

STAFF REPORT  
February 9, 2012

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**No. 12UR001 - Major Amendment to a Conditional Use Permit to expand an On-Sale Liquor Establishment**      **ITEM 19**

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GENERAL INFORMATION:

APPLICANT	Troy Erickson M.G. Oil Co.
AGENT	Kent Kennedy
PROPERTY OWNER	Market Square, LLC
REQUEST	<b>No. 12UR001 - Major Amendment to a Conditional Use Permit to expand an On-Sale Liquor Establishment</b>

EXISTING  
LEGAL DESCRIPTION

A portion of Lot B of Lot 3 of Tract D of the SW1/4 of the SW1/4, Section 5, T1N, R8E, B.H.M., Rapid City, Pennington County, South Dakota more fully described as follows: Commencing at the southwesterly corner of said Lot B of Lot 3 of Tract D of the SW1/4 of the SW1/4 of Section 5: Thence, N11°02'55"E, a distance of 170.875 feet, to a point on the westerly wall of the existing building, common to the southwesterly corner of the License Area, and the Point of Beginning; Thence, first course: N00°08'01"E, along the westerly edge of the westerly wall of said building, a distance of 41.37 feet, to the northwesterly corner of the License Area; Thence, second course: S89°51'59"E, along the northerly edge of a common wall, a distance of 40.43 feet, to a corner of said License Area; Thence, third course: S44°54'46"E, along the northerly edge of a common wall, a distance of 13.52 feet, to the northeasterly common wall corner of the said License Area; Thence, fourth course: N45°05'14"E, along the northerly edge of a common wall, a distance of 0.60 feet, to the northeasterly common wall corner of the said License Area; Thence, fifth course: S44°54'46"E, along the northerly edge of a common wall, a distance of 8.85 feet, to the northeasterly corner of said License Area; Thence, sixth course: S00°08'01"W, along the easterly edge of a common wall, a distance of 9.00 feet, to a corner of said License Area; Thence, seventh course: N89°51'59"W, along the southerly edge of a common wall, a distance of 6.00 feet, to a corner of said License Area; Thence, eighth course: S00°08'01"W, along the easterly edge of a common wall, a distance of 12.00 feet, to a corner of said License Area; Thence, ninth course: S89°51'59"E, along the northerly edge of a common wall, a distance of 6.00 feet, to a corner of said License Area; Thence, tenth course: S89°51'59"E, along

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the northerly edge of a outdoor patio, a distance of 10.00 feet, to a corner of said License Area; Thence, eleventh course: S00°08'01"W, along the easterly edge of a outdoor patio, a distance of 22.83 feet, to a corner of said License Area; Thence, twelfth course: N89°51'59"W, along the southerly edge of a outdoor patio, a distance of 8.00 feet, to a corner of said License Area; Thence, thirteenth course: N89°51'59"W, along the southerly edge of a common wall, a distance of 19.18 feet, to a corner of said License Area; Thence, fourteenth course: N00°08'01"W, along the westerly edge of a common wall, a distance of 17.78 feet, to a corner of said License Area; Thence, fifteen course: N89°51'59"W, along the southerly edge of a common wall, a distance of 39.49 feet, to a point on the westerly wall of the existing building, common to the southwesterly corner of said License Area, and the Point of Beginning.

PARCEL ACREAGE	Approximately .062 acres
LOCATION	1624 East Saint Patrick Street
EXISTING ZONING	General Commercial District - Light Industrial District
SURROUNDING ZONING	
North:	Light Industrial District
South:	General Commercial District
East:	Light Industrial District
West:	General Commercial District
PUBLIC UTILITIES	Rapid City
DATE OF APPLICATION	1/13/2012
REVIEWED BY	Fletcher Lacock / Brandon Quiett

**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. The proposed fencing shall be consistent with the sample elevation as submitted;
2. The outdoor patio area shall be continually fenced if on-sale liquor is to be allowed within the area;
3. All provisions of the General Commercial District shall be met unless otherwise specifically authorized as a stipulation of this Major Amendment to the Conditional Use Permit or a subsequent Major Amendment;
4. 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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5. A minimum of 123 parking spaces shall be provided. In addition, five of the parking spaces shall be handicap accessible. One of the handicap spaces shall be "van accessible." All provisions of the Off-Street Parking Ordinance shall be continually met;
6. A minimum of 68,866 landscaping points shall be provided. All provisions of Section 17.50.300, the Landscaping Regulations of the Rapid City Municipal Code shall be continually met. All landscaping shall be continually maintained in a live vegetative state and replaced as necessary;
7. All outdoor lighting shall be reflected within the property boundaries so as to not shine onto adjoining properties and rights-of-way and to not be a hazard to the passing motorist or constitute a nuisance of any kind;
8. All signage shall conform to Chapter 15.28 of the Rapid City Municipal Code. No electronic signs are being approved as a part of this Major Amendment to the Conditional Use Permit. All signage not in conformance with Chapter 15.28 of the Rapid City Municipal Code or any electronic reader board signs shall require the review and approval of a Major Amendment to the Conditional Use Permit. Lighting for the signs shall be designed to preclude shining on the adjacent properties and/or street(s). A sign permit shall also be obtained for each individual sign;
9. All applicable provisions of the adopted International Fire Code shall continually be met; and,
10. The Major Amendment to the Conditional Use Permit shall allow for the expansion of the on-sale liquor establishment. Any change in use that is a permitted use in the General Commercial District shall require the review and approval of a Minimal Amendment. Any change in use that is a Conditional Use in the General Commercial District shall require the review and approval of a Major Amendment to the Conditional Use Permit.

**GENERAL COMMENTS:**

The applicant has submitted a Major Amendment to a Conditional Use Permit to expand an on-sale liquor establishment. In particular, the applicant is proposing to expand the existing Market Square Casino into the adjacent suite and to fence in an outdoor patio area increasing the total square footage from 1,693 square feet to 2,680 square feet. No food will be served in the outdoor fenced in area.

On April 6, 2006, a Conditional Use Permit to allow an on-sale liquor establishment (File #06UR003) was approved with stipulations.

On July 6, 2006, a Major Amendment to a Conditional Use Permit (File #06UR017) was approved with stipulations to revise the legal description of the previously approved Conditional Use Permit.

The property is located northwest of the intersection of Creek Drive and East Saint Patrick Street. Currently, a one story commercial building is located on the property.

**STAFF REVIEW:**

Staff has reviewed the Conditional Use Permit and has noted the following considerations:

1. *The request will not "adversely affect" the use of any place used for religious worship, school, park, playground, or similar use within (500) foot radius.*

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The bike path is located adjacent to the north and east property lines of the subject property. The west edge of the Star of the West Sports Complex is located within 500 feet of the subject property. There are no other parks or any places of religious worship or schools located within a 500 foot radius of the subject property. It appears that the proposed use will be buffered from the bike path by future development on the subject property to the north and the Star of the West Sports Complex is buffered from the subject property by Rapid Creek on the east. Staff does not find this request for an expansion of the on-sale liquor use to constitute an adverse affect on these recreational areas due to the buffering and separation provided by Rapid Creek.

2. *The requested use is "sufficiently buffered" with respect to residential areas so as not to "adversely affect" such areas.*

The subject property is currently zoned General Commercial District and is located adjacent to existing commercial uses. Residential structures are located southwest of the subject property across East Saint Patrick Street. East Saint Patrick Street is a five-lane principal arterial street that serves as a buffer for the residential areas from the subject property and the proposed use.

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."*

An on-sale use liquor establishment, Pauly's Pizzeria and Sub Company, is located in the adjacent suite. East Saint Patrick Street is identified as a principal arterial street on the City's Major Street Plan. Staff does not find this request to expand an on-sale liquor use to constitute an undue concentration that would cause blight or deterioration or diminish land values in the surrounding area.

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

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

1. *The location, character and natural features of the property:*

The property is located at 1624 East Saint Patrick Street adjacent to a five lane principal arterial street on the south and a minor arterial on the east. The existing building is a one story commercial structure on a relatively flat parcel.

2. *The location, character and design of adjacent buildings:*

To the east, west and south of the subject property are one story commercial and industrial buildings. Located on the south side of Saint Patrick Street to the southwest are one story residential structures.

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3. *Proposed fencing, screening and landscaping:*

The applicant is proposing to fence a patio area in front of the existing casino located on the east side of the structure. A sample fence elevation has been provided showing a black wrought iron fence. The proposed fencing must be consistent with the sample elevation as submitted. The outdoor patio area must be continually fenced if on-sale liquor is to be allowed within the area.

A minimum of 68,866 landscaping points must be provided. All provisions of Section 17.50.300, the Landscaping Regulations of the Rapid City Municipal Code must be continually met. All landscaping must be continually maintained in a live vegetative state and replaced as necessary.

4. *Proposed vegetation, topography and natural drainage:*

There will be no changes in impervious surfaces, topography or drainage.

5. *Proposed pedestrian and vehicular access, circulation and parking, including that related to bicycles and other unpowered vehicles and provisions for handicapped persons:*

Vehicular access is off of East Saint Patrick Street. A curbside sidewalk is located along East Saint Patrick Street providing pedestrian access. There are currently 157 parking stalls with six handicapped accessible stalls. The uses on site require a minimum of 123 parking stalls with five stalls handicapped accessible.

6. *Existing traffic and traffic to be generated by the proposed use:*

The expansion of use is expected to generate approximately 13 additional trips per day thus creating very little impact to the existing transportation system.

7. *Proposed signs and lighting:*

There are no additional proposed signs or lighting. All signage must conform to Chapter 15.28 of the Rapid City Municipal Code. No electronic signs are being approved as a part of this Major Amendment to the Conditional Use Permit. All signage not in conformance with Chapter 15.28 of the Rapid City Municipal Code or any electronic reader board signs will require the review and approval of a Major Amendment to the Conditional Use Permit. Lighting for the signs must be designed to preclude shining on the adjacent properties and/or street(s). A sign permit must also be obtained for each individual sign.

8. *The availability of public utilities and services.*

The property is currently served by public utilities including Rapid City sewer and water.

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9. *The objectives of the adopted comprehensive plan and the purpose of the ordinance codified herein:*

The property is intended to be used for commercial uses. The proposed expansion of an on-sale liquor establishment requires a Major Amendment to the Conditional Use Permit. One of the goals of the Comprehensive Plan as identified in the Future Land Use Plan Overview adopted in 2008 is to provide a variety of centers for community activities and employment that meet the needs of residents and are integrated into the fabric of the community. The objective of the adopted Comprehensive Plan is to encourage retail establishments and businesses that are convenient to neighborhood residents, yet compatible with but not intrusive upon residential neighborhoods. Additionally, the objective of the adopted comprehensive plan is to insure that there is sufficient separation of conflicting uses. East Saint Patrick Street is a five-lane road that serves as a buffer for the residential areas from the subject property and the proposed use and has been constructed as an arterial street to accommodate both residential and commercial traffic. It appears that there is sufficient buffering between the on-sale liquor establishment expansion and the residential districts to the southwest and therefore appears to be in compliance with the adopted Comprehensive Plan.

10. *The overall density, yard, height and other requirements of the zone in which it is located:*

The existing development on the property is in compliance with the density, yard and height requirements of the General Commercial District. All provisions of the General Commercial District must be met unless otherwise specifically authorized as a stipulation of this Major Amendment to the Conditional Use Permit or a subsequent Major Amendment.

11. *The effects of noise, odor, smoke, dust, air, and water pollution and the degree of control through the use of clarifiers, screening, setbacks and orientation:*

The existing setback is in compliance with the setback requirements for the General Commercial District. No additional screening is required other than the previously referenced fencing around the outdoor patio and Rapid Creek provides a buffer between the proposed on-sale liquor establishment expansion and the recreational use. In addition, the bike path located adjacent to the north and east property lines will be buffered by future development on the property.

12. *The degree to which conditions imposed will mitigate any probable adverse impacts of the proposed use on existing adjacent uses:*

The stipulations of approval of the Conditional Use Permit will serve as a tool to insure that the currently adopted International Fire Codes are continually met and that the proposed expansion is in compliance with the zoning ordinance. In addition the stipulations will ensure that the outdoor patio area is continually fenced and that parking, landscaping and signage will comply with the Zoning Ordinance.

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Notification: As of this writing, the white slips and green cards have not been returned and the required sign has not been posted on the property. Staff will notify the Planning Commission at the February 9, 2012 Planning Commission meeting if these requirements have not been met.