



March 18, 2022

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Sent via email to: jcallahan@maypotenza.com

SUBJECT: Zoning Administrator Determination
Marijuana Dispensary
221 E 6th St, Tucson AZ 85705
Pima County Tax Parcel Number: 117-04-2710
Development Plan/ Permit Numbers: T21SA00415, T21CM05662
Activity # T22SA00041

Dear Mr. Callahan,

I am in receipt of your letter and its attachments, dated February 2, 2022, requesting a Zoning Administrator Determination (“ZAD”) (See, Exhibit A). In your letter of request you state the City is in error for denying zoning compliance of a proposed marijuana dispensary expansion located at 221 E 6th St, Tucson, AZ (T22SA00041) (the “Property”). You specifically request a ZAD relating to the City’s application of setbacks to the Property required by the Unified Development Code (“UDC”) in Section 4.9.9.E.1.h., for a marijuana dispensary, which states that a marijuana dispensary shall be setback “a minimum of 500 feet from a K-12 public, private, or charter school or a licensed childcare center, measured in a straight and direct horizontal line from the closest exterior or applicable interior suite wall of the marijuana dispensary to the closest property line of a school or childcare center.” Your letter states that Imago Dei Middle School’s use of Santa Theresa Tile Works, located at 440 N 6th Ave., qualifies as neither a “school” nor “licensed childcare center” and is, therefore, not subject to the setback requirement of UDC Section 4.9.9.E.1.h (and 4.9.9.E.1.j) for such sensitive uses. Additionally, you argue that a prior determination authored by the City sets a precedent which controls and contradicts the denial made in this case.

Use of Santa Theresa as “K-12 public, private, or charter school”:

In the City’s letter dated December 6, 2021 the proposed marijuana dispensary expansion at the Property was denied on the grounds that the use of Santa Theresa Tile Works by the Imago Dei Middle School is an established

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educational use or school, therefore, the 500 foot setback from a “K-12 public, private, or charter school” required by UDC 4.9.9.E.1.j. applies to the Property (See, Exhibit B). Please note, the correct standard used in this case is 4.9.9.E.1.j. which relates specifically to dispensary expansions. The same setback requirement is found in 4.9.9.E.1.h. as referenced in your letter of request.

In your letter of request, you admit that Santa Theresa Tile Works, located at 440 N 6th Ave., lies within 500 feet of the Property but dispute that educational land use activities (K-12 public, private or charter school) are performed on-site which subject the Property and its’ proposed expansion to the zoning setbacks required by UDC 4.9.9.E.1.h (and UDC 4.9.9.E.1.j).

While the UDC does not specifically define “K-12 public, private, or charter school” Section 11.3.3.E. does define Educational Uses. Section 11.3.3.E.1 defines Elementary and Secondary Schools as: “[p]rovid[ing] primary and secondary education for grades kindergarten through 12, as required by the Arizona State Board of Education. Typical uses include elementary, middle, junior high, and high schools.” This determination clarifies the meaning of “K-12 public, private, or charter school” as it relates to Educational Uses for the purpose of applying UDC Sections 4.9.9.E.1.h & j.

For the purposes of applying zoning regulations, a Use may be certified through the compliance review process and the issuance of a Certificate of Occupancy or Letter of Completion for the proposed use of the structure. Pursuant to UDC Section 1.4.1.B “Land shall not...be used or occupied, ...and no existing use or structure expanded, reconstructed, changed, or otherwise altered until compliance with the provisions of the UDC have been certified.” A Certificate of Occupancy was issued November 30, 1998 for business name “Santa Theresa Tile” and business use “Art Studio” (See, Exhibit C). The common use of “Art Studio” designated on this Certificate of Occupancy does not align with a defined use in the UDC. In cases where a term is undefined, the UDC provides the flexibility to clarify the use as noted on the Certificate of Occupancy. In referencing the Merriam-Webster Dictionary, art is defined as “the conscious use of skill and creative imagination especially in the production of aesthetic objects, also: works so produced.” Additionally, studio is defined as “the working place of a painter, sculptor, or photographer; and a place for the study of an art (such as dancing, singing, or acting).”

Although a Certificate of Occupancy is generally indicative of the land uses legally occurring on a site, a C of O is not dispositive and other indicia/sources may be considered and used. Imago Dei Middle School has a main campus located at 55 N 6th Ave. Santa Theresa Tile Works is a non-profit subsidiary of Imago Dei Middle School. The School considers Santa Theresa Tile Works its “arts campus” and is mentioned as part of its curriculum. Students attend arts classes at Santa Theresa Tile Works several days a week on a weekly basis. Courses are taught by

both Santa Theresa Tile Works employees and Imago Dei Middle School staff. Santa Theresa Tile Works has been legally permitted as an “Art Studio” which does not preclude it as a location for the study or instruction of art. Therefore, the educational land use activities occurring at Santa Theresa Tile Works by Imago Dei Middle School align with the UDC definition of Elementary and Secondary Schools because art “education for grades kindergarten through 12” is being conducted numerous days per week on an ongoing basis at the site.

As such, the use of the property by Imago Dei Middle School has been legally established through a Certificate of Occupancy issued to Santa Theresa Tile Works to include educational activities. Santa Theresa Tile Works is occupied by Imago Dei Middle School, an established school which conducts educational land use activities on-site. Therefore, the use by Imago Dei Middle School of Santa Theresa Tile Works is considered a “K-12 public, private, or charter school” for the purposes of applying the required zoning setbacks in UDC Sections 4.9.9.E.1.h & j.

A.R.S. Title 36, Chapters 28.1 and 28.2 and A.A.C. Title 9, Chapter 17 and 18 each contain requirements applicable to the Arizona Medical and Adult Use Marijuana Programs. Accordingly, to fully understand all the applicable requirements the statutes and rules should be read in conjunction with each other. City staff reference the A.R.S. and A.A.C. to determine the definition of “K-12 public, private of charter school”. While A.R.S. Chapters 28.1 and 28.2 provide no definition, A.A.C. R9-17-101.36 does and states: “‘Private school’ means the same as in A.R.S. § 15-101.” A.R.S. 15-101(21) states: “‘Private school’ means a nonpublic institution where instruction is imparted.” Because the Image Dei Middle School is an independent private school, only the definition of “private school” is included here as the directly relevant category of school. The City’s regulations regarding marijuana uses must be at least as strict as Arizona state law, as regulated in the A.R.S. and A.A.C. For the purposes of applying the provisions of UDC 4.9.9.E.1.h & j., the use of Santa Theresa Tile Works by the Imago Dei Middle School as its arts campus is, therefore, a private school as defined by the A.R.S. and A.A.C.

Your request letter references the additional definition in A.R.S. 15-802(G)(3) which states that “‘Private school’ means a nonpublic institution, other than the child’s home, where academic instruction is provided for at least the same number of days and hours each year as a public school.” Imago Dei Middle School, a licensed private school, operates a non-contiguous arts campus at Santa Theresa Tile Works. The definition you reference in A.R.S. 15-802(G)(3) does not preclude a private school from having multiple campuses or locations.

Furthermore, your request letter states that the City may have incorrectly based the denial for the Property on the use of Santa Theresa Tile Works by Imago Dei Middle School being alternately considered an “Instructional School” and that such a consideration would exclude the use from being considered a “K-12 public,

private, or charter school.” The City has made no assertion regarding Santa Theresa Tile Works as an “Instructional School”. For clarification, the “Instructional School” use was not considered in relation to the zoning authorization denial for the Property and bears no weight in the consideration of the use of Santa Theresa Tile Works by Imago Dei Middle School as a “K-12 public, private, or charter school.”

Santa Theresa as “licensed childcare center”:

Your request letter states that the City may have incorrectly based the denial for the Property on the use of Santa Theresa Tile Works by Imago Dei Middle School being alternately considered a “licensed childcare center” rather than a “K-12 public, private, or charter school.” The City has made no assertion regarding Santa Theresa Tile Works as a “licensed childcare center”. For clarification, the “childcare center” use was not considered in relation to the zoning authorization denial for the Property and bears no weight in the consideration of the use of Santa Theresa Tile Works by Imago Dei Middle School as a “K-12 public, private, or charter school.”

Precedent regarding authorized use:

Lastly, your request letter claims that consideration of Santa Theresa Tile Works as a school would be contrary to a prior determination issued by the City. Pursuant to UDC Section 1.5.1.C.4. “The Zoning Administrator may designate certain decisions as precedent for future decisions. Any decision so designated shall be binding upon future cases unless reversed on appeal. One copy of all precedent decisions shall be maintained by the Zoning Administrator and one copy shall be maintained by the City Clerk for public review and inspection;” The prior determination was not designated as precedential and is, therefore, not binding upon this or future cases. Additionally, the letter written by former Section Manager Steve Shields in relation to the prior case was not an official Determination and cannot set precedent. As such, the prior case has no bearing upon this case.

It is my determination that for the purposes of applying the required zoning setbacks of a Marijuana Dispensary, as indicated in Unified Development Code (UDC) Sections 4.9.9.E.1.h & j, that the use of the property addressed 440 N 6th Ave. does meet the definition of “K-12 public, private, or charter school” as established through a Certificate of Occupancy and as provided in the UDC, A.R.S. and A.A.C.

Please feel free to contact me if you have questions. You may reach me via email at Elisa.Hamblin@tucsonaz.gov or by telephone at (520) 837-4966.

This determination may be appealed to the Board of Adjustment per UDC Section 1.5.1.E. Please contact Mark Castro for questions about the appeal process via email at Mark.Castro@tucsonaz.gov or by telephone at (520) 837-4979.

Sincerely,



Elisa Hamblin, AICP
Zoning Administrator

C: Scott Clark, Director Planning and Development Services
Mike Rankin, City Attorney
Piroschka Glinsky, Principal Assistant City Attorney
Roi Lusk, Principal Assistant City Attorney
Mark Castro, Principal Planner