

STAFF REPORT  
July 5, 2012

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**No. 12UR016 - Major Amendment to a Conditional Use Permit for the expansion of an On-Sale Liquor Establishment**      **ITEM 11**

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GENERAL INFORMATION:

APPLICANT	Orris Enterprises, Inc.
PROPERTY OWNER	Lakota Building, LLC
REQUEST	<b>No. 12UR016 - Major Amendment to a Conditional Use Permit for the expansion of an On-Sale Liquor Establishment</b>
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, located in Section 1, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately .26 acres
LOCATION	518 and 520 Seventh Street
EXISTING ZONING	Central Business District
FUTURE LAND USE DESIGNATION	Commercial
SURROUNDING ZONING	
North:	Central Business District
South:	Central Business District
East:	Central Business District
West:	Central Business District
PUBLIC UTILITIES	Rapid City
DATE OF APPLICATION	June 8, 2012
REVIEWED BY	Fletcher Lacock / Brandon Quiett

RECOMMENDATION:

Staff recommends that the Major Amendment to a Conditional Use Permit for the expansion of an On-Sale Liquor Establishment be approved with the following stipulations:

1. The on-sale liquor establishment shall allow full liquor sales;
2. The hours of operation shall be from 10:00 a.m. to South Dakota legal last call;
3. The on-sale liquor establishment shall operate in compliance with SDCL 34-46-18, "Smoking permitted in certain licensed establishments where alcohol is sold";
4. All provisions of the Central Business Zoning District shall be met unless an exception is specifically authorized as a stipulation of the Conditional Use Permit or a subsequent Major Amendment;

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5. All applicable provisions of the adopted International Fire Code shall continually be met;
6. 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 a 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. The approval of the Historic Sign Review Committee shall be obtained prior to obtaining the Sign Permit;
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; and,
8. The Major Amendment to a Conditional Use Permit will allow for the expansion of an On-Sale Liquor Establishment. Any change in use that is a permitted use in the Central Business District will require the review and approval of a Minimal Amendment. Any change in use that is a Conditional Use in the Central Business District will require the review and approval of a Major Amendment to the Conditional Use Permit. All provisions of the Central Business 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.

GENERAL COMMENTS:

The applicant has submitted a Major Amendment to a Conditional Use Permit to expand the existing on-sale liquor establishment to include full liquor sales. In addition, the applicant is requesting that the hours of operation be amended to allow operation from 10:00 a.m. to South Dakota legal last call which is currently 2:00 a.m. The previous Major Amendment to a Conditional Use Permit stipulated that the on-sale liquor establishment be limited to malt beverages and wine and that a Major Amendment to a Conditional Use Permit be obtained if full liquor sales is proposed. In addition, the hours of operation were stipulated to be from 10:00 a.m. to 12:00 a.m. The applicant is not proposing any new structures or expanding the area of use within the existing structure.

On April 26, 2007, a Conditional Use Permit to allow an on-sale liquor establishment (File #07UR003) was approved with stipulations. The on-sale use was limited to malt beverages only.

On June 25, 2009, a Sidewalk Café Permit (File #09SC004) was approved with stipulations.

On May 27, 2010, a Major Amendment to a Conditional Use Permit to expand an on-sale liquor establishment (File #10UR010) was approved with stipulations. Those stipulations are listed below.

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.;

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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;
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.

The property is located northeast of the intersection of 7<sup>th</sup> Street and Saint Joseph Street. Currently, a two story commercial structure is located on the property.

**STAFF REVIEW:**

Staff has reviewed the Major Amendment to a 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.*

There is one place of religious worship, and one school, Black Hills Beauty College, 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 7<sup>th</sup> Street and Kansas City Street approximately 280 feet to the southwest. There are twelve on-sale liquor establishments 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 and as such 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. The properties to the north, south, east and west are zoned Central Business District. There are some existing apartment units above businesses along Saint Joseph Street. The property is in the established Central Business 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

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property. The Brass Rail is located on the property immediately adjacent to the east. Paddy O'Neill's Irish Pub is located to the east at the intersection of Saint Joseph Street and 6<sup>th</sup> Street. Tally's Silver Spoon is located at the northeast corner of the intersection of Saint Joseph Street and 6<sup>th</sup> Street. Botticelli Ristorante, Wine Cellar Restaurant, and Delmonico Grill are located to the northeast at the intersection of Main Street and 6<sup>th</sup> Street. The Firehouse Brewing Company and the proposed Firehouse winery are located to the north along Main Street between 6<sup>th</sup> Street and 7<sup>th</sup> Street. The Oasis Lounge, The Corn Exchange, and Dublin Square are located to the northwest along Main Street between 7<sup>th</sup> Street and Mount Rushmore Road. In addition, the Independent Ale House is located on the south side of Saint Joseph Street between 6<sup>th</sup> Street and 7<sup>th</sup> Street.

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. The City Attorney's office has previously 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.*

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 on the east side of 7<sup>th</sup> Street between Main Street and Saint Joseph Street. A two story commercial structure is currently located on the property.

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

The properties to the north, south, east and west are zoned Central Business District and consist of two story commercial structures.

3. *Proposed fencing, screening and landscaping:*

The applicant is not proposing any fencing or screening. On June 25, 2009, a Sidewalk Café Permit (File #09SC004) was approved with stipulations. The property is zoned Central Business District which does not require landscaping.

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

The applicant is not proposing any new construction. 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:*

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There is no vehicular access to the site. The property is zoned Central Business District and does not require off-street parking. A sidewalk is located along 7<sup>th</sup> Street which provides pedestrian access to the site.

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

The proposed expansion of the on-sale liquor establishment will not create a significant increase in traffic generation.

7. *Proposed signs and lighting:*

The applicant is not proposing any new signage or lighting as a part of this application. 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 a 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. The approval of the Historic Sign Review Committee must be obtained prior to obtaining the Sign Permit. In addition, all outdoor lighting must 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. *The availability of public utilities and services:*

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

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

The Zoning Ordinance is the tool that implements the Comprehensive Plan. A Conditional Use Permit was approved to allow an on-sale liquor establishment on the above legally described property. The Major Amendment to a Conditional Use Permit will allow the applicant to expand from a malt beverage and wine license to a full liquor license. Any change in use that is a permitted use in the Central Business District will require the review and approval of a Minimal Amendment. Any change in use that is a Conditional Use in the Central Business District will require the review and approval of a Major Amendment to the Conditional Use Permit. All provisions of the Central Business 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. In addition, the applicant is requesting that the hours of operation be amended to allow operation from 10:00 a.m. to South Dakota legal last call. The previous Major Amendment to a Conditional Use Permit stipulated that the hours of operation be from 10:00 a.m. to 12:00 a.m. Currently, legal last call is 2:00 a.m. for an on-sale dealer.

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

The applicant is not proposing any new construction. The existing structure is in compliance with Chapter 17.16 of the Rapid City Municipal Code.

*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 proposed expansion of the on-sale use does not appear to generate any additional noise, odor, smoke, dust, air or water pollution that would negatively impact the neighborhood. The existing establishment is a cigar bar and as such must operate in compliance with SDCL 34-46-18, "Smoking permitted in certain licensed establishments where alcohol is sold". In addition, the mechanical systems must provide air changes per the currently adopted mechanical code.

*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 will ensure that the proposed expansion of the on-sale liquor establishment operates in compliance with state law, the Zoning Ordinance and the International Fire Code.

Notification: As of this writing, the white certified mail receipts and green cards have not been returned. The required sign has not been posted on the property. Staff will notify the Planning Commission at the July 5, 2012 Planning Commission meeting if these requirements have not been met.