

**CITY OF OAKLAND
COUNCIL AGENDA REPORT**

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2003 NOV -5 PM 6:06

TO: Office of the City Manager
ATTN: Deborah Edgerly
FROM: Community & Economic Development Agency
DATE: November 18, 2003
RE: A PUBLIC HEARING AND ADOPTION OF RESOLUTION DENYING THE APPEAL OF PLANNING COMMISSION APPROVAL OF MAJOR VARIANCE FOR A SIX UNIT RESIDENTIAL PROJECT AT 436 OAKLAND AVENUE.

SUMMARY

This project, to construct a six unit multi-family dwelling (VMCD03-294), was originally approved by the Planning Commission on September 17, 2003. On September 29, 2003, Neil Kaplan filed an appeal of the Planning Commission's approval (Attachment A). The appellant generally alleges that the Planning Commission is obligated to maintain the views and air rights of his dwelling unit, which is located on the top **floor of** a three story, 53 unit, multi-family dwelling. The appellant alleges that approval of the project is in direct violation of this obligation because the proposed structure would adversely affect the views from, solar access to, and privacy of his dwelling unit. Staff responses to the grounds for appeal are discussed in the Key Issues and Impacts section of this report. Staff recommends that the Council uphold the Planning Commission's approval of this project and deny the appeal.

FISCAL IMPACT

The project involves a private development, does not request or require public funds and has no fiscal impact on the City of Oakland. The appellant submitted the required appeal fees. If constructed, the project would provide a positive fiscal impact through increased property tax valuation and business license tax.

BACKGROUND

This request would provide for the construction of a six unit residential condominium building on an undeveloped lot. The subject 5,850 square foot lot slopes steeply up from Oakland Avenue with an approximately 20 percent change in elevation from street level to the rear lot line. The proposed structure would consist of three stories of living area elevated above a partially submerged parking garage containing nine parking spaces.

The subject site is located along Oakland Avenue, just southwest of the Interstate 580 / Oakland Avenue inter-change and MacArthur Boulevard. The General Plan designates Oakland Avenue as an arterial street. Although dominated by multi-family residential development, the surrounding development pattern consists of a mixture of dwelling types of varying architectural

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styles and heights, including single-family dwellings and apartment buildings containing up to 66 units.

The subject site and surrounding properties are zoned R-50, Medium Density Residential Zone, and S-12, Residential Parking Combining Zone. The R-50 zone is intended to create, preserve, and enhance areas for apartment living. This zoning district would conditionally permit four dwelling units on the subject site. The General Plan recommendation for the subject site would allow a maximum density of up to one unit per 1,089 square feet of lot area or 5.4 units per acre. The proposed project would provide for six units on a 5,850 square foot lot, creating a density of one unit per 975 square feet of lot area, which requires a Major Variance.

Higher residential densities, as proposed, are typically found along arterial streets, such as Oakland Avenue. For example, R-70 zoning is found along Oakland Avenue just north of the subject site and 1-580, as well as east of the site along MacArthur Boulevard. These areas and the subject site feature similar conditions that warrant a higher density, such as close proximity to an interstate, its location on a major arterial that will support a higher volume of traffic, and availability of infrastructure.

On September 17, 2003, the Planning Commission made the required findings and approved the Major Variance application.

KEY ISSUES AND IMPACTS

The appellant's letter is attached as Exhibit "A". The basis for the appeal, as contained in the appeal letter, is shown in bold text. A staff response follows each point in italic type.

1. The Planning Commission is obligated to maintain views and air rights. In direct violation of this obligation the proximity of the rear facade, the height of the rear facade, rear elevator tower and roof will block views, solar and air access to the appellant's dwelling unit.

Staff Response: The current variance findings related to the protection of views and air rights apply to design review for one and two-family residential projects only. This request would provide for a six unit residential project. Therefore, the Planning Commission was not obligated to make specific findings related to the maintenance of views and air rights in respect to this application.

*Based upon the documents submitted with the appeal, the appellant's primary concerns relate to the rear facade of the proposed building. The Zoning Code would permit a maximum height of 30 feet for the primary structure. Portions of the building over the 30-foot maximum height are located over 28 feet from the rear property line. Stair and elevator towers are permitted at a height of up to 42 feet, with a conditional use permit required to exceed 42 feet. **only** the elevator and stair tower located **on** the front elevation of the building would exceed 42 feet. The entire rear facade, including the rear 12 feet of the building and the rear stair tower, would be below the permitted height. **In** addition, the structure would be setback 17 feet from the rear property line,*

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where only a 15-foot rear yard setback is required. Height and setback requirements of the Zoning Code are intended to provide a level of protection for solar and air access between structures. Given that the rear facade of the building, nearest the appellant's dwelling unit, would be below permitted height and that the rear setback of the structure would exceed the requirements of the Code, the view, solar and air right protections intended by the Code have been met.

SUSTAINABLE OPPORTUNITIES

This section describes the sustainable opportunities that are being addressed or will be implemented as part of the item, such as:

- Economic: The project will expand the available housing inventory in the City of Oakland.
- Environmental: The project has been found to be exempt under Section 15332 "In-Fill Development" of the State of California Environmental Quality Act (CEQA). Furthermore, the permit has been conditioned to require the applicant to use Best Management Practices (BMPs) during construction, divert 50% of the waste generated by construction to recycling, and provide for erosion control on the site during construction to prevent runoff.
- Social Equity: The project benefits the community and improves social equity by providing additional available housing to the City of Oakland as well as additional temporary jobs during the construction of the project.

DISABILITY AND SENIOR CITIZEN ACCESS

The Building Division of the Community and Economic Development Agency will require that the project conform to the Americans with Disability Act in all provisions to ensure equal access to this facility.

STAFF RECOMMENDATION AND RATIONALE

Staff recommends that the City Council adopt the attached Resolution upholding the Planning Commission approval and denying the appeal. 1) The Planning Commission's decision was based on its thorough review of all pertinent aspects of the project. 2) The approved Design Review, Variance and Conditional Use Permit includes enforceable conditions of approval that will enhance the visual aesthetics of the building.

ALTERNATIVE CITY COUNCIL ACTIONS

The City Council also has three other options in addition to the recommended action above.

1. The City Council could uphold the appeal and reverse the Planning Commission decision, denying the project.
2. The appeal could be denied, but with additional conditions imposed on the project.

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3. The item could be continued pending new information or further clarification of conditions or property inspection.

ACTION REQUESTED OF THE CITY COUNCIL

1. Affirm staffs environmental determination to apply an infill exemption to this project under CEQA guidelines Section 15332.
2. Adopt the attached Resolution upholding the Planning Commission approval and denying the appeal.

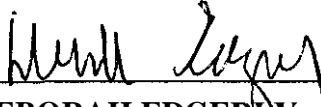
Respectfully submitted,

for


CLAUDIA CAPPIO
Development Director
Community & Economic Development Agency

Prepared by:
Leigh McCullen, Planner II
Planning & Zoning

Approved and Forwarded to the City Council:


DEBORAH EDGERLY
Office of the City Manager

ATTACHMENTS:

- A. Appellant's letter of August 11,2003
- B. Planning Commission Staff Report
- C. Project Plans
Exhibit A

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OAKLAND CITY COUNCIL

John T. [Signature]
OFFICE OF THE CITY CLERK
2003 NOV -6 PM 6:06

RESOLUTION No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____

RESOLUTION DENYING THE APPEAL AND SUSTAINING THE DECISION OF THE CITY PLANNING COMMISSION IN APPROVING THE APPLICATION FOR A MAJOR VARIANCE TO CONSTRUCT A SIX UNIT RESIDENTIAL PROJECT AT 436 OAKLAND AVENUE, OAKLAND

WHEREAS, the property owner, Bill Levinson, filed an application on July 1, 2003 to construct a six unit residential project at 436 Oakland Avenue; and

WHEREAS, The City Planning Commission took testimony and considered the matter at its meeting held September 17, 2003. At the conclusion of the public hearing held for the matter, the commission deliberated the matter, and voted. The project was approved, 5-0-0; and

WHEREAS on September 29, 2003, an appeal of the Planning Commission's approval 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 November 18, 2003; 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 November 18, 2003;

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 15332 "In-Fill Development" of the State CEQA Guidelines.

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

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of the Application, the City Planning Commission'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 City Planning Commission's decision was made in error, that there was an abuse of discretion by the Commission or that the Commission's decision was not supported by substantial evidence in the record based on the September 17, 2003 Staff Report to the City Planning Commission (attached as Exhibit "A") and the November 18, 2003, 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 Commission's CEQA findings and decision are upheld, and the Project is approved (Major Variance, Minor Variance, Minor Conditional Use Permit, and Design Review), subject to the findings and conditions of approval contained in Exhibits "B" in the Staff Report for this item prepared for the City Council meeting of November 18, 2003.

FURTHER RESOLVED: That, in support of the City Council's decision to approve the Project, the City Council affirms and adopts the September 17, 2003 Staff Report to the City Planning Commission (including without limitation the discussion, findings, conclusions and conditions of approval) all attached as Exhibit "A", as well as the November 18, 2003, 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.

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.

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 application and appeal; 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.

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.

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, _____, 2003

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
CEDA FLOYD
City Clerk and Clerk of the
Council of the City of
Oakland, California

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Exhibit A

[September 17, 2003 Planning Commission Staff Report]

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Case File Number VMCD03-294

September 17, 2003

Location: 436 Oakland Avenue (See map on reverse)	
Assessors Parcel Numbers: 010-0792-020-00	
Proposal: To construct a 6-unit residential condominium building.	
Owner	Bill Levinson
Applicant:	Bill Levinson
Planning Permits Required:	Major Variance to provide for six dwelling units on a 5,850 square foot lot or one unit per 975 square feet of lot area where one unit per 1,089 square feet of lot area is allowed, Minor Variance for up to 40 feet of building height where 30 feet is allowed, Minor Conditional Use Permit for a 48-foot tall stair and elevator tower, and Design Review.
General Plan:	Mixed Housing Type Residential
Zoning:	R-50 Medium Density Residential Zone, S-12 Residential Parking Combining Zone
Environmental Determination:	Exempt, Section 15303, State CEQA Guidelines, new construction of small structures
Historic Status:	Undeveloped lot, no historic record
Service Delivery District:	3 - San Antonio
City Council District:	3
Staff recommendation:	Approve with attached findings and conditions.
For further information:	Contact case planner Leigh McCullen at 510-238-4977 .

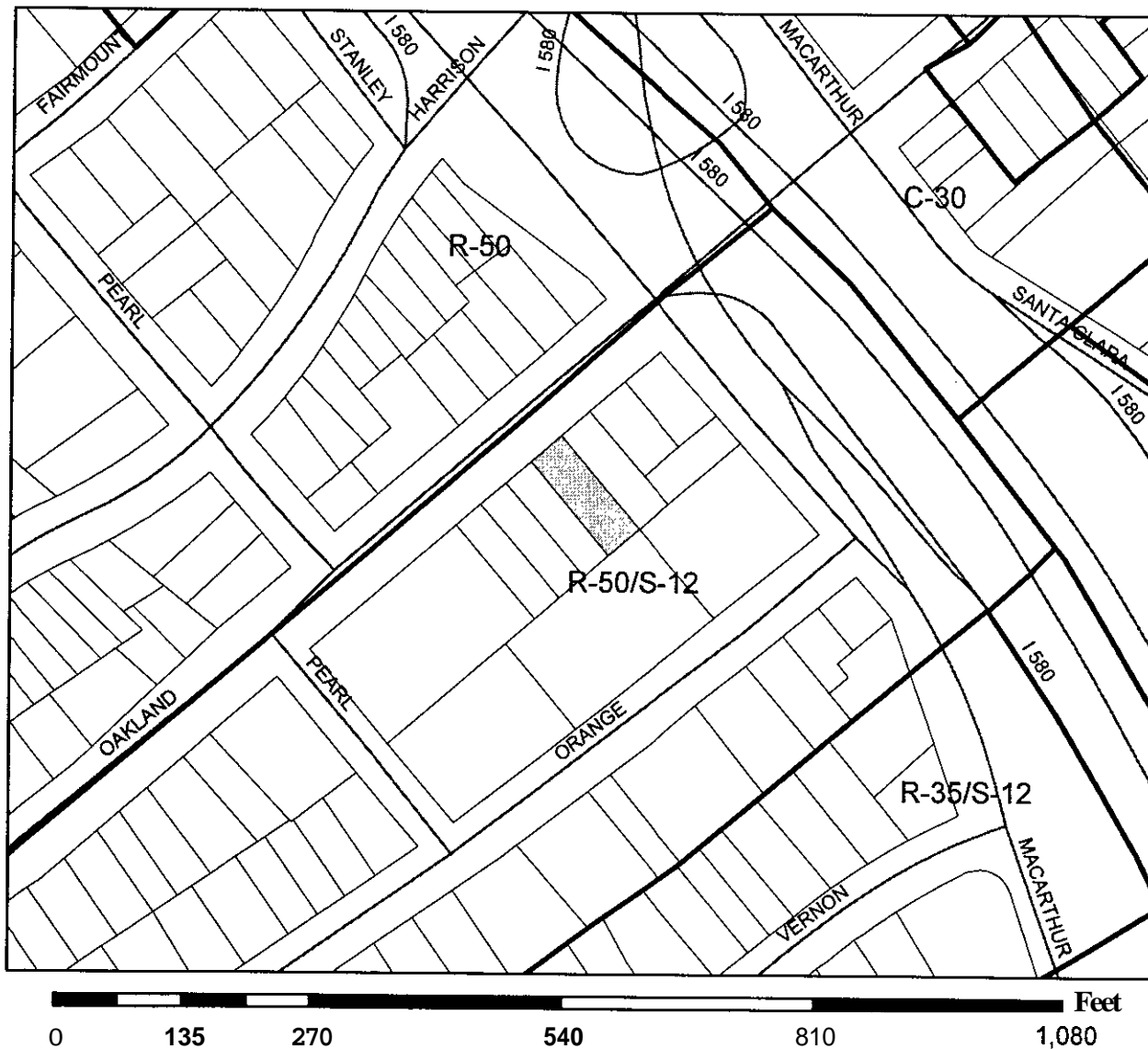
SUMMARY

This request would provide for the construction of a six unit, residential, condominium building on an undeveloped lot. The proposed structure would consist of three stories of living area elevated above a partially submerged parking garage containing nine parking spaces. Each floor of living area would contain two, 1,300 square foot dwelling units. The proposed site plan would accommodate 1,306 square feet of combined group and private open spaces.

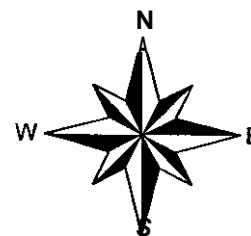
The subject site is located along Oakland Avenue, just southwest of the Interstate 580 / Oakland Avenue inter-change and MacArthur Boulevard. The General Plan designates Oakland Avenue as an arterial street. Although dominated by multi-family residential development, the surrounding development pattern consists of a mixture of dwelling types of varying architectural styles and heights, including single-family dwellings and apartment buildings containing up to 66 units.

The subject site and surrounding properties are zoned R-50, Medium Density Residential Zone, and S-12, Residential Parking Combining Zone. The R-50 zone is intended to create, preserve, and enhance areas for apartment living. This zoning district would conditionally permit four dwelling units on the subject site. The General Plan recommendation for the subject site would allow a maximum density of up to one unit per 1,089 square feet of lot area or **5.4** units per acre. The proposed project would provide for six units on a 5,850 square foot lot, creating a density of one unit per 975 square feet of lot area.

CITY OF OAKLAND PLANNING COMMISSION



Case File: VMCD03-294
Applicant: Bill Levinson
Address: 436 Oakland Ave.
Zone: R-50 / S-12



Higher residential densities, as proposed, are typically found along arterial streets, such as Oakland Avenue. For example, R-70 zoning is found along Oakland Avenue just north of the subject site and I-580, as well as east of the site along MacArthur Boulevard. These areas and the subject site feature similar conditions that warrant a higher density, such as proximity to an interstate, the capacity of these streets to support a higher volume of traffic, and availability of infrastructure. Therefore, the slight increase in density for the proposed project would be appropriate given the high density development found within the surrounding neighborhood, the proximity of the site to an interstate highway, nearby recreational opportunities, and public transportation systems.

Overall, this project would result in the construction of a residential building consistent aesthetically and in terms of density with the surrounding neighborhood. Therefore, staff recommends approval of the Major Variance, Minor Variance, Conditional Use Permit and Design Review for this project, subject to the conditions of approval attached to this report.

PROJECT DESCRIPTION

This request would provide for the construction of a six unit residential condominium building on an undeveloped lot. The proposed building design and site planning are impacted by the physical conditions of the lot. The subject 5,850 square foot lot slopes up from Oakland Avenue with an approximately 20 percent change in elevation from street level to the rear lot line. The proposed structure would consist of three stories of living area elevated above a partially submerged parking garage containing nine parking spaces. The entry of the garage, accessed from Oakland Avenue, would be located at grade, with the majority of the parking area located below grade as the lot slopes up. Due to the change in grade, the front elevation of the building would be four stories in height and the rear elevation would be three stories. The first floor of the front face of the building would accommodate the primary entrance of the building and the garage door. The living areas, elevated above the garage and the entry lobby, would be situated in a tiered design with each floor stepping back approximately eight feet from the floor below. This tiered design would accommodate street facing private balconies for each unit. A 48-foot stair and elevator tower located in the middle of the front façade would bisect the balconies.

PROPERTY DESCRIPTION

The subject lot contains 45 feet of street frontage and 130 feet of lot depth, with approximately 20 percent slope from street grade to the rear lot line. Access to the lot is gained via Oakland Avenue, an arterial street. The surrounding development pattern consists of a mixture of dwelling types of varying architectural styles and heights.

GENERAL PLAN ANALYSIS

The General Plan land use designation for the site is Mixed Housing Type Residential. The Mixed Housing Type Residential classification is intended to create, maintain, and enhance residential areas characterized by a *mix* of single family and multi-family dwellings, and neighborhood serving businesses. The maximum density allowed within this designation is 30 units per gross acre or one unit per 1,089 per square feet of lot area. At one unit per 975 square feet of lot area, the proposal would be slightly higher than the maximum theoretic General Plan density. General Plan Policy N7.1 indicates that new residential development should be compatible with the density and scale of surrounding development. The Plan specifies that factors to be considered when determining compatibility should include infrastructure availability, emergency response and evacuation times, street width and function, predominant development type and height, and distance from public transportation. In this case staff has found that the proposed density would be compatible with the surrounding multi-family development pattern, and that a higher density would be warranted given the proximity of the an interstate highway, availability of infrastructure, nearby recreational opportunities, easy access to public transportation systems. Additionally, the request would be consistent with Neighborhood

Policy N3.5 of the General Plan to encourage development of housing in designated mixed housing type areas.

ZONING ANALYSIS

The subject property is within the R-50 Medium Density Residential Zone and S-12 Residential Parking Combining Zone. The following evaluates relevant zoning code sections in terms of the R-50 and S-12 development standards contained in Chapters 17.20 and 17.94 and other applicable sections of the Planning Code.

Maximum Height

The Planning Code would permit a maximum height of 30 feet for the primary structure. Stair and elevator towers are permitted at a height of up to 42 feet, with a conditional use permit required to exceed 42 feet. The height of the building, measured from finished grade, varies from the front of the structure to the rear due to the cross-sloping topography of the lot. At the rear of the lot, the first floor of living area would be situated at grade, with the parking garage submerged. In order to maintain constant floor levels, the finished floors of garage and living spaces would increase in elevation as the lot slopes down toward the street. Consequently, the front elevation of the building, situated on the lowest portion of the lot, would be the tallest due to the stair and elevator tower. The height of the stair tower is dictated by the need to gain access to the third floor dwelling units. The majority of the living areas would be below the permitted height of 30 feet with the exception of a small portion of the third floor located at the front of the building. At its tallest point, the ridge of the hipped roof would be 40 feet above grade. The increased heights of the building on the lower portion of the lot would be warranted given the change in grade elevation across the lot.

Setbacks

The following table lists the required and proposed setbacks for the project.

	Required	Proposed
Front	15'-0"	15'-0"
Right Side	4'-0"	4'-0"
Left Side	4'-0"	4'-0"
Rear	15'-0"	17'-0"

Open Space

The proposed site design would accommodate 827 square feet group open space or 138 square feet per unit. A total of 958 square feet of private open space would be provided in the form of balconies for the units. Thus, a total of 1,785 square feet of open space would be located on the lot. The Planning Code requires a minimum of 1,200 square feet of total open space, with a minimum of 75 square feet of group open space per unit.

Design Review Requirement

The project requires Design Review approval for the construction of more than three dwelling units on one lot. The "Findings for Approval" section of this report show that the project meets the findings required for Residential Design Review (Section 17.136.070a for Regular Residential Design Review and 17.20.070 Design Review for the R-36 Zone).

Parking

The S-12 District is intended to ensure that adequate off-street parking is provided in areas with high concentrations of residential facilities. The zoning regulations require one off-street parking space for each three habitable rooms in the facility. In an effort to reduce the amount of land area needed to provide the increased number parking spaces, the S-12 zone permits reduced maneuvering aisles and compact spaces if the widths of the spaces are increased. Consistent with S-12 requirements, four standard 9' by 18' spaces with a 20' maneuvering aisle, three compact 8'6" by 15' spaces with a 20' maneuvering aisle, and one 9' 6 by 18' accessible space with a 20' maneuvering aisle would be provided.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines lists projects that qualify as statutory exemptions from environmental review. Section 15303.b of that document exempts the construction of a multi-family dwelling containing no more six dwelling units on lots located in urbanized areas from environmental review. The project involves six units in an urbanized area and is thereby consistent with Section 15303.b, and consistent with the criteria set forth in Section 15332.

KEY ISSUES AND IMPACTS

Building Height

The topography of the lot represents a unique practical difficulty in meeting the building height requirements. The majority of the living areas would be below the maximum permitted height. In order to maintain consistent floor levels, the finished floors of garage and living spaces would increase in elevation as the lot slopes down toward the street resulting in wall heights in excess of 30 feet. Therefore, the increased height permits a superior design solution from a visual and practical point of view.

Staff has found that the density variance would be appropriate for the following reasons:

- There is an established pattern of multi-family units within the surrounding neighborhood of similar density.
- The site is located on a major arterial street and is readily accessible to a freeway, recreational opportunities, and public transportation.
- The higher density can be accommodated within the R-50 in terms of parking, open space, or setbacks.
- The request would be consistent with Neighborhood Policy N3.5 of the General Plan to encourage development of housing in designated mixed housing type areas.


Design Review

The proposed building elevation plans submitted with the application do not include detailed information. To ensure that the visual quality of the proposed building is consistent with the Design Review criterion, final detailed building elevations should be submitted to the Zoning Administrator for review and approval. Additional information submitted should include window and door details, landscaping, and building materials. Minor changes, such as gabled roof ends and alternative window sizes and placement on the stair and elevation tower, which may improve the visual aesthetics of the building, may be made to the final building design.

RECOMMENDATIONS:

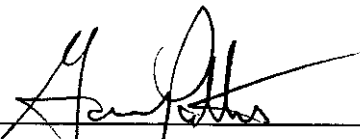
1. Affirm staffs environmental determination.
2. Approve the Variance and Design Review Permit subject to the attached findings and conditions.

Prepared by:




Leigh McCullen
Planner II

Approved by:



GARY V. PATTON
Deputy Director of Planning and Zoning
Approved for forwarding to the
City Planning Commission:



CLADIA CAPIO
Director of Development

ATTACHMENTS:

- A. Plans and Elevations

FINDINGS FOR APPROVAL:

This proposal meets the required findings under 17.148.050 (Variance Criteria), 17.136.070.A (Residential Design Review Criteria), 17.134.050 (Conditional Use Permit Criteria).

Section **17.148.070** Variance Criteria:

- A. Strict compliance with the **specified** regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions **of** design; or, as an alternative in **the** case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.

The General Plan land use designation for the site is Mixed Housing Type Residential. The Mixed Housing Type Residential classification is intended to create, maintain, and enhance residential areas characterized by a mix of single family and multi-family dwellings, and neighborhood serving businesses. The maximum density allowed within this designation is 30 units per gross acre or one unit per 1,089 per square feet of lot area. At one unit per 975 square feet of lot area, the proposal would be slightly higher *than* the maximum theoretic General Plan density. General Plan Policy N7.1 indicates that new residential development should be compatible with the density and scale of surrounding development. The Plan specifies that factors to be considered when determining compatibility should include infrastructure availability, emergency response and evacuation times, street width and function, predominant development type and height, and distance from public transportation. In this case the proposed density would be compatible with the surrounding multi-family development pattern, and that a higher density would be warranted given the proximity of the an interstate highway, nearby recreational opportunities, available infrastructure, and easy access to public transportation systems.

The Planning Code would permit a maximum height of 30 feet for the primary structure. The height of the building, measured from finished grade, varies from the front of the structure to the rear due to the steep cross-sloping topography of the lot. At the rear of the lot, the first floor of living area would be situated at grade, with a submerged parking garage. In order to maintain constant floor levels, the finished floors of garage and living spaces would increase in elevation as the lot slopes down toward the street. Consequently, the front elevation of the building, situated on the lowest portion of the lot, would be the tallest portion of the building. The majority of the living areas would be below the permitted height of **30** feet with the exception of a small portion of the third floor located at the front of the building. At its tallest point, the ridge of hipped roof would be 40 feet above grade. The increased heights of the building on the lower portion of the lot would be warranted given than the change in grade elevation of the lot.

- B. Strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners **of** similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution **fulfilling** the basic intent **of** the applicable regulation.

The project would be consistent with the surrounding mixture of dwelling types and with the corresponding density within the neighborhood, particularly adjacent to Interstate 580 and along Oakland Avenue, a major arterial street.

- C. **The variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy;**

The proposed residential building would be consistent aesthetically and in terms of density with the surrounding neighborhood. There is a broad spectrum of architectural forms and massing for multi-family buildings and the proposed design. Setbacks, height, and exterior building materials of the project are within this existing context.

The majority of the building would be below the maximum permitted height. The wall heights in excess of 30 feet in height are located toward to northwest side of the building closest to Oakland Avenue. Therefore, the impacts created by the height of the building would occur near the primary street frontage of a major arterial.

- D. **The variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations.**

The proposed density would be appropriate **given** the average densities found within the surrounding neighborhood, the proximity of the site to an interstate highway, nearby recreational opportunities, available infrastructure and public transportation systems. Overall, this project would result in the construction of a residential building consistent aesthetically and in terms of density with the surrounding neighborhood.

The topography of the lot represents a unique practical difficulty in meeting the building height requirements. The majority of the living areas would be below the maximum permitted height. In order to maintain constant floor levels, the finished floors of garage and living spaces would increase in elevation as the lot slopes down toward the street resulting in wall heights in excess of 30 feet. Further, grading is deemed impractical and would not provide as high of a quality of living as the proposed design.

17.136.070.A (Residential Design Review Criteria):

- A. **The proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures.**

This request would provide for the construction of a six unit residential condominium building on an undeveloped lot. The subject site is surrounded by a mixed of dwelling types of varying architectural styles and heights. The proposed building design and site planning are constrained by the physical conditions of the lot. The subject 5,850 square foot lot slopes up from Oakland Avenue with an approximately 20 percent change in elevation from street level to the rear lot line. The proposed structure would consist of three stories of living area elevated above a partially submerged parking garage containing nine parking spaces. The entry of the garage, accessed from Oakland Avenue, would be located at grade, with the majority of the parking area located below grade as the lot slopes up. Due to the change in grade, the front elevation of the building would be four stories in height and the rear elevation would be three stories. The first floor of the front face of the building would accommodate the primary entrance of the building and the garage door. The living areas, elevated above the garage and the entry lobby, would be situated in a tiered design with each floor stepping back approximately eight feet from the floor below. This tiered design would accommodate street facing private balconies for each unit.

B. The proposed design will protect, preserve, or enhance desirable neighborhood characteristics.

Although dominated by multi-family residential development, the surrounding development pattern consists of a mixture of dwelling types of varying architectural styles and heights, including single-family dwellings and apartment buildings containing up to 66 units. The proposed six unit residential condominium building would contribute to the established residential development pattern found within the neighborhood.

C. The proposed design will be sensitive to the topography and landscape.

Although some excavation would occur to accommodate the subterranean garage, the existing grade would be visually maintained along the exterior walls of the building. The living areas of the proposed structure would be arranged in a stepped fashion to correspond to the topography of the lot.

D. If situated on a hill, the design and massing of the proposed building relates to the grade of the hill.

The proposed building design and site planning are constrained by the physical conditions of the lot. The subject **5,850** square foot lot slopes up from Oakland Avenue with an approximately **20** percent change in elevation from street level to the rear lot line. The proposed structure would consist of three stories of living area elevated above a partially submerged parking garage containing nine parking spaces. The entry of the garage, accessed from Oakland Avenue, would be located at grade, with the majority of the parking area located below grade as the lot slopes up. Due to the change in grade, the front elevation of the building would be four stories in height and the rear elevation would be three stories. The first floor of the front face of the building would accommodate the primary entrance of the building and the garage door. The living areas, elevated above the garage and the entry lobby, would be situated in a tiered design following the topography of the lot, with each floor stepping back approximately eight feet from the floor below.

E. The proposed design conforms in all significant respects with the Oakland Comprehensive Plan and with any applicable district plan or development control map which has been adopted by the City Council.

The General Plan land use designation for the site is Mixed Housing Type Residential. The maximum density allowed within this designation is 30 units per gross acre or one unit per 1,089 per square feet of lot area. At one unit per **975** square feet of lot area, the proposal would be slightly higher the maximum theoretic General Plan density. General Plan Policy N7.1 indicates that new residential development should be compatible with the density and scale of surrounding development. The Plan specifies that factors to be considered when determining compatibility should include infrastructure availability, emergency response and evacuation times, street width and function, predominant development type and height, and distance from public transportation. In this case the proposed density would be compatible with the surrounding multi-family development pattern, and that a higher density would be warranted given the proximity of the an interstate highway, nearby recreational opportunities, available infrastructure, and easy access to public transportation systems.

SECTION 17.134.050 - CONDITIONAL USE PERMIT FINDINGS:

A. That the location, size, design, and operating characteristics of the proposed development will be compatible with, and will not adversely affect, the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the

FINDINGS

availability of civic facilities and utilities; to harmful effect, if any upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

The Conditional Use Permit is required to provide for a stair tower that exceeds **42** feet in height. The height of the building, measured from finished grade, varies from the front of the structure to the rear due to the steep cross-sloping topography of the lot. At the rear of the lot, the first floor of living area would be situated at grade, with the parking garage submerged. In order to maintain constant floor levels, the finished floors of garage and living spaces would increase in elevation as the lot slopes down toward the street. Consequently, the front elevation of the building, situated on the lowest portion of the lot, would be the tallest due to the stair and elevator tower. The height of stair tower is dictated by the needed to gain access to the third floor dwelling units.

The mass of the stair tower would be situated in the middle of the front elevation of the building and would be setback **14** feet from the side lot lines. Impacts of the height of the stair tower upon the adjoining properties would be nominal given its location.

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.

The proposed elevator and stair tower improve the accessibility of the units thereby creating a convenient and functional living environment for the residents of the proposed building, as well as meeting the emergency access requirements.

- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.

The proposed multi-family dwelling would contribute to the existing multi-family residential development pattern found within the surrounding neighborhood. Additionally, the request would be consistent with Neighborhood Policy **N3.5** of the General Plan to encourage development of additional housing in designated mixed housing type areas.

- D. That the proposal conforms to all applicable design review criteria set forth in the DESIGN REVIEW PROCEDURE of Chapter 17.136 of the Oakland Planning Code.

See findings above for Section 17.136.070(a).

- E. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.

The General Plan land use designation for the site is Mixed Housing Type Residential. The maximum density allowed within this designation is 30 units per gross acre or one unit per 1,089 per square feet of lot area. At one unit per 975 square feet of lot area, the proposal would be slightly higher the maximum theoretic General Plan density. General Plan Policy N7.1 indicates that new residential development should be compatible with the density and scale of surrounding development. The Plan specifies that factors to be considered when

determining compatibility should include infrastructure availability, emergency response and evacuation times, street width and function, predominant development type and height, and distance from public transportation. In this case the proposed density would be compatible with the surrounding multi-family development pattern, and that a higher density would be warranted given the proximity of the **an** interstate highway, nearby recreational opportunities, easy access to public transportation systems.

CONDITIONS OF APPROVAL**STANDARD CONDITIONS:****1. Approved Use.****a. Ongoing,**

The project shall be constructed and operated in accordance with the authorized use as described in this ~~staff~~ report and the plans submitted on July 1, 2003 and as amended by the following conditions. Any additional uses other than those approved with this permit, as described in the project description, will require a separate application and approval.

2. Effective Date, Expiration, and Extensions**a. Ongoing.**

This permit shall become effective upon satisfactory compliance with these conditions. This permit shall expire on July 1, **2004** unless actual construction or alteration, or actual commencement of the authorized activities in the case of a permit not involving construction or alteration, has begun under necessary permits by this date. Upon written request and payment of appropriate fees, the Zoning Administrator may grant a one-year extension of this date, with additional extensions subject to approval by the City Planning Commission.

3. Scope of This Approval; Major and Minor Changes**a. Ongoing.**

The project is approved pursuant to the Planning Code only and shall comply with all other applicable codes and requirements imposed by other affected departments, including but not limited to the Building Services Division and the Fire Marshal. Minor changes to approved plans may be approved administratively by the Zoning Administrator; major changes shall be subject to review and approval by the City Planning Commission.

4. Modification of Conditions or Revocation**a. Ongoing.**

The City Planning Commission reserves the right, after notice and public hearing, to alter Conditions of Approval or revoke this conditional use permit if it is found that the approved facility is violating any of the Conditions of Approval or the provisions of the Zoning Regulations.

5. Recording of Conditions of Approval**a. Prior to issuance of building permit or commencement of activity.**

The applicant shall execute and record with the Alameda County Recorder's Office a copy of these conditions of approval on a form approved by the Zoning Administrator. Proof of recordation shall be provided to the Zoning Administrator.

6. Reproduction of Conditions on Building Plans**a. Prior to issuance of building permit**

These conditions of approval shall be reproduced on page one of any plans submitted for a building permit for this project.

7. Indemnification**a. Ongoing.**

The applicant shall defend, indemnify, and hold harmless the City of Oakland, its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an

CONDITIONS OF APPROVAL

approval by the City of Oakland, the Office of Planning and Building, Planning Commission, or City Council. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

PROJECT SPECIFIC CONDITIONS:

8. Window and Door Details.

a Prior to issuance of building permit

A window and door schedule, including cross-sections and elevations, and final architectural details of the primary pedestrian entry shall be submitted to the Zoning Administrator for review and approval. Details shall show wood or wood-like (such as aluminum clad) windows that have a minimum two inch recess from the surrounding exterior walls, have wood-like sash dimensions, and contain exterior trim. Each window shall be single or double vertically hung.

11. Landscaping Plan.

a Prior to issuance of building permit

A detailed landscaping plan for the project and shall submit such plans to the Zoning Administrator for review and approval. The landscaping plan shall include a system for automatic irrigation of plantings and at least one new front yard tree. All landscaping shall be permanently maintained in a neat, safe and healthy condition. The landscaping plan shall include a distinct pathway leading to the entry of the units. The pedestrian pathway shall be separated from the driveway by a landscape strip. Landscaping shall be provided within the group open space area at the rear of the site. Planters shall be installed along the inside of the balcony railings, planted with a flowering, cascading plant species.

12. Driveways and Parking

a Prior to issuance of building permit

The landscape plan, submitted to the Zoning Administrator for review and approval, shall detail the proposed paving, curbing and parking layout. The driveway from Oakland Avenue shall be no wider than the width of the garage door or 19 feet, whichever is less. The driveway along East 20th Street shall be improved with a pervious decorative surface. A sample of the proposed method of paving shall be submitted with the revised site plan.

13. Final Building Elevations

a. Prior to issuance of building permit

Final building elevations shall be submitted to the Zoning Administrator for review and approval. Architectural details shall, at a minimum, include:

1. A substantial cornice (approximately 3" to 4") of an appropriate material, such as brick or plaster, shall cap the hand ledge of the front balconies.
2. The garage door recessed a minimum of 18 inches from the outer perimeter walls.
3. Ornamental moldings located at finished floor elevations.

5 ayes, 0 noes

APPROVED BY City Planning Commission: September 17, 2003 (date) **- to approve** (vote)

City Council: _____ (date) _____ (vote)

Neil S. Kaplan
510-451-5252

Oakland City Planning Commission
250 Frank Ogawa Plaza, Suite 2114
Oakland, California 94612
September 26, 2003

RE: Case file #VMCD03-294 1436 Oakland Ave / Appeal

Dear Folks:

I am a property owner of a condominium located on the north corner of the top floor of the Cedars, a condominium building at 425 Orange Street, Oakland. This unit I purchased 14 years ago has the right light, air, orientation and view I need to live and work comfortably in good health. I found here a surprising amount of foliage for such a densely populated area. I also enjoyed the distant view of Mt. Tamalpais, Marin, Oakland city buildings, trees, rooftops, freeway and the relative serenity and greenery of the vacant lot that is located directly in front of my primary view. In fact the presence of the lot and its wild growth was, among other considerations, an important factor in my decision to reside here. And so far I did enjoy living in this location with this view and ambiance.

But I am a realist, a firm believer in good development and I knew that someone someday would want to build some kind of house or apartment on that lot that I liked to look at. It's just a matter of time. Well, that time has come.

My appeal is based on the fact that the size and nature of this particular development that has been proposed for the site at 436 Oakland Avenue will significantly diminish my property values (and other properties nearby) in so many ways that I will explain forthwith. Attached are exhibits graphically showing in plan, elevation and perspective the relationship between my property and the developer's proposal.

I studied the developer's drawings on file and determined that the position and proximity of the rear **façade**, building height, roof and stair tower with respect to the height and location of my unit in the Cedars will definitely block my view of said elements. My bedroom, for instance, would be in continuous shadow. The condominiums below me would be dark. The rear of this building is so close as to create a real crowded-in feeling. Neighboring buildings on either side of this one are at least 30 feet shorter in length and lower in height. One can clearly see this from looking at a building footprint plan such as what's on a Sanborn Map. This proposed bully of an apartment building to be built on a lower grade would *still* exceed my view horizon. In addition to the loss of view, light, late afternoon sunshine and air, I will lose my privacy, security, quiet and quality of life that I enjoy in order to live and work here.

We will also lose the benefit of all the trees (and the birds that perch within) on the site – especially near the edges. All those trees and shrubs are to be removed. The subterranean garage that extends almost to the rear property line will prohibit the root growth of any future trees planted to grow to maturity. This is vitally important in any areas of close in and disparate structures. The tree's presence and canopy, cleanses the air and visually softens the harshness (ugliness) of the dense jumble of all the structures built here in Oakland.

ATTACHMENT A

Furthermore, the increase in noise from construction and the occupants, who may want to entertain loudly on the roof deck (which is so close), will become quite stressful to me. Speaking of noise, all the immediate buildings on Oakland Avenue are rental apartments. From what I observed, the tenants come and go every few months or so. There is much screeching tires, racing and boom box noise on Oakland Avenue and Harrison Street near the freeway entrances. Clearly, a different demographic there than there is on Orange Street – just a block away. This should be kept in mind. Another thing is that if I do decide to move, I will suffer a significant reduced value and the resale of my condominium will become more difficult.

After reading the staff report of the City Planning Commission and while I agree on some of their findings I felt that certain considerations were lacking. I also got the impression from the report that the city was so anxious to fill that lot (increased tax base, etc) that it would create reason to justify having almost any size/density of project there. The city does have an obligation to maintain view and air rights to existing residents. This type of maximum lot coverage in this context sets a bad planning precedent for future building projects and will lower the standards for the neighborhood for views, trees and general ambiance. A project like this on a similar lot in neighboring Berkeley would have a tougher time getting variances / permits. Nothing was mentioned about how close to and how the proposed building will otherwise effect the immediate community. The massing at the front of the building was (I think) handled well with its setbacks but the rear of it extends way into the rear yard and its sheer volume will cast a shadow upon all the neighboring apartments and condos at certain times of the day and year. Indeed, no storey poles were erected at the corners of the proposed building to give interested parties an idea of its height and volume. I'm glad that I am able to interpret the drawings.

Once again all of this contributes to a significant loss of property value and the general reduction of the quality of life to me.

If there is to be a building at this site (and there should be *some* kind of development for that site) I would strongly recommend it to be at least one storey lower in height and be built close in line with the neighboring rear facades. That is, to have a rear yard. This would be more consistent with the nearby buildings and will keep some of the necessary trees. Here again, this may contribute to a minor loss of my property values but one I could perhaps live with.

Sincerely,



Neil S. Kaplan

ATTACHMENT A

Case File Number VMCD03-294

September 17, 2003

Location:	436 Oakland Avenue (See map on reverse)
Assessors Parcel Numbers:	010-0792-020-00
Proposal: To construct a 6-unit residential condominium building.	
Owner	Bill Levinson
Applicant:	Bill Levinson
Planning Permits Required:	Major Variance to provide for six dwelling units on a 5,850 square foot lot or one unit per 975 square feet of lot area where one unit per 1,089 square feet of lot area is allowed, Minor Variance for up to 40 feet of building height where 30 feet is allowed, Minor Conditional Use Permit for a 48-foot tall stair and elevator tower, and Design Review.
General Plan:	Mixed Housing Type Residential
Zoning:	R-50 Medium Density Residential Zone, S-12 Residential Parking Combining Zone
Environmental Determination:	Exempt, Section 15303, State CEQA Guidelines, new construction of small structures
Historic Status:	Undeveloped lot, no historic record
Service Delivery District:	3 – San Antonio
City Council District:	3
Staff recommendation:	Approve with attached findings and conditions.
For further information:	Contact case planner Leigh McCullen at 510-238-4977.

SUMMARY

This request would provide for the construction of a six unit, residential, condominium building on an undeveloped lot. The proposed structure would consist of three stories of living area elevated above a partially submerged parking garage containing nine parking spaces. Each floor of living area would contain two, 1,300 square foot, dwelling units. The proposed site plan would accommodate 1,306 square feet of combined group and private open spaces.

The subject site is located along Oakland Avenue, just southwest of the Interstate 580 / Oakland Avenue inter-change and MacArthur Boulevard. The General Plan designates Oakland Avenue as an arterial street. Although dominated by multi-family residential development, the surrounding development pattern consists of a mixture of dwelling types of varying architectural styles and heights, including single-family dwellings and apartment buildings containing up to 66 units.

The subject site and surrounding properties are zoned R-50, Medium Density Residential Zone, and S-12, Residential Parking Combining Zone. The R-50 zone is intended to create, preserve, and enhance areas for apartment living. This zoning district would conditionally permit four dwelling units on the subject site. The General Plan recommendation for the subject site would allow a maximum density of up to one unit per 1,089 square feet of lot area or 5.4 units per acre. The proposed project would provide for six units on a 5,850 square foot lot, creating a density of one unit per 975 square feet of lot area.

Higher residential densities, as proposed, are typically found along arterial streets, such as Oakland Avenue. For example, R-70 zoning is found along Oakland Avenue just north of the subject site and I-580, as well as east of the site along MacArthur Boulevard. These areas and the subject site feature similar conditions that warrant a higher density, such as proximity to an interstate, the capacity of these streets to support a higher volume of traffic, and availability of infrastructure. Therefore, the slight increase in density for the proposed project would be appropriate given the high density development found within the surrounding neighborhood, the proximity of the site to an interstate highway, nearby recreational opportunities, and public transportation systems.

Overall, this project would result in the construction of a residential building consistent aesthetically and in terms of density with the surrounding neighborhood. Therefore, staff recommends approval of the Major Variance, Minor Variance, Conditional Use Permit and Design Review for this project, subject to the conditions of approval attached to this report.

PROJECT DESCRIPTION

This request would provide for the construction of a six unit residential condominium building on an undeveloped lot. The proposed building design and site planning are impacted by the physical conditions of the lot. The subject 5,850 square foot lot slopes up from Oakland Avenue with an approximately 20 percent change in elevation from street level to the rear lot line. The proposed structure would consist of three stories of living area elevated above a partially submerged parking garage containing nine parking spaces. The entry of the garage, accessed from Oakland Avenue, would be located at grade, with the majority of the parking area located below grade as the lot slopes up. Due to the change in grade, the front elevation of the building would be four stories in height and the rear elevation would be three stories. The first floor of the front face of the building would accommodate the primary entrance of the building and the garage door. The living areas, elevated above the garage and the entry lobby, would be situated in a tiered design with each floor stepping back approximately eight feet from the floor below. This tiered design would accommodate street facing private balconies for each unit. A 48-foot stair and elevator tower located in the middle of the front façade would bisect the balconies.

PROPERTY DESCRIPTION

The subject lot contains 45 feet of street frontage and 130 feet of lot depth, with approximately 20 percent slope from street grade to the rear lot line. Access to the lot is gained via Oakland Avenue, an arterial street. The surrounding development pattern consists of a mixture of dwelling types of varying architectural styles and heights.

GENERAL PLAN ANALYSIS

The General Plan land use designation for the site is Mixed Housing Type Residential. The Mixed Housing Type Residential classification is intended to create, maintain, and enhance residential areas characterized by a *mix* of single family and multi-family dwellings, and neighborhood serving businesses. The maximum density allowed within this designation is 30 units per gross acre or one unit per 1,089 per square feet of lot area. At one unit per 975 square feet of lot area, the proposal would be slightly higher the maximum theoretic General Plan density. General Plan Policy N7.1 indicates that new residential development should be compatible with the density and scale of surrounding development. The Plan specifies that factors to be considered when determining compatibility should include infrastructure availability, emergency response and evacuation times, street width and function, predominant development type and height, and distance from public transportation. In this case staff has found that the proposed density would be compatible with the surrounding multi-family development pattern, and that a higher density would be warranted given the proximity of the an interstate highway, availability or infrastructure, nearby recreational opportunities, easy access to public transportation systems. Additionally, the request would be consistent with Neighborhood

Policy N3.5 of the General Plan to encourage development of housing in designated mixed housing type areas.

ZONING ANALYSIS

The subject property is within the R-50 Medium Density Residential Zone and S-12 Residential Parking Combining Zone. The following evaluates relevant zoning code sections in terms of the R-50 and S-12 development standards contained in Chapters 17.20 and 17.94 and other applicable sections of the Planning Code.

Maximum Height

The Planning Code would permit a maximum height of 30 feet for the primary structure. Stair and elevator towers are permitted at a height of up to 42 feet, with a conditional use permit required to exceed 42 feet. The height of the building, measured from finished grade, varies from the front of the structure to the rear due to the cross-sloping topography of the lot. At the rear of the lot, the first floor of living area would be situated at grade, with the parking garage submerged. In order to maintain constant floor levels, the finished floors of garage and living spaces would increase in elevation as the lot slopes down toward the street. Consequently, the front elevation of the building, situated on the lowest portion of the lot, would be the tallest due to the stair and elevator tower. The height of the stair tower is dictated by the need to gain access to the third floor dwelling units. The majority of the living areas would be below the permitted height of 30 feet with the exception of a small portion of the third floor located at the front of the building. At its tallest point, the ridge of the hipped roof would be 40 feet above grade. The increased heights of the building on the lower portion of the lot would be warranted given the change in grade elevation across the lot.

Setbacks

The following table lists the required and proposed setbacks for the project.

	Required	Proposed
Front	15'-0"	15'-0"
Right Side	4'-0"	4'-0"
Left Side	4'-0"	4'-0"
(Rear	15'-0"	17'-0"

Open Space

The proposed site design would accommodate 827 square feet group open space or 138 square feet per unit. A total of 958 square feet of private open space would be provided in the form of balconies for the units. Thus, a total of 1,785 square feet of open space would be located on the lot. The Planning Code requires a minimum of 1,200 square feet of total open space, with a minimum of 75 square feet of group open space per unit.

Design Review Requirement

The project requires Design Review approval for the construction of more than three dwelling units on one lot. The "Findings for Approval" section of this report show that the project meets the findings required for Residential Design Review (Section 17.136.070a for Regular Residential Design Review and 17.20.070 Design Review for the R-36 Zone).

Parking

The S-12 District is intended to ensure that adequate off-street parking is provided in areas with high concentrations of residential facilities. The zoning regulations require one off-street parking space for each three habitable rooms in the facility. In an effort to reduce the amount of land area needed to provide the increased number parking spaces, the **S-12** zone permits reduced maneuvering aisles and compact spaces if the widths of the spaces are increased. Consistent with S-12 requirements, four standard 9' by 18' spaces with a 20' maneuvering aisle, three compact 8'6" by 15' spaces with a 20' maneuvering aisle, and one 9' 6" by 18' accessible space with a 20' maneuvering aisle would be provided.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines lists projects that qualify as statutory exemptions from environmental review. Section 15303.b of that document exempts the construction of a multi-family dwelling containing no more six dwelling units on lots located in urbanized areas from environmental review. The project involves six units in an urbanized area and is thereby consistent with Section 15303.b, and consistent with the criteria set forth in Section 15332.

KEY ISSUES AND IMPACTS

Building Height

The topography of the lot represents a unique practical difficulty in meeting the building height requirements. The majority of the living areas would be below the maximum permitted height. In order to maintain consistent floor levels, the finished floors of garage and living spaces would increase in elevation as the lot slopes down toward the street resulting in wall heights in excess of 30 feet. Therefore, the increased height permits a superior design solution from a visual and practical point of view,

Staff has found that the density variance would be appropriate for the following reasons:

- There is an established pattern of multi-family units within the surrounding neighborhood of similar density.
- The site is located on a major arterial street and is readily accessible to a freeway, recreational opportunities, and public transportation.
- The higher density can be accommodated within the R-50 in terms of parking, open space, or setbacks.
- The request would be consistent with Neighborhood Policy N3.5 of the General Plan to encourage development of housing in designated mixed housing type areas.


Design Review

The proposed building elevation plans submitted with the application do not include detailed information. To ensure that the visual quality of the proposed building is consistent with the Design Review criterion, final detailed building elevations should be submitted to the Zoning Administrator for review and approval. Additional information submitted should include window and door details, landscaping, and building materials. Minor changes, such as gabled roof ends and alternative window sizes and placement on the stair and elevation tower, which may improve the visual aesthetics of the building, may be made to the final building design.

RECOMMENDATIONS:


1. Affirm staffs environmental determination.
2. Approve the Variance and Design Review Permit subject to the attached findings and conditions.

Prepared by:




Leigh McCullen
Planner II

Approved by:



GARY V. PATTON
Deputy Director of Planning and Zoning
Approved for forwarding to the
City Planning Commission:



CLADIA CAPIO
Director of Development

ATTACHMENTS:

- A. Plans and Elevations

FINDINGS FOR APPROVAL:

This proposal meets the required findings under 17.148.050 (Variance Criteria), 17.136.070.A (Residential Design Review Criteria), 17.134.050 (Conditional Use Permit Criteria).

Section 17.148.070 Variance Criteria:

- A. Strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.**

The General Plan land use designation for the site is Mixed Housing Type Residential. The Mixed Housing Type Residential classification is intended to create, maintain, and enhance residential areas characterized by a mix of single family and multi-family dwellings, and neighborhood serving businesses. The maximum density allowed within this designation is 30 units per gross acre or one unit per 1,089 per square feet of lot area. At one unit per 975 square feet of lot area, the proposal would be slightly higher than the maximum theoretic General Plan density. General Plan Policy N7.1 indicates that new residential development should be compatible with the density and scale of surrounding development. The Plan specifies that factors to be considered when determining compatibility should include infrastructure availability, emergency response and evacuation times, street width and function, predominant development type and height, and distance from public transportation. In this case the proposed density would be compatible with the surrounding multi-family development pattern, and that a higher density would be warranted given the proximity of the an interstate highway, nearby recreational opportunities, available infrastructure, and easy access to public transportation systems.

The Planning Code would permit a maximum height of 30 feet for the primary structure. The height of the building, measured from finished grade, varies from the front of the structure to the rear due to the steep cross-sloping topography of the lot. At the rear of the lot, the first floor of living area would be situated at grade, with a submerged parking garage. In order to maintain constant floor levels, the finished floors of garage and living spaces would increase in elevation as the lot slopes down toward the street. Consequently, the front elevation of the building, situated on the lowest portion of the lot, would be the tallest portion of the building. The majority of the living areas would be below the permitted height of 30 feet with the exception of a small portion of the third floor located at the front of the building. At its tallest point, the ridge of hipped roof would be 40 feet above grade. The increased heights of the building on the lower portion of the lot would be warranted given than the change in grade elevation of the lot.

- B. Strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.**

The project would be consistent with the surrounding mixture of dwelling types and with the corresponding density within the neighborhood, particularly adjacent to Interstate 580 and along Oakland Avenue, a major arterial street.

ATTACHMENT B

FINDINGS

- C. The variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy;**

The proposed residential building would be consistent aesthetically and in terms of density with the surrounding neighborhood. There is a broad spectrum of architectural forms and massing for multi-family buildings and the proposed design. Setbacks, height, and exterior building materials of the project are within this existing context.

The majority of the building would be below the maximum permitted height. The wall heights in excess of 30 feet in height are located toward the northwest side of the building closest to Oakland Avenue. Therefore, the impacts created by the height of the building would occur near the primary street frontage of a major arterial.

- D. The variance will not constitute a grant of special privilege inconsistent with Limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations.**

The proposed density would be appropriate given the average densities found within the surrounding neighborhood, the proximity of the site to an interstate highway, nearby recreational opportunities, available infrastructure and public transportation systems. Overall, this project would result in the construction of a residential building consistent aesthetically and in terms of density with the surrounding neighborhood,

The topography of the lot represents a unique practical difficulty in meeting the building height requirements. The majority of the living areas would be below the maximum permitted height. In order to maintain constant floor levels, the finished floors of garage and living spaces would increase in elevation as the lot slopes down toward the street resulting in wall heights in excess of 30 feet. Further, grading is deemed impractical and would not provide as high of a quality of living as the proposed design.

17.136.070.A (Residential Design Review Criteria):

- A. The proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures.**

This request would provide for the construction of a six unit residential condominium building on an undeveloped lot. The subject site is surrounded by a mixed of dwelling types of varying architectural styles and heights. The proposed building design and site planning are constrained by the physical conditions of the lot. The subject 5,850 square foot lot slopes up from Oakland Avenue with an approximately 20 percent change in elevation from street level to the rear lot line. The proposed structure would consist of three stories of living area elevated above a partially submerged parking garage containing nine parking spaces. The entry of the garage, accessed from Oakland Avenue, would be located at grade, with the majority of the parking area located below grade as the lot slopes up. Due to the change in grade, the front elevation of the building would be four stories in height and the rear elevation would be three stories. The first floor of the front face of the building would accommodate the primary entrance of the building and the garage door. The living areas, elevated above the garage and the entry lobby, would be situated in a tiered design with each floor stepping back approximately eight feet from the floor below. This tiered design would accommodate street facing private balconies for each unit.

- B. The proposed design will protect, preserve, or enhance desirable neighborhood characteristics.

Although dominated by multi-family residential development, the surrounding development pattern consists of a mixture of dwelling types of varying architectural styles and heights, including single-family dwellings and apartment buildings containing up to 66 units. The proposed six unit residential condominium building would contribute to the established residential development pattern found within the neighborhood.

- C. The proposed design will be sensitive to the topography and landscape.

Although some excavation would occur to accommodate the subterranean garage, the existing grade would be visually maintained along the exterior walls of the building. The living areas of the proposed structure would be arranged in a stepped fashion to correspond to the topography of the lot.

- D. If situated on a hill, the design and massing of the proposed building relates to the grade of the hill.

The proposed building design and site planning are constrained by the physical conditions of the lot. The subject 5,850 square foot lot slopes up from Oakland Avenue with an approximately 20 percent change in elevation from street level to the rear lot line. The proposed structure would consist of three stories of living area elevated above a partially submerged parking garage containing nine parking spaces. The entry of the garage, accessed from Oakland Avenue, would be located at grade, with the majority of the parking area located below grade as the lot slopes up. Due to the change in grade, the front elevation of the building would be four stories in height and the rear elevation would be three stories. The first floor of the front face of the building would accommodate the primary entrance of the building and the garage door. The living areas, elevated above the garage and the entry lobby, would be situated in a tiered design following the topography of the lot, with each floor stepping back approximately eight feet from the floor below.

- E. The proposed design conforms in all significant respects with the Oakland Comprehensive Plan and with any applicable district plan or development control map which has been adopted by the City Council.

The General Plan land use designation for the site is Mixed Housing Type Residential. The maximum density allowed within this designation is 30 units per gross acre or one unit per 1,089 per square feet of lot area. At one unit per 975 square feet of lot area, the proposal would be slightly higher than the maximum theoretic General Plan density. General Plan Policy N7.1 indicates that new residential development should be compatible with the density and scale of surrounding development. The Plan specifies that factors to be considered when determining compatibility should include infrastructure availability, emergency response and evacuation times, street width and function, predominant development type and height, and distance from public transportation. In this case the proposed density would be compatible with the surrounding multi-family development pattern, and that a higher density would be warranted given the proximity of the an interstate highway, nearby recreational opportunities, available infrastructure, and easy access to public transportation systems.

SECTION 17.134.050 - CONDITIONAL USE PERMIT FINDINGS:

- A. That the location, size, design, and operating characteristics of the proposed development will be compatible with, and will not adversely affect, the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the

availability of civic facilities and utilities; to harmful effect, if any upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

The Conditional Use Permit is required to provide for a stair tower that exceeds 42 feet in height. The height of the building, measured from finished grade, varies from the front of the structure to the rear due to the steep cross-sloping topography of the lot. At the rear of the lot, the first floor of living area would be situated at grade, with the parking garage submerged. In order to maintain constant floor levels, the finished floors of garage and living spaces would increase in elevation as the lot slopes down toward the street. Consequently, the front elevation of the building, situated on the lowest portion of the lot, would be the tallest due to the stair and elevator tower. The height of stair tower is dictated by the needed to gain access to the third floor dwelling units.

The mass of the stair tower would be situated in the middle of the front elevation of the building and would be setback 14 feet from the side lot lines. Impacts of the height of the stair tower upon the adjoining properties would be nominal given its location.

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.

The proposed elevator and stair tower improve the accessibility of the units thereby creating a convenient and functional living environment for the residents of the proposed building, as well as meeting the emergency access requirements.

- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.

The proposed multi-family dwelling would contribute to the existing multi-family residential development pattern found within the surrounding neighborhood. Additionally, the request would be consistent with Neighborhood Policy N3.5 of the General Plan to encourage development of additional housing in designated mixed housing type areas.

- D. That the proposal conforms to all applicable design review criteria set forth in the DESIGN REVIEW PROCEDURE of Chapter 17.136 of the Oakland Planning Code.

See findings above for Section 17.136.070(a).

- E. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.

The General Plan land use designation for the site is Mixed Housing Type Residential. The maximum density allowed within this designation is 30 units per gross acre or one unit per 1,089 per square feet of lot area. At one unit per 975 square feet of lot area, the proposal would be slightly higher the maximum theoretic General Plan density. General Plan Policy N7.1 indicates that new residential development should be compatible with the density and scale of surrounding development. The Plan specifies that factors to be considered when

determining compatibility should include infrastructure availability, emergency response and evacuation times, street width and function, predominant development type and height, and distance from public transportation. In this case the proposed density would be compatible with the surrounding multi-family development pattern, and that a higher density would be warranted given the proximity of the an interstate highway, nearby recreational opportunities, easy access to public transportation systems.

CONDITIONS OF APPROVAL

STANDARD CONDITIONS:

1. Approved Use.
 - a. **Ongoing.**

The project shall be constructed and operated in accordance with the authorized use as described in this staff report and the plans submitted on July 1, 2003 and as amended by the following conditions. Any additional uses other than those approved with this permit, as described in the project description, will require a separate application and approval.
2. Effective Date, Expiration, and Extensions
 - a. **Ongoing.**

This permit shall become effective upon satisfactory compliance with these conditions. This permit shall expire on July 1, 2004 unless actual construction or alteration, or actual commencement of the authorized activities in the case of a permit not involving construction or alteration, has begun under necessary permits by this date. Upon written request and payment of appropriate fees, the Zoning Administrator may grant a one-year extension of this date, with additional extensions subject to approval by the City Planning Commission.
3. Scope of This Approval; Major and Minor Changes
 - a. **Ongoing.**

The project is approved pursuant to the Planning Code only and shall comply with all other applicable codes and requirements imposed by other affected departments, including but not limited to the Building Services Division and the Fire Marshal. Minor changes to approved plans may be approved administratively by the Zoning Administrator; major changes shall be subject to review and approval by the City Planning Commission.
4. Modification of Conditions or Revocation
 - a. **Ongoing.**

The City Planning Commission reserves the right, after notice and public hearing, to alter Conditions of Approval or revoke this conditional use permit if it is found that the approved facility is violating any of the Conditions of Approval or the provisions of the Zoning Regulations.
5. Recording of Conditions of Approval
 - a. **Prior to issuance of building permit or commencement of activity.**

The applicant shall execute and record with the Alameda County Recorder's Office a copy of these conditions of approval on a form approved by the Zoning Administrator. Proof of recordation shall be provided to the Zoning Administrator.
6. Reproduction of Conditions on Building Plans
 - a. **Prior to issuance of building permit.**

These conditions of approval shall be reproduced on page one of any plans submitted for a building permit for this project.
7. Indemnification
 - a. **Ongoing.**

The applicant shall defend, indemnify, and hold harmless the City of Oakland, its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an

approval by the City of Oakland, the Office of Planning and Building, Planning Commission, or City Council. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

PROJECT SPECIFIC CONDITIONS:

8. Window and Door Details.

a Prior to issuance of building permit

A window and door schedule, including cross-sections and elevations, and final architectural details of the primary pedestrian entry shall be submitted to the Zoning Administrator for review and approval. Details shall show wood or wood-like (such as aluminum clad) windows that have a minimum two inch recess from the surrounding exterior walls, have wood-like sash dimensions, and contain exterior trim. Each window shall be single or double vertically hung.

11. Landscaping Plan.

a Prior to issuance of building permit

A detailed landscaping plan for the project and shall submit such plans to the Zoning Administrator for review and approval. The landscaping plan shall include a system for automatic irrigation of plantings and at least one new front yard tree. All landscaping shall be permanently maintained in a neat, safe and healthy condition. The landscaping plan shall include a distinct pathway leading to the entry of the units. The pedestrian pathway shall be separated from the driveway by a landscape strip. Landscaping shall be provided within the group open space area at the rear of the site. Planters shall be installed along the inside of the balcony railings, planted with a flowering, cascading plant species.

12. Driveways and Parking

a Prior to issuance of building permit

The landscape plan, submitted to the Zoning Administrator for review and approval, shall detail the proposed paving, curbing and parking layout. The driveway from Oakland Avenue shall be no wider than the width of the garage door or 19 feet, whichever is less. The driveway along East 20th Street shall be improved with a pervious decorative surface. A sample of the proposed method of paving shall be submitted with the revised site plan.

13. Final Building Elevations

a. Prior to issuance of building permit

Final building elevations shall be submitted to the Zoning Administrator for review and approval. Architectural details shall, at a minimum, include:

1. A substantial cornice (approximately 3" to 4") of an appropriate material, such as brick or plaster, shall cap the hand ledge of the front balconies.
2. The garage door recessed a minimum of 18 inches from the outer perimeter walls.
3. Ornamental moldings located at finished floor elevations.

5 ayes, 0 noes

APPROVED BY City Planning Commission: September 17, 2003 (date) - **to approve** (vote)
City Council: _____ (date) _____ (vote)

ATTACHMENT B

CONDITIONS OF APPROVAL

NOTES

1. ALL EXISTING GRADES AND CONTIGUES ARE BASED UPON THE CITY OF OAKLAND DATUM.
2. THE NEAREST RISE IN DRAINAGE IS 140 FEET TO THE NORTH-EAST AS SHOWN. ALSO ONE AT PEARL ST. 3RD FREET ARMY.
3. THERE ARE AN INFERENTIAL CURVES OR SHARP VERTICAL CURVES WITHIN 300 FEET OF THE GARAGE.
4. NO OBJECTS WITHIN 50' OF FRONTAGE TO RESTRICT DRIVE SIGHT.
5. THERE ARE AN BUS STOPS OR CROSSWALKS WITHIN 150 FEET OF THE FRONTAGE.

SURVEYOR'S CERTIFICATE

THIS MAP CORRECTLY REPRESENTS A FIELD SURVEY MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND IN ACCORDANCE WITH THE REQUIREMENTS OF THE LAND SURVEYING ACT AS ENACTED BY THE LEGISLATURE OF THE STATE OF CALIFORNIA ON JANUARY 10, 1907. I HEREBY STATE THAT ALL EXISTING GRADES AND CONTIGUES DEPICTED UPON THIS MAP ARE BASED UPON CITY OF OAKLAND DATUM.

I FURTHER STATE THAT THE PARCEL REPRESENTED UPON THIS SURVEY IS THE SAME AS THAT SHOWN ON THE CURRENT EQUALIZED COUNTY ASSESSMENT ROLL AS A UNIT.



FILE NO. 27185

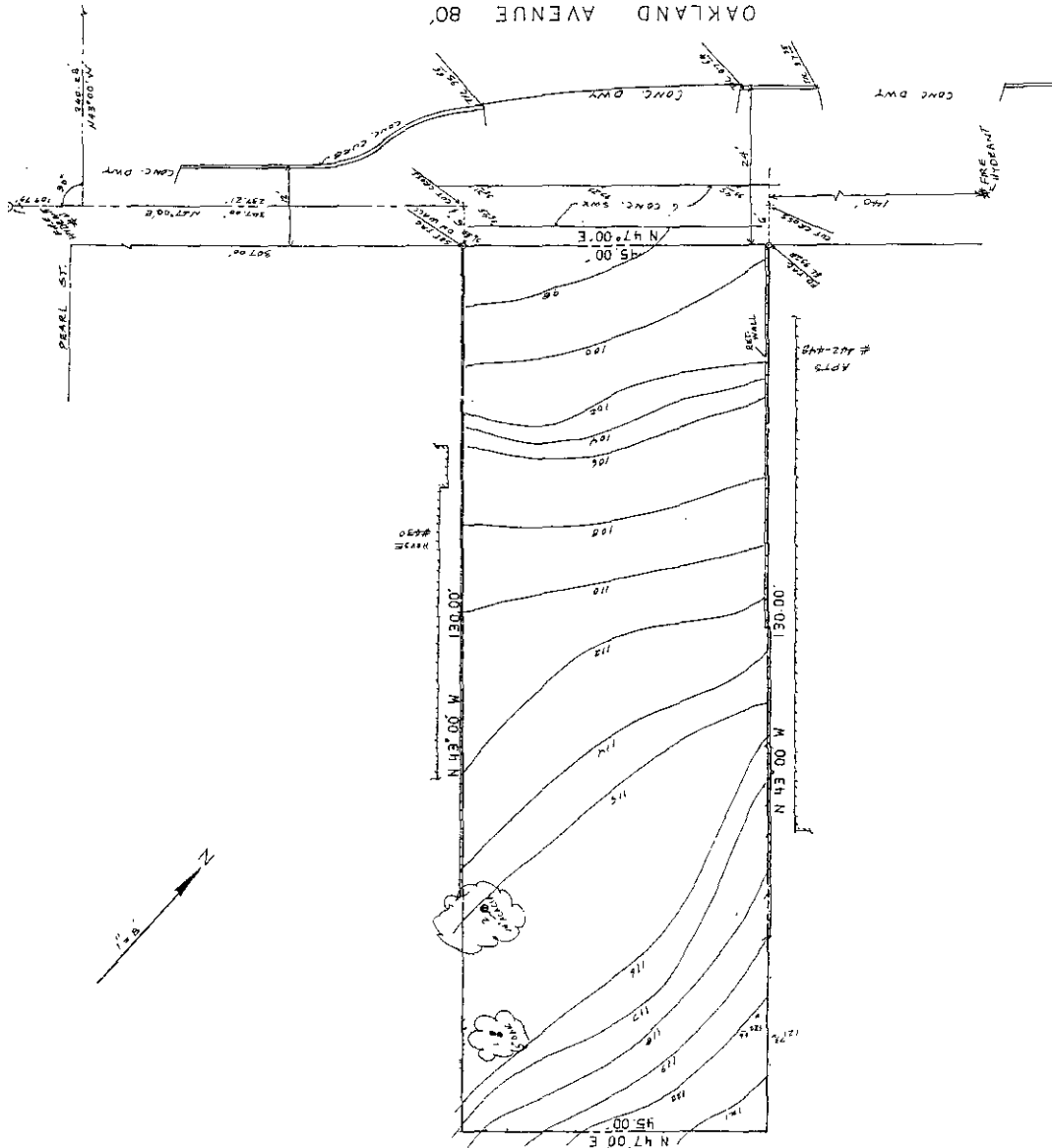
DATE

436 OAKLAND AVENUE
OAKLAND, CALIFORNIA
PORTION OF LOT 2, BLOCK K, MAP OF FLINT,
BOOK 15, PAGE 43, ALAMEDA COUNTY REC'D

FOR: BILL LEVINSON
529 MARGARIDO DRIVE,
OAKLAND, CALIFORNIA
TEL. 928-3658

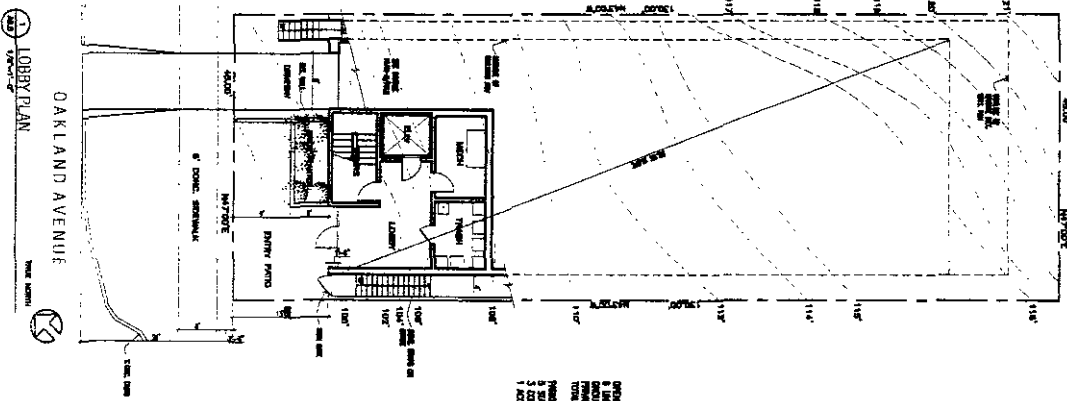
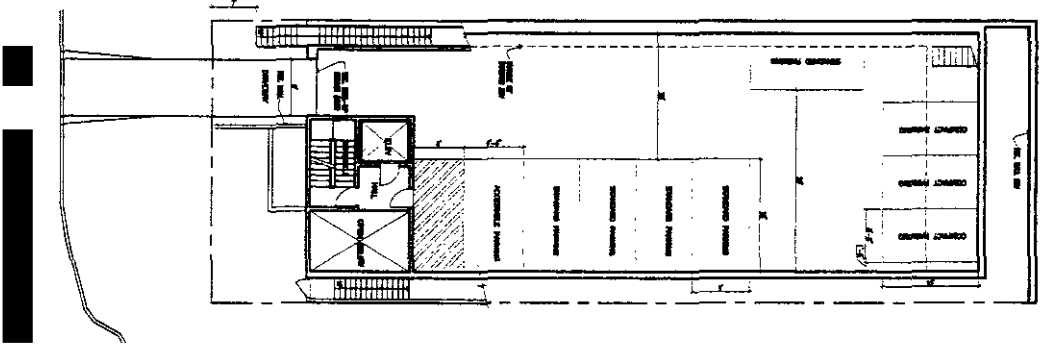
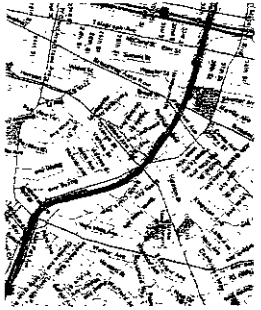
BY: AHMAD MOGHADDAS
1631 BERKELEY WAY,
BERKELEY, CA. 94703
TEL. 843-6880

MARCH 2001 SCA.F. 1-1



- REVISION NO. 1**
- THE SURVEY WAS REVISED ON MARCH 20, 2001
- REVISIONS INCLUDE:
1. SOME CONTOUR LINES WERE CORRECTED (BY THE SURVEYOR)
 2. UNDER CONTIGUES WERE CORRECTED (BY THE SURVEYOR)
 3. DATE OF DRAWING WAS CHANGED
 4. ADDED DELUSION CURB LINE

THIERRE. APARTMENT CONDOMINIUMS



1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 3. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 4. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 5. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.

John Norton
 Project Architect
 1810 Clay Park Road
 Oakland, CA 94612
 (510) 882-1700

**THIERRE. APARTMENT
 CONDOMINIUMS**

PROJECT ADDRESS:
 1515 OAKLAND AVE
 OAKLAND, CA
 94612

OWNER:
 BULLOCK & BULLOCK
 3501 OAKLAND AVE
 OAKLAND, CA
 94612

REVISION
 No. Description Date

No.	Description	Date

A2.0

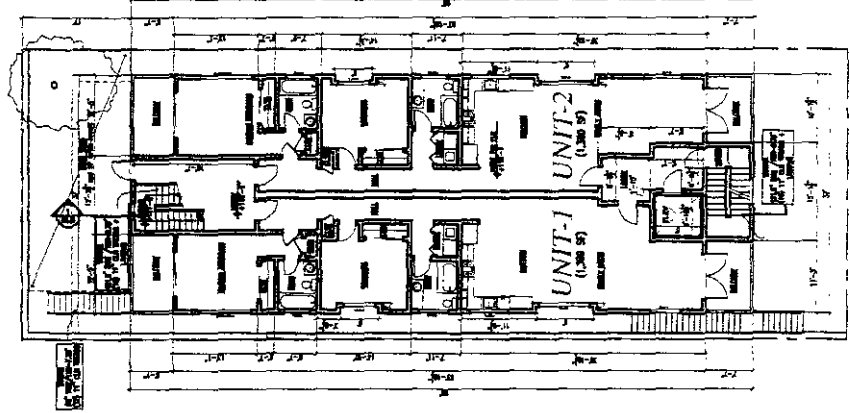
John Merton
 Project Development
 38400 Glen Park Road
 Oakland, CA 94602
 (415) 494-1794

THEERS APARTMENT
 CONTINGENTIONS
 PROJECT ADDRESS:
 430 OAKLAND AVE.
 OAKLAND, CA
 94612
 OWNER:
 THEERS APARTMENTS
 3529 MARSHBORO HIGHWAY
 OAKLAND, CA
 94618

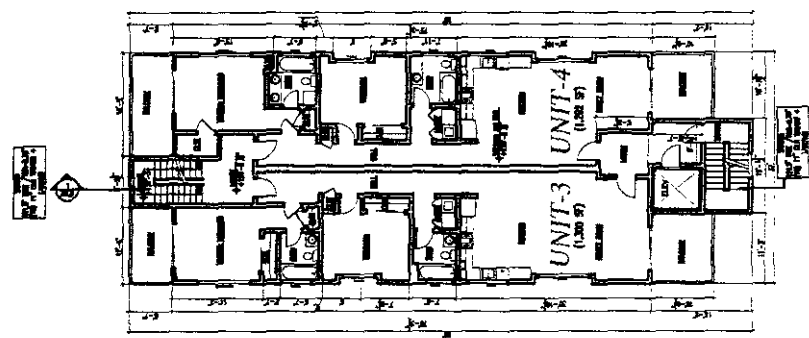
REVISION	
No.	Date

PROJECT No. _____
 DRAWING No. _____
 SHEET No. _____
 DATE _____

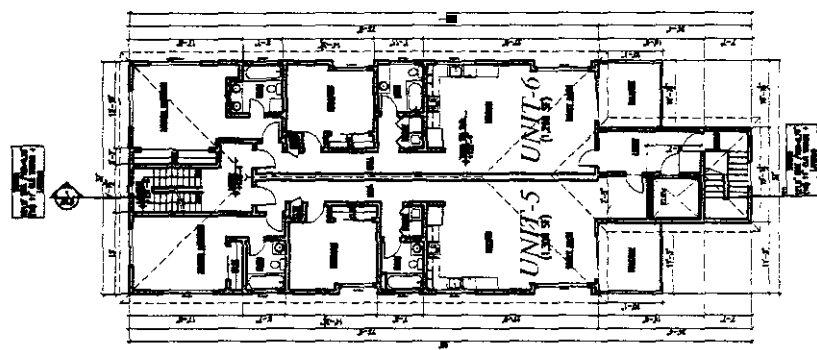
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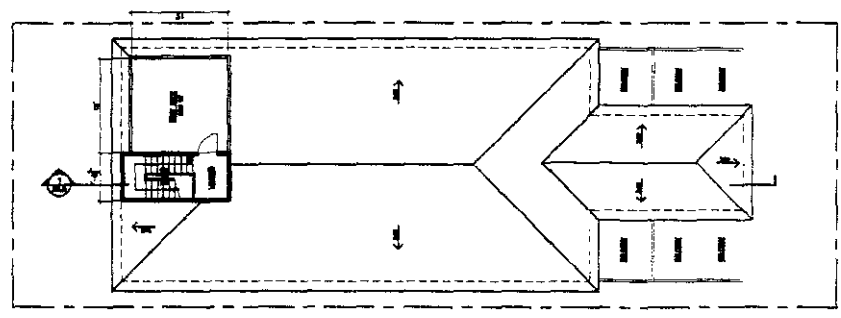
① FIRST FLOOR PLAN (3,268 SF)



② SECOND FLOOR PLAN (3,064 SF)



③ THIRD FLOOR PLAN (3,064 SF)



④ ROOF PLAN (131 SF)

John Pershin
 Project Development
 39188 Chino Park Road
 Chino Hills, CA 91702
 (916) 495-1794

**THREE APARTMENT
 CONDOMINIUMS**

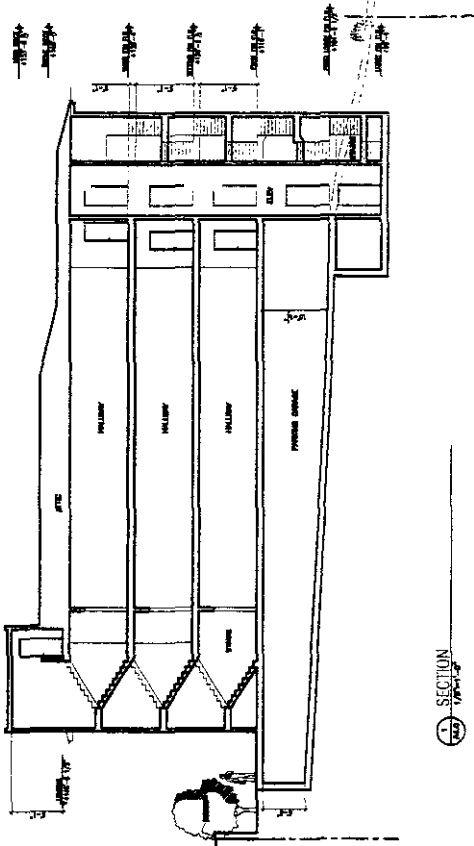
PROJECT ADDRESS:
 45 EAST 40TH AVE.
 CHICAGO, IL 60611

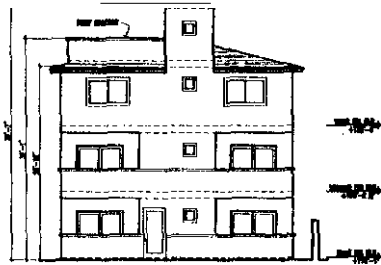
OWNER:
 RUI J. FERNANDES
 9222 MARGARET DRIVE
 CHICAGO, IL 60611

REVISION	
No.	Date

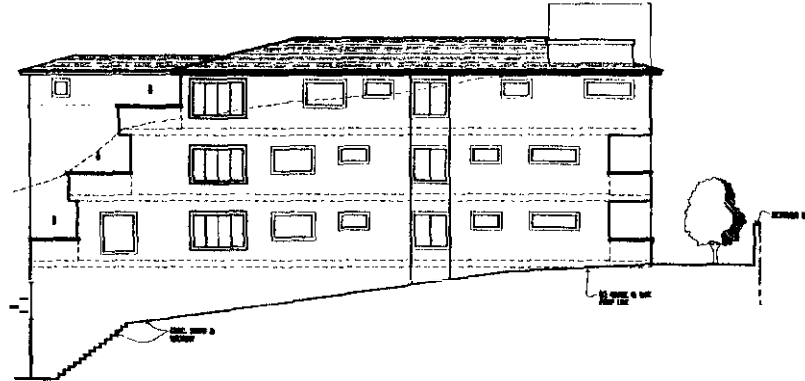
SCALE: 1/8" = 1'-0"
 DATE: 11/23/11
 DRAWN BY: J.P.

A4.0

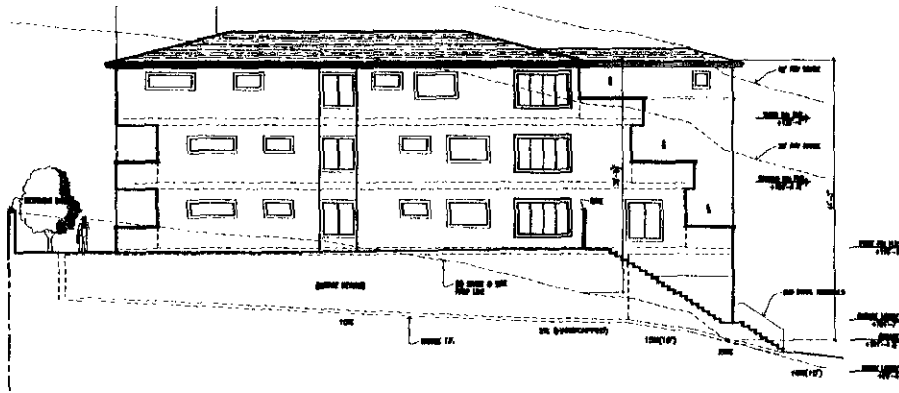




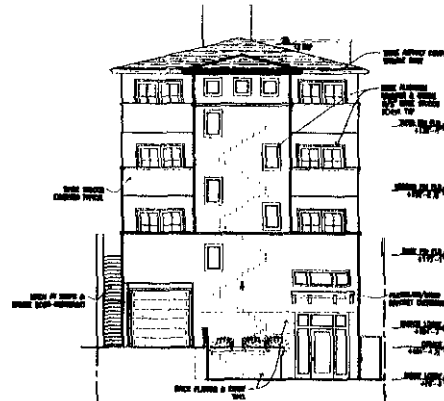
1 EAST ELEVATION
SCALE 1/8"=1'-0"



2 SOUTH ELEVATION
SCALE 1/8"=1'-0"



3 NORTH ELEVATION
SCALE 1/8"=1'-0"



4 WEST (FRONT) ELEVATION
SCALE 1/8"=1'-0"

John Newton
John K. Development
1169 Glen Park Road
Oakland, CA 94612
(510) 485-1794

HERE APARTMEN
CONDOMINIUMS

PROJECT ADDRESS:
495 OAKLAND AVE
OAKLAND, CA
94612

OWNER:
HILLSTROMSON
929 MARSHBURN DRIVE
OAKLAND, CA
94612

REVISIONS

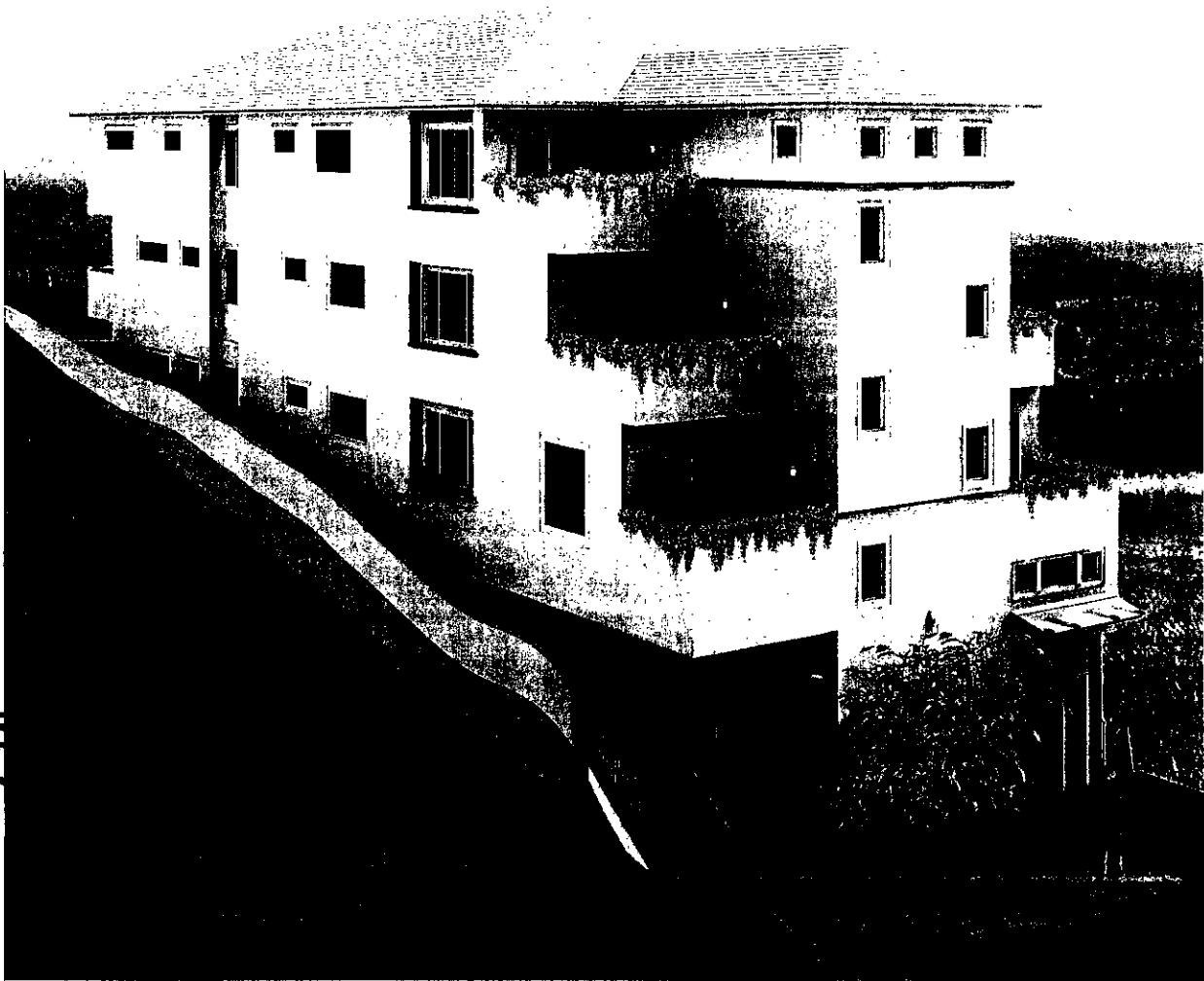
Revision	Date

DATE: 11/11/11
DRAWN: JLN
CHECKED: JLN
SCALE: AS SHOWN

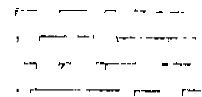
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ATTACHMENT C

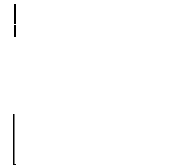
195
ORACOUNCIL
NOV 18 2003



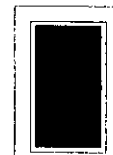
**Roof: White Asphalt
Composition Shingles**



Exterior Walls: White Stucco



**Window Reveal: Beige Stucco
Windows: Beige Dual-Pane
Aluminum**



Brick Walls & Accents:

