

**April 17, 2023 BOARD OF ADJUSTMENT/ PLANNING COMMISSION
DEUEL COUNTY
STAFF REPORT**

Monday – April 17, 2023 – 6:30 p.m.

DEUEL COUNTY BOARD OF ADJUSTMENT

ITEM #1 VARIANCE

Applicant: Jeff Boer

Owners: Dorothy M Hayek Living Trust

Property Description: Lots 13-14 & SE 80' of NW 260' Lot 17 Clear Water Beach in Gov't Lot 6 in NE1/4 of the Section 4-114-47, Norden Township, Deuel County, South Dakota.

Action Items – Variance – (1103.06 Minimum Lot Area and Yard)

Zoning Designation: LP – Lake Park

Request: Applicant requesting a Variance to build a garage less than 30' from the road and easement.

Specifics of Request:

1. Jeff Boer is in the process of purchasing these lots from the Dorothy M Hayek Living Trust
2. The applicant would like to build a garage on the back side of these lots, which is Lot 17.
3. There is an existing 20' easement that runs between Lots 13-14 and Lot 17.
4. The existing cabin/house is located up to the 20' easement, and they would like to build the garage within the 30' from edge of the road and easement. The irregular lot size and the existing easement the proposed garage would be located up to the existing easement and approximately 14' from the platted road right-of-way (Lakeview Drive).

Ordinance/Variance History regarding this request:

1103.06 Minimum Lot Area and Yard

1. Each building shall be set back not less than fifty (50) feet from the right-of-way of State or Federal highways. For all other roads, the front yard setback shall at least thirty (30) feet from the edge of the road, but in no circumstance shall the structure be located within the right-of-way. Side yards shall have a ten (10) foot setback from the side yard property line. Exception: On those lots platted prior to June 8, 1976, which have a lot width of less than seventy-five (75) feet, each building shall have a side yard of not less than a distance equal to ten (10) percent of the lot width. Under no circumstances shall a building have a side yard of less than five (5) feet. Roof overhangs may infringe upon the side yard requirements no more than one and one-half (1.5) feet.
2. The Board has history of granting some variance requests in the Lake Park District of similar relaxation of rules. This situation is unique with the since the easement going through the middle of their property. (Kooima, Jelen, Pederson, etc.)
3. This property is located out of the floodplain.

Staff recommendation: If approved, staff recommendation - To grant the Variance to build and accessory building would be located up to the existing easement and and no closer than 14' from the edge of the platted road right-of-way (Lakeview Drive). All voted in favor and the motion carried. Please see Findings of Fact and Conclusions of Law on file with this application.

The Board could deny the Variance on the basis that the circumstances surrounding this request are not so unique in nature to necessitate granting special privilege to this applicant which is denied to other properties in this zoning district.

ITEM #2 VARIANCE

Applicant: Dorn Severtson

Owners: GW Cummings Cabin LLC

Property Description: Lot 5 The Elms in Gov't Lot 6 in NE1/4 of Section 4, T114N, R47W, Deuel County, SD.

Action Items – Variance – (1103.06 Minimum Lot Area and Yard)

Zoning Designation: LP – Lake Park

Request: Applicant requesting a Variance to build a house/deck/garage less than 50' from the high-water-mark.

Specifics of Request:

1. Severtson is part of GW Cummings Cabin LCC and they have owned this property cabin for many years
2. The applicant would like to build a new house/deck/garage less than 50' from the high-water-mark.
3. The new house/deck/garage will meet the 5' side setback.
4. The existing cabin/house is located approximately 25' from the high-water-mark, and they would like to build the new deck within the 50' from high-water-mark. The garage would be greater than 30' from the edge of the road.
5. The narrow lot size and the depth of the lot would make the house/deck/garage be located in the 50' from the high-water-mark which would be approximately 30' from the high-water-mark.
6. The site of view the existing house located to the east of this property is located closer to the high-water-mark than the Severtson current house.

Ordinance/Variance History regarding this request:

1103.06 Minimum Lot Area and Yard

1. Each building shall be set back not less than fifty (50) feet from the established normal high-water mark and or have a rear yard of fifty (50) feet.
2. Each building shall be set back not less than fifty (50) feet from the right-of-way of State or Federal highways. For all other roads, the front yard setback shall at least thirty (30) feet from the edge of the road, but in no circumstance shall the structure be located within the right-of-way. Side yards shall have a ten (10) foot setback from the side yard property line. Exception: On those lots platted prior to June 8, 1976, which have a lot width of less than seventy-five (75) feet, each building shall have a side yard of not less than a distance equal to ten (10) percent of the lot width. Under no circumstances shall a building have a side yard of less than five (5) feet. Roof overhangs may infringe upon the side yard requirements no more than one and one-half (1.5) feet.
3. The Board has history of granting some variance requests in the Lake Park District of similar relaxation of rules. This situation is unique with the since the easement going through the middle of their property. (Fieldsend 38' deck and house 50' from HWM, Kooima 29' cover porch from HWM, etc.)
4. This property is located out of the floodplain.

Staff recommendation: If approved, staff recommendation - To grant the Variance to build new house/deck/garage no closer than 30' from the high-water-mark. All voted in favor and the motion carried. Please see Findings of Fact and Conclusions of Law on file with this application.

The Board could deny the Variance on the basis that the circumstances surrounding this request are not so unique in nature to necessitate granting special privilege to this applicant which is denied to other properties in this zoning district.

ITEM #3 CONDITIONAL USE

Applicant: Jerae Wire - East River Electric Power Coop
Land Owner: Jeffrey & Christine Watt

Property Description: SE1/4 (to be known upon platting as Toronto Substation Addition in the SE1/4) of Section 26-113-50, Grange Township, Deuel County, South Dakota.

Action Items – Conditional Uses Permit – (Section 1101.04.12 Essential Services System & Section 1101.04.13 Wireless Telecommunication Tower)

Zoning Designation: A – Agricultural District

Request: Applicant/Owner requesting a Conditional Uses Permit to construct a substation station (Toronto Substation) and to erect 60' private internal communication tower.

History/Issue(s):

Specifics of Request

1. The applicant is requesting to construct a substation station (Toronto Substation) and to erect 60' private internal communication tower in AG District.

a) The new substation is needed by East River member system H-D Electric Coop to serve existing and expanding load in Deuel County, SD. A new load growth consists largely of new dairy addition in the area.

b) This new facility will also provide backup for the existing Dempster, Astoria and Clear Lake Substations for H-D. Sioux Valley Energy will take service from the new Toronto Substation to provide backup to their load in the area.

c) The applicant seeks to purchase this platted land from the Watt's if this conditional use permit is granted.

d) The applicant seeks to build security fence is approximately 65' from the east right-of-way which is a 50' county oil an approximately 65' from the southern 33' road right-of-way which is a township gravel road.

The proposed 60' tower would be approximately 107' from the east road right-of-way and approximately 79' from the southern road right-of-way.

e) While we are requesting the CUP for approval of the substation and the internal communication tower they would need and other permitting with the PUC or with the FAA since substation is below permitting size for voltage and the tower is 60' which is below FAA regulations.

f) We have also notified the impacted townships (Grange Township in Deuel) about your plans for the installation of the substation station about any approaches.

2. Deuel County Ordinance requires that a land owner go through the Conditional Uses Permit Process to construct a substation station (Toronto Substation) and to erect 60' private internal communication tower in the "AG" District.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. Essential services are listed as a Conditional Uses in the A – Agricultural District.

12. Essential services – Overhead or underground electrical, gas, steam or water transmission or distribution systems and structures, or collection, communication, supply or disposal systems and structures used by public for protection of the public health, safety or general welfare, including towers, poles, wires, mains drains, sewers, pipes, conduits, cables satellite dishes, and accessories in connection therewith. The Board attached the specific condition in accordance with its ability to add conditions to a conditional use permit.

2. Wireless Telecommunication Towers are listed as a Conditional Uses in the A – Agricultural District.

13. Wireless Telecommunication Towers and Facilities provided they meet requirements of Section 1216

- Since this tower is 60' tall majority of the Section 1216 does not apply because of height of the tower.

3. The Deuel County Comprehensive Land Use Plan states that the main goal is to accommodate growth and to minimize the disturbance of agricultural land.

4. This property is located out of the floodplain.

o This lot will get access off of 195th Street;

o They have efficient Off-street parking; ample room for parking

o They have efficient utilities;

o They have efficient Screening and Buffering; Applicant exceeds the setbacks and considering the location, no screening is necessary & chain link fence around the sites;

o They will have a sign; signage being located on the entrance gates approximately 2' x 4'; commercial grade work lights during emergency or work situation.

o They have have efficient yard space and other open space; General compatibility with adjacent properties and other property: Applicant's proposed use is generally compatible with the adjacent properties and there is one residence (house) approximately 1900' from the platted lot in the Agriculture Zoned District. .

Staff Summary

Conditional Use Permit – Essential Services & Wireless Telecommunication Tower: The application may be approved, postponed, or denied.

Staff recommendation:

Approval would be based on the applicant's ability to meet the requirements for a Conditional Use Permit described in ordinance - To grant the Conditional Uses Permit to construct a substation station (Toronto Substation) and to erect 60' private internal communication tower in AG District.

The Board determined that it is empowered under the section of the ordinance described in the application to grant the special exception and that granting the special exception will not adversely affect the public interest. Please see Findings of Fact and Conclusions of Law on file with this application.

ITEM #4 CONDITIONAL USE

Applicant: Cody Krause

Owner: Cody Krause Construction LLC

Property Description: Lot 1 Krause Addition in the N1/2NE1/4 of Section 28-115-49, Clear Lake Township, Deuel County, South Dakota.

Action Items – Conditional Uses Permit – (Section 1102.04 Contractors' Shop and Yard.)

Zoning Designation: CI – Commercial/Industrial District

Request: Applicant/Owner requesting a Conditional Uses Permit to construct and operate Contractors' Shop and Yard for construction business.

History/Issue(s):

Specifics of Request

1 The applicant is requesting to construct and operate Contractors' Shop and Yard for construction business in CI District.

a) The applicant purchases this platted land from Jogchum & Maartje Andringa.

b) The applicant petitioned to rezone Lot 1 Krause Addition to CI – Commercial/Industrial District from A – Agricultural District.

c) The lot is 6.6 acres which is more than the 5 acres that is required in the CI – Commercial/Industrial District.

d) The applicant seeks to build and office approximately 40' X 40' and shop approximately 90' X 208' which they have applied for variance later in the meeting from both front yards.

e) We have also notified the impacted townships (Clear Lake Township in Deuel) about your plans to construct and operate Contractors' Shop and Yard for construction business in CI District.

2. Deuel County Ordinance requires that a land owner go through the Conditional Uses Permit Process to to construct and operate Contractors' Shop and Yard for construction business in the CI – Commercial/Industrial District

Ordinance and Comprehensive Land Use Plan regarding this request:

1. Contractors' shops and yards is listed as a Conditional Uses in the CI – Commercial/Industrial District.

2. 1. On-premise Signs provided they meet the requirements of Section 1214 is listed as a Permitted Use in the CI – Commercial/Industrial District.

1. Signs shall be permitted in all zoning districts, subject to the following provisions:

a. Wall signs may be located anywhere on the wall of a building.

3. The Deuel County Comprehensive Land Use Plan states that the main goal is to accommodate growth and to minimize the disturbance of agricultural land.

- o This lot will get access off SD Hwy #22 (main access); will still have existing approach off 475th Ave which has an easement for access to Lot 3
- o They have efficient Off-street parking; ample room for parking
- o They have efficient utilities; Garage service and a dumpster
- o They have efficient Screening and Buffering; Applicant has existing trees to the west;
- o They will have a Sign; signage being located on structure which will be lighted or illuminated, they will have security lighting on the structure and can lighting on the office porch
- o They have efficient yard space and other open space; General compatibility with adjacent properties and other property: Applicant's proposed use is generally compatible with the adjacent properties and there is one residence (house) approximately 194' from the proposed structure in A – Agricultural District which is owned by Krause and will be rented out.

Staff Summary

Conditional Use Permit – to construct and operate Contractors' Shop and Yard for construction business in CI District. The application may be approved, postponed, or denied.

Staff recommendation:

Approval would be based on the applicant's ability to meet the requirements for a Conditional Use Permit described in ordinance - to construct and operate Contractors' Shop and Yard for construction business in CI District. To have on-site sign on the structure and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district. Contingent that the rezoning has no referendum or protest and the 20 day after the notice of adoption has passed.

The Board determined that it is empowered under the section of the ordinance described in the application to grant the special exception and that granting the special exception will not adversely affect the public interest. Please see Findings of Fact and Conclusions of Law on file

ITEM #5 VARIANCE

Applicant: Cody Krause

Owner: Cody Krause Construction LLC

Property Description: Lot 1 Krause Addition in the N1/2NE1/4 of Section 28-115-49, Clear Lake Township, Deuel County, South Dakota.

Action Items – Variance – (1102.05 Minimum Lot Area and Yard Regulations)

Zoning Designation: CI – Commercial/Industrial District

Request: Applicant/Owner a variance to build Contractors' Shop/Office less than 150' from the front yard and less than 100' from the rear lot line.

Specifics of Property/Request:

1. Krause purchased this land existing of approximately 6.6 acres last month.
2. The applicant would like to build Contractors' Shop/Office less than 150' from the front yard and less than 100' from the rear lot line.
3. The applicant would like to build the proposed 30' x 40' office with a 10' x 40' porch (40' x 40') approximate 111' from the north right-of-way (SD HWY #22) which is 75' ROW (so approximate 186' from the center) and to have the proposed 90' x 208' shop approximate 112' from the east road right-of-way (475th Ave) which is 33' ROW (so approximate 145' from the center) .
4. In the CI – Commercial/Industrial District it states on lots adjacent to a residential area, all buildings and incidental areas shall be located so as to provide a minimum side yard of one hundred (100) feet, which shall be landscaped on the side adjacent to the residential area. Which the building would have to 100' from the property line.
5. The applicant could move the shed more to the south which they would not need a variance to the SD HWY.

6. The applicant could ask for a variance for the structure to be closer than 100' from on lots adjacent to a residential area (which would be the rear lot line).
7. The applicant contacted the Clear Lake Township about some access to the 475th Ave.

Ordinance/Variance History regarding this request:

Section 1102.05 Minimum Lot Area and Yard Regulations

1. The Zoning Ordinance requires a minimum depth of the front yard shall be not less 150 feet.
2. Two (2) Front yards required on all corner lots & on lots adjacent to a residential area, all buildings and incidental areas shall be located so as to provide a minimum side yard of one hundred (100) feet, which shall be landscaped on the side adjacent to the residential area.
3. The board received requests for building a new structure within the 150 feet from the road right-of-way and in the past the board has granted a variance to build a structure no closer than 100' from the road right-of-way (SD HWY 22). (Deboer in 2019).

Staff Summary

Section 1102.05 Minimum Lot Area and Yard Regulations

The Board has to decide whether the issuance of allowing a build to be built less than 150' of a public road right-of-way's or less than from 100' property line adjacent to a residential area, would not produce undue hardship or be substantial detriment to adjacent property.

Staff is unable to identify any physical hardships on the property that would deprive the applicant of rights enjoyed by other property owners in the area on (in the same zoning district).

Staff recommendation:

Variance Permit – Section 1101.04 Area Regulations: The application may be approved, postponed, or denied. If approved, approval would be based on the board:

1. To build Contractors' Shop/Office no closer than 110' from the road right-of-way (SD HWY 22) and no closer than 110' from 475th Ave. It will not cause any greater snow or safety concern. This Variance does not apply to any new structures that are built on the property.

Denial would be based upon:

1. The Board could deny the Variance on the basis that the circumstances surrounding this request are not so unique in nature to necessitate granting special privilege to this applicant which is denied to other properties in this zoning district. A "no" vote, the property can be platted, but a deed restriction stating the structure that is too close cannot be rebuilt or added onto needs to be prepared and recorded.

Please refer to the Findings of Fact and Conclusions of Law on file with the application.

ITEM #6 VARIANCE

Applicants/Owners: Bryan & Ashley Lipp

Property Description: Lot 1 Southwest Addition in SW1/4SW1/4 of Section 27-115-49, Clear Lake Township, Deuel County, South Dakota.

Action Items – Variance – (1208 Shelterbelt Setback Requirements)

Zoning Designation: A – Agricultural District

Request: Applicants/Owners are requesting to plant trees within the 50' from the road right-of-way

Specifics of Property/Request:

1. The applicant applied for a variance are requesting to plant trees within the 50' from the road right-of-way.
2. They applicant would like to plant one row of trees approximate 9' feet from the road right-of-way, the second row of trees would be planted approximate 25' from the road right-of-way they would be horizontal from the road right-of-way.

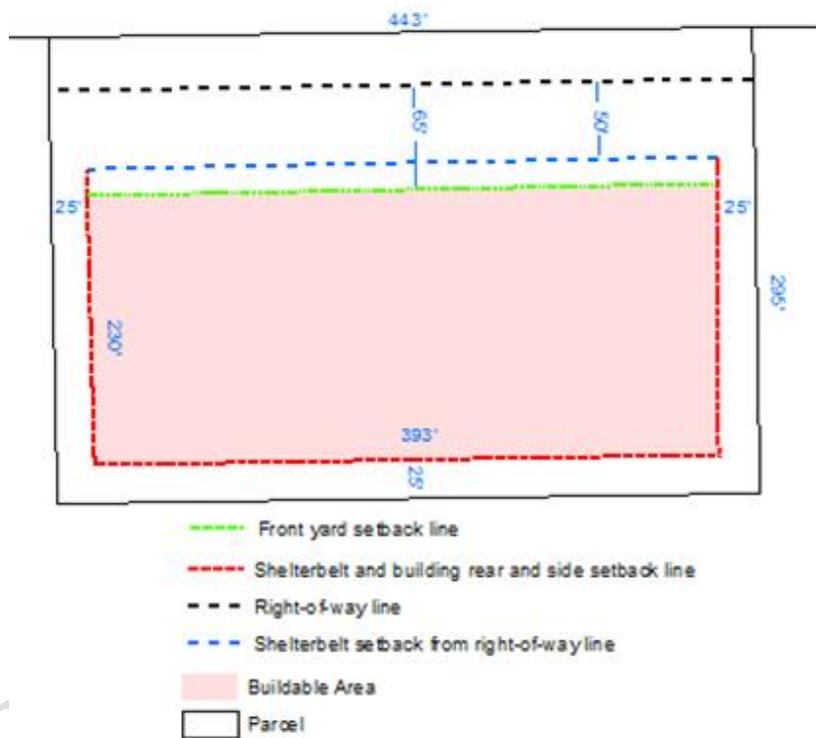
3. The applicant has existing windward row of trees (furthest east row of trees) located more than 150' from the road right-of-way.
4. This property is located east of a township road that has a 33' road right-of-way.
5. The applicant has received written permission from the Clear Lake Township to allow them to plant trees within the 50' from the road right-of-way setback. They allowed the trees to be planted approximate 9' from the ROW.

Ordinance/Variance History regarding this request:

Section 1208

1. A shelterbelt may be established within fifty (50) feet of the public road right-of-way line if the windward row of trees is established one hundred fifty (150) feet from the public road right-of-way line. Further, the shelter belt will consist of at least three (3) rows of trees with the windward row of trees consisting of shrubbery or tree species which aid in the containment of snow. See Figure 1208.1.
2. Shelterbelts around building sites shall not be established within fifty (50) feet of the right-of-way line. See Figure 1208.2 without written permission of Road Authority

Figure 1208.2



3. A recommendation from the Road Authority is required prior to the issuance of any variance of the shelterbelt setback from a public right-of-way.
4. The board received requests for variances to plant shelterbelts within the 150 feet (previous setback) from the road right-of-way and in the past the board has granted a variance to plant shelterbelts no closer than 50' from the road right-of-way (VanDyke in 2019), no closer than 25' from the road right-of-way (Harringa in 2020) & no closer than 10' and 15' from the road right-of-way (Moore in 2020)

Staff Summary

Section 1208. Shelterbelt Setback Requirements.

The Board has to decide whether the issuance of a shelterbelt around building sites shall not be established within fifty (50) feet of the right-of-way line. See Figure 1208.2 without written permission of Road Authority would not produce undue hardship or be substantial detriment to adjacent property.

Staff recommendation:

Variance Permit – Shelterbelt Setback Requirements (1208): The application may be approved, postponed, or denied. If approved, approval would be based on the board:

1. That the intent of a shelterbelt is to protect yard, lots, buildings, livestock and residences recreation and wildlife from wind. This shelterbelt would also prior screening with reference to this request and warrants relaxation of the road right-of-way setback requirements.

Denial would be based upon:

1. Granting this variance would confer special privilege that is denied by this ordinance to other property in the district.

The Board could deny the Variance on the basis that the circumstances surrounding this request are not so unique in nature to necessitate granting special privilege to this applicant which is denied to other properties in this zoning district. Please refer to the Findings of Fact and Conclusions of Law on file with the application

ITEM # 7 PLAT

**Applicant: Jerae Wire - East River Electric Power Coop
Land Owner: Jeffrey & Christine Watt**

Property Description: Lot 1 of Toronto Substation Addition in SE1/4 of Section 26, T113N, R50W, Deuel County, SD.

Request: To plat Lot 1 which contains 4.12 acres for transferring purposes.

Action Item –Plat approval.

ITEM # 8 PLAT

Applicants/Owners: Western Trust Company

Property Description: Gary Hoffman Addition in the S1/2 of Section 23, T113, R48W, Deuel County, SD.

Request: Plat Gary Hoffman Addition which contains 80.32 acres irregular parcel for transferring purposes. .

Action Item –Plat approval.

ITEM # 5 PLAT

Applicants/Owners: Scoot & LaNora Brandenburger

Property Description: Plat of Brandsrud FFH Addition in NW1/4 of Section 26, T117N, R49W

Request: Brandsrud FFH Addition which contains 3-acre parcel for transferring purposes to daughter and son-in-law to build a residence on

Action Item –Plat approval.