

STAFF REPORT
March 24, 2011

No. 11UR002 - Conditional Use Permit to allow an on-sale liquor establishment **ITEM 27**

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	Patsy Horton / Karley Halsted

STAFF REPORT
March 24, 2011

No. 11UR002 - Conditional Use Permit to allow an on-sale liquor establishment ITEM 27

RECOMMENDATION:

Staff recommends that the Conditional Use Permit to allow an on-sale liquor establishment be approved with the following stipulations:

1. Prior to the initiation of the use and each year thereafter, obtain an operational building permit as required in the applicable Fire Code prior to occupancy of the tent;
2. Each year prior to the initiation of the use, the applicant shall obtain an electrical permit approved by the Rapid City electrical inspector for all temporary electrical wiring utilized to support area lighting, exit lighting, stage and equipment;
3. Prior to the initiation of the use and prior to approval of the permit authorizing the tent, the applicant shall provide copies of a revised Parking and Lease Agreement with Hilton Development Corp. stating that the existing parking agreement remains valid and authorizing the applicant to utilize the property as a beer garden;
4. Prior to the initiation of the use and prior to approval of the permit authorizing the tent, the applicant shall provide written confirmation from American Memorial Life Insurance Co. that the existing parking agreement remains valid;
5. Prior to the initiation of the use and prior to approval of the permit authorizing the tent, the applicant shall provide copies of a revised Parking and Lease Agreement with WestMed indicating that the Agreement accommodates the proposed Friday and Saturday use;
6. Each year thereafter prior to the initiation of the use, the applicant shall provide written confirmation that all four parking agreements remain in effect, or the use shall immediately cease until the agreements are secured;
7. Prior to the initiation of the use and prior to approval of the permit authorizing the tent, the applicant shall submit any revisions to the site plan that the Police Department staff may require for review and approval, to include all required egress and fencing as may be necessary to secure the facility. The tent shall be set up and maintained in accordance with the approved plan and the stipulations of approval at all times. Any changes to the approved site plan shall require submission and approval as a minimal amendment;
8. The tent shall be operated as a canopy with the sides removed and include an existing 6 foot fence along the eastern perimeter and a 4 foot fence along the balance of the site as identified on the site plan;
9. Exits designed in accordance with all applicable provisions of the Fire Code shall be provided and maintained at all times. The exits must not be obstructed in any fashion and an attendant shall be provided at each location to monitor the patrons coming and going to satisfy the required control of alcohol;
10. Each exit must be clearly marked with an illuminated exit sign complete with secondary power or battery back-up. Normal illumination of the means of egress must be a minimum of one foot candle at the floor level and must be capable of providing emergency illuminations in the event of a power failure;
11. The tent membrane shall meet all applicable flammability standards;
12. The tent which includes all tie down cables, ropes, stakes, etc. must be

STAFF REPORT
March 24, 2011

No. 11UR002 - Conditional Use Permit to allow an on-sale liquor establishment ITEM 27

- maintained a minimum of 12 feet from the existing structure along the north side. All tie down cables, ropes, stakes, etc. shall be protected at all times so as to prevent personal injury;
13. No cooking, heating equipment or flame producing devices shall be allowed on-site, unless the applicant obtains prior written approval from the Rapid City Fire Chief or his designee;
 14. Each year prior to initiation of the use, the applicant shall submit copies of active Liability Insurance for review and approval by the City Attorney. The applicant shall provide written confirmation that the insurance covers the beer garden site;
 15. Each year prior to initiation of the use, the applicant shall submit an updated security plan to the Police Department for review and approval. The applicant shall provide a copy of the approved security plan to the Growth Management Department;
 16. The Conditional Use Permit per the approved site plan and letter of intent shall be valid from April 1st through October 31st through 2014; and,
 17. The Conditional Use Permit shall expire if the use is not undertaken 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: (Updated March 16, 2011. All added and/or revised text is shown in bold print.) This application was continued at the March 10, 2011 Planning Commission meeting to allow the applicant to either revise the site plan that had been submitted or revise the legal description to reflect the advertised legal description.

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 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

STAFF REPORT
March 24, 2011

No. 11UR002 - Conditional Use Permit to allow an on-sale liquor establishment ITEM 27

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 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 west, 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.

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:

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

STAFF REPORT
March 24, 2011

No. 11UR002 - Conditional Use Permit to allow an on-sale liquor establishment ITEM 27

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 as 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.

A revised site plan was submitted on March 9, 2011 and circulated to the various departments for review. The revised site plan identifies that the tent that will located on the site will be 45 feet by 75 feet. A five foot walkway will be located on the private property along the full width of the tent to accommodate the pedestrian traffic and avoid pedestrians having to walk in the street. As a result the proposed tent will be located entirely outside of the right-of-way and within the area advertised for the on-sale liquor establishment.

The plan as submitted identifies that either a four foot high cattle (panel) fence will be constructed along the Apoldo Street frontage or the tent side walls will be used to provide security around the site. The applicant is currently reviewing the alternatives with the Fire Department and Police Department staff to insure that adequate security is provided for the area where alcohol sales will occur as well as adequate egress is available for an emergency situation. An existing six foot chain link fence secures the eastern area of the beer garden.

The Fire Department has provided the following comments regarding the required Exit and Fire Code requirements:

STAFF REPORT
March 24, 2011

No. 11UR002 - Conditional Use Permit to allow an on-sale liquor establishment **ITEM 27**

- It would be the Fire Departments preference to operate the tent as a canopy with the sides removed however the following criteria will remain the same either way.
- Assuming the occupant load for a concentrated use could be as high as 480 occupants, the Fire Code, table 2403.12.2 requires three exits having a minimum width of 72 inches each and remotely located.
- The exits must not be obstructed in any fashion, therefore will likely require an attendant at each location to monitor the patrons coming and going to satisfy the required control of alcohol.
- Each Exit must be clearly marked with an illuminated Exit sign complete with secondary power (Battery Back-up is acceptable)
- Normal illumination of the means of egress must be a minimum of 1 foot candle at the floor level and must be capable of providing emergency illumination in the event of a power failure.
- Ensure that the tent membrane meets all applicable flammability standards.
- The tent to include the tie down cables, ropes stakes must be maintained a minimum of 12 feet from the existing structure along the North side.
- Ensure that all tie down cables, ropes stakes etc. are protected to prevent personal injury.
- All temporary electrical wiring utilized to support, area lighting, exit lighting, stage and equipment must be approved by the RC electrical inspector.
- Prior to setting the tent ensure that the final configuration has been reviewed and approved by the Rapid City Fire Department.
- No cooking, heating equipment, or flame producing devices have been approved at this time.

The applicant submitted copies of a Parking Lease and Agreement with WestMed and a 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. **A copy of a new Parking Lease and Agreement with Johnson Brothers was submitted on March 10, 2011. The new agreement addresses both the Friday and Saturday operations of the beer garden. Prior to the initiation of the use and prior to approval of the permit authorizing the tent, a revised Parking Lease and Agreement with WestMed shall be submitted.** 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. **The applicant has provided verbal confirmation that the agreement with American Memorial Life Insurance Co is in place. However, no written confirmation has been provided. Prior to the initiation of the use and prior to approval of the permit authorizing the tent, the applicant shall provide written confirmation that the agreement remains valid.** 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.

STAFF REPORT
March 24, 2011

No. 11UR002 - Conditional Use Permit to allow an on-sale liquor establishment ITEM 27

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. **The insurance policy shall clarify that the insurer will cover claims against the insured which arise on the property located adjacent to its present business, specifically including the site where the beer garden shall be located.**

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.

Notification Requirement: As of this writing, the white receipts from the certified mailing have been returned however the green card receipts have not been returned. The required sign has been posted on the property. Staff will notify the Planning Commission at the March 24, 2011 Planning Commission meeting if these requirements have not been met.

Based on compliance with the four criteria established for on-sale liquor establishments identified in Section 17.50.185, and the criteria identified in Section 17.54.030(E), staff recommends approval of the Conditional Use Permit for an On-sale liquor establishment with the conditions outlined above.