

Case File Number APL19019 & APL19020

November 20, 2019

Location:	0 Linden Street	3319 Linden Street
Assessor's Parcel Number:	005 0471-006-00	005 0471-005-00
Proposal:	Appeal of the Zoning Manager's Determination that a Construction Operations Industrial Activity is operating without the benefit of required permits.	
Applicant:	William H. McInerney Jr. (510) 465-7100	
Owner:	Rahebi Properties LLC	
Appellant:	William H. McInerney Jr.	
Case File Number:	APL19020	APL19019
Original Case File Number:	DET190068	DET190067
Planning Permits Required:	N/A	N/A
General Plan:	Mixed Housing	Urban Residential
Zoning:	RM-2	RU-5
Environmental Determination:	Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15306, Information collection and/or 15061(b)(3) (the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment.)	
Historic Status:	N/A	
City Council District:	3	
Status:	The Zoning Decision Letter was mailed on July 2, 2019; Project appealed on July 11, 2019	
Staff Recommendation:	Deny the Appeal and uphold the Zoning Manager's Decision.	
Finality of Decision:	Final (not administratively Appealable pursuant to OMC Sec. 17.132.030)	
For Further Information:	Contact case Planner Eva Wu at (510) 238-3785 or ewu@oaklandca.gov	

SUMMARY

This item is an appeal of two zoning determination regarding two contiguous vacant lots operating a construction yard without required permits. Staff recommends denial of the appeal because the proposed activity is not permitted in the Mixed Housing Residential or Urban Residential Zones and the appellant has not demonstrated, based on substantial evidence in the record, that there was an error or abuse of discretion made by the Zoning Manager in the determination.

BACKGROUND

In January 2017, Rahebi Properties, LLC purchased two adjoining parcels located at 3319 Linden Street and 0 Linden Street in Oakland to store construction vehicles.

On May 4, 2018, the Bureau of Building issued two Notices of Violations (#1801414 and #1801415), after an inspection determined that the subject properties were used for the storage of large construction vehicles and equipment for Redgwick Construction Company without zoning approval.

William H. McInerney Jr. of McInerney & Dillon, the attorney on behalf of Rahebi Properties LLC, appealed the Notice of Violations and filed for two Zoning Manager's determination letters on June 3, 2019 (See Attachment A).

A July 2, 2019 determination letter from the Zoning Manager states that the City considers the construction vehicle yard to be a "Construction Operation Industrial Activity," as defined by Chapter 17.10 of the Planning Code (see Attachment B). The determination stated that all Industrial Activities are prohibited in the RM-2 and RU-5 Zones. The letter further stated that the Major Variance granted in 1976 for an auto-wrecking yard does not apply to the current use because the prior Variance approved an activity that falls under a different land use classification, "Scrap Operation Commercial Activity" under the 1976 Planning Code and "Warehousing, Storage, and Distribution Industrial Activity, subclassification E. Automotive Salvage/Junk Yards" in the current Planning Code. To operate a Construction Operations Industrial Activity at the sites would require a Major Variance and Staff cannot make the required findings for such activity in RM-2 and RU-5 Zones.

The applicant appealed the determination on July 11, 2019; that appeal is the subject of this report (see Attachment C for the appeal). Per Section 17.132.020 of the City of Oakland Planning Code, to uphold the appeal, the Planning Commission must determine that an error or abuse of discretion was made by the Zoning Manager or the Zoning Manager's decision is not supported by evidence in the record. The arguments raised by the Appellant are summarized below in the "Basis for the Appeal" portion of this report, along with City staff's response to each argument.

PROPERTY AND NEIGHBORHOOD DESCRIPTION

3319 Linden St. and 0 Linden Street are adjoining lots in two different zones. 3319 Linden Street abuts a warehouse to the north and west and a vacant lot (0 Linden Street) to the south. 0 Linden Street abuts a vacant lot (3319 Linden Street) to the north and residential homes to the west and south. The context of the surrounding area is mostly residential and commercial with three existing warehouses along 34th street.

ZONING ANALYSIS

3319 Linden Street is in the Urban Residential – 5 (RU-5) Zone and 0 Linden Street is in the Mixed Housing Type Residential (RM-2) Zone. The intent of the RU-5 zone is to create, maintain, and enhance areas of the City that are appropriate for multi-unit, mid-rise, and high-rise residential structures and ground floor neighborhood business on the City's major corridors. The intent of the RM-2 Zone is to create, maintain, and enhance residential areas characterized by a mix of single-family homes, duplexes, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate. All Industrial Activities are prohibited in the two zones and a proposed construction yard clearly does not meet the intent of the RM-2 or RU-5 zones.

The applicant proposes to use the site to store construction equipment. Staff determined that the storage of construction equipment is classified in Section 17.10.583 as a "Construction Operations Industrial Activity", which, per Section 17.17.030 and 17.19.030 of the Planning Code, is not permitted in the RM-2 or RU-5 Zones. Section 17.10.582 of the Planning Code describes this activity as the following:

Construction Operations Industrial Activities include enclosed and unenclosed facilities and accessory yards for construction and incidental storage activities and/or fabrication activities performed by construction contractors on lots other than construction sites. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040. This classification includes, but is not limited to, the storage and custom cutting of stone for interior applications, roofing and plumbing component storage, and equipment storage for environmental contractors.

The Major Variance issued in 1976 does not apply to the proposed Construction Operations Industrial Activity at the sites because it was granted to allow a different activity: "Scrap Operation Commercial Activity" under the 1976 Planning Code (see Attachment B for Permit #VM76-001) and "Warehousing, Storage, and Distribution Industrial Activity – E. Automotive Salvage/Junk Yards" in the current Planning Code. The following is the description of this activity in Section 17.10.583 of the Planning Code:

Warehousing, Storage, and Distribution Industrial Activities

Warehousing, Storage, and Distribution Industrial Activities include five (5) sub-classifications as described below. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

- A. *General Warehousing, Storage, and Distribution. General Warehousing, Storage, and Distribution Activities include the warehousing and storage, primarily within enclosed buildings, of commercial goods (other than primary storage of hazardous materials), and the associated distribution activities that occur on-site prior to delivery of goods to wholesale and retail outlets or direct shipment to customers. These activities may also include ancillary truck parking and dispatching; and accessory outdoor storage areas where outdoor storage, not including parking and loading areas, does not occupy more than thirty percent (30%) of the total site area.*
- B. *General Outdoor Storage. General Outdoor Storage Activities include principal outdoor storage of items for more than 24 hours where such storage activities occupy more than thirty percent (30%) of the site area. The principal storage of goods and materials, equipment or vehicles; as well as the storage of operating equipment for warehouses, such as forklifts, pallets, and racks. This classification excludes outdoor storage uses that are more specifically described in this Chapter, including but not limited to, container storage, salvage and junk yards and oil and gas storage. This classification includes, but is not limited to, construction trailers, outdoor sheds or accessory portable structures, secondary sites for storage of building materials that are not for resale on-site.*
- C. *Self- or Mini-Storage. Self- or Mini-Storage Activities consist of storage in small individual spaces, on average of four hundred (400) square feet or less that are exclusively and directly accessible to a specific tenant, offered on a monthly or other limited basis, and available to the general public.*
- D. *Container Storage. Container Storage Activities include the storage, repair, and "pre-tripping" of shipping containers, including refrigerated shipping containers, on open lots. Includes minor repair and cleaning of containers and may include the rehabilitation of containers for other uses.*
- E. *Automotive Salvage/Junk Yards. Automotive Salvage/Junk Yard Activities include the storage and dismantling of vehicles and equipment for sale of parts.*

In sum, the current Construction Operations Industrial Activity is not a permitted activity in the zones and the 1976 Major Variance does not grant the construction storage yard operation a conforming status. Therefore, the activity is not operating legally at the subject sites.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines statutorily and categorically exempts specific types of projects from Environmental Review. The zoning determination is Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15306, Information Collection. And Section 15321 Enforcement Actions by Regulatory Agencies.

BASIS FOR APPEAL

The appellant filed a timely Appeal of the Zoning Manager's determination on July 11, 2019. The following describes the issues raised in the appeal and staff's response. The issues are in **bold**; staff responses are in *italic*.

- 1) Since 1979, the prior owner's tenants had been using the two parcels as a junk/yard since 1976 under the attached permit (Exhibit 1). I have enclosed a copy of the aerial photograph of the site when it was used to store crushed vehicles and a picture of the property as its is currently being used.**

Staff Response

As stated in the Determination Letter, in 1976, an auto wrecking yard operation (Scrap Operation Commercial Activity under the 1976 Planning Code) was approved through a Major Variance (VM76-001). The sites are currently used as a construction yard, not an auto wrecking yard. These activities are in different use classifications and, therefore, the Major Variance issued in 1976 does not apply to the current operation (see Zoning Analysis, above).

Applicant mistaken Exhibit 1 as a permit. Exhibit 1 is a Negative Declaration (ER 76- 002) for the expansion of Auto Wrecking Yard in the C-30 Zone, not a permit.

- 2) In January 2017, prior to the close of escrow for the purchase of the two parcels, Rahebi Properties, LLC' managing member, Bob Rahebi, reviewed with the City of Oakland's Permit Department its files on those two parcels. Exhibit 1, which is part of those files, was discussed with the Permit Department. Mr. Rahebi was informed that the LLC plan to use the two parcels to store construction equipment was grandfathered/ permitted under the 1976 permit. Based on that information, Rahebi Properties, LLC purchased the property.**

Staff Response

Staff did not find any record of the conversation described by Mr. Rahebi nor did applicant submit meeting notes. As mentioned, Exhibit 1 is a Negative Declaration (ER 76-002) for the Expansion of Auto Wrecking Yard in C-30 Zone 3315 Linden Street (3315 is now 0 Linden Street), not a permit. Conversations at the "Permit Department" do not constitute approval and do not provide vested rights to perform an illegal activity (see response #1 and the Zoning Analysis section for a discussion of why the activity is not permitted at the site).

- 3) Based on the above facts, Rahebi Properties, LLC believes its current use of the two parcels as a storage yard for its construction equipment is permitted and is not in violation of the City of Oakland's Municipal Code.**

Staff Response

See above responses and the Zoning Analysis Section of this report.

CONCLUSION

The Appellant has not demonstrated, based on substantial evidence in the record, that there was an error or abuse of discretion made by the Zoning Manager in the determination. Staff made the appropriate interpretation of the Planning Code, and the history of the operation demonstrates illegal and nonconforming activities at the sites.

RECOMMENDATIONS:

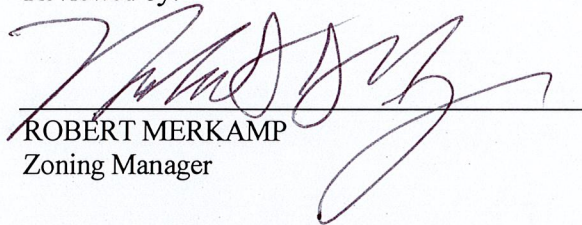
1. Deny the Appeal, thereby upholding the Zoning Manager's determination that the Construction Operation Industrial Activities at 0 and 3319 Linden Street are in violation of the Planning Code.

Prepared by:



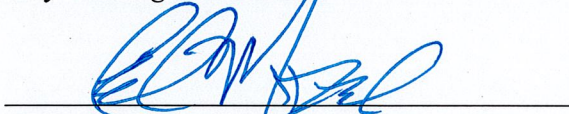
EVA WU
Planner II

Reviewed by:



ROBERT MERKAMP
Zoning Manager

Approved for forwarding to the
City Planning Commission:



EDWARD MANASSE
Acting Deputy Director
Bureau of Planning

ATTACHMENTS:

- A. June 3, 2019 Request for Determination
- B. July 2, 2019 Determination Letter
- C. July 11, 2019 Appeal of Determination Letter

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE ANNOUNCEMENT OF A FINAL DECISION, PURSUANT TO THE CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.