

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

December 17, 2008

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Vice - Chair Larry Ryan on Wednesday December 17, 2008 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, Mel Allen, Larry Ryan and Sheree Green.

ABSENT PLANNING & ZONING: Marie Farrier.

PRESENT BOARD OF ADJUSTMENT: Francis Toscana, Georgeann Silvernail, Joe Peterson & Lenny Schroeder.

ABSENT BOARD OF ADJUSTMENT: Mike Klamm.

APPROVAL OF MINUTES:

Mr. Shedd moved to approve the minutes of the November 19, 2008 Regular Meeting, as mailed. Mr. Allen seconded and the motion carried.

All in favor - 4
Opposed - 0

SIGN PERMITS:

CADILLAC JACKS 360 MAIN STREET - REQUEST FOR THREE (3) SEPARATE SIGNS.

Ms. Williams stated Mr. Keith Umenthum, Deadwood Building Inspector, could not be present at the meeting; therefore, she would be reviewing his staff reports with the Commission members. Ms. Williams stated Cadillac Jack's was requesting three (3) separate signs. Ms. Williams explained that two (2) of the three (3) proposed signs reflected the name change of the remodeled restaurant. The proposed name of the restaurant was "Brown Rock Sports Café" and such would be identified on the existing signs. She stated the remaining sign would be a new sign for Cadillac Jacks.

Sign #1: Ms. Williams stated the text, on the existing freestanding sign, would be changed to read "Brown Rock Sports Café". The sign measured 42.25 square feet and it was made of aluminum. She noted no variance was required and that Mr. Umenthum had recommended approval of the sign.

Mr. Allen moved to approve sign # 1 the changes to the freestanding sign. Mr. Shedd seconded and the motion carried.

All in favor - 4
Opposed - 0

Sign #2: Ms. Williams stated this existing sign would also be changed to read "Brown Rock Sports Café" and it measured 42 square feet and was made of aluminum. She noted that a 1'5" variance was required from the vertical height in order to allow a sign from 2' to 3'5". Ms. Williams noted that Mike Olsen, Historic Preservation representative had contacted staff to make a correction to the staff report. She noted the staff report had indicated that Cadillac Jack's project was located outside of the historic district. Ms. Williams stated the staff report should have read outside of the locally adopted Historic District (Unit 4); however, their development was located within the National Landmark District. Ms. Williams noted that Mr. Umenthum's staff report indicated that a variance was appropriate in this area due to the

distance of the buildings setback from the street and the fact of the 4-lane highway and speed of drive-by traffic; therefore, he had recommended approval of the sign and variance.

Mr. Shedd moved to approve sign #2 with a height variance allowing for a height of 3'5". Ms. Green seconded and the motion carried.

All in favor - 4
Opposed - 0

Sign #3: Ms. Williams stated a new wall sign was being proposed for the north end of the building . She noted the sign would read "Cadillac's Gaming Resort" and it would measure 57 square feet and be made of aluminum. She noted that two (2) variances were required for this sign. She stated the first variance was from the vertical height of the sign from the required 2' to 6' and the second variance was required since identification signs were usually required over an entrance and there was no entrance on the north side of the building.

Ms. William reiterated the correction to the staff report for sign #3 regarding that the project was located outside of the locally adopted Historic District (Unit 4); however, it was still located within National Landmark District. Ms. Williams noted that Mr. Umentum had felt that the variances were appropriate since the building(s) set back quite a distance from the 4-lane highway and he had recommended approval of the sign and variances.

Mr. Green moved to approve sign #3 with a 4' height variance allowing the sign to be 6'. Mr. Allen seconded and the motion carried.

All in favor - 4
Opposed - 0

NEW BUSINESS:

LIBERTY MADISON - REQUEST FOR CONDITIONAL USE PERMIT FOR A MASSAGE THERAPY BUSINESS
LOCATION: 652 MAIN STREET

Ms. Williams referred to the following staff report:

**DEADWOOD PLANNING AND ZONING COMMISSION
DECEMBER 17, 2008 JOINT MEETING**

APPLICANT: Liberty Madison

BUSINESS DESCRIPTION: Main Street Massage – Request for Conditional Use Permit for a Message Therapy Business.

LEGAL DESCRIPTION: Lot 14, Block 19, O.T., City of Deadwood, Lawrence County, South Dakota

PROJECT INFORMATION:

- A. Planning Area Community Commercial**
- B. Existing General Land Use Designation – Commercial Spaces**

The downtown core district is occupied by narrow lots and attached buildings and the pedestrian traffic is heavy in this area. The Massage Therapy business is a basic support enterprise for the community as well as the visitors to Deadwood.

- C. Existing Zoning: C1 – Commercial District**
- D. Existing Land Use – Commercial**
- E. Location: 652 Main Street**
- F. Adjacent Land Use Information:**

	<u>Land Use</u>	<u>Zoning</u>	<u>General Plan Designation</u>
North	Commercial	C1 - Commercial	Gaming Enterprises
South	Commercial	C1 - Commercial	Gaming Enterprises
East West	Commercial Parking Ramp	C1 – Commercial PU – Public Use Support Service	Tourist Service

Project Description:

The proposed Conditional Use Permit is to allow for a Massage Therapy Business in the downtown core area. Since the business is located in Unit 4 and in a historic structure, the parking requirements are not enforced.

The site previously housed the Dakota Territory (DT) and gaming. Currently the structure is being used by Dina Flores for a Jewelry Shop and Ice Cream Shop. Ms. Flores is Liberty's mother and they will be sharing the space(s).

The site is located within the C1 – Commercial District, in the center of downtown.

COMPLIANCE:

- 1. The Zoning Officer provided notice identifying the applicant, describing the project and its location and giving the scheduled date of the public hearing in accordance with Section 17.96.020.D.2.**
- 2. A sign was posted on the property for which the requests were filed as required by Section 17.76.060.J.**
- 3. Notice of the time and place was published in the designated newspaper of the City of Deadwood as required by Section 17.76.060.J.**

CONDITIONAL USE PERMIT

GENERAL USE STANDARDS FOR CONDITIONAL USE PERMITS:

In reviewing any application under the authority of this chapter and as a further guide to its decision upon the facts of the case, the Commission(s) shall consider, among other things, the following facts:

- A. The proposed use shall be in harmony with the general purposes, goals, objectives, and standards to the City Policy Plan, the ordinance, the district in which it is located, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice by the City of Deadwood.

ANSWER: The current zoning ordinance requires a massage therapy business to obtain a Conditional Use Permit under the C1 – Commercial District classification. The process gives the Commission's and adjacent landowners the opportunity to address any impacts and the issues. The standards under Conditional Use Permits are used as a guide for approval or denial.

- B. Whether or not a community need exists for the proposed use at the proposed location in light of existing and proposed uses of a similar nature in the area and of the need to provide or maintain a proper mix of uses both within the city and also within the immediate area of the proposed use:
(a) the proposed use in the proposed location shall not result in either a detrimental over concentration of a particular use from previously permitted uses within the city or within the immediate area of the proposed use.

ANSWER: The proposed use in the subject location does not result in a detrimental over concentration of this particular use in the subject district. There are other massage therapy sites within the city limits; however, not in the vicinity of this site. The subject property is located within a business area that generates pedestrian traffic.

- C. The proposed use at the proposed location shall not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, public sites, or rights-of-way.

ANSWER:

The proposed use will not result in a substantial or undue adverse effect on adjacent property or the character of the region and the use will not alter the character of the neighborhood.

- D. Whether or not the proposed use increases the proliferation of non-conforming uses as well as previously approved Conditional Use Permits which are still in use, when influenced by matters pertaining to the public health, safety, and general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of provisions and policies of the Policy Plan, this ordinance, or any other plan, program, map or ordinance adopted, or under consideration pursuant to official notice, by the city or other governmental agency having jurisdiction to guide growth and development.

For any conditional use, lot and performance standards shall be the same as similar type uses located in specific districts. The character and use of buildings and structures adjoining or near the property mentioned in the application shall be considered in their entirety

ANSWER: Whenever an application is submitted for a Conditional Use Permit, and it is approved, it increases the number of conditional use permits in the area; however, in this instance, there are no other Conditional Use Permits within the vicinity for this type of use within this district.

- E. Whether or not the proposed use in the proposed area will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, and services specified in this section.

ANSWER: The proposed use will not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation or other services. This type of use does not demand a high level for services.

CONDITIONS GOVERNING APPLICATIONS AND PROVISIONS:

- A. Following the issuance of a conditional use permit pursuant to the provisions of this ordinance, such permit may be amended, varied, or altered only pursuant to the standards and procedures established by this section for its original approval.
- B. The Board of Adjustment can revoke conditional use permits, once granted, for cause after a hearing is held before them. Complaints seeking the revocation of such permit shall be filed with the Zoning Administrator and may be initiated by the Planning and Zoning Commission OR any three (3) residents within three hundred (300) feet of the property lines of which the application has been filed. All such revocation hearings shall be conducted in the same manner as for the Conditional Use Permit application hearings.
- C. The Planning and Zoning Commission shall have the authority to review Conditional Use Permits at any time and/or on an annual basis and place additional stipulations to mitigate a problem.
- D. If the use permitted under the terms of a Conditional Use Permit has not been started within six (6) months of the date of issuance thereof, said permit shall expire and be canceled by the City Planning Department. Written notice thereof, shall be given to the person(s) affected, together with notice that further use or work as described in the canceled permit shall not proceed, unless and until a new conditional use permit has been obtained.
- E. If the use permitted under the terms of a Conditional Use Permit, ceases, for whatever reason, for a period of twelve (12) months, said permit shall expire and be canceled by the City Planning Department. Written notice thereof, shall be given to the person(s) affected, together with notice that further use or work as described in the canceled permit shall not proceed, unless and until a new conditional use permit has been obtained.

In this instance, the Conditional Use Permit runs with the property.

Ms. Williams noted that numerous landowners were notified and she did not receive any comments regarding the Conditional Use Permit (CUP).

Ms. Williams stated since the CUP was located within the C-1 Commercial District, the CUP would run with the building not the applicant.

Mr. Shedd moved to recommend approval for a Conditional Use Permit for Liberty Madison for a Massage Therapy Business at 652 Main Street. Mr. Allen seconded and the motion carried.

All in favor - 4
Opposed - 0

Vice - Chairman Ryan 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 Conditional Use Permit for Liberty Madison for a Massage Therapy Business at 652 Main Street, as recommended by the Planning & Zoning Commission. Mr. Peterson 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

Vice - Chairman Ryan called the Planning and Zoning meeting back to order.

ADJOURNMENT:

Mr. Ryan moved to adjourn the Joint Meeting of the Planning and Zoning Commission. Mr. Shedd 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:

Ms. Marie Farrier
Chairman (Acting)
Planning and Zoning

Ms. Sheree Green
Secretary (Acting)
Planning and Zoning