



TANEY COUNTY PLANNING COMMISSION

P. O. Box 383 • Forsyth, Missouri 65653
Phone: 417 546-7225 / 7226 • Fax: 417 546-6861
website: www.taneycounty.org

TANEY COUNTY BOARD OF ADJUSTMENT

STAFF REPORT

JONI GLESSNER

#07-6

OCTOBER 17, 2007

Public Hearing for Joni Glessner located at 588 Crestview Dr. Ridgedale Missouri in the Scott Township Sec. 2 Twp. 21 Rng. 22.

The applicant requests an appeal of the Taney County Planning Commission decision of June 18, 2007 to approve a permit to Big Cedar Wilderness club to construct condominiums.

History: The Planning Commission approved the request by Big Cedar Wilderness Club to place a condominium project at the corner of Crestview and McMeen Roads in the Oakmont Subdivision.

General Description: The project consists of a three story 18 unit lodge building and 4 cabins on land adjacent to the resort consisting of up to 300 units. The adjoining properties to the development consist of single family residential and the Big Cedar Resort.

Review: The appeal is for the permit to be denied and the Planning Commission decision to approve overturned.

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

1. Permit #07-20 revoked.
2. The Decision of Record shall be filed with the Taney County Recorder's Office within 120 days or the approval shall expire (Chapter II Item 6).

Oct. 17, 2007

07-6

**TANEY COUNTY BOARD OF ADJUSTMENT
APPLICATION and AFFIDAVIT
FOR VARIANCE OR APPEAL**

(Circle one)

Variance (\$25.00) Appeal (\$75.00)

PLEASE PRINT

Applicant Joni Glessner Phone 417-335-0352
Address, City, State, Zip 588 Crestview Dr. Ridgedale, MO. 65739
Representative _____ Phone _____
Owner of Record Joni Glessner Signature: Joni Glessner
Name of Project: Big Cedar Wilderness Club
Section of Code Protested: (office entry) Chap. II pg. 5 & 13, Chap. VI pg. 42, Sec. III
Address and Location of site: Crestview & McMeen
19-1.0-11-001-010-002.000 / 19-1.0-02-004-015-003.000
19-1.0-02-004-018-001.000 / 19-1.0-02-004-015-001.000
19-1.0-02-004-015-004.000
Subdivision (if applicable) OAKMONT
Section 02 Township 21 Range 32 Number of Acres or Sq. Ft. 4.47
Parcel Number _____

Does the property lie in the 100-year floodplain? (Circle one) _____ Yes _____ No.

Required Submittals:

- ☒ Typewritten legal description of property involved in the request
- ☒ Alphabetical list of all property owners within 600 feet of the request
- ☐ 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.

Describe in detail the reason for your request:

The decision of the Taney County Planning Commission (Commission) issued in this matter on June 18, 2007, including the "*TANEY COUNTY PLANNING COMMISSION, DIVISION III DECISION OF RECORD, JUNE 18, 2007, BIG CEDAR WILDERNESS CLUB, #07-20*", should be overturned and is hereby requested to be overturned and the permit request denied and permit and/or approval issued denied for reasons including but not limited to that the decision granting said permit was improper, arbitrary and capricious, not decided or issued pursuant to applicable law, and is in violation of applicable law, including the Taney County Development Guidance Code (the "Code"), the Master Plan of Taney County (the "Master Plan"), the statutes and Constitution of the State of Missouri, and other law and authority, and further including but not limited to the following reasons:

1. The project is incompatible with existing land uses (residential) and surrounding land uses (residential), and thus was improperly approved.
2. The project has a negative impact on the water supply of the community including neighboring homes and taxpayers, and thus was improperly approved.
3. The project has a negative impact on the road traffic on existing roads in the neighborhood, including neighboring homeowners and taxpayers and thus was improperly approved.
4. The project has a negative impact on quality of life and nuisance issues in the neighborhood including causing additional trash, noise and increased crime, and thus was improperly approved.
5. The project has a negative impact on the boat and other water traffic on the lake in the neighborhood, and thus was improperly approved.
6. The project has a negative impact on the property values of neighboring homes, and thus was improperly approved.
7. The project has a negative impact on the natural environment of the surrounding neighborhood, and thus was improperly approved.
8. The project has a negative impact and was improperly approved by replacing previous single family residential land use with commercial land uses.
9. This project has a negative impact and was improperly approved by replacing previously platted single family residential land uses, such uses that had been platted as residential in the Recorder's Office of Taney County, Missouri for approximately 40 years, with commercial land uses.
10. The project is in violation of existing land use covenants which were platted as residential

uses and not commercial uses for the property, and thus was improperly approved.

11. This project was improperly approved in that the property could be used for other legal uses by the developer that are more compatible with existing uses and/or the surrounding uses and the platted nature of the land (residential development for sale, or residential for employees or executives of developer).

12. This project was improperly approved in that the property could have been approved for a less severe use or lower density use that is more compatible with existing residential and neighborhood residential land uses (e.g., single family, or single cabin on single lot).

13. This project was improperly approved in that the property is not appropriate for this project in that the developer has other property more suitable for commercial use and that is not platted residential uses.

14. This project was improperly approved in that the property is not appropriate for this project as the developer has other property where this project could be placed where the other property does not border adjacent residential land uses.

15. The approval of the permit was improper for violation of the Code, Master Plan, and State Law, by not complying with the Code, Chapter I, page 1, Purposes of these Codes, Paragraph A, and the Master Plan, and State Statute Section 64.825, "to promote the health, safety, convenience, prosperity, and general welfare of its inhabitants", in that the approval fails to consider and/or promote the safety, convenience, prosperity, and general welfare of the inhabitants as required.

16. The approval of the permit was improper for violation of the Code, Master Plan, and State Law, by not complying with the Code, Chapter I, page 1, Purposes of these Codes, C., and the Master Plan, and State Statute Section 64.850, "to . . . protect property and building values", in that the approval fails to consider and/or protect property values and building values of neighboring and existing uses as required.

17. The approval of the permit was improper for violation of the Code, Master Plan, and State Law, by not complying with the Code, Chapter VI, page 43, Off-site Nuisances, in that the approval fails to consider and/or meet off-site nuisance standards as required, in that the use approved allows for noise and light to leave the project to the detriment of adjacent landowners.

18. The approval of the permit was improper for violation of the Code, Master Plan, and State Law, by not complying with the Code, Chapter VI, page 43, Compatibility Factors, Paragraph A., "Use compatibility is encouraged", in that the approval fails to consider and/or meet use compatibility standards as required, in that the use approved is incompatible with existing residential and neighboring residential uses.

19. The approval of the permit was improper for violation of the Code, Master Plan, and State Law, by not complying with the Code, Chapter VI, page 43, Compatibility Factors, Paragraph A., "Use compatibility is encouraged", in that the approval fails to consider and/or meet use compatibility standards as required, in that the approved use (as compared to the residential use existing and on adjacent property) is not within the uses that is approved to be compatible with each other in Appendix M, Page 126, or appendix N, Page 131.

20. The approval of the permit was improper for violation of the Code, Master Plan, and State Law, by not complying with the Code, Chapter VI, page 43, Compatibility Factors, Paragraph B., "Building height compatibility is encouraged", in that the approval fails to consider and/or meet compatibility standards as required, in that the building height approved is for taller buildings and thus incompatible with existing residential and neighboring residential uses.

21. The approval of the permit was improper for violation of the Code, Master Plan, and State Law by not complying with the Code, Chapter VI, page 43, Compatibility Factors, Paragraph C., "Lot coverage compatibility is encouraged", in that the approval fails to consider and/or meet compatibility standards as required, in that the lot coverage approved is more dense and thus incompatible with existing residential use and neighboring residential uses by placing multi-story, large, commercial buildings on the property.

22. The approval of the permit was improper for violation of the Code, Master Plan, and State Law, by not complying with the Code, Chapter VI, page 43, Relative Policies, Compatibility Factors, Paragraph D., "Building bulk and scale compatibility is encouraged", in that the approval fails to consider and/or meet compatibility standards as required, in that the building bulk and scale approved is larger and thus incompatible with existing and neighboring residential uses) by placing multi-story, large, commercial buildings on the property.

23. The approval of the permit was improper for violation of the Code, Master Plan, and State Law, by not complying with Code, page 46, Chapter VI, Section VI, Commercial Development, Relative Policies, 1.1. Commercial Development Patterns, "commercial development is encouraged to be clustered so as to share parking facilities and to minimize road frontage, the number of access points needed, and the number of signs required to direct attention to the development", in that the approval fails to consider and/or meet commercial development pattern standards as required, in that the project approved is not clustered with existing commercial development of developer as it could have been done to share parking facilities, minimize the road frontage, minimize the number of access points needed, and minimize the number of signs required to direct attention to the development.

24. The approval of the permit was improper for violation of the Code, Master Plan, and State Law, by not complying with the Code, Chapter VI, page 47, Section VII, Services: Capacities and Access, Relative Policies, 1. Traffic, "developments that will contribute traffic in excess of current rated capacity to a public road or highway are discouraged", in that the approval fails to properly consider and/or meet traffic standards as required, in that the project approved

contributes excessive traffic.

25. The approval of the permit was improper for the reason that it was not in conformity with nor properly issued pursuant to the procedures of the Taney County Master Plan, which per Section 64.815, RSMo. "shall promote the health, safety, convenience, prosperity and general welfare of the inhabitants" of Taney County, and per "Chapter 11" of the Master Plan, the Master Plan "... is a guide to assist decision-makers ... take actions to achieve the County's goals ... , and should be considered in daily decision-making on issues affecting the County's future"; this approval failed to consider and/or follow the Master Plan in that the decision failed to follow and implement the "Residential Land Use Goals", "Objective 1: Protect the viability of existing neighborhoods and residential areas", by not "[m]aintaining the integrity of existing residential areas", and by failing to consider and/or follow "Action 1: Ensure that incompatible non-residential uses are not located adjacent to residential areas in order to maintain the viability of existing residential neighborhoods"; said decision did not consider and/or protect the viability of the existing residential neighborhoods in that it approved incompatible commercial use.

26. The approval of the permit was improper for the reason that it was not in conformity with nor properly issued pursuant to the procedures of the Taney County Master Plan, which per Section 64.815, RSMo. "shall promote the health, safety, convenience, prosperity and general welfare of the inhabitants" of Taney County, and per "Chapter 11" of the Master Plan, the Master Plan "... is a guide to assist decision-makers ... take actions to achieve the County's goals ... , and should be considered in daily decision-making on issues affecting the County's future"; this approval failed to consider and/or follow the Master Plan in that it failed to consider and/or follow and implement the "Land Use and Growth Management Goals", and the policy specified under "Goal" by not issuing a decision that "protects the quality of life in the Taney County community", and that does not consider and/or meet "Objective 3" to "Protect and preserve rural areas from incompatible urban development", in that such decision adversely affects the health, safety, convenience, prosperity and general welfare of the neighboring homeowners in the area, by contributing noise, road traffic congestion, lake traffic congestion, water level deterioration, adverse property values, and other matters, and by converting rural areas to urban.

27. The approval of the permit was improper for the reason that it was not in conformity with nor properly issued pursuant to the procedures of the Taney County Master Plan, which per Section 64.815, RSMo. "shall promote the health, safety, convenience, prosperity and general welfare of the inhabitants" of Taney County, and per "Chapter 11" of the Master Plan, the Master Plan "... is a guide to assist decision-makers ... take actions to achieve the County's goals ... , and should be considered in daily decision-making on issues affecting the County's future"; this approval failed to consider and/or follow the Master Plan in that it failed to consider and/or follow and implement the "Commercial Land Use Goals", called for under "Goal: Promote the development of ... commercial ... uses ... that are compatible with the natural environment and adjacent land uses", and it that it failed to consider and/or follow the policy called for in "Objective 1" of requiring commercial uses to be designed "... to have a minimum impact on adjacent, lower intensity land uses", as the permit as approved allows commercial uses

incompatible with adjacent residential land uses, and that do have a negative impact on adjacent lower density residential land uses.

28. The approval of the permit was improper for the reason that it was not in conformity with nor properly issued pursuant to the procedures of the Taney County Master Plan, which per Section 64.815, RSMo. "shall promote the health, safety, convenience, prosperity and general welfare of the inhabitants" of Taney County, and per "Chapter 11" of the Master Plan, the Master Plan "... is a guide to assist decision-makers ... take actions to achieve the County's goals ... , and should be considered in daily decision-making on issues affecting the County's future"; this approval failed to consider and/or follow the Master Plan in that it failed to consider and/or follow and implement the "Commercial Land Use Goals", called for under "Goal: Promote the development of ... commercial ... uses ... that are compatible with the natural environment and adjacent land uses", and it that it failed to consider and/or follow the policy called for in "Objective 2" of requiring commercial developments to be designed "... minimize negative impacts of lights, traffic, and noise on residential properties", as the permit as approved allows commercial uses that do have a negative impact of lights, traffic, and noise on residential properties.

29. The approval of the permit was improper and invalid for the reason that it was not issued according to law, in that the Taney County Development Guidance Code, Chapter III, Page 26, "4. Step 4 - Action", allows approval of a project only if the project "... complies with each of the absolute policies, is awarded a score of zero (+/-0) rating or higher on the relative policies ... ", and as also specified in Chapter II, page 9, 48. Relative Policies; however, this project was not approved according to this procedure, in that no such approval of all absolute policies was considered and/or established, and in that no score of zero or higher was obtained on the relative policies, and the permit therefore should have been denied.

30. The approval of the permit was improper and invalid for the reason that it was not issued according to law, in that the Taney County Development Guidance Code, Chapter III, Page 26, "4. Step 4 - Action", authorizes approval of a project only if the project "... complies with each of the absolute policies, is awarded a score of zero (+/-0) rating or higher on the relative policies ... ", and as also specified in Chapter II, page 9, 48. Relative Policies; however, this project was not approved according to this procedure, in that no such approval of all absolute policies was established, and no score of zero or higher was obtained on the relative policies, and due to the failure to follow this procedure as required by law, the decision and approval was arbitrary and capricious and unlawful, in that apparently no standard for approval or denial actually applies to the decision process and result reached, or at least no standard that is determinable in advance by interested persons.

31. The approval of this permit was improper and unlawful for the reason that the decision therein is arbitrary and capricious and unlawful, in that the decision is not in conformity with similar precedent established and similar cases established and decided by the Planning Commission, wherein the same and/or similar facts and issues were presented, but the opposite

result was ordered by the Planning Commission (e.g., the Monkeys and More Exotic Animal Rescue / Donald and Bonnie Manson request, #07-41, on T Hwy., Branson), resulting in arbitrary and capricious action, especially in view of not following the procedure for the obtaining a zero or higher score on the relative policies, in that apparently no standard for approval or denial actually applies, or at least no standard that is determinable in advance by interested persons.

32. The decision is invalid in that the alleged scheme of zoning in use in Taney County, the Code, referred to as performance based zoning, was not properly applied and used, in that the internal mechanisms and procedures for the approval or denial were not properly followed, or were ignored, including but not limited to the reasons set forth elsewhere which are incorporated herein by reference, and as such, if the zoning scheme is valid on its face, it is invalid in its application and use, including in the instant case, including but not limited to being applied arbitrarily and capriciously.

33. The decision is invalid in that the alleged scheme of zoning in use in Taney County, the Code, referred to as performance based zoning, is not properly authorized by Missouri law, in that it is not traditional zoning, or sufficiently similar to traditional zoning, and thus not authorized and is therefore invalid, and the decision rendered thereunder is invalid.