



SUMMARY REPORT

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**Agenda Date:** 7/9/2019

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**To:** Board of Supervisors

**Department or Agency Name(s):** Permit Sonoma

**Staff Name and Phone Number:** Derik Michaelson, 565-3095

**Vote Requirement:** Majority

**Supervisorial District(s):** First

**Title:**

10:15 AM -Hosted Rental Appeal; File No. ZPE15-0654

**Recommended Action:**

Adopt a resolution denying an appeal and upholding Zoning Permit approval for a hosted rental use within a legal nonconforming guest house on a 1.05 acre parcel; 16690 Mission Way, Sonoma; APN 056-562-004.

**Executive Summary:**

The project is an appeal of the Board of Zoning Adjustment's January 24, 2019 decision to deny an appeal of the administrative determination to approve a Zoning Permit allowing hosted rental use of a legal nonconforming guest house. The County originally permitted the structure as a legal guest house in 1986. The structure is nonconforming because it is 38 square feet larger in size and 2.5 feet closer to the neighboring residence than the code currently allows for a guest house.

On August 1, 2016 Permit Sonoma staff administratively approved the Zoning Permit for the hosted rental. The adjacent property owner appealed the decision alleging the substandard size and location of the guest house make it ineligible for hosted rental use. On January 24, 2019, the Board of Zoning Adjustments (BZA) considered the appeal and upheld staff's decision to approve the hosted rental. The BZA considered the following factors in adopting on a 5-0-0 vote Resolution 19-002, denying the appeal:

- The subject guest house legally exists with a valid Building Permit (B-69710);
- The structure is nonconforming based on regulations adopted after it was legally constructed;
- Nonconforming regulations allow continued use of a legal structure that no longer meets current standards;
- Hosted rental regulations provide that a guest house need only be legally permitted to qualify for hosted rental use;
- Approved hosted rentals must comply with special performance standards designed and adopted to ensure neighborhood compatibility; and
- Hosted rentals operating per required performance standards do not result in an expansion or intensification of a legal existing residential use (Ord. No. 1645).

The current appeal, filed by Carmen Carlton, expands the first appeal by contending the guest house is ineligible for continued legal use due to violations committed by the prior owner. The appellant alleges the violations terminated the nonconforming status of the guest house and require that its size and location now

comply with current regulations. However, here code violations that arose after the establishment of the legal non-conforming structure, which have since been remedied in full, do not cause the entire structure to lose its legal non-conforming status. Staff recommends the appeal be denied.

**Discussion:**

Project Description

On September 22, 2015, the applicant and property owner applied for a zoning permit to use their 678 square foot legal, nonconforming guest house for hosted rental purposes. Zoning section 26-88-118 defines hosted rental use as the transient occupancy of a single-room or living area within an existing residence or guest house where the homeowner remains in residence during the rental period. The current applicant and appellants are identified below.

Applicant: Craig Lichty & Lisa Kilday, 16690 Mission Way  
Appellants: Current: Carmen Carlton, 16742 Mission Way  
Original: Cheryl Hoey, 16675 Mission Way

Background

In 1986, the County permitted the subject structure as a legal guest house under Building Permit No. B-69710 (Attachment 4), consistent with size and setback requirements in effect at the time. The final inspection confirms the guest house was approved at 678 square feet located 9 feet from the northerly side property line, approximately 37 feet from the neighboring residence. In 1993, under Ordinance No. 4643 (on file with Clerk) the County adopted changes to its zoning code restricting guest houses to 640 square feet in size and to a location that must be closer to the subject property residence than to any neighboring residence. Thus the once-legal guest house became 38 square feet larger and approximately 2.5 feet closer to the neighboring residence than the current code allows. The guest house is currently legal nonconforming.

*Permit and Violation History*

- 1986: - Building permit for new construction of 678sf guest house - ISSUED
  - Final occupancy inspection and clearance for completed construction - FINALED
- 2001: - Code complaint received for illegal kitchen - VIOLATION
  - Violation notice for illegal second unit conversion - NOTICE
  - Demolition permit for removal of illegal kitchen - CLOSED
  - Code complaint received for illegal kitchen - VIOLATION
  - Demolition permit for removal of illegal kitchen - CLOSED
- 2016: - Demolition permit for removal of 95sf illegal addition - VIOLATION/CLOSED
  - o Staff identified floor area discrepancy during hosted rental review;
  - o Applicant removed exterior wall to restore covered patio space and original interior floor area size back to 678sf;
  - Zoning Permit for hosted rental in legal guest house - PENDING APPEAL
- 2017 - Code complaint received for illegal kitchen - NO VIOLATION FOUND

In April 2001, Code Enforcement received complaints about the prior property owner adding an illegal kitchen to the guest house and having a full-time tenant reside there. Code Enforcement confirmed the complaint and issued a notice of violation for an illegal conversion of the guest house to a second unit. In June 2001, Code Enforcement cleared the violation upon confirming the owner's removal of the refrigerator, stovetop and oven appliances under Demolition Permit No. DEM01-0156.

In December 2001, Code Enforcement received a second complaint concerning an illegal kitchen within the guest house. On December 24, 2001, Code Enforcement cleared the violation upon confirming removal of the rough-in gas line and 240 volt electrical circuit under Demolition Permit No. DEM01-0323. Code Enforcement further notes in the demolition permit file that the remaining sink and cabinets are allowed per the original building permit for the guest house under Permit No. B-69710.

In 2016, Planning staff identified during its review of the current hosted rental request an undocumented expansion of the guest house interior floor plan, presumably done by the prior owner. The applicant rectified the situation before receiving hosted rental approval and removing the unpermitted work as described under Demolition Permit No. DEM16-0169. Listed below is a general summary regarding the permit and violation history on the guest house.

Site Characteristics:

The project site is a 1.05-acre single-family parcel located within the rural residential surroundings of the Mission Oaks neighborhood. The neighborhood is situated on the east side of Highway 12 just north of Agua Caliente. The subject property is developed with an existing residence, pool, carport, and guest house. A secondary driveway provides access to the carport and guest house from Mission Way. The driveway is approximately 100 feet in length and runs alongside the northerly boundary line of the property. The neighboring residence is located within approximately ten feet of the driveway, and within approximately 37 feet of the subject guest house. The main residence of the subject parcel is located toward the center of the property approximately 42 feet from the guest house.

Surrounding Land Use and Zoning:

Surrounding land uses include existing single-family homes on one to two-acre sized parcels. The properties are configured in a relatively uniform lot pattern with immediate street access along site frontages. The subject property and all surrounding parcels to the north, east, west, and south are zoned Rural Residential (RR) with a 2-acre density requirement and are designated with the Vacation Rental Exclusion (X) combining zone.

**APPEAL ISSUES:**

Staff's approval of the Zoning Permit was appealed to the Board of Zoning Adjustments (BZA) by the neighboring property owner on the grounds that the hostel rental would increase the existing legal nonconformity. The following matters were discussed at the January 24, 2019 BZA Hearing, and raised in the current appeal Letter.

- 1) Legal Nonconforming Status:** The appellant contends the structure is not a legally permitted nonconforming guest house.

Staff Analysis

The County's hosted rental ordinance (on file with Clerk) requires that a guest house be legally permitted to qualify for hosted rental use. The BZA determined that the applicant's guest house is legally permitted under Building Permit No. B-69710 and may legally remain in use subject to County's nonconforming provisions under Article 26-94. The appeal challenges the BZA decision based on violations committed by the prior

owner. The appeal includes documentation of the prior owner illegally expanding and converting the use of the guest house in violation of the nonconforming use regulations provided under Article 26-94. The appellant contends these violations terminated the legal nonconforming status of the guest house and that its substandard size and location must now conform to current regulations.

The appeal refers to current permit records and the County's nonconforming use regulations provided under Article 26-94, including:

*"The lawful use of land ... although does not conform to the regulations... may be continued but shall not be enlarged or increased, nor be extended to occupy a greater area" (26-94-010 - Continuance); and "If the actual operation of a legal nonconforming use ceases for a continuous period of one (1) year... the use of land shall be subject to all the regulations" (26-94-030 - Termination of use).*

The County's prior abatement actions required removal of the unpermitted work, thereby restoring the guest house back to its original construction. Staff determined the unpermitted conversion and floor area expansion did not terminate the legal status of the guest house because Code Enforcement abated and cleared the violations and the structure was returned to its original condition.

County Code Enforcement policy provides when work completed without required permits cannot be legalized, the property owner shall remove the unpermitted improvements and restore the structure to a lawful condition. For first time violations, owners must remove unpermitted improvements. For second time violations, Code Enforcement requires removal of fixtures and rough-ins, including plumbing, heating ducts, and electrical wiring and conduit.

**2) Conversion of guest house use:** The appellant contends the temporary conversion of the guest house to an unpermitted accessory dwelling unit terminated its right to continue as a legal nonconforming guest house use.

#### Staff Analysis

The appellant contends the prior owner twice installed an illegal kitchen and converted the guest house into an accessory dwelling unit in 2001. The unpermitted fixtures included an oven and refrigerator exceeding five cubic yards in capacity. The unpermitted rough-in improvements included a gas line for the oven and a 240 volt electrical outlet for the refrigerator. Code Enforcement issued a notice of violation (VPL01-0219) in April 2001, and upon confirming removal of all unpermitted rough-in improvements and fixtures under Demolition Permit DEM01-0323, closed the violation file in December 2001.

The appellant contends the conversion terminated the legal nonconforming status of the guest house by causing a cease in use under section 26-94-030 (Termination of use). The regulation provides that *"If the actual operation of a legal nonconforming use ceases for a continuous period of one (1) year... the use of land shall be subject to all the regulations..."*. The appellant argues the guest house lost its legal nonconforming status and should be forced to comply with current standards by requiring a floor plan reduction of 38 square feet, and relocating the building southward by approximately 2.5 feet.

Appellant is incorrect. The guest house is a legal non-conforming structure available to house guests. The unpermitted work described above, while constituting code violations that were subsequently cleared, does

not cause the original structure to lose legal non-conforming status, such that all or a part of the structure must be moved or demolished, nor does it prohibit the guest house from being presently used to house guests or qualifying for a hosted rental permit.

Presently, the structure includes countertops and cabinets. This is because the 2001 demolition permit allowed a counter top and cabinets to remain. Staff believes the countertops and cabinets may be contributing to on-line reviews posted by the former hosted rental guests of the applicant referencing available "kitchen accommodations." The County's definition of a kitchen is differentiated from "wet bars," which are fixtures that contain a counter top and cabinetry under six feet in length. The subject counters and cabinets in the guest house meet the wet bar definition and this does not constitute a cessation of the guest house use. However, under Permit Sonoma's current administrative policy on Residential Accessory Structures (On file with Clerk), wet bars are not permitted within a guest house. While the non-compliance with the administrative policy does not constitute a code violation that would result in losing legal nonconforming status of the structure, staff recommends adding a condition of approval to the hosted rental application requiring the removal of the wet bar fixtures per the current administrative policy.

- 3) Expansion of Use.** The appellant contends the illegal expansion of the guest house terminated its legal nonconforming status.

Staff Analysis

The appeal includes documentation of prior owner expanding the guest house by enclosing a 95 square-foot portion of covered patio space and converting it into conditioned floor area. Current Zoning Code regulations prohibit expansion of a legal nonconforming use. Permit Sonoma staff required the applicant obtain a demolition permit and remove the unpermitted work prior to proceeding with the hosted rental request. Under Demolition Permit No. DEM16-0169, the unpermitted enclosure wall was removed and reconstructed back in the location of the original west exterior elevation.

The restored building footprint matches the original 1986 permit plans for the guest house and the illegal expansion has been cleared.

The temporary violation, which was cured, does not necessarily cause the original structure to lose legal non-conforming status, such that the entire structure must be demolished, nor does it prohibit the guest house from being used to house guests or qualifying for a hosted rental permit. In short, a guest house with a building violation for an illegal expansion, where such illegal expansion has been removed, is still a guest house.

- 4) Intensification of Use:** The appellant contends the Hosted rental permit expands and intensifies the use of a non-conforming guest house located in a Vacation Rental (X) Exclusion zone.

Staff Analysis

The Vacation Rental Exclusion (X) Combining Zone does not apply to hosted rental use, thus the BZA did not discuss the hosted rental application within the zone. However, the Board considered the code issues regarding an expansion and intensification of nonconforming uses under Section 26-94-010. The BZA took into consideration that the Code does not specify what would constitute an enlargement or increase in use, other than an expansion in square footage. Also in 2016 the Board of Supervisors adopted Hosted Rental Regulations, which exempted the project from the California Environmental Quality Act (CEQA) and

established performance standards that state: a hosted rental *“will not involve an expansion of use beyond that currently existing; and because it can be seen with certainty that adoption of the Ordinance does not result in a physical change in the environment. Implementation of the regulations does not increase residential density or the intensity of use as the standards adopted herein are consistent with otherwise allowable residential use and any activities that may exceed the residential character would be subject to further discretionary review”*

- 5) County Knowledge of Nonconformity:** The appellant contends Permit Sonoma staff knew that the guest house was in violation of Sonoma County Codes when they issued the permit.

Staff Analysis

At the time the hosted rental permit was issued, Permit Sonoma staff was aware of the prior existence of violations related to kitchen appliances and rough in fixtures, which had been cured prior to permit issuance, as described above. During staff’s initial review of the hosted rental application, staff identified an undocumented expansion of the guest house floor plan, which staff required the applicant to correct before proceeding with issuance of the hosted rental request. The current owner converted the unpermitted interior floor area back to covered patio space as shown on the 1986 permit plans, thereby removing the violation. Staff confirms the current floor plan of the guest house matches its original footprint.

- 6) Other Violations:** The appeal states the guest house and the approval of the Hosted Rental Zoning Permit is in violation of several section of the Zoning Code, as follows:

- a) 26-94-010: Nonconforming Uses - Continuance

Staff Analysis

Article 26-94 of the County code contains the current regulations on nonconforming use. The requirements provide that a lawfully existing use which does not conform to current zoning standards may be continued, but shall not be *“enlarged or increased, nor ...extended to occupy a greater area”*. The nonconforming provisions do not specify what would constitute an enlargement or increase in use, other than an expansion in area. In this case, the proposed use does not increase the legal nonconforming use of the property because it is contained within an existing legal nonconforming structure, does not increase the area of the structure subject to the use, does not change the character of the use as a structure for periodic habitation, and is therefore consistent with the County’s current nonconforming use provisions in Section 26-94-010.

- b) 26-94-030: Nonconforming Uses - Termination of use.

Staff Analysis

Section 26-94-030 establishes criteria for determining when a nonconforming use has terminated and must conform to current regulations. The requirement provides that *“If the actual operation of a legal nonconforming use ceases for a continuous period of one (1) year... the use of land shall be subject to all the regulations specified in this chapter”*. As noted above the current and past use of the legal nonconforming guest house structure do not meet the requirement for termination of use, and thus there is no requirement to correct the substandard size and location with current standards.

- c) 26-18-030: Permitted residential density and development criteria.

Staff Analysis

Code section 26-18-030 specifies the development standards for Rural Residential (RR) zones. At the BZA hearing, the appellant produced a survey of the property line between the applicant and the appellant parcels. The survey indicates the applicant's guesthouse is 5.5 feet closer to the side property line than shown on its original 1986 building permit site plan (a 1.5 feet encroachment into the required side yard setback at the time of building permit approval). Section 26-18-030 provides that the required side yard setback is five feet. The 1986 Building Permit, site plan, and final inspection card indicate that the guest house is set back nine feet from the property line. As outlined in the BZA staff report, the property line discrepancy is a civil matter between private parties and County intervention was not recommended. The BZA did not review or comment on this issue, except to acknowledge that the issue is a civil matter between private parties and is not within the County's purview to resolve. However, the location of the structure has been fixed since it was approved by the County in 1986. The disputed setback distance does not affect Staff's determination on the current hosted rental application that the guest house is legal nonconforming, and that the prior violations did not constitute a cessation in use or result in the loss of legal nonconforming status.

- d) 26-88-118: Special use standards for hosted rentals and B&B inns.

Staff Analysis

Section 26-88-118 contains the County's current code requirements for permitting and operating hosted rentals. The code provides two options allowing transient occupancy of residential property for hosted rental use: (a) in a single room or sleeping area within a residence, or (b) within a legally permitted guest house. Both options require a zoning permit, that the use be allowed in the underlying zone, and that the owner remain in residence during the rental period (a hosted rental). The code imposes no specific size or setback requirements on hosted rental structures, nor does it specify limitations or conditions addressing the legal nonconforming status of a structure proposed for hosted rental use. The subject structure is legally permitted as a guest house and the proposed hosted rental meets the code provisions specified in this section for the use.

- e) 26-02-140: Definitions of Sonoma County Code - Guest House.

Staff Analysis

The above code section refers to the County's zoning definition for Guest House. The definition specifies that: "**Guest house.** ... a legal, fully permitted guest house may be used as a hosted rental as provided for under 26-88-118 (Hosted Rentals)." The issuance of the subject hosted rental permit does not violate this provision. A legal nonconforming guest house is a legal, fully permitted guest house that may qualify for use as a hosted rental.

- f) 26-92-200: Compliance with chapter generally.  
26-92-210: Permits and licenses to conform

Staff Analysis

Staff confirms under each of the above appeal statements that continued use of the existing guest house and the current hosted rental proposal complies with and conforms to the applicable requirements of the County

zoning code with regard to the regulation of nonconforming uses and hosted rentals.

**Recommended Action:**

Staff recommend the Board of Supervisors deny the appeal and uphold the Board of Zoning Adjustments decision to deny the former appeal and approve the Zoning Permit for a Hosted Rental in a legal non-conforming guest house, and to include a condition to require that the applicant remove the “wet bar” fixtures from the guest house consistent with t Permit Sonoma administrative policy.

**Prior Board Actions:**

Ordinance No. 6145, amending Chapter 26 (zoning) of the Sonoma County Code to revise regulations and allowances for one-room bed and breakfast inns, also known as hosted rentals, March 15, 2016.

**FISCAL SUMMARY**

**Narrative Explanation of Fiscal Impacts:**

n/a

**Narrative Explanation of Staffing Impacts (If Required):**

n/a

**Attachments:**

1. BOS Draft Resolution
2. BOS Draft Conditions of Approval
3. Zoning Permit Approval Documents
4. Original Building Permit, Guest House (1986)
5. Appeal Submittal (46 pages)
6. BZA Resolution and Staff Report
7. Prior Code Definition, Guest House (1987-1993)

**Related Items “On File” with the Clerk of the Board:**

1. Hosted Rental BOS Approval Ordinance (Ord. No. 1645)
2. Current Code Definition, Guest House (Ord. No. 4643)