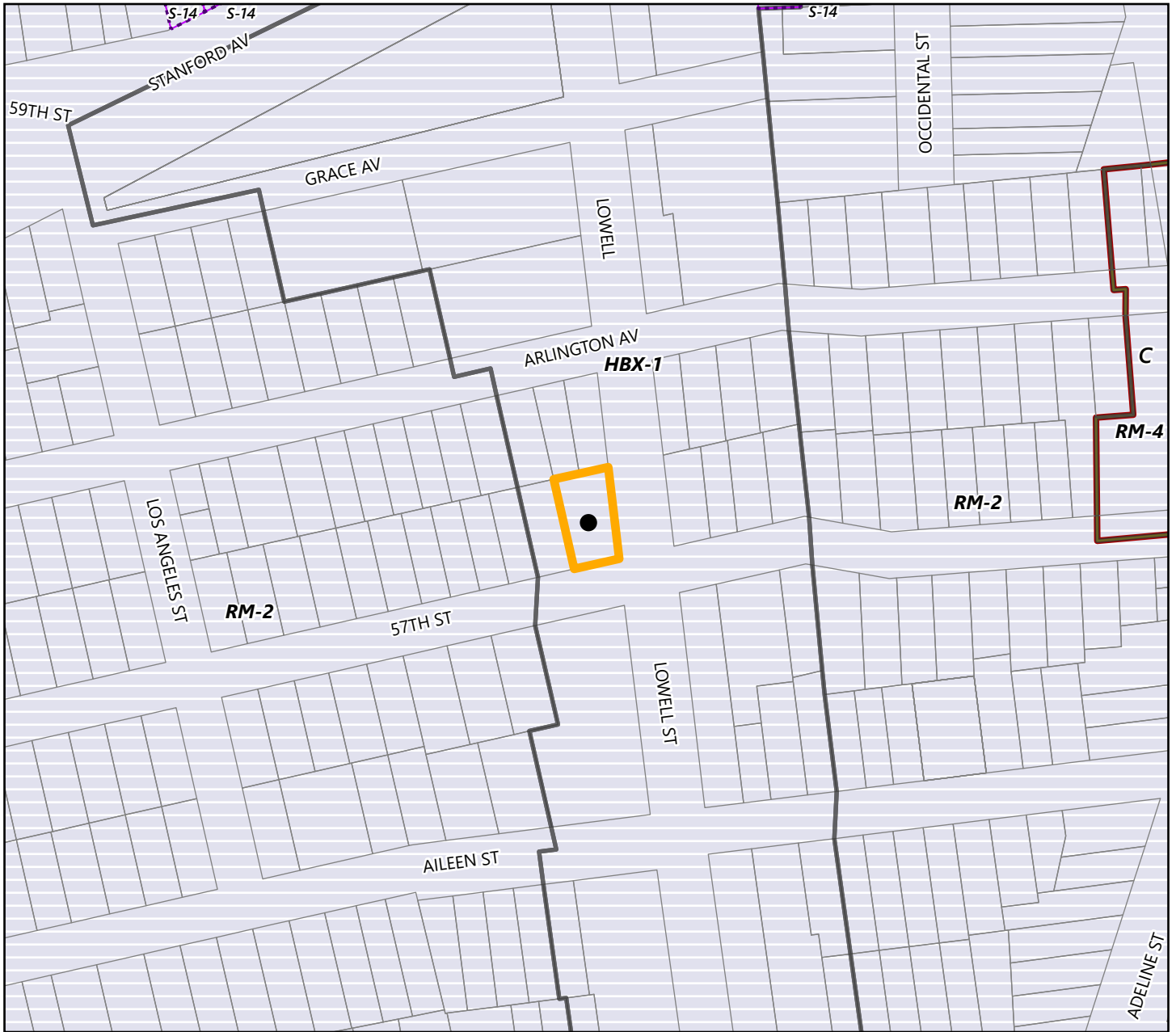


Location:	952 57th Street
Assessor’s Parcel Number(s):	015 1297002
Proposal:	Appeal of an Administrative Determination that denied an appeal of a Notice of Violation from the Bureau of Building. The Determination (DET240084) confirmed that an operating warehousing business violates the permitted activity regulations in the HBX-1 Zone.
Applicant:	Michael-Ryan McGrew
Contact Person/ Phone Number:	Michael-Ryan McGrew/(916) 662-5936
Owner:	Miguel E. Jara Jr.
Case File Number:	APL24017
Planning Permits Required:	Not applicable
General Plan:	Housing and Business Mix
Zoning:	Housing and Business Mix - 1 (HBX-1)
Proposed Environmental Determination:	The Determination is exempt from environmental review Per Section 15321 of the State CEQA Guidelines: Enforcement Action by Regulatory Agencies.
Historic Status:	The Oakland Cultural Heritage Survey rates the site as "X".
City Council District:	1
Finality of Decision:	The decision is final per Section 17.132.030 of the Planning Code
For Further Information:	Contact Case Planner Neil Gray at (510) 238-3878 or by email at ngray@oaklandca.gov.

SUMMARY

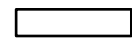
On December 11, 2024, Planning staff issued a Determination (DET240084) stating that the General Warehousing, Storage, and Distribution activity at 952 57th Street requires the granting of a Conditional Use Permit to operate. The Determination was appealed on December 20, 2024, by a representative of the business, Suprema Meats. Staff recommends denying the appeal of the Determination because the appellant has not provided the required documentation demonstrating either that: 1) the warehousing activity began prior to the effective date of the ordinance making General Warehousing, Storage, and Distribution a conditionally permitted activity in the HBX – 1 Zone; or 2) the warehousing activity is a nonconforming activity that qualifies for a right to continue at the site.

CITY OF OAKLAND PLANNING COMMISSION



 Site Parcel

 S-13 Combining Zone

 Feet
100



Case File: APL24017
Appellant: Michael McGrew
Address: 952 57th Street
Base Zone(s): HBX-1
Combining Zone(s): S-13

BACKGROUND

On April 22nd, 2024, the City received a complaint that Suprema Meats, Inc., a meat packaging and distribution business at 955 57th Street, had expanded across the street into a warehouse building at 952 57th Street. Code Compliance conducted an inspection on May 12, 2024 and, confirming the violations, concluded that the expansion was not done in compliance with applicable zoning requirements. Code Compliance sent the owner a Notice of Violation (NOV), dated May 15, 2024 (see **Attachment A**), which stated that the operation had not been granted the required Conditional Use Permit (see Zoning Analysis, below). The NOV instructed the owner to either: (1) cease the activity, then modify the activity to one that is permitted and obtain a zoning clearance for that activity; or (2) cease the activity, then obtain an approved Conditional Use Permit. The NOV included information on the right to appeal the decision.

The owner’s representative (herein owner and his representative are collectively referred to as “Appellant”) appealed this decision by timely requesting a Zoning Manager Determination. However, the Appellant did not provide supporting documentation with the appeal, nor did Appellant provide any explanation as to why Appellant believed the use of the property conforms to the applicable zoning designation. The Zoning Manager upheld the decision made by Code Compliance in a Determination Letter dated December 11, 2024 (DET240084 - see **Attachment B**). Appellant filed a timely appeal of this Determination on December 20, 2024 (APL24017 - see **Attachment C**). This item is a response to the December 20th appeal.

Suprema Meats, Inc. has a long history of code compliance issues at 955 57th Street. The company received a Zoning Clearance in 1996 to operate as a General Food Sales Commercial Activity at its main location at 955 57th Street. The Planning Bureau’s most recent involvement indicates that the property has been operated predominantly as a General Retail Sales Commercial, General Wholesale Sales Commercial, and General Warehousing, Storage, and Distribution Industrial Activity. The property has had unpermitted improvements on site since 2007. Efforts to resolve those unpermitted improvements through a Compliance Plan requiring the owner to submit Planning applications to legalize the unpermitted construction was ultimately unsuccessful after both the owner and neighbors appealed the Planning Bureau’s entitlement approval and the Planning Commission overturned the approval of the entitlements. Suprema Meats, Inc. subsequently filed a petition for a writ of administrative mandate challenging the Planning Commission’s decision. The Alameda County Superior Court rejected that petition and the First Appellate District upheld the trial court’s decision. The City continues to assess fines against Suprema Meats, Inc. for those unpermitted improvements. While this background is important to contextualize the operations, this appeal is only regarding the activity occurring in the warehouse building at 952 57th Street and has no impact on the prior applications and appeals for the operations across the street at 955 57th St.

PROJECT DESCRIPTION

Inspections of the site by City staff determined that Suprema Meats has expanded its food distribution operation to 952 57th Street. At the inspections, staff witnessed the storage of forklifts, a storage container, storage boxes, and lockers at the subject site. This use is consistent with the Planning Code’s General Warehouse, Storage, and Distribution Industrial Activities designation. As noted further below, Appellant did not submit any documentation with its appeal of the Code Compliance NOV, and thus any claims that the property is not being used as a Warehouse, Storage, and Distribution Industrial Activity has been waived.

PROPERTY AND NEIGHBORHOOD DESCRIPTION

The 5,634 square-foot site at 952 57th Street is flat and contains a one-story industrial building with cargo doors facing 57th and Lowell Streets. The building covers all but the front 17 feet of the lot.

Lowell Street is a light industrial and commercial corridor between approximately 53rd and 63rd Streets. A

similar warehouse is located across Lowell Street. The neighborhood behind Lowell Street to the west and east is generally residential, with one- to two-story single-family homes and duplexes.

GENERAL PLAN ANALYSIS

The Land Use and Transportation Element (LUTE) of the General Plan designates the property as being in the “Housing and Business Mix” land use classification. . According to the LUTE, the intent of the Housing and Business Mix (HBX) classification is: “Respect for environmental quality, coupled with opportunities for additional housing and neighborhood-friendly businesses is desired, as well as the transition from industry that generates impacts detrimental for residences.” The desired character of the HBX classification states: “Future business development within this classification should be compatible with housing, and development should recognize the mixed business nature of the area. Development of site-specific buffers are essential as are specific conditions under which business and housing will co-exist.”

The Determination being appealed (DET240084) is based on the appropriate Zoning classification of the activity at 952 57th Street as a “Warehouse, Storage, and Distribution Industrial Activity,” which the applicant has not challenged. As described in the Zoning Analysis section, below, this activity requires a Conditional Use Permit (CUP) in the HBX-1 Zone. The requirement for a CUP is consistent with the following policy in the LUTE:

- **Policy N1.6 Reviewing Potential Nuisance Activities.** The City should closely review any proposed new commercial activities that have the potential to create public nuisance or crime problems, and should monitor those that are existing. These may include isolated commercial or industrial establishments located within residential areas, alcoholic beverage sales activities (excluding restaurants), adult entertainment, or other entertainment activities.

ZONING ANALYSIS

The project is in the Housing and Business Mix – 1 (HBX-1) Zone. According to Section 17.65.010 of the Planning Code, the HBX-1 Commercial Zone is intended to provide development standards that provide for the compatible coexistence of industrial and heavy commercial activities and medium density residential development. This zone recognizes the equal importance of housing and business.

In the NOV dated May 15, 2024, and the Determination Letter dated December 11, 2024, Planning and Building Department staff classified the project as a “Warehousing, Storage, and Distribution Industrial Activity”. Section 17.10.583 of the Planning Code states that Warehousing, Storage, and Distribution Industrial Activities include five sub-classifications as described below:

- 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.

The subject activity falls into subclassification A., which requires the granting of a CUP, according to Table 17.65.01 of the Planning Code. The activity has not received a CUP, and, therefore, does not conform to the requirements of the HBX-1 Zone.

ENVIRONMENTAL DETERMINATION

The Determination being appealed (DET240084) is exempt from environmental review Per Section 15321 of the State CEQA Guidelines: Enforcement Action by Regulatory Agencies.

KEY ISSUES AND IMPACTS

Appellant's Argument

The Appellant states that the Determination was "issued in error and was an abuse of discretion" for the following reasons (see **Attachment C**):

Appellant's use of the property is proper as a continuing nonconforming use under 17.114.040. The property was previously zoned for warehousing activity. This activity continued regularly within a year of the purchase of the property by Appellant. Despite the Determination's claim none was offered, appellant explained and offered a declaration by the previous owner. Instead, the Planner required a previous Zoning Clearance, which did not exist in the City's database.

Subsection (A) of the above-referenced Planning Code Section 17.114.040 states:

Right to Continue. A nonconforming use which is in existence on the effective date of the zoning regulations or of any subsequent rezoning or other amendment thereto which makes such use nonconforming, and which existed lawfully under the previous zoning controls, or which is subsequently developed or changed pursuant to Section 17.114.030, may thereafter be continued and maintained indefinitely, and the rights to such use shall run with the land, except as otherwise specified in the nonconforming use regulations. However, no substitution, extension, or other change in activities and no alteration or other change in facilities is permitted except as otherwise provided in Section 17.114.030 and except as specifically provided hereinafter.

Section 17.114.040 of the Planning Code does not provide a right to continue the subject activity at 952 57th Street. On October 3, 2023, the City Council passed an ordinance requiring a CUP for General Warehousing, Storage, and Distribution Industrial Activities in the HBX-1 Zone, effective October 30, 2023. Prior to the effective date of the ordinance, the activity was permitted, by right, on lots less than 10,000 square feet such as the subject site (952 57th Street is 5,634 square feet). Upon the effective date of

the ordinance, any existing Warehousing, Storage, and Distribution Activities in the HBX-1 Zone became nonconforming uses. Section 17.114.040(A) provides the right to continue nonconforming uses under certain described circumstances. However, the applicant provided no evidence that a warehousing activity existed prior to the effective date of the ordinance establishing the CUP requirement (October 30, 2023).

Staff requested that the applicant submit evidence of the issuance a Zoning Clearance as evidence that the activity existed prior to the CUP requirement, but none was provided to staff. Staff made this request because a Business Tax Certificate is required whenever a business starts an activity at a new site¹, and a Zoning Clearance is required to issue a Business Tax Certificate². The applicant provided no such documentation or any other evidence that the activity began prior to October 30, 2023, and City records do not indicate the issuance of a Zoning Clearance or Business Tax Certificate at 952 57th Street for operating a warehousing operation. The Zoning Clearance is required to ensure that an operation only receives a business license for an activity that is permitted at a site.

The only supporting documentation submitted by Appellant, an Alameda County Assessor printout and an Oakland Parcel Information printout, was included not with their appeal of the NOV but with their appeal of the Zoning Determination. (See **Attachment C**.) Neither of these printouts are germane to whether a prior warehouse activity existed at the site as of October 30, 2023. The Alameda County Assessor's Office specifically cautions: "The Assessor's Office does NOT recommend other agencies (Cities, School, Districts, Special Districts, etc.) use these Use Codes for any other purpose and is not responsible for any inaccurate determinations on their part when using these Use Codes."³ The City of Oakland Parcel Information printout simply replicates the Use Code information from the Alameda County Assessor's Office webpage, and similarly includes a disclosure that the information is for reference purposes only. Neither reflect any documentation or determination conducted by the City.

Section 17.114.050 of the Planning Code states that an activity can only resume a legal, nonconforming activity if the prior operation has ceased operation for less than a year. A written declaration by the previous owner is insufficient evidence to establish that the warehouse legally operated within one year of Suprema Meats commencing operation at the site. Regardless, this documentation has not been submitted by the appellant.

CONCLUSION

Staff recommends that the Planning Commission deny the appeal of the December 11, 2024, Determination (DET240084), which states the subject warehousing activity for Suprema Meats requires a Conditional Use Permit to operate at 952 57th Street. The appellant has not provided the required documentation demonstrating either that: 1) the warehousing activity began prior to the effective date of the ordinance making General Warehousing, Storage, and Distribution a conditionally permitted activity in the HBX – 1 Zone; or 2) the activity qualifies for a right to continue at the site.

¹ OMC Section 5.04.020 states that: "A separate (business tax) certificate must be obtained for each and every business activity at each and every branch establishment or separate place of business at which business activity takes places, subject to the requirements to obtain a "master certificate" as defined in Section 5.04.320."

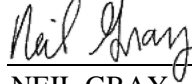
² OMC Section 5.02.130 states that "Prior to the filing of any application for a permit as in this Chapter provided for, the Planning Director, or his or her designee, shall examine the same for the purpose of ascertaining whether the business, establishment or place for which such permit is desired is proposed to be located within a zone in which the same is permitted pursuant to the provisions of this code and the ordinances and laws of the city. If such location is not within such approved zone, the City Administrator, or his or her designee, shall refuse to accept such application."

³ <https://propinfo.acgov.org/UseCodeList>.

RECOMMENDATIONS:

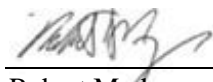
Deny the appeal of the Determination and Affirm staff's environmental determination.

Prepared by:



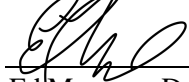
NEIL GRAY
Planner IV

Reviewed by:



Robert Merkamp
Zoning Manager
Bureau of Planning

Approved for forwarding to the Planning Commission:



Ed Manasse, Deputy Director
Bureau of Planning

ATTACHMENTS:

- A. Notice of Violation
- B. December 11, 2024, Determination
- C. December 20, 2024, Appeal