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BOARD OF ADJUSTMENT REQUEST FOR CONDITIONAL USE PERMIT

Staff Report

Date: December 7, 2023
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Conditional Use Permit – Bed and Breakfast Establishment

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

PURPOSE: Application for CUP – Bed and Breakfast Establishment

ADDRESS: 388 and 390 Main Street

LEGAL DESCRIPTION: LOT TWELVE (12) AND THE SOUTH HALF OF LOT THIRTEEN (13), BOTH LOTS IN BLOCK THREE (3) IN THE FOUNTAIN CITY ADDITION TO THE CITY OF DEADWOOD, TOGETHER WITH ALL IMPROVEMENTS THEREON AND APPURTENANCES THEREUNTO BELONGING, SUBJECT TO COVENANTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

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: PU – Public Use

West: R1 - Residential

Surrounding Land Uses:

Businesses

Businesses

Public Use

Residential Housing

SUMMARY OF REQUEST

The applicants have submitted a request for a Conditional Use Permit to operate a Bed and Breakfast Establishment in the cottages located at 388 and 390 Main Street. Since 2005, First Deadwood Cottages have been utilized as a vacation rental location as a Bed and Breakfast establishment. Recently, this property is now owned by a new business entity.

FACTUAL INFORMATION

1. The property is currently zoned CH – Commercial Highway.
2. The property has operated as a bed and breakfast multiple years.
3. The subject property has access from Main Street with off street parking.
4. The subject property is located within a CH - Commercial Highway zoning.
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 businesses and a couple single-family dwellings.

STAFF DISCUSSION

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 CH- Commercial Highway zoning district with an approved Conditional Use Permit. The subject property has been operating as a Bed and Breakfast establishment since 2005. According to their application, they have adequate off-street parking and a long driveway providing ingress/egress.

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

“Bed and breakfast establishment” means:

Any building or buildings run by an operator that is used to provide accommodations for a charge to the public, with at most five rental units for up to an average of ten guests per night and in which family style meals are provided.

1. No bed and breakfast home shall be located on a lot closer than two hundred (200) feet from any other lot containing a bed and breakfast establishment. The Deadwood building inspector shall inspect the premises to ensure compliance with the Building Code;

In this instance there are no bed and breakfasts within the two hundred feet required buffers. Wayne Morris plans to continue to operate the cottages as he has since 2005.

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. The subject residence proposed for a bed and breakfast shall be required to provide the following: Off-street parking for four vehicles.

The Deadwood Zoning Code requires a bed and breakfast establishment to be run by an operator which provides family style meals. The code also states a requirement of one off-street parking space per guestroom in section 17.64.060 of the ordinance book. The property does have adequate off street parking spaces on site.

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. Preserve the existing stock of historic structures by working with the individuals and guiding the uses is an acceptable means. Traffic and parking have not significantly affected the neighborhood if the applicant abides by the parking requirements associated with a Bed and Breakfast. This area has a mixture of businesses and 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 CH – Commercial Highway District and is intended to provide locations for commercial uses, which require access to roads and highways, and substantial amounts of parking. There are no B&Bs within 200 feet of the proposed B&B.

- 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 only uses off street parking and prevents any public nuisance issues that are often associated with Short-Term Rentals, the proposed use will not result in a substantial or undue adverse effect on adjacent property, or the character of the property and the use would not alter the character of the district. There will be no change in the size of the dwelling. 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. To-date, the City has not received any complaints with the operation of this establishment.

- 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. The subject residence is in an area that does not have additional bed and breakfasts nearby and the new ordinance changes limited the number of Bed and Breakfast establishments through a buffer requirement. 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.

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. The Bed and Breakfast Establishment must provide family style meals by the operator.
3. Proof of a state sales tax number shall be provided to the Planning and Zoning Office for their files.
4. Proof that the Building Inspector has inspected the building and it meets all the building codes.
5. City water and sewer rates to be changed from residential to commercial rates.
6. Proper paperwork is filed with the City of Deadwood Finance Office for Business Improvement District (BID) taxes.
7. Proof of City of Deadwood Business License.
8. Obtain lodging license after inspection from the South Dakota Department of Health.
9. All parking shall be off street.

ACTION REQUIRED:

Recommendation was made on December 6, 2023, by the Planning and Zoning Commission to approve the Conditional Use Permit – Bed and Breakfast 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.