



Planning and Zoning Commission Regular Meeting Minutes

Wednesday, March 20, 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, March 20, 2024 at 4:03 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 March 6, 2024 Planning & Zoning Commission meeting.

It was moved by Commissioner Keehn and seconded by Commissioner Eagleson to approve the March 6, 2024 minutes. Voting yea: Martinisko, Keehn, Owens, Eagleson.

4. Sign Review Commission

5. Planning and Zoning Commission

- a. Planning and Zoning Commission Conditional Use Permit – 81 Charles Street – Lorann Berg (on behalf of BNS Properties, LLC)

LOT 7 IN BLOCK 74 OF THE ORIGINAL TOWN OF DEADWOOD, LAWRENCE COUNTY, SOUTH DAKOTA, AS SHOWN ON THE P.L. ROGERS MAP OF THE TOWN OF DEADWOOD.

Action Required:

1. Public Discussion regarding Conditional Use Permit – 81 Charles Street

Mr. Kuchenbecker shared the application for Conditional Use Permit - 81 Charles Street - Lorann Berg (on behalf of BNS Properties, LLC). The Conditional Use Permit is for Lot 7 in block 74 of the Original Town of Deadwood, Lawrence County, South Dakota, as shown on the P.L. Rogers map of the Town of Deadwood.

Mr. Kuchenbecker stated that this Conditional Use Permit (C.U.P.) is for a Vacation Home Establishment. The property is zoned commercial and surrounded by commercial properties on three (3) sides and residential properties on the south side. Since 2015, 81 Charles Street has been utilized as a Vacation Home Establishment. It is rented as a long-term rental on occasion, typically during the winter months. The property has access from Charles Street with off-street parking for two (2) vehicles. The property is not located in a flood zone. There are adequate facilities to service the property. Because the property is zoned Commercial Highway, a Vacation Home Establishment may be issued under a C.U.P., and the applicant plans to continue to operate as it has done since 2015. The applicant is seeking to become compliant with Deadwood Codified Ordinance 17.76.

Mr. Kuchenbecker confirmed that all legal obligations have been completed by the Planning and Zoning office. The office did send out letters to the property owners within 300 feet of this site, a sign was posted, and it was published in the newspaper. As a result, one (1) phone call was received followed up by written documentation.

Mr. Kuchenbecker also said that the building at 81 Charles Street is non-contributing. Traffic and parking have not significantly affected this neighborhood. The proposed use will not increase the proliferation of non-conforming uses throughout the neighborhood; however, it should be noted that of the eleven (11) residential character style structures along this side of Charles Street, this would be the sixth (6) Vacation Home Establishment. The appearance of the structure will not change and will not adversely affect the character of surrounding buildings and properties. The use of the building will not adversely affect the infrastructure, water supply, fire protection, waste disposal, schools, traffic, and other services.

Mr. Kuchenbecker mentioned that if the Commission approves the C.U.P., they may require conditions. If the property is sold, the C.U.P. is null and void. Applicant must provide proof of a sales tax number, Short-Term Rental license, inspection by the Building Inspector to ensure building codes are met, city water and sewer rates are to be changed from residential to commercial, the proper paperwork must be filed with the current Business Improvement District for tax purposes, proof of city Business License, lodging license obtained from the South Dakota Department of Health. All parking shall be off-street.

Mr. Kuchenbecker also noted that a letter is included in the application from Lorann Berg, Property Manager, stating that the the property has been used as a Vacation Home Establishment since 2015. Four (4) guests are allowed to stay, but most bookings are for two (2) guests. They have kitchen and bathroom supplies for guests. It has had high ratings over the years.

Mr. Kuchenbecker informed the Commission that Lorann Berg is in attendance to answer questions.

Commissioner Martinisko opened the meeting for public comments.

Wade Morris introduced himself as a new resident living next door to 81 Charles Street. Mr. Morris resides at 83 Charles Street. Mr. Morris provided photographs of the front of 81 and 83 Charles Street for the Commission to review. Mr. Morris brought attention to the photograph showing the limited amount of parking space. Mr. Morris stated Deadwood has several short-term rentals, and while 81 Charles Street is zoned Commercial, parking is an issue. In addition, snow removal has not been completed over the winter months, causing Mr. Morris to shovel the snow at 81 Charles Street himself. There has also been issues with run off when snow melts and it runs across the property line and freezes at night. Mr. Morris said he feels the property at 81 Charles Street would be better suited as a long-term rental so that tenants would be present to always upkeep the property.

Shanna Knox introduced herself and stated she has lived at 83 Charles Street for seventeen (17) years. Ms. Knox said 81 Charles Street sold ten (10) years ago to the current owners and it has been used as a short-term rental except for three (3) long-term residents who each stayed four (4) to five (5) months. The long-term renters do not do snow removal with the exception of one (1) past resident. The property has a lot of noise and continually has more than four (4) guests. There are more than two (2) beds in the house and there are typically eight (8) to ten (10) guests. It is a very small, single-family home and is best suited for a single person to live in. Cars have been towed from in front of 83 Charles Street when the property has too many cars and they park in front of the wrong house. Ms. Knox stated she owns her property and pays taxes and would like to park in her parking space. There are noisy parties nightly. Ms. Knox feels her life is often unenjoyable. Ms. Knox acknowledged that the properties are on a busy spot on the highway, but at some point, in the night, the neighborhood gets quiet unless the property at 81 Charles Street has been rented. The neighbors on Stewart Street can also hear the noise. Ms. Knox explained she must wear earbuds at times, and sometimes she will turn her own music up loud. Ms. Knox said she only sees the owner once a year for about two (2) weeks when he comes to do yardwork. There is also an area at the back of the property that doesn't get mowed, so Ms. Knox ends up mowing it. There have been issues with skunks, voles, and mice. Ms. Knox has an outdoor cat that kills three (3) to five (5) small animals daily. Ms. Knox stated these animals do not come out of her yard, since her yard is manicured and taken care of. Ms. Knox believes the neighbors only care about making money.

Commissioner Martinisko thanked Ms. Knox for her comments.

Lorann Berg stated she would like to address the snow removal concerns. Ms. Berg explained that snow has always been a problem because it melts off the roof, goes into a downspout and spreads down the driveway. Ms. Berg has had professionals remove snow in the winter. Ms. Berg commented that the property is taken care of and has good reviews. There is one (1) bed and two (2) couches in the house with a maximum of four (4) guests allowed and the typical booking is for two (2) guests, however, Ms. Berg does not check the number of guests who arrive. Ms. Berg also

stated that the prior owners told her that there would be problems with the neighbors because the neighbors lived there year-round, and they wished Ms. Berg luck when the home was purchased. Ms. Berg said the owners would like to continue doing what they are doing with the property. They enjoy hosting guests. It is a busy place. Ms. Berg said she hasn't heard any other complaints from other neighbors.

Commissioner Martinisko asked if Ms. Berg was the property manager. Ms. Berg confirmed she was a partial owner at one time, but now acts as the property manager. Her daughter and son-in-law own the property. Ms. Berg then shared with the Commission letters from both the prior owners and the current owners.

Commissioner Keehn asked city staff about the short-term rental saturation rate of the neighborhood. Mr. Kuchenbecker stated areas zoned Commercial and Commercial Highway do not have a buffer required between short-term rental properties and so every property in that zone could theoretically apply for a Conditional Use Permit.

Commissioner Eagleson asked Ms. Knox if she contacts Ms. Berg when there is an issue with the property. Ms. Knox confirmed she called Ms. Berg years ago. The last time she texted about a parking issue, she did not receive a response. Ms. Berg stated she is willing to communicate via text. Ms. Berg stated she informed Ms. Knox of a long-term renter that would stay the winter with his dog, but Ms. Knox didn't agree with there being a dog next door. Commissioner Eagleson asked Ms. Berg if short-term renters were allowed to bring dogs. Ms. Berg replied dogs were not allowed for short-term renters but are allowed for long-term renters.

Commissioner Keehn asked Ms. Berg about yard maintenance. Ms. Berg responded they have hired someone to maintain the yard. Ms. Berg added the part of the yard that Ms. Knox is talking about is fenced off from 81 Charles Street. Ms. Knox asked Ms. Berg one time if she could use that area for her garden and Ms. Berg agreed. Ms. Berg said if the fence needs to be taken down so a mower could be used there, she is willing to do that.

Commissioner Eagleson asked Ms. Berg where the neighbors would call to reach her if there are issues. Ms. Berg responded that Ms. Knox has her phone number. Commissioner Eagleson asked to clarify where Ms. Berg lives. Ms. Berg responded that she lives in Rapid City.

Commissioner Eagleson asked Ms. Knox what her two (2) main complaints are. Ms. Knox replied parking and snow removal. Ms. Berg said even if they turned the property into a long-term rental, she doesn't believe that the snow removal would improve. Mr. Morris responded that snow removal is a city ordinance. Ms. Berg stated she understands that, and she could tell people to remove snow, but it may not be done. Commissioner Eagleson informed Ms. Berg that if there is a complaint, the city will remove the snow and charge the property owner \$150 an hour for it. Ms. Berg responded that they have hired people to remove snow and it is very expensive and she doesn't think anybody has done a great job, mainly because it is a bad spot and there is no place to put the snow. Two (2) years ago it was hauled away in a truck because there was so much snow and it's very frustrating. She would

have to come up every day in the winter to keep everything nice and clean and that is hard to do.

Commissioner Eagleson asked Ms. Berg if there is anything in the lease agreement regarding parking. Ms. Berg responded each time people rent it, she writes them a letter informing them that there are two (2) parking spots in front of the house. Commissioner Martinisko suggested that a barrier or signs on the property might help.

Commissioner Martinisko commented that if there is noise, the police should be called so that it goes on record. If there are complaints about noise on record, Conditional Use Permits can be revoked at any time.

Mr. Morris stated that the photo he provided shows Ms. Knox's vehicle parked in between the properties and the reason for that is so people don't park at 83 Charles Street. The car acts as a barrier. Ms. Knox said during the last Rally there were four (4) to six (6) motorcycles there with a van parked sideways to block the motorcycles in. They also blocked the sidewalk and fire hydrant.

Commissioner Eagleson asked city staff if the city allows for painting or fencing to divide properties. Mr. Kuchenbecker responded yes, a barrier or appropriate fence would be allowed. Commissioner Eagleson asked if lines could be painted on the driveway. Mr. Kuchenbecker responded that lines, signs and a fence are options. Ms. Berg commented that there is a partial concrete barrier. Commissioner Martinisko commented that signs might help.

Commissioner Owens asked Ms. Berg how often she visits the property. Ms. Berg responded every three (3) weeks. There is someone who takes care of the cleaning and mowing, and that person lives in Spearfish. Commissioner Owens asked Ms. Berg how she would respond if she received a call from her neighbors reporting an issue with the maintenance. Ms. Berg stated she would get after them, but she hasn't received a call. Commissioner Owens asked Ms. Knox if Ms. Berg had neglected to answer the phone in the past. Ms. Knox stated she stopped calling a few years ago. Ms. Berg added the last complaint was about a long-term renter, not a short-term renter.

Commissioner Martinisko asked Ms. Knox if she has called the police. Ms. Knox stated that she has not called the police.

Commissioner Eagleson inquired as to the nature of the call against the long-term renter. Ms. Berg responded that she received a text message from Ms. Knox stating that she didn't want a dog next door. Ms. Berg commented that Ms. Knox doesn't like her or the owners of 81 Charles Street and doesn't want them there. Ms. Berg also said she has offered to put up a privacy fence in two (2) places, but Ms. Knox refused because she wants sunlight for her garden.

Commissioner Eagleson asked Ms. Knox and Mr. Morris what would make them happy. Ms. Knox responded with snow removal and parking control. She also stated when she hears noise, she will start calling the police. In addition, she complained about the long-term renter because nobody ever picked up the dog feces.

Commissioner Eagleson asked Ms. Knox and Mr. Morris what they believed the best solution to the snow removal would be. Mr. Morris responded that a long-term renter would be the best solution so snow removal would be the responsibility of the renter. Mr. Morris acknowledged that there is limited space for snow removal and believes a long-term renter might care about the place as opposed to a short-term renter. Mr. Morris added a long-term renter might help the owners out in the end also.

Commissioner Eagleson asked city staff and the Commission why Conditional Use Permits may have been denied in the past. Commissioner Keehn responded it was dependent upon complaints, violations and whether the property is being managed well.

Commissioner Keehn asked city staff if 81 Charles Street had a Conditional Use Permit in the past. Ms. Berg responded she was told by the city that since the property was zoned Commercial, she could use it as a vacation rental. Mr. Kuchenbecker agreed and stated that since then, the ordinances have changed, and the property owner is now seeking to become compliant with the new ordinances. This property was not able to be grandfathered in as a legal non-conforming Vacation Home Establishment because they were not licensed with the state at the time the ordinance was passed. For this reason, they now need to obtain a Conditional Use Permit.

Commissioner Owens sought confirmation from Mr. Kuchenbecker that this will be the first time that a Conditional Use Permit will be issued for 81 Charles Street. Mr. Kuchenbecker responded in the affirmative.

Commissioner Keehn said he struggles with the fact that the property has one (1) residential neighbor and that single neighbor showed up to the meeting with a complaint.

Commissioner Martinisko stated that he is seeking a compromise and the city can ask for conditions to be placed on the Conditional Use Permit. Mr. Kuchenbecker responded with confirmation of this fact.

Commissioner Eagleson asked Mr. Morris and Ms. Knox for clarification on the main issues that are of concern to the neighbors: snow, noise and parking. Mr. Morris stated noise is last on the list. Ms. Knox said the snow will be picked up by the city if it is put out on the street in time. However, the person shoveling snow for 81 Charles doesn't show up to clear the snow until after the snow has already been picked up. Then it melts and turns hard and a bobcat needs to be brought in. In addition, there isn't anyone to salt, so when the snow melts off the roof it goes across the property to 83 Charles Street and cracks the concrete. Ms. Knox also added a lot of people walk in front of the house to access the clinic and it is slippery. Ms. Knox's mother fell down walking in front of 81 Charles Street which prompted Ms. Knox to salt the property at 81 Charles Street.

Commissioner Eagleson encouraged Ms. Knox to further discuss parking. Ms. Knox said she would be open to painting a line between the two (2) properties.

Mr. Morris stated that there are at least 10 properties in his neighborhood that are short-term rentals and that is too many. Commissioner Martinisko responded that

for properties zoned Commercial, the city does not have an ordinance that restricts the number of rentals.

Commissioner Martinisko asked Ms. Berg what she would be willing to do to ensure her property is well managed. Ms. Berg answered they will do their best to get someone to take care of the snow.

Commissioner Eagleson asked Ms. Berg what accommodations she would be willing to make for parking. Ms. Berg responded she would do whatever it takes. Commissioner Eagleson asked if she would be willing to paint lines and put up signs. Ms. Berg responded in the affirmative. Commissioner Owens suggested signs specifying which parking spots are for 81 Charles Street and which are for 83 Charles Street. Ms. Knox responded she would be fine with that.

Commissioner Eagleson asked city staff if they had recommendations. Mr. Kuchenbecker clarified there are licensed Vacation Home Establishments at five (5) locations on Charles Street. 81 Charles Street would make six (6). Commissioner Martinisko asked if complaints had been received about the five (5) existing rentals. Mr. Kuchenbecker responded no.

Commissioner Owens addressed Ms. Berg and stated snow removal will need to be addressed better in the future. Mr. Kuchenbecker said the difficulty in removing the snow from a Vacation Home Establishment is that the owners are absent, unlike a Bed & Breakfast. Ms. Berg stated the snow removal happens during the months when the home is rented long-term instead of short-term, so the issues with snow are not caused by the property being a vacation rental.

Commissioner Eagleson asked Ms. Berg if she would like to discuss the issues brought up in the meeting with the property owners. Ms. Berg said that the owners would be willing to hang signs and paint for parking.

Commissioner Martinisko commented there is a city ordinance about lawn maintenance, which was also brought up as an issue. Mr. Kuchenbecker responded if the grass is over 6" in length, and there is a complaint, the city will give the owners 24 hours to mow it. If it isn't mowed, the City will mow it and charge \$150/hour to the owner. Mr. Mohr advised the non-removal of snow on the sidewalk and the failure to mow can be dealt with by city ordinance. Essentially, it is the parking issue that needs some resolution between the parties. Mr. Kuchenbecker replied that the parking could be a condition of the Conditional Use Permit. Mr. Mohr agreed.

Commissioner Eagleson suggested the parties get to know each other better and attempt to work out their differences. Mr. Morris said he enjoys snow removal, has a snow blower, and will consider talking with Ms. Berg about future snow removal. Mr. Morris also stated he feels that there are too many Vacation Home Establishments in the neighborhood and would like to see that changed.

Mr. Eagleson asked Ms. Knox if signs and painted lines were done next door, would she find that to be satisfactory. Ms. Knox said that painting lines is a great idea. Mr. Morris asked if painting the concrete would be okay with the city since they are zoned Commercial. Mr. Kuchenbecker responded that painting a stripe on a driveway would not be regulated.

Mr. Eagleson asked Ms. Berg if she is willing to accept the condition that the parking spaces are to be painted and signs hung, and snow removal will be worked out directly with Mr. Morris. Ms. Berg confirmed that she is willing to accept the conditions.

Mr. Morris asked if there will be a limit on motorcycles parked at the property during the Rally. Ms. Berg confirmed there would be a limit of four (4). If more than that try to park on the property, she would appreciate a call.

Commissioner Keehn asked how often Conditional Use Permits are reviewed. Commissioner Martinisko responded that they are reviewed annually, and if there have been complaints, they can be reviewed at any time necessary.

2. Approval/Denial by Planning and Zoning Commission

It was moved by Commissioner Owens and seconded by Commissioner Eagleson to approve the Conditional Use Permit - 81 Charles Street - Lorann Berg (on behalf of BNS Properties, LLC) with the conditions within the staff report plus the designated parking spaces are painted on driveway, signs are hung on designated parking spots and compliance with city ordinances will be met. Voting Yea: Keehn, Owens, Eagleson. Voting Nay: Martinisko.

6. Items from Citizens not on Agenda

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

7. Items from Staff

Mr. Kuchenbecker stated that work continues towards the secondary access from Stage Run.

Mr. Kuchenbecker added a progress meeting with FEMA confirmed that curb and gutters are being put down. Fencing along the retaining wall and utility work is also continuing. Those items should be completed in time for the Mickelson Trail Marathon.

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, Owens, Eagleson.

There being no further business, the Planning and Zoning Commission adjourned at 5:07 p.m.

ATTEST:

Chairman, Planning & Zoning Commission

Secretary, Planning & Zoning Commission

Leah Blue-Jones, Zoning Coordinator