

**JUNE 2019  
CODINGTON COUNTY  
PLANNING COMMISSION/BOARD OF ADJUSTMENT  
STAFF REPORT**

**MONDAY – JUNE 17, 2019 – 7:30 p.m.**

**CODINGTON COUNTY BOARD OF ADJUSTMENT**

**ITEM #1 (2) VARIANCES**

**Applicant/Owner: Jeremy Boswell**

**Property Description:** W790' of E1881.45' of N605' in NE1/4, Section 6-T116N-R54W, Codington County, South Dakota. (kampeska 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 Boswell's purchased the above legal description from the Hieb's two years ago.
2. The applicant seeks to retain building rights at the site of the existing farmstead located on the above property to make improvements after a fire.
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 #2 (2) VARIANCES**

**Applicant/Owner: Dewey Chapin**

**Property Description:** W1/2 of SW1/4, Section 11-T119N-R51W, Codington County, South Dakota. (Leola 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. Chapin owns the above "80" with a right-of-way that runs through the southwest corner.
2. Mr. Chapin plans to split the building site off from the remaining pasture land but to retain building rights at the farmstead.
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 November 26, 1976. If approved it should be done so on the condition that the applicant shall plat a lot of at least five (5) acres in accordance with the Codington County Subdivision Ordinance.

**ISSUE #3 (2) Variances**

**Applicant/Owner:** Todd Stark

**Property Description:** N300' of W435' in NW1/4, Section 11-T116N-R54W, Codington County, South Dakota. (Kampeska Township)

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

**Zoning Designation:** Agricultural

**Request:** Mr. Stark requests variance to retain residential building rights on their 2 acre parcel.

**History/Issue(s):**

1. Mr. Stark's father purchased the W1/2 of this Quarter Section ("80") in 1977.
2. Mr. Stark's father built his house on the "80" in 1998 (building permit #1499 issued by past zoning officer)
3. Mr. Stark built his house in 2002 on the above legal description (building permit #1891 issued by past zoning officer) as a relative/employee of the farm owner without Board of Adjustment approval. At the time, no rule or Board action restricted Mr. Stark from owning the lot.
4. Since the issuance of the permit, neither of the Starks' primary source of income is directly related to farming.
5. This case resembles those of some others in that building permits had been previously granted by the zoning officer to sites with insufficient lot area particularly where they

were originally involved in a farming operation (Chad Comes and (former) Chandler sites). The variances in those cases were granted.

6. Staff recommendation – **Variance to Minimum Lot Area and Minimum Lot Width**- The Board could use a single motion to approve request based upon the following findings:
  - i. The Zoning Officer in 2002 issued a permit for a house on the above described property. The issuance of the building permits conferred some sort of vested building right to this applicant. While Board of Adjustment permission was not officially granted, it is presumed that the Board based upon similar requests would have granted the request.
  - 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 Officer in August of 2002.
  - iii. It should be noted that the Board grants this variance based upon its similarity to variances approved in the past in similar instances where the zoning officer conferred some sort of vested building rights to a lot of less than 35 acres associated with a farming operation.
  - iv. Future similar requests will be required to meet conditions similar to this request.

#### **ITEM #4 (2) VARIANCES**

**Applicant/Owner: Iron Ranch Manufacturing (by Charles Raml)**

**Property Description:** Lot 1 and Lot 2 of Raml Addition, Section 4-T116N-R51W, Codington County, South Dakota. (Kranzburg (S) Township)

**Action Items – Variances – Extended Home Occupation, Non-Family Employees (5.12.2.a), Extended Home Occupation, Retail Sales (5.12.2.d)**

**Zoning Designation:** Agricultural

**Request:** The applicant seeks to sell over-run raw materials from his previously permitted Extended Home Occupation, and seeks the ability to have up to ten (10) non-family employees.

**History/Issue(s):**

1. Mr. Raml was granted a conditional use permit to operate a Welding Business as a conditional use by this Board in December 2012. The validity of that permit is not in question, merely the ability to change two conditions (which requires variance in this case.)
2. Regarding retail sales:
  - a. The zoning ordinance limits retail sales to items prepared on site.
  - b. Mr. Raml seeks to sell “overrun” raw materials which he purchases in bulk for his welding business.
  - c. The materials are stored out of view from any public right-of-way or neighboring property, and no changes/signs are proposed to draw attention to the sale of these products.
  - d. The Board has allowed the sale of products not built/treated on site in some other extended home occupations provided no sign is placed on site directing the public to the sale of those items, and the items for sale are not visible from the public right-of-way or neighbors requesting to be screened.
3. Regarding 10 employees:
  - a. Mr. Raml seeks the ability to employ up to ten (10) non-family individuals in the event his demand increases to the point that number of employees is necessary.

- b. Currently Mr. Raml meets the requirement of not more than three (3) non-family employees.
  - c. The Board allowed a welding extended home occupation (BZ Welding) up to ten non-family employees on April 15, 2013. At the time Mr. Zaug was operating with more than three employees. It was noted that no further variances would be granted to allow more employees.
4. Staff Summary:
- Retail sales: If retail sales are ancillary to the primary extended home occupation and neither the items for sale or any advertising of the items for sale are visible from the public right-of-way or adjacent properties the Board has allowed those items to be sold when asked.
- Up to 10 employees: Mr. Raml acknowledges in his application that if the need arises for greater than 10 employees he will need to seek commercially zoned property to operate his business. This was the determination of the Board in April 2013 in reference to Mr. Zaug's Request as well. It should be noted though that at the present time there is not a need for 10 employees. Typically the Board does not permit a site for speculated business without a timeframe to achieve the projected scale. For example, the Board has given up to 2-3 years for feedlots to increase to a projected size/meet conditions warranted by future expansion(s). If the projected increase is not met, they are required to request the permit/variance again. In this case, that same condition may be appropriate.
5. Staff recommendation (**Variance**) –**Greater than three (3) employees in an Extended Home Occupation-** Staff recommends approval of the request based upon the following findings:
- (1) The applicant has operated the extended home occupation since 2013 with no complaints received regarding the business.
  - (2) The applicant operates the extended home occupation on a road capable of handling traffic generated by up to ten (10) non-family employees (US HWY 212.)
  - (3) The Board has a history of allowing up to ten (10) non-family employees in conjunction with welding businesses in this same neighborhood on paved roads.
  - (4) Applicant agrees that a separate site is necessary if he should need more than ten (10) employees.
  - (5) The intent of the Agricultural District and requirements of extended home occupations will be met if the following conditions are met:
    - a. The maximum number of employees (part-time or full-time, including the Operator) shall not exceed eleven (11).
    - b. The Codington County Zoning Officer shall be provided documentation upon request to verify to the satisfaction of the Board of Adjustment that the maximum number of employees is not exceeded.
    - c. The Board of Adjustment will grant no further variances to allow for more employees for this Extended Home Occupation.
    - d. The terms of this variance expire on June 17, 2022 if at no time between the issuance of this variance and that date the applicant has not employed greater than three (3) non-family employees. After June 17, 2022 the maximum number of employees shall not exceed the maximum number of employees at any one time prior to that date.
    - e. The applicant may re-apply to allow up to eleven (11) employees as in "a" above if this variance expires.
6. Staff recommendation (**Variance**) –**Retail sales of items not produced on site of an Extended Home Occupation-** Staff recommends approval of the request based upon the following findings:

- (1) The applicant has operated the extended home occupation since 2013 with no complaints received regarding the business and no items visible from neighboring property or right-of-way.
- (2) The applicant agrees to limit sales to be ancillary to the primary extended home occupation (welding).
- (3) The applicant agrees that no items for sale nor signs advertising the items for sale will be visible from neighboring property or right-of-way.
- (4) The intent of the Agricultural District and requirements of extended home occupations will be met if the following conditions are met:
  - a. Retail sales will be ancillary to the primary extended home occupation permit issued in December of 2012.
  - b. Retail sales of items not prepared on site is limited to products/raw materials used within the process of the primary extended home occupation permit issued in December of 2012.
  - c. No items for sale nor signs advertising the items for sale will be visible for neighboring property or right-of-way.

### **ITEM #5 CONDITIONAL USE**

**Applicant: Velocitel**

**Owner: MoDak Dairy**

**Property Description** SE1/4, Section 26-T117N-R51 West of the 5th P.M., Codington County, South Dakota, less Greg Moes Addition. (Kranzburg (N) Township)

**Action Item – Conditional Use – Telecommunications (Cell) Tower (3.04.02.15)**

**Zoning Designation:** Agricultural District

**Request:** Applicant seeks to construct a cell tower on a leased portion of the above described parcel.

**History/Issue(s):**

**Specifics of Request:**

1. Velocitel seeks to construct a 400' tall cellular tower with guyed wires on the above described property.
2. They will lease a 100' x 100' site upon which the tower will sit.
3. Velocitel requests no variances with this application.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. The comprehensive land use plan lists considerations for telecommunications towers on pages 69-71
2. Telecommunications towers such as this are listed and allowed as a conditional use in the Agricultural District subject to numerous conditions and considerations.
3. The following table outlines the review by the zoning officer of the application as presented by the applicant at the time of this report:

Section	Title	Reference Page	Notes
5.24.02.1	Exempt Towers	N/A	
5.24.02.2	Co-location	"Tower Information Tab" Excel Document Provided electronically; personal correspondence with applicant	<ul style="list-style-type: none"> <li>• Structure was designed/tested for 9 antennae attachments. Applicant will use 1</li> <li>• Applicant shall not charge excessive co-location fees; and shall agree upon request to mount public safety/law enforcement apparatus.</li> <li>• Will provide certification from engineer to verify.</li> </ul>
5.24.02.3(a)	Contact/project info	Building Permit/ Conditional Use applications	
5.24.02.3(b)	Legal Description/Address	Building Permit/ Conditional Use applications	
5.24.02.3(c, e, f)	towers w/in ½ mile	N/A	None within half mile
5.24.02.3(d)	Description of design plan	RFDS Attachment provided electronically	Includes technology used. Microcell technology is inferior to the modern technology used.
5.24.02.3(g)	Will not interfere with other radio signals	RFDS Attachment provided electronically	Applicant agrees to provide "plain English" letter attesting to this.
5.24.02.3(h) and 5.24.04	Structural Requirements	C-1 – C8; A-1 – A-4; E-1.1 – E-2; and G-1 – G-4	Applicant agrees to provide "plain English" letter attesting to this.
5.24.02.3(j)	Meeting FCC Standards	RFDS Attachment provided electronically	May be required to provide documentation of meeting FCC requirements in the future.
5.24.02.3(k)	No zoning violations	n/a	No violations on this property
5.24.02.3(l)	Other information		Applicant agrees to provide "plain English" letter attesting to practical ability of the tower to meet the county's ordinance.
5.24.03.2.a	Setbacks from existing off-site residences, businesses and public buildings	Shall be 1,000 feet	Lat/Long Provided. Measured by zoning officer. Nearest structure not operated by the applicant is 3,600' (Bob Lenards)

Section	Title	Reference Page	Notes
5.24.03.2.b	Setbacks from public right-of-way	At least 400'	Less than 400' from 465 Ave Statutory right-of-way; however that section line was vacated on July 2, 1974 (Book ZZ; Page 177) No other applicable right of way.
5.24.03.2.c	Setbacks from property line	At least 400'	Approximately 350' from property line which is owned by the same owner. No variance needed if building permit application references the east property as well.
5.24.04	Structural Requirements	See 5.24.02.3(h) above	
5.24.05	Separation of Buffer Requirements	Comprehensive Land Use Plan & Lat/Long	No towers less than half mile away (exceeds greatest separation distance required.)
5.24.06	Tower Height	Tower height provided in Scope of work	400' above grade.
5.24.07	Illumination	Lighting Type not specified	Applicant agrees to meet FAA requirements
5.24.08 & 5.24.09	Not applicable		
5.24.10	Certificates and Inspections	No information required at time of application	Required to be inspected and verification sent to zoning office at the tower is structurally sound every 2 years. Zoning officer requests that inspections be sent upon request, rather than every two years.

4. Non commercial structures, according to state law are required to meet the latest edition of the International Building Code.

Staff recommendation:

**Conditional Use Permit: Telecommunications Tower.** The Board may postpone the request, deny the request, or approve the Conditional Use Permit(s). The Zoning officer recommends that, if approved, the applicant agree to the following conditions in a letter of assurance to be recorded at the Codington County Register of Deeds:

- A. Applicant agrees to submit a letter from the project engineer attesting to that the proposed tower will be constructed to meet or exceed all applicable building codes imposed by the State of South Dakota; and by Section 5.24 of the Codington County Zoning Ordinance.
- B. Applicant agrees that it will not charge co-location fees in excess of commercially reasonable industry amounts.
- C. Applicant agrees that upon the request of Codington County mount law-enforcement or public safety communications apparatus.
- D. Prior to issuance of building permit, the applicant shall demonstrate an easement or some other form of access to the building site from 171<sup>st</sup> Street.
- E. Since the tower is located less than 400' from the east property line of SE1/4 of Section 26-117-51, but no variance was applied for since the neighboring property is owned by the same owner; the applicant agrees that if MODAK Addition in Section 25-117-51 is not owned by the same owner as the SE1/4 of Section 26-117-51, less Greg Moes Addition;

that no building permits may be issued for the reconstruction of said tower unless in conformance with the Codrington County Zoning Ordinance at the time.

- F. Applicant agrees to inspect and verify that the tower is structurally sound every 2 years. Documentation of inspections shall be sent to the zoning officer upon request of the zoning officer to determine compliance with this condition.

**ISSUE #4 OPEN/ADMINISTRATIVE REPORT**

**ISSUE #5 EXECUTIVE SESSION**