

STAFF REPORT  
November 5, 2009

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**No. 09UR026 - Conditional Use Permit to allow an on-sale liquor establishment**      **ITEM 44**

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GENERAL INFORMATION:

APPLICANT/AGENT	Charles Desmond
PROPERTY OWNER	Workop SD LLC
REQUEST	<b>No. 09UR026 - Conditional Use Permit to allow an on-sale liquor establishment</b>
EXISTING LEGAL DESCRIPTION	Lot 11 of Block 93 of the Original Town of Rapid City, Section 1, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 0.08 acres
LOCATION	725 St. Joseph 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	10/9/2009
REVIEWED BY	Patsy Horton / Karley Halsted

RECOMMENDATION: Staff recommends that the Conditional Use Permit to allow an on-sale liquor establishment be continued to the November 19, 2009 Planning Commission meeting.

GENERAL COMMENTS: The applicant has submitted a Conditional Use Permit to allow an on-sale liquor establishment in the Central Business Zoning District. Section 17.16.030 of the Rapid City Municipal Code allows on-sale liquor establishments as a Conditional Use in the Central Business District. The property is located at 725 Saint Joseph Street.

Currently, a hookah bar is located on the property. A hookah is defined as “a single or multi-stemmed water pipe for smoking flavored tobacco.” The applicant is proposing to expand the existing business to include malt beverage sales.

The property is currently zoned Central Business District. The adjacent properties to the north, south, east and west are also zoned Central Business District. The applicant has

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indicated that the hours of operation will be from 6:00 p.m. until 12:00 midnight, Monday through Thursday, from 6:00 p.m. until 2:00 a.m. on Friday and Saturday. The applicant has indicated that the business will be closed on Sundays.

The Planning Commission reviewed a Conditional Use Permit request by a different applicant an application for an on-sale liquor establishment for this location on July 23, 2009 (#09UR018) and denied without prejudice the application at the applicant's request.

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.*

The location of the proposed use is located within 500 feet of three churches and two similar uses. Two of the existing churches are located approximately one block south of the business on Kansas City Street. The third church is located approximately one block east of the business on Seventh Street. The existing churches are not in direct view of the location of the business. Staff is not aware of any significant adverse affects the proposed use will have on any place used for religious worship.

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

No residential areas are located adjacent to the proposed on-sale liquor establishment. Staff does not anticipate that the proposed on-sale liquor use will have a significant impact on any residences.

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 1975, the City Council passed a resolution establishing a policy on the location of liquor licenses in the downtown area. In particular, the policy stated that the Common Council would look at the transfer or issuance of any licenses within the Central Business District. Obtaining an on-sale wine and malt beverage liquor license from the City Council will satisfy this requirement. In 1988, the City Council passed another resolution further limiting the transfer or issuance of on-sale liquor licenses within a portion of the downtown area. However, this property is located outside of that area.

Currently, there are two on-sale liquor establishments located within 500 feet of the property. Dublin Square, located at 504 Mount Rushmore Road, is a full service restaurant and bar. The Corn Exchange, located at 727 Main Street, is a full service restaurant with beer and wine sales. It does not appear that the proposed use will create an undue concentration of similar uses so as to cause blight deterioration or substantially diminish or impair property values.

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

Staff has given due consideration during the review of the proposed use as identified in Chapter 17.54.030 (E). Staff does not anticipate that the proposed on-sale liquor use will have a significant impact on any criteria identified in Chapter 17.54.030.

Site plan: The site plan and building plans submitted with this application were not drawn by a registered professional. Prior to the issuance of a building permit, a site plan signed by a registered professional as required by South Dakota Codified Law 36-18A must be submitted for review and approval.

Fire Codes: The Rapid City Fire Department staff indicated that the building is fire sprinklered. However, the addition of food sales will require additional inspections by the Fire Department. These inspections will be done as part of the required building permit process. The Fire Department staff has indicated that further improvements may be required at the site, and those comments, if appropriate, will be submitted at the time that the applicant applies for the required building permit.

South Dakota Codified Law: On-sale alcohol establishments as regulated in SDCL 35-4 are exempt from non-smoking requirements per SDCL 22-36-2. Staff is concerned about 18-20 year old persons continuing to engage in smoking activities if alcoholic consumption is approved. If the applicant intends to continue to allow 18-20 year olds on the premises, SDCL 35-4-79.2 allows multiple uses of the on-sale alcohol establishments provided that the applicant construct a physical barrier to separate the multiple uses. If the applicant intends to continue to allow 18-20 year olds on the premises, staff recommends that prior to the issuance of the Certificate of Occupancy for the change in use to an on-sale alcohol establishment, the applicant obtain a building permit to construct the physical barrier as required in SDCL 35-4-79.2.

Building Permit: A building permit and a certificate of occupancy are required for the hookah lounge located at 725 Saint Joseph Street. The hookah lounge is currently in violation of the provisions of the Rapid City Municipal Code. Any time a change of use is initiated, a building permit and certificate of occupancy must be obtained. The applicant must apply for a building permit and a certificate of occupancy, including construction plans stamped by a registered professional as required in South Dakota Codified Law 36-18A in order to remedy the existing code violations.

As of this writing, the required sign has been posted on the property and the receipts from the certified mailing have been returned. Staff has not received any inquiries regarding the proposed Rezoning application.

Prior to Planning Commission approval the applicant must obtain a building permit and obtain a certificate of occupancy. As such, staff recommends that the Conditional Use Permit to allow an on-sale liquor establishment be continued to the November 19, 2009 Planning Commission meeting to allow the applicant to address the existing building code violations.

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