

SUGGESTED CHANGES TO VRD and B&B ORDINANCES

No objections to the proposed deletions in Section 3. The February 15, 2024 memo from Community Development Direction states that a new Short-Term Rental Ordinance will be housed under Business Licensing. The following are suggested changes to the existing Ordinances that the **Planning Commission should suggest to the Council for incorporation in the new Ordinances.**

1. **Delete Section 6.136.1. (B&B).** This is an unlawful delegation of the Council's legislative authority. See attached Henningsgaard letter March 4, 2021 to Van Thiel.
2. **Section 6.135.2. (B&B) should include a definition of "owner occupied."** Currently, Zoning Ordinance Section 1.030 Definitions includes: "Owner: Includes an authorized agent of the owner." This definition should be included in the Business License Ordinance.
3. **Section 6.137.6.E. (VRD) should be deleted.** This section requires payment for a Business License and payment of Room Taxes and includes a penalty of revocation of the permit if payments are not made. There is no such requirement for B&Bs. The Business License & Room Tax Ordinances speak for themselves – a license & tax is required for all businesses (which includes VRD and B&B). The Business License Ordinance includes a penalty for failure to acquire a Business License. There is no reason to create a unique penalty for VRD's which does not exist for B&Bs or any other business.
4. **VRD and B&B distinctions should be replaced by an all-inclusive Short Term Rental category.** To preserve the essential differences the replacement Ordinance could state: "If occupancy up to and including 12 persons is approved, the premises make be occupied by the owner or not, at the owner's discretion. If occupancy of 13-15 persons is approved, the premises shall be owner occupied."



Don Godard

April 2, 2024

2411 Ocean Vista Drive

Seaside OR 97138



March 4, 2021

Dan Van Thiel
POB 805
Baker City OR 97814 vanthiellaw@gmail.com

Re: Seaside Variance Procedure for Bed and Breakfast Establishments - ZOS 6.136

Dear Dan,

I write to alert you to a conversation I anticipate you will have with the Seaside Mayor and /or planning staff. I represent Don Godard who resides at 2411 Ocean Vista Drive. My client's desire to increase the rental units in his bed and breakfast has collided with the objection of an absentee neighbor. For the reasons described below, I believe that ZOS 6.136(1) which allows an abutting property owner to veto a variance application violates Article I, section 21 of the Oregon Constitution. In its relevant part that section provides no law shall be passed "the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution* * *."

My client currently operates his home as a bed and breakfast under a variance from the city. He is in the process of increasing the number of bedrooms on his second floor and like to increase his allowable rental units. Any increase will require a variance for the additional units. The procedure is set forth in ZOS 6.136. This section provides:

Section 6.136 Variance Procedure For Bed & Breakfast Establishments. A variance for additional units may be considered if the following criteria are met:

1. Abutting property owners are in agreement.
2. House has architectural design that would accommodate the use without changing the character of the neighborhood.
3. Adequate approved parking is provided.
4. Building meets Fire & Life Safety Code with annual inspection required.

The only objection my client received from surrounding owners was from the trustee of a California trust that owns an adjacent property. Ironically the only beneficiary who regularly uses that house does not object. The objecting trustees are his parents, who live in Orange County and rarely come to Seaside. Their objection is not based on my

client's operation of the bed and breakfast but rather on a vague notion that there are enough visitors in the area already.

Several land use cases from Umatilla County hold that permitting private citizens to arbitrarily make a land use decisions is an unlawful delegation of decision making authority under Article I Section 21.

In *Cosner v Umatilla County LUBA* (2012) LUBA considered a county ordinance that allowed a private landowner to waive the two-mile setback to a wind power generator and substitute a lesser setback at the sole discretion of the landowner. That ordinance, just like ZOS 6.136.1 allowed a private citizen to arbitrarily make the decision. LUBA found that allowing the waiver in the "arbitrary and standardless" discretion of the landowner, ran afoul of the delegation clause of Article I, section 21 of the Oregon Constitution.

Umatilla County responded to the Cosner decision by adopting an ordinance which allowed a landowner to "effectively veto" an application by failing to sign a consent. The amended statute was also held to violate Article I, section 21 in *Iberdrola Renewables, LLC v Umatilla county* 67 Or LUBA 149 (2013).

In my mind there does not seem to be a significant difference between the defect LUBA found in the Umatilla ordinance and ZOS 6.136.1. I believe that this defect can be cured simply by disallowing the citizen veto. My client has met with Kevin Cupples concerning this problem and has a meeting scheduled with the mayor next week. If you have not already been advised of this issue I expect you will.

Please let me know if I can provide any further information or if you have questions.

Sincerely,



Blair J. Henningsgaard cc
client