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## BOARD OF ADJUSTMENT STAFF REPORT REQUEST FOR VARIANCE

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### Staff Report

**Date:** July 7, 2025  
**To:** Board of Adjustment  
**From:** Kevin Kuchenbecker  
Planning, Zoning & Historic Preservation Officer  
**RE:** Request for Variance

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**APPLICANT(S):** Sara Hyser

**PURPOSE:** Request for Variance

**ADDRESS:** 125A Mystery Wagon Road

**LEGAL DESCRIPTION:** Lot 14A, Block 4A of Palisades Tract of Deadwood Stage Run Addition to the City of Deadwood formerly Lot 14, Block 4A located in the SW  $\frac{1}{4}$  of Section 14, the SE  $\frac{1}{4}$  of Section 15, the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  of Section 22 and the N  $\frac{1}{2}$  NW  $\frac{1}{4}$  of Section 23, T5N, R3E, B.H.M., City of Deadwood, Lawrence County, South Dakota.

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

**ZONE:** R2 – Multi-Family Residential

### STAFF FINDINGS:

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#### Surrounding Zoning:

North: R2 – Multi-Family Residential  
South: R2 – Multi-Family Residential  
East: R2 – Multi-Family Residential  
West: R1 – Residential

#### Surrounding Land Uses:

Residences  
Undeveloped  
Residences  
Undeveloped

## **SUMMARY OF REQUEST**

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The applicant has applied for a variance to Ordinance Chapter 17.28.040 (B) – Area and Bulk Requirements (Minimum front yard, principal buildings and uses: twenty (20) feet), and Chapter 17.28.040 (C) – Area and Bulk Requirements (Minimum side yard, principal buildings and uses: five (5) feet).

## **FACTUAL INFORMATION**

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1. The property is currently zoned R2 – Multi-Family Residential.
2. The property is not located within a flood zone.
3. The area is characterized by a mixture of duplexes and single-family homes.

## **STAFF DISCUSSION**

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The applicants have submitted a Request for a Variance to Ordinance 17.28.040 (B) – Area and Bulk Requirements. (Minimum front yard, principal buildings and uses: twenty (20) feet) and Ordinance 17.28.040 (C) – Area and Bulk Requirements (Minimum side yard, principal buildings and uses: five (5) feet). According to the application, a balcony is to be built above the garage. The balcony will extend five (5) feet into the front yard setback area and three (3) feet into the side yard setback area.

## **COMPLIANCE:**

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1. The Zoning Office provided notice identifying the applicant, describing the project and its location, and giving the scheduled date of the public hearing in accordance with SDCL 11-4-4.
2. A sign was posted on the property for which the requests were filed.
3. Notice of the time and place was published in the designated newspaper of the City of Deadwood.

## **GENERAL USE STANDARDS FOR VARIANCE REQUESTS:**

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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:

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 title would result in peculiar, exceptional, and undue hardship on the owner of such property. The aforesaid circumstances or conditions shall be set forth in the findings of the board.

*The front yard of 125A Mystery Wagon Road measures approximately 36 feet in width by 16+/- feet in length. The length of the driveway is less than the twenty (20) foot setback required in 17.28.040 (B) due to an administrative variance provided at the time of construction of the home. A balcony is desired by the property owner and will be placed over the garage. French doors will lead from the home to the balcony.*

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

*The subject property is in Zoning District R2 – Multi-Family Residential, and decks attached to homes are allowed within this zone.*

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

*The proposed balconies will measure five (5) feet in depth and eighteen (18) feet in width. Because the depth of the front yard/driveway is less than twenty (20) feet, the deck measuring five (5) feet in depth will encroach into the required setback area. In addition, the eighteen (18) feet width of the deck will encroach on the setback of five (5) feet for an interior lot line. Because the two balconies will only be a few feet from each other, fire resistant materials will need to be used in the construction of the balconies.*

4. The granting of any variance is in harmony with the general purposes and intent of this title 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.

*The granting of this variance is not anticipated to be injurious and/or detrimental to the public welfare. It is required that the property owner utilize fire resistant materials in the construction of the balconies.*

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 knowledge of the restrictions; it must result from the application of this title; it must be

suffered directly by the property in question; and evidence of variance granted under similar circumstances shall not be considered.

*The current configuration of the duplex does not allow the front of the home to be utilized as livable outdoor space due to the nature of the design. A balcony would allow the owner to further utilize the outdoor space and take advantage of the views.*

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 proposed variance will not impair light and air to adjacent properties, nor will it increase the congestion in the public streets. Because the two balconies will only be a few feet from each other, fire resistant materials will need to be used in the construction of the balconies*

7. A fee, as adopted by resolutions, due and payable prior to the public hearing, shall be 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 paid an application fee at the time the Request for Variance was submitted to the Zoning Administrator.*

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.

*Per the Lawrence County online database, the applicant is the owner of the subject property.*

#### **CONDITIONS GOVERNING APPLICATIONS AND PROVISIONS:**

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1. 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 year upon the receipt of a written request from the applicant demonstrating good cause for the delay.
2. If upon review by the Zoning Administrator, a violation of any condition imposed on the 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 the 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 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 board's decision.

If approved, staff recommendations for stipulation(s):

1. Fire Department to inspect the balcony to ensure it meets applicable fire codes.
2. Building Inspector to inspect the balcony to ensure it meets applicable building codes.

**ACTION REQUIRED:**

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1. Approval/Denial by Deadwood Board of Adjustment (approved by Planning and Zoning Commission July 2, 2025).