

STAFF REPORT
November 19, 2009

No. 09UR026 - Conditional Use Permit to allow an on-sale liquor establishment **ITEM 48**

GENERAL INFORMATION:

APPLICANT/AGENT	Charles Desmond
PROPERTY OWNER	Workop SD LLC
REQUEST	No. 09UR026 - Conditional Use Permit to allow an on-sale liquor establishment
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 approved with the following stipulations:

- 1. Prior to Planning Commission approval, the applicant shall obtain a change of occupancy building permit, including construction plans stamped by a registered professional per SDCL 36-18A;**
- 2. Prior to Planning Commission approval, the applicant shall obtain a Certificate of Occupancy as required by the 2006 International Building Code;**
- 3. Prior to Planning Commission approval, the applicant shall submit a sign package for review and approval demonstrating the size and location of all existing and proposed signs on the property. All signage shall conform to the design, color and location as shown in the sign package submitted as a part of the Conditional Use Permit. No LED reader board signs shall be allowed. Changes to the proposed**

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sign package, which the Growth Management Director determines to be consistent with the original approved sign package, shall be allowed as a Minimal Amendment to the Conditional Use Permit. No electronic signs are being approved as part of this sign package. The addition of electronic signs shall be considered a major amendment to the Conditional Use Permit. The Growth Management Director may approve temporary signs in accordance with Chapter 15.28.080 of the Rapid City Municipal Code. The lighting for the signs shall be designed to preclude shining on the adjacent properties and/or street(s). A sign permit shall also be obtained for each individual sign;

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. All applicable provisions of the International Fire Codes shall be continually met; and
6. 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: (Update, November 13, 2009. All revised and/or added text is shown in bold print.) This item was continued to the November 19, 2009 Planning Commission meeting in response to public comments received at the November 5, 2009 meeting and to allow the applicant an opportunity to obtain a Certificate of Occupancy. The applicant has submitted a building permit application in order to comply with the Certificate of Occupancy requirement. As of this writing, however, the Certificate of Occupancy has not been issued. Staff will notify the Planning Commission at the November 19, 2009 meeting if this stipulation has not been met.

Additionally, as requested by the Planning Commission and Council liaison, staff is preparing a map identifying the liquor establishments in the downtown area and will have the map available at the Planning Commission meeting.

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 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.

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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.

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

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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, additional 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. However, staff has expressed concern regarding the right for 18-20 year old persons to engage in smoking activities but restricted from engaging in alcoholic consumption.

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.

On November 6, 2009, the applicant submitted an application for a building permit to bring the structure and use into compliance with the 2006 International Building Code

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. **At the November 5, 2009 Planning Commission meeting, members of the public expressed concern regarding the concentration of alcoholic establishments in the downtown area. Staff is preparing a map identifying the liquor establishments including restaurants with liquor licenses and will have the map available at the Planning Commission meeting.**

Staff recommends that the Conditional Use Permit to allow an on-sale liquor establishment be approved with the above-referenced stipulations.