

STAFF REPORT
March 10, 2011

No. 11UR002 - Conditional Use Permit to allow an on-sale liquor establishment **ITEM 16**

GENERAL INFORMATION:

APPLICANT	Riley Cassidy - UGLY, Inc.
PROPERTY OWNER	Hilton Development Corp.
REQUEST	No. 11UR002 - 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	1/31/2011
REVIEWED BY	Marcia Elkins / Karley Halsted

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RECOMMENDATION:

Staff recommends that the Conditional Use Permit to allow an on-sale liquor establishment be continued to the March 24, 2011 Planning Commission meeting to allow the applicant to provide clarification of the appropriate legal description or an updated site plan.

GENERAL COMMENTS: The applicant has submitted this Conditional Use Permit request to allow an on-sale liquor establishment on the parking lot located north of Apolda Street between Mount Rushmore Road and 7th Street. The applicant is proposing to use a large tent for entertainment events including concerts with the sale of alcoholic beverages. The applicant is requesting approval to hold the events on Friday evenings from 6 pm to 1 am and on Saturdays from 3 pm to 1 am from April through October. The use would be very similar to the use allowed pursuant to a Conditional Use Permit approved by the Planning Commission on June 10, 2010. However, that Conditional Use Permit allowed the use to operate on Saturdays only during the summer of 2010.

STAFF REVIEW: Staff has reviewed the application and noted a discrepancy between the legal description that the applicant submitted and the site plan that has been submitted. The legal description indicates that the use will be located on the south 50 feet of Lots 25 through 27 of Block 63 of the Original Town along with a 17 foot wide strip of land lying across Lots 25 through 32 of Block 63 of the Original Town. As Lots 25 through 27 are each 25 feet wide, the area identified in the legal description is generally an area 50 feet by 75 feet. However, the site plan that has been submitted indicates that the area of development is 50 feet by 94 feet. Either a revised site plan must be submitted identifying the area of development within the area legally described in the application or the legal description must be revised to include the additional area that is proposed as part of the site development.

Because of the nature of the discrepancy and the fact that either a revised site plan must be submitted or additional legal notice will be required, staff is recommending that the Conditional Use Permit application be continued to the March 24, 2011 Planning Commission meeting. This will allow the applicant to either provide a corrected legal description so that a new legal notice may be published and additional notices sent, or staff can review the revised site plan.

Other additional information is also required. In meeting with the applicant on February 28, 2011 the applicant indicated that the location of the stage and access points was different from what had been shown on the site plan that was submitted. The applicant indicated that he would submit a corrected site plan. To date, staff has not received the revised site plan. Additionally, a sidewalk was identified on the site plan; however, both the applicant and the staff have noted that a sidewalk is not installed at that location. Staff has noted that during the operation of the facility last year, pedestrians were forced to walk in the driving lanes on Apolda creating a safety hazard. Staff would recommend that the applicant revise the site plan and situate the tent on the site in such a manner so as to provide a pedestrian walkway in accordance with the American with Disabilities Standards so as to eliminate the hazardous situation.

The applicant submitted copies of a Parking Lease and Agreement with WestMed and a

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similar agreement with Johnson Brothers for parking to accommodate the proposed use. However, these agreements expired on October 31, 2010 and only addressed the Saturday use. Additionally, the applicant has provided copies of an agreement with American Memorial Life Insurance Co regarding the lease of 20 parking spaces. It is not clear from the terms of that lease as to where those spaces are located as the Exhibit is missing from the documentation provided with the application. In addition, some clarification is needed as to whether or not that lease is still in place, as the terms allow for its termination upon 10 days notice or immediately without notice with cause. Staff is recommending that the applicant provide a written statement outlining where the required parking is being provided to meet the minimum required off-street parking requirements and copies of the appropriate current year leases and/or agreements supporting the use of those properties.

The applicant has provided a copy of a Certificate of Liability Insurance for the property; however, the insurance expires on April 1, 2011. Prior to initiation of the use, staff is recommending that the applicant submit copies of active Liability Insurance for review and approval by the City Attorney.

Prior to initiation of the use, staff is recommending that the applicant submit an updated security plan to the Police Department for review and approval. A copy of the approved security plan shall be submitted to the Growth Management Department.

Elevations of the proposed fence have not been submitted with the application. Clarification is required to insure that the fence is in compliance with the fence height requirements. A maximum four foot high fence may be installed in the area located within 25 feet of the property line along Apolda Street or a fence height exception must be obtained. A six foot fence may be installed in those areas located more than 25 feet back of the front property line. Staff is requesting that written clarification of the type, height and location of the proposed fencing be submitted for review and approval.

Staff recommends that the application for a Conditional Use Permit to allow an on-sale liquor establishment be continued to the March 24, 2011 Planning Commission meeting to allow the applicant to address the information identified previously in this report.