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**PLANNING AND ZONING COMMISSION
BOARD OF ADJUSTMENT
STAFF REPORT
CONDITIONAL USE PERMIT**

Staff Report

Date: December 23, 2024
To: Planning and Zoning Commission
Board of Adjustment
From: Kevin Kuchenbecker
Planning, Zoning & Historic Preservation Officer
RE: Conditional Use Permit – Vacation Home Establishment

APPLICANT(S): Sportsbook Deadwood, LLC

PURPOSE: Application for CUP – Vacation Home Establishment

ADDRESS: 65 Sherman Street

LEGAL DESCRIPTION: Lots 9 and 11 and the northeast twenty-four (24) feet of Lot 7, Block 30, Original Town of the City of Deadwood, Lawrence County, South Dakota.

FILE STATUS: All legal obligations have been completed.

ZONE: C1 - Commercial

STAFF FINDINGS:

Surrounding Zoning:

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

Surrounding Land Uses:

Business (Landmark)
Businesses
Parking Lot
Post Office

SUMMARY OF REQUEST

The applicant has submitted a request for a Conditional Use Permit to operate a Vacation Home Establishment located at 65 Sherman Street. The six (6) rooms that will be available for rent at 65 Sherman Street will be applied to the Landmark Hotel & Casino inventory to create a total of thirty (30) hotel rooms. A minimum of thirty (30) rooms suitable for lodging accommodations are required for the applicant to obtain a Convention Facility On-Sale Liquor License per Chapter 5.04.110 of the Deadwood Codified Ordinances.

The submission of the Application for Conditional Use Permit was prompted by a requirement from the South Dakota Department of Health (SDDOH) to license both 57 and 65 Sherman Streets separately from 55 Sherman Street. Per the SDDOH, a single hotel license for all three (3) properties could not be issued for the following reasons:

1. Each building has a separate address.
2. Each building has its own entrance.
3. There is a “gap” between 57 and 65 Sherman Streets. This “gap” contains a restaurant and parking area.

FACTUAL INFORMATION

1. The property is currently zoned C1 - Commercial.
2. The subject property has access from the Miller Street parking lot.
3. The subject property is surrounded by C1 – Commercial and PU – Public Use zoning districts.
4. The property is located within a 0.2% (500 year) flood zone.
5. Adequate public facilities are available to serve the property.
6. The area is characterized by a mixture of both business 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; however, the applicant has applied for a Specialty Resort Lodging License with the South Dakota Department of Health (SDDOH). The subject property will be operated as part of the Landmark Hotel & Casino

complex. The property will offer six (6) of the thirty (30) total rooms suitable for lodging accommodation and available for overnight guests to rent.

The city would like to have consistency in the classification of Short-Term Rentals with SDDOH. In this instance, the applicant has applied for a Specialty Resort License with SDDOH and a Conditional Use Permit for a Vacation Home Establishment with the City of Deadwood. In this case, either category would work based on SDDOH's interpretation of Specialty Resort operations.

According to an SDDOH staff member, a Specialty Resort is defined in ARSD 44:02:05:01 as "any Bed and Breakfast Establishment except a Bed and Breakfast Establishment as defined in § 44:02:06:01, lodge, dude ranch, resort, building, or buildings used to provide accommodations or recreation for a charge to the public, with no more than ten (10) rental units for up to an average of twenty (20) guests per night and in which meals are provided to only the guests staying at the specialty resort;" It does not necessarily require the owner to provide meals, but allows the owner to provide meals to guest only without the need of a separate food service license. Therefore, if the applicant would consider the Conditional Use Permit application for a Specialty Resort, the city would prefer consistency, and this would not be a substantial change to the Conditional Use Permit application and would not cause delay or restarts to the public hearing.

The request for the Conditional Use Permit, either Vacation Home Establishment or Specialty Resort, does not constitute a change of use and therefore is allowed under Section 17.56.040 (H) which states a nonconforming use of a structure may be changed to another nonconforming use provided the Planning and Zoning Commission finds the proposed use is appropriate to the existing nonconforming use. In this case the existing use and the proposed use are for lodging accommodations.

Furthermore, Section 17.56.040 (H) allows the commission to make findings in the specific case or case-by-case which would allow the nonconforming use to continue. In this case, it is staff opinion, the continued use of the lower level as a Short-Term Rental in the west part of the main level maintains the intent of the ordinance to allow for retail as part of the operation of the ground level. The east half of the structure still could be used as retail and the storefront transparency is still in place.

This property is in the historic overlay zone and is not required to provide off-street parking, according to Section 17.64.060 (B) which states any new uses in building built prior to January 1, 1941, shall not be required to provide off-street parking facilities. City staff have met with the management of the Landmark Hotel and Casino to discuss possibilities of validating parking for guests through our parking management system.

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 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 C1 – Commercial zoning district and its operation will 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 a two-story commercial structure located within the local historic district. Therefore, to remain in compliance with 17.53.030, the Vacation Home Establishment must be located solely on the upper floors of the structure. The intent of this ordinance is to allow for retail as part of the operation of the ground level. However, under Section 17.56.040 (H), should the commission make a finding in this specific case to allow the nonconforming use as a Short-Term Rental to continue on the west side of the main level, the east half of the structure could still be used as retail and the storefront transparency would remain.

"Specialty Resort" means:

Any Bed and Breakfast Establishment (except a Bed and Breakfast Establishment as defined in this Title), lodge, dude ranch, resort, building or buildings used to provide accommodations or recreation for a charge to the public, with no more than ten (10) rental units for up to an average of twenty (20) guests per night and in which meals are provided to only guests staying at the Specialty Resort as defined and permitted by the State of South Dakota and this Title.

1. Specialty Resort establishments are strictly prohibited in R1 and R2 zoning districts.

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

2. Specialty Resort Establishments shall only be located in upper floors of commercial structures within the local historic district boundaries.

This property is a two-story commercial structure located within the local historic district. Therefore, to remain in compliance with 17.53.030, the Specialty Resort Establishment must be located solely on the upper floors of the structure. However, under Section 17.56.040 (H), should the commission make a finding in this specific case to allow the nonconforming use to continue by using the lower level as a Short-Term Rental in the east part of the main level, the east half of the structure could still be used as retail and the storefront transparency would remain.

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

This property is within the local historic district boundary and if the Commission makes a finding in this specific case under Section 17.56.040 (H) to allow the nonconforming use of the lower level to continue, then the above buffer requirements could continue to be waived.

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 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 of properties is an acceptable means of accomplishing this goal. Traffic and parking will not significantly affect the neighborhood. This area has a mixture of businesses and public use buildings.

- 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.

- 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 prevents any public nuisance issues that are often associated with Vacation Home Establishments or Specialty Resorts, the proposed use should 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 building. 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 without guidance from the Historic Preservation Commission; 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 should 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.

INITIAL FINDINGS:

1. The Commission finds the proposed use is appropriate to the existing nonconforming use (lodging accommodations) and declares the Conditional Use Permit does not constitute a change of use and therefore is allowed under Section 17.56.040 (H).
2. The Commission further finds under Section 17.56.040 (H) the upper floor requirement of the existing legal nonconforming use meets the intent of the ordinance which allows for retail as part of the operation of the ground level and in this specific case the east half of the structure shall be used as retail and the storefront transparency will remain. Because of this finding and the property being within the local historic district, the Commission finds the buffer requirement would not apply.

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. The ground floor shall remain available for retail as part of the operation of the property and in this specific case the east half of the structure shall be used as retail and both sides of the storefront shall remain transparent.
3. Obtain and maintain a City of Deadwood Business License.
4. Obtain and maintain a City of Deadwood Short-Term Rental License.
5. File proper paperwork with the City of Deadwood Finance Office to participate in Business Improvement District (BID) 1-7 taxes.
6. Obtain Lodging License from the South Dakota Department of Health which is the same category of Short-Term Rental as the Conditional Use Permit and provide a copy to the Planning and Zoning Department for their files.
7. Obtain a South Dakota Department of Revenue Sales Tax License and provide a copy to the Planning and Zoning Department for their files.

8. Have the City of Deadwood Building Inspector inspect the building to ensure compliance with applicable safety and building regulations.
9. Submit a parking management plan with the City of Deadwood Parking and Transportation Director for review and recordation.

ACTION REQUIRED:

1. Approval/Denial by Deadwood Planning and Zoning Commission
2. Approval/Denial by Deadwood Board of Adjustment