

**DECISION DATE:** March 24, 2022

### **Code Interpretation Request**

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Request From: Mr. William Hegger, Manager, Canyon Development Company  
13110 NE 1777<sup>th</sup> Place, Suite 202  
Woodinville, WA 98027

File Number: MISC-2021-010

#### **Interpretation Request:**

On December 8, 2021, William Hegger submitted a land use application (see **Exhibit 1**) for a zoning code interpretation per Mukilteo Municipal Code (MMC) section 17.72.020. Mr. Hegger expressed interest in submitting a permit application to develop a project in the City of Mukilteo Downtown Business (DB) District zone and proposes that an office-related “work” component, of what are commonly referred to as a “live/work” units, satisfy the zoning code’s mixed-use requirement.

On December 14, 2021, Mr. Hegger supplemented the code interpretation request with a project narrative (see also **Exhibit 1**) that specified the code interpretation request as follows:

“We are requesting a code interpretation of OFFICE, as used in the DB Subarea Plan.

....

#### **REQUEST**

We respectfully request our live-work office concept be determined to fulfill not only the definition of office, but to be both an attractive addition to Mukilteo, as well as providing consistency to the old town look and feel....”

“Live/work units” are not defined in the City of Mukilteo Zoning Code. This code interpretation solely addresses whether live/work units with office or retail uses are allowed in the Downtown Business (DB) District zone to satisfy the zoning district’s mixed-use requirement. Other proposed project elements described in Mr. Hegger’s code interpretation request are not addressed or concurred with in this interpretation.

#### **Findings**

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1. On December 8, 2021, Mr. Hegger submitted a land use application for a zoning code interpretation per Mukilteo Municipal Code (MMC) section 17.72.020. On December 14, 2021, the applicant supplemented the request with a project narrative.
2. The applicant requests that the live/work office concept be determined to fulfill the definition of office, for the purposes of a mixed-use development.
3. The Mukilteo Municipal Code (MMC) Chapter 17.08 entitled “Definitions” does define or use the term “live/work unit”. The zoning code does not use the term “live/work unit.”

4. The terms “Mixed-Use” and “Office, General” are identified as uses in the MMC Section 17.16.040A entitled “Permitted Use Matrix, Table 17.16.040.” Neither “Mixed-Use” and “Office, General” is specifically defined in MMC Chapter 17.08, although there is reference to office types as exclusions within the definition of “Commercial, Retail” as follows:

“Commercial, Retail. “Retail commercial” means a use which dispenses commodities to the consuming public at retail, excluding printing, publishing and binding establishments, public utility facilities and offices, contractor’s offices, repair shops for household appliances and the like, business and professional offices, real estate offices, financial institutions, personal service shops, hotels, motels, offices for licensed practitioners, and hospitals.”

5. While “Mixed-use” is not defined in the zoning code (MMC Chapter 17.08, “Definitions”), the term is referenced in several sections of the zoning code including, but not limited to:

- a. MMC Section 17.25.010 (***emphasis added***):

A. A mixed-use district is intended to accommodate and foster pedestrian usage by ***combining commercial/retail uses and residential uses*** in the same buildings or in close vicinity of each other.

B. ...

C. ...”

- b. MMC Section 17.25.030 (***emphasis added***):

**“17.25.030 Overall district design.**

A. Mixed-use development should create a new diverse and pedestrian-friendly neighborhood, with a mix of housing, shopping, workplace and entertainment uses and nodes for transportation access, all within a short walk of each other. A range of types, sizes, amenities, and uses will enhance a series of inviting functional public spaces, ***including ... residential, office, and retail in mixed-use buildings.***

...

B. ...”

- c. MMC Section 17.25A.030 (***emphasis added***):

**“17.25A.030 Mixed-use development.**

**All mixed-use projects shall include a:**

- A. **Commercial-Retail-Office Portion.**

1. Intent. To create activity, visual interest and a pedestrian-friendly environment.

2. Standards.

a. The front portion of the street level of all structures shall only be ***occupied by commercial-retail uses*** as follows:

- i. **One hundred percent of the floor area of the street level shall be occupied by commercial-retail or office uses** if the minimum depth of the structure at street level is less than sixty feet.
  - ii. Two pedestrian entryways exclusively for residential units with each entry no more than six feet wide. **Pedestrian entryways providing access to commercial-retail-office uses or both residential and commercial-retail-office uses** do not count against the two allowed exclusively residential pedestrian entryways.
- b. ...
- B. Residential Portion.
1. Intent: to provide for economic viability of new development and redevelopment while ensuring the **commercial-retail components of a development predominate over the residential uses** both visually and interactively at street and alley levels.
  2. Standards.
    - a. **Dwelling units shall only be located above, behind or below commercial-retail uses.**
    - b. ...

The sections above show that office can, along with retail, be a use within a mixed use development in combination with residential uses.

6. While not defined in the zoning code, live/work units have been approved in the City of Mukilteo. Sub-Area B of the Sector 15 Development Agreement (approved October 1998) is described as a mixed-use master plan composed of residential, retail, entertainment, commercial, open space and related uses and development standards set forth in this Agreement ("Project").

Included in the approved Sector 15 Development Agreement is a definition of "Commercial Uses" and "Mixed-use" as follows:

"Commercial Uses" means the retail, office, entertainment and other non-residential uses specified in Exhibit 2.1."

"Mixed-Use" means the residential and commercial uses authorized in Development Area B and shown on Exhibit 2.1.

Exhibit 2.1 to the approved Sector 15 Development Agreement does not identify "Live/work" units as a specific use. Rather, the use table authorizes a set of specific residential and commercial uses allowed within the mixed-use area of Sub-Area 'B', including office uses.

In 2001 the City of Mukilteo issued a Notice of Decision (NOD) for the Village Center Mixed Use Community (City File No: PPR2000-16), and involved property subject to the

Sector 15 Development Agreement. The decision covered Phase 1 of a mixed-use community that consists of 235 multi-family units and 22,642 square feet (sf) of retail and commercial office space on 19 acres of property.

The approval included 30 live/work units with ground floor office/retail connected to two floors of residential townhouses. Building design was referenced in the NOD as “Mixed-use occupancies with small downtown architecture design”. Total commercial square footage for live/work units is 10,708 sf, nearly half of the total commercial square footage for the project permit and just over a quarter (27%) of the minimum commercial area approved for the entire Sector 15 Development Agreement area.

Project findings and conclusions refer to the proposal as mixed-use, and does not specify “live/work” units as a separate use from mixed-use. While the term “live/work unit” is not mentioned throughout the document, the “live/work” units account for a significant portion of the commercial area provided.

7. MMC section 17.08.020 (“Definitions”) includes a definition of “Pedestrian-oriented use (or business)” as follows:

“Pedestrian-oriented use (or business)” means a commercial enterprise with customers who commonly arrive by foot; or with signage, advertising, window display, and entryways oriented toward pedestrian traffic. Pedestrian-oriented businesses may include restaurants, retail shops, personal service businesses, travel services, banks (except drive-through windows), and similar establishments.

While not exclusive, this definition does not include offices. However, “pedestrian-oriented use” and “pedestrian-oriented business” are not used elsewhere in the zoning code. The term “pedestrian-oriented” is used throughout Chapter 17.25A MMC to describe the relationship between structures and the streetscape, landscaping, and other exterior features.

8. The City of Mukilteo Comprehensive Plan (amended February 1, 2021) includes the following policies that would support live/work units:

LU2d. New development and redevelopment shall provide housing, increased opportunities for employment, services, retail options, recreational activities, and enjoyment of the arts compatible with and complementary to the residential character of the neighborhoods.

LU11: Development and redevelopment in the Downtown Business District shall be guided so as to create a unique identify for the area that is pedestrian-centric as provided for in the Downtown Business District Subarea Plan.

ED1: Programs that attract, support, and encourage businesses that will complement the City’s vision and diversify it tax base shall be investigated and should be implemented if feasible.

9. The Downtown Business District Subarea Plan (adopted 2009) includes the following policies that would support live/work units:

OT1: Develop the Downtown Business (DB) District to have its own unique identity and to be a pedestrian-friendly environment.

OT2: Create well-defined edges for the Downtown Business District to distinguish it from the adjacent residential areas. Protect the residential areas from negative impacts associated with commercial activity.

10. The International Building Code (IBC) Chapter 2 Definitions includes a definition of Live/Work Unit as follows,

“Live/Work Unit: A dwelling unit or sleeping unit in which a significant portion of the space includes a nonresidential use that is operated by the tenant.”

11. There is no definition of Live/Work Unit in the International Residential Code (IRC) Chapter 2.

12. The International Fire Code (IFC) does not define Live/Work units, but Section 310.3 entitled “Residential Group R-2” references Live/Work units and states,

“Residential Group R-2. Occupancies containing sleeping units or more than that two sleeping units where the occupants are primarily permanent in nature, including: Live/work units.”

13. Life-safety provisions exist in the IBC and IFC for Live/work units.

14. MMC Chapter 17.72 specifies authority to make interpretations. MMC section 17.72.020 entitled “Interpretation” states, in part:

“17.72.020 Interpretation.

“When it is the case that there is confusion regarding the purpose of a particular section or subsection of this code, it is the responsibility of the city attorney to interpret the title. When there is confusion regarding how a particular section or subsection of this code is to be applied in an individual instance, it is the responsibility of the mayor or his designate to interpret the title. The interpretations shall be strictly in accordance with the provisions of this section and those of Section 17.72.060....”

As this request addresses how a particular section or subsection of this code is to be applied in an individual instance, the interpretation is to be made by the mayor or his designate.

## **Conclusions**

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1. The City of Mukilteo zoning code does not define live/work units.
2. The City of Mukilteo zoning code does not define Mixed-Use development, but “Mixed-Use” is identified as a use in the Zoning Code permitted use matrix (MMC Table 17.16.040).
3. While not defined, there are frequent references to office and retail commercial uses as being acceptable forms of mixed-use, when developed in concert with a residential use.
4. Live/work units have been approved by the City of Mukilteo, by Development Agreement, with the “work” component counted towards satisfying commercial development. (See Sector 15 Development Agreement and Project Permit File No. PPR 2000-16 for the Village Center Mixed Use Community, Phase I.)

5. Neither the Sector 15 Development Agreement nor the Village Center Mixed Use Community Phase I decision precluded office uses from being part of the “work” component of the live/work units.
6. Per MMC 17.72.020 entitled “Interpretation” the Mayor or his designate has the responsibility to interpret Title 17, Zoning, when there is confusion regarding how a particular section or subsection of this code is to be applied.

### **Interpretation**

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Based on the Findings and Conclusions above, an office use within a “live/work” unit in the Downtown Business Zoning District may be considered mixed-use and may be used to meet mixed-use requirements, unless office uses are otherwise prohibited. When “live/work” units are utilized, all other applicable development standards, including but not limited to those applicable to mixed-use, shall still apply.



David Osaki  
Community Development Director



Decision Date

### **Appeals**

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Any person may appeal this interpretation within 14 calendar days for the date of this decision by filling out the appeal form and submitting it with the appeal fee to the City of Mukilteo Community Development Department, 11930 Cyrus Way, Mukilteo, WA 98275 by mail or personal delivery to City Hall, or other method, by **4:30 p.m. on April 7, 2022**. The appeal with fee must be received by this date and time. Postmark dates will not be accepted.

Mukilteo City Hall is open to the general public Monday through Thursday 7:30 am-5:00 pm, closed for lunch 12 noon - 1:00 pm. City Hall is closed to the public on Fridays.



Exhibit A

City of Mukilteo
Land Use Permit Application

11930 Cyrus Way
Mukilteo, WA 98275
(425) 263-8000
www.mukilteowa.gov

GENERAL INFORMATION

ADDRESS/LOCATION: 823 2ND STREET PARCEL NO: 004659-003-001-00
DESCRIPTION OF WORK: 5-LOT TOWNHOUSE DEVELOPMENT

RECEIVED

DEC 08 2021

COMP PLAN DESIGNATION: COMMERCIAL/MIXED USE ZONING: D.B.
DATE OF PREAPPLICATION MEETING (if held): N/A

CITY OF MUKILTEO

APPLICANT INFORMATION

NAME: WILLIAM HEGGER PHONE: 206-679-5131 EMAIL: STNHILLD@AOL.COM
ADDRESS: 13110 NE. 177th PLACE #202 CITY: WOODINVILLE STATE: WA ZIP: 98072

PROPERTY OWNER INFORMATION Same as Above

NAME: BOB FORD PHONE: EMAIL:
ADDRESS: 45540 CLUB DRIVE CITY: INDIAN WELLS STATE: CA ZIP: 92210

CONTACT INFORMATION Same as Above

NAME: PHONE: EMAIL:
ADDRESS: CITY: STATE: ZIP:

Project Type (check all that apply):

- Accessory Dwelling Unit\*, Binding Site Plan, Comprehensive Plan Amendment, Conditional Use\*, Lot Line Adjustment\*, Reasonable Use\*, Rezone\*, Shoreline, Conditional Use\*, Exemption, Substantial Development\*, Variance\*, Special Use\*, Subdivision\*, Preliminary Short, Preliminary Long, Final Short, Final Long, Amendment, Variance\*, Wireless Communication Facility, Other: CODE INTERPRETATION #17.72.020, SEPA

SIGNATURE:

I/We certify that the information provided in this application, including all submittals and attachments, is true and correct under penalty of perjury by the laws of the State of Washington.

Applicant / Authorized Agent Signature: [Signature] Date: 12-8-21

Owner Signature (required): [Signature] Date: 12-8-21

CANYON DEVELOPMENT COMPANY, LLC CDC

13110 N.E. 177<sup>th</sup> Place, Suite 202  
Woodinville, Washington 98072

RECEIVED  
DEC 14 2021  
CITY OF MUKILTEO

Mr. Garrett Jensen

December 14, 2021

Associate planner

CITY OF MUKILTEO

MUKILTEO, WASHINGTON 98275

RE: CODE INTERPRETATION REQUEST:

We previously submitted a code interpretation request on 12-8-21. Receipt number 2021102417 for \$1,250.00.

We are requesting a code interpretation of OFFICE, as used in the DB Subarea Plan.

PROJECT NARRATIVE

1. We are proposing to develop five townhomes at 823 Second Street in "old Town Mukilteo".
2. The DB Subarea calls for new projects to include a mixture of residential and mixed use or include office.
3. This development would include five live-work offices attached to the residential units.
4. Vehicular access would be provided via the east/west alley to the rear.
5. Each home would have two interior parking stalls and an additional two per unit in the rear.
6. Access to the live work office would be from parking along second street.

LOCATION

1. The site address is 823 Second Street.
2. Legal description is: Lots 1,2,3 of block 3, W.R. HASSARD'S ADDITION.
3. The immediate area is a mixture of residential homes, some low impact commercial retail as well as office.



4. The general topography slope upward for the north. Much of the slope in off second street. Then gradual upwards slope to the alley to the south.
5. There are no known sensitive areas on site.
6. There is an existing structure that may have been used as a day care at some point in its economic life.

#### OWNERSHIP

1. The property is owned by Mr. Bob Ford.

#### INFRASTRUCTURE

1. The proposed development would be serviced by public water and sewer.
2. Some dedication of frontage may be required to provide revised street parking,
3. Storm water would be controlled on site and discharged into the City storm system.

#### GENERAL DEVELOPMENT UNDERSTANDINGS

1. 17.25A.050: No variations from standards related to residential-commercial mixture of uses or the height limits are requested.
2. 17.25.010: We propose utilizing Guideline #9 for elevation criteria
3. The DB overlay for this zoning calls for an office component. It is our interpretation that a connected office to the residential unit would conform with the definition of office.  
We propose this office to function as a live-work unit. Optional use would be owner landlord rentable unit.
4. The neighborhood residents and street design calls for a conservative, low impact use. No high volume establishments. Light impact, low frequency office use such as accounting, and professional use is considered preferable and appropriate.

#### USE DEFINITION

1. The city has several methods to interpret the code definition of OFFICE. 17.72.060, 17.018, 17, as well as WEBSTER'S DICTIONARY. It is our interpretation that our planned use complies with several municipal Code narratives. None of which require participation by the General Public.

## PUBLIC BENEFIT & COMMUNITY VALUE

- A, Such a development is low impact to the neighbors and neighborhood.
- B. Neighborhood solidarity will be maintained.
- C. Safety, and public welfare is promoted.
- D. New residents will be drawn to the area while still keeping the “Old Town” sentiment.

## REQUEST

We respectfully request our live-work office concept be determined to fulfill not only the definition of office, but to be both an attractive addition to Mukilteo, as well as providing consistency to the old town look and feel.

Sincerely,

Wm. Hegger, Manager

CITY OF