



The Wayward R Studio Design | Preservation | Presentation  
P.O. Box 1808 Bandon Oregon 97411 - 541-551-0057 phone - info@waywardstudio.com

April 5, 2022

**David Reed, Appellant's Representative**  
**PO Box 1808**  
**Bandon, OR 97411**

City of Bandon  
C/O Hearings Officer  
Planning Department  
PO Box 67  
Bandon, OR 97411

Re: Appeal of Planning Application 22-001; 4000 Beach Loop Drive SW

Bandon Hearings Officer,

On behalf of property owners Paul Michaels and Ben Vouk, please accept this appeal of the March 23, 2022 decision by City of Bandon Planning Manager Dana Nichols, denying Planning Application 22-001; a request for Zoning Compliance, to construct three accessory structures, (garage addition, kayak shed, and repair/expand an existing deck) at 4000 Beach Loop Drive SW, located in the CD-1 Zone in the City of Bandon.

Appellants disagree with the Planning Manager's finding that the application fails to meet the requirements of Bandon Municipal Code 17.20.040(B)(2), and disagree with the Planning Manager's decision to deny the application as a whole. Supporting evidence and documentation is included in this appeal document, as listed in Appendices A & B, and as part of the application's complete record available through the City of Bandon's website:

<https://www.cityofbandon.org/general/page/22-001-4000-beach-loop-drive-type-ii-review>

**I. Overview:**

Appellants purchased 4000 Beach Loop Drive SW in the spring of 2021 and retained professional services to assist with the planning and permitting of the proposed project. Communication about the proposed project began with the City of Bandon Planning Department in May 2021. After extensive preliminary discussions regarding applicable criteria, direction was given by the City Planner in the fall of 2021 to submit a consolidated Planning Permit application, requesting Plan Review and Zoning Compliance approval for all three accessory structures.



(Exhibit 1: Subject Property, Coos County Assessor Maps)

The application was submitted to the City of Bandon on January 3, 2022 and was deemed complete by Planning Staff on January 20, 2022. On February 9<sup>th</sup> Planning Manager Dana Nichols requested additional information and revisions to the submitted plans. Although the department had deemed the application complete, the information and revisions requested by Planning Manger Nichols, were supplied and after review of the additional material, it was determined that the application would be processed by the department as a Type I, ministerial action, for Zoning Compliance.

On February 14<sup>th</sup> the Planning Manager informed the property owners that the application could not be processed due to a potential code compliance violation on the subject property. On February 15<sup>th</sup> the Planning Manager rescinded her statements regarding the potential code violation and continued the Type I review of the application, but indicated that she would deny the application based on her research and interpretation of BMC 17.20.040(B)(2), which included two Bandon City Council resolutions (c. 2001 and 2005).

Upon expressing concerns and confusion about the Planning Manger's interpretation and the application's process, the Planning Manager suggested submitting an additional application, for an *Interpretation* of BMC 17.20.040(B)(2) to the City Council. Between February 15<sup>th</sup> and March 2<sup>nd</sup> numerous attempts were made to obtain information and direction from the City of Bandon about the subject code provision and the City's process, with the ultimate goal of conforming to the City's code and obtaining approval. On March 2<sup>nd</sup> the City Manager provided a response that the application would be elevated from a Type I Decision to a Type II, due to the lack of substantive code and the interpretive nature of BMC 17.20.040(B)(2).



Notice of Type II Review was mailed by the City on March 8<sup>th</sup>. Despite finding that all other standards and criteria of the CD-1 Zone were either met, exempt, or immaterial to the application, and after receiving only letters of support for the proposed project from surrounding property owners, the Planning Manager issued a Notice of Decision denying the application as a whole on March 23<sup>rd</sup> with no further correspondence.

**II. Burden of Proof:**

This appeal is specific to the Planning Manager's interpretation of BMC 17.20.040(B)(2) which is the basis of the City's denial and states:

*"B. All new uses or structures or major exterior alterations of existing structures in the CD-1 zone shall comply with the following:*

- 2. Siting of structures should minimize negative impact on the ocean views of existing structures on abutting lots. Protection of views from vacant building sites should also be taken into consideration. Where topography permits, new structures should be built in line with other existing structures and not extend farther out into those viewsapes."*

**III. Supporting Evidence:**

**City of Bandon – 1991 Comprehensive Plan**

**Scenic Resources – Goal 5 – Policies and Implementation measures (pg 11)**

*Policy 1. The City recognizes the importance of dimensional standards in the preservation of scenic resources.*

*Implementation Measure*

- 1. The City shall periodically review height, setback, and lot coverage requirements in the affected areas to ensure maintenance of scenic resources.*

*Policy 2. The City shall encourage the appropriate clustering of development, recognizing that the residents of the City will benefit from the provision of open space and view corridors.*

*Implementation Measure*

- 1. The City shall periodically review and amend its Planned Unit Development regulations to ensure that the appropriate provision of open space and view corridors shall occur.*



## **Natural Resources – Viewsheds – Policies and Implementation measures (pg. 16)**

*Policy 1. The City recognizes the importance of dimensional standards in the preservation of scenic resources.*

*1. Implementation Measure*

*The City shall periodically review height, setback, and lot coverage requirements in the affected viewshed areas to ensure maintenance of scenic resources.*

*Policy 2. The City shall encourage the appropriate clustering of development, recognizing that the residents of the City will benefit from the provision of open space and view corridors.*

*Implementation Measure*

*1. The City shall periodically review and amend its Planned Unit Development regulations to ensure that the appropriate provision of open space and view corridors shall occur.*

## **Chapter 12: Scenic Resources (pg 173)**

### **GEOGRAPHIC VIEWSHEDS**

*There are three identified geographic viewsheds:*

*The Bluff/Beach Loop Area.*

*While this area is most known for the expansive ocean views and sea stack formations, it also includes some wetland/dune areas which contain ecological resources as well as provide significant backdrops for some of the residential development along Beach Loop Drive.*

*The Goal 5 process will be completed when the City and its residents determine which viewshed sites are significant, and where conflicting uses will be limited, prohibited, or fully allowed. Alternatively, the City may conduct an ESEE analysis each time a proposal conflicts with scenic views as its existing policy requires. However, this approach is onerous and leaves too much uncertainty for landowners and citizens alike. It is proposed that this be removed entirely.*

### **METHODS FOR CONSERVING VIEWSHEDS AND ACCESS TO VIEWSHEDS**

*Regulatory- To limit or prohibit certain uses or activities and to regulate the physical characteristics of allowed uses or activities is accomplished through zoning regulations.*

*Purchase/Acquisition of Property- The acquisition of property by the City or another entity for the purpose of protecting the property from future development.*



*Considerations: costs involved, source of funds, grant opportunities, identification of properties for acquisition, etc.*

*Easements- Easements for view access are usually voluntary and may occur between private parties or between a private party and government agency or nonprofit group. May have financial benefits for grantor.*

*Government Agency Coordination/Cooperation- This approach entails strengthening communication and coordination of government agencies that own or manage property in the viewshed areas.*

#### *BEACH LOOP/BLUFF VIEWSHEDS*

#### *CONCLUSIONS*

*The area of primary concern in this viewshed is the west side of Beach Loop Drive. The north-south orientation of Beach Loop Drive allows access for the public at a number of sites identified in the Inventory that are publicly-owned and accessible for various ocean views. There are also secondary drive- by glimpses of the ocean and rock formations. While these secondary views contribute to the overall significance and importance of the viewshed, most occur over private property. These secondary view opportunities are partially protected by the dimensional standards required in the zone.*

*The preceding analysis identifies the economic, social, environmental, and energy (ESEE) consequences of fully allowing, prohibiting, and limiting conflicting uses within the viewshed. In the case of the Bluff/Beach Loop viewshed, the consequences of prohibiting conflicting uses would entail the condemnation/purchase of property not already developed in order to ensure unobstructed views over these properties. If conflicting uses were fully allowed, the result would most likely be detrimental to the viewshed as a whole, particularly without meaningful height and setback regulations. By limiting conflicting uses, a balance of view access, preservation of the resource, and assurance of development rights, although slightly constrained, will be achieved as proposed below.*

*Actions to protect and/or ensure access to the resource*

*Encourage voluntary view/conservation easements, secure right of first refusal for the sale of publicly- owned property, limit street vacations, enhance existing public sites, and limit lot coverage.*



**Appeal:** The Comprehensive Plan recognizes the rights of private property owners, as well as the significance of scenic resources/views accessible to the public, and calls for future regulation against conflicting uses in the Beach Loop/Bluff Viewshed through requesting voluntary compliance, public land acquisition of undeveloped properties, and through adoption of land use ordinances into the Bandon Zoning Code. The subject property is located on the west side of Beach Loop Drive, but is not specifically identified as a natural or scenic resource.



The proposed use is permitted outright in the CD-1 Zone, and due to the property's shape, with all existing structures roughly 110-feet west of Beach Loop Drive, there are no secondary or public views of the ocean from the Beach Loop Drive right-of-way.

(Exhibit 2: 4000 Beach Loop, view from Beach Loop Drive looking west down driveway)

### City of Bandon – Municipal Code

#### **Title 16: 16.04.60(B)(4) Type II Procedure**

*At the conclusion of the comment period, the Reviewing Body shall review the comments received and prepare a decision notice approving, approving with conditions, or denying the application based on the applicable Code criteria.*

**Appeal:** There are no codified provisions in the current Bandon Municipal Code to substantiate BMC 17.20.040(B)(2), as such the Planning Manager's decision was not based on the applicable code criteria and staff erred in processing this application as a Type II.

#### **Title 17: 17.02 Definitions**

*Viewline – undefined*

*Viewshed – undefined*

*Viewscape – undefined*



**Appeal:** There are no codified definitions to support regulation of viewline, viewscape, view protection, or viewshed.

**Title 17.20.040(B)(2) Controlled Development 1 (CD-1) Zone**

*B. All new uses or structures or major exterior alterations of existing structures in the CD-1 zone shall comply with the following:*

*2. Siting of structures should minimize negative impact on the ocean views of existing structures on abutting lots. Protection of views from vacant building sites should also be taken into consideration. Where topography permits, new structures should be built in line with other existing structures and not extend farther out into those viewsapes."*

**Appeal:** This code provision is wholly unsupported by the City of Bandon's existing development code and Comprehensive Plan, and should therefore be unenforceable. However, should the Hearing's Officer determine otherwise or be unwilling to make that determination, the proposed application received three letters of public comment, all from abutting property owners, and all of whom expressed their support for the proposed development with no concern of view obstruction. There are no opponents to the proposed application beyond the City of Bandon. As stated in the application, listed on the submitted plans, and discussed extensively with City Staff, the proposed deck expansion was designed with consideration given to the subject property's topography as well as the surrounding properties existing structures, and is located at a lower, more easterly elevation than the existing western deck, pathway, and neighboring structures.



(Exhibit 3: Proposed "viewline" for 4000 Beach Loop Drive SW)



(Exhibit 4: Aerial image of existing neighborhood, Google Maps 2022)

### **City of Bandon – City Council Resolution 01-03**

**Appeal:** Appellants believe that Resolution 01-03 is specific to the City Council’s decision concerning the appealed Plan Review application for 2462 Beach Loop Drive, and believe that Planning Staff improperly applied the City Council’s 2000 determination for 2462 Beach Loop Drive to the subject application. Although the City Council did make a determination considering the Planning Commission’s interpretation and application of the City’s “viewline ordinance” for the application under appeal, the City Council’s review and determination was for the purpose of the application under appeal at that time, and was not an ordinance amendment to the Bandon Municipal Code. Appellants question whether Planning Manager Nichols has the authority to apply her interpretation of a twenty two year old, uncodified, City Council decision to the subject application. The City of Bandon Planning Department referenced at least two separate City Council determinations concerning “viewline”, none of which are accessible or even known to the general public because they are not contained within the current Bandon Municipal Code.



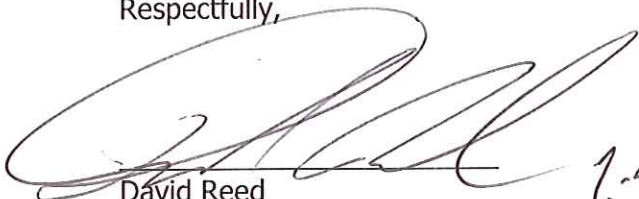


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**IV. Conclusion**

Appellants have spent considerable time and resources trying to understand the City of Bandon's development regulations and submit an approvable application that meets both the needs of the property owners and the unique challenges of the subject property. Despite the guidance provided by the Comprehensive Plan, the City of Bandon's development code fails to adequately address view protection or prescribe any approval criteria or standards specific to "viewline". The proposed development is an outright permitted use in the CD-1 Zone and meets all other criteria of the Bandon Comprehensive Plan and Bandon Municipal Code. All properties abutting the subject lot are fully developed, and there are no objections to the proposed development. Additionally, there are no view obstructions proposed in the subject application. The appellant team has worked respectfully and diligently with the City of Bandon to comply with all requirements. We request that the Hearings Officer approve the appeal of Planning Application 22-001, and that the application be approved as submitted with the March 23, 2022 Planning Manager's decision overruled.

Respectfully,



David Reed  
Appellant's Representative

2-5-22

Appendix A



View of the subject property from abutting southern property's rear yard:



View of Subject Property from abutting property's north rear yard:



Subject property's side yard and area of



proposed deck improvements:



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## Appendix B

(Attached record of email correspondence between applicant and City of Bandon)

**From:** info waywardstudio.com <info@waywardstudio.com>  
**Sent:** Wednesday, March 9, 2022 12:39 PM  
**To:** Dan Chandler <dchandler@cityofbandon.org>; Dana Nichols <dnichols@ci.bandon.or.us>  
**Subject:** Fw: Application: 22-001 4000 Beach Loop Drive SW

Hi Dan and Dana,

I was just checking to see if the notices had been mailed out for the 4000 Beach Loop application for Vouk/Michaels. I did not notice any updates to the application on the Bandon Planning website.

Thank you,

David Reed  
Wayward R Studio  
541-551-0057

**From:** info waywardstudio.com <info@waywardstudio.com>  
**Sent:** Thursday, March 3, 2022 8:32 AM  
**To:** dchandler@cityofbandon.org <dchandler@cityofbandon.org>  
**Subject:** Re: Application: 22-001 4000 Beach Loop Drive SW

Hi Dan,

Thank you for the response to my latest email. From your interpretation of the Bandon Municipal Code 17.20.040, I am now confident that the siting and construction of the proposed deck is in full compliance.

For clarification, the proposed new deck will not be built in line, but behind (East), of the existing deck; impacting no views whatsoever. The proposed deck finish floor will be 12" above grade, 8" below the finish floor of the existing deck. Additionally, the proposed deck will be equal to the finish elevation of the existing elevated stone patio on the neighboring property to the South.

Maybe the specifics of the proposed deck were not adequately communicated in the original submission, or the email correspondence; either way I appreciate the clarification.

If there is any additional information you may need during the notification period please email me at your convenience.

Thank you,

Dave Reed



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**From:** Dan Chandler <dchandler@cityofbandon.org>  
**Sent:** Wednesday, March 2, 2022 4:43 PM  
**To:** 'info@waywardstudio.com' <info@waywardstudio.com>  
**Cc:** 'Dana Nichols' <dnichols@ci.bandon.or.us>  
**Subject:** 4000 Beach Loop Drive SW

Mr. Reed

Dana Nichols forwarded your emails to me regarding the above-mentioned property. I agree that the term “viewline” is not defined. However, the relevant criterion as I see it is:

Siting of structures should minimize negative impact on the ocean views of existing structures on abutting lots. Protection of views from vacant building sites should also be taken into consideration. Where topography permits, new structures should be built in line with other existing structures and not extend farther out into those views. BMC 17.20.040 (emphasis added)

The term “in line with” might be restated as viewline. As to whether the criterion is clear and objective, I understand that the subject application is for a deck and storage shed. That is not needed housing, so I don’t believe ORS 197.307 applies here.

Our code allows us to process your application as a Type II:

*The Planning Director may process any Type I application as a Type II application if they determine that the application involves interpretation or the exercise of policy or legal judgment.*

So our plan is to go ahead and sent out notice and issue a staff decision. That decision would be appealable to our hearings officer if you disagree with it.

Feel free to reach out if you have any questions.

Regards

Dan Chandler JD, ICMA-CM  
City Manager  
City of Bandon  
541-347-2437 Ext. 228



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**From:** Dana Nichols <dnichols@ci.bandon.or.us>  
**Sent:** Wednesday, March 2, 2022 1:59 PM  
**To:** info@waywardstudio.com <info@waywardstudio.com>  
**Subject:** RE: Application: 22-001 4000 Beach Loop Drive SW

Dave,

I'm not ignoring you. I'm working on getting a legal interpretation of the present situation. I will be in touch as soon as I have a response.

Thanks!  
-Dana

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**Dana Nichols**

**From:** Dana Nichols  
**Sent:** Tuesday, March 1, 2022 8:43 AM  
**To:** 'Chandler Dan'  
**Subject:** RE: Application: 22-001 4000 Beach Loop Drive SW

Okay, here's what I'm thinking (below). I just want to make sure I am correct in asserting the Council's interpretation as valid in this case. If I'm wrong, I can totally fall on my sword and acquiesce. And, if you'd prefer to respond, or if I should get Shala involved, I am happy to do that instead.

Thanks for your wisdom and guidance!  
-Dana

Dave,

*I'm sorry that you feel like the process has not been clear. I shared with you that the view line is applicable to bluff adjacent properties, and is determined by drawing a line between the westernmost points of the walls of the structures on properties to the north and south. No structures may be located west of this line. This interpretation is not my own "personal interpretation", but rather came from the City Council in 2001. I shared with you the code provision to request a formal interpretation so that if you found this particular interpretation to be incorrectly applied, you would have the opportunity to appeal, as you are correct that otherwise a Type I application may only be appealed to circuit court.*

*To your question about where "viewline" is defined, it is not. It is a term that was coined during the 2001 interpretation and is referenced in the code to provision 17.20.040(B)(2). That interpretation was made when there was an appeal, so no, the planning commission and city council would not be involved unless there was an appeal of the interpretation of viewline.*

*Please let me know if you have any additional questions.*

\*\*Additional Email (above) received via public records request to City of Bandon Planning



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**From:** info@waywardstudio.com <info@waywardstudio.com>  
**Sent:** Sunday, February 27, 2022 2:56 PM  
**To:** Dana Nichols <dnichols@ci.bandon.or.us>  
**Subject:** Application: 22-001 4000 Beach Loop Drive SW

Dana,

As a 25 year veteran in the fields of Architecture and land use, and having spent the last 12 years working with Bandon's Planning Department and serving as a Planning Commissioner. I am fully aware of submittal requirements, codes and code enforcement.

Your office has provided numerous conflicting opinions in the nearly two months this application has been pending, and the nine months I have spent undertaking preliminary research. This extensive, and ongoing, review period is causing undue frustration for both the property owners and myself.

I specifically addressed your interpretation of "viewline" in my previous email on February 17<sup>th</sup> (Please read the email below) and would appreciate a response to that content so that I can figure out how to instruct my clients and help move forward with the application.

I will not request, nor do I require a formal interpretation for this application, as you have already provided your personal interpretation in previous emails. Per your office email stating the completeness of the application on January 20<sup>th</sup>, the "Type I" review, which requires clear and objective standards per BMC 16.04.050(A), would NOT allow me the ability to appeal the interpretation before the Planning Commission as you have asserted in your previous email. A type I application has no local process after the planning department makes its decision. This is why I am asking for the codified language and ordinance for "viewline". Considering the substantial weight your interpretation has on the fate of this application, I am wondering why it is not being processed as at least a Type II.

I maintain that there is no reason that exists in Bandon's current code that a Western Deck cannot be built off of the existing deck, especially at its lower elevation, which has no view obstruction for either neighboring property.

Due to the lack of clear direction from your office and failure to respond to my specific questions regarding "viewline", I believe you are attempting to enforce a code that does not formally (or legally) exist.

Also, if you could please let me know how to proceed and send me the application and fee schedule for a "formal interpretation", as I might have use for it on a future project. I was not able to find either of them anywhere on the city's website.

Thank you,

Dave Reed  
541-551-0057



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**From:** Dana Nichols <[dnichols@ci.bandon.or.us](mailto:dnichols@ci.bandon.or.us)>  
**Sent:** Friday, February 25, 2022 11:40 AM  
**To:** info [waywardstudio.com](mailto:info@waywardstudio.com) <[info@waywardstudio.com](mailto:info@waywardstudio.com)>  
**Subject:** RE: A couple more questions for Application: 22-001 4000 Beach Loop Drive SW

Dave,

To be honest, no, Type I applications are generally quick because the city's codes are observed. If you want to file for a formal interpretation of the viewline, you may, and then you can appeal that interpretation to the Planning Commission and City Council (per BMC 16.04.120).

Let me know how you'd like to proceed.

Thanks!  
-Dana

**From:** info [waywardstudio.com](mailto:info@waywardstudio.com) <[info@waywardstudio.com](mailto:info@waywardstudio.com)>  
**Sent:** Thursday, February 17, 2022 1:49 PM  
**To:** Dana Nichols <[dnichols@ci.bandon.or.us](mailto:dnichols@ci.bandon.or.us)>  
**Subject:** Re: A couple more questions for Application: 22-001 4000 Beach Loop Drive SW

Hi Dana,

Well, this has been quite a deep dive into planning for me. I'm not used to all of this back-and-forth/process confusion over such basic renovations/additions. Are all type I applications this extensive?

Regarding the proposed deck, I am still a bit confused.

As far as we know, the house and western most decks were built in 1976. The current owner purchased the property just last fall. It is unclear whether the property was actually inside city limits at the time it was first developed, but we assume the zoning/building requirements were much different back then, if regulations even existed. Your records seem to reinforce our assumption, so I am struggling to understand how existing structures on the property are material to this application.

So my questions:

1. What is a "viewline" and how do I satisfy this requirement on my plans and application correctly when the section in the CD-1 chapter only mentions 'minimizing view obstruction'? You keep referencing these terms, but I can't find them anywhere in the zoning code. Are they defined somewhere? Maybe I missed it? can you help me find what I'm looking for?
2. In one of your emails you included previous correspondence I had with Megan last May that mentioned a 2005 council resolution for "viewline". You also provided me with a City Council resolution dated 2-5-2001 regarding an appealed land use application, where the council made an interpretation of "viewscape / view line" specific to that application/appeal. Is the Vouk's application something the planning commission or city council should be involved in?

**For clarity, recounting what we've resolved and what is still an issue:**

- Filing for GAR (resolved, not required)



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- Site plan setback (revised and resubmitted)
- Second story garage addition previously thought to be non-compliant (immaterial to the proposed development, and found to be compliant through your internal file research)
- Additional information requested by you from the geotech (addendum resubmitted)
- Application is a Type 1 process for zoning compliance
- "Viewline" (requirement not met, but based on your interpretation of past city council interpretations, only documented through various resolutions)

Other than the "viewline", for which I await your answers to my two questions above, I think all of the other issues have been resolved? I know that the owners are eager to start renovations on the property as spring draws near. I hope that we can get this project started soon and take advantage of the good spring weather!

Thanks again,

Dave  
541-551-0057

---

**From:** Dana Nichols <[dnichols@ci.bandon.or.us](mailto:dnichols@ci.bandon.or.us)>  
**Sent:** Wednesday, February 16, 2022 11:58 AM  
**To:** info [waywardstudio.com](http://waywardstudio.com) <[info@waywardstudio.com](mailto:info@waywardstudio.com)>  
**Subject:** RE: A couple more questions for Application: 22-001 4000 Beach Loop Drive SW

I liked, "he seemed like a nice guy with no malicious intent, so we should approve his stuff." Really great planning. We could have a hall of horrors here with all the nightmare approvals that have occurred overtime. Could be a new money making campaign for the city!! See attached for another letter in the file that I mentioned yesterday. These people were really something

I understand what you're saying, but I have no approval for the deck in my files, so my assumption has to be that it's a non-conforming use or was not constructed with approval. If you have conflicting evidence, I'm happy to review that. That house was (I think) the first home out there, so it got the advantage of setting the beginning of the viewline. If the new construction is within the viewline from other properties, then I can approve it. I cannot allow for a non-conforming use to become more conforming though (i.e. expanding a deck beyond the viewline).

See attached for a Planning Fee Assessment form – you can pay when you pick up approval if that's easiest.

Thanks!  
-Dana

**Attachment \*\*\*Email Memorandum June 18, 2004 \*\*\*\***



# MEMORANDUM

Post-It® Fax Note	7671	Date	6/21/04	# of pages	1
To	BOB MAIN		From	MATT WINKEL	
Co./Dept.			Co.		
Phone #			Phone #		
Fax	(541) 396-6071		Fax #		

To: Planning Dept.  
From: Jim Wise, Code Compliance  
Date: June 18, 2004  
Re: Ludwick structure, 4000 Beach Loop Drive

As per Charli's request, I contacted Mr. Ludwick, at his residence at 4000 Beach Loop Drive, at approximately 11:20 am, 6/18/04, to determine the use of a building on the property other than the main residence. As I approached the driveway, I noticed a woman working outside. I got out of my patrol car and started to walk to the door of the residence when the woman came up to me and introduced herself as Mrs. Ludwick. I asked to talk to her husband pertaining to a dwelling that was on her property. In the late '90s, it was designed as a RV garage. In the meantime, it has been upgraded with tile roofing, nice landscaping all around the circumference of the building. The question Charli had was that it might possibly be a second dwelling which is against the zoning regulations to have two dwellings on the same property. I introduced myself to Mr. Ludwick who had come out of the residence. He said he knew why I was there, that the County Tax Assessor had been there, and that the Assessor had been asking the same questions - if the building was being used as a dwelling. Mr. & Mrs. Ludwick both were adamant in stating that "no" it was not used as a dwelling and that they did not feel that they needed to allow me access to the building to prove it. They had been in court with the magistrate yesterday, 6/17/04, discussing the assessment value of the building which had been assessed at \$28,000.00, as a second cottage. After further conversation with Mr. Ludwick and explaining that by not allowing the Assessor or officials to inspect the interior of the building, it could lead to suspicion and that the wrong conclusions could be formed. Mr. Ludwick had told me that his appeal of yesterday had been denied. I explained to him that I was not from the Assessor's office, but from the City of Bandon. He stated he was a scientist and that he was conducting experiments in the building and had a lot of scientific and research equipment in the building plus an office. He finally granted me access to the building. I explained to him that he did not have to grant me access. He said he wanted me to come in and see for myself. He then took me inside. On the bottom level of the building was an assortment of tools and equipment, much of which I could not identify, possibly an autoclave, and other stainless steel equipment plus other different scientific apparatus. He then lead me upstairs to the next floor where he had his office and a small bathroom. The office space consisted of file cabinets, etc., but there was no signs of a living area whatsoever. I then thanked Mr. Ludwick and told him I would type up a report in the attempt to clear up some of the confusion as to the use of his building.





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**From:** info waywardstudio.com <info@waywardstudio.com>  
**Sent:** Wednesday, February 16, 2022 9:39 AM  
**To:** Dana Nichols <dnichols@ci.bandon.or.us>  
**Subject:** Re: A couple more questions for Application: 22-001 4000 Beach Loop Drive SW

Hi Dana,

Ok, that whole attachment was seriously funny!  
I think that kind of old Bandon correspondence should have a corner in the museum. I specifically enjoyed how the construction was more artistically created, in the moment, instead of planned. The former owner must have been quite eccentric; NOT a neighbor I would want!

I have a follow-up to the orientation/ location of the view line you have described. For this specific instance, I would refer to 17.20.040 Limitation on use #2:

"Siting of structures should minimize negative impact on the ocean views of existing structures on abutting lots. .... Where topography permits, new structures should be built in line with other existing structures and not extend farther out into those viewscapes."

The existing Western deck extends well into the viewline of the abutting properties, and has for many years, even before the neighboring houses were constructed. Additionally, the proposed deck will be located at an elevation lower than the existing deck. So the new deck will not be impacting the viewlines of abutting properties any more than what is existing on the property already. With consideration to Limitations #2 there will be no impact of the viewlines to abutting lots.

Also, as mentioned before, I haven't paid the fee for the application and want to make sure that's taken care of before or when I pick up the zoning compliance.

Please contact me with any questions.

Thanks,

Dave  
541-551-0057



The Wayward R Studio Design | Preservation | Presentation  
P.O. Box 1808 Bandon Oregon 97411 - 541-551-0057 phone - info@waywardstudio.com

**From:** Dana Nichols <[dnichols@ci.bandon.or.us](mailto:dnichols@ci.bandon.or.us)>  
**Sent:** Tuesday, February 15, 2022 4:30 PM  
**To:** info [waywardstudio.com](mailto:info@waywardstudio.com) <[info@waywardstudio.com](mailto:info@waywardstudio.com)>  
**Subject:** RE: A couple more questions for Application: 22-001 4000 Beach Loop Drive SW

Hi there,

I did get a chance to talk with Dan and review the files. I have good news and not so good news. The good news is that I think I've found the paperwork that approved the second story addition in the required setback. Weirdly (or maybe not because it's Bandon) the applicant constructed the addition without permission from the City and then it went to the Commission for Plan Review approval, to which they voted to approve. The site plan submitted by the applicant was inaccurate, based on what you've provided today, but that doesn't invalidate their decision. I've scanned in and attached that documentation for the property owner's records – it may come in handy later!

On the viewline front, I started thinking about the interpretation and I'll amend my conclusion that the viewline should be measured from the westernmost point of the wall *of a structure*. So, that gives you the benefit of any decks or structures beyond the actual dwelling. This makes the most sense to me because we allow you to build decks, etc. up to a viewline, so the viewline should be measured from there. The not so good news is I don't think that actually helps in this particular case, but it's difficult to say for sure from the aerial. Let me know.

Please let me know if you have any additional questions.

Thanks!  
-Dana

**Attachment \*\*\*Planning Commission notes and documentation 1987\*\*\*\***

The staff recommended that the Partitioner hook up to sewer and water; sign an anti-remonstrance agreement for improvements to 8th St. SW; be required to 'round-off' the front slope along the property line, and grant to the City a slope easement of 20 feet along 8th St. to facilitate improvement of 8th St. SW in the future. He should also be required to either give an access easement -through Lot 7 and along the west property line to the SW corner of Parcel B (which would make this a major partition) or have the driveway on 8th St. SW be located along the east property line.

Mr. Pryor asked about the access through Lot 7 and commented that access would make Lot 7 unbuildable except for access.

After discussion about the access problem and the fact that neither Mr. Laird nor a representative were present, Mrs. Schamehorn moved that we postpone this request to the next meeting so Mr. Laird can be contacted. Seconded by Mr. Webb and passed unanimously.

6C - Plan Review - Yost - CD-1 zone on Beach Loop

Mr. Ward stated that the plan review concerns a skylight and garden window addition to an existing residence at 1175 Beach Loop. When Mr. Yost came in to check with staff prior to reroofing his home he inquired about doing this work. The staff sees no problem.

Mrs. Morris moved that the plan review be accepted; seconded by Mrs. Schamehorn and passed unanimously.

6D - Plan Review - Ludwick - 4000 Beach Loop - CD-1 zone

Chairman Landucci told the audience that all the preliminary work had been done by staff on plan reviews before our meeting, so the acceptance was mostly a formality. He stated that he felt fortunate to be working with volunteers who have been holding two meetings a month for some time.

Mr. Ward explained that recently on a field trip to the Roberts property (May of this year), it was discovered that an addition to the up-stairs of the garage on this house had been done without approval of the Planning Commission. The property is in the CD-1 zone which requires review of any changes.

Mr. Ludwick was contacted by Inspector Don Sparks. He said he had tried to find out in which jurisdiction, City or County, he was located, but had been unable to do so. He forwarded copy of his telephone bill showing the calls he had made. He has been most cooperative.

The addition does not have kitchen facilities and is not an apartment. It is an extra bedroom and bath for the house. Mr. Sparks will meet with Mr. Ludwick in the future to inspect the addition.

Mrs. Morris moved that we accept this plan review with the understanding that it conforms and that Mr. Sparks inspects and the fees are paid. Seconded by Mrs. Schamehorn and passed with five (5) yes and one (1) no (Eakley).



# CITY of BANDON

P. O. BOX 67  
BANDON, OR. 97411  
347-2437

8/27/87  
6D

TO: PLANNING COMMISSION

DATE: AUGUST 19, 1987

FROM: Larry Ward

SUBJECT: Plan Review - J. D. Ludwick

Mr. Ludwick owns the house at 4000 Beach Loop. On a field trip to the Roberts property in May of this year it was discovered that an addition to the upstairs of the garage had been done without approval of the Planning Commission. The house is in the CD-1 zone.

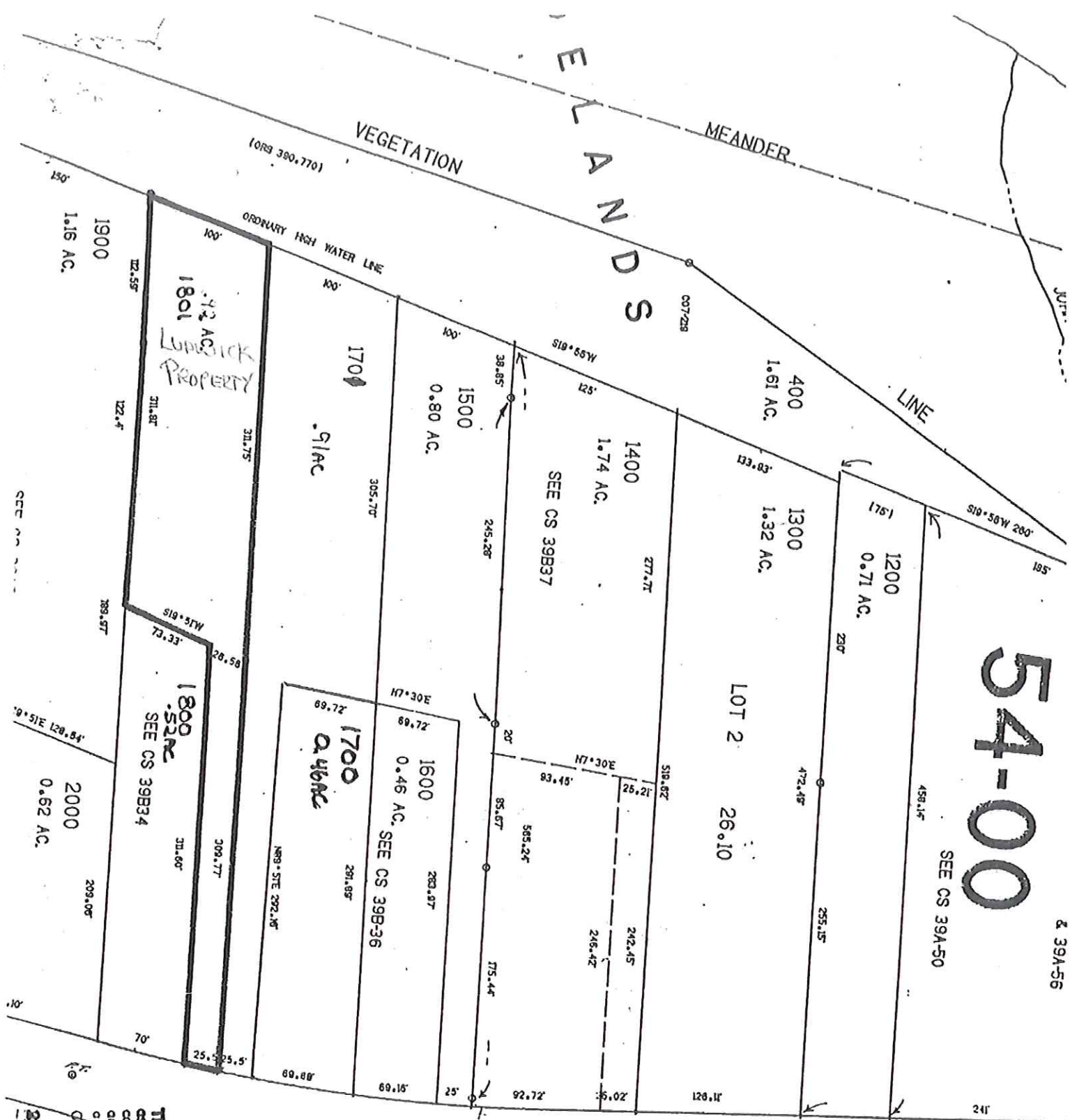
At my request, Don Sparks, Building Inspector for the City of Bandon, wrote to Mr. Ludwick to ask if he had a building permit to do the addition and why he had not gotten approval from the Planning Commission for the project. Mr. Ludwick's reply is attached.

In summary, Mr. Ludwick had difficulty finding out if the house was in the City or County jurisdiction. He supplied a phone bill indicating that he had called both the County and the City.

In reading the letter I believe that he made a good faith effort to go through the proper channels. He has been cordial and cooperative in his response and indicates that he will do what is required to resolve this issue.

It should be noted that this addition does not have kitchen facilities, and is not an apartment. It is an extra bedroom for the house with a bathroom.

I do not have a detailed building plan for this, only a plot plan. Mr. Sparks will be meeting Mr. Ludwick in the future to inspect the addition for compliance with Building Codes, and will require a Building Permit, if you approve the addition.



**54-00**

& 39A-56

SEE CS 39A-50

**BRADLEY**

(BEACH LO

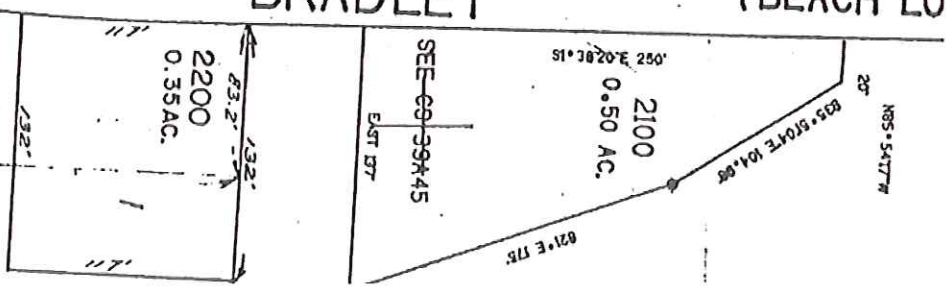
This print is made solely for the purpose of assisting in locating said premises. No warranty is made by the company assuming no liability for errors or omissions and location ascertained by other means.

**10/16/67**

**WILLAMETTE VALLEY TITLE**  
394 CENTRAL COOS BAY,  
PHONE 269-0119

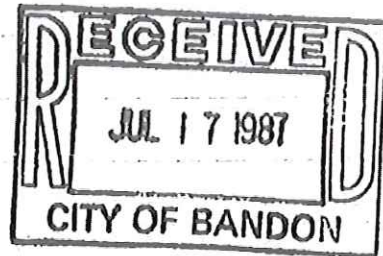


MAP 29 15 1





Mr. Si Don Sparks  
 Building Official  
 City of Bandon  
 Bandon, Oregon 97411



Dear Mr. Sparks:

I apologize for the delay in my reply to your letter of July 2, 1987. I have been searching for some records concerning this issue.

First, let me introduce myself and my wife to the City of Bandon. We have been vacationing in Bandon for over 20 years and are planning to retire in Bandon shortly. We purchased what we consider to be our dream home.

Last September, we want to be good neighbors and we are very concerned with maintaining the beauty and community of the area. In fact, we are very gratified by Planning Commission decisions concerning our area since we purchased our home.

Unfortunately, we were unaware of the jurisdiction of the City of Bandon until we received a notice in April or May concerning issues.



presented before the Planning Commission, by others, that we were asked to comment on. Subsequent to that, we received a call from Mr Griffin that things were not in order. Among these things was the fact that our tenants (that we inherited from the previous owners), were conducting a business in violation of certain ordinances. To resolve that issue, we requested that they vacate the premises before June 1, 1987. They are now gone.

With respect to the issue of jurisdiction, let me apologize for my error and seek a proper solution. In my defence, I would like to present the events prior to the construction.

We received the enclosed map of our property from the Title Co. There were no indications of City boundaries on it, that I could tell. Prior to 10/21/86, I called the County offices at Coquille to determine what approvals, if any, were necessary to make the building modification. I have made several calls to Coquille, and at the

moment, I cannot identify which one was the County office that I dealt with. However, on 10/21/87, I remember the sequence of calls that were made, and are shown on the enclosed attachment. First to two of the County offices and then to the City of Boulder. I asked officials at the County offices where to go for such approvals. After giving them my address, they were uncertain as to whose jurisdiction the property was under. It seemed to me that I was getting nowhere. I then called the City of Boulder and spoke with a lady that I was directed to. I told her that my property was at 4000 Beach Loop and she said that the address was insufficient to identify if the property was within the City limits. She asked where, physically, the property was located at. I said that it was south of the golf course. She said that it was probably in the County and asked if I was on a sewer system. I said that I was on a septic tank. She then seemed certain that I was not within the City limits.

I really did not know what to do next. Frankly, I decided that the 8 ft addition, below the existing roof line (that simply let light into the existing room), would have no impact on anyone else.

This explanation is a long-way around to answer your questions:

1. Construction started sometime in November, on one of my trips (perhaps Thanksgiving)
2. The addition was completed in the exterior by Dec. The interior, about March.
3. I constructed the addition, and worked on it slowly, a few days at a time, when I visited the property - so there is nobody to blame - but my wife and I will be in Bandar Aug 1-15, I would be happy to elaborate on any of the issues of concern to you, or meet with you at your convenience during our stay.

Thank you for your understanding of my dilemma.

Sincerely  
  
Dan Ludwig

# Execulines, Inc.

C EET

1 BILLING PERIOD : 10/18 - 11/18/86 PAGE 1

CALL DETAIL REPORT FOR ACCESS CODE: 626 / 0  
 NUMBER CALLED DESTINATION

DATE	TIME	NUMBER CALLED	DESTINATION
10/21	11:35 AM	213-807-2868	NORWALK CA
10/21	02:59 PM	503-396-3121	COQUILLE OR
10/21	03:00 PM	503-396-2148	COQUILLE OR
10/21	03:02 PM	503-347-2437	BANDON OR
10/30	03:21 PM	208-526-0605	IDAHO FALLS ID
10/31	08:29 AM	614-258-9501	COLUMBUS OH
10/31	08:34 AM	208-526-0605	IDAHO FALLS ID
11/03	11:11 AM	213-204-5050	CULVERCITY CA
11/04	11:09 AM	805-541-7305	SNLUSDBSPCA
11/07	08:40 AM	815-234-5441	BYRON IL
11/07	10:24 AM	815-234-5441	BYRON IL
11/07	02:21 PM	509-928-3030	SPOKANE WA
11/07	02:23 PM	503-643-8611	BEAVERTON OR
11/07	02:29 PM	509-928-3030	SPOKANE WA
11/17	08:33 AM	305-665-2873	MIAMI FL
11/18	11:15 AM	614-258-9501	COLUMBUS OH
11/18	11:30 AM	614-876-7381	HILLIARD OH
11/18	11:44 AM	301-944-6037	WOODLAWN MD
11/18	02:38 PM	213-204-5050	CULVERCITY CA

ACNT 0 TOTALS: 19 CALLS  
 SAVED \$9.33 ( 23.8% )

DON -  
With the proof of  
phone calls supplied, it  
seems that he probably  
made a "good faith"  
effort to go through the  
right channels -

He still (I think) needs  
Bldg Inspection + OK  
from Plan. Commission. -  
CD & zone

J. D. Ludwick





The Wayward R Studio Design | Preservation | Presentation  
P.O. Box 1808 Bandon Oregon 97411 - 541-551-0057 phone - info@waywardstudio.com

**From:** info@waywardstudio.com <info@waywardstudio.com>  
**Sent:** Tuesday, February 15, 2022 11:59 AM  
**To:** Dana Nichols <dnichols@ci.bandon.or.us>  
**Subject:** Re: A couple more questions for Application: 22-001 4000 Beach Loop Drive SW

Hi Dana,

Just wanted to confirm our conversation regarding The Vouk Application located at 4000 Beach Loop Drive.

1. You are likely unable to approve the application based on the existing nonconforming use located on the property; i.e. the second-floor Southern garage addition.
2. Based on the City council determination provided (item #6.1.1 dated 2-5-2001) the application provided for a new Western deck would not be allowed.

I know you were going to follow up with Dan regarding the above. Please let me know any additional information you might find.

Thank you for the help.

Dave

**From:** Dana Nichols <dnichols@ci.bandon.or.us>  
**Sent:** Monday, February 14, 2022 1:09 PM  
**To:** info@waywardstudio.com <info@waywardstudio.com>; Eric Montes <emontes@ci.bandon.or.us>  
**Subject:** RE: A couple more questions for Application: 22-001 4000 Beach Loop Drive SW

Dave,

It might be helpful to hop on a phone call to discuss. Unless your project meets one the GAR exemption allowances listed in the code (which, upon first glance it does not), you will be subject to these requirements. This is accomplished through a Type II/Plan Review process. The zoning compliance is separate and can be issued once the GAR is approved.

On the setback, the issue is that you showed the required south (side) setback at 5' and the kayak storage building at 10', but the building looks to be further away than 10'. I just want to confirm the actual distance.

The viewline determination was interpreted by City Council in 2005. I will send you an email from Megan back in May that discussed the viewline and have also attached the minutes from the City Council interpretation. Essentially, what it says is that view protection is only for properties adjacent to the bluff and that the viewline is determine by the westernmost walls of the properties directly adjacent.

Feel free to call the office or email me to setup a time to chat!

Thanks!  
-Dana

**Attachment \*\*\*2005 City Council Determination 2-5-2001\*\*\*\*\***

# City of Bandon

## CITY COUNCIL AGENDA DOCUMENTATION

DATE: 2-5-2001

ITEM NO: ^1#1

**SUBJECT:**

A RESOLUTION ADOPTING THE COUNCIL DECISION AFFIRMING THE PLANNING COMMISSION APPROVAL OF A PLAN REVIEW FOR A SINGLE FAMILY RESIDENCE FOR ROBERT HARTMAN AT 2464 BEACH LOOP DRIVE.

### **BACKGROUND:**

This is a Resolution adopting the Councils' decision to affirm the Planning Commission approval of a Plan Review for a single-family residence located at 2464 Beach Loop and denying the appeal.

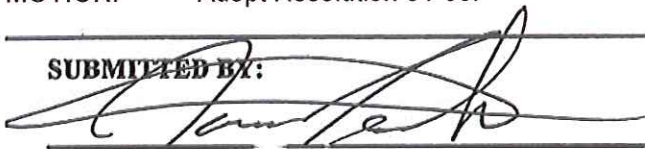
### **FISCAL IMPACT:**

None

### **RECOMMENDATION:**

MOTION: Adopt Resolution 01-03.

**SUBMITTED BY:**



Jasop'tTocke, Fanning Director



Resolution No. 01 -03

A RESOLUTION OF THE MAYOR AND  
CITY COUNCIL AFFIRMING THE  
PLANNING COMMISSION APPROVAL OF  
A PLAN REVIEW LOCATED AT 2464  
BEACH LOOP DRIVE.

**WHEREAS**, the City Council has determined that the decision of the Planning Commission on this matter was correct.

**NOW, THEREFORE, BE IT RESOLVED** that the Mayor and City Council of Bandon hereby declare that the Planning Commission decision is affirmed and the Plan Review application is approved with findings of fact and conclusions as put forth in the City Council Final Order attached and hereby referenced as Exhibit "A".

**ADOPTED** by the City Council and **APPROVED** by the Mayor of the City of Bandon, this 5th day of February, 2001.

Brian M. Vick, Mayor

*Attest:*

Marie Ducharme, City Recorder

CITY COUNCIL  
CITY OF BANDON

IN THE MATTER OF THE APPEAL OF  
PLANNING COMMISSION DECISION OF A  
PLAN REVIEW AT 2464 BEACH LOOP  
DRIVE, BANDON, OREGON

) EXHIBIT "A"  
) ORDER AFFIRMING )  
PLANNING COMMISSION )  
DECISION AND APPROVING )  
APPLICATION

**Robert Hartman** : **Applicant**

**Sandra Rickert** : **Appellant**

**Mike Sterling** : **Appellant**

RECITALS

1. An Application for a Plan Review for construction of a single family residence was filed by Robert Hartman and accepted by the City on September 27, 2000, and deemed complete by October 16, 2000.

2. The subject property is located at 2464 Beach Loop Drive and more particularly described in Coos County Assessor's Map 28-15-36CB, Tax Lot 902. The property is designated as Controlled Development (CD) on the Comprehensive Plan Map and is zoned CD-1.

3. After public notice was duly given, a public hearing was held on November 16, 2000, before the Planning Commission which heard testimony submitted on behalf of the Applicant and interested parties including the Appellants.

4. After receiving evidence the hearing was closed and the Planning Commission deliberated after which a motion was made and seconded to approve the Application for Plan Review for the single family residence. The motion was passed by a majority vote.

5. On November 20, 2000, Sandra Rickert and Mike and Jamie Sterling filed written notice of appeal with the city. As required by Article 15, Section 17.124.010(C)(3) the notice stated specific grounds upon which Appellants sought review of the Planning Commission decision. In particular, the grounds sought were that Planning Commission failed to properly apply the review criteria contained in the Municipal Code at Section 17.20.040(2)(B).

2.1 The Applicant's lot is located adjacent to the edge of the bluff bordering the ocean and extends eastward from the top of the bluff approximately 140 feet is 50 feet wide.

2.2 There are three (3) separately owned parcels which abut Applicant's property along its northern boundary and one property which abuts Applicant's southern boundary.

2.3 The properties abutting Applicant's parcel to the north include the Campbell property at 1455 Strawberry Drive which is also adjacent to the edge of the bluff and contains an existing residence. The Appellant Rickert's property is immediately east of the Campbell property and is a vacant lot and Appellant Sterlings' property lies east of the Rickert property and contains an existing residence. The parcel that abuts Applicant's property on the south extends from the edge of the bluff in an easterly direction to Beach Loop Drive and contains a residential duplex. The duplex is constructed so there is no setback between the structure and Applicant's south property line.

2.4 The Applicant proposes to site the residence so that it does not extend further west than a line drawn between a westerly corner of the Campbell home to the north and a westerly corner of the duplex on the south. (Referred to as the "view line")

2.5 The Applicant's proposed siting of the structure complies with the setback requirements in the zone including a five foot setback from the north line; a ten foot setback from the south line to provide for a minimum often feet between the structures; a 20 foot setback from Beach Loop Road; and, 22 feet from the edge of the bluff which conforms to the minimum of 20 feet recommended by Applicant's geological report.

2.6 The structure proposed will not exceed the maximum height in the zone of 24 feet and the size or footprint of the structure complies with the requirement that it not occupy more than 50 percent of the lot area.

2.7 Currently the ocean may be viewed from the Rickert property and the Sterling property over and across the Applicant Hartman's vacant property. Once constructed, Applicant's residence will not impact the view from the lots abutting it to the north and south that are adjacent to the edge of the bluff but will impact the view from the vacant lot of Appellant Rickert and the view from the residence of Appellants Sterling.

3 - Order Affirming Planning Commission Decision and Approving Application abuts the proposed lot including lots abutting the proposed lot on its north or south

boundary that are not lots that also are adjacent to the edge of the bluff. In construing the ordinance, the Council is aware that if the term “abutting lots” if applied literally, then even lots that would abut the Applicant’s lot on its eastern boundary would have to be considered and since views that are being protected are those looking to the west, it would be difficult and in some cases impossible to minimize negative impacts on views from property located to the east because as is the case here there are already structures located to the north and south of the lot where the structure is proposed to be located and if the proposed structure is otherwise located in compliance with required setbacks, there is no practical way to minimize negative impacts from structures located to the east of the proposed site location.

The Council interprets Section 17.20.040(B)(2) to mean that it affords view protection primarily to those lots adjacent to the edge of the bluff. This conclusion is based on interpretation and application of the first and last sentence of the pertinent ordinance which provides “where topography permits, new structures should be built in line with other existing structures and not extend further out into those viewsapes.” It is the Council’s interpretation of the ordinance that by reading these two sentences together the ordinance is meant to primarily protect the lots immediately adjacent to the edge of the bluff. In addition to the language of the ordinance itself, the Council reaches this conclusion based on previous interpretations of the Council establishing the method for determining what has been referred to as the “view line”. The primary intent of the ordinance is to afford existing structures on abutting lots adjacent to the edge of the bluff, the maintenance of a reasonable view of the ocean that they enjoy without substantial impacts from proposed structures on abutting lots.

Mr. Sterling acknowledged in his argument before the Council that he was aware when he purchased his property that the view he was afforded over and across the Hartman property would be substantially impacted at such time as a residence was constructed on it.

While the Council concludes that the protection afforded by the pertinent ordinance section is primarily designed for protection of lots adjacent to the edge of the bluff, it reviewed whether adjusting the proposed site to the east would provide any assistance in protecting the view from the Sterling property even though such a move would require a variance. The Council determined that any movement of the proposed residence to the east would mean that it is no longer built in line with the other structures that abut the bluff edge and would reduce the view from the Hartman structure and only provide very minimal additional view from the Sterling home. This view from the Sterling home would then be substantially impacted if not lost when development occurred on the Rickert property because the code presently allows Rickert to build within five feet of the south line of the Rickert lot. The Council therefore concluded that moving the Applicant’s proposed site to the east would only afford a De minimis protection to the Sterling view which could then be lost by development of the Rickert lot.

Appellant Rickert relies on the second sentence of the pertinent ordinance which provides: "Protection of views from vacant building sites should also be taken into consideration." The Council believes that this section likewise is intended to apply primarily to the vacant building sites on abutting lots adjacent to the edge of the bluff and this "consideration" is to be given at the time the view line is determined. In other words, when drawing a view line between existing structures, if there is more than one vacant lot between those existing structures then when drawing the view line between existing structures to determine the appropriate siting of a new structure on one of the vacant lots consideration must be given to the other vacant lot to make certain that the line drawn does not eliminate a building site from that lot.

Appellant Rickert's lot is not one that abuts the edge of the bluff. The Council finds that in applying the ordinance the first step is to determine the location of the view line and then tentatively site the proposed structure in line with the other structures along the view line. Then if the proposed siting of the structure can be adjusted along the view line (as opposed to away from it) in such a fashion as to provide some additional view for a vacant lot that does not abut the edge of the bluff such consideration should be entertained. This interpretation harmonizes the two pertinent provisions of the applicable criteria by making the construction of the residence in line along the view line where topography permits the primary consideration and at the same time providing leeway to adjust the siting of the structure along the view line if possible in conformance with the "consideration" requirements of the other sentence in the ordinance.

## CONCLUSION

Reviewing the evidence and facts found from the evidence and the interpretation of the ordinance to be applied to those facts, the Council concludes as follows:

1. The proposed site for the residence is located in proper relationship to the view line which has been determined as required by the ordinance.
2. The ordinance does not authorize the Council to redesign the proposed residence by eliminating the second floor or otherwise redesigning the structure. The required setback, lot coverage, and height restrictions for this residence do afford some view protection to properties to the east thereof which includes the Sterling residence. Due to the width of the lot, the setback requirements, and the minimum space between structures required for fire safety, the structure cannot be moved to the south which is the only adjustment in the siting of the structure that might afford some view protection for the Sterling residence. Even if such an adjustment could be made, there would be no assurance that view from Sterlings' residence would be protected when the Rickert lot is developed. The Council therefore concludes that with respect to Appellant Sterlings' appeal, there is nothing that can be done to minimize the impact on the view from the Sterling property.

3. With respect to the Rickert appeal regarding her vacant lot, the Council concludes from the foregoing facts and interpretation of the ordinance that consideration has been given to views from this vacant lot by applicant's design which does not construct the west wall of the residence parallel to the view line and instead leaves a corridor along the north side of the new residence to afford a view between it and the Campbell residence. The Council further concludes that after considering the possibility of moving the residence to the south from its proposed location, that should not be done because of the fire safety concerns between the structures. The Council therefore concludes that sufficient "consideration" within the meaning of the ordinance has been given to the Rickert lot and that is all that is required by the ordinance.

#### DECISION

Based on the foregoing conclusions, the Council has determined that the Planning Commission has properly applied the ordinance, that the decision of the Planning Commission including the conditions imposed therein is correct, and therefore the appeals of Rickert and Sterling are denied.



The Wayward R Studio Design | Preservation | Presentation  
P.O. Box 1808 Bandon Oregon 97411 - 541-551-0057 phone - info@waywardstudio.com

**From:** info [waywardstudio.com](mailto:info@waywardstudio.com) <[info@waywardstudio.com](mailto:info@waywardstudio.com)>  
**Sent:** Friday, February 11, 2022 12:33 PM  
**To:** Eric Montes <[emontes@ci.bandon.or.us](mailto:emontes@ci.bandon.or.us)>  
**Cc:** Dana Nichols <[dnichols@ci.bandon.or.us](mailto:dnichols@ci.bandon.or.us)>  
**Subject:** A couple more questions for Application: 22-001 4000 Beach Loop Drive SW

Thanks Eric, for the information,

I realized after sending my last email that Dana had sent me a link to the planning website with blurbs about GAR and the hazard overlay zone. I was not familiar with the acronym, and it was not on any of the planning pages. So, if the geotech certifies there is no need for a GAR and we submit an exemption form, the application will not need a type 2/plan review? If so, then how does the application get processed and what is the timeline for completion?

Also, I am still not fully clear on the view line issue. Are there any specific approval standards for viewline / view protection in the zoning code other than that of CD-1?

Additionally, what was the issue with the Setbacks?

Thanks for your help,  
Dave

Dana Nichols <[dnichols@ci.bandon.or.us](mailto:dnichols@ci.bandon.or.us)>  
Mon 2/14/2022 1:10 PM

----- Forwarded message -----

**From:** Megan Lawrence <[mlawrence@ci.bandon.or.us](mailto:mlawrence@ci.bandon.or.us)>  
**Date:** Tue, May 18, 2021 at 10:25 AM  
**Subject:** Re: Vouk Addition - View Corridor  
**To:** info [waywardstudio.com](mailto:info@waywardstudio.com) <[info@waywardstudio.com](mailto:info@waywardstudio.com)>  
**Cc:** Dana Nichols <[dnichols@ci.bandon.or.us](mailto:dnichols@ci.bandon.or.us)>

Hi Dave!

Upon further research, we've found that in 2005(ish) the City Council made the interpretation that view lines are determined from the western most points of surrounding dwellings (wall, not eaves). Existing accessory structures (decks, hot tubs, fences, etc) are not used to determine a view line and are considered non-conforming. Below is an updated graphic (not to scale) showing the viewline for 4000 Beach Loop Drive in Red. Our previous interpretation from yesterday is shown in yellow.

Thanks!

Megan Lawrence  
City Planner



The Wayward R Studio Design | Preservation | Presentation  
P.O. Box 1808 Bandon Oregon 97411 - 541-551-0057 phone - info@waywardstudio.com

On Tue, May 18, 2021 at 12:10 AM info [waywardstudio.com](mailto:info@waywardstudio.com) <[info@waywardstudio.com](mailto:info@waywardstudio.com)> wrote:  
I have a few follow up questions for the view corridor concept:

1. Is the line to be taken from the western-most part of an existing residence?
2. Does a legally created deck qualify as a legal structure to base the western most point?

Reviewing the houses to the North and South of the Vouk's, the house to the North definitely used the western most point of the Vouk's house to be placed. The house directly South of the Vouk's likely used the same western point of the Vouk's based on the Southwestern-most point.

If the Western tip of the Vouk's house was used, approximately 10ft could be added to the Southern second floor portion of the house.

Please review and I will stop by again to discuss further.

Dave  
541-551-0057

**Dana Nichols** | Planning Manager  
City of Bandon  
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**From:** Eric Montes <[emontes@ci.bandon.or.us](mailto:emontes@ci.bandon.or.us)>  
**Sent:** Thursday, February 10, 2022 3:34 PM  
**To:** info [waywardstudio.com](mailto:info@waywardstudio.com) <[info@waywardstudio.com](mailto:info@waywardstudio.com)>  
**Cc:** Dana Nichols <[dnichols@ci.bandon.or.us](mailto:dnichols@ci.bandon.or.us)>  
**Subject:** Re: Notice of Complete Application: 22-001 4000 Beach Loop Drive SW

Hi Dave,

You can find the code language for a GAR in the Hazards Overlay Chapter in the Bandon Municipal Code (Chapter 17.78), which you can find on our website [here](#) and is also attached below.

In the chapter you will find the following language:

*"17.78.020 Applicability*

*The following areas are considered potentially geologically hazardous and are therefore subject to the requirements of this section:*

- A. All lands partially or completely within "high" or "very high" landslide susceptibility areas as mapped in DOGAMI Open File Report 0-16-02, "Landslide susceptibility overview map of Oregon".*
- B. All lands partially or completely within "high" or "very high" liquefaction susceptibility as mapped in DOGAMI OPEN-FILE REPORT O-13-06, "Ground motion, ground deformation, tsunami inundation, co-seismic subsidence, and damage potential maps for the 2012 Oregon Resilience Plan for Cascadia Subduction Zone Earthquakes."*
- C. All lands along the oceanfront"*





The property for this application is oceanfront and also identified to have "high" susceptibility to landslides, which you can view for yourself [here](#) by using the DOGAMI Open File Report 0-16-02, "Landslide susceptibility overview map of Oregon" (image attached as well).

As far as the fee and process for a GAR, you can find the following language in the Hazards Overlay Chapter, "Application, review and appeals for a Geologic Assessment Review shall be in accordance with the requirements for plan review as set forth in BMC 16.04. Applications for a Geologic Assessment Review may be made prior to or concurrently with any other type of application required for the proposed use or activity. Geologic Assessment Review shall be completed prior to any ground disturbance."

It goes on to say the following:

*16.04.060 Type II Procedure*

*The Planning Director, or their designee, performs Administrative Staff Reviews through the Type II procedure. Type II decisions are made by the Planning Director with public notice and an opportunity for appeal to the Hearings Officer, unless otherwise stated in Table 16.04.020.*

*A. Application Requirements.*

*1. Application Forms. Applications for projects requiring Administrative Review shall be made on forms provided by the Planning Department.*

*2. Submittal Information. The Planning Department shall advise the applicant on application submittal requirements. At a minimum, the application shall include all of the following information:*

- a. The information requested on the application form;*
- b. Plans and exhibits required for the specific approval(s) being sought;*
- c. A written statement or letter explaining how the application satisfies each and all of the relevant criteria and standards in sufficient detail;*
- d. Information demonstrating compliance with prior decision(s) and conditions of approval for the subject site, as applicable; and*
- e. The required fee.*

*B. Procedure.*

*1. The Planning Department shall mail notice of a pending Type II decision to the following individuals and agencies no fewer than 14 days prior to making the Type II decision.*

*2. The purpose of the Administrative Decision notice is to give nearby property owners and other interested people and agencies the opportunity to submit written comments on the application before the Planning Department issues the decision. Therefore the following individuals and agencies shall be notified:*

*a. All owners of record of real property (as shown in the records of the County Assessor) within a minimum of 100 feet of the subject site;*

*b. Any person who submits a written request to receive a notice of a specific application; and*

*c. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies. The failure of another agency to respond with written comments on a pending application shall not invalidate an action or permit approval made by the City under this Code.*

*3. The notice of pending Administrative Decision, at a minimum, shall contain all of the following information:*

- a. The deadline for submitting written comments, which must be at least 14 days prior to the scheduled decision date or, as applicable, the scheduled meeting date where an application is referred to the Reviewing Body for review;*

- b. A summary of the proposal and the relevant approval criteria in sufficient detail to help the public identify and locate applicable code requirements;*

- c. The address and City contact person for submitting written comments; and the date, time, and location the Reviewing Body, as applicable, is scheduled to make a decision on the application;*



- d. The street address or other easily understandable reference to the location of the proposed use or development;
- e. Disclosure statement indicating that if any person fails to address the relevant approval criteria with enough detail, he or she may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue, and that only comments on the relevant approval criteria are considered relevant evidence;
- f. Statement that all evidence relied upon by the Reviewing Body, as applicable, to make its decision is in the public record and is available for public review. Copies of this evidence can be obtained at a reasonable cost from the City; and
- g. Statement that after the comment period closes, the City will issue its decision and the decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice.

4. At the conclusion of the comment period, the Reviewing Body shall review the comments received and prepare a decision notice approving, approving with conditions, or denying the application based on the applicable Code criteria.

*Bandon Municipal Code, Title 16, Codified 06-03-2021 Page 7 of 60*

5. Within seven days of a Type II (Administrative) decision, the Planning Department shall proceed to prepare a notice of decision and mail it to the applicant, property owner (if different), the State Building Codes Division, those who provided written comments on the proposal, and those who requested a copy of the decision. The Planning Department shall cause an affidavit of mailing the notice to be prepared and made a part of the file. The affidavit shall show the date the notice was mailed and shall demonstrate that the notice was mailed to the parties above and was mailed within the time required by law.

6. The Notice of Decision shall contain all of the following information:

- a. A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;
- b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area (a copy of assessor's map may be used);
- c. A statement of where the City's decision can be obtained;
- d. The date the decision shall become final, unless appealed; and
- e. A statement that all persons entitled to notice may appeal the decision to the City of Bandon Hearings Officer.

C. *Effective Date of Decision.* Unless the conditions of approval specify otherwise, an Administrative Decision becomes effective 12 days after the City mails the decision notice, unless the decision is appealed.

D. *Appeal of Type II (Administrative) Decision.* A Type II Administrative Decision made by the Planning Director may be appealed to the City of Bandon Hearings Officer;

1. *Who may appeal.* The following people have legal standing to appeal a Type II Administrative Decision:

- a. The applicant or owner of the subject property;
- b. Any person who was entitled to written notice of the Type II decision; and
- c. Any other person who participated in the proceeding by submitting written comments on the application to the City by the specified deadline.

2. *Appeal filing procedure.*

a. *Notice of appeal.* Any person with standing to appeal, as provided in subsection 1, above, may appeal a Type II Administrative Decision by filing a Notice of Appeal according to the following procedures.

b. *Time for filing.* A Notice of Appeal shall be filed with the Planning Department within the timeframe specified on the Notice of Decision; typically, this will be within 10 days of the date the Notice of Decision is mailed.

c. *Content of notice of appeal.* The Notice of Appeal shall be accompanied by the required filing fee and shall contain:

*Bandon Municipal Code, Title 16, Codified 06-03-2021 Page 8 of 60*



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- 1) An identification of the decision being appealed, including the date of the decision;
  - 2) A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
  - 3) A statement explaining the specific issues being raised on appeal; and
  - 4) If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period.
3. *Scope of appeal. The appeal of a Type II Administrative Decision shall be a hearing de novo before the Hearings Officer. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the review leading up to the Administrative Decision, but may include other relevant evidence and arguments. The hearing appeal body may allow additional evidence, testimony, or argument concerning any relevant standard, criterion, condition, or issue.*
4. *Appeal Hearing Procedure. Hearings on appeals of Type II decisions shall follow the same procedure used for public hearings on Type III reviews. Section 16.04.070 contains requirements for public hearing notices, conduct of hearings, and decision-making procedures for Type III reviews."*

Now, for the fee. Plan Reviews are a \$500 deposit and billed at actual cost based on staff time and the cost of postage used for sending out notices. There is also the fee for Zoning Compliance, which is based on the square footage of the proposal. Based on your floor plans, the total square footage of new structures would fall into the "Residential Structure 1501 - 2500 square feet" category which has a fee of \$750. I have attached a planning fee assessment form for this application to this email. We should have never started processing this application without the fee, but like you stated, we were out of the office and could not do an intake on the application. In our office, the date an application is considered received is the day it is paid, so in fairness to you and the property owners, we took the application in as if it was submitted on January 3rd. It is my fault that I did not reach out and make sure you understood what the fees were and to make sure you paid, so I do apologize for that.

As far as the viewline, I do not know what you and Dana have discussed, but the code states the following in Chapter 17.20 CONTROLLED DEVELOPMENT 1 (CD-1) ZONE (also attached below):

*"Siting of structures should minimize negative impact on the ocean views of existing structures on abutting lots. Protection of views from vacant building sites should also be taken into consideration. Where topography permits, new structures should be built in line with other existing structures and not extend farther out into those viewscapes."*

Best,  
**Eric Montes**  
Planning Technician  
He/Him/His ([Why these pronouns?](#))

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On Thu, Feb 10, 2022 at 1:56 PM info [waywardstudio.com](mailto:info@waywardstudio.com) <[info@waywardstudio.com](mailto:info@waywardstudio.com)> wrote:

I dropped off the application for zoning compliance in person at city hall on January 3rd, everyone in planning was on vacation so no fee was associated at that time. I was notified by email on January 20<sup>th</sup> that the application was deemed complete (See attached). I was unsure what application(s) are still relevant, but I assumed Zoning Compliance is still required and that the city would notify me of any information missing or needed before deeming my application complete.

The geotech report was commissioned at the property owners request and included in the application submittal for informational purposes only. Does this project require GAR? If so, what is the city's process? Fee? There are no forms or information for GAR on your website.

The shop setback is field verified and accurate as proposed. I was not able to find any clear standards or definitions for "viewline" or "viewscape" in the city code beyond the vague language in the CD-1 zone chapter, so I'm not sure how to determine what, where, or how "view line"/"viewscape" applies. Can you specify where that info can be found in the zoning code and clarify how applicants satisfy that criteria?

The property owners (and myself) are anxious to get this project moving forward. So that I can give them a clear update, can you give me a breakdown of the review process/where we're at, and a guesstimate of your timeline to making a decision on the application?

Thanks!  
Dave Reed

**From:** Dana Nichols <[dnichols@ci.bandon.or.us](mailto:dnichols@ci.bandon.or.us)>  
**Sent:** Monday, February 2, 2022 2:58 PM  
**To:** info [waywardstudio.com](mailto:info@waywardstudio.com) <[info@waywardstudio.com](mailto:info@waywardstudio.com)>; Eric Montes <[emontes@ci.bandon.or.us](mailto:emontes@ci.bandon.or.us)>  
**Subject:** RE: 4000 Beach Loop Questions

Hi Dave!

Hope you're doing well! I started reviewing the application for 4000 Beach Loop and I have a couple questions:

1. Did you pay for this application? We have no record of assessment or payment.
2. Did you want to file for GAR and Zoning Compliance at the same time? The application only says GAR.
3. Your site plan has a couple things missing/off: viewline isn't shown, setback for shop is incorrect
4. I started reviewing the Geotech Report, and I'm certain it's missing things. Our requirements changed recently with the Hazard Overlay Zone, so tell Eric Oberbeck not to feel bad...see attached, specifically 17.78.040. The City's website has the missing content here:  
<https://www.cityofbandon.org/general/page/hazard-overlay-zonegeologic-assessment-review>

Thanks! Eric will be here today and tomorrow and I'll be back Monday if you have any questions.

**Dana Nichols**  
Planning Manager



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**From:** Eric Montes <emontes@ci.bandon.or.us>  
**Sent:** Thursday, January 20, 2022 1:54 PM  
**To:** info@waywardstudio.com <info@waywardstudio.com>  
**Subject:** Notice of Complete Application: 22-001 4000 Beach Loop Drive SW

Hey Dave,

Please find attached a completeness review form and a notice of complete application letter for 4000 Beach Loop Drive SW. Megan will be back tomorrow, so I think she will be the lead on this application. We will be in touch!

Best,  
Eric Montes  
Planning Technician

Megan Lawrence <mlawrence@ci.bandon.or.us>  
Tue 5/18/2021 10:25 AM  
Hi Dave!

Upon further research, we've found that in 2005(ish) the City Council made the interpretation that view lines are determined from the western most points of surrounding dwellings (wall, not eaves). Existing accessory structures (decks, hot tubs, fences, etc) are not used to determine a view line and are considered non-conforming. Below is an updated graphic (not to scale) showing the viewline for 4000 Beach Loop Drive in Red. Our previous interpretation from yesterday is shown in yellow.

Megan Lawrence <mlawrence@ci.bandon.or.us>  
Mon 5/17/2021 2:21 PM  
See attached.



Megan Lawrence  
City Planner