

Monday October 16, 2023

The Deuel County Zoning Board met on Monday October 16, 2023, at 6:30 p.m., in the Commissioner's Room of the Courthouse in Clear Lake. Those present were members Dennis Kanengieter, Jay Grabow, Paul Brandt, Kevin DeBoer and Mike Dahl. Also present were States Attorney Craig Evenson, Zoning Officer Jodi Theisen and other members of the public.

Chairman Dennis Kanengieter called the meeting to order.

The minutes from the September 11, 2023, meeting were discussed. Motion by Grabow, seconded by DeBoer, to approve the September 11, 2023 minutes. All voted in favor and motion carried.

Motion by DeBoer, seconded by Grabow, to approve the Monday October 16, 2023. All voted in favor and motion carried.

Motion by Grabow, seconded by DeBoer to recess the Planning Commission and convene only as the Board of Adjustment. Motion passed unanimously.

Motion by Brandt, seconded by DeBoer to approve a Variance to build a lean-to on the existing building no closer than 2' from the rear lot line requested by applicant Brad Fairchild, owner, 26 Pines LLC on his property on Lot 1 Helmbolt Sub in SW1/4 of the Section 34-115-47 Herrick Township, Deuel County, South Dakota. Brad Fairchild (26 Pines LLC) purchased this property July 16, 2018 from Fireworks City Inc. Helmbolt (Fireworks City) sold firework many years prior to Fairchild purchasing the property and Fairchild continues to sell fireworks. Mr. Fairchild is requesting to build a lean-to on the existing building with less than 25' of rear yard. Fairchild would like to build an 8' x 36 lean-to which would be an addition on the exiting building (30' x 40'). The lean-to would be approximately 2' from the rear lot line. The existing structure is 110' from the 75' road right-of-way. The back of the existing structure is approximately 215' from the center of a 75' ROW. With those measurement the existing structure is 140' from the road right-of-way and the lot is 150' deep which puts the existing structure 10' from the rear property line. The Board questioned why he wants to build to the north and not build an addition toward the east. Fairchild stated he would like more storage for the fireworks and building to the north toward the rear property line is most cost effective. The office has received a letter from Gabrielson (adjoining property owners) stating they are okay with the addition (lean-to) being within 2' from their property line. Please see Findings of Fact and Conclusions of Law on file with this application. Motion failed 1 yes – 4 no.

Motion by Grabow, seconded by DeBoer to approve a Conditional Use Permit request by the applicant/owner, Wildrose Dairy, to continue to have employee housing (Accessory Agricultural Housing) – based on the current State Permit CAFO Permit of 3,100 animal units they are allowed up to 6 dwelling and 18 persons on their property in AG District on their property in Gov Lot 1 & SE1/1NE1/4 of Section 2-113-49, Blom Township, Deuel County, South Dakota. In the event of the state approves the expansion of the CAFO to 6,520 they could have up to 9 dwelling and 27 employees on their property in AG District.

Wildrose Dairy LLC currently has 3 existing mobile homes for their employees on site of the Dairy which are two single wide homes with 3 bedrooms each and one double wide with 4 bedrooms. Jochum Andringa stated they have three people in one of the single wide mobile homes, the other single wide mobile home has one person in it and a family of four in the double wide mobile home. Theisen stated according to the Deuel County Zoning Ordinance no more than 3 unrelated can occupy each dwelling which is 9 employees that are unrelated. The applicant is not thinking about adding any more mobile homes or dwellings in the yard they are content with the 3 existing mobile homes. Wildrose Dairy would have to sign a letter of Assurance to be filed in the Zoning Office. Please see Findings of Fact and Conclusions of Law on file with this application. Motion passed unanimously.

Motion by DeBoer, seconded by Brandt to approve a Variance to replace a garage that was destroyed by May 2022 storm with a new garage no closer than 1' from the front yard requested by applicant Barbara McCarty, owners, Mona Kelley, Gus Van Steenberg, Monica Koeppen, Rita Dwinell & Barbara McCarty on their property on Gov Lots 2-3-4-5-6-7 & SE1/4 NE1/4 Less OL 1 Gov Lot 4 of the Section 6-116-48, Altamont Township, Deuel County, South Dakota. Barbara McCarty has owned this property for long time with her siblings. McCarty is requesting to replace a garage that was destroyed by a May 2022 storm with a new garage less than 65' of front yard. McCarty would like to build a 24' x 28' garage to replace approximate 20' x 28' shed that was destroyed by the May 2022 storm. The new garage would be approximately 1' from the 50' ROW (51' from the center of the County HWY). The previous structure approximately 1' from the 50' ROW (51' from the center of the County HWY). Theisen visited with Jamie Broksieck, Deuel County Highway superintendent, and he does not have an issue with the new shed since they are replacing the old shed because of the storm. There were no objections. This Variance does not apply to any new structures that are built on the property. Please see Findings of Fact and Conclusions of Law on file with this application. Motion passed 4-1.

Motion by DeBoer, seconded by Brandt to approve Variance to build a deck no closer than 40' from the rear lot line located to the south on a permitted house/garage and to meet the other Lake Park setbacks requested by the applicant/owner David & Kim Overby on their property on Lot 3 Block 2 Dakota Bluffs of the Section 8-114-47, Norden Township, Lake Cochrane, Deuel County, South Dakota. David & Kim Overby purchased this lot on 11/30/2021. The applicants applied for a variance to build a deck less than 50' from the rear lot line on a permitted house/garage. The applicants were granted a permit to build a house/garage which the proposed new location would be more than 10' from the property line (east and west) and more than 30' from the edge of the road (approximately 62' from the ROW). Overby submitted the building permit with all the required information, documents and the structure met the required setbacks. However, when she met with the certified septic installer, they realized that the structure would need to be a certain distance from the septic tank which is 7'. So, they would need to push the house/garage and deck further toward the back lot line so the front of the house/garage would be approximately 62' from the front property line. The proposed deck would be located approximately 44' from the front property line. There were no objections. Please see Findings of Fact and Conclusions of Law on file with this application. Motion passed unanimously.

States Attorney Craig Evenson stated he will conduct this portion of the meeting.

Board of Adjustment will consider an appeal in accordance with Section 502 thru Section 503 of the Deuel County Zoning Ordinance by Matt Wagner relating to the ability of the zoning officer to issue building permits for structures associated with the building permits for a fence (Permit No. 23-90) and shed (Permit No. 23-97) granted to Joe & Lori Entenman to use the following property: Lot 1 Rhea Addition in Gov Lot 7 in Section 4-114-47, Norden Township, Lake Cochrane, Deuel County, South Dakota. Entenman applied for a fence extension of 22' toward the ROW. This application will also be considered in the appeal.

Issue Statement: Whether the building permit for Entenman's Fence, Shed and Fence extension was properly granted by the Deuel County Zoning Officer.

Lori Entenman the owner of Lot 1 Rhea Addition in Gov Lot 7 in Section 4-114-47, Norden Township, Lake Cochrane, Deuel County, South Dakota represented herself. Matt Wagner the owner of LOT 2A, 2D, & 2E RHEA 4TH ADD'N in Gov Lot 7 in Section 4-114-47, Norden Township, Lake Cochrane, Deuel County, South Dakota represented himself.

Matt Wagner had the floor first and he stated he grew up in Canby, Mn and purchased his property from Rhea's in 2016. He stated that the access by the old Shady Beach was used for over 40 years. Wagner stated they tried to be good neighbors but 6-7 week ago they were informed that Entenman's were going to build a fence. This fence would be located in front of their garages and the Entenmans also applied for a shed to be located along the fence. They called and texted the Entenman's to communicate about the fence and any issues. Wagner mentioned that he came to Commissioner Meeting in 2019 and John Appelen presented a drawing of the platted access easement, drainage easement and how the access easement was used versus platted. Wagner stated he had an agreement with the Rhea's that previously owned his lot and the Lot that Entenman own now about pouring a concrete driveway on both lots. He mentioned at that 2019 meeting he was told he could not block the easement. His concerns were about the fence blocking his access to his garages and the shed and how Entenman would block the access to the lake.

Appelen stated that Wagner's poured the concrete over the graveled access and planted grass toward the lake which should have stayed gravel for the people that use the access. Appelen stated that Wagner does not have willingness to keep the access open during the winter. Paul Christianson stated that access to Lake Cochrane has not changed since 1980's and he uses that access for his boat and if they have vehicles in the way Wagner has moved them for him to use the access. Dahl stated that you cannot block an easement for any long period of time. Brandt asked if this access easement is mainly used for docks, boats, and ice fishing? Paul Pederson, representing the Lake Cochrane Association, stated that they support the public access as 2019 diagram as used. Armstrong asked the board about recorded easement on the diagram, States Attorney Evenson responded that the Circuit Court would have to have an interpretation of the platted easement versus the as used easement. Lori Nosbush had concerns about emergencies on the lake and the fence blocking the access since the other access sometimes is blocked by snow.

Lori Entenman stated they have been having some problems with their neighbors, the Wagner's. They would like to put the fence up for privacy and to indicate the platted access easement location. Entenman stated that they have people parking in their driveway a lot. So, they hired a professional surveyor and located the property pins. Which during the survey they realized the location of the property line, some of the pins are located under the concrete, and the platted access easement. They also realized that they did not own the land up to the platted highway lot so they inquired and purchased that property from the Cochranes. Entenman stated the fence was originally going to be located in the grass area toward the lake and then they decided that they would like to extend the fence along the entire property line including the 22' they just acquired from the Cochranes. Entenman stated they are not blocking the platted access easement with the fence. They are located outside the easement which is 6' from the property line. They stated the beginning of the fence would be 50' from the high-water-mark. They have talked to the GFP and they were ok with the placement of the fence with in the drainage easement. Entenman's stated that they did not know or see the 2019 drawing until last year. They would put a sign up to indicate where the platted access easement is located on the fence.

There was discussion about the 50' from the highwater mark about public access. There was also discussion about the location of the easements (drainage and access), Wagner has 10' of the access and drainage easement and Entenman has 6' of the access easement and 10' of the drainage easement. The board discussed the location of Wagner's house from the property line which is 10', the side garages, the distance from the garage doors and the fence which is 16'. Mike Nosbush asked about the problems identifying the property lines at Lake Cochrane. Stuart Rhea stated they hired DeJong (Aason Engineering) out of Watertown for the platting. The Board asked both parties if they considered transferring some land to each other. Entenman stated they suggested that to the Wagner, however nothing came from it.

Ashley Conner asked about the status of the application of the fence extension of 22' since it has not been granted. States Attorney Evenson stated that the board could consider that application in this appeal. If the appeal is denied the permit would be granted tomorrow by the Zoning Officer Theisen since it is within the ordinance regulations. The board had discussion about including that application in the appeal and to allow the building of the permitted fences and shed and having the high court define the platted use or the as used use of the access easement. Discussion was made about the application fence extension of 22' not being granted yet and advertised, States Attorney Evenson stated that they could include it in this appeal or not, if not then Theisen would grant the permit and Wagner could appeal that permit later. If you make a ruling on the appeal of the building permits for Entenman's Fence and Shed that it was properly granted by the Deuel County Zoning Officer. Wagner is more that welcome to appeal the 22' fence extension after the permit is granted however, the 22' fence extension permit would be the same result if it was appealed.

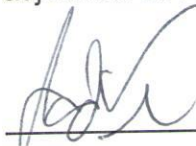
The board talked about the 16' access easement and how technically you cannot use 25' if 16' was dedicated. Wagner stated that they put up a sign and allowed the public to use about 26' of his shoreline for access.

Motion by Grabow, seconded by Dahl to not accept the appeal for the building permit for Entenman's Fence and Shed. Kanengieter asked for a roll call vote: Brandt-no, Grabow-yes, Dahl-yes, DeBoer-yes Kanengieter-no. Motion carried. Theisen asked if the Wagners appeal the fence extension permit would he have to pay another \$250 and the response was yes from the Board and States Attorney.

Motion by Grabow, seconded by DeBoer to recess the Board of Adjustment and convene only as the Planning Commission. Motion passed unanimously.

Theisen informed the board about the ordinance amendments: setbacks from the rear lots not adjacent to the lake, amend the number trees planted in a row in the controlled area in the Ag District and amending the permission from all the adjoining property owners to a percentage to allow campers on lots for a specific time in the AG and LP Districts. Theisen also informed the Board about the two letters that the office received from the DANR regarding Sunrise Dairy & Global Dairy. Lastly, Thiesen informed the Board that Kees Knevelbaard and Ben Stout was inquiring about a possible dirt work permit for Hollywood Feeders (Plainview Dairy) for the NW1/4 in Section 17-113-48. Thiesen stated there is a prior haul road agreement (from 2009) with Blom Township for the NW1/4 and talking with States Attorney Craig Evenson that haul road agreement would suffice for granting the dirt working permit. However, they would have to obtain a new haul road agreement to include the NE1/4 in Section 17-113-48 for a building and dirt work permit for the N1/2.

Motion to adjourn made by Grabow, second by Dahl. Motion passed unanimously. Meeting adjourned at 10:30 p.m.



Jodi Theisen

Zoning Officer



Kevin DeBoer

Vice Chairman, Zoning Board