

Codington County Planning Commission/Board of Adjustment Minutes

September 19, 2016

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on September 19, 2016 at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: 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 Gary Jongeling, Nathan Peterson, Ken Kones, Jodi Kones, Rick Holinka, Gwen Holinka, Jim Linderer, Dorothy Linderer, Ron German, Kelly German, Charles Cameron, Ryan Carlson, Lee Gabel, Gene Kluck, Lona Kluck, Brandi Hanten, Terry Little, Carina Little, Jeff DeVillie, Dale Bille, Patrick McCann, John B., Roger Kouf, Dale Tesch, and Becky Goens.

Vice Chairman O'Neill brought the meeting of the Board of Adjustment to order.

Motion by Ries, second by Johnson, to approve the August 15, 2016 minutes. Motion passed unanimously.

Motion by Hanten, second by Klatt, to remove Terry and Carina Little's variance request from the table. Muller reminded the board of the request made initially in July and tabled at that time as well as at the August meeting. The purpose of tabling the request was for our States Attorney to discuss the opinion of Little's attorney and to report back to the board accordingly. Patrick McCann, Codington County States Attorney, addressed the task of reviewing whether or not there was a question as to how this request was being applied to this individual or just a challenge to our ordinance. Based on his conversations with Mr. Little's attorney via email, it is a general challenge to our ordinance. Mr. McCann's recommendation to the Board of Adjustment is that our ordinance is constitutional and valid and feels the board can make a decision on this variance request based on what the ordinance is today. Determinations have to be made based on what the law (ordinance) is and challenges to the law (ordinance) may need to be made at a later time. The question before the board is if Mr. Little meets the requirements of the board's request. Public hearing portion on this item was closed at the July meeting so no public discussion was held. Motion failed unanimously based upon the following findings:

- a. There are no special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are applicable to other land, structures, or buildings in the same district;
- b. The literal interpretation of the provisions of this ordinance would not deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;

- c. The special conditions and circumstances do result from the actions of the applicant;
- d. Financial disadvantage of the property owner shall not constitute conclusive proof of unnecessary hardship within the purposes of zoning.
- e. The granting the variance request would confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.
- f. Nonconforming use of neighboring lands, structures, or buildings in the same district, and permitted or nonconforming use of lands, structures, or buildings in other districts are not considered grounds for the issuance of a variance.

Motion by Johnson, second by Rossow, to remove the Conditional Use Permit request by Dakota Range Wind, LLC from the table. Muller reminded the board of the request made and tabled at the August 25 meeting. Muller reviewed Staff Report (attached). County landowner, Dale Bille, inquired about lighting at the top of the tower for alerting aircraft. Per Muller, lighting is not required as it is below 200'; however, there are alternating orange and white requirements along with balls on the guyed wires. Also, prior to flying, aircraft must log their flight plan. Being no further discussion, public hearing closed. Motion passed unanimously based upon findings and conditions as read.

Motion by Ries, second by Rossow, to approve two variance requested by Dale and Diane Bille for property described as all that part lying north and west of railroad ROW in NW1/4, Section 29-T116N-R53W. The Bille's are requesting an existing farmstead exemption and variance to minimum lot size for purposes of retaining residential building rights at the location of an existing farmstead. There were no parties to speak on this issue. Public hearing closed. Motion passed unanimously based upon findings as read.

Motion by Hanten, second by Johnson, to approve the variance request by Ron German to construct a shed 12' from his south (rear) property line. Property is described as Lot 6, Block 9 in North Kampeska, Section 1-T116N-R534W. Muller reviewed Staff Report (attached). Mr. German indicates the purpose for moving closer to the property line is so that the building is not constructed on top of his existing leach lines. There were no parties to speak on this issue. Public hearing closed. Motion passed unanimously based upon findings as read.

Motion by Hanten, second by Ries, to approve a variance request by Joel Willette to construct an accessory building prior to construction of a principal (residential) structure. Property is located in Lot 2 of Buck and Rooster Addition in NW1/4, Section 18-T117N-R53W. Muller reviewed Staff Report (attached). Approval would be subject to the applicant signing a letter of assurance agreeing to the following conditions:

- a. Building permit is required prior to the commencement of construction activities.

- b. Applicant shall obtain building permit for a single family residence not less than one (1) years from the date of issuance of a building permit for the aforementioned accessory structure.
- c. If building permit is not obtained less than one (1) year from the date of issuance of a building permit for the aforementioned accessory structure the Board of Adjustment will forward the matter with no further action to the Codington County State's Attorney for prosecution based upon failure to comply with conditions set forth by the Board of Adjustment. This may result in the removal of the accessory structure authorized by this variance.

Public discussion was held regarding this variance only. Lona Kluck inquired about the size of the building which would be 2,880 square feet. This building could be used as storage of equipment, campers, building materials, etc. but cannot be used as a commercial hunting lodge without a separate permit to come before the Board of Adjustment. Rick and Gwen Holinka, adjoining landowners, have concerns about the use of the building and the exact location. Gene Kluck would like to see a master plan provided by the applicant stating his intentions for the manmade lakes/ponds, driveways, buildings, sewer, water, etc. Ryan Carlson inquired as to the size of the structure and if there are any size limitations. Dorothy and Jim Linderer, adjoining landowners, inquired about sewer and water to the accessory structure. It would be allowed per Muller to install a septic tank; however, a condition could be imposed restricting sewer and water availability. There were no parties to speak of this issue. Public hearing portion closed. Location of the proposed accessory structure was shown by Muller, which is to be located in Lot 2, approximately 400-500 yards from West section line. Upon submission of building permit, more detailed information will be provided. Motion to table made by Klatt, second by Hanten. Motion passed unanimously.

Motion by Klatt, second by Hanten, to approve Joel Willette's variance application for more than one single-family, non-farm dwelling per quarter-quarter section in property located in NW1/4 less 10 acres in NE1/4 of NE1/4 of NW1/4 and less W600' S1452' & less E100' of NW1/4 of NE1/4 of NW1/4, Section 18-T117N-R53W, also known as Buck and Rooster Addition in NW1/4. Muller reviewed Staff Report (attached). Muller read a response from an adjoining landowner, Don Schneider, relaying that he does not support the request citing concerns regarding pumping of wells, aquifer, use by individuals, and that he was not able to have two homes on one lot in which he owned. Dorothy and Jim Linderer have concerns as to Willette's intentions in placing the houses and depleting their own well with additional houses. Mrs. Linderer also indicated that when a local irrigation system is turned on, their well drops roughly 20'. There is also a slough located in the area of one of the proposed houses and to construct a

driveway for access purposes would require a berm which would affect the natural waterway. Gary Jongeling, adjoining landowner, resides directly west and his land has been farmed by family for over 70 years. He has seen many changes to property owned by Willette and is concerned with the large amounts of landscaping and is concerned about a future housing development in "farm country." Additional residences in this area would create difficulty for area farmers. Jongeling would like to see the ordinance guidelines adhered to as Willette knew what the ordinance was prior to purchasing this land. Jongeling inquired about prospective homeowners having to sign waivers acknowledging local farm practices. Mr. Crawford, adjacent landowner, agrees with the opposition that spoke before him. Rick Holinka indicates the driveway in Lot 2 is only 12' from his property and if a house is also placed in this vicinity, how will he continue his farming practices such as spreading manure and spraying. If approved, he would like to see a house in this Lot located further east of Willette's proposed site. Holinka does not object to two houses in the NW1/4 of NW1/4 as it would be as far away from his own yard as possible but would like to see in writing that the remainder of Lot 2 could not be developed in the future. Also, Holinka advised the board that his children will come before the board in the future for an additional house in Holinka's quarter as well. Mrs. Holinka would also like to see future homeowners sign waivers acknowledging Ag practices. Ron Carlson, inquired about wetland plans or environmental impact plans. Muller responded that such permits are not required or applied for through the county. Dorothy Linderer also inquired about the hole that was dug by Willette and what his intention is as if he plans to fill it with well water, it will drain everyone's well water. Muller advised the audience there are no ordinances with regard to lagoons in the Agricultural District. Gary Jongeling would like to see the board table this issue to allow time for board members to visit the site. Being no further discussion, public hearing closed.

Muller addressed questions asked during public discussion. If the board does approve a variance to allow more than one residence in the same quarter-quarter section, a Letter of Assurance would be required that indicates residential building rights are transferred. This document would be recorded so future buyers are made aware. If the board does approve this variance, there can still only be one house on each lot. Regarding agricultural practices, Muller summarized Chapter 5.27 Agricultural Easement and Chapter 5.29 Waiver of Setback from Existing Concentrated Animal Feeding Operation from the ordinances. These documents are recorded at the Register of Deeds office. Muller addressed the concern of a subdivision and advised the audience that a rezoning and a master plan would need to be approved and submitted along with internal streets, homeowners association, and not located over the shallow aquifer. Lot 3 would be accessed on a driveway directly west of Linderer's property on a 45'

strip. Motion by Ries to table this item to allow Willette to explain his intentions for the property. Motion failed for lack of a second. Holinka reviewed the layout of the area. For clarification of the original motion, Klatt indicated a home for Lot 2 can be constructed in the same quarter-quarter section as Lot 1 (northwest quarter of the northwest quarter) but cannot have any other home in Lot 2; and the home for Lot 3 can be constructed in the southeast quarter of the northwest-quarter, but not located in the same quarter-quarter as the Linderer residence. Motion approved unanimously.

Motion by Hanten, second by Ries, to remove the accessory building variance request for Joel Willette from the table. This accessory structure can be located anywhere in Lot 2. If approved, the applicant will be required to sign a Letter of Assurance agreeing to the following conditions:

1. Building permit is required prior to the commencement of construction activities.
2. Applicant shall obtain building permit for a single family residence not less than one (1) years from the date of issuance of a building permit for the aforementioned accessory structure.
3. If building permit is not obtained less than one (1) year from the date of issuance of a building permit for the aforementioned accessory structure the Board of Adjustment will forward the matter with no further action to the Codrington County State's Attorney for prosecution based upon failure to comply with conditions set forth by the Board of Adjustment. This may result in the removal of the accessory structure authorized by this variance.
4. This accessory structure is to be used for accessory purposes, i.e. storage of personal items only and not as dwelling purposes.
5. This structure can only be used per ordinance guidelines.

Motion approved unanimously.

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

Planning Commission convenes.

Motion by Ries, second by Rossow, to recommend approval to the Board of County Commissioners the Plat of A and M Second Addition in the S1/2 of NE1/4 and N1/2 of SE1/4, Section 10-T116N-R51W. Motion passed unanimously.

Motion by Ries, second by Rossow, to recommend approval to the Board of County Commissioners the Plat of Joy C Nelson Cemetery Plot of Lutheran Outdoors Addition located in Governments Lots 4, 5 and 7 in Section 1-T117N-R54W. This request is to create a single cemetery plot at Joy Ranch for Joy C. Nelson. Motion passed unanimously.

Muller advised the Board of the upcoming Planners Conference being held in Sioux Falls, SD. Some meetings of interest to the board may include conflict resolution at public hearings and Jack Hieb and Zach Peterson presentation.

Muller asked the board if there was any interest in making changes to the required waiver. Klatt feels if the waiver is eliminated then farmers lose their right to farm. Hanten suggested possibly changing the wording of the waiver but not the intent of it.

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

Respectfully Submitted,

Becky Goens, Secretary

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

**MONDAY – SEPTEMBER 19, 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 September 19, 2016 meeting to allow the State's Attorney time to review Mr. Little's attorney's legal arguments regarding this matter.
2. The State's Attorney supports an ordinance amendment to allow residences less than ½ mile from an existing CAFO as a conditional use on the condition an acknowledgement of an existing CAFO within ½ mile which allows for the grantor to object, but puts the grantor on notice that the Board may consider whether a CAFO pre-dated the residence at any subsequent variance hearing for expansion of the CAFO.
3. 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.
4. 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).
5. The house is proposed to be 1,320 from the southernmost point of the CAFO on Dale Tesch's property.
6. 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.
7. 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.
8. 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.
9. He proposes to place a small utility shed 5' from the south property line.

10. The Board has never heard a request for variance from the Waiver of Setback...
11. (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.
12. 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 #2 CONDITIONAL USE PERMIT (Tabled from 8/25/16 Meeting)**

**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 latest 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 152<sup>nd</sup> 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 #3 (2) VARIANCES**

**Applicant/Owner:** Dale and Diane Bille

**Property Description:** All that part lying north and west of railroad right-of-way in NW1/4, Section 29-T116N-R53W, Codington County, South Dakota. (Pelican 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 residence (including an existing farmstead) was first split from the rest of the quarter section in 1996.
2. The property was used as a base for farming operations 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.

### **ISSUE #4 VARIANCE**

**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 – 13' Rear Yard Setback Variance (3.10.03.1.a)**

**Zoning Designation:** TD – Town District

**Request:** Mr. German seeks to place a shed 12' 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 26 x 20 shed 12' from the south property line.

3. The structure is proposed to be on a foundation but would be placed over the southernmost end of his drainfield. Much of the rest of the property is proposed to be covered with structures (house and other storage building.)
4. Utilities are not located under the proposed 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 request resembles the variance granted 8/15 for Wayne Borgheijnck in Waverly Village.
8. Staff recommendation – **13' 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 Board has approved similar sized structures, similarly situated in Town Districts.
- c. The Board would only consider approving other similar requests meeting the unique circumstances.

## **ISSUE #5 (2) Variances**

**Applicant/Owner: Joel Willette**

**Property Description:** Buck and Rooster Addition in the Northwest Quarter of Section 18-1117N-R53W, Codington County, South Dakota. (Lake Township)

**Action Items – Variances – Construct an accessory use prior to constructing a primary use on the lot (5.14.2); More than one residence per quarter-quarter section (3.04.01.2).**

**Zoning Designation:** A - Agricultural

**Request:** The applicant requests to construct pole foundation, steel sided accessory structure until a home can be completed; and to have more than 2 residences in the N1/2 of the NW1/4 of this section.

### **History/Issue(s):**

2. Regarding the accessory structure without a primary structure (see 1-4): Codington County Zoning Ordinance requires all accessory structures to be located on the same lot as a primary structure – in this case – a single family residential structure.
3. Mr. Willette proposes to construct a shed on site prior to constructing a single-family residence.
4. He expects to pull a building permit for the house later in the fall of 2016 or Spring of 2017.
5. The Board has a history of granting variances to allow an accessory structure prior to building a house, provided the applicant agree to get a building permit for a new house on the same lot within one year.

6. Regarding more than 1 residence per quarter/quarter section: The Board approved this plat at last month's meeting.
7. The zoning ordinance allows only 1 residence per quarter-quarter section.
8. Currently, in the NW1/4 of this section, 1 residence is located in the NE1/4 (of NW1/4).
9. It is expected that homes on lots 1 and 2 will be located in the NW1/4 (of the NW/4) and the home on Lot 3 would be located in the NE1/4 (of the NW1/4).
10. It is the intent of the current owner to build homes with shorter driveways to minimize the amount of agricultural/conservation land disturbed for residential purposes.
11. The Board has allowed more than residence in the same quarter-quarter adjacent to county roads, where no more than 4 residences will be constructed in the quarter section (on conforming lots.)
12. Staff Recommendation –

**Variance to allow accessory structure without a primary structure:** Staff recommends approval of the request to allow the construction of an accessory structure before construction of a primary structure (house) on the above described property. Should the Board approve the request approval should be subject to the applicant signing a letter of assurance agreeing to the following conditions:

- a. Building permit is required prior to the commencement of construction activities.
- b. Applicant shall obtain building permit for a single family residence not less than one (1) years from the date of issuance of a building permit for the aforementioned accessory structure.
- c. If building permit is not obtained less than one (1) year from the date of issuance of a building permit for the aforementioned accessory structure the Board of Adjustment will forward the matter with no further action to the Codington County State's Attorney for prosecution based upon failure to comply with conditions set forth by the Board of Adjustment. This may result in the removal of the accessory structure authorized by this variance

**Variance to allow more than 1 residence in the same quarter-quarter section:** Should the Board approve the variance, the following or similar findings could be used: Building permit is required prior to the commencement of construction activities.

- a. All three lots access streets maintained by Codington County.
- b. All three lots consist of at least 35 acres.
- c. The total number of residences in the NW1/4 of Section 18-117-53 will not exceed 4.
- d. The request will be consistent with the intent of the Agricultural District and Comprehensive Land Use Plan if the following conditions are met:
  - 1) Applicant sign and record a letter of assurance agreeing that the building right for the SW1/4 of the NW1/4 of 18-117-53 is transferred to the portion of Lot 2 located in the NW1/4 of the NW1/4 of 18-117-53.
  - 2) Applicant sign and record a letter of assurance agreeing that the building right for the SE1/4 of the NW1/4 of 18-117-53 is transferred to the portion of Lot 3 located in the NE1/4 of the NW1/4 of 18-117-53.

**Action Item – Variances – Construct an accessory use prior to constructing a primary use on the lot (5.14.2)**

## **CODINGTON COUNTY PLANNING COMMISSION**

### **ISSUE #1 Plat**

**Applicant/Property Owner: Arnold and Marilyn Haan**

**Property Description:** Plat of A and M Second Addition in the South Half of the Northeast Quarter and the North Half of the Southeast Quarter of Section 10-T116N-R51W, Codington County, South Dakota. (Kranzburg [S] Township)

**Zoning Designation:** A-Agricultural

**Request:** Redraw property lines of one 5 acre lot and one 60 acre lot as required by Existing Farmstead Exemption (circa 2006).

**Action Item – Recommendation of Plat approval to County Commissioners.**

### **ISSUE #2 Plat**

**Applicant/Property Owner: Lutherans Outdoors in South Dakota, Inc**

**Property Description:** Plat of Joy C Nelson Cemetery Plot of Lutheran Outdoors Addition Located in Gov't Lots 4, 5 and 7 in Section 1, Township 117 North, Range 54 West of the 5<sup>th</sup> P.M., in the County of Codington, South Dakota. (Richland Township)

**Zoning Designation:** A-Agricultural

**Request:** Create a single cemetery plot at Joy Ranch.

**Action Item – Recommendation of Plat approval to County Commissioners.**

### **ISSUE #3 Staff Report**