

## STAFF REPORT

June 25, 2009

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### **No. 09UR016 - Major Amendment to a Conditional Use Permit to expand an on-sale liquor establishment**

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**ITEM 40**

#### GENERAL INFORMATION:

APPLICANT	Frankies, LLC, d/b/a Thirsty's
AGENT	Frank Morrison
PROPERTY OWNER	Morrison Family Holdings, LLC
REQUEST	<b>No. 09UR016 - Major Amendment to a Conditional Use Permit to expand an on-sale liquor establishment</b>
EXISTING LEGAL DESCRIPTION	Lots 10, 11 and 12 of Block 82 of the Original Town of Rapid City, Section 1, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 0.24 acres
LOCATION	819 Main Street
EXISTING ZONING	Central Business District
SURROUNDING ZONING	
North:	Central Business District
South:	Central Business District
East:	Central Business District
West:	Central Business District
PUBLIC UTILITIES	City water and sewer
DATE OF APPLICATION	6/2/2009
REVIEWED BY	Travis Tegethoff / Karley Halsted

#### RECOMMENDATION:

Staff recommends that the Major Amendment to a Conditional Use Permit to expand an on-sale liquor establishment be approved with the following stipulations:

1. All applicable provisions of the International Fire Codes shall be continually met;
2. The proposed structure shall conform architecturally to the plans and elevations submitted. Any expansion to the use will require a Major Amendment to the Conditional Use Permit;
3. The on-sale liquor establishment shall be operated in conjunction with a full service restaurant;
4. A Sign Permit shall be obtained prior to any signs being placed on the property and shall

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- comply with the Sign Code Regulations. The signs shall meet the site plan as shown and as approved by the Historic Sign Review Committee;
5. A Sidewalk Café Permit shall be obtained prior to any structures being placed in the Main Street right-of-way;
  6. No parking shall be allowed on Lot 12 of Block 82 of the Original Town of Rapid City;
  7. No tables shall be placed in the Main Street right-of-way adjacent to Lot 12 of Block 82 of the Original Town of Rapid City until vertical curbing is installed along the street right-of-way; and,
  8. The Major Amendment to a Conditional Use Permit shall expire if the use is not undertaken and completed within two years of the date of approval by the Planning Commission, or if the use as approved has ceased for a period of two years.

**GENERAL COMMENTS:** The property is located in the Central Business District at 819 Main Street, south of Main Street, east of 9<sup>th</sup> Street and west of Mt. Rushmore Road and Thirsty's restaurant is currently located on the property. The surrounding properties east, west, north and south are also zoned Central Business District. An alcohol establishment is located adjacent to the property to the west and an alcohol establishment is located across the street from the property. Another alcohol establishment within a hotel is located across the street to the east of the property. Two retail structures are located within the block and a parking lot is located east of the subject property at the corner of Mt. Rushmore Road and Main Street.

On January 2, 2007, City Council approved a Conditional Use Permit (#06UR022) to allow an on-sale liquor establishment in conjunction with a restaurant with the following stipulations:

1. A Building Permit shall be obtained prior to any construction and an Occupancy Permit shall be obtained prior to occupancy;
2. Prior to obtaining a building permit, all plans shall be stamped and prepared by a Registered Professional Engineer and/or Architect as per SDCL 36-18A;
3. The structure shall be fully fire sprinklered and fire alarmed/detected and all applicable provisions of the 2003 International Fire Codes shall be continually met;
4. The proposed structure shall conform architecturally to the plans and elevations submitted. Any expansion to the use will require a Major Amendment to the Conditional Use Permit;
5. The on-sale liquor establishment shall be operated in conjunction with a full service restaurant;
6. A Sign Permit shall be obtained prior to any signs being placed on the subject property and shall comply with the Sign Code Regulations. The signs shall meet the site plan as shown and as approved by the Historic Sign Review Committee;
7. No outside patio or open air windows are allowed. Any expansion of the use will require a Major Amendment to a Conditional Use Permit;
8. The parking lot located west of the building shall be eliminated;
9. The Conditional Use Permit shall expire if the use is not undertaken and completed within two years of the date of approval by the Planning Commission, or if the use as approved has ceased for a period of two years.

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The applicant is requesting approval of a Major Amendment to a Conditional Use Permit to modify the specific stipulations of approval as approved by the City Council. Specifically, the applicant is requesting that stipulation number 7 that stated that no outside patio or open air windows are allowed be removed. This would allow outdoor seating on the west side of the building and would allow the applicant to obtain approval of a sidewalk café allowing outdoor seating along the north side of the building in the Main Street right-of-way. The applicant has submitted a Sidewalk Café Permit (#09SC005) to allow table and chairs to be placed in the public right-of-way. The applicant is proposing the location of a total of five tables in the Main Street right-of-way. Nine tables are proposed to be located along the west side of the building on private property.

**STAFF REVIEW:** Staff has reviewed this request with respect to the four criteria established for On-Sale Liquor establishments identified in Section 17.50.185:

*1. The request will not “adversely affect” the use of any place used for religious worship, school, park, playground, or similar use within five hundred (500) feet radius.*

There are no places of religious worship, schools, or playgrounds located within a five hundred foot radius of the subject property. There are five similar uses located within a 500 foot radius of the property. Prior to original approval of this Conditional Use Permit in 2007, complaints were received regarding the noise from the bars in this area, specifically due to the outdoor open air venues. As a result of those complaints, the original Conditional Use Permit was approved allowing the use but with the stipulation precluding outside patios and open air windows. The applicant is requesting that this specific stipulation of approval be removed. Staff is unaware of any complaints for this particular establishment since the Conditional Use Permit was approved in 2007.

On July 21, 2008, the City Council approved Ordinance No. 5404 to create a Sidewalk Café Permit allowing outdoor seating in the public right-of-way by amending Chapter 12.20.020(E) of the Rapid City Municipal Code. The applicant is also proposing to expand the use to include the sidewalk café and the outside patio area on private property. Central Business Zoning Districts surround the property. The Police Department does not oppose this application as there is no evidence that this establishment will cause additional adverse affects in the area. Staff’s review of the proposed on-sale liquor establishment finds that the proposed use provides a concentration of similar uses within the area but does not appear to have a significant adverse affect on the surrounding uses.

*2. The request use is “sufficiently buffered” with respect to residential areas so as not to “adversely affect” such areas.*

There are no residential zoning districts adjacent to the property as the property is surrounded by Central Business District. There are two residential units located across the alley east of the property. Staff does not anticipate that the proposed on-sale liquor use will have a significant negative impact on any residences.

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3. *The proposed use will not create an undue concentration of similar uses, so as to cause "blight, deterioration, or substantially diminish or impair property values."*

In addition to the restaurant, the proposed on-sale liquor use will include video lottery, two pool tables and a dart board. Currently, there are five on-sale liquor establishments within 500 feet of the property. In 1975, the City Council passed a resolution establishing a policy on locations of liquor licenses especially in the Central Business District. The resolution stated that the number of liquor establishments was creating a police problem and that the Council would seriously look at any transfer or issuance of any new licenses in the Central Business District. Some of the issues that created this resolution have been eliminated over the years. Staff has some concerns that this proposed use will create a concentration of similar uses in this area. However, the Police Department does not oppose this application as there is no evidence that this establishment will cause additional concerns. In addition, as this on-sale liquor establishment is proposed to operate in conjunction with a restaurant, the effects appear to be significantly mitigated.

4. *The proposed use has been reviewed under Chapter 17.54.030 (E) Criteria for Review.*

Staff has reviewed the proposed use with respect to Chapter 17.18 of the Rapid City Municipal Code and notes the following issues:

Land Use: The applicant has indicated that the on-sale alcohol use will be in conjunction with a restaurant. The applicant is now proposing an outdoor patio along the west and north sides of the building with a total of 14 tables.

Parking: Staff noted that no off-street parking is required in the Central Business District. Currently, a vacant lot is located adjacent to the building. The applicant is proposing to place outdoor seating in this area. The applicant is not proposing any parking as this lot does not meet the Parking Code regulations and provide safe access, no parking shall be allowed on Lot 12 of Block 82 of the Original Town of Rapid City. In addition, there is an existing curb cut along Main Street adjacent to Lot 12 of Block 82 of the Original Town of Rapid City. As such, to assure public safety no tables shall be placed in the Main Street right-of-way adjacent to Lot 12 of Block 82 of the Original Town of Rapid City until curbing is installed.

Landscaping: Staff noted that no landscaping is required for the property since it is located in the Central Business District.

Historic Review: The subject property is within the environs of individually nominated historic buildings and as such, the applicant was required to submit building and sign changes to the Historic Preservation Commission and the Historic Sign Review Committee.

Fire Code: Staff noted that all applicable provisions of the International Fire Code shall be continually met.

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Notification: As of this writing, the required sign has not been posted on the property and the receipts from the certified mailing have not been returned. Staff will notify the Planning Commission at the June 25, 2009 Planning Commission meeting if this requirement has not been met. Staff has not received any objections regarding the proposed Major Amendment to a Conditional Use Permit at the time of this writing.

Staff is recommending that the Major Amendment to a Conditional Use Permit to allow an on-sale liquor establishment be approved with the previously stated stipulations.