



**Development Services Department Staff Report
September 15, 2020 Planning Commission Regular Meeting
Prepared by: Pierre Rivas, Development Services Director**

Item#: 5.0: 651 Main Street – Variance (VAR) 20-01: Request by the project applicant Kelly Chiusano on behalf of PVILLECA LLC for a Variance to allow for a reduction in the minimum distance required from a “Commercial Cannabis Business” to a “sensitive use” from 250 feet to approximately 200 feet as required under City Code Section 5-28-25. The sensitive uses identified are the Sierra Elementary School (1100 Thompson Way) and the Federated Church (1031 Thompson Way). Staff recommends a finding that the request is categorically exempt from environmental review pursuant to Section 15303(a) of the California Environmental Quality Act Guidelines.

Location: 651 Main Street identified as Assessor’s Parcel Number 002-171-008. The site is on the north side of Main Street approximately 90 feet from the intersection with Locust Avenue (see Exhibit B).

General Plan: Commercial Land Use Designation

Zoning: Commercial / Commercial Cannabis Business Overlay (C-CBO)

Summary Recommendation:

Approve Variance 04-02 for the establishment of a commercial cannabis business at 651 Main Street with the Findings and Conditions as stated herein; and find that the variance request is categorically exempt from environmental review pursuant to Section 15303(a) of the California Environmental Quality Act Guidelines.

Background:

On October 9, 2018, the City Council adopted Ordinance No. 1694 regulating commercial cannabis business activity. There are many provisions contained in the Ordinance that regulates the specific practice of operating and dispensing cannabis products and provisions that regulate their location. Cannabis businesses are only permitted within Heavy Commercial, Commercial, Highway Commercial, Central Business District and Industrial Zone Districts; and are further restricted to those locations to be within the “Cannabis Business Overlay Zone District” (CBO). The Planning Commission considered the CBO on December 4, 2018 recommending approval to the boundaries to the City Council. The Council adopted Ordinance No. 1695 creating the CBO on January 22, 2019 adding the overlay zone to the official zoning map and adding Code Section 10-5-25 to the Zoning Ordinance.

Code Section 5-28-25(A) subsections 1 and 2 require a 250-foot distance from any school, commercial daycare center, or youth center. The intent of this “setback” is to create a reasonable distance between potentially conflicting uses, particularly in terms of “walking distance”.

The applicant applied for a permit commercial cannabis business to operate a retail store front for sale of cannabis products for adult use and medical use on April 19, 2019. The “Scared Roots” application was approved by the City Council on August 20, 2020.

This request is made to establish a commercial retail cannabis business at 651 Main Street. This location is an existing commercial building located in a Commercial Zone District. Because this site is approximately 186 feet from Sierra Elementary School and approximately 190 feet from the Federated Church, both located on Thompson Way, the location does not meet the setback requirements of 250 feet from a school and 250 feet from the church (see Exhibit 3). The Ordinance requires that the distance measured shall be the horizontal distance measured in a straight line from the property line of the parcel containing the sensitive use to the closest property line of the lot on which the cannabis business is to be located or “as the crow flies”.

The intent of setback is to minimize direct access or, in essence, separate potentially conflicting uses. A map showing the proximity of the dispensary, church and school is attached.

Discussion:

In order to approve any variance, the Planning Commission must make the following findings:

1. That the granting of the request would not constitute a special privilege not enjoyed by others in the vicinity;
2. The granting will not be detrimental to the public health, safety, convenience and welfare, and,
3. That the granting of the variance would not injure property or improvements in the vicinity of the site.

The aforementioned school and church are on Thompson Way and there is a significant hillside and commercially developed area located between the proposed cannabis business and the school and church. The commercially developed area and the heavily vegetated hillside between the uses prohibit direct access between the uses and there is no visibility between them. The nearest distances for pedestrian or vehicle access as measured from the proposed cannabis business to the school and the church are approximately 2,027 feet and approximately 1,562 feet respectively. Both the school and church properties contain undeveloped portions of their property between them and 651 Main Street property. The distance from the subject property to the lower edge of the Federated Church parking lot is approximately 254 feet. The distance from the subject property to the edge of the Sierra School’s lower parking lot is approximately 294 feet and approximately 422 feet to the school (see Exhibit 4). Thus, the intent of the Ordinance requiring the setback is not only met but, in fact, exceeded. In light of this, staff believes that there is justification in granting the variance due to the topographic and built environment described above and that the granting of the variance would not constitute a grant of special use or privilege not enjoyed by others in a similar situation.

Public Noticing: Public notice of the public hearing was provided in writing to property owners within 500 feet of the project site. Notice was also published in the Mountain Democrat on September 4, 2020 and posted to the City’s website. One comment was received from Patricia Horn, Principle of Sierra School as of the distribution of staff’s report.

Environmental Document:

This request is categorically exempt from environmental review pursuant to Section 15303(a) of the California Environmental Quality Act Guidelines, in that it involves minor alterations (setback variance) in land use limitations not resulting in the creation of a new parcel.

Recommendation: As described above, the existing circumstances of the project parcel and the physical layout of the built environment and topography provide justification to approve VAR 20-01. Staff recommends that the Planning Commission take the following action:

- I. Adopt the Staff Report as part of the public record.
- II. Make the following findings:
 - (a) The project is categorically exempt from environmental review according to Section 15303(a) of the California Environmental Quality Act Guidelines, in that the request involves a minor setback variances not resulting in the creation of a new parcel.
 - (b) Due to the existing topography, heavy vegetation, and the physical layout of the built environment and streets; the effective distances between the proposed commercial cannabis business location and the Sierra School and Federated Church are approximately 2,027 feet and approximately 1,562 feet respectively, exceeding the required distance of 250 feet of separation. Thus, the granting of this request does not constitute a special privilege not enjoyed by others in the vicinity and zone in which the property is located.
 - (c) The proposed commercial retail cannabis business is located along an existing commercial corridor consisting of other retail, service and auto related uses. The effective physical distance between the proposed cannabis retail business and the Sierra School and Federated Church are approximately 2,027 feet and approximately 1,562 feet respectively exceeding, the required distance of 250 feet of separation. Thus, the granting of this variance request will not be detrimental to the public health, safety, convenience and welfare.
 - (d) The granting of this variance request will not adversely affect the General Plan and is in conformity with the application provisions of the Zoning Ordinance and the Commercial Zone District regulations.
- III. Approve Variance 20-01, subject to the following conditions and requirements:
 1. These conditions and requirements shall apply to Variance 20-01 that allows for an approximate 186.2 feet distance from the Sierra Elementary School property and an approximate 190.4 feet distance from the Federated Church property where a minimum of 250 feet of distance is required from the location of the proposed commercial cannabis business location at 651 Main Street.
 2. Approval is granted for the Variance request described in the application date-stamped August 25, 2020, and staff's September 15, 2020 report to the Planning Commission, except as modified by the conditions of approval.
 4. These conditions of approval shall be binding on the applicant and all successors in interest in the event the project site is sold or transferred to another party.

5. Any proposed future change to the site or modification to the application beyond what is authorized under this permit shall be submitted to the Development Services Department for a determination of appropriate procedures.
6. The applicant, employees, and agents shall comply with City Code Title 5, Chapter 28 Commercial Cannabis Activity, Title 10 Zoning, and all applicable California State regulations.

Pierre Rivas

Pierre Rivas, Development Services Director

Exhibits:

- A. [Applicant Submittal Package](#)
- B. [Location Map](#)
- C. [Distance Calculation Exhibit Map](#)
- D. [Aerial](#)
- E. [Comment Letter – Sierra School](#)