

Codington County Planning Commission/Board of Adjustment Minutes

November 20, 2017

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on November 20, 2017 at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: Bob Fox, Myron Johnson, Rodney Klatt, Brenda Hanten, Mark O'Neill, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer). Absent: Charles Rossow.

Others present were Larry Hanson, Leon Hackbart, Dennis Tilly, Bob Boettcher, Brenda Boettcher, Andrea Tesch, Marjorie Tesch, Carl Tesch, Cliff Genzler, Gloria Genzler, Lee Gabel, Jeff DeVille, and Becky Goens.

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

Motion by Hanten, second by Ries, to approve the October 16, 2017 meeting minutes. Motion passed unanimously.

Motion by Hanten, second by Ries, to approve the Conditional Use Permit request made by Jordan and Andres Tesch. The Tesch's are requesting to construct a house less than ½ mile from existing CAFO. Property is owned by Dennis Thyen and located in Thyen-Tesch Addition in SW1/4 of Section 22-T118N-R51W. Property was granted an existing farmstead exemption and has been subsequently platted. Fox read the Findings of Fact. Motion passed unanimously.

Motion by Johnson, second by Ries, to approve the Conditional Use Permit request made by Robert and Brenda Boettcher as read by Staff and subject to the conditions as read by staff. Property is located in E400' of the S1100' of SW1/4, Section 21-T118N-R52W. The Boettcher's would like to operate a restaurant with alcohol sales and a banquet facility. Muller read Staff Report (attached) to include the Ordinance and Comprehensive Land Use Plan, Staff Summary, Recommendation, Violations and Penalties regarding this request. Mr. Boettcher is requesting to use concrete on the first 100-200 feet with the remainder of the parking area using crushed granite in lieu of crushed rock. The East side of the building will be 50' from the property line which does comply with the current ordinance. Information was sent to the highway superintendent and sheriff at the time of rezoning as well as this Conditional Use Permit request. The highway superintendent did indicate that 164th Street does have the capacity to handle the increase traffic and does not foresee an issue with visibility. The Sheriff's office did not object to this request but would like to be notified when there is a planned event occurring. Scott Lentz, adjoining landowner, was unable to attend the meeting but did call with the request that the board and applicants are reminded this business would be occurring in an agricultural area whereas dust, odors, and other farming operations will and may happen during a wedding event. One of the conditions to be applied is that the applicant is required to sign an Agricultural

Easement acknowledging such agricultural uses will be occurring. Marjorie Tesch, property owner 1-1/2 miles from proposed facility, agrees that preference for land use should be given to agriculture and strongly opposes this Permit being granted. Carl Tesch asked Chairman Fox if his decision was already made prior to today's public hearing. Chairman Fox indicated his decision is open until the request is presented and reminded Mr. Tesch that he voted against the rezoning. Mr. Tesch has concerns about persons that have been drinking and will use 456th Avenue rather than one of the main, paved roads to avoid law enforcement. Mr. Tesch also reminded the board that once they vote yes, they are unable to back out as the property and use will remain. Leon Hackbart, adjacent landowner, has no objections to the request. No one else spoke during the public portion. Public portion closed. Mrs. Boettcher is a third generation landowner on this property and indicates that if she felt this use was a detriment to the area, she would not propose it. Chairman Fox asked Ms. Tesch what her opinion on the land use and she reminded the board her farm is listed on the American Registry of Historical Places and should be considered when determining the effects of property value. Private wells will supply the water. Boettcher would like some additional time to hard surface the parking area to allow for settling. He estimates approximately one year but will abide by the board's request regarding material and time frame. Motion by Johnson, second by Klatt, to amend the motion to include a one year time frame following construction to evaluate the crushed granite chip parking surface to determine if another or different hard surface should be applied. Motion passed unanimously on the amendment. Board Member Johnson announced that years of planning have been made for updating and resurfacing County Road 6. Work is proposed to begin in 2018 but is not definite at this time. Boettcher reviewed his initial building design. Motion by O'Neill, second by Hanten, to not allow temporary signage associated with this business which would include signs on wheels as well as banners, flags, etc. Motion on amendment passed unanimously.

Boettcher's are also working with the local fire marshal regarding a sprinkler system. There have also been conversations with Sheriff Howell regarding security. O'Neill would like to see protection for the garbage receptacles/dumpsters. Mr. Boettcher indicates the design is still in the initial phase. Jeff DeVille, Municipal Utilities Water Superintendent, does not object to private wells being used to service this site. Chairman Fox read the Findings of Fact. Motion on the Conditional Use Permit, with the amendments, passed unanimously.

At the October 16, 2017 meeting, the board approved a Conditional Use Permit for a gravel pit for Clausen Construction. The Findings of Fact were not read at that meeting. Chairman Fox read the Findings of Fact at this time. There were no objections. Motion passed unanimously.

Motion by Johnson, second by Klatt, to adjourn the Board of Adjustment meeting. Motion passed unanimously.

Chairman Fox brought the meeting of the Planning Commission to order.

Motion by Klatt, second by Ries, to recommend approval to the Board of County Commissioners the Plat of Ommen's Second Addition in County of Codington, SD located in NW1/4, Section 32-T117N-R55W subject to public road right of way. Motion passed unanimously.

Gerald VanWell moved in an older manufactured home onto his property and the Zoning Officer was notified via the Director of Equalization office. For this reason, a letter was sent to Mr. VanWell indicating the applications required and the fees associated with them. Due to the manufactured home being moved in prior to the required variances, Conditional Use Permit, and building permit applications, there are after-the-fact fees that will be applied to each required permit per ordinance. This results in all fees being doubled. Mr. VanWell addressed the Board of County Commissioners requesting the after-the-fact fees be waived. He was advised by the County Commissioners this request should be presented to the Codington County Planning Commission for recommendation prior to the County Commissioners making a decision. After-the-fact fees are described in the ordinance and Staff indicates that in order to eliminate these charges, a change should be made in the ordinance. The board discussed past practices and precedents being set if the fees are waived as requested. Motion by Klatt, second by O'Neill, to recommend to the Board of County Commissioners that Mr. VanWell be required to pay the penalty fees as described in the ordinance. Motion passed unanimously.

Muller reviewed meeting plans for ordinance updates and the producer survey information. Public notices will be issued as well as the website updated with ordinance update meeting dates, times, and agenda discussion.

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

Respectfully Submitted,

Becky Goens, Secretary

**NOVEMBER 2017
CODINGTON COUNTY
PLANNING COMMISSION/BOARD OF ADJUSTMENT STAFF REPORT**

MONDAY – NOVEMBER 20, 2017 – 9:00 a.m.

CODINGTON COUNTY BOARD OF ADJUSTMENT

ITEM #3 CONDITIONAL USE

Applicant: Jordan and Andrea Tesch

Owner: Dennis Thyen

Property Description: Thyen-Tesch Addition in SW1/4 of Section 22-T118N-R51W, Codington County, South Dakota. (Waverly Township)

Action Item – Conditional Use - Residence less than one-half mile from existing CAFO

Zoning Designation: Agricultural

Request: The applicant seeks to construct a residence less than ½ mile from the family's existing CAFO and a neighbor's existing CAFO.

History/Issue(s):

1. The Tesch's are completing the purchase of this property, granted an existing farmstead and subsequently platted in 2015 and 2017 (respectively).
2. In this case, Mrs. Tesch's parents will own a small CAFO on the "parent parcel" of this lot. In addition, the neighbor to the west also has a small CAFO across the road from this proposed site.
3. The County requires a conditional use permit to construct a residence within one-half mile of an existing CAFO, but to only require an acknowledgment that the existing CAFO was on the neighbor's property.
4. As of the date of this report staff has received no objections regarding this request.

Staff recommendation:

Conditional Use Permit: Dwelling less than ½ mile from existing CAFO. The Board may table the request, deny the request or approve the request. If approved the applicant would be required to sign and record the "Acknowledgment of Existing Concentrated Animal Feeding Operation" prior to issuance of a building permit for the house.

ISSUE #2 CONDITIONAL USE

Property Owner/Applicant: Robert and Brenda Boettcher

Property Description: E400' of the S1100' of SW1/4, Section 21-T118N-R52W, Codington County, South Dakota (Rauville Township)

Action Item – Conditional Use Permit – Bar/Tavern (3.05.02.12).

Request: Applicant seeks to operate a Restaurant with alcohol sales and a banquet facility.

History:

Specifics of Request:

1. The above property was recently rezoned (Effective October 20, 2017)
2. Applicant requests to construct a 68 x 98 “barn-style” restaurant and banquet facility on the above property.
3. The main dining area for the restaurant is proposed in an approximate 36 x 36’ area near the entrance. Other areas would be open for over-flow seating if need be.
4. The banquet facility will include up to 4,080 total square feet on the main floor and 3,136 square feet of additional banquet area in the balcony area.
5. The applicant submitted a business plan (summarized below):
 - a. Occupancy for 400
 - b. Full service restaurant and bar
 - c. 10 acre lot
 - d. Between 11 and 17 full and part time employees
6. Access to the site will utilize 164th Street, a paved county road.
7. The building is anticipated to be located approximately 500’ north of the road, with a long driveway serving the parking lot, but that may change upon survey of property.
8. A digital sign is proposed to be placed at the entrance of the property. It will not contain off premise messages. It will not exceed 80 square feet. The purpose of the digital sign is to describe what events are taking place. It is proposed to be placed 10’ from the right-of-way line.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. Bar/Tavern is listed as a Conditional Use in the Commercial District.
2. Land Use Plan Criteria (Comprehensive Plan):
 - a. The site is adjacent to a county highway
 - b. Access to the site is controlled by the Codington County Highway Superintendent. Only one access is proposed.
 - c. No trees or fences are proposed for screening. It is not anticipated the use will directly inhibit agricultural land use:
 - 1) It is recommended that as a condition of approval an Agricultural Easement be recorded.
 - d. Driveways and parking areas are required to be hard surfaced
 - 1) Applicant seeks clarification on what form of hard surface may be used (implied as asphalt or concrete) and if paving may be phased.
3. Conditional Use Requirements (Ordinance)
 - a. Ingress/egress:
 - a single approach is proposed on to 164th street at a location to be approved by the Codington County Highway Superintendent.
 - Internal parking lot layout and appropriate “fire lanes” around the building will be reviewed by the Watertown Fire Marshal to ensure access to the structure and egress in the event of fire.
 - b. Off-street parking:
 - The Commercial District references retail parking requirements which are not necessarily applicable to this request. Based upon standards used in other communities in the area for banquet/event centers and/or restaurants staff recommends 125 spaces.
 - c. Utilities:

- Much of the refuse and service area is projected to be on the east side of the building.
- Trash services will be contracted.
- d. Screening:
 - It is the intent of this business to be operated in a rural setting; no plans for screening have been provided, nor have they been requested by neighbors.
- e. Signs:
 - Only one, maximum 80 square foot free standing sign is proposed for this use. It is anticipated to be either partly or entirely digital.
 - No wall signs are proposed, however past practice has been to allow up to 80 square feet of additional wall signs.
 - No Off-Premise messages are proposed for this site.
 - Despite not being prohibited, the county has not been requested to permit a digital sign before. If allowed, the zoning officer recommends certain requirements standard for digital signs in many communities be included.
 - Conflicts with adjoining landowners, uses are not anticipated if appropriate conditions are followed.
 - The parking lot is proposed to be lit with shoe-box lighting.
- f. Required Yards and other opens spaces:
 - The primary structure will meet setback requirements. Applicant plans at least one utility shed which will also be required to meet setbacks.
 - Drainage crosses the property from north to south, and is not anticipated to significantly change.
 - More than 1 acre will be disturbed in conjunction with this project. A storm water pollution prevention plan/permit from the state is required for this project.
- g. Compatibility:
 - According to the land use plan, the use is compatible if it is a listed use and can meet the conditions required by the Ordinance and Board.

Staff Summary and Recommendation

Conditional Use Permit – **Bar/Tavern**: The application may be tabled, or denied. If approved staff recommends the following conditions be agreed to in the form of a letter of assurance to be recorded with the property:

- i. Effective date , transferability, and future permits required:
 - a. The permit shall become active upon recording of this “Letter of Assurance”.
 - b. The Conditional Use permit for a bar/tavern is transferable. Subsequent owners/operators shall agree to the same conditions described herein.
 - c. In no way shall it be implied that this permit implies consent by Codington County or the State of South Dakota in issuing any subsequent licenses or permits also required for this business.
- ii. Site improvements (hard surfacing):
 - a. Driveways and required parking areas shall be paved (concrete or asphalt) prior to occupation of the proposed structure.
- iii. General Requirements
 - a. The parking lot shall include a minimum of one hundred twenty-five (125) parking spaces. The design and layout of the parking lot shall be approved by the zoning officer and reviewed with EMS providers.

- b. All applicable state and county regulations shall be complied with and applicable licenses maintained for the operation of the proposed bar/tavern.
 - c. Applicant shall sign and record an "Agricultural Easement" prior to issuance of a building permit for the proposed bar/tavern.
 - d. There will be no junk stored outside.
 - e. Noxious weeds shall be controlled.
 - f. In addition to septic tanks for human waste, any wastewater collection system other wastewater and fluids shall adhere to all rules and regulations of the South Dakota Department of Environment and Natural Resources.
 - g. Prior to any future construction on the above described property, documentation shall be submitted to the Zoning Officer identifying that the structure shall be constructed in accordance with the most recently adopted (by South Dakota Codified Law) International Building Code.
 - h. Sign area is limited to the maximum amount allowed by ordinance.
 - i. Any permitted signs may be, or may include as an individual component of the total sign area, electronic message signs (digital signs).
 - j. Electronic message signs (digital signs) shall be limited to displays, which have gradual movements, including, but not limited to, dissolving, fading, scrolling, or traveling. However, sudden movement is prohibited, including, but not limited to, blinking and flashing.
- iv. Violations and Penalties.
- a. Violation of the terms of this conditional use permit will be determined by the Codington County Zoning Officer.
 - (1) The first violation substantiated by the Zoning Officer of this conditional use permit may result in a notification letter stating the violation and a prescribed period of time to remove the violation. A second violation occurring within one calendar year of the previous violation may result in a review of the validity of the conditional use permit and potential revocation of said permit. A third violation within one calendar year of the initial violation may result in revocation of the conditional use permit and cessation of all mining operations within forty-five days (45) of notice of revocation.
 - (2) The applicant may make appeal from the decision of the Zoning Officer or other agent of the Board to the Board. The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days. Appeals from the Board shall be taken to Circuit Court.
 - (3) Failure to comply with the decision of the Zoning Officer or other agent of the Board may be deemed a separate violation.

ISSUE #3 FINDINGS OF FACT: CLAUSEN CONSTRUCTION PERMIT – 10-16-17

Description: On October 16, 2017 the Board of Adjustment approved a conditional use permit for: Clausen Construction requests to start mining gravel and crush rock on NE1/4 of Section 18-T117N-R51 West of the 5th P.M., Codington County, South Dakota. The Board needs to review the findings of fact for this request to be entered into the record.

ISSUE #4 OPEN/STAFF REPORT