

OFFICE OF
PLANNING, ZONING AND
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**STAFF REPORT
REQUEST FOR VARIANCE
PLANNING AND ZONING COMMISSION
June 16, 2021**

APPLICANT: Rob & Wendy Nelson

PURPOSE: Request for Variance – Setbacks for R1

GENERAL LOCATION: 19 Centennial Street

LEGAL DESCRIPTION: Lot 8A, Block K, Original Townsite, City of Deadwood, Lawrence County, South Dakota Formerly Portions of Lots 8 and 9, Block K

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 foot setbacks according to Deadwood City Ordinance 17.24.040 (Area and Bulk Requirements). The Planning and Zoning Commission recently approved a replat of this area for the purpose of building a garage. According to the application submitted, due to the steep slope of the site, they are concerned with the amount of earth that will be excavated to build the garage. They are requesting that the setback be reduced to 10 feet to reduce the amount of excavation, reduce the cost of the structure to retain earth and increase safety of the excavation and construction crew.

EXISTING ZONING AND LAND USES

The property is currently zoned R1 – Residential District. This lot is located in the Williams Street neighborhood and is surrounded by legal non-conforming homes and garages as this entire area was established long before any zoning ordinances had been adopted by the City.

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.
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 eight (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.

According to the application, they are concerned with the amount of earth that will be excavated to build the garage and coupled with the slope of the property create a hardship on the owner to build a garage and maintain the front setback.

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 R1 - 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.

The intent and purpose of this application for variance, if granted, the minimum adjustment necessary to afford relief or the reasonable use of the land will be a ten-foot variance. 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. In fact, historically this would be a better representation of the historic Victorian style of homes and garages in the area.

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.

According to the application, they are concerned with the amount of earth that will be excavated to build the garage and coupled with the slope of the property create a hardship on the owner to build a garage and maintain the front setback.

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 Nelson's have 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 Nelson's have 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. **Recommendation by Planning and Zoning to Approve/Deny/Approve with conditions for a 10' variance from the front yard setback requirements in the R1 - Residential District.**