

Codington County Planning Commission/Board of Adjustment Minutes

April 18, 2016

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on April 18, 2016 at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: Bob Fox, Mark O'Neill, Myron Johnson, Mel Ries, Rodney Klatt, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer).

Others present were Nathan Thyen, Dan Thyen, John Redlinger, Jim Comes, Cathy Gridley, Don Flisrand, Sue Flisrand, Val Jaspers, Jim Moes, Kathy Moes, Jeff DeVille, Jason Whitted, Michelle Pederson, Karl Kuhlman, and Becky Goens.

Chairman Fox brought the meeting of the Board of Adjustment to order.

Codington County Commissioners Brenda Hanten and Tyler McElhany filled the vacant seats on the board.

Fox announced the meetings from March 21 will be handled at the end of the meeting as there will be changes made.

Muller advised the board and the audience that two items which had been published will not be heard – Kelly Mahlen and Larry Schmeling. Mr. Mahlen's property is located within the Joint Jurisdiction area and will need to be republished and heard at the May meeting. Mr. Schmeling's request no longer requires a variance.

Motion by McElhany, second by Ries, to remove the variance request by Ryan and Pamela Carlson which was tabled at the March 21 meeting. The request is to place shrubs 10' from the 169th Street right-of-way on property located in Lot 1B and Lot 2 of the replat of Schneider Addition in S1/4, 18-T117N-R53W. The two rows of shrubs would include dogwoods and lilacs for purposes of cutting down dust from the road. Staff recommends that if the variance is approved, the motion is to include a minimum of 30' from the right-of-way as suggested by Lake Township supervisors. The dogwoods are to be the closest row with the lilacs on the inside. Motion by Johnson, second by Klatt, to approve the variance request based on staff recommendations. Lake Township supervisor, Val Jaspers, viewed the property and would agree to the 30' variance. Motion passed unanimously.

Motion by Hanten, second by O'Neill, to approve an Existing Farmstead Exemption and minimum lot width variances for Don Flisrand on property located in NE1/4, 23-T119N-R54W. Flisrand's would like to retain residential building rights at the site of an existing farmstead. This site, with a minimum of 5 acres, will be sold to their son. Approval is subject to the applicant platting a parcel with a minimum 5-acre lot according to the county's subdivision regulations and Flisrand's sign a Letter of Assurance transferring the 5-acre building right to the parcel to be created and agreeing that the existing residence on the remainder of the quarter section will be required to have

a minimum of 35 acres. Motion passed unanimously based on staff recommendation and conditions as stated.

Motion by Hanten, second by Ries, to approve an Existing Farmstead Exemption and minimum lot width variances for Jason and Lorna Whitted on property located in S33' of NE1/4 and N810' E810' SW1/4 and S41' E660' of SE1/4 of NW1/4, Section 30-T118N-R51W. Whitted's would like to retain residential building rights at the site of an existing farmstead. Motion passed unanimously.

Motion by Klatt, second by Ries, to approve an Area Regulations variance for Catherine Gridley on property located in E25' of Lot 5 and W25' of Lot 6, Block 2, Section 29-T118N-R51W. Ms. Gridley is requesting a 17' variance from the rear property line to construct a building/shed. Muller reviewed Staff Report (attached). Electrical and phone lines are located on the south side of the property and not in the alley. They will run directly under the proposed shed. Approval is subject to the applicant agreeing the shed will not be placed on a permanent foundation and sign a recorded document agreeing that if at any time the proposed structure is required to be moved to access the utilities, the structure will either be moved or removed at the expense of the applicant. Per Ms. Gridley, the shed will be placed on a gravel pad. Motion passed unanimously.

Motion by Hanten, second by McElhany, to approve existing farmstead exemption (lot area) and minimum lot width variances for MoDak Dairy, Inc. at property located in E8970' W2255' N875; NW1/4, Section 10-T116N-R51W. Muller reviewed Staff Report (attached). Motion passed unanimously.

Motion by McElhany, second by Hanten, to approve an existing farmstead exemption variance for MoDak Dairy to allow a second house to be used as an employee residence at the site of an existing farmstead on property located in E870' W2255' N875' NW1/4, Section 10-T116N-R51W. Conditions applied to this variance approval would include:

- A. The resident(s) of the second home are to be affiliated with the operation of the farm or relatives of the farm owner. If it is found that the residents are not affiliated with the farm or relatives of the farm owner the second home is to be removed within six months.
- B. Maximum occupancy of any home on the above described property shall be one (1) family. The word "family" shall be defined to mean: One (1) or more persons related by blood, marriage, or adoption occupying a dwelling unit as a single household unit. A family shall not include more than three (3) adults who are unrelated by blood or law. This definition shall not include foster families as regulated by the State of South Dakota.

Motion passed unanimously.

Motion by Hanten, second by Johnson, to approve a front yard setback variance request by Jeremiah and Michelle Pederson for property located at Lot 1, Brandriet First Addition, Section 13-

T117N-R52W. Pederson's would like to place a shed 55' from the right-of-way (10' front yard variance). Motion passed unanimously.

Board of Adjustment adjourns and the board is now acting as the Planning Commission.

Motion by McElhany, second by Ries, to recommend approval of the Plat of Goose Lake Addition in SE1/4, Section 11-T116N-R54W to the Board of County Commissioners. This plat was required after the approval of an existing farmstead exemption. Property is owned by Karl Kuhlman. Motion passed unanimously.

Muller reviewed the minutes from March 21, 2016 which were sent via email to the board members. However, there are changes and additions to be made. Once the changes are incorporated, another draft version of the minutes will be sent to board members for review. Motion by Johnson, second by Klatt, to approve the minutes. Motion by O'Neill, second by Ries, to table action on the minutes until the May meeting after changes have been made. Motion passed unanimously.

Muller presented the board with a photocopy of a newspaper article regarding a pending court case on a dairy CAFO in Grant County.

Motion to adjourn by Hanten, second by O'Neill. Motion passed unanimously.

Respectfully Submitted,

Becky Goens, Secretary

**APRIL 2016
JOINT PLANNING COMMISSION/BOARD OF ADJUSTMENT
CODINGTON COUNTY
STAFF REPORT**

MONDAY – APRIL 18, 2016 – 7:30 p.m.

CODINGTON COUNTY BOARD OF ADJUSTMENT

ISSUE #1 VARIANCE (Remove Variance from Table)

Owner/Applicant: Ryan and Pamela Carlson

Property Description: Lot 1B and Lot 2 of the replat of Schneider Addition located in S1/4, Section 18-T117N-R53W, Codington County, South Dakota. (Lake Township)

Zoning Designation: A – Agricultural

Request: The Carlson's request to plant two rows of trees shelterbelt parallel to and 10' from the 169th Street Right-of-Way.

History/Issue(s):

1. This item was tabled at the 3/21/16 meeting because the zoning office had not received payment. (Payment had been sent directly to the Treasurer's Office.)
2. The Carlson's live at the above described parcel and hope to plant 2 rows of trees (lilacs and dogwoods) 10' from the 169th Street Right-of-way for an approximate 133' span to cut down on dust.
3. The applicant proposes to place the closest row 75' west of the 439th Avenue Right-of-Way.
4. Codington County Ordinance requires shelterbelts on the north side of a road to be at least 150' from the right-of-way; however variance may be granted if the following conditions are met:
 - a. An established treebelt is located within ½ mile to the (north)
 - b. Approval is granted from the (Township Supervisors)
 - c. No trees are planted closer than 75' north of the right-of-way.
5. The Board has allowed similar plantings (distance) less than 75' north of county roads, but has no history of allowing less than 75' adjacent to township roads.
6. The Lake Township Supervisors have been contacted. They have not determined whether they object to the placement at the time of this report.
7. Staff recommendation – Variance – **Shelterbelt setback** – The Board has the option to table, deny or approve the request. If the Board approves the request it could use the following findings:
 - An established shelterbelt is located parallel to and north of the proposed shelterbelt.
 - The Board, based upon lack of objection from the road authority, has allowed setbacks of less than 150' north of a right-of-way for residential uses adjacent to county roads in the past.
 - The unique configuration of this lot, including the trees perpendicular to the road, 10' north of the right-of-way and the shelterbelt surrounding the building site north and west of the site.
 - The proposed rows of trees will span less than 150 lineal feet.
 - Future requests for variance will have to meet the same unique requirements as are met by this application.
 - The intent of the zoning ordinance and the comprehensive land use plan may be met if the following conditions are met:

- i. The applicant present the zoning officer of written documentation from the Lake Township Board of Supervisors that it authorizes the location of the proposed two rows of trees.
- ii. The two rows of trees be placed a distance as prescribed by the Lake Township Board of Supervisors provided that distance is not less than 30 feet north of the 169th Street Right-of-way.

If the Board denies the request, the Board could use the following findings:

- There are no special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are applicable to other land, structures, or buildings in the same district;
- The board does not have a history of granting variances to allow shelterbelts less than 75' north of township right-of-way.
- The granting the variance request would confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.

Action Item: Variance – Minimum Required Setback for Shelterbelts (5.08.01)

ITEM #2 (2) VARIANCES

Applicant/Owner: Don Flisrand

Property Description: NE1/4, Section 23-T119N-R54W, Codington County, South Dakota. (Dexter Township)

Zoning Designation: Agricultural

Request: Mr. Flisrand seeks variances from the minimum lot width and minimum lot area (by virtue of existing farmstead exemption) to create a minimum 5 acre building site at the location of an existing farmstead.

History/Issue(s):

1. The property has been used as a base of farming operations since prior to 1976.
2. Mr. Flisrand seeks to sell the building site on at least 5 acres to his son.
3. Codington County's Zoning Ordinance does allow for variance from the 35 acre-minimum lot requirement if the lot is determined to be an existing farmstead which contains at least five acres and thereby affording building rights.
4. The parcel contains an existing farmstead as defined by the Codington County Zoning Ordinance.
5. Staff recommendation –***Existing Farmstead Exemption and variance to Minimum Lot Width-*** Approve request because 1) The lot does contain at least five acres which meets the terms of the Ordinance. 2) The Zoning Officer after review of records and site-visit has determined that this parcel was used as an existing farmstead/residential site prior to October 26, 1976 subject to the following conditions:
 - A. The applicant plat a parcel with a minimum 5-acre lot according to the County's subdivision regulations.
 - B. Mr. Flisrand will sign a letter of assurance transferring the 5 acre building right to the parcel to be created and agreeing that the existing residence on the remainder of the quarter section will be required to have a minimum of 35 acres.

Action Item – Variances – Minimum lot size/Existing farmstead exemption (3.04.03.7.b), minimum lot width (3.04.03.2).

ITEM #3 (2) VARIANCES

Applicant/Owner: Jason and Lorna Whitted

Property Description: S33’ of NE1/4 & N810’ E810’ SW1/4 & S41’ E660’ of SE1/4 of NW1/4, Section 30-T118N-R51W, Codington County, South Dakota. (Waverly Township)

Zoning Designation: Agricultural

Request: The Whitted’s seek variances from the minimum lot width and minimum lot area (by virtue of existing farmstead exemption) on their 17 acre building site at the location of an existing farmstead.

History/Issue(s):

1. The property was used as a base of farming operations prior to 1976 and has been occupied in the last 50 years.
2. The Whitted’s recently purchased the property and intent to build a house.
3. Codington County’s Zoning Ordinance does allow for variance from the 35 acre-minimum lot requirement if the lot is determined to be an existing farmstead which contains at least five acres and thereby affording building rights.
4. The parcel contains an existing farmstead as defined by the Codington County Zoning Ordinance.
5. Staff recommendation –***Existing Farmstead Exemption and variance to Minimum Lot Width-*** Approve request because 1) The lot does contain at least five acres which meets the terms of the Ordinance. 2) The Zoning Officer after review of records and site-visit has determined that this parcel was used as an existing farmstead/residential site prior to October 26, 1976.

Action Item – Variances – Minimum lot size/Existing farmstead exemption (3.04.03.7.b), minimum lot width (3.04.03.2).

ITEM #4 (2) VARIANCES

Applicant/Owner: MODAK Dairy

Property Description: E870’ W2255’ N875’ NW1/4, Section 10-T116N-R51W, Codington County, South Dakota. (Kranzburg (S) Township)

Zoning Designation: Agricultural

Request: MODAK Dairy seeks variances from the minimum lot width and minimum lot area (by virtue of existing farmstead exemption) on their 17 acre building site at the location of an existing farmstead and to replace a second residence on the existing farmstead.

History/Issue(s):

1. The property was used as a base of farming operations prior to 1976.

2. MODAK purchased the above property in 2010 and has used it as a small feedlot and allowed workers to occupy the two houses on site.
3. MODAK intends to replace the west house on the site with a newer used house to be occupied by farm employees.
 - a. In order to move the used house in they will need signatures from 2/3 of adjacent property owners; however regardless of whether the specific house is approved by the neighbors, MODAK would like to affirm that they have the ability to replace the existing houses.
4. Codington County's Zoning Ordinance does allow for variance from the 35 acre-minimum lot requirement if the lot is determined to be an existing farmstead which contains at least five acres and thereby affording building rights.
5. The parcel contains an existing farmstead as defined by the Codington County Zoning Ordinance.
6. Codington County Zoning Ordinance allows not more than one dwelling per ¼ ¼ section; however exception may be made where a permit for an additional single-family farm dwelling is requested on an existing farmstead, provided:
 - a. The dwelling is located on the same legal description as the existing farmstead.
 - b. The maximum number of dwelling units within the existing farmstead will not exceed two (2).
 - c. The dwelling is occupied by employees or relatives of the farm owner.
 - d. The additional single-family farm dwelling shall be removed in the event the structure becomes a non-farm dwelling.
7. Policy has been to require one of the two homes to be a manufactured home. (1 of the 2 is a manufactured home).
8. The "Existing Farmstead Exemption" does not require the two houses to be on a lot of at least 35 acres, but specifically authorizes this exception at the site of an existing farmstead as defined by the ordinance. (See item #5 above.)
9. Staff recommendation –***Existing Farmstead Exemption (allow a lot of less than 35 acres) and variance to Minimum Lot Width-*** Approve request because 1) The lot does contain at least five acres which meets the terms of the Ordinance. 2) The Zoning Officer after review of records and site-visit has determined that this parcel was used as an existing farmstead/residential site prior to October 26, 1976.

Staff recommendation –***Existing Farmstead Exemption:*** Approve request because the Zoning Officer after review of records and site-visit has determined that this parcel was used as an existing farmstead/residential site prior to October 26, 1976 and the applicant meets the conditions of 3.04.03.7.a (existing farmstead exemption); conditional upon the applicant signing a letter of assurance stating the following:

- C. The resident(s) of the second home are to be affiliated with the operation of the farm or relatives of the farm owner. If it is found that the residents are not affiliated with the farm or relatives of the farm owner the second home is to be removed within six months.
- D. Maximum occupancy of any home on the above described property shall be one (1) family. The word "family" shall be defined to mean: One (1) or more persons related by blood, marriage, or adoption occupying a dwelling unit as a single household unit. A family shall not include more than three (3) adults who are unrelated by blood or law. This definition shall not include foster families as regulated by the State of South Dakota.

Action Item – Variances – Minimum lot size/Existing farmstead exemption (3.04.03.7.b), minimum lot width (3.04.03.2). Existing farmstead exemption (3.04.03.7.a)

ISSUE #5 VARIANCE

Owner/Applicant: Catherine Gridley

Property Description E25' of Lot 5 and W25' of Lot 6, Block 2, Section 29-T118N-R51W, Codington County, South Dakota. (Waverly Township)

Zoning Designation: TD – Town District

Request: Mrs. Gridley seeks to place a shed 8' from her south (rear) property line.

History/Issue(s):

1. Mrs. Gridley recently purchased the property and intends to place a shed 8' north of an unimproved alley line in Waverly.
2. On April 11, I spoke with a Waverly Township Supervisor regarding this request. There is no expectation to improve the alley, unless a full sewer project would be conducted for the village. It is not expected the proposed location would impede any future installation of sanitary sewer should the village/township choose to pursue it in the future.
3. Electrical and phone lines are located in the alley. Codington Clark Electric recommended the applicant perform a utility locate to be certain of their location.
4. 72% of the lot is covered by setback area (only 28% of her lot is buildable.)
5. Buildings on the east and west of this property are located less than 25 feet from the south property line.
6. Staff recommendation – **17' Variance to Rear Yard Setback**- The Board could table, deny or approve the request. If the Board chooses to approve the variance it could use the following findings, similar to those used in previous approvals of setback requirements in Town and Lake Park Districts:
 - a. The unique size and shape of the lot.
 - b. The Board has granted front and side yard variances to neighboring lots in the past.
 - c. The ordinance creates a unique hardship on this property in that it renders 72% of the lot unbuildable due to setbacks without the variance(s).
 - d. The Board would only consider approving other similar requests meeting the unique circumstances.

If the Board chooses to deny the variance it could use the following findings, similar to those used in previous denials of setback variances:

- a. The lot is not so unique to necessitate the relaxation of the setback requirement in that:
 - i. The lot size, though less than some others in the district still allows up to 28% of the lot to be built upon.
- b. The granting of this variance would confer upon the applicant special privilege denied to others in the Town District.

Action Item – Variances – 17' Rear Yard Setback Variance (3.10.03.1.a)

ISSUE #6 VARIANCE

Owner/Applicant: Jeremiah and Michelle Pederson

Property Description Lot 1, Brandriet First Addition, Section 13-T117N-R52W, Codington County, South Dakota. (Elmira Township)

Zoning Designation: A – Agricultural District

Request: The Pederson's seek to place a shed 55' from the right of way (10' front yard variance).

History/Issue(s):

1. The Pederson's own the 2.7 acre parcel and live in a house on it.
2. The Pederson's seek to construct a shed 88' north of the center of 169th Street (or 55' from the Right-of-Way.)
3. Codington County Ordinance requires structures to be placed a minimum of 98' from the center of streets or 65' from right-of-way lines.
4. West of the home the property is low and placing fill may affect the septic tank or run water around to the neighboring farm field.
5. The Board has granted small variances to front yard setbacks where there is no objection from the applicable road authority (Meadors, Roberts).
6. Codington County Highway Superintendent does not object to the proposed placement of this structure 55' north of the right-of-way.
7. Staff recommendation – **10' Variance to Front Yard Setback**- The Board could table, deny or approve the request. If the Board chooses to approve the variance it could use the following findings, similar to those used in previous approvals of setback requirements in Town and Lake Park Districts:
 - a. The unique size and shape of the lot.
 - b. The Board has granted front yard variances for similar relatively minor adjustments where the road authority does not object to the placement of the structure.
 - c. The Codington County Highway Superintendent does not object to the proposed placement of the structure.
 - d. The Board would only consider approving other similar requests meeting the unique circumstances.

If the Board chooses to deny the variance it could use the following findings, similar to those used in previous denials of setback variances:

- a. Adequate area exists to the west and north of the house to place the proposed building.
- b. The granting of this variance would confer upon the applicant special privilege denied to others in the Agricultural District.

Action Item – Variances – 10' Front Yard Setback Variance (3.04.03.3)

CODINGTON COUNTY PLANNING COMMISSION

ISSUE #1 Plat

Applicant/Property Owner: Karl Kuhlman

Property Description: Plat of Goose Lake Addition in the Southeast Quarter, Section 11-T116N-R54W, Codington County, South Dakota. (Kampeska Township)

Zoning Designation: A-Agricultural

Request: Create a 12 acre lot required Board of Adjustment.

Action Item – Recommendation of Plat approval to County Commissioners.

ISSUE #2 Staff Report/Open

Issue #3 Executive Session (if necessary)