

MEMORANDUM

TO: City Council

FROM: Brian Pedrotti, Community Development Director

BY: Patrick Holub, Assistant Planner

SUBJECT: Appeal Case 21-006; Appeal of Planning Commission Approval of Minor Use Permit-Plot Plan Review 21-033 for the Establishment of a Vacation Rental; Location; 263 Spruce St, Unit D; Appellant – Sharon Valienzi

DATE: January 25, 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 October 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. 21-006 and approving Plot Plan Review 21-033.

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-four (74) vacation rentals and forty-one (41) homestays, not including the subject application. In addition to this application, staff is currently processing applications for seven (7) vacation rentals and three (3) homestays. 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. 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.

Plot Plan Review 21-033

The applicants for Minor Use Permit-Plot Plan Review 21-033 submitted their application on August 30, 2021, for the establishment of a vacation rental at 263 Spruce Street, Unit D. The subject property is a detached residential unit within a four-unit planned development in the neighborhood west of Elm Street and north of Ash Street, approximately 300 feet north of the Soto Sports Complex. Additional materials necessary to provide a complete application were received by the City on September 28, 2021. After reviewing the materials provided, the Community Development Director approved Minor Use Permit-Plot Plan Review 21-033 on October 28, 2021 (Attachment 3). 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.

Planning Commission Review

An appeal of the Community Development Director's approval of the Minor Use Permit-Plot Plan Review was filed on November 8, 2021. The Planning Commission heard the appeal at its meeting on December 7, 2021 (Attachment 4). Issues raised in the appeal included obstruction of the fire lane, inadequate parking for guests due to an unpermitted storage room in the garage, and disruptive guests from short term rentals when the residence was rented before obtaining a vacation rental approval. Although the Planning Commission agreed that the subject property is a poor location for a vacation rental, the appeal was denied due to a determination that the Commission was unable to make

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sufficient findings to uphold the appeal. Furthermore, the Commission discussed the alleged obstruction of the fire lane and access easement. It was determined that multiple vehicles parked outside of the garage could cause access issues for adjacent units. Therefore, the Commission added a condition of approval requiring the operators to demolish the unpermitted storage room and require short term renters to park in the garage to alleviate concerns regarding obstruction of emergency access. The appellant submitted a timely appeal of the Planning Commission’s decision on December 16, 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) availability of parking and guest parking within a fire lane, (2) disruptive behavior from guests, (3) violation of private covenants, conditions, and restrictions (CC&Rs) for the development in which the property is located, (4) inconsistency with the vacation rental ordinance, and 5) that the Planning Commission’s review of the appeal was flawed due to a conflict of interest by one of three Commissioners who voted on the appeal (Attachment 5).

(1) Parking & Emergency Access

The residential complex at 263 Spruce Street consists of four separate units. Each unit has two parking spaces in their respective garage, as well as two (2) uncovered guest parking spaces to share. One of the shared spaces is for use by units A and B and is located west of unit B, while the second shared parking space is reserved for guests of units C and D and is located between the units. The appeal states concerns regarding the use of the guest parking space between units C and D by short term renters, as well as concerns regarding vehicles parked in the driveway in a manner that blocks access to unit C’s driveway. Additionally, there exists a twenty-one foot (21’) access easement to provide ingress and egress to all four units. The easement terminates ten feet (10’) into the western end of unit D’s parcel, leaving approximately twelve feet (12’) of driveway for parking outside of the easement. (See Figure 1 – Project Site below).

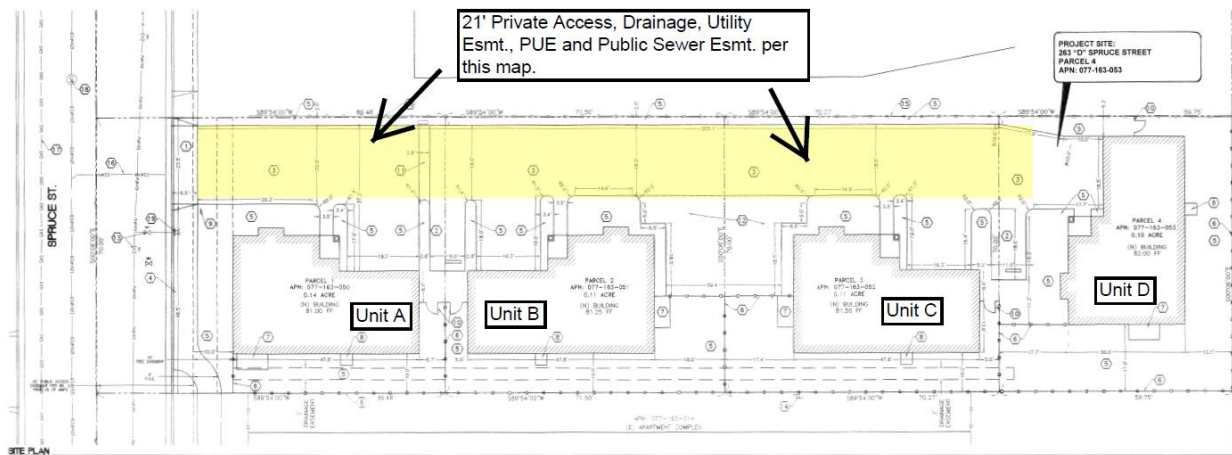
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Figure 1 – Project Site



The City’s vacation rental ordinance does not establish a parking requirement for short term rentals. The Planning Commission discussed the parking issue during its consideration of the appeal and conditioned its approval to include a requirement that vacation rental guests park in the unit’s garage. The appeal argues that, because the ordinance does not require parking to be provided, a condition to require parking in the garage should not be a viable solution to mitigate adverse impacts from the rental. Because the City’s vacation rental ordinance does not impose specific parking standards, and in light of the condition of approval requiring the use of the unit’s garage for vacation rental parking, staff does not recommend upholding this appeal issue. Furthermore, the availability of parking within the garage will mitigate the need for guests of the residence to park outside of the garage and will eliminate issues of blocked access and parking within the easement.

(2) Disruptive Behavior

The appeal raises concerns regarding disruptive behavior from short term renters as a reason to deny the requested permit. Disruptive behavior from guests was considered during the development of the vacation rental ordinance and each approval is conditioned 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. 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. As part of their application, the applicant identified a primary emergency contact, Michelle Gust and her telephone number was provided on the approved permit.

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The name and phone number of the local contact is also mailed to property owners within 300 feet of the vacation rental upon approval of the application.

Identifying a local contact is intended to serve as the primary means of addressing issues with the rental instead of relying solely on City services, such as Police, Neighborhood Services, and Community Development. In the event that the local contact repeatedly fails to respond to complaints, the permit may be revoked. If the local contact changes, the applicants are required to notify staff and property owners within 300 feet, who must be mailed a postcard with the new contact information. Because the vacation rental performance standards require the applicant to maintain an emergency contact person within a fifteen-minute response time, which helps address any concerns regarding disruptive behavior from future guests, staff does not believe this concern is sufficient to uphold this appeal issue.

(3) Private CC&Rs

The appeal states that CC&Rs prohibit any business being operated from a residence in this development. While staff encourages applicants to abide by private CC&Rs, the City is not a party to CC&Rs and does not enforce them as a general rule. As a result, the terms of CC&Rs do not provide grounds for denial of a land use application such as a vacation rental permit. Enforcement of the private CC&Rs is the responsibility of the homeowner's association or property owners whose properties are regulated by the CC&Rs using the legal mechanisms built into that document. Because the City does not enforce these types of documents, staff does not believe that this concern is sufficient to uphold this appeal issue.

(4) Inconsistency with Ordinance 663

The appeal contends that the Planning Commission's addition of a condition requiring guests to park within the garage was done so improperly based upon the fact that vacation rentals are not required to provide on-site parking per Ordinance 663 (Attachment 6). While this Ordinance does not specify a parking requirement for short term rentals, the Planning Commission has the authority to add conditions of approval to help address any concerns regarding the land use. Because of this, staff does not believe that this concern is sufficient to uphold this appeal issue.

(5) Conflict of Interest

The appeal of the Community Development Director's approval of the application to the Planning Commission was considered by three Commissioners. One Commissioner was absent, and one Commissioner recused herself due to the proximity of her residence to the subject property. During the hearing, the applicant, speaking in favor of vacation rentals, noted renters spend money at local shops and restaurants to bolster tax revenue. During deliberations, one Commissioner noted that he was in favor of vacation rentals, in part, because they benefit his business as a restaurateur. The appeal contends that,

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because the Commissioner’s business benefits from vacation rentals, he should recuse himself from all matters pertaining to short term rentals. The City Attorney has reviewed the appeal and the facts and circumstances surrounding the alleged conflict of interest and has opined that the Commissioner’s participation in the appeal hearing does not violate the law, as it is not reasonably foreseeable that the decision would have a material effect on the Commissioner’s financial interest. Any potential effect on the Commissioner’s financial interest is hypothetical and speculative given that there are many restaurants in the City that someone in a vacation rental could decide to patronize. Staff does not believe that this concern is sufficient to uphold this appeal issue.

Recommended Action

Staff recommends that the City Council adopt the attached Resolution denying Appeal Case No. 21-006 and approving Plot Plan Review Case No. 21-033 due to the fact that the appeal issues raised are not sufficient to uphold the appeal. In order for the City Council to uphold this 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.
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

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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 non-emergency 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. 21-006 and approving Plot Plan Review Case No. 21-033;
2. Modify and adopt the attached Resolution denying Appeal Case No. 21-006 and approving Plot Plan Review Case No. 21-033;
3. Do not adopt the attached Resolution, take tentative action to uphold Appeal Case No. 21-006, and provide direction for staff to return with an appropriate supporting resolution including findings for denial of Plot Plan Review Case No. 21-033; or
4. Provide other direction to staff.

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

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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 14, 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.

Attachments:

1. Proposed Resolution
2. Ordinance 663
3. Approval Letter dated October 28, 2021
4. Minutes from the December 7, 2021 Planning Commission Meeting
5. Appeal Form