



**NOTICE AND CALL OF A MEETING OF THE
TRINIDAD PLANNING COMMISSION**

The Trinidad Planning Commission will hold a rescheduled monthly meeting on
THURSDAY MARCH 29th, 2018, AT 6:00 P.M.
in Town Hall at 409 Trinity Street.

The following items will be discussed:

- I. ROLL CALL
- II. APPROVAL OF MINUTES - January 31, 2018
- III. APPROVAL OF AGENDA
- IV. ITEMS FROM THE FLOOR
- V. AGENDA ITEMS

Discussion / Decision / Public Hearing / Action

- 1. Selection of a new Chair / Vice Chair.
- 2. Policies for Detached Living Spaces: As directed by the City Council, an initial discussion to develop clear policy recommendations about permitting detached living space to minimize the potential for these spaces to be utilized as separate dwelling units and add enforcement fines and/or fees for violators. *Continued from the January meeting.*

- VI. COUNCIL REPORT
- VII. STAFF REPORT
- VIII. FUTURE AGENDA ITEMS
- IX. ADJOURNMENT

MINUTES OF THE RECHEDULED MONTHLY MEETING OF THE
TRINIDAD PLANNING COMMISSION
Wednesday, January 31, 2018

I. CALL TO ORDER/ROLL CALL (6:05pm)

Commissioners Present: Johnson, Graves, Gregory, Stockness

Commissioners Absent: None

Staff: Parker

II. APPROVAL OF MINUTES

December 20, 2017

There were no comments.

Motion (Johnson/Graves) to approve the minutes as submitted.

Passed unanimously (4-0).

III. APPROVAL OF AGENDA

Motion (Johnson/Graves) to approve the agenda.

Passed unanimously (4-0).

IV. ITEMS FROM THE FLOOR

Do. Cox (436 Ocean) thanks the City for installing an ADA button for the Town Hall door. She knows that J. Cuthbertson will be very happy.

L. Farrar (433 Ewing) cringes when she reads staff reports. Arguments are made to benefit property owners, and there is no enforcement. Staff needs to put more emphasis on community character and benefits to actual residents. She states that many people feel the same way, but don't attend meetings for many reasons. City staff have a culture of using negative labels. She commends the Commission for their service, and asks them to carefully consider the long-term impacts of their decisions, which affect the City for generations.

V. AGENDA ITEMS

1. Hasselquist 2017-07: After-the fact Design Review, Use Permit, Variance and Coastal Development Permit to convert a permitted, 2-story garage with upstairs recreation room (approximately 1,120 sq. ft. total) into a 1-bedroom second dwelling unit. The conversion happened more than 10 years ago under a previous owner. The variance is needed because the structure does not meet residential setbacks. A new septic system designed to accommodate two units was recently installed. Located at: 150 Scenic Drive; APN: 042-141-03.

Parker summarizes the information in the staff report. She explains the scope of the project and its consistency with the City's zoning regulations. No physical changes are being proposed. She explains the history of the project. She notes that this is the second variance to come before the Commission in as many months. This is very

unusual, because variances are difficult to grant, but she feels that the findings can be made in this case due to the geologic limitations on the property. She summarizes the various findings that are required to approve the project, as well as the proposed conditions of approval.

Commissioner Comments/Questions

Commissioner Gregory confirms that the new owners were unaware that the unit was not legally permitted. P. Hasselquist (applicant) responds that they were not aware at the time, and they were planning on relying on the income from the STR to help pay for the mortgage on the property. He adds that they have been transparent with the City and their neighbors. Commissioner Gregory opines that the owners would not have upgraded the septic system if they were trying to be sneaky. He acknowledges that STRs have created problems in certain locations, but this seems to be an appropriate location that is not bothering any neighbors, because they have written letters of support for the project. Commissioner Gregory also confirms that a CDP was granted for the garage structure itself.

Commissioner Graves asks about the history of the STR. Planner Parker confirms that the STR was operating under a business license long before the City started regulating them. It also operated under a VDU license from the City under the first ordinance for two years until the City discovered that the STR was in an unpermitted dwelling under the new, stricter ordinance. Commissioner Graves adds that the fact that the STR/VDU was operating legally makes a significant difference to him, but he is still concerned about being able to make the variance findings.

Commissioner Stockness asks about the location and design of the septic system. Planner Parker responds that it is a standards system located adjacent to the primary residence, which was not shown on the submitted site plans. Stockness confirms that the STR is not currently in operation. She also gets clarification regarding: (1) the setbacks and the easement from the neighbor for the deck encroachment; (2) the SE Zone requirements; (3) the required OTD, OS easement and hold harmless agreement; and (4) geologic considerations. Commissioner Graves adds that he feels that the hold harmless agreement is very important, and it needs to be included as a condition of approval.

Commissioner Johnson seeks further clarification regarding the septic system. Parker notes that there is only one system that serves both residences. Johnson then asks for clarification regarding the location of the primary unit, because it is not shown on the site plans due to the large size of the property. He discloses that he is on the TCLT Board, and that the Land Trust would like to at least consider the feasibility of a public access easement along the shoreline to connect to adjacent access.

Commissioner Johnson feels that it is important for the City to review the inspection requirements of the STR ordinance to ensure this kind of situation doesn't happen

again. He also asks for clarification regarding the zoning boundaries and requirements. Planner Parker explains how she made her determination of the SE/SR zone boundary, which she indicated on the site plan. She also explains the density limitations of both zones and that Trinidad's ordinance only considers gross lot size, not net developable area in calculating density.

Johnson also asked about the parking area, which appears to be partially located on a neighboring property. Parker responds that yes, in reality, cars would tend to park perpendicular to the access drive, which likely means they are encroaching on the neighbor's property. However, that small strip of neighboring property is at the base of a very large rock, and so not useable to the neighbor above. In addition, technically, there is room for at least 4 spaces that meet the City's size requirements in that area, plus more in the driveway that are located fully on the applicant's property. Commissioner Johnson also requests a brief summary of the City's enforcement process, including nuisance abatement, which Parker provides.

Applicant Comment

M. Hasselquist states that they are a local Trinidad family that has been in the area for more than 20 years. Their kids attend Trinidad Elementary. This property is their dream property, and they plan on living in the primary residence once their kids are older and move out.

P. Hasselquist that they are willing to do what is necessary to bring the property into compliance with City codes, even though it is a lot of work and expense. He encourages the Commission to approve the project expeditiously, so they can continue with that process.

Public Comment

Do. Cox (436 Ocean) states that she generally disapproves of after-the-fact permits due to the problems that have occurred in her neighborhood. She does not think it should be too easy to get approval for unpermitted work. She feels that the new septic system is great, but it is still fairly small for two units (only two bedrooms total capacity). She questions how the primary unit will be used until the Hasselquists can move in. She suggests that the Planning Commission wait on making a decision on this application until there is an ADU ordinance or until the the detached living space policy is finalized.

L. Farrar (433 Ewing) feels that the site plan is confusing, because it does not show the location of both residences. She notes that this project requires both a Use Permit and a Variance and urges the Planning Commission not to grant special privileges, especially in the SE zone. She also states that there have been problems in the past with rocks falling on vehicles in the parking area of this property, and she worries about the City's liability. She is also concerned that there is no reserve area identified for the septic system. She urges the Planning Commission to be cautious about

setting precedence. Ms. Farrar adds that she feels that the STR license should not be kept "on hold" and that the owners should have to apply for a new one if this project is approved. She notes that these comments are not personal, she just wants everyone to be held to the same standards.

A. Grau (433 Ewing) also expresses concern about the status of the STR license; he feels that it should be denied based on the illegal construction. He thinks that the previous owners should be held responsible and have to pay fines for the unpermitted development. The City needs to step up enforcement.

A. King (396 Wagner) notes that her comments are not personal. She feels that it is unfortunate that the Planning Commission has to deal with this kind of project. The Planner and Building Inspector give property owners too much hope and then drop applications in the Planning Commission's lap. Since the owner of this property is a contractor, he should have known to ask questions about the permitting status. She wants to know how a VDU license ever got approved for an illegal structure. She adds that no building (including a deck) should be allowed over the new septic system.

P. Hasselquist (applicant) states that the garage was likely converted soon after it was built in 1989 and that it was probably one of the first STRs in Trinidad. He notes that only septic tank is located under a deck, but the leachfield is open. He also adds that tonight's approval should focus on the use permit and variance for conversion to a residence, and that the structure itself was properly permitted.

M. Hasslequist (applicant) adds that the STR should not really be a consideration tonight. There is no STR license or activity at this time.

Do. Cox (436 Ocean) notes that this is one of four 2017/2018 STR licenses that are "on hold." She adds that the unit is still listed on VRBO but listed as "inactive."

Commissioner Discussion

Commissioner Johnson states that he appreciates the lengths the applicants have gone to bring the property into compliance. He expresses frustration with the overall lack of enforcement in the City, but acknowledges that there is no way to hold the responsible party accountable at this point. Johnson also notes that the situation was discovered under the new STR regulations, so they are working in that sense. He states that he does not have a problem with the STR license being on hold in this case. He points out that a second unit is a permissible use on this property and that it generally meets all the regulatory requirements. He feels that it is an ideal location for an STR and notes that the neighbors are in support of the project. Key considerations include the facts that the structure is located in the SR Zone, it is on a large lot in an isolated location, and the proposed project does not increase the existing degree of nonconformity of the structure.

Commissioner Stockness would like to review the hold harmless agreement language before approving the project. She is also concerned about the access easement and enforcement. She is unsure if she can approve the project without additional information. She feels that the Planning Commission should first finalize its policies on detached living spaces. Planner Parker clarifies that this situation would not fall under that policy, because it is a true second unit. Commissioner Johnson clarifies that the access easement language is pretty standard. He adds that they take the form of an Offer to Dedicate (OTD) an easement that is valid for 21 years, but does not actually become a public access easement until and if accepted by an entity such as the TCLT.

Commissioner Graves states that the fact that this structure was one of the first VDUs/STRs in town and had been legally operating under a license from the City for many years is significant to him. He notes that fact was not clear in the staff report. In his view, this is a longstanding use, and the proposal is not actually changing anything, just completing some paperwork that should already have been done. He feels that he can see a way for making the necessary findings. He suggests that the Commission add a condition that a Hold Harmless clause or agreement, in a form approved by the City Attorney, be required, and that the language be brought back to the Commission as an information item (not for approval). Graves also expresses appreciation for the comments from the public and the perception of a double standard; he lives near STRs himself. In looking at the totality of the situation, he is in favor of this project.

Commissioner Gregory echoes Commissioner Graves' comments. He adds that the situation is not the fault of the applicants, and that they bought the property with a valid STR license. Commissioner Stockness states that she was confused by the site plan, which does not show the entire property. She could go along with Commissioner Graves' proposal with the added Condition #10 requiring a hold harmless agreement. She would also like to see VDU/STR license file(s) for this property.

Action

Motion (Graves, Gregory) Based on application materials, information and findings included in the staff report, and based on public testimony, I move to adopt the information and required Design Review, Use Permit and Variance findings in the staff report and approve the project as submitted in the application, as described in this staff report, and as conditioned therein and amended at this meeting. Passed unanimously (4-0).

2. Policies for Detached Living Spaces: As directed by the City Council, an initial discussion to develop clear policy recommendations about permitting detached

living space to minimize the potential for these spaces to be utilized as separate dwelling units and add enforcement fines and/or fees for violators. *Continued from the July, August and November meetings.*

Parker summarizes the staff report. She provided an outline of what the policy might look like and some sample language. She also summarized another case example for consideration, noting that there are a wide variety of these situations in Trinidad.

Commissioner Comments/Questions

Commissioner Graves would like to get further input from the City Council, including a timeline and more specific direction. He would also like staff to have more discussions with other jurisdictions about their regulations. Parker notes that the few jurisdictions she has spoken with don't have this come up as a major issue. Many are more focused on looking for ways to allow additional housing rather than prevent the creation of second units.

Commissioner Johnson suggests revisiting the Council discussion and action on this issue, particularly the part about enforcement and fines, which is not generally a Planning Commission issue. He would like to get an idea of the breadth of policies that other jurisdictions have.

Commissioner Gregory would like to see a list of all the known detached living spaces in town. He would also like clarification on the enforcement process.

Commissioner Johnson pointed out that some of the sample policies use the term "kitchenette," but that it isn't defined; it either needs to be defined or taken out of the policies. He questions the need to limit them to existing structures; why can't someone build new detached living space? Parker responds that if someone wants additional living space, they should add on to the existing structure rather than constructing a new one in order to avoid these problems. In addition, there is an exemption in much of the City to construct a 500 sq. ft. accessory structure, which could further complicate this issue. However, she acknowledges that this does not necessarily have to be limited to existing structures.

Commissioner Graves would like to get the clarification from the City Council on their expected timeline, and then just keep this item on the agenda until it is done, even if there is no new information to present.

Commissioner Gregory notes that there is a lot of variability in existing situations and examples. It's clear that many people don't follow the rules. These requests may need to be considered on a case-by-case basis.

Commissioner Stockness suggests setting a timeline and then start with getting the definitions in order.

Commissioner Johnson questions the limitation on a studio/workshop not being allowed to be used for profit. He points out that Home Occupations are a legal use in residences. Commissioner Graves added that it would be difficult to prove one way or another.

Public Comment

Do. Cox (436 Ocean) opines that the Planning Commission must start somewhere. One place to begin would be the lessons learned from 407 Ocean. She states that she has obtained copies of all the STR applications and has compiled, reviewed and notated them; not one would receive an "A." There are too many staff exceptions (e.g. "okay as long as..."). She provides the example of "Starfish House," which has a parking exception as well as a requirement to open up the only official parking space on the property, which is currently gated and used as a patio for the detached bedroom. She also provides a photo that shows limited kitchen facilities in the detached bedroom. She also provides an example of an "exception" on Underwood that is described as having an extra unit with a kitchen downstairs. Commissioner Johnson points out that the extra kitchen was explicitly allowed by the City; the property has a deed restriction limiting it to a single unit, and it is rented under only one STR contract for the entire property. Ms. Cox continues, opining that the City's review procedures are too lackadaisical and need to be tightened up.

A. King (396 Wagner) asks the Commission to consider what they want Trinidad to look like. She doesn't want to see people crawling out of every structure and crowding the town. She suggests that the Commission needs to define the limits with very clear language and then ensure everyone complies. She provides an example of living space being approved by the Building Inspector in a downstairs garage on Wagner.

Commissioner Discussion

Planner Parker explains some of the recent, and not so recent, State laws that limit local control over the creation of second units. However, these laws are complicated by the fact that Trinidad operates under an LCP certified by the Coastal Commission, which is not necessarily trumped by State law. Therefore, as she understands it, the City's density limitation of one unit per 8,000 sq. ft. of lot area still applies. However, newer State law also encourages creation of "junior" second units within existing structures, and that the Coastal Commission doesn't consider that "development" under the Coastal Act. To avoid some of the confusion between conflicting State and local laws, the City has often fallen back on Health Dept. requirements for septic upgrades for second units. However, it seems that their policy has changed, and that they no longer require upgrades if there is not increase in the total number of bedrooms on the property when a second unit is created.

Commissioners note that it is getting late, and elect to continue this item to the next meeting.

VI. COUNCIL REPORT

Planner Parker reports that the Council considered Mr. Reinman's appeal of the Planning Commission decision on his "significant violation" determination under the STR ordinance. The Council upheld the Planning Commission's decision and denied the appeal. Commissioner Johnson notes that the Trinidad Rancheria will be presenting an update to Council on their interchange project at the February 28 meeting.

VII. STAFF REPORT

Planner Parker provided an update as to the current status of the Trinidad Memorial Lighthouse move. She also informs the Commission that the second LCP update grant contract was recently finalized.

VIII. FUTURE AGENDA ITEMS

There were no future agenda items requested.

IX. ADJOURNMENT

The meeting was adjourned at 9:10

Submitted by:

Trever Parker

Interim Secretary to Planning Commission

Approved by:

Diane Stockness

Acting Planning Commission Chair



MEMORANDUM

TO: Trinidad Planning Commission

FROM: Trever Parker, City Planner

DATE: March 23, 2018

RE: Election of Chair and Vice Chair

I wanted to provide you with the Trinidad Municipal Code provisions regarding the election of a Chair and Vice Chair for the Planning Commission. Administrative rules applicable to the Planning Commission can be found in Chapter 2.20 of the Municipal Code.

2.20.070 Election of chair and vice chair.

The commission shall elect its chair and vice chair from among the appointed members of the commission.

The chair of the planning commission shall be elected to a two-year term, on a rotating basis, so that no individual may serve a second term as chair as long as there are others on the commission who have not so served. [Ord. 96-1 § 1, 1995; Ord. 122A § 8, 1958].

Other than the limitation on serving as the Chair more than once, the manner of nominating and electing a Chair and Vice Chair is flexible. A Commissioner can nominate/volunteer themselves or another Commissioner for the position. Commissioner Johnson has previously served as Chair, so can not be elected Chair again, but can serve as Vice Chair. Commissioner Stockness has served as Vice Chair and acting Chair for several months. But since she was never officially elected as Chair, I think she can still qualify.

PC DISCUSSION / ACTION AGENDA ITEM

Thursday, March 29, 2018



Item: Continued Discussion of Policies for Detached Living Spaces: As directed by the City Council, an initial discussion to develop clear policy recommendations about permitting detached living space to minimize the potential for these spaces to be utilized as separate dwelling units and add enforcement fines and / or fees for violators.

Approach

At this point, I would like to take a step back and try to simplify this discussion. It is a very complex topic and may be best approached in prioritized chunks. The issue does need to be addressed holistically, but that is more appropriately done as part of the zoning ordinance portion of the LCP update. At this point, the discussion is taking a long time, and is interfering with progress on that LCP update. The Council direction was to develop policy, not regulations at this time. And while the Council has not had this item on their agenda again, there is indication (e.g. comments at the 3/14/18 Council meeting) that the Council wants this done as quickly as possible.

Some reasons for approaching this piece-by-piece include: (1) it will be difficult to apply complex new policy to existing detached living spaces, especially without clear regulatory backing; (2) the Planning Commission will still have a chance to review any proposed new detached living spaces on a case-by-case basis; (3) the complaints about detached living spaces all seem to be in regards to STRs; and (4) it would be more efficient to address detached living spaces on a broad scale as part of the LCP update, which would provide additional context, such as ADU regulations.

PC Requests

At the January meeting, Planning Commissioners requested some additional information. One request was for further direction from the City Council. As mentioned above, this item has not been on a subsequent Council agenda. However, there was some indirect discussion at the 3/14/18 Council meeting, and I spoke with the City Manager, who has spoken with individual Council members. I have included the minutes from the March 22, 2017 Council meeting, when the Council directed the Planning Commission to work on this issue for additional context.

This issue is a problem that staff identified based on lessons learned from complaints and responding to them. Staff initiated this item and requested that the Council direct/authorize the Planning Commission and staff to work on this issue. The Council has not considered the whole breadth of issues around this topic, and therefore, their

guidance / direction was general. I think agendizing this on a Council meeting would just slow down the process at this point.

Two other information requests had to do with getting information from other jurisdictions. I have already provided a number of examples from other jurisdictions that take a variety of approaches. And I think further research could be reserved for when we develop regulations as part of the LCP update. If the scope of this item is going to be narrowed back down, then that level of detail may not be necessary now.

There was also a request for an accounting of the number of detached living spaces that exist in town. In talking with Gabe, we were able to identify at least seven that would qualify. Four of them are on Ocean Avenue, and five of the seven properties have STR licenses. There are a number of other detached spaces, including second units (most of which are nonconforming) as well as workshop / utility types of spaces that are not conditioned, finished and/or not continuously occupied living space, but may have a bathroom and other improvements. There are approximately 12 detached second units known to exist in the UR and SR zones, with another six in the PD zone, several of which are being utilized as commercial space rather than residences.

At this point, staff suggests that the two primary issues that would help address complaints and with enforcement are: (1) definition of a kitchen; and (2) residences being used as both long-term and short-term rentals.

Kitchen Definition

Below are the definitions that I included in the January memo with some commentary.

This is the broadest definition, but I don't think that a single refrigerator should constitute a kitchen.

- A room or space within a building used or intended to be used for the cooking or preparation of food, which includes any of the following: refrigerator, stove, oven, range top, dishwasher, kitchen sink. (Fort Bragg)

I don't think this one is specific enough for what we need either.

- Any room or portion of a building used or intended or designed to be used for cooking or the preparation of food, whether the cooking unit be permanent or temporary and portable, including any room having a sink and cooking stove that has a flat top with plates or racks to hold utensils over flames or coils. (Mendocino)

This one is better, but still pretty general.

- Any room, all or any part of which is designed or used for cooking and preparation of food. The use of a portable microwave oven or mini-refrigerator appliance utilizing one hundred ten volt plugs for the purpose of incidental wet-bar or snack bar purpose

without food storage, a cook stove or preparational/clean-up area shall not constitute a kitchen. (Crescent City)

I like this one, but I think it needs more specificity / exceptions. A garage could reasonably have a utility sink and an extra fridge/freezer as well as store a smoker or outdoor burner for cooking crab for example.

- Any room or portion of a room used or designed to be used for cooking and/or preparation of food and containing two or more of the following appliances and/or fixtures; any sink (larger than fourteen inches by fourteen inches and/or having a drain outlet larger than one and one-half inches in diameter), refrigerator (larger than two and one-half cubic feet), hot plate, microwave, burner, stove or oven. (Santa Cruz)

This one from Sonoma is the most comprehensive. Note that Sonoma (Policy and Procedure Number 1-4-5, attached) also requires a structure to have a bedroom/bathroom in addition to a kitchen to qualify as a second unit.

- A kitchen means an area within a structure that is used or designed to be used for the preparation or cooking of food and that contains one or both of the following:
 1. Cooking appliances or rough in facilities including, but not limited to: ovens, convection ovens, stoves, stove tops, built-in grills or microwave ovens or similar appliances, 240 volt electrical outlets or any gas lines. OR
 2. A sink less than 18 inches in depth with a waste line drain 1-1/2 inches or greater in diameter AND a refrigerator exceeding five (5) cubic feet in capacity or space opening with an electrical outlet that may reasonably be used for a refrigerator exceeding five (5) cubic feet in capacity. (Sonoma)

Wet bar: A single sink with a waste drain line no greater than 1-1/2 inches in diameter and an under counter refrigerator no greater than 5 cubic feet in size with cabinets and/or counter top area not exceeding 6 lineal feet. A wet bar shall not include a refrigerator in excess of 5 cubic feet in size or a kitchen sink greater than 2 square feet in size or a gas or electric range, stove top and/or oven (but may include a microwave oven). (Sonoma).

Notwithstanding the criteria above, the following shall not be considered to be a kitchen (Sonoma cont):

- A. Gas lines and/or electrical outlets of 240 volts in a residential garage, barn, workshop or similar structure, if an operable garage door is provided and the space is unconditioned as defined in the adopted model codes. A garage may contain a refrigerator or freezer but cannot contain any cooking appliances.
- B. One laundry/utility room in a dwelling unit. The laundry room may include utility hook-ups for gas or electric laundry appliances and may include a utility sink with a sink depth 18 inches (18") or greater and/or a full size refrigerator or freezer. A laundry room shall not contain cooking appliances.

- C. An “outdoor kitchen” that is placed in an unenclosed area that may be roofed but is open on at least two sides and exposed to weather.
- D. Any room where the City Manager or his/her designee determines that the room, by its design, clearly cannot reasonably be used as a kitchen. In considering whether a room is a kitchen that would designate a structure as a dwelling unit, the director may also consider but not be limited to, whether or not the structure has a full bathroom and/or potential sleeping area. When an exception is made pursuant to this section, it shall be documented by a Deed Restriction and/or an Agreement to be signed by the property owner and recorded to inform future property owners of restrictions on the use of a building and future permit requirements for any change in use.

Administrative Rules for STRs

Because the existing complaints, and the properties that staff have struggled with in terms of interpreting regulations are all STRs, it may make sense to focus on that aspect of this topic. The STR ordinance allows the City Manager to develop administrative rules regarding STRs. The Planning Commission could make a recommendation for such rules.

17.56.190 (6.26).Q Administrative Standards and Rules

The City Manager shall have the authority to establish administrative rules and regulations consistent with the provisions of this Section for the purpose of interpreting, clarifying, carrying out, furthering, and enforcing the requirements and the provisions of this Section. In particular, the City Manager will establish administrative procedures for complaints. A copy of such administrative rules and regulations shall be on file in the Office of the City Clerk and posted on the City's website.

Regulating how a detached living space is used is problematic from an enforcement standpoint. And, in our discussions so far, the Planning Commission has seemed reluctant to limit the use as long as it's not causing a nuisance. However, the type and number of rental contracts is a more tangible/verifiable aspect of use that could be regulated. A primary problem that has come up is when a portion of a residence is rented to a long-term tenant and another portion is rented as an STR.

Staff have been reluctant to take away someone's rights without clear authority to do so—generally if something is not prohibited, it is allowed. And if the long-term resident is the owner, then renting out a portion of their home as an STR is an allowable use. Where does the line fall if there is one? It could make sense for an STR to be rented without a kitchen, but it doesn't make sense for a long-term rental to not have a kitchen. In the case of 381 Ocean, the long-term tenant lives in the detached space, without a full kitchen, but the rental agreement allows the tenant access to the kitchen in the main residential structure. The owner lives there part-time, but also rents out the main structure as an STR part of the year. The STR rental agreement acknowledges that there is a long-term tenant in the detached structure that has access to the kitchen when it is rented as an STR. The situation seems to meet the letter of the law and limitations, but still functions as a de facto second

unit. It would be helpful for the Planning Commission to weigh in on this situation. There is a similar situation at 88 Van Wycke that has created a de facto duplex.

Next Steps/Other Issues

Another piece of this issue that the Planning Commission may want to consider would be special conditions that would be applied to any application for a new detached living space. Suggestions that I have heard from Commissioners before include: (1) agreement to periodic / random inspections by the City to ensure conditions are being complied with; (2) restrictions on the spaces use, including as an STR; (3) limitations on the improvements that are allowed; and (4) various combinations of the above. A list of possible conditions is included below.

1. An accessory living space shall operate as an extension of and be dependent upon the principal use and shall not be a separately functioning dwelling unit.
2. A "kitchen" is prohibited within a detached living space.
3. Property owner to sign and record a deed restriction limiting the number of bedrooms and units on the property.
4. Owner to agree to periodic inspections/walk-throughs by the City Building Inspector with 24-hour notice.
5. Separate mailing addresses are prohibited for a detached living space.
6. Separate utility meters for electricity, water, and other utility services are prohibited.

Enforcement & Fines

The enforcement and fine portion of the Council's direction was not included in the staff recommendation to them, because that is not normally a Planning Commission issue. However, you could make a recommendation in this regard. In fact, I believe the Planning Commission previously made a recommendation that the Council consider adopting an administrative fine ordinance as part of the STR ordinance update. Currently, building and zoning code violations can be processed as infractions and misdemeanors with fines associated with them. However, it takes a court process to issue those; therefore they are not readily useful. The Council did institute administrative fines within the new STR ordinance. Generally, enforcement for STRs is through the procedures of the STR ordinance and through the Nuisance Abatement Ordinance for most other land use and building violations. The Planning Commission could make a recommendation that the City Council adopt a more comprehensive administrative fine ordinance. In addition, the Planning Commission could make recommendation(s) for enforcement priorities.

Attachments

- Staff report and minutes from the March 22, 2017 Council agenda item on this issue.
- Sonoma County Permit and Resource Management Department Policies and Procedures: Number 1-4-5: Definition of a Kitchen and Determination of a Dwelling Unit

ACTION AGENDA ITEM
Wednesday, March 22nd, 2017

Item: Discussion/Decision regarding Building Permit Violations and Citywide Policies

Summary:

Specific -

On March 1st Staff received complaints that building permit conditions imposed on the detached living space (a converted shop/garage) at 407 Ocean St were being violated. The City's Building Inspector toured the property a week later, on March 9th, and confirmed that plumbing for a sink and stove had been reinstalled against permit conditions. It appeared that the actual sink and cooktop had been removed in the days before his arrival. The Building Inspector issued a demolition permit to the property owner, requiring the removal of the utilities in violation. That permit also requires an aging non-conforming propane tank to be replaced with a smaller tank consistent with current codes, and cleanup of some other items on the property. City staff time involved in investigating and rectifying this situation will be billed to the owner as part of the demolition permit. The permit requires all work to be done shortly, by the end of the month. The property is currently listed for sale.

General-

Zoning and OWTS limitations make it difficult to permit secondary dwelling units on many City parcels. What is often possible to permit is the creation of detached living space – a bedroom, office, or study in a detached structure, such as a conversion of a garage or shop. Once these living spaces are in place, there are powerful financial incentives, as well as personal convenience, for owners or residents to convert a detached bedroom/living space into its own complete dwelling unit. A clear demarcation between the two situations is not always evident, and it can be difficult for the City to know how such space is being used. State law is also changing to encourage secondary units, and can override some local controls. Staff are recommending the Council direct the Planning Commission and Planning Staff to address these challenges by developing new policy around this issue for the City to consider.

Background:

The back structure at 407 Ocean St. was converted without permits from a shop/garage into a second dwelling unit sometime in the late 2000's under the same owner. After a lengthy process the Planning Commission issued an 'after the fact' permit allowing some of the improvements to remain, but requiring that the structure be 'detached living space' that is considered part of the main house – basically a detached bedroom. No kitchen facilities (sink or stove or cabinets) are allowed, any tenant must have access to the main house for cooking and general use, and a deed restriction was placed on the property explicitly limiting the address to one dwelling unit, and three bedrooms total.

Staff appreciate the community for bringing this violation to our attention, and expect to have the property back in compliance with the permit conditions soon. With the property for sale, staff are recommending the Council direct staff to generate a City letter for a new or prospective owner summarizing the restrictions on use of the detached living space and any other relevant

issues. Staff's priority here is to ensure the violations are promptly corrected, and that they not reoccur.

For the City as a whole - this episode reflects the challenges that exist for the City in allowing detached living spaces, while trying to prevent them from being used as full accessory dwelling units. Secondary units are being encouraged throughout the State as a way to provide additional, and often affordable, housing stock. New state law makes it generally difficult for local governments to restrict accessory dwelling units. In Trinidad the situation is unusual in that secondary units are limited not just by our zoning (which the state law may override) but also by our reliance on Onsite Wastewater Treatment Systems (OWTS or septic systems). Most residential OWTS are not sized to support two separate dwelling units, which generally result in more wastewater than simply another bedroom in a single residence.

As a compromise, the City has a history of allowing existing, detached structures to be converted into living space as an economical alternative to an addition. These spaces can and have been used for a variety of legitimate, single-family, residential uses. However, there are powerful financial incentives, as well as reasons of simple personal convenience, for owners or residents to convert a detached bedroom/living space into its own complete dwelling unit. Staff, concerned citizens, and the Planning Commission and Council have spent quite a bit of time in recent years over concerns and disagreements about the difference between a second dwelling unit and a detached living space, and whether any secondary cooking facilities should be allowed on a property that only has one dwelling unit.

To reduce the likelihood of future incidents like this recurring problem at 407 Ocean St., Staff recommend that the Council direct Planning Commission and Planning Staff to develop clear policy recommendations about permitting detached living space. The policies should address the potential for these spaces to be utilized as separate dwelling units in violation of permit requirements, and the challenges for the City in identifying such violations. This could include some or all of concepts like a) not allowing them, b) requiring semiannual walk throughs by the Building Inspector, c) creating a more explicit list of exactly what utilities and appliances mark the boundary between a second dwelling unit, and a detached living space associated with a single main dwelling unit.

Staff are not requesting the Council try and tackle this policy at all at this meeting, but simply to ask the Planning Commission and Staff to develop a recommendation.

STAFF RECOMMENDATION:

Direct staff to generate a letter summarizing 407 Ocean St. restrictions and conditions for transmittal to the owner, realtor, and any new owner to ensure any new owner understands the situation and limitations on the uses of the property. .

Direct Planning Commission and staff to develop clear policy recommendations about permitting detached living space to minimize the potential for these spaces to be utilized as separate dwelling units.

No decision was made. Continued to a future meeting.

4. Discussion/Decision regarding Building Permit Violations and Citywide Policies

City Manager Berman explained that on March 1st Staff received complaints that building permit conditions imposed on the detached living space (a converted shop/garage) at 407 Ocean St were being violated. The City's Building Inspector toured the property a week later, on March 9th, and confirmed that plumbing for a sink and stove had been reinstalled against permit conditions. It appeared that the actual sink and cooktop had been removed in the days before his arrival. The Building Inspector issued a demolition permit to the property owner, requiring the removal of the utilities in violation.

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Public comment included:

Dorothy Cox – Trinidad

Introduced a summary of the letter submitted to the Council for review. Ordinance enforcement needs to be a priority. Acknowledged City staff quick response and resolution to the complaint, but urged the Council to impose fines for such blatant violations and repeat offenders. STR applications should be complete, and staff responses should be much quicker. Hope problems like these don't happen to others.

Tom Davies – Trinidad

I agree with Dorothy. 10 years I've heard people in both buildings. The owner caused issues for us intentionally. There have been up to 10 vehicles at the house at times. It's been a nightmare. I ask that the garage be restored to its original state. Our alley looks like a ghetto. He should also lose his STR license. It's time the citizens voices are heard.

Alan Grau – Trinidad

I understand that the City Manager inspected this STR. He should apologize for the oversight in approving this illegal unit. Citizens should be thanked, not labeled as complainers.

Leslie Farrar – Trinidad

This is a city-wide issue. Detached dwellings should be investigated by the city. Staff isn't concerned with residents. Residents should be considered as additional staff. Writing more rules won't fix this.

Dan Cox – Trinidad

No fines have been issued? This process needs fines/fees, and I hope his permit gets revoked. He doesn't deserve and upside, and it's a disgrace how he has treated this town.

Council comments included:

West: Asked City Manager to describe the current conditions, and stated that the STR permit is a completely separate issue. There is a code that allows the Planning Commission to revoke a conditional use permit, but as far as a criminal misdemeanor fine is concerned, it sounds counterproductive. Administrative fines/fees sound like a better option. My initial reaction to revoking the permit is that it would open the City up to a big legal fight. I ask the PC to take the lead on developing a policy to see that this doesn't happen in the future.

Rotwein: A citizen could ask the PC to take this issue up. The City has a list of things to enforce such as building codes, view protection, septic permits, STR's, dog licenses and rules, etc. A system needs to be developed to administer these projects and maintain adequate follow up.

Baker: Regular walk-throughs with buildings that have similar histories as 407 Ocean seem reasonable. We also need to be concerned with legal issues, but making conditioned space owners uncomfortable with threatened fines and/or regular walk-thru's is a good idea.

Miller: Enforcement is the elephant in the room.

*Motion (Rotwein/West) to 1) Direct the Planning Commission to develop clear policy recommendations about permitting detached living space to minimize the potential for these spaces to be utilized as separate dwelling units and add enforcement fines and/or fees for violators, and 2) write a letter to the owner of 407 Ocean Avenue regarding restrictions and conditions that affect the property. **Passed unanimously.***

Move to consent #1 for discussion.

XII. ADJOURNMENT

Meeting ended 9:20pm.

Submitted by:

Approved by:

Gabriel Adams
City Clerk

Dwight Miller
Mayor

Definition of a Kitchen and Determination of a Dwelling Unit

PURPOSE

This policy provides guidance to PRMD staff as to the allowable design and use of an accessory structure and in determining the number of kitchens within a dwelling unit. It shall be used when reviewing permit applications, checking plans, investigating complaints and inspecting buildings. The provision of a kitchen is one of the primary factors used to determine whether a structure is considered to be a dwelling unit and for determining the number of units within a structure or allowed on a given site. These guidelines shall be used by all staff in determining whether a building contains a kitchen and is an allowable dwelling unit.

GENERAL

The Sonoma County General Plan and Zoning Ordinance limits allowable residential densities (units per acre) in all zoning districts and allows additional dwelling units, such as second units, agricultural employee units, and farm family units, in some areas. Dwelling units are defined in the zoning code as “*a permanent building or portion thereof including manufactured and mobile homes designated or used exclusively as the residence, sleeping room or quarters with kitchen facilities which constitutes an independent housekeeping unit, for one (1) or more persons*”. Efficiency dwelling units can be as small as 220 square feet. Similarly, the Building Code defines a dwelling unit as “*A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation*”.

This policy should be used in conjunction with Policy 1-4-1, *Definition of a Bedroom* in determining whether a structure or portion of a structure is considered a *dwelling unit* that must conform with the allowable density under the General Plan and Zoning Code or other applicable zoning requirements (e.g., second units). A *dwelling unit* must also conform to applicable septic system standards.

A non-commercial structure, or portion thereof, shall be considered a *dwelling unit* if it contains a kitchen as defined herein, and an area that constitutes a bedroom as defined in Policy 1-4-1. In most cases, a structure with a full bathroom will be considered as having a bedroom pursuant to Policy 1-4-1. Structures that meet this definition will be considered a *dwelling unit* regardless of how they are labeled on the plans (e.g., pool house, cabana, recreation room, guest house, studio, etc.). Where an additional dwelling unit cannot be allowed, the design of an accessory structure can be modified to eliminate the bedroom or kitchen facilities that constitute a dwelling unit.

AUTHORITY

Chapter 26, Sonoma County Code. Currently, the Sonoma County Code does not include a definition of a kitchen, but a kitchen is one of the determining features in the definition of a dwelling unit. Since dwelling units are limited by the allowable density and zoning standards, the definition of a kitchen is important in making the determination about whether a structure is a *dwelling unit* under the code.

Chapter 2 of the Sonoma County Code authorizes staff to record the conditions of approval of an issued permit.

PROCEDURE

PRMD staff shall determine whether an area is a kitchen and whether the structure is a *dwelling unit*. This determination shall be based on the design of the physical facilities rather than the proposed use or how the area is labeled on the plans. Staff shall use the following criteria.

DEFINITIONS

- A. **Kitchen.** A kitchen means an area within a structure that is used or designed to be used for the preparation or cooking of food and that contains one or both of the following:
1. Cooking appliances or rough in facilities including, but not limited to: ovens, convection ovens, stoves, stove tops, built-in grills or microwave ovens or similar appliances, 240 volt electrical outlets or any gas lines.
- OR
2. A sink less than 18 inches in depth with a waste line drain 1-1/2 inches or greater in diameter AND a refrigerator exceeding five (5) cubic feet in capacity or space opening with an electrical outlet that may reasonably be used for a refrigerator exceeding five (5) cubic feet in capacity.
- B. An approved kitchen may have more than one sink, stove, oven or refrigerator in the same room.
- C. **Wet Bar.** A single sink with a waste drain line no greater than 1-1/2 inches in diameter and an under counter refrigerator no greater than 5 cubic feet in size with cabinets and/or counter top area not exceeding 6 lineal feet. A wet bar shall not include a refrigerator in excess of 5 cubic feet in size or a kitchen sink greater than 2 square feet in size or a gas or electric range, stove top and/or oven (but may include a microwave oven).

EXCEPTIONS

Notwithstanding the criteria above, the following shall not be considered to be a kitchen:

- A. Gas lines and/or electrical outlets of 240 volts in a residential garage, barn, workshop or similar structure, if an operable garage door is provided and the space is unconditioned as defined in the adopted model codes. A garage may contain a refrigerator or freezer but cannot contain any cooking appliances.
- B. One laundry room in a dwelling unit. The laundry room may include utility hook-ups for gas or electric laundry appliances and may include a utility sink with a sink depth 18 inches (18") or greater and/or a full size refrigerator or freezer. A laundry room shall not contain cooking appliances.
- C. An "outdoor kitchen" that is placed in an unenclosed area that may be roofed but is open on at least two sides and exposed to weather.
- D. Any room where the director of PRMD or his/her designee determines that the room, by its design, clearly cannot reasonably be used as a kitchen. In considering whether a room is a kitchen that would designate a structure as a dwelling unit, the director may also consider but not be limited to, whether or not the structure has a full bathroom and/or potential sleeping area pursuant to Policy 1-4-1. When an exception is made per #4 above, it shall be documented by a Zoning Permit application and a "Notice" on the subject parcel shall be placed in PRMD's permitting computer system so that anyone researching the parcel is aware of the determination. A Deed Restriction and/or an Agreement may be required to be signed by the property owner and recorded to inform future property owners of restrictions on the use of a building and future permit requirements for any change in use.

An electrical outlet of 240 volts in capacity or a gas outlet including "rough-in" openings that provide for future installation of any kitchen facilities described in Section "A" above must receive planning approval/clearance prior to building permit issuance or final inspection. The criteria noted above shall be used to determine if the structure is an allowable use, if it constitutes a dwelling unit, and/or if it requires a deed restriction and agreement. Kitchen facilities described in Section "A" above, including "rough ins" may be allowed in structures that meet the criteria for a second unit and are designated and permitted as such, even though the structure is not used as a dwelling (i.e. allowing a gas line, refrigerator and sink in a workshop or artist studio or allowing a stove, refrigerator and sink in a pool house). The deed restriction/agreement will be binding on all successors in interest and will limit the use of the structure as permitted.