

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, AUGUST 19, 2009
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, August 19, 2009 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: Kim Griffo, Mary Anne Medlock, Scott Seiber, Kevin Perry, Tom Auer and Bill Whitaker

Board Members Absent: Justin Pounds

Also Present: Candace Dowdy, Peyton Mastera, Mike Pitman, David Roberts, Reta Gray, Thurman Cowan, Marilyn Travis, Teresa Barnett, George Nichols, Tanya Geurin, Betty Coleman, Bess Kerlick, Suzette Vaughn, Jackie Vaughn, Michael Gibbs, Jason Marchman, Carolyn Clendenen, Mark Roberts, Officer Jimmy Osborne 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 July 22, 2009 regular meeting.

Scott Seiber made a motion to approve the minutes from the July 22, 2009 regular Board of Zoning Adjustments meeting as presented. Mary Anne Medlock seconded the motion and the motion carried unanimously with a voice vote.

Public hearing to review the dimensional variance application for an 11 foot rear setback variance and to review exterior appearance requirements on proposed manufactured home – 215 Spruce Street – Thurman Cowan and Joyce Dillard: Peyton Mastera used a Power Point presentation to show the property at 215 Spruce Street owned by Mr. Thurman Cowan and Ms. Joyce Dillard. The home is located just to the north of the Calloway County Jail and is approximately 10 feet from the front property line (15 feet from Spruce Street). In an R-5 zoning district, the rear setback requirement is 25 feet for principal structures. The applicants are requesting their new home be placed 14 feet from the rear property line; thus, an 11 foot rear setback variance is being requested. The proposed home will meet all other setback requirements. Mr. Mastera stated that Mr. Cowan and Ms. Dillard are looking to demolish their current home and place a manufactured home at this location. Mr. Mastera stated that due to the small nature of the lot, the property owners will be turning the home to the side. Manufactured homes are to meet all requirements for lot, yard, building, and other requirements for the district in which they are located. In addition, a manufactured home is required to appear to face the public street. The applicants are aware of this requirement and intend to construct stairs and a porch on the Spruce Street side of the home to fulfill that requirement.

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

Mr. Thurman Cowan, 215 Spruce Street, Murray was sworn in. Mr. Cowan stated that after having an estimate on repairs to his current home, he decided to demolish the existing home and have a manufactured home placed at that location. He feels that the new home will improve the looks of the neighborhood. Mr. Cowan stated that the manufacturer of the home will be prefabricating the structure to meet his needs; therefore, a front door will be built to the side of the home leaving the appearance that the front is actually facing Spruce Street. Mr. Cowan presented a floor plan for the home that was entered as *Exhibit A*. Mr. Cowan added that the home will have a front porch across the entire front of the house with constructed stairs.

Chairman Whitaker asked if there was anyone that would like to speak in opposition to the application. 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 grant an 11 foot rear setback variance on the proposed placement of a manufactured home at 215 Spruce Street (property owners: Joyce Dillard and Thurman Cowan) as this home will be in line with other homes in the vicinity; this lot is a non-conforming lot being only 50 feet wide; the rear yard does not back up to a residential zone or structure; with the condition that the side of the home facing Spruce Street have stairs and a porch constructed to give the appearance of facing Spruce Street; and by granting this variance, 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 6-0 voice vote.

Public hearing to review the dimensional variance application for a 16.5 square foot variance on a wall sign – 308 North 12th Street – Marilyn Travis – Cherry Tree Florist: Candace Dowdy used a Power Point presentation to show the building at 308 North 12th Street where The Cherry Tree Florist has relocated from downtown. Marilyn Travis and Karen Garland recently purchased The Cherry Tree Florist. They also purchased the existing sign with the business assuming it could be used at the new location; however, the sign is 136” x 30.75” for a total of 29 square feet. The dimensions of the store front at the current location are 13’ x 19’3” which would only allow them a 12.5 square foot sign. According to the construction plans for the building, there are three equally divided storefronts; thus, each store should be allowed the same size wall signage. Ms. Dowdy stated that when Ms. Travis contacted the Planning Department she had already moved the sign from the prior location to the new location and she was requesting information for the placement of a new panel in the existing freestanding sign. Since Ms. Travis is a new business owner, she was not aware of the city ordinance pertaining to signage. Ms. Dowdy explained that since the sign was larger than the allowed square footage, the BZA would have to consider granting Ms. Travis a 16.5 square foot variance on the existing wall sign. Planning Staff allowed Ms. Travis permission to leave the sign up until the board reviewed the dimensional variance application.

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

Ms. Marilyn Travis, 355 Green Valley Road, Dexter, Kentucky was sworn in. Ms. Travis stated when she and Karen Garland bought the business and moved to their new location on North 12th Street, they also moved the existing wall sign. After speaking to Planning Staff, they discovered that the sign was larger than the allowable square footage requirements in the city ordinance. Ms. Travis added that she has plans to replace the panel on the free-standing sign with a panel of the same dimensions.

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

Tom Auer made a motion to grant a 16.5 square foot size variance for the wall sign located at 308 N. 12th Street (The Cherry Tree Florist) for a total size of 29 square feet that is applicable only for this business. This sign will not obstruct nor hinder the view of any surrounding business and this sign 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 a 5-0 voice vote. *Chairman Whitaker abstained from voting.*

Public hearing to review the conditional use permit application to allow two non-related persons to occupy the premises in an R-2 zoning district – 1508 Cardinal Drive – Bonnie Womack-Carter Options, LLC: Peyton Master showed the property at 1508 Cardinal Drive on a Power Point presentation. Mr. Mastera stated that it was brought to the attention of Murray Planning Staff that 1508 Cardinal Drive was being used as a Residential Care Facility in an R-2 zone. Currently there are two non-related persons occupying the premises with one full time staff person on duty at all times. The staff person does not reside at the premises. The residents do not drive so most of the time the only vehicles at the location will be that of the staff. Mr. Mastera stated that the Planning Staff had spoken to Bonnie Womack-Carter, representative for Womack-Carter Options, LLC and that she had stated that they had been occupying the premises since May 2008 and that they were not aware that a conditional use permit was needed for this use.

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

Teresa Barnett, 80 Asbury Cemetery Road, Murray was sworn in. Ms. Barnett stated that she is the Case Manager Supervisor for Womack-Carter Options, an agency that provides services to adults with disabilities. The agency tries to provide family homes for all of their individuals. They currently have five separate locations where these individuals with disabilities are housed with two to three individuals in each home; only one of the homes is located in an R-2 zoned

district. Ms. Barnett added that when they found the home at 1508 Cardinal Drive, they were unaware of the zoning ordinance and its restrictions. She stated that the two individuals that currently reside at this home had been determined by the courts to be unable to live alone and they are under state guardianship. Ms. Barnett stated that these individuals are not blood relatives; however, she felt that they were family members because they were each under state guardianship and have the same acting guardian. The agency would like to continue to provide the home environment at this location. Ms. Barnett added that the Rights of Developmentally Disabled Persons gives these individuals the right to live as near to the same kind of life as someone that is not disabled. Ms. Barnett stated that foster or boarded children whose room and board is paid by recognized childcare agency are covered under the Cabinet for Health and Family Services; therefore, they interpreted that these individuals do meet the definition of a family. Currently there are only two residents at the premises; however, they are requesting approval for an additional person to also occupy the home at some future time, should the need occur. The staff provides 24 hour care to the residents each working an eight hour shift.

Mike Pitman, attorney for the Planning Commission, stated that he did not feel like this situation meets the definition of a family. He stated that according to the ordinance that if any two or more individuals that were not related either by blood or marriage wished to live in an R-2 zoned area they would have to apply for a Conditional Use Permit.

George Nichols, 1504 Cardinal Drive, Murray was sworn in. Mr. Nichols also owns the property that is adjacent to 1508 Cardinal Drive. Mr. Nichols stated that he feels that there is a need for these types of residences in the area and that he is not aware of any problems in the neighborhood that have been created by the current residents.

Tanya Geurin, 2113 Edinborough Drive, Murray was sworn in. Ms. Geurin is the owner of the house at 1508 Cardinal Drive and she rents the house to the individuals that currently reside there. She has received no complaints from the neighbors since she rented the property approximately a year ago. Ms. Geurin stated that she stops by frequently and the tenants are taking very good care of the property. Ms. Geurin is a special needs teacher and she thinks it is good for people with special needs to be able to succeed and be able to function in daily life. She stated that she feels these individuals should be looked at as a family even though they weren't blood related. Ms. Geurin said she is in favor of them staying there. She stated that they have been wonderful renters, they don't bother others and they just live in harmony. *Ms. Geurin submitted a letter for Exhibit A* from another resident whose backyard is adjacent to 1508 Cardinal. They are also in favor of the application.

Chairman Whitaker asked if there was anyone that would like to speak in opposition to the application.

Betty Coleman, 1507 Cardinal Drive, Murray was sworn in. Ms. Coleman stated that she has lived at that address for 18 ½ years and that she has the property under her control; however, her grandson does lives with her. She said that Ms. Geurin had visited her home on the previous Saturday and asked if the people at 1508 Cardinal Drive had bothered her and Ms. Coleman said

they had not; however, what does bother Ms. Coleman is the fact that Cardinal Drive is an old residential street yet they are operating a business across the street from her house in a residential zone. She stated that she would like to see her neighborhood remain residential. Ms. Coleman said she was worried that in the future if she decides to sell her home, that she feels the business could be detrimental to the sale of her property. Ms. Coleman feels that Womack-Carter Options should find a more suitable location in a properly zoned district for their business.

Bess Kerlick, 1513 Cardinal Drive, Murray was sworn in. Ms. Kerlick stated that she lives directly in front of 1508 Cardinal Drive and like Ms. Coleman, had been a long time resident of her home. She said that she had not had any problems with the individuals that lived there. She stated that Ms. Geurin had also visited her home on the previous Saturday and during that time Ms. Geurin told her what damage she would be doing if she did not agree to allow the tenants to remain at that residence. Ms. Kerlick wanted to know why Womack-Carter Options did not apply for a conditional use permit application in the beginning. Ms. Kerlick stated that she also fears that when her property is eventually sold, the property value will go down because of the business across the street.

Suzette Vaughn, 1517 Cardinal Drive, Murray was sworn in. Ms. Vaughn stated that she had lived in her home for approximately 30 years and they had never had this particular problem before. Ms. Vaughn said that this is a business and that money is being paid to be able to use the house. Ms. Vaughn stated that there are several cars in and out of the premises and there is a person that lives there that regularly walks up and down the driveway at 2:00 a.m. in the morning talking very loud on the cell phone. Ms. Vaughn said that the police had been patrolling the neighborhood quite frequently. She does not know why this is happening, other than the fact that she was told that the home/business was under investigation. She concluded by saying that she hoped that the board would not let anyone come into their residential neighborhood with the intent of operating a business there.

Jackie Vaughn, 1517 Cardinal Drive, Murray was sworn in. Mr. Vaughn stated that there had been more traffic flow during the past two weeks than normal. He added that he was not in favor of a business being run from 1508 Cardinal Drive and did not want to see an increase in the traffic flow in the future. Mr. Vaughn said that he was not opposed to the property being rented, he said there are other properties rented in the area; however, he is opposed to the property being rented as a business.

Michael Gibbs, 1509 Cardinal Drive, Murray was sworn in. Mr. Gibbs stated that he agreed with the others that are in opposition. He added that he thought the people that were doing the renting of the property should have known the rules and regulations of renting their property in a single family dwelling and he thinks they should have applied for a conditional use application before renting to the individuals.

Chairman Whitaker asked if there was any rebuttal on the affirmative side of the application.

Ms. Guerin stated that she is a preschool teacher and she serves special needs families. She once again stated that this situation was not a business being run out of a home, that it was a guardianship family that was living there.

Ms. Teresa Barnett stated that their business (Womack-Carter Options) is located at 411 North 4th Street, not at the home. She added that they did not mean to deceive anyone when they rented the property for the two individuals that now reside there. She stated that their company is regulated by the Division of Mental Retardation and they are required to follow Kentucky Statutes. When they referred to Kentucky Statute #100-894, they interpreted that the residents were defined as a family. Ms. Barnett added that the residents pay a monthly fee that is judiciary pay and funded through their Medicaid by the state. Ms. Barnett concluded that Womack-Carter is a business and they do get a fee each month; however, she stated again that the home itself was not a business.

Jason Marchman, 1608 College Farm Road, Apartment 8 West, Murray was sworn in. Mr. Marchman is the Residential Manager for Womack-Carter Options and stated that their goal is to provide these individuals with independent living. Mr. Marchman said that the individuals are under the care of the state and cannot live on their own. He stated that to his knowledge, the police have not been called to the residence since the individuals have occupied the home. Mr. Marchman said that if teenagers were living in the home, there would probably be as much or more increased traffic than there is now. He stated that some of the increased traffic that may have been seen could have been at shift changes for the caretakers. Also, he added that he or a case manager may occasionally be at the home for various reasons and there might be another vehicle there at that time. There are also training sessions and safety inspections, where even more vehicles would be there. Mr. Marchman said that this is a home where a family resides and not a business.

Chairman Whitaker asked if there was any rebuttal on the denial side of the application.

Ms. Kerlick said that when she came home one day, she noticed a lot of cars parked along the street. She had asked Ms. Geurin if they were having a business meeting at the house and Ms. Geurin had said they were. Ms. Kerlick said again that it is being used as a business and she would rather that it not be there.

Ms. Vaughn said that she understood that Kentucky laws state what is required for Womack-Carter to operate this type of business; however, the laws do not tell them to move into a residential zone and put a business there. Ms. Vaughn said that a family is individuals that are related. She also added that when Mr. Marchman spoke, he admitted that there had been quite a lot of traffic to the home which is what the residents have been saying. She said that the residents have nothing against the individuals that live there; they just do not want a business located there. Ms. Vaughn concluded by saying that if you let one business in, then there would eventually be others.

Chairman Whitaker closed the public hearing and turned it over to the board for discussion.

Scott Seiber made a motion to deny the conditional use permit request of Womack-Carter Options, LLC at 1508 Cardinal Drive for up to three non-related persons to occupy the premises in an R-2 zoning district and set a date of January 1, 2010 for this home to be in compliance. Mary Anne Medlock seconded the motion and the motion carried with a 6-0 vote.

Public hearing to review the conditional use permit application for a home occupation as certified home provider – 1803 College Farm Road – Carolyn Clendenen: Candace Dowdy used a Power Point presentation to show the property at 1803 College Farm Road where Carolyn Clendenen resides and runs her home occupation. Ms. Clendenen has been licensed through the state as a certified home provider for the past 11 years and keeps up to five children at once. Ms. Dowdy defined a home provider as a person that wishes to keep three or fewer non-related children in their home where no license or certification is required; a certified home provider is for four to six non-related children. No additional employees are needed but they are required to list a backup person in case of an emergency. Ms. Dowdy added that seven or more children being kept in a home requires full licensure from the state. Recently the State began requiring all daycares to provide zoning certification. When Mrs. Clendenen requested a zoning certification form, it was discovered that she had been operating at this location without a conditional use permit for a home occupation. Mrs. Clendenen was unaware her business required a conditional use permit since it has been in operation since 1998. Mrs. Clendenen was informed that she must apply for a conditional use permit. This home sits approximately 75 feet off College Farm Road and has adequate access and parking for parents to drop off and pick up their children. Ms. Dowdy stated that there had been no complaints of traffic issues at the location since Ms. Clendenen has operated her business there.

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

Ms. Carolyn Clendenen, 1803 College Farm Road, Murray was sworn in. Ms. Clendenen stated that when she started keeping children, it was not an actual business. Recently regulations have become quite restrictive and in order for children to stay there, Ms. Clendenen is required to post that she is located in a properly zoned area. Ms. Clendenen said that the state oversees the regulations by making regular visits and inspections to make sure she is in compliance. Ms. Clendenen added that she has talked to her neighbors and they have no objections to her keeping the children in her home. Ms. Clendenen submitted a letter from a neighbor saying that she had no objections to the application. *The letter was entered as Exhibit A.*

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 turned it over to the board for discussion.

Kevin Perry made a motion to approve the conditional use permit for a Home Occupation at 1803 College Farm Road for Mrs. Carolyn Clendenen, as a certified home provider for

up to 6 children with the following conditions: 1) This permit is only valid for Mrs. Clendenen; 2) No other employees other than those that reside on the premises; 3) No disruptive behavior or complaints. Scott Seiber seconded the motion and the motion carried with a 6-0 voice vote.

Request to waive off street parking requirements for a proposed restaurant in a B-3 zoning district – Mark Roberts: Candace Dowdy stated that Mr. Roberts came before the BZA last month requesting a parking variance for a proposed restaurant at a different location and that did not work out for him; therefore, he is now looking to lease the west side of the Murray Main Street building at 412 Main Street (next door to Mugsy's) for the restaurant with a seating capacity of approximately 100, which would require to 40 to 43 parking spaces. Ms. Dowdy stated that since the restaurant would be located in the downtown area, there is no specific location for off street parking. Ms. Dowdy said that in July of 2001, the Bull Pen Restaurant (which was previously located at 106 South 5th Street) was approved for on street parking by the BZA. The zoning ordinance has provisions for B-3 zoning relating to parking for businesses around the court square. There are some public parking lots that are located off the square. Ms. Dowdy said that before Mr. Roberts moves forwards with this venture, he requested to come before the board to address the parking issue. This is actually the first step before Mr. Roberts moves any further with this venture. The building will additionally have to be brought up to building and fire codes before a business can be opened.

Scott Seiber made a motion to waive off street parking requirements for a proposed restaurant in a B-3 zoning district for Mark Roberts. Kim Griffo seconded the motion and the motion carried with a 6-0 voice vote.

Questions and comments: None.

Scott Seiber made a motion to adjourn. Kim Griffo seconded the motion and the motion carried with a unanimous vote. The meeting adjourned at 6:45 p.m.

Chairman, Bill Whitaker

Recording Secretary, Reta Gray