

was made by Kroeger, seconded by Murphy and carried to continue this item until October 15, 2001.

The Mayor presented No. 01SE001, a request by Bill Caldwell for a **Special Exception to the Flood Area Construction Regulations to allow permanent structures in the floodway** on Tract 5, Bradsky Subdivision No. 2, located in the NW1/4 SW1/4 Section 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota, located at 1316 Cambell Street. Motion was made by Kroeger and seconded by Johnson to deny the request. Bill Caldwell urged the Council to approve the special exception. He noted that he has letters of support for this special exception from adjoining property owners. Engineering Division Manager Randy Nelson submitted a summary of the actions relative to the property located at 1310 Cambell Street, on the south side of Rapid Creek. The petitioner is requesting authorization to double the size of the existing building by adding 2600 square feet for use as an automobile service shop. The property is located entirely within the floodway and requires a floodplain development permit. Because the use and building are non-conforming, a special exception to the flood plain development permit must be approved by the City Council. There are two issues that must be addressed. First, the ordinance specifically states that no structural alteration, addition or repair can be made to any non-conforming structure if it exceeds 50% of its value at the time of becoming a non-conforming use. The building is non-conforming in that it is located in the floodway. Also, the existing building raises the base flood elevation approximately two-tenths of a foot. Secondly, the use of the property includes storage of materials (vehicles) in the floodway that could be hazardous to public safety and welfare. Nelson stated that the non-conformity of this property increased in 1995 when the use was changed to a car lot. It was noted that the petitioner has submitted the required information for a No Rise Certificate and Flood Proofing Design. When discussing this type of petition, the ordinance requires the Planning Commission and the City Council consider several factors, including the danger to health, safety, welfare and property due to increased flood types or velocities caused by encroachments. The City should also consider any danger that materials may be swept onto other lands or downstream to the injury of any person or property and also consider the availability of alternative locations not subject to flooding. The ordinance states that a variance shall only be issued upon a showing of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship to the applicant and a determination that granting a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense. The Planning Commission's recommendation for denial was based on the fact that those conditions as established by City ordinance for granting a special exception are not met in this case. In addition, adding additional investment to the property adds to the permanency of the non-conforming use and reduces the likelihood of achieving the community's goals of the Floodplain Management Ordinance. Expansion of the building for purposes of expanding the business volume may likely lead to an increase in the average number of vehicles stored at this location in the floodway. The nature and degree of risk resulting from vehicles in the floodway is in fact real; it is significant. Nelson noted that cars can plug bridges and there is a bridge located on Creek Drive, about one-third of a mile downstream from this location. Nelson stated that this request constitutes re-building in the floodway, ignoring some of the lessons we learned as a result of the 1972 Flood. Further, allowing expansion at this time will increase the cost of future property acquisition if the City and the property owners are agreeable to add this property to the City's Greenway. Nelson stated that for these reasons, staff is recommending denial of the special exception.

Asst. City Attorney Adam Altman submitted a historical time line of the development of this property. The property has been out of compliance with City codes for several years, even before it was purchased by Mr. Caldwell. The property became an illegal non-conforming use in 1988 and has continued as such until the rezoning was approved in August of 2001. Altman went through the legal criteria that the Council is required to find that the applicant has met before a special exception is granted. He noted that the applicant has failed to meet nine out of eleven of these criteria (two of the criteria are not applicable). The Council must

also determine that the special exception is the minimum necessary to allow reasonable use of the property. Altman stated that it is not proper to grant an exception to alleviate financial hardship or permit financial growth. He added that the City Council must find as follows in order to approve the requested variance: 1) good and sufficient cause to grant the variance; 2) exceptional hardship to the petitioner in order to grant the variance; and 3) that there are no additional threats to public safety. If the Council finds that there is any additional threat to public safety, the variance shall be denied. Hanks questioned the discussion about vehicles being parked on this property when the question is for an addition to the building. Altman stated that if the parking area is not included in the variance application, then it will still be an illegal non-conforming use and subject to the City's spectrum of enforcement options. Caldwell stated that his special exception request is for an addition to the building only; nothing to do with the parking lot. Caldwell stated that any increase in risk of vehicles floating down the creek is because the elevation of the base flood has increased and not the result of anything he has any control over. Substitute motion was made by Kriebel and seconded by Hadley to approve the special exception to the Flood Area Construction Regulations to allow permanent structures in the floodway, with the stipulation that the available parking will stay the same (square footage). Johnson stated that he does not feel the Council has authority to grant this variance or special exception based on the criteria described by the City Attorney's Office. Altman reiterated that if the special exception that the Council is considering does not include the parking of cars on this paved section, the inventory storage (parking of cars) would continue to be an illegal non-conforming use and would be subject to the City's enforcement spectrum (anywhere from ignoring the use to removing the non-conforming use). Planning Commission representative Jeff Hoffman stated that everyone is aware of the history of this property. Since the base flood elevation has risen, there is more of an issue on this property than was originally thought. He added that since the Council knows the history, the City will have increased liability if this request is approved. Mayor Munson stated that if this request is approved, the City is saying that we know there will be cars on this property, we know they are illegal, we know they post a hazard, but we are going to allow additional money to be invested in this property and turn a blind eye. He urged the Council not to approve the request for a special exception and to continue the work of acquiring property that is located in the floodway. Second substitute motion was made by Murphy to continue this item until October 1, 2001 to give staff and Mr. Caldwell more time to discuss purchasing the property. Motion died for lack of a second. Upon vote being taken, the motion carried with Johnson voting no.

The Mayor presented No. 01SV022, a request by Polenz Land Surveying for Rose Schimke for a **Variance to the Subdivision Regulations to waive the requirement for sidewalk, curb and gutter and street light conduit** on Lot 5R and 6R of Schimke Subdivision formerly Lot 5 and 6 of Schimke Subdivision all located in the S1/2 of the SW1/4 of Section 3, T1N, R8E, BHM, Pennington County, South Dakota, located at 1650 Sweetbriar. Motion was made by Kroeger, seconded by Hanks and carried to approve the requested Variance with the following stipulations: 1) Prior to City Council approval, a drainage ditch shall be constructed along Sweetbriar Street, or surety shall be posted for the improvement; and, 2) Prior to City Council approval, a waiver of right to protest an assessment district for Lot 5R and 6R of Schimke Subdivision shall be signed.

The Mayor presented No. 01SV025, a request by Ron & Mary Ann Davis for a **Variance to the Subdivision Regulations to waive the requirement for curb, gutter, sidewalk, street light conduit, water and sewer for Reservoir Road** on Lots 1 thru 18 of Buffalo Ridge Subdivision formerly: unplatted all located in: NW1/4 NW1/4 of Section 11, T1N, R8E, BHM, Pennington County, South Dakota, located 800 feet south of the intersection of Twilight Drive and Reservoir Road. Motion was made by Kroeger, seconded by Hanks and carried to continue this item until October 1, 2001.

The Mayor presented No. 01UR032, a request by Dream Design International, Inc. for a **Use On Review to allow a utility substation in the Low Density Residential Zoning District**