



Where Life is Sweet

Members of the Planning Commission
STAFF REPORT
For the Meeting of March 11, 2026

Title/Subject

Restoration of Nonconforming Use – 4N2810DA Tax Lot 10900 Larkin 205 SW 3rd St

Summary and Background

Diane Larkin has submitted an application for the restoration of a non-conforming use for property located at 205 SW 3rd St. The property was originally constructed as a single-family residence and subsequently converted to a commercial use, specifically a salon. The applicant requests that the city permit the conversion of the salon back to a dwelling.

The subject property is a 5,200 square foot lot at the southeast corner of SW 3rd Street and W Locust Ave. There are existing commercial buildings to the north, east, and south. The area to the west is mixed commercial and residential however, all of the buildings to the west were constructed as single-family dwellings and some have converted to commercial use. Beyond the immediately adjacent commercial uses on the west side of SW 3rd Street, the remainder of the land to the west is single-family residential. The neighborhood in general is mixed commercial/residential. The commercial zoning extends from Highway 395 to the east to SW 4th Street. Beyond SW 4th Street, the land becomes Medium-High Density Residential (R-3). The property also lies within the Downtown Urban Renewal District.

The Hermiston Code of Ordinances contains provisions protecting existing residences within commercial zones. A residence is protected by §157.041(E(3)) which states, "*Where there are existing residential dwellings, they and their accessory uses may be maintained, expanded or reconstructed in conformance with the development standards of the R-3 zone.*" However, this structure fell out of use as a residence and became a compliant use thus falling under the restoration of use provisions for non-conforming uses in §157.194 which states, "*If a nonconforming use involving a structure or property is discontinued from active use for a period of one year, any subsequent use of the property or structure shall be a conforming use, unless otherwise approved by the Planning Commission through the conditional use process.*" Although a residence may be continued and rebuilt or expanded as an outright use, the residence is still considered a non-conforming use. Once the residential structure converts from a residence to a conforming commercial use, there is only one year to change back to a residence. If the owner wishes to convert back to a residence, a public hearing is required.

The planning commission granted a request to convert a commercial use back to a residence for property located at 525 E Hurlburt Ave in 2021.

The text of §157.194 provides the guarantee of the right to petition the city to change a pre-existing residential structure which has been converted to commercial use back to a residential use. The planning commission will consider the request subject to the process for a conditional use permit. However, the text does not state that the approval criteria for a conditional use permit are in effect, merely the process which is a quasi-judicial process in the code. Therefore, staff recommends and the planning commission has previously agreed that the standards for the alteration of a non-conforming use are the governing criteria. The discontinuance and restoration of non-conforming uses are governed within the non-conforming use provisions in §157.190 through 157.196. The criteria to grant or deny are contained in §157.195.

157.195 CRITERIA TO GRANT OR DENY

When reviewing any request to alter or restore a nonconforming use, it shall be determined that all of the following are found to exist:

- A) The nature and character of the proposed use are substantially the same;
- B) There is no material difference in the quality, character or degree of use; and
- C) The proposed use will not prove materially adverse to surrounding properties.

Tie-In to Council Goals

N/A

Fiscal Information

There is no financial impact to the city. The property has an assessed value of \$261,000. Approximately \$1,770 in property taxes are collected for the city annually.

Alternatives and Recommendation

Alternatives

The planning commission may choose to:

- Approve the restoration of the nonconforming use and permit the change in occupancy to a residential dwelling.
- Deny the restoration of the nonconforming use and deny the change in occupancy to a residential dwelling.

Recommended Action/Motion

The neighborhood is a transitional neighborhood and this property specifically sits at a transition point between commercial and residential uses. The site has successfully operated as a commercial property for over a decade. However, attempts to market the property commercially have been unsuccessful for over a year and there have been inquiries as to its suitability for residential use. The site itself is not large enough to develop into a large commercial use and is landlocked by the large scale Bi-Mart building to the east and a strip mall to the south. In the absence of significant commercial development pressure, staff recommends restoring the residential use of the property.

Motion to approve the restoration of a non-conforming use, allowing residential occupancy at 205 SW 3rd Street, pursuant to any improvements required by Oregon State Building Codes for residential dwellings.

Submitted By:

Clinton Spencer, Planning Director