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

Staff Report

Date: May 20, 2024
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Conditional Use Permit – Bed and Breakfast

APPLICANT(S): Aaron Sternhagen

PURPOSE: Application for CUP – Bed and Breakfast

ADDRESS: 25 Lincoln Avenue

LEGAL DESCRIPTION: Lots 12, 13 and 14, Block 42 in the City of Deadwood, Lawrence County, South Dakota, except the southeasterly 10 feet of lots 12, 13 and 14 and one-half of the vacated alley, Block 42, previously conveyed to Dennis L. McKay and Linda M. McKay. Also that portion of Lots E, F, and G, Block 35 of Probate Lot 226 and sometimes referred to as Child's addition to the City of Deadwood, quit claimed by Francis Caneva to Lawrence C. McKay, all according to 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 submitted a request for a Conditional Use Permit to operate a Bed and Breakfast located at 25 Lincoln Avenue. Since 2020, 25 Lincoln Avenue has been utilized as a Bed and Breakfast. This property is currently under contract to be sold, and the prospective owner is seeking to maintain compliance with Municipal Code 17.53.

FACTUAL INFORMATION

1. The property is currently zoned R1 - Residential.
2. The property has operated as a Bed and Breakfast since 2020.
3. The subject property has access from Lincoln Avenue with off-street parking for several vehicles.
4. The property is not located within a flood zone.
5. Adequate public facilities are available to serve the property.
6. The area is characterized by a mixture of both single and multi-family residential uses.
7. According to Deckard – Rentalscape this property has been booked for 205 nights in the past 12 months.

STAFF DISCUSSION

The applicant has submitted a request for a Conditional Use Permit for a Bed and Breakfast and City regulations permit Bed and Breakfast establishments in Residential zoning districts with an approved Conditional Use Permit. The subject property has been operating as a Bed and Breakfast since 2020. According to the application, there is adequate off-street parking and a driveway providing ingress/egress from Lincoln Avenue.

The Deadwood Zoning Code 17.08 and South Dakota Codified Law defines a Bed and Breakfast as the following:

“Bed and Breakfast” 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 rental units for up to an average of ten guests per night and in which family style meals are provided as defined and permitted by the State of South Dakota.

1. Bed and Breakfasts are allowed in R1 and R2 zoning districts with a Conditional Use Permit under 17.24.030.

Aaron Sternhagen plans to continue to operate the Bed and Breakfast as it has been run since 2020.

2. Specialty Resorts shall be in upper floors of commercial structures only within the local historic district.

This property is not located in a commercial structure within the local historic district. Therefore, first floor use is permissible in this instance.

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 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 have not significantly affected the neighborhood. This area has a mixture of single 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 R1 – Residential and is intended to provide locations for medium density, residential development commensurate with an urban area. The primary use is single-family detached residences.

- 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 Specialty Resorts, 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.

On May 14, 2021, this office documented a complaint with regards to parking issues associated with this 21 Lincoln Avenue. Three (3) current letters of support, included in this packet, have been received in this office.

- 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:

- 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 Conditional Use Permit will take effect only upon the successful closing of the property by the applicant. Should the sale of the property fail to close, the Conditional Use Permit for this applicant will be null and void.
10. The Bed and Breakfast establishment must be owner occupied and the owner or owner's representative must be on-site when guests are present.

ACTION REQUIRED:

Approved with above conditions by Deadwood Planning and Zoning Commission on May 1, 2024.

1. Approval/Denial by Deadwood Board of Adjustment