

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

May 18, 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 Jim Van Den Eykel.

ABSENT BOARD OF ADJUSTMENT: Gary Todd.

APPROVAL OF MINUTES:

Mr. Allen moved to approve the minutes of the May 4, 2011 Regular Meeting. Ms. Farrier seconded and the motion carried.

All in favor - 3
Opposed - 0

SIGNS:

JACKPOT SOUVENIRS - 674 MAIN STREET - REQUEST FOR TWO 36" X 18" WINDOW SIGNS

Mr. Umenthum stated that the applicants were requesting permission to install two window signs at 674 Main Street. Mr. Umenthum explained that the sign would state, "Jackpot Souvenirs." Mr. Umenthum stated that the sign would be 36" x 18" or 4 ½ square feet made of vinyl. No variances were required and Staff recommended approval.

Ms. Farrier moved to approve two 36" x 18" window signs for Jackpot Souvenirs at 674 Main Street. Mr. Allen seconded and the motion carried.

All in favor - 3
Opposed - 0

KLK FOUNDATION - 616 & 618 MAIN STREET - REQUEST FOR A 78" X 42" PROJECTING SIGN

Mr. Umenthum stated that the applicants were requesting permission to install a projecting sign at 616 and 618 Main Street the former Lucky Nugget complex. Mr. Umenthum explained that the sign would state, "Historic Green Door Club." Mr. Umenthum stated that the signs would be 78" x 42" or 22.75 square feet made of sandblasted redwood. No variances were required and Staff recommended approval.

Ms. Farrier moved to approve a 78" x 42" projecting sign for KLK Foundation at 616 and 618 Main Street. Mr. Allen seconded and the motion carried.

All in favor - 3
Opposed - 0

KLK FOUNDATION - 624 & 608/610 MAIN STREET - REQUEST TO RELOCATE EXISTING SIGNS

Mr. Umenthum stated that the applicants were requesting permission to relocate the sign at 624 Main Street. Mr. Umenthum stated that the Wild Bill Bar sign would be relocated to the original location at 608/610 Main Street. He explained that it would replace the Calamity's sign at the Wild Bill Bar. No variances were required and Staff recommended approval.

Ms. Farrier moved to approve the relocation of the historic Wild Bill Bar sign to its original location at 608/610 Main Street for the KLK Foundation. Mr. Allen seconded and the motion carried.

All in favor - 3
Opposed - 0

KLK FOUNDATION - 608/610 AND 620/622 MAIN STREET - REQUEST TO RELOCATE EXISTING SIGNS

Mr. Umenthum stated that the applicants were requesting permission to relocate the sign at 608/610 Main Street. Mr. Umenthum stated that the Calamity's sign would be relocated to 620/622 Main Street and will replace the Lucky Nugget sign. No variances were required and Staff recommended approval.

Ms. Farrier moved to approve the relocation of the Calamity sign to 620/622 Main Street for the KLK Foundation. Mr. Allen seconded and the motion carried.

All in favor - 3
Opposed - 0

KLK FOUNDATION - 612, 614, 620 & 622 MAIN STREET - REQUEST FOR SIGNAGE ON AWNING VALANCE

Mr. Umenthum stated that the applicants were requesting permission to install signage on the awning valances at 612, 614, 620 and 622 Main Street. Mr. Umenthum explained that the sign ordinance allows additional signage on valances and that they would state "Badlands Gaming." No variances were required and Staff recommended approval.

Ms. Farrier moved to approve the awning valances signage at 612, 614, 620 and 622 Main Street for KLK Foundation. Mr. Allen seconded and the motion carried.

All in favor - 3
Opposed - 0

PUBLIC HEARING:

REQUEST FOR VARIANCE FROM SECTION 17.24.040.B - FRONT YARD AND SIDE YARD SETBACK REQUIREMENTS FOR BY DEVELOPMENT

Mr. Nelson referred to the following staff report:

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

APPLICANTS: BY Development

SIZE AND LOCATION: The parcel of land located at 360 Main Street and consists of 1.58 ± acres.

ADDRESS: 360 Main Street

LEGAL DESCRIPTION: – Bradsky Tract of M.S. 308 being a Vacation of Shama Lots Number One and Number two, A Vacated Portion of Williams Street, Tracts A and B of M.S. 308 and a Portion of M.S. 308 as Recorded in Doc. No. 78-2861, All located in the NW¼ of Section 23, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota, As shown on the Plat filed in Plat Document No. 99-6032A

ZONE: CH – Commercial Highway District

REQUEST: BY Development has applied for a fifteen (15) foot variance from Section 17.40.040.B - Area and Bulk requirements, Front Yard Setbacks - 2. Minimum front yard, Accessory buildings and uses: fifteen (15) feet as well as a ten (10) foot variance from Section 17.40.040.C – Area and Bulk requirements, Side Yard Setbacks – 1. Minimum side yard, buildings and uses: ten (10) feet.

EXISTING ZONING AND LAND USE: The property is currently zoned CH – Commercial Highway District. The land is currently being used for a parking lot for a hotel, restaurant, and gaming.

ADJACENT ZONING AND LAND USES:

The property to the north is zoned CH – Commercial Highway District, a private parking lot. The land to the south is zoned PU – Public Use District, a recreational trail. The land to the east is zoned PU – Public Use District, a public sports complex. The land to the west is the zoned R1 – Residential District, residential housing.

BACKGROUND:

BY Development is requesting a variance from the Front Yard Setback Requirement of fifteen feet and a variance from the Side Yard Setback of ten feet in a CH – Commercial Highway District. BY Development is proposing the construction of a one level parking structure that will be located in front of the existing hotel on the property. The proposed parking structure will be located on the front lot line and the west lot line, neither are interior lot lines. The front lot line is not located directly adjacent to the highway; there is approximately ten feet of highway ROW between the lot line and Highway 85. The west lot line is located directly behind the curb of Williams Street. The west lot line, directly behind the curb, does not allow for future sidewalk on Williams Street and would create a narrow approach on and off of Williams Street.

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 of the City of Deadwood Code of Ordinances. 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 of the City of Deadwood Code of Ordinances.**
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 of the City of Deadwood Code of Ordinances.**

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 shape of the lot in this case does not impact the use of the property in question. The request for variance is to utilize the entire property for the parking structure. The lot is not irregular in shape.
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 CH – Commercial Highway 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 should be considered along with the required number of parking spots throughout the property along with the number of parking spots currently.
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 variances in review have no evidence that they will be injurious to the neighborhood. The proposed structure will not be detrimental to fire safety, clearance, preservation of light and open space. However staff has concerns with the approach on and off of Williams Street, as well as pedestrian traffic flow from Highway 85 onto Williams Street. Public welfare should be considered when reviewing the Side Yard Variance.
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.
A parking structure on the property in review could be constructed within the required setbacks. Evidence must be provided that the number of parking spots required for the proposed hotel are to

be located within the new parking structure. The question is whether the parking structure will accommodate the required number of parking spots by City Code or will additional parking be provided above the City Code requirements? The applicant must show practical difficulty to grant the variances and not be based solely on economic factors.

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 proposed variances will not impair an adequate supply of light and air to adjacent properties. Williams Street at the junction of Williams and Highway 85 does appear to be an area of concern. With the approval of the Side Yard Setback Variance, Staff believes the intersection of Williams and Highway 85 will become an unsafe intersection for vehicle and pedestrian travel. Congestion in the public street does appear to be evident and may endanger the public 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. *BY Development 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. *BY Development has proven to the City of Deadwood Planning and Zoning office that it is 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 a fifteen (15) foot variance from the front yard setback requirements in the CH – Commercial Highway District and a ten (10) foot variance from the side yard setback requirements in the CH – Commercial Highway District.
2. Approve/deny/or approve with conditions from Board of Adjustment.

Mr. Nelson stated he had received a letter from Ron and Sheree Green of 54 Williams Street regarding concerns on safety.

Robert E. Nelson, Jr. Zoning Administrator,

We would like to express our concern regarding the 10' variance from the side yard setback that is being sought by BY Development.

We have attached a copy of the plat that shows the Bradsky Tract and Reloated Williams Street. The platted public right of way is shown on the plat to be 24' wide.

Williams Street appears to be very narrow in that area and the approach is frequently blocked by vehicles trying to leave or enter Cadillac Jack's parking lot. We decided to measure the width of the street. Our measurements show that the current parking lot apparently encroaches in the right of way over 4' feet.

If the variance is to be granted, we feel that the 24 foot right of way must be restored, and that safety issues such as the line of sight triangle should be reviewed by a traffic engineer.

We are not opposed to the expansion, but we feel the current situation is not in the best interest of public safety.

Sincerely,

Ron & Sheree Green 54 Williams Street

Mr. Nelson stated that he had concerns on the safety at the entrance of Williams Street. Mr. Nelson stated that Mr. Cameron Lund of Lund Associated was present and would address the issues.

Mr. Lund presented a power point presentation overviewing the project to the Planning & Zoning Commission. Mr. Lund stated that the proposed single level parking structure would add fifty-five parking spots to accommodate the Spring Hills Hotel and Convention addition. He noted that there will be a loss of parking with construction of the new hotel addition.

Mr. Nelson stated that the Shea's retaining wall caused a loss of eighteen inches to the right of way on Williams Street.

Mr. Lund explained that they propose building to the lot line and expanding Williams Street by two feet, placing the north side of the curb on the lot line. Mr. Lund explained that the design would not accommodate bus traffic, therefore eliminating large bus traffic on Williams Street. He explained that they had designed an area by the current Brown Rocks Café for buses and deliveries and stated that he worked with Mr. Ken Hawki to insure fire equipment would be able to maneuver in the area.

Ms. Farrier questioned where the trolley stop would be located. Mr. Lund explained that through the Tax Increment Financing District (TIFD) there would be upgrades to the water, sewer and sidewalks; the trolley stop would be relocated further north. He stated that they propose constructing a trolley stop with a stamped concrete plaza with interpretive panels.

Mr. Toscana questioned if William Street would be two feet wider. Mr. Lund explained that the proposal would bring Williams Street to almost twenty-three feet in width. He stated that the curb would be on the property line and explained that the curb of the Shea's retaining wall occupies six inches into the right of way. Mr. Toscana explained that originally the street was to be twenty-eight feet wide and he was under the impression that the project would produce the twenty-four foot street as platted. Mr. Raysor stated it would be close to twenty-three feet. Mr. Toscana asked if there would be sidewalks. Mr. Nelson stated no and explained that was another issue to be addressed with Mr. Lund.

Mr. Lund explained that moving the curb to the property would expand the street and they had not explored the possibility of moving the curb on the retaining wall side of Williams however they would be willing to look into it.

Mr. Lund explained due to the elimination of bus and deliveries, he felt there would not be an increase of traffic on Williams Street. He stated that in the parking ramp it would be two-way traffic and he felt most people would use the main entrance to exit. Mr. Raysor questioned how wide the opening from the parking ramp to Williams Street would be. Mr. Lund stated that he thought it was thirty-two feet wide, however would have to verify the fact and stated that it was wide enough for two-way traffic.

Mr. Toscana questioned if the parking ramp would be constructed to the end of the existing parking lot. Mr. Lund stated that was correct and they would not be cutting into the slope due to existing utilities. Mr. Toscana questioned if the line of sight on Williams would be affected by the parking structure. Mr. Lund presented computer animation of Williams Street. Mr. Lund stated the line of sight is not affected.

Mr. Nelson questioned if the five employee parking area on Williams Street could be moved to accommodate a possible sidewalk. Mr. Nelson stated that the issues were the widening of Williams Street and the possibility of a sidewalk for pedestrian safety. Mr. Raysor stated that he appreciated the fact that Mr. Lund was willing to widen Williams Street, however he felt a sidewalk was needed on Williams Street. Mr. Raysor suggested a possible alteration to their proposal to provide a sidewalk

Mr. Lund stated that he would be willing to provide a covered sidewalk within the parking ramp for Williams Street. Mr. Raysor was agreeable to the covered sidewalk.

Ms. Silvernail questioned if the parking ramp was in line with the existing building. Mr. Lund stated that the parking ramp followed the property line and would not be parallel to the building. She questioned if the sidewalk could extend to the end of Williams Street. Mr. Lund stated that because of the turnaround on the end of Williams Street there was not enough room for a

sidewalk. Mr. Raysor stated that there is a sidewalk in the back of the building. Mr. Lund explained that a precast walkway would be placed over the top of the underground parking; therefore, extending the sidewalk. Mr. Allen noted that he observed people walking in the street because of the lack of sidewalk.

Mr. Allen questioned if the variance request had changed. Mr. Nelson explained that if they complied with the stipulation of making Williams Street almost twenty-three feet wide and provide a sidewalk in the parking ramp, the variances would still remain the same. Mr. Lund was agreeable with the conditions. Mr. Toscana noted that because the bus and delivery traffic had been eliminated, the impact on Williams Street would be reduced. Mr. Nelson agreed and felt that the pedestrian issue had been resolved with the covered sidewalk.

Mr. Shedd suggested continuing the request until legal council could review. Mr. Toscana stated he did not feel it was necessary and the variance request could precede with conditions that the State Department of Transportation, Mr. Umenthum, Mr. Raysor and Mr. Nelson are notified of any changes to the design.

Mr. Allen moved to approve the request for a 15' variance from Section 17.24.040.B, Front Yard setback requirement and a ten (10) foot variance from Section 17.40.040.C, Side Yard Setbacks with the stipulation that Mr. Keith Umenthum, Mr. Jim Raysor, Mr. Robert Nelson and the State Department of Transportation are notified and must approve of any changes to the design at 360 Main Street. Ms. Farrier seconded and the motion carried.

All in favor - 3
Opposed - 0

Mr. Shedd closed the Planning & Zoning Meeting.

Mr. Toscana opened the Board of Adjustment.

Ms. Silvernail moved to approve the request for a 15' variance from Section 17.24.040.B, Front Yard setback requirement and a ten (10) foot variance from Section 17.40.040.C, Side Yard Setbacks with the stipulation that Mr. Keith Umenthum, Mr. Jim Raysor, Mr. Robert Nelson and the State Department of Transportation are notified and must approve of any changes to the design at 360 Main Street, as recommended by the Planning and Zoning Commission. Mr. Peterson seconded and the motion carried.

All in favor - 4
Opposed - 0

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 5:50 p.m.

ATTEST:

Mr. Jim Shedd
Chairman
Planning and Zoning

Ms. Sheree Green
Secretary
Planning and Zoning