

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

May 4, 2022

Re: Appeal of Planning Application 22-001; 4000 Beach Loop Drive SW (#2)

Bandon Hearings Officer,

We are the property owners at the above referenced address and have previously submitted documents related to our appeal of the Planning decision denial. We have reviewed the recently uploaded document entitled "Staff Report for Appeal" within the supporting documents on the City of Bandon website (<https://www.cityofbandon.org/general/page/22-001-4000-beach-loop-drive-type-ii-review-appeal>). We would like to make additional comments in response to that document. We present the following paragraph from that recently uploaded document (page 3 of 7), which, as clearly stated, the City Planning Department has "relied" upon with respect to enforcement and interpretation of code 17.20.040(B)(2):

This property is located west of Beach Loop Drive and is therefore subject to the City's viewscape criterion, 17.20.040(B)(2). The City has relied on the interpretation of 17.20.040(B)(2) by the City Council, as adopted in Resolution 01-03 and the definition of structure (*that which are built or constructed; an edifice or building or any kind or any piece of work artificially built up or composed of parts joined together in some definite manner and which requires location on the ground, or which is attached to something having a location on the ground*). This resolution was passed to affirm an interpretation of the Planning Commission that: (1) view protection is only afforded to properties that are bluff-adjacent, (2) that the "viewline" is drawn between structures on abutting lots along the bluff edge, and (3) that consideration must be given to ensure a viewline does not eliminate a building site on an abutting vacant lot. This Resolution states that, "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."

As we are, indeed, bluff-adjacent, and not adjacent to an abutting vacant lot, as the Resolution states very clearly, "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." As we have clearly presented in our appeal documents, and as substantiated by our adjacent neighbors, our proposed deck will not impact ANY view of the ocean, let alone a "reasonable view" and will not have ANY impact, let alone a "substantial impact."

Regardless of the viewline drawn, either by the city or our architect within the original submittal, as can be seen from the City's recently uploaded document, our existing deck appears non-compliant. As our house was the first one built in 1976, it is not surprising that the adjacent homes built after that, particularly given the topography of the lot north of us (which needed to be built further east given the significant drop-off present in the western portion of that lot), that subsequent "viewlines"

drawn based on these new structures would impact our future viewline. This discriminates against future improvements done to our home, at no consequence of our own actions, simply based on prior decisions and the topography of the lots surrounding us.

Regardless, based on the current code, our proposed plans are in line with ALL THREE SENTENCES within the code 17.20.040(B)(2). Specifically, the first sentence states:

“Siting of structures should minimize negative impact on the ocean views of existing structures on abutting lots.” As we have clearly demonstrated based on pictures and plans (and testimony from our neighbors to the north and south), and as confirmed by the City’s intent, our proposed deck will NOT have a negative impact on the ocean view (that is if our deck is even considered a “structure”).

With regards to the second sentence within code 17.20.040(B)(2):

“Protection of views from vacant building sites should also be taken into consideration.” This is not applicable in this case as there is no vacant building site that is bluff-adjacent to our property. This is no longer a hypothetical case of potentially inhibiting a future view. There is NO impact of an ocean view from the current structures, again, as confirmed by our neighbors who have submitted testimony restating this fact.

Finally, the third sentence of code 17.20.040(B)(2) is also important, as it states, *“Where topography permits, new structures should be built in line with other existing structures and not extend farther out into those viewsapes.”* There are several aspects to take into consideration with regards to this final sentence from the code in question. Most importantly, our current deck that is already in place and was in place prior to the construction of the homes on the bluff-adjacent lots, will remain the westernmost point of our constructed property (present and future), though the City considers decks to be “accessory structures” (see below email from Megan Lawrence). The proposed deck renovation, regardless of the fact that it will not impede any ocean view from our neighbors, will indeed be *“built in line with other existing structures and not extend farther out into those viewsapes.”* One interpretation would be that our current deck, by definition, is an existing structure, and our proposed renovations, as can be seen by the proposed plans, will be built in line or behind the current deck. In addition, the proposed decks will *not extend farther out into* the viewscape. However, another interpretation, as stated by Mr. Dan Chandler, City Manager of Bandon, can be seen from his email to our architect, Mr. Reed from March 2, 2022:

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 viewscapes. 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.

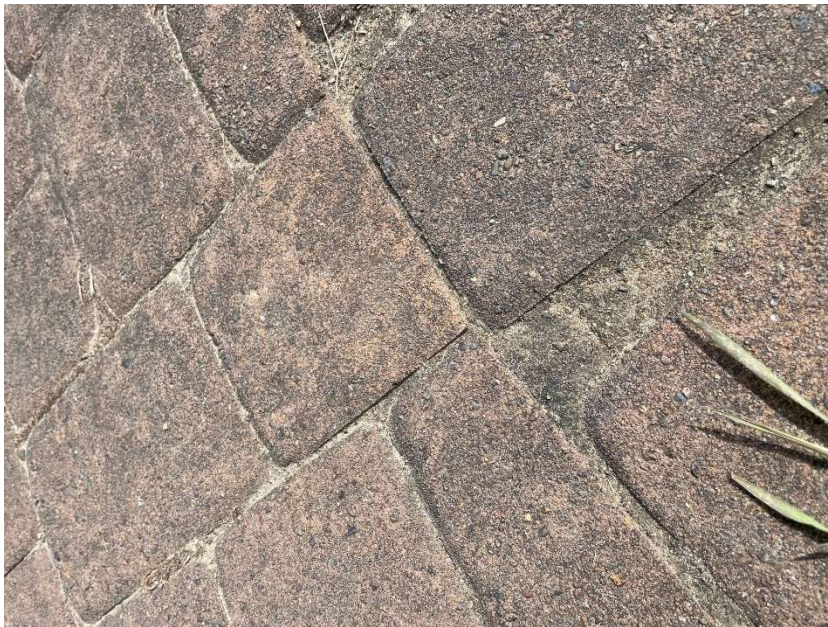
Regards

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

As I have highlighted, Mr. Chandler states within this email that "the term 'in line with' might be restated as viewline." Yet, again, even if this is the case, the City has previously addressed this issue (as detailed in my prior appeal submission and confirmed on Page 3 of the "Staff Report for Appeal,") and to reiterate, "*The primary intent of the [viewline] 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.*"

If these facts alone are not enough to consider acceptance of this appeal, I would alternatively argue that our deck should not be included in consideration of the viewline for basic commonsense reasoning AND based on prior precedent from the City Council. The City Planning Department initially deemed our viewline is determined by the western most walls of the adjoining bluff-adjacent properties, per a prior City Council decision. Therefore, our WALLS should fall behind the viewline. We agree with that, which is why we cancelled original plans after purchasing the property to add on to our house in a westerly direction where the **current** location of our deck and hot tub are. However, why is it that the construction of our deck is somehow subjected to a viewline drawn by the westernmost **WALLS** and the adjacent property **DECKS** are not used to determine the trajectory of that viewline for our **PROPOSED DECK**? Both of the decks to the north and south are "definite" structures, as the property to the north is

a wood deck with cement pillars, while the property to the south is composed of cement-type bricks that are MORTARED IN PLACE, and elevated above ground, creating a permanent structure, and not simply pavers that can be removed. If the planning department doubts this, I would encourage them to come to the property and try and lift these cement-type bricks out of place. See below close-up pictures of the western deck for 1500 Polaris (property immediately south of our lot) :



As previously stated, the City Planning Department relies on the decision regarding 2464 Beach Loop Drive (Resolution 01-03) with regards to the definition of the viewline, as determined in this appeal. Again, I also rely on their previously described terminology with respect to the **INTENT** of the viewline code, to protect the view of the ocean, which we are doing. However, I would also like to

present into evidence an aerial view of 2464 Beach Loop Drive, as taken from the City's directed website with respect to parcel lines (<https://www.arcgis.com/>), as of April of 2022:



As can be seen in this image (which I have personally noted with text boxes and red and orange lines for clarification), even the property at 2464 Beach Loop Drive has a deck (as I have outlined in orange) that extends west of two separate viewlines, as determined by the westernmost walls on the next-door bluff-adjacent properties (as I have outlined in red) or as determined by the westernmost decks/structures, if you use that definition (as I have outlined in blue). In fact, this deck can be seen in the earliest satellite view showing this property not long after construction was finished. This is highlighted in the next satellite image from 2005 (see below). Therefore, it is clear that this deck construction is from a time immediately around the period when the house construction was both approved and built:



Therefore, this historical example that the current City Planning Department is using to deny our application because of our proposed construction of a deck (which they are now deeming represents a “structure” that would extend into the viewline), actually shows that the prior City Council possibly did not consider decks to represent a “structure” that must conform to the viewline code and therefore did not use them to draw a viewline for the prior property at 2464 Beach Loop Drive, for the very reason that they do not impede ocean views from bluff-adjacent properties. In fact, the below email to our architect from the prior City Planner Megan Lawrence (in which Dana Nichols is cc’ed) on May 18, 2021, defined a deck as an “accessory structure,” stating that the viewline should not be drawn from this, as supported by the prior City Council precedent. However, that would also indicate that the intent of the viewline is to NOT CONSIDER accessory structures, such as decks, to be a significant obstruction to an ocean view, hence the decision not to use them to draw the viewline in the first place!

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

From: Megan Lawrence <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>
Cc: Dana Nichols <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

Yet, Ms. Nichols later “amended” this decision in the following below email:

From: Dana Nichols <dnichols@ci.bandon.or.us>
Sent: Tuesday, February 15, 2022 4:30 PM
To: info [waywardstudio.com](mailto:info@waywardstudio.com) <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

The following has been copied from the current Bandon city municipal code:

Chapter 17.02

DEFINITIONS

Sections:

17.02 Definitions.

Ordinance History: No. 1636, 1639

17.02 Definitions.

As used in Title 16 and Title 17, the masculine includes the feminine and neuter and the singular includes the plural. The following words and phrases, unless the context otherwise requires, shall mean:

"Deck" means a flat, floored, roofless structure, generally elevated above ground level, connected to or adjoining a building.

"Structure" means that which is built or constructed; an edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner and which requires location on the ground or which is attached to something having a location on the ground.

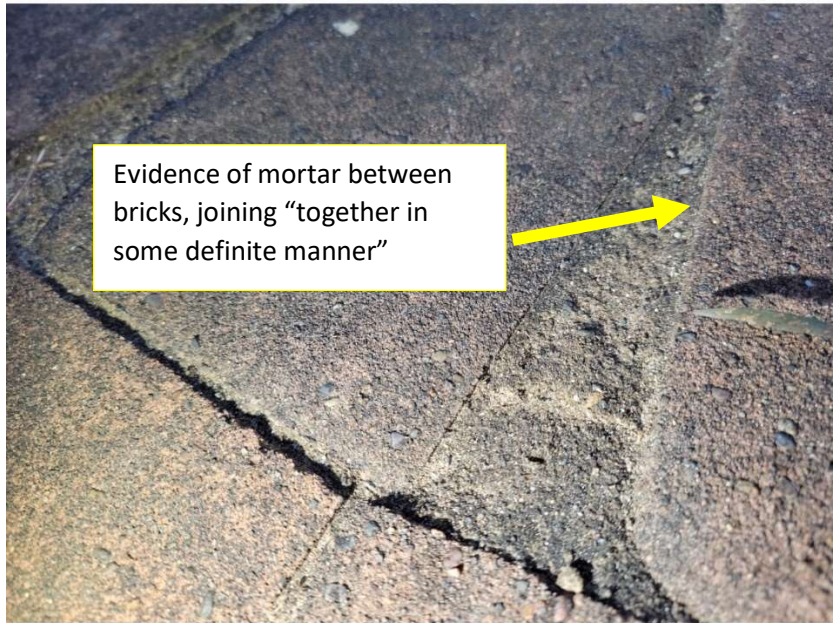
In using Ms. Nichols' "amended" conclusion regarding the definition of a structure, the built up/elevated, cemented, and mortared deck at 1500 Polaris should be considered a "structure" based on this definition. In addition, per the municipal code definition, this structure on the western portion of 1500 Polaris not only represents "that which is built or constructed", but as confirmed by the numerous below pictures, it is clearly a "piece of work artificially built up," "joined together in some definite manner and which requires location on the ground." It is immovable, and again, if there is any argument about that, I would encourage any of the interested parties to go over to the deck and try and move the cement blocks. You cannot, as they are secured in place. Please see the below additional pictures of the structure/deck from the west-facing portion of 1500 Polaris:



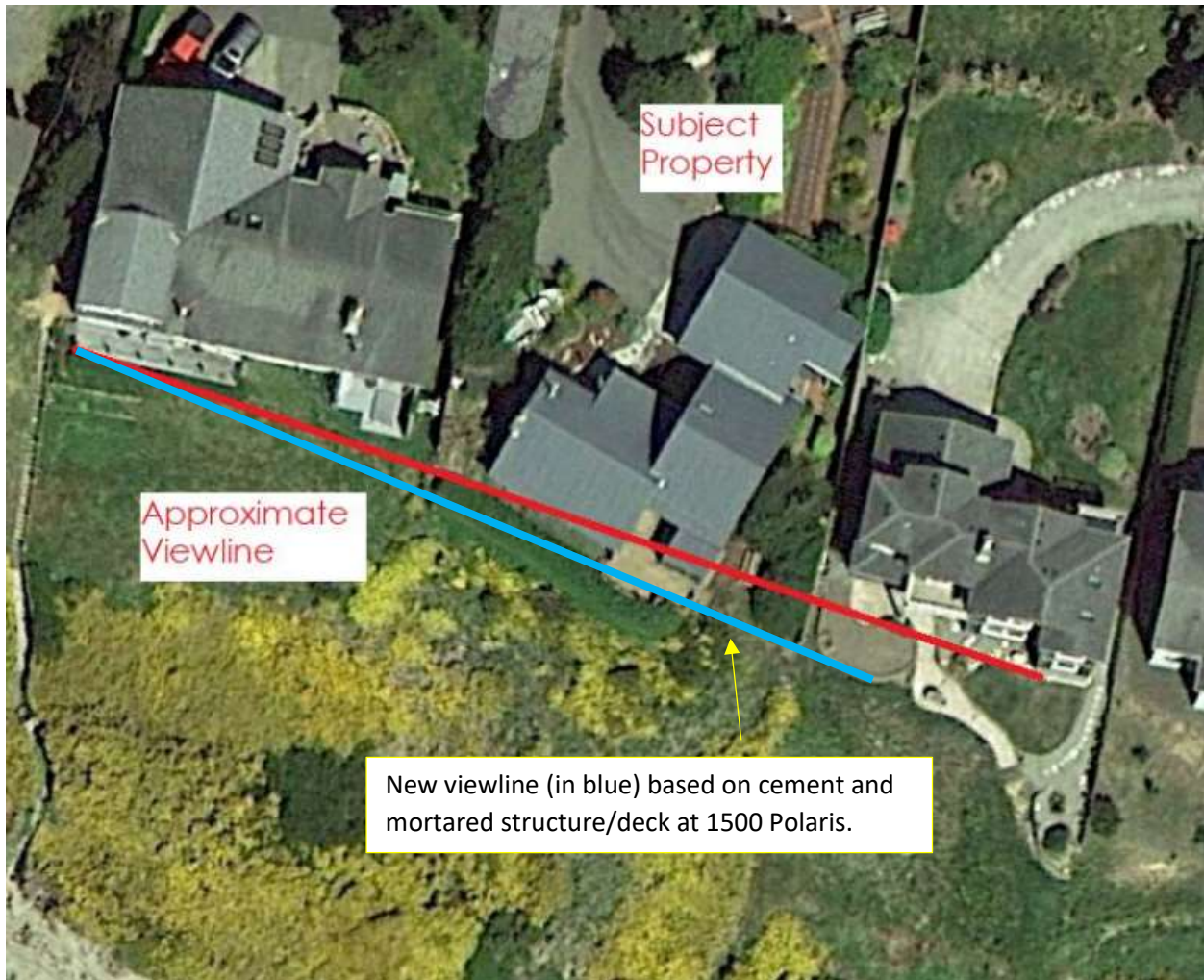
Evidence of deck/structure artificially built up from the ground



Evidence of mortar between bricks, joining "together in some definite manner"



Therefore, even in the strictest definitions, if you are going to propose that a deck should be built behind a viewline, even though it would have zero effect on the actual view, then we would argue that the real viewline, using the westernmost decks/structures from both adjacent properties, would make our proposed deck expansions well within compliance (see below) and also, additionally, "in line with **existing structures**" (our current deck), again, per code (as our proposed decks are east of the westernmost point of our current deck). Please see below image provided by the city, with revision based on true viewline taking into account the built-up/mortared, structure/deck at 1500 Polaris:



As the above satellite image taken from the city is clearly at an angle and not directly above the homes (as can be seen based on being able to see the windows of 1500 Polaris), the following image is a better representation of a true satellite image taken from Google Maps, with a yellow line indicating our opinion as to the true viewline, taking into account the structures/decks on BOTH the north and south adjoining properties:



As an entirely separate issue, we find it misleading that the *recently uploaded* Staff Report states on pages 5 and 6 that “A number of neighbors provided comments that staff found were not relevant to the criteria listed in the code: property values, primary v. secondary structures, and the height of the proposed structure.” It is clear now that the subject at hand is whether or not the ocean view will be impeded based on the lot and the topography of our land in conjunction with our neighbors. That was not aware to us or our neighbors when comments were sought at the time of public comment. When looking at the prior Type II Decision from March 23, 2022, the following was written by the City Planning Department:

During review, staff also found that the plans included deck construction and/or reconstruction that extended beyond the allowance described in Bandon Municipal Code 17.20.040, which states that new structures should be built in line with other existing structures and not extend farther out into the viewscape. Because the code says “should,” staff’s decision has inherent limited discretion, and the application was elevated to a Type II decision. Type II decisions require noticing of property owners within 100-feet to allow for public comment and also permit appeals of Staff decisions to the City’s hearings officer. The City received a number of comments from surrounding property owners, however most of the comments only provided support for the overall application and did not reference the criteria under which the decision is to be made. The City does not consider increases in property values or improvements to neighborhood character in decision-making. One comment did specifically reference the view line and stated that they did not think that views from surrounding properties would be obstructed.

Yet, in reality, **four** of our neighbors, in TWO separate comments, Mr. and Mrs. Maciejewski, and Dr. and Mrs. Bilderback (who have since **additionally** made further comments regarding the above with respect to this appeal) specifically mentioned the view NOT being impacted prior to the City Planning Department’s original decision. Additionally, Dr. and Mrs. Bilderback correctly noted that by relocating our hot tub from the current deck to the new proposed lower deck, it may actually IMPROVE the view for our southern neighbors. See below:

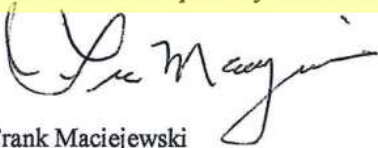
To : Dana Nichols, Planning Manager

March 15, 2022

From: Frank and Sandra Maciejewski
Owners of lot 1701 (3900 Beach Loop Dr SW)

Subject: Application 22-001 (4000 Beach Loop Dr SW)
Ben Vouk and Paul Michaels

We do not have any problem with the proposed new deck and renovation of existing garage and additional construction. We believe it would be an improvement to the property and the neighborhood. This would not impact anyone's view.



Frank Maciejewski



Sandra Maciejewski

From: Diane Bilderback <ddbilderback@gmail.com> on behalf of Diane Bilderback
Sent: Monday, March 21, 2022 11:20 AM
To: Planning@cityofbandon.org
Subject: Response to Type II Review

Follow Up Flag: Follow up
Flag Status: Completed

Dear Ms. Dana Nichols and Planning Department:

Thank you for the Notice of **Type II Review of application 22-001 at 4000 Beach Loop Drive SW, Bandon, OR**. We have carefully reviewed the Notice as well as the full proposal on the web.

David's father built our house at 3830 Beach Loop Drive SW in 1986. We made frequent visits to the neighborhood before assuming full-time residency in 2003. We are well acquainted with the property located at 4000 Beach Loop Drive SW. The house is architecturally noteworthy, and the wood interior is stunning. Unfortunately, the property did slip into disrepair as the previous owner entered old age. Making every effort to maintain the integrity and unique character of their new home, the current owners have planned extensive, compatible renovations to the house. To make the house more energy efficient, old windows will be replaced, the roof insulated and replaced and the old shingles on the exterior walls will be replaced with a more resilient, compatible siding.

According to the Notice and full plans, three new structures have been proposed: an addition to and renovation of an existing RV garage, a small kayak storage shed and an addition of two new low decks to an existing deck which predates 1986. The existing RV garage is situated low in a natural depression to the east of the main house, and its existing roof ridgeline extends only about 10 feet above the native grade of house and garage. It appears that the highest roof ridgeline of the proposed addition to the RV garage will add only about 10 feet to the existing roof ridgeline of the RV garage. This addition to the RV garage will not dominate the property or the neighborhood. The exterior design of the addition to the RV garage appears to be compatible with that of the main house. The small kayak storage shed will be located between the enlarged and renovated RV garage and also appears to be compatible with the addition to the RV garage and renovation of the main house. One new, low deck is proposed to the south of the existing deck to support a relocated hot tub. There will be two steps down to the new, lower deck from the existing deck and an additional single step from the new, lower deck to ground level. The relocation of the enclosed hot tub from the existing deck to the new, lower deck may improve the neighbor's view corridor. The second new, low deck will be five feet wide and will extend to the north along the front of the house. There will be two steps down to the new, low deck from the existing deck and an additional single step from the new, low deck to ground level. In our opinion, these two new, low decks will not obstruct any view.

We find the plans to be well-considered and fully support them. The proposed additions and improvements to 4000 Beach Loop Drive SW will enhance the property values of the neighborhood.

Best regards,
Diane and David Bilderback
3830 Beach Loop Drive Sw
Bandon, OR 97411

There were no comments from our neighbors to the contrary. There was only one other comment submitted at that time in support of our project, from Mr. and Mrs. Schaeffer, who are in the process of building a home and are not bluff-adjacent, nor impacted by any views from their home based on our proposed construction, though regardless are in support of our planned renovations. Our neighbors, in referencing proposed height of the project, character, etc., were simply commenting on the overall scope of the project and objective consequences to our remodeling, IN ADDITION TO COMMENTING ON A LACK OF IMPACT ON THE VIEW, therefore, their opinions should not be discounted because of that. Since that time, and as can be seen in the additional supporting online documents, our neighbors to the south at 1500 Polaris, Mr. and Mrs. Kempner, have also confirmed that, based on our lots, our proposed addition to our deck east of our current deck will not have any impact on their specific ocean view.

In conclusion, I find it concerning that the City of Bandon Planning Department would continue to push for a denial of our application for an expanded deck based on supposedly not being in compliance with a viewline aerial drawing (determined from homes that were built after ours), for a

deck that both of our potentially impacted neighbors (Maciejewskis at 3900 Beach Loop and Kempners at 1500 Polaris) have stated in writing will not impact any view of the ocean, based on their own observation. Once again, it is important to consider that if decks and accessory structures are going to be used to draw the viewline as Ms. Nichols stated in her February 2022 email, then both structures need to be included in this assessment, in which case there is no question that our proposed plans unequivocally fall behind the viewline. In contrast, if the written precedent regarding walls being used to determine the viewline, as suggested by the City Council in 2001, to enforce the viewline, then one must also not “cherry pick” from this prior decision and also include their language with respect to intent of the viewline, which is to preserve reasonable ocean views of our bluff-adjacent next-door neighbors. Not only does commonsense dictate that a low-lying deck not pose any threat to a human being’s ocean view, but our pictures from our prior appeal documentation also further support this objective fact, AND we have WRITTEN TESTIMONY from the involved neighbors that there is NO IMPACT on their ocean view/viewscape. Therefore, for a multitude of reasons and as demonstrated by using various reasonable interpretations of the code and accompanying municipal definitions , we encourage you to accept our appeal based on the clear weight of evidence in our favor.

Respectfully,

The image shows two handwritten signatures in black ink. The first signature is cursive and appears to read 'Paul J. Michaels'. The second signature is also cursive and appears to read 'Benjamin J Vouk'.

Paul J. Michaels and Benjamin J Vouk
4000 Beach Loop Drive SW
Bandon, OR 97411