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## BOARD OF ADJUSTMENT STAFF REPORT CONDITIONAL USE PERMIT

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### Staff Report

**Date:** March 16, 2026  
**To:** Board of Adjustment  
**From:** Kevin Kuchenbecker  
Planning, Zoning & Historic Preservation Officer  
**RE:** Conditional Use Permit – Bed and Breakfast Establishment

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**APPLICANT(S):** Greg and Cari Rothenhoefer

**PURPOSE:** Application for CUP – Bed and Breakfast Establishment

**ADDRESS:** 21 Spring Street

**LEGAL DESCRIPTION:** Lots 1 and 2, Block 5, Howard's Addition to the 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: R2 – Multi-Family Residential

Surrounding Land Uses:

Residences

Open Space

Residences

Residences

### SUMMARY OF REQUEST

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The applicants have submitted a request for a Conditional Use Permit to operate a Bed and Breakfast Establishment located at 21 Spring Street. The Bed and Breakfast Establishment would offer guests three (3) bedrooms. The owners have

indicated they intend to stay onsite when guests are present by creating an owners suite in the garage/basement area. Parking is available for guests via a driveway. Overflow parking would be available by utilizing a neighboring lot. The owners have stated they have permission from the neighbors to utilize the lot in such a way.

### **FACTUAL INFORMATION**

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1. The property is currently zoned R2 – Multi-Family Residential.
2. The subject property has access from Spring Street with off-street parking via a driveway and one (1) car garage.
3. The subject property is located within an R2 – Multi-Family Residential zoning location on all sides.
4. The property is not located within a flood zone.
5. Adequate public facilities are available to serve the property.
6. The area is characterized by single family residential properties and open space.
7. The structure is listed as “non-owner occupied” by Lawrence County Department of Equalization.

### **STAFF DISCUSSION**

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The applicants have submitted a request for a Conditional Use Permit for a Bed and Breakfast Establishment and City regulations permit Bed and Breakfast Establishments in R2 – Multi-Family Residential zoning districts with an approved Conditional Use Permit. According to their application, there is adequate off-street parking via a driveway and one (1) car garage providing ingress/egress onto Spring Street.

The Deadwood Zoning Code 17.08 and South Dakota Codified Law defines a Bed and Breakfast Establishment as the following:

**“Bed and Breakfast Establishment” means:**

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.

1. No Bed and Breakfast Establishment shall be located on a lot closer than two hundred (200) feet from any other lot occupied with a structure used as a Bed and Breakfast Establishment in R1 and R2 zoning districts.

*In this instance there is not another Bed and Breakfast Establishment located within 200 feet of the property.*

2. Applicants proposing tandem parking shall be required to provide a control board for the keys of the guests. The owner/manager shall be responsible for the control board.

*Per the site plan provided by the applicant, tandem driveway/garage parking will be offered to guests.*

### **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 Section 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 CONDITIONAL USE PERMITS:**

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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:

- 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. Preserving the existing stock of historic structures by working with individuals and guiding the uses is an acceptable means of achieving this goal. Traffic and parking have not significantly affected the neighborhood. This area is characterized by single-family dwellings.*

- 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 R2 – Multi-Family Residential and is intended to provide locations for medium density, multiple-family units such as duplexes, townhouses, condominiums and apartment developments.*

- 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 right-of-way.

*If the applicant only uses off street parking and prevents any public nuisance issues that are often associated with Bed and Breakfast Establishments, the proposed use may not result in a substantial or undue adverse effect on adjacent properties, or the character of the property and the use would not alter the character of the district. It should be noted; this street is not conducive for off-street parking. There will be no change in the size of the dwelling. To support the denial of a Conditional Use Permit on the grounds that it will cause increased traffic problems, there must be a high degree of probability that the increase would pose a substantial threat to the health and safety of the community.*

- D. Whether or not the proposed use increases the proliferation of non-conforming uses as well as previously approved Conditional Use Permits which are still in use, when influenced by matters pertaining to the public health, safety, and general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of provisions and policies of the Policy Plan, this ordinance, or any other plan, program, map or ordinance adopted, or under consideration pursuant to official notice, by the city or other governmental agency having jurisdiction to guide growth and development.

For any conditional use, lot and performance standards shall be the same as similar 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 proposed use would not increase the proliferation of non-conforming uses. The appearance of the structure will not change; therefore, the character and use of the buildings and structures adjoining the subject property will not be adversely affected. Currently, there are no other short-term rentals licensed in this neighborhood.*

- E. Whether or not the proposed use in the proposed area will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, and services specified in city ordinance. Where any such improvements, facilities, utilities or services are not available or adequate to service the proposed use in the proposed location, the applicant, as part of the application and as a condition to approval of the proposed Conditional Use Permit, is responsible for establishing ability, willingness and binding commitment to provide such improvements, facilities, utilities and services in sufficient time and in a manner consistent with the policy plan, this title, and other plans, programs, maps and ordinances adopted by the city to guide its growth and development. The approval of the Conditional Use Permit shall be conditioned upon such improvements, facilities, utilities, and services

being provided and guaranteed by the applicant as described in Section 17.04.110.

*The proposed use will not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services. Existing services are available onsite.*

**CONDITIONS GOVERNING APPLICATIONS AND PROVISIONS:**

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- A. In the R1 Residential District and/or R2 Multi-Family Residential District, Conditional Use Permits granted by this chapter shall be temporary in nature, with the exception of townhouses, condominiums and multi-family dwellings, and shall be granted to a designated person who resides at a residential address. They are not transferable from person to person or from address to address.
- B. Following the issuance of a Conditional Use Permit pursuant to the provisions of this ordinance, such permit may be amended, varied, or altered only pursuant to the standards and procedures established by this section for its original approval.
- C. Conditional Use Permits, once granted, can be revoked by the Board of Adjustment for cause after a hearing is held before them. Complaints seeking the revocation of such permit shall be filed with the 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. To defray the administrative costs of processing requests for Conditional Use Permits, a fee has been set by resolution of the City Commission, and such information is available at the Planning and Zoning Office.
- F. 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 therewith.
- G. 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.

- H. 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.
- I. Upon receipt in proper form of the application and other requested material, the Board of Adjustment shall hold at least one (1) public hearing in a location to be prescribed by the Board of Adjustment and shall make a decision upon the proposal to grant or deny the Conditional Use Permit. At least ten (10) days in advance of each hearing, notice of the time and place of such hearing shall be published in the official newspaper of the city. Notice shall be posted on the property for which the Application for Conditional Use Permit has been filed.

If approved for a Conditional Use Permit, staff recommend the following stipulation(s):

1. The Conditional Use Permit runs with the applicant and not the land; therefore, should the property be sold, the Conditional Use Permit is null and void.
2. Proof of a state sales tax number shall be provided to the Planning and Zoning Office for their files.
3. The Building Inspector shall have the right to inspect the premises to ensure compliance with applicable building codes. If renovations are made to the property, appropriate building permits shall be issued.
4. City water and sewer rates to be changed from residential to commercial rates.
5. Proper paperwork shall be filed with the City of Deadwood Finance Office for Business Improvement District (BID) taxes.
6. A City of Deadwood Business License shall be obtained.
7. A City of Deadwood Short-Term Rental License shall be obtained.
8. Obtain Lodging License after inspection from the South Dakota Department of Health.
9. All parking shall be off street and a parking agreement with the adjoining owner for overflow parking must be submitted to the Planning and Zoning Office.
10. Conditional Use Permits are reviewed on an annual basis. Applicants are encouraged to participate in the annual review process.
11. The Bed and Breakfast Establishment must provide family style meals by the operator.

12. The Bed and Breakfast Establishment's owner or owner's representative must be on-site when guests are present.
13. If the permitted use under the terms of the Conditional Use Permit has not been started within six (6) months of the date of issuance thereof, the permit shall expire and be cancelled by the City Planning Department.
14. Meet conditions required by Public Works Department pertaining to driveway stabilization and erosion control conditions.

**ACTION REQUIRED:**

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1. Approval/Denial by Deadwood Board of Adjustment (Denied by Planning and Zoning Commission February 18, 2026)