Monterey County
Zoning Administrator

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Agenda Item No. 4

Legistar File Number: ZA 17-033

June 29, 2017

Introduced: 6/16/2017

Version: 1

Current Status: Agenda Ready

Matter Type: ZA

PLN120587 - HUGO, H AND LINDA TRS

Public hearing to consider a Continuance from the June 8 Zoning Administrator Hearing allowing the Transient Use of an existing two-story single family residential property for remuneration.

Project Location: 583 Viejo Road, Carmel (Assessor's Parcel Number 103-031-004-000), Greater Monterey Peninsula Area Plan.

CEQA Action: Categorically Exempt per Section 15301 of CEQA Guidelines

RECOMMENDATION:

It is recommended that the Zoning Administrator adopt a resolution to:

    a. Find the project Categorically Exempt per Section 15301 of CEQA Guidelines; and

    b. Approve an Administrative Permit allowing the Transient Use of Residential Property for Remuneration with Conditions of Approval limiting the use to no more than 5 guestrooms of an existing 8 bedroom/8 bathroom two-story single family dwelling.

The attached draft resolution includes findings and evidence for consideration (**Exhibit B**). Staff recommends approval subject to 12 conditions of approval.

PROJECT INFORMATION:

    Agent: Michael Harrington

    Property Owner: Hugo, H and Linda TRS

    APN: 103-031-004-000

    Parcel Size: 5.3 acres

    Zoning: "RDR/5.1-UR-D-S "Rural Density Residential/5.1 acres per unit-Urban Reserve-Design Control-Site Plan Review

    Plan Area: Greater Monterey Peninsula Area Plan

    Flagged and Staked: No

SUMMARY:

This project was continued from the June 8th Zoning Administrator Hearing to allow the applicant time to post notices at the subject property.

This is a 5.3-acre parcel located off Viejo Road, which is a county road that is narrow and winding. Access to the property is directly off Viejo Road and shares a private driveway/road with a neighboring parcel. The shared driveway splits to the subject property before you can see the closest neighbor's home and is easily identified with a gate at the entrance. All the homes within the immediate vicinity are also approximately 5 acres. The proposed Short Term Rental (STR) is an 8 bedroom/8 bath, 10,384 square foot home built in 1998. Most of the 5.3-acre parcel is flat and has sufficient parking to provide for the use. The property is surrounded with vegetation which provides privacy, and security not only for the applicant's home but also the surrounding neighbors. There are no other approved STRs in this neighborhood.

In January, 2013, the property owner applied for an Administrative Permit to allow the transient use of residential property for remuneration or short term rental (STR). At the time, there were several building code violations that had to be resolved prior to processing that permit application. The applicant worked to resolve these violations, and in December, 2014, there were no more outstanding code issues. In March, 2015, the application for an STR permit continued to be processed.

During the application process, three main issues were raised by members of the public, including neighbors. Two of the issues raised revolve around granting an STR Permit to a dwelling of this size. The first issue is an intensification of the use of the residential property, the second issue is an intensification of the shared private road. The third issue raised is that the County STR ordinance requires denial of the application if an HOA objects. Since March, 2015, staff has been working with both the public in opposition and the applicant to refine the project in consideration of these issues.

To address the concern about the intensification of use to the residential property, staff worked with the applicant to develop two potential paths to permit this property for an STR. The paths proposed were: 1) Obtain an Administrative Permit for Transient Use of Residential Property for Remuneration with Conditions of Approval limiting the use to no more than 5 guestrooms; or 2) obtain a Use Permit for a use of a similar character, density and intensity to a Bed and Breakfast to utilize all eight (8) guestrooms.

The rationale behind the two options is based on the number of guestrooms in this single-family dwelling. There is currently no code limiting the number of guestrooms in an STR. However, the California Building Code limits the maximum number of guestrooms that can be permitted for "lodging houses" in dwellings with the R-3 (residential) building classification to five (5) guestrooms. More than five (5) guestrooms changes the building occupancy from R-3 to R-1, which changes the nature of use from residential to commercial (e.g.; hotel/motel/bed & breakfast). Therefore, limiting the guestrooms to five (5) would not result in an intensification or change of use of the property.

The applicant has chosen to pursue option number one, and agrees to conditions which would limit the STR to no more than five guestrooms. Staff supports this option. Enforcement of this ongoing condition would be conducted in accordance with the current practice of the RMA Code Compliance Department. Currently, enforcement is done on a reactionary basis, and prioritized by the level of threat to health, safety and wellbeing. If Monterey County was made aware of this property being used or advertised for use online (eg: Air B&B) with more than 5 guestrooms, code enforcement would respond appropriately.

With regard to the second issue raised by the public, staff analyzed the potential for intensification of the shared private road under the Proof of Access ordinance. There is a recorded 30-foot wide right-of-way easement that provides access to only two parcels. The actual width of the driveway before it splits is approximately 12 feet wide. The applicant's portion of the shared driveway splits to the subject property before you can see the neighbor's home and is easily identified with a gate at the entrance. The Road Agreement is a "non-exclusive easement" that has no limit on the number of people that the holder of the easement could invite to his home. There is also a Road Maintenance Agreement recorded in 1997 that requires both parcels to equally divide the cost of maintaining the shared road. Staff has determined that as conditioned in the proposed project, the subject property meets the exemption under (D)(4) of the Proof of Access Ordinance, for the first single family dwelling, because it is not an intensification of use. Under the code, unless a project proposes a use that is clearly inconsistent with the plain language of the private road agreements, the appropriate

authority may approve a project without applying conditions to the project outlined in that section. Due to staff's interpretation of no intensification of use, staff determined there was no need to notice the project in accordance with the Proof of Access Ordinance. However, the Zoning Administrator may still choose to make the determination that the Proof of Access Ordinance should apply in this case.

Finally, with regard to the third issue, there is no official HOA for this property. However, there is an Aguajito Property Owners Association (APOA) for this subdivision. This association has nothing in its bylaws allowing them to require CC&R's from its members. In 2014, the APOA also determined it will not seek recognition from Monterey County as a HOA for the purposes of allowing or denying short term rentals under Title 21.

The intent of the short term rental ordinance is to provide an administrative procedure to legalize existing visitor serving opportunities while preserving the residential character of the zoning district and the sense of security and safety in stable neighborhoods of owner-occupied residences. Based on staff's opinion, this site is physically suitable for the use proposed and would not be detrimental to the health, safety, and general welfare of the neighborhood. A Condition of Approval requires that if the applicant does not reside within a five mile radius of the residence being rented, the applicant shall designate a person located within a 25 mile radius of the rental, who will be available 24 hours a day to respond to tenant and neighborhood questions or concerns and to otherwise be responsible for assuring that the rental unit complies with the requirements of the administrative permit issued.

Therefore, staff recommends the Zoning Administrator approve an Administrative Permit for Transient Use of Residential Property for Remuneration with Conditions of Approval limiting the use to no more than 5 guestrooms. Additional Conditions of Approval require limiting the number of guestrooms to 5, quiet hours, residential-related uses only, (off-street parking, disposal of excess trash), minimum rental period(s) and limiting rentals to families; on-site advertising, and payment of transient occupancy taxes (TOT).

OTHER AGENCY INVOLVEMENT:
The following agencies have reviewed the project, have comments, and/or have recommended conditions:
- ✓ Environmental Health Bureau
- ✓ RMA-Public Works
- ✓ RMA-Environmental Services
- ✓ Water Resources Agency
- ✓ Cypress FPD
- ✓ City of Monterey

Since there is no Homeowners Association for this subdivision, the application was sent to the Greater Monterey Peninsula Land Use Advisory Committee (LUAC) on two occasions.

On August 20, 2014, a recommendation of denial (4-0 vote) came from the Greater Monterey Peninsula Land Use Advisory Committee because there were several concerns from neighbors regarding traffic, noise and special events related to short term rentals.

On May 17, 2017, staff sent the application back to the Greater Monterey Peninsula Area Land Use Advisory Committee to discuss the applicant's option for applying for an Administrative Permit for Transient Use of Residential Property for Remuneration with Conditions of Approval limiting the use to no more than 5 guestrooms. The LUAC again recommended

denial, this time by a vote of 3-0. The LUACs concerns included:

- the actual number of people occupying all the rooms. For example, a couple may have 2 teenagers that would want their own room. There would be no way to enforce the use of only 5 bedrooms. One suggestion was to limit the number of people and not guestrooms.
- The shared use of a driveway is negative aspect of the project, because it is shared with a neighbor and may impact them.
- The use is not conducive to traveling on the narrow, unfamiliar windy public road to the site (Viejo Road is a public road). This use is not consistent with the rural nature of the area.

Section 15301 of the CEQA Guidelines categorically exempts leasing of existing private structures, involving negligible or no expansion of an existing use. The applicant proposes to use (lease) an existing residential single-family dwelling as a transient use (short-term rental) facility and does not propose any additional development and/or expansion of the existing structure.

The project is located within the sphere of influence of the city of Monterey. Staff reached out to the City of Monterey Planning Department for comment on the proposed use. City Planning staff confirmed that they have no comments regarding this application for an STR.

Prepared by: Elizabeth Gonzales, Associate Planner x5102
Reviewed by: Brandon Swanson, RMA Planning Services Manager x5334
Approved by: Carl Holm, AICP, RMA Director

The following attachments are on file with the RMA:
    Exhibit A - Project Data Sheet
    Exhibit B - Discussion
    Exhibit C - Draft Resolution including:
- Recommended Conditions of Approval
- Site Plan and Photos

    Exhibit D - Vicinity Map
    Exhibit E - Road Easement Deed/Maintenance Agreement
    Exhibit F - LUAC Minutes

cc: Front Counter Copy; Zoning Administrator; Cypress Fire PD; RMA-Public Works Department; RMA-Environmental Services; Environmental Health Bureau; Water Resources Agency; Jacqueline R. Onciano, Chief of RMA-Planning; Brandon Swanson, RMA Services Manager; Elizabeth Gonzales, Project Planner; H and Linda Hugo, Owner; Michael Harrington, Agent; The Open Monterey Project; LandWatch; Pam Butler, interested party; Planning File PLN120587.