

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, FEBRUARY 18, 2009
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, February 18, 2009 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: Kim Griffo, Tom Auer, Mary Anne Medlock and Bill Whitaker

Board Members Absent: Scott Seiber, Greg Mayes

Also Present: Candace Dowdy, Peyton Mastera, David Roberts, Mike Pitman, Reta Gray, Mayor Rushing, Officer Steve Robinson, Gerald Carter, Mary Ann Carter, Jennifer Taylor, William Jones, Teresa Enoch, Micah Morris, Greg Taylor, Gary Taylor, Greg Anderson, Jeremy Bell, Dr. Kevin Adams, Ryan Rogers, Stephanie Peck, Homer Jones, Nicole Farmer, Drucilla Owens, Cam Alexander 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 January 21, 2009 regular meeting.

Kim Griffo made a motion to approve the minutes from the January 21, 2009 regular Board of Zoning Adjustments meeting as presented. Mary Anne Medlock seconded the motion and the motion carried unanimously.

Public hearing to review an administrative appeal – 201 North 8th Street – Gerald Carter: Peyton Mastera pointed out the property at 201 North 8th Street on a Power Point presentation. On August 23, 2006, a letter was sent by planning staff to Gerald Carter regarding his multi-unit dwelling which is located in an R-2 (single family) zone at 201 North 8th Street. The letter (Exhibit A) explained to Mr. Carter that since this structure had not been occupied for over 12 months, it lost its non-conforming status as multi-family residential. At this time, utility records showed that Unit A had been inactive since 2001; Unit B had been inactive since June 2004; and Unit C had been inactive since 1998. Unit B became active in August 2006 in Mr. Carter's name. There was an approximate time period of 26 months where no services were active to the property. Mr. Carter responded in a letter on September 7, 2006 (Exhibit B) that planning staff was incorrect and that the home had not lost its non-conformity. Planning staff submitted a follow-up letter on October 3, 2006 (Exhibit C) reiterating that 201 North 8th Street had lost its non-conforming status. Recently utility services were requested for 201-A North 8th Street, prompting another letter (Exhibit D) to Mr. Carter restating that this structure lost its non-conformity. Mr. Carter appealed the letter (Exhibit E). At the January 21, 2009 regular meeting, the BZA directed planning staff to set a public hearing for February 18, 2009 to review Mr. Carter's Administrative Appeal. Mr. Mastera stated the only means by which the units could be occupied is if it is found that the structure has not lost its non-conformity. Mr. Carter would not be allowed to apply for a conditional use permit because 201 North 8th Street is comprised of multiple units. In an R-2 zone, the zoning ordinance states in Section II, Article 2.D.3. "A group

of not to exceed four (4) persons not all related by blood or marriage, occupying the premises and living as a single non-profit housekeeping unit.” Mr. Carter would not be eligible for a conditional use permit under these provisions since this structure has multiple units.

Candace Dowdy stated that there was a period of time where the property was unable to be occupied because the property was under repairs due to a violation that had been issued by the Property Maintenance officer and Fire Marshall, Dickie Walls. In August of 2006, Mr. Walls informed Ms. Dowdy that Mr. Carter had completed all the requirements that had been issued in the violation; thus, the property was brought up to code.

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

Gerald Carter, 1506 London Drive, Murray was sworn in. Mr. Carter stated that he did not feel that the section of the ordinance that was quoted was properly administered. Mr. Carter focused on the word “use”. He said that the word “use” was defined by Webster Dictionary as being available. Mr. Carter stated that his apartments were available for rent during the majority of the time since 1998 except for the time when the apartments were under repair because of vandalism around 2006 and 2007; however, they were not rented the entire time. Mr. Carter stated that he and his wife were rather picky about whom they chose to live in their apartments; therefore, they may have been vacant for extended periods of time while the right tenants were chosen. Mr. Carter added that the word “intent” was also used in the ordinance and Mr. Carter stated that he would never have spent the amount of money remodeling if his intent had been to abandon the apartment building. *“When a non-conforming use of a structure, or structure and premises in combination, intentionally is discontinued or abandoned so as to show a gross lack of diligence in using for one (1) year or more (except when government actions prevents such use), the structure or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the zone or district in which it is located.”*

Chairman Whitaker asked Mr. Carter how he advertised the apartments as available for rent. Mr. Carter stated that he does not always advertise his rental properties; he usually receives referrals. Mr. Carter said with the downturn of the economy, there would be more and more apartments found unrented and he questioned if they would be categorized as unavailable.

Chairman Whitaker asked if there was anyone that wished to speak against the appeal.

Jennifer Taylor, 208 North 8th Street, Murray was sworn in. She said that when she purchased her house the apartment building was a mess; however, she added that it had since been cleaned up. Ms. Taylor has concerns about the property being rented. She stated that there is not sufficient parking for tenants at that property. Ms. Taylor then stated that she also wished to speak on behalf of her mother, Anna Faye Taylor and read a letter in protest to the property being rented. (Exhibit F)

William Jones, 802 Olive Street, Murray was sworn in. Mr. Jones said that he and his wife, Lisa, were concerned that if the property was permitted to be rental, that it would negatively affect the quality of life and property value in the area.

Teresa Enoch, 804 Olive Street, Murray was sworn in. Ms. Enoch stated that they have been in the area since 2000. Ms. Enoch stated that when the vandalism occurred to Mr. Carter's apartments and the windows were broken, there was a mold smell coming from the apartment building. Ms. Enoch clarified that "intent to rent" to her meant that the property would be kept in a suitable manner where it could actually be rented. She did not think that the property could be rented in the condition that it was in. Ms. Enoch also concurred with Ms. Taylor in that there was not sufficient parking for tenants at the property. Ms. Enoch concluded by adding that she was representing others that lived on Olive Street and they also were against the property being used as rental.

Micah Morris, 203 North 8th Street, Murray was sworn in. Mr. Morris stated that he bought his home in June of 2006 with the intent that no one would move into the rundown apartments next door and with the hope that he might see the building torn down at some point. When Mr. Morris purchased his house, his mother (home appraiser) told him that no one had occupied the apartment for several years. Mr. Morris stated that he also took much pride in his home and its surroundings and did not want to see renters move in the apartment. Mr. Morris brought pictures of the shed to the back of Mr. Carter's property as well as the apartment building itself. (Exhibit G) Mr. Morris said that he had seen cars parked in his yard and on the sidewalk in conjunction to the apartments. He stated that it was a dangerous spot for parking on the road since there was a hill before you reached the stop sign at 8th and Olive. Mr. Morris concluded said that he would like to see the area have a tight lockdown so that his family and neighborhood could thrive in the area; therefore, he is against the apartments being used as rental properties.

Chairman Whitaker asked if there were rebuttals in favor of the appeal.

Mr. Carter stated that he was not asking to "rezone" his property at 201 North 8th Street, he was asking for a clear statement about the definition of the ordinance that he is accused of violating.

Mary Ann Carter, 1506 London Drive, Murray was sworn in. Ms. Carter stated that they had purchased the apartment house in the 1960's; thus, the situation is not new. Ms. Carter addressed the parking situation and stated that she had spoken to the Planning Department and they discussed with her the possibility of potentially utilizing the alley to the North of the home for parking purposes.

Chairman Whitaker asked if there were any rebuttals in opposition of the appeal. There were none.

Kim Griffo made a motion to deny Mr. Gerald's Carter's appeal that 201 North 8th Street has not lost its non-conforming status. This is based upon evidence shown that 201 North 8th Street went over twelve months without being occupied; thus, 201 North 8th Street has

lost its non-conformity and it must revert to a single family dwelling. Mary Anne Medlock seconded the motion and the motion carried with a 4-0 vote.

Public hearing to review the dimensional variance application for a nine foot front setback variance on a monument style sign – 306 South 12th Street – Racer Rental Investments: Peyton Mastera showed the signage at 306 South 12th using a Power Point presentation. Mr. Mastera stated that Greg Taylor had submitted a revised application for the placement of his monument style sign. The request is to keep the sign in its current location and to remove the tree in the front of his business to help with visibility. The sign is located approximately three feet from the sidewalk which places it approximately one foot from the front property; thus, Mr. Taylor is requesting a nine foot front setback variance. {Please see past minutes regarding 306 S. 12th Street for reference purposes}

Chairman Whitaker opened the public hearing and asked if there was anyone that wished to speak in favor of the variance. *Mayor Rushing left the meeting at 5:40 p.m.*

Greg Taylor, 1103 Sycamore Street, Murray was sworn in. Mr. Taylor stated that since September 2008 when he previously applied for a dimensional variance, he has spoken to Dr. Kevin Adams concerning Mr. Taylor's sign blocking the visibility to Dr. Adam's sign. Mr. Taylor said that after speaking to Dr. Adams, that he was lead to believe that Dr. Adams agreed that removing the tree would help alleviate the situation. Mr. Taylor stated that he is trying to find an economical solution that will satisfy Dr. Adams without having to replace the sign. He added that if he had to ditch the current sign, he would encounter significant economical damage. Mr. Taylor stated that if he cut the tree down, half of Dr. Adam's sign would then be visible. Mr. Taylor's secondary proposal would be to move his sign seven feet north and one foot west of where it now sits which could also help alleviate the blocked visibility to Dr. Adam's sign.

Gary Taylor, 201 Gilbert Street, Hazel was sworn in. Gary stated that he is a partner in Racer Rental Investments and he read a letter (Exhibit A) that he wrote to the BZA on his son Greg's behalf. He stated in the letter that originally Greg had asked for a 42 square foot sign approved under city ordinances, agreed to a 35 square foot sign and later erected an even smaller 24 square foot sign. Gary then added that Greg had placed the sign at the exact location that the BZA had approved only to subsequently be called back to the BZA and asked to remove his sign. He said that they had never intended to be a bad neighbor to Dr. Adams. Gary concluded by saying that he did not personally think that the sign in the present location harms Dr. Adams; however, he will graciously honor the BZA's decision to remove the sign if that should happen.

Greg Anderson, 908 Hillwood Drive, Murray was sworn in. He stated that the Taylor's went through the proper channels on placement of the sign and now through no fault of theirs, were being asked to remove the sign. Mr. Anderson said that no matter whose fault it was, he would like for the BZA to meet half way so that this business could continue to thrive.

Jeremy Bell, 810 Bagwell Boulevard, Murray was sworn in. He feels the Taylor's are trying to go the extra mile to have this situation resolved and he would like to see a compromise on this matter.

Chairman Whitaker asked if there was anyone that wished to speak against the application.

Dr. Kevin Adams, 1407 South 12th Street, Murray was sworn in. Dr. Adams stated that did not agree with Mr. Taylor that removing the tree would resolve the situation. He then presented pictures (Exhibit B) of Mr. Taylor's sign blocking his sign. Dr. Adams suggested that Mr. Taylor turn his sign vertically and as far towards the circle drive (west) as possible which would locate the sign three more feet from the sidewalk. Dr. Adams stated that there were approximately twenty signs between Sycamore and Poplar on 12th Street and none of them are closer to the street than Mr. Taylor's sign is.

Chairman Whitaker asked if there was any rebuttal.

Mr. Taylor again stated that when he previously talked to Dr. Adams and they discussed removal of the tree, Dr. Adams agreed with him and said that removal of the tree would be the first thing that could be done. Mr. Taylor said that turning the sign vertical as Dr. Adams suggested would cause him to incur considerable costs towards a new sign. He said that the most expensive part of the sign is not the cost of the sign, it is the vinyl lettering on the sign. Costs for a new sign would be an additional \$3500.00 or \$4000.00 versus cutting down the tree at the cost of \$2500.00.

Dr. Adams spoke in opposition and once again stated that his suggestion would be to go vertical with the sign.

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

Tom Auer made a motion to deny the dimensional variance request for a nine foot front setback variance for 306 South 12th Street (Racer Rental Investments), owned by Mr. Greg Taylor. This sign must be brought in compliance by July 1, 2009. Mary Anne Medlock seconded the motion and the motion carried with a 3-1 vote. Kim Griffo voted no.

Public hearing to review the conditional use permit application to allow up to three non-related persons to occupy the premises in an R-2 (single family residential) zoning district – 806 Bagwell Boulevard - Ryan Rogers: Ms. Dowdy showed the property on a Power Point presentation. She stated that the Planning Department received an inquiry in December 2008 regarding the use of the property at 806 Bagwell Boulevard. On December 24, 2008 a letter was sent to Ryan and Emily Rogers who own the property and their reply was that the property was for sale and that it had been rented to two college girls on December 1, 2008. Ms. Dowdy stated that Mr. Rogers told her that when he purchased the property he was told by the realtor that two non-related persons could occupy the premises. The planning staff explained to Mr. Rogers that two college students sharing a residence did not meet the definition of a family as stated in the

Zoning Ordinance and the only way he would be allowed to use the property for multi-family use would be if the Board of Zoning Adjustments approved a conditional use permit for this location; thus the application was filed. Ms. Dowdy said that Mr. Rogers later told planning staff that he had recently found out that the original two tenants had one additional girl living on the premises and that they would all be graduating in 18 months. Ms. Dowdy stated that the planning staff had received calls from property owners in the area regarding noise and parking on the street. After the complaints were received, the planning staff checked with the Police Department to see if there had been any calls made to this property and found out that there had been none.

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

Ryan Rogers, 230 Stone Crest Drive, Murray was sworn in. Mr. Rogers stated that he owns the property at 806 Bagwell Boulevard. During the summer of 2008, Mr. Rogers and his wife purchased another home and attempted to sell the house on Bagwell. After several months of unsuccessfully trying to sell the house, the Rogers resorted to renting it. Since renting the house to two college girls, Mr. Rogers learned they were in violation of the zoning ordinance. Mr. Rogers stated that he was not aware of any complaints from the neighbors concerning noise since the girls have resided there.

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

Stephanie Peck, 809 Bagwell Boulevard, Murray was sworn in. Ms. Peck read a statement (Exhibit A) that she had previously prepared stating that she and her husband were against the granting of the conditional use permit. Ms. Peck lives directly across the street from the property. Ms. Peck brought a petition that was signed by approximately 40 other people in the neighborhood that feel the same as Mr. and Mrs. Peck about the application. Ms. Peck stated that in contrary to what Mr. Rogers had previously stated, there has been an increased amount of traffic as well as a lot of noise coming from their street. She stated that Mr. Rogers lives in Almo, so therefore he is not aware of the increased noise. She stated that there are plenty of multi-family housing units in Murray for this type of tenant. Ms. Peck said that her family had lived in the neighborhood for approximately five years and would like for the neighborhood to remain single family dwellings.

Homer Hall, 807 South 9th Street, Murray was sworn in. Mr. Hall lives directly behind the property. Mr. Hall has lived there since 1977 and does not like the idea of the non-related girls living in the house at 807 South 9th Street. Mr. Hall stated that he gets up in the morning around 5:30 and he likes to go to bed around 10:00 and that he has heard loud music at night around 11:30 p.m. or 12:00 a.m. He concluded that he would like for the neighborhood to remain single family.

Chairman Whitaker asked if there was any rebuttal.

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Nicole Folmer, 806 Bagwell Boulevard, Murray was sworn in. Ms. Folmer spoke in favor of the application. Ms. Folmer is a resident of the home. Ms. Folmer said that she was a little upset because she feels that they are being discriminated against because they are college students. She added that after Mr. Rogers had called and told them that there had been some complaints, they were immediately on their best behavior. Mr. Folmer stated that they loved the house and they would like to continue to live there.

Candace Dowdy stated that she had received a comment from Lexie Moore, property owner to the north of the property. Ms. Moore stated that she did not have anything against the girls there. She added that she had noticed cars in the driveway but had not personally had any issues with any noise problems. Ms. Moore asked Ms. Dowdy to let the board know that she had no opposition to the request.

Drucilla Owens, 812 Guthrie Drive, Murray was sworn in. Ms. Owens spoke against the application. Ms. Owens said that the neighbors had nothing personal against the college girls; they were just speaking as concerned citizens. She added that their neighborhood was a wonderful place to live and raise a family. They do not want this type of thing to become precedence where other non-related tenants start moving in and the quality of their neighborhood loses its value.

Cam Alexander, 806 Bagwell Boulevard, Murray was sworn in. Ms. Alexander is another resident of the house. She stated that if the board should deny the conditional use permit application, she would appreciate being able to continue to reside at the residence until the school year is out in May 2009.

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

Mary Anne Medlock made a motion to deny the conditional use permit application of Ryan Rogers, property owner of 806 Bagwell Boulevard to allow three non-related persons to occupy the premises in an R-2 (Single Family Residential) zoning district as this home is located in a single family residential zoning district. A date of May 17, 2009 is set for 806 Bagwell Boulevard to come in compliance with all zoning requirements. Kim Griffo seconded the motion and the motion passed with a 4-0 voice vote.

Questions and Comments: None.

Mary Anne Medlock made a motion to adjourn. Kim Griffo seconded the motion and the motion carried with a unanimous vote. The meeting adjourned at 7:00 p.m.

Chairman, Bill Whitaker

Recording Secretary, Reta Gray