



## TANEY COUNTY PLANNING COMMISSION

P. O. Box 383 • Forsyth, Missouri 65653

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

website: [www.taneycounty.org](http://www.taneycounty.org)

### AGENDA

#### **TANEY COUNTY BOARD OF ADJUSTMENT WEDNESDAY, JULY 18, 2012, 7:00 P.M. COUNTY COMMISSION HEARING ROOM TANEY COUNTY COURTHOUSE**

##### Call to Order:

*Establishment of Quorum*

*Explanation of Public Hearing Procedures*

*Presentation of Exhibits*

*Governing Statutes*

##### Request for Reconsideration:

*Todd Shuler*

##### Public Hearing:

*Meyer Land Development Co., LLC*

##### Review and Action:

*Minutes, June 2012*

##### Old and New Business:

*Tentative*

##### Adjournment.

## Bob Atchley

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**From:** Bob Atchley  
**Sent:** Wednesday, June 27, 2012 9:21 AM  
**To:** 'trshuler@suddenlink.net'  
**Subject:** RE: Requested Information - Board of Adjustment

Dear Mr. Shuler,

I will consider this e-mail to be your request for a reconsideration / rehearing of the Board of Adjustment denial of your variance request, which I received within seven (7) days of the posting of the Board's decision. Please note that the Board of Adjustment Bylaws require 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."

At the July 18, 2012 Board of Adjustment Public Hearing the Board will make the decision to either grant or not grant your request for reconsideration / rehearing. You and/or your legal council will have the opportunity to present new evidence demonstrating substantial injustice would result as a refusal to grant the reconsideration request and/or new evidence that was not in existence at the time of the original hearing. The Board will make the decision at the hearing to either grant or not grant your request. If the Board makes the decision at the July 18th Hearing to grant your request, the Board shall direct the 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 August 15, 2012. If you are severally aggrieved by the decision of the Board of Adjustment you may be appeal that decision to the Taney County Circuit Court. 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 exhibits at least ten (10) days in advance of the July 18th Hearing. This will enable the staff to place the new evidence within the Board of Adjustment packets.

Please feel free to contact our office with any additional questions or concerns. I sincerely appreciate your continued time, patience and assistance.

Thanks Again,

Bob Atchley  
Taney County Planning Administrator  
P.O. Box 383  
207 David Street  
Forsyth, MO 65653

Phone: (417) 546-7225  
Fax: (417) 546-6861

-----Original Message-----

From: [trshuler@suddenlink.net](mailto:trshuler@suddenlink.net) [<mailto:trshuler@suddenlink.net>]

Sent: Tuesday, June 26, 2012 5:27 PM  
To: Bob Atchley  
Subject: Re: Requested Information - Board of Adjustment

Dear Bob Atchley, I am requesting a revote with my attorney Thomas Motley. He is out of town. I am doing my best to meet the deadline. But I am leaving for Boston on a personal matter not paid for by me.

Please give me an extension of an extra 7 days You can call my cell at 417-337-3169 Thank you  
Todd Shuler

----- Bob Atchley <[boba@co.taney.mo.us](mailto:boba@co.taney.mo.us)> wrote:

> Hello Todd,

>

> The three members of the Board of Adjustment (BOA) who were in attendance at the June 20, 2012 BOA Public Hearing were (Chairman) David Clemenson, Bob Hanzelon and Mark Weisz.

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> Please note that the June 20, 2012 BOA Public Hearing minutes will not become official until accepted by the Board at the July 18, 2012 BOA Public Hearing. However, each of the BOA Public Hearings are both broadcast live and recorded via the Taney County website. I have created a link below to the recording of the June 20, 2012 BOA Public Hearing below:

> [mms://www.taneycounty.org/2012\\_06\\_20\\_19\\_00\\_BOA\\_Meeting](mms://www.taneycounty.org/2012_06_20_19_00_BOA_Meeting)

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> Please feel free to contact our office with any additional questions or concerns. I sincerely appreciate your continued time, patience and assistance.

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> Thanks Again,

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> Bob Atchley

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> Administrator

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> Taney County Planning Commission

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## TANEY COUNTY BOARD OF ADJUSTMENT VARIANCE STAFF REPORT

**HEARING DATE:** July 18, 2012

**CASE NUMBER:** 2012-0003V

**APPLICANT:** Meyer Land Development Company & Myer Land, LLC

**LOCATION:** The subject property is a portion of the Whisper Cove Subdivision located predominantly on Blue Lake Drive and Splendor View Road off of Santa Fe which adjoins State Highway 265; Branson Township; Section 10, Township 22, Range 22.

**REQUEST:** The applicant, the Myer Land Development Company & Myer Land, LLC is requesting a right-of-way width variance from the provisions of Section 5 (Subdivision of Land) of the Taney County Development Guidance Code in order to allow for 20 foot wide right-of-ways on all streets within Whisper Cover subdivision that are maintained by the Property Owners Association (All of the land area except parcel 8 as approved on the enclosed master plan). The applicant is also requesting a variance from Section 9, Table 1 (Property Line Setbacks) of the Development Guidance Code concerning front and side lot setbacks in order to make an allowance for a 20 foot front lot setback and a 5 foot side lot setback in the parcels approved for both the existing townhomes and the townhomes yet to be constructed (Parcels 4, 5, 6 & 7 as approved on the enclosed master plan).

### **BACKGROUND and SITE HISTORY:**

The subject property is the Whisper Cove subdivision which was approved by the Planning Commission via Division III Permit # 2006-0026. This Division III Decision of Record authorized the development of 56 acres, which was to consist of 12 estate lots, 130 townhomes, 192 condo units, dry dock storage, a chapel and clubhouse.

At this time two townhome buildings (4 townhome units) have been constructed. Currently, utilities are in place for 32 additional townhome buildings (64 townhome units), with roads being complete for 19 additional buildings (38 townhome units).

The 12 estate lots were previously platted and filed with the Taney County Recorder of Deeds office on September 21, 2007 (Parcel 8 as indicated on the enclosed master plan).

For a number of years, per the provisions of the Taney County Development Guidance Code duplexes (townhomes) were only allowed by the Planning Commission in instances where each unit was held in a condominium style of ownership, with all of the common elements being owned and maintained by a condominium association. On March 15, 2012 the Taney County Commission



approved a series of amendments to the Development Guidance Code defining the term duplex and allowing duplex units to be held in whole ownership, so long as all of the adopted requirements are adhered to.

### **GENERAL DESCRIPTION:**

The applicant, the Myer Land Development Company & Myer Land, LLC is requesting a 30 foot road right-of-way width variance from the provisions of Section 5 (Subdivision of Land) of the Taney County Development Guidance Code in order to allow for 20 foot wide right-of-ways on all streets within the Whisper Cove subdivision, with the exception of the road right-of-way serving the 12 estate lots which were already platted and filed with the Recorder of Deeds on September 21, 2007 (Parcel 8 as indicated on the enclosed master plan).

The applicant is also requesting a 5 foot front lot variance from Section 9, Table 1 (Property Line Setbacks) in order to make an allowance for a 20 foot front lot setback. Finally the applicant is requesting a 2 foot side lot variance in order to allow for a 5 foot side lot setback in the parcels approved for both the existing townhomes and the future townhome buildings yet to be constructed (Parcels 4, 5, 6 & 7 as approved in the enclosed master plan).

### **REVIEW:**

In Taney County it has been generally accepted practice to allow for the plating of a condominium style ownership development served by easements that are less than 50 feet in width and buildings that do not meet the minimum setback requirements of the Development Guidance Code because each of the lots is held by the condominium association as common property. The applicant has requested road right-of-way width and front & side lot setback variances in order to allow for the plating and recording of the townhome (duplex) portions of the Whisper Cove subdivision as a whole ownership development. The granting of the right-of-way width and setback variances will not change the original Division III approval.

The topography and the existing installed utilities and infrastructure would preclude changes to the subdivision layout.

### **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 30 foot right-of-way variance from Section 5 (Subdivision of Land) of the Taney County Development Guidance Code allowing for 20 foot road right-of-ways for all of the Whisper Cover Subdivision other than that road right-of-way which was previously platted and recorded at Book J Page 586.
2. Approval of a 5 foot front lot setback variance and 2 foot side lot setback variance from Section 9, Table 1 (Property Line Setbacks) of the Taney County Development Guidance Code allowing for a 20 foot front lot setback and a 5 foot side lot setback for the townhomes (duplexes) currently constructed and also to be constructed within Parcels 4, 5, 6 & 7 as approved on the submitted master plan.
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).





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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

6/19/2012

Myer Land LLC

Applicant

Myer Land Development Co

Phone

417-339-4024

Address, City, State, Zip

203 A. South Wildwood, Branson, MO 65616

Representative

Gail Myer

Phone

417-335-0638

Owner of Record

Myer Land Development Co

Signature:

Gail Myer

Name of Project:

Whisper Cove

Section of Code Protested: (office entry)

Section 5 - Concerning 50' ROW and Section 9, Table

Address and Location of site:

On site office is 231

Santa Fe, Branson, 65616, Property is West of Hwy 265

Subdivision (if applicable)

Section 10

Township 22

Range 22

Number of Acres or Sq. Ft.

≈ 57.29 Total

X Parcel Number

18-2.0-10-002-001-006.000 = 18.19 AC

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

Yes

X

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.

Request for Variance for Whisper Cove, Taney County, Owned by Myer Land Development Company.

The variance request is for

1. The allowance of 20 ft right of way on all streets maintained by POA. (All area except parcel 8 as approved on the master plan)
2. The allowance of 20 ft front yard setback (Parcels 4, 5, 6, 7 as approved on the master plan)
3. The allowance of 5 ft side yard setback (Parcels 4, 5, 6, 7 as approved on the master plan)

Reason for the request:

The request is being made because of exceptional topography, which results in peculiar and exceptional difficulty and results in undue hardship. It is desired that the area would develop consistently and in harmony with design and facility.

Applicability:

Relief can be granted without detriment to the public good and without impairing the intent, purpose and integrity of the zone plan as embodied in the zoning regulations and map. **There would be no change in the original Division III approval of the master plan by granting these variances. It is a property ownership rights change that dictates this request. The original Division III approval Decision of Record is dated May 15, 2006 and approves 12 estate lots, 130 duplex townhomes, 192 condo units, dry dock storage, chapel, and a clubhouse.**

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Background:

Whisper Cove was master planned as a multi-faceted lake development by Bill Yung and Associates of Branson. Most of the original land mass, approximately 43 acres of the original 57 acres is planned for multi family residential use. This land mass is owned in part by two entities Myer Land Development Company, and Myer Land LLC. The plan has been accepted and approved by Taney County. A substantial portion of the land has been approved for duplex townhome condominium ownership (Parcels 4, 5, 6, 7 as approved on the master plan). This portion is owned by Myer Land Development Company and is the subject of requests 2 and 3 above. Although, It was always hoped that the duplexes could be whole ownership, this ownership possibility was not available at the beginning of the development process. Recently, Taney County has put into place Development Code Guidance that would allow for whole ownership of each side of a duplex. However, this change in ownership would require setback and right of way dimensions that are not achievable due to topography and installed infrastructure. **The topography of the**



**land is similar to the shape of a tortoise shell. The master plan was designed to take into account lake views and minimizes the steepness of the roadways. The slope of the property dictates narrower, longer lots and narrower roadways in order to accomplish the project.**

Currently, two of the duplexes have been constructed and utilities are in place for 32 more duplexes. Roads are complete for 19 duplexes.

Summary of reason to approve the variance:

1. These requests satisfy allowable criteria for a variance request as stated in Missouri statute chapter 64 section 64.870.
  2. Topography, existing installed utilities and infrastructure would preclude changes that would result in a hardship if changes were required.
  3. The Whisper Cove master plan has already been approved by Taney County. There would be no changes to the plan. This is a change of ownership (from condominium to whole ownership) and property rights issue.
  4. The duplex townhome development area, in total, substantially exceeds the required lot size and area required for the density of the master plan under whole-ownership guidelines. The current master plan provides an average of 8800 sq ft of area per unit or 17600 sq ft per duplex.
  5. Taney County has had a side setback guidance change. They have changed from using a foundation to property line measurement, to an overhang to property line measurement. All of our planning and existing work has used and assumed the *foundation to property line measurement* previously used and dictated by topography.
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### **MINUTES TANEY COUNTY BOARD OF ADJUSTMENT WEDNESDAY, JUNE 20, 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 three members present. They were, Dave Clemenson, Bob Hanzelon, 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 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.

Mr. Clemenson informed the applicant that since there were only three members present, he has the option to postpone until next month when a full Board is present. The applicant chose to proceed.

The Chairman swore in Mr. and Mrs. Schuler to speak, before the hearing.

#### Public Hearing:

Todd Schuler: a request for a variance from the provisions of Section 5.1 and 5.3 of the Development Guidance Code concerning minimum lot size, in order to divide one parcel into two, located at 330 Longcreek Road, Ridgedale. Mr. Atchley read the staff report and presented pictures, maps and a video of the site. Mr. Schuler explained where the proposed lot line would be. Mr. Hanzelon asked how the driveway would be kept private. A secondary driveway is proposed for the other property. The applicant stated that the reason for splitting off the parcel is to pay off his property. A septic system would be installed on the other property. Mr. Clemenson asked Mr. Schuler to explain if in his opinion, was a grant of a privilege according to the rules of the development code, and Missouri Revised Statutes. Mr. Schuler answered that to approve the variance do would benefit the neighborhood, in his opinion. Mr. Weisz pointed out that most of the lots in the neighborhood are small lots and are on individual septic systems. Mr. Atchley stated that there are some lots to the north that



are smaller because they are served by a community wastewater system. Discussion followed regarding a small discrepancy between the survey and the County GIS system. Mr. Weisz stated that he would go with the surveyors work, and asked if a hardship would be created and asked Mr. Schuler to explain. He stated that with this market it has been hard to sell the home, and at the same time he doesn't have a job and needs the income. Mr. Weisz pointed out that if the soil did not percolate a septic system could not be installed. Mr. Schuler discussed a type of septic system called a peat moss system, which he is proposing for this site. Mr. Clemenson stated that this property was purchased eleven years ago and should be just as easy to sell now with all the land intact. Mr. Schuler stated that in his research, homeowners do not want bigger acre lots. This property has been on the market for 10 months. Mrs. Schuler stated that everyone that has looked at the property have not wanted the extra land and that it would sell for just as much or more money than it would otherwise. They want to make as much money as they can. After discussion, a motion was made by Bob Hanzelon to deny the request for a variance. Mr. Clemenson seconded. The vote to deny the request was two in favor of denial and one vote to approve the request. The request for variance was not granted. The applicant was informed how to proceed from this point.

#### Review and Action:

Minutes, February 15, 2012: with no additions or corrections a motion was made by Bob Hanzelon to approve the minutes as written. Seconded by Mark Weisz. The vote to approve was unanimous.

#### Old and New Business:

Mr. Atchley asked the Board if they wanted to change the meeting time. Discussion followed and everyone was in agreement to leave the time at 7:00 p.m.

Mr. Atchley reported that July's Board of Adjustment meeting there will be one request and he will not be present for the meeting. Scott Starrett will be standing in for him.

Mr. Weisz discussed having alternate members to fill in to make sure there is always a quorum, and if staff could research this. Mr. Atchley stated that he is aware of other areas that do this.

#### Adjournment:

With no other business on the agenda for June 20, 2012 the meeting adjourned at 7:40 p.m.