

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, JULY 16, 2008
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, July 16, 2008 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: Scott Seiber, Kim Griffo, Tom Auer, Greg Mayes and Bill Whitaker

Board Members Absent: Darren Jones and Ed Davis

Also Present: Candace Dowdy, Peyton Mastera, David Roberts, Mike Pitman, Reta Gray, Mayor Rushing, Holly Wise, Betty Bumphis, Tom McElrath, Jason Billington, Linda Demrow, Derrick Waters, Bill and Dawn Sanders, Chris Clark, Laura Sheridan, James Herndon, Gene Schanbacher and public audience

Chairman Whitaker called the meeting to order at 4:30 p.m. and welcomed all guests and applicants. Chairman Whitaker asked for approval of the minutes from the June 18, 2008 regular meeting.

Scott Seiber made a motion to approve the minutes from the June 18, 2008 regular Board of Zoning Adjustments meeting with the noted corrections. Tom Auer seconded the motion and it carried unanimously with a 5-0 voice vote.

Scott Seiber made a motion to remove the dimensional variance application from the table for Heritage Bank (2185 US Hwy 641 North) that was tabled at the June 18th meeting. Greg Mayes seconded the motion and the motion passed unanimously.

Scott Seiber made a motion to remove the dimensional variance application from the table for Heritage Bank (1302 Main Street) that was tabled at the June 18th meeting. Tom Auer seconded the motion and the motion passed unanimously.

Peyton Mastera stated that since the last meeting, he had spoken with Mr. Rick Fritschle, representative for Max Arnold and Sons, and that they would be bringing the signage into compliance; thus, no further action is required.

Public hearing to review the dimensional variance application to place an accessory structure (carport) in a side yard – 200 Pine Street – Betty Bumphis: Candace Dowdy referred to a Power Point presentation to show the property at 200 Pine Street (corner of Pine and North 1st Street) where Ms. Betty Bumphis resides. She has a concrete driveway that extends back to the north along the west side of her house and she would like to have a 12' x 20' metal carport erected to place her car under. Ms. Bumphis has an exterior door on the west side of her home that comes out onto a wood porch that prevents her from placing the metal carport any further back. Ms. Bumphis would also like to keep her utility meters outside of her carport. Ten feet of the carport will run along the side of the house and ten feet will project beyond the front

wall of the house. Ms. Dowdy stated that since 2006, the BZA has reviewed and approved four or five dimensional variance applications for setbacks on metal carports which are considered accessory structures. In addition, the property owner across the street has an existing two car metal carport (with no variance on file). Ms. Dowdy stated that Ms. Bumphis had been made aware of the fact that she would be required to apply for a building permit if the BZA approves the request and that there is a \$20.00 fee for the building inspector to come out and insure that the structure is properly secured to the ground. Ms. Dowdy added that Ms. Bumphis brought in documentation from her adjoining property owners stating that they did not have a problem with her placing a metal carport in her side yard.

Chairman Whitaker opened the public hearing and asked if there was anyone there wishing to speak in favor of the variance.

Ms. Betty Bumphis, 200 Pine Street, was sworn in. Ms. Bumphis stated that her car wouldn't fit between the steps and the side of the concrete slab and she also added that the carport would be too low for her to go up the steps to her house. The way that the carport is proposed, Ms. Bumphis would be able to enter her front door from her carport and stay under the roof while walking from the car to the house. Ms. Bumphis concluded by saying that if the proposed carport is approved there will be adequate room for an additional car to park in her driveway behind her car.

Chairman Whitaker asked if anyone would like to speak in opposition of the variance. There was no one. Chairman Whitaker closed the public hearing and opened for board discussion.

Tom Auer made a motion to approve the request for a dimensional variance to place an accessory structure (carport) in a side yard at 200 Pine Street because it is not feasible to move the carport to the back side, given the configuration of the home with the side entrance door, the obstruction to the utility meter, and the tree in the yard and it will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. Kim Griffo seconded the motion and the motion passed with a 5-0 vote.

Public hearing to review the conditional use permit application to allow a residential care facility in an R-2 zoning district – 654 Utterback Road – Behavioral Support Services:

Candace Dowdy referred to the property on a Power Point presentation. Ms. Dowdy stated that planning staff noticed that the utilities at 654 Utterback Road were in the name of Behavior Support Services and upon contacting Tom McElrath, representative for Behavior Support Services, found out that the property was being used as a residential care facility for mentally disabled adults. Mr. Marty Dick is the property owner and he is leasing the home to Behavior Support Services. Currently there are two non-related persons occupying the premises with a full time staff person on duty at all times (rotating 8 hour shifts); however, no staff member resides at the premises. Mr. McElrath was not aware that a conditional use permit was needed for this use. The property is a part of Whispering Meadows Subdivision, Unit III. Ms. Dowdy

stated that the business is state regulated by Medicaid and regular inspections are made at the home.

KRS 100.084 (Residential care facility for persons with disabilities) states:

Any sponsoring private or governmental agency shall be permitted to operate a residential care facility in any residential district, zone, or subdivision subject only to compliance with the same limitations upon area, height, yard, screening, parking, number of dwelling units, and number of occupants per dwelling unit as apply to other residences in the district, zone, or subdivision. For purposes of determining the number of occupants in a residential care facility, or in any of the dwelling units which comprise the facility, employees of the sponsoring agency providing services to persons with disabilities shall be counted only if their permanent residence is maintained at the facility. No conditional use permit not otherwise required for other residences within a zone or land use category shall be required for the operation of a residential care facility.

Chairman Whitaker opened the public hearing and asked if there was anyone wishing to speak in favor of the conditional use permit application.

Tom McElrath, 1607 Hermitage Place, was sworn in. Mr. McElrath stated he and his partner started their business in 2000 as a limited liability company solely in Murray. This home serves as a residence for two adult males. The situation and home is very quiet and has a very low key setting with no complaints from the neighbors nor have there been any issues since they have resided there. The staff takes care of meal preparation, house cleaning, assists with medications and aids in shopping. They also accompany the residents to the movies and restaurants and other outings in the community. The staff's vehicle would be the only vehicle at the home unless Mr. McElrath or his partner drops by. Mr. McElrath added that when they looked at this particular rental property, it suited their needs; so that is how they ended up there. They always try to rent nicer homes to give a sense of a home atmosphere. Mr. McElrath stated that the goal is for the residents to integrate into the community as much and as normal as possible.

Scott Seiber asked how the type and level of care was determined for these individuals. Mr. McElrath stated that they are very highly selective and get a lot of referrals; however, he and his partner (both having backgrounds in clinical psychology) review referral packets and look at past behavioral issues and diagnosis before actually selecting their candidates. Mr. Seiber asked Mr. McElrath if he knew that the city had ordinances and Mr. McElrath stated that he did and he added that if he was going to run a business in a residential zone he realized that that would certainly be prohibited, but he did not consider this a business. He considered it a home; he considered the actual office on Johnson Boulevard the business. Mr. McElrath stated that the state regulated program only allows three tenants to one home and they have room for one more tenant; however, they have rejected many referrals for that vacant spot because they have not found that perfect fit.

Chairman Whitaker asked if there was anyone that wished to speak in opposition of the application.

Jason Billington, 2130 Brinn Road, was sworn in. Mr. Billington stated that he was first aware that that the property was being rented on the previous Sunday afternoon and that he is opposed to granting the conditional use permit simply because the home is in an R-2 single family zone. He added that there are appropriate zones in the city such as R-3, R4 and R5 where something like this can be accomplished. Mr. Billington presented a petition with 19 signatures from his neighbors that share the same opinion. *The petition was submitted as Evidence A.*

Linda Demrow, 2168 Brinn Road, was sworn in. Ms. Demrow wanted to ask a question. She wanted to know if this organization was a business for profit. She said that the Whispering Meadows Subdivision rules and regulations stated that there can be no business for profit located within the subdivision. Mr. Mike Pitman, attorney for the city, stated that the BZA could only address applications for conditional use permits under the zoning ordinance and not police the subdivision's rules and regulations.

Derrick Waters, 2070 Brinn Road, was sworn in. Mr. Waters stated that the gentlemen were very quiet. Mr. Waters stated that his knowledge of the business is limited and therefore, given the safety of his children, he is opposed to the application.

Chairman Whitaker asked if there were any rebuttals. They were none. The public hearing was closed and it was turned over to the board for discussion.

Scott Seiber made a motion to deny the request for a conditional use permit to allow a residential care facility to operate in an R-2 zoning district at 654 Utterback Road – Behavioral Support Services. Kim Griffo seconded the motion and the motion passed with a 4-1 vote. Greg Mayes voted no.

Mr. McElrath came forward again and stated that the lease for the home on 654 Utterback Road runs through August and he asked that the board be lenient on a giving them a time limit in order to find proper housing for the two tenants.

The board unanimously approved by voice vote to give Mr. McElrath until January 1, 2009 (six months) to be out of the home and for 654 Utterback Road to come in compliance with the zoning ordinance.

Public hearing to review the dimensional variance application to place an accessory structure (detached garage) in a side yard – 1311 Farris Avenue – Bill and Dawn Sanders: Peyton Mastera referred to the property on a Power Point presentation. Mr. and Mrs. Sanders currently live at 1311 Farris Avenue and they also own the vacant lot to the east of them. The vacant lot fronts Farris Avenue and goes back to Main Street. The property owners are in the process of having a minor subdivision plat prepared to abolish the line between the vacant lot and the lot where their home is located at 1311 Farris and making a new separate lot (99.19' x 199.03') that will front only on Main Street. There is a natural drainage that runs behind the house and along the south property line that would be disturbed if the garage was placed in the

rear yard; therefore, they are requesting the variance to place the 30' x 40' detached two car garage in their new side yard. The proposed garage will be 26.41' off the east property line and 60.36' off the rear property line. The Sanders had already begun work in their backyard on drainage issues before they were aware that they were required to apply for a dimensional variance for an accessory building. David Roberts stated that the city had been aware that Mr. Sanders was making improvements to his property and had been communicating with him concerning the improvements; however, the city had not dictated anything.

Chairman Whitaker opened the public hearing and asked if anyone would like to speak in favor of the application.

Chris Clark, 2106 Creekwood Drive, was sworn in. Mr. Clark, with Clark Construction and contractor for this project, stated that the Sanders had recently purchased this property, cleaned up fence lines, took out trees, and filled holes. Mr. Sanders' house and lot is ¼ acre. After purchasing the 1/3 acre lot next to his residence and resubdividing the land, they will have approximately .65 acres; therefore, the garage will fit proportionally on the property. While Mr. Sanders was doing earth work to correct his yard, he built a building pad where he wanted his building to be. The house is L shaped and the garage sticks out on the front side of the house 26' from the front line of the house. Mr. Clark also added that because of the fill that has been done to the property and the box culvert that is further back on the lot, this is about the only spot where the garage could be placed. There has been a petition signed by the property owners to the east and the west of the Sanders' property in agreement with the dimensional variance. A temporary fence was installed while earlier construction was taking place. It will remain until the project is completed and at that time the fence will be straightened to run along the back of the new garage.

William Sanders, 1311 Farris Avenue, was sworn in. Mr. Sanders stated that his proposed garage would be ten feet longer than a typical garage which is 30' x 30'. Scott Seiber asked how the garage would be accessed. Mr. Sanders stated that he may have stepping stones from his house to the garage and that there would be a street entrance from Farris. Mr. Sanders stated that he was going to put trees on the east side of the property and that the fence line would have ivy growing on it to create a barrier from the Main Street traffic. Some of the houses in the neighborhood are brick and some are vinyl sided; therefore, the garage should blend in aesthetically. Mr. Sanders added that he would be landscaping around the garage similar to the landscaping around his house.

Laura Sheridan, 1307 Farris Avenue, was sworn in. Ms. Sheridan stated that she neighbors the Sanders' home on the east. Ms. Sheridan explained that she did not think the Sanders would build anything that would be a detriment to the neighborhood and she wanted to voice her support.

Chairman Whitaker asked if there was anyone that wished to speak in opposition of the application.

James Herndon, 1312 Farris Avenue, was sworn in. Mr. Herndon stated that he felt the garage that the Sanders are proposing to build is larger than typical. He added that since the yard work had begun at the Sanders' home that heavy equipment had already damaged the street pavement. He feels that construction has already begun and there hasn't been a permit issued. He added that no amount of landscaping could conceal that this proposed structure is a common garage and concluded by saying that the only other free-standing garage in the neighborhood is located in the back yard behind that home making it barely visible; therefore, he opposes the construction of the garage.

Gene Schanbacher, 1314 Farris Avenue, was sworn in. Mr. Schanbacher explained that Farris Avenue residents take a lot of pride in having a good neighborhood. Mr. Schanbacher has looked at the short and long term possibilities of the structure and has come to the conclusion that the garage does not fit very well with the neighborhood. He does agree that the Sanders have done a good job of having an attractive home with landscaping; however, down the road should the Sanders sell their property, Mr. Schanbacher is concerned about the function the garage might serve should the property change hands.

Chairman Whitaker asked if anyone had a rebuttal.

Chris Clark came forward and stated that at this point, Clark Construction had only done storm drainage to take care of the water problem that was dumping into this piece of property and that no building construction had begun. He added that the owners did the dirt work themselves. Mr. Clark said that Clark Construction permits every project that they do which is typically commercial industrial. He explained that the clay fill was put in and compacted and that the pad was put in at the time that the earthwork was being done around it. Mr. Clark said that the first step after the variance is granted is to present drawings to meet all regulations and codes and then once the permit is granted, the construction will start. Greg Mayes asked if there was going to be one or two overhead garage doors on the building. Mr. Sanders stated that he did not have a design plan at this time, but that he was leaning towards two doors. Mr. Clark stated that in the state of Kentucky, earthwork is always allowed before a permit is issued on a project of this nature. Mr. Seiber noted that the size of the garage will not be a typical garage for Farris Avenue and Mr. Clark agreed. Mr. Clark then referred to an advertisement that came from a local paper which listed various sized garages as standard; he commented that it actually depends upon the wants and needs of the owner/purchaser. Mr. Clark added that the property that Mr. Sanders is putting the garage on is actually larger than the property that Mr. Sanders' house and attached garage is on; therefore, proportionally to the piece of property, the garage will be small.

Dawn Sanders, 1311 Farris Avenue, was sworn in. Ms. Sanders stated that they could have made investment purposes with the two lots that they own on Farris and Main by building a house on each, but they thought the property would be more suitable to the neighborhood if they combined the two lots and built a garage.

Chairman Whitaker closed the public hearing and opened for board discussion.

Tom Auer made a motion to approve the dimensional variance application for Bill and Dawn Sanders to place an accessory structure (detached garage) in a side yard at 1311 Farris Avenue due to the location of the box culvert and other drainage issues that it will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. Scott Seiber seconded the motion and the motion carried with 4-0 vote. Kim Griffio abstained from voting.

Questions and Comments: Mike Pitman stated that Greg Taylor received a variance from the BZA in Oct. 2007 for a front setback on his free-standing sign at 306 S. 12th Street. Dr. Kevin Adams, who owns the optometrist business to the north of Mr. Taylor's business, filed an appeal with Judge Foust stating that the sign is obscuring the view of his sign when traveling south on 12th Street. A response was filed by Mr. Pitman and other issues were raised. Judge Foust issued a ruling recently stating that Dr. Adams was not present at the hearing and was not made aware of the dimensional variance application request; therefore, Judge Foust has remanded it back to the BZA in order for everyone to have a chance to voice their opinion either for or against the issue. At the time of this request, it was not required to notify adjacent property owners for a dimensional variance application. The ordinance has since been changed so that all adjoining property owners are notified for variance requests.

Kim Griffio stated that in larger cities, the sanitation departments are being used to report issues of non-compliance on PDA devices. The reasoning behind this is that the sanitation workers are out every day and it is saving the cities tons of fuel and work. She added that this could be a big help in inventorying the metal carports throughout the city should the city decide to do so in the future.

Kim Griffio asked what the code/ordinance for dog kennels was. Ms. Dowdy stated that there used to be an ordinance restricting the number of dogs a person could have in the city, but that ordinance had been amended in the past few years. Ms. Dowdy said that there is a noise ordinance which would allow a person to contact the police department if the animals were all outside and making noise.

Peyton Mastera reminded the members attending the Continuing Education course the next day at the Kentucky Dam Village.

Scott Seiber made a motion to adjourn. Greg Mayes seconded the motion and it carried with a unanimous vote. The meeting adjourned at 7:10 p.m.