
1645 & 1647 SOUTH TEJON STREET, COLORADO SPRINGS

APPEAL STATEMENT

MAY 28, 2019

APPEAL REQUEST

N.E.S. Inc., on behalf of Fonseca 94 LLC, submit this appeal against the decision of the City Planning Commission at its hearing on May 16, 2019 to deny a non-use variance for reduced parking for 1645 & 1647 South Tejon Street.

PROJECT BACKGROUND

The 29,673 sq. ft property is located on South Tejon Street, northeast of its intersection with East Ramona Avenue. The site is within the Ivywild neighborhood and is surrounded by a mix of uses including commercial, office, civic and multi-family residential. The property includes two attached buildings, totaling 15,629 sq. ft. The southern 6,846 sq. ft building is occupied by a distillery. The northern 8,783 sq. ft building was previously home to The Blue Star Restaurant, which has been closed for two years. The current proposal is to convert this building into as commercial center, housing three different uses: a medical marijuana dispensary, a bar/restaurant/music venue, and retail space. The property is zoned C5 (Intermediate Business), which allows these uses by right.

This appeal relates to a requested non-use variance for reduced parking. The 8,783 sq. ft building is designated a commercial center as it includes "a grouping of three or more attached commercial, office and/or civic uses developed and maintained under unified control" per City Code definition. The parking requirement for a commercial center of less than 10 acres is 1 space per 250 square feet of gross floor area. This equates to a parking need for the commercial center of 35 spaces. The parking requirement for the adjacent distillery is assessed separately based on the warehousing component and tasting room/bar area at 11 spaces. This generates a total on-site parking requirement of 46 spaces. Section 7.4.204.C.1.b of City Code allows for a 5% reduction in the minimum parking space requirements in certain circumstances, including when property is located within four hundred feet of a designated bike route, which is the case for this property. This brings the minimum parking requirement to 44 spaces.

The property provides 26 parking stalls on site to the north and east of the building and an additional 11 spaces on the west of the building adjacent to Tejon Street. These spaces are partially on private property and partially within the right-of-way. The City has granted a revocable permit to the Appellant that allows the exclusive use of these spaces as off-street parking by the permit holder.

The non-use variance subject of this appeal seeks a reduction of the minimum parking requirement by seven spaces (15%), from the 44 spaces that would be required by City Code to the 37 spaces that are currently available to serve the proposed commercial center and distillery.

The original request for the non-use variance was granted administratively by City Planning on April 12, 2019. That decision was appealed to City Planning Commission and at a hearing on May 16, 2019 City Planning Commission upheld the appeal, thereby denying the non-use variance.

APPEAL STATEMENT

This appeal asks City Council to reverse City Planning Commission's decision and approve the non-use variance for reduced parking. In order to appeal a decision that was originally approved administratively, the Appellant must address the following requirements of Section 7.5.906.A.4 of City Code:

- a. *Identify the explicit ordinance provisions which are in dispute.*
- b. *Show that the administrative decision is incorrect because of one or more of the following:*
 - (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.*
- c. *Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.*

For clarification, the Appellant considers that the original administrative decision by staff was correct and that Planning Commission's decision to uphold the appeal by the neighboring business and overturn the administrative decisions was incorrect. It is on that basis that the above considerations are addressed.

In upholding the appeal and denying the non-use variance, the Planning Commissioners did not express specific reasoning for their decision, other than one generalized comment about investigating the possibility of alternative parking solutions. Accordingly, this appeal statement will address each of the non-use variance criteria in Section 7.5.802.B of the Code, which is the specific ordinance provision in dispute. In doing so we will demonstrate that the Planning Commission's decision was contrary to the express language and intent of the non-use variance ordinance and was unreasonable given the relevant facts of the case. In addition, the Appellant will demonstrate that the Planning Commission's decision was contrary to the purpose and intent of the Zoning Code to protect property values and preserve neighborhoods. The Appellant will also show that the Planning Commission failed to give adequate regard to the goals, policies and recommendations of the City's recently approved Comprehensive Plan (PlanCOS) in applying the non-use variance criteria.

The principal Appellant of the initial administrative approval of the non-use variance for reduced parking was the adjacent Edelweiss Restaurant. Some neighborhood residents also expressed concern about the impact of the non-use variance on on-street parking in the surrounding neighborhood. In the absence of a clearly stated reason for upholding the appeal and denying the non-use variance by the

Planning Commission, this appeal statement will address the applicable arguments presented by those who opposed the administrative approval of the non-use variance.

Non-Use Variance Review Criteria

Section 7.5.802.B indicates that the following criteria must be met in order for any non-use variance to be granted:

- 1. The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district; and*
- 2. That the extraordinary or exceptional physical condition of the property will not allow a reasonable use of the property in its current zone in the absence of relief; and*
- 3. That the granting of the variance will not have an adverse impact upon surrounding properties.*

1. Extraordinary or Exceptional Physical Conditions

The buildings at 1645 and 1647 South Tejon were originally constructed in the 1950's as a grocery store and associated warehouse, prior to zoning and prior to parking standards. The buildings themselves take up 53% of the property which, when taking into account the irregular shape of the site and the need for adequate circulation, pedestrian walkways, trash and utilities, leaves very little room for off-street parking. The 27 proposed parking spaces maximize the use of the remaining space available on the site for off-street parking.

There are a few similar properties in the area that have older buildings and high lot coverage and some have been granted similar parking relief in the past, including the adjacent Edelweiss Restaurant on two occasions. Evidently parking relief in this area is not uncommon and this request is in line with past precedent. This site is also somewhat unique as it is hemmed in by existing buildings to the south and east, South Tejon Street to the west, East Ramona Avenue to the south, and the Cheyenne Run creek to the north. Accordingly, unlike some of the adjacent businesses this site has no option for expansion for parking, even for the limited seven spaces requested by this non-use variance. For these reasons, we consider that the Planning Commission's decision was unreasonable with regard to this criterion.

2. No Reasonable Use

At the Planning Commission hearing, it was argued that, when considering the commercial center alone, the available 27 parking spaces for the 8,783 sq. ft. building (equivalent to 1 space per 325 sq. ft.) would allow several categories of use within the C5 zone and that equates to reasonable use. The Appellant considers that the limitation on the reasonable use of the property is far more substantial when taking into account building and neighborhood compatibility. There are 81 permitted uses in the C5 zone. Of these, only about 40% would meet the 1 space per 325 sq. ft parking ratio. While these uses may be theoretically viable from a parking perspective, some of these uses would require significant internal

alteration to this historically commercial property (e.g. residential type uses, mixed residential/commercial, bed and breakfast) or could be viewed as incompatible with the neighboring residential uses (e.g. detoxification centers, human service establishments, drug and alcohol rehabilitation centers, agricultural sales, construction/contractor's yards, light industry). When these uses and other non-commercial uses are excluded this would further reduce the number of viable and compatible uses for this building to about 20% of the 81 permitted uses. This is a significant restriction on the reasonable use of this property. For this reason, we consider that the Planning Commission's decision was unreasonable with regard to this criterion.

3. No Adverse Impact

Considerable emphasis was placed by the Edelweiss Restaurant on the adverse impact to its business in relation to the past activities of The Blue Star, particularly with regard to Blue Star customers using Edelweiss parking. Clearly there has been some past antagonism between the respective business owners in this regard but we consider this to be a private matter that should not influence the City's consideration of the "no adverse impact" criterion of the non-use variance ordinance. Edelweiss has the ability to enact measures to ensure that its parking is preserved solely for its customers. As noted in Edelweiss' appeal statement, the Millibo Art Theater "on busy weekends has gone as far as to rope off and place parking cones on their lot to prevent their parking from being taken by the business from Ivywild School building." These and other measures are common and often necessary for private business owners to protect the use of their parking areas for their own customers. This should not be a justification for a finding of adverse impact in the context of this non-use variance for parking.

An additional criticism of the original administrative approval of the non-use variance was the use of the commercial center parking ratio for this project and the exclusion of the distillery from the commercial center. A commercial center 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." The proposed reuse of 1645 South Tejon Street for three individual tenant spaces, to include a restaurant/bar/music venue, a retail space and a medical marijuana dispensary clearly falls within this definition. We also agree with City staff's conclusion that the distillery should not form part of the center. The distillery is defined as manufacturing use, which is not "commercial, office and/or civic uses" per the commercial center definition so should not be included in the commercial center.

The "commercial center" classification of 1645 South Tejon Street allows use of a parking ratio of 1 stall per 250 sq. ft for all the tenants within the building. The objective of the common parking ratio for commercial centers is to average out parking demands for differing use types, which if assessed separately may have a higher or lower parking requirement, and to account for uses that have peak parking demand at different times of the day. This allows more flexibility for owners of commercial centers to lease tenant spaces over the long term, as changes in use type would be accommodated within the commercial center parking requirements. Accordingly, it is evident that the commercial center parking ratio is the correct one to use and that the requested parking relief for seven spaces is appropriate.

Section 7.5.802.D.2 provides guidelines for assessing non-use variances. With regard to the consideration of "no adverse impact" it notes that the granting of a variance shall not be inconsistent

with any plans adopted by the City. Section 7.2.104 of the Code also indicates that the Zoning Code is an important tool for implementing the goals, policies, and recommendations of the City's Comprehensive Plan, and it shall be consistent with that plan. The Code also states that the purpose of the commercial district zoning is to provide appropriate areas for commercial retail, service, and office uses required by the residents of the City in a manner which is consistent with the Comprehensive Plan. The Appellant contends that the Planning Commission failed to give adequate regard to the goals, policies and recommendations of the City's Comprehensive Plan in applying the non-use variance criteria.

The City's newly adopted Comprehensive Plan (PlanCOS) encourages infill development and the creation of walkable and mixed-use neighborhoods. The subject property lies between the South Nevada corridor, which is defined as a "Mature/Redevelopment Corridor" and Ivywild, which is defined as a "Neighborhood Center". The goal of the "Mature/Redevelopment Corridor" 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." The goal of the "Neighborhood Center" typology is to "provide a focal point for community life and services at a neighborhood scale... designed for well-connected multi-modal local access and are oriented toward the pedestrian."

Many of the specific goals and policies within the Unique Places chapter of PlanCOS support this project's utilization of a vacant building for multiple neighborhood and community serving uses, with an emphasis on walkability, rather than drivability. Goal UP-1 seeks to "enrich the texture and livability of the city as a tapestry of unique, vibrant, and walkable places." Goal UP-2 encourages the City to "embrace thoughtful, targeted, and forward-thinking changes in land use, infill, reinvestment, and redevelopment to respond to shifts in demographics, technology, and the market." Policy UP-2.A urges the City to "support infill and land use investment throughout the mature and developed areas of the City." PlanCOS explicitly identifies the South Tejon Street Redevelopment as a specific application of these goals and policies. It notes that "Tejon Street, around the repurposed Ivywild School, are being redeveloped with a particularly wide range of desired attributes. Tools and incentives including special districts and urban renewal are being used to support this redevelopment. The result is anticipated to be an especially unique, identifiable, and livable urban environment."

The Ivywild and South Nevada area is also classified under "Creative Districts and Corridors" in the Renowned Culture chapter of PlanCOS. Policy RC-2.B promotes existing and proposed arts and cultural hubs, venues and focal points as elements of activity centers throughout the City. Policy RC-3.C encourages the evolution of Creative Districts and Corridors through support and attraction of museums, performance venues, and galleries for the fine and performance arts.

The subject property is located within the Ivywild Urban Renewal Area (URA) and adjacent to the South Nevada URA, which seek to cure blight, promote projects which provide public benefit, create quality sustainable places, raise standards of development, promote public art, and create jobs. Specifically, the Ivywild URA aims to "promote greater stability in the neighborhood through the introduction of a mix of uses in a vertically integrated building format." It also encourages additional retail, residential and office use along South Tejon street.

At the Planning Commission hearing and in its appeal statement, Edelweiss criticized the Appellant for not converting other property they own in the vicinity to parking lots, as Edelweiss has done adjacent

to their property. The Edelweiss appeal statement states “over the years, the Edelweiss has purchased 4 properties, leveled 6 houses, a garage, and relocated another house all for the purpose of adding more parking.” Mr. Coleman’s response to this at the hearing was that there is a philosophical difference between him and the Edelweiss owners, as he does not want to tear down old buildings for parking and instead wants to contribute to an urban environment that has fewer cars and encourages greater use of alternatives, such as biking, walking or ride-share.

The philosophical approach of Mr. Coleman is entirely consistent with the goals and policies of PlanCOS generally and specially for this area and the goals of the URA. The proposed reuse of this historic commercial building as a commercial center that includes a music venue, restaurant, and retail uses in a location that is accessible by a variety of transport modes is providing a public benefit in line with the Plan COS placemaking and cultural objectives and the goals of the URA. Providing expanses of horizontal surface level parking and creating a situation where a building has no reasonable use is not in keeping with these goals.

Neighbors in the area have expressed concern that the approval of the parking variance would create parking issues on the surrounding streets. These concerns must be weighed against the fact that the Ivywild neighborhood is evolving in the direction envisioned by PlanCOS and the URA. In furtherance of this vision, the City are about to embark upon improvements to South Cascade Avenue that will create a one-way section between Brookside and Tejon, including Navajo, with angled parking. According to the City’s project manager this will increase parking from approximately 49 parallel street spaces to about 106 angled parking stalls. This will create additional on-street public parking in the Ivywild neighborhood to the benefit of businesses and residents alike. In addition, the site is located on a formal bicycle route (South Tejon to Cheyenne Blvd), is less than 1,000 feet from a bus stop on South Nevada Avenue, and is in close proximity to public trails. Given these measures to increase public parking and the accessibility by other modes of transport, the requested relief for seven spaces will have negligible impact on the parking situation in the area.

Conclusion

Based on the above analysis, there is no evidence that the granting of this parking variance for a shortfall of only seven spaces would weaken the general purpose of this Zoning Code. City Council’s approval of this non-use variance for 1645 & 1647 South Tejon Street would be consistent with similar historic approvals of non-use variances for parking relief at other similarly constrained properties in the immediate area.

A denial of this variance would place an undue burden on the Appellant, as it would severely restrict the reasonable use of his property. A vacant unusable building would not contribute to the preservation and vitality of the neighborhood and would undermine the recently approved PlanCOS and URA objectives for the Ivywild area. Conversely, the approval of this variance would facilitate the creation of a new music venue and a vibrant cultural hub that will implement the goals and policies of PlanCOS and the URA to the benefit of the local and broader community. The Appellant considers that these factors should outweigh the negligible impact of the seven parking spaces for which relief is requested on parking in the community or the specific operations of the adjacent restaurant owner.