



STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Date: November 8, 2018

PLANNER: Stephanie Roxas, AICP, Senior Planner *SR*

SUBJECT: **Appeal of Denial of Nonconforming Short-Term Lodging Unit (STLU) Amortization Extension (AP STLU 18-516)**, an appeal of the Community Development Director's denial of Nonconforming STLU Amortization Extension Permit Nos. 18-379, 18-380, 18-381 requesting continued operation of STLUs located at 259 Avenida Granada, Units A, B, and C

BACKGROUND

The appeal hearing for the subject STLU was initially scheduled for the regular Planning Commission meeting of October 3, 2018. In consultation with the City Attorney's Office, staff recommended continuing the item to the November 8, 2018, Planning Commission meeting to further evaluate the amortization-extension provisions of the STLU Ordinance.

The October 3, 2018, Planning Commission staff report, resolution, and attachments are attached in its entirety. Additionally, staff received a public comment letter from an adjacent property owner, which is provided as Attachment 6.

RECOMMENDATION

Staff recommends that the Planning Commission:

1. Determine the project is Statutorily Exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15268 (Ministerial Projects); and
2. Adopt Resolution PC 18-028, denying Nonconforming STLU Amortization Extension Permits Nos. 18-379, 18-380, 18-381 for 259 Avenida Granada, Units A, B, and C.

Attachments:

1. October 3, 2018, Planning Commission Staff Report
2. Resolution No. PC 18-028
3. Location Map
4. Community Development Director's decision letter denying the application
5. Appeal letter submitted by property owner David Neilan
6. Public comment letter



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BACKGROUND

In May 2016, the City Council adopted a Short-Term Lodging Unit (STLU) Ordinance establishing a comprehensive set of operating and zoning regulations for STLUs. The ordinance established specific areas within the City where STLUs are permissible. Nonconforming STLUs that were legally established prior to the ordinance adoption, which are located outside of the permitted STLU areas, were granted a two-year amortization period. Owners of nonconforming STLUs were allowed to continue operating during the amortization period, contingent upon maintaining an active operating license with the City and reporting and remitting transient occupancy taxes (TOT) on a quarterly basis.

The initial amortization period was set to expire on June 16, 2018. Staff mailed notices to owners of properties located outside of permitted STLU areas informing owners that the STLU Ordinance would take effect on June 16, 2018. At the conclusion of the amortization period, nonconforming STLUs were required to cease operations and comply with current zoning standards.

As part of a negotiated settlement agreement with the San Clemente Vacation Rental Alliance, on May 15, 2018, the City Council adopted Ordinance No. 1654 approving various amendments to the STLU Ordinance. Among the changes, the ordinance extended the amortization period for STLUs in higher-density zones to a total of ten years, thereby allowing nonconforming STLUs in those zones to operate an additional eight years. Specifically, Zoning Ordinance Section 17.72.060.(G)(1)(b), states:

"The owner of an STLU outside of the RVL and RL zones may, if the owner is in good standing, extend the two-year amortization period to ten years by submitting a complete, written application to extend the amortization period on a form provided by the Director of Community Development within 30 days after the Director makes extension application forms available to the public. 'In good standing' here means: current on remittance of STLU TOT to the City and with no violation of the City's Municipal Code, including the TOT ordinance that was not cured within 30 days of

the notice of violation. The Director's decision on amortization-extension applications is ministerial."

Thus, with City approval, nonconforming STLUs located in higher-density zones outside of the permitted areas may be granted an extension to continue operating until June 17, 2026. To be eligible for the longer extension, STLUs must be located outside of the RVL and RL zones and meet certain standards. The City made Nonconforming STLU Amortization Extension Applications available to the public on May 16, 2018. Furthermore, City staff mailed the application to all owners of STLUs with an active operating license.

The City received a total of 78 applications for a Nonconforming STLU Amortization Extension. Based on review of the applications and their conformance to the STLU Ordinance, staff approved 54 applications and denied 24 applications. Owners of approximately 15 nonconforming STLUs that were eligible to apply for an extension failed to submit an application. Code Compliance staff has commenced enforcement action against STLUs that are operating without City approvals.

Noticing

In accordance with City and State requirements, staff published a notice of the appeal hearing in the *Sun Post* on September 20, 2018. In addition, staff mailed notices to property owners within a 300-foot radius of the subject property and posted notices at the subject property. No public comments have been submitted on this item to-date.

DESCRIPTION

The subject property is a residential apartment triplex under the same ownership. The triplex is three stories in height and sits on a narrow sloped lot. The site provides six parking spaces total (four garage, two uncovered). Each unit has two bedrooms. The triplex registered with the City as a vacation rental in October 2015 prior to adoption of the STLU Ordinance.

Subsequent to the ordinance adoption in 2016, the owner was required to register each unit under separate STLU operating licenses. The subject property was permitted to continue operation as nonconforming STLUs pursuant to Zoning Ordinance Section 17.72.060.(G)(1)(a). Specifically, this code provision states that nonconforming STLUs are "subject to an amortization period of two years, or until the sale or transfer of the property whichever occurs first, as long as that STLU...is operated according to the operational standards of Subsections 17.28.292.(C) and (D) with a valid STLU operating license under Chapter 3.24 and in accordance with other local, state, and federal laws."

The property is located outside of the permitted STLU areas, directly adjacent to the boundaries of the Downtown STLU area. There are five approved STLUs within 300 feet of the subject property; three STLUs are located outside of the STLU-allowed areas, one is located inside the Downtown STLU area, and one obtained a STAR permit. For additional details, please refer to the location map (Attachment 2).

ANALYSIS

Applications for a Nonconforming STLU Amortization Extension are considered “ministerial permits.” These types of permits are issued by the City when all standards and objective measurements established in the Municipal Code are met. Unlike discretionary applications, which are reviewed on a case-by-case basis and where decision-makers use special discretion to reach a decision, ministerial permits involve little or no subjective judgement by the City. Furthermore, with ministerial permits, the City has limited ability to regulate how the project should be carried out. For example, the City has little or no ability to impose unique conditions of approval on ministerial permits.

Table 1 below summarizes the objective requirements set forth in the Municipal Code to determine whether a permit for a Nonconforming STLU Amortization Extension should be issued. If the STLU fails to meet any of the requirements, the STLU Ordinance requires denial of the requested permit. The applicant did not meet City standards related to timely compliance with the Municipal Code.

Table 1 – Nonconforming STLU Amortization Extension

Requirements per SCMC Section 17.72.060.(G)(1)(b)	Compliance?
1) STLUs were legally established and legally operating as of February 2, 2016 with no change of property ownership or lapse in operating license.	Yes. City records show the triplex has legally operated as early as October 2015.
2) Located outside of the RVL and RL zones.	Yes. Located in the RM zone.
3) Submitted completed application within deadline.	Yes. Applications were submitted on June 11, 2018.
4) Current on remittance of STLU transient occupancy taxes (TOT). Any TOT delinquencies must have been resolved within 30 days of receiving a notice.	Yes. The STLUs have been compliant with the TOT ordinance and submitted returns within required timeframes.
5) Compliance with the Municipal Code. Any prior violations must have been resolved within 30 days of receiving a notice.	No. Case No. CE2016-0319 related to Municipal Code violations associated with an illegal fourth unit. See section below.

Consequently, the Community Development Director denied the applications for extensions. Denial was based on failure to resolve Municipal Code violations as described below. The Community Development Director’s decision letter, dated August 6, 2018, is provided for the Planning Commission’s reference (Attachment 3).

Pursuant to Zoning Ordinance Section 17.12.140.(A)(1)(a), "Any person may appeal a decision of the Community Development Director and/or City Planner to the Planning Commission. The Planning Commission's decision may be appealed to the City Council, whose decision shall be final." On August 16, 2018, David Neilan, the applicant and owner of the subject STLUs, filed an appeal with the City. The appellant's letter citing the basis for the appeal is provided as Attachment 4.

Municipal Code Compliance:

When the subject property initially registered with the City as a vacation rental, the building contained four units. Subsequently, staff discovered that the property was developed as a triplex and a fourth unit had been illegally constructed. On May 5, 2016, Code Compliance mailed a correction notice informing the owner of the violation. To correct the violation, the notice stated that building permit plans needed to be submitted to the City within 30 days.

On May 12, 2016, a representative for the property owner met with staff at the public counter. Planning determined that the fourth unit could not be legalized due to inadequate parking, and, consequently, the fourth unit would need to be removed to comply with the Municipal Code. Submission of plans and issuance of a demolition permit was required before the owner could commence work. The owner expressed a desire to bring the property into compliance but requested an extension from the 30-day deadline specified in the correction notice. The Code Compliance Officer sent an email on June 7, 2016 granting an extension, contingent on the owner making a good faith effort to proactively rectify the violation. Over the course of several months, the Code Compliance Officer continued to reach out to the owner via email and phone requesting status updates and a timeline for submission of plans.

On September 26, 2016, Code Compliance mailed a final notice informing the owner of the continued violation. To correct the violation, the owner was given thirty days to submit plans to the City and obtain a demolition permit to remove the illegal fourth unit.

A building permit application and plans were submitted to the City on October 18, 2016. Corrections were issued by the Building Division on November 2, 2016 and December 15, 2016. The City approved the plans on February 1, 2017, and the building permit was issued on February 2, 2017. Demolition work commenced immediately, and final inspections were conducted by the City on March 9, 2017.

In summary, the appellant has violated the Municipal Code by failing to commence action to cure the violation within 30 days of notice. Although it is challenging to cure the violation entirely within 30 days, the appellant did not make a good faith effort to rectify the violation in a timely fashion. Code Compliance contacted the appellant on multiple occasions over the course of five months. The correction notice was originally sent in May, and the appellant did not submit a building permit application and plans to the City until October, after receipt of a final correction notice. This untimely cured violation eliminated the appellant's good standing to receive an amortization extension. To be deemed to have good standing now, the appellant must prove that this violation never occurred or that this violation did not go uncured for more than 30 days.

ENVIRONMENTAL REVIEW/COMPLIANCE (CEQA):

The project is statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15268 (Ministerial Projects) because CEQA does not apply to ministerial projects.

ALTERNATIVES; IMPLICATIONS OF ALTERNATIVES

1. The Planning Commission can uphold the Community Development Director's denial of the application.

Staff recommends this action. This action would result in the adoption of the attached Resolution PC 18-028 denying the application based on failure to comply with all City standards. The owner may convert the STLUs into long-term rentals for periods of 30 or more consecutive days. Long-term rentals are not subject to City regulation or tax remittance.

2. The Planning Commission can reverse the Community Development Director's decision and approve the nonconforming STLUs for an eight-year amortization extension.

The Planning Commission may determine that in light of new and additional information provided by the appellant, the STLUs are deemed to be "in good standing" and are eligible for an extension. This action would result in permitting these nonconforming STLUs to operate through the duration of the ten-year amortization period. If approved, the STLUs may continue operating until June 2026, or when ownership of the subject property changes (whichever occurs first). This action would require this hearing to be continued to allow staff to draft a new resolution based on findings articulated by the Commission.

The Planning Commission's decision may be appealed to the City Council or be called up by the City Council for review and action.

SUMMARY

The STLU Ordinance requires that property owners are compliant with the Municipal Code and cure any violations within 30 days of receiving a notice. Due to the scope of the remedy, which involved obtaining permits from the City and demolition work, it was not feasible to cure the violation entirely within 30 days. However, the appellant did not make a good faith effort to commence action to cure the violation within 30 days of notice. The correction notice was issued on May 5, 2016, and plans were not submitted to the City until October 18, 2016, after receipt of a final correction notice. Therefore, the nonconforming STLU is not eligible for an amortization extension, and the permit was denied.

Based on information in the staff report, staff recommends that the Planning Commission:

1. Determine the project is Statutorily Exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15268 (Ministerial Projects); and

2. Adopt Resolution PC 18-028, denying Nonconforming STLU Amortization Extension Permits Nos. 18-379, 18-380, 18-381 for 259 Avenida Granada, Units A, B, and C.

Attachments:

1. Resolution No. PC 18-028
2. Location Map
3. Community Development Director's decision letter denying the application
4. Appeal letter submitted by property owner David Neilan

ATTACHMENT 2

RESOLUTION NO. PC 18-028

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DENYING THE APPEAL (AP STLU 18-516), AND UPHOLDING THE COMMUNITY DEVELOPMENT DIRECTOR'S DENIAL OF NONCONFORMING SHORT-TERM LODGING UNIT (STLU) AMORTIZATION EXTENSION PERMIT NOS. 18-379, 18-380, AND 18-381 PROHIBITING THE CONTINUED OPERATION OF THREE STLUs AT 259 AVENIDA GRANADA, UNITS A, B, AND C

WHEREAS, in May 2016, the City Council adopted Ordinance Nos. 1622, 1623, and 1624 regulating short-term lodging units (STLU); and

WHEREAS, the STLU ordinances were adopted with the intent of protecting the public health, safety, and welfare by ensuring neighborhood compatibility through the regulation of commercial, non-residential uses located in residential zones; and

WHEREAS, in May 2018, the City Council adopted Ordinance No. 1654 approving amendments to the STLU ordinances; and

WHEREAS, on May 16, 2018, the City made available to the public applications to request an extension to the amortization period for nonconforming STLUs in higher-density zones outside of the STLU-allowed areas in accordance with Zoning Ordinance Section 17.72.060.(G)(1)(b); and

WHEREAS, the subject property has been registered with the City of San Clemente as a vacation rental as early as October 2015 and has operated under business license numbers STLU-315513, STLU-316124, and STLU-316125; and

WHEREAS, the subject property lies in a higher-density zone outside of the STLU-allowed areas; and

WHEREAS, on June 11, 2018, applications (18-379, 18-380, 18-381) were submitted by the property owner, David Neilan, requesting an extension of the amortization period to continue operating the subject STLUs within the Residential Medium (RM) zone; and

WHEREAS, staff reviewed City records, correspondence, and files associated with the subject STLUs, and determined that the operator of the STLUs failed to meet the standards established under Zoning Ordinance Section 17.72.060.(G)(1)(b); and

WHEREAS, on August 6, 2018, the Community Development Director issued a

determination letter denying the extension applications (Permit Nos. 18-379, 18-380, 18-381) and not allowing the continued operation of the subject STLUs; and

WHEREAS, on August 16, 2018, an appeal (AP STLU 18-516) was filed by David Neilan appealing the Community Development Director's denial of Permit Nos. 18-379, 18-380, 18-381; and

WHEREAS, the project is statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15268 (Ministerial Projects) because CEQA does not apply to ministerial projects; and

WHEREAS, in accordance with City and State requirements, notice of the appeal hearing was published in the *Sun Post* newspaper on September 20, 2018, posted at the project site, and mailed to all property owners within 300 feet of the site; and

WHEREAS, on October 3, 2018, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application, considered written and oral comments, and facts and evidence presented by the applicant, City staff, and other interested parties.

NOW, THEREFORE, The Planning Commission of the City of San Clemente does hereby resolve as follows:

Section 1. Incorporation of Recitals.

The Planning Commission hereby finds that all of the facts in the Recitals are true and correct and are incorporated and adopted as findings of the Planning Commission as fully set forth in this resolution.

Section 2. CEQA Findings.

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commission, and the facts outlined below, the Planning Commission hereby finds and determines that the proposed project is statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15268 (Ministerial Projects) because CEQA does not apply to ministerial projects.

Section 3. Findings.

With respect to Nonconforming Short-Term Lodging Unit Amortization Extension Permit Nos. 18-379, 18-380, 18-381 ("STLU 18-379, 18-380, 18-381"), the Planning Commission finds as follows:

A. The subject STLUs are nonconforming residential uses.

1. Under Zoning Ordinance Section 17.72.060.(G)(1)(a), “any residential use that was legally established and legally operating as of February 2, 2016 (including any legitimate legal and appropriately licensed home occupation and any other legitimate and legal incidental and accessory commercial use) but that is categorized by the provisions of this title as a Short-term Lodging Unit (STLU) or Short-term Apartment Rental (STAR) and does not conform to the development standards of Subsections 17.28.292.E. and F.” is considered a nonconforming residential use.
 2. The triplex has been registered with the City as a vacation rental as early as October 2015, and the STLUs have operated under business license numbers STLU-315513, STLU-316124, and STLU-316125. Therefore, the STLUs are a nonconforming residential use eligible under the provisions of Zoning Ordinance Section 17.72.060.(G).
- B. The STLUs are located outside of the Residential Very Low (RVL) and Residential Low (RL) zoning districts.
1. The subject property is located in the Residential Medium (RM) zoning district.
- C. The appellant submitted complete, written applications within 30 days after the Director makes extension application forms available to the public.
1. The deadline to submit an application requesting an extension to the amortization period for nonconforming STLUs was June 18, 2018. The property owner submitted the required applications on June 11, 2018 (Permit Nos. 18-379, 18-380, 18-381).
- D. The appellant is current on remittance of transient occupancy taxes (TOT), and any TOT delinquencies were resolved within 30 days of receiving a notice.
1. The appellant has been compliant with the TOT ordinance and submitted returns within required timeframes for the three STLUs.
- E. The subject STLUs have violated the San Clemente Municipal Code, and the appellant failed to cure the violations within 30 days of the City’s notice of violation.
1. Staff discovered that the property was developed as a triplex and a fourth unit had been illegally constructed. On May 5, 2016, Code Compliance mailed a correction notice informing the owner of the violation. To correct the violation, the notice stated that building permit plans needed to be submitted to the City within 30 days.
 2. Over the course of several months, the Code Compliance Officer continued to reach out to the owner via email and phone requesting status updates and a timeline for correcting the violation. The owner failed to submit a building permit application and plans to the City.

3. On September 26, 2016, Code Compliance mailed a final notice informing the owner of the continued violation. To correct the violation, the owner was given thirty days to submit plans to the City and obtain a demolition permit to remove the illegal fourth unit.
4. A building permit application and plans were submitted to the City on October 18, 2016. The building permit was issued on February 2, 2017, and final inspections were conducted by the City on March 9, 2017.
5. The appellant has violated the Municipal Code by failing to commence action to cure the violation within 30 days of notice. The appellant did not make a good faith effort to rectify the violation in a timely fashion. Code Compliance contacted the appellant on multiple occasions over the course of five months before the appellant submitted a building permit application and plans to the City.
6. This untimely cured violation eliminated the appellant's good standing to receive an amortization extension.

Section 4. Planning Commission Denial.

Based on the foregoing recitals and findings, and the written and oral comments, facts, and evidence presented, the City of San Clemente Planning Commission upholds the decision of the Director of Community Development. The denial of Nonconforming Short-Term Lodging Unit Amortization Extension Permit Nos. 18-379, 18-380, and 18-381 was proper.

PASSED AND ADOPTED at a regular meeting of the City of San Clemente Planning Commission on October 3, 2018.

Chair

CERTIFICATION:

I HEREBY CERTIFY this Resolution was adopted at a regular meeting of the City of San Clemente Planning Commission on October 3, 2018, carried by the following roll call vote:

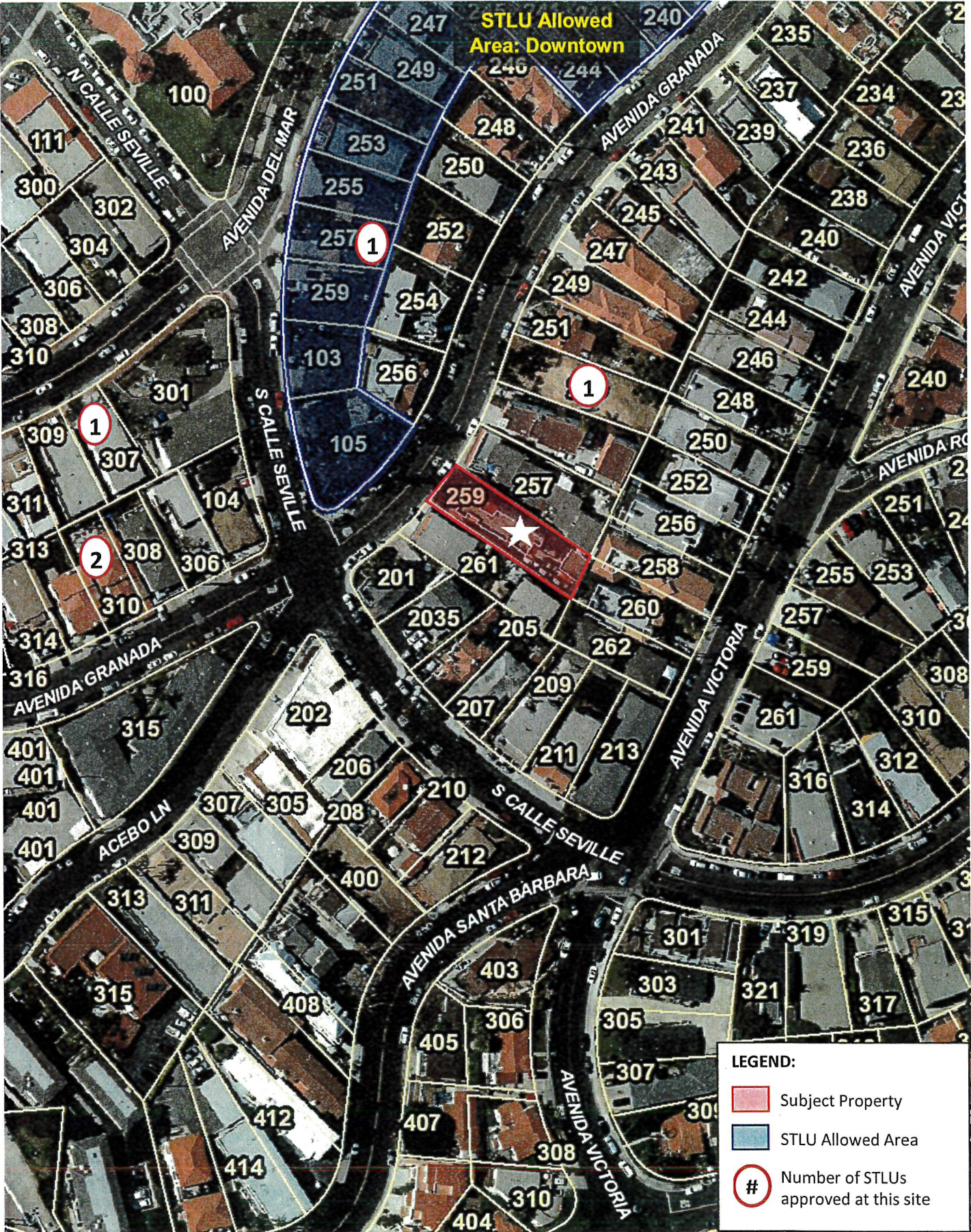
AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

Secretary of the Planning Commission





City of San Clemente
Community Development, Planning Division
Phone (949) 361-6197, E-Mail: Planning@San-Clemente.org

August 6, 2018

A J N Co.

**SUBJECT: 259 Avenida Granada, Units A, B, and C
Operating License Nos. 315513, 316124, 316125
Denial of STLU Amortization Extensions (STLU Nos. 18-379, 18-380, 18-381)**

Dear A J N Co.,

On May 15, 2018, the San Clemente City Council adopted Ordinance No. 1654 ("Ordinance") approving an amendment to Municipal Code Title 17 regarding the regulation of short-term lodging units (STLU). Zoning Ordinance Section 17.72.060(G)(1)(b) states the following: "Notwithstanding subsection G.1.a. above, the owner of an STLU outside of the RVL and RL zones may, if the owner is in good standing, extend the two-year amortization period to ten years by submitting a complete, written application to extend the amortization period on a form provided by the Director of Community Development within 30 days after the Director makes extension application forms available to the public. 'In good standing' here means: current on remittance of STLU TOT to the City and with no violation of the City's Municipal Code, including the TOT ordinance that was not cured within 30 days of the notice of violation. The Director's decision on amortization-extension applications is ministerial."

On June 11, 2018, you submitted applications for Nonconforming STLU Amortization Extensions requesting to allow the continued operation of three STLUs located at 259 Avenida Granada, Units A, B, and C in the Residential Medium (RM) zone. After reviewing your applications and City records, the City determined the subject property is not "in good standing" due to violations of the San Clemente Municipal Code. City records show a code enforcement violation associated with the parcel that was failed to be cured within 30 days of notice. Consequently, the property is not eligible for an extension, and your Nonconforming STLU Amortization Extension Applications (STLU Nos. 18-379, 18-380, 18-381) are denied. You have the right to appeal this decision to the Planning Commission in accordance with Zoning Ordinance Section 17.12.140 – Appeals of an Action.

Please be advised that the subject property does not have valid City approvals to continue operation of a short-term vacation rental and must cease and desist all STLU operations immediately. Continued business operations will be subject to Code Compliance action, including, but not limited to, administrative citations.

If you have any questions regarding this letter, please contact Stephanie Roxas, Senior Planner, at (949) 361-6195 or StephanieR@San-Clemente.org.

Sincerely,

Cecilia Gallardo-Daly
Community Development Director



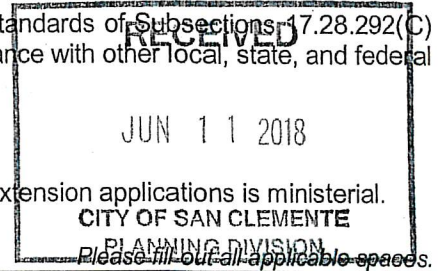
City of San Clemente Nonconforming STLU Amortization Extension

Community Development Department, 910 Calle Negocio, San Clemente, California 92673

Based on a recent change to the Short-Term Lodging Unit (STLU) regulations adopted by the City Council on May 15, 2018, STLUs that are not located within a RL or RVL zone, are eligible to apply for an eight (8) year amortization extension. If you wish to continue operating your STLU after June 16, 2018, please submit this application in-person to the Planning Division located at 910 Calle Negocio, Suite 100, San Clemente, CA 92673. **THE APPLICATION DEADLINE IS MONDAY, JUNE 18, 2018 at 5:00 PM.** Applications received after the deadline will not be considered for an amortization extension.

To qualify for the extension, the STLU owner must do the following:

- (1) show that the STLU was legally established and legally operating as of February 2, 2016;
- (2) show that the STLU has been and is operated according to the operational standards of Subsections 17.28.292(C) and (D) with a valid STLU operating license under Chapter 3.24 and in accordance with other local, state, and federal law; and
- (3) complete and submit this form by the Deadline.



If an STLU owner fulfills these three qualifications, the Director's decision on amortization-extension applications is ministerial.

Part 1: Owner and STLU Information 315513

STLU Property Address		259 Avenida Granada Apt A San Clemente CA 92672	
Property Owner Name		AJN Co	
Property Owner Mailing Address			
Property Owner Phone Number			
Property Owner Email			
Property Manager Name		Bradley den Dulk	
Property Manager Mailing Address		160 Avenida Granada San Clemente CA 92672	
Property Manager Phone Number		949-413-6102	
Property Manager Email		brad@beachsidevacationrentals.net	
*Emergency Contact Phone Number		800-408-1822	
Square Footage of STLU	888.5	Number of Bedrooms	2
Maximum Number of Overnight Renters **	6	Number of Legal Off-street Parking Spaces	2
Is the Property Governed by an HOA?	Yes <input checked="" type="radio"/> No	Name of Governing HOA	
Is the STLU Advertised on the web?	<input checked="" type="radio"/> Yes No	Website Address	http://www.beachsidevacationrentals.net
		Website Listing Number	800-408-1822

*24-hour emergency contact number as required by San Clemente Municipal Code.

**Max Overnight Renters as required in SCMC 17.28.292.C.11.

Part 2: Qualifying for the Extension

Please answer each question.

Legally Established and Operating

Does the property have a valid STLU Zoning Permit?	<input checked="" type="radio"/> Yes <input type="radio"/> No*	If so, what is the STLU Zoning Permit number?	319513
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Current TOT

Are you current on remittance of STLU TOT to the City?	<input checked="" type="radio"/> Yes <input type="radio"/> No	
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Compliance

Have you, or anyone acting on your behalf, or any of your guests been cited or fined by the City or any other governmental agency for a violation of the city code or of state or federal law or regulation arising out of the operation of the STLU?	<input type="radio"/> Yes <input checked="" type="radio"/> No	If so, was the final decision on the violation adverse to you or to the person cited or fined?	Yes No
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Declaration Under Penalty of Perjury and Acknowledgement (Required)

I declare under penalty of perjury under the laws of the State of California, that the information that I have provided in this application is true and correct.

I also acknowledge (1) prior receipt and notice of the City's standard STLU conditions, (2) that I and others who act on my behalf must abide by these requirements, as well as all others imposed by the San Clemente Municipal Code and by state and federal law and regulation, in order to enjoy the benefit of the extended amortization period, and (3) that I may lose this benefit if I do not comply.

Applicant's Name David Neilan

Applicant's Signature David Neilan Date 6/8/18

Mailing Address _____
STREET ADDRESS UNIT NUMBER

CITY STATE ZIP CODE

E-Mail Address _____

Phone No. _____

STLU 18-380



City of San Clemente Nonconforming STLU Amortization Extension

Community Development Department, 910 Calle Negocio, San Clemente, California 92673

Based on a recent change to the Short-Term Lodging Unit (STLU) regulations adopted by the City Council on May 15, 2018, STLUs that are not located within a RL or RVL zone, are eligible to apply for an eight (8) year amortization extension. If you wish to continue operating your STLU after June 16, 2018, please submit this application in-person to the Planning Division located at 910 Calle Negocio, Suite 100, San Clemente, CA 92673. **THE APPLICATION DEADLINE IS MONDAY, JUNE 18, 2018 at 5:00 PM.** Applications received after the deadline will not be considered for an amortization extension.

To qualify for the extension, the STLU owner must do the following:

- (1) show that the STLU was legally established and legally operating as of February 2, 2016;
- (2) show that the STLU has been and is operated according to the operational standards of Subsections 17.28.292(C) and (D) with a valid STLU operating license under Chapter 3.24 and in accordance with other local, state and federal law; and
- (3) complete and submit this form by the Deadline.

If an STLU owner fulfills these three qualifications, the Director's decision on amortization-extension applications is ministerial.

Part 1: Owner and STLU Information 316124

CITY OF SAN CLEMENTE
Please fill out all applicable spaces

STLU Property Address	259 Avenida Granada Apt B San Clemente CA 92672		
Property Owner Name	AJN Co		
Property Owner Mailing Address			
Property Owner Phone Number			
Property Owner Email			
Property Manager Name	Bradley den Dulk		
Property Manager Mailing Address	160 Avenida Granada San Clemente CA 92672		
Property Manager Phone Number	949-413-6102		
Property Manager Email	brad@beachsidevacationrentals.net		
*Emergency Contact Phone Number	800-408-1822		
Square Footage of STLU	818.5	Number of Bedrooms	2
Maximum Number of Overnight Renters **	6	Number of Legal Off-street Parking Spaces	2
Is the Property Governed by an HOA?	Yes <input checked="" type="radio"/> No	Name of Governing HOA	
Is the STLU Advertised on the web?	<input checked="" type="radio"/> Yes	Website Address	http://www.beachsidevacationrentals.net
	No	Website Listing Number	800-408-1822

*24-hour emergency contact number as required by San Clemente Municipal Code.

**Max Overnight Renters as required in SCMC 17.28.292.C.11.

Part 2: Qualifying for the Extension

Please answer each question.

Legally Established and Operating			
Does the property have a valid STLU Zoning Permit?	<input checked="" type="radio"/> Yes <input type="radio"/> No*	If so, what is the STLU Zoning Permit number?	316124
Current TOT			
Are you current on remittance of STLU TOT to the City?	<input checked="" type="radio"/> Yes <input type="radio"/> No		
Compliance			
Have you, or anyone acting on your behalf, or any of your guests been cited or fined by the City or any other governmental agency for a violation of the city code or of state or federal law or regulation arising out of the operation of the STLU?	Yes No	If so, was the final decision on the violation adverse to you or to the person cited or fined?	Yes No

Declaration Under Penalty of Perjury and Acknowledgement (Required)

I declare under penalty of perjury under the laws of the State of California, that the information that I have provided in this application is true and correct.

I also acknowledge (1) prior receipt and notice of the City's standard STLU conditions, (2) that I and others who act on my behalf must abide by these requirements, as well as all others imposed by the San Clemente Municipal Code and by state and federal law and regulation, in order to enjoy the benefit of the extended amortization period, and (3) that I may lose this benefit if I do not comply.

Applicant's Name David Neilan

Applicant's Signature David Neilan Date 6/11/18

Mailing Address _____
STREET ADDRESS UNIT NUMBER
CITY STATE ZIP CODE

E-Mail Address _____

Phone No. _____

STLU 18-381



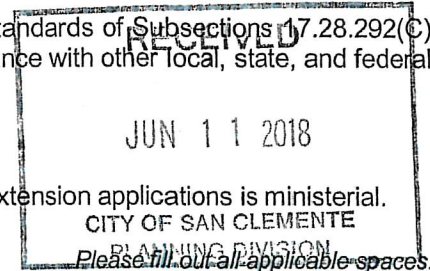
City of San Clemente Nonconforming STLU Amortization Extension

Community Development Department, 910 Calle Negocio, San Clemente, California 92673

Based on a recent change to the Short-Term Lodging Unit (STLU) regulations adopted by the City Council on May 15, 2018, STLUs that are not located within a RL or RVL zone, are eligible to apply for an eight (8) year amortization extension. If you wish to continue operating your STLU after June 16, 2018, please submit this application in-person to the Planning Division located at 910 Calle Negocio, Suite 100, San Clemente, CA 92673. **THE APPLICATION DEADLINE IS MONDAY, JUNE 18, 2018 at 5:00 PM.** Applications received after the deadline will not be considered for an amortization extension.

To qualify for the extension, the STLU owner must do the following:

- (1) show that the STLU was legally established and legally operating as of February 2, 2016;
- (2) show that the STLU has been and is operated according to the operational standards of Subsections 17.28.292(C) and (D) with a valid STLU operating license under Chapter 3.24 and in accordance with other local, state, and federal law; and
- (3) complete and submit this form by the Deadline.



If an STLU owner fulfills these three qualifications, the Director's decision on amortization-extension applications is ministerial.

Part 1: Owner and STLU Information 316125

STLU Property Address		259 Avenida Granada Apt C San Clemente CA 92672	
Property Owner Name		AJN Co	
Property Owner Mailing Address			
Property Owner Phone Number			
Property Owner Email			
Property Manager Name		Bradley den PulK	
Property Manager Mailing Address		160 Avenida Granada San Clemente CA 92672	
Property Manager Phone Number		949-413-6102	
Property Manager Email		brada@beachsidevacationrentals.net	
*Emergency Contact Phone Number		800-408-1822	
Square Footage of STLU	1,301.5	Number of Bedrooms	2
Maximum Number of Overnight Renters **	6	Number of Legal Off-street Parking Spaces	2
Is the Property Governed by an HOA?	Yes <input checked="" type="radio"/> No	Name of Governing HOA	
Is the STLU Advertised on the web?	<input checked="" type="radio"/> Yes	Website Address	http://www.beachsidevacationrentals.net
	No	Website Listing Number	800-408-1822

*24-hour emergency contact number as required by San Clemente Municipal Code.

**Max Overnight Renters as required in SCMC 17.28.292.C.11.

Part 2: Qualifying for the Extension

Please answer each question.

Legally Established and Operating

Does the property have a valid STLU Zoning Permit?	<input checked="" type="radio"/> Yes <input type="radio"/> No*	If so, what is the STLU Zoning Permit number?	316125
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Current TOT

Are you current on remittance of STLU TOT to the City?	<input checked="" type="radio"/> Yes <input type="radio"/> No	
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Compliance

Have you, or anyone acting on your behalf, or any of your guests been cited or fined by the City or any other governmental agency for a violation of the city code or of state or federal law or regulation arising out of the operation of the STLU?	<input type="radio"/> Yes <input checked="" type="radio"/> No	If so, was the final decision on the violation adverse to you or to the person cited or fined?	<input type="radio"/> Yes <input type="radio"/> No
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Declaration Under Penalty of Perjury and Acknowledgement (Required)

I declare under penalty of perjury under the laws of the State of California, that the information that I have provided in this application is true and correct.

I also acknowledge (1) prior receipt and notice of the City's standard STLU conditions, (2) that I and others who act on my behalf must abide by these requirements, as well as all others imposed by the San Clemente Municipal Code and by state and federal law and regulation, in order to enjoy the benefit of the extended amortization period, and (3) that I may lose this benefit if I do not comply.

Applicant's Name David Neilan

Applicant's Signature David Neilan Date 6/11/18

Mailing Address _____
STREET ADDRESS UNIT NUMBER

CITY STATE ZIP CODE

E-Mail Address _____

Phone No. _____

ATTACHMENT 5

David Neilan, AJN Co

August 16, 2018

TO: City of San Clemente
Community Development, Planning Division
RE: 259 Avenida Granada, STLU Licenses for Apt. A, B and C
Operating License Nos. 315513, 316124, 316125
STLU Amortization Extensions (STLU Nos. 18-379, 18-380, 18-381)

Dear Planning Commission Members:

I am writing to appeal the denial of our STLU license extensions. I speak on behalf of my family corporation, AJN Co, which comprises my sisters, Katherine and Rosemary, myself, and our elderly mother Nuala. We are dedicated to meeting all requirements of short-term leasing in San Clemente, and when I completed the City of San Clemente Nonconforming STLU Amortization Extension on June 8, 2018, I did so in good faith because I believed we were in good standing.

When filling out the renewal application, I selected "No" to the section of Compliance:

Current TOT			
Are you current on remittance of STLU TOT to the City?	<input checked="" type="radio"/> Yes <input type="radio"/> No		
Compliance			
Have you, or anyone acting on your behalf, or any of your guests been cited or fined by the City or any other governmental agency for a violation of the city code or of state or federal law or regulation arising out of the operation of the STLU?	<input type="radio"/> Yes <input checked="" type="radio"/> No	If so, was the final decision on the violation adverse to you or to the person cited or fined?	<input type="radio"/> Yes <input type="radio"/> No

I selected this option because I understood that the question referred to violations sustained as a result of problems with short-term tenants e.g. noise or complaints about guests' parking or behavior by guests that neighbors found unpleasant or unsavory.

It did not occur to me, when I completed this form, that it might include issues we had addressed and corrected in the past. We had a problem with our STLU license renewal applications in 2016, but I understood that this issue was completely resolved and so I did not think it applied to the question regarding compliance on operation of the STLU for the Nonconforming STLU Amortization Extension form.

It did take more than 30 days to resolve our prior issue in 2016, but it would have been unreasonable to expect resolution in such a short time frame. As soon as we received the citation in 2016 we removed the unit from short-term vacation rental and did everything possible to comply with the City's requests. Since construction was involved, we feel it is unreasonable to expect such an issue to be resolved within 30 days. Planning eventually approved the STLU applications once the issue was remedied.

Prior to completing construction of the building in 1989, the contractor walled off the back bedroom of the top unit. Over the years, my Dad used that back room as a manager's room on his weekly visits to San Clemente from Los Angeles (every Saturday for many, many years.) He never rented it out and he was the only one who ever used the room.

We inherited the property in 2013 when our father, Dr. Aidan J. Neilan, died. We had not been involved in any aspect of the building before he died, and he did not share any details of the building with us when he was alive.

In 2015, we decided to invest in the property, modernize it, and convert the building to short-term rentals so that we as a family could enjoy visiting San Clemente for a few weeks a year, while renting out the units the rest of the time. We invested several hundred thousand dollars in upgrading the apartments including new kitchens, new bathrooms, new floors, new windows and doors, as well as adding air conditioning and washer/dryer units to each apartment. We also furnished the apartments for short-term rentals.

When all the construction was done and we were ready to start providing vacation rentals, we submitted 4 STLU license applications for a building that we had always assumed was a 4-unit building. At that time, in 2016, we learned that the small room in the back on the third floor was not a separate unit but rather was part of the original floor plan for the third floor apartment.

We initially thought the problem was that we did not have 8 parking spots for the 4 units and we researched ways to remedy this issue. After going back and forth on email with the City, we learned via an in-person meeting with City Planner Adam Atamian that the size of the lot and the square footage of the property made it zoned for only a 3-unit building, regardless of the number of parking spaces. We searched city records and found the original blueprint plans submitted in the late 1980s for the building. These plans showed that the small back room was actually the original master bedroom of the top unit.

We then undertook the process of bringing the building into compliance. Of course this process took much longer than 30 days, it took many months. We hired an architect to draw up plans that reflected the original layout. We then worked with our contractor, whose schedule was jam-packed, to submit the new plans to Building Department, adjust those plans (with ongoing refinements by our architect, as specified by Building), to get a building permit, and to perform the necessary work. The Building Department inspected and signed off on the work. The Planning Department subsequently approved the application for the three STLU licenses and the Finance Department issued the three licenses.



There was a significant cost of upgrading the building, and also costs associated with making the changes to come into compliance. We accept these costs and continue to endeavor to comply with all rules and regulations set forth by the City of San Clemente.

We believe we have become an anchor property on this block of Avenida Granada. The work we did on our building seems to have encouraged other owners in the vicinity to make improvements to their properties and, as a result,

the entire neighborhood has improved. Additionally, other owners on the block have thanked us for the beautiful renovation. We interviewed two other vacation rental property management companies but chose Beachside Vacation Rentals because they have very high standards, are personally involved with every aspect of management, and make it a priority to protect the properties and prevent misuse, loud parties, or bad behavior. Their marketing targets families who come to San Clemente for weddings or family vacations, and they do not allow large groups or large parties. Their offices are also on Avenida Granada, just a block away from our building, and they take exceptional care of every detail.

Our large investment in 259 Avenida Granada was based on an ROI (return on investment) over many years. Had we known the city was going to change the rules in the next few years, we would not have made these large investments.

Also, please note that our building is located in the Downtown Area and Pier Bowl, just a block from the San Clemente Community Center and the San Clemente Public Library. Parts of Avenida Granada were included in the original area approved by the City for STLU licensing. However, the map included only buildings on the north side of Granada, not the south side (where we are located) and divides the street of Granada in half. See map attached below with a red marking of our lot at 259 Avenida Granada.

Again, we as a family love San Clemente and want to preserve its beauty and charm and also share its many treasures with visitors from across the country and around the world. Please reconsider the ruling on our building and grant renewal of the STLU licenses for 259 Avenida Granada, Units A, B, and C.

Thank you very much,

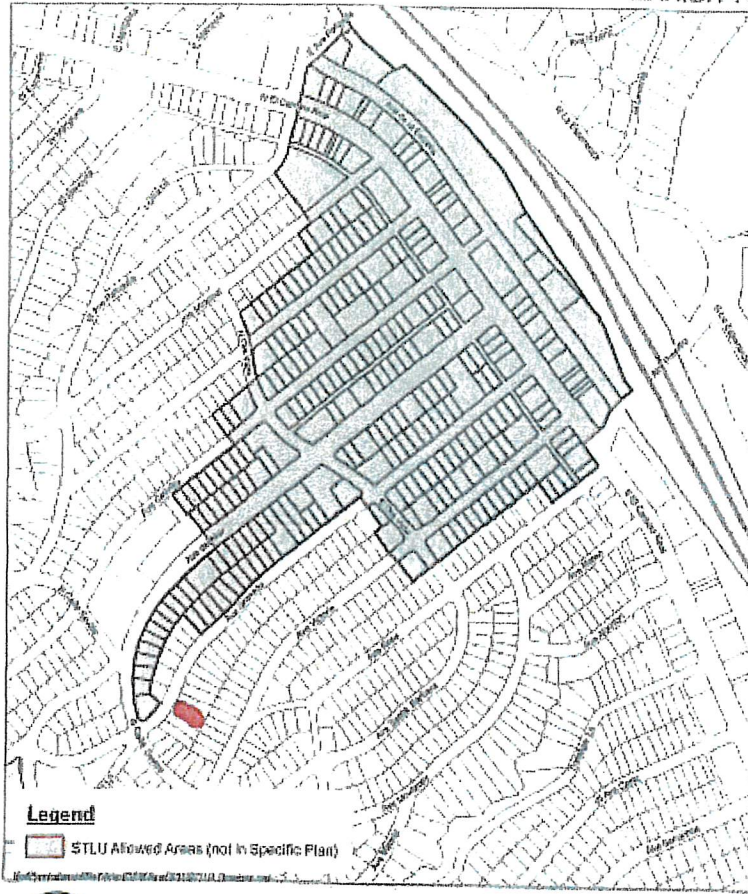
Sincerely,

A handwritten signature in blue ink that reads "David Neilan".

David Neilan
CFO, AJN Co

AJN Co

EXHIBIT A



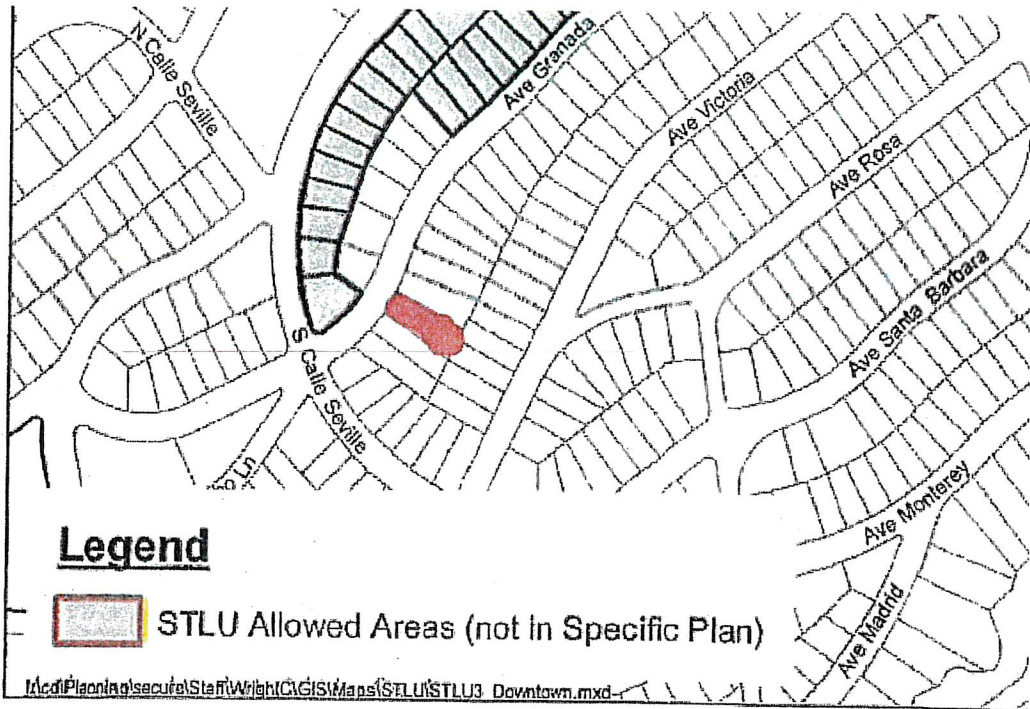
Sheet 3 - Short-Term Lodging Units (STLU)
Allowed Areas - Downtown

(Adopted: May 17, 2016)



0 50 100 200 Feet
11-21-17 / 04-11

A zoom version of lot 259 Avenida Granada in red across the street from the Downtown STLU zoning plan border.



Sheet 3 - Short-Term Lodging Allowed Areas - Downtown

(Adopted: May 17, 2016)

October 1, 2018

To: City of San Clemente
Community Development Planning Division
Attn: Stephanie Roxas, Senior Planner

Re: 259 Avenida Granada - Appeal of Short-Term Lodging Unit 18-516

Dear Planning Committee Members:

I am writing to you today to voice my concern over the appeal by the AJN Corporation that represents 259 Avenida Granada (Units A,B,C).

My name is Kevin Condrin and I live at 261 Avenida Granada, Unit B for approximately 2 years. My unit is directly adjacent and possibly most impacted to the property in question. Although I have only lived in San Clemente for a short period, I have been visiting San Clemente since the 1970's and appreciate and respect the community. Additionally, I work in San Clemente for USGI Medical, attend Heritage Christian Church, and a member of Casa Romantica to provide you a profile of my engagement and investment to San Clemente.

Although I appreciate David Neilan's comment in his Appeal response letter that his "family loves San Clemente and wants to preserve its beauty and many treasures...", I disagree that running a STLU is the best approach to this goal. My experiences with his renters suggest just the opposite. I strongly oppose this appeal application for the following reasons:

1. Negative impact to the residential character and charm of San Clemente
2. Reduced economic value
3. Drives up rents by reducing the overall stock of affordable housing
4. Property is outside of the define STLU Allowed Areas

Negative impact to the residential character and charm of San Clemente

I have experienced continuous excess noise, parking related issues, and trash-related issues. Noise is related to renters arriving late at night, dragging their luggage loudly up the multiple steps, yelling from the top unit to the bottom units, late nights entertaining on the patios (especially Unit A), early and late rolling of 6-8 garbage cans, challenges of renters navigating the driveway (many struggle with the steepness and difficulties turning around) which often requires another person to get out of car and loudly directing the driver safely down the steep driveway. Finally, renter often bring more cars than allowed for units and take up the limited street parking. Renters not fully understanding our neighborhood parking norms and will take up two spots on the street for their one car, further negatively impacting our parking situation.

Reduces economic impact

It is my estimation, the revenues received from the taxes and local spending by visitors is inferior to the potential revenues to San Clemente if this property was leased as traditional long-term

apartments. Assuming this property is rented mostly in the peak summer season (~20 weeks), I would suggest that if these same 3 units were long-term apartments, occupied 52 weeks a year, they would provide better economic revenues to San Clemente. Like me, I would assume they would spend locally at our stores and restaurants and join the many organizations and events throughout our city. Much more than a few out-of-town visitors who are not fully committed to our town.

Drives up rents by reducing the overall stock of affordable housing

The conversion of housing to STLU is only beneficial to the homeowners and the renters but not the local resident in my opinion. The homeowner benefits from the anticipated market value increase and other tax advantages to name a few. The renters of course benefit from reduced lodging cost compared to hotels. What are the advantages to the local resident? In particular, STLU's negatively impact the availability of affordable housing as clearly stated by the Planning Commission during the development of STLU the ordinance.

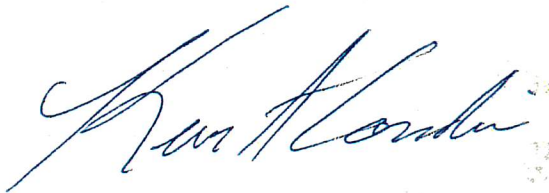
Property is outside of the define STLU Allowed Areas

I believe when the STLU Allowed Areas was being defined, there was great thought and consideration by the Planning Commission to the impact to the community. The current property under question is outside both the Downtown and Pier Bowl allowable areas. I suggest there was a reason why the allowable areas were defined as they are today.

Finally, I have never met the homeowners or members of their family corporation. I have no personal issues or grudges. My concern is preserving the beauty and charm of San Clemente as identified by the owner. In my opinion by reversing this denial, this would be counter to the intended objective.

My apologies for not being able to attend the meeting live but I had a previously scheduled medical appointment that cannot be changed. I did however come to the Planning desk and discussed my concerns with Stephanie Roxas as an engaged and committed citizen of San Clemente. Thank you for allowing me to share my perspective and opinions.

Best regards,

A handwritten signature in blue ink, appearing to read "Kevin Condrin". The signature is fluid and cursive, with a large initial "K" and "C".

Kevin Condrin
261 Avenida Granada, Unit B
San Clemente, CA 92672