



MEMORANDUM

354
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DATE: April 11, 2006

TO: Zoning Administration Division
DSD Zoning Review Section

FROM: Walter Tellez
Zoning Administrator

SUBJECT: LUC 3.5.4.20.C.4, Cell Towers in the SCZ, Gateway Route, HPZ, ERZ, and HDZ
Land Use Code: Zoning Administrator Determination

LUC 3.5.4.20.C.4 restricting new towers within 400 feet of a designated Scenic Route or Gateway Route, within a designated Historic Preservation Zone, Environmental Resource Zone, or on a protected peak or ridge as identified in a Hillside Development Zone applies to private property, public property and any right-of-ways. This determination applies to private commercial uses on public property, which is subject to and not exempt from the LUC, and which we regularly apply to other governmental entities. The lease agreement with the wireless provider makes it clear that it is a lease, and not a franchise or license. This is not subject to the City Manager waiver approach.

s:zoning administration/za determination/LUC 3.5.4.20.doc

Walter Tellez - Proposed Peace Palace project: Zoning information requested

From: Wayne Bogdan
 To: chuck@longrealty.com
 Date: 04/06/2006 11:13 AM
 Subject: Proposed Peace Palace project: Zoning information requested
 CC: Walter Tellez

April 6, 2006

Chuck Corriere, MBA
 Associate Broker
 Long Realty Commercial Real Estate
 3130 East Broadway Blvd., Suite 180
 Tucson, AZ 85716

Subject: Proposed Peace Palace project
 Land Use Code (LUC) Information

Dear Mr. Corriere:

Thank you for your letter dated March 23, 2006 and attachments regarding the above referenced project. The attachments included a program brochure and building plans. The project is the proposed Peace Palace facility. The purpose of the Peace Palace facility will be to teach the Maharishi Corporate Development Program, a human resource and corporate development related seminars. The facility in its conceptual phase will comprise a 12,000 square foot building on an approximate half acre site. The building will be designed to provide space for class and lecture rooms, a library, offices, dining facilities, meeting rooms, exhibition and display rooms. Based on this preliminary information, you are requesting zoning information applicable to the project as proposed.

The Zoning Administration Division has reviewed your letter, the attachments and the LUC regulations deemed applicable to the project. For zoning purposes, the Peace Palace facility, as proposed, is considered to be a "Educational Use: Postsecondary Institution" land use.

This land use is permitted in the following zones: O-3, C-1, C-2 subject to LUC Sec. 3.5.3.3:

3.5.3.3 Postsecondary Institutions. Teaching of only those operations or occupations which are allowed in the zoning classification of the property as permitted uses is allowed.

This use is permitted in the OCR-1, OCR-2 and I-1 zones without this restriction.

Please note, final LUC approval for the project will require the submittal and approval of the project's site plan to the Development Services Department, 1st Floor, 201 North Stone Avenue for the zoning compliance review process. Information on this review process can be obtained by contacting either David Rivera or Patricia Gehlen of the DSD Zoning Compliance Review Section at (520) 791-5555. Also note, a copy of this eletter must be attached to the project's site plan when submitted to DSD for zoning compliance review. I hope you find this information helpful and should you require further information from the Zoning Administration, please email me.

Sincerely,

Wayne F. Bogdan
 Zoning Administration Division
 Development Services Department
 City of Tucson
 Ph: (520) 791-4541 ext. 1116



MEMORANDUM

354
288

DATE: April 5, 2006

TO: Zoning Administration Division
DSD Zoning Review Section

FROM: Walter Tellez
Zoning Administrator

SUBJECT: LUC 2.5.3, C-1 Zone, Liquor Sales in Restaurants
Land Use Code: Zoning Administrator Determination

In order to match the State's definition for "restaurant", a Food Service land use is considered the Principal Use when 40 percent of gross revenues are from food sales. Liquor service as a permitted secondary use can not be restricted to only beer and wine in order to conform with the State liquor license regulations. The only difference between liquor sales as the permitted secondary use and the special exception use is the special exception use would allow a separate cocktail area for a restaurant with less than 75 seats.

s:zoning administration/za determination/LUC 2.5.3a.doc



MEMORANDUM

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DATE: February 24, 2006

TO: Zoning Administration Division
DSD Zoning Review Section

FROM: Walter Tellez
Zoning Administrator

SUBJECT: LUC 2.8.5.8.C.e, ADC-3, Meeting Space Defined
Land Use Code: Zoning Administrator Determination

LUC 2.8.5.8.C.e states "Any meeting space and function areas where people gather in excess of 5,000 square feet in area will be located underground. This Criteria is only a limitation on "meeting" space or rooms such as an auditorium, conference room, ball room, etc. and not on any place where people might "meet" such as a restaurant or on the cumulative number of customers.

s:zoning administration/za determination/LUC 2.8.5.8.C.doc

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From: Walter Tellez
To: Gross, Craig
Date: 02/13/2006 8:35:30 AM
Subject: Re: Commercial Commissary Kitchen

Retail food sales at 1/200, wholesale food sales at 1/2000.

>>> Craig Gross 02/13/2006 8:26:37 AM >>>
thanks. what parking calcs do we use?

>>> Walter Tellez 02/13/2006 7:26:18 AM >>>
For retail customers, ok in C-1. For businesses (peddlers) needs C-2.

>>> Craig Gross 02/10/2006 4:43:30 PM >>>
How do we view a commercial commissary Kitchen that prepares food for caterers? No public seating or sales. They cook food on-site, van comes in and picks up prepared food and delivers it elsewhere.

2006/02/13
2:11

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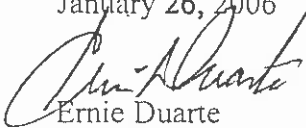


CITY OF TUCSON

MEMORANDUM

DATE: January 26, 2006

TO: Jaret Barr
City Manager's Office

FROM: 
Ernie Duarte
Development Services

SUBJECT: Inn Suites

You had requested information regarding the possible redevelopment of the current Inn Suites located at 475 North Granada .

My zoning staff had previously communicated with a customer interested in redeveloping the site as a "vacation rental" condominium project. This proposal is permitted in the existing I-1 zoning as "Travelers Accommodations, Lodging". However, to qualify for this use the room units must remain as vacation rentals with no kitchens facilities added and must function as a short term stay facility.

However, if the units are changed to residential dwellings such as multi-family apartments with kitchens amenities and separate utilities, the existing I-1 zoning would need to be changed to a residential or appropriate commercial zone as residential dwellings is not a permitted use in the I-1 zoning.

I hope this clarifies any questions you may have. If you need additional information, please contact me or Walter Tellez, Zoning Administrator. Thank you.

cc: Karen Masbruch, Assistant City Manager
Craig Gross, DSD Deputy Director
Walter Tellez, Zoning Administrator

H:\winword\mydocuments\innsuites-barr



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From: William Balak
To: lisa@metropermitexpress.com
Date: 01/23/2006 8:54:18 AM
Subject: Parking Requirements for Nail Salons

Ms. Bowers,

You requested a information on the Land Use Code (LUC) classification and parking requirements for a nail salon.

The Commercial Services Use Group, Land Use Class: "Personal Service", LUC Section 6.3.5.19, is described as a use which provides personal care and appearance services to an individual such as barber and beauty shops. Based on a determination of the Zoning Administrator, a nail salon was considered a Personal Service land use and required to meet the Personal Service parking requirements of 1 parking space for every 100 square feet of gross floor area. This determination was appealed to the Board of Adjustment and the Board reversed the Zoning Administrator's determination for the parking requirements and stated that the parking requirement for a nail salon is 1 parking space for every 200 square feet of gross floor area.

William Balak
Principal Planner
Development Services Department

CC: David Rivera; Walter Tellez; Zoning Enforcement Staff

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From: Wayne Bogdan
To: cdeal.homesplus@cox.net
Date: 01/13/2006 2:54:07 PM
Subject: Hookah Lounges: Land Use Classification and Parking Requirements

January 13, 2006

Christine Deal
Realtor
Cienega Creek Realty
2215 W. Osborn Road
Phoenix, AZ 85015

Subject: Hookah Lounge: Request for zoning classification and parking requirements
Land Use Code (LUC) Information

Dear Ms. Deal:

Thank you for your patience in awaiting staff's reply to your letter dated December 8, 2005 on the subject matter referenced above. The project proposes a new hookah lounge catering to college students aged 18 to 21 years old. The lounge will be alcohol free and meant to be a gathering space for the underage and non-drinking college students to congregate and socialize. The lounge will offer low setting tables with built in hookah pipes. Flavored tobaccos will be offered along with light appetizer type ethnic foods, coffees and soft drinks. The food preparation area will be about 300 square feet. There will be a small gift shop but cigarettes and cigars will not be sold. On Friday and Saturday nights there will be a live DJ and music. The hours of operation will be approximately 5:00 pm to 5:00 am, 7 days a week with 5 to 10 employees. Based on this information, you are requesting the land use classification and parking requirements for this use.

The Zoning Administration Division has reviewed your information, information on hookah lounges available on the internet, and the LUC regulations applicable to new uses of land. After consultation with the City Attorney's Office, staff considers the proposed hookah lounge to be similar in function to a coffee house a "Food Service" land use. The off-street parking requirements for this land use can be determined by using the ratio of one off-street parking space per 100 square feet of gross floor area (1/100). I hope this information has answered your request and should you require further zoning information from the Zoning Administration Division, please let me know. Please note, a copy of this letter must be attached to the project site plan when submitted to the Development Services Department (DSD), 1st Floor, 201 North Stone Avenue for the zoning compliance review process.

Sincerely;

Wayne F. Bogdan
Principal Planner
Zoning Administration Division
Development Service Department
City of Tucson
Ph: (520) 791-4541 ext. 1116
Fx: (520) 791-5852
Em: wayne.bogdan@tucsonaz.gov

CC: Ernie Duarte; Viola Romero; Walter Tellez

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C-3
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From: Wayne Bogdan
To: info@saharaapartments.com
Date: 12/14/2005 3:44:23 PM
Subject: Sahuara Apartments, 919 N Stone: Nightly/Monthly Rental Units

December 14, 2005

Ted Mehr
Managing Member
Sahuara Apartments
919 N. Stone Avenue
Suite 1101
Tucson, AZ 85705

Subject: 919 N Stone: Sahuara Apts: Proposed Rental of Units for Gem Show
Land Use Code (LUC) Information

Dear Mr. Mehr:

Thank you for your letter dated November 23, 2005 regarding the proposed rental of the Sahuara apartment units. Specifically you would like to be able to rent some of the apartment units (50-100) on a nightly or monthly basis during the Gem show. If this is possible you would also like to be able to rent these same units the same way during the rest of the year as well.

The Zoning Administration Division has reviewed your request, the project and the LUC regulations applicable to the project. Based on this review staff has no objections to the rental of 50 to 100 apartment units on a nightly or monthly basis. Staff's decision in this matter is based, in part, on the projected ADT counts provided by the Traffic Engineer Department that indicate there will be no change in the daily vehicular trips per day to the complex caused by the request (e.g. apartment versus motel rental). Please note, this staff decision is conditioned upon the submittal to the Development Services Department (DSD), 1st floor, 201 N Stone Avenue of a revised site plan for the apartment complex indicating those units assigned for nightly/monthly rental and those units reserved for student rental.

If you should have any questions concerning this zoning matter, please contact me by telephone: (520) 791-4541 ext. 1116 or by email: wayne.bogdan@tucsonaz.gov.

Sincerely,

Wayne F. Bogdan
Zoning Administration Division
Developmental Services Department
City of Tucson

CC: Craig Gross; Walter Tellez

Faint handwritten notes and stamps at the bottom right of the page, including the date "2007".

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From: Walter Tellez
To: Gross, Craig
Date: 09/07/2005 12:37:15 PM
Subject: Re: DDO Process

Don't think so. LUC 3.5.4.3.B says for Dev. Designator setbacks only, not Performance Criteria.

>>> Craig Gross 09/07/2005 12:20:45 PM >>>

Could we use the administrative DDO process to modify setbacks in LUC 3.5.6.3.C (for golf courses)? If they offer a lesser setback with trees and safety nets?

3.5.6.3.C
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From: David Rivera
To: Gehlen, Patricia; Gross, Craig; Tellez, Walter
Date: 08/15/2005 11:12:29 AM
Subject: Re: Retail uses with seating areas

That is correct. As long as the the seating area is defined on the plan and does not exceed the 25% floor area. That's what I recall.

David

>>> Walter Tellez 08/15/2005 11:06:27 AM >>>

I thought we had a long standing determination that retail uses (AM/PM's, Circle K's, Take out food/coffee) could have seating areas as long as less than 25%. I don't think we need a letter to allow Scot Cummings to do it at 6th and Campbell for pizza take out.

CC: Balak, William; Bogdan, Wayne

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From: Craig Gross
To: Castro, Daniel; Gehlen, Patricia; McLaughlin, Peter; Rivera, David; St. Paul, Michael; Stevens, Terry; Thrall, Heather
Date: 06/21/2005 2:57:08 PM
Subject: Blood Donor Centers vs. Plasma Centers

GDA is submitting a proposal for a Red Cross Blood Donor Center in the C-2 zone. Per Walter, a Red Cross Donor Center (where blood is donated not sold) does not require compliance with the Special Exception requirement section 3.5.4.8.C. This is to be used for Blood Centers and Plasma Centers where blood, blood products or platelets are purchased on a commercial basis.

CC: Tellez, Walter

C-2
3.5.4.8.C
3.5.4.8.A
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From: William Balak
To: Amanda McCline
Date: 06/03/2005 10:40:58 AM
Subject: Re: Commercial Noise 6534 E. Tanque Verde

Amanda,

I checked on Sakura and the zoning is C-2 which does not have setback limits or limits on outdoor music. The police can cite for noise the neighbors can hear under Section 11-73.1 of the Tucson Code (Other noises prohibited: standards for excessive noise). Section 11-73.1 of the Tucson Code states that such activities (activity being any continuous or intermittent noise that lasts more than 15 minutes caused by radio, tv, tape deck, record player, or musical instruments) are prohibited if they produce clearly audible sound beyond the property line of the property on which the activity is conducted and they disturb the public peace, quiet or comfort of the neighboring inhabitants. Sounds like an easy police citation.

Bill

>>> Amanda McCline 06/02/2005 9:10:11 AM >>>
Hi Bill-

Just checking to see if you were able to find rules on commercial businesses playing loud music outside. To refresh your memory, I had a call from the Mayor's office- a constituent of Ward 2 has a complaint about Sakura Restaurant playing patio music late at night. I found out that live music is played at Sakura Sunday through Thursday 7:00-11:00 and Friday & Saturday 7:00-midnight.

She lives right behind this restaurant in The Meadows town homes. She is starting a petition.

Amanda
Ward 2

CC: Fran Johnson; Lisa Ross; Walter Tellez

3.54
3.54
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From: Patricia Gehlen
To: Herman, Ted
Date: 06/01/2005 1:08:03 PM
Subject: Re: St. Philips Plaza 'shopping center' parking status

Hi Ted,

Based on the spreadsheet provided and the fact that the hotel has 122 rooms, this development is not currently 50% retail or less intense. Although I do not know how many parking spaces are on site, my guess is it is non-conforming for parking. If and when we annex, new non-retail tenant would likely have to "jump through some hoops" to get their CofO.

Let me know if you have additional questions.

Patricia

>>> Ted Herman 05/31/2005 10:04:34 AM >>>

Greetings Patricia,

Hope you had a great Memorial Day weekend. I've attached updated numbers and uses for the Plaza. Can you please review to determine if the Plaza is eligible for 'shopping center' parking status. I appreciate your assistance with this project. Please let me know if there is any further information required.

Thanks,
Ted

Theodore Herman
Project Manager
Regional & Strategic Planning
Department of Urban Planning & Design
City of Tucson
(520) 791-4505 ext. 129

CC: Kaselemis, Chris; Tellez, Walter

SEARCHED
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FBI - TUCSON
18

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From: Walter Tellez
To: Bogdan, Wayne; Gehlen, Patricia
Date: 03/29/2005 7:10:25 AM
Subject: Re: Fwd: temp permit for storage containers sams club tucson

If it is storage for the contractor, does not need TUP.

>>> Wayne Bogdan 03/28/2005 4:31:52 PM >>>
yeah i agree but walter seems to think it may be construction related...i best call for more info...thanx

>>> Patricia Gehlen 03/28/2005 4:31:00 PM >>>
Actually sounds like storage to me (not construction offices). I leave it up to guys though.

>>> Wayne Bogdan 03/28/2005 4:26:31 PM >>>
Hi Trish,

your thoughts...this sounds like typical "construction activity" not needing a tup....

bog

>>> "Andrew Bauer" <abauer@harrislights.com> 03/25/2005 1:37:11 PM >>>
Wayne Bogdan,

I am the project manager for Harris Manufacturing. We coordinating the efforts for the Lighting Upgrade to take place at Sams Club #6692. The facility is located at 4701 N. Stone Avenue. In order to complete the project, I need to place 2 containers (apprx 40' each) to be utilized for storage of lighting product and materials. My understanding is that we are required to have permits to drop containers for a temporary timeframe of 30 days. Please inform me of the correct procedure to do so. It is important to have guidelines and permit in place a soon as possible. You can reach me directly via the cell number listed, as well as email.

Thank You

Andrew Bauer
Project Manager
Harris Lighting-Facility Service Group
904.284.8311 office
904.622.6847 cell
abauer@harrislights.com

2005 3/29/05 11:17 AM

February 9, 2005

WALTER 354
YOUR REFERENCE (301)
COPY
CONSTRUCTION SERVICE
C-2
IF YOU NEED IT
MAY



CITY OF TUCSON

ZONING ADMINISTRATION DIVISION

DEVELOPMENT SERVICES DEPARTMENT (DSD)

Bob Patrick
R.G. Patrick, Ltd.
Land Planning & Development
5524 E. So. Wilshire Drive
Tucson, AZ 85711

SUBJECT: Tucson Plumbing – Land Use Classification
Land Use Code (LUC) Information

Dear Mr. Patrick:

Thank you for your letter, dated January 10, 2005, regarding the above referenced zoning matter. Per your letter, Tucson Plumbing is a construction service related business. The plumbing materials used in their business, is sold on a retail basis to their customers within the provisions of their service contracts. Plumbing materials are also available for sale to walk-in customers on a retail basis. Tucson Plumbing does not wholesale any of the plumbing materials they acquire, use and sell. Based on this information, you are requesting Tucson Plumbing be classified as "Retail Trade Use Group, Construction Materials Sales". If staff concurs, then you request confirmation that, in the C-2 zone, Tucson Plumbing would be allowed to store plumbing materials outside.

The Zoning Administration Division has reviewed the information provided by your letter, the Tucson Plumbing website www.tucsonplumbing.com, and the LUC regulations applicable to land use classifications. Staff notes that the business profile created by the sum of this information clearly fits more closely with the definition of LUC Sec. 6.3.5.9 "Commercial Services Use Group, Construction Service",

6.3.5.9 Construction Service. Construction Service is a use which provides construction activity to be performed at a construction site with related work performed on shop premises. Typical uses include construction companies, carpentry services, and plumbing services.

and not for "Construction Material Sales" per LUC Sec. 6.3.10.2:

6.3.10.2 Construction Material Sales. Construction Material Sales is the sale of lumber and other building materials. Typical uses include lumberyards, fence companies, and brick and block sales.

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Given the specific language of these LUC definitions and the descriptions of the services provided by Tucson Plumbing, it is quite clear to staff the principal activity of the company is "Commercial Services Use Group, Construction Service" and not "Retail Trade Use Group, Construction Materials". Construction Service is a an allowed principal use of land in the C-2 zone (LUC Sec. 2.5.4.2.A.8). However, all land uses within this zone are subject to compliance with LUC Sec. 2.5.4.6, which states:

2.5.4.6 General Restrictions. The following restrictions apply to all uses and development in this zone.

- A. Outdoor display of finished products for rent or sale at retail or wholesale is permitted, unless prohibited by specific performance criteria.
- B. Unless modified by specific performance criteria or Sec. 2.5.4.6.A, land uses in the Commercial Services, Industrial, Restricted Adult Activities, and Wholesaling Use Groups shall be conducted entirely within an enclosed building.

Outdoor storage other than that allowed per LUC Sec. 2.5.4.6, requires a minimum of C-3 zoning. Please note that a copy of this letter must be attached to the project's site plans when submitted to the Development Services Department (DSD), 1st floor, 201 North Stone Avenue for the zoning compliance review process. If you should require further LUC information from the Zoning Administration Division, please contact William Balak (ext. 1168) or Wayne Bogdan (ext. 1116) at (520) 791-4541.

Sincerely,



Post Walter Tellez
Zoning Administrator

s:zoning administration/zoning/200/tucsonplumbing.doc

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From: Walter Tellez
To: Warner, Anne
Date: 02/08/2005 2:12:19 PM
Subject: RE: 1101-1115 South Park

Anne,

If your client is a contractor, he is considered "construction service" which needs C-3 to have outdoor storage. See LUC 2.5.4.6.B which prohibits outdoor storage in C-2.

>>> "Anne Warner" <awarner@planningresources.net> 02/08/2005 1:30:35 PM >>>
Yes.

Anne Warner, RLA
Planning Resources
270 North Church
Tucson, AZ 85701
awarner@planningresources.net
520 628-1118
520 628-7637 fax

-----Original Message-----

From: Walter Tellez [<mailto:Walter.Tellez@tucsonaz.gov>]
Sent: Tuesday, February 08, 2005 12:09 PM
To: awarner@planningresources.net
Subject: Re: 1101-1115 South Park

Anne,

Does he need outside storage?

>>> "Anne Warner" <awarner@planningresources.net> 02/08/2005 11:09:05 AM >>>
Walter -

I need your advice. I have a parcel at the above location, surrounded by C-2 to the south (Unocal station), residential on the north and west sides (R-2), and I-1 to the east and north west. On this particular parcel, the owner would like to rezone the property to allow a warehouse for heating and cooling equipment. The neighbors prefer C-2 rather than have more industrial zoning in the neighborhood, which I agree with, but after reading the code, I don't know if this use would be allowed. It would make everyone happy if it were. Can you let me know what you think about the appropriate zone? I appreciate your help and wisdom.

302

Anne

Anne Warner, RLA

Planning Resources

270 North Church

Tucson, AZ 85701

awarner@planningresources.net

520 628-1118

520 628-7637 fax

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303

From: Wayne Bogdan
To: pharmon@sunstonehealing.net
Date: 11/24/2004 2:02:04 PM
Subject: Sunstone Cancer Support Foundation, 2545 N Woodland Rd., SR — Massage License

November 24, 2004

Patricia C. Harmon, MSW
President/CEO
Sunstone Cancer Support Foundation
2545 North Woodland Road
Tucson, AZ 85749

Subject: Request for renewal of massage license
Land Use Code (LUC) Information

Dear Ms. Harmon,

Thank you for your fax, dated November 19, 2004, regarding the Sunstone Cancer Foundation massage license. The property is addressed 2545 North Woodland Road, zoned "SR" Suburban Ranch and has been Sunstone's site, along with its Healing Center, since 2001. Sunstone's current services include 4-day intensive retreats, day programs and complementary therapies (i.e. healing touch, reiki, massage, etc.). Survivors can stay in the guest casitas while undergoing their cancer treatments. You are requesting the zoning approval necessary to allow Sunstone a massage therapy license at this location.

The Zoning Administration Division has reviewed your letter, the zoning history of the property, and the LUC regulations applicable to the SR zone. Based on this review the Sunstone facility is considered to be, for zoning purposes, a "Travelers' Accommodation, Lodging" land use. Massage therapy is considered an acceptable accessory use to this principal use of the property and has no objections to your obtaining the necessary City business license. Please note, a copy of this letter must be attached to your business license application when submitted to the Development Services Department (DSD), 1st Floor, 201 North Stone Avenue for the zoning compliance review of your license. If you should have need of further zoning information from the Zoning Administration Division, please contact either William Balak (ext. 1168) or myself (ext. 1116) at (520) 791-4541.

Sincerely,

Bogdan

Wayne F. Bogdan
Principal Planner
Zoning Administration Division
Development Services Department
City of Tucson

CC: Walter Tellez; William Balak

3.5.19
6.3.5.21
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MEMORANDUM

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DATE: October 15, 2004

TO: Zoning Administration Division
DSD Zoning Review Section

FROM: Walter Tellez
Zoning Administrator

SUBJECT: LUC 2.5.3, C-1 Zone, Restaurant Hours of Operation
Land Use Code: Zoning Administrator Determination

While there are some circumstances where hours of operation of a business may be limited, such as a rezoning case, Zoning can not apply an hours of operation limitation to one property that has the same zoning as other similar properties. Any change in the LUC to limit the hours of operation of a business would have to be a code amendment that applies City wide.

s:zoning administration/za determination/LUC 2.5.3.doc

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From: Walter Tellez
To: Torres, Aline
Date: 09/08/2004 9:59:59 AM
Subject: Re: Audio Express

Hi Aline,
Only the area, inside or out, that has the auto use occurring on it needs C-2. Does not include parking, loading or p.a.a.l.'s. Parking areas needs only C-1. This is how we originally did Costco and K-marts with auto repair. I have told Trish and David R. already.

>>> Aline Torres 09/08/2004 9:50:34 AM >>>

Hi, Walter - Glenn would like me to get something in writing from you regarding the Audio Express rezoning request. Our question was if they should rezone the building square footage or a portion of the site covering the parking, loading, access areas. Can you please provide us with some form of written statement? Thanks.

CC: McCrory, Michael; Moyer, Glenn; Romero, Viola

C-1 = 2.53
C-2 = 2.54
C-1 = 2.53
C-2 = 2.54
127

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From: Heather Thrall
To: Walter Tellez
Date: 08/10/2004 9:07:37 AM
Subject: Re: Interpretation = type of activity for spray on truck bed liners

Thank you Walter.

>>> Walter Tellez 08/10/2004 7:34:32 AM >>>

It would be auto repair, if a paint booth is not required. If required, it would be Trade Service Major.

>>> Heather Thrall 08/09/2004 4:15:38 PM >>>

Hi Walter,

Town of Marana would like to know what type of classification we give to the activity of spraying on truck bed liners. I advised I would classify it to possible auto body/paint which needs a C -3. I thought it would fall under a trade service Major, rather than just auto repair.

Do you concur? Please advise. Thanks, HT

63 770...
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From: William Balak
To: Melinda Jacobs
Date: 07/27/2004 11:21:06 AM
Subject: Re: Supercarniceria & La Villa Markets

Melinda,

The meat markets are considered retail uses and the addition of a grill would not change the use. Both meat markets are cooking outside on a regular basis so the area with the grill must be shown on a revised site plan because it is considered an expansion of the business and blocking the use of some parking spaces. The C-2 zone where both stores are located would permit outdoor uses so if the store owners revise their site plans and can meet parking, they will be able to keep the grills outside. One of the stores has the grill in the handicapped area which is another major violation. We have opened violation cases on both stores.

I talked with the Pima County Health Department and their regulations cover only the food preparation and sanitary conditions not the smoke or odors. I was told the DEQ does not deal with smoke from cooking facilities. The EPA will get involved if there is substantial amounts of smoke as when they filed a complaint about Pinnacle Petes.

Bill

>>> Melinda Jacobs 07/21/2004 2:39:24 PM >>>

Bill,
I need an update... also, if they are now cooking on their premises doesn't this change their use and are now considered a "restaurant".

Please advise.... the neighbors continue to complain. Thanks!

Melinda

>>> William Balak 4/13/2004 3:18:33 PM >>>

Melina
I will check their plans and let you know.
Bill

>>> Melinda Jacobs 04/13/2004 3:16:30 PM >>>

The Ward V office received a complaint from one of the neighbors regarding these two meat markets. Supercarniceria located @ S. 6th Avenue/Illinois & La Villa Market located at S. 6th Avenue & Ohio both offer to grill the meat that their customers buy from them. They have a grill on the premises. Is this legal?? Please advise. Thanks for your help!

Melinda

Melinda Jacobs
Aide to Councilmember Steve Leal
City of Tucson
Ward V
(520) 791-4231
(520) 791-3188 FAX

CC: BJ Viestenz; Richard Diaz; Walter Tellez

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From: Walter Tellez
To: Krausman, Patricia
Date: 07/23/2004 3:34:11 PM
Subject: Re: Car Sales Incidental to Car Repair Shop

OK if they send letter saying no more then 12 per year. One per month average seems incidental.

>>> Patricia Krausman 07/23/2004 3:29:13 PM >>>

I looked up the definition for "motor vehicle dealer", Chapter 28-4301 Definitions and it says "Motor vehicle dealer" means a used motor vehicle dealer (etc, etc)...excluding a person who comes into possession of a motor vehicle as an incident to the person's regular business and who sells or exchanges the motor vehicle." So, I think not?

>>> Walter Tellez 07/22/2004 8:48:37 AM >>>

Does the State require a dealer's license?

>>> William Balak 07/22/2004 8:45:59 AM >>>

I would call it auto sales so they need a new site plan and landscaping but let's see what walter thinks.

>>> Patricia Krausman 07/22/2004 8:41:39 AM >>>

Do you have a policy or has there been a determination on a case basis for car repair shops to be able to display cars for sale that are repaired, not paid for and not claimed? One of the cases I'm working (Aastro Transmission on Speedway) claims they've always had the right to have "incidental" car sales for cars that they have filed liens. They have two vehicles in front of their shop. They say they don't sell more than 10-12 a year and they do not allow any other type of sales.

CC: Balak, William; McCrory, Michael

LE...
42

354
309

From: Walter Tellez
To: Gross, Craig
Date: 06/02/2004 7:17:58 AM
Subject: Re: nail salon

OK with me.

>>> Craig Gross 06/01/2004 4:38:42 PM >>>

Since the LUC doesn't specifically list nail salons as a personal service can we go back to the BA decision that nail salons are similar to retail at 1:200 for parking purposes?

Please make a note of my new e-mail address

craig.gross@tucsonaz.gov

CC: McCrory, Michael

6.2.04
334-10000
40



MEMORANDUM

354
310

DATE: March 23, 2004

TO: Zoning Administration Division
DSD Zoning Review Section

FROM: Walter Tellez
Zoning Administrator

SUBJECT: LUC 5.5.3, Signs on Undeveloped Portion of Site, Auto Mall
Land Use Code: Zoning Administrator Determination

The owners of lot 1 in the Tucson Auto Mall (Lexus) developed the northern portion of the lot with the southern portion remaining vacant and undeveloped. The request was for a sign on the undeveloped portion (south) .

Sign was denied based on TC 3-15(y) : Premises: All contiguous land used and occupied by an establishment, whether owned or leased from another. Craig Gross and Debbie Capple determined that the sign is not permitted because their "premise" does not include the adjacent vacant property that is not currently being used.

s:zoning administration/za determination/LUC 5.5.3a.doc

354
311

From: Walter Tellez
To: deniseandandrew@cox.net; Gehlen, Patricia
Date: 02/20/2004 4:15:41 PM
Subject: Re: zoning

A retail store is a principal permitted use in C-1. The making of jelly as proposed is permitted as a secondary/accessory use.

>>> Patricia Gehlen 02/20/2004 3:55:42 PM >>>

Denise,

You very clearly told me yesterday that the only thing you would be doing in the building would be making the jelly and storing it. You told me there would be no customers coming in to the building. There was no confusion on my part. What you are saying now is very different than what you told me yesterday. There are provisions in the C-1 zone that allow for up to 33% of the building area to be used for the making of baked goods and confectionery products as long as the product is sold on site.

Patricia

>>> "McCreery Family" <deniseandandrew@cox.net> 02/20/2004 3:40:21 PM >>>

I'm sorry, I thought I mentioned I wanted to do retail there....I got so frazzled when we were speaking. Yes, we certainly plan to do retail there, we have a loyal and quickly growing customer base that is looking for where they can buy our jelly outside of the street fairs and such, which is one of the reasons we are so attached to this space, it's not at all industrial looking and will make a beautiful gourmet shop. When we get going, we plan to sell other items as well, such as decor, serving wear, etc.

Our kitchen requirements are very limited due to our product. We will have one range to cook the jelly, a counter top to fill the jars and a sink/washing area. This will take up less than a fourth of the square footage. Next to the kitchen area will be work stations for wrapping the jars, creating the gift baskets, etc. Easily the front half of the store we intend to use for a little tasting table, retail decor/items, etc.

I'm so sorry I wasn't clear, is there a chance I have made myself anxious all day for no reason? Please please please????

If you could let me know soon, I would be forever in your debt!

Denise
deniseandandrew@cox.net
440-6994

C-1 - 33% 3.0. 5.5

354
312

March 14, 2003



CITY OF
TUCSON

DEVELOPMENT
SERVICES
DEPARTMENT

ZONING
ADMINISTRATION

Marcus E. Jones, Director
TUSD Engineering & Planning Services
2025 East Winsett Street
Tucson, AZ 85719

SUBJECT: 2400 N. Country Club, Doolen Middle School – Boys/Girls
Club

Dear Mr. Jones:

Thank you for your letter, dated February 17, 2003, requesting Land Use Code (LUC) information on the above referenced project. The project property is the Doolen Middle School campus site at 2400 North Country Club Road, R-2 zoned. The project proposes to construct a new Boys and Girls Club headquarters and clubhouse facility on the School campus. The Club will allow the School use of the facilities gym for physical education and other similar activities. The facility itself will function similarly to a governmental agency in the services provided for the students. After regular school hours, the facility will be used for Boys and Girls Club activities. You are requesting verification that the Club facility, as proposed, will be considered the same as a governmental use.

The Zoning Administration Division, and the City Attorney's Office, have reviewed your letter and do consider the proposed facility the same as a governmental use, thus exempt from LUC regulations applicable to new uses of land. Please note that a copy of this letter must be attached to the project's site plan when submitted to the Development Services Department (DSD), First Floor, 201 North Stone Avenue, for the building permit review process. If you should require further LUC information from the Zoning Administration Division, please contact William Balak (Ext. 1168) or Wayne Bogdan (Ext. 1116) at (520) 791-4541.

Sincerely,

W. Tellez
Walter Tellez
Zoning Administrator

s:zoning administration/zoning/2003/2400coun.doc

c: Thomas Sayler-Brown, SBBA, 1010 N. Alvernon Way, Tucson, 85711

DEVELOPMENT SERVICES DEPARTMENT • 201 NORTH STONE AVENUE
P.O. BOX 27210 • TUCSON, AZ 85726-7210
PHONE (520) 791-4541 • FAX (520) 791-4340

*P.O. Box 27210
Tucson, AZ 85726-7210
6-3-03
Civic Use / School Use
2/2/03*



August 2, 2002

431
392
313

CITY OF
TUCSON
Zoning
Administration -
Development
Services
Department

Wayne R. Rutschman
Special Projects Manager
P.O. Drawer 397
Rillito, Arizona 85654

Subject: Camp Lowell Corporate Center Project – Loading Zones, etc.
Land Use Code (LUC) Information

Dear Mr. Rutschman:

Thank you for your letters, dated June 13, 2002 and July 5, 2002, regarding the above project. Applicable project numbers are Rezoning Case No. C9-95-27 and DSD Processing No. S02-027 (Development Plan/Tentative Plat). The Corporate Center site is a 33 lot commercial subdivision with common area. A total of twelve (12) buildings are proposed to be built within the subdivision. Several of the buildings are designed to straddle or cross over as many as four interior lots. Offstreet parking for all the buildings will be provided by single joint use parking area with spaces located throughout the site. Despite the multiple building multiple lot layout, the Corporate Center is designed to function the same as a single site development. Of specific concern to you is how the LUC loading space, lot area coverage, floor area ratio (FAR) and building setback requirements will be applied to this project.

The Zoning Administration and the City Attorney's Office have concluded their review of your letter and the LUC regulations applicable to the project. For the purposes of applying the LUC development criteria in question (i.e. loading space, floor area ratio, minimum lot sizes and lot coverage, building setbacks, etc.), the Zoning Administrator has determined the Corporate Center Project, as designed, to be the same as if it were a single project single site development. This zoning interpretation requires all lots within the project be bound to comply with the approved development plan through a recorded covenant approval by the City of Tucson and notes on the plat that serve to unify the development as a single site.

Please note, however, the internal setbacks for the project are subject to Fire Code regulations. Also note that a copy of this letter must be attached to the project site

Zoning Administration (DSD), 2nd Floor, 201 North Stone Avenue.
P.O. BOX 27210 - TUCSON, AZ 85726-7210
PHONE (520) 791-4541, 791-4571 • FAX (520) 791-4340

5.3 2 = Rezoning
5.3 8 = Development
19

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Camp Lowell Corp. Ctr. Project

- 2 -

August 2, 2002

plan when submitted to the Development Services Department, 201 North Stone for the zoning compliance review process. If you should have any further questions concerning this zoning matter, please contact Wayne Bogdan or myself at 791-4541.

Sincerely,



Walter Tellez
Zoning Administrator

s:zoning/2002/camplowellcorpctr.doc

c: Ernie Duarte, Development Services Department
Dave Mann, Development Services Department
Michael McCrory, City Attorney's Office

82

354
314

From: Craig Gross
To: Tellez, Walter
Date: 2/25/02 10:44AM
Subject: Re: psychic

That's what we had determined also. Thanks for verifying.
Have they given you your new job description yet?

>>> Walter Tellez 02/25/02 09:49AM >>>

I would say same as Fortune Telling, land use/name book calls it Personal Service.

>>> Patricia Gehlen 02/25/02 09:19AM >>>

Walter, Have you ever done an interpretation about the land use class for psychic? Thanks

Personal Service
2/25/02

77

357
315

From: Walter Tellez
To: Rivera, David
Date: 9/6/01 11:12AM
Subject: Re: Proposed Carwash at Mission and Drexel

Hi David, all development related to the commercial use has to be on commercial zoned land.

>>> David Rivera 09/06/01 10:54AM >>>
Walter,

I had a customer by the name of Phil Veneziano (Architect) in the office a couple of weeks ago requesting information on the possibility of development of a carwash northeast corner of the Drexel Road and Mission Road. The Carwash would be developed adjacent to the north and east property boundaries of the Diamond Shamrock convenience/gas store. The parcel is zoned C-1 and the north portions zoned R2.

I spoke to Phil yesterday regarding the possibility of placing the required screen wall at the north boundary of the site which is the R-2 zone portion. The code requires that the wall be placed where adjacent to the street or adjacent zone developed or vacant. My question is, can the required screen wall be placed on the north property line instead of at the split zone boundary location or will this be a Board of Adjustment variance approval?

The second item we discussed was the possibility of placing the detention basin on the R-2 portion of the parcel. Would the detention basin be considered an extension of the commercial use and thus would the detention basin not be allowed in the R-2 portion? I could not find a specific use for a detention basin in the LUC.

What are the possibilities either of the two items working? The parcel is in southeast corner of section 4 T.15 R.13.

David Rivera
DSD 791-5608 x181

CC: Craig Gross; GEHLEN, Patricia

R-2 zone = 2.3.5
C-2 zone = 2.5.3
Carwash: 6.3.5.5
48

354
316

From: Walter Tellez
To: Montgomery, Dorothy
Date: 9/5/01 8:01AM
Subject: Acupuncture

As we discussed, an acupuncture use is considered a "Medical Service - Outpatient" use for zoning purposes.

CC: Balak, William

Med Services - outpt :
6/13/01
qm



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DEPARTMENT OF PLANNING
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354
327

August 31, 2001

John Feneck
P.O. Box 18490
Tucson, AZ 85731-8490

Subject: 5447 Block S. Nogales Highway, Canyon Welding & Fabrication
Land Use Code (LUC) Information - DSD Project T01CM00952

Dear Mr. Feneck:

Thank you for your letter dated August 3, 2001 regarding the above project. The subject site is comprised of two adjacent properties (approximate address 5447 Block South Nogales Highway) identified by the Parcel Numbers 137-04-137 and 137-04-138, and zoned "C-2" Commercial. Aerial photos available to the Planning Department indicate the site is apparently vacant. You are requesting verification that the Canyon Welding & Fabrication business is an allowed land use at this site, as proposed. Additionally, you request the parking requirements for this land use.

The Planning Department has completed its review of your information, and the information provided by the business owner (Jorge Olguin) in letter dated July 6, 2000. Based on this review staff notes that a welding business, as a principal use, is a permitted use only in the "I-2" Industrial zone. However, a wholesale welding business as described (i.e. mobile welding, wholesaling of welding products, onsite storage of welding products, etc.) is a permitted use in the C-2 zone (LUC Section 2.5.4.2..J) subject to the following limitations. The business must have a building on the site and because this site is vacant land, the entire site must be brought into compliance with all LUC regulations applicable to a new use of land (e.g. landscaping, screening, parking, setbacks, etc.). All onsite welding must be restricted to inside the building, and to a floor area of not more than 25% of the building (LUC Section 2.5.4.4.B). Offsite or mobile welding (i.e. welding at customer locations) is permitted. The offstreet parking requirements for this land use can be calculated at the "Wholesaling Use Group - Business Supply and Equipment Wholesaling" ratio (1/2000 sq. ft., etc.). Please note that a copy of this letter must be attached to any site plan submitted to the Development Services Department (DSD), 201 North Stone Avenue for the LUC compliance review process. If you require further zoning information from the Planning Department, please contact Bill Balak, Wayne Bogdan or myself at 791-4541.

Sincerely,

Walter Tellez
Zoning Administrator

s:zoning/2001/5447nogy.doc

2nd Land Use = 2.5.4.4.B
C-2 zone = 2.5.4
PKB = 3.3.4
I-2 = 2.4.3

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318

August 22, 2001

Linda S. Morales, AICP
The Planning Center
110 South Church, Suite 1260
Tucson, AZ 85701

Subject: 840 Block East Broadway Boulevard, I-1/C-1 - Proposed Blood Plasma Center
Land Use Code (LUC) Information

Dear Ms Morales:

Thank you for your letter dated August 2, 2001. The subject site is located at the southeast corner of Euclid and Broadway (approximately addressed 840 E. Broadway) and split zoned C-1 and I-1. The project proposes to locate on that portion of the site zoned I-1 a new plasma collection center. You are requesting confirmation that LUC Section 3.5.4.8.C.2 (Special Exception Land Use in the I-1 zone) is applicable to the project as stated. Additionally, you request clarification as to whether or not the current site could be newly split so as to allow the project its own property.

The Planning Department, and the City Attorney's Office, has reviewed your letter and zoning regulation in question. This particular regulation requires a minimum setback of 300' be provided between the project's property lines and all nearby residentially zoned boundaries or from the property lines of any nearby elementary or secondary school. Staff considers this regulation to be quite clear in that the reference to "property lines" is to be taken and applied literally (i.e. from the property lines of the project and not to the project buildings, etc.). Additionally, if the current site is split so as to provide the project its own property, the new property must be of sufficient size to contain all the elements of the project (e.g. the building, parking, loading, landscaping, and ingress/egress areas, etc.) Otherwise, this particular setback may still be required by staff to be measured from the property lines of the original site. Please note that a copy of this letter must be attached to the project's site plan when submitted to the Development Services Department (DSD), 201 North Stone Avenue for the zoning compliance review process. If you have any further questions concerning this zoning matter, please contact Wayne Bogdan or myself at 791-4541.

Sincerely,

Walter Tellez
Zoning Administrator

s:zoning/2001/840broad.doc
cc: Michael McCrory, City Attorney's Office

E-Mail: comments_planning@ci.tucson.az.us • Website: <http://www.ci.tucson.az.us/planning>

red. out Pt.
6.5.3.17

I-1 g. 2.7.2
C-1 : 2.3.3
Spec Exempt = 3.5.4.8.C.2

9/1

From: Walter Tellez
To: Balak, William; GEHLEN, Patricia; Gross, Craig
Date: 8/15/01 7:37AM
Subject: Re: Tent Permits for the Gem and Mineral Show

Completely. Just as always. Not allowed at all (no TUP's) on residential or office zoning.

>>> Craig Gross 08/14/01 04:45PM >>>

Do they need to comply with any criteria? setbacks, parking, lot coverage, etc, or are they completely exempt?

>>> William Balak 08/14/01 04:42PM >>>

We have started to receive requests for TUP's and Carnival tent permits for the Gem and Mineral Show. Customers needing to set up a tent(s) or stand(s) for the show only need to get the permits required by DSD.

Gem and Mineral Show permits requiring a site plan can be signed off at the Planning counter at DSD provided the property is not zoned residential or office. No TUP's or other special permits are needed.

Other tent shows, carnivals, circuses, parking lot special events and revivals still require some type of special review from Planning.

CC: Bogdan, Wayne



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354
320

June 19, 2001

Joseph Tartaglia
8401 South Kolb Road, #386
Tucson, AZ 85706

Subject: 110 South Camino Seco, C-2 - Nail Polish Wholesaling and Light Manufacturing
Land Use Code (LUC) Information

Dear Mr. Tartaglia:

Thank you for your fax dated June 18, 2001 and floor plan. The subject property is addressed 110 South Camino Seco and zoned "C-2" Commercial. You are requesting the zoning approval necessary to allow use of the property for a nail polish wholesaling and light manufacturing business. The nail polish products are made by mix formula using products purchased from the manufacturer. The purchased products are 55% water and non-hazardous. The mixing process is not dissimilar from the same processes used by Home Depot, Sherwin Williams and Sears in their mixing and blending of paints to customer specifications. The finished products are sold wholesale.

The Planning Department has reviewed your information and floor plan. The floor plan indicates the total lease area is 866 square feet. The majority of the floor area will be used for office, bathroom, storage and shipping and receiving. 200 square feet of the lease area (23%) will be used for the actual mixing and blending of products. Given this information, staff notes the use, as proposed, is allowed in the C-2 zone subject to the restrictions of LUC Section 2.5.4.4.B, which I have already faxed, to you. The proposed mixing and blending of nail polish products is considered to be, for zoning purposes, a "General Manufacturing" land use. This zoning regulation states that a general manufacturing use is allowed in the C-2 zone only when secondary to the principal use of property for wholesaling and further provided the floor area dedicated to the manufacturing use is limited to not more than 25% of the total floor area. Please note that a copy of this letter must be attached to any site plan submitted to the Development Services Department (DSD), 201 North Stone Avenue for the zoning compliance review process. Should you require additional zoning information from the Planning Department, please contact Bill Balak or myself at 791-4541.

Sincerely,

Wayne Bogdan
Principal Planner

s:zoning/2001/110camino.doc

C-2 - 2.5.4.4
Wholesale: 6.3.13

6.3.6.4
Ken Moran
gk

From: Walter Tellez
To: Moyer, Glenn
Date: 4/10/01 2:14PM
Subject: Re: 3.5.9.2.C Fueling Stations

After further review, a fueling station is where one vehicle can be fueled from a pump. If you can fuel two vehicles at the same time from one pump, it's two stations.

>>> Glenn Moyer 04/10/01 10:08AM >>>

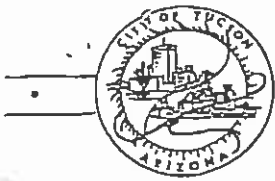
Walter-

Have you previously done a determination on how to count the number of fueling stations per 3.5.9.2.C?

Glenn

CC: Balak, William; Maurer, James

3.5.9.2.C = Fuel Station
63 " " = 2 stations = 126 stations
84



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354
322

February 3, 2000

FEB 4 2000

Lewis & Roca

Keri Silvyn
Lewis and Roca, LLP
One South Church Avenue, Suite 700
Tucson, AZ 85701-1620

Subject: Board of Adjustment Case C10-00-12, Storage And Auction Of Impounded Vehicles
Land Use Code (LUC) Information

Dear Mr. Silvyn:

Thank you for your letter dated January 18, 2000. The proposed site is addressed 2570 South 12th Avenue and proposed for the new vehicle storage and auction of impounded vehicles. The vehicles are impounded and auctioned off by the U. S. Border Patrol, U. S. Customs and other federal agencies. Of the 19 acres within the site, approximately 13.5 acres will be used for storage and the remaining 5.5 acres will be used for parking, office and occasional auction purposes. The site will be closed to the general public except for auction day and the day before the auction. The auctions will be held periodically, throughout the year. For the remainder of the year the vehicles will be securely stored onsite.

Having consulted the City Attorney's Office on this matter, staff considers the primary or principal use of the site, as proposed, to be "Commercial Storage". For the purposes of zoning, the auction sales, as proposed, is considered to be an accessory use to the principal use of the site for vehicle storage. Please note that a copy of this letter must be attached to any site plan submitted to the Development Services Department (DSD), 201 North Stone Avenue for the LUC compliance review process. Should you require further information on this zoning matter, please contact Glenn Moyer, Wayne Bogdan or myself at 791-4541.

Sincerely,

Walter Tellez
Zoning Administrator

s:ba/0012ltr.doc

cc: Michael McCrory, City Attorney's Office
Board of Adjustment Case File C10-00-12

Board Adj: 5.1.7
Comm Storage: 6.3.112



MEMORANDUM

354

223

DATE: November 10, 1999

TO: Ernie Duarte
Development Services

FROM: *W. Tellez*
Walter Tellez
Zoning Administrator

SUBJECT: Home Depot/Hazardous Materials

In response to Mr. Cornelio's letter dated October 29, 1999, there is no Land Use Code (LUC) issue concerning wholesaling of hazardous materials. First, the LUC does not limit or restrict individual packages or containers of materials that may be considered hazardous. The LUC regulates tanks and similar sized containers that contain hazardous materials (Sec. 3.5.10.2). Secondly, if products at the store have a single retail price (i.e., no wholesale prices are quoted to contractors) and any quantity discount terms or sale prices are available to the general public, and does not hold itself out or advertise as a wholesaler or as providing wholesale goods, it is not considered wholesaling by the LUC.

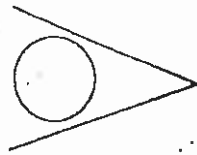
Please let me know if I can be of any further assistance.

WVT:s/walter/homedephaz

Cc: Michael McCrory, City Attorney's Office

1-3-13 - 2:10:00
3-5-11 - 5:00

139 - 6876 237



Grainger Consulting, Inc.

Fire Protection Engineering • Fire & Building Code Consulting

546 N. Vineyard • Mesa, AZ 85201 • (602) 833-2100 • Fax (602) 833-2941

323

Carmine Cornelio, Esq.
Attorney At Law
The Carraige House
325 W. Granklin, Suite 121
Tucson, Az 85701
520-629-0747 V
520-629-0828 F

29 October, 1999

Report Regarding: Home Depot, El Con Mall, Tucson, AZ

GC #1782

Prepared by: Scott Grainger, PE, Fire Protection Engineer

Our office was contracted to review the Home Depot (HD) plans and Hazardous Material (HazMat) submittals for the project and provide comments. The plan review was to address life safety issues only. This limited the review to the following:

- Fire safety
- Life safety (exiting)
- Hazardous Materials

The actual review covered the following areas:

- Site Plan
- Coordination with existing mall structure
- Allowable area of building
- Construction Type
- Exiting
- Fire sprinklers
- Hazardous Materials
 - Hazardous Materials Management Plan
 - Hazardous Materials Information Statement (HMIS)
 - Classification of certain materials
 - Actual quantities in store (3) compared to HMIS
- Administrative Code



MEMORANDUM

323

DATE: November 10, 1999

TO: Ernie Duarte
Development Services

FROM: *W. Tellez*
Walter Tellez
Zoning Administrator

SUBJECT: Home Depot/Hazardous Materials

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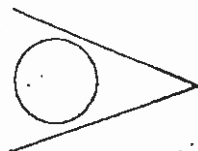
Please let me know if I can be of any further assistance.

WVT:s/walter/homedephaz

Cc: Michael McCrory, City Attorney's Office

6.3.13 - 2.10.13
3.10.13 - 1.10.13

139 - 6676 237



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Carmine Cornelio, Esq.
Attorney At Law
The Carraige House
325 W. Granklin, Suite 121
Tucson, Az 85701
520-629-0747 V
520-629-0828 F

29 October, 1999

Report Regarding: Home Depot, El Con Mall, Tucson, AZ

GC #1782

Prepared by: Scott Grainger, PE, Fire Protection Engineer

Our office was contracted to review the Home Depot (HD) plans and Hazardous Material (HazMat) submittals for the project and provide comments. The plan review was to address life safety issues only. This limited the review to the following:

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- Fire sprinklers
- Hazardous Materials
 - Hazardous Materials Management Plan
 - Hazardous Materials Information Statement (HMIS)
 - Classification of certain materials
 - Actual quantities in store (3) compared to HMIS
- Administrative Code

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Home Depot, El Con Mall
Carmine Cornelio, Esq

GC#1782
29 October 1999

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The lack of detail provided in the plans submitted has resulted in the need to discuss a number of probable options available to the HD design team in the discussion that follows. A complete set of construction documents submitted to an authority having jurisdiction should have all of the questions answered such that a discussion of "probable options" is not necessary. It is not the job of the plans reviewer to guess at what the responsible party for the design documents has in mind. The design team is responsible for understanding and applying the fire and building codes in an appropriate manner. Failure to do so places the registrant in violation of the Codes and Rules for registrants in Arizona. There are jurisdictions in Arizona that will not even accept plans that are not incomplete, let alone attempt to review them.

SITE PLAN

At the time of the review, 10/4/99, the City of Tucson Development Services Center did not have a current HD site plan submittal and neither did the Tucson Fire Dept. The site plan provided by the Fire Dept. for review was for a Walmart store that had been proposed for the same site on an earlier occasion. The Fire Dept. representative assumed that the HD would be placed in the same location. The HD is approximately half the size of the Walmart. It was assumed by the FD that as a worst case condition, that the HD would be placed adjacent to the existing mall.

As of 10/26/99, the City had not received an updated site plan. It is the opinion of this engineer that the lack of a site plan is sufficient justification to not review the submitted plans. The site plan will position the HD relative to the property lines of other buildings (building code property lines, not ownership property lines). The distances to other building property lines will affect the required construction type and allowable area (maximum possible size) of the HD. These two issues determine the requirements for many other building elements. Lack of specificity on these items is discussed throughout this report.

COVERED MALL BUILDING

The existing El Con Mall structure may not be a Covered Mall Building as defined by the building code. The building code did not include special provisions for covered malls prior to 1982 edition. The original El Con Mall structure pre-dates this addition to the code. If the existing El Con Structure still carries the original Business/Retail occupancy classification (B2 or possibly F1), the addition of the HD adjacent to it may affect the code provisions under which the El Con structure was originally designed and built. If the El Con structure has been re-classified as a Covered Mall Building since the original construction, locating the HD adjacent to the existing facility may affect some provisions of the re-classification regardless of the designation of the HD structure. See the following HD Anchor / Tenant discussion. Often such re-classifications carry special provisions or variances that are a matter of public record. At a minimum, a document review and associated code analysis of these records should be included with the HD documents. The purpose of the research would be to demonstrate that the HD placement either does or does not impact the existing El Con structure. How these impacts are

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Home Depot, El Con Mall
Carmine Cornelio, Esq

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resolved is a matter that should be addressed in HD design documents or, if not in the HD documents at least in concurrent documents prepared by other parties (El Con owner) prior to final approval of the HD documents. See the following discussion on Anchor/Tenant conditions.

The impacts upon the El Con facility are expected to include exiting, lack of an existing area separation wall at the interface line with the HD and possibly construction type.

HD ANCHOR / TENANT

Locating the HD adjacent to the existing mall requires that the HD be considered either an Anchor Building or a tenant space of the Covered Mall Building. Lack of a site plan, document review and code analysis makes it impossible to determine which option HD may be selecting. There are different provisions that apply to each of these options.

The Anchor Building Option requirements are discussed in the following Area Separation Wall and Construction Type Sections of this report.

The Tenant option is much more complicated than the Anchor Building option. Only the major items are addressed herein as Client has not requested a complete analysis. A complete analysis is more appropriately the responsibility of HD. The Construction type of the HD could match that of the Covered Mall Building. The HD fire sprinkler systems would need to activate the Mall fire notification system and smoke control system. The Mall may not have a smoke control system due to its age and factors discussed in the Covered Mall Building Section of this report. The addition of a tenant as large as the HD may be sufficient to cause the smoke control requirement to be implemented by the Tucson Building Official. The Building Official could require the smoke control system in just the HD addition or in the HD and all or part of the existing El Con Mall. This would be a negotiated matter. Designating the HD as a tenant would create a large number of issues with the existing structure. There would also be many management issues to be reviewed between HD, the Mall owner and the City. This engineer believes that the management issues would be an important factor because tenant spaces are typically owned by the Mall owner and leased by the tenant although there is no code requirement for this. Some code provisions are structured around such an ownership arrangement.

AREA SEPARATION WALL

Designating the HD as an Anchor Building will require that the HD include at least a two hour area separation wall at the interface with the mall. The plans reviewed did not include provisions for an area separation wall.

CONSTRUCTION TYPE

The plans reviewed provided the following areas for the HD:

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Home Depot, El Con Mall
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Sales/Office 101,326 SF
Receiving 4,254 SF
Garden Center 24,027 SF (under roof or canopy)
Total Area 129,607 SF

Assuming that the HD is attached to the existing El Con Mall as an Anchor Building, the minimum type of construction that may be used to construct a Mercantile Occupancy of this size is Type 2-Fire Resistive. See additional remarks under Fire Sprinkler Section of this letter regarding the membrane roof. The proposed type of construction, 2N, is not code compliant.

FIRE SPRINKLERS

The plans reviewed included one sheet describing the automatic fire sprinkler system proposed for the building. The drawing was marked "For Coordination Only". The drawing was not sealed by a registered professional engineer and was not marked "Preliminary, Not for Construction" as is required by AZ State Law for unsealed engineering drawings issued for client or authority having jurisdiction use. AZ State Law defines the design of fire sprinkler systems to be engineering and therefore requires the documents to be sealed by a registered professional engineer unless marked "Preliminary, Not for Construction".

The system described did not provide full protection for the entire building. Full protection for the entire structure is vitally important. Fire protection throughout is the key to allowing the structure to be as large as it has been proposed. A note on the drawing indicated that no protection was planned for the electric gear room. In addition, only a small portion of the garden center was provided with protection. The protected portion was under the hard roof. The section under the shade screen was not provided with protection. The shade screen (membrane) portion of the building is a part of the structure and therefore must comply with the provisions applicable to the remainder of the structure. This compliance includes Construction Type and fire sprinklers. The plans reviewed did not provide sufficient data to determine Construction Type compliance for the membrane portion of the Garden Center.

HAZARDOUS MATERIALS

The Hazardous Material Inventory Statement (HMIS) submitted to the City Fire Dept. for review provides data that shows the amount of HazMat exceeds the allowable limit for Toxic materials. The exempt amount for Toxics is 1950 Lbs although the Fire Department had not noted this at the time of my visit. The HMIS Summary Report shows a total of 1929 Lbs. Of solids plus 68 Gal.(680 Lbs.) . The total, which is not provided in the summary report is 2,609 Lbs. This amount exceeds the exempt amount by 659 Lbs. The preparer of the HMIS appears to not understand that the exempt amount applies to ALL quantities of a classification category, not individual amounts for solids and liquids for the same classification.

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Home Depot, El Con Mall
Carmine Cornelio, Esq

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The Hazardous Material Inventory Statement (HMIS) submitted to the City for review provides data that shows the amount of HazMat exceeds the allowable limit for Unstable Reactive 2 materials. The HMIS fails to provide an exempt amount for Unstable Reactive 2 HazMat. The limit is 900 Lbs. for stored material in a sprinklered M Occupancy the size of the HD. The HMIS Summary Report shows a total of 743 Lbs. plus 58 Gal. (580 Lbs.). The total, which is not provided in the summary report, is 1323 Lbs. This amount exceeds the exempt amount by 423 Lbs. The preparer of the HMIS appears to not understand that the exempt amount applies to ALL quantities of a classification category, not individual amounts for solids and liquids for the same classification. A Class 2 Unstable Reactive is defined by the Fire Code as:

"Materials which, in themselves, are normally unstable and readily undergo violent chemical change but do not detonate. This class includes materials which can undergo chemical change with rapid release of energy at normal temperatures and pressures and which can undergo violent chemical change at elevated temperatures and pressures".

The HMIS submitted mis-classifies four of the HazMats in one. The materials that are mis-classified are:

- 1" Tablets
- 3" Tablets
- Dry Chlor Cal Hypo
- Shock

The first three of these HazMats have numerous classifications. One of the classifications assigned to each of the three is Unstable Reactive 1. Shock is classified by the HMIS as a Corrosive and an Oxidizer 3. It is the opinion of this Engineer and that of Mr. Larry Fleur (author of numerous references on the subject of HazMat classification) that all four of the above HazMat should be classified as Unstable Reactive 2. GCi has prepared a detailed supporting document to this affect. The Exempt Amounts for the classification categories in question are:

	Unstable Reactive 1	Unstable Reactive 2
Exempt Amount	No Limit	900 Lbs.
Amount per HMIS	2,893 Lbs. & 17 Gal.	743 Lbs. & 58 Gal.
Corrected Amount in HMIS	3,063 Lbs.	2,617 Lbs.(includes Shock)

ACTUAL HAZMAT ON SITE, THREE STORES

We visited three HD stores in the Phoenix area and estimated the amounts of certain HazMat on the shelves. The quantities estimated were obtained by counting containers/boxes/cartons on the racks and individual containers in display bins. The actual amount at each of the sites exceeded the quantity shown in the HMIS for the Thomas Road store and the Exempt Amount (Allowable Limit) as noted in the following table. The Thomas Rd. store HMIS was provided by Client. The quantities shown in the Thomas Rd. HMIS were exactly the same as those described in the Tucson HD HMIS with a few minor deviations.

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GC#1787
29 October 1999

Classification Category	Exempt Amount	Thomas Rd., Phoenix		Alma School, Chandler		Country Club, Mesa	
		Actual	Excess	Actual	Excess	Actual	Excess
Unstable Reactive 2	900 Lbs.	3,327 Lbs.	2,427	3,874 Lbs.	2,974	2,903 Lbs.	2,003
Toxic	1,950 Lbs.	4,658 Lbs.	2,708	5,005 Lbs.	3,055	3,908 Lbs.	1,958

The three stores noted above are all in violation of the fire and building permits that were issued for their construction. There are no provisions in the codes for accidentally or otherwise exceeding the exempt amounts. The building owner may decide to change the occupancy of the building to one of the H occupancies but a plan submission and permit will be required. The letter H stands for hazardous in this occupancy classification. The building and fire codes will not allow a building the size of HD to be an H occupancy with any of the construction types discussed in this report. In addition, neither the fire or building code will allow general public access in a mercantile operation to exist in any of the H occupancies.

The Hazardous Material Management Plan (HMMP) prepared by HD and submitted to the City of Tucson addresses many of the management issues related to hazardous materials in the HD. It does not specifically address quantity control. Quantity control is a problem. This engineer recommends that the City consider requiring that HD include specific sections on quantity control of hazardous materials, especially the four discussed in detail above. The reactions of these chemicals can be very violent and release significant quantities of poisonous and flammable gases.

ADMINISTRATIVE CODE

Tucson has adopted the 1994 edition of the Uniform Administrative Code, a companion document of the Uniform Building Code. There are several provisions of this Code that are of interest when applied to the HD project.

Section 106.4.3 Validity of permit.

This section basically states that after having issued a permit, code violations either contained in the original documents or violations that occur thereafter are not in some manner accepted or approved. It further states that errors found in the documents or violations created by building operations at a later date must be corrected when required by the building official. This is further supported by Section 106.4.5, see discussion that follows.

Section 106.4.5 Suspension or revocation.

The building official may revoke a permit that was issued based upon incorrect data or due to violations of the code.

A permit is not a license to proceed contrary to the permitted plans or the code.

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Home Depot, El Con Mall
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Section 202.4 & 202.5, Stop Orders and Occupancy Violations

These provisions give the building official considerable power to stop work during construction that violates the code and to cause use after occupancy that does not comply with the code to be corrected.

These provisions and others in this Section give the building official control over conditions similar to those found in the three stores discussed in this report. There are similar provisions to these in the fire code related to enforcement of the code after occupancy.



February 10, 2000

Mr. Walter V. Tellez
Zoning Administrator
City of Tucson
Planning Department
255 West Alameda, 3rd Floor
P.O. Box 27210
Tucson, Arizona 85726-7210

Re: Home Depot/El Con; zoning issues regarding wholesaling hazardous materials

Dear Walter:

I received a copy of your recent response to the January 28, 2000 letter that Carmine Cornelio sent to you on behalf of an undisclosed client. Cornelio's January 28 letter appears to be in response to your November 10, 1999 memorandum in which you provide Cornelio with a Land Use Code ("LUC") interpretation defining a retail use as:

[I]f products at the store have a single retail price (*i.e.*, no wholesale prices are quoted to contractors) and any quantity discount terms or sale prices are available to the general public, and [the store] does not hold itself out or advertise as a wholesaler or as providing wholesale goods, it is not considered wholesaling by the LUC.

We agree with your conclusions and simply want to clarify Home Depot's position in this regard. Although Cornelio asks nine questions in his January 28 letter, he appears to be seeking the Zoning Administrator's interpretation on one issue only: whether Home Depot's proposed operation in a C-2 zone at El Con constitutes a "hazardous materials wholesaling" land use as defined by the LUC. The simple answer is no, Home Depot will not conduct hazardous materials wholesaling at its El Con store.

Home Depot is a retail trade use that involves the "selling, leasing, or renting of goods and merchandise to the general public." LUC § 6.3.10.1. More specifically, Home Depot is involved in "General Merchandise Sales":

The selling, leasing, or renting of commonly used goods and merchandise for personal or household use and the providing of services of services incidental to the selling, leasing, or renting of goods.

LUC § 6.3.10.4. General Merchandise Sales are permitted in a C-2 zone.

In practice, Home Depot advertises and sells its merchandise and related services to the general public at a single retail price. Quantity discount terms and sale prices are also available to the general public at a single price. Home Depot does not advertise itself as a wholesaler or as providing wholesale goods, nor does Home Depot sell its merchandise or related services at wholesale prices. Home Depot does waive sales tax for a customer who presents his or her tax exempt identification number issued by the Arizona Department of Revenue. However, Home Depot still charges the same retail price to such customers as it charges every other customer. Further, the sales tax waiver is not limited to contractors but is available to any and all customers with a state tax exempt identification number.

As part of its retail sales operation, a small portion of Home Depot's inventory includes pool chemicals and other materials that are classified under the City's Fire Code as "hazardous." The LUC refers to "hazardous materials" as materials that are "explosive, highly combustible, corrosive, toxic, highly oxidizing, or radioactive." See LUC §§ 6.3.11.3 and 6.3.13.5 (referring to "Hazardous Material Storage" and "Hazardous Material Wholesaling"). Home Depot does not direct its advertising of pool chemicals specifically to wholesalers or at a wholesale price, nor does Home Depot sell these materials at wholesale prices.

The LUC does not list the retailing of hazardous materials as a specific land use for zoning purposes. In fact, in a C-2 zone the only requirement for the retail sale of hazardous materials appears to be in the large retail establishment design criteria for hazardous materials. LUC § 3.5.9.7.11 requires that a large retail store:

[p]rovide a Hazardous Materials Management Plan and Hazardous Materials Inventory Statement as provided in the Fire Code to assure that the building site and design will protect public health and safety from accidental exposure to hazardous materials as provided in the Tucson Fire Code.

Home Depot already submits to the Fire Department a "Hazardous Materials Management Plan" that outlines its procedures for handling hazardous materials within the store and a "Hazardous Materials Inventory Statement" that lists the types and amounts of such materials stocked in inventory for retail sale for each store in Tucson regardless of zone.

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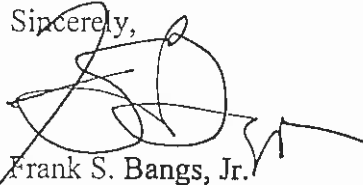
Home Depot is not a wholesaler. It sells merchandise and services to the general public and it is not in the wholesale use business of "selling trade goods, supplies, and equipment to retailers, business, and other wholesalers for their use or resale at retail" as defined by LUC § 6.3.13.1. Notwithstanding Home Depot's general business practices, "Business Supply and Equipment Wholesaling" and "Construction/Heavy Equipment Wholesaling" are both permitted principal uses in a C-2 zone. LUC § 2.5.4.2.J. More specifically, Home Depot is not in the business of selling hazardous materials to other businesses as "hazardous material wholesaling" is defined by LUC § 6.3.13.5.

Home Depot is also not in the storage business. Like any retail store, Home Depot keeps an inventory supply of its merchandise for retail sale. However, Home Depot is not paid for "on-site keeping of trade and personal goods" as the "storage use group" is defined by LUC § 6.3.11.1. Moreover, Home Depot is not in the business of "keeping" hazardous materials as the "hazardous material storage group" is defined by LUC § 6.3.11.3. Home Depot stores a limited inventory of pool chemicals and similar hazardous materials solely for retail sale and not for storage and subsequent distribution.

"Hazardous material storage" as a secondary land use is permitted in a C-2 zone, subject to LUC §§ 3.5.10.2.A and .B.1. See LUC § 2.5.4.4.D. However, these LUC restrictions relate to aboveground storage tanks with a maximum capacity of 1,000 gallons for storage of materials like hydrogen, gasoline, diesel fuel, automotive fluids, oil, or waste-oil. LUC §§ 3.5.10.2.A and .B.1. In contrast, Home Depot generally stores its pool chemicals and other hazardous materials in 5 gallon containers for convenient retail sale. Home Depot's minimal hazardous material inventory does not even come close to a secondary storage use under the LUC.

Please give me a call if I have overlooked anything in the LUC relevant to this issue.

Sincerely,



Frank S. Bangs, Jr.

FSB/MBS

cc: Michael W. L. McCrory, Esq.
Mr. Ernest A. Duarte
Jim Lloyd
Dan Hatch, Esq.
Alan Tanner



The Sunshine City •

CITY OF TUCSON

CITY HALL
P.O. BOX 27210
TUCSON, ARIZONA 85726-7210

DEPARTMENT OF PLANNING
791-4505
791-4571
791-4541
FAX (520) 791-4130

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February 1, 2000

Carmine Cornelio, Esq.
Attorney At Law
325 West Franklin, Suite 121
Tucson, AZ 85701

Subject: Board of Adjustment Case C10-99-76, Home Depot at El Con, 3601 E. Broadway
City Manager (CM) Request Number 14 and CM Referral Number 4476-4280

Dear Mr. Cornelio:

Thank you, for your letter dated January 28, 2000. Your letter raises a series of questions that appear to challenge the zoning approval for the Home Depot project at El Con, and the possible issuance of building permits for the project based on its proposed sales of "hazardous" merchandise. Regarding the zoning approval for the El Con store as it relates to the sale of its merchandise, you referenced a staff memo from Walter Tellez to Ernie Duarte dated November 10, 1999 (Copy Attached). This memo was, in fact, generated by the Planning Department as a formal response to this issue as it was raised in your letter to Ernie Duarte of the Development Services Department (DSD) dated October 29, 1999. Regarding your questions relating to the wholesaling of merchandise at this store (Questions Numbered 2, 3, 4, 5, 6, 7, 8 and 9), it is important to note that the store is to be located within the C-2 portion of the El Con site which allows for wholesale sales as a principal use.

Regarding the issue of building permits, all questions on this matter must be directed to DSD. For reference, this particular issue was brought before the Board of Adjustment, by an applicant, at their December 15, 1999 meeting (Planning Department Case C10-99-76). The Board of Adjustment, at that meeting, voted no jurisdiction to stay the issuance of permits for the project, as it was already a matter before the Courts. On January 26, 2000, the Board reaffirmed this decision by rejecting the applicant's request for reconsideration of the question at their February 23, 2000 meeting. Should you require further zoning information regarding this project, please contact Glenn Moyer, Wayne Bogdan or myself at 791-4541.

Sincerely,


Walter Tellez
Zoning Administrator

s:ba/homdptltr.doc

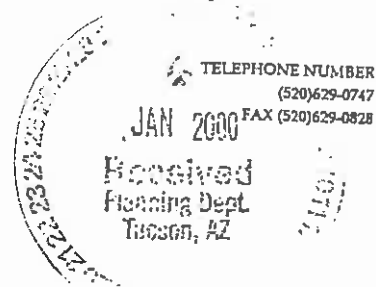
Attachment: Walter Tellez memo to Ernie Duarte dated November 10, 1999

cc: City Manager's Office
David Deibel, City Attorney's Office
Michael McCrory, City Attorney's Office

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CARMINE CORNELIO, ESQ

ATTORNEY AT LAW
THE CARRIAGE HOUSE
325 W. FRANKLIN, SUITE 121
TUCSON, AZ 85701



January 28, 2000

Mr. Walter Tellez
Zoning Administrator
Planning Department
City of Tucson
P. O. Box 27210
Tucson, AZ 85725-7210

Re: Home Depot at the El Con Mall

Dear Mr. Tellez:

On November 10, 1999, you provided Mr. Duarte with a Memorandum responding to an inquiry I made in October regarding the Land Use Code (LUC) and its interpretation/application to the El Con Mall/Home Depot. I am now writing to request a formal interpretation of the LUC as well as its application to Zoning issues regarding the El Con Mall and the planned Home Depot. Please let me know if such an interpretation will be made and when.

The LUC provides a definition for hazardous material wholesaling (6.3.13.5) as "the selling to other businesses materials that are explosive, highly combustible, corrosive, toxic, highly oxidizing, or radioactive". Further, the LUC appears to allow for the wholesaling of hazardous materials only in I-2 Zoning and, then, only after an approval through a Type 3 legislative procedure.

My questions for interpretation/action:

1. What is the definition of hazardous materials under the LUC? Section 6.3.13.5 refers to materials that are explosive, highly combustible, corrosive, toxic, highly oxidizing or radioactive. Is this, therefore, the definition that should be used?
2. What is the definition of wholesaling? Under LUC 6.3.13.1 defines a wholesaling use group as one involving the selling of trade goods, supplies, and equipment to retailers, businesses and other wholesalers for their use or resale at retail. In view of this language, and the instruction of Section 1.2.2 (most restrictive provisions applies, is this the definition that should be used?
3. The C1 - C3 Zones permit Hazardous Material Storage

CARMINE CORNELIO, ESQ.
Attorney at Law
Mr. Walter Tellez
January 28, 2000
Page Two

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as a Secondary Land Use to a permitted use. Are sales of hazardous materials permitted under this classification?

4. May hazardous materials be sold to businesses in the C1-C3 Zones? If so, what section(s) of the LUC permit such sales?

5. Is a business that provides discounts upon the showing of a Business License wholesaling?

6. Does a business that sells at a single price to both the general public and to other business products that are explosive, highly combustible, corrosive, toxic, highly oxidizing or radioactive in the business of hazardous material wholesaling so as to require its location in I-2 Zoning?

7. If a business has a single price for both the general public and in its sales to other businesses of hazardous materials, is there hazardous material wholesaling, as appears to be required by Section 1.2.2, if it holds itself out or advertises itself as a seller to both businesses and the general public?

8. Whether a business that sells to other businesses for resale is a wholesaler.

9. Your Memo makes a distinction based on pricing. Where in the LUC is a distinction made between retail price and wholesale price?

As you know, under LUC 5.1.4.4 you are to assure compliance with the LUC prior to the issuance of any Permit, and are to provide interpretations of the LUC and are responsible for its enforcement.

It is my belief that an issued Permit to Home Depot would be in violation of the LUC given the Zoning of the property.

Thank you for your prompt attention and I look forward to your response.

Sincerely,



Carmine Cornelio

CC/ajd
Enc.
cc: Mr. Ernest A. Duarte

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323
TELEPHONE NUMBER
(520)629-0747
FAX (520)629-0828

January 28, 2000



Messrs. Ernest A. Duarte/Paul Swift
Development Services Center
City of Tucson
201 North Stone Avenue
Tucson, AZ 85726-7210

Re: Home Depot at the El Con Mall

Gentlemen:

1. On January 5, 2000, you provided me with some information in responses to my letter of November 24th. In that letter you indicated that Development Services was under direction, from the City Attorney's office, to not process the Home Depot Plans/Application. Is that still the case? If it has changed, when and why?

2. In October I provided you (and the Fire Department) with a copy of Mr. Scott Grainger's Report. Home Depot has recently responded with a Report from TVA Fire and Life Safety. In the TVA Report, it picks and chooses treating the Home Depot space as "tenant" space and an "Anchor Store". TVA acknowledges that it is "technically a tenant space" and that it will "be operating as an Anchor". It also presumes that the covered walkway "will be part of the Mall rather than being considered an exterior walkway". Was it the City or Home Depot that determined the character of the walkway? Further, what standards will Home Depot be required to comply with? Tenant standards or Anchor tenant standards? I certainly hope that the City has not allowed Home Depot to categorize its space differently for different purposes when viewing the health/safety issues in compliance with the Uniform Building Code.

3. Home Depot/TVA admits that the shade/screen area is not part of its Fire Sprinkler Plan. Whether or not the shade/screen allows heat and smoke to accumulate, there continues to be a significant health/safety risk in the submitted Plans. Mr. Grainger advises me that he believes the shade/screen should be considered a tent under the UBC and, therefore, subject to

CARMINE CORNELIO, ESQ.
Attorney at Law

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Messrs. Ernest A. Duarte/Paul Swift
January 28, 2000
Page Two

full sprinkler coverage.

4. Regarding the hazardous materials, categorization of those materials and excess amounts, the City is on notice of Mr. Grainger's opinions and conclusions and of the significant health/safety issues (as well as Zoning issues) that exist as a result of Home Depot's submitted materials. Again, when reviewing and acting upon these materials, we believe that the City should err on the side of protecting the public's health, safety and welfare.

5. Given Home Depot's admission that the surveyed stores have exceeded (substantially) permitted storage of hazardous materials, perhaps the City should re-review its filed HMIP and require additional assurances this significant safety violation will not occur in Tucson. Further, as you know, Mr. Grainger's Report stated that the quantities stored required H occupancy and the Building Code will not allow an H building the size of Home Depot.

Finally, on the question regarding the Zoning Classification, enclosed is my letter to Walter Tellez.

Sincerely,



Carmine Cornelio

CC/ajd

cc: Chief Fred Shipman, Tucson Fire Department
Benny Young, Assistant City Manager
Thomas J. Berning, Esq., City Attorney
Walter Tellez
Frank S. Bangs, Jr., Esq.

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TELEPHONE NUMBER
(520)629-0747
FAX (520)629-0828

October 29, 1999

HAND-DELIVERED

City of Tucson
Building Department
Development Services
201 N. Stone
Tucson, Arizona 85701

Attn: Ernie Duarte/Paul Swift



99 OCT 29 PM 3: 21
OFFICE OF THE
CITY CLERK
CITY OF TUCSON
RECEIVED

Tucson Fire Department
265 S. Church Avenue
Tucson, Arizona 85701

Re: Home Depot at El Con Mall

Gentlemen:

With this letter, I am submitting a report prepared by Scott Grainger of Grainger Consulting, Inc. I believe that the report is self-explanatory and should be distributed to all appropriate departments.

My review of the report reflects the following key points:

1. The City of Tucson should not be reviewing the Home Depot plans unless and until a complete set is filed with the City;
2. Home Depot and/or El Con have failed to address the related building and fire code issues that arise as a result of the Home Depot being built on or adjacent to the existing El Con Mall;
3. There are significant fire and safety deficiencies in the submitted plans including, but not limited to, the following:

- The use of improper/unsafe construction materials;

Planning

City of Tucson	LOG NO	PUBLIC RECORDS COI
Mayor	Administrative Services	_____
Council	Asst City Clk	_____
City Attorney	Admin Assist	_____
City Manager	BCC Admin	_____
City Clerk	Council Rep Sec	_____
Dept Head Sec	Legal Ass/Agenda	_____
Pers Act Sec	Mayor's Rep Sec	_____
Posting	RF 08283	_____
Public File	Key Information Copy	_____
Records File		_____
	Elections Division	_____
	Asst City Clk	_____
	Admin Assist	_____
	Payroll Clk	_____
	Purchasing Clk	_____
	Records Division	_____
	Asst City Clk	_____
	Admin Assist	_____
	Administ	_____
	Cost Serv/Mail	_____
	Int. Records	_____

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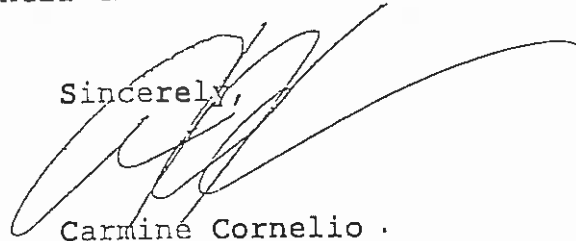
City of Tucson Building Department
City of Tucson Fire Department
October 29, 1999
Page Two

- Inadequate fire sprinkler plans/coverage.
- 4. The Hazardous Materials Inventory Statement (HMIS) submitted by Home Depot is inaccurate and misleading;
- 5. The submitted HMIS reflects that Home Depot plans to have toxic and/or hazardous materials in excess of allowable limits; and
- 6. In several Arizona surveyed operating Home Depot stores, inventory of hazardous/toxic materials are far in excess of HMIS plans Home Depot appear to have submitted to City officials. The excess hazardous materials are in thousands of pounds and in sufficient quantities which may require reclassification of the subject Home Depot buildings as one for hazardous occupancy and may preclude general public access.

The submitted report may raise questions about the zoning classification. It appears from the amount of inventory, there may be wholesaling of hazardous materials and that wholesaling by Home Depot may be the primary rather than secondary use.

It appears to be appropriate for the City to conduct its own analysis of Home Depot's compliance with submitted HMIS and HMMP materials to actual operations in Home Depots located within City limits. It also appears that the City should not be issuing any building permits until these serious issues are satisfactorily addressed.

Sincerely,



Carmine Cornelio .

CC/np
Enclosure

cc: The Honorable George Miller, Mayor of Tucson (w/ encl.)
City of Tucson Council Members (w/ encl.)
Michael W.L. McCrory, City Attorney (w/ encl.)
Mr. Walter Telles, Zoning (w/ encl.)
Ms. Sharon Bonesteel, AIA, CBO (w/ encl.)