

**MURRAY BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING
WEDNESDAY, MARCH 16, 2011
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, March 16, 2011 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5th Street.

Board Members Present: Scott Seiber, Justin Pounds, Mary Anne Medlock, Steven Reed, John Krieb, and Brad Darnall

Board Members Absent: Bill Whitaker

Also Present: Peyton Mastera, David Roberts, Warren Hopkins, Reta Gray, Justin Phillips, Jim Tate and Hawkins Teague

Chairman Seiber called the meeting to order at 4:30 p.m. and welcomed all guests and applicants. Chairman Seiber asked if there were any changes, additions or deletions to the minutes from the February 16, 2011 regular meeting.

Justin Pounds made a motion to accept the minutes from the February 16, 2011 Board of Zoning Adjustments regular meeting as presented. John Krieb seconded the motion and the motion carried unanimously.

Public hearing to review the Dimensional Variance Application to use an existing non-conforming free-standing sign – 1530 Hwy 121 Bypass North- Justin Phillips (Murray Auto Spa): Peyton Mastera used a Power Point presentation to show Murray Auto Spa that is located at 1530 Hwy 121 Bypass North. Murray Auto Spa is under the new ownership of Justin Phillips. Mr. Phillips is looking to utilize an existing non-conforming free-standing sign which sits approximately 90 feet from HWY 121 North near the front property line. A front setback variance was allowed for the sign in 2001. Mr. Mastera said that the placement of the sign is not the problem, but the actual sign is non-conforming because it is not of monument style. He added that since the name of the business has not changed, staff typically would allow for the panels to be changed and a variance would not be required; however, the proposed sign is different in the sense Mr. Phillips is requesting to add an electronic message board to this sign. The current free-standing sign frame is 50 square feet. (There is a vacuum station located just below the sign.) The electronic message board will only be 15 square feet in size; the remaining portion of the signage will be 35 square feet. Mr. Phillips will still be adhering to all electronic message board regulations and will not be expanding the signage area. This business would have been allowed up to an 80 square foot sign when it was erected a few years earlier. With the electronic message board being added, Mr. Mastera stated that the staff felt it was best to bring the matter before the BZA for approval.

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



Justin Phillips, 1160 Bean Road, Murray was sworn in. Mr. Phillips stated that he purchased the carwash because it is a very nice carwash. He said that he wants the sign to look good and compliment the business; thus, making his carwash an asset to the community. Mr. Phillips is currently in the process of making improvements and a new sign is one of those improvements. Mr. Phillips would like to leave the existing sign at the current location because of the vacuum system that was previously installed beneath the sign. He added that if he relocates the sign, it will cost several dollars to bust up the concrete and move the electrical work. Mr. Phillips said he would like to change out the panels and add a reader board to the existing sign frame enabling him to advertise specials. He stated that he might outline the sign in neon lighting; however, at this time that is just an option. Mr. Phillips added that he had looked at installing a monument sign; however, with the layout of the business, a monument sign would not be practical or as visible from the highway as the current sign.

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

Justin Pounds made a motion to approve the Dimensional Variance Application of Murray Auto Spa (business owner: Justin Phillips) at 1530 HWY 121 Bypass North to use an existing non-conforming free-standing sign; this sign is located approximately 90 feet from the road; this sign will still remain under the maximum allowed square footage for HWY 121; the name of the business is not changing; and this variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. Brad Darnall seconded the motion and the motion carried with a 6-0 voice vote.

John Krieb made a motion to amend the previous motion to say that this sign is approved with the addition of an electronic message feature. Brad Darnall seconded the motion and the motion carried with a 6-0 voice vote.

Review of Conditional Use Permit for a Planned Development Project - The Gates, Phase I - Robertson Road South – Barbara Campbell and Jim Tate: *Brad Darnall recused himself since he is a resident of The Gates.* The Gates is a single family residential Planned Development Project located on Robertson Road South and the time limitation has been exceeded. Mr. Mastera explained that in a PDP, there is a two year time limit for everything to be completed and up to city standards. At this time, not all of the units within the development have been constructed and before any new homes can be constructed, an extension must be received from the Planning Commission. Mr. Mastera stated that this item was brought before the Planning Commission the previous night. The BZA previously granted a Conditional Use for this PDP. Mr. Mastera said this item is being brought before the board again to update what is going on and collect some feedback to help the city staff give the developers some direction at this point forward with the project. Currently five of the thirty-six units have been developed. All of the infrastructure for Phase I has been put in place. The main issue at this time is getting the other units constructed and the streets up to standards. Since this is a PDP, it all privately maintained as far as streets and street lights. The city makes sure during the development process that things are up to code and then turns responsibility over to the Home Owner's Association (which will be comprised of the developers until the development is approximately 80% occupied and at that time will be turned over to the residents). Mr. Mastera stated that there were few deviations from the original plat. The club house has been done away with and an additional unit was added. Also, two additional units were added to Pillar Drive. The sizes of the homes will remain the same. The intention is to keep the outside materials all the same in each section. Mr. Mastera said that all of the fences and sidewalks are in place and the streets have been paved in Phase I up through what has been developed. The developers have indicated that they would like to have a few more residents before they have the entry gates activated. The back entrance will be closed off for emergency access only. Mr. Mastera stated that in conjunction with this project, there was initially another phase that would increase the total number of units to 119; however, the developers are not ready to proceed with that phase at this time.

David Roberts stated that the Planning Commission tabled the item on the previous night until the current property owners sign a waiver acknowledging the change in the Home Owner's Association. Ms. Medlock added that (state statutes) have changed the definition in the way condos are sold; therefore, the Planning Commissioners felt that the occupants and homeowners should understand those changes. She said that once they have been informed, the Commissioners felt they could approve the changes presented. Warren Hopkins said the commissioners were also concerned with the changes in the rules and regulations and the fact that the plans for a club house are being done away with. Mr. Hopkins said that he would continue to look at the situation along with Mr. Tate and Mr. Pitman in order to see that the residents are not misled. Mr. Hopkins added that this is a new type of project for the area and that the rules and regulations of the Home Owner's Association would also have to be addressed.

He said that it may not be necessary for the residents to sign off on the changes that have been presented. Ms. Medlock stated that she was also concerned with an additional extended time limit for the PDP as the previous 2 year time limit expired in August of 2009. Mr. Roberts added that at the time that their 2 years was expiring, there was still construction that was happening; therefore, they didn't see the need for bringing the item back before the board at that time. Mr. Roberts said that something with a large magnitude such as this project could possibly take more time than the 2 year limit and while the ordinances are being revised, this type of PDP window could be updated with a more flexible time limit. Chairman Seiber asked if there had been any discussion in the Planning Commission meeting concerning the economic downturn and Ms. Medlock stated that there had been.

Chairman Seiber asked Jim Tate, developer of the project to come forward to answer questions. Mr. Tate said that Phase I was previously approved and that it would not be changing; the developers were only asking to extend the permit. Mr. Tate stated that the developers are currently serving as the Home Owner's Association and when changes are made each homeowner gets a copy of the amendment. There is currently a \$50.00 grounds maintenance fee that is charged monthly for mowing the lawn. Once the Home Owner's Association is transferred to the owners, the responsibility of decision making will also transfer. Mr. Tate said that they had obviously started the project at the wrong time with the economic downturn. He added that they had spent millions of dollars with the infrastructure and at this time, he would like to be able to precede with the remainder of Phase I. Mr. Tate stated that he has a window between now and December in order to have good working conditions for construction. He explained that a PDP works differently than a subdivision and it is not necessary to sit down and talk with each individual homeowner. Mr. Tate said they had originally built the units exceeding the dollar demand for the area and seeing that the average market is for \$100,000 to \$150,000 they have rearranged the units where the cost will be more economically feasible for clients in Murray ranging from \$106,000 thru \$170,000. Mr. Krieb asked how much infrastructure was completed and Mr. Tate said all of Phase I except the roads in the back section. Mr. Tate explained that this project was being treated as a subdivision in that it is monitored to meet all City requirements. Ms. Medlock stated that she was surprised when the plans for a club house were eliminated because that seemed to anchor the community. Mr. Tate said that it costs more money to add on the extra amenities and at this point, they were being more realistic with basic model homes. Mr. Tate explained that the gate system would be unique in that you could call the phone number and the gate would open for one of your guest even though you may not be in the vicinity. Mr. Krieb asked about the storm water detention and Mr. Tate said that that was initially set up for Phase II and since they didn't know where Phase II would be going, they have reserved a new site at the back of Phase I. Mr. Mastera stated that they were still working on the calculations of the site.

Chairman Seiber asked if there was anyone else that had any comments. Brad Darnall, who is a homeowner in The Gates, came forward. Mr. Darnall stated that he was the first resident of The Gates. He has been made aware of changes that have been made to the original plan of The Gates such as the HOA and the decision not to build the club house. Mr. Darnall stated that he loved living in The Gates and he thinks even with the amendments that the integrity of the development remains. Mr. Darnall's unit has a private courtyard where his 3 year old son can

play and he doesn't have to worry about him running into the street. Mr. Darnall said that he enjoys not having to mow his yard; thus, allowing him more time to spend playing with his son. Mr. Darnall said that he is fully in support to what the developers have planned and where it is headed.

Mr. Pounds asked how many units are owned outside of the developers. Mr. Tate stated that four out of the five have been sold. Mr. Tate said that he will have four more units under contract as soon as they can get the building permits. Chairman Seiber asked Mr. Tate what the road requirements were for a PDP and Mr. Tate said they were the same requirements as the city. Mr. Reed asked if the lower priced unit would look any different than the higher priced unit from the outside. Mr. Tate you shouldn't be able to tell any difference.

Mary Anne Medlock made a motion to approve the revised amended final planned development project plat for The Gates, Phase I (developers Jim Tate and Barbara Campbell) and grant a two year time limitation for completion of this project contingent upon it meeting all city regulations. (Noted changes to the project include):

- Occupants will pay a \$50 maintenance fee to the Home Owner's Association currently being run by the developers to cover the grounds
- Covenants and Restrictions (i.e. "Rules and Regulations") to be revised and recorded
- Residents are responsible for the insurance and maintenance of each patio home (including the exterior and patio area)
- A different building design concept which includes the combination of vinyl, brick and dryvit as the developer sees need
- Abolishment of club house
- 3 additional units to be added to Phase 1 (1 unit where the club house was to be, 2 units on Pillar Drive). The developers will still be meeting their density requirements.

John Krieb seconded the motion and the motion carried with a 5-0 voice vote. *Brad Darnall re-entered the meeting at 5:40 p.m.*

Review of Conditional Use Permit – 1502 Sycamore Street – Chong Kim: Peyton Mastera stated that Ms. Kim had been before the BZA on several occasions and had previously received a Conditional Use Permit for a seamstress home occupation. At the last meeting there were conditions placed on the permit and one of the conditions was that Ms. Kim's permit be reviewed in two years. Mr. Mastera stated that Ms. Kim is meeting the conditions and that there have been no complaints from the neighbors; therefore, the staff did not feel it necessary to bring Ms. Kim back before the board. Ms. Kim is currently out of town and lives out of the country for several months of the year. Chairman Seiber asked if there was a need to bring the matter back before the board on an annual basis. Mr. Mastera stated that the home occupation would be monitored continuously and if the need arises, Planning Staff will bring it back before the BZA.

John Krieb made a motion that Ms. Chong Kim is meeting all conditions set forth in the conditional use permit for 1502 Sycamore Street and that she may continue to operate her

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home occupation with the before granted conditions subject to periodic review by the Planning Staff. Justin Pounds seconded the motion and the motion carried with a 6-0 voice vote.

Questions and Comments: Peyton Mastera stated that several members of the BZA attended the update meeting of the zoning ordinance with the consultant from Houseal-Lavigne. He informed the board that Planning Staff as well as the consultant were open for questions or concerns that any of the members might have. Chairman Seiber stated that he was very much impressed with the consultant and added that the presentation was a common sense approach. Chairman Seiber said that he felt gratified to participate in the meeting. Mr. Mastera stated that there were approximately 30 attendees on the second night of the update meeting made up of citizens from the community. He said that it was good to have an outside perspective to reassure the citizens that our regulations aren't necessarily as out of line as some of them think. Mr. Mastera said that it is somewhat our responsibility to educate the public.

Adjournment: Justin Pounds made a motion to adjourn. John Krieb seconded the motion and the motion carried with a unanimous vote. *The meeting adjourned at 5:50 p.m.*

Chairman, Bill Whitaker

Recording Secretary, Reta Gray