



County of Monterey Planning Commission

Agenda Item No. 5
Legistar File Number: PC 23-024

March 08, 2023

Introduced: 2/28/2023

Current Status: Agenda Ready

Version: 1

Matter Type: Planning Item

PLN200101 - BORNSKI MATTHEW & BORNSKI MARIA (FORMERLY WEATHERTOP RANCH LLC)

Public hearing to consider allowing the transient use of a residential property (three single-family dwellings) for remuneration, commonly known as a short-term rental.

Project Location: 500 El Caminito Road, Carmel Valley, Toro Area Plan, (Assessor's Parcel Number 187-011-010-000).

Proposed CEQA action: Finding the project Categorical Exempt pursuant to CEQA Guidelines Section 15301.

RECOMMENDATIONS:

It is recommended that the Planning Commission adopt a resolution:

1. Finding that the project qualifies as a Class 1 Categorical Exemption pursuant to CEQA Guidelines Section 15301, and none of the exceptions contained in Section 15300.2 apply, and
2. Approving an Administrative Permit to allow a transient use of a residential property (three single-family dwellings) for remuneration.

The attached draft resolution includes findings and evidence for consideration (**Exhibit B**). Staff recommends approval subject to 7 conditions of approval.

PROJECT INFORMATION

Agent: Sean Ward

Property Owner: Matt Bornski

APN: 187-011-010-000

Parcel Size: 242.1 Acres

Zoning: Rural Density Residential, 10 acre per unit with Design Control, Site Plan and Regulations for Residential Allocation Zoning overlay districts (RDR/10-D-S-RAZ) & Permanent Grazing, 40 acres per unit with a Visual Sensitivity zoning overlay (PG/40-VS)

Plan Area: Toro Area Plan

Flagged and Staked: No

SUMMARY:

The subject property contains three single-family dwellings which were constructed between 1959 and 1960. The 224-acre property has historically been used for cattle grazing, which recently ended in the spring of 2022 once a goat grazing operation and a small vineyard was established. 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 (2,734 square feet) has 3 bedrooms, 3 bathrooms, and 1 kitchen. The second residence (1,124 square feet) has 2 bedrooms, 2 bathrooms, and 2 kitchens. The third residence (807 square feet) has 1 bedroom, 1 bathroom, and 1 kitchen. The owner is proposing a maximum of 12 people to stay at the property at a time. The property will retain its domestic water connections from a nearby small water system and the existing onsite septic system will continue to provide sewer treatment for the three dwellings.

The property is accessed via Carmel Valley Road and El Caminito Road. El Caminito Road is a County maintained public road for approximately 1.84 miles and then becomes an approximate 1.35-mile private road. Although the private road abuts four separate parcels, these four parcels are under the same ownership (Matthew & Maria Bornski). No development other than the three residences on the subject parcel utilizes the private portion of El Caminito Road. Until such time that these four parcels are under separate ownership, the private road is not subject to the requirements of Monterey County Code Chapter 16.80, pertaining to private road agreements.

Transient use of residential property for remuneration requires an Administrative Permit. An Administrative Permit for the proposed project was scheduled for consideration before the HCD Chief of Planning on October 19, 2022. However, prior to this administrative hearing, staff received public comment letters from neighbors along the public portion of El Caminito Road requesting a hearing on the project. Therefore, pursuant to MCC Section 21.70.060, the project was referred to the Zoning Administrative for consideration at a public hearing on December 1, 2022. After public testimony, the Zoning Administrator referred the item to the Planning Commission citing the following policy questions:

- 1) The property has 3 residences. Single family dwellings accessory to the agricultural use of the property, not exceeding three in total, for the owner, operators, and employees employed on site is a permitted use in the Permanent Grazing Zoning District. This permit would allow all three dwellings constructed on the property that were supposed to be accessory to the agricultural use to be rented short-term (transient use for remuneration); and
- 2) Applicability of the dead-end access standards of the State Fire Safe Regulations.

See the Detailed discussion below for more detail.

DISCUSSION:

Land Use

Based on staff review of the planning application materials, the property complies with all rules and regulations pertaining to zoning uses and other applicable provisions of the 2010 Monterey County General Plan, Toro Area Plan, and applicable sections of the Monterey County Inland Zoning Ordinance (Title 21). The parcel is split-zoned Rural Density Residential, 10 acres per unit with Design Control, Site Plan and Regulations for Residential Allocation Zoning overlay districts (RDR/10-D-S-RAZ) and Permanent Grazing, 40 acres per unit with a Visual Sensitivity zoning overlay (PG/40-VS). All three homes are located on the portion of the lot zoned PG. Both zoning districts allow residential development. Monterey County Code (MCC) Section 21.64.280 allows for the transient use of a residential property for remuneration, subject to an Administrative Permit.

MCC Section 21.64.280.D.2 establishes the requirements and regulations for which a property operating as a transient use for remuneration must abide by. As detailed in the draft resolution (**Exhibit B**), the applicant has provided evidence of compliance with the applicable requirements. The Operations Plan, as attached to the draft resolution, limits the subject property to one rental contract with rental periods with no less than a 7-night consecutive stay and no greater than a 30-night consecutive stay, and a maximum occupancy of 12 individuals. The proposed occupancy does not exceed the limits set forth in the California Housing Code and is within the abilities of the existing septic system. Adequate parking spaces will be provided (8 total). The property owner (Matt Bornski) does not reside within 5 miles of the property and has therefore designated a local contact/property manager who will be available 24/7 to respond to tenant and neighborhood questions or concerns.

Allowed Uses

In 1959 and 1960, when the three single-family dwellings were constructed, the subject property's zoning district was Agriculture-Residential (K). The K Zoning District allowed the establishment of single-family dwellings and accessory buildings including quarters for farm laborers as principally allowed uses. The issued Building Permit indicates that these structures were all built with kitchens and categorized as a single-family dwelling, garage/storage, and storage/living quarters. Although the garage/storage structure was not labeled as a "living quarter," the kitchen would indicate that the intent of the structure was for habitable purposes. For the purpose of MCC Section 21.64.280 (Transient Use of a Residential Property for Remuneration), "Residential Property" is defined as "any single- or multiple-family dwelling units, duplexes, guesthouses, caretaker units, or other dwelling unit or structure located on one or more contiguous lots of record in any of the zoning districts in Title 21 which allow residential uses." Because the Permanent Grazing and Rural Density Residential Zoning Districts allow the establishment of single-family dwellings and other dwellings, such as for on-site employees, the subject property is considered a 'Residential Property'. MCC Section 21.64.280 does not distinguish traditional residential development from agricultural residential development. Therefore, staff recommends the Planning Commission consider the subject property consisting of three single-family dwellings suitable for transient use for remuneration.

Anecdotally, in discussion with the property owner and based on historical agricultural use of the property (cattle grazing), Staff has concluded that the two structures constructed as living quarters have not been used as agriculture workforce housing for many years, in part due to the lack of need for on-site employees for the subject property's agricultural operational. However, these structures may still be utilized as on-site agriculture housing if and when the property owner determines there is a demand.

Fire Regulations

The subject property is identified as being in the State Responsibility Area and the Very High Fire Hazard Severity Zone. The SRA/VHFHSZ Fire Safe Regulations are contained in Title 14 of the California Code of Regulations, beginning at Section 1270.00. The Fire Safe Regulations detail the basic wildfire protection standards of the California Board of Forestry and Fire Protection, which apply to the SRA and the local VHFHSZ. Monterey County Code Title 18 Section 18.56 (Wildfire Protection Standards in State Responsibility Areas) reflects the adopted 1991 Fire Safe Regulations. For this project, the Monterey County Regional Fire District is the appropriate local jurisdiction to enforce Monterey County fire standards and the Fire Safe Regulations. At the December 1, 2022

Zoning Administrator hearing, the Zoning Administrator requested clarification from staff as to whether the Fire Safe Regulations, specifically the dead-end road standards, apply to the subject property.

Section 1273.08 (Dead-end Roads) sets the maximum length of dead-end roads for properties of different sizes (**Exhibit F**). The maximum allowed length of a dead-end road accessed by a 20-acre or greater parcel, such as the subject parcel, is 5,280 feet (1 mile). In the case of smaller parcels, such as the majority of the parcels which are accessed via El Caminito, the dead-end road shall not exceed 800 feet to 0.5 miles. The public portion of El Caminito Road is approximately 1.84 miles while the private portion of the road which leads up to the residences on the subject property is approximately 1.35 miles. Therefore, many of the residences along El Caminito, as well as the subject property, do not conform to the Fire Safe Regulations section relating to dead-end road lengths.

Code Section 1273.08 (a) The maximum length of a dead-end road, including all dead-end roads accessed from that dead- end road, shall not exceed the following cumulative lengths, regardless of the number of parcels served:

- parcels zoned for less than one acre - 800 feet
- parcels zoned for 1 acre to 4.99 acres - 1,320 feet
- parcels zoned for 5 acres to 19.99 acres - 2,640 feet
- parcels zoned for 20 acres or larger - 5,280 feet

However, Section 1270.02 (Scope) of the SRA/VHFHSZ Fire Safe Regulations states, “These regulations shall apply: to the perimeters and access to all residential, commercial, and industrial building construction within the SRA approved after January 1, 1991, and those approved after July 1, 2021 within the VHFHSZ...” (**Exhibit D**). Affected activities include: permitting or approval of new parcels, application for a building permit for new construction (structures or road) which does not relate to an existing structure, and the application for a Use Permit. The proposed project does not involve new construction, the creation of new parcels, or represent a substantial change in the intensity of use which requires a Use Permit. Additionally, all development on the subject parcel was constructed prior to 1991. The Monterey County Regional Fire District reviewed the proposed project and concluded that the 1991 SRA/VHFHSZ Fire Safe Regulations do not apply to the proposed project (**Exhibit G**).

The Board of Forestry and Fire Protection is currently considering amendments to the 1991 Fire Safe Regulations. As of November 2022, the proposed changes would eliminate 1-mile (5,280 foot) dead-end road regulations for properties over 20 acres in size and reduce the 20-foot road width standard to 14 feet for existing roads supporting new developments. These amendments to the Fire Safe Regulations are still under review by the Office of Administrative Law.

Public Comment

The public objection letters raised concerns regarding generated traffic, inappropriate access route, the need to be compatible with the Carmel Valley Master Plan rather than the Toro Area Plan, compliance with fire standards, and violation of Monterey County Code. The applicant has informed staff that the subject property has been operating as an un-permitted short-term rental since 2019. The current practice of HCD Code Compliance is reactive enforcement based on complaints received,

which are then prioritized based on health and safety conditions. Based on review the County's records, although two noise complaints were received, no violation has been issued. The granting of this Administrative Permit will bring the property into conformance with applicable MCC.

Through adoption of the Transient Use of a Residential Property for Remuneration Ordinance (No. 5135), the Board of Supervisors found that the "use permitted pursuant to this ordinance, as regulated, will not constitute a substantial adverse physical change to the environment or any substantive change in the intensity of use of existing single-family dwellings." Even though three single-family dwellings will be utilized for short-term rentals, the property is limited to one contract. Therefore, the proposed use will be comparable to the impacts of one single-family dwelling and will not create an adverse environmental impact.

Public comments submitted on this application contend that the project is an incompatible use with the neighborhood because of traffic and because of the existing condition of El Caminito Road. Comments describe the public portion of El Caminito as, being *"one lane in many sections due to tree growth and erosion, there are hair-pin and blind corners, the shoulder berms have been destroyed and there are numerous potholes,"* and *"very steep in sections and has been built to a very low (minimal) engineering standard which cannot withstand significant traffic."*

HCD-Engineering Services staff measures three random points in the road. Measures road widths ranged from 20 feet to 34 feet, with one short section narrowing down to 17 feet. Due to the length of the road, not all sections were measured and therefore staff recognizes that other portions of the road may be less than or greater than the required 20 feet. Per Monterey County Road Standards, the subject road would qualify as a tertiary sidehill street with a minimum width of 24 feet.

HCD-Engineering Services have reviewed the proposed project and the nearby roadways, and determined that the road is suitable for this use. HCD-Planning staff responded to the neighbors' concerns with instructions on how to report non-urgent problems, such as potholes or overgrown vegetation, or request service on roadways. The existing conditions of El Caminito do not preclude the use of the subject property as a transient use for remuneration.

The Monterey County Regional Fire Protection District has reviewed the application and made no comments. To ensure that the existing residences meet applicable California Health and Safety Code, Condition of Approval No. 3 requires the property owner to receive a health and safety inspection from the Monterey County Regional Fire District Division Chief, or their designee, prior to commencement of use. The Division Chief shall confirm that the subject residences meet the "Annual Fire Inspection Checklist" requirements which include but are not limited to fire extinguishers, smoke alarms, and a debris-free defensible space.

Finally, the public members state that the project will have impacts on "Carmel Valley resources" and therefore the project should reference the Carmel Valley Master Plan rather than the Toro Area Plan. The northern developed portion of the subject property, which will be used for rentals between 7 to 30 days, is located in the Toro Area Plan, while the southern portion is located in the Carmel Valley Master Plan. Therefore, the applicable area plan to reference is the Toro Area Plan. Ultimately, this is a distinction without a difference as the rules for transient use of residential property are the same either way. Due to being limited to one rental contract, the project will likely have less traffic and noise

impacts than if the three single-family dwellings were used as primary dwellings. The property is required to abide by Monterey County's Noise Ordinance which prohibits loud and unreasonable noises from 9 P.M to 7 AM the next morning.

To protect the public, health, and welfare, as well as the residential character of the neighborhood, Condition No. 4 has been applied which requires the property owner to record a Deed Restriction containing the applicable regulations of MCC Section 21.64.280, regarding transient use for remuneration. Additionally, Condition No. 7 applies a 7 year expiration to the granting of this Administrative Permit. The purpose of this expiration is to provide adequate on-going review of the approved transient use of the residential property for remuneration. Prior to its expiration, the owner/applicant shall file an extension in accordance with Title 21 Section 21.70.120, which requires submittal of the request at least 30 days prior to the expiration date. The appropriate authority to consider this extension shall be the Chief of Planning. This subsequent review will ensure: 1) the use continues to meet the standards of Title 21; 2) that the nature and character of the neighborhood has not changed so to cause the transient use to be detrimental to the area; and 3) an opportunity for Planning staff's review for ongoing compliance the Administrative Permit's conditions of approval.

For the above reasons, staff recommends the Planning Commission find the proposed project compatible with the surrounding neighborhood and consistent with current Monterey County regulations pertaining to the transient use of the residential property for remuneration.

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. The subject property will be limited to one rental contract at any given time, and therefore the property (three residences) is limited to functioning as one rental unit. All facilities are existing and have been confirmed by County agencies to be adequate for this use. 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.

OTHER AGENCY INVOLVEMENT

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

- HCD-Engineering Services
- Environmental Health Bureau
- HCD-Environmental Services
- Monterey County Regional Fire Protection District

Prepared by: Fionna Jensen, Associate Planner
Reviewed by: Craig Spencer, Chief of Planning
Approved by: Erik V. Lundquist, AICP, Director

The following attachments are on file with HCD:

Exhibit A - Project Data Sheet

Exhibit B - Draft Resolution, including:

- Recommended Conditions of Approval
- Site Plans & Floor Plans
- Operational Plan

Exhibit C - Vicinity Map

Exhibit D - 1991 Fire Safe Regulations Section 1270.02 and 1273.08

Exhibit E - Letter from the Monterey County Regional Fire District

Exhibit F - Public Comment letters

cc: Front Counter Copy; Monterey Regional Fire Protection District; HCD-Environmental Services; HCD-Engineering Services; Environmental Health Bureau; Fiona Jensen, Associate Planner; Anna Quenga, AICP, Principal Planner; Matt Bornski, Property Owner; Sean Ward, Agent; The Open Monterey Project; LandWatch (Executive Director); Interested Party List; Planning File PLN200101