

Codington County/City of Watertown  
Joint Planning Commission/Joint Board of Adjustment Minutes  
October 19, 2020

The Codington County/City of Watertown Joint Planning Commission/Board of Adjustment met on October 19, 2020 via teleconference. Members of the Joint Planning Commission/Board of Adjustment participating were: Liam Culhane, Mark O'Neill, Bob Fox, Brenda Hanten, and Luke Muller (Planner at First District Association of Local Governments/ Codington County Zoning Officer).

Others present were Myron Johnson, Rodney Klatt, Jennifer Collins, Jesse Nygaard, Mel Ries, and Becky Goens.

Bob Fox brought the meeting of the Joint Board of Adjustment to order at 7:38 pm.

Motion by O'Neill, second by Hanten to approve the minutes of the July 20, 2020 meeting. Motion passed unanimously.

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

Motion by Hanten, second by Culhane, to approve the conditional Use Permit application by Jesse Nygaard. Nygaard is requesting to operate a landscaping business on property currently owned by Dale Lang and located in Norris Hansen Outlet, Section 24-T117N-R53W. Muller reviewed Staff Report (attached). If approved, Nygaard would be required to sign a Letter of Assurance agreeing to the following conditions:

- 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.

Board member Hanten questioned the possibility that the owner and/or an employee will not be residing in the current home. O'Neill has concerns about dumping rubble and landscaping materials on site as it was not addressed in the discussion or in the suggested conditions. Motion by O'Neill, second by Culhane, to amend the conditions by adding the condition that off-site materials cannot be dumped or stored on this site. Motion on the amendment passed unanimously. Additional screening was discussed but no motion was made to add this condition. Outdoor storage does not include the landscaping trailers, loader, or rock bins. Screening from the hill cannot be obtained. Fox read the Findings of Fact. Fox, Hanten, and O'Neill noted concerns with the owner not living on site and uncertainty whether an employee would actually live on site. Muller reiterated that the requirement for an extended home occupation to be operated by the resident of the house on site is a prerequisite to obtaining the permit and not eligible for variance. Motion, with the amendment, failed 1-3.

The variance is now moot since the Conditional Use Permit for Mr. Nygaard did not pass.

Muller updated the Board on the clean-up of items located at the site of Big Shots Fireworks west site. Muller is planning to advise Mr. Alama that all materials must be removed prior to any fireworks sales being conducted.

Muller also advised the board about the building constructed at the corner of old 81 and Highway 81. An attorney has determined this building can be construed as a home. If the Board wants to definitively define a house, it must be done in the ordinance.

Motion by Hanten, second by Culhane, to adjourn. Motion passed unanimously. Meeting was adjourned at 8:29 pm.

Respectfully Submitted,

Becky Goens

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

**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 weigh 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 as variances in ordinance could be construed as 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):

- 8) Individuals engaged in such occupation shall consist of family members residing on the premises and up to ten (10) non-family employees.
- 9) 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”.
- 10) 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:
  - c) A maximum of 16 square feet of sign area will be allowed.
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- 12) 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.
- 13) 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.
- 14) 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.)