

STAFF REPORT
May 27, 2010

No. 10UR011 - Conditional Use Permit to allow an on-sale liquor establishment **ITEM 30**

GENERAL INFORMATION:

APPLICANT/AGENT Gregg Cook for UGLY, Inc.
PROPERTY OWNER Hilton Development Corp.
REQUEST **No. 10UR011 - Conditional Use Permit to allow an on-sale liquor establishment**

EXISTING
LEGAL DESCRIPTION

The south 50 feet of Lots 25 to 27, both inclusive, in Block 63 of the Original Town of Rapid City and a strip of land immediately north thereof being 17 feet wide across Lots 25 thru 32, both inclusive, in Block 63 of the Original Town of Rapid City, and having 8 and 5/10 feet of such width on each side of the center line of Chicago, Milwaukee, St. Paul and Pacific Railroad Company's tract as the same was laid and operated across said lots, meaning and intending hereby a portion of the southerly 17 foot wide strips of land formerly conveyed by Rapid City, Black Hills and Western Railroad Company to Chicago, Milwaukee, St. Paul and Pacific Railroad Company which deed was recorded in the Office of the Register of Deeds, Pennington County, South Dakota on July 15, 1948, in Book 81 of Deeds at page 430, Section 36, T2N, R7E, BHM, Rapid City, Pennington County, South Dakota

PARCEL ACREAGE Approximately 0.16 acres
LOCATION 321 7th Street
EXISTING ZONING General Commercial District
SURROUNDING ZONING
North: General Commercial District
South: General Commercial District
East: General Commercial District
West: General Commercial District
PUBLIC UTILITIES City water and sewer
DATE OF APPLICATION 4/30/2010
REVIEWED BY Jim Flaaen / Mary Bosworth

STAFF REPORT
May 27, 2010

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RECOMMENDATION:

Staff recommends that the Conditional Use Permit to allow an on-sale liquor establishment be continued to the June 10, 2010 Planning Commission meeting.

GENERAL COMMENTS: The applicant has submitted a Conditional Use Permit request to allow an on-sale liquor establishment behind the property at 321 7th Street. In particular, the applicant is proposing to have a beer garden/patio in the parking lot behind the Sports Rock restaurant and bar. The beer garden/patio would be in use Saturday evenings from 4 p.m. to 1 a.m. and occasionally on Sundays. The applicant has proposed live entertainment that will stop at 10 p.m. The proposed beer garden/patio will operate during warm weather months between May and October.

The property is located approximately 125 feet west of the intersection of 7th Street and Apolda Street. The property is currently used as a parking lot for the businesses to the north located at 315 7th Street and 312 Mount Rushmore Road.

STAFF REVIEW: Staff has reviewed the Conditional Use Permit 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, schools or playgrounds within a five hundred foot radius of the subject property. However, the southern portion of Memorial Park is located within the 500 foot radius. There are nine 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. The applicant is proposing to create an outdoor beer garden/patio area on the parking lot to the west of the existing business. General Commercial Zoning District surrounds the property and no residential districts are located in the immediate vicinity. The Police Department has noted concerns about this proposal particularly in regard to security and noise.

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. The property is surrounded by General Commercial 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 diminished or impair property values."*

Currently, nine on-sale liquor establishments exist within a five hundred foot radius of the property. Sports Rock is located on the property immediately adjacent to the east. Happy

STAFF REPORT
May 27, 2010

No. 10UR011 - Conditional Use Permit to allow an on-sale liquor establishment **ITEM 30**

Jack's Downtown is located to the north at the intersection of 7th Street and Omaha Street. Sanford's Grub & Pub and LaCoasta Mexican Restaurant are located to the northeast between 6th Street and 7th Street along Omaha Street. Firehouse Brewing Company is located to the southeast along Main Street between 6th Street and 7th Street. The Oasis Lounge, The Corn Exchange and Dublin Square are located to the south along Main Street between 7th Street and Mount Rushmore Road. The Radisson Hotel is located to the southwest at the intersection of Main Street and Mount Rushmore Road. Family Thrift Center is located to the east, west of Mount Rushmore Road and provides package liquor.

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. The Police Department has raised concerns regarding security and noise, as well as the proposed snow fence barrier.

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:

Property owner signature: The owner of the property for the proposed beer garden/patio is different than that of the applicant. The applicant has submitted a signed letter by the property owner stating that permission is given to the applicant to use the parking lot every Saturday after 4 p.m. and every Sunday all day from May 15th through October 31. However, the property owner must sign the original application or be notified by certified letter with the return receipts submitted to the Growth Management Department staff. This requirement has not been met. As such, staff recommends that this item be continued to the June 10, 2011 Planning Commission meeting to allow the applicant to submit a signed application or receipt of notification by certified letter.

Fencing: The applicant has submitted a site plan that indicates a 4 foot tall orange snow fence would enclose the area of the proposed beer garden/patio. The applicant should be aware that the fencing must be removed after each event and properly stored. The proposed fence must not be placed in any street rights-of-way and must be located outside of all vehicular and pedestrian sight triangles. The proposed fence does not provide sufficient security or aesthetic appeal in a commercial area. As such, staff recommends that this item be continued to the June 10, 2010 Planning Commission meeting to allow the applicant to submit a revised fence elevation appropriate to the commercial area and to ensure security around the event.

Security: The applicant has submitted a site plan that identifies the location of seven security guards positioned throughout the proposed area for the beer garden/patio. Two security guards will be located at the entrance to the proposed beer garden/patio along Apolda Street and the remaining guards will be positioned throughout the beer garden/patio. The

STAFF REPORT
May 27, 2010

No. 10UR011 - Conditional Use Permit to allow an on-sale liquor establishment **ITEM 30**

applicant has indicated that all events will be for persons over 21 years of age.

The Rapid City Police Department has stated that a comprehensive security plan must be submitted for review and approval. In particular, the comprehensive security plan must provide information regarding the number of security personnel on duty during the event, the level and type of lighting proposed for each event as well as plans for maintaining the integrity of the snow fence barrier, i.e., keeping underage people from jumping over the perimeter into the event and also preventing alcoholic beverages from being passed over the fence to persons outside of the event. As such, staff recommends that this item be continued to the June 10, 2010 Planning Commission meeting to allow the applicant to submit a comprehensive security plan for review and approval.

Lighting: The submitted application did not include a lighting plan. A lighting plan must be submitted demonstrating lighting at the proposed event including additional and existing lighting. The plan must demonstrate that the lighting proposed for the event will not reflect on adjacent properties or rights-of-way. As such, staff recommends that this item be continued to the June 10, 2010 Planning Commission meeting to allow the applicant to submit a lighting plan.

Review of use: Staff recommends that the Conditional Use Permit be approved to allow the use of the property as proposed for a period until October 31, 2010. Any future use of the property for this event will require a Major Amendment to the Conditional Use Permit.

Signage: The applicant is not proposing any signage as a part of this Conditional Use Permit application. The applicant should be aware that banner signs are prohibited under Chapter 15.28 Rapid City Municipal Sign Code and are not allowed on the property.

Hours of operation: The applicant has indicated that the proposed hours of operation for the beer garden/patio will be Saturday evenings from 4:00 p.m. to 1:00 a.m. and all day on Sundays. In addition, the applicant has indicated that live entertainment will be provided on the property but will end at 10:00 p.m.

Noise: Staff has noted that noise from similar establishments has been a concern in this area in the past. Residential apartments exist above business in the downtown area nearby to the proposed event. In the past, noise complaints have been received from residents and hotels that these outdoor events create a noise issue. The applicant has indicated that the outdoor patio will include a stage for live entertainment. The applicant has identified that live entertainment would end by 10:00 p.m., although the beer garden/patio is proposed to remain in use until 1:00 a.m. Approving the use for one operating season, ending October 31, 2010 will allow staff to review the noise levels associated with this event.

Parking: The submitted site plan did not include any parking information. The proposed use as a beer garden/patio will require 47 parking spaces. The applicant submitted a shared parking agreement with American Memorial Life Insurance Company for the use of 20 spaces in their off-street parking lot located to the southwest. However, this agreement was entered into with the adjacent business, Phatty McGee's, located at 321 7th Street. The

STAFF REPORT
May 27, 2010

No. 10UR011 - Conditional Use Permit to allow an on-sale liquor establishment **ITEM 30**

applicant has not indicated where proposed parking will be located for the proposed beer garden/patio. The applicant should be aware that if shared parking agreements are to be entered into with adjacent property owners, a signed copy of the shared parking agreement must be submitted to the Growth Management Department. As such, staff recommends that this item be continued to the June 10, 2010 Planning Commission meeting to allow the applicant to submit additional parking information.

Restrooms: The submitted site plan identifies that four portable restrooms will be provided on the property. Staff recommends that four portable restrooms and one handicap accessible portable restroom be provided on the property for each event and subsequently removed thereafter. In addition, the location of the portable restrooms must not be located in pedestrian pathways or street right-of-way and must not impede access for emergency personnel. The applicant must submit a revised site plan shall be submitted showing the location of four portable toilets and one handicap accessible portable toilet. As such, staff recommends that this item be continued to the June 10, 2010 Planning Commission meeting to allow the applicant to submit a revised site plan.

Fire Code: The Rapid City Fire Department has indicated that the adjacent building to the north is not fire sprinkler protected. As such, access to the rear of the adjacent property must be maintained and not closed off with fencing, signage or restroom facilities. The submitted site plan identifies that the proposed location of the portable restrooms would block access from the north alley leading to the proposed beer garden/patio. As such, prior to Planning Commission approval, the applicant must submit a revised site plan showing that the locations of the portable restrooms will not block emergency access to this or adjacent properties. In addition, the Fire Department requested that the applicant coordinate with the Fire Department regarding specific fire protection needs.

Moratorium: On April 4, 1988, the City Council took action to limit the future issuance or transfers of on-sale liquor licenses within an area bounded on the west by the west side of Seventh Street, on the east by the east side of Fifth Street, on the north by the alley north of Main Street, and on the south by the alley south of Saint Joseph Street. This property is outside of the area established by 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.