

**JUNE 2022  
CODINGTON COUNTY  
JOINT PLANNING COMMISSION/BOARD OF ADJUSTMENT &  
CODINGTON COUNTY/CITY OF WATERTOWN  
JOINT BOARD OF ADJUSTMENT**

**STAFF REPORT**

**MONDAY – JUNE 27, 2022 – 9:00 a.m.**

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

**ITEM #1**

**Applicant/Owner: Lee and Kay Quale**

**Property Description:** Lots 18-21 Kittelson's 1st Subdivision and Lot 22 of Kittelson's 2nd Subdivision, Section 2-T116N-R53W, Codington County, SD. (Pelican Township)

**Latitude/Longitude: 44.882871° / -97.162850°**

**Action Items –**

- **Conditional Use Permit – Boathouse within 50' of the Ordinary High Water Mark (3.07.03.3)**
- **Conditional Use Permit – Accessory Structure with sidewalls greater than 10' in height (3.07.03.5)**
- **Variance – 28' Front Yard Setback Variance and 6' Side Yard Setback Variance (3.07.04.1)**
- **Variance – Construct accessory building with 16 foot sidewalls (5.14.1.2.c)**

**Zoning Designation:** LP – Lake Park

**Request:** The applicant requests to construct a 48 x 60 shed with 14' sidewalls 2 feet from the right-of-way and 9 feet from the west property line. The applicant also requests to move an existing shed south to become a boathouse, but also 9' from the west property line.

**Specifics of Property/Request:**

1. The Quale's own the above legal description after purchasing numerous lots along the north side of Lake Pelican.
2. They have removed numerous structures from the lots they have purchased which exceed the overall size of the building proposed here.
3. The Quale's were granted variance to the (road front) setback in April of 2014. That variance authorized construction two (2') feet from the right-of-way line for the residence and would be extended across the property in the application (Lots 19-21).
4. When the house was built, it was allowed to connect to the existing septic tank. That connection is nonconforming. Since then, staff has required/notified landowners of the need to replace septic tanks with sealed holding tanks if a house is replaced.
5. Since then they purchased lot 18 (west of the new house.)
  - a. They have removed a trailer house and other structures from Lot 18.

6. They intend to move the current 24 x 36 shed located approximately 5' from the west property line and 12' from the north (right-of-way) line (currently) to be 9' from the west property line and 25' from the ordinary high water mark.
7. After moving the shed to become a boathouse, they hope to construct a 48 x 60 shed for personal storage west of the house, near the same location the current 24 x 36 shed sits. The structure would be:
  - a. 2' (at the closest point) from the Pelican Lane right-of-way.
  - b. 9' from the west property line.
8. Pelican Lane is a privately maintained public roadway in which (primarily) the property owners are responsible to maintain the road in front of their own property (similar to a sidewalk in town.)

Ordinance/Variance History regarding these requests:

*Boathouse within 50' of ordinary high water mark:*

1. The structure is proposed to be used for storage of watercraft and other associated materials.
2. It will be considered a "dry" boathouse.
3. Since the structure is already on site, it is not expected that additional needs for trash, approach/access, signage, screening, lighting, or parking would be necessary.
4. The applicant does not intend to include living quarters in the boathouse (the building does not currently have them either.)
5. The factor requiring conditional use is the aspect that it will be located less than 50' from the high water mark.
6. The applicant intends to construct the structure in accordance with FEMA flood standards (and the Joint Jurisdiction Ordinance) for elevation from the floodplain.
7. No additional standards are listed in the ordinance.
8. Staff was unable to find examples of boathouses which have been granted conditional use permit since the adoption of Joint Zoning.

*Accessory structures with sidewalls greater than 10' in height:*

1. (Please note: the overall AREA of the shed is a separate question than the sidewall height). The applicant does not intend to include living quarters in the shed and it will be used for personal storage, which qualifies the structure as an accessory structure.
2. Since the structure essentially replaces an existing shed, it is not expected that additional needs for trash, approach/access, signage, screening, lighting, or parking would be necessary. It is possible additional screening may be necessary due to the change in height of the structure, but it is notable that the applicant plans on this shed being farther from the neighbor to the west than the current structure sits.
3. The applicant intends to construct the structure in accordance with FEMA flood standards (and the Joint Jurisdiction Ordinance) for elevation from the floodplain.
4. No additional standards are listed in the Ordinance.
5. The Joint Board has granted similar conditional use permits to construct structures with sidewalls greater than 10' in height in the past (Brunick - 2019 and Florey – 2020). It should be noted that those two sheds were on lots across the road from the lake.

*Accessory structures greater than 2,178 sq. ft.:*

1. No standard exists in the ordinance for granting variance from the maximum size for accessory structures.

2. The Board has granted variance to this section in the past (Brunick - 2019 and Florey – 2020) subject to certain conditions. In both of those cases the shed was on a lot across the road from the lake and the proposed shed was of a size similar to neighboring sheds. The only detached shed close to the same size as this shed is the building already on this lot to be used as a boat house (see previous text.)
3. Asking for special consideration regarding the size of the shed should allows the Board to consider the condition that the septic tank for the house/lot be removed and replaced with a sealed holding tank.
  - a. (It should be noted that the Quale's have bought and removed several houses from these lots.)
4. If variance is denied, the applicant could construct the same sized accessory structure attached to the house (variances to front yard setbacks may be necessary).

*6' Side Yard Setback Variance:*

1. The Joint Ordinance requires a setback of 15' on lots with a septic tank on a lot; and a setback can be decreased to 8' if the lot includes a sealed holding tank or central sewer collection system.
2. The request is to locate the shed and boathouse farther from the west property line than current accessory structures sit.
3. The request meets setbacks (for side yards) in the City of Watertown.
4. Setbacks render 71% of the lot unbuildable. The entire lot is currently located within the floodplain (the house was constructed according to floodplain requirements.)
5. The Board has granted variance but used scrutiny on lots with similar amounts of the lot covered by setbacks.
6. The same sized shed could be constructed 15' from the house and meet the sideyard setback.
7. It is recommended that approval of a side yard setback variance be subject to removal and replacement of the septic tank with a sealed holding tank for the residence/wastewater needs.

*28' Road Front Setback Variance:*

1. The variance granted in 2014 does not extend to the location sought for variance here.
2. The request is to locate the shed as far from the right-of-way as the current residence.
3. Other structures are located the same distance from the right-of-way and the Board has a history of granting variance to be up to the property line (for attached accessory structures or) residences.
4. Setbacks render 71% of the lot unbuildable. The entire lot is currently located within the floodplain (the house was constructed according to floodplain requirements.)
5. The Board has granted variance but used scrutiny on lots with similar amounts of the lot covered by setbacks.
6. If the variance is denied the structure could be constructed east of the house due to the variance issued in 2014.
7. The Board has the ability to approve the variance but limit its scop to the legal description where the house and future shed sit (eliminating the variance on the vacant lot portion of the lot east of the house.)
8. Allowing variance to the front yard setback on this portion of the lot allows the Board to consider the condition that the septic tank for the house/lot be removed and replaced with a sealed holding tank.

Staff Recommendation:

The Quale's have 5 different but related requests. Since the lot is buildable (and has) a house on which was permitted to keep the septic tank for the time being, additions to the house which comply with the ordinance, and accessory structures which comply with the ordinance may be constructed with little justification for change to sewer requirements. Further, this board has very little justification to deny the conditional use permits for the boathouse less than 50' from the OHM and the tall shed as long as the applicant agrees to build to flood requirements and no sewer services are expected to be added to the buildings. However, granting a permit to add another connection to the septic tank or seeking to build something outside the parameters of the ordinance or past decisions of the Board with regard to this property give the Board the ability to revisit the question of a holding tank vs a drainfield. Specifically one of the requests can be remedied by replacing the septic tank with a holding tank.

Staff Recommendation:

- **Conditional Use Permit – Boathouse within 50' of the Ordinary High Water Mark:** The Board could approve the request, deny the request, or postpone the request. If the proposal meets the conditions listed in ordinance prohibiting the use for dwelling purposes and building to floodplain requirements, not additional conditions are recommended.
- **Conditional Use Permit – Accessory Structure with Greater than 10' Sidewalls:** The Board could approve the request, deny the request, or postpone the request. Staff can cite no need for conditions, nor reason for denial of this conditional use.
- **Variance – Accessory Structure Greater than 2,178 square feet:** The Board could approve the request, deny the request, or postpone the request.
  - The request could be approved based upon the following findings
    - a. The applicant has removed multiple structures from this lot.
    - b. The Board has granted variance to this section in other portions of the Lake Park District on this lake.
    - c. The Board determines this use will meet the intent of the zoning ordinance, comprehensive land use plan, and Lake Park District provided:
      - 1. Applicant agrees to replace the septic tank used for private wastewater on this lot with a sealed holding tank on or before June 27, 2025.
      - 2. The structure is not used for dwelling purposes.
      - 3. The structure is not used for any purpose other than accessory storage of personal items owned by residents of the lot.
  - The request could be denied on the basis that there is no hardship unique to this property that is not a result of actions of this or previous property owners.
    - a. Previously issued variances to this section were for lots not adjacent to the lake and in cases where the proposed structure was of a size similar to neighboring detached structures.
    - b. Therefore the literal interpretation of this rule does not deprive the applicant of rights commonly enjoyed by other properties in this district.
- **Variance – 6' (West) Side Yard Variance:** The Board could approve the request, deny the request, or postpone the request.

- The request could be approved based upon the following findings
  - a. The proposed uses seeking this setback are both conditional uses for which the Board has the authority to establish setbacks which are more or less than the established setbacks for the districts.
  - b. The existing structures will be removed, but currently are located closer to the lot line than proposed with this variance. Further, the Board has a history of granting side yard variances in this neighborhood under similar circumstances.
  - c. Coverage of over 70% of the lot with setback area presents a unique hardship which warrants consideration for relaxation of the setback requirements.
  - d. The Board determines this use will meet the intent of the zoning ordinance, comprehensive land use plan, and Lake Park District provided:
    1. Applicant agrees to replace the septic tank used for private wastewater on this lot with a sealed holding tank on or before June 27, 2025.
  
- The request could be denied on the basis that there is no hardship unique to this property that is not a result of actions of this or previous property owners.
  - a. The structures currently located less than 15' from the property line are nonconforming and nonconforming structures should not be the basis for granting variances.
  - b. There is sufficient space to place these buildings on the lot without needing variance to the side yard setback.
  - c. Therefore the literal interpretation of this rule does not deprive the applicant of rights commonly enjoyed by other properties in this district.
  
- **Variance – 28' (Road Side) Front Yard Variance:** The Board could approve the request, deny the request, or postpone the request.
  - The request could be approved based upon the following findings
    - a. The proposed use seeking this setback is a conditional use for which the Board has the authority to establish setbacks which are more or less than the established setbacks for the districts.
    - b. In 2014 the Board granted variance to allow the same setback for the residence on this lot. The applicant is seeking to extend the same setback to the adjacent lot which they bought after that variance was granted.
    - c. The Board has a history of granting setbacks as low as 0' adjacent to Pelican Lane.
    - d. Coverage of over 70% of the lot with setback area presents a unique hardship which warrants consideration for relaxation of the setback requirements.
    - e. The Board determines this use will meet the intent of the zoning ordinance, comprehensive land use plan, and Lake Park District provided:
      1. Applicant agrees to replace the septic tank used for private wastewater on this lot with a sealed holding tank on or before June 27, 2025.
      2. The Front Yard setback variance replaces the previously granted variance (2014) and is limited to only lots 17 – 19.
  
  - The request could be denied on the basis that there is no hardship unique to this property that is not a result of actions of this or previous property owners.

- a. The previously granted variance does not obligate the Board to grant the variance on this lot for a use which may have a need for greater setbacks than a residential garage.
- b. The shed could be placed east of the existing house without granting an additional variance.
- c. Therefore the literal interpretation of this rule does not deprive the applicant of rights commonly enjoyed by other properties in this district.

Public Copy - Do Not Take

## CODINGTON COUNTY BOARD OF ADJUSTMENT

### ITEM #1 CONDITIONAL USE PERMIT

**Applicant:** Tim and Lacey Grabow Living Trust

**Owner:** Jeff and Lynae Grabow Living Trust

**Property Description:** a portion of Government Lot 3 less N1,236' and Government Lot 4, and E1/2 of the SE1/4, less the N1,236' and Lot 1 Beskow Farm Addition in the E1/2 and the SE1/4, Section 17-T119N-R52W of the 5<sup>th</sup> P.M, Codington County, South Dakota, to be known upon Platting as Tim and Lacey Grabow Addition (Germantown Township).

**Action Items – Conditional Use Permit – Existing farmstead exemption “B” (3.04.02.44)**

**Zoning Designation:** Agricultural

**Request:** The applicant seeks Existing Farmstead Exemption to create a lot with less than 35-acres on the same legal description as an existing farmstead.

**History/Issue(s):**

1. The Applicant seeks to establish building rights at the site of an existing farmstead.
2. The property has remained a base for farming operations since prior to 1976 was lived in until recently.
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 **(Conditional Use Permit) –Existing Farmstead Exemption-** 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 CONDITIONAL USE PERMIT

**Owner/Applicant:** Ada Hemstock by Elka Lamberson (Power of Attorney) / Transferred to Rock Arnold during application period.

**Property Description:** West 72 Rods of the South 40 Rods of the Southeast Quarter, Section 11-T116N-R55W of the 5<sup>th</sup> P.M, Codington County, South Dakota (Henry Township).

**Action Items – Conditional Use Permit – Existing farmstead exemption “B” (3.04.02.44)**

**Zoning Designation:** Agricultural

**Request:** The applicant seeks Existing Farmstead Exemption to create a lot with less than 35-acres on the same legal description as an existing farmstead.

**History/Issue(s):**

1. The Applicant seeks to establish building rights on the previously created (prior to 2004) 18-acre lot.
2. The property has remained a base for farming operations since prior to 1976 was lived in until recently.
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 **(Conditional Use Permit) –Existing Farmstead Exemption**  
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.

**ITEM #1 VARIANCE**

**Owner/Applicant: Lynne and Lana Waege**

**Property Description** The North Half of the Northwest Quarter less strip, and the East Half of Section 35, Township 119 North, Range 51 West of the 5th P.M. (Leola Township), Codington County, South Dakota.

**Action Item – Variance – 29' Front Yard Setback (3.04.03.3)**

**Zoning Designation:** Agricultural District

**Request:** The Waege's seek to move a shed from one location to another on the same property but 36' from the 159<sup>th</sup> Street right-of-way.

**History/Issue(s):**

Specifics of Property/Request:

1. The Waege's operate a feedlot as a permitted use at the location of their residence.
2. They seek to move an existing shed from the southwest portion of the yard to the northeast part of the yard.
3. The shed currently conforms with the setbacks for the Ag District.
4. The proposal will move the shed to be located 36' from the 159<sup>th</sup> Street Right-of-way (69' from the center of the road).
5. It should be noted that a farmstead tree claim is located along the property line in this same yard to the west; an existing barn is located approximately 69' from the center of 159<sup>th</sup> Street, and a feed bunk is also located the same distance.
6. 159<sup>th</sup> Street is maintained by Leola Township who has not objected to the request.

Ordinance/Variance History regarding this request:

1. The zoning ordinance requires a 65' setback from the right of way.
2. No record exists of permits for the above referenced shed/barn and feed pad located 69' from the center of 159<sup>th</sup> Street. It's possible those buildings were built when the interpretation of the ordinance allowed ag buildings to be built without a building permit.



3. The Board has granted variance to allow Ag Structures to be built in line with other existing Ag Structures on a case-by-case basis.
4. There is room to place this shed farther south which would meet the required setback, however the existing farm buildings would still be nonconforming.
5. Staff has heard no correspondence from Leola Township regarding this matter.

Staff Summary:

This structure could obviously be placed somewhere on the 300+ acre lot in a manner conforming with the ordinance. The real question here is whether the Board would allow the reconstruction of structures existing on the farm in the same line as this structure. If the Board would be inclined to issue a permit to reconstruct those structures, they should grant the variance for this structure. If it is the inclination that the board would deny that variance, this should be denied too.

Staff Summary and Recommendation:

**Staff Recommendation – 29 foot Variance: Minimum required front yard setback (Section 3.04.03.3):** The Board may approve, deny, or postpone the request.

- The request could be approved based upon the following findings
  - a. The existence of a shed and shelterbelt in the same yard in-line to the right-of-way with the moved structure.
  - b. Lack of objection from Leola Township.
- The request could be denied on the basis that there is no hardship unique to this property that is not a result of actions of this or previous property owners.
  - c. It could be construed that approval of this variance is, in part, due to the presence of nonconforming structures on the lot.
  - d. The configuration and size of the lot is not so unique to necessitate any relaxation of the setback requirement.
  - e. Therefore the literal interpretation of this rule does not deprive the applicant of rights commonly enjoyed by other properties in this district.

**CODINGTON COUNTY PLANNING COMMISSION**

**ITEM #1 PLAT**

**Applicant/Owner: Jeff and Lynae Grabow**

**Property Description:** Plat of Tim and Lacey Grabow Addition in the SE1/4 of Section 17-T119N-R52W (Germantown 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. Existing Farmstead Exemption was granted to the is property earlier in this meeting which allowed the creation of a minimum 5-acre lot.

**ITEM #2 PLAT**

**Applicant/Owner: Morrie Comes and Bob Endres**

**Property Description:** Plat of Comes Acres in the E1/2 of the NE1/4 of Section 13-T118N-R53W (Rauville Township).

**Action Items – Plat approval.**

**Zoning Designation:** Agricultural

**Request:** Plat a 33.11 acre parcel at the site of an existing farmstead which has already been granted a farmstead exemption (Rau Acres Addition).

**ISSUE #2 OPEN/ADMINISTRATIVE REPORT**

**ISSUE #3 EXECUTIVE SESSION (if Necessary)**