

**AGENDA**

**ITEM**

**NO. 9**

Hi Brad,

I wanted to get back to you as quickly as possible. We met to discuss your interpretation of the Code regarding residential uses in the CG zone. I can appreciate and understand why you came to the conclusion that you did, however, I feel that the code is clear in 17.3.300(G) that states "Residential uses are permitted provided that buildings maintain ground floor commercial storefronts." It is my practice utilize the most restrictive code when there appears to be a certain amount of ambiguity in code. My interpretation is that for residential uses to be allowed in the CG Zone you must maintain ground floor commercial storefronts in all buildings.

There are a couple options available for you to move forward with this project. First, apply for a rezone to the property to a zone that allows residential units without the commercial storefront requirement. This recommendation was given to you by City Staff when you first brought your proposal to the Site Plan Review Committee on December 21, 2021. If you had acted on that recommendation the decision would have been made by this time. Second, you can change your development to meet the requirement of the maintaining ground floor commercial storefronts. Third, we can help you look at other properties in town that would work for the product that you are proposing.

Brent McLane

Planning and Development Services Director  
City of Pocatello  
208-234-6583  
[bmclane@pocatello.us](mailto:bmclane@pocatello.us)

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**From:** Brad Brown <[Brad@stewardland.com](mailto:Brad@stewardland.com)>  
**Sent:** Friday, April 8, 2022 3:31 PM  
**To:** McLane, Brent <[bmclane@pocatello.us](mailto:bmclane@pocatello.us)>  
**Subject:** Fwd: Legal Interpretation

Sent from my iPhone

Begin forwarded message:


**From:** Brad Brown <[Brad@stewardland.com](mailto:Brad@stewardland.com)>  
**Date:** April 8, 2022 at 11:40:15 AM MDT  
**To:** Targee Tomisin <[targee@stewardland.com](mailto:targee@stewardland.com)>  
**Subject:** Fwd: Legal Interpretation

Sent from my iPhone

Begin forwarded message:

**From:** Steve Lovell <[steve@freemanlovell.com](mailto:steve@freemanlovell.com)>  
**Date:** April 6, 2022 at 7:42:33 PM MDT  
**To:** Brad Brown <[Brad@stewardland.com](mailto:Brad@stewardland.com)>  
**Cc:** Sky Hazlehurst <[Sky@stewardland.com](mailto:Sky@stewardland.com)>  
**Subject:** Re: Legal Interpretation

To: Planning Department  
From: Matt Kerbs, Deputy City Attorney  
Date: April 5, 2022  
Re: Clarification of footnote #7 under City Ordinance 17.03.500



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The issue may arise (or has arisen) due to an interpretation of Footnote #7 as having a broad application.

The footnote at issue reads: "7. Residential uses are permitted outright, **provided that** [emphasis added] buildings maintain ground floor commercial storefronts to all adjacent public streets. For Industrial and Light Industrial districts, residential uses are further restricted to the designated Warehouse Historic District."

The Legal Department is of the opinion this footnote does not allow a blanket exception for residential uses in the event those uses are not adjacent to public streets. For the footnote to apply, the condition precedent must be met – buildings must maintain ground floor commercial storefronts (to all adjacent streets)."

This footnote, as applied to Commercial General, is consistent with the more applicable part of the ordinance, found in 17.03.300 (G):

"G. Commercial General District (CG): The CG zoning district is designed to accommodate a full range of retail, office and civic uses with a citywide and/or regional trade area. **Residential uses are permitted provided that buildings maintain ground floor commercial storefronts.** [emphasis added] A wide range of higher intensity uses, including, but not limited to, self-service storage, utilities, heliports, and major event entertainment, are conditionally permitted."

### 17.03.300: LIST OF ZONING DISTRICTS:

A. Residential Estate District (RE): The RE zoning district is designed primarily to accommodate detached single-family dwellings with or without accessory dwelling units. Open space, park lands, and neighborhood recreation areas are encouraged. Some civic and institutional uses are also conditionally permitted.

B. Residential Low Density District (RL): The RL zoning district is designed to accommodate single-family dwellings and a mix of other housing types such as accessory dwellings, townhomes, and two-family dwellings. Neighborhood park and recreation areas are encouraged. Some civic and institutional uses are also conditionally permitted.

C. Residential Medium Density Single-Family District (RMS): The RMS zoning district is designed to accommodate single-family dwellings, and a mix of other housing types such as accessory dwellings, townhomes, and two-family dwellings. Development standards for this zoning district promote pedestrian travel to a variety of neighborhood services within close proximity. Neighborhood park and recreation areas are encouraged. Some civic and institutional uses are also conditionally permitted.

D. Residential Medium Density Multi-Family District (RMM): The RMM zoning district is designed to accommodate a mix of housing types including single-family dwellings, townhomes, two-family dwellings, multi-family dwelling units (apartments), condominiums and accessory dwellings. Development standards for this zoning district promote pedestrian travel to a variety of neighborhood services within close proximity. Neighborhood park and recreation areas are encouraged. Some civic, institutional and neighborhood commercial uses are also conditionally permitted.

E. Residential High Density District (RH): The RH zoning district is designed to accommodate a variety of housing types including single-family dwellings, two-family dwellings, accessory dwellings, multi-family dwelling units (apartments), townhomes, and condominiums. Development standards for this zoning district promote pedestrian travel to a variety of neighborhood services within close proximity. Neighborhood park and recreation areas are encouraged. A limited amount of neighborhood commercial, civic, and institutional uses are permitted outright. Other civic and institutional uses also are conditionally permitted.

F. Residential/Commercial/Professional District (RCP): The RCP zoning district is intended to accommodate a mix of residential, professional office, and neighborhood commercial uses including business/professional services, convenience retail, personal services, and restaurants, in close proximity to residential areas and major transportation facilities. Residential uses are permitted consistent with the density and requirements of the RH zoning district. Heliports, medical centers, and some utilities are conditionally permitted. Developments in the RCP zoning district may be used to serve as a buffer between residential areas and commercial and/or industrial areas.

G. Commercial General District (CG): The CG zoning district is designed to accommodate a full range of retail, office and civic uses with a citywide and/or regional trade area. Residential uses are permitted provided that buildings maintain ground floor commercial storefronts. A wide range of higher intensity uses, including, but not limited to, self-service storage, utilities, heliports, and major event entertainment, are conditionally permitted.

H. Central Commercial District (CC): The CC zoning district is designed to provide a concentrated central business district, centered in the city's historic downtown, including a mix of civic, retail, and office uses. Residential uses are permitted provided buildings maintain ground floor commercial storefronts. A wide range of uses, including, but not limited to, facilities with drive-up windows, major event entertainment facilities, and gasoline stations, are conditionally permitted. Some properties in this zoning district are further subject to the standards of the historic preservation overlay (see section 17.04.210 of this title).

I. Office Park District (OP): The OP zoning district provides appropriate locations for combining light industrial, office, business, research and development activities, and secondary small scale commercial uses that serve the employees and businesses in the office park zone, e.g., hotels, restaurants, daycare, personal services and fitness centers, in a campus like setting. Only those light industrial uses with no off-site impacts, e.g., noise, glare, odor, vibration, are permitted in the OP zoning district. In addition to mandatory site development review, design and development standards in the OP zoning district have been adopted to ensure that developments will be well integrated, attractively landscaped, and promote pedestrian travel.

J. Light Industrial District (LI): The LI zoning district provides appropriate locations for general industrial uses including industrial service, light industrial production, research and development, warehousing and freight movement, and wholesale sales activities with minimal impacts on neighboring properties due to nuisance characteristics such as noise, glare, odor, and vibration.

K. Industrial District (I): The I zoning district provides appropriate locations for intensive industrial uses including industrial service, manufacturing and production, warehousing and freight movement, railroad yards, waste related, and wholesale sales activities. Activities in the I district include those which involve the use of raw materials, require significant outdoor storage and generate heavy truck and/or rail traffic. Because of these characteristics, industrially zoned property should be carefully located to minimize impacts on established residential, commercial, and light industrial areas. (Ord. 3044, 2020)

**17.03.500: DISTRICT USE TABLE:**

A. Types Of Uses: For the purposes of this chapter, there are four (4) kinds of uses:

1. A permitted use (P) is one that is permitted outright, but subject to all of the applicable provisions of this title. If a use is not listed as a permitted use, it may be held to be a similar unlisted use under the provisions of section 17.01.160, "Use Classifications," of this title.

2. A restricted use (R) is permitted outright only when in compliance with special requirements, exceptions, or restrictions, in addition to the applicable provisions of this title.

3. A conditional use (C) is permitted only upon approval by the hearing body. The approval process and criteria are set forth in sections 17.02.300, "Decision Making Procedures/Public Hearings," and 17.02.130, "Conditional Use Permits (CUP)," of this title. A use not listed as a conditional use may be held to be a similar use under the provisions of section 17.01.160, "Use Classifications," of this title.

4. A nonpermitted use (N) is a use that is not permitted in the specified zoning district under any circumstances.

B. Use Table: A list of permitted, restricted, conditional and nonpermitted uses in all zoning districts is presented in Table 17.03.500, Use Table, of this section.

**TABLE 17.03.500**

**USE TABLE**

Use Category	RE	RL	RMS	RMM	RH	RCP	CG	CC	OP	LI	I
Use Category	RE	RL	RMS	RMM	RH	RCP	CG	CC	OP	LI	I
<b>Residential:</b>											
Group Home	R <sup>1</sup>	R <sup>1</sup>	R <sup>1</sup>	R <sup>1</sup>	R <sup>1</sup>	R <sup>1</sup>	R <sup>1</sup>	R <sup>1</sup>	N	N	N
Group Living, Supervised	C	C	C	C	C	C	C	C	N	N	N
Group Living, Unsupervised	N	N	N	R <sup>2</sup>	R <sup>2</sup>	R <sup>2,5,7</sup>	R <sup>2,5,7</sup>	R <sup>2,5,7</sup>	N	N	N
Home Occupation	R <sup>3</sup>	R <sup>3</sup>	R <sup>3</sup>	R <sup>3</sup>	R <sup>3</sup>	R <sup>3,5</sup>	R <sup>3,5</sup>	R <sup>3,5</sup>	N	N	N
Household Living	P	P	P	P	P	P	R <sup>7</sup>	R <sup>7</sup>	N	N	N
Residential Daycare	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	R <sup>4,5</sup>	R <sup>4,5</sup>	R <sup>4,5</sup>	N	N	N
Shelter Housing	C	C	C	C	C	P	P	P	N	N	N
Transitional Housing	N	N	N	N	N	N	C	C	N	N	N
<b>Housing Types:</b>											
Accessory Dwelling Units	P <sup>9</sup>	P <sup>9</sup>	P <sup>9</sup>	P <sup>9</sup>	P <sup>9</sup>	P <sup>9</sup>	P <sup>5,9</sup>	P <sup>5,9</sup>	N	N	N
Bed and Breakfast	C <sup>11</sup>	C <sup>11</sup>	C <sup>11</sup>	C <sup>11</sup>	C <sup>11</sup>	P <sup>11</sup>	N	N	N	N	N
Boarding Houses	N	N	N	R <sup>2</sup>	R <sup>2</sup>	R <sup>2,7</sup>	R <sup>2,5,7</sup>	R <sup>2,5,7</sup>	N	N	N
Manufactured Home Units	P <sup>8</sup>	P <sup>8</sup>	P <sup>8</sup>	P <sup>8</sup>	P <sup>8</sup>	P <sup>8</sup>	N	N	R <sup>25</sup>	R <sup>25</sup>	R <sup>25</sup>
Manufactured/Mobile Home Parks	N	N	C <sup>18</sup>	C <sup>18</sup>	C <sup>18</sup>	N	N	N	N	N	N
Multi-family Dwelling Units	N	N	N	P	P	P	R <sup>7</sup>	R <sup>7</sup>	N	R <sup>7</sup>	R <sup>7</sup>
Residential Condominium	N	N	N	P <sup>6</sup>	P <sup>6</sup>	P	R <sup>7</sup>	R <sup>7</sup>	N	R <sup>7</sup>	R <sup>7</sup>
Single-Family Dwelling Units, Detached	P	P	P	P	P	P	N	N	R <sup>25</sup>	R <sup>25</sup>	R <sup>25</sup>
Townhomes	N	P	P	P	P	P	N	N	N	N	N
Two-Family Units (Duplex)	N	P	P	P	P	P	N	N	N	N	N
Zero Lot Line Dwelling Units	N	N	N	N	P	P	N	N	N	N	N
<b>Civic (institutional):</b>											
Basic Utilities	R <sup>20</sup>	R <sup>20</sup>	R <sup>20</sup>	R <sup>20</sup>	R <sup>20</sup>	R <sup>20</sup>	R <sup>20</sup>	R <sup>20</sup>	P	P	P
Colleges	C	C	C	C	C	C	C	C	C	N	N
Community Recreation	P <sup>10</sup>	P <sup>10</sup>	P <sup>10</sup>	P <sup>10</sup>	P <sup>10</sup>	P	P	P	N	N	N
Cultural Institutions	N	N	C	C	C	P	P	P	C	C	N
Emergency Services	C	C	C	C	C	P	P	P	P	P	P
Medical Centers	N	N	N	C	C	C	C	C	P	N	N
Public/Social Support Facilities	N	N	C	C	C	P	P	P	C	C	C
Religious Institutions	P	P	P	P	P	P	C	C	N	N	N
Schools	C	C	C	C	C	C	C	C	N	N	N

Social/Fraternal Clubs/Lodges	N	N	N	N	N	P	P	P	N	N	N
Commercial:											
Commercial Lodging	N	N	N	N	N	R <sup>11</sup>	P	P	R <sup>26</sup>	C	N
Eating and Drinking Establishment	N	N	N	C <sup>12</sup>	C <sup>12</sup>	P <sup>21</sup>	P	P <sup>24</sup>	R <sup>26</sup>	R <sup>26</sup>	R <sup>26</sup>
Entertainment Oriented:											
Adult Entertainment	N	N	N	N	N	N	R <sup>22</sup>	R <sup>22</sup>	N	N	N
Indoor Entertainment	N	N	N	N	N	P <sup>21</sup>	P	P	P	N	N
Major Event Entertainment	N	N	N	N	N	N	C	C	N	N	N
General Retail:											
Outdoor Entertainment	N	N	N <sup>19</sup>	N	N	P <sup>21</sup>	P	C	C	N	N
Animal Related	N	N	N	N	N	N	P	P	N	P	P
Consumer Services	N	N	N	C <sup>12</sup>	C <sup>12</sup>	P	P	P	R <sup>26</sup>	R <sup>26</sup>	R <sup>26</sup>
Outdoor Sales	N	N	N	N	N	N	P	N	N	P	P
Repair Oriented	N	N	N	N	N	P	P	P	R <sup>26</sup>	P	P
Sales Oriented	N	N	N	C <sup>12</sup>	C <sup>12</sup>	R <sup>23</sup>	P	P	R <sup>26</sup>	R <sup>26</sup>	R <sup>26</sup>
Motor Vehicle Sales/Rental	N	N	N	N	N	N	P	C	N	P	P
Motor Vehicle Servicing/Repair	N	N	N	N	N	C	P	C	C	P	P
Vehicle Fuel Sales	N	N	N	N	N	C	P	C	R <sup>27</sup>	R <sup>27</sup>	R <sup>27</sup>
Non-Accessory Parking	C <sup>13</sup>	C <sup>13</sup>	C <sup>13</sup>	C <sup>13</sup>	C <sup>13</sup>	P	P	P	P	P	P
Office	N	N	N	C	C	P	P	P	P	R <sup>28</sup>	R <sup>28</sup>
RV Park	N	N	N	N	N	N	C	N	N	C	N
Self-Service Storage	N	N	N	N	N	N	C	N	C	P	P
U.S. Postal Service	N	N	N	C	C	P	P	P	P	P	P
Industrial:											
Industrial Services	N	N	N	N	N	N	N	N	N	P	P
Heavy Industrial	N	N	N	N	N	N	N	N	N	C	P
Light Industrial	N	N	N	N	N	N	C	N	P	P	P
Railroad Yards	N	N	N	N	N	N	N	N	N	N	P
Research and Development	N	N	N	N	N	C	C	C	P	P	P
Warehouse/Freight Movement	N	N	N	N	N	N	N	N	R <sup>29</sup>	P	P
Waste Related	N	N	N	N	N	N	N	N	N	N	P
Wholesale Sales	N	N	N	N	N	N	C	N	C	P	P
Accessory Structures	P <sup>14</sup>	P <sup>14</sup>	P <sup>14</sup>	P <sup>14</sup>	P <sup>14</sup>	P <sup>14</sup>	P <sup>14</sup>	P <sup>14</sup>	P <sup>14</sup>	P <sup>14</sup>	P <sup>14</sup>
Cemeteries	C	C	C	C	C	N	N	N	N	N	N
Detention Facilities	N	N	N	N	N	N	C	N	C	C	C
Heliports	N	N	N	C <sup>15</sup>	C <sup>15</sup>	C	C	C	C	C	C
Mining	N	N	N	N	N	N	N	N	N	C	C
WECS	R <sup>17</sup>	R <sup>17</sup>	R <sup>17</sup>	R <sup>17</sup>	R <sup>17</sup>	R <sup>17</sup>	R <sup>17</sup>	R <sup>17</sup>	R <sup>17</sup>	R <sup>17</sup>	R <sup>17</sup>
Wireless Communication Facilities	R <sup>16</sup>	R <sup>16</sup>	R <sup>16</sup>	R <sup>16</sup>	R <sup>16</sup>	R <sup>16</sup>	R <sup>16</sup>	R <sup>16</sup>	R <sup>16</sup>	R <sup>16</sup>	R <sup>16</sup>

Notes:

1. Group homes with up to and including fifteen (15) residents permitted by right, per provisions of Idaho Code section 67-6531, or per United States Supreme Court decision. Group homes with sixteen (16) or more residents requires approval of a conditional use permit application.
2. Permitted subject to meeting all standards of section 17.06.500 of this title and obtaining a boarding house permit and license pursuant to title 5, chapter 68 of this code.
3. Permitted subject to requirements of section 17.06.400, "Home Occupations," of this title.
4. Permitted subject to requirements contained in title 5, chapter 28, "Childcare," of this code and elsewhere in this title.
5. Permitted only in, or accessory to, existing residential structures.
6. If built side by side, then minimum lot size requirements according to standards for attached dwelling units (townhouses) apply, otherwise, the maximum number of dwelling units per acre for the subject zoning district apply.

7. Residential uses are permitted outright, provided that buildings maintain ground floor commercial storefronts to all adjacent public streets. For Industrial and Light Industrial districts, residential uses are further restricted to the designated Warehouse Historic District.
8. Limited to multisectional manufactured homes meeting the standards of subsection 17.06.300D, "Manufactured Homes On Individual Lots," of this title, provided a moving and installation permit has first been obtained from the building department and all requirements of Idaho Code title 87 are satisfied.
9. Permitted subject to the requirements of section 17.06.100, "Accessory Dwelling Units," of this title.
10. Recreational trails are a permitted use. City owned recreation lands and facilities are permitted subject to compliance with applicable development standards.
11. Bed and breakfast facilities with five (5) or fewer guestrooms are conditionally permitted subject to 17.05.500, "Off Street Parking And Loading Standards," of this title. Bed and breakfast facilities with five (5) or fewer guestrooms are permitted in the RCP zoning district. Other types of commercial lodging are not permitted.
12. Limited to multi-family projects, not to exceed ten percent (10%) of total gross square feet of the project buildings.
13. Only park and ride and other transit related facilities are permitted conditionally, all other accessory parking facilities are not permitted.
14. Permitted subject to requirements of section 17.06.200, "Accessory Structures," of this title.
15. Heliports are a conditional use permitted only for medical centers.
16. See title 15, chapter 15.42, "Wireless Telecommunications Towers And Facilities," of this code for requirements for permitted and restricted facilities.
17. Subject to the requirements of section 17.06.600 of this title.
18. Subject to the requirements of section 17.06.300 of this title.
19. The Juniper Hills Country Club exception: The uses, improvements, developments and activities associated with the Juniper Hills Country Club golf course and facilities are permitted subject to compliance with applicable residential zone development standards per section 17.05.610 and table 17.03.600 of this chapter.
20. The following are permitted outright: water lines, storm sewer lines, water quality swales, sanitary sewer lines, and local electrical, gas, cable, or telephone lines or conduit. Specifically excluded are uses such as, but not limited to, substations, satellite facilities, and utility operation centers; all others shall be by conditional use permit in the CG, RCP and CC zoning districts.
21. Uses operating before six o'clock (6:00) A.M. and after ten o'clock (10:00) P.M. and drive-up windows are permitted by conditional use, as governed in section 17.02.130, "Conditional Use Permits (CUP)," of this title.
22. Subject further to provisions of title 5, chapter 5.60 of this code governing adult entertainment.
23. Limited to ten thousand (10,000) gross square feet in size, except retail grocery outlets, which are limited to forty thousand (40,000) gross square feet; all others shall be by conditional use permit.
24. Drive-through operations are allowed through the conditional use permit process.
25. A single-family detached dwelling or single-family manufactured home is allowed for one (1) on site caretaker residence when located on the same lot as the permitted use and occupied exclusively by the caretaker and family.
26. These limited uses, separately or in combination, may not exceed twenty five percent (25%) of the entire square footage within a development complex. No retail uses shall exceed thirty thousand (30,000) square feet of gross leasable area per building or business.
27. Vehicle fuel sales permitted outright unless in combination with convenience sales, in which case it is permitted conditionally.
28. Office uses are permitted in LI and I zoning districts as accessory uses up to thirty percent (30%) of the entire square footage within a development complex only as accessory uses to a principal use; all others shall be by conditional use permit.
29. Warehouse/freight movement uses are permitted in OP zoning districts only as accessory uses to a principal use; all others shall be by conditional use permit.

(Ord. 3075, 2021; Ord. 3064, 2021; Ord. 3044, 2020)