

CITY OF GEARHART STAFF REPORT

To: Gearhart Planning Commission

From: Garrett Phillips, City Planner

January 31, 2024

City File #23-06ZTA Zoning Text Amendment Request

Application Purpose: An application by the owner for a Zoning Text Amendment regarding the R-2 Medium Density Residential Zone.

Decision Type: Legislative Text Amendment. The Planning Commission makes a recommendation to the City Council. The City Council will approve or deny the proposed amendment.

Public Hearing Date: Planning Commission, February 9, 2024

Property Owner: Pacific Cottages, LLC
Attention: Nathan Sasaki
415 NW 11th Avenue
Portland, OR 97209
503-595-2843

Applicant's Representative: Mackenzie
Attention : Brian Varricchione
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Portland, OR 97214
971-346-3742
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Location: The proposed text amendment is applicable to properties in the R-2 Medium Density Residential Zone. As described in the applicant's report, the amendment is intended to affect the Drifhaven Inn property at 67 N Cottage Avenue, Gearhart OR, 97138

Preapplication Conference: April 16, 2023
Notice Published: January 16, 2024
Planning Commission Hearing: February 9, 2024

Exhibits: Application
Applicant Report (Proposed amendment on pages 6 to 8)
Gearhart Hotels
Short Term Rentals
Oregon Historic Sites

Review Criteria: GZO Section 3.2 Medium Density Residential Zone R-2
GZO Article 11 Amendments
GZO Article 13 Application, Notice and Hearing Procedures
Gearhart Comprehensive Plan

Public Comments: No public comments were received prior to completing this report

Agency Comments: City staff were invited to comment on the application. Staff did not provide comments.

I. INTRODUCTION

Proposed Amendment Summary

The proposed amendments are provided on pages 6 to 8 of the applicant's report, as the pages are numbered at the bottom of each page of the report.

The proposal is to amend the standards of Gearhart Zoning Ordinance Section 3.2 Medium Density Residential Zone. Proposed amendments are to Section 3.230, which is the list of uses that may be permitted with a conditional use permit, and to Section 3.245 General Exceptions to Lot Size Requirements

The proposed amendment to Section 3.230 would add to the list of uses that may be permitted with a conditional use permit, so that the following use could be permitted:

“A hotel legally established prior to the adoption of the Zoning Ordinance of October 1994 (October 11, 1994) shall be considered a conditional use. A hotel may continue even if it is nonconforming with respect to the standards of Section 3.240, provided it does not increase the degree of nonconformity. If such use is discontinued for a period of one year it may be reestablished upon approval of a new Conditional Use Permit.”

The applicant and staff have only identified one hotel use in Gearhart's R-2 zone that was established prior to October 11, 1994, the Drifhaven Inn. Therefore the effect of the proposed amendment would be to make the Drifhaven Inn eligible for a conditional use permit for hotel use, and that there would not be an effect on any other properties zoned R-2.

Section 3.245 provides that permitted uses on lots that do not conform to minimum lot size requirements may continue and requires that in these cases when such lots are contiguous and in common ownership that they be combined. The proposed amendment to Section 3.245 would make the section applicable to uses permitted conditionally in the R-2 zone, whereas the existing section could be interpreted to only apply to uses that are permitted in the R-2 zone.

Therefore the anticipated overall effect of the proposal would be that the hotel use can be permitted as a conditional use. Any future hotel expansion or increases in hotel use intensity (greater number of rooms) could only be permitted through a conditional use permit process. Any future additional uses on the property accessory to the hotel use would require a conditional use permit if GZO Section 3.2 lists them as permitted or conditionally permitted. Other uses not so listed would continue to be not permissible.

Proposed Amendment Purpose:

The Drifhaven Inn is a hotel and is zoned R-2 Medium Density Residential. The R-2 Zone does not permit hotels as a permitted use or as a conditional use. The Drifhaven Inn eastern parcel may also be considered non-conforming as to the R-2 zone's minimum 7,500 square foot lot size, because it is about 5,000 square feet. The Drifhaven Inn is a nonconforming use, subject to the limitations of GZO Article 10.

The application indicates that the purpose of the zoning amendment is to limit risks associated with hotel financing and the uncertainty associated with the Drifthaven Inn's current nonconforming status and to make it easier to perform structural upgrades, repair fire damage, or similar changes if needed in the future without violating the rules for nonconforming uses.

The application also identifies a public purpose and need for the amendments, as discussed later in this report.

GZO Article 11 Amendment Procedures and Approval Criteria

Proposed amendments to the Zoning Ordinance are legislative and may be initiated by the Planning Commission, the City Council, or a property owner. After providing public notice the City reviews and decides on the amendment following GZO Article 11 Amendment Criteria and Article 13 Administrative Provisions.

FINDINGS: The first evidentiary public hearing by the Planning Commission is scheduled for February 9, 2024. After the Planning Commission recommends a decision on the proposal, a City Council hearing will be scheduled, and the City Council will decide. A person defined as a "party" to the amendment process may appeal the City Council decision to the state Land Use Board of Appeals (Article 12). Anyone who sent a letter or testified at the hearings will be notified of the decisions.

GZO Section 11.040 Amendment Approval Criteria

Findings shall be made: 1) assuring the amendments are consistent with the goals and policies of the Comprehensive Plan, the Statewide Planning Goals and, 2) there is a public need for the amendments.

GZO Section 11.040 Amendment Criterion 1: Comprehensive Plan Compliance

The City shall illustrate how the amendments comply with relevant Comprehensive Plan policies. There are nineteen statewide goals and policies in the Comprehensive Plan as well as General Development Goals for Gearhart.

General Development Goals

It is the general goal of the Comprehensive Plan to preserve the low density, semi-rural character of Gearhart and to ensure that development occurs in a manner that is in harmony with the sensitive coastal environment that defines Gearhart.

Residential and Commercial Development Policies

a. The City will preserve and maintain the predominately residential character of Gearhart through appropriate zoning and land use development regulations.

b. The City will implement the City's land use development regulations through the continued development of Gearhart as a residential community.

c. The City will recognize the importance of the City's residential neighborhoods and the need to protect them from the negative impacts of transient rental of property, and to discourage increased levels of traffic and similar disruptions.

d. The City will limit commercial activity in the City, in terms of both land devoted to commercial uses, and the types of uses permitted in commercial zones to a level that is compatible with Gearhart's residential character.

- e. The City will prevent the City from becoming a tourist destination. To achieve this policy the City, through its land-use designations, shall seek to accommodate only a limited level of tourist development
- f. The City will work to achieve a level of commercial development that supports the needs of the residents of Gearhart, rather than serving a regional commercial center role, or providing for major tourist destination facilities.
- g. The City shall not designate additional property for commercial development.
- h. The City will maintain a commercial zone in the center of the City that provides for the needs of residents.
- I, The City will limit the number of business uses in the C-1 zone so that the zone does not become a destination for tourists.
- j. The City will achieve a compact town center in the vicinity of Pacific Way and Cottage Avenue.
- k. The City will establish Zoning Ordinance standards to protect residential uses from adjacent commercial development.

FINDINGS: The proposed amendment would not result in new commercial development. While the proposed amendment provides new opportunity to expand or intensify the existing Drifhaven Inn use on its existing site following the issuance of a conditional use permit, any such expansion would have to be specified and authorized in a new conditional use permit.

(Continuation of Comprehensive Plan Policies Findings)

Citizen Involvement, Revision, Implementation and Process Goals LCDC Goal 1 & 2

Comprehensive Plan Goals I & 2 policies establish a process and implementation mechanism for land use planning and regulation to assure citizen involvement is provided in the amendment process when adopting new or revised standards.

The City's planning framework ensures information is available to citizens, that the Planning Commission and City Council represent the wide diversity of views and interests in the community. Citizen involvement and an open review process are provided to ensure the citizens receive responses to their comments at meetings in the meeting minutes or in writing, and that the city will maintain a record of meetings. The procedures require an advertised public hearing process with a recommendation by the Planning Commission and a decision by the City Council based on findings that there is a public need for the amendments and that the amendments are in compliance with the Gearhart Comprehensive Plan and Statewide Planning Goals. When considering zoning ordinance revisions, the goals and policies of the Plan provide the underlying principles to measure the amendments against. The policies assure when revisions are made that the broader community interest is served by the modification. Plan policies set forth guidance to assure that development standards remain effective and consistent over time. The zone standards implement the plan policies.

FINDINGS: The prior finding in this report responding to GZO Article 11 Amendment Procedures and Approval Criteria summarizes the overall decision process for this amendment. That process and the more particular procedures for providing public notices and conducting hearings ensure that the proposed amendment would be consistent with Comprehensive Plan policies and related Statewide

Land Use Planning Goals for public involvement. Findings made by the City regarding the proposal's consistency with the comprehensive plan ensure that the proposal is consistent with the statewide goal for Land Use Planning.

(Continuation of Comprehensive Plan Policies Findings)

Open Space, Scenic Areas, Historic and Natural Resources (LCDC Goal 5)

Air, Water, and Land Resource Quality (LCDC Goal 6)

FINDINGS: The amendments do not relate to these Comprehensive Plan Goals.

(Continuation of Comprehensive Plan Policies Findings)

Geology and Geologic Hazards; Flood Hazards (LCDC Goal 7)

The City's geologic hazard policies discourage or prohibit plan and zoning map amendments that will result in more intensive uses in higher risk tsunami hazard areas.

FINDINGS: The Gearhart Zoning Ordinance includes specific standards to implement the geologic hazard policies, particularly in the case of hotels limiting their size to fifty units in the "M" magnitude tsunami hazard area. The Drifthaven Inn is located in the "M" magnitude area, and only has twelve units. The Drifthaven Inn is not within the flood hazard overlay zone.

(Continuation of Comprehensive Plan Policies Findings)

Recreation (LCDC Goal 8)

FINDINGS: The amendments do not relate to this Comprehensive Plan Goal.

(Continuation of Comprehensive Plan Policies Findings)

Economy and Energy

The City's Economy Goal is to ensure a stable and healthy economy in Gearhart through all available resources. State land use planning Goal 9 requires that land be designated for commercial and industrial uses according to the needs of the local and regional economy, current economic base, workforce, availability of land, and availability of key public facilities.

FINDINGS: The proposed amendment affects the R-2 zone and does not alter any standards related to employment land. The amendments do not relate to the Comprehensive Plan policies regarding energy.

(Continuation of Comprehensive Plan Policies Findings)

Housing

The City's housing goal is To ensure decent, affordable housing and housing availability for all residents of the Gearhart area.

FINDINGS: The amendment does not authorize and will not lead to the development of new hotels on vacant or redevelopable land that would otherwise be used for housing. The amendment does not change standards for housing development.

(Continuation of Comprehensive Plan Policies Findings)

Public Facilities and Services (LCDC Goal 11)

Transportation (LCDC Goal 12)

Urban Growth (LCDC Goal 14)

Necanicum Estuary (LCDC Goals 16 & 17)

Coastal Shorelands (LCDC Goal 16 & 17)

Beaches and Dunes (LCDC Goal 18)

Ocean Resources (LCDC Goal 19)

FINDINGS: The City finds the amendments do not relate to these Comprehensive Plan Goals

Amendment Criterion #2 Demonstration of Public Need

FINDINGS: The applicant's report describes the public need for the proposed amendments in two paragraphs at the bottom of the applicant's report page 21 and top of page 22 as quoted below. The public need is to avoid the risk of the Drifhaven Inn having to permanently close and thereby avoid the risk of an associated loss of guest spending in the local economy. It would be reasonable to find that the amendment serves a public need for these reasons and in order to avoid risking loss of transient room tax and property tax revenue associated with the hotel use.

“The public need for the proposed Zoning Ordinance amendment arises from the current regulations, which leave longstanding community institutions (existing hotels in the R-2 zone), in a state of zoning uncertainty due to the nonconforming use status created when the R-2 zoning was applied. It is possible that future economic conditions could lead to closure of existing nonconforming hotels in the R-2, and under current rules a discontinuance exceeding one year eliminates the ability for nonconforming uses to reopen. To protect against such possibilities, it is in the public interest to provide regulatory support for this class of hotels by eliminating the nonconforming status, thereby smoothing the way for these facilities to continue to operate and attract guests to stimulate spending in the local economy.

Providing clear definition in the Zoning Ordinance improves the public's understanding and expectation for hotel use in the R-2 zone, including the manner in which potential future modifications would be reviewed by the City. Clarifying the existing hotels older than 1994 are allowed conditional uses, and that conditional use approval is required for modifications, provides a level of compromise that balances community concern for maintaining a residential feel with economic considerations for hotel Owners. Sustaining existing hotels supports the local economy and benefits the City financially through the continuing remittance of transient room tax and through continuing property tax payments. Adopting a narrowly-focused amendment prevents the construction of new hotels in the R-2 zone, eliminating the possibility of impacts from such new construction on nearby residences.”

DECISION/RECOMMENDATION OPTIONS

The Planning Commission may consider taking one of the following actions:

- Move to recommend that the City Council approve the proposed zoning ordinance text amendment, based on the findings in the staff report or alternate findings.

- Move to recommend that the City Council deny the proposed zoning ordinance text amendment, based on alternate findings that identify how the proposal does not comply with one or more approval criteria.

- Move to continue the hearing to a certain date.