

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

July 22, 2009

SPECIAL MEETING

The Special Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairperson Marie Farrier on Wednesday July 22, 2009 at 5:00 p.m. in the Deadwood City Hall Century Room located at 102 Sherman Street, Deadwood, SD 57732.

PRESENT PLANNING & ZONING: Marie Farrier, Jim Shedd, Larry Ryan & Mel Allen.

ABSENT PLANNING & ZONING: Sheree Green

SIGNS:

HARLEY KIRWAN - PAM'S PURPLE DOOR - 637 MAIN STREET

Mr. Keith Umenthum stated the applicant was requesting permission to install door signs on the double front doors of the building at 637 Main Street. Mr. Umenthum explained that each sign was 36" x 48" or 12 square feet with two panels. He noted that would be considered four "wall signs" according to the sign ordinance. Mr. Umenthum explained that two variances from the sign ordinance would be required; one to allow more than one wall sign per public entrance and one from the allowable vertical height of 2 feet as required for a wall sign.

Mr. Umenthum explained that no variances would be required if the applicant proposed only one of the 3' x 2' sign panels and he did not feel that there were special circumstances that would justify one or both of the variances. Mr. Umenthum, recommended approval of one of the four proposed 3' x 2' sign panels.

Mr. Umenthum pointed out that the building at 637 Main Street currently had 6 United States flags on it frontage. He stated the number of flags were out of compliance with the sign ordinance because the ordinance only allowed one flag per twenty-five feet of primary building frontage.

Mr. Harley Kirwan, applicant, explained the signage he has proposed were two panels linked together and he pointed out he had the same type of signs at his business located in Wall, South Dakota. He noted that according to the Deadwood sign ordinance, "door signs" were not classified. He stated that the Deadwood Sign Ordinance allowed 50 square feet of signage for his building. He pointed out the proposed signage measured less than 50' and that he currently had no other signage on his building. Mr. Kirwan noted he would like to have the signage before the Sturgis Rally in order to increase sales. He noted that he had been in business in Deadwood for three years and that an increase in sales would benefit the City. He pointed out the proposed signage had a western design and he felt it would fit the image of the City of Deadwood. He stated he was applying for the 50 square feet of signage allowed by the sign ordinance and reiterated that "door signs" were not addressed classified by the ordinance. Mr. Kirwan requested a fair ruling from the Commission.

At this time, Mr. Kirwan addressed the issue of the flags on his building. Mr. Kirwan admitted that he did have more flags than were allowed by ordinance; however other businesses were also out of compliance, such as the twelve flags at the Bullock Hotel at 633 Main Street. He stated that if his signage was approved, he would come into compliance with the ordinance; however, he felt they added to the building.

Mr. Allen questioned how much frontage Mr. Kirwan had. Mr. Kirwan stated that the building had twenty-five feet of frontage. Mr. Umenthum stated that one flag was allowed per twenty-five feet of frontage. Mr. Umenthum added that legal council, Mr. Jason Campbell had indicated that, if and when, the Bullock Hotel, or anyone out of compliance with the sign ordinance applied for any permits, the flag issue would be addressed.

Mr. Kirwan explained that in 2008, he had been involved in a court case with the City of Deadwood regarding the placement of t-shirts on his the doorways. He stated that at that time, Mr. Campbell's stance, regarding the flag ordinance, was that it was not enforced. Mr. Allen questioned how the use of bunting on buildings affected the sign ordinance. Mr. Umenthum stated that the Historic Preservation Commission had allowed the use of bunting due to the Iraq conflict.

Mayor Toscana recognized the Bullock Hotel was in violation; however, they only display the flags from Memorial Day to Labor Day. Mr. Kirwan stated he would agree to the same terms of the Bullock. Mr. Allen stated he did not understand why there would be an ordinance against the American flag. Mr. Toscana explained that the purpose of the sign ordinance regarding the American flag was not but using the flag as an advertisement. Mr. Toscana stated that he agreed with Mr. Campbell for non-enforcement; however if a violator applies for a permit they will choose to enforce the ordinance to bring them into compliance.

Mr. Umenthum reiterated that he felt there was not a good enough reason to allow the proposed variances. Mr. Kirwan stated that the signs were temporary; to be place out in the morning and removed from the doors every night. Mr. Kirwan stated that the building is very similar to the Bullock Hotel and people walk in and out of his building because of it. He stated that these signs would help differentiate between the two buildings and generate sales. Mr. Kirwan stated he had studied the sign ordinance and he had not found a classification for the proposed door signage. He stated since the ordinance did not address door signs, he presumed he would be allowed 50 feet of signage.

Mr. Umenthum stated he had applied the definition that best fit the type of signage being proposed; which was "wall signage". Mr. Umenthum explained that if the "window sign" classification was applied, the signage would have to be painted on the glass and occupy only 50% of the glass area. He felt that the proposed signage would take up more than 50%.

Mr. Allen questioned the width of the doorways. Mr. Umenthum stated each door measured three feet for a total of six feet.

Mr. Kirwan pointed out that Mr. Umenthum was also having a problem classifying the "door signs"; therefore, using the 50 feet of allotted signage for his building would be the best solution under the sign ordinance. Mr. Umenthum reminded the commission that approving the proposed door signs would set precedence.

Mr. Allen stated that he was trying to find an option that would remedy or provide an option that both the applicant and city could live with. Mr. Kirwan stated he could create the signage as one piece instead of two panels. Mr. Allen suggested possibly joining the signage together for a sandwich board type sign. Mr. Umenthum stated that sandwich signs were not allowed. by the sign ordinance. Mr. Allen questioned if Mr. Kirwan could place the signs in his doorway. Mr. Umenthum explained that he could place a sandwich board sign one foot into the building. Mr. Toscana commented that it would be cumbersome for people to move around if placed in the doorway. Mr. Kirwan agreed. Mr. Umenthum also agreed and pointed out that it also could be a tripping hazard.

Mr. Toscana questioned Mr. Kirwan if he could place one panel per door. Mr. Kirwan stated he would not get the desired effect and it would be hard to read therefore he would lose more walk-in traffic. Mr. Allen questioned if Mr. Kirwan could leave one door open and one closed. Mr. Kirwan stated he left both doors open during business hours to make the business more visible and inviting.

Mr. Allen stated that Mr. Kirwan could consider placing a sign above the doorway where he had placed the bunting. Mr. Kirwan noted he did place banners in that area during special events to promote his t-shirt sales.

Mr. Umenthum commented that Mr. Kirwan's business had been opened for three years and he still had not attempted to place signage on the building displaying the business name. Mr.

Kirwan explained that he had not attempted to place signage because he was uncertain whether he wanted to continue doing business in Deadwood because of the legal battles with the City of Deadwood. Mr. Kirwan explained the court case with the City involving the placement of t-shirts on the doors of his building and he pointed out that other business in Deadwood still have merchandise hanging outside of their buildings.

Mr. Allen stated that he was at a loss and he reiterated it was the Commissions duty to follow the sign ordinance. Mr. Kirwan repeated that according to the sign ordinance he was allowed 50 square feet of signage. Mr. Allen stated he would like to see Mr. Kirwan continue business in Deadwood and he felt a proper sign over his door would be to his advantage. Mr. Kirwan stated that would be his next step. Mr. Allen questioned placing the signage in the windows. Mayor Toscana said that Mr. Kirwan could possibly place the signs in the window; however, it could not cover more than 50% of the window. Ms. Farrier questioned if window signage was required to be painted on the window. Mr. Umenthum explained that according to the ordinance it must be placed one foot from the window if it was not painted on the window; however, that could be difficult to enforce because the signage can change daily.

Ms. Farrier questioned Mr. Kirwan if he could offer a compromise so as to follow the ordinance. Mr. Kirwan stated that if he placed the signage in the window, his building would still look like the Bullock Hotel. Mr. Kirwan stated he may seek a building permit to reface the building. Mr. Kirwan explained that people come into his building and turn around and walk out because they thought they were going into the Bullock Hotel.

Mayor Toscana pointed out that since the Bullock Hotel had many flags that customers were confused because Mr. Kirwan also had many flags. He recommended that some of the flags be removed to see if that would lessen the confusion and people may not think it is the same building. Mr. Kirwan stated that it would probably not change since his building was an extension of the Bullock Hotel. Mr. Allen recommended a different color scheme from the Bullock and a proper sign. He felt that would help differentiate between the two buildings.

Mayor Toscana questioned if the proposed signs would be placed inside the doors when the doors were open. Mr. Kirwan stated that they would be placed inside the open doors to help draw in walking traffic. Mayor Toscana questioned if Mr. Kirwan left the doors open in the winter. Mr. Kirwan stated no, the doors were closed in the winter expect for warmer days. Mayor Toscana pointed out that technically the signage would not be displayed in the winter. Mr. Kirwan stated that was correct. Ms. Farrier questioned if the sign ordinance addressed temporary signage. Mr. Umenthum explained that the ordinance did not address temporary signage; however, the Commission had approved temporary signage such as the Harley-Davidson banners for the Sturgis Rally. Mayor Toscana suggested temporary signage from Memorial Day to Labor Day. Mr. Kirwan was agreeable with that concept; however, he requested that he be able to display the signage until the end of September.

Ms. Farrier stated that the size of the signage was the issue. Mr. Umenthum explained there were other businesses that left their doors open and approval of this request would result in similar requests from those business owners. Ms. Farrier stated that the Commissions duty was to follow the sign ordinance. She noted that in order to approve the signs as presented, two variances would be required and she felt Mr. Kirwan would was not willing to be flexible. Mayor Toscana questioned if Mr. Kirwan was willing to paint the signs on the windows. Mr. Umenthum stated that Mr. Kirwan could get a sign permit to paint signs on the window; however, the sign could not take up more than 50% of the windows. Mr. Kirwan stated that the doors were in poor shape and had been thinking about replacing them. Mr. Umenthum stated that would be a Historic Preservation District Commission issue.

Mr. Kirwan stated that was not trying to be disagreeable and he felt the signage was temporary and that it would not be visible when they closed up shop. Ms. Farrier questioned if he could compromise with a smaller sign or something that would fit the ordinance. Mr. Kirwan stated that by classifying the signs as "wall sign" the signage did not fit the ordinance; however, he restated that the sign ordinance did allow 50 square feet of signage and the signs should fit that classification. Mr. Umenthum stated that square footage was only one part of the ordinance. Ms. Farrier agreed. Mr. Shedd commented that temporary signage would be the only way that

it could possibly be approved but he expressed concern that approval would set precedence. Mr. Shedd noted there were other businesses that were currently out of compliance.

Mr. Kirwan explained that the signage fits in with the surroundings at his other store in Wall. Mr. Kirwan said that he was in favor of the temporary sign motion and that it would allow him to place a sign above his door. Ms. Farrier commented that she was not comfortable with a temporary sign motion. Mr. Allen felt the best options were to make changes such as painting or placement of the signage in the windows. Mayor Toscana questioned if he could in fact place the signage in the windows. Mr. Umentum stated that according to the sign ordinance he could place them a foot from the window; however, he noted this was hard to enforce. Mr. Kirwan stated it would be hard to see the signage in his windows due to glare on his window.

Mr. Allen stated he would like to see a sign placed above the doorway and then there would be no need for the door signs. He explained that it would benefit Mr. Kirwan to have a sign because people look for a business name. Mr. Kirwan disagreed and he noted that he had very good t-shirt deals and the proposed door signs would enhance his business. Mr. Kirwan stated he was not against placing additional signage above the door but he did not feel it would be visible for walking traffic. Mr. Allen stated that as a resident of Deadwood he looks for signage for a business.

Mr. Umentum explained that an option is a projection sign placed above the door instead of a flat wall sign. Mr. Kirwan explained he was open to that idea but felt these signs would help business. Mr. Umentum stated Mr. Kirwan would get 25 square feet per side for a total of 50 square feet.

Ms. Farrier moved to deny the application as presented and instructed the applicant to work with Mr. Umentum to find signage that would fit the ordinance. Mr. Ryan seconded.

Mr. Kirwan stated that the ordinance does not classify door signage and the wall signage classification does not fit these signs. He stated that they could be approved as temporary signage until the end of September until Mr. Umentum could add this classification to the ordinance. Ms. Farrier stated that a temporary approval would still require variances and she pointed out that text changes to an ordinance involved a lengthy process.

Roll Call Vote: Aye: Allen, Shedd, Ryan, & Farrier. Ney: None. Motion carried.

Mr. Kirwan stated that he was trying to work with the City of Deadwood and stated that with the eight people present they had not been able to come up with solution. Mr. Kirwan thanked the Commission for allowing him to attend the meeting. Ms. Farrier stated that he could come back with a different application that would meet the sign ordinance's rules. Mr. Kirwan reiterated that it was hard working with the City of Deadwood in all respect and it takes legal interpretation to understand the sign ordinance.

FINAL PLAT - ASPEN STORAGE - Plat of Aspen Storage 3 of Wilmington Placer, M.S. 848, Located in the unplatted portion of Wilmington Placer, M.S. 848, NW/4 Section 13, T5N, R3E, B.H.M., Lying inside the city limits of the City of Deadwood, Lawrence County, South Dakota

Ms. Williams stated that the property was zoned Commercial Highway and the Hertel's had acquired the property by paying the back taxes. Ms. William stated all certifications were correct and the State Department of Transportation would need to sign off under the Highway Authority certification statement.

Mr. Shedd moved for approval of the Final Plat for Aspen Storage. Mr. Ryan seconded and the motion carried.

All in favor - 4
Opposed - 0

APPROVAL FOR TEMPORARY VENDORS DURING THE STURGIS RALLY

Ms. Williams noted that the vending ordinance required action of the Planning and Zoning Commission to verify the zoning classification of the vending locations. All are required to be located in the CH - Commercial Highway District or C1 - Commercial District. She noted all the applicants have met that criterion.

Sick Boy - 604 Main Street, Lucky Nugget - Apparel

Mr. Allen moved to approve the temporary vending license for Sick Boy Co., located the Lucky Nugget at 604 Main Street, for apparel. Mr. Shedd seconded and the motion carried.

All in Favor - 4
Opposed - 0

First Gold - 270 Main Street - Bikini Bike Wash

Mr. Ryan moved to approve the temporary vending license for the First Gold located at 270 Main Street, for a bikini bike wash. Mr. Shedd seconded and the motion carried.

All in Favor - 4
Opposed - 0

Deadwood Hospitality Resort - 304 Cliff - Food/Bike Wash/Hooters

Mr. Shedd moved to approve the temporary vending license for the Deadwood Hospitality Resort located at 304 Cliff Street, for a food/bike wash. Mr. Allen seconded and the motion carried.

All in Favor - 4
Opposed - 0

Carol Tellinghuisen - 625 Main (Celebrity Hotel) - Clothing and Jewelry Tent

Mr. Ryan moved to approve the temporary vending license for Carol Tellinghuisen located the Celebrity Hotel at 625 Main Street, for clothing and jewelry tent. Mr. Allen seconded and the motion carried.

All in Favor - 4
Opposed - 0

Tattoo Artist - Goldbergs, LLP - 670 Main Street

Mr. Allen questioned if any other license was required for tattoo artists. Ms. Williams stated that no additional licenses were required unless they were setting up a permanent location in the City of Deadwood.

Mr. Shedd moved to approve the temporary vending license for Tattoo Artists at Goldbergs, LLP located at 670 Main Street. Mr. Allen seconded and the motion carried.

All in Favor - 4
Opposed - 0

Mr. Shedd stated he did not like the idea of temporary tents for the Rally. Mr. Toscana stated that it was a concern.

OPEN:

None.

ADJOURNMENT:

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

All in favor - 4
Opposed - 0

There being no further business, the Planning & Zoning Commission adjourned at 5:55 p.m.

ATTEST:

Ms. Marie Farrier
Chairman (Acting)
Planning and Zoning

Ms. Sheree Green
Secretary (Acting)
Planning and Zoning