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## BOARD OF ADJUSTMENT REQUEST FOR A VARIANCE

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### Staff Report

Date: May 17, 2023  
From: Kevin Kuchenbecker  
Planning, Zoning & Historic Preservation Officer  
RE: Request for a Variance – Front Yard Setback

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**APPLICANT(S):** WJP Holdings, LLC (William Pearson)

**PURPOSE:** Single Family Home

**ADDRESS:** Mystery Wagon Road  
Deadwood, Lawrence County, South Dakota

**LEGAL DESCRIPTION:** LOT 1, BLOCK 3A OF THE PALISADES TRACT OF THE DEADWOOD STAGE RUN ADDITION TO THE CITY OF DEADWOOD LOCATED IN THE SW1/4 OF SECTION 14, THE SE1/4 OF SECTION 15, THE NE1/4 NE1/4 OF SECTION 22 AND THE N1/2 NW1/4 OF SECTION 23, T5N, R3E, B.H.M., CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA

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

**ZONE:** Planned Unit Development

**STAFF FINDINGS:**

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Surrounding Zoning:	Surrounding Land Uses:
North: Planned Unit Development	Residential Housing
South: Planned Unit Development	Vacant Hill Side
East: Planned Unit Development	Residential Housing
West: Planned Unit Development	Vacant Lot

**SUMMARY OF REQUEST**

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The applicant has submitted a request for a variance to the required 20' front yard setback according to Deadwood City Ordinance 17.24.040 (Area and Bulk Requirements) and 17.72.80 (Planned Unit Development). The applicant is requesting an 11' variance.

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## **FACTUAL INFORMATION**

1. The property is currently zoned Planned Unit Development.
2. The property is vacant until construction begins.
3. The subject property has access from Mystery Wagon Road
4. The subject property is located within a very low-density land use classification on the adopted Zoning Map.
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 Stage Run Neighborhood.

## **STAFF DISCUSSION**

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The Planning and Zoning Commission reviewed this request during the April 19, 2023 meeting and although they were unable to take action according to DCO 17.80 (Zoning Variance Appeals to the Board and Decisions of Board) the Commission did raise any concerns. The reason for this variance request is due to the unique footprint and terrain associated with the lot. The lot has very little buildable depth and the small home as proposed will encroach into the front yard setback.

The Planning and Zoning Administrator can administratively reduce the required setbacks in a Planned Unit Development up to 20%, however; this request proposes a front yard setback of 9 feet which exceeds the 20%.

## **COMPLIANCE**

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

## **VARIANCE**

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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. If fact, all lots on the south side of Mystery Wagon Road will likely need a variance for setbacks.*

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 a Planned Unit Development.*

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 an eleven-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.*

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 and shape of the lot. The developer is making every attempt to provide affordable housing to the City of Deadwood which will not only include this home but several additional small homes on this side of the Mystery Wagon Road.*

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**

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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. Approval / Denial by Deadwood Board of Adjustment**

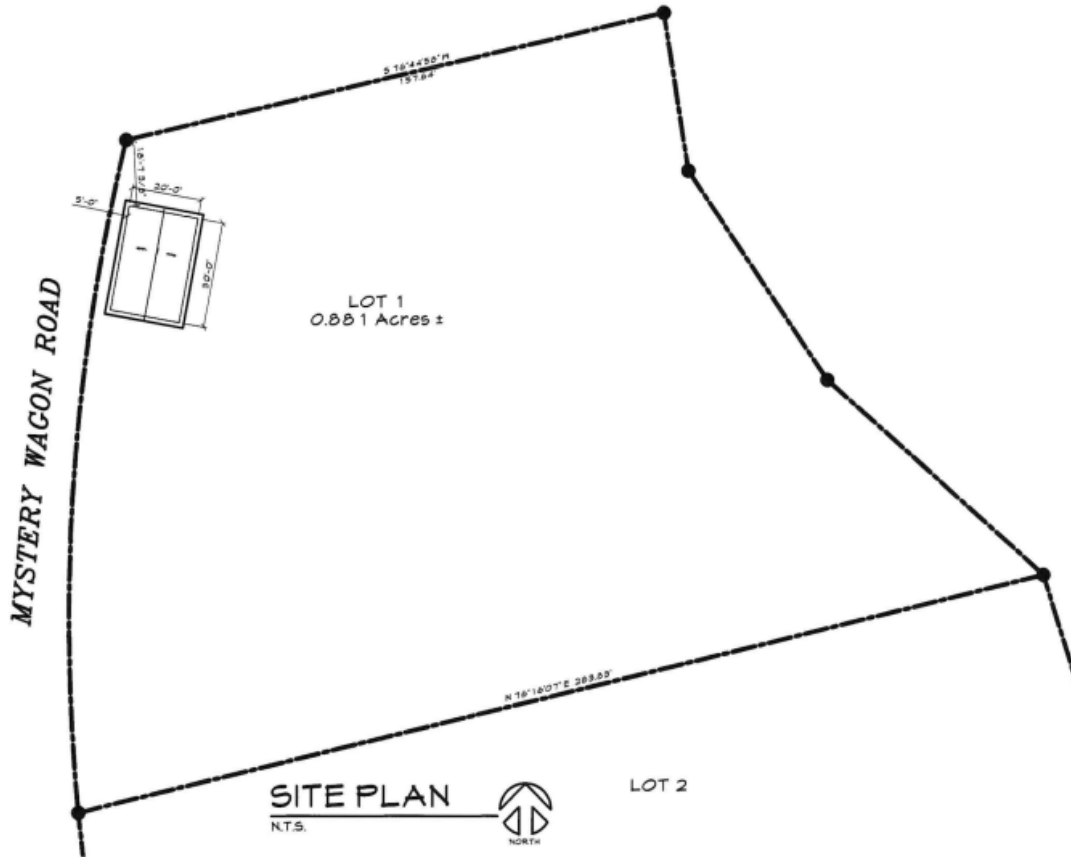
**LOCATION MAP & SITE PLAN**



Map showing the general vicinity of the subject property.



**PRELIMINARY SITE PLAN**



**EXHIBIT A**

Image of sign posted for variance





**EXHIBIT B**

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 Yard Setback requirements found in Sections 17.24.040 (Residential Zoning District) and 17.72.80 (Planned Unit Development).

**APPLICANTS:** WJP Holdings, LLC – William Pearson

**LEGAL DESCRIPTION:** LOT 1, BLOCK 3A OF THE PALISADES TRACT OF THE DEADWOOD STAGE RUN ADDITION TO THE CITY OF DEADWOOD LOCATED IN THE SW1/4 OF SECTION 14, THE SE1/4 OF SECTION 15, THE NE1/4 NE1/4 OF SECTION 22 AND THE N1/2 NW1/4 OF SECTION 23, T5N, R3E, B.H.M., CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA

**ADDRESS:** Mystery Wagon Road

**ZONE:** Planned Unit Development

**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, May 15, 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 5th of May, 2023.

City of Deadwood, Lawrence County, South Dakota



Kevin Kuchenbecker  
Planning, Zoning and Historic Preservation Officer

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