

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, OCTOBER 22, 2008
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, October 22, 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, Greg Mayes, Darren Jones, Ed Davis and Bill Whitaker

Board Members Absent: Tom Auer

Also Present: Candace Dowdy, Peyton Mastera, David Roberts, Mike Pitman, Reta Gray, Pastor Sammy Cunningham, Frederick Blume, Richard Hoffman, Robert Montague, Jack Calbert, Oneida Boyd, Danny Hudspeth, Mary Jane Timmerman, Jodie Mayes, John A. Thomas, Dr. Burton Young, Dr. Steve Farmer, Mayor Rushing 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 September 17, 2008 regular meeting.

Scott Seiber made a motion to approve the minutes from the September 17, 2008 regular Board of Zoning Adjustments meeting as presented. Darren Jones seconded the motion and the motion carried unanimously with a 6-0 voice vote.

Public hearing to review the conditional use permit application for church related activities in an R-2 zone – 618 South 9th Street – Grace Baptist Church: Candace Dowdy used a Power Point presentation to point out the vacant lot at 618 South 9th Street which is owned by Grace Baptist Church. The property previously had a home on it but it was demolished in November 2005; the paved driveway at 618 S. 9th Street remains. Grace Baptist Church is requesting a conditional use permit to allow the property at 618 S. 9th Street to be used as a church parking lot which would be directly across from the church. The property is located in an R-2 zone that only allows church and church related activities as a conditional use. The property owner has been informed of possible stormwater detention requirements if the impervious area is expanded more than 7,500 sq. feet. The size of the lot is 75 feet x 183 feet. Ms. Dowdy stated that Planning Staff had sent letters to all adjoining property owners concerning the intention of the church. Only one response was received and that was from Thornton's Tile. Thornton's Tile stated that they were in support of the church and the expansion of their parking lots.

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

Pastor Sammy Cunningham, 808 South 9th Street, was sworn in. Pastor Cunningham stated that he had been with the church for eight years and had seen growth during that time. Previously the other church parking lots had been sufficient for the parking; however, as the congregation has

grown, Pastor Cunningham stated that several cars have driven away because they couldn't find a parking spot on Sunday mornings. Pastor Cunningham stated that they do not have a site plan yet, but they will request as many parking spots as would be permitted on the lot. He added that since he had been at the church, that people had left the parking lots quite orderly and that there had not been any accidents during that period.

Chairman Whitaker asked if there was anyone that wished to speak against the conditional use permit application. There was no one. Chairman Whitaker closed the public hearing and turned it over to the board for discussion.

Darren Jones made a motion to approve the request for a conditional use permit for Grace Baptist Church at 618 South 9th Street for church related activities, with restricted use for only a parking lot, due to the nature of the church's growth in an R-2 zone and for the church to work with the city on any possible storm water detention issues. Ed Davis seconded the motion and the motion carried with a 6-0 vote.

Public hearing to review the conditional use permit application to allow three non-related persons to occupy the premises in an R-2 zoning district – 1637 Miller Street – Frederick Blume: Peyton Mastera pointed out the property in discussion on a Power Point presentation. He stated that when it was brought to the attention of the Murray Planning Department that the home at 1637 Miller Street was possibly being used for multi-family use, Planning Staff sent a letter to the property owner, Mr. Frederick Blume to inquire as to how the home was being used. The home is currently being used as multi-family. Mr. Blume's request is for his daughter and two other tenants to be able to reside at the premises. The home has ample parking for three or four cars in a paved area in front of the home. Mr. Mastera explained that this particular property was located in an area where a rezoning proposal took place and was ultimately denied by the Murray Planning Commission to rezone a portion of properties west of 16th Street from R-2 (Single Family Residential) to R-4 (Multi-Family Residential). This particular property was purchased from the Reed's. It was indicated in the form of a survey from the Reeds that they were using the property for single family use. Prior to that, it had been used for multi-family. Mr. Mastera stated that only one response was received after letters went out and they were in support of the application.

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

Mr. Frederick Blume, 282 Highland Club Estates, Mayfield, was sworn in. Mr. Blume explained that he had purchased this home directly from the previous owner (without a realtor) either in July or August of 2008 with the intention of his daughter living there while she attended Murray State University. Mr. Blume's daughter, Elise, is currently residing at the home along with one additional person, who is a foreign exchange student from Japan. Mr. Blume explained that the parking area is an asphalt slab that could accommodate up to four cars. He added that more cars could be parked in the back if the need should arise. The house has three bedrooms with two and a half baths and would be suitable for three people to live there. Mr. Blume stated that he spoke

to the neighbors to the east and the ones directly behind the home and neither of them have objections to the application. Mr. Blume purchased the home because of its proximity to campus. He added that since he invested a lot of money when he purchased the house, it would be self defeating if he let it become run down. Mr. Blume is dependent upon the rent that is being paid on the house by his daughter's roommate(s).

Mr. Richard Hoffman, 1630 Farmer Avenue, was sworn in. Mr. Hoffman stated that he lives directly behind the home. He stated that the girls that live in the house are very quiet and he hardly knows when they are there. He rarely sees more than one car at the residence; therefore, he has no problem with the conditional use permit being granted.

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

Scott Seiber made a motion to approve a conditional use permit for Frederick Blume at 1637 Miller to allow up to three non-related persons to occupy the premises in an R-2 zone with the conditions that persons not living on the premises will not be allowed to park their regularly, that there are no complaints, one of the occupants must be Mr. Blume's daughter, and that the application will expire upon the daughter's graduation or ceasing to become a student at Murray State University. Kim Griffio seconded the motion and the motion carried with a 4-2 vote. Ed Davis and Greg Mayes voted no.

Attorney Mike Pitman suggested that when the daughter graduates from MSU and Mr. Blume proceeds to sell the property, that Mr. Blume emphasize that the property is in a single family zone.

Public hearing to review the conditional use permit application to allow three non-related persons to occupy the premises in an R-2 zoning district – 1000 Sharpe Street – Robert Montague: *Greg Mayes asked that he be recused from this application because he is a neighbor to the applicant. He left the meeting at 5:30 p.m. Mayor Rushing left the meeting at 5:35 p.m.* Peyton Mastera pointed out the property on a Power Point presentation. Mr. Mastera stated that it was brought to the attention of the Planning Department that the home at 1000 Sharpe Street was possibly being used for multi-family use. Planning Staff sent a letter to the property owner, William McLean, who resides in Texas, to inquire as to how the home was being used. It was determined that the property is being used for multi-family use. There are three individuals living there at this time. After explaining the options to the current tenants, they decided to apply for a conditional use permit to allow three non-related persons to occupy the premises. One of the tenants, Robert Montague, is the applicant for this request. When letters were sent to adjoining property owners making them aware of the public hearing for the application, only one response was received and that was from George Kipphut, 301 North 10th Street. Mr. Kipphut had no objections to the granting of the conditional use permit; however, he asked that the conditional use apply only to the current residents.

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

Robert Montague, 1000 Sharpe Street, was sworn in. Mr. Montague stated that the owner, Mr. McClean, was his prior boss at Murray State. Mr. McClean lost his job in April of 2008 and has since found a new job in Dallas, Texas. Mr. Montague stated that he and the other tenants were looking for a place to stay when the owner invited them to move in and look after his home until the summer of 2009, when he is able to return to Murray and put the home up for sale. Mr. Montague said that he was not aware of the zoning ordinances when he moved into the house and he feels that if the application is not approved and only one person is allowed to live there, that one person won't be able to afford the rent and that person will have to move. Mr. Montague stated that he and one other resident are scheduled to graduate by, at the latest, May 2009 and the third tenant is an undergraduate student and does not have an interest in staying in the home after the other two leave. Mr. Montague concluded by saying that they are all mature individuals and that they do not have parties or cause disturbances.

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

Jack Calbert, 208 North 10th Street, was sworn in. Mr. Calbert stated that since the property is zoned single family, he feels that it should be left single family. He stated that when multi-family usage is allowed in a single family zone, a crowded condition is created and property values are decreased. Mr. Calbert added that he felt that the occupants should be allowed ample time to move.

Oneida Boyd, 1004 Sharpe Street, was sworn in. Ms. Boyd stated that Sharpe Street is located in the center of Murray and is a very desirable street. They now have a single family neighborhood and she would like for it to remain that way. Ms. Boyd stated that the lot at 1000 Sharpe Street is very small and that earlier in the summer, there had been a large boat at the rear of the property. The boat has since been moved. She is afraid that if the boys that currently occupy the house are allowed to stay, then others will move in the house after they leave. Ms. Boyd stated that she knew Mr. McClean, but she does not know the boys that live in the house. She stated that they had not been loud since they have lived in the house, but she preferred that they not be allowed to stay. Ms. Boyd added that she thought the board should give the boys plenty of time to move.

Danny Hudspeth, 1001 Sharpe Street, was sworn in. Mr. Hudspeth stated that the purpose is not to judge the individuals that are living in the house and that the neighborhood is single family and he would like for it to remain that way. Mr. Hudspeth agreed with Ms. Boyd that it is a nice community and he added that the integrity of the neighborhoods should be kept intact. Mr. Hudspeth said that he is not only trying to protect his neighborhood, but neighborhoods all across the city. He stated that the intent to try and save downtown neighborhoods cannot be accomplished if conditional use permits are allowed to alter or change the use of the property. He said that it is frightening as a home owner not to know how the property next door could be

used in the future. Mr. Hudspeth concluded by saying that he was not in favor of the application and he felt the board should give the boys ample time to relocate.

Mary Jane Timmerman, 1007 Sharpe Street, was sworn in. Ms. Timmerman stated that she had lived on Sharpe since 1970 and this is the first time they have had a multiple occupancy issue. She stated that the neighborhood is R-2 zoned and she would like for that to remain.

Jodie Mayes, 1006 Sharpe Street, was sworn in. Ms. Mayes said that she had the same issues as Mr. Hudspeth. Ms. Mayes stated that she was aware of the trends in college towns for parents to come in and buy houses for their son or daughter to live while attending college. She added that if this had been the case on Sharpe Street when her family was looking for a house, they wouldn't have been as interested if there had been multi-family housing on the street. She has nothing against the young men living in the house now and she agrees that it is hard to tell someone no when they are already occupying the house, but she would prefer that the precedent not be set. Ms. Mayes would like to see the application denied with a generous amount of time for the tenants to be able to find other housing.

Chairman Whitaker asked if anyone had a rebuttal.

Robert Montague came forward to address concerns that the neighbors had. He stated that the boat that Ms. Boyd had mentioned had been moved from the yard and that it would not be back because the owner now lives in Louisville. He added that if it is unsightly for cars to be parked in the front of the house, they would be willing to park them out back. Lastly, Mr. Montague said that since Mr. McLean is a rowing coach and it is a very time consuming job, he may not have time to make the necessary arrangements to sell the house from Dallas. If the application is denied and enforced promptly, the tenants will leave and he feels that the vacant house would hurt property values on the street more than a temporary multi-family use.

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

Ed Davis made a motion to deny the conditional use permit application for Robert Montague at 1000 Sharpe Street and that the property come in compliance with the zoning ordinance by January 15, 2009. Kim Griffo seconded the motion and it carried with a 5-0 vote. Greg Mayes returned to the meeting at 6:10 p.m.

Public hearing to review the dimensional variance request for a twelve foot front setback variance and a five foot rear setback variance – 109 South 13th Street – John Thomas (Room to Grow Preschool): Candace Dowdy pointed out the property on a Power Point presentation. Mr. John A. Thomas is the owner/operator of Room to Grow Preschool at 109 S. 13th Street. Mr. Thomas has applied for a building permit to add to his existing structure. According to the site-plan submitted by Mr. Thomas, the current structure sits 43 feet from the front property line (two feet closer than a variance granted on 10-5-83 when a 5 ft. front setback was granted on the placement of the structure). The proposed addition would place the structure 38 feet from the front property line; thus, Mr. Thomas is requesting a 12 foot front setback

variance. To the rear of the property, Room to Grow Preschool is currently 20 ft. off the rear property line. The addition to the back of the building will extend out to the already existing 20 foot rear building line; thus, a five foot rear setback variance is required. The property has been zoned B-2 since 1974. In B-2 zoning, there is a 50 foot front setback, 25 foot rear setback and no limitation on the sides.

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

John A. Thomas, HC 64 Box 70, Fredonia, Arizona, was sworn in. Mr. Thomas stated that he had owned and managed the child daycare for approximately ten years. Currently the daycare serves 35 children per day with a staff total of five and operating hours of 7:00 a.m. until 5:30 p.m., Monday thru Friday. Mr. Thomas added that much of the space in the daycare is currently used as multi-purpose and the reason for the addition is to allocate classroom and administrative space so that there is not as much transfer of materials back and forth. The addition will not alter the amount of parking spaces across the front; however, it will relocate the spaces closer to the street. Mr. Thomas is considering moving the front entrance door to the south side to keep children from accessing the building directly toward the street. Mr. Thomas added that before he can actually proceed with the alteration of the building, the fire marshal will be required to take measurements and determine if the usage of the property is in compliance with state guidelines.

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

Dr. Burton Young, 2000 Edinborough, was sworn in. Dr. Young stated that he had operated a dental office since 1977 at his current location which is to the south of the daycare. Dr. Young added that 13th Street is a nice little street that is very busy. He said that his concern had always been the amount of traffic that uses 13th Street. Dr. Young added that his office is closed on Friday and he does not care for the daycare using his parking lot on that day; however, during the days of operation, he has had a frequent problem with daycare customers using his parking lot. He has added stripes to the alley way to hopefully divert the people from using this area for parking. The striping helped somewhat; however, it did not totally alleviate the problem. He commented that even if a fence was added to the front of the property, it would create more problems for visibility. Dr. Young concluded that he was speaking in opposition to the addition of the building as well as any kind of sign that might go in the grassy area limiting visibility.

Chairman Whitaker asked if there was any rebuttal.

Mr. Thomas came forward and clarified that the addition would not come any closer to Dr. Young's property than it now is and the five foot strip of grass between them will remain the same. Mr. Thomas added that he would be glad to put up a chain link fence if the board thought it was necessary.

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

Ed Davis made a motion to grant a five foot rear setback variance and a seven foot front setback variance at 109 South 13th Street for John A. Thomas (Room to Grow Preschool) with the condition that the parking situation be brought within some reasonable standard based upon Planning Staff's determination and that the 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. Greg Mayes seconded the motion and the motion carried with a 6-0 vote.

Public hearing to review the dimensional variance request for additional wall signage at Northpointe Professional Office Park – 1710 and 1712 Hwy 121 Bypass North – WMFF, LLC (Steve Farmer): Candace Dowdy pointed out the property on a Power Point presentation. WMFF, LLC is the owner of Northpointe Professional Park at 1710 and 1712 HWY 121 Bypass North. Dr. Steve Farmer is requesting on behalf of WMFF, LLC to place multiple wall signs on the south end of each building facing HWY 121 Bypass North to identify the doctor's offices. They would like to be able to add a 2' x 10' panel for each doctor, five signs per building, with a total of 100 square feet per building. The building on the east is 65 feet back from the property line and the building on the west is 75 feet back. Planning Staff did discuss altering the current monument sign in front of the buildings; however, Dr. Farmer preferred not to.

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

Dr. Steve Farmer, 1765 State Route 94 West, was sworn in. Dr. Farmer stated the reason that he preferred not to alter the existing monument sign was that if each doctor's name was added, the names would be too small from the highway. He is requesting signs at the end of each building that can be removed or replaced when doctors move in or out of the office park. Dr. Farmer stated that there are currently four doctors in the east building and one in the west building, but there is office space still available for a total of five more doctors.

Ms. Dowdy stated that if Dr. Farmer was allowed five 2' x 8' signs on each building that would be a total of 80 square feet per building. The east building would require a 24 square feet variance and the west building would require a 29 square feet variance for signage.

Chairman Whitaker asked if anyone wished to speak against the dimensional variance. There was no one. Chairman Whitaker closed the public hearing and turned it over to the board for discussion.

Scott Seiber made a motion to approve a variance for WMFF, LLC for up to five business wall signs per building with a 29 square foot variance on the amount of signage for the west building located at 1712 Hwy 121 North and a 24 square foot variance on the amount of signage for the east building located at 1710 Hwy 121 North (both buildings located in Northpointe Professional Office Park); each building can go up to 80 square feet of wall

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signage; and, that these signs 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 and the finding that this will make the building more attractive to the area and provide more visibility from Highway 121 North. Ed Davis seconded the motion and it carried with a 4-1 vote. Greg Mayes votes no and Darren Jones abstained from voting.

Questions and Comments: Ed Davis reminded the board that his time on the Board of Zoning expires in January 2009. Darren Jones will also be leaving the board at this time.

Ed Davis made a motion to adjourn. Darren Jones seconded the motion and the motion carried with a unanimous vote. The meeting adjourned at 7:40 p.m.

Chairman, Bill Whitaker

Recording Secretary, Reta Gray