

Codington County Planning Commission/Board of Adjustment Minutes

October 15, 2018

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on October 15, 2018 at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: Myron Johnson, Mel Ries, Brenda Hanten, Mark O'Neill, Rodney Klatt, Bob Fox, and Luke Muller (Planner at First District Association of Local Governments/Codington County Zoning Officer).

Others present were Loren Beld, Vince Foley, Jeff DeVille, Terry Egerstrom, Carina Little, Terry Little, Brandon Trupe, Lynn A. Johnson, Steve Wishard, Rita Wishard, Derrick Joens, and Brianne Joens.

Bob Fox brought the Board of Adjustment and Planning Commission meeting to order at 8:13 pm.

Motion by Johnson, second by Ries, to approve the September 17, 2018 meeting minutes. Motion passed unanimously.

Motion by Hanten, second by Ries, to approve the agenda. Motion passed unanimously.

Motion by Hanten, second by Johnson, to recess as the Planning Commission and convene as Board of Adjustment. Motion passed unanimously.

Adam Hanson had submitted a Conditional Use Permit request which has been withdrawn by the applicant.

Motion by Klatt, second by Ries, to approve two variance requests by Dale and Mary Tesch. They are requesting Existing Farmstead Exemption and Minimum Lot Width variances on property located in Tesch Acres, Section 24-T116N-R53W and SW1/4 of Section 24-T116N-R53W, less Tesch Acres. They seek to split the farm site from the farmland. Muller reviewed Staff Report (attached). Vince Foley provided history on property. No one was present to speak on this issue. Public hearing portion closed. Motion passed unanimously.

Motion by Johnson, second by Hanten, to approve two variance requests by Chad and Jeannie Hanson. They are requesting Existing Farmstead Exemption and Minimum Lot Width variances on property located in E530' of W1015' of S820' of SW1/4, Section 6-T119N-R55W. Muller reviewed Staff Report (attached). Chairman Fox read the Existing Farmstead Findings of Fact for all of the variances being requested at this meeting. No one was present to speak on this issue. Public hearing portion closed. Motion passed unanimously.

Motion by Hanten, second by Johnson, to approve two variance requested by Brandon and Emily Trupe. They are requesting Existing Farmstead Exemption and Minimum Lot Width variances on property located in N25 rods of W36 rods of the NW1/4, Section 22-T119N-R52W. Muller reviewed Staff Report (attached). No one was present to speak on this issue. Public

hearing portion closed. Motion passed unanimously.

Motion by Johnson, second by Hanten, to approve the Front Yard Setback variance request made by Derrick and Brianne Joens. Property is located in N838' of S2065' of E720' of SE1/4, Section 32-T118N-R53W. The Joens' seek to add an addition to be 88' from the center of 450th Avenue. Muller reviewed Staff Report (attached). Highway Superintendent does not object. No one was present to speak on this issue. Public hearing portion closed. Due to the configuration, this is the only option for adding onto their home. Chairman Fox read the Findings of Fact. Motion passed unanimously.

Motion by Hanten, second by Ries, to approve the Conditional Use Permit request made by LL and Sons Excavating to mine sand and gravel, with a rock crusher, on property owned by Steve Wishard and located in SW1/4 of NW1/4, Section 28-T118N-R54W. The current proposal is to mine approximately 10-15 acres. Muller reviewed Staff Report (attached). Staff recommends that if approved, the applicant is required to sign a Letter of Assurance agreeing to the following conditions:

1) Effective Date:

- a. Signing of the Letter of Assurance

2) General Requirements:

- a. There will be no storage of junk on site.
- b. A mining permit or proof thereof from the South Dakota Department of Environment and Natural Resources shall be presented to the zoning officer prior to the excavation of material from this property.
- c. The applicant shall obey any Federal, State and Local law of and obtain any necessary permits from the State of South Dakota. These permits may include but are not limited to Storm water drainage permit, Flood Control Permit, Water Rights Permit, etc.
- d. The site is to be reclaimed according to standards established by the South Dakota Department of Environment and Natural Resources.
- e. Not more than 15 acres shall be mined at any given time. All other property shall remain unmined or reclaimed.
- f. This conditional use permit authorizes the use of this property for crushing of rock and for the applicant to screen materials.

3) Haul Road Agreements:

- a. Applicant shall provide a haul road agreement for the use of 444th Avenue for hauling materials prior to excavation of materials. If no agreement is required

by the Codington County Highway Superintendent, documentation of such decision by the applicable authority is required.

4) Violation and Penalties:

- a. Applicant is put on notice that failure to abide by the requirements of this Letter of Assurance will result in a hearing of the Board of Adjustment to consider revocation of the conditional use permit associated herewith.

No one was present to speak on this issue. Muller states no variance is associated with this permit because the house is less than 1,000' from sites owned by the owner of the pit. If ownership of one of the parcels changes, a variance would be necessary to continue less than 1,000' from the house. Public hearing portion closed. Chairman Fox read the Findings of Fact. Motion passed unanimously.

Motion Hanten, second by Ries, to recess as Board of Adjustment and reconvene as Planning Commission. Motion passed unanimously.

Motion by Klatt, second by Ries, to recommend approval to the Board of County Commissioners the Plat of Tesch Acres Second Addition in the SW1/4 of Section 24-T116N-R53W. Motion passed unanimously.

Motion by Hanten, second by Klatt, to recess as the Planning Commission and reconvene jointly as the Planning Commission and Board of Adjustment. Motion passed unanimously.

Muller updated the board members on a pending building permit application for VanWell Sheep Farms. In order for the permit to be issued, a Conditional Use Permit is required for their Concentrated Animal Feeding Operation (CAFO). Said Permit application is pending as they are currently working with an engineer. Another CAFO, Class III permit will be forthcoming as well.

Chairman Fox visited Brent Zemlicka's new hog barn at a recent open house. It was well attended and an impressive operation in his opinion.

Muller will be visiting with the attorneys during the upcoming Planners Conference to verify if there is anything needed regarding pending litigation.

Motion to adjourn by Hanten, second by Klatt. Motion passed unanimously. Meeting adjourned at 9:21 p.m.

Respectfully Submitted,

Becky Goens, Secretary

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

MONDAY – OCTOBER 15, 2018 – 7:30 p.m.

CODINGTON COUNTY BOARD OF ADJUSTMENT

ITEM #1 CONDITIONAL USE PERMIT – WITHDRAWN BY APPLICANT

Applicant/Owner: Adam Hanson

Property Description: S430' of E936' in E1/2 of SE1/4 in Section 30-T118N-R54W, Codington County, South Dakota. (Fuller Township)

Action Items – Conditional Use – Extended Home Occupation: Butcher Shop

Zoning Designation: Agricultural

Request: This request would allow the applicant to operate a butcher shop as a home based business.

ITEM #2 (2) VARIANCES

Applicant/Owner: Dale and Mary Tesch

Property Description: Tesch Acres, Section 24-T116N-R53W and SW1/4 of Section 24-T116N-R53W, less Tesch Acres, Codington County, South Dakota. (Pelican 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. The Tesch's seek to split the farmsite from the farmland.
2. "Tesch Acres" was platted previously and met the farmstead exemption requirements, however the Tesch's seek to replat Tesch's acres and there is no record of a farmstead exemption being granted.
3. The property was used as a base for farming operations prior to 1976 and has remained lived in.
4. 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.
5. Based upon site visit and review of department of equalization records it appears this site meets the definition of an existing farmstead.

6. Staff recommendation (**Variance**) –*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 anecdotal information, records and site-visit has determined that this parcel is under contiguous ownership of an existing farmstead/residential site prior to October 26, 1976. If approved it should be done so on the condition that the applicant plat a lot of at least five (5) acres in accordance with the Codington County Subdivision Ordinance.

ITEM #3 (2) VARIANCES

Applicant/Owner: Chad and Jeannie Hanson

Property Description: E530' of W1015' of S820' of SW1/4, Section 6-T119N-R55W, Codington County, South Dakota. (Eden 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. The Hanson's purchased this property, which was subdivided from the surrounding farmland in 2005.
2. They seek to retain building rights at the site of the existing farmstead located on the above property.
3. The property was used as a base for farming operations prior to 1976 and is still lived in.
4. 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.
5. The parcel contains an existing farmstead as defined by the Codington County Zoning Ordinance.
6. Staff recommendation (**Variance**) –*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.

ITEM #4 (2) VARIANCES

Applicant/Owner: Brandon and Emily Trupe

Property Description: N25 rods of W36 rods of the NW1/4 in Section 22-T119N-R52W, Codington County, South Dakota. (Sheridan 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. The Trupe's recently purchased this property from the Little's.
2. They seek to retain building rights at the site of the existing farmstead located on the above property.
3. The lot was parceled off and the current house built in 1981.
4. The property was used as a base for farming operations and is still lived in.
5. 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.
6. The parcel contains an existing farmstead and the site was granted building permit by the previous zoning officer at the existing site.
7. Staff recommendation (**Variance**) –**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 in accordance with the policies of the Board.

ITEM #5 VARIANCE

Owner/Applicant: Derrick and Brianne Joens

Property Description N838' of the S2,065' of the E720' of the SE1/4 in Section 32-T117N-R53W, Codington County, South Dakota. (Lake Township)

Action Item – Variance – 19' Front Yard Setback (3.04.03.3)

Zoning Designation: Agricultural District

Request: The Joen's seek to add an addition to be 88' from the center of the road.

History/Issue(s):

Specifics of Property/Request:

1. The Joens' own this ~14 acre lot of record (created in 1968)
2. The Joens' propose to remove an existing sunroom (10 x 16) and replace it with a larger addition (27 x 25).
3. The existing sunroom meets required setbacks (105' from center of road). The right of way is 40' from the center of the road.
4. As proposed, the addition would place the structure 87' from the center of the road.
5. The addition is proposed in the only practical location for the house.
6. An established row of trees is located between the house and the road.
7. Staff has received no objections to the request; including from the highway superintendent.

Ordinance/Variance History regarding this request:

1. The zoning ordinance requires a 65' setback from the (40 foot wide in this case) right of way. (Most rights-of-way in the county are 33' from the center of the road.)
2. The amount of lot covered by the total setback area does not significantly affect this property.
3. The Board did grant a variance to Todd Meester in 2010 on this same road (1 mile south) to allow an attached garage to be constructed 58' from the right-of-way or 98' from the center of the road. (The lot was 8 acres and similarly configured.)
 - a. In the case of Meester, the existing house was located closer to the road than the proposed garage.

Staff Summary and Recommendation:

Staff Summary: Based upon the history of the Board with similar requests the Board needs to consider whether this request is significantly different than past approval(s) (specifically the Meester approval in 2010); and whether those differences warrant a denial or amendment to the request before approving it. In this case, similarities between the Meester request and this are that: the road authority and neighbors do not object, there are existing trees between the structure and the road, and the configuration of the lot. Differences are the lot size (Joens' have 10 more acres), that the house was already closer than the proposed addition, and that this request is to be 10' closer than was granted in 2010.

Staff recommendation – **19' Front Yard Variance**- The Board could postpone, deny or approve the request. Staff recommends that if approved the Board amend the proposal to allow the addition to be no less than 58' from the right-of-way (98' from the center of the road) instead of the requested 48' and could use the following findings:

- a. Due to the presence of an existing tree belt and the extra right-of-way the highway superintendent does not anticipate the structure to block excess snow.
- b. Configuration and size of the lot.
- c. Past approval in similar requests adjacent to the same "street" have met similar criteria and been allowed the same relaxation of the rules.

If denied the Board could use the following findings:

- a. The configuration and size of the lot is not so unique to necessitate any relaxation of the setback requirement.
- b. This request is significantly different from the request approved for Meester's in 2010 in that the variance allowed a structure to be built less than the required setback, but farther from the road than the existing home; and that this lot is bigger.
- c. Therefore the literal interpretation of this rule does not deprive the applicant of rights commonly enjoyed by other properties in this district (This would mean you feel this request is not similar enough to Meester's to justify granting the same variance.)

ITEM #6 CONDITIONAL USE PERMIT

Applicant: LL and Sons Excavating

Property Owner: Steve Wishard

Property Description: SW1/4 of the NW1/4, Section 28-T118N-R54W, Codington County, South Dakota. (Fuller Township)

Zoning Designation: A - Agricultural

Request: LL and Sons request to operate a gravel pit with crusher and screener on the above property.

History/Issue(s):

Specifics of Request:

1. LL and Sons have an agreement with the Wishard's to mine gravel on the above described parcel.
2. The current proposal is to mine approximately 10 acres, but to leave the permit active if they intend to mine more of the property in the future.
3. All mining activities are proposed greater than 65' from the right-of-way.
4. The property accesses a gravel county road (444th Avenue)

Ordinance and Comprehensive Land Use Plan regarding this request:

1. The Comprehensive Land Use Plan lists considerations for Gravel Pits on page 63.
2. No new structures, monitoring wells, or shelterbelts are proposed.
3. No haul road agreement with Codrington County Highway Department has been provided, nor is it expected one will be required (at the time of this report).
4. Reclamation is scheduled to occur upon completion of mining activities, at which time the topsoil will be returned with the intent to use the property for agricultural use/grassland. The topsoil will at that time be seeded with crops or grass.
5. The applicant has a bond with the state for reclamation of the site. Staff has become aware that counties no longer have the authority to require bonds for reclamation of gravel pits (state law).
6. The gravel pit is greater than 1,000 feet from the nearest off-site residence. Mr. Wishard's house is less than 1,000 feet. No variance has been applied for, so if the owner of the pit and house are no longer the same, the pit could get no closer to the house (less than 1,000' from the pit at the present time) after the property transfers.
7. All mining is proposed to be greater than 65' from any right of way.
8. Land Use plan states that: "Drainage patterns... require a case by case consideration of stormwater/pollution control measures." AND "Appropriate extraction setbacks will be imposed".
9. With recent permits the Board has specified an amount of acres which may remain unclaimed until completion of the mining. ("Reclaim as you go.")

Staff Summary and Recommendation:

The applicant, along with information available to the Board through the zoning office, has provided required information for a permit application and proposes to meet specified requirements of the ordinance. Since it is not anticipated that more than 15 acres will be mined in this pit in the near future, it is recommended that a maximum of 15 acres be open at any time.

Conditional Use Permit – **Gravel Pits...** The Board may postpone the request, deny the request or approve the request. If approved staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant(s):

- 1) Effective Date:
 - a. Signing of the Letter of Assurance
- 2) General Requirements:
 - a. There will be no storage of junk on site.

- b. A mining permit or proof thereof from the South Dakota Department of Environment and Natural Resources shall be presented to the zoning officer prior to the excavation of material from this property.
 - c. The applicant shall obey any Federal, State and Local law of and obtain any necessary permits from the State of South Dakota. These permits may include but are not limited to Storm water drainage permit, Flood Control Permit, Water Rights Permit, etc.
 - d. The site is to be reclaimed according to standards established by the South Dakota Department of Environment and Natural Resources.
 - e. Not more than 15 acres shall be mined at any given time. All other property shall remain unmined or reclaimed.
 - f. No mining shall occur within 25' of the ordinary high water mark or agreed upon highest known water elevation of the lake/slough on this property.
 - g. Applicant shall install and maintain pollution control devices at the inlet to the lake in the southwest portion of the area to be mined (based upon the site plan provided.)
 - h. This conditional use permit authorizes the use of this property for crushing of rock and for the applicant to screen materials.
- 3) Haul Road Agreements:
- a. Applicant shall provide a haul road agreement for the use of 444th Avenue for hauling materials prior to excavation of materials. If no agreement is required by the Codington County Highway Superintendent, documentation of such decision by the applicable authority is required.
- 4) Violation and Penalties:
- a. Applicant is put on notice that failure to abide by the requirements of this letter of assurance will result in a hearing of the Board of Adjustment to consider revocation of the conditional use permit associated herewith.

CODINGTON COUNTY PLANNING COMMISSION

ISSUE #1 PLAT

Applicant/Property Owners: Dale and Mary Tesch

Property Description: Plat of Tesch Acres Second Addition in the SW1/4 of Section 24-T116N-53W. (Pelican Township)

Zoning Designation: A-Agricultural District

Request: Plat a 25 acre residential lot at site of farmstead. The Plat will vacate the ~5 acre "Tesch's Acres Addition".

ISSUE #2 OPEN/STAFF REPORT

ISSUE #3 EXECUTIVE SESSION