



PLANNING AND ZONING COMMISSION CONDITIONAL USE PERMIT – ANNUAL REVIEW

Staff Report

Date: July 17, 2024
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Annual Review - Conditional Use Permit – Bed and Breakfast

OWNER(S): Kenneth & Lee Steier
PURPOSE: Annual Review – Conditional Use Permit – Bed and Breakfast Establishment

ADDRESS: 7 Spring Street
Deadwood, Lawrence County, South Dakota

LEGAL DESCRIPTION: Lots X, a replat of Lots 1, 2, and 3, Block 1, Miricks Addition and a portion of MS 735, located in the City of Deadwood, Lawrence County, South Dakota.

FILE STATUS: Legal obligations completed.

ZONE: R2 – Multi-Family Residential

STAFF FINDINGS:

Surrounding Zoning:	Surrounding Land Uses:
North: R2 – Multi-Family Residential	Residential
South: R2 – Multi-Family Residential	Residential
East: R2 – Multi-Family Residential	Residential
West: R2 – Multi-Family Residential	Residential

SUMMARY OF REQUEST

The Deadwood City Commission has directed the Planning and Zoning Commission to conduct annual reviews of all Conditional Use Permits in accordance with City of Deadwood Municipal Code 17.76.060. The owner was issued a Conditional Use Permit on June 8, 2003, to operate a Bed and Breakfast establishment at 7 Spring Street.

The subject property is located on Spring Street and is surrounded by an R2 Zoning District.

FACTUAL INFORMATION

1. The property is currently zoned R2 – Multi-Family Residential District.
2. The subject property is accessed from Spring Street.
3. The property is not in a Flood Zone.
4. Adequate public facilities are available to serve the property.
5. The area is characterized by a mixture of single-family homes and open space.

STAFF DISCUSSION

The applicant was granted a Conditional Use Permit for a Bed and Breakfast establishment, and City regulations permit Bed and Breakfast establishments in R2- Residential Districts with an approved Conditional Use Permit. The subject property is a five (5) bedroom, five (5) bath single family home located on the subject property. The establishment allows up to twelve (12) guests. Renters can park in two (2) parking spaces in front of the establishment, with additional off-street parking across the street.

Under the current ordinance, as well as the South Dakota Department of Health this would be considered a specialty resort establishment due to the number of guests it may accommodate.

“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 (5) rental units for up to an average of ten (10) guests per night in which family style meals are provided as defined and permitted by the State of South Dakota and this Title.

COMPLIANCE:

This short-term rental has been in continual use over the last twenty-one (21) years. The original Conditional Use Permit was under the auspices of a Bed & Breakfast Establishment; however, they are currently licensed with the South Dakota Department of Health as a vacation home establishment which is prohibited in R2 – Multi Family Residential zoning districts. Furthermore, under the definitions regarding short-term rentals, they appear to be operating a specialty resort also prohibited in R2 –zoning districts.

According to Deckard – Rentalscape the property was booked 166 nights in the past 12 months and has received very good reviews.

Staff is aware of complaints during the early years of this Conditional Use Permit; however, no formal complaints are on record for this establishment over the past 24 months or longer.

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 neighborhood if the applicant abides by the off-street parking requirements associated with Short-Term Rentals. This area is of residential use.

- 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 R2– Multi-Family Residential District and is intended to provide locations for medium density, multiple family units such as duplexes, townhouses, condominiums, and apartment developments.

- 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 should not result in a substantial or undue adverse effect on adjacent property, or the character of the neighborhood and the use would not alter the character of the neighborhood. There has been no change in the size of the dwelling.

- D. The previously approved Conditional Use Permit is still in use, and 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 current use has not increased the proliferation of non-conforming uses. The subject residence is in an area that does not have additional Short-Term Rentals in the immediate area. The appearance of the structure has not changed; therefore, the character and use of the buildings and structures adjoining the subject property has not been adversely affected.

- E. Whether or not the current use in the proposed area has been 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 has not caused significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services. Existing services are available onsite. All utilities have been assigned commercial rates.

CONDITIONS GOVERNING APPLICATIONS AND PROVISIONS:

- A. Following the review 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 City of Deadwood Building Inspector shall have the right to inspect the premises to ensure compliance with the Building Code under Title 15.
3. Proof of a state sales tax number must be provided to the Planning and Zoning Office for their files.
4. City water and sewer rates to remain 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. Maintain a City of Deadwood Business License.
7. Obtain and maintain a Bed & Breakfast Lodging License from the South Dakota Department of Health and provide copy to the Planning and Zoning Office for their files on an annual basis. Surrendering the vacation home establishment license would be a requirement.
8. All parking shall be off street.
9. No more than ten (10) guests permitted to stay overnight.
10. No large gatherings or events shall be held at the property.
11. Family style meal(s) must be provided for all overnight guests.

12. The owner or the owner's agent is required to reside in the Bed and Breakfast Establishment or on contiguous property when guests are present.

ACTION REQUIRED FOR CONDITIONAL USE PERMIT:

1. Approval/Denial by Deadwood Planning and Zoning Commission