

Codington County/City of Watertown
Joint Planning Commission/Joint Board of Adjustment Minutes
June 20, 2016

The Codington County/City of Watertown Joint Planning Commission/Board of Adjustment met for their monthly meeting on June 20, 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, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer).

Others present were John West, Terry Egerstrom, Drew Mahowald, Paul Schwanke, Janelle Olson, Bruce Egerstrom, Gary Voelsch, Chad Voelsch, Dawn Voelsch, Jim Madson, Teresa Madsen, Ken Kones, Jodi Kones, Mike Tanner, Kelly German, Carina Little, Terry Little, Kim Larson, Vicki Good, Sarah Cameron, Charlie Cameron, Bill Towle, Scott Voelsch, Sheila Voelsch, Gene Voelsch, Bonnie Voelsch, Eric Anderson, Ted Tesch, Corey Nelson, Sandra Nelson, Lisa Tesch, Janice Schwanke, Raymond Tesch, Trevor VanWell, Lee Gabel, Don Tesch, Lavern Becking, Dan Becking, Mel Ries, Myron Johnson, Charles Rossow, Rodney Klatt, and Becky Goens.

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

Staff displayed a map to the audience showing where the joint jurisdiction area is in Codington County.

Tonight's meeting only has four of the five board members present. This means that all four must vote in favor of the request in order for it to pass. Each applicant will be given a choice as to whether they would like to table their request until the July meeting where there will be five members present.

Motion by Hanten, second by Shriver, to approve the May 16 meeting minutes. Motion passed unanimously.

Motion by Hanten, second by O'Neill, to approve the minimum lot size and minimum lot width variances requested by Janice Schwanke. Ms. Schwanke is requesting to create a lot less than 35 acres and less than 1300' wide on property located in N1/2 of NE1/4, Section 14-T116N-R53W. Muller reviewed Staff Report history, ordinance, and recommendation (attached). Fox asked if Schwanke would like to table this issue until the July meeting or proceed with only four members. Schwanke would like to proceed. Paul Schwanke, applicant's son, is aware of the zoning ordinance but would still like the variance stating the land was farmed for many years by the current owner. Don Tesch and Lisa Tesch spoke in opposition of the variance being granted. Public hearing portion closed. Motion failed unanimously based upon findings presented at the meeting (see staff report - page 4).

Motion by Hanten, second by Shriver, to approve a 24' rear yard setback variance for Charles and Sarah Cameron on property located in Lot 1 of the Plat: Lots 1, 2, 3 of Harold's Addition, Section 7-T117N-R52W. Cameron is proposing to place a 12' x 24' shed 1' from the railroad right-of-way whereas 25' is required. Muller reviewed Staff Report history and recommendation (attached). There is an existing cement pad from a building that is no longer there and Mr. Cameron would like to make use of this pad. Fox has concerns about a 1' setback as you are not able to walk around or service the structure without accessing the neighbor's property. O'Neill agrees with Fox. Shriver has concerns about setting a precedent. Fox asked Cameron if he would like to proceed or table the request until the July meeting when five members can be present. Mr. Cameron has requested the Board table his request. Motion by Hanten, second by Shriver, to table this request until the July 25 meeting.

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

Respectfully Submitted,

Becky Goens, Secretary

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

MONDAY – JUNE 20, 2016 – 7:30 p.m.

CODINGTON COUNTY/CITY OF WATERTOWN JOINT BOARD OF ADJUSTMENT

ITEM #1 (2) VARIANCES

Applicant: Janice Schwanke

Property Description: N1/2 of NE1/4, Section 14-T116N-R53W, Codington County, South Dakota.
(Pelican Township)

**Action Item – Variance – Minimum Lot Width (3.04.03.2)
Variance – Minimum Lot Area (3.04.03.1)**

Zoning Designation: Agricultural

Request: Mrs. Schwanke requests variance to create a parcel of less than 35 acres for residential purposes.

History/Issue(s):

Relevant Property History:

1. Mrs. Schwanke owns the above 80 acre parcel which is farmed by her sons and has her house on it.
2. On August 31, 2009 the Codington County Zoning Officer issued Marvin and Janice Schwanke a building permit to construct a house (#2891) on the above described parcel 80 acre parcel.
3. Though the property has always been farmed, there is no “Existing Farmstead” as defined by the ordinance located on this legally described piece of property.
4. Mrs. Schwanke seeks to keep the farmland to be operated by her family, but to sell the house on a 2-5 acre lot.

Ordinance regarding this request:

1. As has been the case since 1976, there are no building rights to parcels with less than 35-acres. Therefore if the home was destroyed by an act of God, etc – no building permit could be issued to replace the home. Further no permits could be issued for construction of accessory buildings without the granting of variance for this site.
2. By ordinance if the above legal description were decreased in size below 35 acres, the zoning officer could not issue ANY building permits to the newly created lot without a variance to the minimum lot area; however

Abridged Variance History:

1. The Board has allowed variances from the 35 acre requirement in the following instances:
 - a. A lot of 5 acres is created at the site of an existing farmstead or if a second house on the farmstead is to be occupied by employees or relatives of the farm owner.
 - b. The lot contains a nonconforming lot of record created prior to the adoption of the 35 acre rule.
 - c. A past zoning officer issued a building permit to a lot of less than 35 acres and no record of subsequent correspondence from the zoning office is available (building permits, inquiries, Board of Adjustment decisions, etc).
2. This property is not at the site of an existing farmstead.
3. The Board has a history of denying variances to the minimum 35 acre lot requirement where a tract of 35 acres is proposed to be split or has already been split if the split occurred after 1976 regardless of previous permits or approval by the zoning officer in some cases. (Since 2004: Spiegel '04, Manzey '04, Stadheim '06, Smith' 06, Krause '06, Brandreit '06, Wittnebel ('06 and '09), Lueck '07, Steen '09, Laqua '11, Peters/Schreiner '13, Schaefer '13, Schaefer '14, Brandreit '15).

Staff recommendation:

Variance to Minimum Lot Area and Minimum Lot Width- Using one motion, based upon Section 3.02.12.2 and past decisions of the Board of Adjustment, the Zoning Officer is obligated to recommend denial of the variances based upon:

- i. The Board has allowed variances from the 35 acre requirement in the following instances:
 - a. A lot of 5 acres is created at the site of an existing farmstead or if a second house on the farmstead is to be occupied by employees or relatives of the farm owner.
 - b. The lot contains a nonconforming lot of record created prior to the adoption of the 35 acre rule.
 - c. A past zoning officer issued a building permit to a lot of less than 35 acres and no record of subsequent correspondence from the zoning office is available (building permits, inquiries, Board of Adjustment decisions, etc).
- ii. The property currently consists of the following 80 acre legally described property: N1/2 of NE1/4, Section 14-T116N-R53W, Codington County, South Dakota, and further consisted of greater than 35-acres at the time of issuance of Building Permit #2891 in 2009 which satisfied the minimum lot requirement of the Codington County Zoning Ordinance.
- iii. The request proposes to use and sell the parcel in a manner which makes the property non-compliant with the lot area requirements established by ordinance.
- iv. The Board of Adjustment has denied multiple variance requests to create lots of less than 35 acres.
- v. Granting of this variance would authorize the creation of a nonconforming lot.
- vi. Granting of this variance **would** confer upon this applicant privileges not commonly enjoyed by other residents in the Agricultural District.

ISSUE #2 VARIANCE

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.