



## MEMORANDUM

**TO:** Planning Commission

**FROM:** Brian Pedrotti, Community Development Director

**BY:** Patrick Holub, Assistant Planner

**SUBJECT:** CONSIDERATION OF APPEAL TO PLANNING COMMISSION CASE 21-004; APPEAL OF PLOT PLAN REVIEW 21-029 FOR THE ESTABLISHMENT OF A VACATION RENTAL; LOCATION – 1562 STRAWBERRY AVENUE; APPELLANTS – STEW AND FRANCINE ERRICO, ET AL.

**DATE:** December 7, 2021

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### **SUMMARY OF ACTION:**

Adoption of the proposed Resolution would deny the appeal and approve the proposed project in accordance with the approval granted by the Community Development Director on September 28, 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.

### **RECOMMENDATION:**

It is recommended that the Planning Commission adopt a Resolution denying Appeal Case No. 21-004 and approving Plot Plan Review 21-029 (Attachment 1).

### **BACKGROUND:**

#### Vacation Rental Permitting

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 had discussions about potential issues related to noise, parking, and other general nuisances, due to concerns expressed by some members of the public. The performance standards by which a vacation rental application is reviewed were generated from those discussions. For example, an applicant is required to provide a local contact to address noise and

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general disturbance issues that may arise from a short term rental. A 300-foot buffer between rentals on the same street is required to prevent the oversaturation of short term rentals in a neighborhood. Ultimately, both bodies came to the conclusion that these concerns could be addressed by compliance with the performance standards and abiding by conditions of approval. Additionally, these issues were found to be similar to instances when long-term renters, homeowners, and even private guests of homeowners are the cause of these types of nuisances. A vacation rental includes additional protections, whereby the local contact is available to address any complaints and a property owner is motivated to comply with the conditions of approval to avoid possible revocation of the permit. Under the requirements of the Ordinance, the new vacation rental is conditioned to meet performance standards to minimize adverse impacts on adjacent properties, ensure appropriate conditions are implemented, and prohibit overconcentration of these uses in residential districts.

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 this application. In addition to this application, staff is currently processing applications for four (4) vacation rentals. Since the adoption of Ordinance No. 663, seven (7) permits that were approved by the Community Development Director for the establishment of a vacation rental have been appealed to the Planning Commission. All seven (7) 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 being able to make the required findings for the Plot Plan Review.

### Property History

On September 28, 2021, the Community Development Director approved Plot Plan Review 21-029 for the establishment of a vacation rental at 1562 Strawberry Avenue. At the time of approval, notice of the Director's approval were sent to all 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 letter is included as Attachment 3.

On October 11, 2021, the appellants submitted an appeal of this determination to the Planning Commission. On November 12, 2021, the appellants submitted additional documents outlining the grounds for their appeal. The appellants' appeal documentation is included as Attachment 4.

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### **ANALYSIS OF ISSUES:**

#### Basis of the Appeal

The subject appeal indicated concerns about the completeness of the application, the structure's adherence to Building and other Code requirements, availability of parking and perceived impacts on circulation, noticing procedures and the ability of the listed emergency contact to perform the required functions.

#### Vacation Rental Performance Standards

Arroyo Grande Municipal Code Section 16.52.230 outlines 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 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.

#### Completeness of Application

The appellants have raised issue with the alleged incompleteness of the application for Plot Plan Review 21-029. For example, the appellants contend that the plans submitted as part of the Plot Plan Review application are inadequate. The checklist referenced by the appellants is intended for projects that propose new construction, rather than permitting a new use in an existing, permitted structure. Staff believes that the information included on the application provides staff with the required information in order to make the necessary findings for approval of the application. Recognizing that the "Minor Project Application" form is used for a wide array of application types, staff has made adjustments to the application form in order to more clearly indicate which fields are required to be completed for different permit types. These changes include clearly indicating that Section III, found on page three of the application, is not required to be completed for short term rental applications, which include vacation rental and homestay applications.

#### Code Compliance

The appellants have alleged that due to the information provided on the application, staff would be unable to verify whether the existing structure meets provisions of the California Building Code (CBC). During the review of the application, information provided by the applicant was cross referenced with City documentation to confirm that the existing structure was permitted, constructed and inspected according to standard City procedures. Furthermore, after approval of the application and before the applicant is able to rent the unit, the Building Division of the Community Development Department will conduct a safety inspection to confirm that the necessary life safety devices are installed and in working order. This inspection includes verification that the structure is in

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conformance with the City's records regarding the structure as well as verifies that smoke detectors, carbon monoxide detectors, and fire extinguishers are installed as required by the current version of the CBC. Should any deficiencies become known before or during the safety inspection, the applicant will be required to address those deficiencies prior to obtaining their Business License, and therefore, will be unable to rent the unit until such deficiencies are corrected.

### Parking

The appellants' submittal included concerns that guests of the rental parking on the street could have impacts on circulation within the cul-de-sac and that parked vehicles could have impacts on emergency response or trash collection for the street. Strawberry Avenue is classified as a local street, and as such, is designed to accommodate sidewalks, two lanes of traffic with driveway access, and on-street parking within the right-of-way. As a local road, the Strawberry Avenue was designed to provide emergency access with the presence of on-street parking. Furthermore, the appeal documents allege that presence of game tables in the garage preclude the use of the garage for guest parking. The Municipal Code does not include a parking standard for vacation rentals, therefore the presence of any obstructions in the garage is not a basis for denial of a vacation rental application. However, because the game tables are not permanently installed in the garage, staff believes this to be a non-issue and parking vehicles within the garage is possible. Lastly, the appellants have taken the presence of these games tables to constitute a "home occupation" of the garage. The section of the Business License application that the appellants have taken to prohibit this use of the garage is in reference to businesses that have obtained a Home Occupation Permit, which is not applicable in this situation. A Home Occupation Permit is meant to allow a business owner to conduct more typical business activities from their home. These activities include contractors who store vehicles on their property or home office related activities. The prohibition of utilizing a garage as a home occupation does not apply in the scenario of a vacation rental. Furthermore, the use of a garage as part of a vacation rental is to be expected based upon the fact that a vacation rental most closely imitates a residential use of the structure.

### Occupancy Limitations

Condition of Approval No. 9 limits overnight occupants of vacation rentals to two (2) persons per bedroom, and an additional two (2) people. This is to ensure rentals are not over occupied and detrimental to surrounding residences. An applicant is required to submit a floorplan as part of the application so staff can verify the number of bedrooms in a dwelling unit. At 1562 Strawberry Avenue, the single family residence has three (3) bedrooms, therefore the permit was conditioned to have no more than eight (8) overnight occupants (Attachment 5).

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### Noticing Requirements

The appellants' submittal on November 11<sup>th</sup> makes the claim that noticing requirements were not followed for this project. Specifically, the appellants allege that properties within the required 300' radius were not notified. After conducting a thorough analysis of the properties notified of the Community Development Director's decision, staff has concluded that owner of all of properties within a 300' radius of the subject property were sent a copy of the approval mailer previously mentioned. The County of San Luis Obispo's Geographic Information Systems (GIS) information indicates that there are thirty (30) parcels within 300' of the subject property (Attachment 6). Staff believes that the forty-five (45) parcels notified actually exceeded the noticing requirements of the AGMC. Furthermore, staff believes that the appellants arrived at the total of sixty-nine (69) parcels in error due to the fact that "property owner" and "resident" labels were included in their mailing list. Only mailing labels for property owners within 300' are required to be submitted with an application for a vacation rental, pursuant to AGMC Section 16.12.030.

### Local Contact Person

Condition of Approval No. 6 requires the vacation rental operators to maintain a local contact person or entity, within a fifteen (15) minute drive of the property, to be available to resolve any issues resulting from the use of the residence as a vacation rental. This is meant to give neighboring property owners a primary means of addressing issues with the rental instead of relying solely on City services, such as Police, Neighborhood Services, and Community Development. If in the future the local contact changes, the applicants are required to notify the City of the new local contact and property owners within 300 feet would be mailed a postcard with the new contact information. As part of their application, the applicant identified two emergency contacts. The primary emergency contact is Erika McCann and the secondary emergency contact is Kathy Kelly. The appellants expressed concerns regarding the listing of two emergency contacts, stating that Ms. McCann was listed in an attempt to circumvent the City's vacation rental performance requirements. Staff has spoken with the applicant and is confident that Ms. McCann is able to perform the requirements of being listed as the primary emergency contact. Should community members have issues with the emergency contacts' ability to abate concerns related to the rental unit, revocation of the permit could be a solution, subject to a public hearing before the Planning Commission. The AGMC does not prohibit an applicant from providing additional emergency contact persons that can assist in addressing concerns from neighbors.

### Concentration Limitations

During the Council's consideration of Ordinance No. 663, concerns were raised regarding the possibility that an overconcentration of vacation rentals and homestays could negatively impact the residential character of neighborhoods. In order to address this issue, the Council included separation requirements in the regulations that prohibit the establishment of a vacation rental within 300 feet of an existing vacation rental on the

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same street. The nearest permitted vacation rental is located at 1515 Elderberry Court, which is located approximately 175 feet northeast of the subject property (Attachment 7). Although this property is within 300 feet of the subject property, the previously approved vacation rental is on a different street than the current application. Therefore, the address at 1562 Strawberry Avenue is eligible to be entitled as a vacation rental.

### Megan's Law

The appellant has reiterated concerns from a previous appeal that guests of the vacation rental could potentially be registered sex offenders and the proximity of the rental to school sites or locations where children congregate could cause safety issues. Staff would like to again state that while the safety of schoolchildren is of utmost concern, the transitory nature of vacation rental guests does not meet the reporting requirements of Megan's Law. The law was intended to compel individuals to register their permanent (or semi-permanent) address with law enforcement so that they, and the public, would know where offenders are residing. Additionally, this gives law enforcement the opportunity to check up on registered individuals and allows residents to check if any registered offenders reside in their neighborhood.

### **ALTERNATIVES:**

The following alternatives are presented for the Planning Commission's consideration:

1. Adopt the attached Resolution denying Appeal Case No. 21-004 and approving Plot Plan Review Case No. 21-029;
2. Modify and adopt the attached Resolution denying Appeal Case No. 21-004 and approving Plot Plan Review Case No. 21-029;
3. Do not adopt the attached Resolution, take tentative action to approve Appeal Case No. 21-004, and provide direction for staff to return with an appropriate resolution including findings for denial of Plot Plan Review Case No. 21-029; or
4. Provide direction to staff.

### **ADVANTAGES:**

Denial of the appeal and approval of the requested 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 streets and services.

### **DISADVANTAGES:**

The establishment of a number of vacation rentals in an established neighborhood could impact the atmosphere developed in the neighborhood through time. Impacts to noise,

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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 manage neighbor complaints 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, November 22, 2021. 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 beyond what was contained in the appeal forms.

Attachments:

1. Draft Resolution
2. Ordinance No. 663
3. September 28, 2021 Approval letter
4. Appeal form
5. Floor plan
6. 300' notification radius
7. Vacation Rental vicinity map