

HAMLIN COUNTY BOARD OF ADJUSTMENT

Date: January 30, 2018

The Hamlin County Board of Adjustment met on January 30, 2018 at the Hamlin County 4-H Building at 310 Pheasant Ave. Hayti, SD. Board Members present were Larry Saathoff, Robbie Fedt, Scott Popham, Kenneth Struckman, John Pantzke. Richard Wiarda and Lenord Kemnitz were on by teleconference. Also present were Todd Kays, Luke Muller, and Thomas Nealon from First District in Watertown. A list of others attending the meeting is attached to the minutes and available in the Zoning Office.

Board of Adjustment

Acting Chairman Struckman called the Board of Adjustment to order at 3:50 p.m.

Todd Kays, parliamentarian and zoning advisor provided an overview of public hearing protocol. He also explained that when moving to new business Wiarda and Kemnitz would leave the teleconference and Doug Noem and Jay Baldwin would replace them on the Board.

Muller adds an item to the Agenda, discussion of ex parte communication and conflicts of interest.

Motion by Pantzke, Second by Popham to approve Agenda, motion approved unanimously.

Motion by Saathoff, Second by Popham to approve November 13, 2017 Board of Adjustment Meeting Minutes. Motion approved unanimously.

Muller summarized the Board of Adjustment By-Laws, reading through the main sections of the document, specifically upon the Standard Findings of Fact for all conditional use permits and variance requests. Motion by Saathoff, Second by Popham to adopt By-Laws as read. Motion carried unanimously.

Muller and Kays discussed ex parte communication and disclosures of conflicts of interest. Ex parte communication includes an discussion a board member would have based on an agenda item that only they would have due to their standing on the board. Conflict of interest covers any sort of benefit you or your family, directly benefit from the approval of an agenda item.

OLD BUSINESS

1. **Conditional Use Request** – Josh Spilde at Block 1 Spilde Addition SE ¼ Section 36, T113N Motion by Fedt, Second by Popham to approve the conditional use permit. Kays reviewed the staff report (attached). The permit concerns a private campground/commercial storage units the applicant wishing to build on his property. This issue has been postponed since the November 13' 2017 Board of Adjustment meeting to allow Mr. Spilde to gather the proper information in accordance with the campground. Mr. Spilde spoke upon the campground and his plans. Asked about emergency shelters, Mr. Spilde stated the Lake Poinsett Methodist Camp will serve as the shelter, yet could not provide a written agreement attesting to this as the camp as a policy does

not give them out. Pantzke asked if the camp would have the capacity to hold his campground occupants as well as the State Park's. Mr. Spilde did not offer an answer. Tim Bjorklund and Kevin Gruenwaldt both spoke in support. John Hurley spoke in opposition. Following proponent and opponent testimony, Mr. Spilde stated septic tanks would be on the north portion of the property with drain lines running from each pad to the tanks and then run through the Lake Poinsett Sanitary Sewer District. He also proposed placing the commercial storage buildings/fences/trees nearest Mr. Hurley's property to prevent campground visitors would not trespass on his property. In the event during construction of the campsite there is no need for the storage buildings, Mr. Spilde would use those proposed spots for RV pads. The Board then amended the motion to allow Mr. Spilde two years on the construction of the commercial storage buildings. Motion to approve conditional use permits as amended by Fedt, Seconded by Popham. Motion as amended approved unanimously.

2. **Conditional Use Permit** - John Hurley at (S 1,753' of the E1/2 of the SW ¼ of Section 25, T113N R53W of the 5th P.M. Hamlin County SD – less Lake Albert First Auxiliary Addition and less Pier 81 lagoon Addition and Less Pier 81 2nd Addition and less that portion lying west and south of said Lake Albert First Auxiliary Addition, Pier 81 Lagoon Addition and Pier 81 2nd Addition and less the E 855 feet of the S 1280', Less Pier 81 lagoon Addition and less Pier 81 2nd Addition) requests to construct a private campground. Prior to the meeting today, Mr. Hurley approached Staff requesting to withdraw his application. Struckman asked Mr. Hurley is he so wished to withdraw his application. Mr. Hurley confirmed. Struckman stated Mr. Hurley would be allowed to re apply after six months.
3. **Variance Request** – John Hurley at (S 1,753' of the E1/2 of the SW ¼ of Section 25, T113N R53W of the 5th P.M. Hamlin County SD – less Lake Albert First Auxiliary Addition and less Pier 81 lagoon Addition and Less Pier 81 2nd Addition and less that portion lying west and south of said Lake Albert First Auxiliary Addition, Pier 81 Lagoon Addition and Pier 81 2nd Addition and less the E 855 feet of the S 1280', Less Pier 81 lagoon Addition and less Pier 81 2nd Addition) to allow for less than 100% of adjoining landowners signatures when placing a moved-in building on your property. Motion by Pantzke, Second by Fedt. Kays reviewed the staff report (attached). Mr. Hurley attested to only needing three signatures as he was told by the previous zoning officer. Kevin Gruenwaldt in favor of Mr. Hurley's request. Dencye Campbell, Kathy Antinen, Greg Eibert, Bryan Olson (On behalf of Carol Olsen), Rick Anderson, Pam Anderson, and Jeanette Tuhino all spoke in opposition to the approval of the variance. Muller read the standard findings of fact for variance requests. Board members expressed no to each of the statements. Struckman called for a roll call vote. Motion to approve the variance requested was denied unanimously. The Board placed the condition the house must be removed from the property within six months. Motion to include this in the letter of assurance passed with a voice vote.

NEW BUSINESS

At this point Kemnitz and Wiarda left the conference call and were replaced on the board by Doug Noem and Jay Baldwin.

4. **Conditional Use Permit and Variance Request** - Jeff Halme and Kyle Waliezer at Outlot 2 of the NW ¼, Section 19, Township 113N, Range 52W of the 5th p.m. in Hamlin County, South Dakota. Motion by Fedt, Second by Pantzke to approve the front yard setback variance. Nealon reviewed staff report (attached). Mr. Halme and Waliezer propose to construct a Convenience Store/Service Station on the property described above which requires a conditional use permit. As well as variances on the front yard setback and on the placement of petroleum storage tanks underground in Zone B of the Aquifer Protection District. Mr. Halme and Mr. Waliezer spoke on the front yard setback, stating they have written approval from Norden Township for the proposed reduced front yard setback on 193rd Street. In the meeting with Township officials, they also confirmed they will fill in the ditch on 193rd to make an approach along the northern edge of the property. Mr. Waliezer stated they are applying for a State DOT permit to gain road access on the western edge of the property to have another access for traffic to enter the property. Mr. Halme stated there will be catch basins and piping to handle water coming off the property to move it towards the State R.O.W as it does now. Noem asked about signage on the proposed location and standards it must meet according to SD DOT and County regulations. Katherine Wendling spoke in support of the request. Ken Kontz and Jordan Kontz spoke in opposition. Mr. Waliezer spoke to questions and concerns raised in public testimony, speaking on fencing and trash containment, placing a retaining wall on the south side of the property, box lighting on the property, and petroleum containment. Saathoff reiterated conditions that must be met with SDDENR, Federal regulations concerning petroleum storage, and cooperation with the adjoining landowners. Muller asking questions from public testimony concerning highway access, contingency plans if the State permit on 81 is not granted, fencing, and lighting. Muller discusses the conditions listed in the staff report. Muller reads findings of fact for variance on the front yard setback to 193rd Street. Motion to approve front yard variance passed unanimously. Motion by Noem, Seconded by Pantzke to approve variance on storage of underground petroleum tanks in Zone B of the Aquifer Protection District. Muller reads findings of fact for variance on storage of underground petroleum tanks in Zone B of the Aquifer Protection District. Motion to approve variance on underground petroleum tanks passed unanimously. Motion by Pantzke, Second by Popham to approve conditional use permit for convenience store/service station. The Board amended Motion on the conditional use permit to require a civil engineer to design drainage plan and privacy fencing on the East and South sides of property lines. Motion to approve amendments passed by a voice vote. Motion, as amended, to approve conditional use permit passed unanimously.
5. **Variance Request** – Todd Donely at Siouxland 2nd Addition, Lot 1 & 2, Section 36-113N-53W. Motion by Popham, Second by Baldwin to approve variance on front yard setback variance. Nealon reviewed staff report (attached). Mr. Donely seeks a front yard setback variance to add an addition to the existing structure (Siouxland) to add storage and a casino. The addition would

be in line with the existing structure and would not encroach further into the State Highway R.O.W. Mr. Donely was not present to testify on his behalf. No proponents or opponents testified to the variance. The Board instructs the findings of fact to be read, Muller reads the findings of fact. Motion to approve the front yard setback variance passes unanimously.

6. **Conditional Use Permit and Variance Requests** – Jeffery and Wayne Tekrony at Section 22-T115N-R51W in Hamlin Township. Motion by Noem, Second by Popham to approve the variance to reduce the established residence setbacks. Muller reviewed staff report (attached). Jeffery and Wayne Tekrony seek to combine their two existing Concentrated Animal Feeding Operations and build a new site west of the current operation on the NE $\frac{1}{4}$ of Tekrony's property. They are seeking the a Conditional Use permit to operate a Class A CAFO up to 1,400 Dairy cattle on the West site and 1,000 calves (2,400 AU total) on the East site with the use of an irrigation pivot to move process water. The Variance would allow Tekrony to operate the CAFO within $\frac{1}{2}$ mile of an established residence. Jeffery and Wayne Tekrony speak to their operation. No proponents or opponents spoke during public testimony. Kays reads the findings of fact for the variance request. Motion on the variance passed unanimously. Kays reads the findings of fact for the conditional use permit. Motion by Popham, Second by Fedt to approve the conditional use permit. Motion to approve the conditional use permit passes unanimously.
7. **Conditional Use Permit and Variance Requests** – Riverview LLP at SE1/4, Section 15-T113N-R55W, Hamlin County, South Dakota. (Garfield Township). Motion by Pantzke, Second by Baldwin to approve variance on reduced setback for Class A CAFOs from established residences. Kays spoke to conflicts of interest and ex part communication any of the Board members may have had in the lead up to the Board hearing. Fedt recused himself as having a conflict of interest and three Board members did disclose they received letters from opponents to the proposed dairy. The three Board members who received the letters did not believe the letters would influence their decision. Muller reviewed staff report (attached). Riverview LLP, from Morris, MN, seeks to construct and operate a 9,500 Jersey Cow (13,585 AU) Dairy in Southwest Hamlin county near Bryant. The applicant is applying for a conditional use permit to operate a Class A CAFO. The variances request would allow Riverview to construct the dairy and supporting buildings closer that is stated by Ordinance. The requests are from two established residences, one municipality (City of Bryant), one township road (440th Ave), and one State Highway (SD HWY 28). Ben Stout and Brady Janssen, representing Riverview LLP, and Jon Anderson (landowner) gave a PowerPoint presentation on the proposed dairy. They answered questions from the Board and the public. Keith Brown, Rodney Elliot, Avis Welton, Don Endres, and Joan Wastweet all spoke in support of the applicant. Katherine Wendling and Brenda Johnson spoke in opposition. Ben Stout and Brady Janssen answered questions raised in the public testimony. Questions about rural water access through Sioux Rural Water or installation of wells on-site, previous applications for proposed dairy, internal animal raising and breeding, road maintenance, on site housing, and ownership of land. Muller reads findings of fact for the variance request on reduced setback to established residence. Motion on the variance on reduced setback from established residences passes unanimously. Motion by Pantzke, Second by Baldwin to approve variance on the reduced setback from a municipality (City of Bryant). Muller reads the findings of fact on the variance on the reduced setback from a municipality,

Motion passes unanimously. Motion by Popham, Second by Saathoff to approve variance on the reduced setback from a State R.O.W. (SD HWY 28). Muller reads the findings of fact on the variance on the reduced setback from a State R.O.W. Motion passes unanimously. Motion by Saathoff, Second by Pantzke to approve variance on the reduced setback from a township road (440th Ave). Muller reads the findings of fact on the variance on the reduced setback from a township road. Motion passes unanimously. Motion by Noem, Second by Baldwin to approve conditional use permit to operate a Class A CAFO. Muller reads the standard findings of fact on the conditional use permit to operate a Class A CAFO. Motion passes unanimously.

It is the policy of Hamlin County not to discriminate on the basis of color, national origin, sex, religion, age, or disability in employment or the provision of services.

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