

Codington County Planning Commission/Board of Adjustment Minutes

August 15, 2016

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on August 15, 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, Terry Little, Carina Little, Wayne Borgheiinck, Ken Kones, Joel Koustrup, Tyler McElhany, and Becky Goens.

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

Motion by Hanten, second by Ries, to approve the July 25, 2016 minutes. Motion passed unanimously.

Terry and Carina Little's variance request that was tabled at the July meeting will not be removed from the table, at the request of the States Attorney. This item will be reviewed at the next meeting of September 19, 2016 at 7:30 pm.

Motion by Hanten, second by Rossow, to approve two variance requests by Great Western Bank for property in N1/2 of SE1/4, Section 2-T116N-R51W. The requests are for an existing farmstead exemption and a variance to the minimum lot width for purposes of retaining residential building rights. Muller reviewed Staff Report (attached). Motion passed unanimously.

Motion by Klatt, second by Ries, to approve the Area Regulations variance request by Wayne Borgheiinck. Property is located in Lot 7 and E25' of Lot 6, Block 2, Waverly Villages, Section 29-T117N-R51W. Mr. Borheiinck is requesting a 13' variance to the rear (south) setback and 4' variance to the front (east) setback to construct a garage. Muller reviewed Staff Report (attached). A letter has been provided by Codington-Clark Electric Cooperative, Inc. stating they do not object to the placement of this structure even with a permanent foundation located over electrical lines. Muller read the letter aloud. Public portion closed. Motion passed unanimously.

Motion by Johnson, second by Rossow, to approve the Conditional Use Permit request by Dakota Range Wind, LLC. This request is to install a 198' temporary meteorological tower for purposes of studying wind characteristics on property owned by Steven and LeeAnn Maag, located in SW1/4, Section 17-T119N-R51W. Motion by O'Neill, second by Ries, to table this request until September 19, 2016 due to payment not having been received by the date of this meeting. Motion to table passed unanimously.

Motion by Hanten, second by Rossow, to adjourn as the Board of Adjustment.

Fox brought the meeting of the Planning Commission to order.

Muller presented the Plat of Fischer Addition in the N1/2 of SE1/4 of Section 2-T116N-R51W.

Motion by Hanten, second by Ries, to recommend approval to the Board of County Commissioners. Property is owned by Great Western Bank. Motion passed unanimously.

Muller presented the Plat of Buck and Rooster Addition in the NW1/4 of Section 18-T117N-R53W. Property owner is Joel Willette and his intentions are to create and sell three lots, greater than 35 acres each. Motion by O'Neill, second by Klatt, to recommend approval to the Board of County Commissioners.

Motion by Ries, second by O'Neill, to approve Ordinance 63 as presented and read by Staff (copy attached). This ordinance was initiated by the Planning Commission Board at the July 25, 2016 meeting. No one was present to speak to this issue and therefore public hearing was closed. Motion by O'Neill, second by Klatt, to amend the ordinance to include a maximum building size of 200 square feet with a non-permanent foundation. Anything over 200 square feet or located on a permanent foundation would require a variance application. Motion on amendment passed unanimously. Original motion, with amendment, passed 6-1.

Muller passed around a photo of a proposed sign for the new Wallace Elevator fertilizer plant. It does exceed the maximum size allowed by ordinance for an off-site sign. An application can be made; however the board would most likely not allow off-site signage this size. Previous sign requests of this size have been denied by the Board.

Muller provided a staff training session with regard to Section 5.21 Concentrated Animal Feeding Operation Regulations.

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

Respectfully Submitted,

Becky Goens, Secretary

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

MONDAY – AUGUST 15, 2016 – 7:30 p.m.

CODINGTON COUNTY BOARD OF ADJUSTMENT

ISSUE #1 VARIANCE (Tabled Item from 8/25/16 Meeting)

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 – Variance – 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. *This matter was tabled until the August 15, 2016 meeting to allow the State's Attorney time to review Mr. Little's attorney's legal arguments regarding this matter. As of the morning of August 8, the State's Attorney had received no information regarding the matter.*
2. 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 176th Street.
3. 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).
4. The house is proposed to be 1,320 from the southernmost point of the CAFO on Dale Tesch's property.
5. Codington County Ordinance requires that any applicant for a residence either to 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.
6. 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.
7. 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.
8. He proposes to place a small utility shed 5' from the south property line.
9. The Board has never heard a request for variance from the Waiver of Setback...
10. (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.

11. 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.

ITEM #2 (2) VARIANCES

Applicant/Owner: Great Western Bank

Property Description: N1/2 of the SE1/4, Section 2-T116N-R51W, Codington County, South Dakota. (Kranzburg (S) 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 applicant seeks variances from the minimum lot width, minimum lot area (by virtue of existing farmstead exemption), to retain building rights at the location of an existing farmstead.

History/Issue(s):

1. This farmstead has been operated by the Fischer's until present.
2. The property was used as a base for farming operations and prior to 1976.
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:

1) As a condition of obtaining a variance to establish an Existing Farmstead exemption on property described as the North Half of the Southeast Quarter of Section 2-T116N-R51W, Codington County, South Dakota, the Grantors, their heirs, successors, and assigns acknowledge that the existing farmstead, minimum five (5) acre, residential building right is assigned to the 10.1-acre parcel in the North Half of the Southeast Quarter of Section 2-T116N-R51W, Codington County, South Dakota, which upon platting, will be known as: Plat of Fischer Addition in the North Half of the Southeast Quarter, Section 2-T116N-R51W, Codington County, South Dakota.

2) The Grantors, their heirs, successors, and assigns further hereby agree that subsequent residential development in the North Half of the Southeast Quarter of Section 2-T116N-R51W, Codington County, South Dakota less Plat of Fischer Addition, shall only be allowed upon parcels of thirty-five (35) acres unless and until changes are made to the Codington County Zoning Ordinance allowing for such residential development on less than thirty-five acres. Residential development to be defined as a "dwelling" per the Codington County Zoning Ordinance.

ISSUE #3 VARIANCE

Owner/Applicant: Wayne Borgheiinck

Property Description: Lot 7 and E25' of Lot 6, Block, Waverly Village, Section 29-T117N-R51W, Codington County, South Dakota. (Waverly Township)

Zoning Designation: TD – Town District

Action Items – Variances – 13' Rear (South) Yard and 4' Front (East) Yard Setback Variance (3.10.03.1.a)

Request: Mr. Borgheiinck seeks to place a shed 12' from his south (rear) property line and 21' from his east (front) property line.

History/Issue(s):

1. Mr. Borgheiinck lives on the above described corner lot.
2. He requests to place a 24 x 20 shed 12' from the alley line (25' required) and 21' from the right-of-way line (25' required) on his property.
3. On April 11, I spoke with a Waverly Township Supervisor regarding a past request. There is no expectation to improve the alley, unless a full sewer project would be conducted for the village. Since the location of this shed is farther from the alley than the previous request, 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.
4. The structure is proposed to be located over existing electrical lines. (Codington Clark Electric)
 - a. The applicant has a letter from the Electrical Provider stating they do not object to the placement of this structure (even with its permanent foundation) over the electrical lines.

5. The 4' front yard variance still leaves adequate room for a vehicle to be parked in front of the proposed garage and still be entirely on private property.
6. 67.5% of the lot is covered by setback area (only 32.5% of the lot is buildable.)
7. Buildings on the east and west of this property are located less than 25 feet from the south property line.
8. Staff recommendation – **13' Variance to Rear Yard Setback and 4' 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 and side yard variances to neighboring lots in the past.
 - c. The ordinance creates a unique hardship on this property in that it renders 67.5% 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.
 - e. Codington Clark Electric operates a utility line under the proposed structure and has submitted written consent to the proposed project.

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, though less than some others in the district still allows up to 32.5% of the lot to be built upon.
- b. Previously approved sheds have been required to be on nonpermanent foundations (movable).
- c. The granting of this variance would confer upon the applicant special privilege denied to others in the Town District.

ISSUE #4 CONDITIONAL USE PERMIT

Applicant: Dakota Range Wind, LLC (DRW)

Property Owner: Steve and LeeAnn Maag

Property Description: SW1/4 of Section 17-T119N-R51W, Codington County, South Dakota. (Leola Township)

Zoning Designation: A - Agricultural

Action Item – Conditional Use Permit – Telecommunications Tower (3.04.02.15)

Request: DRW proposes to erect a 198' guyed wire meteorological tower.

History/Issue(s):

Specifics of Request:

1. DRW is working to secure permitting for the 198' guyed meteorological tower to record wind data.
2. The applicant has obtained an easement from the property owner for the construction of this and larger wind towers. (Larger wind towers are not a part of this request.)

Ordinance, Comprehensive Land Use Plan and other regulations regarding this request:

- a. Most of the regulations in Section 5.24 are written for television, radio, and cell towers. Sections 5.24.02.2. and 5.24.05 – 5.24.11 do not apply.
- b. Since the Tower is greater than 100' in height, the following setbacks apply (which are met with this application):
 - a. Distance from existing off-site residences, business and public buildings **is greater than** one thousand (1,000) feet. Distance from on-site or lessor's residence **is greater than** five hundred (500) feet.
 - b. Distance from public right-of-way (1,300') **is greater than** the height of the tower.
 - c. Distance from any property line (725') **is greater than** the height of the tower.
- c. Since the Tower is greater than 150' in height, consistent with 5.24.02.1 and 5.24.12 the Board needs to determine that:
 - a. That the Tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.
 - b. Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.
 - c. In addition, the board may include conditions on the site where the Tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed Tower and mitigate any adverse impacts which arise in connection with the approval of the modification.

For reference, Section 5.24.12.1 describes multiple items for a contractor to provide for consideration of "site plan development modifications." The only portion not specifically outlined by the applicant is 5.24.12.1.a.iv which would require the applicant to identify "all other parcels that the tower could be located, attempts by the applicant to... [collocate]" Since the only limiting factor is the actual height being 196' no difference between this or any other property (aside from setbacks) would be relevant, nor would it be practical to collocate an anemometer tower on an existing telecommunications tower.

Given that the applicant exceeds the required setbacks and the proposed structure is located on an otherwise vacant quarter section it appears most adverse impacts are mitigated by the property's relative "remoteness".

4. It should be noted that South Dakota Codified Law 50-9-13 regulates the marking of anemometer towers such as this. The law is enforced by the South Dakota Department of Transportation – Aeronautics Commission. It requires (for reference only)
 - a. alternating orange and white painting
 - b. orange "balls" to be placed on the guyed wires
5. Towers less than 200' in height do not require lights per FAA regulations.
6. Since towers less than 200' in height do not require specific markings from FAA and SDDOT, in the past, the Board has required those constructing towers to notify, via certified mail, certain airports of the construction of such towers.
 - a. It should be noted that the last 5 similar towers were constructed, voluntarily, to the above standards.
7. Non commercial structures, according to state law are required to meet the latest edition of the International Building Code. The Codington County Zoning Ordinance also requires written confirmation from the project engineer that the structure will be structurally sound.
8. As of the date of this report staff has received no objections regarding this request.

Staff recommendation:

Conditional Use Permit: Telecommunications Tower (Meteorological Tower). The Board may table the request, deny the request, or approve the Conditional Use Permit(s). The Zoning officer recommends approval based upon based upon the comprehensive land use plan, zoning ordinance and testimony heard at this meeting:

- A. Standard Findings of Fact for Conditional Uses and Variances adopted March 17, 2014.
- B. The following use is listed in the A – Agricultural Zone of the Codington County Zoning Ordinance

Telecommunications Towers (Ref: Zon. Ord. 3.04.02.15).

- C. On or before August 1, 2016 Dakota Range Wind applied for a conditional use permit (Ref: Zon. Ord. 4.05.01.1) to construct a 198' guyed Meteorological Tower on property owned by Steve and LeeAnn Maag described as:

SW1/4 of Section 17-T119N-R51W, Codington County, South Dakota

- D. That Telecommunications towers (Ref: Zon. Ord. 3.04.02.15) are allowable in the A – Agricultural District under certain conditions (Ref: Zon. Ord. 5.24). Therefore The Board of Adjustment finds that it is empowered under Section 3.04.02.15 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 proposed tower will be greater than 150' in height. (Ref. Zon. Ord. 5.24.02.1 & 5.24.03.1)
- F. The tower will be constructed greater than one thousand (1,000) feet from any existing off-site residences, businesses, and public buildings. No on-site residences are located on the above parcel. (Ref. Zon. Ord 5.24.03.2.a)
- G. The tower will be constructed greater than one hundred ninety-six (196) feet from the nearest right of way. (Ref. Zon. Ord 5.24.03.2.b)
- H. The tower will be constructed greater than one hundred ninety-six (196) feet from the nearest property line. (Ref. Zon. Ord 5.24.03.2.c)
- I. The tower will be designed and certified to be structurally sound and, at minimum, in conformance with the Building Code [as established by SDCL]. The tower shall be fixed to land. (Ref. Zon. Ord. 5.24.04.1)
- J. Since the tower is to be used by the owner to relay information specifically for the use of this business and not for any transmission of television, radio, or cellular (public) purposes, Sections 5.24.02.2. and 5.24.05 – 5.24.13 do not apply, except that Section 5.24.12 applies due to the height of the tower exceeding 150'.
- K. The sole purpose of the construction of this tower is to collect wind data and not otherwise to provide telecommunications signals it would be impractical to require collocation of this tower with another tower; and that the sole reason for requiring additional criteria for site plan development modifications per Section 5.24.2.1 is the height of the tower exceeding would lead yield the same result on any property meeting setbacks, Section 5.24.12.1.a.iv. is considered satisfied.
- L. Due to the ability of the applicant to exceed the required setbacks, the location of no “on-site residences”, and satisfaction of other conditions attached by the Board of Adjustment it has been determined by the Board that the proposed tower:
 - 1) will be compatible with and not adversely impact the character and integrity of surrounding properties (Ref. Zon. Ord 5.24.12.1.b.i.); and
 - 2) Off-site or on-site conditions exist which mitigate the only adverse impacts, created by the [height of the tower] (Ref. Zon. Ord 5.24.12.1.b.ii.); and
 - 3) In addition, the board may include conditions on the site where the Tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods

affected by the proposed Tower and mitigate any adverse impacts which arise in connection with the approval of the modification (Ref. Zon. Ord 5.24.12.1.b.iii.).

- M. The applicant is expected to comply with all applicable state and federal regulations regarding the construction of towers and transmission of radio signals.
- N. SDDOT and FAA may not have specific regulations regarding the construction and marking of towers less than 100' in height.
- O. The findings contained herein combined with the findings of the Board contained in the motion to approve the conditional use permit serve as the Official Findings of Fact referenced in Section 4.05.01.6. The zoning officer is hereby authorized to prepare and issue the conditional use permit and any letters of assurance, building permits or other items associated with said conditional use permit.
- P. In order to comply with the requirements of Section 4.05.01.6 and Chapter 5.24 of the Zoning Ordinance the Board of Adjustment prescribes the following conditions and safeguards in conformity with the Codington County Comprehensive Land Use Plan and Zoning Ordinance (Zon. Ord. 4.05.01.7) to be adhered to:
 - i. Grantor shall submit with building permit application a written statement from an Engineer(s) that the construction and placement of the Tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.
 - ii. Grantor shall submit with building permit application a written statement from an Engineer(s) or the project architect that the construction of the proposed Meteorological Tower shall comply with the 2015 version of the International Building Code.
 - iii. The proposed Meteorological Tower shall meet or exceed all requirements of the Federal Aviation Administration (FAA) and South Dakota Department of Transportation- Aeronautics Commission with regard to transmission of signals, height, marking, and registration of the Tower. If compliance is not necessary, documentation from the applicable agency shall be provided to the Zoning Officer and kept with this application.
 - iv. The Grantor further agrees to notify the following entities of the location (legal description) and height of the anemometer tower via certified mail:
 - a. Wilbur-Ellis Air LLC
45149 152nd Street
Summit, SD 57266-5112
 - b. Watertown Regional Airport
2416 Boeing Avenue
Watertown, SD 57201
 - c. Scott Thompson
Thompson Farm Air
PO BOX 308
Estelline, SD 57234
 - d. Douglas Hansen
Hilltop Aerial Inc
1531 425 Ave N
Clark, SD 57225

ISSUE #5 Executive Session

CODINGTON COUNTY PLANNING COMMISSION

ISSUE #1 Plat

Applicant/Property Owner: Great Western Bank (Personal Representative)

Property Description: Plat of Fischer Addition in the North Half of the Southeast Quarter of Section 2-T116N-R51W, Codington County, South Dakota. (Kranzburg (S) Township)

Zoning Designation: A-Agricultural

Request: Create a 10.10 acre lot required Board of Adjustment.

Action Item – Recommendation of Plat approval to County Commissioners.

ISSUE #2 Plat

Applicant/Property Owner: Joel Willette

Property Description: Plat of Buck and Rooster Addition in the Northwest Quarter of Section 18-T117N-R53W, Codington County, South Dakota. (Lake Township)

Zoning Designation: A-Agricultural

Request: 3 lots with greater than 35 acres each (35.1 acres; 37.2 acres and 53.1 acres).

Action Item – Recommendation of Plat approval to County Commissioners.

ISSUE #3 Ordinance Amendment

Applicant/Property Owner: Initiated by Planning Commission

Summary: Allow accessory buildings to be located within 5 feet of a rear or side lot line in the Town District

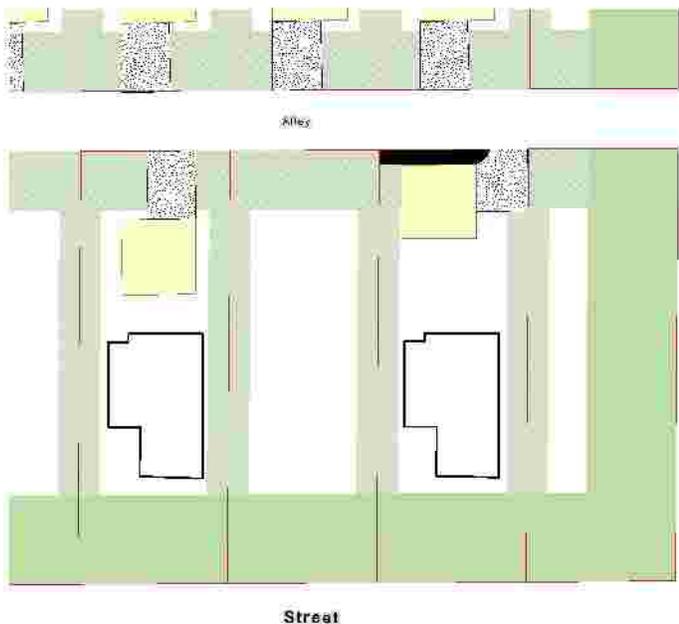
Action Item – Public Hearing Recommendation of Approval to County Commissioners.

**ORDINANCE 63
 AN ORDINANCE AMENDING ORDINANCE 30 AN ORDINANCE AMENDING ORDINANCE #15
 AN ORDINANCE ESTABLISHING COMPREHENSIVE ZONING REGULATIONS FOR
 CODINGTON COUNTY, SOUTH DAKOTA, AND PROVIDING FOR THE ADMINISTRATION,
 ENFORCEMENT, AND AMENDMENT THEREOF, PURSUANT TO SDCL 11-2, 1967, AND
 AMENDMENTS THEREOF, AND FOR THE REPEAL OF ALL RESOLUTIONS AND/OR
 ORDINANCES IN CONFLICT HEREWITH.**

BE IT FURTHER ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CODINGTON COUNTY, SOUTH DAKOTA: that Section 5.14 ACCESSORY BUILDINGS, adopted by Ordinance #30, April 25, 2006, as amended, of the Zoning Ordinance of Codington County be amended to add the following figure and regulations in bold font:

8. In the TD – Town District separate accessory building may be erected within the required side or rear yards provided they are not less than five (5) feet from any side or rear lot line shared by another property in the TD – Town District provided the structure is not constructed upon a permanent foundation. Exception: when a garage is entered directly from an alley it shall not be located closer than twenty (20) feet to the alley line. (See Figure 5.14.8)

Figure 5.14.8



Symbol	Structure	
□	House	
■	Garage	
□	Driveway	
Symbol	Required Yard	Setback*
■	Front Yard	25'
■	Rear Yard	20'
■	Side Yard	15'
□	Parallel Accessory Building Setback	5'

***Applicable setbacks for TD – Town District.**