



## TANEY COUNTY PLANNING COMMISSION

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### **MINUTES TANEY COUNTY BOARD OF ADJUSTMENT WEDNESDAY, FEBRUARY 20, 2008, 7:00 P.M. ASSOCIATE CIRCUIT COURT DIVISION II COURTROOM TANEY COUNTY COURTHOUSE**

#### Call to Order:

Chairman Dave Clemenson called the meeting to order at 7:00 p.m. A quorum was established with four members present. They were: Dave Clemenson, Bob Anderson, Carl Pride, and Bob Anderson. Staff present: Eddie Coxie, Bonita Kisse, Marla Pierce, Keith Crawford, Dan Nosalek, 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. Mr. Clemenson swore each speaker in before their respective hearings.

#### Public Hearing:

Bob Mabe: a request for an appeal of the Taney County Planning Commission decision to deny approval to operate a bed and breakfast from a residential structure located at 211 Parkside Dr. Mr. Coxie read the staff report and presented pictures and a video of the site. Mr. Clemenson reported that this request was deferred from the hearing January 16, 2008 meeting because there were only three Board members present. The applicant chose to postpone until this meeting. There were four people signed up to speak. Jeremy Mabe represented his father Bob. Tim Davis attorney for the Mabe's addressed the Board and reported that in his opinion this request meets all requirements of the Development Code and reported the Jeremy Mabe now lives in this structure. Mr. Davis explained the parking situation and that it meets County requirements, and proceeded to quote case law. He discussed the restrictions on the property and stated that these refer mostly to architectural requirements. This structure applies to these, in Mr. Davis's opinion and he stated that just because the neighbors do not approve of this request, does not mean it should be denied, and makes the request of the neighbors arbitrary and capricious. Mr. Mabe addressed the Board and presented a map of Poverty Point showing the physical proximity and the other business in the area. He gave a history of the project and how they came to own this home and why he lives there now. The new evidence presented this meeting was that the first time a nightly rental was

applied for and denied by the Commission the second request, an employee was hired to live there to operate a bed and breakfast, and now Mr. Mabe lives there and will be able to oversee the operation. Mr. Clemenson clarified the request with Mr. Mabe who reported that at first they operated a nightly rental without a permit, claiming not to know they needed a permit, then continued to operate without accepting payment. Mr. Paulson discussed that Mr. Mabe owns two residences, and if Mr. Mabe keeps this one as his primary residence. Mr. Paulson asked if this residence was ADA compliant. Mr. Mabe answered that at this time it isn't, but will not be a problem to make it comply. Mr. Paulson asked Mr. Mabe if his insurance agent or the Assessor's office were aware that this property was being used as commercial. Mr. Mabe answered that they do not. Mr. Anderson discussed how the Code applies to this request. Five bedrooms or more fall under the State Lodging law which this request does not apply. The attorney for the property owners Mr. Richard Walters, addressed the Board and discussed the restrictive covenants for the subdivision. Chapter 1 paragraph 10 of the Code in his opinion abrogated the restrictive covenants. He discussed the abstract and stated that the covenants are not solely limited to architecture as Mr. Davis stated. He also stated that there isn't a bed and breakfast within 600' of this structure. The desire of the property owners was that the Board uphold the Planning Commission decision to deny. Discussion followed regarding restrictive covenants and how they are enforced. Tom Rankin who lives across the street discussed the restrictions and feels this property should also abide by the same restrictions and it should not be overlooked. He stated that there are no other bed and breakfasts in the subdivision, and reported that this property is still being advertised on the internet as nightly rental. He reported that the neighbors wished to keep this a residential neighborhood. Mr. Mabe stated that the information on the internet has not been changed because the rates are the same, and he didn't think it would matter to leave it on there. He stated that if someone calls about the ad he gives them the correct information. Mr. Mabe said he didn't think he was violating any law by leaving it on the internet. Mr. Clemenson discussed traffic as the Code addresses it as it applies to bed and breakfasts. Mr. Lawson discussed establishing compatibility within 1000' and if compatibility could be established with this property. Mr. Coxie stated that Victory Resort and Rocklane Resort were prior non-conforming uses and could not be used to establish compatibility. Mr. Clemenson called the public input to a close and asked for further discussion from the Board or a motion. Mr. Anderson discussed the new evidence presented this meeting that Planning Commission did not hear. Mr. Coxie reported that the Planning Commission denied because of the requirement of a person living onsite. Mr. Anderson asked Mr. Mabe what would keep him from moving to his other house and renting out rooms there. Mr. Mabe stated that there were not enough rooms. Mr. Coxie defined the difference between in-home occupations and bed and breakfasts. Discussion followed regarding if the Board should take into consideration the restrictive covenants. Mr. Pride discussed owner of record and who would benefit from this

property. Mr. Davis explained that Jeremy Mabe is beneficiary of the trust. Mr. Walters pointed out a procedural problem in his opinion that the applicant on the request was different. Discussion followed. Mr. Coxie reported that Bob Mabe signed the application as applicant and referenced Jeremy Mabe as his son and representative. Mr. Anderson made a motion to overturn the Planning Commission decision to deny the Bed and Breakfast. Alan Lawson seconded. The vote was one yes and three no votes to allow the Planning Commission decision to deny stand.

Old and New Business:

Mr. Coxie reported that there are no applications for next month. He also reported that there may be an application coming up regarding the height amendment. The request heard tonight may request a rehearing. Mr. Clemenson asked if the vacant position in the Planning Department had been filled. Mr. Coxie answered that it had not been filled at this time.

Review and Action:

Minutes, January 2008; with no additions or corrections a motion was made by Alan Lawson to approve the minutes as written. Seconded by Bob Anderson. The vote to approve the minutes was unanimous.

Adjournment:

With no other business on the agenda of February 19, 2008 a motion was made by Alan Lawson to adjourn. Seconded by Bob Anderson. The vote to adjourn was unanimous. The meeting adjourned at 8:10 p.m.