

Codington County Planning Commission/Board of Adjustment Minutes

May 17, 2021

The Codington County Planning Commission/Board of Adjustment met for their monthly meeting on May 17, 2021 via teleconference. Members of the Planning Commission/Board of Adjustment present were: Myron Johnson, Brenda Hanten, Mel Ries, Mark O'Neill, Bob Fox, Alex Kahnke, Rodney Klatt, and Luke Muller (Planner at First District Association of Local Governments/Codington County Zoning Officer).

Others present were Jeff DeVille, Katelyn O'Bryan, Mike Barrett, Lee Schull, and Becky Goens.

Bob Fox brought the Board of Adjustment and Planning Commission meeting to order at 8:00 pm.

Motion by Hanten, second by Ries, to approve the April 19, 2021 meeting minutes. Motion passed unanimously.

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

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

Muller reviewed the variance request for Brooke Nelson for variances for an Existing Farmstead Exemption and Minimum Lot Width. Motion to approve made by Hanten, second by Ries. Property is owned by Richard Nelson and located in SW1/4, Section 1-T116N-R55W. Muller reviewed Staff Report (attached). Chairman Fox read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Motion by Johnson, second by Ries, to approve the variance for more than one principal structure per lot for Brent and Katelyn O'Bryan. Property is in Barrett Addition in NW1/4 of Section 25-T118N-R53. Muller reviewed Staff Report (attached). If approved, applicant agrees to sign Letter of Assurance agreeing to existing house being removed upon complete of new house. Chairman Fox read the Findings of Fact. There were no objections or questions. Motion passed unanimously.

Motion by Ries, second by Hanten, to approve the Rear Yard Setback variance request by Brent and Katelyn O'Bryan in Barrett Addition in NW1/4 of Section 25-T118N-R53W. Muller reviewed Staff Report (attached). When the additional land is purchased, the variance will no longer be needed as the house will meet the setback guidelines. If approved, applicant will sign Letter of Assurance agreeing to purchase additional property to meet setback requirements. Fox read the Findings of Fact. There were no questions or objections. If additional property is purchased and a building permit for a shed is requested, the two parcels will need to be platted together. Building Permits cannot be issued on the additional purchased parcel if it is left as a

separate parcel. Motion passed unanimously.

Motion by Johnson, second by Kahnke, to approve the Conditional Use Permit required by Dakota Drillers to operate a contractors' shop and yard. Property is owned by Gordon Kliegel and located in All that part of Outlot A of the plat entitled outlot 'A' in the SW1/4 of Section 32-T118N-R52W lying S of property conveyed by a deed as recorded in the office of the Register of Deeds, Codington County, South Dakota, Book 113 of Deeds on Page 143, less all the S671' thereof excepting the W110' of N20' of the said S671' and less W199' of N120' of S941'. Muller reviewed Staff Report (attached). Motion passed unanimously.

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

Motion by Ries, second by Kahnke, to request approval to the Board of County Commissioners the Plat of Nelson Addition located in the SW1/4 of Section 1-T116N-R55W. Motion passed unanimously.

Staff received correspondence from Watertown Municipal Utilities and East Dakota Water Development District requesting Codington County prohibit gravel mining and similar uses over Zone A of the Aquifer Protection District (wellhead area). The Board would like Staff to look further into this.

Staff also began discussion regarding Rauville Town District. Lee Schull, who owns 500+ acres in this area, was not in favor of further commercial development. Chairman Johnson is opposed as well.

Motion by Hanten, second by Kahnke, to reconvene jointly. Motion passed unanimously.

Motion to adjourn made by Hanten, second by Johnson. Motion passed unanimously. Meeting adjourned at 9:37 pm.

Respectfully Submitted,

Becky Goens

**MAY 2021
CODINGTON COUNTY PLANNING COMMISSION/BOARD OF ADJUSTMENT
STAFF REPORT**

ITEM #1 (2) VARIANCES

Applicant: Brooke Nelson / Owner: Richard Nelson

Property Description: A portion of SW1/4, Section 1-T116N-R55 West of the 5th P.M., Codington County, South Dakota (Henry 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. Mr. Nelson seeks to transfer a five-acre parcel to his daughter to build a house on the same quarter section as his residence.
2. The property was used as a base for farming operations prior to 1976 and has remained lived in.
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. 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 following conditions:
 - a. that the applicant shall plat a lot of at least five (5) acres in accordance with the Codington County Subdivision Ordinance.

ITEM #2 (2) VARIANCES

Applicant/Owner: Brent and Katelyn O'Bryan

Property Description Barrett Addition in NW1/4 of Section 25-T118N-R53W, Codington County, South Dakota. (Rauville Township)

Action Item – 1) Variance – more than one principal structure per lot (5.20)

2) Variance – 15' rear yard variance (3.04.03.5)

Zoning Designation: A – Agricultural District

Request: The O'Bryan's seek to live in their existing home until a new home can be constructed. The new home is proposed to be 10' from the south property line.

History/Issue(s):

Specifics of Property/Request:

1. The O'Bryan's recently purchased this lot with a house from Katelyn's father. (They had rented the site prior.)
2. The O'Bryan's propose to remove the existing house after moving into a newly constructed house on this lot.
3. The O'Bryan's assist in the family farming operation.
4. They seek to construct the new home 10' from the south (rear) property line on a high point of the property.
5. The surrounding property is owned and farmed by Katelyn's father.
6. The O'Bryan's and Barrett's submitted a letter with the request indicating the intent to transfer enough additional property to meet the required setback of 25' at a future point, but requested variance to allow the start of construction in this location.

Ordinance/Variance History regarding this request:

Section 5.20

1. Regarding the second home, the zoning ordinance specifies that only one principal structure (in this case, a house) can be located on a single lot.
2. In the past, the Board has granted variance to temporarily allow more than one residence on a site provided the applicant agree to remove the existing house. Historically, one of the two houses has been required to be removed within one year of occupying the new residence.

Section 3.04.03.5

1. The Zoning Ordinance requires a 25' rear yard setback in the Ag District to limit likelihood of dust, noise, odor, and other effects of adjacent agricultural uses significantly effecting the new residences.
2. The Board receives very few requests for rear yard variances, unless to construct an addition or new building in-line with existing structures on the lot.
3. The Board has denied at least one variance (Murphy) to construct less than 25' from the rear property line for a new shed. No requests have been made for houses in the Ag District.
4. No previous applicant/adjacent landowner have submitted documentation of willingness to exchange enough property after the issuance of a building permit.

Staff Summary:

Section 5.20

This request is proposed to meet the same requirements of numerous applicants in the past, and staff sees no reason to deny this variance.

Section 3.04.03.5

The Board has to decide whether the issuance of a building permit less than 25' from the current southern property line needs to wait until the O'Bryan's can purchase additional property from the neighboring farmland. A "yes" vote should include a condition to require transfer of at least 15 additional feet on the south end of this property within one year of taking occupancy of

the new home. A “no” vote would require the applicant to either transfer the property prior to obtaining a building permit or to move the proposed home farther north.

Staff Recommendation:

- **Variance to temporarily allow two principal structures on the same lot-** Staff recommends approval of the variance for 2 principal structures subject to the applicant signing a letter of assurance agreeing to remove the existing residential structure from the above-described parcel within one year of taking occupancy of the new home.
- **15' Rear Yard Setback Variance to allow a 10' rear yard:** The Board has the option to approve, deny, or postpone the request to replace an existing shed with a larger shed, one foot closer to the side property line. **Approval** would be based upon:
 1. The applicant's ability to obtain at least 15 additional feet on the south side of this property within one year of occupying this home meet the intent of the Agricultural District with reference to this request and warrants temporary relaxation of the rear yard setback requirement.
 2. The Board would only consider approving other similar requests meeting the unique circumstances.
 3. Approval of this request would be subject to the following conditions:
 - a. The Owner of Barrett Addition in NW1/4 of Section 25-T118N-R53W, Codington County, South Dakota shall purchase at least a 15' strip of property immediately south of the Barrett Addition within one year of taking occupancy of the new house.
 - b. Upon purchase of the property the applicant shall replat the two properties into one or record a letter of assurance agreeing that the additional property shall be transferred with Barrett Addition in any subsequent transfer.
 - c. Applicant agrees that failure to purchase the additional 15' of property will result in the single family residence approved with this variance being ordered to be moved in a manner on the lot to comply with the required rear yard setback.

Denial would be based upon:

1. Literal interpretation of the ordinance would still allow the applicant to construct a new home on this lot or purchase the property prior to issuance of a building permit;
2. Granting this variance would confer special privilege (albeit temporary) that is denied by this ordinance to other property in the district.

ITEM #3 CONDITIONAL USE

Applicant: Dakota Drillers, Inc. (by Jeremy Rislov and Casey Schwinger)

Owner: Gordon Kliegel

Property Description: All that part of Outlot A of the plat entitled outlot 'A' in the SW1/4 of Section 32-T118N-R52W lying S of property conveyed by a deed as recorded in the office of the Register of Deeds, Codington County, South Dakota, Book 113 of Deeds on Page 143, less all the S671' thereof excepting the W110' of N20' of the said S671' and less W199' of N120' of S941'. (Kranzburg (N) Township)

Action Items – Conditional Use – Contractor Shop (3.05.02.6 & 3.12.03.02.3.)

Zoning Designation: Commercial; Zone A – Aquifer Protection District

Request: Applicant seeks to operate a Contractor shop with office for directional boring equipment/business.

History:

Specifics of Request:

1. The above property was rezoned in May of 2006.
 - a. At the time the property included the Bar/Tavern and a truck terminal.
 - b. Sometime between rezoning and today, a tenant in the former truck terminal operated a Welding Business.
2. No new construction is proposed with this project.
3. The use of the Bar will be discontinued, however the building may remain for use as an office.
4. Dakota Drillers uses boring equipment to install underground utilities.
5. It is the intent to store the following inside on site:
 - a. Directional Boring Machine
 - b. Straight Truck
 - c. Mini Excavator
 - d. Car Trailers
6. No hazardous materials are stored on site.
7. No petroleum products in excess of 100 gallons are stored on site.
8. No changes to parking or driveways are proposed from the existing site.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. "Contractor Shop..." is listed as a Conditional Use in the Commercial District.
2. Land Use Plan Criteria (Comprehensive Plan):
 - a. The site is adjacent to a county highway
 - b. Access to the site is controlled by the Codington County Highway Superintendent. Only one access is proposed.
 - c. No trees or fences are proposed for screening. It is not anticipated the use will directly inhibit agricultural land use
 - d. Outdoor storage would be screened by an existing treebelt from a neighboring residence, however no outdoor storage is proposed at this time. Applicant does not propose additional screening at this time.
 - e. Driveways and parking areas may be required to be hard surfaced
 - 1) Since no changes are proposed to the existing site, staff recommends (as in other past cases of "re-development") any need for pavement of required parking spaces and driveway to be deferred unless or until the use of the property changes, or a new structure is permitted.
3. Conditional Use Requirements (Ordinance)
 - a. Ingress/egress:
 - The site has access to 455th Avenue via a large approach in front of the existing bar and across property owned by the north property owner.
 - b. Parking and internal traffic:
 - Materials used for parking and driveways are not proposed to change and have served the site under more traffic than is proposed at this time.
 - Staff recommends conditions relating to future pavement obligations.
 - Staff recommends a minimum of three (3) parking spaces be provided for the proposed use (maximum number of employees on largest shift + 1 space). Adequate space is provided for 3 parking spaces.

- c. Utilities and refuse:
 - The applicant has a septic tank, Clark Rural Water, Codington Clark Electric, and no natural gas.
 - Applicant described trash and refuse areas.
- d. Screening:
 - Currently the site is screened by existing trees (on the neighbor's property) from neighboring residential properties.
 - Since no outside storage is proposed with this use, the Board may require the applicant to amend the permit to allow outdoor storage in the future.
- e. Lighting:
 - Existing rural yard lights will be used.
- f. Compatibility:
 - The use is listed and therefore compatible provided conditions prescribed by the Board are met.

Staff Summary and Recommendation

Conditional Use Permit – **Contractor Shop with Office**: The application may be approved, postponed, or denied. If approved staff recommends the following conditions be agreed to in the form of a letter of assurance to be recorded with the property:

- i. Effective date , transferability, and future permits required:
 - a. The permit shall become active upon the discontinuance of the Bar/Tavern operated on this property and the recording of this "Letter of Assurance".
 - b. The Conditional Use permit for a welding shop is not-transferable. Subsequent owners/operators shall obtain a new permit to operate any contractor shop or yard unless the one or more of the principal agents of the Grantor is listed as principal agent of the subsequent owner operator.
- ii. Site improvements (hard surfacing):
 - a. Driveways and required parking areas may be required to be paved (concrete or asphalt) in conjunction with the construction of any future structures or change of use.
- iii. General Requirements
 - a. A minimum of three (3) parking spaces; or one space for each employee (on site) at peak shift plus one additional space (whichever is greater) shall be provided on the site.
 - b. There will be no outdoor storage allowed with this permit. Grantor may apply to allow outdoor storage by amendment of the permit granted on (this date) provided any outdoor storage will be performed over concrete surfaces.
 - c. Noxious weeds shall be controlled.
 - d. In addition to septic tanks for human waste, any wastewater collection system other wastewater and fluids shall adhere to all rules and regulations of the South Dakota Department of Environment and Natural Resources.
 - e. Prior to any future construction on the above described property, documentation shall be submitted to the Zoning Officer identifying that the structure shall be constructed in accordance with the most recently adopted (by South Dakota Codified Law) International Building Code.
 - f. Sign area is limited to the maximum amount allowed by ordinance.
 - g. 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.
- h. Discharge of industrial processed water on site is prohibited without Board of Adjustment approval.
- 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 will result in the prescription of actions to correct the violation and 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 Board to the 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 Board shall be taken to Circuit Court.

CODINGTON COUNTY PLANNING COMMISSION

ITEM #1 PLAT

Applicant: Brooke Nelson

Owner: Richard Nelson

Property Description: Nelson Addition located in SW1/4, Section 1-T116N-R55 West of the 5th P.M., Codington County, South Dakota (Henry Township)

Action Items – Plat approval.

Zoning Designation: Agricultural

Request: Plat a 5 acre-lot in accordance with the order of the Board of Adjustment. Existing Farmstead Exemption was granted to this property.

ISSUE #2 Zone A – Aquifer Protection Overlay District: Suggested Change

Staff received correspondence from Watertown Municipal Utilities and East Dakota Water Development District requesting Codington County prohibit Gravel Mining and similar uses over Zone A of the Aquifer Protection District (wellhead area.)

ISSUE #3 Discussion Rauville Town District

- Staff has created a draft of a potential Rauville Town District and sent it to Watertown Municipal Utilities and East Dakota Water Development District for comments. Primary discussion points:
 - What should the boundaries be?
 - What uses should be allowed/prohibited?
 - Review of proposed small residential subdivision use and consideration of if it should be allowed.

Past permitting:

- The Board has allowed Commercial Storage:
- Town Districts (conditional use – “other uses...”)
- Commercial and Industrial Districts (the original permit was granted prior to 2006 ordinance (conditional or permitted use – “other uses...”)
- Extended Home Occupations
- It is allowed but no permits have been issued in the Lake Park District

Does the Board wish to initiate an amendment to allow Commercial Storage Businesses in the Commercial District of the Joint Jurisdiction Area?

- Pro:
 - Provides opportunity for use of existing commercially zoned properties and commercial growth potential.
 - With site limitations/criteria it could be limited to certain geographic areas.
- Con:
 - The use is allowed within City Limits.
 - The land use plan discourages commercial uses outside city limits unless directly supportive of agricultural uses.
 - May result in additional requests to rezone property to commercial around the City of Watertown and other lakes.
 - Development of individual sites will create commercial exclaves which may need to be avoided in future community development.
 - Not all storage buildings are operated without outdoor storage or nuisances.

ISSUE #4 OPEN/ADMINISTRATIVE REPORT