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## BOARD OF ADJUSTMENT REQUEST FOR A VARIANCE

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### Staff Report

Date: July 11, 2023  
From: Kevin Kuchenbecker  
Planning, Zoning & Historic Preservation Officer  
RE: Request for a Variance – 16.04.020 K Street Grades and Alleys.  
Maximum street grades 9%.

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**APPLICANT(S):** TRD, LLC (Randy & Cheri Horner)  
**PURPOSE:** Variance – 16.04.020 (K) Street Grades and Alleys.  
**ADDRESS:** The RIDGE at Deadwood development  
Deadwood, Lawrence County, South Dakota  
**LEGAL DESCRIPTION:** Remainder of Preacher Smith Tract (Less Lot A of the Ridge Development); Lots 1 & 22, Block 1B of the Ridge Development; and Block 1 and Block 1A of the Ridge Development, City of Deadwood, Lawrence County, South Dakota  
**ZONE:** PUD – Planned Unit Development with the following Zones:  
R1 – Residential District  
R2 – Multi-Family  
CH – Commercial Highway

### STAFF FINDINGS:

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Surrounding Zoning:	Surrounding Land Uses:
North: Lawrence County	Black Hills National Forest
South: PUD – Planned Unit Development	Tatanka – Justice Center
East: Lawrence County	Residential Housing
West: CH – Commercial Highway	Light – Medium Business

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## **SUMMARY OF REQUEST**

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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 a variety of areas that will be greater than the maximum allowed.

These street grades areas which are greater than the 9 percent requirement of our ordinance are shown on the attached application. The total linear feet is shown below:

- less than 10% = 173± linear feet
- less than 11% = 434± linear feet
- less than 12% = 234± linear feet
- less than 13% = 74± linear feet
- less than 14% = 50± linear feet
- less than 15% = 51± linear feet
- Total greater than 9% 1,016± linear feet

In the application the design engineer states extreme topography and bedrock conditions are present on existing development site which limits lowering grades further. The attached application also shows the longitudinal slopes at each of the intersections within the development.

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## **FACTUAL INFORMATION**

1. The property is currently zoned PUD – Planned Unit Development.
2. The development will have three accesses from US Highway 85 via Ridge Drive, Gold Spike Drive, and Preacher Smith Drive.
3. The property is located outside of Flood Zone AE – Areas of 100-year flood and Flood Zone X – Areas of 500-year flood.
4. Adequate public facilities are available to serve the property.

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## **COMPLIANCE**

1. A sign was posted on the property for which the request was filed as required by Section 17.80.010.B.
2. 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. [Exhibit A]

## **VARIANCE**

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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:**

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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, extreme topography and bedrock conditions are present on existing development site which limits lowering grades further.*

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

*The subject use is part of an overall planned unit development and is not infringed by the issuance of this variance.*

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, one apartment complex under construction, and utility work currently being installed. Approval of this variance would allow for new street grades be accepted by the City of Deadwood but does not have any impact on the variance request for sidewalks, curb and gutter and storm sewer systems. Due to the terrain of the surrounding area and this development, the proposed project is compatible with the area. City departments have reviewed the request and believe 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, extreme topography and bedrock conditions are present on existing development site which limits lowering grades further.*

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. Based on review of all City departments, 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**

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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.

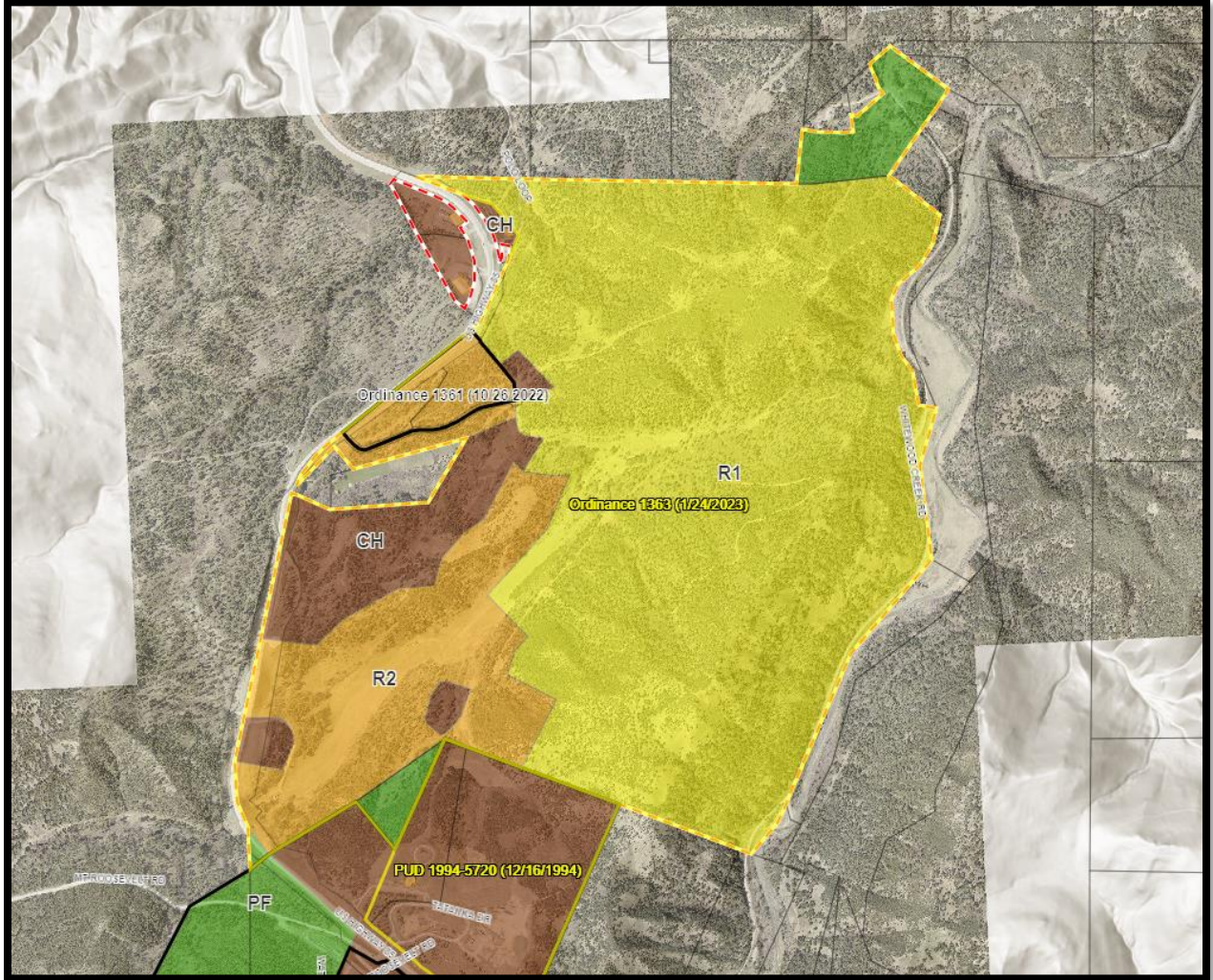
If upon review by the Zoning Administrator, a violation of any condition, imposed in approval of a variance is found, the Administrator shall inform the applicant by registered mail of the violation and shall require compliance within sixty (60) days, or the Administrator will take action to revoke the 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**

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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.

**LOCATION MAP**



Map showing the general vicinity of the subject property.

**NOTICE OF PUBLIC HEARING**

**NOTICE OF PUBLIC HEARING  
BEFORE THE DEADWOOD BOARD OF ADJUSTMENT**

City of Deadwood  
Board of Adjustment  
Deadwood, South Dakota 57732

**NOTICE IS HEREBY GIVEN**, that the following person(s) has applied to the City of Deadwood Planning and Zoning Office for a Variance to Ordinance Chapter 16.04.020 (K) – Street Grades and Alleys. (Maximum street grades 9%).

**APPLICANTS:** TRD, LLC (Randy & Cheri Horner)

**LEGAL DESCRIPTION:** REMAINDER OF PREACHER SMITH TRACT (LESS LOT A OF THE RIDGE DEVELOPMENT); LOTS 1 & 22, BLOCK 1B OF THE RIDGE DEVELOPMENT; AND BLOCK 1 AND BLOCK 1A OF THE RIDGE DEVELOPMENT, CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA.

**ADDRESS:** The RIDGE at Deadwood development  
Deadwood, Lawrence County, South Dakota

**ZONE:** PUD – Planned Unit Development

**NOTICE IS FURTHER GIVEN** that said application will be heard by the Board of Adjustment within and for the City of Deadwood, State of South Dakota, at a regular meeting to be held Monday, August 7, 2023 in the Commission Room at 102 Sherman Street, Deadwood, South Dakota, will at 5:00 p.m. or soon thereafter as the matter at which time and place any such person interested may appear and show cause if there be any, why such special exception should not be granted.

**NOTICE IS FURTHER GIVEN**, that the proposed request for a Variance is on file and available for public examination at the Deadwood Planning, Zoning Office located at 108 Sherman Street, Deadwood, South Dakota.

**ANY** interested person or his/her agent is invited to submit oral or written comments or suggestions regarding the request to the Commissions or their agent prior to or at the public hearing.

Dated this 12th of July, 2023.

City of Deadwood, Lawrence County, South Dakota



Kevin Kuchenbecker  
Planning, Zoning and Historic Preservation Officer

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