



450 E. Main Street
John Day, OR 97845
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Code Interpretation CI-21-01 (Type II)

STAFF REPORT

Date Submitted: Thursday, May 13, 2021

Agenda Date Requested: Thursday, May 20, 2021

Applicant: Amy Denman and Gene Officer

To: John Day Planning Commission

From: Daisy Goebel, Associate City Planner

Subject: Code Interpretation (Type II Administrative)

Location: 331 West Main St.
Map: 13S31E26BA Tax Lot: 5100 & 5200

QUESTION

Amy Denman is requesting a Code Interpretation on behalf of the owner of 331 West Main Street in John Day which is zoned Downtown (D). The subject of the code interpretation is the applicability of a provision in Table 5-2.3.020 of the City Development Code. The provision in question is the fourth use category in Table 5-2.3.020 which includes the statement, "A dwelling unit that existed prior to November 24, 2005 but was not used as a residence on that date may convert back to residential use, but may not be expanded upon. This provision does not apply to a dwelling unit that occupies ground floor space fronting Main Street."

The applicant asks for the City's interpretation of this language and whether it applies to the property in question (331 West Main Street).

BACKGROUND

Amy Denman is the daughter and realtor representing the owner of 331 West Main Street- Gene Officer. The property was originally built in 1938 as a residential home and it is currently being used as a commercial real estate office. The structure itself is understood to be a non-conforming development with an approved use.



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The applicant is planning to list the property in question for sale and wishes to convert the building back to residential use due to the high demand for residential properties within the city.

In September 2019, the City approved a Code amendment to allow housing units that existed prior to the adoption of the code, but were occupied as businesses, to convert back to residential use. The purpose of the amendment was to help diversify and expand housing choices in the City of John Day. The property in question was specifically listed as one of 17 residential units that would fall under this provision and be allowed to convert back to a residential use (below). Because of this inconsistency, the Applicant was under the impression that the property could be converted back to residential use.

| Map Ref. | Tax Lot | Zoning | Current Use | Structure Type | Owner | Column1 | Acres |
|-----------|---------|--------|-------------|----------------|-------------------------------|---------|-------|
| 13S3123CD | 5502 | GC | Commercial | Home | CAUGHLIN, CHARLES | | 0 |
| 13S3123CD | 7900 | GC | C for Vacay | Home | BAY, JAMES W & SANDRA F TTEE | | 0.1 |
| 13S3123CD | 8000 | GC | C for Vacay | Home | BAY, JAMES W & SANDRA F TTEE | | 0.07 |
| 13S3123CD | 8100 | GC | C for Vacay | Home | BAY, JAMES W & SANDRA F TTEE | | 0.07 |
| 13S3123CD | 8600 | GC | Commercial | Home | ARMSTRONG, ROBERT M & LAURI D | | 0 |
| 13S3123CD | 9002 | GC | Commercial | Home | BAGETT, ROBERT D & DELORES A | | 0 |
| 13S3123CD | 10400 | GC | C for Vacay | Home | COWBOY COTTAGES, LLC | | 0.12 |
| 13S3126AB | 900 | GC | Commercial | Home | JEFFRIES, DANNY R & JUDY K | | 0 |
| 13S3126BA | 700 | D | Res/Comm | Home | GIBSON, GEORGE WILLIAM - ETAL | | 0.19 |
| 13S3126BA | 800 | D | Res/Comm | Home | MITCHELL, SHARON - TRUSTEE | | 0.17 |
| 13S3126BA | 5100 | D | Commercial | Home | OFFICER, EUGENE S | | 0.12 |
| 13S3126BA | 10400 | D | Commercial | Home | GARDNER, FREDRICK B & EVELYN | | 0.1 |
| 13S3126BA | 10806 | D | Commercial | Home | SAUL, MITCH & LAURA | | 0 |
| 13S3126BA | 4600 | D | Community | Home | JOHN DAY HIST PRES FOUNDATION | | 0.11 |
| 13S3126BA | 6600 | D | C for Vacay | Home | MOSIER, DALE J - TRUSTEE | | 0.52 |
| 13S3126BA | 6804 | D | Commercial | Home | CRONIN, CHRISTINE D | | 0 |
| 13S3126BA | 6805 | D | Unknown | Home | THOMPSON, CAROL E | | 0 |

REVIEW PROCESS

The Planning Official referred the request to the Planning Commission for its interpretation, per section 5-4.8.020 of the Code. The Planning Commission's review must focus on the relevant code criteria and follow public hearing procedures for Type II (Administrative) review under Section 5-4.1.030.

BURDEN OF PROOF

The applicant has the burden of demonstrating that the proposal meets all applicable Code requirements. The applicant is also responsible for complying with building code requirements and applicable state or federal requirements. It is the Planning Commission's responsibility to interpret the Code based on findings of fact.



CRITERIA

When interpreting the code, the staff first considers the text. If the text is unclear or may have more than one meaning, the staff reviews the text in context with other relevant code provisions. If the code is still unclear, the staff reviews the legislative history from when the City adopted or amended the code. If the meaning remains unclear, the staff refers to statutory construction.

The applicable code criteria are provided below in *italics* typeface; staff's findings follow each code provision in regular typeface. The findings, which are based on information submitted by the applicant, are preliminary.

Table 5-2.3.020- Land Uses Allowed in Commercial Districts (D, GC)

Use Categories; Residential Categories; Household Living [reformatted]

All Residential Uses and Structures (Household Living and Group Living) allowed, if:

- *Lawfully existing as of November 24, 2005*
- *A dwelling that does not occupy ground floor space fronting Main Street**

**In the event of involuntary damage or destruction due to fire or other event beyond the owner's control, a residential use lawfully existing in the Downtown as of November 24, 2005 may be rebuilt and reestablished pursuant with Section 5-5.2.020 through 5-5.2.030. A dwelling unit that existed prior to November 24, 2005 but was not used as a residence on that date may convert back to residential use, but may not be expanded upon. This provision does not apply to a dwelling unit that occupies ground floor space fronting Main Street.*

Finding: 331 West Main Street existed as a lawful dwelling unit prior to November 24, 2005, but was not used as a residence on that date. The owner wishes to convert it back to a residential use and does not intend to expand upon it. The property in question occupies ground floor space fronting Main Street. If this provision is interpreted to apply to the property in question, it will also apply to any other dwelling units existing in commercial zones fronting Main Street.

CONCLUSION AND STAFF RECOMMENDATION

Based on the above analysis and findings, staff recommends the Commission find that the provision of table 5-2.3.020 applies to all properties that occupy ground floor space fronting Main Street, and deny the request to convert the building back to a residential use. Regardless of the mistaken inclusion of 331 West Main in the list of properties affected by the 2019 Code Amendment, the language would not allow the unit in question to be converted back to residential use without violating the Main Street frontage restriction of the code.



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If the Commission wishes to amend the Code to allow the property in question to revert to residential use, a Code Amendment should be proposed subject to the standards and procedures of Chapter 5-4.7—Land Use District Map and Text Amendments, and this provision would have to apply to all downtown properties fronting Main Street (if approved).

PLANNING COMMISSION DECISION

After hearing the applicant's presentation and any public testimony, the Planning Commission must allow the applicant an opportunity to rebut any opposing testimony. Then the Commission will close the hearing and deliberate. The following motion is suggested:

"I move to DENY Code Interpretation Request CI-21-01 to allow a residential dwelling unit fronting main street to convert back to a residential use."

The staff report may be amended during the course of the hearing.

Respectfully submitted this 13th day of May, 2021

Daisy Goebel, Associate Planner
City of John Day

Attachments:

- Request Letter (Exhibit A)