

STAFF REPORT

May 22, 2003

No. 03UR006 - Major Amendment to a Conditional Use Permit to allow the first floor on-sale liquor use to be open starting at 11:00 a.m. on Saturday and Sunday

ITEM 33

GENERAL INFORMATION:

PETITIONER	Robert Fuchs for Phatty McGees
REQUEST	No. 03UR006 - Major Amendment to a Conditional Use Permit to allow the first floor on-sale liquor use to be open starting at 11:00 a.m. on Saturday and Sunday
EXISTING LEGAL DESCRIPTION	The south 50 feet of Lots 28-32, Block 63, Original Town of Rapid City, Section 36, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately .14 Acres
LOCATION	321 7th Street
EXISTING ZONING	General Commercial
SURROUNDING ZONING	
North:	General Commercial
South:	General Commercial
East:	General Commercial
West:	General Commercial
PUBLIC UTILITIES	City sewer and water
DATE OF APPLICATION	04/23/2003
REPORT BY	Vicki L. Fisher

RECOMMENDATION:

Staff recommends that the Major Amendment to a Conditional Use Permit to allow the first floor on-sale liquor use to be open starting at 11:00 a.m. Sunday be approved with the following stipulations:

Building Inspection Division Recommendation:

1. Prior to Planning Commission approval, the surface of the handicap parking stall be repaired or surety shall be posted for the improvement;
2. The handicap parking stall shall continually be kept clear of any encroachments;

Urban Planning Division Recommendations:

3. No part of the building shall be open for public use until 5:00 p.m. Monday through

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- Saturday;
4. The first floor on-sale liquor use shall be allowed on Sunday starting at 11:00 a.m.;
 5. The Conditional Use Permit shall be approved for one year only; and,
 6. The third floor and the basement shall be used as storage. Any other use of these areas will require that additional off-street parking be provided as per Chapter 17.50.270 of the Rapid City Municipal Code.

GENERAL COMMENTS:

The applicant has submitted a Major Amendment to Conditional Use Permit #99UR042 to extend the hours of operation allowing the first floor on-sale liquor establishment to be open starting at 11:00 a.m. in lieu of 5:00 p.m. on Saturday and Sunday as previously stipulated.

In December 1999, the Zoning Board of Adjustment granted a variance to reduce the parking from 104 spaces to one space for the existing use(s) currently located on the subject property contingent upon the business being open after 5:00 p.m.

In December, 2001, the Zoning Board of Adjustment denied a variance request to allow the first floor on-sale liquor establishment to be open at 11:00 a.m. in order to serve lunch.

On March 18, 2003, the Zoning Board of Adjustment continued a variance request to allow the first floor to be open at 11:00 a.m. on Saturday and Sunday in order for the applicant to request an amendment to this associated Conditional Use Permit to revise the time of operation accordingly.

The property is located on the west side of Seventh Street between Omaha Street and Main Street. A three story structure with 5,000 square feet of floor space per floor is located on the property. Currently, "Hooky Jacks", a sports bar, is located on the first floor and "Phatty McGee's, a nightclub, is located on the second floor. The third floor and basement are used as storage.

STAFF REVIEW:

Staff has reviewed the Major Amendment to the Conditional Use Permit and has noted the following considerations:

Handicap Parking Space: As previously indicated, the Zoning Board of Adjustment granted a variance to reduce the minimum required off-street parking from 104 spaces to one space. The one required off-street parking space must be a "van" handicap accessible space and is currently located behind the building along the west lot line of the subject property. The Building Inspection Division has indicated that the stall surface is damaged. As such, the surface of the handicap parking must be repaired or surety posted for the improvement prior to Planning Commission approval. Staff has also noted that on several occasions, a trash dumpster is located within the handicap parking space. Staff is recommending that the handicap parking space continually be kept clear of any encroachments.

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Hours of Operation: As previously indicated, Conditional Use Permit #99UR042 was approved to allow the existing use(s) currently located on the property contingent upon the business being open after 5:00 p.m. The variance granted in December, 1999 to reduce the parking from 104 spaces to one space was also approved contingent upon the business being open after 5:00 p.m. The variance currently being reviewed by the Zoning Board of Adjustment was continued to allow the applicant to seek an amendment to the associated Conditional Use Permit to adjust the hours of operation on Saturday and Sunday to allow the facility to open at 11:00 a.m.

During the public hearing on the variance, an area property owner requested that the variance be granted to allow the existing owner to be open as requested on Saturday and Sunday with the stipulation that if the ownership of the property should be transferred, then the variance reducing the parking requirement would be void. The City Attorney's Staff has indicated that the variance is issued to the property and the on-sale liquor use, and as such, can not be limited to a particular owner. Subsequently, the Zoning Board of Adjustment recommended that the applicant seek to amend the associated Conditional Use Permit to address the ownership issue independent of the variance request. However, staff has noted that the Conditional Use Permit also allows a specific use on a particular property and cannot legally serve as a tool to regulate the ownership of the property. However, the review of the request in the future will allow the City to monitor the impacts of the use on an on-going bases.

Staff has consistently recommended that the hours of operation for Saturday be limited until after 5:00 p.m. due to the presence of existing commercial businesses within the area also being open during the day. However, pursuant to a stipulation to settle litigation on the subject property, staff does not oppose the modification proposed by the applicant for early opening on Sunday.

The applicant submitted a parking agreement for "Lease of Parking Spaces" from American Memorial Life Insurance Company to allow Phatty McGee's to use 50 parking spaces on the insurance company site. However, a term of the agreement states that "either party may terminate this Lease by providing the other written notice within 10 days of such termination". As such, the parking agreement does not serve to permanently secure a shared parking agreement between the two properties. In addition, it has not been demonstrated that American Memorial Life Insurance Company has an excess of parking beyond that required for their business.

Legal Notification Requirement: The white receipts from the certified mailings have been returned. As of this writing, staff has not received any calls or inquiries regarding this proposal.