

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

November 2, 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.

ABSENT: None

PRESENT BOARD OF ADJUSTMENT: Francis Toscana, Mark Speirs, & Georgeann Silvernail.

ABSENT: Ronda Feterl and Nyla Griffith

APPROVAL OF OCTOBER 5, 2005 & OCTOBER 19, 2005 MINUTES

Ms. Green stated corrections were needed on the legal description for the October 19, 2005 minutes on the Plat of Lot 849-A-1. She stated that the legal description should read "Formerly Lot 849A" rather than 848A both in the heading and the motion.

Ms. Green moved to approve the minutes of October 5, 2005, and the October 19, 2005 minutes with the corrections. Mr. Thorpe seconded and the motion carried.

All in Favor - 5
Opposed - 0

FLOYD MILLER -- REQUEST FOR VARIANCE FOR 3' SIDE YARD VARIANCE

LEGAL DESCRIPTION: Lot 8, Block 10, Highland Park Addition, City of Deadwood, Lawrence County, South Dakota

ZONING: R1 - Residential District

ADDRESS: 7 Emery Street

Ms. Williams referred to the following staff report:

STAFF REPORT

PLANNING AND ZONING – OCTOBER - 2005

APPLICANT: Floyd Miller

PURPOSE: Request for a three (3) foot Variance from Section 17-24-040.C.2 Side Yard Setback Requirements - to enable the location of a 10'x18' Metal garage in the rear of 7 Emery.

LOCATION: 7 Emery Street

LEGAL DESCRIPTION: Lot 8, Block 10, Highland Park Addition, City of Deadwood, Lawrence County, South Dakota

FILE STATUS: All legal obligations have been completed

CITIZENS RESPONSE: FOR: AGAINST:

STAFF FINDINGS:

Surrounding Zoning:

North:
South:
East:
West:

Surrounding Land Uses

Single-family residences
Single-family residences
Single-family residences
Single-family Residences

SUMMARY OF REQUEST

The applicant is requesting a three foot (3') variance from Section 17.24.040.C.2 – Side Yard Setback Requirements. The subject property is located on the west side of Emery Street and the address is 7 Emery Street.

FACTUAL INFORMATION

1. The property is currently zoned R1 – Residential District.
2. The property comprises approximately 1,680.70.
3. The subject property has access from Emery Street.
4. The property is located in flood zone X, and is not located within a flood hazard zone.
5. The area is characterized by single-family residences.

STAFF DISCUSSION

The applicant received approval from the Historic Preservation Commission for the metal garage. The garage has already been placed and Mr. Miller is now proceeding through the proper channels.

The proposed plan is in harmony with the general purposes, goals, objectives, and standards of the Comprehensive Plan and is a use permitted by right in the R1 – Residential 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. 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. Mr. Miller's property does have a hill in the rear of the property and he loses approximately 10' for the placement of the garage.

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 hillside that is located to the rear of the property and an existing retaining wall located on the side yard. Side yard setbacks in this area vary and granting a 3'' 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-1 Residential 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.

Allowing a garage in the R1 – Residential District is in harmony with the general purposes of the R-1 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, and also an existing retaining wall on the side yard lot line. The existing lot of record retains a small square footage and area is limited for placement of the garage. Mr. Miller does own 1/2 of a vacated alleyway in this area. .

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. The garage sets lower than the neighbor's structures.

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. Ryan questioned if the fee had been received. Ms. Williams yes, the fee had been paid. Mr. Thorpe questioned if there were any objections from adjacent landowners. Ms. Williams stated no. She noted that a stipulation of the Historic Preservation Commission was to complete the process by obtaining a variance from the Planning & Zoning Commission since the garage set too close to the side yard lot line.

Mr. Farrier questioned if the building was already in place. Ms. Williams stated building was in place. Ms. Farrier stated she was confused with the placement on Lot 8 and it did not fit on the Lot. Ms. Williams stated it did not; however, the alley had been vacated and he was the owner. Ms. Farrier questioned if P&Z would need to clarify that the garage set on the alley abutting Lot 8? Ms. Williams stated the motion should include the alleyway when defining the site. Ms. Farrier questioned if the variance would be in the 30' alleyway. Ms. Williams stated that the alley lined up with the driveway and she referred to the drawing. The P&Z commission discussed the drawings. After further review, it was seen that the 30' was the scale of the drawing and not the width of the alley.

Ms. Williams reiterated the motion for the variance should include the alleyway abutting Lot 8 of Block 10. Ms. Green questioned if he was the owner of the entire vacated alley. Ms. Williams stated he was the owner of the entire alley and he had worked out an arrangement with Keith Harrison.

Ms. Farrier moved to approve the 3' variance in the area of the vacated alley adjoining Lot 8, Block 10, Highland Park Addition, City of Deadwood, Lawrence County, South Dakota. 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.

Ms. Silvernail moved to approve the 3' variance as recommended by the Planning and Zoning Commission. Mr. Speirs seconded and the motion carried.

All in Favor - 3
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.

FINDINGS OF FACT

Delmar Nelson - Request for Variance Findings

Ms. Williams stated that that Findings of Facts were the last step in closing the file to establish the record and a motion was needed to approve the findings.

Mr. Thorpe moved to approve the Findings of Fact for 41 Railroad Avenue. 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.

DEADWOOD BOARD OF ADJUSTMENT

Mayor Toscana called the Board of Adjustment to order. Mr. Toscana referred to the Findings of Fact for Delmar Nelson.

Mr. Speirs moved to approve the Findings of Fact for 41 Railroad Avenue as recommended by the Planning and Zoning Commission. Ms. Silvernail seconded and the motion carried.

All in Favor - 3
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.

DISCUSSIONS:

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

Ms. Williams noted the commissions had been provided copies of the e-mail she received from Mr. Scott Anderson regarding the alternate sewer system. Ms. Williams stated that most of the commission(s) members were present for the onsite. She noted that Mr. Anderson would like a recommendation from the commission on the sewer system. Ms. Williams stated that Mr. Jim Raysor, Public Works Director, via e-mail stated that he was against any onsite wastewater (leaching) system.

Mr. Toscana questioned if there were requirements on how many square feet were needed for a gray water system. Ms. Williams stated she was uncertain. Mr. Speirs questioned the leaching system and how many septic & drainfield systems were within the city limits of Deadwood. Ms. Williams stated there were septic systems but she was not aware of any holding tanks and gray water drainfields. Mr. Toscana stated that septic systems were potentially more hazardous than a gray water system. Ms. Silvernail stated she did not want to set precedence with allowing this type of system in the City of Deadwood. Mr. Toscana stated he would like to see Mr. Anderson use option B on his proposal which tied into the City's sewer system. Mr. Toscana pointed out that the soil in that area was questionable. Mr. Speirs agreed. Ms. Silvernail felt it was the developer's problem not the City's. Mr. Toscana stated that the City was not responsible; this was Mr. Anderson's responsibility. Mr. Toscana stated that Mr. Anderson was questioning what the City would allow. Mr. Toscana stated that since this area was located within the city limits, a holding tank would probably not be a good idea.

Ms. Williams questioned if the commission was in agreement with option two. Mr. Toscana stated that option two made more sense.

Ms. Farrier questioned if Ms. Williams wanted them to make a decision. Ms. Williams stated that she would like their input. Mr. Ryan questioned what Mr. Raysor thought of option two. Ms. Williams stated that he was against option one but did not address option two.

Mr. Allen stated that he would like to see Mr. Anderson's future plans on what he wants to build and he would recommend that he connect to the City's sewer system. The P&Z Commission agreed.

Ms. Williams stated she would contact Mr. Anderson about the commission's decision. Mr. Toscana stated that if Mr. Anderson still wanted Option #1, he should request to be placed on the agenda and they would address it at that time.

OPEN

Ms. Green stated she had attended the Deadwood Economic Development meeting and would like to report that they received a \$1,500 grant from Black Hills Power & Light and had two loan applications from Lead.

ADJOURNMENT:

Mr. Thorpe moved to adjourn the Joint Meeting of the Planning and Zoning Commission. Mr. Allen 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