

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

August 4, 2010

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairperson Jim Shedd on Wednesday August 4, 2010 at 5:00 p.m. in the Deadwood City Hall Meeting Room located at 102 Sherman Street, Deadwood, SD 57732.

PRESENT PLANNING & ZONING: Jim Shedd, Mel Allen, Sheree Green and Larry Ryan.

ABSENT PLANNING & ZONING: Marie Farrier.

PRESENT BOARD OF ADJUSTMENT: Mayor Francis Toscana, Joe Peterson, Lenny Schroeder and Georgeann Silvernail.

ABSENT BOARD OF ADJUSTMENT: Mike Klamm.

APPROVAL OF MINUTES:

Mr. Ryan moved to approve the minutes of the July 21, 2010 Joint Meeting, as mailed. Ms. Green seconded and the motion carried.

All in favor - 4
Opposed - 0

SIGNS:

BIG D OIL COMPANY - FREESTANDING SIGN - 402 MAIN STREET

Mr. Umenthum stated that the applicants were requesting to install a freestanding sign. The sign would serve to direct vehicles to the car wash and would provide clearance information. Mr. Umenthum stated that the applicants currently have a temporary sign, made of PVC, displayed. The sign would be constructed of Diabond panels.

Mr. Umenthum explained that the sign ordinance does not address this type of sign and would need a variance. Staff recommends approval of the sign based on the need for the owner to direct and regulate vehicles going into the car wash.

Mr. Ryan moved to approve the freestanding sign, with a variance, for Big D Oil Company at 402 Main Street. Mr. Allen seconded and the motion carried.

All in favor - 4
Opposed - 0

PLATS:

FINAL PLAT - Plat of Lot 1, Block 1 of Palisades Tract of Deadwood Stage Run Addition, All located in the SW ¼ of Section 14, the SE ¼ of Section 15, the NE ¼ NE ¼ of Section 22, and the N ½ NW ¼ of Section 23, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota.

Mr. Nelson explained that the purpose of the plat was to facilitate the transfer of land, 752 Stage Run, located in the Stage Run subdivision.

Ms. Green moved to approve the final plat of Plat of Lot 1, Block 1 of Palisades Tract of Deadwood Stage Run Addition, All located in the SW ¼ of Section 14, the SE ¼ of Section 15, the NE ¼ NE ¼ of Section 22, and the N ½ NW ¼ of Section 23, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota. Mr. Ryan seconded and the motion carried.

All in favor - 4
Opposed - 0

Joint Meeting
August 4, 2010

Mr. Shedd closed the Planning & Zoning Meeting.

Mr. Toscana opened the Board of Adjustment.

Mr. Schroeder moved to approve the final plat of Plat of Lot 1, Block 1 of Palisades Tract of Deadwood Stage Run Addition, as recommended by the Planning and Zoning Commission. Ms. Silvernail seconded and the motion carried.

All in favor - 4
Opposed - 0

Mr. Toscana closed the Board of Adjustment and turned the meeting over to the Planning and Zoning Commission.

FINAL PLAT - Plat of Bank Lot 2 A portion of Lot R1, City of Deadwood Railroad Property located in the NW ¼ of Section 26, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota.

Mr. Nelson explained that the applicant, the City of Deadwood, was requesting approval to create a parcel within Lot R1 in order to close on the sale of the Engine House at 180 Sherman Street.

Ms. Green moved to approve the final plat of Plat of Bank Lot 2 A portion of Lot R1, City of Deadwood Railroad Property located in the NW ¼ of Section 26, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota. Mr. Allen seconded and the motion carried.

All in favor - 4
Opposed - 0

Mr. Shedd closed the Planning & Zoning Meeting.

Mr. Toscana opened the Board of Adjustment.

Ms. Silvernail moved to approve the the final plat of Plat of Bank Lot 2 A portion of Lot R1, City of Deadwood Railroad Property, as recommended by the Planning and Zoning Commission. Mr. Peterson seconded and the motion carried.

All in favor - 4
Opposed - 0

Mr. Toscana closed the Board of Adjustment and turned the meeting over to the Planning and Zoning Commission.

VARIANCE REQUEST:

Continued From July 7, 2010: Variance Request for a partial 5' variance from Section 17.28.040.C. - Side Yard Setback Requirements for David Bosch,

Mr. Nelson referred to the following staff report:

**AMENDED STAFF REPORT
REQUEST FOR VARIANCE
FROM CHAPTER 17.28
SECTIONS 17.28.040.B, C & E**

APPLICANTS: David Bosch
SIZE AND LOCATION: The site includes approximately 4,931.80 square feet.
ADDRESS: 10 Centennial Avenue
LEGAL DESCRIPTION: Lot 1 of Lot A of Block N according to Plat of A.B. Mitchell's Map recorded in Book 5, page 88 and 89, and Lot 11, Block K according to the P.L. Rogers Map of the City of Deadwood, Lawrence County, South Dakota
ZONE: R2 - Multi-family Residential District

BACKGROUND:

Variations Requested: A partial 5' Variance from Section 17.28.040.C. - Side Yard Setback Requirements. The proposal for a concrete open driveway with concrete retaining walls on three sides has been adjusted to conform better to the side yard setback requirement. The Southwest corner of the driveway is proposed to be five feet from the lot line in question. The proposed midpoint of the driveway will be seven feet from the lot line in question. The South corner of the proposed driveway will be three feet from the lot line or two feet into the setback. The area of the variance will be 12 square feet plus or minus.

Mr. Bosch was asked to have the lot line in question surveyed and staked and to make adjustments to his proposal so the driveway would be attaching the street at a 90 degree angle. Mr. Bosch has complied with both of these requests. The North side of the driveway is at 90 degrees to the street, the south side of the driveway will be close to 90 degrees. With an existing rock wall in the setback on the South side of the driveway the best way to bring the two walls together would be to bring them

Joint Meeting
August 4, 2010

together within the setback. Mr. Bosch has also been asked to provide engineer plans of the retaining walls for the building permit. This project still needs to go through Historic Preservation as well.

Environmental Corridor Status: The property is not located within Other Flood Area - Zone X – Areas of 500 year flood or areas of 100-year flood.

AREA ZONING PATTERNS: The property is currently zoned R2 – Multi-family Residential District. The area has a mixture of uses including a school, church, apartments and single-family dwellings. The City library is also located in this district.

ADJACENT ZONING AND LAND USES: The property to the north is zoned R2 – Multi-family Residential District. This area is primarily single family dwelling units along with apartments. The land to the west is zoned R2 – Multi-family Residential and the city library is nearby. The land to the east is zoned R2 – Multi-family Residential District. The land to the south of the site is zoned C-1 Commercial District.

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 Special Circumstance in this case is the fact that the subject site has existing structures that hinders any new construction on the site and the remaining open area(s) involve a narrowing of the size of the lot. The subject lot has an irregular size which presents problems for new construction. The term undue hardship encompasses virtually any problem and the hardship only need to be practical. Because of the particular physical constraints of the specific property involved, a particular hardship to the owners would result, as distinguished from a mere inconvenience, if the strict letter of regulations were carried out. Strict compliance with the specific regulations would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations. Approving the variance request would enable the reasonable use of the property and improve operational efficiency and appearance.
2. Variances shall not be granted to allow a use otherwise excluded from the particular district in which requested.
The subject use is a use by right in the R2 – Multi-family Residential District.
3. Any variance granted under the provisions of this section shall be the minimum adjustment necessary for the reasonable use of the land.
That within the intent and purposes of the applications for variance, if granted, is the minimum adjustment necessary to afford relief or the reasonable use of the land. The adjustment necessary is only partial on the side yard where the structure encroaches on the lot line.
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 proposed project is compatible with the present and future logical development of the area. The new driveway will not be in conflict with policies of the City of Deadwood or be detrimental to the public welfare. The granting of the variances in the subject area would not be injurious to the area in general. The variance, if granted, would not alter the essential character of the surrounding area in which the property is located; substantially or permanently impair the appropriate use or development of adjacent property.
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.
Due to the constraints associated with the presence of the existing structure and the orientation of the structure on the lot, it is not felt that special circumstances in this case are a result from actions of the Applicant. The variance would not constitute a grant of special privilege inconsistent with limitations imposed on similarly situated properties or inconsistent with the purposes of the zoning regulations. Strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; and strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.
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. The granting of the variance would not be detrimental to public health, safety or general welfare. A variance cannot be granted if it would pose any threat to the public health or safety. This finding includes concerns such as fire safety, structural stability, and visual and aesthetic concerns. Granting this variance will not be injurious to the public health, safety, and general welfare of the community.
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 Administrators 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 Boards decision.

ACTION REQUIRED:

1. Recommendation by Planning and Zoning to approve/deny/approve with conditions: A 5' Variance from Section 17.28.040.C. – Side Yard Setback Requirements.
2. Approve/deny/or approve with conditions: A 5' Variance from Section 17.28.040.C. – Side Yard Setbacks Requirements, by Board of Adjustment.

Mr. Nelson questioned Mr. Raysor if any erosion had taken place during the recent rain storm. Mr. Raysor stated that there was some erosion however erosion had taken place throughout the City due to the amount of rain that had fallen.

Mr. Allen moved to approve the partial 5' (12 square feet) variance at 10 Centennial. Ms. Green seconded and the motion carried.

All in favor - 4
Opposed - 0

Mr. Shedd closed the Planning & Zoning Meeting.

Mr. Toscana opened the Board of Adjustment.

Ms. Silvernail moved to approve the partial 5' (12 square feet) variance at 10 Centennial, as recommended by the Planning and Zoning Commission. Mr. Peterson seconded and the motion carried.

All in favor - 4
Opposed - 0

Mr. Toscana closed the Board of Adjustment and turned the meeting over to the Planning and Zoning Commission.

APPROVAL OF TEMPORARY VENDOR(S):

None

OPEN:

Mr. Nelson stated that there will be a Public Meeting on August 24, 2010 at 6:30 p.m. to 7:30 p.m. at the Lodge at Deadwood regarding the highway expansion project from Highway US 85 from Highway 385 to Cemetery Street. He encouraged all to attend and stated that the projected start date would be January 2013.

Ms. Tracy Island of Deadwood Gulch Resort stated that they had placed a covering over the existing Deadwood Gulch Resort Convention Center sign. She stated that the covering stated "Coyote Ugly Saloon" and she explained that the resort would be hosting this event. Ms. Island explained that she had applied for other banner permits but did not know that she needed permission for this sign because it covered an existing sign. She apologized and stated that she would like a variance for the signage. She noted that it was professionally made and looked better than a banner on the roadside.

Mr. Umenthum stated that the change was not permitted under the sign ordinance without permission and the material is not allowed. He explained that temporary signage is allowed such as Harley-Davidson; however it does require prior permission. He further explained that at the former Shedd Jewelry location banners were placed over the existing signage and the sign ordinance was enforced and the banners were removed. He stated that Deadwood Gulch has been allowed eleven banners in which four banners advertise Coyote Ugly Saloon.

After discussion, it was determined that the Planning & Zoning Commission could not take formal action on the signage because it was not on the agenda. Ultimately a compromise was reached. Deadwood Gulch Resort would lose a banner for the sign and place the words, "Welcome to Historic Deadwood" on the marquee under the sign.

ADJOURNMENT:

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

All in favor - 5
Opposed - 0

There being no further business, Planning & Zoning Commission adjourned at 5:25 p.m.

Joint Meeting
August 4, 2010

ATTEST:

Mr. Jim Shedd
Chairman
Planning and Zoning

Ms. Sheree Green
Secretary
Planning and Zoning