

February 10, 2022

**ADMINISTRATIVE DETERMINATION OF A  
NONCONFORMING USE  
DECISION AND FINDINGS  
PLNZAD2021-01280**



**REQUEST:**

A request for a Determination of Nonconforming Use regarding the property located at 360 South 400 West. The property contains a 151-unit multifamily residential building, the Downtown 360 Apartments, and is located in the D-3 (Downtown Warehouse/Residential) zoning district. This is a request to determine if 34 parking spaces, which exceed the maximum permitted on the approved site plan, can either be legalized through the current zoning ordinance or can be considered a legal nonconforming use.

**DECISION:**

Based on the provisions of the Zoning Ordinance section 21A.38.040.E, City records, and the documentation submitted by the applicant, the Zoning Administrator finds that the unpermitted stalls can be permitted through meeting section 21A.44.050 Transportation Demand Management Strategies to allow parking spaces above the maximum. The following supports this decision:

**FINDINGS:**

The original building permit that was issued (BLD2014-07296) approved a total of 171 parking spaces. The building as constructed provides 205 parking spaces, which exceeds the maximum approved by 34 spaces. Parking spaces in addition to the 171 approved spaces were added in lieu of constructing approved storage areas within the parking garage. There is no evidence showing that any other special approvals were granted by Salt Lake City to allow the additional parking.

The applicant maintains that the additional 34 parking spaces can be approved at this time by “demonstrating project compliance with relevant components of Section 21A.44.050, Transportation Demand Management (TDM), and specifically, the related TDM strategies that allow construction of parking spaces beyond the maximum allowed per the Salt Lake City Municipal Code.” The applicant’s narrative states that while section 21A.44.050.C.3.b provides language to double the minimum, it does not specifically state a method to increase the maximum spaces as stated in 21A.44.050.C.1. They interpret section 21A.44.050.C.1 to mean that going above the maximum parking spaces, in this case up to 205 spaces, would be acceptable if the necessary TDM strategies are met.

*21A.44.050.C.1 Purpose: The following parking incentives are intended to encourage the use of transportation demand management strategies not regulated elsewhere in this subsection. These additional strategies are available to applicants who want to modify the amount of off street parking required by either decreasing the number of spaces below the minimum requirement **or increasing the number of spaces beyond the maximum requirement.***

*21A.44.050.C.3.b Increase Of The Maximum Number Of Allowable Parking Spaces: The minimum number of off street parking spaces, as determined by subsection 21A.44.030G of this chapter, **can be increased to double the minimum requirement** under section [21A.44.030](#), table [21A.44.030](#) and "Table Of District*

*Specific Minimum Off Street Parking Requirements", of this chapter provided the applicant fulfills at least one (1) of the major transportation demand management strategies and one (1) of the minor transportation demand management strategies listed in this subsection.*

The Zoning Administrator finds that the Zoning Ordinance is unclear as to what section 21A.44.050.C.3.b refers to when it states that the maximum parking can be increased to double the minimum. This section lists three different subsections that are to be used to calculate the maximum. It uses the word "and" between the last two items, which would indicate that all three cited sections would be considered. This creates a question as to which section should be doubled to determine the maximum because using table 21A.44.030 produces a different maximum than the "Table of District Specific Minimum Off Street Parking Requirements". If the table refers to the general table (Table 21A.44.030: Schedule of Minimum of Street Parking Requirements), a base number of 167 parking spaces could be used as the minimum, which would permit the excess 34 stalls if the relevant TDM strategies are met. While it is the opinion of the Zoning Administrator that the intent of that section is to use the district-specific minimum table (21A.44.050: District Specific Minimum Off Street Parking Requirements), which would double the minimum of 76 for a total of 152 spaces. Utah Code section 10-9a-306 directs a land use authority to favor a land use applicant if a land use regulation does not plainly restrict a land use application. In this case, 21A.44.050.C.3.b does not plainly restrict the land use applicant from using Table 21A.44.030 when increasing the maximum parking allowed under 21A.44.050. Therefore, the code must be interpreted to favor the land use application.

The Zoning Administrator agrees with the applicant's narrative that the project meets major strategies 1, 4, and 6 defined in 21A.44.050.C.4.a and minor strategy 1 defined in 21A.44.050.C.4.b. Therefore, the excess 34 parking spaces can be permitted.


If you have any questions regarding this interpretation, please contact Krissy Gilmore at (801) 535-7780 or by email at [Kristina.Gilmore@slcgov.com](mailto:Kristina.Gilmore@slcgov.com).

#### **APPEAL PROCESS:**

An applicant or any other person or entity adversely affected by a decision administering or interpreting this Title may appeal to the Appeals Hearing Officer. Notice of appeal shall be filed within ten (10) days of the administrative decision. The appeal shall be filed with the Planning Division and shall specify the decision appealed and the reasons the appellant claims the decision to be in error. Applications for appeals are located on the Planning Division website at <http://www.slcgov.com/planning/planning-applications> along with information about the applicable fee and submission process. Appeals may be filed by submitting an application through the City's online application portal here: <https://citizenportal.slcgov.com>.

#### **NOTICE:**

Please be advised that a determination finding a particular use to be a permitted use or a conditional use shall not authorize the establishment of such use nor the development, construction, reconstruction, alteration, or moving of any building or structure. It shall merely authorize the preparation, filing, and processing of applications for any approvals and permits that may be required by the codes and ordinances of the City including, but not limited to, a zoning certificate, a building permit, and a certificate of occupancy, subdivision approval, and a site plan approval.

  
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Krissy Gilmore  
Senior Planner

cc: Nick Norris, Planning Director and acting Zoning Administrator  
Casey Stewart, Development Review Supervisor  
Posted to Web

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