



CITY OF RAPID CITY

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PLANNING DEPARTMENT

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MEMORANDUM

TO: Rapid City Planning Commission

FROM: Bill Lass, Senior Planner

DATE: 10/17/01

RE: Proposed Amendments to the Zoning Ordinance Regarding Use on Reviews

On September 6, 2001 Staff presented a proposal to the Planning Commission that would result in Ordinance amendments making the Planning Commission the decision-making body regarding Use on Reviews rather than the City Council. The Planning Commission on September 6 felt the concept had some validity and requested that Staff develop a draft Ordinance to bring back for discussion (see attached).

The highlights of the draft Ordinance are as follows:

- Planning Commission Public Hearing: Section "C" of the proposed Ordinance gives the Planning Commission the decision-making authority regarding Use on Reviews. The section also states that appeals of the Planning Commission's decision can be made in accordance with the "Appeals" section.
- Appeal Procedures: Section "F" of the proposed Ordinance sets forth the appeals procedure. There are two portions of this section for which Staff is requesting the specific direction of the Planning Commission. First, a specific timeframe is needed for which appeals could be filed after the Planning Commission decision. For discussion purposes, Staff has proposed that appeals would have to be filed within three, five, or seven working days of the Planning Commission meeting. Secondly, the party responsible for undertaking the required notification of surrounding property owners must be identified. For discussion purposes Staff has suggested this party could be: the first person appealing the decision, the petitioner, or the City.

Appeals before the City Council would happen only after the certified mailing was completed and a public notice published in the newspaper. Both of these events would have to occur at least seven days prior to the City Council meeting.

Two important points to remember in considering these proposed Ordinance amendments are:
1) The changes will shorten the timeframe for most Use on Reviews to be acted upon by about eleven days. However, for those Use on Reviews that are appealed, action will actually take longer than what is currently required – potentially up to 2-3 weeks longer. 2) The proposed Ordinance amendments will affect not only Use on Reviews but Planned Developments also.

In order to gain some perspective on the implications of these proposed Ordinance amendments, Staff researched the number of Use on Reviews and Planned Development submittals between October 1, 2000 and October 1, 2001. During this twelve month period, a total of 129 Use on Reviews, Planned Developments and Major Amendments were acted on by the Planning Commission and City Council. Of this total, there were only six instances in which the City Council action varied from the Planning Commission recommendation. This means that over 95% of the time the City Council concurred with the Planning Commission. Based upon this information, it appears that the proposed amendments could reduce the review period for a significant number of applicants.

Staff will look forward to discussing this matter further with the Planning Commission on October 25.

Thank you.

Draft Ordinance Amendment
Planning Commission Action with Appeal to City Council
October 15, 2001

17.54.030 Procedures for authorization of uses on review.

The following procedures are established to integrate properly the uses on review with other land uses located in the district. These uses shall be reviewed by the ~~city council~~ **planning commission**, and authorized, rejected, or, ~~if the city council deems it appropriate~~, revoked under the following procedures:

- A. Approval Procedures. The procedures of this section shall be followed in making application for approval of a use on review or for an amendment to a use on review.
 1. Application. An application shall be filed with the planning department ~~for planning commission and common council review~~. Said application shall show the location and intended use of the site. Specifics on site development shall include **but not be limited to** parking, landscaping and building setbacks. A site plan drawn to scale which reflects the specifics of the proposed project shall be submitted.
 2. Fees. A fee of two hundred fifty dollars shall be paid at the time of filing any application for a use on review permit; however, if a permit for a limited time period has previously been issued, and all conditions for such permit have been met throughout the term thereof, the renewal fee may be waived at the discretion of the planning director. If the application is for the amendment of a Use on Review the fee shall be two hundred fifty dollars for a major amendment. There is no charge for a minimal amendment.
 3. Notification. Notification of surrounding property owners, tenants and interested parties shall be accomplished by posting a sign on the property and by mailing notices of public hearing to neighboring property owners.
 - a. Posting of sign. A sign noting the fact that a use on review approval, on-sale liquor establishment approval or major amendment is pending shall be posted on the site not less than seven days before the public hearing before the planning commission. The sign shall be maintained on the site until the common council has taken action on the request or the petition is withdrawn. Approved signs shall be secured from the planning department who shall require a reasonable deposit sufficient to cover the cost of replacement of such sign or signs and who shall determine the number and location of the sign or signs to be posted on the site addressed in the petition for Use on Review.
 - b. Mailing of certified notice. The petitioner shall submit postal receipts to demonstrate a good faith attempt to notify by certified letter with return receipt all property owners within one hundred fifty feet, exclusive of public right-of-way, of the site measured from the perimeter of the lot, lots or portions thereof which contain the buildings and area dedicated to the proposed use. If the intended use of the occupied site is to be an on-sale liquor establishment, the petitioner shall submit postal registration data that substantiates the good faith attempt to mail certified letters with return receipts to all property owners within two hundred fifty feet of the perimeter of the occupied site exclusive of public right-of-way. Such certified mailings shall include the date set for the hearing before the planning commission and contemplated uses, and shall be on a form provided by the planning department. The property owners listing shall be prepared by the Pennington County director of equalization office and based on their records of ownership and addresses.

- B. Fees. A fee of two hundred fifty dollars shall be paid at the time of filing any petition for a use on review permit; provided, however, that if a permit has previously been issued, and all conditions for such permit have been met throughout the term thereof, the renewal fee may be waived at the discretion of the planning director. If the application is for the amendment of a planned development plan **or a Use on Review**, the fee shall be two hundred fifty dollars for a major amendment ~~or one hundred twenty five dollars for a minor amendment, as the planning director may determine.~~
- ~~C. Public Hearing. Upon application and review by the city planning and zoning commission, the city council shall hold a public hearing thereon, after having given a seven day notification in a daily newspaper of general circulation.~~
- C. Public Hearing. The City Planning Commission at a public hearing shall review and act upon all Use on Review applications. The action of the Planning Commission shall occur only after having given a seven-day prior notification in a daily newspaper of general circulation. The action of the City Planning Commission shall be final except in the event of an appeal being filed in which case the "Appeal Procedures" shall be followed.**
- D. Restrictions. In the exercise of its approval, the **Planning Commission** ~~city council~~ may impose such conditions regarding the location, character or other features of the proposed use or buildings as it may deem advisable in the furtherance of the general purposes of this title.
- E. Criteria for Review. In reviewing applications for use on review, due consideration shall be given to the following:
1. The location, character and natural features of the property;
 2. The location, character and design of adjacent buildings;
 3. Proposed fencing, screening and landscaping;
 4. Proposed vegetation, topography, and natural drainage;
 5. Proposed pedestrian and vehicular access, circulation and parking, including that related to bicycles and other unpowered vehicles and provisions for handicapped persons;
 6. Existing traffic and traffic to be generated by the proposed use;
 7. Proposed signs and lighting;
 8. The availability of public utilities and services;
 9. The objectives of the adopted comprehensive plan and the purpose of the ordinance codified herein;
 10. The overall density, yard, height, and other requirements of the zone in which it is located;
 11. The effects of noise, odor, smoke, dust, air and water pollution and the degree of control through the use of clarifiers, screening, setbacks and orientation; and
 12. The degree to which conditions imposed will mitigate any probable adverse impacts of the proposed use on existing adjacent uses.
- F. Appeal Procedures. Any person or party has the right to appeal the decision of the Planning Commission regarding any Use on Review application. Appeals must be made in writing and submitted to the Planning Department by close of business on the...**

Option A. Third full working day following action by the Planning Commission.

Option B. Fifth full working day following action by the Planning Commission.

Option C. Seventh full working day following action by the Planning Commission.

Appeals shall be reviewed and acted upon by the City Council in accordance with the requirements of this section. The action of the City Council shall occur only after having given a seven-day prior notification in a daily newspaper of general circulation.

Option A. The first person or party submitting a formal appeal ...

Option B. The petitioner...

Option C. The City...

...shall be required to submit postal receipts to demonstrate a good faith attempt to notify by certified letter with return receipt all property owners within one hundred fifty feet, exclusive of public right-of-way, of the site measured from the perimeter of the lot, lots or portions thereof which contain the buildings and area dedicated to the proposed use. If the intended use of the occupied site is to be an on-sale liquor establishment, the appellant(s) shall submit postal registration data that substantiates the good faith attempt to mail certified letters with return receipts to all property owners within two hundred fifty feet of the perimeter of the occupied site exclusive of public right-of-way. Such certified mailings shall include the appeal date set for the hearing before the City Council and contemplated uses, and shall be on a form provided by the Planning Department. The property owners listing shall be prepared by the Pennington County Director of Equalization Office and based upon their records of ownership and addresses.

~~F~~**G.** Issuance of Permit. Upon completion of the necessary application, hearing and approval of the **Planning Commission** ~~city council~~ and after the expiration of the appeals time period, the building inspector shall issue the building permit subject to all applicable rules, regulations and conditions.

~~G~~**H.** Validity of Plans. All approved plans, conditions, restrictions and rules made a part of the approval of the **Planning Commission** ~~city council~~ shall constitute certification on the part of the applicant that the proposed use shall conform to such regulations at all times.

~~H~~**I.** Amendments. The conditions of approval of a use on review may be amended. Amendments are considered major or minimal and are addressed in the following manner:

1. Major amendments must be reviewed by the planning **commission**, and ~~common council~~ under the provisions of subsection A **through E** of this section. A major amendment is required when:
 - a. A change to another use permitted on review is proposed;
 - b. A change to specific stipulations addressed in the initial approval or a subsequent amendment;
 - c. The structure and/or occupied site is substantially enlarged. A structure is considered to be substantially enlarged when the gross square footage increases by twenty percent or two thousand square feet, whichever is less. The land or site which supports the use is

considered to be substantially enlarged when the gross square footage of the occupied site increases by ten percent or ten thousand square feet, whichever is less;

- d. The planning director determines that the proposed change is major and requires public hearing review.
2. Minimal amendments must be reviewed and approved by the planning director. A minimal amendment involves a change to the site plan affecting any or all of the following: parking, circulation, landscaping, lot coverage by buildings or building setbacks. The planning director shall determine that the proposed modification to the site will not have a significant adverse impact on neighboring properties, the street network or the appearance of the property in approving a minimal amendment. The planning director shall consider the criteria outlined in subsection E of this section to determine if the proposed modifications still meet the requirements of a use on review.

J. Revocation of Use on Review Permit. A use on review permit may be revoked only for cause, consisting of failure to maintain the standards required for the initial use on review. A notice of intent to revoke a use on review shall be given in writing thirty days prior to actual revocation and shall specify the area or areas of continued failure to meet requirements and maintain conditions the city council may have imposed. If, during that period, proof of compliance is made by the holder of the use on review permit, the use on review permit shall be continued in force. If a hearing has been requested following receipt of notice of intent to revoke, the ~~city council~~ **Planning Commission** shall hold a public hearing on the matter and make a final determination on such revocation.

JK. 1. Expiration. A use on review shall automatically expire if:

- a. The primary use for which it was granted has ceased for a period of two years or more; or
 - b. The primary use proposed under the use on review has not been undertaken and completed according to the terms and conditions of the use on review within two years of the approval of the use on review. A use on review is considered approved upon the effective date of the **Planning Commission or city council's** legal action, resolution or ordinance relating thereto.
2. Notwithstanding the provisions of subsection J(1) of this section, the **Planning Commission, council** may as part of the original use on review or as a major amendment to the use on review extend the period of the use on review where it is warranted in light of the relevant circumstances, including, but not limited to, the size and phasing of the development, economic cycles and market conditions. All use on reviews approved prior the effective date of the ordinance codified in this subsection shall be exempt from the provisions of this section. (Ord. 3371, 1997; Ord. 3013, 1993; Ord. 2931 (part), 1992; Ord. 2860, 1991; prior code Appendix A, Art. VII (§ 4))