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BOARD OF ADJUSTMENT STAFF REPORT CONDITIONAL USE PERMIT

Staff Report

Date: July 15, 2024
To: Board of Adjustment
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Conditional Use Permit – Dwelling Unit, Single Family

APPLICANT(S): Terry and Dawn Bahr

PURPOSE: Application for CUP – Construction of Dwelling Unit, Single Family

ADDRESS: 307 Cliff Street

LEGAL DESCRIPTION: Lot 1 revised of the subdivision of Tract E-1 formerly Lot 1 of the subdivision of Tract E-1 being a portion of Hillside Placer M.S. 749 located in the SE ¼ of Section 27, T5N, R3E, B.H.M. City of Deadwood, Lawrence County, South Dakota.

FILE STATUS: All legal obligations have been completed.

ZONE: CH – Commercial Highway

STAFF FINDINGS:

Surrounding Zoning:

North: CH – Commercial Highway
South: CH – Commercial Highway
East: CH – Commercial Highway
West: CH – Commercial Highway

Surrounding Land Uses:

Highway
Vacation Home Establishment
Vacation Home Establishment
Vacation Home Establishment

SUMMARY OF REQUEST

The applicants have submitted a request for a Conditional Use Permit to construct a Dwelling Unit, Single Family in a CH – Commercial Highway zoning district. On April 24, 2024, a plat was recorded subdividing the existing single lot at 305 Cliff Street into two (2) separate lots. The new lot that was created has been assigned the address 307 Cliff Street. The owners of both 305 and 307 Cliff Street desire to construct a Dwelling Unit, Single Family at 307 Cliff Street.

FACTUAL INFORMATION

1. The property is currently zoned CH – Commercial Highway.
2. The owners of the property operate a Vacation Home Establishment located on the neighboring lot of 305 Cliff Street. The intent of constructing a Dwelling Unit, Single Family at 307 Cliff Street is to provide them a home for personal use near their current Short-Term Rental location.
3. The subject property has access from 305 Cliff Street via a twenty-five (25) foot access easement.
4. The subject property is located within a CH – Commercial Highway zoning location on all sides.
5. The property is not located within a flood zone.
6. Adequate public facilities are available to serve the property.
7. The area is characterized by a mixture of businesses, hotels, campgrounds, and Vacation Home Establishments.

STAFF DISCUSSION

The applicants have submitted a request for a Conditional Use Permit to construct a Dwelling Unit, Single Family and City regulations permit single family homes in CH – Commercial Highway zoning districts with an approved Conditional Use Permit. The applicants operate a Vacation Home Establishment on the neighboring lot, located at 305 Cliff Street, and desire a personal home near their existing business. The applicants are aware that due to the proximity of other Vacation Home Establishments in the area, the Dwelling Unit, Single Family that is to be constructed will be unable to be used as Vacation Home Establishment, to maintain compliance with City of Deadwood Ordinance 17.76.

The Deadwood Zoning Code 17.08 defines a Dwelling Unit, Single Family as the following:

“Dwelling Unit, Single Family” means:

A detached residential dwelling unit other than a mobile home, containing only one dwelling unit and not occupied by more than one family and not used for carrying on any commercial or business activity including providing housing for transient persons.

South Dakota Codified Law 10-13-39 defines a Dwelling Unit, Single Family as the following:

“Dwelling Unit, Single Family” means:

An owner-occupied single-family dwelling is a house, condominium apartment, residential housing consisting of four (4) or less family units, town house, housing cooperatives...which is assessed and taxed as a separate unit, including an attached or unattached garage and the parcel of land upon which the structure is situated is recorded in the records of the director of equalization. A person may only have one dwelling, which is the person’s principal place of residence as defined in Section 12-1-4, classified as an owner-occupied single-family dwelling.

1. Dwelling Units, Single Family may be permitted in the CH – Commercial Highway district under Chapter 17.40.030, Conditional Uses:

The property is in a CH – Commercial Highway zoning district. The applicants plan to utilize the Dwelling Unit, Single Family as an owner-occupied residence, and to maintain compliance with Zoning Code 17.08 by not utilizing the property for any commercial or business activity, including that of providing housing for transient persons.

COMPLIANCE:

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 10.10.B.
2. A sign was posted on the property for which the requests were filed.
3. Notice of the time and place of public hearing was published in the designated newspaper of the City of Deadwood.

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 the development of a variety of housing types and to increase the supply of single-family housing units.

- 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 and is intended to provide locations for commercial uses, which require access to roads and highways, and substantial amounts of parking. The proposed use in the proposed location will not result in a detrimental over concentration of single-family homes.

- 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 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. To support a 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 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 proposed use would not increase the proliferation of non-conforming uses for the purposes of Dwelling Units for Single Family use.

- 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 this section.

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 will be made available onsite.

CONDITIONS GOVERNING APPLICATIONS AND PROVISIONS:

- A. 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.
- B. 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 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.
- C. 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.
- D. 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.
- E. 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, staff recommendations for stipulation(s):

1. The Conditional Use Permit allows for usage as an owner-occupied residence. Utilization of the property for any commercial or business activity, including that of providing housing for transient persons, is not permitted.
2. A lot or legal subdivision shall be allowed only one (1) Conditional Use Permit per ordinance 17.76.010.
3. City of Deadwood Building Inspector must inspect building to ensure it meets all applicable building codes.

ACTION REQUIRED:

1. Approved by Deadwood Planning and Zoning Commission on Wednesday, July 3, 2024.
2. Approval/Denial by Deadwood Board of Adjustment