

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, SEPTEMBER 17, 2008
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, September 17, 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, Darren Jones, Ed Davis and Bill Whitaker

Board Members Absent: None

Also Present: Candace Dowdy, Peyton Mastera, David Roberts, Mike Pitman, Reta Gray, Matt Mattingly, Vonnie Hays Adams, Teresa Garland, Dr. Kevin Adams, Greg Taylor, Hawkins Teague 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 August 20, 2008 regular meeting.

Scott Seiber made a motion to approve the minutes from the August 20, 2008 regular Board of Zoning Adjustments meeting as presented. Darren Jones seconded the motion and the motion carried unanimously with a 7-0 voice vote.

Public hearing to review the conditional use permit application for a residential planned development project – Merryman House – 1416 Diuguid Drive – Kentucky Domestic Violence Association: Candace Dowdy used a Power Point presentation to review The Merryman House project. She stated that the planned development project was brought before both the Planning Commission and the Board of Zoning Adjustments last month for advisory and compatibility. Both were approved and forwarded on for the next step in the planned development project process. Ms. Dowdy stated that the site plan had been altered since it was previously presented last month. Upon recommendations from the planning staff, revisions that were made to the plat included four additional parking places, expanded width of the parking aisles to 24 feet, a dumpster area included in the back of the project, and relocation of the sanitary sewer line. The minor subdivision plat has been completed which consolidated the three lots into one tract of land, consisting of a total of approximately 1.5 acres. The Planning Commission approved the preliminary plat on the previous night contingent upon the BZA approving the conditional use permit with any variances that are being considered and that the entire project meet all city regulations. The zoning is R-4 (multi-family residential). The project will consist of four duplexes that will contain a total of eight individual units. Ms. Dowdy added that the storm water detention requirements would be reviewed by city planning staff.

Board member, Darren Jones, asked about the results of the site distance summary. Ms. Dowdy stated that the summary showed that there would be no site distance problem while entering or exiting the project.

Chairman Whitaker opened the public hearing and asked if there was anyone that wished to speak in favor of the conditional use permit application. There was no one. Chairman Whitaker asked if there was anyone that wished to speak in opposition of the application. There was no one. The public hearing was closed and discussion was opened for the board members.

Chairman Whitaker was concerned about the parking for the project and asked Ms. Dowdy why the planning staff had decided to add additional parking places. Ms. Dowdy replied that the four added spaces would allow ample parking for tenants and visitors. She added that should Kentucky Domestic Violence Association decide to sell the property in the future, they might benefit from the added spaces. Ms. Dowdy stated that the sanitation department made the recommendation to add a dumpster area to the back of the project when they reviewed the site plan.

Chairman Whitaker asked Ms. Adams, Director for The Merryman House, to come forward to answer questions for the board. Ms. Vonnie Hays Adams, Kirksey, Kentucky, was sworn in. Board member, Scott Seiber, asked if the location for the playground had been decided on. Ms. Adams stated that it had been discussed with the architect. Originally the front west corner of the project was being looked at for the playground and picnic area since it was well shaded with established trees; however, that area is now being looked at for the storm water detention location. Ultimately, how the detention area gets addressed may come down to the budget and which is the more feasible location for the detention area according to Ms. Adams, and the playground and picnic area might have to be relocated.

Ed Davis made a motion to grant the conditional use permit application for a residential planned development project, The Merryman House, at 1416 Diuguid Drive, Kentucky Domestic Violence Association, with the four parking space variance, in that the nature of the tenants would be that there will not be as many vehicles as would normally be in other apartment complexes; the tree line to be maintained as much as possible; and that if the property is sold, that the board will revisit the conditional use permit as it regards parking and screening and that such variance 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 subject to meeting all city regulations. The approval of the conditional use permit is contingent upon the Planning Commission approving the final plat. Darren Jones seconded the motion and it carried with a 7-0 voice vote. Matt Mattingly left the meeting at 5:00 p.m.

Public hearing to review the dimensional variance application for a four foot rear setback and a three foot side setback variance on proposed accessory building – 505 South 13th Street – Steve Birgbauer: Peyton Mastera used a Power Point presentation to show the property at 505 South 13th Street owned by Mr. Steve Birgbauer. The applicant would like to erect a 16 foot x 24 foot accessory building in the northeast corner of his rear yard. Currently the applicant has two smaller sheds that will be supplanted by this proposed building. The applicant

requests that the accessory building be one foot off the rear property line and two feet off his side property line. The zoning ordinance requires that all accessory buildings be at least five feet off the rear and side property lines. The applicant's back yard is enclosed by a chain length fence. The portion of the fence to the east of his property, where the proposed building is to be located, will be removed. According to Mr. Birgbauer, this building will also act as a sound barrier from South 12th Street and give better protection to his property.

Chairman Whitaker opened the public hearing and asked if there was anyone that wished to speak in favor of the application.

Mr. Steven Birgbauer, 505 South 13th Street, Murray, was sworn in. Mr. Birgbauer stated that he chose the site for the proposed structure to better utilize his backyard space. He added that he had a permanent clothes-line and a couple of established trees that he would like to leave. He confirmed the size of the proposed structure and added that he would like to keep his backyard fully enclosed because of others cutting across his property. Mr. Birgbauer said that the structure would be placed on a permanent concrete foundation and be wood framed. The structure will have one garage door, one walk-in door and one window which will all face the west. Mr. Birgbauer stated that he would like to have the structure less than 400 square feet so that he could have a 12" footer (in order to be in compliance with building codes). The building's vinyl siding and architectural shingled roof will match Mr. Birgbauer's residence. Mr. Birgbauer said that his contractor will put conduit that is capped off at each end in the concrete floor so that he can have electricity run into the building at a later date.

Chairman Whitaker asked if there was anyone that wished to speak against the application. There was no one. Chairman Whitaker closed the public hearing and opened for board discussion.

Chairman Whitaker asked what would happen if the property owner was wrong about his property lines and built on his neighbor's property. David Roberts stated that if the lot-line is in question, the property owner is encouraged to have the property surveyed. He added that if the property owner actually builds outside of his property line, he could be asked to tear the structure down at a later date.

Scott Seiber made a motion to approve a four foot rear setback and a three foot side setback variance on the proposed accessory building at 505 South 13th Street as 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 with the finding that Mr. Birgbauer is trying to obtain as much open space in his yard consequently locating the proposed structure as close to the property line as he can and the adjoining properties of Family Dollar and Murray Plaza were probably surveyed with the changes of property owners giving us a good idea of where the property lines are. Ed Davis seconded the motion and the motion carried with a 7-0 vote.

Review of the tabled dimensional variance application for an eight foot front setback variance on a free-standing sign – 306 South 12th Street – Cornerstone Realty – Greg Taylor:

Scott Seiber made a motion to remove this item from the table. Darren Jones seconded the motion and the motion carried unanimously. *Darren Jones recused himself previously on this matter and he requested to be recused again. Darren Jones left the meeting at 5:30 p.m. Ed Davis recused himself because he had to leave last month's public hearing unexpectedly; therefore, he was not able to listen to the testimonies and felt it would be unfair to the applicants for him to vote on the matter. Ed Davis left the meeting at 5:31 p.m.*

Peyton Mastera stated that at last month's BZA meeting Greg Taylor had filed a new Dimensional Variance application for his existing free standing sign (totaling 24 square feet) located at 306 South 12th Street and a public hearing was held on August 20, 2008, whereby all adjacent property owners were notified. All the evidence was submitted at that time and reviewed. After deliberation, this item was tabled until the September 17, 2008 regular meeting to give the board members the opportunity to drive by the location in order for each one to make a determination on whether the sign should be moved and if so, where it could be moved. Mr. Mastera had included a drawing in the BZA member's packet showing the approximate distances from Vine Street to the center of Dr. Adam's property and the center of Greg Taylor's property.

There was much discussion among the board members. Greg Mayes stated that he drove by and viewed the current location of the sign and that it was his impression that the sign might fit up next to the house close to the corner where the front driveway and the driveway that goes around to the back meet. Tom Auer questioned if there was enough room between the circle driveway and house to relocate the sign and then added that he felt that if the circle drive was done away with, the sign could be moved back toward the house and everything would be fine. He feels that there is enough parking in the back of the house to accommodate clients for all three businesses. Scott Seiber commented that the circle driveway is there and that Mr. Taylor would like to accommodate his customers by leaving the driveway as is. Mr. Seiber added that this type of issue has been presented before and he felt as properties are sold in the future, this issue will present itself again as more businesses locate along South 12th Street. He stated that Mr. Taylor had put the sign in what he felt was the best location for his business and Dr. Adams feels that the sign is a bad location for his business. It depends on the perspective each individual has. Mr. Taylor's sign is in compliance with the original requirements stipulated by the BZA; however, there was never a sign permit issued for Dr. Adams' sign, so it is not known if the sign for his business (Eye Care Specialties) is in compliance.

Chairman Whitaker stated that if one should go back to the original meeting, there were several things mentioned that were unique to this location. 1) The large tree and the circle driveway in the front yard 2) The proximity or closeness of the house to the street 3) A residence being turned into commercial property 4) There are three businesses located at this property with each being advertised on the sign (which requires a larger sign than if only one business was located

at the site). Dr. Adams claimed to have been “injured or aggrieved” as elaborated upon in his appeal.

Greg Mayes made a motion to deny the Dimensional Variance application on an eight foot front setback for the free-standing sign at 306 South 12th Street, Cornerstone Realty, for Greg Taylor. Tom Auer seconded the motion and the motion carried with a 3-2 vote. Kim Griffo and Scott Seiber voted no.

Greg Mayes made a motion that in consideration to the applicant, he is granted a six month period to remove the sign and come in compliance. Tom Auer seconded the motion and it carried unanimously. Darren Jones and Ed Davis returned to the meeting at 5:55 p.m.

Public hearing to review the dimensional variance application for a six foot rear setback variance on construction of home – 2609 Stonegate Drive – Gregg and Valerie Heath: Peyton Mastera referred to the property on a Power Point presentation. Mr. Mastera stated that the property at 2609 Stonegate Drive is located in Hunter’s Pointe, Phase III. The applicant is requesting a six foot rear setback variance on the construction of a home, which will be 19 feet off the rear property line. There is a 40’ minimum setback in the front yard with a 25’ rear setback requirement. Ms. Dowdy stated that anytime the rear setback is not noted on the final plat, the planning staff always goes with the typical rear setback in that particular zoning district, which is 25 feet. Mr. Mastera stated that to the rear of the property runs a 12 foot drainage easement as well as a drainage ditch. At its closest point, the rear of the home would be approximately one foot from the drainage ditch. Upon conferring with a City of Murray Building Official, due to the proximity of the proposed construction to the ditch, the footer would have to be two feet below the bottom elevation of the ditch. The ditch is approximately 30 inches deep, which would make the footer 54 inches deep. According to the Covenants and Restrictions – “Building setbacks and all easements for installation and maintenance of utilities, drainage facilities, and public utilities, are reserved as shown on plat or lying either side of utility lines and drainage facilities as constructed.”

Chairman Whitaker asked about the drainage in the ditch that is behind the proposed home. David Roberts stated that the property drains from Belle Meade drive running west to east behind the property. There is a culvert underneath Stonegate Drive (which is at the northeast corner of the property) that runs north to south and they converge at the southeast corner of the property. Mr. Roberts stated that there is a substantial amount of area with drainage, but he has never witnessed any problems. He added that the drainage was sized by engineers.

Chairman Whitaker opened the public hearing and asked if there was anyone that wished to speak in favor of the application.

Teresa Garland, 1314 State Route 94 West, Murray, was sworn in. Ms. Garland is the contractor for the proposed home of Gregg and Valerie Heath. Ms. Garland said the house plans have a covered porch located on the back side and if the house is located properly with consideration to the front setback, the porch will be very close to the back of the lot. The garage extends out

quite a distance on the front of the home; therefore, there is no room for movement on the lot. Ms. Garland said that the homeowners purchased one of the larger lots in the subdivision to accommodate their selected house plan. (The house plan shows the dimensions as 90 feet deep and 84 feet wide.) Ms. Garland stated that the lot has a decent amount of yard area on either side of the home where the covered porch could be attached, but this would not fit well with the plan of the home; therefore, the homeowners would like to leave the original plan as is. Ms. Garland stated that the homeowners have requested that a covered culvert be installed behind the porch so that it would not be a ditch area. Planning Staff is reviewing that option. Ms. Garland added that she had been to the lot on several occasions after heavy rains and she has never seen water in the ditch. She said that the lot was a pretty even grade. Ms. Garland said that according to the plans, she would technically only need a three foot variance, but she was asking for six feet to make sure everything fit well.

Chairman Whitaker asked if there was anyone that wished to speak in opposition to the application. There was no one. The public hearing was closed and turned over to the board for discussion.

Scott Seiber made a motion to approve the dimensional variance application for a six foot rear setback variance on construction of a new home at 2609 Stonegate Drive for Greg and Valerie Heath based on the fact 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 carried with a 7-0 vote.

Questions and Comments: None.

Darren Jones made a motion to adjourn. Ed Davis seconded the motion and the motion carried with a unanimous vote. The meeting adjourned at 6:25 p.m.

Chairman, Bill Whitaker

Recording Secretary, Reta Gray