



BOARD OF ADJUSTMENT REQUEST FOR A CONDITIONAL USE PERMIT

Staff Report

Date: August 17, 2023
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Request for Conditional Use Permit – Vacation Home
Establishment

APPLICANT(S): Deadwood Rentals, LLC (Trinity Conrad)
PURPOSE: Conditional Use Permit – Vacation Home
Establishment
ADDRESS: 36 Water Street
Deadwood, Lawrence County, South Dakota

LEGAL DESCRIPTION: TRACT A, AN 8' PLATTED ALLEY AND A PORTION OF LOT R-1 OF THE CITY OF DEADWOOD RAILROAD PROPERTY ALL LOCATED IN THE HILLSDALE ADDITION TO THE CITY OF DEADWOOD, IN THE NW ¼ OF SECTION 26, T5N, R3E, B.H.M., CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA; AND, TRACT B-1, MCGOVERN HILL ADDITION OF THE CITY OF DEADWOOD, LOCATED IN THE NW1/4NW1/4 OF SECTION 26 T5N, R3E, B.H.M., CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA

FILE STATUS: All legal obligations have been completed.

ZONE: C1 – Commercial District

STAFF FINDINGS:

Surrounding Zoning:

North: R1 - Residential

South: PU – Public Use

East: C1- Commercial

West: C1 - Commercial

Surrounding Land Uses:

Residential Housing

Parking Lot

Business

Vacant Land

SUMMARY OF REQUEST

The applicant has submitted a request for a Conditional Use Permit to operate a Vacation Home Establishment located at 36 Water Street. The subject property is surrounded by residential homes, business, and public parking. The applicant intends to rent the house for their operation of a vacation home establishment.

FACTUAL INFORMATION

1. The property is currently zoned C1 – Commercial being changed from R1-Residential zoning by Ordinance 1267 on December 27, 2017.
2. The main structure was built in 1902 and is a contributing resource in the Deadwood National Historic Landmark District.
3. The subject property has access from Water Street with off street parking in front of a 1930s log slab garage and bridge over Whitewood Creek.
4. A portion of the property is located within the Regulatory Floodway and the balance of the property within the 100- and 500-year flood zones.
5. Adequate public facilities are available to serve the property.
6. The area is characterized by a mixture of single-family dwellings and commercial businesses.

STAFF DISCUSSION

The applicants have submitted a request for a Conditional Use Permit for Vacation Home Establishment. City regulations permit Vacation Home Establishments in C1- Commercial District with an approved Conditional Use Permit. The subject property is currently being used as a vacation rental. The home has an outside yard area that can be used by guests. According to the application, there is garage parking for guests to use as well as a city parking lot nearby to use if necessary.

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.

COMPLIANCE:

1. The Zoning Office provided notice identifying the applicant, describing the project and its location, and giving the scheduled date of the public hearings 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 should not significantly affect the neighborhood if the applicant abides by the parking requirements associated with a Vacation Home Establishment. This area has a mixture of single family and commercial properties.

- 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. 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 District and is intended to provide locations coinciding with the downtown core commercial zone where certain

uses and gaming are permitted. Through a recent task force set up by the City Commission, the subject of Short-Term Rentals was addressed, and it was determined Vacation Home Establishments may be allowed through a conditional use process reviewed on an annual basis if the property have special uniqueness and does not have a local impact based on the public need.

- 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 Short-Term Rentals, the proposed use should not result in a substantial or undue adverse effect on adjacent property, or the character of the neighborhood and the use would not alter the character of the neighborhood. 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 should not increase the proliferation of non-conforming uses. The subject residence is in an area that does not have additional short-term rentals in the immediate area. 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. Staff has been working with the South Dakota Department of Health with regards to historic structures and ensuring the use is not detrimental to the historic resource. This involves the alteration of windows which can have an adverse effect to the character of the building.

- 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. All utilities will be commercial rates.

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.

Staff recommendations for Conditions be considered if approved:

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 without changing the historic character of the resource through window replacement.
8. All parking shall be off street.

ACTION REQUIRED FOR CONDITIONAL USE PERMIT:

Recommendation was made on August 16, 2023, by the Planning and Zoning Commission to approve the Conditional Use Permit – Vacation Home Establishment -17.08 with conditions.

1. Deny / Approve / Approve with Conditions by the Board of Adjustment.

Possible suggestions to incorporate as conditions to the Conditional Use Permit are listed above in the staff report.