



PLANNING AND ZONING COMMISSION CONDITIONAL USE PERMIT – ANNUAL REVIEW

Staff Report

Date: May 1, 2024
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Annual Review - Conditional Use Permit – Donut Delivery Business

APPLICANT(S): Carsen Witt
PURPOSE: Home Occupation for donut delivery business
ADDRESS: 63 Stewart Street
Deadwood, Lawrence County, South Dakota
LEGAL DESCRIPTION: THE EASTERLY 50 FEET OF LOT 2, BLOCK 72 ORIGINAL TOWN IN THE CITY OF DEADWOOD LAWRECE COUNTY, SOUTH DAKOTA EXCEPT THAT PORTION DEEDED TO THE CITY OF DEADWOOD FOR STREET PURPOSES.
FILE STATUS: Legal obligations have been met.
ZONE: R1 – Residential District
STAFF FINDINGS:

Surrounding Zoning:	Surrounding Land Uses:
North: C1 – Commercial District	Hospital / Clinic
South: R1 – Residential District	Vacant Hill Side
East: R1 – Residential District	Residential Housing
West: R1 – Residential District	Residential Housing

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 applicant was issued a Conditional Use Permit on May 4, 2022, to operate a home-based donut delivery business at 63 Stewart Street.

The subject property is located on the south side of Stewart Street behind the

vicinity of the Deadwood Hospital and Clinic.

FACTUAL INFORMATION

1. The property is currently zoned R1 – Residential District.
2. The property comprises approximately 7,533 square feet +.
3. The dwelling began as a log cabin, presumably built in 1877. By 1890, it appeared as a two-story wood-frame structure and is a contributing structure to the National Historic Landmark District.
4. The subject property has access from Stewart Street.
5. The subject property is located within a very low-density land use classification on the adopted Zoning Map.
6. The property is located outside of Flood Zone AE – Areas of 100-year flood and Flood Zone X – Areas of 500-year flood.
7. Adequate public facilities are available to serve the property.
8. The area is characterized by a mixture of single-family dwellings located in the Cleveland Historic Overlay Zone.

STAFF DISCUSSION

The applicant was granted a Conditional Use Permit for the operations of a small business in the form of a delivery donut shop under Section 17.24.030 Conditional Uses under Home Occupation in a R1 – Residential District.

The applicant has coordinated the proposed business operations with the South Dakota Department of Health and operates under South Dakota’s Cottage Food Laws. [See Exhibit B for more details]

“Home Occupation” means:

An occupation carried out in-residence, of a commercial nature, which has no employees other than family members and takes up no more than twenty-five (25) percent of the total floor area.

COMPLIANCE:

1. This Home Occupation was started within six (6) months of the date of issuance of Conditional Use Permit.
2. No complaints are on record for this establishment.

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 has not significantly affected the neighborhood since the business will be operated on via a delivery service and not by walk-up or appointment basis. This property does not have off street parking. The delivery vehicle is the applicant's personal vehicle.

- 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 R1 – Residential District. The R1 – Residential District is intended to provide locations for low to medium density, residential development commensurate with an urban area. Currently, there is not an over-concentration of this type of use in the city and there is limited home occupational use of residential property in this vicinity.

- C. The proposed use at the proposed 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.

The proposed use has not resulted in a substantial or undue adverse effect on adjacent property, and the use has not altered the character of the neighborhood. There has been no change in the size of the dwelling.

- 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 has not increased the proliferation of non-conforming uses. There are approximately nine (9) homes along this portion of Stewart Street with a variety of on and off-street parking. The use is otherwise surrounded by single-family residences. The appearance of the residence has not changed and the character and use of the buildings and structures adjoining the subject property has not been 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 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.

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. Proof of a state sales tax number shall be provided to the Planning and Zoning Office for their files on an annual basis.
3. City water and sewer rates to remain changed from residential to commercial rates.
4. Proper paperwork is filed with the City of Deadwood Finance Office for Business Improvement District (BID) taxes.
5. Maintain a City of Deadwood Business License.

ACTION REQUIRED FOR CONDITIONAL USE PERMIT:

1. Approval/Denial by Deadwood Planning and Zoning Commission