

**August 22, 2022 BOARD OF ADJUSTMENT/ PLANNING COMMISSION
DEUEL COUNTY
STAFF REPORT**

Monday – August 22, 2022 – 6:30 p.m.

DEUEL COUNTY BOARD OF ADJUSTMENT

ITEM # 1 Variance

**Applicants: Dale & Kim Stroschein
Owners: Dale & Kim Stroschein Joint Trust**

Property Description: NE1/4 of Section 6-113-49, Blom Township, Deuel County, South Dakota

Action Items – Variance – (Section 1101.04 Front Yard)

Zoning Designation: AG – Agricultural

Request: Applicant requesting a Variance to build an house addition, garage, & deck less than 150' from the front yard.

Specifics of Request:

1. Stroschein is requesting a Variance to build an house addition, garage, & deck less than 150' from the front yard.
2. They want to build a house addition, garage, & deck to existing house less than 150' from the front yard. The house addition is approximately 122' from the ROW which is approximately 155' from the center of the road with a 33' ROW.

Staff recommendation: If approved, staff recommendation - To grant the Variance to build a house addition, garage, & deck to existing house, no closer than 120' from the road right-of-way. 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 SPECIAL EXCEPTION

**Applicant: Scott Stevens
Owner: SK Investment Trust**

Property Description: Lot 10 Lake Alice Shores in SW1/4 in Section 7-116-48, Lake Alice, Altamont Township, Deuel County, South Dakota.

Action Items – Special Exception – (1103.4.5 - Shoreline Alterations)

Zoning Designation: LP – Lake Park

Request: Applicants/Owners to alter the shoreline by adding on to the existing retaining wall within 35 feet of the high-water-mark on their property.

History/Issue(s):

1. The applicant is requesting to alter the shoreline within 35 feet of the high-water-mark by adding on to the existing retaining wall on their property.

- a. They removed the old retaining wall and built an additional 13' of retaining wall along their 40' shoreline and to add new retaining toward the lake along the south property line.
- b. They were grant a previous SEP for the existing retaining wall on November 8, 2021. The plan that was provided didn't include the 13' of retaining wall to the south and an new retaining wall going towards the lake and up to the adjoining property line.
- c. They did excavate behind the location of old wall to get proper geo-grid (wall fabric);
- d. They did put drainage rock behind the retaining wall;
- e. They did put 4" to 6" of black dirty on top of drainage rock (3/4" pee rock) and will be sodding any area along the lake disturbed at time of construction;
- f. The walls are approx. 21" high, the retaining wall will be approx. 14" deep;
- g. The retaining wall is constructed with different blocks: 6" high, 6' long, 12" long and 18' long all 12" wide;
- h. They did use erosion control to protect the lake;

2. Deuel County Ordinance requires that a landowner go through the Special Exception Process to alter the shoreline within 35 feet of the high-water-mark in the "LP" District.

Ordinance and Comprehensive Land Use Plan regarding this request:

- o This lot has an existing access off of Edgewater Drive which is maintained by Deuel County;
- o The site has room for off street parking;
- o They have efficient utilities; water is provided by Brookings-Deuel Rural Water, they are connected to the Lake Cochrane Sanitary District. They take their trash home. Electricity is provided by H-D.
- o They have efficient trees planted for Screening and Buffering;
- o They are not having any Signs;
- o They have have efficient yard space and other open space;

Staff Summary

Special Exceptions Permit – Shoreline alteration within 35 feet of the high-water-mark by adding 13' to the existing retaining wall that was granted prior: The application may be approved, postponed, or denied.

Staff recommendation:

Special Exceptions Permit –Shoreline Alterations (1103.4.5): The application may be approved, postponed, or denied. If approved, approval would be based on the board being empowered to issue the permit due to the proposal meeting the definition of a Shoreline Alteration and the applicant's ability to meet the requirements for a special exception described in ordinance.

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 #3 VARIANCE

Applicant: Scott Stevens
Owner: SK Investment Trust

Property Description: Lot 10 Lake Alice Shores in SW1/4 in Section 7-116-48, Lake Alice, Altamont Township, Deuel County, South Dakota.

Action Items – Variance – (Section 1103.5 – Area Regulations & Section 1103.8 Fence Requirements)

Zoning Designation: LP – Lake Park

Request: Applicant/Owner requesting a Variance to add on to existing retaining wall and fence less than 50' from the high water-mark.

Specifics of Request:

1. Stevens requesting a Variance to add on to existing retaining wall and fence less than 50' from the high water-mark.
2. Stevens would like to build approximate 5' high stair stepping to 1' by 36' long retaining wall which approximately 14' from the high-water-mark. The existing retaining walls is approximate 50' from the high-water-mark and will be approximate 1' from the side lot lines.
3. The rod iron fence that is approximate 6' high, approximate 35' from the high-water-mark and approximate 1' or less from the neighbor property line with permission from the neighbor. (updated ordinance will state – fence needs to 1' from property line unless you have neighbors' permission old ordinance didn't stated the distance from the property line).

Staff recommendation: The Board could approve the Variance on the basis that similar variances have been granted in the past. If approved, staff recommendation - To grant the Variance to build a 5' high stair stepping to 1' by 36' long retaining wall which approximately 14' from the high-water-mark. To build a rod iron fence that is approximate 6' high, approximate 35' from the high-water-mark and approximate 1' or less from the neighbor property line with permission from the neighbor. To follow the landscaping plan that was provided to the Zoning Office.

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 # 4 SPECIAL EXCEPTION

Applicant: Scott Stevens
Owner: SK Investment Trust

Property Description: Lot 10 Lake Alice Shores in SW1/4 in Section 7-116-48, Lake Alice, Altamont Township, Deuel County, South Dakota.

Action Items – Special Exception – (1103.4.9 – Storage)

Zoning Designation: LP – Lake Park

Request: Applicants/Owners to build a storage shed on their property.

History/Issue(s):

1. The applicant is requesting to build 10' x 16' personal storage shed.

a) Location of storage shed would need to apply for a variance for the side and high-water-mark setback requirements. Which they are applying for a variance at this meeting.

2. Deuel County Ordinance requires that a landowner go through the Special Exception Process to have storage in the "LP" District.

Ordinance and Comprehensive Land Use Plan regarding this request:

- o This lot has an existing access off of Lake Alice Drive which is maintained by property owners;
- o The site has room for off street parking;
- o They have efficient utilities; water is provided by Brookings-Deuel Rural Water, they have a septic tank. They take their trash home. Electricity is provided by H-D.
- o They have efficient trees planted for Screening and Buffering;
- o They are not having any Signs;
- o They have have efficient yard space and other open space, the shed is approximately 350' from the road, approximately 19' from the high water mark and approximately 5' from the side lot line;

Staff Summary

Special Exceptions Permit – To build a storage shed contingent that a variance is approved for the side and high-water-mark setback requirements: The application may be approved, postponed, or denied.

Staff recommendation:

Special Exceptions Permit – To build a storage shed ((Storage (1103.4.9)) contingent that a variance is approved for the side and high-water-mark setback requirements: The application may be approved, postponed, or denied. If approved, approval would be based on the board being empowered to issue the permit due to the proposal meeting the definition of a Storage and the applicant's ability to meet the requirements for a special exception described in ordinance.

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 #5 VARIANCE

**Applicant: Scott Stevens
Owner: SK Investment Trust**

Property Description: Lot 10 Lake Alice Shores in SW1/4 in Section 7-116-48, Lake Alice, Altamont Township, Deuel County, South Dakota.

Action Items – Variance – (Section 1103.5 Area Regulations)

Zoning Designation: LP – Lake Park

Request: Applicant requesting a Variance to move in a storage shed less than 50' from the high water-mark and less than 10' from the side property line.

Specifics of Request:

1. Stevens is requesting a Variance to move in a storage shed less than 50' from the high water-mark and less than 10' from the side property line.

2. They want to build the storage shed less than 50' from the high-water-mark and less than 10' from the side property line. The storage shed would be approximate 19' from the high-water-mark and approximately 5' from the side property line.

Staff recommendation: If approved, staff recommendation - To grant the Variance to move in a storage shed no closer than 18' from the high water-mark and no closer than 5' from the side property line. 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 #6 VARIANCE

Applicants/Owners: Loren & Carole Femrite

Property Description: is Lots 4 & 5 Thokola Beach in Gov Lot 1 of the Section 8-114-47, Lake Cochrane, Norden Township, Deuel County, South Dakota.

Action Items – Variance – (Section 1103.5 Area Regulations)

Zoning Designation: LP – Lake Park

Request: Applicants/Owners to have an existing deck less than 50' from the high water-mark.

Specifics of Property/Request:

1. Femrite owned this parcel for many years and received a Special Exception for shoreline alterations on July 11, 2002 to repair the shoreline, install retaining walls where the boat house had been removed and to construct a 11' x 16' deck.
2. The DOE office noticed on the property listing that there was a newer deck in the pictures and questioned the Zoning Office about permits. There was no permits for a deck since 2002.
3. A SEP that is granted but not used within two (2) years shall be considered invalid unless an extension has been requested and approved by the Board of Adjustment. Which wasn't done.
4. The Zoning Office contacted Femrite and they stated that it took them years to figure out the deck dimensions and in 2020 they built the deck.
5. This deck is located less than 50' from the high-water-mark, it is approximate 13' from the high-water-mark and approximate 10' from the side property line.

Ordinance/Variance History regarding this request:

Section Section 1103.5 Area Regulations requires the setback to be 50' from the high-water-mark. In the past the board had approved in the past a deck no closer than 39' from the high-water-mark.

Staff recommendation: If approved, staff recommendation - To grant the Variance deck is located less than 50' from the high-water-mark, it is approximate 13' from the high-water-mark and approximate 10' from the side property line. 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 #7 VARIANCE

Applicant/Owner: Wells Trust

Property Description: N1/2N1/2 Less Wells Addition of the Section 32-116-49, Altamont Township, Deuel County, South Dakota.

Action Items – Variance – (Section 1101.04 Front Yard)

Zoning Designation: AG – Agricultural

Request: Applicant requesting a Variance to move in an accessory building less than 150' from the front yard.

Specifics of Request:

1. Wells are requesting a Variance to move in an accessory building less than 150' from the front yard
2. They want to move in a 12' x 24' accessory shed for Ryan's office and storage. The accessory build is approximately 109' from the ROW which is approximately 142' from the center of the road with a 33' ROW.

Staff recommendation: If approved, staff recommendation - To grant the Variance to build move in accessory building no closer than 105' from the road right-of-way. 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 #8 VARIANCE

Applicant/Owner: Wells Trust

Property Description: N1/2N1/2 Less Wells Addition (to be known upon platting as Ryan Wells Addition) of the Section 32-116-49, Altamont Township, Deuel County, South Dakota.

Action Items – Variance – (Section 1101.04 Area Regulations)

Zoning Designation: AG – Agricultural

Request: Applicant/Owner Applicant seeks a variance to plat a parcel of land, to retain existing structures that are closer to the road right-of-way than what the ordinance allows.

Specifics of Property/Request:

1. The Wells Trust is wanting to transfer the Ryan Wells Addition containing 11.02 acres to Ryan Wells which is family.
2. The property has currently an older shed which is approximately 44 feet from the road right-of-way which is 33 feet and the house is approximately 153 feet from the road right-of-way which meets the setback of 150 feet.
3. This property is located west side of a township road that has a 33 feet road right-of-way and located south side of a county road that has a 50 feet road right-of-way.

Ordinance/Variance History regarding this request:

Section 1101.04

1. The Zoning Ordinance requires a minimum depth of the front yard shall be not less 150 feet.
2. The board received requests for plat a parcel of land, to retain existing building that is closer to the new property line than what the ordinance allows within the 150 feet from the road

right-of-way and in the past the board has granted to plat a parcel and to retain the existing house that is approximately 101 feet from the road right-of-way. This Variance doesn't apply to any new structures that are built on the property.

Staff Summary

Section 1101.04

The Board has to decide whether the issuance of a plat a parcel of land, that retains existing structures less than 150' of a public road right-of-way 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. Platting this property with an existing shed that is approximate 44 feet and from the road right-of-way will not cause any greater snow or safety concern.

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 # 9 PLAT

Applicant/Owner: Wells Trust

Property Description: Ryan Wells Addition of the Section 32-116-49, Altamont Township, Deuel County, South Dakota.

Request: Plat of 11.02 acres for transferring purposes.

Action Item –Plat approval.

ITEM # 10 PLAT

Applicant/Owner: Haas Family LLC

Property Description: Lot 2 in Lot 1 of Pheasant Ridge Addition of the Section 12-116-49, Altamont Township, Deuel County, South Dakota.

Request: Plat of 3.2 acres for transferring purposes.

There is an old shed that is rough condition that is within the setback of the south property line, per the Haas's they are going to remove that shed/converted into a greenhouse in the next couple of months. The Zoning Officer didn't request a variance for the shed/greenhouse since the shed is going to be removed.

Action Item –Plat approval.

ITEM # 11 STATES ATTORNEY

Applicant: Dennis Evenson

Owner: Tyler Grong, Evan Grong & Aron Grong

Property Description: Lots in Shady Beach Addition in Gov Lot 7 of Section 4, Township 114 North, Range 47 West of the 5th P.M., Lake Cochrane, Norden Township, Deuel County, South Dakota.

Action Items – County Platting

Zoning Designation: LP –Lake Park

Request: Applicants/Owners seeks a road easement along Co. Rd 516 for existing garage which is located in the existing road right-of-way.

Specifics of Property/Request:

1. Dennis Evenson stated in a letter to the multiple courthouse offices that during the quiet title proceedings for the Rhea's (Shady Beach), the surveyor indicated a 25 foot error on the west boundary. The subsequent survey and plat follows the as built and maintained property lines.
2. Survey shows that the structures are built in the ROW and close or over the property line since the property lines shift northwest.
3. In September 17, 2004 there was a survey done by Banner, which shows that the Grong structure was built in the ROW. Along with other structures located to the north. This survey also shows a shift of property lines to the north of 25'.
4. The buildings are built based on lines of possession rather than the lot lines for some reason. Which will cause some problems in the zoning regulations

ITEM # 12 DISCUSSION

Theisen presented the Planning Commission and the Deuel County Commissioners the updated zoning ordinance that was provided by Todd Kays. Kays suggested three alternative options for the the shoreline alterations section. The Zoning and Commissioners need to decided on which option.

Theisen stated that she sent out tow expired building permits this last month.