

STAFF REPORT  
March 25, 2010

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**No. 10UR006 - Major Amendment to a Conditional Use Permit to expand an on-sale liquor establishment**      **ITEM 47**

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GENERAL INFORMATION:

APPLICANT	Frankies, LLC, d/b/a Thirsty's
AGENT	Frank Morrison
PROPERTY OWNER	Morrison Family Holdings
REQUEST	<b>No. 10UR006 - 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	2/25/2010
REVIEWED BY	Jim Flaaen / 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. Prior to Planning Commission approval, a site plan identifying all underground utilities shall be submitted for review and approval;
2. A Building Permit shall be obtained prior to construction and a Certificate of Occupancy shall be obtained prior to occupancy;
3. The hours of operation for the outdoor patio shall be limited to 11:00 a.m. to 12:00 a.m. and the hours for outdoor live entertainment shall be limited to Friday evenings from 8:00 p.m. to 11:30 p.m.;
4. The proposed structure shall conform architecturally to the plans and elevations

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- submitted. Any expansion to the use shall require a Major Amendment to the Conditional Use Permit;
5. All applicable provisions of the International Fire Codes shall be continually met;
  6. The on-sale liquor establishment shall be operated in conjunction with a full service restaurant;
  7. A Sign Permit shall be obtained prior to any signs being placed on the 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;
  8. No parking shall be allowed on Lot 12 of Block 82 of the Original Town of Rapid City;
  9. 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,
  10. 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 applicant is requesting approval of a Major Amendment to a Conditional Use Permit to expand an on-sale liquor establishment. The property is located in the Central Business District and Thirsty's restaurant is currently located on the property. Surrounding properties to the north, south, east and west are zoned Central Business District. An on-sale liquor establishment is located on the adjacent property to the west. An on-sale liquor establishment is located across Main Street to the north of the property and a hotel with on-sale liquor use is located across Main Street to the east of the property. Two retail uses are located on adjacent properties and a parking lot is located east of the property at the corner of Mount Rushmore Road and Main Street.

On January 2, 2007, the 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 by 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 alarm/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 the Conditional Use Permit;

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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.

On June 25, 2009, the Planning Commission approved a Major Amendment to the Conditional Use Permit to remove the previously approved stipulation that no outside patio or open air windows are allowed 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 comply with 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 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.

In addition, on June 25, 2009, the Planning Commission approved a Sidewalk Café Permit in conjunction with the Major Amendment to the Conditional Use Permit with the following stipulations:

1. A Major Amendment to the Conditional Use Permit allowing an outdoor patio shall be obtained;
2. A minimum 5 foot wide clear pedestrian path shall be maintained at all times;
3. Physical barricades shall be provided around the sidewalk café since alcoholic beverages shall be served. In particular, the barricades shall consist of stanchions and chains in compliance with the submitted design details. The barricades shall not be attached permanently to the sidewalk and shall not exceed four feet in height;
4. All elements associated with the sidewalk café shall be located within the boundary of the sidewalk café at all times;
5. Commercial insurance coverage of at least \$2,000,000 for bodily injury, death, disability, and property damage liability shall continually be provided. The City of Rapid City shall be named as an additional insured on the primary, noncontributory basis for any liability arising directly or indirectly from the operation of a sidewalk café. In addition, the insurance shall be renewed yearly and a copy of the insurance document submitted to

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the City for review and approval. In the event that the insurance is cancelled, the permit holder has 24 hours to reinstate the insurance or the permit shall be revoked;

6. The sidewalk café shall conform to the plans and design criteria submitted as part of this Sidewalk Café Permit and shall be operated in compliance with Chapter 12.20.020(E) of the Rapid City Municipal Code; and,
7. The Sidewalk Café Permit may be revoked with cause, consisting of failure to maintain the standards required for this permit as per Chapter 12.20.020(E).12.

The applicant is requesting approval of a Major Amendment to a Conditional Use Permit to expand the establishment to include a seasonal outdoor seating area. In particular, the applicant is proposing to construct a seasonal outdoor patio area on Lot 12 of Block 82 of the Original Town of Rapid City adjacent to and west of the current structure. The seasonal outdoor dining area would accommodate tables for up to 96 people and will include a stage in the southwest corner of the property for live entertainment on weekends. The existing vacant lot would be enclosed with brick and iron to match the existing façade and the asphalt would be removed and replaced with brick pavers. The outdoor dining area will also include iron and canvas canopies and will be secured on the west side of the property with a steel fence to be used as a trellis for vines. The applicant has also proposed to plant trees and shrubs on the property.

The property is located at 819 Main Street, on the south side of Main Street, west of Mount Rushmore Road and east of 9<sup>th</sup> Street.

**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 within a five hundred foot radius of the subject property. There are five similar uses located within a five hundred foot radius of the property. In the past, complaints have been received regarding the level of noise in this area, particularly in regard to outdoor open air venues. Since the Major Amendment to a Conditional Use Permit to remove the stipulation prohibiting outside patios or open air windows are allowed has been approved in June, 2009 staff is not aware of any complaints regarding this particular establishment.

The applicant is proposing to create an outdoor patio area on the vacant lot to the west of the existing business. Central Business Zoning District surrounds the property and no residential districts are located in the immediate vicinity. The Police Department does not oppose this proposed Major Amendment as there is no evidence that this establishment will cause increased adverse effects in the area. Staff has identified that the proposed use will contribute to a concentration of similar uses in the area, but has not identified any significant adverse effects on the surrounding uses.

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

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*“adversely affect” such areas.*

There are no residential zoning districts adjacent to the property. The property is surrounded by Central Business Zoning District. Staff has identified two residential units to the south of the property, across the alley. Staff does not anticipate that the proposed expansion to the on-sale liquor use will result in any significant adverse effects 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.”*

The property includes a restaurant, on-sale liquor, video lottery, pool tables and a dart board. Currently, five on-sale liquor establishments exist within a five hundred foot radius of the property. In 1988, the City Council passed a resolution to limit the future issuance or transfer of on-sale liquor licenses within an area bounded to the west by Seventh Street, on the east by Fifth Street, on the north by the alley north on Main Street, and on the south by the alley south of St. Joseph Street. The property is outside of the boundary established by this resolution. Staff has noted that the proposed expansion will contribute to a concentration of similar uses within this area. However, the Police Department does not oppose to this application and there is no evidence that this expansion will cause additional concerns. In addition, as the proposed expansion of the on-sale liquor establishment will operate in conjunction with a full service restaurant, the effects will be significantly mitigated.

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

Staff has reviewed the proposed expansion with respect to Chapter 17.54.030(E) and has noted the following issues:

Design: The proposed expansion will include a seasonal outdoor patio to be located on the vacant lot adjacent to and west of the property. The outdoor patio will include seating for up to 96 people and will include a stage to be constructed at the southwest corner of the property for live weekend entertainment. The lot will be enclosed using brick and iron to match the existing façade of the building. The existing asphalt surface will be removed and brick pavers will be installed. The applicant has proposed to enclose the west side of the lot using steel fencing that will also serve as a trellis for vines. Two canopies are proposed to be made of iron and canvas. The applicant has also proposed to plant trees and shrubs on the property to create a park like setting.

Sidewalk Café Permit: On June 25, 2009 the Planning Commission approved a Major Amendment to the Conditional Use Permit in conjunction with a Sidewalk Café Permit for the property. As a stipulation of approval, it was stated that “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”. As of this writing, this stipulation has not been met. Until this stipulation is met, 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.

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Parking: No off-street parking is required in the Central Business District. The submitted site plan does not identify any off-street parking to be included as a part of this Major Amendment. As per stipulation #6 of the previously approved Major Amendment to the Conditional Use Permit, no parking is allowed on Lot 12 of Block 82 of the Original Town of Rapid City. There is an existing curb cut along Main Street adjacent to Lot 12 of Block 86 of the Original Town of Rapid City. Until vertical curbing is installed, no tables shall be placed in the Main Street right-of-way.

Landscaping: Staff has noted that landscaping is not required in the Central Business District. As such, landscaping is not required for this property. However, the applicant is proposing to add trees, shrubs and vines to the property.

Historic Review: The subject property is within the environs of individually nominated historic buildings within the area. As such, the applicant is required to submit building and sign changes to the Historic Preservation Commission and the Historic Sign Review Committee. The applicant has completed this requirement and has received approval for the proposed changes from the Historic Preservation Commission and Historic Sign Review Committee.

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

Utilities: A site plan identifying underground utility lines was not submitted with the application. The applicant must ensure that the proposed structures will not be constructed atop existing utility lines. Prior to Planning Commission approval, a site plan identifying the location of underground utilities must be submitted for review and approval.

Hours of Operation: The applicant has indicated that the outdoor patio will operate in conjunction with the existing restaurant and will be open from 11:00 a.m. to 12:00 a.m. Live entertainment will operate Friday evenings between the hours of 8:00 p.m. and 11:30 p.m.

Noise: Staff has noted that noise from similar establishments has been a concern in this area in the past. However, staff is unaware of any noise complaints resulting from the sidewalk café currently operating on the property. The applicant has indicated that the outdoor patio will include a stage for live weekend entertainment. In discussing the issue with the applicant, it was identified that live entertainment would only occur on Friday evenings from 8:00 p.m. to 11:30 p.m.

Notification Requirement: As of this writing, the required sign has not been posted on the property and the receipts from the required certified mailings have not been returned. Staff will notify the Planning Commission at the March 25, 2010 Planning Commission meeting if this requirement has not been met. Staff has not received any inquiries or objections to 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 expand an on-sale liquor establishment be approved with the stipulations as outlined above.