

AGENCY: Planning Commission
MEETING DATE: October 11, 2023
PREPARED BY: MJC
PRESENTED BY: Marie Jones

AGENDA ITEM SUMMARY REPORT

APPLICATION NO.: Use Permit 1-23 (UP 1-23), Cannabis Business Permit 1-23 (CBP 1-23), Variance 2-23 (VAR 2-23); 4-4-2023

OWNER: Drea Hypes, Gerald Hypes

APPLICANT: Emerald Triangle Cannabis

AGENT: Paul Clark

PROJECT: Retail Cannabis Dispensary

LOCATION: 546 S. Main St.

APN: 018-020-48

LOT SIZE: 14,914 Square Feet

ZONING: Highway Visitor Commercial (CH), Inland Zone.

ENVIRONMENTAL DETERMINATION: Exempt from CEQA under 15301 Class 1 Existing Facilities

SURROUNDING LAND USES:
NORTH: CG – Residential
EAST: CG – Mixed commercial residential
SOUTH: CG – Office and Car wash
WEST: CG – GP Mill Site, Highway 1

APPEALABLE PROJECT: Can be appealed to City Council

RECOMMENDED ACTION

Receive report, hold a public hearing, deliberate and approve Use Permit 1-23, Cannabis Business Permit 1-23 ad Variance 2-23.

ALTERNATIVE ACTIONS

1. Receive report, hold a public hearing, deliberate and provide direction to prepare a resolution for denial.
2. Receive report, hold a public hearing, continue the public hearing and request additional information.

BACKGROUND

The building located at 546 S. Main St. has been utilized over the years by many different businesses, including: restaurants, retail, office and non-profit uses. It has also been vacant at various times for years at a time and is a difficult building to establish a successful business. It was recently purchased with the intention of moving an established retail cannabis dispensary, Emerald Triangle Cannabis, to this new location. The applicants note in their application that they are “showcasing local Mendocino and Humboldt brands and have a 5 Star customer rating on Google, and we strive to make our community a fun place to live and visit.”

Usually, a Cannabis Business Permit is reviewed and approved concurrently with a Minor Use Permit and is heard and decided by the Director of Community Development. However, the Director can and did elevate this permit to a Use Permit, as the project may require a Variance. A Use Permit requires review and consideration by the Planning Commission.

GENERAL PLAN CONSISTENCY

The project was reviewed for consistency with the General Plan and was found to be consistent with all General Plan policies, including the following relevant General Plan Policies.

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| Land Use Policy LU-3.5 Encourage Smart Growth: Locate new residential, commercial, or industrial development within, contiguous with, or in close proximity to, existing developed areas. |
| CONSISTENT – Project is located in an existing retail building along highway 1 in an area developed to serve visitors and retail uses. |
| Land Use Policy LU-3.6 Re-Use of Existing Buildings: Encourage the adaptive re-use and more complete utilization of buildings in the Central Business District and other commercial districts. |
| CONSISTENT – Project will reuse an existing building that has had many years of unstable occupancy and vacancy. This building is more likely to remain occupied if it is occupied by a destination tenant, a tenant which people drive to specifically for retail or services. The proposed use is a destination business and so may result in a more complete utilization of this small commercial building. |
| Safety Policy SF-5.1 Demand for Police Services: Review development proposals for their demand for police services and implement measures to maintain adequate police services. |
| CONSISTENT – The Police Department has reviewed the project and does not have any concerns for approval, additionally the operators have an existing cannabis retail business at the corner of Chestnut and Main street which is operated without excessive calls for service. |

Based on the review of the project, the Planning Commission can make the finding that approval of the Use Permit is consistent with the Inland General Plan.

USE PERMIT ANALYSIS

The project was evaluated for consistency with the ILUDC. The project was found to be consistent with the Highway Visitor Commercial Zone per Table 2-6 Allowed Land Uses and Permit Requirements for Commercial Zoning Districts in ILUDC §18.22.030.

Additionally, ILUDC requires that the project comply with section 18.22.030(C)5:

5. CH (Highway Commercial) district.

- a. **Secondary uses oriented to local clientele may be permitted where the primary use of a site is oriented to or serves visitor, regional, or transient traffic; and**
- b. **Uses oriented to local clientele may be allowed where visitor-oriented uses are precluded because of environmental concerns or other site specific constraints.**

The project is a retail dispensary that will serve locals and visitors alike. Indeed, many tourists come to Fort Bragg to acquire Cannabis and thus this use could be considered primarily a visitor serving use. The finding can be made that it is consistent with Section 18.22.030(C)4.

This project was reviewed for compliance with the Specific Land Use Standards in 18.42.057 Cannabis Retail, as this is the trigger for the Use Permit requirement. Please see analysis below.

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.

The proposed operation does not include cultivation and odor is not an issue.

- 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.

The proposed business would be open between the hours of 9am to 9pm.

- c. **Lighting and Screening.** Projects that are on properties adjacent to residential properties shall comply with §§ [18.30.050\(F\)](#) and [18.30.070](#).

The proposed project is not adjacent to any residential properties. The property to the north is a real estate office and the property to the south is a car wash. However the building does not comply with City regulations regarding lighting, and MJC recommends Special Condition 1.

Special Condition 1. Prior to issuance of the Use Permit, CBP and Variance, the applicant shall replace all non-compliant external lights with downward facing night-sky compliant lights at the front and exterior of the building.

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.

The applicant does not propose to allow onsite consumption of cannabis.

e. Drive-Through Services. Drive-through or walk-up window services in conjunction with cannabis retail are prohibited.

The applicant has not proposed to establish a walk-up window or drive through cannabis retail service.

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.

The recently established Sea Star Studios is located at 579 S Franklin St which is 145 feet from the proposed Emerald Triangle business location, and Sea Star Studios appears to conform with the definition of a “Youth Center” per the City’s and the State cannabis codes. According to Sea Star Studio’s website:

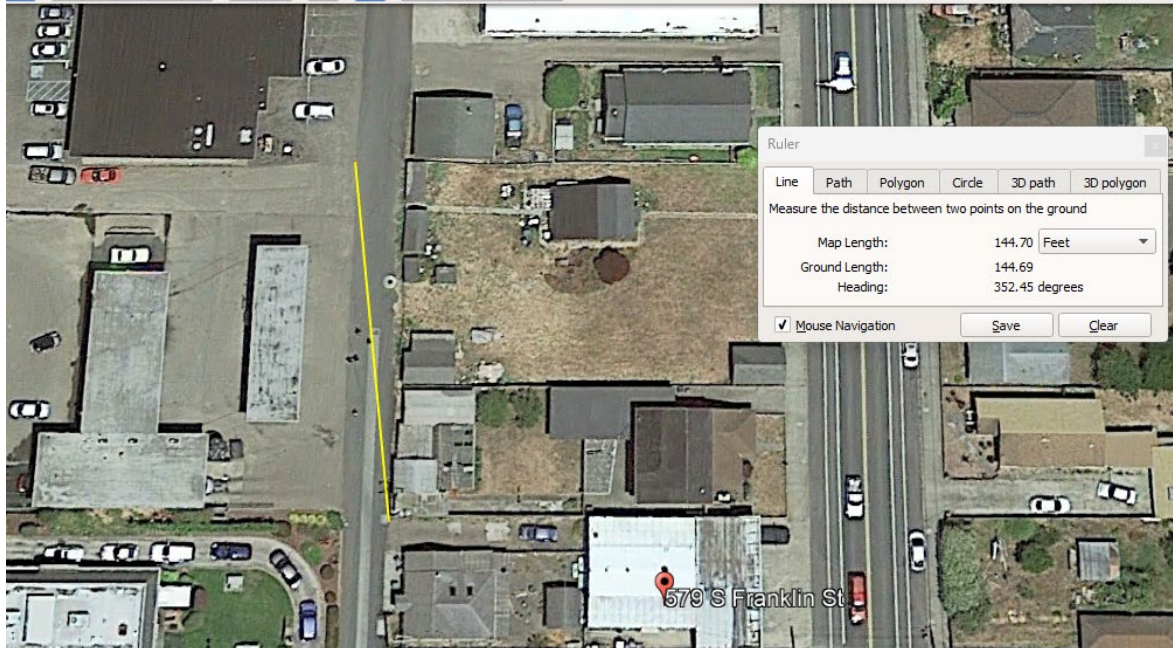
“Sea Star Studios offers creative arts classes for all ages, with a focus on early childhood classes. Children can explore our fun nautical themed play gym and our cozy reading nook, while families and friends can gather, relax and re-connect!”

A youth Center is defined in the Health and Safety Code as follows:

(2) “Youth center” means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

City Staff reached out to the operators of Sea Star Studios to find out if they would object to the sale of cannabis products on a parcel located within 144 feet of their parcel, and they indicated that they do not object to the operation of this business.

As noted in the google map below, the parcel on which the proposed cannabis retail store is located is 144 feet from Sea Star Studios, while the buildings are located 207 linear feet from each other.



The above analysis means that the applicant is precluded from approval of a Use Permit unless the Planning Commission finds either that: 1) the Sea Star Studios does not qualify as a Youth Center; or 2) the Planning Commission grants a variance for the project.

The Planning Commission could make the determination that Sea Star Studios is a Youth Center, in which case MJC has completed a variance analysis for the project below.

VARIANCE ANALYSIS

Section 18.71.070 sets the standards and identifies the required findings for the Planning Commission to determine if a Variance is warranted for this project. As noted in section 18.71.070 the purpose of a variance is to:

“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.”

Further a 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.”

To grant a Variance the Planning Commission must make all three of the following findings (in bold):

- 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;

The proposed project site is a relatively small Highway Visitor Commercial parcel which has had a long history (25+ years) of failed businesses and building vacancy. This location and building clearly pose a difficulty to business success in part because this stretch of Highway 1 is fast moving, the parcel is small and not visible with an unattractive building. Based on this history of vacancies and business failure, only a destination retail business will be successful in this location. A destination store is a retail operation that consumers find attractive for specific reasons and are therefore willing to make a special trip solely for the purpose of shopping at that location. The proposed Cannabis Retail store would be a destination retail business, because people do make special trips to purchase Cannabis, this is borne out by the business's success in its current location which has similar issues (high past vacancy, business turn over and failure). The Planning Commission could find that the parcel's size, zoning and location make it a very difficult parcel on which to have a successful business in conformance with the Highway Visitor Commercial zoning and the Development Code. Additionally, the 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.

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

Special Condition 2 would reduce any potential impacts on the Sea Star Studios:

Special Condition 2: The applicant shall install a 6-foot-high security fence along the east and south parcel boundary to minimize any potential impacts to the Sea Star Studios Youth Center.

c. The Variance or Administrative Variance is consistent with the General Plan and any applicable specific plan.

As noted above the proposed business operation in this location is consistent with the General Plan.

CANNABIS BUSINESS LICENSE

MJC reviewed the application to ensure that it complies with Municipal Code Section 9.30.130 Operating Requirements:

| Code Section | Project | Consistent? |
|---|---|-------------|
| A. The design, location, size and operating characteristics of the cannabis business shall comply with the findings and conditions of any applicable discretionary permit obtained for its operation. | The project as conditioned by the Use Permit and Variance will insure compliance with this requirement. | Yes. |
| B. A cannabis business use shall maintain a current register of the names of all employees currently employed by the use. | See above. | Yes |

| Code Section | Project | Consistent? |
|--|--|----------------------|
| C. The building entrance to a cannabis business shall be clearly and legibly posted with a notice indicating that persons under the age of 21 are precluded from entering the premises unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian. | The application did not include a sample sign and MJC recommends Special Condition 3. Special Condition 3: Prior to issuance of the Use Permit, the applicant shall install a sign on the building that limits entrance to those over 21 years of age. | Yes, as conditioned. |
| D. No cannabis business shall hold or maintain a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of the cannabis business use. | The applicant has not proposed to sell alcoholic beverages. | Yes |
| E. A cannabis business shall provide adequate security on the premises, including lighting and alarms, to ensure the safety of employees and visitors from criminal activity, including theft and unauthorized entry. | The Fort Bragg Police Department conducted a public safety review and has stated that they have identified no issues with the application. The application site plan includes installation of lighting, alarms and video surveillance. | Yes |
| F. A cannabis business shall provide the Chief of Police and Fire Chief with the name, phone number, and facsimile number of an on-site community relations staff person to whom one can provide notice if there is an emergency or there are operating problems associated with the cannabis business. The cannabis business management shall make every good faith effort to encourage residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the Police or Planning Department. | The business owner has provided their contact information to resolve any concerns with the business. | Yes |

The project was reviewed by the Fort Bragg Police Department and prior to issuance of a business license, the business will be inspected by the Fire Marshal.

The project was evaluated to determine if it met any grounds for **rejection** delineated in Section 9.30.100:

| Municipal Code Rejection | Project | Rejection |
|--|--|-----------|
| The business or conduct of the business at a particular location is prohibited by any local or state law, statute, rule, or regulation; | Location is allowable as conditions and with an approved Variance of 3% of the setback from a Youth Center. | No |
| The applicant has violated any local or state law, statute, rule, or regulation respecting a cannabis business; | Not as of the date of the public safety review. | No |
| The applicant has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit; | There is no material evidence to suggest this. | No |
| The applicant, his or her agent, or any person who is exercising managerial authority on behalf of the applicant has been convicted of a felony, or of a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution, or similar activities related to controlled substances, with the exception of cannabis related offenses for which the conviction occurred prior to passage of Proposition 215. A conviction within the meaning of this section means a guilty plea or verdict or a conviction following a plea of nolo contendere; | No convictions were found on the applicant's background check. | No |
| The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices; | No information was uncovered in public safety review. | No |
| The applicant is under 21 years of age; | The applicant is over 21. | No |
| The cannabis business does not comply with Title 18 (Inland Land Use and Development Code); | The project as conditioned and with the approval of all permits by the Planning Commission would comply with Title 18. | No |
| The required application or renewal fees have not been paid. | Applicant has paid all application fees. | No |

In order to approve the project, ILUDC 18.71.060(F)(4) requires several findings, including that, “The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle access... and public services... and utilities... to ensure that the type, density, and intensity of use being proposed would not endanger, jeopardize, or otherwise constitute a hazard to the public interest, health, safety, convenience, or welfare, or be materially injurious to the improvements, persons, property, or uses in the vicinity and zoning district in which the property is located.”

The applicant's plan addressed the following aspects of the business that related to this finding:

| Potential Impact | Applicant's plan | Sufficient |
|-------------------|---|---|
| Security | Applicant has provided a security plan in their application (see Attachment 1), which includes 16 surveillance cameras with high definition night vision auto activation, deep sentinel perimeter surveillance, an alarm system with siren, motion detector and security doors. | The proposed plan is sufficient, however, staff recommend that as a condition of approval, the applicant must have a final inspection by CDD/PD prior to opening for business. |
| Storage and Waste | The applicant offers no onsite consumption or manufacturing therefore standard waste management through C&S waste is sufficient. | Applicant's plan is sufficient. |
| Odor Control | Odor control is not an issue with retail cannabis. | Applicant's plan is sufficient. |
| Lighting | Applicant has not included a lighting plan. | This is an existing structure, however the existing lighting on the exterior of the building does not comply with the City's zoning code, therefore MJC recommends Special Condition 1. |
| Noise | This is a proposed retail use in Highway Visitor Commercial and no additional noise is expected that would be outside normal parameters for a retail store. | Sufficient |
| Parking | The site is located in a commercial development that has shared parking that is sufficient for the site. | Sufficient |

ENVIRONMENTAL DETERMINATION

This project is exempt from CEQA under section 15301 Existing Facilities because there will be no substantial changes to the structure and the use is similar to the previous use. There are no relevant exceptions to the exemption and there are no potential significant environmental impacts from this project.

ATTACHMENTS

1. Application & Site Plan
2. Resolution of the Fort Bragg Planning Commission Approving Use Permit 1-23 (UP 1-23), Cannabis Business Permit 1-23 (CBP 1-23), Variance 2-23 (VAR 2-23) for Emerald Triangle Cannabis to operate at 546 S. Main St.