

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

Tuesday – November 12, 2024 – 6:30 p.m.

**DEUEL COUNTY BOARD OF ADJUSTMENT**

**ITEM #1 CONDITIONAL USE PERMITS AND VARIANCE POSTPONE FROM APRIL 8, 2024 MEETING: NEW  
LOCATION OF PORTABLE READY MIX CONCRETE PLANT**

**Applicant: Buffalo Ridge Concrete  
Owner: Plainview Dairy, LLC**

**Property Description:** NW1/4 in Section 17-113-49, Blom Township, Deuel County, South Dakota.

**Action Items – Conditional Uses Permit – (Section 1101.04.04 Sand, gravel or quarry operation, Mineral exploration and extraction, rock crushers, concrete and asphalt mixing plants provided they they meet requirements of Section 1219)**

**THE NEW LOCATION DOES NOT REQUIRE THE APPLICANT TO APPLY FOR: Variance – (Section 1219.03 Setbacks: gravel or quarry operation, mineral exploration and extraction, rock crushers, concrete and asphalt mixing plants within 1000 feet from property line of nearest residence)**

**Zoning Designation:** A- Agricultural

**Request:** The applicant seeks to locate a portable ready mix concrete plant which will be used to construct a CAFO, with a previously issued permit on the above property.

**Specifics of Property/Request:**

1. Plainview Dairy Exchange, LLC received a permit for a Class A Concentrate Animal Feeding Operation on January 30, 2023. Plainview Dairy Exchange, LLC transferred the land and CUP for the CAFO to Plainview Dairy, LLC on 10-15-24 the Zoning Office received updated Letter of Assurance and the deed was filed on 9-9-24.
  - a. This request is accessory to the Dairy but was not addressed at the time of issuing the CAFO permit.
2. Buffalo Ridge Concrete is requesting to operate a temporary concrete mixing plant on property owned by Plainview Dairy, LLC for the CAFO expansion that was previously approved.
3. The concrete mixing plant would be operating on the property for at least 2 years, (11-12-24 until 11-12-26). The applicant is asking for CUP for 2 years.

**Ordinance/History regarding this request:**

1. Entrance and exit access will be directly onto 473<sup>th</sup> Avenue on the West side of the property. The granting of this permit will decrease the number of traffic/trucks hauling concrete and materials to the site.
2. There is a reasonable amount of area set aside for parking and unloading materials.
3. No utilities changes were proposed in the submitted plans.
4. No screening or buffering were proposed in the submitted plans. While no plans for screening or buffering have been submitted, the requirement is to be 150' from the right-of-way.
5. The site for the portable ready mix concrete plant will be located approximately 500' from the ROW and more than 1,000' from Albert Moore's residence.
6. No signage or additional lighting is being proposed in the submitted plans.
7. The location for the concrete mixing plant meets all setbacks and area requirements.
8. General Compatibility: The property is surrounded by agricultural land.

**Staff Summary & Recommendation:**

The applicant has provided documentation of its ability to meet the other requirements of the zoning ordinance in reference to the proposed concrete mixing plant. The Board may attach conditions to this request provided there is a logical reason to do so. If approved staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant(s):

**Staff Summary**

**Board Action:** Conditional Use Permit: Concrete Mixing Plant

The Board may: 1) Postpone the decision 2) Deny the Request 3) Approve the request with or without conditions.

**Staff recommendation:**

**If approved, staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant:**

1. Prior to operating the batch plant, the applicant is to provide an air quality permit for portable relocation from SD DANR.
2. The applicant will use best practices to limit excess noise, glare, dust, and other effects on adjoining properties.
3. The concrete mixing plant shall be removed from the property and this permit will expire by November 11, 2026 (two years after the hearing date).

**ITEM #2 VARIANCE**

**Applicant/Owners:** Dave Hentges

**Property Description:** Lots 23-24-25 & W 2/3' Lot 26 Shady Beach in Gov Lot 7 in SE1/ of Section 4-114-47 Lake Cochrane, Norden Township, Deuel County, South Dakota

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

**Zoning Designation:** LP – Lake Park

**Request:** Applicant requesting a Variance to remove old house to leave existing basement and construct a new house closer than 10 feet from the side property line and closer than 50 feet from the high-water-mark.

**Specifics of Request:**

1. David Hentges purchased Lots 23-24 & West 16 2/3' of Lot 24 in 1997. When Rhea's replat couple of years ago they notice the lots have been shifted by deed work, and some structures are on the neighbors' lots. Some of the property owners in Shady Beach deeded 25' (some are lots and some are footage) to the correct neighbor. Grong's deeded the East 8 1/3' of Lot 25 and the West 2/3 of Lot 26 of Shady Beach to David Hentges. That is why his current legal is 23-24-25 & W 2/3' Lot 26 Shady Beach which is approximate 91.66' instead of 66.66' which he originally owned. (Published on 10-23-24). On October 31, 2024 David Hentges Deeded Lot 23 to Michael & Karen Zahnow so David's current legal is Lots 24-25 & W 2/3' Lot 26 Shady Beach which has width of 66.66'.
2. The applicant would like to to remove old house to leave existing basement and construct a new house closer than 10 feet (with the deed from October 31, 2024) from the side property line and closer than 50 feet from the high-water-mark
3. Hentges stated that this house has many old additions and the insulation is very poor and he would like to build a new house on the existing basement. He lifted the house up many years ago and did a new block basement at the time the Zoning officer stated he didn't need a building permit since he was repairing the basement.
4. Per the Zoning Officer, Theisen, and Hentges the existing house is approximate 15' from the high-water-mark and the existing house is approximately 9' to 10' from the side property line the timber line in the ground (occupation property line).
  - I have attached the survey that was prepared for Steve Maas the neighbor to the north. On the survey the timber line in the ground which is the occupation property line. The existing house corner toward the road is approximate 9' from the occupation property line (toward Maas) and per Brandon Huppler, the land surveyor, he also stated the corner of the house is approximate 4' from the actual property line (Maas). The existing house is approximate more than 10' from the side property line toward Zahnow (Lot 23).
5. Henges would like to remove the existing decks and build a new approximate 6' x 31' one level deck the same distance from the HWM as the house/basement approximate 15' and more more 10' from the side lot line toward Zahnow (Lot 23).
  - Per the blue print for the new house provided by Hentges the back addition of the house will be extended by 8' x 14' which would be the same distance from the HWM as the existing addition approx. 15'.
  - Per the blue print the new house side toward Zahnow would be 28' instead of 22' so that wall be enlarged by 6' (I think by 4' toward the road and 2' toward the water not for sure would need to ask David).
  - Per the blue print for the house would be extend 4' toward the road from the original house.

- That would encroach on the property line by approximately 3.3' per surveyor from his measurements (it recommend a survey done on Hentges property and show property lines and show the distance the location of new house from the property lines).
  - Per the blue print for the house there would be a 5' deck in front of the house extension of 4' toward the road from the original house.
    - The deck would encroach on the property line by approximately 2.5' per surveyor from his measurements (not official)
6. Hentges existing front of his house toward the road is approximately 10.5' from the occupation line and approximately 14' from the property line (Zahnow Lot 23).

**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. (Kooima, Pederson, Clemensen, etc.)
3. This property is located out of the floodplain.

**Prior variance request by Hentges:**

1. Hentges applied for a variance in 2016 and the motion was to removal of the old house, leave the basement and construct a new house that is no closer than 30' from the high-water-mark in the Lake Park District. The vote was 4 (Yes) and 1 (No). Hentges decided at the meeting to not build.
2. On November 9, 2015 Hentges applied to remove old house to leave existing basement and construct a new house closer than 50 feet from the high-water-mark. At that meeting the board to table the variance until the December 14, 2015 meeting at that meeting the motion was to remove the 15' x 11' house addition and bump out basement walls that are 15 feet from the high-water-mark. To remove old house and leave basement and construct a new house that is no closer than 30 feet from the high-water-mark in the Lake Park District.
3. Hentges decided to apply for a variance for the same request however there has been a survey that has been done by the neighbor to the north and property lines have been defined more than previous variance request.

**Staff recommendation: If approved, staff recommendation - To grant the Variance to remove old house to leave existing basement and construct a new house and deck no closer than 15 feet from the high-water-mark, to construct new house or deck no closer than the existing foundation approximately 4 feet from the north side property line.**

**The request could be approved based upon the following findings**

- a) the existing location of the basement
- b) the existing house is not located in the flood plain

**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 PLAT THAT WAS POSTPONED FROM THE OCTOBER 15, 2024 MEETING: CONCERNS ABOUT ACCESS AND PARKING**

**Applicant/Owners: Lonnie & Gail Krause**

**Property Description: Plat of Clear Lake Historical Post Office Addition in NW1/4 of Section 30, Township 115 North, Range 48 West of the 5th P.M., Deuel County, South Dakota.**

**Request:** To plat Clear Lake Historical Post Office which is .17 acres to be transferred to the Clear Lake Historical Society at a later date. Theisen suggests a letter of assurance: that the Grantors, their heirs, successors, and assigns further hereby agree that no building permits may be issued Clear Lake Historical Post Office Addition in the NW1/4 of Section 30 Township 115 North, Range 48 West of the 5th P.M., Deuel County, South Dakota is combined with an adjoining lot which meets the requirements of the Deuel County Zoning Ordinance to be eligible for construction of a residence nor any structures.

**Action Item –Plat approval.**

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