

**March 11, 2024 BOARD OF ADJUSTMENT/ PLANNING COMMISSION DEUEL COUNTY
STAFF REPORT**

Monday – March 11, 2024 – 6:30 p.m.

DEUEL COUNTY BOARD OF ADJUSTMENT

ITEM #1 CONDITIONAL USE PERMIT

**Applicant: Rebecca VanDyke
Owner: Timothy VanDyke**

Property Description: Block 1 South Rim Addition in NW1/4 (lying west of I-29) of Section 22-114-50, Hidewood Township, Deuel County, South Dakota

Action Items – CONDITIONAL USE PERMIT – (1101.04.16 – Section 1210) Extended Home Occupation (to operate gunsmith business)

Zoning Designation: AG – Agricultural

Request: Applicant/Owner to operate an Extended Home Occupation (to operate gunsmith business)

History/Issue(s):

Specifics of Request:

1. VanDyke's purchased this property on 6-13-2019 and it contains 8.76 acres.
2. Access to this property is 469 Ave which is a paved county road.
3. The applicant is requesting to operate an Extended Home Occupation (to operate gunsmith business) they would like to move in a 16' x 28' accessory building to conduct the business in.
 - a) Future location of 16' x 28' accessory building meets the setback requirement.
 - b) Work would include cleaning , scope mounting, bluing, restoration, barrel threading, repairs and to do cerakote coating.
 - c) Working on getting a FFL (Federal Firearms License)
5. This property is located on the Zone B which is mapped as a shallow aquifer and will have meet the Performance Standards as outlined for the Aquifer Protection Overlay Zones areas #8 (Section 1105.12 page 84-85).
6. Deuel County Ordinance requires that a landowner go through the Conditional Use Permit Process to to operate an Extended Home Occupation in the "AG" District.

Ordinance and Comprehensive Land Use Plan regarding this request:

- o This lot will have access off of 469 Ave which is a paved county road;
 - o The site has room for off street parking;
 - o They have efficient utilities; water is provided by Sioux Rural Water; they have a dumpster for the trash service. They have electricity provided by H-D.
 - o They have efficient Screening and Buffering and the existing shed is located more than 65' from the road rights-of-way and there are existing trees located to south and west;
 - o They are going to have an on-site Signs – either on the building or a metal sign located outside of the road right-of-way. The maximum cumulative amount of all on-premise signage excluding wall signs allowed shall not exceed eighty (80) square feet. They would like a wall sign toward the interstate (east side) an approx. 4' x 6' which is 24 square footage which is less than the 20% of the wall surface. They might have a sign at the end of their driveway.
 - o They have have efficient yard space and other open space, the shed is will be more than 65' from the roads right-of-way (interstate and 469th Ave), will be more than 25' from side lot lines.
- Section 1210. Extended Home Occupation. There are significant differences between home occupations and extended home occupations. While each use is based on supplementing income, the location and type of business in which each is practiced has unique characteristics. Specifically, a home occupation is conducted within the primary structure (residence) while an extended home occupation is conducted in an accessory building

1. For the purpose of this section, provided all requirements are met, the following shall be considered extended home occupations:
 - a. Those businesses that support agricultural needs to include but not limited to vehicle and implement repair, implement sales, welding repair; veterinarian's office; seed sales; and others, which in the opinion of the Board of Adjustment, would not conflict with adjoining land uses.

Staff recommendation:

Condition Use Permit – **Extended Home Occupation (to operate gunsmith business):** 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 Extended Home Occupation and Uses and the applicant's ability to meet the requirements for a special exception described in ordinance. Staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant(s):

- a. An extended home occupation may not be changed to another home occupation except by the issuance of a separate conditional use permit.
- b. Individuals engaged in such occupation shall consist of family members residing on the premises and up to three (3) non-family employees.
- c. There shall be no change in the outside appearance of the buildings or premises, or other visible evidence of the conduct of such home occupation other than one on-premise sign, not to exceed eighty (80) square feet in area, non-illuminated.
- d. Off premise signage for extended home occupations shall be limited to South Dakota Department of Transportation (SDDOT) commercial, directional signs, also known as "TOD Signs". These signs, with SDDOT approval, may be located adjacent to State and Federal Highways.
- e. The only retail sales allowed shall consist of the sale of commodities/products prepared on the premises in connection with such occupation or activity. Exception: Seed Sales.
- f. Extended home occupations should be agriculturally related and be conducted in an accessory building.
- g. No traffic shall be generated by such extended home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need of parking generated by the conduct of such extended home occupation shall be provided off the street and other than in a required front yard.
- h. No equipment or process shall be used in such extended home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

Section 1105.12 Performance Standards For Aquifer Protection Overlay Zones: The following standards shall apply to land uses in Zones A and B of the Aquifer Protection Overlay Districts:

- 8. Auto service, repair or painting facilities and junk or salvage yards shall meet all State and Federal standards for storage, handling and disposal of petroleum products and shall properly dispose of all other potentially hazardous waste materials.**

The Board determined that it is empowered under the section of the ordinance described in the application to grant the conditional use and that granting the conditional use will not adversely affect the public interest. Please see Findings of Fact and Conclusions of Law on file with this application.

ITEM #2 VARIANCE

Applicant/Owners: Lillian & Francis Misar & Ronald & Kathy Gorder

Property Description: S624.36' W344' IN SE1/4 (Misar's property) & a portion of the E286.96' W630.96' S624.36' in SE1/4 where the existing shed is located (Gorder's property) (to be known upon platting as Block 1, Bahr Addition in the SW1/4SE1/4) of the Section 11-113-50, Grange Township, Deuel County, South Dakota.

Action Items – Variance – (1101.05 Area Regulations)

Zoning Designation: AG – Agricultural

Request: Applicant requesting a Variance to replat existing S624.36' W344' IN SE1/4 (Misar's property) & a portion of the E286.96' W630.96' S624.36' in SE1/4 where the existing shed is located (Gorder's property) into one lot and to retain existing structure that is closer to the property lines than what the ordinance allows.

Specifics of Request:

1. Lillian & Francis Misar owns the S624.36' W344' IN SE1/4 and are wanting to sell their property however, Misar built a pole shed on E286.96' W630.96' S624.36' in SE1/4 which is partially on Gorder's property in 2001. Which at the time they must not have known were the property line was located.
2. In 2019 Dennis Evenson, attorney, prepared an easement between the Misar and Gorder in order to allow Misar to continue to use the pole shed. This easement granted ingress and egress for the Misar. In that easement there was an agreement if the Misar's sell the property and if they would keep the pole shed, they would have to pay for the platting to include the shed or they could sell the pole shed to the Gorder's.
3. Misar would like to the sell their property and the the new owner would like purchase the property with the pole shed. The setback for any structure is 25' from rear and side property lines. Gorder's will waive the requirements for this setback from his property so they do not have to part with any additional land around the shed. Gorder's are agreeable to allowing he pole shed to stay in place and will waive the requirement for a setback from their property.
4. The proposed new lot which is to be known upon platting to be known as Block 1, Bahr Addition in the SW1/4SE1/4 would include the pole shed and it would include the existing house and other buildings.
5. The existing pole shed built in 2001 is within the sided and rear yard setback of 25', it is approximately .05' from the new side and rear yard lot lines.
6. The existing garage and house are located more than 65' which meets the front yard setback.
7. There will be document filed for access from Gorder to the new property owner.

Ordinance/Variance History regarding this request:

Section 1101.05 Area Regulations

1. The Zoning Ordinance requires that all residential lots shall be a minimum of three (3) acres the minimum depth of the front yard shall be not less than sixty-five (65) feet, side yard, the minimum width of a side yard shall be twenty-five (25) feet and the minimum depth of a rear yard shall be twenty-five (25) feet.
2. There was a building permit for the pole shed in 2001 but did not define the distance from the side property lines just the ROW.
2. The Board has history of granting numerous variance requests in the Ag District of similar or greater relaxation of rules (Jaeger, Crume, Parker, Krause & etc.)

Staff recommendation: If approved, staff recommendation - To grant the Variance to retain the existing building that is approximately .05' from the new adjoining side and rear property line with a document filed for access from Gorder to the new property owner. This Variance does not apply to any new structures that are built on the property. 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.

ITEM # 3 PLAT

Applicant/Owners: Lillian & Francis Misar & Ronald & Kathy Gorder

Property Description: Block 1, Bahr Addition in the SW1/4SE1/4) of the Section 11-113-50, Grange Township, Deuel County, South Dakota.

Request: Plat 4.96 acres parcel for transferring purposes. The applicant/owners applied for a variance to replat and to retain existing structure (pole shed) that is closer to the rear yard (25') than what the ordinance allows and that Variance does not apply to any new structures that are built on the property.

Action Item –Plat approval.

ITEM # 4 PLAT

Applicants/Owners: Junior & Berdene Boersma & Gregory & Joan Gibson

Property Description: Plat of Hazy Moon Ranch Addition in NW1/4 of Section 15, Township 116 North, Range 50 West of the 5th P.M., Deuel County, South Dakota

Request: To plat Hazy Moon Ranch Addition which contains 10.20 acres for transferring purposes.

Action Item –Plat approval.

ITEM # 5 PLAT

Applicants/Owners: Laron Krause, Krause Farms, LLP

Property Description: Plat of Parker Wildlife Addition in NW1/4 of Section 33, Township 115 North, Range 49 West of the 5th P.M., Deuel County, South Dakota

Request: To plat Parker Wildlife Addition which contains 14.50 acres for transferring purposes.

Action Item –Plat approval.