

Codington County Board of Adjustment Minutes

April 15, 2019

The Codington County Board of Adjustment met for their monthly meeting on April 15, 2019 at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: Myron Johnson, Brenda Hanten, Mark O'Neill, Charles Rossow, Rodney Klatt, Bob Fox, and Luke Muller (Planner at First District Association of Local Governments/Codington County Zoning Officer).

Others present were Shannon Green, James Gergen, Thomas Gergen, Paul Waldron, Barb Waldron, Eric Waldron, Chance Olerud, Jayme Olerud, Rory Olerud, Tyler McElhany and Jim Czech.

Bob Fox brought the Board of Adjustment meeting to order at 6:32 pm.

Motion by Johnson, second by Ries, to postpone approving the March 18, 2019 minutes until the next board meeting in May. Motion passed unanimously.

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

Board Member Hanten has asked for a notice to be published as a reference to the reconsideration of a variance granted to Chance Olerud at the March 18, 2019 meeting. Motion by Hanten to reconsider, second by O'Neill. Following the Elmira Township meeting, the township supervisor presented Hanten with a letter of support for Mr. Olerud to use the township road located directly south of the proposed site. Olerud's neighbors also stated support. The request granted in March allowed Mr. Olerud to construct a home on property located in SE1/4 lying E of railroad ROW, less Stenzel Subdivision, less Syhre Addition and less highway ROW, and including Lot 4 Stenzel Addition, Section 6-T117N-R52W. The county's by-laws do allow for reconsiderations. Motion on reconsideration passed 5-1.

Muller reviewed Staff Report Summary (attached). Signatures were gained from township board members and adjacent landowners indicating support of Olerud using 167th Street for residential access. Motion by Hanten to amend the condition on the variance to state an access for the lot be provided to 455th Avenue, second by O'Neill. Amended passed 6-0. The main motion is to approve a variance to allow more than one house in the same quarter-quarter sections, although only one house in the Olerud Addition in 6-117-52 on the condition an access be provided on 455th Avenue. Findings of Fact were read at the March meeting. Vote on main motion as amended passed 6-0.

Motion by Hanten, second by Rossow, to approve existing farmstead and minimum lot width variance requests for Linda Casey on property located in S590' of E585' of SE1/4, Section 25-118-54 (7.9 acres). Muller reviewed Staff Report (attached). No one was present to speak on

this request. Public hearing closed. Fox read the Findings of Fact. Motion passed unanimously.

Motion by Hanten, second by Ries, to approve existing farmstead and minimum lot width variances for Paul Waldron Trust and Waldron and Waldron LLP. Property is located in Beskow Addition in Section 30 and in Government Lots 1&2, Section 13-T119N-R52W. Muller reviewed Staff Report (attached). Fox read the Findings of Fact. Motion passed unanimously.

Motion by Hanten, second by Klatt, to approve front yard setback, existing farmstead, and accessory building/residential dwelling variances requested by Thomas Gergen. Property is owned by James Gergen and located in SW1/4, Section 14-T118N-R52W. Muller reviewed Staff Report (attached). They are proposing to construct 55' from the center of the section line which would calculate to at 43' front yard variance. Chairman Fox read the Findings of Fact. Motion passed unanimously.

Motion failed, 3-4, to hear the shelterbelt setback variance request by Marty Comes due to nonpayment. Motion by Rossow, second by Klatt, to recess the Board of Adjustment until after the Planning Commission portion of the meeting with hopes the neighbor is coming with payment on this request.

Chairman Fox reconvened the Board of Adjustment.

Motion by Johnson, second by Klatt, to approve a shelterbelt setback variance request for Marty Comes. Property is located in NCA Lot 1 Addition in SE1/4, Section 17-T118N-R51W, Codington County, SD. Muller reviewed Staff Report History/Issue (attached). The last tree in each row will be 12' from the right-of-way, i.e. 45' from the center of the road. Fox read the Findings of Fact. Motion passed unanimously.

Motion by Johnson, second by Rossow, to approve a shelterbelt setback variance request by Marty Comes. Property is located in NCA Lot 2 Addition in NE1/4, Section 20-T118N-R51 W, Codington County, SD. This would apply to the south side of the road. The purpose for the request is the same. The motion includes the Findings read during the previous variance request by Mr. Comes. Motion passed unanimously.

Motion by Johnson, second by Ries, to enter into Executive Session at 9:03 pm to discuss current litigation. Motion by Ries, second by Klatt, to adjourn Executive Session at 9:15 p.m.

Motion to adjourn by Hanten, second by Ries. Motion passed unanimously. Meeting adjourned at 9:16 pm.

Respectfully Submitted,

Becky Goens, Secretary

APRIL 2019
CODINGTON COUNTY BOARD OF ADJUSTMENT STAFF REPORT

CODINGTON COUNTY BOARD OF ADJUSTMENT

ITEM #1 RECONSIDERATION OF VARIANCE

Applicant: Chance Olerud / Owner: Jon Hurkes

Property Description: SE1/4 lying E of railroad ROW, less Stenzel Subdivision, less Syhre Addition and less Highway ROW, and including Lot 4 Stenzel Addition, Section 6-T117N-R52W, Codington County, South Dakota (Elmira Township)

Action Items – Variances – 1) Reconsideration of variance approved March 18; (if approved) and
2) Amendment of Amendment to Variance approved March 18, 2019;
3) Consideration of Variance to allow More than 1 house per quarter-quarter section (3.04.01.2).

Zoning Designation: Agricultural

Request: The applicant seeks variances from the maximum density per quarter-quarter section to allow a house on a lot with greater than 35 acres.

Summary of Reconsideration:

1. On March 18, 2019 the Board of Adjustment approved the above described variance for Mr. Olerud. In doing so, the Board attached a condition that primary access (interpreted to mean a direct driveway and mailing address) for the lot shall be to 455th Avenue.
2. Commissioner Hanten received a letter from the Elmira Township Board expressing their support for Mr. Olerud and any other owner of Olerud Addition to utilize the existing approach on 167th Street for residential access.
3. A letter of support has been received, signed by ALL adjacent landowners for Mr. Olerud to utilize the existing approach on 167th Street for residential access.
4. The Plat of Olerud Addition has been signed by the Codington County Highway Superintendent
5. Sufficient space exists for an access to be placed on 455th Avenue without the need for a variance to access spacing.

Staff Summary and Recommendation:

- The full report from the March Meeting is included below for reference only.
- The condition to require primary access to 455th was based upon a desire to minimize traffic on the minimum maintenance Township road (167th Street). Since the action, the Board has received correspondence from Elmira Township that they do not object to the use of 167th Street as the main access for the house. The plat has been signed by the County Highway Superintendent, and the only access to 455th at this time is across a neighboring lot. Staff recommendation on how to proceed, if the Board is inclined to relieve the condition to require access off the county road is:
 - Motion by Hanten (second) to reconsider the Variance granted to Mr. Olerud on March 18. (This motion requires a 2/3 majority vote to proceed. Approval of the motion to reconsider brings the matter back before the Board at the point after the Amendment was made.)

- Motion to Amend the condition to access by replacing the phrase “**primary access** for the lot be provided to 455th Avenue,” with “**an access** for the lot be provided to 455th Avenue.” (Second/Discussion/Vote. Approval requires a simple majority of the members present and voting.)
- Vote on main motion as amended. (Approval requires 2/3 majority of the full membership of the Board (5 votes)).

History/Issue(s):

1. Mr. Olerud seeks to purchase the ~42 acre parcel which includes two legal descriptions.
 - a. Lot 4 Stenzel Addition
 - b. Remainder of SE1/4 East of the Railroad Addition (less Syhre Addition)
 - c. Syhre Addition was created as a condition of approval of variance in September 2015.
 - i. Transferred ~10 acre building right **from** Lot 4 Stenzel Addition **to** Syhre Addition.
 - ii. Now the above legal description is require to retain at least 35 acres.
2. Mr. Olerud seeks the ability to construct a house in the east 1,320’ of the property (SE1/4 of SE1/4) despite the fact that Mr. Syhre’s house is already in that quarter-quarter section.
 - a. Mr. Olerud/Hurkes **does not** seek to build more than one house on this property.
3. This property is bordered on the east by County Road 11 (Old 81), and on the south by a no maintenance Township Road. At least part of which is vacated.
 - a. The road is primarily maintained (snow) by the property owners.
4. If the variance is denied, a house could still be built on this parcel, however it would nearly guarantee access would come off of the section-line road to the south.
5. Approval does not guarantee that access would come off the county road unless made a condition of approval.
6. In 2011 the Board approved a variance to this rule to allow a second house in the same quarter-quarter for the neighbor bordering this to the south. (The Board also denied his request to have a lot of less than 35 acres at that time.)
7. Staff has heard from the neighbors to the south (Laqua) who does not object to the variance as long as access is limited to the county road.
8. Staff recommendation (**Variance**) – **Variance to residential density per quarter-quarter** – The Board could postpone, deny or approve the request. Staff recommends that if approved the Board could use the following findings:
 - a. Following the required density would encourage the applicant to use the no-maintenance township road to a greater degree than is already used.
 - b. The Board has allowed more than one residence in the same quarter-quarter in the past if the lot:
 - i. Contains at least thirty-five acres AND
 - ii. The quarter-quarter contains either:
 1. Nonconforming lot of record.
 2. Existing Farmstead.lot width would lead to the applicant constructing in the floodplain and having to cross two blue lines (USGS) with a driveway.
 - c. Approval would not increase the development density intended by this ordinance because this quarter-quarter section does contain a lot of record; building right for which has been transferred and utilized already.
 - d. The variance can be granted but still allowing the lot to contain at least 35 acres and not exceed the development density already allowed by ordinance provided the new lot is Platted and a letter of assurance be signed and recorded agreeing to the following:

- i. The residential development right associated with the SW1/4 of the SE1/4 be tied to the new lot.

ITEM #2 (2) VARIANCES

Applicant/Owner: Linda Casey

Property Description: S590' of E585' of SE1/4, Section 25-T118N-R54W, Codington County, South Dakota. (Fuller 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. Linda and her husband purchased this property, which was subdivided from the surrounding farmland in the early 1990s.
2. The applicant seeks 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 #3 (2) VARIANCES

Applicant/Owner: Paul Waldron Trust; Waldron and Waldron LLP, (both) by Paul Waldron

Property Description: Beskow Addition in Section 30 and in Government Lots 1&2, Section 13-T119N-R52W, (Sisseton-Wahpeton), Codington County, South Dakota. (Germantown 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 Waldron's own an irregularly shaped lot (Beskow Addition) which was platted in 1995. It contains 21 acres and straddles the former reservation boundary which results in the lot being located in two different Sections.
2. The Waldron's own more land adjacent to this property and therefore never needed the farmstead exemption to obtain building permits in the past; therefore there has never been a need for a farmstead exemption.
3. The Waldron's are considering selling some or all of Beskow Addition and want to ensure that the future owner would retain building rights.
4. The property was used as a base for farming operations prior to 1976 and has remained 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. Based upon site visit and review of department of equalization records it appears this site meets the definition of an existing farmstead.
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 anecdotal information, records and site-visit has determined that this parcel is under contiguous ownership of an existing farmstead/residential site prior to November 26, 1976. If approved it should be done so on the condition that Beskow Addition, as currently platted, retains building rights if it is not further subdivided, however if it is intended to be subdivided further (decreased in area) the applicant shall plat a lot of at least five (5) acres in accordance with the Codington County Subdivision Ordinance.

ITEM #4 VARIANCE

Applicant: Thomas Gergen / Owner: James Gergen

Property Description SW1/4 of Section 14-T118N-R52W, Codington County, South Dakota. (Rauville Township)

Action Item – Variance – 30' Front Yard Setback (3.04.03.3) (*Variance to live in accessory structure withdrawn with request to discuss it on the "Open"*)

Zoning Designation: Agricultural District

Request: The Gergens seek to build a shop 55' from the center of the road/section line.

History/Issue(s):

Specifics of Property/Request:

1. The Gergens own and farm this quarter.
2. The Gergens propose to construct a 80 x 62 shop (dimensions may change)
3. 163rd Street is a minimum maintenance Township Section-line road.
4. The Gergens have one structure 33' from the center line of the road and one structure 85' from the center-line.

5. The structure will be placed east of the existing house and other farm structures; and south of the existing feedlot to utilize existing internal driveways and farmstead set-up
6. The applicant submitted a letter of support from the Township for the location of the shop; but the township does not intend on vacating the right-of-way.

Ordinance/Variance History regarding this request:

1. The zoning ordinance requires a 65' setback from the 33' right of way.
2. The amount of lot covered by the total setback area does not significantly affect this property.
3. The Board has a history of granting variances to setbacks where a letter of support is provided by the affected road authority.

Staff Recommendation:

Staff recommendation – **30' Front Yard Variance**- The Board could postpone, deny or approve the request. Staff recommends approval based upon the following findings:

- a. Due to the existing configuration and orientation of structures and accesses to the lot; and,
- b. Based upon the support of this request by the road authority (Rauville Township)

ITEM #5 (2) VARIANCES

Applicant/Owner: Martin Comes

Property Description: NCA Lot 1 Addition in SE1/4 Section 17-T118N-R51W, Codington County, South Dakota. (Rauville Township); **and** NCA Lot 2 Addition in NE1/4 Section 20-T118N-R51W, Codington County, South Dakota (Rauville Township)

Action Item: Variance – Minimum Required Setback for Shelterbelts (5.08.01)

Zoning Designation: A – Agricultural

Request: Mr. Comes requests to plant a shelterbelt perpendicular to and 15' north and south of the 163rd Avenue "Right-of-Way".

History/Issue(s):

1. The property east of these legal descriptions in the SE1/4 Section 17-T118N-R51W and NE1/4 Section 20-T118N-R51W was permitted for a gravel pit in May of 2017 for Northern Con-Agg. A condition of approval was to plan a shelterbelt west of the proposed mining to screen neighboring properties.
2. In 2018, Northern Con-Agg sold the above legally described property to Mr. Comes to allow him to own and maintain the shelterbelt proposed to screen his and his neighbors' property.
3. The shelterbelt will include nine (9) rows of varying tree types, planted in a manner consistent with the requirement to screen neighboring houses to the west of the gravel pit.
4. Codington County Ordinance requires shelterbelts to be at least 50' from a right-of-way when planted perpendicular to the right-of-way.
5. In the past the Board has granted variance to decrease setbacks for shelterbelts where the request is supported by the road authority (in this case the Rauville Township is the road authority).
6. The applicant submitted a letter of support by the Rauville Township Supervisors.
7. Staff has received no comments regarding this variance.

8. Staff recommendation – Variance – **Shelterbelt setback** – The Board may postpone, deny or approve the request. Staff recommends using one motion despite this technically being two variances. (The Board may split the motion if it is determined necessary throughout discussion.) If approved, it could be based upon the following findings:
 - a. The purpose of the treebelt is to provide screening of adjoining landowners.
 - b. The road authority for 163rd Street is Rauville Township
 - c. The applicant has submitted documented support of this request by the Rauville Township Board.