

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

February 20, 2008

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission was called to order by Chairperson Marie Farrier on Wednesday February 20, 2008 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.

ABSENT BOARD OF ADJUSTMENT: Nyla Griffith.

APPROVAL OF MINUTES

Mr. Ryan moved to approve the minutes of the January 5, 2008 Regular Meeting, as sent. 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>

NEW BUSINESS:

PUBLIC HEARING FOR REQUEST FOR 2'6" VARIANCE FROM FRONT PORCH AND A 1' VARIANCE FROM ATTACHED GARAGE - FROM SECTION 17.28.040 - FRONT YARD REQUIREMENTS IN THE R2- MULTI-FAMILY RESIDENTIAL DISTRICT

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 VARIANCES
FROM SECTION 17.28.040.B
FRONT YARD SETBACKS**

APPLICANTS: Russ and Donna Smith

SIZE AND LOCATION: The site includes approximately 0.16 Acres/6,969 square feet.

ADDRESS: 1 Meverden Street

LEGAL DESCRIPTION: Lots 8 and 9, Meverden Addition and Tract M-L of M.S. 81, Located in the City of Deadwood, Lawrence County, South Dakota

ZONE: R2 - Multi-family Residential District

BACKGROUND:

Russ and Donna Smith are proposing to construct a 24'x40' residence with a 22'x24' attached garage. The front porch of the residence sets 17'6" from the lot line and the attached garage will set 19' from the lot line. The majority of the lots are covered by flat land; however, as you can see by the map, the lots are irregular in shape and size. There is a steep hillside in the rear and the Smiths would rather not disturb the hillside. The hillside lot extends toward Railroad Avenue, a street that is not utilized much.

Variations Requested: A 2'6" variance from the front porch and a 1' variance from the attached garage. The variations are from Section 17.28.040.B - Front Yard Requirements. Minimum front yard, principal buildings and uses: twenty (20) feet. The variations are the minimum reasonably necessary to overcome the particular steep slope conditions on the subject lot(s).

The Comprehensive Plan designates this land as high density residential. The high density residential category provides for apartment and condominium complexes ranging from 13 or higher net dwelling units per acre. This category may also include such supporting land uses as parks and recreation areas, religious institutions, and schools. A full range of urban services and infrastructure is required.

Environmental Corridor Status: The property is located within Other Area - Zone X – Areas determined to be outside 500 year flood.

AREA ZONING PATTERNS: The subject property is currently zoned R2 - Multi-Residential District. There is a mixture of uses in the subject area and the land is located in the vicinity of a multi-family project and a townhouse complex.

ADJACENT ZONING AND LAND USES:

The surrounding property to the north is Black Hills Housing (multi-family project). The land to the south is vacant and Railroad Avenue is located in this area. The lands to the west are vacant and the uses to the east consist of single-family dwellings.

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. Extending further into the hillside could require a retaining wall to stabilize the hillside and added costs to the project. The proposed residence and garage are in character with the surrounding uses. Many of the existing structures have varying front setbacks in this area.

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.

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 R2 - Multi-family Residential 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. There are townhouses, apartments and single-family dwellings in the vicinity.

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 constraints associated with the presence of the rear hillside, special circumstances in this case are not 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.

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. Black Hills Housing is located across Meverden Street. 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. 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.

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.

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 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.

PLANNING AND ZONING

Mr. Allen moved to approve the Variance Request for a 2' 6" Variance from the front porch and a 1' Variance from Attached Garage from Section 17.28.040 Front Yard Requirements in the R2 - Multi-Family Residential District for Russ and Donna Smith, 1 Meverden. Mr. Shedd seconded and the motion carried.

All in favor - 5
Opposed - 0

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 the Variance Request for a 2' 6" Variance from the front porch and a 1' Variance from Attached Garage from Section 17.28.040 Front Yard Requirements in the R2 - Multi-Family Residential District for Russ and Donna Smith, 1 Meverden. 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.

SIGNS:

Adams Museum and House - 54 Sherman Street

Mr. Keith Umentum, Deadwood Building Inspector, stated that the applicant was requesting a variance for an informational sign to be placed under the existing sign to advertise special events. Mr. Umentum stated these signs are typically allowed if less than one square feet; however, this sign is two square feet therefore a variance is needed, as of Section 15.32.140 #3 of the Sign Ordinance. Mr. Umentum also requested that the fee be waived for the non-profit entity. Mr. Umentum stated Ms. Rose Speirs, Marketing Director of the Adams Museum & House Inc., was in the audience to answer any additional questions.

Ms. Speirs stated that she was actually requesting two signs stating "Special Event Today" and "Special Event Tonight" to be used only when they had an event.

Ms. Green moved to approve the Variance Request for two informational signs and the sign application fee be waived for the Adams Museum & House Inc, a non-profit group. Mr. Ryan seconded and the motion carried.

All in favor - 5
Opposed - 0

Pack Horse – 95 Sherman Street

Mr. Keith Umenthum, Deadwood Building Inspector, stated “BP” British Petroleum Stations were withdrawing from the State of South Dakota and consequently the owners of the Packhorse would need to change the name of their station and the signs. Mr. Umenthum reviewed the sign history stating that the proposed signs are similar and internal lit signs. Mr. Umenthum stated Ms. Loray Bauer, owner of the Packhorse was in the audience to answer any additional questions.

Ms. Bauer stated the signs would be the same size and shape; however, the faces of the signs would change. Mr. Shedd questioned where the free standing sign would be located. Ms Bauer stated it would be located in its current location.

Mr. Ryan moved to approve the sign changes for the Packhorse located 95 Sherman Street. Mr. Allen seconded and the motion carried.

All in favor - 5
Opposed - 0

Taco John’s – Lori Collins – 90 Charles Street

Mr. Umenthum, Deadwood Building Inspector, requested this item be moved to the end of the agenda because the applicant had not arrived and would like to be present when the application was presented.

Deadwood Home Center – Tim Conrad – 32 Charles Street

Mr. Umenthum, Deadwood Building Inspector, stated the Sign Ordinance allowed a maximum height of two feet. He noted that rule created long narrow signs which were appropriate for store fronts along historic Main Street; but, often did not work on modern building such as the Deadwood Home Center. Mr. Umenthum stated the applicant was requesting a variance to place a 12’x4’ sign, which would allow for the sign to be higher; however, it would also be shorter in width. He noted the applicant preferred the 12’x4’ size instead of the allowable 25’x2’ because the appearance of the sign was more appropriate for the subject structure. Mr. Umenthum stated he agreed with the applicant and pointed out the sign’s dimensions were under the permitted square footage for the building.

Mr. Shedd moved to approve the Variance Request for a 12’x4’ sign to be placed at Deadwood Home Center instead of the required 25’x2’. Mr. Ryan seconded and the motion carried.

All in favor - 5
Opposed - 0

Black Hills Detailing – Greg Rolland – 420 Cliff Street

Mr. Umenthum, Deadwood Building Inspector, stated the applicant was requesting a variance from height for signs located at 420 Cliff. He noted the business would be located in the garage area, in the rear of the Chubby Chipmuck. Mr. Umenthum stated the applicant proposed to paint the Black Hills Detailing logo over the existing Noeller Oil-Tire Co. sign. A variance was required since the height exceeded the maximum allowed by the Sign Ordinance.

Mr. Shedd moved to approve the Variance Request from the 2’ height for the signs at Black Hills Detailing at 420 Cliff Street. Mr. Allen seconded and the motion carried.

All in favor - 5
Opposed - 0

DISCUSSION ON AMENDMENTS TO ZONING ORDINANCE:

Ms. Williams reviewed the proposed changes to the zoning text, and on file at City Hall.

The Planning & Zoning Commission had the following comments regarding the changes:

Mr. Allen requested that Ms. Williams set up a committee to review the Height definition with architects and engineers in order to receive feedback on the proposed changes. Ms. Williams stated she would set up a meeting.

Ms. Green questioned if the Floor Area, Gross included basement and designated parking. Ms. Williams stated some communities include it while others do not. Ms. Williams stated that the Floor Area, Net would include those areas.

Ms. Farrier questioned if the Planning & Zoning Commission needed criteria to follow if variances would be required for townhouse projects. Ms. Williams stated yes.

Ms. Williams pointed out that these changes were only preliminary; and, the Planning & Zoning Commission would be reviewing and discussing the nature of the changes in the months to come before approving the proposed changes. Mr. Allen thanked Ms. Williams for her hard work on the Ordinance.

Taco John's - Lori Collins - 90 Charles Street

Mr. Umenthum, Deadwood Building Inspector, stated Taco John's had recently been renovated and Ms. Collins was requesting new signage for the front and sides of the building. He pointed out the signage had not been part of the approval when the plans had been approved by the Historic Preservation Commission.

Mr. Umenthum stated the applicant had been required to comply with Taco John's International Inc. for updating the building and signage. He noted the front sign would be internally lit plastic and state "Taco John's The Fresh Taste of West-Mex" and would replace the former logo. He noted the two side signs would also be internally lit plastic and only state "Taco John's". He pointed out the drive-thru side required a variance since there was not an entrance on that side of the building, and an entrance was required for a sign. Mr. Umenthum noted that the overall square footage of the signage had been reduced from 100 square feet to 76 square feet.

Mr. Umenthum stated several Variances were required for approval: a variance from the height on the front, a variance for plastic internally lit signs and a variance for the sign located on the drive-thru side of the building, without an entrance. Mr. Umenthum stated Ms. Lori Collins had arrived and was present in the audience to answer any questions.

Ms. Collins stated she was withdrawing her request for signage on the drive-thru side of the building. Ms. Collins stated an "eyebrow" light would be placed above the drive thru which is a part of the design of the building and no signage would be placed in this area.

Ms. Collins apologized for not coming forward earlier with the Sign Permit application; however, she had thought it had been approved as part of the project approval.

Ms. Green moved to approve the Height Variance Request for the front sign at Taco John's located at 90 Charles Street. Mr. Allen seconded and the motion carried.

All in favor - 5
Opposed - 0

Ms. Green moved to approve the Variance Request for plastic internally lit signs at Taco John's located at 90 Charles Street. Mr. Ryan seconded and the motion carried.

All in favor - 5
Opposed - 0

Ms. Green moved to approve the change of signage for front free standing sign at Taco John's located at 90 Charles Street. Mr. Ryan seconded and the motion carried.

All in favor - 5
Opposed - 0

ADJOURNMENT:

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

All in favor - 5
Opposed - 0

There being no further business, Planning & Zoning Commission adjourned at 5:50 p.m.

ATTEST:

Ms. Marie Farrier
Chairman (Acting)
Planning and Zoning

Ms. Sheree Green
Secretary (Acting)
Planning and Zoning