

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



FILE NUMBER: 23-037

LOCATION: 850 Portland Ave SW
Map Number 28S-15W-25CB/TL 1600

PROPERTY OWNER: Constance Brigham Trust
APPLICANT: City of Bandon

REQUEST: **The City has initiated this public hearing due to failure to pay transient occupancy taxes for a period of at least one year.**

REVIEWING BODY: City of Bandon Planning Commission

STAFF REPORT PREPARED BY: Dana Nichols, Planning Manager

NOTICE DATE: June 1, 2023

HEARING DATE: Thursday, June 22nd, 2023, at 7:00 PM

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

I. Procedural – Required Burden of Proof

The property is located in the Controlled Development 1 (CD-1) Zone where Vacation Rental Dwellings are Listed as Conditional Uses (17.20.030). This property began operating as a vacation rental dwelling in 1994, just before Ordinance 1336 went into effect, regulating Vacation Rental Dwellings. This property does not have a conditional use permit, in which case it may be considered a non-conforming use. If the planning commission finds that this is a non-conforming use, then discontinuance from the use for a period of one year shall require further use of the property be for a conforming use.

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.

FINDING: Consistent with Chapter 16.04 and Table 16.04.020, the City has processed this application as a Type III request since it involves a Vacation Rental Dwelling. However, the Planning Commission may find this is a non-conforming use not requiring a public hearing to determine whether or not it can continue to operate given no rents have been paid over the last year.

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: Since the City initiated the public hearing due to discontinuance of use, there is no application.

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 1st, 2023. Additionally, notice was posted on the city's website and posted at least 14 days before the first hearing. Criterion met.

Chapter 16.12 – Conditional Uses

16.12.090 Standards governing conditional uses

Vacation rental dwellings (VRDs) are a conditional use in the CD-1, CD-2, CD-3, and C-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.

FINDING: The property is located in the Controlled Development-1 zone and began operating as a vacation Rental Dwelling prior to the adoption of Ordinance 1336 regulating vacation rentals.

16.12.100 Time limitation

- A. *A conditional use permit shall become void one (1) year after approval, or after such greater or lesser time as may be specified as a condition of approval, unless within that time the required building construction, alteration or enlargement has been commenced and diligently pursued or, if no such construction, alteration or enlargement is required, unless the permit activity is being regularly conducted on the premises.*
- B. *The Planning Commission may extend a use permit for an additional period of one (1) year, subject to the requirements of this title.*
- C. *A conditional use permit shall become void if the use is discontinued for a period of one year.*

FINDING: According to the City's transient occupancy tax records, the property has not been rented in over a year. A conditional use permit shall become void if the use is discontinued for a period of one year. The Planning Commission may find that the conditional use chapter doesn't apply, and instead find this is a non-conforming use.

16.12.110 Violation of conditions

The Planning Commission, on its own motion, may revoke any conditional use permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing as provided in Chapter 16.04. The foregoing shall not be the exclusive remedy, and it shall be unlawful and punishable hereunder for any person to violate any condition imposed by a conditional use permit.

FINDING: A public hearing has been scheduled before the Planning Commission and proper notice provided to consider revocation of the conditional use permit and/or determination that this is a non-conforming use.