

MEETING DATE: June 13, 2018

PREPARED BY: S. McCormick

PRESENTED BY: S. McCormick

AGENDA ITEM SUMMARY REPORT

APPLICATION NO.: Use Permit 1-18 (USP 1-18)

OWNER: Matt Huber

APPLICANT: The Cube Power of Three LLC

AGENT: Valerie Thornton

REQUEST: Use Permit to convert an existing vacant storefront in the Central Business District to a bar with live music (*Bar/Tavern*).

LOCATION: 338 N Franklin Street, Fort Bragg

ASSESSOR'S PARCEL NO.: 008-154-05

ENVIRONMENTAL DETERMINATION: Categorically Exempt from CEQA pursuant to Section 15303 – conversion of existing structures to new uses.

SURROUNDING LAND USES:

NORTH:	Mixed-Use, Central Business District
EAST:	Residential, Central Business District
SOUTH:	Commercial, Central Business District
WEST:	Commercial, Central Business District

APPEALABLE PROJECT: ☒ Can be appealed to City Council

PROJECT BACKGROUND AND DESCRIPTION

The subject property (Assessor Parcel Number 008-154-05) is a single story building with a mezzanine located at 334/336 N Franklin Street. An interior wall runs the length of the structure, dividing the building in two separate storefronts. Astoria, a home goods store occupies the southern portion of the building at 334 N Franklin Street. The northern storefront with the address of 336 N Franklin Street has been vacant for about seven years. This unit has been the subject of numerous code enforcement actions over recent years and currently has an open code enforcement case due to nuisance conditions relating to neglect of premises and unpermitted storage, which are a violations of the zoning ordinance.

The applicant is requesting a Use Permit to operate a bar with live music, serving pre-prepared food in the empty storefront at 336 N Franklin Street (Attachment 1 – Location Map).



View facing east of 334/336 N Franklin Street

ANALYSIS

Land Use and Policy Consistency. The Inland Land Use and Development Code (ILUDC) classifies and regulates the uses of land and structures within City Limits. The proposed project is considered a *Bar/Tavern*, which is an allowable land use with Use Permit approval in the Central Business District (CBD) zoning district. *Bar/Tavern* is defined as follows:

A business where alcoholic beverages are sold for on-site consumption, which are not part of a larger restaurant. Includes bars, taverns, pubs and similar establishments where any food service is subordinate to the sale of alcoholic beverages. May include dancing as an incidental use, if authorized by the Use Permit approval for the facility. Does not include adult entertainment business, which are separately defined.

The proposed project will primarily serve alcoholic beverages for on-site consumption and thus meets the definition of *Bar/Tavern* as a land use. The music and pre-prepared food offerings are considered 'incidental uses' and will be addressed through special conditions described later in this report. In order to approve this use permit, Planning Commission must find a *Bar/Tavern* at this location to be consistent with land use planning and policy, and a compatible use in the neighborhood.

The project would convert an underutilized and empty storefront into a visitor serving business, which complies with the ILUDC's stated CBD zoning objectives to encourage pedestrian oriented uses in the downtown core (ILUCD 18.22.030).

This project also complies with the Inland General Plan, which contains goals and policies to ensure the Central Business District remains the historic, civic, cultural and commercial core of the community. The following table lists and discusses the application's consistency with these requirements:

Goal LU-3 Ensure that the CBD remains the historic, civic, cultural, and commercial core of the community	
Policy LU-3.3 Historic Buildings and Mixed Uses: In the Central Business District and in other commercial areas with historic residential structures, encourage residential uses, mixed residential, and commercial uses, and the preservation of historic structures.	
<ul style="list-style-type: none"> The façade of the building will be maintained as a historic element. 	Consistent
<ul style="list-style-type: none"> The single structure will remain two storefronts with mixed commercial uses. 	Consistent
<ul style="list-style-type: none"> Interior remodel will address deferred maintenance and help preserve a neglected historic structure. 	Consistent
Policy LU-3.6 Re-Use of Existing Buildings: Encourage the adaptive reuse and more complete utilization of building in the Central Business District and other commercial districts	
<ul style="list-style-type: none"> The proposed site has been vacant and underutilized for several years and the proposed project would be a visitor serving and pedestrian-oriented business. 	Consistent

The application proposes no exterior modifications to the façade of the building; however, a back patio is proposed in the rear of the building (see photo below). An extensive interior remodel to construct a bar, storage area and ADA compliant restrooms is included as part of this proposed project (Attachment 2 – Floor Plan). Special Condition 1 requires these improvements to be completed prior to opening:

Special Condition 1: Prior to opening for business, the interior remodel will be complete. A building permit will be required to convert the retail (M occupancy) to an Assembly occupancy (A-2). This plan must be prepared, stamped and approved by a CA licensed design professional such as an Architect or Engineer. It is highly recommended that a CAS (Certified Access Specialist) be consulted for the Accessibility features required in the 2016 CBC chapter 11B, and incorporated into the overall complete plan. If the valuation of building permits meets or exceeds \$75,000 over a three year period, the installation of sprinkling system is required per Fort Bragg Municipal Code Section 15.06.030.

ILUDC Chapter 18.38 describes regulations regarding signage in the City. In order to ensure compliant location, size, design and materials, Planning Commission may wish to include Special Condition 2:

Special Condition 2: Prior to installing a sign, a completed sign permit application shall be submitted to the Community Development Director for review and approval.

Not only is the purpose of a Use Permit to verify consistency with planning policies, but also to establish operating standards that address incidental uses and ensure compatibility with neighboring uses. For example, the subject property is located within 500 feet of the Very High Density Residential (RVM) zoning district. The City's Noise Ordinance (Fort Bragg Municipal Code Chapter 9.44) establishes restrictions for any person or activity within a residential zone or within 500 feet of a residential zone as follows:

Section 9.44.020. It is unlawful for any person to create, cause to be created or maintain sources of excessively loud noises caused by the use or operation of radios, musical instruments, drums, phonographs, television sets or other mechanical devices for the reproduction or amplification of sound [...] between the hours of ten p.m. and seven a.m.

In order to address the incidental use of live music included with the proposed project, Planning Commission may utilize the City's Noise Ordinance combined with a quantifiable amount of music that would be considered incidental. Special Condition 3 and 4 are provided for consideration:

Special Condition 3: Music shall be considered an incidental use of *Bar/Tavern* Use Permit, comprising not more than ____% of operating hours. The project shall comply with the City's noise ordinance which requires "after 10:00 pm no noise shall be created, cause to be created or maintained which cause annoyance or discomfort to a reasonable person of normal sensitivities, consistent with the noise requirements of Municipal Code Section 9.44" and documented by the Fort Bragg Police Department.

Special Condition 4: No amplified music is permitted in the outdoor patio, the outdoor patio shall be closed after 10:00pm, and the door to the outdoor patio shall remain closed (not locked) during all business hours.

Concern has been expressed that the proposed *Bar/Tavern* is in close proximity to a neighboring toy store, Spunky Skunk. A bar on the same street already has a negative impact on the downtown environment due to patrons loitering outside. A safeguard to prevent loitering and disorderly conduct from patrons toward toy store clientele might be appropriate. The Police Department supports including a special condition to address these concerns. Staff has prepared Special Condition 5 for Planning Commissioners consideration:

Special Condition 5: The proposed *Bar/Tavern* business will prohibit patrons from loitering on Franklin Street on weekend days - Saturday and Sunday while the toy store is open – and during times when live music is performed. A sign shall be posted on the storefront that:

- informs patrons that loitering in front of bar and neighboring businesses is prohibited;
- informs patrons that smoking in front of bar and neighboring businesses is prohibited per FBMC Section 6.18.050; and

- in the case of unresponsive patrons and/or disorderly conduct, the bar manager is required to contact and cooperate with law enforcement to address the problem.

Resolution 3959-2016 and the 2018 Fee Schedule waive parking requirements within the Central Business District and therefore no parking is required. However, an on-site loading zone in the rear of the parcel might be considered to avoid potential adverse impacts. Planning Commission may wish to include Special Condition 6:

Special Condition 6: Preferred delivery shall occur on-site from rear of property, without obstructing vehicular circulation through the alley. If loading/unloading from Franklin Street, deliveries should occur in the early morning hours, when parking is available. Vehicular circulation shall not be obstructed.

Staff has recommended special conditions for planning Commission to review in order to make the required findings to approve Use Permit 1-18.

PLANNING COMMISSION ACTION

1. Hold a hearing, close the hearing, deliberate and approve Use Permit 1-18 (U 1-18) subject to the required approval findings and subject to standard and special conditions.

ALTERNATIVE ACTIONS

1. Hold a hearing, close the hearing, deliberate without a decision, and revisit the application at the next scheduled meeting for a decision and the addition of any new findings.
2. Hold the hearing, and continue the hearing to a date certain if there is insufficient time to obtain all input from all interested parties. At the date certain, the Commission may then deliberate and make a decision.
3. Deny the Use Permit.

RECOMMENDATION

Staff recommends approval of Use Permit 1-18 based on the following findings and conditions:

GENERAL FINDINGS

1. The proposed project is consistent with the purpose and intent of the zoning district, as well as all other provisions of the Coastal General Plan, Coastal Land Use and Development Code (CLUDC) and the Fort Bragg Municipal Code in general;
2. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity;
3. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities (e.g., fire protection, police protection, potable water, schools, solid waste collection and disposal, storm drainage, wastewater collection, treatment, and disposal, etc.), 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;
4. The project complies with Specific Use Regulations established for the project; and

5. For the purposes of the California Environmental Quality Act (CEQA), this project was found to be exempt under Section 15303 – conversion of existing structures to new uses.

USE PERMIT FINDINGS

1. The proposed use is consistent with the General Plan, any applicable specific plan, and the Local Coastal Program;
2. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Development Code and the Municipal Code;
3. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity;
4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities (e.g., fire protection, police protection, potable water, schools, solid waste collection and disposal, storm drainage, wastewater collection, treatment, and disposal, etc.), 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.
5. The proposed use complies with any findings required by Section 17.22.030 (Commercial District Land Uses and Permit Requirements).

STANDARD CONDITIONS

1. This action shall become final on the 11th day following the decision unless an appeal to the City Council is filed pursuant to CLUDC Chapter 17.92 - Appeals.
2. The use and occupancy of the premises shall be established and maintained in conformance with the requirements of this permit and all applicable provisions of the CLUDC.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and compliance therewith is mandatory, unless an amendment has been approved by the City.
4. This permit shall be subject to the securing of all necessary permits for the proposed development from City, County, State, and Federal agencies having jurisdiction. All plans submitted with the required permit applications shall be consistent with this approval. All construction shall be consistent with all Building, Fire, and Health code considerations as well as other applicable agency codes.
5. The applicant shall secure all required building permits for the proposed project as required by the Mendocino County Building Department.
6. If any person excavating or otherwise disturbing the earth discovers any archaeological site during project construction, the following actions shall be taken: 1) cease and desist from all further excavation and disturbances within 100 feet of the discovery; and 2) notify the Director of Public Works within 24 hours of the discovery. Evidence of an archaeological site may include, but is not necessarily limited to shellfish, bones, flaked and ground stone tools, stone flakes produced during tool production, historic artifacts, and historic features such as trash-filled pits and buried foundations. A professional archaeologist on the list maintained by the Northwest Information Center of the California Historical Resources Information System or Listed by the Register of Professional Archaeologists shall be consulted to determine necessary actions.
7. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - (a) That such permit was obtained or extended by fraud.
 - (b) That one or more of the conditions upon which such permit was granted have been violated.

- (c) That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare, or safety or as to be a nuisance.
 - (d) A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more conditions.
8. Unless a condition of approval or other provision of the Coastal Land Use and Development Code establishes a different time limit, any permit or approval not exercised within 24 months of approval shall expire and become void, except where an extension of time is approved in compliance with CLUDC Subsection 17.76.070 (B).

SPECIAL CONDITIONS

1. Prior to opening for business, the interior remodel will be complete. A building permit will be required to convert the retail (M occupancy) to an Assembly occupancy (A-2). This plan must be prepared, stamped and approved by a CA licensed design professional such as an Architect or Engineer. It is highly recommended that a CAS (Certified Access Specialist) be consulted for the Accessibility features required in the 2016 CBC chapter 11B, and incorporated into the overall complete plan. If the valuation of building permits meets or exceeds \$75,000 over a three-year period, the installation of sprinkling system is required per Fort Bragg Municipal Code Section 15.06.030.
2. Prior to installing a sign, a completed sign permit application shall be submitted to the Community Development Director for review and approval.
3. Music shall be considered an incidental use of *Bar/Tavern* Use Permit, comprising not more than ____% of operating hours. The project shall comply with the City's noise ordinance which requires "after 10:00pm no noise shall be created, cause to be created or maintained which cause annoyance or discomfort to a reasonable person of normal sensitivities, consistent with the noise requirements of Municipal Code Section 9.44" and documented by the Fort Bragg Police Department.
4. No amplified music is permitted in the outdoor patio, the outdoor patio shall be closed after 10:00pm, and the door to the outdoor patio shall remain closed (not locked) during all business hours.
5. The proposed *Bar/Tavern* business will prohibit patrons from loitering on Franklin Street on weekend days - Saturday and Sunday while the toy store is open – and during times when live music is performed. A sign shall be posted on the storefront that:
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6. Preferred delivery shall occur on-site from rear of property, without obstructing vehicular circulation through the alley. If loading/unloading from Franklin Street, deliveries should occur in the early morning hours, when parking is available. Vehicular circulation shall not be obstructed.

ATTACHMENTS

1. Location Map
2. Floor Plans