

**February 12, 2024 BOARD OF ADJUSTMENT/ PLANNING COMMISSION
DEUEL COUNTY
STAFF REPORT**

Monday – February 12, 2024 – 6:30 p.m.

DEUEL COUNTY BOARD OF ADJUSTMENT

ITEM #1 VARIANCE

Applicants/Owners: Hollywood Feeders, LLC/Gary Balbach Family Trust Feedlot, land owners, Chad A Olsen & Pamela J Olsen Trust Agreement, Sandra Balbach Trust and Daniel Rhody Living Trust, recently transferred to Plainview Dairy Exchange, LLC

Property Description: N1/2 of Section 17-113-49, Blom Township, Deuel County, South Dakota.

Action Items – Variance – (Section 1304.06 CAFO Requirements Setback and Separation Distance)

Zoning Designation: AG – Agricultural

Request: Applicant seeks an Extension of Expiration Date for a Variance that was granted on January 30, 2023, with issuance date of February 7, 2023, to expand their Class “A” Concentrated Animal Feeding Operation with less than 2,640’ from several private wells and an established residence in an Agriculture Zoned District.

Specifics of Request:

1. Plainview Dairy Exchange, LLC seek an Extension of Expiration Date for a Variance that was granted on January 30, 2023, with issuance date of February 7, 2023, to expand their Class “A” Concentrated Animal Feeding Operation with less than 2,640’ from several private wells and an established residence in an Agriculture Zoned District.
2. Plainview Dairy Exchange, LLC purchased the NE1/4 from Olsen’s on 1-9-2024 and the NW1/4 from Rhody on 1-17-24. The transfer of Letter of Assurances CAFO was signed and filed in the Zoning Office on 1-19-2024.
3. Plainview Dairy Exchange, LLC stated on December 28, 2023 they formally submit our request for an extension of the two existing variances for Hollywood Feeders. These variances are for the existing wells on Albert Moore’s property and for Dan Rhody’s residence – both of which have signed and recorded waivers on file, and both have also been previously approved by the Board of Adjustment. However, since the formal request they have purchased the property from Rhody. So, they would not need a variance extension for the Rhody property just the Moore property.
4. Plainview Dairy Exchange, LLC stated at this time we have completed a significant amount of work on the dairy expansion project. We have submitted our DANR State General Permit application (which is currently under review by DANR staff); we have completed a significant amount of work on groundwater exploration, as we have drilled a number of test holes, completed pump tests, and submitted a Water Rights Permit application to DANR (also currently under review by DANR staff); we have worked with DOT staff, private engineering firms, and County and Township officials to come up with an official plan for haul road improvements; and, we have obtained a building permit to start dirt work on a portion of the site as well.
5. Plainview Dairy Exchange, LLC stated because the work on many of these parts of the project is still ongoing or under review, we believe it would be best if we were able to extend the timeline for the existing variances for 1 more year while we work to complete these steps of the project in preparation for full construction in 2024.
6. A variance expiration date is 1 year which is February 7, 2024.
7. Plainview Dairy Exchange, LLC stated The purpose of the extension is essentially to sync up to the SEP/CUP and Variance timelines and to eliminate any question of whether inactivity in validates the variance.
8. **Staff recommendation: If approved, staff recommendation - To grant the Extension for the Variance that was granted on January 30, 2023, with issuance date of February 7, 2023, to expand their Class “A” Concentrated Animal Feeding Operation with less than 2,640’ from several private wells and an established residence in an Agriculture Zoned District. To sync up to the SEP/CUP and Variance timelines for 1 year and the expiration date is February 7, 2025. Please see Findings of Fact and Conclusions of Law on file with the 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 CONDITIONAL USE

Applicant/Owner: Plainview Dairy Exchange, LLC

Property Description: N1/2 of Section 17-113-49, Blom Township, Deuel County, South Dakota.

Action Items – Conditional Uses Permit – Section 1101.04.30 Accessory Agricultural Housing (Section 1244).

Zoning Designation: A – Agricultural District

Request: Applicant/Owner requesting a Conditional Uses Permit to construct employee housing – apartment buildings on their property.

History/Issue(s):

Specifics of Request

1. Plainview Dairy Exchange, LLC purchased the NE1/4 from Olsen's on 1-9-2024 and the NW1/4 from Rhody on 1-17-24. The transfer of Letter of Assurances CAFO was signed and filed in the Zoning Office on 1-19-2024.
2. The applicant is requesting to construct employee housing – apartment buildings on their property in AG District.
 - a) Plainview Dairy Exchange, LLC would like to build three (3) 30' x 135' apartment buildings for their employees on site of the Dairy.
 - b) These apartment buildings will consist of 8 rooms, 2 restrooms (4-toilets, 1-urinals and 3-sinks), 8 individuals showers with sinks. These apartment buildings will have separate kitchens, dining areas and washer/dryer areas.
 - c) The applicant seeks to build the apartment buildings approximately 70' south of the right-of-way (33') which is a 192 St and an approximately 75' west of the right-of-way (which they used 50' ROW for future if it gets designated a county road) which is a 473 Ave.
2. Deuel County Ordinance requires that a land owner go through the Conditional Uses Permit Process to construct an Accessory Agricultural Housing in the "AG" District.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. Accessory Agricultural Housing is listed as a Conditional Uses in the A – Agricultural District.

Section 1244. Accessory Agricultural Housing.

 - a. Any Class A CAFO, permitted before July 1, 2022 may submit a request for Accessory Agricultural Housing if such request is made prior to January 1, 2024.
 - b. Accessory Agricultural Housing is recommended to be located within the same section of land as the permitted Class A CAFO, but shall be no further than five (5) miles from the permitted Class A CAFO, provided the property is owned by the permit-holder.
 - c. The applicant is proposing a total of 3 dwellings with 24 dwelling units to house a total of 48 employees.
 - i. For CAFOs with Over 13,000 animal units, the maximum number of dwellings shall not exceed 16 and the maximum number of persons shall not exceed 48.
 - d. Minimum lot area shall consist of at least two (2) acres per accessory agricultural housing dwelling unit , including the residence of the agricultural employer if on the same lot.
 - i. The property consists of 388.57 acres.
 - e. Prior to occupying the accessory agricultural housing dwelling/shared dwelling, the applicant shall provide documentation of compliance with the most recently adopted version of the International Building Code in accordance with SDCL 11-10-6 for any dwelling structure with two (2) or more dwelling units.
 - f. Prior to occupying the accessory agricultural housing dwelling/shared dwelling, the applicant shall provide documentation of compliance with any South Dakota Administrative Rules 74:53. (septic tanks).
2. The Deuel County Comprehensive Land Use Plan states that the main goal is to accommodate growth and to minimize the disturbance of agricultural land.

3. This property is located out of the floodplain and the aquifers.
 - o These apartment buildings will get access with exiting approach off 473 Ave.
 - 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 exceeds the setbacks and considering the location, no screening is necessary;
 - o They will not have a sign; they will have security lights mounted on the apartments for the parking area.
 - o They have have efficient yard space and other open space; General compatibility with adjacent properties and other property: There is one residence (Albert Moore's old house and mobile home) approximately 276' (old house) from the proposed apartment the Agriculture Zoned District.

Staff Summary

Conditional Use Permit – Accessory Agricultural Housing: 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 for Accessory Agricultural Housing to construct employee housing –up to 16 dwellings and to house up to 48 employees on their property in AG District. If approved, staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant:

1. Based on the size of the existing permitted CAFO, the maximum number of dwellings is 16 and the maximum number of persons living in Accessory Agricultural Housing is 48 unrelated adults.
2. The applicant shall provide prior to occupying the accessory agricultural housing dwelling/shared dwelling, the applicant shall provide documentation of compliance with the most recently adopted version of the International Building Code in accordance with SDCL 11-10-6 for any dwelling structure with two (2) or more dwelling units.
3. The applicant shall provide documentation of compliance with any South Dakota Administrative Rules 74:53, prior to occupation of new accessory agricultural housing.
4. The dwelling/shared dwelling shall be removed or renovated into a single-family dwelling in the event the permit for the CAFO becomes void.
5. In the event the accessory agricultural housing dwelling/shared dwelling remains unoccupied for a period of one (1) year; or is not used in conformance with this Chapter, the accessory agricultural housing dwelling/shared dwelling shall be removed or with permission of the Board of Adjustment may be used for any use accessory to the CAFO.
6. 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 Deuel County Zoning Officer. If violations are substantiated, the Board of Adjustment may hold a hearing to consider revocation of this Conditional Use Permit.

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 Conditional Use Permit will not adversely affect the public interest. Please see Findings of Fact and Conclusions of Law on file with this application.

ITEM # 3 PLAT

Applicants/Owners: Kristi J Fischer

Property Description: Plat of Fischer First Addition in the NE1/4 Section 34, Township 116 North, Range 50 West of the 5th P.M., Deuel County, South Dakota

Request: To plat Lot 1 which contains 5.61 acres for transferring purposes.

Action Item –Plat approval.