

Codington County Planning Commission/Board of Adjustment Minutes

December 18, 2017

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on December 18, 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, Mel Ries, Charles Rossow, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer). Absent: Mark O'Neill.

Others present were Todd Kays, Thomas Nealon, Dan Kaaz, Teresa Kaaz, Nathan Meland, Elmer Kruger, Lee Gabel, Charlie Waterman, Gerald VanWell, and Becky Goens.

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

Motion by Johnson, second by Ries, to approve the November 20, 2017 meeting minutes. Motion passed unanimously.

Motion by Hanten, second by Ries, to approve two variance requests made by Jeremy Benthin as read by Staff. Mr. Benthin is seeking an Existing Farmstead Exemption and Minimum Lot Width variance for purposes of retaining residential buildings on his property located in S20 rods of W28 rods of Section 22-118-55. Muller read Staff Report (attached). Motion passed unanimously.

Motion by Johnson, second by Rossow, to approve a variance request made by Todd and Gwen Breske as read by Staff. Breske's are seeking a variance for more than one principal structure per lot for purposes of constructing a new home while keeping their existing home on site until construction is complete. Property is located in Thrun Addition in SE1/4, Section 1-T118N-R52W. In the past, the Board has granted variances to temporarily allow more than one residence on a site provided the applicant agree to remove the existing house within one year of occupying the new residence. A signed Letter of Assurance agreeing to this condition will be required of the applicant. Motion passed unanimously.

Motion by Hanten, second by Ries, to approve an existing farmstead exemption variance request by Gerald VanWell. Property is located in NW1/4 of Section 8-T116N-R54W less road and less H-2 and less RR thereof; and part of the NE1/4 lying North of RR in Section 8-T116N-R54W, less RR and less H-2 and less E537.85' thereof. Muller reviewed Staff Report regarding all three variances and the Conditional Use Permit. Motion passed on unanimously on existing farmstead exemption variance request subject to the applicant signing a Letter of Assurance agreeing to the following condition:

- a) The resident(s) of the second home are to be affiliated with the operation of the farm or relatives of the farm owner. If it is found that the residence are not affiliated with the farm or relatives of the farm owner the second home is to be removed within six months.

Motion by Hanten, second by Ries, to approve the variance request by Gerald VanWell for Maximum Age Requirement on Type B Manufactured Home. Property is located in NW1/4 of Section 8-T116N-R54W less road and less H-2 and less RR thereof; and part of the NE1/4 lying North of RR in Section 8-T116N-R54W, less RR and less H-2 and less E537.85' thereof. VanWell objected to the ordinance age requirement although adjoining and adjacent landowners did sign the Move-in form accordingly. Motion passed unanimously on Maximum Age Requirement variance.

Motion by Johnson, second by Klatt, to approve the Front Yard Setback variance request by Gerald VanWell. Property is located in NW1/4 of Section 8-T116N-R54W less road and less H-2 and less RR thereof; and part of the NE1/4 lying North of RR in Section 8-T116N-R54W, less RR and less H-2 and less E537.85' thereof. VanWell objected to the variance requirement as there had been mobile homes located at this site many years earlier. Motion passed unanimously.

Motion by Hanten, second by Ries, to approve the Conditional Use Permit request by Gerald VanWell for a single family dwelling to be located less than ½ mile from an existing Concentrated Animal Feeding Operation (CAFO). Property is located in NW1/4 of Section 8-T116N-R54W less road and less H-2 and less RR thereof; and part of the NE1/4 lying North of RR in Section 8-T116N-R54W, less RR and less H-2 and less E537.85' thereof. VanWell objected to the requirement of this Conditional Use Permit requirement. Chairman Fox read the Findings of Fact. There were no objections. Motion passed unanimously subject to the applicant signed an acknowledgment that the existing CAFO was on the neighbor's property.

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.

Jim Czech's plat request has been withdrawn by the applicant.

Todd Kays, Director of First District of Local Governments, gave a presentation on the results of the Producer's Survey. This presentation is attached to the paper copy of the minutes located in the Planning and Zoning Office as well as listed on the county's website at <https://www.codington.org/ordinance-review-information-page/>. Following the presentation, Chairman Fox indicated that when a CAFO application is presented by an area farmer, there is little or no opposition. However, when a CAFO application is made by a producer out of state, the room is at least half full of opposition. Fox confirmed that the Producer Survey and the results are based upon what area producers intend to do in the future and does not address any future out of state/area CAFO applications as that is unknown. There were only six people in attendance for this presentation by First District.

Motion to adjourn made by Johnson, second by Rossow.

Respectfully Submitted,

Becky Goens, Secretary

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

MONDAY – DECEMBER 18, 2017 – 9:00 a.m.

CODINGTON COUNTY BOARD OF ADJUSTMENT

ITEM #1 (2) VARIANCES

Applicant/Owner: Jeremy Benthin

Property Description: South 20 Rods of the West 28 Rods of SE1/4 of Section 22-T118N-R55W, Codington County, South Dakota. (Phipps Township)

Action Items – 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 on property with an existing farmstead.

History/Issue(s):

1. Mr. Benthin purchased the above property from his grandparents. It was part of the parent quarter section until the 1990's.
2. The property was used as a base for farming operations prior to 1976 and Mr. Benthin lives there currently.
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. The lot does contain less than 5 acres, however the Board has granted the farmstead exemption to lots of less than 5 acres which were split prior to 2004 and have not decreased in size since that time.
6. Further, the Board has not required platting of existing farmsteads on sites legally described prior to 2004.
7. Staff recommendation (**Variance**) –*Existing Farmstead Exemption and variance to Minimum Lot Width*- Approve request because 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.

ITEM #2 VARIANCE

Owner/Applicant: Todd and Gwen Breske

Property Description Thrun Addition in SE1/4, Section 1-T118N-R52W, Codington County, South Dakota. (Rauville Township)

Action Item – Variance – more than one principal structure per lot (5.20)

Zoning Designation: A – Agricultural District

Request: The Breske's seek to construct a new home while keeping their existing home on site until construction is complete.

History/Issue(s):

1. The Breske's own the above described property and propose to remove the existing house and build a new house.
2. Regarding the second home, the zoning ordinance specifies that only one principal structure (in this case, a house) can be located on a single lot.
3. In the past, the Board has granted variance to temporarily allow more than one residence on a site provided the applicant agree to remove the existing house. Historically, one of the two houses has been required to be removed within one year of occupying the new residence.
4. Staff recommendation – **Variance to temporarily allow two principal structures on the same lot-** Staff recommends approval of the variance for 2 principal structures subject to the applicant signing a letter of assurance agreeing to remove the existing residential structure from the above-described parcel within one year of taking occupancy of the new home.

ITEM #3 3 VARIANCES and CONDITIONAL USE

Applicant/Owner: Gerald Van Well

Property Description: NW1/4 of Section 8-T116N-R54W less road and less H-2 and less RR thereof; and part of the NE1/4 lying North of RR in Section 8-T116N-R54W, less RR and less H-2 and less E537.85' thereof, Codington County, South Dakota. (Kampeska Township)

Action Item –
Variance –Existing farmstead exemption (3.04.03.7.a).
Variance – Maximum Age of Type B Manufactured Home (5.11.6)
Variance – Front Yard Setback (3.04.03.3)
Conditional Use – Residence less than one-half mile from existing CAFO (3.04.02.41)

Zoning Designation: Agricultural

Request: The applicant seeks existing farmstead exemption to allow his grandson to move a manufactured home greater than 15 years old, less than 65' from the US HWY 212 Right-of-way and less than ½ mile from a neighboring CAFO.

History/Issue(s):

Regarding the Existing Farmstead Exemption:

1. Mr. Van Well owns and farms from the above described property.
2. Mr. Van Well has placed a Type B Manufactured home on the site for his grandson to live in and assist in the farming operation.
3. Codington County Zoning Ordinance allows not more than one dwelling per ¼ ¼ section; however exception may be made where a permit for an additional single-family farm dwelling is requested on an existing farmstead, provided:
 - a. The dwelling is located on the same legal description as the existing farmstead.
 - b. The maximum number of dwelling units within the existing farmstead will not exceed two (2).
 - c. The dwelling is occupied by employees or relatives of the farm owner.
 - d. The additional single-family farm dwelling shall be removed in the event the structure becomes a non-farm dwelling.
4. Staff Recommendation –**Existing Farmstead Exemption:** The board may table the request, deny the request, or approve request because 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 and the applicant meets the conditions of 3.04.03.7.a (existing farmstead exemption); conditional upon the applicant signing a letter of assurance with the following conditions:
 - The resident(s) of the second home are to be affiliated with the operation of the farm or relatives of the farm owner. If it is found that the residents are not affiliated with the farm or relatives of the farm owner the second home is to be removed within six months.

Regarding the age of the manufactured home

1. Mr. Van Well has placed a 17 year old Type B Manufactured home on his property as described above.
2. Type B Manufactured Homes are allowed in conjunction with the above farmstead exemption in the Agricultural District, however they are required to be not more than 15 years old at the time they are moved in.
3. Exception to the maximum age requirement may be granted in accordance with Section 5.11.6.
4. Staff Recommendation: **Variance to Maximum Age of Type B Manufactured Home** – Staff recommends approval of the variance contingent upon the applicant gathering the appropriate signatures from neighboring landowners (100% of adjacent landowners) within 30 days of the granting of this variance.

Regarding the variance to front yard setback

1. The property has a front yard bordering US HWY 212.
2. The home has been placed with skirting approximately 40' from the US HWY 212 Right-of-way.
3. Codington County Zoning Ordinance requires all structures to be sixty-five (65) feet from the right-of-way. On 175th Street there is a thirty-three (33) foot “right-of-way” from the center of the road thereby requiring all structures to be at least 98' from the center of the road.
4. The Board has granted variance in the past due to exceptional topography, support from the road supervisor, or small lot size/configuration.

5. The building site is established with the main farm house approximately 80' from the right-of-way.
6. The State DOT does not object to the request.
7. Trees are located between the proposed house and the road.
8. The Board denied a variance in November of last year for a "Stick-built" home located less than 65' from a township right-of-way (the township objected to the location of the structure.)
9. Mr. Van Well contends that a manufactured home was located in this same location in the 1980s and again prior to that.
10. Staff recommendation – **Variance – Front yard setback variance** - The Board could table, deny or approve the request. If approved the Board could include the following in its findings:
 - Due to the unique nature of the request and would only consider approval of variances in similar instances as this. Specifically:
 - SDDOT does not object to the location of the Manufactured Home
 - The Manufactured Home is required to be removed if and when the occupant is not a relative or not affiliated with the farming operation
 - The manufactured home replaces manufactured home(s) which had been placed in this location in the past.

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

1. The County requires a conditional use permit to construct a residence within one-half mile of an existing CAFO,
2. The only requirement is to sign an acknowledgment that the existing CAFO was on the neighbor's property.
3. The proposed residence is less than ½ mile (2,400') from a calf yard on the Richard DeBerg CAFO.
 - i. It should be noted that the definition of "Established Residence" (in reference to Mr. VanWell's current operation would not include this residence. Setbacks would not be measured from the proposed residence if the VanWell's apply for a permit to expand.)
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 PRESENTATION OF ANALYSIS OF CAFO PRODUCERS SURVEY