

**MURRAY BOARD OF ZONING ADJUSTMENTS  
REGULAR MEETING  
WEDNESDAY, FEBRUARY 17, 2010  
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, February 17, 2010 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5<sup>th</sup> Street.

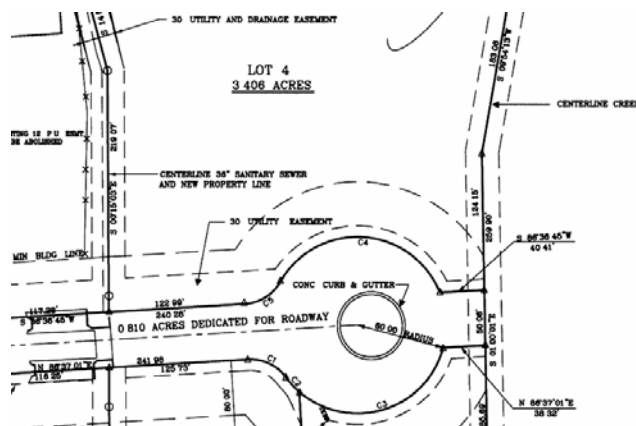
**Board Members Present:** Justin Pounds, Scott Seiber, Tom Auer, Mary Anne Medlock, Steven Reed and Bill Whitaker

**Also Present:** Candace Dowdy, Peyton Mastera, Mike Pitman, Reta Gray, Bill Adams, Tammy Cothran, Reggie McNutt, Michael Russell, Officer Steve Robinson, 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 20, 2010 regular meeting.

**Scott Seiber made a motion to approve the minutes from the January 20, 2010 regular Board of Zoning Adjustments meeting as presented. Justin Pounds seconded the motion and the motion carried unanimously with a voice vote.**

**Public hearing to review the dimensional variance application for a 35 foot front setback variance on the proposed addition to a building – 78 Spruce Street – Swift Rental Properties:** Peyton Mastera used a Power Point presentation to show the proposed building site at 78 Spruce Street where Robert Swift (Swift Rental Properties) would like to make a 30,248 square foot addition to the front of the Nephron warehouse. According to a 2004 building permit, the existing warehouse is currently 50,160 square feet and with the proposed addition would total approximately 80,408 square feet. This property is located at the end of a cul-de-sac. With the cul-de-sac, this building will be similarly in line with other buildings in the vicinity.



Mr. Mastera stated that structures must be setback 50 feet from the front property line in an Industrial Zoning district. The contractor for this project, Bill Adams, has submitted a site plan

showing the addition. The addition will encroach beyond the front building line up to 35 feet (placing the structure 15 feet from the front property line). The site plan shows the building only being 25 feet from the front property line, but the applicant has requested this variance be extended another 10 feet. Mr. Swift was previously granted a variance for a building across the street which presently sits approximately 25 feet from the front property line.

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

Bill Adams, Bill Adams Construction, 305 Andrus Drive, Murray, was sworn in. Mr. Adams stated that Nephron, a distribution center for breathing medications, is expanding a third of their business and they needed additional warehouse space. He added that Robert Swift developed this portion of Spruce Street and currently owns most of the buildings on the street. The street is totally industrial. Mr. Adams stated that if the street went straight through, it would not be an issue. The issue is because it is located at the cul-de-sac. Mr. Adams stated that the expansion to the building would be possible with a variance of 25 feet; however, they are asking for extra footage to cover an access to the building.

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.

**Scott Seiber made a motion to approve a 35 foot front setback variance on the proposed addition of a structure located at 78 Spruce Street due to the unique configuration of this lot and it will be in line with other buildings in the vicinity. This variance is only valid for Swift Rental Properties when a building permit is approved; 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 subject to meeting all city regulations. This is contingent upon the 10 feet of the 35 feet variance closest to the road may not be used for warehouse space, but for parking or overhang of the building. Justin Pounds 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 on a restaurant and retail sales with 10 residential apartments – 1407 Main Street – T.C.**

**Dinh:** Candace Dowdy used a Power Point presentation to show the property at 1407 Main Street (formerly the old Owen's Food Market building) that is currently owned by James Farrow. Ms. Dowdy stated that T.C. Dinh is the actual applicant for a conditional use permit and is interested in purchasing the property and proposing to divide the lower level into two spaces with a restaurant (Dinh's Vietnamese Eggroll's) on one side and lease the other side to a retail business. The lower level of the building is approximately 7,072 square feet. The upper level of the building consists of ten residential apartments which have been in existence since 1969. The property is zoned B-1 (Neighborhood Commercial). The building does have the required fire rated separation between the residential and commercial use.

Based on the proposed mixed use of restaurant, retail and residential the parking requirements are as follows:

- Retail – 3744 sq. ft.  
19 parking spaces required
- Restaurant – 3328 sq. ft. gross floor area  
33 parking spaces required plus four (4) spaces for employees for a total of 37
- Restaurant - based on seating for 62 customers  
21 parking spaces required plus four (4) spaces for employees for a total of 25
- Residential - (10) apartments  
Minimum of ten (10) parking spaces required. This is based on the parking requirements established in 1969 when the building was constructed. This use is not changing.

The total parking requirements would be a minimum of 66 spaces for the three uses. There are currently 33 off-street parking spaces. This would be a 50% variance on the off-street parking requirements. It is also likely that two additional parking spaces would have to be eliminated to provide for a dumpster area making it a 53% variance. Ms. Dowdy stated that the property located at 1407 Main Street was zoned B-1 in 1967 when Mr. Kenneth Owen purchased it and in July 1969 the BZA approved a side and rear building setback variance for the grocery store and a conditional use for the ten apartments. One of the conditions placed on the permit was that the applicant would have to acquire by rent, lease, purchase or otherwise, 5000 additional square feet located within 400 feet of property as shown on said plan for additional parking as required by city ordinance.

Ms. Dowdy reviewed that in June 2004 The Academy of Cosmetology Arts leased the building and it was noted on the building permit that 32 parking spaces were required and that they met the requirements. The owner was to stripe additional parking spaces. In October 2008 the BZA approved a conditional use permit to allow a furniture store to operate at this location and stated that the current parking was adequate for this type of business. With the building currently sitting five feet from the rear property line and five feet from the east property line, there is nowhere to put additional parking. The parking to the west belongs to Matt Bartholomew's Main Street Pizza.

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

Tammy Cothran, 4063 Airport Road, Murray, was sworn in. Ms. Cothran is the realtor for the property in discussion. She stated that the building had been on the market for two years and they have had a very hard time finding a tenant to fill the space because of the 7,000 square feet it contains. She explained that the electrical, thermostats and heat and air units are split where

two to four businesses could actually occupy the facility with only minor changes to the inside. She said that the majority of the tenants that live on the second floor are international students and they do not drive; therefore, they do not utilize the parking spaces made available for them. Ms. Cothran stated that she respected the fact that Matt B's needs his parking at his established business, but at the same time, there is a vacant deteriorating building there that is losing functionality. Ms. Cothran stated that she had gone through town during the peak lunch period times and photographed several businesses that do have retail and restaurant spaces in one location. The pictures were displayed and presented as *Exhibit A*. Ms. Cothran stated that these businesses do not all have the proper spacing for parking and they are successful and that they did not seem to have a problem with parking. She added that is unfortunate that there is not enough parking; however, with the location being near the University, it is focused for foot traffic from the students.

Reggie McNutt came forward to have some questions answered regarding the potential expansion of the proposed restaurant to accommodate 100 seating so that alcohol could be served. Mr. McNutt also asked for clarification on as to who would be liable in this instance. Attorney Mike Pitman answered the question that he did not think the City would have any liability there. Mr. Pitman said that it would be the responsibility of the property owner. Board member Scott Seiber stated that alcohol could not be served under this particular variance; another variance would have to be applied for to expand the business to 100 seating.

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

Michael Russell, 1313 Farris Avenue, Murray, was sworn in. Mr. Russell said that he had lived on an adjoining property when he was growing up and that when Owen's grocery was there, there were numerous parking problems. He said that Mr. Owen actually leased the property at 14<sup>th</sup> Street and Main for his employees to park on because of inadequate parking. Mr. Russell disagreed with Ms. Cothran concerning plenty of parking being available during the lunch hours at similar sized restaurants in Murray. Mr. Russell also conveyed some issues with access through the property through potential alley ways and ingress/egress easements. Mr. Russell said that he is also concerned about parking spaces being allowed for the other half of the building. Ms. Dowdy said that the overall parking calculation that was given was for a restaurant on one side and retail on the other.

Chairman Whitaker asked if there was any rebuttal from either side.

Ms. Cothran referred to the Quiznos space and stated that there were 48 spaces for the five businesses that occupied that plaza which averages about ten spaces per business. She stated that there had to be a common ground to find a use for the space.

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

The board members had a lengthy discussion on the pros and cons of this variance. Board member Steven Reed said that being a retail business owner himself, he did not see that a retail business would utilize their allotted parking spaces during a given time and he feels that the city's requirement of 19 spaces is too many spaces for retail. Justin Pounds said that most people tend to think that retail businesses are where you only purchase a product, when in fact tanning salons and movie stores actually fall under retail businesses and they require a huge amount of parking. Mr. Pounds added that he was also in retail and he agreed that one or two customers at a time were the normal; however, he was concerned with the impact that one business's traffic and parking situation could overall affect another business. Mr. Mastera said that the board members did have a very legitimate concern. He added that the planning staff is looking at updating the ordinance on parking requirements, the need to clearly define the difference in businesses and their need for parking. Mary Anne Medlock said that there were delicate issues to deal with when you deal with the parking and referred to other variances that had been reviewed in the recent past. She said that parking was not going to get any better as the property would be encroached on by Murray State or other businesses and asked if that meant that economic development should stop because of the parking situation. Ms. Medlock added that whether the ordinances were followed or ignored, she did not have a solution to the problem. Scott Seiber referred to other shopping plazas and their lack of parking at peak times of operation.

**Tom Auer made a motion to deny the off street parking variance request for the property located at 1407 Main Street. With the change in use of this property the existing parking is insufficient. The current regulations require a minimum of 66 spaces with only 33 being provided. The granting of this variance would be an unreasonable circumvention of the zoning regulations and the lack of sufficient parking could adversely affect the public health, safety and welfare of the general vicinity with the addition of exaggerating an already bad situation. No one seconded the motion.**

**Steven Reed made a motion to approve the off street parking variance for the proposed use at 1407 Main Street as requested by T.C. Dinh with the following conditions that the parking lot should be restriped for maximum use. The conditions placed on the variance are for this use only and any change in the use or expansion or enlargement of the use will require additional review by the Board of Zoning Adjustments. The granting of 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. Scott Seiber seconded the motion. The vote was 3-3; therefore, the motion was defeated. Tom Auer, Justin Pounds and Bill Whitaker voted no.**

There was continued discussion on the matter and Scott Seiber asked the nay voters what could be added to the motion that was presented that would change their minds. Mr. Auer stated that nothing would change his vote and he felt that there were more appropriate businesses for that location that would not require a variance. Mr. Seiber stated that he agreed that more appropriate businesses were needed for that location, but there were not any takers. Mr. Seiber stated that he

Murray Board of Zoning Adjustments Regular Meeting  
Wednesday, February 17, 2010

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felt the majority of traffic for this particular business would be walk up traffic. Justin Pounds explained that he voted no because he felt that this issue would negatively affect the adjacent property owners. Chairman Whitaker agreed with Mr. Pounds. The committee agreed that a permitted use at this location would not have the parking impact that a restaurant would and if the proposed restaurant was very successful, the existing parking problems would intensify.

**Questions and comments:** Candace Dowdy stated that planning staff was working on a continuing education for the board members.

**Scott Seiber made a motion to adjourn. Justin Pounds seconded the motion and the motion carried with a unanimous vote. *The meeting adjourned at 6:30 p.m.***

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Chairman, Bill Whitaker

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Recording Secretary, Reta Gray