



Planning and Zoning Commission Regular Meeting Minutes

Wednesday, June 19, 2024 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, June 19, 2024, 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 (Secretary) Dave Bruce
Commissioner Charles Eagleson
Commissioner Ken Owens
City Commissioner Blake Joseph

STAFF PRESENT

Kevin Kuchenbecker, Planning, Zoning and Historic Preservation Officer
Trent Mohr, Building Inspector
Leah Blue-Jones, Zoning Coordinator
Jessica McKeown, Finance Officer

3. Approval of Minutes

- a. Approve the minutes from the June 5, 2024 Planning & Zoning Commission meeting.

It was moved by Commissioner Bruce and seconded by Commissioner Owens to approve the minutes from the June 5, 2024 Planning and Zoning Commission Meeting. Voting yea: Martinisko, Bruce, Owens, Eagleson.

4. Sign Review Commission

- a. Application for Sign Permit - 20577 Highway 85 - Can Am 85 RV (Brad Kooiker). Applicant has applied to install a new freestanding sign. Sign and its location are compliant with sign ordinance.

Actions: Approve/Deny Sign Permit

Mr. Mohr introduced Application for Sign Permit - 20577 Highway 85 - Can Am 85 RV (Brad Kooiker) and discussed the location and size of the sign. No variance is necessary.

It was moved by Commissioner Owens and seconded by Commissioner Eagleson to approve Application for Sign Permit - 20577 Highway 85 - Can

Am 85 RV (Brad Kooiker). Voting yea: Martinisko, Bruce, Eagleson, Owens.

5. Planning and Zoning Commission

- a. Conditional Use Permit Review for Bed and Breakfast Establishment – 7 Spring Street – The Birdcage (Kenneth Steier), legally described as Lots X, a replat of Lots 1, 2, and 3, Block 1, Miricks Addition and a portion of MS 735, located in the City of Deadwood, Lawrence County, South Dakota.

Action Required:

1. Public Discussion
2. Approval/Denial by Planning and Zoning Commission

Mr. Kuchenbecker introduced Conditional Use Permit Review for Bed and Breakfast Establishment - 7 Spring Street - The Birdcage (Kenneth Steier) and explained the owner was issued a Conditional Use Permit to operate a Bed and Breakfast Establishment on June 8, 2003. Mr. Kuchenbecker further explained the property is licensed with the State of South Dakota as a Vacation Home Establishment, creating a conflict with the permit issued by the city. A Vacation Home Establishment is not allowed in Deadwood's residential districts, which is where the property is located. City staff is aware of complaints against the Short-Term Rental Establishment during its early years in business, however no formal complaints have been filed over the last twenty-four (24) months with the exception of a complaint filed with the city today, June 19, 2024. Mr. Kuchenbecker further reviewed the Staff Report and introduced Ms. Amber Galbraith of Black Hills Premier Vacation Homes, who acts as Property Manager for 7 Spring Street, to the Commission.

Commissioner Bruce clarified that per South Dakota Codified Law, a Bed and Breakfast Establishment must have an owner or owner's agent reside in the Bed and Breakfast Establishment or a contiguous property, however, city ordinance is silent on this issue. Mr. Kuchenbecker responded that Deadwood ordinances will soon be changed to reflect the same language as the state requirement, and further explained that while the city can be stricter than the state in its ordinances, they cannot be less so. This means the owner or owner's agent must be present while the property is being rented if it is a Bed and Breakfast Establishment.

Commissioner Martinisko recommended a condition be added to the Conditional Use Permit requiring an owner or owner's agent be on-site while guests are staying at the property. Ms. Galbraith asked the Commission to explain why an owner or agent needed to be on-site when it wasn't that way before. Commissioner Martinisko stated it has always been a requirement to have an owner on-site, but it wasn't actively enforced in the past.

Ms. Galbraith stated that all licenses and taxes are being paid and believes the property should be grandfathered in, so an owner does not need to be on-site. If this is not possible, she will need time to figure out what to do. Mr. Kuchenbecker responded that having an on-site owner has always been a requirement of the Conditional Use Permit.

Ms. Galbraith stated it is well known in town that the property has been operating as a Vacation Home Establishment and it was never an issue before. She has even worked with a neighbor on Dudley Street to prevent guests from driving down Dudley Street because the neighbor doesn't want guests there. Commissioner Martinisko responded that the city would provide time for the property to become compliant, however, lack of past enforcement does not preclude the city from current enforcement. Every Conditional Use Permit holder in the city is now being reviewed on an annual basis and ordinances are being enforced.

Commissioner Martinisko suggested the property be given ninety (90) to one hundred-eighty (180) days to come into compliance. Ms. Galbraith stated the property is booked for the next year, so she would like to have until the end of 2024, and possibly up to a year, to come into compliance.

Ms. Marlene Todd introduced herself to the Commission as a neighbor and explained that she first began to complain about the property in 2004. She would not complain if the property were being operated as a Bed and Breakfast because it would be a quiet owner-occupied establishment. Instead, she has ten (10) to fifteen (15) people across the street using obscene language. Beer cans have been thrown in her yard. She has been complaining about the property for twenty (20) years. She has sent in photos, written letters and stopped by City Hall to complain. There are only four (4) homes in the neighborhood, and one is a rental property that is not being operated as a Bed and Breakfast and is instead being operated as a Vacation Home. There have been bachelor parties, people have urinated on her property, she has watched cases of alcohol be brought in. She has asked the city in the past to install a speed bump to slow down the renters who speed up the street. She would like the property to be brought into compliance as a Bed and Breakfast Establishment; with an owner or agent on-site and with meals provided. Commissioner Martinisko agreed the goal is to bring the property into compliance so that it operates as a Bed and Breakfast Establishment, and not a Vacation Home Establishment.

Mr. Kuchenbecker clarified that the Conditional Use Permit was provided to the property for a Bed and Breakfast Establishment, and not a Vacation Home Establishment. Because it was never approved as a Vacation Home Establishment, but continues to operate as one, it can not be considered legal non-conforming.

Ms. Todd stated the owners of the property were aware in 2003 that they were supposed to be operating as a Bed and Breakfast and she feels that giving the owners a year to come into compliance is too long. Ms. Galbraith responded that not all guests have parties, and she is willing to contact anyone who is having one and try to put a stop to it. A gift certificate for a donut shop is provided to guests so they can have breakfast. She also visits the property often when they are in between guests.

Commissioner Martinisko asserted that the licensing discrepancy is an issue that needs to be solved. The property has a Conditional Use Permit with the city for a Bed and Breakfast but has a Vacation Home Establishment license with the state. He reiterated that Vacation Homes are not allowed in the residentially zoned districts within the city. Ms. Galbraith responded that the state may have been confused and provided the wrong licensing.

Commissioner Martinisko continued by saying the lack of an owner or agent on-site is also a problem. Ms. Galbraith responded that they visit the site in between guests. Commissioner Owens replied that the purpose of an on-site agent is to control guest behavior during their stay, and to control the amount of people who show up at the location. Ms. Galbraith responded that they only allow ten (10) guests.

Commissioner Owens commented that a year is a long time to allow the property to become compliant. Commissioner Martinisko commented that correcting the licensing with the state to reflect a Bed and Breakfast is being run and to then run the rental as a Bed and Breakfast should only take a few months. Further, the city is not interested in the rental going out of business, only to bring them into compliance with licensing and permit requirements. Those requirements mean that a family style meal must be served, and an owner or agent must be on-site overnight.

Ms. Galbraith inquired as to the number of Short-Term Rentals located within the city limits. Mr. Kuchenbecker responded accordingly. Ms. Galbraith requested a list of those properties. Mr. Kuchenbecker agreed to provide a list of currently licensed properties to Ms. Galbraith.

Commissioner Bruce suggested Ms. Galbraith be permitted to talk with the owners of the property and reconvene with the Planning and Zoning Commission to continue this discussion later. Ms. Galbraith responded positively to the suggestion.

It was moved by Commissioner Bruce and seconded by Commissioner Owens to reconvene and continue the current discussion at the July 17, 2024, Planning and Zoning Commission meeting. Voting yea: Martinisko, Bruce, Eagleson, Owens.

6. Items from Citizens not on Agenda

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

7. Items from Staff

Further discussion about compliance with state and city regulations pertaining to Short-Term Rentals occurred between City Commissioner Joseph and the Planning and Zoning Commission.

- a. 2024 Annual Conference for South Dakota Planners Association - Box Elder, SD - October 22 - October 24, 2024.

Mr. Kuchenbecker discussed the South Dakota Planners Association 2024 Annual Conference. Members of the Planning and Zoning Commission may wish to attend the event which will be held in October 2024. Please let city staff know if interested.

Mr. Kuchenbecker shared that the Planning and Zoning staff met with the Planning and Zoning Departments of Spearfish and Lead to discuss subdivision and Short-Term Rental ordinances.

Mr. Kuchenbecker congratulated Mr. Mohr on becoming Chair of the South Dakota Building Officials Association (SDBOA).

Further, Mr. Kuchenbecker discussed several trails that are under construction including Homestake Realignment, White Rocks, Welcome Center, and Fuller Brothers. 85 Charles

Street is being cleaned up. The Water Street project is moving along well. Retaining walls at 33 1/2 Jackson Street and 458 Williams Street have been completed. Foundation has been poured at 10 Denver Avenue.

Commissioner Eagleson discussed the Farmers Market. There will be approximately forty (40) vendors. A Chamber of Commerce ribbon cutting ceremony will take place Friday, June 21, 2024, at 4:00 p.m.

8. Adjournment

It was moved by Commissioner Owens and seconded by Commissioner Eagleson to adjourn the Planning and Zoning Commission Meeting. Voting yea: Martinisko, Bruce, Owens, Eagleson.

There being no further business, the Planning and Zoning Commission adjourned at 4:49 p.m.

ATTEST:

Chairman, Planning & Zoning Commission

Leah Blue-Jones, Zoning Coordinator

Secretary, Planning & Zoning Commission