

Monday, December 13, 2021

The Deuel County Zoning Board met on Monday, December 13, 2021, at 6:30 p.m., in the Commissioner's Room of the Courthouse in Clear Lake. Those present were members Dennis Kanengieter, Kevin DeBoer, Paul Brandt, Judith Homan, Mike Dahl, Zoning Officer Jodi Theisen, and Sarah DeBoer.

Chairman Dennis Kanengieter called the meeting to order.

The minutes from the November 8 and November 16, 2021 meetings were discussed. Motion by Dahl, seconded by Kanengieter, to approve the November 8 and November 16, 2021 minutes. All voted in favor and motion carried.

Motion by Homan, seconded by DeBoer, to approve the December 13, 2021, Agenda. All voted in favor and motion carried.

ITEM ONE

Ryan & Sara Harris, applicants/owners, applied for a Variance Permit Pursuant to Section 1103.5 – Area Regulations. The request, if granted, would permit the applicant to use the following property: Lots 5, 6 & 7 Shady Beach Addition in Gov Lot 7 in SE1/4 in Section 4-114-47, Lake Cochrane, Norden Township, Deuel County, South Dakota, to build a deck less than 50' from the high water-mark, build a house and retaining wall less than 10' from the side property line and build a garage less than 30' from the road.

Harris' requested a variance to build a deck less than 50' from the high water-mark, build a house and retaining wall less than 10' from the side property line and build a garage less than 30' from the road. They would like to remove the two existing decks and old house and build a new house and a new deck approximately 42' from the high-water-mark. Which the proposed deck would be 1' further back than the neighbor's house, and the proposed new house would be also located further back than the neighbor's house. The new house would be approximately 8' from the side property line with a window well approximately 5' from the side property line. The front of the proposed garage would be approximately 28' from the closest point to the edge of the roadway. Which further back than the neighbor's existing garage. The Board had discussion about having the Harris's shifting the house to the south and having the setback on that side 10' and to have the north side house 10' and the widow well approximately 7' from the side property line.

Motion by Dahl, seconded by DeBoer, to grant the Variance to erect a deck no closer than 42' from the high-water-mark, window well no closer than 7' from the side property line and attached garage no closer than 27' from the road and no closer than 1' from the front property line. To follow the landscaping plan that was provided to the Zoning Office and to have a silt fence up during construction. All voted in favor and the motion carried. Please see Findings of Fact and Conclusions of Law on file with this application.

ITEM TWO

Ryan & Sara Harris, applicants/owners, applied for for Special Exception Permit Pursuant to Section 1103.4.5 Shoreline Alterations. The request, if granted, would permit the applicant to use the following property Lots 5, 6 & 7 Shady Beach Addition in Gov Lot 7 in SE1/4 in Section

4-114-47, Lake Cochrane, Norden Township, Deuel County, South Dakota, to alter the shoreline within 35 feet of the high-water-mark.

Harris' requested a special exception are requesting to and alter the shoreline within 35 feet of the high-water-mark. They would like to remove the existing decks and stairs but leave the landing down by the water. They would like to excavate 15' back from the high-water-mark extending back 86' for a walkout basement, 20' of the 86' would be within the 35' from the high-water-mark (the special exception area). There will be approximately 90 yards of dirt excavated and removed. After having discussion with the board, they would like to put a in 8" thick concrete retaining wall approximately 10' from the east property line running parallel to the lot line which would not be within the 15' from the high-water-mark. However, they would like to place a rock retaining wall starting approximately 15' from the high-water-mark right along the east property line extending back 20'. They would not disturb any dirt in the first 15' back from the high-water-mark and they would plant grass to help absorb any run off from the concrete patio.

Motion by DeBoer, seconded by Homan, to grant the Special Exception to allow the applicant to alter the shoreline within 35' from the high-water-mark by removing existing decks, building retaining walls and excavating dirt for a walkout basement and patio. To follow the landscaping plan that was provided to the Zoning Office by having a silt fence up during construction. Kanengieter called for a roll call vote; DeBoer-yes, Brandt-yes, Homan-yes, Dahl-no, and Kanengieter-yes and the motion carried. Please see Findings of Fact and Conclusions of Law on file with this application.

ITEM THREE

Chase West, applicant, Chase & Jennifer West, owners, applied for a Variance Permit Pursuant to Section 1101.04 – Area Regulations, Front Yard. The request, if granted, would permit the applicant to use the following property Block 1 Altamont Acres Addition in NW1/4 of Section 35-116-49, Altamont Township, Deuel County, South Dakota, to build a new entry to existing mobile home with less than 150' from the front yard.

Wests' requested a variance to build a new entry to existing mobile home with less than 150' from the front yard. They would like to add an entry to existing mobile home which received a variance prior. The mobile home is approximately 93' from the center of the road with a 33' ROW instead of 183' from the center of the road, then the approximately 12' x 16' entry will be approximately 86' from the ROW.

Motion by Dahl, seconded by DeBoer, to grant the Variance to build an entry to existing mobile home no closer than 80' from the road right-of-way. The Board stated that this is not a safety issue, that this site is within an existing grove of trees located to the north and west. All voted in favor and the motion carried. Please see Findings of Fact and Conclusions of Law on file with this application.

ITEM FOUR

Gary Jaeger & Dennis Jaeger, applicants/owners, applied for a Variance Permit Pursuant to Section 1101.04 Area Regulations. The request, if granted, would permit the applicant to use the following property: Government Lots 3 & 4 (to be known upon platting as Jaeger Addition in

Gov Lots 3 & 4) of the Section 22-117-50, Rome Township, Deuel County, South Dakota, to plat a parcel of land, to retain existing building that is closer to the new property line than what the ordinance allows.

Motion by Brandt, seconded by DeBoer, to grant the Variance to retain the existing building that is approximately 16' from the new adjoining property line. This Variance doesn't 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 Deuel County Board of Adjustment recessed and convened as the Deuel County Planning Commission.

ITEM FIVE

Motion by DeBoer, seconded by Dahl, to approve the Plat of Jaeger Addition in Gov Lots 3 & 4 of the Section 22-117-50, Rome Township, Deuel County, South Dakota. All voted in favor and motion carried.

ITEM ELEVEN

Motion by DeBoer, seconded by Homan, to approve the Replat of Sections A and B of Grand View Cemetery in the SE1/4 of Section 33-116-47, Glenwood Township, Gary, Deuel County, South Dakota. All voted in favor and motion carried.

ITEM TWELVE

Motion by DeBoer, seconded by Dahl, to approve the Plat the Cleveland Addition in the SE1/4 of Section 33-115-47, Herrick Township, Deuel County, South Dakota. All voted in favor and motion carried.

The Deuel County Planning Commission recessed and convened as the Deuel County Board of Adjustment.

Theisen and the Deuel County Board of Adjustment had discussion about a complaint that was received from Russ Hamann and his brother Gordon by letter. They believed that Tatanka Ridge Wind Farm Turbine L1 has violated the zoning set back regulations. They sent a copy of a survey from Marty Mack Land Surveying, Watertown, SD that states the distance from the house to the center tower is conforming but the distance to the outside of the tower is in violation. The Board instructed the Zoning Officer to hire a third party surveyor to preform another survey to determine if the turbine is in compliance or not in compliance to the setbacks.

Theisen presented the Deuel County Board of Adjustment with a complaint that was received from Matt Holden. He emailed the Zoning Office on November 9, 2021 and stated he had a concern about some earth being moved within the low, swampy area east of Lake Cochrane. He sent pictures to the Zoning Office showing some piles of dirt and other evidence of recent activity. Holden had also contacted some of the local property owners, the South Dakota Department of Agriculture and Natural Resources (DANR), and Nathan Lund, the engineer on this project.

Jay Gilbertson, East Dakota Water Development District, provided the Board of Adjustment with some of the background information about this area. He explained that a jurisdictional determination had been made by the US Army Corps of Engineers in 2020, which was based on the definition of what were considered the waters of the United State (WOTUS) in place at the time. Gilbertson stated that the Corps determined that they had no jurisdiction over the area in question, and as such could neither issue or deny a permit for alterations to the property. He noted that this determination would remain in effect for a five-year period, even if the WOTUS definition were to change. Theisen stated that the engineer had stated that this area is not waters of the United States.

Gilbertson stated that the State, under the Administrative Rules of South Dakota (ARSD) 74:51:01:11 (Protection of wetlands as waters of the state), would have a role in the evaluating and/or permitting the proposed activities. The rule prohibits the filling, wholly or partially, of wetlands, unless a federal permit had been issued by the Corps. In that the Corps has determined that the area in question is outside of their jurisdiction, the State will need to determine whether the actions are permissible. He noted that it has been proposed that the 'wetland' in question was actually a former gravel quarry, and therefore not subject to the protection called for in ARSD 74:51:01:11. DANR is aware of the current and proposed activities, but has made no formal decision as to the applicability of the rule.

Gilbertson stated that in the Deuel County Ordinance there is a section pertaining to the types of alteration to property as has been described (Section 1103.07, Filling , Grading, Lagooning and Dredging). Under this ordinance, "A permit shall be required for any filling or grading," regardless of whether or not state or federal permits had been issued.

Susan Norgaard and Alan Armstrong, Lake Cochrane Improvement Association, expressed concerns that the activities could have a detrimental impact on Lake Cochrane.

The Board instructed the Zoning Officer to send a letter to all of the property owners of this slough area, informing them that any work as described in County Ordinance Section 1103.07, Filling , Grading, Lagooning and Dredging, would first require a permit from the Deuel County Board of Adjustment.

Theisen stated that there will be a meeting with 1st District to discuss updating the Ordinance B-2004-01 the Zoning Regulations for Deuel County on Tuesday, December 14 at 6:30 p.m. Theisen talked to the board about some items for instance a shelterbelt planted without a permit, inquires about some extended home occupations, and some Special Exception Permits that have expired.

Meeting Adjourned



Jodi Theisen
Zoning Officer



Dennis Kanengieter
Chairman, Zoning Board