

Codington County Planning Commission/Board of Adjustment Minutes

March 18, 2019

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on March 18, 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 Kevin Bach, Lowell Bach, Chance Olerud, Rory Olerud, Jon Hurkes, Harry LaQua, Sharon LaQua, Betty Hoffman, Darcy Thonvold, Dean Raabe, Jayson Maguire, Greg Moes, Jeff DeVille, Lee Gabel, Val Jaspers, Troy VanDusen, and Becky Goens.

Bob Fox brought the Board of Adjustment and Planning Commission meeting to order at 12:03 pm.

Motion by Hanten, second by O'Neill, to approve the February 19, 2019 meeting minutes. Motion passed unanimously.

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

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

Motion by Hanten, second by Klatt, to approve the Minimum Lot Width and Existing Farmstead Exemption variance requests made by William Hoffman. Property is located in S356' and N441' S797' E476' NE1/4, Section 18-T118N-R54W (5 acres). Muller reviewed Staff Report History (attached). No one was present to speak on this request. Public hearing closed. Chairman Fox read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Motion by Klatt, second by Rossow, to approve a variance request by Kevin Bach. Mr. Bach would like to construct a new home while temporarily residing in the existing home. Property is owned by Lowell Bach and located in N1/2 of NE1/4, Section 20-T118N-R53W. If approved, Mr. Bach would be required to remove the existing house within one year of completion of the new house. No one was present to speak on this request. Public hearing closed. Chairman Fox read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Motion by Rossow, second by Hanten, to approve a variance request by Chance Olerud to allow two residential dwellings in the same quarter-quarter section. Property is owned by Jon Hurkes and located in SE1/4 lying E of RR ROW, less Stenzel Subdivision, less Syhre Addition and less Highway ROW, and including Lot 4 Stenzel Addition, Section 6-T117N-R52W. Muller

reviewed Staff Report History (attached). Adjacent landowner Harry Laqua would like to know where the house is to be constructed. Mr. Laqua currently maintains the 167th Street as it is a minimum maintenance, dead-end road. Mr. Olerud would have only one house and is planning to construct on the east side of the property but the exact location has not been determined due to the amount of snow. Public hearing closed. Board member Johnson would like the access on 455th Street as it is a hard-surfaced, county maintained road. The culvert should be able to handle run-off water properly. Motion by Johnson, second by Klatt, to add the amendment that primary access is to be on 455th Avenue. Motion on the amendment passed unanimously.

Board member Mel Ries arrived at 12:25 p.m.

Olerud would like to keep the existing access on 167th Street. Chairman Fox indicated there must be direct access to the new home from 455th Avenue and not 167th Street. The original motion, with the amendment, passed 5-1.

Motion by Rossow, second by Hanten, to approve the Conditional Use Permit request by KaBoomers ½ Price Fireworks. This request is for a temporary roadside stand utilizing a permanent structure for sales of fireworks on property in S771' of N1205' of W732' in N1/2 of NW1/4, Section 5-T117N-R52W. Muller reviewed Staff Report History (attached). If approved, the following conditions will apply to the Permit:

- A. The applicant is required to meet all State laws regarding location and operation of fireworks stand (separation from other structures, hours of operation, etc).
- B. The applicant may be required to present the Zoning Officer with a copy of the State Permit from the State Fire Marshall's Office prior to opening for sales for any specific season.
- C. Sales shall occur no closer than 65' to the public right-of-way.
- D. No parking shall be allowed in the public right-of-way.
- E. Separate conditional use permit(s) are required for any off-premise advertising associated with the business.
- F. Total on-premise signage shall not exceed eighty (80) square feet.
- G. The conditional Use is valid only for the dates of June 27 through July 5, 2019 and may be renewed annually with no further action by the Board of Adjustment provided the operator declare the intent to resume operations for the specific year to the Zoning Officer in writing on or before June 1 of the specified year.
- H. All signs are to be removed on or before July 12, 2019; or any subsequent year the permit is effective.

- I. If there are documented complaints, the Board of Adjustment will hold a hearing to determine whether additional conditions are warranted or whether the applicant should be required to close the business.
- J. The applicant further agrees that if any terms of this agreement are not complied with, the applicant shall forfeit his/her claim to a Conditional Use permit.

Chairman Fox read the Findings of Fact. There no questions or objections. Motion passed unanimously.

Chairman Fox read the Findings of Fact regarding Mr. Olerud's variance request as it was overlooked. There were no questions, comments, or objections.

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

Motion by Rossow, second by O'Neill, to recommend approval to the Board of County Commissioners the Plat of Bill Hoffman Addition in the NE1/4 of Section 18-T118N-R54W. This request would be to plat a 5-acre lot at the site of an existing farmstead consistent with the requirement of existing farmstead exemption variance considered earlier this meeting. Motion passed unanimously.

Motion by O'Neill, second by Ries, to recommend approval to the Board of County Commissioners the Plat of Olerud Addition in SE1/4 of Section 6-T117N-R52W (42.2 acres). This plat eliminates the 10-acre "Lot 4, Stenzel Addition" which no longer has building rights due to variance granted in 2015. Motion by Johnson, second by Hanten, to add the amendment that a driveway and/or approach to 455th Avenue must be constructed prior to issuance of a building permit. Motion passed. Original motion, with amendment passed 6-1.

The Planning Commission, along with County Commissioners Troy VanDusen and Lee Gabel, reviewed and discussed a draft of the updates to the Concentrated Animal Feeding Operation (CAFO) regulations. The draft incorporates comments from the two boards at previous meetings. Others present for this discussion were: Greg Moes, Val Jaspers, Jeff DeVille, and John West. Following today's discussion, a draft of Chapter 5.21 Concentrated Animal Feeding Operation Regulations (CAFO's) will be presented at a joint meeting of the Planning Commission and Board of County Commissioners for action at the April 15, 2019 meeting. This will include a public notice and public hearing. The second reading on the ordinance for the County Commissioners will be April 23, 2019.

Board member Charles Rossow was excused at 2:30 p.m.

Commissioner VanDusen was excused at 2:55 p.m.

Motion to adjourn by O'Neill, second by Ries. Motion passed unanimously. Meeting adjourned at 3:40 pm.

Respectfully Submitted,

Becky Goens, Secretary

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

MONDAY – MARCH 18, 2019 – 12:00 p.m.

CODINGTON COUNTY BOARD OF ADJUSTMENT

ITEM #1 (2) VARIANCES

Applicant/Owner: William Hoffman

Property Description: S356' and N441' S797' E476' NE1/4, Section 18-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). (Application received 3/4/2019)

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 applicant seeks to split the farmstead from the farmland.
2. The property was used as a base for farming operations prior to 1976 and has remained lived in.
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. Based upon site visit and review of department of equalization records it appears this site meets the definition of an existing farmstead.
5. A similar variance was granted on this property in March 2005 on the condition the ~5 acre lot be platted and that the remainder of the property be transferred with the lot in the future.
6. Since then, the Board has allowed similar variances where the remaining portion is less than thirty-five acres on the condition the applicant sign/record a letter of assurance agreeing the remainder of the property does not have building rights unless it is owned in common with the new lot or in combination with a total of 35 acres.
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 the applicant plat a lot of at least five (5) acres in accordance with the Codington County Subdivision Ordinance; and that a letter of assurance be recorded agreeing that no building permits may be issued to the remainder of the legal description unless owned in common with this lot or as part of a 35 acre legal description.

ITEM #2 VARIANCE

Applicant: Kevin Bach / Owner: Lowell Bach

Property Description N1/2 of NE1/4, Section 20-T118N-R53W, Codington County, South Dakota. (Fuller Township)

Action Item – Variance – more than one principal structure per lot (5.20) (Application received 3/1/2019)

Zoning Designation: A – Agricultural District

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

History/Issue(s):

1. The Bach's 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 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 – More than 1 house per quarter-quarter section (3.04.01.2). (application received 3/4/2019)

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.

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 #4 CONDITIONAL USE

Owner/Applicant: Thor and Darcy Thonvold

Property Description S771' of N1205' of W732' in N1/2 of NW1/4, Section 5-T117N-R52W, Codington County, South Dakota. (Rauville Township)

Action Items – Conditional Use Permit – (3.04.02.37) (Application received 2/12/2019)

Zoning Designation: A – Agricultural District

Request: The Thonvold's seek to sell fireworks out of a permanent structure.

History/Issue(s):

Specifics of this request:

1. The Thonvold's seek to sell fireworks out of a tent on the above described property.
2. The Thonvolds sold fireworks in Rauville under permit issued to Kaboomers for the several years out of a temporary structure, until getting permit two years ago to sell at their residence on this property.
3. Codington County has received no complaints regarding the sale of fireworks in Rauville, nor last year on this property.
4. In the first year they sold out of a tent; last and this year they propose to sell out of an existing structure on the property.
5. Adequate parking and loading will be provided for the fireworks sales site.
6. The Thonvold's/Kaboomers will obtain a license for retail sale of fireworks from the state.

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

1. Permanent stands for the sale of fireworks are allowed by conditional use.
2. Aside from the general requirements of Section 4.05.01.6.a-f., no specific standards are listed in the zoning ordinance for fireworks sales.
3. The Comprehensive Land Use Plan lists the following considerations in issuing a permit for all fireworks sales:
 - a. Fireworks sales and storage operations are required to meet all applicable state and federal regulations regarding the sale and storage of fireworks.
 - b. Applicants for sale of fireworks shall obtain a State Permit from the South Dakota State Fire Marshall's Office prior to the sale of fireworks.
 - c. Codington County shall review and require precautions be taken for the safety of patrons, employees and adjacent land uses.
 - d. Permits for the sale of fireworks shall be specific to the season applied for and expire or be suspended until the next permitted season.
 - e. Fireworks sales are required to be situated with access to a county road, paved road, or Board of Adjustment approved privately maintained road.
 - f. On-site parking and loading will vary upon the size of the operation and may require site specific consideration.
 - g. Entrance and exit to and from the site will be achieved in a forward gear.
 - h. Storage of fireworks may be required to be screened from adjacent landowners and/or rights-of-way.
4. The Board has historically added conditions specifying sign area and duration, compliance with state law, duration of sales, expiration/re-application of permit, parking, and loading requirements.
5. The Board has historically authorized an applicant to continue operation of fireworks sales without an annual conditional use permit being issued if the business is operated three consecutive years without complaint. This would be the third consecutive year for this business.
6. As of the date of this report staff has received no objections regarding this request.

Staff recommendation:

Conditional Use Permit: Temporary Roadside Stand for sale of Fireworks. The Board may table the request, deny the request or approve the request. If approved, the staff recommends, at a minimum, the following conditions:

- K. The applicant is required to meet all State laws regarding location and operation of fireworks stand (separation from other structures, hours of operation, etc).
- L. The applicant may be required to present the Zoning Officer with a copy of the State Permit from the State Fire Marshall's Office prior to opening for sales for any specific season.
- M. Sales shall occur no closer than 65' to the public right-of-way.
- N. No parking shall be allowed in the public right-of-way.
- O. Separate conditional use permit(s) are required for any off-premise advertising associated with the business.
- P. Total on-premise signage shall not exceed eighty (80) square feet.
- Q. The conditional Use is valid only for the dates of June 27 through July 5, 2019 and may be renewed annually with no further action by the Board of Adjustment provided the operator declare the intent to resume operations for the specific year to the Zoning Officer in writing on or before June 1 of the specified year.
- R. All signs are to be removed on or before July 12, 2019; or any subsequent year the permit is effective.
- S. If there are documented complaints, the Board of Adjustment will hold a hearing to determine whether additional conditions are warranted or whether the applicant should be required to close the business.
- T. The applicant further agrees that if any terms of this agreement are not complied with, the applicant shall forfeit his/her claim to a Conditional Use permit.

CODINGTON COUNTY PLANNING COMMISSION

ISSUE #1 PLAT

Applicant/Property Owners: William Hoffman

Property Description: Plat of Bill Hoffman Addition in the Northeast Quarter (NE1/4) of Section 18-T118N-R54W, in the County of Codington, South Dakota. (Fuller Township)

Zoning Designation: A-Agricultural District

Request: Plat an 5 acre lot at the site of an existing farmstead consistent with the requirement of existing farmstead exemption variance considered earlier this meeting.

ISSUE #2 PLAT

Applicant/Property Owners: Chance Olerud / Jon Hurkes

Property Description: Plat of Olerud Addition in the Southeast Quarter (SE1/4) of Section 6-T117N-R52W, in the County of Codington, South Dakota. (Elmira Township)

Zoning Designation: A-Agricultural District

Request: Plat a 42 acre lot which eliminates the 10-acre "Lot 4, Stenzel Addition" which no longer has building rights due to variance granted in 2015.

ISSUE #3 WORK SESSION: CONCENTRATED ANIMAL FEEDING OPERATIONS

The Planning Commission and County Commissioners will review and discuss a draft of the updates to the Concentrated Animal Feeding regulations. The draft incorporates comments from the two boards at previous meetings. Though not a public hearing, written comments received prior to noon on Friday, March 15, 2019 will be discussed as well. A draft of the ordinance has been available at: <https://www.codington.org/wp-content/uploads/2019/03/Chapter-5.21-CAFO-Ordinance-Draft-3-5-19.pdf> for over one week.

ISSUE #4 OPEN/STAFF REPORT

ISSUE #5 EXECUTIVE SESSION