Minutes of the Board of Adjustment meeting held on Monday, June 14, 2010, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present:	Joyce McStotts, Chair Roger Ishino Preston Olsen Chad Wilkinson, Community Development Planner Tim Tingey, Community & Economic Development Director G.L. Critchfield Citizens
Excused:	Jonathan Russell, Vice-Chair Rosi Haidenthaller

There was a staff review meeting held where the Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

Ms. McStotts explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

APPROVAL OF MINUTES

Roger Ishino made a motion to approve the minutes from May 10, 2010 as written. Preston Olsen seconded the motion.

Call vote recorded by Chad Wilkinson.

A Ms. McStotts
A Mr. Olsen
A Mr. Ishino

Motion passed 3-0.

Ms. McStotts explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

CONFLICT OF INTEREST

There were no conflicts of interest pertaining to these agenda items.

Joyce McStotts announced that Case #1410 – D.M. Kimball, LLC has been postponed to the July 12, 2010 meeting.

CASE #1407 – BRITTANY WELLS/ALEX SALAZ – 4953 South Naylor Lane - Project No. 10-159

Brittany Wells, Alex Salaz and Linda Kirk were the applicants present to represent this request. Chad Wilkinson reviewed the location and request to construct an addition to a nonconforming structure located at 4953 South Naylor Lane. Murray City Code 17.52.040 allows for a building or structure occupied by a nonconforming use, or a building nonconforming as to height, area or yard regulations to be added to, enlarged or moved to another location on the lot subject to authorization of the Board of Adjustment. Murray City Code Section 17.100.080 (R-1-8 zoning district) requires a minimum 8 foot

side yard setback with a total of 20 feet for the two side yards. The applicant proposed to demolish the existing home on the property and to construct a new single family home. The existing home on the property has considerable contamination of methamphetamine production and has been condemned. The existing detached garage is also proposed to be demolished. The applicant has obtained approval of an FHA 203K loan for rehabilitation of the property which requires that the foundation of the existing residence remain as a condition of approval for the loan. Additionally, the applicant has submitted a letter from the lender stating that because of the chemical contamination the existing home must be removed down to the foundation. The existing foundation is setback approximately 4 feet 5 inches from the side (north) property line. The proposed structure will meet the setbacks of the zoning district with exception of the north property line. Because the federal funding requires the use of the existing foundation, requiring the minimum 8 foot setback from the side yard would prevent the applicant from moving forward with the rehabilitation. The removal and mitigation of the contaminated structure will reduce negative impacts on adjoining properties. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the staff finds that the proposal meets the standards for an expansion/alteration of a nonconforming use or development subject to meeting the current building and fire codes.

Joyce McStotts asked for clarification of what portion of the home would remain in order to qualify for the rehab loan. Mr. Wilkinson responded essentially only the foundation of the home will remain.

Roger Ishino asked if the 4.5 foot side yard setback would cause safety access problems. Mr. Wilkinson responded that the home will need to meet the fire codes and there is a possibility that there may be a restriction for building openings on the north side and a requirement to have added fire protection on that side of the structure. The proposed condition of approval would cover these issues in the building and fire code requirements.

Preston Olsen asked the reasoning for having to keep the foundation for the loan. Mr. Wilkinson responded the loan is administered through the federal housing administration specifically for housing rehab called a 203K loan. A 203K loan does not allow construction of a totally new home and a portion of the existing structure must remain to qualify and is specifically for these types of home rehabs. Everything but the foundation has to be removed due to the extent of contamination in order to mitigate the contamination.

Linda Kirk, 2276 Ramona Avenue, Salt Lake City, stated she is the realtor who has been handling this property transaction for the buyers. Ms. Kirk stated the 203K loan is designed to rehab these types of properties. The reason the entire home cannot be totally demolished is that it would then be a “construction loan” and not a rehab loan and the government does not wish to be in the construction loan business with a 3.5% down payment. She stated this is a rare situation where the home has methamphetamine and they had to obtain approval from the Board of Health, Air Quality, etc so the tear down would not be a problem with the meth contamination. She stated they recently re-measured the north setback and found it to be 4 feet 9 inches. The property to the north has a side yard setback of 28 feet with a large driveway making the separation of the two homes over 30 feet.

Sterling Hess, 4957 South Naylor Lane, stated he is the adjacent property owner to the south. Mr. Hess stated this proposal is a welcomed change. The property to the north has a large driveway of 28 feet so the two homes will have ample separation.

Chad Wilkinson explained when there is an expansion of a nonconforming structure; it requires approval of the Board of Adjustment and is not a typical variance

Roger Ishino asked if the neighbor to the north has acknowledged this proposal. Linda Kirk responded that the adjacent neighbor to the north inquired how fast this home could get torn down and the new home constructed and is a welcomed changed.

Preston Olsen made a motion to grant approval for the addition to a nonconforming structure located at 4953 South Naylor Lane based on the findings presented by staff and subject to meeting current building and fire codes. Seconded by Roger Ishino.

Call vote recorded by Tim Tingey.

A__Mr. Olsen
A__Mr. Ishino
A__Ms. McStotts

Motion passed 3-0.

Mr. Ishino made a motion to approve the Findings of Fact as outlined by staff. Seconded by Mr. Olsen.

A voice vote was made. The motion passed 3-0.

CASE #1408 – AAA RESTORATION/DON GOETTSCHE – 249 West 4860 South – Project #10-161

Don Goettsche and Andy Warr were present to represent this request. Chad Wilkinson reviewed the location and request for a variance to front yard setback and parking lot landscaping requirements of the M-U (mixed use) zoning district for the property. Murray City Code Section 17.146.050 requires that buildings in the M-U zoning district have a front yard setback of between 15 and 25 feet measured from the back of curb on the adjacent street. Section 17.146.090 requires that parking lots abutting a property line shall be screened by landscape area with a minimum width of 10 feet. The applicant proposes a setback of 29 feet from back of curb. The applicant also applied for a landscaping variance which staff has determined is not necessary based on an analysis of the M-U code. The remaining variance request is the result of minimum separation regulations from a high voltage power line that runs along the west side of the property on 300 West (Commerce Drive). The maximum zoning setback of 25 feet could not be met while meeting the minimum power line setback requirements. In order to meet the minimum power line setback, approval of a variance is necessary for the building to be constructed on the lot. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, staff finds that the proposal meets the standards for a variance and recommends approval for the 29 foot setback with a requirement that the structure meet all applicable requirements of the Power Department and building code related to setback from the power line.

Andy Warr, 727 W Alan Point Drive, Draper, stated he is representing Warr & Associates Architects. AAA Restoration is an existing business that wants to relocate to this property. It is their understanding that the Community Development office would like to

have a pedestrian friendly atmosphere and a two-story building similar to the downtown area. It is difficult to have a two-story building fit underneath the sloping requirement of radius around the power line. They would like to have a quality building on the property and they cannot move it back further because of the ordinance and this is a situation where it is difficult to balance the required setbacks and meet parking requirements without some type of variance.

David Platt, 389 East 4800 South, stated he is the adjacent property owner to the south. Mr. Platt asked the front location of the proposed building, and if the existing retaining wall is to remain. Mr. Wilkinson stated a 1 foot setback as shown on the plan is acceptable for the rear setback for zoning regulations.

Joyce McStotts asked about the landscaping requirements. Mr. Wilkinson responded the original request for landscaping requirements is no longer necessary based on further review of the city code and the only variance being requested is for the front yard setback to be 29 feet.

Andy Warr stated the existing retaining wall with the chain link fence is intended to remain. He stated they will build a new retaining wall to the north of the existing retaining wall so as to be a continuous retaining wall and prevent drainage onto adjacent property. The foundation wall of the building will replace about 20 feet of the retaining wall along the west boundary. The chain link fence at the west edge of the retaining wall towards the street will be removed and replaced with the building continuing in that section. The building codes allow a building to be built to the property line which generally means one foot because of the footing offset. The building is will be decorative concrete block that meets the fire rating for property line wall.

Roger Ishino made a motion to grant the variance as requested for a front yard setback of 29 feet based on findings of fact and acknowledging the power line minimum requirement and with the condition that the structure meet all applicable requirements of the Power Department and building and fire codes. Seconded by Preston Olsen.

Call vote recorded by Tim Tingey.

A__Mr. Olsen
A__Mr. Ishino
A__Ms. McStotts

Motion passed 3-0.

Mr. Olsen made a motion to approve the Findings of Fact as outlined by staff. Seconded by Mr. Ishino.

A voice vote was made. The motion passed 3-0.

CASE #1409 – HARMONY HOME HEALTH – 5650 South Green Street – Project #10-162

Dennis Strong and Kevin Christensen were present to represent this request. Chad Wilkinson reviewed the location and request for a sign height and sign area variances for

a proposed detached sign in the General Office zone. The proposed sign will be 45 feet high and a total area of 228.38 sq.ft. The sign code limits sign height in the G-O zone to 15 feet overall height and the sign area is limited to a maximum of 50 sq.ft. Murray City Code Section 17.48.120 A states: "A detached on-premise sign is permitted for each developed parcel not exceeding one-half square feet of sign area for each lineal foot of street frontage, and may not exceed 50 sq.ft. of total sign area. Section 17.48.120 C states: "Maximum sign height allowed is fifteen feet from the sidewalk grade to the top of the sign." The G-O signage regulations are intended to be a buffer to the residential areas with sign area and height limitations in close proximity to a residential zone. There are other businesses throughout the city that comply with the G-O sign code regulations. Mr. Wilkinson reiterated that financial issues cannot be considered as a hardship. The adjacent properties to the west are residential. The properties to the north are in a different zoning district which is C-D-C and has different sign regulations. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, staff finds that the proposal does not meet the standards for a variance.

Joyce McStotts clarified that this request is for a 30 foot height variance and 178 sq.ft. variance on the size of the sign. Mr. Wilkinson responded in the affirmative. Mr. Wilkinson stated that the planning staff received two letters from neighbors in opposition for this request and the Board members have been given a copy of those two letters.

Kevin Christensen, 1606 South Gramercy Road, Salt Lake City, stated he is representing Young Electric Sign Company for this application. Mr. Christensen stated that the adjacent properties to the north are in the C-D-C zoning district and this property is in the G-O zoning district which have different sign regulations particularly in height and size. He stated the G-O zone works well on State Street and 700 East, but where this property is adjacent to the freeway it poses a problem for sign visibility. He explained that a 15 foot high sign is not visible from the freeway. He stated other cities along the I-15 allow signs to be 25 feet above the freeway grade and this proposal is consistent with that. He stated that people who use this facility question the location and this proposed sign would help with persons being able to find the facility. He stated the adjacent building to the north and to the south is both three-story buildings and their attached signage is visible from the freeway. This building is a single-story and the attached signage is not visible from the freeway.

Bill Meters, attorney with Kirton & McConkie, 16 East South Temple Suite 1800, Salt Lake City. Mr. Meters stated there are three unusual factors that affect this application. One factor is that the property is adjacent to I-15 and fronts on Green Street. The second factor is the grade of I-15 was built up when I-15 was improved in 2002. Prior to the grade change of I-15 construction, this building was visible from the freeway. The freeway grade was changed 10-12 feet and the building is no longer visible from the freeway. The third factor is that this is the only one-story building in the G-O zone in this area. Mr. Meters presented photographs showing the property as it currently exists which is not visible from the freeway but the two adjacent three-story buildings are visible from the freeway. He stated that there are only five properties along Green Street that are zoned G-O. The first one is the Eagle Gate College building which is a three-story building. This property is the second property. The third property is the Siegfried & Jensen building which is a three-story building that recently replaced a new sign on the north side of their building so it would be seen by south bound traffic on I-15. The fourth

building is Dominion Engineering that is a two-story building with attached signage that is visible from the freeway. The fifth building is a Title Company that is a converted residence that is a two-story building that has a nonconforming pole sign that is visible from the freeway. He stated that this building is the only building that is not visible from the freeway.

Mr. Meters reviewed the factors for granting a variance and indicated that there is a hardship because the Harmony Home Health building is the only building along this stretch of road without either a pole sign or multi-levels where attached signage would be visible from I-15. He stated that their customers have commented that they cannot find the property due to the lack of visible signage. Mr. Meters stated the special circumstances for this application are that the property is adjacent to I-15 and is a one-story building that is different from other properties in the G-O zone and should be sufficient grounds for a variance. He stated this request is essential to substantial property rights and they want to be able to advertise their business to passing traffic along I-15 and are currently not able to do so. This will not substantially affect the General Plan because it is adjacent to I-15. There are numerous G-O zoning districts, but not many in a corridor similar to this. He stated only this property would be affected by this hardship and the spirit of the ordinance would be observed and substantial justice done.

Joyce McStotts stated that most of the properties Mr. Meters has referred to have referenced attached signage. Mr. Meters responded in the affirmative.

Dennis Strong, 5650 South Green Street, stated he is the owner of Harmony Home Health. Mr. Strong stated he started Harmony Home Health 14 years ago in his basement and was a home health aid who took care of patients. Currently they take care of over 800 patients with over 300 employees. He has always had his business in Murray. Prior to moving to this building they were approved for signage on the other side of the freeway.

This agenda item was opened to the public for comments.

Marlene Maag, 5631 South Sanford Drive, stated her home is to the rear of the property in question. She asked who had submitted letters in opposition to this request because she is representing the homeowners in the neighborhood.

Chad Wilkinson indicated the letters of opposition that the staff received were from Dominion Engineering and from Siegfried & Jensen.

Marlene Maag stated she is also representing Brent Torgesen and Karen Nielsen who live in the neighborhood to the west of this property. She stated all three of these neighbors are in opposition to the requested variances. She stated they enjoy the meager view they have of the mountains and wish to continue to have that view as much as possible. She stated she moved into this neighborhood last July because this is a great neighborhood and has a view of the mountains and is in Murray City.

Mary Woodward, 5651 South Sanford Drive, stated she is the adjacent property owner to the west and is in opposition to the proposed sign variance requests.

Tracy Woodward, 5651 South Sanford Drive, stated he is in opposition to the variances. He stated if the business is worried about signage, they should have purchased property where it is allowed. Mr. Woodward stated that the residents do not wish to lose their view of the mountains anymore and the adjacent buildings have already obstructed their view. He asked what research has been done regarding the impact this proposal would have on the residential neighborhood. He stated the sign down the street at the music store is so bad it reflects off the front windows of the house to his west, which is about 10 houses from the actual sign. There is also lighting reflection from the Siegfried & Jensen signage. He stated he has cleaned up beer bottles and syringes being thrown over the fence from this property.

Jay Francis, representing Siegfried & Jensen, stated he submitted an email to the planning department regarding this variance request. He clarified that the owner of this property purchased the property after the period of construction of I-15 and knew about these regulations before purchasing the property. He stated that they are opposed to the sign variance request.

Josh Cameron, representing Christopherson Travel Group, stated their business is located in the Eagle Gate College building which is adjacent to the north of the Home Health building. He stated they are opposed to the variance request and feel it would deter from the value of their building. He stated they built their building as a three-story building to allow for valuable signage for their building.

Roger Ishino asked if the Harmony Home Health building was purchased after reconstruction of I-15 was done. It was indicated that the building was purchased after reconstruction of I-15.

Dennis Strong stated at the time he purchased this property, there was no indication that there was an issue with signage along I-15 and they paid appropriately based upon the value of the location.

Preston Olsen stated the difficulty with this project is that when looking at the pictures, you can understand why someone would want to have a sign as proposed because to the north there are signs and the other buildings are taller. He stated he is struggling with how this proposal can fit into the standards given because this is more of a zoning issue than a variance issue.

A comment was made that none of the photographs show what the sign would look like if the current standard were applied and that possibly the sign would be visible from the freeway.

Roger Ishino asked if there is a rendering of what the sign would look like if it met the existing code regulations. Kevin Christensen responded that he shot the grade from where the sign would be placed to the grade of the freeway which was about 12.5 feet verses 15 feet that would make approximately 2.5 feet of the sign visible over the freeway wall.

Joyce McStotts stated that there is a difference in other cities and zonings, but unfortunately the city cannot address those differences and the Board must uphold the Murray City zoning regulations.

Preston Olsen stated if the variance was granted, it would set a precedent for all properties along I-15 that are located within the G-O zoning district.

Joyce McStotts stated that variances remain with the property and not the property owner or tenant.

A comment was made that Harmony Home Health has the option to relocate to another property where they would have adequate signage for their needs but the adjacent residents do not have the option to move nor do they wish to move.

Preston Olsen made a motion to deny the variance request based on the Findings of Fact that this does not comply with the standards for granting a variance. Seconded by Roger Ishino.

Call vote recorded by Tim Tingey.

A__Ms. McStotts
A__Mr. Olsen
A__Mr. Ishino

Motion passed 3-0.

Mr. Ishino made a motion to approve the Findings of Fact as outlined by staff. Seconded by Mr. Olsen.

A voice vote was made. The motion passed 3-0.

Meeting adjourned.

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Tim Tingey
Director of Community & Economic Development