

Codington County Planning Commission/Board of Adjustment Minutes

January 29, 2018

The Codington County Planning Commission/Board of Adjustment met for a special meeting on January 29, 2018 at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: Bob Fox, Myron Johnson, Rodney Klatt, Brenda Hanten, Mel Ries, Charles Rossow, Mark O'Neill, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer).

Others present were Gerald Peltier, James Steiger, Diane Steiger, Larry Schmeling, Linda Schmeling, Kay Suttan, Rose Hjermsstad, Elmer Kruger, and Becky Goens.

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

Motion by Ries, second by Hanten, to approve the variance request by James and Diane Steiger as read by Staff. Steiger's are requesting two variances: 1) Minimum Lot Size; and 2) Minimum Lot Width for property owned by Gerald and Theresa Peltier located in W660' of S660' of Lot #4 in Section 3-T117N-R53W. Steiger's intend to purchase this property from Peltier's and are requesting to decrease the existing lot of record from ten (10) acres to three (3) acres. Muller reviewed Staff Report (attached). Maps of the site were displayed. Mr. Steiger spoke asking for a favorable vote indicating this house has been vacant for approximately one year and is in need of major repairs in order to be livable and sellable as well as cleaning up the property. Gerald Peltier spoke in favor of the requests. For health and family reasons, Peltier is unable to make the necessary repairs and updates to make the property sellable. Kay Suttan, adjoining landowner, is in support of this request. Larry Schmeling, adjoining landowner, inquired about current ordinances with relation to properties that need to be cleaned up. Public hearing closed. Chairman Fox indicated he understands and appreciates what Steiger's are proposing to do; however, there is no ordinance in the books that allows this split to happen. Similar requests in the past have been denied. Chairman Fox referenced the ordinance section which indicates property may not be decreased in size at any point thereafter. There has been building permits issued on the ten acre parcel in 1991 and 2006. Larry Schmeling corrected board member Johnson by stating his daughter and son-in-law are not in favor of this request but could not be present for the meeting. Motion by Johnson, second by Hanten, to amend the motion to increase the minimum lot size request to ten (10) acres. This would amend the variance request; however, does not alter the existing parcel/lot size. Motion on the amendment passed unanimously. The current motion now includes approving the variance request for a ten (10) acre lot size. Motion passed unanimously.

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

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

Muller began a work session to review suggested changes to Article IV (Administration) of the Zoning Ordinance. A draft with suggested changes is available on the County's website at: <https://www.codington.org/ordinance-review-information-page/>.

A work session is scheduled for 12:00 pm on Wednesday, February 14 regarding wind energy systems.

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

Respectfully Submitted,

Becky Goens, Secretary

**JANUARY 2018
CODINGTON COUNTY PLANNING COMMISSION/BOARD OF ADJUSTMENT
STAFF REPORT**

TUESDAY – JANUARY 29, 2018 – 12:00 p.m.

CODINGTON COUNTY BOARD OF ADJUSTMENT

ITEM #1 VARIANCE

Applicant: James and Diane Steiger

Owner: Gerald and Theresa Peltier

Property Description W660' of S660' of Government Lot #4 in Section 3-T117N-R53W, Codington County, South Dakota. (Lake Township)

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

Zoning Designation: Agricultural District

Request: Decrease the existing lot of record from 10 acres to 3 acres

History/Issue(s):

Specifics and History of Property/Request:

1. Gov't 4 in Section 3-117-53 was a 38-acre legal lot of record prior to October 26, 1976 (adoption date of County Zoning Ordinance adopting 35 acre minimum lot area requirement) and thereby were afforded one (1) residential building right
2. A building permit on Lot 4 for a home was granted to Bill Ostrander in May of 1978. By issuance of the building permit, the residential building right for Gov't Lot 4 was exercised.
3. The west 660' of the south 660' of Gov't Lot 4 in Section 3-117-53, which contained the house constructed in 1978, was subdivided from Gov't Lot 4 in September of 1979 (purchased by Peltier's). When this subdivision occurred the building right to Gov't Lot 4 was understood administratively to have been passed on to the new subdivision
 - a. BP #1029 (October of 1991) Building Permit for a garage
 - b. BP #2413 (June of 2006) Building Permit for shed
 - c. In denial of variance to obtain building rights on the 28 acre remainder of Government Lot 4 in July of 2007, the Board acknowledged the building right of the 660 x 660 lot.
4. Mr. Steiger seeks to purchase the 10 acre lot; remove vehicles, equipment, scrap, and buildings on the property, and then have the property available for sale.
5. If the variance is granted to allow 3 acres to retain residential building rights, it would leave Mr. Steiger a combined 35 acres in this section, in addition to his 75 acres on the adjoining property. While he does not intend to ask for an additional building right in Government lot 4 at this time, the Steiger's would like enough land to avoid asking for a lot size variance in the future.

Ordinance/Variance History regarding this request:

1. The minimum lot area in the Agricultural District is 35 acres except
 - a. At the site of an existing farmstead

- b. Where the legal description existing prior to October 26 1976;
 - i. If it has not been decreased in size since then; and
 - ii. It has not been held under contiguous ownership in a manner to make it conforming (with enough acres to make it a 35 acre lot.)
2. The Codington County Board of Adjustment has issued variances where the past zoning officer (prior to 2004) issued building permits for residences where in his determination at the time the site met the requirements as an existing farmstead. As long as the legal description had not changed as in 1.b.i and 1.b.ii. above. (Reference "Bud-ism") (Building permit 1029; Building Permit 2413; decision of Board of Adjustment July 2007.)
3. Staff is unaware of an instance where the County Board of Adjustment has allowed a lot to decrease in area after a variance in these instances (Bud-ism) has been granted.

Staff Summary and Recommendation:

Staff Summary – Staff recommends handling these two variances with the same motion. The current situation of the property most closely resembles a variance which was granted to Gary Schickedanz in February of 2012 in which the previous zoning officer had issued a building permit to the applicant where the "parent-parcel" had a building right which was handed down to the smaller legal description without first seeking board approval. Despite the acknowledgement of building rights by the Board in 2007 and building permits issued in 1991 and 2006; no formal variances have been issued to affirm building rights on this 660 x 660 lot. Staff recommends at least amending the request to create 3 acre lot and approve of the variances to lot area and lot width to formally authorize building permits on for the currently legally described 10 acre parcel. (Amend from 3 to 10 acres) Approval could be based upon the following findings:

- i. The Zoning Officer in 1991 issued a permit for a house on the above described property where no surrounding property was under contiguous ownership. The issuance of the building permits conferred some sort of vested building right to this applicant.
- ii. It should be noted that the Board grants this variance only because of the specific nature of the request and previous action by the Zoning Officers and Board of Adjustment in 1991, 2006, and 2007.
- iii. In accordance with Section 3.02.12.2 of the Codington County Zoning Ordinance, if at any point in the future the applicant purchases additional property contiguous to this parcel such property shall be considered combined with the above described property and may not be decreased in size at any point thereafter. (Property can only get larger, never smaller- even if at some point it gets larger).
- iv. Future similar requests will be required to meet conditions similar to this request.

Staff does not see any history to support allowing the lot to be decreased to 3 acres. The only findings to support decreasing the minimum lot area would be on the basis that the applicant agrees to remove materials which had in the past received nuisance complaints. It is not recommended to allow a minimum lot width of less than 660' in width due to the requirement of Mr. Schmeling (across the road) in April of 2015 to retain at least 660' for his new lot, when he requested less width. It could be argued allowing the lot to be less than 660' wide and the current 10 acres would allow special privilege to this applicant not afforded to other property owners in the agricultural district (which is the opposite of the intent of the zoning ordinance.)

CODINGTON COUNTY PLANNING COMMISSION

ISSUE #1 Zoning Ordinance Review: Article IV Administration

ISSUE #2 Open/Staff Report