



CITY OF DEL REY OAKS

Staff Report

DATE: February 27, 2023

TO: Honorable Mayor and City Council

FROM: John Guertin, City Manager

SUBJECT: Appeal of Building Official Determination Regarding Square Footage Calculations at 121 Calle Del Oaks

CEQA: This action does not constitute a “project” as defined by the California Environmental Quality Act (CEQA) guidelines section 15378 as it is an administrative activity of the City that will not result in direct or indirect physical changes in the environment.

Recommendation

An appeal hearing for this issue was conducted on January 23, 2024. The hearing was continued to the next regularly scheduled City Council meeting on February 27, 2024. The appellant has since had discussions with the Monterey Peninsula Water Management District and believes they have reached and agreed solution to the water permitting issue. They have requested that the appeal hearing be continued to the March 26, 2024, City Council meeting to allow time for them to work on a solution.

Staff recommends that the City Council approve the appellant’s request to continue the hearing to the March 26, 2024 City Council meeting.

Summary & Discussion

Authority for Appeal

The California Building Code, at Section 1.8.8.1 provides, in relevant part, “[e]very city... shall establish a process to hear and decide appeals of orders, decisions and determinations made by the enforcing agency relative to the application and interpretation of this code and other regulations governing construction, use, maintenance and change of occupancy. The governing body of any city... may establish a local appeals board and a housing appeals board to serve this purpose.” And that, “[w]here no such appeals boards or agencies have been established, the governing body of the city... shall serve as the local appeals board...”

Factual and Procedural Background

In May of 2023, the new owners (Owner) of 121 Calle Del Oaks (Property) applied for a business license from the City to operate an automotive restoration facility. Shortly thereafter, the Owner submitted plans to modify the existing structure at the Property (Building).

On June 9, 2023, the City's Building Official, Joe Headley, provided Plan Review Comments that included, in relevant part, a determination that the plans incorrectly stated the Building's square footage. The June 9, 2023, Plan Review Comment document is attached hereto as Exhibit A.

Shortly thereafter, the Owner's counsel submitted a letter, dated June 16, 2023, to the City arguing that Mr. Headley's determination regarding the Building's square footage was incorrect for a variety of reasons. The letter is attached hereto as Exhibit B.

In response, Mr. Headley issued another Plan Review Comment document dated July 11, 2023, which clarified and augmented the June 9, 2023 Plan Review Comment document. The July 11, 2023, Plan Review Comment document is attached hereto as Exhibit C.

Shortly thereafter, Mr. Headley and City Manager Guertin met with the City Attorney to discuss this matter. After the meeting, on July 13, 2023 the City Attorney sent Owner's counsel a letter outlining the reasons for the City's position on the matter, and why the City disputed the contentions made by the Owner's counsel. The July 13, 2023, City Attorney's letter is attached hereto as Exhibit D.

Thereafter, the Owner filed an appeal of Mr. Headley's determination.

Appeal

In many jurisdictions, a separate hearing board is established to hear appeals of building decisions and interpretations. Here, the City has no such hearing board and therefore, as noted above, the Council is the appropriate body to hear this appeal.

This appeal hearing before the City Council is *de novo*, meaning the Council does not defer to Mr. Headley's determination. Rather, the Council must hear the Owner's appeal, the City's response, and consider the evidence presented by both parties at the hearing. From there, the Council has the authority to deny the appeal (and therefore uphold Mr. Headley's determination), or grant the appeal (and therefore reverse Mr. Headley's determination).

Whether the Council upholds the appeal or denies it, it must make specific findings on the record at the hearing to support its decision.

Fiscal Impacts

There will be no direct financial impact as a result of this action.

ATTACHMENTS:

- As noted.

Respectfully Submitted,

John Guertin
City Manager