

MINUTES OF THE LINCOLN COUNTY BOARD OF ADJUSTMENT

February 19, 2019

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Ron Larson, Tyler Klatt, Ron Albers, Monty Derosseau, Gary Pashby, Tiffani Landeen, and Darrel Sogn

STAFF PRESENT: Toby Brown and Joan Doss - County Planning

PUBLIC PRESENT (sign in sheet): Ricky DeBoer, Jay DeBoer, Dick & Roxanne Peters, Tony Ventura, Don Abbas, Mike Pederson, Enest Stratmeyer, Al Hoines, Mitch Peterson, Larry & Faith Kinkner, Paul & Glenadene Aamot, Lynn Hurley, and Amy Olson

1. CALL TO ORDER AND ROLL CALL

The regular meeting was brought to order on February 19, 2019 at 7:45pm in the Commission Meeting Room of the Lincoln County Courthouse by Chairman Derosseau.

2. APPROVAL OF AGENDA

Klatt motioned to approve the agenda and was seconded by Albers. The motion passed unanimously (7-0).

3. PUBLIC HEARINGS

- a. APPEAL / 19-BOA-001: Appeal filed by Appellants on the approval of a Building Permit (18-239) authorizing Shane Zylstra to construct a 51-foot x 393-foot confinement barn (Class C CAFO: 2,499 finishing swine) on the property legally described as Tract 1 of Zylstra Addition in Government Lot 1 of the Northeast quarter (NE1/4) of Section 3, Township 96 North, Range 50 West of the 5th Principal Meridian, Lincoln County, South Dakota.

Appellants: Faith & Larry Kinkner, Gay & George Kapplinger, and Kapplinger Farms LLC

Staff Analysis:

Description: Appeal Building Permit Number 18-239 (Shane Zylstra) – For possible action, hearing, and discussion on an appeal of the Planning and Zoning Director’s decision to approve a building permit application for a Class C Concentrated Animal Feeding Operation. The Class C Concentrated Animal Feeding Operation was proposed to be in conformance with the prescribed requirements of Section 3.03 of the 2009 Revised Zoning Ordinance for Lincoln County. Applicant: Shane Zylstra Location: 47397 291st Street

Staff Recommendation: Staff offers the following motion for the Board’s consideration:

I move that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Lincoln County Board of Adjustment **deny or approve** Appeal of Building Permit Number 18-239 for Shane Zylstra and **affirm or overrule** (with stated reason) the decision by the Director of Planning and Zoning to issue a building permit for a Class C Concentrated Animal Feeding Operation.

Public Comment:

Toby Brown presented a summary of the staff report. Toby noted that the building permit was approved since it met the requirements of section 3.03(H) of the zoning ordinance. He also noted that the decision tonight would require a supermajority in agreement.

Mitch Peterson, attorney representing the appellants, presented his case. Mr. Peterson noted that prior to February 2018 all Class C CAFOs required a conditional use permit. He claimed that Section 3.03(H) conflicts with Section 12.09(B) which states all Class A, B, and C CAFOs shall be required to apply for a conditional use permit. Mr. Peterson then pointed to section 25.04 which states that if regulations conflict, the more stringent restriction shall prevail, and argued that the conditional use permit was the more stringent restriction.

Pashby asked if the appeal of Shane Zylstra’s conditional use permit was still pending even though he withdrew the permit. Mr. Peterson noted that it was still pending because the decision on this appeal needed to be made first, and he’s not sure how Mr. Zylstra would respond after tonight’s decision. Pashby also questioned why 3.03(H) would need to conform to 12.09(B) since it wasn’t directly referenced like 12.09(D)(5) and 12.09(F). Pashby went on to clarify that if the intent of the ordinance amendment had meant for conformance with section 12.09(B), it would have been listed in the list of stipulations, and that he believes the intent was to provide applicants with two avenues of permitting procedures. Mr. Peterson responded that 3.03(F) would only work in the instances of an unpermitted facility wanting to expand up to a Class C size.

Derausseau asked for public comment, hearing none, he closed the floor to public comment.

Discussion & Action:

Pashby motioned to deny the appeal and affirm the decision by the Planning Director based on the information received in the staff report and public hearing and because he believed the intent of the ordinance was to provide two avenues for development of Class C CAFOs. The motion was seconded by Landeen. The motion passed unanimously (7-0).

Appeal 19-BOA-001 - Denied

4. OPPORTUNITY FOR PUBLIC COMMENT - None

5. OLD BUSINESS – None

6. NEW BUSINESS – None

7. ADJOURNMENT

Klatt motioned to adjourn at 8:14pm and was seconded by Albers. Motion passed unanimously (7-0).

Respectfully submitted,
Joan Doss
Planner