

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



FILE NUMBER: 23-002

LOCATION: 0 8th Street SW
Map Number 28S-15W-25DB/TL 10000

APPLICANT: Mariah Grami
PROPERTY OWNER: Eudiptula Revocable Living Trust

REQUEST: Approval of a request to partition a 40,020 square foot lot into three parcels in the Residential 1 (R-1 Zone). Approval of a variance to allow for the creation of flag lots as part of the partition.

PLANNING STAFF: Dana Nichols, Planning Manager

IMPORTANT DATES: 250' Notice mailed: February 1st, 2023
First Evidentiary Hearing: February 23rd, 2023 at 7:00 PM
120 Day Deadline: June 1st, 2023

APPLICABLE CRITERIA: BMC (Bandon Municipal Code) Chapters:
16.08 – Land Divisions and Property Line Adjustments
16.36 – Adjustments & Variances
17.12 – Residential (R-1) Zone

I. Procedural – Required Burden of Proof

The development standards of Land Divisions and Property Line Adjustments are located in Chapter 16.08 and the Residential 1 (R-1) Zone are contained in Chapter 17.12 of the Zoning Code. Staff will also be reviewing the application for conformance with the approval criteria listed in 16.36, Adjustments & Variances due to the fact that the partition request includes flag lots. Bandon Code language will appear in italics.

Chapter 16.08 – Land Divisions and Property Line Adjustments

16.08.020 General Requirements

- A. *Subdivision and Partition Approval Through Two-Step Process. Applications for subdivision or partition approval shall be processed by means of a preliminary plat evaluation and a final plat evaluation, according to the following two steps:*

1. *The preliminary plat must be approved before the final plat can be submitted for approval consideration; and*
2. *The final plat must demonstrate compliance with all conditions of approval of the preliminary plat.*

Finding: The applicant has submitted materials for preliminary plat approval. A condition of approval shall be placed on the application that the final plat shall demonstrate compliance with all conditions of approval and the approved preliminary plat.

B. Compliance with Oregon Revised Statutes (ORS) Chapter 92. *All subdivision and partition proposals shall conform to state regulations in Oregon Revised Statute (ORS) Chapter 92 Subdivisions and Partitions.*

Finding: Staff sent the application to the Coos County Surveyor and Cadastral Cartographers for additional review of ORS Chapter 92 requirements. Staff finds this criterion has been met.

C. Conversion Plans. *At the time an application is made to divide a parcel into any number of lots, a conversion plan must also be submitted, if the parcel will have additional division potential after the current proposal is completed. The conversion plan must show how the parcel can be ultimately divided into the maximum practical number of lots allowed by the zoning. The conversion plan must provide all of the graphic information required for a land subdivision or partition, as applicable, based on the ultimate number of lots allowable under the zoning. The conversion plan must show how the presently proposed division will be compatible with the allowable ultimate land division. The conversion plan must be simultaneously recorded with the approved partition plat and shall be binding unless amended with the Reviewing Body's approval. (See also, Section 16.08.040 Pre-Planning for Large Sites.)*

Finding: This is the final possible partition for this lot. Therefore, staff finds this criterion does not apply.

D. Adequate Utilities. All lots created through land division shall have adequate public utilities and facilities such as streets, water, sewer, gas, and electrical systems, pursuant to Titles 12 & 13. These systems shall be located and constructed underground where feasible.

E. Adequate Drainage. All subdivision and partition proposals shall have adequate surface water drainage facilities that reduce exposure to flood damage and improve water quality. Water quality or quantity control improvements may be required, pursuant to Chapter Title 13.

F. Adequate Access. All lots created or reconfigured shall have adequate vehicle access and parking, as may be required, pursuant to Titles 16 and 17.

Finding: The applicant's site plans show utilities, drainage, and access for each proposed parcel. All lots have access from 8th Street, which contains the necessary utilities and facilities to serve these lots. Staff finds this criterion has been met.

16.08.060 Preliminary Plat Submission Requirements

Applications for Preliminary Plat approval shall contain all of the following information:

A. General Submission Requirements.

1. *Information required for a Type III review (see Section 16.04.070); and*
2. *Public Facilities and Services Impact Study. The impact study shall quantify and assess the effect of the development on public facilities and services. The City shall determine the scope of the study, which shall address, at a minimum, the transportation system, including required improvements for vehicles and pedestrians; the drainage system; the parks system (for subdivisions and planned unit developments of 20 or more dwelling units); water system; and sewer system. For each system and type of impact, the study shall propose improvements necessary to meet City standards under adopted ordinances and facility master plans. The City may require a Traffic Impact Analysis.*

Finding: The applicant submitted all materials required for a Type III review. Staff has not required a Public Facilities and Services Impact Study due to the scope of this request. Staff finds these criteria have been met.

B. Preliminary Plat Information. *In addition to the general information described in subsection A, above, the preliminary plat application shall consist of drawings and supplementary written material (i.e., on forms and/or in a written narrative) adequate to provide all of the following information, in quantities determined by Reviewing Body:*

1. *General information:*
 - a. *Name of subdivision (partitions are named by year and file number), which shall not duplicate the name of another land division in Coos County (check with County Surveyor);*
 - b. *Date, north arrow, and scale of drawing;*
 - c. *Location of the development sufficient to define its location in the city, boundaries, and a legal description of the site;*
 - d. *Zoning of parcel to be divided, including any overlay zones;*
 - e. *A title block including the names, addresses, and telephone numbers of the owners of the subject property and, as applicable, the name of the engineer and surveyor, and the date of the survey; and*
 - f. *Identification of the drawing as a "preliminary plat."*

Finding: The applicant submitted materials required on the preliminary plat, which was reviewed during the Completeness Check (see attached). Staff finds this criterion has been met.

2. Existing Conditions. *Except where the Reviewing Body deems certain information is not relevant, applications for Preliminary Plat approval shall contain all of the following information on existing conditions of the site:*
 - a. *Streets: Location, name, and present width of all streets, alleys, and rights-of-way on and abutting the site;*

- b. *Easements: Width, location and purpose of all existing easements of record on and abutting the site;*
- c. *Utilities: Location and identity of all utilities on and abutting the site. If water mains and sewers are not on or abutting the site, indicate the direction and distance to the nearest one and show how utilities will be brought to standards;*
- d. *Ground elevations shown by contour lines at two-foot vertical intervals. Such ground elevations shall be related to some established benchmark or other datum approved by the County Surveyor; the Reviewing Body may waive this standard for partitions when grades, on average, are less than 6 percent;*
- e. *The location and elevation of the closest benchmark(s) within or adjacent to the site (i.e., for surveying purposes);*
- f. *The Base Flood Elevation, per FEMA Flood Insurance Rate Maps, as applicable;*
- g. *North arrow and scale; and*
- h. *Other information, as deemed necessary by the Reviewing Body for review of the application. The City may require studies or exhibits prepared by qualified professionals to address specific site features and code requirements.*

Finding: The applicant submitted materials required on the preliminary plat, which was reviewed during the Completeness Check (see attached). Staff finds this criterion has been met.

- 3. *Proposed Development.* *Except where the Reviewing Body deems certain information is not relevant, applications for Preliminary Plat approval shall contain all of the following information on the proposed development:*
 - a. *Proposed lots, streets, tracts, open space, and park land (if any); location, names, right-of-way dimensions, approximate radius of street curves; and approximate finished street center line grades. All streets and tracts that are being held for private use and all reservations and restrictions relating to such private tracts shall be identified;*
 - b. *Easements: location, width and purpose of all proposed easements;*
 - c. *Lots and private tracts (e.g., private open space, common area, or street): approximate dimensions, area calculation (e.g., in square feet), and identification numbers for all proposed lots and tracts;*
 - d. *Proposed uses of the property, including all areas proposed to be dedicated as public right-of-way or reserved as open space for the purpose of surface water management, recreation, or other uses;*
 - e. *Proposed public street improvements, pursuant to Chapter 16.40;*
 - f. *On slopes exceeding an average grade of 10 percent, as determined by the City Engineer, the preliminary location of development on lots (e.g., building envelopes), demonstrating that future development can meet minimum required setbacks and applicable engineering design standards;*
 - g. *Preliminary design for extending City water and sewer service to each lot, per Chapter 16.40;*

- h. *Proposed method of storm water drainage and treatment, if required, pursuant to Chapter 16.40;*
- i. *The approximate location and identity of other utilities, including the locations of street lighting fixtures, as applicable;*
- j. *Evidence of compliance with applicable overlay zones, including but not limited to City of Bandon Flood Plain Overlay and Hazards Overlay; and*
- k. *Evidence of contact with the applicable road authority for proposed new street connections.*

Finding: The applicant submitted materials required on the preliminary plat, which was reviewed during the Completeness Check (see attached). Staff finds this criterion has been met.

16.08.050 Flag Lots

A. Flag Lot Standards.

1. *A deep lot may be split into a front and rear lot, creating a maximum of one flag lot, if the original lot cannot be otherwise divided separately or in conjunction with adjoining lots.*
2. *Flag lots which would take access on an identified future or existing collector street shall not be allowed.*
3. *Flag lots which would take access on a local street shall only be allowed through the granting of a variance by the planning commission in conformance with Chapter 16.36. If granted, the divider shall recognize that the subject lots have no further division potential. In addition to variance approval and the requirements of this chapter, any flag lot shall meet the following standards:*
 - a. *The length, width and yard dimensions of each resulting lot must be at least the minimum required in the zoning district, with the front lot retaining a minimum lot depth of ninety (90) feet.*
 - b. *The rear lot must have access to the street that is at least twenty-five (25) feet wide with twenty-five (25) feet of street frontage. The “flagpole” access must be conveyed with ownership of the rear lot and be an integral part of the rear lot;*
 - c. *The driveway access shall be improved to a permanent surface of asphaltic concrete, Portland cement, or gravel acceptable to the public works department with a minimum width of twelve (12) feet. Shared access agreements benefiting two adjacent parcels may be allowed where two accesses are less than fifty (50) feet apart or the resulting configuration of the lots permits shared access.*

Finding: The applicant has submitted a plan that shows the partition of a 40,020 square foot lot that contains one lot with 70 feet of street frontage and two lots that each have 25 feet of street frontage. Generally, the city’s code only permits one flag lot, however the applicant has suggested that more efficient use of the property would include two flag lots, with or without a shared driveway. Since the applicant has applied for a variance, I think it’s the Commission’s prerogative as to whether or not they want to approve a request for a flag lot that falls outside of the standard listed above. The Commission can find that that there is sufficient evidence to support the applicant’s proposal for a variance to the

minimum lot frontage provides for a more reasonable and efficient use of the residential land, creating two equally sized lots, rather than one large and one small.

That being said, if the Commission wants to approve the request as presented, Staff recommends adding a condition of approval for a shared driveway with the specifications provided. The two 25 foot lots each having their own driveway could create a conflict, whereas a shared driveway minimizes impact.

16.08.070 Preliminary Plat Approval Criteria

A. *Approval Criteria.* *The Reviewing Body may approve, approve with conditions, or deny a preliminary plat. The Reviewing Body decision shall be based on findings of compliance with all of the following approval criteria:*

1. *The land division application shall conform to the requirements of Chapter 16.08;*

Finding: The land division partition has been processed as a Type III application because the application is also requesting a variance, with the correct applications filed, notices sent, and reporting prepared.

2. *All proposed lots, blocks, and proposed land uses shall conform to the applicable provisions of Title 17 (Zoning);*

Finding: The applicant's proposed lot configuration meets the requirements of the underlying Residential-1 (R-1) Zone. Minimum lot size in the R-1 zone is 5,400 square feet. Each property meets or exceeds this requirement.

3. *Access to individual lots, and public improvements necessary to serve the development, including but not limited to water, sewer, and streets, shall conform to Title 17;*

Finding: The proposed land division has access to city water, sewer, and streets.

4. *The proposed plat name is not already recorded for another subdivision, and satisfies the provisions of ORS Chapter 92;*

Finding: This application is for a partition and not a subdivision. There does not appear to be an underlying subdivision from which the original lot was created.

5. *The proposed streets, utilities, and surface water drainage facilities conform to City of Bandon adopted master plans and applicable engineering standards, and allow for transitions to existing and potential future development on adjacent lands. The preliminary plat shall identify all proposed public improvements and dedications;*

Finding: The proposed preliminary plat shows water, sewer, and street connections. No new streets are being created. No extensions of sewer or water mains are requested as part of this approval.

6. *All proposed private common areas and improvements, if any, are identified on the preliminary plat and maintenance of such areas is assured through appropriate legal instrument;*

Finding: There are no proposed common areas.

7. *Evidence that any required state and federal permits, as applicable, have been obtained or can reasonably be obtained prior to development; and*

Finding: There is no evidence that state and/or federal permits are required for the proposed land division.

8. *Evidence that improvements or conditions required by the City, road authority, Coos County, special districts, utilities, and/or other service providers, as applicable to the project, have been or can be met.*

Finding: No improvements are required by the City of Bandon. Conditions of approval are included below and can be met by the applicant.

Chapter 16.36 – Adjustments & Variances

16.36.040 Variances

- A. *Applicability. A Variance is a variance that does not otherwise meet the criteria under Section 16.36.030.*

Finding: Staff finds that this variance cannot meet the criteria under section 16.36.030 and thus is processed as a Type II Variance.

- B. *Approval Criteria. The Reviewing Body through a Type III procedure may approve a Variance upon finding that it meets all of the following criteria:*

1. *The Variance is necessary because the subject Code provision does not account for special or unique physical circumstances of the subject site, existing development patterns, or adjacent land uses. A legal lot determination may be sufficient evidence of a hardship for purposes of approving a variance;*

Finding: The subject property has a depth of over 260 feet, which is much deeper than many of the other existing lots in Bandon (generally these are bisected in some way by another access point, be it a street or an alley). Since this lot doesn't have a separate access point, the property can only be subdivided in a way that makes long, skinny lots without creating islands.

2. *The Variance is the minimum necessary to address the special or unique physical circumstances related to the subject site;*

Finding: The applicant is requesting two flag lots so that each deep lot can be accessed by 8th St. The Planning Commission may find that this is the minimum necessary to develop this efficient pattern, or they may find that only one flag lot is acceptable since that is the prescribed code standard.

- 3. The need for the Variance is not self-imposed by the applicant or property owner. (For example, the Variance request does not arise as a result of a property line adjustment or land division approval previously granted to the applicant);*

Finding: The applicant has applied for two prior land divisions (partitions) that were approved in 2021 and 2022. The applicant chose to conduct a serial partition, rather than a subdivision, which would have required the proposed land division to be reviewed and considered as a whole. The Planning Commission may find that the proposed partition is the most efficient use of the land, regardless of prior land division applications and approvals, or they may find that the need for a variance has arisen because of a prior action.

- 4. The Variance does not conflict with other applicable City policies or other applicable regulations;*

Finding: The variance request does not conflict with other applicable City policies or regulations. Staff finds this criterion has been met.

- 5. The Variance will result in no foreseeable harm to adjacent property owners or the public; and*

Finding: The variance is a request to partition a lot with a road access location less than the required 40 feet. Staff finds that this will not create any foreseeable harm to adjacent property owners or the public, as long as there is a condition added required a shared driveway.

- 6. All applicable building code requirements and engineering design standards shall be met.*

Finding: Staff recommends this be added as a condition of approval. No building codes or design standards are affected at this time by the proposal.

III. Recommendations

The application may be approved, approved with conditions, or denied. Staff recommends that the planning commission consider the above discussion in the staff report and determine whether or not this application has met the burden of proof to be approved.

If the Planning Commission chooses to approve the application, staff recommends the following conditions:

1. The applicant shall amend the plan to include a shared access easement between parcel 1 and parcel 2, and that the driveway shall be improved to a permanent surface of asphaltic concrete, Portland cement, or gravel acceptable to the public works department with a minimum width of twelve (12) feet.

2. All applicable building code requirements and engineering design standards shall be met.
3. The final plat shall demonstrate compliance with all conditions of approval of the approved preliminary plat.
4. The applicant shall submit a final plat to the City of Bandon within two years of approval of the preliminary plat. This plat must conform to the requirements of ORS 92 and Chapter 16.08.090 of the Bandon Municipal Code.