

OFFICE OF
PLANNING, ZONING AND
HISTORIC
PRESERVATION
108 Sherman Street
Telephone (605) 578-2082
Fax (605) 578-2084



Kevin Kuchenbecker
Planning, Zoning and
Historic Preservation Officer
Telephone (605) 578-2082
kevin@cityofdeadwood.com

BOARD OF ADJUSTMENT STAFF REPORT CONDITIONAL USE PERMIT

Staff Report

Date: April 21, 2025
To: Board of Adjustment
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Conditional Use Permit – Vacation Home Establishment

APPLICANT(S): Emrick Real Estate Group, LLC (Cody Emrick)

PURPOSE: Application for CUP – Vacation Home Establishment

ADDRESS: 9 Shine Street

LEGAL DESCRIPTION: Lots 2B and 2D of Block 23, Original Town, City of
Deadwood, Lawrence County, South Dakota

FILE STATUS: All legal obligations have been completed.

ZONE: C1 - Commercial

STAFF FINDINGS:

Surrounding Zoning:

North: R1 – Residential
South: C1 – Commercial
East: C1 – Commercial
West: PU – Public Use

Surrounding Land Uses:

Residences and Public Park
Hotel
Businesses
Library

SUMMARY OF REQUEST

The applicant(s) have submitted a request for a Conditional Use Permit to operate a Vacation Home Establishment located at 9 Shine Street. Over the last 1.5 years, this home, located in the Historic Downtown Core, has undergone extensive remodeling in anticipation of its opening as a Vacation Home Establishment.

FACTUAL INFORMATION

1. The property is currently zoned C1 – Commercial.
2. The property has a history of being utilized as a Vacation Home, however, it has not been in operation during its remodel over the last 1.5 years +/- . To re-open this location as a Vacation Home Establishment, a Conditional Use Permit is required.
3. The subject property has access from Shine Street with off-street parking for two (2) vehicles.
4. The subject property is located within the Historic Downtown Core, and is surrounded by several different zoning districts, including C1 – Commercial, R1 – Residential and PU – Public Use.
5. The property is not located within a flood zone.
6. Adequate public facilities are available to serve the property.
7. The area is characterized by a mixture of business, residential and public uses.

STAFF DISCUSSION

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 operated as a Vacation Home Establishment in the past. According to their application, they have adequate off-street parking for two (2) vehicles, and a driveway providing ingress/egress via Shine Street.

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 fourteen (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.

1. Vacation Home Establishments are strictly prohibited in R1 and R2 zoning districts with the exceptions under 17.53.030.

In this instance the property is in a C1 – Commercial zoning district and does not violate city ordinance.

2. STR Type shall only be located in upper floors of commercial structures within the local historic district.

While this property is located within the local historic district, it was originally built as a house, and not as a commercial building within the downtown core. Therefore, having the entire building be utilized as a Vacation Home Establishment would not violate Ordinance 17.53.030.

3. No Vacation Home Establishment shall be located on a lot closer than two hundred (200) feet from any other lot occupied by a structure used as a Vacation Home Establishment unless located on the upper floors of a historic commercial structure within the local historic district boundaries.

Since this property is located within the local historic district, the two hundred (200) foot buffer requirement would not apply.

4. Existing Vacation Home Establishments operating and approved by the City of Deadwood prior to April 1, 2023, and in continuance use, shall remain authorized until conditions outlined in Chapter 17.76 take effect.

While this property was an existing Vacation Home Establishment prior to April 1, 2023, it has not remained in continuance use since that date, and therefore a Conditional Use Permit is required for the property to re-open as a Vacation Home Establishment.

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 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.
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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 usage types. Preserving the existing stock of historic structures by working with owners and guiding the usage properties is an acceptable means of meeting the standards of the City Comprehensive Plan. Traffic and parking should not significantly affect the neighborhood. This area has a mixture of businesses, single and multi-family dwellings, as well as public spaces.

- 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, and substantial amounts of parking. The proposed use will not have a negative impact on the historic downtown core.

- 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 should not result in a substantial or undue adverse effect on adjacent properties. 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 the 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 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 a 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 recommend 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. Obtain and maintain a City of Deadwood Business License.
3. Obtain a Lodging License from the South Dakota Department of Health and provide a copy of said license to the Planning and Zoning Department for their files.
4. Obtain a sales tax number from the South Dakota Department of Revenue and provide a copy of paperwork showing verification of the sales tax number to the Planning and Zoning Office for their files.
5. Contact the City of Deadwood Finance Office to participate in Business Improvement District (BID) taxes.
6. Contact the City of Deadwood Finance Office to change City water service from residential to commercial.
7. Have the City of Deadwood Building Official inspect the building to ensure it meets applicable building codes.
8. All parking shall be off street.

ACTION REQUIRED:

1. Approval/Denial of Application for Conditional Use Permit by the Deadwood Board of Adjustment. (Approved with conditions by Planning and Zoning Commission April 2, 2025)