

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

September 15, 2010

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairperson Jim Shedd on Wednesday September 15, 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, Marie Farrier, Mel Allen, and Larry Ryan.

ABSENT PLANNING & ZONING: Sheree Green.

PRESENT BOARD OF ADJUSTMENT: Mayor Francis Toscana, Mike Klamm, Lenny Schroeder and Georgeann Silvernail.

ABSENT BOARD OF ADJUSTMENT: Joe Peterson.

APPROVAL OF MINUTES:

Mr. Ryan moved to approve the minutes of the August 4, 2010 Joint Meeting, as mailed. Mr. Allen seconded and the motion carried.

All in favor - 4
Opposed - 0

SIGNS:

DEADWOOD FIRE DEPT. - TEMPORARY BANNER - 737 MAIN STREET

Mr. Umenthum stated that the applicants were requesting permission to display a two temporary banner and waiver of the application fee.

Mr. Umenthum explained that the banner would be displayed for the annual chili feed. Staff recommends approval of the banners and the waiving of the application fee.

Mr. Ryan moved to approve the temporary banners and waiver of the application for Deadwood Fire Department at 737 Main Street. Ms. Farrier seconded and the motion carried.

All in favor - 4
Opposed - 0

LEAD-DEADWOOD REGIONAL HOSPITAL - TEMPORARY BANNER - 61 CHARLES STREET

Mr. Umenthum stated that the applicants were requesting permission to display a temporary banner and waiver of the application fee.

Mr. Umenthum explained that the banner would be displayed for the Breast Cancer Awareness Month at the Lead Deadwood Regional Hospital, a non profit entity. Staff recommends approval of the banners and the waiving of the application fee.

Ms. Farrier moved to approve the temporary banners and waiver of the application for Lead Deadwood Regional Hospital at 61 Charles Street. Mr. Allen seconded and the motion carried.

All in favor - 4
Opposed - 0

PUBLIC HEARING:

Request for a 10' variance from Section 17.24.040.B - Front Yard Setback Requirements - 752 Stage Run - Bill Pearson

Mr. Nelson referred to the following staff report:

**STAFF REPORT
REQUEST FOR VARIANCE
FROM CHAPTER 17.20
SECTION 17.24.040.B**

APPLICANTS: Bill Pearson
SIZE AND LOCATION: The parcel of land located in the Stage Run subdivision and consists of 1.02 ± acres.
ADDRESS: 752 Stage Run
LEGAL DESCRIPTION: Lot 1 of Block 1 of Palisades Tract of Deadwood Stage Run Addition, All located in the SW ¼ 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
ZONE: R1 – Residential District
REQUEST: Ten foot variance from front yard setback requirements.

EXISTING ZONING AND LAND USE: The property is currently zoned R1 – Residential District. This lot is adjacent Lot MF-1 a multi-family residential lot directly to the northwest. There are currently three other single-family dwellings constructed in this subdivision.

ADJACENT ZONING AND LAND USES:

The property to the north is zoned PF – Park Forest District. The land to the northwest is zoned R2 – Multi-family Residential District and R1 – Residential District across the street. The land to the east is zoned R1 - Residential District with a vacant lot located next to the subject property. Across the street to the south the zoning is R1 – Residential District.

BACKGROUND:

Mr. Pearson is requesting a variance from the front yard setback requirement of 20 feet in an R1 – Residential District. His request is for a ten foot variance from said setback. As construction began on the dwelling at 752 Stage Run the excavation of the basement and foundation became very difficult due to the soil conditions and slope of the hillside in the rear of the property. Mr. Pearson is asking to move the dwelling into the setback to ease the construction of the dwelling. After reviewing the lot lines it was discovered that when the road right-of-way was adjusted from 50' to 42' the front lot lines of the lots were not moved to the new right-of-way boundaries. The front lot lines are four feet from the sidewalk right now which in turn puts a new dwelling twenty-eight feet from the curb if being built with the twenty foot setback. If this variance is granted the dwelling will be eighteen feet from the street or fourteen feet from the sidewalk. Given the shape of the lot, the slope in the rear of the lot and the rocky conditions in the slope of the hill, moving the dwelling into the setback will alleviate the hardship of construction on the proposed lot.

As previously mentioned the soil conditions were discovered when construction began and given the timetable of our designated newspaper to publish the notice along with the date of the variance request the notice was published eight days prior to the hearing date. The ordinance requires ten days prior to the hearing date. Planning and Zoning will need to approve a variance from Section 17.80.010.B – Public Hearing – requiring the notice be placed 10 days in advance of the public hearing. It is felt that substantial notice has been given since the property was posted and adjacent landowners were notified.

Environmental Corridor Status: The property is located outside of the Flood Area.

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 eight (8) days in advance of the hearing in the designated newspaper of the City of Deadwood. A two (2) day variance from section 17.80.010.B regarding the time frame must be approved by the Deadwood Planning and Zoning Commission.**

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 shape of the lot in this case is in the shape of a triangle and narrows towards the rear of the lot which does make the front of the lot more usable. The conditions of the soil along with the slope of the property create a hardship on the owner to build a dwelling and maintain the front setback.***
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 R1 - 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 this application for variance, if granted, the minimum adjustment necessary to afford relief or the reasonable use of the land will be a ten foot variance. The remaining bulk and height regulations are all met (i.e. side and rear setback requirements and height).

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 development of the area. The granting of the proposed structure will not be detrimental to fire safety, clearance, preservation of light and open space and/or visual and aesthetic concerns.
The variance will 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 lot being of irregular shape along with the existing soil condition which was unknown until excavation began creates the hardship which should be eased by moving the dwelling into the setback.
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 an adverse manner. There will be no significant adverse impacts on water supply, schools, or other services. 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, and visual and aesthetic concerns.
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.
Mr. Pearson has paid the \$75.00 fee to process the variance and have the public 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.
Mr. Pearson has proven to the City of Deadwood Planning and Zoning office that he is the current owner of the subject property.

Requirements for the Granting of a Variance:

Before the Board shall have the authority to grant a variance, the person claiming the variances has the burden of showing:

1. **That the granting of the permit will not be contrary to the public interest;**
2. **That the literal enforcement of the Ordinance will result in unnecessary hardship; and,**
3. **That by granting the permit, substantial justice will be done.**

A variance shall be null and void two (2) years from the date it is granted unless completion or substantial construction has taken place. The Board of Adjustment may extend the variance for an additional period not to exceed one (1) year upon the receipt of a written request from the applicant demonstrating good cause for the delay.

If upon review by the Zoning Administrator, a violation of any condition, imposed in approval of a variance is found, the Administrator shall inform the applicant by registered mail of the violation and shall require compliance within sixty (60) days, or the Administrator will take action to revoke the permit. The Administrator's letter, constituting Notice of Intent to Revoke Variance may be appealed to the Board of Adjustment within thirty (30) days of its mailing. The Board of Adjustment shall consider the appeal and may affirm, reverse, or modify the Administrator's Notice of Intent to Revoke. The applicant must comply with the Board of Adjustment's Order on Appeal of Notice of Intent to Revoke Variance within thirty (30) days of the Board's decision.

ACTION REQUIRED:

1. Recommendation by Planning and Zoning to approve/deny/approve with conditions Variance from Section 17.80.010.B requiring 10 day notice in the designated newspaper, prior to a public hearing.
2. Recommendation by Planning and Zoning to approve/deny/approve with conditions for a 10' variance from the front yard setback requirements in the R1 - Residential District.
3. Approve/deny/or approve with conditions from Board of Adjustment.

Ms. Farrier questioned if the commission would need to approve two variances. Mr. Nelson stated that there would be two variances; one for the public hearing notice and one for the 10' variance.

Mr. Allen moved to approve the variance from Section 17.80.010.B for an 8-day notice instead of the designated 10-day notice for 752 Stage Run. Ms. Farrier seconded and the motion carried.

All in favor - 4
Opposed - 0

Ms. Farrier moved to approve the request for a 10' variance from Section 17.24.040.B, Front Yard setback requirement at 752 Stage Run. Mr. Ryan 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.

Mr. Bill Pearson, Deadwood Stage Run, arrived to represent the issue.

Mr. Toscana questioned if it was legal to change the designated days from 10 to 8 days and if they had the authority to do so. Mr. Nelson stated that it was legal with the variance.

Ms. Silvernail moved to approve the variance from Section 17.80.010.B for an 8-day notice instead of the designated 10-day notice for 752 Stage Run, as recommended by the Planning and Zoning Commission. Mr. Klamm seconded and the motion carried.

All in favor	-	4
Opposed	-	0

Ms. Silvernail moved to approve the request for a 10' variance from Section 17.24.040.B, Front Yard setback requirement at 752 Stage Run, as recommended by the Planning and Zoning Commission. Mr. Klamm seconded.

Mr. Schroeder questioned Mr. Pearson if the property line would be extended because of the road right of way. Mr. Pearson stated that it would not be extend and that the property is not buildable.

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:

None

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 5:10 p.m.

ATTEST:

Mr. Jim Shedd
Chairman
Planning and Zoning

Ms. Sheree Green
Secretary
Planning and Zoning