

Codington County Planning Commission/Board of Adjustment Minutes

July 25, 2016

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on July 25, 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, Charles Rossow, Brenda Hanten, Rodney Klatt, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer).

Others present were John West, Jeff West, Karen West, Terry Little, Carina Little, Ron German, Kelly German, Jeff Deville, Dale Tesch, Patrick McCann, and Becky Goens.

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

Codington County Board of Adjustment meeting has convened.

Motion by Hanten, second by Ries, to approve the June 20, 2016 minutes. Motion passed unanimously.

Motion by Hanten, second by Rossow, to remove Ron German's variance request from the table. Motion passed unanimously. Muller reviewed history of the request. It was determined there are other structures placed in the area within the suggested setback requirements. However, the only shed that received a permit does meet setbacks. The other unpermitted sheds are roughly 80-100 square foot in size. The public hearing portion of this item was closed at the June 20 meeting. Property is located in the Town District. Fox inquired about narrowing the rear setbacks in the Town Districts via an ordinance change so as to accommodate a larger number of landowners. After being questioned by the Board, Ron German indicates the building is proposed to be constructed with a wood floor so it can be moved if needed with one 6' door in the back and a front walk-in door. He prefers to not locate the building over the existing leach lines. Discussion was held regarding potential ordinance changes regarding rear yard setback in Town Districts. Fox advised the board he feels this request should be denied with the intention of amending the ordinance as discussed and if it not complete within two months, the board will invite Mr. German to re-apply for this variance. Motion denied unanimously.

Motion by Hanten, second by Klatt, to approve the existing farmstead exemption and minimum lot width variance requests by Jeff and Karen West. Property is located on a 17.16-acre parcel in E905' of N710' of SE1/4 less highway and E600' of S175' of S1/2 of SE1/4, Section 20-T118N-R53W. The West's are requesting to retain residential building rights at the site of an existing farmstead. Motion passed unanimously based upon testimony and findings read at the meeting and attached in the Staff Report.

Motion by Hanten, second by Ries, to approve the Easement/Waiver variance request by Terry and Carina Little on property located in NW1/4 less S997' and less highway, Section 25-

T116N-R53. The Little's are requesting a variance to construct a residence less than ½ mile from an existing concentrated animal feeding operation (CAFO) without signing a waiver of setback. Muller reviewed History/Issue per Staff Report (attached). Terry Little addressed the board stating he opposes signing the waiver and does not acknowledge this CAFO exists. Little indicates his objections include Muller first reviewing a 2014 aerial photo of Tesch's property to determine the site as a CAFO, some beef cattle have been on site but mainly in the cornstalks and not in the lots, the dairy business ended years ago, and barns are falling down. Little belongs to a local group that is fighting a large CAFO on Dale Tesch's property in which lawyers have been hired to assist. Little cited his arguments why he feels this is unconstitutional which include: the setback easement is illegal, keeps Little from having due process to fight the CAFO, Little has to be ½ mile away from Tesch to construct but Tesch only has to be ¼ mile from Little, and the laws are vague and wouldn't hold up in court. Muller indicated he has contacted Mr. Tesch and requested an affidavit be signed attesting to the number of livestock on the property in the last year. That number is 125 animals up to 45 days or more. John West, resident of Air Haven Road, suggests an ordinance change increasing the suggested setback from an existing CAFO. Muller advised how an ordinance is amended. States Attorney, Patrick McCann, has emailed Mr. Little's attorney requesting an outline on why they feel this is illegal and then search case law so as to advise the board. At this point, McCann finds their claims are vague with no basis to believe it is illegal or improper law. If their argument cannot be cited under South Dakota law, McCann is in a position to say the board has the authority to make these rules (ordinances) accordingly. He has not yet received a response from Mr. Little's attorney. McCann is hoping to hear back from the attorney prior to the next monthly board meeting on August 15. Public hearing was closed for board discussion. Motion by Hanten to table this request, second by Johnson. Motion passed unanimously.

Johnson advised the audience there are maps in existence indicating what a ½ mile or less setback would do to existing animal operations. It would eliminate the ability for anyone in the livestock production industry to expand because of shallow aquifers. The Board recognizes Codington as an agricultural county and wants to keep land viable for crop farmers as well as livestock farmers.

Motion by Hanten, second by Ries, to adjourn as the Board of Adjustment. Motion passed unanimously.

The board has convened as the Planning Commission.

Motion by Hanten, second by O'Neill, to advise Muller to create a draft of an ordinance amendment to the rear setbacks in Town Districts. The amendment should include moveable structures and potentially limiting the size of the structure. Motion passed unanimously.

Motion to adjourn by Klatt, second by Ries. Motion passed unanimously.

Motion by Rossow, second by O'Neill, to enter into Executive Session. Motion passed unanimously. Motion by O'Neill, second by Hanten, to adjourn from Executive Session. Motion passed unanimously.

Respectfully Submitted,

Becky Goens, Secretary

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

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

**CODINGTON COUNTY BOARD OF ADJUSTMENT**

**ISSUE #1 VARIANCE (Tabled from 6/20/16)**

**Owner/Applicant: Ron German**

**Property Description** Lot 6, Block 9 in North Kampeska, Section 1-T116N-R54W, Codington County, South Dakota. (Kampeska Township)

**Action Item – Variances – 20' Rear Yard Setback Variance (3.10.03.1.a)**

**Zoning Designation:** TD – Town District

**Request:** Mr. German seeks to place a shed 5' from his south (rear) property line.

**History/Issue(s):**

1. Mr. German was recently granted permit to construct a house on the above described property.
2. He proposes to place a small utility shed 5' from the south property line.
3. The structure would not be on a foundation but would be placed over the southernmost end of his drain field. Much of the rest of the property is proposed to be covered with structures (house and other storage building.)
4. Utilities will not be located in the location of the shed
5. 46% of the lot is covered by setback area (54% of the lot is buildable.)
6. Buildings bordering this property generally comply with the setback requirements.
7. *This application was tabled at the previous meeting to review permitting status of sheds on neighboring properties.*
  - a. *Lot 3, Block 1 (NE of property) permitted with #2866 (met rear yard setbacks)*
  - b. *No other permits on file for sheds shown along south line.*
8. Staff recommendation – **20' 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 54% 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.

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 location of the septic tank, drainfield and other structures limit the location of a small shed to this location.
- c. Similarly situated sheds are located in close proximity to this proposed shed.
- d. The Board would only consider approving other similar requests meeting the unique circumstances.
- e. Approval is subject to the following conditions:
  - 1) The structure may not be placed upon a permanent foundation.

## **ITEM #2 (2) VARIANCES**

**Applicant/Owner: Jeff and Karen West**

**Property Description:** 17.16-acre parcel in E905' of N710' of SE1/4 less Highway and E600' of S175' of S1/2 of NE1/4, Section 20-T118N-R53W, Codington County, South Dakota. (Fuller Township)

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

**Zoning Designation:** Agricultural

**Request:** The West's seek variances from the minimum lot width, minimum lot area (by virtue of existing farmstead exemption), to retain building rights on their 17 acre parcel at the location of an existing farmstead.

**History/Issue(s):**

1. The West's purchased this property in 1994 (17.16 acres) and seeks to sell the parcel today.
2. The property was used as a base for farming operations and prior to 1976 and is currently occupied by the West's.
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.

## **ISSUE #3 VARIANCE**

**Owner/Applicant: Terry and Carina Little**

**Property Description** NW1/4 less S997' and less highway, Section 25-T116N-R53W, Codington County, South Dakota. (Pelican Township)

**Action Item – Variances – Construct a residence less than ½ mile from existing CAFO without signing a waiver of setback (3.04.03.9.b)**

**Zoning Designation:** A – Agricultural District

**Request:** Construct a residence with signing required CAFO setback waiver.

**History/Issue(s):**

1. The Little's own the above described property and propose to construct a house approximately 750' from the east property line and 150' south of 176<sup>th</sup> Street.
2. Dale Tesch operates a Class 5 Concentrated Animal Feeding Operation on the property immediately north of this site (S1/2 of Section 24-116-53).
3. The house is proposed to be 1,320 from the southernmost point of the CAFO on Dale Tesch's property.
4. Codington County Ordinance requires that any applicant for a residence either sign a waiver of setback from a concentrated animal feeding operation or to receive waiver from the operator of any CAFO operator within a ½ mile of a proposed residence.
  - a. The requirement has been in ordinance since 2006.
  - b. The waiver acknowledges the existence of a CAFO within ½ mile and potential need for variance from setback requirements; and waives rights to appeal decision of BOA in issuing future variance in reference to setback from the proposed residence.
5. There is room on the property to construct a residence greater than ½ mile from the existing concentrated animal feeding operation, which would not necessitate the signing of the waiver of setback.
6. Mr. Little refuses to sign the above referenced Waiver of Setback from Existing Concentrated Animal Feeding Operation on the grounds that the provision itself is illegal.
7. The Board has never heard a request for variance from the Waiver of Setback.
8. (From Section 4.05.02) In order to approve a variance the Board must find ALL of the below have been met (c – h are converse of how listed in ordinance):
  - a. That it is empowered to grant the variance
  - b. That the granting of the variance will not adversely affect the public interest
  - c. There are special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other land, structures or buildings in the same district.
  - d. The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.
  - e. Any special conditions and circumstances do not result from the actions of the applicant.
  - f. Financial disadvantage of the property owner is not being used as conclusive proof of unnecessary hardship within the purposes of zoning.
  - g. The granting of this request would **not** confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.
  - h. No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted or nonconforming use of lands, structures, or buildings in other districts were considered as grounds for issuance of the variance.
9. Staff recommendation – ***Construction of residence without waiver of CAFO Setback-*** The Board could table, deny or approve the request. If approved the Board would be certifying the a-h listed above have been satisfied. If denied, the Board shall specify which of the above (a-h) are not satisfied and are thus the basis for denial.

**ISSUE #5 Executive Session**

**ISSUE #6 Staff Report**