

**CITY OF DEADWOOD**

**PLANNING AND ZONING COMMISSION**

July 5, 2006

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairman Larry Ryan on Wednesday, July 5, 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, Sheree Green, and Mel Allen.

Due to a conflict with the City Commission Meeting, no members from Board of Adjustment were able to attend.

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

**APPROVAL OF MINUTES**

**Ms. Green moved to approve the minutes of the June 21, 2006 Joint Meeting. Mr. Thorp seconded and the motion carried.**

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

**REQUEST FOR A CONDITIONAL USE PERMIT FOR A BED AND BREAKFAST**

Ms. Williams referred to the following staff report:

**STAFF REPORT**  
**PLANNING AND ZONING**  
**REQUEST FOR CONDITIONAL USE PERMIT**  
**FOR A BED & BREAKFAST**

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**APPLICANT:** Robert and Deborah Thorp

**PURPOSE:** Request for Conditional Use Permit for a Bed and Breakfast

**GENERAL LOCATION:** 20 Pleasant Street

**LEGAL DESCRIPTION:** Lots 8, 9, 10 and the East 20' of Lot 11, Block 8, Highland Park Addition, City of Deadwood, Lawrence County, South Dakota

**FILE STATUS:** All legal obligations have been completed.

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**CITIZENS RESPONSE:** FOR: 1 AGAINST:

**STAFF FINDINGS:**

Surrounding Zoning:

North: R1 – Residential District  
South: R1 – Residential District  
East: R1 – Residential District  
West: R1 – Residential District

Surrounding Land Uses

Single Family  
Single Family  
Single Family  
Single Family

**SUMMARY OF REQUEST**

The petitioner(s) submitted a request for a Conditional Use Permit to operate a Bed and Breakfast at 20 Pleasant Street. The applicant requested one (1) unit at the time of our meeting; however, there are two (2) bedrooms available, so staff recommended they request two (2) units so they would not need to repeat the process if it was found that they could use two (2) units. The subject property is located on the west side of Pleasant Street. Parking spaces are available onsite.

### FACTUAL INFORMATION

1. The property is currently zoned R1 – Residential District
2. The property is comprised of approximately 6,372 square feet.
3. The property has access from Pleasant Street . .
4. The Comprehensive Plan designates this area as a low density residential land use classification on the adopted Land Use Map.

The low density residential neighborhood category is intended for predominately single family detached residential development, similar to that found in many existing city neighborhoods. In general, these areas are quiet residential neighborhoods, predominately consisting of single family detached homes. A mix of single family homes, duplexes, townhouses, and low-rise apartments is also suitable.

5. The property is located in Zone X, areas determined to be outside 500 year floodplain.
6. Adequate public facilities are available to serve the property.
7. The area is characterized by single family residential use and the B&B will not compromise the quality of life for the residents.
8. The structure is a non-contributing home.

### STAFF DISCUSSION

Bed and Breakfast(s) are designated under Conditional Use Permits in the R1 – Residential District. Since the site is located in a residential district, the Conditional Use Permit runs with the applicant, not with the land. The current ordinance requires that Bed and Breakfasts be owner occupied. The fact the use requires owner occupied status, reduces complaints of noise, garbage and parking.

The Zoning Code requires the following:

#### 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.D.2.**
2. **A sign was posted on the property for which the requests were filed as required by Section 17.76.060.J.**
3. **Notice of the time and place was published in the designated newspaper of the City of Deadwood as required by Section 17.76.060.J.**

### CONDITIONAL USE PERMIT

#### **The text in italics is in response to the standards and how the criteria have been met.**

#### 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:

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. The probable use is in harmony with the general purposes and is consistent with the overall development and character of the neighborhood with regard to building size, height, color, material and form. The structure's appearance will not change and the property will remain owner occupied.*

- 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 R1 – Residential District. The R1 – Residential District is intended to provide locations for medium density, residential development commensurate with an urban area. The primary use is single family detached residences.*

*The requested use in the proposed location does not result in a detrimental over concentration of this particular use. There are no other B&B's in the Burnham Hill neighborhood. A Conditional Use Permit was granted for a multi-family dwelling on Williams Street.*

The proposed use at the subject 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 will 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 dwellings. A request for a 1-2 unit Bed and Breakfast would generate, at most, a minimal impact on the neighborhood and no noise, garbage or parking problems are anticipated with this use. 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.*

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 Burnham Hill neighborhood is primarily made up of single family dwellings. A Conditional Use Permit was granted for a multi-family dwelling on Williams Street.*

- 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 use will not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation or other services. Existing utilities and services are available.*

*If granted, staff notifies the Finance Office and the petitioner(s) is placed on a commercial rate for water and garbage; also, if granted, the applicant is placed on the Business Improvement District list. Proof of a state excise tax number shall be provided to the Planning and Zoning Office for the file.*

#### 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.

Ms. Williams restated that the Conditional Use Permit will run with the owners, not the property; therefore, if the house were to be sold, the Conditional Use Permit would become invalid. Ms. Williams notified (35) property owners of the request for a Conditional Use Permit and the Planning and Zoning Commissioners were given copies of the letters and e-mail correspondence received from various property owners in the area. Ms. Williams referred to a letter received by Fred and Natalie Ormiston, 47 Highland, whom were in favor of the Bed and Breakfast. Ms. Williams also noted that Sonny Sorenson, and Leonard Schroeder came into the office with questions regarding the Conditional Use Permit and after discussion with staff, they did not oppose the request for Conditional Use Permit.

Ms. Williams stated she received a phone call from Ms. Deborah Brown of 31 Burnham. Ms. Brown voiced opposition to the Bed and Breakfast. She felt approval of the use would increase the traffic in the area and she pointed out the fact there was only one way out of the Burnham Hill area in case of an emergency. Ms. Williams noted phone calls were received from Terry and Barbara Hansen, of 23 Burnham Avenue, opposing the Bed and Breakfast. She noted that Sam Hoberson had called in opposition; however, he was not a resident.

Ms. Janice Crary, landowner within 300', stated she and her husband opposed the Bed and Breakfast as well.

Ms. Farrier questioned if there were any other Conditional Use Permits, for a bed and breakfast within 500 feet of the Thorps' home. Ms. Williams stated no; however, the Hills Apartments had a conditional use permit and were located in the Burnham Hill area. She pointed out another CUP, for a Bed and Breakfast, could not be requested within 500' of Thorp's property; however, if a home was registered on the Historic Register, the Planning and Zoning Commission could waive that requirement.

Ms. Deb Thorp, applicant, explained that she loved the area of Burnham Hill and her home. She noted they wished to open their home to a number of select individuals and open a true B&B. She noted they would only rent their house when they were home. She stated they both loved to cook and they were looking forward to cooking for their guests.

Mr. Ryan opened discussion up to the citizens present at the meeting. Ms. Brown and Ms. Hansen, landowners within 300' again stated the purposes for their opposition to the Bed and Breakfast. They stated they did not want strangers in their neighborhood and they pointed out there was no way for the Thorps to screen their guests. Ms. Brown noted that she had been a landlord and there was no way to screen who your tenants (guests) would be. Ms. Brown also stated that she felt her property's value would decrease due to the proximity of the Bed and Breakfast. Ms. Brown and Ms. Hansen both voiced concern to the increase in traffic that the use would generate. Neither felt a commercial use was proper in a residential area.

Mr. and Ms. Crary were in agreement with Hansen's and Brown's statements and reiterated there was concern in regards to the increase in traffic. Mr. Thorp pointed out they were only requesting two (2) units and that they would only rent to people who were related to each other (family) or were close friends that were traveling together; therefore, there would only be one (1) or two (2) cars.

Ms. Green stated when a Bed and Breakfast was owner occupied there were very few, if any, complaints. She felt they were an asset to the community when they were properly operated. Mr. Ryan noted he had lived in an area where there were two (2) B&B's and he never had any complaints and never heard any of his neighbors complaining. Ms. Brown stated that she felt the Commission had already made up their minds about approving the B&B and wondered why she even was invited to the meeting. Ms. Williams felt that was an insult to the commission and she pointed out that CUP's were expressly permitted in the zoning district under certain conditions. She noted the commissions were mailed the staff report several days in advance of the hearing. She noted if they disagreed with staff or had any questions regarding the standards for approval or denial, they would come into the office to discuss their concerns. She again explained the process that Planning and Zoning must follow when a request was submitted for a Conditional Use Permit. Mr. Ryan stated the Commission members did listen to the concerns of residents; however, the ordinance had rules and guidelines that were required to be followed and the Mr. and Ms. Thorp had met all of the requirements for approval of a B&B.

Ms. Green moved to recommend the approval of the Conditional Use Permit for a two (2) unit Bed and Breakfast at 20 Pleasant with the stipulation that the permit be reviewed in one (1) year. Mr. Allen seconded and the motion carried.

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| <u>All in Favor:</u> | <u>-</u> | <u>4</u>         |
| <u>Opposed:</u>      | <u>-</u> | <u>0</u>         |
| <u>Abstain</u>       | <u>-</u> | <u>1 (Thorp)</u> |

OPEN

ADJOURNMENT

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

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| <u>All in favor</u> | <u>-</u> | <u>4</u> |
| <u>Opposed</u>      | <u>-</u> | <u>0</u> |

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

ATTEST:

\_\_\_\_\_  
Larry Ryan  
Chairman (Acting)  
Planning and Zoning

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Marie Farrier  
Secretary (Acting)  
Planning and Zoning