



STAFF REPORT SAN CLEMENTE ZONING ADMINISTRATOR

Meeting Date: 10/17/2019

PLANNER: Erin Guy, Community Development Technician

SUBJECT: **Short Term Apartment Rental Permit No. 19-295, Boki STAR,**
a request to allow three STAR rentals at 119 Avenida San Pablo
in Units B, C, and D. Unit A is owner-occupied.

LOCATION: 119 Avenida San Pablo

ZONING/GENERAL PLAN: The property is located in the Residential Low Zone.

PROJECT SUMMARY:

- The subject property is a 7,265 square foot lot. A single-story 2,400 square foot, four unit residence was originally built on the lot in 1953. The subject property is located within the Residential Low Density zone. The subject property does not fall within any of the City of San Clemente’s five STLU Allowed Areas. Figure 1 on the following page illustrates the existing site conditions.
- A short term lodging unit (STLU) is a dwelling unit rented for lodging less than 30 days (“Short term”). While STLUs are not permitted on the site, if the property owner, or the owner’s trained and qualified property manager, resides in one of the units while the other units are rented short term, the Zoning Ordinance will allow this form of short term lodging on the site. This form of rental is known as a Short Term Apartment Rental (STAR). The proposed project includes the use of 199 Avenida San Pablo Units B, C, and D as short term apartment rentals (STARs).
- The existing residence includes four, 600 square foot dwelling units and 4 existing parking spaces on site. Each dwelling unit contains 1 bedroom and 1 bathroom, and would be permitted to allow up to 4 guests per unit as a STAR. The property owner and applicant, Ignat Boki, resides in Unit A as their full-time residence. The proposed project includes no interior or exterior remodels, and no additions. The nearest currently operating STLU is approximately 1,116 linear feet away at 1800 Entrada Paraiso.
- Zoning Ordinance Section 17.28.292.C.11, limits the number of renters and guests in a STAR, based on the number of legal bedrooms available in each rental unit.
 - The site has four individual, legal one bedroom units.
 - The Zoning Ordinance allows for 2 persons per legal bedroom, plus two persons, giving Units B, C, and D a maximum occupancy of 4 persons each.

- If additional legal bedroom spaces were provided in the future, the STLU Ordinance allows the occupancy limit to increase if changes are first reviewed and approved by the Community Development Director or designee, and all appropriate and necessary permits are obtained.
- Staff confirmed the applicant is knowledgeable of and agreed to meet STAR requirements, such as: 1) requiring the property owner to reside in a dwelling unit when the other units are used as short term rentals; and that 2) the STAR permit is voided if there is a change of ownership, as defined in the Zoning Ordinance.
- Zoning Ordinance Section 17.16.146.C requires Zoning Administrator approval for a STAR located in a residential zone where general STLU's are not permitted.

Figure 1 – Existing Site Conditions



- Property is subject to open Code Compliance Case CE 2019-0311. Code Compliance case CE 2019-0311 was opened as the result of a received complaint from the public that stated *“Suspected STLU because of different cars and different people. I think that most of the regular tenants were moved out, there seem to be only one regular tenant. Guest are there mainly there Thursday-Sunday. There's not much action during the weekdays.”* Original complaint does not raise concerns regarding the operations of the STAR such as excessive noise or traffic.

- The Development Management Team (DMT) reviewed the project and recommends approval with the conditions provided in Exhibit A of Attachment 1.
- At the time of this report, staff has received no comments from the public regarding this project.
- Staff believes the required findings can be made to approve the project, as set forth in the Findings of the attached Resolution, because:
 - The architectural treatment of the project complies with the General Plan, Zoning Ordinance, and the City's Design Guidelines, and remains in character with buildings in the neighborhood, as there are no proposed exterior modifications or additions.
 - The proposed use is permitted within the subject zone pursuant to the approval of a STAR permit.
 - The site is suitable for the type and intensity of the proposed use in that there are four legal units existing on-site, with only three proposed for short term use.
 - A STAR must be located at least 300 feet from every other STAR or STLU. The nearest currently operating STLU or STAR is approximately 1,116 linear feet away.
 - The proposed use provides additional lodging options for visitors within close proximity of the Municipal Golf Course, Wedgewood Wedding and Banquet Center, and San Clemente State Beach.

RECOMMENDATIONS

Based on the information in the staff report and subject to the required findings and conditions of approval, staff recommends that the Zoning Administrator:

1. Determine the project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Class 1: Existing Facilities); and
2. Adopt Resolution ZA 19-017, approving Short Term Apartment Rental (STAR) Permit No. 19-295, Boki STAR, subject to the conditions of approval.

Attachments:

1. Resolution ZA 19-017
Exhibit A - Conditions of Approval
2. Location Map
3. Plans

RESOLUTION NO. ZA 19-017

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING SHORT TERM APARTMENT RENTAL PERMIT NO. 19-295, BOKL STAR, A REQUEST TO ALLOW THREE SHORT TERM APARTMENT RENTALS AT 119 AVENIDA SAN PABLO UNITS B, C, AND D

WHEREAS, on September 19, 2019, a complete application was submitted by applicant Ignat Bokl of 119 Avenida San Pablo, Unit A, San Clemente, CA 92672, for Short Term Apartment Rental (STAR) Permit No. 19-295, a request to allow three short term apartment rentals at 119 Avenida San Pablo Unit B, C, and D. The subject site is in the Residential Low zoning district. The site's legal description is Lot 13, of Block 14, of Tract 851 and Assessor's Parcel Number 690-422-13; and

WHEREAS, the Planning Division completed an initial environmental assessment of the above matter in accordance with California Environmental Quality Act (CEQA) and recommends that the Zoning Administrator determine this project is categorically exempt from CEQA as a Class 1 exemption pursuant to CEQA Guidelines Section 15301(e) because the project proposes an addition to a single-family home in an urban area that involves a negligible expansion of an existing use; and

WHEREAS, on September 12, 2019, the City's Development Management Team reviewed the proposed project for compliance with the General Plan, Zoning Ordinance, and other applicable requirements; and

WHEREAS, in accordance with City and State requirements, notice of the public hearing was published in the *San Clemente Times* newspaper on October 2, 2019, posted at the project site, and mailed to all property owners within 300 feet of the subject parcel; and

WHEREAS, on October 17, 2019, the Zoning Administrator 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 Zoning Administrator of the City of San Clemente hereby resolves as follows:

Section 1. Incorporation of Recitals.

The Zoning Administrator hereby finds that all of the facts in the Recitals are true and correct and are incorporated and adopted as findings of the Zoning Administrator as

fully set forth in this resolution.

Section 2. CEQA Findings.

Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the Zoning Administrator, and the facts outlined below, the Zoning Administrator hereby finds and determines that the proposed project is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Class 1: Existing Facilities). The Class 1 exemption specifically exempts from further CEQA review the operation, repair, maintenance, permitting, leasing, licensing or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features. Here, the proposed project involves a request to rent and use an existing dwelling unit on a short-term basis with no expansion of use. Zoning limitations apply to ensure the type, size, and operation of the proposed use is consistent with the purpose, intent, and conditionally permitted uses of the zone. Thus, the project qualifies for the Class 1 exemption.

Furthermore, none of the exceptions to the use of the Class 1 categorical exemption identified in State CEQA Guidelines section 15300.2 apply. The project will not result in a cumulative impact from successive projects of the same type in the same place, over time, given the proposed use is consistent with Zoning regulations, that include a requirement for a 300 foot separation between STARs to ensure there is not an over concentration of short-term lodging in residential zones. There are no unusual circumstances surrounding the project that result in a reasonable possibility of a significant effect on the environment. The project will not damage scenic resources, including trees, historic buildings, rock outcroppings, or similar resources. The project does not include any hazardous waste sites, and the project will not cause a substantial adverse change in the significance of a historical resource, given none are adjacent to the site. Thus, the Class 1 exemption applies, and no further environmental review is required.

Section 3. Short Term Apartment Rental Findings

With respect to Short Term Apartment Rental Permit No. 19-295, the Zoning Administrator finds as follows:

- A. The proposed use is permitted within the subject zone pursuant to the approval of a STAR permit and complies with all the applicable provisions of this title, the San Clemente General Plan, and the purpose and intent of the zone in which the use is being proposed, in that:
 1. The STAR is consistent with the types of permitted and intended uses in the zone, and special use requirements are applied to ensure the existing character of residential neighborhoods are preserved and not adversely impacted.

- B. The site is suitable for the type and intensity of use that is proposed, in that:
1. General Plan Land Use Element Policy LU-1.03 states: *“Maintenance of Neighborhood Character: We maintain elements of residential streets that unify and enhance the character of neighborhoods, including parkways, street trees, and compatible setbacks.”* The STAR unit must comply with all codes and adhere to Conditions of Approval, attached hereto as Exhibit A. These requirements and conditions ensure the existing character of residential neighborhoods are preserved and not adversely impacted. Therefore, the project is consistent with General Plan Policy LU-1.03.
- C. The proposed use will not be detrimental to the public health safety, or welfare, or materially injurious to properties and improvements in the vicinity, in that:
1. The STAR must comply with all code requirements including but not limited to Fire Code, California Building Code, and the San Clemente Municipal Code. Also, the STAR must adhere to Conditions of Approval, attached hereto as Exhibit A. These requirements and conditions apply to ensure the existing character of residential neighborhoods are preserved and not adversely impacted. These requirements include, but are not limited to, a 300 feet separation requirement between currently operating STARs and STLUs in areas where STLUs are not permitted to control zone density, and minimum standards for trash storage, provision of insurance, architectural treatment, and limitations on occupancy and noise.
- D. The proposed use will not negatively impact surrounding land uses, in that:
1. Conditions of Approval (attached as Exhibit A) must be met to ensure the existing character of the surrounding land uses are not adversely impacted. These requirements include, but are not limited to, a 300 feet separation requirement between currently operating STARs and STLUs in areas where STLUs are not permitted to control zone density, and minimum standards for trash storage, provision of insurance, architectural treatment, and limitations on occupancy and noise; and
 2. The STAR owner proposes to operate the STAR and sleep within a habitable room or unit on the property every night a room or unit is rented for short-term lodging purposes, so STAR operation and use is monitored and controlled by the property owner to ensure compliance with Municipal Code requirements.
- E. The use meets the minimum operating and development standards of Subsections 17.28.292E. and F, in that:
1. The STAR is located in an area permitted according to the limitations and requirements of the use tables in Chapters 17.32, Residential Zones and

Standards; the STAR does not exceed the maximum limitation of 20 percent of the total housing units within an STLU allowed area, and; the STAR provides adequate trash receptacles in a location screened from public view.

2. The STAR would be located at least 300 feet from every other existing STAR or STLU. The nearest currently operating STAR or STLU is approximately 1,116 linear feet away at 1800 Entrada Paraiso.
- F. The STAR qualifies for an STLU operating license pursuant to San Clemente Municipal Code Chapter 3.24.
1. With approval of STAR Permit 19-295, the property qualifies for a STLU operating license. Condition of approval 2.4 stipulates that prior to renting and operating the STAR, the owner shall obtain a STLU operating license. License issuance and renewals shall occur pursuant to Municipal Code Chapter 3.24.

Section 4. Zoning Administrator Approval.

Based on the foregoing recitals and findings, and the written and oral comments, facts, and evidence presented, the City of San Clemente Zoning Administrator approves Short Term Apartment Rental (STAR) 19-295, Bokl STAR, subject to the Conditions of Approval set forth in Exhibit A.

PASSED AND ADOPTED at a regular meeting of the City of San Clemente Zoning Administrator on October 17, 2019.

Gabriel J. Perez, Zoning Administrator

CONDITIONS OF APPROVAL
SHORT TERM APARTMENT RENTAL PERMIT NO. 19-295

1.0 GENERAL CONDITIONS OF APPROVAL

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| 1.1 | Within 30 days of receipt of the signed conditions of approval, the applicant shall submit to the City Planner a signed acknowledgement concurring with all conditions of approval on a form to be provided by the City, unless an extension is granted by the City Planner. | Planning |
| 1.2 | The applicant shall defend, indemnify, and hold harmless the City of San Clemente and its officers, employees, and agents from and against any claim, action, proceeding, fines, damages, expenses, and attorneys' fees, against the City, its officers, employees, or agents to attack, set aside, void, or annul any approval or condition of approval of the City concerning this project, including but not limited to any approval or condition of approval of the City Council, Planning Commission, or City Planner. Applicant shall pay all costs. The City shall promptly notify the applicant of any claim, action, or proceeding concerning the project and the City shall cooperate fully in the defense of the matter. The City reserves the right, at its own option, to choose its own attorney to represent the City, its officers, employees, and agents in the defense of the matter. If the applicant fails to so defend the matter, the City shall have the right, at its own option, to do so and, if it does, the applicant shall promptly pay the City's full cost of the defense. | Planning |
| 1.3 | Use and development of this property shall be in substantial conformance with the approved plans, material boards and other applicable information submitted with this application, and with these conditions of approval. Any modifications to the project shall be reviewed by the City Planner in accordance with Zoning Ordinance Section 17.12.180. | Planning |
| 1.4 | The applicant shall comply with all applicable current and future provisions of the San Clemente Municipal Code, adopted ordinances, and state laws. | All |
| 1.5 | Use of the subject property shall conform to all occupancy requirements, including posting of signs related to the maximum occupancy limitations. The STAR owner shall post a copy of the permit and house rules that comply with the conditions set forth in this section in a conspicuous place in the STAR. | Code
Comp * |
| 1.6 | STAR 19-295 shall be deemed to have expired if within three years of approval the project is not commenced, or the project permitted by the approved application has lapsed, as defined by Zoning | Planning |

Ordinance Section 17.12.150.

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| 1.8 | STAR 19-295 shall become null and void if: <ul style="list-style-type: none"> a. there is a change of ownership as defined in the Municipal Code for STAR units; or b. the STAR use is not commenced within one (1) year from the later of: 1) the date of the approval thereof. Since the use itself does not require the issuance of a building permit, the use shall not be deemed to have commenced until the date the use becomes operational. <i>[Citation - Section 17.12.150.A.1 of the SCMC]</i> | Planning
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| 1.9 | The STAR owner shall comply with STAR requirements to ensure the existing character of residential neighborhoods are preserved and not adversely impacted. These requirements include, but are not limited to, minimum standards for trash storage, provision of insurance, and limitations on occupancy and noise. | Planning
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| 2.0 | In the event that noise impacts neighboring properties, the STAR owner must soundproof the STAR unit, or implement other best management practices as determined by the Community Development Director or designee, to eliminate the problem and comply with the City's noise ordinances. | Planning
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| 2.1 | Plans to construct new building, add or alter the existing building configuration, change in use, add or alter structural, mechanical, electrical or plumbing features of the project must be reviewed and approved through a separate building plan check / permit process. <i>[S.C.M.C – Title 8 – Chapter 8.16- Fire Code, Title 15 Building Construction - Chapters 15.08, 15.12, 15.16, 15.20]</i> | Building
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| 2.2 | The owner of the STAR must own and operate the STAR and must sleep within a unit on the property while a separate unit is rented for short-term-lodging purposes. The owner occupied unit has been identified as Unit A, in accordance with the application submitted. <i>[Citation - Section 17.28.292.D of the SCMC]</i> | Planning
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| 2.3 | Approval of STAR 19-295 supersedes all Short-Term Lodging Unit (STLU) Operating Licenses for the site, and upon issuance of the STAR Zoning Permit, renders all STLU Operating Licenses previously issued to the property null and void. This means short-term lodging shall be limited to the STAR according to STAR 19-295 and these Conditions of Approval. | Planning
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| 2.4 | Prior to renting and operating the STAR, the owner shall obtain a Short-Term Lodging Unit (STLU) Operating License. License | Planning
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issuance and renewals shall occur pursuant to Municipal Code Chapter 3.24.

- 2.5 The STAR owner shall provide record of their name and current 24-hour contact information (which consists of, at minimum, a phone number) to the Community Development Director, or designee. Updated information shall be provided, pursuant to SCMC Section 17.28.292(C)(5), which states, *“The STLU owner shall provide a 24-hour emergency contact that will respond, on-site if requested, within 30 minutes to complaints about the condition, operation or conduct of STLU renters or their guests. Prior to any change to the 24-hour emergency contact, the STLU owner shall submit a revised STLU zoning permit application to the Community Development Director, or designee for approval.”*

Planning
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- 2.6 The number of renters and guests permitted in the STAR shall be limited based on Zoning Ordinance Table 17.28.292.C, Occupancy Limit, or Building Code, whichever is more restrictive. There shall be no more than four people (renters and guests) in each STAR Unit (Units B, C, and D), at any time, based on the number of bedrooms provided within each unit. If additional legal bedrooms are provided in the future, the occupancy can change to reflect regulations, provided any changes are first reviewed and approved by the Community Development Director or designee and all appropriate and necessary permits are obtained.

Planning
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- 2.7 The STAR operator shall prepare and submit to the City a quarterly tax return, on forms provided by the Finance and Administrative Services Department, stating the total rents charged and received and the amount of the transient occupancy tax (TOT) collected the previous quarter. Taxes shall be remitted within 30 calendar days of the end of each quarterly period as set forth in San Clemente Municipal Code 3.24.070. The owner shall timely submit the filing whether or not the STLU was rented during the reporting period and TOT was collected. Failure to file required quarterly tax returns may result in the revocation of STAR Permit No. 19-295.

Planning
&
Finance**

- 2.8 STAR renters and their guests shall not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of the San Clemente Municipal Code or any state or federal law or regulation, including, but not limited to, those pertaining to noise disorderly conduct, the consumption of alcohol, or the use of illegal drugs. The STLU owner shall ensure compliance with this provision.

Planning
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- 2.9 The STAR may only be used for overnight lodging. It shall not be used for a wedding, bachelor or bachelorette party, or other party conference, or any other similar event.

Planning
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3.0 Based on the number of bedrooms provided within each unit, there shall be no more than four people (renters and guests) in each STAR Unit (Units B, C, and D), at any one time. If additional legal bedrooms are provided in the future, the occupancy can change to reflect regulations, provided any changes are first reviewed and approved by the Community Development Director or designee and all appropriate and necessary permits are obtained.

Planning
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3.1 The Community Development Director may request access to the STAR or to records related to the use and occupancy of the units for the purpose of inspection or audit to determine that the objectives and conditions of this permit are being fulfilled. On such request, the STLU owner shall provide access to the Director during normal business hours.

Planning
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8.0 ENFORCEMENT AUTHORITY—VIOLATIONS OF CONDITIONS

8.1 The Applicant (including any property owners and managers, and their designees) shall use her/his best judgment and best management practices to ensure the residential activities on the premises will be conducted in a manner that will not be disruptive to neighbors. The business owner shall be responsible for ensuring compliance with the San Clemente Municipal Code (SCMC), and all conditions of approval contained herein. The Applicant (including any property owners and managers, and their designees) hereby understands that noncompliance with regulations and conditions of approval, shall be immediate grounds for citation pursuant to SCMC Section 8.52.030(Y), which states, "It is declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises in this City to maintain such premises in such manner that ... A structure, improvement, property, and/or land use is not in compliance with terms and/or conditions of any City of San Clemente issued permit or approval," and any subsequent revision of this section of the code. [Citation - Section 8.52.030(Y) of the SCMC]

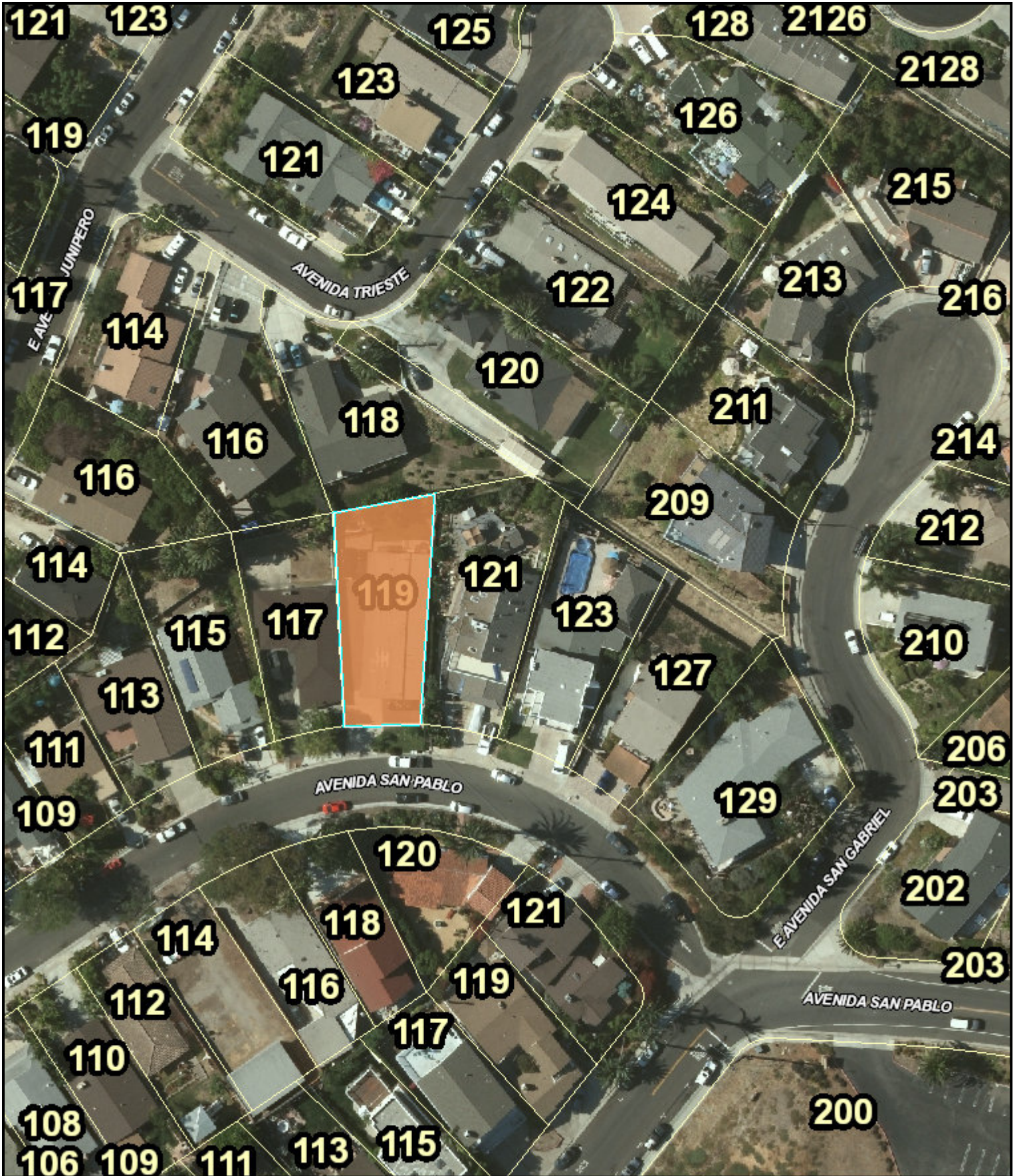
Code
Comp **

8.2 The Applicant (including any property owners and managers, and their designees) understands and agrees that in the event noise generated by the use approved by this permit impacts neighboring properties, the tenant must soundproof the facility, or use other best management practices as determined by the City Planner and/or City Building Official, to comply with the City's noise standards, as described in SCMC Chapter 8.48.

Code
Comp **

* Denotes a modified Standard Condition of Approval

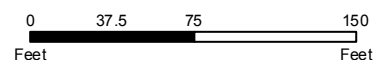
** Denotes a project-specific Condition of Approval



City of San Clemente

Project: STAR Permit No. 19-295

Address: 119 Avenida San Pablo



ATTACHMENT 3

STLU SITE PLAN

119 Avenida San Pablo

San Clemente, CA 92672

APN 690-422-13

Legal Description:

N-TRACT: 851 BLOCK: 14 LOT 13

Zoning RL

