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OFFICE OF THE CLERK

OAKLAND CITY COUNCIL

2007 JUN -7 PM 3:14

RESOLUTION No. 80652 C.M.S.

INTRODUCED BY COUNCILMEMBER _____

RESOLUTION DENYING THE APPEAL AND UPHOLDING THE CEQA DETERMINATION OF A CATEGORICAL EXEMPTION FOR CASE FILE NUMBER CD06-604 (CONSTRUCTION OF 6 DWELLING UNITS OVER GROUND FLOOR COMMERCIAL AT 5253 COLLEGE AVENUE, OAKLAND

WHEREAS, the project applicant/owner, Kirk Peterson, filed an application on December 7, 2006, to construct a mixed use project containing 6 residential units and less than 3,000 square feet of commercial space at 5253 College Avenue; and

WHEREAS, The Zoning Administrator considered the matter and approved the project on February 28, 2007; and

WHEREAS, on March 9, 2007 the appellant, Bert Verrips, filed an appeal of the Administrative decision to the Planning Commission; and

WHEREAS, The City Planning Commission took testimony and considered the appeal at its meeting held May 2, 2007. At the conclusion of the public hearing held for the matter, the commission deliberated the matter, revised the project to include the removal of the open space variance and amend the Conditions of Approval, and voted. The appeal was denied, 6-0-0; and

WHEREAS on May 10, 2007, an appeal of the Planning Department's CEQA Determination and a statement setting forth the basis of the appeal was received; and

WHEREAS, after giving due notice to the Appellant, the Applicant, all interested parties and the public, the Appeal came before the City Council for a public hearing on June 19, 2007; and

WHEREAS, the Appellant, 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 June 19, 2007;

Now, Therefore, Be It

RESOLVED: The requirements of the California Environmental Quality Act (CEQA) of 1970, as prescribed by the Secretary of Resources, and the City of Oakland's environmental review requirements, have been satisfied, and, in accordance the adoption of this resolution is exempt from CEQA under Section 15303 of the State CEQA Guidelines, Section 15183 of the CEQA Guidelines, and Section 15332 of the CEQA Guidelines; and be it

FURTHER 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 Department's decision, and the Appeal, finds that the Appellant has **not** shown, by reliance on evidence already contained in the record before the City Planning Commission that the Zoning Administrator's Decision of February 28, 2007 and City Planning Commission's decision on May 2, 2007 was made in error, that there was an abuse of discretion by the Planning Department or Planning Commission or that the Commission's decision on May 2, 2007 was not supported by substantial evidence in the record based on the May 2, 2007 Staff Report to the City Planning Commission (attached as Exhibit "A") and the June 19, 2007, City Council Agenda Report (attached as Exhibit "B") hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Department's CEQA Determination is upheld, subject to the findings contained in Exhibit "B" in the Staff Report for this item prepared for the City Council meeting of June 19, 2007, 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 on May 2, 2007 to deny the appeal and uphold the approval of the Project, the City Council affirms and adopts the May 2, 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) all attached as Exhibit "A", as well as the June 19, 2007, City Council Agenda Report, attached hereto as Exhibit "B," (including without limitation the discussion, findings, and conclusions) except where otherwise expressly stated in this Resolution; 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, 3rd 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, JUN 19 2007, 2007

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, KERNIGHAN, AND
PRESIDENT DE LA FUENTE - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST:



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

Exhibit A

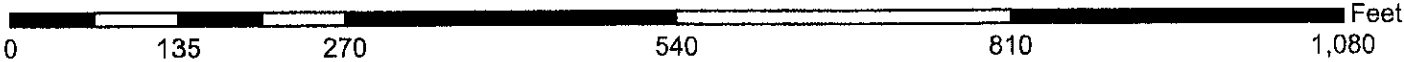
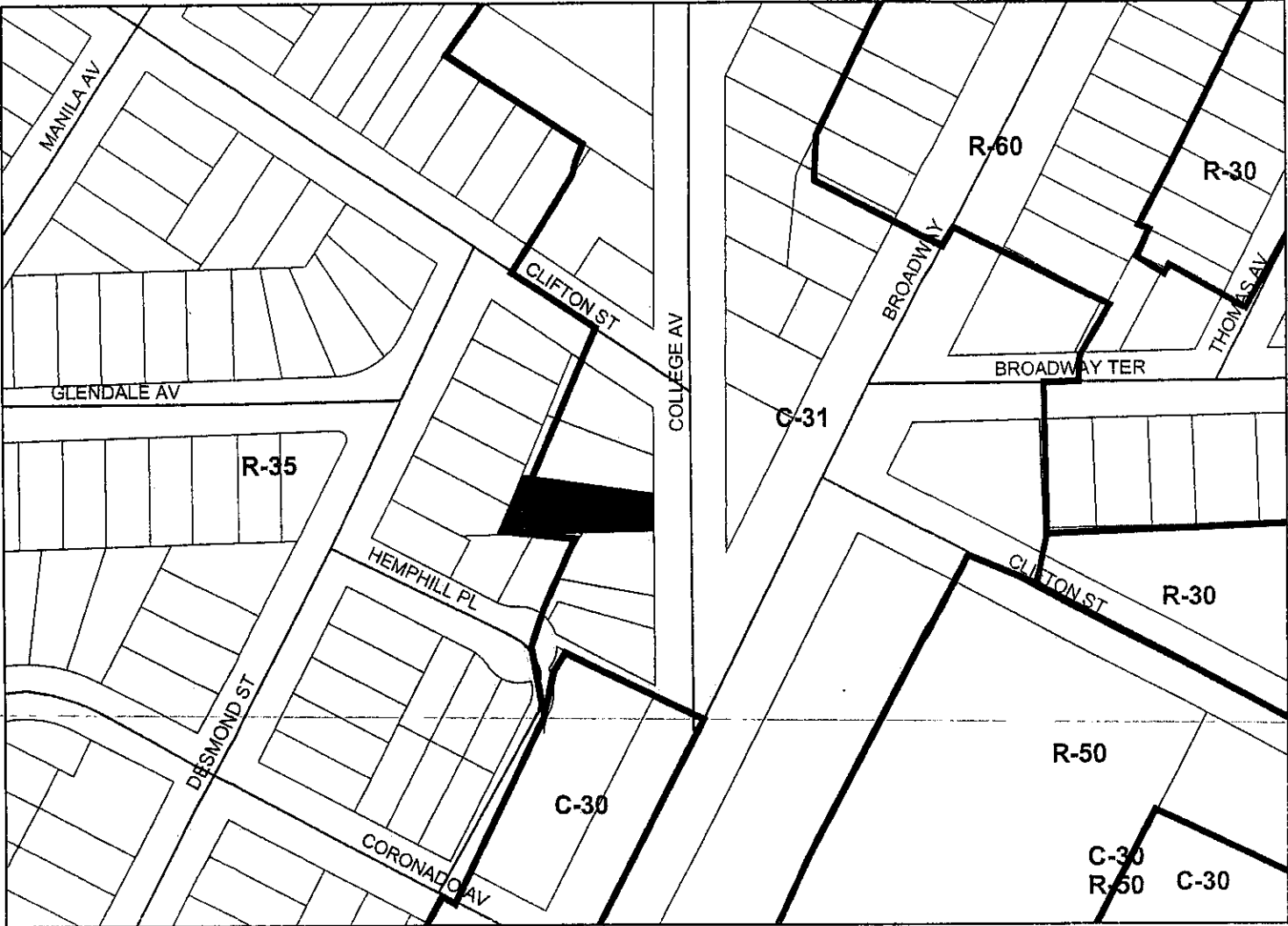
[May 2, 2007 Planning Commission Staff Report]

Location:	5253 College Avenue (See map on reverse)
Assessor's Parcel Number:	014-1240-004-00
Proposal:	Appeal of an Administrative decision to approve a mixed use development containing six dwelling units over ground floor commercial.
Applicant:	Kirk Peterson
Owners:	Kirk Peterson
Appellant:	Bert Verrips
Planning Permits Required:	Design Review for new construction, Minor Variance to allow more than 20% of the required group open space on the rooftop, and Conditional Use permits for ground floor parking and re-establishment of the existing non-retail ground floor use (Financial and Consultative – Architecture firm).
General Plan:	Neighborhood Center Mixed Use
Zoning:	C-31 Special Retail Commercial Zone
Environmental Determination:	Exempt, Section 15303 of the State CEQA Guidelines, New construction of small structures Exempt, Section 15183 of the State CEQA Guidelines, Projects consistent with a community plan, general plan, or zoning
Historic Status:	Not a Potential Designated Historic Property; Survey rating: X
Service Delivery District:	2
City Council District:	1
Status:	The application was approved by the Zoning Manager on February 28, 2007. The approval was subsequently appealed by the appellant on March 9, 2007.
Action to be Taken:	Decision on appeal based on staff report and public testimony
Staff Recommendation:	Deny the appeal thereby upholding the approval of the application
Finality of Decision:	Final Decision
For Further Information:	Contact case planner Peterson Z. Vollmann at (510) 238-6167 or by email at pvollman@oaklandnet.com .

SUMMARY

The applicant proposes to demolish the existing commercial building and construct a new mixed use building containing six dwelling units over two new ground floor commercial spaces. The proposal required a Design Review approval for the proposed new construction, and a minor variance to allow more than 20% of the required group open space to be located on the roof top. In addition the project required a Minor Conditional Use Permit, pursuant to the C-31 zone regulations, for ground floor parking and for the re-establishment of the existing Architecture firm, which is a non-retail use. On February 28, 2007 the Zoning Manager approved the application, finding that the proposal complied with all the necessary criteria for approval. On March 9, 2007 the approval was appealed to the Planning Commission. Staff recommends that the Planning Commission deny the appeal, thereby upholding the Zoning Manager's approval of the project.

CITY OF OAKLAND PLANNING COMMISSION



Case File: A07-090 (CDV06-604)
Applicant: Kirk Peterson
Address: 5253 College Ave
Zone: C-31



PROPERTY DESCRIPTION

The subject lot is approximately 6,255 square feet in size, located on College Avenue just to the north of the Broadway/College intersection. The site is currently developed with a one-story commercial building that is approximately 1,700 square feet, with auto access off of a driveway easement that enters from Hemphill Place.

The site is located on College Avenue in the College Avenue commercial district. The site is bordered by commercial uses with some upper level housing on College Avenue and lower intensity residential uses along the back streets.

PROJECT DESCRIPTION

The applicant proposes to construct a three (3) story mixed use building with commercial space and parking located on the ground floor, and six residential dwelling units above. The parking would be accessed off of a driveway easement that runs along the back side of other properties, and enters at approximately the middle of the site. All parking will be located within enclosed garages served off of the central parking court. This driveway configuration allows the proposal to have a continuous commercial ground floor with no sign of parking facilities from College Avenue. The front commercial space would be used for any use that would be out right permitted under the C-31 Zone, and the rear commercial space, which does not contain any street frontage or display windows, would be used as an architecture firm, which requires a Conditional Use Permit since it is located at the ground floor and is classified as a "non-retail" use in the C-31 Zone. The upper levels will contain six dwelling units, three per floor, and contain open space provided in individual decks as well as a large rooftop open space. The applicant requested and was granted a minor variance to allow 100% of the required group open space to be located on the rooftop. Staff approved this variance request because the subject property backs up against lower scale residential properties and staff believes that it was an adequate design solution that would move the open space for the future tenants further away from the abutting rear yards of the adjacent homes (Condition of Approval #14 – Attachment B).

GENERAL PLAN ANALYSIS

The site is designated Neighborhood Center Mixed Use (NCMU) by the General Plan. The NCMU designation is intended to identify, create, maintain, and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses. According the General Plan, future development within this classification should be commercial or mixed uses that are pedestrian-oriented and serve nearby neighborhoods, or urban residential with ground floor commercial.

The subject C-31 Zoning is consistent with the Neighborhood Center Mixed Use General Plan Designation. Since the project site is not located within a Growth and Change corridor, the existing allowed Intensity and Density are consistent with the General Plan.

ZONING ANALYSIS

The site is located in the C-31 Special Retail Commercial Zone. According to the Zoning Regulations, the C-31 Zone is intended to create, preserve, and enhance areas with a wide range of retail establishments serving both short and long term needs in attractive settings oriented to pedestrian comparison shopping, and is typically appropriate along important shopping streets having a special or particularly pleasant character.

The project is consistent with the intent of the C-31 Zoning District, because it creates a mixed use project that does not sacrifice the retail potential of the commercial level. The project will add six new dwelling units to the neighborhood, and create a new retail space that fronts on College, while relocating the existing "non-retail" use to a new rear location at the ground floor that does not contain any street frontage.

ENVIRONMENTAL DETERMINATION

The project was found to be categorically exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303 of the State CEQA Guidelines ("New Small Structures") because the proposal involves the construction of only six new dwelling units, and less than 10,000 square feet of commercial space.

ZONING ADMINISTRATOR'S DECISION

On February 28, 2007 the Zoning Manager approved the application finding that the proposal complies with all the necessary criteria for approval. Attached is the Zoning Manager's decision letter containing the required findings and the reasons the findings were met (see Attachment B). The primary reasons for approving the application were the following:

1. **High Quality Design:** The proposed building contains a high quality design with the attention to detail and ornamentation that would allow the building to fit in contextually with the existing character of the College Avenue commercial district.
2. **Ground Floor Uses:** The proposed building met the required Use Permit findings for ground floor activities, non-retail and parking, by concealing the activities behind a prominent store front that fits in with the commercial district and has no impact onto the pedestrian atmosphere of the street.
3. **Open Space Variance:** The proposed project complied with the findings for a minor variance because of the superior design solution that allows the open space for the six dwelling units to be located further away from the adjacent rear yards of the neighboring lower intensity homes. Much of the opposition to this variance was based upon the roof top open space and neighbors didn't want the Department to grant a variance that would allow neighbors to be located on rooftops looking down into their yards, but the rooftop open space is outright permitted. The variance was to allow all of the open space on the roof and eliminate the requirement for open space in the rear yard, which staff believed would be more of an impact because of the close proximity to their yards. The project as proposed would move all of the outdoor space onto the roof top and leave the rear yard as a landscaped garden that is directly off of the architecture firm's office windows, which staff believed to be much less of an impact (Condition of Approval #14 requires the roof top open space to be setback 25 feet from the rear property line and an additional five feet from the south building wall).

BASIS OF THE APPEAL

On March 9, 2007 the appellant, Bert Verrips, submitted an appeal of the Zoning Manager's decision to approve the project. The applicant's appeal letter received March 9, 2007 contains arguments challenging the Zoning Manager's approval of the Application (see Attachment C). The appellant's arguments are summarized below. Staff's response to each argument follows each item.

- A. The City's findings do not support granting the conditional use permit for allowing non-retail ground floor use in the C-31 commercial retail zone.

Appellant's Argument: The City's first finding regarding the project's compatibility and harmony with the surrounding neighborhood completely ignores the General Plan requirement that the College Avenue commercial area remain low density since it is in the "Maintain and Enhance" area.

The appellant challenges that the proposed project is not compatible with the rear abutting properties that are located within the lower intensity residential zone, and that the density of the project should not be permitted because it is located within an area designated as "Maintain and Enhance".

Staff Response: The "Maintain and Enhance" designation of the General Plan does not preclude any development of individual property that would intensify above the existing condition, as suggested by the appellant. The intent of the "Maintain and Enhance" areas is to analyze the existing zoning for an area and determine whether or not there should be a down zoning applied to an area or whether the existing zoning should be respected and complied with. This is different from the "Growth and Change" areas of the City where the higher intensity/ density set forth in the General Plan is encouraged and would essentially replace the existing zoning which may allow less intensity/density. The College Avenue corridor contains a Zoning of C-31, which was specifically created for small neighborhood commercial districts such as this as well as locations such as Piedmont Avenue. These areas have been designated as "Maintain and Enhance" because the higher intensity called out in the General Plan would not typically be appropriate on these streets because of their small nature, and therefore the existing zoning is respected and followed. The proposed project complies with the C-31 height limits and setbacks, and the proposed six units is only one-half the density that is permitted for this site, which would allow for a maximum of twelve (12) dwelling units *by right*. If the applicant were requesting an Interim Use permit to exceed the base C-31 Zone density the appellant's argument would have merit, but that is simply not the case, as the applicant is only proposing to build one-half of what is permitted.

The argument that the proposed building should not be permitted based upon compatibility with the adjacent lower intensity homes behind the project site is not valid, because the subject property is located on College Avenue, which is a mixed use commercial district, and not within the rear low intensity single family zone. When reviewing development proposals on commercial streets staff looks to have a building that is contextual with the commercial district, which this project has done by the proposed architecture of the building and the prominent storefront at the sidewalk. When staff looks at the rear abutting lower intensity areas we look to see what impacts if any would occur, and whether or not they are significant. Staff does not believe that the impacts from this proposed building would be significant. Yes the building is larger than the rear single family homes, but that is because the project is not located within the same single family zone. Any property located directly adjacent to a lot in a commercial zone should be aware that higher intensity development is permitted. Furthermore, the rear wall of the subject building is only two stories at 29 feet tall (parapet/railing included), which is less than the 30 foot maximum height permitted within the adjacent R-35 Zone that the appellant's property is located within. The third floor

is then stepped back as required by Zoning, which reaches the maximum 35 foot height limit.

Furthermore, the reason for the Conditional Use permits was not for the issue of density or intensity. The Use permit was for two issues, ground floor parking and a “non-retail” business located at the ground floor. Staff believes that the granting of the use permit for these two issues is valid. The intent of a use permit for ground floor parking is primarily to ensure that parking does not adversely impact the pedestrian and commercial nature of the commercial street. This has been accomplished in this project because the parking is accessed off of a driveway easement, and no aspect of the parking is visible or noticeable from College Avenue. In addition, the project is of a relatively small size such that the impact to the residential street should not be adverse. Second the use permit to allow a “non-retail” activity at the ground floor is also warranted because the existing use of the building is an Architecture firm, which is classified as a “non-retail” use in the C-31 Zone. The proposed project will re-establish this “non-retail” use, but it will be located at the back of the building in a commercial space that will not have any street fronting elements. The front of the building will create a new commercial space that will have full street frontage and will be available for “retail” activities or other uses that are principally permitted at the ground floor within the C-31 Zone. In the end the proposal will actually create a new retail opportunity that presently does not exist, and the re-established “non-retail” use will not have any negative impact upon the shopping environment on College Avenue.

- B. The developer and the City have failed to produce the necessary evidence to support findings necessary for the grant of a variance for 80% of the open space requirement to be fulfilled on the roof.**

~~**Appellant’s Argument:** The appellant is arguing that the use of the rooftop for recreational opportunities would result in the loss of privacy and would result in increased noise. Concerns are also based on the potential of parties that would result from the development being occupied by renters, and/or students.~~

The appellant also argues that the Department used the wrong test for determining whether to grant the variance. The appellant cites Policy N11.3 of the General Plan, Requiring Strict Compliance with Variance Criteria, and that since the General Plan supercedes the Zoning that a Minor Variance should no longer be an acceptable procedure, and that the tougher Major Variance Criteria should be applied that require proof of a “hardship caused by unique physical or topographical constraints”.

Staff Response: The granting of the open space variance is not to allow open space to be located on the rooftop. The granted variance was to allow all of the required open space on the rooftop of the building. If the proposed project had called out the rear yard as the open space to meet the open space requirement, the rooftop open space would still be permitted outright. There is no restriction to the use of a rooftop for open space; the only restriction is that no more than 20% of the *required* group open space may be located on the rooftop. The applicant could very well provide access to the rear yard for tenants and still keep all of the proposed open space on the rooftop and be completely complying with the Planning Code. Staff viewed the variance as a better design solution that would limit the impacts onto neighbors by locating the group open space on the roof so that it would be further away from the neighboring properties and there would not be walls for noise to reflect off of. The

line, and an additional five feet from the south building wall (which faces the side property line), and that the roof top be screened by a solid parapet along the perimeter to further conceal the open space on the rooftop. In addition, other “use” limitations of this rooftop open space have been placed to further reduce or eliminate any potential adverse impacts. By creating all of the residential open space on the roof deck, the rear yard would essentially become a landscaped garden that would sit adjacent to the office space and would not have any recreational use at all, which staff had viewed as a superior design solution that would benefit the adjacent neighbors as well as the future tenants of the proposed building.

With regard to the Criteria used for the granting of the Variance, staff used the Minor Variance criteria as required by the Planning Code. Objective N11 of the General Plan is the section that guides policy for updating the Zoning Code for compliance with the General Plan. While Policy N11.3 does state that the stricter criteria should be used, it also states that, “in instances where large numbers of variances are being requested, the City should review its policies and regulations and determine whether revisions are necessary”. This is not meant to trump the existing Zoning regulations, but rather act as a guide for updating the Zoning regulations in certain situations.

C. The City has not made any findings or otherwise demonstrated why the claimed CEQA exemptions apply or that the exceptions cited by the community did not apply.

1. Guideline Section 15183 exemption is inapplicable because the General Plan EIR doesn’t even remotely say a thing about College Avenue.

Appellant’s Statement: The appellant is challenging the use of Section 15183 of the CEQA guidelines for an environmental exemption. This is based upon the argument that the appellant makes that the EIR for the Oakland General Plan does not specifically cite an increase of density on College Avenue, and that the project is not consistent with the General Plan.

Staff Response: Section 15183 does not require a general plan EIR to cite the specific density of a project’s location. Section 15183 states that “projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require further environmental review, except as might be necessary to examine whether there are project-specific environmental effects which are peculiar to the project or its site. This project falls within the criteria of zoning and the general plan.

This project is consistent with the applicable densities, and an EIR was prepared for the zoning and general plan policies. The Land Use and Transportation Element (LUTE) of the General Plan was an element of the EIR. In the LUTE the subject property is identified in an area designated as Neighborhood Center Mixed Use. The area is also identified as a “Maintain and Enhance” area, which as stated earlier in this report does not preclude any re-development of the site, but would lead any future development towards remaining consistent with the existing C-31 base zoning. The proposed project is consistent with the C-31 regulations and only is constructing half the number of dwelling units that would be outright permitted on the property. Furthermore, the proposed project is consistent with the Neighborhood Center Mixed Use designation because the proposal is creating a mixed use

building that provides housing options above a new commercial space that will create future shopping opportunities for the College Avenue commercial district. The appellant also argues that the project is not consistent with the General Plan because it is not “sensitive to the character and design of existing buildings”. The proposed project is consistent with other mixed use buildings along College Avenue in height as well as architectural style. The argument that a building on a commercial street should be designed to be consistent with single family houses is invalid since the subject property is not located within the same single family zone. In reviewing proposals on commercial streets staff looks at the rear of buildings not as a contextual matter, but as a matter of good design and limited impacts from height. In this case the rear of the building has ornamental features and quality finishes to create an attractive building and the height of the building steps away from the rear of the lot as mandated by the Planning Code, and at the rear portion of the building is only 29 feet in height above grade, which is less than the maximum height permitted in the adjacent zone.

In addition, as discussed in more detail below regarding Appellant’s assertion no. 2, there are no project-specific significant effects that are peculiar to the project or its site that would require additional environmental review as the subject parcel is a typical urban lot.

2. CEQA Guideline exemption 15303 does not apply because the community has shown that there is a reasonable possibility the project will have a significant impact on the environment. (Guideline Section 15300.2(a))

Appellant’s Statement: The appellant argues that the Small Structures CEQA exemption may not be used because of unusual circumstances that would qualify as an Exception to the use of a CEQA Categorical Exemption. The appellant states the following reasons for a possible environmental impact:

- Due to the topography of the lot the people who would occupy the proposed building could look into the windows of the adjacent neighbors.
- The noise from the rooftop would reverberate throughout the neighborhood.
- The proposed project would create significant traffic and parking impacts.
- Cumulative impacts – such as, 1) Allowing rooftop open space, which would lead to future noise impacts; 2) Traffic and Parking impacts from the subject project and other nearby proposed projects; 3) Allowing increased density in a “Maintain and Enhance” area.

Staff Response: Section 15303 of the CEQA Guidelines states that a project is Categorical Exempt from Environmental Review if a project includes new construction of a building of no more than six dwelling units in an urbanized zone, and a commercial space of not more than 10,000 square feet. The proposed project contains six units and the proposed commercial space is far less than 10,000 square feet.

Section 15300.2 of the CEQA Guidelines provides Exceptions to the use of any Categorical Exemption if they meet any of the following criteria:

- a) Location. A class “3” exemption applies in all instances, except where the project

designated, precisely mapped, and officially adopted pursuant to law by federal, state or local agencies.

The project location is not located in an area that has been specifically identified as an environmentally sensitive area.

- b) Cumulative Impacts. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

The existing base C-31 Zoning recognizes and permits this type of mixed use development, and recently there have not been a large number of proposed mixed use developments along this stretch of College Avenue. A much larger nearby project is proposed at 5175 Broadway, which is currently undergoing an Initial Study pursuant to CEQA. The potential cumulative impacts argued by the appellant about rooftop open space are unwarranted as an exception/variance is not required to allow rooftop open space, it is only required when it is proposed as a complete substitution for the location of required group open space as discussed earlier in this staff report. The claim that outdoor open space would lead to noise impacts would preclude any outdoor activities in residential neighborhoods as well. The noise from an outdoor space from an apartment building would be the same noise that would emanate from a multi-unit building as well and would be subject to the same noise ordinances. The appellant argues that there would be cumulative impacts to parking and traffic in the area. Parking has been determined not to be considered an environmental impact by the courts. The proposed six unit building would not create a significant number of trips to even be considered in the discussion of cumulative impacts as six units and the small proposed commercial space would not generate the peak hour trips that would potentially degrade the existing Level of Service of any nearby intersections. Traffic impacts are typically studied further by larger development proposals that could potentially be a Class 32 In-Fill exemption, which specifically identify traffic impacts as an area of needed review. The appellant also argues that there would be cumulative impacts caused by increasing the density of the College Avenue area, which is designated as "Maintain and Enhance" in the General Plan. As stated earlier in this staff report the project is not proposing an increase of density over what is permitted in the C-31 Zone, and the proposal would only contain one-half of the permitted density under the existing base C-31 Zone.

- c) Significant Effect. A Categorical Exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

The appellant argues that due to the location of the project site there are unusual circumstances that would create significant impacts, specifically identifying occupants of the proposed building looking into windows of adjacent neighbors, parking, traffic, and noise. The claims against parking, traffic and noise are discussed in the previous section under cumulative impacts, and privacy is not an environmental impact, and it is unreasonable to expect no contact with adjacent neighbors when living in an urban environment. The same alleged impact would then be true of any of the existing homes in the area which are only required to be

set back five feet from one another. No setback variances or height variances have been granted for the project.

- d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources within a highway officially designated as a state scenic highway.

The subject property is not located on a scenic highway nor would it cause any visual degradation from any scenic highway.

- e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

The subject property is not on any of these lists.

- f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significant of a historic resource.

The subject property is not a historic resource.

CONCLUSION

Staff believes the proposal complies with all the necessary criteria for approval of the Design Review, Minor Conditional Use Permits, and Minor Variance. The proposal will develop an attractive mixed use project that provides housing opportunities in the area, as well as creating expanding ground floor commercial opportunities for the College Avenue commercial district.

Staff believes the appellant has not sufficiently demonstrated that there was an error or abuse of discretion in the Zoning Administrator's decision to approve the project. Staff recommends that the Planning Commission deny the appeal, thereby upholding the Zoning Administrator's decision to approve the project.

RECOMMENDATIONS:

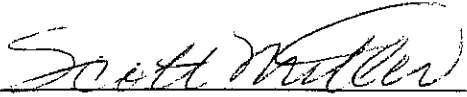
1. Affirm staff's environmental determination;
2. Uphold the Zoning Administrator's decision to approve the application for a Design Review, Minor Conditional Use Permits, and Minor Variance.

Prepared by:



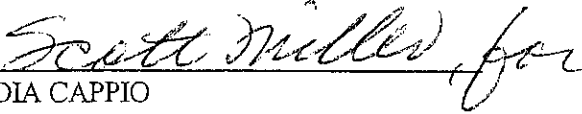
PETERSON Z. VOLLMANN
Planner III

Approved by:



SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:



CLAUDIA CAPPIO
Development Director

LEGAL NOTICE: The decision of the City Planning Commission is final and not administratively appealable. Any party seeking to challenge such decision in court must do so within ninety (90) days of the date the decision is announced (Code of Civil Procedure Section 1094.6).

ATTACHMENTS:

- A. Project Drawings
 - B. Zoning Administrator's Decision Letter
 - C. Appellant's Letter
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Exhibit B

[June 19, 2007 City Council Agenda Report]