

STAFF REPORT
July 8, 2010

No. 10UR016 - Major Amendment to a Conditional Use Permit

ITEM 24

GENERAL INFORMATION:

APPLICANT	Charles Desmond
AGENT	Brian Winckel
PROPERTY OWNER	Workop SD, LLC
REQUEST	No. 10UR016 - Major Amendment to a Conditional Use Permit
EXISTING LEGAL DESCRIPTION	Lot 11 of Block 93 of the Original Town of Rapid City, Section 1, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 0.08 acres
LOCATION	725 St. Joseph Street
EXISTING ZONING	Central Business District
SURROUNDING ZONING	
North:	Central Business District
South:	Central Business District
East:	Central Business District
West:	Central Business District
PUBLIC UTILITIES	City water and sewer
DATE OF APPLICATION	6/10/2010
REVIEWED BY	Jim Flaaen / Karley Halsted

RECOMMENDATION:

Staff recommends that the Major Amendment to a Conditional Use Permit be approved with the following stipulations:

1. The hours of operation shall be limited to 11:00 a.m. to 4:00 a.m. Monday through Sunday. Any expansion of the hours of operation will require a Major Amendment to the Conditional Use Permit;
2. The sale of alcohol shall be limited to on-sale beer and wine sales in conjunction with the business operating as a smoke or hookah lounge. The addition of alcohol sales beyond on-sale beer and wine will require a Major Amendment;
3. The proposed structure shall conform architecturally to the plans and elevations submitted. Any expansion of the use will require a Major Amendment to the Conditional Use Permit;
4. All signage shall conform to the design, color and location as shown in the sign package

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submitted as a part of the Conditional Use Permit. No LED reader board signs shall be allowed. Changes to the proposed sign package, which the Growth Management Director determines to be consistent with the original approved sign package, shall be allowed as a Minimal Amendment to the Conditional Use Permit. No electronic signs are being approved as part of this sign package. The addition of electronic signs and LED signs shall be considered a Major Amendment to the Conditional Use Permit. The Growth Management Director may approve temporary signs in accordance with Chapter 15.28.080 of the Rapid City Municipal Code. The 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;

5. All applicable provisions of the currently adopted International Fire Code shall be continually met; and,
6. The Conditional Use Permit shall expire if the use ceases for a period of two years.

GENERAL COMMENTS: The applicant has submitted a Major Amendment to a Conditional Use Permit to expand the hours of operation for an on-sale liquor establishment to allow the business to operate from 11:00 a.m. to 4:00 a.m. Monday through Sunday. The property is located in the Central Business District and Ifrit's Hookah Lounge is currently located on the property. A hookah is defined as "a single or multi-stemmed water pipe for smoking flavored tobacco". Surrounding properties to the north, south, east and west are zoned Central Business District.

On November 19, 2009 the Planning Commission approved a Conditional Use Permit (#09UR026) to allow an on-sale liquor establishment at 725 Saint Joseph Street with the following stipulations:

1. Prior to Planning Commission approval, the applicant shall obtain a change of occupancy building permit, including construction plan stamped by a registered professional per SDCL 36-18A;
2. Prior to Planning Commission approval, the applicant shall obtain a Temporary Certificate of Occupancy as required by the 2006 International Building Code and a Certificate of Occupancy on or before March 1, 2010;
3. Prior to Planning Commission approval, the applicant shall submit a sign package for review and approval demonstrating the size and location of all existing and proposed signs on the property. All signage shall conform to the design, color and location as shown in the sign package submitted as a part of the Conditional Use Permit. No LED reader board signs shall be allowed. Changes to the proposed sign package, which the Growth Management Director determines to be consistent with the original approved sign package, shall be allowed as a Minimal Amendment to the Conditional Use Permit. No electronic signs are being approved as part of this sign package. The addition of electronic signs and LED signs shall be considered a Major Amendment to the Conditional Use Permit. The Growth Management Director may approve temporary signs in accordance with Chapter 15.28.080 of the Rapid City Municipal Code. The 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;
4. The proposed structure shall conform architecturally to the plans and elevations submitted. Any expansion to the use will require a Major Amendment to the Conditional Use Permit;

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5. All applicable provisions of the International Fire Code shall be continually met;
6. 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; and,
7. That the sale of alcohol shall be limited to on-sale beer and wine sales in conjunction with the business operating as a smoke or hookah lounge.

The applicant has submitted a Major Amendment to the Conditional Use Permit to expand the hours of operation for an on-sale liquor establishment. In particular, the applicant wishes to expand the current hours of operation to 11:00 a.m. to 4:00 a.m. Monday through Sunday. The current hours of operation are 6:00 p.m. to 12:00 a.m. Monday through Thursday and 6:00 p.m. to 2:00 a.m. Friday and Saturday. The applicant has submitted a Sidewalk Café Permit application (#10SC003) in conjunction with this application.

The property is located at 725 Saint Joseph Street, on the south side of Saint Joseph Street, east of Mount Rushmore Road and west of 7th Street.

STAFF REVIEW: Staff has reviewed this request with respect to the four criteria established for On-Sale Liquor establishments identified in Section 17.50.185.

1. *The request will not “adversely affect” the use of any place used for religious worship, school, park, playground, or similar use with five hundred (500) feet radius.*

As noted in the previous review, the on-sale liquor establishment is located within 500 feet of four churches. The First Presbyterian Church is located southeast of the property northwest of the intersection of 7th Street and Kansas City Street. The First United Methodist is located southeast of the intersection of 7th Street and Kansas City Street. The Faith Temple Church of God in Christ is located south of the property on Kansas City Street between 7th Street and Mount Rushmore Road. The First Christian Church is located south of the property northeast of the intersection of Quincy Street and Mount Rushmore Road. The YMCA is located within 500 feet of the property southwest of the intersection of Kansas City street and Mount Rushmore Road which provides child care services.

The Planning Commission previously approved the on-sale liquor establishment with the requirement that the sale of alcohol be limited to on-sale beer and wine sales in conjunction with the business operating as a smoke or hookah lounge. The requested change in hours of operation would not appear to have any significantly different affect on any place used for religious worship, school, park, playground or similar use.

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. There are some existing apartment units located above the businesses along Saint Joseph Street. The property is surrounded by Central Business Zoning District. Staff noted that the expansion of hours of operation could result in some adverse affects on residences in the area resulting from increased vehicular and pedestrian traffic. In addition, the

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applicant has submitted a Sidewalk Café Permit application (#10SC003) in conjunction with this application. The approval of both the Sidewalk Café Permit and this Major Amendment to a Conditional Use Permit will allow patrons of the business to be on the sidewalk until 4:00 a.m., potentially creating additional noise concerns for surrounding 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, there are five on-sale liquor establishments located within 500 feet of the property. The Brass Rail and Vino 100 are located northeast of the property northeast of the intersection of 7th Street and Saint Joseph Street. The Oasis Lounge, The Corn Exchange and Dublin Square are located to the north of the property on Main Street between 7th Street and Mount Rushmore Road. In addition, several other on-sale liquor establishments are located within the downtown area although outside of the 500 foot radius.

The existing on-sale liquor establishments within the downtown area close at 2:00 a.m. when state law prohibits the sale or consumption of alcohol. This property will be required to stop the sale and consumption of alcohol at 2:00 a.m. in accordance with state law as well. However, the continued operating hours until 4:00 a.m. will allow patrons of other on-sale liquor establishments in the area to congregate at this location potentially creating noise, traffic and safety concerns. In addition, the extended hours may require additional monitoring to ensure that the establishment is not serving alcohol after 2:00 a.m. The Police Department has recommended approval of the application.

As noted in the previous review, 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. The property is outside of the boundary established by this resolution.

4. *The proposed used 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:

Sidewalk Café Permit: The applicant has submitted a Sidewalk Café Permit application (#10SC003) in conjunction with this application. The Sidewalk Café is allowed to operate in conjunction with the hours of operation of the associated business.

Hours of operation: The on-sale liquor establishment currently operates from 6:00 p.m. to 12:00 a.m. Monday through Thursday and 6:00 p.m. to 2:00 a.m. Friday and Saturday with the business closed on Sundays. The applicant has submitted this Major Amendment to a Conditional Use Permit to expand the hours of operation to 11:00 a.m. to 4:00 a.m. Monday through Sunday.

South Dakota Codified Law 35-4-81 restricts the sale or consumption of alcohol after 2:00

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a.m. Concerns have been expressed that the operation of the on-sale liquor establishment until 4:00 a.m. may create the potential for the sale or consumption of alcohol past 2:00 a.m. The extended hours will require additional monitoring to ensure that alcohol is not being sold or consumed on the property after 2:00 a.m.

As previously stated, the applicant has submitted a Sidewalk Café Permit in conjunction with this application. The Sidewalk Café is allowed to operate in conjunction with the hours of operation of the associated business. The approval of both the Sidewalk Café Permit and this Major Amendment to a Conditional Use Permit will allow patrons of the business to be consuming alcohol on the sidewalk until 4:00 a.m. Noise, vehicular and pedestrian traffic and safety may become an issue with the operation of the business until 4:00 a.m. The continued operating hours until 4:00 a.m. will allow patrons of other on-sale liquor establishments in the area, which close at 2:00 a.m., to congregate at this location potentially creating noise, traffic and safety concerns.

Alcohol sales: The previously approved Conditional Use Permit included a stipulation that limited the sale of alcohol to on-sale beer and wine only in conjunction with the business operating as a smoke or hookah lounge. Staff is recommending that the stipulation remain valid with this Major Amendment and that the addition of alcohol sales beyond on-sale beer and wine require a Major Amendment.

Notification Requirement: As of this writing, the receipts from the certified mailing have not been returned nor has the sign been posted on the property. Staff will notify the Planning Commission at the July 8, 2010 Planning Commission meeting if the notification requirements have not been met.

Staff recommends that the Conditional Use Permit to allow an on-sale liquor establishment be approved with the stipulations as identified above.