



Archuleta County
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MEMORANDUM

TO: Archuleta County Planning Commission
FROM: John C. Shepard, AICP; Planning Manager
DATE: June 26, 2019
RE: VR19-215 Adonais Vacation Rental Permit Referral & Appeal

Joe Beaubouef, Adonai's PL LLC of Shreveport, Louisiana, owns a Single Family Dwelling on Lot 70 The Reserve at Pagosa Peaks Phase 3 Subdivision at 620 Santino Pl., a 0.86 ac lot which is zoned Planned Unit Development (PUD). In 2016, written complaints were received that the owner was offering short-term rentals in violation of covenants (adopted by reference with PUD zoning), and the owner was cited with a Notice of Violation (ENF16-00013).

In 2018, the Board of County Commissioners legalized short-term rental of any legal dwelling unit, with a Vacation Rental Permit, and required any existing operators to apply for a permit no later than 12/31/18. The Property Owner failed to begin the application process and was cited again 4/02/19 (after multiple courtesy notices) with Notice of Violation of the revised regulations after new complaints were filed. On 4/08/19, Jeannie Bartholomew completed a Pre-Application Conference on property owner's behalf, and applied on property owner's behalf on 4/25/19, paying a double "after-the-fact" application fee acknowledging operations continued while the permit is under review, at the property owner's risk. Randy Fehrenbacher, Pagosa Central Management, is Local Owner/Representative and the unit is listed on his website (Whispering Pines Lodge" advertised for 14 individuals).

Section 5.5.6.2(6) of the *Archuleta County Land Use Regulations* provides that where rental property has not been in compliance with the Land Use Regulations, the Director shall refer the application...to the Planning Commission for review at a public meeting. The primary residence on the parcel has 4 bedrooms, provided in Building permit #2006-459, and is not in contention if operated within the Performance Standards (4 bedrooms x 2 occupants per bedroom + 2 overall = Maximum Occupancy 10 people).

Applicant is also appealing staff's determination regarding use of the Detached Garage & "Guest House" for the Vacation Rental. Sec. 11 of the Land Use Regulations provides definitions:

Vacation Rental: Residential use of a dwelling unit, or any portion thereof (including a Manufactured Home) as a short-term rental accommodation for no more than thirty (30) days, subject to Colorado state sales tax under CRS 39-26-704, where no meals are served or provided to renters.

Guesthouse: An accessory building designed and used for the purpose of providing temporary living accommodations for guests or for members of the same family as that occupying the main building, and containing no kitchen facilities.

Dwelling: A building used exclusively for residential occupancy, with complete living facilities including kitchen, bathroom and sufficient living area to meet the minimum requirements of the adopted residential building code.

Dwelling Unit: One (1) or more rooms and a single kitchen and at least one (1) bathroom, designed, occupied or intended for occupancy as separate living quarters for the exclusive use of a single family for living, cooking and sanitary purposes, located in a single-family, two-family or multi-family dwelling or mixed-use building.

There are two questions here for the Planning Commission's consideration:

1. Has the Garage & Guest House been converted to a Single Family Dwelling legally, which would allow use as a Vacation Rental?
2. If not, then can a Guest House as defined by used as a Vacation Rental?

Question 1: Legal Dwelling Unit?

Zoning allows one house on one single-family lot, with a general exception for two homes on a larger lot. In this case, covenants for the Reserve in effect when the PUD zoning was adopted (Section III Dwellings) restrict all lots to "residential use with one single-family dwelling permitted per lot". Two dwellings on one lot are only permitted when an Owner has consolidated 3 or more lots into one legal lot. However, the Covenants do provide that the Reserve's Architectural Review Committee may "allow reasonable variances and adjustments of the restrictions".

The previous owner applied for a building permit for a 2nd single family residence, which was modified to "Garage w/Living Space" (#2008-1), for a detached accessory structure with no bedrooms and no bathrooms. In 2014, the Reserve's Architectural Review Committee approved modification of plans to "allow the use of the upstairs area of the detached garage as additional living space with the kitchen facilities". The POA's ARC basically approved a Guest House with a kitchen. While no "Variance or Adjustment" was sought or received from the Planning Department to requirements of the *Archuleta County Land Use Regulations*, no Planner was on staff at that time and the Building Official signed a Certificate of Occupancy on 8/28/2014 with Use Classification "SFR". During the Vacation Rental Building Safety Inspection on 6/11/19, the Code Enforcement Officer confirmed the upstairs is finished with a bedroom and full kitchen, meeting the definition of Dwelling Unit such that this structure would be considered a 2nd Dwelling Unit, not in conformance with zoning.

If the 2nd building is a legal dwelling unit, then Maximum Occupancy would be $1 \times 2 + 2 = 4$ people, for 14 people in both buildings.

Question 2: Can a Guest House be a Vacation Rental?

If Question #1 is yes, then Question #2 is moot at this time. If not, then we need to confirm that a Guest House may not be used as a Vacation Rental, under the Regulations adopted in 2018. A "Vacation Rental" is defined as use of a dwelling unit. A Guest House is not a dwelling unit by definition.

ATTACHMENTS.

Attachment 1: Site Map

Attachment 2: Accela Permit Summary & Building Safety Inspection Sheet

Attachment 3: Building Permit 2008-001