

Codington County Planning Commission/Board of Adjustment Minutes

December 21, 2015

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on December 21, 2015 at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: Bob Fox, Mark O'Neill, Myron Johnson, Charles Rossow, Mel Ries, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer).

Codington County Commissioner Brenda Hanten filled the vacant seat on the board.

Others present were Michael Johnson, Jeff DeVille, Don Barrow, Tyler McElhany, Lee Gabel, and Becky Goens.

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

Motion by Hanten, second by Ries, to approve the November 23 meeting minutes. Motion passed unanimously.

Payment has not been received from Allen Fannin regarding his tabled variance. Therefore, Staff recommends this item remain on the table until the January meeting. Staff will follow up with Mr. Fannin.

Karl Kuhlman is requesting two variances: 1) Existing Farmstead Exemption; and 2) Lot Width for property owned by James and Betty Glosimodt and described as N745' of S1739' of E1672' and N120' of S1739' of W857' of E2529' and W170' of E1725' of S994' and the N5' of S1744' of E2529' all in the SE1/4 of Section 11-T116N-R54W. Motion by Johnson, second by Rossow, to approve the two variances as submitted and read by Staff. Kuhlman intends to purchase this property, separate the residence portion, and eventually sell with the residential building rights. Staff recommends approval subject to the applicant platting the 5-acre parcel and signing a Letter of Assurance agreeing the minimum 5-acre building right goes with the lot that is platted and everything else within that quarter must contain a minimum of 35 acres. Motion passed unanimously.

Rodney Klatt arrived at the meeting to reside on the Board.

Michael and Jenna Johnson are requesting a variance to the shelterbelt setback requirements for purposes of placing trees 50' south of 173<sup>rd</sup> Street right-of-way. Property is located in W450' of E1503' of N600' of NE1/4, and W1320' of E2200' of N1320' of NE1/4 less W450' of E1503' of N600' of NE1/4, all in Section 12-T116N-R52W. Motion to approve made by Hanten, second by Ries. Staff recommends approval based on the findings that an established shelterbelt is located parallel to and North of the proposed shelterbelt; Sheridan Township Supervisors do not object to the placing of these trees 50' west of the right-of-way; the closest row will be planted no closer to the right-of-way than 50'; and future requests for variance will have to meet the same

unique requirements as are met by this application. Motion passed unanimously.

The Codington County Planning and Zoning Officer has received complaints from an adjacent landowner of Craig Lammle regarding smoke originating from an external wood burning furnace located on his property described as Lot 109, East Air Haven Subdivision in Section 11-T116N-R53W. The furnace does meet required setbacks for accessory uses. Muller reviewed the Complaint and Facts as stated in Staff Report (attached). Mr. Lammle had a prior trip planned upon receiving notice and therefore could not attend this meeting. He did agree to add another 4' onto the vent but would like the issue then to be considered resolved. Staff would like the Board to recommend a course of action. Board member Fox made motion to consider the complaint as a nuisance violation, second by O'Neill. Don Barrow, neighbor filing the complaint, indicated the Lammle's burner is located 100' from his home. Approximately one year ago, Barrow requested Lammle put another stack on the vent; however, it did not alleviate the smoke and odor. Barrow would like the Board to recommend two additional, higher stacks be placed on the vent so that the smoke and odor is higher than the peak of his home. No one else was present to speak of this issue. Public portion of the meeting was closed. Board member Fox believes this is a civil matter between the two landowners as there is nothing within the zoning ordinance that addresses or regulates noise, odor, or smoke. If the ordinance were amended to include such regulations, Mr. Lammle would be "grandfathered" and would not be required to conform to any new regulations. The Air Haven covenants do not address this issue either. It was suggested by Fox to amend their covenants for future. A "no" vote indicates the Board and Zoning Officer determines the matter is a civil matter between the two property owners and the board does not see this as a violation of a nuisance ordinance. All present voted "no", motion failed unanimously.

Staff received a complaint from Leola Township Supervisor regarding topsoil material placed less than 65' from the 158<sup>th</sup> Street ROW for Lonnie Lowe's gravel pit in Section 26-T119N-R51W. This pit has been in operation for over ten years but recent activity has left these piles approximately 30' from the ROW line. The township is concerned about snow build-up on the road due to the piles. Muller contacted Lowe prior to Thanksgiving requesting the piles be removed by December 1, 2015 and submit a Haul Road Agreement. This has not yet been done. Lowe would like to wait until spring of 2016 to level the piles. Staff is looking for direction on how to proceed. Motion by Hanten to allow Staff to direct a letter to Mr. Lowe indicating that if these piles create any additional snow build up or snow removal time, he will be billed the additional costs accordingly. Second by Ries. The board may consider a variance application, along with a Haul Road Agreement, at the January meeting. Motion amended by Hanten, second by Ries, to allow Mr. Lowe until January 4 to sign a Letter of Assurance with the township. Motion on the motion, with amendment, passed unanimously.

Board member and County Commissioner Myron Johnson recommended each board member be reimbursed the meeting fee and mileage for attending the required October 19 deposition. These fees will be included in the December vouchers for payment in January.

Muller provided the End-of-Year Report and reviewed the number of variances, conditional use permits and building permit applications as well as the fees collected.

Discussion was held regarding the 2016 contract from First District of Local Governments. It was suggested to the Board that if there are any questions related to planning and zoning, to contact Luke at the Extension Office during his hours on Monday's, Wednesday's, and Friday's. Motion by Klatt, second by O'Neill, to recommend to the Codington County Commissioners to enter into contract for Planning and Zoning Services for 2016. Motion passed unanimously.

Board member Mark O'Neill's term will expire on December 31, 2015. O'Neill has elected to remain on the board for another term.

Muller received an inquiry from a seed company looking for property to place grain bins in which to store seed. There would be no farming activity associated with this operation. The board was in agreement that this use would be deemed commercial or agri-business vs. agricultural and therefore would require a Conditional Use Permit granted by the Board. An amendment to the zoning ordinance can also be created to include agri-business uses, although still subject to a Conditional Use Permit being granted.

Board member Fox does not like the lights placed on billboard signs along I-29 belonging to Jermar Properties. They are too bright and can cause a driving distraction. Fox would like to see the lights angled differently so reduce the light shining into traffic. Muller has had conversations with Jermar Properties and will contact the electrician that installed the lights so they can be adjusted.

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

Respectfully Submitted,

Becky Goens, Secretary

**DECEMBER 2015  
JOINT PLANNING COMMISSION/BOARD OF ADJUSTMENT  
CODINGTON COUNTY  
STAFF REPORT**

**MONDAY – DECEMBER 21, 2015 – 9:00 a.m.**

**CODINGTON COUNTY BOARD OF ADJUSTMENT**

**ISSUE #1 VARIANCE (Tabled from November 23, 2015 Meeting)**

Owner/Applicant: Allen Fannin

Property Description: Government Lots 6, 7, 8 & the N300' of Government Lot 5, all in Section 33-T119N-R55W, Codington County, South Dakota. (Eden Township)

Zoning Designation: A – Agricultural

Request: Mr. Fannin requests to plant a shelterbelt parallel to and 75' from the 439<sup>th</sup> Avenue Right-of-Way.

History/Issue(s):

1. Mr. Fannin plans to plant an additional shelterbelt which would connect two perpendicular shelterbelts on his property and run parallel to 439<sup>th</sup> Avenue.
2. The applicant proposes to place the closest row 75' west of the 439<sup>th</sup> Avenue Right-of-Way.
3. The applicant intends to plant trees as far WEST of the road as possible all the way up to 75' from the right-of-way in order to minimize impact of snow on 439<sup>th</sup> Avenue.
4. Codington County Ordinance requires shelterbelts on the west 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 (west)
  - b. Approval is granted from the (Township Supervisors)
  - c. No trees are planted closer than 75' south of the right-of-way.
5. For reference, some scattered trees are located in the shoreline of Kings Lake less than ½ mile west.
6. Based on #3 above, the Codington County Highway Superintendant no longer objects to the placement of the trees as described above.
7. Staff recommendation – Variance – *Shelterbelt setback* - Staff recommends approval of the request based upon the following findings:
  - a. An established shelterbelt is located parallel to and north of the proposed shelterbelt.
  - b. Codington County Highway Superintendant does not object to the placing of these trees 75' west of the right-of-way.
  - c. The closest row will be planted no closer to the right-of-way than 75'.
  - d. Future requests for variance will have to meet the same unique requirements as are met by this application.

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

## **ISSUE #2 (2) VARIANCES**

Applicant: Karl Kuhlman

Owner: James and Betty Glosimodt

Property Description: N745' of the S1,739' of the E1,672' and N120' of the S1,739' of the W857' of the E2,529' and the W170' of the E1,725' of the S994' and the N5' of the S1,744 of the E2529' all in the SE1/4 of Section 11-T116N-R54W, Codington County, South Dakota. (Kampeska Township)

Zoning Designation: Agricultural

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

History/Issue(s):

1. Mr. Kuhlman owns the rest of the quarter section and seeks to purchase the above legal description but will be splitting off the buildings site on the above described property which was used as a base for farming operations prior to 1976.
2. The applicant seeks to plat a parcel greater than 5 acres but less than 35 acres.
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.
  - A. The applicant plat a parcel with a minimum 5-acre lot according to the County's subdivision regulations.
  - B. The applicant sign and record a letter of assurance agreeing to assign the minimum 5 acre building right to the above referenced lot to be platted and that any other residential building permits in the rest of the quarter section would be required to be on 35 acre lots:

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

## **ISSUE #3 VARIANCE**

Owner/Applicant: Michael and Jenna Johnson

Property Description: W450' of E1503' of N600' of NE1/4, and W1320' of E2200' of N1320' of NE1/4 less W450' of E1503' of N600' of NE1/4, all in Section 12-T116N-R52W, Codington County, South Dakota. (Sheridan Township)

Zoning Designation: A – Agricultural

Request: The Johnson's request to plant a shelterbelt parallel to and 50' south of the 173<sup>rd</sup> Street Right-of-Way.

History/Issue(s):

1. The Johnson's plan to plant a shelterbelt run parallel to 173rd Avenue.
2. The applicant proposes to place the closest row 50' south of the township Right-of-Way.
3. Codrington County Ordinance requires shelterbelts on the south side of a road to be at least 100' 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 50' south of the right-of-way.
4. For reference, a shelterbelt is located on the quarter section north of this property.
5. The Zoning Office has received a letter from Sheridan Township verifying they do not object to this placement of the shelterbelt
6. Staff recommendation – Variance – *Shelterbelt setback* - Staff recommends approval of the request based upon the following findings:
  - a. An established shelterbelt is located parallel to and north of the proposed shelterbelt.
  - b. Sheridan Township Supervisors do not object to the placing of these trees 50' west of the right-of-way.
  - c. The closest row will be planted no closer to the right-of-way than 50'.
  - d. Future requests for variance will have to meet the same unique requirements as are met by this application.

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

**Issue #4: Complaint: Craig Lammle/Don Barrow**

In the past the Zoning Office has asked the Board whether it considers a specific action to constitute a nuisance in the county. If the Board is inclined it can make a non-binding recommendation to the State's Attorney to prosecute a matter as a nuisance. Otherwise the Board can note that the issue does not constitute a nuisance or under what parameters it would deem the matter to not be a nuisance.

Craig Lammle owns and resides at 2235 Air Haven Road. He utilizes an external wood burning furnace as a source of heat for his residence which is located approximately 50' northeast of his house. The furnace meets required setbacks for accessory uses/air conditioning units (deemed similar). In April 2015 Don Barrow contacted the zoning office regarding smoke generated by the furnace getting into his house and making it difficult to utilize his property. After multiple conversations between property owners, at the request of Mr. Barrow, Lammle added two extension(s) to get the peak of the exhaust vent approximately 16' above grade (at level of eaves of Mr. Barrow's adjacent shop.) In November, Mr. Barrow contacted the zoning office regarding the smoke again being noticeable in his house and making it difficult to use his property.

Facts regarding the issue

1. The furnace does not violate the Zoning Ordinance.
2. While the nuisance ordinance does reference matters offensive to the senses of property owners other than from which the matter originates as a nuisance; the only items actually enumerated as nuisances involve abandonment or disrepair of personal property and accumulation of junk.
3. The zoning office is unaware of any instance when the County has used "odor" as a grounds for prosecuting a nuisance.
4. The Zoning Ordinance does provide for odor mitigation measures in the case of certain uses, but not in this case.

5. Manufacturer's recommendation for these furnaces is to run the vent to the peak of the roof of any neighboring residence within 200-300' of the furnace. (Mr. Barrow's house is less than 200' from the furnace. An additional 5-7' of vent would be necessary to add to be at the height of the neighbor's house.)
6. The county does not require/enforce installation of any other structure to be installed according to manufacturer's recommendation except manufactured homes (anchoring only).
7. If an ordinance were adopted prohibiting or adding construction standards to such furnaces, Mr. Lammle's furnace would be "grandfathered" (considered nonconforming) and not obligated to meet any new rules.
8. According to the City Fire Marshall, while the odors may be offensive during "low ceiling" days, no fire codes (City of Watertown) are being violated with the furnace's operation.

Though not obligated to do so, staff asks the Board to recommend a course of action. It may be any of the following 3 items or a variation of them:

- 1) Determine the matter is a civil matter between two property owners and that the board does not see this as a violation of the nuisance ordinance.
  - a. Based upon no known history of prosecuting nuisances relating to odor.
  - b. Based upon no actual odor standards within the county.
- 2) Determine the matter should not be prosecuted as a nuisance provided Mr. Lammle adds venting to the existing vent to reach a height consistent with the manufacturer's recommendation.
  - a. The county does have construction/setback standards for certain other uses to mitigate odor potentially caused by a certain use.
  - b. The county does require manufactured homes to be anchored in accordance with manufacturer's recommendations.
- 3) Recommend the State's Attorney prosecute the matter as a nuisance. (The recommendation would be non-binding to the State's Attorney).
  - a. (The Board should come up with a basis for this if it is the intent. There is no historical basis that the zoning officer is aware of for this recommendation.)

Action Item – One of the 3 above recommendations regarding the complaint.

#### **ISSUE #5: Complaint: Lonnie Lowe Gravel Pit**

A complaint was received regarding materials (topsoil) placed less than 65' from the 158<sup>th</sup> Street Right of Way for a gravel pit in Section 26-119-51 operated by Lonnie Lowe. Mr. Lowe was contacted in November and told to remove the piled materials by December 1, 2015. The materials have not been removed. He contacted the Zoning Officer on December 16, 2015 noting he had equipment failure before the snow flew and would like to level the materials in the spring when a better job can be done. At a minimum he will need a variance granted by the Board to allow the piles to remain until spring. He understands he will need to pay applicable fees and come before the Board in January.

The original complaint by Leola Township cited the potential for increased snow piling on 158<sup>th</sup> Street near this site.

Does the Board have any specific recommendations for Mr. Lowe's obligation between the date of the December and January meetings regarding potential snow removal?

**ISSUE #6 End of Year Report**

**ISSUE #7 Recommendation to enter into contract for Planning and Zoning Services for 2016**

**ISSUE #8 Executive Session**