

City of Bandon

CITY COUNCIL AGENDA DOCUMENTATION	DATE: 07/17/2023
SUBJECT: Determination of Scope of Review for appeal of Planning Commission decision, PA# 23-037	ITEM NO: 3.1

BACKGROUND:

On June 28th, 2023, the Planning Commission reviewed a request from Staff to consider the operation of a Vacation Rental Dwelling at 850 Portland Ave SW. The City initiated a public hearing due to failure to pay transient occupancy taxes for a period of at least one year. Upon review, the property had never received a conditional use permit because operation of the property as a Vacation Rental Dwelling pre-dated the regulating ordinance by a few months. Staff stated that this could be a non-conforming use, in which case BMC 17.108.050(A) (*If a non-conforming use involving a structure is discontinued from use for a period of one year, further use of the property shall be for a conforming use*) would apply. The Planning Commission made a motion to disallow the continued use of this property as a vacation rental dwelling for failure to pay transient occupancy taxes for a period of one year.

An appeal was received by a representative of the property owner, Brad Owens of Exclusive Property management, who testified during the hearing.

The applicant's appeal materials are attached.

FISCAL IMPACT:

None.

RECOMMENDATION:

The Council must determine the scope of review, from one of the following options:

1. Restricted to the record of the decision being appealed;
2. Limited to admission of additional evidence on such issues of additional evidence as the reviewing body determines necessary for a proper resolution of the matter;
3. A *de novo* hearing on the merits of the appeal.

SUBMITTED BY:

Dana Nichols

Dana Nichols, *Planning Manager*

Exclusive Property Management, Inc.
PO Box 979
Bandon, OR 97411

City of Bandon City Council
555 Highway 101
Bandon, Oregon 97411

July 11, 2023

Council Members,

I would like to appeal the decision of the Planning Commission on June 22nd to discontinue the use of the vacation rental at 850 Portland Ave SW. I testified in writing and orally at the hearing as a representative of the owner, Connie Markovich. I believe that even though the Planning Commission decided in favor of the City's current ordinances, any reasonable individual can see that there are extenuating circumstances for this property.

The house had a water tank in the attic which burst and flooded the whole bottom floor causing extensive damage. Every room on the first floor suffered some level of damage, including doors, door frames, carpets, floor tiles, subfloors, kitchen cabinetry, appliances, and every piece of sheetrock on every wall. (I have provided pictures that show water pouring out of a ceiling light fixture and carpets completely underwater.)

Under historically normal circumstances, it seems that a year should be more than sufficient enough time to resolve a situation like this. But post-COVID supply chain issues have impacted established timelines and caused a one-year deadline to become unattainable for this big of an unforeseen, emergency project. And given the massive undertaking of a project like this, where attempts to resolve one issue only uncovers another issue, those supply chain issues paired with insurance delays and backed up contractors only made that deadline even more out of reach.

I was not aware of any code that allowed hardship cases any kind of extension, so I earnestly hoped that those forces outside of our control would resolve themselves with enough time to make that deadline. A deadline, that for the City's code and, more importantly, employees supported by this vacation rental, we desperately wanted to meet. We certainly did, however, notify the City quarterly that the house was undergoing construction, a fact which was supported by the City's Planning Manager, Dana Nichols, during the hearing.

As with many of you, we and the people that our business supports are still feeling the negative financial effects of COVID.

Thank you for your consideration,



Brad Owens

Administrative Assistant



NOTICE OF DECISION

CITY OF BANDON PLANNING COMMISSION

On June 22nd, 2023, the Planning Commission of the City of Bandon acknowledged non-conforming use of VRD located at 850 Portland Ave SW and denied continued use of their vacation rental due to non action for a period of one year. You have received this notice because you participated in the Public Hearing.

Property Owner:	Connie Markovich
Applicant(s):	
Property Location:	850 Portland Ave SW (28S-15W-25CB TL 1600)
Proposal:	"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 receipt and rental documentation, the VRD becomes null and void" BMC 16.04
Applicable Criteria List: (Bandon Municipal Code)	16.04, Administration and Enforcement 16.12, Conditional Uses 17.20, Controlled Development 1 (CD-1)

Date of Public Hearing:	Thursday, June 22, 2023
Date of Mailing:	Thursday, June 29 th , 2023
Appeal Deadline:	Wednesday, July 12 th , 2023
Date Decision is Final:	Thursday, July 13 th , 2023

Materials concerning this decision are available to review online through the Planning Department’s webpage at www.cityofbandon.org. Copies may be purchased from Bandon City Hall located at 555 Hwy 101, Bandon, Oregon.

This decision may be appealed to the City Council within 20 days following the date of decision. Appeals must be submitted in writing and all fees paid no later than **Wednesday, July 12th, 2023**. If the application is not appealed, the decision will become final on **July 13th, 2023**.

If you would like to appeal this decision, the following standards must be met and steps completed:

1. **Who May Appeal:** The applicant or owner of the subject property or any other person who testified orally or in writing during the subject public hearing before the close of the record.
2. **Notice of Appeal:** Any person with standing may appeal a Type III Quasi-Judicial Decision by filing a Notice of Appeal according to the following procedures.
3. **Content of the Appeal:** The Notice of Appeal shall be accompanied by the required filing fee (\$250 + Actual Cost) and shall contain:
 - a. An identification of the decision being appealed, including the date of the decision;
 - b. A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
 - c. A statement explaining the specific issues being raised on appeal; and
 - d. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period.

If you need additional information or have questions about the appeals process, please contact the Planning Department at (541) 347-7922 or via e-mail at planning@cityofbandon.org.

