

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

June 21, 2006

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairman Larry Ryan on Wednesday, June 21, 2006 at 5:00 p.m. in the Deadwood City Hall Meeting Room located at 102 Sherman Street, Deadwood, SD 57732.

PRESENT PLANNING & ZONING: Larry Ryan, Marie Farrier, Robert Thorp, and Sheree Green.

ABSENT: Mel Allen

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

ABSENT: None

APPROVAL OF MINUTES

Ms. Farrier moved to approve the minutes of the June 7, 2006 Regular Meeting. Ms. Green seconded and the motion carried.

All in favor - 4
Opposed - 0

REQUEST FOR A 29' HEIGHT VARIANCE AND LOT LINE VARIANCES FOR A HOTEL/CONVENTION CENTER

Ms. Williams stated after further review it was determined a 31' variance would be required. Ms. Williams referred to the following staff report:

**STAFF REPORT
REQUEST FOR VARIANCE**

NAME: Deadwood Resorts, LLC

LEGAL DESCRIPTION: Lots 849 A-1 and 849 A-2, formerly Lot 849A and Lot B of the subdivision of Cimbria Placer Mineral Survey No. 849; and Waterworld Lot 1, and A portion of Government Lot 15, in the N ½ of the SE ¼; and the vacated portion of U.S. Highway 85 R-O-W; Located in the NE 1/4, All located in Section 14, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South

SITE: Across from Dunbar Lane/Deadwood Hill Area

ZONE: CH - Commercial Highway District

ADDRESS: 100 Pine Crest Lane

BACKGROUND:

The applicants have subdivided the land into two (2) lots. Lot 1 of Deadwood Resorts will be 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.

The plans were changed early in 2006 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 plan now proposes all the same uses; however, only 500+ parking spaces will be available for hotel, overflow and convention parking.

The existing site is presently being graded to prepare the land for the project. Tatunka, owned by Kevin Costner, is located to the North of the proposed project. A residential subdivision is being proposed 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 applicant is requesting a thirty-one (31) foot variance and relief from Section 17.40.040 Area and Bulk Requirements - Height Requirements - Maximum Height forty-five (45) feet. The applicant is proposing to build a seventy-six (76) foot structure. Due to site conditions the building is designed perpendicular to the existing hill to eliminate the need for a 60' high retaining wall. The building is located on the south side of the site to maximize

parking and to allow for access off Mt. Roosevelt Road. The hotel itself does not need the variance; however, a parking garage is being proposed for the bottom floor; therefore, the height of the total structure is increased to 76'. Also, one of the reasons for the garage, under the hotel is to raise the hotel to allow for the windows on first floor of rooms to clear the roof line. The gable roof on the hotel is 59' to the eave and 76' at the center of the gable. The Convention Center is an integral part of the hotel, and will be deeded to the City of Deadwood as part of the TIF Agreement. The property line between the City owned property and the Deadwood Resort, LLC owned property follows a wall line and makes a setback requirement not feasible. The applicant will demonstrate that the structure itself will not be entirely visible from Highway 85N. Due to the lay of the land, the building will only be visible at certain viewpoints.

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. Major parking facilities should be designed to provide direct linkages to the City Center and should be designed, whenever possible to incorporate other activities such as retail, offices, and entertainment.

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. It would be unusually difficult and unduly expensive for the applicant to build the project in conformance with the ordinance. The hardship is directly related to the relationship of the property to natural topography and 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.

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

The hotel/convention center/water park is 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.

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.

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 without relief. The hardship was not created by the applicant(s).

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.

Ms. Williams stated Mr. Wayne Lund, Lund and Associates and Mr. Mike Wordeman, co-owner were present to represent Deadwood Resorts, LLC. Ms. Williams stated the Planning & Zoning commission had not seen the artist rendering of the facility. Copies of documents regarding the project were obtained from the Historic Preservation Office.

Ms. Farrier questioned if 500 parking spots were sufficient for the convention center and the hotel. Mr. Lund stated the convention center measured 32,000 square feet and stated the requirement from the ordinance was 370 spaces for the entire complex. Ms. Farrier stated in the initial plans, 1,000 parking spaces had been proposed and she questioned why that figure had

changed. It was noted the first plan had been abandoned, due to the cost of a 60' retaining wall. Mr. Lund noted the current plan involved turning the structure away from the ridge and it cut down on the amount of land they could utilize. Mr. Lund pointed out that 125 parking spaces were located underground and beneath the hotel and the remaining parking spaces were available onsite.

Ms. Farrier questioned if the parking garage was underground or above ground. Mr. Lund stated that it would be an underground parking garage and explained the parking structure placed the hotel at a level where the first floor of the hotel would be positioned above the Convention Center.

Mr. Lund explained, in the original design, the facility met the height requirements; however, the plan required a 60' retaining wall that had been very costly and the size of the retaining wall would have an adverse effect on the historic integrity of the area. Mr. Lund explained that the owners were concerned with the safety of the retaining wall safety and again, the cost to the project. Mr. Lund stated the current plans were then designed, without the retaining wall; however, there was a need for a height variance. Mr. Lund stated the new design allowed views from the rooms of Deadwood and also Spearfish. Mr. Lund added there were 25 additional parking spots for the 25 suites. Mr. Lund stated that the Department of Transportation would be widening the road for a turning lane and also stop lights would be installed. Mr. Lund stated the design of the project was not intrusive and it could only be seen for a short distance, from the state highway.

Ms. Green and Mr. Thorp questioned if this type of variance had been approved before. Ms. Williams stated they have approved a height variance for the Dunbar and Silverado's projects. She noted each variance is specific to the request.

Mr. Thorp moved to recommend the approval of the 31' height variance for the hotel/convention center. Ms. Farrier seconded and the motion carried.

All in Favor: - 4
Opposed: - 0

Mr. Thorp questioned if action from Planning and Zoning was only a recommendation to the Board of Adjustment. Ms. Williams stated yes and pointed out there were also rear and side yard setbacks required due to the hotel and convention center being connected, and the property being owned by the city and Deadwood Resorts, LLC. Mr. Thorp questioned these requirements. Ms. Williams stated that the yard setback were included in the staff report. Mr. Lund stated because of the city ownership of the Convention Center the setbacks would not be feasible because the Convention Center is a part of the entire facility. Mr. Lund stated this would require a zero (0) setback between the City land and the private land.

Mr. Thorp restated the motion to include the height, side and rear requests for variances. Ms. Green questioned how many variances were included. Mr. Lund stated a 10' variance for side(s) and 5' for the rear were also being requested. Mr. Thorp questioned the need for these requirements. Ms. Williams stated that it was a rare occurrence since the city owned one parcel and Deadwood Resorts, LLC owned the other. The Convention Center would be owned by the City, but leased to Deadwood Resorts, LLC. In this case, the convention center would be connected to the hotel; therefore, requiring the setback requirements.

Mr. Thorp moved to recommend the approval of all variances for a 31' height variance and 10' variance from the side lot lines and 5' for the rear setbacks for the hotel/convention center. Ms. Farrier seconded and the motion carried.

All in Favor: - 4
Opposed: - 0

Chairman Ryan adjourned the Planning and Zoning meeting and turned the meeting over to the Board of Adjustments.

DEADWOOD BOARD OF ADJUSTMENT

Mayor Toscana called the Board of Adjustment to order.

Ms. Silvernail moved to except the recommendation by Planning & Zoning to approve the 31' height variance and the rear and side setbacks for the hotel/convention center. Ms. Griffith seconded and the motion carried.

All in Favor - 5
Opposed - 0

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

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

KEN KELLER RE: Extension of time to pave public parking lot located across from the Bullock Hotel

Mr. Stacy Kooistra, Brady Pluimer Law, represented Mr. Ken Keller and Bullock properties. Mr. Kooistra referred to his proposal submitted to the Planning & Zoning office. Mr. Kooistra stated that to maintain the parking lot with 4" of base core gravel would cost \$4850 and to pave the lot it would be \$84,000. Mr. Kooistra stated that Mr. Keller and Mr. Love would like an extension due to the fact they plan to utilize the property for an upcoming project. Mr. Kooistra stated he did understand an extension was granted in the past; however, with the cost of asphalt and the upcoming plans for a railroad and/or convention center, it presented quite a loss for the owner. Mr. Kooistra stated Mr. Love would provide updates as to the status of the parking lot and at the end of the year provide a report for definite plans for the lot, whether it is construction or paving the lot. Mr. Kooistra stated there were several plans for the lot, including a convention center or a depot for the railroad if the project materialized.

Ms. Williams pointed out it had been three years since the last request for a time extension. She noted a one year extension had been granted at that time. Ms. Williams noted that Cadillac Jacks had been required to pave the parking area following the demolition of the Ridgestone Apartments. She noted that Cadillac Jack's also had plans to develop the lot this fall. Ms. Williams recommended the commission stay consistent with their requirements. She also pointed out a variance could not be granted for this situation since paving and landscaping were not prevented by the land itself. Ms. Williams reiterated the one year extension turned into three (3) years and they have had ample time to improve the parking lot.

Mr. Kooistra stated if approval was granted another extension, Mr. Love and Mr. Keller would have the lot meeting the condition, for 4" base course gravel, within a week or two. Mr. Kooistra noted that the majority of the parking lot was grandfathered-in and only required the base core gravel. He pointed out that having the entire lot graveled would present a consistent appearance. He noted by paving sections of the lot and graveled some of the area would create problems with mud on the paved portion. Mr. Kooistra stated he would research the legality for requesting a variance. Mr. Ryan questioned when the railroad was expected. Mr. Kooistra stated the project involved bringing a railroad to Deadwood and a depot. He stated they still had some problems with right-of-way and funding.

Mr. Kooistra did not feel that everyone was in disagreement that the property in question needed to be paved or developed, it was a timing issue. Mr. Kooistra felt it would be in everyone's best interest to grant the extension.

Ms. Farrier questioned the grandfathered-in status of the property adjacent to the area in question. Ms. Williams stated a portion of the parking lot had been grandfathered-in because the use was in existence prior to the 1992 Zoning Ordinance; therefore, it fell under a previous ordinance which only required 4 inches of base core gravel. The commission reviewed the GIS map of the areas in question.

Ms. Williams reaffirmed that the commission needed to stay consistent. Ms. Green agreed and felt there should be no exceptions. Mr. Kooistra felt the current request from the Bullock fell under different circumstances from the Bradsky situation. Mr. Kooistra restated his request for his client's extension.

Ms. Farrier questioned why the parking lot had potholes if it was maintained. Ms. Williams stated it was not maintained. Ms. Farrier questioned if they could then lose their grandfathered-in status. Ms. Williams stated it was an issue she would need to research. Mr. Kooistra stated the area was maintained. Ms. Williams stated she believed it was not maintained with 4" base gravel. Mr. Kooistra stated he would look into that issue.

Ms. Williams stated the owner had three (3) years from the last request for an extension and the plans had not materialized and the City needed to address the violation. Mr. Kooistra stated the plans were in the works but it was behind the scenes. Ms. Williams pointed out no improvements had been done to the area itself.

Mr. Thorp questioned whether 100% of the pavement would need to be removed for the project. Mr. Kooistra stated not necessarily, it would depend on the project.

Ms. Farrier questioned what the Bullock was proposing? Mr. Kooistra stated they were proposing to place 4" base core gravel over the entire area and in twelve months or prior to that upon request; the owners would provide definite plans for the area or pave the entire parking lot.

Mr. Kooistra stated they were actively monitoring the railroad issue.

Mr. Thorp questioned if they would recommend this to the Board of Adjustments. Ms. Williams stated no, this was a violation of the zoning code and it was the Planning & Zoning Commissions' decision.

Ms. Farrier moved to deny the Bullock's request for an extension of time to pave the parking lot area's in violation of the zoning code and located across from the Bullock. Ms. Green seconded and the motion carried.

All in Favor	-	4
Opposed	-	0

OPEN

The Planning & Zoning Commission instructed Ms. Williams to schedule an on-site for the Bill Pearson's project.

ADJOURNMENT

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

All in favor	-	4
Opposed	-	0

There being no further business, Planning & Zoning Commission adjourned at 5:45 p.m.

ATTEST:

Larry Ryan
Chairman (Acting)
Planning and Zoning

Marie Farrier
Secretary (Acting)
Planning and Zoning