

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



FILE NUMBER: 24-005

LOCATION: 2885 Beach Loop Drive SW, Bandon, OR 97411
Map Number 28S-15W-36BC/TL 03304

PROPERTY OWNER: Greg Loper & Emily Loper
APPLICANT: Same as above

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: March 6, 2024

COMPLETENESS DATE: January 17, 2024

HEARING DATE: Thursday, March 28th, 2024, at 7:00 PM

APPLICABLE CRITERIA: BMC (Bandon Municipal Code) Chapters:
16.04 Administration & Enforcement
16.12 Conditional Uses
16.12.100 Time Limitation

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.*

STAFF 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.*

STAFF FINDING: The application contained the necessary information for staff review. The application was deemed “complete” for processing by City staff on January 17, 2024. Criterion met.

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.

STAFF FINDING: Notice was mailed to properties within 250-feet of the site on March 1, 2024. Additionally, notice has been posted on the city's website and posted at the site at least 14 days before the first hearing. Criterion met.

II. Applicable Criteria Review

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.

STAFF 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. Criterion met.

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.*

STAFF 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. Criterion met.

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.*

STAFF 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. Criterion met.

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, 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.

Definitions: "Owner" for the purposes of this chapter, means the natural person or legal entity that owns and holds legal and/or equitable title to the property. If the owner is a natural person, or where the natural person has transferred their property to a trust where the natural person is the trustor, that person can have an ownership right, title, or interest in no more than one dwelling unit that has a VRD permit. If the owner is a business entity such as a partnership, corporation, a limited liability company, a limited partnership, a limited liability partnership or similar entity, any person who owns an interest in that business entity shall be considered an owner and such person can have an ownership right, title, or interest in no more than one dwelling unit that has a VRD permit.

1. All vacation rental dwellings shall comply with the following approval criteria:

a. VRDs are only allowed in single-family detached dwellings. Any dwelling proposed as a VRD shall be at least three years old, calculated from the date of issuance of a certificate of occupancy from the City of Bandon;

STAFF FINDING: The home is a detached, single-family dwelling. Based on the Coos County Assessor's Summary Report, the home was constructed in 2003. The subject dwelling is 2,071 square feet on a 0.27-acre lot. Criterion met.

b. Including the subject property, the saturation rate within a 250- foot radius of the subject property must be less than 30%. The saturation rate is calculated using the following ratio:

Numerator: Subject Property + Permitted VRD units (each unit within a multi-family VRD is counted individually).

Denominator: Subject Property + eligible properties (single-family detached dwellings).

STAFF FINDING: City Staff completed a Saturation Study for the subject property on April 17, 2023. As seen in the Saturation Study Map, Figure 1, the saturation rate for the 250' radius is 21%. A saturation rate of 21% is below the maximum allowed with 250' of the subject property. Therefore this criterion is met.

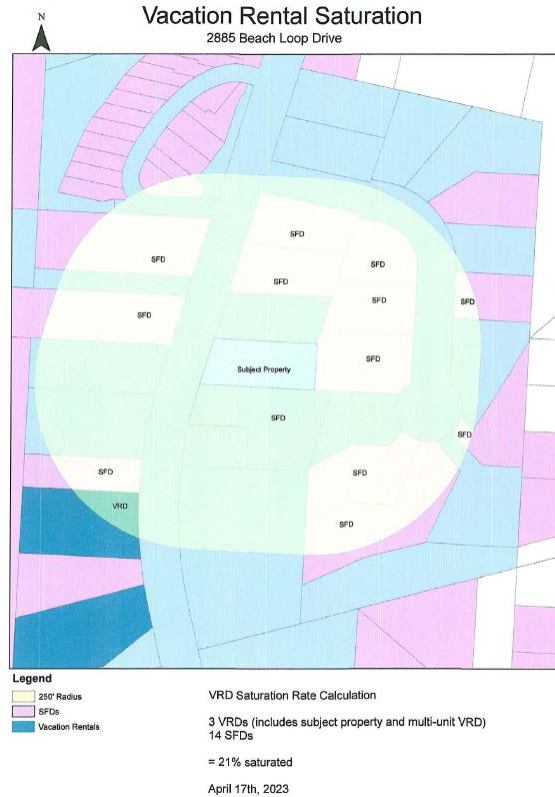


Figure 1. Saturation Study Map.

c. In the CD-1 zone, dwelling units 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;

STAFF FINDING: The home is located in Controlled Development 1 Zone. A VRD is a conditionally permitted use in the Controlled Development Zone. Criterion met.

d. The VRD Conditional Use Permit is valid for a specific owner of a specific dwelling and is not transferable. The permit shall become null and void when the owner sells or transfers the real property. No owner shall be issued a new VRD permit who holds another VRD permit;

STAFF FINDING: Greg and Emily Loper 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.

e. VRD's with shared 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;

STAFF FINDING: The subject property does not have private beach access. Visitors of the subject property may access Tish-A-Tang beach via a public footpath located off Beach Loop Drive. 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.

f. 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;

STAFF 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.

g. The applicant shall provide evidence that the VRD will be maintained at or above the level of surrounding dwellings in the neighborhood, including landscaping, signage and exterior maintenance;

STAFF FINDING: As described in the written narrative, the owners are committed to maintaining the home to better or at current levels as the other homes in the vicinity. The owners have made several upgrades to the home, both exterior and interior, since first purchasing the property. Upgrades conducted on the home include new paint, replacing hardware, and thoroughly cleaning the home. The home is spaced well from neighboring properties and parties are forbidden. The owners of the home have designated Sam Hernandez of Exclusive Property Management as the local point of contact and designated individual to respond to issues on a 24/7 basis. Criterion met.

h. The applicant shall provide evidence that the property can accommodate one off-street parking space for each bedroom in the VRD, with a minimum of 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. The Planning Commission may limit the allowable parking area and the number of parked cars on-site;

STAFF 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 Figure 2 below, the subject property has three off-street parking spaces. Criterion met.

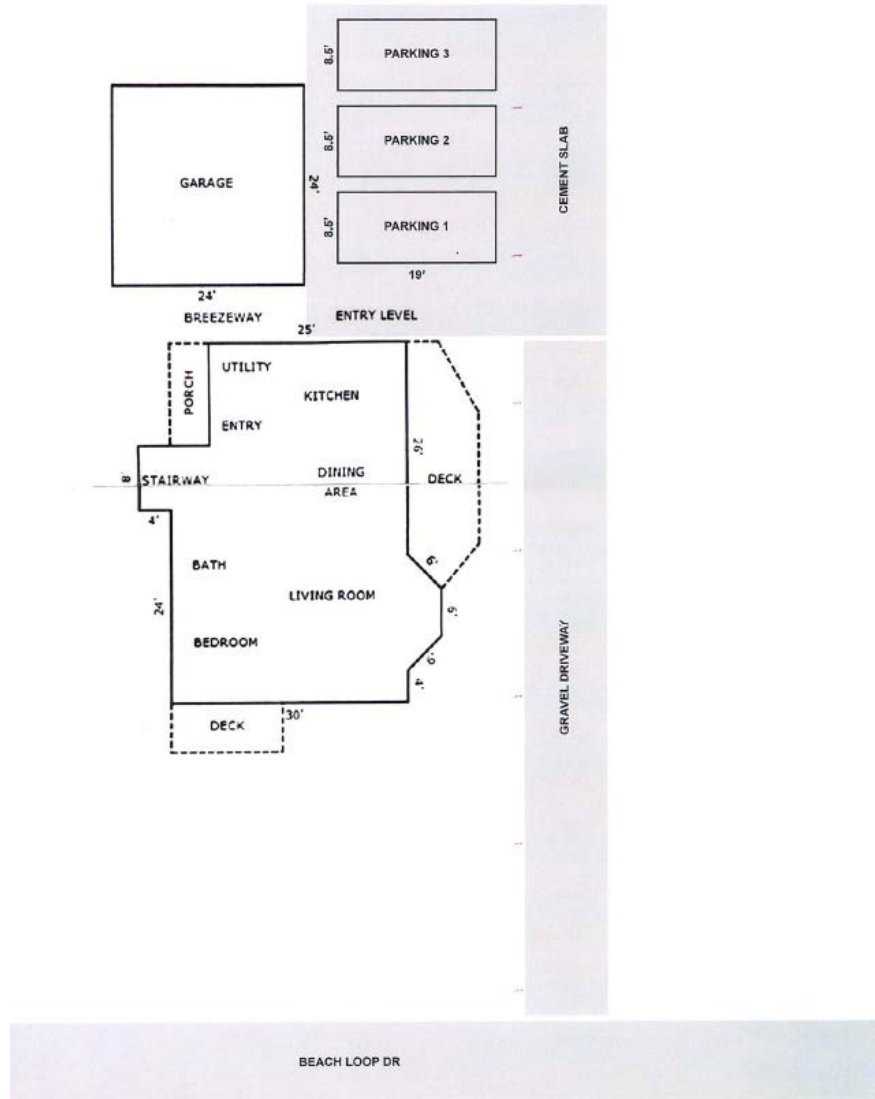


Figure 2. Applicant's parking site plan. Three off-street parking spaces are provided.

i. Occupancy of any VRD shall not exceed 3 people per bedroom up to a maximum of 10 people. The occupancy determined by the Planning Commission may be less than the maximum allowed;

STAFF 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.

j. Property owners shall be required to comply with the requirements of all other permitting agencies.

STAFF FINDING: The applicant agrees to comply with all reporting and accounting requirements. Criterion met.

2. General Regulations:

a. There shall be an owner or designated local management person immediately available to handle complaints and problems on a 24-hour basis. Contact information of the designated local management person shall be updated annually and kept on file in the 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;

STAFF FINDING: The owners of the home have designated Sam Hernandez of Exclusive Property Management as the local point of contact and designated individual to respond to issues on a 24/7 basis. The owners understand that the contact information of the designated local management person shall be updated annually and kept on file in the Bandon Planning Department. This shall be a condition of approval. Criterion met.

b. Compliance with all reporting and accounting requirements of the transient occupancy tax ordinance shall be done in accordance with the City of Bandon requirements;

STAFF FINDING: The owners understand the reporting and accountability requirements and will comply. This shall be a condition of approval. Criterion met.

c. 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 becomes null and void;

STAFF FINDING: 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 becomes null and void. This shall be a condition of approval.

d. Carbon monoxide and smoke detectors shall be provided in all potential and actual sleeping areas, whether or not such detectors are required by the building code.

STAFF FINDING: The applicant states in their application narrative that smoke detectors are in each room and that the home has carbon monoxide detectors, but the locations of the carbon monoxide detectors is unknown. Prior to first occupancy of the dwelling as a VRD, the applicant shall furnish an updated floor plan map to the Bandon Planning Department clearly showing the locations of all smoke

detectors and carbon monoxide detectors in potential and actual sleeping areas. Criterion conditionally met.

e. No more objectionable traffic, on-street parking, noise, smoke, light, dust or litter or odor may be emitted from the VRD than a normal neighborhood dwelling.

STAFF FINDING: The characteristics of the site are suitable for the proposed VRD. The property previously operated as an approved VRD. The owners are committed to providing a VRD that is in harmony with the neighborhood and creates no more nuisance than a normal neighborhood dwelling. Criterion met.

f. Weekly solid waste collection service shall be provided during all months that the dwelling is available as a rental pursuant to this chapter. The property must provide a 96-gallon receptacle for solid waste. Receptacles must be removed from the City right-of-way within 24 hours after pick up.

STAFF FINDING: In a February 8, 2024, email to staff, the applicant confirmed they will be contracting for regular garbage service through Les's Sanitary Services. Evidence of weekly service shall be provided to the City. This shall be a condition of approval and met before first occupancy of the VRD.

g. Tsunami preparedness – all VRD's shall post the Bandon Tsunami Evacuation Route Map in a conspicuous location within the dwelling.

STAFF FINDING: The applicant has stated in their application narrative that the Bandon Tsunami Evacuation Route Map will be posted in the VRD in a conspicuous location. Criterion met.

h. At the direction of the City Manager, other informational materials may be required to be posted in a conspicuous location within the dwelling. The City shall provide such materials at no cost to the property owner.

STAFF FINDING: Compliance with BMC 16.12.090(K)(2)(h) shall be a condition of approval.

i. A rental permit shall be posted within the dwelling adjacent to the front door. The permit shall state the name, address, and telephone number of the contact person required by this chapter. The permit shall also identify the address of the VRD, the maximum number of occupants to stay overnight, the day(s) established for solid waste collection, and non-emergency Bandon Police number.

STAFF FINDING: Compliance with BMC 16.12.090(K)(2)(i) shall be a condition of approval and shall be implemented prior to the first occupancy of the dwelling as a VRD.

3. Compliance

a. Vacation Rental Dwellings that are out of compliance with the requirements of 16.12.090(K)(2) as of the effective date of the ordinance codified in this section shall, within 120 days after said date, be brought into compliance.

b. Violation of the requirements specified herein shall constitute grounds for revocation of the permit. Additionally, the city may institute appropriate actions or proceedings to prevent, restrain, correct, abate, or remove any unlawful location or a vacation rental dwelling in violation of this chapter. The owner(s) of a building where a violation has been committed shall be guilty of a violation of this title and shall be subject to conviction of a fine of \$750, per BMC 1.04. Each day under which the violation constitutes shall be considered a separate offense.

STAFF FINDING: Compliance with BMC 16.12.090(K)(3)(a) & (b) shall be conditions of approval.

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.

STAFF FINDING: Consistent with the provisions of BMC 16.12.100(A-C), a conditional use permit shall become void one (1) year after approval. Extensions may be granted pursuant to BMC 16.12.100(B). This will be a condition of approval.

III. Recommendations and Conditions of Approval

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. 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.
5. 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.
6. The Bandon Tsunami Route map shall be posted in a conspicuous location within the dwelling.
7. The number of guests is restricted to 8.
8. Trash shall be enclosed at all times.
9. The name and contact information for the Local Management Person shall be updated annually and kept on file in the Bandon Planning Department.
10. Property owner shall comply with all reporting and accounting requirements of the transient occupancy tax ordinance, in accordance with the City of Bandon requirements. If the Transient Occupancy Tax account is not current, no rental shall be allowed while the account is in arrears.
11. 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 becomes null and void.
12. Prior to first occupancy of the dwelling as a VRD, applicant shall furnish an updated floor plan map to the Bandon Planning Department that clearly shows the locations of all smoke detectors and carbon monoxide detectors in potential and actual sleeping areas.
13. Prior to first occupancy of the dwelling as a VRD, applicant shall furnish evidence of weekly solid waste collection service to the Bandon Planning Department. Minimum size of solid waste collection receptacle shall be 96-gallons.
14. At the direction of the City Manager, other informational materials may be required to be posted in a conspicuous location within the dwelling. The City shall provide such materials at no cost to the property owner.
15. Prior to first occupancy of the dwelling as a VRD, A rental permit shall be posted within the dwelling adjacent to the front door. The permit shall state the name address, and telephone number of the contact person required by this chapter. The permit shall also identify the address of the VRD, the maximum number of occupants to stay overnight, the day(s) established for solid waste collection, and non-emergency Bandon Police number.
16. Vacation Rental Dwellings that are out of compliance with the requirements of 16.12.090(K)(2) as of the effective date of the ordinance codified in this section shall, within 120 days after said date, be brought into compliance.

17. Violation of the requirements specified herein shall constitute grounds for revocation of the permit. Additionally, the city may institute appropriate actions or proceedings to prevent, restrain, correct, abate, or remove any unlawful location or a vacation rental dwelling in violation of this chapter. The owner(s) of a building where a violation has been committed shall be guilty of a violation of this title and shall be subject to conviction of a fine of \$750, per BMC 1.04. Each day under which the violation constitutes shall be considered a separate offense.
18. 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.
19. A conditional use permit shall become void if the use is discontinued for a period of one year.
20. Failure to conform to the conditions of approval shall result in revocation of the Conditional Use permit.

IV. Attachments

Attachment A – Applicant Materials

Attachment B – Photos