

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, AUGUST 20, 2008
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, August 20, 2008 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: Scott Seiber, Kim Griffo, Tom Auer, Greg Mayes, Darren Jones, Ed Davis and Bill Whitaker

Board Members Absent: None

Also Present: Candace Dowdy, Peyton Mastera, David Roberts, Mike Pitman, Reta Gray, Mayor Rushing, Matt Mattingly, Rick Frischle, Vonnie Hays Adams, James Burris, Damon Turner, Dr. Kevin Adams, Greg Taylor and public audience

Chairman Whitaker called the meeting to order at 4:30 p.m. and welcomed all guests and applicants. Chairman Whitaker asked for approval of the minutes from the July 16, 2008 regular meeting.

Scott Seiber made a motion to approve the minutes from the July 16, 2008 regular Board of Zoning Adjustments meeting as presented. Darren Jones seconded the motion and it carried unanimously with a 7-0 voice vote.

Public hearing to review the dimensional variance application for additional wall signage and additional canopy signage – 506 North 4th Street – Maxfuel #44 – Max Arnold and Sons: Peyton Mastera used a Power Point presentation to show Maxfuel #44 and the canopy like structure in discussion located at 506 North 4th Street. Max Arnold and Sons is requesting approval to add (in addition to their current 4' x 4' reader board) four 2' x 8' *Maxfuel Xpress* decals (one decal for each of the three sides of the canopy and one on the building storefront). This will be a total of two wall signs on the west side of the building and three signs on their canopy. In configuring the allowable signage along the west side of the building, Maxfuel would be allowed a 38.5 sq. ft. wall sign. Each proposed *Maxfuel Xpress* decal will be 16 sq. ft. totaling 80 sq. ft. of wall and canopy signage.

Chairman Whitaker opened the public hearing and asked if there was anyone that wished to speak in favor of the application. *Matt Mattingly left the meeting at 4:40 p.m.*

Mr. Rick Frischle, Evansville, Indiana, was sworn in. Mr. Frischle is a representative for Max Arnold and Sons. Mr. Frischle stated that there is a reader board on the west side of the building that will remain unchanged. He added that his company would like to add four decals just as Mr. Mastera had presented. Mr. Frischle commented that they felt their canopy was being underutilized as far as advertising goes and in their industry, the canopy has been a good advertisement tool. The canopy itself is currently white. The proposed decals are red, white and blue. Scott Seiber asked if the free standing sign that is already there would be sufficient for

their advertisement needs. Mr. Frischle stated that this was the new look for a lot of their unbranded locations, that it was not just for advertisement purposes.

Chairman Whitaker asked if there was anyone that wished to speak in opposition of the application. There was no one. Chairman Whitaker closed the public hearing and turned it over to the board for discussion.

Candace Dowdy stated that Max Arnold and Sons is asking for a total of 80 square feet of overall signage. They are within their allowable square footage on the front (west side) of the building; however, they would be asking for a 41.5 square foot variance for the additional signage (decals) for the canopy.

Scott Seiber made a motion to approve the request by Max Arnold and Sons for a dimensional variance request for the additional signage of 41.5 square feet (for a total of 80 sq. ft.) at 506 North 4th Street (Maxfuel #44) since the location is on a corner with considerable amounts of traffic on the north and west sides, and that precedence of similar variances have been granted in the past; and that it 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. Ed Davis seconded the motion and it carried with a 6-1 voice vote. Bill Whitaker voted no. Mayor Rushing left at 5:05.

Compatibility hearing – Planned development project for The Merryman House – 1416 Diuguid Drive – Kentucky Domestic Violence Association: Candace Dowdy used a Power Point presentation to show the property and site plan of the proposed planned development project. Ms. Dowdy stated that the Kentucky Domestic Violence Association (KDVA) is looking to place The Merryman House, which consists of four apartment buildings, at 1416 Diuguid Drive. The property site consists of three lots in which the property owners are currently in the process of combining into one tract of land. The Merryman House will have eight individual units; two units will have three bedrooms, five units will have two bedrooms, and there will be one handicap unit with one bedroom. Except for the handicap unit, each unit will be two stories. This property is zoned R-4 and since it has more than four units, it is required to go through the PDP process. P.A.D.D.'s Diuguid Apartments are located to the east of the proposed project (zoned Government), Froggy Radio Station is located west (zoned B-2) and R-4 zoned properties are to the south. The fire, police, and sanitation departments have been given copies of the site plan for review. Utilities, parking variance and storm water detention are being discussed with planning staff. The Planning Commission reviewed the project at their regular meeting held on August 19th and decided to send the project forward to the BZA for the compatibility hearing, determining whether the project fits in relation to the surrounding area. Ms. Dowdy explained that at the previous night's meeting Ms. Vonnie Hays Adams had explained that KDVA is developing 72 units across the state specifically for victims of domestic violence. Eight of these units will be located in Calloway County and twelve will be located in

McCracken County. The Merryman House will have an elaborate security system with cameras and alarms on the doors and windows. There will not be a sign advertising the home.

Attorney Mike Pitman stated that domestic violence cases are unique in the court system and that the victims of domestic violence usually have a restraining order against the perpetrator stating that that person has to stay a certain distance from the victim. If the order is violated, the police can immediately arrest that person. He added that this situation may have less opportunity for domestic violence than other housing complexes because the restraining order would serve as an indirect security system; thus, the order would ensure court protection for these victims.

Ed Davis stated that according to Ms. Adams' statement the previous night at the Planning Commission meeting, for most of the tenants, the abuser had already moved on and was no longer in the picture.

Ms. Vonnie Hays Adams, 1135 Old Soldier Creek Road, Kirksey, Kentucky, was sworn in. Ms. Adams is the Executive Director of The Merryman House, which is a United Way agency in Calloway County. The Kentucky Domestic Violence Association is designing and funding this project according to Ms. Adams. She explained that Kentucky has a system called VINE that lets authorities know where the perpetrators are until they are released from that domestic violence order and that Kentucky is one of the few states in the country that has a notification system like this. All of the domestic violence shelters in Kentucky belong to the KDVA. This particular housing is dedicated to abused victims and their children and is primarily for residents of Calloway County. There is a separate set of units being built in McCracken County for the residents there. The units in McCracken County are gated because it is considered an emergency shelter unlike the one in Calloway County because the victims in McCracken County have not gone through the court proceedings yet. The local office will serve both Calloway and Marshall County. Ms. Adams said that these types of safe and affordable homes are for victims that are at a point in their life where they can live permanently on their own without any assistance except for counseling and support services from the agency (Carla Owens will be working with the individuals here in Calloway County). Ms. Adams explained the three part housing process for the project as follows:

- 1) Emergency phase housing from approximately 30 days to six months (This generally takes place at The Merryman House in Paducah or some of the other homeless shelters in the area.)
- 2) The transitional phase includes housing that has rent paid for the victims for up to two years. This is to solidify that they are not going to return to the perpetrator and that they are willing to do some things where they will become self sufficient on their own.
- 3) Permanent housing, which is the Merryman House type of facility. These clients will probably have been with the program two or more years at this point.

The tenants are selected according to a points system which will prioritize disabled persons as first in line, then families with children under the age of five, women with children under the age of 18 and last, single individuals. Income, educational level, and commitments that been kept while the tenant has been with the program are also factored in. Since this is considered

permanent housing, tenants will be allowed to stay at the home indefinitely. An annual recertification is performed with each family and a monthly inspection is made to look at the overall conditions of the dwelling. Ms. Adams added that most of the tenants were single parent households with one vehicle or in the transitional phase and they would be using the public transportation available in Murray. KDVA will not be managing the complex; however, they will make referrals. The overall building and land maintenance will be managed by Winterwood Management System. Scott Seiber asked if there was going to be a play area for children. Ms. Adams stated that she had been working on that with the architect.

Mr. James Burris, Frankfort, Kentucky, architect for the project, was sworn in. Mr. Burris stated that the intent is to develop the forest area, which has mature trees that occupy almost half of the site, into a park-like setting with playground equipment and picnic tables. He added that the idea in developing the duplexes was to keep a less dense, multi-family development that could maintain some economic advantages by having attached housing. He explained that each house would have its own porch, entry, front yard, and back yard and in addition would provide a sense of ownership for each family. He feels that this is a very positive move for domestic violence victims to have housing of this type.

Mr. Damon Turner was sworn in. Mr. Turner represents F & T Engineering in Paducah, Kentucky. Mr. Turner stated that there is an 11.5% grade from the east property line to the west property line; thus, making it difficult to grade. He added that if it was determined that a detention be required, it might possibly have to be located where they are looking at putting the park. Chairman Whitaker commented that he would request that a plan for the storm water detention of this site be presented before final approval could be made. Mr. Turner stated that he has submitted the pre-imposed plans of 10, 25 and 100 year storms to the Planning Department and that they would be available upon request.

Ed Davis made a motion to accept the residential planned development project, The Merryman House at 1416 Diuguid Drive, as compatible to the area. Darren Jones seconded the motion and the motion passed with a 7-0 voice vote.

Public hearing to review the remanded dimensional variance application for a two foot front setback variance on a free-standing sign – 306 South 12th Street – Cornerstone Realty – Greg Taylor: *Darren Jones stated that he had recused himself previously on this matter and he requested to be recused again. Darren Jones left the meeting at 5:35 p.m.* Peyton Mastera reviewed the dimensional variance that had been granted to Greg Taylor for a free standing sign at 306 South 12th Street in October of 2007. The BZA granted an eight foot front set back with the outer edge of the sign located approximately three feet from the edge of the sidewalk. Mr. Taylor is in compliance with the requirements that were set forth. The applicant also met the size requirements set forth by the BZA by only erecting a 28 square foot sign (**correction, the sign is actually 6' x 4' = 24 sq. ft. It was reported incorrectly by staff in last month's staff report and during the meeting*), as opposed to the 35 square foot the BZA granted.

Mike Pitman, BZA attorney, explained that the property to the south of Greg Taylor's business Cornerstone Realty, 308 S. 12th Street, is owned by Dr. Kevin Adams, Eye Care Specialists. Mr. Pitman stated that following the completion of Mr. Taylor's sign, an appeal to the Circuit Court was filed by Dr. Adams. Dr. Adams claimed to have been "injured or aggrieved" as elaborated upon in his appeal. His basic argument was that Mr. Taylor's sign was blocking his business's sign as you travel from the north to the south on South 12th Street. Coupled with this complaint, Dr. Adams had stated that he did not have the opportunity to attend the original variance request; therefore, he did not have an opportunity to present his side of the story. Mr. Pitman added that he filed a response to the complaint that stated that the BZA did not require that adjoining property owners be notified. On June 27, 2008, an order was issued by Judge Foust "that this matter shall be remanded to the Murray Board of Zoning Adjustments for a rehearing, with the applicant for the variance to amend his application to name any and all adjacent property owners, and that those owners be given notice of the new hearing date and an opportunity to be heard at that hearing." Mr. Pitman stated that the ordinance had since been changed to show that all adjacent property owners are to be notified in the future of any dimensional variance. He also stated that Judge Foust was basically requesting that the BZA essentially forget that this had previously been before the board and that both parties be allowed to present their sides before the BZA made their final decision. It was explained by Mr. Pitman that Judge Foust's decision was neither a recommendation to approve, nor a recommendation to deny the request, rather just a remand of the item with all adjoining property owners notified. *Ed Davis left the meeting at 5:45 p.m.*

Peyton Mastera referred to a Power Point presentation to show the proximity of the free-standing sign to the circular driveway at Mr. Taylor's business. Mr. Mastera also pointed out the very large tree next to the circular drive which was a point of concern at the previous meeting. Mr. Mastera stated that Mr. Taylor had asked for the board's approval to leave the tree. Since the size of the sign is in compliance, the placement of the sign is what is to be decided; therefore, Mr. Greg Taylor has filed a new dimensional variance application. A public hearing date was set and all adjacent property owners were notified.

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

Greg Taylor, 1103 Sycamore Street, Murray, was sworn in. Mr. Taylor used a Power Point presentation to show signs at other businesses in the area along South 12th Street. The first factor that Mr. Taylor wanted the board to consider is that his house is actually located closer to the street than others on South 12th Street which makes it a unique site. The second factor is that if the sign is moved ten feet back from the street, it will be in the middle of the circle driveway. (Mr. Taylor feels that the circle drive is critical to his business because it is used by customers who just want to make a quick stop; therefore, he would like to keep the circle driveway even though he does have adequate parking in the back of the business.) If the sign is placed on the opposite side of the circle driveway, it will be against the front of the building and customers will have to walk around it to get in the front door; thus, he feels that there is no other place to put the sign. Mr. Taylor has \$5,000.00 invested in the new sign, has landscaped around it and feels that

it is an added aesthetic feature to his business and would like to keep the sign as is. Mr. Taylor stated that before he had the sign installed, Dr. Adams' sign was already blocked by the large tree that is in Mr. Taylor's yard and its visibility was limited. He admitted that his sign does somewhat block Dr. Adams' sign from a distance when traveling south on South 12th Street, but he added that once you get to Mr. Taylor's property line on the north side, you can clearly see Dr. Adams' sign. Mr. Taylor referred to the ordinance on dimensional variances and stated that he did not feel that his sign would alter the essential character of the general vicinity or adversely affect the public health, safety or welfare. *Greg Taylor's pictures were entered as Exhibit A.*

Chairman Whitaker asked if there was anyone that wished to speak against the variance.

Dr. Kevin Adams, Murray, was sworn in. Dr. Adams used a Power Point presentation to show pictures that he had taken of Mr. Taylor's sign and how it was blocking his business sign along with others along South 12th Street. Dr. Adams understands that Mr. Taylor has a big tree and a concrete circle driveway in his front yard, but he stated that there are lots of houses along South 12th Street with big trees in the front yard. Dr. Adams added that out of the 20 signs that were located between Poplar and Sycamore on South 12th Street, Mr. Taylor's sign was located closer to the street than any of the others. He added that there are eleven more houses that could probably be turned into businesses in the future and they also could have sign issues; therefore, he felt it necessary to set precedence by having Mr. Taylor relocate his sign. *Dr. Kevin Adams' pictures were entered as Exhibit B.*

Board member Scott Seiber commented that 12th Street homes were not designed to be businesses. He added that since 12th Street had been widened, it had been a dilemma in making decisions such as this one concerning placement and appearance of signs.

Chairman Whitaker asked if there was any rebuttal.

Mr. Taylor came forward and stated that Dr. Adams' sign is lighted and at night it can be seen for some distance. He added that his sign only blocks Dr. Adams' sign from Vine to Mr. Taylor's driveway. Mr. Seiber asked Mr. Taylor if he felt that it was a problem that his sign blocked Dr. Adams' sign. Mr. Taylor's response was that it might be a little disconcerting to Dr. Adams, but he did not feel that according to the way that he read the ordinance, it was a factor in denying the variance. He added that in some manner, if you put up a sign anywhere, it would block some view depending on how far down the street you go.

Dr. Adams came forward and stated that the ordinance states that it will not alter the essential character of the general vicinity. He stated again that 20 signs were in the vicinity and not a single one was as close to the street as Mr. Taylor's, which is 24 inches from the sidewalk. Dr. Adams believes that is changing the character of how you put signs up and down 12th Street.

Chairman Whitaker closed the public hearing and opened for board discussion.

Board member Greg Mayes asked if any of the discussion from the meeting in October of 2007 should be considered. Mike Pitman stated that Judge Foust's point was that this dimensional variance be heard as if it was for the first time and each person tell their side of the story; therefore, nothing from the previous variance would pertain. Mr. Pitman also stated that the Mr. Taylor's sign blocking Dr. Adams' sign was not an issue at that time. One of the issues actually had been whether the sign would block traffic while going in or out of the site. Board member Kim Griffo asked if something like this had happened before (referring to Fousts' remand) where the board would have to overturn their previous decision. Mike Pitman said no, this was the first time. Mr. Seiber stated that he was not clear on how much of a visual impairment that this was and he felt that each member of the board should drive by there before making a decision. After much discussion, the board members agreed that they should each make a site inspection before making their decision. Mr. Pitman made a suggestion that the planning staff visit the site and mark the property boundary lines along with the ten foot setback line where the board members could individually drive by and see the full view.

Tom Auer made a motion to table the dimensional variance application until the September meeting to give the board members the opportunity to drive by the location in order for each one to make a determination on whether the sign should be moved and if so, where it could be moved. Scott Seiber seconded the motion and it carried with a 5-0 voice vote.

Questions and Comments: Chairman Whitaker distributed a document entailing standard conditions for a Conditional Use Permit that was given to him at his continuing education course. He feels it would be a good idea to start incorporating some of these ideas into the City of Murray's Conditional Use Permits. These standard conditions are:

1. Approval of the Conditional Use Permit does not exempt the applicant from complying with all the requirements of the zoning regulations.
2. The Conditional Use Permit shall be exercised within a period of 12 months from the date of approval.
3. The Conditional Use Permit is subject to annual review of the Conditional Use Permit by the Board of Adjustments and/or staff.
4. The Applicant shall return to the Board of Adjustments prior to ANY change, which affects the approved conditions.
5. The Conditional Use Permit shall become "null & void" upon sale or transfer of the property.
6. (If Necessary) The applicant shall comply with all other federal, state, and local regulatory entities and shall provide copies of the Board of Adjustments of any and all permits issued on behalf of the applicant as a result of the approval of the Conditional Use Permit.

Mr. Seiber asked the planning staff to look at Dr. Adams sign' while traveling 35 mph on South 12th Street to see how much of the sign could be observed.

Murray Board of Zoning Adjustments Regular Meeting
Wednesday, August 20, 2008

Scott Seiber made a motion to adjourn. Bill Whitaker seconded the motion and it carried with a unanimous vote. The meeting adjourned at 6:35 p.m.

Chairman, Bill Whitaker

Recording Secretary, Reta Gray