

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

May 16, 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, Mel Allen & Jim Shedd.

ABSENT PLANNING & ZONING: Sheree Green.

PRESENT BOARD OF ADJUSTMENT: Francis Toscana, Mike Klamm and Georgeann Silvernail.

ABSENT BOARD OF ADJUSTMENT: Mark Speirs and Nyla Griffith.

APPROVAL OF MINUTES

Mr. Ryan moved to approve the minutes of the April 18, 2007 Joint Meeting, as mailed. Mr. Shedd seconded and the motion carried.

All in favor - 4
Opposed - 0

NEW BUSINESS:

**REQUEST FOR 12' VARIANCE FROM FRONT YARD SETBACK REQUIREMENTS
IN THE R1 - RESIDENTIAL DISTRICT**

APPLICANT: Bryan & Roberta (Robin) Arsaga

LOCATION: 128 Williams Street

PROPERTY DESCRIPTION: Lots 1 and 2 and the N 1/2 of Lot 3, Block D, Porters Addition and Lot 5, Geis Addition, City of Deadwood, Lawrence County, South Dakota

ZONING: R1 - Residential District

Ms. Williams referred to the following staff report:

**STAFF REPORT
REQUEST FOR VARIANCE
FROM CHAPTER 17.24
SECTION 17.24.040.B**

APPLICANTS: Bryan and Roberta (Robin) Arsaga

SIZE AND LOCATION: The approximate 0.22 acre property is located on Northern Williams Street.

ADDRESS: 128 Williams Street

LEGAL DESCRIPTION: Lots 1 and 2 and the N 1/2 of Lot 3, Block D, Porters Addition and Lot 5, Geis Addition, City of Deadwood, Lawrence County, South Dakota.

EXISTING ZONING AND LAND USE: The property is currently zoned R1 - Residential District and there is an existing home on the site.

ADJACENT ZONING AND LAND USES:

The property to the north is zoned R1 - Residential District and is the Highland Park Addition that is primarily made up of single family residences. The land to the east is zoned R1 - Residential District and CH - Commercial Highway District and is made up of single-family dwellings and the Lower Main Street municipal parking lot is located in this area. The land to the south and west is zoned R1 - Residential District with residential multi-family residential and vacant lands.

ATTACHMENTS:

Attached for review is a location map and aerial photo with topo lines.

BACKGROUND:

The proposed project consists of a two (2) stall garage (22'x30') with an accessory bath space on the second floor (10'x26'). The applicants are requesting approval of a 12' variance from the front yard setback requirements. The lots are square in shape; however, the rear yards retains a slope (see topo map). Placement of the structure is limited by the slopes of the lots.

The intention of the proposed garage is for off-street parking and the addition is for an extra bathroom.

The Comprehensive Plan designates this land as Low Density Residential. The low density category is intended for predominately single family detached residential development, similar to that found in many existing city neighborhoods.

The property is located within Zone X – Other Areas zoned X – areas determined to be outside the 500 year flood plain.

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 as required by Section 17.80.010.B.**

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 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.**

There are special circumstances unique to this property. These special circumstances involve the size and topography, of the property -- in short, a physical constraint which is unique to this site. Lot sizes in Deadwood tend to be small in size. Special circumstances are not interpreted to be something intangible, such as lack of knowledge of the Code or misinformation given at the time that the land was purchased. The term undue hardship encompasses virtually any problem and the hardship only need to be practical. Because of the particular physical surroundings of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of regulations were carried out. Approving the variance request would enable the reasonable use of the property.

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

The zoning ordinance does not preclude the construction of the garage and an addition of a bathroom located on the second floor. The Comprehensive Plan recommends a mixture of uses in this area, when located properly. This property is located on Williams Street and garages along Williams Street set near to the street.

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, is the minimum adjustment necessary to afford relief or the reasonable use of the land without disturbing the rear hillside. 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 granting of the variance would not be detrimental to public health, safety or general welfare. 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, structural stability, clearance, preservation of light and open space concerns.

The granting of the variances in the subject area would not be injurious to the area in general. Again, the garage use is an allowed accessory use in the R1 – Residential District. The variance would not alter the essential character of the neighborhood 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.

Once more, the natural hillside in the rear poses practical difficulties and a literal enforcement of the provisions of the zoning ordinance would involve either substantial hardship, financial or otherwise to the petitioners. The hardship was not self created by the applicant(s). The granting of the variance would not constitute a special privilege.

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 a substantially adverse manner. There will be no significant adverse impacts on water supply, fire protection, schools, or other services. The granting of the variance would not be detrimental to public health, safety or general welfare. A variance cannot be granted if it would pose any threat to the public health or safety.

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.

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.

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 Administrators 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 Boards decision.

Ms. Williams stated Mr. and Mrs. Arsaga were in the audience to answer any questions the commission may have. Ms. Williams questioned where the measurements had been taken from on the submitted plans. Mr. Arsaga stated he had measured from the front retaining wall. Ms. Williams suggested a surveyor be hired to identify the front line of the subject area prior to construction. She noted that Keith Umenthum, Deadwood Building Inspector and herself had made an onsite and felt the dimensions for the garage, in the area being proposed, were challenging. She recommended the Arsaga's add 1' to the variance request, just in case it was needed.

Ms. Farrier questioned if the retaining wall would be taken out. Mr. Arsaga stated it would be removed for the garage/addition. Mr. Arsaga noted the stairs had deteriorated and the would also be fixed or replaced.

Mr. Shedd stated he had no problem issuing the variance from front yard setback regulations.

Ms. Farrier recommended the motion include that the front lot line be defined by a surveyor, prior to construction.

Mr. Allen moved to approve the 13' Variance from the front yard setback requirements with the condition that the front lot line be defined prior to construction of the garage and addition at 128 Williams.

Mr. Ryan question if the requirement is 8' from the street. Ms. Farrier stated that was in question because the lot lines were not defined. Ms. Williams stated it must be defined so that construction does not encroach on to Williams Street. Ms. Williams suggested the Variance be a additional foot more for safety.

Mr. Allen amended his motion to approve a 13' Variance from the front yard setback requirements with the condition that the front lot line be defined prior to constructions at 128 Williams. Mr. Shedd seconded and the motion carried.

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

Ms. Silvernail moved to approve the recommendation of the Planning & Zoning Commission a 13' Variance from the front yard setback requirements with the condition that the front lot line be defined prior to constructions at 128 Williams. Mr. Klamm seconded and the motion carried.

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

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.

FINDINGS OF FACT:

- 1) **Tracie Johnson - Conditional Use Permit - Large Daycare at 168 Charles Street**

Mr. Shedd moved to approve the Findings of Fact for a Conditional Use Permit for a Large Day Care Service at 168 Charles Street. Mr. Ryan seconded and the motion carried.

All in Favor - 4
Opposed - 0

- 2) **GR Deadwood - Conditional Use Permit - Valet Parking - 601 Main**

Mr. Shedd moved to approve the Findings of Fact for Conditional Use Permit for Valet Parking at 601 Main Street. Mr. Allen seconded and the motion carried.

All in Favor - 4
Opposed - 0

- 3) **Robert and Donna Nelson - Findings for granting of Conditional Use Permit for a Bed and Breakfast at 28 Lincoln Avenue.**

Mr. Shedd moved to approve the Findings of Fact for Conditional Use Permit for a Bed & Breakfast at 28 Lincoln Avenue. Mr. Ryan seconded and the motion carried.

All in Favor - 4
Opposed - 4

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.

- 1) **Tracie Johnson - Conditional Use Permit - Large Daycare at 168 Charles Street**

Ms. Silvernail moved to approve the Findings of Fact for a Conditional Use Permit for a Large Day Care Service at 168 Charles Street. Mr. Klamm seconded and the motion carried.

All in Favor - 4
Opposed - 0

- 2) **GR Deadwood - Conditional Use Permit - Valet Parking - 601 Main**

Ms. Silvernail moved to approve the Findings of Fact for Conditional Use Permit for Valet Parking at 601 Main Street. Mr. Klamm seconded and the motion carried.

All in Favor - 4
Opposed - 0

- 3) **Robert and Donna Nelson - Findings for granting of Conditional Use Permit for a Bed and Breakfast at 28 Lincoln Avenue.**

Ms. Silvernail moved to approve the Findings of Fact for Conditional Use Permit for a Bed & Breakfast at 28 Lincoln Avenue. Mr. Klamm seconded and the motion carried.

All in Favor - 4
Opposed - 4

OLD BUSINESS:

NONE

OPEN

Ms. Williams presented the updated zoning map for review. Ms. Williams stated she would bring the map forth in the coming weeks.

Ms. Williams stated there would be a Planning & Zoning meeting on May 30, 2007. Ms. Williams stated that Deadwood Stage Run will be coming in for a Planned Unit Development. .

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 5:30 p.m.

ATTEST:

Ms. Marie Farrier
Chairman (Acting)
Planning and Zoning

Ms. Sheree Green
Secretary (Acting)
Planning and Zoning