

Monday August 12, 2024

The Deuel County Zoning Board met on Monday August 12, 2024 at 6:30 p.m., in the Commissioner's Room of the Courthouse in Clear Lake. Those present were members, Dennis Kanengieter, Jay Grabow, Mike Dahl, Mike Lammers, Kevin DeBoer, States Attorney Craig Evenson, Zoning Officer Jodi Theisen and other members of the public.

Chairman Dennis Kanengieter called the meeting to order.

The minutes from July 8, 2024 meeting were discussed. Motion by DeBoer, seconded by Lammers, to approve the amended July 8, 2024 minutes. All voted in favor and motion carried.

Kanengieter asked if the board, or any staff member, had anything to add to the agenda with none being offered.

Kanengieter asked the public if they would like to talk during the public comment session. Some of the public stated they would like to talk during that time.

Kanengieter asked for any seated board member if they think they need to recuse themselves from any discussion topics on the agenda, or from voting on an agenda item with no board member responding.

Motion by Dahl, seconded by DeBoer, to approve the August 12, 2024, Agenda. All voted in favor and motion carried.

Motion by Dahl, seconded by Lammers to adjourn as the Deuel County Planning Commission and convene as the Deuel County Board of Adjustment. Motion passed unanimously.

#### ITEM ONE

Motion by Dahl, seconded by DeBoer to approve a Variance to allow the existing grain hoppers to remain in their current location approximately 30' from the western property line in the Commercial/Industrial District request by the applicant/owner, Olerud Enterprises LLC on their property Block 1 Agri Partners Second Addition in NW1/4NE1/4 of the Section 28-115-49, Clear Lake Township, Deuel County, South Dakota

Theisen stated that Olerud Enterprises LLC are seeking a Variance for existing grain hoppers approximately 30' from the property line to the west, which is less than 50' in a Commercial/Industrial District. The applicant is requesting a 20' variance from the required 50' side yard setback, which would permit the hoppers to be placed 30 feet from the property line instead. The grain hoppers were installed in 2022. The setback error occurred because the zoning officer provided incorrect setback information, referencing Agricultural setbacks instead of those required for Commercial/Industrial zoning. The applicant has historically complied with setback requirements and this situation arose due to the misinformation provided.

The board opened the meeting for public comments, there was no public comment.

Motion passed unanimously Grabow was absent for the vote. Please see Findings of Fact and Conclusions of Law on file with this application.

#### ITEM TWO

Motion by DeBoer, seconded by Dahl to approve a Variance to build a new house 50' from the the high-water-mark and the deck no closer than 30' from the high-water-mark request by the applicant/owner, Guy Jeremiason on his property Lot 19 Bostic Beach in Gov Lot 5 in NW1/4 of the Section 4-114-47, Lake Cochrane, Norden Township, Deuel County, South Dakota.

Jeremiason seeks a Variance to remove old house and build a new house with a deck approximately 34' from the high-water-mark which is less than 50' in a Lake Park District. Jeremiason is requesting a 16' variance from the required 50' high-water-mark setback, which would permit the deck to be placed 34' from the high-water-mark and the house approximately 50' from the high-water-mark

which would meet the setback. The new house/deck will meet the 5' side setback (approximately 5' to the right and 10' to the left) and will be more than 30' from the edge of the road (approximately 107').

Summarize the locations of the neighboring houses/decks relative to the high-water mark: Meyer's Deck: Approximately 34' to 41' from the high-water mark. Tekrony's Deck: Approximately 27' from the high-water mark, which is closer to the high-water mark compared to Meyer's deck.

Craig Fields, representing Jeremiason, stated if they were to build the deck 50' from the high-water mark, it would be the farthest from the high-water mark compared to both Meyer's and Tekrony's decks, indicating that Jeremiason's house would be located behind his neighbors.

The board opened the meeting for public comments, there was no public comment.

Motion passed unanimously Grabow was absent for the vote. Please see Findings of Fact and Conclusions of Law on file with this application.

### ITEM THREE

Motion by Grabow, seconded by DeBoer to approve a Conditional Use Permit Pursuant to Section 1101.04.19 – Game Lodge request by the applicant/owner, BlackFork LLC, to build game lodges and other buildings in the Agricultural District on their property Jenson Place Addition in SW1/4 of Section 6-114-48, Norden Township, Deuel County, South Dakota. Approval will be subject to the applicant and owner signing a Letter of Assurance.

Daniel Scott, representative for BlackFork, stated that BlackFork LLC/Ommen family has owned this property for many years and they platted out 27.74 acres which is Jenson Place Addition in SW1/4 and they would like to build two lodges on this property. BlackFork LLC owns and operates a distillery 1 ½ miles to the east of this property. They would like to build one lodge with 3 levels that is approximately 79' x 51' which would contain garage, kitchen, laundry, living room, bathrooms and approximate 4 bedrooms. The 2nd lodge is approximately 67' x 88' which would contain garage, porch, kitchen, laundry, living room, bathrooms and approximate 6 bedrooms. The property will be used for lodging family, friend, customers or guests of BlackFork LLC and the distillery with or without meals. The intent is for people to bring their own food and prepare it at the site if they choose too.

Theisen stated the applicant has signed the Right to Farm Covenant for this property. Theisen also informed the board that in any district, only one (1) structure housing is permitted or permissible principal use may be erected on single lot, provided that yard and other requirements are met and no accessory building may be used for residential dwelling purposes at any time.

Theisen stated that this lot will have access off of 185th St which is maintained by Norden Township, the site has room for off street parking, efficient utilities; and they will have a 18" X 18" Black BFF-Pronghorn sign (made of cedarwood) along with masonry posts on 185TH ST entrance, no intent for Screening and Buffering at this time, and the site has efficient yard space and other open space.

Theisen reviewed the Staff Report and all the regulations, BlackFork LLC ("Applicant") must follow and Gordon Ommen will sign a Letter of Assurance agreeing to the following conditions:

1. The Applicant shall be permitted for Game Lodge: to build game lodges and other buildings on the property.
2. The Applicant shall be aware of and remain in compliance with, applicable South Dakota Codified Law and regulations.
3. In the event the Game Lodge permit becomes void, or the owner chooses to pursue other zoning arrangements in conformity with applicable Deuel County zoning code, the structure identified on submitted plans as "Lodge Building 2" would necessarily require, due to its relative proximity to "Lodge Building 1," future conversations and considerations with the Deuel County Zoning Office, to arrive at reasonable and appropriate new zoning status. The potential options

could include attempting to qualify Lodge Building 2 as: (a) a permitted use site-built single-family dwelling; (b) a permitted use additional single-family farm dwelling under the "Intensity of Use" code criteria; (c) a permitted residence if re-platting as a separate lot met the minimum lot size of three (3) acres code requirement; (d) a permitted use if renovated into a qualifying non-single-family dwelling; or (e) other potential arrangement as considered and approved by the Deuel County Zoning Office. In such cases, the property owner will work closely with the Deuel County Zoning Officer, and the commission, board or other delegated party.

4. In the event "Lodge Building 2" is separated from "Lodge Building 1," said separation shall be done in a matter consistent with Deuel County's subdivision and zoning ordinance. Further, the structure may only continue as an approved "Game Lodge" structure if the new owner(s) sign a similar letter of assurance agreeing to the same requirements of the originally issued Conditional Use Permit.

5. Any failure to comply with the terms of this Letter of Assurance 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 opened the meeting for public comments, there was no public comment.

Motion passed unanimously. Please see Findings of Fact and Conclusions of Law on file with this application.

#### ITEM FOUR

Motion by Dahl, seconded by Grabow to approve a Conditional Use Permit Pursuant to Section Section 1101.04.27 – Target/Shooting Range request by the applicant/owner, BlackFork LLC, to operate a private target/shooting range contingent that they receive approval letters from the adjoining land owners, Hamann Family Farms LLC and John & Andrea VanDyke, in the Agricultural District on their property Gov Lot 1 Less E1231.5' N1070' & Gov Lot 2 Less Van Dyke Addition of Section 4-114-48, Norden Township, Deuel County, South Dakota.

Daniel Scott, representative for BlackFork, stated it is a 34-acre parcel that is well within stated and reasonable measures of setbacks - from public roads; property lines; front, rear and side setbacks; nearest buildings on neighboring properties; and finally, any reasonable measure of noise or projectile travel. The topographical "lay of the land" of the subject parcel is such that we believe it has natural features that make it a reasonable choice for our use; its overall size and backdrop are positive aspects. It is unconstructed, in that it has no building or structure of any type; and though we have no present plans for building structures on the premises, in the event we were to wish to build a shade stand, or a shooting platform, or a small storage building, etc., we would of course communicate with you, reference the DC zoning code, and follow the law. At the outset, we would be bringing the clay pigeon throwing-type device onto the parcel when folks wished to practice or target shoot, which are often either attached to a small piece of plywood and/or hand-held products that sling the clay pigeon into the air. The users of this site will be family, friends, customers or guests; they well understand the importance of gun safety, risk of harm and damage that gun fire creates, gun and ammunition handling, other rules of use and operation, and overall awareness and respect for the environment and surrounding property, landowners and animals in the area, if any.

BlackFork LLC owns and operates a distillery ½ mile to the west and 1 mile to the south of this property. They just applied for a game lodge ½ mile to the west, 1 mile to the south 3 ½ miles west of this property.

Discussion was held about the definition in the ordinance states: Range (Target/Shooting). Shall be defined as an area for the discharge of weapons for sport under controlled conditions where the object of the shooting is an inanimate object such as, but not limited to, paper, metal or wooden targets. The term range includes archery ranges. This term only applies to commercial ranges or ranges open to the public.

Scott stated he visited with SD GFP and they state they could have a shooting range on their property and it is not a commercial shooting range. The Board clarified that the shooting range in question would include customers or guests of the distillery. This would categorize it as a commercial shooting range due to the presence of guests and the concentration of activities in one area. The Board suggested utilizing the Deuel County Isaac Walter League shooting range as an alternative. This range is located relatively close to their property and could serve as a suitable option for their needs and it would meet their requirements while adhering to regulatory classifications.

Theisen stated that this lot will have access off of 184th St which is maintained by Norden Township, the site has room for off street parking, no present plans for building structures on the premises; they will have an 18" X 18" Black BFF-Pronghorn sign (made of cedarwood), no intent for Screening and Buffering at this time, and the site has efficient yard space and other open space.

The board opened the meeting for public comments, there was no public comment.

Kanengieter called for a roll call vote; DeBoer-no, Lammers-yes, Grabow-yes, Dahl-yes, and Kanengieter -yes and the motion carried. Please see Findings of Fact and Conclusions of Law on file with this application.

Motion by Grabow, second by DeBoer, to recess the Board of Adjustment and reconvene as Planning Commission. Motion passed unanimously.

#### ITEM FIVE

Motion by Grabow, second by DeBoer, to recommend approval to the Board of County Commissioners the Plat of Frensko Addition in the SW1/4 of Section 23, Township 116 North, Range 50 West of the 5th P.M., Deuel County, South Dakota. Motion passed unanimously.

Motion by Grabow, second by Kanengieter, to recess the Planning Commission and reconvene as Board of Adjustment . Motion passed unanimously.

Kanengieter opened the meeting for public comment.

Mike Fieber informed that he had visited with other municipalities except Clear Lake and how they felt about large CAFOs and setbacks and they would like a setback of 4 to 5 miles from them.

Theisen discussed with the board about potential changes to setback regulations for CAFOs, potentially prompted by a request from the Deuel County Commissioners. The discussion revolves around adjusting setback distances and possibly introducing a tiered approach based on the number of animal units for residences for upcoming CAFO applications. Importantly, these proposed changes would not impact any current applications but would rather set a framework for future ones.

The board did some discussion about other counties' setback and they talked about increasing the setback to two miles for 7,500 -10,000 animal units from established residences & churches, businesses and commercially zoned areas and 4 miles for over 10,000 animal units. Theisen provided a table from the information the board provided her from the July 8, 2024 meeting.

1. **Proposed Changes to Setback Regulations:** There was a proposal to adjust setback distances for CAFOs based on the number of animal units: (amended by adding language in bold and underline and removing strikeout language)

- Number of Animal Units: 5,000 to ~~7,500~~ **7,499** Animal Units
  - Established Residences<sup>2,3</sup> setback - ~~3,960 feet~~ **5,280 feet**
  - Churches, Businesses and Commercially Zoned Areas setback - ~~3,960 feet~~ **5,280 feet**
- Number of Animal Units: ~~Over 7,500~~ **to 9,999** Animal Units
  - Established Residences<sup>2,3</sup> setback - ~~5,280 feet~~ **10,560 feet**
  - Churches, Businesses and Commercially Zoned Areas setback - ~~5,280 feet~~ **10,560 feet**
  - Incorporated Municipality Limits<sup>3</sup> setback - ~~8,800~~ **7,700** feet plus 440 feet for each additional 1,000 animal units over ~~10,000~~ **7,500** animal units

- **Number of Animal Units: Over 10,000 Animal Units**
  - Established Residences setback - **21,120 feet**
  - Churches, Businesses and Commercially Zoned Areas setback - **10,120 feet**
  - Incorporated Municipality Limits<sup>3</sup> setback - **17,600 feet plus 440 feet for each additional 1,000 animal units over 10,000 animal units**
- At the bottom of Table 13404.6.2
  - **7 The Board of Adjustment may require a greater setback if the well is upgradient and lesser setback if the well is downgradient from the concentrated animal feeding operations exceeding 7,499 animal units. This may be used to change the setback from the CAFO to a well or public water supply.**
- Section 1304. Concentrated Animal Feeding Operation Control Requirements.
  - 6. Required Setbacks and Separation Distance for New Class A, B, C, and D, concentrated animal feeding operations and those existing, non-permitted concentrated animal feeding operations expanding into a Class A, B, C, or D Concentrated animal Feeding Operations after **November 15, 2022 October 1, 2024**. See Table 1304.6.2.
  - 7. Exemptions to Separation and/or Setback Distance Requirements
    - f. All Concentrated Animal Feeding Operations in operation prior to **July 1, 2022 October 1, 2024** which do not comply with the required minimum setback/separation requirements, but continue to operate, and are not expanded in a manner which will result in the one of the following examples are exempt from the suggested separation distance
      - i.. Example 1: A Class D CAFO expands to a Class A or B CAFO
      - ii. Example 2: A Class B CAFO expands to a Class A CAFO.
      - iii. Example 3: A Class A CAFO expands by 10% of the number of animal units
    - Provided, that the expansion does not further encroach the setback/separation distance existing on **July 1, 2022 October 1, 2024**. See Figure 1304.7.
    - g. Any Concentrated Animal Feeding Operation in operation as of **July 1, 2022 October 1, 2024** which does not comply with the suggested minimum setback/separation distance requirements is allowed to be replaced in the event of a calamity without obtaining a variance. Provided, that the replacement does not further encroach the setback/separation distance existing at the time of the calamity. See Figure 1304.7.

2. **Next Steps:** To set a joint hearing with the Deuel County Planning Commission and the Deuel County Commissioners to amend the zoning ordinance Section 1304.6.2 Minimum Separation Distances and Setbacks and other sections in relation to this section . To publish a public notice for that hearing.

The board did some discussion about Public and Private Utilities in the Commercial/Industrial District. Theisen reported there are no existing setback or DBA regulations for public and private utilities in the Commercial/Industrial District. After reviewing ordinances from other counties, Theisen noted that Deuel County's ordinance does not include these regulations. The Board proposed adding a noise provision to the ordinance, stipulating that noise levels should not exceed 45 DBA from a residence. However, this provision could be waived by the landowner.

1. Next Steps: Set a joint hearing with the Deuel County Planning Commission and the Deuel County Commissioners to amend the zoning ordinance, specifically Section 1304.6.2 regarding Minimum Separation Distances and Setbacks, and related sections.
2. To publish a public notice for that hearing.

Theisen reported receiving of a new site plan for the NE1/4 of Section 17-113-49 and building permits from Plainview Dairy for dairy construction. The Board, States Attorney, and Zoning Officer agreed that the Zoning Officer can issue the permit as the project meets all requirements and setbacks according to SDCL 11-2-17.8.

Al Moore updated the Board on ongoing negotiations with Plainview Dairy regarding haul road agreements. It was noted that haul road agreements are required for Conditional Use Permits (CUP), not for building permits. Plainview Dairy inherited a haul road permit from Balbach's, as per previous agreements.

Theisen informed the board that the next regular meeting is scheduled for September 9, 2024.

Chairman Kanengieter called the meeting adjourned the meeting at 9:45 p.m. All voted in favor and motion carried.

A handwritten signature in cursive script, appearing to read "Jodi Theisen", written over a horizontal line.

Jodi Theisen  
Zoning Officer

A handwritten signature in cursive script, appearing to read "Dennis Kanengieter", written over a horizontal line.

Dennis Kanengieter  
Chairman, Zoning Board