

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

October 19, 2005

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairman Larry Ryan on Wednesday, October 19, 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.

PRESENT BOARD OF ADJUSTMENT: Francis Toscana, Mark Speirs, Nyla Griffith & Georgeann Silvernail. Ronda Feterl arriving at 5:05 p.m.

REQUEST FOR VARIANCE FROM FRONT YARD SETBACK REQUIREMENTS

LEGAL DESCRIPTION: Lot 1 of the Keener Subdivision, located in a portion of Mineral Survey 335, City of Deadwood, Lawrence County, South Dakota

ZONING: R2 - Multi-family Residential District

ADDRESS: 41 Railroad Avenue

Ms. Williams referred to the following staff report:

**STAFF REPORT
PLANNING AND ZONING**

APPLICANT: Sperlin Inc./Delmar Nelson

PURPOSE: Request for 10' Variance from front yard setback to enable new residential construction

GENERAL LOCATION: 41 Railroad Avenue

LEGAL DESCRIPTION: Lot 1 of the Keener Subdivision, located in a portion of Mineral Survey 335, City of Deadwood, Lawrence County, South Dakota

FILE STATUS: All legal obligations have been completed

CITIZENS RESPONSE: FOR: AGAINST: 0

STAFF FINDINGS:

<u>Surrounding Zoning:</u>	<u>Surrounding Land Uses</u>
North:	Rodeo Grounds
South:	Vacant Lots
East:	City Park/Residential
West:	City Shop

SUMMARY OF REQUEST

The applicant is requesting a 10' variance from Section 17.28.040.B - Front Yard Setback Requirements. The subject property is located on the west side of Railroad Avenue and the address is 41 Railroad Avenue.

FACTUAL INFORMATION

1. The property is currently zoned R2 – Multi-family Residential District.
2. The property comprises approximately 10,835 square feet.
3. The subject property has access from Railroad Avenue.
4. The property is located in flood zone X, and is not located within a flood hazard zone.
5. The area is characterized by a mixture of single-family, multi-family structures and the Rodeo Grounds located below the site.

STAFF DISCUSSION

The applicant received approval from the Historic Preservation Commission to demolish an existing residence. The proposed activity will involve demolition of the existing residence, some dirt work and possibly placement of retaining walls. A building permit will be required for the new construction and the design and materials of the structure will require approval from the Historic Preservation Commission.

The proposed plan is in harmony with the general purposes, goals, objectives, and standards of the Comprehensive Plan.

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. The notice was mailed to property owners located within 300 feet of the subject property.
2. A notification sign was posted on the property for which the request was filed.
3. Notice of the time and place for the public hearing was published in the designated newspaper of the City of Deadwood.

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 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 thirty (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 term unnecessary hardship encompasses virtually any problem and the hardship only need to be practical. The hardship is due to a steep slope that is located to the rear of the property. Front yard setbacks in this area vary and granting a 10' variance will not influence the existing surroundings .

2. Variances shall not be granted to allow a use otherwise excluded from the particular district in which requested.

The R-2 Multi-family District permits residences and garages by right.

3. Any variance granted under the provisions of this section shall be the minimum adjustment necessary for the reasonable use of the land.

The requested variance will be the minimum adjustment necessary for the reasonable use of the land and the minimum that would afford relief.

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. (Amended 99-952) and/or detrimental to the public welfare, or in conflict with the established policies of the City of Deadwood.

The construction of the proposed residence and garage is in harmony with the general purposes of the R-2 Multi-family Residential District and the Deadwood Comprehensive Plan.

5. There must be proof of practical difficulty, (Amended 99-952) 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.

The practical difficulty is a result of special circumstances regarding the rear yard, due to a steep slope. The existing lot of record retains more than enough square footage, but it is an odd shaped lot.

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. The proposed use will not impair an adequate supply of light and air.

7. The fee, as adopted by resolutions, was paid to the Zoning Administrator as agent for the Board to cover the costs of notices and other expenses incidental to the hearing.

The fee has not been received.

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.

The last deed on the property is in the name of the applicant.

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.

Mr. Allen stated he had done an on-site and had observed the house being torn down. Mr. Allen stated he did not see any problem with building a new house on the property and allowing the structure to set closer to Railroad Avenue would move the structure away from the rear bank. Ms. Williams noted that this would also give them a back yard. Mr. Ryan questioned if the fee had been paid. Ms. Williams stated yes, all requirements had been met. Mr. Thorpe questioned the extent of the variance. Ms. Williams stated that a 10' variance was being requested from a standard of 20' for front yard setback requirements. Mr. Allen felt the owners should stay as far away from the rear bank as possible. Ms. Williams stated that the owners had contacted Mr. Jim Raysor, former Public Works Director, about the city building a retaining wall due to the sloughing. She noted that if a retaining wall was needed, the owners would be responsible to build the wall.

Ms. Farrier questioned where the garage would sit. Ms. Williams stated she has not received plans for the new that was to be built and she was uncertain of the location of the proposed garage.

Mr. Allen moved to approve the 10' variance. Mr. Thorpe seconded and the motion carried.

All in Favor - 5
Opposed - 0

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

DEADWOOD BOARD OF ADJUSTMENT

Mayor Toscana called the Board of Adjustment to order. Mr. Toscana reviewed the 10' variance request staff report and he questioned if there was an existing retaining wall by the City Shop. Ms. Williams stated not in this area.

Ms. Griffith moved to approve the 10' variance from front yard setback as recommended by the Planning and Zoning Commission. Ms. Silvernail seconded and the motion carried.

All in Favor - 5
Opposed - 0

Mr. Toscana 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.

PLAT - YELLOW JERSEY/PAULA AND CHAD LEWIS

LEGAL DESCRIPTION: Plat of Lots 14 through 17 and Dedicated Street of Peck's Garden Town homes Subdivision, being a portion of Tract H, Tract H being a portion of Probate Lot 327, Lot 1 of the Murray Subdivision of Probate Lot 327 and a Portion of Lot 5 of Peck's Garden Subdivision and a portion of School Lot 16, all located in the City of Deadwood, in the NW1/4 of Section 27, T5N, R3E, B.H.M., Lawrence County, South Dakota

LOCATION: Calamity Lane

ZONING: R-2 - Multi-family Residential District

The purpose of the plat was to subdivide land for townhouses. Ms. Williams stated the right of way of Calamity Lane had been widened from 20' to 38.20' in the area of Burlington Street in order to incorporate strips of isolated lands. Ms. Williams recommended a stipulation be placed on the plat that the western side of such r-o-w be landscaped with maintenance free materials by the owner. She noted the city would then take over that portion of the r-o-w.

Ms. Farrier moved to approve the plat of Lots 14 through 17 and Dedicated Street of Peck's Garden Town homes Subdivision, being a portion of Tract H, Tract H being a portion of Probate Lot 327, Lot 1 of the Murray Subdivision of Probate Lot 327 and a Portion of Lot 5 of Peck's Garden Subdivision and a portion of School Lot 16, all located in the City of Deadwood, in the NW1/4 of Section 27, T5N, R3E, B.H.M., Lawrence County, South Dakota with the stipulation that Yellow Jersey Construction/Paula and Chad Lewis provide maintenance free landscaping materials on the western side of the r-o-w with the city then taking responsibility for such area thereafter. Ms. Green seconded and the motion carried.

All in Favor - 5
Opposed - 0

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

DEADWOOD BOARD OF ADJUSTMENT

Mr. Toscana called the Board of Adjustment to order. Mr. Toscana referred to the legal description of the plat.

Ms. Feterl questioned the location of the lands. Ms. Williams explained the areas being platted were the new townhouses, located to the rear of Glen Stratton's home on Burlington Street. She reiterated the strip of land abutting Stratton's land had been taken into the right-of-way. She noted a sidewalk had been abandoned since it would be difficult to relocate the mailboxes. Ms. Griffith expressed concern regarding the use of rock to fill the area because it tended to move and end up on the road or in peoples' yards. Ms. Williams felt the area needed to be maintenance free and it could possibly be paved.

Ms. Griffith moved to approve the plat of Lots 14 through 17 and Dedicated Street of Peck's Garden Town homes Subdivision, with the understanding that western edge of the right-of-way, abutting Stratton's land/Burlington Street, contains a hard surface. Ms. Feterl seconded and the motion carried.

All in Favor - 5
Opposed - 0

Mr. Toscana adjourned the Board of Adjustments and turned the meeting over to the Planning and Zoning Commission.

FINAL PLAT - RAMKOTA - Plat of Lot 849-A-1 and Lot 849-A-2 Formerly Lot 849A and Lot B of the Subdivision of Cimbria Placer Mineral Survey No. 849, Located in the NE 1/4 and the SE 1/4 of Section 14, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota.
Location: Deadwood Hill/North of Deadwood
Zoning: CH - Commercial Highway District

Ms. Williams stated the purpose of the plat was to subdivide a portion of the lands to accommodate the Tax Increment Financing District for a Convention Center. She noted the land would be deeded to the City of Deadwood.

Ms. Green moved for approval of the Plat of Lot 849-A-1 and Lot 849-A-2 Formerly Lot 849A and Lot B of the Subdivision of Cimbria Placer Mineral Survey No. 849, Located in the NE 1/4 and the SE 1/4 of Section 14, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota. Mr. Allen seconded and the motion carried.

All in Favor - 5
Opposed - 0

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

BOARD OF ADJUSTMENT

Mayor Toscana called the Board of Adjustment to order. Ms. Silvernail moved to approve the Plat of Lot 849-A-1 and Lot 849-A-2 Formerly Lot 849A and Lot B of the Subdivision of Cimbria Placer Mineral Survey No. 849, Located in the NE 1/4 and the SE 1/4 of Section 14, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota . Ms. Feterl seconded and the motion carried.

All in Favor - 4
Opposed - 0

Mayor Toscana 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.

DISCUSSIONS:

Scott Anderson Re: Discussion on alternate sewer service on School Lot 70, City of Deadwood, Lawrence County, South Dakota

Ms. Williams referred to the following staff report:

Ms. Williams noted that Mr. Anderson has been working with the City in regards to receiving sewer services to School Lot 70. The School Lot retains a steep hillside with some patches of flat land. Mr. Anderson was proposing a holding tank for the black water system and a small leach field for the gray water. She noted the Deadwood Subdivision Ordinance did allow for Septic Systems under certain conditions. She noted an alternate system did require a design by a Registered/Certified Engineer. In this instance, a septic system would not be allowed since the land was located less than 100' from a creek.

Mr. Allen questioned what Mr. Toscana thought of the situation due to his experience at the Sanitary District. Mr. Toscana stated he would have visit the site to assess the proposal. He felt there could be possible problems with a holding tank. Mr. Speirs stated he would be concerned with environmental effects on Spring Creek should a holding tank overflow. Mr. Toscana did not think that a holding tank would overflow however he felt an onsite was essential to make a determination. Ms. Farrier questioned if there were other septic tanks in Deadwood. Ms. Williams stated there were a few that were grandfathered in. Ms. Williams suggested an on-site visit and the matter be tabled until the commissions had the opportunity to visit the site.

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Mr. Ryan suggested that an engineer look at the area as well. Ms. Williams stated she would set up the on-site later in the week.

ADJOURNMENT:

**Mr. Thorpe moved to adjourn the Joint Meeting of the Planning and Zoning Commission.
Ms. Farrier 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.

ATTEST:

Larry Ryan
Chairman (Acting)
Planning and Zoning

Marie Farrier
Secretary (Acting)
Planning and Zoning