

Appeal Request

SPARKS LAW FIRM
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REFER TO FILE NUMBER

804.01

August 14, 2020

VIA HAND DELIVERY AND FEDERAL EXPRESS

City Council
c/o City Clerk
City of Bakersfield
1600 Truxtun Avenue
Bakersfield, CA 93301

20 AUG 13 PM 4:06
BAKERSFIELD CITY CLERK

Re: **Municipal Code Section 17.64.090 Appeal of Approval of Conditional Use Permit No. 20-0170 (Project Roomkey-Bakersfield CA)**

Dear Members of the City Council:

Our office serves as legal counsel to Heart Hospital of BK, LLC dba Bakersfield Heart Hospital ("Hospital"). Pursuant to Bakersfield Municipal Code Section 17.64.090, this shall constitute a written appeal from the August 11, 2020 Board of Zoning Adjustment ("BZA") vote to conditionally approve Project Roomkey for a period not to exceed five (5) months.

I. Exhibits in Support of Appeal

Attached hereto as Exhibit "A" is a copy of the August 10, 2020 Notice of Opposition to CUP for "Project Roomkey" which was timely submitted by my office via e-mail to the City of Bakersfield Planning Commission in accordance with the instructions we were provided in the Notice of Public Hearing.

Attached hereto as Exhibit "B" is a copy of the August 12, 2020 letter we received from Paul Johnson, Planning Director, informing my office that "due to technical issues with the City's server, the e-mail was not received by staff until August 12, 2020" and confirming that "the comments were not included with information presented to the Board of Zoning Adjustment ('BZA') as part of their consideration of the conditional use permit."

Attached hereto as Exhibit "C" is a copy of the Notice of Public Hearing which, among other things, directed that any written comments be submitted by e-mail to "devpln@bakersfieldcity.us" prior to the August 11, 2020 hearing.

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II. Municipal Code 17.64.090 Appeal

A. Appellant's Relationship to the Subject Property

The Hospital owns and operates an acute care hospital on the real property across the street from the Rosedale Inn. The Hospital is negatively impacted by the Conditional Use Permit and opposes its issuance for the reasons stated in its August 10, 2020 letter which the BZA failed to consider when voting to conditionally approve the project.

B. The Decision or Action Appealed

The Hospital hereby appeals the August 11, 2020 BZA decision to conditionally approve Project Roomkey (Conditional Use permit No. 20-0170) for a period not to exceed 5 months. (See, Ex. B hereto.)

C. The Reasons Why Appellant Believes the Decision Should Not Be Upheld

As noted above, the BZA failed to take into consideration the August 10, 2020 Notice of Opposition which was timely presented to it via e-mail in advance of the August 12, 2020 BZA meeting. Although the BZA has admitted that the August 10, 2020 Notice of Opposition was timely, the BZA failed to consider it due to alleged "technical issues with the City's server." As those issues were not the fault of the Hospital, its opposition should have been considered by the BZA and the Hospital respectfully urges the City Council to deny the requested conditional use permit for the reasons stated in its Notice of Opposition which are reiterated below.

It is our understanding that the project contemplates the provision of temporary housing of persons experiencing homelessness who are deemed high-risk of contracting COVID-19 to shelter in place at the Rosedale Inn which is located immediately behind the Hospital. As the City Council is likely aware, the Rosedale Inn is presently used as a drop off location for parolees and is frequented by persons abusing drugs and engaging in other illicit and illegal activity. The Hospital is consequently concerned that permitting the proposed housing of homeless, who are in many cases likely experiencing mental issues and/or issues with drug addiction themselves, would jeopardize the health and well-being of those participating in the program and would significantly add to the serious problems which already emanate from the Rosedale Inn, which includes, but is not limited to, illicit drug use, vagrancy, theft and vandalism of Hospital property, theft and vandalism of cars parked on Hospital property, and an increased exposure of patients and staff of the Hospital to COVID-19 and other adverse consequences.

It was made clear to the Hospital and others who attended the pre-hearing Zoom meeting the week prior to the August 11, 2020 hearing that insufficient resources are available to the project

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to protect the Hospital, its employees, patients and guests. Specifically, there has no been allocation of funds to provide for 24-hour security at the Rosedale Inn or other reasonable measures to ensure that those who are sheltered there as part of the project remain on the premises of the Rosedale Inn and are prevented from entering the Hospital's property or the property of adjacent businesses. We are informed and believe that there will only be "monitors" present on a part-time basis who will have no authority whatsoever to detain or otherwise restrain those who are supposed to remain solely at the Rosedale Inn. Simply put, the lack of security and other safeguards places those who work at or otherwise receive care and treatment from the Hospital at unnecessary risk and will only serve to exacerbate what are already significant security problems caused by others presently residing at the Rosedale Inn.

The Hospital is also concerned that those who are going to be housed at the Rosedale Inn as part of the project will tax the already limited resources of the Hospital by presenting to the Emergency Department with non-emergency conditions and/or that they will expose the staff, patients and other guests of the Hospital to the spread of COVID-19 due to their failure to maintain social distancing and the use of personal protective equipment. The project admittedly has inadequate staffing and contingency plans to protect against the dangers presented by the participants in the proposed program, and insufficient resources have been dedicated by the program to ensure the protection of the patients and staff of the Hospital and those patronizing surrounding businesses.

Simply put, although the Hospital applauds the efforts of the Bakersfield-Kern Regional Homeless Collaborative and its goal of assisting an at-risk population, the simple truth is that the Rosedale Inn is not at all a suitable environment for those participating in the proposed program. Rather, we firmly believe that the health and well-being of the participants in the project would be jeopardized rather than assisted by sheltering them at the Rosedale Inn. In other words, the granting of the conditional use permit will be materially detrimental to the public welfare and unreasonably increases the danger to the Hospital, its staff and the patients it serves. As the proposed use is not essential and contrary to the public welfare, the Conditional Use Permit should be denied.

For all of the foregoing reasons, the Hospital opposes the Conditional Use Permit for "Project Roomkey" and urges the Bakersfield City Council to deny the Conditional Use Permit which was erroneously approved by the BZA.

III. Request for Hearing

The Hospital respectfully requests that the City Clerk set a date for hearing the appeal and that notice be provided as set forth in Section 17.64.050 of the Bakersfield Municipal Code.

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Please do not hesitate to contact our office should you have any questions or require any additional information concerning this appeal. Thank you for your time and consideration.

Very truly yours,

SPARKS LAW FIRM
A Professional Corporation



JERRY R. SPARKS

JRS:s
Attachments
cc: Bakersfield Heart Hospital

EXHIBIT “A”

Jerry Sparks

From: Jerry Sparks
Sent: Monday, August 10, 2020 4:06 PM
To: devpln@bakersfieldcity.us
Subject: Opposition to CUP for "Project Roomkey"
Attachments: 8-10-2020 Letter re Opp to CUP.pdf

Importance: High

Dear Planning Director Johnson:

Attached please find a letter on behalf of Heart Hospital of BK, LLC in opposition to the application for temporary CUP for "Project Roomkey."

Please do not hesitate to contact me should you have any questions. Thank you for your consideration.

Very truly yours,

Jerry R. Sparks

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A Professional Corporation
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NOTE:

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REFER TO FILE NUMBER

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August 10, 2020

VIA E-MAIL

devpln@bakersfieldcity.us

Paul Johnson
Planning Director
City of Bakersfield - Planning Division
1715 Chester Avenue
Bakersfield, CA 93308

Re: **Notice of Opposition to CUP for "Project Roomkey"**

Dear Planning Director Johnson:

Our office serves as legal counsel to Heart Hospital of BK, LLC dba Bakersfield Heart Hospital ("Hospital"). We are writing to you on behalf of the Hospital to go on record with the Hospital's opposition to the Bakersfield-Kern Regional Homeless Collaborative temporary conditional use permit for "Project Roomkey" (17.64.020.B) at the Rosedale Inn.

It is our understanding that the project contemplates the provision of temporary housing of persons experiencing homelessness who are deemed high-risk of contracting COVID-19 to shelter in place at the Rosedale Inn which is located immediately behind the Hospital. As you may be aware, the Rosedale Inn is presently used as a drop off location for parolees and is frequented by persons abusing drugs and engaging in other illicit and illegal activity. The Hospital is consequently concerned that permitting the proposed housing of homeless, who are in many cases likely experiencing mental issues and/or issues with drug addiction themselves, would jeopardize the health and well-being of those participating in the program and would significantly add to the problems which already emanate from the Rosedale Inn, which includes, but is not limited to, illicit drug use, vagrancy, theft and vandalism of Hospital property, theft and vandalism of cars parked on Hospital property, and an increased exposure of patients and staff of the Hospital to COVID-19 and other adverse consequences.

It was made clear to the Hospital and others who attended the pre-hearing Zoom meeting last week that insufficient resources are available to the project to protect the Hospital, its employees, patients and guests. Specifically, there has been no allocation of funds to provide for 24-hour security at the Rosedale Inn or other reasonable measures to ensure that those who are sheltered there as part of the project remain on the premises of the Rosedale Inn and are prevented from entering the Hospital's property or the property of adjacent businesses. We are informed and

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Paul Johnson
Planning Director
August 10, 2020
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believe that there will only be "monitors" present on a part-time basis who will have no authority whatsoever to detain or otherwise restrain those who are supposed to remain solely at the Rosedale Inn. Simply put, the lack of security and other safeguards places those who work at or otherwise receive care and treatment from the Hospital at unnecessary risk and will only serve to exacerbate what are already significant security problems caused by others presently residing at the Rosedale Inn.

The Hospital is also concerned that those who are going to be housed at the Rosedale Inn as part of the project will tax the already limited resources of the Hospital by presenting to the Emergency Department with non-emergency conditions and/or that they will expose the staff, patients and other guests of the Hospital to the spread of COVID-19 due to their failure to maintain social distancing and the use of personal protective equipment. The project admittedly has inadequate staffing and contingency plans to protect against the dangers presented by the participants in the proposed program, and insufficient resources have been dedicated by the program to ensure the protection of the patients and staff of the Hospital and those patronizing surrounding businesses.

Simply put, although the Hospital applauds the efforts of the Bakersfield-Kern Regional Homeless Collaborative and its goal of assisting an at-risk population, the simple truth is that the Rosedale Inn is not at all a suitable environment for those participating in the proposed program. Rather, we firmly believe that the health and well-being of the participants in the project would be jeopardized rather than assisted by sheltering them at the Rosedale Inn.

For all of the foregoing reasons, the Hospital opposes the proposed temporary conditional use permit for "Project Roomkey" and urges the Planning Division to deny the proposed conditional use permit. Please do not hesitate to contact our office should you have any questions or wish to further discuss this matter.

Very truly yours,

SPARKS LAW FIRM
A Professional Corporation


JERRY R. SPARKS

JRS:s
cc: Bakersfield Heart Hospital

EXHIBIT “B”



BAKERSFIELD

THE SOUND OF *Something Better*

August 12, 2020

Sparks Law Firm
Attn: Jerry Sparks
650 Town Center Drive, Suite 1200
Costa Mesa, California 92626

RE: Project Roomkey - Bakersfield, CA - Conditional Use Permit No. 20-0170

Dear Mr. Sparks,

I am in receipt of your comment letter dated August 10, 2020 on behalf of your client, Heart Hospital of BK, LLC dba Bakersfield Heart Hospital. The letter was sent via email to DEVPln@BakersfieldCity.us however, due to technical issues with the City's server, the email was not received by staff until August 12, 2020. As such, the comments were not included with information presented to the Board of Zoning Adjustment ("BZA") as part of their consideration of the conditional use permit.

At the August 11, 2020 BZA meeting, City staff presented the project and public testimony was provided in support of the project. No one spoke in opposition. Following deliberations, the BZA unanimously voted to conditionally approve the project for a period not to exceed 5 months. Supporting documents are available here: <https://bakersfield.novusagenda.com/AgendaPublic/?MeetingType=10>

Pursuant to Bakersfield Municipal Code Section 17.64.090, the action of the BZA shall be final unless, within 10 calendar days after the decision, the applicant or any other person shall appeal therefrom in writing to the City Council by filing such appeal with the City Clerk. A decision of the City Council shall be final and conclusive. The appeal shall include the appellants interest in or relationship to the subject property, the decision or action appealed, and specific reasons why the appellant believes the decision or action from which the appeal is taken should not be upheld. Upon receipt, the City Clerk shall set the date for hearing the appeal. The City Council may grant, grant in modified form, or deny the requested CUP. The decision of the council shall be final and conclusive.

Your comment letter will be included in the case file for this project, along with a copy of this letter. Should you have any questions or wish to further discuss this matter, please do not hesitate to contact me at 661-326-3681 or PJohnson@BakersfieldCity.us

Sincerely,

Paul Johnson
Planning Director

CC: City Attorney's Office

Development Services Department
1715 Chester Avenue, Bakersfield, CA 93301
Planning: 661-326-3733 Building: 661-326-3720
FAX Planning: 661-852-2136 Building: 661-325-0266

EXHIBIT “C”



BAKERSFIELD

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Development Services Department - Planning Division

NOTICE OF PUBLIC HEARING

The Board of Zoning Adjustment of the City of Bakersfield will hold a public hearing at 3:00 p.m., **Tuesday, August 11, 2020**, in City Council Chambers of City Hall South, 1501 Truxtun Avenue, Bakersfield, CA, to consider the following:

The Bakersfield-Kern Regional Homeless Collaborative is proposing a temporary conditional use permit for "Project Roomkey" (17.64.020.B). The project provides temporary housing of persons experiencing homelessness who are deemed high-risk of contracting COVID-19 to shelter-in-place at an existing motel (Rosedale Inn) in the C-2 (Regional Commercial Zone) district, located at 2604 Buck Owens Blvd. A finding that the project is exempt from the California Environmental Quality Act will also be considered. (File No. 20-0170; Ward 3)

All written comments must be received by the City of Bakersfield Development Services Department on or before the public hearing date/time indicated above (location: 1715 Chester Avenue, Bakersfield, CA; phone: 661-326-3733; email: devpln@bakersfieldcity.us). You may review and/or obtain copies of all public documents at the same location. If you challenge the action taken on a specific project in court, you may be limited to addressing only those issues raised at the public hearing or in written correspondence delivered to the City of Bakersfield.



If you have any questions, please contact Kassandra Gale at 661-326-3411 or kgale@bakersfieldcity.us.

Dated: June 28, 2020

Paul Johnson
Planning Director



