

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

July 15, 2009

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairperson Marie Farrier on Wednesday July 15, 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, Larry Ryan & Mel Allen and Sheree Green. Mr. Jason Campbell, City Attorney was also present.

ABSENT PLANNING & ZONING: Jim Shedd. Ms. Bernadette Williams, Zoning Administrator, was absent.

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

APPROVAL OF MINUTES:

Mr. Ryan moved to approve the minutes of the July 1, 2009 Meetings, as mailed. Ms. Green seconded and the motion carried.

All in favor - 4
Opposed - 0

SIGNS:

Black Hills Harley Davidson Temporary Sign - 628 Main Street

Mr. Keith Umenthum, Deadwood Building Inspector, stated the applicant had requested permission to place a temporary sign from July 31 - August 15, 2009 at the Fairmont Hotel. He stated the temporary sign had been approved in the past. He noted Harley Davidson expanded their operations to the Fairmont Hotel during the Sturgis Bike Rally and he recommended approval.

Mr. Allen moved to approve the temporary sign for Black Hills Harley-Davidson at the Fairmont Hotel from July 31 - August 15, 2009. Mr. Ryan seconded and the motion carried.

All in favor - 4
Opposed - 0

NEW BUSINESS:

CONDITIONAL USE PERMIT REQUEST FOR A LARGE DAYCARE - KRYSTINA COLVIN/PHILIP HAWKI AT 2 PECK STREET

Mr. Jason Campbell, City Attorney reviewed the following Staff Report for Ms. Williams:

STAFF REPORT
PLANNING AND ZONING
REQUEST FOR CONDITIONAL USE PERMIT
FOR A LARGE DAYCARE USE

APPLICANT: Philip Hawki/Krystina Colvin

PURPOSE: Request for Large Day Care.

GENERAL LOCATION: 2 Peck Street

GENERAL PLAN DESIGNATION: Low – density residential

LEGAL DESCRIPTION: Part of Lot 5 and all of Lot 6, Pecks Garden Addition, Section 27, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota.

ADDRESS: 2 Peck Street

ZONE: R1 –Residential District

FILE STATUS: All legal obligations have been completed.

CITIZENS RESPONSE: FOR: AGAINST:

STAFF FINDINGS:

| <u>Surrounding Zoning:</u> | <u>Surrounding Land Uses</u> |
|--------------------------------------|------------------------------|
| North: R2 – Multi-family Residential | Town Houses |
| South: R1 – Residential District | Single-family dwellings |
| East: R1 – Residential District | Vacant lands |
| West: R1 – Residential District | Single-family dwellings |

SUMMARY OF REQUEST

The petitioner has submitted a request for a Conditional Use Permit to allow a Large Day Care Use. Large Day Care is defined as **“Day care, large” means a facility that provides care for six or more children that are primarily present during daytime hours, and do not regularly stay overnight. Basic requirements for a large day care facility are: 1) Operator must comply with the standards of the state Fire Marshal relating to the subject of fire and life safety in large day care facilities; 2) The applicant shall be licensed by the State of South Dakota as a day care facility; 3) Applicant shall develop and distribute information to the day care clients stating the need not to disrupt the neighborhood when dropping off and picking up children; 4) Off-street parking shall be provided for employees of the day care facility; 5) Drop-off and pick-up areas are designated for clients.** Ms. Colvin has a state certified license for ten (10) children. She will not have any employees.

FACTUAL INFORMATION

1. The property is currently zoned R1 – Residential District.
2. The property used for the day care is comprised of 0.27 acres or 11,920, plus or minus, square feet.
3. The residence has ample parking in the drive-way for drop-off and pick-up points. The pick-up/drop-off area will provide short-term parking opportunities for the parents and/or guardians.
4. The subject property has access from Peck Street.
5. The properties are located within an area that has single-family and townhouse residences. The land is classified as low density residential on the adopted Land Use Map in the Deadwood Comprehensive Plan.
6. The property is located in Flood Zone X – Area’s determined to be outside the 500 year flood.
7. Adequate public facilities are available to serve the property.
8. The area is characterized by residential uses and vacant lands.

STAFF DISCUSSION

The petitioner has submitted an application for Conditional Use for a Large Day Care facility in her home. Again, Ms. Colvin is licensed by the state; however, the applicant does not meet the city’s ordinance. An application for the large daycare has been submitted to the city in order to come into compliance with the city’s ordinance.

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 Chapter 17.76.**
2. **A sign was posted on the property for which the request was filed in accordance with Chapter 17.76.**
3. **Notice of the time and place was published in the designated newspaper of the City of Deadwood in accordance with Chapter 17.76.**

CONDITIONAL USE PERMIT

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 use, as proposed, provides a daycare service that is a needed service in the Deadwood area. The use is listed under Conditional Uses in the R1 – Residential District. This use is in harmony with the general purposes of the Comprehensive Plan and zoning ordinance. Conditional uses are those uses which have some special impact or uniqueness since their effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location. The low density residential classification is intended for predominately single family detached residential development, similar to that found in many existing city neighborhoods. . . . In some areas, a mix of single-family homes, duplexes, townhouses and low-rise apartment would also be suitable, provided that the average of such areas does not exceed 5 dwelling units per acre. This classification may also include such supporting land uses as neighborhood shops and services, parks and recreation areas, religious institutions and schools. A full range of urban services and infrastructure is required. The application has met this standard by being a supporting service to the community and meeting the criteria of the comprehensive plan and zoning district regulations. The use is compatible to the neighborhood.

- 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 Hawki residence is currently being used as a daycare; however, the applicant thought she was in compliance when she received a state license. No complaints have been lodged and staff found out about the daycare when driving through the neighborhood. A review of the location, configuration and impact has been conducted and compared to uses by right.

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.

There are no other Conditional Use Permits in the area; however, there is a non-conforming gun shop in the vicinity.

- C. **The proposed use at the subject site 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 will not alter the character of the neighborhood. The structure will remain the same size and the appearance of the structures does not change. The establishment, maintenance, and operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare. On the contrary, the availability of licensed child care will have a positive impact on the community.

The daycare use does create more traffic; however, due to the location and the type of use, it will only have a minor effect on adjacent landowners. 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.

- 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 will not increase the proliferation of non-conforming uses. The use is intended to be a service to the community. The subject area is comprised of single-family dwellings and townhouses. Due to the limited impact from such a use, the planned conditional use will not negatively impact the enjoyment of the surrounding properties.

- 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.**

There will be no significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation or other services. Adequate facilities and infrastructure are available to serve the proposed use. Again, a drop-off and pick-up area is designated in the paved driveway to the garage. Peck Street has additional parking spaces that could be used if needed. Normally, a minimum of three parking spaces are required for large daycare services or 1 parking space per 1,000 square feet of the structure. Our current ordinance does not set the number of parking spaces required for daycare services.

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.

Mr. Ryan stated he had spoken with adjacent landowners and they did not have a problem with the proposed daycare.

Mr. Ryan moved to approve the Conditional Use Permit for a large daycare for Krystina Colvin and Phillip Hawki at 2 Peck Street with the stipulation that the application be reviewed in one year. Ms. Green 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 Toscana called the Board of Adjustment to order.

Ms. Silvernail moved to approve the Conditional Use Permit for a large daycare for Krystina Colvin and Phillip Hawki at 2 Peck Street to be reviewed in one year, as recommended by the Planning & Zoning Commission. Mr. Klamm seconded and the motion carried.

All in favor - 5
Opposed - 0

Mayor Toscana 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.

CONDITIONAL USE PERMIT FOR TOWNHOUSES - KASEY CAMPBELL AT 21 PARK STREET

Mr. Jason Campbell, City Attorney reviewed the following Staff Report for Ms. Williams:

**STAFF REPORT
PLANNING AND ZONING
JULY 17, 2009 MEETING**

APPLICANT: Kasey Campbell

PURPOSE: Request for Conditional Use Permit for Townhouses

GENERAL LOCATION: Burnham Hill Area

LEGAL DESCRIPTION: Lots 1-5, Block 13, Highland Park Addition, City of Deadwood, Lawrence County, South Dakota.

ASSESSOR'S NO.: 30500-01300-050-00

FILE STATUS: All regulations have been met.

CITIZENS RESPONSE: FOR: AGAINST:

STAFF FINDINGS:

| <u>Surrounding Zoning:</u> | <u>Surrounding Land Uses</u> |
|----------------------------|--|
| North: R1 – Residential | Single-family -- dwellings/vacant lands |
| South: R1 – Residential | St. Ambrose Cemetery |
| East: R1 – Residential | Single-family/vacant land |
| West: R1 - Residential | Vacant Land |

SUMMARY OF REQUEST

The applicant has submitted an application for a Conditional Use Permit for townhouses. The plan proposes two (2) buildings that would contain two (2) units each for a total of four (4) units. The units would set side by side; much like a one-story duplex. Each unit would have two (2) bedrooms and a two (2) bay garage. Townhouses are a series of attached single-family dwelling units, sharing common walls, with each dwelling unit having private entrances and being located on separate lots.

The area under discussion is located on the southwest side of Park Street and Highland and the address is 21 Park Street. .

FACTUAL INFORMATION

1. The property is currently 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 dwellings.
2. The property is comprised of approximately 0.34 acres/14,810.4 square feet.
3. The subject property is currently vacant.
4. The property has access in the area of the intersection of Park/Highland Streets. The rear lot lines, of the area under discussion, abut St. Ambrose Cemetery.
5. The property is located within a low density use classification on the adopted Land Use Map. This category is intended for predominately single family detached residential development. A mix of single family homes, duplexes, townhouses and low-rise apartments would be suitable.
6. The property is located in Flood Zone X – Area’s determined to be outside the 500 year flood.
7. Adequate public facilities are available to serve the property.
8. The area is characterized by single-family residential uses; however, the Comprehensive Plan recommends diversity. .

STAFF DISCUSSION

The townhouse plan designates 2 clusters of attached residences (2 in each building) totaling 4 units. Each unit will have a two bay garage; therefore, the parking requirements are met.

Conditional uses are considered similar to regular “permitted” uses; however, the CUP process allows the city to investigate a proposal in greater detail and apply conditions to mitigate potentially negative impacts of a use. In this instance, the townhouses are considered single-family dwellings with a common wall; therefore, the use is similar to the uses “permitted by right”. A couple of comments have been received in regards to this type of use being placed in the subject area. Public input is an important part of the process; however, the decision to approve or deny a conditional use permit must be made on facts and cannot be solely based on public support or opposition.

Staff understands and respects the concerns of neighbors that are troubled by the perceived or potential affects of a townhouse project in this area. However, when a negative impact is brought forth, the first step is to determine if the negative impact can be mitigated with a condition. If the concern is legitimate and the impact cannot be mitigated and the impact would have a detrimental impact on the neighborhood, the commission can deny the conditional use permit. To deny a CUP, the commission must demonstrate, for the record, why the conditional use permit will have a continuing or unmanageable negative impact.

COMPLIANCE:

4. **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 Chapter 17.76.**
5. **A sign was posted on the property for which the request was filed in accordance with Chapter 17.76.**
6. **Notice of the time and place was published in the designated newspaper of the City of Deadwood in accordance with Chapter 17.76.**

CONDITIONAL USE PERMIT

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 proposal for townhouse development conforms to all applicable regulations and standards established by the Zoning Ordinance and the Comprehensive Plan. No variations from existing standards are being requested. The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property.

The Land Use Plan Goals and Actions promote, if appropriate, a mixture of land uses and different housing types. It also recommends the city stimulate more efficient use of the city's land resources by encouraging infill, mixed-use, cluster development and higher residential densities at appropriate locations.

The Zoning Code defines "Townhouse" as: means a multi-unit dwelling in which the ownership of each dwelling unit consists of a separate fee simple estate on an individually platted lot, together with an undivided fee simple interest in the common elements, if any; and, "Townhouse unit" means that part of a townhouse constituting a single dwelling unit. Therefore, the proposal is considered a single-family project since the units are purchased and not rented out on a monthly basis, like an apartment house.

Section 17.24.040 states: "Minimum lot area per dwelling unit for nonconforming lots of record: two thousand five hundred (2,500) square feet. Minimum lot area per dwelling unit for all new lots: (a) five thousand (5,000) square feet for single-family dwellings and duplexes; (b) for multiple-family structures, there shall be a lot area of not less than three thousand five hundred (3,500) square feet for the first unit, plus an additional one thousand (1,000) square feet for each additional dwelling unit. For those structures which provide off-street parking within the main structure, the lot area requirement per each additional unit may be reduced to two hundred (200) square feet per dwelling unit; (c) four hundred (400) square feet of open space shall be provided for each multi-family unit. A fifty (50) foot frontage on the lot is required for multi-family dwellings." The property retains 0.34 acres/14,810 s.f, more or less, at the intersection of Park and Highland Streets. The proposed townhouses would cover approximately 5,700 square feet (38%) of the property, according to the formula in Section 17.24.040. There appears to be adequate space on the site for the proposed building, access and minimum parking requirements.

- B. **Whether or not a community need exists for the proposed use at the anticipated 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.**

There is not an over concentration of this type of use and the homes in the immediate vicinity are single-family dwellings. There is one other conditional use permit, for a Bed & Breakfast, in the Burnham Hill area. Since the area is populated with single-family dwellings, the subject area has limited activity within the neighborhood.

- C. **The proposed use at the projected 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.**

Neighborhood impacts: The neighborhood is residential in nature with the predominant homes in the area being detached single family homes. This zoning district permits single family homes by right with duplexes townhouses, condominiums and multi-family buildings being required to apply for a Conditional Use Permit. Based on the review of the proposed project, there should be no significant impacts to the neighborhood. Architectural compatibility will be addressed by the Deadwood Historic Preservation Commission.

Effects on property values: *No significant negative impacts on property values are anticipated. As previously mentioned, the type of use being proposed is compatible with the neighborhood, and the development and land use impacts would be typical of that anticipated for the area.*

The Comprehensive Plan recommends that the City of Deadwood utilize the limited developable land available in and around Deadwood in the most efficient, economic and cost effective manner and that they would look to new areas to meet long-term needs for various land uses types including business park development, retail services, and housing. This plan would be providing for another type of housing as well as using existing services.

The proposed use would not result in a substantial or undue adverse effect on adjacent property or the character of the neighborhood since the use is similar to a single-family use except that structures are clustered and there is a common wall. Appropriate off-street parking will be provided; consequently, on street parking would be used on a limited basis.

Traffic: *Traffic generated by the proposed project will use existing city streets for access to the townhouses and for connecting to other city streets. The adjacent city streets will be able to accommodate the increased traffic generated by the proposed project. Traffic generation from the development is estimated at 6.7 average daily traffic trips per unit, based on estimates for multiple housing in the Institute of Transportation Engineers Trip Generation manual (7th Edition). A vehicle trip is defined as a one-way vehicle movement from a point of origin (the unit) to a point of destination (work, school, grocery store, etc.). A total of 27 vehicle trips could be expected every day from the proposed four units based on the average number of daily trips per unit. This amount of vehicle trips will not significantly alter current traffic circulation in the neighborhood and the existing city streets are able to handle the additional traffic.*

Grading Plan: *Keith Umenthum, Deadwood Building Inspector, will review the grading plan prior to issuance of a building permit. The purpose of the grading plan is to insure that the developer addresses storm water runoff from the parking lot and building and if needed, the plan may need to address the runoff from an existing underground spring. This plan should keep the storm water or spring runoff on this lot so as not to impact adjacent properties. SEE ATTACHED LETTER FROM KEITH UMENTHUM, DEADWOOD BUILDING INSPECTOR RE: Concerns with site..*

- 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 anticipated use will not increase the proliferation of non-conforming uses. The use requested, provides for an alternate type of residential use. Granting of a Conditional Use Permit does not exempt the applicant from complying with all of the requirements of building and housing regulations

The Land Use Plan designates this area as Low Density Residential. This category is intended for predominately single family detached residential development, similar to that found in many existing city neighborhoods. In some areas, a mix of single family homes, duplexes, townhouses and low-rise apartments are suitable to the location. No variances are being requested. The project meets the standards of the Zoning Code for setbacks and height.

- 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.**

Schools: *This site is within the boundaries of Lead/Deadwood School District. No impacts are anticipated with the proposed use.*

Fire Protection: *Fire protection will be provided by the Deadwood Fire Department. There are three (3) existing fire hydrants within the vicinity. Ken Hawki, Deadwood fireman, indicated that adequate fire protection was available for the site.*

Solid Waste: *Solid waste pick-up will be provided by a private contractor. This project will have no impact on current services.*

Police: *Police protection will be provided by the Deadwood Police Department. No unusual impacts or needs are anticipated from the proposed use.*

Water: *City water will be used to serve the project. No significant impact on water services can be anticipated as a result of the proposed use. A water main line is located within Highland Avenue right-of-way. The developer will have to extend a service line from the main line to serve the townhouses. The water pressure in this area is lower than in other areas; however, there is an existing pump house in the vicinity that addresses the water pressure if it goes below a certain level.*

Sewer: *Sewer service is available. No significant impacts on sewer services can be anticipated as a result of the proposed use. The developer will have to extend a sewer service line to the townhouses during the construction of the townhouses.*

Parks and Recreation: *There should be no significant impact on the parks and recreation programs and facilities as a result of this use.*

Storm Water Drainage: *The applicant will need to address storm water drainage from the site. The runoff will need to be addressed, due to the topography of the site. There is also a possibility of an underground spring that would need to be addressed. Keith Umenthum, Deadwood Building Inspector, has informed Mr. Campbell that an engineer would be required to address the concerns regarding siting of the structures, run-off and soils.*

Staff finds that the proposed use will not have a significant adverse impact on public facilities beyond that of uses allowed by right within this zone.

CONDITIONS GOVERNING APPLICATIONS AND PROVISIONS:

- A. In the R1 residential district and/or R2 multi-family residential district, conditional use permits granted by this chapter shall be temporary in nature, with the exception of townhouses, condominiums and multi-family dwellings, and shall be granted to a designated person who resides at a residential address. They are not transferable from person to person or from address to address.
- B. Following the issuance of a conditional use permit pursuant to the provisions of this chapter, such permit may be amended, varied or altered only pursuant to the standards and procedures established by this section for its original approval.
- C. In the R-1 residential district and/or R2 multi-family residential district, should a home occupation permit holder die or move to a new location, the existing permit shall be automatically terminated, except that, in the case of death, should a surviving spouse or child desire to continue the home occupation, written notice to that effect shall be given to the zoning administrator, and the board of adjustment may authorize continuation of that permit without further hearing.
- D. Conditional use permits, once granted, can be revoked by the board of adjustment 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 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.
- E. The planning and zoning commission shall have the authority to review conditional use permits at any time and on an annual basis and place additional stipulations to mitigate a problem.
- F. To defray the administration costs of processing requests for conditional use permits, a fee has been set by resolution by the city commission and such information is available at the planning and zoning office.
- G. Any use permitted under the terms of any conditional use permit shall be established and conducted in conformity with the terms of such permit and of any conditions designated in connection therewith.
- H. If the use permitted under the terms of a conditional use permit has not been started within six months of the date of issuance thereof, the permit shall expire and be canceled by the city planning department. Written notice thereof, shall be given to the persons 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.
- I. If the use permitted under the terms of a conditional use permit ceases, for whatever reason, for a period of twelve (12) months, the 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.

- J. Upon receipt in proper form of the application and other requested material, the board of adjustment shall hold at least one public hearing in a location to be prescribed by the board of adjustment, and shall make a decision upon the proposal to grant or deny the conditional use permit. At least ten (10) days in advance of each hearing, notice of the time and place of such hearing shall be published in the official newspaper of the city. Notice shall be posted on the property for which the conditional use application has been filed. (Ord. 1035 (part), 2005; Ord. 952 (part), 1999; Ord. 900 (part), 1995; Ord. 831 § 10.7.5, 1992)

Mr. J. Campbell stated Mr. Kasey Campbell was present to answer questions.

Mr. Umenthum read his letter of concern to the Commission:

Date: July 7, 2009-07-06
To: Bernadette Williams
From: Keith Umenthum
Re: The proposed townhouses at the intersection of Highland Street and Park Street.

I have examined the proposed plans to build two townhouses, each having two dwelling units on the 5 lots of record at Highland and Park. I have looked at the plat and physically looked at the property. From this information I have concluded that this is an extremely difficult site to construct the two proposed townhouses for the following reasons:

- This is a very steep site with the grade extending uphill from Park Street to Pearl Street above.
- A significant amount of excavation and grading would be required to site the townhouses and provide off street parking.
- It is likely that the slope consists of heavy, expansive clay soils.
- It is possible that an excavation could open up a spring in the slope.
- There is no street frontage available at this time. Extending Highland Street to Pearl Street is impractical given the difference in elevations.

For the reasons stated above, any planning for the site work – excavation and grading is required to be performed by a civil engineer. Plans specifications shall be drawn and sealed by an engineer registered in the State of South Dakota.

Mr. Raysor agreed with Mr. Umenthum that engineering should be required in order to determine if this type of construction was feasible on the property.

Mr. Schroeder questioned where the access would be placed on the property. Mr. K. Campbell stated in his discussion with Mr. Umenthum and Ms. Williams, the best ingress/egress would be at the junction of Park and Highland Streets. Mr. Schroeder noted that route would require additional grading, and he requested to see a plan prior to construction. Mr. Schroeder stated he did not want to see any problems with the proposed work site, such as the current problems on Pleasant Street.

Mr. Allen questioned if it was proper to make a motion to approve the application before the soils engineering is completed. Mr. J. Campbell stated that the Commission could recommend approval with the condition that soils engineering be completed prior to any construction.

Mr. Umenthum recommended that soils testing and a grading plan be completed by the engineer. Ms. Green and Mr. Ryan said they would be more comfortable tabling the application until the engineering was completed.

Mr. Allen stated that he felt a decision should be made with conditions and felt tabling the application would only prolong the process.

Mr. Allen moved to recommend approval with the following condition: any planning for the site work - excavation and grading is required to be performed by a civil soils engineer. Plans and specifications shall be drawn and sealed by an engineer registered in the State of South Dakota, with a six-month expiration time on the work. Mr. Ryan 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

Mayor Toscana called the Board of Adjustment to order.

Ms. Silvernail questioned where the driveway would be located for the proposed townhouses. Mr. K. Campbell explained the location on a map of the Staff Report. Ms. Silvernail expressed her concerns with moisture (spring) in the area and agreed that engineering needed to be performed. Mr. K. Campbell questioned if he had six months to have the engineering performed. Mr. Toscana stated he would have six-months to complete the engineering.

Mayor Toscana questioned Mr. Schroeder if he had hit a natural spring when he had excavated his lot when building his home in the area. Mr. Schroeder stated yes, he had hit water while constructing his home and it is a valid concern in the area.

Mr. Klamm moved to approve the conditional use permit for townhouses, with conditions, as recommended by the Planning & Zoning Commission. Mr. Schroeder seconded. Roll Call Vote: Aye - Klamm, Silvernail, Schroeder and Toscana. Nay - None. Abstain - Peterson. The motion carried.

Mayor Toscana 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:

Mr. Campbell explained that a sign application for 637 Main Street for Harley Kirwan had been pulled from the agenda because it was incomplete. Mr. Campbell stated that the applicant had since turned in a completed application to Mr. Umenthum. Mr. Campbell recommended a Special Meeting for the application since the applicant wished to have the signage up in time for the Sturgis Rally. The Commission was agreeable and set the Special Meeting for Wednesday July 22, 2009, at 5:00 p.m., in the Century Room.

ADJOURNMENT:

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

All in favor - 4
Opposed - 0

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

ATTEST:

Ms. Marie Farrier
Chairman (Acting)
Planning and Zoning

Ms. Sheree Green
Secretary (Acting)
Planning and Zoning