

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, JANUARY 20, 2010
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, January 20, 2010 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: Justin Pounds, Scott Seiber, Tom Auer, Mary Anne Medlock, Steven Reed and Bill Whitaker

Also Present: Candace Dowdy, Peyton Mastera, David Roberts, Mike Pitman, Reta Gray, Rob Hall, Matt Falwell, Victor Olazabal, Officer Todd Clere and public audience

Chairman Whitaker called the meeting to order at 4:30 p.m. and welcomed all guests and applicants. Candace Dowdy swore in new Board of Zoning member Steven Reed. Ms. Dowdy then read corrections to the minutes from the previous month. Chairman Whitaker asked for approval of the minutes from the December 16, 2009 regular meeting.

Scott Seiber made a motion to approve the minutes from the December 16, 2009 regular Board of Zoning Adjustments meeting with the noted corrections. Justin Pounds seconded the motion and the motion carried unanimously with a voice vote.

Public hearing to review the dimensional variance application to use the existing sign frame of a non-conforming, free-standing sign – 1711 Hwy 121 Bypass North – Dr. Tony Milliano: Peyton Mastera used a Power Point presentation to show the sign located at 1711 Hwy 121 Bypass North where Dr. Tony Milliano's Audiology and Hearing Center is located. Dr. Milliano is requesting to use the existing frame of a non-conforming free-standing sign. Currently the sign is advertising for Dan West's Family Dentistry and the applicant would like to split the square footage of the existing sign evenly so that it advertises for both Family Dentistry and The Audiology and Hearing Center. The current sign does not meet the minimum setback requirements of 10 feet from the front and side property lines; however, the sign did receive an eight foot front and three foot side setback variance in October 1996 making the location of the sign compliant. The sign is enclosed in a 52 inch x 42 inch frame and measures 10 feet 9 inches tall. The sign is just over 15 square feet in size. Attorney Mike Pitman read the definition of a monument sign according to the City Ordinance. Mr. Mastera reviewed that the City Council adopted new regulations for monumental style signs for 12th Street and Highway 121 a few years earlier and added that it is staff's opinion that the existing sign is not of monument style, thereby making it a non-conforming free-standing sign. In addition, the sign is also non-conforming because it exceeds the maximum height limitation of 10 feet. Mr. Mastera also pointed out the state will be widening the highway at some time during the future; however, the right of way at this particular property will go unaffected. Mr. Mastera stated that Dr. Milliano was not present at the meeting because he is attending a conference in California.

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

Mr. Rob Hall, 429 Hilldale Road, Paducah, KY was sworn in. Mr. Hall is employed by Hultman Sign Company. Mr. Hall stated that he had presented Dr. Milliano with several different options and designs of signs and added that a fifty-five foot square monument sign was out of Dr. Milliano's budget. Mr. Hall stated that they would like to get approval to change the existing sign by altering the panel where both of the business's names would appear on it.

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 turned it over to the board for discussion.

Justin Pounds made a motion to approve a sign variance for Dr. Tony Milliano at 1711 Highway 121 Bypass North to allow an existing non-conforming free-standing sign; this sign may not be expanded or enlarged beyond the existing square footage; being as this sign is existing in its location, it will not hinder nor obstruct the view of any surrounding businesses; and this 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 and shall follow all landscaping regulations applicable to standard monument signs. Scott Seiber seconded the motion and the motion carried with a 6-0 voice vote.

Public hearing to review the dimensional variance application for a parking space variance – 100 South 13th Street – Matt Falwell: Peyton Mastera used a Power Point presentation to show the two buildings owned by Matt Falwell that are located at 100 South 13th Street. The two buildings share the same address; however, they are separated by a twenty foot access. Mr. Falwell is looking to open a carryout restaurant in the building to the north. This is a permitted use in a B-2 zoning district. Mr. Mastera stated that there are currently ten rental units available within the combined buildings. These apartments are not a permitted use; however, they have been grandfathered-in. With Mr. Falwell looking to alter the use of 100 S. 13th Street, parking standards must be addressed prior to issuance of a business license. Currently, this particular section of 100 South 13th Street has a 40 foot right-of-way. This right-of-way comes as close as six and one-half feet from the front building line (approximately fourteen feet from the edge of the road). The other building is set off the right-of-way by thirteen feet (approximately twenty feet from the edge of the road). Despite the close proximity of the right-of-way, vehicles are generally parked in front of these two buildings. Minimum parking requirements are nine feet x eighteen feet with an accompanying isle for turnaround purposes. The front property line (i.e. right-of-way) intersects the area in which cars park. Consequently, vehicles parked in front of 100 South 13th normally are setting in the right-of-way and must back into South 13th Street to exit. There is a similar parking situation just to the North with two other buildings that are owned by Larry Doyle and Victor Olazabal. The right-of-way actually encroaches closer to the building lines of these two building than of Mr. Falwell's building. Vehicles generally park along side these two buildings in a parallel manner or at an angle. Across the street where Walgreen's is located is an undesignated, widened area of South 13th Street where vehicles often

park in a one-way stacked fashion. There is no designated on-street parking provided in this section of South 13th Street. Any parking that exists on this street has been done by those parking in the right-of-way.

Mr. Mastera stated that according to Mr. Falwell's site plan, the gross floor area for the restaurant will be 522 square feet with 192 square feet being in the front for customer use. No seating will be provided. Parking requirements for a restaurant are: *One (1) for each three (3) persons within the seating capacity of the establishment, or one (1) for each 100 sq. ft. of gross floor area, whichever is greater, plus two (2) for each three (3) employees.*

Parking requirements for 100 S. 13th Street

522 sq. ft. gross floor area / 100	=	5 parking spaces
3 employees, 2 spaces for each 3	=	2 parking spaces
10 apartments	=	30 parking spaces

Total = **37 parking spaces**

Mr. Mastera stated that the BZA should take into consideration the existing parking situation of South 13th Street, but they may not grant any variance which includes any of the existing parking in the right-of-way. Mr. Mastera said that Mr. Falwell has a designated area behind the buildings in which vehicles can be parked. This area is comprised of pavement, grass, and gravel and can provide eight parking spaces. Mr. Mastera concluded by saying that since Mr. Falwell can only provide eight of thirty-seven parking spaces, or 21.62%, the application will require a twenty-nine parking space variance.

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

Matt Falwell, 5303 Wiswell Road West, Murray was sworn in. Mr. Falwell stated that when he originally bought the property, it was in much worse condition and that he has slowly been attempting to make it more functional by eliminating unnecessary buildings. He said that there are currently two individual buildings located at the site and that a third structure located to the back of the property was torn down approximately three or four years ago. Mr. Falwell stated that he had met with the city's building official and fire marshal about bringing the building into compliance for the proposed restaurant. The Panada family is currently interested in renting the space and opening a carry-out "Tacoria" with hours of operation on Friday, Saturday and Sundays. Mr. Falwell concluded by saying that currently there are seven vehicles owned by tenants that are parked in the front and back of the buildings and added that the parking situation began in the 1940's when the structures were built before South 13th Street was widened.

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

Victor Olazabal, 1301 Main Street, Murray was sworn in. Mr. Olazabal is the owner of Victor's Restaurant and has been at that location for thirty-five years. He stated that he had no problem with a new business coming in; however, he would like to address the parking situation that exists on South 13th Street. Mr. Olazabal stated that when former businesses that once occupied the proposed restaurant site were there, even temporary parking was quite troublesome. He often found his entire parking area used by customers of the adjoining business, leaving no parking for his delivery driver or customers. Mr. Olazabal stated that he had to ask the people to move their vehicles to free up his parking spaces. He added that not so long ago, tenants of Mr. Falwell's had left vehicles for up to two days in his parking area where he eventually ended up calling the police department to have the vehicles removed. Mr. Olazabal stated that as recent as the past few months, he had witnessed up to twenty cars on Mr. Falwell's property which included cars parked in front of Mr. Olazabal's dumpster and in the street. He stated that is a very hazardous situation. Mr. Olazabal said that there is an accident at the intersection of South 13th and Main Street at least once a week and he feels that approving this application could contribute to the problem. Mr. Olazabal added that he had a very good relationship with the Dairy Queen and they actually share parking spaces which helps his parking situation. In conclusion, Mr. Olazabal said that should Mr. Falwell take out all his apartments and make a restaurant, he would not have any problem with the situation.

Chairman Whitaker asked if there was any rebuttal. There was none. Chairman Whitaker closed the public hearing and turned it over to the board for discussion.

Scott Seiber made a motion to deny the twenty-nine parking space variance request for Matt Falwell at 100 South 13th Street. The zoning ordinance requires a minimum of thirty-seven parking spaces for the proposed use and only eight off-street spaces can be provided. The request would be varying the regulations by 78.38%. Justin Pounds seconded the motion and the motion carried with a 6-0 voice vote.

Appointment of new Vice-Chair: Peyton Mastera stated that Kim Griffo turned in her resignation to the Board of Zoning where she served as vice-chair. Mr. Mastera asked for nominations of a new vice-chair.

Tom Auer made a motion to nominate Scott Seiber, who is currently serving as Secretary, as Vice-Chair and to nominate Justin Pounds as the new Secretary. Steven Reed seconded the motion and the motion carried unanimously.

Questions and comments: The board members discussed the current situation of the parking on South 13th Street.

Scott Seiber made a motion to adjourn. Justin Pounds seconded the motion and the motion carried with a unanimous vote. *The meeting adjourned at 6:10 p.m.*