

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

April 6, 2011

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairperson Jim Shedd on Wednesday April 6, 2011 at 5:00 p.m. in the Deadwood City Hall Meeting Room located at 102 Sherman Street, Deadwood, SD 57732.

PRESENT PLANNING & ZONING: Jim Shedd, Marie Farrier and Mel Allen.

ABSENT PLANNING & ZONING: Sheree Green and Larry Ryan.

PRESENT BOARD OF ADJUSTMENT: Mayor Francis Toscana, Georgeann Silvernail, Joe Peterson and Lenny Schroeder.

ABSENT BOARD OF ADJUSTMENT: Bruce Oberlander.

APPROVAL OF MINUTES:

Ms. Farrier moved to approve the minutes of the March 16, 2011 Regular Meeting. Mr. Allen seconded and the motion carried.

All in favor - 3  
Opposed - 0

SIGNS:

MAVERICK TRADING POST - 653 MAIN STREET - REQUEST FOR A 10' X 12' WALL SIGN

Mr. Umenthum stated that the applicants were requesting permission to install a wall sign at 653 Main Street. Mr. Umenthum explained that the sign would state, "Maverick Trading Post." Mr. Umenthum stated that the sign would be 10' x 12' or 10 square feet made of MDF Letters. Staff recommended approval.

Ms. Farrier moved to approve the 10' x 12' wall sign for Maverick Trading Post at 653 Main Street. Mr. Allen seconded and the motion carried.

All in favor - 3  
Opposed - 0

MAVERICK TRADING POST - 653 MAIN STREET - REQUEST FOR THREE 3' X 2' WINDOW SIGNS

Mr. Umenthum stated that the applicants were requesting permission to install three window signs at 653 Main Street. Mr. Umenthum explained that the sign would state, "Maverick Trading Post." Mr. Umenthum stated that the signs would be 3' x 2' or 6 square feet made of vinyl and placed on the glass. Staff recommended approval.

Ms. Farrier moved to approve three 3' x 2' window signs for Maverick Trading Post at 653 Main Street. Mr. Allen seconded and the motion carried.

All in favor - 3  
Opposed - 0

HOMESTAKE ADAMS RESEARCH & CULTURAL CENTER- 150 SHERMAN STREET SIGN A: REQUEST FOR A 10' X 6' WALL SIGN

Mr. Umenthum stated that the applicants were requesting permission to install a wall sign at 150 Sherman Street. Mr. Umenthum stated that the sign would be 10' x 6' or 60 square feet made of painted MDO board. He explained that two variances were required: a four feet height variance from the maximum two feet allowed and a ten square feet variance from the fifty square feet allowed by the sign ordinance. He explained that because the building has a unique

façade replicating a mining head frame structure, Staff recommended approval with the two variances.

**Ms. Farrier moved to approve the 10' x 6' wall sign with two variances for height and square footage for the Homestake Adams Research & Cultural Center at 150 Sherman Street. Mr. Allen seconded and the motion carried.**

**All in favor - 3**  
**Opposed - 0**

**SIGN B: REQUEST FOR A 4' X 4' PROJECTING SIGN**

Mr. Umenthum stated that the applicants were requesting permission to install a projecting sign at 150 Sherman Street. Mr. Umenthum stated that the sign would be 4' x 4' or 16 square feet made of powder coated black steel. He explained that two variances were required: a variance for height of a sign because a projecting sign cannot be higher than the bottom sills of a two story building and a variance for location because the sign is not located near a public entrance. The sign would not have any lettering, only a pick, shovel and gold pan and would be displayed at the top of the replicated head frame. He explained that because the building is not the traditional 25 feet store front as the buildings on Historic Main Street, the sign ordinance does not work for this type of building; therefore, Staff recommended approval with the two variances.

**Ms. Farrier moved to approve the 4' x 4' projecting sign with two variances for height and location for the Homestake Adams Research & Cultural Center at 150 Sherman Street. Mr. Allen seconded and the motion carried.**

**All in favor - 3**  
**Opposed - 0**

**REQUEST FOR WAIVER OF SIGN PERMIT FEE**

Mr. Umenthum stated that the applicants were requesting permission to waive the sign permit fee for a not for profit organization.

**Ms. Farrier moved to approve the waiver of the sign permit fee for the Homestake Adams Research & Cultural Center at 150 Sherman Street. Mr. Allen seconded and the motion carried.**

**All in favor - 3**  
**Opposed - 0**

**PUBLIC HEARING:**

**PUBLIC HEARING - REQUEST FOR A 7' VARIANCE FROM SECTION 17.24.040.B - FRONT YARD SETBACK REQUIREMENTS**

Mr. Nelson referred to the following staff report:

**STAFF REPORT  
REQUEST FOR VARIANCE  
FROM CHAPTER 17.20  
SECTION 17.24.040.B**

**APPLICANTS:** David Winter  
**SIZE AND LOCATION:** A parcel of land located in the Stage Run subdivision and consists of 1.41 ± acres.  
**ADDRESS:** 754 Stage Run  
**LEGAL DESCRIPTION:** Lot 2 of Block 1 of Palisades Tract of Deadwood Stage Run Addition, All located in the SW ¼ Section 14, the SE ¼ of Section 15, the NE ¼ NE ¼ of Section 22 and the N ½ NW ¼ of Section 23, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota  
**ZONE:** R1 – Residential District  
**REQUEST:** Seven foot variance from front yard setback requirements of twenty feet.

**EXISTING ZONING AND LAND USE:**

The property is currently zoned R1 – Residential District. The lots adjacent Lot 2 of Block 1 of the Stage Run Addition are residential with a structure built on the lot to the Northwest and a vacant lot to the Southeast. There are currently four other single-family dwellings constructed in this subdivision.

**ADJACENT ZONING AND LAND USES:**

The property to the north is outside of the City of Deadwood Limits. The land to the northwest is zoned R2 – Multi-family Residential District with one lot between the R2 zoning and the subject property. The land to the east is zoned R1 - Residential District with a vacant lot located next to the subject property. Across the street to the south the zoning is R1 – Residential District.

**BACKGROUND:**

Mr. Winter is requesting a variance from the front yard setback requirement of twenty feet in an R1 – Residential District. His request is for a seven foot variance from said setback. As construction began on the dwelling at 754 Stage Run, the excavation of the crawlspace and foundation became very difficult due to the soil conditions and slope of the hillside in the rear of the property. Mr. Winter is asking to move the dwelling into the setback for ease of construction. After reviewing the lot lines, it was discovered that when the road right-of-way was adjusted from 50' to 42'. The front lot lines of the lots were not moved to the new right-of-way boundaries. The front lot lines are four feet from the sidewalk which puts the new dwelling twenty-eight feet from the curb if it were built with the twenty foot setback. If this variance is granted, the dwelling will be thirteen feet from the lot line or twenty-one feet from the curb. Given the slope in the rear of the lot and the rocky conditions in the slope of the hill, moving the dwelling into the setback will alleviate the hardship of construction on the lot.

**Environmental Corridor Status:** The property is located outside of the Flood Area.

**COMPLIANCE:**

1. **The Zoning Officer provided notice identifying the applicant, describing the project and its location and giving the scheduled date and time of the public hearing in accordance with Section 17.80.010.B. This notice was mailed to property owners within 300 feet of the subject property.**
2. **A sign was posted on the property for which the request was filed as required by Section 17.80.010.B.**
3. **Notice of the time and place for the public hearing was published ten (10) days in advance of the hearing in the designated newspaper of the City of Deadwood.**

**VARIANCE:**

The purpose of a variance is to modify the strict application of the specific requirements of this Ordinance in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional (Amended 99-952) conditions, whereby, such strict application would result in practical difficulty or unnecessary hardship which would deprive an owner of the reasonable use of his or her land. The variance shall be used only where necessary to overcome some obstacle which is preventing an owner from using his or her lot as the Zoning Ordinance intended.

The Board shall consider and decide all applications for variances within 30 days of such public hearing and in accordance with the standards provided below.

**STANDARDS FOR VARIANCES:**

**In granting a variance, the Board shall ascertain that the following criteria are met, and presented at the public hearing or otherwise included in the record.**

1. A variance may be appropriate where, by reason of exceptional narrowness, shallowness, or shape or by reason of other exceptional topographic conditions or other extraordinary conditions on a piece of property, the strict application of any regulation enacted under this Ordinance would result in peculiar, exceptional, and undue hardship on the owner of the property. The previously mentioned circumstances or conditions shall be set forth in the Findings of the Board.  
*The conditions of the soil along with the slope of the property create a hardship on the owner to build a dwelling and maintain the front setback. The owner in this case has chosen to not attempt a basement which would have been more difficult to excavate. Given the soil conditions, construction of a crawlspace has resulted in undue hardship.*
2. Variances shall not be granted to allow a use otherwise excluded from the particular district in which requested.  
*The subject use is a use by right in the R1 - Residential District.*
3. Any variance granted under the provisions of this section shall be the minimum adjustment necessary for the reasonable use of the land.  
*That within the intent and purposes of this application for variance, if granted, the minimum adjustment necessary to afford relief or the reasonable use of the land will be a seven foot variance. The remaining bulk and height regulations are all met (i.e. side and rear setback requirements and height).*
4. The granting of any variance is in harmony with the general purposes and intent of this Ordinance and will not be injurious to the neighborhood, and/or detrimental to the public welfare, or in conflict with the established policies of the City of Deadwood.  
*The proposed project is compatible with the present development of the area. The granting of the proposed structure will not be detrimental to fire safety, clearance, preservation of light and open space and/or visual and aesthetic concerns.  
The variance will not alter the essential character of the surrounding area in which the property is located; substantially or permanently impair the appropriate use or development of adjacent property.*
5. There must be proof of practical difficulty, which may be based upon sufficiently documented economic factors but such proof shall not be based solely upon or limited to such economic factors. Furthermore, the hardship complained of cannot be self-created; nor can it be established on this basis by one who purchases with or without the knowledge of the restrictions; it must result from the application of this Ordinance; it must be suffered directly by the property in question; and evidence of variance granted under similar circumstances shall not be considered.

*The existing soil condition which was unknown until excavation began creates the hardship which should be eased by moving the dwelling into the setback.*

6. That the proposed variance will not impair an adequate supply of light and air to adjacent properties, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the adjacent neighborhood.  
*The use and value of the area adjacent to the property included in the variance request will not be affected in an adverse manner. There will be no significant adverse impacts on water supply, schools, or other services. A variance cannot be granted if it would pose any threat to the public health or safety. This finding includes concerns such as fire safety, and visual and aesthetic concerns.*
7. The fee, as adopted by resolution, was paid to the Zoning Administrator as agent for the Board to cover the costs of notices and other expenses incidental to the hearing.  
*Mr. Winter has paid the \$75.00 fee to process the variance and have the public hearing.*
8. The applicant has proven that he or she is the owner of the property, or is his or her officially designated agent and has presented proof thereof.  
*Mr. Winter has proven to the City of Deadwood Planning and Zoning office that he is the officially designated agent for the current owner of the subject property.*

**Requirements for the Granting of a Variance:**

Before the Board shall have the authority to grant a variance, the person claiming the variances has the burden of showing:

1. That the granting of the permit will not be contrary to the public interest;
2. That the literal enforcement of the Ordinance will result in unnecessary hardship; and,
3. That by granting the permit, substantial justice will be done.

A variance shall be null and void two (2) years from the date it is granted unless completion or substantial construction has taken place. The Board of Adjustment may extend the variance for an additional period not to exceed one (1) year upon the receipt of a written request from the applicant demonstrating good cause for the delay.

If upon review by the Zoning Administrator, a violation of any condition, imposed in approval of a variance is found, the Administrator shall inform the applicant by registered mail of the violation and shall require compliance within sixty (60) days, or the Administrator will take action to revoke the permit. The Administrator's letter, constituting Notice of Intent to Revoke Variance may be appealed to the Board of Adjustment within thirty (30) days of its mailing. The Board of Adjustment shall consider the appeal and may affirm, reverse, or modify the Administrator's Notice of Intent to Revoke. The applicant must comply with the Board of Adjustment's Order on Appeal of Notice of Intent to Revoke Variance within thirty (30) days of the Board's decision.

**ACTION REQUIRED:**

1. Recommendation by Planning and Zoning to approve/deny/approve with conditions for a 7' variance from the front yard setback requirements in the R1 - Residential District.
2. Approve/deny/or approve with conditions from Board of Adjustment.

Mr. Nelson explained that the applicant had a similar situation in construction as the home at 752 Stage Run when soil and slope conditions made it difficult to proceed. Mr. Nelson explained that the applicant had continued with construction on the house; therefore, Mr. Nelson had the applicant sign a release of responsibility from the City. He noted that the applicant is aware that the variance is subject to approval or denial.

Mr. Nelson noted that because of the difficulties in the construction of 752 Stage Run, the applicant decided to build the house without a basement only a crawlspace. Mr. Nelson stated that he did not receive any responses from adjacent landowners.

**Ms. Farrier moved to approve the request for a 7' variance from Section 17.24.040.B, Front Yard setback requirement for Mr. David Winter at 754 Stage Run. Mr. Allen seconded and the motion carried.**

All in favor	-	<u>3</u>
Opposed	-	<u>0</u>

Mr. Shedd closed the Planning & Zoning Meeting.

Mr. Toscana opened the Board of Adjustment.

**Ms. Silvernail moved to approve the request for a 7' variance from Section 17.24.040.B, Front Yard setback requirement for Mr. David Winter at 754 Stage Run, as recommended by the Planning and Zoning Commission. Mr. Schroeder seconded and the motion carried.**

All in favor	-	<u>4</u>
Opposed	-	<u>0</u>

Joint Meeting  
April 6, 2011

Mr. Toscana closed the Board of Adjustment and turned the meeting over to the Planning and Zoning Commission.

OPEN  
None

**ADJOURNMENT:**

**Ms. Farrier moved to adjourn the Joint Meeting of the Planning and Zoning Commission. Mr. Allen seconded and the motion carried.**

All in favor - 3  
Opposed - 0

There being no further business, the Planning & Zoning Commission adjourned at 5:17 p.m.

ATTEST:

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Mr. Jim Shedd  
Chairman  
Planning and Zoning

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Ms. Sheree Green  
Secretary  
Planning and Zoning