



PLANNING AND ZONING COMMISSION REQUEST FOR A VARIANCE

Staff Report

Date: August 11, 2023
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Request for a Variance – 16.04.020 Improvements.

APPLICANT(S): TRD, LLC (Randy & Cheri Horner)
PURPOSE: Variance – 16.05.020 Improvements –
Obligations of Developer
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:

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

FACTUAL INFORMATION

1. The property is currently zoned PUD – Planned Unit Development through the adoption of Ordinance No. 1363 on January 26, 2023 and amended through Ordinance No. 1385 which had its first reading on August 7, 2023.
2. The Planned Unit Development will have R1-Residential zones, R2 – Multi-Family Residential zones and CH- Commercial Highway zoning all amended through Ordinance No. 1385.
3. The development will have three accesses from US Highway 85 via Gold Spike Drive, Preacher Smith Drive and Ridge Drive.
4. The property is located outside of Flood Zone AE – Areas of 100-year flood and Flood Zone X – Areas of 500-year flood.
5. Public facilities are being constructed and installed to serve the property.

SUMMARY OF REQUEST

The applicant has submitted a request for a variance to the design standards for public improvements and infrastructure required by Deadwood City Ordinance 16.05.020 Improvements.

During recent reviews, discussions, and site visits by staff and City Commissioners, it has been discovered, the plans for this development by the developer and engineer are not in compliance with City of Deadwood Ordinances and no formal action has been taken to exempt or grant a variance to the ordinances regards to this project.

After several attempts by staff to garner a set of plans, a letter was sent by City legal counsel to the developer, stating the processes required by the City of Deadwood to request consideration of variances to the Ordinances.

This portion of the ordinance for the variance request is as follows:

16.05.020 Improvements

The following improvements shall be constructed as provided for this section. Design of improvements shall be approved by a registered engineer retained by the developer.

1. *Obligation of developer:*
 1. *Necessary site grading shall be performed by the developer.*
 2. *Street grading consisting of actual street width and drainage (as shown on submitted road profiles) shall be performed by the developer.*
 3. a) *Street improvements, including, but not necessarily limited to, curb and gutter, four (4) foot wide sidewalks, boulevard sodding, inlets and leads, and paving, shall be constructed in accordance with the city*

of Deadwood's construction standards shall be constructed.

- b) Installation of underground work utilities may be required. All required underground work shall have preceded any permanent street improvements. Any improvements on a city street shall be approved by the public works director as to the design and construction. Temporary construction maybe required, for just cause, on any street, streets, or portion thereof. Reconstruction or alteration in any way of existing streets affected by the plat or improvements thereupon, shall be subject to the approval of the city commission. All costs therein incurred, for either temporary access or reconstruction shall be borne by the developer.*
- 4. All sewer systems, other than the Lead-Deadwood Sanitary District No. 1, shall be designed by a registered professional engineer. Plans and specifications shall be submitted to and approved by the Lead-Deadwood Sanitation District, the South Dakota department of water and natural resources and all other appropriate agencies.*
 - 5. All potable water supply systems shall be designed by a registered professional engineer. Plans and specifications shall be submitted to and approved by the South Dakota department of water and natural resources, city of Deadwood water department, city of Deadwood fire chief and all other appropriate agencies.*
 - 6. Boulevard trees, if required, shall be installed by the owner or developer in accordance with city parks department standards.*
 - 7. The developer shall submit for planning and zoning commission approval a fire prevention plan that will reduce forest fire hazards within a subdivision of three (3) or more parcels. Such plan (i.e. tree thinning, water storage, etc.) shall be submitted with the preliminary plat and shall have been reviewed by and received recommendation from the South Dakota division of forestry and the city of Deadwood fire chief.*
 - 8. And, upon completion of the project the developer shall submit to the city planning office, certification from the developer's engineer that the streets were constructed in accordance with the submitted road profiles, or if construction has deviated from submitted profiles and cross-sections, a complete set of road profiles showing grade lines and cross-sections as constructed.*

BACKGROUND INFORMATION

The following is an outline of major actions taken with regard to approvals and correspondence with engineer of record and/or developer for The RIDGE at Deadwood.

January / February 2021

Discussions begin regarding The RIDGE at Deadwood development with City staff and Commissioners. The proposed conceptual and master plans were shared with City staff and Commissions. (Copy included as part of this packet for reference)

June 2021

A memorandum of agreement was executed between the City of Deadwood and the developer which outlines the preliminary development costs that relate to the project included in the concept plan and states the developer will continue to work with City staff concerning the project and site plans. [No additional plans were submitted for formal approval] (Copy included as part of this packet for reference)

October 2021

The Planning and Zoning Commission held a public hearing for creating TIF# 14 on Wednesday, October 6, 2021. The Planning and Zoning Commission recommended approval to the Board of Adjustment/City Commission.

On October 18, 2021, the City Commissioners questioned the amounts within the project plan presented by Tobin Morris, Senior VP Dougherty & Company during the City Commission meeting. Discussion was held concerning costs, itemizations, and cost of turning lane. The City Commission unanimously continued Project Plan for TIF # 14.

In the same meeting the City Commission unanimously continued Resolution 2021-23 to create TIF # 14 for The RIDGE at Deadwood.

November 2021

On November 1, 2021, the City Commission unanimously approved continuing the Project Plan and Resolution 2021-23 due to no updates from the developer and/or consultants.

On November 15, 2021, the City Commission continued discussion concerning the project plan and associated resolution. Commissioner Martinisko reminded developers the TIF is an annual appropriation and not guaranteed. The City Commission approved (vote 4 to 1) the project plan included in their packet for Tax Increment Finance District # 14. The City Commission also unanimously approved Resolution 2021-23 to Create Tax Increment Finance District # 14. (copy included as part of this packet for reference)

January 2022

On January 18, 2022, the City Commission unanimously approved allowing Mayor to sign Development Agreement as provided in the packet for The Ridge (TRD LLC) for Tax Increment District # 14. (Copy included as part of this packet for reference)

The Developers Agreement has language which states the following:

- DEVELOPER shall prepare or cause to be prepared plans and specifications for the Public Infrastructure Improvements in each Phase prior to starting any construction in said Phase. DEVELOPER shall not commence any construction on the Project until the plans and specifications for each Phase have been approved in writing by the appropriate department of CITY and State of South Dakota when applicable
- DEVELOPER will comply with all City of Deadwood Ordinances.

Late-summer /early fall 2022

Staff requests meetings to be held regarding infrastructure relating to pump stations. Meetings occur late fall-early winter regarding Dakota Pump and grinding pumps. Requests made to set progress schedule meetings.

January 2023

Developer and engineer participates in Short-Term Task Force Meetings.

January 27, 2023, Engineer emails to inquire about setback variances and short-term rental variance regarding City Ordinances.

February 2023

On February 6, 2023, the City Commission unanimously approved allowing the mayor to sign Planned Unit Development Certification for The Ridge development as required under DCO Chapter 17.72.090. (Copy included as part of this packet for reference)

February 22, 2023, after consultation with legal counsel to ensure necessary process and steps are followed, staff responds to steps necessary regarding the Planned Unit Development specifically regarding short-term rentals. Staff indicates an amendment to the PUD which is a change of zoning would be necessary.

March 2023

On March 10, 2023, staff emailed the engineer stating the following:

“We are going through the Developer’s agreement and have a few questions and clarifications.

Under section 3.03 it states ... The Developer shall submit all contracts, which is to include quantities and unit pricing, to the City to ensure that all infrastructure meets CITY’s specification and for our record keeping.

To our knowledge, we have not seen any of the contracts, please submit all contracts executed to date to the City Finance office by 5:00 p.m. on Friday, March 24, 2023.

Also, in Section 3.05, all plans and specifications must be submitted and approved by the City in writing. To my knowledge, there has been no final

submittals, nor any approvals issued in writing. Furthermore, City has not received periodic reports of construction and expenditures. Please submit current status of construction and all expenditures to date. Please also submit an updated Construction Schedule and an annual report for 2022 on the project for review.

We furthermore need an updated insurance policy stating the City of Deadwood as an additional insured.”

On March 19, 2023, the city was provided shop drawings of underground water main pipe and fittings, gravity sewer main, manholes, and sanitary sewer force main along with the lift stations. In addition, the engineer provided a Drop Box link to construction contracts, pays applications, and insurance certificates. A complete set of plans were not included.

April 2023

On April 20, 2023, staff emailed the engineer of record regarding concerns with the asphalt roadway and open ditch drainage. The email outlined the obligations of the developer under Chapter 16.05.020 as well as the discussion of a variance would need to be obtained to vary from the ordinance.

May 2023

A sinkhole within the new asphalt roadway to be known as Gold Spike Lane was identified and reported to the engineer. Staff request weekly or bi-weekly construction progress meetings. Engineer questions city roadway load restrictions. Staff states the City has no load restrictions within Deadwood.

On May 18, 2023, staff emails engineer requesting plans and specifications and these need to be approved in writing. To date no final submittals, nor approvals have been executed. Staff states concerns on roads, sidewalks, and utilities being installed without submitted plans and approvals. Again, request for weekly progress meetings given to engineer.

June 2023

On June 5, 2023, members of the City Commission and staff tour the site with project engineer and developer to garner better understanding of the development. Staff and Commissioners voice concerns on lack of communication, plans and submittals for this project.

On June 27, 2023, due to lack of response from the engineer regarding plans and specifications, Deadwood City Attorney writes developer to reinforce the procedures necessary for approvals and/or variances.

July 2023

On July 5, 2023, the City received an email to access DropBox for Contracts, Geotechnical Reports and Testing, Insurance Certificates, Pay Apps, Permits,

Shop Drawings, 2021 Master Plan, and Plans; however, administrative rights were not granted to staff.

On July 6, 2023, staff is emailed the first of what would be three versions of the requested variance for improvements.

On July 31, 2023, staff finally garners administrative access to Dropbox for the engineer. It contains limited plans for the development including one page for road sections dated May 22, 2023. This is the first detailed cross-section provided to the city regarding the proposed streets outside the “master plan” which were conceptual in nature.

VARIANCE REQUEST

Version three of formal variance request is provided in the packet as a downloadable pdf.

CITY REVIEW AND COMMENT:

The recently submitted application (shown in italics) states the following:

This request is in response to the City request for a formality that was not completed at project commencement and will serve as the official approval for the previously staff approved items.

It is the engineer responsibility to take into account all applicable state and municipal laws, ordinances and regulations and may not knowingly execute a project in violation of them.

Under City adopted standards it is understood and agreed upon that the written terms and provisions shall supersede all verbal statements of representatives of the City, and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever the written documents for the project.

As well as the previously presented and accepted Project Plan from February 2021. This project plan document is attached for reference. This project plan shows the Developers plan for the development including the road section planned for the RIDGE Development. This section includes a rural section road, open ditches for drainage, asphalt surfacing on the road surface and aggregate pedestrian trail on one side of the roadways, along the property line in most areas. Please see the typical residential section detailed graphically in the attached Project Plan and on the current recreational trails’ layout sheet.

It is the City’s understanding the document labeled as “The RIDGE: A Master Planned Community” as data required under Chapter 16.03.010 for a concept plan. It is a statement or document as to the design intent and purpose to be served by the development and does not preclude following city requirements and standards for construction and development

The “Project Plan” was referenced in and tied to many City voted on and approved documents such as: the MOU (Memorandum of Understanding) approved June 2021, TIF #14 approved November 2021, and Development Agreement approved January 2022.

The “Project Plan” referenced by the applicant is labeled as a “The RIDGE: A Master Planned Community” and is recognized as a concept plan in the Memorandum of Understanding adopted in June of 2021. Some of the agreements are shown below with underlining to emphasis the facts.

Item 2. TIF Eligibility. Economic development within a city is an authorized use of tax increment districts under SDCL Chapter 11-9. None of the Property is currently developed. Developing the Property into a mixed-use development with multi-family, residential, office and retail space, is expected to promote economic development within the City. It will also conform to the standards of the comprehensive plan of the City in order to provide for the orderly development of residential and commercial property for the City.

Item 4. Property and TIF Development Process. The Developer has submitted a concept plan that will be reviewed by the City Staff and Planning Commission. City and Developer will work jointly on the preparation of a TIF proposal for presentation to the City Planning Commission. During this period, Developer will also continue to work with the City Planning Director, and Public Works Director concerning the project and site plans. The City and Developer will work jointly on the drafting of the TIF project plan and an associated development agreement outlining the duties, rights and responsibilities of Developer in connection with the development of the Property. The City will also cooperate with Developer in securing necessary permits.

Exhibit A was submitted as part of the MOU which only provided one page from the “concept plan” showing the property located in the TIF boundary and master plan overview plat (dated February 2021).

Exhibit B was submitted which shows an opinion of probable costs-budget for TIF justification.

In the TIF #14 document referenced above, it provides the following definition:

"Infrastructure Improvements" means a street, road, sidewalk, parking facility, pedestrian mall, alley, bridge, sewer, sewage treatment plant, property designed to reduce, eliminate, or prevent the spread of identified soil or groundwater contamination, drainage system, waterway, waterline, water storage facility, rail line, utility line or pipeline, or other similar or related structure or improvement, together with necessary

easements for the structure or improvement, for the benefit of or for the protection of the health, welfare, or safety of the public generally.

The TIF #14 document also states:

It must be noted that the TIF WILL NOT directly benefit the homes or businesses that will be established in the Project area. Rather, it will be the increment from these properties that will be used to make the needed infrastructure improvements to develop the area.

In several other sections of the document it further states:

The intention of this TIF Project is to provide the necessary infrastructure related to the construction of a residential development and a commercial retail area.

“Project Costs” means any expenditure or monetary obligations by City of Deadwood, whether made, estimated to be made, incurred or estimated to be incurred, which are listed as Project Costs herein will include any costs incidental thereto but diminished by any income, special assessments, or other revenues, other than tax increments, received, or reasonably expected to be received, by City of Deadwood in connection with the implementation of this Plan.

“Project Plan” means a properly approved Plan for the development or redevelopment of a tax incremental district including all properly approved amendments thereto as recommended pursuant to SDCL § 11-9-13.

The TID will consist of creating a new development and all necessary infrastructure needed in an undeveloped area that is currently on the northern side of the City of Deadwood. Once developed, the area will be the site of a residential and multi-family housing area and a retail/commercial development. A healthy mix of housing options ensures opportunities for all individuals to improve their economic situation and contribute to their communities. Visitors to a city create a direct economic value within multiple sectors of the economy by staying at hotels, eating at restaurants, and shopping, boosting local economic vitality.

Investing in the community and its infrastructure will make the City desirable to live in which is a key component to the city’s long-term success and viability.

Upon completion of the construction of the infrastructure improvements, the Developer shall certify to the City’s Finance Officer the costs of construction, including capital costs, Professional Fees, and contingency costs. The Developer shall provide contractor/supplier invoices or other supporting documentation upon request of the Finance Officer. Upon

certification and verification of costs, the City shall pay all available tax increment fund revenues not to exceed \$12,500,000, which shall include the total amount paid to the City and Developer.

For purposes of this Project Plan, the Developer is projecting that the infrastructure and site improvements will be fully developed by calendar year 2023.

The Project area lies north of Deadwood along Highway 85. It is to be used for providing infrastructure for a housing development with a commercial component. The investment in the Project area will stimulate and develop the general economic welfare and prosperity of the State through the increase of housing, promotion of employment, and advancement of commerce.

All drawings and graphics are labeled as preliminary and/or concept information by the engineer for the purpose of the TIF document.

Finally the Development Agreement approved by the City in January 2022 outlines several key elements that address following City Ordinances. Several of these items have been noted previously in this staff report including need City approval on construction plans and specifications.

The development agreement also states in the project schedule that Final Design and planning for infrastructure improvements would be completed in the Winter of 2021-2022.

The City has yet to receive submitted specifications for the infrastructure improvements and has only recently received plans dated May 22, 2023.

To date, the only permit submitted by the developer and issued by the City of Deadwood for this development project (outside of the apartment building) has been for a grading permit in the amount of \$100.00 for the following:

Rough mass grading work for future new roads and limited development area(s).

Final plans, dated May 22, 2023, for the public road work infrastructure were finally submitted to the City after requests were made by staff and legal counsel.

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

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.

The applicant states “Based on prior approval of the Project Plan, rural section with asphalt roads, open ditches, and a pedestrian trail is planned, please see attached.

Again, based on the actions taken by the developer and the City Commission, staff and legal counsel have confirmed no formal review nor final plans have been approved by the City of Deadwood through the appropriate processes to date. The concept plan was approved but required additional plans be submitted which shall follow City Ordinances and Standards for City departments and Commissions to review and approve.

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 the PUD is not infringed by the issuance of this variance; however, granting said variance is adverse to several departments within the City which could have severe impacts

to the City budget and cause economic and staffing hardships for the future operations of the City of Deadwood. It also has potential to impact life and safety of the PUD's residents and City staff providing necessary services to this development.

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; however, the costs associated with the required standards is not economically feasible.

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 with work commencing in the summer of 2021 with the issuance of a grading permit from the City of Deadwood for rough mass grading work for future new roads and limited development area(s).

Approval of this variance would allow the new street and public improvements to be exempt from City ordinances which outline the required standards. City departments have reviewed the request and believe the granting of the proposed variance will be detrimental to fire safety and public welfare of residents and City employees and is conflict with the established policies of the City of Deadwood.

The following items were discussed amongst the departments and shared with the engineer of record and developer at meetings on August 3, 2023 and August 8, 2023.

This section of the staff report outlines the major concerns raised in the review of the plans dated May 22, 2023 along with the requested variance before us.

- The Water Department has concerns regarding the locations of the curb stops. Typically curb stops are next to the roadway within the adjacent sidewalk. Sidewalks are maintained by the property owner; therefore, easily located without searching under snow. When in sidewalks the curb stops are protected from freeze thaw movement and have less likelihood of breaking or developing leaks.*
- With 309 proposed lots and ditches with culverts to access said lots, it will create a large amount of maintenance issues as well as safety issues for the snow removal efforts. Since the culverts are in the 66' of right-of-way, it is assumed the City will be ultimately responsible to clean them out. With*

traditional storm drains, the run-off is less likely to need as much maintenance.

- The presented cross-section of the roadway as presented in the variance does not meet City standards and would require a variance as well. It does not have the required 2' shoulders on each side of the roadway for this type of construction and the ditches do not meet the requirements for slope and possible coverage over the minimum size requirements of the culvert. Concern has been voiced by staff that the proposed culverts with the existing ditch design may cause the culverts to possibly flatten the culvert because not enough coverage. Hard surface driveways will be a minimum standard of 50' into the property for longer driveways.*
- Construction workers are currently using wooden planks to get to the construction site at the apartment due to the condition of the ditches.*
- The Streets Department is concerned with shoulder damage without curb and gutter in addition to on-going erosion of the shoulders. This creates an additional maintenance item to the overall roadway by having to blade the shoulders or bring additional material to build the shoulders back up.*
- The Streets Department is further concerned with snow removal and the safety issues without curb and gutter. The crews may not know where they are in relation to the road and may drop off the ledge of the pavement or shoulder. Continuous equipment near the edge of the pavement will cause asphalt to roll, crack and spall creating an on-going maintenance issue to the 20 year design of the pavement.*
- There are additional concerns with grass or turf being peeled by blade and catching or hitting culvert with the grader or loaders.*
- The ditch is within the 66' right-of-way and becomes the responsibility of the local government. The ownership of the ditch and culvert would be the City's responsibility. A question which is unclear is does this responsibility also include mowing above and beyond the maintenance of ensuring the open ditch drainage is kept free and clear of obstacles.*
- The Police Department voiced concern about vehicle safety with the open ditch drainage system and is concerned that some vehicles may slide into the ditch causing personal and property damage.*
- The city staff and all departments are also very concerned with pedestrian safety within the development. Without traditional sidewalks and the proposed trails only on one side of a portion of the roads, pedestrian-vehicular conflicts will exist. Resident safety is a top concern of staff.*
- The Fire Department expressed concerns with locating and accessing the fire hydrants with the open ditch system. By not being adjacent to the roadway in or adjacent to the sidewalks creates additional lead time in an*

emergency. Firefighters would have to cross said ditch system which could be difficult in large snow events and the ditches may fill with snow from the street cleaning activities. Street and Parks Department crews would have to hand dig out the hydrants where with a typical curb, gutter and sidewalk system the property owner is responsible for clearing the sidewalk. This effort will take additional staff or staff time with an already lean city departments.

- Discussions were held with where the proposed snow dumps may be located due to narrow streets on steeper grades. This is a serious safety concern of staff especially the departments engaged in snow removal.*
- Concerns were raised on the lack of guardrails in certain steep areas due to the proposed variance for the required curb and gutter. The locations will need to be presented and reviewed if this variance is accepted.*
- The engineer of record and the developer propose many of the solutions lie with the establishment of a Homeowner's Association (HOA). City staff and legal counsel have witnessed several communities and developments where the HOA has disbanded and have little to no funds along with difficulty collecting dues.*
- The proposed variance states the HOA and development will be governed by the covenants. Should the HOA be dissolved and the City does not recognize the covenants, all costs to enforce them will be borne by the residents of the development and/or the taxpayers of the City of Deadwood.*
- When the project is complete, the City will accept the public infrastructure within the right-of-way and be responsible for long-term maintenance and this cost will need to be absorbed by the taxpayers until the TIF district is paid in full which is currently anticipated to be 20 years.*

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 meeting the standards for public improvements and infrastructure. Is this hardship self-created or requested after the fact without knowledge of the ordinances and standards adopted by the City of Deadwood. It is the responsibility of the developer and engineer of record to

know the requirements set forth by the City of Deadwood. No additional financial information to project costs have been submitted except through the pay applications to date and the preliminary estimated project costs associated with the TIF District #14.

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.

At this time, we are still determining the impact on our water supply as well as the impacts on the schools, or other services. This task is not necessary for determining for this variance; however, a variance cannot be granted if it would pose any threat to the public health or safety. Based on review of all City departments, our finding includes concerns such as fire safety, pedestrian safety, and impact to City budget and staffing.

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.

POSSIBLE CONDITIONS IF APPROVED

The City staff and the legal counsel believe there is sufficient and justifiable evidence to deny the variance request as submitted due to the reasons outlined in this staff report.

Several of the applicant's responses to city concerns lay the burden of responsibility on the HOA. City staff and legal counsel question the ability, longevity, capability, and sustainability of the HOA to follow through with construction funding and maintenance of proposed responsibilities outlined in the variance request.

Engineer appears to pick and choose portions of the project to utilize the standards. The plans dated at the end of May 2023 and submitted in July include design standards from the 2022 Rapid City standards yet stated the plan was developed prior to the City's adoption of said standards.

However, should the commission approve this request for variance, we ask consideration of the following conditions be a part of the approval request.

1. Prior to acceptance of public infrastructure culverts and crossings shall be installed to all fire hydrant by the developers and not the responsibility of the HOA. Fire hydrants and water valves shall not be located behind the proposed guard rail.
2. Prior to acceptance all water shut off valves must be installed with concrete casings by the developers. A review of the locations should happen to ensure access is available for maintenance by city staff. There is no guarantee the driveways will be in line with water shut off valves and may be several years before all lots are sold and built out with hard surface driveways.
3. The proposed roadway as designed doesn't meet current or prior standards and would need a variance which would be probably be challenging as well for acceptance. The City of Deadwood used the Rapid City 2007 construction standards prior to the recent adoption of

the 2022 standards. All streets, ditches and shoulders shall meet the standards utilized by the City including Gold Spike Lane which shoulders do not meet the 24-inch minimum standards. Engineer shall modify current plans to meet or exceed the standards for rural roadways. Additional geotechnical investigation and testing shall also be conducted regarding the already installed and failing roadway surface.

4. Ditches, drainage system and sanitary system should be approved by the Department of Agriculture and Natural Resources as may be required.
5. The City will not require or enforce load limits on roadways. Roadways should be designed and built to withstand heavy trucks and equipment necessary for the maintenance and snow removal activities of the City of Deadwood in addition to typical construction of residential and commercial properties.
6. The City shall not accept the responsibilities of operations and maintenance of roadways and infrastructure until completed for all improvements within phase 1, 1A and 1B to include future portions of these phases identified in the recent submittals.
7. The developer and engineer of record shall conduct weekly, or at least bi-weekly progress meetings with design team, engineer, contractor, and city staff.
8. The engineer of record shall provide timely submittals, plans, specifications, shop drawings, and related required documentation to be inclusive of all aspects of the project dealing with public infrastructure.
9. The city commission authorize staff to engage the services of a third-party professional engineering company to review all current and future plans regarding this development to ensure a quality project, standards and ordinances are followed, and to protect the City obligations using a portion of the administrative revenues from TIF#14.
10. The trail surface must be approved and available for use by the general public. Installation shall be completed as part of the overall acceptance of the public infrastructure system. Maintenance shall remain with the HOA/developer and the city will enforced compliance as if it is a public sidewalk.
11. Additional trail system shall be installed and lit along ALL roadways within the development to ensure pedestrian and recreational safety.
12. Addendums to the Memorandum of Agreement, TIF #14 documents, project plan shall be executed and shall be binding to any and all heirs,

successors, and assigns outlining the conditions set forth in this variance approval. Failure to execute such documentation shall jeopardize future TIF allocations.

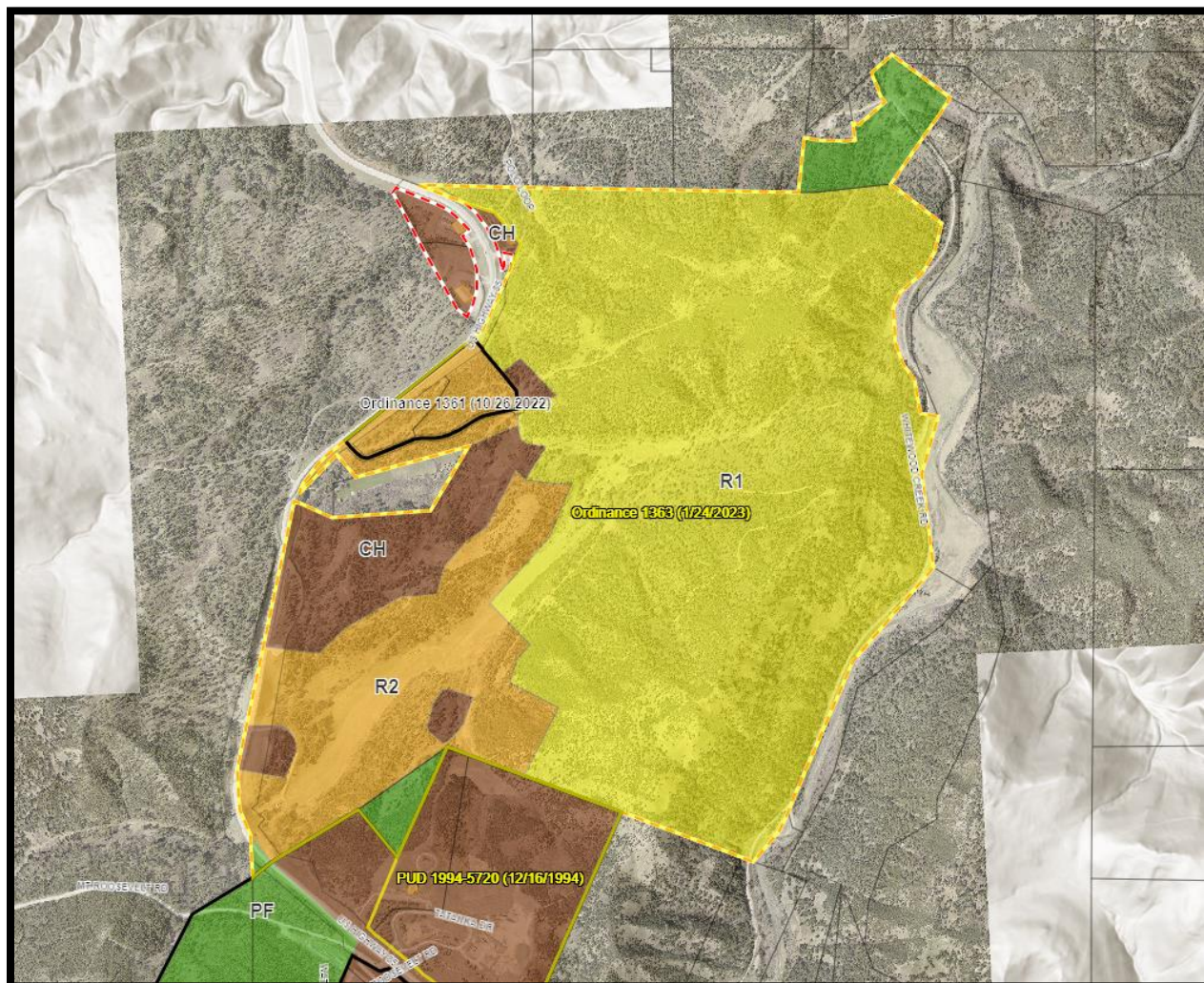
13. Upon formation of the HOA, a binding agreement of the responsibilities under this variance request shall be executed with a perpetual clause and inability to dissolve said HOA. This shall be completed by the developer immediately acting as the declarant for the HOA and filed with the secretary of state and Lawrence County.
14. Failure to follow conditions set forth in this variance approval shall negate future TIF allocations.
15. Action shall be taken by the City against the HOA/declarant for failure to implement, maintain and follow through on all responsibilities for the HOA/ declarant outlined in this variance request submitted by the applicant.
16. The engineer, developer and realtors shall be responsible for disclosures related to the conditions set forth in this variance request for any property transactions within the development.
17. No additional building permits shall be issued until acceptance of the public infrastructure by the City. City reserves the right to accept partial public improvements such as water and sanitary sewer without acceptance of roadways until phases 1, 1A and 1B are fully completed including the future roadways. Separate agreements may allow building permits to be issued prior to the roadway acceptance.
18. Roadway maintenance and responsibility shall remain with the developer and/or HOA/declarant until such time as the project is complete and the City has accepted said roadways.
19. Street and trail lighting plan shall be designed and engineered by a qualified electrical engineer to meet adopted standards and submitted to the city for approval prior to installation as part of the condition of this variance request.
20. Dedicated Park property sufficient for the development and acceptable by the City shall be set aside and donated to the city for future park space.
21. Dedicated snow dumps sufficient for the safe operation within development and acceptable by the City shall be set aside and donated to the city for snow removal efficiency in each area of the ridge.

ACTION REQUIRED

1. Recommendation to the City Commission based on the information provided by the applicant and city staff. The options available to the Planning and Zoning Commission are to “Approve”, “Deny”, “Approve with Conditions” or to provide “No Recommendation” for Request for Variance as presented.

Conditions may be chosen from the staff recommendations listed above in part or in its entirety or based on additional conditions developed by the Planning and Zoning Commission.

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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