

MINUTES
TANEY COUNTY BOARD OF ADJUSTMENT
WEDNESDAY, AUGUST 13, 2007, 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 three members present. They were: Dave Clemenson, Tim Huddleston, and Alan Lawson. Staff present: Eddie Coxie, Bonita Kisse, Dan Nosalek, Marla Pierce, 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 explained that any applicant that wished to postpone could do so at this time until a full Board could be present in thirty days. No one chose to do so. Each speaker was sworn in before the hearing.

Public Hearings:

Westgate at Emerald Pointe: request for reconsideration from the Board's decision to deny an appeal of the Planning Commission decision to deny a request to build condominiums on property located off Emerald Point Boulevard. David Hughes representing the developer did not present any new evidence. Hearing none, a motion was made by Alan Lawson not to grant the reconsideration. Tim Huddleston seconded. The vote to deny the reconsideration was unanimous.

Billy Tsai: a request for a variance for the reduction of the front setback from Amherst Road for an existing carport. Mr. Coxie read the staff report and presented pictures, a video of the site, and reminded the Board that a new survey had been requested showing the road easement. Mr. Tsai did not present this survey. He addressed the Board and stated the reason for the request, and that he would remove the side of the carport to comply with the requirement, but would like to leave the rest of the carport intact. In order to do this, would need a variance from the front. He presented a hand drawn approximation of where the road easement was in his opinion. The road is very narrow. Mr. Tsai also reminded the Board that everyone on Amherst Road has built within the

setback. Mr. Clemenson stated that the Board cannot allow a variance when a structure has been built over the survey post showing the road easement. Mr. Tsai stated that he could remove the roof overhang. Robert Ray whose mother lives next door voiced the same concerns as the previous meeting including, the structure being a fire hazard in his opinion. He also had issue with the fact the Mr. Tsai constructed without a permit and built too close to the property lines. The Board asked Mr. Coxie for the history of the request. Mr. Paulson stated that the Board cannot grant a variance within a county road easement. Discussion followed. Mr. Lawson explained to the applicant that unless he could produce a survey showing where the road easement is the Board could not grant a variance onto County property. Mr. Lawson then made a motion to deny the request. Tim Huddleston seconded. The vote to deny was unanimous. Mr. Clemenson reminded the applicant what he could do to appeal this decision and stated that a letter would be sent from the department.

David Hover: a request for an appeal of the Taney County Planning Commission decision to deny a request to construct 23 additional units with parking located at 1685 Lakeshore Dr. Mr. Coxie read the staff report and presented pictures and a video of the site. Mr. Clemenson gave the history of the request. Brian Wade representing the developer presented some exhibits as evidence. Mr. Wade discussed Exhibit C first, stating the reasons for denial were valid and why. He presented a traffic study and pointed out that the staff report stated that the traffic created would not duly impact the existing road. Mr. Wade pointed out what the Code says within the point system about traffic. He brought to the Board's attention that Mr. Staples who sits on the Planning Commission lives and works in the immediate area of this request, and reported that Mr. Staples voted and made the motion to deny this request. Mr. Paulson pointed out that Mr. Staples lives 3 miles from this property which does not reflect a conflict. Mr. Wade felt that Mr. Staples should have disqualified himself from discussion and vote. Mr. Wade finished by stating that in his opinion the addition would not unduly affect the surrounding area. Mr. Clemenson reported that Mr. Staples has lived in Cougar Trails Subdivision since the 1970's, he does not work for Kanakuk Kamp or have any interest in it, and that in the Boards opinion, there is no basis to impugn Mr. Staple's character. He also reported that Mr. Staples voted in favor of the project on the first two requests. Mr. Paulson stated that it is not the Boards obligation to prove the case. Discussion followed. Dane Siler who is a traffic engineer, did the traffic study for this area, explained how he arrived at his figures. Mr. Paulson asked Mr. Siler if he had ever testified in court. Mr. Siler had not. Further discussion followed regarding how the figures were found. Mr. Coxie discussed Exhibit 2 with Mr. Siler. John Hover who is the brother of the applicant is in charge of construction for the project addressed questions regarding time frame of completion, and stated the reason that the additional units weren't originally applied for was because they thought that part was in the flood plain and then found out it wasn't. Jerry Jeschke spoke on behalf of

Kanakuk Kamps and stated that they are the largest property owner in that area, and the third largest employer in the County. The Kamp would like the request to be denied because it would make the area too dense affecting the type of business they do. Mr. Coxie testified that the Planning Commission does hear a lot of requests for that area and that other traffic studies have been done. The Planning Commission has asked staff for a study of the location and amount of projects that have been approved in that area. In rebuttal Mr. Wade asked the Board to vote in favor of the request because of the evidence presented. Mr. Coxie reported that there would be adequate parking. Mr. Clemenson asked Mr. Hover for his opinion on why six members of the Planning Commission denied the request. Mr. Hover stated that in his opinion Mr. Staples ran the "whole show" and no one else had any questions. Mr. Lawson discussed the traffic study and the fact that 76 Hwy. wasn't rated at the intersection. After discussion, Tim Huddleston made a motion to deny the appeal based upon not enough evidence being presented to warrant overturning the request. Alan Lawson seconded. Discussion followed. Mr. Huddleston redefined the motion and based it on the same findings as the Planning Commission. The vote to deny the request was unanimous.

Jerry K. & Lynnette Bryant: a request for a variance of the reduction of the front setback from Jellystone Ave. for an addition of a loft room. The request is for an encroachment into the 25' setback area, 6' on one corner and 12' on the other. Mr. Coxie read the staff report and presented pictures and a video of the site. Mr. Coxie reminded the Board what the setbacks are and that a blanket variance exists, but that when a new structure is built will revert back to County standards. Mr. Bryant explained the request and stated that Lot 13 was not included in the blanket variance. Plans are to stay within the park standards with the new structure. Mr. Clemenson made a motion to amend the variance request to allow this property to be under the original blanket variance voiding the request. Mr. Bernard Simonson president of the homeowners association stated that the homeowners association approved of the request. Mr. Clemenson restated his motion. Tim Huddleston seconded. The vote to approve was unanimous.

Michael Randolph: a request for a variance for a deck in front of an existing house located at Jellystone and Dora Lane. The request consists of a 25' encroachment into the required 25' setback off Dora Lane. Mr. Coxie read the staff report and presented pictures and a video of the site. Mr. Randolph stated that he built the deck before obtaining a permit or survey. He offered to take down part of the deck if necessary. Mr. Coxie addressed the encroachment and reported that this property is a corner lot. Mr. Randolph presented a drawing of the site. Mr. Coxie stated that there is some space between the deck and road but that the deck still encroaches. That part of the deck could be removed. Bernard Simonson as president of the Homeowners Assoc. stated that they

support this request as 5' 5' and 10', and would like to meet with the Board for another blanket variance to include the rest of the lots. Mr. Lawson stated that 5' should be removed for the property line. Mr. Coxie stated that in his opinion there is some validity of granting the blanket variance to this property, but might not apply to the rest of the park. Discussion followed, regarding making sure each approval in the park has complied. Mr. Clemenson reminded the Board that they had just denied almost the same kind of request this meeting. Discussion followed regarding overbuilding in the park. Mr. Simonson stated that he would be in favor of Mr. Bryant taking the front of the deck off or back from the road. After discussion a motion was made by Alan Lawson to allow the variance of 12 ½ feet based upon the decision of record with the exception that the applicant shall take off the front of the deck to the property line. Mr. Huddleston seconded. The vote to approve was unanimous.

Gary Smith: a request for variance from the setback requirements off Sunup Lane for an existing structure located at Ozarks Paradise Village, Oakmont Addition. Mr. Coxie read the staff report and presented pictures, a video of the site, and gave a history of the project. Mr. Smith clarified the request and stated that the structure is a workshop, or an ATV garage. He stated that the structure could be moved if necessary. Teresa Smith stated that when the permit was obtained, they found out that the structure was too close to the lateral lines, so it was moved to the current location. At the time they thought it was within the setback area. Mr. Coxie reminded that the lot is a corner lot and that the front would need to be half the front setback making the request 12'. Mrs. Smith presented a site plan showing lot dimensions. Discussion followed. Robert Hinikey representing the Board of Directors of Oakmont, explained that the covenants require 20' setback and that at some point Sunup will be finished and because of this structure a ditch cannot be done. He reported that this is a violation of the covenants and they do not support this request. Craig White another Board member supported the Boards decision against this request as well. Mr. Coxie stated that platted roads exist as streets and a replat would have to be done if this type of request was approved. Mr. Smith stated that nobody told them during construction that they were in violation. Mrs. Smith stated that her daughter in law was on the Oakmont Board at the time and saw the plans but did not know of the violation. She also presented a plat showing lots not built on and stated that the road is not well traveled. Mr. Clemenson stated that it is up to a property owner to know where their own property lines are, and asked Mr. Smith why the sewer district was involved. Mr. Smith stated that they put plumbing in the building. Mr. Coxie stated that on the application no plumbing was to be in the structure because it was supposed to be a garage. Mr. Lawson stated that the rules had obviously been broken both with the County and Oakmont, then made a motion to deny the request based on this. Dave Clemenson seconded. The vote to deny the request was unanimous. Mr. Clemenson explained to the applicant other recourses open to them.

Review and Action:

With no additions or corrections a motion was made by Alan Lawson to approve the minutes as written. Seconded by Tim Huddleston. The vote to approve the minutes was unanimous.

Old and New Business:

Mr. Clemenson reported on the workshop held with the three Boards and topics discussed. Mr. Coxie reported that a rough draft of the building height requirements and fee schedule had been presented to the Planning Commission and will be voted on at the next meeting to be sent to the County Commission for their approval.

Other discussion followed regarding the upcoming meeting.

Adjournment:

With no other business on the agenda for August 15, 2007 a motion was made by Alan Lawson to adjourn. Seconded by Tim Huddleston. The vote to adjourn was unanimous. The meeting adjourned at 9:50 p.m.