

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

May 19, 2010

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairperson Jim Shedd on Wednesday May 19, 2010 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, Marie Farrier, and Mel Allen. Larry Ryan arrived at 5:20 p.m.

PRESENT BOARD OF ADJUSTMENT: Georgeann Silvernail, Joe Peterson and Mike Klamm.

ABSENT BOARD OF ADJUSTMENT: Mayor Francis Toscana and Lenny Schroeder.

APPROVAL OF MINUTES:

Ms. Farrier moved to approve the minutes of the May 5, 2010 Joint Meeting, as mailed. Mr. Allen seconded and the motion carried.

All in favor - 4  
Opposed - 0

SIGNS:

THE LODGE AT DEADWOOD - 100 PINE CREST - WALL SIGNAGE WITH A VARIANCE FOR MAXIMUM NUMBER OF SIGNS ALLOWED

Mr. Umenthum stated that the applicants were requesting to display a wall sign to be placed on the retaining wall at the entrance of The Lodge at 100 Pine Crest. Mr. Umenthum stated that the application and approval by the Planning and Zoning Commission is "after the fact". Mr. Umenthum stated that according to the sign ordinance, the sign under section 15.32.270 is a "Wall and fence sign". Such signs are subject to all requirements of a free standing sign. The sign meets the requirements however a variance is needed for the number of allowed signs because of the proximity of the proposed sign to the existing monument sign. The proposed sign is necessary to show direction to "The Lodge".

Staff recommends approval of the new signage with a variance for a second sign.

Ms. Farrier moved to approve the wall sign for The Lodge at Deadwood, 100 Pine Crest with a variance for a second sign. Ms. Green seconded and the motion carried.

All in favor - 4  
Opposed - 0

DEADWOOD GULCH RESORT - 304 CLIFF STREET - EAVE SIGNAGE WITH A 4 FEET VARIANCE

Mr. Umenthum stated that the applicants were requesting approval to install signage along the eave at 304 Cliff Street. Mr. Umenthum explained that although this signage is painted or printed on a valance similar to an awning it resembles most closely to wall signage and is considered as such for purposes of the sign ordinance review. The required variance is that of placing the signage 4 feet from the wall of the building on the eave of the building.

Staff recommends approval of the new signage with a variance of placing the signage 4 feet from the wall of the building.

Mr. Allen moved to approve the eave signage for Deadwood Gulch Resort at 304 Cliff Street with the 4 foot variance of placement from the wall. Ms. Green seconded and the motion carried.

**All in favor - 4**  
**Opposed - 0**

Mr. Allen questioned if the ordinance should be changed to address the eave signage. Mr. Umentum stated he did not think it was necessary at this time.

**PUBLIC HEARINGS:**

**PUBLIC HEARING FOR A REQUEST FOR A CONDITIONAL USE PERMIT FOR A BED & BREAKFAST**

Mr. Nelson referred to the following staff report:

**STAFF REPORT**  
**PLANNING AND ZONING**

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**APPLICANT:** Danny Gray  
**PURPOSE:** Request for a Single Unit Bed and Breakfast with Five Bedrooms  
**GENERAL LOCATION:** 65 Sherman Street  
**LEGAL DESCRIPTION:** Lots Nine (9) and Eleven (11) and the Northeast twenty-four feet of Lot Seven (7), Block Thirty (30), Original Town of the City of Deadwood, Lawrence County, South Dakota.  
**FILE STATUS:** All legal obligations have been completed.

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

**STAFF FINDINGS:**

<u>Surrounding Zoning:</u>	<u>Surrounding Land Uses</u>
North: C1 - Commercial District	Law Office, Hotel
South: C1 - Commercial District	Clothing Store / Coffee Shop
East: PU - Public Use	Municipal Parking Lot
West: PU - Public Use	Post Office and Museum

**SUMMARY OF REQUEST**

The petitioner has submitted a request for a Conditional Use Permit to operate a Bed and Breakfast establishment on this property. The subject property is located on the east side of Sherman Street and the address is 65 Sherman Street.

**FACTUAL INFORMATION**

1. The property is currently zoned C1 - Commercial District.
2. The property comprises approximately 8,250 square feet.
3. The site was originally developed in 1892 with an addition in 1929.
4. The subject property has access from Sherman Street.
5. The subject property is located within a high density land use classification on the adopted Land Use Map.
6. The property is located in Flood Zone X - Area's of 500 year flood.
7. Adequate public facilities are available to serve the property.
8. The area is characterized by a mixture of public use and commercial uses.

**STAFF DISCUSSION**

The petitioner has submitted a request for a Conditional Use Permit for a Bed and Breakfast establishment and the city regulations permit Bed and Breakfast establishments in the C1 - Commercial District under a Conditional Use Permit.

The subject property is currently utilized as a small assembly facility. The petitioner indicates he intends to rent one unit which includes five bedrooms. The Deadwood Zoning Code requires a bed and breakfast establishment to be occupied by the owner(s). The code also states a requirement of one off-street parking space per guestroom in section 17.64.060 of the ordinance book. The owner does meet the required number of off-street parking spaces.

According to the City regulations defining a bed and breakfast, it cannot be situated on a lot closer than two hundred (200) feet or eight (8) residences, whichever is greater, from any other lot containing a bed and breakfast home. In this instance there are no other bed and breakfast uses within the two required buffers. The code also defines that the Building Inspector is to inspect the premises to ensure compliance with the Building Code.

**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 10.10.B.**
2. **A sign was posted on the property for which the requests were filed.**
3. **Notice of the time and place was published in the designated newspaper of the City of Deadwood.**

**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.  
*The City Comprehensive Plan encourages a variety of uses and a mixture of housing types. Preserve the existing stock of historic structures by working with the individuals and guiding the uses is an acceptable means. Traffic and parking should not significantly affect the neighborhood. Off street parking will be provided. This area is in transition and has a mixture of commercial and public use property.*
- 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.  
*The subject area is zoned C1 - Commercial District. The C1 - Commercial District is intended to provide locations for high density residential. High density residential is designed to provide apartment and condominium complexes as well as parks and recreation areas and commercial uses. There are no B&B's within 200 feet of the proposed B&B.*
- 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.  
*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 size of the dwelling. To support a denial of a conditional use permit on the grounds that it will cause increased traffic problems, there must be a high degree of probability that the increase would pose a substantial threat to the health and safety of the community. In this particular case, additional traffic is generated in the neighborhood due to the location of the B&B and how close it is to downtown. This use would generate minimal traffic and is located close to municipal parking.*
- 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.  
*The proposed use would not increase the proliferation of non-conforming uses. The subject residence is located in an area that has small businesses, a post office, and a specialty resort. (Butch Cassidy's) The appearance of the structure will not change; therefore, the character and use of the buildings and structures adjoining 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.  
*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.*

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 applicant in the commercial area of Deadwood; therefore, if Mr. Gray sells his property, the Conditional Use Permit will be voided.

If approved, staff recommendations for stipulation(s):

1. The Conditional Use Permit runs with the applicant and not the land; therefore, should the property be sold, the Conditional Use Permit is null and void.
2. The Bed and Breakfast must be owner occupied.
3. Proof of a state excise number shall be provided to the Planning and Zoning Office for their files.
4. Proof that the Building Inspector has inspected the building and it meets all of the building codes.

ACTION REQUIRED FOR CONDITIONAL USE PERMIT:

1. Recommendation by Planning and Zoning Commission for Approval / Approval with conditions / Denial by Board of Adjustment
2. Approval / Approval with conditions / Denial by Board of Adjustment

Mr. Nelson stated that he had received a letter of support from Mr. Tom Griffith of TDG Communications at \_- Sherman Street; the letter is on file at City Hall.

Mr. Allen questioned if Mr. Nelson had toured the building. Mr. Nelson explained that the applicant had split the building with his intended living quarters on one side and the rental on the other. Mr. Nelson stated the applicant was in the process of addressing Building Code issues, such as staircases, handrails and interconnected fire alarm system. Mr. Nelson noted that Mr. Umentum had been working with Mr. Gray and would conduct a final inspection to sign off on the property.

Mr. Allen questioned if Mr. Gray was living on premises. Mr. Nelson stated that he is currently not however is in the process of moving on site. Ms. Farrier questioned if the property has a kitchen facility. Mr. Nelson stated that the building has a kitchen located on the lower level. Mr. Nelson noted that the applicant was in contact with the Department of Health and they would conduct and inspection of the entire Bed and Breakfast. This would be conducted yearly.

Ms. Green questioned if approved could the CUP be revoked if he did not move into the facility. Mr. Nelson stated it could be revoked and recommended a stipulation to the motion of a review of the facility in three (3) or six (6) months.

**Ms. Green moved to approve the Conditional Use Permit at 65 Sherman Street for Danny Gray for a Bed & Breakfast in an C-1 Commercial District with the stipulation of a three (3) month review. Mr. Allen seconded and the motion carried.**

All in favor - 4  
Opposed - 0

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

Ms. Silvernail opened the Board of Adjustment.

**Mr. Klamm moved to approve the Conditional Use Permit at 65 Sherman Street for Danny Gray for a Bed & Breakfast in an C-1 Commercial District with the stipulation of a three (3) month review, as recommended by the Planning and Zoning Commission. Mr. Peterson seconded and the motion carried.**

All in favor - 3  
Opposed - 0

Ms. Silvernail closed the Board of Adjustment and turned the meeting over to the Planning and Zoning Commission.

**FINDINGS OF FACT:**

**FINDINGS OF FACT AND CONCLUSIONS FOR CONDITIONAL USE PERMIT FOR A DWELLING UNIT - MODULAR, ROBERT AND BARB SCHALLENKAMP, 9 SAMPSON**

Mr. Nelson noted that this was the final step in closing the file.

**Mr. Allen moved to approve the Findings of Fact and Conclusions for Conditional Use Permit for a Dwelling Unit - Modular, Robert and Barb Schallenkamp, 9 Sampson. Ms. Farrier seconded and the motion carried.**

All in favor - 4  
Opposed - 0

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

Ms. Silvernail opened the Board of Adjustment.

**Mr. Peterson moved to approve the Findings of Fact and Conclusions for Conditional Use Permit for a Dwelling Unit - Modular, Robert and Barb Schallenkamp, 9 Sampson. Mr. Klamm seconded and the motion carried.**

All in favor - 3  
Opposed - 0

Ms. Silvernail closed the Board of Adjustment and turned the meeting over to the Planning and Zoning Commission.

FINDINGS OF FACT AND CONCLUSIONS FOR CONDITIONAL USE PERMIT FOR A DWELLING UNIT - SINGLE FAMILY, JOHN BOLAN, 1 RAILROAD AVENUE

Mr. Nelson noted that this was the final step in closing the file.

Ms. Farrier moved to approve the Findings of Fact and Conclusions for Conditional Use Permit for a Dwelling Unit - Single family, John Bolan, 1 Railroad Avenue. Ms. Green seconded and the motion carried.

All in favor - 4  
Opposed - 0

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

Ms. Silvernail opened the Board of Adjustment.

Mr. Klamm moved to approve the Findings of Fact and Conclusions for Conditional Use Permit for a Dwelling Unit - Single family, John Bolan, 1 Railroad Avenue, as recommended by the Planning and Zoning Commission. Mr. Peterson seconded and the motion carried.

All in favor - 3  
Opposed - 0

Ms. Silvernail closed the Board of Adjustment and turned the meeting over to the Planning and Zoning Commission.

APPROVAL OF TEMPORARY VENDOR(S):

*Dakota Plains Auctions - The Lodge at Deadwood, 100 Pine Crest Lane - June 18-20, 2010*

Ms. Farrier moved to approve temporary vendor, Dakota Plains Auctions at The Lodge at Deadwood, 100 Pine Crest Lane on June 18-20, 2010. Mr. Allen seconded and the motion carried.

All in favor - 4  
Opposed - 0

*The Runner's Shop - The Lodge at Deadwood, 100 Pine Crest Lane - June 3-17, 2010*

Mr. Allen moved to approve temporary vendor, The Runner's Shop at The Lodge at Deadwood, 100 Pine Crest Lane on June 3-17, 2010. Ms. Farrier seconded and the motion carried.

All in favor - 4  
Opposed - 0

*Grapevine Grains - The Lodge at Deadwood, 100 Pine Crest Lane - June 3-17, 2010*

Ms. Green moved to approve temporary vendor, Grapevine Grains 100 Pine Crest Lane on June 3-17, 2010. Ms. Farrier seconded and the motion carried.

All in favor - 5  
Opposed - 0

Mr. Nelson noted that the fees have been paid and the vendors would be providing sales tax numbers prior to vending.

Joint Meeting  
May 19, 2010

Ms. Green questioned the cost of a vending permit for outdoor vending. Mr. Nelson stated that outdoor vending costs \$750.00 for a fourteen (14) day period of time.

Ms. Green questioned if there would be a reason for denying vending permit. Mr. Nelson stated that if a background review was conducted and came back with violations, the Planning & Zoning Commission could move to deny.

Ms. Silvernail stated that a review of the vending ordinance has been requested and may take place in the future.

**OPEN:**

Mr. Nelson requested an onsite visit with the Planning & Zoning Commission on Thursday May 27, 2010 at 11:00 at 764 Main Street and 10 Centennial. The owner of 764 Main Street proposing building a second dwelling on the property and a variance is needed.

**ADJOURNMENT:**

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

**All in favor - 5**  
**Opposed - 0**

There being no further business, Planning & Zoning Commission adjourned at 5:30 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