

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

February 3, 2010

JOINT MEETING

The Regular Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairperson Marie Farrier on Wednesday February 3, 2010 at 5:00 p.m. in the Deadwood City Hall Meeting Room located at 102 Sherman Street, Deadwood, SD 57732.

PRESENT PLANNING & ZONING: Marie Farrier, Mel Allen, Sheree Green, Larry Ryan and Jim Shedd.

PRESENT BOARD OF ADJUSTMENT: Mayor Francis Toscana, Lenny Schroeder, and Georgeann Silvermail.

ABSENT BOARD OF ADJUSTMENT: Mike Klamm, and Joe Peterson.

Planning and Preservation representative, Mike Olsen, was also present.

APPROVAL OF MINUTES:

Mr. Ryan moved to approve the minutes of the December 6, 2009 Regular Meeting, as mailed. Mr. Shedd seconded and the motion carried.

<u>All in favor</u>	<u>-</u>	<u>5</u>
<u>Opposed</u>	<u>-</u>	<u>0</u>

MR. KEITH UMENTHUM - SIGNS

Results of phone vote for Wayne Morris- 390 Main Street- Request for a 6'x4' freestanding sign.

Ms. Deanna Berglund, acting Zoning Administrator, stated that during the phone vote conducted on January 6, 2010, all five Planning and Zoning Commissioners had approved the sign permit for Wayne Morris at 390 Main Street for a 6'x4' freestanding sign with the stipulation that a \$40.00 sign permit be paid. Ms. Berglund noted that the \$40.00 permit fee had been received.

Northern Hills Alliance for Children- 751 Main Street- Request for a temporary banner and fee waiver.

Mr. Umenthum explained that the Northern Hills Alliance for Children, a non-profit organization, that was formed in 2009 to provide care and educational services to children in the Northern Black Hills, had purchased the Qwest building, located at 751 Main Street, and are currently in the process of fundraising and renovating the building. He stated that the applicants were requesting permission to display a temporary banner at 751 Main Street announcing the forthcoming daycare. He also noted that the applicants were requesting a fee waiver. Mr. Umenthum recommended approval of the sign and waiver.

Ms. Farrier called for a motion to approve the temporary banner at 751 Main Street and waive the fee for a non-profit.

Mr. Allen moved to approve the display of an 8'x3' or 24 sq. ft. temporary banner for the Northern Hills Alliance for Children at 751 Main Street and a fee waiver for a not-for-profit. Mr. Shedd seconded and the motion carried.

<u>All in favor</u>	<u>-</u>	<u>5</u>
<u>Opposed</u>	<u>-</u>	<u>0</u>

Regency Hotel/The Lodge at Deadwood- 100 Pine Crest- Request permission to revise sign permit approved on October 21, 2009.

Mr. Umenthum explained that the Planning and Zoning Commission had already approved the Regency Hotel's request for a sign at the end of the hotel building reading "The Lodge at Deadwood," with an 84 square foot variance from the 60 square feet allowed for a wall sign outside of the historic district. Mr. Umenthum noted that the applicants were requesting a revision to the previously approved sign. Mr. Umenthum stated that the City Commission had amended the sign ordinance to allow for internally lit signs outside of the federally designated Deadwood National Historic landmark District and the applicants wanted to use backlit led's as now allowed.

Ms. Farrier called for a motion to approve a revised sign permit for the Lodge at Deadwood.

Mr. Shedd moved to approve a revision, that would allow the applicants to use solid sign letters with backlit led's, to the sign permit approved on October 21, 2009 for the Lodge at Deadwood. Mr. Ryan seconded and the motion carried.

All in favor - 5
Opposed - 0

CONDITIONAL USE PERMIT REQUEST FOR A LARGE DAYCARE:

Northern Hills Alliance for Children- 751 Main Street- Request for Conditional Use Permit for a Large Daycare.

Ms. Berglund noted that the legal description on the mailed staff report was incorrect and that it had been corrected reprinted. She added that the corrected sheet was located in front of the Commission.

Ms. Berglund referred to the following staff report:

**STAFF REPORT
PLANNING AND ZONING
REQUEST FOR CONDITIONAL USE PERMIT
FOR A LARGE DAYCARE USE**

APPLICANT: Northern Hills Alliance for Children
PURPOSE: Request for Large Day Care.
GENERAL LOCATION: 751 Main Street
LEGAL DESCRIPTION: Lots 8 Thru 12 Block 2, Kennedy & Cameron Addition, City of Deadwood, Lawrence County, South Dakota.
ADDRESS: 751 Main Street
ZONE: C1 - Commercial District
FILE STATUS: All legal obligations have been completed.

CITIZENS RESPONSE: FOR: AGAINST:

STAFF FINDINGS:

<u>Surrounding Zoning:</u>	<u>Surrounding Land Uses</u>
North: C-1 Commercial/PU - Public Use	Radio Station/Fire Hall
South: PU - Public Use	Chamber of Commerce
East: PU - Public Use	Highway/Vacant lands
West: PU - Public Use	Church

SUMMARY OF REQUEST

The petitioner has submitted a request for a Conditional Use Permit to allow a Large Day Care Use. Large Day Care are defined as "Day care, large" means a facility that provides care for six or more children that are primarily present during daytime hours, and do not regularly stay overnight. Basic requirements for a large day care facility are: 1) Operator must comply with the standards of the state Fire Marshal relating to the subject of fire and life safety in large day care facilities; 2) The applicant shall be licensed by the State of South Dakota as a day care facility; 3) Applicant shall develop and distribute information to the day care clients stating the need not to disrupt the

neighborhood when dropping off and picking up children; 4) Off-street parking shall be provided for employees of the day care facility; 5) Drop-off and pick-up areas are designated for clients.

The Northern Hills Alliance for Children (NHAC) will be state certified licensed for up to sixty (60) children. The facility plans to have 2 full-time, 5 part-time and 8-15 student workers. The NHAC long-term goal is to create and staff a twenty-four (24) hour daycare center for up to one hundred twenty (120) children.

FACTUAL INFORMATION

1. The property is currently zoned C1 – Commercial District.
2. The property used for the day care is comprised of 5,656, plus or minus, square feet.
3. The property has ample parking in the drive-way for drop-off and pick-up points. The pick-up/drop-off area will provide short-term parking opportunities for the parents and/or guardians.
4. The property has access from Main Street.
5. The properties are located within an area close to the school and fire station. There is limited commercial use in the vicinity. The land is located in a mixed use neighborhood and is classified as low density residential on the adopted Land Use Map in the Deadwood Comprehensive Plan.
6. The land is located in Flood Zone X – Area's of 500 year flood; areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 100-year flood.
7. Adequate public facilities are available to serve the property.
8. The area is characterized by mixed commercial, public, residential uses and vacant lands.

STAFF DISCUSSION

The petitioner(s) has submitted an application for Conditional Use for a Large Day Care to be located at 751 Main Street. The hours of operation will be 7:00 a.m. to 7:00 p.m., Monday through Friday. The daycare will be registered with the State of South Dakota and NHAC has applied for 501(c) (3) nonprofit status. The projected opening of the daycare is June 2010.

The long term goal of the NHAC is to create a twenty-four (24) hour daycare center. The Zoning Ordinance states in the definition of a large daycare that children, "do not regularly stay overnight." Therefore, when expansion of operation times is needed, NHAC will have to request a change to the Zoning Ordinance from City Commission. If the ordinance is changed, the Planning & Zoning Commission can review the CUP to allow overnight child care.

COMPLIANCE:

1. The Zoning Officer provided notice identifying the applicant, describing the project and its location and giving the scheduled date of the public hearing in accordance with Chapter 17.76.
2. A sign was posted on the property for which the request was filed in accordance with Chapter 17.76.
3. Notice of the time and place was published in the designated newspaper of the City of Deadwood in accordance with Chapter 17.76.

CONDITIONAL USE PERMIT

GENERAL USE STANDARDS FOR CONDITIONAL USE PERMITS:

In reviewing any application under the authority of this chapter and as a further guide to its decision upon the facts of the case, the Commission(s) shall consider, among other things, the following facts:

The proposed use shall be in harmony with the general purposes, goals, objectives, and standards to the City Policy Plan, the ordinance, the district in which it is located, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice by the City of Deadwood.

The use, as proposed, provides a daycare service that is a needed service in the Deadwood area. The use is listed under Conditional Uses in the C1 – Commercial District. This use is in harmony with the general purpose of the Comprehensive Plan and Zoning Ordinance. Conditional uses are those uses which have some special impact or uniqueness since their effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location.

Whether or not a community need exists for the proposed use at the proposed location in light of existing and proposed uses of a similar nature in the area and of the need to provide or maintain a proper mix of uses both within the city and also within the immediate area of the proposed use: (a) the proposed use in the proposed location shall not result in either a detrimental over concentration of a particular use from previously permitted uses within the city or within the immediate area of the proposed use.

A review of the location, configuration and impact has been conducted and compared to uses by right. The school, church and fire station are all located in the vicinity, as well as an existing daycare center.

The review determines whether the proposed use should be permitted by weighing public need for and benefits to be derived from the use, against the local impact which it may cause. There are other Conditional Use Permits in the area; a Bed & Breakfast at 771 Main Street and a large daycare located at 732 Main Street. In recent years many home daycares in the Lead/Deadwood have closed; therefore, there is a need for a large daycare center.

The subject area is zoned C1 Commercial District. The District is intended to provide locations coinciding with the downtown core commercial zone where certain commercial uses and gaming are permitted.

- C. The proposed use at the subject site shall not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites or rights-of-way.

The proposed use would not result in a substantial or undue adverse effect on adjacent property nor will it alter the character of the neighborhood. The structure will remain the same size and the appearance will not change. The establishment, maintenance, and operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare. On the contrary, the availability of licensed child care will have a positive impact on the community.

The daycare use does create more traffic; however, due to the location and the type of use, it will only have a minor effect on adjacent landowners. To support a denial of a conditional use permit on the grounds that it will cause increased traffic problems, there must be a high degree of probability that the increase would pose a substantial threat to the health and safety of the community.

Whether or not the proposed use increases the proliferation of non-conforming uses as well as previously approved Conditional Use Permits which are still in use, when influenced by matters pertaining to the public health, safety, and general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of provisions and policies of the Policy Plan, this ordinance, or any other plan, program, map or ordinance adopted, or under consideration pursuant to official notice, by the city or other governmental agency having jurisdiction to guide growth and development. For any Conditional Use, lot and performance standards shall be the same as similar type uses located in specific districts. The character and use of buildings and structures adjoining or near the property mentioned in the application shall be considered in their entirety.

The daycare use will not increase the proliferation of non-conforming uses. The use is intended to be a service to the community. The subject area is comprised of residential, public uses and commercial uses. Structures located near the proposed daycare are: St. Ambrose Catholic Church, public elementary school, Wells Fargo Bank, Real Estate Office, Fire Hall, KDSY and Deadwood Chamber of Commerce.

Whether or not the proposed use in the proposed area will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, and services specified in this section.

There will be no significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation or other services. Existing services are available onsite. The area can accommodate drop-off and pick-up for the clients in the front and the side of the building.

CONDITIONS GOVERNING APPLICATIONS AND PROVISIONS:

- A. Following the issuance of a conditional use permit pursuant to the provisions of this ordinance, such permit may be amended, varied, or altered only pursuant to the standards and procedures established by this section for its original approval.
- B. The Board of Adjustment can revoke conditional use permits, once granted, for cause after a hearing is held before them. Complaints seeking the revocation of such permit shall be filed with the Zoning Administrator and may be initiated by the Planning and Zoning Commission OR any three (3) residents within three hundred (300) feet of the property lines of which the application has been filed. All such revocation hearings shall be conducted in the same manner as for the Conditional Use Permit application hearings.
- C. The Planning and Zoning Commission shall have the authority to review Conditional Use Permits at any time and/or on an annual basis and place additional stipulations to mitigate a problem.
- D. If the use permitted under the terms of a Conditional Use Permit has not been started within six (6) months of the date of issuance thereof, said permit shall expire and be canceled by the City Planning Department. Written notice thereof, shall be given to the person(s) affected, together with notice that further use or work as described in the canceled permit shall not proceed, unless and until a new conditional use permit has been obtained.
- E. If the use permitted under the terms of a Conditional Use Permit, ceases, for whatever reason, for a period of twelve (12) months, said permit shall expire and be canceled by the City Planning Department. Written notice thereof, shall be given to the person(s) affected, together with notice that further use or work as described in the canceled permit shall not proceed, unless and until a new conditional use permit has been obtained.

ACTION REQUIRED FOR CONDITIONAL USE PERMIT:

1. Recommendation by Planning and Zoning Commission for approval/approval with conditions/denial.
2. Approval/approval with conditions/denial by Board of Adjustment.

Ms. Berglund noted that she had not received any comments from adjacent landowners.

Mr. Allen questioned if the daycare across the street from the proposed daycare was open. Mayor Toscana stated that it was. Ms. Green asked if the CUP would run with the property, since the building is commercial. Ms. Berglund stated that that was correct.

Ms. Farrier called for a motion to approve the Conditional Use Permit for a large daycare at 751 Main Street.

Mr. Shedd moved to approve the Conditional Use Permit for a large daycare at 751 Main Street. Mr. Allen seconded and the motion carried.

All in favor - 5
Opposed - 0

Ms. Farrier closed the Planning and Zoning Commission and turned the meeting over to the Board of Adjustment.

Mayor Toscana stated that this matter would have to be continued by the Board of Adjustment as he serves on the board for the Northern Hills Alliance for Children. He explained that he would have to recuse himself from voting; therefore, the Board of Adjustment would not have a quorum. He added that the matter would have to be taken to the City Commission for Monday's meeting. Mayor Toscana asked Ms. Berglund to make sure that the CUP made it on Monday's agenda. Ms. Berglund stated that she would get it on the agenda.

Ms. Farrier called the Planning and Zoning Commission back to order.

REVIEW OF BED & BREAKFAST AT 15 WASHINGTON STREET:

Ms. Berglund stated that the Bed and Breakfast, owned by Brent and Mary Ellen Biskup, located at 15 Washington Street, had been issued three formal notices regarding trash and snow removal. She explained that the trash had been removed from the B&B; however, she was unaware if formal trash pickup had been arranged or if snow removal charges had been paid. Ms. Berglund also explained that there is a question as to whether or not the Biskup's are living at 15 Washington Street as is required by the Zoning Ordinance. Ms. Berglund stated that the Biskup's had been sent a certified letter requesting their presence at the night's meeting and that since they had not shown up, a public hearing would need to be regarding their Conditional Use Permit.

Mr. Ryan asked if the Biskup's had responded to the letter. Ms. Berglund stated that she had received her certified letter receipt; however, they had not called or made any contact with the Planning and Zoning Office.

Ms. Berglund explained that she had talked with Mr. Jason Campbell, City Attorney, and that he had stated that 15 Washington Street had a grandfathered status; however, this does not mean that their CUP status cannot be revoked. She added that the issue at hand is that it is believed that the Biskup's are not living at 15 Washington Street. Ms. Farrier asked if there would need to be a public hearing to address the matter. Ms. Berglund stated that this was correct. She asked if the Commission would like to wait for the new planning and zoning officer or if the Commission would like her to proceed with the matter. Mayor Toscana stated that there was no need to wait and that Ms. Berglund should go ahead and schedule a public hearing. Ms. Green stated that she agreed.

Mayor Toscana stated that the Planning and Zoning Commission should make a motion for the records.

Ms. Farrier called for a motion to set a public hearing, for the first Planning and Zoning Meeting in March, regarding the Bed and Breakfast at 15 Washington Street.

Mr. Ryan moved to approve a public hearing for the first meeting in March regarding the Bed and Breakfast at 15 Washington Street. Mr. Shedd seconded and the motion carried.

All in favor - 5
Opposed - 0

ELECTION OF OFFICERS:

Ms. Farrier explained that a nominating committee, made up of Mr. Mel Allen and Ms. Sheree Green, had been formed in December to suggest new candidates for office and asked for their recommendations.

Ms. Green moved to approve the nomination of Mr. Jim Shedd for the position of Planning and Zoning Commission Chairman. Mr. Ryan Seconded and the motion carried.

All in favor - 5
Opposed - 0

Mr. Allen moved to approve the nomination of Mr. Larry Ryan for the position of Planning and Zoning Commission Vice-Chairman. Ms. Green seconded and the motion carried.

All in favor - 5
Opposed - 0

Mr. Allen moved to approve the nomination of Ms. Sheree Green for the position of Planning and Zoning Commission Secretary. Mr. Shedd seconded and the motion carried.

All in favor - 5
Opposed - 0

OPEN:

Ms. Berglund and the other members of the Planning and Zoning Commission thanked Ms. Farrier for being a very thorough Chairman.

ADJOURNMENT:

Mr. Shedd moved to adjourn the Joint Meeting of the Planning and Zoning Commission. Mr. Ryan seconded and the motion carried.

All in favor - 5
Opposed - 0

There being no further business, the Planning & Zoning Commission adjourned at 5:20 p.m.

ATTEST:

Ms. Marie Farrier
Chairman (Acting)
Planning and Zoning

Ms. Sheree Green
Secretary (Acting)
Planning and Zoning