

BOARD OF ADJUSTMENT JANUARY 2006 PACKET

AGENDA  
TANEY COUNTY BOARD OF ADJUSTMENT  
WEDNESDAY, JANUARY 18, 2006, 7:00 P.M.  
ASSOCIATE CIRCUIT COURT DIVISION II COURTROOM  
TANEY COUNTY COURTHOUSE

Call to Order:

*Establishment of Quorum*  
*Election of 2006 Officers*  
*Explanation of Public Hearing Procedures*  
*Presentation of Exhibits*  
*Governing Statutes*

Public Hearings:

*Randall Besser*  
*Friendly Hills Property Owners Assoc. Reconsideration*

Old and New Business:

Review and Action:

*Minutes, December 2005*

Adjournment.

## TANEY COUNTY BOARD OF ADJUSTMENT

**STAFF REPORT**  
**RANDALL BESSER**  
**CASE #05-26**

Public Hearing for Randall Besser, located at 2835 E. Hwy. 76, in the Branson Township, Sec. 2 Twp. 22 Rng. 21.

The applicant, Randall Besser requests an appeal of the Taney County Planning Commission decision of December 18, 2005 to deny a request to operate a restaurant.

History: The Taney County Planning Commission voted unanimously to deny the request based upon incompatibility to the surrounding area and traffic safety.

General Description: The subject property contains 35,412 sq. ft. and is located at Country Club Heights Block 3 Plot A and Lot 6. The adjoining properties to the development consist of residential, commercial, and mixed use, Holiday Hills. The property is serviced by County Sewer.

Review: The request is to use an existing residence and carport to convert to a restaurant to seat up to 30 people, and to add a kitchen and restroom. Access would be from St. Hwy. 76, which is a 22' paved surface with a 16' access.

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

1. Compliance with the Taney County Development Guidance Code that include plans for the following:
  - a. Utilities easements and building line setbacks (Table 12)
  - b. Foliage screening or fencing for commercial area that adjoins residential tracts (Appendix C)
  - c. Improvements with scale of buildings, onsite parking and utilities (Table 6)
2. Compliance letters from the Fire, Sewer, and Water Districts (Chapter VI-VII)
3. Division II Permit will be required for all applicable structures in the development.
4. The Decision of Record shall be filed with the Taney County Recorder's Office within 120 days or the approval shall expire. (Chapter III Item 6)

**TANEY COUNTY BOARD OF ADJUSTMENT**  
***STAFF REPORT***  
***FRIENDLY HILLS PROPERTY OWNERS***  
***CASE #05-27***

Public Hearing for Friendly Hills etal., located at Lenhart Lane, in the Branson Township, Sec. 10 Twp. 22 Rng. 22.

The applicant Friendly Hills Property Owners, request, a reconsideration of the decision of the Board of Adjustment taken at the December 2005 meeting to allow the original permit to stand for the construction of a condominium project, The Majestic at Table Rock, LLC.

History: Raised as an issue at the Planning Commission meeting on October 17, 2005, and denied by the Board of Adjustment in December 2005.

General Description: The subject property contains 10.30 acres and is located off Lenhart Road. The adjoining properties to the development consist of Table Rock Lake, Chateau on the Lake, residential, and a proposed condo development. The property is accessed on the east by St. Hwy. 265.

Review: The reconsideration is for the decision of the board to allow the original permit to stand allowing the construction of a condo project to be located at Lenhart Lane. Applicant requests that Division III Permit #89-87 be declared void.

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

1. Permit #89-87 is void.
2. The Majestic at Table Rock, LLC, must file a new application with the Planning Commission in order to proceed with the project.
3. The Decision of Record shall be filed with the Taney County Recorder's office within 120 days or the approval shall expire.

**MINUTES**  
**TANEY COUNTY BOARD OF ADJUSTMENT**  
**WEDNESDAY, NOVEMBER 16, 2005, 7:00 P.M.**  
**ASSOCIATE CIRCUIT COURT DIVISION II COURTROOM**  
**TANEY COUNTY COURTHOUSE**

Call to Order:

Dave Clemenson called the meeting to order at 7:00 p.m. A quorum was establishment with five members present. They were: Dave Clemenson, Alan Lawson, Gary Wakefield, Tim Huddleston, and Bob Anderson. Staff present: Kurt Larsen, Bonita Kisse, Larry Rowland and Bob Paulson.

A statement explaining the meeting procedures was read and the Taney County Development Guidance Code was placed into evidence as Exhibit A, the Staff Report as Exhibit B, and the staff files, including all pertinent information, as Exhibit C, and the Taney County Board of Adjustment bylaws as Exhibit D. The State Statutes that empower and govern the Board of Adjustment were read, and the speakers sworn in.

Public Hearings:

David Gibson: a request for a variance from the 50' easement to 20' easement off Eagle Rock Road. Mr. Larsen read the staff report and presented pictures and a video of the site. Mr. Ron Herschend asked to speak first. He explained that the reason this variance was before the board was because sewer lines were going in where Mr. Gibson originally planned to build. He found other property and proceeded to build without a permit. When he realized this he contacted the County Commission, and explained to them that the property was recorded as two separate parcels. Mr. Herschend explained an emergency permit waiver was issued by the Commission because Mr. Gibson was ready to put on the roof and wanted to do so before inclement weather. He also cut back part of the structure to comply with the setback regulations when he found out that the side of the house was in violation of the setbacks. Mr. Gibson addressed the Board and stated that this house is for himself and his family and he did not violate the Code knowingly. He presented a new survey, which was done to make sure he was complying with the setbacks and found out that the structure was still in violation, so he agreed to remove more off the corner. Mr. Clemenson asked Mr. Gibson why he didn't get a permit. Mr. Gibson stated that he didn't know he needed a permit before the footings were poured, and his contractor could only do the work at a certain time. Mr. Larsen explained why a 50' easement was needed and what constitutes a minor subdivision. He reported

that State Statute says that property cannot be recorded with a metes and bounds description unless it is greater than 40 acres. Mr. Gibson stated that he is no longer asking for a 50' easement. The only request at this time is the setback variance. Sue Anderson, a real estate agent and neighboring property owner, addressed the Board regarding procedure inconsistency, two-acre minimum requirement, setting precedence, wastewater disposal, setback requirements, and obtaining an accurate survey. She presented a survey of her own showing the property line where the encroachment was located and stated that the pins had been moved, in her opinion. Her survey had been confirmed by two surveyors. Mr. Larsen reported that according to the sewer district an alternate system has been approved. Eastern Commissioner Danny Strahan addressed the Board regarding discussions between Mr. Gibson and the Commission. He reported that he had visited the site and viewed the survey pins in question and measured the line and came up with 8' 3" from the property line. Later on, Mr. Gibson reported to the Commission that a new survey had been done and it showed the measurements to be less than Mr. Strahan had measured and offered to cut more off his house at that time. Mr. Strahan advised him to wait until the Board could hear the variance request. He feels that Mr. Gibson had made a good effort to correct the problem. Greg Gibson, David Gibson's attorney, spoke in favor of granting the variance request and stated that Mr. Gibson is willing to do anything the Board requests. He reminded the Board that Mr. Gibson is not over the line but only too close to it, purely by accident. Jon Disleppe representing Shoji Tabuchi stated Mr. Tabuchi's position on the request. She pointed out the three violations and questioned the Board's ability to grant such requests and that the rules were created to protect all property owners of Taney County. If a central sewer project is extended to this part of the County 10' would have to come from the Tabuchi property if this variance is granted. Mr. Tabuchi made certain recommendations to the Board if they grant the variance. She presented these recommendations for the file. Elle Forte addressed the Board regarding the home she owns located in front of Mr. Gibson's house and reported that she had the two pieces of property separated. Discussion followed. Mr. Clemenson clarified the request. Mr. Huddleston asked Mr. Herschend why the house was pushed back in the location it is in. Mr. Herschend stated that it was there because that is where Mr. Gibson wanted it. Mr. Gibson stated that during hard rains the water would rise in the front of the lot and there is solid rock there. Discussion followed. Mr. Herschend addressed the sewer issue and stated that the location of the line is going into the creek bed making this a non-issue. Mr. Wakefield addressed with Mr. Gibson the reason for not obtaining a permit. Mr. Gibson stated that he poured the footers before he got the emergency permit from the County Commission. Discussion followed. Mr. Larsen stated that if Mrs. Anderson could produce the two deeds the lot split was not an issue and the only item to be considered was the side setback. Discussion followed with Mrs. Anderson reporting on the proceedings of the surveying of the property line next to the Tabuchi property. Discussion followed again regarding

the location of the house. Mr. Paulson pointed out that the State Statute says topography can be used as a hardship. Mr. Clemenson discussed with Mr. Gibson the removal of the corner of the house. Mr. Gibson asked if he could put the corner back on. Mr. Pennel clarified the County Commission actions on the emergency waiver. He reported that the County Commission warned Mr. Gibson of the risk that he would be taking in proceeding with construction. Mr. Pennel wanted the Board to understand that the Commission was not trying to do the Board's job. He stated that at that time the sub-floor and some walls were up. Mr. Clemenson stated that at this point in the meeting public comment would cease so the Board could discuss the request before making their motion. After discussion Mr. Anderson made a motion to approve a 2' 10" variance on the side allowing the corner of the house to be put back on, based upon the topography hardship with the stipulation that the survey is clarified administratively. Alan Lawson seconded. Mr. Huddleston made a statement before voting. Gary Wakefield and Mr. Clemenson voted no, making the vote three in favor and two against. The request was approved. The applicant will receive confirmation in the mail.

Bill Durrell: a request for an appeal of the Taney County Planning Commission decision of July 18, 2005, to approve a condo project located at 1162 Iowa Colony Road. Mr. Larsen read the staff report and presented pictures and a video of the site. Mr. Clemenson asked the applicant if new evidence was being presented. Mr. Steve Durrell (son of the applicant) representing Bill Durrell stated that he wanted to continue the appeal of the decision of the planning commission because in his opinion the items had not been complied with in a specific time frame. Mr. Paulson clarified that there is no time frame on compliance of the decision of record. Mr. Clemenson stated that if no new evidence could be presented he recommended the request not be heard at this meeting. Mr. Durrell asked what his recourse could be at this point. Mr. Paulson stated that if error of law could be presented the request could be heard. Discussion followed. Mr. Clemenson asked if these were the same issues presented at the Planning Commission meeting. Mr. Durrell stated that there were new issues. Mr. Clemenson asked for any concurrence from the Board. Discussion followed. This request was not heard because error of law could not be proved and no new evidence was presented.

The Majestic at Table Rock, LLC: a request for an appeal of the October 17, 2005 Taney County Planning Commission decision to deny a request for 37 more condo units at Lenhart Lane. Mr. Larsen read the staff report and presented pictures and a video of the site. Mr. Anderson stated that he knew the applicants as friends and asked both parties for any objections to his voting on the request. Mr. Clemenson and Mr. Wakefield also stated that they knew the applicants. Neither party objected to the three Board members hearing and voting on the request. The attorney for Majestic Point, Brian Wade, gave a brief

history of the project and stated that his client is in possession of a Division III Permit to build 123 condos approved by the Circuit Court. He stated that at the Planning Commission meeting the motion was made to deny based upon incompatibility. He contended that since approval had already been given for condos, incompatibility does not apply and referred to Appendix N of the Code, which states that condos are indeed compatible. An aerial map of the property was presented showing location of the property to the other structures in the area. Adding on additional 37 units would not impact the road any more than the amount of condos already approved in Mr. Wade's opinion. Referring to Appendix H, stated again that there is nothing in the Code, which supports denying this project because of incompatibility, and that State Statute says that any one can use their land as they wish as long as the use doesn't break the law. Mr. Lawson asked if the first request was the one that went to circuit court. Mr. Paulson addressed the question and reported the findings of the court. Mr. Lawson asked Mr. Paulson if this Board had the right to rule on a request a judge had already ruled on. Mr. Paulson stated that they could rule on the addition of the units, because that issue was not before the judge. Discussion followed. Gary Allman representing the Friendly Hills Property owners Assoc. addressed the Board regarding two issues presented at the Planning Commission meeting, which were nightly rentals being compatible with the residential area and the road leading to the development is the same road that leads to the residences. He stated that the circuit court ruled that the permit exists, and gave a brief history of the proceedings. Discussion followed. Mr. Allman presented an aerial map of the site and a video of Gunner Hill Road and Lenhart Lane as it opens into the project. Mr. Allman stated that it is the feeling of the Association that a new application and permit should be issued. Mr. Steve Redford owner of the property addressed the Board and stated that in his opinion the issue has been defined and is very obvious that the extra units are within the limits of the permit and regulations of the code. He stated that the rules have been followed and the issue has gone on too long, and he would like to proceed with his project. He stated that he owns the land surrounding the roads and plans to reroute Gunner Hill Road coming from St. Hwy. 265 so the access will be safer. Robert Johnson from Friendly Hills Subdivision addressed some of the concerns of the other property owners, which were traffic safety, compatibility, and other access options. Richard McCooch also a property owner, addressed the Board regarding his concerns with traffic safety because he has six children who play in the area. Discussion followed. Mr. Wade stated that his client is asking for a reversal of the Planning Commission decision to deny the additional units. He then restated the issues. Mr. Wakefield discussed the public road. Mr. Lawson asked if this project was approved before the majority of houses were built. Mr. Allman stated that some were. Discussion followed. Mr. Wakefield asked the County Commissioners if they had anything to add. Mr. Herschend stated that there is a road issue that should be considered; if it is improved, it becomes an emotional issue to the property owners because they had not planned on rerouting it. Discussion followed regarding who

maintains the road and if the county would ever accept it. Mr. Paulson clarified the statutes as they apply to this project. Mr. Clemenson asked for a motion. No one made a motion. Mr. Paulson reminded the Board that an alternative was asked for and gave the Board their options. Discussion followed. Mr. Huddleston made a motion to deny the request based upon sufficient evidence had not been presented. No second. The motion died. Discussion followed. Alan Lawson made a motion to approve based upon the letter of May 18, 2005 that there were 123 condos permitted to increase to 160 proving that the compatibility issue was not valid. Gary Wakefield seconded. Tim Huddleston voted no. The request was approved. The applicant will receive confirmation in the mail.

Old and New Business:

Staff reported on upcoming business.

Review and Action:

Bob Anderson made a motion to approve the minutes as written. Seconded by Gary Wakefield. The vote to approve was unanimous.

Adjournment:

With no other business on the agenda for November 16, 2005 a motion was made by Bob Anderson to adjourn. Seconded by Alan Lawson. The vote to adjourn was unanimous. The meeting adjourned at 10:30 p.m.