

**From:** [Jacob Patterson](#)  
**To:** [cdd; Cherry, Juliana](#)  
**Cc:** [Cervenka, Neil](#)  
**Subject:** Comment and Concern About Variance 223 (VAR 2-23)  
**Date:** Thursday, September 28, 2023 2:42:49 PM

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Community Development Department,

After inquiring about the Emerald Triangle relocation entitlement applications, I learned the following about the requested variance:

"[T]he Variance from the zoning code is a very small reduction of the setback from a youth center from 150 feet to 145 feet, which is less than a 3% decrease in the required setback.

The youth center mentioned is Sea Star Studios Youth Center."

I understand why the applicant is requesting a variance but this is not the kind of thing that can be altered through the variance process according to how I interpret the ILUDC. The above statement is also somewhat inaccurate because the issue is not one of a setback, which is about internal placement of structures relative to the parcel boundaries, it is about an explicit and specific prohibition and a land use. ILUDC § 18.42.057 concerning the Cannabis Retail land use doesn't create a setback of 150 feet that could potentially be reduced with a variance, it creates an exclusion zone around youth-oriented land uses that strictly prohibits the location of a cannabis retail land use within 150 feet of an existing youth center.

ILUDC § 18.71.070 concerning variances make it very clear in Subdivision B that variances cannot be applied to "allowed land uses" or "specific prohibitions" and this situation involves both the land use of cannabis retail and a specific prohibition of not locating cannabis retail land uses within 150 feet of an existing youth center. The variance process could be used for something else like an internal building setback requirement, sign height limitation, lot coverage ratios, or specific site improvements like frontage sidewalks. It cannot be used to allow an otherwise unpermitted land use, in this case cannabis retail. Nor can it be used to avoid a specific prohibition in the ILUDC and the Location Requirements in ILUDC § 18.42.057, subdivision C.3., is a specific prohibition (note the use of "**shall not** be").

This may be an unfortunate consequence of how our code is written but it certainly doesn't create a situation where the applicant would be deprived of a right or privilege enjoyed by other property owners in the vicinity and in the same zoning district. All nearby property owners also within 150 feet of Sea Star Studios also have the same strict prohibition against locating a cannabis retail business on their parcels.

Interestingly, the land owner could creatively get around this prohibition if they applied for a lot line adjustment in conjunction with the neighboring car wash site so their nearest property line is no longer within 150 feet of the property line of the Sea Star Studios or the property where Sea Star Studios could be split into two under the new CA rules, putting the residential use along the alley in a separate parcel from the front commercial building, but neither of those mechanisms are at issue in this application as it is currently configured.

Moreover, it is very unlikely that the Planning Commission will be able to find (in a supported manner with written findings that include explicit analytical justifications for the conclusions of the findings) that the first two of the three required findings are satisfied because there are

not any special circumstances that apply to this property and approving the variance would grant a special privilege to this property compared to the adjacent properties that are also subject to the same prohibition (e.g., the car wash or Starbucks).

Even if no neighboring property owner or even Sea Star Studios explicitly support this project, the City cannot ignore the plain language of the ILUDC that excludes situations like this from even being eligible for a variance. Sometimes interpreting and applying a local zoning code has unfortunate results that even the Planning Commissioners or staff don't feel makes sense in a particular situation but that doesn't mean we can ignore the requirements of the ILUDC and pretend that a variance can be used to permit a specifically prohibited land use in this location. If the Planning Commission doesn't like the result, the answer is to recommend an amendment to the ILUDC that would allow for variances in situations like this rather than trying to make specious justifications with a wink and a nod to look the other way and approve a variance under the current ILUDC, which is what governs this application. I think this is particularly true when there are other remedies that could allow for this business to use the intended building (e.g., a lot line adjustment).

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**Cc:** [Cervenka, Neil](#)  
**Subject:** Re: Comment and Concern About Variance 223 (VAR 2-23)  
**Date:** Friday, September 29, 2023 9:49:35 AM  
**Attachments:** [Cannabis retail variance 18.71.070.pdf](#)

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Here are the ILUDC sections with my highlights of the relevant provisions

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## 18.71.070 - Variance and Administrative Variance

**A. Purpose.** The Variance and Administrative Variance provide a process for City consideration of requests to waive or modify certain standards of this Development Code when, because of special circumstances applicable to the property, including location, shape, size, surroundings, topography, or other physical features, the strict application of the development standards otherwise applicable to the property **denies the property owner privileges enjoyed by other property owners in the vicinity and in the same zoning district.**

**B. Applicability.** A Variance or Administrative Variance may be granted to waive or modify any requirement of this Development Code **except: allowed land uses;** residential density; **specific prohibitions** (for example, prohibited signs), or procedural requirements.

**C. Review authority.**

**1. Variance.** A Variance application shall be reviewed, and approved or disapproved, by the Commission.

**2. Administrative Variance.** An Administrative Variance application shall be reviewed, and approved or disapproved, by the Director.

a. The Director may grant an Administrative Variance to reduce any of the following requirements of this Development Code up to a maximum of 25%:

- i) Distance between structures;
- ii) Parcel dimensions (not including area);
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- vi) Lot coverage; and/or
- vii) Floor area ratio.

b. The Director may choose to refer any Administrative Variance application to the Commission for hearing and decision.

**D. Application filing and processing.** An application for a Variance or Administrative Variance shall be filed and processed in compliance with Chapter 18.70 (Permit Application Filing and Processing). The application shall be accompanied by detailed and fully dimensioned plans, architectural drawings and sketches, and data/materials identified in the Department handout for Variances or Administrative Variances. It is the responsibility of the applicant to provide evidence in support of the findings required by Subsection (F) of this Section (Findings and decision).

**E. Project review, notice, and hearing.** Each application shall be reviewed by the Director to ensure that the proposal complies with this Section, and all other applicable requirements of this Development Code.

**1. Variance.** The Commission shall conduct a public hearing on an application for a Variance before a decision. Notice of the public hearing shall be provided, and the hearing shall be conducted in compliance with Chapter 18.96 (Public Hearings).

**2. Administrative Variances.** Before a decision on an Administrative Variance, the City shall provide notice of a public hearing in compliance with Chapter 18.96 (Public Hearings).

**a. Initial notice.** The notice shall state that the Director will decide whether to approve or disapprove the Administrative Variance application on a date specified in the notice, and that a public hearing will be held only if requested in writing by any interested person before the specified date for the decision.

**b. Notice and conduct of hearing.** When a hearing is requested, notice of the hearing shall be provided in compliance with Chapter 18.96 (Public Hearings), and the Director shall conduct the public hearing before a decision on the application in compliance with Chapter 18.96.

**F. Findings and decision.**

**1. General findings.** The review authority may approve a Variance or Administrative Variance only after first making all of the following findings:

- a. There are special circumstances applicable to the property, including size, shape, topography, location, or surroundings, so that the strict application of this Development Code deprives the property of privileges enjoyed by other property in the vicinity and within the same zoning district;
- b. The approval of the Variance or Administrative Variance includes conditions of approval as necessary to ensure that the adjustment granted does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and within the same zoning district; and
- c. The Variance or Administrative Variance is consistent with the General Plan and any applicable specific plan.

**2. Findings for off-site parking Variance.** The approval of a Variance to allow some or all of the parking spaces required for a nonresidential project to be located off site, or to allow in-lieu fees or facilities instead of the required on-site parking spaces, shall require that the review authority first make both of the following findings in compliance with Government Code Section 65906.5, instead of those required by Subsection (F)(1) of this Section.

- a. The Variance will be an incentive to, and a benefit for, the nonresidential development; and
- b. The Variance will facilitate access to the nonresidential development by patrons of public transit facilities, particularly guideway facilities.

**3. Reasonable accommodation.** The review authority may also grant a Variance or Administrative Variance to the site planning or development standards of this Development Code in compliance with this Section, based on the finding that the Variance or Administrative Variance is necessary to accomplish a reasonable accommodation of the needs of a disabled person in compliance with the Americans with Disabilities Act (ADA). (Housing Element, Program H-3.9.1.)

**G. Conditions of approval.** In approving a Variance or Administrative Variance, the review authority may impose any conditions deemed reasonable and necessary to ensure that the approval will comply with the findings required by Subsection (F) of this Section (Findings and decision). The violation of any required condition shall constitute a violation of this Section and may constitute grounds for revocation of the permit.

**H. Post approval procedures.** The procedures and requirements in Chapter 18.76 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 9 (Land Use and Development Code Administration), shall apply following a decision on an application for a Variance or Administrative Variance.

(Ord. 930, § 2, passed 06-12-2017)

## 18.42.057 - Cannabis Retail

- A. Applicability.** Where allowed by Article 2 (Zoning Districts and Allowable Land Uses), cannabis retail shall comply with the standards of this Section. These standards apply in addition to the other provisions of this Development Code and requirements imposed by Chapter 9.30 and any required State licenses prior to operation.
- B. Definitions.** Definitions of the cannabis retail facilities regulated by this Section are in Article 10 (Definitions) under "Cannabis."
- C. Standards for Cannabis Retail.** A minor use permit for cannabis retail shall be approved if it complies with the following standards:
- 1. Additional Permits and Licenses Required.** A cannabis storefront retail business shall obtain a cannabis business permit subject to Chapter 9.30 and any required State licenses prior to operation.
  - 2. Operation Requirements.**
    - a. Odor.** Cannabis cultivations shall use the best available technology to ensure odors are not detected on adjacent or nearby property or areas open to the public.
    - b. Hours of Operation.** Cannabis retail may operate between the hours of 9:00 a.m. to 9:00 p.m. up to 7 days per week unless the review authority imposes more restrictive hours due to the particular circumstances of the application. The basis for any restriction on hours shall be specified in the permit. Cannabis retail uses shall only be permitted to engage in delivery services during hours that the storefront is open to the public, unless the review authority permits delivery outside these hours.
    - c. Lighting and Screening.** Projects that are on properties adjacent to residential properties shall comply with §§ 18.30.050(F) and 18.30.070.
    - d. On-Site Consumption.** The consumption of cannabis at a cannabis retail use or within the parking lot or public right-of-way is prohibited.
    - e. Drive-Through Services.** Drive-through or walk-up window services in conjunction with cannabis retail are prohibited.
  - 3. Location Requirements.** In order to avoid the concentration of cannabis retail land uses and maintain the downtown commercial character, and compatibility with adjacent residential uses, a cannabis retail business shall not be:
    - a.** Located within 150 feet of a school providing instruction in kindergarten or any grades 1 through 12, a child day care center or facility, a youth center as defined in the State of California Health and Safety Code Section 11353.1(e)(2), or a park. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school, youth center, day care facility, and/or park to the closest property line of the lot on which the cannabis business is proposed.
  - 4. Accessory Uses.** The primary use of a cannabis retail use shall be to sell products directly to on-site customers.
    - a. Accessory Uses.** The following uses are permissible as accessory uses to cannabis retail. More than one accessory use is permissible; however, each accessory use shall not exceed the total square footage of the primary use.
      - i.** Office, nursery (non-flowering) cultivation for on-site sales only; retail delivery; on-site distribution, craft cannabis manufacturing – no volatile solvents permitted, distribution, wholesale.
      - ii.** Fire suppression sprinklers are required in all buildings with on-site nursery cultivation located in commercial districts. Nursery cultivation as an accessory use shall also comply with § 18.42.055, Commercial Cannabis Cultivation.
    - b. Minor Use Permit.** If a permitted cannabis retail use chooses to provide an accessory use or services at a later date, a minor use permit shall be required.
    - c. Accessory Delivery.** Sales may also be conducted by delivery, subject to the requirements of § 18.42.059.

(Ord. 979, § 3, passed 6-13-2022)

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**From:** [Jacob Patterson](#)  
**To:** [cdd](#); [Cherry, Juliana](#)  
**Cc:** [Cervenka, Neil](#); [Ducey, Peggy](#); [Marie Jones](#)  
**Subject:** Fwd: Comment and Concern About Variance 223 (VAR 2-23)  
**Date:** Friday, October 6, 2023 11:17:19 AM  
**Attachments:** [Cannabis retail variance 18.71.070.pdf](#)

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Community Development Department,

I noticed that the Planning Commission meeting materials do not include my prior submitted written comment about the requested variance, which I submitted pursuant to the public hearing notice (see below). This oversight should be corrected ASAP because it deals with the central issue if a variance is even possible at this location;. According to case law regarding variances and the plain language of our own code, which is included in the staff report, the specific prohibition of cannabis retail land uses within 150 feet of a youth center is not something that can be adjusted through the variance process.

Please distribute this comment to the Planning Commission without delay and include it in the agenda materials as a public comment for the 10/11/23 PC meeting, agenda item 6B.

Regards,

--Jacob

----- Forwarded message -----

**From:** **Jacob Patterson** <[jacob.patterson.esq@gmail.com](mailto:jacob.patterson.esq@gmail.com)>  
**Date:** Fri, Sep 29, 2023 at 9:49 AM  
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**To:** CDD User <[cdd@fortbragg.com](mailto:cdd@fortbragg.com)>, <[jcherry@fortbragg.com](mailto:jcherry@fortbragg.com)>  
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- b. The Variance will facilitate access to the nonresidential development by patrons of public transit facilities, particularly guideway facilities.

**3. Reasonable accommodation.** The review authority may also grant a Variance or Administrative Variance to the site planning or development standards of this Development Code in compliance with this Section, based on the finding that the Variance or Administrative Variance is necessary to accomplish a reasonable accommodation of the needs of a disabled person in compliance with the Americans with Disabilities Act (ADA). (Housing Element, Program H-3.9.1.)

**G. Conditions of approval.** In approving a Variance or Administrative Variance, the review authority may impose any conditions deemed reasonable and necessary to ensure that the approval will comply with the findings required by Subsection (F) of this Section (Findings and decision). The violation of any required condition shall constitute a violation of this Section and may constitute grounds for revocation of the permit.

**H. Post approval procedures.** The procedures and requirements in Chapter 18.76 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 9 (Land Use and Development Code Administration), shall apply following a decision on an application for a Variance or Administrative Variance.

(Ord. 930, § 2, passed 06-12-2017)

## 18.42.057 - Cannabis Retail

- A. Applicability.** Where allowed by Article 2 (Zoning Districts and Allowable Land Uses), cannabis retail shall comply with the standards of this Section. These standards apply in addition to the other provisions of this Development Code and requirements imposed by Chapter 9.30 and any required State licenses prior to operation.
- B. Definitions.** Definitions of the cannabis retail facilities regulated by this Section are in Article 10 (Definitions) under "Cannabis."
- C. Standards for Cannabis Retail.** A minor use permit for cannabis retail shall be approved if it complies with the following standards:
- 1. Additional Permits and Licenses Required.** A cannabis storefront retail business shall obtain a cannabis business permit subject to Chapter 9.30 and any required State licenses prior to operation.
  - 2. Operation Requirements.**
    - a. Odor.** Cannabis cultivations shall use the best available technology to ensure odors are not detected on adjacent or nearby property or areas open to the public.
    - b. Hours of Operation.** Cannabis retail may operate between the hours of 9:00 a.m. to 9:00 p.m. up to 7 days per week unless the review authority imposes more restrictive hours due to the particular circumstances of the application. The basis for any restriction on hours shall be specified in the permit. Cannabis retail uses shall only be permitted to engage in delivery services during hours that the storefront is open to the public, unless the review authority permits delivery outside these hours.
    - c. Lighting and Screening.** Projects that are on properties adjacent to residential properties shall comply with §§ 18.30.050(F) and 18.30.070.
    - d. On-Site Consumption.** The consumption of cannabis at a cannabis retail use or within the parking lot or public right-of-way is prohibited.
    - e. Drive-Through Services.** Drive-through or walk-up window services in conjunction with cannabis retail are prohibited.
  - 3. Location Requirements.** In order to avoid the concentration of cannabis retail land uses and maintain the downtown commercial character, and compatibility with adjacent residential uses, a cannabis retail business shall not be:
    - a.** Located within 150 feet of a school providing instruction in kindergarten or any grades 1 through 12, a child day care center or facility, a youth center as defined in the State of California Health and Safety Code Section 11353.1(e)(2), or a park. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school, youth center, day care facility, and/or park to the closest property line of the lot on which the cannabis business is proposed.
  - 4. Accessory Uses.** The primary use of a cannabis retail use shall be to sell products directly to on-site customers.
    - a. Accessory Uses.** The following uses are permissible as accessory uses to cannabis retail. More than one accessory use is permissible; however, each accessory use shall not exceed the total square footage of the primary use.
      - i.** Office, nursery (non-flowering) cultivation for on-site sales only; retail delivery; on-site distribution, craft cannabis manufacturing – no volatile solvents permitted, distribution, wholesale.
      - ii.** Fire suppression sprinklers are required in all buildings with on-site nursery cultivation located in commercial districts. Nursery cultivation as an accessory use shall also comply with § 18.42.055, Commercial Cannabis Cultivation.
    - b. Minor Use Permit.** If a permitted cannabis retail use chooses to provide an accessory use or services at a later date, a minor use permit shall be required.
    - c. Accessory Delivery.** Sales may also be conducted by delivery, subject to the requirements of § 18.42.059.

(Ord. 979, § 3, passed 6-13-2022)

## 18.71.070 - Variance and Administrative Variance

**A. Purpose.** The Variance and Administrative Variance provide a process for City consideration of requests to waive or modify certain standards of this Development Code when, because of special circumstances applicable to the property, including location, shape, size, surroundings, topography, or other physical features, the strict application of the development standards otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same zoning district.

**B. Applicability.** A Variance or Administrative Variance may be granted to waive or modify any requirement of this Development Code except: allowed land uses; residential density; specific prohibitions (for example, prohibited signs), or procedural requirements.

**C. Review authority.**

**1. Variance.** A Variance application shall be reviewed, and approved or disapproved, by the Commission.

**2. Administrative Variance.** An Administrative Variance application shall be reviewed, and approved or disapproved, by the Director.

a. The Director may grant an Administrative Variance to reduce any of the following requirements of this Development Code up to a maximum of 25%:

- i) Distance between structures;
- ii) Parcel dimensions (not including area);
- iii) Setbacks;
- iv) On-site parking, loading, and landscaping;
- v) Sign regulations (other than prohibited signs);
- vi) Lot coverage; and/or
- vii) Floor area ratio.

b. The Director may choose to refer any Administrative Variance application to the Commission for hearing and decision.

**D. Application filing and processing.** An application for a Variance or Administrative Variance shall be filed and processed in compliance with Chapter 18.70 (Permit Application Filing and Processing). The application shall be accompanied by detailed and fully dimensioned plans, architectural drawings and sketches, and data/materials identified in the Department handout for Variances or Administrative Variances. It is the responsibility of the applicant to provide evidence in support of the findings required by Subsection (F) of this Section (Findings and decision).

**E. Project review, notice, and hearing.** Each application shall be reviewed by the Director to ensure that the proposal complies with this Section, and all other applicable requirements of this Development Code.

**1. Variance.** The Commission shall conduct a public hearing on an application for a Variance before a decision. Notice of the public hearing shall be provided, and the hearing shall be conducted in compliance with Chapter 18.96 (Public Hearings).

**2. Administrative Variances.** Before a decision on an Administrative Variance, the City shall provide notice of a public hearing in compliance with Chapter 18.96 (Public Hearings).

**a. Initial notice.** The notice shall state that the Director will decide whether to approve or disapprove the Administrative Variance application on a date specified in the notice, and that a public hearing will be held only if requested in writing by any interested person before the specified date for the decision.

**b. Notice and conduct of hearing.** When a hearing is requested, notice of the hearing shall be provided in compliance with Chapter 18.96 (Public Hearings), and the Director shall conduct the public hearing before a decision on the application in compliance with Chapter 18.96.

**F. Findings and decision.**

**1. General findings.** The review authority may approve a Variance or Administrative Variance only after first making all of the following findings:



- a. There are special circumstances applicable to the property, including size, shape, topography, location, or surroundings, so that the strict application of this Development Code deprives the property of privileges enjoyed by other property in the vicinity and within the same zoning district;
- b. The approval of the Variance or Administrative Variance includes conditions of approval as necessary to ensure that the adjustment granted does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and within the same zoning district; and
- c. The Variance or Administrative Variance is consistent with the General Plan and any applicable specific plan.

**2. Findings for off-site parking Variance.** The approval of a Variance to allow some or all of the parking spaces required for a nonresidential project to be located off site, or to allow in-lieu fees or facilities instead of the required on-site parking spaces, shall require that the review authority first make both of the following findings in compliance with Government Code Section 65906.5, instead of those required by Subsection (F)(1) of this Section.

- a. The Variance will be an incentive to, and a benefit for, the nonresidential development; and
- b. The Variance will facilitate access to the nonresidential development by patrons of public transit facilities, particularly guideway facilities.

**3. Reasonable accommodation.** The review authority may also grant a Variance or Administrative Variance to the site planning or development standards of this Development Code in compliance with this Section, based on the finding that the Variance or Administrative Variance is necessary to accomplish a reasonable accommodation of the needs of a disabled person in compliance with the Americans with Disabilities Act (ADA). (Housing Element, Program H-3.9.1.)

**G. Conditions of approval.** In approving a Variance or Administrative Variance, the review authority may impose any conditions deemed reasonable and necessary to ensure that the approval will comply with the findings required by Subsection (F) of this Section (Findings and decision). The violation of any required condition shall constitute a violation of this Section and may constitute grounds for revocation of the permit.

**H. Post approval procedures.** The procedures and requirements in Chapter 18.76 (Permit Implementation, Time Limits, and Extensions), and those related to appeals and revocation in Article 9 (Land Use and Development Code Administration), shall apply following a decision on an application for a Variance or Administrative Variance.

(Ord. 930, § 2, passed 06-12-2017)

**From:** [Jacob Patterson](#)  
**To:** [cdd](#)  
**Subject:** Public Comment -- 10/11/23 PC Mtg., Item Nos. 6A & 6B  
**Date:** Friday, October 6, 2023 12:18:43 PM

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Planning Commission,

This is kind of technical but the agenda descriptions for both items should have included the disclosure that the City is trying to claim CEQA exemptions from further environmental review, which is supposed to be included according to relatively recent case law applying the Brown Act. Technically, your determinations about agenda items that were not properly noticed could be set aside if challenged. I happen to agree with the substance of the CEQA determinations and think both items are exempt for the reasons laid out in the staff reports and draft resolutions but that doesn't rectify the incomplete agenda descriptions, which are primarily for the public's benefit to ensure that anyone reading the agenda understands what is being proposed. Our CDD has a long history of failing to properly notice agenda items, particularly public hearings, and this meeting appears to fall into that troubling pattern.

Regards,

--Jacob

### Planning Commission item 6b 10/11/2023

Paul Clark <pclark@fortbraggrealty.co>

Mon 10/9/2023 9:04 AM

To:cdd <cdd@fortbragg.com>

Cc:Paul Clark <pclark@fortbraggrealty.co>;Phillip Jago <pjfortbragg@icloud.com>

23-338 Version: 1

Name:

Type: Planning Resolution Status: Public Hearing

File created: 10/5/2023 In control: [Planning Commission](#)

On agenda: 10/11/2023 Final action:

Title: Receive Report, Hold a Public Hearing, Deliberate, and Approve Use Permit 1-23, Cannabis Business Permit 1-23 and Variance 2-23 for Emerald Triangle Cannabis at 546 S. Main Street, and Ensure Associated CEQA Determination is Consistent with the Coastal Act

Attachments: 1. [Staff Report UP 1-23, CBP 1-23, VAR 2-23](#), 2. [Att. 1 Site Plan](#), 3. [Att. 2 PC Resolution](#), 4. [Att. 3 Public Comments](#), 5. [Att. 4 Public Hearing Notice English - UP 1-23](#), 6. [Att. 5 Public Hearing Notice Espanol - UP 1-23](#)

Just to clarify I was the agent for the former owners of this building, that had to approve the application for this site, so I was agent for them mainly. The building was sold to this applicant 05/19/2023 it took some time to get to this point. The city would not process the request unless the then building owner Mr. And Mrs. Gee, signed the application or their agent. The new owns should be complimented on the major improvements they have made on this Main street property. I do not plan on attending this meeting, but am available if you have any questions. Not sure I can answer much.

Thank you

Paul Clark  
DRE 00640014  
809 North Main Street  
Fort Bragg, CA 95437  
707-964-0811  
pclark@fortbraggrealty.co

October 9, 2023

To: Fort Bragg Planning Commission

From: Marianne McGee

RE: Emerald Triangle Relocation

Dear Chair Logan,

I appreciate the opportunity to provide input and to support the relocation of Emerald Triangle from its current location on the corner of Chestnut and Main to 546 S. Main Street.

Emerald Triangle has benefited the City of Fort Bragg by providing an important service to many in the community, improving its current location by installing disabled access and paying taxes as a successful business.

The drawback to the current location is the small parking lot, which enters right onto Chestnut. That lot is dangerous as it's so small and close to the street with many cars flying around the corner from Main Street. It is extremely difficult to maneuver my Toyota out of the disabled space as it's so close to Chestnut. The restaurant sharing the 5 spaces is opening back up again, so traffic will increase again.

I am thankful that Emerald Triangle has finally found a product that enables me to sleep. Staff there has worked closely with me to find it, as insomnia has made my disability worse. I see other elders shopping there, many saying the products are effective for pain relief.

This new location is not in the Central Business District, so the objections raised on a previous potential business are irrelevant and there is only one person with concerns. Additionally, the Fort Bragg Police Department and Sea Stars Studio appear to have no objections either.

As a resident of the City for over 25 years, that building has had a variety of businesses and often been vacant. The Hypes have a successful business and have improved the rental location, so I expect this will continue.

Please enable Emerald Triangle to move to their new location, making it safer for all of us.

## Flynn, Maria

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**From:** Jacob Patterson <jacob.patterson.esq@gmail.com>  
**Sent:** Wednesday, October 11, 2023 2:20 PM  
**To:** cdd  
**Cc:** Cervenka, Neil; Marie Jones; Cherry, Juliana  
**Subject:** Public Comment -- 10/11/23 PC Mtg., Item No. 6B, Emerald Triangle Dispensary  
**Attachments:** 20231011\_094705.jpg

Planning Commission & CDD,

Please note that the following is my personal opinion and cannot be relied upon as legal advice even though I am an attorney with land use expertise. You should consult the City Attorney's office or special counsel for any legal analysis and advice about this or other entitlement reviews.

That being said, I actually think this is a good local business in its current location and even think it is unfortunate that it is prohibited at the proposed location, but I am dismayed that I have to object to this public hearing proceeding at all because of procedural issues with the public hearing notice. Weirdly, the very same issue occurred for the last cannabis retail permit application when the City failed to make sure the applicant posted the required notices in a prominent location at the project site, which is required by the ILUDC. (One would think we would learn from past errors but alas...) For the Sunshine-Holistic application, that actually became one of the two findings of denial when the Planning Commission denied that project--they also found it was not compatible with the existing land uses in the vicinity. In this case, the notices have not been properly posted again. Since the public hearing was scheduled and noticed in the paper--only one of the forms of notice that is required by the applicable provisions of the ILUDC--I have checked the project site daily to see if the physical notices on the project site was being displayed. After checking for a final time today, the day of the hearing itself and a day when City Hall is not even open to allow any interested member of the public to seek access to application materials and information, I can attest that there has never been a notice of the public hearing posted on the project site, let alone in a prominent location. As a result, the Planning Commission cannot make the required findings for approval since the project cannot be found to have met all ILUDC requirements because the required public hearing notice has not been posted on the project site as required.

Moreover, the prior notice of pending permit was not displayed either until it was posted some time yesterday. That notice, which is totally different than the notice of the public hearing, asserts it was posted 3-31-2023 but even if that had been the case, it was removed at some point prior to when the public hearing was supposed to be noticed and only replaced yesterday, a mere day prior to the public hearing and at a time when any interested person wouldn't even have the ability to go into CDD to seek relevant information to inform their participation. This is not procedurally acceptable and the public hearing, IMO, needs to be rescheduled and noticed properly and fully. The alternative is much more severe, which is denying the permit application because it was not noticed properly as the Planning Commission did for the Sunshine-Holistic cannabis retail permit application. This is true because it is critically important that the City interpret and apply its zoning code in a consistent manner across projects. If we deny one permit because of lack of posted notice, we need to deny a similarly situated permit for the same reasons or the City could be accused of making arbitrary and capricious permit entitlement decisions treating some applications more favorably than others. Consistency in approach across permits is a fundamental requirement for defensible entitlement review decisions. In addition, you shouldn't feel bad for the applicant since it was their responsibility (in conjunction with City planning staff) to actually post the required notice of public hearing on the project site in a prominent location and they clearly failed to do so.

Of the two options, continuance to a new public hearing that is properly noticed or denial of the permit, it probably makes more sense to deny the permit with two findings of denial: (1) the notice of public hearing was not posted as required, and (2) cannabis retail dispensaries are not permitted within 150 feet of an existing day care or youth center and Sea Star Studios is closer than 150 feet away. As I explained in my prior comment, my opinion is that this is not something that can be waived via the variance process. Although I relied on interpreting the plain language of the ILUDC to come to that conclusion, it is actually a matter of state law. California has determined as a matter of policy that cannabis retail cannot be located within an exclusion zone around youth-oriented land uses and our ILUDC only reflects this state law requirement (i.e., we didn't come up with this policy choice on our own). The state default exclusion zone is 600 feet but we exercised the only local control that the state left to us and made the exclusion zone smaller at a 150 foot radius measured from property line to property line. We don't have the authority to ignore this aspect of state law and although we properly exercised our local land use authority to shrink the radius of the exclusion zone within which cannabis retail land uses are strictly prohibited, we do not have the authority to change the radius of the exclusion zone on an ad hoc, project-by-project basis, through variance or otherwise, despite what is in the staff report. You may not like the result of this policy directive but this is not about your personal opinions and preferences, it is about reviewing an entitlement application objectively and applying the applicable rules and procedures based on the verified facts. I feel bad that this applicant probably invested time and money seeking to relocate to their new building and I suspect that CDD staff failed to flag these critical issues but apparent mistakes by City staff don't excuse an applicant from the requirements of the ILUDC and relevant state law. It is also irrelevant to your decision whether or not Sea Star studios objects to cannabis retail sales this close to their youth center because the exclusion zone is absolute and not dependent on the parties involved approving or objecting to the proposed nearby location. Please don't get distracted by irrelevant factors or engage in emotional decision-making in your review. To ignore the applicable code and state law would result in reversible decisions due to an abuse of the Planning Commission's discretion.

Regards,

--Jacob



## NOTICE OF PENDING PERMIT

THE CITY OF FORT BRAGG IS PROCESSING AN APPLICATION  
FOR DEVELOPMENT ON THIS SITE

**PROPOSED DEVELOPMENT:**

Minor use permit for  
Cannabis retail

STREET ADDRESS: 546 S. MAIN ST

ASSESSOR PARCEL NUMBER(S): 018-020-48

APPLICANT'S NAME: DREA HYPES

DATE NOTICE POSTED: 3-31-2023

**For further information, please contact:**

City of Fort Bragg  
Community Development Department  
416 North Franklin Street  
Fort Bragg, CA 95437  
Tel: 707-961-2827

NOTE: At the time an application is submitted for filing, the applicant must complete and post this notice in a conspicuous place, easily read by the public and as close as possible to the project site. A notice of the public hearing will be mailed 10 days prior to the public hearing to property owners within 300 feet of the project site and all other parties requesting notification.

Date: October 11, 2023

To: Fort Bragg Planning Commission

From: Jacob Patterson

Re: Use Permit 1-23, Cannabis Business Permit 1-23 and Variance 2-23 for Emerald Triangle Cannabis at 546 S. Main Street

I have one final comment and objection concerning the public hearing tonight, which is I was not provided access prior to this public hearing to the relevant permit application materials by the City of Fort Bragg Community Development Department despite several attempts to review them. The result is that I have not been provided the opportunity to fully inform my public comments with the relevant information, much like any interested member of the public who walked by the project site wouldn't have had any way to know there was a scheduled public hearing coming up.

This is troubling for several reasons but primarily because the notice of public hearing directed any member of the public to the Community Development Department where such records were supposed to be available for public review. Likewise, Juliana Cherry did not respond to any of my written inquiries even though her email address was listed as the appropriate contact for any questions about the permit applications. I also contacted the City Manager and Assistant City Manager and they also did not provide the information or responses to my timely inquiries. The one time I was able to actually speak with someone at the public information counter of the Community Development Department about this project, I asked to receive information about the requested variance but was told that nothing existed yet, which was odd since it was listed in the public hearing notice as one of the requested entitlements and the City's ILUDC requires complete applications before permit reviews are supposed to proceed. The first information I was able to review about the variance or the rest of the entitlement applications is in the staff report from Marie Jones but that is just her summary and analysis not the underlying information and application materials.

City of Fort Bragg  
Received

OCT 11 2023