

**June 6, 2022 BOARD OF ADJUSTMENT/ PLANNING COMMISSION
DEUEL COUNTY
STAFF REPORT**

Monday – June 6, 2022 – 6:30 p.m.

DEUEL COUNTY BOARD OF ADJUSTMENT

ITEM #1 VARIANCE

Applicant: Greg Bothun

Owners: Greg & Tami Bothun Living Trust and Cori & Joseph Bothun

Property Description: Lot 13 Marion Bay in Gov Lot 7 of Section 5-114-47, Norden Township, Lake Cochrane, Deuel County, South Dakota

Action Items – Variance – (Section 1103.5 Area Regulations)

Zoning Designation: LP – Lake Park

Request: Applicants/Owners to build a new garage with less than 30' from road right-of-way.

Specifics of Property/Request:

1. Bothun has owned this parcel for a significant period of time which contains 1 lot which was replatted in 2019 (to make 4 lots into 2 lots). Bothun's lot is 75' wide by the road, 120+- depth and approximately 71' wide at the lake side. He sold the other lot with the house and garage on it.
2. Bothun would like to build a 16' x 24 garage with a 6' x 24 lean less than 30' from the front yard.
3. The location of the shed is located on the east side of existing pine trees which are along the road right of way.
4. This lot only has a one other storage shed on it, currently it does not have a house.
5. This property is located on the east of a county road that has a 66' road right-of-way.

Ordinance/Variance History regarding this request:

Section Section 1103.5 Area Regulations requires the setback to be 30 feet from road right-of-way. However, in the past the board used the interpretation of the 30' from the edge of the road. The Board is working on updating the current ordinance make this section clearer and more defined.

Staff Summary

Section Section 1103.5 Area Regulations

The Board has to decide whether the issuance of a garage with less than 30' from the road right-of-way and more than 37' from the edge of the road would not produce undue hardship or be substantial detriment to adjacent property.

Staff recommendation:

Variance Permit – Section 1103.5 (Area Regulations): The application may be approved, postponed, denied or disregarded. If approved, approval would be based on the board:

1. That the intent of a 30' setback from a road right-of-way is a visual and safety issue. However, in this situation the proposed new garage would be 37' from the edge of the road and within their property line.

Denial would be based upon:

1. Denial of this variance application due to the new garage being than 34' from the edge of the road and within their property line (how they have treated other properties in the Lake Park 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 refer to the Findings of Fact and Conclusions of Law on file with the application.

ITEM #2 SPECIAL EXCEPTION

Applicant: Greg Bothun

Owners: Greg & Tami Bothun Living Trust and Cori & Joseph Bothun

Property Description: Lot 13 Marion Bay in Gov Lot 7 of Section 5-114-47, Norden Township, Lake Cochrane, Deuel County, South Dakota

Action Items – Special Exception – (1103.4.9 – Storage)

Zoning Designation: LP – Lake Park

Request: Applicants/Owners moved in a a storage shed on their property.

History/Issue(s):

1. The applicant is requesting to allow a 16' x 24 garage with a 6' x 24 lean.
 - a) Applicant applied for a variance which the board made a motion: denial of this variance application due to the new garage is more than 34' from the edge of the road and it is within their property line (how they have treated other properties in the Lake Park District).
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 Edgewater Alice Drive which is maintained by the county;
- o The site has room for off street parking;
- o They could have? efficient utilities; water is provided by Brookings-Deuel Rural Water, they don't have a septic tank as of now. 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 efficient yard space and other open space, the shed is approximately 37' from the edge of the road, more than 50' from the high water mark and approximately 10' from the side lot line;

Staff Summary

Special Exceptions Permit – Storage: The application may be approved, postponed, or denied.

Staff recommendation:

Special Exceptions Permit – Storage (1103.4.9): 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 #3 VARIANCE

Applicants/Owners: City of Clear Lake

Property Description: N580' E700 of NW1/4 of Section 21-115-49, Clear Lake 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 (pole shed) with less than 150' from the front yard.

Specifics of Request:

1. City of Clear Lake is requesting a Variance to move in an accessory building (pole shed) with less than 150' from the front yard
2. They would like to remove the old pole shed from the old airport land to the dump site. The pole shed would be approximately 110' from the ROW which is approximately 143' from the center of the road with a 33' ROW.
3. **Staff recommendation: If approved, staff recommendation - To grant the Variance to move in an accessory building (pole shed) no closer than 110' 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 #4 VARIANCE

Applicant: Hollywood Feeders LLC

Owners: Chad A Olsen & Pamela J Olsen Trust Agreement and Sandra Balbach Trust

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

Action Item – to Section 1304.06 CAFO Requirements Setback and Separation Distance

Zoning Designation: AG - Agricultural

Request: The applicant requesting to expand their Class “A” Concentrated Animal Feeding Operation with less than 2,640' from three unregistered wells.

History/Issue(s):

1. Hollywood Feeders LLC, is requesting to expand their Class “A” Concentrated Animal Feeding Operation with less than 2,640' from three unregistered wells.
2. The proposed expansion of the CAFO will be located within the 2,640 feet of unregistered wells to the south and north. Albert Moore's unregistered wells to the north, are approximately 929.4' and 1,084.5' from the existing CAFO barns. Variance is not required from Mr. Moore's unregistered well as a variance was previously granted with no maximum number of animals and the proposed expansion will not get any closer to Mr. Moore's well. Hollywood Feeders was also granted a variance from Tory Lenning's unregistered well to the south, however, the expansion will be closer than previously approved to. The closest feature of the proposed facility would be approximately 950' from Mr. Lenning's well.

3. The Board of Adjustment have previously required a waiver or a letter to construct a Class A CAFO within one-half mile of an existing residence:

- a. An non-occupied residence (Albert Moore) is located less than 1/2 mile from the existing CAFO site to the north side of the section for which a permit for a Class A CAFO was granted in 2009.
- b. On July 13, 2009 Gary Balbach was granted a special exception to expand from a Class B CAFO to Class A CAFO up to 3,499 animal units with the following conditions unannounced inspections will be done in 6 month intervals for at least two years, no manure application within 600 feet from Albert Moore's property line: submit to the board an updated Manure Management Plan, including maps of each field with specifically defined spreading areas, and extend the manure holding capacity from 323 days to 365 days.
- c. On August 17, 2009 a variance was issued to build a 80' x 990' cattle barn at least that is closer than 2,640 feet from 1 private well south and 2 private wells north of the site which meets zoning requirements. There was a motion to expand from Class B CAFO to a Class A CAFO up to 3,499 animal units. There was discussion about the wells but no motion was found in the July 13, 2009 minutes of the meeting. The motion to expand a Class B CAFO to Class A CAFO up to 3,499 animal units was approved.
- d. The expansion will be closer to the south well (Tory & Betsy Lenning) which would be approximately 900' (property line) versus the north wells (Albert Moore).
- e. The Board has a history of granting variances for residences, where the neighbors sign the waiver or a letter. However, the neighbor to the north (Albert Moore) has declined to sign a waiver as he owned the land before the CAFO was built.
- f. The zoning ordinance allows for a decrease of setback where an improvement to manure handling facilities is being proposed from past practices at an existing site.

4. As of the date of this report staff the office has received correspondence regarding the expansion (road and smell) and Mr. Lenning did come to the office to do research on the variance request:

Staff recommendation:

Variance Permit: to expand their Class "A" Concentrated Animal Feeding Operation with less than 2,640' from three unregistered wells. The expansion will be closer to the south well (Tory & Betsy Lenning) which would be approximately 900' (property line) versus the north wells (Albert Moore). There was knowledge of a variance for the original CAFO and expansions in the past were granted from the three wells. The Board may postpone the request, deny the request or approve the request

ITEM #5 SPECIAL EXCEPTION

Applicant: Hollywood Feeders LLC

Owners: Chad A Olsen & Pamela J Olsen Trust Agreement and Sandra Balbach Trust

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

Action Items – Special Exceptions ((Section 1101.03 (8)) Article XIII - (Section 1300) – Concentrated Animal Feeding Operation Regulations

Zoning Designation: AG – Agricultural

Request: To apply for a Special Exception Permit to expand its Class "A" Concentrated Animal Feeding Operation (CAFO from 3,499 animal units to 13,585 animal units which is 9,500 mature cattle) which is a new dairy facility in the Ag District.

History/Issue(s):

Specifics of Request

Specifics of Request:

1. Hollywood Feeders LLC is seeking to expand its Class "A" Concentrated Animal Feeding Operation (CAFO from 3,499 animal units to 13,585 animal units, of which are 9,500 mature cattle) which is a new dairy facility in the Ag District.
 - a. The site described NW1/4 of Section 17-113-49, Blom Township, Deuel County, South Dakota; the N1/2NW1/4 is owned by Chad A Olsen & Pamela J Olsen Trust Agreement & the S1/2NW1/4 is owned by Sandra Balbach Trust. The plan is to have the NW1/4 under the ownership of Hollywood Feeders LLC.
 - b. They have applied for a variance to expand their Class "A" Concentrated Animal Feeding Operation less than 2,640' from three unregistered wells. The expansion will be closer to the south well (Tory & Betsy Lenning) which would be approximately 900' (property line) versus the north wells (Albert Moore).
 - c. Manure management was provided by Central Crop Consulting.
 - d. Feed sources/storage and nutrient management provided by Central Crop Consulting.
2. Soil borings preformed in the past indicated that some of the soils in the expansion have glacial till soils and that the aquifer is not present at the extent of the site.
3. The new proposed components are not located in the FEMA floodplain
4. The improvements consist of:
 - a. Construction of two outside yards by existing mono slope barns, addition to an existing mono slope barn, shop, commodity barn, scale, feed pad expansion, two dairy freestall barns, milk center (parlor), sand area and four manure storage ponds.
5. Most common haul route for the CAFO includes 473rd Ave to the west. This road is maintained by Blom Township. They have haul roads for transportation of feed and manure and the roads are predominately maintained by Blom Township.

Ordinance regarding this request:

1. The applicant will be submitting the current nutrient management plan to Deuel County for review decision of this Board.
2. The applicant will be submitting a full engineering packet to the Deuel County Zoning Office before any construction begins, that which will be approved by the SDDANR.
3. The Board shall consider the following in determining whether the proposed CAFO will create a significant contribution of pollution:
 - a. Size of feeding operation and amount of manure reaching waters of the state
 - i. Historically the Board has relied in the determination of SDDANR in reference to this question since waters of the state are under their jurisdiction.
 - ii. Historically the Board has relied in the determination of SDDANR in reference to this question since waters of the state are under their jurisdiction and this is a component of the State General Permit review.
4. A nutrient management plan is required.
 - a. Nutrient management plan has been prepared by a licensed Agronomist and submitted.
 - b. Fields in the nutrient management plan are expected to change (per the applicant and based upon the zoning ordinance.)
 - c. The agronomist certifies that the land currently used for spreading is sufficient for spreading the manure generated.
5. A manure management plan is required
 - a. The applicant's agronomist and engineer prepared the manure management plan. It included:
 - i. A site plan
 - ii. Operation procedures and maintenance of manure facilities for proposed facility.
 - iii. Final as-built plans will be submitted to the zoning officer following review by SDDANR.
 - iv. Plans specify records on manure application will be kept and will document that acceptable manure and nutrient management practices have been followed.
6. A Management plan for fly and odor control.
 - a. Completed –
 - i. Operational plans for manure collection storage, treatment are expected to be updated and implemented

- ii. Applicants will temporarily store the mortalities in an enclosed structure prior to rendering.
 - iii. No new trees are proposed with the new facilities, however, there is adequate space for shelterbelt plantings.
 - iv. It is the intent to avoid spreading manure on weekends, holidays, and evenings on warm days.
 - v. It is the intent to avoid spreading on calm and humid days.
7. The site is greater than the suggested separation distances for Churches, Businesses, Commercially Zoned Areas, Town Districts, Incorporated Municipalities, other than the operator, and lakes and streams classified as fisheries.
 8. Setbacks for this CAFO are being applied as Class A setback. The proposed CAFO expansion is located more than 1/2 of a mile from the non-occupied existing residences that does not have a waiver or letter from the residences. The proposed expansion of the CAFO will be located within the 2,640 feet unregistered wells to the south and north. Albert Moore's unregistered wells to the north, are approximately 929.4' and 1,084.5' from the existing CAFO barns. Tory Lenning's unregistered well to the south, is approximately 900' from the property line.
 9. The proposed facilities meet the minimum setbacks from rights-of-way.
 10. Review of Specifications and nutrient management plan by Deuel County Board of Adjustment.
 - a. Applicant is required to keep and maintain records of fields to receive manure, utilize adequate acres for the spreading of manure in accordance with state general permit standards, and adhere to minimum manure application setbacks.
 11. The zoning office has received a concern about the expansion of Hollywood Feeders LLC about the smell and the roads.
 12. The zoning office has received complaints in the past about manure handling which was filed with the DANR.
 13. The zoning office also has received complaints in the past about road issues.
 14. All information required of the applicant in Section 1302 was provided.
 15. Information on soils, shallow aquifers, wellhead protection areas and floodplain was provided.
 16. Staff notified Blom Township, in charge of maintenance of other haul roads.
 17. Staff notified Brookings-Deuel Rural Water of the request. (Rural Water Supplier.)
 18. Staff notified SDDENR, East Dakota Water Development District, and Sioux Rural Water of the request
 19. The zoning office notified owners of property within two-miles of the site (approximately 65 letters).

Staff Recommendation

Special Exception: The board, utilizing one motion could approve, deny or table the special exception request. If approved the Board may use the following findings:

- That this expansion will not adversely affect the public interest.

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.