

Codington County Planning Commission/Board of Adjustment Minutes

October 21, 2019

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on October 21, 2019 at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were: Myron Johnson, Brenda Hanten, Charles Rossow, Mark O'Neill, Mel Ries, Rodney Klatt, Bob Fox, and Luke Muller (Planner at First District Association of Local Governments/Codington County Zoning Officer).

Others present were Amber Christenson, Linda Lindgren, Gary Kliegel, Duane Torgerson, Kyle Braun, Phillip Barrow, and Becky Goens.

Bob Fox brought the Board of Adjustment and Planning Commission meeting to order at 8:45 am.

Motion by Hanten, second by Ries, to approve the September 23, 2019 meeting minutes. Motion passed unanimously.

Gary Kliegel, Amber Christenson, and Linda Lindgren are present to speak during the Open Session. Motion by Hanten, second by Klatt, to approve the agenda. Motion passed unanimously.

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

Motion by Hanten, second by Klatt, to approve the variance request as read by Staff for Duane Torgerson. Mr. Torgerson is seeing an existing farmstead exemption and minimum lot width variance for his property described as S595' of W297' of NW1/4, Section 21-T117N-R51W, and E435' of S595' of NE1/4, Section 20-T117N-R51W. Muller reviewed Staff Report (attached). The road at the section line was discussed. It has never been vacated. Chairman Fox read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Motion by Johnson, second by Hanten, to approve the front yard setback request for Kyle Braun on his property located in N660', SW1/4 less W374' of N240' and less E457' of W831' of N280' in Section 1-T117N-R53W. Muller reviewed Staff Report (attached). No one was present to speak on this variance. Public hearing closed. The concrete pad for the proposed garage has been poured. Board member Johnson indicated the acreage is maintained in very good condition at all times. Proposed garage will be 28x40. Discussion was held regarding issuing a variance or changing the ordinance for this area. Past actions of the board has been to grant variances due to hardship not created by the landowner due to proposed construction size. Chairman Fox indicated moving a livestock fence is not considered a hardship. Per contractor Phillip Barrow, there is approximately a 3-1/2' drop in the land if the

garage were to be moved back. Allowing this variance will set a precedent for future construction. Chairman Fox read the Findings of Fact. There were no questions or objections. Motion failed 2-5.

Motion by Hanten, second by Rossow, to recess the Board of Adjustment. Motion passed unanimously.

Chairman Fox reconvened the Planning Commission.

Motion by Ries, second by Rossow, to approve the plat of J and J Mather Addition in the SE1/4 of Section 35-T117N-R52W. This is property related to the variance that was approved by the Joint Jurisdiction Board of Adjustment for Jessica Fox. Motion passed unanimously.

Motion by Hanten, second by Rossow, to reconvene as a joint board. Motion passed unanimously.

Gary Kliegel is present to discuss potential rezoning of Rauville. Kliegel would like to see the bar, shop, and house separated into different lots/plots as they are currently on one combined lot. One challenge to rezoning this property into Town District is its location over the Wellhead Protection District for the City of Watertown. Adding septic tanks and businesses that may have pollutants are a concern.

Amber Christenson addressed the board regarding some concerns:

1. Crowned Ridge Wind Farm permit states they are using 13, 1.7 megawatt turbines. They are now 2.3 megawatt turbines presented to the PUC. Has the county approved this change? Do this increase the sound levels to some homes? A permit was issued for 600 megawatts and have notified the state they are reducing those to a 400 megawatt project. This is less than what was approved by the county. She feels these permits should be revoked and new ones applied for. Muller advised the board that legal counsel has advised them to not engage in discussion due to pending litigation.
2. The Findings of Fact state one permit was issued for Crowned Ridge I and II. Two separate permits were applied with the PUC. She would like to know the process of appeal.
3. She indicated that Jay Haley, EAPC, represented himself as a professional engineer but states he is not. She feels this is a misrepresentation/lie at a public hearing in Waverly and intentionally mislead the board and the public. She feels the Permit should be revoked based on this information.
4. Crowned Ridge has started construction without proper permits in place. Culverts, approaches, and digging out of ditches is occurring. What is the overview or process for review? This is the responsibility of the road authorities. The county does not

have a drainage ordinance nor are building permits required for transmission lines.

Muller is going to drive in the county to review construction. Rural signs are required to be purchased with building permits but not required to post. It is well-advised to post the signs. Christenson also indicated some street signs are missing. This is the responsibility of the authority responsible for the specific roads. Highway Superintendent Hartley will be notified as well. The Board forwarded the rest of the questions to the Zoning Officer for review.

Staff Administrative Report included a report from attending the South Dakota Public Assurance Alliance. It was recommended to stop recording meetings.

Motion by Hanten, second by Ries to enter into Executive Session. Motion by Johnson, second by Rossow to exit Executive Session.

Motion to adjourn by Hanten, second by Johnson. Motion passed unanimously. Meeting adjourned at 10:32 am.

Respectfully Submitted,

Becky Goens, Secretary

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

**CODINGTON COUNTY BOARD OF ADJUSTMENT**

**ITEM #1 (2) VARIANCES**

**Applicant/Owner:** Duane Torgerson

**Property Description:** S595' of W297' of NW1/4, Section 21-T117N-R21W, and E435' of S595' of NE1/4, Section 20-T117N-R51W (Kranzburg (N) 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 applicant seeks to retain building rights at the site of an existing farmstead.
2. A house was built upon this site in July of 2000 (BP 1733) by Jeff Deville. This site was sold in 2008 and again (this time to the Torgerson's) in 2018.
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. The land use plan allows farmstead lots described prior to 2004 to retain building rights (if granted a farmstead exemption) without platting. This case includes two legal descriptions. The portion located in Section 21 was first split from the remaining portion of the NW1/4 after 1976 and therefore retains building eligibility only if held under contiguous ownership with adjoining property not separated by a right-of-way.
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.

**ITEM #2 VARIANCE**

**Owner/Applicant:** Kyle Braun

**Property Description** N660', SW1/4 less W374' of N240' & less E457' of W831' of N280' in Section 1-T117N-R53W, Codington County, South Dakota. (Lake Township)

**Action Item – Variance – 4' Front Yard Setback (3.04.03.3)**

**Zoning Designation:** Agricultural District

**Request:** The Braun's seek to construct a private garage to be located 61' from the Sioux Conifer Road right-of-way.

**History/Issue(s):**

Specifics of Property/Request:

1. The Braun's own this 35 acre lot.
2. They seek to construct a private garage south of the existing house on a concrete pad 61' from the Sioux Conifer Road right-of-way where 65' is required.
3. The property slopes downward to the east with much of the property located in the surrounding pasture situated in the 100-year floodplain.
4. The structure could be built outside the 100-year floodplain, but would require more fill and the relocation of the pasture fence.
5. The applicant notes that surrounding property, though in a different zoning district, is allowed to construct buildings 50' from the Sioux Conifer Road right-of-way.

Ordinance/Variance History regarding this request:

1. The zoning ordinance requires a 65' setback from the right of way.
2. The amount of lot covered by the total setback area does not significantly affect this property.
3. The Board does not have a history of granting variance to the front yard setback on 35-acre lots in the Ag District adjacent to Sioux Conifer Road.
4. The Board had a history of granting variance to lots on less than 35-acres adjacent to Sioux Conifer road and several cross streets (primarily for the reconstruction of structures and building additions in line with existing structures. That is one reason the Rural Residential District includes a 50' front yard setback instead of a 65' front yard setback.

Staff Summary and Recommendation:

Staff Summary: Staff is unaware of any variances issued to property within the Ag District adjacent to Sioux Conifer Road to allow smaller front yard setbacks. The RR – District does surround this property on the north and west and does allow for a 50' setback. The real question here is whether the setback adjacent to Sioux Conifer Road adjacent to RR – District properties should also be 50'. If that is the case it would be more appropriate to amend the zoning ordinance than to grant the variance.

Staff recommendation – **4' Front Yard Variance**- The Board could postpone, deny or approve the request. Staff recommends that if denied the Board could use the following findings:

- a. The configuration and size of the lot is not so unique to necessitate any relaxation of the setback requirement.
- b. This request is significantly different from the request approved for Meester's in 2010 in that the variance allowed a structure to be built less than the required setback, but farther from the road than the existing home; and that this lot is bigger.
- c. Therefore the literal interpretation of this rule does not deprive the applicant of rights commonly enjoyed by other properties in this district.

If approved it would be done based upon the following findings:

- The lot slopes downward to the east of the proposed structure and would result in the need for additional fill.
- Meeting the required setback would result in the pasture size (surrounding the buildings site) being decreased.
- Approval is on the basis that adjacent property in a different zoning district is allowed the same setback and that the Board intends to recommend the Planning Commission initiate an amendment to the zoning ordinance to allow for this exemption in ordinance.

## **CODINGTON COUNTY PLANNING COMMISSION**

### **ISSUE #1 PLAT**

**Applicant/Property Owners: Jessica Fox**

**Property Description: J and J Mather Addition in the Southeast Quarter of Section 35-T117N-R52W of the 5th P.M., Codington County, South Dakota (Elmira Township)**

**Zoning Designation: A-Agricultural District**

**Request: Plat a minimum 5 acre lot as condition of receiving existing farmstead exemption.**

### **ISSUE #2 OPEN/ADMINISTRATIVE REPORT**

### **ISSUE #3 EXECUTIVE SESSION**