

STAFF REPORT
December 4, 2008

No. 08SV056 - Variance to the Subdivision Regulations to reduce the minimum access easement width from 59 feet to 24 feet; to reduce the paved surface requirement from 26 feet to 24 feet; and to waive the requirement to install curb, gutter, sidewalk, street light conduit, water and sewer along the access easements as per Chapter 16.16 of the Rapid City Municipal Code

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GENERAL INFORMATION:

APPLICANT	Thomas P. Walsh Sr. Family Ltd. Partnership
AGENT	Janelle Finck for Fisk Land Surveying & Consulting Engineers
PROPERTY OWNER	Thomas P. Walsh Sr. Family Ltd. Partnership
REQUEST	No. 08SV056 - Variance to the Subdivision Regulations to reduce the minimum access easement width from 59 feet to 24 feet; to reduce the paved surface requirement from 26 feet to 24 feet; and to waive the requirement to install curb, gutter, sidewalk, street light conduit, water and sewer along the access easements as per Chapter 16.16 of the Rapid City Municipal Code
EXISTING LEGAL DESCRIPTION	Lot 2 of the Trijowinn Subdivision, located in the NW1/4, Section 2, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota
PROPOSED LEGAL DESCRIPTION	Days Inn Tract and Burger King Tract of Trijowinn Subdivision, Section 2, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 2.3 acres
LOCATION	725, 719 and 711 Jackson Boulevard
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 sewer and water

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DATE OF APPLICATION 10/24/2008

REVIEWED BY Vicki L. Fisher / Ted Johnson

RECOMMENDATION:

Staff recommends that the Variance to the Subdivision Regulations to reduce the minimum access easement width from 59 feet to 24 feet; to reduce the paved surface requirement from 26 feet to 24 feet; and to waive the requirement to install curb, gutter, sidewalk, street light conduit, water and sewer along the access easements as per Chapter 16.16 of the Rapid City Municipal Code be **approved with the following stipulations:**

1. **Prior to City Council approval, an Exception shall be obtained to allow the water service line serving the proposed Days Inn Tract to cross the proposed Burger King Tract or construction plans shall be submitted in compliance with City design standards;**
2. **Prior to City Council approval, a request to authorize the Mayor and Finance Officer to sign the Covenant Agreement for the water service line serving the proposed Days Inn Tract to cross the proposed Burger King Tract shall be approved by the City Council; and,**
3. **Prior to submittal of a Final Plat application, the Covenant Agreement to allow a water service line to cross another lot and the Hold Harmless Agreement to allow a City sewer main to be located under the Days Inn Motel shall be recorded at the Register of Deed's Office and a copy of the recorded documents shall be submitted to the Growth Management Department.**

GENERAL COMMENTS:

(Update, November 26, 2008. All revised and/or added text is shown in bold print.) This item was continued at the November 20, 2008 Planning Commission meeting to allow the applicant to address the outstanding utility issues. The applicant has subsequently submitted an Exception request to allow the water service line serving the proposed Days Inn Tract to cross the proposed Burger King Tract. On November 25, 2008, the Public Works Committee recommended denial of the Exception request. City Council will consider the Exception request at their December 1, 2008 City Council meeting.

The applicant is currently working with the City Attorney's Office on the associated Covenant Agreement to be considered in conjunction with the Exception request and on an agreement to hold the City harmless from any damages resulting in the location of the sewer main under the Days Inn Hotel.

The applicant has submitted a Variance to the Subdivision Regulations to reduce the width of the access easements from 59 feet to 24 feet, to waive the requirement to install curb,

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gutter, sidewalk, street light conduit, water and sewer along the access easements and to reduce the pavement width from 26 feet to 24 feet. In addition, the applicant has submitted an Initial and Final Commercial Development Plan (File #08PD058) to allow the existing structure located on the proposed Days Inn Tract to be used as a hotel with a lounge and public meeting rooms.

On December 21, 1998, the City Council approved a Use on Review (File #98UR049) to allow an on-sale liquor establishment within the hotel structure located on the proposed Days Inn Tract.

On January 10, 2008, the Planning Commission recommended approval of a Preliminary Plat (File #07PL164) to subdivide the property into two lots. The City Council will consider the Preliminary Plat application at their November 17, 2008 City Council meeting.

On January 22, 2008, the City Council approved a Variance to the Subdivision Regulations (File #07SV065) to reduce the right-of-way width along W. Kansas City Street from 59 feet to 55 feet as it abuts the property.

The property is located south of West Kansas City Street and west of Jackson Boulevard. Currently, a Burger King is located on the proposed Burger King Tract and a Day's Inn Hotel and lounge with meeting rooms is located on the proposed Days Inn Tract.

STAFF REVIEW:

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

Access and Utility Easements: An existing 24 foot wide access and utility easement is located along the west lot line of the property. In addition, the associated Preliminary Plat identifies a 24 foot wide access and utility easement along the common lot line of the two proposed lots. The easements are classified as commercial streets requiring that they be located within a minimum 59 foot wide easement and constructed with a minimum 26 foot wide paved surface, curb, gutter, sidewalk, street light conduit, water and sewer.

Currently, a 24 foot wide driving lane has been constructed within each of the easements and serves as internal circulation between the adjacent properties. The adjacent parking lots provide curbing to direct the traffic along the two easements. In addition, sidewalks are currently constructed along Jackson Boulevard, along West Kansas City Street and internally along both buildings providing a pedestrian connection to the adjacent street rights-of-way. The Fire Department has indicated that the existing 24 foot wide paved driving lanes provide sufficient fire apparatus access through the two proposed lots. In addition, lighting is being provided within the adjacent parking lots. As such, staff recommends that the Variance to the Subdivision Regulations to reduce the pavement width

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from 26 feet to 24 feet and to waive the requirement to install curb, gutter, sidewalk and street light conduit along the access and utility easements be approved.

As noted in the associated Preliminary Plat review and the Initial and Final Commercial Development Plan review, a sewer main is currently located within a 12 foot wide sewer easement that extends under the Days Inn Motel to West Kansas City Street. In addition, water and sewer service lines will be located on adjacent properties as a result of the associated Preliminary Plat. The City's Standard Specifications do not allow service lines to cross over another lot unless an Exception has been granted. As such, an Exception must be obtained to allow a water and/or sewer service line to cross another lot or construction plans must be submitted for review and approval showing the relocation of the service lines in compliance with the regulations. Sewer plans must be submitted for review and approval showing the relocation of the sewer main from under the Days Inn Motel structure or the applicant must enter into an agreement with the City to hold the City harmless from any damages resulting in the location of the sewer main and to provide maintenance for this portion of the sewer main. Until the utility issues are resolved, the Variance to the Subdivision Regulations to waive the requirement to install water and sewer mains along the easements and to reduce the width of the easement from 59 feet to 24 feet as proposed can not be supported. As such, staff recommends that the Variance to the Subdivision Regulations be continued to the December 4, 2008 Planning Commission meeting to allow the applicant to resolve the utility issues.

(Update: November 21, 2008) As previously indicated, the applicant has submitted an Exception request to allow the water service line serving the proposed Days Inn Tract to cross the Burger King Tract. On November 25, 2008, the Public Works Committee recommended denial of the Exception request. City Council will consider the Exception request at their December 1, 2008 City Council meeting. Staff recommends that prior to City Council approval of the Variance to the Subdivision Regulations to waive the requirement to install a water main along the access easement(s), the Exception be obtained from the City Council to allow the water service line serving the proposed Days Inn Tract to cross the proposed Burger King Tract or construction plans must be submitted in compliance with City design standards

The applicant is also currently working with the City Attorney's Office on the associated Covenant Agreement to be considered in conjunction with the Exception request and on an agreement to hold the City harmless from any damages resulting in the location of the sewer main under the Days Inn Hotel. The Covenant Agreement and the Hold Harmless Agreement have been signed by the property owner. The Covenant Agreement also requires the City's signature. As such, a request to authorize the Mayor and Finance Officer to sign the Covenant Agreement will be considered by the Public Works Committee on November 25, 2008 and the City Council on December 1, 2008.

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Staff recommends that the Variance to the Subdivision Regulations to waive the requirement to install water and sewer mains along the access easements and to reduce the width of the easements from 59 feet to 24 feet be approved with the stipulation that prior to City Council approval of the Subdivision Regulations, the City Council shall authorize the Mayor and Finance Officer to sign the Covenant Agreement. In addition, prior to submittal of a Final Plat application, the Covenant Agreement and the Hold Harmless Agreement shall be recorded at the Register of Deed's Office and a copy of the recorded documents shall be submitted to the Growth Management Department.

Legal Notification Requirement: As of this writing, the receipts from the certified mailings have been returned. Staff has received several calls of inquiry regarding this proposal. None of the callers opposed the request.