

STAFF REPORT
July 9, 2009

No. 09UR018 - Conditional Use Permit to allow an on-sale liquor establishment **ITEM 35**

GENERAL INFORMATION:

APPLICANT	BDUBS, LLC
AGENT	Patrick G. Bles for CMA
PROPERTY OWNER	Perkins Delaware, LLC
REQUEST	No. 09UR018 - Conditional Use Permit to allow an on-sale liquor establishment
EXISTING LEGAL DESCRIPTION	Lot D, E, F & G of Lot 1 of the NE1/4 NE1/4, less Lot H of the Lot 1 of Baken Park Subdivision (NKA Tract 11 of the Rapid City Greenway Tract) less Lot H1 of said Lot D, less Lot H1, Lot H2, Lot H3 of said Lot E, less Lot H1 and Lot H2 of said Lot 6, Section 3, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 15.19 acres
LOCATION	2001 West Main Street
EXISTING ZONING	Shopping Center 2 District
SURROUNDING ZONING	
North:	General Commercial District
South:	Park Forest District
East:	General Commercial District
West:	Flood Hazard District
PUBLIC UTILITIES	City water and sewer
DATE OF APPLICATION	6/12/2009
REVIEWED BY	Travis Tegethoff / Ted Johnson

RECOMMENDATION:

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

1. Prior to Planning Commission approval, the applicant shall submit a revised site plan demonstrating that the structure is located outside of the 100 Year Federally Designated Flood Plain or the applicant must obtain a Flood Plain Development Permit;
2. Prior to Planning Commission approval a sign package be submitted for review and approval demonstrating the size and location of all existing and proposed signs on the

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- property;
3. 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;
 4. The on-sale liquor establishment shall be operated in conjunction with a full service restaurant;
 5. All applicable provisions of the International Fire Codes shall be continually met;
 6. A Building Permit shall be obtained prior to any construction and a Certificate of Occupancy shall be obtained prior to occupancy; and,
 7. 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.

GENERAL COMMENTS: The applicant is requesting a Conditional Use Permit to allow an on-sale liquor establishment in conjunction with a full service restaurant. The establishment will occupy a 7,795 square foot portion of the Baken Park Shopping Center.

On July 7, 1999, City Council approved a Conditional Use Permit (#99UR024) for an on-sale liquor establishment for Qdoba with the following stipulations:

1. That a Building Permit be obtained prior to any construction and a Certificate of Occupancy shall be obtained prior to occupancy;
2. That prior to issuance of a Certificate of Occupancy, all fire codes must be complied with;
3. The primary use of the property shall be a restaurant with the on-sale liquor use being allowed as an accessory use to the restaurant; and,
4. The Use On Review approval shall expire if the use is not undertaken and completed within two years of the date of approval by City Council, or if the use as approved has ceased for a period of two years.

On June 18, 2001, City Council approved a Conditional Use Permit (#01UR024) for an on-sale liquor establishment with video lottery for the BP Casino with the following stipulations:

1. Prior to issuance of a Certificate of Occupancy, the two approaches closest to the intersection, one on Mountain View Street and one on West Main Street shall be eliminated;
2. That prior to issuance of a Certificate of Occupancy, all fire codes must be complied with;
3. That a Building Permit shall be obtained prior to any construction and a Certificate of Occupancy shall be obtained prior to occupancy;
4. The Use on Review approval shall expire if the use is not undertaken and completed within two years of the date of approval by the City Council, or is the use as approved has ceased for a period of two years;
5. Prior to issuance of a Building Permit a complete sign package shall be submitted for review and approval; and,
6. Prior to City Council approval, the applicant shall provide a separate legal description for

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the on-sale liquor establishment and the Use On Review shall be approved only for that premise.

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) foot radius.

There are no places of religious worship or schools within a 500 foot radius. The proposed on-sale liquor establishment is located within 500 feet of Sioux Park. However, the park is separated from the use by commercial development and Canyon Lake Drive. The area around the property is predominantly commercial. Staff's review of the proposed on-sale liquor establishment finds that the proposed use should have no adverse effect on the surrounding area.

2. The requested use is "sufficiently buffered" with respect to residential areas so as not to "adversely affect" such areas.

There are no single family residences located in the general area of the proposed on-sale liquor establishment. Staff does not anticipate that the proposed use will have a significant negative impact on the residential area because there are no residential areas close by.

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."

There are five on-sale liquor establishments, two casinos, two bars and one restaurant, located in the general area of the proposed use. The two casinos are BP Casino at 609 Mountain View Road and Happy Jack's at 1925 Main Street. The two bars are Kelly's Sport's Lounge at 825 Jackson Boulevard and the Sun Lounge at 1901 West Main Street and the restaurant is Qdoba that is located at 741 Mountain View Road. 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 full service restaurant, the effects may be mitigated.

4. The proposed use has been reviewed under the Section 17.54.030(E) and Section 5.12.140.

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

Flood Plain: Staff noted that a portion of the property is located within the 100 Year Federally Designated Flood Plain. As such, staff recommends that prior to Planning Commission approval, the applicant must submit a revised site plan demonstrating that the

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structure is located outside of the 100 Year Federally Designated Flood Plain or the applicant must obtain a Flood Plain Development Permit.

Land Use: The applicant has indicated that the on-sale alcohol use will be in conjunction with the restaurant.

Parking: Staff noted that there is no proposed expansion to the existing structure and that the parking plan was previously reviewed and approved for the property.

Landscaping: Staff noted that the property is not expanding by 20 percent or more and per Section 17.50.300 of the Rapid City Municipal Code additional landscaping is not required for the property.

Signage: Staff noted that no sign package was submitted with the application. As such, staff recommends that prior to Planning Commission approval a sign package be submitted for review and approval demonstrating the size and location of all existing and proposed signs on the property.

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

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 July 9, 2009 Planning Commission meeting if this requirement has not been met. Staff has not received any objections regarding the proposed Conditional Use Permit at the time of this writing.

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