



BOARD OF ADJUSTMENT REQUEST FOR A VARIANCE

Staff Report

Date: June 16, 2023
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Request for a Variance – Front Yard and Side Yard Setbacks

APPLICANT(S): Jackie Diana Fisher and Bryan James Duffy
Revocable Trust

PURPOSE: Single Family Home

ADDRESS: 22 Washington Street
Deadwood, Lawrence County, South Dakota

LEGAL DESCRIPTION: TRACT C, BLOCK 53, A SUBDIVISION OF PART OF LOTS 1 AND 2, BLOCK 53, ORIGINAL TOWN, CITY OF DEADWOOD, LOCATED IN THE NW1/4 OF SECTION 26, T5N, R3E, B.H.M., LAWRENCE COUNTY, SOUTH DAKOTA, according to Plat recorded as Document No. 2001-01165, subject to easements, reservations, and restrictions of record.

FILE STATUS: All legal obligations have been completed.

ZONE: R1 – Residential District

STAFF FINDINGS:

Surrounding Zoning:

North: R1 – Residential District

South: R1 – Residential District

East: R1 – Residential District

West: R1 – Residential District

Surrounding Land Uses:

Residential Housing

Residential Housing

Residential Housing

Residential Housing

SUMMARY OF REQUEST

The applicant has submitted a request for a variance to the required 20' front yard setback according to Deadwood City 17.24.040 (Area and Bulk Requirements). The applicant is requesting a variance (11'-4"± to building

plane and 15'-4"± to the covered porch) on Washington Street and a variance (7'-10"± to building plane or 11'-10"± to the covered porch) along the Monroe Street.

FACTUAL INFORMATION

1. The property is currently zoned R1 – Residential District.
2. The property is vacant until construction begins. (It appears to have been vacant since Deadwood's founding.)
3. The subject property has access to off-street parking which would be from Washington Street.
4. The subject property is located within a residential land use classification on the adopted Zoning Map and mainly surrounded by historic single-family residential properties.
5. The property is located outside of Flood Zone AE – Areas of 100-year flood and Flood Zone X – Areas of 500-year flood.
6. Adequate public facilities are available to serve the property.
7. The area is characterized by a mixture of single-family dwellings located in the Ingleside Planning Unit known as the Presidential District.

COMPLIANCE

1. A sign was posted on the property for which the request was filed as required by Section 17.80.010.B.
2. 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. [Exhibit A]

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.

Planning and Zoning staff conducted a site visit and concluded that the developer has limited buildable space due to the size and shape of the lot. Strict adherence to the ordinance would adversely affect the rhythm, site, and setting of the National Landmark District, and the State and National Register Historic Districts (Collectively known as historic districts for the balance of this report). The existing adjacent historic properties do not meet the setback distances in the zoning ordinance.

2. Variances shall not be granted to allow a use otherwise excluded from the particular district in which requested.

The construction of a new single-family home that has been proposed is a use by right in the R1 – Residential Zoning District.

3. Any variance granted under the provisions of this section shall be the minimum adjustment necessary for the reasonable use of the land.

The intent and purpose of this application for variance, if granted, is to mimic existing setbacks on adjacent historic properties and to allow the maximum 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 area. The granting of the proposed structure will not be detrimental to fire safety, clearance, preservation of light and open space and/or visual and aesthetic concerns. The variance will 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.

There is evidence of practical difficulty due to the size of the lot. The applicant has made an attempt to provide infill housing on an existing lot which has been vacant within the City of Deadwood. In many ways, this is efficient use of stranded infrastructure which is not fully utilized and does not require high costs and additional maintenance from the city services already provided to this area of the community.

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. There will be no significant adverse impacts on water supply, 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, and visual and aesthetic concerns.

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.

The applicant has paid the \$200.00 fee to process the variance and have the public 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.

The applicant has proven to the City of Deadwood Planning and Zoning office that they are the current owner of the subject property.

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.

ACTION REQUIRED

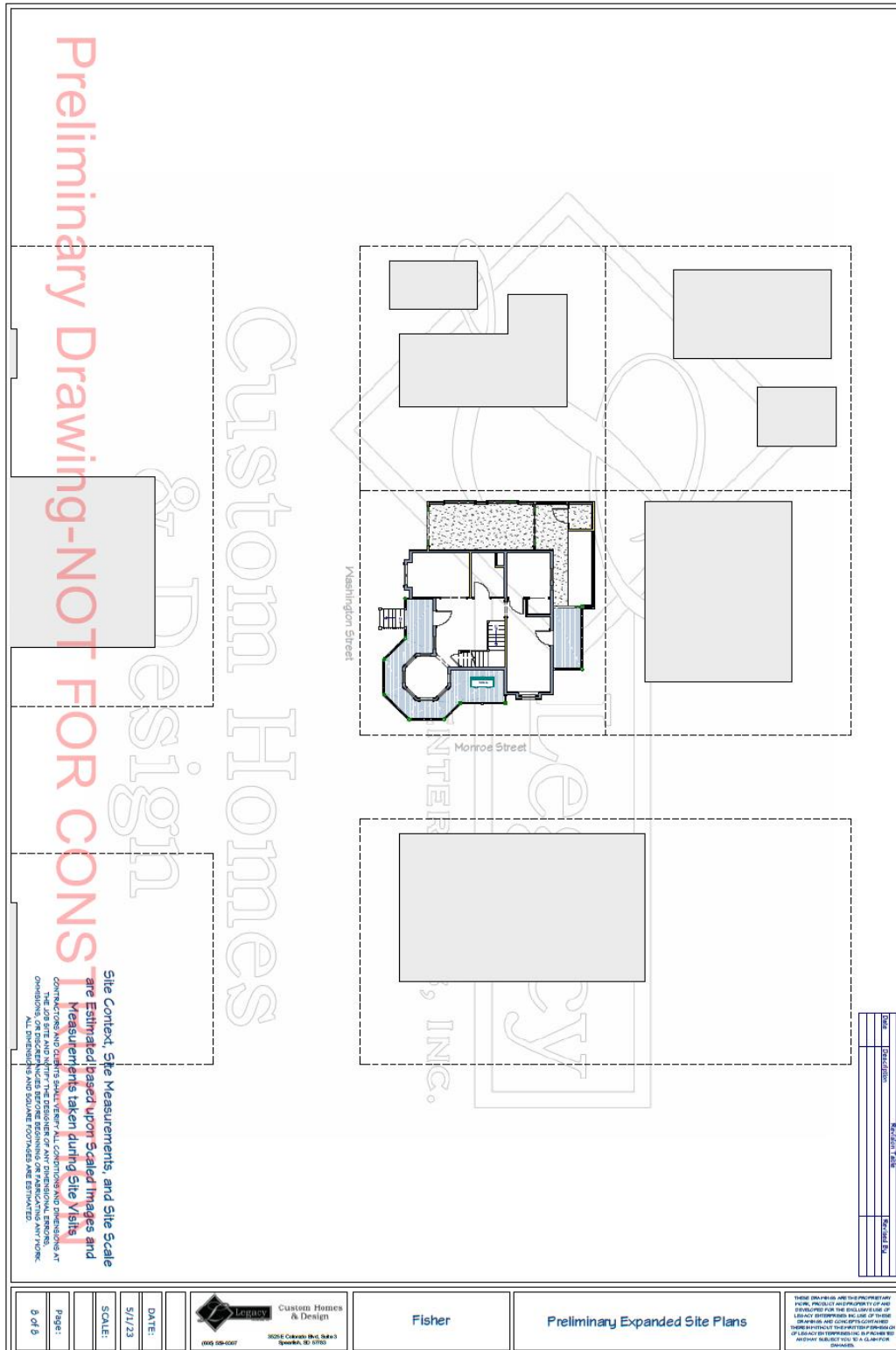
1. Recommended for approval by the Planning & Zoning Commission on June 21, 2023.
2. Approval / Denial by Deadwood Board of Adjustment

LOCATION MAP & SITE PLAN



Map showing the general vicinity of the subject property.

PRELIMINARY SITE PLAN



NOTICE OF PUBLIC HEARING

NOTICE OF PUBLIC HEARING BEFORE THE DEADWOOD BOARD OF ADJUSTMENT

City of Deadwood
Board of Adjustment
Deadwood, South Dakota 57732

NOTICE IS HEREBY GIVEN, that the following person(s) has applied to the City of Deadwood Planning and Zoning Office for a Variance to the Front and Side Yard Setbacks requirements found in Sections 17.24.040 (Residential Zoning District).

APPLICANTS: Jackie Diana Fisher and Bryan James Duffy Revocable Trust

LEGAL DESCRIPTION: TRACT C, BLOCK 53, A SUBDIVISION OF PART OF LOTS 1 AND 2, BLOCK 53, ORIGINAL TOWN, CITY OF DEADWOOD, LOCATED IN THE NW1/4 OF SECTION 26, T5N, R3E, BHM, LAWRENCE COUNTY, SOUTH DAKOTA

ADDRESS: Washington Street and Monroe Street (Vacant Lot)

ZONE: R1 Residential

NOTICE IS FURTHER GIVEN that said application will be heard by the Board of Adjustment within and for the City of Deadwood, State of South Dakota, at a regular meeting to be held Monday, July 3, 2023 in the Commission Room at 102 Sherman Street, Deadwood, South Dakota, will at 5:00 p.m. or soon thereafter as the matter at which time and place any such person interested may appear and show cause if there be any, why such special exception should not be granted.

NOTICE IS FURTHER GIVEN, that the proposed request for a Variance is on file and available for public examination at the Deadwood Planning, Zoning Office located at 108 Sherman Street, Deadwood, South Dakota.

ANY interested person or his/her agent is invited to submit oral or written comments or suggestions regarding the request to the Commissions or their agent prior to or at the public hearing.

Dated this 14th of June, 2023.

City of Deadwood, Lawrence County, South Dakota



Kevin Kuchenbecker
Planning, Zoning and Historic Preservation Officer

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