



**STAFF REPORT
REQUEST FOR VARIANCE
PLANNING AND ZONING COMMISSION
October 5, 2022**

APPLICANT: Dana Foreman – KLJ Engineering on behalf of The Summit at Deadwood Stage Run (Bill Pearson)

PURPOSE: Request for Variance – 16.04.020 K Street Grades and Alleys. Maximum street grades R1 (Residential) District 9%.

GENERAL LOCATION: Stage Run Subdivision

LEGAL DESCRIPTION: Palisades Tract of Deadwood Stage Run Addition, formerly Tracts E, F, G, H, I, J, K and L and the remaining portion of MS 696 Palisades Stone Placer, all located in the SW1/4, Section 14, the SE1/4 of Section 15, the NE1/4NE1/4 of Section 22 and the N1/2NW1/4 of Section 23, T5N, R3E, BHM, City of Deadwood, Lawrence County, South Dakota

FILE STATUS: All legal obligations have been completed

ZONE: Park Forest

STAFF FINDINGS:

Surrounding Zoning:

North: Planned Unit Development (R1)
South: Planned Unit Development (PF)
East: Planned Unit Development (PF)
West: Planned Unit Development (PF)

Surrounding Land Uses:

Residential Housing
Vacant Land
Vacant Land
Residential Housing

SUMMARY OF REQUEST

The applicant has submitted a request for a variance to the design standards for streets and alleys required by Deadwood City Ordinance 16.04.020 Streets and Alley, K. Street Grades. The ordinance allows for the grade of streets in a residential zoning district to be a maximum grade of 9%. The application states they are proposing street longitudinal slopes in four areas that will be greater than the maximum allowed. These grades are: 9.98 %, 10%, 11.42%, and 12%. The application states the design engineer lowered the slopes as much as possible, but existing terrain

and bedrock prevent further lowering of the slopes to maintain buildable lots on both sides of the road.

EXISTING ZONING AND LAND USES

The property is currently zoned PF – Park Forest and is located within the Planned Unit Development Boundary of the Stage Run Development. Soon, the developer will be requesting a zoning amendment for this area to be changed to R1 Residential. The area is surrounded by vacant land but has been planned for residential development since 2006.

Environmental Corridor Status: The property is located outside of the Flood Area.

COMPLIANCE:

1. The Zoning Officer provided notice identifying the applicant, describing the project and its location and giving the scheduled date and time of the public hearing in accordance with Section 17.80.010.B. This notice was mailed to property owners within 300 feet of the subject property.
2. A sign was posted on the property for which the request was filed as required by Section 17.80.010.B.
3. 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.

VARIANCE

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.

According to the application, existing terrain and bedrock prevent further lowering of the slopes to maintain buildable lots on both sides of the road.

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

The subject use is a use by right in the PF and R1 Zoning District.

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

The developer has stated that they have reduced as much as possible while still allowing for buildable lots.

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.

This area is currently occupied by vacant land but is part of the overall masterplan that was approved by the City of Deadwood in 2006. Approval of this variance will allow for new residential structures to be built. In that sense, the proposed project is compatible with the area. The granting of the proposed variance will not be detrimental to fire safety, clearance, preservation of light and open space and/or visual and aesthetic concerns.

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.

According to the application, existing terrain and bedrock prevent further lowering of the slopes to maintain buildable lots on both sides of the 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. At this time, we are still determining the impact on our water supply but there will be no significant adverse impacts on the 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.

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:

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. **Recommendation by Planning and Zoning to Approve/Deny/Approve with conditions for Request for Variance – 16.04.020 K. Street Grades and Alleys. Maximum street grades R1 (Residential) District 9%.**
2. **Approve/ Deny/ Approve with Conditions by City of Deadwood Board of Adjustment.**