

NOTICE AND AGENDA

BOARD OF ADJUSTMENT
WEDNESDAY
AUGUST 21, 2024

COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
8:15AM

To participate in the meeting virtually use the following link:

[Join the Meeting Online](#)

Board of Adjustment Meetings are live streamed on the city's YouTube page (<https://www.youtube.com/@FlagstaffCityGovernment>)

Written comments may be submitted to tantol@flagstaffaz.gov. All comments submitted via email will be considered written comments and will be documented into the record as such.

1. CALL TO ORDER

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the Board of Adjustment and to the general public that, at this work session, the Board may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).

2. ROLL CALL

NOTE: One or more Commissioners may be in attendance through other technological means.

ART BABBOTT
BOB HARRIS III, P & Z Representative
DEVIN KELLEY, CHAIR
DEBRA LEWIS

DIANE LORDEN
JAMES MALONEY
JED WESTOVER, VICE CHAIR

3. APPROVAL OF PRIOR MEETING MINUTES

- A. Approval of August 7, 2024 and April 3, 2024 Meeting Minutes
Approve Minutes

4. PUBLIC COMMENT

At this time, any member of the public may address the Board on any subject within their jurisdiction that is not scheduled before the Board on that day. Due to Open Meeting Laws, the Board cannot discuss or act on items presented during this portion of the agenda. To address the Board on an item that is on the agenda, please wait for the Chair to call for Public Comment at the time the item is heard.

5. PUBLIC HEARING

A. PZ-24-00074: An appeal of a Zoning Code Interpretation on Marijuana Establishment Separation Requirements.

Staff recommends that the Board of Adjustment uphold the subject interpretation.

6. INFORMATIONAL ITEMS TO/FROM BOARD MEMBERS AND STAFF, FUTURE AGENDA ITEM REQUESTS

7. ADJOURNMENT

In compliance with the Americans with Disabilities Act, if you need assistance to participate in this meeting, please contact Tiffany Antol at (928) 213-2605. Notification at least 48 hours in advance will enable the City to make reasonable arrangements.

CERTIFICATE OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on _____, at _____ a.m./p.m. in accordance with the statement filed by the City Council with the City Clerk. This notice has been posted on the City's website and can be downloaded at www.flagstaff.az.gov.

Dated this _____ day of _____, 2024.

Commission Representative



Board of Adjustment

3. A.

Meeting Date: 08/21/2024

From: Nancy Corbin-Fuller, Administrative Specialist

Information

REQUEST:

Approval of August 7, 2024 and April 3, 2024 Meeting Minutes

STAFF RECOMMENDED ACTION:

Approve Minutes

VARIANCE CRITERIA AND ANALYSIS:

Attachments

8/7/24 Minutes

4/3/24 Minutes

MINUTES

1. CALL TO ORDER

Chairperson Devin Kelley called the meeting to order at 8:19 a.m.

2. ROLL CALL

NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.

PRESENT:

BOB HARRIS, *P & Z Representative* (virtually)
DEVIN KELLEY
DEBRA LEWIS (virtually)
DIANE LORDEN (virtually)
JED WESTOVER

ABSENT:

JAMES MALONEY
ART BABBOTT

3. PUBLIC COMMENT

At this time, any member of the public may address the Board on any subject within their jurisdiction that is not scheduled before the Board on that day. Due to Open Meeting Laws, the Board cannot discuss or act on items presented during this portion of the agenda. To address the Board on an item that is on the agenda, please wait for the Chair to call for Public Comment at the time the item is heard.

NONE

4. Election of Officers

Chairperson: Devin Kelley
Moved by Jed Westover, seconded by Diane Lorden
Vote: 4-0, unanimously

Vice Chairperson: Jed Westover
Moved by Devin Kelley, seconded by Diane Lorden
Vote: 4-0, unanimously

5. **Training:**

Kevin R. Fincel, Deputy City Attorney introduced consulting attorney for the Board of Adjustment, Joseph Estes of Pierce Coleman. Joseph provided training to the Board of Adjustment on appeals, variances, hearing procedures and conflict of interest.

6. **INFORMATIONAL ITEMS TO/FROM BOARD MEMBERS AND STAFF, FUTURE AGENDA
ITEM REQUESTS**

7. **ADJOURNMENT:**

The meeting of the Board of Adjustment adjourned at 9:35 a.m.

CHAIRPERSON

MINUTES

BOARD OF ADJUSTMENT
WEDNESDAY
APRIL 3, 2024

COUNCIL CHAMBERS
211 WEST ASPEN AVENUE
9:00 A.M.

1. CALL TO ORDER

NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION

Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the Board of Adjustment and to the general public that, at this work session, the Board may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).

Tiffany Antol, staff liaison to the Board of Adjustment called the meeting to order at 9:08 A.M.

2. ROLL CALL

NOTE: One or more Commissioners may be in attendance through other technological means.

Present:

ART BABBOTT
DEVIN KELLEY
JED WESTOVER
BOB HARRIS III (P&Z Representative)

Absent - Excused:

DEBRA LEWIS
JAMES MALONEY
DIANE LORDEN

3. APPROVAL OF PRIOR MEETING MINUTES

Approval of the minutes from the regular meeting on [Wednesday, June 21 2023](#).

Moved by Devin Kelley, seconded by Jed Westover to approve the minutes as written.

Vote: 4 - 0 - Unanimously

4. PUBLIC COMMENT

At this time, any member of the public may address the Board on any subject within their jurisdiction that is not scheduled before the Board on that day. Due to Open Meeting Laws, the Board cannot discuss or act on items presented during this portion of the agenda. To address the Board on an item that is on the agenda, please wait for the Chair to call for Public Comment at the time the item is heard.

NONE.

5. PUBLIC HEARING

A. Public Hearing:

PZ-24-00022

A request for a Zoning Code Variance from the setback requirements of Table 10-40.30.030.C: Residential Zones -- Building Form and Property Development Standards, of the Zoning Code. This request is to reduce the required setback from 75' to 25'. The subject property is located at 3475 Soliere Avenue, and is zoned Rural Residential (RR).

1) Hold the Public Hearing

2) Staff recommends that the Board of Adjustment approve the proposed variance for a 25-foot front setback in accordance with the findings presented in this staff summary.

Wesley Welch, Planner, with the City of Flagstaff, presented to the Board of Adjustment. Wesley's presentation included an overview of the request, application, requirement, current aerial view of the parcel, proposed facility/parcel map, standards for granting variances, and staff recommendations. Wesley also fielded questions and comments from the board members.

The applicant, Pastor Chris Reed with Christ's Church of Flagstaff and legal representative, Trevor Kortsen with Aspey, Watkin & Diesel PLLC provided further information, details, and background to the board regarding their application, objectives, and goals pertaining to the variance request.

Moved by Devin Kelley, seconded by Art Babbott to approve the proposed variance for a 25-foot setback for 3475 Soliere Avenue.

Vote: 4 - 0 - Unanimously

6. INFORMATIONAL ITEMS TO/FROM BOARD MEMBERS AND STAFF, FUTURE AGENDA ITEM REQUESTS

Tiffany Antol, staff liaison to the Board of Adjustment, thanked the board members for attending and informed everyone that another variance application was submitted. Therefore, Tiffany advised the board members there will be an upcoming meeting in May, with further communication to come. In addition, Tiffany also noted at the next Board of Adjustment meeting be prepared to elect a Chairperson.

There were no informational items or questions, etc. from any board members.

7. ADJOURNMENT

Tiffany Antol, staff liaison to the Board of Adjustment adjourned the meeting by unanimous consent at 9:32 A.M.

CHAIRPERSON



Board of Adjustment

5. A.

Meeting Date: 08/21/2024

From: Tiffany Antol, Zoning Code Manager

Information

REQUEST:

PZ-24-00074: An appeal of a Zoning Code Interpretation on Marijuana Establishment Separation Requirements.

STAFF RECOMMENDED ACTION:

Staff recommends that the Board of Adjustment uphold the subject interpretation.

Attachments

Appeal Application

Staff Report

Noble Herb Zoning Verification Letter

Custodial Care Facility Zoning Verification Letter

Appellant's Supplemental Narrative

Appellant - Exhibit 1

Appellant - Exhibit 2

Appellant - Exhibit 3

Appellant - Exhibit 4

Appellant - Exhibit 5

Appellant - Exhibit 6

Appellant - Exhibit 7

Appellant - Exhibit 8

Appellant - Exhibit 9

Appellant - Exhibit 10

Appellant - Exhibit 11

Appellant - Exhibit 12

Appellant - Exhibit 13

Appellant - Exhibit 14

Appellant - Exhibit 15

Appellant - Exhibit 16

Appellant - Exhibit 17

Appellant - Exhibit 18

Interested Party - Narrative

Public Comment



City of Flagstaff

Community Development Division

211 W. Aspen Ave
Flagstaff, AZ 86001

P: (928) 213-2618
F: (928) 779-7684

www.flagstaff.az.gov/communitydevelopment
cdfrontcounter@flagstaffaz.gov

APPEAL

Date Received		Application for Appeal		File Number
Appellant FLG Industries, LLC dba Woodlands Village Day Care	Title	Phone 602.320.8866	Email hdukes@dukeslawaz.com	
Mailing Address 5527 N. 25th Street			City, State, Zip Phoenix, Arizona 85016	
Site Address N/A - Appeal of Zoning Code Interpretation dated 4/17/2024			City, State, Zip	
Parcel Number(s)		Zoning District		
Action Requested: <input checked="" type="checkbox"/> Appeal to Board of Adjustment <input type="checkbox"/> Appeal to Planning and Zoning Commission <input type="checkbox"/> Appeal to City Council Date of previous appeal (if any) <input type="checkbox"/> Appeal of dedications and exactions to Hearing Officer <input type="checkbox"/> Appeal to Heritage Preservation Commission				
Note: <ul style="list-style-type: none"> The Board of Adjustment hears and decides appeals when there is an alleged error in an order, requirement or decision made by an administrative official in the enforcement of the Zoning Code. The Planning and Zoning Commission hears and decides appeals of decisions by Staff concerning design review guidelines. The City Council hears and decides appeals of decisions by the Planning and Zoning Commission. A City Manager appointed hearing officer hears and decides appeals of dedications and exactions. <p>For information on the City of Flagstaff appeal process refer to Division 10-50.80 (Procedures for Appeals) of the Zoning Code.</p>				
Submittal Requirements				
All applications for an appeal shall provide necessary background information to the appeal, and clearly state the grounds for the appeal. An appeal fee as established in Appendix 2 (Planning Fee Schedule) of the Zoning Code shall also be submitted, as well as any documentation, plans or other information in support of the appeal. Fees are non-refundable. Also refer to the Additional Submittal Requirements on the following page.				
Appellant Signature		Date 4/29/24		
Property Owner Signature		Date		
Note: Incomplete applications and those not accompanied by the required information will not be accepted.				
For City Use				
Date Filed: _____		File #: _____		
Hearing Date: _____		Publication and Posting Date: _____		
Fee Receipt #: _____		Amount: _____ Date: _____		
Action by Board:		Cross Reference Numbers:		
Hearing Date:		IDS: _____		
<input type="checkbox"/> Approved _____		P&Z: _____		
<input type="checkbox"/> Denied _____				
<input type="checkbox"/> Continued _____				
<i>See reverse side for additional information</i>				

April 29, 2024

VIA EMAIL: TAntol@flagstaffaz.gov

Board of Adjustment
CITY OF FLAGSTAFF
Flagstaff City Hall
211 W. Aspen Avenue
Flagstaff, AZ 86001

RE: Authorization Letter for Appeal of Zoning Code Interpretation to Board of Adjustment – Marijuana Establishment Minimum Separation Interpretation dated April 17, 2024 (the "Interpretation")

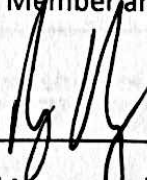
Dear Board of Adjustment Members:

Please accept this letter authorizing attorney Heather Duker to represent the Appellant of the above-referenced Interpretation, FLG Industries, LLC, an Arizona limited liability company dba Woodlands Village Day Care.

Sincerely,

FLG INDUSTRIES, LLC, an Arizona limited liability company

By: FLG INDUSTRIES REVOCABLE TRUST
Its: Member and Manager

By: 
Printed Name: RYAN HERMANSKY

Its: MANAGER

DUKES LAW, PLLC

5527 N. 25th Street
Phoenix, AZ 85016
602.320.8866

VIA EMAIL: TAntol@flagstaffaz.gov

Board of Adjustment
ATTN: Tiffany Antol, Zoning Code Manager
CITY OF FLAGSTAFF
211 W. Aspen Avenue, 1st Floor
Flagstaff, AZ 86001

April 29, 2024

RE: Appeal of Zoning Code Interpretation to Board of Adjustment – Marijuana Establishment Minimum Separations Interpretation dated April 17, 2024 (the “2024 Interpretation”)

Dear Ms. Antol and Board of Adjustment Members:

On behalf of my client, FLG Industries, LLC, an Arizona limited liability company, dba Woodlands Village Day Care (the “**Day Care**” or the “**Appellant**”), we submit to the Board of Adjustment this notice of appeal of the above-referenced 2024 Interpretation pursuant to Section 10-20.80.020 of the Flagstaff Zoning Code. We respectfully request a Board of Adjustment decision granting this appeal and reversing or modifying the Zoning Code Administrator’s 2024 Interpretation as erroneous. Specifically, the Appellant is requesting a Board of Adjustment Decision which uniformly applies and enforces the Marijuana Establishment separation standards as follows:

1. Uses are vested at the time an applicant obtains certificate of occupancy approval, pursuant to Section 10-20.40 of the Zoning Code and applicable caselaw.
2. Concept Plan review and approval is an informal review process and does not vest a project under the Zoning Code, pursuant to Section 10-20.30.050 of the Zoning Code.
3. Once a protected use (i.e. a day care) obtains a certificate of occupancy approval, the use must be identified by the City as an existing land use for purposes of applying Marijuana Establishment separation standards.
4. Because a use is not vested until certificate of occupancy approval is issued, the minimum separation requirements for a proposed Marijuana Establishment are not finally determined until the time a certificate of occupancy is issued for the Marijuana Establishment.

Background Information

Prior to issuing the 2024 Interpretation, the City consistently provided correspondence and direction to applicants in the following manner:

1. A specific version of the City Code is vested at the time of site plan or building permit approval – meaning the use may proceed with its development under the City Code in effect at the time of site plan or building permit approval.
2. A use is vested and established once a certificate of occupancy is issued.
3. A Concept Plan review and approval vests nothing. It is an informal approval.

Surprisingly, on April 17, 2024, the Planning Director issued the new 2024 Interpretation which contradicts the City’s previous direction and correspondence on several occasions. Based upon the “Context” provided within the 2024 Interpretation, the Interpretation appears to have been issued in response to the proposed Nirvana dispensary at 2725 S. Woodlands Village Boulevard and the Appellant’s Woodlands Village Day Care located less than 500 feet away at 2700 S. Woodlands Village Boulevard. To date, the proposed Nirvana dispensary has processed a Concept Plan review, but has not received site plan or building permit approval. On the other hand, the Woodlands Village Day Care has received building permit approval and is completing the necessary on-site improvements to obtain a certificate of occupancy in the near future.

In effect, the 2024 Interpretation applies two (2) different standards for vesting uses: (1) marijuana establishment uses are vested at the time of submitting for initial concept plan review (an informal process); and (2) all other uses are not vested until the time of certificate of occupancy approval. The following statements in the 2024 Interpretation demonstrate this inconsistency not only with the City’s prior correspondence but also an inconsistency in the vesting of certain uses.

2024 Interpretation

A. Reason for the Interpretation Determination:

To identify that existing land uses do not include those currently in review for either concept, site plan, or building permit. Land uses not yet established shall not impact the development of a Marijuana Establishment. Minimum separation requirements are determined at the time of concept plan application submittal for the Marijuana Establishment as required in Section 10-40.60.220(B)(6).

E. Analysis and Methodology:

- a. Since the proposed land use (daycare and family entertainment center) had not yet received a Certificate of Occupancy nor is in operation it is not considered an existing land use as referenced in Section 10-40.60.220(F). The proposed land use (daycare and family entertainment center) will be considered an existing land use once a Certificate of Occupancy has been issued by the City of Flagstaff and the business is in operation through visible inspection.
- b. The land uses that a marijuana establishment is required to meet minimum separations from shall be in operation before the date the marijuana establishment submitted the initial concept application and the submittal of the required affidavit. The affidavit of separation shall be in effect for the term of the concept plan per Section 10-20.30.050.

F. Interpretation Determination

- a. Section 10-40.60.220(F) of the Flagstaff Zoning Code shall be interpreted to require minimum separations from sites containing existing uses to mean land uses that have received Certificate of Occupancy and are currently in operation. The timing of determination of minimum separations shall be consistent with State licensing for similar facilities which occurs at the time of application as described above.**

In addition, the City erroneously claims that they have issued this interpretation to “be consistent with State licensing for similar facilities.” The Arizona licensing process requires that a dispensary submit a certificate of occupancy as part of the initial licensing application to the State. Likewise, the state DHS regulations specify that marijuana establishments must be separated from schools that are in existence as of the date that a licensee files an application to move an establishment. A.A.C. R9-22-321. Therefore, even the State applies its licensing criteria (including the 500’ separation requirement applicable to schools) after the dispensary has received a certificate of occupancy.

Grounds For Appeal

For the following reasons, the 2024 Interpretation is erroneous, arbitrary and capricious, an abuse of discretion, or contrary to law and should be set aside:

1. The 2024 Interpretation violates zoning uniformity requirements and treats the vesting of certain uses differently. It determines that a daycare and other protected uses are not vested until a certificate of occupancy has been issued, whereas the dispensary need only submit a concept plan application. The interpretation is contrary to the intent of the Zoning Code by granting the dispensary special treatment when the daycare is the use that is intended to be protected.

2. The 2024 Interpretation directly conflicts with the City’s prior direction and communications to applicants. For the last 3 years, the City has interpreted concept plan review to be an informal process, consistent with the Zoning Code. Now, the 2024 Interpretation considers a marijuana establishment use to be vested at the time of concept plan review for purposes of applying the separation standards. Instead, the separation standards should be applied and enforced from concept plan review through certificate of occupancy approval.

3. The 2024 Interpretation is contrary to Arizona law, which recognizes that rights vest only when substantial expenditures are made in reliance upon a development permit. In this case, no formal permit or approval has been issued.

4. The 2024 Interpretation is an undesirable City policy because it enables a cannabis applicant to block out huge territory for an extended period of time for a cheap price. A concept plan application fee is \$420 and is valid for a year, with an option to extend for up to 90 days. The dispensary applicant could block off huge areas and then let the applications sit for months and months. The \$420 concept plan review fee to vest a dispensary use is *de minimis*. For approximately \$5,000, a dispensary could submit concept plans for properties located near a dozen key intersections in Flagstaff, and block off nearly the entire city for 15 months. Is it the City’s intention to allow marijuana establishments to vest their rights

BOARD OF ADJUSTMENT

City of Flagstaff

April 29, 2024

Page 4 of 4

in this manner? Furthermore, are daycares and other protected uses expected to search up to 15 months' worth of concept plan approvals to determine whether their use will or will not be afforded protection from dispensaries?

5. To the extent the City expresses concern about the identity of the Day Care, the City is violating the basic rule that zoning is concerned with the use and not the user. To issue an interpretation based upon the identity of the user would be discriminatory and an abuse of discretion.

6. The 2024 Interpretation is contrary to the State licensing requirements for marijuana establishments and the vesting rule that is implied in AAC R9-17-321 and 322.

At this point in time, we have several outstanding public records requests related to this appeal of the 2024 Interpretation and the proposed dispensary at 2725 S. Woodlands Village Blvd. These records were not produced by the City prior to the appeal deadline. The Appellant reserves the right to supplement or modify the grounds for this appeal and to submit any additional documentation in support of this appeal up until 10 calendar days prior to the Board of Adjustment hearing, in accordance with Rule 405 of the Board of Adjustment Rules of Procedure updated March 30, 2016.

Very truly yours,

/s/ Heather N. Dukes

Heather N. Dukes, Esq.

602.320.8866 | hdukes@dukeslawaz.com

Enclosures

EXHIBIT 1



City of Flagstaff

Flagstaff Zoning Code Interpretation Determination

Issued By: Michelle McNulty
Planning Director

Subject: Marijuana Establishment minimum separations

Date Issued: April 17, 2024

Summary of Zoning Code Interpretation Determination:

This interpretation is intended to address when the following minimum separations are addressed in the development review process.

A Marijuana Establishment shall meet the following minimum separations, measured in a straight line from the boundary of the lot or parcel containing the use to the property boundary of the lot or parcel containing any of the existing uses listed below:

1. Two thousand feet from another Marijuana Establishment;
 2. Five hundred feet from a residential substance abuse treatment facility or other residential drug or alcohol rehabilitation facility licensed by the State of Arizona;
 3. Five hundred feet from a community college, university, or from any public, private, parochial, charter, dramatic, dancing, music learning center, or other similar school or educational facility that caters to children;
 4. Five hundred feet from a daycare home or daycare center;
 5. Five hundred feet from a public library or public park; and
 6. Five hundred feet from a facility devoted to family recreation or entertainment.
-

A. Reason for the Interpretation Determination:

To identify that existing land uses do not include those currently in review for either concept, site plan, or building permit. Land uses not yet established shall not impact the development of a Marijuana Establishment. Minimum separation requirements are determined at the time of concept plan application submittal for the Marijuana Establishment as required in Section 10-40.60.220(B)(6).

B. Authority to the Administrator Zoning Code.

The Planning Director is the Zoning Code Administrator/Zoning Administrator for the City of Flagstaff in accordance with the authority granted by Section 10-20.20.090. of the Flagstaff Zoning Code (the "Zoning Code"), and Arizona Revised Statutes §9-462, et al, is authorized to interpret, administer, and enforce Title 10, Flagstaff Zoning Code, of the Flagstaff City Code.

C. Context for the Request for Interpretation Determination:

A concept plan for a marijuana establishment has been submitted and reviewed. An affidavit signed and notarized by the applicant attesting that the lot or parcel proposed to contain the marijuana establishment meets the separation requirements from the nearest lot or parcel containing any of the existing uses listed in Section 10-40.60.220(F). After the submittal of the concept plan, a building permit was submitted for a new daycare and family entertainment center within five hundred feet.

D. Relevant Definitions, and Reference Material:

1. Section 10-10.30.030(A) states that no building, structure, or land shall be used or occupied, and no building, structure, or land shall be constructed, replaced, occupied, enlarged, or altered, nor shall any applicable permit be issued unless in conformity with all the provisions of this Zoning Code for the zone in which it is located and other applicable regulations.

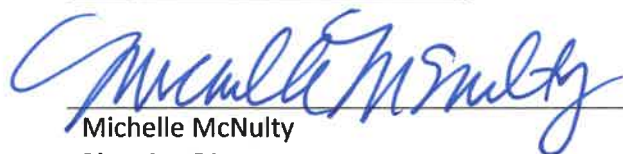
E. Analysis and Methodology:

- a. Since the proposed land use (daycare and family entertainment center) had not yet received a Certificate of Occupancy nor is in operation it is not considered an existing land use as referenced in Section 10-40.60.220(F). The proposed land use (daycare and family entertainment center) will be considered an existing land use once a Certificate of Occupancy has been issued by the City of Flagstaff and the business is in operation through visible inspection.
- b. The land uses that a marijuana establishment is required to meet minimum separations from shall be in operation before the date the marijuana establishment submitted the initial concept application and the submittal of the required affidavit. The affidavit of separation shall be in effect for the term of the concept plan per Section 10-20.30.050.

F. Interpretation Determination

- a. Section 10-40.60.220(F) of the Flagstaff Zoning Code shall be interpreted to require minimum separations from sites containing existing uses to mean land uses that have received Certificate of Occupancy and are currently in operation. The timing of determination of minimum separations shall be consistent with State licensing for similar facilities which occurs at the time of application as described above.

Interpretation Determination By:


Michelle McNulty
Planning Director


Date:

Appeal of Interpretation Determination

Pursuant to Section 10-20.80.020 of the Zoning Code, an appeal of a decision, determination or interpretation of the Zoning Code Administrator/Zoning Administrator shall be filed within 10 calendar days of the date of the decision, determination or interpretation. Appeals shall be filed in accordance with Section 10-20.80.020 of the Zoning Code.

**The deadline to File Appeal of this interpretation determination is:
5:00 p.m. on April 29, 2024**



PUBLIC HEARING

PZ-24-00074

DATE: August 14, 2024

MEETING DATE: August 21, 2024

REPORT BY: Tiffany Antol

Appeal Process and Review:

Section 10-20.80.020 provides a process for appeals of interpretations by the Zoning Code Administrator or Planning Director. Appeals may be heard by the Board of Adjustment where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of the Zoning Code.

The Board of Adjustment shall review the application and the recommendation of the Zoning Code Administrator and, following a public meeting, the Board of Adjustment shall reverse or modify the interpretation under appeal only upon finding an error in the application of the Zoning Code regulations on the part of the administrative officer rendering the interpretation. The Board of Adjustment shall grant the appeal, grant the appeal subject to specified conditions, or deny the appeal.

Purpose of the Interpretation:

The April 17, 2024, interpretation regarding Marijuana Establishment Minimum Separations was intended to address when the minimum separation requirements for Marijuana Establishments are addressed in the development review process.

Section 10-40.60.220 of the Flagstaff Zoning Code provides the following use standards for Marijuana Establishments:

A. Applicability. Prior to the submittal of a Building Permit or Business license application, or prior to the occupancy of a structure, for a Marijuana Establishment, the applicant shall complete a Concept Plan in accordance with Section 10-20.30.050, Concept Plan Review.

B. The Concept Plan application shall include the following:

- 1. A notarized authorization executed by the property owner acknowledging and consenting to the use of the property as a Marijuana Establishment;*
- 2. The name of the Marijuana Establishment and the name of the owner(s) of the Marijuana Establishment;*
- 3. The name, address, birth date, and valid registry identification card number of each nonprofit medical Marijuana Dispensary agent or registered Marijuana facility agent;*

4. A security plan describing details of alarm systems and exterior lighting in compliance with Division 10-50.70, Outdoor Lighting Standards, and including a floor plan showing the location, dimensions, and type of security measures demonstrating that the Marijuana Establishment will be secured, enclosed, and locked as required by law;

5. A scaled survey sealed by a land surveyor registered in the State of Arizona depicting the property lines of the lot or parcel that is proposed to contain the Marijuana Establishment and the separations from the nearest lot or parcel that contain any of the existing uses listed in subsection F of this section; and

6. An affidavit signed and notarized by the applicant attesting that the lot or parcel proposed to contain the Marijuana Establishment meets the separation requirements from the nearest lot or parcel containing any of the existing uses listed in subsection F of this section.

C. A Marijuana Dispensary shall have operating hours not earlier than 8:00 a.m. and not later than 10:00 p.m.

D. A Marijuana Establishment shall:

1. Not be located in a temporary building or structure (e.g., shipping container, storage structure, tent, trailer, vehicle, etc., as determined by the Zoning Administrator);

2. Not emit dust, fumes, vapors, smoke, or odors into the environment;

3. Prohibit consumption of Marijuana on the premises, including the parking area associated with the Marijuana Establishment;

4. Display a current City of Flagstaff business license;

5. Include a secure storage area that can be enclosed and locked as required by law;

6. Have a single secure entrance or, if a dual licensee, demonstrate appropriate security measures to deter and prevent the theft of Marijuana and to reasonably regulate customer access to the premises, including equipping all entrances and exits with an alarm system;

7. Provide additional exits in accordance with the Building Code or Fire Code; and

8. Dispose of Marijuana remnants and by-products in accordance with State and local regulations.

E. A Marijuana Dispensary shall not have a drive-through service or an outdoor seating area for dispensary customers. An outdoor seating area for employees shall be designed in a manner that prohibits access and use by dispensary customers.

F. A Marijuana Establishment shall meet the following minimum separations, measured in a straight line from the boundary of the lot or parcel containing the use to the property boundary of the lot or parcel containing any of the existing uses listed below:

1. Two thousand feet from another Marijuana Establishment;

2. *Five hundred feet from a residential substance abuse treatment facility or other residential drug or alcohol rehabilitation facility licensed by the State of Arizona;*
3. *Five hundred feet from a community college, university, or from any public, private, parochial, charter, dramatic, dancing, music learning center, or other similar school or educational facility that caters to children;*
4. *Five hundred feet from a daycare home or daycare center;*
5. *Five hundred feet from a public library or public park; and*
6. *Five hundred feet from a facility devoted to family recreation or entertainment.*

With respect to the separation from existing uses identified in Section 10-40.60.220.F., the Zoning Code does not clearly state when the required separation requirements are required to be reviewed and determined to conform to code.

The attached April 17, 2024, interpretation from the Zoning Code Administrator identifies when the uses requiring separation are determined to be existing (i.e., at the time of Certificate of Occupancy) and when the City determines conformance with the separation requirements (i.e., at the time of concept plan submittal).

Applicant's Grounds for Appeal:

- Violates zoning uniformity requirements by treating the vesting of certain uses differently.
- Conflicts with Arizona law on rights vesting.
- Conflicts with previous interpretations.
- Contrary to state licensing requirements for marijuana establishments.
- The applicant also states that the interpretation is undesirable policy and that it is based on the identity of the user (business owner) rather than the use itself (daycare).

Grounds for Recommendation:

1. Determination of conformance with separation requirements.

Pursuant to Section 10-40.60.220.B. of the Zoning Code, the Concept Plan Application for a Marijuana Establishment must include an affidavit that verifies the proposed Marijuana Establishment meets the separation requirements from the nearest lot or parcel containing any of the existing uses listed in Section 10-40.60.220.F. Once submitted, planning staff reviews the affidavit and confirms the separation requirements are met. The review and acceptance of the affidavit allows the Marijuana Establishment to move through the development process in accordance with the Zoning Code, which can be multi-faceted and time consuming. Staff's acceptance of the affidavit submitted with the Concept Plan Application establishes conformance with the separation requirements and locks that determination in throughout the development process.

The Zoning Code was amended in 2021 to add the requirement that every Marijuana Establishment submit a concept plan application. The purpose of that amendment was to have a way to record and file information required to be submitted in conjunction with the initiation of a Marijuana Establishment,

including the affidavit establishing conformance with separation requirements. Requiring a Concept Plan, at a minimum, ensures that a planning review occurs as part of the initiation of a Marijuana Establishment and the required records are maintained in permanent planning files. It would be inefficient and potentially injurious to an applicant if the City were to require an affidavit establishing conformance with separation requirements at the time of Concept Plan application, but then wait to make a final determination of those separation requirements at time of certificate of occupancy, as suggested by the appellant.

A. Timing of conformance determination.

Appellant takes the position that conformance with the separation requirements should not be determined until the Marijuana Establishment receives certificate of occupancy. The purpose of the separation requirements is to ensure that Marijuana Establishments are not established near certain existing land uses. When a Marijuana Establishment applies for Concept Plan it becomes public record and allows other businesses or property owners the opportunity to determine their appropriate surroundings. For example, the proposed daycare was aware of the proposed Marijuana Establishment and had the opportunity to decide to locate or not locate in the vicinity of this use. Thus, establishing conformance with separation requirements at Concept Plan application supports the intended purpose of the regulations by providing notice to uses that seek to locate to the same general vicinity as the proposed Marijuana Establishment.

The affidavit can only represent a moment in time, and it is possible that new uses that require separation will be established during the time it takes to establish a Marijuana Establishment. The timeframe to establish a new Marijuana Establishment can vary based on many factors, such as whether it's new construction or alternation of an existing site. For example, an existing Marijuana Establishment recently relocated to a former restaurant and extensively renovated the structure to serve as a Marijuana Establishment. A timeline of their development review process is provided to show the length of time it can take to obtain Certificate of Occupancy.

- November 12, 2020 – Zoning Verification Letter
- December 12, 2020 – Concept Plan submitted to City
- February 4, 2021 – Concept Plan found complete
- April 19, 2021 – Building Permit submitted to City
- June 24, 2021 – Building Permit issued
- June 30, 2022 – Certificate of Occupancy

In that case, staff did not require an updated affidavit to establish conformance with separation requirements prior to issuance of certificate of occupancy. If the City had not established conformance at Concept Plan application, the Marijuana Establishment in this example could have expended significant time and resources to renovate their new location only to be denied a certificate of occupancy if a daycare had been established nearby on June 1, 2022.

B. Consistent with other separation requirement reviews.

The interpretation appears to be consistent with when the Arizona Department of Health Services establishes conformance with the State's single separation requirement. The following are sections from the rules in the Arizona Administrative Code governing the State's Medical Marijuana Program.

R9-17-321. Physical Plant

A. *A dispensary or a dispensary's cultivation site shall be located at least 500 feet from a private school or a public school that existed, as applicable:*

1. *Before the date the dispensary submitted the initial dispensary registration certificate application,*
2. *Before the date of an application to change the location of the dispensary, or*
3. *Before the date of an application to add a cultivation site.*

R9-17-322. Denial or Revocation of a Dispensary Registration Certificate

A. *The Department shall deny an application for a dispensary registration certificate or a renewal if:*

1. *For an application for a dispensary registration certificate, the physical address of the building or, if applicable, the physical address of the dispensary's cultivation site is within 500 feet of a private school or a public school that existed before the date the dispensary submitted the initial dispensary registration certificate application, before the date of an application to change the location of the dispensary, or before the date of an application to add a cultivation site;*

C. Conformance and vesting.

The appellant argues that the subject interpretation treats the vesting of uses differently or nonuniformly, which conflates conformance with vesting. Vesting is a legal term that refers to when a right or interest in property is secured, which is not at issue here. The subject interpretation merely determined when conformance with the City's adopted separation requirements will be established.

D. Other interpretations.

The appellant goes on to state that the subject interpretation conflicts with other staff interpretations. There are no official interpretations of the Zoning Code Administrator that reference the time frame for reviewing and accepting an affidavit confirming the minimum separation requirements for specific land uses.

E. Policy considerations.

Lastly, the appellant is concerned that the subject interpretation represents undesirable policy in addition to concerns that the interpretation was influenced by the owner of the daycare rather than the daycare itself. Neither of these issues speak to an error of the Zoning Code Administrator as is required to overturn such an interpretation.

2. When the uses requiring separation are determined to be existing.

The Zoning Code provides the following guidance on the requirement for separations: *"A Marijuana Establishment shall meet the following minimum separations, measured in a straight line from the boundary of the lot or parcel containing the use to the property boundary of the lot or parcel containing any of the existing uses listed below:"*

This provision of the Zoning Code requires separation from **existing** land uses. The Zoning Code does not specifically define the term "existing," so staff relies on the dictionary definition. Existing is defined as in existence or operation at the time under consideration. A proposed land use, such as the appellant's

daycare, will be considered an existing land use once a Certificate of Occupancy has been issued by the City of Flagstaff and the business is in operation through visible inspection.

Appellant does not appear to be challenging this interpretation.

Recommendation:

The appellant has not identified a specific error of the Zoning Code Administrator in the subject interpretation. In accordance with the findings presented in this report, staff recommends that the Board of Adjustment uphold the subject interpretation and deny the appeal.

Attachments:

1. Zoning Verification Letter for Noble Herb relocation
2. Zoning Verification Letter for proposed custodial care facility



City of Flagstaff

Community Development

November 22, 2022

Mr. Nicholas A. Sobraske
Gammage & Burnham, PLC
40 North Central Avenue, 20th Floor
Phoenix, AZ 85004
Via email: nsobraske@gblaw.com

RE: Zoning Verification Letter 1301 W University Avenue, APN 112-27-027

Dear Mr. Sobraske:

In response to your request for information regarding the above-referenced properties (hereafter the "Property"), we have researched our files and present the following:

1. The current zoning classification for the subject Property is Highway Commercial (HC) with the Resource Protection Overlay (RPO).
2. A site plan was approved for an Indoor Commercial Recreation use consisting of an athletic facility/health club on July 1, 1999.
3. The proposed use of Custodial Care Facilities is a permitted use in the Highway Commercial (HC) zone. If a proposed Custodial Care Facility is to be located less than 1,320 feet from another Custodial Care Facility a Conditional Use Permit must be obtained. City records do not indicate that there is another similar facility within 1,320 at the time of this letter. A Conditional Use Permit would not be required so long as another facility is not located within 1,320 feet at the time of permitting.
4. A change of use from Indoor Commercial Recreation to Custodial Care Facility requires the review of a concept plan application. The applicant shall provide a map that identifies whether similar facilities are located within 1,320 feet of the site as part of the concept plan application.

This information was researched on the above-referenced date by the undersigned per request and as a public service. The City of Flagstaff, and the City Staff, assumes no liability for errors and omissions. All information was obtained from public records, which may be inspected during regular business hours. The Flagstaff City Code may be viewed at the following website: <https://www.codepublishing.com/AZ/Flagstaff/>.

Sincerely;

Tiffany Antol, AICP
Zoning Code Manager
(928) 213-2605
tantol@flagstaffaz.gov



City of Flagstaff

Community Development

Planning and Development Services
211 West Aspen Avenue
Flagstaff, Arizona 86001

November 12, 2020

Douglas A. Daly
Daly Law Firm, PLLC
Post Office Box 14483
Scottsdale, Arizona 85267
T: 602.703.5320
daly@dalylawfirmaz.com

**RE: Zoning Verification Letter
PZ 20-00198
Medical Marijuana Dispensary
522 East Route 66
Flagstaff, Arizona 86001**

Dear Mr. Daly,

In response to your request for information regarding locating a Medical Marijuana Dispensary at the above-referenced property (hereafter the "Property"), we have researched our files and present the following:

1. Current zoning classification for the subject Property?
 - The current zoning classification for the subject Property appears to be zoned Highway Commercial (HC). The applicable standards of this district may be found in Section 10-40.30.050. Commercial Zones of the Zoning Code, as amended. The subject Property does not appear to be subject to an overlay zone.

These property development standards may be obtained at the following website:

<https://www.codepublishing.com/AZ/Flagstaff/html/Flagstaff10/Flagstaff1040030.html#10.40.30.040>

2. Is a Medical Marijuana Dispensary allowed on the Property?
 - A Medical Marijuana Dispensary is currently allowed in the Highway Commercial (HC) zone (Attachment 1), subject to compliance with the Section 10-40.60.220 of the Zoning Code (Attachment 2).
 - Based on the available information, the Property appears to comply with location requirements of Section 10-40.60.220.F. of the Zoning Code, although all applicable requirements of Section 10-



City of Flagstaff

Community Development

40.60.220 must be complied with. It is the property owner's, business owner's, and/or authorized applicant's responsibility to demonstrate compliance with all requirements of the City Code.

- The property owner, business owner, and/or authorized applicant shall demonstrate that all requirements of the Zoning Code are complied with prior to obtaining a building permit.

Prior to submitting a building permit application, it is recommended that the property owner, business owner, and/or authorized applicant submit a Concept Plan application that demonstrates compliance with the requirements of the Zoning Code, including Section 10-40.60.220. Below is a link to the Concept Plan application:

<https://www.flagstaff.az.gov/DocumentCenter/View/42850>

This letter is not an approval to locate a Medical Marijuana Dispensary on the Property. The property owner, business owner, and/or authorized applicant shall demonstrate compliance with the City Code to City Staff.

This letter does not "hold" the property as a Medical Marijuana Dispensary location, nor does this letter prohibit another use from locating in an area that would cause the Property not to comply with the requirements of Section 10-40.60.220 of the Zoning Code.

This information was researched on the above-referenced date by the undersigned per request and as a public service. The City of Flagstaff, and the City Staff, assumes no liability for errors and omissions. All information was obtained from public records, which may be inspected during regular business hours. The Flagstaff City Code may be viewed at the following website: <https://www.codepublishing.com/AZ/Flagstaff/>.

Sincerely;

Dan Symer, AICP
Zoning Code Manager
(928) 213-2613
daniel.symer@flagstaffaz.gov

Attachments:

1. Highway Commercial (HC) Zone
2. Medical Marijuana Uses Section 10-40.60.220

10-40.30.040 Commercial Zones

A. Intent.

1. **SC.** The Suburban Commercial (SC) zone applies in areas with suburban character that are appropriate for neighborhood commercial uses. This zone allows retail and service establishments that supply commodities or perform services meeting the needs of adjacent residential neighborhoods. The SC zone encourages the orderly development of dispersed commercial areas and diverse housing choices. The standards of this zone ensure that such commercial zones will be compatible with adjacent, noncommercial development and will minimize the undesirable effects of heavy traffic, type of activity, and site development requirements.
2. **CC.** The Community Commercial (CC) zone applies to areas of the City appropriate for dispersed commercial areas designed to serve communitywide needs. Such areas provide a wide variety of goods and services in predominately established, built up areas and must be consistent with the overall development of the City and its environs. The development of residential uses in addition to commercial uses is also encouraged in this zone to provide diversity in housing choices. The provisions of this zone are intended to ensure that such commerce will be compatible with adjacent, noncommercial development and to minimize the undesirable effects of heavy traffic, commercial activity, and site requirements.
3. **HC.** The Highway Commercial (HC) zone applies to areas of the City appropriate for a full range of automobile-oriented services. The development of commercial uses in addition to residential uses is encouraged in the HC zone to provide diversity in housing choices; provided, that residential uses are located above or behind commercial buildings so that they are buffered from adjoining highway corridors. The provisions of this zone are also intended to provide for convenient, controlled access and parking, without increasing traffic burdens upon the adjacent streets and highways. This zone is designated primarily at the commercial corridors of the City, with the intention of making the City more attractive as a tourist destination while providing needed commercial activity.
4. **CS.** The Commercial Service (CS) zone applies to areas of the City appropriate for those service industries and support activities necessary to maintain viable commercial retail trade centers. The development of residential uses in addition to commercial uses is encouraged in this zone; provided, that residential uses are located above or behind the primary commercial service use.
5. **CB.** The Central Business (CB) zone applies to the central core area which is appropriate for accommodating retail commercial, personal services, and governmental, business, financial, professional, and general offices. The uses in this area require a central location accessible to all routes entering the City and grouped so that the shopper or user can park once and visit a number of stores and offices on foot. The development of residential uses in addition to commercial uses is encouraged in this zone; provided, that residential uses are located on the second story or above or behind on the first floor.

B. Commercial Zones – Allowed Uses. The allowed land uses of each of the Commercial zones are shown in Table 10-40.30.040.B.

Table 10-40.30.040.B. Commercial Zones – Allowed Uses						
Land Use¹	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
Industrial, Manufacturing, Processing and Wholesaling						
Carpenter or Cabinet Shops		--	--	--	P	-
Flammable Liquid, Gas, and Bulk Fuel – Storage and Sale		--	--	UP	--	
Machine or Metal Working Shops		--	--	--	P	--
Manufacturing and Processing – Incidental		--	P	P	P	P

Table 10-40.30.040.B. Commercial Zones – Allowed Uses						
Land Use ¹	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
Micro-brewery or Micro-distillery	10-40.60.240	--	P	P	P	P
Mini-storage Warehousing	10-40.60.250	--	--	UP ²	P	--
Research and Development Uses	10-40.60.300	--	--	UP	--	--
Transportation or Trucking Yards		--	--	--	P	--
Vehicle Towing/Impound Yard		--	--	P ⁴	--	--
Warehousing		--	P ³	P ³	--	P ³
Wholesaling and Distribution		--	--	--	P	P ³
Recreation, Education and Assembly						
Automobile, Go-kart, Miniature Automobile Racing	10-40.60.080	--	UP	UP	--	--
Commercial Campgrounds	10-40.60.130	--	--	P	--	--
Commercial Recreation Facilities, Indoor		P	P	P	--	P
Commercial Recreation Facilities, Outdoor	10-40.60.270	--	UP	UP	--	--
Libraries, Museums		P	P	P	P	P
Meeting Facilities, Public or Private	10-40.60.230					
	Regional	--	P/UP ⁵	P/UP ⁵	P/UP ⁵	P/UP ⁵
	Neighborhood	P ⁵	P/UP ⁵	--	--	--
Outdoor Public Uses, General		P	P	P	--	--
Places of Worship		P/UP ¹⁰	P/UP ¹⁰	P/UP ¹⁰	P/UP ¹⁰	P/UP ¹⁰
Schools – Public and Charter		P	P	P	P	P
Schools – Private		P	P	P	P	P
Theaters		P	P	P	--	P
Trade Schools		--	UP	UP	UP	UP
Residential⁷						
Co-housing	10-40.60.120	P ⁶	P ⁶	P ⁶	P ⁶	P ⁶
Congregate Care Facilities		UP	P	P	P	UP
Day Care, Centers	10-40.60.150.B	P	P	P	UP	UP
Day Care, Home	10-40.60.150.A	P	P	P	P	P
Development, Duplex		P ⁶	P ^{6,9}	P ⁶	P ⁶	P ⁶
Development, Multiple-Family		P ⁶	P ⁶	P ⁶	P ⁶	P ⁶
Development, Single-Family		--	P ⁹	--	--	--

Table 10-40.30.040.B. Commercial Zones – Allowed Uses						
Land Use ¹	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
Dormitories		UP ⁶	UP ⁶	UP ⁶	UP ⁶	UP ⁶
Fraternities and Sororities		UP ⁶	UP ⁶	UP ⁶	UP ⁶	UP ⁶
Group Homes		p ⁶	p ⁶	p ⁶	p ⁶	p ⁶
Home Occupation	10-40.60.180	p ⁶	p ⁶	p ⁶	p ⁶	p ⁶
Institutional Residential						
Custodial Care Facilities		p ⁸	p ⁸	p ⁸	p ⁸	p ⁸
Homeless Shelters	10-40.60.190					
Emergency Shelters		p ⁸	p ⁸	p ⁸	p ⁸	p ⁸
Short Term Housing		p ⁸	p ⁸	p ⁸	p ⁸	p ⁸
Transitional Housing		P	P	P	P	P
Nursing Homes		UP	UP	UP	UP	UP
Sheltered Care Homes		P	P	P	P	P
Live/Work	10-40.60.200	P	P	P	P	P
Planned Residential Development	10-40.60.280	P/UP	P/UP ⁹	UP	UP	UP
Residence for Owner, Caretaker or Manager		p ⁶	p ⁶	p ⁶	p ⁶	p ⁶
Rooming and Boarding Facilities		UP ⁶	UP ⁶	UP ⁶	UP ⁶	UP ⁶
Single Room Occupancy		UP	--	P	--	P
Retail Trade						
Bars/Taverns		P	P	P	P	P
Crematorium		P	P	P	P	--
Drive-through Retail	10-40.60.160	P	P	P	--	--
Drive-through Service		P	P	P	--	--
Farmers Markets and Flea Markets		--	P	P	P	P
General Retail Business		P	P	P	P	P
Mixed Use	10-40.60.260	P	P	P	P	P
Restaurant or Cafe		P	P	P	P	P
Services						
Bed and Breakfast Establishments	10-40.60.110	P	P	P	P	P
Cemeteries		UP	UP	UP	UP	--

Table 10-40.30.040.B. Commercial Zones – Allowed Uses						
Land Use ¹	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
Dry-cleaning, Processing		P	P	P	--	--
Equipment Rental Yard		--	UP	P	P	--
Funeral Homes, Chapels and Mortuaries		--	P	P	--	UP
General Services		P	P	P	P	P
Hospital		UP	UP	UP	UP	UP
Kennel, Animal Boarding	10-40.60.195	--	--	UP ¹¹	--	--
Medical Marijuana Dispensary	10-40.60.220	--	--	P	--	--
Office		P	P	P	P	P
Public Services						
Public Services Major		--	--	--	--	--
Public Services Minor		P	P	P	P	P
Emergency Services		UP	UP	UP	UP	UP
Travel Accommodations		UP	--	P	--	P
Veterinary Clinics		P	P	P	P	--
Veterinary Hospitals		--	--	UP	UP	--
Telecommunication Facilities						
AM Broadcasting Facilities	10-40.60.310	UP	UP	UP	UP	UP
Antenna-Supporting Structure	10-40.60.310	UP	UP	UP	UP	UP
Attached Telecommunication Facilities	10-40.60.310	P	P	P	P	P
Collocation Facility	10-40.60.310	P	P	P	P	P
FM/DTV/Low Wattage AM Broadcasting Facilities	10-40.60.310	P	P	P	P	P
Stealth Telecommunication Facilities	10-40.60.310	P	P	P	P	P
Transportation and Infrastructure						
Accessory Wind Energy Systems	10-40.60.040	P	P	P	P	P
Garages, Off-Street		P	P	P	P	P
Parking Lots, Off-Street	10-50.80	P	P	P	P	P
Passenger Transportation Facilities		--	--	UP	UP	UP
Urban Agriculture						

Table 10-40.30.040.B. Commercial Zones – Allowed Uses						
Land Use¹	Specific Use Regulations	Commercial Zones				
		SC	CC	HC	CS	CB
Community Gardens	10-40.60.140	P	P	P	P	P
Food Production		--	--	UP ²	UP ²	--
Vehicle Sales and Services						
Automobile Service Station and Convenience Store	10-40.60.090	P	P	P	P	--
Automobile and Trailer Rental		--	--	P	P	--
Automobile/Vehicle Sales and Service, New and Used		--	UP	P	P	UP
Automobile/Vehicle Repair Garages – Major	10-40.60.100	--	--	P	P	--
Automobile/Vehicle Repair Garages – Minor	10-40.60.100	--	UP	P	P	--
Car Washes		P	P	P	--	--
Mobile Homes and Recreational Vehicles, Sales, and Service		--	--	P	--	--
End Notes						
1.	A definition of each listed use type is in Chapter 10-80, Definitions.					
2.	Only allowed on lots that do not have highway frontage or behind existing/new commercial uses.					
3.	Only permitted when incidental to permitted use.					
4.	This use shall be screened. See Division 10-50.50, Fences and Screening, for fencing and screening requirements.					
5.	A conditional use permit is required if liquor is sold or if facilities exceed 250 seats.					
6.	Residential uses with more than two units are allowed as part of a mixed-use development located above or behind the commercial uses, or as a planned residential development (Section 10-40.60.280).					
7.	Residential uses in the CC, HC, CS and CB zones, and residential uses and properties listed on the National Historic Registry or within the Landmarks overlay zone existing prior to the effective date of this Zoning Code are considered legal, nonconforming uses. Residential uses in the CC, HC, CS and CB zones shall be subject to the development standards established in the HR zone.					
8.	Conditional use permit is required if proximity between shelter facilities is less than one-quarter mile.					
9.	Single-family and duplex land uses are permitted by right on lots ≤9,000 sf and existing prior to November 1, 2011, subject to the building placement and building form requirements of the MR zone.					
10.	A conditional use permit is required if the facility exceeds 250 seats and/or if the facility is located adjacent to a toxic use.					
11.	Outdoor kenneling of animals is prohibited.					
Key						
P =	Permitted Use					
UP =	Conditional Use Permit Required					
-- =	Use Not Allowed					

C. **Commercial Zones – Building Form and Property Development Standards.** The building form and property development standards shown in Table 10-40.30.040.C. shall apply to all property with the corresponding commercial zones.

Table 10-40.30.040.C.					
Commercial Zones – Building Form and Property Development Standards					
	Commercial Zones				
	SC	CC	HC	CS	CB
Building Placement Requirements					
Setback from property line					
Front (Also see Section 10-50.60.040.B)	15' ¹	0'	0' ²	0'	0'
Side					
	Adjacent to Residential Use	----- 15' min. ⁶ -----			
	Street Side (min.)	10' ³	10' ³	10' ³	10' ³
	All Other Sides	----- 0' -----			
Rear					
	Adjacent to Residential	----- 15' min. -----			
	All Other Rears	----- 0' -----			
Building Form Requirements					
Building Height (max.) ^{8, 9, 10}	35'	60' ^{4, 7}	60' ⁴	60' ⁴	60' ⁴
Gross FAR (max.)	0.8	2.5	3.0	2.0	No max.
Density Requirements					
Gross Density (units/acre) (max.) (Not Applicable to Mixed Use)					
	Areas of the City without the Resource Protection Overlay (RPO)	13	----- 29 -----		
	Areas of the City inside of a pedestrian shed of an activity center delineated on the General Plan, with or without the RPO	13	----- 29 -----		
	Areas of the City with RPO, excluding areas of the City inside of a pedestrian shed of an activity center delineated on the General Plan	13	----- 22 -----		
Lot Requirements					

Table 10-40.30.040.C. Commercial Zones – Building Form and Property Development Standards					
	Commercial Zones				
	SC	CC	HC	CS	CB
Area (Gross sf) (min.) ⁵	6,000	9,000	9,000	9,000	7,000
Width (min.) ⁵	50'	60'	60'	60'	50'
Depth (min.) ⁵	100'	100'	100'	100'	--
Open Space					
Developments with Two or More Dwelling Units	----- 15 percent of the net lot area -----				
Other Requirements					
Fences and Screening	See Division 10-50.50				
Landscaping	See Division 10-50.60				
Outdoor Lighting	See Division 10-50.70				
Parking	See Division 10-50.80				
Signs	See Division 10-50.100				
End Notes					
1.	Front setbacks shall be equal to 15' or match adjacent residential development, whichever is less.				
2.	No front setback required, except when required by the adoption of building setback lines along specified streets.				
3.	Setback may be reduced to 5' min., if the landscape street buffer is reduced in accordance with Section 10-50.60.040(B), Nonresidential Zone Buffers.				
4.	Conditional use permit required for structures over 60' in height.				
5.	Within a planned residential development, the minimum area, width, and depth of a lot may vary based on the minimum lot standards applicable to the building types selected for application within a planned residential development (see Section 10-40.60.280, Planned Residential Development).				
6.	Except that the setback from a proposed residential use in a commercial zone to other residential uses shall be 5' min.				
7.	Single-family dwellings and duplexes in the CC zone shall be limited to a maximum height of 35 feet consistent with the height standard for the MR zone.				
8.	Primary structures, excluding accessory structures, with a roof pitch greater than, or equal to, 6:12 shall be allowed an additional five feet above the maximum building height.				
9.	The elevator and stairwell bulkheads shall be architecturally integrated with the building. Elevator and stairwells bulkheads are allowed an additional 15 feet above the maximum building height. The Director may approve a height greater than 15 feet when the additional height is necessary to accommodate an elevator or stairwell bulkhead, related equipment, or the requirements of the Building or Fire Code.				
10.	Steeple, solar collectors, towers and other unoccupied architectural features are allowed an additional height above the maximum building height equal to 20 percent multiplied by the maximum building height allowed for property's zone. The total area of the referenced allowances above the building height shall not exceed 20 percent of the total roof area.				

D. Miscellaneous Requirements – All Commercial Zones.

1. In accordance with Chapter 11-20, Subdivision and Land Split Regulations, and Title 13, Engineering Design Standards and Specifications for New Infrastructure, of the City Code, all land subdivided into lots or parcels shall abut a public right-of-way or private street tract, and have water and sewer infrastructure service.

2. All products incidental to a permitted use which are manufactured or processed on the premises shall be sold on the premises and at retail only, and shall be further limited as follows:
 - a. In the CC and CB zones, such activity shall be restricted to not over 25 percent of ground floor area of the building or buildings.
 - b. In the CS zone, such activity shall be restricted to not over 50 percent of ground floor area of the building or buildings.
 - c. In the CC and CB zones, not more than five employees shall be engaged in such activity.
 - d. In the CS zone, not more than 10 employees shall be engaged in such activity.
4. Every development in the commercial zones shall have a refuse storage area constructed and provided in accordance with City standards.
5. Temporary uses shall be permitted in compliance with Section 10-20.40.150, Temporary Use Permits.
6. **Accessory Uses.**
 - a. An Accessory Dwelling Unit (ADU) use is allowed in commercial zones on a lot containing a single-family dwelling unit as the primary use.
 - b. All other accessory uses are allowed in accordance with Section 10-40.60.025.
7. **Accessory Structures.**
 - a. An Accessory Dwelling Unit (ADU) structure that complies with Section 10-40.60.030 is allowed in Community Commercial (CC) zone on a lot containing a detached single-family dwelling.
 - b. All other accessory structures are allowed in accordance with Section 10-40.60.020.

(Ord. 2020-11, Amended, 5/5/2020 (Res. 2020-17); Ord. 2019-32, Amended, 11/5/2019 (Res. 2019-49); Ord. 2017-10, Amended, 4/4/2017; Ord. 2016-07, Amended, 2/16/2016 (Res. 2016-02))

10-40.60.220 Medical Marijuana Uses

A. **General Requirements for Medical Marijuana Uses.** The minimum requirements of this section shall apply to all medical marijuana dispensaries and to medical marijuana dispensary off-site cultivation locations.

B. In addition to any other application requirements, an applicant for any medical marijuana dispensary or medical marijuana dispensary off-site cultivation location shall provide the following:

1. A notarized authorization executed by the property owner acknowledging and consenting to the proposed use of the property as a medical marijuana dispensary or a medical marijuana dispensary off-site cultivation location, as applicable;
2. The legal name of the medical marijuana dispensary or medical marijuana dispensary off-site cultivation location;
3. If the application is for a medical marijuana dispensary off-site cultivation location, the name and location of the medical marijuana dispensary with which it is associated;
4. The name, address and birth date of each officer and board member of the nonprofit medical marijuana dispensary;
5. The name, address, birth date, and valid registry identification card number of each nonprofit medical marijuana dispensary agent;
6. A copy of the operating procedures adopted in compliance with A.R.S. § 36-2804;
7. A notarized certification that none of the nonprofit medical marijuana dispensary officers or board members has been convicted of any of the following offenses:
 - a. A violent crime as defined in A.R.S. § 13.901.03(B) that was classified as a felony in the jurisdiction where the person was convicted; or
 - b. A violation of State or Federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted except an offense for which the sentence including any term of probation incarceration or supervised release was completed 10 or more years earlier or an offense involving conduct that would be immune from arrest prosecution or penalty under A.R.S. § 36-2811 except that the conduct occurred before the effective date of that statute or was prosecuted by an authority other than the State of Arizona.
8. A notarized certification that none of the nonprofit medical marijuana dispensary officers or board members has served as an officer or board member for a medical marijuana dispensary that has had its registration certificate revoked;
9. A security plan describing details of alarm systems and exterior lighting in compliance with Division 10-50.70, Outdoor Lighting Standards, and including a floor plan showing the location, dimensions and type of security measures demonstrating that the medical marijuana dispensary or medical marijuana dispensary off-site cultivation location will be secured, enclosed, and locked as required by law; and
10. A scale drawing depicting the property lines and the separations from the nearest property boundary of the parcel containing the medical marijuana dispensary or medical marijuana dispensary off-site cultivation location to the property boundary of the parcel containing any existing uses listed in subsection (F) of this section. If any of the uses are located within 50 feet of the minimum separation, the drawing showing actual surveyed separations shall be prepared by a registered land surveyor.

C. A medical marijuana dispensary shall have operating hours not earlier than 8:00 a.m. and not later than 7:00 p.m.

D. A medical marijuana dispensary or medical marijuana dispensary off-site cultivation location shall:

1. Be located in a permanent building and may not be located in a semi-trailer, shipping container, or motor vehicle;
2. Not have drive through service;
3. Not emit dust, fumes, vapors, smoke or odors into the environment;
4. Prohibit consumption of marijuana on the premises, including the parking area associated with the marijuana dispensary or medical marijuana dispensary off-site cultivation location;
5. Not have outdoor seating areas;
6. Display a current City of Flagstaff business license applicable to medical marijuana uses;
7. Include a secure storage area that can be enclosed and locked as required by law;
8. Have a single secure entrance as required by law. Additional fire exits that may be required by applicable Building Code requirements shall be provided with an alarm system to prevent unauthorized exiting; and
9. Shall dispose of medical marijuana remnants and by-products in accordance with State and local regulations.

E. Medical marijuana infusion facilities shall only be permitted within a medical marijuana dispensary or at a medical marijuana off-site cultivation location.

F. A medical marijuana dispensary or medical marijuana dispensary off-site cultivation location shall meet the following minimum separations, measured in a straight line from the boundary of the parcel containing the medical marijuana dispensary or medical marijuana dispensary off-site cultivation location to the property boundary of the parcel containing any existing uses listed below:

1. Two thousand feet from any other medical marijuana dispensary, medical marijuana dispensary off-site cultivation location, or medical marijuana infusion facility;
2. Five hundred feet from a licensed residential substance abuse treatment facility or other residential drug or alcohol rehabilitation facility;
3. Five hundred feet from a community college, university, or from any public, private, parochial, charter, dramatic, dancing, music learning center or other similar school or educational facility that caters to children;
4. Five hundred feet from a daycare home or daycare center;
5. Five hundred feet from a public library or public park; and
6. Five hundred feet from a facility devoted to family recreation or entertainment.

G. A medical marijuana off-site cultivation location not associated with a medical marijuana dispensary located in Flagstaff is prohibited.

H. Medical marijuana cultivation may occur within a medical marijuana dispensary.

I. **Medical Marijuana Qualifying Patient Cultivation Location.** A qualifying patient may cultivate at their place of residence within the Flagstaff City limits subject to compliance with A.R.S. § 36-2804.02, i.e., a qualifying patient may not cultivate medical marijuana at their place of residence if there is a medical marijuana dispensary located within 25 miles of the qualifying patient's home.

J. **Medical Marijuana Designated Caregiver Cultivation Location.**

1. All conditions and restrictions for medical marijuana dispensary off-site cultivation locations apply except that the designated caregiver cultivation location cultivation area is limited to a total of 250 square feet maximum, including any storage areas.
2. A designated caregiver may cultivate at their residence for a single qualifying patient subject to compliance with A.R.S. § 36-2806.01.
3. More than one designated caregiver may co-locate cultivation locations as long as the total cultivation area does not exceed 250 square feet maximum, including storage areas.

(Ord. 2016-07, Amended, 2/16/2016 (Res. 2016-02))

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VIA EMAIL: TAntol@flagstaffaz.gov

Board of Adjustment
ATTN: Tiffany Antol, Zoning Code Manager
CITY OF FLAGSTAFF
211 W. Aspen Avenue, 1st Floor
Flagstaff, AZ 86001

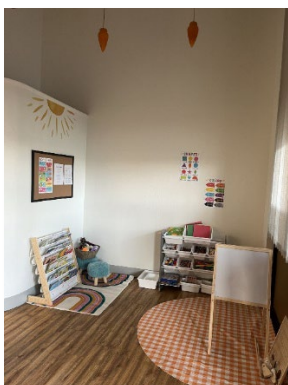
August 9, 2024

RE: Appellant's Supplemental Submittal in Support of Appeal of Zoning Code Interpretation to Board of Adjustment – Marijuana Establishment Minimum Separations Interpretation dated April 17, 2024 (the "Interpretation")

Dear Ms. Antol and Board of Adjustment Members:

On behalf of my client, FLG Industries, LLC, an Arizona limited liability company, dba Woodlands Village Day Care (the "Day Care" or the "Appellant"), we submit to the Board of Adjustment this supplemental narrative and the enclosed exhibits in support of the Day Care appeal of the Interpretation pertaining to marijuana establishment separation standards. The City's Interpretation is erroneous and an abuse of discretion, as demonstrated by the City contradicting several mandatory provisions in the Zoning Code, reversing long-standing policies, and bending over backwards to "protect" a dispensary from a day care that already exists.

Since 2011, the City of Flagstaff Zoning Code has required that marijuana dispensaries maintain a minimum separation of 500 feet from a day care. When a proposed dispensary fails to meet this separation standard, the use is prohibited unless the applicant can obtain a variance approval from the Board of Adjustment. In this matter, the Day Care is located within 500 feet of a proposed Nirvana dispensary at 2725 S. Woodlands Village Boulevard. The Day Care obtained a building permit and certificate of occupancy approval before the dispensary received any valid approvals from the City. The Woodlands Village Day Care is currently open and providing day care services to families in the community, as shown by the photographs below.



Initially, the Planning Director advised the dispensary that a variance approval would be required to operate within 500 feet of the Day Care. Then, approximately one week later, the Planning Director changed her decision and issued the Interpretation, allowing the dispensary to operate without obtaining a variance. The Interpretation is an attempt to circumvent the 500-foot separation standard in the Zoning Code by creating a double standard whereby: (1) the day care is vested as an existing use at the time of certificate of occupancy approval, but (2) a marijuana dispensary is vested as an existing use at the time of an initial, informal concept plan submittal. Ultimately, the Interpretation creates a complicated and non-uniform scheme for applying separation standards to the detriment of the day care, which is the use intended to be protected by the 500-foot separation standard in the Zoning Code.

The irony of the Interpretation is glaring. It requires a protected use, such as a day care, to clear a higher, more difficult hurdle and demonstrate compliance with the Zoning Code throughout the development process (until issuance of C of O), whereas the “problematic” use is given a lower hurdle to clear at the initial, informal concept plan review stage. Essentially, the Interpretation treats the disfavored dispensary use known for adverse secondary effects as the protected use.

We respectfully request a Board of Adjustment decision granting this appeal and reversing or modifying the Interpretation as erroneous. Specifically, the Appellant is requesting a Board of Adjustment Decision which adopts the following findings and uniformly applies and enforces the Marijuana Establishment separation standards in a manner which is consistent with the City of Flagstaff Zoning Code and caselaw:

1. Uses are vested at the time an applicant obtains certificate of occupancy approval, pursuant to Section 10-20.40 of the Zoning Code and applicable caselaw.
2. Concept Plan review and approval is an informal review process and does not vest a project under the Zoning Code, pursuant to Section 10-20.30.050 of the Zoning Code.
3. Once a protected use (i.e. a day care) obtains a certificate of occupancy approval, the use must be identified by the City as an existing land use for purposes of applying Marijuana Establishment separation standards.
4. Because a use is not vested until certificate of occupancy approval is issued, the minimum separation requirements for a proposed Marijuana Establishment are not finally determined until the time a certificate of occupancy is issued for the Marijuana Establishment.

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I. PROPERTY DESCRIPTION, LOCATION AND SURROUNDING USES.

The locations of the proposed dispensary and existing day care are depicted below.



The proposed dispensary property and Day Care property are zoned Highway Commercial zoning district. Day care centers are permitted within the HC zoning district. Marijuana dispensaries are also permitted within the HC zoning district, subject to the specific use regulations in Section 10-40.60.220 of the Zoning Code.¹ One such regulation requires marijuana establishments, including dispensaries, to choose locations that meet the following minimum separations from certain protected uses:

- F. A Marijuana Establishment shall meet the following minimum separations, measured in a straight line from the boundary of the lot or parcel containing the use to the property boundary of the lot or parcel containing any of the existing uses listed below:
1. Two thousand feet from another Marijuana Establishment;
 2. Five hundred feet from a residential substance abuse treatment facility or other residential drug or alcohol rehabilitation facility licensed by the State of Arizona;
 3. Five hundred feet from a community college, university, or from any public, private, parochial, charter, dramatic, dancing, music learning center, or other similar

¹ See Table 10-40.30.040.B of the Zoning Code.


- school or educational facility that caters to children;
4. **Five hundred feet from a daycare home or daycare center;**
 5. Five hundred feet from a public library or public park; and
 6. **Five hundred feet from a facility devoted to family recreation or entertainment.**²

In the event a marijuana establishment cannot satisfy the separation requirements, the establishment may search for an alternative location or obtain a variance approval from the Board of Adjustment by satisfying the variance tests set forth in Ariz. Rev. Stat. Section 9-462.06 and Section 10-20.70.050 of the Zoning Code (including the test that any special circumstances applicable to the property are not self-imposed). In this case, the proposed dispensary property is located within approximately 82 feet of the Day Care property. Therefore, the dispensary must obtain a variance approval in order to operate at 2725 S. Woodlands Village Boulevard.

It is also important to note that the use of the property at 2725 S. Woodlands Village Boulevard is governed by a Declaration of Covenants, Conditions and Restrictions and Grant of Easements for Woodlands Crossing (the "Woodlands Crossing CC&Rs").³ The Woodlands Crossing CC&Rs specifically prohibit any business "associated with illegal or unlawful activities, including, without limitation the sale of paraphernalia used in connection with marijuana . . . or other controlled drugs or substances" as well as any business which "creates a public or private nuisance", or any "use which emits offensive or obnoxious odor . . . which can be smelled outside of any building." With these private use restrictions, it appears that the proposed dispensary use would not only violate the separation requirements in the Zoning Code, but would also violate the private use restrictions in the Woodlands Crossing CC&Rs prohibiting marijuana uses.

II. OVERVIEW OF CITY CERTIFICATE OF OCCUPANCY PROCESS AND VESTING A USE.

The following flowchart depicts the typical City process for obtaining a certificate of occupancy and establishing a use within the City of Flagstaff. The flowchart also identifies at which point a development may proceed under a particular version of the City Code, and at which point the use is vested. As you will note, no vesting occurs during the Concept Plan Review stage because it is an informal review process at the preliminary stages of a proposed use.



NO VESTING OCCURS AT THE TIME OF CONTEXT PLAN REVIEW.

- "Concept plan review is an informal review. . . ." See Zoning Code § 10-20.30.050.A.
- "No formal action is taken by the Director during the concept plan review." See § 10-20.30.050.C.3.b.
- "Failure by the Director or staff to identify all required studies or all applicable requirements shall not constitute a waiver of those studies or requirements." See § 10-20.30.050.C.3.c.

² Emphasis added. See Section 10-40.60.220.F of the Zoning Code.

³ See Woodlands Crossing CC&Rs recorded on October 28, 1996 at Docket 1928, Page 888, as amended on September 26, 1997 at Docket 2026, Page 225, and Tract Declaration for PAD "C" recorded on September 26, 1997 at Docket 2026, Page 233, Official Records of the Coconino County Recorder's Office.



A specific version of the Zoning Code may be vested at the time of site plan approval, but the use itself is not established or vested. The City reviews the site plan for compliance with the Zoning Code, which may lead to requirements not imposed at the context plan stage.

- “An applicant whose development has received site plan review and approval prior to the effective date of this Zoning Code. . . may file an application for building permit in compliance with the approved site plan . . . even if the development does not comply with the provisions of this Zoning Code.” See § 10-10.30.090.B.2.
- "When considering an application for site plan review and approval, the Director shall consider the extent to which it complies with all requirements of the Zoning Code." See § 10-20.40.140.C.2.a.



A specific version of the Zoning Code may be vested at the time of building permit application or approval, but the use itself is not established or vested. The City reviews construction plans and building permit applications for compliance with the Zoning Code, which may lead to requirements not imposed at prior stages.

- “Any building. . . for which a lawful building permit has been issued or for which a complete building permit application has been filed at least one day prior to the effective date of this Zoning Code . . . may be constructed and completed in conformance with the permit and other applicable approvals. . . , even if such building . . . does not fully comply with this Zoning Code....” See § 10-10.30.090.B.1.
- "No development shall be permitted or no new use established until the applicant . . . has obtained a building permit and/or certificate of occupancy" § 10-20.40.030.B.1.
- "No building permit shall be issued unless the application for development approval complies with the provisions of this Zoning Code" § 10-20.40.030.B.2.



A USE IS ESTABLISHED & VESTED ONCE THE CITY ISSUES A CERTIFICATE OF OCCUPANCY.

- "No building or structure shall be occupied or used until the Building Official has issued a certificate of occupancy and has determined that the building has been constructed and all on- and off-site improvements have been developed in compliance with the provisions of this Zoning Code and any other applicable City codes.” See § 10-20.40.030.C.
- “If the structure or use does not comply with the requirements of this Zoning Code . . . , the Director shall not issue a certificate of occupancy. . . .” See § 10-20.40.030.C.1.



ADHS evaluates whether to issue an approval to operate a dispensary and whether the dispensary meets all separation requirements AFTER the applicant receives its certificate of occupancy from the local jurisdiction and submits a copy to ADHS.

- "To apply for approval to operate a marijuana establishment, a principal officer or board member of the entity holding a marijuana establishment license shall submit to the Department . . . a copy of documentation issued by the local jurisdiction to the marijuana establishment authorizing occupancy of the building as a marijuana establishment's retail site, such as a certificate of occupancy, a special use permit, or a conditional use permit.” See A.A.C. § R9-18-304 (Recreational marijuana regulations)
- “To apply for approval to operate a dispensary, a person . . . shall submit to the Department . . . a copy of documentation issued by the local jurisdiction to the dispensary authorizing occupancy of the building as a dispensary . . . , such as a certificate of occupancy, a special use permit, or a conditional use permit” and “the distance to the closest private school or public school from the dispensary” See A.A.C. § R9-17-305.A.3 and A.4 (medical marijuana dispensary regulations).

Prior to issuing the Interpretation, the City consistently provided correspondence and direction to applicants in the following manner, which is consistent with the flow chart above and the various cited sections throughout the Flagstaff Zoning Code:

1. A specific version of the City Code is vested at the time of site plan or building permit approval – meaning the use may proceed with its development under the City Code in effect at the time of site plan or building permit approval.
2. A use is vested and established once a certificate of occupancy is issued.
3. Until a use receives certificate of occupancy approval, the City is authorized and required to review any site plan or building permit applications for compliance with the Zoning Code. If a Zoning Code violation is discovered during the site plan and building permit application processes, the applicant must resolve the violation or the Director shall not issue a certificate of occupancy.
4. A concept plan review and approval vests nothing. It is an informal approval.

III. TIMELINE OF EVENTS.

The following timeline of events is pertinent to this appeal of the Interpretation and includes references to exhibits attached hereto to be made part of the record.

A. February 15, 2011 – The Flagstaff City Council approved Ordinance No. 2011-03 which amended the Flagstaff Zoning Code to allow non-profit medical marijuana dispensaries and cultivation facilities in certain commercial and industrial zoning districts, subject to limitations. The 2011 text amendment required that dispensaries and cultivation locations meet minimum separation requirements, including five hundred feet from a child day care. Over the last 13 years, the City of Flagstaff has not modified this 500-foot separation requirement between marijuana dispensaries and child day cares.

B. November 2020 – Arizona voters legalized recreational marijuana for adult use. As part of the new statutory framework applicable to recreational marijuana uses, it was again acknowledged that day cares remain a protected use despite this legalization. Ariz. Rev. Stat. § 36-2851 states that Title 36 Chapter 28.2 (“Responsible Adult Use of Marijuana”) does not restrict the rights of “day care centers . . . to prohibit or regulate conduct otherwise allowed by this chapter when such conduct occurs on or in their properties.”

C. February 26, 2024 – The City issued its 1st Concept Plan Review Comments for the proposed Nirvana Center marijuana dispensary at 2725 S. Woodlands Village Boulevard. Several corrections and additional submittal requirements were noted in the 1st Review Comments due to Nirvana’s failure to comply with the Concept Plan Review requirements in Section 10-40.30.220.B of the Zoning Code. For instance, as of February 26, 2024, Nirvana Center had failed to submit an affidavit attesting that the property met all separation requirements and a scaled survey identifying the closest protected uses.⁴ Nirvana Center had also failed to submit a property owner authorization letter, a security plan, a floor plan, and valid registry identification card numbers for each dispensary agent.

⁴ See City 1st Concept Plan Review Comments attached hereto as **Exhibit 1**.

Notably, the 1st Review Comments on page 2 mention that Section 10-40.60.220.B requires “a scaled survey sealed by a land surveyor depicting the property lines of the lot or parcel and the separations from the nearest lot or parcel that contain any of the existing uses listed in subsection F of 10-40.60.220.” This application requirement is mandatory (“The Concept Plan application shall include the following. . .”) and is not subject to the discretion of staff.⁵ This scaled, sealed survey requirement is also important because it is intended to identify protected uses within the minimum separation distances measured from the parcel lines of the proposed dispensary location. Despite the mandatory nature of this requirement, staff waived it in the 1st Review Comments, stating that “the map does not need to be sealed by a surveyor.” Planning staff had no authority to waive this mandatory application requirement and, therefore, this decision was ultra vires and void. The Concept Plan application submitted by the dispensary remains incomplete, and any future dispensary approvals issued by the City would be erroneous or ultra vires.

D. **March 11, 2024** – The City issued its 2nd Concept Plan Review Comments, requiring that the dispensary applicant submit a traffic statement with calculations that determine if a right turn lane would be warranted at the driveway, per City of Flagstaff Engineering Standards.⁶

E. **April 9, 2024** – A City of Flagstaff Planner provided a status update to the Planning Director regarding the dispensary and Day Care applications. In the email, the Planner confirmed that the day care submitted its building permit application to the City before the dispensary, and that the dispensary is still in concept plan review. The Planner also admitted he had been working with the dispensary’s realtor to find a location for Nirvana and that “they will not be happy once this news is delivered.”⁷

Also, on April 9th, the City’s Senior Lead Transportation Engineer requested guidance from the Transportation Director regarding whether to impose a right-turn lane requirement for the dispensary use. The City’s Transportation Engineer confirmed that the dispensary’s right-turn lane analysis warrants the installation of a right-turn lane, but Nirvana’s traffic engineer was “not recommending it” in the traffic statement for various reasons. The City’s Transportation Engineer requested the Director’s decision either to require or not require the right turn lane and admitted that “this has become rushed because apparently a day care is being proposed across the street and there are laws that a day care/school cannot be a certain distance from a pot place. So, it is a race to get approvals.”⁸

F. **April 10, 2024** – The Planning Director, Community Development Director and Economic Vitality Director exchanged communications in which they agreed that the day care submitted for building permits first in time, thus creating a separation issue/violation for the dispensary. The Planning Director proposed to set up an internal meeting to discuss the traffic analysis and the potential claim by the dispensary owner that they were delayed on purpose by the required turn lane analysis.⁹

⁵ See Section 10-40.60.220.B of the Zoning Code; see *also* Section 10-10.30.050.B of the Zoning Code (“The following rules of construction shall apply . . . The words “shall,” “must,” “will,” “is to,” and “are to” are always mandatory”). Emphasis added.

⁶ See City 2nd Concept Plan Review Comments attached hereto as **Exhibit 2**.

⁷ See April 9, 2024 Email from Planner Welch to Planning Director attached hereto as **Exhibit 3**.

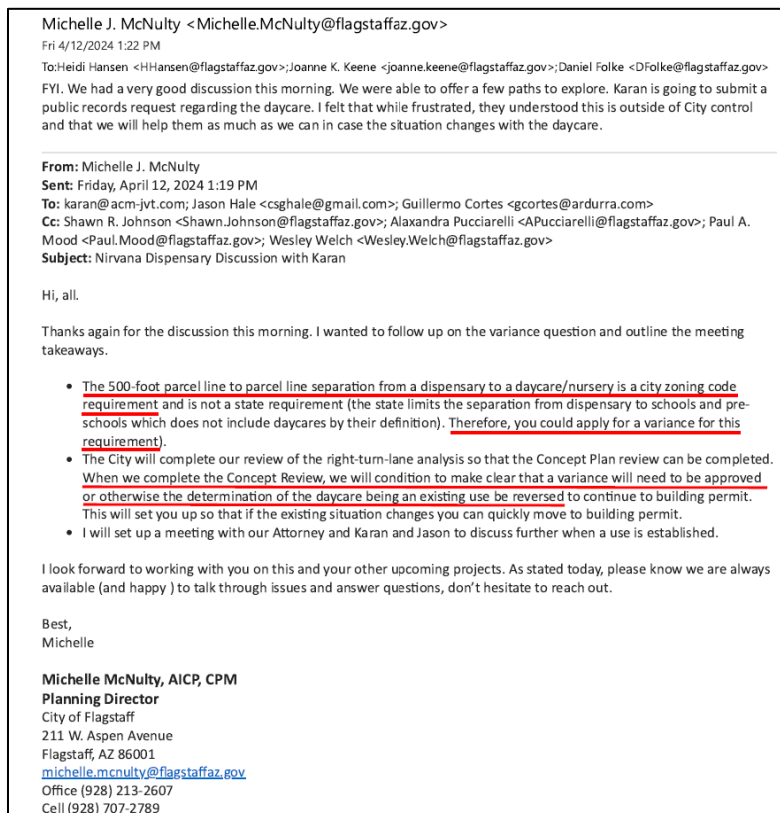
⁸ See April 9, 2024 Email from Senior Lead Transportation Engineer attached hereto as **Exhibit 4**.

⁹ See April 10, 2024 Email correspondence between City Directors attached hereto as **Exhibit 5**.

G. April 11, 2024 – The Community Development Director notified City staff that the Mayor had been contacted by “Karan”, who is the owner of the property to be leased by the Nirvana dispensary.¹⁰

Also, on April 11th, the City’s Transportation Engineers exchanged a timeline and facts regarding the right-turn lane analysis required by staff. This timeline and the information provided in the email demonstrate the potential increase in traffic generated by the dispensary and the need for a right-turn lane. It also demonstrates that the dispensary would have no claim against the City for intentionally delay or unnecessary application requirements.¹¹

H. April 12, 2024 – The Planning Director sent an email to City staff and dispensary representatives confirming their meeting discussions on April 12, 2024. In the email, the Planning Director described the 500-foot separation requirement between a dispensary and a day care and notified the dispensary representatives that a condition could be imposed as part the Concept Review approval requiring the dispensary to obtain a variance. The Planning Director also disclosed that the City had previously made the determination that the Day Care was an existing use for purposes of applying the 500-foot separation requirement (“we will . . . make clear that a variance will need to be approved or otherwise the determination of the day care being an existing use be reversed . . .”).¹²



¹⁰ See April 11, 2024 Email from the Community Development Director attached here to as **Exhibit 6**.

¹¹ See April 11, 2024 Email exchange between City Transportation Engineers attached hereto as **Exhibit 7**.

¹² See April 12, 2024 Email from Planning Director attached hereto as **Exhibit 8**.

I. April 15, 2024 – The Day Care received building permit approval from the City to complete necessary tenant improvements at 2700 S. Woodlands Village Boulevard, Suite 390.¹³

Also on April 15th, the City’s Senior Lead Transportation Engineer issued formal review comments regarding the Nirvana Traffic Statement, concluding that the traffic statement warrants a right turn lane based on City of Flagstaff Engineering Standards. The review comments also made an important note that the “new use of a marijuana dispensary is generating double the daily and PM peak hour trips as compared to the previous use of a high-turnover (sit-down) restaurant.” Despite these conclusions, the City did not require a right turn lane, and instead imposed a condition that, if there is an increase in rear-end or right turn crashes into the site, a right turn lane would need to be constructed.¹⁴

J. April 15 and 16, 2024 – The Planning Director and Building Inspection Manager exchanged email communications confirming that a use is established/vested at the time a building permit and certificate of occupancy is issued. The Building Inspection Manager confirmed that, from the perspective of the International Building Code, the only way to establish a new use with a new building occupancy type would be “if there was a building permit for a specific occupant that is different than the original occupant and new C of O is issued.” The Building Inspection Manager did not state that a use could be established or vested at the time of Concept Plan Review.¹⁵

K. April 17, 2024 - The Planning Director issued the new Interpretation which contradicts the City’s previous direction and correspondence on several occasions, and also contradicts the state licensing process for dispensaries.¹⁶ Surprisingly, the Planning Director no longer required the dispensary to obtain a variance of the 500-foot separation requirement. Instead, the City reversed its determination that the Day Care was an existing use and applied two (2) different standards for vesting uses: (1) marijuana establishment uses are vested at the time of submitting for initial concept plan review (an informal process); and (2) all other uses are not vested until the time of certificate of occupancy approval. The following statements in the Interpretation demonstrate this inconsistency not only with the City’s prior correspondence but also an inconsistency in the vesting of certain uses.

¹³ See Woodlands Village Day Care Plans with a building permit approval stamped on April 15, 2024 attached hereto as **Exhibit 9**.

¹⁴ See April 15, 2024 Memorandum re Review of Nirvana Traffic Statement sealed April 4, 2024 attached hereto as **Exhibit 10**.

¹⁵ See April 15 and 16, 2024 Email correspondence between Planning Director and Building Inspection Manager attached hereto as **Exhibit 11**.

¹⁶ See Interpretation dated April 17, 2024 attached hereto as **Exhibit 18**.

April 17, 2024 Interpretation

A. Reason for the Interpretation Determination:

To identify that existing land uses do not include those currently in review for either concept, site plan, or building permit. Land uses not yet established shall not impact the development of a Marijuana Establishment. Minimum separation requirements are determined at the time of concept plan application submittal for the Marijuana Establishment as required in Section 10-40.60.220(B)(6).

E. Analysis and Methodology:

- a. Since the proposed land use (daycare and family entertainment center) had not yet received a Certificate of Occupancy nor is in operation it is not considered an existing land use as referenced in Section 10-40.60.220(F). The proposed land use (daycare and family entertainment center) will be considered an existing land use once a Certificate of Occupancy has been issued by the City of Flagstaff and the business is in operation through visible inspection.
- b. The land uses that a marijuana establishment is required to meet minimum separations from shall be in operation before the date the marijuana establishment submitted the initial concept application and the submittal of the required affidavit. The affidavit of separation shall be in effect for the term of the concept plan per Section 10-20.30.050.

F. Interpretation Determination

- a. Section 10-40.60.220(F) of the Flagstaff Zoning Code shall be interpreted to require minimum separations from sites containing existing uses to mean land uses that have received Certificate of Occupancy and are currently in operation. The timing of determination of minimum separations shall be consistent with State licensing for similar facilities which occurs at the time of application as described above.

In addition, the City erroneously claimed that they have issued this interpretation to “be consistent with State licensing for similar facilities.” The Arizona licensing process requires that a dispensary submit a certificate of occupancy as part of the initial licensing application to the State. Therefore, even the State applies its licensing criteria (including the 500’ separation requirement applicable to schools) after the dispensary has received a certificate of occupancy.

L. April 17, 2024 - The Planning Director sent an email to City staff and Directors notifying them that a written interpretation had been posted on the City’s website and would be subject to a 10-day appeal period. The Planning Director also stated that the interpretation was shared with the Nirvana dispensary and that they would be able to proceed with their dispensary at the old IHOP location.¹⁷ The written interpretation directly contradicts prior internal email communications between the Planning Director and staff and was never provided to the Day Care. By chance, this law office found the written

¹⁷ See Email correspondence between Planning Director and staff between April 11, 2024 and April 17, 2024, attached hereto as Exhibit 6.

interpretation online while conducting research for another matter.

In a follow-up email communication dated April 17th, the Planning Director stated that “Karan’s appreciation and happiness when we delivered the interpretation made my week.”¹⁸ Once again, Karan is the owner of the dispensary property and the individual who contacted the Mayor immediately prior to the Planning Director changing her decision in the dispensary’s favor.

M. April 19, 2024 – The City issued its 3rd Concept Plan Review comments for the proposed dispensary, deeming the application complete, subject to conditions. The 3rd Review Comments did not identify the Day Care or its location within 500 feet of the dispensary property. The 3rd Review Comments did not condition future approvals upon the dispensary obtaining a variance of the 500-foot separation requirement. Instead, Current Planning issued the following comments:

1. Separation distances are valid for the length of this concept plan, which will expire one year from the above date.
2. Section 10-40.60.220(F) of the Flagstaff Zoning Code shall be interpreted to require minimum separations from sites containing existing uses to mean land uses that have received Certificate of Occupancy and are currently in operation. The timing of determination of minimum separations shall be consistent with State licensing for similar facilities which occurs at the time of application. The applicant submitted their affidavit on February 29, 2024.¹⁹

Clearly, Comment No. 2 refers to the April 17, 2024 Interpretation as the basis for allowing the dispensary applications to proceed despite the violation of the 500-foot separation requirement. At the time of issuing Comment No. 2, the Interpretation was not yet final, and the Day Care later filed a timely appeal. Once the appeal was filed, the Interpretation could not longer be relied upon as a basis for allowing the dispensary to file a building permit application, and an automatic stay should have been enforced by the City in accordance with Ariz. Rev. Stat. Section 9-462.06.E and Zoning Code Section 10-20.80.020.C.4.²⁰

Furthermore, the Concept Plan application remains incomplete. Planning staff had no authority to waive the mandatory scaled, sealed survey requirement in Section 10-40.60.220.B of the Zoning Code. The map submitted by the dispensary is not stamped by a land surveyor and erroneously depicts the 500-foot buffer being measured from the center of the building, as opposed to the property lines.²¹ Section 10-40.60.220.B specifically requires that the survey depict the “property lines of the lot or parcel that is proposed to contain the marijuana establishment and the separations from the nearest lot or parcel that contain” the protected uses listed in Subsection F. Subsection F requires that the distances be “measured in a straight line from the boundary of the lot or parcel containing the (marijuana) use to the property boundary of the lot or parcel” containing the protected use.²² Therefore, the Concept Plan Review

¹⁸ *Id.*

¹⁹ See 3rd Concept Plan Review Comments attached hereto as **Exhibit 12**.

²⁰ See July 30, 2024 Letter to Board of Adjustment and T. Antol attached hereto as **Exhibit 13**.

²¹ See non-compliant separation map submitted by the Dispensary attached hereto as **Exhibit 17**.

²² See Zoning Code Section 10-40.60.220.F.

application was incomplete and erroneous pursuant to Sections 10-40.60.220.B and 220.F and remains incomplete and erroneous to this day. The Day Care is now an existing use and must be depicted on the survey.

For these reasons, the City's determination that the dispensary Concept Plan Review is complete is erroneous, ultra vires and void.

- N. May 14, 2024 – The City issued a Certificate of Occupancy to the Day Care.²³
- O. May 31, 2024 – The City issued a Business License Certificate to the Day Care.²⁴
- P. August 2024 – Current photographs of the Day Care open and operating are attached hereto.²⁵

IV. BOARD OF ADJUSTMENT AUTHORITY.

A. Arizona Revised Statutes and Zoning Ordinance.

Arizona's zoning enabling statutes prescribe the authority of the Board of Adjustment to hear and decide appeals from the decisions of the zoning administrator.²⁶ Subsections C and G of Ariz. Rev. Stat. § 9-462.06 provide as follows:

- C. A board of adjustment shall hear and decide appeals from the decisions of the zoning administrator, shall exercise other powers as may be granted by the ordinance and adopt all rules and procedures necessary or convenient for the conduct of its business.
...
- G. A board of adjustment shall:
 - 1. Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the zoning administrator in the enforcement of a zoning ordinance adopted pursuant to this article.
...
 - 3. Reverse or affirm, in whole or in part, or modify the order, requirement or decision of the zoning administrator appealed from, and make the order, requirement, decision or determination as necessary.

Similarly, Section 2-10-001-0004 of the Zoning Code states that the Board is "a quasi-judicial body" that "interprets the meaning and spirit of City Code Title 10 (Zoning Code)" and "shall have the powers and duties per A.R.S. § 9-462.06" to "hear and decide appeals in which it is alleged there is an error in an order,

²³ See Day Care Certificate of Occupancy attached hereto as **Exhibit 14**.

²⁴ See Day Care Business License Certificate attached hereto as **Exhibit 15**.

²⁵ See Day Care photographs dated August 5, 2024 attached hereto as **Exhibit 16**.

²⁶ See Ariz. Rev. Stat. § 9-462.06.C and G.

requirement, or decision” made by a zoning administrative official.

In addition, the Arizona Supreme Court has previously ruled that a city board of adjustment has jurisdiction and authority to determine issues concerning vested rights.²⁷ With vested rights and established uses being a core issue in the Interpretation, the Board of Adjustment is authorized to hear and decide the Day Care’s appeal of the Interpretation.

B. Standard of Review.

The Board of Adjustment is not bound by the zoning administrator’s findings of fact or conclusions set forth in the Interpretation. The Board is authorized to conduct an evidentiary hearing with the power to administer oaths to witnesses for the purpose of evaluating the evidence and issuing its own findings of fact and conclusions.²⁸ As such, the Arizona Court of Appeals, Division 1, has recognized a board of adjustment’s authority to conduct a *de novo* proceeding,²⁹ meaning the board is to evaluate the arguments and evidence before it, but should give no weight to the zoning administrator’s decision or any staff report issued prior to the Board’s hearing.

V. DAY CARE’S STANDING TO FILE THIS APPEAL.

Appeals to the board of adjustment may be taken by “persons aggrieved.”³⁰ Arizona courts have determined that the appellant must allege particularized harm in order to qualify as a person aggrieved.³¹ The Appellant Day Care would suffer particularized harm in this matter due to its location within 500 feet of the proposed dispensary.³² The proposed dispensary will generate a significant number of additional vehicles during peak hours and the busiest time periods for the Day Care drop-off and pick-up. Furthermore, the Flagstaff Zoning Code requires all marijuana establishments to maintain a minimum distance of 500 feet from a “daycare home or daycare center” or any “facility devoted to family recreation or entertainment.”³³

Separation requirements in zoning ordinances are designed to separate “regulated” uses from “protected” uses. Regulated uses may include higher-impact, potentially nuisance-causing uses, such as sexually oriented businesses, junkyards, feed-lot operations, and marijuana establishments. “Protected” uses often include residences, churches, parks and playgrounds, schools, and day-care centers. The justification for separating regulated uses from protected uses is based on the deleterious, detrimental, or

²⁷ *Neal v. City of Kingman*, 169 Ariz. 133, 817 P.2d 937 (1991).

²⁸ See Ariz. Rev. Stat. § 9-462.06.B; see also Rules, 102A, 404 and 405 of the City of Flagstaff Rules of Procedure for the Board of Adjustment updated March 30, 2016.

²⁹ See *Murphy v. Town of Chino Valley*, 163 Ariz. 571, 574-75, 789 P.2d 1072, 1075-76 (Div.1 1989).

³⁰ See Ariz. Rev. Stat. § 9-462.06.D; see also Section 10-20.80.020.C.1 of the Flagstaff Zoning Code.

³¹ See *Ctr. Bay Gardens, LLC v. City of Tempe City Council*, 214 Ariz. 353, 358, 153 P.3d 374, 379 (App.Div.1 2007).

³² See Interpretation attached hereto as **Exhibit 18** (identifying Appellant Day Care in the following manner - “A context plan for a marijuana establishment has been submitted and reviewed. . . . After the submittal of the concept plan, a building permit was submitted for a new day care and family entertainment center within five hundred feet.”)

³³ See Section 10-40.60.220.F of the Zoning Code .

blighting effects that the higher-impact, nuisance-like uses can have on residential areas and vulnerable populations in other areas (e.g., schools and day cares).

In this instance, the City of Flagstaff has justified the minimum 500-foot separation requirement between dispensaries and protected uses, such as day cares, due to “data collected by states that have previously passed medical marijuana ballot initiatives” which have demonstrated that marijuana dispensaries, once established, “have created a number of secondary effects associated with their operation and activity, including illegal drug use and drug sales in the vicinity of the dispensaries; robbery of clients and employees leaving dispensaries; loitering; driving under the influence of controlled substances obtained from dispensaries; resale of marijuana acquired from dispensaries to non-eligible persons; burglaries and robberies; and increases in vacancies in the commercial areas near such dispensaries.”³⁴ These potential secondary effects associated with the proposed dispensary could cause particularized harm to the Day Care and the children in its care.

Together, the dispensary traffic study and the City’s acknowledgement that the Day Care is within 500 feet of the proposed dispensary demonstrate the particularized harm the Day Care would suffer in the event the Interpretation is implemented and the dispensary is allowed to open and operate. The Day Care is a person aggrieved and has standing to appeal this matter to the Board of Adjustment.

VI. AUTOMATIC STAY OF ALL PROCEEDINGS IN THIS MATTER.

Prior to the Board of Adjustment hearing, the Appellant submitted a letter requesting confirmation that all proceedings related to the Interpretation Appeal and the proposed dispensary at 2725 S. Woodlands Village Boulevard would be stayed in compliance with A.R.S. Section 9-462.06.E and Flagstaff Zoning Code Section 10-20.80.020.C.4.³⁵ The stay of all proceedings would include any pending site plan, building permit or certificate of occupancy applications for the dispensary.

Pursuant to A.R.S. Section 9-462.06.E, once an appeal is filed to the Board of Adjustment, the appeal “stays all proceedings in the matter appealed from, unless the zoning administrator certifies to the board that, in the zoning administrator’s opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property.” Emphasis added. The City of Flagstaff Zoning Code Section 10-20.80.020.C.4 also provides for an automatic stay process for appeals filed to the Board of Adjustment, consistent with the state statute. The only exception to this mandatory stay is when the stay would cause imminent peril to life or property. No such exception is present here.

In the event the City has failed to enforce a stay of all dispensary proceedings in this matter, the Appellant respectfully reserves the right to raise this matter at the Board of Adjustment hearing and in subsequent appeals, if necessary.

VII. GROUND FOR APPEAL

For the following reasons, the Interpretation is erroneous, arbitrary and capricious, an abuse of

³⁴ See City of Flagstaff Ordinance No. 2011-03, page 2.

³⁵ See Appellant’s Letter to Board of Adjustment and Zoning Code Manager dated July 30, 2024 attached hereto as Exhibit 13.

discretion, or contrary to law and should be set aside:

A. **The Interpretation violates zoning uniformity requirements and treats the vesting of certain uses differently.**

The Interpretation determines that a day care and other protected uses are not vested until a certificate of occupancy has been issued, whereas the dispensary need only submit an informal concept plan application. The interpretation is contrary to the intent of the Zoning Code by granting the dispensary special treatment when the day care is the use that is intended to be protected.

Municipal zoning authority is derived from the state, requiring cities to exercise their zoning power within the limits and in the manner prescribed by state statutes. *Jachimek v. Superior Court in and for County of Maricopa*, 169 Ariz. 317, 318-19, 819 P.2d 487, 488-89 (1991). “Any attempt to exercise the zoning authority without complying with the statutory conditions is void.” *Jachimek*, 169 Ariz. at 319, 819 P.2d at 489; *see also Hart*, 86 Ariz. at 384, 346 P.2d at 1105.

Arizona’s legislature has enacted a zoning uniformity statute. Ariz. Rev. Stat. Section 9-462.01(C) states that “[a] zoning regulations shall be uniform for each class or kind of building or use of land throughout each zone . . .” The purpose of this uniformity requirement “is to assure property owners that there shall be no improper discrimination, all owners of the same class and in the same zone being treated alike . . .” *Jachimek*, 169 Ariz. at 319, 819 P.2d at 489; *see also* 1 N. Williams & J. Taylor, *American Planning Law: Land Use and the Police Power* § 31.01 (1988 Rev.) (statutory uniformity requirements represent “a reenactment in statutory form of the general principle underlying the equal protection clause – that all land in a similar circumstance should be zoned alike, and that differential treatment must be justified by a showing of different circumstances justifying such treatment).

As shown in the flowchart above, several sections of the City Code establish the City’s authority and obligation to review all development applications for compliance with the Zoning Code from the point of concept plan review through the issuance of a certificate of occupancy. This includes an evaluation of whether the development complies with any applicable separation requirements in the Zoning Code. The City’s Interpretation effectively cuts off this continuing obligation at the informal concept plan review stage for marijuana establishments only (with no explicit authority to do so). Meanwhile, the day care and all other uses in the City are subject to a continuing review for Zoning Code compliance through certificate of occupancy approval.

This non-uniform scheme created by the Interpretation is erroneous, and the separation standards must be applied and enforced from concept plan review through certificate of occupancy approval for all uses, including marijuana establishments.

It is important to note that other uses with similar circumstances – such as those uses subject to minimum separation requirements - are given no such special treatment and are required to demonstrate compliance with the Zoning Code and the separation standards until they are established with a certificate of occupancy in hand. For instance, adult entertainment uses are required to maintain 500 feet of separation from another adult oriented business and 750 feet from a residential zone, child care facility,

school, preschool, nursery, etc.³⁶ The Zoning Code states that an adult-oriented business “lawfully operating in conformity with this section does not violate this section if another location-restricted use in subsection (C)(1)(b) [such as a day care] subsequently locates within 750 feet of the existing and operating adult-oriented business.”³⁷ The Zoning Code does not allow the adult-oriented business use to vest at an informal concept plan review stage. Instead, the Code requires that the adult-oriented business be “existing” and “lawfully operating” before it is deemed vested and no longer subject to a violation arising from a protected use locating within 750 feet.

The Interpretation violates zoning uniformity principals by creating differential, unjustified treatment in favor of marijuana establishments. No other use in the City is afforded a guarantee that it meets Zoning Code requirements or separation standards at the pre-application meeting or informal concept plan review stage.

B. The Interpretation is contrary to Arizona law, which recognizes that rights vest only when substantial expenditures are made in reliance upon a legitimately issued development permit. In this case, no formal permit or approval has been issued.

In *Town of Paradise Valley v. Gulf Leisure Corp.*, the Arizona Court of Appeals applied concepts of due process to determine that, when “a building permit has been legitimately issued and the permittee has substantially relied thereupon and incurred consideration expenses, the right to continue construction under such permit becomes a vested right which a municipality has no right to violate without good cause or in the absence of any public necessity.”³⁸

A decade later, in *Burroughs v. Town of Paradise Valley*, the Town was asked to recognize a landowner’s vested right to build a Frank Lloyd Wright-designed house on her property despite never having received a building permit approval.³⁹ The property owner’s predecessors had installed water and electrical utilities and cleared a pad site. The predecessor owners also paid \$18,000 to commission the plans prepared by Frank Lloyd Wright. Thereafter, the owner received plan approval from the Paradise Valley Town Council, provided that the Planning and Zoning Commission and Board of Adjustment also approved the plans. The Board of Adjustment ultimately determined that the plans were in violation of the zoning ordinance and denied the owner’s subsequent variance application. Therefore, no building permit was issued and no construction was commenced on the pads. The Court of Appeals noted that the vesting criteria cited in *Gulf Leisure* had not been satisfied:

This case, however is clearly distinguishable from *Gulf Leisure*. Appellant has overlooked the crucial distinction between the cases: in this case no building permit was ever issued nor was any application ever filed. There can be no vested right in a permit that never existed, and it is clear that establishment of a vested right to build requires a prior issuance of a permit. . .

³⁶ See Section 10-40.60.050.C.1 of the Zoning Code.

³⁷ See Section 10-40.60.050.C.3 of the Zoning Code.

³⁸ See *Town of Paradise Valley v. Gulf Leisure Corp.*, 27 Ariz. App. 600, 608, 557 P.2d 532, 540 (1976).

³⁹ See *Burroughs v. Town of Paradise Valley*, 150 Ariz. 570, 571-72, 724 P.2d 1239, 1240-41 (App.Div.2 1986).

Moreover, appellant has failed to show any substantial expenditures of money in reliance upon approval of her building plans. . . Appellant has shown that \$18,000 was paid for the plans, but that expense was not incurred in reliance on a building permit either issued or applied for. There is no vested right to build on the property.⁴⁰

Similar to *Burroughs*, in this case, the dispensary applicant has never been issued a building permit. In fact, the dispensary has never been issued a formal approval. Concept plan review is an informal process whereby the City does not issue an approval.⁴¹ Therefore, under Arizona caselaw, there is no vested right to build and operate a dispensary on the property. The Interpretation's decision vesting a marijuana dispensary at the commencement of an informal process before any formal approvals are issued is clearly erroneous.

Even if the dispensary had applied for or obtained a building permit approval in this matter, the permit would have been issued in violation of the Zoning Code's separation standards. When permits are not lawfully issued – i.e. issued in violation of the Zoning Code or a governing statute – no vested property rights arise from the permit approval.⁴² The dispensary would need to obtain a variance approval from the Board of Adjustment in order to vest any future building permit approval at this location.

C. The Interpretation is an undesirable City policy because it enables a cannabis applicant to block out huge territory for an extended period of time for a cheap price.

A concept plan application fee is \$420 and is valid for a year, with an option to extend for up to 90 days. The dispensary applicant could block off huge areas and then let the applications sit for months and months. The \$420 concept plan review fee to vest a dispensary use is *de minimis*. For approximately \$5,000, a dispensary could submit concept plans for properties located near a dozen key intersections in Flagstaff, and block off nearly the entire city for 15 months. Is it the City's intention to allow marijuana establishments to vest their rights in this manner? Furthermore, are day cares and other protected uses expected to search up to 15 months' worth of concept plan reviews to determine whether their use will or will not be afforded protection from dispensaries?

⁴⁰ *Id.* Emphasis added.

⁴¹ See Zoning Code § 10-20.30.050.A. ("Concept plan review is an informal review. . ."); see also Zoning Code § 10-20.30.050.C.3.b. ("No formal action is taken by the Director during the concept plan review"); see also Zoning Code § 10-20.30.050.C.3.c ("Failure by the Director or staff to identify all required studies or all applicable requirements shall not constitute a waiver of those studies or requirements").

⁴² See *Outdoor Systems, Inc. v. Arizona Dept. of Transp.*, 171 Ariz. 263, 264-65, 830 P.2d 475, 476-77 (App.Div.2 1992); see also *City of Tucson v. Whiteco Metrocom, Inc.*, 194 Ariz. 390, 983 P.2d 759 (App.Div.2 1999) (recognizing that Whiteco could not obtain vested property rights if the permits authorized construction of the billboards in violation of then-existing City building or zoning regulations); see also *Rivera v. City of Phoenix*, 186 Ariz. 600, 602, 925 P.2d 741, 743 (App.Div.1 1996).

D. To the extent the City expresses concern about the identity of the Day Care, the City is violating the basic rule that zoning is concerned with the use and not the user. To issue an interpretation based upon the identity of the user would be discriminatory and an abuse of discretion.

As demonstrated in the materials submitted herewith, the Woodlands Village Day Care is a legitimate business that is open and operating, providing much needed day care services to the community. The City's inquiry into the Day Care ownership and using that as a potential justification for issuing the Interpretation in the dispensary's favor is improper. Such action would be evidence of discrimination and an abuse of discretion.

E. The Interpretation is contrary to the State licensing requirements for marijuana establishments and the vesting rule that is implied in AAC R9-17-321 and 322.

Within the Interpretation, the City stated that they have issued this interpretation to "be consistent with State licensing for similar facilities." The Arizona licensing process requires that a dispensary submit a certificate of occupancy as part of the initial licensing application to the State. See flowchart above. Therefore, the State applies its licensing criteria (including the 500' separation requirement applicable to schools) after the dispensary has received a certificate of occupancy from the local jurisdiction. The Interpretation's claim to be consistent with State licensing requirements is erroneous.

F. The Interpretation exceeds the authority of the Zoning Administrator and is therefore ultra vires and void.

Historically, courts have deemed any decision made by a zoning official or board which exceeds their restricted statutory authority to be "ultra vires and void" and a nullity of no force and effect.⁴³ While the zoning administrator and the board of adjustment have the authority to interpret and enforce the zoning ordinance, they have no authority to exercise legislative functions or issue decisions which modify zoning ordinance requirements.

In this case, the Planning Director exceeded her authority by issuing an interpretation that has the effect of circumventing or altering the following mandatory provisions in the Zoning Code, all of which require that site plan, building permit and certificate of occupancy applications be reviewed for compliance with the Zoning Code, regardless of the use:

- "When considering an application for site plan review and approval, the Director shall consider the extent to which it complies with all requirements of the Zoning Code." See Zoning Code § 10-20.40.140.C.2.a.
- "No building permit shall be issued unless the application for development approval complies with the provisions of this Zoning Code" See Zoning Code § 10-20.40.030.B.2.
- "No building or structure shall be occupied or used until the Building Official has issued a certificate of occupancy and has determined that the building has been constructed and all on- and off-

⁴³ See *Arkules v. Board of Adjustment of Town of Paradise Valley*, 151 Ariz. 438, 440, 728 P.2d 657, 659 (App.Div.2 1986) (abrogated for unrelated reasons).

site improvements have been developed in compliance with the provisions of this Zoning Code and any other applicable City codes.” See Zoning Code § 10-20.40.030.C.

- “If the structure or use does not comply with the requirements of this Zoning Code . . . , the Director shall not issue a certificate of occupancy. . . “ See Zoning Code § 10-20.40.030.C.1.

Emphasis added. The Interpretation modifies these mandatory sections of the Zoning Code for marijuana establishment uses. If the Interpretation stands, a marijuana establishment may submit an informal concept plan review application and be deemed at that point in time to comply with the Zoning Code separation requirements. The Interpretation does not allow the future site plan, building permit or certificate of occupancy applications related to that marijuana establishment to be evaluated for compliance with the Zoning Code separation requirements thereafter. This directly contradicts the four mandatory sections of the Zoning Code referenced above, and the Planning Director has no authority to modify or change mandatory sections of the Zoning Code. To do so would be an exercise of legislative authority which is beyond the scope of a planning director or administrative official. As a result, the Interpretation is ultra vires and void.

The Planning Director has also effectively modified the Zoning Code’s mandate that a Concept Plan Review is an informal process and no decisions are issued at that time. Instead, the Interpretation directs the City to issue a formal, binding decision as to whether the proposed marijuana establishment satisfies the separation requirements in contradiction with Sections 10-20.30.050.A, C.3.b, and C.3.c of the Zoning Code.

We respectfully request a Board of Adjustment decision granting this appeal and reversing or modifying the Interpretation as erroneous, arbitrary and capricious, an abuse of discretion, or contrary to law.

Very truly yours,

/s/ Heather N. Dukes

Heather N. Dukes, Esq.

602.320.8866 | hdukes@dukeslawaz.com

Enclosures



City of Flagstaff
Community Development
Concept Plan Review Comments

Project Name: Nirvana Center - Flagstaff
Project No.: PZ-23-00200-01
Project Address: 2725 S Woodlands Village Boulevard

Date: February 26, 2024

Application Type: Concept Plan
Review Number: 1

Project Manager: Wesley Welch
E-mail: Wesley.Welch@FlagstaffAZ.gov
Phone: 928-213-2608

Status of Review: **Corrections Required**

The following conditions of resubmittal (in red) must be addressed in a revised concept plan submittal. Please include with your resubmittal a copy of this letter along with your responses to each comment in red. A site plan application, or the next stage in the development review process, will not be accepted until a revised concept plan is reviewed and accepted.

General Comments are provided for your reference and may be addressed as part of future submittals as opposed to the resubmittal.

Future Submittal Requirements are provided to guide you through the entire review and permitting process.

Upon receipt of these comments, an applicant may request a meeting with Staff to discuss the development requirements and how to proceed with the application..

PROJECT SUMMARY

This application proposes a change of use for the existing building on the development site located at 2725 S Woodlands Village Boulevard (APN: 112-29-002B). The previous use of a restaurant will be changed to a marijuana dispensary.

CONDITIONS/COMMENTS:

Current Planning:

First Review, **Return for Corrections**, 2/23/24
Wesley Welch, Planner

Conditions of Resubmittal:

1. To establish a dispensary in this location, the City of Flagstaff will need the requirements found in 10-40.60.220.B. The following was not included with the concept plan application and will need to be included in the resubmittal:
 - a. A notarized authorization executed by the property owner acknowledging and consenting to the use of the property as a Marijuana Establishment.
 - b. The name of the owners of the Marijuana Establishment.



City of Flagstaff
Community Development
Concept Plan Review Comments

- c. The name, address, birth date, and valid registry identification card number of each nonprofit medical marijuana dispensary agent or registered marijuana facility agent.
 - d. A security plan describing details of alarm systems and exterior lighting in compliance with Division 10-50.70. This should include a floor plan showing the location, dimensions, and type of security measures.
 - e. A scaled survey sealed by a land surveyor depicting the property lines of the lot or parcel and the separations from the nearest lot or parcel that contain any of the existing uses listed in subsection F of 10-40.60.220. Please note, there was a previous discussion regarding this site in which it was determined that due to the distance of the existing uses, the map does not need to be sealed by a surveyor. However, the applicant will still need to graphically depict that the location is far beyond the separation distances required by code.
 - f. An affidavit signed and notarized by the applicant attesting that the lot or parcel proposed to contain the Marijuana Establishment meets the separation requirements from the nearest lot or parcel containing any of the existing uses listed in subsection F of 10-40.60.220.
2. Please provide bicycle parking as required in 10-50.80.50.

Traffic:

First Review, **Return for Corrections**, 2/16/24
Reid Miller, Traffic Engineering Project Manager

Conditions of Resubmittal:

1. Please submit a Traffic Statement with a warrant analysis for a right turn deceleration lane at the driveway, per City of Flagstaff Engineering Standards.
2. Provide bike parking as required per the COF Zoning Code.

Stormwater:

First Review, **Approved**, 2/14/24
Douglas Slover, Project Manager

General Comments:

1. Stormwater requirements waived for 350 square foot increase in impervious area for proposed sidewalk.
2. Sidewalk is permitted within existing drainage easement.

Fire Prevention:

First Review, **Approved with Conditions**, 2/15/24
Chris Jack, Fire Inspector

Conditions of Approval:

1. Deferred submittal required for the modification of fire alarm system as mentioned in General Note #36.

Engineering:

First Review, **Approved**, 2/21/24
David Millis, Development Engineering Manager



City of Flagstaff
Community Development
Concept Plan Review Comments

No Comments

Building & Safety:

First Review, **Approved**, 2/6/24

Brian Cook, Building Plans Examiner

No Comments

Water Services:

First Review, **Approved**, 2/22/24

Jackson Salazar, Water Services Plan Reviewer

No Comments

Heritage Preservation/Community Design:

First Review, **Approved**, 2/15/24

Mark Reavis, Neighborhood Planner – Heritage Preservation Officer

No Comments

Parks:

First Review, **Approved**, 2/14/24

Amy Hagin, Parks Manager

No Comments

Public Works:

First Review, **Approved**, 2/26/24

Samuel Beckett, Streets Section Director

No Comments



City of Flagstaff
Community Development
Concept Plan Review Comments

Project Name: Nirvana Center - Flagstaff
Project No.: PZ-23-00200-01
Project Address: 2725 S Woodlands Village Boulevard

Date: March 11, 2024

Application Type: Concept Plan
Review Number: 2

Project Manager: Wesley Welch
E-mail: Wesley.Welch@FlagstaffAZ.gov
Phone: 928-213-2608

Status of Review: **Corrections Required**

The following conditions of resubmittal (in red) must be addressed in a revised concept plan submittal. Please include with your resubmittal a copy of this letter along with your responses to each comment in red. A site plan application, or the next stage in the development review process, will not be accepted until a revised concept plan is reviewed and accepted.

General Comments are provided for your reference and may be addressed as part of future submittals as opposed to the resubmittal.

Future Submittal Requirements are provided to guide you through the entire review and permitting process.

Upon receipt of these comments, an applicant may request a meeting with Staff to discuss the development requirements and how to proceed with the application..

PROJECT SUMMARY

This application proposes a change of use for the existing building on the development site located at 2725 S Woodlands Village Boulevard (APN: 112-29-002B). The previous use of a restaurant will be changed to a marijuana dispensary.

CONDITIONS/COMMENTS:

Current Planning:

First Review, **Return for Corrections**, 3/11/24
Wesley Welch, Planner

Conditions of Resubmittal:

1. Please address comments from Traffic below.

General Comments:

1. Please note, depending on the outcome of the Traffic Statement, the next step in the development review process will be for building permits. However, if it is determined that a right turn deceleration lane at the driveway then this will need site plan review before the permitting process.



City of Flagstaff
Community Development
Concept Plan Review Comments

Traffic:

First Review, **Return for Corrections**, 3/08/24
Reid Miller, Traffic Engineering Project Manager

Conditions of Resubmittal:

1. **Submit a Traffic Statement with calculations that determine if a right turn lane is warranted at the driveway, per City of Flagstaff Engineering Standards.**

Engineering:

First Review, **Approved with Conditions**, 3/7/24
James Boyer, Development Engineering Project Manager

Conditions of Approval:

1. A Public Improvements or Right of Way Permit will be required for any work done within the Public Right of Way.
2. A Traffic Control Plan will need to be submitted and approved before any construction related disruptions to vehicular, pedestrian, or bicycle traffic occur.

Stormwater:

First Review, **Approved**, 2/14/24
Douglas Slover, Project Manager

General Comments:

1. Stormwater requirements waived for 350 square foot increase in impervious area for proposed sidewalk.
2. Sidewalk is permitted within existing drainage easement.

Fire Prevention:

First Review, **Approved with Conditions**, 2/15/24
Chris Jack, Fire Inspector

Conditions of Approval:

1. Deferred submittal required for the modification of fire alarm system as mentioned in General Note #36.

Building & Safety:

First Review, **Approved**, 2/6/24
Brian Cook, Building Plans Examiner
No Comments

Water Services:

First Review, **Approved**, 2/22/24
Jackson Salazar, Water Services Plan Reviewer
No Comments



City of Flagstaff
Community Development
Concept Plan Review Comments

Heritage Preservation/Community Design:

First Review, **Approved**, 2/15/24

Mark Reavis, Neighborhood Planner – Heritage Preservation Officer

No Comments

Parks:

First Review, **Approved**, 2/14/24

Amy Hagin, Parks Manager

No Comments

Public Works:

First Review, **Approved**, 2/26/24

Samuel Beckett, Streets Section Director

No Comments

Nirvana Center - New Dispensary Location vs. Proposed Daycare

Wesley Welch <wesley.welch@flagstaffaz.gov>

Tue 4/9/2024 10:43 AM

To:Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>

Michelle -

I just wanted to bring to your attention an issue that has popped up in the last couple of days. Nirvana Center is the dispensary we currently have in Concept Plan review that will be going into the old IHOP building off of Woodlands Village. They have not yet received final "approval" due to traffic requiring a turn lane warrant analysis. That has recently been submitted to traffic and they should be close to approval which means the dispensary could resubmit soon and receive Concept approval and go straight to building permit.

We also recently received a building permit for a daycare in the shopping center across the way. Our separation distance requirements for dispensaries require 500 feet from schools/daycares/etc. and that is measured property line to property line. Talking to Tiffany and Christina, a determination was made that a property owner is vested once their building permit application is deemed administratively complete.

This will now make the site for the dispensary not suitable as a location due to the daycare building permit. I have been working with the realtor for a while now to find this location and they submitted their first concept plan earlier this year. I know they will not be happy once this news is delivered. I wanted to loop you in to the conversation and we can discuss this further before we deliver the news. Happy to set up a time to meet or you can swing by my office for more information if you need.

Thanks,

Wesley Welch
Planner, Current Planning

211 W Aspen Avenue
Flagstaff, AZ 86004
(928)-213-2608

FW: Nirvana Flagstaff - PZ-23-00200

Steph Santana </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=156524AA4D244096A0D9CD3B1C79416C-STEPHANIE S>

Tue 4/9/2024 12:36 PM

To: Jeff Bauman <jbauman@flagstaffaz.gov>

Cc: Reid Miller <RMiller@flagstaffaz.gov>

 1 attachments (1 MB)

Nirvana - Right Turn Lane Analysis 2024-04-04.pdf;

Jeff,

We forgot to bring this up this morning. Nirvana (pot place going in old Ihop on WVB) submitted the Traffic Statement. Essentially only thing that was required was a rt turn lane warrant analysis. Long story short, it does meet COF warrants for a rt turn lane, but Guillermo is not recommending it in the TS because it does not meet ADOT warrants, it impacts an existing drainage basin, and there are currently no rt turn lanes anywhere along WVB. He gives a few other reasons in the conclusion section as well, please check it out.

This has become rushed because apparently a daycare is being proposed across the street (unsure exactly where) and there are laws that a daycare/school cannot be a certain distance from a pot place. So, it is a race to get approvals. Please let us know your direction for requiring/not requiring a rt turn lane into the site.

Thank you,

Stephanie Santana, P.E., PTOE

Sr. Lead Transportation Engineer

City of Flagstaff

211 W. Aspen Ave. | Flagstaff, AZ | 86001

SSantana@flagstaffaz.gov

[\(928\) 213-2692](tel:(928)213-2692)

From: Guillermo Cortes <gcortes@ardurra.com>

Sent: Thursday, April 4, 2024 3:24 PM

To: Steph Santana <SSantana@flagstaffaz.gov>; Jason Hale <csghale@gmail.com>

Cc: Reid Miller <RMiller@flagstaffaz.gov>; Alexandra Pucciarelli <APucciarelli@flagstaffaz.gov>; Wesley Welch <wesley.welch@flagstaffaz.gov>; Victoria Martin <Victoria.Martin@flagstaffaz.gov>

Subject: RE: Nirvana Flagstaff - PZ-23-00200

Good afternoon Steph,

Attached please find our Right Turn Lane Analysis at the proposed Nirvana site. Please call with any questions or comments.

Best,

Guillermo

From: Guillermo Cortes

Sent: Thursday, March 21, 2024 10:43 AM

To: Steph Santana <SSantana@flagstaffaz.gov>; Jason Hale <csghale@gmail.com>

Cc: Reid Miller <RMiller@flagstaffaz.gov>; Alexandra Pucciarelli <APucciarelli@flagstaffaz.gov>; Wesley Welch

<wesley.welch@flagstaffaz.gov>; Victoria Martin <Victoria.Martin@flagstaffaz.gov>

Subject: RE: Nirvana Flagstaff - PZ-23-00200

Good morning Steph,

Attached please find the revised Scoping document for Nirvana. Give me a call when you have a moment to discuss.

Best,



Guillermo E. Cortes, PE

Northern Arizona Group Manager

O: (928) 773-0354 | **M:** (928) 606-9095

110 W Dale Ave, Flagstaff, Arizona, 86001

gcortes@ardurra.com | www.ardurra.com



From: Steph Santana <SSantana@flagstaffaz.gov>

Sent: Wednesday, March 20, 2024 1:58 PM

To: Jason Hale <csg hale@gmail.com>

Cc: Guillermo Cortes <gcortes@ardurra.com>; Reid Miller <RMiller@flagstaffaz.gov>; Alexandra Pucciarelli

<APucciarelli@flagstaffaz.gov>; Wesley Welch <wesley.welch@flagstaffaz.gov>; Victoria Martin <Victoria.Martin@flagstaffaz.gov>

Subject: RE: Nirvana Flagstaff - PZ-23-00200

Jason,

Please see the comments on the Nirvana Pre-Scoping form. We would like a resubmittal to have a clean final copy, but we would be good with it being submitted with the Traffic Statement as long as all comments are addressed. I have also attached the traffic count I referenced in the comments (FMPO's count from 2019).

Please also note that a Traffic Statement (TS)/TIA review fee is due upon submittal of the TS. Please find attached the invoice for the Traffic Statement/TIA Review Fee. We are not able to take credit card payments over the phone, so you will need to come by City Hall. Another option is to provide a check made out to The City of Flagstaff containing the project number PZ-23-00200-02. If you have any payment questions, please call the Front Counter at (928) 213-2619.

Thank you,

Stephanie Santana, P.E., PTOE

Sr. Lead Transportation Engineer

City of Flagstaff

211 W. Aspen Ave. | Flagstaff, AZ | 86001

SSantana@flagstaffaz.gov

[\(928\) 213-2692](tel:(928)213-2692)

From: Jason Hale <csg hale@gmail.com>

Sent: Tuesday, March 19, 2024 10:55 AM

To: Steph Santana <SSantana@flagstaffaz.gov>

Cc: Guillermo Cortes <gcortes@ardurra.com>; Reid Miller <RMiller@flagstaffaz.gov>; Alexandra Pucciarelli

<APucciarelli@flagstaffaz.gov>; Wesley Welch <wesley.welch@flagstaffaz.gov>

Subject: Re: Nirvana Flagstaff - PZ-23-00200

Some people who received this message don't often get email from csg hale@gmail.com. [Learn why this is important](#)

Attached is the requested pre-scoping form. Please let me know if this is sufficient.

Jason Hale, PE, SE, LEED AP

President

CORE STRUCTURE GROUP

Flagstaff, Prescott
PHONE: 928.458.5155
FAX: 877.862.9153
JasonHale@CSGeng.com

CSG licensed in AZ, CA, CO, NM, NV, OH, TX, UT and WA

Please consider the environment before printing this e-mail

On Wed, Mar 6, 2024 at 11:19 AM Steph Santana <SSantana@flagstaffaz.gov> wrote:

Good morning,

I spoke with Jason this morning and wanted to summarize it in an email also.

Our Pre-Scoping form is used as a tool to determine if a TIA or Traffic Statement is needed. For this project, it needs to be filled out to give us trip counts, state that only a right turn lane analysis will be needed, and a short discussion on available traffic counts. A Traffic Statement (the memos Ardurra write are perfect) will suffice for this project.

I took a quick look and ITE Trip Generation has a land use code 882 – Marijuana Dispensary. The number of studies was not the best, but it will suffice (7 in the daily, 6 in the AM peak hr, and 16 in the PM peak hr). Counts were just taken along Woodlands Village Blvd in 2023, but it may have been when NAU was not in session (I have no idea why this was counted during the summer). We also have the count from 2019 and it can be grown to 2023. AND, a turning movement count at WVB & Beulah from 2021, if it is helpful. I am confident no counts need to be completed with these three options of data available.

Please let me know if you have any questions working through the Pre-Scoping form.

Thank you,

Stephanie Santana, P.E., PTOE

Sr. Lead Transportation Engineer

City of Flagstaff

211 W. Aspen Ave. | Flagstaff, AZ | 86001

SSantana@flagstaffaz.gov

[\(928\) 213-2692](tel:(928)213-2692)

From: Reid Miller <RMiller@flagstaffaz.gov>

Sent: Tuesday, March 5, 2024 3:53 PM

To: Steph Santana <SSantana@flagstaffaz.gov>

Subject: FW: Nirvana Flagstaff - PZ-23-00200

From: Jason Hale <csg hale@gmail.com>

Sent: Monday, March 4, 2024 1:40 PM

To: Reid Miller <RMiller@flagstaffaz.gov>

Cc: Alaxandra Pucciarelli <APucciarelli@flagstaffaz.gov>; Wesley Welch <wesley.welch@flagstaffaz.gov>; giod@nirvanacenter.com

Subject: Nirvana Flagstaff - PZ-23-00200

Some people who received this message don't often get email from csg hale@gmail.com. [Learn why this is important](#)

Hi Reid,

I spoke with Guillermo at Ardura about the Pre-scope form and he advised that this form is not usually used unless it is known that a Traffic Impact Analysis is required. He suggested again that a letter regarding the trip generation for this property citing the 12252 total VPD and 6500 VPD for eastbound traffic on Woodlands Village Blvd from the 2023 count could possibly satisfy

the City's needs to show that the traffic totals are such that a deceleration lane would not be required based on current capacity more than double the existing traffic counts.

Our issue is that the development team was not advised of a need for a traffic statement at the pre-app meeting and that obtaining one will be thousands of dollars and at least a couple months additional time to just getting the Concept Plan approved. Is there any leeway here? Is there something short of a Traffic Statement that would address the City's concerns?

Jason Hale, PE, SE, LEED AP

President

CORE STRUCTURE GROUP

Flagstaff, Prescott

PHONE: 928.458.5155

FAX: 877.862.9153

JasonHale@CSGeng.com

CSG licensed in AZ, CA, CO, NM, NV, OH, TX, UT and WA

Please consider the environment before printing this e-mail

From: [Michelle J. McNulty](#)
To: [Jeff Bauman](#)
Subject: Fwd: Question
Date: Wednesday, April 10, 2024 5:01:35 PM
Attachments: [image001.png](#)
[image002.gif](#)

FYI. I will set up internal meeting. Just wanted you to have a heads up.

Get [Outlook for iOS](#)

From: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>
Sent: Wednesday, April 10, 2024 4:53:49 PM
To: Heidi Hansen <HHansen@flagstaffaz.gov>; Daniel Folke <DFolke@flagstaffaz.gov>
Cc: Joanne K. Keene <joanne.keene@flagstaffaz.gov>; Shawn R. Johnson <Shawn.Johnson@flagstaffaz.gov>
Subject: Re: Question

Heidi, I'm happy to call and set up meeting.

I think we should meet internally with traffic first to understand why the analysis was required. Agree?

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From: Heidi Hansen <HHansen@flagstaffaz.gov>
Sent: Wednesday, April 10, 2024 4:51:49 PM
To: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>; Daniel Folke <DFolke@flagstaffaz.gov>
Cc: Joanne K. Keene <joanne.keene@flagstaffaz.gov>; Shawn R. Johnson <Shawn.Johnson@flagstaffaz.gov>
Subject: RE: Question

Question: So, other dispensaries are allowed in the city?

Question: I think the owner is going to argue that the turn lane analysis is unnecessary since IHOP had a large traffic flow of patrons prior...they feel they were being delayed on purpose.

Michelle – I wonder if you or Dan should give Karan a call or set up a meeting.

From: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>
Sent: Wednesday, April 10, 2024 4:48 PM
To: Daniel Folke <DFolke@flagstaffaz.gov>; Heidi Hansen <HHansen@flagstaffaz.gov>
Cc: Joanne K. Keene <joanne.keene@flagstaffaz.gov>; Shawn R. Johnson <Shawn.Johnson@flagstaffaz.gov>
Subject: Re: Question

Yes, the dispensary is still in for concept review and the nursery/day care has submitted building permits. So yes, that is why this is an issue for the dispensary. Unfortunately this is state statute (separation requirement) so no flexibility. I think the frustration for the dispensary is that if they had

not had to do the turn lane analysis they may had been able to get through Concept Review quicker and able to submit a building permit before the nursery. In that case, the dispensary would be fine and the nursery could choose to move in within the separation requirement.

[REDACTED]. I don't know answer on license, but can track down if needed.

I have looped in Shawn because Mayor has already received a call.

Let me know if you need anything else.

Best,
Michelle

From: Daniel Folke <DFolke@flagstaffaz.gov>
Sent: Wednesday, April 10, 2024 4:09 PM
To: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>; Heidi Hansen <HHansen@flagstaffaz.gov>
Cc: Joanne K. Keene <joanne.keene@flagstaffaz.gov>
Subject: RE: Question

Thanks for the update Michelle. Assuming from Wesley's email that the Daycare permit was found complete or issued, while the dispensary is still in concept review, no building permit submitted yet? For Heidi – this is why the daycare would be considered established or vested before the dispensary.

I am also confused about the state licensing, I thought Council was able to say yes or no to more licenses and they decided no... maybe that was just the "extra licenses" for disadvantaged business owners offered a few years ago and this is a different license being brought to Flagstaff? [REDACTED]
[REDACTED]. Thanks

Daniel Folke
Community Development Director
City of Flagstaff
928-213-2630

From: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>
Sent: Wednesday, April 10, 2024 2:45 PM
To: Heidi Hansen <HHansen@flagstaffaz.gov>
Cc: Joanne K. Keene <joanne.keene@flagstaffaz.gov>; Daniel Folke <DFolke@flagstaffaz.gov>
Subject: RE: Question

Hi, Heidi.

I just got an update on this yesterday. Please see attached and let me know if you want to chat or if

this provides info you need.

Best,
MM

From: Heidi Hansen <HHansen@flagstaffaz.gov>
Sent: Wednesday, April 10, 2024 2:28 PM
To: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>
Subject: Question

Michelle – Hi! I received a call from Karan Patel. He owns the IHOP building and the person he was going to lease it to was currently working with the City to get permits to remodel, etc. They were going to be a marijuana dispensary.

Karan is claiming that they had gotten approval to do the dispensary (I was confused, as I thought Council said no more of them) and were submitted in advance to a Nursery asking for a TIA. I guess the nursery trumped the dispensary is what he heard and wanted to know how that could happen when his partner submitted first.

I have no idea what is actual in all this...can you fill me in? Trying to keep him from going to Council.

HEIDI HANSEN

Economic Vitality Director

City of Flagstaff

hhansen@flagstaffaz.gov

W: (928) 213-2905

C: (928) 814-2539



From: [Heidi Hansen](#)
To: [Michelle J. McNulty](#)
Subject: RE: Dispensary Licenses
Date: Wednesday, April 17, 2024 5:34:00 PM

I am very happy it worked out...he is very appreciative!

From: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>
Sent: Wednesday, April 17, 2024 5:29 PM
To: Heidi Hansen <HHansen@flagstaffaz.gov>
Subject: Re: Dispensary Licenses

Karan's appreciation and happiness when we delivered the interpretation made my week!

Get [Outlook for iOS](#)

From: Heidi Hansen <HHansen@flagstaffaz.gov>
Sent: Wednesday, April 17, 2024 4:58:17 PM
To: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>; Kevin Fincel <KFincel@flagstaffaz.gov>; Daniel Folke <DFolke@flagstaffaz.gov>; Sterling Solomon <SSolomon@flagstaffaz.gov>; Christina Rubalcava <CRubalcava@flagstaffaz.gov>
Cc: Joanne K. Keene <joanne.keene@flagstaffaz.gov>; Greg Clifton <Greg.Clifton@flagstaffaz.gov>; Tiffany Antol <TAntol@flagstaffaz.gov>
Subject: RE: Dispensary Licenses

Thank you for the update and the work behind it!!!

From: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>
Sent: Wednesday, April 17, 2024 3:31 PM
To: Kevin Fincel <KFincel@flagstaffaz.gov>; Daniel Folke <DFolke@flagstaffaz.gov>; Sterling Solomon <SSolomon@flagstaffaz.gov>; Christina Rubalcava <CRubalcava@flagstaffaz.gov>
Cc: Heidi Hansen <HHansen@flagstaffaz.gov>; Joanne K. Keene <joanne.keene@flagstaffaz.gov>; Greg Clifton <Greg.Clifton@flagstaffaz.gov>; Tiffany Antol <TAntol@flagstaffaz.gov>
Subject: RE: Dispensary Licenses

Hi, all!

[REDACTED]

Attached is the written interpretation that has been posted on our website and is subject to a 10-day appeal period. We have also shared with Nirvana. They have submitted their affidavit over a month ago and will be able to continue to proceed with their location at the old IHOP location.

Thank you, Kevin and Christina, for working with us to get here!

Best,
Michelle

From: Michelle J. McNulty
Sent: Monday, April 15, 2024 9:17 AM
To: Kevin Fincel <KFincel@flagstaffaz.gov>; Daniel Folke <DFolke@flagstaffaz.gov>; Sterling Solomon <SSolomon@flagstaffaz.gov>; Christina Rubalcava <CRubalcava@flagstaffaz.gov>
Cc: Heidi Hansen <HHansen@flagstaffaz.gov>; Joanne K. Keene <Joanne.Keene@flagstaffaz.gov>; Greg Clifton <Greg.Clifton@flagstaffaz.gov>; Tiffany Antol <TAntol@flagstaffaz.gov>
Subject: RE: Dispensary Licenses

Thanks, Kevin.

Current planning staff and myself are meeting with Christina this morning to discuss [REDACTED]. I will respond to all on the outcome of that discussion.

Best,
Michelle

From: Kevin Fincel <KFincel@flagstaffaz.gov>
Sent: Monday, April 15, 2024 8:54 AM
To: Daniel Folke <DFolke@flagstaffaz.gov>; Sterling Solomon <SSolomon@flagstaffaz.gov>; Christina Rubalcava <CRubalcava@flagstaffaz.gov>
Cc: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>; Heidi Hansen <HHansen@flagstaffaz.gov>; Joanne K. Keene <joanne.keene@flagstaffaz.gov>; Greg Clifton <Greg.Clifton@flagstaffaz.gov>; Tiffany Antol <TAntol@flagstaffaz.gov>
Subject: RE: Dispensary Licenses

Good morning Dan,

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

Thanks,

Kevin

Kevin R. Fincel
Deputy City Attorney
City of Flagstaff
211 West Aspen Avenue
Flagstaff, AZ 86001
(928) 213-2045
kfincel@flagstaffaz.gov

From: Daniel Folke <DFolke@flagstaffaz.gov>
Sent: Thursday, April 11, 2024 5:02 PM
To: Sterling Solomon <SSolomon@flagstaffaz.gov>; Kevin Fincel <KFincel@flagstaffaz.gov>; Christina Rubalcava <CRubalcava@flagstaffaz.gov>
Cc: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>; Heidi Hansen <HHansen@flagstaffaz.gov>; Joanne K. Keene <joanne.keene@flagstaffaz.gov>; Greg Clifton <Greg.Clifton@flagstaffaz.gov>
Subject: Dispensary Licenses

Hi Sterling, Kevin and Christina,

CD has been processing a concept plan application for a dispensary at the former I-Hop on Woodlands Blvd. and the question has come up that [Redacted]

[Redacted]

[Redacted]

[REDACTED]

My ask – [REDACTED]

I think Council will have similar questions and the Mayor has been contacted by Karan. Thanks for your consideration. Dan

Daniel Folke, AICP, CPM
Community Development Director
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001
dfolke@flagstaffaz.gov
928-213-2630

[Community Development | City of Flagstaff Official Website \(az.gov\)](#)

Housing, Planning & Development Services, Building Safety & Code Compliance, and Real Estate
Mission: We build community together, provide service with integrity and honor the diverse heritage of Flagstaff.

“The future is unwritten” – Joe Strummer

Fwd: Nirvana RTL Timeline & Trip Gen Restaurant vs Dispensary

Steph Santana <SSantana@flagstaffaz.gov>

Fri 4/12/2024 1:31 PM

To: Reid Miller <RMiller@flagstaffaz.gov>

📎 1 attachments (1 MB)

Nirvana - Traffic Statement_20240404.pdf;

Thank you,

Stephanie Santana, P.E., PTOE

Sr. Lead Transportation Engineer

City of Flagstaff

211 W. Aspen Ave. | Flagstaff, AZ | 86001

SSantana@flagstaffaz.gov

[\(928\) 213-2692](tel:(928)213-2692)

From: Steph Santana

Sent: Thursday, April 11, 2024 5:35:25 PM

To: Paul A. Mood <Paul.Mood@flagstaffaz.gov>

Cc: Jeff Bauman <jbauman@flagstaffaz.gov>; Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>

Subject: RE: Nirvana RTL Timeline & Trip Gen Restaurant vs Dispensary

Paul,

Please see the timeline below:

- 11/17/2023 – Millis made this comment following the pre-application meeting (PAM), “The proposal does not appear to include any exterior changes to the building. To the extent that the change in intensity or type of use does not trigger the need for traffic improvements or new water/sewer/fire infrastructure Engineering has no comments on this project at this time.” There was a change in intensity. Please see the trip generation calculation comparison below.
- 2/16/2024 – Reid made a comment in Innoprise on Concept Plan submittal, “Please submit a Traffic Statement with a warrant analysis for a right turn deceleration lane at the driveway, per City of Flagstaff Engineering Standards.”
- 3/6/2024 – I spoke with Jason Hale and let him know why we need a pre-scoping and what it needed to include, followed up with an email.
- 3/8/2024 – Reid made a comment in Innoprise on resubmittal of Concept Plan, “Submit a Traffic Statement with calculations that determine if a right turn lane is warranted at the driveway, per City of Flagstaff Engineering Standards.”
- 3/19/2024 - Applicant submitted first pre-scoping form
- 3/20/2024 - City sent comments back
- 3/21/2024 - Applicant resubmitted the pre-scoping form & Traffic Statement review fee was paid
- 3/22/2024 - City sent approval of pre-scoping
- 4/4/2024 - Applicant submitted Traffic Statement which included a right turn lane warrant analysis. The development warrants a right turn lane, but below is a snip of all the reasons the Applicants traffic engineer recommends not installing it.
- 4/11/2024 – City checked rear end crashes to make sure we do not have an existing problem along Woodlands Village Blvd. See below for a snip of the rear end crashes from 2012-2022.

Will you please give me direction for if I need to reply to Jason Hale and what is our direction? Should I approve the Traffic Statement with their recommendation of not installing rt turn lane or approve with a condition that the rt turn lane is needed?

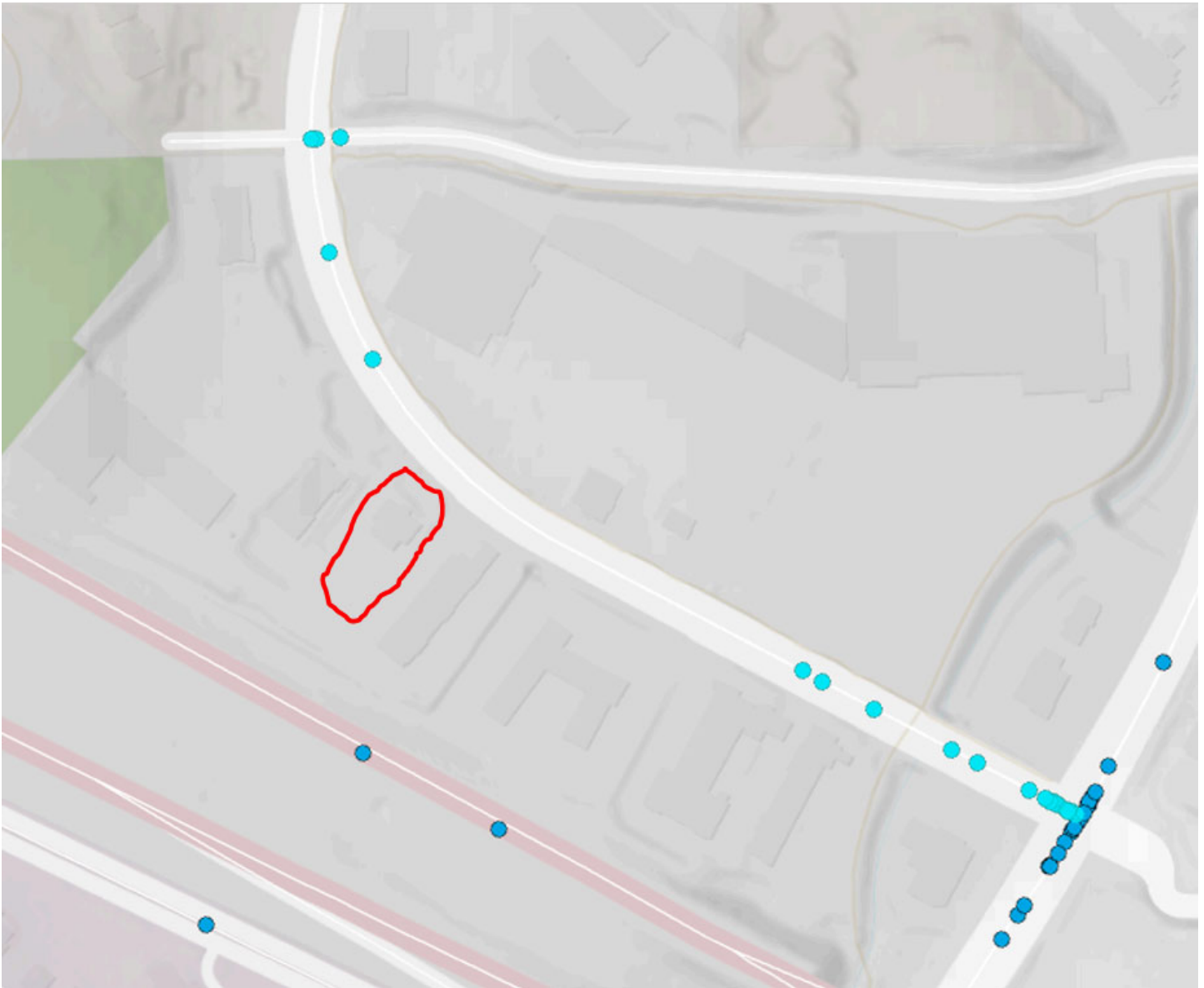
ITE Trip Generation Comparison		Average Rates						
Land Use Code:	Land Use:	Weekday	AM Peak Hr	PM Peak Hr	*All based on building size 1000 Sq Ft			
932	High-Turnover (Sit-Down) Restaurant	107.20	9.57	9.05				
882	Marijuana Dispensary	211.12	10.54	18.92				

Conclusions & Recommendations

Per City of Flagstaff Engineering Standards Section 13-10-10-0002, a right turn lane is warranted for the proposed site based on the proposed number of right turning vehicles. Per ADOT's Traffic Guidelines & Processes Section 245 a right turn lane would not be warranted.

We do not recommend the installation of a right turn lane for the following reasons:

- A right turn lane is not required per ADOT's analysis for a four(4) lane roadway.
- The construction of a right turn lane would impact the existing drainage basin as well as the established landscaping for this site.
- A right turn lane would add pavement area and increase storm runoff exacerbating the loss of detention area.
- This is not a new building – the site operated as a high turnover restaurant in the past.
- Woodlands Village Blvd does not currently have any right turn lanes including at intersections or at recent developments along the corridor.
- Woodlands Village Blvd is currently operating below capacity for a two(2) lane roadway let alone the four(4) lane that exist now. This allows for the outside lanes to act as the right turn lane while through vehicles utilize the inside lane.



Thank you,

Stephanie Santana, P.E., PTOE
Sr. Lead Transportation Engineer
City of Flagstaff
211 W. Aspen Ave. | Flagstaff, AZ | 86001
SSantana@flagstaffaz.gov
(928) 213-2692

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

From: Paul A. Mood <paul.mood@flagstaffaz.gov>
Sent: Thursday, April 11, 2024 4:16 PM
To: Steph Santana <SSantana@flagstaffaz.gov>
Subject: Nirvana RTL Timeline

Can you send me the timeline you went over. I might need it for the meeting tomorrow.

Thanks,

Paul

Stephanie Santana
City of Flagstaff
211 W. Aspen
Flagstaff, AZ 86001

April 4, 2024

RE: Nirvana Center Flagstaff
Traffic Impact Statement

Dear Ms. Santana:

This letter has been written to support the proposed improvements to the property located at 2925 S. Woodlands Village Blvd in Flagstaff, Arizona. Nirvana Center Flagstaff proposes to convert the existing restaurant to a marijuana dispensary. The intent of this letter is to provide a trip generation analysis and a right turn lane analysis for the proposed dispensary. The attached Site Plan shows the location of the project.

Woodlands Village Blvd includes two thru lanes in each direction separated by a median and currently posted at 40 miles per hour. There are no existing right turn lanes along the whole stretch of Woodlands Blvd including at major intersections. There is one existing direct site access driveway that serves the existing site.

Trip Generation

The subject property is currently a vacant restaurant. The existing 4,085 square-foot building was formerly operated as IHOP.

The average daily traffic volumes, including AM and PM peak hour trips generated by the proposed development, have been estimated using the trip rates provided by the *Institute of Transportation Engineer's (ITE) Trip Generation Manual, 11th Edition*. ITE land use code 882: Marijuana Dispensary was used to estimate the trips generated by the repurposed building. Based on the trip generation analysis, the proposed dispensary will generate a total of 844 daily weekday trips, including 42 AM and 76 PM peak hour trips. With a 50/50 split entering and exiting, we anticipate 38 inbound trips. Utilizing a 70/30 split for WB/EB inbound traffic derived an anticipated 11 vehicles turning right into the site driveway. The full trip generation analysis is included as an attachment.

It should be noted that the high turnover restaurant generates 458 daily trips including 41 AM and 40 PM peak hour trips.

Right Turn Lane Analysis

A right turn lane warrant analysis was conducted per Section 13-10-10-0002 of the City of Flagstaff Engineering Standards to determine if a right turn lane is required for the project.

The City of Flagstaff published counts shows this stretch of Woodlands Blvd carried 13,948 daily trips including 692 EB PM peak hour trips in August 2023. Because the counts were done when NAU was not in session, the Traffic Division has asked to use November 2019 counts and factored

to 2024 utilizing a 2% growth rate. The November 2019 PM peak traffic volumes were 747 for EB Woodlands Village Blvd. Utilizing a 2% growth rate results in 825 PM peak hour vehicles for EB Woodlands Village Blvd. Applying a 65/35 split for inside/outside lanes gives 289 vehicles in the outside lane.

The threshold for a warranted right turn lane is 6 right turning vehicles during the peak hour. Therefore, with 11 estimated right turning vehicles during the peak hour, an eastbound right turn lane is warranted for the proposed dispensary based on the traffic volumes, the number of thru lanes, and the posted speed limit.

Because the City of Flagstaff's right turn lane warrant does not separate having more than one lane in the direction of travel, we utilized ADOT's Traffic Guidelines & Processes Section 245 which includes an analysis for 1, 2, and 3 lane roadways. Utilizing ADOT's warrant, a right turn lane would not be required. The proposed 11 right turns fall below the threshold of 40 based on Woodlands Village Blvd PM peak hour traffic of 825 and the posted speed of 40 mph on a four lane (two in each direction) roadway. It should be noted that the right turn lane would not be required for a two lane (one in each direction) roadway as well.

Conclusions & Recommendations

Per City of Flagstaff Engineering Standards Section 13-10-10-0002, a right turn lane is warranted for the proposed site based on the proposed number of right turning vehicles. Per ADOT's Traffic Guidelines & Processes Section 245 a right turn lane would not be warranted.

We do not recommend the installation of a right turn lane for the following reasons:

- A right turn lane is not required per ADOT's analysis for a four(4) lane roadway.
- The construction of a right turn lane would impact the existing drainage basin as well as the established landscaping for this site.
- A right turn lane would add pavement area and increase storm runoff exacerbating the loss of detention area.
- This is not a new building – the site operated as a high turnover restaurant in the past.
- Woodlands Village Blvd does not currently have any right turn lanes including at intersections or at recent developments along the corridor.
- Woodlands Village Blvd is currently operating below capacity for a two(2) lane roadway let alone the four(4) lane that exist now. This allows for the outside lanes to act as the right turn lane while through vehicles utilize the inside lane.

Please let us know if you have any questions, comments, or need any additional information.

Sincerely,

Shephard – Wesnitzer, Inc., an Ardurra Company

Guillermo E. Cortes, P.E.
Northern Arizona Group Manager

Attachments:

1. Site Plan
2. Trip Generation Analysis
3. Right Turn Lane Warrant Analysis





PRELIMINARY

NOT FOR CONSTRUCTION,
BIDDING OR RECORDING



75 Kallaf Place
Sedona, AZ 86336
928.282.1061
928.282.2058 fax
www.ardurra.com

JOB NO.	
DATE	MAR 24
SCALE	NTS
DRAWN	RRW
DESIGN	RRW
CHECKED	GEC

NIRVANA CENTER DISPENSARY

FLAGSTAFF
ARIZONA

TRAFFIC IMPACT STATEMENT
TRIP DISTRIBUTION

SHEET

1

OF 1

Nirvana Center Flagstaff
 Date: 04/1/2024
 Revised Date:

SITE GENERATED TRAFFIC - PROPOSED

LAND USE	ITE CODE	VARIABLE	TIME PERIOD	EQUATION	% ENTERING	WEEKDAY TOTAL	AM TOTAL	AM		PM TOTAL	PM		PM TOTAL	PM	
								in	out		in	out		in	out
Marijuana Dispensary	882	4.0	<i>Weekday</i>	T=211.12(X)	50%	844									
Variable=1,000 sf GFA			<i>AM peak</i>	T=10.54(X)	50%		42	21	21						
			<i>PM peak</i>	T=18.92(X)	50%					76	38	38			
Subtotal Trips =						844	42	21	21	76	38	38	76	38	38

ITE Code

882:Marijuana Dispensary

Notes:

*AM Peak Hour is 7-9 am

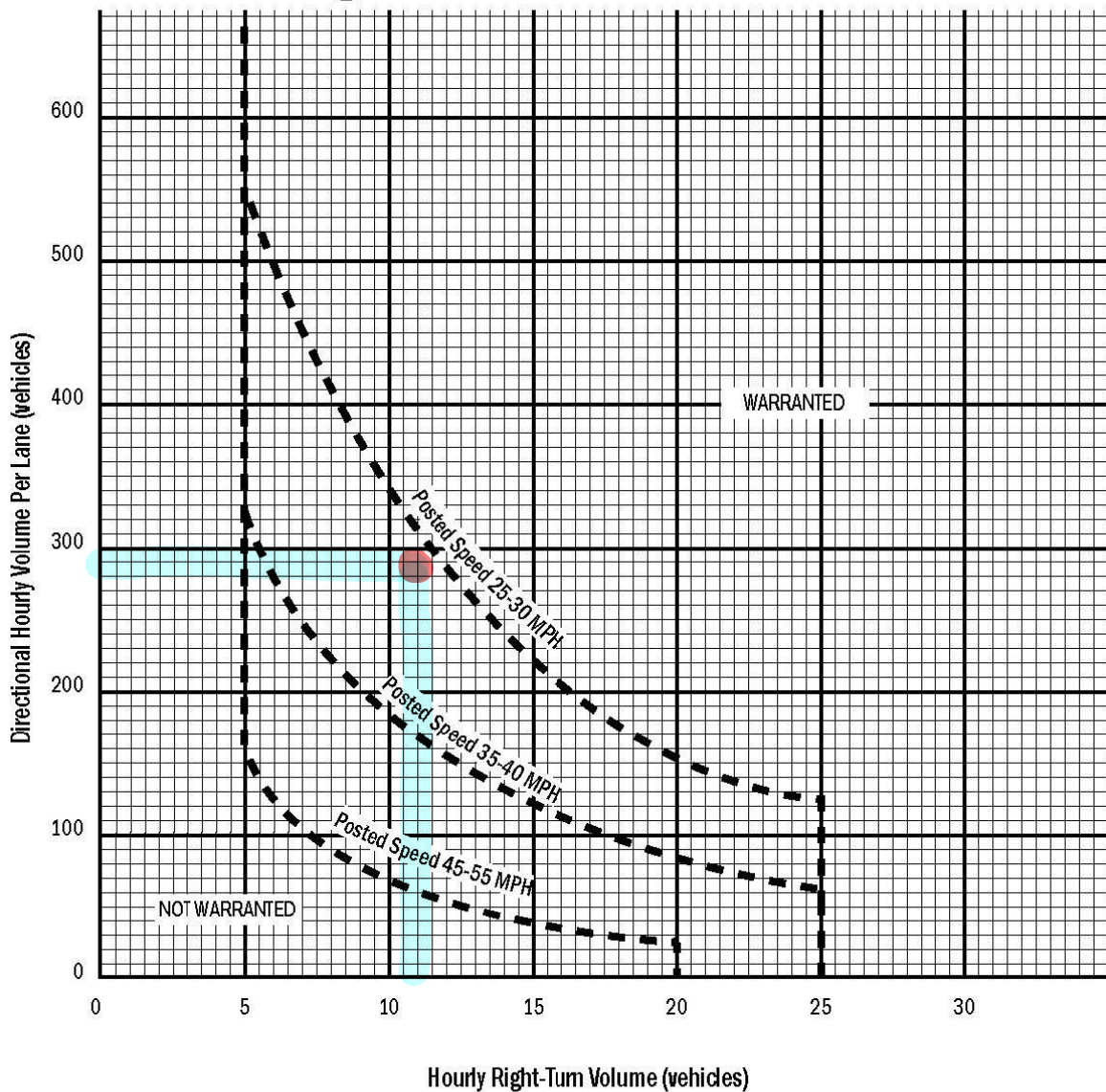
*PM Peak Hour is 4-6 pm

13-10-010-0002 Right Turn Deceleration Lane Warrants

Right turn deceleration lanes shall be required at driveways based on the following set of curves. The curves are based upon design peak hour (DPH) volume of the curb lane (current planning horizon year volume), DPH right turning volume and posted speed limits. Data points that land above the given curve warrant a right turn lane and points below the curve do not automatically warrant a right turn deceleration lane. Refer to Detail 10-10-020 or ADOT Policies, Guidelines, and Procedures, Section 430 for design.

Figure 13-10-010-01

Right-Turn Lane Warrant



Sources: Idaho Transportation Department "Traffic Manual";
Transportation Research Board, NCHRP Report 348, Access Management Guidelines for Activity Centers.

(Ord. 2017-22, Rep&ReEn, 07/05/2017)

245 TURN LANE WARRANTS

The intent of this document is to offer guidance to warrant the installation of dedicated left or right turn lanes on state routes, whether during new construction, major reconstruction, or in the course of the encroachment permitting process. **The primary determining factors to warrant an exclusive turn lane shall be: (a) the combination of through traffic volume and turning traffic volume, (b) the posted roadway speed, and (c) the number of through lanes on the roadway.** Note: Dual right- or left-turn lanes should be considered when the turning volume exceeds 300 vehicles per hour. In addition to the criteria presented in the tables below, other factors should be taken into consideration when performing a warrant study such as: shoulder width, percentage of trucks, sight distance, highway grade, horizontal and vertical curvature and crash history.

Right-Turn Lane Warrants

Peak Hour Traffic Volume on the Highway in Advancing Direction	Minimum Peak Hour Right-turn Traffic Volume				
	# of thru lanes per direction				
	1		2		3
	< 45 MPH Posted Speed	≥ 45 MPH Posted Speed	< 45 MPH Posted Speed	≥ 45 MPH Posted Speed	All Speeds
≤ 200					
201 – 300	-	30	-	-	-
301 – 400	-	19	-	55	-
401 – 500	85	14	-	30	-
501 – 600	58	12	140	25	-
601 – 700	27	9	80	18	-
701 – 800	20	8	53	15	-
801 – 900	12	7	40	12	-
901 – 1000	9	6	30	11	-
1001 – 1100	8	5	23	9	18
1101 – 1200	7	5	18	8	16
1201 – 1300	6	4	14	8	15
1301 – 1400	6	4	11	6	12
1400+	5	3	8	6	10

FW: Nirvana Dispensary Discussion with Karan

Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>

Fri 4/12/2024 1:22 PM

To: Heidi Hansen <HHansen@flagstaffaz.gov>; Joanne K. Keene <joanne.keene@flagstaffaz.gov>; Daniel Folke <DFolke@flagstaffaz.gov>
FYI. We had a very good discussion this morning. We were able to offer a few paths to explore. Karan is going to submit a public records request regarding the daycare. I felt that while frustrated, they understood this is outside of City control and that we will help them as much as we can in case the situation changes with the daycare.

From: Michelle J. McNulty

Sent: Friday, April 12, 2024 1:19 PM

To: karan@acm-jvt.com; Jason Hale <csghale@gmail.com>; Guillermo Cortes <gcortes@ardurra.com>

Cc: Shawn R. Johnson <Shawn.Johnson@flagstaffaz.gov>; Alaxandra Pucciarelli <APucciarelli@flagstaffaz.gov>; Paul A. Mood <Paul.Mood@flagstaffaz.gov>; Wesley Welch <Wesley.Welch@flagstaffaz.gov>

Subject: Nirvana Dispensary Discussion with Karan

Hi, all.

Thanks again for the discussion this morning. I wanted to follow up on the variance question and outline the meeting takeaways.

- The 500-foot parcel line to parcel line separation from a dispensary to a daycare/nursery is a city zoning code requirement and is not a state requirement (the state limits the separation from dispensary to schools and pre-schools which does not include daycares by their definition). Therefore, you could apply for a variance for this requirement).
- The City will complete our review of the right-turn-lane analysis so that the Concept Plan review can be completed. When we complete the Concept Review, we will condition to make clear that a variance will need to be approved or otherwise the determination of the daycare being an existing use be reversed to continue to building permit. This will set you up so that if the existing situation changes you can quickly move to building permit.
- I will set up a meeting with our Attorney and Karan and Jason to discuss further when a use is established.

I look forward to working with you on this and your other upcoming projects. As stated today, please know we are always available (and happy) to talk through issues and answer questions, don't hesitate to reach out.

Best,
Michelle

Michelle McNulty, AICP, CPM

Planning Director

City of Flagstaff

211 W. Aspen Avenue

Flagstaff, AZ 86001

michelle.mcnulty@flagstaffaz.gov

Office (928) 213-2607

Cell (928) 707-2789

CONDITIONS of APPROVAL

Building Safety: Brian T Cook; Brian.Cook@flagstaffaz.gov, 928-213-2626 Approved with Conditions 04/15/2024

IBC 105.4 Validity of permit. The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is authorized to prevent occupancy or use of a structure where in violation of this code or of any other ordinances of this jurisdiction.

IBC 107.3.1 Approval of construction documents. The approved copy of construction documents (plans, calculations, project manual, etc.) shall be kept at the site of work and shall be open to inspection by the building official or a duly authorized representative.

IBC 107.4 Amended construction documents. Work shall be installed in accordance with the approved construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.

Stormwater: Douglas Slover; Approved 04/11/2024

Water Services: Jackson Salazar; Approved 04/10/2024

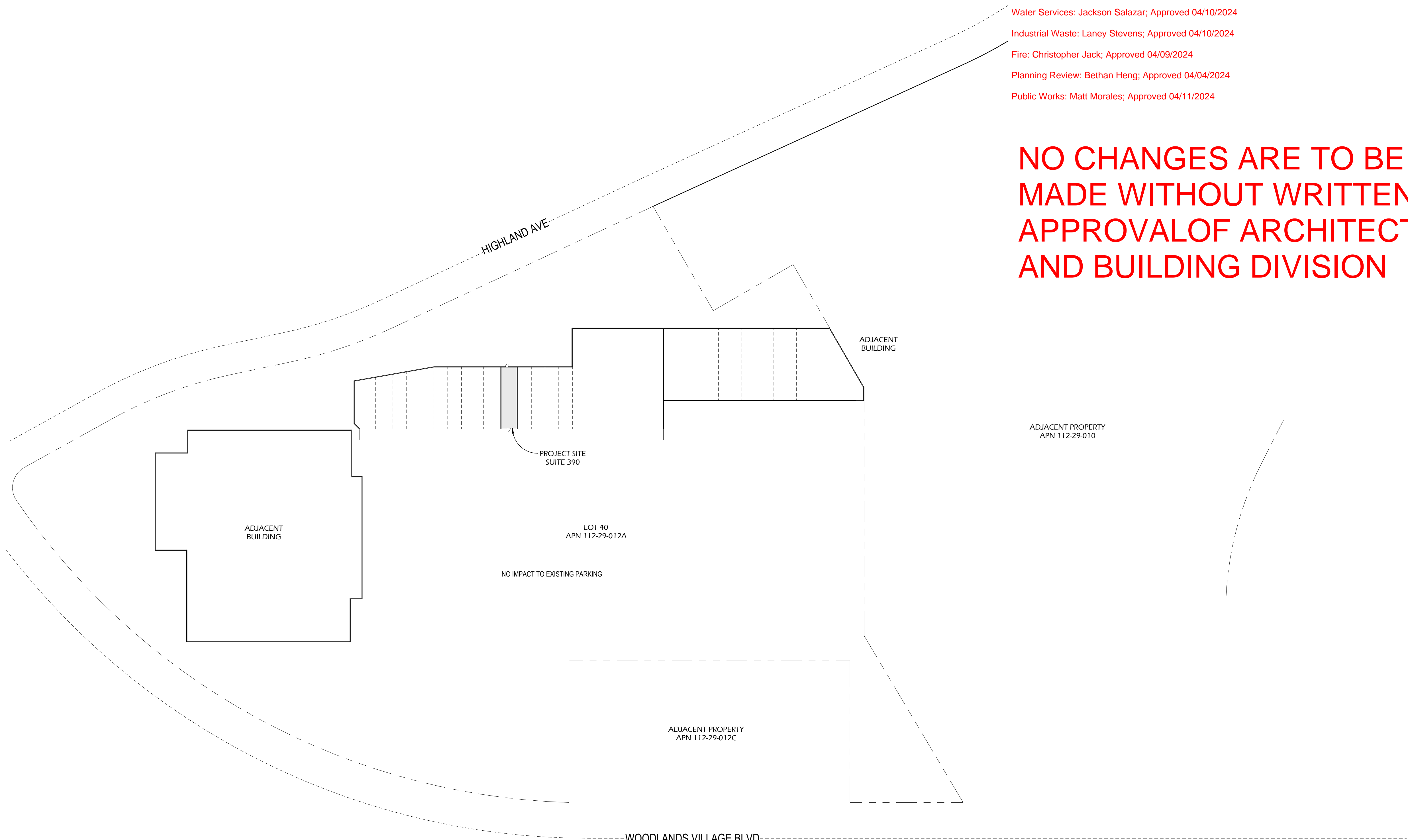
Industrial Waste: Laney Stevens; Approved 04/10/2024

Fire: Christopher Jack; Approved 04/09/2024

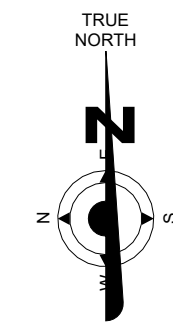
Planning Review: Bethan Heng; Approved 04/04/2024

Public Works: Matt Morales; Approved 04/11/2024

NO CHANGES ARE TO BE MADE WITHOUT WRITTEN APPROVAL OF ARCHITECT AND BUILDING DIVISION



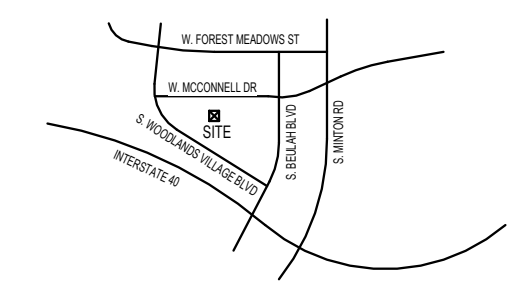
SITE PLAN
1" = 60'-0"



SHEET LIST

A1.1	SITE PLAN
A2.1	FLOOR PLAN

VICINITY MAP



BUILDING DATA

PROJECT NAME: WOODLANDS VILLAGE DAYCARE
PROJECT ADDRESS: 2700 S. WOODLANDS VILLAGE BLVD, SUITE 390, FLAGSTAFF, ARIZONA 86001.
SUBDIVISION: WOODLANDS VILLAGE UNIT 03
AUTHORITY HAVING JURISDICTION: CITY OF FLAGSTAFF
OWNER: SPE-WOODLANDS VILLAGE SHOPPING CENTER LLC
APN: 11229012A
PARCEL SIZE: 8.84 ACRES
BUILDING SIZE: 43067 SF
SUITE SIZE: 1175 SF

USE AND OCCUPANCY ANALYSIS

PROJECT DESCRIPTION: TENANT IMPROVEMENT OF AN EXISTING SUITE TO USE AS A DAYCARE FACILITY. USE AND OCCUPANCY CLASSIFICATION WILL CHANGE TO GROUP E. NO CHANGE WILL OCCUR TO THE STRUCTURE OR EXTERIOR FACADE. INTERIOR RENOVATIONS CONSIST ONLY LEVEL 1 ALTERATION FINISHES. THE NET (OCCUPIABLE) AREA INSIDE THE SUITE IS 983 SQUARE FEET.

OCCUPANCY: E - DAY CARE FACILITIES, MIXED USE BUILDING

CONSTRUCTION TYPE: V-B

OCCUPANT LOAD: 983 SF / 35 = 28 OCCUPANTS (TABLE 1004.5)

NUMBER OF EXITS: REQUIRED: 1 SECTION 1006.2.1
 PROVIDED: 2
DISTANCE TO EXIT: ALLOWED: 250' TABLE 1017.2 (E)
 PER PLAN: 41'

SEPARATION OF EXITS: NA

BUILDING HEIGHT: ALLOWABLE HEIGHT: 60'0" IBC TABLE 504.3
 OCCUPANCY B & E
 ACTUAL HEIGHT: <60'

EXTERIOR OPENINGS: UNPROTECTED OPENINGS: IBC TABLE 705.8
 SOUTH (FRONT BUILDING) UNLIMITED UNPROTECTED OPENINGS
 SOUTH (BACK OF BUILDING) UNLIMITED UNPROTECTED OPENINGS

EXIT SIGNAGE & ILLUMINATION: IBC SECTION 1008 AND 1013
 NO EXIT SIGN IS REQUIRED. 1 IS PROVIDED WITH EMERGENCY ILLUMINATION.

SPRINKLERS: EXISTING SYSTEM TO REMAIN. NO CHANGE TO THE EXISTING FIRE PUMP AND RISER ROOM, OR EXISTING FIRE MONITORING SYSTEM.

ACCESSIBLE EGRESS: IBC SECTION 1009
 BOTH EXITS SHALL BE ACCESSIBLE EGRESS.

FIRE EXTINGUISHERS: ONE ORDINARY HAZARD FIRE EXTINGUISHER 2-A:20-B:C MINIMUM IS REQUIRED. THERE ARE NO CLASSROOMS OTHER THAN THE PRIMARY AREA.

PLUMBING FIXTURES: IBC TABLE 2902.1
WATER CLOSETS: MALE 1/50 REQUIRED 1 PROVIDED: 1
 FEMALE 1/50 REQUIRED 1 PROVIDED 1
LAVATORIES: MALE 1/50 REQUIRED 1 PROVIDED 1
 FEMALE 1/50 REQUIRED 1 PROVIDED 1
DRINKING FOUNTAIN: REQUIRED 1 PROVIDED 1
MOP SINK: REQUIRED 1 PROVIDED 1

NOTE: ONE OF THE RESTROOMS WAS RE-CONFIGURED FOR ADA COMPLIANCE. BOTH RESTROOMS WILL BE LABELED AS UNISEX.

APPROVED
REVIEWED FOR
CODE COMPLIANCE

City of Flagstaff
 Building Safety Program

REVIEWED BY: Brian.Cook
 DATE: 04/15/2024

WOODLANDS VILLAGE DAYCARE

PROJECT ADDRESS

FLG INDUSTRIES, LLC
 1846 E. INNOVATION PARK DR #100
 ORO VALLEY, AZ 85755

REVISION HISTORY

No	Description	Date



BUILDING CODES

APPLICABLE CODES:
 2018 INTERNATIONAL EXISTING BUILDING CODE (IEBC)

OTHER CODES AS REFERENCED WITHIN THE 2018 IEBC AS FOLLOWS:
 2018 INTERNATIONAL BUILDING CODE (IBC)
 2018 INTERNATIONAL MECHANICAL CODE (IMC)
 2018 INTERNATIONAL PLUMBING CODE (IPC)
 2018 INTERNATIONAL MECHANICAL CODE (IMC)
 2018 INTERNATIONAL ENERGY CONSERVATION CODE (IECC)
 2017 NFPA 70 / NATIONAL ELECTRIC CODE (NEC)
 ICC A117.1-2017 ACCESSIBLE AND USABLE BUILDINGS AND FACILITIES
 1997 UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS
 1997 UNIFORM ADMINISTRATIVE CODE
 ALL REFERENCES AS AMENDED BY THE LOCAL JURISDICTION.

DESIGNED BY: TL
 DRAWN BY: TL
 APPROVED BY: BH

3/29/2024 12:17:01 PM

SITE PLAN

PAGE NUMBER

A1.1



1 EXISTING FLOOR PLAN
1/4" = 1'-0" 0 1/2" 1" 2" PAGE FORMAT: 24"x36"

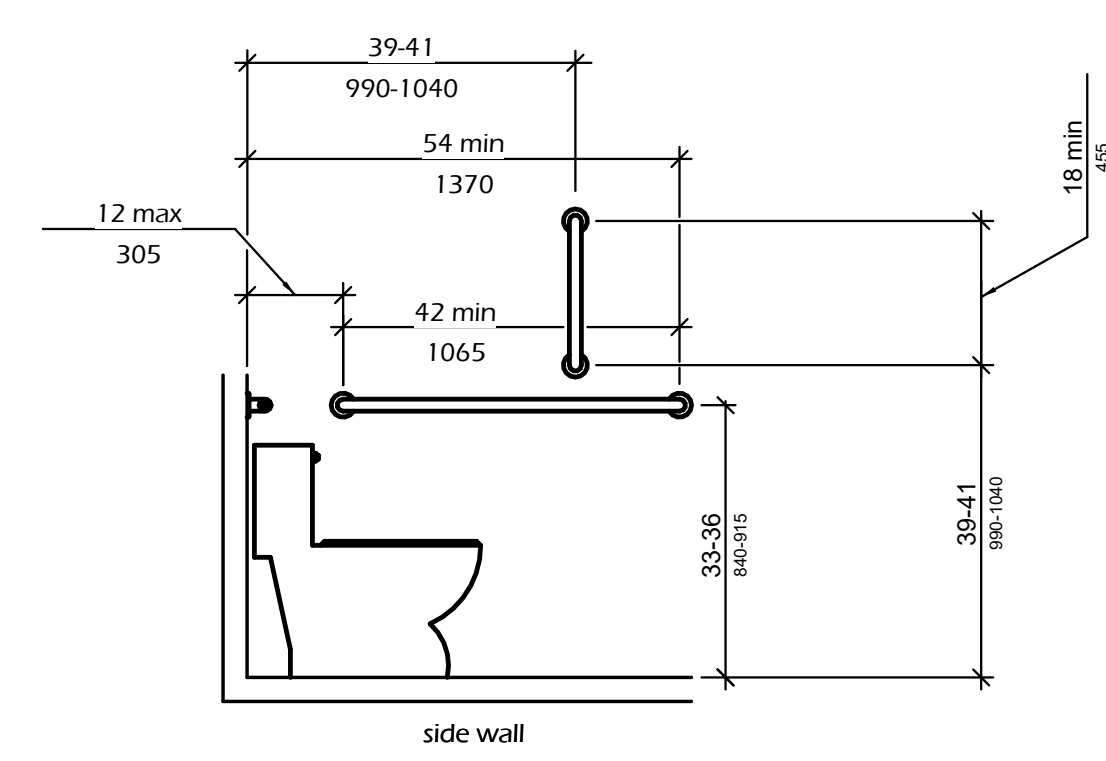
2 NEW FLOOR PLAN / EGRESS
1/4" = 1'-0" 0 1/2" 1" 2" PAGE FORMAT: 24"x36"

RM#	ROOM NAME	AREA
001	BREAKROOM	98 SF
002	MECH ROOM	19 SF
003	UNISEX RESTROOM	21 SF
004	UTILITY CLOSET	31 SF
005	MAIN FLOOR AREA	570 SF
006	STORAGE	33 SF
007	OFFICE	70 SF
008	RECEPTION	71 SF
009	LOBBY	170 SF
010	UNISEX ADA RESTROOM	41 SF

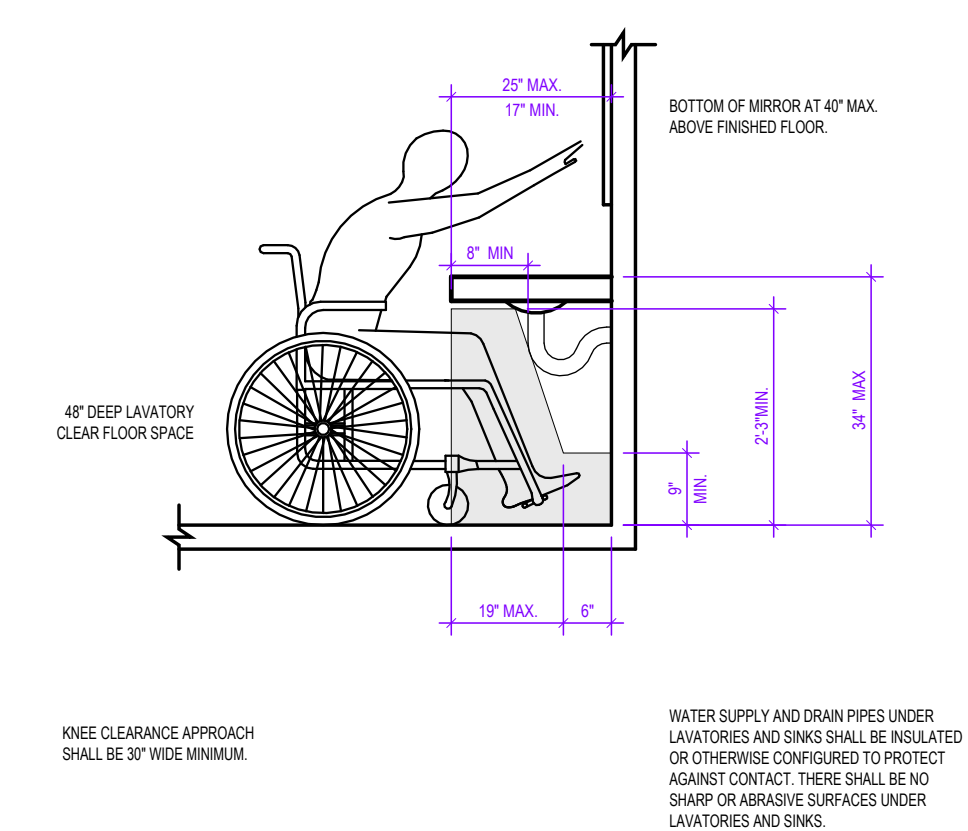
EGRESS LEGEND	
EE	EMERGENCY EGRESS
—	EXIT SIGNAGE PER IBC 2018 SECTION 1013
FE	2-A-10B-C - FIRE EXTINGUISHER
123'	EGRESS PATH WITH DISTANCE

PROJECT SCOPE GENERAL NOTES

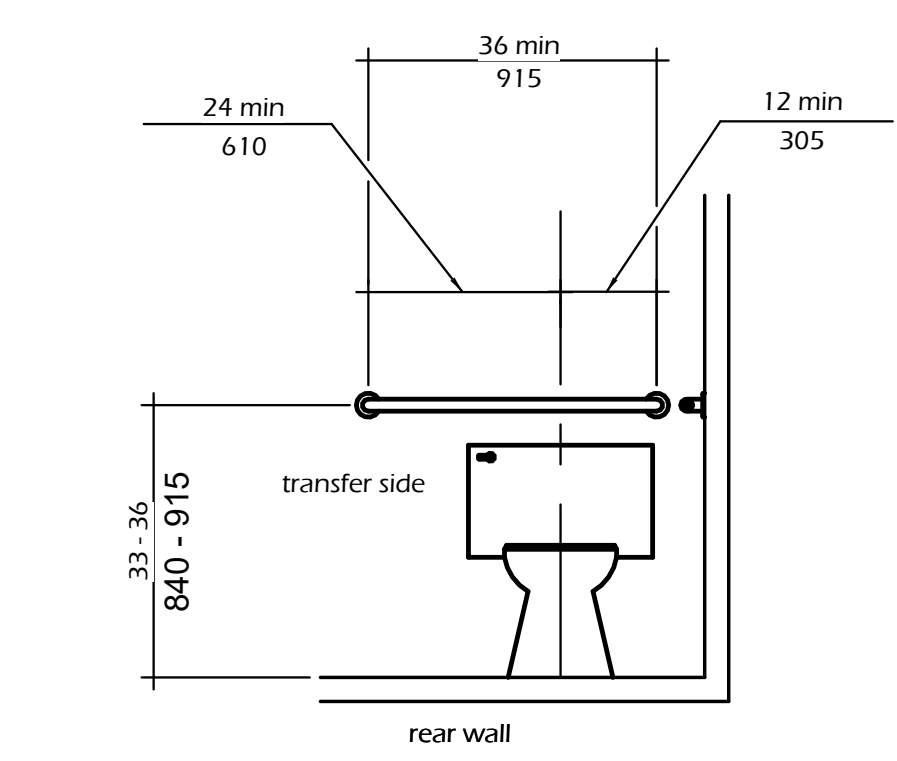
1. NO CHANGE TO THE BUILDING FACADE OR THE EXTERIOR ELEVATIONS
2. NO CHANGE TO THE BUILDING STRUCTURAL ELEMENTS
3. BUILDING ADDRESS AND SUITE NUMBER WILL REMAIN VISIBLE FROM THE STREET
4. NO CHANGE TO EXISTING BUILDING FIRE PUMP, RISER ROOM, OR FIRE MONITORING SYSTEM. SPRINKLER SYSTEM SHALL BE TESTED AND MAINTAINED IN ACCORDANCE WITH LOCAL FIRE CODE.
5. REMOVAL OF UNNECESSARY SINKS SHALL BE CAPPED AND ABANDON IN ACCORDANCE WITH 2018 INTERNATIONAL PLUMBING CODE.
6. UPGRADE ADA UNISEX RESTROOM TO MEET ALL ADA RESTROOM REQUIREMENTS



3 ADA FLOOR TOILET REQUIREMENTS
1/2" = 1'-0" 0 1/2" 1" 2" PAGE FORMAT: 24"x36"



4 ADA SINK
1/2" = 1'-0" 0 1/2" 1" 2" PAGE FORMAT: 24"x36"



9 EXISTING 1 HR FIREWALL ASSEMBLY
1/2" = 1'-0"

WOODLANDS VILLAGE DAYCARE

PROJECT ADDRESS
FLG INDUSTRIES, LLC
1846 E. INNOVATION PARK DR #100
ORO VALLEY, AZ 85755

REVISION HISTORY

No	Description	Date



DESIGNED BY: TL
DRAWN BY: TL
APPROVED BY: MO

3/29/2024 12:17:01 PM

FLOOR PLAN

PAGE NUMBER
A2.1



Patrick Vandergriff
35 Cottonwood Canyon Road
La Luz, NM 88337

pvandergriff@codeconsult.org
575-430-8752

Design Data

APPROVED
REVIEWED FOR
CODE COMPLIANCE

City of Flagstaff
Building Safety Program

REVIEWED BY: Brian.Cook
DATE: 04/15/2024

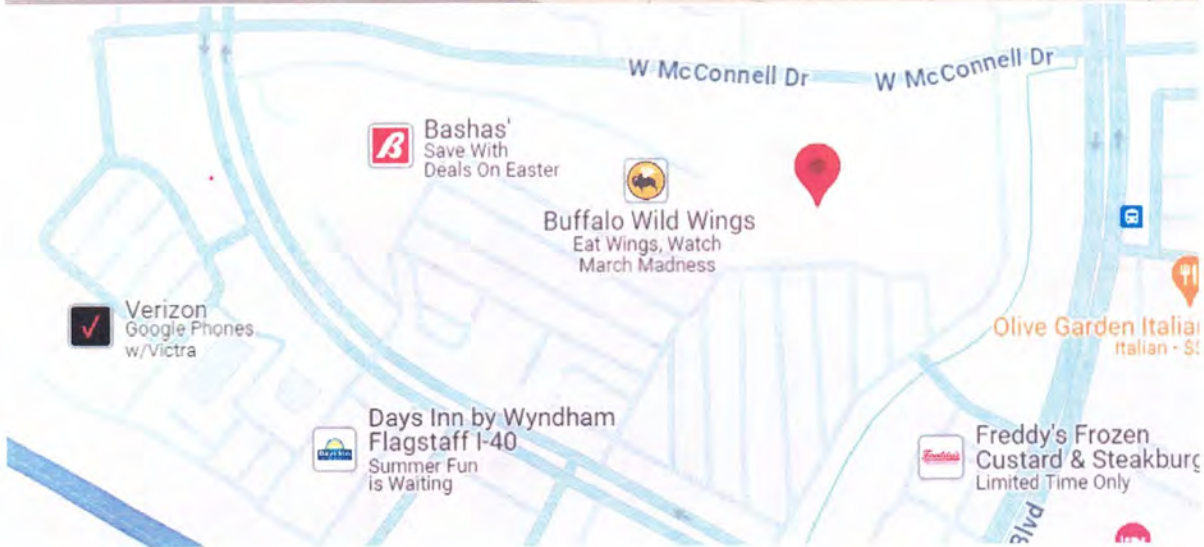
FLG INDUSTRIES, LLC
1846 E. INNOVATION PARK DR #100
ORO VALLEY, AZ 85755

Project Name: Woodlands Village Daycare
Project Address: 2700 S. Woodlands Village Blvd, Suite 390, Flagstaff, Arizona 86001.
Subdivision: Woodlands Village Unit 03
Authority Having Jurisdiction: City of Flagstaff
Owner: SPE-Woodlands Village Shopping Center LLC
APN: 11229012A
Parcel Size: 8.84 acres

Existing Building: The existing building is a single-story storefront shopping mall structure. The original certificate of occupancy was issued in 1990 with B-2 occupancy, construction type 5-B construction. The structure is fire sprinklered. Suite 390 has a rentable square footage of 1,175 square feet. The suite is separated from adjacent tenants with a 1-hour fire rated wall on each side consisting of wood framing and 5/8" drywall. The interior walls are wood framed with gypsum board finishes.

Project Description: Tenant improvement of an existing suite to use as a daycare facility. Use and occupancy classification will change to Group E (mixed use building). No change will occur to the structure or exterior facade. Suite 390 is the former Aspen Denture suite in the image below with visible stucco and masonry finishes. It is located on the interior of the building with adjacent suites on each side. Interior renovations consist only of Level 1 Alteration finishes. The net (occupiable) area inside the suite is 983 square feet. The daycare operation is planned for a maximum of 5 kids and 1-2 employees. Hours of operation are planned 8am to 5pm (less than 24 hours per day).

Question: Requested evaluation in accordance with 2018 Codes adopted by the jurisdiction that would govern this project.



Design Data

Applicable Codes:

2018 International Existing Building Code (IEBC)

Other Codes as referenced within the 2018 IEBC as follows:

- 2018 International Building Code (IBC)
- 2018 International Mechanical Code (IMC)
- 2018 International Plumbing Code (IPC)
- 2018 International Mechanical Code (IMC)
- 2018 International Energy Conservation Code (IECC)
- 2017 NFPA 70 / National Electric Code (NEC)

ICC A117.1-2017 Accessible and Usable Buildings and Facilities
 1997 Uniform Code for the Abatement of Dangerous Buildings
 1997 Uniform Administrative Code
 All references as amended by the local jurisdiction.

IBC Analysis

✓ Reflects compliance.

Occupancy: Mixed Occupancy, Separated Structure
 ✓ E – Day Care Facilities Section 306.2
 ✓ **Note:** Children older than 2 ½ years of age.

Building Construction Type: IBC Table 601
 ✓ V-B
 Primary structural frame 0 Rating
 Bearing walls (exterior) 0 Rating
 Bearing walls (interior) 0 Rating
 Nonbearing walls and partitions (exterior) Table 705.5 0 Rating
 Nonbearing walls and partitions (interior) 0 Rating
 Floor construction and associated secondary structural members 0 Rating
 Roof construction and associated secondary structural members 0 Rating
 Separation of occupancies E and B require 1-hour rated fire barrier per Table 508.4. Existing wall assemblies meet the required 1 hour rating. Other uses in the building may include A3 or M occupancy. The existing 1 hour separation is compliant with these uses.

Building Area:
 Allowable Area: 38,000 sq. ft. Table 506.2 Occupancy E. The remaining building occupancy B allows for 36,000 sq. ft. in each separated section.
 ✓ Actual: 1,175 sq. ft. for separated suite 390 with occupancy E.
Area Increase: N/A
Occupant Load: Daycare 35 net per Table 1004.5
 983/35 = 28 Occupants
 Business plans for 5 kids, 1 employee, and temporary parents.

Number of Exits: Required: 1 Section 1006.2.1
 ✓ Provided: 2
Distance to Exit: Allowed: 250' Table 1017.2 (E)
 ✓ Per Plan: 41'
Separation of Exits: NA
Building Height: Allowable Height: 60'0" IBC Table 504.3 for occupancy B & E

Building Stories: ✓ Actual Height: <60'
 Allowed: 2 Stories IBC Table 504.4 (Occ. E more restrictive than B)
 ✓ Actual Stories: 1 Story

Exterior Openings: Unprotected Openings: IBC Table 705.8
 South (front building) Unlimited Unprotected Openings
 South (back of building) Unlimited Unprotected Openings

Exit Signage & illumination: IBC Section 1008 and 1013
 Required: 0 per exception 1 & 2 Section 1013.1
 ✓ Provided: 1 sign with emergency illumination

Sprinklers: Existing system to remain. No change to the existing fire pump and riser room, or existing fire monitoring system. A manual fire alarm system is not required per exemption 1 section 907.2.3 with an occupant load less than 50.

Accessible Egress: IBC Section 1009
Note: Both exits shall be Accessible Egress.

Fire Extinguishers: One ordinary hazard fire extinguisher 2-A:20-B:C minimum is required. There are no classrooms other than the primary area.

Seismic Criteria:

Date 3/28/2024, 6:55:07 AM
 Design Code Reference Document ASCE7-16
 Risk Category II
 Site Class D - Default (See Section 11.4.3)

Type	Value	Description
SS	0.314	MCER ground motion. (for 0.2 second period)
S1	0.096	MCER ground motion. (for 1.0s period)
SMS	0.486	Site-modified spectral acceleration value
SM1	0.231	Site-modified spectral acceleration value
SDS	0.324	Numeric seismic design value at 0.2 second SA
SD1	0.154	Numeric seismic design value at 1.0 second SA

Type	Value	Description
SDC	C	Seismic design category
Fa	1.549	Site amplification factor at 0.2 second
Fv	2.4	Site amplification factor at 1.0 second
PGA	0.142	MCEG peak ground acceleration

FPGA	1.517	Site amplification factor at PGA
PGAM	0.215	Site modified peak ground acceleration
TL	6	Long-period transition period in seconds
SsRT	0.314	Probabilistic risk-targeted ground motion. (0.2 second)
SsUH	0.344	Factored uniform-hazard (2% probability of exceedance in 50 years) spectral acceleration
SsD	1.5	Factored deterministic acceleration value. (0.2 second)
S1RT	0.096	Probabilistic risk-targeted ground motion. (1.0 second)
S1UH	0.105	Factored uniform-hazard (2% probability of exceedance in 50 years) spectral acceleration.
S1D	0.6	Factored deterministic acceleration value. (1.0 second)
PG _{Ad}	0.5	Factored deterministic acceleration value. (Peak Ground Acceleration)
PG _{AUH}	0.142	Uniform-hazard (2% probability of exceedance in 50 years) Peak Ground Acceleration
CRS	0.913	Mapped value of the risk coefficient at short periods
CR1	0.922	Mapped value of the risk coefficient at a period of 1 s
CV	0.909	Vertical coefficient

Plumbing Fixtures:

IBC Table 2902.1

Water Closets:	Male 1/50		
	Required	1	
	✓ Provided:	1	
	Female 1/50		
	Required	1	
	✓ Provided	1	
Lavatories:	Male 1/50		
	Required	1	
	✓ Provided	1	
	Female 1/50		
	Required	1	
	✓ Provided	1	
Drinking Fountain:	Required	1	
	✓ Provided	1 (Sink Alternative)	
Mop Sink:	Required	1	
	✓ Provided	1	

Note: One of the restrooms was re-configured for ADA compliance. Both restrooms will be labeled as unisex.

2018 IEBC Design Data

**Alteration Level One per Chapter 7
Change of Occupancy per Section 605**

GENERAL:

Alterations include the removal and replacement or the covering of existing materials, elements, equipment, or fixtures using new materials, elements, equipment, or fixtures that serve the same purpose.

Occupancy classification will change from B to E for the suite.

ELECTRICAL:

No change.

MECHANICAL:

No change.

PLUMBING:

Extra sinks that were used by the previous tenant will be removed and capped. No change to restrooms. Grab bars added for ADA compliance in 1 restroom.

ENERGY CONSERVATION:

811.1 Minimum requirements. Level 1 alterations to existing buildings or structures are permitted without requiring the entire building or structure to comply with the energy requirements of the International Energy Conservation Code or International Residential Code. The alterations shall conform to the energy requirements of the International Energy Conservation Code or International Residential Code as they relate to new construction only.

NOTE: No special requirements for compliance with the energy code are noted within this project scope.

The above information concludes my report. Let me know if you need any further assistance.

Respectfully Submitted,

Pat Vandergriff

SHEET LIST

ALL SHEETS
DATE: 11/27/2024

VICINITY MAP



BUILDING DATA

PROJECT NAME: WOODLANDS VILLAGE DAYCARE
PROJECT ADDRESS: 202 S. WOODLANDS VILLAGE BLVD, SUITE 39A,
 WOODLANDS, MO 64090
SUBDIVISION: WOODLANDS VILLAGE UNIT 03
AUTHORITY HAVING JURISDICTION: CITY OF FLAGSTAFF
OWNER: SPE-WOODLANDS VILLAGE SHOPPING CENTER LLC
DESIGNER: ERIC S. HALLER
PANEL SIZE: 8x14 FEET
BUILDING SIZE: 1867 SF
SITE SIZE: 1175 SF

USE AND OCCUPANCY ANALYSIS

PROJECT DESCRIPTION: TENANT IMPROVEMENT OF AN EXISTING
 STRUCTURE TO USE AS DAYCARE. THE USE CHANGE TO DAYCARE WILL OCCUR
 TO THE STRUCTURE OR EXTERIOR FACADE. INTERIOR REMOVALS
 CONSIST ON 1 LEVEL. ALL INTERIOR FINISHES, THE NET (OCCUPYABLE)
 AREA INSIDE THE SUITE IS 893 SQUARE FEET.

OCCUPANCY: E - DAY CARE; FACILITIES, MIXED USE BUILDING

CONSTRUCTION TYPE: V-B

OCCUPANT LOAD: 893 SF / 35 = 25 OCCUPANTS (TABLE 1004.5)

NUMBER OF EXITS: REQUIRED: 1 SECTION 1008.2.1

DISTANCE TO EXIT: ALLOWED: 250' TABLE 1017.2 (E)

SEPARATION OF EXITS: 14'

BUILDING HEIGHT: ALLOWABLE HEIGHT 80' IBC TABLE 504.3

OCCUPANCY S & E ACTUAL HEIGHT: 40'

EXTERIOR OPENINGS: UNPROTECTED OPENINGS IBC TABLE 703.8
 SOUTH (PROOF BUILDING); UNLIMITED UNPROTECTED OPENINGS
 SOUTH (BACK OF BUILDING); UNLIMITED UNPROTECTED OPENINGS
EXIT SIGNAGE & ILLUMINATION: IBC SECTION 1008 AND 1013
 NO EXIT SIGN IS REQUIRED. ITS PROVIDED WITH EMERGENCY
 ILLUMINATION.

SPRINKLERS: EXISTING SYSTEM TO REMAIN, NO CHANGE TO THE
 SYSTEM. EXISTING PRE-PUMP AND RISER ROOM, OR EXISTING FIRE MONITORING
 SYSTEM.

ACCESSIBLE EGRESS: IBC SECTION 1009
 BOTH EXITS SHALL BE ACCESSIBLE EGRESS.

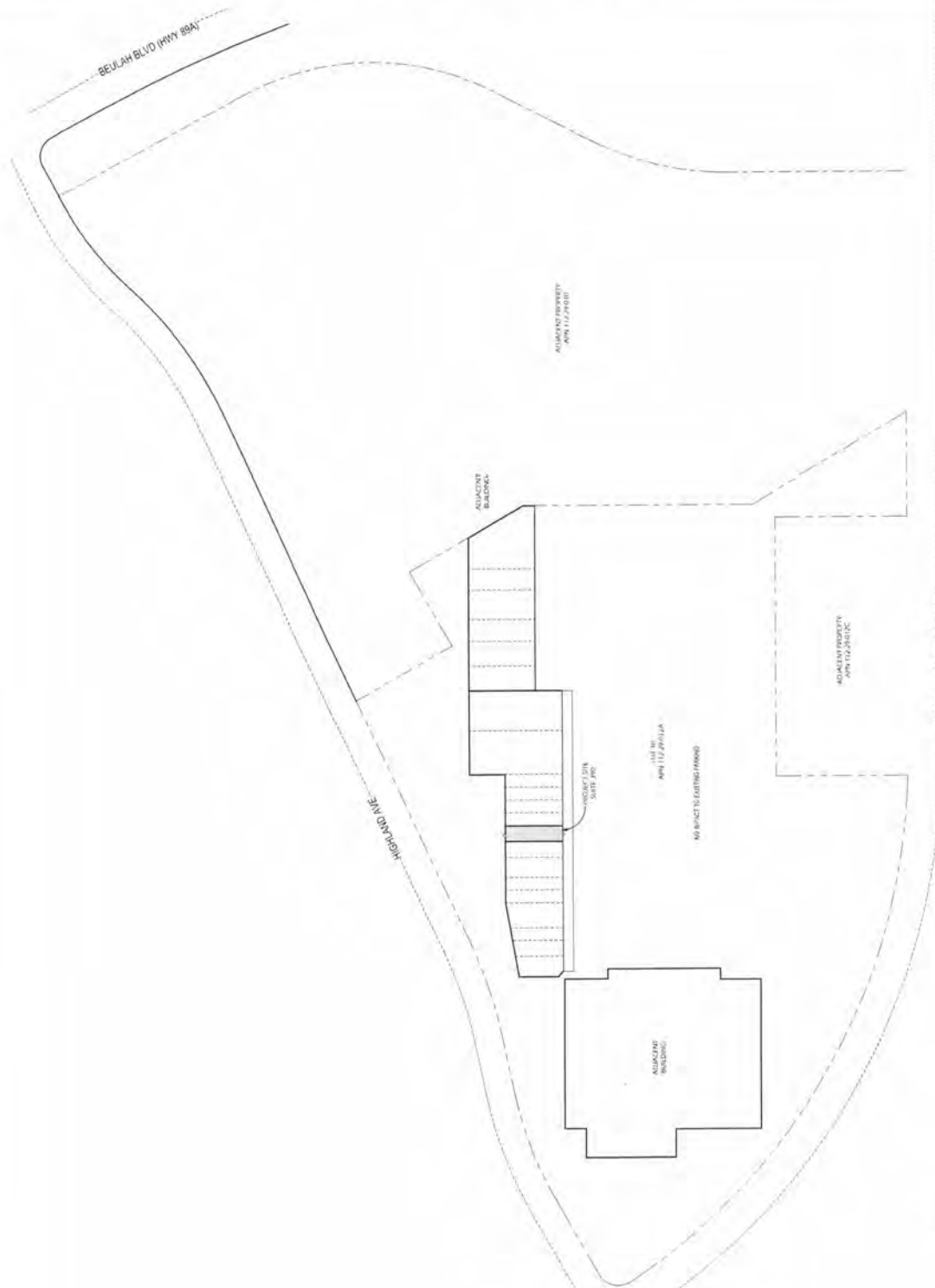
FIRE EXTINGUISHERS: ONE ORDINARY HAZARD PRE-FIRE EXTINGUISHER, 2-
 A, 2-B-C; MINIMUM IS REQUIRED. THERE ARE NO CLASSROOMS OTHER
 THAN THE PRINCIPAL AREA.

PLUMBING FIXTURES: IBC TABLE 2907.1
 WATER CLOSETS: MALE 150' REQUIRED 1 PROVIDED 1
 LAVATORIES: MALE 150' REQUIRED 1 PROVIDED 1
 SINKS: MALE 150' REQUIRED 1 PROVIDED 1
 DRINKING FOUNTAIN: FEMALE 150' REQUIRED 1 PROVIDED 1
 WET BAR: REQUIRED 1 PROVIDED 1

NOTE: ONE OF THE RESTROOMS WAS RE-CONFIGURED FOR ADA
 COMPLIANCE. BOTH RESTROOMS WILL BE LABELED AS UNSEX.

BUILDING CODES

APPLICABLE CODES:
 2018 INTERNATIONAL EXISTING BUILDING CODE (IEBC)
 OTHER CODES AS REFERENCED WITHIN THE 2018 IEBC AS FOLLOWS:
 2018 INTERNATIONAL MECHANICAL CODE (IMC)
 2018 INTERNATIONAL PLUMBING CODE (IPC)
 2018 INTERNATIONAL FIRE CODE (IFC)
 2018 INTERNATIONAL ENERGY CONSERVATION CODE (IECC)
 2017 NFPA 701 NATIONAL ELECTRIC CODE (NEC)
 ICC A117.1-2017 ACCESSIBLE AND USABLE BUILDINGS AND FACILITIES
 FOR STATE AND LOCAL GOVERNMENTS AND CERTAIN PRIVATE BUILDINGS
 1907 AMERICAN ADMINISTRATIVE CODE
 ALL REFERENCES AS AMENDED BY THE LOCAL JURISDICTION.



SITE PLAN
1" = 80'



To: Guillermo Cortes, Ardurra - SWI

From: Stephanie Santana, Sr. Lead Transportation Engineer SS

Date: April 15, 2024

RE: Review of the Nirvana Traffic Statement, sealed April 4, 2024

CC: Reid Miller, Sr. Transportation Engineer
Wesley Welch, Planner
Jeffrey Bauman, Traffic Engineer

The City of Flagstaff Transportation Engineering Section has reviewed the Nirvana Traffic Statement sealed April 4, 2024. The Traffic Statement is approved with the following condition.

The Nirvana Traffic Statement concludes that the site warrants a right turn lane based on City of Flagstaff Engineering Standards. The summary includes a bulleted list of recommendations as to why the right turn lane should not be constructed. Transportation Engineering pulled crash data to check if there is an existing issue with rear-end crashes (commonly known to be as a result of needing a right turn lane) and the results concluded that there is not an existing issue. If, when the development opens, there is an increase in rear-end or right turn crashes into this site, a right turn lane will need to be constructed at no cost to the City.

It is important to note that the new use of a marijuana dispensary is generating double the daily and PM peak hour trips as compared to the previous use of a high-turnover (sit-down) restaurant.

From: [Michelle J. McNulty](#)
To: [Kevin Fincel](#); [Christina Rubalcava](#); [Alaxandra Pucciarelli](#); [Tiffany Antol](#)
Subject: RE: Use establishment question
Date: Tuesday, April 16, 2024 10:41:00 AM

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

From: Kevin Fincel <KFincel@flagstaffaz.gov>

Sent: Tuesday, April 16, 2024 10:26 AM

To: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>; Christina Rubalcava <CRubalcava@flagstaffaz.gov>; Alexandra Pucciarelli <APucciarelli@flagstaffaz.gov>; Tiffany Antol <TAntol@flagstaffaz.gov>

Subject: RE: Use establishment question

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Thanks,

Kevin

Kevin R. Fincel
Deputy City Attorney
City of Flagstaff
211 West Aspen Avenue
Flagstaff, AZ 86001
(928) 213-2045

kfincel@flagstaffaz.gov

From: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>
Sent: Tuesday, April 16, 2024 9:50 AM
To: Kevin Fincel <KFincel@flagstaffaz.gov>; Christina Rubalcava <CRubalcava@flagstaffaz.gov>; Alaxandra Pucciarelli <APucciarelli@flagstaffaz.gov>; Tiffany Antol <TAntol@flagstaffaz.gov>
Subject: FW: Use establishment question

[REDACTED]

From: Richard Stanionis <rstanionis@flagstaffaz.gov>
Sent: Tuesday, April 16, 2024 9:07 AM
To: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>
Subject: RE: Use establishment question

Hi Michelle,

That would be correct; from the perspective of the IBC chapter 3, a building's occupancy is established when a building is designed and built for a specific occupant and is effectively set in stone when the C of O is issued for the building. The only way to change a building's occupancy type would be if there was a building permit for a specific occupant that is different than the original occupant and new C of O is issued.

Which change of use problem are we talking about? Grand Canyon Spirits? Or the guy that came in last week to talk about a day care type E occupancy going into an HC zoned previously business type B occupancy?

Rick Stanionis
Building Inspeccion Manager, City of Flagstaff
rstanionis@flagstaffaz.gov
office: 928-213-2628
cell: 928-853-6802

From: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>
Sent: Monday, April 15, 2024 3:24 PM
To: Amy Tressler <amy.tressler@flagstaffaz.gov>; Richard Stanionis <rstanionis@flagstaffaz.gov>
Subject: Use establishment question

Hi!

From a building Safety standpoint, at what point do you consider a use established? Is it when building permit application is complete or when CO issued? Or some other point?

Happy to talk through why I am asking if not a straightforward answer. I know there are often

nuances to these things.

Thanks,

Michelle

Michelle McNulty, AICP, CPM

Planning Director

City of Flagstaff

211 W. Aspen Avenue

Flagstaff, AZ 86001

michelle.mcnulty@flagstaffaz.gov

Office (928) 213-2607

Cell (928) 707-2789



City of Flagstaff
Community Development
Concept Plan Review Comments

Project Name: Nirvana Center - Flagstaff
Project No.: PZ-23-00200-01
Project Address: 2725 S Woodlands Village Boulevard

Date: April 19, 2024

Application Type: Concept Plan
Review Number: 3

Project Manager: Wesley Welch
E-mail: Wesley.Welch@FlagstaffAZ.gov
Phone: 928-213-2608

Status of Review: Complete

The following conditions and comments must be addressed in the next step in the development process, Building Permit review. Please include with your submittal a copy of this letter along with your responses to each comment. Standard building permit submittal requirements, applications, and a list of adopted codes and amendments can be obtained from the City of Flagstaff website: <https://www.flagstaff.az.gov/494/Building-Safety>
Please note that the concept plan shall expire one year from the above date.

PROJECT SUMMARY

This application proposes a change of use for the existing building on the development site located at 2725 S Woodlands Village Boulevard (APN: 112-29-002B). The previous use of a restaurant will be changed to a marijuana dispensary.

CONDITIONS/COMMENTS:

Current Planning:

Third Review, **Approved**, 4/19/24
Wesley Welch, Planner

General Comments:

1. Separation distances are valid for the length of this concept plan, which will expire one year from the above date.
2. Section 10-40.60.220(F) of the Flagstaff Zoning Code shall be interpreted to require minimum separations from sites containing existing uses to mean land uses that have received Certificate of Occupancy and are currently in operation. The timing of determination of minimum separations shall be consistent with State licensing for similar facilities which occurs at the time of application. The applicant submitted their affidavit on February 29, 2024.
3. Any change to the exterior facade of the building will be reviewed against the Architectural Design Standards (10-50.20).
4. Applicant will need to submit an Outdoor Lighting Permit and meet Outdoor Lighting Standards (10-50.70).



City of Flagstaff
Community Development
Concept Plan Review Comments

5. Any changes to signage will need to be handled with a Permanent Sign Permit and will need to meet the Sign Standards (10-50.100).

Traffic:

Third Review, **Approved with Conditions**, 4/19/24

Reid Miller, Traffic Engineering Project Manager

Conditions of Approval:

1. The Nirvana Traffic Statement concludes that the site warrants a right turn lane based on City of Flagstaff Engineering Standards. The summary includes a bulleted list of recommendations as to why the right turn lane should not be constructed. Transportation Engineering pulled crash data to check if there is an existing issue with rear-end crashes (commonly known to be as a result of needing a right turn lane) and the results concluded that there is not an existing issue. If, when the development opens, there is an increase in rear-end or right turn crashes into this site, a right turn lane will need to be constructed at no cost to the City.

Engineering:

First Review, **Approved with Conditions**, 3/7/24

James Boyer, Development Engineering Project Manager

Conditions of Approval:

1. A Public Improvements or Right of Way Permit will be required for any work done within the Public Right of Way.
2. A Traffic Control Plan will need to be submitted and approved before any construction related disruptions to vehicular, pedestrian, or bicycle traffic occur.

Stormwater:

First Review, **Approved**, 2/14/24

Douglas Slover, Project Manager

General Comments:

1. Stormwater requirements waived for 350 square foot increase in impervious area for proposed sidewalk.
2. Sidewalk is permitted within existing drainage easement.

Fire Prevention:

First Review, **Approved with Conditions**, 2/15/24

Chris Jack, Fire Inspector

Conditions of Approval:

1. Deferred submittal required for the modification of fire alarm system as mentioned in General Note #36.

Building & Safety:

First Review, **Approved**, 2/6/24

Brian Cook, Building Plans Examiner

No Comments



City of Flagstaff
Community Development
Concept Plan Review Comments

Water Services:

First Review, **Approved**, 2/22/24

Jackson Salazar, Water Services Plan Reviewer

No Comments

Heritage Preservation/Community Design:

First Review, **Approved**, 2/15/24

Mark Reavis, Neighborhood Planner – Heritage Preservation Officer

No Comments

Parks:

First Review, **Approved**, 2/14/24

Amy Hagin, Parks Manager

No Comments

Public Works:

First Review, **Approved**, 2/26/24

Samuel Beckett, Streets Section Director

No Comments

DUKES LAW, PLLC

5527 N. 25th Street
Phoenix, AZ 85016
602.320.8866

VIA EMAIL: TAntol@flagstaffaz.gov

Board of Adjustment
ATTN: Tiffany Antol, Zoning Code Manager
CITY OF FLAGSTAFF
211 W. Aspen Avenue, 1st Floor
Flagstaff, AZ 86001

July 30, 2024

RE: Request for Confirmation of Mandatory Stay of All Proceedings due to Appeal of Zoning Code Interpretation dated April 17, 2024 Regarding Marijuana Establishment Minimum Separations (the “2024 Interpretation Appeal”)

Dear Ms. Antol and Board of Adjustment Members:

On behalf of my client, FLG Industries, LLC, an Arizona limited liability company, dba Woodlands Village Day Care (the “**Day Care**” or the “**Appellant**”), we respectfully request that the City confirm that all proceedings related to the 2024 Interpretation Appeal and the proposed dispensary at 2725 S. Woodlands Village Boulevard (the “**Property**”) are stayed in compliance with A.R.S. Section 9-462.06.E and Flagstaff Zoning Code Section 10-20.80.020.C.4, including, but not limited to, any pending building permit or certificate of occupancy applications for the Property.

The Appellant filed an appeal from the decision of the zoning administrator to the board of adjustment in accordance with A.R.S. Section 9-462.06. Once an appeal is filed to the board of adjustment, the appeal “stays all proceedings in the matter appealed from, unless the zoning administrator certifies to the board that, in the zoning administrator’s opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property.” Emphasis added. See A.R.S. Section 9-462.06.E. The City of Flagstaff Zoning Code Section 10-20.80.020.C.4 also provides for an automatic stay process for appeals filed to the Board of Adjustment, consistent with the state statute:

10-20.80.020 Appeals of Interpretations by the Zoning Code Administrator and Director

...

C. Filing of Appeal.

...

4. *Except as provided below, the filing of an appeal shall stay any proceedings in furtherance of the contested action. The Zoning Code Administrator may certify in writing to the Board of Adjustment that, because of facts stated in the certificate, a stay imposes an imminent peril to life or property. The Board of Adjustment shall*

then review such appeal application and may override the stay of further proceedings. Proceedings shall not be stayed if the appeal requests relief which has previously been denied by the Board of Adjustment except in compliance with a court order.

Emphasis added. Thus, the only exception to this mandatory stay is when the stay would cause imminent peril to life or property. No such exception is present here.

In this matter, the City of Flagstaff Zoning Administrator issued an interpretation dated April 17, 2024 (the “Interpretation”) finding that “land uses not yet established shall not impact the development of a marijuana establishment” and that “minimum separation requirements are determined at the time of concept plan application submittal for the Marijuana Establishment.” As part of the context for the Interpretation, the Zoning Administrator provided a summary of the context plan application submitted for the proposed marijuana establishment (dispensary) at the Property and the building permit issued to the Appellant Day Care. Based on these facts and findings, the Zoning Administrator interpreted the provision in Section 10-40.60.220(F) of the Zoning Code, which requires minimum separations from sites containing existing uses, to mean land uses that have received Certificate of Occupancy and are currently in operation. Furthermore, the Zoning Administrator determined that the “timing of minimum separations shall be consistent with State licensing for similar facilities which occurs at the time of application...”

On April 29, 2024, the Day Care timely filed its 2024 Interpretation Appeal, activating the mandatory stay of all proceedings in this matter pursuant to A.R.S. Section 9-462.06.E and Flagstaff Zoning Code Section 10-20.80.020.C.4. Based on the context and determination in the Interpretation, any pending site plan or building permit applications for the proposed dispensary at the Property must be stayed during the pendency of this appeal. The dispensary applications relate to the matter at issue as they pertain directly to a future development on the Property which triggered the Interpretation and 2024 Interpretation Appeal. Moreover, in the event the Board agrees with the Appellant Day Care and orders that the Property must comply with the minimum separation standards applicable to day cares, the dispensary use will be prohibited on the Property.

Given the fact that the dispensary is attempting to move forward with its development plans of retrofitting the building on the Property, despite clear direction in our state statutes and the Flagstaff City Code that “all proceedings” must be stayed, the Appellant Day Care seeks confirmation from the City that any future actions, including but not limited to, processing the applications, conducting reviews, or making decisions relating to the dispensary applications, are stayed.

Given our upcoming August 21, 2024 hearing before the board of adjustment, we respectfully request a written decision from the City confirming its position on the automatic stay so that the Appellant may preserve all rights and remedies under law.

BOARD OF ADJUSTMENT
Tiffany Antol, Zoning Code Manager
City of Flagstaff
July 30, 2024
Page 3 of 3

By Friday, August 2, 2024, please provide confirmation that all proceedings in this matter will be stayed during the pendency of the 2024 Interpretation Appeal to the Board of Adjustment, including any pending applications for the Property. Thank you in advance.

Very truly yours,

/s/ Heather N. Dukes

Heather N. Dukes, Esq.
602.320.8866 | hdukes@dukeslawaz.com

City of Flagstaff
Building Safety

Certificate of Occupancy

This certificate, issued pursuant to the requirements of the City of Flagstaff Building Codes, certifies that at the time of issuance this structure was in compliance with the various ordinances of the City of Flagstaff regulating building construction or use, for the following:

Permit Number: BP-24-00652

Description: Commercial Building
Repair/Remodel/TI

Building Address: 2700 S WOODLANDS VILLAGE BLVD

Occupancy Group: E Educational

Building Owner Information:
SPE-WOODLANDS VILLAGE SHOPPING CENTER LLC
5670 WILSHIRE BLVD., STE 1250
LOS ANGELES CA 90036

Max Occupant Load: 12

Use Zone: HC Highway Commercial

Date: 05/14/2024

Construction Type: VB

By _____

Automatic Sprinkler System:
Code Edition with Amendments:
2018 I-Codes
2017 NEC
2018 IECC
ICC A117.1-2017

Amy Tressler - Building Official



City of Flagstaff
 211 W Aspen Ave
 Flagstaff, AZ 86001
 Phone: 928-213-2250

CITY OF FLAGSTAFF BUSINESS LICENSE CERTIFICATE

www.flagstaff.az.gov

FLG Daycare
 PO BOX 14483
 Scottsdale, AZ 85267

Business License No. BL-04389
 Expiration Date 05/31/2025

IMPORTANT INFORMATION:

- Please verify all information. If any changes occur, please contact the Business License Division at (928) 213-2250
- Remember to renew your Business License within one month of the Expiration Date, even if you do not receive a Renewal Notice. If the last day of the month (Penalty Date) falls on a holiday, weekend, or city closure day, make sure payments at the City Hall are received by 4:00pm on the last business day prior to this to avoid late penalties. Payments postmarked or paid on-line after the Penalty Date will also incur late penalties
- New location? Please call to have the location on your Business License updated - New License fee applies.
- Please display the Certificate below in public view.

Thank you for doing business in the City of Flagstaff

FOLD OR DETACH HERE FOR DISPLAY

BUSINESS LICENSE CERTIFICATE

This certificate is to be displayed at your place of business. It is issued without verification that the holder is subject to or exempt from licensing in the State of Arizona. This certificate does not constitute a permit to operate a business in violation of any law or ordinance.

Business Name: FLG Industries LLC

DBA: FLG Daycare

Business Location: 2700 S WOODLANDS
 VILLAGE BLVD Ste 390
 Flagstaff AZ 86001



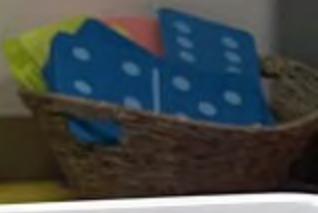
City of Flagstaff
 211 W Aspen Ave
 Flagstaff, AZ 86001
 Phone: 928-213-2250
www.flagstaff.az.gov

Business License Number: BL-04389

Expiration Date: 05/31/2025

POST IN A CONSPICUOUS PLACE - NOT TRANSFERABLE

Customer Service Manager, City of Flagstaff





The Art of Learning
Encourages:
• Color Recognition
• Fine Motor Skills
• Creativity

Parent's Choice
10 FL. OZ. (300 ml)





NUM	
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10





NUMBERS

1 One	6 Six
2 Two	7 Seven
3 Three	8 Eight
4 Four	9 Nine
5 Five	10 Ten

CLASSROOM RULES

PREPARE TO LEARN
BE POSITIVE
ALWAYS DO YOUR BEST
BE RESPECTFUL
ASK QUESTIONS
BE HONEST
WORK HARD & HAVE FUN
ALWAYS BE KIND

ALPHABET

A	B	C	D	E
F	G	H	I	J
K	L	M	N	O
P	Q	R	S	T
U	V	W	X	Y
Z				

PLAY







SITE DISTANCE MAP



NIRVANA CENTER - FLAGSTAFF
 NIRVANA CENTER
 DISPENSARIES
 2725 S WOODLANDS VILLAGE BLVD
 FLAGSTAFF, ARIZONA

VICINITY CLEARANCE

PROJECT NUMBER
 124006

C1.1
 2 of 7



City of Flagstaff

Flagstaff Zoning Code Interpretation Determination

Issued By: Michelle McNulty
Planning Director

Subject: Marijuana Establishment minimum separations

Date Issued: April 17, 2024

Summary of Zoning Code Interpretation Determination:

This interpretation is intended to address when the following minimum separations are addressed in the development review process.

A Marijuana Establishment shall meet the following minimum separations, measured in a straight line from the boundary of the lot or parcel containing the use to the property boundary of the lot or parcel containing any of the existing uses listed below:

1. Two thousand feet from another Marijuana Establishment;
 2. Five hundred feet from a residential substance abuse treatment facility or other residential drug or alcohol rehabilitation facility licensed by the State of Arizona;
 3. Five hundred feet from a community college, university, or from any public, private, parochial, charter, dramatic, dancing, music learning center, or other similar school or educational facility that caters to children;
 4. Five hundred feet from a daycare home or daycare center;
 5. Five hundred feet from a public library or public park; and
 6. Five hundred feet from a facility devoted to family recreation or entertainment.
-

A. Reason for the Interpretation Determination:

To identify that existing land uses do not include those currently in review for either concept, site plan, or building permit. Land uses not yet established shall not impact the development of a Marijuana Establishment. Minimum separation requirements are determined at the time of concept plan application submittal for the Marijuana Establishment as required in Section 10-40.60.220(B)(6).

B. Authority to the Administrator Zoning Code.

The Planning Director is the Zoning Code Administrator/Zoning Administrator for the City of Flagstaff in accordance with the authority granted by Section 10-20.20.090. of the Flagstaff Zoning Code (the "Zoning Code"), and Arizona Revised Statutes §9-462, et al, is authorized to interpret, administer, and enforce Title 10, Flagstaff Zoning Code, of the Flagstaff City Code.

C. Context for the Request for Interpretation Determination:

A concept plan for a marijuana establishment has been submitted and reviewed. An affidavit signed and notarized by the applicant attesting that the lot or parcel proposed to contain the marijuana establishment meets the separation requirements from the nearest lot or parcel containing any of the existing uses listed in Section 10-40.60.220(F). After the submittal of the concept plan, a building permit was submitted for a new daycare and family entertainment center within five hundred feet.

D. Relevant Definitions, and Reference Material:

1. Section 10-10.30.030(A) states that no building, structure, or land shall be used or occupied, and no building, structure, or land shall be constructed, replaced, occupied, enlarged, or altered, nor shall any applicable permit be issued unless in conformity with all the provisions of this Zoning Code for the zone in which it is located and other applicable regulations.

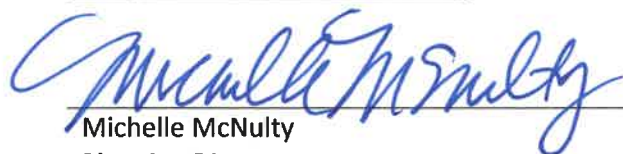
E. Analysis and Methodology:

- a. Since the proposed land use (daycare and family entertainment center) had not yet received a Certificate of Occupancy nor is in operation it is not considered an existing land use as referenced in Section 10-40.60.220(F). The proposed land use (daycare and family entertainment center) will be considered an existing land use once a Certificate of Occupancy has been issued by the City of Flagstaff and the business is in operation through visible inspection.
- b. The land uses that a marijuana establishment is required to meet minimum separations from shall be in operation before the date the marijuana establishment submitted the initial concept application and the submittal of the required affidavit. The affidavit of separation shall be in effect for the term of the concept plan per Section 10-20.30.050.

F. Interpretation Determination

- a. Section 10-40.60.220(F) of the Flagstaff Zoning Code shall be interpreted to require minimum separations from sites containing existing uses to mean land uses that have received Certificate of Occupancy and are currently in operation. The timing of determination of minimum separations shall be consistent with State licensing for similar facilities which occurs at the time of application as described above.

Interpretation Determination By:


Michelle McNulty
Planning Director


Date:

Appeal of Interpretation Determination

Pursuant to Section 10-20.80.020 of the Zoning Code, an appeal of a decision, determination or interpretation of the Zoning Code Administrator/Zoning Administrator shall be filed within 10 calendar days of the date of the decision, determination or interpretation. Appeals shall be filed in accordance with Section 10-20.80.020 of the Zoning Code.

**The deadline to File Appeal of this interpretation determination is:
5:00 p.m. on April 29, 2024**

KATHLEEN A. SHAFFER
ATTORNEY AT LAW

O. 602.252.1900
D. 480.739.2749

EMAIL
kshaffer@maypotenza.com



May Potenza
Baran & Gillespie

CENTRAL ARTS PLAZA
1850 NORTH CENTRAL AVE., 16TH FLOOR
PHOENIX, AZ 85004

August 9, 2024

VIA E-Mail Only

City of Flagstaff Board of Adjustment
c/o Tiffany Antol, Zoning Code Manager
211 W. Aspen Avenue, 1st Floor
Flagstaff, AZ 86001

Re: Support for Zoning Code Interpretation Determination issued on April 17, 2024

Dear Board Members:

Nirvana Center, through its undersigned counsel, provides the following statement of support for the Zoning Code Interpretation Determination issued on April 17, 2024 (the "Determination")

The Determination interpreted Section 10-40.60.220(F) of the Flagstaff Zoning Code requiring minimum separations from "sites containing any of the existing uses" to 1) refer to "land uses that have received Certificate of Occupancy and are currently in operation;" and 2) "[t]he timing of the determination of the minimum separations shall be consistent with State licensing for similar facilities which occurs at the time of the application"

Appellant, FLG Industries, LLC appealed this determination. As explained below, FLG's appeal must be denied where Appellant's grounds for appeal are not based on any findings or conclusions in the Determination.

A. Brief Factual History

1. In early 2024, Nirvana Center submitted a site concept plan attesting that the lot or parcel proposed to contain the marijuana establishment meets the separation requirements from existing uses listed in Section 10-40.60.220(F).

2. On April 1, 2024, Appellant, an affiliate entity of Noble Herb Dispensary, submitted a rushed building permit application to convert an existing dental office to a daycare to prevent its competitor from building at the property.

3. The Planning Director considered when Appellant's "daycare" would be considered an "existing use" within the meaning of Section 10-40.60.220(F).

4. The Planning Director also considered whether the determination of the distances would be made at the time of the concept application, which remains in effect for the term of the concept plan in accordance with Section 10-20.30.050.

5. On April 17, 2024, the Planning Director issued the Determination finding that 1) a use will be considered an "existing use" once the Certificate of Occupancy has been issued and the business is operating; and 2) the timing of the separation determination occurs at the time of the application.

6. On April 29, 2024, Appellant appealed the Determination.

B. Authority

The Zoning Code Administrator is empowered to "interpret, administer, and enforce the provisions of this Zoning Code." Section 10-20.20.090.

On a timely appeal, the Board "shall reverse or modify the order, decision, determination or interpretation under appeal only upon finding an error in the application of these regulations on the part of the administrative officer rendering the order, decision, determination or interpretation." Section 10-20.80.020(G).

C. The Appeal must be denied as untimely.

Section 10-20-80.20(C)(2) provides that a notice of appeal must be filed within 10 calendar days of the date of the decision. In this case, Appellant's notice of appeal was due April 27, 2024, but was not submitted until April 29, 2024. Section 10-20-80.20(C)(2) provides that the deadline cannot be extended except upon a determination that "the person filing the appeal received no actual or constructive form of notice of the order, requirement, decision or determination being appealed." Absent proof that an extension was granted on the basis that Appellant received no actual or constructive notice of the Determination, this appeal must be denied as untimely.

D. The Appeal should be denied as groundless.

Rather than attack the actual basis for the Determination, Appellant appeals findings that are not part of the Determination, and consequently are not proper grounds for appeal.

Appellant's challenges relate to 1) vested rights; 2) Appellant's true identity as a marijuana competitor; and 3) AZDHS standards when considering an application for approval to operate.

1. The Appeal includes strawman arguments about vested rights that were not the basis for the Determination (*Grounds 1-3, 4, and 6*).

Appellant argues that the Determination treats the “vesting of certain uses differently.” *See* Appeal, at 1 (emphasis added). This argument is patently defective in that it grossly misunderstands the concept of “vesting.” In short, a right vests; the use itself does not.

It is black-letter law that “a property right ‘vests’ when every event has occurred which needs to occur to make the implementation of the right a certainty. A vested property right is a right which is ‘actually assertable as a legal cause of action or defense or is so substantially relied upon that retroactive divestiture would be manifestly unjust.’” *Aranda v. Indus. Comm’n of Arizona*, 198 Ariz. 467, 471, ¶ 18, 11 P.3d 1006, 1010 (2000) (internal quotations omitted).

The Determination includes no analysis, finding, or conclusion regarding vesting of rights. Instead, the Planning Director interpreted the term “existing uses” in Section 10-40.60.220(F) and found that a use is not an existing use until a certificate of occupancy is issued and operations have commenced for that use. The Determination follows well-established legal principles that a certificate of occupancy must be issued for the use and the use be in operation for it to be considered an “existing use.” *See, e.g. Kubby v. Hammond*, 68 Ariz. 17 (1948) (analyzed in context of non-conforming use).

The Determination makes no finding or conclusion about the vesting of rights, whether the Appellant's “daycare” or the “daycare's” competitor marijuana establishment. It confirms that the daycare is not an existing use for purposes of Section 10-40.60.220(F) until it receives a certification of occupancy and operates as such. Appellant's first three stated grounds for appeal are all based entirely on the vesting of rights and must be rejected. Appellant's fourth and sixth grounds for appeal are also erroneously tied to a “vesting” decision that was never part of the Determination, but those stated grounds for appeal are addressed further below.

2. Public policy supports denial of the Appeal (*Grounds 4-5*).

As an alternative ground for appeal, Appellant argues that it would be discriminatory and an abuse of discretion to issue an interpretation based on the identity of the user. There is no reasoning in the Determination relating to “concerns about the identity of the Day Care.”

The Board of Adjustment, however, should consider the identity of the Day Care when considering Appellants' public policy arguments about anti-competitive behavior. Contrary to Appellant's feigned concerns that the interpretation would allow a cannabis applicant to block off territory, it is Appellant who seeks to block off this territory from a cannabis competitor.

Appellant's manager is Ryan Hermansky, founder of Noble Herb dispensary in Flagstaff. Apparently, Nirvana Center's business presence in the community poses such a great threat to Noble Herb that it decided to manufacture a daycare to prevent the competition. Only after Nirvana Center submitted its concept plan, Appellant rushed to interfere with Nirvana Center's building plans by seeking to change the use of an existing dental office to a proposed daycare.

The Board should not condone the stifling of competition by permitting cannabis competitors to manufacture sham daycares after a competitor has already met the municipality's separation requirements. Appellant's fourth and fifth grounds for appeal should be denied where the sham "daycare's" true identity was not a basis for the Determination and where the real anti-competitive concern is the "sham" uses that will inevitably occur if competitors can simply take note of a concept plan and then manufacture a "daycare" to keep out competition.

3. The Determination conflates State licensing requirements with zoning requirements. (*Ground 6*).

Finally, Appellant raised arguments regarding State licensing requirements that are not the subject of the Determination. To be sure, the failure to comply with State licensing requirements would impact both the marijuana establishment's and Appellant's sham daycare's eventual operation, as both facilities would require licensure by the Arizona Department of Health Services (AZDHS) in order to operate. But neither Nirvana Center's ATO application to operate a marijuana establishment nor Appellant's application for licensure of a child care facility are before the Board.

Any arguments raised by Appellant regarding licensure are irrelevant to the Determination and premature where, as Appellant acknowledges, approval to operate will not occur until after the marijuana establishment obtains its certificate of occupancy and do those requirement do not relate to the "daycare." Appellant cannot predict the future of any eventual application, nor should the Board. Whether AZDHS will approve Nirvana Center's marijuana establishment (or Noble Herb's daycare, for that matter) is not an issue before the Board.

Appellant's sixth ground for appeal must be denied where it is entirely detached from the Determination that was made.

City of Flagstaff Board of Adjustment
August 9, 2024
Page 5 of 5

There is no error in the Determination. Appellant's appeal is disconnected from the reality of what the Determination considered and concluded. The Determination must be upheld where Appellant offers no legitimate grounds for appeal. Nirvana Center intends to participate, through its undersigned counsel, at the Board of Adjustment hearing on August 21, 2024, and can address any questions the Board may have regarding these issues.

Sincerely,

MAY POTENZA BARAN &
GILLESPIE, PC



Kathleen A. Shaffer, Esq.
Jesse R. Callahan, Esq.

KAS/II

Cc: Giovanni Dolleton, Esq. (giod@nirvanacenter.com)

GAMMAGE & BURNHAM, PLC

ATTORNEYS AT LAW

40 NORTH CENTRAL AVENUE

20TH FLOOR

PHOENIX, ARIZONA 85004

TELEPHONE (602) 256-0566
FACSIMILE (602) 256-4475

WRITER'S DIRECT LINE
(602) 256-4418

August 14, 2024

Via email: Tantol@flagstaffaz.gov

Board of Adjustment

Attn: Tiffany Antol, Zoning Code Manager

City of Flagstaff

211 W. Aspen Avenue

Flagstaff, AZ 86001

RE: Appeal of 2024 Zoning Code Interpretation pertaining to Separation Requirements

Dear Members of the Board of Adjustment,

This firm represents RCH Wellness, the operator of a medical marijuana dispensary located within the City of Flagstaff (the "City"). On behalf of RCH Wellness, we are submitting this letter in support of the appeal of the City's 2024 Zoning Code Interpretation (the "Interpretation"), which was timely filed under Section 10-10.30.060 of the City's Zoning Code. Based on the materials presented below, the Interpretation contradicts the Zoning Code and departs from the City's established precedents.

The Interpretation states that the submittal of a Concept Plan is sufficient to vest an applicant's right to establish a marijuana use with regard to one specific development standard—separation from protected uses. However, this contradicts the City's previously stated policies regarding vesting. In fact, just one month prior to issuing the Interpretation, the City confirmed to us that a marijuana use does not vest until much later in the permitting process. The Interpretation is thus confusing, contradictory, and arbitrarily grants preferential treatment to the Nirvana facility.

1. The Interpretation contradicts the City's Zoning Code.

The Flagstaff Zoning Code (the "Code") is clear that Concept Plan Review is just a preliminary process: "Concept plan review is an informal review to ensure that the applicant is aware of the procedures and substantive requirements of the City and to identify any potential problems or concerns prior to submitting for site plan review and approval." Section 1020.30.050.A. Furthermore, "[n]o formal action is taken by the Director during concept plan review." Section 1020.30.050.C.3.

Concept Plan is the first mandatory step in the permitting process. For marijuana-related uses, the application must include an affidavit describing how the project complies with separation requirements. Upon receipt of the application, City Staff reviews the application and provides comments and conditions. This comment and condition letter is sometimes informally referred to as an "approval."

The receipt of this letter marks completion of the Concept Plan Review process, and allows an applicant to submit its full site plan or other construction documents.

The only purpose of Concept Plan Review, according to the Code, is to inform applicants of the requirements of their project. No formal action is taken nor formal approval granted. The Code does not even suggest that submitting a Concept Plan gives the applicant (who is not even an “applicant” at that point) legally vested rights.

To the contrary, the Code states that “[n]either concept plan review nor the provision of information by the [City] and the discussion of City policies shall be construed as either a recommendation for approval or denial of the development.” Section 1020.30.050.C.3. The Code clearly informs applicants that even the completion of Concept Plan Review does not create any rights. Because the Interpretation concludes that vested rights are acquired just by starting the Concept Plan process, it is contrary to the City Code.

The Interpretation raises a straightforward issue: when during the permitting process does an applicant obtain a vested right to establish a dispensary? Whether the mere filing of a Concept Plan has that effect is an entirely separate issue from the date on which a protected use (such as the daycare) becomes an “existing use” under the Code. At present, there is an existing daycare, but there is no existing dispensary. The Interpretation allows Nirvana to circumvent that fact.

2. The Interpretation contradicts the City’s previous treatment of dispensaries.

In addition to contradicting Section 1020.30.050 of the Code, the Interpretation is inconsistent with the City’s prior treatment of dispensaries. In 2020, RCH Wellness submitted a Concept Plan to relocate its dispensary. Upon receipt of Concept Plan approval, on February 8, 2021, RCH Wellness requested assurances from the City that the Concept Plan approval was sufficient to “secure the property as it relates to the setback requirements.” See Tab A – 2021 Emails. In other words, RCH asked the very same question that is at issue in this Interpretation. However, the City gave RCH Wellness the opposite answer.

First, on February 17, 2021, the Planning Development Manager, Genevieve Pearthree responded to RCH Wellness, after consulting with the City Attorney, and stated:

Per Section 10-20.30.050: Concept Plan Review of the City of Flagstaff Zoning Code, “Concept plan review is an informal review to ensure that the applicant is aware of the procedures and substantive requirements of the City and to identify any potential problems or concerns...”. Concept Plan is not a formal approval and thus it does not vest a project in the current City Code.

...

There are two options to vest the current project in the current City Code. The first, which again is not required for the proposed project, is to obtain Site Plan completeness and then approval. The second option is to apply for a building permit at the site for the interior and exterior changes needed to update the building to meet the proposed dispensary use.

See Tab A.

In 2021, the City clearly stated that Concept Plan Review is an informal process, and that approval does not vest compliance with any development standards. Consistent with Arizona case law on “vested rights,” the City determined that further, more substantial steps are required to vest the project in the Code.

Second, on March 4, 2024, this firm contacted the City Attorney’s Office about its previous position regarding vesting for marijuana uses. See Tab B – 2024 Emails. We referred back to the 2021 email from Ms. Pearthree and asked whether building permits or site plan approval were still considered sufficient for vesting. The City’s Planning Director reaffirmed the 2021 email (that Concept Plan Review does not vest a project with respect to the Code’s requirements), and added that that the right to the marijuana *use* is not vested until the City issues a Certificate of Occupancy:

[The 2021] email is regarding vesting in the current code, your email below indicates vesting the new use.

If you just want to vest the project in current code, then yes, as explained in [the] 2021 email would still be the position of Planning. However, ***if you are asking when the use is vested, then that would be with the issuance of a CO.***

See Tab B (emphasis added).

This March 4, 2024, email confirmed again that a project is not vested in the Code upon Concept Plan approval. The 2024 email also established that the *use* itself is not vested until Certificate of Occupancy.

Given this explicit guidance, we were stunned when, just over one month later, the City issued the Interpretation that is being appealed here. That Interpretation concluded that the mere *submission* of a Concept Plan application was sufficient to vest under the Code’s development standards.

The Planning Department was aware of the inconsistency between prior communications and the Interpretation. Before issuing the Interpretation, the Planning Director forwarded our 2024 email exchange to other Planning Staff, once more affirming the City’s prior position and questioning why the Nirvana Interpretation was different:

Let’s chat. My understanding is use is vested ***when CO issued not completeness completed.*** Do either of you know ***the distinction between this response and Nirvana*** or do we need to revisit.

See Tab C – Planning Department Email (emphasis added).

To answer the Planning Director’s question, there is no distinction. The City’s consistent, logical policy on vesting cannot be reconciled with the Interpretation. According to the City, a project is not even vested in the current version of the Code until building permit applications or Site Plan Approval. How can a project vest compliance with specific provisions of the Code, before it is vested in the Code at all? The City’s Interpretation is illogical and erroneous.

The Interpretation contradicts City precedent and grants preferential treatment to the Nirvana facility. Prior to issuance of the Interpretation, the City has held all applicants to a different, higher standard. RCH Wellness, as well as other dispensaries within the City, have not been entitled to vest compliance with development standards simply by submitting Concept Plan applications. All other dispensaries have been required to proceed at risk and were not vested until issuance of a Certificate of Occupancy.

3. The Interpretation has potential to create widespread negative impacts on development in the City.

At present, the Code does not allow applicants to acquire vested legal rights through the Concept Plan Review process. The Interpretation opens the door for applicants to gain vested rights at an early stage in the development process that is inconsistent with state-wide and former City practices. The Board of Adjustment should appreciate the consequences of opening that door.

The Interpretation, if upheld, is precedent for all future development within the City. The Interpretation effectively allows an applicant to “freeze” the existing conditions surrounding the development at the time of Concept Plan submittal. From the time of submittal, the applicant need not consider changes to the surrounding area or any new developments. This policy could have negative ramifications for the City.

For example, the City often requires applicants to complete a Traffic Impact Analysis (TIA) as part of Site Plan Review (after Concept Plan Review). The TIA considers the effect the development will have on traffic and factors in nearby future developments. Under the Interpretation, applicants would only need to base the TIA on the conditions existing at the date of Concept Plan submittal. This policy would allow applicants to disregard any new developments or changes to the community, even if they would greatly impact the traffic study.

Furthermore, because Concept Plan is a relatively inexpensive process (\$420 application fee), and the completion is valid for at least one year, applicants are likely to purchase all the vested rights that are marked for sale by the Interpretation. With the knowledge that one can lock in existing conditions simply by submitting a Concept Plan, we would expect applicants to submit such plans all over the City.

4. The identity of the user is an improper consideration in a land use matter.


The Interpretation raises issues concerning development standards and vested rights. Answers to such questions never depend on the identity of the user—land use law does not ask “who.” Nonetheless, interested parties may try to avoid the legal issues by tying their argument to the identity of RCH Wellness. Consideration of such matters is totally improper. While the daycare and RCH Wellness (two distinct legal entities) share common interests, land use law is neutral as to ownership. Neither the Planning Department nor the Board of Adjustment is allowed to apply different rules depending on the identity of an applicant, its friends and neighbors, or its business associations.

August 14, 2024
Page 5

We urge the Board of Adjustment to ensure that the same rules apply to similarly-situated persons and to consider the long-term ramifications of the Interpretation. The City does not have authority to contradict its own Code or to treat applicants differently. We look forward to the opportunity to speak on this item at Board of Adjustment meeting on August 21st.

Sincerely,

GAMMAGE & BURNHAM

By 
Cameron C. Artigue

CCA/cap

TAB A

2021 Emails

----- Forwarded message -----

From: **Genevieve Pearthree** <Genevieve.Pearthree@flagstaffaz.gov>

Date: Wed, Feb 17, 2021 at 11:55 AM

Subject: Re: RCH Wellness Center Relocation - Concept Plan PZ-20-00232

To: Douglas Daly <daly@dalylawfirmaz.com>

Cc: Christina Rubalcava <CRubalcava@flagstaffaz.gov>

Good morning Doug,

Thank you for your patience while I consulted with the City Attorney's Office regarding your request for a Concept Plan approval letter.

City Staff cannot write an approval letter for a Concept Plan Review. Per Section [10-20.30.050](#): Concept Plan Review of the City of Flagstaff Zoning Code, "Concept plan review is an informal review to ensure that the applicant is aware of the procedures and substantive requirements of the City and to identify any potential problems or concerns...". Concept Plan is not a formal approval and thus it does not vest a project in the current City Code.

In contrast, a letter of approval was issued in 2012 for the RCH Wellness Center Site Plan Review (PSPR2012026) because the project went through Site Plan Review, and Site Plan Review is a formal approval (it is located in Section [10-20.40](#): Permits and Approvals). Please note that Site Plan Review is not required for the current project (PZ-20-00232).

There are two options to vest the current project in the current City Code. The first, which again is not required for the proposed project, is to obtain Site Plan completeness and then approval. The second option is to apply for a building permit at the site for the interior and exterior changes needed to update the building to meet the proposed dispensary use.

Please let me know if you have any questions.

Best,

Genevieve Pearthree

Planning Development Manager | Current Planning Section

City of Flagstaff | 211 W. Aspen Ave. | Flagstaff, AZ 86001

gpearthree@flagstaffaz.gov | 928-213-2603

From: Douglas Daly <daly@dalylawfirmaz.com>

Sent: Wednesday, February 10, 2021 4:47 PM

To: Genevieve Pearthree <Genevieve.Pearthree@flagstaffaz.gov>

Subject: Re: RCH Wellness Center Relocation - Concept Plan PZ-20-00232

Thank you for the update.

Regards,

Douglas A. Daly
DALY LAW FIRM, PLLC

PO Box 14483
Scottsdale, Arizona 85267
T: 602.703.5320

On Wed, Feb 10, 2021 at 4:31 PM Genevieve Pearthree <Genevieve.Pearthree@flagstaffaz.gov> wrote:

Good afternoon Doug,

I am in the process of discussing your question with staff, including the City Attorney's Office. I will be in touch next week when I have more information for you.

Best,

Genevieve Pearthree

Planning Development Manager | Current Planning Section
City of Flagstaff | 211 W. Aspen Ave. | Flagstaff, AZ 86001
gpearthree@flagstaffaz.gov | 928-213-2603

From: Douglas Daly <daly@dalylawfirmaz.com>
Sent: Monday, February 8, 2021 9:47 AM
To: Genevieve Pearthree <Genevieve.Pearthree@flagstaffaz.gov>
Subject: Re: RCH Wellness Center Relocation - Concept Plan PZ-20-00232

Thank you Genevieve. I will mail hard copies of everything out today. In addition, I have attached a copy of the newly issued facility license from AZDHS approving RCH as a dual license Marijuana Establishment (Adult Use 21+ Sales License & Medical).

As you know, RCH is currently in the process of acquiring the 522 E. Route 66 property. They have applied for and been issued a business license for the property to operate the Marijuana Establishment. They are seeking some assurance from the city that the concept plan process and approval to submit for building permits will secure the property as it relates to the set back requirements. For example, should another dispensary submit for building plans within 500 feet, RCH would still be permitted to move forward with their project subject to the conditions in the concept plan comments. When RCH previously applied for approval of their current location Mr. Gullickson issued a letter in that regard stating the property was approved by the city for use as a dispensary.

Could you provide a letter stating the same that the property is approved for RCH as a marijuana establishment and medical dispensary?

Regards,

Douglas A. Daly
DALY LAW FIRM, PLLC
PO Box 14483
Scottsdale, Arizona 85267
T: 602.703.5320

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On Thu, Feb 4, 2021 at 4:51 PM Genevieve Pearthree <Genevieve.Pearthree@flagstaffaz.gov> wrote:

Good afternoon Doug,

I'm writing to let you know that the City of Flagstaff Inter-Division Staff (IDS) has reviewed and accepted with the conditions and comments listed below the Concept Plan for the RCH Wellness Center Relocation (PZ-20-00232). You can now allowed to submit for Building Permit review. Include a copy of this Concept Plan Review Comments letter along with your responses as part of Building Permit submittal.

Please feel free to contact me if you have any questions. Otherwise, I'll look for your building permit submittal soon.

Best,

Genevieve Pearthree

Planning Development Manager | Current Planning

City of Flagstaff | 211 W. Aspen Ave | Flagstaff, AZ 86001

gpearthree@flagstaffaz.gov

Office: 928-213-2603



TAB B

2024 Emails

Chloe A. Plaisance

From: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>
Sent: Monday, March 4, 2024 9:43 AM
To: Kevin Fincel; Chloe A. Plaisance
Cc: Lindsay C. Schube; Alaxandra Pucciarelli; Christina Rubalcava
Subject: RE: Vesting for Marijuana Dispensaries

Hi, Chloe.

Genevieve's email is regarding vesting in the current code, your email below indicates vesting the new use.

If you just want to vest the project in current code, then yes, as explained in Genevieve's 2021 email would still be the position of Planning. However, if you are asking when the use is vested, then that would be with the issuance of a CO.

Best,
Michelle

Michelle McNulty, AICP, CPM
Planning Director
City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001
michelle.mcnulty@flagstaffaz.gov
Office (928) 213-2607
Cell (928) 707-2789

From: Kevin Fincel <KFincel@flagstaffaz.gov>
Sent: Monday, March 4, 2024 6:52 AM
To: Chloe A. Plaisance <cplaisance@gblaw.com>
Cc: Ischube@gblaw.com; Alaxandra Pucciarelli <APucciarelli@flagstaffaz.gov>; Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>; Christina Rubalcava <CRubalcava@flagstaffaz.gov>
Subject: RE: Vesting for Marijuana Dispensaries

Good morning Chloe,

The question below is a question for Alax or Michelle in Planning. I am copying both on this email, along with their legal counsel, Christina Rubalcava.

Please include Christina on any emails to Planning staff.

Thanks,

Kevin

Kevin R. Fincel
Deputy City Attorney

City of Flagstaff
211 West Aspen Avenue
Flagstaff, AZ 86001
(928) 213-2045
kfincel@flagstaffaz.gov

From: Chloe A. Plaisance <cplaisance@gblaw.com>
Sent: Friday, March 1, 2024 12:56 PM
To: Kevin Fincel <KFincel@flagstaffaz.gov>
Cc: lschube@gblaw.com
Subject: Vesting for Marijuana Dispensaries

You don't often get email from cplaisance@gblaw.com. [Learn why this is important](#)

Hi Kevin,

Per my email yesterday, we received the guidance below from Genevieve Pearthree in 2021 for a previous client. With regard to a potential new dispensary for a new client, we'd like to confirm whether the City still takes the position that either site plan approval or building permits would be sufficient for vesting. Typically, we advise that the most conservative approach is to assume the use doesn't vest until a Certificate of Occupancy is issued. Site plan approval and building permits are earlier in the process, so we just want to confirm that we are providing advice consistent with the City's current approach.

Thank you,
Chloe

Chloe A. Plaisance
Gammage & Burnham | [Profile](#)
602.256.4427 Direct

From: Genevieve Pearthree <Genevieve.Pearthree@flagstaffaz.gov>
Date: Wed, Feb 17, 2021 at 11:55 AM
Subject: Re: RCH Wellness Center Relocation - Concept Plan PZ-20-00232
To: Douglas Daly <daly@dalylawfirmaz.com>
Cc: Christina Rubalcava <CRubalcava@flagstaffaz.gov>

Good morning Doug,

Thank you for your patience while I consulted with the City Attorney's Office regarding your request for a Concept Plan approval letter.

City Staff cannot write an approval letter for a Concept Plan Review. Per Section [10-20.30.050](#): Concept Plan Review of the City of Flagstaff Zoning Code, "Concept plan review is an informal review to ensure that the applicant is aware of the procedures and substantive requirements of the City and to identify any potential problems or concerns...". Concept Plan is not a formal approval and thus it does not vest a project in the current City Code.

In contrast, a letter of approval was issued in 2012 for the RCH Wellness Center Site Plan Review (PSPR2012026) because the project went through Site Plan Review, and Site Plan Review is a formal approval (it is located in Section [10-20.40](#): Permits and Approvals). Please note that Site Plan Review is not required for the current project (PZ-20-00232).

There are two options to vest the current project in the current City Code. The first, which again is not required for the proposed project, is to obtain Site Plan completeness and then approval. The second option is to apply for a building permit at the site for the interior and exterior changes needed to update the building to meet the proposed dispensary use.

Please let me know if you have any questions.

Best,

Genevieve Pearthree

Planning Development Manager | Current Planning Section

City of Flagstaff | 211 W. Aspen Ave. | Flagstaff, AZ 86001

gpearthree@flagstaffaz.gov | 928-213-2603

TAB C

Planning Department Emails

FW: Vesting for Marijuana Dispensaries

Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>

Mon 4/15/2024 9:01 AM

To: Alexandra Pucciarelli <APucciarelli@flagstaffaz.gov>; Wesley Welch <wesley.welch@flagstaffaz.gov>

Let's chat. My understanding is use is vested when CO issued not completeness completed. Do either of you know the distinction between this response and Nirvana or do we need to revisit.

From: Kevin Fincel <KFincel@flagstaffaz.gov>
Sent: Monday, April 15, 2024 8:46 AM
To: Chloe A. Plaisance <cplaisance@gblaw.com>; Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>
Cc: Ischube@gblaw.com; Alexandra Pucciarelli <APucciarelli@flagstaffaz.gov>; Christina Rubalcava <CRubalcava@flagstaffaz.gov>
Subject: RE: Vesting for Marijuana Dispensaries

Good morning Chloe,

Do you represent Noble Herb?

Kevin R. Fincel
Deputy City Attorney
City of Flagstaff
211 West Aspen Avenue
Flagstaff, AZ 86001
(928) 213-2045
kfincel@flagstaffaz.gov

From: Chloe A. Plaisance <cplaisance@gblaw.com>
Sent: Monday, March 4, 2024 9:46 AM
To: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>; Kevin Fincel <KFincel@flagstaffaz.gov>
Cc: ischube@gblaw.com; Alexandra Pucciarelli <APucciarelli@flagstaffaz.gov>; Christina Rubalcava <CRubalcava@flagstaffaz.gov>
Subject: RE: Vesting for Marijuana Dispensaries

Michelle –

Thank you for the quick response and clarification.

Have a great week,
Chloe

Chloe A. Plaisance
Gammage & Burnham | [Profile](#)
602.256.4427 Direct

From: Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>
Sent: Monday, March 4, 2024 9:43 AM
To: Kevin Fincel <KFincel@flagstaffaz.gov>; Chloe A. Plaisance <cplaisance@gblaw.com>

Cc: Lindsay C. Schube <lschube@gblaw.com>; Alaxandra Pucciarelli <APucciarelli@flagstaffaz.gov>;
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Subject: RE: Vesting for Marijuana Dispensaries

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Michelle

Michelle McNulty, AICP, CPM
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City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001
michelle.mcnulty@flagstaffaz.gov
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To: Chloe A. Plaisance <cplaisance@gblaw.com>
Cc: lschube@gblaw.com; Alaxandra Pucciarelli <APucciarelli@flagstaffaz.gov>; Michelle J. McNulty <Michelle.McNulty@flagstaffaz.gov>; Christina Rubalcava <CRubalcava@flagstaffaz.gov>
Subject: RE: Vesting for Marijuana Dispensaries

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Please include Christina on any emails to Planning staff.

Thanks,

Kevin

Kevin R. Fincel

Deputy City Attorney
City of Flagstaff
211 West Aspen Avenue
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(928) 213-2045
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Cc: lschube@gblaw.com
Subject: Vesting for Marijuana Dispensaries

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Chloe

Chloe A. Plaisance
Gammage & Burnham | [Profile](#)
602.256.4427 Direct

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Date: Wed, Feb 17, 2021 at 11:55 AM
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To: Douglas Daly <daly@dalylawfirmaz.com>
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Thank you for your patience while I consulted with the City Attorney's Office regarding your request for a Concept Plan approval letter.

City Staff cannot write an approval letter for a Concept Plan Review. Per Section [10-20.30.050](#): Concept Plan Review of the City of Flagstaff Zoning Code, "Concept plan review is an informal review to ensure that the applicant is aware of the procedures and substantive requirements of the City and to identify any potential problems or concerns...". Concept Plan is not a formal approval and thus it does not vest a project in the current City Code.

In contrast, a letter of approval was issued in 2012 for the RCH Wellness Center Site Plan Review (PSPR2012026) because the project went through Site Plan Review, and Site Plan Review is a formal approval (it is located in Section [10-20.40](#): Permits and Approvals). Please note that Site Plan Review is not required for the current project (PZ-20-00232).

There are two options to vest the current project in the current City Code. The first, which again is not required for the proposed project, is to obtain Site Plan completeness and then approval. The second option is to apply for a building permit at the site for the interior and exterior changes needed to update the building to meet the proposed dispensary use.

Please let me know if you have any questions.

Best,

Genevieve Pearthree

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