

**MURRAY BOARD OF ZONING ADJUSTMENTS  
REGULAR MEETING  
WEDNESDAY, JULY 18, 2018  
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, July 18, 2018 at 4:30 p.m. in the council chambers of City Hall at 500 Main Street.

**Board Members Present:** John Krieb, Bobbie Weatherly, Mike Faihst, Terry Strieter, Jim Foster and Josh Vernon

**Board Members Absent:** None

**Also Present:** Maurice Thomas, Justin Smith, Jeremy Buchanan, David Roberts, Attorney David Perlow, Elizabeth Pasco, Sarah Martin, Allison Samisch, William Samisch, Georgena Taylor, and Kristal Romaine

Chairman Krieb called the meeting to order and welcomed all guests and applicants. Maurice Thomas called the roll. Chairman Krieb then asked for a motion to approve the minutes from the June 20, 2018 Regular BZA meeting.

**Mike Faihst made a motion to approve the minutes from the June 20, 2018 regular BZA meeting as amended. Terry Strieter seconded the motion. The motion passed unanimously.**

Chairman Krieb then introduced the new Planning Manager, Jeremy Buchanan. Jeremy came forward and told a little about his previous employment background.

**Public Hearing: Consideration of a Conditional Use Permit request to rent a sleeping room in an R-2 Zone located at 310 North 14<sup>th</sup> Street – Applicant: Sarah Martin:** Justin Smith explained that the applicant Sarah Martin is seeking approval to allow Rebecca Garth to rent a room from her and to help with the remodeling and preservation of this historic property. Ms. Martin was advised by an attorney to pursue a Conditional Use Permit for her situation. Ms. Martin is an employee at Murray State University which is within walking distance of this property. Justin reviewed previous similar CUP requests. To grant the conditional use request, the Board must find that “the granting of the conditional use meets the stipulations listed in § 156.081 CONDITIONAL USE PERMITS”. Justin added that staff has not received any input from adjoining property owners either in approval or denial of the request.

Chairman Krieb opened the public hearing and asked if there was anyone that wished to speak in favor or opposition to the request.

Elizabeth Pasco came forward and was sworn in. Ms. Pasco stated that they are delighted to have Sarah as a neighbor and to see the improvements made to the beautiful old home. Ms. Pasco said that if Sarah needs Rebecca there to help her with the improvements, they did not have any objections.

Sarah Martin came forward and was sworn in. Ms. Martin bought this older home that is a beautiful and enormous project. The home has 4 bedrooms and 2 baths. Ms. Martin is a professor at MSU and Ms. Garth is a lawyer. Both women are adult professionals and they conduct their lives as adult professionals. In order to “fix the place up” she is asking permission to rent one of the bedrooms to help supplement her income to be able to afford to complete this project. Otherwise this will be a 40 year project. Ms. Martin addressed the parking situation. Currently there is a large piece of concrete blocking her driveway. Elizabeth has offered a parking space for their use and another neighbor has also offered their driveway for use as well while they are removing the concrete piece. Once that concrete is removed there should be adequate room for 2 automobiles to park. Ms. Martin added that she was also considering helping out any of her students if they should find themselves in an emergency situation, but she would not be renting out any additional rooms. Ms. Martin likes to sleep a lot; therefore, her tenant must be really really quiet.

No one spoke in opposition; therefore, the public hearing was closed and the item turned over to the Board for discussion and a motion.

**Mike Faihst made a motion to grant the Conditional Use Permit for allowing one (1) sleeping room to be rented in an R-2 Single Family Residential Zoning District located at 310 North 14<sup>th</sup> Street. The testimony presented in this public hearing has shown based on the findings it does not adversely affect public health, safety, or welfare; will not alter the essential character of the general vicinity; will not cause a hazard or nuisance to the public; and will not allow unreasonable circumvention of the requirements of the zoning ordinance. This permit will be for one room rental only limited to the current owner. The nature of the occupant that will be renting the space is professional. There appears to be enough parking for use around the premises. There was no opposition to this request and the location of the property is surrounded by mostly multi-family and MSU campus. Josh Vernon seconded the motion and the motion carried with a 6-0 roll call vote.**

**Public Hearing: Consideration of a Conditional Use Permit to allow persons not related to occupy the premises in an R-2 Zone located at 217 Woodlawn Avenue – Applicant: Allison & William Samisch:** A concerned citizen that owns a rental duplex two doors down at 221 Woodlawn actually called in to report this situation. She thought that she was the only property owner on Woodlawn allowed to have multi-family residents because of being “non-conforming and grandfathered in”. Justin informed her at that time that he would check into the situation at 217 Woodlawn to see if they would like to seek approval for a Conditional Use Permit.

The applicant Allison Samisch is seeking approval to allow her two (2) female MSU soccer teammates to live with her in an R-2 (Single Family) zoning district. Pictures were shown of the property. Justin explained that Allison and her parents purchased this home in January of 2018 in order to give Allison plenty of quiet time to concentrate on her studies while at Murray State University. He then reviewed previous similar requests for CUPs. Justin said that Mr. Samisch has indicated that there is no lease agreement with the other girls. Mr. Samisch pays the mortgage and all the utilities. Mr. Samisch has admitted to knowing this home was located in an R-2 zoning district. He indicated that they looked at several homes in Murray to purchase but passed on every other home due to the nature of the neighborhoods. According to Mr. Samisch

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these girls are very respectful young ladies that do not throw parties and they enjoy the peaceful neighborhood. The adjacent property owners were sent letters informing them of this request. Planning Staff received an email from the adjacent property owner, Adam Kiesler, at 215 Woodlawn, dated July 5, 2018, in favor of allowing these college students to stay next door to him. He has a 19 month old daughter whose window faces 217 Woodlawn and they have never had an issue with noise or anything during the night. He also stated: *“Displacing these young students would cause them to find new housing less than a month before the start of their fall training with the soccer team. I think they are perfect right where they are and are causing no harm to anyone in the local area”*. On July 10, 2018, Melodie Cunningham, 218 Irvan Street, called in to disapprove of the granting of this Conditional Use Permit. Ms. Cunningham was unable to attend the meeting because of a previously scheduled appointment. Ms. Cunningham (an adjacent property owner) has not had any problems with the current residents; however, her main concern is keeping the neighborhood single-family residential. She has seen over the years what has happened to the area of Farmer, Miller, and Hamilton and does not want that to happen to the neighborhood where she has lived for over 20 years. She believes approval of this Conditional Use opens the door for more college students to seek approval and in doing so, will hurt the character of this single-family residential zoning district. She also expressed concerns about not enough adequate parking and future negative impacts on property value in the neighborhood. Justin informed the Board that in order to grant the Conditional Use request, they must find that “the granting of the Conditional Use meets the stipulations listed in § 156.081 CONDITIONAL USE PERMITS”.

Chairman Krieb opened the public hearing and asked if there was anyone that wished to speak in favor or opposition to the request.

William and Allison Samisch came forward and were sworn in. Mr. Samisch reiterated the reason for purchasing the property where Allison is living. The neighborhood is the quiet atmosphere that they were looking for while Allison completes her studies at MSU. The girls that are living with Allison are teammates of hers on the MSU Soccer Team. The girls are quiet and do not throw parties as the next door neighbor has indicated. There is adequate parking for three automobiles in the driveway. Mr. Samisch said when he purchased the home, it had recently been renovated and that he possibly paid more than anyone else on the street had paid for their house and that he does not have the intent to devalue the other homes in any way. The girls that are occupying the house are currently juniors. Mr. Samisch has another daughter that is a senior in high school at this time and she will be coming to Murray State to play soccer as well. The plan is for her to live in the dorm her freshman year and then to move into the house. He indicated that he did not plan on owning the house except for another five years.

Georgena Taylor came forward and was sworn in. Ms. Taylor owns the property at 216 Woodlawn but does not reside there. She just wanted to comment that the house in subject had been rented out numerous times in the past. When Dr. Jackson bought it, he totally remodeled it and did a good job of it. There is an apartment development nearby off Poplar that has already happened and she foresees that this property could possibly be rezoned in a matter of time. Ms. Taylor thinks that the other residents are concerned that the property will not be taken care of.

No one spoke in opposition; therefore, the public hearing was closed and the item turned over to the Board for discussion and a motion.

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Jim Foster said that the Board has seen similar cases such as this one in the past and this concerns him. They move in first and then come before the Board. It is hard to properly judge a person's character by simply looking at them. Mr. Foster wished that this had been brought before the Board before the tenants had actually moved in. Justin showed the aerial view of the zones on the overhead. Bobbie Weatherly stated that Woodlawn has numerous renovations going on and it is obvious that they are renovating with the purpose of renting. Ms. Weatherly added that she had a resident contact her and requested that she work hard to keep the Woodlawn neighborhood residential. Josh Vernon commented that he didn't doubt that the rezoning of this property would be down-the-road; however, until that happens, the Board should make their decision based on the current situation and honor the integrity of the R-2 zone. Chairman Krieb reviewed the past similar cases and said that those requests had been primarily denied. Those residents were given adequate time to find housing. If this request should be denied, he suggested that the Board give a specific time-line in order for the students to find housing.

David Roberts reviewed that the Board shall have the right to review Conditional Use Permits annually to see that the landowner is in compliance.

**Bobbie Weatherly made a motion to grant the Conditional Use Permit for allowing three (3) non-related persons to occupy the premises in an R-2 Single Family Residential Zoning District located at 217 Woodlawn Avenue for a total of two years after which the Board will review the standing. The testimony presented in this public hearing has shown based on the findings, it does not adversely affect public health, safety, or welfare; will not alter the essential character of the general vicinity; will not cause a hazard or nuisance to the public; and will not allow unreasonable circumvention of the requirements of the zoning ordinance. The property should be maintained at least to a comparable level of neighborhood standards or even above or beyond that if possible. There should be no parking in the streets and no loud noises after 10 p.m. Mike Faihst seconded the motion and the motion carried with a 5-1 roll call vote. Terry Strieter voted no.**

**Public Hearing: A request for a Dimensional Variance for a 20 foot setback for a garage in a secondary yard located at 814 Bagwell Boulevard – Applicant: Rick & Kristal Romaine:** Justin began by showing the aerial photography and zoning of the property. This property is located in an R-2 zoning district. Rick Romaine hired a contractor to extend his driveway and to add an accessory structure in the rear yard. The contractor Musco & Taylor had made contact with one of the city building officials on April 12, 2018 inquiring about permits for extending a driveway. At this time, they acquired a business license but never mentioned constructing a detached garage. A city building official was contacted and made aware of the detached garage being constructed. A letter was sent to Rick & Kristal Romaine on June 12, 2018 in regards to the partially finished garage to inform the current property owners of the city setback regulations and the process in obtaining a building permit. Currently a building permit has been filled out; however, the building official's approval depends on the ruling from the BZA on whether or not they will be allowed to keep the accessory structure in its current location. The structure is 10 feet away from the right-of-way off Glendale Road. This is a corner lot; therefore, Bagwell Boulevard is considered a secondary street. The secondary yard setback on this lot is 30 feet. Where it stands now, the detached garage is sitting within the setback by 20 feet. The home owners were unaware of the Musco & Taylor's oversight and apologize for not following up on the proper permits before getting to this point. Justin explained that if this request is not approved, there will have to be additional concrete poured, a large tree taken down in order to relocate the garage and additional costs will be incurred by the homeowner. To grant the

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Dimensional Variance request the Board must find that the “granting of the variance meets the stipulations listed in § 156.082 DIMENSIONAL VARIANCES”. Justin stated that Staff had received one letter of approval from Mike Faihst (neighbor that lives directly across the street to the east) requesting that the owner be allowed to leave the garage where it is at.

Chairman Krieb opened the public hearing and asked if there was anyone that wished to speak in favor or opposition to the request.

Kristal Romaine came forward and was sworn in. Ms. Romaine explained the three reasons they wanted the garage attached to their existing driveway.

- The Romaines have a 16 year old daughter that is getting ready to get her license; therefore, they needed additional parking and they didn’t want their daughter backing into the street. *They added an extra 20 foot of driveway in front of the building so they could have a turn-around.*
- They are locked at that location because of the big tree on the lot that they do not wish to disturb.
- Mr. Romaine was diagnosed with early stages of Alzheimer’s a few years ago. His neurologists and neuro-psychologists have indicated that he needs a place to go to during the day to “tinker” with his computers as he previously was an IT director for 20 years; thus, the personal reason for the garage. Ms. Romaine needs to have a visual on her husband from the house and this location will allow her to be able to keep an eye on him.

Ms. Romaine realizes as the homeowner this problem falls on her shoulders. She trusted her contractor. She feels that this error was a miscommunication problem and not a misrepresentation problem. Her contractor indicated that he had told the Planning Staff that he was constructing a building as well as a turn-around. He “thought” he was purchasing a building permit; when instead it was a business license. Musco & Taylor did the excavating and concrete work and another company is constructing the building. Ms. Romaine said that they have contacted that company to stop the construction at this point. She has not looked into legal recourse at this time. She has already paid Musco & Taylor; however, she has yet to pay the second contractor. Ms. Romaine had plans to landscape around the building.

No one came forward to speak in opposition to the request; therefore, the public hearing was closed and the item turned over to the Board for further discussion and a motion.

**Bobbie Weatherly made a motion to grant the Setback Variance for an accessory building in a side secondary yard for 814 Bagwell Blvd. as presented by the homeowner and her three reasons for wanting this setback. The testimony presented in this public hearing has shown based on the findings, it does not adversely affect public health, safety, or welfare; will not alter the essential character of the general vicinity; will not cause a hazard or nuisance to the public; and will not allow unreasonable circumvention of the requirements of the zoning ordinance. The Board encourages the homeowner to evaluate the situation with her contractor and take actions that she deems necessary. Based on the recommendation of Board members, they encourage that the homeowner make appropriate provisions for landscaping to beautify the property to the south and west sides of the garage. John Krieb seconded the motion and the motion was denied with a 2-3 roll call vote. Mike Faihst abstained from voting. Jim Foster, Terry Strieter and Josh Vernon voted no.**

Chairman Krieb asked if there was anything else that the Board would like to see that could change their mind about the voting. Mr. Foster said that he would have felt a lot better about the situation if the contractor had been present where he could have explained the situation and told the Board what happened instead of hiding. He would be willing to table the item for 30 days if the contractor would come in and explain why he did what he did. Mr. Vernon said that if the request had been made prior to the construction, with the circumstances of the tree and needs of the applicant he believes that there was a possibility that this would have been approved; however, he would have liked to see the building be at least up to the standard of the home and not just a metal building.

**Jim Foster made a motion to table this item for 30 days to see if the Board can come to a better understanding of something that can be done with the facility as it is now. It definitely needs more work in changing the appearance of the garage and adding a landscaping plan. The Board would like for the contractor to attend the next meeting. Terry Strieter seconded the motion and the motion carried with 5-0 roll call vote. Mike Faiht abstained from voting.**

**Questions and Comments:** Justin explained that the property on Chestnut Street next to the cemetery is zoned R-2. A realtor has been in touch with Planning Staff about rezoning the property to B-2 Commercial. The realtor was given the application for rezoning requests and advised of the process in seeking this change. The realtor has recently put up a sign stating that the commercial property is for sale. There are a lot of residents that have been in contact with the Planning Staff because of this. Justin has been telling them the same thing that he just told the Board. This realtor has talked to some of the residents and told them that she is working very close with staff to get the property rezoned. Justin just wanted to make the Board aware of the situation since several concerned citizens have been coming in and calling about it. Justin stated that they cannot regulate her sign as it is in accordance with the sign ordinance nor can they ask her to take it down.

Several Board members voiced their concern over the garage ordeal. They feel bad for the property owner. This has happened so many times before; people start building before they know what the regulations are.

The Board members said that there are issues with opening the e-mails they receive from the City. Justin said that he would talk to the IT guys about that problem. Justin then indicated that Shane Knight was the Building Inspector involved with the garage situation. He said that he would speak to Shane and see if he could attend the meeting next month.

Josh Vernon said that he wished there was a way that realtors could convey to potential property buyers when changes are being proposed to that particular property (or surrounding property) before that interested party makes the investment.

**A motion was made by Terry Strieter to adjourn and seconded by Mike Faiht. The meeting adjourned at 6:04 p.m.**