



# Planning and Zoning Commission Regular Meeting Minutes

Wednesday, April 19, 2023 at 4:00 PM

City Hall, 102 Sherman Street, Deadwood, SD 57732

---

## 1. Call to Order

The meeting of the Deadwood Planning and Zoning Commission was called to order by Chairman Martinisko on Wednesday, April 19, 2023, at 4:00 p.m. in the Deadwood City Hall Meeting Room, located at 102 Sherman Street, Deadwood, SD 57732.

## 2. Roll Call

PRESENT

Commissioner (Chair) John Martinisko  
Commissioner (Vice-Chair) Josh Keehn  
Commissioner Charles Eagleson  
Commissioner Ken Owens

Michael Johnson, City Commissioner

ABSENT

Commissioner (Secretary) Dave Bruce

STAFF PRESENT

Kevin Kuchenbecker, Planning, Zoning and Historic Preservation Officer  
Trent Mohr, Building Inspector  
Cindy Schneringer, Administrative Assistant

## 3. Approval of Minutes

a. Approval of April 5, 2023 Minutes

***It was moved by Commissioner Owens and seconded by Commissioner Keehn to approve the April 5, 2023 minutes. Voting Yea: Martinisko, Keehn, Eagleson, Owens***

## 4. Sign Review Commission

## 5. Planning and Zoning Commission

a. Conditional Use Permit - 63 Stewart Street - Carson Witt - Home Occupation

Mr. Kuchenbecker stated we have an application for a Conditional Use Permit (CUP) for a home occupation, specifically for a home delivery donut business. The applicant is Carson Witt located at 63 Stewart and legally described as THE EASTERLY 50 FEET OF LOT 2, BLOCK 72 ORIGINAL TOWN IN THE CITY OF DEADWOOD LAWRENCE COUNTY, SOUTH DAKOTA EXCEPT THAT PORTION DEEDED TO THE CITY OF DEADWOOD FOR STREET PURPOSES. It is zoned residential. All legal obligations have been completed. It is surrounded to the north by commercial district being the hospital and clinic. To the south it is zoned R-1,

however it is a vacant hillside. East and west are R-1 zoning districts with residential housing. The applicant submitted a formal request for a CUP for the operations of a small business in the form of a delivery donut shop under Section 17.24.030 Conditional Uses under Home Occupation. The subject property is located on the south side of Stewart Street behind the vicinity of the Deadwood Hospital and Clinic. You have the factual information. The property comprises of a lot approximately 7500 square feet. It is on the National Register of Historic Places and a contributing structure with in the National Historic Landmark District. It has access from Stewart Street and located in a low-density land use classification on the adopted Zoning Map. It is located outside of the floodplain. Adequate public facilities are available to serve the property. It is surrounded by a mixture of single-family dwellings located in the Cleveland Historic Overlay Zone. The applicant has submitted a request for a Conditional Use Permit for the operations of a small business in the form of a delivery donut shop under Section 17.24.030 Conditional Uses under Home Occupation in a R1 – Residential District. Specific detail on the proposed operations and business plan are included with the application and supporting documentation. It appears to be limited impact on the proposed location of the subject property for Home Occupation. The applicant has coordinated the proposed business operations with the South Dakota Department of Health and would operate under South Dakota's Cottage Food Laws which are shown in Exhibit B. Exhibit C shows the notification. We did a buffer of three hundred feet and sent out notifications. Posted the property for this conditional use. We also advertised twice in the newspaper. You have the general use standards of the CUPs that are outlined in the staff report. The conditions governing the applications are outlined as well. One of the things we need to do is on item C is the Planning and Zoning Commission shall have the authority to review CUPs at any time and/or on an annual basis and place additional stipulations to mitigate a problem. The "or" does not exist in our zoning ordinance. Based on conversations on Monday night at the City Commission meeting and confirmation from legal counsel is that this body shall review all CUPs on an annual basis. Staff recommendations if approved, the CUP runs with the applicant and not the land; therefore, should the property be sold, the CUP is null, and void and the non-conforming status could be voided from the property and proof of a City of Deadwood Business License. I would add to this annual review as part of that approval. Exhibits show the subject property, the plat map of the subject property, street views of said subject property, and also includes the Department of Health Cottage Industries, the notice that was put in the newspaper, and the letter that was sent to the owners. Also in the packet, is the application and outline of the business plan. I did not receive any calls or emails. I did talk to one city commissioner that wanted additional information to provide to a resident. There is a resident here that might have questions. Open it up to any questions and encourage the commission to see if anyone wants to advocate for or against this CUP.

Chairman Martinisko opened the floor for any comments for or against this CUP.

Jeff Snedeker, next door neighbor, said his question is it is a duplex with two parking spaces, so they spill out onto him. Is there going to be another delivery car

in that neighborhood too because that gets to be a lot of vehicles for a residence that doesn't have any parking?

Commissioner Keehn stated according to that statement no.

Mr. Kuchenbecker said they are using their personal vehicles.

Mr. Snedeker asked if it has to be commercially inspected? If you are boiling donuts, you have to have like an ANSUL system?

Mr. Kuchenbecker stated I know she has been working with Charlotte Johnson with the Department of Health, so they have to meet the criteria under the Department of Health Food Cottage. One of the things I learned in doing the research and talking with the applicant is their revenues shall not exceed \$5,000.00 otherwise they get bumped up to commercial kitchen and everything else. It is really a small operation. One of the other things is they will not be custard filed because she does not have the refrigeration necessary because it is not a commercial kitchen.

Chairman Martinisko stated it sounds very small because they both have fulltime jobs which they are going to maintain. They are going to do deliveries in the morning with their personal vehicles before they went to their jobs. There will be nobody coming on site to purchase. That is not an option. There should not be any additional traffic that way. Those are kind of the important parts of it.

Mr. Kuchenbecker stated that under the ordinance, three residents in the three hundred feet that were notified of this, if three of them lodge a concern this commission can call it in for a review and either revoke it or add additional conditions. As of Monday night, we will be reviewing it on an annual basis and can address any issues that may arrive if there isn't a mid-year or concerns raised by residents or this body. With that said, I am taking the word of the applicant, they have full intentions of being here. Appreciate the concern of the neighbor.

Commissioner Keehn asked Mr. Snedeker if he talked to any of his neighbors.

Mr. Snedeker stated just his daughter.

Commissioner Keehn asked do you care?

Mr. Snedeker said his concern is just the parking situation.

Chairman Martinisko stated if it becomes an issue, somebody needs to let the city know. The permit can be revoked. Their business plan sounds like parking should not be any different than it is now. Asked are there any other comments from the floor or the commission on this permit application?

Mr. Kuchenbecker stated I will note it will also have a public hearing in front of the Board of Adjustment which will be the City Commission. There will be another opportunity for the community, specifically the residents, to voice any concerns.

***It was moved by Commissioner Eagleson and seconded by Commissioner Owens to approve the Conditional Use Permit for a home occupation for 63 Stewart legally described as THE EASTERLY 50 FEET OF LOT 2, BLOCK 72 ORIGINAL TOWN IN THE CITY OF DEADWOOD LAWRENCE COUNTY, SOUTH DAKOTA EXCEPT THAT PORTION DEEDED TO THE CITY OF***

***DEADWOOD FOR STREET PURPOSES with conditions it is reviewed annually and required to have a City of Deadwood Business License. Voting Yea: Martinisko, Keehn, Eagleson, Owens***

- b. Discussion for consideration of potential setback variance request for small homes along south side of Mystery Wagon Road, Stage Run Phase II, Deadwood, Lawrence County, South Dakota - Bill Pearson

Mr. Kuchenbecker stated about three weeks ago Bill Pearson emailed me the sight plan you have in your packet wanting to request a variance for some small homes, that are about seven hundred square feet, along the south side of Mystery Wagon Road in Stage Run Phase II. I did not communicate well enough with Bill on getting in the application. He asked if we could get it on the agenda to do a discussion to feel the temperature.

Mr. Pearson stated what if you do grant the variance, I have to mark the back corner and do some test drilling to make sure that ground is solid enough to build on. The reason I am asking for the variance is because I only have thirty feet to actually build on on that side. I want to put two homes there. They are thirty feet long and twenty feet deep. The utility easement along Mystery Wagon Road on the east side is nine feet long so there would be a nine-foot buffer there anyway. We are going to request there be no parking on that side of the road. The entrance into the homes would be on the side not facing the street. I think that takes care of some of the safety issues I am sure you guys would be concerned with. We are also putting a concrete pad in on the side where the doorway is so they can park their car off the street. The depth will be for two cars to park there. Basically, what I am asking for is a variance to be able to build up to that nine-foot utility easement.

Mr. Kuchenbecker stated this is R-1 and it is a twenty-foot set back. It would be an eleven-foot difference from what is required under our ordinance. In this location, I think it is justifiable. Staff can administratively approve a small variance to that, but this exceeds that administrative approval, so it does come to this body for consideration.

After some discussion, the consensus was the commission members supported submitting the request for variance.

**6. Items from Citizens not on Agenda**

(Items considered but no action will be taken at this time.)

- a. Open discussion regarding property owners request for cell tower on personal property located below Brown Rocks behind 170 Pleasant Street, Deadwood, Lawrence County, SD - Bonnie Fosso

Mr. Kuchenbecker stated that Bonnie Fosso has reached out to staff, and she has also completed a Conditional Use Permit. However, I could not find where it was a conditional use or a use of right in R-1 zoning. Part of it is telephone lines. Is it a stretch? I don't know. At her location right below brown rocks, has a challenge with cell services and is also looking at avenues for additional revenues. If she found a cell company interested in putting it on there, she would receive payments on that.

Ms. Fasso provide information regarding the need and want of adding a cell phone tower to her property below brown rocks.

After much discussion, it was recommended her first step be a change of zoning from R-1 to Park Forest and would need to be contiguous and adjacent with her neighbor.

**7. Items from Staff**

- a. GIS Online Maps - Zoning Map - [gis.cityofdeadwood.com/portal/home](http://gis.cityofdeadwood.com/portal/home)

Mr. Kuchenbecker provided an update and presentation of the new online Zoning Map.

**8. Adjournment**

***It was moved by Commissioner Keehn and seconded by Commissioner Owens to adjourn the Planning and Zoning Commission meeting. Voting Yea: Martinisko, Keehn, Eagleson, Owens***

There being no further business, the Planning and Zoning Commission adjourned at 5:08 p.m.

ATTEST:

---

Chairman, Planning & Zoning Commission

*Cindy Schneringer, Planning & Zoning Office/Recording Secretary*

---

Secretary, Planning & Zoning Commission