

**CITY OF DEADWOOD**

**PLANNING AND ZONING COMMISSION**

October 21, 2014

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission and Board of Adjustment was called to order by Chairperson Jim Shedd on Tuesday, October 21, 2014 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, Sheree Green, Mark Speirs, and Mel Allen.

ABSENT PLANNING & ZONING: Marie Farrier

PRESENT BOARD OF ADJUSTMENT: Jim Van den Eykel, Dave Ruth, Gary Todd, Chuck Turbiville, and Georgeann Silvernail.

**PUBLIC HEARING:**

**Request for a 10'11" Variance from Section 17.24.040.C.1- Side Yard Setback Requirements**

Mr. Shedd introduced the variance request to the Commission and the audience present. Mr. Nelson introduced the process of the hearing and explained the order of public input. He then introduced Mr. Roger Tellinghousen as the representative for the applicant.

Mr. Tellinghousen clarified the request for the variance request and the allowance for the move of the Fountain House. He explained the process they have been through thus far with approval from the Historic Preservation Commission. The home is 40 feet wide and the lot is 50 feet wide. Due to the lot being on the corner and for safety reasons, there is a 15" requirement for a side yard setback. There is a five yard interior set back, which they will need five feet seven inches due to a retaining wall between the lot and the adjoining property. Mr. Tellinghousen handed out a photo packet with several references to variance breaches. The first photo he referenced was a photo of the home across the street from the proposed lot. It showed the proposed lot. The second photo was a different view of the proposed lot. The third photo is a photo of the housing along Lincoln Street. The fourth photo is of the home that sits immediately adjacent to the proposed lot, 33 Lincoln. He pointed out the retaining wall and the location of it. The wall is part of the reasoning behind the variance request. Mr. Tellinghousen said the Fountain House will not fit on the

lot with the setback required by our ordinance for corner lots. They are requesting the minimum setback of four feet and one inch. The justification behind the variance request is with the setbacks, it would only leave 30 feet to put a home. He believes the lot and the neighborhood are more worthy than a small home of 30 feet. Mr. Tellinghousen showed the insurance maps for the current location of the Fountain House and the remodeling over the years. He then showed the insurance maps for a few locations in the President's District, pointing out the descriptions are very similar. He pointed out that most of the houses in the development comply with the current ordinance, though most were grandfathered in. Mr. Tellinghousen reviewed what homes are typically within the 30 foot criteria citing modular homes and governor's homes, both of which he does not feel worthy of the neighborhood. He expressed exceptional circumstances of the lot noting how long and narrow the lot is. A photo of the apartment house that was previously on the lot was shown to demonstrate the size of what was formerly there. Mr. Tellinghousen again demonstrated a few properties that are outside the ordinance and needed approvals for their variances. He said that due to the safety concerns, they owners would be willing to move the home back so one could see around the house if turning. Mr. Tellinghousen pointed out the elephant in the room with the Historic Preservation Commission and the drawn out proceedings that had to do with their approval. He pointed out that the decision was made and now we are here to decide if the Fountain House is appropriate for the particular lot, 33 Lincoln. He brought up that the home would fit harmoniously in the neighborhood due to the historical factor. Mr. Tellinghousen went on to explain low income housing and reasonable housing prices for the neighborhood and the consistency the Fountain House brings with the proposed neighborhood. He quoted from the comprehensive plan and explained, again, how the Fountain House would work.

With his conclusion, Mr. Tellinghousen opened to questioning.

Mr. Speirs asked if the hardship was self-imposed. Mr. Tellinghousen did not agree based on the Fountain House being a historical home and it would be going into a historical neighborhood. He pointed out that the lots are set to a much smaller scale and the lot actually consists of four 25 foot lots. He stated that any home that is placed on the lot will have to have special consideration and circumstances due to the lot shape and size or the neighborhood will end up with homes that are not compatible with the neighborhood. Mr. Speirs pointed out that the placement of the home will be very close to Jackson Street and will be continually hit with the elements, including splash in the winter. Mr. Tellinghousen said it is common for the neighborhood and that doesn't necessarily mean that the home isn't appropriate to place in the neighborhood.

Ms. Terri Williams asked Mr. Tellinghousen to clarify his two points on the hardship not being self-imposed as she did not feel it was clear. Mr. Tellinghousen said his points were the long narrow lot and the fact that the house they are intending to move is a historical home that cannot be modified to fit the lot. Ms. Williams clarified that the second point goes toward the comprehensive plan and Mr. Tellinghousen agreed.

Mr. Nelson opened the floor for public input.

Ms. Lenessa Keehn read the following letter on behalf of Mr. John Martinisko.

City of Deadwood

Planning, Zoning and Historic Preservation

Re: Request for 10' 11" variance for 33 Lincoln Ave.

My comments are simply that the commission should follow their Code of Ordinances in making a determination on the variance request.

Chapter 16.07.010 A. of the Deadwood Code of Ordinances states that a variance may be requested when an "undue hardship may result from strict compliance". In that all we have is an empty lot, I do not see where an undue hardship is even possible. I believe that granting this variance could set a dangerous precedent.

16.07.010 A.1. states that "no variance shall be granted unless applying the provisions of this title would deprive the applicant of the reasonable use of applicant's land". I believe there are numerous reasonable uses of this land other than moving a house onto that does not fit the code requirements of 17.24.040, area and bulk requirements. For example a home could be built or another house could be moved to the lot that does meet the code requirements.

16.07.010 A.2. states that no variance shall be granted unless it is necessary for the preservation and enjoyment of a substantial property right of the applicant. I do not believe it is a substantial property right to vary from the Deadwood Code of Ordinances. There are many other options.

17.80.010.C.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 title would result in peculiar, exceptional and undue hardship on the owner of such property."

This is a large level lot typical in width of many lots in Deadwood. There are no extraordinary conditions present on this lot. It offers many options for development within the code.

17.80.010.C.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 knowledge of these restrictions; it must result from the application of this title; it must be suffered directly by the property in question; and evidence of variance granted under similar circumstances shall not be considered."

I don't believe you can prove 'practical difficulty' on a proposal. Like I said, there are many uses for this lot within the ordinances.

17.80.010.D.2 Before the board shall have the authority to grant a variance, the person claiming the variance 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 this title will result in unnecessary or unreasonable hardship;**
3. That by granting the permit, substantial justice will be done.

I haven't seen any of this shown by the property owner and thus ask the commission to deny the request for variance.

Respectfully,

John Martinisko

53 Taylor Street

Deadwood, SD 57732



Mr. Keith Umentum spoke as a resident of the President's District. He brought up a former employee of Deadwood, Herb Heist. He was involved when gaming came into play in Deadwood. One of the expressions Mr. Heist used frequently, according to Mr. Umentum, was, "This is like fitting a forty pound turtle in a ten pound shell." Mr. Umentum expressed that this is how it feels with the Fountain House going into 33 Lincoln. Mr. Umentum discussed building his home on a similar sized lot and pointed out that it is possible to have a home fit accordingly. He discussed the additions put onto the Fountain House through the years and although it is a historic home, it is not entirely historic.

Mr. William Walsh spoke as a resident of the President's District. He discussed that he was on Planning and Zoning for a number of years in which they granted very few ordinances. He went on to discuss the history of the proceedings regarding the Fountain House and

how he felt we are putting the cart before the horse. He elaborated on his home, the historic neighborhood, and the progress that has been made in the President's District. Mr. Walsh discussed the finding of bones in the neighborhood and the fact that an archeological survey has not been done on the property. He went on to discuss the lot as an open space. He feels the lot should be converted to a park to accommodate the tourists and residents of the neighborhood. Mr. Walsh feels that view from the lot should be preserved and not broken up with a home on the property. He expressed that the elephant in the room is the bad press that the City has gotten over the debate with the Fountain House and that he was opposed to moving the home to that particular lot.

Mr. James Olson spoke as a resident of the President's district and pointed out that he is directly involved. He pointed out that the photos Mr. Tellinghousen handed out in an attempt to show compliance for the proposed home were either grandfathered in with the current ordinance or previously granted a variance. He does not feel Mr. Tellinghousen has alleged a hardship. He went on to discuss what is appropriate for the granting of a variance and stated that the owner of the property is Neighborworks. Mr. Olson discussed how Neighborworks apprehended the property, stating it was purchased by Neighborworks for a dollar from a Rapid City corporation. He brought up that he feels they have not shown a hardship and discussed that there is also no financial hardship. He feels the parties involved, Neighborworks and the corporation, have colluded in a plan to place the property in the President's District. Mr. Olson again referenced the ordinance and stated that he feels, again, that the hardship is self-created.

Mr. Matthew Pike spoke as a resident of the President's District. He felt the applicants have not met a burden. He pointed out the Mr. Tellinghousen is asking the Commission to, on one hand, not consider the back history with the Historic Preservation Commission, but at the same time, consider the history of the neighborhood and why it makes the home appropriate. He elaborated on the style of homes in the President's District and why he feels it does not fit. Mr. Pike said that Mr. Tellinghousen is asking the Commission to consider a previous variance that was granted when the guidelines state that previous decisions must not be considered. Mr. Pike also discussed whether the variance request is appropriate, whether that is to be considered or not, and if it complied with the granting of variances.

Mr. Tellinghousen discussed the hardship argument and discussed a variance that was granted in 2003. It discussed practicality and Mr. Tellinghousen stated that it is not any different than what we are dealing with today. He stated that the Fountain house fits the neighborhood. In response to Mr. Olson, Mr. Tellinghousen said Neighborworks paid \$40,000 for the lot. He stated that the lot has been for sale for many years. He feels that if the community wanted to develop a park, there was ample time to do so. Mr. Tellinghousen feels that this is the right lot for the Fountain House and if this was not a corner lot, not variance would be needed.

Mr. Umenthum stated that his home required a variance due only to the slope of his property. He feels that his home is not substandard to the community. Mr. Umenthum felt that the corporation that owned the home previously had other options aside from 33 Lincoln.

*Mr. Speirs motioned to deny based on the variance being too large and the home being too large for the lot chosen. He noted the hardship they were experiencing was self-created and did not feel it warranted approval. There was no second and the motion died.*

*Mr. Allen motioned to approve the request for a 10'11" variance from Section 17.24.010.C.1.*

Mr. Allen stated that regardless if the home is historic or not, it is not a zoning issue. Zoning is only interested in the footprint of the home. Mr. Allen feels that the property belongs to a person or persons. He feels that by asking us to consider the history, they are asking the Planning and Zoning Commission to remove rights regarding to the property. Mr. Allen stated the hardship is there because the home does not fit the currently zoning ordinance. It is common to see this all over Deadwood. He again stressed that we, as a Commission, do not worry over the history of the home, only the footprint.

*The motion was seconded by Ms. Green.*

Ms. Williams requested the Commission go over the requirements for a variance. Mr. Nelson read them to the audience.

*Mr. Allen, Ms. Green, and Mr. Shedd voted in favor of the motion. Mr. Speirs was opposed. The motion carried.*

**Mr. Shedd closed the Planning and Zoning Meeting.**

**Mr. Turbiville opened the Board of Adjustment.**

Mr. Turbiville introduced the variance vote by stating that he hopes the board keeps in mind they are voting strictly on the variance, not whether the home should or could be moved. He pointed out that decision was already made by other commissions and the courts. He read the mandate stating the variance has to pass by a 2/3 majority vote. That requires four of the five to vote in favor for the variance to pass. He again requested the Board forget the history and look at the variance at hand.

Mr. Todd referenced the ordinance and stated he did not understand why the Planning and Zoning Commission would pass the variance.

Ms. Williams asked Mr. Todd to consider the public interest of the entire city, not just the people that spoke this evening.

Mr. Todd said he has come to terms that the home is going to be moved. He feels it is their duty and obligation to ensure another mistake is not made, which would be placing on the proposed lot. He does not feel that the variance should be allowed as there was no evidence of the hardship.

Mr. Van den Eykel stated he is in support of approving the variance based on the Planning and Zoning Commission's recommendation. He feels that there are exceptions of ordinances and this is an opportunity to have a home in the President's District.

Mr. Todd again stressed that he does not feel the burden of hardship has been proven. He said there are other lots available and there are other options, such as building a new home on the lot.

Ms. Silvernail stated that she fully agrees with the Planning and Zoning Commission. She feels it is not our place to dictate what people can or cannot place on their property.

Mr. Todd asked why we have ordinances in place if we are going to continually go against them.

Mr. Ruth stated that he is aware of people who have inquired about purchasing the property and they were not offered it at \$40,000. He just wanted to point out that inquiries have been made in the past and there are those who are willing to acquire the property.

Mr. Turbiville opened the floor to comments and there were none.

*Mr. Turbiville called for a motion. Ms. Silvernail motioned to approve the application for a 10'11" variance from Section 17.24.010.C.1. Mr. Van den Eykel seconded the motion.*

*Ms. Silvernail, Mr. Van den Eykel, and Mr. Turbiville voted in favor of the motion. Mr. Todd and Mr. Ruth were opposed. The motion died for the lack of a 2/3 majority.*

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

**ADJOURNMENT:**

*It was moved by Mr. Allen and seconded by Ms. Green to adjourn the Regular Meeting of the Planning and Zoning Commission. Aye - All. Motion carried.*

There being no further business, the Planning & Zoning Commission adjourned at 6:10 p.m.

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Mr. Jim Shedd  
Chairman  
Planning and Zoning

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Ms. Sheree Green  
Secretary  
Planning and Zoning