



BOARD OF ADJUSTMENT CONDITIONAL USE PERMIT – ANNUAL REVIEW

Staff Report

Date: December 16, 2024
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
To: Board of Adjustment
RE: Annual Review - Conditional Use Permit – Bed and Breakfast
Establishment

APPLICANT(S): First Deadwood Cottages
PURPOSE: Annual Review – Conditional Use Permit – Bed and
Breakfast Establishment
ADDRESS: 388/390 Main Street
Deadwood, Lawrence County, South Dakota
LEGAL DESCRIPTION: Lot 12 and the south half of Lot 13, both lots in Block 3
in the Fountain City addition to the City of Deadwood,
together with all improvements thereon and
appurtenances thereunto belonging, subject to
covenants, restrictions and reservations of record.
FILE STATUS: Legal obligations have been met.
ZONE: CH – Commercial Highway
STAFF FINDINGS:

Surrounding Zoning:	Surrounding Land Uses:
North: CH – Commercial Highway	Commercial
South: CH – Commercial Highway	Commercial
East: PU – Public Use	Highway
West: R1 – Residential	Residential

SUMMARY OF REQUEST

The Deadwood City Commission has directed the Planning and Zoning Commission to conduct annual reviews of all Conditional Use Permits in accordance with City of Deadwood Municipal Code 17.76.060. The applicant was

issued a Conditional Use Permit on December 31, 2023, to operate a Bed and Breakfast Establishment at 388 Main Street.

The subject property is located on the highway and sits in between two other commercial buildings.

FACTUAL INFORMATION

1. The property is currently zoned CH – Commercial Highway.
2. The subject property has access from Main Street.
3. The subject property has access to off-street parking via a driveway parking lot located on the premises.
4. The property is not in a Flood Zone.
5. Adequate public facilities are available to serve the property.
6. The area is characterized by businesses that sit along the highway, with access to single family homes located behind the establishment.

STAFF DISCUSSION

The applicant was granted a Conditional Use Permit for a Bed and Breakfast Establishment and City regulations permit Bed and Breakfast Establishments in CH - Commercial Highway Districts with an approved Conditional Use Permit. The subject property has ten (10) bedrooms, and ten (10) bathrooms spread over four (4) cottages. According to advertisements, the establishment can accommodate up to twenty-four (24) guests per night. Guests can park off-street in the parking lot located on the property.

It does not appear, from viewing advertisements for the property, that family-style meals are being provided to guests. Due to the large size of the establishment, and the absence of family style meals being served, reconsideration may need to be given as to the current classification as a Bed and Breakfast Establishment. A more appropriate designation may be of a Vacation Home Establishment.

“Bed and Breakfast” is defined as:

Any building run by an operator that is used to provide accommodations for a charge to the public, with at most five (5) rental units for up to an average of ten (10) guests per night and in which family style meals are provided as defined and permitted by the State of South Dakota.

“Vacation Home Establishment” is defined as:

Any home, cabin, or similar building that is rented, leased, or furnished in its entirety to the public on a daily or weekly basis for more than fourteen (14) days in a calendar year and is not occupied by an owner or manager during the time of rental.

COMPLIANCE:

This Bed and Breakfast Establishment has been in continual use over the last 12 months.

No complaints are on record for this establishment.

According to Deckard – Rentalscape the property was booked 194 nights in the past 12 months and has received very good reviews.

GENERAL USE STANDARDS FOR CONDITIONAL USE PERMITS:

In reviewing any application under the authority of this chapter and as a further guide to its decision upon the facts of the case, the Commission(s) shall consider, among other things, the following facts:

- A. The proposed use shall be in harmony with the general purposes, goals, objectives, and standards to the city policy plan, the ordinance, the district in which it is located, or any other plan, program, map, or ordinance adopted, or under consideration pursuant to official notice by the City of Deadwood.

The City Comprehensive Plan encourages a variety of uses and a mixture of housing types. Traffic and parking should not significantly affect the neighborhood if the applicant continues to abide by the off-street parking requirements associated with Short-Term Rentals. This area is of mixed use, with businesses situated along the highway and single-family homes located behind the property.

- B. Whether or not a community need exists for the proposed use at the proposed location in light of existing and proposed uses of a similar nature in the area and of the need to provide or maintain a proper mix of uses both within the city and also within the immediate area of the proposed use: (a) the proposed use in the proposed location shall not result in either a detrimental over concentration of a particular use from previously permitted uses within the city or within the immediate area of the proposed use.

The subject area is zoned CH- Commercial Highway District and is intended to provide locations for commercial uses, which require access to roads and highways, and substantial amounts of parking. The current use has not resulted in an over-concentration of Short-Term Rentals within the immediate area.

- C. The proposed use at this location shall not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvement, public sites, or rights-of-way.

The applicant only uses off-street parking and the manager's office is located onsite. The current use has not resulted in a substantial or undue adverse effect on adjacent property, or the character of the neighborhood and the use has not altered the character of the neighborhood.

- D. Whether or not a previously approved Conditional Use Permit that is still in use increases the proliferation of nonconforming uses. For any conditional use, lot and performance standards shall be the same as similar type uses located in specific districts. The character and use of buildings and structures adjoining or near the property mentioned in the application shall be considered in their entirety.

The current use has not increased the proliferation of non-conforming uses. The subject residence is in an area that has many hotels, casinos and Short-Term Rentals. The appearance of the structure has not changed; therefore, the character and use of the buildings and structures adjoining the subject property have not been adversely affected.

- E. Whether or not the current use in the proposed area will be adequately served by, and will not impose an undue burden on, any improvements, facilities, utilities, and services.

The proposed use has not caused significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services. Existing services are available onsite. All utilities have been assigned commercial rates.

CONDITIONS GOVERNING APPLICATIONS AND PROVISIONS:

- A. Conditional Use Permits shall be temporary in nature. They are not transferable from person to person or from address to address.
- B. Following the issuance of a Conditional Use Permit, such permit may be amended, varied, or altered only pursuant to the standards and procedures established for its original approval.
- C. The Board of Adjustments can revoke Conditional Use Permits, once granted, for cause after a hearing is held before them. Complaints seeking the revocation of such permit shall be filled with the Planning and Zoning Administrator and may be initiated by the Planning and Zoning Commission OR any three (3) residents within three hundred (300) feet of the property lines of which the application has been filed. All such revocation hearings shall be conducted in the same manner as for the Conditional Use Permit application hearings.
- D. The Planning and Zoning Commission shall have the authority to review Conditional Use Permits at any time and/or on an annual basis and place additional stipulations to mitigate a problem.
- E. Any use permitted under the terms of any Conditional Use Permit shall be established and conducted in conformity with the terms of such permit and of any conditions designated in connection therewith.
- F. If the use permitted under the terms of a Conditional Use Permit has not been started within six (6) months of the date of issuance thereof, said

permit shall expire and be canceled by the City Planning Department. Written notice thereof shall be given to the person(s) affected, together with notice that further use or work as described in the canceled permit shall not proceed, unless and until a new Conditional Use Permit has been obtained.

- G. If the use permitted under the terms of a Conditional Use Permit ceases, for whatever reason, for a period of twelve (12) months, said permit shall expire and be canceled by the City Planning Department. Written notice thereof shall be given to the person(s) affected, together with notice that further use or work as described in the canceled permit shall not proceed, unless and until a new Conditional Use Permit has been obtained.

If approved for continued use, staff recommends continuing to require the following stipulations plus the change of categorization of the short-term rental:

1. Proof of a South Dakota Department of Revenue sales tax number has been provided to the Planning and Zoning Office for their files.
2. Update the City of Deadwood Short-Term Rental License to reflect the property is being utilized as a Vacation Home Establishment instead of a Bed and Breakfast Establishment.
3. Update the State of South Dakota Department of Health Lodging License to reflect a Vacation Home Establishment instead of a Bed and Breakfast Establishment.
4. Provide a copy of the South Dakota Department of Health Lodging License to the Planning and Zoning Office for their files on an annual basis.
5. Maintain a City of Deadwood Business License.
6. Proper paperwork is filed with the City of Deadwood Finance Office for Business Improvement District (BID) taxes.
7. The Building Inspector has inspected the building, and it meets all relevant building codes.
8. City water and sewer to remain at commercial rates.
9. All parking shall be off street.

ACTION REQUIRED FOR CONDITIONAL USE PERMIT:

1. Approval/Denial of continued use by Deadwood Board of Adjustment with conditions (approved by the Planning and Zoning Commission on December 4, 2024).