

**COUNTY OF SAN MATEO
PLANNING AND BUILDING DEPARTMENT**

DATE: November 20, 2014

TO: Zoning Hearing Officer

FROM: Planning Staff

SUBJECT: Appeal of administrative fines issued to Pierre Berkaloff, owner of a property in unincorporated Redwood City (Emerald Lake Hills) and zoned RH/DR, for use and maintenance of their property contrary to the County's Zoning Regulations.

County File Number: VIO 2014-00113

APPEAL/APPELLANT

The property owner submitted a letter requesting an appeal in conjunction with a check for \$100.00 on September 19, 2014 (on the 14th day from the date of citation, within the time frame required for timely appeal). The letter states: "I, Pierre Berkaloff, as the parcel owner in the above-reference citation, hereby exercise the right to request a hearing in this matter. I further request that I be presented with and have a chance to review the evidence against me being used as a basis for the citation. I do not reside at the address cited and have no knowledge of short term rentals, nor operation of a bed-and-breakfast, and have no reason to believe that such activities occurred at the parcel address in any relationship in time with respect to the citation date, and thus, I believe that no fine is due."

PROPERTY INFORMATION

- A. The subject property contains a 2720 sq. ft., 4-bedroom, 3-bathroom, single-family dwelling with address of 3091 Oak Knoll Drive in unincorporated Redwood City with APN of 058-267-150.
- B. Size of parcel: 7540 square feet
- C. Current Zoning: RH/DR (Residential Hills/Design Review)
- D. General Plan Land Use and Description: Urban/Medium Low Density Residential
- E. Sphere-of-Influence: Redwood City (Emerald Lake Hills Unincorporated)
- F. Water Supply/Sewage Disposal: City of Redwood City/Oak Knoll Sewer District
- G. Flood Zone: Zone X, Area of minimal flood hazard

KEY ISSUES

Zoning Regulations Section 6400(a)2 (*Rental of Rooms*) states: “Provisions outside the Coastal Zone. The long term renting of rooms and/or the providing of table board in a dwelling (for a period of 30 consecutive days or longer only) as an incidental use to that of its occupancy as a dwelling of the character permitted in the respective district, but not to the extent of constituting a hotel as defined in this Part, unless permitted in the district. (*The short term rental of rooms, for a period less than 30 consecutive days, and bed and breakfast inns are not allowed in “R” Districts outside the Coastal Zone.*)” [Emphasis added.]

The Compliance Officer, Kate Foster, performed property research after receiving a complaint about a bed-and-breakfast running from the subject property on July 10, 2014. The rooms for rent at the subject property were confirmed as advertised on a website known for advertising bed-and-breakfast rentals: www.airbnb.com (Airbnb). This confirmation of room rentals took place prior to sending the Notice of Violation and the Administrative Citation, both. Currently, all advertising for the short term room rentals has been removed from the site, indicating the prohibited use has stopped; however, this does not negate the fine due for the activities occurring during the time frames specified in the Notice of Violation and Administrative Citation.

ENFORCEMENT TIMELINE

<u>Date</u>	<u>Action</u>
August 21, 2014	- Notice of Code Violation (Attachment A)
September 3, 2014	- Certified Return Receipt for Notice of Violation received by Owner (Attachment B)
September 5, 2014	- Administrative Citation \$100 (Attachment C)
September 23, 2014	- Received timely appeal dated September 19, 2014 (Attachment D)

FILE HISTORY

- A. July 10, 2014: The Code Compliance Section received a complaint regarding short term room rentals and the resulting parking issues at the subject property. The file was assigned to Kate Foster.
- B. July 14, 2014: Site visit performed; no bed-and-breakfast signage observed.
- C. July 15, 2014: Online research of Airbnb website shows five distinct rooms for rent all on Oak Knoll without specific address listed; however, all five have the same host and most share pictures of the same property. Each room was available for a period of less than a 30-day stay, such as two nights. The Compliance Officer determined five short term rooms were available for rent

from the subject property based on site visit comparison of the deck, fencing, and the photos and advertised information available on the Airbnb website. (See Attachment E for site visit photos and Attachments F, G, H, I, and J for Airbnb website information viewed.)

- D. August 21, 2014: Notice of Code Violation sent via certified mail to owner of record at the address listed in the Tax Assessor's Office of 3091 Oak Knoll Drive in Redwood City. This Notice informed the property owner that they had fourteen days, or until September 4, 2014 to cease the prohibited activities. The Notice specified that failure to correct the violation within the time frame specified will result in a citation being issued with penalties of \$100.00 for the first violation, \$200.00 for a second violation within 12 months, and \$500.00 for a third and additional violations within 12 months. The Notice stated that failure to correct the violations within fourteen days will result in assessment of administrative costs associated with the processing of this violation at an hourly rate established by the Board of Supervisors and presently \$50.00 per hour of staff time.
- E. September 3, 2014: Pierre Berkaloff signed for the certified mail containing the Notice of Code Violation.
- F. September 4, 2014 and September 5, 2014: Performed research on Airbnb website to determine if advertising for the prohibited use had stopped; it had not. (See Attachments F, G, H, I, and J for Airbnb website information viewed.)
- G. September 5, 2014: Administrative Citation sent via first-class mail to owner of record.
- H. September 18, 2014: The Compliance Officer received first contact from Pierre Berkaloff via phone. During the phone call the owner stated he did not think he should have to pay the \$100.00 because the first letter says they have 14 days from "the service of this notice" and, since he did not pick up the letter until September 3, 2014, it should be 14 days from that time instead. I explained to the owner that the Administrative Remedies Chapter states that the "service of the notice" is the date the County mails the letter, pursuant to Section 1.40. In addition, the initial letter carried no penalty or fines; had the owner contacted the Compliance Officer when he picked up the notice on September 3, 2014, one day before the deadline to cease the prohibited activities, he could have requested an extension or asked the resident to cease the use within the time frame specified in the Notice of Violation and avoided incurring any penalty. The owner said his wife/ex-wife lives on the property (and he does not) and he would contact her to deal with the citation issue.
- I. September 23, 2014: Received request for appeal letter with check for \$100.00 dated September 19, 2014 from owner.
- J. September 24, 2014: Airbnb website shows the five rooms previously listed are now removed; therefore, the prohibited activities appear to have ceased. However, during the staff report writing process for the appeal, Code Compliance

looked more closely at the website information and discovered what appears to be an illegal 2nd dwelling on the property referred to as the “Cute Studio with Patio Amid Nature” which will need to be addressed by the owner as well. Code Compliance will discuss the illegal 2nd dwelling with the owner and proceed with any necessary enforcement action after the appeal hearing before the Administrative Citation is completed.

APPEAL PROCEDURES

Section 1.40.090 of the Administrative Remedies Chapter allows any recipient of an Administrative Citation to request an appeal hearing to contest that there was a violation or that he or she is the responsible party by completing a Request for Hearing Form and returning it to the County within 14 days from the date of the Administrative Citation, along with the processing fee as listed in the County’s fee schedule. The Request for Hearing Form shall include a brief statement of material facts supporting the appellant’s claim that no violation occurred or no penalties or other remedies shall be imposed. In accordance with these procedures, the property owner filed a timely and complete appeal.

Section 1.40.120 of the Administrative Remedies Chapter regulates the Zoning Hearing Officer’s decision and administrative order. The Zoning Hearing Officer shall only consider evidence that is relevant to whether the violation occurred and whether the responsible person has caused or maintained the violation on the date specified in the Administrative Citation. After considering all of the testimony and evidence submitted at the hearing, the Zoning Hearing Officer shall issue a written decision to uphold or cancel all or part of the Administrative Citation and shall list the reasons for that decision.

STAFF RECOMMENDATION

Staff recommends the Zoning Hearing Officer uphold all of the administrative citation because the person responsible maintained the violations and the violations existed on the dates specified in the administrative citation. The decision issued by the Zoning Hearing Officer should include an administrative order to maintain cessation of the prohibited uses that are the subject of this violation.

Confirmed Violation: The violations were confirmed to exist during property research performed by Code Compliance in July, August, and September of 2014.

Due Process: The Planning and Building Department has followed the codified procedures to ensure due process for the recipients of the Notice of Violation and Administrative Citation.

Integrity of Permit Requirements: Without use of administrative fines when necessary to enforce permitting and zoning requirements, there is less incentive for compliance, and those property owners who abide by the requirements are done a disservice.

Case Resolution: The owner ceased the prohibited activities relating to the short term rental of rooms; however, the Code Compliance Section will not close the case until the issue surrounding the 2nd illegal dwelling is resolved.

ATTACHMENTS

- A. Notice of Violation
- B. Certified Return Receipt for Notice of Violation Received by Owner
- C. Administrative Citation
- D. Appeal Request
- E. Site Visit Photos from July 2014
- F. Room for Rent: "Cute Studio with Patio Amid Nature" Information from Website
- G. Room for Rent: "Functional Quiet Room" Information from Website
- H. Room for Rent: "Private Bedroom Retreat" Information from Website
- I. Room for Rent: "Screened Off Sleeping Space" Information from Website
- J. Room for Rent: "Peaceful Calm Oasis" Information from Website
- K. Administrative Remedies Chapter

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