

**STAFF REPORT
OF THE PLANNING DEPARTMENT
FOR THE CITY OF BANDON, OREGON**



FILE NUMBER: 22-060

LOCATION: 1137 Three Wood Drive
Map Number 28S-15W-36CC/TL 03313

PROPERTY OWNER: Rylie Hancock
APPLICANT: Rylie Hancock

REQUEST: **Conditional Use Permit** Approval to operate a Vacation Rental Dwelling in the Controlled Development 1 Zone.

REVIEWING BODY: City of Bandon Planning Commission

STAFF REPORT PREPARED BY: Henry O. Hearley, Associate Planner, Lane Council of Governments

NOTICE DATE: June 28, 2022

HEARING DATE: Thursday, July 21st, 2022, at 7:00 PM

APPLICABLE CRITERIA: BMC (Bandon Municipal Code) Chapters:
16.04 Administration & Enforcement
16.12 Conditional Uses
17.20 Controlled Development 1 Zone

I. Public Comment

Staff received one public comment in opposition from an adjacent property owner on July 11, 2022. The comment includes the addresses and signatures of approximately 23 individuals that presumably also live or own property near the subject property. The commenters cite several reasons why the Planning Commission must deny the application. Staff will summarize the comment below and provide staff's analysis, where appropriate. To read the comment in its entirety, please refer to **Attachment B**.

The commenters assert the proposed VRD does not comply with the Comprehensive Plan because the site size and dimensions do not provide adequate area for the proposed use. The commenters state the home is 664 square feet on the main floor and 600 square feet on the bedroom floor. The commenters question the proposed occupancy of nine persons based on this information.

Staff do know the total square footage of the home is 1,152 square feet, which is what's recorded on the application and on the Coos County Tax Assessor's website. From staff's understating of the floor plan of the home, there are no bedrooms located on the first floor. The first floor contains a great room, kitchen and dining room. For purposes of determining occupancy for maximum allowed guests, only

bedrooms are to be considered¹. The upper floor plan clearly shows the home contains three bedrooms. Per BMC occupancy is based on three persons per bedroom. Based on this ratio of occupants to bedrooms, the maximum allowable occupancy is nine. However, it is noted that other factors such as parking availability may be considered when determining maximum occupancy.

Staff are aware of the site's limitations with respect to the presence of wetlands and the restricted riparian area, but don't agree with the commenter that the presence of wetlands combined with the small outdoor seating area means guests will go over the fence and traverse on the sensitive areas on the property. The home has a back patio/porch that is fenced in. It is reasonable to believe the existence of a fence will deter guests from traversing on the sensitive areas as the commenter contends.

The commenters also raise concerns around traffic, parking, neighborhood compatibility, the driveway, and contend that because of the property's location on a cul-de-sac, on-street parking is limited. Next, the commenters raise an issue that staff thinks warrants denial of the application. The commenters note in Exhibit 1 that the property line between the subject property and the adjacent property bisects the driveway. This is in direct conflict with the applicant's proposed off-street parking plan and requires a signed agreement with the adjacent property owner because the driveway is under a reciprocal access easement (see **Attachment D** for reciprocal access easement). This requirement directly relates to Criterion #8 for VRDs. Staff will address this criterion later in this staff report.

II. Procedural – Required Burden of Proof

The property is located in the Controlled Development 1 Zone where Vacation Rental Dwellings are Listed as Conditional Uses (17.20.030). Because the single-family detached dwelling already exists, the Staff Report will review the criteria for conditional uses listed in Chapter 16.12 below.

Chapter 16.04 Administration & Enforcement

16.04.020 Types of Procedures and Actions.

A. All land use and development permit applications and approvals, except building permits, shall be decided by using the procedures contained in this chapter. The procedure "type" assigned to each application governs the decision-making process for that permit or approval. There are four types of permit/approval procedures as described in subsections (A) to (D) below.

3. Type III Procedure: Type III decisions are made after a public hearing, with an opportunity for appeal to the City Council. 4. Type IV Procedure: The Type IV procedure applies to the creation or revision, or large-scale implementation, of public policy. Type IV reviews are considered by the Planning Commission, which makes a recommendation to the City Council. City Council makes the final decision on a legislative proposal through the enactment of an ordinance.

¹ Bandon Municipal Code defines a bedroom for the purposes of determining occupancy for a VRD as an enclosed sleeping area with a built-in closet. BMC 16.12.090(K)(10).

FINDING: Consistent with Chapter 16.04 and Table 16.04.020, the City is processing the requested conditional use permit as a TYPE III application. A Type III application shall be reviewed by the Planning Commission with appeals heard by the City Council. Criterion met.

16.04.070 Type III Procedure

Type III decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal to the City Council.

A. Application Requirements.

1. Application Forms. Applications requiring Quasi-Judicial 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.

FINDING: The application contained the necessary information for staff review. The application was deemed “complete” for processing by City staff on June 27th, 2022.

B. Procedure.

1. Mailed and Posted Notice.

a. The City shall mail public notice of a public hearing on a Quasi-Judicial application at least 20 days before the hearing date to the individuals and organizations listed below. The Planning Department shall prepare an affidavit of notice, which shall be made a part of the file. The affidavit shall state the date Bandon Municipal Code, Title 16, Codified 06-03-2021 Page 9 of 60 that the notice was mailed. Notice shall be mailed to:

1) All owners of record of real property located within a minimum of 250 feet of the subject site;

2) Any person who submits a written request to receive a notice; and

3) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies. At a minimum, the Planning Department shall notify the road authority if different than the City of Bandon. 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.

b. At least 14 days before the first hearing, the applicant or applicant's representative shall post notice of the hearing on the project site in clear view from a public right-of-way using a poster format prescribed by the Planning Department. The applicant shall submit an affidavit of notice using a form provided by the City, which shall be made a part of the file. The affidavit shall state the date that the notice was posted.

c. At least 14 days before the first hearing, the City shall publish notice of the hearing on the City website, and/or have said notice published in a newspaper with local circulation.

FINDING: Notice was mailed to properties within 250-feet of the site on June 28, 2022. Additionally, posted notice on the city's website and posted at the site at least 14 days before the first hearing. Criterion met.

Chapter 16.12 – Conditional Uses

16.12.010 Authorization to grant or deny conditional uses

Conditional uses are those which may be appropriate, desirable, convenient or necessary in the zoning district in which they are allowed, but which by reason of their height or bulk or the creation of traffic hazards or parking problems or other adverse conditions may be injurious to the public safety, welfare, comfort and convenience unless appropriate conditions are imposed. Applications for uses designated in this title as conditional uses may be granted, granted with modifications or denied by the planning commission in accordance with the standards and procedures set forth in this chapter.

FINDING: The applicant has requested to operate a Vacation Rental Dwelling in the Controlled Development 1 Zone. This use is listed as a conditional use in the zone and the Planning Commission has the authority to review this application and determine if it may be approved, approved with conditions, or denied based on the criteria listed in the Bandon Municipal Code.

16.12.020 Authorization to impose conditions

In approving an application for a conditional use or the modification an existing and functioning conditional use, the city may impose, in addition to those standards and requirements expressly specified by this title, any additional conditions which the city considers necessary to assure that the use is compatible with other uses in the vicinity and to protect the city as a whole. These conditions may include but are not limited to:

- A. *Changing the required lot size or yard dimensions;*
- B. *Limiting the height of the building(s);*
- C. *Controlling the location and number of vehicle access points;*
- D. *Requiring additional right-of-way areas or changing the street width;*
- E. *Requiring public improvements, including, but not limited to streets, sidewalks, sewer and water line extensions, and bike paths;*
- F. *Changing the number of off-street parking and loading spaces required;*
- G. *Limiting the number, size and location of signs;*

- H. *Requiring diking, fencing, screening or landscaping to protect adjacent or nearby property;*
- I. *Requiring design features which minimize environmental impacts such as noise, vibration, air pollution, glare, odor and dust;*
- J. *Limiting the hours, days, place and manner of operations;*
- K. *Limiting or setting standards for the location and intensity of outdoor lighting;*
- L. *Setting requirements on the number, size, location, height and lighting of signs;*
- M. *Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas and drainage areas.*

FINDING: The Planning Commission may approve, approve with conditions, or deny the application. If additional conditions are needed to ensure this use fits in with the surrounding neighborhood, the Planning Commission may reference this list to impose such conditions.

16.12.040 Approval standards for conditional uses

The approval of all conditional uses shall be consistent with:

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

FINDING: The applicant’s findings do not elaborate on if the proposal is consistent with the Comprehensive Plan. Consistency with the Comprehensive Plan is a subjective approval criterion. Staff are inclined to believe that if the proposal can be approved then it is also found to be consistent with the Comprehensive Plan. There is evidence in the record rebutting the applicant’s findings in the form a comment (with accompanying Exhibits) from an adjacent property owner. The comment submitted raises concerns that relate to parking problems, traffic hazards, adverse impacts to public safety, welfare and convenience. The comment does contain reasonable evidence to support their assertions (see the Exhibits contained in the comment). Planning Commission will have to weigh the evidence in support of the application and the evidence in opposition to the proposal and determine if it is substantial. Generally substantial evidence in land use is evidence that a reasonable person would rely upon to reach a conclusion. Further, the standard of evidentiary review in land use is a preponderance of the evidence – meaning that it’s more likely than not to be true. The burden of proof in land use is on the

applicant. This burden requires the applicant to provide evidence that satisfies all of the applicable approval standards. The Planning Commission will have to determine whether or not the approval standards for a conditional use are met.

16.12.090 Standards governing conditional uses

K. Vacation Rental Dwelling. *Vacation rental dwellings (VRDs) are a conditional use in the CD-1, CD-2, and CD-3 zones, and are subject to the requirements of this chapter. Conditional use permits are a discretionary decision by the City subject to review by the Planning Commission. VRDs are not an outright permitted use in the CD-Zones.*

All vacation rental dwellings shall comply with the following provisions:

1. *The single-family detached dwelling proposed for the VRD shall be at least three years old, calculated from the date of issuance of a certificate of occupancy;*

FINDING: The home is a detached, single-family dwelling constructed in 2002. Criterion met.

2. *Less than 30% of the single-family detached dwellings within 250 feet of the subject property, and located in a zone where VRD's are allowed, are VRD's;*

FINDING: As seen on the Saturation Study for 1137 Three Wood Drive, there are presently nine single-family dwelling, one of which is a current vacation rental dwelling within 250-feet of the subject property. As such, this equates to a saturation rate of 11.11% (1 VRD/9 SFD = 0.1111*100 = 11.11% when rounded). Criterion met. See **Saturation Map contained in Attachment A.**

3. *In the CD-1 zone, single-family detached dwellings proposed for VRD status may be located only in the VRD-overlay zone as indicated on the attached map. VRD's are allowed as a conditional use in all areas of the CD-2 and CD-3 zones;*

FINDING: The home is located in the CD-1 and in the Vacation Rental Dwelling Overlay.

4. *The VRD Conditional Use Permit is valid for the named applicant of record and is not transferable to a new applicant. Upon change in named applicant due to sale, transfer, or other reason, the CUP shall become null and void. A new applicant shall apply for a new conditional use permit;*

FINDING: Rylie Hancock is the applicant of record and property owner, as seen on the application and Coos County GIS Parcel data. The VRD Conditional Use permit is only valid for the named applicant of record. Upon change in named applicant due to sale, transfer or other reason, the Conditional Use Permit shall become null and void.

5. *Tsunami Preparedness – all VRD's shall post the Bandon Tsunami Evacuation Route map in a conspicuous location within the dwelling;*

FINDING: The Tsunami Evacuation Route map shall be posted in the home in a conspicuous location.

6. *No more objectionable traffic, on-street parking, noise, smoke, light, dust, litter or odor is emitted from the VRD than a normal neighborhood dwelling;*

FINDING: There is evidence in the record, in the form of a public comment, from adjacent property owners that contend the proposed VRD will create objectionable traffic, traffic hazards, affect the welfare and convenience of the neighborhood. The subject property is at the end of a cul-de-sac that has a 22-foot-wide paved shared driveway with Lot 8 of the subdivision (according to commenters Exhibit 7). The property line between Lots 7 and 8 bisects the driveway and both properties operate the driveway under a reciprocal access easement. Staff do think there is adequate off-street parking in the form the area directly in front of the garage and inside the garage – those spaces can hold up to four vehicles – two in the driveway and two in the garage. None of the four vehicles would be interfering with the access in the shared driveway or require parking on the street. The commenters also cite instances of garbage/litter, but staff cannot directly tie this to the subject application and do not find it relevant to the application under consideration. Given the analysis above, staff do believe the proposed VRD would not create no more objectionable traffic, on street parking, noise, smoke, light, dust, litter or odor than a normal neighborhood dwelling. Criterion met.

7. *VRD's without private beach access shall provide written permission from all persons with an interest in a private beach access to be used by the VRD or positive action to notify renters of the location and required use of public beach access points shall be taken;*

FINDING: The subject property does not have private access or shared access to a beach. This criterion is not applicable.

8. *VRD's using a joint access driveway shall provide evidence that all other owners of property utilizing the private access agree to the proposed vacation rental dwelling using the private access;*

FINDING: The home does have a joint driveway. See **Attachment B** Reciprocal Access Easement recorded on August 6, 2002, between Lots 7 and 8 of Three Wood Drive. The applicant has not submitted evidence that all other owners of property utilizing the private access agree to the proposed VRD using the private access. As such staff cannot find this criterion met and recommend Planning Commission deny the application.

9. *VRD's will be maintained at or above the level of surrounding dwellings in the neighborhood, including landscaping, signage and exterior maintenance;*

FINDING: The applicant states in the written narrative that they will be contracting with a local landscaping company to maintain the yard on a weekly basis. The property owner will also be on site often to ensure signage, the exterior and interior of the home is well kept. The commenters have called into question the existence of the applicant's proposed property management contractor.

10. *There shall be an owner or designated local management person immediately available to handle complaints and problems on a 24-hour basis. The name and contact information of the designated local management person shall be kept on file in the Police Department and Planning Department. The owner or management person shall be available by phone and physically able to respond to the VRD within a reasonable time period;*

FINDING: The applicant states that housekeeping and garbage removal (garbage removal also to be provided by Les's Sanitary Garbage services) will be provided by Peggy's House Cleaning Services and that Ms. Peggy Reimer will be the 24/7 designated local management person.

The commenters contend the proposed business to handle cleaning of the home and designated as the local management person is inactive with the Oregon Business Registry (see Exhibit 8), however, whether a private business has a current license with the Oregon Business Registry is not an applicable approval criterion, so staff do not see that a reason for denial.

Additionally, the business, Peggy's Cleaning Service, is not proposed as the local management person, Ms. Reimer is, independent of the business itself.

However, if Planning Commission considers the evidence contained in Exhibit 8 will more likely than not cause Criterion #10 to not be met, then there may be a case to use the evidence contained in Exhibit 8 as a reason to support denial.

11. *VRD's shall have one off-street parking space for each bedroom in the VRD, but in no case have less than two off-street parking spaces. A bedroom is defined as an enclosed sleeping area with a built-in closet. Approved off-street parking areas shall be available to accommodate full occupancy of the VRD without the use of on-street parking;*

FINDING: The subject home has three bedrooms. The property can reasonably hold four off-street parking spaces; two in the driveway immediately in front of the garage and two in the garage itself. Criterion met.

12. *Evidence shall be provided ensuring that there is regular garbage removal from the premises;*

FINDING: The applicant has stated that the home is serviced by Les's Sanitary Garbage service. Criterion met.

13. *Compliance with all reporting and accounting requirements of the transient occupancy tax ordinance shall be done in accordance with the City of Bandon requirements;*

FINDING: The applicant agrees to comply with all reporting and accounting requirements. Criterion met.

14. *If the VRD activity ceases for a period of one year, or fails to be rented for more than 10 nights within a calendar year, as determined by the transient occupancy tax receipts and rental documentation, the VRD permit becomes null and void with no further proceedings;*

FINDING: The applicant understands and agrees to the activity requirement. Criterion met.

15. *Occupancy of any VRD shall not exceed 3 people per bedroom up to a maximum of 10 people. The Planning Commission shall determine the maximum occupancy of the VRD based upon bedrooms, parking, overall home floor plan and site plan, and other factors determined by the Commission based upon neighborhood characteristics outlined in item 6 above and others deemed significant. The occupancy determined by the Planning Commission may be less than the maximum allowed;*

FINDING: The proposed vacation dwelling contains three bedrooms; the applicant is requesting a maximum occupancy of 9 persons. An occupancy of 9 persons is consistent with the ratio of persons to bedrooms. The Planning Commission, through its review, may determine a maximum occupancy other than what is permitted by the set ratio of persons to bedrooms. Criterion met.

16. *VRD's require a conditional use permit (CUP). All criteria for a CUP must be addressed and included as part of the application materials. The applicant shall also address the surrounding neighborhood and provide information how the proposed VRD is appropriate given the specific characteristics of the neighborhood.*

FINDING: The applicant's materials are sufficient to process the application and assess conformance with VRD requirements. The initial application did not include evidence that all other owners of the joint access driveway agree to the proposed VRD. The applicant was informed of this requirement and is attempting to obtain the agreement, but to date has not been successful. It is because of this reason staff are recommending Planning Commission deny the application.

17. *The applicant shall provide an annual report to the Bandon Planning Department showing compliance with all conditions and ordinance requirements. Failure to provide such report shall result in revocation of the Conditional Use Permit.*

FINDING: The applicants agree to provide the annual report as necessary.

18. *Smoke detectors shall be provided in all potential and actual sleeping areas, whether or not such detectors are required by the building code.*

FINDING: The applicant has stated that the proposed VRD has smoke detectors installed in each room and will be maintained and replaced as appropriate.

II. Recommendations

Staff recommend denial of the application for failure to meet Criterion # 8. Planning Commission, through its review, may choose additional criteria or reasons as to why denial of the application is warranted. Staff find evidence insufficient to find Criterion is met and therefore denial is warranted.

Planning Commission is not bound by staff's recommendation.

III. Attachments

Attachment A – Applicant Materials

Attachment B – Public Comment Received

Attachment C – Notice Materials

Attachment D – Reciprocal Access Easement for Lots 7 and 8 of Three Wood Subdivision