



March 3, 2014

Hand Delivered

Ms. Sarah Johnson
City of Colorado Springs City Clerk
30 S. Nevada Avenue
Colorado Springs, Colorado 80903

RE: Notice of Appeal of City Planning Commission Decision Granting Appeal of Notice and Order Issued to Studio A64, LLC ("Studio A64"), File No. CPC AP 14-00002

Ms. Johnson:

This letter is intended to serve as formal notice that, pursuant to the City of Colorado Springs Code of Ordinances ("City Code"), Section 7.5.906.B., the City of Colorado Springs Administration ("City Administration") is hereby filing an appeal of the City of Colorado Springs Planning Commission ("Planning Commission") action taken at its February 20, 2014, meeting on Planning Commission Agenda Item No. 4, File No. CPC AP 14-00002, granting an appeal of the Notice and Order issued against Studio A64 pursuant to Section 7.5.1005D. In granting the appeal filed by Studio A64, the Planning Commission permitted a use of the property located at 332 East Colorado Avenue, Colorado Springs, Colorado, that is not permitted by Chapter 7 of the City Code (the "Zoning Code").

As set forth in Section 7.5.103A., of the Zoning Code, the City Council has jurisdiction to hear appeals of any Planning Commission action. Such an appeal may be filed by any person against whom an adverse action has been made by the Planning Commission. City Code § 7.5.906B. Furthermore, pursuant to Section 7.5.906B.4., of the Zoning Code, City Council review of Planning Commission actions may be *de novo*, and because the basis for the Planning Commission's decision was raised for the first time by the Planning Commission, City Administration requests that City Council consider the issues raised in this Notice of Appeal *de novo*. Therefore, in accordance with Section 7.5.906B., of the Zoning Code, City Administration requests that an appeal hearing before City Council be set for the next regularly scheduled City Council meeting that is no less than twenty (20) days from the date of this Notice. This Appeal is based on the following:

1. The Planning Commission's Decision to Grant the Appeal is Inconsistent with the City's Zoning Code and the Downtown Colorado Springs Form-Based Code.

Sections 7.2.107 and 7.2.108 of the Zoning Code generally prohibit uses of property which are not specifically allowed within a particular zoning district. Section 7.2.107 provides that, "Except as herein specified, it shall be unlawful to use any building ... except in conformity with the requirements

established in the zone district in which said ... building ... is located and in accord with the provisions of this Zoning Code.” Section 7.2.108 provides, as follows:

When a use is not specifically identified as allowed in a zone district, it shall not be allowed in the zone district unless it meets the following description and criteria of a similar use. The function, performance characteristics, and location requirements of the unlisted, proposed use must be consistent with the purpose and description of the zone district where it is proposed, compatible with the uses specifically allowed in the district Uses may be allowed as principal permitted, conditional, and accessory uses in any zone district where similar uses are allowed. Similar use determinations shall be made by the Manager or the designee in writing.

As a marijuana smoking facility is not a defined, permitted, or conditionally permitted use under the Zoning Code, or the Downtown Colorado Springs Form-Based Zoning Code (“FBZ Code”), discussed in more detail below, it is not an allowed use and is not in conformity with the requirements for the zoning district for the subject property. In addition, Studio A64 did not seek a “similar use determination” prior to opening the facility, was therefore in violation of the Zoning Code.

2. The City Planning Commission’s Comparison of the Subject Property to a “Civic Use Type” is not Consistent with the Classification of a “Civic Use Type” Under the Zoning Code or the FBZ Code.

To justify its decision to grant Studio A64’s appeal, the City Planning Commission erroneously compared Studio A64 to a “Social Club” under the umbrella definition of a “[Membership] Club” under the category of Civic Use Types identified in 7.2.302D., which defines a “Civic Use Type” as follows: “Civic use types include the performance of educational, recreational, cultural, medical, protective, utility, governmental, and other uses which are strongly vested with public social importance.” (Civic Use Types are similarly defined in the FBZ Code in Section 6). While the Zoning Code provides a number of specific Civic Use Types, including Membership Clubs and within that category, Social Clubs, each of these Use Types must be interpreted to be consistent with the umbrella definition for a Civic Use Type provided above. Studio A64’s primary purpose is NOT one that could be described as strongly vested with public social importance. While in some ways, Studio A64 may appear to fall within the category of Social Clubs, it is not a Civic Use and, therefore, cannot be considered to be a Social, Membership Club.

Furthermore, by using this comparison of Studio A64 to a Social Club as justification for its ruling that the administrative action being appealed was in error, the Planning Commission exceeded its authority and effectively substituted its judgment for a judgment the Planning and Development Director would be required to make under the Zoning Code had he been requested to make a similar use determination under Section 7.2.108 of the Zoning Code.

3. Restrictions on the Location of Civic Uses under the Downtown Colorado Springs Form-Based Code.

Even if Studio A64’s use of the property could be construed as a Civic Use Type, this use would not be permitted at Studio A64’s location. Studio A64 is located at 332 East Colorado Avenue, Colorado Springs, Colorado, on the second floor of a two-story, mixed-use structure. This location is included within the Downtown Colorado Springs FBZ Code, which is a form-based zoning district established under the Zoning Code, with uses which are specifically set forth in the FBZ Code. Uses permitted under

the FBZ Code depend both on the location of a particular piece of property and the type of building constructed on that property.

The subject property is located within what is referred to as the “Central Sector,” or urban core of the form-based zone. Section 2.2.3 of the FBZ Code describes the intended uses of the Central Sector as follows: “It is intended that the Central Sector will have commercial uses (retail, restaurant, entertainment and office) on the first level of most buildings, with residential, lodging and office uses on the upper levels.” Section 2.5 of the FBZ Code further sets forth the permitted uses within the form-based zone. As indicated in Section 2.5.1 of the FBZ Code, Civic Use Types are allowed within the Central Sector of the Downtown form based zone, however, such use is limited under Section 2.5.2 of the FBZ Code to the ground floor of a Mixed Use Building. Thus, even if Studio A64’s use were a Civic Use, it would not be permitted on the second floor of the building located at 332 East Colorado Avenue.

4. The Use is Inconsistent with the Expressed Intent of the Zoning Code for Similar Uses.

The City Planning Commission’s decision to grant the appeal and allow consumption of marijuana without any standards is clearly against the expressed intent of the Zoning Code, which currently establishes additional standards for medical marijuana facilities, liquor sales, and bars in Section 7.3.205 of the Zoning Code. It is apparent that the expressed intent of the Zoning Code is to institute specific use definitions and standards for facilities that contain or sell marijuana products. For example, the Zoning Code distinguishes medical marijuana (“MMJ”) facilities from other similar facilities – particularly other retail uses that sell pharmaceutical and medical products - by creating a separate and distinct definition for MMJ facilities. The Planning Commission failed to consider the intent of the Zoning Code to additionally regulate marijuana-related establishments and to distinguish marijuana facilities from other non-marijuana facilities.

Sincerely,



Peter Wysocki, AICP
Planning and Development Director

Copy: K.C. Stark, Studio A64, LLC
Charles T. Houghton, Esq., attorney for Studio A64, LLC
Kenneth Brady, Property Owner
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