

CITY OF GEARHART PLANNING COMMISSION STAFF REPORT

From: Garrett Phillips, City Planner

Date: September 17th, 2025

File #: 25-07 APPL

Description: Appeal of expiration of a Vacation Rental Permit for 101 5th Street.

Appellant: Jeff Miller, 2202 SW Kings Ct, Portland, OR 97205

Owner: 101 5th Street LLC, 2202 SW Kings Ct, Portland, OR 97205

Other parties: None as of this report.

Subject Location: 101 5th Street. Taxlot 61004DD07500.

Decision Type: Quasi-judicial decision to be made after a hearing that is open to new evidence.

Decision Maker: Planning Commission. The Planning Commission's decision may be appealed to the City Council.

Planning Commission Hearing: October 9, 2025

Application complete: : August 20th, 2025

Notice to parties August 30th, 2025

Testimony: The appellant or their agent submitted a 35 page collection of timelines and emails that on the first page has a title "Gearhart House Timeline"

Agency Comments: Comments were not requested from city staff or other agency staff.

Decision Criteria: GZO Section 13.060 Appeals, and GZO Article 7 Vacation Rentals.

I. BACKGROUND

Jeff Miller and 101 5th Street LLC held a Vacation Rental Permit pursuant to GZO Article 7. The permit holder did not renew the permit before it expired, so the permit expired. The appeal seeks to reverse the permit expiration and renew the permit.

II. APPLICABLE STANDARDS AND FINDINGS

SECTION 13.060 APPEALS, 1. A Decision of a City Administrator Officer

A decision of a City Administrator officer regarding a requirement of this ordinance may be appealed to the Planning Commission by an affected party by filing an appeal with the City Auditor within 15 days of the date that notice of the decision was mailed by the City. The notice of appeal that is filed with the City shall indicate the interpretation that is being appealed. The matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the ordinance.

FINDINGS: The appellant is the vacation rental permit holder, and they filed the appeal application on August 20th and later provided the written testimony titled "Gearhart House Timeline" on its first page. It is not clear in the appeal application or testimony what permit renewal criteria, GZO interpretation, or constitutional issue is being raised.

Arguably, there is no City Administrator decision to appeal, as the sections and findings below describe that permits expire if not renewed, and the applicant did not renew the permit. While staff sent the permit holder a notice of the expiration on August 15th, the notice, an explanation, findings, and information on appeal rights is not required to be sent for this expiration to be effective. The permit expired as a matter of course. In this regard, there is not only no discretionary decision to appeal, there is also not even a ministerial decision to appeal. City staff did not take action to deny a renewal application.

SECTION 13.060 APPEALS, 2 through 7

FINDINGS: These sections are procedural standards for appeals of Planning Commission decisions to City Council, so are not applicable.

SECTION 7.020 – Special Standards Governing Vacation Rentals

1. Neighborhood Exemptions. The Palisades, the Highlands and the East Pine Street neighborhoods are exempt from these provisions because they are not located in the Gearhart city limits. 2. R-A, R-1, R-2 and RCPD Zones. Vacation rental dwellings are similar to a commercial business use and therefore are not a permitted use in the R-A, R-1, R-2 and RCPD zones. 3. R-3 Zone....

FINDINGS: The subject property is not in the referenced exemption areas. It is in the R-1 zone, so vacation rentals are not permitted except as described in subsection 4 immediately below this finding.

4. Limited Permit Offering to obtain a Vacation Rental Permit

Upon the effective date established by City Council Ordinance there will be a one-time 60-day period in which a property owner may file an application for a vacation rental permit from the City of Gearhart. At the time of application, the applicant shall provide proof that city lodging taxes were paid on the subject property prior to the end of the 60-day application period. When the one-time 60-day application period expires there shall be no new permit opportunities. The permit application must be deemed complete within 180 days of submittal...

FINDINGS: This section prohibits the issuance of new vacation rental permits after the limited permit offering window that was open following adoption of the ordinance that established this section. This is why renewal of the original permit is important to the appellant and the subject of this appeal (They cannot just apply for a new permit). Otherwise, this section describes procedural criteria for the original permit issuance and permit transfers (not the permit renewal). The validity of the original permit issuance is not questioned by the appellant or the City and permit transfers are not an issue in this case, so this section is not applicable to the appeal.

SECTION 7.030 – Vacation Rental Permit Standards and Procedures

1. Maximum Occupancy Calculation
2. 24-Hour Representative and Neighbor Notice ---
3. Residential Appearance
4. Off Street Parking Requirements
5. Garbage Service
6. Fire/Safety/Health Inspection
7. Tsunami Preparedness
8. Permit Limitations

9. Vacation Rental Permit Issuance and Annual Renewal The owner shall be issued a permit for a vacation rental dwelling by the City upon completion of all required forms, approval of the dwelling unit by the Building Official or designee, and payment of the initial and annual permit fee of \$600 (nonrefundable), with a \$100 fee reduction if standard tsunami go-bags are provided in the dwelling. City vacation rental taxes must be paid quarterly on an annual basis for the permit to remain valid, as verified by a City Vacation Rental Tax registration form. Upon notice by the City, if an owner has not paid vacation rental taxes to the city annually (July 1 – June 30), and no proof of payment is provided the vacation rental permit will not be renewed.
10. Violations...

FINDINGS: Subsections 1 through 8 and 10 are not applicable to the appeal decision because they describe requirements and conditions for obtaining and maintaining a vacation rental permit that did not cause permit expiration. The remainder of this finding is about subsection 9.

The vacation rental permit expired because the permit holder did not renew it before the expiration date. The attached Facts Timeline and Staff Statement document the advanced notices and technical assistance provided by City staff to the applicant in the months and days leading up to permit expiration. The Facts Timeline and Staff Statement also document that the permit holder successfully renewed their permit several times in prior years.

III. CONCLUSION

The appeal application materials and “Gearhart House Timeline” testimony describe the permit holder’s attempts and their agents’ attempts to renew the permit, however they do not include information supporting a claim that the City made a constitutional error or GZO interpretation error.

The City was reasonable in providing a pathway for the permit holder to renew the permit, providing two advanced notices that clearly stated the deadline, responding to the applicant’s request for technical assistance in a timely manner, and processing their tax payment in a timely manner. The permit holder has successfully followed the City’s renewal process in prior years, and the City did not change the process or requirements this year.

The Planning Commission can affirm the permit expiration, or it can reverse or modify the permit expiration.

After the Planning Commission decides, the City will send a written notice to all parties, and parties will have 15 days from the date of the signed order to submit an appeal application for City Council to review the Planning Commission’s decision.

IV. DECISION OPTIONS

- Motion affirming the permit expiration based on the staff report findings or alternate findings.
- Motion reversing or modifying the permit expiration based on alternate findings. The motion should identify a time period within which the online application system shall be opened for the applicant to complete renewal forms.

V. ATTACHMENTS

1. Appeal Application (August 20, 2025)
2. 1st and 2nd expiration/renewal notice form letters

3. Facts Timeline and Staff Statement
4. Appeal Hearing Notice to Appellant
5. Testimony titled on the first page as "Gearhart House Timeline"