

**BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN**  
**MARCH 3, 2008**

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The Special Meeting of the Goodhue County Board of Adjustment was called to order at 5:00 p.m. by Chairman Judy Fritzingler in the Goodhue County Justice Center located at 454 West Sixth Street in Red Wing, Minnesota.

Present: Dennis Monroe Brad Anderson Judy Fritzingler Bernie Overby Stanley Klair  
Mike Wozniak

Absent: Mike McKay

K. Gross suggested the Board amend the Agenda so that the two times are the same. The meeting started at 5:00 pm and should say that in both places on the agenda.

*<sup>1</sup>Motion by B. Overby seconded by D. Monroe and carried to approve the March 3, 2008 Board of Adjustment Agenda as amended. Motion carried 5:0.*

C/J. Fritzingler indicated that the minutes needed to be amended to reflect M. McKay dissenting on the first item of the agenda.

*<sup>2</sup>Motion by S. Klair seconded by D. Monroe and carried to approve the November 26, 2008 Board of Adjustment minutes as amended. Motion carried 5:0.*

**Staff Updates:** K. Gross stated that there will be no regular meeting in March due to lack of applications.

**Conflict/Disclosure of Interest:** None

**Carl Quast** – That part of the NW ¼ of the NW ¼ Section 32 T110N, R15W, Zumbrota Township. The request is an appeal to staff's decision that the location does not meet the definition of a replacement building site. If the appeal were upheld it would allow a dwelling to be built on the parcel.

M. Wozniak presented the staff recommendation and findings of fact:

Findings of fact:

- A. That there are special circumstances or conditions affecting the land, building or use referred to in the appeal that do not apply generally to other property in the same vicinity.
  - a. The parcel is adjacent to the Suburban Residential Zoning District (R-1). There are dwellings on either side of this parcel.
  - b. The parcel is less than ¼ mile from the city limits of Zumbrota.
  - c. For a dwelling to qualify as a replacement building site 2 out of the following three criteria are needed: 1) Dwelling or existing foundation, 2) Defined farmyard, 3) Existing outbuildings.
    - i. The property contains the footings for a dwelling that was permitted in 1992, but was never built.
    - ii. There is a driveway that leads to the building site.
  - d. The applicant felt that a building site was secured on this property
    - i. There is no written evidence supporting this.
  - e. The property is very scenic. It would make a beautiful home site, but could also be used for recreational purposes.
  - f. The property qualified as a building site under the "Parcel of Record" clause, which expired in June of 2004.

**BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN**  
**MARCH 3, 2008**

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- i. The County has not been flexible with the expiration of that clause due to the number of properties that would have qualified, but were never built on and also because it was extended for an extra year.
- B. That the granting of the application will not materially adversely affect the health or safety of persons residing or working in the area adjacent to the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the area adjacent to the property of the applicant, and that the granting of the variance will not alter the essential character of the locality.

There are no foreseeable adverse material affects on the health or safety of persons residing or working in the area adjacent to the property of the applicant.

Based on the findings of fact stated thus far, staff recommended denial of the appeal that this property qualifies as a replacement dwelling.

B. Overby clarified that the houses to the east are R-1.

M. Wozniak said they are.

B. Overby asked if the dwelling to the west was R-1.

M. Wozniak said it is A-3.

Bill Ryan is a lawyer representing Mr. Quast. He has been on the case a few days. He stated that Mr. Quast wanted to ensure this was a building site, and that he was informed by the zoning administrator to apply for a variance. He noted the topography of the property, it is heavily wooded. This is not prime agricultural land; it has some woods and a wonderful building site on it. It is near some R-1 and some single family dwellings on smaller parcels. Mr. Quast purchased the property in 1994, and the property was buildable. Something has changed in the interim that has changed that.

M. Wozniak stated that the property was originally buildable under "Parcel of Record" which sunset in 2004.

Mr. Ryan said that it was buildable when Mr. Quast bought it and he intended to build on it. He had a number of unfortunate events during the late 1990's when he had originally planned to build on the property. It was roughly in 2001 when he spoke with Ms. Wood. Was she the administrator at that time?

M. Wozniak clarified that she was the zoning administrator at the time.

Mr. Ryan said that Mr. Quast will tell you that Ms. Wood said that since Mr. Schulz had been granted a building permit and had put footings in which would hold the building site. There was a hand written note which they believe is Ms. Wood's handwriting. The criteria for granting a variance and it basically requires two, that there are special circumstances and that the request will not adversely affect the neighboring properties. Mr. Quast was advised by Ms. Wood as late as 2001 and wasn't required to do anything to preserve that status. It is wooded and the terrain wouldn't be viable for agriculture. The assessors value of this property is 74,300 assuming it can be built on; with the lack of a variance it would reduce it to nothing. What's different here is that you have Ms. Wood assuring Mr. Quast in the relatively resent past. It was his reliance on that advice that makes this different.

**BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN**  
**MARCH 3, 2008**

---

M. Wozniak said that we handle situations like this as an appeal to a staff decision, and the applicant doesn't have to show hardship for a decision like this. It is up to the board to make the determination, you are not held to the strict standards of needing to prove a hardship.

Mr. Ryan said that if he were to draft the application it would have been for a variance to build on a property that was less than 35 acres. We believe that there are special circumstances; it won't change the character of the area.

C/J. Fritzingler clarified that the handwritten note was found in the parcel file, and only staff has access to the parcel files.

M. Wozniak said that is correct.

B. Overby clarified that the Parcel of Record expired in 2004, so that makes the note invalid.

Mr. Ryan said that Mr. Quast is certain that the conversation did occur in 2001. And the point of calling your attention to the note was to show evidence of the conversation taking place.

B. Overby clarified that they don't need to find a hardship.

M. Wozniak said this is coming as an appeal to staff's decision that the footings don't hold the building site. What you need to find is that there are special circumstances that do not apply generally to other properties in the vicinity.

*C/J. Fritzingler opened the public hearing.*

Darren Pahl treasurer Zumbrota Township, they feel this is a building site. There is no agricultural land. It has a driveway. We could use a little extra tax money for a house. One more house will not make any difference. You cannot put any more houses on the back side, you can only get one house in there. If Zumbrota comes out that way they would have to accommodate 10 other houses. I would not appraise 9 acres for 74,000 if there wasn't a building site on there. If there is a footing there, like they say there is. Whatever we need to do to make it a building site we would be happy to adjust. There was a party that suggested a building site they bypassed the township, and there is a house there.

M. Wozniak said we would have to look into that situation.

D. Monroe clarified that the houses that are all together, they are not in the city limits either.

Mr. Pahl said that they are not in the city limits, it would be way in the future before they would get out there.

Dan King said that they are here to debate the merits of staff recommendations and it is clear that the criteria for meeting that criteria are not met. He would like to reiterate staff's recommendation to deny the appeal. As we get on alternative means for Mr. Quast to build on that lot. He doesn't know when the city will get out there either, it would be sure that it would be urbanized with city sewer and water and with the consistency of the density of city zoning.

B. Overby asked why this dwelling going in the middle of already build houses would be detrimental for the city. It is inefficient already.

**BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN**  
**MARCH 3, 2008**

---

M. Wozniak said as a former city planner he would like to expand on what Mr. King is saying. When a city is expanding, they need to invest in improving roads and they need to assess the property owners for those expenses. That becomes the crux for future urbanization. What we are discussing here is public policy versus the rights of a property owner.

B. Overby asked what Forest Mills was.

Mr. Pahl said that it is a little place that used to have a flour mill.

Mr. King said that he would empathize with the applicant there has been ample opportunity to do what he would like to do here. Clearly the County went through quite an ordeal with the parcel of record. I don't see why there is a reason to provide for exceptions. There is no opportunity to develop. It looks like it would have opportunity to develop as an urban residential in the future.

Mr. Pahl said that he could see it if it was on the end of one of these rows, but it is not. It is not like it would make the city extend its sewer and water; it would be going right by it anyway.

B. Overby asked if the city would feel any different if the house would be built down where the houses are right in a row.

Mr. King said that the property owners usually contest the assessments.

B. Overby said that if there was no development going through that property and you ran city services through that property who would be paying for those services?

Mr. King said that the property owner would.

Mr. Wozniak said that they are valid concerns from the city's standpoint. But you are weighing that on what is reasonable use for the property.

*With no further public comment D. Monroe motioned and B. Anderson seconded to approve the closure of the public hearing. Motion carried 5:0*

Mr. Ryan said that there is one issue the city is overlooking that the topography dictates here that there really is only one buildable site. It is in a ravine. That is the primary fact the city is overlooking when they are telling you all the bad things that would happen.

S. Klair said that it was a beautiful site, there was a footing. It's not a defined farmyard, it is all mowed. I could see for two of the criteria.

C/J. Fritzinger clarified that you could only get one dwelling there.

S. Klair said that it was intended for one building site.

D. Monroe asked because the note from Joanne that is why you ignored the sunset of the parcel of record.

Mr. Quast said that since there was building permits issued and the footings, Ms. Wood said that I didn't need to worry about the sunset clause. He left with that assurance that it would always be a building site.

**BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN**  
**MARCH 3, 2008**

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M. Wozniak said that Mr. Quast has always been forthright with us. It is the question of the strict interpretation of the sunset clause that is at question here.

B. Anderson clarified that if you take the ordinance literally, there is a foundation and a cleared area.

D. Monroe said that what they are looking at it as an appeal for a replacement site.

K. Gross clarified what M. Wozniak was pointing out, this was a very complicated request to put all of it in a public notice, and the intent of the request is to be able to build on here. If you are feeling in support of the request you can look at the other factors involved.

Mr. Ryan said that the hardship is that there is no other viable realistic use for this property.

S. Klair said that it is valued as a building site.

M. Wozniak said that we cannot base our decision on that. It would be difficult to do more than one unless you were to combine it with other property.

B. Overby said this is a difficult one, and the comprehensive plan says we want to put the development in the city when we can. What makes this property unique is that this property is situated with 9 houses on one side and 1 house on the other.

B. Overby moved, seconded by D. Monroe to approve the appeal to staff's decision that the location does not meet the definition of a replacement building site.

M. Wozniak asked what their findings of fact were.

B. Anderson said that the exhibits show that there is an improved farmyard, permits were issued, due to unique circumstances the building could not be finished, literally it meets two out of the three criteria for a replacement site are met.

B. Overby accepted the addition to the motion, D. Monroe seconded. Amended motion reads:

*<sup>3</sup>Motion by B. Overby and seconded by D. Monroe to approve the appeal to staff's decision that the location does not meet the definition of a replacement building site and accept this as a building site based on the exhibits shown that there is an improved farmyard, permits were issued, also due to unique circumstances the building could not be finished, literally it meets two out of the three criteria for a building site. Motion carried 5:0.*

**John Papajohn Jr.** – Part of the E ½ of the SW ¼ Section 24, T110N, R 16W, Minneola Township. The request is for a variance to build a dwelling on a parcel that contains less than the required 100' of lot width on a public road right of way.

M. Wozniak presented staff recommendations and findings of fact: The parcel was divided in 1989 for the purpose of a building site. At the time the parcel was divided, there was 100' of road frontage to the property, but was later transferred back to the original owner to "clean up" the legal description (see letter from Rockne Law Office dated December 10, 1999). The previous decision to deny the variance to the road frontage was based on the possibility to obtain the road frontage from the neighboring property; this is no longer an option due to liens on the neighboring property. On January 24, 2000, the Board of

**BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN**  
**MARCH 3, 2008**

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Adjustment granted the variance to allow the building site, because the land could not be put to reasonable use without the variance. There is a private drive that runs through the property; there is access to a public road right of way. The property currently is completely wooded. a. There are no foreseeable adverse material affects on the health or safety of persons residing or working in the area adjacent to the property of the applicant. It could be seen that the hardship in this case was created by the landowner when the 100' of road frontage was given back to the previous property owner to clean up their legal description. However, the property in question does have access to a public road right of way, via the private road. The intent of the official control is to provide every parcel with access on the public road right of way. The property has already been deemed to not be put to reasonable use without the variance to allow a dwelling.

Based on the above stated findings of fact, staff recommends approval of the variance request to build a dwelling on a property without the required 100' lot width on a public road right of way.

B. Overby asked for clarification on the 100'.

M. Wozniak stated that you would need to make a total exception to the requirements.

B. Anderson asked for clarification on where the city limits are. (The city limits were pointed out on the map provided)

M. Wozniak said that all properties in the ag district are required to have 100' of road frontage.

*C/J. Fritzinger opened the public hearing.*

Dan King said that he would like to reiterate the same points when looking at existing low density. It will be difficult to expand out to that area. Naturally it will extend out that way, he doesn't know if it will be 5 or 10 years, but it is in the long term plan. Do you want a proliferation; we are going to run out of space. Often enough people expect services within the cities. At some point this is going to be an urban road. There was an intention to keep with the letter of the law. What is the intent of requiring 100' frontage?

M. Wozniak said the intent was to avoid land locked parcels. Today, the county's subdivision ordinance would not allow this, it would not allow private roads. He couldn't imagine a situation like this to be permitted. That is the challenge here, it exists, it is what it is. How would the city react if the property owner would request an annexation? Timing is everything.

Mr. King said that when the market forces warrants us expanding, it would make sense. We have 300 lots that could be developed. Why do we need to develop this property when you have 300 lots that are available?

B. Overby said that if you were to annex this way, do you automatically go R1 would he have a place where the owner would maintain

Neil Jensen, city administrator said that it is a very inefficient way for planning the city.

M. Wozniak said if road and utilities are being run through it, it automatically bears incentive to develop their property.

Mr. King said that there was an opportunity to build under the old regulations.

**BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN**  
**MARCH 3, 2008**

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Mr. Jensen said that one of the items was that there was a lien on the adjoining property, economics could not be a factor. What has changed since they denied it once? If you were to plan the city properly, this would be the last lot you would cut off to the west.

Mr. Jensen said that Mr. Papajohn's property is going to look pretty favorable when we annex further.

C/J. Fritzinger asked what the terrain is on that property.

Mr. Jensen said that you can't look at one ten acre parcel, you have to look at the big picture. The city is surrounded by subdivision, there is Sugar Loaf which is less than  $\frac{3}{4}$  of a mile away. There is quite a barrier that is being put up.

B. Overby clarified that the variance was granted has it expired?

K. Gross said that variances do not expire, unless an expiration date is specifically put as a condition on the variance.

C/J. Fritzinger said that she thinks at the time they denied it, they felt the applicants could buy it from the neighbor.

M. Wozniak said that you need to look at what is fair to this property owner.

B. Overby asked if the other properties have exceptions to the road frontage.

K. Gross said that none of them do, they all deeded back their road frontage at one time.

M. Wozniak said that we could not see something like this happen today. A home going there isn't going to preclude services run through the property, but it could be more expensive.

Mr. Jensen said that here is how to make this right. You have one way of making this right.

Doug Sommer, Minneola Township chair, said that someone wants to put a house there. Minneola protects their ag land pretty close, He would recommend that the board would accept the variance.

B. Overby asked if the township has approved this.

Mr. Sumner said that five years ago the city property wasn't that close, but now that they decided to come closer, they are having issues.

S. Klair asked if some way the township would be required to take that over. That would be the one thing that would solve the problem would be if the township took it over.

Dean Murray said that he is the parcel owner to the west. One of the things he is concerned about is how would this dwelling be sited 1000' from his dwelling. The other properties, this is the least desirable because of the slope of the land.

M. Wozniak said that they would have show with a building permit that they would be able to build on the site appropriately.

**BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN**  
**MARCH 3, 2008**

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Mr. Murray asked if the variance is granted and Mr. Papajohn sells the property, would the new owners need another variance?

M. Wozniak said again, if they could appropriately site the dwelling they would not need another variance.

B. Overby asked what his thoughts are on this.

Mr. Murray said he is concerned with seeing another house out his kitchen window.

Mr. Sumner points out Mr. Murray's point on the terrain of the property.

*After no further public comment it was moved by D. Monroe and seconded by B. Overby to close the public hearing. Motion carried 5:0.*

S. Klair asked if Papajohn was planning on building a home.

K. Gross said that he was planning on selling. He has a purchase agreement pending the outcome of this meeting.

B. Overby said that we want developments to go into the city, and we find reasons to go away from that.

M. Wozniak said that we have official policies that are very limited under the A-3 district. It is not really ag, what other viable use does it have at this time? The points the city makes and we also have to look at the property owner's rights today. It was divided, and it exists how it is. These are hard decisions.

B. Overby said that we don't have R-1 adjacent to this property.

M. Wozniak said it is surrounded by home sites. If the board were to find that they are not comfortable approving the variance as staff has recommended, but you would find plenty of information from the city for findings on this one. Staff looked at this one, and there are homes all around it, what are the expectations for that property owner. It is up to the board with how comfortable they are.

B. Anderson said that it appears that the Murray property to the west never had 100' of road frontage.

K. Gross said that she believed Mr. Murray's property was built under the parcel of record, which didn't require 100' of road frontage, but it required 1000' spacing.

B. Overby said that the road frontage variance was denied back when the variance for the homesite was approved because there was an option to buy from the adjacent neighbor.

K. Gross said that someone had indicated to the board at the time that that was an option. The applicant, Starr had indicated he didn't want to go that route so he wanted the variance, but the owner, Papajohn had said he could do that. For the current application, the applicant is indicating that it is no longer on the table to purchase property from the neighbor.

C/J. Fritzinger clarified that at one time he had that road frontage, but he deeded it back because of the request to clean up someone else's title.

**BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN**  
**MARCH 3, 2008**

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M. Wozniak said that they didn't envision that the county's interpretation of the rules would change and become, more rational, but it depends on your position.

*<sup>4</sup>Moved by D. Monroe, seconded by J. Fritzinger to approve the request for a variance to build a dwelling on a parcel that contains less than the required 100' of lot width on a public road right of way, based on Zumbrota annexing out to this property for a number of years and the feasibility of the property for other uses. Motion carried 3:2 S. Klair and B. Overby dissenting.*

*<sup>5</sup>Motion by D. Monroe and seconded by B. Overby to adjourn the March 3, 2008 Board of Adjustment meeting at 7:55 p.m. Motion carried 4:0.*

Respectfully Submitted,

Kristi Gross

Secretary

**BOARD OF ADJUSTMENT, GOODHUE COUNTY, MN**  
**MARCH 3, 2008**

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**MINUTES**

<sup>1</sup> APPROVE March 3, 2008 Board of Adjustment Agenda as amended. Motion carried 5:0.

<sup>2</sup> APPROVE November 26, 2008 Board of Adjustment minutes as amended. Motion carried 5:0.

<sup>3</sup> APPROVE the appeal to staff's decision that the location does not meet the definition of a replacement building site and accept this as a building site based on the exhibits shown that there is an improved farmyard, permits were issued, also due to unique circumstances the building could not be finished, literally it meets two out of the three criteria for a building site. Motion carried 5:0.

<sup>4</sup> APPROVE the request for a variance to build a dwelling on a parcel that contains less than the required 100' of lot width on a public road right of way, based on Zumbrota annexing out to this property for a number of years and the feasibility of the property for other uses. Motion carried 3:2 S. Klair and B. Overby dissenting.

<sup>5</sup> ADJOURN the March 3, 2008 Board of Adjustment meeting at 7:55 p.m. Motion carried 4:0.