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**PLANNING AND ZONING MEETING**  
**BOARD OF ADJUSTMENT**  
**STAFF REPORT**  
June 14, 2023

**APPLICANT:** Jay and Pam Smith

**PURPOSE:** Application for CUP – Bed and Breakfast Establishment

**GENERAL LOCATION:** 5 Burlington Street

**LEGAL DESCRIPTION:** LOTS THREE (3) AND FOUR (4) OF PECK'S GARDEN SUBDIVISION OF PART OF PROBATE LOTS 138 AND 327, DEADWOOD CITY, LAWRENCE COUNTY, SD, ACCORDING TO THE RECORDED PLAT THEREOF.

**FILE STATUS:** All legal obligations have been completed.

**ZONE:** R1 Residential

**STAFF FINDINGS:**

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Surrounding Zoning:

North: R2 - Multi-Family Residential

South: R1 - Residential

East: R1 - Residential

West: R1 - Residential

Surrounding Land Uses:

Townhouses

Residential Housing

Residential Housing

Residential Housing

**SUMMARY OF REQUEST**

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The applicants have submitted a request for a Conditional Use Permit to operate a Bed and Breakfast Establishment in the accessory building [7 Burlington] at their residence located at 5 Burlington Street. The subject property is in the Peck Garden Neighborhood and surrounded by residential homes and multi-family townhomes.

## **FACTUAL INFORMATION**

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1. The property is currently zoned R1 - Residential.
2. The site was built in 1950 and was originally a gun shop known as Lock, Stock and Barrel.
3. The subject property has access from Burlington Street with off street parking.
4. The subject property is located within a R1 Residential zoning district adjacent to R2 Multi-Family zoning district.
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 a mixture of single-family dwellings and multi-family dwellings.

## **STAFF DISCUSSION**

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The applicants have submitted a request for a Conditional Use Permit for a Bed and Breakfast establishment and City regulations permit Bed and Breakfast establishments in R1- Residential District with an approved Conditional Use Permit. The subject property was originally a gun shop, then the applicant's mothers house, and the house is now vacant. The applicants indicate they intend convert the house for their operation. According to their application, they have adequate off-street parking.

The Deadwood Zoning Code 17.08 and South Dakota Codified Law defines a Bed and Breakfast as the following:

### **“Bed and breakfast establishment” means:**

Any building or buildings run by an operator that is used to provide accommodations for a charge to the public, with at most five rental units for up to an average of ten guests per night and in which family style meals are provided.

*Jay and Pam Smith intend to rent the small house for their operation.*

1. No bed and breakfast home shall be located on a lot closer than two hundred (200) feet or eight residences, whichever is greater, from any other lot containing a bed and breakfast home. However, the planning and zoning commission may waive the distance limitation if the structure is listed on the

National Register of Historic Places or eligible for individual listing on the National Register of Historic Places. The Deadwood building inspector shall inspect the premises to ensure compliance with the Building Code;

*In this instance there are no bed and breakfasts within the two hundred feet required buffers.*

2. Applicants proposing tandem parking shall be required to provide a control board for the keys of the guests. The owner/manager shall be responsible for the control board. The subject residence proposed for a bed and breakfast shall be required to provide the following: Off-street parking for four vehicles.

*The Deadwood Zoning Code requires a bed and breakfast establishment to be occupied by the owner(s). The code also states a requirement of one off-street parking space per guestroom in section 17.64.060 of the ordinance book. The property does have four off street parking spaces on site.*

### **COMPLIANCE:**

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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:**

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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 Bed and Breakfast. This area has a mixture of single family and townhome dwellings.*

- 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 R1 – Residential District and is intended to provide locations for low to medium density residential. Medium density residential is designed to provide apartment and multi-family dwellings as well as parks and recreation areas. There are no B&Bs within 200 feet of the proposed B&B.*

- 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 would 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 would not increase the proliferation of non-conforming uses. The subject residence is in an area that does not have additional bed and breakfasts nearby and the new ordinance changes limited the number of Bed and Breakfast establishments through a buffer requirement. 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.*

- 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:**

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- 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. The Bed and Breakfast Establishment must be owner occupied.
3. Proof of a state sales tax number shall be provided to the Planning and Zoning Office for their files.
4. Proof that the Building Inspector has inspected the building and it meets all the building codes.
5. City water and sewer rates to be changed from residential to commercial rates.
6. Proper paperwork is filed with the City of Deadwood Finance Office for Business Improvement District (BID) taxes.
7. Proof of City of Deadwood Business License.
8. Obtain lodging license after inspection from the South Dakota Department of Health.
9. All parking shall be off street.

**ACTION REQUIRED FOR CONDITIONAL USE PERMIT:**

1. Approve / Deny by the Planning and Zoning Commission.
2. Approve / Deny by the Board of Adjustment.