

Codington County/City of Watertown
Joint Planning Commission/Joint Board of Adjustment Minutes
September 23, 2019

The Codington County/City of Watertown Joint Planning Commission/Board of Adjustment met on September 23, 2019 at the Codington County Extension Complex. Members of the Joint Planning Commission/Board of Adjustment present were: Brenda Hanten, Blake Dahle, Mark O'Neill, Bob Fox, and Luke Muller (Planner at First District Association of Local Governments/Codington County Zoning Officer).

Others present were Jeff DeVille, Melanie Morrow, Claren Morrow, Walter Arriaga, Mike Alama, Justin Pietz, Mel Ries, Rodney Klatt, Charles Rossow, Maria Jongbloed, Matt Thill, Keith Lukonen, Lee Gabel, Mark Finstad, Sharon Hemiller, and Becky Goens.

Board member Mark Stein was unable to attend. Alternate Liam Culhane resided in his absence.

Bob Fox brought the meeting of the Joint Board of Adjustment to order at 7:35 pm.

Motion by Culhane, second by Hanten to approve the minutes of the July 15, 2019 meeting. Motion passed unanimously.

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

Motion by Hanten, second by O'Neill, to approve the variance request for Justin Pietz on property located in E776.8' of S699' of SE1/4, Section 28-T117N-R53W. Mr. Pietz is requesting a front yard setback variance to allow construction of an addition, 30' from 42nd St NW right-of-way, to an existing building to assist in water temperature management. Muller reviewed Staff Report History/Issue (attached). The water comes into his building from the city. It is only buried 6' deep and freezes every year. It must be dug up entirely and buried deeper, or construct an addition. Keith Lukonen, adjoining landowner, is in favor of Pietz's request. Public hearing closed. Motion passed unanimously.

Motion by Hanten, second by Culhane, to approve the setback variance request for Justin Pietz on property located in E776.8' of S699' of SE1/4, Section 28-T117N-R53W. Mr. Pietz would like to utilize existing concrete pads and construct two structures on each of them, 47' from the north side of 3rd Avenue NW. Lake township would like to discuss this item at their upcoming meeting. Discussion was held regarding allowing approval of the request subject to the board receiving a letter of support from Lake Township board of supervisors. Motion by Hanten, second by Dahle, to postpone action on this variance until 4:00 pm on October 10 at Watertown City Hall. Motion passed, 4-1.

Chairman Fox recused himself from the Conditional Use Permit request by Walter Rene Lemus Arriaga due to a conflict of interest. Codrington County Board of Adjustment member Rodney Klatt took Mr. Fox's place on the Board. Vice Chair Dahle resumed the meeting.

Motion by Hanten, second by Culhane, to approve the Conditional Use Permit request by Walter Rene Lemus Arriaga, as read by Staff, to operate an Automotive Towing Business on property owned by Mike Alama and located in S852.2' of W371' of SW1/4 less ROW in Section 33-T117N-R53W. Muller reviewed Staff Report (attached). The county hasn't approved a repair or towing business, unless it is part of a home-based business, in over 20 years. The Board could approve this permit on an annual basis. Muller recommends that if approved, the applicant and owner agree to the following conditions in the form of a Letter of Assurance:

- i. Effective date, transferability, expiration, and future permits required:
 - a. The permit shall become active upon filing of this "Letter of Assurance".
 - b. The Conditional Use permit for an Automotive Towing and Repair is not transferable. This permit is only effective if the business is operated by the property owner or applicant at the time of this request.
 - c. The Conditional Use Permit would expire on September 23, 2020 unless application is made, heard, and granted, prior to this date and issued for a one year extension at that time. Following the third approval, annual extensions/renewals will not be required.
- ii. Site improvements (hard surfacing):
 - a. Driveways, required parking spaces for the fireworks sales (twenty-one (21) spaces) and the towing and repair business (four (4) spaces), and any area designated or used for storage of any vehicles stored outside shall be paved (concrete or asphalt) prior to the operation of the above use consistent with any future extensions associated with this permit. (This request could be deferred until next year if an extension is requested.)
- iii. General Requirements:
 - a. The business associated with this permit may not be operated during any hours of operations of the fireworks business permitted on this property on June 27-July 5. Therefore, the business associated with this permit shall cease operations from June 27 through July 5 every year, and any other such times in which the fireworks business is operated in accordance with its permit issued.
 - b. No vehicles associated with this permit may be stored outside from June 27 through July 5 every year, and any other such times in which the fireworks business is operated in accordance with its permit issued.
 - c. Not more than 10 vehicles from which major parts have not been removed, and which are capable of being made fully operable, will be stored outside at any time. For the purposes

of this permit, "Stored vehicles" shall refer to any vehicle parked and remaining on the site for greater than five (5) business days, notwithstanding the provisions of iii.a.-b. above.

- d. Prior to storage of any vehicles on this site for more than five (5) days, the area must be paved with concrete or asphalt as it is located over the shallow aquifer.
 - e. Vehicle parts shall not be stored outside.
 - f. Vehicle parts shall not be sold from vehicles stored in conjunction with this business.
 - g. Prior to commencement of the use, the area for stored vehicle shall be completely enclosed by a fence or natural vegetation having a minimum height of six (6) feet or a fence which is two (2) feet higher than the tallest vehicle being stored, whichever height is greater; and constructed with a material or have vegetation so dense that ensures that the interior of the impound lot cannot be viewed from adjoining properties.
 - h. Vehicles and equipment associated with the business stored outside shall be kept in neat, straight rows.
 - i. The storage of equipment and materials will not be carried out in a manner which creates breeding grounds for rodents.
 - j. Noxious weeds shall be controlled.
 - k. This permit authorizes no additional signage for the site. No signs will be allowed on the structure proposed for this business, nor upon any fences used for screening.
 - l. Storage of petroleum products in quantities exceeding one hundred (100) gallons at one (1) locality in one (1) tank or series of tanks must be in elevated tanks; such tanks larger than eleven hundred (1,100) gallons must have a secondary containment system.
 - m. This operation shall meet all State and Federal standards for storage, handling and disposal of all other potentially hazardous waste materials.
- iv. Violations and Penalties.
- (1) Violation of the terms of this conditional use permit will be determined by the Codington County Zoning Officer.
 - a. Any violation substantiated by the Zoning Officer may result in a review of the validity of the conditional use permit and potential revocation of said permit.
 - b. The applicant may make appeal from the decision of the Zoning Officer or other agent of the Joint Board to the Joint Board. The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days. Appeals from the Joint Board shall be taken to Circuit Court.

Michael Alama, property owner, indicated the applicant would like to start up his own business and Mr. Alama was looking for a tenant for his building. Arriaga has signed a lease agreement with Alama as to storage of vehicles, etc. The only vehicles to be towed will be those of customers in which he will do the repairs. Alama would like to pave the lot with or without the passing of this permit. His intention is to complete it in three different phases, annually. Recommended screening would be fully enclosed. Vehicles that do have to be stored outside will be required, per the lease agreement, will be along the East side of the property, North of the building. Keith Lukonen, adjoining landowner, indicated there is a minimum of 50 side dumps of landscaping junk, pallets, rocks, timbers, landscape nails, trees, etc. that have been left on site from the previous owner. Trees are growing out of the pile along with vehicles and a pontoon sitting on site. Lukonen would like to see these piles cleaned up before any new business is considered. He is opposed to the current request. Maria Jongbloed, adjoining landowner directly to the North, is not against the business opening as they encourage everyone's opportunity to prosper. With that said, Jongbloed also does not like the storage of junk and debris left on site, the barge/pontoon that resides on site, and other items being collected on site. Photos were displayed of the property as viewed from her property line. The photos showed slabs of concrete, landscaping materials, tree stumps, branches, construction debris, etc. It is being treated as a landfill. This can be seen when driving in from the West. Jongbloed would like to see the property cleaned up, perhaps as a condition to the new business opening. Bob Fox inquired about the number of vehicles that can be included in the enclosed area which is ten; screening is a good idea but it takes too long for trees to grow enough to provide screening; has concerns about drainage of fluids from vehicles stored on site and would request a holding structure; vehicles inside the closed area need to be removed during fireworks sales; and this should be an opportunity for the board to finally get the refuse cleaned up. Mark Finstad, adjoining landowner to the northwest, has no issues with Alama or the proposed business but wants to see the junk and weeds cleaned off the property. Alama does not dispute the look of the junk items on the north end of the property. Alama has not done any research as to the cost of labor or time involved to remove this debris. It would have to be hauled out and estimates need to be obtained as he does not have the equipment needed for removal. Public hearing closed. Culhane made a motion to amend the conditions to substitute the one year conditional use to eight (8) months and that it be conditioned on the removal of anything the county ordinance classified as a nuisance, second by Klatt. At the eight (8) month renewal if the items are not removed the permit may not be renewed. Motion on the amendment passed unanimously. Motion on the amended motion passed unanimously.

Fox resumed his place as Chairman of the board.

Muller advised the board that a current sign in the county was too large for the zoning district it was in. A storm in August blew the sign down. The landowner removed what was left of the sign. Since it was a nonconforming sign, no building permit can be issued to re-construct this sign as it exceeds the size in which our ordinance allows. The landowner has asked Muller to seek guidance from the board as to whether they would consider an application from the landowner for replacement of this nonconforming sign since the sign was removed while waiting for an answer from the zoning officer who was unavailable at the time. As Planning and Zoning Officer, Muller advised the board the ordinance does not allow for repairs or reconstruction to load bearing walls. In this case, the support posts which were destroyed, are load bearing walls so said signage of this size cannot be rebuilt. The board was in agreement to uphold the ordinance as written.

Motion by Dahle, second by Culhane, to adjourn. Motion passed unanimously. Meeting was adjourned at 9:20 pm.

Respectfully Submitted,

Becky Goens

**SEPTEMBER 2019
CODINGTON COUNTY/CITY OF WATERTOWN
JOINT BOARD OF ADJUSTMENT STAFF REPORT**

ITEM #1 (2) VARIANCES

Applicant: Jessica Fox / Owner: Mark Fox - This item was removed from the agenda and will be presented at the October 21, 2019 meeting.

ITEM #2 VARIANCE

Applicant/Owner: Justin Pietz

Property Description E776.8' of S699' of SE1/4, Section 28-T117N-R53W, Codington County, South Dakota. (Lake Township)

Latitude/Longitude: 44.905995° / -97.188451°

Action Items – Variance – 1) Construct addition to and in line with existing structure at 30' from 42nd Street NW Right of Way (3.04.03.3); 2) Construct 3 new sheds 47' from the 3rd Ave NW Right of Way (3.04.03.3). Application received 8/16/19

Zoning Designation: A – Agricultural District

Request(s): Construct a small addition onto and in-line with an existing structure; and construct 3 new sheds 45' from an unmaintained right-of-way (3rd Avenue NW).

History/Issue(s):

1. Mr. Pietz owns the above property and has received conditional use permits to operate 2 extended home occupations on this property.
2. The site was formerly used as a turkey farm and has numerous structures which were constructed less than the required setback distance from the right of way.
3. Mr. Pietz's water source for one of the shops is located straight north of the northeast corner (closest to 42nd Avenue NW). Mr. Pietz proposes a small structure (well house) over the well.
4. Mr. Pietz proposes to connect the addition to comply with the required separation distance between structures (if not connected.)
5. The zoning ordinance allows for in-line additions to nonconforming structures on conforming lots (lot area). The only reason this requires a variance is because the lot is a nonconforming lot of record and is not specifically exempted from this rule by ordinance.
6. In the past the County Board of Adjustment has granted variance to allow additions onto nonconforming structures if in-line with the existing structure and no objection is raised from the road authority.
7. Mr. Pietz was permitted to construct 2 sheds west of his house, perpendicular to 3rd Avenue NW. Those sheds are currently being constructed 65' from the right-of-way.
8. Mr. Pietz proposes to fully utilize an existing concrete pad, located 47' from the 3rd Ave NW right of way (80' from the center of the section-line).
9. 3rd Avenue Northwest is an unmaintained section line right-of-way in this location.
10. 3rd Avenue is planned as a future "Collector Street" with an 80' wide right-of-way (40 from the center of the section line.) If a commercial district (City of Watertown) setback were applied in

addition to the future right-of-way, the structure would be required to be 80' from the center of the section-line.

11. No objections have been brought to the attention of staff at the time of this report.
12. In the past the county has allowed construction of structures closer than 65' from the right-of-way of unmaintained/unimproved rights-of-way with support from the [typically] township.
 - a. In this case, the City of Watertown is more likely to maintain this street if ever improved.
 - b. Lake Township will be discussing this item at their meeting in the upcoming weekend.

Staff summary

Staff recommends splitting this request into two questions. Regarding the pumphouse addition: granting of this variance would allow construction of an addition, in line with a nonconforming structure which **is allowed** elsewhere in the zoning district, provided there is no objection from the road authority.

Regarding the 3 sheds: In the county, adjacent to rights-of-way where it would not make sense to vacate the right-of-way but a variance is requested to construct closer than 65' from the right-of-way the Board has granted variance provided support is given from the applicable road authority. In this case the request does not encroach upon the widest setback of any zoning district in the City of Watertown (presuming the street would be annexed before ever being improved.)

Staff recommendation – Variance to allow extension/addition of a structure 30' from 42nd Street NW Right of Way: This variance could be approved based upon:

1. The request is to raise and add an addition, in line with (no closer than) the existing structure;
2. The ordinance allows for this sort of addition on lots of greater than 35 acres in the Ag District, therefore denial of this variance would infringe upon a right commonly enjoyed by other property owners in the same zoning district;
3. No objection has been received from the 42nd Street NW road authority.

Variance to allow extension/addition of a structure 30' from 42nd Street NW Right of Way:

If approved, the board could do so based upon:

1. The unique size and configuration of the lot;
2. The County Board of Adjustment has a history of granting variance to front yard setbacks adjacent to unmaintained section lines provided the request is supported by the road authority.
 - a. The City of Watertown does not object to this request at the date of this report.
 - b. Lake Township does not object to this request
3. The proposal will keep structures sufficiently setback to meet future right-of-way and setback needs on the basis of current regulations and policies of the City of Watertown.

If denied, the Board could do so based upon;

1. The granting of the variance request would confer on the applicant special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district;
2. The conditions and circumstances of this request are not so unique to necessitate the requested variance.

ITEM #3 CONDITIONAL USE PERMIT

Applicant: Walter Rene Lemus Arriaga / Owner: Michael Alama

Property Description S852.2' of W371' of SW1/4 less right-of-way in Section 33-T117N-R53W, Codington County, South Dakota. (Lake Township)

Latitude/Longitude: 44.891145° / -97.207731°

Action Item – Conditional Use Permit – Automotive Towing Business (3.05.02.24). Application received 9/6/10.

Zoning Designation: Commercial District

Request: Mr. Arriaga intends to tow and repair vehicles on this site but be closed during fireworks sales.

History/Issue(s):

Specifics of Property/Request:

1. This 4.5 acre parcel is zoned commercial and has been granted a conditional use permit to sell fireworks.
2. Mr. Alama sells fireworks from June 27 – July 5 each year from this location. The store is not open at any other time of year.
3. Mr. Arriaga (applicant) requests to tow vehicles to the site, store them, and repair them on the site when fireworks sales are not being conducted on the site.
4. The applicant proposes to have not more than 10 vehicles stored outside at any time.
5. The applicant does not request additional signage.
6. The lot is bordered by residential uses on its north.
7. No additional screening or paving is proposed with this request.

Land Use Plan/Ordinance/Policies

1. This property is located in the area of Development Transition in the County Land Use Plan, and Existing Rural Development for the City's Land Use Plan.
2. The zoning ordinance does not allow more than one commercial use on any property at the same time. (This proposal is to only operate the repair/towing business when fireworks sales are not being conducted.)
3. The use is approximately 500 feet from residentially zoned property, and therefore vehicles are required to be screened.
4. It is the policy of this Board to require compliance with the zoning ordinance for all uses on a lot before granting new permits.
 - a. In this case, the lot is not paved and would need to be paved in accordance with the standards of the Zoning Ordinance and County Land Use Plan. That is, that the driveway and required parking spaces for both the fireworks and this proposed use would need to be paved.
5. City of Watertown parking regulations require 1 space per 1,000 square feet of warehouse space (the lot includes approximately 2,400 sq. feet of warehouse space); 8 spaces per 1,000 square feet of retail space (the lot includes approximately 2,400 sq. feet of retail space); and one (1) "bay" which could be used for auto repair (similar to car wash).
6. As of the date of this report, no objection has been raised in reference to this request.

Staff Summary and Recommendation

Conditional Use Permit – **Towing business with auto repair**: Approval of the request would (though not specifically enumerated in Table 5.38.1) require a 2/3 majority of the members present and voting. This action does not affect the previously issued permit which allows fireworks sales. The application may be postponed, or denied on the basis more than one commercial use is proposed to be operated on the lot. If approved staff recommends the following conditions be agreed to in the form of a letter of assurance:

- v. Effective date, transferability, expiration, and future permits required:
 - a. The permit shall become active upon filing of this “Letter of Assurance”.
 - b. The Conditional Use permit for an Automotive Towing and Repair is not transferable. This permit is only effective if the business is operated by the property owner or applicant at the time of this request.
 - c. The Conditional Use Permit would expire on September 23, 2020 unless application is made, heard, and granted, prior to this date and issued for a one year extension at that time. Following the third approval, annual extensions/renewals will not be required.

- vi. Site improvements (hard surfacing):
 - a. Driveways, required parking spaces for the fireworks sales (twenty-one (21) spaces) and the towing and repair business (four (4) spaces), and any area designated or used for storage of any vehicles stored outside shall be paved (concrete or asphalt) prior to the operation of the above use consistent with any future extensions associated with this permit. (This request could be deferred until next year if an extension is requested.)

- vii. General Requirements:
 - a. The business associated with this permit may not be operated during any hours of operations of the fireworks business permitted on this property on June 27-July 5. Therefore, the business associated with this permit shall cease operations from June 27 through July 5 every year, and any other such times in which the fireworks business is operated in accordance with its permit issued.
 - b. No vehicles associated with this permit may be stored outside from June 27 through July 5 every year, and any other such times in which the fireworks business is operated in accordance with its permit issued.
 - c. Not more than 10 vehicles from which major parts have not been removed, and which are capable of being made fully operable, will be stored outside at any time. For the purposes of this permit, “Stored vehicles” shall refer to any vehicle parked and remaining on the site for greater than five (5) business days, notwithstanding the provisions of iii.a.-b. above.
 - d. Prior to storage of any vehicles on this site for more than five (5) days, the area must be paved with concrete or asphalt as it is located over the shallow aquifer.
 - e. Vehicle parts shall not be stored outside.
 - f. Vehicle parts shall not be sold from vehicles stored in conjunction with this business.
 - g. Prior to commencement of the use, the area for stored vehicle shall be completely enclosed by a fence or natural vegetation having a minimum height of six (6) feet or a fence which is two (2) feet higher than the tallest vehicle being stored, whichever height is greater; and constructed with a material or have vegetation so dense that ensures that the interior of the impound lot cannot be viewed from adjoining properties.
 - h. Vehicles and equipment associated with the business stored outside shall be kept in neat, straight rows.
 - i. The storage of equipment and materials will not be carried out in a manner which creates breeding grounds for rodents.
 - j. Noxious weeds shall be controlled.

- k. This permit authorizes no additional signage for the site. No signs will be allowed on the structure proposed for this business, nor upon any fences used for screening.
 - l. Storage of petroleum products in quantities exceeding one hundred (100) gallons at one (1) locality in one (1) tank or series of tanks must be in elevated tanks; such tanks larger than eleven hundred (1,100) gallons must have a secondary containment system.
 - m. This operation shall meet all State and Federal standards for storage, handling and disposal of all other potentially hazardous waste materials.
- viii. Violations and Penalties.
- (2) Violation of the terms of this conditional use permit will be determined by the Codington County Zoning Officer.
 - c. Any violation substantiated by the Zoning Officer may result in a review of the validity of the conditional use permit and potential revocation of said permit.
 - d. The applicant may make appeal from the decision of the Zoning Officer or other agent of the Joint Board to the Joint Board. The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days. Appeals from the Joint Board shall be taken to Circuit Court.

ITEM #4 ADMINISTRATIVE REPORT

- Sign Maintenance vs Reconstruction