

James Feenan - Fwd: October 21 Hearing for Kung Permit-Planning Commission- Comment letter

From: PBS PBS
To: James Feenan
Date: 10/18/2021 8:50 AM
Subject: Fwd: October 21 Hearing for Kung Permit-Planning Commission- Comment letter
Attachments: Roberta Belson G Road Opinion Letter.pdf

Mendocino County

OCT 18 2021

Planning & Building Services

Planning & Building Services Staff

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>>> Terry Gross <terryngrosslaw@gmail.com> 10/17/2021 6:10 PM >>>

Please see attached for submission to commission, thankyou.

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Mendocino County
OCT 18 2021
Planning & Building Services

August 31, 2021

Mendocino County Planning Commission

Commissioner Clifford Paulin	District 1,
Commissioner Macci Morse	District 2
Commissioner Alison Pernell	District 3
Commissioner Marie Jones	District 4
Commissioner Diane Wiedemann	District 5

**Re: Kung/Application for Use Permit U_2021-0001
Failure to Make Necessary Findings for Major Use Permit for Short-term
Rental**

Dear Planning Commissioners,

A. Introduction

The Kung application demonstrates precisely why a Major Use Permit is required for a short-term rental that is not located directly on a county or other public roadway. The resulting impact on the neighboring properties without the property owner present is overwhelming. The requirement demands that the Commission examine and evaluate each specific location and neighborhood at a public hearing, where those individuals most affected by the application can voice their concerns. Here, not one other of the eight (8) property owners on the private road supports this application and twenty (20) additional individuals in the surrounding neighborhood oppose it as well. This attempt to legitimize an *accessory* use to a residence which the property owners are not living in, must be denied. Unlike a subdivision, which requires the Commission's approval if all statutory conditions are met¹, the Use Permit is a discretionary decision requiring the Commission to consider the "comfort and general welfare" of the specific neighborhood and those who live there. Their needs take precedence.

¹ Approval of a final subdivision map is a ministerial act requiring no discretion on the part of the legislative agency if all requirements are met. See, *Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644

Simply stated, this application must be denied because it cannot meet the requirements of a Major Use Permit, primarily, Mendocino County Code 20.196.020 (C) which provides in pertinent part:

(C) That such use will not, under the circumstances of that particular case, constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in or passing through the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county;

Transient traffic on a narrow private road through a small, intimate neighborhood, during a drought, with high fire danger and no landlord present to monitor activities, constitutes a nuisance and is detrimental to the “health, safety, peace” and “general welfare” of the people who have resided there for decades. The findings cannot be made to allow this short-term rental, warranting outright denial.

B. Major Use Permit Findings Cannot Be Made.

In order to approve a major use permit, Mendocino County Code 20.196.020 requires the Commission to make the following findings:

“(A) That the establishment, maintenance or operation of a use or building applied for is *in conformity to the General Plan*;

(B) That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided;

(C) That such use will not, under the circumstances of that particular case, constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in or passing through the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county; provided, that if any proposed building or use is necessary for the public health, safety or general welfare, the finding shall be to that effect;

(D) That such use preserves the integrity of the zoning district.”

Contrary to the Staff Report the aforementioned findings cannot be made here.

1. The Short-Term Rental Disrupts the Neighborhood’s *Peace, Comfort and Safety.*

The entire residential neighborhood adamantly opposes this short-term rental. It disrupts their privacy, their “peace”, “comfort” and “safety” because the property owners are not on site to monitor transient activities. Unless the applicant hires a full-time guard, it will be impossible to manage the activities of transient traffic on either the road or through the neighboring private properties which are not fenced.

The Planning Commission received over twenty (20) letters from neighbors opposing this one use permit. These letters detail the potential disruptions to the peace, comfort and safety of this small, quiet, and well-established neighborhood:

- Without the landlord on site there is no one to protect neighbors from loud parties, outdoor fires, dogs, trespass on neighboring unfenced properties
- Inability to enforce noise, traffic, water use, additional guest limitations
- Interference with horses, goats and other nearby livestock
- Additional draw on already stressed, shallow water table in neighborhood by individuals unaware of the need to or how to, conserve water
- Owner clear cut and clearing of property eliminating visual and sound barriers
- Extreme fire danger and one way exit off private road onto narrow and winding ridge road
- Overnight guests' potential in excess of 300 individuals within one years; no limit on number of days of occupancy or additional guests.
- Parcel is located in critical water area
- Air BnB guests and their children jog, cycle and hike on private property and road that is not fenced

The Commission need go no further to deny this permit and the finding cannot be made. However there are other grounds to deny the permit as follows.

2. The Application for an Air BnB is Inconsistent with the General Plan and County Zoning Codes; It therefore fails to preserve the integrity of the Zoning District.

As the Staff report correctly points out the subject property is zoned Rural Residential and is intended by the General Plan, Chapter 3:DE14 to "encourage local small farm food production in areas which are not well suited for large scale commercial agriculture defined by present or potential use, location, mini-climate, slope, exposure. ...the Rural residential classification is not intended to be a growth area and residences should be located as to create normal impact on agricultural viability". Principal permitted Uses are residential and associated utilities, light agriculture and home occupations. However, contrary to the staff report there is no residential use on this property—the owners do not live on site and do not plan to live on site.

While certain *accessory* uses are permitted with an additional Use Permit, an accessory use is a use that is "appropriate, incidental and subordinate" to the principal use. Mendocino County Code Sec. 20. 704.010. Here, the primary uses for rural residential property are single family residences, certain limited civic uses and agricultural uses. Kung's application fails to identify **any** of those primary uses. The failure to identify any primary use that supports the accessory use of transient housing renders the application inconsistent with the General Plan and subject to denial on those grounds alone. Transient housing is simply not compatible in a neighborhood of long-time owners and in an area crying out for long term housing. This

proposal fails to preserve the integrity of the Zoning District, which encourages residential housing that doesn't interfere with potential light agricultural uses.

3. The Access Road is Inadequate and subject to poor Drainage; There is No Road Maintenance Agreement to Insure Upkeep.

The entrance road is barely sixteen (16) feet in width—too narrow for additional traffic. That is why the Department of Transportation has requested changes to the entrance to the Kung's property. Two of the property owners have spent thousands of dollars to create adequate drainage, clear brush and shape the road. However, there is no road maintenance agreement guaranteeing adequate drainage, brush removal or road upkeep. The road is plagued by a seasonal creek that requires maintenance. The road is owned by one individual property owner—Roberta Belson pursuant to a 1976 minor subdivision. She granted easements to her neighbors for their ingress and egress and utilities. Under California law, when an easement impacts more than one property owner, each must pay their pro-rata share of the roadway upkeep. There is no agreement in place for road maintenance, another grounds for denial.

C. Conclusion

None of the permit conditions address the neighborhood's concerns—they allow for three occupants every night of the year, two cars, fire rings for outdoor fires, unlimited water usage. All of the neighbors oppose the location of this short-term rental because it is a threat to, not only their privacy, but their “health, safety, peace, morals, comfort and general welfare”. The applicants are not residents of the area and have expressed no interest in living in Mendocino County; they will have no presence here whatsoever. The findings necessary for a Major Use Permit are lacking, with or without the conditions.

Over the years, the Commission has granted other Major Use Permits for short-term vacation rentals, all of them were granted under significantly different circumstances from the one before you today. One was for a bedroom in an owner-occupied primary dwelling unit (U_2017-0014). Another had roads maintained by a long-established road association (operating since 1975) and the applicant polled their neighbors prior to their application, who did not object to the application. (U_2017-0013). Both the foregoing Applicants confirmed their presence full time on the property where the short-term rental is located. Another request was regarding an unoccupied second home on a large parcel located .5 miles from Highway 128—it affected no neighboring parties and had quick, easy access for emergency vehicles existed. (U_2017-010). Here, neighbors are seriously impacted by traffic, noise, water usage and fire danger and strenuously object, there is no road maintenance agreement in place and the applicants do not live on the property.

For public health and safety as well as privacy and general plan consistency concerns the entire neighborhood respectfully requests that the Planning Commission deny this application outright.

Sincerely,

A handwritten signature in blue ink, appearing to read "Terry N. Gross", with a long, sweeping flourish extending to the right.

Terry N. Gross

Attorney for "G" Road South

cc: Deputy County Counsel, Matt Kiedrowski