



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning and
Development
Department No.: 053
For Agenda Of: March 11, 2014
Placement: Departmental
Estimated Tme: 5 hours
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Glenn Russell, Ph.D., Director
Director Planning and Development 568-2085
Contact Info: Alice McCurdy, Deputy Director
Planning and Development 934-6559
**SUBJECT: Rose Petition for Termination of the Grove Non-Conforming Use
on APN 133-220-020; Third Supervisorial District**

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

As to form: No

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors conduct a public hearing pursuant to County Land Use Development Code (LUDC) Section 35.101.070, consider whether the current nonconforming residential use of a structure should be ordered terminated pursuant to the provisions of either LUDC Section 35.101.060 or LUDC Section 35.101.020(D), and:

1. Determine that the hearing is Exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3), No Possibility of a Significant Effect on the Environment (See Attachment 1).
2. Take one of the following actions:
 - a. Direct staff to prepare a written decision containing findings of fact and rendering a decision to permit the continuance of the nonconforming use; and continue this item to April 1, 2014 for final action;

OR

- b. Direct staff to prepare a written decision containing findings of fact, ordering the nonconforming use terminated, and specifying the time within which the nonconforming use shall be terminated; and continue the item to April 1, 2014 for final action;

OR

- c. Render no decision on the item.

Summary Text:

On December 10, 2013, your Board granted the request of Mr. Kelly Rose (“Petitioner”) to consider whether the nonconforming use of a structure by Mr. and Mrs. Grove (“Respondents”) should be ordered terminated under County Land Use and Development Code (“County LUDC”) Chapter 35.101 (Nonconforming Uses, Structures, Lots).

With respect to the subject Petition, the Board is adjudicating the legal issue of whether the Respondents’ nonconforming use of the structure should be ordered terminated pursuant to either of the following provisions of the County LUDC:

- “[A]ny expansion of or change in a nonconforming use of structures or land, or both, not expressly allowed under and strictly in compliance with the provisions of this Development Code, and especially this Chapter, nor required by law may be ordered terminated by the Board.” (County LUDC Section 35.101.060).
- “A nonconforming use that is discontinued for a continuous period of at least 12 consecutive months shall be considered to be abandoned and the rights to continue the nonconforming use shall terminate. If a nonconforming use is abandoned, any future use shall comply with the provisions of the zone in which the use is located.” (County LUDC Section 35.101.020(D)).

The Petitioner’s submittal was previously included as Attachment 1 to the Board Agenda letter for the December 10, 2013 item.

At the request of the Board, County staff will be available to provide information concerning P&D’s decision not to commence a zoning enforcement action against the Respondent.

The subject petition was filed with the Clerk of the Board by Matthew M. Clarke, attorney for Kelly Rose on March 19, 2013.

The hearing will proceed in accordance with County LUDC Section 35.101.070.A-C. These procedures specify required noticing, hearing procedures, rules of evidence, and the timing and form of the Board’s decision, as follows:

Noticing. Fifteen days notice of the hearing shall be given by publication once in a newspaper of general circulation within the County or in the area where the affected property is located, and by service upon the owner of the land. The notice shall specify the date, time, and place of the hearing

and shall specify the grounds on which the nonconforming use or changes or expansion of the use is sought to be terminated.

P&D has completed the required noticing by publishing a legal ad in the Thursday, February 20th, 2014 edition of Santa Ynez Valley News.

Hearing procedures. The owner, the Board, and all other interested persons may be represented by attorneys of their own choosing, may submit written and oral evidence; provided, oral evidence shall be taken only on oath or affirmation, may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, to impeach any witness regardless of which party first called the witness to testify, and to rebut the evidence against the witness. If the owner does not testify on their own behalf, they may be called and examined as if under cross-examination.

P&D recommends that the Board conduct the hearing in the following stages, with tentative time limits for each stage:

- Opening Statements: Petitioner presents, followed by Respondent (15 minutes each)
- Presentation of documentary and oral evidence: Petitioner presents, followed by Respondent (1 hour, 30 minutes each)
- Closing Statements: Petitioner presents, followed by Respondent (15 minutes each)

These time limits and procedures are subject to adjustment by your Board, as deemed necessary.

Rules of evidence. The hearing need not be conducted in compliance with technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions in courts. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.

Board's action. The Board shall render its decision in writing, containing findings of fact, within 30 days after the date on which the public hearing was completed and closed. It shall deliver copies by mail or personally to the parties concerned in the hearing. Failure to render the decision within 30 days, or any extension thereof stipulated to by the parties, shall be deemed to permit the continuance of the nonconforming use which was the subject of the hearing. The decision shall, if it ordered the nonconforming use terminated, specify the time within which the owner shall terminate, as the Board deems reasonable and proper under the circumstances. The hearings may be continued from time to time by the Board. Judicial review of any order of the Board made in compliance with this Section may be had by filing a petition for a writ of mandate in compliance with the provisions of the California Code of Civil Procedure. Any non-compliance with an order of termination of the

Board made in compliance with the LUDC, as well as any continuance of any nonconforming use beyond the expressed period of time identified in the LUDC shall be deemed a violation of the terms of the LUDC.

In compliance with this section, in the event that the Board:

- a. Determines to permit the continuance of the nonconforming use, then staff would return to your Board with a written decision containing findings of fact and rendering a decision confirming the current residential use of the structure as legal, nonconforming;
- b. Determines to order the nonconforming use terminated, then staff would return to your Board with a written decision containing findings of fact, rendering a decision ordering the current, nonconforming residential use terminated, and specifying the time in which the nonconforming use shall be terminated;
- c. Renders no decision on the status of the nonconforming use within 30 days of closing the public hearing (i.e., by April 10, 2014), such non-action would be deemed to permit the continuance of the current, nonconforming residential use.

Background:

Subject Property. The subject use is located on a 20 acre parcel known as Assessor Parcel Number 135-330-020, 3110 Acampo Road, located on the east side of Highway 154, approximately 2,500 feet north of the intersection of Corral de Quati Road and Highway 154, in the Los Olivos area, Third Supervisorial District (See Attachment 2). This parcel was created in 1993 upon recordation of a Tract Map (TM 14,162) which subdivided a 160 acre parcel (which was a result of a Lot Line Adjustment [91-LA-010] between a 142 acre parcel and an adjacent parcel processed simultaneously with the Tract Map). See Exhibit #10, Petition for Termination of a Nonconforming Use, dated March 19, 2013 (Attachment 1 to December 10, 2013 Board Agenda letter).

Development Onsite. The subject structure, known as the “old farm house,” was built in the 1880’s as a single family dwelling (See Attachment 3, excerpt from Final Environmental Impact Report, 88-EIR-15; January, 1989, pp.67 and 68). Since that time, the structure has been used for various purposes, including as a bunk house, farm employee dwelling, guest house, office, and storage (See Exhibit #1, Petition for Termination of a Nonconforming Use, dated March 19, 2013 (Attachment 1 to December 10, 2013 Board Agenda letter). In addition to the old farm house, the following structures are located on the subject parcel: an additional single family dwelling (permitted under Land Use Rider, dated 06/29/79, described under Permit History below), two agricultural employee dwellings (both permitted under 04LUP-00000-00016/03CUP-00000-00057), three barns, and a garage/shop (See Exhibit #3, Petition for Termination of a Nonconforming Use, dated March 19, 2013 (Attachment 1 to December 10, 2013 Board Agenda letter).

Zoning Ordinance Requirements. Under the current LUDC, a legal parcel is limited to one primary single family dwelling. However, in 1979, the 142 acre parcel (retired APN 135-040-016) encompassing the subject parcel was zoned Limited Agriculture, 100 acre minimum parcel size (100-AL-0) under a prior zoning ordinance, Ordinance 661. Section 27.1.d of Ordinance 661 allowed more

than one dwelling per parcel in this zone district provided that each dwelling was limited to occupancy by:

- 1) The owner, lessee, or lessor of the land upon which such dwellings were located;
- 2) The bona fide employees of said owner, lessee, or lessor; and
- 3) The families and nonpaying guests of said owner, lessee, lessor, or employees; and providing one dwelling may contain a kitchen for each building site, but if the building site is zoned to require at least a 20 acre building site, one dwelling may contain a kitchen for each 20 acres within the building site, provided further, that dwellings containing kitchens shall be located a minimum of 50 feet from any other such dwellings.

The four dwellings (i.e., the “old farm house,” the single family dwelling approved in the 1979 Land Use Rider, and the two agricultural employee dwellings permitted under 04LUP-00000-00016) which currently exist on the 20 acre parcel were therefore permissible in 1979, as the parcel size was 142 acres at that time, and could have accommodated up to seven dwellings based on acreage and the other provisions identified in Section 27.1.d. above.

Permit History. On June 29, 1979, a Land Use Rider (the equivalent of the current Land Use Permit/Zoning Clearance) was approved for two new single family dwellings on the 142 acre parcel. An attachment to the Land Use Rider designated the subject structure (i.e., the “old farm house”) as “storage (future HQ and bunkhouse).” Pursuant to the Ordinance 661 criteria identified above, the existence of four dwellings on the 142 acre parcel was permissible so long as they were occupied by the owner, lessee, lessor, and/or their employees, families or nonpaying guests.

Following the subdivision of the property in 1993, the subject structure was located on the subject 20 acre parcel which also contains most of the agricultural structures associated with the historic ranch. Two of the single family dwellings which were located on the original 142 acre parcel are now located on adjacent 20 acre parcels also created in 1993. During this period, the land use regulations in effect for the property were contained in Article III, a previous zoning ordinance. Article III did not include the provision for multiple dwellings on a parcel.

Residential use of the structure became nonconforming in 1984, when the parcel was rezoned under Article III, and absent Board action to terminate, such use remains nonconforming under the current County LUDC.

Zoning Enforcement. Based on the information above, staff determined not to pursue zoning enforcement on the basis of the residential use of the old farm house.

Three zoning violations have been reported on the subject parcel:

05ZEV-00000-00255: This zoning complaint, filed on October 31, 2005, alleged that two Agricultural Employee Dwellings and one Guesthouse onsite were not being used as permitted. The case was closed on January 5, 2010 with a No Violation determination.

10ZEV-00000-00097: This zoning complaint, filed on April 27, 2010, alleged that horse manure was being illegally dumped within the Rancho Cuerno Largo trail easement on the subject parcel. A Zoning Violation was confirmed and Notices of Violation, and Determination of Fines, were issued. An appeal was resolved by the Director of P&D and the case was closed on June 28, 2011.

10ZEV-00000-00292: This zoning complaint, filed on December 9, 2010, reasserted the allegation that one Agricultural Employee Dwelling and the "Old Farm House" were not being used as permitted. The case was closed on February 17, 2011 with a No Violation determination.

Fiscal and Facilities Impacts:

There is no established fee for petitions for termination of a non-conforming use. Therefore, P&D is absorbing the full costs of the staff time. Labor expenditure is estimated at approximately \$10,000.00 (55 hours). This work is funded in the Development Review Division on page D-168 of the adopted 2013-2015 fiscal year budget.

Special Instructions:

Noticing has been provided by Planning & Development pursuant to LUDC Section 35.101.070.A.2 - .4 as follows:

Fifteen days notice of the hearing shall be given by publication once in a newspaper of general circulation within the County or in the area where the affected property is located, and by service upon the owner of the land and upon the person operating or maintaining the nonconforming use, if not the owner.

Service of the notice shall be either personal or by mail addressed to the last known address of the person to be served.

The notice shall specify the date, time, and place of the hearing and shall specify the grounds on which the nonconforming use or changes or expansion of the use is sought to be terminated.

Attachments:

1. Notice of Exemption
2. Aerial Photograph depicting the location of the "old farm house" and other dwelling units onsite
3. Final Environmental Impact Report, 88-EIR-15; January, 1989; Excerpt: pp.67 and 68

Authored by:

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