

STAFF REPORT  
August 27, 2009

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**No. 09SV016 - Variance to the Subdivision Regulations to waive the requirement to install sidewalk, water and sewer and to reduce the pavement width from 26 feet to 20 feet along the access easement as per Chapter 16.16 of the Rapid City Municipal Code**

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**ITEM 32**

GENERAL INFORMATION:

APPLICANT/AGENT	Dream Design International, Inc.
PROPERTY OWNER	City of Rapid City
REQUEST	<b>No. 09SV016 - Variance to the Subdivision Regulations to waive the requirement to install sidewalk, water and sewer and to reduce the pavement width from 26 feet to 20 feet along the access easement as per Chapter 16.16 of the Rapid City Municipal Code</b>
EXISTING LEGAL DESCRIPTION	Tract 3 of Discovery Subdivision, located in the NE1/4 of SE1/4 and the SE1/4 of the NE1/4, Section 28, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota
PROPOSED LEGAL DESCRIPTION	Lot 1 of Tract 3 of Discovery Subdivision, Section 28, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 32.46 acres
LOCATION	1851 Discovery Circle
EXISTING ZONING	General Commercial District
SURROUNDING ZONING	
North:	General Commercial District
South:	General Commercial District (Planned Commercial Development)
East:	Box Elder
West:	General Commercial District (Planned Commercial Development)
PUBLIC UTILITIES	City Water and Sewer
DATE OF APPLICATION	7/31/2009
REVIEWED BY	Marcia Elkins / Karley Halsted

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RECOMMENDATION:

If the Planning Commission finds that it is appropriate to approve the Variance to the Subdivision Regulations to waive the requirement to install sidewalk, water and sewer and to reduce the pavement width from 26 feet to 20 feet along the access easement as per Chapter 16.16 of the Rapid City Municipal Code, the Commission may wish to recommend approval of the Subdivision Variances with the following stipulations:

1. Prior to City Council approval of the Subdivision Variance, a Planned Development Designation shall be submitted and approved for Tract 3, Discovery Subdivision; and,
2. Prior to City Council approval of the Subdivision Variance, the applicant shall obtain an exception to allow non-conforming water and sewer lines to cross adjacent property on a temporary basis.

GENERAL COMMENTS: The applicant has submitted a Preliminary Plat application (09PL048) proposing to create one 4.381 acre lot out of the existing 32.458 acre parcel. Proposed Lot 1 is the current site of the Visitor's Information Center and Black Hills Badlands and Lake Offices and related off-street parking areas. The property is located south of East Mall Drive and west of North Elk Vale Road. It is currently owned by the City of Rapid City. The applicant has submitted this Subdivision Variance request to waive the requirement to install sidewalk, water and sewer and reduce the pavement width from 26 feet along the access easement as per Chapter 16.16 of the Rapid City Municipal Code.

The City of Rapid City entered into an amended agreement with Cabela's Retail, Inc. in 2007. Pursuant to that agreement, the 32.458 acre lot legally described as Tract 3 Discovery Subdivision will be transferred to Cabela's. Subsequently, Cabela's is required to plat the Visitor Information Center property and transfer the Visitor Information Center parcel back to the City within 120 days of Cabela's receiving ownership of the land. To date, the 32.458 acre parcel has not been transferred to Cabela's and is still owned by the City of Rapid City. Approval of this Subdivision Variance and the related plat will allow the transfer of property to occur as identified in the agreement.

Cabela's working through Dream Design International previously submitted a plat application (09PL014) on March 13, 2009 proposing to subdivide Tract 3 into three parcels. That plat application was subsequently denied without prejudice on August 3, 2009 at the applicant's request. Dream Design International resubmitted a plat application (09PL048) and this Subdivision Variance application on July 31, 2009. Cabela's is now proposing to plat only Lot 1 of Tract 3 of Discovery Subdivision to facilitate the transfer of the property in accordance with the 2007 revised agreement. The remaining balance of Tract 3 incorporating 28.077 acres would not be platted at this time and would remain a non-transferable balance. The applicant has indicated that Cabela's has no plans for the remaining 28.077 acres. As such, they cannot lay out streets, sewer, water, right-of-way or other improvements.

The applicant has requested Subdivision Variances to waive the requirement to install sidewalk, water and sewer and to reduce the pavement width from 26 feet to 20 feet along

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the access easement. The granting of these easements would allow Lot 1 of Tract 3 to be platted with the current improvements serving the Visitor's Information Center in place. At such time as Cabela's knows how the balance of the property will be developed, the applicant indicates that they will submit the plat documents through the subdivision review process and address the relocation of roads, sewer and water as well as the construction of additional storm water and drainage improvements. Because the property could be developed without requiring the property to be platted, the applicants have submitted a Planned Development Designation request for the property. and it has been approved. That will require that before any additional building permits are issued for the site, the owners will need to submit an Initial and Final Development Plan. This will insure that the infrastructure issues are addressed prior to either platting or development of the property.

STAFF REVIEW: Staff has reviewed the Variance to the Subdivision Regulations and has noted the following considerations:

Discovery Circle: Discovery Circle is currently a 20 foot wide one way driveway that extends from East Mall Drive southwest to the proposed Lot 1 of Tract 3. A portion of the driveway provides access to existing parking areas originally constructed to support the Visitor's Information Center. A portion of the existing driveway includes areas where vehicles back into the driveway. The applicant has proposed to grant an access, utility and parking easement by miscellaneous document to the City for the existing driveway and parking areas. The applicant has indicated this will be a temporary arrangement until such time as a development plan is prepared for the property. An agreement would address the elimination of the easement at such time in the future as a development plan is prepared for the balance of Tract 3 and right-of-way is dedicated providing permanent access and utility corridors to proposed Lot 1 of Tract 3. In lieu of expanding the existing 20 foot paved road surface to a minimum 26 foot wide paved surface, the applicant is requesting a Subdivision Variance to reduce the minimum required road width.

The City's Subdivision Regulations do not specifically address one-way road widths for commercial/industrial roads. The adopted Fire Code requires that a minimum 20 foot clear surface area be provided. The proposed 20 foot paved surface will comply with the adopted Fire Code. The existing 20 foot wide paved surface appears to have provided sufficient access for the existing Visitor's Information Center as it is currently operating. No expansion of the Visitor's Information Center and no additional development on the balance of Tract 3 will be allowed until reviewed further through either the subdivision review process or an Initial and Final Development plan is submitted. As such, it would appear that granting the subdivision variance to reduce the minimum pavement width to 20 feet for the existing use would provide safe and efficient access. When further development is proposed, the minimum 26 foot wide paved surface should be provided to safely accommodate further development and increased vehicular traffic. It should be noted that the City has typically required the owner of the property to sign a Waiver of Right to Protest an Assessment when a subdivision variance is granted for the pavement width. However, in this case the road will be located in an easement and the City cannot assess for road improvements located in

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easements.

Sidewalks: In addition to waiving the requirement for a 26 foot wide pavement section, the applicant has requested that the requirement for the design of sidewalks along Discovery Circle be waived as well. It should be noted that the owner will not be required to install the sidewalks until such time as a building permit is issued for development on the site. As noted previously in this report, no building permits can be issued until such time as an Initial and Final Development Plan is reviewed and approved. Sidewalk construction could be required as a condition of either the review of the future subdivision of the Balance of Tract 3 or in conjunction with an Initial and Final Development Plan. If the Subdivision Variance to waive the paving requirement is approved due to the likelihood of the relocation and redesign of the roadway system, it would appear appropriate to grant the subdivision variance to waive the requirement for sidewalks until such time as a development plan for the property is developed and the final road location is known. It should be noted that typically, the City Council has required that the property owner sign a Waiver of Right to Protest an Assessment for sidewalk improvements; however, in this case the sidewalks would be located in an easement. As such, the City cannot assess the costs of sidewalks.

Sanitary Sewer and Water: The applicant has requested a variance to waive the requirement for the extension of sewer and water mains in the proposed access and utility easement. Currently, the sanitary sewer line serving the Visitor's Information Center extends northeast from the existing building across the Balance of Tract 3. The water service line providing service to the existing building runs north from proposed Lot 1 of Tract 3 along the western boundary of the Balance of Tract 3. The applicant has requested that the variance be granted waiving the requirement to install sewer and water mains in the proposed Discovery Circle access and utility easement. They have proposed providing easements for the existing service lines across the Balance of Tract 3 and constructing sewer and water mains in the future when a development plan is submitted through the subdivision review process or the Initial and Final Development Plan review process. It should be noted that in addition to the Subdivision Variance, the applicant will need to obtain an exception to allow non-conforming water and sewer lines to cross adjacent property. The applicant has indicated that they will be submitting a request for an exception on a temporary basis similar to an exception previously granted by the City Council to allow utility lines to cross an adjacent property for a five year period.

City staff has not supported the granting of variances to waive the requirements for the extension of water and sewer mains to serve additional lots that are being created and where additional development is proposed. The construction of these improvements insures that adequate water service is available to all properties for both domestic and fire purposes. It further insures that all properties are hooked to City sewer service protecting the groundwater. In this case, the existing building is already served by City water and sewer service lines. Mains will need to be extended to serve additional development of the Balance of Tract 3; however, the applicant has indicated that they do not know how that development will be configured at this point in time and they cannot identify the appropriate

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location for sewer and water mains. While staff cannot support waiving the requirements for the installation of water and sewer mains, it should be noted that no further development and no increase in the density of development will be allowed until reviewed through either the subdivision review process or the Initial and Final Development Plan review process.

Legal Notification: Staff has received the white receipts indicating that the required notification has been mailed. As of this writing, the green receipts from the certified mailings have not been returned. Staff will notify the Planning Commission at the August 27, 2009 Planning Commission meeting if the notification requirements have not been met.

The applicant has requested subdivision variances that have not generally been supported by City staff or granted by the Planning Commission and City Council. However, in this case the applicant has indicated that they are asking for the existing infrastructure to continue serving the Visitor's Information Center and they have proposed mechanisms to insure that the future development of the property guarantees the construction of the minimum street pavement width, sidewalks and sewer and water mains. If the Planning Commission finds that it is appropriate to grant the variance to the Subdivision Regulations to waive the requirement to install sidewalk, water and sewer and to reduce the pavement width from 26 feet to 20 feet, they may wish to recommend approval with the following stipulations:

1. Prior to City Council approval of the Subdivision Variance, a Planned Development Designation shall be submitted and approved for Tract 3, Discovery Subdivision; and,
2. Prior to City Council approval of the Subdivision Variance, the applicant shall obtain an exception to allow non-conforming water and sewer lines to cross adjacent property.