

Codington County Planning Commission/Board of Adjustment Minutes

July 18, 2022

The Codington County Planning Commission met for their monthly meeting on July 18, 2022 via teleconference and at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were Mel Ries, Mark O'Neill, Myron Johnson, Rodney Klatt, Brenda Hanten, and Luke Muller (Planner at First District Association of Local Governments/Codington County Zoning Officer). Board members Bob Fox and Alex Kahnke were present via teleconference.

Others present were Dwight Zemlicka.

Chairman Fox and Vice Chair Kahnke were participating via teleconference; therefore, Chairman Fox appointment Board Member Mark O'Neill as Chair for this meeting. Chair O'Neill brought the meeting to order at 7:31 pm.

Motion by Hanten, second by Ries, to approve the June 27, 2022 meeting minutes. Motion passed unanimously.

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

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

Motion by Johnson, second by Ries, to approve a 34' front yard setback variance request by Dwight Zemlicka on property in S1/2 S1/2 SE1/4 less S528', Section 13-T117N-R54W for purposes of constructing an addition to the existing home. Muller reviewed Staff Report (attached). Muller read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Muller has advised the Board and the public that he has been forced to use accumulated vacation time which has included most Friday's this summer.

A forthcoming floodplain ordinance will need to be adopted per FEMA requirement. A public meeting will be held by FEMA on July 19, 2022 at the Watertown Regional Library.

Motion to adjourn made by Johnson, second by Hanten. Motion passed unanimously. Meeting adjourned at 8:02 pm.

Respectfully Submitted,

Becky Goens

**JULY 2022  
CODINGTON COUNTY  
JOINT PLANNING COMMISSION/BOARD OF ADJUSTMENT STAFF REPORT  
CODINGTON COUNTY BOARD OF ADJUSTMENT**

**ITEM #1 VARIANCE**

**Owner/Applicant: Dwight and Patricia Zemlicka**

**Property Description** The South Half of the South Half of the SE1/4 less the East 528 Feet of Section 13, Township 117 North, Range 54 West of the 5th P.M. (Richland Township), Codington County, South Dakota.

**Action Item – Variance – 33' Front Yard Setback (3.04.03.3)**

**Zoning Designation:** Agricultural District

**Request:** The Zemlicka's propose to construct an addition to and in-line with the existing house, 65' from the center of 169<sup>th</sup> Street.

**History/Issue(s):**

**Specifics of Property/Request:**

1. The Zemlicka's live at the above property.
2. The house was constructed in 1997 by a previous owner. No record of a building permit was found.
3. The house is located approximately 65' from the center of 169<sup>th</sup> Street (32' from the 169<sup>th</sup> Street Right-of-Way.)
4. The proposed addition would be located adjacent to and in-line with the existing house. No portion of the addition would be located closer to the right-of-way than the existing house.
5. Though trees are located nearer to the right-of-way than the present house, no other structures are located closer than 65' from the right-of-way.

**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 house. Given that the existing house is located 65' from the Section Line, it is possible a miscommunication or misinterpretation of the zoning ordinance led to the location of the present house.
3. The Board has granted variance to allow in-line additions to existing structures when the road authority does not object to the request.
4. Staff has heard no correspondence from Richland Township regarding this matter.

**Staff Summary:**

It is unlikely that the proposed addition will cause additional cost in maintenance of 169<sup>th</sup> Street. The Board needs to determine whether the location of the unpermitted house would be honored if a catastrophic event took the house away. If the Board would approve a variance to replace the house at this location due to some level of implied consent (with no proof) then the variance should be issued, if not the variance should be denied.

Staff Summary and Recommendation:

**Staff Recommendation – 33 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 addition will be in-line with the existing house which was constructed in 1997 65' from the center of the road.
  - b. The makes the reasonable determination that at some point, some level of consent was implied by the zoning administrator at the time of the permit for the existing house.
  - c. Lack of objection from Richland 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.
  - a. It could be construed that approval of this variance is, in part, due to the presence of an unpermitted structure located closer to 169<sup>th</sup> Street than allowed.
  - b. Denial of the variance would not deny the applicant of the ability to use the property for a residence and agricultural use; nor prohibit the applicant from obtaining building permits to construct a conforming addition.
  - c. Therefore the literal interpretation of this rule does not deprive the applicant of rights commonly enjoyed by other properties in this district.