

**CITY OF DEADWOOD**

**PLANNING AND ZONING COMMISSION**

December 5, 2007

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairperson Marie Farrier on Wednesday December 5, 2007 at 5:00 p.m. in the Deadwood City Hall Meeting Room located at 102 Sherman Street, Deadwood, SD 57732.

PRESENT PLANNING & ZONING: Marie Farrier, Sheree Green, Mel Allen, Larry Ryan, & Jim Shedd. Mr. Jason Campbell, City Attorney was also present.

PRESENT BOARD OF ADJUSTMENT: Francis Toscana, Georgeann Silvernail, Mike Klamm, Mark Speirs, & Nyla Griffith.

**APPROVAL OF MINUTES**

Ms. Farrier requested the O.T. be added to the legal description of the Final Plat on page nine and to read as follows: Final Plat of Lots A and B, Block 44, O.T., Formerly Lots 12-16, Block 44 O.T., Located in the SW 1/4 SW 1/4, Section 23, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota.

**Mr. Ryan moved to approve the minutes of the November 21, 2007 Joint Meeting, with correction. Mr. Shedd seconded and the motion carried.**

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

**NEW BUSINESS:**

**CITY OF DEADWOOD - VARIANCE REQUEST - 10' Variance from Sections 17.48.040.B& E, Height and front yard setback requirements.**

Ms. Williams summarized the information contained in the Variance Staff Report as sent to the commission members and included as part of the record.

**STAFF REPORT  
REQUEST FOR VARIANCE  
FROM CHAPTER 17.48  
SECTIONS 17.48.040.B & E**

**APPLICANTS:** City of Deadwood

**SIZE AND LOCATION:** The site includes approximately 13,381 square feet.

**ADDRESS:** 105 Sherman Street

**LEGAL DESCRIPTION:** Lots 13-41, Block 36, O.T, Located in the City of Deadwood, Lawrence County, South Dakota (Deadwood Rec Center)

**ZONE:** PU - Public Use District

**BACKGROUND:**

The City of Deadwood is proposing an addition to the Deadwood Recreation Center. The new addition will house an office, work room, reception area, racquet ball area, kick boxing room, lap pool, splash pool, seating and a lobby. The width of the new addition, at its widest point is 188' and the length is approximately 143' long; however, the width in the front of the structure is approximately 110'.

Variations Requested: A 10' variance from Section 17.48.040.B - Front Yard Setbacks and a 10' variance from Section 17.48.040.E - Height Requirements. Maximum height.

The Comprehensive Plan designates this land as an office/business park area which is intended to provide locations for a variety of workplaces including light industrial uses, research and development activities, offices and institutions. Uses in this category are typically developed in attractively landscaped, campus like settings with activities carried out entirely within enclosed buildings. Sites designated for this category should have good access to existing or planned transportation facilities and compatibility with adjacent land uses.

Environmental Corridor Status: The property is located within Other Flood Area - Zone X – Areas of 500 year flood; areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 100-year flood. Jim Raysor, will need to address this issue through the Flood Ordinance Regulations.

**AREA ZONING PATTERNS:** The property is currently zoned PU - Public Use District. All government owned lands are zoned PU - Public Use District. The surrounding property is zoned C1 - Commercial District and is allowed a 45' height, by right. However, the PU - District was not adjusted to match the surrounding zones height and bulk regulations. There is a mixture of uses in the subject area. The current uses of the land are Gordon Park, Rec Center, and parking for city employees.

**ADJACENT ZONING AND LAND USES:**

The property to the north is zoned C1 - Commercial District. The BP Gas Station, TDG, etc. are located on the same side of the street. The Lawrence County Courthouse and Annex are zoned PU - Public Use District. The land to the west is zoned PU – Public Use District and includes City Hall. The land to the east is zoned R1 - Residential District and residential uses are located up above on Taylor Avenue. The land to the south of the projected site is zoned PU - Public Use (Gordon Park) and C1 - Commercial District (Blondies IGA).

**ATTACHMENTS:**

Attached for review is an aerial photo

**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 ten (10) days in advance of the hearing in the designated newspaper of the City of Deadwood as required by Section 17.80.010.B.**

**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 Special Circumstance in this case is the fact that the subject site has a hillside in the rear. Also, since this is an addition to the an existing historic structure, the setback from the front is being matched to the front of the existing structure to provide a structure that corresponds to the original structure and makes the operation secure. Construction is limited on the property due to the physical constraints of the rear hillside. The new addition will be located approximately 8' into the rear hillside. Extending further into the hillside would require a large retaining wall to stabilize the hillside and added costs to the project.. The*

*structure is only two (2) stories high, from the ground (excluding basement area). This height is not out of character with the surroundings. The proposed design is in keeping with the existing structure.*

*The term undue hardship encompasses virtually any problem and the hardship only need to be practical. Because of the particular physical constraints of the specific property involved, a particular hardship to the owners would result, as distinguished from a mere inconvenience, if the strict letter of regulations were carried out. Strict compliance with the specific regulations would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations. Approving the variance requests would enable the reasonable use of the property and improve operational efficiency and appearance.*

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 PU - Public Use 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 the applications for variance, if granted, is the minimum adjustment necessary to afford relief or the reasonable use of the land without disturbing the rear hillside. The remaining bulk and height regulations are all met*

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 and future logical development of the area.*

*The granting of the variances in the subject area would not be injurious to the area in general. The variances, if granted, would 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 constrains associated with the presence of the hillside and existing circumstances on the lot, it is not felt that special circumstances in this case are a result from actions of the Applicant. The variance would not constitute a grant of special privilege inconsistent with limitations imposed on similarly situated properties or inconsistent with the purposes of the zoning regulations.*

*Strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; and strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.*

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 a substantially adverse manner. Gordon Park property abuts the site for the addition. There will be no significant adverse impacts on water supply, fire protection, schools, or other services. The granting of the variance would not be detrimental to public health, safety or general welfare. 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, structural stability, and visual and aesthetic concerns. Granting this variance will not be injurious to the public health, safety, and general welfare of the community. It would allow the protections the ordinance requires for this type of use, to be placed when and where needed to protect adjacent properties.*

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. (No fee required).

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.

**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 Administrators 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 Boards decision.**

**SUMMARIZATION:**

Ms. Williams noted two (2) variances were being sought. The first was a 10' variance from front yard setback requirements and secondly, a 10' variance from the height requirements. She pointed out that the PU - Public Use District was customized towards governmental uses and ownership. She noted the subject site was surrounded by the C1 - Commercial District which allowed for a 45' height and had zero setbacks. Ms. Williams reiterated that in the near future, the Planning and Zoning Commission will be discussing making the standards to match the surrounding zoning district in order to stay consistent with the surroundings. She noted that the property was located within a flood zone and regulations of the National Flood Insurance Program would need to be observed. She also pointed out that a portion of the proposed addition set on vacated Miller Street, which included an old railroad right-of-way. She noted this structure would block the right-of-way for future railroad use through this area. Ms. Williams questioned where the parking would be provided. She noted that only the new addition would need to provide parking since historic structures in Unit 4 were exempt from the parking requirements. She noted the parking requirement was one space per five hundred (500) feet of gross floor area.

Ms. Green questioned what the height requirement was in the PU - Public Use District. Ms. Williams stated the PU - Public Use District height requirement was 35' while C-1 Commercial District, the adjoining zoning district, allowed 45'. Ms. Williams noted that governmental buildings and lands were zoned PU - Public Use District; however, the properties were spread throughout the city and they would not be always be consistent with the adjoining zoning district. She noted this was an issue the Commission would need to discuss at a later time and possibly amend the text in the zoning ordinance to state height would correspond to the surrounding district's height requirement.

Ms. Williams stated Ms. Minnie Stanley owner of the Smith Apartments had contacted the Zoning Office regarding the proposed project; however, she did not have a problem with the proposed plans.

Ms. Williams explained that the subject site was located in a flood zone and regulations of the National Flood Insurance Program would need to be observed. Ms. Williams stated Mr. Jim Raysor, City Planner, would be handling this issue and he was in the audience, if anyone had questions.

Ms. Williams stated the expansion would be located over an area of vacated portions of Miller Street and the old railroad right-a-way. She pointed out the proposed structure would block the existing railroad right-of-way for any future railroad use plans. However, an alternate route could possibly be found to accommodate future railroad plans.

Ms. Williams also stated the new construction of the addition would need to provide parking, one space per 500 gross square feet. Mr. Raysor stated there were three options for parking: the Miller Street parking lot, the Baptist Church lot, and the Miller Street lot at Gordon Park. Mr.

Raysor pointed out that some parking would be lost because the new entrance would be located behind the Rec Center for the reason of safety issues associated with the front entrance on Sherman Street.

Mayor Toscana stated the City was currently negotiating with the Baptist Church for a long term parking lease in order to find additional parking spaces to make up for the parking that would be lost with the expansion.

Ms. Williams requested that the motion include the waiving of the application fee for the record.

**Ms. Green moved to approve the Variance Request for a 10' Variance from Sections 17.48.040.B & E, Height and front yard setback requirements in the PU - Public Use District, for the City of Deadwood and that the application fee be waived. Mr. Shedd seconded and the motion carried.**

<u>All in favor</u>	<u>-</u>	<u>5</u>
<u>Opposed</u>	<u>-</u>	<u>0</u>

Chairperson Farrier adjourned the Planning and Zoning meeting 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 recommendation of the Planning & Zoning for approval of the 10' Variance Requests from height and front yard setback requirements for the City of Deadwood with the application fee waived. Ms. Griffith seconded and the motion carried.**

<u>All in favor</u>	<u>-</u>	<u>5</u>
<u>Opposed</u>	<u>-</u>	<u>0</u>

Mayor Toscana adjourned the Board of Adjustment and turned the meeting back over to the Planning and Zoning Commission.

#### **PLANNING AND ZONING:**

Chairperson Farrier called the Planning and Zoning meeting back to order.

#### **FINDINGS OF FACT - Day's of '76 - Request for 25' variance from rear lot line**

Ms. Williams stated this was the last step in closing the file and the findings demonstrate the action taken by the commissions. She noted the Findings of Fact also explained the approval of the expansion of a non-conforming use in the PF - Park Forest District, made by the Deadwood Board of Adjustment. She noted the findings also addressed the action taken for the 25' variance from rear lot line by the Deadwood Planning and Zoning Commission and the Board of Adjustment.

**Mr. Allen moved to approve the Findings of Fact for Day's of '76 - request for 25' variance from rear lot lines. Mr. Shedd seconded and the motion carried.**

<u>All in favor</u>	<u>-</u>	<u>5</u>
<u>Opposed</u>	<u>-</u>	<u>0</u>

Chairperson Farrier adjourned the Planning and Zoning meeting 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 recommendation from Planning & Zoning for the Findings of Fact for Day's of '76 - request for 25' variance from rear lot lines and approval for the expansion of non-conforming use. Mr. Speirs seconded and the motion carried.**

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

Mayor Toscana adjourned the Board of Adjustment and turned the meeting back over to the Planning and Zoning Commission.

**PLANNING AND ZONING:**

Chairperson Farrier called the Planning and Zoning meeting back to order.

**ADJOURNMENT:**

**Mr. Ryan moved to adjourn the Joint Meeting of the Planning and Zoning Commission and the Board of Adjustment. Mr. Shedd seconded and the motion carried.**

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

There being no further business, Planning & Zoning Commission adjourned at 5:15 p.m.

ATTEST:

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Ms. Marie Farrier  
Chairman (Acting)  
Planning and Zoning

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Ms. Sheree Green  
Secretary (Acting)  
Planning and Zoning