



May 6, 2019

***Draper City Planning Division
Administrative Interpretation***

RE: Sno Shack - Hokulia Shave Ice Interpretation

This letter is in regards to a question that has arisen regarding whether a temporary use is considered legal nonconforming in a certain location and how much space the temporary use can utilize on site. The use has historically been located at 1212 East Draper Parkway. The temporary use permit application is USE-619-2019. The subject property is located within the CC (Community Commercial) zoning designation.

Temporary Use Permits are not regulated in the land use and development code but within the business licensing code, per Draper City Municipal Code (DCMC) Chapter 6-16. This code states in DCMC Section 6-16-030 what types of uses are considered temporary, how long they can be at any one location and specific standards for each use. In the case of temporary food sales, such as a snow shack or Hawaiian shaved ice, the use is considered retail sales not directly associated with a permanent business and is allowed for up to 180 days. Per DCMC Section 6-16-030(B)(7)(c) temporary retail sales are limited to an area of 100 square feet in size.

6-16-030: TEMPORARY USES ALLOWED:

B. Uses Listed: The temporary uses listed in this section shall be allowed up to the time limits specified for each use. Uses not specifically identified by this section shall not be allowed as temporary uses. Unless otherwise specified in this section, occurrences for temporary uses shall be determined by the business or individual operating the use.

7. Temporary retail sales not directly associated with a permanent business on the site may be conducted for up to one hundred eighty (180) days per year, subject to the following:

- a. The sales operation is contained within the parking area of an operating, permanent business;
- b. The sales operation is conducted with the property owner's permission, including the availability of restroom use by the permanent business for employees and customers of the operation;
- c. The sales operation is contained within one hundred (100) square feet or less of the parking area;
- d. The sales operation, including all stock and supplies, is completely contained within a temporary, enclosed, portable structure;
- e. The sales operation does not prevent or inhibit pedestrian mobility through all sidewalks and pedestrian walkways; and
- f. The sales operation does not create hazards such as limited visibility or other nuisances that could potentially result in accidents or complaints.



The City modified the DCMC on October 20, 2009, with ordinance 908. This ordinance moved the regulations for temporary use permits from the land use and development code by repealing DCMC Chapter 9-40, and created the new DCMC Chapter 6-16. The previous code restricted temporary retail sales to 200 square feet of area per the now repealed DCMC Section 9-40-030(a)(10).

The Draper City Fire Marshal, Don Buckley has stated in writing that as part of his role as Fire Inspector with Unified Fire Authority, the previous fire service provider for Draper City, he inspected a sno shack on the property at 1212 East Draper Parkway from 2005 thru 2016. This predates the 2009 code change, and establishes the use on the property under the previous code.

In addition, the property owner for Hidden Valley Shopping Center, Ron Raddon, has provided a letter stating a sno shack has been located in the center for a least the past 15 years. The subject property is part of the overall Hidden Valley Shopping Center.

It is the Zoning Administrators position that the sno shack located at 1212 East Draper Parkway is a legal nonconforming temporary use. Per DCMC Section 9-6-040 a legally existing use may be continued. This use predates the current temporary use regulations adopted in 2009.

9-6-040: NONCONFORMING USES:

A. Continuation: A nonconforming use of any conforming or nonconforming structure which was legally existing when such use became prohibited may be continued as provided in this chapter.

There are a couple options available to you if you believe this interpretation has been made in error. You may seek a text amendment in order to change the code, or you may appeal this determination. An appeal is subject to DCMC Section 9-5-180 and 9-6-140 and shall be made within 14 days of the decision which is appealed. Applications for both options can be found on the city's website.

If you have further questions, please contact me at jennifer.jastremsky@draper.ut.us or at 801-576-6328.

Respectfully,

Jennifer Jastremsky, AICP
Senior Planner/Zoning Administrator
Community Development Department

Attachments

Cc File

Draper City Fire Department

www.draper.ut.us



April 30, 2019

To: Jennifer Jastremsky

From: Don Buckley
Fire Marshal

Re: Sno Shack @ 1212 East Draper Parkway

Jennifer,

When I worked for the Unified Fire Authority I was assigned to Draper City from 2005 thru 2016. Every year from 2005 thru 2016 I performed a fire inspection on a Sno Shack at 1212 East Draper Parkway. They have always been compliant and we have never had any code violations.

I am available should you have any further questions or concerns in regards to this matter.

Thanks

A handwritten signature in blue ink, appearing to be 'Don Buckley', is written over a horizontal line.

Don Buckley
Draper City Fire Marshal
don.buckley@draper.ut.us
801-824-3714

Hidden Valley, LLC
1111 East Draper Parkway, Suite 101
Draper, UT 84020
801-576-1553

May 6, 2019

Russell Fox
Draper City Assistant City Manager
1020 East Pioneer Road
Draper, UT 84020

Russell,

The Sno-Shack has been a part of Hidden Valley Shopping Center for the last 15 years. When I built the Freddy's restaurant I no longer had the space for them to set up where they had in the previous years.

I contacted Associated Foods to see if they would agree to let Sno-Shack re-locate to the northeast corner of their parking lot and also take over the lease. The new location was ideal for both Associated Foods and Sno-Shack for the safety of the customers and their children.

If you have any other questions, please contact myself or Patti Thomson at my office. Thanks for your time with this.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ron Raddon', with a long horizontal flourish extending to the right.

Ron Raddon