CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

May 20, 2009 JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairperson Marie Farrier on Wednesday May 20, 2009 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, Jim Shedd, Sheree Green, Larry Ryan & Mel Allen.

PRESENT BOARD OF ADJUSTMENT: Georgeann Silvernail, Joe Peterson, Lenny Schroeder & Mike Klamm.

ABSENT BOARD OF ADJUSTMENT: Francis Toscana,

APPROVAL OF MINUTES:

Mr. Ryan moved to approve the minutes of the May 6, 2009 Regular Meeting, as mailed. Mr. Shedd seconded and the motion carried.

All in favor - 5
Opposed - 0

SIGNS:

JO ANN AND PAT EASTMAN - REQUEST FOR 32" WALL SIGN AT 73 SHERMAN STREET. ALSO, REQUEST FOR VARIANCE FROM SECTION 15.32.300 – WALL SIGN – REQUIRING WALL SIGNS PER PUBLIC ENTRANCE.

Mr. Umenthum stated the applicant was requesting to install a small sign at the back corner of Pump House Coffee and Deli located at 73 Sherman Street. Mr. Umenthum explained that variance was required from the sign ordinance because the sign was not located by a public entrance to the building.

Mr. Umenthum stated staff recommended approval as presented.

Ms. Farrier questioned if the variance was needed because it was not located by an entrance. Mr. Umenthum stated that was correct.

Mr. Allen moved to approve the 32" wall sign at 73 Sherman Street with the variance from the sign ordinance. Mr. Shedd seconded and the motion carried.

All in favor - 5
Opposed - 0

DALE BERG – 596 AND 650 MAIN STREETS – REQUEST TO CHANGE THE TEXT AND DESIGN OF SIGNS.

Mr. Umenthum stated the applicant was requesting to change the projecting signage at 596 Main Street. Mr. Umenthum explained the text and design would change; however, the size and the location would not change and no variances were required. Mr. Umenthum stated staff recommended approval as presented.

Mr. Shedd moved to approve the request to change the text and design of the sign at 596 Main Street. Mr. Ryan seconded and the motion carried.

All in favor - 5
Opposed - 0

Mr. Umenthum stated the applicant was requesting another change to the projecting signage at 650 Main Street. Mr. Umenthum explained the text and design would change; however, the size and the location would not change and no variances were required. Mr. Umenthum stated staff recommended approval as presented.

Mr. Shedd moved to approve the request to change the text and design of the sign at 596 Main Street. Mr. Allen seconded and the motion carried.

All in favor - 5
Opposed - 0

ADAM'S MUSEUM AND HOUSE – 3'X15' OR 45 SQUARE FEET OUTDOOR VINYL BANNER.

Mr. Umenthum stated the applicant was requesting permission to replace two banners at the Adams Museum at 54 Sherman Street. Mr. Umenthum stated the banners are located on the front corner and back corner of the building.

Mr. Umenthum explained the purpose of the banners is to advertise a new exhibit at the Museum and they are replaced every two years. Mr. Umenthum stated they are requesting permission to display the banners for two years and waive the sign permit application fee for a non-profit group; he recommended approval as presented.

Ms. Green moved to approve the request for two outdoor vinyl banners, for two years, and to waive the sign permit fee. Mr. Allen seconded and the motion carried.

All in favor - 5
Opposed - 0

NEW BUSINESS:

MARK BERGSTEIN – REQUEST FOR 6' VARIANCE FROM FRONT YARD SETBACK REQUIREMENTS.

Ms. Williams referred to the following staff report:

STAFF REPORT
REQUEST FOR VARIANCE
FROM SECTION 17.28.040.B
FRONT YARD SETBACKS

APPLICANTS: Mark Bergstein

SIZE OF SITE: Mr. Bergstein's site contains approximately 0.150 Acres/6,553 square feet.

ADDRESS: 3 John Street

LEGAL DESCRIPTION: Lot 3A, Block 12, Highland Park Addition, formerly Lots 3, 4 and a portion of Lot 7, Block 12, Highland Park Addition, Located in the NW ¼ of Section 23, T5N, R3E, B.H.M., Located in the City of Deadwood, Lawrence County, South Dakota

ZONE: R1 - Residential District

BACKGROUND:

Requested Action: Mr. Bergstein is requesting a 6' variance from the front yard

setback requirements. He is requesting to reduce the front yard setback from 20 feet to 14 feet from the front lot line. The subject property abuts the John Street right-of-way and gains access in this area. Section 17.24.040.B. Deadwood Zoning Code – R1 - Residential District requires a 20 foot front yard setback

The Commissions are being requested to approve a variance at 3 John Street so as to enable construction of a two-bay garage, and again, to a distance of 14' from the front yard lot line.

The proposed garage will measure 24'x28' and will have two bays and an entrance door to the garage. The Comprehensive Plan designates this land as low density residential. This category is intended for predominately single family detached residential development, similar to that found in many existing city neighborhoods. Residential densities of up to 5 dwelling units per acre (net) are typical of this category. The majority of this category is located toward the periphery of developed areas of the city. In general, these areas are quiet residential neighborhoods, predominately consisting of single family detached homes. The Burnham Hill area is made up of single-family dwellings, with a mixture of newer and older homes.

ENVIRONMENTAL CORRIDOR: The property is located within Other Area - Zone X – Areas determined to be outside 500 year flood.

AREA ZONING PATTERNS: The subject property is currently zoned R1 - Residential District. Again, there is a mixture of historic and new homes in the vicinity. The primary use is single-family dwellings.

ADJACENT ZONING AND LAND USES:

The surrounding property to the north is single-family dwellings. The land to the south is currently vacant and the lands to the west and east are residential in nature.

ATTACHMENTS:

Attached for review is an aerial photo of the subject site

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 (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.

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The Special Circumstance in this case is the fact that the subject site has a limited area in which to work, due to the siting of existing structures on an existing lot The existing residence sets back, approximately, 50' from the front lot line. Many of the newer homes in this area have garages and off-street parking. The subject area is made up of primarily non-contributing homes and it is not unusual to place garages in the front of properties in Deadwood.

The term undue hardship encompasses virtually any problem and the hardship only need to be practical. Because of the particular physical constraints of the specific property involved, a particular hardship to the owners would result, as distinguished from a mere inconvenience, if the strict letter of regulations were carried out. Strict compliance with the specific regulations would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations. Approving the variance requests would enable the reasonable use of the property. The strict application of the bulk, dimensional or performance standards set forth in the subject district precludes a reasonable permitted use of the property.

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

The subject use is an accessory use by right in the R1 - Residential District. The intent of this standard is not to deprive a property owner of a use that is enjoyed by the neighbors. Garages in this area are mainly attached with driveways. However, in order to provide proper drainage between the existing house and the proposed garage, an appropriate sized area is needed. Twenty-three (23) Emery, adjacent house to the east, has an existing detached garage at street level, at the end of the block. The house across the street has approximately a 15' setback for an attached garage Given the location of the existing residence there is not a location on the subject site that would support a two-bay garage, without a variance. The strict application of the zoning code would result in impractical difficulties or unnecessary hardship to the applicant and would result in unreasonable deprivation of allowable uses of the property within the R1 – Residential District. The variance is necessary for the preservation of a property right of the applicant and to possess the same rights of other properties in the same zone or vicinity.

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 the applications for variance, if granted, is the minimum adjustment necessary to afford relief or the reasonable use of the land without precluding the construction of a new garage. The remaining bulk and height regulations are all met

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 requested variance would allow the applicant to develop, maintain and enhance the subject property for single-family residential use, as intended by the City Zoning Code and the Comprehensive Plan. The proposed project is compatible with the present and future logical development of the area.

The granting of the variances in the subject area would not be injurious to the area in general. The variance, if granted, would not alter the essential character of the surrounding area 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.

Due to the constraints associated with the presence of existing structures, special circumstances in this case are not a result from the actions of the Applicant. The variance would not constitute a grant of special privilege inconsistent with limitations imposed on similarly situated properties or inconsistent with the purposes of the zoning regulations. The property cannot be developed to the extent similarly zoned property in the area can be developed because of existing siting of existing uses on the land and lot size.

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. This finding includes concerns such as fire safety, structural stability, and visual and aesthetic concerns. Granting this variance will not be injurious to the public health, safety, and general welfare of the community.

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 noted that she had received an e-mail that objected to the variance. She proceeded to read the e-mail from adjacent landowner Mr. Glen A. Blasius, landowner of 1 John Street. She noted the e-mail would be made part of the file at City Hall. Ms. Williams stated Mr. Blasius had indicated an associate would be attending the meeting; however, he was not in attendance.

Ms. Williams stated Mr. Mark Bergstein was in the audience. Mr. Bergstein stated he did not feel the height of the proposed garage would impact the view from 1 John Street. He noted that the drainage issues would be addressed and he did not feel the abutting property would be impacted.

Ms. Farrier stated she was concerned about the adjacent driveway for 23 Emery Street. Mr. Bergstein stated the neighbors at 23 Emery had an easement and the construction would be located five (5) feet from the driveway. He stated he would work with them if any problems did arise.

Ms. Farrier questioned if he would dig into the hillside to make the garage street level and if it would block the front windows of the house. Mr. Bergstein stated the plan was to dig to street level and it would not obstruct the view from his home. He pointed out he was not able to add on to or use the existing garage that was attached to the house because the driveway was extremely steep. Mr. Bergstein explained the proposed garage would have a flat roof and possibly he would have a patio on top at some point in the future. He stated the construction of the proposed garage would depend on the costs communicated with the contractor. He noted the variance had been required in order to calculate the costs.

Ms. Williams presented photographs of the subject area and she pointed out where the proposed garage would set on the property.

Ms. Farrier questioned if the retaining wall would be torn down. Mr. Bergstein stated a portion of the wall would come down and he pointed out it was not a historic wall.

Mr. Allen questioned if the house at 1 John was a nightly rental or a bed and breakfast. Ms. Williams stated the owner does not live there and she had understood it was a monthly rental.

Ms. Green question if the 14′ feet clearance needed to be paved and questioned if the city had a requirement. Mr. Bergstein stated he was planning to pave the area. Ms. Farrier questioned how much dirt would be removed. Mr. Bergstein stated quite a bit would be excavated and he still needed to have the plan approved.

Ms. Farrier asked for staff opinion. Ms. Williams stated the standards had been met and that she supported the variance and felt 14′ was adequate and noted that the 14′ was more than most other areas in Deadwood.

Mr. Allen moved to approve the request for a 6′ variance for Mr. Mark Bergstein at 3 John Street. Mr. Shedd seconded and the motion carried.

All in favor - 5
Opposed - 0

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

DEADWOOD BOARD OF ADJUSTMENT

Commissioner Silvernail called the Board of Adjustment to order.

Mr. Klamm moved to approve the request for a 6′ variance for Mr. Mark Bergstein at 3 John Street, as recommended by the Planning & Zoning Commission. Mr. Schroeder seconded and the motion carried.

All in favor - 4
Opposed - 0

Commissioner Silvernail adjourned the Board of Adjustment and turned the meeting back over to the Planning and Zoning Commission.

PLANNING AND ZONING

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

FINAL PLAT – STAGE RUN ADDITION – PLAT OF LOT 12, BLOCK 1, OF PALISADES TRACT OF DEADWOOD STAGE RUN ADDITION TO THE CITY OF DEADWOOD, ALL LOCATED IN THE SW ¼ SECTION 14, THE SE ¼ OF SECTION 15, THE NE 1/4NE1/4 OF SECTION 22 AND THE N ½ NW ¼ OF SECTION 23, T5N, R3E, B.H.M., CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA

Ms. Williams stated the commission was familiar with these plats since they were coming in one at a time. The purpose of the plat was for transfer purposes. Ms. Williams stated construction would start immediately on this lot and three building permits were in the process of being issued.

Ms. Green moved to approve the Final Plat for Stage Run Addition Plat of Lot 12, Block 1, of Palisades Tract of Deadwood Stage Run Addition to the City of Deadwood. Mr. Shedd seconded and the motion carried.

All in favor - 4
Opposed - 0

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

DEADWOOD BOARD OF ADJUSTMENT

Commissioner Silvernail called the Board of Adjustment to order.

Mr. Schroeder moved to approve the Final Plat for Stage Run Addition Plat of Lot 12, Block 1, of Palisades Tract of Deadwood Stage Run Addition to the City of Deadwood, as recommended by the Planning & Zoning Commission. Mr. Klamm seconded and the motion carried.

All in favor - 3
Opposed - 0
Abstain - 1(Peterson)

Commissioner Silvernail adjourned the Board of Adjustment and turned the meeting back over to the Planning and Zoning Commission.

PLANNING AND ZONING

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

OPEN:
None

ADJOURNMENT:

Mr. Shedd moved to adjourn the Joint Meeting of the Planning and Zoning Commission. Ms. Green 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	Ms. Sheree Green
Chairman (Acting)	Secretary (Acting)
Planning and Zoning	Planning and Zoning