

CITY OF DEADWOOD

PLANNING AND ZONING COMMISSION

June 18, 2008

JOINT MEETING

The Joint Meeting of the Deadwood Planning and Zoning Commission and Deadwood Board of Adjustment was called to order by Chairperson Marie Farrier on Wednesday June 18, 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, Lenny Schroeder & Joe Peterson.

APPROVAL OF MINUTES:

Mr. Shedd moved to approve the minutes of the June 4, 2008 Regular Meeting, as mailed. Mr. Ryan seconded and the motion carried.

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

SIGN PERMITS:

*BY Development - Cadillac Jacks - Relocation of existing signs at 560 Main Street*

Ms. Williams noted these were existing signs that were being relocated on the property. The previous signs had been located within the State's right-of-way. She noted that the state was placing turning lanes in this area and uses located within the right-of-way were required to be removed. BY Development will also lose 17 parking spaces since a trolley stop is being placed in that area. Ms. Williams noted that Keith's staff report had recommended approval for the relocation of the signs with a stipulation that they only be approved for a two year time frame.

Mr. Allen moved to approve the relocation of the existing at 560 Main Street with a two year time frame. 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>

*John Bolan/Coldwell Banker - Real Estate Sign Size at 1 Railroad Avenue*

Ms. Williams noted that Section 15.32.140.A.1 of the sign ordinance stated "Temporary, non-illuminated signs indicating the availability for sale, rent or lease of the specific lot, building or portion of a building on which the sign is displayed, provided that such signs do not exceed five square feet in area and four feet in height, and are limited to one such sign per lot, building, dwelling or business unit are allowed without a permit. Such signs shall not remain in place more than seven days after sale or rental of the subject property." Ms. Williams noted that Number 1 Railroad Ave was partially screened from the highway. She noted Mr. Bolan had placed the property up for sale with Coldwell Banker. The land is situated above the City parking lot and the front lot line is located approximately 95 feet away from the highway. She noted that larger real estate signs had been allowed in the past where properties set quite a distance from the highway or street. She noted that larger signs were usually allowed since they were more difficult to see and traffic was moving faster. She stated that Keith's staff report had recommended approval of the variance from the size of the sign as well as from the requirement for one sign with the condition that the signs be removed within 7 days upon sale of the property.

Mr. Allen noted that the signs were already in place at the location. Mr. Toscana noted there were two and had been in place for a week. Ms. Williams stated Mr. Umenthum informed the owner that approval was needed and he submitted the application and fee.

Ms. Green questioned if a time limit could be placed on the signs. Ms. Williams stated one was in place for the removal. Ms. Green stated if the property does not sell, then the signs could be in place for years. Ms. William noted that a condition for a review could be place in the motion.

**Ms. Green moved to approve the two real estate signs at 1 Railroad Avenue with a year review. Mr. Shedd seconded and the motion carried.**

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

**NEW BUSINESS:**

**CHAD BLAIR RE: REQUEST FOR 19' VARIANCE FROM FRONT YARD SETBACK**

The property was located at 3 Ryan Road and the land was zoned PF – Park Forest District.

Ms. Williams requested the staff reports be made part of the minutes.

**STAFF REPORT  
REQUEST FOR VARIANCE  
FROM CHAPTER 17.20  
SECTION 17.20.040.B**

**APPLICANTS:** Chad Blair/Tom Blair

**SIZE AND LOCATION:**The site includes 1 Acre, more or less.

**ADDRESS:** 3 Ryan Road

**LEGAL DESCRIPTION:** – Plat of Tract 1, being a portion of Deadwood Gulch Campground Tract and a portion of vacated McDonald Street, Located in the E ½ of Section 27, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota

**ZONE:** PF - Park Forest District

**REQUEST:** Nineteen (19) foot variance from front yard setback requirements.

**EXISTING ZONING AND LAND USE:** The property is currently zoned PF - Park Forest District and the land had previously been a segment of the RV Campground Tract. The subject plat for Tract 1 was approved on April 2, 2008

**ADJACENT ZONING AND LAND USES:**

The property to the north is zoned R1 - Residential District and is occupied by single-family dwellings. The land to the west is zoned CH – Commercial Highway District and Deadwood Gulch Resort is located in this area. The land to the east is zoned R1- Residential District and is the Ryan Addition which is made up of single-family dwellings. Comfort Inn, the amusement park and the Campground are located to the south.

**ATTACHMENTS:**

Attached for review is an aerial photo

**BACKGROUND:**

Chad Blair is constructing a new residence and garage at 3 Ryan Street. Keith Umenthum, building inspector, and I made an onsite of the subject property on Monday, June 9th. At that time, we found that the front setback did not meet the requirements for the PF – Park Forest District. The contractor had measured from the curb instead of the lot line. Staff took measurements from the existing excavated portion of the land facing Ryan Road. It was determined that a 19' variance was required from the front lot line.

The rebar has been set and staff decided to bring the variance forward as soon as possible and the next meeting was scheduled for June 18<sup>th</sup>. The determination was made for the reasons that staff will be gone for the July 2<sup>nd</sup> meeting date and the next scheduled date for a public hearing was July 16<sup>th</sup>. Therefore, the Notice of Public Hearing was placed in the paper on June 11<sup>th</sup>. The ordinance requires the Notice to be placed in the designated newspaper of the City, ten (10) days in advance of public hearing. Mr. Blair has signed a waiver from that notice requirement. Planning and Zoning will need to approve a variance from Section 17.80.010.B – Public Hearing – requiring the notice be placed 10 days in advance of the public hearing. The notice was placed seven (7) days in advance of the public hearing. It is felt that substantial notice has been given since the property was posted and adjacent landowners within 300' were notified.

The PF - Park Forest District does allow for single-family residences by right. The Park Forest District requires a much larger lot size and also greater setbacks. The subject land is zoned PF – Park Forest because of the campground use and this lot was detached from the campground tract; therefore, the zoning remained Park Forest on this parcel of land. The front setback from the front lot line is 35' in the Park Forest District; whereas, R1 – Residential District only requires a twenty (20) foot setback. The degree of the requested setback is significant. However, in review of this request, staff visited the site again to gain a sense of how significant the impact would be on surrounding properties. The Ryan Addition properties, to the east, would be most directly impacted. The visit revealed that for both the petitioner's residence and the residences on properties immediately facing south (Ryan Addition), all function as front yards facing Ryan Road. The setbacks vary in the vicinity and a 16' front setback is appropriate for this area.

**Environmental Corridor Status:** The property is located outside of the Flood Area.

**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. *The letters were mailed as required by the ordinance.***
2. **A sign was posted on the property for which the request was filed as required by Section 17.80.010.B. *This requirement has also been met as required.***
3. **Notice of the time and place for the public hearing was published seven (7) days in advance of the hearing in the designated newspaper of the City of Deadwood. A 3 day variance from Section 17.80.010.B. regarding the time frame must be approved by the Deadwood Planning and Zoning Commission.**

**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 a steep drop-off in the rear of the residence. Also, the shape of the lot limits where buildings can be sited. 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 request 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 permitted by right in the PF – Park Forest 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 this application for variance, if granted, is the minimum adjustment necessary to afford relief or the reasonable use of the land. The remaining bulk and height regulations are all met (i.e. side and rear setback requirements and height).*

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. Ryan and Peck Additions surround the subject area on three sides. The Campground is located to the south of the subject site. The granting of the variance would not be detrimental to fire safety, structural stability, clearance, preservation of light and open space and/or visual and aesthetic concerns.*

*The variance 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 drop-off in the rear and the irregular shape of 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 similar 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. There will be no significant adverse impacts on water supply, fire protection, schools, or other services. 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.*

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

Joint Meeting  
June 18, 2008

**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.**

Ms. Williams noted that a letter of concern had been received from the Bureau of Land Management (BLM); Mr. Jim Raysor, City Planner, would explain the letter.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
South Dakota Field Office  
310 Roundup Street  
Belle Fourche, SD 57717  
<http://www.blm.gov/sdfo>



IN REPLY TO:  
1785

June 13, 2008

Deadwood City Hall  
Office of Planning, Zoning and Historic Preservation  
108 Sherman Street  
Deadwood, SD 57732

Re: Variance Request for Chad Blair, 3 Ryan Road, Deadwood, SD 57732

To: Whom it May Concern;

We have reviewed the variance request received June 12, 2008 for a front yard setback at 3 Ryan Road. We are concerned that any building or construction on this lot may affect the hydrology of Pecks Gulch thus causing negative effects to the gulch. Should this change the hydrology of Pecks Gulch, the public lands upstream would be impacted. If you have any questions, please contact Marian Atkins at (605) 892-7000.

Sincerely,

  
Marian Atkins  
South Dakota Field Manager

Mr. Raysor explained the hydrology in the Pecks Garden Area. Mr. Raysor stated that above Peck Garden is a dam that was built by the City as a result of the Grizzly Gulch Fire of 2002. Within the dam is a 15 inch pipe that runs under the proposed area of the new residence. Mr. Raysor speculated that the roof elevation of the new residence, or higher, would be the approximate elevation of the dam. He noted the dam had overflowed past the pipe but never to the top of the dam and had never impacted the area in question. Mr. Raysor stated that in his opinion a massive flood would have to take place to effect the hydrology in Pecks Garden. Mr. Raysor stated that Mr. Blair's new residence would be affected if a flood would happen; however, it would not affect the public lands owned by the BLM. Mr. Raysor stated he had made an effort to contact Ms. Marian Atkins; however, she had not been available.

Mr. Ryan questioned when the last big flood had occurred. Mayor Toscana stated the flood of 1965 and the turn of the century. Mayor Toscana stated he had visited the area with Mr. Raysor and agreed that there would not be any impact on private or public property.

Mr. Ryan questioned if Mr. Raysor would recommend approval. Mr. Raysor state he would recommend approval because he did not see any impact in the lands.

Ms. Farrier questioned if Planning & Zoning was required to answer this letter from the BLM. Mr. Jason Campbell, City Attorney, stated he did not feel they had to reply to the letter since the Commission, Mr. Raysor and Mr. Toscana had addressed the concerns in the letter.

Mr. Allen question if a change of zoning was required to build this house. Ms. Williams stated it was not required since the lot had 1 acre and single-family residences were allowed by right in the PF-Park Forest District.

**Mr. Ryan moved to recommend approval for a Nineteen (19) feet variance from front yard setback requirements in the PF - Park Forest District and a three (3) day variance from the ten (10) day requirement for public notice for Chad Blair, 3 Ryan Road. Mr. Allen 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 from Planning & Zoning for a Nineteen (19) feet variance from front yard setback requirements in the PF - Park Forest District and a three (3) day variance from the ten (10) day requirement for public notice for Chad Blair, 3 Ryan Road. Mr. Klamm 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**

Mr. Tom Blair publicly thanked the Commission for approval and issued a special thanks to Ms. Williams and Mr. Raysor for all their hard work on this variance.

**FINAL PLAT DGR HOSPITALITY GROUP: PLAT OF TRACTS A, B, C AND D OF DEADWOOD GULCH ADDITION II, BEING A PORTION OF DEADWOOD GULCH ADDITION II, ALL LOCATED IN THE NE ¼, SE ¼ AND SW ¼ OF SECTION 27, T5N, R3E, B.H.M., CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA**

**STAFF REPORT  
PLANNING AND ZONING  
JUNE 18, 2008 MEETING**

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**APPLICANT:** DGR – Deadwood Gulch Resorts

**PURPOSE:** For transfer purposes

**GENERAL LOCATION:** 304 Cliff Street

**LEGAL DESCRIPTION:** PLAT OF TRACTS A, B, C AND D OF DEADWOOD GULCH ADDITION II, BEING A PORTION OF DEADWOOD GULCH ADDITION II, ALL LOCATED IN THE NE ¼, SE ¼ AND SW ¼ OF SECTION 27, T5N, R3E, B.H.M., CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA

**FILE STATUS:** All legal obligations have been completed.

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**CITIZENS RESPONSE:** FOR: NA AGAINST: NA

**STAFF FINDINGS:**

**SUMMARY OF REQUEST**

The landowner is subdividing the subject lands into four (4) lots. Deadwood Gulch Resorts is in the process of being sold and the new owners do not need or want the entire parcel.

**FACTUAL INFORMATION**

1. The properties are currently zoned Commercial Highway District.
2. The total area platted is 20.69 acres.
3. The properties gain access from Cliff Street and Timm Lane.
4. Portions of the tracts are located in Zone AE – Areas with a 1% annual chance of flooding and a 26% chance of flooding over the life of a 30-year mortgage. The subject parcels are shown on FEMA Maps,

Community Panels 460045 0001C, Effective Date May 7, 2001 and 460045 00002C, Effective Date May 7, 2001.

The area is characterized by rural residential uses, open space vacant lands and commercial uses.

All requirements have been met to process the subject plat.

Ms. Williams noted Mr. Island will retain ownership of one tract. Ms. Williams thanked Ms. Green for her help condensing the legal description.

**Ms. Green moved to recommend approval of the Final Plat of DGR Hospitality Group, 304 Cliff Street/Deadwood Gulch Resorts. Mr. Ryan 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 of the Final Plat of DGR Hospitality Group, 304 Cliff Street/Deadwood Gulch Resorts. 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 Commission**

**OPEN**

Ms. Williams stated the letter was for informational purposes only. The letter was in regards to a possible cell tower at the Hampton Inn, located in Unit Four (4), Deadwood.

Mr. Ryan commended the wonderful job with signage and exterior work at the Packhorse Liquor & Convenience Store. Mr. Ryan stated he would like for Mr. Umenthum to address the signage issue at Pat Mollman's South Side Service Station 157 Sherman Street.

**ADJOURNMENT:**

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

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

There being no further business, Planning & Zoning Commission adjourned at 5:30 p.m.

ATTEST:

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Ms. Marie Farrier  
Chairman (Acting)  
Planning and Zoning

\_\_\_\_\_  
Ms. Sheree Green  
Secretary (Acting)  
Planning and Zoning