

Codington County Planning Commission/Board of Adjustment Minutes

January 19, 2021

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on January 19, 2021 via teleconference. Members of the Planning Commission/Board of Adjustment present were: Myron Johnson, Brenda Hanten, Mel Ries, Mark O'Neill, Rodney Klatt, Bob Fox, Alex Kahnke, and Luke Muller (Planner at First District Association of Local Governments/Codington County Zoning Officer).

Others present were Todd Kays, Jeff DeVille, and Becky Goens.

Bob Fox brought the Board of Adjustment and Planning Commission meeting to order at 12:34 pm.

Chairman Fox introduced new board member, Alex Kahnke, who has replaced outgoing member Charles Rossow.

Motion by Hanten, second by Johnson, to approve the December 4, 2020 meeting minutes. Motion passed unanimously.

Motion by Ries to approve the agenda, second by Klatt. Motion passed unanimously.

Motion by Hanten to nominate Bob Fox as Chairman. Second by Johnson. There were no other nominations. Motion by Hanten to cast a unanimous ballot for Fox. Second by Ries. Motion passed 6-1.

Motion by Fox to nominate Mark O'Neill as Vice Chairman. Second by Johnson. There were no other nominations. Motion by Johnson to cast a unanimous ballot for O'Neill. Second by Hanten. Motion passed 6-1.

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

Motion by Hanten, second by Klatt, to approve the Conditional Use Permit request by James Whisman. Whisman is requesting to operate a Pet Crematorium on his property in W1/2 of S660' of N1404' of NW1/4, Section 35-T116N-R51W, subject to public road right-of-way. Muller reviewed Staff Report (attached). If approved staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant(s):

- 1) Applicant agrees that unless it is found that the above-described lot was created on or before October 26, 1976, the zoning officer is not authorized to issue building permits to the above legally described property unless and until an existing farmstead exemption is issued in accordance with the Codington County Zoning Ordinance.
- 2) Individuals engaged in such occupation shall consist of family members residing on the premises and up to three (3) non-family employees.

- 3) 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”.
- 4) There shall be no change in the outside appearance of the buildings or premises, no outdoor parking or storage of items or vehicles associated with the operation, nor other visible evidence of the conduct of such home occupation.
- 5) 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.
- 6) 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.
- 7) 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.
- 8) The Conditional Use permit for the extended home occupation is non-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.
- 9) 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.

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

Motion by Johnson, second by Ries, to approve the Conditional Use Permit request by Brad Kays. Mrs. Kays is requesting to amend the Conditional Use Permit issued to John Kays on September 17, 2012 to be listed as a “co-operator” and to include auto body repair. Property is owned by John Kays and located at N1620’ E390’ NW1/4 and S742’ N1680’ W387’ NE1/4, Section 19-T119N-R54W. Brad Kays is the son of John Kays. Muller reviewed Staff Report (attached). Chairman Fox read the Findings of Fact. There were no objections or questions. Motion passed unanimously.

Motion by Johnson, second by Kahnke, to recess as Board of Adjustment and

reconvene as Planning Commission. Motion passed unanimously.

Motion by O'Neill, second by Klatt, to recommend approval of the Plat of Zemlicka Farm Addition to the Board of County Commissioners. The property is described as Plat of Zemlicka Farm Addition located in Government Lots 1 and 2 and the S1/2 of NE1/4 of Section 5-T118N-R51W.

Muller led discussion regarding a draft ordinance addressing shop-style residences as directed by the Board.

Motion to adjourn by Hanten, second by Ries. Motion passed unanimously. Meeting adjourned at 2:40 pm.

Respectfully Submitted,

Becky Goens, Secretary

JANUARY 2021
CODINGTON COUNTY
PLANNING COMMISSION/BOARD OF ADJUSTMENT
STAFF REPORT

CODINGTON COUNTY BOARD OF ADJUSTMENT

ITEM #1 CONDITIONAL USE

Applicant/Owner: James Whisman

Property Description: W1/2 of S660' of N1404' of NW1/4, Section 35-T116N-R51W, subject to public road right-of-way, Codington County, South Dakota. (Kranzburg (S) Township)

Latitude/Longitude: 44.814712° / -96.925074°

Action Items – Conditional Use – Extended Home Occupation (Pet Crematorium) (3.04.02.16)

Zoning Designation: A – Agricultural District

Request: The applicant seeks to operate a pet crematorium out of an accessory building at the site of his home.

History/Issue(s):

Specifics of Request:

1. The Whisman's purchased this ~20 acre property in 2013.
 - a. There is no record of an existing farmstead being granted for this property, although it meets the definition of one.
2. Access to this property is provided by an easement across the neighbor's property (south) to 464th Ave (County Road).
3. Mr. Whisman intends to install and operate a pet cremator for local veterinary clinics in an existing accessory building.
4. No new accessory buildings are proposed at this time.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. Minimum lot area for conditional uses is as approved by the Board.
 - a. No building permits may be issued unless an existing farmstead is granted; however
 - b. The board has the authority to establish that this ~20 acre parcel is adequately sized until an existing farmstead exemption could be issued for structures to be permitted.
2. No new structures are proposed with this permit.
3. Extended Home Occupations are a listed use in the A – Agricultural District.
4. The Codington County Comprehensive Land Use Plan 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.
5. According to the Codington County Comprehensive Land Use Plan Conditional Uses may only be denied if specific criteria for denying the permit can be identified.
6. The zoning officer was informed by the state veterinarian that no special permits or licenses are necessary to operate a pet crematorium. Mr. Whisman would only be bound by state clean air and nuisance regulations should odor pose a nuisance to neighboring properties.

7. No non-resident employees are expected at this time.
8. No on or off-premise signs are planned at this time and no additional structures.
9. No sales will be conducted on site except parts necessary to complete the work necessary on a per project basis.
10. No outdoor storage nor operations will occur on site.
11. The Board has granted extended home occupations to one pet crematorium in the past, finding that it was agriculturally related (Erickson – 2003).
12. No need for additional parking is expected.
13. 464th Avenue is a paved county road that provides access to the (recorded) easement which provides access to this lot.
14. The cremator will include an after-burner which is intended to eliminate materials which may otherwise result in odor.
 - a. It is not anticipated that any processes associated with the business will be noticeable by heat, glare, vibration, etc. on neighboring properties.
 - b. Obviously the applicant would not like to live on the site of a crematorium that smells, causes heat or vibration, etc.

Staff Summary:

In order to approve this Conditional Use Permit, in addition to typical findings for extended home occupations, the Board will have to find:

- In this instance 19.49 acres is an appropriate lot area for the proposed use.
 - Staff has recommended conditions to account for this finding which would preserve the intent of the lot area and density requirements of the Agricultural District.
- The access easement is an appropriate access to this parcel.
 - The zoning ordinance notes that every lot shall have direct access to a right-of-way or **Board of Adjustment approved access.**

Staff Recommendation

Conditional Use Permit – **Extended Home Occupation (Pet Crematorium)** may postpone the request, deny the request or approve the request. If approved staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant(s):

- 10) Applicant agrees that unless it is found that the above-described lot was created on or before October 26, 1976, the zoning officer is not authorized to issue building permits to the above legally described property unless and until an existing farmstead exemption is issued in accordance with the Codington County Zoning Ordinance.
- 11) Individuals engaged in such occupation shall consist of family members residing on the premises and up to three (3) non-family employees.
- 12) 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”.
- 13) There shall be no change in the outside appearance of the buildings or premises, no outdoor parking or storage of items or vehicles associated with the operation, nor other visible evidence of the conduct of such home occupation.

- 14) On-premise signage may be permitted by the Zoning Officer subject to the following:
- c) A maximum of 16 square feet of sign area will be allowed.
 - d) Sign will be non-illuminated.
- 15) 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.
- 16) 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.
- 17) The Conditional Use permit for the extended home occupation is non-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.
- 18) 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.

ITEM #2 CONDITIONAL USE (amendment)

Applicant: Brad Kays

Owner: John and Arlys Kays

Property Description: N1620' E390' NW1/4 and S742' N1680' W387' NE1/4 of Section 19-T119N-R54W, Codington County, South Dakota. (Dexter Township)

Latitude/Longitude: 45.108413° / -97.362983°

Action Items – Conditional Use – Extended Home Occupation (Small engine repair AND AUTO BODY/ENGINE REPAIR) (3.04.02.16)

Zoning Designation: A – Agricultural District

Request: The applicant seeks to be added as an operator to the previously issued permit and to add the ability to perform auto body and engine repair.

History/Issue(s):

Specifics of Request:

1. This site was granted existing farmstead exemption in September 2012
2. A Conditional Use Permit to operate an extended home occupation small engine repair was granted by the Board on September 17, 2012
3. Brad Kays has since moved to the site as well and intends to perform auto body/engine repair inside the same buildings on the site.

4. Brad also hopes to be able to add the ability within the previously approved permit to be eligible to operate the permit in the future.
5. No new accessory buildings are proposed at this time.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. Extended Home Occupations are a listed use in the A – Agricultural District.
2. The Codington County Comprehensive Land Use Plan 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 Conditional Uses may only be denied if specific criteria for denying the permit can be identified.
4. No non-resident employees are expected at this time.
5. No on or off-premise signs are planned at this time and no additional structures.
6. No sales will be conducted on site except parts necessary to complete the work necessary on a per project basis.
7. Brad will not store vehicles he is working on outside. He only will work on as many vehicles (typically one) as will fit inside buildings on site.
 - a. Brad and John will seek building permit to place cargo containers on site for storage of personal vehicles and tools.
8. This business is intended to continue to serve neighboring agricultural and non agricultural residents.
9. No substantial need for additional parking is expected.
10. Traffic on 442nd Avenue and 157th Street will not increase. Vehicles will only arrive to be fixed, and leave when completed. Volume of business is not expected to affect those roads.
11. It is not anticipated that any processes associated with the business will be noticeable by heat, glare, vibration, etc. on neighboring properties.

Staff Summary:

The action before the Board is to allow an additional service (auto body repair) as a component to the extended home occupation granted in September of 2012. A “no” vote does not affect the current permit to operate small engine repair. A “yes” vote allows the additional service to be performed on site. Regarding the addition of Brad Kays as an operator, since this permit was not transferable, Brad needs to be approved as an operator to allow him the ability to take an increased role in operating the repair business.

Staff Recommendation

Conditional Use Permit – **Extended Home Occupation (Small Engine Repair and Auto Body/Engine Repair)** may postpone the request, deny the request or approve the request. 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 three (3) 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, no outdoor parking or storage of items or vehicles associated with the operation, nor other visible evidence of the conduct of such home occupation.
- 4) 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.
- 5) 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.
- 6) 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.
- 7) The Conditional Use permit for the extended home occupation is not-transferable beyond the two applicants (John and Brad Kays). Subsequent owners/operators will be required obtain a separate conditional use permit in order to continue the use for which this permit is granted.
- 8) 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.

CODINGTON COUNTY PLANNING COMMISSION

ITEM #1 PLAT

Applicant/Owner: Leon Zemlicka

Property Description: Plat of Zemlicka Farm Addition located in Government Lots 1 and 2 and the S1/2 of NE1/4 of Section 5-T118N-R51W, Codington County, SD (Waverly Township)

Action Items – Plat approval.

Zoning Designation: Agricultural

Request: Plat a 61-acre irregularly shaped parcel for transfer purposes.

ISSUE #2 DISCUSSION: “Shop-Style Residences” and other ‘dwelling’ related amendments

Staff has included a draft ordinance to address stop-style residences as directed by the Board. Staff also took the opportunity to combine other small amendments to the definition and regulation of dwellings in the ordinance.

ISSUE #3 OPEN/ADMINISTRATIVE REPORT