Item #5

Applicant Request(s)
Case #22VA010 Variance to waive the requirement to pave a portion of the circulation, loading/unloading, and parking areas and reduce the rear yard setback to 9 feet in lieu of required 25 feet
Companion Case(s) N/A

Development Review Team Recommendation(s)
Staff recommends that the Variance requests be approved.

Project Summary Brief
The applicant has submitted a Variance request to waive the requirement to pave a portion of the circulation, loading/unloading, and parking areas and to reduce the rear yard setback to 9 feet in lieu of the required 25 feet. The subject property is zoned Light Industrial District and consists of three warehouse buildings built in the early and mid-1970s. The site is currently being used for the storage and maintenance of the applicant’s construction equipment, vehicles, and materials. The northern warehouses are 8,000 and 10,000 square feet in size respectively and the southern warehouse is 20,000 square feet in size. The applicant is proposing to change the use of the southern warehouse to a heavy construction equipment repair and storage facility. The interior of the warehouse will be modified to provide vehicle bays, mechanical work areas, and storage space. No exterior alterations are proposed with this application. The Rapid City Municipal Code stipulates that when new land uses are initiated every building or structure must conform to the requirements of the parking regulations which involves hard-surfacing for required parking and loading facilities. All required parking and loading facilities on the property are proposed to be hard-surfaced except for a 20,200 square-foot area located between the northern and southern warehouses. This area is proposed to be surfaced with asphalt millings which are not considered a hard-surfaced material. To accommodate a two-way drive aisle a 26-foot wide hard-surfaced area is required north of the proposed equipment repair facility and south of the northern warehouses. In addition, during the review of this application, it was identified that the east rear yard setback on the existing northern and southern warehouses did not meet the minimum 25-foot requirement. This setback did not conform to the regulations at the time it was built and is therefore non-conforming. All non-conformities associated with a property must be legally permitted or rectified before the issuance of a building permit.

Applicant Information
Applicant: Magic Canyon Limited Partnership
Property Owner: Magic Canyon Limited Partnership
Architect: N/A
Engineer: Towey Design Group, Inc.
Surveyor: Baseline
Project Planner: Towey Design Group, Inc

Development Review Team Contacts
Planner: Tanner Halonen
Engineer: Todd Peckosh
Fire District: Chip Premus
School District: N/A
Water: City
Sewer: City

Subject Property Information
Address/Location 704 Industrial Ave
Neighborhood Deadwood Avenue
Subdivision Deadwood Avenue Tract
Land Area 3.09 acres or 134,647 square feet
Existing Buildings Warehouses
Topography Relatively Flat
Access Industrial Avenue
Water / Sewer Rapid City
Electric/Gas Provider Black Hills Energy / MDU
## Subject Property and Adjacent Property Designations

<table>
<thead>
<tr>
<th></th>
<th>Existing Zoning</th>
<th>Comprehensive Plan</th>
<th>Existing Land Use(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject Property</td>
<td>LI</td>
<td>LI</td>
<td>Warehouses</td>
</tr>
<tr>
<td>Adjacent North</td>
<td>LI</td>
<td>LI</td>
<td>Warehouse</td>
</tr>
<tr>
<td>Adjacent South</td>
<td>LI</td>
<td>LI</td>
<td>Mini-warehouses</td>
</tr>
<tr>
<td>Adjacent East</td>
<td>GC</td>
<td>LI</td>
<td>Service repair garage</td>
</tr>
<tr>
<td>Adjacent West</td>
<td>LI</td>
<td>LI</td>
<td>Service repair garage</td>
</tr>
</tbody>
</table>

### Zoning Map

![Zoning Map Image]

### Existing Land Uses

![Existing Land Uses Image]
<table>
<thead>
<tr>
<th>Case/File#</th>
<th>Date</th>
<th>Request</th>
<th>Action</th>
</tr>
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<tbody>
<tr>
<td>N/A</td>
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<tr>
<th>Relevant Zoning District Regulations</th>
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<tbody>
<tr>
<td>Light Industrial District</td>
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<tr>
<td>Required</td>
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</tbody>
</table>
Lot Area | 20,000 square feet | 134,674 square feet
Lot Frontage | No requirement | 449 feet
Maximum Building Heights | 4 stories or 45 feet | 1 story
Maximum Density | 75% | 53%
Minimum Building Setback:
- W Front: 25 feet > 25 feet
- E Rear: 25 feet 9 feet
- N Side: 25 feet > 25 feet
- S Side: 25 feet > 25 feet
Minimum Landscape Requirements:
- # of landscape points: 96,674 101,580
- # of landscape islands: No requirement None
Minimum Parking Requirements:
- # of parking spaces: 40 44
- # of ADA spaces: 2 2
Signage: As per RCMC Chapter 17.50.080 None Proposed
Fencing: As per RCMC Chapter 17.50.340 None Proposed

Applicant’s Justification:
Pursuant to Chapter 17.54.020.D of the Rapid City Municipal Code, before the Board shall have the authority to grant a variance, the applicant must adequately address the following criteria:

Written Statement from applicant:
Request to waive the requirement to pave approximately 0.464 acres (20,211 sf) of the parking and circulation area of the existing equipment parking and storage area at 704 Industrial Avenue. One existing 20,000 sf warehouse on the property is being re-purposed into a heavy construction equipment repair and storage facility for use by Scull Construction and Site Work Specialists. The site is currently used for storage and maintenance of the Applicant's construction equipment, vehicles and storage of materials. The site uses will remain the same with modifying the interior of the existing warehouse to provide interior vehicle bays and mechanical work areas, and storage space. The existing property is approximately 3.09 acres (134,600 sf) in size and contains three warehouse buildings, 38,000 sf combined. The proposed parking, circulation and storage improvements include surfacing approximately 0.765 acres with asphalt surfacing. The facility will provide repair, maintenance and storage of steel tracked heavy equipment such as bulldozers, excavators and similar construction equipment. Operating and turning movements for these types of units on asphalt surfacing will damage and destroy the pavement. The Applicant is requesting a variance to allow the use of asphalt millings with a dust palliative on the approximate 0.464 acre (20,211 sf) portion of the property to allow unloading/loading, circulation and storage of the tracked equipment. Using millings will allow for ongoing grading and maintenance of the circulation area. Any runoff from the millings area will flow across the paved surfacing and be collected in the stormwater detention and water quality pond before leaving the site.
Request to reduce the 25-foot rear yard setback requirement to 9-feet for the two existing eastern warehouse buildings. Existing buildings were constructed the 1970's. The circumstances leading to the current non-compliant rear yard setback are not known. The lots in this area appear to have been replatted and divided into various parcels which may have contributed to the current conditions.

Criteria: | Applicants Response (verbatim):
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1. The granting of the Variance will not be contrary to the public interest; | The property is currently unpaved and used for the storages and maintenance of heavy construction equipment and storage of
materials. A larger portion of the parking and circulation area will be paved and containment of any stormwater runoff will be collected and treated onsite. The proposed improvements will improve the condition of the site and are not contrary to the public interest.

The non-compliant app. 9-foot rear yard setback is an existing condition that has been in place for many years. The proposed re-purposing of the south warehouse build will not change the current condition.

2. There are special conditions attached to the property that do not generally apply to other properties in the same district;

<table>
<thead>
<tr>
<th>2. There are special conditions attached to the property that do not generally apply to other properties in the same district;</th>
<th>The property is zoned light industrial, and heavy equipment circulation, storage, and maintenance are allowed uses in this district. These types of uses have been and will continue to occur on the site. Waving pavement in heavy equipment circulation, maneuvering and maintenance areas at other construction and repair facilities has been allowed and is a typical practice. The maintenance and storage/maneuvering of heavy tracked equipment is unique to and generally limited to heavy construction facilities and related operations. The app. 9-foot rear yard setback is an existing condition that has been in place for an unknown length of time, there will be no expansion of the buildings.</th>
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<tr>
<td>3. Owing to special conditions, the literal enforcement of this title will result in unreasonable hardship;</td>
<td>The property is currently used for maintenance and storage of heavy tracked equipment, and will continue in this capacity. Requiring paved surfacing in the identified tracked equipment loading/unloading, circulation and storage area will impose a non-beneficial expense on the Owner, and will require ongoing and continuous major repair of the pavement, which will be expensive and time consuming. Literal enforcement of the setback requirements would require removing the buildings, or a portion of them, to come into compliance. This is an existing condition, any new construction would comply with current setbacks.</td>
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<td>3. Owing to special conditions, the literal enforcement of this title will result in unreasonable hardship;</td>
<td>The property is currently used for maintenance and storage of heavy tracked equipment, and will continue in this capacity. Requiring paved surfacing in the identified tracked equipment loading/unloading, circulation and storage area will impose a non-beneficial expense on the Owner, and will require ongoing and continuous major repair of the pavement, which will be expensive and time consuming. Literal enforcement of the setback requirements would require removing the buildings, or a portion of them, to come into compliance. This is an existing condition, any new construction would comply with current setbacks.</td>
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<td>4. By granting the Variance contrary to the provisions of this title, the spirit of this title and the City’s Comprehensive Plan will be observed; and,</td>
<td>The loading/unloading, maintenance and storage of heavy construction equipment, including heavy tracked equipment is an allowed use in the Light Industrial Zoning District and is the current use of the property. The Future Land Use of the property is Light Industrial which allows continued occupation and use for construction equipment maintenance and storage. Waiving the surfacing requirement on a portion of the circulation and parking area of the site to allow circulation of tracked equipment and reducing the rear yard setback will allow continued utilization of the property and is within the spirit of the Comprehensive Plan and allowed uses.</td>
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<td>4. By granting the Variance contrary to the provisions of this title, the spirit of this title and the City’s Comprehensive Plan will be observed; and,</td>
<td>The loading/unloading, maintenance and storage of heavy construction equipment, including heavy tracked equipment is an allowed use in the Light Industrial Zoning District and is the current use of the property. The Future Land Use of the property is Light Industrial which allows continued occupation and use for construction equipment maintenance and storage. Waiving the surfacing requirement on a portion of the circulation and parking area of the site to allow circulation of tracked equipment and reducing the rear yard setback will allow continued utilization of the property and is within the spirit of the Comprehensive Plan and allowed uses.</td>
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<td>5. By granting the variance, substantial justice will be done.</td>
<td>Granting the variance to waive paving on a portion of the site will allow the continued utilization of the site without creating an ongoing</td>
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</tbody>
</table>
The design and layout of the surfacing and drainage improvements account for the use of millings on a portion of the site. Damaged pavement and potholes would adversely affect drainage and stormwater management and water quality improvements.

The 9-foot rear yard setback is an existing condition that has been in place for an unknown length of time. Granting the setback reduction will allow continued use of the buildings.

### Staff’s Review of the Board of Adjustment Criteria and Findings for Approval

**Should the Board of Adjustment grant the Variance to waive the requirement to pave a portion of the circulation, loading/unloading, and parking areas the following criteria, findings, and conditions of approval would be applicable:**

<table>
<thead>
<tr>
<th>Criteria:</th>
<th>Findings:</th>
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<tbody>
<tr>
<td>1. Variances shall not be granted to allow a land use otherwise excluded from the particular district in which requested.</td>
<td>The Light Industrial District is to provide areas in which the use of land is for light manufacturing and assembly, plants, processing, storage, warehousing, wholesaling, and distribution. This Variance request is to waive a portion of the paving requirement for the proposed heavy equipment repair facility and the existing warehouse buildings. The proposed and existing land uses are permitted in the Light Industrial District.</td>
</tr>
<tr>
<td>3. Variances granted under the provisions of this section should be the minimum adjustment necessary for the reasonable use of the land.</td>
<td>As previously indicated all required parking and circulation areas will be hard-surfaced except the 20,200 square foot area between the northern and southern warehouses. A 26-foot wide hard-surfaced drive aisle is required north of the proposed heavy equipment repair facility and south of the northern warehouses. The applicant has indicated that hard-surfacing this heavy equipment circulation area will lead to deterioration and create an ongoing maintenance issue. As such the requested Variance is the minimum adjustment necessary.</td>
</tr>
<tr>
<td>4. Variances may be granted where special circumstances or conditions (such as lot size or dimension, topography or existing building location), fully described in the findings of the Board, do not apply generally in the district.</td>
<td>The applicant has indicated that the area in question will be used for heavy equipment circulation and maneuvering. Steel tracked equipment such as bulldozers and excavators will damage hard surfacing material. The use of asphalt millings will allow for ongoing grading and maintenance of this circulation area. This constitutes a special condition, therefore, justifying approval of the request.</td>
</tr>
<tr>
<td>5. The granting of any variance is in harmony with the general purposes and intent of this title and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with the City’s Comprehensive Plan.</td>
<td>The purpose and intent of paving requirements are to provide a durable and dustless surface for required parking, loading, and circulation. This requirement mitigates any adverse impacts pertaining to air quality and cleanliness for adjacent properties and reduces the tracking of dirt and dust into the public right-of-way. The applicant has indicated that a dust palliative will be applied to the area in question as needed. The dust palliative ensures that there will be minimal impact on air quality and cleanliness to adjacent</td>
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The maintenance issue and increased expense.
properties and public right-of-way. The Rapid City Municipal Code stipulates that an approved dust palliative must be applied annually or as directed by the Engineering Division. As such, granting the Variance is in harmony with the general purposes and intent of this title and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with the City’s Comprehensive Plan.

### Board of Adjustment Criteria and Findings for Denial

Should the Board of Adjustment decide to deny the Variance to waive the requirement to pave a portion of the circulation, loading/unloading, and parking areas the following criteria would be applicable:

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<tr>
<td>2. For reasons fully set forth in the findings of the Board, the aforesaid circumstances or conditions are such that the strict application of the provisions of this title would deprive the applicant of reasonable use of his or her land. Mere loss in value shall not constitute a deprivation of reasonable use so as to justify a variance.</td>
<td>The property consists of three warehouse buildings and is currently being used for the storage and maintenance of the applicant’s construction equipment, vehicles, and materials. The applicant is proposing to change the use of the southern warehouse to a heavy equipment repair facility. As such, reasonable use of land currently exists.</td>
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### Staff’s Review of the Board of Adjustment Criteria and Findings for Approval

Should the Board of Adjustment grant the Variance to reduce the required rear yard setback to 9 feet in lieu of 25 feet, the following criteria, findings, and conditions of approval would be applicable:

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<tr>
<td>1. Variances shall not be granted to allow a land use otherwise excluded from the particular district in which requested.</td>
<td>The Light Industrial District is to provide areas in which the use of land is for light manufacturing and assembly, plants, processing, storage, warehousing, wholesaling, and distribution. This Variance request is to reduce the rear yard setback for a proposed heavy equipment repair facility and an existing warehouse. The proposed and existing land uses are permitted in the Light Industrial District.</td>
</tr>
<tr>
<td>2. For reasons fully set forth in the findings of the Board, the aforesaid circumstances or conditions are such that the strict application of the provisions of this title would deprive the applicant of reasonable use of his or her land. Mere loss in value shall not constitute a deprivation of reasonable use so as to justify a variance.</td>
<td>The nonconforming east rear yard setback is an existing condition associated with the property. No building expansions are being proposed as a part of this application. All nonconformities associated with the property must be legally permitted or rectified before the issuance of a building permit. Approval of this request ensures that the existing warehouses can continue in their current state and allows the potential for future development on the property.</td>
</tr>
<tr>
<td>3. Variances granted under the provisions of this section should be the minimum adjustment necessary for the reasonable use of the land.</td>
<td>The rear yard setback requirement in the Light Industrial District is 25 feet, this same requirement existed at the time the property was developed. The northern and southern warehouses were setback nine feet from the east property line and are therefore non-conforming. These are existing structures; enforcement of this setback requirement would require either structural changes to the existing warehouses or require that the applicant purchase additional land to meet the requirement. The existing nine-foot</td>
</tr>
</tbody>
</table>
4. Variances may be granted where special circumstances or conditions (such as lot size or dimension, topography or existing building location), fully described in the findings of the Board, do not apply generally in the district. Any nonconformities associated with a property must be legally permitted or rectified before the issuance of a building permit. The nonconforming building locations necessitate the need for a Variance to allow for the future site or building improvements that require a building permit. The existing setback is a special circumstance justifying approval of the request.

5. The granting of any variance is in harmony with the general purposes and intent of this title and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with the City’s Comprehensive Plan. The purpose and intent of the rear yard setback in Light Industrial Districts are so that sufficient separation is provided between structures on adjoining properties. This nonconforming setback is an existing condition and is setback more than 100 feet from the nearest building on the adjoining property. As such, granting the Variance is in harmony with the general purposes and intent of this title and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with the City’s Comprehensive Plan.

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**Summary of Findings**

The applicant has submitted a Variance request to waive the requirement to pave a portion of the circulation, loading/unloading, and parking areas and reduce the rear yard setback to 9 feet in lieu of required 25 feet

Staff is recommending that the Variance request to waive a portion of the paving requirement be approved based on the following criteria:

1. The subject area will be used for heavy equipment circulation. Hard-surfacing this area will lead to damage, deterioration and create an ongoing maintenance issue for the applicant. These factors constitute a special condition justifying the use of alternative paving material.
2. All required parking, loading, and circulation areas will be hard-surfaced except the subject area. The request is the minimal adjustment necessary.
3. A dust palliative approved by the Engineering Division will be applied to the circulation area, therefore, minimizing adverse impacts to air quality and cleanliness for adjoining properties and public right of way. The request meets the purpose and intent of the Ordinance and will not be injurious to adjoining property owners.

Staff is recommending that the Variance request to reduce the rear yard setback requirement be approved based on the following criteria:

1. The nine-foot rear yard setback is an existing condition, approval ensures that reasonable use of the property can continue.
2. The nonconforming setback is a special condition that must be legally permitted before the issuance of a building permit to repurpose the southern warehouse.
3. Enforcement of the setback requirement would require structural changes to the existing warehouses or require that the applicant purchase additional land to meet the requirement. The request is the minimal adjustment necessary.

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**Recommendation**
Staff recommends that the Variance to waive a portion of the paving requirement be approved and that the Variance request to reduce the rear yard setback from 25 feet to 9 feet be approved with the following stipulation;

(1) Any expansion of the existing structures or new development on the property shall meet all minimum setback requirements.