CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

October 5, 2005 JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairman Larry Ryan on Wednesday, October 5, 2005, 2005, at 5:00 p.m. in the Deadwood City Hall Meeting Room located at 102 Sherman Street, Deadwood, SD 57732.

PRESENT PLANNING & ZONING: Larry Ryan, Mel Allen, Sheree Green, Marie Farrier and Robert Thorp arriving at 5:45.

PRESENT BOARD OF ADJUSTMENT: Ronda Feterl, Mark Speirs & Nyla Griffith arriving at 5:10.

ABSENT BOARD OF ADJUSTMENT: Francis Toscana & Georgeann Silvernail.

APPROVAL OF SEPTEMBER 7, 2005 MINUTES

Ms. Green moved to approve the minutes of September 7, 2005 as mailed. Ms. Farrier seconded and the motion carried.

All in Favor - 4
Opposed - 0

Clarification of phone vote for comparable use in C-1 – Commercial District for Townhouses

Ms. Williams noted that a phone vote was conducted on September 20, 2005, questioning if townhouses were a comparable use in the C-1 Commercial District. Ms. Williams requested the commission clarify the phone vote with a motion.

Ms. Farrier moved to add Townhouses under the Conditional Use Permit (CUP) section in the C-1 – Commercial District, so as to make clear the phone vote taken on September 20, 2005 , comparing Townhouses to Condominiums and multi-family dwellings directly listed under the CUP section. Mr. Allen seconded and the motion carried.

All in Favor - 4
Opposed - 0

REQUEST FOR CONDITIONAL USE PERMIT FOR THREE (3) UNIT TOWNHOUSES

LEGAL DESCRIPTION: Lots 1, 3, 5 and 7, Block 38, O.T.; And an area containing 835 square feet, more or less, along Lot 1, Block 38, (Metes and Bounds description available at the Zoning Office), City of Deadwood, Lawrence County, South Dakota, also known as 3 Cemetery Street.
ZONING: C1 – Commercial District
ADDRESS: 3 Cemetery Street

Ms. Williams stated that the petitioners were John and Terri Keene. Ms. Williams referred to the following staff report:

STAFF REPORT
PLANNING AND ZONING

APPLICANT: John and Terri Keene

PURPOSE: Request for Conditional Use Permit for Condominiums

GENERAL LOCATION: Off of Sherman and Cemetery Streets

LEGAL DESCRIPTION: Lots 1, 3, 5 and 7, Block 38, O.T., AND an area containing 835 square feet, more or less, along Lot 1, Block 38 (Metes and Bounds description available at the Zoning Office), City of Deadwood, Lawrence County, South Dakota, also known as 3 Cemetery

FILE STATUS: All legal obligations have been completed.

CITIZENS RESPONSE: FOR: AGAINST:

STAFF FINDINGS:

Surrounding Zoning:		Surrounding Land Uses
North:	C1 – Commercial District	Deckers, City Hall, Lawrence County Courthouse
South:	PU – Public Use District	Sherman Street Parking Lot
East:	C1 - Commercial District	Beauty Shop, Video Rental
West:	R1 – Residential District	Water Street and Creek, Single-family Residential

SUMMARY OF REQUEST

The petitioners have submitted a request for a Conditional Use Permit for a three (3) unit Condominium on the properties described above. The subject property is located on the west side of Sherman Street and Cemetery Street is located on the southern edge of the property. The address is 3 Cemetery Street.

FACTUAL INFORMATION

1. The property is currently zoned C1 – Commercial District.

2. The total site includes approximately 8,700 square feet.

3. The site has an existing garage and Burleys' Auto Repair was lost in a fire a few years ago.

4. The property maintains access from Cemetery and Water Streets.

5. The property is located within a Moderate Density Residential District land use classification on the adopted Land Use Map in the Comprehensive Plan.

6. The property is located in Flood Zone AE. Zone AE is the flood insurance rate zone that corresponds to the 100-year floodplains that are determined in the Flood Insurance Study by detailed methods. Whole-foot base flood elevations derived from the detailed hydraulic analyses are shown at selected intervals within this zone. An encroachment on floodplains, such as structures and fill, reduces flood-carrying capacity, increases flood heights and velocities, and increases flood hazards in areas beyond the encroachment itself. One aspect of floodplain management involves balancing the economic gain from floodplain development against the resulting increase in flood hazard. For purposes of the National Flood Plain Program, a floodway is used as a tool to assist local communities in this aspect of floodplain management. Under this concept, the area of the 100-year floodplain is divided into a floodway and a floodway fringe. The floodway is the channel of a stream, plus any adjacent floodplain areas, that must be kept free of encroachment so that the 100-year flood can be carried without substantial increases in flood heights. Minimum Federal standards limit such increases to 1.0 foot, provided that hazardous velocities are not produced.

7. Adequate public facilities are available to serve the property.

8. The area is characterized by a mixture of government offices, private and public parking lots, grocery store and other commercial uses.

STAFF DISCUSSION

The majority of the property is vacant with a private storage garage. The petitioners indicate they intend to build three (3) condominium units. The plan designates two (2) off-street parking spaces for each unit and meets the Deadwood Zoning Code.

The Zoning Code requires the use to be in harmony with the general purposes, goals, objectives, and standards of the Comprehensive Plan. A mixture of residential uses is recommended in the C1 – Commercial District/Unit 4 Planning District since many of the downtown businesses have second floors and it is in the best interest of preservation to use the upper floors. There are several single-family residences on Water Street, which is located to the rear of the proposed site.

The petitioners will require approval from the Deadwood Historic Preservation District Commission for the design and materials used for the condominiums. The C1 – Commercial District has zero setback requirements; therefore, setbacks are not addressed in this matter. Floodplain management will need to be addressed by a registered certified engineer.

Ms. Williams noted that Mr. & Mrs. Keene were in the audience to answer any questions. Mr. Keene stated he had approached Ms. Williams on ideas for use of this land. Mr. Keene questioned if the proposed townhouses could they be rented nightly, monthly or would they have to be sold. Ms. Williams stated they could not be rented on a nightly basis and would be treated the same as other residential uses. Mr. Keene questioned if they could be rented on a monthly basis. Ms. Williams stated that they could be rented on a monthly basis. Ms. William questioned if they would be two-story and also questioned the type of material they were considering in building the townhouses. Mr. Keene stated the townhouses would be constructed with two-stories with the possibility of using Hardy Plank and/or would follow the Historic Preservation Commission suggestions. Ms. William noted Mr. Keene should talk to Mr. Jim Wilson, Historic Preservation Officer. Mr. Allen questioned who would follow up on the flood plan issue. Ms. Williams stated at the building permit stage, an engineer would need to be hired to make the determinations in a report.

Ms. Farrier pointed out that the townhouses could request a Bed and Breakfast; however, it would have to be owner-occupied. Ms. Williams clarified if the townhouse was owner occupied, the townhouses could qualify under a Condition Use Permit for a Bed & Breakfast. Mr. Ryan questioned if the Keene's wanted to rent the townhouses on a nightly basis. Mr. Keene stated that the townhouses would not be owner-occupied and questioned if the townhouses had to be owner-occupied if rented on a nightly basis. Ms. Williams stated the units could be looked at as suites that could be rented out on a nightly basis; however, the construction would need to be addressed through the building code and additional safety items would need to be added. Mr. Keene stated that they were considering a nightly rental similar to Butch Cassidy and Sundance Kid Suites on Sherman Street. Ms. Williams stated that that establishment was considered a hotel/motel and that type of use was by right in the C1 - Commercial District.

Ms. Green moved to recommend approval of a Conditional Use Permit for townhouses on property owned by Mr. & Mrs. John and Terri Keene legally described as: Lots 1, 3, 5 and 7, Block 38, O.T.; And an area containing 835 square feet, more or less, along Lot 1, Block 38, (Metes and Bounds description available at the Zoning Office), City of Deadwood, Lawrence County, South Dakota, also known as 3 Cemetery Street . Ms. Farrier seconded and the motion carried.

All in Favor	**-**	**4**
Opposed	**-**	**0**

Chairman Ryan adjourned the Planning and Zoning Commission and turned the meeting over to the Board of Adjustment.

DEADWOOD BOARD OF ADJUSTMENT

Ms. Feterl called the Board of Adjustment to order. Mr. Speirs questioned if Mr. Keene was considering turning the townhouses into a hotel. Mr. Keene stated that it was an idea that his designer and himself had considered, however he now knew that townhouses had rented on a monthly basis. Ms. Williams reiterated if they built the townhouses as residential then they would not be able to rent on a nightly basis. However, the property was located in the C-1 Commercial District under which hotels are a use-by-right therefore he could build a small hotel instead of townhouses if he wanted to rent on a nightly basis. Ms. Green questioned how Planning & Zoning would differentiate between the two. Ms. Williams stated the applicant would need to identify the use prior to construction. Ms. Williams stated Mr. Keene would have to provide a parking space for each unit. Mr. Speirs explained to Mr. Keene that he was requesting a CUP for residential townhouses; however since they were zoned commercial they could also build a hotel without going through the CUP process. Ms. Williams stated she needed to talk to Mr. Keith Umenthum, Building Inspector, to see if there were any requirements on how many units were needed to be considered a hotel under the building code. Mr. Keene stated they would be building three units with two levels for each unit. Ms. Keene stated there would not be six units. Ms. Feterl questioned if a hotel was a use-by-right. Ms. Williams stated yes, in the C-1 Commercial District.

Ms. Griffith questioned if they would need to decide before they build if it was to be a hotel or townhouses. Ms. Williams stated they would be required to decide before a permit would be issued since the building codes (UBC) addresses the different types of uses as well as the size. Ms. Griffith questioned that if the Board of Adjustment voted for the CUP would the Keene's

still have a choice. Ms. Williams stated yes, if the commissions approved the CUP; however, if they decide on the townhouses, the CUP would need to start within six (6) months with plans. Ms. Green questioned if the Keene's did not need the CUP, what would happen to the CUP. Ms. Williams stated it would be voided within one (1) year. Ms. Feterl questioned if the motion should include a statement about the requirement for an engineer and that historic preservation needed to approve the design. Ms. Williams stated that it would be a good idea to include both in the motion.

Mr. Speirs questioned if the Keene's were to occupy a unit, built as a townhouse, could they then rent the other two units as a Bed & Breakfast. Ms. Williams stated no, due to the fact that each unit was an individual residential unit. Mr. Keene questioned if the action tonight would then limit the uses on the property. Ms. Williams stated no that it give them the option to build the townhouses or suites. Ms. Williams stated she still would like to consult with Mr. Umenthum on the number of units needed for a hotel in the UBC.

Mr. Speirs moved to approve the request for a CUP for a three unit townhouse compound, with the following stipulations: 1) An engineer must be hired to address the flood plain issues; and, 2) Applicant must obtain approval from the Historic Preservation Commission regarding materials and design. Ms. Griffith seconded and the motion carried.

All in Favor - 3
Opposed - 0

Ms. Feterl adjourned the Board of Adjustments and turned the meeting over to the Planning and Zoning Commission.

Mr. Ryan called the Planning and Zoning meeting back to order.

FINDINGS OF FACT

1. Lenny Mamola - CUP for Car Lot

Ms. Williams stated that Mr. Mamola was not using the CUP; however, it was good for a six (6) month period. If the use is not started in that time frame, the permit will be voided.

Mr. Allen moved to approve the findings of fact for the conditional use permit requested by John Mamola for the used car lot. Ms. Farrier seconded and the motion carried.

All in Favor - 4
Opposed - 0

2. Billy Mathieu/4 Aces - COZ Request

Mr. Allen moved to approve the findings of fact for the Billy Mathieu/ 4 Aces COZ Request. Ms. Farrier seconded and the motion carried.

All in Favor - 4
Opposed - 0

DISCUSSIONS:

Thad Fuller - Environmental Overlay Zone

Ms. Williams stated that Mr. Fuller was in the audience. Ms. Williams referred to the following staff report:

The Environment Overlay Zone addresses uses located in sensitive areas. A plat for this area had recently been approved by the commissions. Copies of letters from the Army Corp of Engineers, State Department of Transportation, Game, Fish and Parks and the DENR will all be needed for the file. A temporary bridge is being proposed for the first year and a permanent bridge would be built later for access across the creek.

Mr. Fuller referenced a map to point out the area for tree removal and the location of the silt fencing along the creek to block sediment from entering the creek. He stated the engineer 's drawing had rip-rap over the entire bank and the grade would be sloped to the back of the hill with a channel to a sediment pond to catch the erosion. Mr. Fuller noted the channel would be rip-raped back to the creek. Mr. Fuller stated that he had letters from DENR and Army Corp of Engineers. He noted he had shared the engineering report with them. Mr. Fuller stated that he was waiting on DENR permit but should have it within ten days. He noted the stable slope would be packed down and rip-raped according to the plan. He noted the scenic quality would be slightly affected but he would not be removing many trees. Mr. Fuller stated he planned to keep the majority of the trees.

Ms. Williams questioned if he would be constructing a building on the property. Mr. Fuller explained he planned to build a carpentry workshop, in the future, and would like the building to be visible from the highway. Ms. Farrier questioned the distance between Mr. Fuller's property and the Webb's property. Mr. Fuller stated according to the plat, he felt the Webb's home was partially on his property. Mr. Fuller stated he would be constructing a temporary bridge across the creek and pointed out the location on the plat.

Mr. Allen questioned what the state said about the proposed access off of the highway. Mr. Fuller stated he had been meeting with Gary Engle from the SDDOT. Mr. Fuller stated they had made an onsite of the proposed location for the access; however, a permit has not been issued to occupy the right-of-way. He noted the new access would have better visibility. Mr. Fuller stated he had contacted the Game, Fish & Parks and they also were in agreement to move the road because of the trail. Mr. Allen felt it would be difficult to move equipment in and out through the existing access since visibility was poor.

Mr. Allen questioned the flood plain issue. Ms. Williams stated the fill was currently being addressed with the rip-rap, silt fence and sediment pond. Mr. Fuller stated that 70% of his property was in the flood plain.

Ms. Farrier questioned if all of the certifications become a part of the Planning & Zoning record. Mr. Williams stated they would become a part of the file on record at City Hall. Mr. Ryan thanked Mr. Fuller for the presentation.

1. <u>Ferd Balkenhol - Discussion on International employee housing</u>

Ms. Williams stated that Mr. Balkenhol was in the audience and he had requested to be on the agenda to discuss International employee housing. Mr. Balkenhol stated he had a request from his property management company to rent the home on 20 McKinley Street, for six International workers. This property was located in the area of the McKinley apartments. Mr. Balkenhol stated that the location was ideal for the workers who would be employed by Four Aces, due to the walking distance to work. He noted that the employees would have only one vehicle. Mr. Balkenhol stated that he had told the company he would talk to the P&Z Commission to see if this would be allowable under a Conditional Use Permit (CUP). Ms. Farrier questioned if the employees were related. Mr. Balkenhol stated they were not related; however, they did travel together. Ms. Williams stated the zoning ordinance limited three unrelated people to a household. Mr. Balkenhol questioned if it would be allowable with a CUP and stated he had contacted Joyce Pfarr, a neighbor and she was not opposed to this type of living arrangement.

Mr. Balkenhol explained the International worker process with the hotels and casinos.

Ms. Griffith questioned how many bathrooms were in the house. Mr. Balkenhol stated that there was only one. Ms. Griffith explained that the spirit of the ordinance was to <u>prevent</u> International workers, in low paying jobs, to live in undesirable environments within the community. Mr. Balkenhol stated that in the past, he had not worked with these companies due to problems. He believed that the residence would be used on a revolving basis and the workers had worked at Custer State Park.

Mr. Speirs stated that if P&Z Commission allowed this type of living arrangements, precedence would be set. Ms. Williams stated the limit per household came into place because of the parking issues; however in this situation it did not necessarily apply. Ms. Williams explained in the past neighbors got uneasy because of the number of International employees housed in a

unit and there were 9-12 workers placed in units with one (1) bathroom. Ms. Williams stated she would like to communicate with Keith Umenthum, building inspector about the number of people allowed to live in a unit, with one bath. Ms. Williams reiterated that the problem was the parking issue but it did not apply in this situation. Ms. Williams stated that she would like to give the commission time to think about the issue. Ms. Farrier questioned when he needed an answer. Mr. Balkenhol stated he needed one immediately.

Ms. Griffith questioned how many unrelated people could live together. Ms. Williams stated three (3) were allowed under the current zoning ordinance. Ms. Green stated she did not like the idea of setting precedence. Ms. Farrier suggested that Mr. Balkenhol place three (3) in one house and another three (3) in another house. Mr. Balkenhol stated he had suggested that to the company and they stated that they needed to keep the costs low for the workers; and the alternative was more expensive. The P&Z commission questioned the legal status of the workers. Mr. Balkenhol stated they were in the United States under visas for a limited period of time.

Ms. Allen stated they had chosen the number three (3) for unrelated people living together for a reason and they should continue to follow the ordinance. Ms. Louie Lalonde addressed the Commission on the International workers working in the United States. She felt the businesses should try and hire people in the area or offer jobs to people that had lost jobs due to hurricane "Katrina". Ms. Griffith noted this area was an equal housing opportunity and the issue was not the International worker but if the Commission would allow more than three unrelated persons to live in one household. Ms. Lalonde stated she would continue under the current ordinance.

Ms. Williams stated at this time, the P&Z Commission was not willing to issue a CUP and the consensus was to honor the current ordinance. Mr. Balkenhol thanked the Commission for their time.

2. Underground utilities - moving of electrical poles on Denver Street

Ms. Williams referred to the following staff report:

Utility Pole Relocation:

Black Hills Power is requesting to place their poles within the City's 66' right-of-way. Currently, the poles set up higher on the hillside and the hillside is sloughing and is causing a dangerous situation. Relocation of the poles would also make it easier to get to and fix, when needed.

Some of the poles have been moved down towards the road; however, the poles located within the city limits are located halfway up the slopes.

The Commission may want to require the poles be placed at least a 10-15 feet from the road and try to place the poles in areas that are less vulnerable to pole crashes. There is 33' from the center of the road on both sides. There is not a lot of traffic on this road and the travel lane is narrow but there is nowhere to pull off the road.

We should make sure that the relocation of the poles does not cause additional hazards or that it is just a transferal of problems along the roadway. We should also be proactive with the setback should the street be improved in the future.

Staff contacted Ken Meirose, foreman, Black Hills Power and Light, to discuss the situation and he indicated the poles would need to be moved in the near future. The city owns the right-of-way within the city limits which extends to the gas service equipment on Denver Street and prior to Clifford and Lori Etherington's home (first home on the right – gravel road portion).

Ms. Williams recommended the poles be placed 15' from the road. Ms. Williams questioned the P&Z commissioners if Black Hill Power & Light would need an easement if it is in the right-of-way. Ms. Farrier questioned if the poles were near enough to the road where snowplow could hit the poles. Mr. Williams stated no, if they were located 15' however the road. She noted this road was very narrow and there was no place for a car to pull over. Ms. Farrier questioned if they were asking for it to be in the right-of-way. Ms. Williams stated yes, Mr. Raysor, Public Works Director, had stated there was a 66' right-of-way. Ms. Green questioned if Black Hills Power would need an easement. Mr. Allen stated he believed they had an existing easement for the poles. Mr. Speirs questioned if all the poles would be repositioned up and down Denver Street. Ms. Williams stated this area include the gravel portion of Denver Street to the city limit line.

Mr. Thorpe entered at 5:45.

Mr. Allen explained the pattern of the pole placement in the affected area.

Mr. Allen moved to allow the placement of the poles with the following stipulations: Relocation of poles shall set 15' away from the driving surfaces on Denver Street; and an easement would be required in order to occupy, if there were no existing easements. Ms. Farrier seconded and the motion carried.

All in Favor	**-**	**5**
Opposed	**-**	**0**

OPEN

Ms. Williams handed out for updated information on the townhouse located on Calamity Lane. Ms. Williams stated the property owner had been informed by Mr. Umenthum to clean up the construction mess. Several photographs were taken and there was an unsightly area at the end of Calamity Jane Lane.

ADJOURNMENT:

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

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

There being no further business, Planning & Zoning Commission adjourned at 6:15 p.m.

ATTEST:

Larry Ryan
Chairman (Acting)
Planning and Zoning

Marie Farrier
Secretary (Acting)
Planning and Zoning