

OFFICE OF  
PLANNING, ZONING AND  
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108 Sherman Street  
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**STAFF REPORT  
PLANNING & ZONING  
BOARD OF ADJUSTMENT  
REQUEST FOR A CONDITIONAL USE PERMIT  
May 19, 2021**

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**APPLICANT:** Rick & Chris Jordan

**PURPOSE:** Application for CUP - Bed and Breakfast

**GENERAL LOCATION:** 768 Main Street

**LEGAL DESCRIPTION:** Part of Lots 46 & 47, Block 23, Original Townsite, City of Deadwood, Lawrence County, South Dakota

**FILE STATUS:** All legal obligations have been completed

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

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**STAFF FINDINGS:**

Surrounding Zoning:

North: R1/R2 – Residential Districts

South: R1 – Residential Districts

East: PU/Commercial

West: R1/R2 Residential Districts

Surrounding Land Uses:

Residential Housing

Multi-family Housing

Mixed Use

Residential Housing

**SUMMARY OF REQUEST**

The applicant has submitted a request for a Conditional Use Permit to operate a Bed and Breakfast establishment at their residence located at 768 Main Street. The subject property is located on upper Main Street and is surrounded by different zoning classifications: Residential, Residential Multi-Family, Public Use, Commercial and Park Forest.

**FACTUAL INFORMATION**

1. The property is currently zoned R2 – Residential Multi-Family.
2. The site was originally built in the early 1900's is on the National Historic Registry.

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3. The subject property has access from Main Street.
4. The subject property is located within a low density land use classification on the adopted Land Use Map.
5. The property is located in Flood Zone X – Areas of 500-year flood.
6. Adequate public facilities are available to serve the property.
7. The area is characterized by a mixture of single family dwellings, multi-family dwellings, commercial and public use areas.

### **STAFF DISCUSSION**

The applicant has submitted a request for a Conditional Use Permit for a Bed and Breakfast establishment and City regulations permit Bed and Breakfast establishments in R2 – Residential Multi-Family District with an approved Conditional Use Permit. The subject property is currently being utilized for an apartment. The applicant indicates they intend to rent two private, one bedroom areas for their operation.

The Deadwood Zoning Code 17.08 defines a Bed and Breakfast as the following:

**“Bed and breakfast establishment” means:**

1. A single detached dwelling where temporary lodging or sleeping accommodations with no more than three guest rooms is provided with a breakfast meal to the traveling public, by the owner and his or her immediate family for payment and such shall be subordinate to the principle use of the dwelling as an owner occupied residence.

**Rick and Chris intend to occupy the lower level as their residence and would comply with the stipulation of being owner occupied.**

2. No bed and breakfast home shall be located on a lot closer than two hundred (200) feet or eight residences, whichever is greater, from any other lot containing a bed and breakfast home. However, the planning and zoning commission may waive the distance limitation if the structure is listed on the National Register of Historic Places or eligible for individual listing on the National Register of Historic Places. The Deadwood building inspector shall inspect the premises to insure compliance with the Building Code;

**In this instance there are bed and breakfasts within the two hundred feet required buffers. The Jordan’s home sits in between four legal operating bed and breakfast establishment’s own by Shirlene Joseph. The Planning and Zoning Commission may waive the distance limitation if the structure is listed on the National Register of Historic Places or eligible for individual listing on the National Register of Historic Places. 768 Main Street is currently on the National Register of Historic Places.**

3. Applicants proposing tandem parking shall be required to provide a control board for the keys of the guests. The owner/manager shall be responsible for the control board. The subject residence proposed for a bed and breakfast shall be required to provide the following: (a) off-street parking for two vehicles; (b) proof of a state sales tax number shall be provided to the planning and zoning office for their files; and (c) proof that the business improvement district has been notified of the bed and breakfast establishment and (d) proof of a lodging license from the State of South Dakota.

**The Deadwood Zoning Code requires a bed and breakfast establishment to be occupied by the owner(s). The code also states a requirement of one off-street parking space per guestroom in section 17.64.060 of the ordinance book. The property does not have off street parking on site but owners have leased two private parking areas nearby for compliance.**

COMPLIANCE:

1. **The Zoning Officer provided notice identifying the applicant, describing the project and its location, and giving the scheduled date of the public hearing in accordance with Section 10.10.B.**
2. **A sign was posted on the property for which the requests were filed.**
3. **Notice of the time and place was published in the designated newspaper of the City of Deadwood.**

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 should not significantly affect the neighborhood. This area has a mixture of single family and multi-family dwellings.*

- 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 – Residential Multi-Family District and is intended to provide locations for low to medium density residential. Medium density residential is designed to provide apartment and multi-family dwellings as well as parks and recreation areas. There are four B&Bs within 200 feet of the proposed B&B.*

- 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 proposed use would 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 will be no change in the size of the dwelling. To support a denial of a conditional use permit on the grounds that it will cause increased traffic problems, there must be a high degree of probability that the increase would pose a substantial threat to the health and safety of the community.*

- 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 would not increase the proliferation of non-conforming uses. The subject residence is located in an area that has apartment buildings and additional B&Bs. The appearance of the structure will not change; therefore, the character and use of the buildings and structures adjoining the subject property will not be 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 will not cause 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 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 filled 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 Bed and Breakfast must be owner occupied.**
- 3. Proof of a state sales tax number shall be provided to the Planning and Zoning Office for their files.**
- 4. Proof that the Building Inspector has inspected the building and it meets all of the building codes.**
- 5. Proper paperwork is filed with the City of Deadwood Finance Office for BID taxes.**

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- 6. Proof of City of Deadwood Business License.**
- 7. Obtain lodging license after inspection from the South Dakota Department of Health.**
- 8. All parking shall be off street.**

ACTION REQUIRED FOR CONDITIONAL USE PERMIT:

1. Approve / Deny by the Planning and Zoning Commission.
2. Approve / Deny by the Board of Adjustment.