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BOARD OF ADJUSTMENT STAFF REPORT CONDITIONAL USE PERMIT

Staff Report

Date: December 15, 2025
To: Planning and Zoning Commission
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Conditional Use Permit – Vacation Home Establishment

APPLICANT(S): Optima LLC

PURPOSE: Application for CUP – Vacation Home Establishment

ADDRESS: 308 Main Street

LEGAL DESCRIPTION: Lot 1A, 2, 3 and the North 17 feet of Lot 4, Block A of the Noble's Addition to the City of Deadwood, NE ¼ of Section 23, T5N, R3E, B.H.M., Lawrence County, South Dakota

FILE STATUS: All legal obligations have been completed.

ZONE: CH – Commercial Highway

STAFF FINDINGS:

Surrounding Zoning:

North: CH – Commercial Highway
South: PU – Public Use
East: CH – Commercial Highway
West: CH – Commercial Highway

Surrounding Land Uses:

Open Space
Highway
Businesses
Residence

SUMMARY OF REQUEST

The applicants have submitted a request for a Conditional Use Permit to operate a Vacation Home Establishment located at 308 Main Street.

FACTUAL INFORMATION

1. The property is currently zoned CH – Commercial Highway.
2. Until recently, this property has been a private long-term residence.
3. The subject property has access from Highway 14A with off-street parking for two (2) vehicles.
4. The subject property is located within a CH - Commercial zoning location on 3 sides, and an PU – Public Use zoning on the south side.
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 businesses with a single residence next door.

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 CH – Commercial Highway zoning districts with an approved Conditional Use Permit. According to their application, there is adequate off-street parking and a driveway providing ingress/egress onto Highway 14A.

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 CH – Commercial Highway zoning district and operating as a Vacation Home Establishment would not violate city ordinance.

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

This property is not located in a traditional commercial structure, but it is not within the local historic district.

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.
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. Preserving the existing stock of historic structures by working with the individuals and guiding the use is an acceptable means of accomplishing this goal. Traffic and parking have not significantly affected the neighborhood. This area consists of large gaming based businesses with only two single-family dwelling resources remaining within this portion of the National Historic Landmark District.

- 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 overconcentration 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 CH – Commercial Highway and is intended to provide locations for commercial uses, which require access to roads and highways, and substantial amounts of parking. Changing this use from residential to transient use.

- 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.

- 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. Unfortunately, soon after the change of ownership, the entire yard was removed, and asphalt millings were added.

- 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. Building Inspector to inspect the building to ensure it meets applicable building codes.
4. Proper paperwork to be filed with the City of Deadwood Finance Office for Business Improvement District (BID) taxes.
5. City of Deadwood Business License required.
6. City of Deadwood Short-Term Rental License required.
7. Lodging License from the South Dakota Department of Health required.
8. All parking shall be off street.
9. No burn permits will be issued for this property.

ACTION REQUIRED:

1. Approval/Denial by Deadwood Board of Adjustment (approved by Planning and Zoning Commission November 19, 2025).