

**Interpretation of the Director
Under Seattle Municipal Code Title 23**

Regarding the Use of the

Property at

5601 – 6th Avenue South

**DPD Interpretation No. 14-002
(DPD Project No. 3016915)**

Background

This interpretation was requested by attorney Jessica M. Clawson on behalf of her client Scanlan Kemper Bard. The Seattle Design Center, a business complex including both the Plaza Building and the separate Atrium Building across South Orcas Street, is located in the Georgetown neighborhood of South Seattle. The sole question for interpretation is whether the “wholesale showroom” use established in the Plaza Building by permit may appropriately be classified as an office use consistent with the definitions of these terms in former zoning regulations and the present Land Use Code and with the history of actual use of the building since its construction in 1981.

Findings of Fact

1. The Plaza Building property is addressed in Department of Planning and Development (DPD) records as 5601 – 6th Avenue South. According to the Geocortex land use map maintained by DPD, the property is described as Lots 1-18, Block 17, Commercial Street Steam Motor Addition, together with the vacated alley and vacated south Findlay Street adjoining, and together with a vacated portion of South Orcas Street adjoining Lots 1-12.
2. The property is zoned IG2 U/85': General Industrial 2, with an unlimited height for most structures and a structure height limit of 85 feet for structures containing the uses described in Seattle Municipal Code (SMC) Section 23.50.022.B.
3. The Plaza Building is a six-story structure built over a basement parking level. The ground or first floor of the building is also a second parking level.
4. Floors two through six are developed with a mix of offices and “showroom” uses. As observed in a site visit by DPD Land Use Planner Supervisor William Mills on April 14, 2014, the second level is the first commercial level above the parking. A map of the interior of the building furnished by the Seattle Design Center reception staff and available on the Design Center website shows this second level as “Plaza Floor One.” At this level, there is an open “atrium” or lobby area with tables and chairs and a reception

desk. Various businesses that appear to operate as studios, galleries, or showrooms are accessed from the atrium lobby. The businesses display art, rugs, furniture, draperies, and similar products typically associated with furnishing or fitting out the interiors of commercial spaces or possibly communal areas of residential uses such as apartment building lobbies.

5. The third level (Plaza Floor Two) contains spaces that are mainly showroom spaces but include offices as well. The fourth level (Plaza Floor Three) includes large areas of vacant space as well as more office space. Similarly, the fifth and sixth levels (Plaza Floors Four and Five) included mainly office space. One tenant is the corporate headquarters of Sur La Table, a kitchen supply business according to their website. While Sur La Table has some showroom space for display of kitchenware, Mr. Mills observed that most of their space appears to be in use as offices. Additional offices on Plaza Floor 4 included a law office and the headquarters of the King County Police Officers guild.
6. As observed by Mr. Mills, the majority of spaces in the building, including the vacant spaces, was either carpeted or had floors of finished wood or fine tile. There is an unenclosed loading dock accessible from the second floor (Plaza Floor One) that fronts on the west side of the building facing 5th Avenue South. This area was vacant on April 14, with no trucks parked in the area or any products stored in the modest enclosed space behind the loading docks. Mr. Mills did not observe any customers transacting business in the Plaza Building, although all businesses in the building appeared to have various employees at work.
7. According to the concierge staff on duty in the lobby on April 14, small orders of items on display in the businesses at the Plaza Building are occasionally fulfilled at the Plaza Building for specialty furnishings for specific areas of a business, such as a small number of tables, chairs, an art display, or a carpet intended for the lobby of a restaurant or hotel, or similar use. However, the displays by the businesses in the building are primarily for the benefit of customers to see how such items appear when arranged in a space, and orders are fulfilled from an off-site warehouse. Customers are primarily architects, interior designers, contractors and other similar professionals, although the building is open to members of the general public.
8. Corporate tenants of the Plaza Building have provided signed statements that further explain details of the business operations in the structure. These statements are from Melyssa Romney of Prowess Consulting, Mark Comstock of Sur La Table, and Tim Jones of Workspace Development. According to the information in the signed statements, these companies use their space primarily as offices, with Sur La Table and Workspace Development also maintaining some showroom space. Mr. Comstock and Mr. Jones both state that their companies do not store merchandise other than samples at the Plaza Building and that customers are able to view their products but cannot purchase those products at their companies' Plaza Building spaces. A further signed statement is from Shannon Gerrity, the Property Manager of the Plaza Building employed by Hines Interests Limited Partnership, who states in part that tenants of the Design Center utilize their space to allow customers to shop for merchandise, but the location does not sell directly to customers. Merchandise is not stored on-site but rather orders may be made at the Plaza Building but fulfilled from an off-site location. The "... tenants in the Design

Center are comprised of a use that is more of a corporate office use than a retail or warehouse use.” These signed statements verify that the businesses discussed in them have operated in the same way since as early as 1995.

9. Permission was granted to construct the parking levels of the Plaza Building and establish use for “office/wholesale/parking bldg. per plans” under Seattle Master Use Permit (MUP) No. 597729 (Project No. 81191-0182) issued September 17, 1981. There is also a separate area on the face of Permit 597729 for description of “use under this permit” and within this area the identified uses are office, wholesale display, warehouse, and parking garage. Permission was granted to complete construction of “office, warehouse, and parking building” under Seattle Building Permit No. 599656, issued February 18, 1982. The Plaza Building, when completed, was connected to the building to the south, the original Design Center “Atrium Building”, by a skybridge, which is still in place. Since the original permit for the Plaza Building, a variety of additional permits have been issued for alterations, interior remodels, and tenant improvements. These additional permits continue to describe the use as wholesale showroom space, offices, warehouse, “display”, and parking garage
10. A parking analysis of the entire Seattle Design Center was done as part of the application for environmental review of the structure under the State Environmental Policy Act (SEPA) that was submitted for MUP application 81191-0182. The parking analysis included the connected Atrium and Plaza Buildings and two smaller buildings, “V” and “W”. The analysis shows 284 stalls total in the Plaza Building (or “new design center” as it is referred to in the analysis).¹ The floor area for the Plaza Building is shown as 253,875 square feet of wholesale showroom and 24,117 square feet of office. The calculations for the entire Design Center show a total of 327 required parking stalls, with 433 stalls provided. The calculations are based on a mix of office use at 1 space per 800 square feet, wholesale showroom at one space per 2000 square feet, and a restaurant space in the atrium building for which 69 spaces were assigned.²
11. The building plans approved as part of the analysis of Permit 599656 show “tenant” space on floors 2-5 and “office tenant” on the “penthouse” or sixth level.
12. Table A for 23.50.012 sets forth the uses permitted in the IG2 zone. Under Line C.8, office uses are permitted outright. Under Line C.11, heavy sales and services are permitted outright.³ Storage uses including warehouses are also permitted outright under Line K.
13. While the uses identified in the permit history of the Plaza Building are permitted outright, they are subject to different development standards. In particular, office uses are subject to maximum size limits for nonindustrial uses under SMC Section 23.50.027. Under Table A for 23.50.027, office uses as principal uses on a lot in the IG2 zone are limited to 25,000 square feet. Subsection 23.50.027.B.1 provides an exception as follows:

¹ This total is slightly lower than stated in the Determination of Non-Significance (DNS) decision under SEPA, which notes 291 stalls. The parking analysis tallies handicapped stalls separately and it is possible that the total noted in the DNS includes a total of handicapped and regular parking stalls.

² Restaurant space in the Atrium Building was changed to wholesale showroom under Permit 6280731, issued August 8, 2011.

³ The “wholesale showroom” use is a subset of heavy sales and services per the definition in Seattle Municipal Code (SMC) Section 23.84A.036.

“B. The following exceptions to the size limitations in Table A for 23.50.027 are allowed for a structure existing as of September 26, 2007:

1. A use legally established as of September 26, 2007 that already exceeds the size limitations listed in Table A for 23.50.027 may continue.”

14. When the Plaza Building was constructed in 1981-1982, the applicable zoning under former SMC Title 24, the Seattle Zoning Code of 1957, was IG: General Industrial Zone. Under former SMC 24.46.020, by cross-reference to former Sections 24.50.030, 24.48.030, and 24.44.030, offices, warehouses, and “wholesale store” uses were all permitted outright in the IG zone. No specific development standards other than different parking requirements per former Section 23.64.120 applied to these uses. Section 24.64.120 required one parking space for every 800 square feet of floor area for office uses not providing customer services on the premises and one space for every 2,000 square feet of floor area for “warehouses and storage buildings.” The “wholesale store” use was not separately identified in the parking requirements.

15. Former Section 24.08.240 defined “wholesale office” and “wholesale store” as follows:

- “1. ‘Wholesale office’ means an establishment for the sale of goods and merchandise in wholesale lots, not including any wholesale storage.
2. ‘Wholesale store’ means an establishment for the sale of goods and merchandise in wholesale lots, including wholesale storage.”

Title 24 did not contain definitions for office, warehouse, wholesale showroom, wholesale display, or display.

16. The current Industrial zoning was added to the Land Use Code in 1987, with the adoption of Seattle City Ordinance 113658. At that time, former SMC Section 23.84.044 included the following definitions:

“‘Warehouse’ means a commercial use in which space is provided in an enclosed structure for the storage of good produced off-site, for distribution or transfer to another location.”

“‘Wholesale showroom’ means a commercial use in which merchandise is displayed and sold at wholesale to business representatives for resale, rather than to the general public for direct consumption and which includes storage of goods for sale. Wholesalers which do not have auxiliary storage as a part of the use shall be considered administrative offices.”

17. The following current definitions in Section 23.84A.036 were adopted under Seattle City Ordinance No. 122311, effective in January 2007:

“‘Sales and services, heavy’ means one of the following uses:

* * *

5. ‘Wholesale showroom’ means a heavy sales and service use in which merchandise is displayed and sold at wholesale to business representatives for

resale, rather than to the general public for direct consumption, and that includes storage of goods for sale.”

* * *

“Storage’ means a use in which goods or products are stored more than (72) hours. Storage uses include but are not limited to the following uses:

* * *

3. ‘Warehouse’ means a storage use in which space is provided in an enclosed structure for the storage of goods produced off-site, for distribution or transfer to another location.”

18. The current definition of “office” was also added to the Code by Ordinance 122311 as part of Section 23.84A.028 and it provides as follows:

“Office’ means a commercial use that provides administrative or professional services to individuals, businesses, institutions and/or government agencies primarily by phone or mail, by going to the customer's home or place of business, or on the premises by appointment; or in which customers are limited to holders of business licenses, but not including facilities where medical services are provided or customer service offices. Examples of services provided include general contracting, janitorial and housecleaning services; legal, architectural, and data processing; broadcasting companies, administrative offices of businesses, unions or charitable organizations; and wholesalers and manufacturer's representatives' offices. Offices may include accessory storage, but not the storage of building materials, contractor's equipment or items, other than samples, for wholesale sale.”

19. Section 23.42.102.A provides in part as follows:

“A. Any use that does not conform to current zoning regulations, but conformed to applicable zoning regulations at any time and has not been discontinued as set forth in Section 23.42.104 is recognized as a nonconforming use or development.”

20. The current parking requirements are found in Table A for 23.54.015. For offices, the current requirement is one space for each 1,000 square feet of floor area (Table A, Line B.8). For both storage uses of any kind and heavy sales and service uses, the requirement is one space for every 2,000 square feet of floor area (Table A, Line F and Line B.11).

Conclusions

1. According to DPD records for the Plaza Building as described in Findings of Fact Nos. 9-11, several uses were established within the structure, including office, warehouse, wholesale showroom, wholesale display, display, and parking. The current Land Use Code contains definitions for office, warehouse, and wholesale showroom use (Findings of Fact Nos. 17 and 18). The Zoning Code of 1957 (SMC Title 24), applicable at the time the structure was built, did not define the terms office, warehouse, or wholesale showroom, but these definitions were added to the Code effective for the Industrial zones when the current zoning was adopted in 1987. No definitions have ever existed in the Code for the terms wholesale display or display. (Finding of Fact No. 15.)

2. While Title 24 did not specifically define the terms office, warehouse, or wholesale showroom, it did provide separate parking requirements for offices as well as warehouse and storage buildings in Section 24.64.120. (See Finding of Fact No. 14.)
3. Offices, warehouses, and wholesale showroom uses are permitted outright in the IG2 zone by the current Land Use Code (Finding of Fact No. 12). At the time the Plaza Building was built, offices, warehouses, “wholesale offices” and “wholesale store” uses were permitted outright in the IG zone (Finding of Fact No. 14). Thus, the uses in the Plaza Building, including its accessory parking, are conforming uses under past and present regulations. However, the existing uses in the building may be nonconforming to certain development standards, such as maximum size of use limits for non-industrial uses (Finding of Fact No. 13). Even if this is so, the existing uses in the building may be recognized as a nonconforming development under SMC Section 23.42.104 if the uses conformed to applicable zoning regulations at any time. Section 23.50.027.B.1 also provides that legally established uses that already exceed maximum size of use limits may continue.
4. While the permit history for the Plaza Building notes “warehouse” as an established use, there is no documentation of warehouse use on approved plans for this structure maintained by DPD. The plans generally show “tenant” space on floors 2-5, above the two parking levels, and show office space on the sixth level. The approved plans date to the 1980’s and also more recently. (See Findings of Fact Nos. 9 and 11.)
5. There is no apparent history of actual use of the Plaza Building as a warehouse. Corporate tenants of the building have provided written statements that merchandise other than samples is not stored in the building and that direct sales to customers does not generally occur in the building. These corporate tenants have operated in the same manner for a number of years as long ago as 1995 (See Finding of Fact No. 8.)
6. The Plaza Building was designed and is operated with minimal space for storage and there is no apparent separate warehouse or storage use operating in the building. The loading and unloading dock on 5th Avenue South and the enclosed storage rooms behind the loading dock appear to have minimal use for storage. The building appears to be occupied by a mix of offices and galleries or showrooms, with various types of products on display. A number of large spaces are vacant. All spaces appeared to be improved in a way that would be compatible with either office or some type of sales use, with carpeted floors or finished wood or fine tile floors. As observed by Mr. Mills in his site visit, employees of businesses that were clearly offices and also many of the employees in the businesses operating as galleries or showrooms were working in a manner that appeared consistent with office activity rather than an active sales operation. Customer activity, if any, was minimal and appeared more consistent with office use than a sales operation, either retail or wholesale. (See Findings of Fact Nos. 4-7.)
7. When the Plaza Building was approved in 1981, the applicable zoning regulations did not define or distinguish between office uses and wholesale showroom or display uses for most purposes. These uses were permitted in the applicable zone and not defined, so it appears reasonable to conclude that they were generally interchangeable. Even under

- the current Land Use Code, the definition of “wholesale showroom” that applied between 1987 and January 2007 included a specific statement that wholesale showroom uses that did not have auxiliary storage as a part of the use were to be considered administrative offices. Since the Plaza Building lacks significant storage facilities, the showroom uses apparently do not operate as warehouses or wholesale distributors. At most, only occasional sales of small quantities of items occur on-site. (Finding of Fact No. 7.)
8. The current Land Use Code definition of wholesale showroom continues to state that such a use “includes storage of goods for sale,” which implies that showrooms without significant storage functions could be classified as similar to some other use, such as offices, not involving storage. The Code amendments effective under Ordinance 122311 did remove the statement found in the former Section 23.84.044 definition of “wholesale showroom” stating that wholesale showroom uses that did not have auxiliary storage as a part of the use were to be considered administrative offices (compare Findings of Fact Nos. 16 and 17). However, the current definition of “office” says that storage of goods for wholesale sale is not part of an office use (Finding of Fact No. 18). Thus, the current definitions still provide some basis for interpreting the classification of showroom uses without storage.
 9. There is a reasonable basis to conclude that the businesses in the Plaza Building have operated for many years with a mix of office and showroom uses, dating from a time when the Codes did not have specific development standards such as size of use limits that distinguished these uses. The size of use limits allow legally established uses to continue. Thus, the spaces occupied by existing businesses that have operated as offices or showrooms without storage prior to current regulations may continue to operate interchangeably as either office or showroom space without storage.
 10. The available records, including permits and plans, as well as additional history of operation of the Plaza Building from its tenants, suggests that it is reasonable to analyze it as a building in which offices and wholesale showrooms without storage are interchangeable. However, the uses have been analyzed as separate for some purposes since the time of construction. The most significant development standard that has been applied separately to the uses in the building is parking. The analysis of parking for the structure at the time it was built identified one space for every 800 square feet of office space and 1 space for every 2,000 square feet of wholesale showroom, which suggest that wholesale showroom use was analyzed as similar to a warehouse, at least for parking standards, per former Section 24.64.120. Since the parking was analyzed on that basis historically, it is reasonable to continue to give effect to the differences in parking requirements at present. If showrooms in the Plaza Building are considered interchangeable with office use, compliance with office parking standards, currently one space per 1,000 square feet, must be shown. Based on DPD records (Finding of Fact No. 10), there is a total of 277,992 square feet of floor area in the structure. If this is all calculated as office space, then 278 parking spaces are required. With 284 spaces provided, the Plaza Building meets the parking standards for offices.
 11. The lack of history of use of the Plaza Building for storage or as a warehouse is important to the determination that the wholesale showrooms or galleries in the structure may also be operated as office uses. This interpretation is specific to the Plaza Building site.

Structures on other sites that have been classified as wholesale showroom uses, including other properties within the Seattle Design Center, may be analyzed differently than the Plaza Building for compliance with the use regulations and development standards of the Land Use Code.

DECISION

The use of the Plaza Building at the Seattle Design Center site addressed as 5601 6th Avenue South is established by permit as an office structure and as wholesale showrooms, together with accessory parking. The record shows that the structure has been operated without significant storage or separate warehouse use. Based on the record of use of the building since its construction, the lack of definitions of office and wholesale showroom use at the time the structure was built, and later definitions of “wholesale showroom” that included office use within that definition if storage was not part of the showroom, the decision is that the Plaza Building may be operated as either office or showrooms without warehouse functions, except for minimal accessory storage, consistent with the current definition of office use. The uses in the structure meet parking standards for office use.

Entered this 9th day of June, 2014.

(Signature on File)

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Department of Planning and Development