

Sonoma County Board of Zoning Adjustments  
STAFF REPORT

FILE: ZPE15-0654  
DATE: January 24, 2019  
TIME: 1:30 pm  
STAFF: Derik Michaelson, Project Planner

Appeal Period: 10 calendar days

**SUMMARY**

**Appellant:** Cheryl & Jack Hoey, 16676 Mission Way, Sonoma

**Applicant:** Craig Lichty & Lisa Kilday, 16690 Mission Way, Sonoma  
**Owner:** (Applicant)

**Location:** 16690 Mission Way, Sonoma  
APN: 056-562-004 Supervisorial District: 1

**Subject:** Hosted Rental Appeal / Zoning Permit

**PROPOSAL:** Appeal of a zoning permit allowing a legal nonconforming guest house for hosted rental use on a 1.05 acre parcel in the Mission Oaks neighborhood located off Highway 12 near Aqua Caliente.

**CEQA Status:** Categorically exempt per section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA).

**General Plan:** RR 2 (Rural Residential); 2 acre density

**Specific Plan:** N/A

**Zoning:** RR B6 2 X (Rural Residential, 2-acre density); Vacation Rental Exclusion Zone

**Ord. Reference:** County Zoning Code Sections: 26-88-118 (Special Use Standards for Hosted Rentals and Bed and Breakfast Inns), 26-02-140 (Zoning Definitions/Guest house), 26-94-010 (Nonconforming Uses)

**Complete for Processing:** July 21, 2016

**RECOMMENDATION:** Uphold zoning permit approval



## EXECUTIVE SUMMARY

The appeal brings into question whether nonconforming conditions preclude the use of legally established guest house for hosted rental purposes. The County permitted the subject structure as a legal guest house in 1986. The structure is nonconforming because it is 38 square feet larger than the size currently permitted for a guest house, and is approximately 2.5 feet closer in proximity to the residence on the neighboring property than to the subject property residence, contrary to current code.

Nonconforming code regulations specifically allow for continuation of a lawfully established use that does not conform to current zoning standards, provided that it is not *“enlarged or increased, nor ...extended to occupy a greater area....”* A one-time expansion in area of 10% or less is allowed, subject to lot coverage, setback and code provisions applicable at the time of the expansion. The code does not specify what would constitute an enlargement or increase in use, other than an expansion in area. In this case, the guest house is legally permitted for habitation and is not proposed to occupy a greater area.

County code provisions establish “Special Use Standards for Hosted Rentals” to ensure neighborhood compatibility. The standards specifically provide that hosted rental use is allowed in a legal guest house with zoning permit approval. Permit Sonoma issued the zoning permit based on the legal status of the guest house and on the specific provisions in the code allowing a legal guest house for hosted rental use. The appellant contends the hosted rental is an expansion of use not permitted under the nonconforming provisions of the code. The appellant emphasizes as their appeal basis that the guest house is nonconforming in its size, side yard setback, and its proximity to a neighboring residence. The appellant has submitted documentation of the alleged nonconformities.

For clarification, staff notes the issue before the Board of Zoning Adjustments is not whether the guest house is nonconforming, but whether its nonconforming status precludes hosted rental use under the current code. Staff’s analysis is that hosted rental use does not change the occupancy character of an existing legal guest house so as to constitute an expansion of a nonconforming use, and that issuance of the zoning permit meets the current requirements of the County code.

## PROJECT SITE AND SURROUNDINGS

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. 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 frontage access. The subject property and neighborhood parcels are zoned Rural Residential (RR) with a Vacation Rental Exclusion (X) combining District.

## PROJECT DESCRIPTION

The applicant has applied for a zoning permit to allow use of their legally permitted 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.

### Background

In 1986, the County permitted and finalized occupancy of the structure as a 678 square-foot legal guest house. The 1986 permit plans and final inspection report confirm the location of the structure at 9 feet from the northerly side yard property line. A six foot tall wooden fence currently provides a physical barrier between the guest house and the adjacent property. A single-vehicle carport adjoins the easterly exterior of the guest house near the northerly side yard property line. 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 of the adjacent property 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 parcel approximately 42 feet from the guest house.

### Appeal Basis

The appellant submits the following statements as the basis for their appeal (Attachment A).

- *"Commercializes established residential neighborhood."*
- *"Violates County Code 26-88-118"*
- *"is larger than 640sf size limitation."*
- *"is nearer to residence on adjacent property than to subject property residence"*
- *"has nonconforming 3.5 foot side yard setback."*
- *"existing carport has nonconforming 2 foot side yard setback."*

The appellant identifies in their appeal that the guest house is 38 square feet over the 640 square foot size limitation established for a guest house in current code, and is 2.5 feet closer in proximity to their home on the adjacent property than to the applicant's residence on the subject property, again contrary to current code.

Additionally, the appellant has submitted a professional survey indicating that the original 1986 permit plans for the guest house misrepresent the location of the adjacent side yard property line. The survey locates the property line over five feet closer to the guest house is shown on the 1986 permit plans. According to the appellant's survey, the

guest house is located within 3.5 feet of the property line and encroaches 1.5 feet into the 5-foot required zoning setback for the side yard.

Staff notes the discrepancies concerning the side property line location are a private matter between the two parties and will not be determined or resolved by the County.

## **DISCUSSION AND ANALYSIS**

### **Issue #1:       *“Commercializes a long established residential neighborhood.”***

Section 26-18-010 provides that in Rural Residential zones, hosted rental uses are specifically permitted subject to zoning permit approval and compliance with code section 26-88-118 (Hosted Rentals).

### **Issue #2:       *“Violates County Code 26-88-118.”***

Section 26-88-118 contains the County’s current code requirements for the permitting and operation of hosted rentals. The code allows transient occupancy of residential property for hosted rental use in two options: (a) a single room or sleeping area within a residence, or (b) a legally permitted guesthouse. Both scenarios require issuance of a zoning permit, that the use be allowed in the underlying zone, and that the owner remain in residence during the rental period. The code imposes no specific size or setback requirements on the hosted rental use of a structure, nor does it specify any limitations or special conditions addressing the legal nonconforming status of a structure proposed for hosted rental use.

In this case, the requirement for a guest house is that it be legally permitted. Staff confirms the subject structure is legally permitted as a guest house and that the requested zoning permit meets the provisions specified in this section of the code for allowable hosted rental use, as required.

### **Issue #3:       *“is larger than 640 square feet size limitation.”* *“is nearer to residence on adjacent property than to residence on subject property.”***

The appeal statements reference two development standards established for a guest house under code section 26-02-140 (Definitions, “Guest House”). The standards are specific to the permitting and construction of guest house structures do not preclude hosted rental use because the larger code definition contains specific language addressing hosted rental use. The code definition specifically provides that a guest house may be used as a hosted rental as allowed by the hosted rental code provisions.

The code excerpt referencing allowable hosted rental use is provided below. The full version of the code definition is attached (Exhibit D).

***“Guest house ...” “The building shall not be leased, subleased, rented or sub-rented separately from the main dwelling except that a legal, fully permitted guest house may be used as a hosted rental as provided for under 26-88-118 (Hosted Rentals).”***

#### Nonconforming Status

The County Legally permitted the applicant’s guest house in 1986. A valid permit record is well documented which confirms the issuance and final inspection of the existing plans and construction of the guest house. The structure is nonconforming because it is 38 square feet larger than the size currently permitted for a guest house, and is approximately 2.5 feet closer in proximity to the residence on the neighboring property than to the subject property residence. A guest house by definition must be located closer to the home of the subject property than to any neighboring residence.

Nonconforming code regulations specifically allow for continuation of a lawfully established use that does not conform to current zoning standards, provided that it is not *“enlarged or increased, nor ...extended to occupy a greater area....”* The code does not specify what would constitute an enlargement or increase in use, other than an expansion in area. In this case, the guest house is legally permitted for habitation and is not proposed to occupy a greater area. The proposed use does not increase the legal nonconforming use of the property because it is contained within an existing structure, does not increase the area of the structure subject to the use, does not change the level of occupancy or 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

Additionally, upholding the appeal and denying the zoning permit for hosted rental use would require the Zoning Board to read into language not presently in Section 26-88-118 to preclude hosted rental use of legal nonconforming guest houses, or alternatively, interpret hosted rental use of a legal nonconforming guest house as an impermissible expansion or intensification of use under Section 26-94-010. Staff and County Counsel concur this could have larger potential policy implications beyond the hosted rental ordinance and do not recommend this potential precedent.

#### **Issue #4:**      ***“has nonconforming 3.5 foot side yard setback.”***

The side yard setback issue refers to the Zoning District development standards established for Rural Residential zones. The side yard setback requirement is five feet. The appellant has submitted a survey indicating the guesthouse is setback 3.5 feet from the property line. The 1986 permit, site plan, and final inspection card issued by the County indicate the setback of the guest house is nine feet from the property line. Staff

reiterates that this discrepancy is a separate matter concerning a property line dispute between private parties, and will not be determined or resolved by the County.

**Issue #5:**      ***“The existing carport has nonconforming side yard setback 1.78ft.”***

The referenced carport is a small single-vehicle structure abutting the east exterior of the guest house. Section 26-02-140 (“Guest house”/ General Definitions) provides that garage area is excluded from the maximum size of a guest house.

Neither the current zoning permit, the original 1986 building permit nor the property’s current permit history appears to address the carport, but its status is not before the Board on this appeal. It should be noted that the carport serves as an additional privacy barrier between the neighboring property and the guest house driveway. Removing the carport, which is enclosed at its north exterior elevation, would leave an open hog-wire fence remaining between the driveway and the neighboring home.

**Issue #6:**      **Code Enforcement Activity**

This section addresses recent Code Enforcement activity relating to the subject hosted rental use for informational purposes, but is not submitted as part of the current appeal.

On August 4, 2017, Permit Sonoma received a code complaint regarding possible use of a kitchen associated with hosted rental activities occurring within the guest house. The code definition of guest house prohibits “...appliances for the storage and preparation of food, including, but not limited to refrigeration, dishwashers or cooking facilities....” A second kitchen is prohibited on this parcel unless part of a permitted Accessory Dwelling Unit.

On August 17, 2017, County Code enforcement staff conducted an on-site inspection with the property owner to investigate the complaint regarding possible use of a kitchen within the guest house. Code Enforcement indicates in their report that the subject guest house contains no appliances, consistent with Permit Sonoma’s Policy and Procedure Number 1-4-5 for “Definition of a Kitchen and Determination of a Dwelling Unit”. As the provision of a kitchen is a primary consideration factor for classifying a structure as a dwelling unit, Policy 1-4-5 is used to assist Permit Sonoma staff with investigating complaints and inspecting buildings as to the allowable design and use of an accessory structure in determining whether it contains a kitchen. On August 18, 2018, Code Enforcement closed the case.

Staff notes the complaint description on file with Code Enforcement indicates no actual disturbance activities occurring during the guest house rental period.

## **RECOMMENDATION**

Deny the appeal and uphold the zoning permit approval for hosted rental use, based on existing County code, including Section 26-02-140, Section 26-94-010, and Section 26-88-118.

## **ALTERNATIVES**

- A. Request additional information and review the matter further at a later hearing date to be determined.

## **FINDINGS**

1. The requested permit is categorically exempt from CEQA Guidelines, pursuant to Section 15301 (Existing Facilities), which applies to the permitting of private structures involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination; and
2. The proposed use allows transient occupancy of a legally permitted guest house for hosted rental purposes and therefore meets the express standard of the County's hosted rental ordinance as required under Section 26-88-118; and
3. The proposed use does not increase the legal nonconforming use of the property because it is contained within an existing structure, does not increase the area of the structure subject to the use, does not change the level of occupancy or 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; and
4. The establishment, maintenance or operation of the use for which application is made will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such use, nor be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the area. The particular circumstances in this case are:
  - a. The proposed use is specifically allowed under County code.
  - b. The proposed use will occupy an existing structure already constructed on the property.
  - c. The use as permitted is subject to the conditions of approval attached as Exhibit B which require the use to operate in compliance with performance standards in Section 26-88-118 to ensure that hosted rentals are compatible with and do not adversely impact surrounding residential uses. Those standards limit food service to breakfast for guests only, prohibit events, limit vehicles to one per hosted rental, provide noise limits, prohibit outdoor amplified sound, place limits on pets and outdoor fire areas and require adequate and functioning septic systems or a sewer connection.

**ATTACHMENTS**

- EXHIBIT A: Appeal Submittal, August 4, 2016
- EXHIBIT B: Zoning Permit Approval, August 1, 2016
- EXHIBIT C: Building Permit, September 1986
- EXHIBIT D: Zoning Code References:
  - Code Definitions: "Guest house", 26-02-140
  - Hosted Rental Provisions, 26-88-118
  - Nonconforming Provisions, 26-94-010
  - Zoning District Permitted Uses, 26-18-010
- EXHIBIT E: Board of Zoning Adjustments Resolution