



COUNTY OF HUMBOLDT

For the meeting of: 6/28/2022

File #: 22-830

To: The Humboldt County Board of Supervisors

From: Planning and Building Department

Agenda Section: Public Hearing

SUBJECT:

Homestead Collective Weed Company Appeal of the Zoning Administrator's Conditional Approval of a Special Permit for an Existing 10,000 Square Foot Outdoor Cannabis Cultivation Operation

RECOMMENDATION:

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the appellant (applicant), and public; and
2. Close the public hearing; and
3. Adopt the resolution (Resolution 22-__) (Attachment 1) which does the following:
 - a. Finds that the proposed project does not comply with all applicable terms of the Zoning Ordinance; and
 - b. Denies the Appeal submitted by Homestead Collective Weed Company LLC; and
 - c. Denies the Special Permit.
4. Direct the Clerk of the Board to give notice of the decision to the appellant, the Planning and Building Department, and any other interested party.

SOURCE OF FUNDING:

The Appellant has not paid the proper fee associated with filing this appeal.

DISCUSSION:

Executive Summary

This is an applicant appeal of the Zoning Administrator's decision to approve a Special permit for an existing 10,000 square foot commercial cannabis operation. The appeal is based on concern with a condition of approval (COA #12) regarding the setback from a wetland on the site. The concern with the condition has been resolved, but the applicant/appellant still wants to pursue the appeal and is unwilling to pay the cost of processing his permit. The CMMLUO requires that application fees be paid. Since the applicant/appellant is unwilling to pay the processing fees, it is recommended that the appeal be denied and that the Special Permit be denied.

The project is for 10,000 square feet of pre-existing outdoor cultivation with electricity sourced from a generator and irrigation water sourced from an on-stream pond. This application has a long history of complications and disagreements between the applicant and the County Planning and Building Department. These disagreements originated due to the applicant's initial refusal to pay the 2018 and 2019 Measure S taxes on the issued Interim Permit. On May 7, 2020 the application was brought forward to the Planning Commission and staff recommended denial due to the unwillingness to pay these cultivation taxes. At this hearing the applicant agreed to pay the taxes and the Planning Commission took no action. After paying the taxes the application continued in the process and on December 17, 2020 the Humboldt County Zoning Administrator approved the Special Permit application. The information at the time of the Zoning Administrator hearing was that the wetland on the site had year-round standing water and qualified as a perineal wetland feature. The condition to require approximately 368 square feet of cultivation out of the 150-foot setback was maintained.

On January 5, 2021 the applicant filed an appeal of the Zoning Administrator's approval. The applicant refused to pay the appropriate appeal fee and was able to convince a staff member to accept the appeal application. Planning staff worked with the applicant to address his concerns and had a verbal agreement whereby the appeal would be dropped once the appeal issue was addressed. The appeal issue was addressed however the applicant has not dropped the appeal. The applicant has also refused to pay processing costs or the annual inspection deposit.

Appeal

The appellant filed an appeal during the appeal period of the Zoning Administrator's decision on December 17, 2020 to approve the project. The appellant believes that the requirement to have a 150-foot setback from the wetland on-site is excessive and not supported by the biological report submitted for the project. Specifically, the condition of approval in question considered that the wetland was a perennial wetland, which would require a 150-foot setback. Information in the biological report was somewhat confusing but a closer review indicates that the wetland in question is seasonal, which would require a 50-foot setback under the County Streamside Management and Wetland Ordinance, and a 100-foot setback under the State Water Resources Control Board General Cannabis order. County staff provided the applicant with a letter documenting that the wetland would be considered seasonal and that the seasonal wetland setbacks would be applied. This is what the appeal specifically asked for and the applicant had verbally agreed to drop the appeal upon such an outcome. However, the applicant has since chosen not to withdraw the appeal. The applicant has also chosen not to provide the required appeal fee. It is difficult to discern what the applicant/appellant is seeking in this appeal.

County Ordinance Non-Compliance

Section 314-55.4.11(k) requires applicants under the CMMLUO to pay all applicable application and annual inspection fees. To date invoices have been sent to the applicant and gone unpaid. Planning staff has spent considerable time meeting with the applicant and reviewing the invoices and has been unable to come to agreement. The total of all processing charges that have been accrued on this Special Permit is \$7,128.30. For context the average processing cost for a Special Permit, based on a review of all 412 Special permits that have been approved since February of 2016, is \$6,097.92. The Special Permit cost of \$7,128.30 is not out of the ordinary for an application that has required significantly more staff time and had more public hearings than typical.

In order for this permit to be found in compliance with the CMMLO, it must meet all the requirements of the ordinance, and this includes Section 314-55.4.11(k) which requires payment of all application fees and annual inspection fees. As a result of failure to pay processing costs the application does not comply with the Humboldt County Zoning Ordinance. Staff is therefore recommending that both the permit application and the appeal be denied.

FINANCIAL IMPACT:

There will be no additional effect on the General Fund.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by its support of enforcing laws and regulations to protect residents.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose to approve the appeal and approve the Special Permit with the amended condition of approval number 12 as identified by staff in the letter dated July 15, 2021. The Board could also choose to add or remove additional conditions of approval.

ATTACHMENTS:

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

1. Draft Board Resolution and Findings
2. Appeal filed by Homestead Weed Collective, LLC
3. Zoning Administrator Staff Report for December 17, 2020
4. Resolution of the Zoning Administrator
5. Letter dated July 15, 2021 to Brian Roberts regarding the application of condition of approval number 12
6. Planning Commission Staff Report for May 7, 2020
7. Email correspondence between Brian Roberts and County staff
8. Aquatic Resources Delineation

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A