



TANEY COUNTY PLANNING COMMISSION

P. O. Box 383 • Forsyth, Missouri 65653

Phone: 417 546-7225 / 7226 • Fax: 417 546-6861

website: www.taneycounty.org

AGENDA TANEY COUNTY BOARD OF ADJUSTMENT WEDNESDAY, JANUARY 16, 2013, 7:00 P.M. COUNTY COMMISSION HEARING ROOM TANEY COUNTY COURTHOUSE

Establishment of Quorum.

Election of 2013 Officers.

Call to Order:

Explanation of Public Hearing Procedures

Presentation of Exhibits

Governing Statutes

Public Hearings:

Greg and Stephanie Smith, Request for Rehearing

Brit James Russell, Variance Request from Minimum Lot Size

Sterling Estates Condo Assoc., Variance Request from Setbacks

Review and Action:

Minutes, December 2012

Old and New Business:

Tentative

Adjournment.

RUSS SCHENEWERK & ASSOCIATES, LLC
ATTORNEYS AT LAW
500 WEST MAIN ST., SUITE 305
BRANSON, MO 65616
PHONE: 417.334.7922 FAX: 417.334.7923
OZARKATTORNEYS@YAHOO.COM WWW.BRANSONATTORNEYS.COM

RUSS SCHENEWERK*
KARL A. FINKENBINDER*, SHAREHOLDER
JOSEPH W. ALLEN*
JOSHUA R. BAKER*
JACQUELINE A. BRYANT*
LACEY CHANDLER, OFFICE MANAGER
JOANN SANTULLI, PARALEGAL
KATHY PEDIGO, LEGAL SECRETARY

(LICENSED IN MO AND U.S. DISTRICT COURT*)

December 27, 2012

Taney County Board of Adjustment
c/o David B. Clemenson, Chairman
P.O. Box 383
Forsyth, MO 65653
Sent via facsimile to (417) 546-6861

RE: Appeal of Decision of Record for Special Use Permit # 2012-0010
Case No.: 2012-0002A

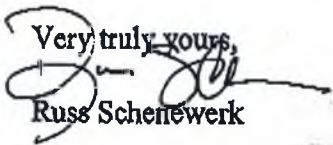
Dear Mr. Clemenson:

Please be advised that I represent Greg and Stephanie Smith in the above referenced matter. I am writing this letter pursuant to Article 16 Section (a) of the Taney County Board of Adjustment Bylaws to request that the Board reconsider its denial of Special Use Permit # 2012-0010 and order a rehearing.

The Commission never entered an order approving the regulations for Nightly Rentals in Section 4 of the Taney County Development Guidance Code. Enforcement of this section of the Code without record of its enactment is a violation of due process. Failure to maintain proper records of amendments to the Code renders the Code vague and uncertain, and as such is unconstitutional.

On behalf of Mr. and Ms. Smith, I request that Board reconsider its decision to deny the granting of a Special Use Permit to the Smiths and set this matter for rehearing during the next scheduled Board of Adjustment meeting.

Thank you for your attention to this matter. If you have any questions, please feel free to contact my office.

Very truly yours,

Russ Schenewerk

:cc Greg and Stephanie Smith



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December 28, 2012

Russ Schenewerk
Russ Schenewerk & Associates, LLC
500 West Main Street, Suite 305
Branson, MO 65616

Dear Mr. Schenewerk:

On December 27, 2012 I received your letter via facsimile requesting that the Board of Adjustment reconsider on the record its decision concerning Appeal Case Number 2012-0002A. I am considering your letter to be the request of Greg & Stephanie Smith for a reconsideration of the Board of Adjustment denial of the Appeal Case Number 2012-0002A, which I have received within seven (7) days of the posting of the Board's decision.

The Board of Adjustment Bylaws states that:

The Board shall not grant a party's Request for Reconsideration if that party did not appear at the original hearing and does not demonstrate that substantial injustice would result as a refusal to grant such Reconsideration request.

The Board of Adjustment Bylaws further state that:

The Board shall not grant such a request for rehearing to any party who did not appear at the original hearing and who cannot demonstrate that there is new evidence that was not in existence at the time of the original hearing or was not available to the person making the request because another interested party had prevented the discovery of such evidence and because such evidence could not have been discovered by the party making the request through diligent efforts on his/her part.

During the January 16, 2013 Board of Adjustment Public Hearing, the Board will make the decision to either grant or not grant your request for reconsideration / rehearing. If the Board makes the decision at the January 16, 2013 Public Hearing to grant your request, the Board shall direct the Planning Administrator to have the appropriate notices given for the rehearing. If the Board grants your request for a reconsideration / rehearing, then the rehearing will be held on February 20, 2013. Please note that the Board of Adjustment hearings are held at 7:00 PM.

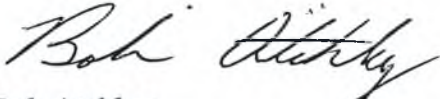
Per the provisions of the Board of Adjustment Bylaws you will need to submit all exhibits at least ten (10) days in advance of the January 16, 2013 Public Hearing.

Russ Schenewerk
Russ Schenewerk & Associates, LLC
December 28, 2012
Page 2

If you are severally aggrieved by the decision of the Board of Adjustment you may appeal that decision to the Taney County Circuit Court.

Please feel free to contact our office with any additional questions or concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Atchley".

Bob Atchley
Taney County Planning Administrator



TANEY COUNTY BOARD OF ADJUSTMENT

VARIANCE STAFF REPORT

HEARING DATE: January 16, 2013

CASE NUMBER: 2012-0010V

APPLICANTS: Brit James & Tara Russell

LOCATION: The subject property is located at 879 Brockman Road, Taneyville, MO; Swan Township; Section 22, Township 24, Range 19.

REQUEST: The applicants, Brit James & Tara Russell are requesting a variance from Section 7, Table 3, (*Lot Size & Frontage Requirements*) of the Taney County Development Guidance Code and Article 9, Section 3, Table 1 of the Taney County Subdivision Regulations concerning the two (2) acre minimum lot size.

BACKGROUND and SITE HISTORY:

The subject property is currently an approximately three (3) acre meets and bounds described parcel of land. The property in question was originally a portion of a 68 acre farm. At the time that the original property owners divorced all but three (3) acres were sold to Jimmie Russell, the applicant's father. The wife was granted the three acres but was forced to sell, leading to the property being purchased by the applicant.

The property is served by an existing on-site wastewater treatment system and a public water system.

GENERAL DESCRIPTION:

The subject property is currently an approximately three (3) acre meets and bounds described parcel of land located at 879 Brockman Road, Taneyville, MO.

The applicants, Brit James & Tara Russell are seeking a variance from the provisions of Section 7, Table 3, (*Lot Size & Frontage Requirements*) of the Taney County Development Guidance Code and Article 9, Section 3, Table 1 of the Taney County Subdivision Regulations specifically concerning the two (2) acre minimum lot size. Per the provisions of Section 7, Table 3 and Article 9, Section 3, Table 1, the minimum lot size for a property served by an on-site wastewater treatment system is two (2) acres. The applicants are requesting to replat the property in question, leaving the actual fenced "yard" area with the existing residence, while selling the land that is currently utilized by the adjoining land owner (the applicant's father) as pasture land for cattle to that adjoining land owner. If the property in question were replatted utilizing the existing fence line as the new property boundary, the property would be approximately 1.10 acres in size (utilizing information contained within Beacon, the County's online GIS system).

REVIEW:

The applicants are requesting a variance from the two (2) acre minimum lot size requirement, allowing the property in question to be replatted utilizing the existing fence line as the new property line, leaving an approximately 1.10 acre tract of land. The approximately two (2) acre remainder would then be absorbed by the existing, adjoining approximately 40 acre meets and bounds described tract of land, owned by the applicant's father.

Both the property in question and the adjoining property (owned by the applicant's father) currently share a sole access point off of Brockman Road. The applicants and the adjoining property owner wish to ensure that the adjoining property continues to have access to Brockman Road, via this existing access point.

The adjoining property owner currently utilizes approximately two (2) acres of the existing three (3) acre property in question for the raising of cattle. A number of cattle pins and corrals, utilized by the adjoining property owner, are currently located on the three (3) acre property in question. If the property is not allowed to be replatted utilizing the existing fence line, the perimeter of the existing three (3) acre tract will have to be fenced ensuring that the adjoining property owner's (applicant's father) cattle are properly contained.

STATUTORY REQUIREMENTS OF APPROVAL:

Per the requirements of Missouri Revised Statutes the Board of Adjustment shall have the have the following powers and it shall be its duty:

"Where, by reason of exceptional narrowness, shallowness, shape or topography or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under sections 64.845 to 64.880 would result in peculiar and exceptional difficulties to or exceptional and demonstrable undue hardship upon the owner of the property as an unreasonable deprivation of use as distinguished from the mere grant of a privilege, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the demonstrable difficulties or hardships, provided the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map."

SUMMARY:

If the Taney County Board of Adjustment approves this variance request, the following requirements shall apply, unless revised by the Board:

1. Approval of a variance from the two (2) acre minimum lot size requirement, allowing the property in question to be replatted utilizing the existing fence line as the new property line, leaving an approximately 1.10 acre tract of land.
2. The approximately two (2) acre remainder shall be absorbed by the existing, adjoining approximately 40 acre meets and bounds described tract of land into a single property description.
3. Compliance with all of the other provisions of the Taney County Development Guidance Code.
4. The Decision of Record shall be filed with the Taney County Recorder's Office within 120 days or the approval shall expire (Chapter 7.3.4 Taney County Development Guidance Code).



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TANEY COUNTY BOARD OF ADJUSTMENT

APPLICATION and AFFIDAVIT

FOR VARIANCE OR APPEAL

(Circle one)

Variance (\$125.00) Appeal (\$125.00)

PLEASE PRINT

DATE

Applicant BRIT JAMES RUSSELL

Phone (417) 559-0526

Address, City, State, Zip 879 BROCKMAN RD TANEYVILLE MO 65759

Representative BRIT JAMES RUSSELL

Phone (417) 559-0526

Owner of Record BRIT JAMES RUSSELL

Signature: [Signature]

Name of Project: _____

Section of Code Protested: (office entry)

Article 9, Section 3, Table 1 - Subdivision Regulations
Section 7, Table 3 - Development Ordinance Code

Address and Location of site: 879 BROCKMAN RD TANEYVILLE MO 65759

Subdivision (if applicable) _____

Section 22 Township 24 Range 9 Number of Acres or Sq. Ft. 2 ACRES

Parcel Number 03-5.0-22-000-000-007.001

Does the property lie in the 100-year floodplain? (Circle one) _____ Yes _____

No.

Required Submittals:

- ☐ Typewritten legal description of property involved in the request
- ☐ Postage for notifying property owners within 600 feet of the project
- ☐ Proof of public notification in a newspaper of county-wide circulation
- ☐ Proof of ownership or approval to proceed with request by the owner
- ☐ Sketch plan/survey of the project which completely demonstrates request

Please give a complete description of your request on page two.

We are requesting variance on our property due to the following circumstances.

- The land was originally set up as a 68 acre farm and when the original owners divorced all but three acres was sold to Jimmie Russell (my father). The wife was granted the three acres, but was forced to sell the place and that's when I bought it. My father has agreed to buy the remaining two acres in order to keep it for farming purposes.
- My father has maintained the remaining two acres, and ran cattle on the land for about eight years, and would like to continue to do so.
- We are selling the house which is located on a fenced off acre. The other two acres are connected to my father's forty acres which there are no existing fences in which to separate.
- My father has an entrance to his land on an existing fence (which is indicated on the other page) which would have to be moved along with existing corals and new fences built.
- I personally don't believe it to be fair to whoever buys the house to possibly lose an acre because someone has maintained the land for more than seven years.

Thank you for your time and consideration.

Respectfully,



Brit James Russell

Describe in detail the reason for your request:

I WOULD LIKE TO SELL THE LAND NOT WITHIN
THE AREA OF THE ACTUAL "YARD" TO THE PERSON
WHO OWNS THE ACREAGE AROUND AND CONNECTED
TO THE REMAINING TWO ACRES.

VERIFICATION

In signing this application, I fully understand, and will comply with, the responsibilities given me by the Taney County Development Guidance Code. I certify that all submittals are true and correct to the best of my knowledge and belief, and that my request may or may not be approved by the Taney County Planning Commission's Board Of Adjustment.

[Signature]
Signature of Applicant

11-27-12
Date of Application

STATE OF MISSOURI)

S.S. On this 27th day of Nov., 2012

COUNTY OF TANEY)

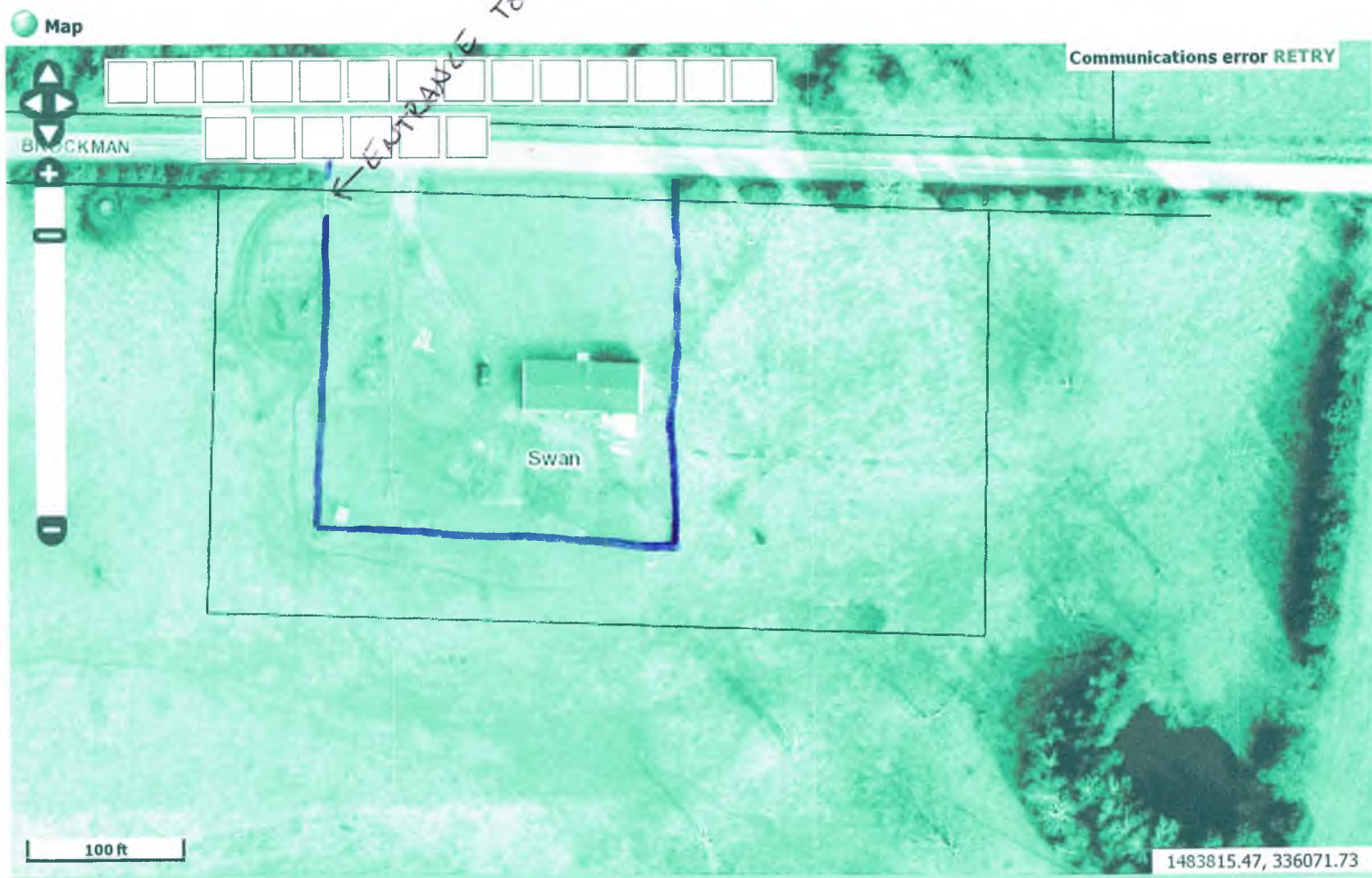
Before me Personally appeared Yara Russell, to me known to be the person described in and who executed the foregoing instrument.

In testimony Whereof, I have hereunto set my hand and affixed my official seal, at my office in Forsyth, Mo. The day and year first above written. My term of office as Notary Public will expire 2/6/2014.



BONITA KISSEE
My Commission Expires
February 6, 2014
Taney County
Commission #10440057

Bonita Kisse
Bonita Kisse, Notary Public



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TANEY COUNTY BOARD OF ADJUSTMENT

VARIANCE STAFF REPORT

HEARING DATE: January 16, 2013

CASE NUMBER: 2012-0011V

APPLICANT: Sterling Estates Condominium Owners Association

LOCATION: The subject property is located on Sterling Way off of Iowa Colony Road; Oliver Township; Section 24, Township 22, Range 22.

REQUEST: The applicant, the Sterling Estates Condominium Owners Association is requesting a series of variances from Section 9, Table 1 (Property Line Setbacks) and Section 5.3.1 (Lot Size and Frontage Requirements) of the Taney County Development Guidance Code.

BACKGROUND and SITE HISTORY:

The subject property currently consists of five (5) duplex patio homes, ten (10) duplex patio home units held in condominium style ownership, platted as Sterling Estates. On October 16, 2002 Sterling Estates (Permit # 2002-0035) was approved by the Taney County Board of Adjustment as an appeal, authorizing the development of ten (10) duplex patio homes, twenty (20) duplex patio units for residential use, to be held in condominium style ownership. The Taney County Planning Commission had initially denied the request on September 16, 2002. The ten (10) duplex patio home units in question have been constructed and are currently being held in condominium style ownership, with the lot area being maintained by the Condominium Owners Association as common space.

The Sterling Estates Condominium Owners Association is now requesting variances from Section 9, Table 1 (Property Line Setbacks) and Appendix K (Road and Access Standards) of the Taney County Development Guidance Code in order to allow for the replating of the 10 existing condominium units as a zero lot line, whole ownership duplex subdivision. The property owners are wishing to dissolve the condominium owners association and become a whole ownership subdivision.

GENERAL DESCRIPTION:

The applicant, the Sterling Estates Condominium Owners Association is requesting variances from Section 9, Table 1 (Property Line Setbacks) and Appendix K (Road and Access Standards) of the Taney County Development Guidance Code, allowing for the replating of the ten lots that have already been built upon. Sterling Way, formally an ingress and egress easement, does not meet the required 50 foot minimum right-of-way requirements and expanding it to meet the requirement would cause a number of the existing units to encroach within the said right-of-way. Lot 3 is requesting a .33' side lot setback variance allowing the existing duplex patio home to be setback 6.67' from the side lot line. The applicant has requested a variance from the road frontage requirements. However, upon review of the requirements of Section 7, Table 3 of the Development Guidance Code the

existing lots will meet the minimum road frontage requirements, which require 70 feet of frontage for the entire two-family dwelling (both lots).

REVIEW:

In Taney County it has been generally accepted practice to allow for the plating of a condominium style ownership development with lots that do not necessarily meet the setback, road frontage and / or minimum lot size requirements because each of the lots is held by the condominium association as common property. Therefore, as the condominium units were completed within Sterling Estates, upon the issuance of Certificates of Compliance, each of the condominium units and the common areas maintained by the Condominium Owners Association were platted. The applicant is requesting a variance in order to allow the ten units (which have been constructed) within Sterling Estates to be replatted as lots. The balance of the original condominium style development has been sold off to other individuals, after the original developer lost the property to the bank, therefore these ten property owners are not able to make any additional property available allowing the property to meet the provisions of the Development Guidance Codes.

STATUTORY REQUIREMENTS OF APPROVAL:

Per the requirements of Missouri Revised Statutes the Board of Adjustment shall have the have the following powers and it shall be its duty:

“Where, by reason of exceptional narrowness, shallowness, shape or topography or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under sections 64.845 to 64.880 would result in peculiar and exceptional difficulties to or exceptional and demonstrable undue hardship upon the owner of the property as an unreasonable deprivation of use as distinguished from the mere grant of a privilege, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the demonstrable difficulties or hardships, provided the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map.”

SUMMARY:

If the Taney County Board of Adjustment approves this variance request, the following requirements shall apply, unless revised by the Board:

1. Approval of a variance of twenty-five (25) feet from the fifty (50) minimum road right-of-way requirements, allowing the easement width of Sterling Way to be as little twenty-five (25) feet wide.
2. Approval of a variance of a side lot setback variance of .33' allowing the existing duplex patio home to be setback 6.67' from the side lot line.
3. Compliance with all of the other provisions of the Taney County Development Guidance Code.
4. The Decision of Record shall be filed with the Taney County Recorder's Office within 120 days or the approval shall expire (Chapter 7.3.4 of the Taney County Development Guidance Code).



Brit James Russell





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TANEY COUNTY BOARD OF ADJUSTMENT

APPLICATION and AFFIDAVIT

FOR VARIANCE OR APPEAL

(Circle one)

Variance (\$125.00) Appeal (\$125.00)

PLEASE PRINT

DATE

Applicant Pat Lambert President COA Phone 417-230-0449

Address, City, State, Zip 189 Sterling Way, Hallister, MO 65672

Representative President of COA Phone _____

Owner of Record Land Sterling Estates Condo Assoc. Signature: Pat Lambert

Name of Project: Sterling Estates Condominiums

Section of Code Protested: (office entry) Section 9, Table 1 - Property line setbacks
Appendix K - Road Access Standards

Address and Location of site: Sterling Way

Subdivision (if applicable) Sterling Estates Condominium

Section 24 Township 22 Range 32 Number of Acres or Sq. Ft. 2.78 Acres

Parcel Number 18-6.0-24-002-004-010.100 / 18-6.0-24-002-004-010.100 ⁰⁰²

Does the property lie in the 100-year floodplain? (Circle one) _____ Yes ☒ No.

Required Submittals:

- ☒ Typewritten legal description of property involved in the request
- ☐ Postage for notifying property owners within 600 feet of the project
- ☐ Proof of public notification in a newspaper of county-wide circulation
- ☐ Proof of ownership or approval to proceed with request by the owner
- ☒ Sketch plan/survey of the project which completely demonstrates request

Please give a complete description of your request on page two.

Describe in detail the reason for you request:

The condominium owners of Sterling Estates Condominium Association come to ask The Taney County Board of Adjustment to convert this condominium development into a Patio Home Subdivision. In order to proceed several variances are need.

The property was originally developed as a condominium, therefore items such as width of the roadway; the minimum road frontage of the lots; setback issues where not required to develop the property and plat the condominium units. Now that the property owners wish to convert to a patio home or zero lot line subdivision they can not make some the standard subdivision requirements on all of the lots. The first condominium units were put of record in July of 2004. The last units were put of record in November of 2007. Therefore, the property has existed in its current state of conditions for more than five years. The request for the variances will have no visual effect on the present conditions.

The existing Sterling Way, formally an Ingress and Egress Easement, does not meet the required fifty foot of right-of-way and expanding it to meet that requirement would cause the some of the existing duplexes to be encroached into said right-of-way. This would prohibit the current owners from ever selling their property, as lenders would not loan on such a property without a variance in place.

The existing divisions of limited common property between the condominium units and the proposed lot lines are shown on the survey plat provided. The smallest lot is Lot 6, it contains 8,723.895 square feet of property, but does not have the required seventy foot of road frontage. Lot 2, 4 9 and 10 also do not have the required seventy foot of frontage, but meet the requirements of square footage and the condominium requirements at the time they were put of record.

The balance of the original condominium development has been sold off to other individuals, after the developer lost the property back to the bank, therefore these ten property owners are not able to make any additional property available in order to meet more of the Taney County Development Codes.

At the time that this property was developed the option of a patio home or zero lot line development was not possible in Taney County. Now the property can be converted in to such a subdivision with the grant of some variances. The property would go forward as a residential development of duplex homes as it current appears that it is.

VERIFICATION

In signing this application, I fully understand, and will comply with, the responsibilities given me by the Taney County Development Guidance Code. I certify that all submittals are true and correct to the best of my knowledge and belief, and that my request may or may not be approved by the Taney County Planning Commission's Board Of Adjustment.



Signature of Applicant

12/18/2012

Date of Application


STATE OF MISSOURI)

S.S. On this 18th day of Dec., 2012

COUNTY OF TANEY)

Before me Personally appeared Pat Lambert, to me known to be the person described in and who executed the foregoing instrument.

In testimony Whereof, I have hereunto set my hand and affixed my official seal, at my office in Forsyth, Mo. The day and year first above written. My term of office as Notary Public will expire 2/6/2014.


Bonita Kisse, Notary Public



BONITA KISSEE
My Commission Expires
February 6, 2014
Taney County
Commission #10440057

BOOK: 494 PAGE: 2393
BOOK: 478 PAGE: 2889
BOOK: 469 PAGE: 4265
BOOK: 2011 PAGE: 10641

OUT CLAIM DEF
BOOK: 2012 PAGE: 3531
BOOK: 2012 PAGE: 3534
BOOK: 2012 PAGE: 3532
BOOK: 2012 PAGE: 3533

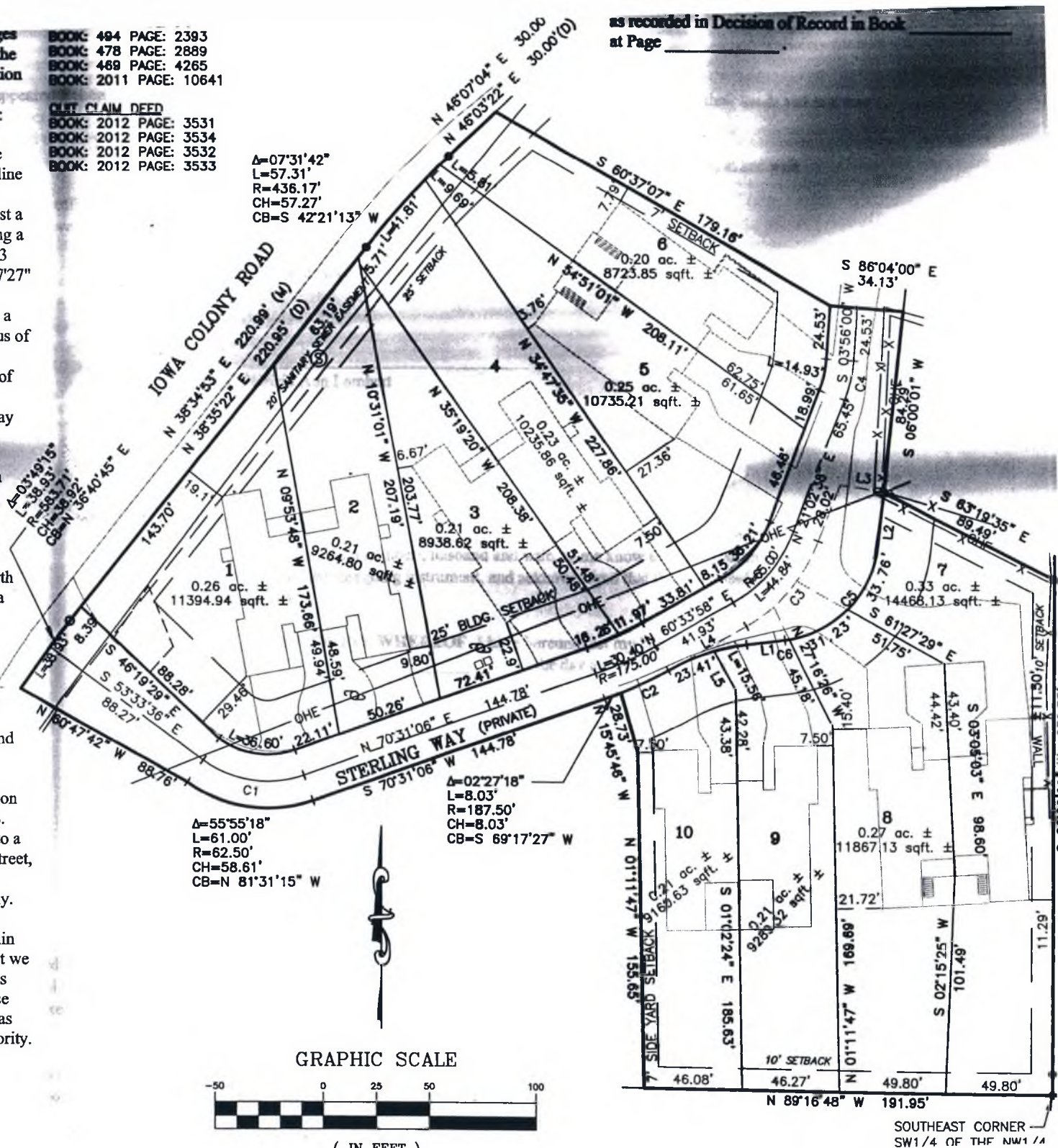
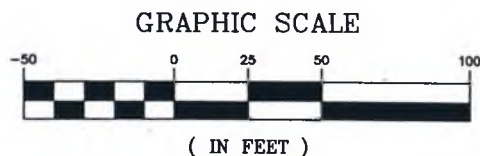
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 $CH=8.03'$
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in the manner shown hereon
by STERLING ESTATES.
The minimum development into a
residential subdivision or the creation of any new street,
road or town hereon are
subject to the approval of the appropriate utility company.

and hereon, which is within
County of Taney, and that we
do devote to public use all areas
right of Way, except those
shall maintain all such areas
appropriate public authority.



Decision of Record

A formal, official and documented record of the Staff or Planning Commission findings supporting the approval or rejection of an application for a permit.

Designated Official

The Administrator of the Taney County Planning and Zoning department or assigned delegate, as designated by the County Commission and the Planning Commission, charged with the operation of the Planning and Zoning department and the administration of the Development Guidance Codes, as directed by the Planning Commission. (Reference sections 64.810 and 64.865 of the Missouri Revised State Statutes.)

Developer

A person, partnership, or corporation engaged in the development of land. The developer, by definition, owns the property to be developed. A property owner may retain, or contract, representatives to assist in the design, approval, and construction of a development, but the application must be filed in the name of the owner of record (see "Applicant").

Development

The general term used to refer to any proposed land-use change, subdivision, construction, building, grading, clearing, filling, quarrying, construction, or similar activities. Please note that the subdivision of land requires the approval of either the Planning Commission or Planning Administrator per the provisions of the Taney County Subdivision Regulations. All other development activities enumerated above require the issuance of a permit.



Duplex

A two-family residential use in which the dwelling units share a common wall (including the wall of an attached garage or porch) and in which each dwelling unit has living space on the ground floor and a separate, ground floor entrance.



Dwelling Unit

A building or portion of a building designed and used for residential occupancy by a single Household. (This includes exclusive sleeping, cooking and sanitation facilities.)

Easement

A property right-of-way held by the owner that entitles the holder to apply and enforce restrictions on its use.

Economic Growth

A positive change in the level of production of goods and services in the county over a sustained period of time.

Erosion

The wearing away of land by actions of wind, water, and/or gravity.

Farm Buildings and Structures

Barns, farrowing houses, machine sheds, poultry houses, sheds and any other structures not meant for human habitation or occupancy. Farm buildings and structures are exempt from all provisions of the Development Codes if they are located on agriculturally zoned property.

Final Plan

The plan submitted by the developer that incorporates the recommendations and comments of the Designated Official with respect to the preliminary plan.

Floodplain

Any land area susceptible to inundation by water from any source.

Floodway

The stream or channel and adjacent areas that carry the actual floodwaters.

Floodway Fringe

All land in a floodplain not lying within a delineated floodway. Land within a floodway fringe is subject to inundation by relatively low velocity flows and shallow water depths.

3.10. Enforcement, Violations, and Penalties

It shall be the duty of the Designated Official to enforce these regulations and to bring to the attention of the Taney County Prosecuting Attorney any violations or lack of compliance herewith. Any person, firm, or corporation that fails to comply with or violates any of these regulations shall be deemed guilty of a misdemeanor and be subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for a period not exceeding one (1) year, or both.

3.11. Building and Land Use Restrictions – Exemptions

The following exemptions are excerpts from Missouri State Statutes 64.890 and the full and accurate reading shall rest with State Statute:

3.11.1. Nothing in this Development Guidance Code shall affect the recovery of natural resources by strip or open-cut mining; provided that commercial structures attending to strip or open-cut mining operations shall be permitted in all districts except those zoned for residential or recreational use.

3.11.2. The provisions of this code shall not apply to the incorporated portions of the county.

3.11.3. The provisions of this code shall not apply to the raising of crops, livestock, orchards, or forestry and not to seasonal or temporary impoundments used for rice farming or flood irrigation. As used in this provision, the term "rice farming or flood irrigation" means small berms of no more than eighteen inches high that are placed around a field to hold water for use in growing rice or for flood irrigation.

3.11.4. This code shall not apply to the erection, maintenance, repair, alteration, or extension of farm buildings or farm structures used for such purposes in an area not within the area shown on the flood hazard map.

3.11.5. This code shall not apply to underground mining where the entrance is through an existing shaft or shafts, or through a shaft or shafts not within the area shown on the flood hazard area map.

3.11.6. This code shall not apply to cemeteries. Cemetery provisions are found within Chapter 214 of Missouri Revised Statute.

3.12. Temporary Construction Facilities

All temporary construction facilities must be removed within thirty (30) calendar days after a certificate of occupancy / compliance is issued.



3.13. Duplexes

All duplexes shall comply with the following requirements:

3.13.1 The lot size for a duplex when a public/central sewer system is available shall be, at a minimum, equivalent to existing standards for single family residential dwellings.

3.13.2 If an onsite wastewater treatment system is required due to the unavailability of a public/central sewer system, the lot size for a duplex dwelling unit shall be, at a minimum, equivalent to existing standards for single family residential dwellings. *(Please refer to the definition of dwelling unit.)*

3.13.3 A one (1) hour fire rated, partition wall from foundation to roof decking shall be required between dwelling units. *(Please refer to the definition for wall.)*

3.13.4 No interior side setback is required on the "attached" side of a lot containing a duplex. The street, side and rear setback standards shall apply.

3.13.5 Each dwelling unit shall have direct access to the existing road.

3.13.6 A recorded governing document acknowledged by all property owners that

TABLE 3
Lot Size and Frontage Requirements

Area Measurements	Lot Area Public / Central Sewer	Lot Area On-Site Wastewater System	Minimum Frontage
Single-Family Dwelling	8,000 Square Feet	2 Acres	70 Feet
Two-Family Dwelling	8,000 Square Feet	4 Acres	70 Feet
Multi-Family Dwelling	3,000 Square Feet Per Dwelling Unit	---	70 Feet
Commercial Use	8,000 Square feet	2 Acres	70 Feet

8. PERFORMANCE GUARANTEES

Upon approval of one or more required [Technical Plans](#) and before the issuance of an associated permit, the developer may, as a good-faith [Performance Guarantee](#), be required to post a bond with good and sufficient [sureties](#) (as set out in sections 64.825 and 107.080 RSMo 1996 incorporated herein by reference with such provisions) as will guarantee the faithful performance of all required work to be done in accordance with the submitted plans.

8.1. Sediment and Erosion, Stormwater Management, Re-vegetation Bonds

8.1.1. POSTING REQUIREMENTS

The developer shall provide the necessary surety through certified check, establishment of an escrow account, or one-hundred (100) percent bond for the estimated cost of the required improvements, plus twenty (20) percent, as a guarantee that all improvements will be installed in accordance the [Technical Plan](#) submitted (at most within two years) in the amount of all required work to be done under the submitted Plan(s). Any work shown in the submitted plans that is considered above and beyond minimum county standards may be deducted from the required financial posting.

Note: Bonds for land grading are addressed in section 8.2, below.

8.1.2. AMOUNT OF BOND

The amount of the surety for the Performance Guarantee is specific to the type of work to be performed and will be based on cost estimates provided by a certified engineer.

8.1.3. RELEASE OF FUNDS

Prior to a release of funds, either partial or in full, a statement of plan compliance shall be submitted. The statement of compliance shall establish what portions of the plan have been met and to what standard. Up to ninety (90) percent of the funds can be released after all code requirements are met and approved by the Designated Official. Ten (10) percent will be held until the public improvements are accepted by the County to ensure that the required control measures are satisfied.

8.1.4. FAILURE TO PERFORM

If all planned improvements are not been completed on time and in compliance with the submitted and approved plan(s), the County will call the account or bond for completion. The Commission may, with sufficient proof of cause, extend the completion deadline, however no additional phase of the development shall be permitted to begin if an extension has been granted.



4.14 AC(c)

STERLING WAY

IOWA COLONY RD

665'

685'

HISTORIC HWY 165

325'

180'

191.95'

184.23'

186.0-24-002-004-010.100

156.32'

231.25'

53.47'

1057

446.53'

193.27'

115.68'

179.16'

100.87'

1072

1071

1070

1102

378.20'

258.47'

39.36'

302.56'

625.30'

1.41 AC(c)

36 AC

186.0-24-002-004-010.002

131

129

313.33'

171

14

15

16



TANEY COUNTY PLANNING COMMISSION

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Phone: 417 546-7225 / 7226 • Fax: 417 546-6861

website: www.taneycounty.org

MINUTES

TANEY COUNTY BOARD OF ADJUSTMENT WEDNESDAY, DECEMBER 19, 2012, 7:00 P.M. COUNTY COMMISSION HEARING ROOM TANEY COUNTY COURTHOUSE

Call to Order:

Chairman Dave Clemenson called the meeting to order at 7:00 p.m. A quorum was established with five members present. They were, Dave Clemenson, Bob Hanzelon, Dave Nelson, and Mark Weisz. Staff present, Bob Atchley and Bonita Kisse.

Mr. Atchley read a statement explaining the meeting procedures and placed the Taney County Development Guidance Code into evidence as Exhibit A, the staff report as Exhibit B, and the staff files including all pertinent information as Exhibit C, and the Board of Adjustment Bylaws as Exhibit D. The state statutes that empower and govern the Board of Adjustment were read by Mr. Hanzelon.

Mr. Clemenson swore in the speakers before their respective hearings.

Public Hearings:

Greg and Stephanie Smith: a request for an appeal of the Planning Commission denial of a special use permit to utilize an existing, single-family residence for a nightly rental located at 1662 Hill Haven Road. Mr. Atchley read the staff report and presented pictures and a video of the site. Mr. Clemenson reported that a continuance had been requested by legal counsel for Mr. Smith, Mr. Russ Schenewerk representing the request, and Mr. Bob Paulson representing the applicant on the criminal case. Mr. Paulson stated that because he is under contract with the County Commission preventing him from representing a client against the County, asked that the request be postponed for a month in order to allow time for a declaratory judgement to be rendered. Mr. Clemenson stated that under the Code, and Board of Adjustment bylaws, it does not state that this is a valid reason for postponement. Mr. Schenewerk objected to Exhibits B, C, D, and E because in his opinion they lack foundation and are based on hearsay. Mr. Paulson interrupted the reading of the staff report on the grounds that in his opinion it was here-say, and lacked foundation. Mr. Clemenson over ruled the objection, and Mr. Atchley continued. Mr. Schenewerk asked to cross examine Mr. Atchley, and asked him if he knew how many other violations had been prosecuted in Taney County. Mr. Clemenson asked why he needed to do this. Mr. Schenewerk answered that it was to prove a point and discussion followed. He then proceeded to ask Mr. Atchley if the Code defined compatibility, and Mr. Atchley read definition via the Code. Discussion followed regarding wastewater disposal, and if there were other uses

of this nature in this area. Also, discussed was number of guests allowed in single family residences, contracts for nightly rentals, compliance with the fire district, compliance with the health department regulations, parking requirements as it pertains to this property, performance zoning and the point system and how the staff arrives at a score, how the staff monitors the nightly rental website, and who of the staff does this, if there are other properties other than this advertised on that site, amendments to the Code regarding nightly rental, other permits from the department issued on this property, and obtaining a compliance letter from the Assessors office. Mr. Paulson stated that the reason the Planning Commission gave for denial was compatibility, then he discussed compatibility and that the appearance is of a single family residence. He also discussed the County zoning map, and that the Planning Commission had approved other nightly rental uses within residential areas. Alicia Johnston, who shares the driveway with this property and lived here for a year and a half, reported that there is a large amount of traffic in and out of this site, and to get to the dumpster must go through her driveway. She has had property damage from this. The dock below is solely for the property owners, and not for guests of the nightly rental. She says this area is not for a business of this type and is a distraction to the neighborhood. She stated that in the brief time she has lived here there have been several times there have been up to 30 people staying in the house. She does not feel this is right since the property owners pay for the use of the dock and the guests do not. Mr. Clemenson offered to allow legal counsel to cross examine, but they declined. Dennis McClintic who lives below this site stated that they have dealt with fireworks being shot off and falling on their property, and they can't enjoy their own property because of parties going on at this house, among other things interfering with their privacy. He also has a dock below which is private, there have been guests from this house on his dock. There are people who walk on this road for exercise and in his opinion the traffic is dangerous for them. His realtor told him that the neighbors should try to get this business shut down because it would lower the property values. He would not have bought the property if he had known there was this business next door. He and his wife have lived there two years and almost every week there have been guests at this house. Mr. Paulson asked Mr. McClintic if he was at the Planning Commission meeting, and he was not there. Don Long who lives at 1830 Hill Haven Road, is thankful he doesn't live any closer to this property, because all the neighborhood talks about the loud music and partying that goes on. He has a slip at the dock and guests from the house use his private slip. He has lived there 10+ years and feels this use is out of place and degrades the property values. Mr. Weisz asked why he doesn't use his slips, Mr. McClintic uses the state park marina instead. Mr. Paulson clarified that Mr. McClintic did not speak at the Planning Commission hearing, and objected to the here-say. Mr. Wayne Berkbighler whose property joins this one and has lived there 13 years, stated that there is no way to buffer from this property, and described a recent party held in the house which was a nuisance to the neighborhood. There is a lot of trash, and the neighbors can hear the obscenities. Mr. Paulson also asked if he was here for the Planning and Zoning meeting, and he was not. Kay Afshar who lives in the neighborhood discussed the noise and partying in the middle of the night, trash, and incompatibility to the surrounding area.

Mr. Paulson also asked if she was at the Planning meeting and she was. Mr. Clemenson asked Mr. Schenewerk why it took Mr. Smith so long to get to the department, after a stop work order was issued. Mr. Schenewerk stated that what he is here to challenge is the validity of the Code as it applies to this request. Mr. Clemenson asked if the criminal case was valid to this case. Mr. Schenewerk stated that it was and stated why. With no other discussion, Mr. Clemenson closed the public hearing so the Board could deliberate. Mr. Weisz stated his opinion on the request, and after discussion Mr. Hanzelon made a motion based upon the decision of record presented to deny the appeal. The Board did not find beyond a reasonable doubt, that there was an error of law that had been committed by the Planning Commission. Seconded by Mark Weisz. The vote to deny was unanimous.

David and Christine Shaw: a request for a variance from Section 7 Table 1 (setbacks) of the Taney County Development Guidance Code. The applicants are requesting a variance from the required 25' front property line setback requirement, in order to allow for the construction of a single-family residence located at 188 Longshore Dr. Mr. Atchley read the staff report and presented pictures and a video of the site. Tom Holman representing the applicant clarified the request and stated that the lots in Williams Landing subdivision are very narrow and drop off in the back. To issue this variance, would allow all the houses to be in line with each other in Mr. Holman's opinion. At least one other variance has been granted on this street in the past. If the road didn't curve where it does, the variance would not be needed. Discussion followed. Dave Nelson made a motion to approve based upon the decision of record. Seconded by Bob Hanzelon. The vote to approve was unanimous.

Review and Action:

Minutes, November 2012; with no changes or additions a motion was made by Dave Nelson to approve the minutes as written. Seconded by Bob Hanzelon. The vote to approve the minutes was unanimous.

Old and New Business:

No discussion.

Adjournment:

With no other business on the agenda for December 19, 2012, the meeting adjourned at 8:33 p.m.