

GRAVEL POINT Rebuttal

APN: 28-15-36C Tax Lots 1500, 400, 500, 600, 700
28-15-36BC 219

OWNER/APPLICANT: Bandon Beach Ventures, LLC
Perk Development Group, LLC

APPLICANT'S REPRESENTATIVE: Coos County Consulting (Sheri McGrath)
PO Box 1548, Bandon, OR 79411

CONSOLIDATED REQUEST

As stated on page 6 of the Gravel Point Project Narrative- This is a concurrent application and proposed findings addressing compliance with all City of Bandon regulations, including the Zoning Code, Comprehensive Plan, Transportation System Plan, Bandon Gorse Compliance District Plan, Water and Sewer Master Plans. **Consolidated review is specific to the Conditional Use for Hotel, Motel, Spa and Restaurant uses along with the proposal as it meets the intention of the Commercial Design Standards and Conditions for requiring design features that minimize environmental impacts.**

BMC 16.04.020

Summary of Approvals by Type of Review Procedure

This section lists Conditional Uses and Variances as Type III review by the Planning Commission. Plan Review (Geologic Assessment Review) and Zoning Compliance as reviewed by Staff as Type II and Type I reviews.

The applicant did not request a consolidation of the Type I and Type II applications, and is not required to consolidate all permit types during the Type III review process.

BMC 16.04.090

C. Consolidated Review of Applications. When an applicant applies for more than one type of land use or development permit for the same one or more contiguous parcels of land, the proceedings shall be consolidated for review and decision. When proceedings are consolidated, required notices may be consolidated, provided the notice shall identify each application to be decided. When more than one application is reviewed in a hearing, separate findings and decisions shall be made on each application.

The applicant is not required to consolidate all permit types under one review. The Planning Commission can approve the Conditional Use and Variance without consolidating the Type I and Type II application types. The Planning Commission is permitted to review a Conditional Use and a Variance during the same public hearing as long as separate findings are made.

BMC 17.02

"Limited land use decision" a final decision or determination made by a local government pertaining to a site within an urban growth boundary which concerns the approval or denial of a subdivision and the approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site reviews, plan reviews and design reviews. (ORS 197.195)

ORS 197.195 Approval or denial of a limited land use decision shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.

The Planning Commission can approve or deny an application as long as there are findings or an explanation for the decision.

VARIANCE

The proposed plans show a flat roof for the Meadow Lodge. That roof pitch requires an exception to the minimum 3:12 roof pitch as listed in BMC 17.20.090(B,1,a).

16.36 Adjustments and Variances

16.36.010 Purpose

Chapter 16.36 provides standards and procedures for adjustments and variances, which are modifications to development standards that are not otherwise permitted elsewhere in this Code.

The applicant believes that the Planning Commission has the right to approve the project as proposed and as addressed in Section 16.12.020 without a Variance being applied for or granted. Planning Staff required the inclusion of a Variance request for the elimination of the 3:12 roof pitch on the Meadow Lodge. 16.12 provides allowances for discretionary review for a project falling under the conditional use purview.

DESCRINARY REVIEW

Comprehensive Plan page 170 The City has considerable discretion in determining if such uses will be approved. For example, a conditional use must first comply with the comprehensive plan. Further, the City must determine if the conditional use will 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 zone. The purpose of the Conditional Use Permit criteria are to ensure that a proposed use is fully reviewed and assessed for conformance with applicable Comprehensive Plan and Zoning standards.

Findings for the Comprehensive Plan are found on pages 71-100 of the submitted application. The proposed project meets the objectives and policies of the Comprehensive Plan and is meeting a need identified in the Plan for tourist facilities along Beach Loop and for clustered development.

Page 138 of The Plan reads, *“Future development in the CD-1 and CD-2 zones will be 90% residential and 10% commercial/other. This 10% allotment is made because both controlled development zones allow some commercial uses conditionally.”*

Page 139 of The Plan reads, *“In addition to the acreage in commercial zones, another 15 acres may be considered available in the Controlled Development (CD) zones of the Jetty and Beach Loop Road areas. The City estimates that 10% of the buildable land in the CD zones will go to commercial uses. Such uses will likely be tourism related.”*

The proposed plan is in accordance with the Plan and the expected ratio of residential to commercial development. There are 5 commercial establishments in the CD-1 zone- Table Rock, Sunset, Lord Bennett’s, Best Western, and Windermere. Those businesses comprise less than 10% of the land inventory and overall uses. Incompatibility would be for a proposed use in EXCESS of the desired use ratio.

In order for the City to determine if a Conditional Use will alter the character of the surrounding properties, substantial evidence must be presented that shows incompatibility. The proposed project has less of an impact on the surrounding uses than a new 199 single family subdivision in regard to Noise, Traffic, Air and Light Pollution, and On-going Construction. A project is deemed Compatible if it meets the standards of the Zoning Ordinance as listed for the underlying zone and approvable uses.

The Zoning Ordinance outlines the minimum requirements to ensure compatibility. These standards apply to all property owners and protect the right to develop land under private ownership. The proposed project EXCEEDS the minimum requirements for development and is considered Compatible in regard to the development standards. The only item listed below that cannot be met is the elimination of the 3:12 roof pitch requirement for a structure over 28’. The flat roof can be considered compatible given its location on the subject site. The closest residential structures are located 255’ to the North, 317’ to the West and over 730’ to the Southeast corner of the property line on Carter. For reference, the West side of Lincoln Ave is 435.54’ in length and has five building lots. A 3:12 roof pitch for a 35’ increase in a dense neighborhood is a criteria to reduce shading on adjoining properties. Given the amount of open space between the proposed Meadow Lodge and the closest residential structures, the roof pitch is not considered a needed item for compatibility.

A solar study was submitted to the Commission for review. It clearly showed that the height of 35’ with a flat roof would not affect any other property owner. Additionally,

there are no ocean views from the adjoining properties- existing or proposed development. This is evidenced by the maps and plans that have been submitted that clearly show the east boundary of the property located over a third of a mile away and the topographic map shows the elevation of the property lower than the properties along Beach Loop. It would be impossible to hinder an ocean view from development at the subject site unless a height of over 35' were to be granted to a neighboring parcel.

BMC 17.20.040

Limitations on Use

- A. The applicant is not proposing drive-up uses.**
- B. No ocean views are impacted by the proposed development.**
- C. Metal sided buildings are not proposed.**
- D. No structures are proposed to be located on a foredune.**
- E. Single family dwellings are not proposed, though the Villa Suites can meet the architectural features as listed. They appear residential in nature and standalone in lieu of additional Hotel Structures with multiple rental rooms.**

BMC 17.20.060

Lot Size

There is not a minimum lot size for commercial development within the CD-1 zone. Considering the minimum lot size for a Single Family Dwelling, the proposed project exceeds the minimum lot size of 5400sf per dwelling unit. The site has 1,075,935sf as shown on the Project Summary. That would be equal to 199 single family dwellings. Gravel Point is proposing a total of 32 Villa Suites which contain a total of 86 rooms for rent. If the City considered each individual room rental in comparison to the SFD dwelling unit square footage ratio, the Lot Size per Room Rental would be 5,489sf which exceeds the minimum lot size for a SFD (1,075,935/196 individual room rentals). If the Villa Suites are counted as one rental unit vs individual bedrooms, the lot size would be 7,577sf per unit (1,075,935/142 total rental units). The proposed project is compatible in regard to lot coverage and size.

BMC 17.20.070

Yards

- A. The minimum setback proposed for any of the structures is 20'. The setback from Face Rock to the closest structure is 80'. The setback from the Meadow Lodge to the future street extension is 41' whereas the minimum requirement is 27' (20' plus 7' for the additional 7' height per 17.20.090(a,5). The Dune Lodge is located no closer than 90' to Beach Loop. The closest setback on Carter is 25'.**
- B. The side yard setback on the West side is a minimum of 8'. The proposed plans show a minimum setback of 40' from the closest structure to the Strawberry neighborhood.**
- C. The 10' rear yard setbacks have been exceeded and include a minimum setback of 20' on the south side of the property. The Meadow Lodge is no closer than**

95' to the north property which could be viewed as the front or rear yard depending on interpretation of the Planning Department. Either way is well exceeds the minimum setback requirement.

- D. The minimum side yard setback to a residential use on the subject site is 20'.
- E. There are no rear yards abutting Beach Loop, though the closest setback as shown is 90'.

BMC 17.20.080

Lot Coverage

The CD-1 zone allows for up to 50% lot coverage for structures and 65% lot coverage for total impervious. The October 5, 2023 proposed plan shows a total of 9.5% for lot coverage and 23.5% for total impervious. The plans were updated to include a screened area and additional parking which increased the lot coverages from the original application. The project is well within the allowances of this section.

BMC 17.20.090

Height of Buildings and Structures

B. Buildings east of Beach Loop may exceed the 28' height to 35' with approval of the Planning Commission. The proposed plan shows a 35' for the Meadow Lodge.

- a. *In deciding whether to approve or deny a request for the additional height, the Planning Commission shall consider and require conformance with the following review criteria. It shall be the applicant's responsibility to provide sufficiently detailed plans, data, and all other information necessary for the Planning Commission to determine whether the proposed additional height complies with the applicable review criteria.*
 - 1. **The Meadow Lodge is located near the center of the parcel and does not negatively impact the views from surrounding properties.**
 - 2. **A Summer and Winter Solar Study was submitted to the Planning Commission for the September 28th meeting. The study considered ALL proposed structures and not just the one with the 35' height. The study shows that sunlight will not be cut off from the proposed additional height.**
 - 3. **The additional height will not negatively impact the aesthetic character of the neighborhood because the closest property line is located 95' on the north side. The home on that property is 256' to the north of the Meadow Lodge. The property line to the West is 317' and over 730' to the Southeast corner of the property line on Carter.**
 - 4. **The proposed roof is flat and does not contain the 3:12 roof pitch. A Variance has been applied for. The CUP is a discretionary review and the Commission can approve the height limit and roof pitch without the need for a Variance.**
 - 5. **The yard setbacks are required to increase by one foot for every one foot above the 28' height. The proposed setbacks to All structures, but**

specifically relating to the Meadow Lodge exceed the minimum 27' front setback and exceed the other setbacks significantly.

17.104.050

General exception to lot size requirements.

The applicant has not requested an exception to the lot size requirements.

17.104.060

General exception to yard requirements.

The applicant has not requested an exception to the lot size requirements.

17.104.080

Access.

B. The number of access locations onto highways and arterial streets from any development shall be minimized whenever possible through the use of common driveways or side streets common to more than one development and interior vehicle circulation design.

The plans propose access from Beach Loop at one entrance point. The Carter Street extension is a requirement of the City of Bandon and not a proposal from the developer or owner. The criteria have been 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:

C. Controlling the number of access points

The proposal shows one driveway access point from Beach Loop. The City of Bandon is requiring that Carter be extended to Beach Loop to loop utilities and to provide emergency access. Carter Street is not required to be open for vehicular traffic for the proposed use which is not "more than one development" as listed above. The City of Bandon has opened streets and blocked them with Breakaway Gates and Bollards (visit Madison Ave SW and Ohio Ave SE for reference). These barricades provide emergency access by fire trucks, pedestrian walkways and limit vehicular traffic through residential neighborhoods and on substandard streets. The use of Carter Street is not relevant to the proposed development and is not needed as speculated by the public testimony.

GEOLOGIC ASSESSMENT REVIEW

BMC 17.78.030

C. Application, review and appeals for a Geologic Assessment Review shall be in accordance with the requirements for plan review as set forth in BMC 16.04. Applications for a Geologic Assessment Review may be made prior to or concurrently with any other type of application required for the proposed use or activity. Geologic Assessment Review shall be completed prior to any ground disturbance

The GAR is required prior to any ground disturbance and is a stand alone Type II Plan Review which can be reviewed concurrently or independently. The applicant chose to apply concurrently with the other Administrative Review- Zoning Compliance.

WETLAND/CRITICAL STUDY

BMC 17.102.020

B. Applicability

4) The Planning Commission shall be the Reviewing Body for applications requiring exceptions to the provisions herein pertaining to significant wetlands, pursuant to Section 17.102.020.

The Applicant has not requested an exception, or Variance as listed in “C”; therefore it is not subject to a Type III review process. The applicant is not required to apply for the GAR concurrently with a CUP application.

RV PARKING

17.96.050 Design requirements for parking lots.

L. For parking lots for motels, restaurants or retail businesses of more than twenty (20) spaces, five percent of the total number of spaces will be R.V. spaces at least ten (10) feet wide by thirty (30) feet long.

The proposed plan can provide the 8 required RV parking spaces parallel to the one site drive surfaces and at the Meadow Suite Villas. The request for an exception to the required RV parking spaces was specific to a delineated space that only serves Recreational Vehicles. The applicant is opposed to signage that specifically delineates and designates 8 RV parking spaces which is the equivalent to 12 standard parking spaces at 10’x20’. Either way, the proposed plans show that the required RV parking can be met.

PARKING

Table 17.96.020

Parking Requirements For Specific Uses

1. Hotel One space per two guest rooms plus one space per two employees.

5. Eating or drinking establishment One space per two hundred (200) square feet of floor area.

The proposed plan can provide the required parking and there is room for additional parking as needed or required. The spa, meeting rooms and other accessory commercial uses are accessory to the main Hotel and Restaurant uses.

BICYCLE PARKING

Comprehensive Plan page 34

The required number of bicycle parking spaces will be determined on a case-by-case basis, and the Oregon Bicycle and Pedestrian Plan (see Table 4, p.30a), can be used to provide guidance. Bicycle parking spaces shall be provided in a visible location which does not obstruct pedestrian traffic.

Bandon Transportation System Plan page 363

Restaurants require 1:1000sf

Transient Uses are not listed. The proposed plan shows bicycle parking delineated in both parking levels and additional parking is provided at each lodge. The proposal exceeds the minimum requirements.

TRAFFIC

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.)

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:

C. Controlling the number of access points

The proposal is for a main access point off of Beach Loop. The City of Bandon required that Carter be extended to Beach Loop to meet their own agenda- loop utilities and provide emergency access and evacuation routes. The City can “block” the street opening similar to Madison Ave SW and Ohio Ave SE which accomplishes that desired outcome. That would restrict vehicular traffic from Gravel Point and Beach Loop.

BMC 17.02

"Bollard" means a post of metal, wood or masonry that is used to separate or direct traffic (vehicles, pedestrians and/or bicycles). Bollards are usually decorative and may contain sidewalk or pathway lighting.

"Directional Sign": a sign which directs the reader to a location, event, or activity. Such signs also include signs designed and installed for the purpose of traffic or pedestrian direction to an entrance or exit from premises.

"Level of service" for transportation, a standard of a street's carrying capacity, based upon prevailing roadway, traffic and traffic control conditions during a given time period. The Level of Service (LOS) range, from LOS A (free flow) to LOS F (forced flow) describes operational conditions within a traffic stream and their perception by motorists/passengers. Level of Service is normally measured for the peak traffic hour, at intersections (signalized or un-signalized) or street segments (between signalized intersections).

There are ways to direct traffic, restrict traffic and provide pedestrian access without opening a street to through traffic. The LOS study showed that Beach Loop and Seabird could handle the expected traffic count for the proposed project. There is no reason to open Carter Street to through traffic.

17.104.080

Access.

B. The number of access locations onto highways and arterial streets from any development shall be minimized whenever possible through the use of common driveways or side streets common to more than one development and interior vehicle circulation design.

The proposal is for a main access point off of Beach Loop. The subject site has adequate circulation.

Comprehensive Plan

Transportation Goal 12

E. The City will require limited or shared access points along arterials and collectors as is necessary to preserve traffic-carrying capacity.

Land use changes which result in the generation of 300 or more new vehicle trips per day will be required to provide a traffic impact study. The results of the study will be used by the City and ODOT to determine what traffic mitigation measures will be required.

The proposed development does not result in a generation of 300 or more new vehicle trips per day; however, the developer chose to conduct a traffic study for the Planning Commission to review. The study and results are based on the Industry Standard and relied on information from ODOT and the City of Bandon. The total new trips per day do not warrant a second access point, new street connectivity, a four way stop or a traffic signal. ODOT has reiterated that they will not allow a signal at Seabird and Hwy 101.

STREET CREATION

Bandon Transportation System Plan

Page 353 *Development of Face Rock Drive-20th Street as a collector will be done as the South Bandon interior develops over the next twenty years.*

The interior of South Bandon, aka the Donut Hole, has yet to be developed to an extent that a new street connecting Beach Loop to Hwy 101 is warranted. The County residents have commented on the record that they are opposed to a new street. Additionally, the City of Bandon does not want to annex South Bandon and take on the expense of infrastructure. The Planning Commission is not the governing body for annexation or street openings or extensions; therefore, a requirement for a new street is outside of the purview of the Conditional Use Permit request.

BANDON BEACH PLAT

The proposal shows a vacation of the platted right of ways within the subdivision, and the extension of Carter to Beach Loop. The proposed plan also shows room for adjustments and considerations including moving the Villa Suites West by 30' to account for access to the wetland area owned by the City of Bandon. The plan also shows room to move the southern Villas North to eliminate the need for a street vacation that affects the abutting properties at the south side of the subdivision. The Planning Commission can approve the Conditional Use and Variance, the Commercial Design Standards, Parking and Signage; however, it is the City Council that will approve the street vacations.

Approval of the proposed project does not initiate or guarantee approval of the street vacation. The applicant could apply for a Minor Modification to the conditional use permit approval if the City Council requires changes to the proposed layout. A minor modification would be reviewed by staff for continued compliance with the permit conditions.

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:

C. Controlling the number of access points

The proposal is for a main access point off of Beach Loop. The City of Bandon required that Carter be extended to Beach Loop to meet their own agenda- loop utilities and provide emergency access and evacuation routes. The City can “block” the street opening similar to Madison Ave SW and Ohio Ave SE which accomplishes that desired outcome. That would restrict vehicular traffic from Gravel Point and Beach Loop.

16.12.070

Major modifications to approved plans.

B. The director shall determine that a major modification has resulted if one or more of the changes listed below have been proposed:

- 1. A change in land use;*
- 2. An increase in dwelling unit density;*
- 3. A ten (10) percent change in the ratio of the different types of dwelling units to the number of units;*
- 4. A change in the type of commercial or industrial structures;*
- 5. A change in the type and location of access ways and parking areas where off- site traffic would be affected;*
- 6. An increase in the floor area proposed for nonresidential use by more than ten (10) percent where previously specified;*
- 7. A reduction of more than ten (10) percent of the area reserved for common space and/or usable open space;*
- 8. A reduction of specified setback requirements by more than twenty (20) percent;*
- 9. An elimination of project amenities by more than ten (10) percent where the plan specified they were to be provided, such as: a. Recreational facilities, b. Screening, or c. Landscaping provisions;*
- 10. A ten (10) percent increase in the approved density; or*
- 11. Any modification to conditions imposed at the time of the approval of the conditional use permit.*

The Planning Commission can approve the Conditional Use and allow the applicant to proceed with the permit process. If a Major Modification to the approval is needed, then reapplication is required.

LANDSCAPING

17.94.060 Landscaping

"Landscaping" means any combination of living plants such as trees, shrubs, plants, vegetative ground cover or turf grasses, and may include structural features such as walkways, fences, benches, plazas, works of art, reflective pools, fountains or the like. Landscaping also includes irrigation systems, mulches, topsoil, and revegetation or the preservation, protection and replacement of existing trees."

The applicant submitted a landscape plan that meet the Ordinance requirements. Per Public Comment, and not specific to a code requirement, the developer consulted with local plant experts and revised the proposed plan. An exact landscape plan at this stage in permitting is premature and will result in a modification to the conditional use permit at a later date. The site itself will determine what should be planted, and there has not been enough time to eradicate the gorse and properly examine the site. Regardless, a plan and planting list have been provided and the criteria to provide a landscape plan has been met.

COMPATIBILITY

17.94.010

The purpose of this chapter is to promote growth management and the planning of development to protect resources and maximize Bandon's economic assets and advantages. Commercial Design Standards are intended to reflect Bandon's unique historic landscape and architectural character while encouraging the visual quality and continuity of commercial development. The standards will provide greater visual design interest, pedestrian-oriented site design, compatibility with uses and development on adjacent land, and a greater likelihood of building reuse. As future growth and urbanization occur, certain measures will be required to preserve the quality of life of Bandon's residents and the City's attraction to visitors.

The proposed plans meet the Commercial Design Standards as listed in this section. The standards are intended to provide "compatibility with uses and development on adjacent land." The proposed project has met the standards listed for compatibility, so the criterion has been met.

17.02

Definitions

"Incompatibility of land uses" means an issue arising from the proximity or direct association of contradictory, incongruous or discordant land uses or activities, including the impacts of noise, vibration, smoke, odors, toxic matter, radiation and similar environmental conditions."

"Lot coverage" means the area of a lot covered by a building or buildings expressed as a percentage of the total lot area."

"Performance zoning" provides that the criteria for evaluating an application are the net results or effects of the proposal, rather than a rigid set of rules or proscriptions."

"Sensitive lands" means wetlands, riparian areas, significant trees, steep slopes, flood plains and other natural resource areas designated for protection or conservation by the comprehensive plan."

"Scale" means the relationship of a project or structure in terms of size, height, bulk intensity, and aesthetics to its surroundings."

Compatibility in the planning and permitting process is specific to the applicant meeting the criteria in the Ordinance for compatibility. Compatibility has nothing to do with what an adjacent property wants in their neighborhood- that is subjective. The applicant has met the "Clear and Objective" criteria for a Compatible Use by demonstrating compliance with the BMC and Comprehensive Plan, therefore the proposed project is considered Compatible. In order to deem the project Incompatible, the Commission would need to write a specific finding that demonstrates non-compliance with the criteria in the BMC. See additional comments earlier in this document that relate to compatibility.