

CITY OF DEADWOOD
PLANNING AND ZONING COMMISSION

April 15, 2009

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairperson Jim Shedd on Wednesday April 15, 2009 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, Sheree Green, Larry Ryan & Mel Allen.

ABSENT PLANNING & ZONING: Marie Farrier

PRESENT BOARD OF ADJUSTMENT: None.

ABSENT BOARD OF ADJUSTMENT: Francis Toscana, Georgeann Silvernail, Joe Peterson, Lenny Schroeder & Mike Klamm. *

*** Due to lack of quorum, the Joint Meeting for the Planning & Zoning Meeting was held without the Board of Adjustment. The Board of Adjustment decisions would be made at the April 20, 2009 City Commission Meeting.**

APPROVAL OF MINUTES:

Mr. Ryan moved to approve the minutes of the April 1, 2009 Joint Meeting, as mailed. Mr. Allen seconded and the motion carried.

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

SIGNS:

NONE

NEW BUSINESS:

DAWN IHNKEN - VARIANCE REQUEST FOR 6' VARIANCE FROM SECTION 17.24.041 - FRONT YARD SETBACKS

Ms. Williams referred to the following staff report:

STAFF REPORT
PLANNING AND ZONING – APRIL 15, 2009 JOINT MEETING
VARIANCE REQUEST

APPLICANT: Dawn Ihnken

PURPOSE: Applicant is requesting a 6' variance from Deadwood City Ordinance 17.24.040.B – Front yard setbacks

(B) Front Yard Requirements. Minimum front yard setback requirements for all buildings and uses (feet):

(2) Minimum front yard, accessory buildings and uses: twenty (20) feet.

LOCATION: 298 Williams Street

ZONING: R1 – Residential District

LEGAL DESCRIPTION: Lots 24, 25 and 26, Block G, City of Deadwood, Lawrence County, South Dakota

FILE STATUS: All legal obligations have been completed

CITIZENS RESPONSE: **FOR:** **AGAINST:**

STAFF FINDINGS:

Surrounding Zoning:

North: R1 – Residential District
South: R1 – Residential District
East: R1 – Residential District
West: R1 – Residential District

Surrounding Land Uses

Forest Ave. Residences
Williams St. Residences
Williams St. Residences
Williams St. Residences

SUMMARY OF REQUEST

The applicant is requesting a variance from the front lot line to enable construction of a three (3) stall garage.

FACTUAL INFORMATION

1. The property is currently zoned R1 – Residential District.
2. The property comprises approximately 11, 429.77 square feet.
3. The subject property has access from Williams Street.
4. The property is located outside of the flood zone.
5. The area is characterized by residential uses.

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. The notice was mailed to property owners located within 300 feet of the subject property.
2. A notification sign was posted on the property for which the request was filed.
3. Notice of the time and place for the public hearing was published 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 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 thirty (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. Staff's analysis follows each criterion.

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.

STAFF: There appear to be special circumstances applicable to the subject property that were not created by the applicant and do not apply generally to other properties in the same zone within the city. The subject property contains a steep hillside in the rear. The applicant has completed a soil analysis on the property and an engineer will be required for the design of the proposed garage. It is anticipated that the rear wall of the garage will function as a retaining wall. Currently the property is vacant. There are 12 garages on Williams Street that set in front of Williams Street. Some actually set right next to the street. The majority of the properties in this area retain steep hillsides in the rear. Since the majority of the properties in the vicinity have steep hillsides, the Commission should possibly review this area in order to

provide a more reasonable and historic setback for the fronts of the properties. In this case, the character of the neighborhood would not be changed.

2. Variances shall not be granted to allow a use otherwise excluded from the particular district in which requested.

STAFF: Section 17.24 R1 – Residential District permits garages as accessory uses as a use by right.

3. Any variance granted under the provisions of this section shall be the minimum adjustment necessary for the reasonable use of the land.

STAFF: The applicant is only requesting the minimum number of feet to meet the required setback. The request is for exactly the number of feet needed and no more. The variance is only for the portion of the garage which juts out. The proposed garage, if it were to comply with the zoning front yard setback of 20; would push it closer to the existing critical area in the rear of the property. A zoning variance is conceivably preferred over the danger of digging further into the steep hillside in the rear. The conditions of the zoning code are meant to maintain uniformity between the variance site and surrounding properties. In this case, there are 12 garages on Williams Street which set near Williams Street. Again, variances are used to provide equality with surrounding uses.

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. (Amended 99-952) and/or detrimental to the public welfare, or in conflict with the established policies of the City of Deadwood.

STAFF: The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which it is located. The request for variance is in harmony with the general purpose of the R1 – Residential District and the Deadwood Comprehensive Plan. The proposed garage will set 14' from the front lot line. The property right or use of the applicant is possessed by the owners of other properties in the same vicinity. This variance is necessary for the applicant in order to preserve their property right for a garage.

5. There must be proof of practical difficulty, (Amended 99-952) 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.

STAFF: The standard of hardship for variances relates to the property, not to the person who owns it. Financial hardship, community benefit, or the worthiness of the project are not considerations in determining whether to approve a variance. Variances from the terms of the zoning ordinances are only be granted because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, and the strict application of the zoning ordinance deprives such property of privileges enjoyed by other properties in the vicinity and under the same zoning classification. The intent of allowing relief is to provide for a reasonable rate of return not to maximize profit for a single landowner at the expense of others. Again, variances are used to provide equality with surrounding uses and, the hardship was not created by the applicant but by the circumstances of the land.

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.

STAFF: The requested use will not impair an adequate supply of light and air to adjacent properties or substantially increase the congestion in the public streets, or increase the danger of fire. The garage will set below the owner's home and the garage will set back as far as the neighboring residence and will not impair light and air. It will not affect the functioning of the street, nor will the use increase fire danger. The garage will be built on private property and will not affect emergency access.

7. The fee, as adopted by resolutions, was paid to the Zoning Administrator as agent for the Board to cover the costs of notices and other expenses incidental to the hearing.

STAFF: The fee has been received.

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.

STAFF: The most recent deed on the property is in the name of the applicant.

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.

Ms. Williams reiterated that soil testing had been conducted onsite and an engineer would be required to ensure the retaining wall retained the hillside. Ms. Williams stated she had not received any negative feedback from adjacent landowners. Ms. Green questioned the status of the small garage existing on the property. Ms. Williams stated at this time, it would remain and she pointed out it was a contributing structure.

Ms. Williams stated the variance request was only for 6' from the front yard setbacks for only a small portion of the garage.

Mr. Ryan moved to approve the request for a 6' variance for Ms. Dawn Ihnken at 298 Williams Street. Ms. Green seconded and the motion carried.

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

FINDINGS OF FACT:

Scott Goble/ Hampton Inn/I Wireless - Conditional Use Permit - 531 Main Street

Ms. Williams pointed out this was the last step in closing the file. Ms. Williams explained that she prepared Findings of Fact to back up decisions that have been made by the Commission members. Ms. Williams stated in three court cases Findings of Fact had been referred to and they helped the City win the cases.

Mr. Shedd moved for approval of the Findings of Fact for the Scott Goble/ Hampton Inn/I Wireless, Conditional Use Permit at 531 Main Street. Mr. Allen seconded and the motion carried.

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

OPEN:

Ms. Williams updated the commission and noted the Change of Zoning for Mr. Richard Granberg had been denied by the Board of Adjustment.

Ms. Williams also stated the request for an easement for Claim Jumper Mobile Home Park had been approved by the Board of Adjustment but only as an emergency exit. She noted Mr. Campbell, City Attorney had been directed to draft the easement.

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 - 4
Opposed - 0

There being no further business, Planning & Zoning Commission adjourned at 5:05 p.m.

ATTEST:

Ms. Marie Farrier
Chairman (Acting)
Planning and Zoning

Ms. Sheree Green
Secretary (Acting)
Planning and Zoning