



## Legislation Details (With Text)

**File #:** 2019-0516

**Type:** Regular Calendar Item **Status:** Passed

**File created:** 4/8/2019 **In control:** Permit and Resource Management

**On agenda:** 6/13/2019 **Final action:** 6/13/2019

**Title:** 9:00 A.M. -Appeal of a Use Permit approval to allow retail sales of alcohol (off-premise) at an existing cheese shop in Freestone. UPE15-0115

**Sponsors:** Permit and Resource Management

**Indexes:**

**Attachments:** 1. UPE15-0115 BOS Agenda Summary Report.pdf, 2. UPE15-0115 Draft Board of Supervisors Conditions of Approval, 3. UPE15-0115 Draft Board of Supervisors Resolution, 4. UPE15-0115 Attachment A: Appeal Submitted by Eric Koenigshofer dated May 8, 2017, 5. UPE15-0115 Attachment B: Proposal Statement.pdf, 6. UPE15-0115 Attachment C: Site and Floor Plan, 7. UPE15-0115 Attachment D: Board of Zoning Adjustments Minutes Dated April 27, 2017, 8. UPE15-0115 Attachment E: BZA Staff Report & Attachments. April 27, 2017.pdf, 9. UPE15-0115 BOS Permit Sonoma PowerPoint.pdf

| Date      | Ver. | Action By            | Action              | Result |
|-----------|------|----------------------|---------------------|--------|
| 6/13/2019 | 1    | Board of Supervisors | Approved as amended | Pass   |

**To:** Board of Supervisors

**Department or Agency Name(s):** Permit Sonoma

**Staff Name and Phone Number:** Jennifer Faso

**Vote Requirement:** Majority

**Supervisory District(s):** Fifth

**Title:**

**9:00 A.M.** -Appeal of a Use Permit approval to allow retail sales of alcohol (off-premise) at an existing cheese shop in Freestone. UPE15-0115

### Recommended Actions:

Conduct a public hearing and at the conclusion of the hearing, adopt a Resolution denying the appeal and upholding the Board of Zoning Adjustments decision to approve the retail sales of alcohol (off-premise) at an existing retail cheese shop (Freestone Artisan Cheese) located at 380 Bohemian Highway, Freestone, APN 073-120-032. (Fifth District)

### Executive Summary:

This report presents an appeal of the Board of Zoning Adjustments decision to approve a use permit to add retail sales of alcohol (off-site) at an existing cheese shop located at 380 Bohemian Highway, Freestone, APN 073-120-032. The Use Permit was approved unanimously (5-0-0 vote) by the Board of Zoning Adjustments on April 27, 2017 and was appealed on May 8, 2017.

The subject parcel is located within the boundaries of the Freestone Historic District and the Landmarks Commission reviewed and approved the exterior changes to the structure with the original use permit. Given that the current request to add off-site alcohol sales does not involve exterior changes it is not necessary for the Landmarks Commission

to review this application.

The appeal includes concerns regarding conflicts between the subject parcel's land use and zoning designations and inconsistencies with the General Plan. The appeal also raises concerns related to on-site septic system capacity, food cooked to order and the use of the community area across the street from the project site.

On February 29, 2012 a Use Permit (UPE11-0073) was approved for the subject parcel to allow the conversion of a single family dwelling to a retail cheese shop and to convert an existing detached garage into a single family dwelling.

On April 27, 2017 the Board of Zoning Adjustment approved a Use Permit (UPE15-0115) to allow the addition of off-site sales of beer, wine and hard cider. The use permit also allows the preparation of crepes and coffee for take out. During that hearing the Board of Zoning Adjustments heard concerns from community members that a conflict existed between the General Plan land use map for the Freestone area and the language of the General Plan. The Board of Zoning Adjustment approved the request for the use permit to allow retail sales of alcohol at Freestone Artisan Cheese. However, they also directed staff to prepare a letter to the Board of Supervisors conveying the Board of Zoning Adjustments' concerns regarding the extent of the Limited Commercial land use designation within Freestone and the potential conflict with General Plan Policy.

Under a separate action, on April 24, 2018 the Board of Supervisors adopted a Resolution amending the General Plan land use map and related Ordinance rezoning 17 parcels in Freestone. This action resolved the inconsistencies between General Plan Policy and the General Plan Land Use map. As a result of this approval the subject parcel was rezoned from CR (Commercial Rural) to RR (Rural Residential). This rezone rendered the existing cheese shop a legal non-conforming use. As a legal non-conforming use the cheese shop is allowed to operate under the approved use permit (UPE11-0073). However if in the future the operation of the retail cheese shop ceases for a continuous period of one (1) year, then the non- conforming use would be considered terminated and any new use would be subject to the current zoning designation and regulations.

The proposed project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to 15301, because the project involves existing structures with no new construction proposed.

## **Discussion:**

### **Project Description:**

The proposed project is a request for a Use Permit to allow retail sales of alcohol (off-premise, ABC Type 20 license) at an existing cheese shop along with the preparation of crepes and coffee for take out on a 0.28 acre parcel. The existing retail shop specializes in items that are produced locally by farmers and other artisan entrepreneurs in the county such as cheese, charcuterie, olive oils, cracker, cookies and soaps. The applicant proposes to offer hard cider, beer and wine for sale. No tasting or consumption of alcohol on site is proposed, nor are events proposed. No changes to the existing building will result from this request. The area dedicated to display the alcohol will be less than 20 percent of the total square footage of the existing retail space. The hard cider, beer and wine will be displayed in the shop's existing refrigerated coolers.

### **Site Characteristics:**

The 0.28 acre subject site is located in the community of Freestone just west of the intersection of Bohemian Highway and Freestone Street. The parcel is developed with a 1,100 square foot retail shop, four on-site parking spaces for

customers and a detached single family dwelling with associated parking.

**Surrounding Land Use and Zoning:**

The following uses and zoning surround the site.

- North: Residential and commercial land uses, zoned LC (Limited Commercial) and RR (Rural Residential) HD (Historic Combining), SR (Scenic Resources Combining)
- South: Residential and commercial land uses, zoned LC (Limited Commercial) and RR(Rural Residential), HD (Historic Combining), SR (Scenic Resources Combining)
- East: Residential and Commercial uses, zoned PF (Public Facilities) and HD (Historic Combining), SR (Scenic Resources Combining)
- West: Single Family residential uses, zoned RR (Rural Residential), SR (Scenic Resources Combining)

**Issues Discussed at the Board of Zoning Adjustments Hearing and Raised in the Appeal Letter:**

The following issues were discussed at the Board of Zoning Adjustments hearing and are included as part of the Appellant's appeal (Attachment A). Additional background on the project, site and project issues are provided in the Board of Zoning Adjustments staff report (Attachment E) and the April 27, 2017 Board of Zoning Adjustments minutes (Attachment D).

**1. Consistency of the project site's zoning with General Plan.**

The original objection to the project and one of the primary basis for this appeal is a concern that the subject parcel's zoning and land use designation is inconsistent with the General Plan. The appellant contends that the approval of this use permit, constitute an expansion of a use on a parcel that is inconsistent with the General Plan.

Staff Analysis

Since this appeal was filed Permit Sonoma staff identified inconsistencies between General Plan Policy and land use and zoning designations of multiple parcels in the community of Freestone. The subject parcel was included in the parcels identified as being inconsistent. To rectify this, Permit Sonoma staff proposed changes to these designations. On April 24, 2018, the Board of Supervisors reviewed and approved these changes rectifying the inconsistencies. As a result, the subject parcel was rezoned from CR (Commercial Rural) to RR (Rural Residential) making Freestone Artisan Cheese a legal non-conforming use. In the future if the existing retail use ceases for a continuous period of one (1) year then the parcel and future uses shall be subject to the current zoning regulations of RR (Rural Residential).

With the approval of the rezoning and changes to land use designations the subject parcel is no longer inconsistent with the General Plan and any future new uses will be required to adhere to the current land use and zoning designations. Given that the project site is now zoned Rural Residential (RR) and that the current use of the site has been deemed a legal non-conforming use, going forward if the existing use loses it legal non-conforming status, a retail shop and off-site sales of alcohol would no longer be allowed because these uses are not permitted or allowed with a use permit in the RR zoning designation.

## **2. General Plan Planning Area.**

The appeal points out that the analysis in the original use permit approval in 2012 (UPE11-0073) for the project site listed incorrectly *Sebastopol and Environs Planning Area* instead of the *Sonoma Coastal/Gualala Basin Planning Area*.

### Staff Analysis

Staff recognizes that the original 2012 use permit (UPE11-0073) approving the conversion of the single family dwelling into a retail cheese shop, identified the incorrect Planning Area.

The subject parcel is within the *Sonoma Coastal/Gualala Basin Planning Area*. This Planning area runs the 40 mile length of the Pacific Coastline from the Gualala River to the Estero Americano and extents inland to include Freestone.

When the retail cheese shop was originally approved and when the Board of Zoning Adjustments recently approved the use permit to allow off-site sales of alcohol, the subject parcel had a land use designation of Limited Commercial. Within this planning area the intent of the Limited Commercial land use designation was for existing retail uses that were in operation prior to the General Plan update of 1989. Given that the subject property had a land use designation of Limited Commercial when the use permit was approved, the appellant felt that the proposed use was inconsistent with the policies of this planning area.

With the recent Freestone General Plan amendment and rezoning approvals, the subject parcel is now consistent with the General Plan and the existing retail use is deemed legal non- conforming.

The approval of the current use permit request to allow off-site alcohol sales would be ancillary to a legal non-conforming use and this use would only be allowed under the current retail operation. When and if this retail use ceases then the new use will have to conform to the current regulations; requiring the new use to be consistent with Sonoma Coastal/ Gualala Basin Planning Area.

Given that the current use is legal non-conforming and any future uses will have to comply with the current zoning and land use designation, the proposed project is found consistent with the General Plan policies of the Sonoma/Coast/ Gualala Basin Planning Area.

## **3. Food Cooked to Order.**

The appellant contends that the preparation of crepes and coffee is not consistent with the approved use permit and that the existing septic system does not have adequate capacity to support food cooked to order.

### Staff Analysis

An ancillary part of the operations of Freestone Artisan Cheese is the preparation of crepes and coffee. These items are only available for take-out. This food preparation is consistent with the Retail Food Facility Permit issued by the County of Sonoma Department of Health Services.

The existing wastewater disposal system and expansion area was approved for this use in 2012 (SEP11-0634). The system was designed to accommodate the cheese shop operations and the single family dwelling on the site. As a condition of approval of the septic permit the property owner is required to participate in the Non- Standard Septic Systems Operational Permit and Monitoring program. The property owner has adhered to the program requirements

since the shop opened and based on Permit Sonoma records the current system has functioned properly without issues.

This issue was discussed at the Board of Zoning Adjustments hearing and the Board did not have any concerns with the continuation of the preparation of crepes and coffee as take-out items only. However they were supportive of a sign being installed on the subject property discouraging the use of the community area across the street by the customers of the cheese shop. Draft condition of approval number 19 has been added that requires the installation of a sign

#### **4. ABC Licenses within 1,000 feet of subject parcel.**

The appeal states that the subject parcel is located within one-thousand (1,000) feet of another alcoholic beverage retail establishment, and therefore inconsistent with the code requirements. Specifically the Freestone Country Store located at 500 Bohemian Highway.

#### Staff Analysis

Section 26-88-195(b) of the Sonoma County Zoning Code regulates small alcoholic beverage retail establishment in terms of locational requirements. Small alcoholic beverage establishments are required to be separated by a minimum of one thousand (1,000) feet from other alcoholic beverage retail establishments. An exception to this provision may be allowed for establishments outside of urbanized areas when the following findings can be made.

- 1. That the proposed use is located in an area where the number of calls for service, crimes, and arrests within a one-half mile radius of the premises is less than the county-wide average; and*
- 2. There is adequate separation from the other uses specified above to deter loitering and exposure to alcohol sales.*

The Freestone Country Store is located within 1,000 feet of the project site; it is approximately 600 feet from the project site. There is a Type 20 ABC license associated with this property. However the store is currently closed for business and this license was surrendered effective July 7, 2018. If the surrendered license is not reinstated or sold within one year of the surrender date then the license will be revoked.

The project site is not located in an urbanized area as defined by the Zoning Ordinance and the U.S. Census. Therefore the following required findings can be made to allow an exception to the separation criteria.

1. Based on the Sonoma County Sheriff's Arrest and Crime logs, the subject parcel is located in an area where the average number of calls, crimes and arrests is less than the county-wide average. The number of crime incidents for the project area is 21.75 per 1,000 residences which is less than the county average of 23.83 per 1,000 residences.
2. The project site is located in a rural area and therefore there is adequate separation between the developed lots, and the subject parcel is not located near schools or day care centers. The nearest school is 1.72 miles to the north.

The Board of Zoning Adjustments did not discuss this item at the April 27, 2017 hearing.

#### **5. Parking.**

The appellant contends that there is inadequate on-site parking.

#### Staff Analysis

Section 26-86-010 of the zoning code requires 1 parking space per 200 square feet of retail sales area. The existing retail

cheese shop has approximately 600 square feet of retail sales area and the addition of alcohol sales will not result in an expansion of the sales area. Based on the parking requirements the project site is required to have three on-site parking spaces for customers. The site currently has four dedicated parking spaces on site for customers. The project site also contains a separate single family dwelling that has two dedicated parking spaces for the residential use.

The proposed project is consistent with the parking requirements of the Sonoma County Zoning code.

The Board of Zoning Adjustments did not discuss this item at the April 27, 2017 hearing.

#### **6. Septic System Capacity.**

The appellant contends that the subject parcel has inadequate septic system capacity.

##### Staff Analysis

A new septic system was installed in 2012 under approved septic permit SEP11-0634. A condition of approval required that the property owner participate in the Annual Operating Permit and Monitoring program. This program monitors non-standard septic systems to ensure that the system is operating properly for the protection of public health and groundwater resources. As part of the program the property owner is required to submit biannual monitoring information to Permit Sonoma. Based on Permit Sonoma records the property is in compliance with the requirements of the monitoring program. Furthermore based on the results of the monitoring information collected it has been demonstrated that the septic system has adequate capacity for the current uses on the project site. Approval of this use permit will not increase the need for additional septic capacity.

The Board of Zoning Adjustments did not discuss this item at the April 27, 2017 hearing.

#### **7. Substandard parcel size.**

The appellant contends that the size of the project site is substandard.

##### Staff Analysis

The project site is a 12,600 square foot parcel that was legally created prior to the current regulations. As a legal lot, development is allowed as long as it is consistent with the current development standards. All existing structures and improvements on the site were authorized with approved building and septic permits. The addition of alcohol sales is not associated with new physical construction.

#### **8. Community Area across from project site.**

The appeal includes concerns regarding the use of the community area located across the street from the project site. The appellant is concerned that customers of the retail shop will take their purchased items and picnic within the community area.

##### Staff Analysis

This area is owned by the Gold Ridge Fire Protection District and is part of the fire station property. The Gold Ridge Fire Protection District was one of the agencies included in the standard project referral process. Through this process a copy of the application, project description and plans are distributed to agencies who would have interest in the project. The Fire District was included in the referral process and also received a public hearing notice of the project as a

property owner within 300 feet of the project site. The Fire District did not submit comments on the project or express any concerns with the proposed project.

Authorization for the requested use permit and associated conditions of approval can only apply to the subject property. It is not the practice of Freestone Artisan Cheese employees to direct customer to the community area across the street to consume their purchases. However recognizing that some customers may choose to visit this area draft condition of approval number 19 has been added that requires a sign be installed on the project site to discourage use of the community area for consumption of alcohol.

An additional condition of approval has been added that requires a one year review period after commencement of alcohol sales. Notice of the Use Permit review will be given to property owners within three hundred (300') of the subject property and additional property owners with previously requested notice. If it is determined that there is credible evidence of non- compliance with the Conditions of Approval or that operational activities constitute a public nuisance, then the use permit will be referred to the Board of Zoning Adjustments for possible revocation or modification.

**Staff Recommendation:**

Deny the appeal and uphold the Board of Zoning Adjustments' decision to approve of the Use Permit to allow retail sales of alcohol (off-premise) at an existing legal non-conforming retail cheese shop.

**Prior Board Actions:**

None.

**FISCAL SUMMARY**

| <b>Expenditures</b>                | <b>FY 18-19<br/>Adopted</b> | <b>FY19-20<br/>Projected</b> | <b>FY 20-21<br/>Projected</b> |
|------------------------------------|-----------------------------|------------------------------|-------------------------------|
| Budgeted Expenses                  | N/A                         |                              |                               |
| Additional Appropriation Requested | N/A                         |                              |                               |
| <b>Total Expenditures</b>          | <b>N/A</b>                  |                              |                               |
| <b>Funding Sources</b>             | <b>N/A</b>                  |                              |                               |
| General Fund/WA GF                 | N/A                         |                              |                               |
| State/Federal                      | N/A                         |                              |                               |
| Fees/Other                         | N/A                         |                              |                               |
| Use of Fund Balance                | N/A                         |                              |                               |
| Contingencies                      | N/A                         |                              |                               |
| <b>Total Sources</b>               | <b>N/A</b>                  |                              |                               |

**Narrative Explanation of Fiscal Impacts:**

N/A

| <b>Staffing Impacts:</b>        |  |                               |                               |
|---------------------------------|--|-------------------------------|-------------------------------|
| <b>Position Title (Payroll)</b> | <b>Monthly Salary Range (A - I Step)</b> | <b>Additions<br/>(number)</b> | <b>Deletions<br/>(number)</b> |
|                                 |  |                               |                               |

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**Narrative Explanation of Staffing Impacts (If Required):**

N/A

**Attachments:**

Draft Board of Supervisors Resolution with Exhibit A Conditions of Approval

Attachment A: Appeal Submitted by Eric Koenigshofer dated May 8, 2017

Attachment B: Proposal Statement

Attachment C: Site Plan and Floor Plan

Attachment D: Board of Zoning Adjustments Minutes dated April 27, 2017

Attachment E: Board of Zoning Adjustments Staff Report and Attachments dated April 27, 2017

**Related Items “On File” with the Clerk of the Board:**

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