

# STAFF REPORT

June 6, 2013

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## No. 13UR008 - Major Amendment to a Conditional Use Permit to Expand an On-Sale Liquor Establishment in Conjunction with a Restaurant

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ITEM 13

### GENERAL INFORMATION:

APPLICANT Brian Dadah

PROPERTY OWNER Market Square, LLC

REQUEST **No. 13UR008 - Major Amendment to a Conditional Use Permit to Expand an On-Sale Liquor Establishment in Conjunction with a Restaurant**

### 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 Lot B of Lot 3 of Tract D of the SW1/4 of the SW1/4 of Section 5, Thence, N11°47'32"E±, a distance of 117.25± feet, to the southwesterly corner 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 wall of said building, a distance of 30.00± feet, to a point on the westerly line of the existing building and corner of the License Area; Thence, second course: S89°51'57"E±, along the centerline of a common wall, a distance of 8.67± feet, to a corner of said License Area; Thence, third course: N00°08'01"E±, along the centerline of a common wall, a distance of 22.95± feet, a corner of said License Area; Thence, fourth course: S89°51'59"E±, along the centerline of a common wall, a distance of 31.49± feet, to a corner of said License Area; Thence, fifth course: S00°08'01"W±, along the centerline of common wall, a distance of 17.77± feet, to a corner of said License Area; Thence, sixth course: S89°51'59"E±, along the centerline of a common wall, a distance of 27.18± feet, to a point on the easterly line of the existing building and corner of said License Area; Thence, seventh course: S00°08'01"W±, along the easterly wall of said building, a distance of 1.18± feet, to a point on the easterly wall of the existing building, and a corner of said License Area; Thence, eighth course: S89°51'59"E±, a distance of 26.00± feet, to a corner of said License Area; Thence, ninth course: S00°08'01"W±, a distance of 34.00± feet, to a corner of said License Area; Thence, tenth course: N89°51'59"W±, a distance of 26.00± feet, to a corner of said License Area; Thence, eleventh course:

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N00°08'01"E±, a distance of 2.00± feet, to the southeasterly corner of the existing building, and a corner of said License Area; Thence, twelfth course: N89°51'59"W±, along the southerly wall of said building, a distance of 37.33± feet, to a corner of said License Area; Thence, thirteenth course: S00°08'05"W±, along the southerly wall of said building, a distance of 2.00± feet, to a corner of said License Area; Thence, fourteenth course: N89°51'59"W±, along the southerly wall of said building, a distance of 30.00± feet, to the southwesterly corner of the existing building, common to the southwesterly corner of the License Area, and the point of beginning.

PARCEL ACREAGE	Approximately .85 acres
LOCATION	1624 East Saint Patrick Street
EXISTING ZONING	General Commercial District
FUTURE LAND USE DESIGNATION	Commercial
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	May 13, 2013
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 in conjunction with a restaurant be approved with the following stipulations:

1. The proposed fencing shall be consistent with the sample elevation showing a stainless steel fence with vinyl sleeves, post caps and skirt;
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 minimum of 132 parking spaces shall be provided. In addition, five of the parking

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- 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;
5. 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;
  6. 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;
  7. All signage shall continually conform to the Sign Code. No new electronic signs are being approved as a part of this Major Amendment to the Conditional Use Permit. Changes to the proposed sign package, which the Community Planning and Development Services Director determines to be consistent with the original approved sign package, shall be allowed as a Minimal Amendment to the Conditional Use Permit. All signage not in conformance with the Sign Code shall require a Variance or a Planned Development Overlay. Any new 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;
  8. All applicable provisions of the adopted International Fire Code shall continually be met; and,
  9. The Major Amendment to the Conditional Use Permit shall allow for the expansion of the on-sale liquor establishment in conjunction with a restaurant with one access point from inside of the restaurant to the patio area as proposed. 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 conjunction with a restaurant. In particular, the applicant is proposing to expand the existing "Pauly's Pizzeria & Sub Co." to include an approximate 884 square foot fenced patio area on the east side of the existing structure. The applicant is proposing to attach the fencing to the building and to maintain one access point from the inside of the restaurant to the patio area.

On May 21, 2009, a Conditional Use Permit to allow an on-sale liquor establishment (File #09UR012) was approved with stipulations for "Pauly's Pizzeria & Sub Co."

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 Major Amendment to a Conditional Use Permit and has noted the following considerations:

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

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 and since the use is being proposed in conjunction with a restaurant.

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, Market Square Casino, 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 in conjunction with a restaurant 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:*

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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.

*3. Proposed fencing, screening and landscaping:*

The applicant is proposing to fence an 884 square foot patio area in front of the existing restaurant located on the east side of the structure. A sample fence elevation has been provided showing a stainless steel fence with vinyl sleeves, post caps and skirt. 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 for the proposed development. The applicant has submitted a landscaping plan that shows a total of 76,750 landscaping points to be provided. The proposed landscaping is in compliance with Chapter 17.50.300 of the Rapid City Municipal Code. 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. A minimum of 132 parking spaces must be provided. In addition, five of the parking spaces must be handicap accessible. One of the handicap spaces must be "van accessible." The applicant has submitted a parking plan showing a total of 153 parking stalls. In addition, six of the parking spaces are handicap accessible with one of the spaces being "van accessible". The parking plan is in compliance with Chapter 17.50.270 of the Rapid City Municipal Code. All provisions of the Off-Street Parking Ordinance must be continually met.

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

The expansion of use is expected to generate approximately 17 additional trips per weekday peak hour 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 continually conform to the Sign Code. No new electronic signs are being approved as a part of this Major Amendment to the Conditional Use Permit. Changes to the proposed sign package, which the Community Planning and Development Services Director determines to be

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consistent with the original approved sign package, will be allowed as a Minimal Amendment to the Conditional Use Permit. All signage not in conformance with the Sign Code will require a Variance or a Planned Development Overlay. Any new 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.

*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. In addition, the expansion to the on-sale liquor use is being proposed in conjunction with a restaurant.

*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:*

No additional screening is required other than the previously referenced fencing around the outdoor patio. Rapid Creek provides a buffer between the proposed on-sale liquor

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establishment expansion and the recreational uses to the northeast. 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. The stipulations will also ensure that the on-sale liquor use will operate in conjunction with a restaurant.

Notification: The first class mailings have been returned to the Community Planning and Development Services Department for mailing. Staff has subsequently mailed the letters. In addition, the sign has been posted on the property.