

County Planning Commission/Board of Adjustment Minutes

November 21, 2022

The Codington County Planning Commission met for their monthly meeting on November 21, 2022 via teleconference and at the Codington County Extension Complex. Members of the Planning Commission/Board of Adjustment present were Mark O'Neill, Brenda Hanten, Bob Fox, and Luke Muller (Planner at First District Association of Local Governments/Codington County Zoning Officer). Board member Alex Kahnke joined via Zoom.

Others present were Terry Sutton, Jason Jatton, Brian Beachy, David Stark, Doris Stark, Don Stark, Todd Stark, and Becky Goens.

Chairman Fox brought the meeting to order at 9:06 am.

Motion by O'Neill, second by Hanten, to approve the September 19, 2022 meeting minutes. Motion passed unanimously.

Motion by Hanten, second by O'Neill, to approve the agenda. Motion passed unanimously.

Board member Klatt arrived at 9:08 am.

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

Motion by Hanten, second by O'Neill, to approve the Conditional Use Permit request by Terence Sutton on property described as OL 1 less N55' of SE1/4 of SW1/4 & W30.33' of E236.58' of S374' of SW1/4 and W301.56' of S429' of SE1/4, Section 24-T117N-R52W, Codington County, SD. Sutton is seeking an Existing Farmstead Exemption to retain building rights at the site of an existing farmstead. Muller reviewed Staff Report (attached). Sutton distributed photos of an existing silo from the previous farmstead and provided history on the site. Public hearing closed. Chairman Fox read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Motion by Klatt, second by Hanten, to approve the Conditional Use Permit request by Brian Beachy on property described at Henning Addition in NE1/4, Section 24-T117N-R55W, Codington County, SD. Beachy would like to operate an Implement/Ag Equipment Repair business. Muller reviewed Staff Report (attached). If approved, Beachy 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 five (5) 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) Up to one (1) non-illuminated, freestanding or wall sign with a maximum sixteen (16) square feet of surface area is allowed on-site.
- 4) Up to ten (10) vehicles or pieces of equipment may be stored outside waiting to be repaired or picked up.
- 5) No vehicle or equipment is on site for more than six (6) months.
- 6) No vehicle or equipment is stored outside, between the structure in which the extended home occupation is carried out and any adjacent right-of-way.
- 7) Any vehicles or equipment associated with the extended home occupation which are stored outside shall be screened from the right-of-way and adjacent property by means of buildings and/or the existing shelterbelts. Should the existing shelterbelt(s) be removed or degrade in effect to a point that the storage is no longer screened, outdoor storage may be required to be removed, moved, or screened by means of solid walled fence, not more than eight (8') feet in height and/or conifer trees spaced not more than forty-five feet (45'), and greater than five feet (5') at the time of planting.
- 8) 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.
- 9) 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.
- 10) Sale of products necessary to perform the service provided by the business and incidental accessory sale of excess inventory may be allowed. No other retail is allowed unless the product is associated with the business and produced on site.
- 11) 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.
- 12) 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.
- 13) Applicant would be required to plat the property as discussed.
Beachy requested clarification on the screening and number of non-related employees.

Muller suggested confirmation that the existing screening (trees) meets the qualifications, and a fence would not be necessary. If at some point Mr. Beachy would need to update the conditions regarding number of employees, he would be requested to come back to the Board for approval. Motion by Hanten, second by Klatt, to amend condition #1 to change the number of non-family employees from three (3) to five (5). Motion on the amendment approved unanimously. Chairman Fox read the Findings of Fact. There were no questions or objections. Motion on the Conditional Use Permit, with the amendment, passed unanimously.

Motion by Hanten, second by O'Neill, to approve the variance request for Donald and Doris Stark to transfer a variance to minimum lot area issued on June 17, 2019 to Todd and Faren Stark. Property is NW1/4 less Highway ROW's and less W660' E1320' N660' and less E550' and less W110' E660' N660' and less N300' W435' and less E1432' less N660', Section 11-T116N-R54W, Codington County, SD. Muller reviewed Staff Report (attached). Public hearing closed. David Stark inquired about future sales and was advised one piece must contain a minimum of 5 acres and the other parcel must contain a minimum of 35 acres. Chairman Fox read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Motion by Klatt, second by Hanten, to adjourn Board of Adjustment and reconvene as Planning Commission. Motion passed unanimously.

Discussion was held requesting clarification on required building permits on dryer units and pits associated with grain bin sites. It was suggested building permits are required for legs but not dryers as they are considered equipment rather than structural. The pit will be considered a component and not part of the permanent structure.

Muller advised the Board of two letters sent recently to Codington County residents about building permits not obtained on structures already built. After-the-fact fees were incorporated. One landowner did finally comply and paid the 200% administrative fees.

Muller advised the Board that December will be the last Zoom meeting. Board members unable to attend in person will be given an opportunity to participate via teleconference if needed.

Motion to adjourn made by Hanten, second by O'Neill. Motion passed unanimously. Meeting adjourned at 10:39 am.

Respectfully Submitted,

Becky Goens

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

CODINGTON COUNTY BOARD OF ADJUSTMENT

ITEM #1 CONDITIONAL USE PERMIT

Applicant/Owner: Terence Sutton

Property Description OL 1 less N55' of SE1/4 of SW1/4 & W30.33' of E236.58' of S374' of SW1/4 & W301.56' of S429' of SE1/4, Section 24-T117N-R52 West of the 5th P.M., Codington County, South Dakota.

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

Zoning Designation: Agricultural

Request: The applicant seeks Existing Farmstead Exemption to retain building rights at the site of an existing farmstead.

History/Issue(s):

1. The Applicant seeks to retain building rights at the site of his present house.
2. OL 1 was platted long before 1976, however in 1981 the north 55' was sold/retained with the pasture to the north of the house. That action removed the nonconforming (buildable) status from the lot, despite the fact that (at the same time) a portion of the SE1/4 was added to the OL, giving it a LARGER lot area. (OL 1 was a 2 acre piece; the current legal description is a 5-acre piece.)
3. The property was used as a base for farming operations prior to 1976 and is still lived in.
4. 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.
5. The parcel contains an existing farmstead as defined by the Codington County Zoning Ordinance.
6. The parcel contains at least five-acres which was legally described prior to 2004. The Policy of the Comprehensive land use plan is that if the legal description of an existing farmstead was created prior to 2004, a plat is not required as a condition of approval.

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 CONDITIONAL USE

Applicant/Owner: Brian Beachy

Property Description: Henning Addition in NE1/4, Section 24-T117N-R55W, Codington County, South Dakota. (Graceland Township)

Action Items – Conditional Use – Extended Home Occupation (Implement/Ag Equipment

Repair) (3.04.02.16)

Zoning Designation: A – Agricultural District

Request: The applicant seeks to operate an implement repair business out of an accessory building at the site of his home.

History/Issue(s):

Specifics of Request:

1. The Beachy's recently purchased this ~53 acre property.
2. Access to this property is provided directly to 442nd Avenue (Medicine Lake/Tinkertown Road) (County Road).
3. The repairs will primarily be carried out in the existing (roughly) 48' x 36' shed located over 600' from the right-of-way.
4. An established shelterbelt is located south of the driveway and will provide screening for any equipment stored outside.

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. The county recently updated requirements for extended home occupations. The only reason Mr. Beachy requires a conditional use permit is because he *may* store items outside if waiting to be worked on or picked up.
5. No non-resident employees are expected at this time.
6. No on or off-premise signs are planned at this time and no additional structures.
7. No sales will be conducted on site except parts necessary to complete the work necessary on a per project basis.
8. This property is NOT located over the aquifer protection district
9. Outdoor storage is proposed to be south of the shed in which repair will be completed.
10. Outdoor storage is proposed to be located approximately 700' west of the right-of-way and behind an existing shelterbelt with trees greater than 5' in height.
11. Buildings and existing shelterbelts screen adjoining properties from outdoor storage.
12. The applicant does not intend to keep equipment on site for greater than six months.
13. The applicant does not intend to have more than 10 vehicles or pieces of equipment on site waiting to be repaired or waiting to be picked up.
14. No need for additional parking (on or off-street) is expected.
15. 442nd Avenue is a paved county road built to a standard to handle traffic generated by this use. It should be noted that both north and south of this property, 442nd Avenue is subject to periodic flooding and annual load limits. The Zoning Office notified the Road Authority of the request.
16. It is not anticipated that any processes associated with the business will be noticeable by heat, glare, vibration, etc. on neighboring properties.

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):

- 14) Individuals engaged in such occupation shall consist of family members residing on the premises and up to three (3) non-family employees.
- 15) 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".
- 16) Up to one (1) non-illuminated, freestanding or wall sign with a maximum sixteen (16) square feet of surface area is allowed on-site.
- 17) Up to ten (10) vehicles or pieces of equipment may be stored outside waiting to be repaired or picked up.
- 18) No vehicle or equipment is on site for more than six (6) months.
- 19) No vehicle or equipment is stored outside, between the structure in which the extended home occupation is carried out and any adjacent right-of-way.
- 20) Any vehicles or equipment associated with the extended home occupation which are stored outside shall be screened from the right-of-way and adjacent property by means of buildings and/or the existing shelterbelts. Should the existing shelterbelt(s) be removed or degrade in effect to a point that the storage is no longer screened, outdoor storage may be required to be removed, moved, or screened by means of solid walled fence, not more than eight (8') feet in height and/or conifer trees spaced not more than forty-five feet (45'), and greater than five feet (5') at the time of planting.
- 21) 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.
- 22) 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.
- 23) Sale of products necessary to perform the service provided by the business and incidental accessory sale of excess inventory may be allowed. No other retail is allowed unless the product is associated with the business and produced on site.
- 24) 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.
- 25) 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 #3 Variance

Applicant/Owner: Todd and Faren Stark; Donald and Doris Stark

Property Description:

- N300' of W435' in NW1/4, Section 11-T116N-R54W, Codington County, South Dakota. (Kampeska Township)
- NW1/4 less Highway ROW's and less W660' E1320' N660' & less E550' & less W110' E660' N660' & less N300' W435' & less E1432' less N660', Section 11-T116N-R54W, Codington County, South Dakota. (Kampeska Township)

Action Item – Variance – Minimum Lot Area (3.04.03.1)

Zoning Designation: Agricultural

Request: The Starks request variance to transfer minimum lot area variance issued on June 17, 2019 from Todd and Faren to Don and Doris's property.

History/Issue(s):

1. Don and Doris purchased the W1/2 of this Quarter Section ("80") in 1977.
2. Don and Doris built a house on the "80" in 1998 (building permit #1499 issued by past zoning officer)
3. Todd Stark built his house in 2002 on the above legal description (building permit #1891 issued by past zoning officer) as a relative/employee of the farm owner without Board of Adjustment approval. At the time, no rule or Board action restricted Mr. Stark from owning the lot.
4. In June of 2019 variance was granted to honor the decision of the past zoning officer to allow a lot of less than 35-acres at a site where originally occupied by a family member of the owner of greater than 35-acres.
5. Don and Doris seek to sell their house on a five (5) acre lot to another son, and the remainder of the surrounding farmland to Todd and Faren.

Staff Summary:

- The Board originally granted the variances (minimum lot area and width) due to the ambiguity surrounding the permitting of Todd's house by the previous zoning officer in reference to the farmstead exemption rules at the time. Today, this Board would allow the transfer of a farmstead exemption among adjoining property owners. In this unique case, a "farmstead exemption" was not granted; instead the applicant seeks to transfer a variance granted due to previous administrative decision (commonly referred to as, "Bud-ism.") This application requests to transfer that "Bud-ism" between two consenting parties which were involved in original permit(s) dating back to 1998.
- If the Board allows the transfer of variance: one house will be on a lot with 5-acres; one house will be on a lot with greater than 35-acres.
- If the Board denies the transfer of variance: one house will be on a lot with 2-acres and one house will be on a lot with 35-acres.

Staff recommendation

Variance to Minimum Lot Area -The Board could approve request based upon the following findings:

- i. The Board recognizes and re-affirms the findings of the variance granted on June 19, 2019 in reference to the property currently owned by Todd and Faren Stark.
- ii. It should be noted that the Board grants this variance based upon its similarity to variances approved in the past in similar instances where the zoning officer conferred some sort of vested building rights to a lot of less than 35 acres associated with a farming operation.
- iii. If the applicant had obtained farmstead exemption from the Board of Adjustment at the time of construction of Todd and Faren's house, this request could be approved with no further Board action.
- iv. The request is consistent with the requirements of the existing farmstead exemption. (One house on a minimum 35 acre parcel, One house on a platted, 5 acre parcel.)
- v. Future similar requests will be required to meet conditions similar to this request.
- vi. The request will not adversely affect the public interest and will meet the intent of the Agricultural District and Comprehensive Land Use Plan if the following conditions are met:
 - a. The applicant shall plat a minimum five (5) acre lot in accordance with the Codrington County Subdivision Ordinance.
 - b. The applicant acknowledges that, unless the zoning ordinance is changed, no more than two houses may be maintained or replaced on the properties described in this application. (Todd and Faren's house may continue to receive building permits; and Donald and Doris' house may continue to receive building permits; and each can be replaced if necessary.)