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3 **BEFORE THE HEARING EXAMINER**
4 **FOR THE CITY OF REDMOND**

5 In the Matter of the Appeal of

6 **WPDC Cleveland LLC**

7 of approved Building Permit authorizing
8 alterations to the structure at 16390 Cleveland
9 Street, Redmond, issued February 17, 2017

BLDG-2016-09802

BPLN-2016-02092

APPLICANT ANDORRA VENTURES
LLC'S PREHEARING BRIEF

10 **I. INTRODUCTION**

11 Andorra Ventures LLC ("Andorra") hereby submits the following prehearing brief. All
12 of the Errors of Procedure, Fact and Law ("Errors") cited by Appellant are based on
13 erroneous legal conclusions and are beyond the scope of the building permit that is being
14 appealed. Andorra therefore respectfully requests the Examiner to dismiss all Errors raised
15 by Appellants.
16

17 **II. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND**

18 The building permit that is the subject of this Appeal is for tenant improvements to
19 the building located at 16390 Cleveland Street, Redmond, Washington ("Building"). The
20 Building was constructed in the 1950s.¹ Its building code occupancy classification is
21 currently "Storage", and its land use classification is "General Sales and Services."² The
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25 ¹Staff Report, p. 3.

²Id.

1 Building is a nonconforming structure in that it does not meet certain Redmond City (“City”)
2 Code (“Code”) requirements (such as parking) that were adopted after it was built.

3 Andorra purchased the Building in November 2016, at which time it was occupied by
4 Raparatur LLC under a lease whose term ran from April 16, 2012, through May 15, 2017.³
5 Andorra terminated the lease early in February 15, 2017, when it began its process for
6 making tenant improvements.⁴
7

8 On September 1, 2016, Andorra representatives met with City staff for a
9 “preapplication conference.” At that meeting, the City staff told Andorra representatives
10 that, should Andorra’s proposed tenant improvements exceed the value of the Building, it
11 would lose its status as a legally nonconforming structure and the Building would have to be
12 brought into compliance with current Code requirements. City staff noted that the Building
13 value could be based on its assessed value or pursuant to a valuation by a certified appraiser.
14

15 Andorra engaged a licensed appraiser to appraise the Building. The appraisal, dated
16 October 3, 2017, valued the Building at \$250,000.⁵

17 On December 8, 2016, Andorra submitted an application for tenant improvements
18 and change of occupancy to the Building (“Original Building Permit”). The change of
19 occupancy permit involved a change from the current “Storage” classification to
20 “Mercantile” under the International Building Code (“IBC”).⁶ The Original Building Permit
21 application also included the addition of 459 square feet to the Building through the creation
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23 ³See Declaration of Sean Miller in Support of Respondent Andorra Ventures LLC’s Dispositive Motion to
24 Dismiss, attached hereto as Exhibit 1 to Declaration of Vicki Orrico (“Orrico Decl.”).

25 ⁴*Id.*

⁵Applicant’s Hearing Exhibit 2.

⁶Section 105.1, as adopted in RMC Chapter 15.08, Building Code and RZC 21.76.020.H.2.

1 of a mezzanine to be used for office space, and significant exterior modifications such as
2 façade improvements and an awning.⁷

3 The Original Building Permit application prepared by Andorra's consultant contained
4 two inadvertent errors: the "Project Name" blank on the Building Permit form said "Origins
5 TI & Change of Use." In reality, the applicant was not Origins⁸ but the Building owner,
6 Andorra, and the application was for a change of *occupancy* rather than a change of *use*.
7

8 On January 25, 2017, the City approved the Original Building Permit, with two
9 significant changes. First, City staff corrected the "change of use" error (but not the Origins
10 name) by stamping the form in red with the following:

11 Change of Occupancy – Origins – Construction includes TI to divide the
12 building into multiple retail suites, storage and offices including the
13 construction of a new 2nd story (459 ft.) mezzanine. Total area of construction
= 3268 sq. ft.⁹

14 The City also excluded the exterior modifications from the Original Building Permit scope.¹⁰
15 Soon thereafter, Andorra began its tenant improvements.

16 In its approval of the Original Building Permit Application, the City did not mention
17 any requirements for a site plan entitlement permit, administrative modification permit,
18 design review or any other land use permit necessary for the interior tenant improvements or
19 the addition of the mezzanine. It was not until February 24, 2017, when Appellant's
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23 ⁷Staff Report, Facts and Findings 2.

24 ⁸While Andorra is the applicant and building owner, Origins is the product brand that is proposed to be offered
by Andorra's proposed tenant, Alternative Medicine Collective, LLC.

25 ⁹Staff Report, Exhibit J.

¹⁰Staff Report, Exhibit K.

1 representative Kevin Wallace notified the City of its intent to appeal the Original Building
2 Permit, that the City notified Andorra of the need for additional permits.

3 On March 2, 2017, Appellant filed its appeal of the Permits. At that point, the City
4 recognized that a portion of the tenant improvements contemplated by Andorra – namely the
5 addition of a mezzanine for office space – could require a site entitlement permit.

6
7 At first, the City informed Andorra that the mezzanine triggered a requirement for an
8 additional parking space and therefore required “a Correction Notice to address the parking
9 deficiency of the existing permit – as the City did issue the permit in error. The Correction
10 Notice will not trigger a need for a new application or permit, and will not be appealable by
11 the neighbors.”¹¹

12 Then the City informed Andorra that an administrative modification was required not
13 only for the exterior improvements but also for the mezzanine. Then on March 9, 2017, the
14 City informed Andorra that it did not qualify for the
15

16 Administrative Modification land use application, per paragraph D.5 below –
17 as your addition is more than 10 percent of the existing square foot of the
18 building. As such, for the addition that is more than 10% of the building, you
will need to apply for a Site Plan Entitlement application which the fee will be
\$18,523.42.”¹²

19 Andorra agreed that, if it desired to do that work, it would submit a separate site
20 entitlement application. On March 23, 2017, Andorra did submit a site entitlement
21 application, but due to delays resulting from the site entitlement application process, on
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25 ¹¹Orrico Decl., Exhibit 2.

¹²Orrico Decl., Exhibit 3.

1 April 12, 2017, Andorra withdrew its site entitlement application which included the
2 mezzanine work and discretionary cosmetic exterior work.

3 Then on April 25, 2017, City staff informed Andorra that staff had made an error in
4 calculating the exterior modification valuation, and that a Site Plan Entitlement application
5 was not necessary. Rather, Andorra could simply revise its building permit application to
6 include the original exterior modifications, remove the mezzanine and not be required to
7 submit any land use application. The revised building permit (“Building Permit”), which
8 encompassed the tenant improvements and change in occupancy, was submitted to the City
9 on April 25, 2017,¹³ and approved May 8, 2017. Appellant appealed the Building Permit on
10 June 2, 2017.
11

12 As part of the Building Permit, Andorra *did not* apply for a *change in use* to
13 marijuana retail sales or any other use. Although Andorra was forthright in its discussions
14 with City staff that it ultimately intended to use a portion of the Building for retail marijuana
15 sales (along with two other spaces for other general retailers), such change in use is triggered
16 by a separate business license application which would be submitted by a tenant seeking to
17 establish a retail marijuana business at the location. Andorra will not be applying for a retail
18 marijuana license, and no such license is part of the Permits or this Appeal.¹⁴ Nor is it a
19 foregone conclusion that there will be a retail marijuana tenant. Although Andorra has been
20 candid with the City about its intent to eventually have a retail marijuana tenant. There are
21 many issues that could preclude such a use, including the current federal administration’s
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25 ¹³Staff Report Exhibit B.

¹⁴Permits subject to appeal were attached to the Appellant’s appeal statement.

1 new position regarding enforcement of federal drug laws, market forces, state regulations,
2 and, of course, a potential tenant's ability to meet any requirements that may be imposed by
3 the City when such tenant applies for a business license.

4 **III. RESPONSE TO LEGAL ISSUES IDENTIFIED IN APPEAL**

5 Pursuant to Section VIII.E.1 of the Redmond Hearing Examiner rules, the Appellant,
6 WPDC Cleveland LLC, has the burden of proof in this appeal. The Examiner must "accord
7 substantial weight to the decision of the department director" for Type I permits.¹⁵ The
8 Examiner may grant the appeal, or grant the appeal with modifications, only if the Examiner
9 determines that the appellant has carried the burden of proving that the Type I decision "is
10 not supported by a preponderance of the evidence or was clearly erroneous."
11

12 Although the Appeal of Andorra's Building Permit cites 14 Errors, Appellant's
13 appeal is essentially based three erroneous legal conclusions: (1) that there has been a
14 change in use of the Building; (2) that the tenant improvements to the Building being made
15 by Andorra require some sort of land use permit beyond the Building Permit; and (3) that the
16 use of the Building as an existing legally nonconforming structure was abandoned, thereby
17 losing its grandfathered status and triggering additional requirements (such as additional
18 parking requirements). As will be demonstrated herein, these assumptions are incorrect, and
19 therefore the Errors cited by Appellant are baseless and must be dismissed.
20

21 **A. Change in Use to Retail Marijuana is Beyond Scope of Building Permit and** 22 **Appeal.**

23 Appellant raises numerous issues that are beyond the scope of the Building Permit
24 and, as such, should not properly be considered by the Examiner in this Appeal. These
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¹⁵RZC 21.76.060.1.4.

1 pertain to changes in use of the Building, particularly related to a proposed retail marijuana
2 tenant. As discussed in Andorra’s Dispositive Motion To Dismiss Errors and in this
3 Prehearing Brief, and confirmed by the City’s Staff Report,¹⁶ there has been no application to
4 the City to change the *use* of the Building to retail marijuana, only a change in the *occupancy*
5 of the Building.

6
7 1. The Building Permit has no Change in Use Component.

8 Many of the Errors alleged by Appellant mistakenly assume that Andorra has applied
9 for a change in use for the Building. There is no change in use associated with the Building
10 Permit, to “General Sales or Services and/or Marijuana Retail Sales” as Appellant claims;
11 only a change in occupancy.

12 It is important to distinguish between a change in *occupancy* and a change in *use*.
13 Occupancy pertains to the requirements under the IBC with regard to the actual building,
14 including things such as the physical structure, types of construction, ingress and egress
15 requirements, storage of hazardous materials, etc. A building cannot be occupied without
16 compliance with IBC, including inspection and certificate of occupancy. Different types of
17 occupancy carry different requirements for the building’s structure (for example, a daycare
18 will have very different building requirements than an industrial manufacturing facility).

19
20 “Structures or portions of structures shall be classified with respect to occupancy in
21 one or more of the groups listed in this section.”¹⁷ Currently, the Building is classified as
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25 ¹⁶Staff Report, FF 7, p. 5, and Analysis of Assertions, pp. 6-17.

¹⁷IBC 302.1.

1 “Storage - Group S” pursuant to the IBC.¹⁸ The Building Permit changes the occupancy to
2 “Mercantile - Group M”:

3 Mercantile Group M occupancy includes, among others, the use of a building
4 or structure or a portion thereof for the display and sale of merchandise, and
5 involves stocks of goods, wares or merchandise incidental to such purposes
6 and accessible to the public. Mercantile occupancies shall include . . . Retail
or wholesale stores.¹⁹

7 Because different occupancy types carry different requirements under the IBC, there
8 may be new requirements that must be met when changing occupancy. These, too, are
9 governing by the IBC.²⁰

10 The Building Permit which is the subject of the Appeal is an application to make
11 interior ground floor improvements and change the occupancy from Storage to Mercantile.

12 While *occupancy* pertains to the physical requirements for a building structure based
13 on a certain type of occupancy, the use pertains to the uses allowed under the City’s zoning
14 code. Currently, the Building retains its historical *use* designation of “General Sales and
15 Services;²¹“

16 An establishment engaging in the retail sale, rental, or lease of goods or the
17 provision of services, including but not limited to automobile sales or service;
18 heavy consumer goods sale or service; durable consumer goods or service; the
19 sale or service of other consumer goods, grocery, food and beverage sales;
20 health and personal care services; finance and insurance services; real estate
21 services; professional services; administrative services; and restaurant and
22 food services.²²

23 ¹⁸ IBC 311.1.

24 ¹⁹ IBC 309.1

²⁰ See IBC 101.4.7 and IEBC 202.

25 ²¹ Staff Report, pp. 3-4.

²² RZC 21.78 – G Definitions.

1 Upon completion of the tenant improvements, the Building will house three leasable
2 spaces. Any tenant falling within the General Sales or Services category will be able to
3 operate upon receipt of a business license; no additional *use* requirements (such as additional
4 parking) would be triggered because such a business would not change the use. A change in
5 *use* may be triggered by a business license application for a use that is not within the General
6 Sales or Services category.
7

8 Retail marijuana is a use separate from General Sales and Services. Therefore, it is
9 reasonable to anticipate that a change in use will be triggered if and when a retail marijuana
10 tenants applies for a business license to open such a business. Andorra has not and legally
11 *cannot* apply for a change in use to marijuana retail sales. Under City and State law, only the
12 actual marijuana retailer may apply for such a license. A retail marijuana business license
13 cannot be issued by the City until (1) a retailer (Andorra's planned tenant) has procured a
14 location and lease; (2) the Washington Liquor and Cannabis Board has issued a retail
15 cannabis state license for that location;²³ and (3) the City conducts its own review and issues
16 a city business license.²⁴
17

18 2. Evidence Beyond Scope of Appeal Must be Excluded.

19 Because the Building Permit does not encompass a change in use and no application
20 for a change in use or business license has been submitted to the City, all discussions
21 regarding change in use to retail marijuana are beyond the scope of the Building Permit and
22 issues before this Examiner on appeal.
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24

25 ²³RCW 69.50.325(3) and WAC 314-55-020.

²⁴RZC 21.41.030 and RMC Ch. 5.04.

1 A hearing examiner may “exercise only those powers conferred either expressly or by
2 necessary implication.”²⁵ The Examiner does not have the power to adjudicate in any
3 equitable capacity.²⁶ The Examiner’s authority is strictly limited to that which is given in the
4 local regulations.²⁷ RMC 4.28.020 grants the Examiner the power to conduct hearings as
5 described in RZC Chapter 21.76. RZC 21.76.060.D.4 grants the Examiner the authority to
6 hear appeals on permits issued by the City. The Examiner has no authority to hear issues that
7 are not within the scope of permits issued by the City.
8

9 Many of the Appellant’s over 100 exhibits as well as some of Appellant’s witnesses
10 relate to these issues that are beyond the scope of what can be properly considered by the
11 Hearing Examiner on appeal. Andorra therefore requests that the exhibits pertaining to retail
12 marijuana be excluded, along with the witnesses²⁸ whose testimony pertains solely to a
13 change in use to retail marijuana or any witness testimony related to a change in use to retail
14 marijuana. Such witnesses and exhibits are beyond the scope of the Appeal and beyond the
15 purview of the Examiner. Andorra further reserves the right to object to the admission of any
16 evidence sought to be admitted by the parties on relevancy, other applicable Rules of
17 Evidence, or legal standard.
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21 ²⁵*Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 636, 689 P.2d 1084 (1984) (citing *State v. Munson*, 23 Wn. App. 522, 524, 597 P.2d 440 (1979)).

22 ²⁶*Chaussee*, 38 Wn. App. at 638.

23 ²⁷*In re King County Hearing Examiner*, 135 Wn. App. 312, 319-320, 144 P.3d 345 (2006).

24 ²⁸For example, Mr. Mike J. Read states that he was hired to testify as follows:

25 On April 4, 2017, I was engaged by attorney Aaron Laing of Schwabe, Williamson & Wyatt, PC to prepare a comparative trip generation and parking generation analysis of the proposed marijuana retail sales business known as the Origins Tenant Improvements and Change of Use project for the existing building located at 16930 Cleveland Street, Redmond, WA 98052 (“Redmond Origins”), City permit references BLDG-2016-09802 and LAND-2017-00290.

Appellant Ex. 2, para. 3 (emphasis added).

1 3. Errors Related to Change in Use Must be Dismissed.

2 Each of Appellant’s Errors cites as its basis a change in “use to General Sales or
3 Services and/or Marijuana Retail Sales Marijuana Retail Sales use.” As noted above, the
4 current use *is* general sales or services. Therefore, any use of the Building for general sales
5 or services businesses will not be a change in use or trigger compliance with any
6 requirements based on a change in use. Although use of the Building for a retail marijuana
7 business would trigger a change in use, and compliance with any associated requirements, *no*
8 *change in use to retail marijuana sales has been applied for.* The compliance triggers cited
9 by Appellant pertain to *changes in use* not changes in occupancy. Because the Building
10 Permit does not include a change in use, the Errors that arise from a change in use must be
11 dismissed.²⁹

12
13 Appellant first claims, in Error 2, that the City erred in allowing a change in use “to
14 General Sales or Services and/or Marijuana Retail Sales use in a building that does not meet
15 substantive land use code requirements and/or comply with the building code.” There has
16 been no such change in use; this portion of Error 2 should be dismissed.

17
18 In Error 3, Appellant alleges that the City failed to follow RZC 21.40.010.C.1.a. and
19 RZC 21.10.030.D. because “the proposed change in use to General Sales or Services and/or
20 Marijuana Retail Sales use *is a change in land use and such change in use requires*
21 provision of onsite parking spaces.”³⁰ RZC 21.10.030.D sets the number of required parking
22 stalls for a given land use. RZC 21.40.010.C.1.a allows developments that met the parking
23

24 ²⁹Each of the alleged Errors is based upon “the proposed change in occupancy and/or use to
25 General Sales or Services and/or Marijuana Retail Sales use”. Andorra addresses only the purported change in
 use to retail marijuana because the current designated use is General Sales or Services.

³⁰Emphasis added.

1 requirements in effect when approved to “continue to operate with the parking deficiency as
2 long as no land use change is made that would require additional parking spaces. There has
3 been no land use change; therefore no additional parking space requirement is triggered.
4 Error 3 should be dismissed.

5
6 In Error 5, Appellant alleges that the City failed to follow RZC 21.40.010.C.1.c. and
7 RZC 21.10.030.D. because “the proposed change in use to General Sales or Services and/or
8 Marijuana Retail Sales *use will result in a change in land use and such change in use*
9 *requires* provision of at least the code minimum number of onsite parking spaces and bicycle
10 parking.”³¹ As noted above, RZC 21.10.030.D sets the number of required parking stalls for a
11 given land use. RZC 21.40.010.C.1.c provides:

12
13 When a preexisting building with nonconforming parking *is remodeled or*
14 *rehabilitated but not enlarged, the existing use of the building may continue*
15 *without providing additional parking.* In the event that *the land use is*
16 *changed* or increased by an addition of building square footage, the minimum
17 level of parking required, including bicycle parking required by this chapter,
18 consistent with the new or increased land use affected by the change must be
19 provided, or an approved Transportation Management Program, as provided
20 in RMZ, *Transportation Management Program*, must be implemented for the
21 site that effectively reduces parking demand;³²

22 As noted herein, the Building is being rehabilitated but not enlarged, and there is no land use
23 change. Therefore, the existing use of the Building may continue without providing
24 additional parking for cars or bicycles. Error 5 must be dismissed.

25 In Error 8, Appellant alleges that the City failed to follow RZC 21.40.010.E.8 because
“the proposed change in use to General Sales or Services and/or Marijuana Retail Sales *use*

³¹Emphasis added.

³²Emphasis added.

1 *requires provision of off-street parking/loading facilities for service vehicles.*” However, as
2 noted above, RZC 21.40.010.C.1 allows developments that met the parking requirements in
3 effect when approved to continue to operate with the parking deficiency as long as no
4 enlargement or land use change is made that would require additional parking spaces. No
5 enlargement or land use change has been made that would trigger the provision of off-street
6 parking/loading facilities. As such, Error 8 must be dismissed.
7

8 4. Marijuana Regulations are Unrelated to the Building Permit.

9 Errors 13 and 14 specifically allege noncompliance with marijuana regulations under
10 RZC 21.41 and WAC 314-55.050, alleging that the City’s development regulations
11 governing marijuana, including buffer requirements are not met in the Building Permit. As
12 noted throughout this brief, there has been no change in use of the Building to retail
13 marijuana applied for as part of the Building Permit. As such Errors 13 and 14 must be
14 dismissed.
15

16 **B. No Land Use Applications Are Required.**

17 Appellant alleges that the City has “piecemealed” the permit process by failing to
18 require review and approval of land use permits prior to issuing the Building Permit.
19 Appellant claims the land use permits were triggered by (1) exterior modifications to the
20 Building³³ and, (2) expansion of the Building square footage.³⁴ Appellant also alleges that
21 the City failed to require design review of the proposed alterations.³⁵ Appellant alleges that
22
23

24 ³³See Errors 2 and 11.

25 ³⁴See Errors 2, 4, and 6.

³⁵Error 11.

1 the City failed to give notice of these purportedly required land use permits.³⁶ Appellant is
2 incorrect with regard to these allegations: there was no expansion of the Building's square
3 footage, no land use applications were required and thus no notice was required. Errors 1, 2,
4 4, 6 and 11 should be dismissed.

5 1. Exterior Modifications are Exempt.

6 In Errors 2 and 11, Appellant argues that the City failed to require compliance with
7 design standards under RZC Chapter 21.60 and RZC 21.76.020. As noted above, the exterior
8 modifications were originally excluded from the City's approval of the Original Building
9 Permit.³⁷ However, the City acknowledged that the exterior modifications would be exempt
10 from any design review if they fell within the exemption provided by RZC 21.76.020.E.3.c:
11

12 The Administrator shall have design review authority on all building permit
13 applications that have a total valuation of less than \$50,000 and are not
14 specifically exempt from design review in subsection E.2 above.

15 Andorra modified its proposed exterior modifications, eliminating discretionary
16 cosmetic items such as an awning, thereby reducing the cost of such modification to
17 \$39,700.³⁸ As such, the exterior modifications fall within the \$50,000 exemption. In
18 accordance with the City's direction, Andorra revised the Original Building Permit to include
19 the exterior modifications, and the Building Permit does include these exterior
20 modifications.³⁹ As noted in the Staff Report, the exterior modifications fall under the
21 exemption and thus no land use permit or review by the Design Review Board is required:
22

23 ³⁶Error 1.

24 ³⁷See Original Building Permit.

25 ³⁸Applicant's Hearing Exhibit 7.

³⁹Staff Report, Exhibit B; excludes some of the more expensive exterior façade modifications such as the awnings that had been proposed in the Site Plan Entitlement application withdrawn by Andorra.

1 3. The applicant submitted a revision application to the City that eliminated
2 the addition of floor area, namely the mezzanine. Based on that reduction,
3 coupled with the fact that the valuation of the exterior modifications is
4 less than \$50,000 (See Exhibit B – Building Permit Revision Application,
Increase in Valuation line), the City finds that a land use permit
(Administrative Modification) is not required per RZC21.76.090. D.

5 4. As the value of the exterior improvements to the building is less than
6 \$50,000, the City finds that review by the Design Review Board is not
7 required, per RZC 21.76.020.3.c, and that review of the building design is
within the authority of the Administrator.⁴⁰

8 Because no land use permit or design review is triggered by the exterior
9 modifications, Errors 2⁴¹ and 11 should be dismissed.

10 2. The Mezzanine is no Longer Part of the Building Permit.

11 The Original Building Permit as submitted included the addition of 459 square feet to
12 the Building through the creation of a mezzanine to be used for office space. When the City
13 notified Andorra in March that a site entitlement permit would be required for the additional
14 space, Andorra submitted a site entitlement application on March 23, 2017. However, due to
15 delays resulting from the site entitlement application process, Andorra withdrew its site
16 entitlement application and its design to expand the mezzanine on April 12, 2017. The
17 Building Permit that is the subject of this Appeal does not include the mezzanine or any
18 expansion of the Building square footage. As such, no site entitlement permit or other land
19 use application is required.

21 2. The applicant originally applied for a Tenant Improvement that included the
22 addition of a mezzanine office space. See Exhibits J – Original Building
23 Permit Application and Exhibit K – Approved Original Plans. The original
24 application and plans have been revised with the submission of Exhibit B –

25 ⁴⁰Staff Report, Facts and Findings 3-4.

⁴¹The portion dealing with design review and exterior modifications.

1 Building Permit Revision Application and Exhibit C Approved Revised
2 Architectural Plans.

3 3. The applicant submitted a revision application to the City that eliminated
4 the addition of floor area, namely the mezzanine. Based on that reduction
5 ...the City finds that a land use permit (Administrative Modification) is not
6 required per RZC21.76.090. D.

7 Because the mezzanine is not included in the Building Permit, there is no enlargement
8 of the leasable floor area. No land use application is therefore required and the additional
9 requirements that would be triggered by such an enlargement are not triggered.

10 In Error 2, Appellant alleges that the City erred in approving a change of use “with
11 increased usable floor area on a non-conforming site in a non-conforming structure without
12 required parking, bicycle parking, loading, garbage/recycling, and/or utility meters.” In
13 Error 4, Appellant alleges that an enlargement of the leasable floor area requires provision of
14 onsite parking spaces. Similarly, in Error 6, Appellant alleges that an enlargement of the
15 leasable floor area requires provision of “at least the code minimum number of onsite parking
16 spaces and bicycle parking.” Because there has been no enlargement of the leasable floor
17 area, Errors 2,⁴² 4 and 6 are beyond the scope of the Building Permit and must be dismissed.

18 3. No Land Use Notices Were Required.

19 Appellant also alleges that the City failed to give notice and opportunity to comment
20 pursuant to City and State land use regulations.⁴³ Only RZC 21.76.050 and .080 contain
21 notice requirements. RZC 21.76.050 provides that building permits are Type I with
22 “Minimal-generally no public notice required. No public hearing.” The only notice for a
23 building permit pursuant to RZC 21.76.080 is notice of an open record appeal hearing.
24

25 ⁴² The portion dealing with increased usable floor area.

⁴³ RZC 21.76.020, 21.76.050, 21.76.060 and 21.76.080, and RCW 36.70B.110.

1 RCW 36.70B.110 allows local governments to determine the appropriate notice to be given,
2 which may include posting the property for site-specific proposals,⁴⁴ as was done here.
3 There were no additional notices required.

4 In summary, no land use applications are triggered by the Building Permit
5 Application or the tenant improvements: no enlargement, no design review, no notices, and
6 no land use applications. Therefore, the Errors 1, 2⁴⁵, 4, 6 and 11 should be dismissed.
7

8 **C. The Building has not Lost its Status as a Legally Nonconforming Structure.**

9 Appellant claims that the Building is “an abandoned warehouse”⁴⁶ and that such
10 “abandonment” or “termination” and “the proposed change in occupancy and/or use to
11 General Sales or Services and/or Marijuana Retail Sales use” required the City to impose
12 additional parking, bicycle parking, garbage/recycling, utility meters, and loading facilities
13 requirements.⁴⁷
14

15 Under City Code, “abandonment” is defined as:

16 Abandonment, Nonconforming Use or Structure. All right to continue a
17 nonconforming use is abandoned when the property owner (a) *intends to*
18 *abandon* its right to continue the nonconforming use or structure, and
19 (b) there is an *overt act*, or failure to act, on the part of the property owner
20 *which implies that the owner no longer claims or retains any interest in the*
21 *right to continue* the nonconforming use or structure.⁴⁸

22 Here, the owner has neither overtly nor impliedly expressed an intent to abandon the
23 Building’s nonconforming status. The Building has been in continual use, has not been

24 ⁴⁴RCW 36.70B.110(4)(a).

25 ⁴⁵The portion dealing with increased floor space, design review, notices, exterior modifications and land use applications.

⁴⁶Amended Appeal, p. 2.

⁴⁷See Errors 2, 7, 9 and 10.

⁴⁸RZC 21.78 A Definitions (emphasis added).

1 expanded or abandoned, and has retained its status as a legally nonconforming structure.⁴⁹
2 No change in use has been applied for under the Building Permit. The change in occupancy
3 does not trigger any additional parking or loading facilities requirements. The City has
4 therefore determined that no additional parking or loading facility requirements are triggered
5 in conjunction with the Building Permit.⁵⁰
6

7 Again, it is important to distinguish between change in *use* and change in *occupancy*.
8 The compliance triggers cited by Appellant pertain to *changes in use* not changes in
9 occupancy. First, Appellant cites RZC 21.40.010.C.I.e.,⁵¹ which provides:

10 *When a use* in a development with nonconforming parking *is terminated*, the
11 area vacated shall not be occupied by a use requiring more parking spaces
12 than the terminated use, unless the required additional parking spaces are
provided.⁵²

13 There is no use being terminated in conjunction with the Building Permit. Nor would there
14 be a change in use if and when a general sales tenant opens for business. Only a marijuana
15 retail sales business (through a business license application) would trigger a change in use,
16 and none has been applied for or is part of the Building Permit. Therefore, no additional
17 parking requirement is triggered under RZC 21.40.010.C.I.e.
18

19 Appellant next cites RZC 21.76.100.F.7⁵³ which governs abandonment of rights to
20 nonconformities. That code section provides:
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22

23 ⁴⁹Staff report, p. 3-4.

24 ⁵⁰Staff Report, Facts and Findings 6.

25 ⁵¹Error 7.

⁵²Emphasis added.

⁵³Error 9.

1 All rights to nonconforming parking shall be lost *if the primary structure on*
2 *the lot is demolished or rebuilt* as defined in RZC Article VII, *Definitions*.
Rights shall not be lost if a building is merely vacated for less than one year.⁵⁴

3 The Building has not been demolished or rebuilt; as such this provision is inapplicable.⁵⁵

4 Finally, Appellant cites RZC 21.76.100.F.9.a and b⁵⁶ which govern alteration or
5 expansion of a nonconformance:
6

- 7 a. General. *The alteration or expansion of a legal nonconforming use or*
8 *structure is prohibited unless it does not increase the degree of*
9 *nonconformity*, or unless it is specifically permitted through an official
10 action as stated in RZC 21.76.050, *Permit Types and Procedures*. . .
11 b. Bringing Nonconforming Structures into Compliance. A legal
12 *nonconforming structure shall be brought into full compliance* with the
13 RZC when *alteration or expansion of the structure* takes place, and the
14 following takes place within any three-year period:
15 i. The gross floor area of the structure is increased by 100 percent or
16 more; or
17 ii. The *costs stated on all approved building permit applications* for
18 the structure equal or exceed *the value of the existing structure* at
19 the beginning of that three-year period.⁵⁷

20 Paragraph a. is inapplicable. The alteration of the Building does not increase the
21 structure's nonconformity. The alterations do not result in the expansion of the structure:
22 neither the Building's footprint nor square footage is changing. There is no change in use
23 under the Building Permit that will increase the parking nonconformity.

24 The Building's alterations do fall within the exemption of RZC 21.76.100.F.9.b.ii.
25 above, in that the costs of the approved Building Permit do not exceed the value of the
Building. "Value, Existing Structure" is defined as:

23 ⁵⁴Emphasis added.

24 ⁵⁵ Please note that the remainder of RZC 21.76.100.F.7 applies to nonconforming *uses*; the Building is defined
as a nonconforming *structure*, not a nonconforming use. See RZC 21.78 Definitions N.

25 ⁵⁶Error 10.

⁵⁷Emphasis added.

1 The value established by the records of the King County Assessor or, where
2 the applicant disagrees with such value, the value established by a current
3 appraisal that is:

- 4 1. Prepared by an appraiser licensed by the State of Washington to appraise
5 properties of the type at issue; and
- 6 2. Paid for by the applicant; and
- 7 3. Determined to be accurate and reliable by the Administrator.⁵⁸

8 Andorra engaged Washington-licensed CJM Appraisers to conduct an appraisal of the
9 Building (“Appraisal”).⁵⁹ The Appraisal valued the Building at \$250,000. The actual cost of
10 the improvements pursuant to the Building Permit is \$204,493.80.⁶⁰ Appellant’s claims that
11 the improvements will exceed \$500,000,⁶¹ that the Building’s value is less than \$250,000,⁶²
12 and that the Building Permit was “obtained by misrepresentation of material fact [of] the
13 estimated value of the improvements”⁶³ are fictional and completely unsupported. The costs
14 stated on the approved building permit for the Building do not equal or exceed the value of
15 the Building. The nonconformance has not been impermissibly expanded or altered. No
16 additional parking or loading facilities are required. Errors 7, 9 and 10 should be dismissed.

17 **D. City Had no Duty to Revoke Permit.**

18 In Error 12, Appellant claims that the City was required “to revoke or otherwise
19 rescind” its issuance of the Building Permit. Appellant cites RZC 21.76.090(E) to support its
20 claim. However, that provision is permissive: “The Administrator *may* determine that any
21 approved permit should be revoked upon a finding that one or more of the following

22 ⁵⁸RZC 21.78.V.

23 ⁵⁹Andorra Exhibit 2.

24 ⁶⁰ Andorra Exhibit 7.

25 ⁶¹Amended Appeal, p. 4.

⁶² Id.

⁶³ Error 12.

1 conditions exist . . .”⁶⁴ It was within the City’s discretion to determine whether the Building
2 Permit should be revoked; the Administrator chose not to do so. Andorra is fully cognizant
3 of the risk of continuing its work given the Appeal. The City will not issue a Certificate of
4 Occupancy unless and until it is satisfied that the tenant improvements comply with City
5 Code. Moreover, the basis of Error 12, and the basis for all of Appellant’s alleged Errors, is
6 “the proposed change in occupancy and/or use to General Sales or Services and/or Marijuana
7 Retail Sales use.” Again, there is no such change in use encompassed in the Building Permit.
8 Error 12 must be dismissed.

10 **IV. CONCLUSION**

11 All of the Errors raised by Appellant are based on erroneous legal conclusions and are
12 beyond the scope of the Building Permit that is being appealed here. Andorra therefore
13 respectfully requests the Examiner to dismiss all Errors raised by Appellants.

14 DATED this 12th day of July, 2017.

16 JOHNS MONROE MITSUNAGA
17 KOLOUŠKOVÁ PLLC

18 By 
19 Vicki E. Orrico, WSBA #16849
20 Darrell S. Mitsunaga, WSBA #12992
21 Attorneys for Andorra Ventures LLC

22 *156-1 Applicant’s Prehearing Brief 7-12-17*

25 _____
⁶⁴Emphasis added.

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DECLARATION OF SERVICE

I, Evanna L. Charlot, am a citizen of the United States, resident of the State of Washington, and declare under the penalty of perjury under the laws of the State of Washington, that on this date, I caused to be filed with the City of Redmond Hearing Examiner, and served on all counsel of record, via email, a true and correct copy of the foregoing APPLICANT ANDORRA VENTURES LLC'S PREHEARING BRIEF, as stated below.

Office of the Hearing Examiner
To: Cheryl Xanthos, Deputy City Clerk
PO Box 97010 – M/S 3NFN
Redmond, WA 98073-9710

cdxanthos@redmond.gov

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Seattle, WA 98101
Attorneys for Appellant

alaing@schwabe.com

Dated this 12th day of July, 2017, in Bellevue, Washington.


EVANNA L. CHARLOT