

CITY PLANNING COMMISSION AGENDA
MAY 16, 2019

STAFF: RYAN TEFERTILLER

FILE NO(S):

A. – AR R 19-00118 (APPEAL) – QUASI-JUDICIAL

B. – AR R 19-00141 (APPEAL) – QUASI-JUDICIAL

PROJECT: 1645 S. TEJON COMMERCIAL CENTER AND MMC SEPARATION

OWNER: FONSECA 94, LLC

CONSULTANT: PURE MEDICAL, LLC



PROJECT SUMMARY:

1. **Project Description:** The project includes two applications: 1) administrative relief for 961 feet of separation where 1,000 feet are required between the proposed Medical Marijuana Center (MMC) and the nearest existing MMC, and 2) a non-use variance to allow 37 parking stalls where 44 are required to convert space that had previously been used for a restaurant into a three-tenant commercial center (note: this application was initially taken in as a request for administrative relief but changed to a non-use variance during the review process). These applications were approved administratively but appealed by three separate parties: a) RJJ Tejon, LLC, b) Edelweiss Restaurant, and c) Michael and Valerie Fix. The C5 zoned, 29,673

square foot property includes two buildings (1645 and 1647 S. Tejon St.) which total 15,629 square feet in size. The site is located on the east side of S. Tejon St. just north of E. Ramona Ave. **(FIGURE 1)**

2. Applicant's Project Statement: **FIGURES 2 and 3**
3. Appellant's Appeal Statements: **FIGURES 4, 5 and 6**
4. Planning and Development Team's Recommendation: City Planning staff recommends denial of the appeals, upholding Staff's administrative approvals.

BACKGROUND:

1. Site Address: 1645 and 1647 S. Tejon St.
2. Existing Zoning/Land Use: C5 (Intermediate Business) / 1645 S. Tejon was previously used as the Blue Star Restaurant but has been largely vacant for over a year; 1647 S. Tejon St. is occupied by Distillery 291 for a craft whiskey distillery and tasting room **(FIGURE 7)**
3. Surrounding Zoning/Land Use:
 - North: C5 (Intermediate Business) / commercial and office uses
 - South: C5 (Intermediate Business) and R5 (Multi-Family Residential) / commercial, office and multi-family residential uses
 - East: C5 (Intermediate Business) / commercial uses
 - West: C5 (Intermediate Business), R5 (Multi-Family Residential), and PUD (Planned Unit Development) / commercial, civic and residential uses
4. Annexation: Reannexation of Southwest Annex Area, 1980
5. Master Plan/Designated Master Plan Land Use: Ivywild Master Plan (1993) / Cottage Commercial
6. Subdivision: Addition #1 Ivywild, 1890
7. Zoning Enforcement Action: none
8. Physical Characteristics: the site is developed with two attached commercial buildings; 26 off-street parking stalls are present to the north and east of the buildings while 11 additional on-street stalls existing to the west of the building (these stalls are half on private property and half within the public right-of-way).

STAKEHOLDER PROCESS AND INVOLVEMENT:

The stakeholder involvement for this project was significant. In January 2019 a pre-application neighborhood meeting was held to discuss the property owner's desire to convert the restaurant space at 1645 S. Tejon into a music venue that could hold approximately 500 spectators. Notices for that meeting were mailed to over 180 owners of property within 1,000 feet of the subject property. Approximately 50 people attended the neighborhood meeting, most (but not all) expressing opposition to the proposed project due to inadequate parking in the area. A few of the stakeholders present expressed support for live music venues in the area help implement the region's cultural master plan. Staff continued to receive additional input on this proposal after the neighborhood meeting due in part to media coverage of the project.

Considering the amount of opposition to the proposed music venue, the property owner modified the proposed use of the building to include three separate tenant spaces: a smaller music venue capable of holding around 100 spectators, a retail space, and a medical marijuana center (MMC). This change required the submittal of the two applications currently under appeal. When the applications were submitted in late-February, postcards were sent same mailing list used for the pre-application neighborhood meeting. Additionally, Staff emailed all the attendees at the January neighborhood meeting as well as any stakeholder that had sent an email to Staff about the original project – a total of roughly 60 individual email addresses.

During the internal review of the applications Staff received a large number of stakeholder comments **(FIGURE 8)**. Many stakeholders expressed concern with the number of MMCs in the area and with the lack of off-street parking for the proposed mix of uses. Some stakeholders expressed concern that the proposed applications were an "end-around" to ultimately build-out and operate the originally proposed large music venue. One stakeholder, RJJ Tejon, LLC (aka Native Roots – the MMC located at 1433 S. Tejon St.), objected to any relief to the required 1,000' separation requirement as it could have a negative impact on their business. It should be noted that while the Director of Public Affairs for Native Roots did

submit a formal letter of opposition during the internal review stage, it was received by the Staff just after completion of the initial review letter and was therefore not included within that packet of information. However, the letter was subsequently sent to the applicant and was considered by staff during analysis of the required criteria.

Staff continued to communicate with those stakeholders who provided formal comment on the applications sending them direction on how to review my formal review letter when it was completed in late March. Stakeholders were notified via email once again when revised applications materials were received in early April, and lastly when administrative approvals were issued on April 12, 2019.

Staff's analysis of the proposed applications is outlined in the following sections of this report. The applications were sent to a limited number of review agencies given the nature of the request; these included: Traffic Engineering, the Urban Renewal Authority, and our Medical Marijuana lead planner. All necessary technical issues were resolved by the applicant prior to application approval.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:

1. Review Criteria / Design & Development Issues:

a. Background

The subject property is located on S. Tejon, just north of the "five-points" intersection of Tejon, Ramona, Cascade, and Cheyenne Blvd. The site contains two buildings totaling 15,629 square feet on a 29,673 square foot, C5-zoned parcel. The buildings were built in 1951 and 1974 and were historically used for a grocery store and warehouse. The site includes 26 off-street parking stalls to the north and east of the buildings while 11 additional on-street stalls existing to the west of the building. The on-street stalls are actually half on private property and half within the public right-of-way and are subject to a revocable permit approved by the City of Colorado Springs.

b. Planning and Zoning Context

The subject property was granted a parking variance in 1997 to allow 27 off-street parking stalls where 65 were required for the Blue Star Restaurant and Bristol Brewing manufacturing space (**FIGURE 9**). The application at that time was contentious with numerous stakeholders arguing that the proposed restaurant would create significant parking problems in the area.

The subject property is within the Ivywild Urban Renewal Area which was created in 2011. The district was created for a number of typical reasons: eliminate and prevent blight; implement the City's Comprehensive Plan; stimulate development; enhance the public realm; and others. Additionally, the plan hoped to expand the mixed-use concept that was initiated at the Ivywild School site into the surrounding area. Specifically, additional retail, residential and office uses are encouraged along Tejon St.

Beyond the subject property and the Ivywild School site, this area has seen number applications in recent years and will continue to see additional submittals in the future. A few noteworthy projects include:

- Parking Variances for the Edelweiss restaurant in 2007 and 2013, both of which allowed expansions of the existing restaurant even though adequate on-site parking did not exist.
- Development Plan to convert the religious institution at 1626 S. Tejon St. to a theater (Millibo Art Theater) in 2013
- Relief from setback requirements for a new residential structure at 1701 S. Tejon St. (immediately south of the subject property) in 2013
- Development Plan and parking consideration at 1605 S. Tejon in 2015 to allow for the establishment of Prime 25; adequate parking was provided, but not on the same parcel as the restaurant.
- Development Plan and parking considerations for 1515 S. Tejon to allow the existing office building to be converted to a restaurant; new parking is being constructed to the east of Cheyenne Creek.

- Future submittal of a hotel and restaurant project are expected later this year for the land immediately north of the subject property.

c. MMC Separation

There are two separate applications associated with this site. The first (AR R 19-00118) was submitted to allow the building at 1645 S. Tejon to be redeveloped for three separate tenant spaces, one of which is a Medical Marijuana Center (MMC).

In August of 2018 City Council passed a change to City Code to require 1,000 feet of separation between MMCs. Prior to that change, the 1,000 foot separation requirement was only measured between a proposed MMC and nearby schools, child care centers or drug/alcohol treatment facilities. This change to MMC standards was requested and supported by the Medical Marijuana industry as a way to avoid the clustering of MMCs and allow each MMC to have more distinct customer bases in their surrounding areas. It should be noted, however, that adoption of the new requirement did not affect the ability for existing MMCs to operate despite the fact that many existed within 1,000 feet of each other. This fact is especially true in the S. Nevada area where multiple MMCs operate within blocks of each other.

The proposal for relief from this standard was submitted by Pure Medical, LLC in order for the business to operate from one of three tenant spaces within 1645 S. Tejon. Pure Medical, LLC is licensed to operate from their current location at 130 E. Cheyenne – approximately 1,000 feet south (as the crow flies) from the subject property. That site is within the South Nevada Urban Renewal Area and their lease has been terminated to allow for the demolition of their building and the development of the Creekwalk Commercial Center.

While the relocation of existing MMCs is permitted by City Code, the operators of Pure Medical struggled to find an available space that met their needs, including staying within their existing service area with the hope to retain many of their current customers. Staff held pre-application meetings with Pure Medical regarding no less than four different sites, none of which fully complied with the necessary zoning and separation requirements. And while the subject property didn't fully comply either, it was within 4% of the required 1,000 foot separation requirement, while also staying close to their existing customer base.

MMC separation is measured “from the nearest portion of the building used for the MMC to the nearest property line of the school, residential childcare facility, drug or alcohol treatment facility, or other MMC using a route of direct pedestrian access.” There are actually two existing MMCs within 1,000 feet of the subject property using the required measurement methodology. Rocky Roads Remedies (1530 S. Nevada Ave.) is the closest measuring as being 961 feet from the northwest corner of 1645 S. Tejon. And while the operator of this business was initially opposed the requested relief, once he understood more about the request, he submitted an email supporting approval of the application. A second MMC, Native Roots gas-station/dispensary (1433 S. Tejon St.) is located 975 feet north of the subject property. It is the parent company for Native Roots, RJJ Tejon, LLC, that submitted one of the three appeal applications.

Section 7.5.1102 of City Code requires that an application for administrative relief meet four specific criteria. Analysis of each criteria follows:

A. *Strict application of the regulation is unreasonable given extraordinary or exceptional conditions.*

City Code requires separation to be measured from the closest portion of the building where the proposed MMC is located to the property line of the nearest MMC via a route of direct pedestrian access. The proposed MMC is to be located at the rear of the building addressed as 1645 S. Tejon. While Staff has correctly applied the measurement methodology and determined that the required 1,000' separation is not present, if the measurement were taken from the closest portion of the tenant space, over 1,000' of separation would be achieved since the specific tenant space is roughly 100' further away from the existing MMC's than the

closest corner of the building. Furthermore, the location of the proposed MMC at the rear of the building, with extremely limited visibility from the public right-of-way helps to address the perception that this area is experiencing a higher density of MMC uses. Lastly, the large building size, and limited parking area is an extraordinary condition in this area, and the owner has worked to find multiple users for the building with off-setting parking demand peaks to mitigate concerns from stakeholders about the modest parking supply on the site.

B. Intent of the Zoning Code preserved.

The intent of the Zoning Code is to protect property values, to preserve neighborhoods and to protect private property from adjacent nuisances such as noise, excessive traffic, incompatibility of uses, inappropriate design of buildings, and visual obstructions. Staff finds that allowing the proposed MMC use to be approximately 4% short of the required 1,000 separation from the nearest MMC will not affect property values, nor will it damage or destroy the surrounding neighborhood. The use will not create nuisance noise, traffic, uses, or visual obstruction.

C. No adverse impact to surrounding properties.

The MMC proposed for 1645 S. Tejon currently operates approximately 1,000 feet from the proposed location. The operator's lease has been terminated due to the planned redevelopment of the site for the Creekwalk Commercial project – the largest to date within the South Nevada Urban Renewal District. Staff is not aware of any adverse impacts that the existing location created for surrounding properties. The new store location will not increase the number of MMCs in the area as it is just moving from one property to another within the same neighborhood. The new location is at the rear of the existing building and will have limited visibility from the public right-of-way. One intent of the MMC separation requirement is to avoid the clustering of MMCs in specific areas and to allow each MMC to have a better chance of securing customers from the surrounding neighborhood. The proposed relocation should not interfere with the customer bases of other MMCs in the area, as the proposed MMC already exists roughly 1,000 feet to the south.

D. No increase in residential density.

This criteria is not applicable to this request.

Staff found that the first three criteria are met and that the fourth is not applicable. Staff approved the application on April 12, 2019 (**FIGURE 10**).

d. Parking Relief

Concurrent to the submittal and review of MMC separation relief, the property owner submitted an application to allow the existing building at 1645 S. Tejon to be converted from a single tenant restaurant space to a three-tenant "commercial center" (AR R 19-00141). This application was initially submitted as a request for "administrative relief" since the number of on-site parking stalls were within 15% of the required parking. However, during the initial review of the request it was determined that the relief could only be granted using a non-use variance since the project made use of the parking reduction factors for proximity to a bike route; Section 7.4.201.A. precludes the use of parking reduction factors in conjunction with requests for administrative relief. So while the file number may indicate that the application is for administrative relief, the property owner submitted a non-use variance application upon resubmittal and City Staff utilized the non-use variance criteria in order to evaluate the request.

The "commercial center" use is defined by City Code as: "A grouping of three (3) or more attached commercial, office and/or civic uses developed and maintained under unified control. A majority of the establishments in a commercial center share common walls and parking areas. Freestanding buildings may be included as part of a commercial center." While some multi-use properties must calculate parking requirements based on the mix of individual businesses on the site at any given time, approval of the "commercial center" use type allows use of one parking ratio for all the tenants within the building or on the property. Specifically, "commercial centers"

are parked at the 1 parking stall per 250 square foot ratio for all specific tenants. While the 1/250 rate may be lower than some uses (e.g. restaurants are normally parked at 1/100) it is also higher than others (e.g. retail uses are normally parked at 1/300 and office uses at 1/400). Utilizing one common parking rate for a commercial center addresses two issues: first that it minimizes the need for a new parking analysis every time a space changes from one tenant to another, and secondly that the rate takes into account that some tenants may have evening peak demand for parking while others have mid-day peak demand.

While the owner's initial plans for redeveloping the building at 1645 S. Tejon called for two music venues – one large and one small, the application that was submitted in on March 1st includes only the small music venue (approximately 3,600 square feet), plus a roughly 3,400 square foot retail user, and the 1,750 square foot MMC used discussed above. Any while the “commercial center” use could allow future modifications to the mix of tenants or even reconfiguration of the shape or size of the individual tenant spaces, the building must include at least three separate tenants in order to retain the “commercial center” use and the 1 parking stall per 250 square foot parking requirement.

The granting of a non-use variance must comply with the criteria found in Section 7.5.802.B. of City Code. The criteria and Staff analysis follows:

7.5.802 (B.1) Exceptional or Extraordinary Conditions

The structures at 1645 and 1647S. Tejon were constructed prior to modern day parking requirements. The 29,673 sf parcel includes 15,629 sf of building space resulting in over 50% lot coverage. Given that less than half of the parcel is available for parking, circulation, landscaping, pedestrian walkways, and utilitarian needs such as trash and utilities, there is only a limited ability to provide off-street parking. While there are a few similar properties in the area that have older buildings and high lot coverage, many of those have been granted similar parking relief in the past. Staff finds that the situation on the subject property is exceptional and extraordinary.

7.5.802 (B.2) No Reasonable Use of Property

The applicant has maximized the number of stalls that can be provided to the north and east of the buildings as well as provided 11 parking stalls on S. Tejon St. that are partially on private property and partially in the public right-of-way; these stalls are subject to a revocable permit which provides for exclusive use of the stalls by the permit holder. Altogether, 37 parking stalls are available for the parcel which equates to one stall for every 422 square feet of building space. Review of the City's required parking ratios reveals very few uses that are permitted in the C5 zone and require less than one stall per 422 square feet of building space. While uses such as “construction sales and services,” “furniture or appliance retail sales,” or other low-parking demand uses were considered for the site, there are very few low-parking uses that are permitted in the zone that also contribute to the success of the Ivywild Urban Renewal Area and which would be compatible with the surrounding properties. The proposed establishment of the “commercial center” use which will allow multiple tenants with off-setting peak parking demands is a reasonable solution, but can only be established with the requested parking variance. Staff finds that there is no reasonable use of the property in the absence of the proposed parking relief.

7.5.802 (B.3) No Adverse Impact to Surrounding Property

While Staff has received considerable input from neighborhood stakeholders regarding parking supply and demand in the area, Staff finds that the proposed commercial center use will allow for multiple tenants with off-setting peak parking demands. Two of the three uses in within the center, as illustrated on the variance plan, have peak parking demands during the day which is when the parking supply in the area is greatest. Staff finds that the propose commercial center will likely have less impact on neighborhood-wide parking concerns than the restaurant use which existed at 1645 S. Tejon for roughly 20 years and was approved via parking variance HO NV 97-00121. The site is located along a formal bike route (S. Tejon to Cheyenne Blvd), is less than 1,000 feet from a bus stop serving two different transit routes (both on S. Nevada Ave.), and is an

area that is evolving with a mix of higher density residential, commercial, lodging and other uses. It is likely that many of the customers to the center will park once and visit multiple businesses along the corridor reducing the need for individual parking stalls at each specific site. Staff finds that the requested parking relief will have no adverse impact on the surrounding properties.

Additionally, requests for parking relief must meet the additional criteria found in Section 7.5.802.D.1.

7.5.802 (D.1.a.) Pedestrian/Vehicular Safety

The site plan for the property illustrating parking lot lay-out, design and circulation has been reviewed by Planning and Traffic Staff and has been found to meet parking design standards and to be safe to both pedestrians and vehicular use in the area. The plan illustrates essentially the same parking design that was approved in 1997 and functioned successfully for the Blue Star Restaurant that operated from the site for nearly 20 years.

7.5.802 (D.1.b.) No Adverse Impact

As stated above in the analysis of code criteria 7.5.802.(B.3.), the parking relief is expected to have no adverse impact on the surrounding properties or neighborhood.

After close consideration of all criteria, as well as stakeholder input, Staff approved the requested parking variance on April 12, 2019 (**FIGURE 11**).

e. Appeal of an Administrative Decision

Three separate appeal applications were filed pertaining to staff's administrative approvals (**FIGURES 4, 5, AND 6**). According to City Code Section 7.5.906.A.4.b, a successful appeal must be found to meet the following criteria:

- (1) It was against the express language of this zoning ordinance, or
- (2) It was against the express intent of this zoning ordinance, or
- (3) It is unreasonable, or
- (4) It is erroneous, or
- (5) It is clearly contrary to law.

While the appellants argue that these criteria are not met, Staff has documented above that the required administrative relief and non-use variance criteria are indeed met, and that all appropriate standards, guidelines, policies and procedures were adhered to. The City's Zoning Code includes relief provisions in order to address unique situations where relief is justified and where denial of relief would result in a condition where no reasonable use of the property is available.

After careful consideration, Staff finds that the required appeal criteria are not met.

2. Conformance with the City Comprehensive Plan:

The City's newly adopted PlanCOS encourages infill development and the creation of walkable and mixed use neighborhoods. Specifically, mature/redevelopment corridors are described within the broader Corridor Typology as opportunities for significant infill and redevelopment. The overarching statement within the Corridor Typology reads "The goal of this place typology is to take advantage of the capacity and potential of these corridors to create unified, vital, connected, and more transit supportive urban places, each with its unique character, identity, and design." Additionally, Goal UP-2 reads "Embrace thoughtful, targeted, and forward-thinking changes in land use, infill, reinvestment, and redevelopment to respond to shifts in demographics, technology, and the market." Many of the specific strategies within the Unique Places chapter of PlanCOS support the approved project and its desire to utilize a vacant building for multiple, neighborhood serving (as well as community serving) uses.

3. Conformance with the Area's Master Plan:

The subject property falls within the 1993 Ivywild Master Plan where it is identified as part of the Cottage Commercial land use area. This area is described in part as being "characterized by small businesses that typically occupy converted houses or older commercial buildings which maintain historic setbacks, character, and relationship to the street." Staff has reviewed the Ivywild Plan and determined that while there is little language in the Plan that directly supports the proposed applications there is nothing in the Plan that directly conflicts with the proposed use change nor modest parking relief.

STAFF RECOMMENDATIONS:

Item: AR R 19-00118 – ADMINISTRATIVE RELIEF FROM MMC SEPARATION

Deny the appeals, thereby upholding Staff's administrative approval, allowing 961 feet of separation between the proposed MMC at 1645 S. Tejon St. and the closest existing MMC based upon the finding that the request complies with the administrative relief review criteria in City Code Section 7.5.1102, as well as the finding that the appeal criteria found in Section 7.5.906.A.4. are not met.

Item: AR R 19-00141 – NON-USE VARIANCE FOR PARKING

Deny the appeals, thereby upholding Staff's administrative approval, allowing 37 parking stalls (26 off-street stalls and 11 stalls along S. Tejon St.) where 44 stalls are required, based upon the finding that the request complies with the non-use variance review criteria in City Code Section 7.5.802, as well as the finding that the appeal criteria found in Section 7.5.906.A.4. are not met.