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## BOARD OF ADJUSTMENT CONDITIONAL USE PERMIT – ANNUAL REVIEW

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### Staff Report

**Date:** June 2, 2025  
**From:** Kevin Kuchenbecker  
Planning, Zoning & Historic Preservation Officer  
**To:** Board of Adjustment  
**RE:** Annual Review - Conditional Use Permit – Vacation Home  
Establishment

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**APPLICANT(S):** 47 North, LLC – Budi Kusser  
**PURPOSE:** Annual Review – Conditional Use Permit – Vacation  
Home Establishment  
**ADDRESS:** 29 Lee Street  
Deadwood, Lawrence County, South Dakota  
**LEGAL DESCRIPTION:** Lot B in Block 18 of the City of Deadwood, Lawrence  
County, South Dakota, also known as 29 Lee Street,  
according to P.L. Rogers Map.  
**FILE STATUS:** Legal obligations are being met.  
**ZONE:** C1 - Commercial  
**STAFF FINDINGS:**

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Surrounding Zoning:	Surrounding Land Uses:
North: C1 – Commercial	Businesses
South: C1 – Commercial	Businesses
East: C1 – Commercial	Businesses
West: C1 - Commercial	Businesses

### SUMMARY OF REQUEST

The Deadwood City Commission has directed the Planning and Zoning Commission to conduct annual reviews of all Conditional Use Permits in accordance with City of Deadwood Municipal Code 17.76.060. The applicant was issued a Conditional Use Permit on May 20, 2024, to operate a Vacation Home Establishment at 29 Lee Street.

The subject property is located on Lee Street and is surrounded by Commercial zoned properties located within the Historic Downtown Core.

### **FACTUAL INFORMATION**

1. The property is currently zoned C1 - Commercial District.
2. The subject property has access from Lee Street.
3. The subject property is located within a zone coinciding with the downtown core commercial district.
4. The property is in a 500-year flood zone.
5. Adequate public facilities are available to serve the property.
6. The area is characterized by a mixture of commercial businesses.

### **STAFF DISCUSSION**

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The applicant was granted a Conditional Use Permit for a Vacation Home Establishment and City regulations permit Vacation Home Establishments in C1 - Commercial Districts with an approved Conditional Use Permit. The subject property is a one (1) bedroom, two (2) bath apartment located on the upper floor of a commercial building. Renters can park nearby in the Broadway parking ramp.

### **“Vacation Home Establishment” means:**

Any home, cabin, or similar building that is rented, leased or furnished in its entirety 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 city ordinance.

### **COMPLIANCE:**

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This Vacation Home Establishment has been in continual use over the last 12 months.

According to Deckard – Rentalscape the property was booked 55 nights in the past 12 months and has good reviews.

No complaints are on record for this establishment.

### **GENERAL USE STANDARDS FOR CONDITIONAL USE PERMITS:**

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In reviewing any application under the authority of Chapter 17.76.040 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 Conditional 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. Traffic and parking has not significantly affected the neighborhood since the applicant abides by the parking requirements associated with Short-Term Rentals.*

- B. Whether or not a community need exists for the Conditional Use at the 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 Conditional Use in the location has not resulted in either a detrimental over concentration of a particular use from previously permitted uses within the city or within the immediate area of the Conditional Use.

*The subject area is zoned C1– Commercial District and is intended to provide locations coinciding with the Downtown Core Commercial Zone where certain commercial uses and gaming are permitted.*

- C. The Conditional Use at this location has not resulted 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.

*The applicant only uses off-street parking and prevents any public nuisance issues that are often associated with Short-Term Rentals, the Conditional Use has not resulted 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.*

- D. Whether or not the proposed use increases the proliferation of nonconforming 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 of 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 current use has not increased the proliferation of non-conforming uses. The subject residence is in an area that does have additional Short-Term Rentals in the immediate area. The appearance of the structure has not changed; therefore, the character and use of the buildings and structures adjoining the subject property has not been adversely affected.*

- E. Whether or not the current use in the area has been adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, and services specified in city ordinance.

*The Conditional Use has not caused significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services. Existing services are available onsite. All utilities have been assigned commercial rates.*

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**CONDITIONS GOVERNING APPLICATIONS AND PROVISIONS:**

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- A. Following the review 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 Commission for its original approval.
- B. Conditional Use Permits, once granted, can be revoked by the Board of Adjustment 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. Any use permitted under the terms of any Conditional Use Permit shall be established and conducted in conformity with the terms of such a permit and of any conditions designated in connection therewith.
- E. If the permitted use 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 for continued use, staff recommends the following conditions be met:

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. A state sales tax number from the South Dakota Department of Labor has been provided to the Planning and Zoning Office for their files.
3. The Building Inspector has inspected the building, and it meets applicable building codes.
4. City water and sewer rates are being charged commercial rates.
5. Proper paperwork has been filed with the City of Deadwood Finance Office for Business Improvement District (BID) taxes.
6. City of Deadwood Business and Short-Term Rental Licenses have been maintained and are active.
7. A Lodging License from the South Dakota Department of Health has been maintained and is active.
8. All parking shall be off street.
9. The Vacation Home Establishment shall be limited to only the second floor and the ground level used as retail space.

**ACTION REQUIRED FOR CONDITIONAL USE PERMIT:**

1. Approval/Denial by Deadwood Board of Adjustment (approved by Planning and Zoning Commission May 21, 2025).