



# Planning and Zoning Commission Regular Meeting Minutes

Wednesday, July 17, 2024 at 4:00 PM

City Hall, 102 Sherman Street, Deadwood, SD 57732

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## 1. Call to Order

The meeting of the Deadwood Planning and Zoning Commission was called to order by Chairman Martinisko on Wednesday, July 17, 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 (Vice-Chair) Josh Keehn  
Commissioner (Secretary) Dave Bruce  
Commissioner Charles Eagleson  
Commissioner Ken Owens  
City Commissioner Blake Joseph  
Quentin Riggins, City Attorney

STAFF PRESENT

Kevin Kuchenbecker - Planning, Zoning, and Historic Preservation Officer  
Trent Moore – Building Inspector  
Leah Blue-Jones – Zoning Coordinator  
Justin Lux – Parking and Transportation Director

## 3. Approval of Minutes

- a. Approve the minutes from the July 3, 2024 Planning and Zoning Commission Meeting.

***It was moved by Commissioner Keehn and seconded by Commissioner Eagleson to approve the minutes from the July 3, 2024 Planning and Zoning Commission meeting. Voting yea: Martinisko, Keehn, Bruce, Owens, Eagleson.***

## 4. Sign Review Commission

- a. Application for Sign Permit - 667 Main Street - Tootsie's Taproom (Nick Bennet). Applicant is requesting permission to install vinyl window signs for new business. Signs and locations are compliant with sign ordinance.

Actions:

1. Approve/deny Application for Sign Permit.

Mr. Mohr introduced Application for Sign Permit - 667 Main Street - Tootsie's Taproom (Nick Bennet). Four (4) window signs are requested. Signs and locations are compliant with sign ordinance.

***It was moved by Commissioner Bruce and seconded by Commissioner Owens to approve Application for Sign Permit - 667 Main Street - Tootsie's Taproom (Nick Bennet). Voting yea: Martinisko, Keehn, Bruce, Owens, Eagleson.***

## **5. Planning and Zoning Commission**

- a. Annual Review – Conditional Use Permit – Bed & Breakfast Establishment – 7 Burlington Street (Jay & Pam Smith) legally described as Lot 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.

Actions:

1. Public Comment
2. Approve/Deny continued use of Conditional Use Permit

Mr. Kuchenbecker shared Annual Review - Conditional Use Permit - Bed & Breakfast Establishment - 7 Burlington Street (Jay & Pam Smith) and introduced Ms. Pam Smith to the commission. Details of the Staff Report were discussed. The Conditional Use Permit was originally issued with eight (8) conditions and the business has maintained compliance for the past year since opening.

Commissioner Eagleson inquired as to the number of other Bed & Breakfasts in the Peck Gardens Neighborhood. Ms. Blue-Jones responded there were no others besides the one at 7 Burlington Street.

Commissioner Eagleson asked if the owners were onsite. Ms. Smith stated that she lives on the grounds, in the main house.

***It was moved by Commissioner Keehn and seconded by Commissioner Owens to approve Annual Review - Conditional Use Permit - Bed & Breakfast Establishment - 7 Burlington Street (Jay & Pam Smith) with eight (8) conditions. Voting yea: Martinisko, Keehn, Bruce, Owens, Eagleson.***

- b. Continuation of Annual Review - Conditional Use Permit - Bed and Breakfast Establishment - 7 Spring Street (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.

Actions:

1. Public discussion
2. Approve/Deny continued use of Conditional Use Permit

Mr. Kuchenbecker discussed Continuation of Annual Review - Conditional Use Permit - Bed and Breakfast Establishment - 7 Spring Street (Kenneth Steier) and introduced Kenneth and Lee Steier, property owners, as well as Amber Galbraith, Property Manager, to the Commission. Details of the Staff Report were discussed. During the June 19, 2024, Planning and Zoning meeting, twelve (12) conditions were recommended by the Commission to allow for the continued use of the Conditional Use Permit – Bed and Breakfast Establishment. Mr. Kuchenbecker reminded the Commission the property is licensed as a Bed and Breakfast establishment with the

City of Deadwood, but as a Vacation Home Establishment with the State of South Dakota. In Deadwood, Vacation Home Establishments are prohibited in R2 - Multi-Family Residential districts, which is where the property is located.

Ms. Galbraith stated, unbeknownst to her, the State of South Dakota Department of Health (SDDOH) changed their license from a Specialty Resort to a Vacation Home Establishment instead of a Bed and Breakfast. However, she would like to ask the Commission to allow them to continue to operate as a Vacation Home Establishment and requested the city grandfather them in, pursuant to South Dakota Codified Law 11-6-39 since they have never ceased operations as a Vacation Home Establishment. Quentin Riggins responded that SDCL 11-6-39 would not apply in this instance since the original Conditional Use Permit was issued for a Bed and Breakfast. A grandfathered use would mean utilizing the property as the originally permitted purpose, which was for a Bed and Breakfast. Even if a brand-new Conditional Use Permit was issued, it could only be issued for a Bed and Breakfast, and not for a Vacation Home Establishment, since a Vacation Home Establishment is not permitted in an R2-Multi-Family Residential district.

Commissioner Owens asked if the property would need to meet the criteria for a Bed and Breakfast to continue operations as a Short-Term Rental establishment. Mr. Riggins responded in the affirmative. The owner, or agent, must be onsite and a family style meal must be served per city ordinance.

Ms. Galbraith stated the SDDOH told her she doesn't have to serve a meal and most places serve granola bars or provide coupons. Commissioner Martinisko responded that the city can be more restrictive than the state and reiterated that a family style meal must be served. In addition, and more importantly, someone must be onsite to ensure parking and noise regulations are being tended to, and to meet the intent of the ordinance.

Ms. Steier stated the property has not had any recent complaints. Commissioner Martinisko responded despite whether there have been any complaints, someone must be on site. It would be unfair for a single property with a Bed and Breakfast to be allowed to have no owner or agent onsite, while all other Bed and Breakfasts must comply with the ordinance.

Commissioner Bruce asked how the owners plan to comply with having someone on site. Ms. Galbraith responded that a small cabin could be built on an adjacent lot, or the neighboring property could be purchased and lived in. Commissioner Bruce asked if an agent could utilize one of the rooms within the existing house to meet the onsite requirements. Ms. Galbraith responded that other Bed and Breakfasts don't do that, and they would prefer not to either.

Mr. Steier stated even an onsite caretaker could leave the premises after check-in and inquired how the city would enforce that matter. Mr. Kuchenbecker responded an onsite agent could leave the premises when they need to, but ultimately resides at the property. Mr. Steier said he is always available by phone, which is the same thing. Mr. Riggins responded if an owner or agent is available by phone and not onsite, the property is a Vacation Home Establishment, not a Bed and Breakfast. Mr.

Steier said he would like to comply with city ordinance, but having someone onsite will be difficult since he does not intend to live there.

Ms. Galbraith and Mr. Steier stated that everyone in town has known they have continually operated as a Vacation Home Establishment and while they don't want to be treated special, they want to find a way to be grandfathered in so they can continue running their business as they have been. Commissioner Martinisko reiterated that grandfathering a Conditional Use Permit for 7 Spring Street would mean the original use permitted for the property would need to be used, and since the Conditional Use Permit was originally issued for a Bed and Breakfast, a grandfathering would mean that Bed and Breakfast rules would apply. Commissioner Martinisko further noted that the establishment has been out of compliance for over twenty (20) years and the city is now enforcing compliance with the ordinances.

Discussion occurred about the types of structures allowed to be built in an R2 – Multi-Family Residential district which could be utilized as a dwelling unit for an agent of the owner.

Commissioner Owens inquired as to how long the booking window for the property is. Ms. Galbraith responded there were some for the summer, and a few in September. Commissioner Owens stated the Commission does not wish to provide the owners time to come into compliance only to have the owners use upcoming bookings as an excuse to continue to require extensions on meeting compliance requirements. Ms. Galbraith responded she intends to update to a Bed and Breakfast license with the SDDOH and it should get done quickly.

Commissioner Bruce suggested a short period of time be provided to the owners to decide their course of action to comply with all twelve (12) conditions of the Conditional Use Permit. Mr. Riggins suggested the Commission consider an approval of the Conditional Use Permit under the condition that all twelve (12) conditions are met, and the property comes into full compliance by the time of the next annual review in June 2025. In addition, a further review within sixty (60) days of today's meeting should be held to discuss the owner's plans to come into compliance with having an agent on site.

***It was moved by Commissioner Owens and seconded by Commissioner Eagleson to temporarily approve Conditional Use Permit - Bed and Breakfast Establishment - 7 Spring Street (Kenneth Steier) for sixty (60) days with the following ten (10) conditions must be met, or continue to be met, immediately.***

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 City of Deadwood Building Inspector shall have the right to inspect the premises to ensure compliance with the Building Code under Title 15.
3. Proof of a state sales tax number must be provided to the Planning and Zoning Office for their files.
4. City water and sewer rates to remain changed from residential to commercial rates.
5. Proper paperwork is filed with the City of Deadwood Finance Office for Business Improvement District (BID) taxes.

6. Maintain a City of Deadwood Business License.
7. All parking shall be off street.
8. No more than ten (10) guests permitted to stay overnight.
9. No large gatherings or events shall be held at the property.
10. Family style meal(s) must be provided for all overnight guests.

***AND, in addition the following items must be completed and submitted to the City of Deadwood Planning and Zoning Office no later than Monday, September 16, 2024:***

1. Obtain and maintain a Bed & Breakfast Lodging License from the South Dakota Department of Health (SDDOH) and surrender the SDDOH Vacation Home Establishment license with final copy to the Planning and Zoning Office for their files.
2. The owner or the owner's agent is required to reside in the Bed and Breakfast Establishment or on contiguous property when guests are present. A detailed plan must be submitted within 60 days showing how you intend to meet this requirement prior to the next annual review.

***Once these two (2) items are received, a review of the submitted items by the Planning and Zoning Commission will be scheduled. Voting yea: Martinisko, Keehn, Bruce, Owens, Eagleson.***

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

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

#### **7. Items from Staff**

Mr. Kuchenbecker discussed the FEMA project. Curb, gutter and trenching for utilities is occurring behind City Hall. A curb, gutter and sidewalk will also be installed up to Cemetery Street. The creek bank behind the Comfort Inn has been stabilized.

The Whitewood Creek boardwalk is going well. An archaeological feature was discovered during construction. It is a culvert associated with the railroad from approximately 1890 built from Deadwood Formation rock and railroad track roof.

The Vacation Home Establishment located at 29 Lee Street has been given until August 31 to come into compliance with Ordinance 17.53.030.D.2.

#### **8. Adjournment**

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

There being no further business, the Planning and Zoning Commission adjourned at 4:58 p.m.

ATTEST:

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Chairman, Planning & Zoning Commission

***Leah Blue-Jones, Planning & Zoning Coordinator***

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Secretary, Planning & Zoning Commission