

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

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

Board Members Present: Mary Anne Medlock, Steven Reed, Justin Pounds, John Krieb, and Bill Whitaker

Board Members Absent: Scott Seiber and Tom Auer

Also Present: Candace Dowdy, Peyton Mastera, Reta Gray, David Roberts, Dawn Therrell, Patsy Oakley, Whitney Cooper, Tommy Carroll, Fred Swann, Larry Herndon, Officer Clere, 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 22, 2010 regular meeting.

Justin Pounds made a motion to approve the minutes from the September 22, 2010 regular Board of Zoning Adjustments meeting as presented. John Krieb seconded the motion and the motion carried unanimously.

Public hearing to review the conditional use permit application to allow personal fitness training as a home occupation – 2111 Gatesborough Circle – Dawn Therrell: Peyton Mastera used a Power Point presentation to show the property at 2111 Gatesborough Circle where Ms. Dawn Therrell resides. Ms. Therrell is a certified personal fitness trainer and is requesting permission to conduct personal training services from her home. Mr. Mastera stated that this is only allowed as a conditional use in an R-2 (Single Family Residential) zoning district in accordance with Section III, Article 6 of the City of Murray Zoning Ordinance. Mrs. Therrell will have a maximum of 4-5 clients which will come and visit her at most three days a week. No more than one client will be at Mrs. Therrell's home at a given time. There is ample parking on the premises.

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

Dawn Therrell, 2111 Gatesborough Circle, Murray was sworn in. Chairman Whitaker asked Mrs. Therrell if she planned on having more than one client there at a time for a group type activity. Mrs. Therrell stated that was not her intention. She said that she had converted her living room into a studio for her clients and it was not large enough to accommodate more than one client at a time. Mrs. Therrell added that they would be in that one room unless they went for a walk outside. Mrs. Therrell stated that she had two letters of approval from her neighbors. Mr. Mastera displayed the letters on the screen. *The letters were submitted as Evidence A & B.*

Patsy Oakley, 2112 Gatesborough Circle, Murray was sworn in. Mrs. Oakley stated that she lives across the street from Mrs. Therrell and she would be one of her clients. Mrs. Oakley said that she is not opposed to Mrs. Therrell operating a home occupation.

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.

John Krieb made a motion to approve the Conditional Use Permit application of Dawn Therrell to be a certified personal fitness training instructor at 2111 Gatesborough Circle with the condition that there be no more than fifteen visits on site, per week; that there be no more than one client on the premises at a given time; no on-street parking; and any complaint or disturbance reported is subject to review. This permit is only valid for Mrs. Therrell as long as she owns and occupies the residence. Justin Pounds seconded the motion and the motion carried with a 5-0 voice vote.

Public hearing to review the dimensional variance application for a five foot side setback and three foot height variance on a proposed monument style sign – 1113 Sycamore Street – Flowers by Whitney: Candace Dowdy used a Power Point presentation to show the property at 1113 Sycamore Street where Flowers by Whitney, owned by Whitney Cooper, is located. Ms. Cooper is requesting a five foot side setback variance and a three foot height variance on an existing sign frame located at her business on the southeast corner of South 12th and Sycamore. This business is located within the 12th Street corridor; therefore, requiring a monument style sign. Ms. Dowdy stated that there is currently a two foot tall concrete base (which meets current requirements) around the existing sign posts with approximately 96 square feet of area for landscaping. Ms. Cooper is requesting a five foot by eight foot sign with intentions of placing the sign within the existing sign posts where she would be able to utilize the existing metal brackets. Ms. Dowdy stated that on February 1, 2006, all property owners along the 12th Street corridor were sent a letter informing them that any existing freestanding sign would be grandfathered in as a legal non-conforming sign and would be allowed to remain as long as the sign was not expanded, altered, or enlarged and any replacement sign would have to comply with the new sign regulations. The letter also stated that if a business was discontinued, any non-conforming sign would have to be removed and any new business at the same location would have to comply with the current sign regulations. The property owner removed the non-conforming signage back in 2006 but left the sign posts and the base. Ms. Dowdy said that Tommy Carroll owns the property at 505 South 12th Street which is to the south of 1113 Sycamore. Mr. Carroll made a similar request to the board in May 2006 for a three foot height variance and an eight foot side setback variance on the existing freestanding sign at this location. The board approved the request as presented. The original sign on South 12th Street was approximately thirty feet tall and it was modified by removing the top two panels to an overall height of thirteen feet. Ms. Cooper would like for her sign to be approximately the same height. Ms. Dowdy said that currently Ms. Cooper has two smaller additional wall signs that are within the guidelines for a corner lot.

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

Whitney Cooper, 84 Wildwood, Murray was sworn in. Ms. Cooper stated that the current wall sign that is on the north side of the building is very small and she would like to put a free-standing sign along the south property line of the business to make her business more visible from South 12th Street. Ms. Cooper said that she would like to utilize the existing posts and install a larger free-standing sign and request a three foot height variance where her sign would line up with La Cocina's sign. Ms. Cooper said that the existing posts are already the height she is requesting and there are brackets inside of the posts to affix the sign to. Ms. Cooper stated that her plan is to paint the base of the sign and have that area professionally landscaped. Board member Steven Reed asked Ms. Cooper if she would consider cutting the sign posts even more and putting up a sign that would be in compliance without the height variance. Ms. Cooper said that she did not know the costs at this point of cutting the posts and reconfiguring the placement of the brackets; she was waiting to see what happened at the meeting to see which route to take. Board member John Krieb stated that there might be an advantage of keeping the sign up high and that would be a clearer visibility of seeing below the sign.

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.

Justin Pounds made a motion to approve the dimensional variance application of Flowers by Whitney (business owner: Whitney Cooper) at 1113 Sycamore Street for a three foot height and a five foot side setback variance along the south property line for the proposed placement of a monument style sign due to the unique configuration of this lot. The size of this freestanding sign or any future freestanding sign with the specified setback and height variance shall not exceed 40 square feet in size; 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. Mary Anne Medlock seconded the motion and the motion carried with a 5-0 voice vote.

Public hearing to review the dimensional variance application for a eight foot front and a twenty-two foot rear setback variance on a proposed commercial building – 300 Mulberry Street – Fred Swann: Peyton Mastera used a Power Point presentation to show the property at 300 Mulberry Street. Mr. Fred Swann, the applicant, has made an offer on the property located at the intersection of South 4th and Mulberry Streets (owned by Clara and Sue Darnell) contingent upon approval of this dimensional variance application. The existing PVA parcel 10-20-03 is an 80 foot x 225 foot triple road frontage lot with South 3rd Street to the east; Mulberry Street to the south; and South 4th Street to the west. Mr. Swann is looking to subdivide the property into two commercial tracts of land. The eastern tract will be known as 300 Mulberry Street since the proposed structure will face to the south. The western tract will either have a

Mulberry Street or South 4th Street address, depending upon future development of said tract of land. Mr. Mastera stated that Mr. Swann had presented a site plan with dimensions of the proposed subdivision line as well as the size of the structure. Mr. Swann's intent is to build a 2000 square foot building that will be divided into two sections. One side will be used by Mr. Swann as a car detail business and the other side will be rented. Since this proposed building will be facing Mulberry Street, the building must meet the following setback requirements: front yard - 50 foot; rear yard - 25 foot; side yard (along South 3rd Street) - 25 foot; side yard (closest to newly established west property boundary) - no limitation. Mr. Mastera stated that Mr. Swann will be meeting both side yard setback requirements. The proposed building will be only forty-two feet from the front property line; therefore, an eight foot front setback variance is being requested. In addition the proposed building will only be three feet from the rear property line; thus, a twenty-two foot rear setback variance is being requested. While the rear setback variance is large, if the building front was South 3rd or South 4th, the building could be placed up to the north property line, so staff has no objections in that respect. The applicant is also looking to waive the screening requirements along the southern property line. Mr. Mastera stated that the Zoning Ordinance states "whenever a front or side yard is across the street from any property located in a residential zone, screening shall be provided adjacent to a landscaped yard ten feet in depth for a distance equal to the residential zoning lot line along the street." Mr. Mastera stated the reason for this request is because the entrance to this facility will be on Mulberry Street and although the property to the south is zoned Multi-Family Residential, the property is of an abandoned church and the Future Land Use map – which was recently adopted – reflects "Semi-Public Institutional" and not "Residential". Mr. Swann will be completing all screening requirements along the eastern property line.

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

Fred Swann, 1309 Olive, Murray was sworn in. Mr. Swann said that the nature of the lot was an issue, but Mr. Mastera had worked quite well with him on a configuration that would work for him. Mr. Swann said that he was looking at building an aluminum building with garage doors where he could restore cars on one side of the building and the other side would be rented.

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.

John Krieb made a motion to approve the dimensional variance application of Fred Swann at 300 Mulberry Street (property owner(s): Clara and Sue Darnell) for a eight foot front setback variance and a twenty-two foot rear setback variance on the future eastern tract and to waive the screening requirements along the southern property line contingent upon a minor subdivision plat being approved and recorded separating the existing PVA parcel 10-20-03 in to a western and eastern tract of land; remove the two sheds on the property; and, contingent upon the sale and transfer of property to Mr. Fred Swann. This variance is being granted with the findings that the lot is only eighty feet in width; the lot to the

south is currently abandoned with the Future Land Use map showing it as “Semi-Public Institutional”; 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. Justin Pounds seconded the motion and the motion carried with a 5-0 voice vote.

Public hearing to review the conditional use permit application for a mixed commercial and residential development – 111 Poplar Street – Larry Herndon: Candace Dowdy used a Power Point presentation to show the property at 111 Poplar Street that is owned by Larry Herndon. This property was formerly known as the Landolt building. The property was rezoned to B-3 (Central Business District) in 2008 and it is located within the Historic Overlay District. Mr. Herndon is proposing a mixed use of this building. Currently Mr. Herndon has intentions to put retail in the lower level, professional offices and residential apartments on the second floor and loft apartments on the third floor. In the B-3 zoning district residential use is only allowed as a conditional use provided the dwelling unit(s) shall be part of the building and located above or to the rear of the principal use. Mr. Herndon currently has an office space for his business, Blueridge Enterprises, located on the second floor of the building with the potential tenant build out space for other professional office and/or retail spaces available. Each build out will require a separate building permit to be issued prior to any work being performed. Ms. Dowdy stated that based on the site plan submitted to the Planning office thirty (30) parking spaces can be provided on the east side of the building. There is currently an old metal building to the rear of the property that Mr. Herndon plans on removing for future parking availability. Any exterior renovations to the building will require review by the Architectural Review Board. Ms. Dowdy stated that Mr. Herndon has a family member currently living in an RV on the premises that oversees the property. In Mr. Herndon’s most recent site plan, two apartments are shown to be built on the second floor. Ms. Dowdy said that if the conditional use is approved, Mr. Herndon would like to move forward with one apartment at this time and build out the second apartment for himself at some point in the future. Ms. Dowdy added that the building does have a sprinkler system; however, that will need to be brought up to code and certified. The fire marshal and building official have made several inspections of the building.

Chairman Whitaker opened the public hearing and asked if there was anyone that wished to speak in favor of the application. Larry Herndon, 108 South 10th Street, Murray was sworn in. Mr. Herndon stated that he currently has his office located in the building. Mr. Herndon said that he had encountered some problems with skateboarders before his cousin moved on the property in his RV; however, that situation has subsided. He now would like to build out an apartment on the second floor for his cousin to continue to live there and oversee the property and finish out another apartment for himself. Originally Mr. Herndon had no intentions of putting apartments on the second floor; the plan was for loft style apartments on the third floor only. This plan has been modified recently to accommodate his cousin’s request for living quarters. Mr. Herndon has been working with the fire marshal and has learned that he can isolate the second floor for now and this will allow him to leave the third floor alone for future use. Chairman Whitaker asked Mr. Herndon what kind of shape the building was in. Mr. Herndon

stated that it was in good shape except for the water damage along the west wall. Mr. Herndon added that the roof was in need of repair and he is continuing to work on it and will eventually re-roof it in sections. Board member Justin Pounds asked if there was a basement in the building and Mr. Herndon replied that there was a half basement that was used for storage. Mr. Herndon stated that he has had a lot more interest in rental of apartments than retail space and at this point, he does not want to invest in the overall development of the building until he sees what the demand will be.

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.

Ms. Dowdy stated that it had been discussed to have this project go through a Planned Development Process because it is unique in nature; however, with the given site plan, the approval at this time would be for a conditional use permit to allow residential use. This conditional use permit will not give Mr. Herndon blanket approval to rent spaces and put in any type of business. If it is not a permitted use in a B-3, Mr. Herndon will have to come back before the board for approval. Ms. Dowdy added that conditional use permits can be reviewed annually for compliance for any conditions placed on the permit. If these conditions are not being met, then the BZA can review it again and possibly revoke the permit.

Mary Anne Medlock made a motion to approve the Conditional Use Permit application of ComStar (Larry Herndon) at 111 Poplar Street for a mixed commercial and residential use contingent upon the development meeting all City of Murray regulations. This includes but not limited to demolishing the metal building to the south for parking accommodations and meeting all building and fire codes. John Krieb seconded the motion and the motion carried with a 5-0 voice vote.

Election of Officers: Peyton Mastera read the list of officers that are currently serving on the BZA and they are as follows: Chairman – Bill Whitaker; Vice Chairman – Scott Seiber; and Secretary – Justin Pounds.

Mary Anne Medlock made a motion to accept the same slate of officers for the coming year. Steven Reed seconded the motion and the motion carried unanimously.

Questions and Comments: Steven Reed asked if the Planning Staff had sent letters to the merchants who were not in compliance with their sign landscaping requirements. Mr. Mastera stated that a multitude of letters had been mailed. David Roberts added that there had been some positive movement. Mr. Mastera stated that the Planning Staff does their best to work with the business owner to bring them into compliance before going through other means.

Chairman Whitaker asked about the next continuing education opportunity on proper conduct at public meetings. Mr. Mastera stated that once the new city council members are selected in the upcoming election, Planning Staff will choose a date.

Murray Board of Zoning Adjustments Regular Meeting
Wednesday, October 20, 2010

Adjournment: Justin Pounds made a motion to adjourn. John Krieb seconded the motion and the motion carried with a unanimous vote. *The meeting adjourned at 6:20 p.m.*

Chairman, Bill Whitaker

Recording Secretary, Reta Gray