

For: 11-12-20 Planning Commission meeting – C-1 discussion based on 10-1-20 draft  
From: Carole Connell  
Re: C-1 zone draft edits and narrative responding to testimony

**Do the following two requested amendments comply with the Residential and Commercial Development Policies of the Comprehensive Plan?**

1. Change Neighborhood Café to an outright use?
2. Eliminate the Arts & Craft Gallery and Variety Store categories and replace them with a new “Retail” outright use category?

Comprehensive Plan 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: No, the two suggestions conflict with the purpose statement of the C-1 zone and the above plan policies. The suggestions closely align with the C-2 zone purpose statement to

*“provide for a broader range of commercial development than may be located in the C-1 zone.”*  
The C-1 zone regulations are designed “to recognize the importance of the residential neighborhoods, to protect them from the negative impacts of transient rental of property, increased levels of traffic, and similar disruptions from adjacent commercial development and they “ will limit commercial activity” and “the types of uses permitted in commercial zones to a level that is compatible with Gearhart’s residential character.”

**Implementation of the policies: How does the C-1 zone assure the types of uses permitted will not result in the negative impacts described in the policies?**

FINDINGS: The C-1 zone implements the plan policies by specifying permitted, conditional and prohibited uses that will not conflict with the policies. If a general “Retail” permitted use category replaces the existing specified list city staff is left to interpret every proposed use as to whether it complies with the C-1 purpose statement and the plan policies. This becomes a subjective and arbitrary administrative decision subject to legal challenge.

The city established a Conditional Use Permit (CUP) approval process for a Neighborhood Café so that the Planning Commission can evaluate the impact of the proposal on the neighborhood. The new definitions for Neighborhood Market, Variety Store and Neighborhood Café also modernizes and clarifies the intent consistent with the plan policies. Without these the C-1 zone becomes comparable to the unlimited C-2 zone.

The following are the existing CUP approval criteria that provide the Planning Commission an objective method to review a Neighborhood Café request and assure compliance with the plan policies:

*SECTION 8.040 OVERALL CONDITIONAL USE REVIEW CRITERIA*

*Before a conditional use is approved, findings will be made that the use will comply with the following standards:*

- 1. The proposed use is consistent with the policies of the Comprehensive Plan:*
- 2. A demand exists for the use at the proposed location. Several factors which shall be considered in determining whether or not this demand exists include: accessibility for users (such as customers and employees), availability of similar existing uses, availability of other appropriately zoned sites, particularly those not requiring conditional use approval, and the desirability of other suitable zoned sites for the use.*
- 3. The location, size, design and operating characteristics of the proposed use are such that the development will have a minimum impact on surrounding properties.*
- 4. The use will not generate excessive traffic when compared to the traffic generated by uses permitted outright and adjacent streets have the capacity to accommodate the traffic generated.*
- 5. Public facilities and services are adequate to accommodate the proposed use.*

6. *The site's physical characteristics in terms of topography, soils and other pertinent considerations are appropriate for the intended use; and*
7. *The site has adequate area to accommodate the proposed use. The site layout has been designed to provide appropriate access points, on site drives, parking area, loading areas, storage facilities, setbacks, buffers, utilities or other facilities which are required by City Ordinance or desired by the applicant.*

**SECTION 8.050            SPECIFIC USE STANDARDS**

*In addition to the Overall Conditional Use Standards of Section 8.040, the following specific Conditional Use Standards shall be applied:*

**1. Neighborhood Café**

*A neighborhood café shall conform to the following standards:*

- A.** *A public need exists for the use at the proposed location. The following factors shall be considered in determining whether a public need exists: availability of similar uses, availability of other appropriately zoned locations, particularly those not giving call for a conditional use approval; and availability of other suitably zoned sites for the use.*
- B.** *The neighborhood café shall be in operation during a minimum of eleven months in a calendar year.*
- C.** *The neighborhood café shall be closed by 10 p.m.*
- D.** *The neighborhood café, if located in a new structure, shall provide off-street parking spaces in the proportion of one space per 200 square feet of floor area, plus one space per employee.*

In conclusion, the proposed amendments are consistent with the C-1 zone purpose statement and the Residential and Commercial Development Policies of the Comprehensive Plan. Allowing a Neighborhood Café and general Retail as outright uses is not consistent with the policies and the objective method for administering land use requests.

**Other amendment suggestions by testimony and staff:**

**1. Proposed definition of Neighborhood Market - a permitted use**

Current code is silent on outdoor and sidewalk seating.

- Change "limited" indoor to a maximum of 700 SF of indoor seating.
- Allow sidewalk seating limited to 5 – 6' wide and ADA specifications, no permit.

**2. Proposed Neighborhood Café as a CUP**

The amendments eliminate current definition restrictions that alcohol sales are for wine and beer only, eliminates the use shall be open 11 months a year and must be closed by 10 pm.

Amendments retain customers shall be seated at tables having no more than 1300 SF of seating but eliminates the 40 seats maximum.

- Retain 1300 SF indoor seat limit, Add unlimited onsite outdoor seating.
- Allow sidewalk seating limited to 5 – 6’ wide and ADA specifications, no permit.

**3. Proposed prohibition of “Amusement activities sports and recreational equipment rental uses”.**

- Revise wording to prohibit *amusement parks, arcades, or surrey-style bicycle rentals*.

**4. Revise proposed Formula Use definition** by increasing the threshold to 7: “Any restaurant, bar, entertainment, or retail use that has ~~4 or more~~ 7 or more other establishments in operation or with local land use or permit entitlements already approved and effective, located anywhere in the United States. In addition to the *seven (7)* either in operation or with local land use or permit entitlements approved for operation, the establishment maintains two (2) or more of the following features *in all of its establishments*: a standardized façade, a standardized array of merchandise, a standardized array of services, a standardized décor and color scheme, uniform apparel, a standardized sign, a trademark or a service mark”.

**5. Remove gambling as a prohibited use.**

**6. Off-Street Parking:** Eliminate existing C-1 off-street parking requirements for eating and drinking establishments in new structures required for Neighborhood Cafés and residential structures per CUP Section 8.050 D. and the Parking Section 6.060.

**7. Eliminate the proposed design guideline 3.040 4 due to its enforcement subjectivity.**

**8. Proposed Residential opportunity by CUP**

- Retain the 50% residential size allowance permitted by a Conditional Use Permit to assure commercial floor area is available in the small zone. Simple to design and enforce for example, for a new two-story building.

**OTHER?**