

**MURRAY PLANNING COMMISSION MINUTES
REGULAR MEETING
TUESDAY, DECEMBER 18, 2007**

The Murray Planning Commission met in special session on Wednesday, December 18, 2007 at 5:00 p.m. in the council chambers of City Hall located at 104 N. 5th Street.

Commissioners Present: Tom Kind, Marc Peebles, Mike Lovins, Mary Anne Medlock, Nelson Shroat, Howard Koenen and Richard Vanover

Commissioners Absent: Ed Davis, Ed Pavlick, and Loretta Jobs

Also Present: Mayor Rushing, Candace Dowdy, Peyton Mastera, Mike Pitman, David Roberts, Reta Gray, David Pike, and public audience.

Chairman Vanover called the meeting to order at 5:00 p.m. and welcomed all guests. He then turned the floor over to the Mayor. Mayor Rushing thanked the Planning Commission for the work that they do for the City and wished everyone a Merry Christmas.

Chairman Vanover asked for approval of the November 13, 2007 regular meeting minutes. Mike Lovins made the motion to approve the minutes. Tom Kind seconded the motion and it carried with a 7-0 voice vote.

Chairman Vanover asked for approval of the December 5, 2007 special meeting minutes. Nelson Shroat made the motion to approve the minutes. Tom Kind seconded the motion and it carried with a 7-0 voice vote.

Public Hearing for Cell Tower Application – Murray Calloway County Park: Candace Dowdy referred to a power point presentation to show pictures of the proposed location of the monopole cellular antennae tower. Ms. Dowdy stated that a representative of Pike Legal Group was here on behalf of Cingular Cell Wireless in their request to replace an existing light pole in the City Park with a monopole tower. The property is within a government-zoned district and the zoning ordinance states that government-zoning districts are exempt from zoning regulations. Pike Legal Group has submitted the application as a normal process and has agreed to go through the public hearing as a courtesy. There was a diagram of the monopole tower also presented with a 500 feet notification radius. This area will be leased from the City Park. There will be white pine trees planted around the perimeter of the area. The monopole tower will be 120 feet tall and has a safety feature built in so that the tower will not fall over during inclement weather conditions; instead, it is designed to collapse by folding. There is an intentional weak area approximately 2/3 of the way up the pole that is designed to bend at that point in order to relieve the stress. The monopoles are very reliable structures and have to meet national design standards, which in this area is a sustained wind speed of 75 mph with a ½” of radial ice over the entire structure.

Chairman Vanover opened the public hearing. He asked if there was anyone there that would like to speak in favor of the cell tower application. Attorney David Pike of Pike Legal Group

was sworn in. Mr. Pike explained that the firm felt that it was appropriate to go through this process out of consideration to the city and county and to answer any questions. Mr. Pike also stated that in comparison to most monopoles, this would be relatively short. Lights will be mounted at the same level on the monopole as they were on the previous light pole. The structure will meet all FCC and national design standards and will also meet all of the planning staff's landscaping recommendations. A diligent effort was made to locate this tower at the football stadium area; however, Murray State was not able to accommodate ground equipment location associated with the tower and to meet their standards. David Roberts stated that the Park Board had approved this proposal after reviewing the information through public hearings and meetings for the past three years.

Chairman Vanover asked if there was anyone else that would like to speak in favor or against the application. There was no one. The public hearing was closed. Chairman Vanover stated that no vote was required.

Public Hearing to Review Possible Text Amendments to the City of Murray Zoning Ordinance: Chairman Vanover stated that they would be combining the public hearings for signage and Board of Zoning Adjustments sections of the zoning ordinance. He then opened the public hearings. There was no one there to speak in favor of or against the possible text amendments. The public hearing was closed. Mr. Mastera presented the following to the Planning Commissioners:

SECTION I ARTICLE 2 (DEFINITIONS)

64. MARQUEE: Any permanent roof-like structure projecting beyond the wall of the building, generally designed and constructed to provide protection from the weather.

93E. CANOPY SIGN: A sign that is part of or attached to a canopy or awning.

93L. MARQUEE SIGN: An identification sign attached to the bottom of a marquee.

SECTION III, ARTICLE 1 (SIGN REGULATIONS):

A. INTENT

It is the intent of this ordinance to regulate signs. A permit for the installation of any sign is required unless otherwise provided for in this ordinance. Permits must be obtained from the zoning official before installation of any type of sign. Failure to obtain a permit can result in the zoning official having the sign removed at the owner's expense. If the owner fails to pay for such removal, the city may attach a lien to the lot on which the sign was located.

B. SIGNS FOR R-1, R-2, R-3, R-3A, R-4 AND R-5 ZONES

1. ~~Only traffic signs and~~ Temporary signs are allowed in the residential zoning districts per approval of the zoning official.
2. Real estate signs are allowed not exceeding six and a quarter (6.25) square feet on residential properties of less than one (1) acre in size. Real estate signs may not exceed twelve (12) square feet on properties from one (1) to ten (10) acres in size. All residential properties greater than ten (10) acres in size shall be allowed real estate signage up to thirty-two (32) square feet. All real estate signs are considered temporary for the period of the sale of the property.
3. Yard sale signs are permitted only on property of the sale and only on the day before and the days of the sale. No yard sign shall be attached to a tree, fence or public utility pole. No other advertising, except for the yard sale, will be allowed on the sign.
4. Temporary signs not exceeding six and a quarter (6.25) square feet may be placed for special events subject to placement of a bond to assure their removal as outlined in the general sign regulations.

5. One (1) unlighted sign not over two (2) square feet in area identifying home occupations permitted as a conditional use on the premises. The sign location shall be subject to control by the Board of Zoning Adjustments.
6. One ~~(1) free-standing sign or one (1) wall~~ sign not ~~over eight (8)~~ **to exceed twelve (12)** square feet in area, identifying the fraternity or sorority house on the premises shall be permitted.
- 7. One (1) free standing or one (1) wall sign not to exceed 32 square feet for churches or buildings used for church related activities.**
- 8. Signage for residential developments will be approved through the review process.**

C. SIGNS FOR B-1, B-2, B-3, B-4 & INDUSTRIAL ZONES

1. The following non-illuminated, indirectly illuminated, or directly illuminated signs shall apply:
 - (A) One (1) identification sign for each individual building **and/or business** not to exceed three (3) square feet and must be attached to the building. **The identification sign must be attached to the wall of the building or displayed under a canopy or marquee not to extend more than 12" below the canopy or marquee.**
 - (B) Private directional signs indicating entrance, exit, or location of parking not exceeding two (2) square feet in surface area for each sign and the height must not be more than 30" from the street level. These signs must be placed on private property and not on public right-of-way.
 - (C) One (1) canopy sign is permitted for ~~buildings~~ **businesses** having an attached canopy covering a privately or publicly owned walkway ~~provided the width of the sign does not exceed 75% of the width of the canopy and does not extend more than 12" below the ceiling of the canopy.~~ The total area of the **canopy** sign ~~shall will~~ **not exceed three (3) square feet be determined in conjunction with the allowable wall signage for the business.**
2. The following regulations for business signs (non-illuminated, indirectly illuminated, or directly illuminated shall apply:
 - (A) The total number of business signs on a lot shall not exceed three (3).
 - (B) Only one (1) free standing business sign shall be permitted with the size to be determined as follows: .5 sq. ft. per lineal foot of street frontage not to exceed 80 square feet. Small lots with under 60 feet of street frontage will be allowed a 30 square foot sign if desired. The outer edge of the sign shall be set back at least ten (10) feet from the side lot line. All permitted free standing signs shall not exceed a height of 24 feet from mean property level. All freestanding signs are to be placed in a landscaped area, with a ratio of one (1) square foot of landscaping to equal one (1) square foot of sign area up to a maximum of eighty (80) square feet.
 - (C) One (1) wall business sign for each tenant or lessee mounted on the face of the building with the size to be determined as follows: 5% of square footage of face of building if the building is located up to 100 feet from the street and an additional 5% of square footage of face of building for each 100 feet thereafter, not to exceed 10%. For double frontage or corner lots, two (2) wall business signs for each tenant or lessee mounted on the face of the building which fronts on both primary and secondary street with the size to be determined above. No flat wall sign shall project above the roof or parapet line.
 - (D) **Only a wall sign or a projecting sign is allowed in a B-3 zone** ~~Projecting signs are only allowed in the B-3 zone~~ where the right-of-way does not permit a free standing sign. **A projecting sign** ~~One (1) sign~~ shall be permitted, provided it does not exceed a surface area of twelve (12) sq. ft. It shall be at least 9 feet above ground level, but shall not project above the roof or parapet line. The front edge of a projecting sign must not project closer than two (2) feet inside the street curb.
 - (E) Monument type signage shall be required in place of free standing signage along the Twelfth Street corridor from the southern city limits to the northern city limits and along KY 121 North Bypass at the intersection of Twelfth Street, a/k/a US Highway 641, to the western city limits. Freestanding signs existing at the date of adoption of this Ordinance will be allowed to remain under the terms of §156.050(J)(3). The size of a monument type sign shall be determined as follows: .5 square feet per lineal foot of street frontage not to exceed fifty-five (55) square feet except on lots with a frontage road or a shopping

center with four (4) or more businesses in which case such sign shall not exceed eighty (80) square feet excluding base and columns. Columns shall not exceed 30" in width or depth. The overall height of a monument type sign shall not exceed ten (10) except on lots with a frontage road or a shopping center with four (4) or more businesses in which case such sign shall not exceed fourteen (14) feet in height with height being measured from mean property level. All monument type signs shall be placed in a landscaped area.

- (F) Real estate signs are allowed not exceeding six and a quarter (6.25) square feet on commercial properties less than one (1) acre in size. Real estate signs may not exceed twelve (12) square feet on properties from one (1) to ten (10) acres in size. All commercial properties greater than ten (10) acres in size shall be allowed real estate signage up to thirty-two (32) square feet.
- (G) Electronic reader boards are allowed in B-2, B-3, B-4 and Industrial Zones. Electronic changeable copy shall be permitted for all signs, which shall conform to the following:
Non-flashing mode, with electronic changeable copy displaying only on-premises messages or public service messages. Changes in copy shall be limited as follow:
 - 1. Size shall not exceed 30% of allowable sign area
 - 2. Amber in color
 - 3. No more than one (1) electronic message board per business
 - 4. A single message or segment of a message shall have a display time of at least two (2) seconds including the time needed to move the message onto the sign board, with all segments of the total message to be displayed within ten (10) seconds.
 - 5. A message consisting of one (1) segment may remain on the signboard any amount of time in excess of two (2) seconds. An electronic sign requiring more than four (4) seconds to change from one (1) single message to another shall be turned off during the change interval.
 - 6. A display traveling horizontally across the signboard shall move between sixteen (16) and thirty-two (32) light columns per second. A display may scroll onto the signboard but shall hold for two (2) seconds including the scrolling time.
 - 7. A display shall not include an art animation or graphic that portrays motion, except for movement of a graphic onto or off of the signboard.

D. SIGN FOR PROFESSIONAL OFFICE ZONE

- 1. The following non-illuminated, indirectly illuminated, or directly illuminated signs shall apply:
 - (A) One (1) free standing sign or business wall sign and not to exceed twenty (20) square feet. **The free-standing sign shall not exceed ten (10) feet in height.** It shall be set back at least ten (10) feet from front lot line/right-of-way and five (5) feet from the side lot line/right-of-way line.
 - (B) One (1) identification sign for each tenant or lessee limited to two (2) square feet in area, mounted on face of the building.
 - (C) Private directional signs indicating entrance, exit, or location of parking not exceeding two (2) square feet in surface area for each sign.

E. SIGNS FOR AGRICULTURAL ZONE

One (1) sign identifying the name and type of agriculture activity conducted on the same premises not to exceed thirty-two (32) square feet.

F. GENERAL SIGN REGULATIONS

- 1. No sign shall be erected or maintained at any location where by reason of its position, wording, illumination, size, shape, or color it may obstruct, impair, obscure, interfere with the view of, or be confused with, any authorized traffic control sign, signal or device.
- 2. No sign shall contain or make use of any word, phase, symbol, shape, form or character in such a manner as to interfere with, or confuse traffic.
- 3. No illuminated sign shall be permitted within fifty (50) feet of property in any residential district.
- 4. Business ground signs shall be located not closer than ten (10) feet to a street right-of-way line.

5. No sign shall be placed in any public right-of-way, except publicly owned signs, such as traffic control signs and directional signs.
6. Signs projecting from a building or extending over public property shall maintain a clear height of nine (9) feet above the sidewalk and all such signs shall not project closer than two (2) feet inside the street curb.
7. Wall signs shall not be attached to or obstruct any window, door, stairway or other opening intended for egress, ingress, ventilation and light.
8. No sign shall be attached to any tree, fence or utility pole.
9. Any business sign now or hereafter existing which no longer advertises a bona fide business conducted or product sold on the premises, and any advertising sign now or hereafter existing which no longer advertises a bona fide business conducted or a product sold, or activity or campaign being conducted shall be taken down and removed by the owner, agent or person having the beneficial use of the building, structure or lot upon which such sign may be found within forty five (45) days after written notification from the zoning official. Upon failure to comply with such notice within the time specified in such order, the zoning official is hereby authorized to cause removal of such sign, and any expense incident thereto shall be paid by the owner of the building, structure, or lot to which such sign is attached.
10. All signs shall be adequately maintained. Such maintenance shall include proper alignment of structures, continued readability of the structure and preservation of the structure with paint or other preservatives.
11. All real estate and tract signs shall be removed within ten (10) days after completion of sales activities in connection with the property or tract to which they pertain.
12. All temporary signs shall be removed within ~~five (5) days~~ **24 hours** of the completion of the activity being advertised, and the posting of a performance bond with the zoning official shall be required to insure such removal.
13. All signs placed upon private property must have the written consent of the owner or his agent.
14. Permitted temporary signs may be erected or posted for the period not to exceed fourteen (14) days for any quarter of a year. Any sign posted for a longer period must meet the requirements for permanent signs.
15. The area of a free standing sign shall be measured by drawing eight (8) or fewer straight lines encompassing the extremities of the sign within the smallest possible area. The area of a free standing sign shall not include poles, supports, or other structures which are used solely for support and which do not contain any advertising of any kind. (See Illustration No. 4)
16. Business announcement signs may consist of wall signs, banners and other similar signs approved by the Murray zoning official. Mobile signs, pennants, streamers, and any moving, rotating or flapping signs, excluding balloons, are prohibited. Signs are limited to two (2) per proprietor, not to exceed 32 square feet each. A \$10.00 permit fee and a sign permit issued by the planning office will be required. The following time limitations also apply:
 - (A) "Going out of business" and "grand opening" signs may be erected for a period of 30 days and only once per year per proprietor.
 - (B) Temporary signs for "special sale", "under new management" and similar announcements may be erected for a period of fourteen (14) **consecutive** days and only once every three (3) months per proprietor.
17. Window signage is defined as any sign, picture or symbol that is attached to the interior or exterior of a window or window frame. Said signage is not to exceed twenty five (25) percent of the window area. Said signage shall not require a sign permit. Existing businesses will have one hundred and twenty (120) days to come into compliance with this ordinance.

G. SIGNS PERMITTED IN ALL ZONES AND DISTRICTS

The following non-illuminated signs are permitted in all zones and districts and no permit is necessary for erection:

1. Temporary signs not exceeding thirty-two (32) square feet in surface area, for architectural, engineering, construction, or other similar firms engaged in the work on a construction site. Such signs shall not be erected prior to submission of a building permit application and shall be removed at the end of construction.

2. **One (1)** temporary signs not to exceed 32 square feet to announce the construction of a new subdivision with lots for sale, to be removed upon the completion of sales of 80% of lots.
3. Any official sign, or any informational or directional signs or historic marker erected by a public agency.
4. One temporary real estate sales or rental sign indicating only sales or rental of the premises are allowed not exceeding six and a quarter (6.25) square feet of surface area or as provided for in article I, B and C in this section. The sign shall be placed flat against the building or back from the street not less than ten (10) feet.
5. Political campaign signs provided they are kept on private property, shall be removed within fourteen (14) days after the election. Signs must be limited to eight (8) square feet and one (1) sign per candidate, per lot with the bottom of the sign no higher than two (2) feet from ground level. Placement of campaign signs on public property such as traffic signs, utility light poles or buildings is prohibited and if found, will be removed at the cost of the candidate.
6. One (1) unlighted sign not over two (2) square feet in area identifying home occupations permitted as a conditional use on the premises. The sign location shall be subject to control by the Board of Zoning Adjustments.
7. The flag, pennant, or insignia of any nation, state or city.
8. Temporary signs associated with community festivals or events of a cultural or educational nature, not to be displayed more than fourteen (14) consecutive days. Only two (2) signs allowed per event in all zones, except residential, with the size not to exceed 32 square feet each and the posting of a performance bond with the Zoning Official shall be required to insure **compliance.**
~~such removal.~~
9. Unique or unusual signs, such as artistic renderings, murals, etc. are permitted in all zones, except residential, subject to the approval of the Board of Zoning Adjustments based on aesthetics, size, location, and effect upon the general area.
10. **Two (2) signs not exceeding 32 square feet each advertising the date and location of an auction are allowed. Only one (1) of the permitted signs is allowed off-site indicating the direction to the auction site. The signs can only be erected for a period of fourteen (14) days prior to the event. The signs are to be removed with 24 hours of the completion of the auction.**

H. SIGNS PROHIBITED IN ALL ZONES AND DISTRICTS

1. Flashing or blinking signs.
2. Roof signs.
3. Exposed lighting and tubing is not permitted to outline the building or building wall.
4. Temporary signs except as provided herein.
5. Signs painted directly upon the wall surface of a building.
6. Mobile signs.
7. Pennants, banners or streamers advertising special sales or events.
8. Moving, rotating or flapping signs.
9. Billboards as defined in Section I, Article 2.
10. Projecting signs, except in B-3 zone.
11. Yard sale signs, except as provided for in Article 1,B in this section.
12. Signs lettered in a crude or amateurish fashion.
13. Inflatable signs and tethered balloons.
14. Vehicles or trailers (operable or inoperable), which contain advertising and are not used in the daily conduct of business.
15. Off-premises signage as defined in Section I, Article 2.

I. APPLICATION, FEES AND PENALTIES

1. No sign, except as specifically exempted herein, shall be displayed, or erected, relocated or altered until a permit has been issued by the zoning official. Application materials shall include, but shall not be limited to the following:
 - (A) A completed application form.
 - (B) A site plan and/or building elevations drawn to scale showing the locations of the proposed sign(s) on the lot and/or building, including setbacks.

(C) Detailed sign information including type of construction, method of illumination, dimensions, methods of mounting and/or erecting and other similar information.

(D) A permit fee.

J. REGULATION OF SIGNS

1. Signs are permitted only in those zoning districts where they are designated as permitted uses under the zoning district regulations or where specifically permitted under other provisions of this ordinance. Each zoning district will designate the type and size limitations for signs. For the type and size for a particular zoning district, please refer to that section of the ordinance.
2. All existing prohibited signs shall be removed within six months from the enactment of this sign ordinance.
3. Any business sign legally existing on the effective date of the enactment of this sign ordinance that does not meet the requirements of this ordinance or any amendment thereto shall be considered non-conforming. Such sign shall be allowed to remain unless otherwise provided herein. No such non-conforming sign shall be moved to a new location on the building or lot, altered, expanded or enlarged. No such sign (non-conforming) shall be repaired when damaged from any cause if repairs exceed 50% of the replacement value of the sign as determined by the building inspector. Any replacement sign must comply with the regulations. If a business is discontinued, any non-conforming sign that exists must be removed and any new business occupying the same location must conform to this sign ordinance.

K. APPEALS

Appeals to the Board of Zoning Adjustments may be taken by any person, or entity claiming to be injuriously affected or aggrieved by an official action or decision of the zoning official. Such appeal shall be taken within thirty (30) days after the appellant or his agent receives notice of the action appealed from, by filing with said officer and with the board a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties or record. Said officer shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken and shall be treated as and be the respondent in such further proceedings. At any hearing by the board any interested person may appear and enter his appearance and all shall be given an opportunity to be heard. The board shall fix a reasonable time for hearing the appeal and give public notice in accordance with KRS Chapter 424, as well as written notice to the appellant and the zoning official at least one (1) week prior to the hearing, and shall decide it within sixty (60) days. The affected party may appear at the hearing in person or by attorney.

SECTION IV

ARTICLE 3

BOARD OF ZONING ADJUSTMENTS

A. ESTABLISHMENT

The Board of Zoning Adjustments as constituted at the time of the adoption of this zoning ordinance shall continue in power. Future appointments shall be made as required by KRS 100.217 and this city ordinance.

B. PROCEEDINGS

The Board of Zoning Adjustments shall conduct meetings at the call of the chairman or zoning official who shall give written or oral notice to all members of the board at least ~~two (2)~~ **seven (7)** days prior to the meeting, and the subject or subjects which will be discussed. The board may at their choosing, meet monthly or more often as desired. A simple majority of the total membership of the board shall constitute a quorum. The Board of Zoning Adjustments may adopt bylaws for the transaction of business and shall keep minutes and records of all proceedings, including regulations, transactions, findings, determinations, the number of vote for and against each question, whether any member is absent or abstains from voting, all of which shall, immediately after adoption, be filed in the city planning office. A transcript of the minutes of a Board of Zoning Adjustments meeting shall be provided if requested by a party, at the expense of the requesting parties, and the transcript shall constitute the record.

C. POWERS

The Board of Zoning Adjustments shall have the following powers:

GENERAL POWERS – The board may employ or contract with planners or other persons as it deems necessary to accomplish its assigned duties. The board shall have the right to receive, hold, and spend funds which it may legally receive from any and every source in and out of the Commonwealth of Kentucky, including the United States Government, for the purpose of carrying

out the provisions of this zoning ordinance. The board shall have the power to issue subpoenas to compel witnesses to attend its meetings and give the evidence bearing upon the questions before it. The chairman of the Board of Zoning Adjustments shall have the power to administer oaths to witnesses prior to their testifying before the board on any issue.

D. CONDITIONAL USE PERMITS

1. The board shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the planning area of uses which are specifically named in this zoning ordinance which may be suitable only in specific locations in the zone only if certain conditions are met.
1. The board may approve, modify or deny any application for conditional use permit. If it approves such permit, it may attach necessary conditions such as time limitations, requirements that one or more things be done before the request can be initiated, or conditions of a continuing nature. Any such conditions shall be recorded in the board's minutes and on the conditional use permit, along with a reference to the specific section in the zoning ordinance listing the conditional use under consideration. The board shall have the power to revoke conditional use permits, or variance for noncompliance with the conditions thereof. Furthermore, the board shall have a right of action to compel offending structures of uses removed at the cost of the violator and must have judgment in personam for such cost.
2. The granting of a conditional use permit does not exempt the applicant from complying with all the requirements of building, housing and other regulations.
3. In any case where a conditional use permit has not been exercised within the time limit set by the board, or within one (1) year, if no specific time limit has been set, the granting of such conditional use permit shall be reconsidered by the Board of Zoning Adjustments. "Exercised" as set forth in this section, shall mean that binding contracts for the construction of the main building or other improvements have been let; or in the absence of contracts that the main building or other improvement is under construction to a substantial degree or that prerequisite conditions involving substantial investment shall be under contract, in development, or completed. When construction is not a part of the use, exercised shall mean that the use is in operation in compliance with the conditions as set forth in the permit.
4. The zoning official shall review all conditional use permits, except those for which all conditions have been permanently satisfied, at least once annually and shall have the power to inspect the land or structure where the landowner is complying with all of the conditions which are listed on the conditional use permit. If the landowner is not complying with all conditions listed on the conditional use permit, the zoning official shall report the fact in writing to the chairman of the Board of Zoning Adjustments. The board shall hold a public hearing on the report within a reasonable time, and notice of the time and place of the hearing shall be furnished to the landowner at least one (1) week prior to the hearing. If the Board of Zoning Adjustments finds that the facts alleged in the report of the zoning official are true and that the landowner has taken no steps to comply with them between the date of the report and the date of the hearing, the board may authorize the zoning official to revoke the conditional use permit and take the necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.
5. Once the Board of Zoning Adjustments has granted a conditional use permit and all of the conditions required are of such type that they can be completely and permanently satisfied, the zoning official, upon request of the applicant, may if the facts warrant, make a determination that the conditions have been satisfied and the conclusion of the margin of the copy of the conditional use permit which is on file with the county clerk, as required in KRS 100.3681. Thereafter said use, if it continues to meet other requirements of the regulations, will be treated as a permitted use.

E. DIMENSIONAL VARIANCES

1. The board shall have the power to hear and decide on applications for dimensional variances where, by reasons of the exceptional narrowness, shallowness, or unusual shape of a site on the date of adoption or amendment of this zoning ordinance or by reason of exceptional topographic conditions, or some other extraordinary situation or condition of that site, the literal enforcement of the dimensional requirements (height or width of building or size of yards, but not population

- density) of this zoning ordinance would deprive the applicant of reasonable capacity to make use of the land in a manner equivalent to the use permitted other landowners in the same zone. The board may impose any reasonable conditions or restrictions on any variance it decides to grant.
2. Before any variance is granted, the board must find that the granting of the 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. In making these findings, the board shall consider whether:
 - (A) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone.
 - (B) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.
 - (C) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.
 3. The board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.
 4. The board shall not possess the power to grant a variance to permit a use of any land, building, or structure which is not permitted by the zoning ordinance in the zone in question.
 5. A dimensional variance applies to the property for which it is granted, and not the individual who applied for it. A variance also runs with the land and is transferable to any future owner of the land, but it cannot be transferred by the applicant to a different site.

F. ADMINISTRATIVE REVIEW

The Board of Zoning Adjustments shall have the power to hear and decide cases where it is alleged by an applicant that there is an error in any order, requirement, decision, grant or refusal made by the zoning official in the enforcement of this zoning ordinance. Appeals under this section must be taken within sixty (60) days of the date of official action by the zoning official.

G. APPEALS

Appeals to the board may be taken by any person, or entity claiming to be injuriously affected or aggrieved by an official action or decision of the zoning official. Such appeal shall be taken within thirty (30) days after the appellant or his agent received notice of the action appealed from, by filing with said officer and with the board a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. Said officer shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken and shall be treated as and be the respondent in such further proceedings. At any hearing by the board any interested person may appear and enter his appearance and all shall be given an opportunity to be heard. The board shall fix a reasonable time for hearing the appeal and give public notice in accordance with KRS Chapter 424, as well as written notice to the appellant and the zoning official at least one (1) week prior to the hearing, and shall decide it within sixty (60) days. The affected party may appear at the hearing in person or by attorney.

H. ADMINISTRATIVE PROCEDURE

1. The Board of Zoning Adjustments will meet at the call of the zoning official, chairman, or on a regular basis, whichever is convenient, and in the wishes of the majority of the board.
2. Application must be filed by the zoning official in order for the board to hear any questions involving the literal interpretation of this ordinance, the exact location of zoning district boundaries, or any other interpretations and decisions specifically delegated to it by the provisions of this ordinance.
3. The zoning official has initial authority for literal enforcement and interpretation of the zoning ordinance. He has no discretionary authority to allow any departure from the literal conformance with this ordinance.
4. Any appeals from decisions made by the zoning official shall be appealed only according to Section IV, Article 3,G of this ordinance. This administrative power is intended to correct any possible misinterpretation by the zoning official.
5. The Circuit Court has jurisdiction to determine all questions and issues properly brought before it on appeal from decision of the Board of Zoning Adjustments.

6. An application process is required prior to the Board of Zoning Adjustments hearing any conditional use or dimensional variance requests. Applications shall be obtained from the zoning official and properly filled out according to their instructions and returned prior to their consideration. The zoning official shall review all applications for their completeness. All applicants for a conditional use permit or dimensional variance will require written notice of the date and time of the public hearing, as well as a copy of the application, be given by first class mail to the applicant and all adjoining property owners at least fourteen (14) days in advance of the meeting. Adjoining property owners include those across a public right-of-way. Notice of the public hearing shall be published at least seven (7) days and not more than twenty-one (21) days in advance in the Murray Ledger and Times. It shall be the duty of the applicant to furnish the names and addresses of the owners of all adjoining properties. A fee as established by the City Council will be charged to all applicants.

Mike Lovins made a motion to forward the proposed text amendments (Section I, Article 2 Definitions; Section III, Article 1 Sign Regulations; Section IV, Article 3 Board of Zoning Adjustments) on to the City Council with the acknowledgement Planning Staff may make some minor changes but that any alterations will be reflected in the December 18, 2007 Regular Meeting Minutes. Nelson Shroat seconded the motion and it carried with a 7-0 vote.

Chairman Vanover opened the Public Hearing for Transient Business Regulations. There was no one there to speak in favor of or against the possible text amendments. The public hearing was closed. Mr. Mastera presented the following text amendments to the Planning Commissioners:

SECTION III, ARTICLE 10 (TRANSIENT BUSINESS REGULATIONS)

A. INTENT

The purpose of the Transient Business Regulations section is to establish minimum guidelines for transient (i.e. temporary, mobile) businesses wishing to conduct business within the city limits of Murray. The section provides requirements that promote the health, safety, morals, and general welfare of the citizens of Murray, Kentucky and establish reasonable and uniform regulations for transient businesses.

B. DEFINITIONS

TRANSIENT BUSINESS/MERCHANT: The sale of goods or services from roadside or public view by way of tent, trailer, roadside stand, parked vehicle or other similar enclosure not attached by permanent foundation.

C. PROCEDURE

1. Anyone wishing to operate a transient business must first obtain a business license application from the City Clerk's office. No person shall operate a transient business in the city without an issued license.
2. The business license application will be reviewed by the Murray Planning Department to ensure zoning compliance. If all requirements in section D are met, the Murray Planning Department will issue a Transient Business Permit to the applicant.
3. ~~The City of Murray may revoke any Transient Business Permit for noncompliance with the criteria set forth in section D. If permit is revoked, it becomes null and void, and the transient business shall be terminated.~~ If during the time the permit is in effect, the transient business fails to maintain the required conditions pursuant to section D, the City of Murray may revoke the permit and the transient business activity shall be terminated.
4. The decision of the City of Murray official concerning revocation of the Transient Business permit shall be final, unless a written appeal by the applicant is filed with the Murray Board of Zoning Adjustments within thirty days of the applicant's receipt of the notice to revoke the permit.
5. Each location shall ~~constitute a separate business~~ only maintain one business. and Permits are non-transferable.

D. REQUIRED CONDITIONS

Approval of a Transient Business permit is subject to the following conditions:

1. Transient businesses are permitted uses in B-2 (Highway Business) and I (Industrial) zoning districts and as a Conditional Use in a B-1, B-3, and B-4 zone.
2. Transient businesses must be a minimum of 1000 ft. from one another (measured by radial distance).
3. A copy of a lease agreement, deed, (or similar document) from the property owner is required.
4. All signage is to be approved by the Murray Planning Department. Any signage, other than that permanently affixed to the mobile transient facility would have to be approved through the Murray Board of Zoning Adjustments.
5. Transient businesses may not be permitted at a location more than 90 days per calendar year. The owner/operator may reapply for a permit at the end of their duration, but the transient business must be relocated at a minimum of 1000 ft. (measured in radial distance) from the prior location.
6. A site plan must be submitted for review and approval. The site plan shall include a mapped location of the proposed business, including existing parking spaces, roadways, sidewalks, and buildings; it should also entail measurements of distance from proposed display/enclosure to nearby parking spaces, roadways, sidewalks, setbacks, and buildings. Aerial photography, existing surveys, or plat will suffice for this purpose. The site plan shall include any photography of tents, trailers, stands, etc. that will be used. The City of Murray has the right to review and/or reject any site plan submitted. Once approved by the City, all site plans must be maintained by the transient business with the duration of the permit. Any deviation from the site plan by the transient business may result in revocation of the permit and the transient business activity shall be terminated.
7. All transient businesses are subject to the Public Noise Ordinance as prescribed in § 99 of the City of Murray Code of Ordinances.
8. If a transient business distributes or prepares food products, a copy of the current health permit issued by the Calloway County Health Department is required to be produced. Any revocation of the Health permit may constitute revocation.
9. The provisions of this ordinance shall not apply to any general sale, fair, auction, or bazaar sponsored by any religious, education, public service, or charitable organization.
10. Failure to comply with this ordinance could result in revocation or a penalty as prescribed in § 118.99 of the City of Murray Code of Ordinances.
11. The provisions of this ordinance shall not be interpreted to be in contravention of KRS 365.

Tom Kind made a motion to forward the proposed text amendments (Section III, Article 10 Transient Business Regulations) on to the City Council as there are no firm regulations in place and with the acknowledgement Planning Staff may make some minor changes but that any alterations will be reflected in the December 18, 2007 Regular Meeting Minutes. Marc Peebles seconded the motion and it carried with a 7-0 vote.

Mayor Rushing left the meeting at 6:10. Nelson Shroat left the meeting at 6:15.

Questions or Comments: There were none.

Marc Peebles made a motion to adjourn. Mike Lovins seconded the motion and the motion carried with a 6-0 voice vote. The meeting adjourned at 6:20 p.m.