

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



**FILE NUMBER:** 23-006

**LOCATION:** 535 2<sup>nd</sup> St SE  
Map Number 28S-14W-30BC/TL 5200

**APPLICANT:** Coos Curry Consulting  
**PROPERTY OWNER:** Beach Loop Realty, LLC

**REQUEST:** Approval of a request for a variance to Bandon Municipal Code 17.90.100(A)(1)(c) to site an internally illuminated sign on property located at 535 2nd St SE (28S-14W-30BC, 5200) zoned Old Town Commercial (C-1) in the Architectural Review Overlay.

**PLANNING STAFF:** Dana Nichols, Planning Manager

**IMPORTANT DATES:** 250' Notice mailed: March 2<sup>nd</sup>, 2023  
First Evidentiary Hearing: March 23<sup>rd</sup>, 2023 at 7:00 PM  
120 Day Deadline: May 19<sup>th</sup>, 2023

**APPLICABLE CRITERIA:** BMC (Bandon Municipal Code) Chapters:  
16.36 – Adjustments & Variances  
17.40 – Old Town Commercial (C-1) Zone  
17.84 – Architectural Review (AR) Overlay  
17.90 - Signs

**I. Procedural – Required Burden of Proof**

The development standards of the Old Town Commercial and Architectural Review Overlay zones are located in Title 17 and the criteria for approving a variance are located in Chapter 16.36. The applicant is requesting to construct a sign that is internally illuminated, which is prohibited in the Architectural Review overlay zone, as described in Chapter 17.90, Signs.

**Chapter 17.40 – Old Town Commercial (C-1) Zone**

**17.40.050 Signs.**  
See Chapter 17.90 Signs

**Chapter 17.90 – Signs**

## 17.90.100 Old Town (C-1) and Architectural Review Overlay (AR)

- A. *Exterior Signs Requiring a Certificate of Appropriateness. Exterior signs within the Architectural Review Overlay Zone of this section must receive a COA before installation or before any change in design, size, color(s), or location is made. Signs on properties in the C-2 and LI zones shall be exempted from the architectural review overlay zone sign regulations, but shall be subject to the sign regulations applicable to the underlying zone.*

**Finding:** The property is located in the Old Town Commercial zone (C-1) and is subject to the requirement for a Certificate of Appropriateness.

1. *Criteria. In considering applications for COA's, signs shall be reviewed for their compliance with the following requirements:*
  - c. *Internally illuminated signs are prohibited. Neon tubing signs shall not be considered internally illuminated signs.*

**Finding:** The proposed sign is described as, "LED lit channel letters," which is considered an internally illuminated sign. Staff finds that this sign request requires a variance in order to be approved.

## 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 III 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 applicant prepared Findings which have been attached. The applicant has stated that the subject property is one of four C-1 businesses located east of the Old Town arches, three of which have existing internally illuminated signs. Additionally, across Highway 101, there are other businesses that have internally illuminated signs. The applicant further states that the proposed sign is compatible with existing development patterns.

Staff finds that there are no special or unique physical circumstances affecting the subject site. Existing development patterns along the Highway 101 corridor do include some permitted internally illuminated signs, primarily in the C-2 and LI zone, which are not subject to this prohibition. The signs along the north side of Highway 101 (on which the subject property is located) are more complicated. Some are not approved (out of compliance), while others are non-conforming. The Planning Commission may want to discuss whether “existing development patterns” should include non-compliant and/or non-conforming signs.

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

**Finding:** Staff agrees with the applicant’s finding that if the Planning Commission finds that there is a special or unique circumstance related to the subject property that the requested variance is the minimum necessary.

- 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 stated: “The need for the Variance has not been self-imposed by the applicant/property owner. This situation has resulted from the blanket application of a regulation [BMC 17.90.100 (A)(1)(c)], “Internally illuminated signs are prohibited. Neon tubing signs shall not be considered internally illuminated signs.” to this particular property just because it is located in the C-1 Zone, without considering the previously described special and unique physical circumstances of the subject site, existing development patterns, or adjacent land uses and signs.”

Staff has a hard time finding that this variance request is not self-imposed since the when the property was purchased this code provision prohibiting internally illuminated signs was in place. Surrounding property uses with approved internally illuminated signs are located in different zones.

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

**Finding:** Staff agrees with the applicant’s finding that the variance request does not conflict with other applicable City policies or regulations.

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

**Finding:** Staff agrees with the applicant’s finding that the variance will not result in foreseeable harm to adjacent property owners or the public. Staff disagrees that the gas station sign is non-conforming as it was approved as a neon-tubing sign and does not exceed façade coverage. This may be a compliance issue, but shouldn’t create or support the continuation of non-compliant signage. Staff does not find that building facades with different signage designs are harmful and does not account for property values in making land use decisions.

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

**Finding:** Staff agrees with the applicant's findings that the internally illuminated sign will meet all applicable building code requirements and engineering design standards.

### **III. Recommendations**

The application may be approved, approved with conditions, or denied. Staff recommends that the planning commission consider whether there is a unique circumstance related to the site and whether the need for the variance is self-imposed. The Planning Commission may approve a Variance only upon finding that it meets all of the criteria listed above. Staff prepared findings that question whether the burden of proof has been met, particularly related to 16.36.040(B) (1) and (3).

If the Planning Commission chooses to approve the application, Staff recommends the following conditions of approval:

1. All proposals of the applicant shall become conditions of approval unless otherwise modified by the reviewing body.
2. The applicant shall submit applications for Certificate of Appropriateness and Zoning Compliance (sign permit) before the sign can be approved.
3. The applicant shall submit a Floodplain Development permit prior to sign installation.