



# AGENDA REPORT

## Community Development

<b>DATE:</b>	March 4, 2025
<b>TO:</b>	Mayor Martinez and Members of the City Council
<b>FROM:</b>	Lina Velasco, Director of Community Development Avery Stark, Acting Planning Manager James Atencio, Senior Assistant City Attorney Pam Lee, Aleshire & Wynder, LLP
<b>Subject:</b>	California Portsmouth Square Association (CPSA) Emergency Housing (PLN23-360) Public Hearing to Consider an Appeal of the Denial of Conditional Use Permit.
<b>FINANCIAL IMPACT:</b>	None.
<b>PREVIOUS COUNCIL ACTION:</b>	None.
<b>STATEMENT OF THE ISSUE:</b>	An appeal was submitted by Lonnie Holmes, of the Planning Commission's decision to deny a Conditional Use Permit (PLN23-360) to convert an existing office building into an emergency shelter for up to 25 persons at 207 37 <sup>th</sup> St (APN: 516-210-020)
<b>RECOMMENDED ACTION:</b>	HOLD a Public Hearing and ADOPT a Resolution denying the appeal submitted by Lonnie Holmes of the Planning Commission's denial of a conditional use permit to convert an existing office building into an emergency shelter at 207 37 <sup>th</sup> Street and Uphold the Planning Commission's decision denying Planning Application No. PLN23-360 – Community Development Department (Lina Velasco/ Avery Stark 510-620-6706).

### DISCUSSION:

This report addresses the appeal submitted by the appellant following the Planning Commission’s decision to deny a Conditional Use Permit (PLN23-360) on December 19,2024 for the proposed project at 207 37th Street (APN: 516-210-020). It aims to provide the City Council with a comprehensive overview of the background, the basis for the Planning Commission’s denial, and the arguments presented in the appeal.

### Background

The subject site is located at 207 37<sup>th</sup> Street (“Site” or “Property”), at the southeast intersection of 37<sup>th</sup> Street and Bissel Ave, in the Pullman neighborhood. 37<sup>th</sup> Street is a two-lane local street that intersects with Macdonald Avenue one block north of the subject site and has access to I-80 in about 1 mile. The Site is approximately 7,500 square feet and zoned T5MS-O (T5 Main Street – Open) within the Richmond Livable Corridors Form-Based Code. Adjacent properties along Bissel Avenue are zoned T5MS-O with residential uses developed with single-family units. Adjacent and nearby properties bordering Macdonald Avenue are zoned T5MS (T5 Main Street) with primarily commercial uses.



The Site is developed with an existing 5,045-square-foot office building that is currently vacant and has been vacant for several years, with the exception of May to August of 2023, when the structure was used as an emergency shelter, as described below. The main entrance, located at the front of the structure on 37<sup>th</sup> Street, has a metal gate and rolling metal security fence. The rear of the building has wooden screens covering existing windows and a portion of the rear wall and has a metal security door at the rear entrance. The parking area at the rear of the building includes minimal landscaping and three parking spaces, which do not meet the required stall length nor include any accessible spaces.

*Previous Shelter Use:* Starting in May of 2023, the nonprofit California Portsmouth Square Association (CPSA) assisted the City of Richmond and the nonprofits Ways to Love and the Consortium of the East Bay by providing and overseeing an emergency shelter on the premises. The shelter housed up to 15 people at one time, and each resident had an individual lease agreement with CPSA. The residents primarily consisted of women, some of whom had children. No land use permits were needed at the time since the City was involved with the three-way arrangement to address an emergency situation at the Castro encampment. Subsequently, in early August 2023, the Fire Department advised Community Development staff that the use could not continue because the structure had code deficiencies that did not allow for a housing-type use. The City discontinued its involvement with CPSA and the occupants moved out in August of 2023, at which point the use was fully discontinued.

Some time thereafter, the applicant and architect, Gregory VanMechelen, requested a Conditional Use Permit (CUP) to allow the conversion of the office building into an emergency shelter for up to 25 persons (“Project”).

### **Project Proposal**

The Project consists of converting the existing office building into an emergency shelter with up to 25 beds. The Project would provide housing for no longer than six months; individual residents would individually obtain supportive services based on their case management programs, such as therapist, vocational, and occupational and related services. The Project would include seven rooms (six dorm-style and one private), a women’s restroom, a men’s restroom, one private restroom, an entertainment room, a dining hall, an office area for management staff, and a rear courtyard area.

The primary entrance would be on 37<sup>th</sup> Street, and an accessible entrance would be provided on Bissell Avenue, through the rear courtyard. Again, residency would be limited to six months or less.

Exterior improvements to the Site included adding egress windows at the rear of the building to comply with building codes for the new occupancy type, a 30-square-foot addition to accommodate a rear vestibule and wheelchair access ramp, and removal of existing non-compliant parking stripes. The newly striped parking area would include three parking spaces (including two tandem spaces and one accessible space), five short-term bicycle parking spaces, a new wheelchair ramp at the rear of the building, a new 340-square-foot courtyard area at the rear of the building, a refuse area with

screening wall in the center of the parking area, and a six-foot-tall fence (including a metal person gate and rolling vehicle access gate) surrounding the parking area for security purposes. Per the applicant's description, CPSA would not directly hire service providers for the shelter. Instead, individual residents would be placed at the shelter with existing management plans in place. CPSA would solely provide staffing management/security personnel responsible for intake, supervising residents, and any other daily requirements of shelter operations.

### **State Laws on Emergency Shelters**

In accordance with California Government Code §65583(a)(4)(B), emergency shelters may only be subject to objective standards that already exist in the Richmond Municipal Code ("RMC") or other regulations, and conditions of approval that are imposed are permitted to address only the following issues:

- Maximum number of beds or persons permitted to be served nightly by the facility;
- Sufficient parking to accommodate all staff working in the emergency shelter, provided that the standards do not require more parking for emergency shelters than other residential or commercial uses within the same zone;
- Size and location of exterior and interior onsite waiting and client intake areas;
- Provision of onsite management;
- Proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart;
- Length of stay;
- Lighting; and
- Security during hours that the emergency shelter is in operation.

According to the State statute referenced above, the City may prescribe specific operational requirements to the extent deemed sufficient to address public health and safety concerns and would not render the project financially infeasible. For example:

- Management and security requirements may include the number of required staff and training.
- On-site management requirements may address sanitation, air quality, graffiti abatement, and exterior improvements, as well as outdoor congregation areas.
- Outdoor congregation areas could be based on California Fire Code requirements of 15 square feet per person in a furnished assembly area (i.e., with tables and chairs).
- Parking may be based on staffing requirements.

State law does not allow the City to reduce occupancy beyond what is identified in the current regulations; in this case, up to 25 beds are allowed in accordance with RMC Section 15.04.610.180.

Neither state law nor local municipal standards require a specific ratio of management staff to residents for emergency shelters. City staff recommended that the Project be required to operate with three management staff personnel awake and on duty during daytime hours, and two management staff personnel awake and on duty during

nighttime hours, as is required for residential care facilities in California. City staff also recommended that the management team include two trained, uniformed security officers at all times, as informed by the Richmond Police Department's Crime Prevention Through Environmental Design (CPTED) report. City staff recommended requiring one of the required management staff personnel to be designated as a Community Liaison and requiring one additional staff personnel during nighttime hours to be on-call within 30 minutes of the facility in case of an emergency.

Thus, in terms of parking requirements under the RMC, there needs to be 33 percent less than the number of employees working at the Project at a given time. In this case, the day time hours have up to five staff members (three management staff personnel plus two security officers), and therefore at least three and one-third parking spaces, rounded up to four parking spaces are required for this Project.

### **Planning Commission Review and Denial:**

The Planning Commission reviewed the application during several hearings of the Planning Commission, beginning on May 2, 2024, continuing to June 6, 2024, then July 18, 2024, and finally on November 7, 2024. A decision was rendered at a December 19, 2024 meeting. After extensive discussion and continued public hearings, the Commission denied the application based on several factors, including:

- Potential impacts on surrounding land uses
- Inadequate mitigation measures to address community concerns
- Non-compliance with certain applicable zoning standards and development guidelines.

Specifically, the Planning Commission was required to make the following five findings, as required under RMC Section 15.04.806.040:

1. The location of the proposed conditional use is in accordance with the General Plan and any applicable specific plan and the land use designations for the project site;
2. The location, size, design, and operating characteristics of the proposed use will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood;
3. The proposed use will not create any nuisances arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding ambient conditions;
4. The proposed use complies with all applicable provisions of Article XV; and
5. The site of the proposed use is adequately served by highways, streets, water, sewer, and other public facilities and services.

Although the Planning Commission found that criteria #1 and #5 were satisfied, criteria #2, #3, and #4 were not, for the following reasons:

*Parking:* Government Code Section 65583(a)(4)(B)(ii) allows the City to require sufficient parking to accommodate all staff working at an emergency shelter, provided that the standards do not require more parking there than other residential or

commercial uses in the same zone. RMC Section 15.04.607.060 requires a minimum of 33 percent less than the estimated demand for a use (or in this case, 33% less than the number of employees). The Project proposes two (2) parking spaces on-site. The applicant stated that there would be three employees, so three parking spaces would be required, and 33 percent less than that is two parking spaces. However, this parking and employee count does not account for the two additional security personnel that are required to be on-site at all times (one patrolling the exterior of the building and one patrolling the interior of the building). Therefore, there will be five employees/personnel working at the Project Site, and the required number of parking spaces is five spaces, which means more than three spaces will be required (taking into consideration a reduction of 33% less than the number of employees on-site). At most, the Site can accommodate three on-site parking spaces. Accordingly, the parking requirement was not satisfied.

*Security:* The Project is located adjacent to a residential neighborhood and in close proximity to schools where many minors/children walk past and in close proximity to the Project Site. As indicated by the Richmond Police Department (RPD)'s review of the Project, the RPD conducted a Crime Prevention Through Environmental Design (CPTED) assessment at the Project Site. The CPTED assessment included a review of the number of calls for service at the Project Site per year, broken down by month from 2019 to 2024. The full report is attached as Attachment 4 to the Agenda Report. Additional data from RPD was taken to compare the calls per year by month in 2023, when the Project was operating illegally without a permit in 2023, as compared to the same time period in other years between 2019 to 2024. The comparison is attached as Exhibit C to the November 7, 2024 Staff Report linked as Attachment 9. The data from the CPTED shows that during the year that the Project was in operation illegally in 2023, the calls for service were the highest, compared to the previous years and in 2024. Additionally, the monthly breakdown indicates that during the months the Project was in operation illegally in 2023, the calls for service were higher during May through August of 2023, compared to the same months during previous years and in 2024. This demonstrates an indisputable uptick in calls for service and potential criminal activity based on the Project operation, which necessitates a need for increased security measures to address adverse safety concerns at the site and in the surrounding neighborhood.

The conditions of approval for the Project, as proposed by the City, to address security and safety concerns include: minimum of three daytime staff and two nighttime staff, not including security personnel, employee training on preventive safety measures, graffiti removal within 24 hours of notice, operation of seven security cameras and monitoring, posted signage regarding loitering and prohibited activities on-site, and two onsite uniformed security personnel at all times. The applicant, however, has indicated that the conditions of approval with respect to the security measures would need to be modified or eliminated, such that the security personnel should not and could not contact persons on the premises or in vehicles without probable cause.

*Public Health/Safety:* The applicant also was not willing to comply with the litter management requirements to ensure that the site and adjacent area are kept free of

litter at all times. There had been problems with litter and the public health and safety of the Project Site due to litter, illegal dumping, and potential vermin issues during the time the Project was operating illegally without a permit. The proposed conditions address those public health and safety concerns, but the applicant does not appear to seek compliance with those conditions.

Overall, the operating characteristics of the Project, including capacity, security protocols, and on-site management, are proposed to be imposed to address adverse safety impacts and security issues, but the applicant has requested modification or elimination of conditions that would adequately address these concerns, such that the conditions, if adopted, would exacerbate local safety and security challenges rather than alleviate them.

### **Appeal Action**

Pursuant to RMC Section 15.04.803.140.E, the City Council determines whether an underlying decision is supported by substantial evidence and/or constitutes an abuse of discretion. The same standards and evaluation criteria, including the findings required, apply as they were for the original application. The appellate body's review is limited to the issue(s) raised in the petition for the appeal.

The Richmond Municipal Code allows for appeal of Planning Commission decisions per RMC Section 15.04.803.140. A public hearing is required for an appeal, and new testimony and other new evidence can be provided and considered by the City Council. The City Council is not bound by the Planning Commission's decision, and is not required to decide the matter based on the conclusions or assumptions made by the Planning Commission. Instead, the City Council has the authority to affirm, modify, or reverse the original decision. However, if the City Council decides to modify or reverse the approval, the City Council must state specific reasons for doing so and provide a decision within 30 days of the close of the public hearing. The City Council may also choose to refer the matter back to the Planning Commission for further consideration and a decision, but only if significant new evidence is presented in conjunction with the appeal, which may include substantial changes to the original proposal.

In this case, Lonnie Homes appealed the Planning Commission's decision on January 2, 2025. The appellant argues its position in Attachment 2 of this agenda report.

The appeal specifically requests that the City Council:

- Reconsider the evidence and findings presented by the Planning Commission
- Evaluate additional documentation submitted with the appeal
- Determine whether a remand for further review or a reversal of the decision is warranted

The appellant cites inconsistent police data, regulatory overreach on staffing hiring requirements, cleaning of public streets, and addressing loitering strangers, among others, that the appellant states it does not have control over. The appellant also states

that it did not disagree or refuse the conditions proposed by the Planning Department of the City.

**Review of the Planning Commission’s Decision:**

An analysis of the Planning Commission’s findings indicates that the decision was primarily driven by concerns related to the number of parking spaces being inadequate for the proposed number of staff for the emergency shelter, and therefore the appellant’s Project cannot meet the objective standards of the RMC with respect to parking, which is a topic that the City has authority over, pursuant to Government Code Section 65583(a)(4)(B). Other issues related to security and public health and safety were also considered. Staff notes that these concerns are in line with established city policies.

City staff recommends that the City Council adopt the resolution in Attachment 1 denying the appeal and uphold the finding consistent with those of the Planning Commission’s denial of the conditional use permit. This would maintain consistency with the City’s planning policies and protect community interests.

**DOCUMENTS ATTACHED:**

- Attachment 1 - Resolution Denying the Appeal
- Attachment 2 - Appeal filed by Lonnie Homes
- Attachment 3 - Project Plans
- Attachment 4 - CPTED Report
- Attachment 5 - Planning Commission Agenda Report dated June 6, 2024
- Attachment 6 - Planning Commission Approved Meeting Minutes June 6, 2024
- Attachment 7 - Planning Commission Agenda Report dated [July 18, 2024](#)
- Attachment 8 - Planning Commission Approved Meeting Minutes July 18, 2024
- Attachment 9 - Planning Commission Agenda Report dated [November 7, 2024](#)
- Attachment 10 - Planning Commission Approved Meeting Minutes November 7, 2024
- Attachment 11 - Planning Commission Agenda Report dated [December 19, 2024](#)
- Attachment 12 – DRAFT Planning Commission Meeting Minutes dated December 19, 2024
- Attachment 13 – CPSA Response to December 19, 2024 Public Comment