

**June 26, 2023 BOARD OF ADJUSTMENT/ PLANNING COMMISSION
DEUEL COUNTY
STAFF REPORT**

Monday – June 26, 2023 – 6:30 p.m.

DEUEL COUNTY BOARD OF ADJUSTMENT

ITEM #1 CONDITIONAL USE

Applicant/Owner: Kim & Jean Willers

Property Description: Lot 5 Block 2 Dakota Bluffs Addition in Gov't Lot 1, Gov't Lot 2 and the N1/2 of the Section 8-114-47, Norden Township, Lake Cochrane, Deuel County, South Dakota.

Action Items – CONDITIONAL USE – (Section 1103.05.8 – Accessory structures located on a lot adjacent to a lot with principle structure separated by a public or private road)

Zoning Designation: LP – Lake Park

Request: Applicant requesting a Conditional Use Permit to build a garage located on a lot adjacent to a lot with principle structure separated by a public or private road.

Specifics of Request:

1. Kim & Jean Willers purchased this lot recently.
2. The applicant would like to build a garage on this lot they also own Lots 33-34-35 Thokola Beach in Gov Lot 2, which located crossed the road from Lot 5 Block 2 Dakota Bluffs Addition.
3. There is an existing 55' easement that runs toward the front of the Lot 5 Dakota Bluff Addition (road side).
4. The applicant was will not need a variance to build an accessory building they meet the all the Lake Park setbacks.
5. Deuel County Ordinance requires that a landowner go through the Conditional Use Process to have accessory structures located on a lot adjacent to a lot with principle structure separated by a public or private road in the "LP" District.

Ordinance and Comprehensive Land Use Plan regarding this request:

- o This lot will have access off Edgewater Drive which is maintained by Deuel County
- o This site has room for off street parking; They will not park in the road right-of-way
- o They have efficient utilities; Water is provided by Brookings-Deuel Rural Water, they have been in contact with Lake Cochrane Sanitary District. They have garage service for their trash. Electricity is provided by H-D.
- o They have efficient Screening and Buffering and the shed will be located approximately 10' from the side lot line and the shed is located 60' from the front property line and they have no intent to plant trees or build a fence for screening at this time.
- o They are not having any Signs;
- o They have have efficient yard space and other open space, the garage will be located 10' from the existing easements and and 60 from the platted road right-of-way (Edgewater Drive) and more than 10' from the side lot lines;

Staff Summary

Conditional Use Permit – Accessory structures located on a lot adjacent to a lot with principle structure separated by a public or private road: The application may be approved, postponed, or denied.

Staff recommendation:

Approval would be based on the applicant's ability to meet the requirements for a Conditional Use Permit described in ordinance - To grant the Conditional Uses Permit for – Accessory structures (garage) located on a lot adjacent to a lot with principle structure separated by a public or private road

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

ITEM #2 CONDITIONAL USE

Applicant: Tabb McCluskey

Owner: Joan A McCluskey Living Trust

Property Description: Lots 6-6A (replat Lot 12) & 20' between Lots 6-7 Ingvalsons Sugar Sand Beach Add in Gov Lot 6 & SE1/4 NE1/4 4-114-47, Lake Cochrane, Norden Township, Deuel County, South Dakota.

Action Items – CONDITIONAL USE – (Section 1103.05.8 – Accessory structures located on a lot adjacent to a lot with principle structure separated by a public or private road)

Zoning Designation: LP – Lake Park

Request: Applicant requesting a Conditional Use Permit to move in a shed/garage located on a lot adjacent to a lot with principle structure separated by a public or private road.

Specifics of Request:

1. Joan A McCluskey Living Trust owned these lot for many years.
2. The applicant would like to move in a 12' x 20' shed/garage on Lot 6A (Lot 6 is the lake lot and Lot 6A is back lot)
3. There is an existing 20' road way platted between the lots that separates Lot 6 and Lot 6A.
4. The applicant will not need a variance to build an accessory building they meet the all the Lake Park setbacks. The proposed location of the shed is approximately 12' from the side lot line and approximately 39' from the edge of the road.
5. Deuel County Ordinance requires that a landowner go through the Conditional Use Process to have accessory structures located on a lot adjacent to a lot with principle structure separated by a public or private road in the "LP" District.

Ordinance and Comprehensive Land Use Plan regarding this request:

- o This lot will have access off Cobblestone Lane which is maintained by Deuel County
- o This site has room for off street parking; They will not park in the road right-of-way
- o They have efficient utilities; Water is provided by Brookings-Deuel Rural Water, they have been in contact with Lake Cochrane Sanitary District. They did not provide a plan for trash. Electricity is provided by H-D.
- o They have efficient Screening and Buffering and the shed will be located approximately 12' from the side lot line and the shed is located approximately 39' from the edge of Cobblestone Lane and within their front property line; they have existing trees located between the shed location and the road and trees to the north.
- o They are not having any Signs;
- o They have have efficient yard space and other open space, the garage will be located approximately 39' from the platted road right-of-way (Cobblestone Lane) and more than 10' from the side lot lines;

Staff Summary

Conditional Use Permit – Accessory structures located on a lot adjacent to a lot with principle structure separated by a public or private road: The application may be approved, postponed, or denied.

Staff recommendation:

Approval would be based on the applicant's ability to meet the requirements for a Conditional Use Permit described in ordinance - To grant the Conditional Uses Permit for – Accessory structures (storage shed/garage) located on a lot adjacent to a lot with principle structure separated by a public or private road

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

ITEM #3 VARIANCE

Applicant/Owners: Hal & Terri Clemensen

Property Description: Lots 63-64 Thokola Beach in Gov't Lots 1 & 2 & NE1/4NW1/4 of the Section 8-114-47, Norden Township, Lake Cochran, Deuel County, South Dakota.

Action Items – Variance – (Section 1103.06 Minimum Lot Area and Yard)

Zoning Designation: LP – Lake Park

Request: Applicant requesting a Variance to remove old shed and build a new shed less than 50' from the high-water mark.

Specifics of Request:

1. Hal & Terri Clemensen purchased this lot in 2018.
2. The applicants removed the old shed and built a new shed less than 50' from the high-water mark.
3. The existing shed was very old and had rotting corners and floor. Theisen did research and couldn't find a building permit or a variance for the old existing shed. However, Theisen did find pictures for the retaining wall in 2001 and it showed the existing shed and location.
4. The existing shed was located approximately 30' from the high-water-mark and they built a new 8' x 12' shed in the same location. The shed is located more than 10' from the property line.

Ordinance/Variance History regarding this request:

1103.06 Minimum Lot Area and Yard

1. Each building shall be set back not less than fifty (50) feet from the right-of-way of State or Federal highways. For all other roads, the front yard setback shall at least thirty (30) feet from the edge of the road, but in no circumstance shall the structure be located within the right-of-way. Side yards shall have a ten (10) foot setback from the side yard property line. Exception: On those lots platted prior to June 8, 1976, which have a lot width of less than seventy-five (75) feet, each building shall have a side yard of not less than a distance equal to ten (10) percent of the lot width. Under no circumstances shall a building have a side yard of less than five (5) feet. Roof overhangs may infringe upon the side yard requirements no more than one and one-half (1.5) feet.
2. The Board has history of granting some variance requests in the Lake Park District of similar relaxation of rules. (Kooima, Pederson, etc.)
3. This property is located out of the floodplain.

Staff recommendation: If approved, staff recommendation - To grant the Variance to build/replace and accessory building no closer than 30' from the high-water-mark. 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 #4 VARIANCE

Applicant: Ronald Tvedt

Owners: Ronald Tvedt Family Trust

Property Description: E1/2E1/2 Less N161' S568' E235' SE1/4NE1/4 of the Section 12-114-49 Brandt Township, Deuel County, South Dakota.

Action Items – Variance – (Section 1101.05 Area Regulations)

Zoning Designation: AG – Agricultural

Request: Applicant requesting a Variance to build a new bin less than 65' from the road right-of-way.

Specifics of Request:

1. Ron Tvedt has owned this property for many years.
2. Mr. Tvedt is requesting to build a new bin less than 65' from the road right-of-way.
3. Tvedt would like to build a 42D x 26H 2013 Bock bin approximately 57' from the road right-of-way (approximately 90' from the center of a 33' ROW).
4. The existing bins are approximately 54' from the 33' ROW (approximately 87' from the center). Mr. Tvedt would like to keep the bins in alignment.

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. The Board has history of granting numerous variance requests in the Ag District of similar or greater relaxation of rules (Peterson)

Staff recommendation: If approved, staff recommendation - To grant the Variance to build an older bin no closer than 50' from the road right-of-way. 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 #6 VARIANCE

Applicants/Owners: Cordell & Phyllis Fox

Property Description: E690' S1345' less HWY in the SE1/4 of the Section 10-115-49 in Clear Lake Township, Deuel County, South Dakota.

Action Items – Variance – (1208 Shelterbelt Setback Requirements)

Zoning Designation: A – Agricultural District

Request: Applicants/Owners are requesting to plant trees within the 50' from the road right-of-way and to have more than 4 trees in a row in the controlled area.

Specifics of Property/Request:

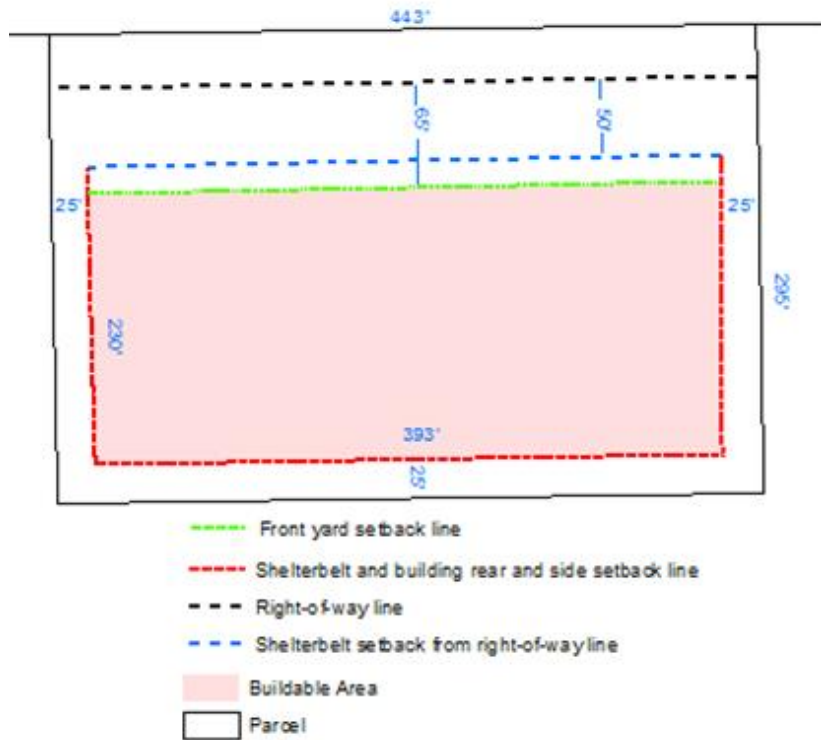
1. The applicant applied for a variance they are requesting to plant trees within the 50' from the road right-of-way and to have more than 4 trees in a row in the controlled area.
2. The applicant would like to plant one row of approximate 9 new trees with some older trees approximate 1' feet from the road right-of-way, the other 22 apple trees that are within the 100' controlled area from the house and barns are approximate 90' from the center of the road which is 40' from the road right-of-way they would be horizontal (parallel) to from the road right-of-way.
3. The applicant has existing windward row of trees (furthest north row of trees) located more than 150' from the road right-of-way.
4. This property is located north of a county road (180th St) that has a 50' road right-of-way.
5. The applicant has received written permission from the Jamie Broksieck Deuel County Hwy Superintendent to allow them to plant trees within within the 50' from the road right-of-way setback. They allowed the trees to be planted approximate 1' from the ROW.

Ordinance/Variance History regarding this request:

Section 1208

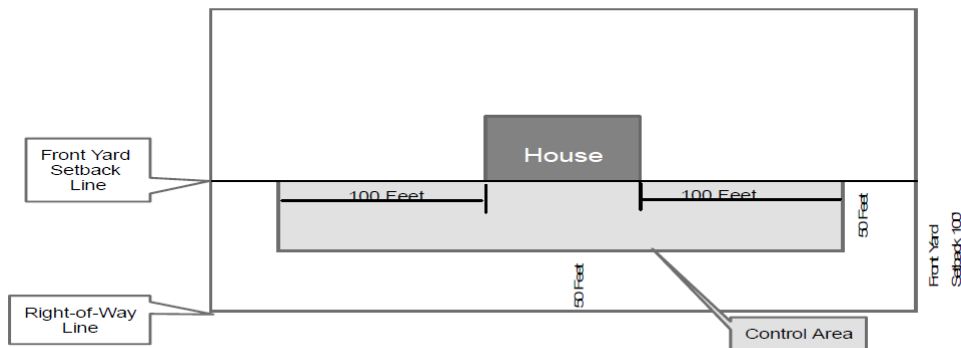
1. A shelterbelt may be established within fifty (50) feet of the public road right-of-way line if the windward row of trees is established one hundred fifty (150) feet from the public road right-of-way line. Further, the shelter belt will consist of at least three (3) rows of trees with the windward row of trees consisting of shrubbery or tree species which aid in the containment of snow. See Figure 1208.1.

- Shelterbelts around building sites shall not be established within fifty (50) feet of the right-of-way line. See Figure 1208.2 without written permission of Road Authority
Figure 1208.2



- Shade trees, ornamental trees or shrubs generally used for landscaping and windbreak are allowed in a controlled area. The controlled area is defined as the area within one hundred (100) feet of homes or farm buildings, but not closer to the right-of-way than fifty (50) feet. Except for the following, plantings within the controlled area are exempt from this regulation. Four or more trees in a row are not allowed within the controlled area. Deciduous trees which are spotted or staggered within the controlled area can be no closer than twenty (20) feet. Conifer trees which are spotted or staggered within the controlled area can be no closer than twenty-five (25) feet. The distance between trees shall be determined by measuring distance between tree trunks. See Figure 1208.3.

Figure 1208.3 Controlled Area Illustration



- A recommendation from the Road Authority is required prior to the issuance of any variance of the shelterbelt setback from a public right-of-way.

5. The board received requests for variances to plant shelterbelts within the 150 feet (previous setback) from the road right-of-way and in the past the board has granted a variance to plant shelterbelts no closer than 50' from the road right-of-way (VanDyke in 2019) ,no closer than 25' from the road right-of-way (Harringa in 2020) , no closer than 10' and 15' from the road right-of-way (Moore in 2020) & no closer than 15' from the road right-of-way (Lipp in 2023).

Staff Summary

Section 1208. Shelterbelt Setback Requirements.

The Board has to decide whether the issuance of a shelterbelt around building sites shall not be established within fifty (50) feet of the right-of-way line and to have more than 4 in a row in the controlled area. See Figure 1208.2 without written permission of Road Authority would not produce undue hardship or be substantial detriment to adjacent property.

Staff recommendation:

Variance Permit – Shelterbelt Setback Requirements (1208): The application may be approved, postponed, or denied. If approved, approval would be based on the board:

1. That the intent of a shelterbelt is to protect yard, lots, buildings, livestock and residences recreation and wildlife from wind. This shelterbelt would also prior screening with reference to this request and warrants relaxation of the road right-of-way setback requirements.

Denial would be based upon:

1. Granting this variance would confer special privilege that is denied by this ordinance to other property in the 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 #6 SPECIAL EXCEPTION

Applicant/Owner: Jeremy Wipf

Property Description: NE1/4NW1/4NE1/4 & W268' N661.47' NE1/4NE1/4 of Section 28-113-47, Scandinavia Township, Deuel County, South Dakota.

Action Items – Special Exception – (1101.04.16 – Section 1210) Extended Home Occupation (Spray Foam Business)

Zoning Designation: AG – Agricultural

Request: Applicant/Owner to operate an Extended Home Occupation (Spray Foam Business)

History/Issue(s):

Specifics of Request:

1. Wipf was granted a Special Exception to operate an auto and equipment sales business, spray foam business, and to have a single-family residence in a Commercial District in 2019.
2. Wipf rezoned this property from Commercial District to Agricultural District on May 16, 2023 and the effected date is July 4, 2023.
3. Wipf rezoned the property to Commercial District because with the intention to operate auto and equipment sales business however that business was not started. In the updated Commercial District single-family residence are not allowed that is why Wipf applied to rezone the property back to Agricultural District, where a single-family residence is permitted and that is why he is applying for a CUP for extended home occupation for spray foam business.
4. Access to this property is SD HWY 28 maintained by the State of South Dakota.
5. The applicant is requesting to operate an Extended Home Occupation (Spray Foam) in existing accessory building.
 - a) Location of existing shed meets the setback requirement.

6. No new accessory buildings are proposed at this time.
7. Wipf stated that the business has 6 employees (himself, 2 brother-in-law's and 3 cousins).
8. This property is not located on a aquifer or in the flood plain.
6. Deuel County Ordinance requires that a landowner go through the Conditional Use Process to to operate an Extended Home Occupation in the "AG" District.

Ordinance/Variance History regarding this request:

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.

Ordinance and Comprehensive Land Use Plan regarding this request:

- o This lot will have access off SD Hwy 28 which is maintained by State of South Dakota;
- o The site has room for off street parking;
- o They have adequate utilities; water is provided by Brookings-Deuel Rural Water and power is provided by H-D.
- o They have efficient Screening and Buffering and the existing shed is located approximately 180' from the road right-of-way and there are existing trees located to north, west and east;
- o They are not going to have an on-site Signs currently.
- o They have have efficient yard space and other open space, the shed is approximately 180' from the road right-of-way.

Staff recommendation:

Special Exceptions Permit – Extended Home Occupation (Spray Foam 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.

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 # 7 PLAT

Applicant/Land Owner: Vincent & Roberta Parker Trust

Property Description: Plat of Parker Third Addition in NE1/4 of Section 15, T114N, R50W

Request: To plat a bare parcel which contains 3.3 acres for transferring purposes.

Action Item –Plat approval.

ITEM # 8 PLAT

Applicants/Owners: Brian Moe

Property Description: S420' W108.5' SE1/4 & S420' E600' SW1/4 of Section 12, T116N, R49W to be known as Brian And Vanessa Moe Addition in S1/2 of Section 12, T116N, R49W

Request: To Plat footage description into Brian And Vanessa Moe Addition in S1/2 which contains Lot 1: 3.415 acres which contains the house and Lot 2: 3.415 acres which contains the shed which they will apply for extend home occupation for welding later. They are platting for banking purposes.