

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

June 20, 2007

JOINT MEETING

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

ABSENT PLANNING & ZONING: None.

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

ABSENT BOARD OF ADJUSTMENT: Mark Speirs.

APPROVAL OF MINUTES

Mr. Ryan moved to approve the minutes of the May 30, 2007 Special Joint Meeting, as mailed. Mr. Shedd seconded and the motion carried.

All in favor	-	<u>5</u>
Opposed	-	<u>0</u>

NEW BUSINESS:

VARIANCE REQUESTS FROM HEIGHT, FRONT AND REAR LOT LINE SETBACKS AND CHANGE OF ZONING FROM PF - PARK FOREST TO CH - COMMERCIAL HIGHWAY DISTRICT

LEGAL DESCRIPTION: : Deadwood Resort Lots 1 and 2, Formerly Lots 849A-1 and 849A2, Subdivision of Cimbria Placer MS No. 849; AND, Waterworld Lot 1, A portion of Government Lot 15, Located in the N 1/2 of the SE 1/4; AND the vacated portion of U.S. Highway R-O-W; Located in the NE 1/4 and the SE 1/4, All located in Section 14, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota (Lot 1 Containing 19.21 Acres; Lot 2 Containing 1.38 Acres)

ADDRESS: 100 Pine Crest

ZONING: CH - Commercial Highway and PF - Park Forest District

Ms. William referred to the following Staff Report:

**STAFF REPORT
REQUEST FOR VARIANCE AND
CHANGE OF ZONING**

NAME: Deadwood Resorts, LLC and City of Deadwood

LOCATION: Across from Tatunka/Adjacent to Highway 85 N

ADDRESS: 100 Pine Crest Lane

LEGAL DESCRIPTION: Deadwood Resort Lots 1 and 2, Formerly Lots 849A-1 and 849A2, Subdivision of Cimbria Placer MS No. 849; AND, Waterworld Lot 1, A portion of Government Lot 15, Located in the N 1/2 of the SE 1/4; AND the vacated portion of U.S. Highway R-O-W; Located in the NE 1/4 and the SE 1/4, All located in Section 14, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota (Lot 1 Containing 19.21 Acres; Lot 2 Containing 1.38 Acres)

ZONE: CH - Commercial Highway District and PF - Park Forest District

BACKGROUND:

The applicants subdivided the land into two (2) lots. Lot 1 of Deadwood Resorts is owned by the City of Deadwood and consists of 1.38 acres, more or less. Lot 2 is owned by Deadwood Resorts, LLC, and consists of 19.21 acres, more or less. The site has public frontage along Highway 85 North.

In 2006, original plans were presented; however, they were abandoned due to the costs of a retaining wall. The project at one time proposed the hotel/convention center/water park and 1,000 parking spaces. The second plan proposed all the same uses; however, only 500+ parking spaces would be available for hotel, overflow and convention parking.

Previously, a thirty-one (31) foot variance had been granted to accommodate a parking garage under the hotel due to the constraints of the site.

The existing site has been graded to prepare the site for the project and new requests are being petitioned at this time. Relief is again being sought from Section 17.40.040 Area and Bulk Requirements – Height Requirements – Maximum Height forty-five (45) feet. At the present time, a six (6) foot variance from height is being requested on Tract 2 and the current plans do not include the parking under the hotel. The hotel is four (4) stories, but the roof places the structure over the permitted height of the district. The proposed structure will have a 6:12 pitch roof which will bring the height to 51'. The previous plans proposed a 76' structure. Therefore, the applicants maximized the building footprint and on-site parking without having to provide a parking garage beneath the hotel or high-rise construction.

The current plans propose approximately 140 hotel rooms; Convention Hall with occupancy for 1,190; gaming; restaurant and bar; and, a 7,000 square foot aquatic park (for hotel guests only).

The Convention Center is an integral part of the hotel, and it will belong to the City of Deadwood as part of the TIFD Agreement. Since the hotel project and the convention center will be connected, it is not possible to meet the side and rear yard setbacks. Due to the lay of the land, the building will only be visible from the State Highway at certain locations.

Tatunka, owned by Kevin Costner, is located to the North of the proposed project. A Planned Unit Development has been approved in an area located to the South of the project site. Property to the east is vacant and zoned CH – Commercial Highway District. Property to the west is vacant and owned by Costner and the Federal Government.

The Comprehensive Plan designates this land as tourist service. The tourist service area is intended to contain uses that primarily support the Deadwood tourist industry. Uses include employee housing, maintenance yards, visitor parking, and transportation facilities.

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 (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 term unnecessary hardship encompasses virtually any problem and the hardship only need to be practical. Lots 1 and 2 of Deadwood Resorts retain steep hillsides and again, the plan was changed early in 2006 due to the cost of a retaining wall that would restrain the hillside if it was disturbed. Since the plan was abandoned, the amount of land available for building and parking has been downsized. Again, the circumstances of the city owning the land and convention center presents an unique situation and since the structures will be connected, the side and rear setbacks cannot be met. If the land was under one ownership, a variance would not be required for the rear and side yard setbacks. The hardship is directly related to the relationship of the property to natural topography and proposed improvements warrants relief from the standards. Because of the physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning code and that the authorization of the variances is necessary to enable the reasonable use of the property. At the May 30, 2007, Special Joint Meeting the primary use for this proposal was discussed and it was the consensus that the use with the largest demand would be used for the parking requirements; therefore, the convention center requires the most parking at 396 parking spaces and 370 are being proposed.

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

The hotel/convention center is partially located in the CH – Commercial Highway District which is intended to provide locations for commercial uses, which require access to roads and highways, and substantial amounts of parking. However, a portion of this public hearing is also for a Change of Zoning since the rear portion of the property was zoned PF - Park Forest District. This was recently found out when GIS staff placed the zoning map on the GIS system. Therefore, the rear portion of the property will be rezoned to CH - Commercial Highway and the entire property will be located under one (1) zoning designation.

- 3. Any variance granted under the provisions of this section shall be the minimum adjustment necessary for the reasonable use of the land.**

The variance being requested is the minimum adjustment necessary for the reasonable use of the land and the minimum that would afford relief.

- 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 the subject area would not be injurious to the area in general. Tatunka, the Buffalo Jump, is located across the highway. The remaining lands are currently vacant. The variances will 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 nor be detrimental to the public welfare. The Comprehensive Plan's land use plan supports this type of use.

- 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 topography poses practical difficulties and it is unusually difficult to build on the subject land and provide parking without relief. Plans for the convention center and hotel connect the structures; therefore, side and rear setbacks cannot be met. Due to the different ownerships, this variance was required; however, if both lots were under the same ownership, no variance would be required.

- 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.

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 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.

AMENDMENT TO ZONING MAP

CITY OF DEADWOOD
REZONING ANALYSIS

BACKGROUND:

The request for a Change of Zoning was initiated by Deadwood Resorts after staff informed them that a portion of their land was located within the PF - Park Forest District. This error was found when GIS staff placed the zoning map, as an overlay, on the GIS system. Staff then notified Deadwood Resorts and they applied for the change in zoning at the same time as the variances. The existing zoning map has arbitrary lines drawn on it and many lots, under one ownership, have more than one zoning designation on their lands. The Comprehensive Land Use Plan designates the subject area, as a tourist service area. The lands in this area have not been built out; however, Super G (Silverado) and Tatunka (Costner) have presented future plans in the vicinity.

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
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.

SECTION 17.100.030 - STANDARDS OF REVIEW:

In reviewing an amendment to the text of this Ordinance or an amendment to the Official Zoning District Map, the City Commission and Planning and Zoning Commission shall consider the following:

- A. Whether the proposed amendment is in conflict with any applicable portions of this Ordinance.**

The application is not in conflict with the City of Deadwood Zoning Code or Comprehensive Plan. The use has access from a State 4-lane highway and the location is appropriate for this type of zoning and the comprehensive plan supports this type of use. It is logical to place the entire ownership of the lot and project under one zoning designation.

- B. Whether the proposed amendment is consistent with all elements of the Deadwood Comprehensive Plan.**

Again, The Comprehensive Plan, indicates that this area should be used for "tourist service". The proposed change of zoning from PF - Park Forest to CH - Commercial Highway District is appropriate for this area. The only reason a portion of this land was zoned PF - Park Forest was due to the fact that the rear of the property did not have water and sewer and the existing zoning map did not follow property lines. Utilities are located in the right-of-way of the 4-lane highway.

- C. Whether the proposed amendment is compatible with surrounding Zone Districts and land uses, considering existing land use and neighborhood.**

The lands in the vicinity are zoned CH - Commercial Highway District and projects have been proposed for those lands; however, the plans have not materialized. An arbitrary line had been drawn on the existing zoning map and lands designated as PF - Park Forest District were located in areas where water and sewer had not been extended. A Planned Unit Development has recently been approved in the vicinity.

- D. Whether and the extent to which the proposed amendment would result in demands on public facilities, and the extent to which the proposed amendment would exceed the capacity of such public facilities, including, but not limited to transportation facilities, sewage facilities, water supply, parks, drainage, schools, and emergency medical facilities.**

A hotel and convention center and parking are being proposed at this time. There would be an additional impact on public facilities such as water and sewer. Letters have been sent to Francis Toscana, Lead-Deadwood Sanitary District and Jim Raysor, Deadwood Public Works and City Planner for input on the capacity of the systems. Drainage will be addressed at the building permit stage. Running the trolley to this area has been discussed; the trolley rider numbers would more than likely rise if it was run to this project. Also, the type of transportation to this area has been discussed but not addressed. Emergency and medical facilities could be slightly impacted.

Ms. Williams stated Mr. Larry Crane, representing Deadwood Resort LLC. was in the audience to answer any questions.

Mr. Crane presented a power point presentation on how the resort project would affect the surrounding areas. Mr. Tom Rensch, representative for Super G (Silverado), adjacent landowner, had visited with staff and had requested the Commissions review a digital image of how the project would affect adjacent lands. Mr. Crane noted that that style of the project had not changed much; however, the height of the hotel had been lowered and had been broaden; however, they had been able to meet the parking standards. Mr. Crane noted the height of the building had been lowered from the previous specification. Mr. Crane pointed out

that the proposed height of the new structure was 51' and that it had been lowered approximately 25' from their last proposal. He stated they would work with Mr. Kevin Kuchenbecker, Deadwood Historic Preservation Officer, on the exterior design of the building. Mr. Crane noted that the property, located on the Mt. Roosevelt side, would not be affected by the construction. Mr. Crane noted that the rear of the building would serve as the service entrance and parking for employees. He noted this area would be hidden from view. Mr. Crane reviewed the details of the project to date. He pointed out the project was focused on a family environment.

Ms. Griffith stated Super G was concerned about the structure obstructing a view from their property if they build in the future. After reviewing the digital information and the fact that the new project was lower in elevation than the previous plans, it was the consensus that critical views would not be obstructed.

Mr. Toscana questioned the height difference from the prior design. Mr. Crane stated the prior height was 75' and it was now reduced to 51'. Ms. Williams stated the height would be only on Tract 1 and 2 for the motion.

Ms. Green moved to approve the Variance requests for the 6' height request on Lot 2 and the front and rear lot line setbacks for Deadwood Resorts LLC at 100 Pine Crest. Mr. Ryan seconded and the motion carried.

All in favor	-	5
Opposed	-	0

Mr. Allen moved to approve the Change of Zoning from PF - Park Forest to CH - Commercial Highway District for Deadwood Resort LLC at 100 Pine Crest. Mr. Shedd seconded and the motion carried.

All in favor	-	5
Opposed	-	0

Chairperson 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 from Planning & Zoning for the Variance request for the 6' height request on Lot 2 and the front and rear lot line setbacks for Deadwood Resorts LLC at 100 Pine Crest. Ms. Griffith seconded and the motion carried.

All in favor	-	3
Opposed	-	0

Mayor Toscana noted that the Change of Zoning would be First Reading for an Ordinance. Therefore, First Reading would take place on June 25, 2007 at the City Commission Meeting.

Roll Call Vote

All in favor	-	3 (Griffith, Silvernail & Toscana)
Opposed	-	0

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

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

FINDINGS OF FACT:

- 1) **Planned Unit Development - Stage Run Subdivision - Changes of Zoning - Off Mt. Roosevelt Road**

Mr. Ryan moved to approve the Findings of Fact for a Planned Unit Development for Stage Run's Changes of Zoning, located off Mt. Roosevelt Road. Mr. Shedd seconded and the motion carried.

All in Favor - 5
Opposed - 0

- 2) **Janice Heffron-Fogle - Conditional Use Permit - Home Occupation - Electrologist - 12 Washington**

Mr. Shedd moved to approve the Findings of Fact for Janice Heffron-Fogle for a Conditional Use Permit a Home Occupation for Electrology at 12 Washington. Ms. Green 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

Mayor Toscana called the Board of Adjustment to order.

Ms. Silvernail moved to approve the Findings of Fact for a Planned Unit Development for Stage Run changing the zoning designations, located off Mt. Roosevelt Road. Ms. Griffith seconded and the motion carried.

All in Favor - 3
Opposed - 0

Ms. Griffith moved to approve the Findings of Fact for Janice Heffron-Fogle for a Conditional Use Permit a Home Occupation for Electrologist at 12 Washington. Ms. Silvernail seconded and the motion carried.

All in Favor - 3
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.

UPDATE ON ZONING MAP

Ms. Williams stated she would like permission to set a public hearing to adopt the changes on the Official Zoning Map. Ms. Williams requested a motion from the Planning & Zoning Commission

Mr. Allen moved to give permission to set a public hearing to adopt the Zoning Map. Mr. Ryan seconded and the motion carried.

All in favor - 5
Opposed - 0

OPEN

At this time, Ms. Williams pointed out that Ms. Heffron had not complied with the stipulations on her CUP for a retaining a building permit. Ms. Williams noted she had contacted the State and there was no license requirements for an Electrologist. Ms. Williams she will follow up on the building permit to make sure that the conditions are met.

Ms. Williams stated the next Planning & Zoning meeting would be on Thursday July 5, 2007 due to the Fourth of July holiday.

ADJOURNMENT:

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

<u>All in favor</u>	<u>-</u>	<u>5</u>
<u>Opposed</u>	<u>-</u>	<u>0</u>

There being no further business, Planning & Zoning Commission adjourned at 5:35 p.m.

ATTEST:

Ms. Marie Farrier
Chairman (Acting)
Planning and Zoning

Ms. Sheree Green
Secretary (Acting)
Planning and Zoning