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BOARD OF ADJUSTMENT STAFF REPORT REQUEST FOR VARIANCE

Staff Report

Date: June 17, 2024
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Request for Variance

APPLICANT(S): Brian Kinkler

PURPOSE: Request for Variance

ADDRESS: 288 Williams Street

LEGAL DESCRIPTION: Lot 1 of Probate Lots 354 and 508; formerly Probate Lot 508 and the west 11' of Probate Lot 354; 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 (C) – Area and Bulk Requirements. (Minimum side yard for accessory buildings and uses: five 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 single family homes.

STAFF DISCUSSION

The applicants have submitted a Request for a Variance to Ordinance 17.24.040 (C) – Area and Bulk Requirements. (Minimum side yard for accessory buildings and uses: five feet). According to their application, the driveway is to be widened to reach the eastern property line and a new garage is to be constructed one (1) foot from the eastern property line. A variance from the required five feet minimum side yard for accessory buildings and uses is being requested.

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 VARIANCE REQUESTS:

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:

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 lot of 288 Williams measures 67.05 feet wide (street frontage/south side) x 95.3 feet (east side) x 66.43 feet wide (north side), x 88.33 feet wide (west side). The property currently has a narrow driveway entrance. A sharp turn to the left is required to access the current garage, which sits behind, and slightly west, of the house. The property owner is prevented from accessing the garage with his vehicle, due to lot size as well as the current configuration of both the driveway and garage.

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, and driveways are both 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 35 feet wide x 25 feet deep. This will be larger than the current garage, which measures 12 feet wide x 30 feet deep., however, the larger garage, the change in orientation of the garage entrance to face the south, and the relocation of the garage from the west to the east side of the property will allow for the minimum adjustment necessary for the reasonable use of the land. The new configuration of the garage will place it within one (1) foot of the east 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. It is required that the property owner receive project approval from the Historic Preservation office prior to the start of construction.

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.

According to the applicant, the current size and configuration of the existing garage creates a practical difficulty due to lack of accessibility and its inability to be utilized by the property owner for the purpose of parking and storage of vehicle(s).

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. If granted, the newly built garage will be built within one (1) foot of the house, which may increase the danger of fire spreading between buildings on the lot. It is staff recommendation that the property owner, and any contractor(s) working on the new garage consult with the Fire Department and proceed with all fire safety requirements and/or recommendations provided by the Fire Department related to the construction of the new accessory building.

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. Project approval from the Historic Preservation Commission is required prior to the start of the project.
2. Proof that the Fire Department has inspected the building, and it meets all fire codes.
3. Proof that the Building Inspector has inspected the building, and it meets all the building codes.

ACTION REQUIRED:

Approved with conditions above by Deadwood Planning and Zoning Commission on June 5, 2024.

1. Approval/Denial by Deadwood Board of Adjustment