

BOARD of ADJUSTMENT



Joe Bazzoli
Board Chair
BOA@ci.moscow.id.us

Public Hearing
~ Agenda ~

Aimee Hennrich
Staff Liaison
208.883.7095

<https://www.ci.moscow.id.us/581/Agendas-and-Minutes>

Tuesday
June 11, 2024

7:00 PM

Council Chambers
206 E Third Street

WELCOME AND ATTENDANCE

REGULAR AGENDA

1. Approval of May 22, 2024 Minutes (ACTION ITEM)

PROPOSED ACTIONS: Approve minutes as presented; approve minutes with amendments; or provide staff further direction.

2. Public Comment

Time limit 15 minutes. Members of the Public may speak to the Board regarding matters NOT on the Agenda nor currently pending before the Board of Adjustment. Please state your name and resident city for the record and limit your remarks to three (3) minutes.

3. Appeal of a Zoning Administrator Determination Regarding the Proposed Use of a Building Located at 414 S Main St. Permit Application LUP2024-0017 (ACTION ITEM)

Appeal application for a Zoning Administrator Determination regarding the proposed use of a building located at 414 South Main Street within the Central Business (CB) Zoning District, per Moscow City Code (MCC) 4-3-4.

PROPOSED ACTIONS: After considering the record and appeal request:

1. Sustain the decision of the Zoning Administrator in whole or in part; or
2. Reverse the decision of the Zoning Administrator in whole or in part; or
3. Remand the matter, in whole or in part, to the Zoning Administrator with comments and/or instructions for further consideration by the Zoning Administrator; or take other such action as deemed appropriate.
4. Direct Staff to prepare a written decision based on the Zoning Board of Adjustment decision.

REPORTS

ANNOUNCEMENTS

UPCOMING EVENTS/MEETINGS

The next Board of Adjustment meeting is scheduled for 7:00 PM on June 18, 2024.

ADJOURN

NOTICE: It is the policy of the City of Moscow that all City-sponsored public meetings and events are accessible to all people. If you need assistance in participating in this meeting or event due to a disability under the ADA, please contact the City's ADA Coordinator by phone at (208) 883-7600, TDD (208) 883-7019, or by email at adacoordinator@ci.moscow.id.us at least 48 hours prior to the scheduled meeting or event to request an accommodation. The City of Moscow is committed to ensuring that all reasonable accommodation requests are fulfilled.

BOARD of ADJUSTMENT



Joe Bazzoli
Board Chair
BOA@ci.moscow.id.us

Public Meeting
~ Minutes ~

Aimee Hennrich
Staff Liaison
208.883.7095

<http://www.ci.moscow.id.us/354/Board-of-Adjustment>

Wednesday
May 22, 2024

5:30 PM

Council Chambers
206 E Third Street

Comstock called the meeting to order at 5:34 PM

MEMBERS PRESENT: Marshall Comstock, Vice Chair; Ivy Dickinson, Jerry Schutz
MEMBERS ABSENT: Joe Bazzoli, Steve Bush, Tim Kinkeade, Tim Thomson
STAFF: Jennifer Fleischman, Aimee Hennrich

REGULAR AGENDA

1. Approval of May 13, 2024 Minutes (ACTION ITEM)

Schutz moved for approval of the minutes as written, seconded by Dickinson. Roll Call Vote; Ayes: Unanimous (3). Nays: None. Abstentions: None. Motion carried.

2. Public Comment

Time limit 15 minutes. Members of the Public may speak to the Board regarding matters NOT on the Agenda nor currently pending before the Board of Adjustment. Please state your name and resident city for the record and limit your remarks to three (3) minutes.

None.

3. Approval of Reasoned Statement of Relevant Criteria and Standards (ACTION ITEM)

Conditional Use Permit for a Private Garage in excess of 1,000 square feet located at 2375 North Highway 95 within the Suburban Residential (SR) Zoning District in the Area of City Impact, per Moscow City Code 4-3-4.

Dickinson moved for approval of the Reasoned Statement of Relevant Criteria and Standards for the Conditional Use Permit as presented, seconded by Schutz. Roll Call Vote; Ayes: Unanimous (3). Nays: None. Abstentions: None. Motion carried.

4. Approval of Reasoned Statement of Relevant Criteria and Standards (ACTION ITEM)

Variance to reduce the rear and side yard setbacks for a new single-family dwelling located at 2375 North Highway 95 within the Suburban Residential (SR) Zoning District in the Area of City Impact, per Moscow City Code 4-4-2.

Schutz moved for approval of the Reasoned Statement of Relevant Criteria and Standards for the Variance as presented, seconded by Dickinson. Roll Call Vote; Ayes: Unanimous (3). Nays: None. Abstentions: None. Motion carried.

REPORTS

ANNOUNCEMENTS

UPCOMING EVENTS/MEETINGS

The next Board of Adjustment meeting is scheduled for 7:00 PM on June 11, 2024.

The meeting adjourned at 5:39 PM

Joe Bazzoli, Chair

Date

DRAFT

NOTICE OF PUBLIC MEETING

Appeal of a Zoning Administrator determination at 414 S Main Street
Permit Application LUP2024-0017

A public meeting at which you may be present will be conducted before the Board of Adjustment of the City of Moscow at which time the following proposal will be considered:

Appeal of a Zoning Administrator determination regarding the proposed use of a building located at 414 S Main St within the Central Business (CB) Zoning District, per Moscow City Code (MCC) 4-3-4.

Per MCC 4-8-2, new information that was not considered by the Zoning Administrator shall not be provided to or considered by the Zoning Board of Adjustment. No testimony other than that from the Appellant(s) and City Staff shall be taken or considered at the public meeting.

HEARING DATE: Tuesday, June 11, 2024

HEARING LOCATION: Council Chambers on the Second Floor of Moscow City Hall
206 East Third Street, Moscow, Idaho

MEETING TIME: 7:00 pm

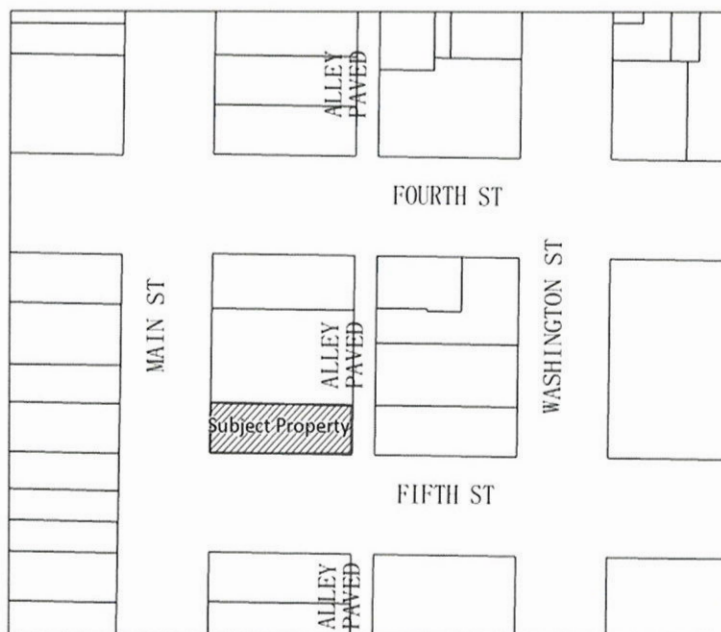
Note: Meeting start time is not necessarily indicative of hearing start time for the proposal advertised in this notice. Multiple hearings and/or agenda items may make it difficult to determine hearing start time, which could occur late in the meeting.

The file containing information on this matter is available for public review at the Community Development Department located in the Haddock Building at 504 S Washington Street, Moscow, Idaho. Call 883-7035 for a meeting agenda and further information about the matter. You may obtain further information about the public hearing process and procedures on the City's Website

at:

<https://www.ci.moscow.id.us/593/Public-Hearing-Notices>

Laurie M. Hopkins, Moscow City Clerk



Jennifer Fleischman,
Deputy City Clerk

Published: Saturday, May 25, 2024



City of Moscow Community Development

Memo

To: City of Moscow Zoning Board of Adjustment

From: Cody Riddle, Deputy City Supervisor-Community Development

Date: June 11, 2024

Re: Appeal of Zoning Administrator Decision 2024-02

Brenda Von Wandruszka, representing Rootforest, LLC, and Benjamin Merkle, representing New Saint Andrews College (NSA), are appealing the Zoning Administrator's Determination regarding the use of property located at 414 S. Main Street in the Central Business Zoning District (CB). Consistent with Moscow City Code (MCC) 4-8-2.B.2, both parties have requested the opportunity to present oral arguments before the Board. They will present their arguments following a Staff introduction of the appeal.

In addition to oral argument, the following records have been provided for review:

Page 2 - Background & Summary of Zoning Administrator Determination

Page 3 - Required Action & Staff Recommendation

Page 4 - Zoning Administrator Determination & Supporting Documents, issued March 21, 2024

Page 52 - Rootforest, LLC Appeal & Supporting Documents, received April 15, 2024

Page 70 - Benjamin Merkle Appeal & Supporting Documents, received April 15, 2024

Page 83 - Title 4, Chapter 8, Section 2 of MCC, Appeals of Zoning Administrator Decisions

BACKGROUND & SUMMARY OF ZONING ADMINISTRATOR DETERMINATION

On April 15, 2024 appeals were filed by Brenda Von Wandruszka and Benjamin Merkle concerning a March 21, 2024 Zoning Administrator Determination regarding the use of an existing building located at 414 S. Main Street in the Central Business District (CB).

That determination was in response to a request by New Saint Andrews College (NSA) to occupy the entire building previously used by Moscow Contemporary. They proposed to use the building as an art gallery, a retail space, and administrative offices to support the operations and functions of NSA. The offices would be occupied by NSA administrative staff, with no academic instruction or credit-bearing activities. The gallery would include rotating exhibits and support art classes for both adults and children in the community, similar to what the two prior art galleries, Moscow Contemporary and Prichard Art Gallery, offered.

After a detailed review of the materials provided by the property owner (Brenda Von Wandruszka) and potential tenant (Ben Merkle), and an evaluation of the applicable provisions of the MCC, the Zoning Administrator issued the following decision:

The proposed use of the building at 414 S. Main Street by NSA as an art gallery with an accessory art instruction and retail space is a permitted use so long as the operations of the gallery does not further the educational purposes of the college and does not include credit-bearing academic activities. The proposed administrative offices within the building would constitute a prohibited use under Moscow City Code, Title 4, Chapter 3, Section 3-2.E, and Section 3-4, and are therefore not permitted.

The detailed analysis that informed this decision is provided in the attached record. Ultimately, the Zoning Administrator found the introduction of office space, occupied by NSA, would be an expansion of a University, which is explicitly prohibited in the CB zone by Ordinance 2019-07, adopted by City Council in July of 2019.

As detailed in the appeals, the owner and prospective tenant believe the decision:

1. Exceeds the City's statutory authority
2. Was arbitrary, capricious, or an abuse of discretion
3. Violates statutory or constitutional provisions

REQUIRED ACTION & STAFF RECOMMENDATION

Pursuant to MCC 4-8-2.B.7, after considering the record, the reasons for the appeal, and the oral arguments, the Board shall take one or more of the following actions:

1. Sustain the Decision. Sustain the decision of the Zoning Administrator in whole or in part.
2. Reverse the Decision. Reverse the decision of the Zoning Administrator in whole or in part.
3. Remand the Decision. Remand the matter in whole or in part to the Zoning Administrator with comments and/or instructions for further consideration.

Staff has reviewed the appeal materials and maintains the Zoning Administrator decision of March 21, 2024 is consistent with MCC. It was based on a thorough evaluation of substantial evidence, does not exceed the statutory authority of the Administrator, and is not in violation of any statutory or constitutional provision. As a result, Staff **recommends Sustaining the Zoning Administrator decision, in whole.**

1. In accordance with the Board's decision, direct staff to prepare the written decision document.

ZONING ADMINISTRATOR DECISION & SUPPORTING DOCUMENTATION



Heart of the Arts



Arthur D. Bettge
Mayor

Gina Taruscio
Council President

Sandra Kelly
Council Vice-President

Bryce Blankenship
Council Member

Drew Davis
Council Member

Hailey Lewis
Council Member

Julia Parker
Council Member



Bill Belknap
City Supervisor



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Hearing Impaired (208) 883-7019



Zoning Administrator Decision 2024-02

Date of Request: March 1, 2024.

February 12, 2024, was the date of the original request related to the property in question that resulted in Zoning Administrator Decision 2024-01. New information was submitted on March 1, 2024, with a request for reconsideration of Zoning Administrator Decision 2024-01, and per MCC 4-8-2.A. the Zoning Administrator shall consider the additional information and issue a new decision, which will be the basis for this Zoning Administrator Decision 2024-02.

Date of Decision: March 21, 2024

Person Requesting Decision of Zoning Administrator (Applicant): Brenda von Wandruszka, Rootforest LLC

Property Impacted by Decision: 414 S. Main Street, Moscow, Idaho

Zoning of Property in Question: Central Business District, hereinafter "CB"

Current Use of Property in Question: Art Gallery

Proposed Use of Property in Question: New Saint Andrews College (hereinafter "NSA") seeks occupancy and use of the entire building located at 414 S. Main Street. The proposal is for NSA to use the existing building as an art gallery, a retail space, and administrative offices to support the operations and functions of NSA. The offices are to be occupied by NSA administrative staff, and no academic instruction or credit-bearing activity are proposed. The art gallery would include rotating exhibits and the applicant wishes to continue to offer non-credit community art classes to both adults and children in the community, similar to what the prior art gallery, Moscow Contemporary, has offered.

Determination Requested: Brenda von Wandruszka seeks a reconsideration of Zoning Administrator Decision 2024-01. Ms. Von Wandruszka provided additional information to be considered and requested a determination as to whether or not the combination of uses as proposed constitute an allowed use of the subject property.

Background: The historic use of the building at 414 S. Main Street has been an art gallery since the 1980's. The University of Idaho operated the Prichard Art Gallery until the transition of the building to the Moscow Contemporary Art Gallery in 2021. It is the City's understanding that Moscow Contemporary operated their art gallery in a similar fashion to the Prichard Gallery, conducting artist exhibitions and also providing non-degree art education to children and adult members of the community. It is also the City's understanding that Moscow Contemporary utilized the entire building for the operations of their art gallery.

Zoning Administrator Decision 2024-02

1



On February 12, 2024, the City issued Zoning Administrator Decision 2024-01 related to the proposed use of the property in question. The City then met with Brenda von Wandruszka and Ben Merkle on March 1, 2024, to discuss the determination. Additional information was submitted during that meeting with a request for reconsideration of which required a new decision to be issued per MCC 4-8-2.A.

Zoning Regulations Pertinent to the Question Presented:

1. Moscow City Code Title 4, Chapter 11 authorizes the Zoning Administrator to administer and enforce the zoning code. The Administrator's duties include ordering discontinuance of illegal use of land, buildings or structures; removal of illegal additions, alterations, or structural changes; discontinuance of illegal work being done; or shall take other action authorized by the zoning code to insure compliance with or to prevent violation of its provisions. (MCC 4-11-1.A and B) The Zoning Administrator is further authorized to make interpretations on the allowance or prohibition of proposed uses in specific zoning districts. (MCC 4-3-3)

2. Moscow City Code Title 4, Chapter 1, Section 1-6.D.103 defines "Museums and Art Galleries" as follows:

Establishments primarily engaged in the preservation and exhibition of objects of historical, cultural, and/or educational value.

3. Moscow City Code Title 4, Chapter 3, Section 3-4 specifically lists art galleries and professional offices as allowed uses in the CB.

4. Moscow City Code Title 4, Chapter 1, Section 1-6.D.52 defines "Educational Services" as follows:

Establishments that provide instruction and training in a wide variety of subjects. The instruction and training is provided by specialized establishments, such as schools, colleges, universities, and training centers.

The North American Industry Classification System (NAICS), referenced in Moscow City Code for the purpose of making land use determinations, provides a more specific definition. NAICS 611310 (Colleges, Universities, and Professional Schools) are defined as follows:

This industry comprises establishments primarily engaged in furnishing academic courses and granting degrees at baccalaureate or graduate levels. The requirement for admission is at least a high school diploma or equivalent general academic training. Instruction may be provided in





diverse settings, such as the establishment's or client's training facilities, educational institutions, the workplace, or the home, and through diverse means, such as correspondence, television, the Internet, or other electronic and distance-learning methods. The training provided by these establishments may include the use of simulators and simulation methods.

5. Moscow City Code Title 4, Chapter 3, Section 3-4 specifically prohibits colleges and universities in the CB.
6. Moscow City Code Title 4, Chapter 1, Section 1-7.E.4 related to Nonconforming Uses of Structures and Premises in Combination, states that:

When a nonconforming use of a structure, or of a structure and premises in combination, is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three (3) year period, the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the zoning district in which the structure is located...

7. The North American Industry Classification System (NAICS), referenced in Moscow City Code for the purpose of making land use determinations, provides the following definition of Accounting, Tax Preparation, Bookkeeping, and Payroll Services (NAICS 54121):

*This industry comprises establishments **primarily engaged in** providing services, such as auditing of accounting records, designing accounting systems, preparing financial statements, developing budgets, preparing tax returns, processing payrolls, bookkeeping, and billing. (emphasis added)*

8. The North American Industry Classification System (NAICS), referenced in Moscow City Code for the purpose of making land use determinations, provides the following definition of Advertising Agencies (NAICS 541810):

*This industry comprises establishments **primarily engaged in** creating advertising campaigns and placing such advertising in periodicals, newspapers, radio and television, or other media. These establishments are organized to provide a full range of services (i.e., through in-house capabilities or subcontracting), including advice, creative services, account management, production of advertising material, media planning, and buying (i.e., placing advertising). (emphasis added)*

Analysis: The art gallery component of the proposed use of the building is a permitted use within the CB Zoning District and the building has historically been





used as an art gallery dating back to the 1980's. The additional function of the art gallery to provide non-degree art instruction to the community has also been documented as being a continuous component of the operation of the Prichard Art Gallery and more recently the Moscow Contemporary Art Gallery. The non-degree art instruction component of the art gallery is viewed as an accessory use to the operations of the gallery.

While the University of Idaho did operate the Prichard Art Gallery and the educational components of the gallery, it is the City's understanding that its operation was not for credit-bearing academic purposes. Furthermore, even if the University did provide credits related to the programming and operation of the Prichard Gallery, that right has since been divested with the conversion of the building to the Moscow Contemporary Art Gallery in 2021, since that gallery was not affiliated with the University. Any credit-bearing academic activities at that time would have been a non-conforming use, since the City Council had passed Ordinance 2019-07 on July 15, 2019, which prohibited new and expanded colleges and universities in the CB Zoning District. The Zoning Code states that when a nonconforming use of a structure is abandoned for six (6) consecutive months, "the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the zoning district in which the structure is located." MCC 4-1-7.E.4. Therefore, NSA may continue the operation of an art gallery with an accessory art instruction component so long as the operations of the gallery does not further the educational purposes of the college and does not include credit-bearing academic activities.

Historically, there has been a small retail space near the main entrance to the building, adjacent to Main Street. It's the City's understanding that NSA would like to continue the use of this portion of the building as a retail space. Retail sales is a permitted use within the CB Zoning District, therefore, NSA would be permitted to continue the use of this space for retail sales, which is more specifically defined within NAICS 44-45 (Retail Trade).

The final determination request pertains to the use of a series of offices on the second floor of the building. It's the City's understanding that NSA wishes to utilize and/or convert numerous rooms on the second floor to offices used to support the function of NSA, such as finance, recruitment, fundraising, and marketing. NSA is not requesting a determination whether private firms, companies or businesses that primarily engage in providing services of accounting, tax preparation, bookkeeping, payroll services, and advertising is permitted at the subject property. NSA, which meets the definition of "*establishments that provide instruction and training in a wide variety of subjects*", and "*establishments **primarily engaged in furnishing academic courses and granting degrees at baccalaureate or graduate levels***" is requesting to expand the NSA operations and functions of NSA through utilizing the subject property for NSA administrative offices.





In spring of 2022, the City was contacted by NSA regarding a proposal to locate the non-academic operation of their Music Conservatory to the Nuart Theatre building. The proposal was to offer instrument and voice lessons, choral and orchestral ensembles, etc. to the local community. NSA also inquired about locating offices for the Hale Institute within the Nuart, which was portrayed as a law and policy think tank. Based upon the descriptions of the uses, NSA was advised that the non-academic music instruction would still be classified under the All Other Schools and Instruction Sector (NAICS 6114-6117), which would require a conditional use permit at the Nuart location. Based upon the description of the Hale Institute being a law and policy think tank providing no academic instruction, the use was most consistent with the Business, Professional, Political, Social Advocacy, Grantmaking, and Similar Organizations Sector (NAICS 8132/8133/8139), which is a permitted use within the CB Zone.

On July 6, 2022, the City received an email from Ben Merkle, President of NSA, stating that they were going back to the drawing board to think about how to make use of the space inside the zoning requirements. There were four offices within the Nuart building that they were planning on subleasing from Christ Church, who was the primary occupant of the building. The offices discussed were the marketing, fundraising, and recruitment offices, which do not interact with the student body. Without issuing an official determination, the City indicated that offices were a permitted use in the CB Zone so long as there is not any element of academic instruction, student counseling, gatherings, or similar activities occurring on-site.

Then on April 13, 2023, the City received the following email message from Ben Merkle:

Cody,

I'm circling back to the Nuart question. I think that this past year has gone well. As I reported previously, we have placed our marketing, recruitment, fundraising, and the office for the Hale Institute in the Nuart offices. Whenever recruitment has had prospective students visit, they have met them at the south campus building, not at the Nuart. Any meetings with students that Hale Institute staff have are also conducted at the south campus. We have used the theater space as one would for typical theater use - non credit bearing gatherings that would be typical for a public theater - like if we have a concert or a drama performance or a public lecture, that is not credit bearing but the sort of thing that you would rent a downtown theater for and invite the public. Anyhow, I think this has gone well and has been feasible for us. This next year we are being offered a longterm lease on this. And I don't want to sign if I'm not clear that this is all permitted. This next year we will plan on the same kind of use with two exceptions. I would like to move my finance team over there. This would be my CFO,





bookkeeper, and bursar. The only one of those people who would interact with students would be our bursar, who would in certain seasons need to meet with students about billing. So I would have the bursar conduct all student meetings at the South Campus building and not at the Nuart. The second exception would be our theater use. I wouldn't change the kind of use at all, but we would be using it more frequently. This past year we were subleasing from Christ Church, who still had the primary use of the theater. And so we only had limited times that we could use it. If we take this longterm lease then we will have primary use of the theater and will increase how often we use it. This would be things like a movie night, more theater productions, etc. I would continue to not allow credit bearing activity to happen there. And I would make sure that our music conservatory operations stay at our north campus location (music lessons, etc). So we would work to keep all use of the theater as typical public theater type activities.

Thanks.

Ben Merkle

Based upon the proposed use of the Nuart building, the City reviewed and subsequently issued Zoning Administrator Decision 2023-01 on June 6, 2023, which stated that the net result of the proposal would be an entire facility dedicated to furthering the mission and goals of the college by using the theater in a way to provide instruction, education, and/or training in a diverse setting by way of diverse means. In effect, the primary use of the property would no longer be considered a church. Rather, the proposed primary use of the subject property would be classified as a university. The Zoning Administrator's decision was that the proposed use of the Nuart building constituted a prohibited use under MCC 4-3-2.E. MCC 4-8-2 permits an affected person to appeal an interpretation or administration of the Zoning Code by the Zoning Administrator to the Board of Adjustment within thirty (30) days from receipt of the decision. No appeal was subsequently received for Zoning Administrator Decision 2023-01.

While the CB Zoning District does permit certain types of professional office uses, those professional offices are encompassed within certain industries within the NAICS classification system which the City has adopted. The other similar office uses such as Accounting, Tax Preparation, Bookkeeping, and Payroll Services (NAICS 54121) and Advertising Agencies (NAICS 541810) are all referencing individual establishments primarily engaged in those activities, typically for multiple clients. Offices which are a component of a broader establishment are part of that larger establishment, they are not their own establishment. Administrative offices which are part of a college and support the college in its purpose of furnishing academic courses and granting degrees at baccalaureate or graduate levels, would be classified under NAICS 611310 as Colleges, Universities, and





Professional Schools. These offices serve an essential function within colleges, whereas the college would not be able to function without them. Offices such as a finance department would be classified as offices of a college.

In the reconsideration request it was stated that nowhere under the subcategories of Educational Services does it include financial or development functions to support an educational institution. While that is true, if you look at all of the industries across the NAICS system, they all provide a general description of what the industry and establishments are primarily engaged in, but do not individually list what types of offices could be encompassed within the establishments. Take, for instance, a large department store where you're likely to have a finance department, marketing department, human resources department, etc. within the same company. Those offices aren't listed underneath that description either, because it's understood that those offices are a component of the larger (primary) establishment, they are not their own establishment.

In previous discussions with Brenda von Wandruszka and Ben Merkle, the University of Idaho's purchase of the former City of Moscow Police Station was brought up as being an example of why the NSA proposal at 414 S Main Street should be approved. The City of Moscow sold a building located in the CB Zoning District to the University of Idaho, who communicated at the time that the future use of the building was intended to be the relocated Prichard Art Gallery and a retail space. Since the purchase of the building, the University of Idaho has not proceeded with the remodeling of the building, with the exception of the painting of the exterior of the building. The City has not received any building plans which would identify proposed uses of the building, nor has there been a land use determination requested from the Community Development Department. The University's portrayal of the future uses of an art gallery and retail space during the purchase of the building are the same uses that the City has determined are permitted uses for NSA to operate at 414 S Main Street. There has been no discussions over the establishment of administrative offices for the University of Idaho at the old Police Department building, and there has been no official decision from the Zoning Administrator related to such a determination for the University.

Additionally, during the course of the discussions with Brenda von Wandruszka and Ben Merkle, it was mentioned that the City had heard that at some point in time the University of Idaho was interested in relocating their finance department to the old Daily News building and that they believed the use would have been permitted. This was a general statement that was made when discussing whether offices that serve an educational institution would be permitted or not in the CB Zoning District. The University of Idaho never discussed this proposal with the Community Development Department, never moved into the building, or requested a land use determination of whether finance offices would be a permitted use or not at that location. It was later determined through Zoning Administrator Decisions 2023-01





and 2024-01 that finance offices that are a function of a College or University are not a permitted use in the CB Zoning District.

As you are aware, the City Council had passed Ordinance 2019-07 on July 15, 2019, which effectively prohibited new and expanded colleges and universities in the CB Zoning District. Therefore, the use of a portion of the building for administrative offices for NSA would be a prohibited expansion of an existing college within the CB Zoning District.

Decision: The proposed use of the building at 414 S Main Street by NSA as an art gallery with an accessory art instruction and retail space is a permitted use so long as the operations of the gallery does not further the educational purposes of the college and does not include credit-bearing academic activities. The proposed administrative offices within the building would constitute a prohibited use under Moscow City Code, Title 4, Chapter 3, Section 3-2.E, and Section 3-4, and are therefore not permitted.

Documents and Information relied upon in making the determination: This determination is based on in-person conversations with Brenda von Wandruszka and Ben Merkle, as well as the attached email correspondence dated April 13, 2023 and February 12, 2024, that details the proposed use of the subject property. Also considered was the attached reconsideration request that was distributed on March 1, 2024, in addition to Zoning Administrator Decision 2023-01 and 2024-01.

Right to Appeal: Moscow City Code, Title 4, Chapter 8, Section 8-2, permits an applicant, City representative or affected person to appeal an interpretation or administration of the Zoning Code by the Zoning Administrator to the Board of Adjustment. Such appeal shall be made within thirty (30) days from receipt of this decision. An appeal shall be made by filing with the Zoning Administrator a written notice of appeal specifying the grounds thereof and paying an appeal fee established by Resolution. Upon the filing of an appeal, the Zoning Administrator shall submit to the Board of Adjustment all materials constituting the record upon which the appeal is made. The appeal process will be followed pursuant to MCC Title 4, Chapter 8.

Attachments

Reconsideration Request (March 1, 2024)

Zoning Administrator Decision 2024-01, with attachments (February 21, 2024)

Email Correspondence (February 12, 2024)

Email Correspondence (April 13, 2023)

Zoning Administrator Decision 2023-01, with attachments (June 6, 2023)



Appeal of Zoning Administrator Decision 2024-01

The City has determined that for New Saint Andrews College (NSA) to move our Development offices (our advertising branch which we call Marketing, our fundraising/grant writing branch which we call Fundraising, and our Recruitment department) along with our Finance offices into the second floor of the gallery space located at **414 S. Main Street** would be an expansion of the college's educational use in the Central Business Zoning District (CB), which would be a prohibited use.

I would like to appeal this determination for the following three reasons:

First, the City has already permitted NSA to move these uses into the CB Zone in July of 2022. To now prohibit this use is "arbitrary, capricious, or an abuse of discretion" as stated in Moscow City Code Title 4, § 8-2(B)(e).

New Saint Andrews College currently has its Finance and Development offices in the front office portion of the Nuart Theater, a property on 516 S. Main Street in the CB Zone. NSA subleases these offices from Christ Church, which holds the lease on the entire building.

Before moving into that space, I had first proposed to move some of our Music Conservatory offices into this space. However, when I met with Planning Manager Mike Ray and Deputy City Supervisor Cody Riddle (Zoning Administrator) I was told that the instruction component of the music classes would mean that these needed to stay in our North Campus building. I then wrote the following email message to Mike Ray on July 6, 2022:

"I went back to the drawing board to think through how we could make use of that space inside of the zoning constraints. I'm going to keep our Conservatory operations in the North Campus for the moment to keep things straightforward. We are planning now to move our development team into the Nuart space. This team consists of our marketing, fundraising, and recruitment offices. They are pretty much just business offices and do not interact significantly with the student body. I think we would probably just be subleasing from Christ Church. Thanks very much for your help."

Mike Ray replied with the following email message on July 11, 2022:

"Hi Ben, Thanks for the update, glad you are able to make this plan work. **We don't see an issue with your new plan, so long as activities like student counseling remain at a separate location**, which it sounds like they would. If anything else changes feel free to reach out and discuss.
Thanks, Mike."

With this approval from the City Planner, I moved the approved offices into the Nuart Theater. Afterwards, I received an email message from Deputy City Supervisor Cody Riddle on July 20, 2022. Cody was concerned that the NSA Recruitment team might bring student tours into the Nuart building:

“Thank you for the response. As Mike indicated, **office use is permissible in the zone**. It’s any element of academic instruction, student counseling, gatherings, and similar activities that create a challenge from a zoning perspective. The tours you reference would fall into that category. That’s more in line with what one would expect at a college. Those activities should originate and be conducted at one of the locations approved for academic use. I hope this provides better clarification. Please let us know if you have further questions. We’re happy to help.”

Because of this concern, the college agreed to have all student tours take place at the NSA South Campus (405 S. Main Street) and not occur at the Nuart—a commitment that we have carefully kept ever since. Clearly, in these two emails, Cody Riddle and Mike Ray both stated that NSA’s Development offices are permitted uses in the CB Zone.

In advance of taking any action, I was very transparent with the City about the moves that we were planning to make. I proactively went to the City offices before making any administrative office location changes to walk through the details of my plans. I had both Cody Riddle’s and Mike Ray’s explicit approval in the emails quoted above as well as in a number of in-person meetings.

Two of those in-person meetings took place from July 2022 through May 2023.

- 1) On July 5, 2022, Mike Ray and Cody Riddle explained to me that at one point the University of Idaho had been looking to locate their finance department into the former Daily News building. There would have been no students, and the offices were purely financial. They said that having a college’s financial offices in the CB Zone would be a permitted use.
- 2) On May 3, 2023, Cody Riddle explained that ownership or rental of office space does not matter. It’s not about who owns a building or who rents a building. It is the use that matters.

In the fall of 2023, our CFO, who had been operating remotely, relocated to Moscow and we moved our Finance offices into the Nuart offices, alongside the Development team (Marketing, Fundraising, and Recruitment). I have been transparent with the City in each move that I have made.

Now, as we ask to move the exact same offices one block north, we are now being told that these uses are not permitted in the CB Zone—same exact offices, same exact uses, but now prohibited. To restate my first point, the City is being arbitrary, capricious, and exhibiting an abuse of discretion in its interpretation and application of the code.

Second, to move these offices into 414 S. Main does not expand educational use in the CB Zone because Educational Services are defined as the provision of instruction. The City's restriction of our offices being moved into this space is a decision that "exceeds statutory authority" as stated in Moscow City Code Title 4, § 8-2(B)(b).

NAICS Sector 61 subsection 611310 (census.gov/naics) summarizes the thing that all educational uses hold in common— "All industries in the sector share this commonality of process, namely, labor inputs of instructor with the requisite subject matter expertise and teaching ability" (p. 509). Educational use is use that provides instruction.

Each of the subcategories under the NAICS definition of *educational services* describes permutations of instruction. Nowhere does it include uses like the financial or development functions to support to an educational institution. Even the final subcategory of *educational support services* (611710), which initially sounds like it might describe uses like finance or development, turns out to simply describe providing materials for colleges—job training, research in cognitive development, and publishing educational materials such as tests and assessments. The NAICS definition of *educational use*, and all the varieties of ways in which it can appear, is quite extensive. And yet nowhere in that definition can anything be found that supports the City's attempt to massively expand the definition of *educational use*. This is the plain reading of the NAICS definition.

This definition of *educational services* was mutually understood when we first worked with the City on putting our offices in the Nuart. As Cody said in his email "As Mike indicated, office use is permissible in the zone. It's any element of academic instruction, student counseling, gatherings, and similar activities that create a challenge from a zoning perspective."

In July of 2022, the City restricted its definition of *educational services* to direct instruction and working with students. We have consistently communicated with the City to ensure that we were abiding by that definition. And this is the definition of *educational use* that NSA is still maintaining as we look to move offices into 414 S. Main. NSA is not looking to expand the use of *educational services* into the CB Zone.

NSA currently has two properties that offer *educational services*, our North and South Campus buildings. These two properties are covered by two CUP's that limit the North Campus building to 300 students and our South Campus building to 200 students. You can tell that we are not expanding *educational use* because moving our Finance and Development offices into 414 S.

Main will not increase our number of permitted students, nor will it expand the locations where instruction will be given. We will only put expressly permitted uses in the gallery building.

According to Idaho Statute 67-6535, the City's decision "... shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county. Such approval standards and criteria shall be set forth in express terms in land use ordinances in order that permit applicants, interested residents and decision makers alike may know the express standards that must be met in order to obtain a requested permit or approval." The "express terms" of the zoning code do not support the City's decision. Rather, the City has created its own definition of the term *educational use*, in departure from NAICS's definitions. In doing so, the City has exceeded its statutory authority.

Third, the City is smuggling consideration of ownership into a zoning code that should only restrict use. Once again, the City "exceeds statutory authority" as stated in Moscow City Code Title 4, § 8-2(B)(b).

Zoning code is supposed to govern what kind of activity is done not who is doing the activity. But the City is arguing that if an administrative activity, such as doing payroll, supports an educational institution, then that financial activity essentially becomes an educational use. This argument smuggles ownership back into use and it contradicts the City's position that it clearly articulated when conveying the former police station to the University of Idaho, with the purpose of using that space as an art gallery and gift store.

1) Public Works/Finance (preliminary meeting to Moscow City Council) June 28, 2021.¹

Gary Riedner: "I want to make a clarification that ownership by an educational institution—zoning is about use. It's not about ownership. So, we don't see any issue with the proposed use that the U of I has indicated they want to use it for."

2) City Council (regular meeting) July 6, 2021.²

Gary Riedner: "Now I know a concern at Committee was because the University of Idaho is an educational institution and there are restrictions on the use of facilities in downtown for educational purposes. Was the University of Idaho going to use it for educational purposes? As Tony indicated during the Public Works/Finance Committee last week the university is purchasing it for a replacement for the Prichard Art Gallery and intends to use it as an art gallery and a retail space. Art galleries and retail spaces are uses of right in the Central Business District. So that seems to take care of the zoning issues and I know that Bill Belknap has had conversations with the U of I on that as well."

¹ <https://www.youtube.com/watch?v=4iaSa1TSIo4&t=356s1> (begin at minute 17:45)

² <https://www.youtube.com/watch?v=lQVrywloIFw&t=1717s> (begin at minute 37:39)

3) City Council (regular meeting just before public hearing) August 2, 2021.³

Brandy Sullivan: "How about the use of it as a gallery versus an educational institution?"

Gary Riedner: "Those discussions as council knows there is a restriction on use of property in the Central Business District for educational purposes and the University of Idaho has been advised of that. We've been advised that they intend to use it as a gallery and a retail space both of which are uses of right in the Central Business District."

We see clearly here that the City understands that zoning is not a matter of ownership, but of use. And if a use is a by right, permitted use, then it does not matter who the user is.

To be clear, the uses that NSA wants to put into this space all constitute uses that are expressly permitted uses in the CB Zone. All activities of our finance team are covered by "54121 Accounting, Tax Preparation, Bookkeeping, and Payroll Services." Our Development Team activities are accurately summarized by "541810 Advertising Agency," as well as by other related permitted uses in the CB Zone. All uses that will be located in 414 S. Main will be expressly permitted uses. But the City is arguing that these uses are transformed into educational activity when they are used to serve a college. Again, this is smuggling ownership into use.

Each one of these departments that are in question has been, at various times, outsourced by the college to other companies. Our finance team was outsourced to the accounting firm Clifton, Larsen, and Allen from August 2019 through August 2021. Had this accounting firm been in Moscow, would their offices have been considered an educational use?

NSA's marketing was entirely outsourced to Canon Press from June 2020 to January 2022. Did Canon Press become an educational use during this contract?

Our fundraising has outsourced much of their work to Inquiry and Renegade. Do they need a CUP to operate in Moscow?

If I rehired each of these outsourced companies to cover NSA's Finance and Development departments once again, could these companies have offices downtown? Yes. They could because they would be performing explicitly permitted uses. But those exact same uses carried by a department of NSA, somehow no longer are evaluated by what they are doing, but who they are. The use is exactly the same. The only thing that has changed is ownership. The City is smuggling ownership into use.

What if we applied this principle to another downtown businesses? Is the Colter's Creek tasting room a vineyard? A vineyard would be prohibited in the CB Zone. But that tasting room exists solely to support the vineyard. And yet when it comes to Colter's Creek, we evaluate them based on use, not ownership. They are a tasting room, not a winery. Is Populi, which solely supports the

³ <https://www.youtube.com/watch?v=wYLFbwFFlr8> (begin at minute 2:21:12)

registrar function of colleges and universities, an *educational use* because of whom they serve? Would the business office of a manufacturing company be allowed on Main Street?

On the one hand, the City grants the distinction between ownership and use, and claims to base the decision on use. NSA is asking to put uses in 414 S. Main that are expressly permitted in the CB Zone. But the City is saying that these uses are not permitted, not because of what is being done, but because of who is doing it. The City is smuggling consideration of ownership into a determination that is supposed to be solely about use. As Gary Riedner said; "I want to make a clarification that ownership by an educational institution— zoning is about use. It's not about ownership."

Conclusion

According to the Land Use Table (Sec. 3-4 of Moscow City Code), Professional Services is a permitted use in the CB Zone, just as Museums and Art Galleries are a permitted use in the CB Zone. All of New Saint Andrews College's intended uses for 414 S. Main fall expressly under these headings according to the NAICS definitions. NSA is entitled to all by-right uses in the CB Zone. To prohibit this right is arbitrary and capricious and exceeds the City's statutory authority.



Heart of the Arts



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Bill Belknap
City Supervisor



City of Moscow, City Hall
c/o Bill Belknap, City Supervisor
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Hearing Impaired (208) 883-7019



Zoning Administrator Decision 2024-01

Date of Request: February 12, 2024

Date of Decision: February 21, 2024

Person Requesting Decision of Zoning Administrator: Brenda von Wandruszka, Rootforest LLC

Property Impacted by Decision: 414 S. Main Street, Moscow, Idaho

Zoning of Property in Question: Central Business District, hereinafter "CB"

Current Use of Property in Question: Art Gallery

Proposed Use of Property in Question: New Saint Andrews College (hereinafter "NSA") seeks occupancy and use of the entire building located at 414 S. Main Street. The proposal is for NSA to use the existing building as an art gallery, a retail space, and administrative offices. The offices are to be occupied by administrative staff, and no academic instruction or credit-bearing activity are proposed. The art gallery would include rotating exhibits and the applicant wishes to continue to offer non-credit community art classes to both adults and children in the community, similar to what the prior art gallery, Moscow Contemporary, has offered.

Determination Requested: Brenda von Wandruszka seeks a determination as to whether or not the combination of uses as proposed constitute an allowed use of the subject property.

Background: The historic use of the building at 414 S. Main Street has been an art gallery since the 1980's. The University of Idaho operated the Prichard Art Gallery until the transition of the building to the Moscow Contemporary Art Gallery in 2021. It is the City's understanding that Moscow Contemporary operated their art gallery in a similar fashion to the Prichard Gallery, conducting artist exhibitions and also providing non-degree art education to children and adult members of the community. It is also the City's understanding that Moscow Contemporary utilized the entire building for the operations of their art gallery.

Zoning Regulations Pertinent to the Question Presented:

1. Moscow City Code Title 4, Chapter 11 authorizes the Zoning Administrator to administer and enforce the zoning code. The Administrator's duties include ordering discontinuance of illegal use of land, buildings or structures; removal of illegal additions, alterations, or structural changes; discontinuance of illegal work being done; or shall take other action



authorized by the zoning code to insure compliance with or to prevent violation of its provisions. (MCC 4-11-1.A and B) The Zoning Administrator is further authorized to make interpretations on the allowance or prohibition of proposed uses in specific zoning districts. (MCC 4-3-3)

2. Moscow City Code Title 4, Chapter 1, Section 1-6.D.103 defines “Museums and Art Galleries” as follows:

Establishments primarily engaged in the preservation and exhibition of objects of historical, cultural, and/or educational value.

3. Moscow City Code Title 4, Chapter 3, Section 3-4 specifically lists art galleries and professional offices as allowed uses in the CB.

4. Moscow City Code Title 4, Chapter 1, Section 1-6.D.52 defines “Educational Services” as follows:

Establishments that provide instruction and training in a wide variety of subjects. The instruction and training is provided by specialized establishments, such as schools, colleges, universities, and training centers.

The North American Industry Classification System (NAICS), referenced in Moscow City Code for the purpose of making land use determinations, provides a more specific definition. NAICS 611310 (Colleges, Universities, and Professional Schools) are defined as follows:

This industry comprises establishments primarily engaged in furnishing academic courses and granting degrees at baccalaureate or graduate levels. The requirement for admission is at least a high school diploma or equivalent general academic training. Instruction may be provided in diverse settings, such as the establishment's or client's training facilities, educational institutions, the workplace, or the home, and through diverse means, such as correspondence, television, the Internet, or other electronic and distance-learning methods. The training provided by these establishments may include the use of simulators and simulation methods.

5. Moscow City Code Title 4, Chapter 3, Section 3-4 specifically prohibits colleges and universities in the CB.
6. Moscow City Code Title 4, Chapter 1, Section 1-7.E.4 related to Nonconforming Uses of Structures and Premises in Combination, states that:

When a nonconforming use of a structure, or of a structure and premises in combination, is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three (3) year period, the structure,





or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the zoning district in which the structure is located...

Analysis: The art gallery component of the proposed use of the building is a permitted use within the CB Zoning District and the building has historically been used as an art gallery dating back to the 1980's. The additional function of the art gallery to provide non-degree art instruction to the community has also been documented as being a continuous component of the operation of the Prichard Art Gallery and more recently the Moscow Contemporary Art Gallery. The non-degree art instruction component of the art gallery is viewed as an accessory use to the operations of the gallery.

While the University of Idaho did operate the Prichard Art Gallery and the educational components of the gallery, it is the City's understanding that its operation was not for credit-bearing academic purposes. Furthermore, even if the University did provide credits related to the programming and operation of the Prichard Gallery, that right has since been divested with the conversion of the building to the Moscow Contemporary Art Gallery in 2021, since that gallery was not affiliated with the University. Any credit-bearing academic activities at that time would have been a non-conforming use, since the City Council had passed Ordinance 2019-07 on July 15, 2019, which prohibited new and expanded colleges and universities in the CB Zoning District. The Zoning Code states that when a nonconforming use of a structure is abandoned for six (6) consecutive months, "the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the zoning district in which the structure is located." MCC 4-1-7.E.4. Therefore, NSA may continue the operation of an art gallery with an accessory art instruction component so long as the operations of the gallery does not further the educational purposes of the college and does not include credit-bearing academic activities.

Historically, there has been a small retail space near the main entrance to the building, adjacent to Main Street. It's the City's understanding that NSA would like to continue the use of this portion of the building as a retail space. Retail sales is a permitted use within the CB Zoning District, therefore, NSA would be permitted to continue the use of this space for retail sales, which is more specifically defined within NAICS 44-45 (Retail Trade).

The final determination request pertains to the use of a series of offices on the second floor of the building. It's the City's understanding that NSA wishes to utilize and/or convert numerous rooms on the second floor to offices used to support the function of NSA, such as finance, recruitment, fundraising, and marketing. While the CB Zoning District does permit certain types of professional office uses, those professional offices are encompassed within certain industries within the NAICS





classification system which the City has adopted. Administrative offices which are affiliated with NSA and support the college in its purpose of furnishing academic courses and granting degrees at baccalaureate or graduate levels, would be classified under NAICS 611310 as Colleges, Universities, and Professional Schools. As you are aware, the City Council had passed Ordinance 2019-07 on July 15, 2019, which effectively prohibited new and expanded colleges and universities in the CB Zoning District. Therefore, the use of a portion of the building for administrative offices for NSA would be a prohibited expansion of an existing college within the CB Zoning District.

Decision: The proposed use of the building at 414 S Main Street by NSA as an art gallery with an accessory art instruction and retail space is a permitted use so long as the operations of the gallery does not further the educational purposes of the college and does not include credit-bearing academic activities. The proposed administrative offices within the building would constitute a prohibited use under Moscow City Code, Title 4, Chapter 3, Section 3-2.E, and Section 3-4, and are therefore not permitted.

Documents/Information relied upon in making the determination: This determination is based on in-person conversations with Brenda von Wandruszka and Ben Merkle, as well as the attached email correspondence dated February 12, 2024 that details the proposed use of the subject property.

Right to Appeal: Moscow City Code, Title 4, Chapter 8, Section 8-2, permits an applicant, City representative or affected person to appeal an interpretation or administration of the Zoning Code by the Zoning Administrator to the Board of Adjustment. Such appeal shall be made within thirty (30) days from receipt of this decision. An appeal shall be made by filing with the Zoning Administrator a written notice of appeal specifying the grounds thereof and paying an appeal fee established by Resolution. Upon the filing of an appeal, the Zoning Administrator shall submit to the Board of Adjustment all materials constituting the record upon which the appeal is made. The appeal process will be followed pursuant to MCC Title 4, Chapter 8.

Attachments: Email Correspondence (February 12, 2024)



Michael Ray

From: brendav@turbonet.com
Sent: Monday, February 12, 2024 4:15 PM
To: Michael Ray; Cody Riddle
Cc: bmerkle@nsa.edu
Subject: FW: 414 S Main Street, Moscow ID 83843

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From: brendav@turbonet.com <brendav@turbonet.com>
Sent: Monday, February 12, 2024 2:22 PM
To: 'rvw@uidaho.edu' <rvw@uidaho.edu>
Subject: 414 S Main Street, Moscow ID 83843

Dear Mike,

We are changing tenants at 414 S Main Street and are asking for a Zoning Certificate.

The University of Idaho (U of I) operated an art gallery in this building for approximately 40 years (from some time in 1980s until 2021). In May 2018, Ordinance 2018-7, in effect eliminated Educational Services in the downtown and now allows only those schools and instruction as defined in the North American Industry Classification System (NAICS 6114-6117) and has even excluded some of these uses within those subsectors. When the zone change occurred the U of I continued to use the building as it always had since the Code does allow legal uses to continue when amendments to the code no longer allow such uses. (Sec 1-7 A).

Therefore in 2021 when the U of I terminated their lease with us, our new tenant Moscow Contemporary used the building exactly as the U of I had, including the existing non-conforming educational uses. This use included, offering art classes to both adults and children, presentations by artists and discussions of their work.

Our new tenant will be New Saint Andrews College (NSA) and it is their intention to use the building primarily as an art gallery, a store, and as offices. All of these uses are Permitted in the CBD and are defined in NAICS -712110, 541, 5322. While acknowledging that NSA cannot use the building as a college as defined in Sector 61 of NAICS, we do believe that NSA, if they so wish, has the right to continue offering art education to both adults and children in the same way that Moscow Contemporary had been doing since 2021 because this use has been continuous since the 1980s.

You have asked that we show what uses will occur in certain parts of the building and what percentage of the building will be used for each use. This building was remodeled in the 1980s for use specifically as an art gallery and it does not lend itself to many other uses without substantial changes to the architecture. The primary use of the building by NSA will be as an art gallery and any other uses will be located in smaller areas of the building. We do not wish to restrict our Tenants by confining certain areas of the building to certain uses and we understand that they will be allowed to use the building for all Permitted Land Uses in the CBD, even though they may not be taking advantage of all their options at this time.

Brenda von Wandruszka
Rootforest LLC
1827 Daves Avenue

Moscow ID 83843
208-596-1951



Heart of the Arts



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Mayor

Maureen Laflin
Council President

Gina Taruscio
Council Vice-President

Drew Davis
Council Member

Sandra Kelly
Council Member

Hailey Lewis
Council Member

Julia Parker
Council Member



Bill Belknap
City Supervisor



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Zoning Administrator Decision 2023-01

Date of Request: May 9, 2023

Date of Decision: June 6, 2023

Person Requesting Decision of Zoning Administrator: Ben Merkle-President,
New Saint Andrews College

Property Impacted by Decision: 516 S. Main Street, Moscow, Idaho

Zoning of Property in Question: Central Business District, hereinafter "CB"

Current Use of Property in Question: Religious Institution with Office Space

Proposed Use of Property in Question: New Saint Andrews College (hereinafter "NSA") seeks occupancy and use of the entire building located at 516 S. Main Street. The proposal is for NSA to use both the historic theater space and seven offices. The offices are to be occupied by administrative staff, and no academic instruction or credit-bearing activity are proposed. The theater would be used to host various events consistent with the historic use of the building. This includes providing opportunities for NSA students to participate in movies, live performances, lectures, debates, and church services, many of which would be open to the public, with the primary use to be for the benefit of the students of NSA.

Determination Requested: Ben Merkle, President of NSA, seeks a determination as to whether or not the combination of uses as proposed constitute an allowed use of the subject property.

Background: While the historic use of the building was a theater, it has most recently been used primarily as a religious institution. Both are allowed uses in the underlying CB zone (MCC 4-3-4). A small portion of the building has also historically supported professional office space for the religious institution and other organizations, including the college. To date, the office space has been a secondary or accessory use to the church.

Zoning Regulations Pertinent to the Question Presented:

1. Moscow City Code Title 4, Chapter 11 authorizes the Zoning Administrator to administer and enforce the zoning code. The Administrator's duties include ordering discontinuance of illegal use of land, buildings or structures; removal of illegal additions, alterations, or structural changes; discontinuance of illegal work being done; or shall take other action authorized by the zoning code to insure compliance with or to prevent violation of its provisions (MCC 4-11-1.A). The Zoning Administrator is



further authorized to make interpretations on the allowance or prohibition of proposed uses in specific zoning districts (MCC 4-3-3).

2. Moscow City Code Title 4, Chapter 3, Section 3-4 specifically lists professional offices, religious facilities, and movie theaters as allowed uses in the CB.
3. Moscow City Code Title 4, Chapter 1, Section 1-6.52 defines “Educational Services” as follows:

Establishments that provide instruction and training in a wide variety of subjects. The instruction and training is provided by specialized establishments, such as schools, colleges, universities, and training centers.

The North American Industry Classification System (NAICS), referenced in Moscow City Code for the purpose of making land use determinations, provides a more specific definition. NAICS 611310 (Colleges, Universities, and Professional Schools) are defined as follows:

This industry comprises establishments primarily engaged in furnishing academic courses and granting degrees at baccalaureate or graduate levels. The requirement for admission is at least a high school diploma or equivalent general academic training. Instruction may be provided in diverse settings, such as the establishment's or client's training facilities, educational institutions, the workplace, or the home, and through diverse means, such as correspondence, television, the Internet, or other electronic and distance-learning methods. The training provided by these establishments may include the use of simulators and simulation methods.

4. Moscow City Code Title 4, Chapter 3, Section 3-4 specifically prohibits universities in the CB.

Analysis: The individual uses proposed in the building are generally allowed. However, the issue with the proposed use by NSA is their cumulative impact, and relationship or direct correlation to an otherwise prohibited use in this location; a university. While the proposed use of the property is not for credit-bearing academic purposes, City Code does not make a distinction between academic instruction and support services and assembly space, like those proposed, when defining a university. While a small portion of the building has supported various offices, those were secondary to the primary, permitted use of a religious institution.

The administrative offices, when combined with operation of the theater by the college, constitutes a prohibited use. The fact that portions of the building will be open to the public, and others will function very similar to stand-alone allowed uses, does not change the interpretation. The net result is an entire facility





dedicated to furthering the mission and goals of the college by using the theater in a way to provide instruction, education, and/or training in a diverse setting by way of diverse means. In effect, the primary use of the property would no longer be considered a church. Rather, the proposed primary use of the subject property would be classified as a university, as defined above.

Decision: In conclusion, your proposal, as described to date, constitutes a prohibited use under Moscow City Code, Title 4, Chapter 3, Section 3-2.E.

Documents/Information relied upon in making determination: This determination is based on in-person conversations with Ben Merkle, as well as the attached email correspondence dated between June 17, 2022 and May 11, 2023 that detail the proposed use of the subject property.

Right to Appeal: Moscow City Code, Title 4, Chapter 8, Section 8-2 permits an applicant, City representative or affected person to appeal an interpretation or administration of the Zoning Code by the Zoning Administrator to the Board of Adjustment. Such appeal shall be made within thirty (30) days from receipt of this decision. An appeal shall be made by filing with the Zoning Administrator a written notice of appeal specifying the grounds thereof and paying an appeal fee established by Resolution. Upon the filing of an appeal, the Zoning Administrator shall submit to the Board of Adjustment all materials constituting the record upon which the appeal is made. The appeal process will be followed pursuant to MCC Title 4, Chapter 8.

Cody Riddle
Deputy City Supervisor
Community Development

Attachments:

Email Correspondence (June 17, 2022-May 11, 2023)



Cody Riddle

From: Benjamin Merkle <bmerkle@nsa.edu>
Sent: Thursday, May 11, 2023 10:55 AM
To: Cody Riddle
Cc: rauch@mrlegal.com; maria@mrlegal.com
Subject: RE: Nuart Follow-Up

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Cody,
There are three offices upstairs and there are four offices downstairs. We are currently using all seven of them. And to be clear, this is the arrangement that I ran by you last summer, which you told me was permitted.

Ben Merkle
President
New Saint Andrews College



On May 11, 2023 at 7:17 AM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

I'm working on the letter now. Could you tell me how many total office spaces are in the building, and of those, how many NSA would like to occupy?

Thanks,

Cody

From: Benjamin Merkle <bmerkle@nsa.edu>
Sent: Tuesday, May 9, 2023 9:49 AM
To: Cody Riddle <criddle@ci.moscow.id.us>
Subject: RE: Nuart Follow-Up

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Cody

We are not looking at increasing office space at all. We are using the same amount of office space next year as last year. There is no proposed increase in the office area. The only thing that we are looking at with regard to the office space is putting different people in those offices. But it would be the same amount of office space, no increase.

Yes, if you could give me a formal write up of this determination, that would be helpful.

Can you specify that we are allowed to continue to have non-credit bearing admin offices there?

The same as you have allowed up until now. And can you specify what theater usage we can have? So, if we continue to rent from Christ Church, can we rent the theater for certain events?

What restrictions would be on that?

Thanks

Ben Merkle

President

New Saint Andrews College



On May 9, 2023 at 7:56 AM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Good Morning Ben,

Thanks for the conversation yesterday. I wanted to follow up a little further on our discussion. The university's past use of a few office spaces in the building has largely been secondary or incidental to the primary, allowed use, a church. Our stance is that your proposal to occupy additional office space and assume primary use of the theater would effectively convert the use of the property to that of a university. We've talked a bit about credit bearing and non-credit bearing activities. We certainly considered that in evaluating your proposal. The code does not make a distinction in that way. Our view is that the activities/uses proposed are tied directly to, and in direct support of, the University. This expansion, or increase in occupancy, including any additional office space, would be prohibited.

As we discussed yesterday, I am happy to provide a formal, written determination that outlines this in greater detail. This would include language specifying an opportunity for appeal. Please let me know if this is how you'd like to proceed, and if you have any follow-up questions.

Thanks,

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Friday, May 5, 2023 4:07 PM

To: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Nuart Follow-Up

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

That works. I will pop over then.

Ben Merkle

President

New Saint Andrews College



On May 5, 2023 at 4:05 PM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

How does 10:30am Monday sound?

Thanks,

Cody

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Friday, May 5, 2023 4:01 PM

To: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Nuart Follow-Up

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

I can do 2 on Monday. But if we could go any earlier that would be good.

Also, it's not clear to me whether you are saying we can't use the theater space at the Nuart property or we can't use the Nuart property at all.

Ben Merkle

President

New Saint Andrews College



On May 5, 2023 at 3:55 PM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

How does 2pm Monday sound? It's really the combination of uses, with the theater space, being used primarily in conjunction with, or as a component of the university that's a concern. We can talk through it more Monday if that works?

Thanks,

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Friday, May 5, 2023 11:28 AM

To: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Nuart Follow-Up

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Yeah. Let's do Monday. Can we get it before 2:30?

Also, can you be specific about which part of the plan for next year is a university use?

Ben Merkle

President

New Saint Andrews College



On May 5, 2023 at 11:21 AM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

Thank you for the follow up information. I've looked at this quite closely, and without going into a lot of detail, at the end of the day, we see your proposal would in effect be a university use, which as you know, is prohibited in the underlying zone. I'm happy to sit down and chat through this further if you'd like, before issuing a formal determination. Is that something that would be of interest to you? I could find time as early as Monday.

Please let me know.

Thanks,

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

From: Benjamin Merkle <bmerkle@nsa.edu>
Sent: Thursday, May 4, 2023 7:47 AM
To: Cody Riddle <criddle@ci.moscow.id.us>
Subject: Re: Nuart Follow-Up

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Cody,

The theater would not be limited to school functions. I have my COO working on a plan for our building use this next year. Our plan is for the Nuart Theater to be something that we offer to be rented out for non-college events. And so I am having him work on our policies for renting it out. I would anticipate that we will do a lot more renting the facility out than Christ Church has done because we would be more purposeful in using the space as a public theater. Also, most college events that would be held there would be open to the public as well - lectures, debates, concerts, theater performances, movie nights, etc. And when I say "lectures" I should be clear that I do not mean lectures for NSA classes, but public lectures that are not for credit but are intended for the general public.

As it is right now, Christ Church would continue to sublease from us for a small Sunday morning service. I don't know how long that will last for. But our current

plan is for us to keep renting to them. So a Sunday morning service will keep happening there.

The building has four offices and a reception desk on the first floor. The second floor has three offices, a conference room, and then stairs up to another kind

of peculiar lounge space. We would put administrative offices in these offices. No student services would go in these offices, nothing that students would be showing up for. If there was a student service element to anything that happened there, they would

meet at the North or South Campus and not at the Nuart. No teachers or professors would have offices there.

I hope this answers all your questions. But let me know if there is anything else I can answer.

Ben Merkle

President

New Saint Andrews College



On May 4, 2023 at 6:48 AM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Good Morning Ben,

Thank you for taking the time to walk me through your proposal for the use of the old Nuart Theater yesterday. I want to confirm a couple things before providing a determination. First, for the theater space, it's my understanding it would no longer be used regularly for church services. Rather, it would support performances by students, and provide a venue to host plays and other live productions. Is this correct? Would the facility have any sort of public component? Meaning, could someone reserve/rent the space for community events? Or, would the events be limited to school functions, similar to an auditorium often found on campus at a public school?

It's my understanding the remainder of the building houses office space. How many total offices are there, and would that space be occupied by anyone other than school administrators? I believe you indicated there would be no teachers/professors housed in the building?

Finally, it's my understanding the church function would effectively no longer occur on the premises, other than the occasional special event. Did I understand that correctly?

Your confirmation/clarification here is appreciated, and will help us make a final determination.

Thanks,

Cody Riddle

Cody Riddle

From: Benjamin Merkle <bmerkle@nsa.edu>
Sent: Thursday, May 4, 2023 7:47 AM
To: Cody Riddle
Subject: Re: Nuart Follow-Up

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Cody,

The theater would not be limited to school functions. I have my COO working on a plan for our building use this next year. Our plan is for the Nuart Theater to be something that we offer to be rented out for non-college events. And so I am having him work on our policies for renting it out. I would anticipate that we will do a lot more renting the facility out than Christ Church has done because we would be more purposeful in using the space as a public theater. Also, most college events that would be held there would be open to the public as well - lectures, debates, concerts, theater performances, movie nights, etc. And when I say "lectures" I should be clear that I do not mean lectures for NSA classes, but public lectures that are not for credit but are intended for the general public.

As it is right now, Christ Church would continue to sublease from us for a small Sunday morning service. I don't know how long that will last for. But our current plan is for us to keep renting to them. So a Sunday morning service will keep happening there.

The building has four offices and a reception desk on the first floor. The second floor has three offices, a conference room, and then stairs up to another kind of peculiar lounge space. We would put administrative offices in these offices. No student services would go in these offices, nothing that students would be showing up for. If there was a student service element to anything that happened there, they would meet at the North or South Campus and not at the Nuart. No teachers or professors would have offices there.

I hope this answers all your questions. But let me know if there is anything else I can answer.

Ben Merkle

President
New Saint Andrews College



On May 4, 2023 at 6:48 AM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Good Morning Ben,

Thank you for taking the time to walk me through your proposal for the use of the old Nuart Theater yesterday. I want to confirm a couple things before providing a determination. First, for the theater space, it's my understanding it would no longer be used regularly for church services. Rather, it would support performances by students, and provide a venue to host plays and other live productions. Is this correct? Would the facility have any sort of public component? Meaning, could someone reserve/rent the space for community events? Or, would the events be limited to school functions, similar to an auditorium often found on campus at a public school?

It's my understanding the remainder of the building houses office space. How many total offices are there, and would that space be occupied by anyone other than school administrators? I believe you indicated there would be no teachers/professors housed in the building?

Finally, it's my understanding the church function would effectively no longer occur on the premises, other than the occasional special event. Did I understand that correctly?

Your confirmation/clarification here is appreciated, and will help us make a final determination.

Thanks,

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

Cody Riddle

From: Benjamin Merkle <bmerkle@nsa.edu>
Sent: Friday, April 28, 2023 4:24 PM
To: Cody Riddle
Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

That works.

Ben Merkle
President
New Saint Andrews College



On Apr 28, 2023 at 4:21 PM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

How does Wednesday at 1pm sound?

Thanks!

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

From: Benjamin Merkle <bmerkle@nsa.edu>
Sent: Friday, April 28, 2023 4:00 PM
To: Michael Ray <mray@ci.moscow.id.us>; Cody Riddle <criddle@ci.moscow.id.us>
Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Cody,
Yeah, I can do Monday from 3 on, Tuesday 10-1:30, and any time on Wed or Thu. What works for you?

Ben Merkle

President

New Saint Andrews College



On Apr 28, 2023 at 3:47 PM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

I do have some concerns with the evolution/expansion of the use of the facility. Before making a final determination, I would appreciate the opportunity to sit down and chat through a few things. Are there a few days/times next week that might work for you?

Thanks,

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Thursday, April 27, 2023 9:03 AM

To: Michael Ray <mray@ci.moscow.id.us>; Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Cody,
Just following up on this. Were you able to get the conversations that you needed to have?

Ben Merkle

President

New Saint Andrews College



On Apr 20, 2023 at 1:20 PM -0700, Benjamin Merkle <bmerkle@nsa.edu>, wrote:

Got it. Talk to you then.

Ben Merkle

President

New Saint Andrews College



On Apr 20, 2023 at 12:39 PM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

Thank you for reaching out. I apologize for the delayed response. I'd like to discuss this a little further internally before formally responding. I'll get back with you next week.

Thanks,

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

From: Benjamin Merkle <bmerkle@nsa.edu>
Sent: Thursday, April 13, 2023 8:47 AM
To: Michael Ray <mray@ci.moscow.id.us>; Cody Riddle <criddle@ci.moscow.id.us>
Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Cody,

I'm circling back to the Nuart question. I think that this past year has gone well. As I reported previously, we have placed our marketing, recruitment, fundraising, and the office for the Hale Institute in the Nuart offices. Whenever recruitment has had prospective students visit, they have met them at the south campus building, not at the Nuart. Any meetings with students that Hale Institute staff have are also conducted at the south campus. We have used the theater space as one would for typical theater use - non credit bearing gatherings that would be typical for a public theater - like if we have a concert or a drama performance or a public lecture, that is not credit bearing but the sort of thing that you would rent a downtown theater for and invite the public.

Anyhow, I think this has gone well and has been feasible for us. This next year we are being offered a longterm lease on this. And I don't want to sign if I'm not clear that this is all permitted.

This next year we will plan on the same kind of use with two exceptions. I would like to move my finance team over there. This would be my CFO, bookkeeper, and bursar. The only one of those people who would interact with students would be our bursar, who would in certain seasons need to meet with students about billing. So I would have the bursar conduct all student meetings at the South Campus building and not at the Nuart.

The second exception would be our theater use. I wouldn't change the kind of use at all, but we would be using it more frequently. This past year we were subleasing from Christ Church, who still had the primary use of the theater. And so we only had limited times that we could use it. If we take this longterm lease then we will have primary use of the theater and will increase how often we use it. This would be things like a movie night, more theater productions, etc. I would continue to not allow credit bearing activity to happen there. And I would make sure that our music conservatory operations stay at our north campus location (music lessons, etc). So we would work to keep all use of the theater as typical public theater type activities.

Thanks.

Ben Merkle

President

New Saint Andrews College



On Jul 20, 2022 at 11:46 AM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

Thank you for the response. As Mike indicated, office use is permissible in the zone. It's any element of academic instruction, student counseling, gatherings, and similar activities that create a challenge from a zoning perspective. The tours you reference would fall into that category. That's more in line with what one would expect at a college. Those activities should originate and be conducted at one of the locations approved for academic use.

I hope this provides better clarification. Please let us know if you have further questions. We're happy to help.

Best,

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Tuesday, July 19, 2022 6:43 PM

To: Michael Ray <mray@ci.moscow.id.us>; Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Cory,

That is tricky. Given the email I already received from Michael, I have moved ahead on renting this.

With regard to recruitment, by definition this is not with students. It serves prospective students and their families. This would be the function of one of the four offices, so 1/4 of the use. And the bulk of their contact is via phone, email, etc. We would have prospective students visit. And we have probably a half dozen visit weekends over the course of the year where students would gather at that office.

Ben Merkle

President

New Saint Andrews College



On Jul 19, 2022, 5:16 PM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

I wanted follow up on this, as it still sounds like an integral part of the college. I'm specifically wondering if you can tell us more about the recruiting component mentioned below. Can you expand on that for us? I envision students coming and going, perhaps for tours or visits.

Any clarification you can provide would be appreciated.

Thanks,

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Tuesday, July 12, 2022 6:38 AM

To: Michael Ray <mray@ci.moscow.id.us>

Cc: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Got it. Yes, our registrar and other student services would stay at the South Campus. So there would not be student counseling here. Also, we may still put the Hale Institute here. Our Director of the Inst teaches two electives each year. But those lectures and recitations would happen at either the North or South Campus, not in the Nuart space.

Ben Merkle

President

New Saint Andrews College



On Jul 11, 2022, 2:43 PM -0700, Michael Ray <mray@ci.moscow.id.us>, wrote:

Hi Ben,

Thanks for the update, glad you are able to make this plan work. We don't see an issue with your new plan, so long as activities like student counseling remain at a separate location, which it sounds like they would. If anything else changes feel free to reach out and discuss.

Thanks,

Mike

Mike Ray, AICP

Planning Manager

City of Moscow

504 S. Washington Street

Moscow, ID 83843

mray@ci.moscow.id.us

(208) 883-7008

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Wednesday, July 6, 2022 5:56 PM

To: Michael Ray <mray@ci.moscow.id.us>

Cc: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Mike,

Thanks for this and thanks for the meeting.

I went back to the drawing board to think through how we could make use of that space inside of the zoning constraints. I'm going to keep our Conservatory operations in the North Campus for the moment to keep things straightforward. We are planning now to move our development team into the Nuart space. This team consists of our marketing, fundraising, and recruitment offices. They are pretty much just business offices and do not interact significantly with the student body. I think we would probably just be subleasing from Christ Church.

Thanks very much for your help.

Ben Merkle

President

New Saint Andrews College



On Jul 5, 2022, 4:30 PM -0700, Michael Ray <mray@ci.moscow.id.us>, wrote:

Ben, you can find the relevant criteria and standards for a CUP on page 4 of the following link:

<https://www.ci.moscow.id.us/DocumentCenter/View/1291/Chapter-08---Appeals-Variances-Conditional-and-Special-Uses-PDF>

Let me know if you need anything further.

Thanks,

Mike

Mike Ray, AICP

Planning Manager

City of Moscow

504 S. Washington Street

Moscow, ID 83843

mray@ci.moscow.id.us

(208) 883-7008

From: Michael Ray <>

Sent: Thursday, June 30, 2022 8:54 AM

To: 'Benjamin Merkle' <bmerkle@nsa.edu>

Cc: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Use of the Nuart Theatre

Great, see you Tuesday at 4pm. Have a good 4th of July weekend.

Mike

Mike Ray, AICP

Planning Manager

City of Moscow

504 S. Washington Street

Moscow, ID 83843

mray@ci.moscow.id.us

(208) 883-7008

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Thursday, June 30, 2022 8:50 AM

To: Michael Ray <mray@ci.moscow.id.us>

Cc: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Mike,

Hah, yes, the 4th won't work. Let's do Tuesday at 4.

Ben Merkle

President

New Saint Andrews College



On Jun 30, 2022, 8:07 AM -0700, Michael Ray <mray@ci.moscow.id.us>, wrote:

Ben, Monday is the 4th of July, does Tuesday work? We have availability at 10am or 4pm.

Mike Ray, AICP

Planning Manager

City of Moscow

504 S. Washington Street

Moscow, ID 83843

mray@ci.moscow.id.us

(208) 883-7008

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Wednesday, June 29, 2022 5:02 PM

To: Michael Ray <mray@ci.moscow.id.us>

Cc: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Monday is fine. What availability do you have then?

Ben Merkle

President

New Saint Andrews College



On Jun 29, 2022, 4:24 PM -0700, Michael Ray <mray@ci.moscow.id.us>, wrote:

Hi Ben,

I'm going to be out of the office on Friday, but if there was a day that worked for you next week I should be able to make that work. As an alternative, Cody Riddle, who is my boss will be in the office on Friday and may be able to meet with you if that is the only day that you have available. We have been discussing this internally so he is up to speed on what the discussion has been up to this point. So, whatever works best for you, just let me know.

Thanks,

Mike

Mike Ray, AICP

Planning Manager

City of Moscow

504 S. Washington Street

Moscow, ID 83843

mray@ci.moscow.id.us

(208) 883-7008

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Wednesday, June 29, 2022 3:36 PM

To: Michael Ray <mray@ci.moscow.id.us>

Cc: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Mike,

Would you have availability on Friday to discuss this?

Ben Merkle

President



On Jun 27, 2022, 3:04 PM -0700, Michael Ray <mray@ci.moscow.id.us>, wrote:

Hi Ben,

Thanks for the update on NSA's plans for the fall. If you're looking for a more formal determination on whether the plans would be consistent with the zoning in the Central Business District, could you please expand a little on your description of the uses? For the conservatory, just so that I understand correctly, these will be faculty members of NSA who will be conducting music and voice lessons to people in the community? There will be no academic credit that will be provided to anyone attending these lessons? Will there be faculty offices that will be located in the building, or will this just be space for music instruction? Regarding the choral and orchestral ensembles, is the composition of these ensembles NSA students who are performing as part of an academic curriculum, or is this just intended to be a musical performance space for ensembles made up of people in the community, or both?

Based upon my review of your description so far, it's likely that the use is still going to fall under the Educational Services sector in the use table, but will be located in the All Other Schools and Instruction (NAICS 6114-6117) section. The specific NAICS number would be 611610 and is listed as Fine Arts Schools with a description as establishments primarily engaged in offering instruction in the arts, including dance, art, drama, and music. I've included a link below to that sector for your reference. The All Other Schools and Instruction (NAICS 6114-6117) category is a conditional use permit in the CB Zone, so you would need to apply for a CUP and a public hearing before the Board of Adjustment would be conducted, who will then render a decision.

<https://www.census.gov/naics/?input=611610&year=2012&details=611610>

It would also be helpful if I could understand a little more about the Hale Institute and how it relates to NSA. The website for the Institute states that it carries out its mission both through course study within the college curriculum and in wider public discourse through publication and symposia. Is the intention to just locate the Institute's offices there without any academic instruction occurring on-site? Will there be students visiting the Institute's offices as part of academic instruction that is occurring elsewhere, such as an advisor? If you could please expand upon how the Institute relates to NSA and these academic related questions that would be helpful for me to understand. Looking at the non-academic use, it appears that the most similar sector in the use table would be Business, Professional, Political, Social Advocacy, Grantmaking, and Similar Organizations (NAICS 8132/8133/8139) which is a permitted use in CB. I just need to fully understand the academic function of the Institute and how it relates to this location to be able to give you any further guidance.

Thanks in advance and I look forward to hearing back from you,

Mike

Mike Ray, AICP

Planning Manager

City of Moscow

504 S. Washington Street

Moscow, ID 83843

mray@ci.moscow.id.us

(208) 883-7008

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Friday, June 17, 2022 3:18 PM

To: Michael Ray <mray@ci.moscow.id.us>

Subject: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Mike,

Just writing to let you know that NSA will likely be leasing the Nuart Theatre this fall. Our plan is to locate the non-academic operations of the Music Conservatory there for now. The conservatory offers instrument and voice lessons, choral and orchestral ensembles, etc. to the local community. We will also put the offices for the Hale Institute there. This is a law and policy think tank. I believe that this is all in keeping with the city's zoning requirements.

Thanks,

Ben Merkle

President

New Saint Andrews College

ROOTFOREST, LLC APPEAL

LUP2024-0017

**COMMUNITY DEVELOPMENT**

Ph: 208-883-7035

504 S. Washington Street

jfleischman@ci.moscow.id.us

For City Use Only

Date Received		4-15-24	
Dept	Fee Type	Fees	Paid
CDV	Application Fee	\$281.00	4/15/24
Receipt Number		LUP2024-00	

APPLICATION FOR APPEAL (MCC 4-8-2 and 4-8-5)

(Please type or print plainly with blue ink.)

I, BRENDA VON WANDRUSZKA for ROOTFOREST LLC hereby appeal the decision of the:

- ☒ Zoning Administrator ☐ Board of Adjustment ☐ Planning & Zoning Commission

File Number: _____ Address/Project: 414 S MAIN STREET**Grounds for Appeal:**

Appeals are limited to applicant(s), city representatives, or an affected person as defined by MCC 4-1-6.D.3.

- ☒ Decision violates statutory or constitutional provisions. ☐ Decision was unsupported by substantial evidence in the records or as a whole.
- ☒ Decision exceeds statutory authority. ☐ Decision was arbitrary, capricious, or an abuse of discretion.
- ☐ Decision was made upon unlawful procedure.

Appellant(s) must attach a letter detailing the following to complete the application:

Supporting materials requested herein may be included as attachments to the letter.

1. Describe the original request and the specific final decision being appealed.
2. If you are not the original applicant or city representative, describe the testimony or evidence you presented or provided prior to the final decision being made.
3. Provide evidence supporting the grounds for appeal.
4. Provide evidence that the applicant is an "affected person", as defined by MCC, if not the original applicant or city representative.

Once your appeal has been accepted and a public meeting is set, you have the right to request or waive an oral argument:Are you requesting the opportunity to provide an oral argument? YES (Y/N)**Appellant:**

Name: BRENDA VON WANDRUSZKA for ROOTFOREST LLC Phone: 208 596 1951

Address: 1827 DAVES AVE, MOSCOW ID 83843 Email: brendav@turbonet.com

Notes:

1. The only topics which may be discussed during the hearing are the specific reasons for the appeal as stated in the application.
2. The appeal process follows specific procedures outlined in Moscow City Code Title 4, Chapter 8.

I understand this information is a public record and may be posted to a public website. I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

BvW Wandruszka
Signature of Appellant

APRIL 14 2024
Date

APPEAL OF ZONING ADMINISTRATOR DECISION 2024-01 TO THE BOARD OF ADJUSTMENT

Appellants: Rootforest LLC (property owner) and New Saint Andrews College (tenant)

1. Rootforest LLC is appealing the Zoning Administrator Decision 2024-01 dated February 21, 2024, on the grounds that the:

Decision violates statutory or constitutional provisions.

Decision exceeds statutory authority.

APPEAL BY ROOTFOREST LLC

Rootforest, LLC. owns a building located in the Central Business District Zone (CBD) at 414 South Main Street, in Moscow, and it is our desire to continue to use the building as a community art gallery in the same way as it has been used since the 1980s. The Zoning Administrator (ZA) has approved the use of the building as both an Art Gallery and Retail Space because these are PERMITTED uses in the CBD.

Since the passing of Ordinance No 2019-07 all education in the City is confined to the University District and any educational use in any other district must be approved through a conditional use permit. There were of course many educational uses throughout the City at the time the Ordinance was passed, and these all continued as continuing nonconforming uses. The educational activities in our building at 414 S Main Street continued for the same reason, and like Moscow Contemporary, New Saint Andrews College has the right to continue that educational use and the ZA agrees.

However, we cannot obtain a Zoning Certificate from the City of Moscow because of the Zoning Administrator's determination that our new tenant New Saint Andrews College (NSA) will use some of the space in the building as offices and that this use will be an expansion of the college in the CBD.

Ordinance No 2019-07 is the tool used to deny us this property right. The adoption of this ordinance was the consequence of the City Council's directive to the Planning and Zoning Commission in April 2019 to prepare "an ordinance which would prohibit additional or expanded universities and colleges in the CBZD". There is, however, nothing in the Zoning Code that gives the City the authority to make such a restriction. There is nowhere in the code that limits the footprint or number of any particular use. In any event offices are a PERMITTED use by right in the CBD.

The City has adopted the North American Industries Classification System (NAICS) and NAICS defines universities and colleges very clearly as institutions that are involved in teaching academic courses and granting degrees at baccalaureate and graduate levels.

Moscow City Code Title 4 Chapter 3 permits a number of different uses in the CBD BY RIGHT. PERMITTED USES appear in a USE TABLE in Section 3-2 and if a "P" appears in a cell of that Use Table it "indicates that the use is allowed by right". The numbers in the second column refer to where definitions can be found in NAICS.

The Permitted uses in the CBD include : Beverage Manufacture; Antenna Towers; Civic and Social Organizations; Community/Neighborhood Center; Government Office Buildings; Health Care Services; Museum and Art Galleries; Public Parks and Recreation Facilities operated by local government; Religious Facilities; Telecommunication Services; Consumer Goods Rental; Laundries and Dry Cleaners; Personal Care Services; Retail Sales; Electronic and Precision Equipment Repair and Maintenance; Bed and

Breakfast Inns; Hotels and Motels; Market and Community Gardens; Archery and Shooting Ranges; Bowling Centers; Dance Halls; Fitness Centers; Miniature Golf Facilities; Movie Theatres; Riding Stables; Stadiums and Sports Arenas; Agencies, Brokerages and Other Insurance Related Activities; Broadcasting Studios; Business, Professional, Political, Social Advocacy; Commercial Banking; Credit Unions and Savings Institutions; Construction Contractor Services; Data Processing; Hosting and Related Services; Professional, Scientific and Technical Services (NAICS 541), Publishing Industries (except internet); Real Estate Services; Securities Commodity Contracts and Other Financial Investments; Software Publishers; Drinking Places; Restaurants, and also PROFESSIONAL SCIENTIFIC AND TECHNICAL SERVICES, (NAICS 541)

The Zoning Code gives property owners the right to rent their property to ANYONE who will USE it for any purpose that is LEGALLY PERMITTED in a particular zone and when that right is denied, the City is depriving a property owner of a fundamental property right. Like all property owners we have the right to USE our property and allow our tenants to USE our property in a lawful manner as allowed by the Zoning Code and this is a protection we are afforded by the United States and Idaho Constitutions.

Ordinance No 2019-07 cannot be used to deny us this property right and arguing that while the educational component of what the building will be used for is permitted, but that the building may have no office is an underhand way of preventing the gallery from operating at all. In order to operate the gallery, many staff people are needed and they will consist of a range of professionals with grant writing abilities, fund raising abilities, legal knowledge, accounting, and so on. They all need office space and it is not the City's business to monitor who the staff people are - the Zoning Code is after all a USE code and not a WHO code,

We do not argue that the City has the right under the police power to divide the City into zoning districts, decide what uses are allowed in each zoning district, and to restrict certain uses in those districts. However, the Zoning Code does not give the City the prerogative to decide WHO can use a property in a particular way. Furthermore, we do not believe that it was the intention of the City administration that adopted this Ordinance to prevent either NSA or the University of Idaho (U of I) from occupying and using properties for legally permitted uses in the CBD. This is evidenced by the fact that in 2021, two years after Ordinance 2019-07 was adopted, the City of Moscow sold a building they owned in the CBD to the U of I. At that time Gary Riedner told the Public Works/Finance Committee meeting on June 28, 2021 and then at the City Council Meeting on July 6, 2021 and again on August 2, 2021: that *"uses of right are allowed in the Central Business District"* and that the City did not *"see any issue with the proposed use"* and *"uses of right in the Central Business District..... seems to take care of the zoning issues"* and *"Those discussions as council knows there is a restriction on use of property in the Central Business District for educational purposes and the University of Idaho has been advised of that. We have been advised that they intend to use it as a gallery and a retail space, both of which are uses of right in the Central Business District"*. (See the attached transcripts).

As a result, the City Council correctly allowed the City of Moscow to sell a building they owned in the CBD to the U of I and to allow the university to USE it for purposes that are legally permitted in the CBD. The City should be consistent and afford us the same right by allowing us to rent our building to New Saint Andrews College to USE for all LEGALLY PERMITTED USES.

To prohibit the use of the property at 414 S Main Street for an explicitly permitted purpose, brings us to the conclusion that this prohibition is based on WHO the prospective tenants are, rather than WHAT the property will be used for. This amounts to a discriminatory practice that has no place in our town. We

cannot be complicit in an action that excludes a segment of the population on the basis of religious, or other cultural, considerations.

Chapter 1

GENERAL PROVISIONS

- Sec. 1-1: Title
- Sec. 1-2: Authority
- Sec. 1-3: Purpose
- Sec. 1-4: Adoption of
Comprehensive Plan
- Sec. 1-5: Scope of Zoning Code
- Sec. 1-6: Definitions
- Sec. 1-7: Nonconformities

Sec. 1-1. Title.

Title 4, Land Use Regulations, of the Code, the Chapters and subparts contained therein, and its appurtenant maps shall be known as the "Moscow Zoning Code." The words "the Zoning Code" or "this Zoning Code" shall mean all or any part of the Moscow Zoning Code.

Sec. 1-2. Authority.

This Zoning Code is adopted pursuant to the authority conferred by Chapter 65, Title 67 and Chapter 13, Title 50 of the Idaho Code and to the home rule authority of Idaho cities granted by Article 12, Section 2 of the Idaho Constitution and Section 302 of Title 50, Idaho Code. The City shall designate a Zoning Administrator who shall have all responsibilities required to assist the City to comply with Federal, State and Local statutes and ordinances related to zoning and land use planning, including but not limited to the laws in Idaho Code Title 67, Chapter 65, and the City Zoning Code.

(Ord. 2021-09, 07/19/2021)

Sec. 1-3. Purpose.

The provisions of this Zoning Code shall be applied to fulfill the following purposes:

- A. Promote the health, safety and general welfare of the Moscow community.
- B. Encourage the most appropriate use of land within the City's jurisdiction to protect the natural and human environment.
- C. Mitigate the effects of incompatible land uses upon neighborhoods, public

facilities, and the community as a whole.

- D. Provide for public improvements which are serviceable and durable and which provide for effective service delivery by all public agencies.
- E. Preserve the positive aspects of existing neighborhoods while improving the neighborhoods which have fallen into disrepair.
- F. Provide adequate public services and community amenities in newly developing neighborhoods.
- G. Further the goals of the enabling statutes which grant authority to the City to enact ordinances regulating land use and development.

Sec. 1-4. Adoption of Comprehensive Plan.

The Comprehensive Plan of the City of Moscow is hereby adopted by reference as the policy guide for the application of the provisions of this Title. The words "the Plan" or "this Plan" shall mean the Comprehensive Plan of the City of Moscow throughout this Title. One (1) copy of the Plan, as it now exists and may be subsequently amended, shall be retained by the Clerk, available for public inspection during regular City business hours.

(Ord. 2021-09, 07/19/2021)

Sec. 1-5. Scope of Zoning Code.

This Zoning Code shall apply to buildings, structures, and lands situated within the City and to those buildings, structures and lands hereafter annexed to the City, and to those buildings, structures and lands situated within the Area of City Impact. The regulations set forth in this Zoning Code for each zoning district shall be minimum standards and shall be applied uniformly to each class or kind of structure or land, particularly as follows:

- A. No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered except in conformity with all of

- the regulations herein specified for the zoning district in which it is located.
- B. No building or other structure shall hereafter be erected or altered:
1. to exceed the height or bulk as herein required; or
 2. to accommodate or house a greater number of families than herein allowed; or
 3. to have narrower or smaller rear yards, front yards, side yards, or other open spaces than herein required; or
 4. in any other manner contrary to the provisions of this Zoning Code.
- C. No part of a yard, open space, or off-street parking or loading space required in connection with any building or use for the purpose of complying with this Zoning Code, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building or use, unless otherwise provided herein.
- D. No yard or lot existing at the time of passage of this Zoning Code shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Zoning Code shall meet at least the minimum requirements established by this Zoning Code.
- (Ord. 1402, 11/05/79; Res. 93-03, 02/01/93; Ord. 2018-07, 05/21/2018)

Sec. 1-6. Definitions.

For the purpose of this Zoning Code, certain words and terms used herein are defined as follows:

- A. All words used in the present tense include the future tense; all words in the plural number include the singular number, and all words in the singular number include plural number; unless the natural construction of the wording indicates otherwise. The word "lot" includes the word "plot"; the word "building" includes the word "structure"; and the word "shall" is mandatory and not directory. The word "used" shall be deemed also to include "designed, intended or arranged to be

used."

- B. Where applicable, uses have been named and defined using the 2012 North American Industry Classification System (NAICS) which is the standard used by the Federal government in classifying business establishments. The uses that are defined by NAICS will have an associated NAICS code in parenthesis following the named use (i.e., *Bowling Centers (NAICS 713950)*). In many cases, this Code has used an abbreviated definition, which is further defined using the 2012 NAICS Manual that is published on the United States Census Bureau website. Many NAICS subsectors include multiple industries that are included within the subsector. In some circumstances, certain industries have specifically been excluded from subsectors because of incompatibility with certain zoning districts.
- C. Unless otherwise specified, all distances shall be measured horizontally.
- D. Definitions used herein:
1. *Accessory Dwelling Unit.* A secondary dwelling unit that is accessory to a single family dwelling on a single lot, containing complete housekeeping facilities and which is added to, created within, or detached from the principal dwelling unit and subject to the Specific Use Standards of this Code.
 2. *Accessory Use.* A minor or second use for which a lot, structure or building is designed or employed in conjunction with but subordinate to its primary use. The term is synonymous with "secondary use."
 3. *Affected Person.* A person who shows to the City, by a preponderance of evidence, that such person has an interest which may be adversely affected by the issuance or denial of a permit authorizing development or by a decision of the City.
 4. *Agencies, Brokerages and Other Insurance Related Activities*

Chapter 3

PERMITTED LAND USES

- Sec. 3-1: Introduction of Land Use Table
 Sec. 3-2: Interpretation of Land Use Table
 Sec. 3-3: Authorized Uses
 Sec. 3-4: Land Use Table
 Sec. 3-5: Specific Use Standards
 Sec. 3-6: Limitations on Uses Table
 Sec. 3-7: Performance Standards

Sec. 3-1. Introduction of Land Use Table.

The Land Use Table within Section 3.4 below lists the uses allowed within all base zoning districts. Each of the listed uses is defined in City Code Section 4-1-6, *Definitions*.

(Ord. 2018-07, 05/21/2018)

Sec. 3-2. Interpretation of Land Use Table.

- A. Permitted Uses. "P" in a cell indicates that the use is allowed by right, without special conditions other than those imposed upon other uses by right in the district. Permitted uses are subject to all other applicable regulations of this Code.
- B. Permitted Accessory Uses. "PA" in a cell indicates that the use is allowed only as accessory or incidental to a permitted principal use. An accessory use is generally designed or employed in conjunction with but subordinate to its primary use.
- C. Conditional Uses. "C" in a cell indicates that in the respective zoning district the use is allowed only if reviewed and approved in accordance with the

procedures in City Code Section 4-8-4, Conditional Uses. Conditional Uses are subject to all other applicable regulations of this Code. A "C" designation does not constitute an authorization or assurance that such use will be permitted. Rather, each Conditional Use Permit application shall be evaluated against the relevant criteria and standards contained within City Code Section 4-8-4(B), and may be approved or denied as the findings indicate appropriate.

- D. Uses Subject to Specific Requirements. "Px", "PAx", or "Cx" in a cell indicates that the use is subject to specific requirements contained within footnotes at the end of the use table.
- E. Prohibited Uses. A blank cell indicates that the use is not permitted in the respective zoning district.

(Ord. 2018-07, 05/21/2018)

Sec. 3-3. Authorized Uses.

This Zoning Code is an exclusive zoning ordinance wherein the stated uses are the only uses which are permitted in each zoning district. Those uses not listed as permitted or conditionally permitted are not authorized. The question whether a specific use is encompassed by a listed use shall be subject to the Zoning Administrator's or designee's reasonable discretion. Further, if a proposed use is not specifically listed within the Land Use Table, the Zoning Administrator or designee shall make a determination as to the zoning classification into which such use should be placed, based upon the most comparable use listed within the table.

(Ord. 2018-07, 05/21/2018)

§ 3-4

TITLE 4 — ZONING CODE

§ 3-4

Sec. 3-4. Land Use Table.

LAND USE TABLE																	
P = Permitted Use PA = Permitted Accessory Use C = Conditional Use Permit Blank = Not Permitted																	
RESIDENTIAL USES	NAICS 2012 Code No.	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U
Dwellings in Residential Zones²																	
Single Family (up to 4 unrelated individuals)		P	P	P	P	P	P	P									
Two Family							P	P									
Twinhome							P	P									
Townhouse ¹							P	P									
Single Family (up to 6 unrelated individuals)		C	C	C	C	C	C	C									
Multiple Family (3 or more units)								P									
Mobile Home Parks								P									
Dwellings in Commercial Zones																	
Above or behind a commercial use or on a secondary street frontage		See above, Dwellings in Residential Zones								P	P		P/C ³	P	P	PA ⁴	P/C ³
On the ground floor on primary street frontage										P	C		C	C	C	PA ⁴	C
Group Living																	
Boarding House (occupied by owner, up to 6 boarders)		P	C	C	C	C	C	P									
Dormitories																	P
Fraternity, Sorority, and Cooperative Houses	721310							C									P
Accessory Uses																	
Accessory Buildings or Structures (up to 1,000 sq ft)		PA	PA	PA	PA	PA	PA ¹⁵	PA ¹⁵	PA								
Accessory Buildings or Structures (1,001 to 1,500 sq ft)		C	C	C	C	C	C	C	C								
Accessory Buildings or Structures (no size limitation)										PA	PA	PA	PA	PA	PA	PA	PA
Accessory Dwelling Unit ¹		PA	PA	PA	PA	PA	PA	PA	PA								
Accessory Home Occupations Type I ¹		PA	PA	PA	PA	PA	PA	PA	PA	PA		PA	PA	PA	PA	PA	PA
Accessory Home Occupations Type II ¹		C	C	C	C	C	C	C	PA	PA		PA	PA	PA	PA	PA	PA
Accessory Gardens		PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA
NON-RESIDENTIAL USES	NAICS 2012 Code No.	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U
Agricultural Uses																	
Agriculture, Animal Production	112	P/C ¹⁰	C ⁵														P
Agriculture, Crop Production	111	P															P
Animals and Fowl (as permitted by City Code Title 10)		PA	PA	PA	PA	PA	PA	PA	PA								
Animal Slaughtering and Processing	31161	C														P	P
Gardens (Market and Community) no on-site retail sales ¹		P	P	P	P	P	P	P	P	P		P	P	P	P	P	P
With on-site retail sales ¹		P	P	C	C	C	C	C	P	P		P	P	P	P	P	P
Sawmills	321113	C													C		
Amusement and Recreation Facilities																	
Archery/Shooting Ranges (indoor only)	713990											P	P	P	P	P	P
Bowling Centers	713950											P	P	P		P	P
Dance Halls	713990											P	P	P		P	P
Fitness Centers	713940									P		P	P	P		P	P
Golf Courses and Country Clubs	713910	C	C	C	C	C	C	C	C								P
Miniature Golf Facilities	713990											P	P	P		P	P
Movie Theaters	512131											P	P	P		P	P
Riding Stables	713990	C										P	P	P	P	P	P
Stadiums and Sports Arenas (Ice/Roller Rinks, Gymnasiums, Ballfields)	713940						C	C				P	P	P		P	P
Animal-Related Business																	
Veterinary Services	541940	C	C						P	P			P	P	P		
Pet Care Services ¹	812910	C	C							P ¹⁰				P	P		
Financial, Technology, and Professional Services																	
Agencies, Brokerages and Other Insurance Related Activities	5242							P ⁶	P	P	P	P	P	P		P	
Broadcasting Studios	515										P	P	P	P		P	
Business, Professional, Political, Social Advocacy, Grantmaking, and Similar Organizations	8132/8133/8139	C	C					P ⁶	P	P	P	P	P	P		P	
Commercial Banking, Credit Unions, and Savings Institutions	522110/120/130											P	P	P			
Construction Contractor Services	238											P	P	P	P	P	
Data Processing, Hosting, and Related Services	518								P	P	P	P	P	P	P	P	P
Professional, Scientific, and Technical Services	541							P ⁶	P	P	P ¹¹	P ¹¹	P	P	P	P ¹¹	P
Publishing Industries (except Internet)	511											P	P	P	P	P	P
Real Estate Services	531							P ⁶	P	P	P	P	P	P		P	
Securities, Commodity Contracts, and Other Financial Investments	523							P ⁶	P	P	P	P	P	P		P	
Software Publishers	5112							P ⁶	P	P	P	P	P	P	P	P	
Food and Beverage Service																	
Coffee/Espresso Stand										P		C	C	P		C	P
Drinking Places (Alcoholic Beverages)	722410											P	P	P		P	P
Restaurants	72251								P ⁶	P		P	P	P		P	P

§ 3-4

TITLE 4 — ZONING CODE

§ 3-4

NON-RESIDENTIAL USES	NAICS 2012 Code No.	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U
Manufacturing																	
Beverage Manufacturing	3121									C		P	P	P	P	P	
Manufacturing, Heavy															C		
Manufacturing, Light													C	P	P	C	
Aerospace Product and Parts Manufacturing	3364										P		C	P	P	C	
Computer and Electronic Product Manufacturing	334										P		C	P	P	C	
Electrical Equipment, Appliance, and Component Manufacturing	335										P		C	P	P	C	
Medical Equipment and Supplies Manufacturing	3391										P		C	P	P	C	
Pharmaceutical and Medicine Manufacturing	3254										P		C	P	P	C	
Public/Institutional Uses																	
Antenna Towers (new)		C	C	C	C	C	C	C	C	C		C	C	C	C	C	C
Co-Location ¹⁴		P	P	P	P	P	P	P	P	P		P	P	P	P	P	P
Cemeteries	812220	C	C	C	C	C	C	C	C					C			
Child Day Care Services ¹																	P
Family, 5 or fewer children		PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	P	
Group, 6 to 12 children		P	P	P	P	P	P	P	P	P	C	C	C	C	C	P	
Small, 13 to 20 children		C	C	C	C	C	P	P	P	P	C	C	C	C	C	P	
Large, 21 or more children		C	C	C	C	C	C	C	C	P	C	C	C	C	C		
Civic and Social Organizations	813410												P	P		C	P
Community/Neighborhood Center		C	C	C	C	C	C	C	P	P		P	P	P			P
Correctional Institutions	922140													C	C		
Educational Services																	
Elementary and Secondary Schools ¹	6111	C	C	C	C	C	C	C	C	C			C	C	C	C	P
Colleges, Universities, and Professional Schools	6112/6113								C	C	C		C	C	C	C	P
All Other Schools and Instruction	6114-6117								C	C	C ¹⁶	C	C	P	C	C	P
Fairgrounds		C	C	C	C	C	C	C	C					C			
Funeral Homes and Funeral Services	81221								C	C	P		C	P	P		
Government Office Buildings		C	C	C	C	C	C	C	C	P		P	P	P	P	P	P
Health Care Services (Ambulatory) (excluding 624410)	621							P ⁶	P	P	P ⁸	P	P	P	P	P	P
Hospitals	622											C	P	C			P
Museums and Art Galleries	712110							C	C	P		P	P	P		P	P
Nursing and Residential Care Facilities	623			C	C	C	C	C	C			P	P	P			
Public Parks & Recreational Facilities (operated by local government) ⁷		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Public Service and Utility Facilities		C	C	C	C	C	C	C	C	C	C	C	C	C	P	C	P
Religious Facilities	813110	C	C	C	C	C	C	C	C	P		P	P	P		C	P
Telecommunications Services ¹	517							P ⁶	P	P	P	P	P	P	P	P	
Retail and Personal Services																	
Consumer Goods Rental	5322									P		P	P	P	P	P	P
Laundries and Drycleaners	812310/ 812320									P		P	P	P	P	P	P
Personal Care Services	8121								P	P		P	P	P	P	P	P
Retail Sales (excluding 4411, 444, 447, & 453930)	44-45								PA	P	PA	P	P	P	P	P	P
Large Retail Establishment ¹														P	P		
NON-RESIDENTIAL USES																	
Storage Services																	
Self-Storage Facilities	531130	C	C				P ¹	P ¹	P ¹	P ¹				P	P		
Warehousing and Storage	493										PA ¹²			C	P		
Wholesale Uses	423										PA ¹²			C	P		
Temporary Uses¹												P	P	P	P	P	
Vehicles and Equipment																	
Automobile and RV Dealers	4411											C	C	P	P		
Automotive Repair and Maintenance	8111											C	C	P	P		
Building Material Sales & Garden Equipment/Supplies	444													P	P		
Commercial and Industrial Machinery and Equipment Repair and Maintenance	811310													C	P		
Electronic and Precision Equipment Repair and Maintenance	8112								P	P		P	P	P	P		
Gasoline Stations	447											C	C	P	P		
Heavy Equipment Sales (manufactured home dealers, farm and garden equipment)	453930 423820													C	P		
Off-Street Parking Areas		PA	PA	PA	PA	PA	PA	PA/C	P	P	PA	PA	P	P	P	P	P
Parking Lots and Garages	812930								P	P		C	P	P	P	P	P
Personal and Household Goods Repair and Maintenance	8114									P		P	P	P	P	P	
Railroad Yards and General Freight Trucking	48210/4841														P		
Rental and Leasing Services (excluding 5322)	532											C	C	P	P		
Scrap Yards/Material Recycling	423930														C		
Visitor Accommodations																	
Bed and Breakfast Inns		P	P	C	C	C	C	P	P	P		P	P	P		P	
Hotels and Motels	721110											P	P	P		P	P
RV Parks and Campgrounds	721211	C	C					C				P	P	P	P		P

USE ELEMENTS & EXCEEDANCES TO BULK & DIMENSIONAL REQUIREMENTS	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTD	CB	GB	MB	I	UMC	U
Drive-Through Facilities ¹											P/C ¹³	C	P		C	
Exceedance of maximum building height (for permitted non-residential uses)	C	C	C	C	C	C	C	C	C	C	C	C			C ¹⁷	

NOTES¹ Subject to Specific Use Standards within Section 4-3-4 of this Zoning Code² Only one principal dwelling permitted per building lot in AF, FR, SR, R-1, and R-2 Zones³ Residential dwellings located on ground floor on secondary street frontages require a Conditional Use Permit in CB and UMC Zone⁴ One dwelling unit per lot is allowed where accessory to a permitted principal use⁵ Feedlots must be on at least 20 acres of land and associated buildings must be set back at least 500 ft from the nearest property line⁶ Use shall not exceed 2,000 sq ft of office space⁷ Including all public facilities operated by local government (including but not limited to parks, recreational facilities, and recycling centers)⁸ Excluding Outpatient Care Centers, Home Health Care Services, and Other Ambulatory Health Care Services (NAICS 6214, 6216, and 6219)⁹ Restaurants shall not exceed 1,500 sq ft in the RO Zone¹⁰ Indoor kennels only¹¹ Excluding Veterinary Services¹² Indoor storage only¹³ Drive-up windows permitted for financial institutions only. Conditional Use Permit is required for drive-up windows associated with all other uses in the CB Zone¹⁴ Antenna shall not extend more than 18 ft above, and shall not project more than 8 ft horizontally away from the existing tower or support structure¹⁵ Or 600 sq ft per dwelling unit in R-3 and R-4 Zones¹⁶ Business Schools and Computer and Management Training, and Technical and Trade Schools only, as defined by NAICS code number 6114 and 6115, and excluding aviation and flight training instruction schools, modeling schools, nursing schools, cosmetology schools, and truck driving schools¹⁷ Residential or commercial uses may obtain a Conditional Use Permit for exceedance of the maximum building height in the UMC Zone¹⁸ Feedlots with up to 20 animals are permitted by right. Feedlots between 20 and 200 animals require a Conditional Use Permit

(Ord. 2018-07, 05/21/2018; 2019-07, 07/15/2019)

Sec. 3-5. Specific Use Standards.**A. Accessory Dwelling Units:**

1. **Applicability and Purpose.** These standards shall apply to Accessory Dwelling Units which are permitted by this Code. These standards are intended to help promote the benefits of Accessory Dwelling Units, while also preserving neighborhood character and creating predictability and certainty for established neighborhoods.

2. Specific Standards.

a. **General.** Accessory Dwelling Units must meet all applicable regulations for the zoning district in which they are located, except as otherwise expressly stated within this Section.

b. **Size.** The floor area of the Accessory Dwelling Unit may not exceed six hundred (600) square feet or forty percent (40%) of the gross floor area of the principal dwelling, whichever is less.

c. **Maximum Occupancy.** The number of persons allowed to reside within an Accessory Dwelling Unit shall be limited to two (2).

d. Owner Occupancy.

i. Prior to the issuance of a building permit for an Accessory Dwelling Unit, the property owner must record a deed restriction upon the property which states that the property owner will reside on the property, within either the principal dwelling or Accessory Dwelling Unit. The deed restriction must be approved by the City Attorney and shall be binding upon the heirs, assigns, and subsequent purchasers of the property.

ii. Owner occupancy means a property owner, as reflected in real property records, who makes his or her legal residence at the property, as evidenced by voter registration or similar means and actually resides at the property for more than six (6) months out of any given year. Owner occupancy may also include a named natural person with an ownership or benefit in a private trust, but shall not extend to corporate trusts.

iii. The Zoning Administrator may waive this requirement for temporary absences

Sector 61--Educational Services^T

The Sector as a Whole

The Educational Services sector comprises establishments that provide instruction and training in a wide variety of subjects. This instruction and training is provided by specialized establishments, such as schools, colleges, universities, and training centers. These establishments may be privately owned and operated for profit or not for profit, or they may be publicly owned and operated. They may also offer food and/or accommodation services to their students.

Educational services are usually delivered by teachers or instructors that explain, tell, demonstrate, supervise, and direct learning. Instruction is imparted in diverse settings, such as educational institutions, the workplace, or the home, and through diverse means, such as correspondence, television, the Internet, or other electronic and distance-learning methods. The training provided by these establishments may include the use of simulators and simulation methods. It can be adapted to the particular needs of the students, for example sign language can replace verbal language for teaching students with hearing impairments. All industries in the sector share this commonality of process, namely, labor inputs of instructors with the requisite subject matter expertise and teaching ability.

611 Educational Services^T

Industries in the Educational Services subsector provide instruction and training in a wide variety of subjects. The instruction and training is provided by specialized establishments, such as schools, colleges, universities, and training centers.

The subsector is structured according to level and type of educational services. Elementary and secondary schools, junior colleges, and colleges, universities, and professional schools correspond to a recognized series of formal levels of education designated by diplomas, associate degrees (including equivalent certificates), and degrees. The remaining industry groups are based more on the type of instruction or training offered, and the levels are not always as formally defined. The establishments are often highly specialized, many offering instruction in a very limited subject matter, for example ski lessons or one specific computer software application. Within the subsector, the level and types of training that are required of the instructors and teachers vary depending on the industry.

Establishments that manage schools and other educational establishments on a contractual basis are classified in this subsector if they both manage the operation and provide the operating staff. Such establishments are classified in the Educational Services subsector based on the type of facility managed and operated.

Excluded from this subsector are establishments primarily engaged in publishing educational software or other educational materials without providing instruction. These establishments are classified in Subsector 513, Publishing Industries. Establishments that manage schools and other educational establishments on a contract or fee basis without providing the operating staff are classified in Subsector 561, Administrative and Support Services. Establishments primarily engaged in providing vocational rehabilitation services and establishments primarily engaged in providing child care services are classified in Subsector 624, Social Assistance.

6111 Elementary and Secondary Schools^T

61111 Elementary and Secondary Schools

See industry description for 611110.

611110 Elementary and Secondary Schools

This industry comprises establishments primarily engaged in furnishing academic courses and associated course work that comprise a basic preparatory education. A basic preparatory education ordinarily constitutes kindergarten through 12th grade. This industry includes school boards and school districts.

Illustrative Examples:

Elementary schools

Parochial schools, elementary or secondary

^T—Canadian, Mexican, and United States industries are comparable.

High schools
Primary schools
Charter schools
Kindergartens

Military academies, elementary or secondary
Schools for the physically disabled, elementary or secondary

Cross-References.

- Establishments primarily engaged in providing care and early learning opportunities for infants and children and also offering pre-kindergarten, kindergarten, and/or before- or after-school educational programs are classified in Industry 624410, Child Care Services; and
- College-level military academies are classified in Industry 611310, Colleges, Universities, and Professional Schools.

6112 Junior Colleges^T

61121 Junior Colleges^T

See industry description for 611210.

611210 Junior Colleges

This industry comprises establishments primarily engaged in furnishing academic, or academic and technical, courses and granting associate degrees, certificates, or diplomas below the baccalaureate level. The requirement for admission to an associate or equivalent degree program is at least a high school diploma or equivalent general academic training. Instruction may be provided in diverse settings, such as the establishment's or client's training facilities, educational institutions, the workplace, or the home, and through diverse means, such as correspondence, television, the Internet, or other electronic and distance-learning methods. The training provided by these establishments may include the use of simulators and simulation methods.

Cross-References.

Establishments primarily engaged in providing technical training without offering academic courses are classified in Industry 61151, Technical and Trade Schools.

6113 Colleges, Universities, and Professional Schools^T

61131 Colleges, Universities, and Professional Schools^T

See industry description for 611310.

611310 Colleges, Universities, and Professional Schools

This industry comprises establishments primarily engaged in furnishing academic courses and granting degrees at baccalaureate or graduate levels. The requirement for admission is at least a high school diploma or equivalent general academic training. Instruction may be provided in diverse settings, such as the establishment's or client's training facilities, educational institutions, the workplace, or the home, and through diverse means, such as correspondence, television, the Internet, or other electronic and distance-learning methods. The training provided by these establishments may include the use of simulators and simulation methods.

Illustrative Examples:

Colleges (except junior colleges)
Theological seminaries offering baccalaureate or graduate degrees
Military academies, college-level

Universities
Professional schools (e.g., business administration, dental, law, medical)

^T—Canadian, Mexican, and United States industries are comparable.

census.gov/naics

ORDINANCE NO. 2019 – 07

AN ORDINANCE OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE AMENDMENT OF MOSCOW CITY CODE TITLE 4, CHAPTER 3; PROVIDING FOR AMENDMENTS TO THE LAND USE TABLE FOR EDUCATIONAL SERVICES, HEALTH CARE SERVICES, SELF-STORAGE FACILITIES, COMMERCIAL AND INDUSTRIAL MACHINERY AND EQUIPMENT REPAIR AND MAINTENANCE, OFF-STREET PARKING AREAS, AND PARKING LOTS AND GARAGES; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE BE DEEMED SEVERABLE; AND PROVIDING FOR THIS ORDINANCE TO BE IN FULL FORCE AND EFFECT FROM THE DATE OF ITS PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, on August 20, 2018, City Council directed staff to develop a survey designed to gauge the perceptions of the community, property owners, and businesses operating within the Central Business Zoning District (CBZD) regarding current public/private universities and colleges within the CBZD, and additional or expanded public/private universities and colleges within the CBZD; and

WHEREAS, the survey was then sent out in the fall of 2018 to CB property and business owners as well as a random sample of the community; and

WHEREAS, the results of the survey were then discussed at the City Council meeting on April 1, 2019 and the Council then directed the Planning and Zoning Commission to prepare an ordinance which would prohibit additional or expanded universities and colleges in the CBZD; and

WHEREAS, the Planning and Zoning Commission then prepared the proposed ordinance which would eliminate certain educational services as permitted uses in the CBZD; and

WHEREAS, the Commission also reviewed other uses which staff has encountered challenges with in the past year and expanded the ordinance to include additional amendments to the land use table;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MOSCOW, IDAHO, AS FOLLOWS:

SECTION 1: That Moscow City Code Title 4, Chapter 3 be amended as follows:

• • •

Sec. 3-4. Land Use Table.

LAND USE TABLE																		
P = Permitted Use PA = Permitted Accessory Use C = Conditional Use Permit Blank = Not Permitted																		
RESIDENTIAL USES	NAICS 2012 Code No	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U	
Dwellings in Residential Zones²																		
Single Family (up to 4 unrelated individuals)		P	P	P	P	P	P	P										
Two Family							P	P										
Twinhome							P	P										
Townhouse ¹							P	P										
Single Family (up to 6 unrelated individuals)		C	C	C	C	C	C	P										
Multiple Family (3 or more units)								P										
Mobile Home Parks								P										
Dwellings in Commercial Zones																		
Above or behind a commercial use or on a secondary street frontage		See above, Dwellings in Residential Zones								P	P		P/C ³	P	P	PA ⁴	P/C ³	P
On the ground floor on primary street frontage										P	C		C	C	C	PA ⁴	C	P
Group Living																		
Boarding House (occupied by owner, up to 6 boarders)		P	C	C	C	C	C	P		See above, Dwellings in Commercial Zones								
Dormitories																	P	
Fraternity, Sorority, and Cooperative Houses	721310							C									P	
Accessory Uses																		
Accessory Buildings or Structures (up to 1,000 sq ft)		PA	PA	PA	PA	PA	PA ⁵	PA ⁵	PA									
Accessory Buildings or Structures (1,001 to 1,500 sq ft)		C	C	C	C	C	C	C	C									
Accessory Buildings or Structures (no size limitation)										PA	PA	PA	PA	PA	PA	PA	PA	
Accessory Dwelling Unit ¹		PA	PA	PA	PA	PA	PA	PA										
Accessory Home Occupations Type I ¹		PA	PA	PA	PA	PA	PA	PA	PA	PA		PA	PA	PA	PA	PA	PA	
Accessory Home Occupations Type II ¹		C	C	C	C	C	C	C	PA	PA		PA	PA	PA	PA	PA	PA	
Accessory Gardens		PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	
NON-RESIDENTIAL USES																		
	NAICS 2012 Code No	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U	
Agricultural Uses																		
Agriculture, Animal Production	112	P/C ¹⁰	C ⁵														P	
Agriculture, Crop Production	111	P															P	
Animals and Fowl (as permitted by City Code Title 10)		PA	PA	PA	PA	PA	PA	PA	PA									
Animal Slaughtering and Processing	31161	C													P		P	
Gardens (Market and Community) no on-site retail sales ¹		P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	
With on-site retail sales ¹		P	P	C	C	C	C	C	P	P		P	P	P	P	P	P	
Sawmills	321113	C													C			
Amusement and Recreation Facilities																		
Archery/Shooting Ranges (indoor only)	713990											P	P	P	P	P	P	
Bowling Centers	713950											P	P	P		P	P	
Dance Halls	713990											P	P	P		P	P	
Fitness Centers	713940									P		P	P	P		P	P	
Golf Courses and Country Clubs	713910	C	C	C	C	C	C	C	C								P	
Miniature Golf Facilities	713990											P	P	P		P	P	
Movie Theaters	512131											P	P	P		P	P	
Riding Stables	713990	C										P	P	P	P	P	P	
Stadiums and Sports Arenas (Ice/Roller Rinks, Gymnasiums, Ballfields)	713940						C	C				P	P	P		P	P	
Animal-Related Business																		
Veterinary Services	541940	C	C						P	P			P	P	P			
Pet Care Services ¹	812910	C	C							P ¹⁰				P	P			
Financial, Technology, and Professional Services																		
Agencies, Brokerages and Other Insurance Related Activities	5242							P ⁶	P	P	P	P	P	P		P		
Broadcasting Studios	515										P	P	P	P		P		
Business, Professional, Political, Social Advocacy, Grantmaking, and Similar Organizations	8132/8133/8139	C	C					P ⁶	P	P	P	P	P	P		P		
Commercial Banking, Credit Unions, and Savings Institutions	522110/120/130											P	P	P				
Construction Contractor Services	238											P	P	P	P	P		
Data Processing, Hosting, and Related Services	518								P	P	P	P	P	P	P	P	P	
Professional, Scientific, and Technical Services	541							P ⁶	P	P	P ¹¹	P ¹¹	P	P	P	P ¹¹	P	
Publishing Industries (except Internet)	511										P	P	P	P	P	P	P	
Real Estate Services	531							P ⁶	P	P	P	P	P	P		P		
Securities, Commodity Contracts, and Other Financial Investments	523							P ⁶	P	P	P	P	P	P		P		
Software Publishers	5112							P ⁶	P	P	P	P	P	P	P	P		
Food and Beverage Service																		
Coffee/Espresso Stand										P		C	C	P		C	P	
Drinking Places (Alcoholic Beverages)	722410											P	P	P		P	P	
Restaurants	72251								P ⁹	P		P	P	P		P	P	

NON-RESIDENTIAL USES		NAICS 2012 Code No.	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U
Manufacturing																		
Beverage Manufacturing		3121									C		P	P	P	P	P	
Manufacturing, Heavy																C		
Manufacturing, Light														C	P	P	C	
Aerospace Product and Parts Manufacturing		3364										P		C	P	P	C	
Computer and Electronic Product Manufacturing		334										P		C	P	P	C	
Electrical Equipment, Appliance, and Component Manufacturing		335										P		C	P	P	C	
Medical Equipment and Supplies Manufacturing		3391										P		C	P	P	C	
Pharmaceutical and Medicine Manufacturing		3254										P		C	P	P	C	
Public/Institutional Uses																		
Antenna Towers (new)			C	C	C	C	C	C	C	C	C		C	C	C	C	C	C
Co-Location ¹⁴			P	P	P	P	P	P	P	P	P		P	P	P	P	P	P
Cemeteries		812220	C	C	C	C	C	C	C	C					C			
Child Day Care Services ¹																		P
Family, 5 or fewer children			PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	P	
Group, 6 to 12 children			P	P	P	P	P	P	P	P	P	C	C	C	C	C	P	
Small, 13 to 20 children			C	C	C	C	C	P	P	P	P	C	C	C	C	C	P	
Large, 21 or more children			C	C	C	C	C	C	C	C	P	C	C	C	C	C	C	
Civic and Social Organizations		813410											P	P	P		C	P
Community/Neighborhood Center			C	C	C	C	C	C	C	P	P		P	P	P			P
Correctional Institutions		922140													C	C		
Educational Services		61+	E ¹⁰	E ¹⁰	E ¹⁰	E ¹⁰	E ¹⁰	E ¹⁰	E	E	E	E ¹⁰	E	E	E	E	E	P
Elementary and Secondary Schools ¹		6111	C	C	C	C	C	C	C	C	C			C	C	C	C	P
Colleges, Universities, and Professional Schools		6112/6113							C	C	C			C	C	C	C	P
All Other Schools and Instruction		6114-6117								C	C	C ¹⁰		C	C	C	C	P
Fairgrounds			C	C	C	C	C	C	C	C					C			
Funeral Homes and Funeral Services		81221							C	C	P		C	P	P			
Government Office Buildings			C	C	C	C	C	C	C	C	P		P	P	P	P	P	P
Health Care Services (Ambulatory) (excluding 624410)		621							P ⁶	P	P	P ⁶	P	P	P	P	P	P
Hospitals		622											C	P	C			P
Museums and Art Galleries		712110							C	C	P		P	P	P		P	P
Nursing and Residential Care Facilities		623			C	C	C	C	C	C				P	P			
Public Parks & Recreational Facilities (operated by local government) ⁷			P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Public Service and Utility Facilities			C	C	C	C	C	C	C	C	C	C	C	C	C	P	C	P
Religious Facilities		813110	C	C	C	C	C	C	C	C	P		P	P	P		C	P
Telecommunications Services ¹		517							P ⁶	P	P	P	P	P	P	P	P	
Retail and Personal Services																		
Consumer Goods Rental		5322									P		P	P	P	P	P	P
Laundries and Drycleaners		812310/ 812320									P		P	P	P	P	P	P
Personal Care Services		8121								P	P		P	P	P	P	P	P
Retail Sales (excluding 4411, 444, 447, & 453930)		44-45								PA	P	PA	P	P	P	P	P	P
Large Retail Establishment ¹															P	P		
NON-RESIDENTIAL USES																		
Storage Services																		
Self-Storage Facilities		531130	C	C											C	P		
Warehousing and Storage		493										PA ¹²			C	P		
Wholesale Uses		423										PA ¹²			C	P		
Temporary Uses¹													P	P	P	P	P	
Vehicles and Equipment																		
Automobile and RV Dealers		4411											C	C	P	P		
Automotive Repair and Maintenance		8111											C	C	P	P		
Building Material Sales & Garden Equipment/Supplies		444													P	P		
Commercial and Industrial Machinery and Equipment Repair and Maintenance		811310													C	P		
Electronic and Precision Equipment Repair and Maintenance		8112								P	P		P	P	P	P		
Gasoline Stations		447											C	C	P	P		
Heavy Equipment Sales (manufactured home dealers, farm and garden equipment)		453930 423820													C	P		
Off-Street Parking Areas			PA	PA	PA	PA	PA	PA	PA	P	P	PA	PA	P	P	P	P	P
Parking Lots and Garages		812930	PA	PA	PA	PA	PA	PA	PA	P	P	PA	PA	P	P	P	P	P
Personal and Household Goods Repair and Maintenance		8114									P		P	P	P	P	P	
Railroad Yards and General Freight Trucking		488210/4841																
Rental and Leasing Services (excluding 5322)		532											C	C	P	P		
Scrap Yards/Material Recycling		423930														C		
Visitor Accommodations																		
Bed and Breakfast Inns			P	P	C	C	C	C	P	P	P		P	P	P		P	
Hotels and Motels		721110											P	P	P		P	P
RV Parks and Campgrounds		721211	C	C					C					P	P	P		P

USE ELEMENTS & EXCEEDANCES TO BULK & DIMENSIONAL REQUIREMENTS		AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U
Drive-Through Facilities ¹												PC ¹³	C	P		C	
Exceedance of maximum building height (for permitted non-residential uses)		C	C	C	C	C	C	C	C	C	C	C	C			C ¹⁷	
NOTES																	
¹ Subject to Specific Use Standards within Section 4-3-4 of this Zoning Code																	
² Only one principal dwelling permitted per building lot in AF, FR, SR, R-1, and R-2 Zones																	
³ Residential dwellings located on ground floor on secondary street frontages require a Conditional Use Permit in CB and UMC Zone																	
⁴ One dwelling unit per lot is allowed where accessory to a permitted principal use																	
⁵ Feedlots must be on at least 20 acres of land and associated buildings must be set back at least 500 ft from the nearest property line																	
⁶ Use shall not exceed 2,000 sq ft of office space																	
⁷ Including all public facilities operated by local government (including but not limited to parks, recreational facilities, and recycling centers)																	
⁸ Excluding Outpatient Care Centers, Home Health Care Services, and Other Ambulatory Health Care Services (NAICS 6214, 6216, and 6219)																	
⁹ Restaurants shall not exceed 1,500 sq ft in the RO Zone																	
¹⁰ Indoor kennels only																	
¹¹ Excluding Veterinary Services																	
¹² Indoor storage only																	
¹³ Drive-up windows permitted for financial institutions only, Conditional Use Permit is required for drive-up windows associated with all other uses in the CB Zone																	
¹⁴ Antenna shall not extend more than 18 ft above, and shall not project more than 8 ft horizontally away from the existing tower or support structure																	
¹⁵ Or 600 sq ft per dwelling unit in R-3 and R-4 Zones																	
¹⁶ Business Schools and Computer and Management Training, and Technical and Trade Schools only, as defined by NAICS code number 6114 and 6115, and excluding aviation and flight training instruction schools, modeling schools, nursing schools, cosmetology schools, and truck driving schools																	
¹⁷ Residential or commercial uses may obtain a Conditional Use Permit for exceedance of the maximum building height in the UMC Zone																	
¹⁸ Feedlots with up to 20 animals are permitted by right. Feedlots between 20 and 200 animals require a Conditional Use Permit																	
¹⁹ Elementary Schools, Secondary Schools, and Other Schools and Instruction only, as defined by NAICS code number 6111 and 6116																	

...

SECTION 2: SEVERABILITY. Provisions of this Ordinance shall be deemed severable and the invalidity of any provision of this Ordinance shall not affect the validity of remaining provisions. The remaining sections of Title 4 shall be in full force and effect.

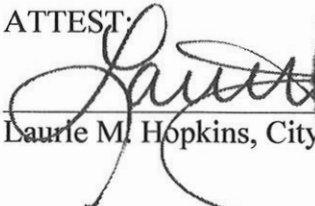
SECTION 3: EFFECT ON OTHER ORDINANCES. Where the definitions contained in this Ordinance are in conflict with relevant portions of the City of Moscow, Idaho, Municipal Code, the definitions contained within those portions of the Moscow Municipal Code will be unaffected until such time, if any, as they are amended to be consistent with this Ordinance.

SECTION 4: EFFECTIVE DATE. This Ordinance shall be effective upon its passage, approval, and publication according to law.

PASSED by the City Council and APPROVED by the Mayor this 15th day of July, 2019.


Bill Lambert, Mayor

ATTEST:


Laurie M. Hopkins, City Clerk



From gmail:

<https://mail.google.com/mail/u/1/?ogbl#sent/KtbxLwgswrbtJJtxfTqxGcktnWmnsbhdBB>

1) Public Works/Finance (preliminary meeting to Moscow City Council) June 28, 2021. Begin at minute 17:45.

<https://www.youtube.com/watch?v=4iaSa1TSlo4&t=356s1>

Transcription:

Gina Taruscio: "Will you talk about the conditional use permit and the educational institutions in the Central Business District?"

Gary Riedner: "That was a question that we talked about early on and the University of Idaho indicated and you probably saw President Green's press release last week indicating that the intent of the use is to use it for the Prichard Art Gallery in a new location for the Prichard Art Gallery. Community development indicates that art galleries are use right in the Central Business District and it exists there now. The U of I has been advised and shown them the code as what you can use it for and maybe Tony can address that but that was that discussion was aired out early on in the discussions."

Gina: "I just think that that would be a good clarification I want to make a clarification ownership by and educational institution zoning is about use. It's not about ownership, so we don't see any issue with the proposed use that the U of I has indicated they want to use for."

(Note: The following section is a summary and not a direct quote—You may want to listen to the fiscal reasoning for buying rather than leasing.)

Tony Broyles Special Assistant to the President for Strategic Initiatives (from U of I) talks about the gallery already being downtown. They had been leasing a space. Now they can buy and avoid leasing...

2) City Council (regular meeting) July 6, 2021. Begin at minute 37:39

<https://www.youtube.com/watch?v=IQVrywlolFw&t=1717s>

Transcription:

Gary Riedner: "Now I know a concern at Committee was because the University of Idaho is an educational institution and there are restrictions on the use of facilities in downtown for educational purposes. Was the University of Idaho going to use it for educational purposes as Tony indicated during the Public Works/Finance Committee last week the university is purchasing it for a replacement for the Prichard Art Gallery and intends to use it as an art gallery and a retail space. Art galleries and retail spaces are uses of right in the Central Business District. So that seems to take care of the zoning issues and I know that Bill Belnap has had conversations with the University of Idaho on that as well."

3) City Council (regular meeting just before public hearing) August 2, 2021. Begin at minute 2:21:12.

<https://www.youtube.com/watch?v=wYLFbwFFIr8>

Transcription:

Brandy Sullivan: "How about the use of it as a gallery versus an educational institution?"

Gary Riedner: "Those discussions as council knows there is a restriction on use of property in the Central Business District for educational purposes and the University of Idaho has been

advised of that. We've been advised that they intend to use it as a gallery and a retail space both of which are uses of right in the Central Business District."

Here's the link to the article about Prichard that mentions they do "related educational programming."

<https://www.uidaho.edu/caa/galleries-centers-and-labs/prichard/about>

🏠 / COLLEGE OF ART AND ARCHITECTURE / GALLERIES, CENTERS & LABS
/ PRICHARD ART GALLERY / ABOUT

About the Gallery

The Prichard Art Gallery is an outreach entity of the University of Idaho College of Art and Architecture. Established in 1982, the gallery serves the community and the university year-round by presenting a comprehensive and balanced schedule of exhibitions.

The gallery opened its first downtown Moscow location at the corner of 5th and Main St. in the fall of 1986 as the result of an extensive remodeling project. University of Idaho Associate Professor of Architecture William Bowler designed the interior space and students of the Department of Architecture carried out the renovation as a design build class. The galleries were renovated in 2005 and the Children's Studio was renovated and expanded in 2012-2015. In 2024, the Prichard Art Gallery is moving to a new building, at 118 E 4th St., within the former police station. Remodeling will begin in early 2023 with a plan to open the new space in late 2024.

The Prichard Art Gallery serves students and faculty within the College of Art and Architecture as well as the university by providing important educational experiences. Additionally, the gallery welcomes over 17,000 visitors annually, including approximately 1,700 students from area and regional schools. Through exhibition programming, outreach and related educational programming, the gallery is dedicated to the cultural enrichment of the university community, the Palouse, the State of Idaho, and the Northwest region.

BENJAMIN MERKLE APPEAL

LUP2024-0017

**COMMUNITY DEVELOPMENT**

Ph: 208-883-7035

504 S. Washington Street

jfleischman@ci.moscow.id.us

For City Use Only

Date Received		4-15-24	
Dept	Fee Type	Fees	Paid
CDV	Application Fee	\$281.00	
Receipt Number		LUP2024-00	

APPLICATION FOR APPEAL (MCC 4-8-2 and 4-8-5)

(Please type or print plainly with blue ink.)

I, Benjamin R Merkle, hereby appeal the decision of the:

☒ Zoning Administrator ☐ Board of Adjustment ☐ Planning & Zoning Commission

File Number: ZAD 2024-02 Address/Project: 414 S. Main St.**Grounds for Appeal:**

Appeals are limited to applicant(s), city representatives, or an affected person as defined by MCC 4-1-6.D.3.

- ☐ Decision violates statutory or constitutional provisions. ☐ Decision was unsupported by substantial evidence in the records or as a whole.
- ☒ Decision exceeds statutory authority. ☒ Decision was arbitrary, capricious, or an abuse of discretion.
- ☐ Decision was made upon unlawful procedure.

Appellant(s) must attach a letter detailing the following to complete the application:

Supporting materials requested herein may be included as attachments to the letter.

1. Describe the original request and the specific final decision being appealed.
2. If you are not the original applicant or city representative, describe the testimony or evidence you presented or provided prior to the final decision being made.
3. Provide evidence supporting the grounds for appeal.
4. Provide evidence that the applicant is an "affected person", as defined by MCC, if not the original applicant or city representative.

Once your appeal has been accepted and a public meeting is set, you have the right to request or waive an oral argument:Are you requesting the opportunity to provide an oral argument? Y (Y/N)**Appellant:**

Name: Benjamin R Merkle Phone: 208 301 1948
Address: 528 E 1st St. Email: bmerkle@nsa.edu

Notes:

1. The only topics which may be discussed during the hearing are the specific reasons for the appeal as stated in the application.
2. The appeal process follows specific procedures outlined in Moscow City Code Title 4, Chapter 8.

I understand this information is a public record and may be posted to a public website. I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Signature of Appellant

4/15/24
Date

APPLICATION FOR APPEAL FROM BEN MERKLE, NEW SAINT ANDREWS COLLEGE**1. Describe the original request and the specific final decision being appealed.**

On February 12, 2024, Brenda von Wandruska requested a determination as to whether or not the combination of uses of 414 S. Main Street as an art gallery, retail space, and second-floor business/administrative offices constituted an allowed use of the subject property. This request was to accommodate New Saint Andrews College as we have signed a lease to use that space.

On February 21, 2024, Brenda von Wandruska received Zoning Administrator Decision 2024-01 stating that the proposed use of the building at 414 S. Main Street by NSA as an art gallery with an accessory art instruction and retail space is a permitted use, so long as the operations of the gallery do not further the educational purposes of the college and do not include credit-bearing academic activities, but that the proposed administrative offices within the building would constitute a prohibited use under MCC Title 4, §3-2(E) and MCC Title 4, §3-4.

On March 1, 2024, Brenda von Wandruska and NSA President Ben Merkle met with Zoning Administrator Cody Riddle and Planning Manager Mike Ray as per MCC Title 4, §8-2(A) in order to present additional information pertinent to the Zoning Administrator's interpretation/administration of the Zoning Code for consideration and issuance of a new decision as to whether or not the combination of uses as proposed constituted an allowed use of the subject property prior to consideration of an appeal by the Board of Adjustment.

On March 21, 2024, the City issued Zoning Administrator Decision 2024-02 with the identical decision as above which is that the proposed use of the building at 414 S. Main Street by NSA as an art gallery with an accessory art instruction and retail space is a permitted use, so long as the operations of the gallery do not further the educational purposes of the college and do not include credit-bearing academic activities, but that the proposed administrative offices within the building would constitute a prohibited use under MCC Title 4, §3-2(E) and MCC Title 4, §3-4.

2. If you are not the original applicant or city representative, describe the testimony or evidence you presented or provided prior to the final decision being made.

I am not the original applicant, but the requested testimony or evidence that I read aloud to Cody Riddle and Mike Ray is included in the City's Zoning Administrator Decision 2024-02.

3. Provide evidence supporting the grounds for appeal.

Evidence supporting the grounds for appeal consists of a new written submission that follows below. All of what was included in the March 1, 2024, meeting with Cody Riddle and Mike Ray is included here, and it has been amplified with further information. This is the document that needs to be read in its entirety in order to understand my claim.

4. Provide evidence that the applicant is an “affected person”, as defined by MCC, if not the original applicant or city representative.

I, Ben Merkle, am an “affected person,” as defined by MCC Title 4, §8-2(A) because I would like to rent 414 S. Main Street to use as an art gallery with an accessory art instruction and retail space with second-story accessory administrative offices as a permitted use.

Appeal of Zoning Administrator Decision 2024-02

The City has determined that for New Saint Andrews College (NSA) **to move our Development offices (our advertising branch which we call Marketing, our fundraising/grant writing branch which we call Fundraising, and our Recruitment department) along with our Finance offices into the second floor of the gallery space located at 414 S. Main Street** would be an expansion of the college's educational use in the Central Business Zoning District (CB), which would be a prohibited use.

I would like to appeal this determination for the following four reasons:

First, the City has already permitted NSA to move these uses into the CB Zone in July of 2022. To now prohibit this use is "arbitrary, capricious, or an abuse of discretion" as stated in Moscow City Code Title 4, § 8-2(B)(e).

New Saint Andrews College currently has its Finance and Development offices in the front office portion of the Nuart Theater, a property on 516 S. Main Street in the CB Zone. NSA subleases these offices from Christ Church, which holds the lease on the entire building.

Before moving into that space, I had first proposed to move some of our Music Conservatory offices into this space. However, when I met with Planning Manager Mike Ray and Deputy City Supervisor Cody Riddle (Zoning Administrator) I was told that the instruction component of the music classes would mean that these needed to stay in our North Campus building. I then wrote the following email message to Mike Ray on July 6, 2022:

"I went back to the drawing board to think through how we could make use of that space inside of the zoning constraints. I'm going to keep our Conservatory operations in the North Campus for the moment to keep things straightforward. We are planning now to move our development team into the Nuart space. This team consists of our marketing, fundraising, and recruitment offices. They are pretty much just business offices and do not interact significantly with the student body. I think we would probably just be subleasing from Christ Church. Thanks very much for your help."

Mike Ray replied with the following email message on July 11, 2022:

"Hi Ben, Thanks for the update, glad you are able to make this plan work. **We don't see an issue with your new plan, so long as activities like student counseling remain at a separate location**, which it sounds like they would. If

anything else changes feel free to reach out and discuss.
Thanks, Mike. (emphasis added)

With this approval from the City Planner, I moved the approved offices into the Nuart Theater. Afterwards, I received an email message from Deputy City Supervisor Cody Riddle on July 20, 2022. Cody was concerned that the NSA Recruitment team might bring student tours into the Nuart building:

“Thank you for the response. As Mike indicated, **office use is permissible in the zone**. It’s any element of academic instruction, student counseling, gatherings, and similar activities that create a challenge from a zoning perspective. The tours you reference would fall into that category. That’s more in line with what one would expect at a college. Those activities should originate and be conducted at one of the locations approved for academic use.
I hope this provides better clarification. Please let us know if you have further questions. We’re happy to help.” (emphasis added)

Because of this concern, the college agreed to have all student tours take place at the NSA South Campus (405 S. Main Street) and not occur at the Nuart—a commitment that we have carefully kept ever since. We have posted a sign outside of the Nuart offices directing students to take all student business to the South Campus building. Clearly, in these two emails, Cody Riddle and Mike Ray both stated that NSA’s development offices are permitted uses in the CB Zone. What was prohibited was the expansion of the provision of instruction. We have been careful to respect this boundary.

In advance of taking any action, I was very transparent with the City about the moves that we were planning to make. I proactively went to the City offices before making any administrative office location changes to walk through the details of my plans. I had both Cody Riddle’s and Mike Ray’s explicit approval in the emails quoted above as well as in a number of in-person meetings.

Two of those in-person meetings took place from July 2022 through May 2023.

- On July 5, 2022, Mike Ray and Cody Riddle explained to me that at one point the University of Idaho had been looking to locate their finance department into the former Daily News building. There would have been no students, and the offices were purely financial. They said that having a college’s financial offices in the CB Zone would be a permitted use. I don’t cite this as a precedent for us. Simply to illustrate the logic that the City was then using.

- On May 3, 2023, Cody Riddle explained that ownership or rental of office space does not matter. It's not about who owns a building or who rents a building. It is the use that matters.

Zoning Administrator Decision 2024-02 even confirms that the City originally gave approval to these uses. "Without issuing an official determination, **the City indicated that offices were a permitted use in the CB Zone** so long as there is not any element of academic instruction, student, counselling, gatherings, or similar activities occurring on-site." (emphasis added).

Here the City concedes that it had previously approved of this use. However, in the above quote, the qualification is given "without issuing an official determination. . ." This statement is a bit misleading because it implies that an official determination had been possible but was not sought out. This is not the case. When I first began pursuing this matter with the City, I asked about how I was to get determinations from the City regarding zoning. Here is Mike Ray's answer on May 12, 2022, "**The process of the Zoning Administrator making a determination is an informal process that is not codified in our City Code.** These determinations are a fairly common occurrence and we request an email or letter explaining what the proposed use is." As Mike states, at this time it was an informal process, which involved sending an email, which I did. The formal process of responding with a Zoning Administrator Decision did not exist in City Code until Ordinance 2023-04 was passed on July 17, 2023, amending MCC Title 4, Ch. 8. Sec 8-2. **In other words, it would be impossible to have a formal determination prior to July 17, 2023, because, as Mike Ray explained, only informal processes existed up to that point.**

Therefore, the approvals received by New Saint Andrews via email on July 11, 2022, and July 20, 2022, were official approvals. They were informal, but official. To dismiss these as not official because they were not issued as Zoning Administrator Decisions is to fault them for not being able to time travel to the future to July 17, 2023.

In the fall of 2023, our CFO, who had been operating remotely, relocated to Moscow and we moved our finance offices into the Nuart offices, alongside the Development team (Marketing, Fundraising, and Recruitment). At the same time, we moved two offices from the Nuart to the South Campus building so that the addition of the finance office to the Nuart did not constitute any administrative expansion within the Nuart. It was simply a rearranging of the seating arrangement. At the same time that the CFO moved into the Nuart, NSA received an option to rent the theater space in that building as well. I was interested in using the theater for public events and not for any NSA classes. I again reached out to the City to discuss these plans.

In our initial correspondence, Cody's position was that the office use, including the finance office was fine. It was only the addition of the theater space that was problematic. On May 5, 2023, he explained, "**It's really the combination of uses, with the theater space, being used**

primarily in conjunction with, or as a component of the university Business, Professional, Political, Social Advocacy that's a concern."

He then followed up with his official determination, the very first Zoning Administrator Decision 2023-01. In this decision, Cody said, **"The individual use proposed in the building are generally allowed."** The problem was the adding of the theater. As he later writes **"The administrative offices, when combined with operation of the theater by the college, constitutes a prohibited use."** I wanted to be clear that our current offices, development and finance, were approved by the City and wrote to Cody asking for this to be clear.

I also followed up with Cody in an in-person meeting on May 8, 2023, during which he confirmed that the administrative offices, including the CFO, were approved and that **ZAD 2023-01 only prohibited the addition of the theater.**

However, in ZAD 2024-02, the City now claims that "It was later determined through Zoning Administrator Decisions 2023-01 and 2024-01 that finance offices that are a function of a College or University are not a permitted use in the CB Zoning District." This is false and an attempt to rewrite the City's earlier decision.

The City has already officially approved the New Saint Andrews offices that are currently operating in the Nuart Theater as permitted uses in the CB Zone. Now, as NSA asks to move the exact same offices one block north, we are being told that these uses are not permitted in the CB Zone—same exact offices, same exact uses, but now prohibited. To restate my first point, the City is being arbitrary, capricious, and exhibiting an abuse of discretion in its interpretation and application of the code.

Second, to move these offices into 414 S. Main does not expand educational use in the CB Zone because Educational Services are defined as the provision of instruction. The City's restriction of our offices being moved into this space is a decision that "exceeds statutory authority" as stated in Moscow City Code Title 4, § 8-2(B)(b).

NAICS Sector 61 (census.gov/naics) summarizes the thing that all educational uses hold in common— "All industries in the sector share this commonality of process, namely, labor inputs of instructor with the requisite subject matter expertise and teaching ability" (p. 509). Educational use, according to NAICS, is use that provides instruction.

Each of the subcategories under the NAICS definition of *Educational Services* describes permutations of instruction. Nowhere does the NAICS description of *Educational Services* include uses like the financial or development functions to support an educational institution. Even the final subcategory of *Educational Support Services* (611710), which initially sounds like

it might describe supporting uses like finance or development, turns out to simply describe providing materials for colleges—job training, research in cognitive development, and publishing educational materials such as tests and assessments. The NAICS definition of *Educational Services*, and all the varieties of ways in which it can appear, is quite extensive. And yet nowhere in that definition can anything be found that supports the City’s attempt to massively expand the definition of *educational services*. This is the plain reading of the NAICS definition.

This definition of *educational services* was mutually understood when we first worked with the City on putting our offices in the Nuart. As Cody said in his email referenced above, **“As Mike indicated, office use is permissible in the zone. It’s any element of academic instruction, student counseling, gatherings, and similar activities that create a challenge from a zoning perspective.”**

In July of 2022, the City restricted its definition of *educational services* to direct instruction and working with students. We have consistently communicated with the City to ensure that we were abiding by that definition. And this is the definition of *educational use* that NSA is still maintaining as we look to move offices into 414 S. Main. Because NSA is not proposing to expand instruction, NSA is not looking to expand the use of *educational services* into the CB Zone.

NSA currently has two properties that offer *educational services*, our North and South Campus buildings where all instruction occurs. These two properties are each covered by a CUP that limits the North Campus building to 300 students and the South Campus building to 200 students. You can tell that we are not expanding *educational services* because moving our finance and development offices into 414 S. Main will not increase our number of permitted students, nor will it expand the locations where instruction will be given. We will only put expressly permitted uses in the gallery building.

The City is attempting to expand its definition of *educational services* beyond its previous definition. In addition to contradicting the City’s earlier position, this interpretation does not fit with NAICS.

If the City believes that a service that supports a college must be zoned as a college itself, it would be difficult to explain how the University of Idaho was able to place its Office of Civil Rights and Investigations at 530 S. Asbury Street, which is in the CB Zone. This office does not serve the general public, but rather it exclusively serves the University of Idaho. And yet it did not need a CUP to be located within the CB Zone. Why? Because when considering that question, the City considered the kind of work that was done, not whom they served.

The *Educational Services* section of NAICS (NAICS 611) even mentions that educational services are often supported by uses which should be designated as a different sector, that is *administrative and support services* (NAICS 561). When you consult the NAICS description of *administrative and support services*, it gives this introductory description of the nature of sector: “Industries in the Administrative and Support Services subsector group establishments engaged in activities that support the day-to-day operations of other organizations. The processes employed in this sector (e.g., general management, personnel administration, clerical activities, cleaning activities) are often integral parts of the activities of establishments found in all sectors of the economy... The individual industries of this subsector are defined on the basis of the particular process that they are engaged in and the particular services they provide” (NAICS 561).

It is important to note several things:

- First, *Educational Services* 611 recognizes that schools will be supported by uses that are classified differently (most importantly, by *Administrative and Support Services* 561).
- Second, *Administrative and Support Services* 561 supply services that are “integral parts of the activities of establishments. . .” This means that these are often services that are essential.
- Third, Administrative and Support Services are defined by their specific use, not by the industry that they support, the industry to which their use is essential.

We see here that according to NAICS a use can be “integral” or essential, while still being classified differently than the industry that it is supporting. And the NAICS definition of *Educational Services* even acknowledges this. The City’s insistence that it must classify NSA finance and development functions as *Educational Services* is not just absent in NAICS, but is contradicted by NAICS.

According to Idaho Statute 67-6535, the City’s decision “shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county. Such approval standards and criteria shall be set forth in express terms in land use ordinances in order that permit applicants, interested residents and decision makers alike may know the express standards that must be met in order to obtain a requested permit or approval.” The “express terms” of the zoning code do not support the City’s decision. Rather, the City has created its own definition of the term *educational use*, in departure from NAICS’s definitions. In doing so, the City has exceeded its statutory authority.

Third, the City is smuggling consideration of ownership into a zoning code that should only restrict use. Once again, the City “exceeds statutory authority” as stated in Moscow City Code Title 4, § 8-2(B)(b).

Zoning code is supposed to govern what kind of activity is done, not who is doing the activity. But the City is arguing that if an administrative activity, such as doing payroll, supports an educational institution, then that financial activity essentially becomes an educational use. This argument smuggles ownership back into use, and it contradicts the City’s position that it clearly articulated when conveying the former police station to the University of Idaho, with the purpose of using that space as an art gallery and gift store. The City publicly argued to the contrary at three different times regarding a similar situation with the University of Idaho.

- **Public Works/Finance (preliminary meeting to Moscow City Council) June 28, 2021.**^[1]

Gary Riedner: "I want to make a clarification that ownership by an educational institution— zoning is about use. It's not about ownership. So, we don't see any issue with the proposed use that the U of I has indicated they want to use it for."

- **City Council (regular meeting) July 6, 2021.**^[2]

Gary Riedner: "Now I know a concern at Committee was because the University of Idaho is an educational institution and there are restrictions on the use of facilities in downtown for educational purposes. Was the University of Idaho going to use it for educational purposes? As Tony indicated during the Public Works/Finance Committee last week the university is purchasing it for a replacement for the Prichard Art Gallery and intends to use it as an art gallery and a retail space. Art galleries and retail spaces are uses of right in the Central Business District. So that seems to take care of the zoning issues and I know that Bill Belknap has had conversations with the U of I on that as well."

- **City Council (regular meeting just before public hearing) August 2, 2021.**^[3]

Brandy Sullivan: "How about the use of it as a gallery versus an educational institution?"

Gary Riedner: "Those discussions as council knows there is a restriction on use of property in the Central Business District for educational purposes and the University of Idaho has been advised of that. We've been advised that they intend to use it as a gallery and a retail space both of which are uses of right in the Central Business District."

This same principle was communicated to me when I first began working with the City. As Mike Ray wrote to me on May 12, 2022, **“You are correct in that the zoning districts determine what uses are permitted and ownership does not factor into whether a use is permitted or**

not.” We see clearly here that the City understands that zoning is not a matter of ownership, but of use. And if a use is a by right, permitted use, then it does not matter who the user is.

To be clear, the uses that NSA wants to put into this space all constitute uses that are expressly permitted uses in the CB Zone. All activities of our finance team are covered by “54121 Accounting, Tax Preparation, Bookkeeping, and Payroll Services.” Our Development Team activities are accurately summarized by “541810 Advertising Agency,” as well as by other related permitted uses in the CB Zone. All uses that will be located in 414 S. Main will be expressly permitted uses. But the City is arguing that these uses are transformed into educational activity when they are used to serve a college. This is smuggling ownership into use.

The City argues that activities like finance are more essential to the function of the college and therefore have to be considered as if they are educational activities. This is contrary to the City’s earlier position (as illustrated in my reason #1 above), is contrary to the NAICS definitions (as illustrated in my reason #2 above), and this forces the City into arbitrary and capricious decisions.

For instance, over the past several years, each one of the departments that is in question has been outsourced by the college to other companies. Our finance team was outsourced to the accounting firm Clifton, Larsen, and Allen from August 2019 through August 2021. Had this accounting firm been in Moscow, would their offices have been considered an educational use? NSA’s marketing was entirely outsourced to Canon Press from June 2020 to January 2022. Did Canon Press become an educational use during this contract? Our fundraising has outsourced much of its work to a company called Inquiry and Renegade. Do they need a CUP to operate in Moscow? If these uses were all essential to NSA, then how was it that I was able to outsource them?

And, consider this— if I rehired each of these outsourced companies to cover NSA’s finance and development departments once again, could these companies have their offices downtown while having NSA as a client? Yes. They could because they would be performing explicitly permitted uses. In fact, these companies could rent the upstairs of the NSA gallery space and have NSA as a client. And this would be permitted. But those exact same uses carried by a department of NSA, are somehow no longer evaluated by what they are doing but by who they are. The use is exactly the same. Everything is the same. The only thing that has changed is ownership. The City is smuggling ownership into use.

Now, we could run the same thought experiment with the City’s previous interpretation of use, where we restrict use to the actual use. Under that understanding, if NSA outsourced the teaching of our math classes to another company, a company located in a different building in the CB

Zone, then we would still be in violation of the restriction against the expanding of *educational services* in the CB Zone.

On the one hand, the City grants the distinction between ownership and use, while claiming to base the decision on use. NSA is asking to put uses in 414 S. Main that are expressly permitted in the CB Zone. But the City is saying that these uses are not permitted, not because of what is being done, but because of who is doing it. The City is smuggling consideration of ownership into a determination that is supposed to be solely about use. As Gary Riedner said, "I want to make a clarification that ownership by an educational institution— zoning is about use. It's not about ownership."

Fourth, the City is drawing arbitrary and contradictory lines that handicap and contort our operations. This most recent determination is "arbitrary, capricious, or an abuse of discretion" as stated in Moscow City Code Title 4, § 8-2(B)(e).

Currently, NSA is approved to operate administrative offices on the first and second floors of the Nuart Theater office space. We are also approved to operate a gallery and a gift store at 414 S. Main St. But, according to this decision, we are not allowed to move the offices that are already approved to operate on Main into the same building that the gallery occupies. The same functions, the same zoning district. They can all exist in the CB Zone. But they can't all exist in the same building. Does this make any sense? If the goal of the City is to restrict the expansion of *educational services* in the CB Zone, what sense does it make to require the college to spread out, rather than to be located in just one building?

The City should consider that the move NSA has proposed actually strengthens the CB Zone. It takes what are currently administrative offices that are on the first floor of a Main Street building and moves them to the second floor, above what will then be a public art gallery and retail space. Consider Moscow City Code's description of the CB Zone. **"To promote pedestrian use, unbroken, street-level, commercial frontage is encouraged in this Zoning District"** (MCC Title 4 §2-4(K)). If the goal of this zone is to promote pedestrian use and street-level commercial frontage, then the City's determination here works against that goal.

Due to the Board of Adjustment (Board of Hearing Examiners) serving a quasi-judicial function, it is important to consider prior precedent set by the Board. Formerly, the Board adjudicated in a similar situation when it considered the impact on the CB Zone ground floor/street level by Gritman Medical Park's University of Idaho WWAMI program's request to use a third-floor location. In the August 29, 2017 minutes documenting the Approval of Relevant Criteria and Standards for Gritman Medical Park's University of Idaho WWAMI educational institution, the following statement outlines that "Board members discussed revisions to address the proposal's negligible cumulative impact on existing educational institutions, **and [found] no effect on the**

total ground floor surface area available in the CB District.” This motion was moved by Comstock and seconded by Bush. It was approved unanimously.

The Relevant Facts and Conclusions section states that when U of I’s WWAMI was “added to the existing School/Daycare and Educational Institutional uses, the total land area dedicated to such uses would be **41,364 sf or 3.3% of the total CB land area.**” Similarly, NSA’s business offices would have no effect on the total ground floor surface area available in the CB District. The Board also found that the total land area dedicated to Educational Institutions “will not have an adverse impact to the availability of retail and office space in the CB District. Given that this proposal will occupy the third floor of the building, it will have no effect on the total ground floor surface area available in the CB District” (page 4 of 6). Similarly, NSA business offices on the second floor of a building in the CB will have no effect on the total ground floor surface area available.

Conclusion

According to the Land Use Table (Sec. 3-4 of Moscow City Code), Professional Services are a permitted use in the CB Zone, just as Museums and Art Galleries are a permitted use in the CB Zone. All of New Saint Andrews College’s intended uses for 414 S. Main fall expressly under these headings according to the NAICS definitions. NSA is entitled to all by-right uses in the CB Zone. To prohibit this right not only contradicts the City’s statements in emails, in person, at public meetings, in Zoning Administrator Decision 2023-01, and in the District Purposes section for the Central Business Zoning District (Moscow City Code, Title 4 §2-4(K)). The City’s decision in Zoning Administrator Decision 2024-02 regarding administrative offices within the building at 414 S. Main is arbitrary and capricious and exceeds the City’s statutory authority.

[1] <https://www.youtube.com/watch?v=4iaSa1TSIo4&t=356s1> (begin at minute 17:45)

[2] <https://www.youtube.com/watch?v=lQVrywIolFw&t=1717s> (begin at minute 37:39)

[3] <https://www.youtube.com/watch?v=wYLFbwFFlr8> (begin at minute 2:21:12)

Chapter 8

APPEALS, VARIANCES,
CONDITIONAL AND SPECIAL USES

- Sec. 8-1: Duties of the Board of Adjustment
- Sec. 8-2: Appeals of Zoning Administrator Decisions
- Sec. 8-3: Variances
- Sec. 8-4: Conditional Uses
- Sec. 8-5: Appeals to City Council
- Sec. 8-6: Ability of Use Permits to Assume Variance Functions

Sec. 8-1. Duties of the Board of Adjustment.

The Board of Adjustment shall have the authority to grant, in particular cases and subject to appropriate conditions and safeguards, conditional use permits and variances as authorized by this Zoning Code. The Board of Adjustment shall also have the authority to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Zoning Administrator in enforcement of this Zoning Code.

Sec. 8-2. Appeals of Zoning Administrator Decisions.

A. Appeals to the Board of Adjustment concerning the interpretation or administration of this Zoning Code by the Zoning Administrator may be made by any applicant, City representative or affected person thereby. Such appeal shall be made within thirty (30) days from the date the appellant first knew of or, with reasonable diligence, could have known of such interpretation or administration of the Zoning Code by the Zoning Administrator. An appeal shall be made by filing with the Zoning Administrator a written notice specifying the grounds thereof. Should the appellant acquire additional information pertinent to the Zoning Administrator's interpretation or administration of the Zoning Code, the appellant shall present the additional

information to the Zoning Administrator for consideration and issuance of a new decision prior to consideration of an appeal by the Board of Adjustment.

- B. The Board of Adjustment shall fix a reasonable time for the consideration of the appeal within thirty (30) days of the receipt of notice of appeal by the Zoning Administrator. Consideration of the appeal shall be pursuant to the procedures contained herein. At the consideration on the appeal, the appellant and any affected person may appear in person or by agent or attorney.
 - 1. Grounds upon which an appeal to the Board of Adjustment may be made following a final decision of the Zoning Administrator:
 - a. Decision violates statutory or constitutional provisions;
 - b. Decision exceeds statutory authority;
 - c. Decision was made upon unlawful procedure;
 - d. Decision was unsupported by substantial evidence in the records or as a whole; or
 - e. Decision was arbitrary, capricious, or an abuse of discretion.
 - 2. Scope of Appeal. The appeal shall be limited to the issues raised in the written notice of appeal, which shall specifically state the allowed grounds upon which the appeal is being made to the Board of Adjustment as provided herein. The appellant must indicate in the appeal whether they are requesting oral argument before the Board of Adjustment.
 - 3. Record. The Zoning Administrator shall provide the Zoning Board of Adjustment all documentation, information, City ordinances, and records considered by the Zoning Administrator in making their final decision. New information that was not considered by the Zoning Administrator shall not be provided to or considered by the Zoning Board of Adjustment.
 - 4. Public Meeting. Upon receipt of the complete Record, City Clerk will notice

the matter for consideration before the Zoning Board of Adjustment as a noticed public meeting.

5. If no oral argument is requested, City Staff will introduce the appeal, and then the Board of Adjustment may ask questions of the Appellant and City Staff and then the Board of Adjustment will conduct its deliberations.

6. If oral argument is requested, the process for the Zoning Board of Adjustment to hear the appeal will proceed as follows:

a. Staff Introduction of Appeal. City staff shall provide an introduction of the facts pertaining to the appeal, the procedure followed by the Zoning Administrator, and answer questions about the content of the established Record.

b. Appellant Argument. Appellant will be allowed to argue the issues presented in the appeal. The time allowed for argument is set by the Chair of the Zoning Board of Adjustment.

c. Applicant, if not the Appellant, is permitted to offer a rebuttal. The time allowed is set by the Chair of the Zoning Board of Adjustment.

d. Appellant will be permitted a rebuttal to the Applicant's rebuttal. The time allowed is set by the Chair of the Zoning Board of Adjustment.

e. At the conclusion of arguments, the Zoning Board of Adjustment will conduct its deliberation.

7. After considering the record, the reasons for the appeal, and oral argument if requested, the Zoning Board of Adjustment shall take one or more of the following actions:

a. Sustain the Decision. Sustain the decision of the Zoning Administrator in whole or in part.

b. Reverse the Decision. Reverse the decision of the Zoning Administrator in whole or in part.

c. Remand the Decision. Remand the matter in whole or in part to the Zoning Administrator with comments and/or instructions for further

consideration. The Zoning Board of Adjustment shall remand an appeal in whole or in part for gathering additional material information, and a decision based upon the original and the additional presented evidence where the appellant shows the Zoning Board of Adjustment, by a preponderance of the evidence, that there is:

i. New material information which was not available or readily discoverable at the time of the final decision, and

ii. It is in the public interest to develop such additional material information on the matter.

C. Stay of Proceedings: The filing of an appeal shall stay all interpretations, proceedings and/or activities and furtherance of the action appealed from, including the issuance of building and/or other permits related to the subject property. A stay may be lifted, in whole or in part, only where the Zoning Administrator files a written affidavit with the City Clerk certifying that a stay would, in the opinion of the Zoning Administrator, not serve the purposes for which relevant Code provisions were intended or would cause endangerment to life and/or property. The Zoning Administrator should lift the stay, in whole or in part, only to the extent necessary to further the intent of relevant Code provisions. Where the Zoning Administrator files such an affidavit, interpretations, proceedings and/or activities shall not be stayed other than by the Board, Commission or Council before whom the matter is pending or by a Court of Record. A request for review of the Zoning Administrator's affidavit regarding the stay shall be heard with the consideration of the related appeal, if requested by an affected person not less than ten (10) days prior to such consideration.

D. The appellant shall submit an appeal fee established from time to time by the Council by resolution.