

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



FILE NUMBER: 22-063

LOCATION: 2131 Beach Loop Drive, Bandon, OR 97411
Map Number 28S-15W-36BC/TL 00208

PROPERTY OWNER: Christopher and Renee Whitney
APPLICANT: Christopher and Renee Whitney

REQUEST: **Conditional Use Permit** Approval to operate a Vacation Rental Dwelling in the Controlled Development 1 Zone (CD-1)

REVIEWING BODY: City of Bandon Planning Commission

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

NOTICE DATE: July 27, 2022

HEARING DATE: Thursday, August 25, 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. Procedural – Required Burden of Proof

The property is located in the Controlled Development 1 Zone (CD-1) 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.*

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 July 1, 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 July 27, 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 provided Findings which staff concur with. The request is consistent with the comprehensive plan, the dimensional standards have been met as the house is already existing, the site is large enough to accommodate this use, served by adequate facilities, and the property owners will ensure that renters are held to a high standard. If approved, this use will not limit or impair surrounding properties in their ability to continue to use their property for outright permitted uses.

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. Based on the Coos County Assessor's Summary Report, the home was constructed in 1992. The subject dwelling is 1,947 square feet on a 0.17-acre lot.

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 2131 Beach Loop Drive, there are presently six single-family dwellings, 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 16.67%. Criterion met. See **Attachment B** for Saturation Map.

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 Controlled Development 1 Zone. A VRD is a conditionally permitted use in the Controlled Development Zone.

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: Mr. Christopher and Mrs. Renee Whitney will be the named applicants of record and are also the property owners. Upon change in named applicant due to sale, transfer, or other reason, the CUP shall become null and void. Criterion met.

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. Criterion addressed.

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: The property owner will contract with a local property management company (Tracy Powers with Vacasa) to prevent any objectionable traffic, on-street parking, noise, smoke, light, dust, litter or odor; no more than a normal neighborhood dwelling. Additionally, the property contains three off-street parking spaces (2-in the driveway and 1-in the garage). See applicant's site plan, as included in the application, showing off-street parking spaces. 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 beach access. The subject property is across the street from Face Rock Scenic Park. Guests will be able use the established public access to beach areas and public amenities. Maps and written instructions of this notice will be posted in the dwelling. Criterion 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 subject property does not utilize a joint access driveway. The existing single-family dwelling take its legal access directly from the City right-of-way into the property's driveway. The driveway used for access is the property owner's alone and not shared with an adjacent property or under the encumbrance of any easements. Criterion not applicable.

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 the owners have been and will continue to be very concerned about keeping the property clean and well-maintained. The property owners, in their statement, are committed to maintaining the VRD at or above the level of the surrounding dwellings in the neighborhood. The property owners have interior renovation plans in store for the property, as well plans for removing the hot tub and replacing it with a shuffleboard court. The Local Management Person will be tasked addressing any issues or concerns should they arise on a 24/7 basis. The applicant will be contracting out for regular landscaping and garbage service. Criterion met.

10. 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, as such at the dwelling shall have at least three off-street parking spaces for vehicles. As seen in Image 1 below, the subject property has three off-street parking spaces. The off-street parking spaces are in the form of one vehicle in a garage and two vehicles in the driveway. The subject home can accommodate the full occupancy without the use of on-street parking. Criterion met.

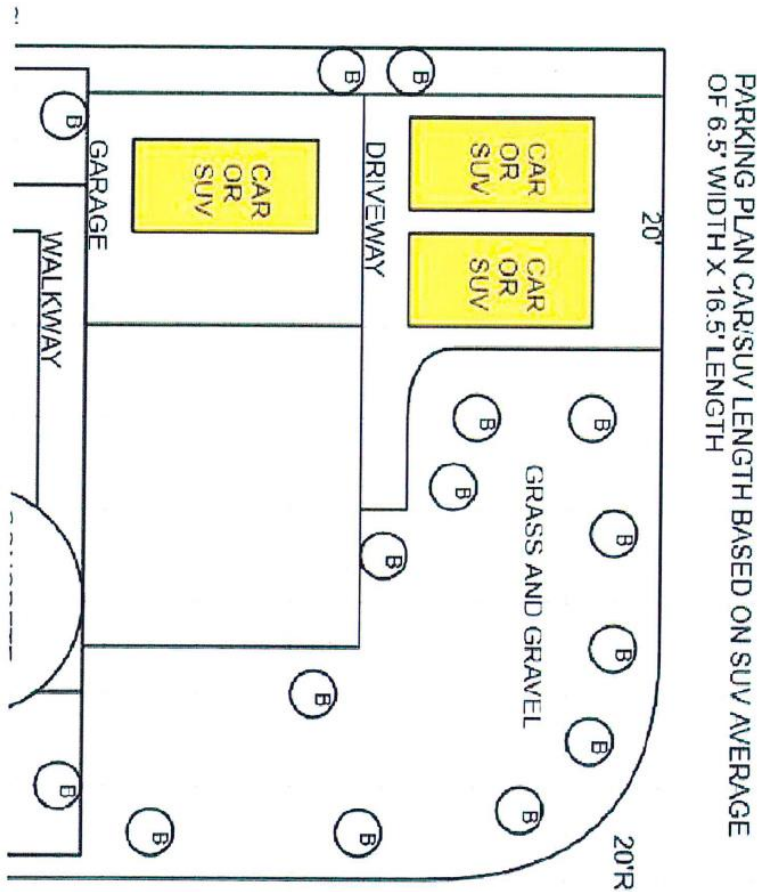


Image 1. Applicant's parking site plan. Three off-street parking spaces are provided.

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

FINDING: The applicant states that the property owner will contract with Bandon Disposal for regular garbage removal and disposal. Evidence of such regular service shall be provided to the City.

12. *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 has stated that Tracy Powers of Vacasa will be the designated Local Management Person. The applicant will be contracting with a local property management company to handle complaints and problems on a 24-hour basis. The contact information of the designated representative will be made available to the Bandon Police Department and Planning Department upon approval of the VRD. 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 proposing a maximum occupancy of eight persons, which is below the 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 proposed VRD is located in a neighborhood having a mixture of both existing single-family residences and permitted vacation dwellings (see Saturation Map). Criterion met.

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. Criterion met.

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 vacation rental dwelling already has smoke detectors in place in each bedroom. The Local Management Person and property owner will be responsible for ensuring that detectors remain operational. Criterion met.

II. Recommendations

Staff recommends approval of the application with the following conditions:

1. All proposals of the applicant shall become conditions of approval unless otherwise modified by the Planning Commission.
2. Approval of the plan is based on information provided by the applicant. No other approvals are expressed or implied. Any changes to the approved plan shall be submitted, in writing, and approved by the Planning Department prior to implementation.
3. All state, federal, and city permits associated with this approval shall be obtained by the applicant prior to operation.
4. The number of the 24-hour local contact shall be posted in a conspicuous place within the dwelling.
5. The Bandon Tsunami Route map shall be posted in a conspicuous location within the dwelling.
6. The number of guests is restricted to 8.
7. Trash shall be enclosed at all times.
8. Transient Occupancy Tax shall be paid, and annual reporting shall be completed as required; if the Transient Occupancy Tax account is not current, no rental shall be allowed while the account is in arrears.
9. Prior to advertisement or operation as a Vacation Rental Dwelling, the applicant shall provide a copy of their Traveler’s Accommodations License, issued by Coos Health and Wellness, to the City of Bandon.
10. Use of the dwelling for transient occupancy prior to licensure by Coos Health and Wellness and registration with the City’s Finance Department shall result in revocation of the Conditional Use permit.
11. Failure to conform to the conditions of approval shall result in revocation of the Conditional Use permit.

III. Attachments

Attachment A – Applicant Materials

Attachment B – Saturation Map

Attachment C – Notice Materials