

Codington County/City of Watertown  
Joint Planning Commission/Joint Board of Adjustment Minutes

July 25, 2016

The Codington County/City of Watertown Joint Planning Commission/Board of Adjustment met for their monthly meeting on July 25, 2016 at the Codington County Extension Complex. Members of the Joint Planning Commission/Board of Adjustment present were: Bob Fox, Mark O'Neill, Brenda Hanten, Pat Shriver, Mark Stein, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer).

Others present were John West, Brooke Muhlack, Jeff West, Karen West, Terry Little, Carina Little, Ron German, Kelly German, Donn Pulfrey, Jeff Deville, Dale Tesch, Patrick McCann, Myron Johnson, Rodney Klatt, Charles Rossow, Mel Ries, and Becky Goens.

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

Motion by Hanten, second by Shriver, to approve the June 20 meeting minutes. Motion passed unanimously.

Motion by Hanten, second by Shriver, to remove Charles Cameron's variance request that was tabled at the June meeting. Muller reviewed the history per Staff Report. Mr. Cameron is working with Burlington Northern Railroad and is waiting to hear back from them as to their stance on the placement of the structure Cameron is requesting to construct. He is requesting to table this item again until he has heard a response from the Railroad representative. Motion by Shriver, second by Hanten, to table this item until Mr. Cameron contacts Mr. Muller. Motion to table passed unanimously.

Knife River Midwest, LLC is requesting an extension to a Conditional Use Permit for a temporary concrete mixing plant until July, 2017 on property owned by Greg Endres and is located in Lots 3 & 4 of Endres East First Addition and S1/2 of the NW1/4, Section 2-116-52. The original Conditional Use Permit was issued February 22, 2016. The variance will run concurrently with the Conditional Use Permit. The deadline for reclamation is the only change being requested. Motion by Hanten, second by Shriver, to approve the request as submitted. Knife River Midwest representative, Brooke Muhlack, explained the project has received some weather delays causing difficulties with concrete production and have been delayed approximately one month. Paving is expected to begin October 1, weather dependent. Adjoining landowner, Donn Pulfrey, voiced concerns regarding a ditch that was cut and how it would be handled as well as dust control measures. The purpose of the ditch is to help with drainage from the site and per Muhlack, a drainage filtration system is in place on site. Smaller rock will be added to filter storm water that leaves the site as well a spill prevention control counter measure plan that is to be on site at all times. Monthly inspections and integrity testing on all tanks. The tanks are double-walled and treated

to prevent rust. Tests are done at the end of the season to determine leaks or malfunctions. Fox inquired about larger rainfalls and the ability of the ditch to handle it. Muhlack is able to design a larger ditch if requested by the Board. Dust control measures include water spraying on site and can be requested more often if dust becomes an issue. Motion passed unanimously based upon testimony and findings read at the meeting and attached on the Staff Report.

Motion to adjourn by Hanten, second by Stein. Motion passed unanimously.

Respectfully Submitted,

Becky Goens, Secretary

**JULY 2016  
CODINGTON COUNTY/CITY OF WATERTOWN  
JOINT PLANNING COMMISSION/ JOINT BOARD OF ADJUSTMENT  
STAFF REPORT**

**MONDAY – JULY 25, 2016 – 7:30 p.m.**

**ISSUE #1 VARIANCE (Tabled item from 6/20 meeting- tabled at request of applicant)**

**Owner/Applicant: Charles and Sarah Cameron**

**Property Description** Lot 1 of the Plat: Lots 1, 2, 3 of Harold's Addition, Section 7-T117N-R52W, Codington County, South Dakota. (Elmira Township)

**Action Item – Variance – 24' Rear Yard Setback Variance (3.10.03.1.a)**

**Zoning Designation:** Agricultural District

**Request:** The Cameron's seek to place a shed 1' from the east (rear) property line.

**History/Issue(s):**

**Specifics of Request:**

1. The Cameron's live at the above described nonconforming, 2-acre, lot of record.
2. This lot is triangularly shaped, bordering the BNSF railroad on the east property line (from SW to NE).
3. The Cameron's seek to replace a shed, which had been previously removed, over an existing concrete pad located up to the east property line/railroad right-of-way at its closest point.
4. No easements are recorded for the area sought to be constructed upon.

**Ordinance/Variance History regarding this request:**

1. Structures are required by ordinance (regardless of the presence of nonconforming structures) to be located at least 25' from rear and side property lines.
2. The Codington County Board of Adjustment has allowed variances to side and rear yard setbacks to be consistent with City of Watertown setbacks in the past in properties expected to be annexed in the future. However, unless the applicant was the owner of the "affected adjacent property" the Board has never allowed a variance to allow a structure less than 5' from a side or rear property line since 2004 (only 2 less than 9').
3. On June 21, 2004, the Board denied a similar variance (25' side yard setback variance) to Mark Fiechtner on an agriculturally zoned lot.
4. The Board has seen no requests adjacent to railroad right-of-way such as this.
5. 56% of the lot is covered by setback area (43.29% of the lot is buildable.)
6. The Board has a history of granting variances for some side/rear yard relief where >72% or more of the lot is unbuildable due to setbacks in residentially zoned parcels (records not available for agriculturally zoned parcels).

**Staff recommendation:**

Staff recommendation – **24' Variance to Rear Yard Setback-** The Board could table, deny or

approve the request. 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:
  - 1) The lot size still allows up to 42% of the lot to be built upon.
  - 2) 50' south of the existing house is available for construction of accessory structures, and 45' north of the existing shed is available for construction of existing structures which could meet the applicable setback.
- b. The Board does not have a history of granting variances to allow less than a 6 foot accessory structure setback on rear yards.
- c. The Board has denied one request for a 25' side yard variance setback.
- d. The granting of this variance would confer upon the applicant special privilege denied to others in the Agricultural District.

If the Board chooses to approve the variance it could use the following findings:

- a. The unique size and shape of the lot.
- b. The angle of the railroad in creating the rear property line in reference to existing (constructed prior to 1976) accessory structures presents hardship in replacing those structures.
- c. The ordinance creates a unique hardship on this property in that it renders 58% 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.

### **ITEM #3 CONDITIONAL USE PERMIT AND VARIANCE**

**Applicant: Knife River LLC**

**Property Owner: Greg Endres**

**Property Description:** Lots 3 & 4 of Endres East Addition and the S1/2 of the NW1/4 of Section 2-116-52, Codington County, South Dakota. (Sheridan Township)

**Action Items: Conditional Use – Temporary Concrete Batch Plant (3.04.02.4)**

**Zoning Designation:** A - Agricultural

**Request:** Knife River seeks to extend the Conditional Use Permit granted February 22, 2016 to temporarily operate a concrete batch plant.

**History/Issue(s):**

**Specifics of Request:**

1. February 22, 2016 the JBOA issued a conditional use permit to temporarily operate a concrete batch plant on this property associated with the reconstruction of US 212.
  - a. A condition of approval was that the site needs to be reclaimed by December of this year.
2. Applicant expects the road project to last into 2017, and requests to utilize the site until July 1, 2017.
3. Variance was granted to allow this plant less than 1,000 feet from 5 residences. Those property owners received notification of this hearing.
4. No changes from original plans are expected.

Staff Summary:

The action requested of the Board at this meeting is to determine whether it is appropriate to allow Knife River to use this property for a temporary batch plant for an additional 8 months in order to complete the project. A “no” vote does not rescind the permit issued in February, it would only require them to find another location after December. A “yes” vote, allows them to complete the project while operating at this location.

Staff Recommendation

Conditional Use Permit – ...**Concrete and Asphalt Mixing Plants (Temporary Concrete Batch Plant)**: The Board may table the request, deny the request or approve the request. If approved this permit is intended to replace the approval from February 22, 2016, while holding the applicant to the same conditions agreed upon at that time except for the expiration of the permit which will change to July 1, 2017. It is recommended that approval would be based on findings based on findings used for the permit’s approval in February (only the dates change):

- A. Standard Findings of Fact for Conditional Uses adopted November 23, 2015.
- B. The following use is listed in the A – Agricultural Land District of the City of Watertown/Codington County Joint Jurisdiction Zoning Ordinance (Ref: SDCL 11-2-17.3):
  - ...Concrete Mixing Plant (Ref: Zon. Ord. 3.04.02.4).
- C. On or before July 11, 2016 Knife River LLC applied for a conditional use permit (Ref: Zon. Ord. 4.05.01.1) to operate a temporary concrete batch plant on property described as:

Lots 3 & 4 of Endres East Addition and the S1/2 of the NW1/4 of Section 2-116-52, Codington County, South Dakota. (Sheridan Township)
- D. That Temporary Concrete Batch Plants (Ref: Zon. Ord. 3.04.02.4) are allowable in the A – Agricultural District under certain conditions (Ref: Zon. Ord. 5.26). Therefore the Joint Board of Adjustment finds that it is empowered under Section 3.05.02.8 of the Zoning Ordinance to grant the conditional use, and that the granting of the conditional use will not adversely affect the public interest. (Ref: Zon. Ord. 4.05.01.5)
- E. The application and supporting documents provided satisfied the application requirements of Section 5.26.01.1. of the Zoning Ordinance
- F. Documentation of the SD DENR General Permit and SD DENR Notice of Intent indicate the site meets the requirements of the State Department of Environment and Natural Resources. (Ref. Zon. Ord. 5.26.02.1)
- G. The State of South Dakota is responsible for any monitoring or inspection of the site to ensure compliance with its applicable rules and regulations. (Ref. Zon. Ord. 5.26.02.2)
- H. On February 22, 2016, the City of Watertown/Codington County Joint Board of Adjustment granted variance to temporarily allow this concrete batch plant to be located on a legal description less than 1,000’ from five (5) residences. (Ref. Zon. Ord. 5.26.03.1)
- I. No mixing plants, piles or other structures will be constructed less than 65’ from any right-of-way. (Ref. Zon. Ord. 5.26.03.2)
- J. No mixing plants, piles or other structures will be constructed less than 25’ from any side or rear property line. (Ref. Zon. Ord. 5.26.03.3)
- K. The applicant has an agreement with SD Department of Transportation to reconstruct the road which it will directly access (US HWY 212). (Ref. Zon. Ord. 5.26.04.1)
- L. The applicant has provided information (hours of operation, berm, and outreach meetings) regarding how potential noise pollution will be minimized. (Ref. Zon. Ord. 5.26.04.2)
- M. The applicant has sufficiently described potential environmental impacts and plans to address

environmental impacts. (Berms, silt fence, grading, dust traps, dust control.) (Ref. Zon. Ord. 5.26.04.3)

- N. The applicant provided a plan for reclaiming the land to cropland prior to October 1. (Ref. Zon. Ord. 5.26.04.4)
- O. The City of Watertown/Codington County Joint Board of Adjustment finds that there is no need to require a bond for the reclamation of the proposed site. (Ref. Zon. Ord. 5.26.04.5)
- P. No mining or excavation other than the site preparation described in the application for conditional use permit and variance by the applicant is authorized by this conditional use permit. (Ref. Zon. Ord. 5.26.04.6 and 5.26.04.8)
- Q. In order to comply with the requirements of Section 4.05.01.6 and Chapter 5.26 of the City of Watertown/Codington County Joint Jurisdiction Zoning Ordinance, the Joint Board of Adjustment prescribes the following conditions and safeguards in conformity with the Joint Jurisdiction Area Comprehensive Land Use Plans and Zoning Ordinance (Zon. Ord. 4.05.01.7) to be agreed to in the form of a "Letter of Assurance" (Ref. Zon. Ord. 4.05.01.10):
  - 1) Dust control measures shall be utilized for the rock truck traffic associated with the operations on the above described property.
  - 2) Operations and reclamation of the sites (including removal of all piles and machinery associated with the project) are to be completed on or before July 1, 2017, at which point the permit will automatically expire.
  - 3) If reclamation or operations are unable to be completed on or before the above prescribed date, the Board may extend the expiration of the permit.
  - 4) Written consent of all five (5) residences within 1,000' of the proposed temporary concrete batch plant shall be obtained and evidence of such shall be presented to the zoning officer prior to the use of the property in any manner described within this application. **(THIS HAS BEEN COMPLETED)**
  - 5) Grantor agrees that evidence of violation of the regulations, including but not limited to air and water contamination, shall be cause for an immediate cessation of activities.
  - 6) Any failure to comply with the terms of this agreement will be deemed a violation of the terms of this Conditional Use permit. Violations will be determined by the Codington County Zoning Officer. If violations are substantiated the Board of Adjustment may hold a hearing to consider revocation of this Conditional Use Permit.