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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  
Leah Blue-Jones, Zoning Coordinator  
RE: Conditional Use Permit – Bed & Breakfast – Annual Review

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**BUSINESS:** Backyard Cottage (Steven Flaigg)  
**PURPOSE:** Annual Review of CUP – Bed & Breakfast  
**ADDRESS:** 28 Lincoln Avenue

**LEGAL DESCRIPTION:** LOTS 1 AND 2, BLOCK 49, ORIGINAL TOWN, CITY OF DEADWOOD, LOCATED IN THE NW 1/4, SECTION 26, T5N, R3E, B.H.M., CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA.

**FILE STATUS:** All legal obligations have been completed.  
**ZONE:** R1 – Residential District

### STAFF FINDINGS:

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<u>Surrounding Zoning:</u>	<u>Surrounding Land Uses:</u>
North: R1 – Residential District	Residential
South: R1 – Residential District	Residential
East: R1 – Residential District	Residential
West: R1 – Residential District	Residential

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## **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 February 5, 2020, to operate a Bed & Breakfast located at 28 Lincoln Avenue. This establishment is a single unit, one bathroom guest home. The subject property is surrounded by residences.

## **FACTUAL INFORMATION**

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1. The property is zoned R1– Residential District.
2. The subject property has off-street parking available in a two (2) stall detached garage.
3. The property is not located within a flood zone.
4. Adequate public facilities are available to serve the property.
5. The area is characterized by residences.

## **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 R1- Residential Districts with an approved Conditional Use Permit. The subject property is a one bedroom, one bath guest house located on the subject property. Renters can park in the detached two (2) car garage.

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.

**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 residential.*

- 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 and is intended to provide locations for medium density, residential development commensurate with an urban area. Bed & Breakfast Establishments may be allowed through a conditional use process reviewed on an annual basis.*

- 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:**

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- 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 recommends the following conditions be added to the Conditional Use Permit to match existing Short-Term Rentals which has been conditioned on other actions by the Planning & Zoning Commission and Board of Adjustment:

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