

## County Planning Board of Adjustment Minutes

June 23, 2025

The Codington County Board of Adjustment met for their monthly meeting on June 23, 2025, at the Codington County Extension Complex. Members of the Board of Adjustment present were Brenda Hanten, Myron Johnson, Calvin Mack, Mark O'Neill, Mel Ries, Rodney Klatt, and Luke Muller (Planner at First District Association of Local Governments/Codington County Zoning Officer). Absent: Liam Culhane.

Others present: Kevin Beaner, Allison Bakken, Brent Zemlicka, and Becky Goens.

Chair Hanten brought the meeting to order at 7:35 pm.

Motion by Johnson, second by Ries, to approve May 19, 2025 meeting minutes. Motion passed unanimously.

Motion by Klatt, second by Ries, to approve the agenda as published. Motion by O'Neill, second by Johnson, to remove the MoDak Dairy application from the agenda. Motion on amendment passed unanimously. Motion on agenda, with amendment, passed unanimously.

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

Motion by Klatt, second by O'Neill, to approve the Conditional Use Permit request by Kevin Beaner as read by Staff. Beaner is requesting an existing farmstead exemption to retain building rights on his property in S411' W795' in NW1/4, Section 20-T117N-R55W, Codington County, SD. Muller read the Staff report (attached) with regard to the Conditional Use Permit request and variance request made by Beaner. No one was present to speak on this request. Public hearing closed. Muller read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Motion by O'Neill, second by Ries, to approve Kevin Beaner's variance application requesting a 10' front yard setback. Property is in S411' W795' in NW1/4, Section 20-T117N-R55W, Codington County, SD. Public hearing was already held with the Conditional Use Permit. Muller read the Findings of Fact. There were no questions or objections. Motion passed unanimously.

Motion by Johnson, second by Ries, to approve the 100' variance shelterbelt setback request by Brent Zemlicka. Property is owned by Rodney and Brenda Zemlicka Living Trust and located in NE1/4 of Section 30-T118N-R52W, Codington County, SD. Muller read the Staff Report (attached) with regard to both shelterbelt variance requests. Staff recommends, if approved, the minimum setback variance should be 75'. Muller read the Findings of Fact. There were no questions or objections. Motion for a 100' variance fails 4-2. Having voted on the prevailing side, Klatt made a motion to reconsider the previous decision, second by O'Neill. Motion passed unanimously. Motion by Klatt, second by O'Neill, to amend the setback request

to a 75' variance. Muller re-read the Findings of Fact. There were no objections or questions. Motion passes 6-0.

Motion by Klatt, second by O'Neill, to approve the 50' variance along 164<sup>th</sup> Street as requested by Brent Zemlicka on property owned by Rodney and Brenda Zemlicka Living Trust and described above. Public hearing was held during the prior variance request. Motion failed, 2-4.

The July meeting has been moved to July 28, 2025 at 7:30 pm.

Motion to adjourn made by O'Neill, second by Mack. Motion passed unanimously. Meeting adjourned at 8:38 pm.

Respectfully Submitted,

Becky Goens

**JUNE 2025  
CODINGTON COUNTY  
PLANNING COMMISSION/BOARD OF ADJUSTMENT STAFF REPORT**

**ITEM #1 CONDITIONAL USE PERMIT & VARIANCE**

**Applicant/Owner:** Kevin Beaner

**Property Description:** The South 411 Feet of the West 795 Feet of the Northwest Quarter, Section 20 Township 117 North, Range 55 West of the 5th P.M., Codington County, South Dakota. (Graceland Township).

**Lat/Long (Existing Approach):** 44.927401°; - 97.473256°

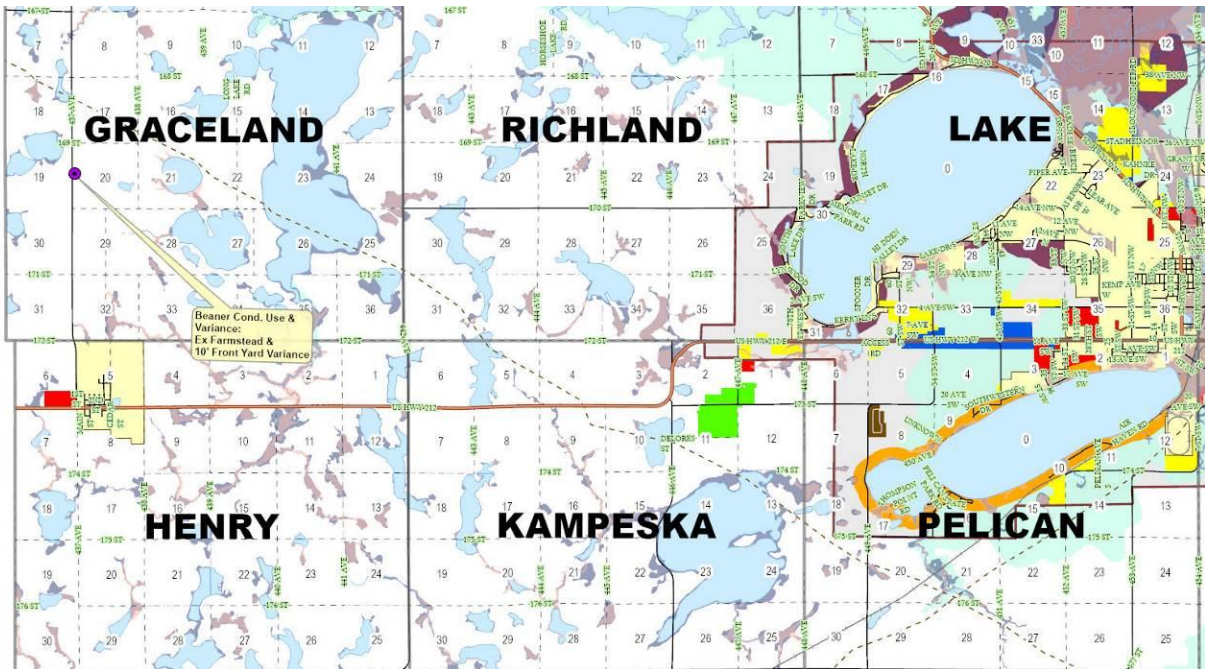
**Action Items –**

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

**Variance – 10’ Front Yard Setback (3.04.03)**

**Zoning Designation:** Agricultural

**Request:** The applicant seeks Existing Farmstead Exemption to retain building rights on a lot with less than 35-acres on the same legal description as an existing farmstead to build a home addition 55’ from the right-of-way.

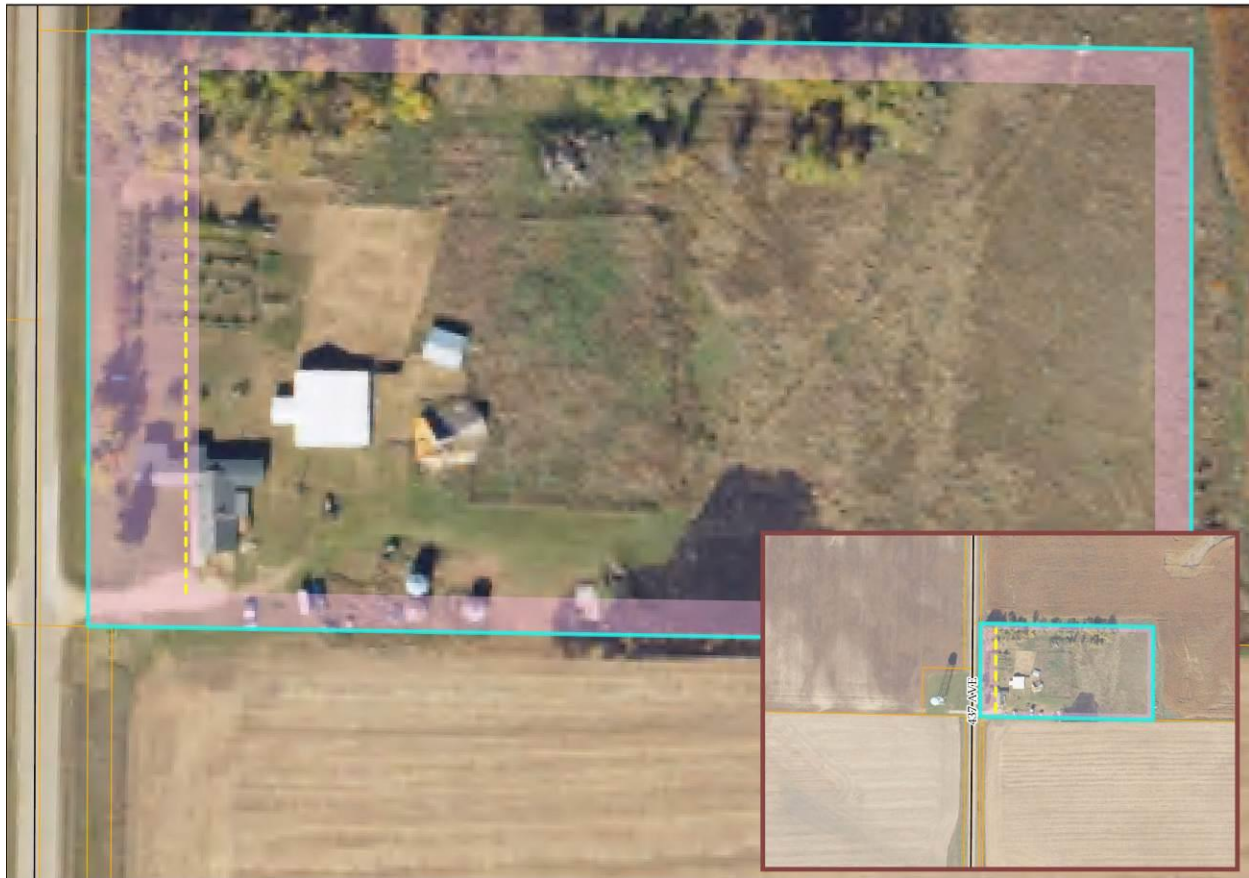


**History/Issue(s):**

1. Mr. Beaner has owned and lived at this site since 2006.
2. The property was a base for farming operations since prior to 1976 and is currently lived in.
3. Codington County's Zoning Ordinance does allow for exception to the 35 acre-minimum lot requirement if the lot is determined to be an existing farmstead.
4. The parcel contains an existing farmstead as defined by the Codington County Zoning Ordinance.

5. The property was sold separately from the farmland prior to 2004.
6. Policy has been to waive the requirement to replat existing farmsteads which were initially transferred prior to 2004.
7. Mr. Beaner seeks to remove an existing manufactured home (currently 28' from the right-of-way) which is connected to an attached garage and living space; and replace it with a home addition which would be no closer than 55' from the right-of-way.
  - a. The garage and original home were constructed prior to the adoption of zoning. The manufactured home was added without a permit later.
  - b. The right-of-way is 50' from the center of the road in this location

Beaner CUP & Variance  
Ex. Farmstead & 10' Front Yard Variance



Ordinance/Land Use Plan: 10' Variance

1. The minimum required front yard setback is 65' from the right-of-way.
  - a. Typical right-of-way is 33' from the center of the road, in this case right-of-way is 50'.
2. The Board has a history of approving variances adjacent to county roads with "oversized" right-of-way for additions to existing structures provided the highway superintendent does not object to the proposal. (Meester, Joens, Zemlicka)
  - a. At the time of this report, staff has heard no objection from the highway superintendent.
3. Staff is not aware of a request such as this to replace an addition with another addition which is *more compliant* but not able to meet setback requirements.

### Staff Summary and Recommendation:

**(Conditional Use Permit) –Existing Farmstead Exemption** - Approve request because the Zoning Officer after review of anecdotal information, records and site-visit has determined was used as an existing farmstead/residential site prior to October 26, 1976.

**Variance – 10' Front Yard Variance (build 55' east of 437<sup>th</sup> Ave Right-of-way):** The Board has the option to approve, deny, or postpone the request to replace an existing shed with a larger shed, in the same location as an existing shed. *Approval would be based upon:*

- Highway Superintendent does not object to the request.
- The right-of-way for 437<sup>th</sup> was expanded and purchased after the construction and configuration of the existing garage to which the addition will be attached.
- The unique size of the lot and configuration of structures on the lot which pre-date the ordinance.
- The request is to replace an existing nonconforming structure with one that conforms significantly more than the existing structure.
- The applicant is requesting the minimum amount of adjustment to retain the ability to have a similarly sized shed as held on neighboring properties.
- The Board would only consider approving other similar requests meeting the unique circumstances.

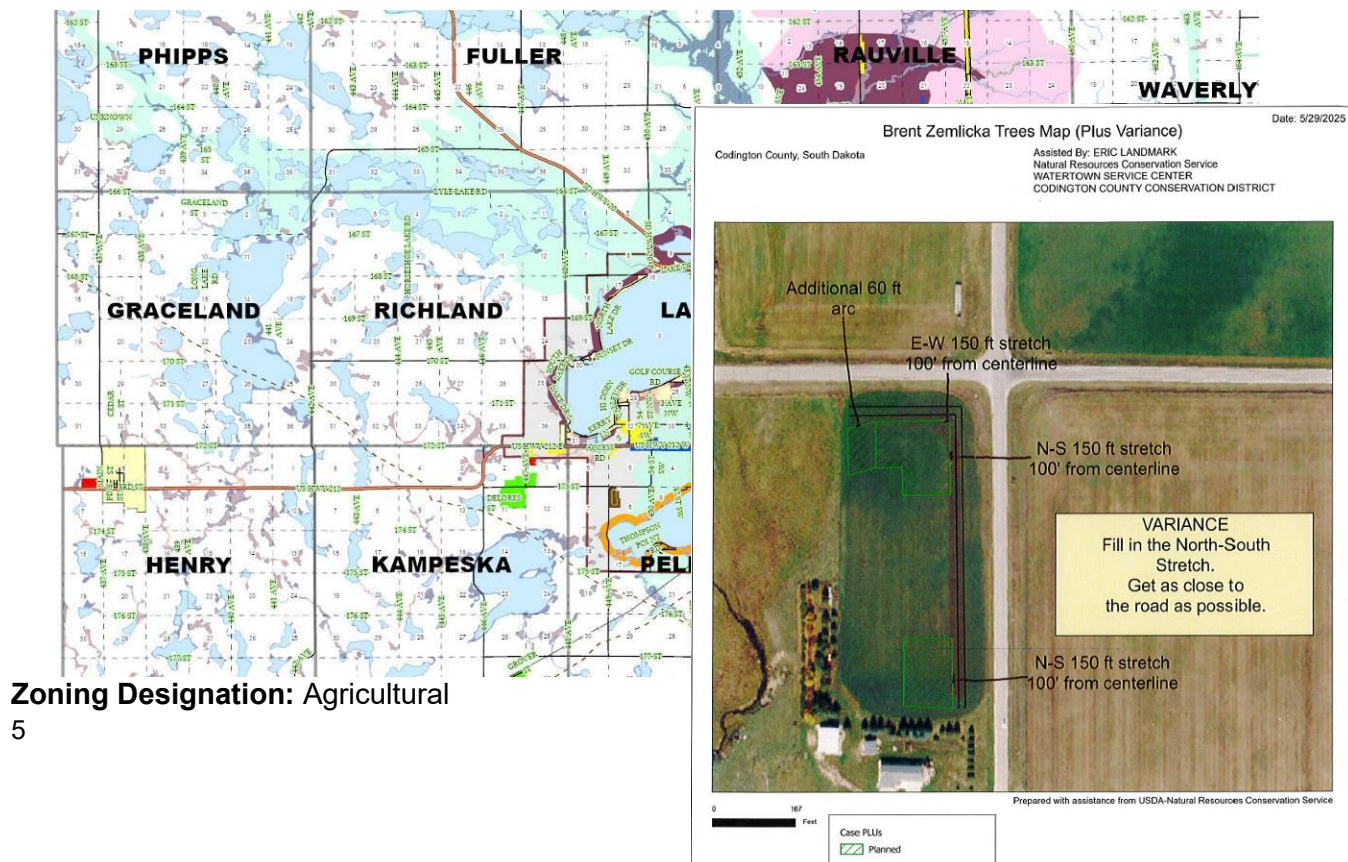
## **ITEM #2 VARIANCE**

**Applicant: Brent Zemlicka**

**Owner: Rodney and Brenda Zemlicka**

**Property Description:** The Northeast Quarter of Section 30, Township 118 North, Range 52 West of the 5<sup>th</sup> Prime Meridian, Codington County, South Dakota. (Rauville Township)

**Action Items – Variance – Shelterbelt Setback (South and West of right of way)**



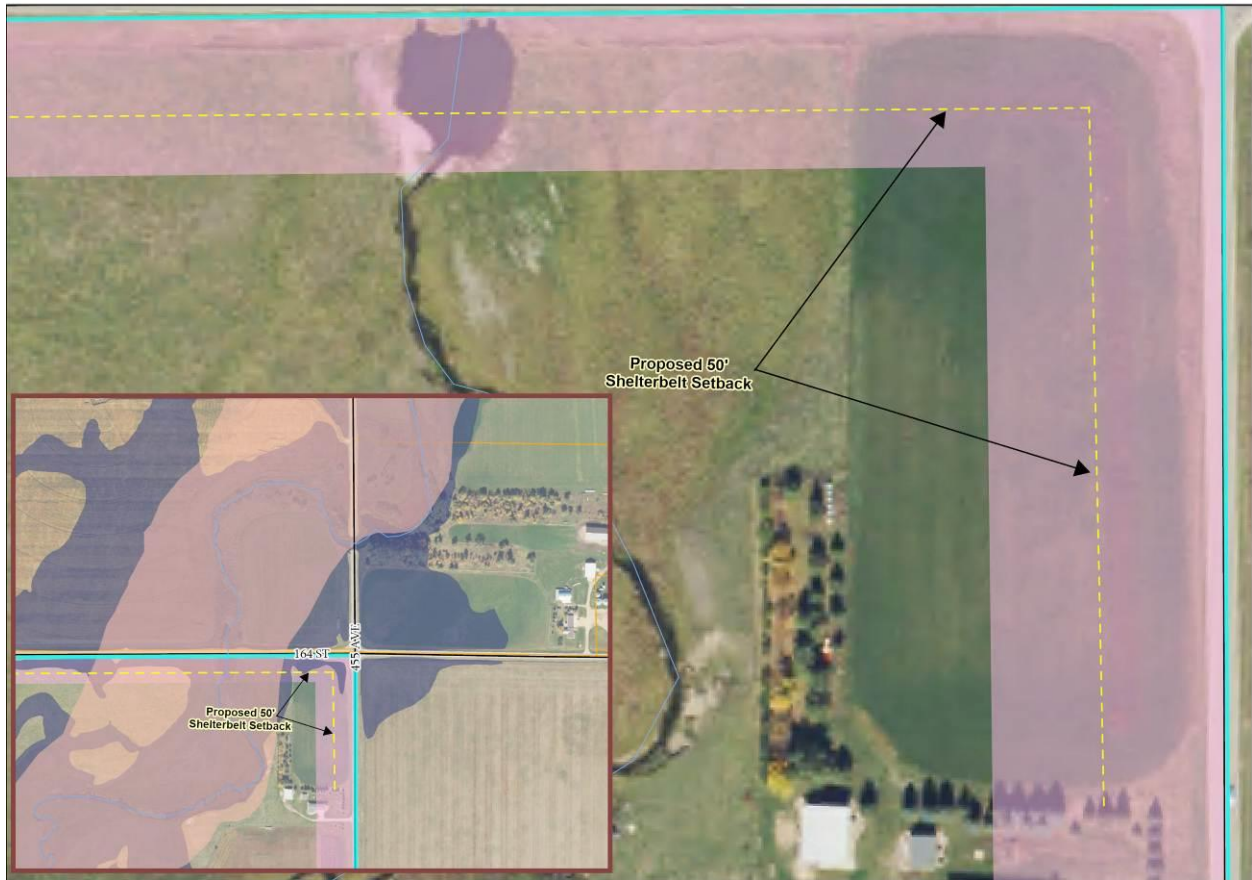
**Zoning Designation: Agricultural**

**Request:** The applicant seeks to plant a shelterbelt running parallel to and 50' from the 164<sup>th</sup> Street and 455<sup>th</sup> Avenue.

**History/Issue(s):**

1. Mr. Zemlicka lives on the above described parcel.
2. Mr. Zemlicka to plant multiple rows of trees (outside row of bushes) with assistance from the Codington County Conservation District.
  - a. The shelterbelt will be 98' wide and run parallel to 164<sup>th</sup> Street for 200' and parallel to 455<sup>th</sup> avenue for 615'.
3. Mr. Zemlicka has already planted a portion of this shelterbelt which complies with the zoning ordinance.
  - a. The rows of trees do not extend for greater than 150'. They have been planted at the intersection of this street. Some trees have been added immediately north of the building site as well.
4. Mr. Zemlicka's goal is to decrease on traffic noise from vehicles and rumble strips.
5. Both 164<sup>th</sup> Street and 455<sup>th</sup> Avenue have 50' right-of-way (from the center of the road.)
6. The zoning ordinance requires shelterbelts south of a right-of-way to be at least 100' from the right-of-way line (in reference to 164<sup>th</sup> Street)
  - a. The setback can be decreased to 50' on the south side of a right-of-way with consent from the road authority (highway superintendent); and
  - b. An existing shelterbelt is established to the north within one mile.
  - c. No shelterbelts are situated within a mile of this proposed shelterbelt (to the north)
7. The zoning ordinance requires shelterbelts west of a right-of-way to be at least 150' from the right-of-way line (in reference to 455<sup>th</sup> Avenue)
  - a. The setback can be decreased to 75' on the west side of a right-of-way with consent from the road authority (highway superintendent); and
  - b. An existing shelterbelt is located to the east within one mile.
  - c. Shelterbelts running perpendicular to and diagonally (along the railroad) are located less than a mile from this shelterbelt.
8. In the past the Board has allowed trees to be planted less than 50' where unique circumstances such as approval by the road authority, replacement of existing shelterbelts, or unique spacing.
9. The Sheriff's office does not see the planting of a shelterbelt as proposed as a safety concern at this intersection. (Traffic coming from the east is more susceptible to accident.)
10. The highway superintendent supports the ability of the applicant to place the closest row of the portions of the shelterbelt connecting the <150' stretches of trees at 75' from the right-of-way.

Zemlicka Variances  
Shelterbelt Setback (50' South; 100' West)



**Staff Summary and Recommendation:**

In the interpretation of the zoning officer, a row or rows of trees that do not extend more than 150' do not meet the definition of a shelterbelt; and therefore the existing tree plantings are not subject to the shelterbelt setbacks. Thus the request is in reference to how close the trees that will be planted to "fill-in" the shelterbelt are allowed to be to the road.

*Staff recommends splitting the question into two motions:*

**164<sup>th</sup> Street:**

Since there is no shelterbelt within 1 mile (to the north) of this proposed shelterbelt, staff recommends that any extension of the shelterbelt beyond 149' in length be made so as not to be parallel. Therefore, staff recommends denial of this portion of the variance.

**455<sup>th</sup> Avenue:**

Staff recommends that the request in reference to 455<sup>th</sup> be amended to allow the closest row of any addition trees to be no less than 75' from the 455<sup>th</sup> Avenue right-of-way.

Staff Recommendation

**Variance – 50' Shelterbelt Variance (164<sup>th</sup> Street):** The Board has the option to approve, deny, or postpone the request to extend this portion of the shelterbelt 50 feet from the 164<sup>th</sup> Street right-of-way line. *Approval would be based upon:*

1. Consent of the highway superintendent.
2. The small distance with which the shelterbelt will be extended (50')

○ *Denial would be based upon:*

1. The Board does not have the authority to grant the variance because the prescribed conditions to do so have not been met (no shelterbelt within 1 mile to the north of the shelterbelt);
2. The size and shape of the lot is not so unique to constitute hardship worthy of granting a variance.
3. Granting this variance would confer special privilege that is denied by this ordinance to other property in the district.

**Variance – 100' Shelterbelt Variance (455<sup>th</sup> Avenue):** The Board has the option to approve, deny, or postpone the request to extend this portion of the shelterbelt 50 feet (unless amended) from the 455<sup>th</sup> Avenue right-of-way line. *Approval would be based upon:*

1. Consent of the highway superintendent.
2. Shelterbelts are located less than one mile to the east of the proposed shelterbelt.

○ *Denial would be based upon:*

1. The size and shape of the lot is not so unique to constitute hardship worthy of granting a variance.
2. Granting this variance would confer special privilege that is denied by this ordinance to other property in the district.