

**OCTOBER 2020  
CODINGTON COUNTY/CITY OF WATERTOWN  
JOINT BOARD OF ADJUSTMENT  
CODINGTON COUNTY  
PLANNING COMMISSION/BOARD OF ADJUSTMENT  
STAFF REPORT**

**MONDAY – OCTOBER 19, 2020 – 7:30 p.m.**

**CODINGTON COUNTY/CITY OF WATERTOWN JOINT BOARD OF ADJUSTMENT**

**ITEM #1 CONDITIONAL USE AND VARIANCE**

**Applicant: Jesse Nygaard**

**Owner: Lang Family Trust (by Dale Lang)**

**Property Description:** Norris Hansen Outlot, Section 24-T117N-R53W, Codington County, South Dakota. (Lake Township)

**Latitude/Longitude: 44.919373° / - 97.131641°**

**Action Items –**

- **Conditional Use – Extended Home Occupation (Landscaping Business) (3.04.02.8 & 3.12.04.02.1)**
- **Variance – More than 3 non-family employees (Extended Home Occupation) (5.12.2.b)**

**Zoning Designation:** Agricultural; Zone C – Aquifer Protection District

**Request:** The applicant seeks Extended Home Occupation permit to operate a landscaping business with up to 11 full time and/or seasonal employees.

**History/Issue(s):**

**History of site/Specifics of Request:**

1. Mr. Nygaard seeks to purchase the above property.
2. Mr. Nygaard intends to move into the house in the future and move his landscaping business to this site.
  - a. No retail sales occur on site.
  - b. Customer traffic on the site is rare.
  - c. Most equipment is expected to be stored inside.
  - d. Only work/employee vehicles and rock bins will be outside. Rock bins will be along and behind the fence separating the house from the *shop area*.
  - e. Mr. Nygaard cannot commit at this time to limiting the resident of the site to being an employee of this business.
3. The only access to this site is 14<sup>th</sup> Avenue NW.
  - a. 14<sup>th</sup> Avenue NW maintained in this area by Codington County and is a high traffic road and designed for volumes which would handle traffic generated by this use.
4. No new accessory buildings are proposed at this time.

5. This site was granted a conditional use permit to Dale Lang to operate MJ Lang's Asphalt Contractor as an extended home occupation in September of 2011. The Board authorized more than 3 non-family employees and outdoor storage as part of the approval but without variance as was policy at the time. Since then, the Board has required specific variances for those items.
  - a. The management of the business has changed, but the site continued to be lived in by an employee of the business.
  - b. The new permit is necessary because the type of business for the extended home occupation is changing.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. Extended Home Occupations are a listed use in the Agricultural.
2. The Codington County Comprehensive Land Use Plan (adopted by the City of Watertown for the Joint Jurisdiction Area) lists numerous considerations for Extended Home Occupations on pages 51-52, most of which are addressed in the zoning ordinance, others relating to policies of the Board in granting similar permits.
3. According to the Codington County Comprehensive Land Use Plan (adopted by the City of Watertown for the Joint Jurisdiction Area), Conditional Uses may only be denied if specific criteria for denying the permit can be identified.
4. Mr. Nygaard has 10-12 seasonal employees that leave for jobs from the shop.
5. No on or off-premise signs are planned at this time and no additional structures.
6. No retail sales occur on site, except for materials used in the landscaping process.
7. Storage will primarily occur inside the shop except for rock bins (placed against the fence/screened by the fence) and job site trailers when not in use.
8. This business is not directly affiliated with agricultural uses, however does install and sell trees and other flora associated with contracted jobs.
9. Parking of workers' vehicles and work equipment will be substantially less than with the previous extended home occupation on site.
10. Traffic utilizing this site will be limited to workers' vehicles and trucks/trailers for hauling equipment and materials to and from sites.
11. It is not anticipated that any processes associated with the business will be noticeable by heat, glare, vibration, etc. on neighboring properties.
12. Compatibility of Adjacent Uses:
  - a. Codington County Comprehensive Land Use Plan (adopted by the City of Watertown for the Joint Jurisdiction Area) explains General Compatibility with adjacent properties not as a justification for denial of a conditional use permit, but as justification for attaching conditions regulating the operation of a proposed use. Further ALL uses if listed as a conditional use are deemed compatible.
13. This property is located over Zone C of the Aquifer Protection District. There is no need for large storage of chemicals or petroleum based products which would need to be limited at this site.

Staff Summary:

3 key questions need to be answered before approving this permit.

- 1) The Board will need to determine whether the intent of the ordinance to limit extended home occupations to "agriculturally related businesses" is being met by this application.
- 2) The Board will have to weight the history of having allowed/granted variance to allow greater than 3 unrelated individuals to work at an extended home occupation in the past with the current interpretation that it could be construed variances conditions in ordinance could be construed a "use variance."
- 3) Is this actually a Home Occupation (extended or not) if the applicant cannot commit to having a full-time tenant as an employee?

While the determination of whether the business is “agriculturally related” allows the Board to exercise discretion granted to it by the ordinance. The number of employees and ability to keep an employee on site are not discretionary items, but prerequisites. The history of the county Board of Adjustment does not obligate this Board to follow it, but since this property is one of those where more than 3 unrelated individuals was allowed to work the Board has more grounds to approve in this case than in any other instance. Staff cannot reconcile justification to allow an extended home occupation on a site where no employees of the business live on site. If no employees live on site, the business must cease and move out until an employee becomes a tenant again.

Staff Recommendation

**Variance –Greater than three (3) employees in an Extended Home Occupation-** The Board may postpone the action, specifying information/action necessary to make its determination; deny the application on the following basis:

The number of non-family employees is a pre-requisite to operating the use defined as “Extended Home Occupation” and therefore a variance to this requirement would be construed as a “use variance.”

The Board is not obligated to follow past practices of the Board to exercise discretion in the above determination in this new application.

The Board could approve the application on the following basis:

- 1) The Codington County Board of Adjustment authorized extended home occupation on this site with greater than 3 unrelated employees for the previously approved use.
- 2) The granting of the previous permit vested this property with the ability to operate an extended home occupation with more than three unrelated individuals.
- 3) The applicant’s request for 11 employees does not exceed the number of employees (related and unrelated) previously allowed by variance of the County Board of Adjustment.
- 4) Therefore extended home occupation since 2013 with no complaints received regarding the business. Therefore, 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.

Conditional Use Permit – **Extended Home Occupation (landscaping business)** may postpone the request, deny the request based upon the inability of the applicant to commit to maintaining an employee of the business living on site throughout the lifetime of the permit; or approve the request subject to special conditions. If approved staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant(s):

- 1) Individuals engaged in such occupation shall consist of family members residing on the premises and up to ten (10) non-family employees.

- 2) Off-premise signage associated with the extended home occupation will be limited to South Dakota Department of Transportation (SDDOT) commercial, directional signs, also known as “Blue Signs”.
- 3) There shall be no change in the outside appearance of the buildings or premises, or other visible evidence of the conduct of such home occupation other than one on-premise sign. On-premise signage may be permitted by the Zoning Officer subject to the following:
  - a) A maximum of 16 square feet of sign area will be allowed.
  - b) Sign will be non-illuminated.
- 4) No traffic shall be generated by such extended home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need of parking generated by the conduct of such extended home occupation shall be provided off the street and other than in a required front yard.
- 5) No equipment or process shall be used in such extended home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.
- 6) The Conditional Use permit for the extended home occupation is not-transferable. Subsequent owners/operators will be required obtain a separate conditional use permit in order to continue the use for which this permit is granted.
- 7) Any failure to comply with the terms of this agreement will be deemed a violation of the terms of this Conditional Use permit. Violations will be determined by the Codington County Zoning Officer. If violations are substantiated the Board of Adjustment may hold a hearing to consider revocation of this Conditional Use Permit.

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

Review of expectations for clean-up of items outdoors at Big Shots Fireworks (West Site.)

## CODINGTON COUNTY BOARD OF ADJUSTMENT

### ITEM #1 (2) VARIANCES

**Applicant:** Jordan and Jennifer Collins

**Owner:** William and Cheryl Lindner

**Property Description:** a portion of SE1/4 of Section 20-T117N-R51W to be known upon platting as Jordan and Jennifer Collins Addition in SE1/4, Section 20-T117N-R51W, Codington County, South Dakota. (Kranzburg (N) Township)

**Action Items – Variances – Existing farmstead exemption/minimum lot area (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 transfer existing farmstead building rights to a specified site.

#### **History/Issue(s):**

1. The Collins' seek to construct a house on the east side of this quarter section, owned by Jennifer's parents.
2. The property has been used as a base for farming operations and lived in since prior to October 1976.
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. The parcel contains an existing farmstead as defined by the Codington County Zoning Ordinance.
5. The existing farmstead does contain two residences. The owner's have been informed that as a result of transferring this building right to this property, future building permits for anything relating to either of those two houses will trigger the requirement to attach legal descriptions of at least 35 acres with both existing houses, or removal of one of the existing houses.
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 October 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; and that a letter of assurance agreeing to transfer the farmstead development right to this lot is recorded with the plat.

## **CODINGTON COUNTY PLANNING COMMISSION**

### **ITEM #1 PLAT**

**Applicant: Jordan and Jennifer Collins**

**Owner: William and Cheryl Lindner**

**Property Description:** Plat of Jordan and Jennifer Collins Addition in SE1/4, Section 20-T117N-R51W, Codington County, South Dakota. (Kranzburg (N) Township)

**Action Items – Plat approval.**

**Zoning Designation:** Agricultural

**Request:** Plat a minimum 5 acre-lot in accordance with the order of the Board of Adjustment. Staff recommends the requirement that the applicant/owner sign and record a letter of assurance specifying the farmstead exemption building right described earlier tonight is transferred to this property.

### **ITEM #2 PLAT**

**Applicant: Dayton Nuttbrock**

**Owner: Susan Brandsrud**

**Property Description:** Plat of Lot 1 of Nuttbrock First Addition in NW1/4, Section 32-T117N-R51W, Codington County, South Dakota. (Kranzburg (N) Township)

**Action Items – Plat approval.**

**Zoning Designation:** Agricultural

**Request:** Plat a minimum 5 acre-lot in accordance with the order of the Board of Adjustment. Staff recommends the requirement that the applicant/owner sign and record a letter of assurance specifying the farmstead exemption building right described in their variance is transferred to this property.

### **ISSUE #3 OPEN/ADMINISTRATIVE REPORT**

### **ISSUE #4 EXECUTIVE SESSION (if Necessary)**