

STAFF REPORT
October 4, 2007

No. 07SV042 - Variance to the Subdivision Regulations to reduce the width of the access easement from 59 feet to 26 feet, to waive the requirement to provide a minimum eight foot wide drainage and utility easement, and to waive the requirement to install curb, gutter, sidewalk, street light conduit, water and sewer as per Chapter 16.16 of the Rapid City Municipal Code

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GENERAL INFORMATION:

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| APPLICANT | Bob Brandt |
| AGENT | TSP Three, Inc. |
| PROPERTY OWNER | Don Weisler/Good Guys, LLC |
| REQUEST | No. 07SV042 - Variance to the Subdivision Regulations to reduce the width of the access easement from 59 feet to 26 feet, to waive the requirement to provide a minimum eight foot wide drainage and utility easement, and to waive the requirement to install curb, gutter, sidewalk, street light conduit, water and sewer as per Chapter 16.16 of the Rapid City Municipal Code |
| EXISTING LEGAL DESCRIPTION | Dan's Supermarket Tract Revised, less Lot 1 [also in Block 67] and less Lot H-1 of Block 66 of the Original Town of Rapid City, Section 36, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota |
| PROPOSED LEGAL DESCRIPTION | Tract 1 and Tract 2 of Tuscan Square Subdivision, Section 36, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota |
| PARCEL ACREAGE | Approximately 5.61 acres |
| LOCATION | 333 Omaha Street |
| EXISTING ZONING | General Commercial District |
| SURROUNDING ZONING | |
| North: | Light Industrial District - Flood Hazard District |
| South: | General Commercial District |
| East: | General Commercial District |
| West: | General Commercial District |
| PUBLIC UTILITIES | City sewer and water |

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DATE OF APPLICATION 7/26/2007

REVIEWED BY Vicki L. Fisher / Todd Peckosh

RECOMMENDATION:

Staff recommends that the Variance to the Subdivision Regulations to reduce the width of the access easement from 59 feet to 26 feet and to waive the requirement to install curb, gutter, sidewalk, street light conduit, water and sewer along the access easement be denied without prejudice with the applicant's concurrence;

That the Variance to the Subdivision Regulations to waive the requirement to provide a minimum eight foot wide drainage and utility easement along the interior of all lot lines be approved with the following stipulation:

1. An eight foot wide drainage and utility easement shall be provided along the interior of all lot lines except where the easement interferes with an existing building;

That the Variance to the Subdivision Regulations to waive the requirement to install water and sewer along Rapid Street and to install sewer along Third Street be approved with the following stipulation:

1. Prior to City Council approval, the applicant shall sign a waiver of right to protest any future assessment for the improvement; and,

That the Variance to the Subdivision Regulations to waive the requirement to install water and sewer along Third Street be denied.

GENERAL COMMENTS:

(Update, September 21, 2007. All revised and/or added text is shown in bold print.) This item was continued at the September 20, 2007 Planning Commission meeting to allow the City Council to consider Exception requests to allow water and sewer service lines to cross another lot and to allow a water main to cross another lot . The City Council will consider the Exception requests at their October 1, 2007 City Council meeting. Staff will notify the Planning Commission on October 4, 2007 of City Council's action.

(Update, September 11, 2007. All revised and/or added text is shown in bold print.) This item was continued at the September 6, 2007 Planning Commission meeting to allow the applicant to submit plans sealed and signed by a Professional Engineer showing the existing construction of Omaha Street, including sidewalks, sidewalk ramps, fire hydrants, water mains, sewer mains, service lines, etc and to allow the City Council to consider associated Exception requests.

On September 10, 2007, the applicant submitted plans showing the existing construction of

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Omaha Street as it abuts the property. Staff has reviewed and approved the plans.

On September 11, 2007, the Development Appeals and Review Board reviewed an Exception request to allow the water service line to cross another lot and to allow a water main to cross another lot and recommended "to ignore the Ordinance", thereby allowing the water service line and the water main to cross another lot. The Public Works Committee considered the recommendation of the Development Appeals and Review Board at their September 11, 2007 Public Works Committee meeting. The item was sent to the September 17, 2007 City Council meeting without recommendation. Staff will notify the Planning Commission on September 20, 2007 of City Council's action.

On September 11, 2007, the Public Works Committee considered an Exception request to allow a sewer service line to cross another lot. The item was sent to the September 17, 2007 City Council meeting without recommendation. Staff will notify the Planning Commission on September 20, 2007 of the City Council's action.

The applicant has submitted a Variance to the Subdivision Regulations to reduce the width of the access easement from 59 feet to 26 feet, to waive the requirement to install curb, gutter, sidewalk, street light conduit, water and sewer along the access easement, to waive water and sewer along Rapid Street and Third Street and to waive the requirement to provide a minimum eight foot wide drainage and utility easement along the interior of all lot lines. In addition, the applicant has submitted a Preliminary Plat (#07PL101) to subdivide the property into two commercial lots. The applicant has also submitted a Fence Height Exception (#07FV006) to allow a six foot high screening fence to be constructed around the dumpster to be located in the southeast corner of the property. The applicant has indicated that the commercial development will be known as "Tuscany Square Shopping Center".

On March 8, 2007, the Planning Commission approved an Initial Commercial Development Plan to allow a 64,237 square foot retail building, a 13,300 square foot strip mall and a 5,940 square foot restaurant to be located on the property.

On April 5, 2007, the Planning Commission approved a Final Commercial Development Plan to allow a 64,237 square foot retail building and a 13,300 square foot strip mall as Phase One of the development.

On August 9, 2007 the Planning Commission approved a Major Amendment to the Commercial Development Plan (File #07PD058) to revise the sign package on the property.

The property is located in the southwest corner of the intersection of 3rd Street and Omaha Street. Currently, a 64,237 structure is located on the property which was previously the location of "Dan's Supermarket". In addition, the proposed strip mall located along Rapid Street is currently under construction.

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STAFF REVIEW:

Staff has reviewed the Variance to the Subdivision Regulations and has noted the following considerations:

Access Easement: The plat document identifies a 26 foot wide access easement along the south and west lot lines between Tract 1 and Tract 2. The access easement is classified as a commercial street requiring that it be located in a minimum 59 foot wide easement and constructed with a minimum 26 foot wide paved surface, curb, gutter, sidewalk, street light conduit, water and sewer. The applicant has indicated that the plat document will be revised to remove the access easement and to show a shared approach along Third Street. As such, staff is recommending that the Variance to the Subdivision Regulations to reduce the width of the access easement from 59 feet to 26 feet and to waive the requirement to install curb, gutter, sidewalk, street light conduit, water and sewer along the access easement be denied without prejudice with the applicant's concurrence.

Drainage and Utility Easement: An eight foot wide drainage and utility easement must be shown along the interior of all lot lines as per Chapter 16 of the Rapid City Municipal Code. However, as a part of the review and approval of the associated Initial and Final Commercial Development Plan, the setbacks for the existing structure along Omaha Street and the proposed strip mall along Rapid Street were reduced to one foot and three foot, respectively. In addition, the applicant has submitted a utility plan and a drainage plan identifying that drainage and utility easements are not needed within this area of the site. As such, staff is recommending that the Variance to the Subdivision Regulations to waive the requirement to provide a minimum eight foot wide drainage and utility easement along the interior of all lot lines be granted where the easement interferes with an existing building.

Rapid Street: Rapid Street is located along the south lot line of the property. To date, water and sewer have not been extended along the street. The City's Master Utility Plan does not show water and sewer along this section of Rapid Street. In addition, water and sewer are not needed within the Rapid Street right-of-way to serve the property. Staff has also noted that all of the adjacent properties are currently served by City sewer and water. As such, staff is recommending that the Variance to the Subdivision Regulations to waive the requirement to install water and sewer along Rapid Street be approved with the stipulation that the applicant sign a waiver of right to protest any future assessment for the improvements.

Third Street: Third Street is located along the east lot line of the property. An eight inch water main is currently located in the north 50 feet of the street and an eight inch sanitary sewer main is located in the south 150 feet of the street. To date, water and sewer mains have not been extended along the balance of Third Street as it abuts the property. During the review and approval of the associated Initial and Final Commercial Development Plan, the

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applicant indicated that the three commercial structures would be located on one parcel of land. As such, staff reviewed and approved the extension of service lines across the one lot to serve the three structures. The applicant has subsequently submitted the associated Preliminary Plat showing the subdivision of the property into two lots. As a result, sewer service lines are now extending from Third Street across Tract 1 to serve Tract 2.

The City has adopted a resolution that may require the City to assist financially in the repair and/or replacement of service lines that cross other private property. Public Works Department staff has indicated that the City is currently assisting in the cost of repairing and/or replacing similar existing sewer service lines. In particular, the Public Works staff has indicated that failure along longer sewer and water lines has resulted in instances where raw sewage escapes to the ground surface or basements and water breaks result in health hazards to people and damage to personal and public property.

Extending the sewer main along Third Street and providing a sewer service line from the street right-of-way directly to proposed Tract 2 will meet the requirements of the platting process and eliminate the possibility of any future City cost contribution for the repair and/or replacement of the service line. In addition, granting the Variance request is contrary to the adopted resolution. As such, staff is recommending that the Variance to the Subdivision Regulations to waive the requirement to install a sewer main along Third Street be denied.

A water main currently exists along the east lot line of the property. As a result of the proposed plat, the water main extends across Tract 2 to Tract 1 and will serve the future commercial development on Tract 1 and Tract 2. However, Chapter 13.04.350 of the Rapid City Municipal Code states that water pipes must not be extended from one premise to another. In addition, the City Master Utility Plan identifies a water main along Third Street to improve service and fire flows to the area. Granting the Variance is contrary to the requirements set forth by Chapter 13.04.035. As such, staff is recommending that the Variance to the Subdivision Regulations to waive the requirement to install a water main along Third Street be denied. As a condition of the associated Preliminary Plat, staff is recommending that the existing water main along the east lot line be abandoned.

Legal Notification Requirement: The receipts from the certified mailings have been returned. Staff has received one call of inquiry regarding this proposal.