

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, August 7, 2015, with Chairperson Tom Harper and members, Carol Schlueter, Mike Birkinbine, and Bill Tharp present, Martha Peterson was absent. Eric S. Furnas, Planning & Zoning Administrator and Dixie Seitz, Office Administrator was also in attendance.

Others present for this hearing: Verne Schumann and Michelle Coghill.

Tom Harper: Okay, first thing we need to do is I have an opening statement to read to you. The Zoning Board of Adjustment is a quasi-judicial board appointed by the Muscatine County Board of Supervisors. The Board's purpose is to interpret the Zoning Ordinance and to allow certain limited exceptions and variances where special conditions or hardships exist. We are an independent volunteer board of citizens and not part of the county administration. There are five members on the Board. State law requires three affirmative votes to approve any appeal under consideration, no matter how many members are present. (If fewer than five members are present, the appellant has the opportunity to have the appeal delayed until the next meeting. This request must be made prior to Board deliberation of that case.) As a Board of the County, we welcome all testimony. We make our decision based on the facts and evidence under county code, presented in open meeting. We ask that if you wish to speak, please come to the podium and give your name and address. So I will ask each applicant when their case comes up if they would like to proceed or not. We have minutes from the last meeting to approve those were all emailed to the members and should have been read. Was there any changes or corrections? Hearing none, I will accept a motion to approve the minutes as written.

Bill Tharp: I will make that motion.

Tom Harper: The motion has been made.

Carol Schlueter: I'll second it.

Tom Harper: The motion has been made and seconded to approve the minutes as written. Any questions, hearing none, all those in favor of the motion please signify by saying Aye (4) Opposed (0) Absent (Peterson). The motion is carried. Now I will turn this over to Eric Furnas.

Eric Furnas: Case #15-08-01. An application has been filed by Charles and Michelle Coghill, Record Owners. This property is located in Fulton Township, in the NE $\frac{1}{4}$  of Sec. 33-T78N-R1E, South of U.S. Hwy. 61, 3667 Hwy. 61, containing approximately 10.44 acres and is zoned A-1 Agricultural District. This request, if approved, would allow the Zoning Administrator to issue a Special Use Permit in order for Mr. & Mrs. Coghill to place a 10' x 10' logo sign for their business in front of the property, and at a later date add a 5' x 8' LED message center.

Tom Harper: Okay, is the applicant or their representative here for this request?

Michelle Coghill: I am.

Tom Harper: Okay, if you could tell us a little about your request?

Michelle Coghill: Sure, my name Michelle Coghill. My husband and I own A-1 Sign and Crane. We've been out there for a little over 13 years. We run a sign business. It's not retail where we have customers coming in. It is a place where we do a lot of advertising and we go to their business and install business signs. We'd like to put a sign out front of our place. We've grown over the last 13 years, fortunately. It's just becoming a little bit more increasingly important for people to know who we are. We do a lot of corporate signage for places such as cinemas and just about any chain

restaurant that you can think of, hotels and restaurants. We do have semi's that come two or three times a week and unload signs that are going to be installed at those businesses. They are having a little bit of a problem finding where we are located and that type of thing. That's one of the reasons why we would like to put the sign up. Another reason being, we'd like to be able to put our name out there with a phone number for people to call us. We have thousands and thousands of cars that go by of course, a lot of them locally from Muscatine to Davenport. We want people to know where we are and that we are a locally owned company and we are there for them to call with their sign needs.

Tom Harper: Eric, was there any correspondence?

Eric Furnas: Yes, we had received a letter from Mr. Schumann, you had received it in your packet and he is here today.

Tom Harper: Okay, Eric do you have anything to add?

Eric Furnas: Right, on the comments and recommendations and as a reminder, this was previously approved several years ago. The Coghill's just did not pursue the erection of that sign at that time. Being the timeframe had passed, we felt that they needed to reapply. So this is essentially the same request that you had previously approved. The sign ordinance in the A-1 Agricultural District it does provide for advertising on commercial billboards under a Special Use Permit. The seller had contacted the DOT for comments and they have obtained approval from them.

Mike Birkinbine: Is there any requirements such as size on the signs?

Eric Furnas: Our sign ordinance basically addresses smaller more private signs for churches and that type of thing. The commercial billboards, we don't have a lot of regulations on them. The maximum height is addressed in each district for the types of structures. The proposed sign that they are proposing would be allowed under the Special Use Permit under the height requirements. There is also something that states if a Special Use Permit is granted that they would need to obtain a building permit, so it would be a second set of review for the construction details, setbacks.

Mike Birkinbine: So we don't really have anything on size?

Eric Furnas: Correct.

Tom Harper: And this is zoned A-1?

Eric Furnas: It is zoned A-1. The commercial business was granted under a Variance several years ago.

Tom Harper: Okay, at this time I will open it up to the public. If there is anyone here that wishes to speak for or against this case, please state your name before you speak. I would also ask that you keep your comments brief and stay on track to the request.

Verne Schumann: Verne Schumann, Wildlife Estates Subdivision. We currently have a 4' x 6' sign which is what we have for the subdivision. We had a larger sign prior to that for the Hawkeye Raceway, which was quite large. That sign won a national contest with endorsements, recommendations from Terry Branstad's office, Iowa Tourism, Muscatine Tourism, and the DOT approved that installation. When we shut down the racetrack we asked if the county would allow us to refab it into a Wildlife Estates sign. Since it was terminated, the sign terminates with the racetrack. We were given a 4' x 6' ruling with no lighting on it. A 4' x 6' with no lighting and you are going down 65 miles per hour, it's going to have to be a big one to be able to see it. So it

might be on the small side and obviously anything that is determined today for my next door neighbor, then I am going to ask for the same thing. In the letter that I sent I did address a few other issues that are ongoing, not really to the zoning but they are going to have to be addressed down the road.

Tom Harper: Those may be valid points, but they are not pertaining to this case so please pursue those later. Anyone else here have anything to add?

Michelle Coghill: I thought your sign was lit. Do you not have ground lighting on your sign?

Verne Schumann: My current sign has no electricity to it, unless the headlights catch it going down the highway.

Michelle Coghill: Okay.

Carol Schlueter: This property that you are talking about, it's a housing addition, correct?

Verne Schumann: Correct.

Carol Schlueter: And what is that zoned?

Eric Furnas: It is zoned R-1 Residential and there is a different set of standards that applies to commercial signs.

Carol Schlueter: So that's why it's different, it's a completely different set of rules because of what it is zoned.

Eric Furnas: Correct.

Tom Harper: Any other questions, comments or concerns?

Carol Schlueter: So the size of the sign and the location has already been approved by the DOT?

Eric Furnas: Yes, I went out yesterday and approved the proposed location and it meets the setbacks and other requirements.

Tom Harper: What is the overall height going to be?

Michelle Coghill: It's going to be 27'.

Tom Harper: So a 10' x 10' on top of a 17' pole?

Carol Schlueter: Right, that's what the picture shows. And then down below it's going to be lit up sometime but not right away?

Michelle Coghill: Not right away, that is correct ma'am. The top one is what we want to put up first.

Carol Schlueter: And that will be lit too?

Michelle Coghill: Yes, yes it will. Both will be lit and from both sides.

Carol Schlueter: And that's what it's going to say, A-1 Sign and Crane?

Michelle Coghill: That is correct. The top one is basically just a logo sign telling who we are, the name of our company. The message center, which will come down the road, will just put on there some of the things that we do, you know, commercial signs, lit signs, channel letters, that type of thing.

Carol Schlueter: But it will only be for your business?

Michelle Coghill: That is correct. This is for our business alone. This is not a billboard advertising anybody else's business.

Tom Harper: So their business, since it is in an A-1 Agricultural District, are they ... does that Variance still allow them there or is it grandfathered in?

Eric Furnas: It was allowed by a Variance.

Carol Schlueter: If it is approved today, is there a time limit on how long they have to put the sign up before it's null and void?

Eric Furnas: A year.

Michelle Coghill: We will be moving forward readily with our logo sign, that will be up before the end of summer.

Carol Schlueter: But if it's not used within a year than ...?

Eric Furnas: They would have to come back and reapply.

Carol Schlueter: Okay.

Tom Harper: The LED sign, is it going to have light control on it?

Michelle Coghill: They do have light control, yes. It is preset by the factory. The end user cannot change it. It's passworded out.

Tom Harper: And we have nothing else in our ordinance for this?

Michelle Coghill: It's not going to be a lot of animation. It's going to basically just tell what we do there. So it's going to be words, channel letters, business signs, flags poles, those types of things. We are not going to be trying to put images on it. I mean, people are going 65 to 75 miles an hour down the road there, that's one of the reasons why we had to have something so that you could see it. But yet we are not going to be putting pictures up there.

Carol Schlueter: So it won't distract the drivers from the road?

Michelle Coghill: Right.

Bill Tharp: Well they will be distracted it's just what level of distraction.

Carol Schlueter: Right.

Tom Harper: Approximately how much distance between where your sign will be located and the entrance or the sign of Wildlife Estates?

Michelle Coghill: Oh wow, quite a ways. I don't know.

Tom Harper: A quarter of a mile?

Verne Schumann: Probably about 1,000 feet.

Eric Furnas: I didn't measure the distance between their driveways, I don't know.

Tom Harper: So it's not right next to it?

Eric Furnas: No.

Tom Harper: Okay, any other questions, comments, concerns? If not, is there a motion?

Mike Birkinbine: I will make a motion to approve this Special Use Permit for the logo sign for the Coghill's sign business.

Tom Harper: Alright, the motion has been made to approve this request as stated, is there a second?

Bill Tharp: I will second it.

Tom Harper: Okay, the motion has been made and seconded to approve this request as stated in Case #15-08-01 for Charles and Michelle Coghill. Any other discussion or questions? Hearing none, all those in favor of the motion signify by saying Aye (4) Opposed (0) Absent (Peterson). Motion carried.

Michelle Coghill: Thank you very much.

MUSCATINE COUNTY BOARD OF ADJUSTMENT  
By Eric S. Furnas, Planning & Zoning Administrator

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, August 7, 2015, with Chairperson Tom Harper and members, Carol Schlueter, Mike Birkinbine, and Bill Tharp present, Martha Peterson was absent. Eric S. Furnas, Planning & Zoning Administrator and Dixie Seitz, Office Administrator was also in attendance.

Others present for this hearing: Jason Cox and Charles Meyer.

Tom Harper: We will move on to the next case. Eric, can you please read that request?

Eric Furnas: Case #15-08-02. An application has been filed by Jason M. and Erika D. Cox, Record Owners. This property is located in Bloomington Township, in the SE<sup>1</sup>/<sub>4</sub> of Sec. 14-T77N-R2W, North of Northwood Drive, Northwood Estates, E<sup>1</sup>/<sub>2</sub> of Lot 7, 2669 Northwood Drive, containing approximately 1.16 acres, and is zoned R-1 Residential District. This request, if approved, would allow the Zoning Administrator to issue a Variance in order for Mr. & Mrs. Cox to build a detached accessory structure in front of the existing dwelling, but it will be at least 65 feet back from the front lot line.

Tom Harper: Okay is the applicant here?

Jason Cox: Yes, I am Jason Cox.

Tom Harper: Okay, you heard the disclosure concerning that there is only four members here today. Do you wish to proceed?

Jason Cox: Yes I do.

Tom Harper: Okay, if you would like to state your name and tell us a little about your request?

Jason Cox: Yeah, I'm Jason Cox and I am trying to build a garage. There is really only one location in the yard to build it because of my septic field. If I go back behind the house there is a pond that's fed by seven springs and it's kind of a feature of the yard. So where it's going to set in the yard it really won't be visible from the road. It's not visible from the neighbors, because it's so wooded and it's been approved by the HOA.

Tom Harper: Okay, is there any correspondence?

Eric Furnas: I believe you were given a copy of the email from the homeowner's association?

Tom Harper: Yes.

Eric Furnas: They stated that they didn't have any problems with the location. That is the only correspondence that we received.

Tom Harper: Okay, is there anyone else here to speak for or against?

Charles Meyer: Yes, my name is Charles Meyer. I live at 2672 Northwood Drive, which is across the street and one block to the east from this lot. I am here to support the application and to mention briefly some comments. I've lived there since that subdivision was formed, which is 41 years. I've seen the building of it. I would like to mention quickly just two other cases that did go through this same procedure and were approved. A lot immediately east which at the time was owned by Gary and Linda Allison, they submitted an identical request, it was approved and built. A lot immediately south submitted a request for a Variance on the original construction of the home to reduce the required 50 foot setback, it was approved and also built. Lastly I would just mention the lay of the land where this lot is located is such that it

severely reduces any visible impacts of this construction. The spring that is out there is lined with trees and brush for the full length of the lot. Along the east side, the property is subject to flash flooding in a heavy rain storm because of the run off from the golf course. Where this building is proposed to be is not located where the flash flood is. I just wanted the owner to be aware of that. Any structure clear along the east side of the foundation of this new structure between them and the stream will be in the flood plain. And again, I am in favor of approving this.

Tom Harper: Okay, thank you for your comments. Anybody else? Any questions or comments?

Jason Cox: It will all be poured foundation walls.

Mike Birkinbine: I will make a motion to approve this in order for them to build a detached accessory structure in front of the existing dwelling.

Bill Tharp: I'll second that.

Tom Harper: Okay, the motion has been made and seconded to approve the request by Jason and Erika Cox as stated. Is there any discussion, questions, comments? Hearing none, all those in favor of the motion signify by saying Aye (4) Opposed (0) Absent (Peterson). The motion is carried.

Jason Cox: Thank you.

Eric Furnas: This Variance would go before the Board of Supervisors for their review. We will let you know when that will be.

Jason Cox: Okay, thanks.

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Others present for this hearing: Justin Bender and Ron Zitzow.

Tom Harper: We will move on to the next case. Eric, can you please read that request?

Eric Furnas: Case #15-08-03. An application has been filed by Ronald L. and Elizabeth A. Zitzow, Record Owners. This property is located in Fruitland Township, in the NW $\frac{1}{4}$  of Sec. 5-T76N-R2W, South of 231<sup>st</sup> Street, Hickory Hills, Lots 20 & 21, 2238 231<sup>st</sup> Street, containing approximately 3.71 acres, and is zoned R-1 Residential District. This request, if approved, would allow the Zoning Administrator to issue a Variance in order for Mr. & Mrs. Zitzow to build a detached accessory structure in front of the existing dwelling and five feet (5') from the front lot line.

Tom Harper: Okay, is the applicant here?

Ron Zitzow: Yes, I am Ron Zitzow.

Tom Harper: Okay and I will restate this. This is normally a five member board and today we only have four members present. So it would have to be at least three votes in favor in order to pass. You have the option of continuing or we can table this until next month.

Ron Zitzow: We'll proceed.

Tom Harper: Okay, if you would please tell us a little about the request?

Ron Zitzow: Sure, I've lived in the house for about ... well I moved there sometime in April. I would like to build a detached garage. Although the garage is in front of the house, it is east of the house. It's about 50 foot off of the house to the east. I intend to build it to match the house. I'm going to brick two sides just like the house, same roof pitch, same shingles. I am going to have two roll up doors and a walk through door. In order to get it back 50 feet from the front lot line, I would start down the bluff. There are a lot of trees and it's really not very practical. You would do more harm than good. I am asking to put it about five foot from the front of the property line. There are a lot of trees to the north of this location out to the highway. I don't think there are any other houses that are closer than about 400 foot to where this garage is going to go. Actually the closest house would be the house down on the Burlington blacktop across G28. I intend it make it very nice to match the house. There is really not another good location. There is this drive already that dead-ends out front and I intend to put it at the end of that.

Tom Harper: Okay, is there any that has any questions, comments, concerns?

Bill Tharp: To me it's a classic case of someone buys a property and they know that with the ordinances with the way that they are they are not going to be able to build a garage in the place that they may want to. Then ... you said it was April and this is only a few months later, then they come before the Board of Adjustment and say hey this has a special and unique feature of the property that prevents me from doing what I want to do. You know, and these things were fully in the knowledge of the person that bought the property. So these things kind of get old to me. Because, you know, somebody buys the property with full knowledge that they are not going to be able to build something with the correct setbacks and then come to the Board of Adjustment and say I'd like to have this fixed. I mean, they could have seen it on their abstract, they could have asked anyone from the county office, will I

be able to build a garage there or not? And they would have told them. So it's not as if a flood came through and changed the nature of this property. He bought the property knowing exactly how it was and that it would be very difficult to build a structure this close. I mean, he's not even asking for 45 feet from the lot line, he's asking for five feet from the lot line. So it's like right on the lot line. If you were to grant that, than why even require any setbacks from any lot lines. It just doesn't seem to make any sense. The one thing that he has kind of going in his favor is that, you know you have those lot line setbacks so if there is a fire or something like that, it doesn't go off into the next place. So I guess there is quite a distance between his house and the next house. But you know, I just wanted to voice my thoughts on this, it's like saying now a new problem has come up and that problem was known at the time when the property was purchased.

Tom Harper: This is two lots that were adjoined, correct?

Ron Zitzow: Yes, that's correct. May I respond? I guess it may be my fault but I wasn't aware when I first purchased this that I couldn't build a garage that close to the lot line.

Bill Tharp: And I guess you have heard that ignorance of the law is not a defense?

Ron Zitzow: I didn't intentionally plan on putting it there knowing that I wasn't supposed to.

Bill Tharp: If you would have had a good real estate lawyer like Steve Kundel here. (laughter) He would have been able to tell you. Like you would have said hey I would like to build a garage here sometime and he would have come to the county or made a call and said, you aren't going to be able to do that. I mean, that's part of why when you are buying a piece of property there are a lot of things to look at if you want to do those things.

Mike Birkinbine: Well the good news here is that he did come before us and didn't build a garage without coming before us. I think there is a positive here too.

Bill Tharp: Yeah, I agree.

Ron Zitzow: Originally when I purchased the property it was two lots. Now I don't know if this helps or not, but I don't know how they would ever be able to get a house on that second lot quite frankly. So if a house wasn't able to fit, I guess I didn't see why you wouldn't go for a garage.

Carol Schlueter: Did you build this house or did you purchase it?

Ron Zitzow: I purchased it.

Carol Schlueter: How many car garages with the house now?

Ron Zitzow: The garage has a two stalls but it is 20 foot deep. It's seven inches shorter than my standard pickup. The house that I was in before had a three stall garage and it was twice as big as what is with this house.

Carol Schlueter: Okay, the new garage is for vehicles?

Ron Zitzow: No, I've got lawn equipment, a little bit of wood working equipment, it's really more storage. If I want to work on my truck, the garage I have isn't deep enough to work on it. I could pull it in there. Typically I would keep my vehicles in the attached garage and I would store the wood working tools and lawn equipment in this garage.

Carol Schlueter: So more like a shop or something.

Ron Zitzow: That's correct.

Carol Schlueter: But you could locate it on a different place on the property but you would have to do more excavating with trees, or something. Is that what I am understanding? I didn't go out to look at this property, so that's why I am asking.

Ron Zitzow: To get it 50 foot from the property line, I would have to cut down quite a few good sized trees and it would go down the bluff. It would have to be built somehow going down the bluff. I would just as soon not disturb that bluff.

Carol Schlueter: I just think that five foot is not very far from the front property line.

Justin Bender: As far as the opening space ... in the back of that property you have the bluff that goes down to Burlington Road, in the front you have G28. This property is up on the top of the hill. For actual flat land from bluff to bluff is only 58 feet. So reasonably if you had to set it back 50 feet, you would be so far down over that bluff going down to Burlington Road. He would have to cut trees down and then it may have more of an issue with erosion and things like that with the properties below him.

Tom Harper: Is the 50 foot setback, is that an ordinance standard or is that the plat standard?

Eric Furnas: That is the zoning district standard.

Tom Harper: Alright.

Bill Tharp: Does commercial have the same setbacks?

Eric Furnas: No, commercial, industrial, agricultural and residential all have different setbacks.

Tom Harper: Any other questions, comments, concerns? Does anybody else wish to speak?

Carol Schlueter: So you are saying really there is no other place on your property to put this, is that what you are telling me?

Ron Zitzow: Yes.

Carol Schlueter: So you can't attach it to the house, just add it onto the existing garage?

Justin Bender: No, because even where the house sits, the back of the house goes down over the bluff. So even to try and get back even with this house, you would be down over the hill.

Tom Harper: Well when this was platted, the second lot basically was a very difficult lot to build on. Does anyone care to make a motion?

Mike Birkinbine: I will make a motion to approve this Variance in order for them to build, due to the topography of the property. I am not always in favor of doing that, but there is a reason why at this particularly time... whether or not they bought the property understanding that is beside the case. I understand that it's a 5 foot setback, but in this case I think it is something that we should allow.

Tom Harper: Is there a second?

Carol Schlueter: I will second it.

Tom Harper: Okay, a motion has been made and seconded to approve the request as stated for Mr. and Mrs. Zitzow to build a detached garage on their property. Is there any discussion, questions?

Carol Schlueter: So this is not going to be in the view of any other properties around it?

Eric Furnas: Well right now it would be almost fully screened from the street and from the properties. I can't speculate what it will look like in the middle of winter of what may be visible. There is a steep slope up from G28 that somewhat secludes this lot. But I can't speculate what may or may not be visible while the leaves are off the trees. I would assume that there would be some visibility.

Carol Schlueter: But this here where he is at, nobody else drives by because this is how he gets to his property?

Eric Furnas: Well it is a single driveway but it is adjacent to G28.

Dixie Seitz: I think the right-of-way was something like 114 feet just on his side, so from the middle of the road to the front of his property it is 114 feet.

Eric Furnas: Yeah it is a very wide right-of-way right through there.

Tom Harper: And the only other house around there is basically a gated house off of that driveway. Those lots were joined together so that no more building could go on back there. Any other questions? Hearing none, all those in favor of the motion please say Aye (3) Opposed (Tharp) Absent (Peterson). The motion has passed with a three to one vote, the request has been approved.

Ron Zitzow: Thank you.

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Others present for this hearing: Rick Thomas, Steve Kundel and Dennis Rinnert.

Tom Harper: Eric, can you please read the next request?

Eric Furnas: Case #15-08-04. An application has been filed by Richard S. Thomas Jr. and Sherry L. Thomas, Record Owners. This property is located in Montpelier Township, in the NW<sup>1</sup>/<sub>4</sub> of Sec. 22-T77N-R1E, Triangular Tract, North of Lots 7 & 8, Block 4, River Vista Farms, at the north end of River Vista Road, containing approximately 0.95 acres, and is zoned R-1 Residential District. This request, if approved, would allow the Zoning Administrator to issue Variances from the residential setbacks; lot width; and from the total lot area in order for Mr. and Mrs. Thomas to remodel the existing outbuilding into a residential structure.

Tom Harper: Is the applicant present?

Rick Thomas: Yes.

Tom Harper: You were here when we explained the four member board today and if we vote and it's a tie vote, it's a denial. You can go ahead with it today or we can table it until next month when we may or may not have a full board. It's up to you. What would you like to do?

Rick Thomas: We'll go ahead.

Tom Harper: Okay, if you would tell us a little about your request?

Steve Kundel: My name is Steve Kundel and I represent Richard or Rick and Sherry Thomas. We are here today to seek approval so that they can convert the existing, whether they are calling it a garage or a pole structure into a dwelling. The plan I believe is to take the northern half of that building and I believe Rick is going to dismantle that and construct a house pretty much in its place. I have a couple of very crude sketches of what they are planning on doing, which I can hand out. The problem though as Eric stated, we have an irregular shape lot here that is just under the required acreage and we also have a setback issue. Here is my really rough sketch of what they plan to do. I also have an aerial photo with essentially the same thing, only this has the building and my sharpie drawings on it. I apologize for my low tech sketches. So you can see we have a pretty funny shaped lot, it's a triangle shaped lot. It's not consistent with the other lots that are in the subdivision. We are just under... I think what we really are under is only by 0.05 under an acre. If you look at the aerial photo, it would be the northern corner of the current building is 14 feet from the property line, and that is not within the official setbacks. I believe we need 15 feet.

Eric Furnas: That is correct for the side yard.

Steve Kundel: I believe the others are okay. If you can see from my sketch Rick just intends to take down the northern half of the pole building, you can see that a little bit better in the sketch on the aerial photograph. He would then construct a house on to that. It would turn that building into approximately an "L" shape. So the house will extend back from that. That in its self I don't believe is a problem because as you go back the lot gets wider. I could also give you a sketch of what Rick has planned to do. On this, so that you can get your bearings on how this all fits together, you can see essentially where, if you hold up the two plats, you can see where he has the garage. That

would be the south half of the pole building, which he would keep and then essentially add a house to that.

Tom Harper: Okay, so all of the other lots are a part of the subdivision?

Eric Furnas: That's correct.

Tom Harper: And this is another lot but it is not part of the subdivision but yet it is zoned R-1?

Eric Furnas: This lot was added to the lot to the south by the owner at that time, in order to construct an accessory structure at that time. The owner of that house to the south purchased some additional ground to build a detached accessory structure there. It was not platted as part of the original subdivision. (changed tapes) That triangular piece was not a part of the original subdivision it was added at a later date. So the adjoining ground was zoned residential, it just wasn't part of this subdivision.

Mike Birkinbine: So the house here owned this piece of triangular property?

Eric Furnas: Correct.

Mike Birkinbine: Then they sold that off?

Eric Furnas: Well there was some sort of transaction and I think Mr. Thomas can probably answer how that came about.

Rick Thomas: Eight years ago I bought a house without a lawyer, without Mr. Kundel and this is what I have here. I purchased this house to the south, understanding when I talked to a realtor that the pole barn went with it. We ended up buying the house and the pole barn didn't come with it. The gentleman before me, Francis Reynolds, he bought the house under the same understanding that the pole barn and ground went with this house. He purchased it, he thought it came with it and it didn't. So when it didn't come with it, he purchased that pole barn and property also. So when he sold it to me he never had it in his name. It was never out of the Starkweather's name. It was a bad situation really. So when I purchased it, I didn't have a lawyer and I purchased it just like he did. So in the scheme of the whole thing, their lawyer ... they just essentially gave it to me. He gave me and my wife this outbuilding and lot.

Steve Kundel: My understanding is that Rick and Sherry did at one time own that parcel directly south of this lot with the house on it. But I believe my understanding was, essentially two owners prior to the Thomas's they constructed that, and I think the original plan was for that parcel to get added to that lot but it never did. Then the ownership changed one more time and then on the third time that's when it changed to the Thomas's and then it was actually sometime after, maybe a year or two after they bought the house the parcel with the pole building – it was discovered that the pole building lot had not been updated from at least two prior owners names. So it had never gotten transferred. This is one of those kind of hind sight is twenty –twenty deals where that lot never got combined to the abstract so that the title was transferred. It just got missed.

Tom Harper: So let's get this straight now. Is this titled as two separate lots?

Steve Kundel: Yes.

Tom Harper: Is everything cleared up on the ownership?

Steve Kundel: Yes.

Dixie Seitz: But it cannot be combined though. We had checked with the Auditor's Office before Eric was here. This is the subdivision and this is a lot outside of the subdivision. So they cannot combine those lots.

Mike Birkinbine: So you own 001 and the house?

Rick Thomas: No, not anymore. What happened was when I purchased the house the interest rate was 13 point something percent. They told me to pay for a year and I could refinance and it would drop down to whatever it is. I tried this for six years to refinance, nobody would do this. Now I am with First National I went to my banker and they told me to take it to him. Essentially my lawyer and the bank told me to walk away from the house because how it is all wrote up – I would never own that house. Essentially I am given them \$8,000 in six years and I still owe \$155,000, which is what I paid for the house.

Steve Kundel: Well the bottom line is that Rick and Sherry got caught up in a real estate up market when lenders were unfortunately saying to customers don't worry about the interest, don't worry about the purchase price, because next year you can refinance it. Well unfortunately they bought it, then the market tanked and nobody would touch them as far as refinancing it. So like Rick said, they eventually walked away from the house.

Carol Schlueter: So lot 7, the original one that you bought somebody else owns that?

Rick Thomas: US Bank has that.

Carol Schlueter: So you are out of that. So all you have is this triangular piece that is not in the subdivision where you want to take this building and make it into a house?

Rick Thomas: Yeah essentially I just want to take half of the building down and build a house right next to it. Put footings under what I am going to leave for the garage so I can attach it to the house, put a foundation there and just build a house. I just want to build a house so that I can recoup and have something there to live in, you know? I mean, I just pretty much burned \$80,000 for nothing. I am 40 years old and I don't have...

Tom Harper: Okay, so let's bring up something about the access. This is not part of the subdivision but the only access is through the subdivision. How does that work? Is there an easement for access? I mean, I know that you have to allow it because it's basically a stranded property.

Bill Tharp: Well I think they could get an easement by necessity, I suppose.

Steve Kundel: Yeah, and this triangular piece has been there long enough and I don't think that the association would have any right to stop him.

Tom Harper: Is there even is an association?

Steve Kundel: Well and that's part of the other situation too, the association would be very informal, at least that's my understanding.

Tom Harper: Okay, so it still comes down to the unnecessary hardship of this property.

Bill Tharp: It also might be the unique topography as well, that's just my two cents worth.

Tom Harper: So these other houses, this previous house and the one next to it, it looks like to me if there was any setbacks at that time that they were violated. It could be because of the property and how it lays over that road.

Bill Tharp: I agree.

Tom Harper: Okay, is there anyone here that wishes to speak? If so please state your name.

Dennis Rinnert: Yeah, I was just at the Muscatine County abstract place and that lot that is north of 7 & 8, which there is no easement to that property. I don't know if you guys came out and looked at this property this morning? You said that he's got 20 feet to that shed? There is probably only about seven or eight foot on the property line.

Rick Thomas: From my barn to the lot line?

Dennis Rinnert: Yes, you only got five feet off.

Tom Harper: Can you please state your name?

Dennis Rinnert: Dennis Rinnert at 1919 River Vista Road.

Tom Harper: Alright, go ahead.

Dennis Rinnert: I have nine people's signatures from the people in the housing addition against it. I mean if you are going to allow that setback to the other house... than every house in that addition has 150 feet from each house.

Bill Tharp: The shape of this lot is much different by the choice of the county. The county is the one that cut up this property. Now this person is forced with trying to make something of it. Without having a use... what use would this property ever have other than just sitting there and becoming a ditch of the county? Unless we take some action to see that there has been a hardship and there is unique topography of this space, what's going to happen to this piece of property? I mean it's just going to be a grassy ditch.

Dennis Rinnert: They could actually sell it to the people that are going to buy that house that is south of it.

Bill Tharp: It's not part of the subdivision.

Dennis Rinnert: That's the only way you have access to that.

Bill Tharp: Then that's putting it in one person's hands ahead of somebody else's, you know. It's kind of like we are picking winners and losers.

Dennis Rinnert: According to the abstract there is not easement to that, only through that lot.

Bill Tharp: True, did you get an opinion of an attorney about how important that was or not?

Dennis Rinnert: No.

Bill Tharp: Okay. The thing about an easement is that easements arise by implication, by grant, or by necessity. There are other ways they come up. One of the things is that you can't have a landlocked property. If you do have a landlocked property, that person who has a landlocked property can petition the district court to go ahead and create an easement and say that since he is landlocked he needs it, it is necessary for him to have an easement. So they will create an easement. So even though there is not an easement on record, whoever owns this property can get one. I mean they can go to district court and get one.

Dennis Rinnert: Okay, so he gets an easement but he is still sitting right on top of the property line and it's a shed and he is to set back further. He's only got like eight foot there, maybe 8 – 10 foot there between the property line on the south side.

Eric Furnas: If I could clarify this one thing. This triangular lot wasn't really created by the county.

Bill Tharp: Who created it?

Eric Furnas: Well the previous owner.

Bill Tharp: But the county allowed it to happen.

Eric Furnas: The county allowed that to happen because it was for an accessory structure so the setbacks were different at that time. So I don't believe that there was a Variance granted to have that property there. So if you look at the political standards for a Variance it is a situation in itself that is self-imposed by the previous owner concerning the shape and the setbacks on the lot.

Bill Tharp: But I do know that if I go into the Auditor's Office and say hey I'd like to cut this up this way, they are not going to take Bill Tharp's word for it. The county is going to make their decision on whether they are going to do it or not. So I put it on the county, the county decided to make this lot the way it was. Because when I have a client come in to say I want to have it look like this, I can't call that. It's the county that makes the decision. So I don't think that there is... there is some responsibility on the county for allowing this parcel to exist in this shape and in this way. You may disagree and that's okay.

Carol Schlueter: So it's not even an acre lot, right?

Dixie Seitz: No, it's 0.95.

Carol Schlueter: Who built this building on there?

Dixie Seitz: The building permit is attached to your packets, it was Starkweather's.

Carol Schlueter: So they owned the house originally?

Dixie Seitz: Yes.

Carol Schlueter: Okay. I mean it's like you said, can this property be used for anything else? I mean, if we don't allow this he is going to have this garage at the end of this subdivision.

Eric Furnas: Well the accessory structure can still remain there.

Bill Tharp: I mean, a guy can come out and visit his little shack, you know? That's about what it would be. I don't think it would be a very income producing property for the county to say, if I buy this property and I get taxed on this property, what can I do with it? A guy can come visit his shed there, you know, I wouldn't pay very much for that. So this is also increasing the tax rolls for the county.

Carol Schlueter: So if he changes this to a house, he has to put in a septic tank and a well, right?

Eric Furnas: Yes, all the building codes and environmental codes would still apply.

Tom Harper: So there's no requirements that it would have to be surveyed because it's already split out, laid out?

Eric Furnas: Right, there is a description for the lot already. The lot is what it is.

Carol Schlueter: And there is room there for a septic and everything, I presume?

Eric Furnas: That has yet to be determined.

Carol Schlueter: Oh.

Eric Furnas: There is potentially room, but physical space doesn't mean that it's usable space because of soil types and slopes. That has not been examined by our office at this point.

Carol Schlueter: So if we do allow this, he still might not be able to build because of that reason?

Eric Furnas: That's very true. There are construction standards that he may find that are going to be cost prohibitive as well. You are taking one type of structure and converting to another one. But that is something that is totally within his right to determine.

Dennis Rinnert: At the west end of that is mostly springs, so I don't think that a septic field is going to perc down there.

Rick Thomas: The septic for the old house isn't working now.

Dennis Rinnert: Yeah, the ground is really wet back there.

Rick Thomas: Because it is on a hill. I had to fix the septic when we bought it.  
(Both Rinnert and Thomas talking at once, back and forth)

Tom Harper: Okay, we need you to make your comments directly to the board.

Rick Thomas: All this crap with me buying this house and everything was supposed to be inspected and all of this... is BS! I mean I don't know what has to be inspected and how this all works out. But I bought the house in February when spring came around the back corner was all black from septic. It was all jacked up. The fields were a mess and it was supposedly inspected. I mean, this whole nightmare of buying this house... it wasn't supposed to be a nightmare. I was going to buy this house and live there and die there owning this house. It's just turned into so much of a nightmare. It would just be nice to start over with new. I've got the okay from my bank.

Dennis Rinnert: Well as far as the septic in the back...I don't think he got a permit to put in a new septic.

Rick Thomas: I didn't put in a new septic.

Bill Tharp: Again, gentleman gentleman!

Tom Harper: Okay, I need you to address the board only, not talking back and forth. This is getting off track of what the case is.

Carol Schlueter: The other question that I have, if we allow the Variance do we need to put a timeline on there when it has to be completed by or is that not necessary?

Eric Furnas: I believe the time limit would be the same as the Special Use Permit, which is a year.

Carol Schlueter: A year?

Eric Furnas: So the permit would have to be obtained within a year. Then once the permit is issued, they have a year for that as well and extensions can be granted if needed.

Tom Harper: Okay, any comments, concerns, discussion? Does anybody care to make a motion?

Bill Tharp: I will make a motion to approve the request as written.

Tom Harper: Alright, is there a second?

Carol Schlueter: I'll second it.

Tom Harper: The motion has been made and seconded to approve the request as stated on the application. Is there any other discussion or comments? If not, all those in favor of the motion please say respond by saying Aye (4) Opposed (0) Absent (Peterson). The motion carried. The request is approved.

MUSCATINE COUNTY BOARD OF ADJUSTMENT  
By Eric S. Furnas, Planning & Zoning Administrator