



Santa Cruz County Community Development Department

Frank Dillon, Director

RE: Interpretation of Santa Cruz County Zoning and Development Code

This is an interpretation regarding the application of zoning requirements for a proposed retail marijuana establishment, single retail location in Rio Rico, AZ.

Background:

Gammage and Burnham is representing a client that proposing a marijuana establishment, single retail location at 1128 Circulo de Mercado, Rio Rico, AZ. The applicant identified potential separation requirement conflicts with the following entities operating within one half mile of the proposed site:

1. Hilltop Christian Fellowship, 1147 West Frontage Road, Rio Rico, AZ
2. Casa de Oracion Apostolica, 1191 West Frontage Road, Rio Rico, AZ

The applicant's analysis indicates that the above listed entities are operating religious places of worship in locations previously permitted and granted Certificates of Occupancy for office use, resulting in violation of adopted County zoning and building safety regulations. The applicant is requesting an interpretation of Article 30, Section 3004.4, of the Santa Cruz County Zoning and Development Code as it relates to separation requirements from protected uses.

Applicable Code Sections:

SEC. 3004.4:

Any business operating pursuant to this Article shall not be located within 2,640 feet of a public or private school, place of worship, or public park existing before the date of application. This distance shall be measured in a straight line from the exterior walls of the building or portion thereof in which the business is conducted or proposed to be conducted to the property line of the protected use.

Considerations:

- Hilltop Christian Fellowship and Casa de Oracion Apostolica have Certificates of Occupancy for office buildings under the Group B Occupancy Classification;
- Plans and other supporting documentation for the above listed entities indicate that the sites will be used as general office space;
- Under the 2012 International Building Code (IBC), places of religious worship fall under the Group A-3 Occupancy Classification and are required to obtain a County Certificate of Occupancy and comply with all applicable County regulations;
- Hilltop Christian Fellowship and Casa de Oracion Apostolica provided the County with inaccurate representations of the intended use and obtained Certificates of Occupancy which has resulted in nonconforming uses at both locations.

Conclusion:

After reviewing the information provided in your request, staff research, the Zoning and Development Code and the 2012 IBC, I have determined that a marijuana establishment, single retail location does not need to meet the separation requirement from a protected use as outlined in the Zoning and Development Code, Article 30, Section 3004.4 if the protected use is not permitted pursuant to a validly issued Certificate of Occupancy.

Under the circumstances that a building or tenant space complies with all applicable County codes and ordinances with no additional work required to begin the use (i.e. one of the above entities secures a building or space with a valid A-3 Certificate of Occupancy), the commencement of the protected use would legally establish the use and cause the separation requirement. Alterations resulting in changes of use and / or requiring building permits are subject to applicable County codes and ordinances and would require a new Certificate of Occupancy.

In sum, if a protected use according to the marijuana establishment provisions of the ordinance was legally established prior to the acceptance of a permit application by a marijuana establishment, the separation requirement applies.

However, if a permit application for a marijuana establishment is submitted (resulting in review, approval and eventual permit issuance) prior to the legal establishment of a protected use, the separation requirement does not apply. For example, if a building or tenant space is engaging in a protected use at the location but have not applied for and received the appropriate certificates of occupancy for the protected use, the protected use has not been legally established. In that case, the separation requirement would not apply.

In the event that a protected use is legally established after a permit application for a marijuana establishment is submitted (resulting in review, approval and eventual permit issuance), once approved, the marijuana establishment is considered legal nonconforming. A subsequently established protected use would not trigger retroactive application of the separation requirement.

Lastly, if a permit application for a marijuana establishment is submitted and denied, separation requirements shall be evaluated at the time of application resubmittal to determine if any protected uses have been legally established in the interim (between the initial and subsequent application) which would apply at the time of the resubmittal. The determining factor in whether the separation requirement applies will be whether the protected us was legally established at the time of resubmittal, not initial application.

Approved April 29 2022 by Frank Dillon, Director of Community Development: 

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