

**May 19 July 19, 2022 BOARD OF ADJUSTMENT/ PLANNING COMMISSION
DEUEL COUNTY
STAFF REPORT**

~~Thursday — May 19~~ Tuesday July 12, 2022 – 6:30 p.m.

DEUEL COUNTY BOARD OF ADJUSTMENT

ITEM #1 VARIANCE

Applicants/Owners: Bentely King

Property Description: E466.69' N466.69' in NE1/4 of Section 14-114-48, Norden 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 with less than 150' from the front yard.

Specifics of Request:

1. King is requesting a Variance to move in an accessory building, a storage shed, with less than 150' from the front yard
2. They built a 8' x 16' storage shed it is approximately 126' from the ROW which is approximately 176' from the center of the road with a 50' ROW.
3. **Staff recommendation: If approved, staff recommendation - To grant the Variance to have an accessory building, storage shed, no closer than 126' 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 VARIANCE

Applicants/Owners: Kelly & Krista Frensko

Property Description: Lot 1 Louwagie Add & Ohnstad OL in SE1/4 of Section 13-116-48, Glenwood 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 accessory building with less than 150' from the front yard.

Specifics of Request:

1. Frensko's are requesting a Variance to move in an accessory building with less than 150' from the front yard.
2. They would like to build a hay shed approximately 63' from the ROW which is approximately 113' from the center of the road with a 50' ROW.

3. The location of proposed shed would be located on Ohnstad OL which is .64 acres which was purchased with Lot 1 Louwagie Addition together in 2005 which the Zoning office would consider these lots together under common ownership.

4. Staff recommendation: If approved, staff recommendation - To grant the Variance to build an accessory building, hay shed, no closer than 60' from the road right-of-way. Condition for this variance would be that they sell both properties together. 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 #3 VARIANCE

Applicants/Owners: Brian Roberts & Therese Gregg

Property Description: NE1/4 (to be known upon platting as Blocks 1 & 2 Roberts Addition) of the Section 25, T115N, R49W of the the 5th P.M., Deuel County, South Dakota.

Action Items – Variance – (Section 1101.04 Area Regulations)

Zoning Designation: AG – Agricultural

Request: Applicant/Owner to retain existing structures that are closer to the road right-of-way & section line right-of-way than what the ordinance allows.

Specifics of Property/Request:

1. Roberts & Gregg purchased this land existing of approximately 13.10 acres with existing buildings in 2021.
2. The property has currently a pole shed which is approximately 41 feet from the section line right-of-way which is 33 feet.
3. The property has currently a mobile home which is approximately 61 feet from the section line right-of-way which is 33 feet an approximately 120' from the road right-of-way for Memorial Drive.
4. This property was not platted prior and would like to plat this property into two lots so they can move in a new mobile home and build a garage on Block 1 for Therese's father.
5. The applicant is working with the Clear Lake Township, Mike Niemann to vacate the section line 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 plating 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 building less than 150' of a public road right-of-way and section line 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 pole shed that is approximately 41 feet from the section line road right-of-way and the existing mobile home which is approximately 61 feet from the section line right-of-way which is 33 feet an approximately 120 feet from the road right-of-way. It will not cause any greater snow or safety concern. This Variance doesn't apply to any new structures that are built on the property.

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 #4 VARIANCE

Applicants/Owners: Brian Roberts & Therese Gregg

Property Description: NE1/4 (to be known upon platting as Block 1 Roberts Addition) of the Section 25, T115N, R49W of the the 5th P.M., Deuel County, South Dakota.

Action Items – Variance – (Section 1101.04 Front Yard)

Zoning Designation: AG – Agricultural

Request: Applicant requesting a Variance requesting to move in a new mobile home and to build a garage less than 150' from the front yard & from the section line right-of-way.

Specifics of Request:

1. Roberts & Gregg requesting a Variance requesting to move in a new mobile home and to build a garage less than 150' from the front yard & from the section line right-of-way.
2. The mobile home and garage would be in line with the existing shed on Block 2 Roberts Addition which would be approximately 41 feet from the section line right-of-way which is 33 feet.
3. **Staff recommendation: If approved, staff recommendation - To grant the Variance a new mobile home and to build a garage no closer than 41 feet from the section line 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 # 5 PLAT

Applicants/Owners: Brian Roberts & Therese Gregg

Property Description: Blocks 1 & 2 Roberts Addition) of the Section 25, T115N, R49W of the the 5th P.M., Deuel County, South Dakota.

Request: Plat Block 1 containing 6.66 acres and Block 2 containing 6.95 acres irregular shaped parcel for moving 2nd home on for family.

Action Item –Plat approval.

ITEM # 6 PLAT

Applicants/Owners: King Trust

Property Description: King Addition in NW1/4 & the W1/4 of the NE1/4 of Section 14, Township 113 North, Range 49 West of the 5th P.M., Deuel County, South Dakota.

Request: Plat 220.77 acres into 3 lots for estate planning.

Action Item –Plat approval.

ITEM # 7 PLAT

Applicants/Owners: DJ Sonnenburg Trust

Property Description: Plat of DJ Sonnenburg Addition in SE1/4 of Section 23, Township 114 North, Range 50 West of the 5th P.M., Deuel County, South Dakota.

Request: Plat containing 3.45 acres for future home and estate planning.

Action Item –Plat approval.

ITEM # 8 PLAT

Applicants/Owners: Bindert Family Trust

Property Description: Bindert Home Addition in SE1/4 of Section 11, Township 116 North, Range 48 West of the 5th P.M., Deuel County, South Dakota.

Request: Plat containing 3.39 acres for transferring purposes.

Action Item –Plat approval.

ITEM #9 SPECIAL EXCEPTION

Applicant: Levi Lunden

Owner: DK Overby LLP

Property Description: Lot 1 of Block 2 Overby Subdivision in the N1/2 of Section 23-113-48, Scandinavia 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 Special Exception Permit for a Class “C” Concentrated Animal Feeding Operation (CAFO up to 999 animal units – consisting of 990) which will be a feeder cattle unit in an Ag District on the property described as Lot 1 of Block 2 Overby Subdivision in the N1/2 of Section 23-113-48, Scandinavia Township, Deuel County, South Dakota.

History/Issue(s):

Specifics of Request

Specifics of Request:

1. Levi Lunden is requesting a Class "C" Concentrated Animal Feeding Operation (CAFO up to 999 animal units – consisting of 990) which will be a feeder cattle unit in an Ag District.
2. This proposed site is outside the 1320' setback for residents and commercial zoned districts.
3. Manure management was provided by Kevin Banken with Centrol.
4. Feed sources/storage and nutrient management provided by Kevin Banken with Centrol.
5. **Soil borings preformed indicated that some of the soils have presence of alluvium, which is sorted, water-lain sediments. Alluvium is/was included in the areas defined as "Aquifer" material during the creations of the original county aquifer maps. Per Jay Gilbertson, East Dakota Water Development District, he stated if he had this information available at the time the Deuel County mapping was done during the winter of 1991, he would have mapped it as an aquifer.**

Jay Gilbertson stated that he would consider this proposed site to be within the Zone B Aquifer Protection Overlay District. He recommends that the Board consider to postpone this application to get more information, to take serious consideration an impermeable liner to prevent ground water contamination and to require a State General Permit.

Section 1105.10 Special exceptions in Zone B:

- 1) **All special exceptions allowed in underlying districts, with the exception of those expressly prohibited in Zone B, may be approved by the Board of Adjustment provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zone.**
- 2) **All new and expansion of existing concentrated animal feeding operations may be required to conduct shall require soil borings to determine impermeable material between land surface and the aquifer.**
- 3) **Earthen storage basins and lagoons may be approved by the Board of Adjustment after site-specific review. Earthen storage basins and lagoons shall require soil borings to determine impermeable material between land surface and the aquifer. The Board reserves the right to require an impermeable liner to prevent ground water contamination.**
6. The new proposed components are not located in the FEMA floodplain
7. The proposed site consists of:
 - a. Construction of one deep pit monoslope barn running east to west with open lots and a wastewater pond located to the south side.
8. Most common haul route for the CAFO includes County Highway 311 which is 483 Ave to the east. This road is maintained by Deuel County Highway Department.

Ordinance regarding this request:

1. The applicant will be submitting engineering and nutrient management plan to Deuel County for review decision of this Board.
2. 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 determination of SDDANR in reference to this question since waters of the state are under their jurisdiction.
 - ii. Historically the Board has relied in 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.
- 3. 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.
- 4. 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 Deuel County Board of Adjustment.
 - iv. Plans specify records on manure application will be kept and document that acceptable manure and nutrient management practices have been followed.
- 5. 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. Rendering service pickup will remove mortalities from the site.
 - iii. No new trees are proposed with the new facilities however, there is adequate space for shelterbelt plantings.
 - iv. Commodity areas will be regularly maintained and spoiled commodities would be regularly removed.
 - v. It is the intent to avoid spreading manure on weekends, holidays, and evenings on warm days.
 - vi. It is the intent to avoid spreading on calm and humid days.
- 6. Section 1304 CAFO Control Requirements
 - a. #2 State General Permit
 - i. **Classes C and D CAFO will be required to obtain a State General Permit if the following occur:**
 - a. If an earthen storage basin or lagoon is used for manure storage, excluding existing operations that are improving waste handling facilities according to Natural Resource Conservation Service standards.**
 - b. The Board of Adjustment decides conditions require a State Permit.

Lunden's (Centrol) have not filed for a State General Permit. The Board of Adjustment will have to decide if they will require a State General Permit, or a Certificate of Compliance with the SDDANR.

- 7. The site is greater than 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 that is being applied as Class C setback. The proposed CAFO is located more than 1320' from the existing residences and commercial zoned property.
- 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 does not have a record of any complaints against the Lunden proposed CAFO.
12. All information required of the applicant in Section 1304 were provided except a State General Permit or application.
13. Information on soils, shallow aquifers, wellhead protection areas and floodplain (provided)
14. Staff notified Jamie Broksieck Deuel County Hwy Superintendent, in charge of maintenance of County 311 which is 483 Ave maintenance.
15. Staff notified Scandinavia Township, in charge of maintenance of other haul roads maintenance.
16. Staff notified Brookings-Deuel Rural Water of the request. (Rural Water Supplier.)
17. Staff notified SDDENR, East Dakota Water Development District, and Sioux Rural Water of the request
18. The zoning office notified owners of property within two-miles of the site (145 letters).

Staff Recommendation

Special Exception: The board, utilizing one motion could approve, deny or table the special exception request.

- The Board could postpone action until additional test holes or more information can be provided to determine if this site is compatible for a Class C CAFO.

If approved the Board may use the following findings:

- No complaints or objection were received from the affected neighbor.
- Since this site is potentially located over a swallow aquifer according to the soil borings.
 - Require a State General Permit
 - Cap Lunden's Class C CAFO at 990 head which is the number they are requesting at this meeting or less.

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.