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PLANNING AND ZONING COMMISSION STAFF REPORT REQUEST FOR VARIANCE

Staff Report

Date: September 2, 2026
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Request for Variance

APPLICANT(S): Danika McFarland

PURPOSE: Request for Variance

ADDRESS: 37 Lincoln Avenue

LEGAL DESCRIPTION: The East twenty feet (20') of Lot Three (3) and all of Lot Four (4), Block 43, Deadwood, as shown on the P.L. Rogers Map of the City of Deadwood, Lawrence County, South Dakota.

FILE STATUS: All legal obligations have been completed.

ZONE: R1 - Residential

STAFF FINDINGS:

Surrounding Zoning:

North: R1 – Residential
South: R1 – Residential
East: R1 – Residential
West: R1 – Residential

Surrounding Land Uses:

Residences
Residences
Residences
Residences

SUMMARY OF REQUEST

The applicant has applied for a variance to Ordinance Chapter 17.24.040 (D) – Rear Yard Requirements (minimum rear yard for accessory buildings and uses: ten (10) feet).

FACTUAL INFORMATION

1. The property is currently zoned R1 - Residential.
2. The property is not located within a flood zone.
3. The area is characterized by residential dwelling units.

STAFF DISCUSSION

The applicant has submitted a Request for a Variance to Ordinance 17.24.040 (D) – Area and Bulk Requirements (minimum rear yard for accessory buildings and uses: ten (10) feet). According to their application, the garage will be placed 1.25 feet from the rear property line. A variance from the required ten-foot setback is being requested. The property owner will install a driveway in accordance with Deadwood’s requirements behind the property and will enter into an easement with the City of Deadwood for the driveway, driveway approach and retaining wall extension; all of which will be built behind the property line and in the right-of-way.

COMPLIANCE:

1. The Zoning Office provided notice identifying the applicant, describing the project and its location, and giving the scheduled date of the public hearing in accordance with Section 11-4-4.4.
2. A sign was posted on the property for which the request was filed.
3. Notice of the time and place of the public hearing was published in the designated newspaper of the City of Deadwood.

GENERAL USE STANDARDS FOR VARIANCE REQUESTS:

In reviewing any application under the authority of this chapter and as a further guide to its decision based upon the facts of the case, the Commission(s) shall consider, among other things, the following facts:

1. A variance may be appropriate where, by reason of exceptional narrowness, shallowness, or shape or by reason of other exceptional topographic conditions or other extraordinary conditions on a piece of property, the strict application of any regulation enacted under this title would result in peculiar, exceptional, and undue hardship on the owner of

such property. The aforesaid circumstances or conditions shall be set forth in the findings of the board.

The 37 Lincoln Avenue lot measures approximately 24.77 feet wide at the rear (along Taylor Street) and over 110 feet in length. The property was excavated in the rear of the lot in anticipation of repairing the foundation and constructing a garage on the rear of the property. The excavation process has resulted in the need to construct a high retaining wall along the northwest and southeast property lines. The intent is for the walls of the tandem style garage to act as the retaining walls along the length of the site and to provide off-street parking which is otherwise unavailable in association with this lot.

2. Variances shall not be granted to allow a use otherwise excluded from the particular district in which requested.

The subject property is in zoning district R1 – Residential, and accessory buildings, such as garages, are allowed within this zone.

3. Any variance granted under the provisions of this section shall be the minimum adjustment necessary for the reasonable use of the land.

The proposed garage will measure over 18 feet wide and 40 feet deep. This is meant to allow a roof top patio above the garage to be utilized as green space and outdoor living area with the sides of the garage retaining the hillside cuts. The configuration of the garage will place it within 1.25 feet of the rear property line, prompting the Variance Request.

4. The granting of any variance is in harmony with the general purposes and intent of this title and will not be injurious to the neighborhood, and/or detrimental to the public welfare, or in conflict with the established policies of the city.

The granting of this variance is not anticipated to be injurious and/or detrimental to the public welfare. The owner received Project Approval from the Historic Preservation Office on May 28, 2025, to construct a vaulted garage and conservatory at the rear of the resource. Until recent site plans were submitted in association with the retaining wall and garage, it was unknown the variance was required.

5. There must be proof of practical difficulty, which may be based upon sufficiently documented economic factors, but such proof shall not be based solely upon or limited to such economic factors. Furthermore, the hardship complained of cannot be self-created, nor can it be established on this basis by one who purchases with or without knowledge of the

restrictions; it must result from the application of this title; it must be suffered directly by the property in question; and evidence of variance granted under similar circumstances shall not be considered.

The excavation of the site has created practical difficulty as it pertains to hill side stabilization and retaining walls. The construction and the lengthening of the garage will assist in stabilizing the site by acting as retaining walls as well as providing off-street parking.

6. That the proposed variance will not impair an adequate supply of light and air to adjacent properties, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the adjacent neighborhood.

The proposed variance will not impair light and air to adjacent properties, nor will it increase the congestion in the public streets. In fact, the off-street parking may relieve some on-street parking congestion.

7. A fee, as adopted by resolutions, due and payable prior to the public hearing, shall be paid to the zoning administrator as agent for the board to cover the costs of notices and other expenses incidental to the hearing.

The applicant paid an application fee at the time the Request for Variance was submitted to the zoning administrator.

8. The applicant has proven that he or she is the owner of the property or is his or her officially designated agent and has presented proof thereof.

Per the Lawrence County online database, the applicant is the owner of the subject property.

CONDITIONS GOVERNING APPLICATIONS AND PROVISIONS:

1. A variance shall be null and void two (2) years from the date it is granted unless completion or substantial construction has taken place. The board of adjustment may extend the variance for an additional period not to exceed one year upon the receipt of a written request from the applicant demonstrating good cause for the delay.
2. If upon review by the zoning administrator, a violation of any condition, imposed in approval of a variance is found, the administrator shall inform the applicant by registered mail of the violation and shall require compliance within sixty (60) days, or the administrator will take action to revoke the permit. The administrator's letter, constituting notice of intent to revoke variance may be appealed to the Board of Adjustment within thirty (30) days of its mailing. The Board of Adjustment shall consider the

appeal and may affirm, reverse, or modify the administrators notice of intent to revoke. The applicant must comply with the Board of Adjustment's order on appeal of notice of intent to revoke variance within thirty (30) days of the board's decision.

If approved, staff recommendations for stipulation(s):

1. Any changes or alteration to the plan submitted be subject to Project Approval by the Historic Preservation Commission prior to the start of the project.
2. Obtain building permit and complete required inspections.
3. Enter into easement agreement with the City of Deadwood for improvements made within the right of way.

ACTION REQUIRED:

1. Approval/Denial by Deadwood Planning and Zoning Commission