



City of Ketchum  
Planning & Building

IN RE: )  
 )  
 Duval Work/Live )  
 Conditional Use Permit ) **KETCHUM PLANNING AND ZONING COMMISSION**  
 Date: January 13, 2020 ) **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**  
 ) **DECISION**  
 )  
 File Number: 19-135 )

**PROJECT:** Duval Work/Live Conditional Use Permit

**FILE NUMBER:** P19-135

**OWNER:** Jon-Kristian A. Duval

**APPLICANT:** Jon Duval

**REQUEST:** Conditional Use Permit (CUP) for a work/live unit

**LOCATION:** 491 E. 10<sup>th</sup> Street Unit A17 (Tenth St Light Industrial Complex Bldg A Unit A17)

**ZONING:** Light Industrial District No. 2 (LI-2)

**OVERLAY:** None

**NOTICE:** Notice was published in the Idaho Mountain Express on December 25, 2019, was mailed to property owners within 300' on December 30, 2019 and was posted on site on January 6, 2020.

**ATTACHMENT:** As-built Floorplan

**FINDINGS OF FACT**

1. On January 13, 2020, the Planning and Zoning Commission considered a Conditional Use Permit (CUP) application for the proposed work/live unit.
2. The subject property is located in the Light Industrial District No. 2 (LI-2) zoning district.
3. Residential dwelling units, which include work/live units, require a Conditional Use Permit in the LI-2 zoning district.
4. The work/live unit has a 833 square foot upper-floor living space and a 950 square foot ground floor that consists of workspace and storage associated with the businesses. The total square footage of the unit is 1,783 square feet.

**Table 1. Comprehensive Plan Analysis**

<p><b>Land Use Category:</b> Mixed-Use Industrial</p> <p><b>PRIMARY USES</b> <i>Light manufacturing, wholesale, services, automotive, workshops, studios, research, storage, construction supply, distribution and offices make up the bulk of development within this district.</i></p> <p><b>SECONDARY USES</b> <i>A limited range of residential housing types, and supporting retail are provided for within this category. Uses should generate little traffic from tourists and the general public.</i></p> <p><b>CHARACTERISTICS AND LOCATION</b> <i>The Mixed-Use Industrial category is intended to provide critical lands for Ketchum's economic growth and entrepreneurial opportunity within a vibrant business district where people can work and live in the same area.</i></p>
<p>The proposed use, a work/live unit with commercial studio (art/graphic design) businesses being the work component, meets both the primary and secondary intention of the light industrial area.</p>
<p><b>Policy E-2(e) Live-Work Opportunities and Home Businesses</b> <i>Support small home-based businesses that allow people to live and work from their residences and evaluate existing home-occupation, live/work, and related land use standards.</i></p>
<p>The proposed use is work/live.</p>
<p><b>Policy H-1.4 Integrated Housing in Business and Mixed-Use Areas</b> <i>Housing should be integrated into the downtown core and light industrial areas, and close to the ski bases, The resulting mix of land use will help promote a greater diversity of housing opportunities as well as social interactions.</i></p>
<p>The proposal integrates housing into the light industrial area in a mixed-use building.</p>

**Table 2. City Department Comments**

City Department Comments			
Compliant			City Standards and City Department Comments
Yes	No	N/A	
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>Fire:</b> No comment.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>City Engineer and Streets Department:</b> This is an existing building that is not being substantially improved. N/A.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>Utilities:</b> This is an existing building that is not being substantially improved. N/A.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Building:</b> Unit is in compliance. No comment.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Planning and Zoning:</b> Comments are denoted throughout the Staff Report.

**Table 3. Standards for Residential, Light Industrial Districts**

IMPROVEMENTS AND STANDARDS: 17.124.090 – RESIDENTIAL, LIGHT INDUSTRIAL DISTRICTS:			
Residential units in the light industrial districts shall comply with the following minimum criteria:			
Yes	No	N/A	City Code
			17.124.090 A (1)
			Dwelling units shall not occupy the ground floor.

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Staff Comments</b>	<i>The application is for a work/live unit with the living area located on the upper floor and work space/storage located on the ground floor.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.124.090 A (2)</b>	<b>Design review under chapter 17.96 of this title shall be required whether new building, addition to existing building or remodel of existing building.</b>
			<b>Staff Comments</b>	<i>Design Review is not required as this application does not change the exterior of the building.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.124.090 A (3)</b>	<b>Dwelling Units: Unless otherwise specified in this section, up to fifty percent (50%) of any light industrial building may be devoted to dwelling units and up to fifty percent (50%) of a work/live unit's gross floor area may be devoted to the residential portion of a work/live unit.</b>
			<b>Staff Comments</b>	<i>46% of the work/live unit's square footage is devoted to residential use (833 of the 1,783 square feet).</i>  <i>Building A of the Tenth Street Light Industrial Complex is comprised of 29,996 square feet. There is one existing Conditional Use Permit for residential use (P17-001, Knudson) in the building for a 461 square foot residential unit. Approval of this work/live CUP would result in 1,294 square feet of residential use, equal to 4.3% of the total square footage in the building.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.124.090 A (4)</b>	<b>Individual Units: Except as set forth in the following instances noted herein below, dwelling units shall not be separated in any manner for sale as individual units and may only be leased or rented. The instances where dwelling units may be sold are limited to:</b>  <ul style="list-style-type: none"> <li>a. City approved work/live units, as defined in chapter 17.08 of this title and subsection A5 of this section;</li> <li>b. Three-story projects in the LI-3 where not less than one-third (1/3) of the total square footage of housing units includes deed restricted community housing that are for sale consistent with subsection B of this section;</li> <li>c. Four-story and five-story projects in LI-2 and LI-3 where not less than two-thirds (2/3) of the total square footage of housing units includes deed restricted community housing units that are for sale consistent with subsection A7 of this section;</li> <li>d. Existing non-conforming single-family dwellings existing in the LI-1 prior to adoption of Ketchum City Ordinance #85, as enacted on May 27, 1965;</li> <li>e. Existing condominiums and work/live units with less than one thousand (1,000) square feet of residential gross floor area that have a valid residential conditional use permit prior to the adoption of this section as published.</li> </ul>
			<b>Staff Comments</b>	<i>This unit is eligible for individual ownership because it is a work/live unit.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.124.090 A (5)</b>	<b>5. Work/Live Units: In the approval of work/live units, the City shall also find that:</b> <ul style="list-style-type: none"> <li>a. The work portion of the unit meets the definition of work/live unit set forth in section 17.08.020 of this title, including that the project is subject to Council approval of a restrictive covenant;</li> <li>b. The work unit is: <ul style="list-style-type: none"> <li>(1) Suitable for on-site employees, foot traffic/customers, and meets applicable Building and Fire Codes;</li> <li>(2) Signed and posted with regular hours of operation;</li> <li>(3) Served by the prominent means of access for the work/live unit; and,</li> <li>(4) Associated with a business license for a use allowed (either conditionally or permitted) in the district.</li> </ul> </li> <li>c. The residential portion of the living space is secondary to the primary use as a place of work. A finding that the residential space is secondary to the work space shall be based on measurable findings, including but not limited to:</li> </ul>

				<p>(1) The size of the live portion of the work/live unit is both smaller than the work portion of the unit and, further, the live portion of the work/live unit does not exceed one thousand (1,000) gross square feet;</p> <p>(2) Means of access to the residential portion of the unit is not prominent and, preferably, is located to the side or rear of the property; and</p> <p>(3) Suitable residential parking that does not interfere with snow removal or the operation of proximate LI uses and, further, is in accordance with the parking and loading requirements set forth in chapter 17.125 of this title.</p>
			<b>Staff Comments</b>	<p>Standards 17.124.090.A.5.a and c have been met. Standards 17.124.090.A.5.b.1 and 3 have been met.</p> <p>Standards 17.124.090.A.5.b.2 (signing and posting of business hours) is included as a condition of approval and compliance with 17.124.090.A.5.b.4 is pending as both businesses have applied for City of Ketchum business licenses.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.124.090 A (6)</b>	<p>6. Size: Dwelling units in the Light Industrial District shall be a minimum of four hundred (400) square feet. In the LI-1 and LI-2 no individual dwelling unit shall exceed a maximum of two thousand (2,000) square feet, contain more than two (2) bedrooms, and all units shall not exceed a mean average of one thousand (1,000) square feet.</p>
			<b>Staff Comments</b>	<p>This standard has been met.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>17.124.090 A (7)</b>	<p>7. Fourth Or Fifth Floor: Buildings proposing a fourth or fifth floor with a qualifying ground floor consistent with section 17.12.050 of this title shall comply with the following minimum criteria:</p> <p>a. If dwelling units are to be sold, a minimum of two-thirds (2/3) of the total square footage of housing units shall be for deed restricted community housing units that are for sale and the deed restricted community housing units shall be designed and administered in accordance with the Blaine-Ketchum housing authority guidelines;</p> <p>b. The area designated as light industrial shall be as follows:</p> <p>(1) The area designated as light industrial shall be a minimum of twenty five percent (25%) of the gross floor area in four story buildings.</p> <p>(2) The area designated as light industrial shall be a minimum of twenty percent (20%) of the gross floor area in five story buildings.</p> <p>(3) Subject light industrial use shall not be for personal storage by dwelling occupants;</p> <p>c. Up to seventy five percent (75%) of the gross square footage of any four-story building and up to eighty percent (80%) of the gross square footage of a five story building may be devoted to dwelling units; and</p> <p>d. Unless otherwise deemed appropriate by the Administrator, common area allocation shall be assessed at a LI to residential ratio of 1:1 for four story buildings and 2:3 for five story buildings.</p>
			<b>Staff Comments</b>	<p>N/A</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.124.090 A (8)</b>	<p>8. Anti-Nuisance And Notice Provisions:</p> <p>a. The applicant is aware the mixed use of the property can result in conflict, that the light industrial use may on occasion or in certain respects be incompatible with the quiet enjoyment of the dwelling units, that due to the subordinate and junior nature of the residential use to the light industrial use, the City will not condition, limit, restrict or otherwise interfere with any lawful light industrial use solely because it interferes with a residential use.</p>

				<p>b. All persons who rent or sublet any residential living unit within the Light Industrial Zones shall provide the tenant, lessee or subtenant with written notice that such unit is located within the Light Industrial Zone and, as such, is junior and, therefore, subordinate in nature to all legal light industrial activities.</p> <p>c. Each and every real estate agent, sales person and broker and each and every private party who offers for rent or shows a parcel of real property and/or structure for lease or rent within such Light Industrial Zones shall, upon first inquiry, provide the prospective lessee or tenant, prior to viewing such real property, with written notice that such real property and/or structure is located within such Light Industrial Zone.</p> <p>d. All brochures and other printed materials advertising rental or lease of a living unit within the Light Industrial Zones shall contain a provision designating that such unit or units are located within the Light Industrial Zone and are within a mixed use area. Lessees and tenants shall be notified that the residential uses within the Light Industrial Zone are subordinate and, therefore, junior in nature to the legal light industrial activities within the zone.</p>
			<b>Staff Comments</b>	<i>The applicant is aware of these standards.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.124.090 A (9)</b>	<p><b>Compliance:</b> Compliance with all applicable code sections, including among others, the City's parking and loading standards as set forth in chapter 17.125 of this title, except that if a parking reduction is requested through a Transportation Demand Management Plan per section 17.125.090 of this title, the reduction request shall be submitted to the Zoning Administrator and the Ketchum City Council will determine if such request shall be approved.</p>
			<b>Staff Comments</b>	<i>The proposal is required one parking space for the residential unit and one parking space for the work square footage. There is space to accommodate one vehicle within the ground-floor of the unit and there are additional parking spaces located in the common parking area for the development.</i>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.124.090 A (10)</b>	<p><b>10. Conditions:</b> Conditions including, but not limited to, the following may be attached to the conditional use permit approval:</p> <ul style="list-style-type: none"> <li>a. Access to the residential units relative to design and relationship to light industrial uses, including suitable access consistent with adopted City standards;</li> <li>b. Separation of residential and light industrial parking on the site to minimize conflicts;</li> <li>c. Restrictions on exterior storage of personal property of tenants;</li> <li>d. Certificate of occupancy required prior to occupancy of units;</li> <li>e. Ketchum Fire Department and Ketchum Building Department requirements shall be met prior to occupancy;</li> <li>f. Snow removal required to ensure utility of residential spaces and non-interference with continuous LI operations;</li> <li>g. Any portion or all waived fees become due and payable upon conversion of resident housing unit(s) to light industrial uses;</li> <li>h. Construction techniques that aid sound proofing and limit externalities of LI noise and use impacts on residences is encouraged;</li> <li>i. Provision for and reasonable extension of sidewalks to assure safe pedestrian access; and/or,</li> <li>j. Any other condition deemed to enhance the purposes under this use, or to establish or promote the criteria referenced in subsections A1 through A10 of this section.</li> </ul>
			<b>Staff Comments</b>	<i>Recommended conditions of approval are below.</i>

**Table 4. Conditional Use Permit Requirements**

<b>Conditional Use Requirements</b>
<b>EVALUATION STANDARDS: 17.116.030 and § 67-6512 of Idaho Code</b>

A conditional use permit shall be granted by the commission only if the applicant demonstrates the following:

**Compliance and Analysis**

Yes	No	N/A	City Code	City Standards and Staff Comments
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.116.030(A)</b>	<p><b>The characteristics of the conditional use will not be unreasonably incompatible with the types of uses permitted in the applicable zoning district.</b></p> <p><i>The Light Industrial Number Two (LI-2) District allows for a variety of permitted and conditionally permitted uses ranging from manufacturing to personal service to wholesaling to automotive uses. Per KMC §17.18.150, the purpose of the LI-2 Zone is “established with the foremost purpose of providing suitable land and environs for uses that are not appropriate in other Commercial Zones due to their light industrial nature, but which provide an essential or unique service to support the local economy and permanent year-round employment base. Uses include: 1) light manufacturing; 2) wholesale trade and distribution; 3) research and development; 4) service industries; 5) limited bulk retail and; 6) offices related to building, maintenance and construction. A secondary purpose of the LI-2 is to provide multiple-family dwellings, constructed to be secondary and subordinate to the primary light industrial purpose of the LI-2. Uses in the LI-2 are intended to generate traffic primarily from the industrial trades and secondarily by other permitted uses that, due to the natures of the uses, are not reliant on pedestrian traffic or high visibility, and/or are not permitted in other zoning districts, and/or are characterized by sale, rental, or service of large, bulky equipment or materials, necessitating location of such use in a Light Industrial Zone.</i></p> <p><i>The work component of the work/live unit is comprised of two businesses categorized as Commercial Studios and Commercial Studio is a permitted use in the LI-2 zoning district.</i></p> <p><i>The combination of residential living with this permitted use, and with the proposed residents being the owners of the businesses, results in a use that is not unreasonably incompatible with other types of uses permitted in the zone.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.116.030(B)</b>	<p><b>The conditional use will not materially endanger the health, safety and welfare of the community.</b></p> <p><i>There are no outstanding life safety code violations within the unit.</i></p> <p><i>Residential use within the unit will not materially endanger the health, safety and welfare of the community.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.116.030(C)</b>	<p><b>The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood.</b></p> <p><i>The work/live use is not anticipated to generate a high volume of trips as both businesses are primarily design-based and on-site sales of products do not occur. As such, hazards to pedestrian and vehicular traffic will not be generated by this proposal.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.116.030(D)</b>	<p><b>The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts.</b></p> <p><i>The existing building and this unit are adequately served by public facilities and services. Use of this unit for the proposed live/work will not adversely affect the delivery of public services to the surrounding area.</i></p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>17.116.030(E)</b>	<p><b>The conditional use is not in conflict with the policies of the Comprehensive Plan or the basic purposes of this section.</b></p> <p><i>As described in Table 1 of this staff report and 17.116.030(A) of this table, the conditional use aligns with, rather than conflicts with, the policies of the Comprehensive Plan and the basic purposes of this section.</i></p>

**CONCLUSIONS OF LAW**

1. The City of Ketchum is a municipal corporation organized under Article XII of the Idaho Constitution and the laws of the State of Idaho, Title 50, Idaho Code;

2. Under Chapter 65, Title 67 of the Idaho Code, the City has passed a land use and zoning ordinance, Title 17;
3. The Commission has the authority to hear the applicant's Conditional Use Permit Application pursuant Ketchum Municipal Code Title 17;
4. The Planning and Zoning Commission's January 13<sup>th</sup>, 2020 public hearing and consideration of the applicant's Conditional Use Permit application was properly noticed pursuant to the Local Land Use Planning Act, Idaho Code Section 67-6512;
5. The application meets the standards of approval under Chapter 17.116, Conditional Uses of Ketchum Zoning Code Title 17 and the 2014 Comprehensive Plan;

### **DECISION**

**THEREFORE**, the Ketchum Planning and Zoning Commission approves this Conditional Use Permit application allowing for a work/live unit on this 13<sup>th</sup> day of January 2020 subject to the following conditions 1 - 11:

1. The Conditional Use Permit is non-transferrable to another property and the validity of the permit is dependent upon Remy Road and/or 5 Atmospheres operating as a commercial studio.
2. Hours of operation for the business shall be posted and remain posted in accordance with KMC 17.124.090A.5.b.2;
3. The residential living area shall not exceed one thousand (1,000) square feet total and shall contain no more than two (2) bedrooms;
4. No residential use shall occur on the ground level (first floor);
5. Because of the mixed-use nature of this space, and in order to ensure compliance with the zoning code requirement that residential dwellings do not exceed 1,000 square feet in the LI-2 zoning district, the Fire Marshal shall conduct routine inspections of the work/live building;
6. Inspections by Planning staff to ensure requirements with the Conditional Use Permit conditions may be scheduled at the discretion of staff;
7. The applicant is aware the mixed use of the property can result in conflict, that the light industrial use may on occasion or in certain respects be incompatible with the quiet enjoyment of the dwelling units, that due to the subordinate and junior nature of the residential use to the light industrial use, the city will not condition, limit, restrict or otherwise interfere with any lawful light industrial use solely because it interferes with a residential use.
8. All persons who rent or sublet any residential living unit within the light industrial zones shall provide the tenant, lessee or subtenant with written notice that such unit is located within the light industrial zone and, as such, is junior and, therefore, subordinate in nature to all legal light industrial activities.
9. Each and every real estate agent, sales person and broker and each and every private party who offers for rent or shows a parcel of real property and/or structure for lease or rent within such light industrial zones shall, upon first inquiry, provide the prospective lessee or tenant, prior to viewing such real property, with written notice that such real property and/or structure is located within such light industrial zone.
10. All brochures and other printed materials advertising rental or lease of a living unit within the light industrial zones shall contain a provision designating that such unit or units are located within the light industrial zone and are within a mixed-use area. Lessees and tenants shall be notified that the residential uses within the light industrial zone are subordinate and, therefore, junior in nature to the legal light industrial activities within the zone.

Findings of Fact **adopted** this 13<sup>th</sup> day of January 2020.

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**Neil Morrow**  
**Chair**  
**Planning and Zoning Commission**