

CITY OF CARMEL BY THE SEA

COMMUNITY PLANNING AND BUILDING OCT

1 2019

GENERAL PLANNING APPLICATION

City of Carmei-by-Ine-Sea

Planning & Building DOMYRS; LLC)

Project Description

treet Location	٠	Dolore	s 3 SE 7t	h		
ock 91		Lot(s)	12	Assess	sor's Parcel No(s).	010-411-003
oning Designa				Current Use		
roject Descrip	tion (Use a	dditiona	al pages if r	veeded):		
See Exhibit						
*						
<u> </u>		Sec	e applicabl	e submittal checklist for a	idditional submitta	al requirements
				Property Owner	<u>Information</u>	
Property Owns	_{er(s)} Dolo	ores, L	LC/Alex	ander P. Cadoux	Phone(s 520 906 4067
Anthor Addres	seles) 321:	2 E. B	iossom	Dancer Lane, Tucs	on, AZ 85718	
	55(e5)			ACADON (O amail	1. com
Email Address	(es)			-		9/18/19
			·	1.81		Date
roperty Own	er signatur	e (vedn	neu)			
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Name of Cont	act	Carn	nei Pen	ho Blud #200 Ca	noie (architect	· ·
Mailing Addre				cho Bivd., #200, Ca	Cla	ry Business License Number
Email Address	psilkv	vøode	Morani	fal.com	Ph	one 831-373-4131
						9/19/9
Signatur	Constant for the	or enta	ative	-		Date /
/ .				Application	on Type	
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Assigned S			r (3 Staff	The state of the s	are concessa and are all making the	- Dother:

By signing and submitting this application, the applicant agrees to the following:

- 1. At its sole expense, to defend, indemnify, and hold harmless the City, its public officials, officers, employees, and assigns, from any liability; and shall reimburse the City for any expense incurred, resulting from, or in connection with any project approvals. This includes any appeal, claim, suit, or other legal proceeding, to attack, set aside, void, or annul any project approval. The City shall promptly notify the applicant of any legal proceeding, and shall cooperate fully in the defense. The City may, at its sole discretion, participate in any such legal action, but participation shall not relieve the applicant of any obligation under this condition. Should any party bring any legal action in connection with this project, the Superior Court of the County of Monterey, California, shall be the situs and have jurisdiction for the resolution of all such actions by the parties hereto.
- 2. That all materials submitted as part of this application package are considered to be public Information, may be posted on the internet, distributed to the necessary Committees, Commissions and Council as part of the approval process, and reviewed by the public.
- 3. To comply with all City ordinances and State laws relating to building construction for any and all aspects of the project proposed in this application and authorizes representatives of the City and Advisory Agencies to enter the above mentioned property at reasonable times for inspection purposes related to the project for which this application is submitted.

I declare under penalty that I am the owner or authorized agent for this property and that the foregoing statements and answers and all data information, documents and evidence herewith submitted are to the best of my knowledge and belief, true and correct. 4/18/19

Signature of Legal Property Owner or Agent

Date

EXHIBIT A

Use Permit Amendment Application

Dolores LLC (BL 19-101)

Dolores 3 SE 7th (APN: 010-411-003)

I. Scope:

This Use Permit Amendment Application is to remove a portion of a specific condition (Condition 7) the City imposed as part of its approval of the original condominium subdivision application in year 2000. The relevant portion of Condition 7 states,

No unit may be rented, leased, subleased, or otherwise made available for renumeration to any person or persons for any period of time of 30 consecutive calendar days or less.

The application should be supported and approved for the following reasons: (1) The applicant would not have purchased the condominium unit, but for the City staff's written assurances and negligent misrepresentation that the unit qualified for transient use, which was relied upon by the applicant to his detriment; (2) the municipal code provision that required this condition at the time of the condominium subdivision application is no longer in effect and the current City Code does not prohibit transient rental for this unit – the approval is consistent with today's City Code; (3) transient rentals are allowed in the commercial zoning district and the subject condominium unit is situated in this district; and (4) the applicant has expended significant amount of money and time in reliance of the City staff's written assurances prior to the purchase of the unit and the City's approval of a transient use license subsequent to the purchase of the unit; accordingly, the applicant has a vested right to continue the transient use at the property.

II. Facts:

On or around January 3, 2019, Earl Y. Meyers II, a licensed real estate broker, contacted Marc Wiener on behalf of the applicant to inquire about the condominium unit located at Dolores 3SE of 7th (APN 010-411-003) in the City of Carmel-by-the-Sea ("City"). At that time, the applicant was interested in purchasing the condominium unit for use primarily as transient rentals. The applicant would not have purchased the condominium unit if there were any restrictions placed on the unit that prohibited its use as transient rentals.

Mr. Wiener responded in writing to the inquiry of Mr. Meyers as follows: "You are correct that transient rentals are allowed in the commercial districts." (See **Exhibit A**.) Other communications between the realtors of the seller and buyer and the condominium unit owner

with the City staff occurred prior to the applicant's purchase of the unit, all of which resulted in the same negligent misinformation by the City staff that the unit was eligible for transient use.

The applicant purchased the unit on or around January 23, 2019, based on written and verbal affirmations made by the City Planning Department staff that the unit is allowed to be used for transient rentals under the City Code. The grant deed, Parcel Map, and Declaration of Covenants, Conditions and Restrictions recorded against the Subject Property as well as Coastal Development Permit 3-00-022 ("CDP") issued by the California Coastal Commission on May 11, 2000, for the condominium subdivision project were all silent as to any restriction on the condominium unit for transient use.

In March 2019, the applicant submitted an application to the City for a transient use license. On March 20, 2019, the applicant received tentative approval of the license from the City Planning Department. (See **Exhibit B**.) The tentative approval included three conditions that would need to be met in order to receive final approval of the license. The tentative approval also allowed for notice and appeal period. No appeal was filed and the three conditions were met, finalizing the approval of the license for transient use.

When the applicant heard about a proposed urgency ordinance related to transient rentals, he contacted Marc Wiener in writing on March 27, 2019, to determine if the proposed ordinance would affect his license. Mr. Wiener responded, "The way the ordinance is currently drafted, if you have the business license approval/permit to operate as a transient rental, it will be 'grandfathered' in." (See **Exhibit C**.)

On or around June 12, 2019, the applicant received a letter from the City Planning Department stating that "the business license approval has been revoked and subsequently denied." The basis for the revocation is that portion of Condition 7 discussed in Section I, which was imposed in year 2000 (about two decades ago) as part of the condominium subdivision approval.

III. The Removal of That Certain Portion of Condition 7 Is Consistent With Today's City Code.

If the subdivision application was received today, the City would not impose such a condition to restrict the use of the condominium unit for transient rentals, because the City Code has been subsequently amended to eliminate that requirement. Accordingly, this use permit amendment is consistent with today's City Code.

IV. The Applicant Has a Vested Right to Continue with the License Through This Use Permit Amendment.

The applicant, in good faith reliance of the representation made by the City staff, purchased the property, applied for a transient use license and met all of the conditions for final approval of the license. He has performed substantial work and incurred substantial liabilities in good faith reliance of the license issued by the City. Accordingly, the applicant acquired a vested

right to act consistent with the issued license through this use permit amendment. Vested rights are grounded upon the constitutional principle that property may not be taken without just compensation.

V. The City's Negligent Misrepresentation is Not Protected Under Governmental Immunities.

The City Planning Department negligently misrepresented to the applicant that an allowable use of the condominium unit under the City Code includes transient rentals. The negligent misrepresentation was relied upon by the applicant to the purchase the unit. The applicant would not have purchased, nor could he afford to purchase, the unit and make substantial improvements therein, but for his reliance of the City's negligent representation that transient rentals are allowed; he was relying on the revenues generated from transient rentals to purchase the unit.

The applicant also relied on the City's approval of the transient use license and expended significant amount of money to meet all of the conditions of approval and to prepare the unit for transient use only to have the City revoke the license months later.

Providing gratuitous planning information on a property to a prospective purchaser is an administrative or ministerial activity outside the scope of governmental immunity. (See, e.g., *Connelly v. State* (1970) 3 Cal.App.3d 744, 751.) That is, careless dissemination of inaccurate information by a governmental employee is not a protected conduct. Accordingly, the negligent misrepresentation by the City staff is not protected under governmental immunities.



Pamela Silkwood

From:

alexander cadoux <acadoux@gmail.com>

Sent:

Wednesday, June 12, 2019 12:13 PM

To:

Pamela Silkwood

Subject:

Fwd: rental codes for commercial district

Attachments:

Transient Rental Information Handout.pdf

Begin forwarded message:

From: earl <u>blissbythesea.com</u> <<u>earl@blissbythesea.com</u>>
Subject: Fwd: rental codes for commercial district

Date: March 26, 2019 at 3:04:58 PM MST
To: Alexander Cadoux cadoux@gmail.com

Begin forwarded message:

From: Marc Wiener < mwiener@ci.carmel.ca.us Subject: Re: rental codes for commercial district

Date: January 3, 2019 at 1:10:42 PM PT

To: "earl meyers II" < earl@blissbythesea.com>

Hello Earl,

You are correct that transient rentals are allowed in the commercial districts. The attached handout provides the information on it.

Marc Wiener, AICP

Community Planning and Building Director Carmel-by-the-Sea, CA/93921/PO Drawer G (831) 620-2024 mwiener@ci.carmel.ca.us



Help improve Community Planning & Building. Click <u>here</u> to take our survey!

On Thu, Jan 3, 2019 at 12:23 PM earl meyers II < <u>earl@blissbythesea.com</u>> wrote: Dear Marc,

RE: Dolores 3 SE of 7th, Carmel by the Sea; APN 010-411-003

Please detail the City codes for rentals in the Commercial District. It is my understanding that short term rentals (transient - any time under 30 days) as well as long term rentals (30 days or more) are both allowed in the Cities commercial district. Further, please let me know the process the city requires for short term vacation rentals in the commercial district.

Thank you, Earl

Earl Y. Meyers II Broker/Owner Bliss by the Sea Realty 831-601-9999 Earl@BlissbytheSea.com www.BlissbytheSea.com DRE # 00854147

Earl Meyers - Broker/Owner Bliss by the Sea Realty 831-601-9999 Earl@BlissbytheSea.com www.BlissbytheSea.com DRE # 00854147





City of Carmel-by-the-Sea Community Planning and Building Department

Transient Rentals in the Commercial District

Are transient rentals permitted in the City of Carmel-by-the-Sea?

Transient rentals are defined as being rented for a period of time less than 30 days (CMC 17.70.020). Transient rentals are prohibited in the Single-Family and Multi-Family Residential Districts. The Zoning Code is silent on transient rentals in the Commercial Zoning Districts and the City has determined that they are not prohibited.

How do I obtain a permit for a transient rental in the Commercial District?

An application for a business license must be submitted to the City in order to convert an apartment or dwelling unit into a transient rental. The City will issue a "Transient Occupancy Registration Certificate" to the operator, following approval of the business license. Transient rentals are subject to the Transient Occupancy Tax rate of 10% of the rent charged by the operator. Operators shall report on total rent received, and remit the taxes collected to the City on a bi-monthly basis. You may refer to City Municipal Code Chapter 3.32 for additional information on the tax rate and reporting process.

What are the building code requirements for a transient rental?

A building that contains 1 or more units, in which any of the units is being used as a transient rental, is defined by the California Building Code as a Hotel/Motel (R-1 occupancy). The California Building Code, in some ways, has differing requirements for apartment units (R-2 occupancy) where occupants are relatively permanent in nature, and hotels/motels (R-1 occupancy) where occupants are transient, residing in the unit for a short period of time. Converting an existing apartment building/unit to a transient rental unit often results in triggering a number of building code related changes due to this change in occupancy classification. The following list describes some of the general areas where building modifications may be required due to the change in occupancy classification from an apartment use to hotel/motel use.

- Installation of single or multiple station smoke alarms and CO alarms
- Installation of fire sprinkler protection with occupant notification
- Installation of mobility features (required for at least 1 guest unit per 25 units provided), including:
 - Accessible toilet and shower room facilities including accessible fixtures, grab bars, and accessories
 - o Accessible doorway widths, thresholds, door swing, and door hardware
 - o Accessible counter heights
 - o Accessible route to and throughout the accessible unit
 - o Accessible sleeping areas including wheel chair turning space
 - o Accessible kitchen/kitchenette facilities (when provided)
 - Accessible stairways including tread striping and handrails

For more information on specific code requirements related to a specific conversion project, consult a State licensed architect. For general information on the business license or Building Code requirements, contact the Community Planning and Building Department at (831) 620-2010.



a Silkwood

om:

Sent: To:

Subject:

Attachments:

alexander cadoux <acadoux@gmail.com> Wednesday, June 12, 2019 12:10 PM

Pamela Silkwood

Fwd: Business License Approval - BL 19-101

BL 19-101 (Dolores LLC) Approval Packet.pdf

Begin forwarded message:

From: Evan Kort < <u>ekort@ci.carmel.ca.us</u>>
Subject: Business License Approval - BL 19-101

Date: March 20, 2019 at 1:18:57 PM MST

To: acadoux@gmail.com

Cc: Bo Grunde < bgrunde@ci.carmel.ca.us >

Mr. Cadoux,

Your Business License application, BL 19-101 has been given zoning approval by the Carmel Planning Department.

This approval is subject to a <u>5-business day</u> noticing/appeal period; staff has posted the notice of approval at City Hall.

Attached is the approval letter and conditions of approval for your records.

After the 5-business day appeal period, please return the signed Conditions of Approval to City Hall.

Final approval of the business license also requires clearance from the Building & Fire Departments. Please contact Mr. Bo Grunde at (831) 620-2026 to schedule an interior business license inspection. Your business license will not be issued until the business license inspection is completed.

If you have any questions, you may contact me at (831) 620-2023.

Best, Evan Kort Assistant Planner Carmel-by-the-Sea (831)620-2023 ekort@ci.carmel.ca.us



Please take our Customer Satisfaction Survey at: https://www.surveymonkey.com/r/3L9PWYB



City of Carmel-by-the-Sea community planning and building department

POST OFFICE DRAWER CC CARMEL-BY-THE-SEA, CA 93921 (831) 620-2010 OFFICE

March 20, 2019

Mr. Alexander P. Cadoux 3212 E. Blossom Dancer Lane Tucson, AZ 85718

Via email:

acadoux@gmail.com

Subject:

Business License Approval Dolores LLC (BL 19-101) Dolores, 3 SE of 7th

Block: 91; Lot(s) 10; APN: 010-411-003

Dear Mr. Cadoux,

An initial review of your application is complete. The proposal to operate one residential unit as a transient rental unit (1 unit – second floor) complies with the City's zoning standards for the Service Commercial (SC) Zoning District. This Department has given an initial zoning clearance for your business license subject to the attached Conditions of Approval. Final approval of the business license is subject to:

1) The completion of the 5-day appeal period.

- 2) The completion of a business license inspection conducted by our Code Compliance Coordinator, Bo Grunde. <u>Please contact Mr. Bo Grunde at (831) 620. 2026 to schedule an</u> <u>interior business license inspection.</u> Your business license will not be issued until the business license inspection is completed.
- 3) The return the signed Conditions of Approval to the Community Planning and Building Department.

City Staff will post the appeal notice at City Hall.

If you have any questions, please do not hesitate to contact me directly at (831) 620-2023.

Sincerely,

Evan Kort Assistant Planner

Encl: Business License Conditions of Approval

BUSINESS LICENSE CONDITIONS OF APPROVAL

BUSINESS NAME: Dolores LLC

BUSINESS OWNER: Alexander P. Cadoux PROPERTY OWNER: Alexander P. Cadoux

BLOCK: 91 LOT: 10 APN: 010-411-003

LOCATION: Dolores, 3 SE of 7th DATE OF ACTION: March 20, 2019

APPROVAL AND CONDITIONS:

- 1. <u>Primary Use:</u> This business license is issued to the property owner(s) with a primary classification of NAICS 531110 (Lessor of Residential Dwellings and Buildings).
 - a. Other goods or services not directly related to the authorizations listed in conditions #1, and #2 are prohibited unless a separate business license application is submitted to the City.
- This business license authorizes the use of 1 second floor unit as a transient (short-term) rental unit that may be rented for a period of time that is less than 30 days.
 The number of units shall not be increased unless a separate application is submitted to the City.

The following conditions shall apply:

- a. Transient occupancy of residential units is permitted in the commercial districts.
- b. The residential units are subject to the City's transient occupancy tax per CMC 3.32 which requires the property owner to collect and report transient occupancy and remit taxes on a bi-monthly basis on a reporting schedule. Forms shall be provided by the City.
- 3. The conditions of this approval apply to all tenant lease agreements, including subleases.
- 4. A Certificate of Occupancy is not required to be posted as this is a continuation of the previous use of the building and fewer than 2 units will be used as transient rentals.
- 5. All modifications made to the exterior of the building, including but not limited to paint, window treatments, awnings, paving and landscaping, shall first require written approval by the Department of Community Planning and Building. No notice-

Business License Approval BL 19-101 (Dolores LLC) March 20, 2019 Page 2

attracting features, such as banners, balloons, streamers, lights, additional signs, or flags shall be installed without written approval from the City.

- 6. Approval of this application does not permit an increase in water use on the project site.
- 7. This license approval shall become effective after the required five business-day appeal period. City Staff will post the appeal notice at City Hall.
- 8. Except as modified by the conditions of this approval, or by requirements of the Municipal Code, the business use shall be operated consistent with the representations made on the business license application. Any violation of these conditions of approval, or of any ordinance in the Carmel Municipal Code, shall be cause for the City to revoke the license
- 9. The applicant agrees, at its sole expense, to defend, indemnify, and hold harmless the City, its public officials, officers, employees, and assigns, from any liability; and shall reimburse the City for any expense incurred, resulting from, or in connection with any project approvals. This includes any appeal, claim, suit, or other legal proceeding, to attack, set aside, void, or annul any project approval. The City shall promptly notify the applicant of any legal proceeding, and shall cooperate fully in the defense. The City may, at its sole discretion, participate in any such legal action, but participation shall not relieve the applicant of any obligation under this condition. Should any party bring any legal action in connection with this project, the Superior Court of the County of Monterey, California, shall be the situs and have jurisdiction for the resolution of all such actions by the parties hereto.

Business Owner Signature		
- Wiler Signature		Date
	-	Date

Once signed, please return to the Community Planning and Building Department

Exhibit C

Pamela Silkwood

From:

alexander cadoux <acadoux@gmail.com>

Sent:

Wednesday, June 12, 2019 12:25 PM

To:

Pamela Silkwood

Subject:

Fwd: rental codes for commercial district: Dolores 3 SE of 7th

Begin forwarded message:

From: Marc Wiener < mwiener@ci.carmel.ca.us>

Subject: Re: rental codes for commercial district: Dolores 3 SE of 7th

Date: March 27, 2019 at 10:56:27 AM MST To: alexander cadoux acadoux@gmail.com

Cc: "earl blissbythesea. com" < Earl@blissbythesea.com>

Hello Alexander,

The City Council will be considering an urgency ordinance at their meeting on Tuesday of next week. The way the ordinance is currently drafted, if you have the business license approval/permit to operate as a transient rental, it will be "grandfathered" in. The Council could change this, but it is highly unlikely based on the feedback they gave at the last meeting. Feel free to call me if you have any follow up questions.

Marc Wiener, AICP

Community Planning and Building Director Carmel-by-the-Sea, CA/93921/PO Drawer G (831) 620-2024 mwiener@ci.carmel.ca.us



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On Wed, Mar 27, 2019 at 9:49 AM alexander cadoux acadoux@gmail.com wrote:

Dear Mr. Wiener,

I bought Dolores 3 SE of 7th with the understanding that it was not subject to the 30 day minimum rental regulations since it is in the commercial district.

My Realtor, Earl Meyers, verified this with you (please see communications below) as this exemption from the 30 day minimum was the reason I bought the home.

I understand that this regulation may soon be changed and would like to be assured that this change to a 30 day minimum rental would not retroactively apply to my home.

I have already submitted the forms for the business license and the 5 notice days have passed.

I am currently undertaking significant upgrades to the unit, and Mr. Bo Grunde has informed me that it will not qualify for inspection until construction is completed and the unit is furnished and operational to code.

This inspection will not take place until the end of May.

Thank you,

Alex Cadoux

cell: 520 906 4067

On Mar 26, 2019, at 3:04 PM, earl <u>blissbythesea.com</u> <<u>earl@blissbythesea.com</u>> wrote:

Begin forwarded-message:

From: Marc Wiener < mwiener@ci.carmel.ca.us Subject: Re: rental codes for commercial district

Date: January 3, 2019 at 1:10:42 PM PT

To: "earl meyers I!" < earl@blissbythesea.com>

Hello Earl.

You are correct that transient rentals are allowed in the commercial districts. The attached handout provides the information on it.

Marc Wiener, AICP
Community Planning and Building Director
Carmel-by-the-Sea, CA/93921/PO Drawer G
(831) 620-2024
mwiener@ci.carmel.ca.us



Help improve Community Planning & Building. Click <u>here</u> to take our survey!

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RE: Dolores 3 SE of 7th, Carmel by the Sea; APN 010-411-003

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Thank you, Earl

Earl Y. Meyers II Broker/Owner Bliss by the Sea Realty 831-601-9999 Earl@BlissbytheSea.com www.BlissbytheSea.com DRE # 00854147

Earl Meyers - Broker/Owner Bliss by the Sea Realty 831-601-9999 Earl@BlissbytheSea.com www.BlissbytheSea.com DRE # 00854147 City of Carmel-by-the-Sea
P.O. Box CC
Carmel-by-the-Sea, CA 93921
831.620.2000
www.ci.carmel.ca.us

Receipt No: 00005765

Date & Time: 10/01/2019, 11:23 AM

Station & Operator: PC-FRANCE, laguilar

Batch No.: 00002

101-000-00-36301

USE PERMIT

2,800.00

Total: 2,800.00

Cash: 0.00

Check: 2,800.00 Check#1047

Credit Card: 0.00

Change: 0.00

Paid by: DOLORES LLC - UP 19-411

Reference: Project:

Thank you for doing business with the City.