



## DRAPER CITY HALL

Community Development | 1020 E. Pioneer Rd. Draper, UT 84020

August 30, 2022

### ***Draper City Planning Division Administrative Interpretation***

#### ***RE: Summer Pugh Convenience Store***

This letter answers a question that has arisen regarding the use classification for a bakery. The applicant owns property located at 12210 South 700 East, parcel number 28-29-304-015. The property is located within the OR (Office Residential) zone. It has historically been used as a residential home, but the applicant would like to convert the building to a mixed use, with a bakery on the first floor and an apartment in the basement. There is no bakery use classification within the Draper City Municipal Code (DCMC). The question is what use classification within DCMC is a bakery considered. DCMC Section 9-8-050 grants the Zoning Administrator authority to determine the proper use when there is an ambiguity.

#### ***9-8-050: CLARIFICATION OF ZONING:***

*B. Ambiguous Use Classification: If ambiguity arises concerning the appropriate classification of a particular use within the meaning and intent of this title, or with respect to matters of height, yard requirements, area requirements, or other property development standards, the zoning administrator shall determine the proper use or development standard, subject to appeal as provided in section 9-5-180 of this title.*

DCMC Section 9-10-1 lists uses allowed within the OR zone. *Restaurant* is the use classification that is typically used for business that involve food sales to the general public. The applicant has requested to be classified as a *Convenience Store*. Restaurants are not allowed within the OR zone. General retail sales (*Retail, General*) are also not permitted within the OR zone.

#### ***9-11-110: USE AND DEVELOPMENT STANDARDS TABLES:***

##### ***TABLE 9-11-1***

##### ***PERMITTED AND CONDITIONAL USES ALLOWED IN COMMERCIAL ZONES (Except CSD Zones)***

<b>Uses</b>	
	<b>O-R</b>
<i>Commercial uses:</i>	
<i>Convenience store</i>	<i>P</i>
<i>Restaurant</i>	<i>NP</i>
<i>Retail, general</i>	<i>NP</i>

Each use is defined within DCMC Section 9-3-040.

**9-3-040: DEFINITIONS:**

*CONVENIENCE STORE: An establishment, not exceeding five thousand (5,000) square feet of gross floor area, serving a limited market area and engaged in the retail sale or rental, from the premises, of food, beverages and other frequently or recurrently needed items for household use, excluding gasoline sales.*

*RESTAURANT, FAST FOOD: An establishment that sells ready to eat food and beverages quickly and which has one or more of the following characteristics:*

- A. Food and beverage orders are not taken at the customer's table;*
- B. Food and beverages are generally served in disposable wrapping or containers; or*
- C. Food and beverages are offered directly to the customer in a motor vehicle from a "drive-up" service window.*

*RESTAURANT, GENERAL: An establishment that derives not less than fifty percent (50%) of its gross receipts from the sale of food and beverages for consumption on the premises and which has one or more of the following characteristics:*

- A. Food and beverage orders are taken at the customer's table from an individually provided menu;*
- B. Food and beverages are served in nondisposable containers by a restaurant employee at the same table or counter where said items are consumed;*
- C. Food and beverages are generally self-served in nondisposable containers and consumed on the premises; or*
- D. A restaurant having some characteristics of a fast food restaurant, other than drive-up service, which is located exclusively within a shopping center, shares common parking facilities with other businesses within the center, and has access to a common interior pedestrian accessway.*

*RETAIL, GENERAL: An establishment that rents or sells goods to the public, but excluding uses specifically classified in another definition herein. Typical uses include apparel stores, antique shops, art and hobby supply stores, bicycle shops, bookstores, clothing rental stores, department stores, discount stores, drugstores, electronic appliance stores, florists, food stores, furniture and appliance stores, gift and novelty shops, glass and mirror shops, hardware stores, home improvement centers, jewelry stores, medical supply stores, music stores, optical retail sales, paint stores, pet supplies stores, photocopying and blueprinting shops, photography supply stores, record, tape and video stores, sporting goods stores, toy stores and variety stores.*

The proposed business, The Gingerbread Cottage, LLC, provides pre-ordered bakery goods and pre-packaged goodies and gifts that can be purchased without pre-ordering. Goods are pre-packaged and are not consumed on the property. This business model is similar to other bakeries within Draper City, including Great Harvest Bakery or Crumbl Cookies. Great Harvest Bakery is classified as a restaurant. Staff was unable to verify what Crumbl Cookies was classified as when it first opened.

After reviewing the definitions for the different uses, it is clear that the proposed business does not meet the standards to be considered a Restaurant, General or Retail, General. The business does not provide tables or made to order food. It also is not similar to any of the uses listed as typical uses for retail. That leaves the definitions of Restaurant, Fast Food and Convenience Store.

The definition for Restaurant, Fast Food calls for food and beverages that are ready to eat and served quickly. It states that orders are not taken at a table and served in disposable wrappings/ containers, "or" offered from a drive-up service window. The proposed business does not have a drive-up service window, but it does meet the other two standards.

By contrast Convenience Store provides food, beverages, "and" other items that are needed frequently for household use. Cookies, holiday goodies and gift baskets are not a frequently needed household use. This term is listed in addition to food and beverages and therefore are household goods other than food and beverages. A bakery does not fit into the Convenience Store definition.

It is the Zoning Administrator's determination that the proposed business, The Gingerbread Cottage, LLC, is classified as a Restaurant, Fast Food business. Restaurant uses are not permitted in the OR zone.

There are a couple options available to you if you wish to pursue this matter further. You may seek a text amendment in order to change the code, seek a zoning map amendment to place the property in a zoning classification that allows for your proposed use, or you may appeal this determination. An appeal is subject to DCMC Section 9-5-180 and shall be

made within 10 days of the decision which is appealed. Applications for all options can be found on the city's website.

If you have further questions, please contact me at [jennifer.jastremsky@draperutah.gov](mailto:jennifer.jastremsky@draperutah.gov) or at 801-576-6328.

Respectfully,

A handwritten signature in black ink, appearing to read 'Jennifer Jastremsky', written over a horizontal line.

Jennifer Jastremsky, AICP  
Planning Manager / Zoning Administrator  
Community Development Department