

# City of Bandon

<b>CITY COUNCIL AGENDA DOCUMENTATION</b>	<b>DATE:</b> December 3, 2018
<b>SUBJECT:</b> Gu VRD – Adoption of Findings of Approval	<b>ITEM NO:</b> 5.1.1

**BACKGROUND:** On December 4, 2017 the City Council denied a Conditional Use Permit (CUP) request by Bao Yi Gu for a Vacation Rental Dwelling (VRD) at 2967 Spinnaker Dr. SW. This denial overturned an approval of the VRD request by the Planning Commission, which had been appealed to the City Council by residents of the surrounding neighborhood.

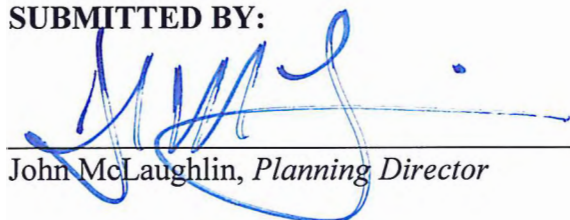
The applicant then appealed the Council's denial to the Oregon Land Use Board of Appeals (LUBA). The applicant's attorney claimed two assignments of error in the City's decision – the first, that the City's findings were not adequate in establishing that the proposal did not comply with the City's conditional use permit criteria; and second, that the Council committed a procedural error in how the hearing was conducted, and the time allowed for testimony. LUBA upheld the first assignment of error regarding the findings, and denied the second, finding that the City did not err in conducting the hearing.

Therefore, this item was remanded to the City. The City Council conducted a public hearing on October 2, 2018 at which time they accepted testimony and evidence based upon the record of the action to address the assignment of error identified by LUBA. The hearing was then closed, and deliberation was continued to the next meeting. On November 5, 2018 the City Council deliberated and unanimously approved the vacation rental dwelling request in accord with the original decision of the Planning Commission.

**RECOMMENDATION:** The findings of approval adopted by the Planning Commission have been updated to reflect the final decision of the City Council.

Staff recommended motion: *I move to approve the Findings of Fact and Conditions of Approval for Conditional Use Permit 17-089 – Applicant: Gu.*

**SUBMITTED BY:**



John McLaughlin, Planning Director

**CITY OF BANDON  
FINDINGS OF FACT AND DECISION  
OF THE CITY COUNCIL**



**FILE NUMBER:** CUP 17-089

**LOCATION:** 2967 Spinnaker Drive SW  
28S-15W-36 CD, TL 612

**APPLICANT:** Bao Yi Gu

**PROPERTY OWNER:** Bao Yi Gu  
15745 SE 25<sup>th</sup> Street  
Bellevue, WA 98008

**REQUEST:** A **conditional use permit** to use a newly built single-family dwelling as a Vacation Rental Dwelling within the Controlled Development 1 (CD-1) Zone.

**DECISION:** **APPROVED**

**Ayes:** Council members Vick, Powell, Braun, Seymour, Hundhausen,

**Nays:** None

**APPROVAL OF FINDINGS OF FACT AND DECISION:** December 3, 2018

**SIGNED:** This 3rd date of December, 2018 in Bandon, Oregon

Mayor:  
Mary Schamehorn

Council members:  
Brian Vick  
Madeline Seymour  
Geri Procetto  
Peter Braun  
Claudine  
Hundhausen

---

Mary Schamehorn, Mayor

## DECISION

**A. Summary:** The applicant is requesting to be allowed to use a newly built dwelling a Vacation Rental Dwelling (VRD). This is a permitted use within the zone through the Conditional Use process.

**B. Existing Conditions:** The property is approximately 0.3 acres. A two story single-family dwelling with an attached garage was built on the property and issued a Certificate of Occupancy on August 17<sup>th</sup>, 2017.

**The home has five rooms that are either considered bedrooms in the plans, or could otherwise be classified as bedrooms (closet and window), and three bathrooms. There is a two-car garage, covered porch, and attic.**

The City Council finds that the applicant has met the criteria to allow for the conditional use of a Vacation Rental Dwelling. The City Council approves of the application as submitted and requires the conditions listed in the findings to become a part of the approval.

## CITY OF BANDON MUNICIPAL CODE

### I. APPLICABLE STANDARDS AND CRITERIA:

#### **A. Title 17 - Chapter 17. 92 - Conditional Uses**

- |  |   |
|--|---|
| 1. Section 17.92.010<br>Authorization to grant or deny conditional uses. | 6. Section 17.92.060<br>Application for a conditional use                                       |
| 2. Section 17.92.020<br>Authorization to impose conditions               | 7. Section 17.92.090<br>Standards governing conditional uses                                    |
| 3. Section 17.92.030<br>Existing Uses                                    | 8. Section 17.92.100<br>Time limits on meeting physical improvement requirements and conditions |
| 4. Section 17.92.040<br>Approval Standards for conditional uses          | 9. Section 17.92.110<br>Violation of Conditions   |
| 5. Section 17.92.050<br>Conditional use cannot grant variances           |   |



## **II. FINDINGS OF FACT:**

1. **Location:** The property is a newly built single-family dwelling on the east side of Spinnaker Drive SW, the second property north of Seabird Drive. The property, 2967 Spinnaker Drive SW, is Tax Lot 612 of Map 28-15-36CD, and encompasses 13,530 square feet.
2. **Zoning and Plan Designation:** The subject property is zoned Controlled Development-1 (CD-1). The 1991 Comprehensive Plan land use classification for the subject property is Controlled Development Area (CDA). The purpose for this area is: "intended to recognize the scenic and unique quality of Bandon's ocean front and view areas and to maintain the quality of Bandon's ocean front by carefully controlling the nature and scale of future development in the area. It is intended that a mix of uses would be permitted, including residential, tourist commercial, and recreational. Future development is to be controlled in order to enhance the area's unique qualities."
3. **Site Description:** The property is located on the east side of Spinnaker Drive SW, two parcels north of Seabird Drive. The property is approximately 0.3 acres, with the western side of the property (123' in length) facing the street. The lot is larger than others in the area due to a lot line adjustment that occurred in 2003 that added approximately 30' of frontage to the property. The property includes a portion of a storm water detention area on the southern end, about 35 feet in width.
4. **Surrounding Zoning and Land Uses:** All properties surrounding the subject property are zoned CD-1.
5. **Proposal:** The applicant is requesting to be allowed to use the single-family dwelling located on the subject property as a Vacation Rental Dwelling.
6. **Public Notice and Comments:** Public Notices were distributed in accordance with Chapter 17.120.

## **III. FINDINGS:**

### **A. Title 16 - Chapter 16.42 - Definitions**

As used in Title 16 and Title 17, the following words and phrases, unless the context otherwise requires, shall mean:

**Vacation Rental Dwelling (VRD):** means an existing single-family detached dwelling that is rented, or is available for rent (whether advertised or not), for a period of less than one month to a family, group or individual. A VRD is considered a commercial use.

**FINDING:** This term will be used when deliberating the proposed application.

### **B. Title 17 - Chapter 17.92. – Conditional Uses.**

**1) 17.92.010 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.

**FINDING:** Vacation Rental Dwellings are listed as a conditional use in the CD-1 Zone. The City Council has the authority to act on this application and may impose conditions that are appropriate for this request and therefore **The City Council finds** this criterion has been met.

**2) 17.92.020 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.

**FINDING:** Items A through F, H- J, and M were addressed during the original development review for siting of the single family dwelling and therefore, **the City Council finds** these criteria are not applicable to this request.

**Criteria G:** Chapter 17.20.050 regulates signs for VRDs. VRDs are only allowed to have one sign no more than two square feet in area. This will be placed as a condition for approval and therefore **the City Council finds** this criterion has been met.

**Criteria K and L:** No additional outdoor lighting, other than what is already in place, should be allowed, especially any additional lighting that will impact neighboring properties or directed west or skyward.

This will be placed as a condition for approval and therefore **the City Council**

**3) 17.92.030 Existing uses.**

In the case of a use existing prior to the effective date of the ordinance codified in this title and which is classified in this title as a conditional use, any alteration of the structure shall conform to the requirements dealing with conditional uses.

**FINDING: The City Council finds** this criterion is not applicable.

**4) 17.92.040 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.

**FINDING:**

**Criteria A:** The Comprehensive Plan states, "The south Jetty and the bluff contain the most unique and attractive areas for residential, tourist commercial, and recreation within the city. These areas have been zoned for 'Controlled Development', in which only one and two family dwellings are permitted outright, and then only under rather strict conditions. There are a variety of conditional uses which may be permitted by the Planning Commission, providing additional specified conditions are met. The intent is to control future development in order to enhance



the area's unique qualities." Vacation Rental Dwellings are, by definition, a commercial use. Because they are rented for less than 30 days, VRDs are used for tourist and recreational activities. **The City Council finds** this request is consistent with the Comprehensive Plan and therefore meets this criterion.

**Criteria B, C and D:** The dimensional standards, site size and dimensions were approved when the existing dwelling was built and therefore **the City Council finds** these criteria have been met.

**Criteria E:** **The City Council finds** the characteristics of the site are suitable for the proposed use and therefore this criterion has been met.

**Criteria F:** The subject property and existing dwelling have adequate public facilities for the requested use and therefore **the City Council finds** this criterion has been met.

**Criteria G:** **The City Council finds** this request will not alter the characteristic of the existing neighborhood and substantially limit or preclude the use of surrounding properties to be used as residences and therefore this criterion has been met.

**Criteria H:** All other applicable requirements of this title will apply and therefore **the City Council finds** this criterion has been met.

**5) 17.92.050 Conditional use cannot grant variances.**

A conditional use permit shall not grant variances to the regulations otherwise prescribed by this title. A variance application may be filed in conjunction with the conditional use permit by filing an application with the city using forms prescribed for that purpose.

**FINDING:** The applicant is not requesting a variance and therefore no variance will be granted by this request. **The City Council finds** this criterion has been met.

**6) 17.92.060 Application for a conditional use.**

The applicant for a conditional use permit shall be the recorded owner of the property or an agent authorized in writing by the owner. They may initiate a request for a conditional use permit or the modification of an existing, functioning conditional use permit by filing an application with the city using forms prescribed for that purpose.

In addition, the following shall be supplied by the applicant:

- A. Twelve (12) copies of the site development plan(s) drawn to scale and necessary data or narrative which explains how the development conforms to the standards;
- B. The required fee;
- C. The conditional use plan, data and narrative shall include the following:

1. Existing site conditions,
  2. A site plan for all proposed improvements,
  3. A grading plan,
  4. A landscape plan,
  5. Architectural elevations of all structures,
  6. A sign plan,
  7. A copy of all existing and proposed restrictions or covenants;
- D. In the case where any or all of the above are unnecessary, as in the case of a change of use in an existing structure, the planning director shall determine which items in subsection (C)(1) through (7) of this section will not be required for application. The planning commission may request additional items if they determine that these additional items are necessary to understand and make a decision on the application.

**FINDING:**

**Criteria A – D:** The applicant has submitted copies of the original site development plan and the required fee. The applicant has submitted a narrative to both the conditional use application and the VRD requirements. Items 1-7 in Section C have either been submitted with this application or were submitted with the original site review plan with the exception of a sign plan. The sign plan will be approved through Chapter 17.20.050 as previously mentioned in this staff report. **The City Council finds** these criteria have been met.

**7) 17.92.090 Standards governing conditional uses.**

A conditional use shall comply with the standards and purpose of the zone in which it is located except as these standards may have been modified in authorizing the conditional use or as otherwise provided as follows:

**D. Signs:** In the case of a conditional use, the planning commission may permit the sign limitations of a zone to be exceeded to allow one indirectly illuminated sign or non-illuminated sign, not more than six square feet in area, on each side of a structure abutting a street. In addition, a church may have a bulletin board not exceeding ten (10) square feet in area. A sign shall pertain to the conditional use and may be permitted in required yards.

**FINDING:**

**Criteria D:** The applicant has not submitted a request for signage and the rental agency has stated there are no plans for a sign. Staff is recommending, as a condition of approval, signage must conform to Chapter 17.20.050 if ever erected. Because this is primarily a residential zone, no exceptions to Chapter 17.20.050 should be granted in keeping a more residential appearance for the conditional use.

**K. Vacation Rental Dwellings.** Vacation Rental Dwellings are a conditional use in the CD-1 and CD-2 and CD-3 zones, and are subject to the requirements of this chapter. A dwelling may only be eligible for VRD status



provided that less than 30% of the dwellings on property within 250 feet of the subject property are VRD=s.

**FINDING:** There are twenty-two (22) single-family dwellings within 250' of the subject property and one (1) VRD within the noticing area. **The City Council finds** the subject dwelling is eligible for VRD status as requested.

All vacation rental dwellings shall comply with the following provisions:

1. No more objectionable noise, smoke, dust, litter or odor is emitted from the VRD than a normal neighborhood dwelling;

**FINDING:** The applicant has stated that in addition to regular trash to prevent unwanted odors, a property manager will be available to monitor the property. This will be listed as a condition of approval and therefore **the City Council finds** this criterion has been met.

2. VRDs without private beach access have 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 will be taken;

**FINDING:** Directions to public beach access will be provided to guests within the house. **The City Council finds** this criterion has been met.

3. VRDs using a joint access driveway shall assure that any other private access does not object to the proposed vacation rental dwelling using the private access;

**FINDING:** **The City Council finds** the subject property does not have a joint access driveway and therefore this criterion is not applicable.

4. Dwellings will be maintained at or above the level of surrounding dwellings in the neighborhood, including landscaping, signage and exterior maintenance;

**FINDING:** The property has been designed with a low maintenance yard with crushed rock and mulch. The property manager will be responsible to monitor the exterior maintenance. This will be a condition of approval and therefore **the City Council finds** this criterion has been met.

5. VRDs shall have one off-street parking space for each bedroom in the VRD, but in no case have less than two off-street parking spaces.

**FINDING:** The property contains a driveway and garage, which has the capacity for five off-street parking spaces. Based on the applicant's submitted information **the City Council finds** this criterion has been met.

6. There are provisions for regular garbage removal from the premises;

**FINDING:** The property owner has contracted with a local service to provide trash pickup and therefore **the City Council finds** this criterion has been met.

7. There shall be a designated local management person immediately available to handle complaints and problems as they arise. The name and contact information of the designated local management person shall be kept on file in the Police Department.

**FINDING:** The designated local management person for the property is Bandon Beach Vacation Properties, LLC and therefore **the City Council finds** this criterion has been met.

8. Compliance with all reporting and accounting requirements of the transient occupancy tax ordinance shall be done.

**FINDING:** The property owner has stated that this service is provided by Bandon Beach Vacation Properties, LLC. The applicant will be required to comply with all reporting and accounting requirements of the transient occupancy tax ordinance and therefore **the City Council finds** this criterion has been met.

9. If the VRD activity ceases for a period of one year, as determined by the transient occupancy tax receipts, the VRD permit becomes null and void with no further proceedings.

**FINDING:** **The City Council finds** this criterion is not applicable until such time that the applicant fails to meet the requirements of the above criteria or ceases the VRD activity for a period of one year in which case the VRD permit will become null and void.

10. Occupancy of any VRD shall not exceed 3 people per bedroom up to a maximum of 10 people.

**FINDING:** Staff has determined there are three listed bedrooms in addition to a den and an office, which may be considered bedrooms, and therefore this dwelling could accommodate up to 10 individuals. Bandon Beach Vacation Properties, LLC has stated that only eight people will be allowed in the vacation rental. A condition of approval will be added that maximum allowed occupancy for this dwelling will be eight (8) people and therefore **the City Council finds** this criterion has been met.

#### **8. 17.92.100 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:**

**Criteria A and B:** The request to be allowed to use the subject property as a VRD will be an ongoing activity and therefore **the City Council finds** these criteria are not applicable to this request.

**Criteria C:** **The City Council finds** this criterion is not applicable until such time the applicant fails to meet any of the conditions as specified in Criteria 17.92.090 (K)(8) and (9).

**9. 17.92.110 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 Sections 17.120.080 through 17.120.160. 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:** If the applicant fails to meet or adhere to any of the conditions placed on this application the Planning Commission has the authority to revoke the conditional use permit for allowing the dwelling to be used as a VRD. In the event a violation to the Conditional Use occurs, the Planning Commission should request staff to proceed with the public hearing process and to give proper notice as required by Sections 17.120.080 through 17.120.160. The City also reserves the right and has the authority to prosecute any violation of this conditional use permit as allowed by the Bandon Municipal Code.

**CONDITIONS OF APPROVAL**

The City Council places the following conditions of approval on this application:

1. That the plans submitted in this Conditional Use Permit shall be in substantial conformance with status as a Vacation Rental Dwelling.
2. Renters of the home will be courteous to the surrounding neighbors, keeping a watch on children outside of the home and keeping exterior noise down.
3. All signage placed on the subject property must meet the requirements of Chapter 17.20.050.
4. No additional outdoor lighting, other than what is already in place, will be allowed. Lighting that will negatively impact neighboring properties or directed west or skyward is prohibited.



5. Written notification must be provided to renters of the home informing them where the nearest public beach access point is located and the need to use the public beach access and not cross over any fore dunes or private property in order to access the beach.
6. Written notification must be provided to renters of the home informing them that vehicles owned or operated by individuals renting the VRD, or visitors to the VRD, shall not park on the City street or on the unimproved portion of the City right-of-way. This includes the dirt lot to the north of the driveway.
7. Written notification must be provided to renters of the subject property informing them of the property owner and/or designated local management person, with phone number, immediately available to handle complaints and problems as they arise.
8. The maximum occupancy of the VRD is eight (8) people. Written notification must be provided to renters of the subject property informing them of the maximum allowed occupancy.
9. Written notification must be provided to renters of the home informing them that no pets are allowed. Also, all dogs must be kept on a leash per City code.
10. Written notification regarding tsunami evacuation routes and supporting emergency information must be provided to renters of the home.
11. The name and contact information of the property owner and/or designated local management person shall be kept on file in the Police Department. Any changes in this information must be updated with the Police Department.
12. The dwelling and landscaping must be maintained at or above the level of surrounding dwellings in the neighborhood.
13. Garbage shall be removed from the premises on a regular basis.
14. The applicant is required to file all reporting and accounting requirements of the transient occupancy tax ordinance.
15. Maximum off-street parking be limited to five vehicles at any time.
16. Any violation of conditions of approval may cause the Planning Commission to hold a Public Hearing to consider revoking the Conditional Use.
17. The City has the right and authority to prosecute any violation of the conditions of approval as allowed by the Bandon Municipal Code.
18. All other City, State, and Federal rules and regulations must be adhered to.