

OFFICE OF
PLANNING, ZONING AND
HISTORIC
PRESERVATION
108 Sherman Street
Telephone (605) 578-2082
Fax (605) 578-2084



Kevin Kuchenbecker
Planning, Zoning and
Historic Preservation Officer
Telephone (605) 578-2082
kevin@cityofdeadwood.com

BOARD OF ADJUSTMENT REQUEST FOR CONDITIONAL USE PERMIT

Staff Report

Date: November 14, 2023
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Conditional Use Permit – Vacation Home Establishment

APPLICANT(S): Nugget Saloon LLC (Wayne Morris)

PURPOSE: Application for CUP – Vacation Home Establishment

ADDRESS: 606 ½ Main Street

LEGAL DESCRIPTION: LOT 24, IN BLOCK 15 OF THE ORIGINAL TOWNSITE OF THE CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA, ACCORDING TO THE P.L. ROGERS MAP EXCEPT A PORTION OF LAND ALONG THE SOUTHERLY SIDE OF LOT 24, BLOCK 15 BEING 8 INCHES IN WIDTH FRONTING ON MAIN AND BACK OF EVEN WIDTH 100' AS SET FORTH IN DEED AND RECORDED IN BOOK 162 PAGE 243.

FILE STATUS: All legal obligations have been completed.

ZONE: C1 – Commercial District

STAFF FINDINGS:

Surrounding Zoning:

North: C1 – Commercial District
South: C1 – Commercial District
East: C1 – Commercial District
West: C1 – Commercial District

Surrounding Land Uses:

Businesses
Businesses
Businesses
Businesses

SUMMARY OF REQUEST

The applicant has submitted a request for a Conditional Use Permit to operate a Vacation Home Establishment located at 606 ½ Main Street and is located on the second floor of the Nugget Saloon property. Apartment 1 is a one bedroom, one bath. Renters will be offered validated parking in the Broadway Parking Ramp. The subject property is surrounded by businesses.

FACTUAL INFORMATION

1. The property is zoned C1– Commercial District.
2. The subject property has access from Main Street with validated parking in the Broadway Parking Ramp.
3. The property is not located within a flood zone.
4. Adequate public facilities are available to serve the property.
5. The area is characterized as the core historic business district.

STAFF DISCUSSION

The applicant submitted a request for a Conditional Use Permit for Vacation Home Establishment and City regulations permit Vacation Home Establishments in C1- Commercial District with an approved Conditional Use Permit. The subject property is a one bedroom, one bath apartment located on the second floor of the Nugget Saloon property. Due to parking issues in the alley behind the building, renters are offered validated parking in the Broadway Parking Ramp.

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

“Vacation home establishment” means:

Any home, cabin, or similar building that is rented, leased, or furnished in its entirety to the public on a daily or weekly basis for more than 14 days in a calendar year and is not occupied by an owner or manager during the time of rental as defined and permitted by the State of South Dakota and this Title. This term does not include a bed and breakfast establishment as defined in this Title.

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 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 a variety of uses and a mixture of housing types. Traffic and parking should not significantly affect the business district if the applicant provides parking validations in the Broadway Parking Ramp for the short-term rentals. This area has a mixture of businesses.

- 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 C1- Commercial District and is intended to provide locations for commercial uses. The City Commission adopted ordinances allowing consideration of Vacation Home Establishments through a conditional use process reviewed on an annual basis if the property have special uniqueness and does not have a local impact based on the public need.

- 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.

If the applicant uses parking solution of validation through the Broadway Parking Ramp and prevents any public nuisance issues sometimes associated with Short-Term Rentals, the proposed use should not result in a substantial or undue adverse effect on adjacent property, or the character of the building and the use would not alter the character of the business 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 does increase the proliferation of non-conforming uses; however, Deadwood has been encouraging the use of upper floors within the commercial district. The subject property is in an area that does not have a proliferation of short-term rentals. 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.

- 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 are available onsite. All utilities will be commercial rates.

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 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. Proof that the Building Inspector has inspected the building and it meets all the building codes.
4. City water and sewer rates to be changed from residential to commercial rates.
5. Proper paperwork is filed with the City of Deadwood Finance Office for Business Improvement District (BID) taxes.
6. Proof of City of Deadwood Business License.
7. Obtain lodging license after inspection from the South Dakota Department of Health.
8. All parking shall be off street preferably validated in the Broadway Parking Ramp.

ACTION REQUIRED:

Recommendation was made on December 6, 2023, by the Planning and Zoning Commission to approve the Conditional Use Permit – Vacation Home Establishment -17.08 with conditions.

1. Approve / Deny / Approve with Conditions by the Deadwood Board of Adjustment

Possible suggestions to incorporate as conditions to the Conditional Use Permit are listed above in the staff report.