



# Planning and Zoning Commission Regular Meeting Minutes

Wednesday, May 01, 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, May 1, 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 Charles Eagleson  
Commissioner Ken Owens  
City Commissioner Michael Johnson  
City Commissioner Charlie Struble-Mook

ABSENT

Commissioner (Secretary) Dave Bruce

STAFF PRESENT

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

## 3. Approval of Minutes

- a. Approve the minutes from the April 3, 2024, Planning & Zoning Commission meeting.

***It was moved by Commissioner Eagleson and seconded by Commissioner Owens to approve the April 3, 2024 minutes. Voting yea: Martinisko, Keehn, Owens, Eagleson.***

## 4. Sign Review Commission

## 5. Planning and Zoning Commission

- a. Approve/Deny Temporary Vendor Application - Back When They Bucked - Black Horse Brew, LLC (Maria Roghair)

Mr. Kuchenbecker shared the Temporary Vendor Application - Back When They Bucked - Black Horse Brew, LLC (Maria Roghair). This vendor was granted a Temporary Vending Permit in 2023 for the same event.

***It was moved by Commissioner Eagleson and seconded by Commissioner Keehn to approve the Temporary Vendor Application - Back When They***

***Bucked - Black Horse Brew, LLC (Maria Roghair). Voting Yea: Martinisko, Keehn, Owens, Eagleson.***

- b. Application for Plat - Adjust Lot Lines - 288 Williams Street

PLAT OF LOTS 1 AND 2 OF PROBATE LOTS 354 AND 508; FORMERLY PROBATE LOT 354 EXCEPT THE WEST 11' THEREOF AND PROBATE LOT 508 AND THE WEST 11' OF PROBATE LOT 354; CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA.

Action Required:

1. Approval/Denial by the Deadwood Planning and Zoning Commission

Mr. Kuchenbecker shared Application for Plat - Adjust Lot Lines - 288 Williams Street, legally described as PLAT OF LOTS 1 AND 2 OF PROBATE LOTS 354 AND 508; FORMERLY PROBATE LOT 354 EXCEPT THE WEST 11' THEREOF AND PROBATE LOT 508 AND THE WEST 11' OF PROBATE LOT 354; CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA.

Mr. Kuchenbecker informed the Commission that 288 Williams Street is zoned R1-Residential and is seeking to move lot lines. The new lot lines would make the parcel of 288 Williams Street larger, and the parcel of 284 Williams Street smaller. The larger parcel would allow space for a garage to be constructed at 288 Williams Street.

***It was moved by Commissioner Owens and seconded by Commissioner Keehn to approve the Application for Plat - Adjust Lot Lines - 288 Williams Street. Voting Yea: Martinisko, Keehn, Owens, Eagleson.***

- c. Annual Review - Conditional Use Permit - Home Based Business - 63 Stewart Street - Do or Donut (Carsen Witt)

Act as Planning & Zoning Commission to approve/deny continued use of Conditional Use Permit for a Home Occupation establishment located at 63 Stewart Street, legally described as THE EASTERLY 50 FEET OF LOT 2, BLOCK 72 ORIGINAL TOWN IN THE CITY OF DEADWOOD LAWRECE COUNTY, SOUTH DAKOTA EXCEPT THAT PORTION DEEDED TO THE CITY OF DEADWOOD FOR STREET PURPOSES.

Action: approve / deny / approve with conditions

Mr. Kuchenbecker introduced the Annual Review - Conditional Use Permit - Home Occupation - 63 Stewart Street (Carson Witt) legally described as THE EASTERLY 50 FEET OF LOT 2, BLOCK 72 ORIGINAL TOWN IN THE CITY OF DEADWOOD LAWRECE COUNTY, SOUTH DAKOTA EXCEPT THAT PORTION DEEDED TO THE CITY OF DEADWOOD FOR STREET PURPOSES. The Conditional Use Permit was issued on May 4, 2023 for Do or Donut, a home based donut shop. No complaints have been filed about this business.

Commissioner Martinisko requested clarification on the conditions in place for this permit. Mr. Kuchenbecker responded that conditions include a sales tax license, commercial rates for water and sewer, and an active business license. BID tax does not apply to this business.

Commissioner Martinisko stated that conditions 1, 2, 3, and 5 as outlined on the Staff Report entitled Planning and Zoning Commission Conditional Use Permit - Annual Review would apply to the continuation of this Conditional Use Permit.

***It was moved by Commissioner Keehn and seconded by Commissioner Owens to approve the Annual Review - Conditional Use Permit - Home Occupation - 63 Stewart Street (Carson Witt) with conditions. Voting Yea: Martinisko, Keehn, Owens, and Eagleson.***

- d. Annual Review - Conditional Use Permit - Bed and Breakfast Establishment - 28 Lincoln Avenue - Backyard Cottage (Steven Flaigg)

Act as Planning & Zoning Commission to approve/deny continued use of Conditional Use Permit for a Bed & Breakfast establishment located at 28 Lincoln Avenue, legally described as LOTS 1 AND 2, BLOCK 49, ORIGINAL TOWN, CITY OF DEADWOOD, LOCATED IN THE NW 1/4, SECTION 26, T5N, R3E, B.H.M., CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA.

Action: approve / deny / approve with conditions

Mr. Kuchenbecker shared Annual Review - Conditional Use Permit - Bed and Breakfast Establishment - 28 Lincoln Avenue - Backyard Cottage (Steven Flaigg) legally described as LOTS 1 AND 2, BLOCK 49, ORIGINAL TOWN, CITY OF DEADWOOD, LOCATED IN THE NW 1/4, SECTION 26, T5N, R3E, B.H.M., CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA. The Conditional Use Permit for this Bed and Breakfast was issued in February 2020. This is the first review of this Conditional Use Permit. This review is being conducted at the request of the City Commission. No complaints are on file for this establishment.

Mr. Kuchenbecker explained this establishment has eight (8) conditions that currently apply to the Conditional Use Permit: 1. Should the property be sold, the Conditional Use Permit is null and void. 2. Sales tax number provided to the Planning and Zoning Department. 3. Building Inspector has inspected the building. 4. Commercial city water and sewer rates 5. BID taxes are paid 6. City of Deadwood Business License 7. Lodging License with South Dakota Department of Health on file with the Planning and Zoning Department. 8. All parking shall be off street.

***It was moved by Commissioner Owens and seconded by Commissioner Eagleson to approve Annual Review - Conditional Use Permit - Bed & Breakfast Establishment -Backyard Cottage (Steven Flaigg) with all eight (8) conditions remaining. Voting Yea: Martinisko, Keehn, Owens, and Eagleson.***

- e. Annual Review - Conditional Use Permit - Bed and Breakfast Establishment - 771 Main Street - Tucker Inn (Shirlene Joseph)

Act as Planning & Zoning Commission to approve/deny continued use of Conditional Use Permit for a Bed & Breakfast establishment located at 771 Main Street, legally described as LOTS 7 AND 8, BLOCK 24, ORIGINAL TOWN, CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA.

Action: approve / deny / approve with conditions

Mr. Kuchenbecker introduced Annual Review - Conditional Use Permit - Bed and Breakfast Establishment - 771 Main Street - Tucker Inn (Shirlene Joseph) legally described as LOTS 7 AND 8, BLOCK 24, ORIGINAL TOWN, CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA. No complaints are on file for this establishment. A copy of the South Dakota Department of Health Lodging License for 2024 is needed.

Mr. Kuchenbecker explained this establishment has eight (8) conditions that currently apply to the Conditional Use Permit: 1. Should the property be sold, the Conditional Use Permit is null and void. 2. Sales tax number provided to the Planning and Zoning Department. 3. Building Inspector has inspected the building. 4. Commercial city water and sewer rates 5. BID taxes are paid 6. City of Deadwood Business License 7. Lodging License with South Dakota Department of Health on file with the Planning and Zoning Department. 8. All parking shall be off street.

***It was moved by Commissioner Keehn and seconded by Commissioner Owens to approve the Annual Review - Conditional Use Permit - Bed and Breakfast Establishment - 771 Main Street - Tucker Inn (Shirlene Joseph) with the eight (8) conditions remaining. Voting Yea: Martinisko, Keehn, Owens, Eagleson.***

- f. Conditional Use Permit Application for Vacation Home Establishment – 29 Lee Street – Budi Kusser

LOT B IN BLOCK 18 OF THE CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA, ALSO KNOWN AS 29 LEE STREET, ACCORDING TO P.L. ROGERS MAP.

Action Required:

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

Mr. Kuchenbecker shared Conditional Use Permit Application for Vacation Home Establishment - 29 Lee Street - Budi Kusser, legally described as LOT B IN BLOCK 18 OF THE CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA, ALSO KNOWN AS 29 LEE STREET, ACCORDING TO P.L. ROGERS MAP. This property has operated as a legal non-conforming Vacation Home Establishment since 2022. The property was recently sold and the new owners are seeking to become compliant with City of Deadwood Zoning Ordinance 17.53.

Mr. Kuchenbecker shared there are currently four (4) Vacation Home Establishments located in the historic downtown core, not including hotels and motels. Customers seeking parking for 29 Lee Street would find it in the Broadway Parking Garage. Staff recommends the following conditions be placed on the Conditional Use Permit: 1. Should the property be sold, the Conditional Use Permit is null and void. 2. Sales tax number provided to the Planning and Zoning Department. 3. Building Inspector has inspected the building. 4. Commercial city water and sewer rates 5. BID taxes are paid 6. City of Deadwood Business License 7. Lodging License with South Dakota Department of Health on file with the Planning and Zoning Department. 8. All parking shall be off street.

Mr. Kuchenbecker also informed the Commission there are two (2) front doors to this establishment. The owners intend for one (1) door to enter to the second floor Vacation Home Establishment, and the other door to enter into a first floor retail establishment. The doors will be divided by a partition.

Commissioner Martinisko asked about past Conditional Use Permits for the property. Mr. Kuchenbecker explained the last owner was a legal non-conforming use allowed to operate without a permit under the current ordinances. With the sale of the property, the new owner will be required to obtain a Conditional Use Permit to operate a Vacation Home Establishment.

Mr. Martinisko inquired as to the number of bedrooms in the location. Staff confirmed there was one (1) bedroom, with more than one (1) bed.

Mr. Martinisko confirmed that there will be nine (9) conditions associated with the property, as follows: 1. Should the property be sold, the Conditional Use Permit is null and void. 2. Sales tax number provided to the Planning and Zoning Department. 3. Building Inspector has inspected the building. 4. Commercial city water and sewer rates 5. BID taxes are paid 6. City of Deadwood Business License 7. Lodging License with South Dakota Department of Health on file with the Planning and Zoning Department. 8. All parking shall be off street. 9. The Vacation Home Establishment shall be limited to only the second floor and the ground level used as retail space.

***It was moved by Commissioner Keehn and seconded by Commissioner Eagleson to approve the Conditional Use Permit Application for Vacation Home Establishment - 29 Lee Street - Budi Kusser with nine (9) conditions. Voting Yea: Martinisko, Keehn, Owens, Eagleson.***

- g. Conditional Use Permit Application for Vacation Home Establishment – 140 Timm Lane – Glen Morovits

LOT 6 OF THE ARNIO SUBDIVISION OF M.S. 107, ACCORDING TO THE S.C. BERRY PLAT RECORDED IN PLAT BOOK 2 PAGE 88D, CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA.

Action Required:

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

Mr. Kuchenbecker presented the Conditional Use Permit Application for Vacation Home Establishment - 140 Timm Lane - Glen Morovits legally described as LOT 6 OF THE ARNIO SUBDIVISION OF M.S. 107, ACCORDING TO THE S.C. BERRY PLAT RECORDED IN PLAT BOOK 2 PAGE 88D, CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA. Since 2020, 140 Timm Lane has been used as a Vacation Home Establishment. The applicant wishes to become compliant with Deadwood Zoning Code 17.53. This property is located in a floodway and has off-street parking.

Mr. Kuchenbecker noted that staff recommends the following nine (9) conditions with the Conditional Use Permit: 1. Should the property be sold, the Conditional Use Permit is null and void. 2. Sales tax number provided to the Planning and Zoning

Department. 3. Building Inspector has inspected the building. 4. Commercial city water and sewer rates 5. BID taxes are paid 6. City of Deadwood Business License 7. Lodging License with South Dakota Department of Health on file with the Planning and Zoning Department. 8. All parking shall be off street. 9. Any new construction or substantial improvements to this property must meet Chapter 15.36 - Flood Hazard Protection Regulations.

Mr. Eagleson asked Mark Kazmer, Property Manager for 140 Timm Lane, for clarification on the property location. Mr. Kazmer confirmed the location via an aerial map.

***It was moved by Commissioner Owens, and seconded by Commissioner Eagleson to approve Conditional Use Permit Application - 140 Timm Lane - Glen Morovits with nine (9) conditions. Voting Yea: Martinisko, Keehn, Owens, Eagleson.***

- h. Conditional Use Permit Application for Specialty Resort – 21 Lincoln Ave – Aaron Sternhagen

LOTS 1, 2, 3, AND ADJOINING VACATED ALLEY AND THE SOUTHEASTERLY 10 FEET OF LOTS 12, 13 AND 14, IN BLOCK 42, ACCORDING TO P.L. ROGERS MAP OF THE CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA.

Action Required:

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

Mr. Kuchenbecker discussed Conditional Use Permit Application for Specialty Resort - 21 Lincoln Avenue - Aaron Sternhagen legally described as LOTS 1, 2, 3, AND ADJOINING VACATED ALLEY AND THE SOUTHEASTERLY 10 FEET OF LOTS 12, 13 AND 14, IN BLOCK 42, ACCORDING TO P.L. ROGERS MAP OF THE CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA. Since 2012, 21 Lincoln Avenue has operated as a Specialty Resort. The property is currently under contract to be sold and the prospective owner is seeking to maintain compliance with Zoning Code 17.53. Parking for several vehicles is available in the back of the property. Mr. Kuchenbecker clarified that a Specialty Resort is a Bed and Breakfast with six (6) to ten (10) bedrooms.

Mr. Kuchenbecker stated that on May 24, 2021 a complaint was documented regarding parking issues at the establishment. The city has received three (3) letters of support for this Specialty Resort to continue doing business under the new ownership. City staff suggests the following eight (8) conditions with this permit: 1. Should the property be sold, the Conditional Use Permit is null and void. 2. Sales tax number provided to the Planning and Zoning Department. 3. Building Inspector has inspected the building. 4. Commercial city water and sewer rates 5. BID taxes are paid 6. City of Deadwood Business License 7. Lodging License with South Dakota Department of Health on file with the Planning and Zoning Department. 8. All parking shall be off street.

Chairman Martinisko opened the meeting for public discussion.

Applicant, Aaron Sternhagen, clarified that the number of bedrooms on the property is seven (7). Neighbor, Kara Olson, stated she supports the Specialty Resort and has never encountered a problem as a result of the business. Commissioner Eagleson expressed his enjoyment of the property and business. Local business owner, Mike Perceovich, noted that since the parking complaint filed in 2021, a parking area has been built in the back.

**It was moved by Commissioner Eagleson and seconded by Commissioner Owens to approve Conditional Use Permit Application for Specialty Resort - 21 Lincoln Avenue - Aaron Sternhagen with eight (8) conditions. Voting Yea: Martinisko, Keehn, Owens, Eagleson**

- i. Conditional Use Permit Application for Bed and Breakfast Establishment – 25 Lincoln Ave – Aaron Sternhagen

LOTS 12, 13 AND 14, BLOCK 42 IN THE CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA, EXCEPT THE SOUTHEASTERLY 10 FEET OF LOTS 12, 13 AND 14 AND ONE-HALF OF THE VACATED ALLEY, BLOCK 42, PREVIOUSLY CONVEYED TO DENNIS L. MCKAY AND LINDA M. MCKAY. ALSO THAT PORTION OF LOTS E, F, AND G, BLOCK 35 OF PROBATE LOT 226 AND SOMETIMES REFERRED TO AS CHILD'S ADDITION TO THE CITY OF DEADWOOD, QUIT CLAIMED BY FRANCIS CANEVA TO LAWRENCE C. MCCKAY, ALL ACCORDING TO THE P.L. ROGERS MAP OF THE CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA.

Action Required:

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

Mr. Kuchenbecker introduced the Conditional Use Permit Application for Bed and Breakfast Establishment - 25 Lincoln Ave - Aaron Sternhagen legally described as LOTS 12, 13 AND 14, BLOCK 42 IN THE CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA, EXCEPT THE SOUTHEASTERLY 10 FEET OF LOTS 12, 13 AND 14 AND ONE-HALF OF THE VACATED ALLEY, BLOCK 42, PREVIOUSLY CONVEYED TO DENNIS L. MCKAY AND LINDA M. MCKAY. ALSO THAT PORTION OF LOTS E, F, AND G, BLOCK 35 OF PROBATE LOT 226 AND SOMETIMES REFERRED TO AS CHILD'S ADDITION TO THE CITY OF DEADWOOD, QUIT CLAIMED BY FRANCIS CANEVA TO LAWRENCE C. MCCKAY, ALL ACCORDING TO THE P.L. ROGERS MAP OF THE CITY OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA. Since 2020, this property has been operating as a Bed and Breakfast. The property is currently under contract to be sold. The prospective owner is seeking to maintain compliance with Zoning Code 17.53.

Mr. Kuchenbecker added this property received a complaint regarding parking on May 14, 2021. Since that time, additional parking has been created in the back of the property. The city has received three (3) letters of support for this Bed and Breakfast to continue doing business under the new ownership. City staff recommends the following conditions with the Conditional Use Permit: 1. Should the property be sold, the Conditional Use Permit is null and void. 2. Sales tax number provided to the Planning and Zoning Department. 3. Building Inspector has inspected the

building. 4. Commercial city water and sewer rates 5. BID taxes are paid 6. City of Deadwood Business License 7. Lodging License with South Dakota Department of Health on file with the Planning and Zoning Department. 8. All parking shall be off street.

***It was moved by Commissioner Owens and seconded by Commissioner Keehn to approve Conditional Use Permit Application for Bed and Breakfast Establishment - 25 Lincoln Avenue - Aaron Sternhagen with eight (8) conditions. Voting Yea: Martinisko, Keehn, Owens, Eagleson***

- j. Review and recommendation to City Commission on possible amendment to Deadwood Codified Ordinance within Chapter 17.53 - Transient Commercial Use of Property.

Mr. Kuchenbecker stated that the City Commission has directed the Planning and Zoning office to consider density restrictions within districts zoned C1 - Commercial and CH - Commercial Highway. Due to a high percentage of residences located within these districts being used as Short-Term Rentals, an amendment to Deadwood Codified Ordinance Chapter 17.53 is being considered. The amendment would require a distance of two hundred (200) feet between properties used as Short-Term Rental establishments.

Commissioner Martinisko asked for clarification on future sales of properties in the affected zones and asked if future buyers would be unable to turn their homes into Short-Term Rentals after purchasing them. Mr. Kuchenbecker confirmed that future owners would be unable to convert their homes into Short-Term Rentals if there was another within 200 feet of the purchased property.

Commissioner Keehn stated he liked the idea, but was concerned future property owners would not. Mr. Kuchenbecker responded the majority of Short-Term Rental operators are from out of town and the change would result in more housing for locals. Commissioner Keehn reiterated that the ordinance change is something that should be considered.

Commissioner Martinisko added that homes for residents are needed. Commissioner Owens asked if properties operating as Short-Term Rentals at the time of the ordinance change would be "grandfathered" in until sold in the future. Mr. Kuchenbecker responded in the affirmative stating they would be legal non-conforming unless sold.

Mr. Kuchenbecker stated that further public discussions would occur later.

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

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

## **7. Items from Staff**

- a. Fassbender Collection Newsletter - 1st Quarter 2024

Mr. Kuchenbecker mentioned the Q1 2024 Fassbender newsletter located within the agenda packet for today's meeting.

Mr. Kuchenbecker discussed the FEMA project. Phase 1A and 1B will stretch from the Deadwood Mountain Grand to Cemetery Street. This project will include new



asphalt, buried utility lines and a fence along Water Street. The Sherman Street parking lot is nearing completion. Stabilization of the creek bank near the Comfort Inn will soon occur.

Mr. Kuchenbecker shared a meeting with the Department of Transportation was held to discuss vehicular/pedestrian safety. In addition, the box culvert project is being pushed out to 2030 due to budgetary constraints.

Mr. Kuchenbecker stated that the Planning and Zoning office was recently trained by the city's third-party monitoring service, Deckard.

Resident Nyla Griffith asked when the Mickelson trailhead would be open again. Mr. Kuchenbecker replied Memorial Day.

Commissioner Martinisko asked staff about the status of the trail at the Welcome Center. Mr. Kuchenbecker stated that project is out for bid. The bid should be awarded this summer and completed by October 31, 2024. Mr. Kuchenbecker also commented that the Fuller Brothers trail should move forward soon.

## **8. Adjournment**

***It was moved by Commissioner Owens 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 4:43 p.m.

ATTEST:

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Chairman, Planning & Zoning Commission

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Secretary, Planning & Zoning Commission

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