



APPEAL OF DIRECTOR'S DETERMINATION

COUNTING A LIVING ROOM AS A BEDROOM FOR SHORT-TERM RENTALS

CITY COUNCIL
MAY 9, 2024



Background

What is before the Council is an appeal of Development Services (Community Development) Director's determination that a living room cannot be considered a bedroom for purposes of a short-term rental unit.

PDMC Chapter 2.12.010 establishes that it shall be the duty of the Director “*to enforce the provisions of this code pertaining to the use of land, the erection, construction, reconstruction, moving, conversion, alteration, or addition to any building or structure.*”

PDMC Chapter 2.72 establishes that City Council will hear appeals from any person aggrieved by an administrative decision.

Initial Request (Attachment 2)

March 5, 2024 – Director sent an email to Owner clarifying that a living room cannot be used as a bedroom for purposes of Short-Term Rental (“STR”), specifically:

For purposes of the short-term rental regulations, I have interpreted bedroom to mean a private room intended for sleeping that is separated from other rooms by a door, having at least one window that meets the egress/rescue requirements, has a closet/storage area, and is accessible to a bathroom without crossing into another bedroom. This is based in part on the city’s ordinance allowing for on-site and off-site owners. On-site means they are present and must stay at the property and the intent would be that a guest would have a private room. If you wish to convert your living room to a bedroom, Jason [Finley] can assist with what permits would be needed.



STR Permit History

- November 2021** Owner purchased 239 Serna Drive
- January 2022** Owner obtained a STR Permit for a 3-Bedroom Unit
- January 2023** Owner renewed 3 Bedroom STR Permit
- July 1, 2023** Development Services Department created internal procedures with staff to ensure that the regulations adopted by City Council were being enforced when applications were submitted, including renewals of STR permits

STR Permit History

January 24, 2024

Owner applied to renew 3 Bedroom STR Permit

- Staff confirmed the number of bedrooms through:
 - ✓ Riverside County Assessor
 - ✓ RealQuest & Lawyers Title (Attachment 3)
 - ✓ All showed a 2-bedroom unit for this Property.
- Staff also reviewed building permit records and there were no building permits for a bedroom addition.

Attachment 3

Property Detail Report

For Property Located At :
239 SERENA DR, PALM DESERT, CA 92260-2157



Subject Property Location

Property Address 239 SERENA DR
City, State & Zip PALM DESERT, CA 92260-2157
County RIVERSIDE COUNTY
Mailing Address 246 W ESCALONES, SAN CLEMENTE, CA 92672-5109
Census Tract 0449.29
Thomas Bros Pg-Grid

Report Date: 04/17/2024
Order ID: R145872561
Property Use Condominium Unit (Residential)
Parcel Number 622-082-020
Latitude 33.74486
Longitude -116.389517

Legal Description Details Lot Number: 4-6 City, Municipality, Township: PALM DESERT Tract No: 11454 Brief Description: UNIT 20 CM 023/032 INT IN COMMON LOTS 4,5 & 6 TR 11454 MB 097/082

Owner Information			
Owner Name:	CASA MONTEREY 239		
Mailing Address:	246 W ESCALONES, SAN CLEMENTE CA 92672-5109		
Vesting Codes:	//		
Location Information			
Legal Description:	UNIT 20 CM 023/032 INT IN COMMON LOTS 4,5 & 6 TR 11454 MB 097/082		
County:	RIVERSIDE, CA	APN:	622-082-020
Census Tract / Block:	449.29 / 1	Alternate APN:	622-082-020
Township-Range-Sect:		Subdivision:	
Legal Book/Page:		Map Reference:	/
Legal Lot:	4	Tract #:	11454
Legal Block:		School District:	DESERT SANDS INDIO
Market Area:	322	School District Name:	DESERT SANDS INDIO
Neighbor Code:		Munic/Township:	CITY OF PALM DESERT
Owner Transfer Information			
Recording/Sale Date:	08/03/2022 / 07/14/2022	Deed Type:	QUIT CLAIM DEED
Sale Price:		1st Mtg Document #:	
Document #:	343714		
Last Market Sale Information			
Recording/Sale Date:	12/09/2021 / 11/15/2021	1st Mtg Amount/Type:	\$396,000 / CONV
Sale Price:	\$495,000	1st Mtg Int. Rate/Type:	4.50 / ADJ
Sale Type:	FULL	1st Mtg Document #:	727611
Document #:	727610	2nd Mtg Amount/Type:	/
Deed Type:	GRANT DEED	2nd Mtg Int. Rate/Type:	/
Transfer Document #:		Price Per SqFt:	\$296.41
New Construction:		Multi/Split Sale:	
Title Company:	CHICAGO TITLE-INLAND EMPIRE		
Lender:	5TH STREET CAP INC		
Seller Name:	BARLOW DOROTHEA A		
Prior Sale Information			
Prior Rec/Sale Date:	08/18/2016 / 08/23/2016	Prior Lender:	WELLS FARGO BK NA
Prior Sale Price:	\$240,000	Prior 1st Mtg Amt/Type:	\$228,000 / CONV
Prior Doc Number:	350522	Prior 1st Mtg Rate/Type:	/
Prior Deed Type:	GRANT DEED		
Property Characteristics			
Gross Area:	2,174	Parking Type:	ATTACHED GARAGE Construction:
Living Area:	1,670	Garage Area:	504 Heat Type: CENTRAL
Tot Adj Area:	1,800	Garage Capacity:	
Above Grade:		Parking Spaces:	3 Exterior wall:
Total Rooms:		Basement Area:	
Bedrooms:	2	Basement Type:	
Bath(F/H):	2 /	Roof Type:	
Year Built / Eff:	1979 / 1980	Foundation:	
Fireplace:	Y / 1	Roof Material:	SLATE Condition:
# of Stories:	1		
Other Improvements:	YES		
Site Information			
Zoning:	PR5	Acres:	
County Use:	CONDO OR PUD WITH PRIVATE ENTR (A11)		
Lot Area:		Lot Width/Depth:	x State Use: R02
Land Use:	CONDOMINIUM	Res/Comm Units:	/ Water Type: TYPE UNKNOWN
Site Influence:	GOLF COURSE		Sewer Type: TYPE UNKNOWN

Current Ownership Information *Source of Ownership data: Recorder Information			
Primary Owner Name(s)	CASA MONTEREY 239 LLC,	Sale Price	
		Transfer Date	07/14/2022
Vesting		Recording Date	08/03/2022
		Recorder Doc #	2022-0343714
		Book/Page	

Latest Full Sale Information			
Primary Owner Name(s)	KROPFL, KEITH JOSEPH; TANNER KROPFL, CARRIE	Sale Price	\$495,000
		Sale Date	11/15/2021
Vesting	Living Trust	Recording Date	12/09/2021
		Recorder Doc #	2021-0727610
		Book/Page	

Financing Details at Time of Purchase				
1	Loan Amount	\$396,000	Origination Lender Name	5TH STREET CAPITAL INC
	Loan Type	New Conventional	Recording Doc #	2021-0727611

Property Characteristics					
Bedrooms	2	Year Built	1979	Living Area (SF)	1,670
Bathrooms/Partial	1.75	Garage/No. of Cars	Attached Garage/2	Price (\$/SF)	\$296/SF
Total Rooms		Stories/Floors	1 Story	Lot Size (SF/AC)	1,686/0.04
Construction Type	Wood	No. of Units	1	Fireplace	1 Fireplace
Exterior Walls		No. of Buildings		Pool	
Roof Material/Type	Tile	Basement Type/Area		Heat Type	Central
Foundation Type		Style		A/C	Central
Property Type	Residential	View	Golf Course Adjacent	Elevator	
Land Use	Condominium Unit (Residential)			Zoning	PR5

Assessment & Taxes					
Assessment Year	2023	Tax Year	2023	Tax Exemption	
Total Assessed Value	\$504,900	Tax Amount	\$6,597.88	Tax Rate Area	18-049
Land Value	\$71,400	Tax Account ID	622082020		
Improvement Value	\$433,500	Tax Status	No Delinquency Found		
Improvement Ratio	85.86%	Delinquent Tax Year			

STR Permit History

February 1, 2024

Owner revised their renewal request for a 2-bedroom STR unit and staff approved and issued a renewal

March 4, 2024

Owner requests and Riverside County Assessor changed the property records from a 2-bedroom unit, with a den to a 3-bedroom property, with no den ([Attachment 4](#))

Attachment 4

Audit Trail

Appraisal Site Id: 1044022 Appraisal Site Name: 62209020

3/4/2024 3:13:50 PM [button] All (4) selected [button] All (4) selected [button]

Workstation Id: IP Address: MAG Address:

Category	Field	Action	Old Value	New Value	Change Date	User Name	Effective Date
Buildings							
Building 1					3/4/2024 3:13:50 PM	Miguel Tapia	8/3/2022
Building Sections					3/4/2024 3:13:50 PM	Miguel Tapia	8/3/2022
Main Dwelling					3/4/2024 3:13:50 PM	Miguel Tapia	8/3/2022
Unit Counts					3/4/2024 3:13:50 PM	Miguel Tapia	8/3/2022
Room Count / Bedroom	Unit Count	Update	2	3	3/4/2024 3:13:50 PM	Miguel Tapia	8/3/2022
Room Count / Family Room / Den	Unit Count	Update	1	0	3/4/2024 3:13:50 PM	Miguel Tapia	8/3/2022

This is contrary to the Appellants statement that *“Nothing has changed during the decades where the Property was classified as a three-bedroom condo. The city should continue to recognize the Property as a three-bedroom condo and allow the Kropfl's to market and rent it as a three-bedroom.”*

Director's Determination

March 25, 2024, the Owner sent an email clarifying that they would like to submit an appeal on three items (Attachment 5).

1. Can they continue to use the third bedroom (den), based on the floor plans provided?
2. Can you use the living room as a bedroom to sleep two additional guests for a Short-Term Rental?
3. Can up to four overnight guests per bedroom be permitted for a Short-Term Rental?

Director's Determination (Attachment 6).

March 25, 2024 - Pursuant to PDMC § 2.72.020 the Director provided a written determination to the Owner.

Request 1. The determination for Request #1 was made by the Building Official as authorized by the California Building Code.

Chapter 2.18 of the PDMC establishes a Building Board of Appeals ("Board") to hear appeals regarding the interpretation of the California Building Code by the Building Official.

The appeal of this request is scheduled to be considered by the Board on May 23, 2024.

The Board's decision may be appealed to the City Council and therefore the specifics of this request should not be discussed or considered at this time.

Director's Determination (see Attachment 6).

Request 2. Can you use the living room as a bedroom to sleep two additional guests for a Short-Term Rental?

1. The Director concluded that based on the language contained in PDMC §5.10.090(G) which establishes that the maximum number of overnight guests shall not exceed two persons per bedroom coupled with fact that on-site STR owners must occupy at least one bedroom, which shall diminish the number of bedrooms for overnight guests. In other words, a one-bedroom unit CANNOT be issued an On-Site Short Term Rental Permit, because the On-Site Owner must be present and must stay at the property in a bedroom; not a living room or having the ability to share the rented bedroom.

Director's Determination (Attachment 6).

Request 2 cont.

2. Due to the lack of a definition of a bedroom and for purposes of Chapter 5.10 Short Term Rentals, the Director interpreted a bedroom room to mean:

A private room intended for sleeping that is separated from other rooms by a door, having at least one window that meets the Emergency Escape and Rescue Opening requirements of the California Building code, has a closet/storage area, and is accessible to a bathroom without crossing into another bedroom

Director's Determination (Attachment 6).

Request 3. Can up to four overnight guests per bedroom be permitted for a Short-Term Rental?

PDMC §5.10.090(G) explicitly states that the maximum number of overnight guests shall not exceed two persons per bedroom.

This was not a matter of interpretation, but a strict code requirement. As such, there is no right to appeal because it does not involve the exercise of administrative discretion or personal judgment (see PDMC §2.72.010(B)).

Letter of Appeal (Attachment 7)

On April 4, 2024, an appeal was filed (see Attachment 7) by Mr. Shaun Murphy, of Slovak Brown Empey Murphy & Pinkney LLP (“Appellant”), on behalf of the Owner for the following:

2. Whether the Kropfl's may use their code compliant living room as an additional sleeping room to accommodate two more guests.

Response to Appeal

- 1. The Appellant states that it is “puzzling” and believes the reference to PDMC §5.10.090(G) is irrelevant to defining the term “bedroom”.**

PDMC §5.10.090(G) includes the following language:

If the use is on-site owner short-term rental, the owner shall be deemed to occupy at least one bedroom, which shall diminish the number of bedrooms for overnight guests accordingly...

Based on this limitation imposed and the Director’s experience, this language aided in his determination that if it was City Council’s intent to allow an owner to stay in a room, other than a bedroom, then City Council would have not included this limitation.

Response to Appeal

2. The Appellant further disputes the Director’s interpretation that a bedroom must have a door and believes this interpretation is arbitrary.

The Appellant’s basis is derived from the definition of “bedroom” from Merriam-Webster, Cambridge Dictionary, and Britannica Dictionary, and as stated in the appeal letter, “all which referenced a room for sleeping with no mention of a door.”

Response to Appeal

The Appellant provides the definition of “bedroom” but chooses to omit the definition of “living room.” Using the Appellant’s same references:

Merriam-Webster defines living room as, “*a **room** in a residence used for the common social activities of the occupants.*”

Cambridge Dictionary defines living room as “*the **room** in a house or apartment that is used for relaxing in and entertaining guests.*”

Britannica Dictionary defines living room as “*a **room** in a house for general family use — usually singular.*”

NOTE: None of the definitions define a living room as a room used for sleeping.

Response to Appeal

Additionally, these three dictionary references used by the Appellant provide for definitions for hotel, motel, and bed and breakfast:

Merriam-Webster

- *Hotel - an establishment that provides lodging and usually meals, entertainment, and various personal services for the public.*
- *Motel - an establishment which provides lodging and parking and in which the **rooms** are usually accessible from an outdoor parking area.*
- *Bed and Breakfast - an establishment (such as an inn) offering lodging and breakfast.*

Cambridge Dictionary

- *Hotel - a building where you pay to have a **room** to sleep in, and where you can sometimes eat meals.*
- *Motel - a hotel for people travelling by car, usually with spaces for cars next to each **room**.*
- *Bed and Breakfast - a **room** to sleep in for the night and a morning meal, or a private house or small hotel offering this.*

Response to Appeal

Britannica Dictionary

- *Hotel - a place that has **rooms** in which people can stay especially when they are traveling: a place that provides food, lodging, and other services for paying guests.*
- *Motel - a place that is next to a road and that has **rooms** for people to stay in especially when they are traveling by car.*
- *Bed and Breakfast - a house or small hotel in which someone can rent a **room** to sleep in for a price that includes breakfast the next morning.*

“Room” was a consistent term used in the definition to describe bedroom, living room, and within the three transient use types.

Response to Appeal

- Merriam-Webster: Room - *a partitioned part of the inside of a building especially such a part used as a lodging.*
- Cambridge Dictionary: Room - *a part of the inside of a building that is separated from other parts by walls, floor, and ceiling.*
- Britannica Dictionary: Room - *a part of the inside of a building that is divided from other areas by walls **and a door** and that has its own floor and ceiling.*

Britannica Dictionary does explicitly include a door in their definition of “**room**”.

Response to Appeal

- 3. The Appellant also conjectures in a footnote wondering how parents would react after learning that removing the door to their teenager’s bedroom, for whatever reason means that the room is no longer a bedroom.**
- While the Appellant tries to provide an example in a “typical” family setting with parents and teenagers, the unit in question is NOT typical and the Owners are seeking a permit for the unit to be rented to a Transient.
 - What is being considered is an application for a dwelling to be used for lodging purposes to a Transient that must obtain a STR Permit to do so.

PDMC § 5.10.030 Short Term Rental Definitions. “Transient” means any person who seeks to rent or who does rent a privately-owned residential unit for a period less than twenty-seven consecutive days.

Response to Appeal

- Short Term Rentals are required to pay:
 - Transient Occupant Tax (TOT) and
 - Tourism Business Improvement District (TBID) assessment.
- “Typical” residential properties are not required to be licensed or required to pay TOT or TBID.
- Only **Transient** uses i.e. hotel, motel, bed and breakfast, and short-term rentals pay the TOT and TBID.

Response to Appeal

- It should be further noted that the definitions of the three transient uses define it as a “room to stay”. What those transient uses definitions do not include is that the room has a door.
- However, when staying at any transient use, whether that be a hotel, motel, bed and breakfast, or short-term rental, there is an expectation of privacy, and that form of privacy always involves a door to that room where a guest is staying.
- One could wonder how parents would react if they stayed with their teenager (or alone) in a hotel room, motel room, or short-term rental without a door.

Staff Conclusion

1. Based on the Director's determination provided on March 25, 2024, and the additional information provided in response to the Appellant's letter, a living room cannot be counted as a bedroom for short-term rental.
2. It is reasonable to conclude that there is implied privacy when sleeping in any room, whether that be a hotel room, motel room, bedroom in a bed and breakfast, or bedroom in a short-term rental, and that implied privacy, while not always explicit (except for the definition of "room" from Britannica Dictionary) includes a door.

Staff Recommendation

1. Find that the staff report, including attachments, and any additional evidence provided at this hearing provides satisfactory evidence that the Development Services Director's determination was correct.
2. Adopt a Resolution entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM DESERT, CALIFORNIA, UPHOLDING THE DEVELOPMENT SERVICES DIRECTOR DETERMINATION THAT A LIVING ROOM CANNOT BE COUNTED AS A BEDROOM FOR PURPOSES OF A SHORT-TERM RENTAL AND MAKING FINDINGS IN SUPPORT THEREOF" (Attachment 1)

