

**MURRAY BOARD OF ZONING ADJUSTMENTS MINUTES
REGULAR MEETING
WEDNESDAY, SEPTEMBER 21, 2005**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, September 21, 2005 at 4:30 p.m. in the council chambers of city hall at 104 North 5th Street.

Board Members Present: Ed Davis, Helen Spann, George Stockton, Darren Jones, Bill Whitaker, Scott Seiber

Board Members Absent: Andy Dunn

Also Present: Faye Holley, Max Dodd, Larry Crouch, Kristen Taylor and other public audience

Chairman Whitaker called the meeting to order at 4:30 p.m. and welcomed the guests and applicants. Chairman Whitaker acknowledged that the board had a chance to review August 17, 2005 minutes by mail and there were a few questions.

Scott Seiber stated that the discussion where Ms. Miller was at the podium and she was asked if the neighborhood would be agreeable to this for one year, it is recorded that she said “Yes, they would”, but his recollection was that she said “No.” Chairman Whitaker stated that his recollection was “No,” also. Chairman Whitaker asked for the tape to be checked and for this to be clarified.

Helen Spann also asked for a clarification in the minutes of the same item about the discussion of property values. **Scott Seiber made a motion to approve the minutes from the August 17, 2005 regular meeting, as presented, with the discussed corrections. Helen Spann seconded the motion and the motion carried with a 6-0 voice vote.**

Dimensional Variance Request Follow-Up For Accessory Structure In The Side Yard—102 South 10th Street—Faye Holley: Chairman Whitaker stated that the staff has sent out a staff report which is attached to each of the applications, which is very useful. Mr. Perry stated he had some more information on this and Candace Dowdy stated that it will be needed to be removed from the table first. **Ed Davis made a motion to remove the item from the table. Scott Seiber seconded the motion and the motion carried with a 6-0 voice vote.** Mr. Perry stated that Ms. Holley would like to put a metal detached carport in the side yard. Mr. Perry presented slides of the side yard. Mr. Perry stated at the time the pictures were taken, it did not show the recent graveling. The reason it was tabled was because the location of the property line was unknown. The property line has since been located and is located in line with the chain link fence. The carport is 12’ x 20’. Mr. Perry stated that Ms. Holley would like to still have access to this gate that she happens to be going through when the picture was taken. In order to fit the carport and stay 5’ off the setback line, the carport would have to be all the way against the chain link fence. She is requesting a 4’ side setback which would put the carport 1’ off of the property line. Normally, accessory structures detached would not be allowed in the side yard, it would have to be in the rear. This is the reason she was requesting the variance in the first place. Scott

Seiber asked Mr. Perry to project the property line to the street from the corner of the building as indicated. Scott Seiber asked if they will continue to share the drive-way. Mr. Perry confirmed that they would and that they have an agreement. Scott Seiber questioned about the staff report containing the information about a letter from the adjacent property owner granting permission for the carport to encroach over the property line has been presented. Mr. Perry stated the reason was because if the carport was overlapping the property line then she would have something stating that was not a problem. Now that the property line is located, there is no need for that letter. Mr. Seiber asked if it could be established on her property. Mr. Perry confirmed. Candace Dowdy stated that the letter was presented at the last meeting. Mr. Perry agreed while stating that she is asking for a 4' side setback variance and also to place an accessory structure in the side yard. Chairman Whitaker asked for an explanation, was it because it came up past the house? Mr. Perry stated the rear building line would be the beginning of the rear yard which would not need a variance if it were behind that rear line. Mr. Perry also stated that the property line has been located. Ed Davis asked if this was the only question they had last time. Mr. Perry confirmed that was correct. Chairman Whitaker stated that they were previously attempting to allow erecting a structure and did not even know if it was going to be on the adjacent property, even though it was okay, it was still pretty uncomfortable. Mr. Perry stated that she did access her property on part of the neighbor's property and she has had the curb cut and a concrete ramp installed. It was all repaired and completed. She now has her own access on her property.

Ed Davis made a motion to grant a 4' side setback variance and allow the accessory structure in the side yard, based on the fact that such variance will not adversely affect the public health, safety or welfare, not alter the essential character of the vicinity, will not cause a hazard or be a nuisance to the public and will not cause an unreasonable circumvention of the zoning regulations. Darren Jones seconded the motion and the motion carried with a 6-0 vote.

Chairman Whitaker apologized that Ms. Holley had to come back but he was glad the matter was cleared up.

Public Hearing For Conditional Use Permit For Home Occupation Of Real Estate Broker – 905 South 9th Street – Max R. Dodd: Chairman Whitaker stated that there was a photograph of the sign and some information as to why this has taken place. Chairman Whitaker asked for the staff to summarize this. Mr. Perry stated that the conditional use permit for home occupation is required because he needs to have a sign. He presented a small picture of the sign. He stated when speaking to Mr. Dodd today he was informed that where the picture of the sign was taken is not actually the house where his home occupation is going to be. Vicinity pictures were supplied along with an overhead presenting the area of South 9th Street and Glendale Road showing the entrance of the driveway of Mr. Dodd's home. Mr. Perry stated that he was not sure exactly where the sign would be because where he was previously, people thought the house was for sale. Therefore, he tends to keep it off to the side where if you were to pull up in the driveway you would see it and he would meet the requirements to legally be a real estate broker.

Scott Seiber stated that he did not know that KRS required real estate brokers to have a sign.

Chairman Whitaker asked if anyone knew why KRS would require a sign for a real estate broker? Mike Pitman stated that he did not know what the logic would be or why it would be required. Mr. Perry stated that he does not have clients coming to his house. This is all done for an auction agency and is basically performing paperwork at home. There are no visitors coming on site, it is just a requirement and Mr. Dodd may have some more information. Other than that, there is no other reason to have a conditional use permit other than to have a sign. Chairman Whitaker asked if there were any more questions of the staff. No questions were asked of the staff and a public hearing was opened.

Chairman Whitaker swore in Max Dodd. Chairman asked Mr. Dodd to tell about the reason for the sign. Mr. Dodd stated the reason for the sign is that according to KRS, you have to have a place of business and a sign on your place of business in order to have a real estate business office. Even though it is in his home, a small sign is required to advertise that he is there. Mr. Dodd stated that he placed the sign on the side of the house so that people will not be confused in thinking his house is for sale. It is basically something to show that it is his business location. Chairman Whitaker asked if he would actually have no traffic that will be coming to this house. Mr. Dodd stated that he does not take regular listings and sales. Mr. Dodd stated that he handles sales of property at auctions, and that is all he does. Chairman Whitaker stated that apparently, the staff is correct that he would not even be here without the requested sign. Ms. Dowdy stated that all the other requirements for home occupations are met. No generating of traffic, no employees, no external storage of inventory vehicles, no alteration to the dwelling and the business is conducted entirely within the dwelling.

Chairman Whitaker asked if there were any questions for Mr. Dodd. Ms. Spann asked why he could not attach it to his house or by his garage area where it would not confuse people instead of having it in the yard. Mr. Dodd stated that he did not want to make it a part of his home, that it is just a little free standing sign about the size of a yard sale sign. Ms. Spann asked if this met the requirements. Mr. Dodd confirmed that it did, as long as there is a sign. Ms. Spann asked if it had to be a certain size and if it has to have all the numbers. Mr. Dodd stated that it will have his new phone number on it. Right now it is at the existing home where he is residing. Mr. Dodd has not yet moved into this new location. Ed Davis asked Ms. Spann if she was asking if this met the current sign regulations. Ms. Spann explained that she was referring to the KRS requirements for real estate brokers. Mr. Dodd stated that it just says when you maintain a place of business then you have to have a sign. It does not really specify how big the sign has to be or anything else, just as long as it is visible. Darren Jones asked where he planned to put it. Mr. Dodd stated at the corner of the garage while pointing to the picture. If you pulled up to the driveway you could see it, but you could not see it from Glendale Road. Scott Seiber stated that the only person that could see it would be another realtor. Mr. Dodd agreed with this statement and said if someone was really looking for it, like if the State of Kentucky came down and wanted to see if he did have an office, they could pull up in the driveway and see that the sign was there. Mr. Perry said that the only other thing he could see is, not that it would be a problem with the staff, is that the zoning ordinance allows only one (1) unlighted sign not over two (2) square feet for home occupations. The board needs to grant a two (2) square foot variance to allow this sign. Chairman Whitaker asked if anyone wanted to make a comment and no one

responded. Chairman Whitaker closed the public hearing and opened it up to the board for discussion.

Chairman Whitaker stated that they needed a conditional use permit and a dimensional variance. Ed Davis asked if these would be together or separate. Mike Pitman advised doing them separate. **Scott Seiber made a motion to grant the conditional use permit for the home occupation to Mr. Dodd based on the fact that it continues to meet the criteria for home occupations. Ed Davis seconded the motion and the motion carried with a 6-0 voice vote.** Chairman Whitaker stated that Mr. Dodd wants to use a sign with two (2) additional square feet and needs a dimensional variance. **Scott Seiber made a motion to approve a variance of an additional two (2) square feet, for a total of four (4) square feet based on the facts that such variance will not adversely affect the public health, safety or welfare, not alter the essential character of the vicinity, will not cause a hazard or be a nuisance to the public and will not cause an unreasonable circumvention of the zoning regulations. Darren Jones seconded the motion and the motion carried with a 6-0 vote.**

Dimensional Variance Request Follow-up For 15 Parking Space Variance—Automated Direct Mail and Retail Suites A-F—1410 North 12th Street—Jeff Sparks: Chairman Whitaker stated that he needed a motion to remove the item from the table. **Scott Seiber made a motion to remove the item from the table and the motion was seconded by Helen Spann. The motion carried with a 6-0 voice vote.** Mr. Perry stated that there has been an agreement made and he can switch over to the site plan. The Millers have given permission for leasing up to 20 parking spaces and they need at least 15 because that was the variance that was being requested. Mr. Perry referred to the aerial photography of the site. Mr. Perry stated he talked to the adjacent property owner today and went out there to look at the situation. These are going to have to be striped again because of the stripes are faded. The purpose of this is for Mr. Sparks to provide parking for his employees of Automated Direct Mail. This would free up parking for the retail spaces in front and around the side. It is a composite of the Automated Direct Mail, five retail spaces plus the restaurant/café in one of the six which that one requires 19 parking spaces just for itself. There is going to be a sidewalk either along the front or to the rear so that there can be pedestrian access. It is fairly level, although that is going to provide the parking needed, staff felt it was necessary to bring it back to the board to explain what they decided to do, since it was tabled and show the board that they have worked out an agreement. It would be required by the planning department to have that sidewalk completed and the spaces striped whether the Millers do this or Jeff Sparks does this so that they can be easily delineated. George Stockton asked if the parking spaces should be marked for a certain purpose. Mr. Perry stated that the Millers are actually going to require that the employees for the “The Village” park around to the back and the only traffic would be them having access to the back door. He is going to improve this and clean it up. It is an older parking area that is not being used and they have worked out the fact that there may be a need for signage. Mr. Perry stated he has been out to the location many times in the past few months and states although there is angled parking there is only about a half of it being used. It does need to be improved as far as being properly delineated.

Chairman Whitaker stated that another thing about using this for employee parking is that if a client of one of those stores wanted to, could they park there? Mr. Perry stated yes, that this

would be no problem. Mr. Sparks had talked about putting a sign in a couple of locations that would say "Additional Parking" and have an arrow pointing to the area. The possibility of customers for these retail spaces to look off-site are going to be slim, therefore, it would more likely be a last resort option for them to park offsite. Scott Seiber stated that as long as he has all of his employees over there that will solve the problem. Mr. Seiber stated that they will not have an issue. At some point, they may have an issue with semi-trucks having to turn around and back in. This is particularly when the parking area is full in the front. That is nothing that we can really address here. Ms. Dowdy stated that at least they won't be putting in parallel parking spaces along the south property line. Darren Jones asked Mr. Perry to explain the location of the 20 spaces. Mr. Perry referred to the pictures stating that no new spaces can be created because of the limited aisle width. The agreement is to keep the parking along the front open for the four (4) businesses. There are 20 spaces available. Scott Seiber asked if the picture indicated Cain's cars were all in front. Mr. Perry stated that Cain's is leasing this area from the Millers and these are actually cars for sale. Scott Seiber stated that it should not present a problem. Mr. Perry stated in regards to the distance, there are some explanations in the zoning ordinance for parking regulations when it is off-site within 400', this is actually about 90' across the grassy area. The majority of ADM employees would actually go in to the warehouse portion of the building. So it is within the 400' but it needs to be approved, even though it is not necessarily a variance, it is to be considered off-site because of the distance and the fact that the adjacent lot is actually wide enough to be subdivided, it is all one property at this time. Mr. Perry used the slides to explain the property line. If it were to be subdivided, it would definitely make it off-site parking. As a preventative measure, the BZA should review it. It is on page 14 in the zoning ordinance. Larry Crouch is the contractor for Jeff Sparks. Jeff Sparks is out of town and Larry Crouch is here to answer any questions regarding the building or sidewalk.

George Stockton asked if the board was approving those 20 spaces to be used by anyone at that building or are we approving those to be approved by 20 employees which will free up spaces for others. Mr. Perry stated 20 employees. George Stockton asked if there will be any requirement that 20 employees park there each day in order to open up the other spaces? Mr. Perry stated that it was the understanding that staff had with Mr. Sparks is that they are for employees and that the employees are not to be parking on site or on the north side of the building. That would free up the spaces on the west side. Mr. Sparks has a total of 18 employees. These employees are not always present at one time. Usually it is 10-15 employees, depending on the work load. There will be spaces available for retail customers if they wanted to walk across. George Stockton asked if he has 10 employees not including the six (6) retail stores with a restaurant. Some of the employees are going to park on his property. Mr. Perry stated that Mr. Sparks was willing to enforce that to his tenants. Ms. Dowdy stated that this was discussed last time that there employees would park off-site there. Chairman Whitaker stated that there will not be enough spots on the Miller property. Ms. Dowdy stated that there may be two (2) employees per business, excluding the restaurant, which would be 10 total. Twenty spaces may not be enough for all employees. Mr. Perry stated that he may state in his lease agreement that if that parking lot is full that they must park on the north side of the building. Ed Davis stated that Mr. Perry had said that all employees were not there at the same time. Mr. Perry clarified that he was not talking about the retail store employees. Ms. Dowdy suggested that he probably would not want to put up a sign directing additional overflow off-site. Chairman Whitaker stated that there will not be any retail parking overflow, they will just not

park at all. Ms. Dowdy stated that it is going to be designated for employees and he would not want his customers parking in "The Village" parking lot. Chairman Whitaker stated that he has 20 employees packed in there which is his allotment and then with customers stated that he probably needs to designate "Employees Only". Chairman Whitaker questioned if this clears things up as far as total required parking spaces. Mr. Perry stated that it is five (5) more than the required minimum, 73 is the total required and this would provide 78 spaces. Chairman Whitaker stated that the board needs a motion to approve off-site parking. Mr. Perry stated this was correct. Ed Davis asked if this should include that it should be for employees only. Chairman Whitaker questioned if the board could force that condition, since it was not a variance or conditional use. Mike Pitman stated that under the ordinance on page 14, he just has to have 73 spaces and if needed, apply for a portion of those to be off-site if it is within 400'. Since it is not a variance and not a conditional use permit, Mr. Pitman stated that it may not be able to be required. It certainly is stated that it is the board's preference and that is the intention for which the off-site parking was approved. Scott Seiber stated that it would not be granted otherwise. Scott Seiber stated that it would not be granted if Mr. Sparks was not going to enforce it. Ed Davis stated that the board has covered themselves in that respect. Mike Pitman advised that the board could approve the 20 spaces of off-site parking within 400' provided that it should be utilized initially by employees and then the overflow. It is not a conditional use permit. It is not a variance. It is just an approval of off-site parking. Scott Seiber stated that the board can not revoke it for whatever reason, such as if he does not enforce the agreement. Really there is nothing the board can do. Mike Pitman advised that the board is not completely powerless in this instance; follow-ups could be made if there was a problem. With conditions of these permits and variances the board has the authority to grant specific conditions and that can be called up and there is nothing in the off-site parking section that would address the placement of conditions. Ed Davis stated that, at a minimum, the board should at least state that it is their preference that the spaces be for employees. Mr. Pitman stated that a motion can be made that the board is approving the off-site parking of 20 spaces provided that it is used by employees. Ms. Dowdy stated that she thought he had to financially pay for these and she was sure Ms. Miller would monitor the situation. Mr. Pitman questioned the policing of the parking space usage. Mr. Pitman stated that he would want the spaces filled. Chairman Whitaker stated that was his point, why would he let employees of the retail store park here, and require that if they want to shop at the retail spaces, they end up having to park off-site? It is not good for business. Chairman Whitaker commented that it would be in his best interest for his employees to park there and give his customers the best spaces. Mr. Perry stated that the last off-site parking permission that he could remember was for the Vanderbilt Sports Medicine Physical Therapy to park in the Weeks Center parking lot. Of course that parking has all changed now with the new building. Ms. Dowdy stated that the North shops (i.e. Cato, etc.) had an agreement for off-site parking since Wal-Mart was adjoining. Mr. Perry stated that it explains that in the paragraph about lots that are all adjoining, i.e., a consolidation of a parking area. Mr. Pitman advised that the board might want to add a requirement that Mr. Sparks affirmatively notify the staff if the lease or arrangement ended or changed for some reason. Scott Seiber stated that his problem with this request is not short term but long term. If the property changes hands, that agreement could go away. Helen Spann stated that it would go with the land. Mr. Perry stated that it would not, because it is not a variance. Mr. Perry stated that the board could require a cross parking easement to be recorded in the courthouse. Mr. Perry stated that that Murray Bank did this with

the Orscheln area. There is a designated strip around the Murray Bank outlot that is a cross-parking easement where they both can share that area. It is between Murray Bank and Orscheln. Scott Seiber stated that he did not know this could be done. Mr. Pitman again advised the annual written verification to the staff that the arrangement is still in force. Scott Seiber stated whatever works is fine with him, but it struck him as a problem if the property did change hands. Mr. Perry stated that easements do get filed with a deed. Therefore, that could be another avenue available to the board. When the deed research is done, the deed can say that this deed is subject to the following easements and that would have to be revoked or nullified by someone before this could ever be omitted. Ed Davis asked if the easement has to be approved by the current property owner would that change Pat Miller's mind if that was included? Mr. Perry stated that the board could do a contingency on that. Chairman Whitaker asked if it was stated it would be an easement because of the sidewalk. Mr. Perry stated that he has just seen parking done in the form of an easement. Mr. Perry explained that it would be a similar document to the City running utilities as a public service across a lot and the property owner giving permission to the City to have a sewer line going across their property. If that changes hands, that easement is still there for the City to come in and maintain the utilities. Ms. Spann stated that it would be a lease, just like she was leasing a part of the building. It is a recordable document. Ms. Dowdy stated that when that lease expires staff could require a copy of an updated lease. Chairman Whitaker stated that he agrees with Scott, that if she sells the property, then the new people buy the property with the idea that they want to use the whole parking lot, they could potentially void this agreement. Mike Pitman stated that they would then be out of compliance and have to figure out a way to come up with the 20 spaces. The board members understood. Scott Seiber stated that presents an extremely unhappy situation to both parties. Chairman Whitaker agreed that there would then be a parking problem. Mr. Perry stated that when you go to the courthouse and do deed research, you are going to find a lot of things that are attached to the deed. Any other restrictions, variances, liens on the property, you are going to find all of that. Chairman Whitaker asked why do we have to record something that is linked to the deed if she is just giving permission for parking on her property. Mr. Perry stated that it is not a requirement but that he is only trying to give the board other options. Ms. Dowdy stated that this is not a variance. Ed Davis stated that he is not sure that she would agree to a parking space leasing if it was not in her best interest. Chairman Whitaker agreed. Ms. Spann stated that she has never seen anybody in those shops use the whole parking lot. Mike Pitman stated that the zoning ordinance states that board may require a plat, deed or any other proof necessary to show that required parking space, if located off the premises it serves, is controlled by and available to the applicant for a building permit. Mr. Pitman believed the easement could be an even more involved process requiring a little more legal work. What they have attached is on the opposite end of the spectrum stating that they have a deal and that is proof. A happy medium may be either a lease that they continually provide proof of; that the agreement is still in effect. Mr. Pitman stated that his concern would be that if that ends and the board does not know about it and the staff does not know about it, and six (6) months down the road you see cars parking all over one another to get in the building. Scott Seiber stated depending on one's perspective, the more you peel the onion back, the worse it stinks. Mr. Seiber stated that if he were Pat, he would be concerned about a business coming in that would require most of that parking. They do not need it now but somebody else might need all of it and more. Mr. Pitman stated that the city just needs just a month to month or year to year lease. Ms. Spann stated that she has more land in

between that she could expand. Ed Davis stated that maybe the other building could buy a portion. Scott Seiber stated that he did not think it would be a problem as long as Ms. Miller owns the property, but Ms. Miller may not always own the property. Ed Davis agreed. Mr. Pitman stated that at a minimum, the board should require that the status be kept up. If there be any changes, we will deal with that if it should arise. Ed Davis questioned if the board should make the motion to approve the off-site parking provided that the employees park there and leave it at that. Mr. Pitman advised that the board should require a continuation of providing proof. Scott Seiber and Ed Davis stated that was about all the board could do. Chairman Whitaker asked if the board would like to ask Larry Crouch any questions since he was present. Being none, a motion was made. **Ed Davis made a motion to grant up to 20 off-site parking spaces provided that there be an annual reporting of the lease agreement to the planning staff, with the knowledge that these spaces are intended to be for employees of all businesses on site and that the sidewalk be constructed and that parking spaces be re-stripped. George Stockton seconded the motion.** Ms. Dowdy stated that the sidewalk and parking space re-stripping will be required before a C.O. is issued for the retail spaces. Mr. Perry stated that there is a C.O. issued for the Automated Direct Mail portion but not for the front portion that is still being constructed. Larry Crouch asked if the motion meant that employees are required to park over there from day one. Scott Seiber stated that he did not think that the board could require that. Chairman Whitaker stated that "preference" would be the proper wording. **Chairman Whitaker asked if there was any other discussion. Being none, the motion carried with a 6-0 vote.**

Staff Request For Interpretation Of Zoning Ordinance Section III, Article I, (H) (3.)

Regarding Exposed Lighting And Tubing On Building Wall: Mr. Perry stated that there was not much history on this topic. Staff has had requests within the past six (6) months and have felt like there was not much ground to stand on regarding tubing, lighting, page 47 zoning ordinance, signs prohibited in all zones and districts. Number three (3), exposed lighting and tubing is not permitted to outline the building or the building wall. That has been in there for some time and staff does not really know if that was specific to neon, it probably was due to limited technologies over the years. There are some newer things out now. There is fluorescent tubing, LED tubing and the difficulty is trying to figure out if it was for a safety reason. There is some safer lighting that is out now that is not such a high voltage. Mr. Keith Crouch with "Greer Neon", stopped by and brought a sample of some newer technology. Ms. Dowdy stated that they think there are some places like Sonic, Brandon Auto World and Sirloin Stockade that have the tubing with a cover across it. Ms. Dowdy stated that Mr. Crouch said that it would not be hot to the touch. Mr. Perry stated that Brandon Auto World has fluorescent tubing and he thought Dwain Taylor Chevrolet had neon tubing with colored film over it so you do not see the neon tubing. Sonic has neon tubing with a clear, protective cover over it, with the appearance that it is bare neon. That was actually permitted under the conditional use permit with the condition that a clear cover be placed over it. I think it was a safety aspect and actually at some point it caught on fire, it was about a year ago. I talked to Dickie Walls, Fire Marshal, and he found a record of it. It did not cause a problem but it was actually the wiring going to the neon, it was not the neon itself. In talking to Keith Crouch today, he explained that the way the voltage works with neon is with several thousand volts of electricity of AC. The voltage in the LED tubing is actually AC

that is converted to 12V DC. This is a more modern technology that many businesses are using. It does not have the high electricity, you can drop that in a bucket of water and it will still run. Neon has become better in the respect that they have smart transformers. When shorted out, the transformer senses the short and cuts off the electricity. It is like a ground fault similar to one you would have in the kitchen or bathroom. The technology with neon has improved and the reason that staff is asking the question is to find out if this text was in the ordinance for aesthetic reasons or a safety reason. If it was not for an aesthetic reason, then maybe that needs to be clarified. Chairman Whitaker stated that he remembered it as an aesthetic reason. Ms. Dowdy stated that just the "exposed" is what was not appealing. Places like Brandon Auto World put the cover over the tubing. Mr. Perry stated that he thought Burger King has some type of lighting going all the way around the building. Ms. Dowdy stated that they had a request from a new business that is being constructed and he wanted to be able to outline his building with something. Mr. Perry stated that we kind of consider that an extension of the sign, it is more signage. Mr. Perry was not sure if the tubing should all be included in sign square footage. The way Brandon Auto World's tubing is presented really is an extension of the sign. Some others probably just have some outlining. Pictures were presented showing the sign at Brandon Auto World. It is really all one sign. The Stone's Auto Wash has panels covering it, he is not sure if it is tubing. You essentially do not see the round tubing. He spoke of a picture of J. Edwards Restaurant and stated this was another issue because of the ordinance states "exposed" and we feel that this is really bare light bulbs. Ms. Spann asked if the Chamber had the same thing. Mr. Perry explained that they turned theirs off. The Sonic picture showed the actual tubing. Mr. Perry stated that there are also Burger King and Applebees pictures as examples of exterior lighting. Applebees does not actually have anything outlining building wall but they have some exposed neon tubing on their wall sign; staff really does not consider this part of what is prohibited by the ordinance. The ordinance prohibits outlining the building and the building wall. Scott Seiber stated that he thought what a lot of these places are looking for particularly the clear covering over the neon is the vintage-looking stores. Ms. Dowdy stated that they were looking for direction and even for the future aesthetically if the board sees that there is not any problem if a business wanted to put something of this nature, outlining their building, as long as it was not exposed. Ms. Spann stated that she thought that was part of their franchise requirements and she thought that was part of what the car dealers were saying in previous BZA meetings. Mr. Perry stated that he interpreted that the example of lighting presented by Greer Neon to be exposed, because it has the round-neon-like appearance from a distance. Darren Jones stated that the exterior is just plastic and LEDs are behind that emit the light, they are not actually exposed. Mr. Jones stated that to him this was totally different than neon, even though from a distance it appears that it is neon. There is flex tubing now, that same type of lighting, stating that it was a rigid structure but there is gel-core lighting that you can now tie a knot in and is the exact same stuff to be more flexible and do more things. There is a lot of new technology regarding what Keith is referring to with this, as opposed to what is just bare neon. Mr. Perry stated that if people are limited on their square footage for wall signs, they will be looking for some other options. Staff probably needs to have an answer for people if they can do this with their building. Ms. Dowdy stated Mr. Crouch said you can just walk up and touch the tubing, there would be no danger to that at all where this tubing was located. Mr. Jones stated comparing J. Edwards to that, like I said that is exposed lighting. It is just a light bulb with a socket sitting out there. Mr. Perry stated that they have not talked to J. Edwards. The request is

from a new business, not J. Edwards. Mr. Perry said the pictures of AutoZone showing that there is neon tubing on AutoZone and it outlines the building wall. Chairman Whitaker asked how they have it attached. Mr. Perry said that he believed AutoZone had to get a conditional use permit. Scott Seiber stated that he was sure they did not because he was here when they went in and he would remember that. Mr. Perry and Ms. Dowdy stated that they had to get one along with Advanced Auto and O'Reily's. Both had to get a conditional use permit for that type of business in a B-4. Scott Seiber stated that there was no discussion about the signage. Mr. Perry said that he remembered seeing on the site plan showing the tubing. It was February of 1994. Retail sales in a B-4 zoning district was approved for AutoZone. Ed Davis questioned if there was any mention of the sign. Mr. Perry stated no. Ms. Spann stated in her opinion it looks like more would go towards the safety issue than it would to the aesthetics; there is not a town anywhere that does not have that kind of sign. Mr. Perry stated not around here. There are towns that say if you want to have a business here, your sign has to look a certain way. Ms. Spann agreed. Chairman Whitaker stated that everybody has an opinion. He thinks it is low class. Chairman Whitaker thinks putting all those little squiggles all over the building and running tubes here and there, does not look good. As a matter of safety, they can do any number of things but to him it is an aesthetic issue. Flip back through those photographs and you can see Applebees with some indirect lighting on their building that looks fine. The rest of these places just look like "Honky-Tonk". It's ugly. Scott Seiber stated that it was in the eye of the beholder. Chairman Whitaker stated that if the city restricts businesses to a certain size sign and then you allow to put these almost "logos", and I will go back to Brandon Auto World, with almost a logo of unlimited size. We have no control over that. He can make that and all the rest of those logos and little things, squiggles out there, "It's Spot Free"; he is sure that most of that was not even asked for and then they put this all over the building and again attract attention to the building. That attracts attention and looks ugly. Mike Pitman questioned if those items just mentioned were exposed. Ms. Dowdy stated they are covered. Mr. Perry stated that the ordinance was just so vague, Ms. Dowdy said that she thought this was what they were asking, do you consider this type to be lighting if it has a plate across it? Is it okay to permit it? Mr. Perry said because it says "exposed lighting and tubing" so what is exposed? Scott Seiber stated that he thought J. Edwards is exposed. Chairman Whitaker stated that the AutoZone is too, that is old style. Ed Davis asked Darren Jones if what was presented tonight was actually a covered light. Mr. Jones stated that you can get that with a clear cover on it, blue, green, or whatever. The LEDs inside are red on the strip. Those that are green, you can get the green cover and green LEDs. The color on the outside just helps enhance and diffuse the light on those opposed to having all white LED's behind every plastic cover. Safety wise, anything like that is more safety than exposed neon because it is just gases that are lighting the neon behind there. If hail hits that, they shatter. George Stockton stated that he saw all of this as an extension to signage in some way. If Burger King was not a sign, they could use all different colors, sizes and shapes, but they do not. They have a common one that they use for all of their buildings which is in recognition, which is an extension to signs. Scott Seiber stated that you can spot a "Holiday Inn" logo anywhere in the country, not just because of the design of the Holiday Inn, but because of the colors in the sign, they are all the same, that is what they try to do. Ms. Spann stated that it was the intent. Mr. Perry stated that it has been in there a long time. Darren Jones stated that it is actually a two fold issue. One is exposed tubing and the other is the extension of the sign. Mr. Perry stated that if we were to get more technical, we could require dimensions on the square footage and just draw

a rectangle around these things stating it is part of your sign and let's just leave it at that. Ed Davis stated that it might change someone's mind about doing some things. Mr. Perry said that he did not know if that is the right approach. Ms. Spann stated that it is so much further ahead of what was there, she believed they were nit-picking. Ed Davis stated that Ms. Spann brought up about franchiser wanting certain things. What do you do if he comes to the city and someone wants to put a franchise in the City like Burger King, McDonald's and the City says well, your signage is not acceptable then they do not build there. Darren Jones stated that gas stations and hotels are the same way. Gas stations change their exterior to sell a certain brand of gas. Mr. Perry stated that he thought it is how bad a business wants to be there. It might deter them. Scott Seiber stated that Wal-Mart wants to be in Sante Fe bad enough to make their store look like adobe. Ed Davis stated that McDonald's has made some changes in theirs. Ms. Spann stated overall these people have worked well to try to conform. Ed Davis stated that he thought it should be on a case by case basis and if staff is uncomfortable with it, let the board make the decision. Scott Seiber said that he thought there is a temptation to put a fine point on a lot of this stuff. Some things like this are tasteful and well done, some are awful. We can not dismiss all of them. He said he would tend to go on a case by case basis, too! If it is over the top, you can hammer it, if not, he believed you can accept that technology has changed and we have to be willing to roll with it to some degree. Ed Davis stated that the board has a little more flexibility if it is a conditional use permit. Mr. Perry stated that the city does not have anything in the current ordinance about UL or ETL certification, and did not know if that would ever change or not, it covers signage safety with blanket certifications. Scott Seiber stated that he certainly did not have any problem saying exposed tubing and lighting is not permitted to outline the building or building wall, it speaks for itself. Ms. Dowdy said just as that statement, if it is "exposed", then no. The board agreed. Ms. Spann stated again the exposed would be a safety issue. Mr. Perry asked if they were going to say it is a safety issue. Darren Jones stated that it is a safety issue. Scott Seiber stated if it is an aesthetic issue, then the board will handle it on a case by case basis. Ms. Dowdy asked how this motion should be made. Mike stated that either a voice vote or a roll call to see what the consensus thinks about it. For safety, like the J. Edwards light bulbs being exposed or tubing, like the neon tubing that would not be permitted but the decision would be for the reason of safety hazard issues or something like that. Darren Jones stated just to clarify that, Sonic is technically neon tubing but there is clear plexiglass in front of it which protects it. So is that okay? Scott Seiber stated yes. Ms. Dowdy stated that this is what they are finding, like Dwain Taylor and Brandon Auto World. That is what we were told today that it just has a color or a clear covering. Ed Davis stated if they were not comfortable, bring it to the board. Ms. Dowdy asked that this be made in the form of a statement that they interpret that statement. Staff should interpret that and if not comfortable should handle this by a case by case issue. Mike Pitman stated that he thought the sign committee needed to take a look at this because there is going to be a public hearing about changes and we could take a look at that further down the road. **Ed Davis made a motion to interpret that exposed lighting and tubing outlining the building wall referred to bare bulbs and was based on safety concerns. George Stockton seconded the motion and the motion carried with a 5-1 vote. Bill Whitaker voted no.**

Candace Dowdy stated that a few council meetings ago they had a council member ask them if Wal-Mart was in compliance with their outdoor merchandise. We followed up and they were in

compliance with their 100 spaces. Ms. Dowdy stated that in the conditional use it stated that they were allowed up to 100 spaces. All along the front of the sidewalk and the front of the building, they have merchandise out. Fire truck hose connections were shown and Dickie Walls preferred that this whole area remain free and clear of any merchandise at all. They would definitely have to keep a pathway of 10' wide to get to the hook-ups for a fire truck. Ms. Dowdy pointed out the fire lane area. Should this be brought back to the board to discuss whether they should not be using this area, especially on this side for merchandise? It was discussed that this should not be an issue and to get it cleared. Ms. Dowdy also stated that we may possibly need to cover that issue with Lowes. Ms. Spann stated that Lowes should not use the fire lanes. The fire department should be the ones to say. Ms. Dowdy stated that she tried to contact Dickie Walls today regarding Lowes. She recalled talking to him before. Scott Seiber stated that they have to move their lawn mowers and back beyond the fire lane. Ms. Dowdy asked if this was acceptable to the board 100 spaces plus all along the sidewalk area and the full length of the building. Scott Seiber stated that they did not have a problem with this but wanted them to keep it clear all the way to the entrance door. Mr. Perry asked if the motion was for 100 spaces or the square footage that would be equivalent area. Ms. Dowdy also mentioned the Southside Shopping Center sign that has been discussed several times and she is still in contact with the property owners to give a little bit of information about possibilities of what we are looking at and possibly some changes to the sign regulations as far as possibly phasing out non-conforming signs along the 12th street corridor. They are going to get back with us. They have someone that is trying to give them an estimate on repainting the sign versus cost of removing the sign and placing a monument style sign in it's place. A deadline was given to them to make a decision. If they do not comply soon, she would be working toward possibly having the sign removed. They have been very positive with Ms. Dowdy and are also looking into renovating their building as well. Ms. Spann asked about a hot air balloon sign. Ms. Dowdy stated that they are going to follow-up with a letter to them, Re-Max, stating that this is prohibited. Ed Davis asked about Closetmaid sign on 16th street. Sam stated he would look into it. If they want a sign and that is there business while also living there, they will have to do the same thing that Max Dowdy had to do. He stated that probably is on the right-of-way and will need to be moved.

Ed Davis made a motion to adjourn. Darren Jones seconded the motion and the motion carried with a 6-0 voice vote.

The meeting adjourned at 6:00 p.m.

Chairman, Bill Whitaker

Recording Secretary, Sam Perry