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**BOARD OF ADJUSTMENT  
STAFF REPORT  
CONDITIONAL USE PERMIT**

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**Staff Report**

Date: May 20, 2024  
From: Kevin Kuchenbecker  
Planning, Zoning & Historic Preservation Officer  
RE: Conditional Use Permit – Vacation Home Establishment

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**APPLICANT(S):** Budi Kusser

**PURPOSE:** Application for CUP – Vacation Home Establishment

**ADDRESS:** 29 Lee Street

**LEGAL DESCRIPTION:** Lot B in Block 18 of the City of Deadwood, Lawrence County, South Dakota, also known as 29 Lee Street, according to P.L. Rogers map.

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

**ZONE:** C1 - Commercial

**STAFF FINDINGS:**

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Surrounding Zoning:

North: C1 – Commercial  
South: C1 – Commercial  
East: C1 – Commercial  
West: C1 - Commercial

Surrounding Land Uses:

Businesses  
Businesses  
Businesses  
Businesses

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## **SUMMARY OF REQUEST**

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The applicants have submitted a request for a Conditional Use Permit to operate a Vacation Home Establishment located at 29 Lee Street. Since 2022, 29 Lee Street has been utilized as a legal non-confirming Vacation Home establishment. This property was recently sold, and the new owner is seeking to become compliant with Municipal Code 17.53.

## **FACTUAL INFORMATION**

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1. The property is currently zoned C1 – Commercial District.
2. The property has operated in the past as a Vacation Home Establishment for two (2) years.
3. The applicant has not provided details related to parking. Parking is available in the Broadway Parking Ramp.
4. The property has one (1) bedroom with three (3) beds. It will sleep up to six (6) guests.
5. The subject property is located within a C-1 Commercial zoning location on all sides.
6. The property is not located within a flood zone.
7. Adequate public facilities are available to serve the property.
8. The area is characterized as the historic core downtown business zone.
9. According to Deckard – Rentalscape the property has been booked for 117 nights over the past 12 months.

## **STAFF DISCUSSION**

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The applicants have submitted a request for a Conditional Use Permit for a Vacation Home Establishment and City regulations permit Vacation Home Establishments in C1 - Commercial zoning districts with an approved Conditional Use Permit. The subject property has been operating as a Vacation Home establishment since 2022.

The Deadwood Zoning Code 17.08 and South Dakota Codified Law defines a Vacation Home Establishment as the following:

### **“Vacation Home Establishment” means:**

Any home, cabin, or similar building that is rented, leased, or furnished in its entirety to the public on a daily or weekly basis for more than 14 days in a calendar year and is not occupied by an owner or manager during the time of rental as defined and permitted by the State of South Dakota and this Title. This term does not include a bed and breakfast establishment as defined in this Title.

1. Vacation Home Establishments are strictly prohibited in R1 and R2 zoning districts with the exceptions under 17.53.040.

*In this instance the property is in a C1 – Commercial zoning district. Budi Kusser plans to continue to operate the Vacation Home Establishment in a similar fashion as it has been run since 2022.*

2. Vacation Home Establishments shall be located in upper floors of commercial structures only within the local historic district.

*This property is in a commercial structure within the local historic district. Therefore, first floor use of a short-term rental is prohibited. The new owners intend to turn the first floor of the structure into a retail space and maintain only the upper floor as a short-term rental. This will be done via a separate entrance and a barrier created between the two doors allowing private ingress/egress into the building for guests of the Vacation Home Establishment.*

#### **COMPLIANCE:**

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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 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:**

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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. Preserve the existing stock of historic structures by working with the individuals and guiding the uses is an acceptable means. Traffic and parking have not significantly affected the neighborhood. This area is of a business nature.*

- 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 C1 – Commercial and is intended to provide locations for commercial uses, which require access to roads and highways. Parking can be a challenge in the historic core and the property owner’s plans to accommodate parking have not been submitted and should be discussed.*

*There are currently four (4) licensed Vacation Home Establishments within the historic core downtown business district. This does not include hotels and/or motels.*

- 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.

*If the applicant only uses off street parking and prevents any public nuisance issues that are often associated with Vacation Home Establishments, the proposed use may not result in a substantial or undue adverse effect on adjacent properties, or the character of the property and the use would not alter the character of the district. 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. To date, the city has not received any complaints about the operation of this establishment.*

- 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 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:**

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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 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.
3. Proof that the Building Inspector has inspected the building, and it meets all the building codes.
4. City water and sewer rates to be 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. 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.
9. The Vacation Home Establishment shall be limited to only the second floor and the ground level used as retail space.

**ACTION REQUIRED:**

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The Deadwood Planning and Zoning Commission approved the C.U.P. on May 1, 2024 with the above referenced conditions.

1. Approval/Denial by Deadwood Board of Adjustment with conditions.