

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

April 18, 2007

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairperson Marie Farrier on Wednesday April 18, 2007 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, Larry Ryan, Sheree Green & Jim Shedd.

ABSENT PLANNING & ZONING: Mel Allen.

PRESENT BOARD OF ADJUSTMENT: Francis Toscana, Mike Klamm and Nyla Griffith.
Mark Speirs arrived at 5:06 p.m.

ABSENT BOARD OF ADJUSTMENT: Georgeann Silvernail.

APPROVAL OF MINUTES

Mr. Ryan moved to approve the minutes of the March 21, 2007 Joint Meeting, as mailed. Ms. Green seconded and the motion carried.

All in favor - 4
Opposed - 0

NEW BUSINESS:

REQUEST FOR CONDITIONAL USE PERMIT FOR ONE (1) UNIT BED & BREAKFAST

Ms. Williams read the following staff report:

STAFF REPORT

PLANNING AND ZONING

APPLICANT: Robert and Donna Nelson

PROJECT PROPOSAL: Conditional Use Permit Request for a Bed and Breakfast

GENERAL LOCATION: 28 Lincoln Avenue

LEGAL DESCRIPTION: Lots 1 and 2, Block 49, O.T., City of Deadwood, Located in the NW 1/4, Section 26, T5N, R3E, B.H.M., 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
R1 – Residential District
West: R1 – Residential District

Surrounding Land Uses

Single-family dwellings
Single-family/B&B
Single-family/Multi-family
Single-family/House
Museum

East:

SUMMARY OF REQUEST

The applicants, Robert and Donna Nelson, are proposing a Bed and Breakfast at 28 Lincoln Avenue. The Bed & Breakfast would offer overnight lodging for a maximum of three (3) people in a detached Cottage, located to the rear of the Nelson residence and detached garage. The Cottage is similar in nature to a studio apartment with one bedroom, which, again, could accommodate a maximum of three (3) people. It also has a private bathroom, a washer and dryer a coffee maker, microwave and refrigerator. The Nelsons would provide baked goods, coffee and juice for the guests. Off-street parking will be provided in the two (2) stall detached garage. The Nelsons' will be applying for a sign that would advertise their Bed and Breakfast.

HISTORY OF RESIDENCE

The main residence is a contributing resource in the Deadwood National Historic Landmark District. This is an early Deadwood house which was remodeled during the pre-World War II years; consequently, it has historic associations with both Deadwood's nineteenth-century mining boom and the region's mining revival of the late 1920s and 1930s. This house displays architectural elements which were popular during the latter period. In Deadwood, as elsewhere in the United States, residential remodels commonly borrowed from the then popular Craftsman Style. Other remodels copy traditional forms seen in the "Picturesque Revival" styles.

The earliest documentation found for this house is a circa 1888-1890 photograph of the Ingleside Neighborhood, in which it is clearly depicted. Since the early 1900s, the house appears to have been home to various members of the Zoeckler-Yeager Family. William Zoeckler, presumably his daughter Ruth, and Sadie Zoeckler. By the early 1930s, Mrs. Ruth Yeager [perhaps the former Ruth Zoeckler] was living here with Sadie Zoeckler who conceivable was Ruth's mother or sister. Directories show that Ruth Yeager continued to reside at this address until at least 1944.

The only history provided for this address in on the residence itself. I have presented this information since the Planning and Zoning Commission must waive the distance limitation if another Bed and Breakfast is located within 200' or 8 residences, which ever is greater. In this instance the Bed and Breakfasts are separated by approximately 122' and 97' in some spots. There are only 2 homes separating the uses; however, the Bed and Breakfasts are located on different streets and both have off-street parking.

FACTUAL INFORMATION

1. The property is currently zoned R1 – Residential District. The property is comprised of approximately 6,534 square feet/0.15 acres, more or less.
2. The subject property has access from Monroe and Lincoln Streets.
3. The subject property is located within a low density residential land use classification on the adopted Land Use Map.
4. The property is located in Zone X, areas determined to be area of 500 year flood.
5. Adequate public facilities are available to serve the property.
6. The area is characterized by single-family residences/Bed and Breakfast (15 Washington) and the Adams House Museum (Van Buren).

STAFF DISCUSSION

The request for a Conditional Use Permit for a Bed and Breakfast is allowed in the R1 - Residential District under the Conditional Use Permit section. The Zoning Code Definition for a Bed and Breakfasts states:

Bed and breakfast establishment” means:

1. A single detached dwelling where temporary lodging or sleeping accommodations with no more than three guest rooms is provided with a breakfast meal to the traveling public, by the owner and his or her immediate family for a payment and such use shall be subordinate to the principle use of the dwelling as an owner occupied residence;
2. No bed and breakfast home shall be located on a lot closer than two hundred (200) feet or eight residences, whichever is greater, from any other lot containing a bed and breakfast home. However, the planning and zoning commission may waive the distance limitation if the structure is listed on the National Register of Historic Places or eligible for individual listing on the National Register of Historic Places. The Deadwood building inspector shall inspect the premises to insure compliance with the Uniform (International) Building Code;

3. Applicants proposing tandem parking shall be required to provide a control board for the keys of the guests. The owner/manager shall be responsible for the control board. The subject residence proposed for a bed and breakfast shall be required to provide the following: (a) water meter, if one has not been installed on the subject premises; (b) proof of a state excise tax number shall be provided to the planning and zoning office for their files; and (c) proof that the business improvement district has been notified of the bed and breakfast establishment. Conditional Use Permits run with landowner; therefore, the use would be voided under new ownership.

The majority of the residences in the neighborhood are owner occupied.

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 Section 17.96.020.D.2.**
2. **A sign was posted on the property for which the requests were filed as required by Section 17.76.060.J.**
3. **Notice of the time and place was published in the designated newspaper of the City of Deadwood as required by Section 17.76.060.J.**

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:

- A. 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.

ANSWER: The current zoning ordinance requires that Bed & Breakfasts must be owner occupied. However, the Cottage is separated from the residence itself. The district allows Duplexes, multiple family dwellings, Bed and Breakfasts and Accessory Housing, under the Conditional Use Permit section. Any additional housing needs should always be subordinate to the principal use. In this case the Bed and Breakfast would be secondary to the use of the single-family dwelling. The Deadwood Comprehensive Plan states: "Accessory dwelling units should include additional dwellings on existing lots, second-story units over garages and other outbuildings, and dwellings located above commercial buildings and offices." ALSO: "Encourage a variety of residential choices." Healthy neighborhoods retain a mixture of uses.

- B. 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.

ANSWER: The proposed use in the subject location does not result in a detrimental over concentration of this particular use since it is a nightly rental accommodation and is on an appointment basis and limited in size. The Non-conforming Bed and Breakfast at 21 Lincoln Avenue (Gordy Pratt homes) has been voided due to non-continuance of use. Again, there is an existing Bed and Breakfast at 15 Washington and the Adams House Museum is located in the vicinity; however, the museum is located below the subject property and should not impact this region.

- C. The proposed use at the proposed location 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.

ANSWER: The subject property is located within the Presidential Neighborhood and this neighborhood does retain a mixture of uses. Due to the location of Mount Moriah, Lincoln Avenue is very busy in the summer months; however, it does not appear to influence the quality of life in this area.

The proposed use would not result in a substantial or undue adverse effect on adjacent property or the character of the neighborhood and the use would not alter the character of the neighborhood. There will be no change in the sizes of the dwellings.

- D. 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

ANSWER: Whenever an application is submitted for a Conditional Use Permit, and it has been approved, it increases the number of conditional use permits in the area; however, in this instance, the Bed and Breakfast at 21 Lincoln has been voided; therefore, there would not be an increase in the number of permits in this region. The proposed Bed and Breakfast will not increase the proliferation of non-conforming uses. The applicants' residence is located in an area that is primarily made up of single family dwellings. Again, the appearance of the residence will not change; only a sign will be placed to inform the guests of their location. The character and use of the buildings and structures adjacent to the subject property will not be adversely affected.

- E. 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.

ANSWER: The proposed use will not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation or other services. Existing services are available onsite. This type of use does not demand a high level for services.

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.

The Conditional Use Permit runs with the applicants in the residential areas of Deadwood; therefore, should the Nelson's sell there property, the Conditional Use Permit will be voided.

If approved, staff recommendations for stipulation(s):

1. The Bed and Breakfast must be owner occupied.
2. The Conditional Use Permit runs with the applicants' and not the home; therefore, should property be sold, the Conditional Use Permit is considered null and void.

3. Proof of a state excise number shall be provided to the Planning and Zoning Office for their files.
4. Proof that the Business Improvement District has been notified of the nightly rental is provided for the file.

ACTION REQUIRED FOR CONDITIONAL USE PERMIT:

1. Recommendation by Planning and Zoning Commission
 - A. Waiver of distance - If approved;
 - B. Recommendation for approval/approval with conditions/denial.
2. Approval/approval with conditions/denial by Board of Adjustment

Ms. Williams reiterated that a non-conforming Bed and Breakfast had been voided at 21 Lincoln Avenue.

Ms. Williams noted the Nelson's would need to provide proof that they had obtained a State Excise tax number and also that they had notified the Business Improvement District (BID). Ms. Williams stated Mr. and Mrs. Nelson were in the audience to answer any questions.

Ms. Green questioned if the house was on this National Historic Register. Ms. Williams stated it is a contributing house in the historic district of Deadwood; therefore, it would make it eligible for the register.

Mr. Shedd moved to approve the Conditional Use Permit for a Bed & Breakfast at 28 Lincoln.

Mr. Ryan questioned if the motion included the waiver of distance.

Mr. Shedd restated his motion to approve the Conditional Use Permit for a Bed & Breakfast at 28 Lincoln with the waiver of distance of 200 feet or 8 residences from another Bed and Breakfast.

Ms. Green questioned if Ms. Williams received any comments from adjacent landowners. Ms. Williams stated Ms. Gertie McCaskell was not in favor of another B&B in the area however she was the only opposing comment she had received.

Ms. Farrier questioned the parking situation. Mr. Nelson stated they only had one vehicle and the patrons would use their garage.

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>

Chairman Farrier adjourned the Planning and Zoning meeting and turned the meeting over to the Board of Adjustment.

DEADWOOD BOARD OF ADJUSTMENT

Mayor Toscana called the Board of Adjustment to order.

Mayor Toscana questioned if they had off street parking. Mr. Nelson stated they did. Mayor Toscana questioned if a year review needed to be placed on the motion. Ms. Williams stated that a review could be placed on the motion; however, any complaint would prompt a review of the permit.

Ms. Griffith moved to approve the Conditional Use Permit for a Bed & Breakfast at 28 Lincoln with the waiver of distance of 200 feet or 8 residences, as recommended by the Planning and Zoning Commission.

All in Favor - 4
Opposed - 0

Mayor Toscana adjourned the Board of Adjustments and turned the meeting over to the Planning and Zoning Commission.

Chairman Farrier called the Planning and Zoning meeting back to order.

DISCUSSION ON FORMING A COMMITTEE REGARDING SAVING OUR NEIGHBORHOODS AND AMENITIES - DR. MICHAEL GUILBERT

Ms. Williams stated Dr. Guilbert was not in the audience and recommended the commission move to the next agenda item.

EXCAVATION DISCUSSION - DENNIS KATON

Mr. Jim Raysor, City Planner and Public Works Director, requested from the Planning & Zoning Commission approval of an Excavation permit according to the City of Deadwood Ordinance. Mr. Raysor stated the permit would be issued by the Building Inspector, Mr. Keith Umenthum upon approval of P&Z. Mr. Raysor stated that Mr. Katon was excavating on his property to widen his road way. Mr. Raysor stated Mr. Katon also had a long term plan to possibly build an additional unit on his property and he would be excavating in that area as well. Ms. Farrier questioned if this permit would be for both projects. Mr. Katon stated it would.

Mr. Raysor stated it would be an annual excavation permit and Mr. Katon could renew it annually.

Mr. Ryan moved to approve the Excavation Permit for Dennis Katon. Mr. Shedd seconded and the motion carried.

All in favor - 4
Opposed - 0

CHANGE OF ZONING POSSIBILITY - STEVE SCHAFFER

Mr. Schaffer questioned the current zoning on Lots 1-13 of Hymer Addition, owned by Martin Guth. Ms. Williams stated the land was currently zoned R-1 Residential District, which only allows single family homes, by right. Mr. Schaffer questioned which zoning allowed condominiums and town houses. Ms. Williams stated the R-2 Multi-family Residential District allowed those type of uses and a Change of Zoning would be required.

Mr. Schaffer questioned what architectural standards would be required for construction on the property. Ms. Williams stated Mr. Schaffer would need to talk to the Historic Preservation Officer to determine what type of infill would be appropriate.

Ms. Williams stated that he would need to fill out an application to begin the process. Ms. Williams pointed out that according to the Zoning Ordinance, on or adjacent to slopes of greater than twenty (20) degrees (36.4 percent slope), the building height may not exceed twenty-five (25) feet. The twenty-five (25) foot height restriction applies to any and all parts of a building, excluding allowed appurtenances, measured from existing grade directly below the building.

Ms. Williams stated that soil testing would also need to be conducted on the property as well.

Mayor Toscana stated archeology would also be a requirement to build on this property.

Mr. Schaffer thanked the Commission and stated he would be in touch.

OLD BUSINESS:

NONE

ADJOURNMENT:

Mr. Allen 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 5:25p.m.

ATTEST:

Ms. Marie Farrier
Chairman (Acting)
Planning and Zoning

Ms. Sheree Green
Secretary (Acting)
Planning and Zoning