



**AGENDA MEMO - COMMUNITY DEVELOPMENT**

**CITY COUNCIL MEETING DATE: APRIL 19, 2023**

**DEPARTMENT: COMMUNITY DEVELOPMENT**

**ITEM DESCRIPTION: APPLICANT: ZELZAH SHRINE TEMPLE INC.**

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**\*\* STAFF RECOMMENDATION(S) \*\***

<b>CASE NUMBER</b>	<b>RECOMMENDATION</b>	<b>REQUIRED FOR APPROVAL</b>
<b>23-0157-DIR1</b>	Staff recommends DENIAL.	

**\*\* NOTIFICATION \*\***

**NEIGHBORHOOD ASSOCIATIONS NOTIFIED**      N/A

**NOTICES MAILED**      Newspaper Notification Only

**PROTESTS**      0

**APPROVALS**      0

**\*\* STAFF REPORT \*\***

**PROJECT DESCRIPTION**

This is an appeal of the Director's determination that portable metal storage/cargo containers that are present at the subject site (APN 162-01-401-004) are not a legally nonconforming use, are considered to be Outdoor Storage pursuant to LVMC Title 19.12, and are not permitted at the location.

**ISSUES**

- The site is an undeveloped lot located near the northeast corner of Sahara Avenue and Eastern Ave.
- The City Council approved a request to Rezone the subject site from R-1 and R-2 to C-1 on 07/20/22. The portion of the site where the storage is located was previously zoned R-1.
- Through historical aerial photography on the Clark County OpenWeb website, it can be determined that the storage containers were originally brought to the site between 2013 and 2014, and the use expanded thereafter.
- Outdoor Storage as a use is permitted pursuant to LVMC Title 19.12. It is allowed as an accessory use in the C-2 and C-PB districts, and as a use permitted by right in the C-M and M districts. Outdoor storage is not permitted in the C-1 district or any residential district at all.
- Where Outdoor Storage is permitted, additional development standards exist that require screening from adjacent properties and rights-of-way, and prohibit the storage to be located within required setback areas.
- An open Code Enforcement case (CE22-02522) exists and a correction notice was issued on 11/16/22 to the property owner to remove the storage from the site.

**ANALYSIS**

The subject site is an undeveloped lot that contains a number of portable metal storage containers, commonly referred to as "cargo containers" or "shipping containers" (and referred to as "containers" from here on). Through the use of Clark County's OpenWeb application, historical aerial photography shows that these containers began to appear on the site between 2013 and 2014. In 2022, the site was referred to Code Enforcement and an inspection was conducted. The containers were considered to be "Outdoor Storage" for purposes of determining the use pursuant to LVMC Title 19.12, and a correction notice was issued in November to remove them. Subsequently, on 03/15/23, the Director of Community Development confirmed that the use was "Outdoor Storage"

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and was not permitted at the site. That determination is being appealed.

At the time that the containers began to appear, the subject property was zoned R-1 (Single Family Residential). The R-1 district is intended to “provide for the development of single family detached dwellings in a suburban setting.” Non-residential uses within this district are strictly limited to uses such as churches and schools, with the approval of a Special Use Permit. Outdoor storage is not permitted as a commercial use in the district.

Pursuant to LVMC Title 19.12, the definition of Outdoor Storage is as follows (*emphasis added*):

The use of a significant portion of a lot or area for the long term retention (more than 24 hours) of materials and machinery or equipment, regardless of whether the materials, machinery or equipment are to be bought, sold, repaired, stored, incinerated, or discarded. *This use includes the storage of self-contained cargo containers that have not been converted into a permanent building*, but does not include new or used motor vehicle sales and rental display, nor does it include accessory and incidental parking of vehicles for residents, guests, customers or employees in connection with a principal use.

This definition has been in effect in Title 19 since its adoption as Ordinance 6210 on 09/05/12. The term “converted into a permanent building” refers to the issuance and completion of a building permit for the structure. With respect to residential structures, including sheds, garages and other similar accessory structures, a building permit is required for any structure over 200 square feet in size (Section 301.4 of the 2019 Administrative Building Code; this requirement was also present in the 2012 Admin Code). The cargo containers on the site are primarily of a standard eight-foot by 40-foot size, or approximately 320 Square feet. A building permit would be required to convert this size container to a permanent building. Because there are no building permits for the containers, they do not qualify as permanent buildings and are therefore outdoor storage by definition.

Regarding accessory structures in the R-1 district, LVMC Title 19.06.040.C.1 states that:  
 No accessory structure shall be erected or moved onto any lot prior to construction of the main building unless a building permit has been issued for the construction of the main building.

If building permits had been submitted for the containers as required, the permits would have been denied as the lot is undeveloped and no building permit for a main building (residence) has been submitted for the site. As the containers qualify as outdoor storage by definition, this section of the code is not applicable.

The term “nonconforming uses” is defined in Title 19.18 as “Any legally pre-existing use

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of land which is inconsistent with the provisions of this Title, or an amendment thereto.” Nonconforming uses are addressed in LVMC Title 19.14, which states that it is “generally

the intent of this Title to permit these nonconformities to continue until they are removed or abandoned, or until such earlier time as they are ordered to be removed, but not to encourage their survival.” However, when the containers were originally brought to the site in 2013 and 2014, they did not conform to the requirements of the R-1 zoning district (19.06) or the use tables (Title 19.16). As such, the outdoor storage use has never been established as “legally pre-existing” with respect to the Unified Development Code (Title 19) and is not subject to the provisions of Title 19.14 for a nonconforming use.

The issue of the storage was brought to the attention of the city when it was depicted on a recent plan submittal for entitlements for a car wash facility at the site. The applicant was notified that the storage would have to be removed from the plans to move forward in the process, as the plans showed an outdoor storage use that was not permitted. The issue was then forwarded to Code Enforcement to conduct an inspection, which resulted in the current enforcement action. There was a previous Rezoning entitlement request for the site after the outdoor storage was established, but no development plans were required or submitted as there was no project proposed for the site at the time. Accordingly, the city was not aware of the outdoor storage at that time and, pursuant to LVMC Title 19.00.080.L Limitations on City Action (*emphasis added*):

The issuance or granting of a building permit or approval of plans or specifications under the authority of the Building Code shall not be construed to be a permit for, or an approval of, any violation of any provisions of this Title or any amendments thereto, or of any other law. No permit, approval, representation, action or inaction on the part of a City officer or employee which purports, or could be interpreted, to authorize the violation or cancellation of any of the provisions of this Title shall limit the City's authority to enforce the provisions of this Title or any other provision of the Municipal Code. No permit or other approval issued under the provisions of this Title shall constitute or imply approval of any business license or permit required by any provision of the Municipal Code. Any permit, license or other approval which is issued in error in conflict with this Title is voidable by order of the City.

The city is required to enforce the provisions of its municipal code. In many cases, such enforcement is a reactive response to a violation that has existed for some time. The fact that it may have existed for a length of time in violation of a code requirement does not justify the existence of the violation and does not exempt it from enforcement. Nor does it absolve the city from its responsibility of enforcing the codes when the city discovers a violation.

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**FINDINGS**

The Director's determinations in this case are as follows:

- The storage containers located at the subject site constitute an outdoor storage use pursuant to LVMC Title 19.12;
- At the time that the containers were placed on the site, the property was zoned R-1, which did not allow outdoor storage;
- The outdoor storage use was not legally established on the site pursuant to the requirements of LVMC Title 19 at the time that the containers were placed and is therefore not a legally pre-existing use of land subject to the nonconforming use provisions of LVMC Title 19.14;
- The subject site is currently zoned C-1; and
- The outdoor storage use is not permitted at all in the C-1 zoning district and must be removed.