

**DECISION OF THE HEARINGS OFFICIAL  
FOR THE CITY OF BANDON, OREGON  
REQUEST FOR  
CONDITIONAL USE PERMIT  
AND PLAN REVIEW**



**FILE NUMBER:** 20-105

**LOCATION:** 522 Madison Avenue, SW  
Map Number 28S-15W-2BAD/ Tax Lot 7400

**APPLICANT:** Vivian Rowe  
**PROPERTY OWNER:** Vivian Rowe

**REQUEST:** Conditional Use Permit approval and Plan Review for Single-family dwelling in the Controlled Development 2 Zone with Shoreland Overlay

**HEARINGS OFFICER:** Virginia G Lucker

**HEARING DATE:** December 21, 2020

**RECORD CLOSED:** December 21, 2020

**APPLICABLE CRITERIA:** BMC (Bandon Municipal Code) Chapter 17.24 *Controlled Development 2 (CD-2) Zone*; Chapter 17.76 *Shoreland Overlay (SO) Zone*; Chapter 17.92, *Conditional Uses*; Chapter 17.104 *Supplementary Provisions*

**FINAL ORDER:** **APPROVED WITH CONDITIONS**

**SIGNED:** This 22nd day of December, 2020

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Virginia G. Lucker, Hearings Officer

**ATTEST:**

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Dana Nichols, Planning Manager

The following findings and conclusions are based upon testimony presented at the public hearing held on December 21, 2020, written testimony submitted prior to the hearing, and all documents in the Bandon City planning file for the requested conditional use permit and plan review submitted before the close of the record on that date.

### **A. Background**

The applicant, Vivian Rowe submitted the subject Plan Review and Conditional Use Permit application required for construction of a single-family home on the subject property on October 8, 2020. The City deemed the application complete on November 9, 2020.

Following public notice, a public hearing was held on December 21, 2021. During the public hearing, the applicant testified on her own behalf. There was no public testimony during the hearing. All written and oral testimony submitted prior to the close of the record are part of the record of this application.

### **B. Site Characteristics**

The subject property is a vacant lot located at 522 Madison Avenue, SW, on the southeast corner of the 5<sup>th</sup> Street SW and Madison Avenue SW Intersection.<sup>1</sup> The property is approximately .086 acres (3,760 square feet), and is a legal non-conforming lot due to its size. There are neighboring houses to the north, west and east, with a vacant lot to the south. The property is located in the Floodplain, Shoreland Overlay (SO) and Controlled Development 2 (CD-2) zones.

### **C. Description of Request**

The applicant requests a Plan Review and Conditional Use Permit in order to construct a single-family dwelling with an internal accessory dwelling unit (ADU) on the property. The description of the proposed residence and ADU is included in the application and further described in the staff report. The application materials include a Floodplain Development permit, which depicts the Base Flood Elevation (BFE) at the subject property is 17 feet NVGD. As shown, the residence is proposed to be located at 18 feet NVGD, which satisfies the requirement that it be at least one-foot above BFE.

The proposed use is permitted subject to Plan Review in the CD-2 zone. However, the property is located within the Shorelands Overlay zone, Shorelands Management Unit No 2. Single-family and accessory dwellings units are conditional uses in this unit of Shoreland Overlay zone. Because the more restrictive zoning applies, the requested single-family dwelling is considered a conditional use.

### **D. Evaluation of Request**

#### ***BMC Chapters 17.24 and 17.76 – Plan Review***

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<sup>1</sup> The staff report for the subject application indicated that the address for the subject property was not yet determined. During the public hearing, the City Planner corrected that information and orally provided the street address for the property.

Plan Review for requested residential use in the CD-2/SO zone requires compliance with BMC Chapter 17.24 (Limitations on Use in CD-2 zone) and BMC Chapter 17.76 (Shorelands Overlay (SO) zone). The Staff Report evaluates the Plan Review request against each of the applicable approval criteria set forth BMC Chapters 17.24 and 17.76 and recommends that the request be found to comply with each of those criteria. The Hearings Officer notes that while the proposed use is consistent with the purposes of each of those zones (17.24.010 for the CD-2 zone and 17.76.010 for the SO zone), the Purpose Statements do not, themselves, include approval criteria for the proposed residential use. The Hearings Officer otherwise adopts and incorporates the staff's analysis, and on that basis concludes that the requested Plan Review complies with all applicable approval criteria.

### **BMC Chapter 17.92 Conditional Uses**

As noted above, because the subject property is located within Shorelands Management Unit No. 2, the proposed CD-2 zoned residential use is considered a conditional use under Table 17.76.130. BMC 17.92.040 set forth the approval standards for conditional uses, which requires that all conditional uses be consistent with the following:

- A. The comprehensive plan;*
- B. The purpose and dimensional standards of the zone except as those dimensional standards have been modified in authorizing the conditional use permit;*
- C. That the site size and dimensions provide adequate area for the needs of the proposed use;*
- D. That the site size and dimensions provide adequate area for aesthetic design treatment to mitigate possible adverse effect from the use of surrounding properties and uses;*
- E. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography and natural features;*
- F. All required public facilities and services have adequate capacity to serve the proposal, and are available or can be made available by the applicant;*
- G. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the permitted uses listed in the underlying zoning district;*
- H. All other requirements of this title that apply.*

**Finding:** The staff report fully evaluates the requested conditional use for compliance with each of these standards and recommends that, subject to the recommended conditions, the request be found to comply with each of those standards. The Hearings Officer adopts and incorporates the staff's analysis, and on that basis concludes that, as conditioned, the requested Conditional Use complies with all applicable approval criteria.

### **BMC Chapter 17.104 – Supplementary Provisions**

The proposed residential dwelling includes an internal (attached) Accessory Dwelling Unit (ADU.) BMC Chapter 17.104.020 sets forth the requirements for ADU's. The Staff Report evaluates the requested ADU against each of the applicable approval criteria set forth BMC Chapter 17.104.020 and recommends that, subject to the recommended conditions, the request be found to comply with each of those criteria. During the hearing, the applicant sought confirmation that, as an internal/attached ADU, the property owner would retain the option whether to have electric and water meters separate from the primary residence. BMC 17.104.020.B.6 specifies that, while detached ADU's must have electric and water meters separate from the primary residence, for attached ADU's, separate metering is optional. Because the applicant proposes an attached ADU, the owner does, in fact, retain the option whether to have separate metering. The Hearings Officer otherwise adopts and incorporates the staff's analysis, and on that basis concludes that, as conditioned, the requested Conditional Use complies with all applicable approval criteria.

## **DECISION**

Based on the above analysis and the analysis and findings in the staff report, the Hearings Officer approves the requested plan review and conditional use permit, subject to compliance with each of the 13 conditions of approval listed in that staff report.

**Conditional Use Approval Expiration:** Under 17.92.100, a conditional use permit becomes void one year after approval, unless construction has commenced by that date, or unless the Planning Commission approves an extension of the deadline. A conditional use permit also becomes void if the use is discontinued for a period of one year.