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## PLANNING AND ZONING COMMISSION CONDITIONAL USE PERMIT – ANNUAL REVIEW

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### Staff Report

Date: May 1, 2024  
From: Kevin Kuchenbecker  
Planning, Zoning & Historic Preservation Officer  
RE: Conditional Use Permit – Bed & Breakfast – Annual Review

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**BUSINESS:** Tucker Inn (Shirlene Joseph)

**PURPOSE:** Annual Review of CUP – Bed & Breakfast

**ADDRESS:** 771 Main Street

**LEGAL DESCRIPTION:** LOTS 7 AND 8, BLOCK 24, ORIGINAL TOWN, CITY OF  
DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA.

**FILE STATUS:** Legal obligations not met.

**ZONE:** R2 – Multi- Family Residential District

### STAFF FINDINGS:

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Surrounding Zoning:

North: R2 – Residential District

South: PF – Park Forest

East: C1 – Commercial District

West: R2 – Residential District

Surrounding Land Uses:

Multi-Family Residential

State Highway

Parking Lot

Multi-Family Residential

### SUMMARY OF REQUEST

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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 19, 2004, to operate a Bed & Breakfast located at 771 Main Street.

This establishment is a duplex style home, with one unit on the main floor, and a second unit on the second floor. Each unit is rented out separately. There are a total of five (5) bedrooms for rent, with one (1) additional bed offered in the main room of the second-floor unit. Each unit has a single bathroom for a total of two (2) baths. The subject property is in a mixed-use area and is immediately surrounded by other residences, a parking lot, and a state highway.

### **FACTUAL INFORMATION**

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1. The property is zoned R2- Residential District.
2. The subject property has off-street parking available for three (3) vehicles via tandem parking in the driveway.
3. The property is located within a 100-year flood zone.
4. Adequate public facilities are available to serve the property.
5. The area is characterized by a mixture of residential and commercial uses.

### **STAFF DISCUSSION**

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The applicant was granted a Conditional Use Permit for a Bed & Breakfast establishment and City regulations permit Bed & Breakfast establishments in R2- Residential Districts with an approved Conditional Use Permit. The subject property is a five (5) bedroom, two (2) bath duplex located on the subject property. Renters can park in the driveway.

The Deadwood Zoning Code 17.08.010 and South Dakota Codified Law defines a Vacation Home Establishment as the following:

**“Bed & 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:**

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1. This Bed & Breakfast has been in continual use over the last 12 months.
2. No complaints are on record for this establishment.
3. Verification of 2024 South Dakota Department of Health Lodging License required to be submitted to the Planning and Zoning Department within thirty (30) days of this hearing.

**GENERAL USE STANDARDS FOR CONDITIONAL USE PERMITS:**

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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 parking requirements associated with short-term rentals. This area is of mixed 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.

*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 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 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 on an annual basis.
3. Building Inspector has inspected the building, and it meets all the building codes.
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. Maintain lodging license after inspection from the South Dakota Department of Health and provide copy to the Planning and Zoning Office for their files on an annual basis.
8. All parking shall be off street.

**ACTION REQUIRED:**

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1. Approval/Denial by Deadwood Planning and Zoning Commission