



AGENCY: City Council
MEETING DATE: July 23, 2018
DEPARTMENT: Community Development
PREPARED BY: S. McCormick
PRESENTED BY: S. McCormick
EMAIL ADDRESS: smccormick@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

RECEIVE REPORT, CONDUCT PUBLIC HEARING AND CONSIDER APPEAL OF PLANNING COMMISSION DECISION TO APPROVE USE PERMIT 1-18 TO CONVERT EXISTING VACANT STOREFRONT IN THE CENTRAL BUSINESS DISTRICT TO A BAR WITH LIVE MUSIC

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

AGENT/APPLICANT: Valerie Thornton / The Cube of Three, LLC

REQUEST: Appeal of Planning Commission Approval of Use Permit 1-18 (UP 1-18) to convert an existing vacant storefront in the Central Business District to a bar with live music (*Bar/Tavern*).

LOCATION: 338 North Franklin Street

ASSESSOR 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 (Spunky Skunk & Vacation Rental)
EAST:	Pre-Existing Non-Conforming Residential
SOUTH:	Retail (Astoria Home Décor and Gift Shop)
WEST:	Mixed Use (Partner's Gallery, If The Shoe Fits and Residential)

ISSUE AND CONSIDERATION BY THE PLANNING COMMISSION

On June 13, 2018, the Planning Commission held a public hearing to consider Use Permit 1-18 (UP 1-18) for a bar with live music and light fare at 336 North Franklin Street. During the Public Hearing eight people spoke in opposition to the project and 15 people spoke in support of the project. Most of the comments in opposition to the project were regarding potential impacts to the residents living in the Central Business District. The majority of comments in favor of the project focused on the specific operations of Tucker's Place. After the Public Hearing, a motion was made to approve the application with special conditions limiting the hours of live music and the operation for the smoking patio. The motion failed. A second motion was made and seconded to not limit the hours of live music, and the Planning Commission voted unanimously to approve Use Permit 1-18 subject to the findings, standard and special conditions provided in the staff report.

Per Inland Land Use and Development Code (ILUDC) Section 18.92, decisions made by the

Planning Commission may be appealed to City Council. On June 22, 2018, the City Clerk received an appeal of the Planning Commission's decision. As a result, the appeal and the permits are now subject to City Council's review and consideration. This staff report presents an analysis of the appeal. Per the City's Land Use and Development Code, appeals are considered only on the basis of concerns raised in the appeal itself.

For a full description of the project and the compliance of the project with the City's ILUDC, please refer to the attached Planning Commission Staff Report (Attachment 1 - Staff Report to Planning Commission).

APPEAL OF BAR/TAVERN USE PERMIT

A timely appeal of the Planning Commission's determination was filed with the City Clerk by Kirk Norton on behalf of Arleta Casalegno, William Casalegno, John Paul McCormick, Rhonda McCormick, Kathryn Lynch, Ted Rabinowitsh, Gayle Bowman and himself, Kirk Norton (Attachment 2- Appeal). The appellants raise several issues regarding the Planning Commission's determination, namely that the concerns of neighboring residents were not considered.

The following analysis addresses the points brought forth in the appeal.

Comment 1: "The Planning Commission did not even hear the concerns of the neighbors directly behind the proposed bar/dancehall."

The Planning Commission held a Public Hearing, considered the information brought forth, deliberated, heard two motions and made a decision. Property owners within 300 feet and residents within 100 feet were given advanced notice of the Public Hearing per Chapter 18.96 of the Inland Land Use and Development Code. Neighbors directly behind the proposed project submitted written comments and made verbal comments prior to and during the public hearing (included with other comments received as Attachment 6 – Public Comment).

Comment 2: "Can their hours of having live music or Karaoke be limited to 10:00pm."

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 between the hours of 10:00pm and 7:00am. The Planning Commission opted to rely on this existing regulatory tool and the management of the proposed business to address any potential noise conflicts that may occur. Additionally, the Planning Commission noted that Code Enforcement can be used should the bar become a frequent source of calls for service to the Police Department to address noise issues.

Special Condition 3: 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.

Comment 3: "Could outside smoking lounge in the back be enclosed or eliminated to keep noise down for the peace and quiet of the residents who live directly opposite its proposed site."

The applicant proposes a rear outdoor patio to curtail the loitering associated with people smoking

that would otherwise happen in front of the proposed establishment (Attachment 5 – Project Plans). Staff recognized this outdoor space could potentially create issues with regard to noise, and drafted a special condition for Planning Commission’s consideration, which was incorporated into the approved Use Permit:

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.

Many of the commenters at the Public Hearing expressed concerns centered on the noise that could be generated by customers conversing on the back patio or due to car doors opening and closing late at night parked in the rear lot. If parking in the rear was reserved for employees, then customer activity would gravitate toward Franklin Street and away from the alley, alleviating some potential concerns by neighbors. Staff has drafted an additional special condition for Council consideration.

Special Condition 7: Parking in the rear of property shall be reserved for staff. Staff shall be trained to open and close car doors quietly at the end of the night shift. Signage shall be installed in the bar that alerts customers that they should park on the street or in public parking lots.

Comment 4: “Parking was obviously also an issue.”

The project is required by the City’s ILUDC to either provide parking for this use within the Central Business District or to pay a Parking In-Lieu Fee for the project, as noted in bold in Sections 18.36.080.C.1.b and 18.36.080.C.3.b below:

C. Central Business District (CBD) Special Parking Combining Zone. The following parking requirements shall apply to areas within the CBD shown on the CBD Special Parking Combining Zone Map, below. An applicant may either comply with the parking requirements identified in § [18.36.040](#) (Number of Parking Spaces Required), meet the alternative CBD parking requirements identified in Subsection (C)(2) of this Section, or pay the parking in-lieu fee identified in Subsection (C)(3) of this Section.

1. Exemptions from the off-street parking requirements. The following uses located within the CBD Special Parking Combining Zone are exempt from the off-street parking requirements identified in this Chapter:

- a. Replacement of an existing use with a new use determined to be similar by the Director.
- b. On the ground floor, any intensification of a commercial use **except for bars, cocktail lounges, restaurants, and taverns.**
- c. Any use with hours of operation exclusively after 5:00 p.m.
- d. Residential dwelling units located above ground floor commercial uses.

3. Parking in-lieu fee. Parking requirements in the CBD Special Parking Combining Zone may be waived at the discretion of the approval authority, if the owner of the subject property pays a parking in-lieu fee to the City in compliance with this Subsection.

a. In lieu of providing the off-street parking spaces required by this Subsection, these requirements may be satisfied by the payment to the City of an in-lieu parking fee established by the Council and identified in the City’s Fee Schedule for both the use of existing structures and for new structures for each required off-street parking space which is not provided.

b. **Parking in-lieu fees may be authorized in the CBD Special Parking Combining Zone for changes of use or projects for which provision of sufficient parking on site is not possible.** Parking in-lieu fees are discouraged for changes of use or new development that can accommodate required parking on site. The funds shall be deposited with the City in a special fund and shall be used and expended for the purpose of acquiring and developing off-street parking facilities located insofar as reasonable in the general vicinity of the structures for which in-lieu payments were made as well as for meeting parking needs through strategies to reduce parking demand or to improve access to parking.

The proposed project site is not physically capable of providing the parking needed to operate a bar at this location and thus the project is eligible to pay a parking in-lieu fee. Further, Resolution 3959-2016 and the 2018 Fee Schedule waive the parking in-lieu fee within the Central Business District. The City Council has maintained a moratorium on payment of the Parking In-Lieu Fee since 2008, in order to encourage economic development and building reuse in the downtown. Thus the project is not required to provide parking or pay the parking in-lieu fee.

In addition to the letter written by Kirk Norton, a second letter signed by Gayle Bowman was included in the appeal. This letter was also received prior to the public hearing at the June 13, 2018 meeting and included in the public packet. Commissioners had an opportunity to read and consider the points raised by Ms. Bowman prior to making their decision to approve Use Permit 1-18. Concerns raised by the letter that have not already been covered in the above analysis include: 1) over concentration of bars and the potential for public nuisances and disorderly conduct in the Central Business District caused by bar patrons; 2) impacts on residential districts adjacent to the proposed bar; and 3) the efficacy of police response to nuisance and disorderly conduct. Each of these issues is addressed below:

1. **Over concentration of bars and the potential for public nuisances and disorderly conduct.** The proposed bar is planned to be a sit down, relatively quiet, upscale bar. "Tucker's Place," owned and operated by the project applicant, has a reputation as a low key "upscale" bar which has had no calls for service. The applicant is proposing to move that business model to the new location. However the Use Permit, if approved, would stay with the land and there is a potential for a different operator in the future with different priorities. The Use Permit includes a standard condition to address the potential for nuisance conditions as noted below:

Standard Condition 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.

The ABC is tasked with determining if a neighborhood has an over concentration of bars through the Liquor License process. The opponents of the project can address this issue directly with the ABC. The Fort Bragg Municipal Code does not include code sections that regulate the number or types of bars within any zoning district, including the CBD.

2. **Impact on a Residential Zoning District:** The residences adjacent to the proposed project are located in the Central Business District, not a residential zoning district. As such they are a pre-existing and non-conforming land use (Attachment 4 – Map of Central Business District). Thus they are subject to sharing a zoning district with a wide variety of land uses, some of which may have an impact on residential use. For example there are quite a number of residential units on Laurel, Franklin and Redwood streets that are adjacent to or located within a building with a bar. These residences are protected from noise impacts from these establishments through the City's noise ordinance.

3. **Police response to nuisance conditions:** The ability for police to respond and take enforcement action on disorderly conduct involves either: a) an officer witnessing the crime first-hand; or b) having a witness present that is willing to step forward to incriminate the offender. In an effort to create cooperation and communication between the proposed bar and police officers, Special Condition 5 is included in UP 1-18:

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.

RECOMMENDED ACTION

- 1) Deny the appeal; and
- 2) Approve Use Permit 1-18 (UP 1-18) to convert an existing vacant storefront in the Central Business District to a bar with live music (*Bar/Tavern*), in accordance with the findings, special conditions and standard conditions below and as analyzed in the staff report to the Planning Commission and the appeal of Planning Commission decision to City Council.

ALTERNATIVE ACTION(S)

1. Approve the appeal of UP 1-18 and provide direction to staff to develop findings for denial of Use Permit 1-18 (UP 1-18) for consideration at a later City Council meeting.
2. Continue the public hearing to receive additional information about the application or project for decision at a later date.
3. If new or different evidence is presented on appeal, the Council may refer the matter to the Planning Commission for further consideration (18.92.030((E)(2))).

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 General Plan, Inland Land Use and Development Code (ILUDC) 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.
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 and any applicable specific plan.
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.

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. 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:
 - 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.

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.
7. Parking in the rear of property shall be reserved for staff. Staff shall be trained to open and close car doors quietly at the end of the night shift. Signage shall be installed in the bar that alerts customers that they should park on the street or in public parking lots.

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 ILUDC Chapter 18.92 - Appeals.
2. 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. Any condition directly addressing an element incorporated into the application exhibits shall be controlling and shall modify the application. All other plans, specifications, details, and information contained within application shall be specifically applicable to the project and shall be construed as if directly stated within the condition for approval. Unless expressly stated otherwise, the applicant is solely responsible for satisfying each condition prior to issuance of the building permit. 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 ILUDC.
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. Any condition directly addressing an element incorporated into the application exhibits shall be controlling and shall modify the application. All other plans, specifications, details and information contained within application shall be specifically applicable to the project and shall be construed as if directly stated within the condition for approval. Unless expressly stated otherwise, the applicant is solely responsible for satisfying each condition prior to issuance of the building permit.
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:

- (e) That such permit was obtained or extended by fraud.
 - (f) That one or more of the conditions upon which such permit was granted have been violated.
 - (g) 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.
 - (h) 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 Inland 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 ILUDC Subsection 18.76.070 (B).

ATTACHMENTS

1. Planning Commission Staff Report 6-13-2018
2. Appeal
3. Table 2.6 Allowable Land Uses and Permit Requirements for Commercial Zoning Districts
4. Map of Central Business District
5. Project Plans
6. Public Comment
7. Public Hearing Notice

NOTIFICATION

1. Kirk Norton, appellant
2. Valerie Thornton / Cube of Three, LLC agent/applicant
3. Notify Me: Fort Bragg Downtown Businesses
4. Fort Bragg Planning Commission