



County of Monterey

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: RES 23-169

September 12, 2023

Introduced: 8/28/2023

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Resolution

PLN210353- WHISLER PATRICK A ET AL

Public hearing to:

- a. Consider granting the appeal of Patrick Whisler from the Planning Commission's denial of a Coastal Development Permit to allow transient use of a property for remuneration (short term rental) as a similar use to a Bed and Breakfast facility; and
- b. Approve a Coastal Development Permit to allow transient use of a property (three single family dwellings) for remuneration as a similar use to a Bed and Breakfast facility.

Project Location: 47 Highway 1, Carmel, Carmel Area Land Use Plan, (Assessor's Parcel Number 243-061-003-000).

Proposed California Environmental Quality Act (CEQA) action: Finding the project Categorically Exempt pursuant to CEQA Guidelines Section 15301.

RECOMMENDATIONS:

It is recommended that the Board of Supervisors adopt a resolution to:

- a) Find that the project qualifies for a Class 1 Categorical Exemption pursuant to CEQA Guidelines section 15301 and no exceptions under section 15300.2 apply;
- b) Grant the appeal of Patrick Whisler from the Planning Commission's denial of a Coastal Development Permit to allow transient use of a property for remuneration (short term rental) as a similar use to a Bed and Breakfast facility; and
- c) Approve a Coastal Development Permit to allow transient use of a property (three single family dwellings) for remuneration as a similar use to a Bed and Breakfast facility.

The attached draft resolution includes findings and evidence for consideration (**Attachment A**). Staff recommends approval subject to 5 conditions of approval.

PROJECT INFORMATION:

Agent: Luke Ingram

Property Owner: Patrick Whisler

APN: 243-061-003-000

Parcel Size: 1.14

Zoning: Low Density Residential, one unit per acre, with a Design Control overlay, within the Coastal Zone [LDR/1-D (CZ)]

Plan Area: Carmel Area Land Use Plan

Flagged and Staked: No

SUMMARY:

The subject property contains three single-family dwellings. The main residence was constructed in 1870 while the second and third residences were constructed in the early 1900s. The proposed project includes the transient use of the property, including the three single-family dwellings, for remuneration. No exterior changes or development is proposed. The main residence (“Whalers Cottage,” 1,324 square feet) has 3 bedrooms, 3 bathrooms, and 1 kitchen. The second residence (“Sea Otter Cottage,” 1,124 square feet) has 2 bedrooms, 2 bathrooms, and 1 kitchen. The third residence (“Abalone Cottage,” 807 square feet) has 1 bedroom, 1 bathroom, and 1 kitchen. These three dwellings will have the ability to be rented separately, or together depending on the number of guests. The Whalers Cottage will occupy 6 guests while the Sea Otter and Abalone Cottages are each limited to 4 guests, for a total of 14 guests. Each rental contract will be limited to no more than 29 consecutive nights in a 30-day period, and no more than 60 days in a one-year period. The property will retain its potable water service from Cal-Am and the existing onsite septic system will continue to provide sewer treatment for the three dwellings. The property is accessed via a private driveway and utility easement located off Highway 1.

On May 10, 2023, the Planning Commission considered the Coastal Development Permit (PLN210353), which included a local off-site property owner providing management services. After staff presentation, public comment, and deliberation, the Planning Commission made a motion of intent to deny the project due to inconsistencies with Monterey County Code (MCC), specifically the Bed and Breakfast Facility regulations (MCC section 20.64.100), which require the property owner to occupy and manage the facility. The hearing was continued to a date uncertain to allow staff time to prepare the requested denial resolution. On June 28, 2023, Planning Commission adopted a resolution to deny the project. In considering the proposal, the Planning Commission found that Bed & Breakfast regulations require that the property owner occupy and manage the Bed & Breakfast (20.64.100.C) and that the zoning for the property, Low Density Residential, allow “other residential uses of a similar character.” The proposed short-term rental of the property would not have an owner onsite and the short-term rentals are considered to be a non-residential use (Planning Commission Resolution No. 23-019; **Attachment D**).

The appellant and property owner, Patrick Whisler, filed a timely appeal of the June 28, 2023 Planning Commission decision to deny the Coastal Development Permit. The Appellant contends that the Planning Commission’s decision is not supported by evidence. Staff originally recommended approval of the project to the Planning Commission because the proposed use is similar in use to a Bed and Breakfast per MCC section 20.14.050.Z. Bed and Breakfast facilities are permitted in the relevant zoning district, Low Density Residential, with a Coastal Development Permit per MCC section 20.14.050.G. Additionally, this interpretation was considered consistent with the memorandum published by the Resource Management Agency (predecessor to Housing and Community Development) (dated July 9, 2015, and amended September 20, 2016) explaining that permits for short-term rentals in the coastal zone can be considered with a Coastal Development Permit as a use similar to a Bed & Breakfast. This interpretation has been used by staff since the memorandum was issued. In this case, the owners/managers live in close proximity to the property and would continue to provide direct oversight and management of the property, and have used this property as a short term rental for over 35 years. Staff is carrying forward the original recommendation on this appeal. See the draft Resolution (**Attachment A**) for more detailed.

Per MCC section 20.86.070, this hearing is heard de novo. Staff has prepared a draft resolution to grant the appeal, find the proposed use Categorically Exempt from CEQA Guidelines, and approve the Coastal Development Permit for a three year term.

APPEAL:

The appellant, Patrick Whisler, filed an appeal with two contentions (**Attachment D**), which staff has summarized below:

1. *The Planning Commission's finding that the project does not have a similar character to a Bed and Breakfast facility because a local property manager is inconsistent with the Bed and Breakfast facility regulations is "not supported by the evidence" and "the local owner [who lives] 1 mile [or] 3 minutes from the property provides a similar level of management to an owner occupying the property."*
2. *"The applicant has proven that with over 35 years of local family management with no complaints submitted by the public or Government agencies that it is providing a level of management similar to an owner occupying the property. The fact that the property has no immediate neighbors and is surrounded by State Park land lessens the need for an owner to occupy the property full time."*

Background

The property has been operating as an unpermitted short-term rental for over 35 years and has been paying Transient Occupancy Tax (TOT) since the establishment of the County's TOT requirement. The property has been successful in managing the use with an off-site manager, who resides 1 mile of the subject property. Based on the Operations Plan (**Attachment A3**), the manager is on-site for all check-ins and check-outs. Given the close proximity, the manager can be on the property within 5 minutes to respond to questions or concerns. Given that there are no residential neighbors within 0.25 miles of the property, the potential for neighborly concerns to be raised is minimized. Staff has researched HCD-Planning and Building records and found no evidence of a filed complaint. The property is surrounded by open space owned by the California Department of Parks and Recreation. The Bay School Parent Co-Op Preschool is adjacent to the subject property. Although, the school generates noise and traffic independent from the proposed use, the subject property has been operating as a short-term rental for over 35 years. Thus, baseline conditions for noise and traffic will not change and there will be no additional impact on the school. Finally, there is no evidence in the record that indicates that the past and proposed management is not adequate for the proposed use.

Allowed Use

Processing of this application as a use similar to a Bed and Breakfast is consistent with the Monterey County Code. Specifically, the property is located at 47 Highway 1, Carmel Area Land Use Plan, Coastal Zone. The parcel is zoned Low Density Residential, one unit per acre, with a Design Control overlay, within the Coastal Zone, or "LDR/1-D (CZ)", which allows for the establishment of a Bed & Breakfast facility, subject to the granting of a Coastal Development Permit per MCC 20.14.050.G. Additionally, MCC section 20.14.050.Z allows: "Other residential uses of a similar character, density and intensity as those listed in this Section [20.14.050] determined by the Planning Commission to be consistent and compatible with the intent of this Chapter [20.14] and the applicable land use plan," subject to the granting of a Coastal Development Permit. In short, the proposed use is of a similar

character, density and intensity as a B&B, which is an allowed use in the LDR zoning designation.

This interpretation is also consistent with Housing and Community Development's Short Term Rental Administrative Guideline/Memorandum (which was prepared by the former Resource Management Agency Director, dated July 9, 2015 and amended September 20, 2016) (**Attachment D**), which states that "a Coastal Development Permit may be applied for if the proposed use is similar to the listed uses allowed for the specific zoning district in which the property is located." Here, the applicant proposes the use of three existing single-family dwellings as a transient use for remuneration, commonly known as a short-term rental. Monterey County does not have adopted transient use of a property for remuneration regulations within the Coastal Zone, only within the Inland portions of the County. As such, MCC section 21.64.280 (Transient Use of a Residential Property for Remuneration) is not applicable and should not be considered. Therefore, the applicant has applied for the proposed use under MCC section 20.14.050.Z.

Similarity to a Bed & Breakfast facility

MCC section 20.64.100 establishes the regulations for Bed and Breakfast facilities (**Attachment E**). Strict consistency with MCC section 20.64.100 (*Bed and Breakfast facilities*) is not required because the project does not propose a Bed and Breakfast. The applicant has applied for a use which is similar to a Bed and Breakfast, as allowed by MCC. Absent adopted and certified Transient Use of a Property for Remuneration Ordinance within the Coastal Zone, the Planning Commission, and now Board on appeal, have the discretion to interpret the Code as it applies to this specific application. Based on the below discussion and more detailed analysis provided in the draft Resolution, staff recommends the Board of Supervisors find that this proposed short term rental use will have a similar character, intensity, and density as a Bed and Breakfast facility. Staff suggests that the proposed local property manager (located one mile south) will provide adequate management of the subject property in this case.

Consistent with the Bed and Breakfast regulations, and as detailed in the proposed Operations Plan (**Attachment A3**), the proposed use does not include more than 10 guest rooms per facility (3 bedrooms, 2 bedrooms, and 2 bedrooms), is not affiliated with a local hotel or motel, is limited to the allowed rental periods, provides one parking space per guestroom (7) and two property manager parking spaces, is required to pay transient occupancy tax, and contains cooking which complies with state law and the Monterey County Code. However, the proposed use does not require the property owner or a property manager to permanently occupy the residence. The Operations Plan states that the property owner/manager will reside at a nearby property located at 57 Riley Ranch Road (1 mile south), will greet the guests upon commencement of each rental contract, and will conduct daily visits (typically 1-3 per day). Additionally, although MCC does not require Bed and Breakfast facilities to have a minimum rental period, the applicant is proposing a minimum of a 4-night stay. Consistent with the Bed and Breakfast facility regulations, the applicant is proposing that the maximum stay for guests does not exceed 29 consecutive days in a 30-day period and no more than 60 days in a one-year period.

The property is subject to the County's noise regulations (MCC Chapter 10.60) which prohibits any loud or unreasonable noise between 9PM and 7AM the next morning. The draft Operations Plan incorporates this requirement. Additionally, the Operations Plan, inclusive of fire safety guidelines, the

property's historical background, parameters of use, and authorized vendors. Parameters of use include abiding by local speed limits and limiting vehicle speed to 10 MPH along the access, prohibiting parties and events of any kind, requiring guests to engage in a behavior that is consistent with the peace and tranquility of the neighborhood, and acknowledging that the property is adjacent to wildlife and therefore dogs must be on leashes. Authorized vendors will be used to provide cleaning, laundry, irrigation, hearing, plumbing, landscaping, etc., services between or during rental periods.

A Trip Generation Assessment (LIB230028; **Attachment F**) was prepared by Keith Higgins to determine traffic generation similarities between the proposed use and the subject zoning district's allowed uses, like Bed & Breakfast facilities. The Institute of Transportation Engineers (ITE) Trip Manual does not have a land use category that corresponds exactly with a Bed & Breakfast or short-term rental. In this case, the traffic engineer compared the proposed use to Single Family Residential, Single-Family Attached Housing, Multi-Family Housing (Low-Rise), Recreational Home, Timeshare, Motel, and Hotel TIE land use categories. Single Family Residential (ITE Land Use Code 210) has the highest daily trip generation of 10 trips per day, while Timeshares have the second highest daily trip generation of 9 trips per day. The traffic engineer determined that a hotel is not an appropriate comparison for the proposed project because hotels often include "ancillary facilities such as restaurants, shops, and conference facilities which require many more employees and deliveries and generate visitor trips independent of the guest rooms." In comparison to the trip generation and traffic impacts of the Zoning District's allowed uses (Bed & Breakfast facility), the proposed project is anticipated to be comparable to a Bed & Breakfast. Additionally, because the proposed use has been in operation since approximately 1985, the anticipated trip generation already exists on Highway 1 and neighboring roadways and there will be no impacts to current conditions. Additionally, the proposed project is anticipated to have a water demand and wastewater generation similar to single-family dwellings and less than a B&B.

Condition No. 5 applies a 3-year expiration to the granting of this Coastal Development Permit. The purpose of this expiration is to provide adequate on-going review of the approved transient use of the property for remuneration.

For the above reasons, Staff recommends that the Board of Supervisors: 1) grant the appeal of the June 28, 2023 Planning Commission decision on PLN210353; and 2) find the proposed short-term rental use of three residences to be of similar character, density, and intensity as other residential uses listed in MCC section 20.14.050, such as a Bed and Breakfast facility, and is consistent and compatible with the Low-Density Residential Zoning District and applicable Carmel Area Land Use Plan (LUP) policies.

CEQA:

The project qualifies as a categorical exemption from environmental review pursuant to Section 15301 of the CEQA Guidelines. This exemption applies to the leasing of existing private structures, involving negligible or no expansion of an existing use. The applicant proposes to use (lease) three existing residential single-family dwellings as a transient use for remuneration and does not propose any additional development and/or expansion of the existing structures. All facilities are existing and have been confirmed by County agencies to be adequate for this use. The short-term rental use of the 3 existing residences has occurred on the subject property for over 35 years, which establishes the

CEQA baseline (current) conditions of the site. Limiting the number of guestrooms or the number of occupants for the transient use for remuneration would not expand the existing use or negatively affect any of the existing facilities or services. Therefore, the proposed use is consistent with the CEQA Guidelines Section 15301. None of the exceptions under CEQA Guidelines Section 15300.2 apply to this project.

LAND USE ADVISORY COMMITTEE REVIEW:

The proposed project was referred to the Carmel Highlands Land Use Advisory Committee (LUAC) for review on March 6, 2023 (**Attachment G**). The LUAC voted 5-0 with two members absent to support the project as proposed. No public members were in attendance for this project. The LUAC raised questions about whether the proposed use was an allowed use, the required entitlement and processing of the application, and voiced concerns about the conversion of other residences in Carmel Highlands to Bed and Breakfast facilities and Short-Term Rentals.

OTHER AGENCY INVOLVEMENT:

The following agencies have reviewed the project, have comments, and/or have recommended conditions:

- Environmental Health Bureau
- Monterey County Regional Fire Protection District
- Office of the County Counsel

FINANCING:


Funding for staff time associated with this project is included in the FY2023-24 Adopted Budget within Community Development General Fund 001, Appropriation Unit HCD002, Unit 8543.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our HCD customers. Processing this application in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources.

Check the related Board of Supervisors Strategic Initiatives:

- Administration
- Economic Development
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Fionna Jensen, Senior Planner, x6407
 Reviewed by: Lori Woodle, Finance Manager I
 Reviewed and Approved by: Craig Spencer, HCD Chief of Planning 

The following attachments are on file with the Clerk of the Board:

- Attachment A - Draft Resolution including:
 1. Recommended Conditions of Approval
 2. Site Plans & Floor Plans

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3. Operational Plan

Attachment B - Notice of Appeal

Attachment C - Planning Commission Resolution No. 23-019

Attachment D - HCD's Short Term Rental Administrative Guideline

Memorandum

Attachment E - Bed & Breakfast Facilities Regulations

Attachment F - Trip Generation Assessment (LIB230028)

Attachment G - Carmel Highlands Land Use Advisory Committee Minutes

(March 6, 2023)

Attachment H - Vicinity Map

cc: Front Counter Copy; Carmel Highlands Fire Protection District; HCD-Environmental Services; HCD-Engineering Services; Environmental Health Bureau; Fiona Jensen, Senior Planner; Anna Ginette Quenga, AICP, Principal Planner; Patrick Whisler, Appellant/Property Owner; Luke Ingram, Agent; Laborers International Union of North America (Lozeau Drury LLP)The Open Monterey Project; LandWatch (Executive Director); Interested Party List; Planning File PLN210353