

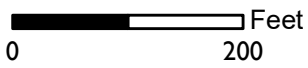
Location:	2315-2317 International Boulevard (APN: 020 010500202). (See map on reverse)
Proposal:	Appeal of the Zoning Manager’s Determination on the applicability of Oakland Municipal Code Chapter 17.153, demolition, conversion, and rehabilitation for residential hotels, and finding that the building is a Residential Hotel.
Applicant:	Hasmukhbhai B. Patel & Rashmika Leva
Owner:	Hasmukhbhai B. Patel & Rashmika Leva
Appellant:	Smith LLP
Planning Determination Required:	Determination regarding Statement of Exemption, and subsequently, an Initial Usage Report Determination if the Zoning Manager’s Determination is upheld.
General Plan:	Neighborhood Center Mixed Use
Zoning:	CN-3 Zone
Environmental Determination:	The proposal is not considered a project as defined by Public Resources Code Section 21065 and Section 15378 of the State CEQA Guidelines, and therefore does not require CEQA review.
Historic Status:	PDHP; Oakland Cultural Heritage Survey (OCHS) Rating: Ed2+; Area of Secondary Importance (23rd Avenue Commercial)
City Council District:	5
Status:	The Zoning Determination Letter was mailed on January 15, 2020. The Determination was appealed on January 27, 2020.
Staff Recommendation:	Deny the Appeal and uphold the Zoning Manager’s Determination.
Finality of Decision:	Final (not administratively Appealable pursuant to OMC Sec. 17.132.030)
For Further Information:	Contact case planner Danny Thai at 510-238-3584 or dthai@oaklandnet.com

SUMMARY

Oakland’s Residential Hotels represent an increasingly rare form of affordable housing essential to sheltering Oakland’s most vulnerable residents including but not limited to those with unstable finances or little access to credit (social security, disability, small pensions or general assistance), and those that have mental or physical disabilities limiting their ability to secure employment and housing. According to City reports, Residential Hotel Units have been removed from the housing stock at a very rapid rate including a 2015 report that found that the City lost approximately 799 Residential Hotel Units in Downtown Oakland. More recently, there has been increased pressure to convert these units to dormitories, market-rate apartments or market rate rooms for rent. Many have also been considered for conversion to boutique commercial hotels.

To address these losses and stressors, the City Council passed Resolution No. 86408 C.M.S. on October 4, 2016, which requested the City Planning Commission amend Oakland’s Planning Code. Subsequently, the City Council adopted Ordinance 13410 C.M.S. that went into effect on December 13, 2016 placing a moratorium on actions that would lead to the loss of Residential Hotel Units. On January of 2017, the moratorium was extended until December 11, 2018.

On December 4, 2018, the City Council adopted Ordinance No. 13509 C.M.S. amending the Planning Code to include Section 17.153 Demolition, Conversion and Rehabilitation Regulations for Residential Hotels (Regulations) with the overall purpose of preserving the existing supply of Residential Hotel Units and



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providing protections for the populations that reside in these units. As such, the Regulations control the demolition, conversion, and rehabilitation of Residential Hotels.

The Regulations also created a process for the City to notify the property owners of buildings the City has preliminarily determined to be a Residential Hotel. Property owners who dispute that preliminary determination may file a formal Statement of Exemption Determination requesting a Certificate of Exemption and detailing why the building is not a Residential Hotel, and therefore, exempt from the Regulations. Property owners who do not dispute the preliminary determination must file a Determination for an Initial Usage Report which documents the number of Residential Hotel Units and number and type of amenity spaces. The City then issues a Certificate of Status which, along with floor plans, is required to be posted in the building.

The property at 2315-2317 International Boulevard, currently known as Mitchell Hotel, was one of the sites that were preliminarily identified to be a Residential Hotel. The Applicant was notified of the preliminary determination on August 10, 2018, prior to adoption of the Regulations, and they were invited to attend a meeting for property owners that occurred on August 22, 2018 to discuss the proposed Regulations. The Applicant was also notified of the public hearings before the Planning Commission, Community and Economic Development Committee, and the Oakland City Council which occurred between September and November of 2018. On January 3, 2019, the City mailed out the required notice to all property owners asking them to either file a Statement of Exemption or Initial Usage Report as described above. Staff did not receive a return receipt from the Applicant. In July of 2019, the City researched properties for which we did not receive a return receipt and found that a change of address had occurred. As such a revised letter was sent on July 3, 2019 requesting the Applicant to timely file a Statement of Exemption or Initial Usage Report. Per the Regulations, the Applicant had 90 days from the issuance of the July 3rd letter to submit evidence that that property was not a Residential Hotel as part of a Statement of Exemption Determination (*Attachment 1*). On September 30, 2019, the Applicants/Owners submitted their Statement of Exemption Determination application to the Bureau of Planning (*Attachment 2*). The request was determined to be Incomplete, and an Incomplete Letter noting the application deficiencies was mailed to the Applicant on October 28, 2019 (*Attachment 3*).

The Bureau of Planning did not receive the additional requested documentation by November 27, 2019 (30 days after the Incomplete Letter was sent).¹ Per Planning Code Section 17.153.030C (Insufficient Filing), if an Applicant fails to provide the additional requested document within 30 days from the date of the Incomplete Letter, “the Director will issue the Certificate of Status confirming that the building is a Residential Hotel that is composed entirely of individual Residential Hotel Units.” Despite this clear language in the Planning Code requiring automatic denial, staff researched additional sources to ensure the accuracy of the determination including city directories of residences and businesses, census data, building permits, reports, letters, and lists of Deemed Approved Residential Hotel inspections as this information had been shown useful in other Statement of Exemption Determinations. All the information, both submitted by the Applicant and publicly available and researched by staff supported the conclusion that the property met the definition and characteristics of a Residential Hotel. As such, on January 15, 2020 the Zoning Manager issued a Determination denying the request for a Certification of an Exemption and confirming that the property was a Residential Hotel in accordance with the Planning Code requirements noted above (*Attachment 4*).

The 10-day appeal period ended on January 27, 2020 at 4:00 p.m., A timely Appeal was filed of the Zoning Manager’s decision on that same day by Smith LLP alleging that the Zoning Manager made a decision not based on substantial evidence (*Attachment 5*). Specifically, the Appellant wrote in the Appeal that:

1. The Exemption was granted; the Appellants relied on the exemption in entering into certain agreements related to the property; and the City later claimed that the exemption was granted in error.
2. The denial of the exemption constitutes a taking by the City without due process of law.
3. The current use of the property is a semi-custodial transitional housing for formerly incarcerated

¹ Additional documentation was submitted via e-mail on December 30, 2019, approximately 30 days after the November 27, 2019 deadline .

- individuals. It is not used or intended to be used as permanent housing.
4. The determinations by the City violate the Subdivision Map Act.
 5. Evidence in support if these positions is in the possession of the City or are based on undisputed facts.

These arguments are further detailed and discussed in the *Basis of Appeal* Section of this report.

For the reasons stated in this report and attachments, including the Applicant's failure to timely submit requested information to the Planning Bureau, the building's history and physical characteristics as well as Appellant's failure to assert error, abuse of discretion, or lack of evidence in the Zoning Manager's decision, staff recommends the Planning Commission deny the Appeal, thereby, upholding the Zoning Manager's Determination of a denial of the Residential Hotel Statement of Exemption.

BACKGROUND AND LEGISLATIVE HISTORY

- The City of Oakland has been monitoring the status of Residential Hotel Units, a common form of Single-Room Occupancy (SRO) units, since at least 1985. A report prepared that year found that SRO units "have been removed from the housing stock at a very rapid rate." The report identified "at least 27 facilities which can be classified as Residential Hotels (i.e., at least 10% of the units being used for SRO housing)." The 25 hotels that responded to the City's survey included a total of 1,861 rooms available for rent. While a 2004 report identified additional Residential Hotels, a 2015 report found that the City lost approximately 799 Residential Hotel Units in Downtown Oakland.
- To combat these losses, on October 4, 2016, the City Council unanimously passed Resolution No. 86408 C.M.S., which requested the City Planning Commission initiate action to amend Oakland's Planning Code to help preserve the existing supply of Residential Hotel Units, and to return to City Council with proposed amendments. Subsequently, the City Council adopted an ordinance that placed a moratorium on actions that would lead to the loss of Residential Hotel Units. This ordinance, titled Ordinance No. 13410 C.M.S., went into effect on December 13, 2016. In January of 2017, the moratorium was extended until December 11, 2018. On December 4, 2018, the City Council adopted Ordinance No. 13509 C.M.S., the Residential Hotel Regulations.
- Both state law and the Regulations define a "Residential Hotel." Since at least 2005, California Health and Safety Code Section 50519 defines a Residential Hotel as:

"any building containing six or more guestrooms or efficiency units, as defined by Section 17958.1, intended or designed to be used, or which are used, rented, or hired out, to be occupied, or which are occupied, for sleeping purposes by guests, which is also the primary residence of those guests, but does not mean any building containing six or more guestrooms or efficiency units, as defined by Section 17958.1, which is primarily used by transient guests who do not occupy that building as their primary residence."

Similarly, the Regulations state that a "Residential Hotel is defined in accordance with California Health and Safety Code Section 50519," and means:

"any building built before 1960 containing six (6) or more Rooming Units, as defined in Section 17.09.040, intended or designed to be used, or which are used, rented, or hired out, to be occupied, or which are occupied, for sleeping purposes by guests, which is also the primary residence of those guests, and where the entrances to the individual units are generally accessed via a shared lobby area."

The Planning Code further defines Rooming Unit to mean:

“a room or suite of rooms, not including a kitchen, designed or occupied as separate living quarters, with or without common boarding provisions, but excluding such rooms where they accommodate a total of three (3) or fewer paying guests within a One-Family Dwelling Residential Facility through the main portion of which access may be had to all such rooms; provided that in the case of student dormitories and similar group living arrangements, each two beds shall be deemed a rooming unit.

- The Regulations impose restrictions on certain actions relating to Residential Hotels and additionally require a Conditional Use Permit (CUP) before other specified actions may occur. In particular, any amenity rehabilitation of a Residential Hotel Unit or a Residential Hotel is prohibited, as is the conversion or demolition of a Residential Hotel Unit or Residential Hotel if there have been any adjudicated cases evidencing tenant harassment or illegal eviction in the past five years. In other cases, a CUP is required before the demolition or conversion of a Residential Hotel, which will only be granted upon showing that replacement Residential Hotel Units will be provided. Various exceptions to the CUP requirement are outlined in the Regulations including the following, which is most applicable to this Appeal.
 - *Conversion of a Residential Hotel to a Transitional Housing Activity.* (O.M.C. Section 17.153.060 B.)
- The Regulations impose a requirement that owners inform the City of notice of a proposed offering for sale or transfer of a Residential Hotel property and allow the City 90 days to tender an offer to purchase the property.
- The Regulations apply to Residential Hotels that the City has specifically identified. The Regulations include a process to ensure that a property owner who contends that their property is not a Residential Hotel has the opportunity to submit evidence explaining why not. Section 17.153.030 states that the Planning and Building Department will notify by mail property owners preliminarily determined by the City to be operating a Residential Hotel subject to the Regulations. The property owner then has either 180 days to submit an Initial Usage Report describing the physical and operational characteristics of the property, or 90 days to file a Statement of Exemption. The Director of Planning shall review the documentation submitted, and the property owner may appeal the Director’s determination within 10 calendar days. In reviewing either a Statement of Exemption or Initial Usage Report application, the Regulations require that the Applicant submit and that Planning Staff review information relevant to determine the physical and functional characteristics of the property as of December 13, 2016, which is the date that the City of Oakland first adopted a moratorium prohibiting the conversion of a Residential Hotel.

PROPERTY DESCRIPTION

The subject property is located midblock on International Blvd. between 23rd Avenue and Miller Avenue. The site contains a mixed-use building with ground-floor commercial space and habitable rooms on the second and third floors. The building is considered a Potentially Designated Historic Property, is in a historic district (Area of Secondary Importance: 23rd Avenue Commercial) and has an OCHS Rating of Ed2+.

RESIDENTIAL HOTEL DETERMINATION ZONING ANALYSIS

Submittal

On September 30, 2019, the owner of Mitchell Hotel submitted a “Residential Hotel Statement of Exemption” Determination application to the Bureau of Planning.

Staff reviewed the information submitted, and per Planning Code Section 17.153.030B(2):

The of Exemption shall be accompanied by evidence, such as a certified copy of the property's tax returns, transient occupancy tax records, residential landlord tax records, Planning and Building Permit records, Alameda County Assessor records, floor plans, or any other evidence necessary to prove the property does not meet the afore-mentioned definition of Residential Hotel or that individual units do not meet the definition of a Residential Hotel Unit."

Per Planning Code Section 17.153.030C:

If the Director determines that additional information is needed to make a determination, the Director shall request the additional information in writing. The owner shall furnish the requested information within thirty (30) calendar days upon receipt of the written request.

The information provided by the Applicant did not include several of the items needed for the Bureau of Planning to make its determination. As such, an Incomplete Letter was sent via U.S. mail on October 28, 2019, detailing the items that were considered insufficient or were not submitted in the initial submittal, including: Residential landlord tax records, Planning and Building Permit records (Attachment 3). These items are noted in the Regulations and were deemed necessary because they can demonstrate whether the building has paid taxes as a residential as opposed to a commercial use, the overall history of the building as a residential or commercial use, and whether the building exhibits the characteristics of a Residential Hotel. In addition, and although it was not necessarily relevant to the Residential Hotel Determination but to the legality of the business, staff requested evidence of the Transitional Housing Agreement with the Department of Corrections and Rehabilitations. The Incomplete Letter required submittal of the outstanding items within 30 days (November 27, 2019).

Additional Evidence the Property is a Residential Hotel

As defined in 17.153.020, Residential Hotels are properties that consist of six or more Rooming Units, as defined in Section 17.09.040 of the Oakland Planning Code, intended or designed to be used, or which are used, rented, or hired out, to be occupied, or which are occupied, for sleeping purposes by guests, which is also the primary residence of those guests, and where the entrances to the individual units are generally accessed via a shared lobby area. The Regulations require that the Applicant submit, and Planning staff review, information relevant to determine whether the property met the definition of a Residential Hotel as of December 13, 2016, which is the date that the City of Oakland first adopted a moratorium prohibiting the conversion of a Residential Hotel. During the analysis of a Residential Hotel Determination, both the physical characteristics and the functional characteristics of the property are considered to determine if the property is a Residential Hotel. The functional floorplan of a property along with supporting evidence of use of the units as primary residences determine if the physical characteristics meet the definition of a Residential Hotel. While the length of stay is not conclusive evidence of whether a residence is a person's primary residence, and in fact a Residential Hotel guest may use a Residential Hotel Unit as their primary residence for lengths less than 30 days based on inability to pay for longer stays, lengths of stay longer than thirty days (30) serves as strong evidence that the room is being used as a primary residence. Staff evaluated the floorplans and documentation to determine whether the property contained at least six Rooming Units in the building as well as whether those units were used as the primary residence of the guests who resided in those units (**Attachment 4, pages 1-3**).

- In yearly City directories of residences and businesses for Oakland from the 1940's, the property is not listed under a commercial hotel. Instead it is listed under Furnished Rooms which suggests a capacity of primary living that is distinct from a classification of a commercial hotel. (**Attachment 4-B**.) Furthermore, U.S. Census information was also noted as it indicates the presence of 32 persons living at a property as their primary residence. (**Attachment 4-C**.)
- City building permits, reports, and letters indicate that the building has historically been used for residential purposes including a 1959 building permit showing the present use as a three-story

apartment house and Residential Record Reports from 1961, 1976, 1979 and 1981 noting the number of habitable rooms ranging between 15 and 40 units. Furthermore, a City of Oakland letter dated March 22, 1983 notes the violations in common/community kitchens and in the units/sleeping rooms. The presence of common or community kitchens indicates that at least some of the rooms do not include kitchens, and therefore are Rooming or Efficiency Units. *Attachment 4-E.*)

- Annual Deemed Approved Residential Hotel inspections occurred at the property in 2008, 2009, 2010, 2012, 2014 and 2016. (*Attachment 4-F.*)
- A Zoning Clearance application submitted in 2017 to establish the existing three-story residential vacant hotel into a 36 (room) rooming house. (*Attachment 4-G.*)

Staff did not find evidence to support concluding that the property is not a Residential Hotel.

Finally, it should be noted that the Applicant did submit floor plans and other information after the Incomplete Letter deadline (*Attachment 6*). The floor plans show 13 rooms with no kitchens or bathrooms within the rooms, two offices, a kitchen and a living room on the second floor, and 18 rooms with no kitchens or bathrooms within the rooms on the third floor.² These floor plans show that the building has the physical characteristics to meet the definition of a Residential Hotel.

Determination

Because the Applicant did not timely submit additional information needed to make a determination, the property is automatically and conclusively determined to be a Residential Hotel. Per Section 17.153.030C:

If the requested information is not furnished, the Director will issue the Certificate of Status confirming that the building is a Residential Hotel that is composed entirely of individual Residential Hotel Units.

Despite the clear language in the Planning Code requiring automatic denial, staff researched sources independently of the Applicant to analyze whether the property is a Residential Hotel as noted above. The documents submitted by the Applicant as well as other publicly available information supported the conclusion that the property met the definition and physical characteristics a Residential Hotel minus the ground floor commercial spaces.

As a result, a Determination letter was mailed to the Applicant on January 15, 2020, stating that the Statement of Exemption was denied, and the building has been determined to be a Residential Hotel entirely composed of individual Residential Hotel Units (*Attachment 4*).

BASIS OF APPEAL

The Appellant filed a timely Appeal of the Zoning Manager's Determination on January 27, 2020 (*Attachment 5*). The basis of the Appeal is that the Zoning Manager abused its discretion and made a determination not based on substantial or any evidence. The Appeal does not address the fact that the Applicant failed to timely submit information requested by the Bureau of Planning. Instead, the Appeal alleges that:

1. The Exemption was granted; the Appellants relied on the exemption in entering into certain agreements related to the property; and the City later claimed that the exemption was granted in error.
2. The denial of the exemption constitutes a taking by the City without due process of law.

² This unit count has not been verified by Planning staff and would be reviewed and compared against available building records during the Initial Usage Report process if the Planning Commission was to uphold the determination that the building is a Residential Hotel.

3. The current use of the property is a semi-custodial transitional housing for formerly incarcerated individuals. It is not used or intended to be used as permanent housing.
4. The determinations by the City violate the Subdivision Map Act.
5. Evidence in support if these positions is in the possession of the City or are based on undisputed facts.

The following is a summary of the specific issues raised in the Appeal along with the staff’s response to each point. Each allegation is shown in **bold text** and the staff response follows each point in regular type.

The Appeal form indicates that the appellant must raise each and every issue on the Appeal form. The Appeal form further states that the Appeal is limited to evidence presented to the decision-maker before the close of the public hearing/comment period Appeal deadline on the matter. An electronic submission of supplemental information including additional evidence was received on April 3, 2020, 68 days after the Appeal deadline. In addition, the Appellant has continued to submit supplemental information to staff (*Attachment 7*). This additional information was not made available to staff and the Zoning Manager prior to issuance of the determination.

1. The exemption was granted. Appellants relied on the exemption in entering into certain agreements relating to the Property. City later claimed that the exemption was granted in error.

The Appellant argues that the property’s use as a Transitional Housing Residential Activity was granted as permissible by the Planning Department on March 16, 2017. As a result, the Appellant claims the Applicants entered into certain agreements (presumably with the California Department of Corrections and Rehabilitations, though not stated in the Appeal). As such, the Appellants claim the exemption for transitional housing allowed in the Regulations was already granted to the Applicants.

Staff Response

Staff understands the Appellant’s argument not to be that the Statement of Exemption itself was granted, but instead that Appellant is either claiming that an exemption from the conditional use permit requirements of the Regulations to convert to transitional housing was granted, and therefore the property should be exempt from the Statement of Exemption determination process, or that the property was converted to a use that does not meet the definition of a Residential Hotel prior to the City’s adoption of the Regulations. Staff disagrees.

- In their Statement of Exemption application, the Applicant submitted documentation of a 2017 City of Oakland New Rental Application, and also submitted a letter from a master lessee stating that the property is currently being used for the purpose of a re-entry transitional housing program and has been used for that purpose since 2017. (*Attachment 2, Exhibits 2 and 4.*) At the time of the Zoning Manager’s Determination, the Planning Bureau also had documentation of the Applicant applying for a Zoning Clearance on March 16, 2017 “to establish an existing three-story residential vacant hotel into 36 (room) rooming house permitted activity in CN-3 Zone” (*Attachment 4-G*) The Zoning Clearance application does not indicate that the property was being changed or going to be used as a Transitional Housing Activity. The only change indicated was that the hotel was going to be turned into a Rooming House, a residential facility type defined as including permanently fixed buildings, or those portions thereof, which accommodate or are intended to accommodate Residential Activities and each of which contains one or more Rooming Units. As such, the Zoning Clearance did not approve a change of activity at the property to a Transitional Housing Activity and instead documents that the property owner at the time classified the current use of the property as a “residential vacant hotel” and proposed to continue to use the property as a “Rooming House” facility, a facility type consistent with the definition of a Residential Hotel.

Every property in the City is classified based on common functional characteristics and assigned an Activity and Facility type. There was no indication that a change in Activity type would occur. Planning Code Section 17.10.630 describes the Residential Facility types, one of which is a

Rooming House. Planning Code Section 17.33.040 outright permitted the change to a Rooming Facility. However, while this Zoning Clearance was granted, it was voided later with the note: “Not Required for a Rental Property.” This is true, Zoning Clearances are not required to rent out units. Only a Business Tax License is required. This request did not change the building to a Transitional Housing Activity.

On October 10, 2017, the City issued a Zoning Verification Letter (DET17106) regarding the zoning on the site, whether Transitional Housing was permitted, and the process to rebuild in case of damage or destruction (**Attachment 8**). The letter notes that a Transitional Housing Residential Activity is a permitted activity in the CN-3 Zone but, again, did not grant conversion to such a Transitional Housing Activity.

Separately, on April 4, 2019, the Applicant submitted a request to change the Activity type to Transitional Housing. The Zoning Clearance was granted; however, it was rescinded on July 2, 2019. (**Attachment 9**.) As noted in the rescission letter, the Zoning Clearance was invalid because the property, which had been preliminarily identified as a Residential Hotel, was required by the Planning Code to receive a written determination by the Planning Director regarding the building’s status before the Zoning Clearance could be approved. Only after a Determination as to the building’s residential hotel status was made, could the City consider changing the building into a Transitional Housing Activity, which is allowed without a CUP per Planning Code Section 17.153.060 upon request and as part of the Initial Use Report Determination. The Determination could include the request that the Zoning Manager grant an exception to the CUP requirement per Planning Code Section 17.153.060(B).

- Second, the Applicant submitted documentation that the Applicant had entered into an agreement with the California Department of Corrections and Rehabilitations on November 7, 2017 through June 30, 2020 to operate the property as transitional housing for former correctional institution inmates (**Attachment 6 and 10**). When the agreement was signed the property was still considered a Permanent Residential Activity³. It clearly was not approved as a Transitional Housing Activity by November 7, 2017. As such, staff is unsure what exemption or approval was relied upon when entering into this agreement.
- Third, the status of the Mitchell Hotel must be evaluated based on its legally approved use as of December 13, 2016. Section 17.153.030(B) of the Oakland Planning Code states:

All properties notified by the Planning and Building Department of their preliminary Residential Hotel status must file an Initial Usage Report or a Statement of Exemption to determine the legal status of the subject property as of December 13, 2016.

The enacting ordinance does allow for buildings that were lawfully issued permits after 2016 but before adoption of the Regulations for conversion to a new activity to be exempt from the Regulations. But here no such permits were issued. Since the Mitchell Hotel has operated as a permanent residence for many decades as noted in the Determination Letter and no permit was filed to convert the location into another approved use by December 13, 2016, the Mitchell Hotel is considered a Residential Hotel.

In sum, the building was a Permanent Residential Activity in December of 2016 with physical and functional characteristics of a Residential Hotel. No approval was granted for a Transitional Housing Activity in March of 2017, and the Applicant entered into an agreement with the state before receiving approval for a Transitional Housing Activity. As such, no exception was granted or has been granted. With

³ See Documentation in the City’s Determination Letter regarding the Hotel’s use as Permanent Residential.

submittal of an Initial Usage Report and request, the City can consider the CUP exception to convert the building legally into a Transitional Housing Activity and continue the current operation on the site.

2. The denial of the exemption constitutes a taking by the City without due process of law.

The Appellant raises two constitutional challenges in its Appeal. First, that the Bureau of Planning's Determination that the Property is a Residential Hotel violates the Appellant's due process rights, and second, that the Determination is an unlawful taking of the Appellant's property.

Staff Response

To the extent the Appellant is directly challenging the City Council's adoption of the Residential Hotel Regulations, the Bureau of Planning and the Planning Commission have no jurisdiction to consider those claims. The Planning Commission is limited to considering whether, in concluding that the Mitchell Hotel meets the definition of a Residential Hotel, the Planning Director or his designee committed an error or an abuse of discretion, or his decision was not supported by the evidence in the record. The Planning Commission is not tasked with evaluating the legality of the City Council's legislative enactments.

To the extent that the Appellant contends that the Residential Hotel Regulations are unlawful in their application to the Mitchell Hotel, the Appellant's challenge is premature. The Bureau of Planning's Determination is only that: a determination that the property at issue is a Residential Hotel that will be subject to the restrictions set forth in Planning Code Section 17.153.040 and Conditional Use Permit requirements set forth in Planning Code Section 17.153.050. The Determination does not alter the property's Activity designation. The Regulations preserve the status quo and impose restraints on a property owner's ability to seek Bureau of Planning approvals for physical modifications to the building or changes to its lawful activity. If, in the future, the Appellant sought to make physical changes or Activity type changes to the building, the Regulations allow the owner to seek a waiver determination or Conditional Use Permit exception per Planning Code Section 17.153.060(B). As mentioned above, the Regulations include a path for this property owner to apply for a Conditional Use Permit exception that, if granted, would allow for the conversion of the Residential Hotel from Permanent Residential Activity to Transitional Housing Residential Activity. (O.M.C. § 17.153.060.)

As a result, these constitutional challenges are not relevant to the Bureau of Planning's factual determination of whether the property at issue meets the definition of a Residential Hotel, as defined in the Residential Hotel Regulations.

Finally, the Applicant was notified in 2018 of the City's preliminary determination, impending changes to the Planning Code, invited to a stakeholder meeting intended to collect feedback from owners, and informed of upcoming public hearing regarding the Regulations which themselves do contain due process rights including the right to appeal both the Statement of Exemption and the Initial Usage Report Determinations.

3. The current use of the Property is as semi-custodial transitional housing formerly incarcerated individuals. It is not used or intended to be used as permanent housing.

The Appellant claims that the property is being used as temporary housing for incarcerated individuals, and therefore, does not meet the definition of a Residential Hotel.

Staff Response

The disputed Residential Hotel Determination focuses only on whether the building demonstrates the characteristics of a Residential Hotel, and not on a specific Activity type. Planning staff did not make a determination about current or approved and Activity of the site, but did acknowledge, as part of the rescinded

Zoning Clearance (*Attachment 8*), that the building is not approved for Transitional Housing Activity as a permit was not received for that use prior to the Moratorium or adoption of the Ordinance.

A Residential Hotel is defined as “any building built before 1960 containing six (6) or more Rooming Units . . . intended or designed to be used, or which are used, rented, or hired out, to be occupied, or which are occupied, for sleeping purposes by guests, which is also the primary residence of those guests, and where the entrances to the individual units are generally accessed via a shared lobby area.”

As previously discussed above and as discussed in the Zoning Manager’s Decision, the subject property meets the definition of a Residential Hotel. The property was built pre-1960, contains more than six rooming units on the second and third floor, and documentation supports that the rooms have been used as a primary place of residents for its occupants. This evidence includes historic records of the property being listed in city directories as a “furnished room” rather than a “hotel,” by census records indicating persons living at the property and building permits and residential reports describing the property as containing apartments and stores.

In their Statement of Exemption Application, the Applicant claimed that the subject property does not meet this definition because the rooms, as currently used for transitional housing for formerly incarcerated individuals, are not “rented out”, because the occupants are not “guests”, and the Residential Hotel is not the “primary residence” of the individuals. As required by the Regulations, the Planning Bureau’s review of whether the property met the definition of a Residential Hotel is based on what the property’s characteristics were on December 13, 2016, the date on which the City adopted its Residential Hotel Conversion Moratorium, which is before the Applicant claims to have started using the property under contract for transitional housing for formerly incarcerated individuals. Nonetheless, the property in its current use, if it were an approved activity, would still meet the definition of a Residential Hotel, since the term “guests” refers to any persons who are not the owner, and since the definition encompasses rooms that are not “rented out” but also those that are “hired out, to be occupied, or which are occupied.” Furthermore, while staff understands that the building is not operationally intended to be the permanent residence of these individuals, the documents submitted by Applicant regarding the contract with the California Department of Corrections and Rehabilitations indicate that participants shall be housed for a placement of up to 180 calendar days based on assessed needs of the participants. As a result, even under this contract, the City would consider the participants to be occupying the rooming units as both their permanent (more than 30 days per the Planning Code) and primary residence even for this amount of time.

4. The determinations by the City violate the Subdivision Map Act.

Staff Response

The Subdivision Map Act provides the City of Oakland the right to regulate and control the design and improvement of subdivisions and set procedures governing the processing, approval, or denial, and filing of tentative, final, tract maps, and parcel maps, and the modification of such maps. Such maps are necessary upon the proposal to subdivide lots, merge lots, and for condominium conversions but excepts lot line adjustments which are processed under a Parcel Map Waiver process.

The determination for the Mitchell Hotel does not involve any of the above listed actions, and therefore, is not associated with the Subdivision Map Act processes in any way. The City’s Determination was regarding the rightful classification of the building under Planning Code Section 17.153 adopted by City Council, and specifically, whether the property was or was not defined as a Residential Hotel.

The Zoning Manager did not make a Determination regarding any mapping process or based on the Subdivision Map Act.

5. Evidence in support if these positions is in the possession of the City or are based on undisputed facts.

Staff Response

The Zoning Manager's determination was based on the information the Applicants provided in their initial Statement of Exemption application to the City, as well as additional information that the Planning Bureau independently collected. The Applicants were able to submit, along with their Statement of Exemption application, any documentation that they believe supported their claim that the property is not a residential hotel. Further, the Planning Bureau sent an incomplete letter to the Applicants requesting additional information that would aid in the Zoning Manager's determination and did not receive a timely response. As a result, the Statement of Exemption application is automatically denied, and, if the Zoning Manager's decision is upheld, the Applicant will be required to submit an Initial Usage Report that will aid the Planning Bureau in determining how many Residential Hotel Units and amenities are contained on the property.

The Appellant provided an electronic submission of supplemental information and documentation on April 3, 2020—68 days after the Appeal deadline; this evidence cannot be considered by the Planning Commission as it was not made available to the Zoning Manager at the time of his decision. The Planning Commission's consideration is limited to whether the Zoning Manager determination was supported by substantial evidence based on the information in the record before him, or to determine whether a procedural error led to an abuse of discretion. A review of this information did not reveal any information relevant to the Zoning Manager's Determination Letter.

KEY ISSUES FOR CONSIDERATION

Purpose of the Residential Hotel Ordinance

There is no dispute that the state of California is in both a housing and a housing affordability crisis. The reasons for this are many including but not limited to decades of not meeting the growing demand for housing. According to the City's 2015-2023 Housing Element update and Oakland's Regional Housing Needs Allocation, Oakland should create 14,765 new housing units within these years with 2,059 affordable to very low-income households, 2,075 to low-income households, and 2,815 to moderate-income households. This overall need for housing has put tremendous strain on existing buildings, and especially Residential Hotels that have typically housed the City's most vulnerable residents. Specifically, there has been increased pressure to convert these units to dormitories, market-rate apartments or market rate rooms for rent. Many have also been considered for conversion to boutique commercial hotels.

The Oakland City Council, in implementing Policy 5.4 (Preservation of Single Room Occupancy Hotels) of the 2015-2023 Housing Element recognized the need to preserve the supply of Residential Hotels as affordable housing for very low and low-income residents, replacement units and tenant protections through the adoption of the Residential Hotel Ordinance (Section 17.153 of the Planning Code).

Possible Outcome of Overturning the Decision

The Applicant is requesting that the Planning Commission overturn the Zoning Manager's decision in part because the property is being used as Transitional Housing. This argument is confusing for several reasons.

First, transitional housing typically serves a vulnerable population, whether its low-income, homeless, or formerly incarcerated people such as the persons housed in this building. As such, the Ordinance was specifically intended to protect these populations.

Second, and as detailed above and reiterated below, the Ordinance also specifically exempts transitional housing from the CUP requirements in the Ordinance. As such, the additional submittal of the Initial Usage Report and request for an Exemption for these units and amenity spaces would further protect them from conversion or demolition.

The granting of the Statement of Exemption application, overturning of the Zoning Manager’s decision, and removal of the property and units from rehabilitation or conversion protections under the Ordinance would mean that following actions would not be prohibited.

- Demolition of the existing building.
- Conversion to a commercial hotel that may freely serve market-rate transient guests, a residential use with dwelling units at market-rate prices, or other activity permitted under the Planning Code.
- Alteration of the building in any way that may result in an increase in rent or reduction in the number of units available.

In sum, once the final decision has been made supporting the Statement of Exemption, it is possible that these units will not be recovered for this vulnerable population. Identification of this property as a Residential Hotel would provide the most protection for these units and use.,

Step by Step Process to allow the Transitional Housing Activity and Protect the Residential Hotel

The administrative process to allow a Transitional Housing Activity at this property is as follows assuming the Planning Commission denies the Appeal and upholds the Zoning Manager’s decision.

- The Applicant submits an Initial Usage Report along with a request to use the property as transitional housing in one combined determination application.
- The Bureau of Planning identifies the number of units and amenity spaces at the property.
- The Bureau of Planning Director issues an Initial Usage Report letter that allows for the Residential Hotel to be converted to a Transitional Housing Activity, as defined in Oakland Municipal Code 17.10.116 and per State of California Government Code 65582. The Initial Usage Report is accompanied with a Certificate of Status that must be posted in a common area with the floorplan.

The Certificate of Status would then protect the building from a reduction in the number of units, rehabilitation of the building that would reduce the identified functional amenities available to the residents or increase amenities that would result in the increase of rent. Should the property be classified as a Residential Hotel, amenity rehabilitations for safety purposes such as seismic retrofits, electrical upgrades, plumbing upgrades, maintenance and repairs are permitted.

Timing for Submittals and Supplemental Information

The Applicant’s failure to timely submit requested information alone is a basis for denial of this Appeal. While the Appellant continues to provide supplemental information, this information was submitted well after the deadline provided in the Residential Hotel Regulations and was not considered by staff and the Zoning Manager when the Determination was made.

The Applicant and Appellant had ample time over 120 days, to submit this information for staff’s review during the process.

- First, the Applicant had 90 days from the July 3, 2019 date the preliminary determination was made that the property was a Residential Hotel.
- Second, the Applicant had an additional 30 days to submit the requested information in the Incomplete Letter along with any other evidence that the property was not a Residential Hotel.

Staff conducted our own research into the property’s history and physical characteristics. This is the same information staff has used to evaluate over 10 Residential Hotel Statement of Exemption applications. All the evidence concluded that the property was a Residential Hotel.

Lastly, staff did review the supplemental information as well as additional documents submitted after the Appeal. None of these documents support the conclusion that the property is not a Residential Hotel and would not have affected the decision.

CONCLUSION

The goal of the Ordinance is to protect vulnerable populations that live in affordable Residential Hotel Units throughout Oakland. Vulnerable population such as the low-income, homeless, or formerly incarcerated individuals depend on the availability and affordability of the rapidly diminishing supply of Residential Hotel Unit, and for example, there are only three of these properties available in East Oakland. The City has preliminarily identified properties such as the Mitchell Hotel as Residential Hotel Units and created a process to minimize the displacement of the vulnerable population. The Statement of Exemption approval or denial process establishes whether the Mitchell Hotel is either a) a protected Residential Hotel with restrictions on rehabilitation or b) a Commercial Hotel that can be converted to any activity, facility, or physical characteristic configuration as allowed by the Planning Code.

The staff report discusses the procedural aspects to approving or denying the Statement of Exemption application and the evidence provided to support the conclusion that the property is a Residential Hotel. The Planning Code clearly states that if the Applicant does not submit required documents within the timeframe outlined in the Regulations, the Zoning Manager is required to issue the Certificate of Status confirming that the building is a Residential Hotel that is composed entirely of individual Residential Hotel Units, denying the request for an Exemption.

However, staff did not solely rely on the information the Applicant submitted in reaching the conclusion that the property was a Residential Hotel. While waiting for the Applicant to submit the additional information in the Incomplete Letter, staff conducted our own research into the property’s history and physical characteristics using the same process and information as at least 10 other Statement of Exemption applications. All the evidence concluded that the property was a Residential Hotel.

The Applicant wants to operate transitional housing use at the property, and one of their Appeal arguments is that they thought the use was already exempted. The status of the Mitchell Hotel must be evaluated based on its legally approved use as of December 13, 2016. A permit was never issued for the conversion to a Transitional Housing Residential Activity prior to the adoption of the Moratorium and the Residential Hotel Ordinance.

However, as outlined throughout the report, there is an administrative path within the Regulations to retain this use and protect housing for this population. The Applicant would need to submit for an Initial Usage Report Determination with the additional request for an exception from the CUP requirement for a Transitional Housing Residential Activity.

In sum, the Appellant has not demonstrated an error or abuse in discretion by the Zoning Manager as discussed above; thus, City of Oakland Planning staff believes that the Determination is valid.

RECOMMENDATIONS:

1. Deny the Appeal and uphold the Zoning Manager’s Determination decision based on the evidence and documentation provided in the letter.

Prepared by:



Danny Thal
Planner I

Reviewed by:



ROBERT MERKAMP
Zoning Manager

Approved for forwarding to the
City Planning Commission:



Edward Manasse, Deputy Director
Bureau of Planning

ATTACHMENTS:

1. Notifications regarding preliminary determinations, and public hearings, August 2018 through July 2019
2. Applicant Statement of Exemption Determination application, dated September 30, 2019
3. Incomplete Letter, dated October 28, 2019
4. Zoning Manager's Decision with evidence, dated January 15, 2020
 - A. Incomplete Letter Dated October 28, 2019
 - B. 1940 RL Polk Company Oakland City Directory
 - C. 1940 US Census Population Schedule
 - D. 1947 Zoning Code Excerpt for Definition of "Hotel"
 - E. City of Oakland Microfiche Records
 - F. City of Oakland Accela Records regarding Deemed Approved Hotel Inspections
 - G. Zoning Clearance Records
 - H. Initial Usage Report Application Form
5. Appeal filed by Smith LLP, dated January 27, 2020
6. Supplemental Documents submitted after Incomplete Letter Deadline
7. Supplemental Appeal Documents submitted after the Appeal deadline
8. Zoning Verification Letter, October 10, 2017
9. Zoning Clearance and Rescission Letter, dated July 2, 2019
10. Documentation from Applicant regarding agreement with the California Department of Corrections and Rehabilitations, dated October 19, 2017

LEGAL NOTICE: THE DECISION OF THE CITY PLANNING COMMISSION IS FINAL AND NOT ADMINISTRATIVELY APPEALABLE. ANY PARTY SEEKING TO CHALLENGE SUCH DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE THE DECISION IS ANNOUNCED (CODE OF CIVIL PROCEDURE SECTION 1094.6).