



MEMORANDUM

TO: City Council

FROM: Brian Pedrotti, Community Development Director

BY: Patrick Holub, Assistant Planner

SUBJECT: Appeal Case 21-007; Appeal of Planning Commission Approval of Minor Use Permit- Plot Plan Review 21-029 for the Establishment of a Vacation Rental; Location: 1562 Strawberry Ave; Appellant: Stew and Francine Errico, Et. Al.

DATE: February 8, 2022

SUMMARY OF ACTION:

Adoption of the proposed Resolution (Attachment 1) would deny the appeal and approve the proposed vacation rental project in accordance with the approval granted by the Community Development Director on September 28, 2021, and upheld on appeal by the Planning Commission on December 7, 2021.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

In accordance with Chapter 3.24 of the Arroyo Grande Municipal Code (AGMC), vacation rentals are required to pay the City transient occupancy tax (TOT) in the amount of ten percent (10%) of the rent charged by the operator. To cover the costs of staff's time to prepare the appeal hearing documents, the appellant paid a fee of \$491 to appeal the Community Development Director's decision to the Planning Commission and a fee of \$1,163 to appeal the Planning Commission's decision to the City Council.

RECOMMENDATION:

Adopt a Resolution denying Appeal Case No. 21-007 and approving Plot Plan Review 21-029.

BACKGROUND:

Vacation Rental Ordinance

On June 10, 2014, the City Council adopted Ordinance No. 663, establishing vacation rentals and homestays as permitted land uses in the City's residential zoning districts, subject to the approval of a Minor Use Permit-Plot Plan Review (Attachment 2). During the development of Ordinance 663, both the Planning Commission and City Council considered potential issues associated with short term rentals, including noise, parking,

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and other general problems that could be associated with vacation rentals. Ultimately, both bodies concluded that these concerns could be addressed by compliance with the performance standards and abiding by conditions of approval. For example, an applicant is required to provide a local contact to address noise and general disturbance issues that may arise from operation of a short term rental. Additionally, a 300-foot buffer between short term rentals on the same street is required to prevent the overconcentration of short term rentals in a neighborhood.

The Ordinance went into effect on July 10, 2014. Since that time, the City has permitted seventy-one (71) vacation rentals and forty-one (41) homestays, not including the subject application. In addition to this application, staff is currently processing applications for two (2) vacation rentals and one (1) homestay. Since the adoption of Ordinance No. 663, nine (9) permits that were approved by the Community Development Director for the establishment of a vacation rental have been appealed to the Planning Commission and one (1) of these approvals have been appealed to the City Council. All nine (9) of the appeals were denied by the Commission and the Community Development Director's decision was upheld. Each of the previous appeals were denied due to the Planning Commission affirming the required findings for the Plot Plan Review. Similarly, the single appeal to City Council was also denied and the Community Development Director's decision was upheld.

Plot Plan Review 21-033

The applicants for Minor Use Permit-Plot Plan Review 21-029 submitted their application on August 2, 2021, for the establishment of a vacation rental at 1562 Strawberry Avenue. The subject property is a single family residence in the Berry Gardens neighborhood west of South Courtland Street and north of Blackberry Avenue. Additional materials necessary to provide a complete application were received by the City on September 12, 2021. After reviewing the materials provided, the Community Development Director approved Minor Use Permit-Plot Plan Review 21-029 on September 28, 2021 (Attachment 3). Notice of the Director's approval was sent to forty-five (45) property owners within 300 feet of the subject property. The notice included the name and phone number of the applicant's local contact person in accordance with Arroyo Grande Municipal Code Subsection 16.52.230.C.5, appeal information, and information about how to contact Community Development staff should there be questions about the project. The approval mailer also listed the name of a secondary emergency contact person.

Planning Commission Review

An appeal of the Community Development Director's approval of the Minor Use Permit-Plot Plan Review was filed on October 11, 2021. The appellants submitted additional documents outlining the grounds justifying their appeal on November 12, 2021. The Planning Commission heard the appeal at its meeting on December 7, 2021 (Attachment 4). Issues raised in the appeal included completeness of the application, impacts on

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availability of parking and circulation, noticing procedures and the ability of the listed emergency contact to perform the required functions. After hearing comments from the applicant, appellants and members of the public, the Planning Commission voted to deny the appeal due to the determination that they were unable to make sufficient findings to uphold the appeal. The appellants submitted a timely appeal of the Planning Commission's decision on December 20, 2021.

ANALYSIS OF ISSUES:

Vacation Rental Performance Standards

Arroyo Grande Municipal Code (AGMC) Section 16.52.230 sets forth performance standards and conditions required for the operation of vacation rentals within the City. These performance standards and conditions are intended to ensure vacation rentals conform to the existing character of the neighborhood and do not create an adverse impact on adjacent properties. Applicable performance standards are included as conditions of approval to allow an upfront understanding by the applicant of what the City requires for the operation of the vacation rental. Conditions include items such as having a structure consistent with the neighborhood, meeting applicable Codes, maintaining a local contact person, and limiting the number of guests allowed to occupy the rental.

Basis of the Appeal

The subject appeal indicated concerns about (1) due process, (2) the application not meeting the required performance standards, and (3) the Planning Commission not addressing material errors raised in that appeal (Attachment 5).

1. Due Process

The appeal raised concerns with the notification of adjacent property owners as required per Arroyo Grande Municipal Code Subsection 16.16.080.C.6. Notice of the Community Development Director's approval of the application was provided to property owners within a 300' radius on September 28, 2021. It was later determined, following the Planning Commission hearing, that eleven (11) property owners within the required radius were not notified included in the original mailing list and did not receive notice of the Community Development Director's approval. However, each of these eleven property owners, as well as all of the other property owners within the required 300' radius, were notified of the Planning Commission hearing. Additionally, the notice of this hearing before the City Council was also mailed to all of the required property owners within 300 feet of the subject property, including the eleven properties missed with the original mailing.

Because the Community Development Director's approval of the permit was eventually appealed to the Planning Commission, and because notices of the two hearings before the Planning Commission and the City Council have been provided properly, the City Attorney has advised that no property owner has been deprived of their rights in this case. Government Code Section 65010(b) states:

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No action, inaction, or recommendation by any public agency or its legislative body or any of its administrative agencies or officials on any matter subject to this title shall be held invalid or set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect, or omission (hereafter, error) as to any matter pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, or any matters of procedure subject to this title, unless the court finds that the error was prejudicial and that the party complaining or appealing suffered substantial injury from that error and that a different result would have been probable if the error had not occurred. There shall be no presumption that error is prejudicial or that injury was done if the error is shown.

As the error in the original notice of the Community Development Director's approval of the permit was not discovered until after the Planning Commission hearing, staff did not notify the Commission that the original notice had inadvertently excluded 11 properties. However, because all of the property owners who should have been originally notified were subsequently noticed properly for the appeals to the Planning Commission and to the City Council, no property owners were deprived of their rights, no prejudicial errors occurred, and a different result was not probable if the error had not occurred. Therefore, staff does not recommend upholding this appeal issue.

2. Performance Standards

The appeal contends that the application does not meet the required performance standards, specifically in regards to the listed emergency contact persons. The application originally included an emergency contact person that was beyond the required 15-minute drive time from the rental property. The applicants later provided an emergency contact person that was within the required distance and that person's contact information was provided as the property's primary emergency contact in the notices mailed to nearby property owners. Because the applicants had already contracted with a vacation rental management company, the applicants requested that the original emergency contact person included in the application be provided as a secondary contact person. The appeal contends that this person would not otherwise qualify as the primary contact person, and, therefore, should not be allowed to be listed as a contact person for this rental. Staff believes that the presence of a second emergency contact person will only serve to benefit the neighborhood should any issues arise. Because the applicants have provided an emergency contact person who meets all of the necessary performance standards, staff does not recommend upholding this appeal issue. If the City Council denies the appeal and upholds approval of the vacation rental permit, notice of the approval listing the emergency contact persons will be mailed to all property owners within a 300' radius of the property.

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3. Planning Commission Hearing

The appeal states that the Planning Commission did not address some of the errors that were raised during that hearing. These errors mentioned include the notification error with the original Community Development Director approval of the permit and that a secondary contact person should not have been provided due to the fact that the secondary emergency contact person does not reside within a fifteen (15) minute drive of the property. The appeal further states that the Planning Commission should have continued the item to a later date to allow these errors to be corrected.

During the hearing before the Planning Commission on December 7, 2021, the Commissioners in attendance had the opportunity to review the materials provided by City staff, the applicant and the appellants and concluded that sufficient materials were provided to make a determination on the appeal. Ultimately, the Planning Commission voted unanimously to deny the appeal and to approve the vacation rental as submitted. Because the Planning Commission conducted a Public Hearing and heard input from all parties, staff does not recommend upholding this appeal issue.

Recommended Action

Staff recommends that the City Council adopt the attached Resolution denying Appeal Case No. 21-007 and approving Plot Plan Review Case No. 21-029. In order for the City Council to uphold the appeal and deny the vacation rental permit, a majority of the quorum would need to identify substantial evidence supporting findings that the requirements of the Ordinance for approval of a vacation rental have not been met, as follows:

1. The proposed project is consistent with the goals, objectives, policies and programs of the Arroyo Grande general plan
2. The proposed project conforms to applicable performance standards and will not be detrimental to the public health, safety or general welfare
3. The physical location or placement of the use on the site is compatible with the surrounding neighborhood.

In accordance with finding #2, the vacation rental must conform to the following performance standards and conditions listed in the Municipal Code:

1. Operators of vacation rentals are required to obtain a minor use permit-plot plan review (Section 16.16.080) and a business license.
2. Any proposed vacation rental shall be compatible with the neighborhood in which it is located in terms of landscaping, scale and architectural character. The use shall be harmonious and compatible with the existing uses with the neighborhood.
3. All Building Code and Fire Code requirements for the level of occupancy of the vacation rental shall be met.
4. All environmental health regulations shall be met.

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5. The operator of the vacation rental shall, at all times while the property is being used as a vacation rental, maintain a contact person/entity within a fifteen-minute drive of the property. The contact person or entity must be available via telephone twenty-four (24) hours a day, seven days a week, to respond to complaints regarding the use of the vacation rental. The contact person or entity shall respond, either in person or by return telephone call, with a proposed resolution to the complaint within three hours between seven a.m. and nine p.m., and within thirty (30) minutes between nine p.m. and seven a.m.
6. The operator of the vacation rental shall annually, at the time of renewal of the business license, notify the community development department of the name, address and telephone number of the contact person required in subsection (C)(6).
7. A written notice shall be conspicuously posted inside each vacation rental unit setting forth the name, address and telephone number of the contact person required in subsection (C)(6). The notice shall also set forth the address of the vacation rental, the maximum number of occupants permitted to stay overnight in the unit, the maximum number of vehicles allowed to be parked on-site, and the day(s) established for garbage collection. The notice shall also provide the nonemergency number of the Arroyo Grande Police Department.
8. On-site advertising of the vacation rental is prohibited.
9. The number of overnight occupants shall be limited to two persons per bedroom and two additional persons. A bedroom shall meet the minimum size requirements as defined in the Building Code.
10. All refuse shall be stored in appropriate containers and placed at the curb for collection every week.
11. The operator of the vacation rental shall pay transient occupancy tax as required by Arroyo Grande Municipal Code Section 3.24.030.
12. Establishment of a vacation rental within three hundred (300) feet of an existing vacation rental on the same street shall not be permitted.
13. Violations. Violation of these requirements shall constitute grounds for revocation of the minor use permit pursuant to Section 16.16.220.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Adopt the attached Resolution denying Appeal Case No. 21-007 and approving Plot Plan Review Case No. 21-029;
2. Modify and adopt the attached Resolution denying Appeal Case No. 21-007 and approving Plot Plan Review Case No. 21-029;
3. Do not adopt the attached Resolution, take tentative action to uphold Appeal Case No. 21-007, and provide direction for staff to return with an appropriate supporting resolution including findings for denial of Plot Plan Review Case No. 21-029; or
4. Provide other direction to staff.

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ADVANTAGES:

Denial of the appeal and approval of the Minor Use Permit - Plot Plan Review would allow the applicants to establish a vacation rental in accordance with City regulations and provide the applicants flexibility to use the home to generate supplemental income. The applicant would also collect and remit TOT from rentals, which would be used to help maintain City services and infrastructure.

DISADVANTAGES:

The establishment of a number of vacation rentals in a residential neighborhood could impact the atmosphere developed in the neighborhood through time. Impacts to noise, traffic, property values, and neighborhood composition could be observed. However, concentration limitations and performance standards developed specifically for vacation rentals were intended to reduce this potential, including the designation of a local contact person to address negative impacts to neighbors and prevent overburdening City services. Additionally, Citywide performance standards, including the Noise Ordinance, also apply to vacation rentals. If the vacation rental begins operating outside of any of these standards or the conditions of the permit, remedies are made available through the AGMC.

ENVIRONMENTAL REVIEW:

Staff has reviewed the project in accordance with the California Environmental Quality Act (CEQA) and determined that it is categorically exempt per Section 15301 of the CEQA Guidelines regarding existing facilities.

PUBLIC NOTIFICATION AND COMMENTS:

A notice of public hearing was mailed to all property owners within 300 feet of the project site, published in the Tribune, and posted on the City's website and at City Hall on Friday, January 28, 2022. The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2. At the time of report publication, no comments have been received.

Attachments:

1. Proposed Resolution
2. Ordinance 663
3. Approval Letter dated September 28, 2021
4. Minutes and Staff Report from the December 7, 2021 Planning Commission Meeting
5. Appeal Documents