

OFFICE

REVISED

2007 JUL 17 11:15

OAKLAND CITY COUNCIL

RESOLUTION No. 80791 C.M.S.

INTRODUCED BY COUNCILMEMBER Mark P Ward

RESOLUTION DENYING THE APPEALS AND UPHOLDING THE PLANNING COMMISSION'S APPROVAL FOR CONSTRUCTION OF 44 DWELLING UNITS AT 4801 SHATTUCK AVENUE, OAKLAND (CASE FILE NUMBER CMDV06-425 & TPM-9235) WITH REVISED, ADDITIONAL CONDITIONS OF APPROVAL

WHEREAS, the project applicant, Bill Lambert of Shasta Pros, filed an application on August 14, 2006, to construct a 44 unit residential condominium building at 4801 Shattuck Avenue; and

WHEREAS, the Design Review Committee of the Planning Commission considered the design aspects of the Project at a duly noticed public meeting on January 24, 2007, and

WHEREAS, The project was duly noticed for the Planning Commission hearing of February 28, 2007, and continued to a later date; and

WHEREAS, the City Planning Commission took testimony and considered the project at its duly noticed public meeting of April 4, 2007. At the conclusion of the public hearing, the Commission deliberated the matter and voted (5-0-0) to approve the Project; and

WHEREAS, on April 13, 2007, the appellant, Bob Brokl representing STAND, filed an appeal of the Planning Commission decision to the City Council, and

WHEREAS, on April 16, 2007, Roy Alper on behalf of the property owner filed an appeal of the Conditions of Approval imposed along with the Planning Commission approval, and

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties and the public, the Appeal came before the City Council for a public hearing on July 17, 2007, and

WHEREAS, the Appellants, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on July 17, 2007,

Now, Therefore, Be It

RESOLVED That, the City Council, having heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellants have **not** shown, by reliance on evidence already contained in the record before the City Council that the Planning Commission's Decision of April 4, 2007 was made in error, that there was an abuse of discretion by the Planning Commission or that the Commission's decision was not supported by substantial evidence in the record based on the April 4, 2007 Staff Report to the City Planning Commission (attached as Exhibit "A") and the July 17, 2007 City Council Agenda Report (attached as Exhibit "B"), hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeals are denied, the Planning Commission's approval is upheld, subject to the findings contained in Exhibits "A" and "B", each of which is hereby separately and independently adopted by this Council in full, and be it

FURTHER RESOLVED: That, in support of the Planning Commission's decision to approve the Project, the City Council affirms and adopts (i) the April 4, 2007 Staff Report to the City Planning Commission (including without limitation the discussion, findings, conclusions and conditions of approval (each of which is hereby separately and independently adopted by this Council in full)), attached as Exhibit "A", and (ii) the July 17, 2007 City Council Agenda Report, attached hereto as Exhibit "B" (including without limitation the discussion, findings, and conclusions (each of which is hereby separately and independently adopted by this Council in full)); except where otherwise expressly stated in this Resolution, and be it

FURTHER RESOLVED That the revised, additional conditions of approval contained in Exhibit C, hereby incorporated by reference, are imposed on the Project; and be it

FURTHER RESOLVED That, the City Council finds and determines that this Resolution complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Exemption with the appropriate agencies, and be it

FURTHER RESOLVED. That, the record before this Council relating to this application and appeal includes, without limitation, the following:

- 1 the application, including all accompanying maps and papers,
2. all plans submitted by the Applicant and his representatives,
- 3 the notice of appeal and all accompanying statements and materials,
- 4 all final staff reports, final decision letters and other final documentation and information produced by or on behalf of the City, including without limitation and all

related/supporting final materials, and all final notices relating to the application and attendant hearings,

5 all oral and written evidence received by the City Planning Commission and City Council during the public hearings on the appeals, and all written evidence received by relevant City Staff before and during the public hearings on the application and appeal,

6 all matters of common knowledge and all official enactments and acts of the City, including, without limitation (a) the General Plan, (b) Oakland Municipal Code (c) Oakland Planning Code; (d) other applicable City policies and regulations, and, (e) all applicable state and federal laws, rules and regulations, and be it

FURTHER RESOLVED: That, the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland CA., and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA, and be it

FURTHER RESOLVED: That, the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

In Council, Oakland, California, JUL 17 2007, 2007

PASSED BY THE FOLLOWING VOTE:

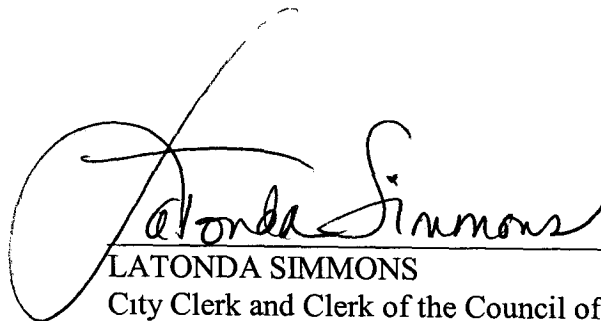
AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, ~~QUAN~~, KERNIGHAN, AND
PRESIDENT DE LA FUENTE - 7

NOES- 0

ABSENT- *Reid - 1*

ABSTENTION- 0

ATTEST



LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

Exhibit A

[April 4, 2007 Planning Commission Staff Report]

Exhibit B

[July 17, 2007 City Council Agenda Report]

Exhibit C

**[REVISED, ADDITIONAL CONDITIONS
IMPOSED BY CITY COUNCIL]**

Exhibit C – Revised, Additional Conditions

1. Reduce the height of the entire building by two feet (not to exceed 55'0") from the height approved by the Planning Commission, except for the corner element, as shown on the attached section drawing titled "4801 Shattuck - Revised Section Compromise," prepared by Kahn Design Associates (KDA) and dated July 13, 2007

2. On the westernmost 50 feet of the Project site, the fourth floor shall be stepped back from 48th Street by an additional 20 feet, as shown on the attached section drawing titled "4801 Shattuck - Revised Section Compromise," prepared by Kahn Design Associates (KDA) and dated July 13, 2007

3. Prior to completion of ground floor building shell

The Applicant shall modify the design of the ground floor space to incorporate a main entry door directly on Shattuck and transparent retail design (glass windows, places for signs, etc.). The Applicant shall also submit a business plan and leasing strategy for the marketing of the ground floor commercial space to the Planning Director for review and approval. The approved plan shall be implemented for one year, beginning no earlier than the completion of the ground floor building shell. It shall include at a minimum, a formal executed contract with a qualified commercial broker, plans for advertising, signs, etc. If after the one year period no retail tenant is found and the Applicant chooses to use those spaces for live/work activity, the applicant shall submit documentation to the Planning Director demonstrating compliance with this condition of approval. If the Applicant has complied with the condition, then live/work activity is authorized, pursuant to existing regulations.

4. In addition to the previously imposed Planning Commission condition no 30, Relocation of Potentially Designated Historic Structures, the Applicant will take the following steps to relocate the building located at 558 48th Street:

- a. Using commercially available compilations of county records, Applicant will identify all vacant parcels larger than 3,500 square feet located in the area surrounded by Interstate 580 on the south, State Highway 24 on the west and north, and a line following Broadway, Pleasant Valley and Piedmont Avenue on the east. Applicant shall provide the list of identified properties to the City and the City may, within 30 days of delivery of the list, add such other properties in the defined area of which the City is aware. In addition, applicant shall post the building for availability with a large sign, using minimum dimension of 6 x 8 ft.
- b. Applicant will compile an information packet about the structure, including physical description, known conditions, and house moving permit and building permit requirements. Applicant will submit the information packet to the Planning Director for review and said packet shall be deemed acceptable unless the Planning Director rejects said packet within 15 days of its submittal and provides specific changes that must be made to the packet to obtain approval. Applicant will contact by

Exhibit C – Revised, Additional Conditions

- letter the owner of record of each identified property to inquire about their desire to take the structure onto their property, including the information packet Applicant shall document to the City all such contacts and the responses it receives to the contact letters within 60 days of this approval.
- c. For all responses Applicant receives from property owners interested in taking a structure, Applicant will conduct reasonable commercial due diligence with regard to their financial capability, ability to move the building within 6 months of this approval, insurance provided and suitability of the proposed site for the building. Suitability shall include a check with the Building and Planning Departments to inquire about zoning and housing code requirements which may apply to the proposed site. Applicant will submit the results of the due diligence to the Planning Director for review subject to the confidentiality and privacy rights of the interested property owners, and in conformance with the City's Sunshine Ordinance and State Public Records Act. Upon submittal the applicant will request an appointment for a meeting with the Planning Director which shall occur within 15 days of the submittal. A decision on acceptability of said due diligence must be made by the Planning Director within 15 days of its submittal or a meeting must take place with the Applicant within 15 days. If no such decision is made within the 15 day period and a meeting with the Planning Director has not taken place then the Applicant shall bring the issue to the Applicant's Councilmember and the Rules Committee of the Oakland City Council to be scheduled on the Council Agenda at the next City Council meeting.
 - d. Applicant will undertake reasonable commercial efforts to enter into an agreement with a willing property owner identified by the due diligence as a satisfactory taker of a building. Prior to entering into contract negotiations with prospective takers of a building, Applicant shall submit the form of agreement it would enter into to the Planning Director for review and said agreement shall be deemed acceptable unless the Planning Director rejects said agreement within 15 days of its submittal and provides specific changes that must be made for the agreement to obtain approval.
 - e. Applicant will offer the affected tenants in the building the Tenant Relocation Assistance Program included in this approval.
 - f. Applicant shall provide the City a letter detailing compliance with these requirements. Upon submittal of said letter the applicant will request an appointment for a meeting with the Planning Director which shall occur within 15 days of the submittal. A decision on the completeness of the above steps must be made by the Planning Director within 30 days of submittal of said letter or a meeting must take place with the Applicant within 30 days. If no such decision is made within the 30 day period and a meeting with the Planning Director has not taken place, then the Applicant shall bring the issue to the Applicant's Councilmember and the Rules Committee of the Oakland City Council to be scheduled on the Council Agenda at the next City Council meeting. If the Planning Director refuses

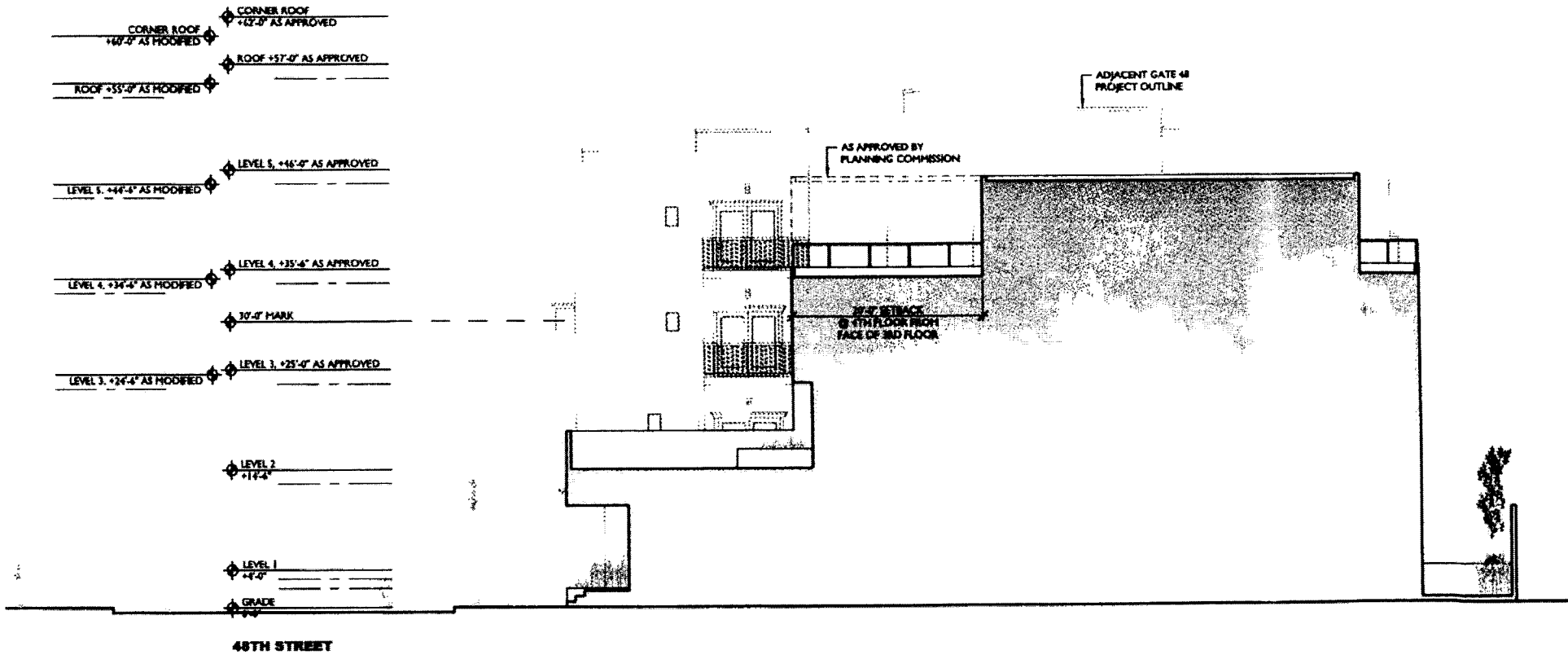
Exhibit C – Revised, Additional Conditions

to certify the completeness of the above steps, the Planning Director must issue a written determination that Applicant has materially and substantially failed to meet subconditions d. through f. and stating the specific actions or omissions of Applicant that are the basis for such determination.

- g. Applicant shall not receive a demolition permit to demolish the existing buildings unless and until all steps listed in d. through f. above have been completed.

5 The Applicant shall be required to provide the following:

- a. Two units to be sold to first time homebuyers of appropriate family size to the unit with an income of 80% AMI or less utilizing Fannie Mae, Freddie Mac, FHA or CalHFA loan products that do not result in negative amortization and requiring no more than 5% down payment from the borrower plus closing costs.
- b. Three units to be sold to first time homebuyers with an income of 100% AMI or less utilizing Fannie Mae, Freddie Mac, FHA or CalHFA loan products that do not result in negative amortization and requiring no more than 5% down payment from the borrower plus closing costs.
- c. Units to be marketed through the various non-profit housing agencies and normal channels and a lottery system established for participants.
- d. Applicant will conduct outreach for buyers of the affordable units at least three (3) months before the sales of any other units in the building commence and will continue such outreach for three (3) months after the sale of any unit in the building.
- e. Applicant will reserve the 5 designated affordable units for three (3) months after entering into the first contract for the sale of any unit in the building.
- f. If any of the 5 designated affordable units remains unsold after three months from the time the first unit sells, applicant will be entitled to offer and sell those units to the general market at market prices.
- g. Units that are sold to buyers with 80% and 100% of AMI to have a recorded protection in the grant deed restricting the resale of the units to 80% or 100% AMI household respectively for 5 years.




4801 SHATTUCK - REVISED SECTION COMPROMISE JULY 13, 2007
 1/8" = 1'-0"

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____

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WHEREAS, the public hearing on the Appeal was closed by the City Council on July 17, 2007,

Now, Therefore, Be It

RESOLVED That, the City Council, having heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellants have **not** shown, by reliance on evidence already contained in the record before the City Council that the Planning Commission's Decision of April 4, 2007 was made in error, that there was an abuse of discretion by the Planning Commission or that the Commission's decision was not supported by substantial evidence in the record based on the April 4, 2007 Staff Report to the City Planning Commission (attached as Exhibit "A") and the July 17, 2007 City Council Agenda Report (attached as Exhibit "B"), hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeals are denied, the Planning Commission's approval is upheld, subject to the findings contained in Exhibits "A" and "B", each of which is hereby separately and independently adopted by this Council in full, and be it

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AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, KERNIGHAN, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

Exhibit A

[April 4, 2007 Planning Commission Staff Report]

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Exhibit C

[REVISED, ADDITIONAL CONDITIONS
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Deleted: the

Deleted: street

Inserted: the

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- b. Applicant will compile an information packet about the structure, including physical description, known conditions, and house moving permit and building permit requirements. Applicant will submit the information packet to the Planning Director for review and said packet shall be deemed acceptable unless the Planning Director rejects said packet within 15 days of its submittal and provides specific changes that must be made to the packet to obtain approval. Applicant will contact by

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- c. For all responses Applicant receives from property owners interested in taking a structure, Applicant will conduct reasonable commercial due diligence with regard to their financial capability, ability to move the building within 6 months of this approval, insurance provided and suitability of the proposed site for the building. Suitability shall include a check with the Building and Planning Departments to inquire about zoning and housing code requirements which may apply to the proposed site. Applicant will submit the results of the due diligence to the Planning Director for review subject to the confidentiality and privacy rights of the interested property owners, and in conformance with the City's Sunshine Ordinance and State Public Records Act. Upon submittal the applicant will request an appointment for a meeting with the Planning Director which shall occur within 15 days of the submittal. A decision on acceptability of said due diligence must be made by the Planning Director within 15 days of its submittal or a meeting must take place with the Applicant within 15 days. If no such decision is made within the 15 day period and a meeting with the Planning Director has not taken place then the Applicant shall bring the issue to the Applicant's Councilmember and the Rules Committee of the Oakland City Council to be scheduled on the Council Agenda at the next City Council meeting.
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