

STAFF REPORT
May 27, 2010

No. 10UR010 - A Major Amendment to a Conditional Use Permit to expand an on-sale liquor establishment **ITEM 29**

GENERAL INFORMATION:

APPLICANT/AGENT	Orris Enterprises, Inc.
PROPERTY OWNER	Lakota Building, LLC
REQUEST	No. 10UR010 - A Major Amendment to a Conditional Use Permit to expand an on-sale liquor establishment
EXISTING LEGAL DESCRIPTION	Lots 17 and 18 and the north 55 feet of Lots 19 thru 21 of Block 84 of the Original Town of Rapid City, Section 1, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 0.26 acres
LOCATION	518 and 520 Seventh 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	4/29/2010
REVIEWED BY	Jim Flaaen / Mary Bosworth

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 issuance of a Building Permit, the applicant shall complete an 11.1 Review for the proposed changes to the interior of the building;
2. Prior to the installation of any signage, the applicant shall obtain approval of any new signage from the Historic Sign Review Committee;
3. The hours of operation shall be from 10:00 a.m. to 12:00 a.m.;
4. All applicable provisions of the International Fire Code shall be continually met;
5. A Building Permit shall be obtained prior to any construction and a Certificate of Occupancy shall be obtained prior to occupancy;

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6. The proposed structures shall conform architecturally to the plans and elevations submitted. Any expansion to the use will require a Major Amendment to the Conditional Use Permit;
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;
8. The on-sale liquor establishment shall be limited to malt beverages and wine. A Major Amendment to the Planned Commercial Development shall be obtained if full liquor sales is proposed; and,
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.

GENERAL COMMENTS: The applicant has submitted 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 Vino 100 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 east. An on-sale liquor establishment is located across Saint Joseph Street to the south of the property.

On April 26, 2007, the City Council approved a Conditional Use Permit (#07UR003) to allow an on-sale liquor establishment at 520 7th Street with the following stipulations:

1. The hours of operation shall be from 10:00 a.m. until 10:00 p.m.;
2. All applicable provisions of the International Fire Code shall be continually met;
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 for on-sale malt beverages only. Any change in use shall require a Major Amendment to the Conditional Use Permit;
5. No outside patio or open air windows are allowed. Any expansion of the use will require a Major Amendment to a Conditional Use Permit;
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.

On June 25, 2009, the Planning Commission approved with stipulations a Sidewalk Café Permit (#09SC004) for the property at 520 7th Street. The stipulations of approval included:

1. A minimum of 5 foot wide clear pedestrian path shall be maintained at all times;
2. Physical barricades shall be provided around the sidewalk café since alcoholic beverages will 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;
3. No logos or other forms of advertisement shall be allowed on the proposed umbrellas;
4. All lighting with the sidewalk café area shall be designed so as not to cause a glare to passing motorists or pedestrians. Table top lighting may include candles and battery

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- operated fixtures;
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 a 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 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 proposed 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 for 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 an on-sale liquor establishment into the adjacent business to the north. In particular, the applicant wishes to purchase the adjacent business to the north and connect the two tenant spaces into one business. 520 7th Street would be used primarily for a non-smoking wine venue used both for on-premise and off-premise wine and beer sales as well as off-premise sales of hard alcohol. 518 7th Street would be utilized as an on-premise cigar lounge with on-premise beer and wine available. Some off-premise sales of beer and wine may also occur from 518 7th Street.

The property is located at 520 Seventh Street, on the east side of Seventh Street, east of Mount Rushmore Road and west of 6th 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 of worship, school, park, playground, or similar use within five hundred (500) foot radius.*

There is one place of religious worship, and one school, Headlines Academy, but no playgrounds within a five hundred foot radius of the subject property. The First Presbyterian Church is located at the northwest corner of the intersection of 7th Street and Kansas City Street. The First United Methodist Church is located just outside the 500 foot radius at the southeast corner of the intersection of 7th Street and Kansas City Street. There are twelve similar uses located within a five hundred foot radius of the property. However, staff review has noted that the proposed Major Amendment will be an expansion of an existing on-sale liquor establishment as should not have any significant adverse affects on the area.

2. *The requested 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. There are some existing apartment units above business along Saint Joseph Street. The property is surrounded by

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Central Business Zoning District. 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."*

Currently, twelve on-sale liquor establishments exist within a five hundred foot radius of the property. The Brass Rail is located on the property immediately adjacent to the east. The Alex Johnson is located to the east at the intersection of Saint Joseph Street and 6th Street. Tally's Silver Spoon is located at the northeast corner of the intersection of Saint Joseph Street and 6th Street. Botticelli Ristorante, Wine Cellar Restaurant and Delmonico Grill are located to the northeast at the intersection of Main Street and 6th Street. The Firehouse Brewing Company is located to the north along Main Street between 6th Street and 7th Street. The Oasis Lounge, The Corn Exchange and Dublin Square are located to the northwest along Main Street between 7th Street and Mount Rushmore Road.

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. This property is located within the area of the 1988 policy. However, the City Attorney's office has indicated that the proposed expansion does not constitute a "new" transfer and is thereby exempt from the moratorium.

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

Signage: A sign package for the proposed expansion has been submitted with the application. The signage at 520 7th Street will remain unchanged from the existing signage. The applicant has indicated that the new signage at 518 7th Street will be wooden with carved wood type and be placed in the position of existing signage on the property. The proposed signage will include the static poster message "Tinder Box Since 1928 Cigar Bar". The property is in the environs of the historic district. As such, a Historic Sign Review must be approved prior to the installation of any new signage on the property. No electronic signs are proposed with this application. The applicant should be aware that banner signs are a prohibited sign under the Rapid City Municipal Sign Code and are not allowed on the property. A sign permit must be obtained for each individual sign.

Parking: The property is located within the Central Business District and as such, no off-street parking is required. No additional off-street parking has been identified on the site plan submitted with this Major Amendment.

Sidewalk Café Permit: On June 25, 2009, the Planning Commission approved with stipulations a Sidewalk Café Permit for the property at 520 7th Street. The applicant should be aware that the Sidewalk Café Permit is associated with the property and not the associated business. As such, 518 7th Street has not been granted a Sidewalk Café Permit as a part of this proposed expansion. The Sidewalk Café associated with 520 7th Street must remain within the boundaries as a part of the approved permit. If the applicant wishes to include

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outdoor seating at 518 7th Street, a separate Sidewalk Café Permit must be obtained.

Fire Code: Staff has noted that all applicable provisions of the International Fire Code shall be continually met, including proper fire sprinkler coverage as well as proper fire alarm and fire sprinkler monitoring equipment.

Permits: A Building Permit shall be obtained prior to construction and a Certificate of Occupancy shall be obtained prior to occupancy.

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 changes to the Historic Preservation Commission and the sign changes to the Historic Sign Review Committee. Prior to issuance of a building permit, the applicant must complete an 11.1 Review for the proposed changes to the interior of the building. In addition, prior to the installation of any new signage on the property, the proposed signage must be reviewed and approved by the Historic Sign Review Board.

Hours of operation: The previously approved Conditional Use Permit stipulated that the hours of operation would be limited to 10:00 a.m. to 10:00 p.m. The applicant has submitted information requesting that the hours of operation be expanded to 10:00 a.m. to 12:00 a.m.

Moratorium: 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. This property is located within the area of the 1988 policy. However, the City Attorney's office has indicated that the proposed expansion does not constitute a "new" transfer and is thereby exempt from the moratorium.

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 May 27, 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.