

PLANNING AND ZONING BOA – FEBRUARY 2006 PACKET

AGENDA  
TANEY COUNTY BOARD OF ADJUSTMENT  
WEDNESDAY, FEBRUARY 15, 2006, 7:00 P.M.  
ASSOCIATE CIRCUIT COURT DIVISION II COURROOM  
TANEY COUNTY COURTHOUSE

Call to Order:

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

Public Hearing:

*Melvin and Cheryl Hodde*

Review and Action:

*Minutes, January 2006*

Adjournment.

**TANEY COUNTY BOARD OF ADJUSTMENT**  
***STAFF REPORT***  
***MELVIN AND CHERYL HODDE***  
***CASE #06-1***

Public Hearing for Melvin and Cheryl Hodde, located at 170 Alexander Ave., in the Scott Township, Sec. 28 Twp. 23 Rng. 21.

The applicant's request a variance from the cul de sac requirement of the Decision of Record for Long Estates.

History: Denied by the Planning Commission July 19, 2004, and approved by the Board of Adjustment August 18, 2004.

General Description: The subject property contains 2.86 acres and is located off Lakeshore Dr. a 19' paved surface to Alexander Ave. an 18' gravel surface. The adjoining properties to the development consist of residential and commercial. A single-family dwelling is built on the site of the required cul de sac.

Review: The variance request will consist of the removal of the cul de sac requirement and replacement of a hammerhead at the site.

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

1. Variance is for the placement of a hammerhead instead of a cul de sac at the end of Alexander Ave.
2. Compliance letter from the Fire District.
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, DECEMBER 21, 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 established with four members present. They were: Dave Clemenson, 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. The speakers sworn in before each case was heard.

Public Hearings:

Horizon Hills LLC: a request by Jon Field for a variance for the reduction of the front setback requirements in the amount of 8' on Lots 309 through 313 Phase 8A, and Lots 230 through 238 Phase 8B of Horizon Hills Subdivision. Only Mr. Field signed up to speak, who presented a drawing of the topography of the land and explained the reason for the request being that the back of the property drops off significantly which does not leave room for meeting the front setback. These are not the only lots to be developed within the subdivision. Some fill has been put in, but more fill will have to be added. There is more than an 8' drop off in the back. Mr. Field stated that it is not feasible for him to build a 20' wide home. Mr. Clemenson asked if two lots could be combined. Mr. Field stated that doing so would cause a negative financial situation for him. There are other lots in the subdivision, which have been built on and have not needed variances. Mr. Paulson pointed out the state statute that discusses grant of a privilege. Mr. Field stated that if he can't build on these lots, no profit will be made on the subdivision. Discussion followed. Mr. Clemenson asked for a motion. Gary Wakefield made a motion to approve the variance based upon the decision of record. Bob Anderson seconded. Discussion followed. Tim Huddleston and Dave Clemenson voted no. The request was denied.

Friendly Hills Property Owners, Inc.: a request by Friendly Hills Property Owners Assoc. represented by Gary Allman for an appeal of the Taney County

Planning Commission Permit #89-87 to allow Majestic Point to amend or enlarge their existing permit to increase the density of the project located on Lenhart Road. Gary Allman presented the case for the property owners and an exhibit. He stated that since no extensions had been applied for until 2001 the permit should be void. The circuit court of appeals ruled that the permit was indeed good on that date, but not that the permit was good forever, in Mr. Allman's opinion. He continued to make a point that the rule in question was in the code in 1988 before the original permit was issued. Brian Wade representing Majestic Point presented the opposite side and a transcript of the Circuit Court hearing for each of the Board members. He pointed out the portion of the meeting where Administrator Tony Wasson stated that he had drafted the amendment to the code for a one-year expiration on a permit. Mr. Wade read a portion from the State Statutes, which states that a permit cannot be retroactive. He reported that all of the Boards found that the 1989 permit was valid, and further stated that it would be inappropriate to reconsider their previous decision. Mr. Wade stated that in his opinion the appeal was not applied for in the appropriate amount of time that the code requires. Kendall McPhail who represented Majestic Point before the commission and circuit court gave a brief history of what transpired in the case. He stated that at no time did the applicant ask for an extension after 1993. He stated that Greg Smith, Planning Administrator in 2001 issued an extension without asking the applicant's permission. The applicant felt that an extension was not necessary because of the circuit court decision. Mr. McPhail stated that this debate has been going on for 12 years, and should finally be put to rest. Mr. Allman gave a brief rebuttal and stated that the rule regarding the one-year extension did not work backwards and grandfathering is not forever. Mr. McCooch who lives within 600' of this property made some statements regarding the history of the project. After public statements were made Mr. Clemenson asked the Board for discussion. Bob Anderson made a motion to deny the appeal Case #05-21. Dave Clemenson seconded. The vote to deny was unanimous. Mr. Clemenson stated what the applicant's options are.

Friendly Hills Property Owners Assoc.: a request by Friendly Hills represented by Gary Allman for a reconsideration of the decision of the Board of Adjustment November 16, 2005 to allow the Majestic at Table Rock, LLC to construct additional condo units on property located off Lenhart Lane. Mr. Larsen read the staff report. Mr. Allman asked if the Board wanted to hear the request now or at the next meeting. Mr. Clemenson stated that if he could present substantial injustice the Board would hear the request. Discussion followed. Mr. Clemenson polled the Board if they wanted to hear this request. Mr. Paulson explained that Mr. Allman should prove injustice. Mr. Allman proceeded to discuss his thoughts on how an injustice was done. He pointed out that in his opinion the Planning Commission did not use the required policy checklist when they approved the 37 units, which is contrary to the Code. Mr. Clemenson stated that the request did not exceed the requirements of the code and does not

restrict the project in that capacity. Discussion followed regarding basis of approval by the Planning Commission. Discussion followed with Mr. Clemenson polling the Board members if they wanted to rehear the request. Bob Anderson, Gary Wakefield, and Dave Clemenson voted no. Tim Huddleston voted yes. The request for reconsideration was denied.

Rick Snyder, The Village at Hillhaven: a request by Mr. Snyder for an appeal of the Taney County Planning Commission decision of November 21, 2005 to deny construction of 18 cottages located at 1828 Hillhaven Road. Bob Paulson read the staff report. A video and pictures of the property were presented. All persons to speak identified themselves for the record. Harry Styron, attorney for Mr. Snyder asked Mr. Larsen if he normally follows the policy structure as set forth in the Code. Mr. Larsen stated that the staff does not, because it was not used when he came on staff. Mr. Styron copied and handed out Chapter III of the development code, which states that if the proposed development does not comply, shall be denied and if it does shall be approved. Mr. Clemenson asked Mr. Styron if he would direct the questions to the Board rather than questioning the staff. Mr. Styron stated that the Bylaws allows this type of questioning. He then continued questioning Mr. Larsen regarding the policy checklist. Mr. Paulson interjected by stating that it was not Mr. Larsen who made the decision but the Planning Commission. Discussion followed. Mr. Styron stated that this decision was not made based upon the code, then referred to the portion of the code that applies to the Board of Adjustment. Mr. Larsen reported that the Planning Commission had been polled, and that they were aware of the appeal. Mr. Styron went through the policy checklist with Mr. Snyder who answered each of the questions, proving in Mr. Styron's opinion that his request was in compliance with the requirements of the code. Discussion followed. Mr. Styron presented a copy of the state statute which addressed condominium forms of ownership and that a difference should not be made. He discussed this issue, and stated that the project would not be very visible from Hillhaven Subdivision in his opinion. In closing Mr. Styron stated that because the staff did not apply the rules to the project, the applicant was unjustly denied. Mr. Snyder stated that his project would not be nightly rentals.

Don Ingram representing the property owners of Hillhaven addressed some of the issues that Mr. Styron raised. He presented an exhibit and pointed out page two, then a copy of the plat presented to the Planning Commission, which had been changed for them. He referred to the Planning Commission Decision of Record, and Minutes, and stated that Mr. Snyder had not given the Planning Department any paperwork addressing that he planned to comply with the requirements. Mr. Paulson asked Mr. Ingram, if in his opinion, was Mr. Snyder presenting a different project to this Board other than the one he presented to this Board. Mr. Ingram stated that he did. He presented two exhibits in the form of aerial photos of Hillhaven and then one of Hillhaven and Emerald Pointe. He

discussed condominium requirements, land use changes, compatibility to rural residential, and stated that the request would not fall under any of the reasons given in the state statutes for being granted an appeal by the Board. He presented an aerial of Pointe Royale and stated that this kind of density is what the property owners hoped to avoid. Mr. Paulson interjected that this is physically identical to a subdivision, and Mr. Ingrum had previously stated that it meets subdivision guidelines. Mr. Ingrum stated that the burden of proof was upon the developer. Ron Herschend representing the Taney County Sewer District addressed the issue of density, and stated that a 2-acre minimum has been adopted to prevent high-density developments, and this would be in violation of the package-plant requirements as set forth by DNR. In Mr. Herschend's opinion, approving this request would be working against what the sewer district is trying to do in protecting the water quality. Mr. Styron rebutted the previous statements made by Mr. Ingrum and Mr. Herschend. He stated that the planned wastewater treatment for the project has been approved by DNR. He stated that comments made by his client and Eddie Wolfe regarding the project being condominiums, were in error, they actually meant multi-family, or planned unit developments. Discussion followed. Chanell Long a property owner in Hillhaven, clarified a point made previously and stated that this request is integrated within the subdivision, which in her opinion is not compatible. Frank Manzie another Hillhaven property owner stated that the request is too dense for the amount of land. Don Long commented that 65% of 4 ½ is 1.6 acres remaining for a vegetative buffer, in his opinion contrary to Mr. Styron's previous calculations. Bonnie Kingsley had a concern about whether the applicant was planning multi family, rentals, or single family and there is discrepancy in his comments. Mr. Snyder disputed this comment and reported the facts of his request. Mr. Clemenson asked for comments from the Board. Mr. Wakefield stated that in his opinion the project had changed from when it was first presented. Tim Huddleston made a motion to deny the appeal based upon substantial evidence presented by the Planning Commission. Bob Anderson seconded. The vote to deny was unanimous. Mr. Clemenson explained the next step to the applicant.

Lance Long, Woodbridge Estates: a request by Mr. Long for a variance from the curb and gutter requirement placed on the Planning Commission's decision of record dated December 20, 2004. The property is located on Jasmine Dr. The staff report was read by Mr. Larsen, who presented pictures and a video of the site. Mr. Larsen reported that there is no curb and gutter on any of the streets leading up to this subdivision. Kevin Fry on behalf of Woodbridge Estates LLC presented exhibits and discussed them with the Board. He stated that in the beginning of the project the most density was at the back of the development, then at the direction of Greg Smith changed that density to be more even, and an additional access is being provided off Lakeshore Dr. The density has been lessened as well. The developer plans to ask the County to accept the roads. Mr.

Long addressed the change of the decision of record and the fact that it had been recorded before the change was made by Greg Smith. He explained to the Board why he wants to eliminate curb and gutter. Reason one being that the topography would force the water to travel down the road and hold it there too long, instead of letting it filter down like it would normally without curb and gutter. The second reason being that it wouldn't look right, having curb and gutter on one road and not on the others. Aesthetics, water flow, were the reasons for the request. Mr. Clemenson stated that curb and gutter is not an absolute policy and not required. Mr. Herschend stated that from the County standpoint, it does not matter if there is curb and gutter. Discussion followed by the Board regarding curb and gutter being detrimental to the subdivision. Mr. Clemenson asked for a motion. Gary Wakefield made a motion to approve the variance to remove the curb and gutter as a requirement of the decision of record by the Planning Commission. Bob Anderson seconded. The vote to approve was unanimous.

Review and Action:

Minutes, November 2005: with no additions or correction a motion was made by Bob Anderson to approve the minutes as written. Seconded by Tim Huddleston. The vote to approve the minutes was unanimous.

Old and New Business:

No discussion.

Adjournment:

With no other business on the agenda for December 20, 2005 Mr. Clemenson adjourned the meeting.