

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

Monday – August 12, 2024 – 6:30 p.m.

**DEUEL COUNTY BOARD OF ADJUSTMENT**

**ITEM #1 VARIANCE**

**Applicant/Land Owner: Olerud Enterprises LLC**

**Property Description: Block 1 Agri Partners Second Addition in NW1/4NE1/4 of the Section 28-115-49, Clear Lake Township, Deuel County, South Dakota.**

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

**Zoning Designation: CI –Commercial/Industrial District**

**Request: Applicant/Owner requesting a variance for existing grain hoppers less than 50' from the side property line which is closer than the ordinance allows in a Commercial/Industrial District**

**History/Issue(s):**

**Specifics of Request:**

1. Applicant/Owner seek a Variance for existing grain hoppers approximately 30' from the property line to the west which less than 50' in an Commercial/Industrial District.
2. 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.
3. 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.
4. **Staff recommendation: The Board could approve the variance due to the miscommunication regarding setback requirements. If approved, staff recommendation -To grant the 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.**

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 see Findings of Fact and Conclusions of Law on file with the application.

**ITEM #2 VARIANCE**

**Applicant/Land Owner: Guy Jeremiason**

**Property Description: 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.**

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

**Zoning Designation: LP – Lake Park District**

**Request: Applicant/Owner requesting a variance to remove old house and build a new house with a deck less than 50' from the high-water-mark which is closer than the ordinance allows in a Lake Park District**

**History/Issue(s):**

**Specifics of Request:**

1. Applicant/Owner seek 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 an Lake Park District.
2. The applicant 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.
3. 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').
4. Summarize the locations of the neighboring houses/decks relative to the high-water mark: Meyer's Deck: Approximately 34 to 41 feet from the high-water mark. Tekrony's Deck: Approximately 27 feet from the high-water mark, which is closer to the high-water mark compared to Meyer's deck.
5. Jeremiason's Deck: If it were 50 feet 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.

**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. (Severtson 30' deck with their house 50' from the HWM, 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 50' from the the high-water-mark and the deck 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. Please see Findings of Fact and Conclusions of Law on file with the application.**

**ITEM #3 CONDITIONAL USE**

**Applicant/Owner: BlackFork LLC**

**Property Description: Jenson Place Addition in SW1/4 of Section 6-114-48, Norden Township, Deuel County, South Dakota**

**Action Items – CONDITIONAL USE – (Section 1101.04.19 – Game Lodge)**

**Zoning Designation: A – Agricultural District**

**Request: Applicant/Owner is requesting a CUP to build game lodges and other buildings in the Agricultural District**

**Specifics of Request:**

1. BlackFork LLC/Ommen family has owned this property for many years.
2. The applicants platted 27.74 acres which is the Jenson Place Addition in SW1/4 and they would like to build two lodges on this property.

3. BlackFork LLC owns and operates a distillery 1 ½ miles to the east of this property.
4. 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 2<sup>nd</sup> lodge is approximately 67' x 88' which would contain garage, porch, kitchen, laundry, living room, bathrooms and approximate 6 bedrooms.
5. The property will be used for lodging family, friends and 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.
6. The applicant has signed the Right to Farm Covenant for this property.

**Ordinance and Comprehensive Land Use Plan regarding this request:**

**Section 1220. Erection of More than One Principal Structure on a Lot. (page 130)**

1. In any district, only one (1) structure housing a permitted or permissible principal use may be erected on single lot, provided that yard and other requirements are met. Exception: Secondary residences in the Agricultural Zone and commercial/industrial buildings in the Commercial/Industrial District may be allowed provided that yard and other requirements are met.

**Section 1238. Accessory Buildings. (page 149)**

4. No accessory building may be used for residential dwelling purposes at any time.

**Game Lodge is listed as a Conditional Use in the Agricultural District**

Definition: Game Lodge. A building or group of two (2) or more detached, or semi-detached, or attached buildings occupied or used as a temporary abiding place of sportsmen, hunters and fishermen, who are lodged with or without meals, and in which there are sleeping quarters.

- o This lot will have access off of 185th St which is maintained by Norden Township -YES; SEE PLANS
- o This site has room for off street parking - YES; SEE PLANS
- o They have efficient utilities; they have H-D Electric , Brookings Rural Water, and garage receptacles
- o They are will have a 18"X18" BLACK BFF-PRONGHORN (MADE OF CEDAR WOOD)
- o The lodges are are located approximately 884' from the road and there is no intent for Screening and Buffering; MASONRY POSTS ON 185TH STREET ENTRANCE; WILL HAVE SAME DISCRETE 18"X18" BFF PRONGHORN SIGN; THERE WILL BE SOME TASTEFUL LANDSCAPING AND SOME PLANTINGS AROUND THE BUILDING STRUCTURE; "SHELTER BELT" OR TREE-PLANTING PROGRAM FOR SCREENING/BUFFERING PURPOSE, THAT WOULD REQUIRE ZONING APPROVAL, IS NOT IN THE PLANS; IF PLANS CHANGE, AND WE NEED ZONING BLESSING, YOU'LL BE THE FIRST TO KNOW!
- o They have efficient yard space and other open space - YES, YES WE DO

**Staff Summary**

**Conditional Use Permit – the Board may postpone the request, deny the request, or approve the request with or without conditions: The application may be approved, postponed, or denied.**

**Staff recommendation:**

To Approve the Condition Use Permit to build game lodges and other buildings: 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 an Game Lodge and the applicant's ability to meet the requirements for a Condition Use Permit described in ordinance. Staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant(s):

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 determined that it is empowered under the section of the ordinance described in the application to grant the Conditional Use Permit 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 #4 CONDITIONAL USE**

**Applicant/Owner: BlackFork LLC**

**Property Description: 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**

**Action Items – CONDITIONAL USE – (Section 1101.04.27 – Target/Shooting Range)**

**Zoning Designation: A – Agricultural District**

**Request: Applicant/Owner is requesting a CUP to operate a private target/shooting range in the Agricultural District**

#### **Specifics of Request:**

1. BlackFork LLC has owned this property for many years.
2. The applicants would like to operate a private target/shooting range in the Agricultural District.
3. 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
4. Per email (Daniel Scott a representative for BlackFork LLC): To summarize, this is how we envision our private shooting range
  - 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, and guests; they will well understand the importance of gun safety, risk of harm and damage that gun fire creates, gun and ammunition handling, our rules of use and operation, and overall awareness and respect for the environment and surrounding property, landowners and animals in the area, if any
5. The Zoning Office received a letter from the neighbors to the east John & Andrea VanDyke stating they have concerns about the shooting range and safety. They sent a letter because they might not be able to attend the meeting.

**Ordinance and Comprehensive Land Use Plan regarding this request:**

1. Target/shooting Range provided they meet the requirements of Section 1225; is listed as a Conditional Use in the Agricultural District

Definition: 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.

**See Section 1225.**

Section 1225	Range Requirements	page 132
Section 1225.01	Conditional Use Permits	page 132
Section 1225.02	General Regulations for All Ranges	page 132
Section 1225.03	Special Regulations for Ranges	page 133
Section 1225.04	Application Requirements	page 134
Section 1225.05	Area Regulations	page 134
Section 1225.06	Miscellaneous Regulations	page 135

The ordinance reads No Conditional Use Permit shall be approved for any Range unless all of the following conditions are met (unless specifically waived by the Board of Adjustment). Some of the conditions for section do not pertain to the scope of application request, so the Board of Adjustment could waive some of the conditions if they chose too.

- o This lot will have access off of 184th St which is maintained by Norden Township - YES; SEE PLANS
- o This site has room for off street parking - YES; SEE PLANS
- o Efficient utilities; no present plans for building structures on the premises - no present plans for building structures on the premises - CORRECT; BUT IF WE GROW BEYOND OUR PRESENT PLANS FOR USE AND ENJOYMENT OF OUR PROPERTY, AND ANY TYPE OF BUILDING STRUCTURES ARE IN THE FUTURE (e.g. SHOOTING PLATFORM, STORAGE BUILDING) THAT REQUIRING ZONING CLEARANCE, WE WILL NATURALLY ENGAGE WITH YOU AND SEEK ANY NECESSARY PERMIT AND APPROVAL
- o They will have 18"x18" BFF-PRONGHORN/CEDAR WOOD Sign;
- o Screening and Buffering; Thers is no intent at this time - NO; NONE NECESSARY
- o They have efficient yard space and other open space - YES; PLENTY OF OPEN SPACE

**Staff Summary**

**Conditional Use Permit – the Board may postpone the request, deny the request, or approve the request with or without conditions: The application may be approved, postponed, or denied.**

**Staff recommendation:**

**Approval would be based on the applicant's ability to meet the requirements that were not waived for a Conditional use Permit described in ordinance - To grant the Conditional Use Permit to operate a private target/shooting range on the applicant's ability to meet the requirements that were not waived in the Agricultural District.**

**The Board determined that it is empowered under the section of the ordinance described in the application to grant the Conditional Use Permit 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.**

**DEUEL COUNTY PLANNING COMMISSION**

**ITEM # 5 PLAT**

**Applicant/Owners: Keith & Terri Goens**

**Property Description: Frensko Addition in the SW1/4 of Section 23, Township 116 North, Range 50 West of the 5th P.M., Deuel County, South Dakota.**

**Request: To plat Frensko Addition which is 16.65 acres for transferring purposes.**

**Action Item –Plat approval.**

**ITEM # 6 Board Discussion: Look at the verbiage for CAFO setbacks & • Discussion on Public and Private Utilities in the Commercial/Industrial District**