

**DECEMBER 2018  
CODINGTON COUNTY/CITY OF WATERTOWN  
JOINT PLANNING COMMISSION/ JOINT BOARD OF ADJUSTMENT  
CODINGTON COUNTY  
PLANNING COMMISSION/BOARD OF ADJUSTMENT  
STAFF REPORT**

**MONDAY – DECEMBER 17, 2018 – 9:00 a.m.**

**CODINGTON COUNTY/CITY OF WATERTOWN JOINT BOARD OF ADJUSTMENT**

**ITEM #1 VARIANCES**

**Applicant: Chad Paulson**

**Owner: Elaine Ries**

**Property Description:** Outlot 1 of the plat of Hindman Outlots 1&2 in SW1/4 of Section 11-T116N-R53W, Codington County, South Dakota. (Pelican Township)

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

**Zoning Designation:** RR – Rural Residential

**Request:** The applicant requests to construct a shed with living quarters prior to construction of a house.

**History/Issue(s):**

1. Mr. Paulson seeks to buy the lot for the purpose of building a house, but would like the ability to build a shed prior to building a house. He expects to complete construction of a house in less than three years.
2. The 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. In the past the Board has approved similar variances provided the applicant apply for a building permit for a house at the same time as the permit for the accessory structure; but the permit is valid for up to **3 years**.
4. Mr. Paulson is not requesting to stay in the shed prior to constructing the house. No living quarters are planned for the lot.
5. 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 at the same time as permit for the shop.
  - c. If the house is not completed/constructed prior to the expiration of the building permit 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

## **ISSUE #2 ADMINISTRATIVE REVIEW OF BUILDING PERMIT/POSSIBLE ENFORCEMENT**

**Applicant/Owner: Doug Allbee**

**Property Description:** Lot 1, Block 1 of the plat of Northwoods 3<sup>rd</sup> Addition in Section 16-T117N-R52W, Codington County, South Dakota. (Elmira Township)

**Action Items – A) Consideration of Building Permit (if application received); or  
B) Forward the matter to State’s Attorney for enforcement**

**Zoning Designation:** PD – Planned Development

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

1. Mr. Allbee received a building permit (#3826) on September 16, 2016.
2. On April 30, 2018, a letter was sent notifying Mr. Albee that:
  - a. His permit was expired
  - b. He needed a new building permit
  - c. If application was made, the zoning officer was only able to issue a permit for up to 6 months. Any further extensions may only be authorized by the Board of Adjustment.
3. Mr. Allbee promptly made building permit application. The permit (#4028) was issued on May 18, 2018.
  - a. Mr. Allbee did note in his application that he may not be complete prior to the expiration of the permit.
4. At the November 19, 2018 Joint City/County Board of Adjustment Meeting the Board agreed that a letter should be sent to Allbee noting that the Board would consider extension of the building permit or turning the matter over to the State’s Attorney at the December Meeting.
5. On November 30, 2018, Mr. Allbee was notified that he needed to make application for building permit and his presence was requested at the December 17, 2018 Meeting.
6. As of the date of this report, Mr. Allbee has not made application.

### **Staff Summary and Recommendation:**

1. This permit is being forwarded to the Board as an Administrative Review function of the board in that the Zoning Officer can forward any application to the Board.
2. It is merely the intent that this structure be completed. However, the options before the Board are:
  - a. Approve a building permit (if application is made). The Board may specify an expiration other than is listed in ordinance.
  - b. Forward the matter to the State’s Attorney for prosecution. (A condition could be added that if at anytime during prosecution Mr. Allbee agrees to make application and complete the siding, windows, doors, and roof within \_\_\_ months; the zoning officer may issue the permit.)

## CODINGTON COUNTY BOARD OF ADJUSTMENT

### ITEM #1 (2) VARIANCES

**Applicants/Owners: Brian and Danica Boydston; and Stephanie VanWell**

#### **Property Description:**

1. N1/2 of the N1/2 of the SE1/4, less the Westerly 1,760' running parallel with the Quarterline in Section 30-T116N-R52W, Codington County, South Dakota (Boydston); and
2. Westerly 1,760' running parallel with the Quarterline in Section 30-T116N-R52W, Codington County, South Dakota (VanWell); and
3. Lot 1, Kingslien Addition in the West Half of Section 30-T116N-R54W, Codington County, South Dakota (VanWell) (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 applicants seek variances from the minimum lot width, minimum lot area (by virtue of existing farmstead exemption), to retain building rights on a property adjacent to an existing farmstead.

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

1. A building permit (#1399) for a house was issued to Sheila Grabow on September 10, 1996 on an approximate 40 acre parcel. (Legal Description #1)
2. In 2008, 26 acres of farmland was sold from the site issued permit #1399 (Legal Description #2), which rendered legal description #1 unable to attain future building permits.
3. The Boydston's purchased legal description #1 in 2016 after being made aware that the current status of the property allowed NO BUILDING PERMITS.
4. VanWell's purchased the legal description #2 in '08 and already owned legal description #3.
5. Legal description #3 contains an existing farmstead as defined by the Codington County Zoning Ordinance.
  - a. The property was used as a base for farming operations prior to 1976 and has been occupied in the last 50 years.
6. 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.
7. The land use plan allows for transfer of those development rights to adjoining parcels under contiguous ownership but not across a right-of-way.
8. This application is unique in that:
  - a. Both property owners have signed the application, and the parcels are contiguous.
  - b. VanWell's understand that transferring the 5 acre development right from the farmstead requires them to retain at least 35-acres to build upon legal descriptions 2 and/or 3.
  - c. The existing farmstead is located over the shallow aquifer, the Boydston's home (receiving 5-acre building right) is not.

- d. The existing farmstead accesses a gravel township road, the Boydston's home (receiving 5-acre building right) accesses a US Highway.
9. The land use plan establishes the policy that property subdivided prior to 2004 may not be required to be platted. The Board will need to determine whether a plat is appropriate in this instance.

Staff Summary:

There is no record of a request where someone is seeking to transfer a farmstead exemption between two owners when both owners give consent to do so. If the VanWell's already owned legal description #1, this request would be exactly the same as the hundreds of farmstead exemptions this board has granted over the years. A "no" vote would essentially require the Boydston's and VanWell's to enter into simultaneous purchase agreements to transfer the property back and forth for the purposes of obtaining the farmstead exemption. A "yes" vote would allow the VanWell's to transfer their development right to the Boydston's without going through the process of buying and reselling the lot.

Staff Recommendation

**(Variance) –Existing Farmstead Exemption and variance to Minimum Lot Width-** The request may be approved 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 by the two applicants. 3) The unique circumstances described above in the report. If approved it should be done so on the condition that the applicant's sign and record a letter of assurance transferring the "less-than-35-acre-building-right" from legal description #3 to legal description #1; and acknowledging that any future development on legal descriptions #2 and #3 will be required to be upon parcels of at least 35 acres. The request may be denied because the property is not under contiguous ownership (of own owner) at the time of application.

**ISSUE #2 OPEN**

**ISSUE #3 ADMINISTRATIVE REPORT**

- Year End Report
- First District Contract for Zoning Officer

**ISSUE #4 EXECUTIVE SESSION**