

**CITY OF OAKLAND**  
**AGENDA REPORT**

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OFFICE OF THE CITY CLERK  
OAKLAND

2007 SEP -6 PM 12:16

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency  
DATE: September 18, 2007

RE: **Conduct a Public Hearing and Upon Conclusion Adopt a Resolution Denying the Appeal (Case # A07103) and Upholding the Planning Commission Approval of Case #CMDV05-507/TPM8859, for Construction of a Four (4) Unit Condominium in the R-50 Zone with a Two (2) Foot Height Variance at 1727 E. 24<sup>th</sup> Street**

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**SUMMARY**

On March 7, 2007, the City Planning Commission approved (by a 6-0 vote) a Conditional Use Permit to construct a 4 unit residential building in the R-50 zone that totals 4,988 square feet. A Tentative Parcel Map for a subdivision of one lot to create four residential condominium units within a new residential building was also approved. The residential building will be 2 stories in height over one level of parking for a total height of 32 feet where 30 feet is required. A two foot height variance was granted by the Planning Commission, which was contrary to staff recommendation.

On March 19, 2007, Modupe Ogunyemi, representing the San Antonio Neighborhood Association, filed an appeal of the Planning Commission's decision. The appellant argues that the City's Planning Commission failed to take into account impacts on the neighbors, topography, General Plan requirements, parking, and site suitability among other items.

Staff believes that the findings made for approval of the project as outlined in the March 7, 2007 Planning Commission staff report (Attachment A) clearly state the reasons why the project complies with the applicable regulations. Staff believes that the stated information in the appeal document does not depict any instance of "error" or "abuse of discretion" by the Planning Commission and therefore staff recommends that the Council deny the appeal, thereby upholding the Planning Commission's decision to approve the project. The Council has several options available regarding this appeal and this project (as outlined on page 11 in the Alternative City Council Actions section), including choosing to deny the appeal but also deny the variance (therefore upholding the approval).

Item: \_\_\_\_\_  
City Council  
September 18, 2007

## **FISCAL IMPACT**

The project is a private development on private property. No public funds are required for the project so there would be no direct fiscal impact to the City. The project does have the potential to result in indirect fiscal impacts to the City. The new development would increase the property tax valuation of the property, thereby providing a positive fiscal impact to the City through increased property tax revenue. All staff time required to process the applications for planning and building permits is fully cost-covered through fees.

## **BACKGROUND**

### **Project Description**

The proposal is to construct a four unit residential building that totals approximately 4,988 square feet. The residential building will be three stories in height, with the ground level for parking. A subdivision of one lot to create four residential condominium units within the new residential building is also proposed. Each unit will have a one car garage, two bedrooms, and two bathrooms.

### **Property Description**

The subject location is a 7,000 square foot site fronting on E. 24<sup>th</sup> Street. The parcel is currently vacant. Directly northwest of the property is a single family home and directly southeast of the property is a triplex residential building. The surrounding uses are a mixture of mostly single family homes with some duplexes, triplexes, quadplexes, and a larger seven unit apartment building. The property is part of the San Antonio Hills neighborhood and there are two Designated Historic Properties on the same side of street as this property, at 1807 and 1819 E. 24<sup>th</sup> Street. The two properties are both of a Victorian style.

### **Design**

The design utilizes porch elements, gable roofs, brackets, and wood hung windows in keeping with characteristics of the neighborhood. The garages are sunk slightly into the hill to help minimize the overall height of the building and face the side of the property. The massing of the building in the front and rear is broken up by open porch elements on the third floor with gables and open truss work over them. The materials will include painted wood windows, painted Portland cement plaster, horizontal ship lap siding, asphalt shingle roofing, and painted wood fascia.

### **Traffic and Transportation**

The proposal will add four new residential units with access on E. 24<sup>th</sup> Street. This will add four required parking spaces to the project site (one per dwelling). The project would not impact any existing level of service for public streets, as E. 24th Street is within a neighborhood with a street grid that has connections to both 17<sup>th</sup> Avenue and 19<sup>th</sup> Avenue, and the addition of four dwelling

Item: \_\_\_\_\_  
City Council  
September 18, 2007

units into this grid corridor would not create a significant impact. An arterial, 14<sup>th</sup> Avenue, is located approximately 400 feet away.

### **General Plan Conformity**

The property is located within the Mixed Housing Type Residential General Plan Land Use Classification. This land use classification is intended to create, maintain, and enhance neighborhood residential areas typically located near the City's major arterials and characterized by a mix of single family homes, townhouses, small multi unit buildings and neighborhood businesses where appropriate. Mixed Housing Type Residential encompasses a range of densities, from one or two units per lot up to a maximum of 30 units per gross acre. The proposed density is consistent with the General Plan density.

The Mixed Housing type residential General Plan Area allows for a maximum residential density of one unit per 1,089 square feet of lot area, which would allow for a maximum total of 6 dwelling units on this site of 7,000 square feet. The property is well within the allowable density for the site.

### **Zoning Conformity**

The subject property is located within the R-50, Medium Density Residential Zone. The R-50 zone is intended to create, preserve, and enhance areas for apartment living at medium densities in desirable settings, and is typically appropriate to areas of existing medium density residential development. The proposed development meets the medium density requirement. Every unit will have a private deck as well as a group open space in the rear yard for a total of 1,334 square feet, where only 800 square feet of group open space (with no private open space) is required. Four parking spaces are provided, which meets the one parking space per unit requirement.

### **Allowed Density**

The R-50 Zone allows 2 units as permitted by right and allows up to 5 units with a conditional use permit for this 7,000 square foot lot. As stated above, the Mixed Housing Type Residential Land Use classification would allow 6 units on this 7,000 square foot lot. The proposed project of four dwelling units complies with the R-50 Zone density upon approval of a conditional use permit.

### **Height Variance**

The allowable maximum height limit is 30 feet, with some allowed projections. In **Section 17.108.30C**, gable ends up to 15 feet in width located on principal and accessory Residential Facilities can exceed the height limit by 10 feet if the maximum aggregate coverage of the building's horizontal area does not exceed 10 percent, but in all cases, no higher than the maximum height of the roof section on which they are located. There is no restriction of minimum horizontal distance from any abutting residentially zoned lot if the vertical projection above the prescribed height does not exceed four feet.

Item: \_\_\_\_\_  
City Council  
September 18, 2007

The front and rear gables that are above the decks off of the great room meet this allowed projection and are 32 feet in height (for a two foot projection). The hip roofs above the garages that are 32 feet in height do not meet this requirement, and hence require a variance.

Staff's original recommendation called for denial of the two foot height variance. This recommendation was based on the ability to reduce the hip roof height to 30 feet and still generate the desired appearance.

### **Planning Commission's Approval**

At the February 28, 2007 hearing, the Oakland Planning Commission took public testimony from various interested parties, including the appellants, who objected outright to the development of the project and its impact on the neighborhood. The Planning Commission approved the project including the variance. Findings in support of the variance, based on the Commission's determination were submitted for the Planning Commission's March 7, 2007 meeting. The Planning Commission approved the project on March 7, 2007 by a 6-0 vote.

The Planning Commission found that the project complies with all the necessary requirements for approval and is consistent with the relevant policies of the General Plan and voted unanimously to approve the project. The staff report for the Planning Commission, which contains a more thorough discussion of the project and the findings made by the Planning Commission to approve the project, is included as Attachment A.

### **KEY ISSUES AND IMPACTS—ISSUES RAISED ON APPEAL**

#### ***Appellant's Arguments***

On March 19, 2007, Modupe Ogunyemi, representing the San Antonio Neighborhood Association, filed an appeal of the Planning Commission's decision. The appellant's letter is attached to this report (Attachment B). The appellant argues that the City's Planning Commission failed to take into account impacts on the neighbors, topography, General Plan requirements, parking, and site suitability among other items. Listed below in **bold** text is a summary of the arguments raised by the appellant. Staff's response to each argument follows each item in *italicized* text.

#### **Issues**

- 1. Limit the use to a single family or triplex to keep with what is on either side of the property. The historic properties are mentioned as concerns. The project does not maintain and enhance desired characteristics of the neighborhood.**

*Staff Response: The overall context of the neighborhood along with the zoning and the General Plan are all looked at in order to analyze the appropriate density. There are a mixture of single family homes, secondary units, duplexes, triplexes, along with four quadraplexes across the*

Item: \_\_\_\_\_  
City Council  
September 18, 2007

street and one seven unit building across the street. The zoning allows for a maximum of a five unit residential building with a conditional use permit and the General Plan of Mixed Housing Type allows for a maximum of 6 residential units. Therefore, the applicant is not asking for the maximum density and the project meets the findings for the Conditional Use Permit to allow four units.

The design of the condominiums takes into account the historic architecture of the neighborhood. The front of the four units is designed to appear as one unit and uses porch elements, gable roofs, brackets and wood hung windows. Today it is too expensive to replicate the existing historic houses that are in the neighborhood nor would one want to do so because this would take away from the importance of these historic structures. Instead, it is appropriate to utilize certain elements of these houses in order to maintain the character of the neighborhood without trying to duplicate them.

Staff also notes that if scale and overall design are a concern, a single family house could be of the same overall size, scale, and design as the proposed project. The four unit density is well within the intensity found in the immediate area.

- 2. The General Plan analysis states that “the land use classification of mixed housing type is intended to create, maintain, and enhance neighborhood residential areas typically located near the City’s major arterials...” Neither of these conditions are met by this project. This project should be deemed not consistent with the general plan and rejected. If not rejected outright, it should be subject to further scrutiny, and an EIR report required. The maintain and enhance portion is not accomplished by putting in a condo and E 24<sup>th</sup> Street, 17<sup>th</sup> Avenue, and 29<sup>th</sup> Avenue are not major arterial streets.**

*Staff Response: The General Plan “Mixed House Type Residential classification is intended to create, maintain, and enhance neighborhood residential areas typically located near the City’s major arterials and characterized by a mix of single family homes, townhouses, small multi-unit buildings and neighborhood businesses where appropriate.” The proposed project is a small-multi-unit building which is located near the major arterial of 14<sup>th</sup> Avenue (1 ½ blocks away). The designation of the land as Mixed Housing Type Residential, means that the property is near a major arterial, otherwise it would be designated a different general plan category. The proposal also is below the General Plan density, which would allow 6 dwelling units on the site. The existing neighborhood has a mixture of single family and small multi-unit buildings. This proposal is designed from the front elevation to appear as a single family home and therefore will maintain and enhance the neighborhood. An EIR is not required because this 4 unit project satisfies criteria for a CEQA exemption (15303 and 15183)*

- 3. The appellants are opposed to granting a permit to do harm to the neighborhood. They are opposed to the variance finding providing a grant of special privilege (Staff findings, Feb 28, 1007 section 17.148.050(a) subsection D).**

*Staff Response: The Planning Commission determined that the higher pitch of the roof would create a better overall appearance to the front elevation of the condominiums instead of a lower*

Item: \_\_\_\_\_

City Council

September 18, 2007

*pitch. Therefore this is not considered a grant of special privilege since it provides a better design solution.*

*The appellants, Mary Becker and Robert Klinger were granted a height variance of 3 feet 6 inches above the 30 foot height requirement for a 1,666 square foot addition that is 33 feet six inches tall on their property at 2302 17<sup>th</sup> Avenue in June of 2001, case #VDRD01-187. The variance was granted in part because it matched the height of the existing building, which shows that the height variance to allow a 32 foot height matches the character of the neighborhood which already has some buildings that are over the 30 foot height limit. Therefore this would not be a grant of special privilege and it would deprive the applicant of privileges enjoyed by owners of similarly zoned property in this very neighborhood if the variance was denied.*

*As previously noted, Staff did not recommend this height variance. The council could choose to deny the appeal but also deny the variance.*

- 4. The appellants bring up an older proposed project that had included this lot along with the property next door, stating that the true development project has not been presented. This approval will be used for justification for the second phase of the original project. A memo from David Mog dated December 9, 2005 is mentioned where a shared access facility is stated as a condition of approval.**

*Staff Response: The previously mentioned project was turned down and was proposed by a different developer. A new owner has purchased the property at 1727 E 24<sup>th</sup> Street. The only project that was approved at the Planning Commission was for a 4 unit residential condominium. The previous project was lacking in architectural detail and was proposed as an apartment building. If a project is proposed at the neighboring property, it will be reviewed as a separate permit. The Planning Commission can not deny a project based on the speculation of what may be proposed on a neighboring property that currently has a different owner. Any new project on a neighboring property will be reviewed on its own merit as to whether it meets the zoning and General Plan requirements.*

*The memo from Dave Mog on December 9, 2005 references driveway regulations which are under the "Shared Access Facilities – Guidelines for Development and Evaluation" for the four condominium units on this lot, it does not mention the driveway being shared by the adjacent lot.*

- 5. The garages will be used as a third bedroom for each unit.**

*Staff Response: The only way for the garages to be legally used as a bedroom is to obtain a zoning permit to approve this along with a building permit. Zoning will not approve the conversion of a garage into a bedroom because the property would then not maintain its required parking of one space per unit. If an owner were to convert the garage illegally to a bedroom, code enforcement action would be taken and the owner would be required to convert the garage back to its original use or face penalties. The Planning Commission can not base their decision on what speculative illegal changes an owner may make. The better design solution is for the garages to be constructed into the hillside in order to have less impact on the*

Item: \_\_\_\_\_

City Council

September 18, 2007

property by being incorporated into the overall design of the condominiums and not a row of freestanding garages. If the garages were separated, this would also create much greater impervious surfaces on the property along with the potential of not being able to have enough space in order to meet the requirement for 4 parking spaces.

- 6. The project is on an incredibly steep hill and is at least 25 feet higher than neighboring properties on 17<sup>th</sup> Avenue, therefore the project will be 57 feet above the neighboring houses.**

*Staff Response:* Relatively speaking, this property is not that steep. The Planning Commission can only look at whether the project is meeting the height limitation on the lot itself, height is not measured from a neighboring lot. This would severely limit development on any hillside properties. There is an existing house between this property and those located on 17<sup>th</sup> Avenue, which creates a buffer between this project and those on 17<sup>th</sup> Avenue. The approximate cross slope of the parcel is 10%. Foundation design required for the project will be commensurate with the soils and slope of the site.

- 7. The balconies and decks will overlook the neighbors' properties.**

*Staff Response:* The balconies enhance the overall design of the project by breaking up the mass of the building with voids and add architecture details instead of creating a box. All of the balconies meet the setback requirements. The rear balcony exceeds the rear yard setback with a 26 foot rear setback where only 15 feet is required and the side balconies exceed the side yard setback with a 14 1/2 foot side yard setback where only 4 feet is required on the side of the condominium that faces toward 17<sup>th</sup> Avenue. The balconies on the other side have a setback of 19 feet, where 4 feet is required. All of the balconies are enclosed within the existing envelope of the condominium, which will reduce the areas from which one can look out. There is also another property in between the balconies and the houses along 17<sup>th</sup> Avenue. In short, no documentation has been submitted to substantiate privacy impacts to surrounding neighbors. Staff notes that the lot size and historic development pattern are more important factors than balcony size and placement.

- 8. The appellants refer to a Sanborn map from the 1970's for building coverage.**

*Staff Response:* The Sanborn map clearly does not represent the development that is there today. An attached aerial map (Attachment C) of the area shows development within a lot of the backyards of the houses behind 1727 E 24<sup>th</sup> Street along with buildings that are longer and take up large portions of the yards. The average coverage of the surrounding lots today is compatible with what is proposed. The Sanborn map is a snapshot in time that is not necessarily representative of today's neighborhood.

- 9. The appellants question adequate parking and places for children to play. They continue to assert that the steepness of the hill prevents children from playing on the street in front of their house.**

*Staff Response:* The proposed development meets the parking requirement for the R-50 zone and exceeds the open space requirement by providing both group and private open space. The Planning Commission can not hold this property to a higher standard than is required on other lots or by code. The mention of children not being able to play in the street is not something that staff would ever recommend and the zoning regulations for open space do not assume that some of the open space used for a property would be for children to be playing in the street. It is also speculative to assume any children will live in the project.

**10. The appellant is concerned about traffic impacts; they state the project puts a shared driveway between this project and the parcel next door, therefore creating a street. They further state the four units will bring too much traffic compared to two units.**

*Staff Response:* As stated earlier, the project proposes for the driveway to be used on this property only, the Planning Commission can not deny a project based on what may or may not be proposed on a future neighboring project that is owned by a different owner. This driveway is not a street. The difference in traffic for 2 units compared to 4 units is not considered significant. At worst it is the difference between 12 trips average per day and 24 trips average per day.

**11. This is a neighborhood of basically single family homes that is quiet and friendly, street parking is available, low levels of traffic allow children to play in the street, there is relatively low crime, people know each other. This project will not enhance these issues.**

*Staff Response:* The neighborhood does have a mixture of single family homes along with secondary units and multi-family homes. Both the zoning and General Plan allow for small multi-family developments. The proposal is for condominiums that allow for individual ownership as opposed to rental apartments. Parking requirements are met, traffic will not be significantly increased. It is never recommended that children play in the street. Building a 4 unit condominium with asking prices of approximately \$400,000 or greater is indicative of a strong commitment, through reinvestment in a neighborhood, for the owners in the building to become part of the community the same as if it were a single family home.

**12. The residential design review requires that the proposed design will be sensitive to the topography and landscape.**

*Staff Response:* The creeks and underground streams map that was presented by the appellant are on the west side of 14<sup>th</sup> Avenue while this project is two blocks over and east of 17<sup>th</sup> Avenue. The zoning ordinance has requirements for creek permits if a project is within 100 feet from a creek, this proposal does not fall within that requirement so no creek permit is required. Engineering stated a soils report may be required and a Geotechnical report has been prepared and will be analyzed by the Engineering department for any potential problems with construction. As far as landscape, trees were cut down by a previous owner and there is nothing that the new owner can do about trees that were removed prior to his purchase of the property. The developer is proposing extensive landscaping including 14 new trees along with shrubs and

Item: \_\_\_\_\_

City Council  
September 18, 2007



*other plantings. As a condition of approval, staff has required that an automatic irrigation system be put in place to maintain the landscaping of the property.*

**13. The site is not physically suitable for this type of development, the site is on a very steep hill and is riddled with underground streams, and the site is located in an area of the hill which has problems with land slides. The project proposes an underground garage which will divert underground streams and cause problems. The geotechnical report presented by the developer found evidence of underground water consistent with underground streams. The project proposes to cover 81% of the surface area and will create problems with water runoff which the area is particularly susceptible to due to the steepness of the hill and the unstable (sliding) hill side.**

*Staff Response: The site is not on a "very steep hill," there is approximately a 10% slope from one side of the property to the other. According to Oakland standards it does not even fall into the City's different zoning standards when a property has greater than a 20% or 40% slope. There is no history of slides for this particular property and none were found in the Geotechnical report. There is no record of underground streams and the Geotechnical report did not state any existence of underground streams. Water that was found was attributed to a form of artificial discharge. There is no evidence to refute this factor except for speculation by the neighbors. Even if there are underground streams there are engineering measures that can be taken to work around the situation. USGS maps show a landslide area on the west side of 17<sup>th</sup> Avenue and they show a liquefaction area west of 14<sup>th</sup> Avenue, both of these areas are well west of the proposed site. The Geotechnical supports the USGS maps, therefore the experts from USGS and the consultant who did the Geotechnical report are more reliable than speculation by the neighbors.*

**14. The project does not meet the criteria for a Categorical Exemption under section 15303 (b); is not consistent with the General Plan. We request that an EIR be required under this determination.**

*Staff Response: The appellant generally states the project does not meet the criteria for Categorical Exemption but does not provide any substantial basis as to why they believe it does not meet section 15303 (b). It states that the project is not consistent with the General Plan but meeting the General Plan is not a specified criteria for 15303(b). Staff has found this project to be consistent with the General Plan (see Staff Response from Issue #2 on page 5 and 6). If the project did not meet the General Plan, a General Plan amendment would be required which would trigger additional CEQA analysis.*

*Section 15303 of the California Environmental Quality Act (CEQA) states:  
Class 3 consists of construction and location of limited numbers of new, small facilities or structures: installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include but are not limited to:*

*(b) A duplex or similar multi-family residential structure totaling no more than four dwelling units. In urbanized areas, this exemption applies to apartments, duplexes, and similar structures designed for not more than six dwelling units.*

*This is a four unit project which clearly falls under the six dwelling unit maximum in an urbanized area. Furthermore, the project is not precluded from using a categorical exemption pursuant to section 15300.2 (Exceptions) under CEQA. The project does not fall into the following Exceptions: (a) Location, the project is not in a particularly sensitive environment to be considered significant; (b) Cumulative Impact, there are not successive projects of the same type in the same place to create a cumulative impact; (c) Significant Effect, this project activity will not have a significant effect on the environment due to unusual circumstances; (d) Scenic Highway, this is not on a scenic highway; (e) Hazardous Waste Sites, this is not a hazardous waste site; and (f) Historical Resources, there is no significant impact on historic resources.*

#### **15. The project does not provide adequate facilities for trash storage and laundry.**

*Staff Response: Each unit will have individual garbage containers that will be wheeled out to the street from the garages like any other home owner. There is adequate storage space within the garage for garbage. At the Planning Commission meeting the applicant stated there will be laundry facilities within each unit, but this is up to the applicant and is not a City requirement. It makes the units more marketable if they have laundry space and hook-ups within, but owners can utilize a Laundromat if necessary.*

#### **SUSTAINABLE OPPORTUNITIES**

The project would provide the following economic, environmental, and social equity benefits:

Economic: The project would contribute to the economic vitality of the San Antonio neighborhood by developing a vacant lot and bringing additional home ownership opportunities. The project would also increase the property tax valuation of the property thereby providing a positive fiscal impact to the City through increased property tax revenue. Since the project would involve residential condominiums, sales and resales of the residential units in the project would also generate transfer taxes for the City.

Environmental: The project has had a geotechnical report performed and engineering will ensure that any required mitigation will be performed before and during construction.

Social Equity: The project involves a four unit housing development and increases housing opportunities for the City of Oakland.

#### **DISABILITY AND SENIOR CITIZEN ACCESS**

Any housing constructed on the property will be required to comply with local, state, and federal ADA access requirements.

Item: \_\_\_\_\_  
City Council  
September 18, 2007

## **STAFF RECOMMENDATION AND RATIONALE**

Staff recommends that the City Council adopt the attached Resolution denying the appeal and uphold the Planning Commission's approval of the project for the following reasons: 1) The Planning Commission's decision was based on a thorough review of all pertinent aspects of the project and consideration of the objections raised by the appellant; 2) The project and the approval of the project comply in all significant respects with applicable general plan policies and zoning regulations and review procedures; and 3) The appellant has failed to demonstrate that there was an error or abuse of discretion in the Planning Commission's decision or that the Planning Commission's decision is not supported by substantial evidence in the administrative record;

## **ALTERNATIVE CITY COUNCIL ACTIONS**

The City Council has the option of taking one of the following alternative actions instead of the recommended action above:


1. Uphold the Planning Commission's decision, but impose additional conditions on the project and/or modify the project.
2. Uphold the Planning Commission's decision, but impose the original conditions given by staff for the February 28, 2007 Planning Commission meeting and eliminate the height variance and change the hip roof over the two interior decks to a flat one (see Attachment D).
3. Continue the item to a future hearing for further information or clarification.
4. Refer the matter back to the Planning Commission for further consideration on specific issues/concerns of the City Council. Under this option, the item would be forwarded back to the City Council with a recommendation after review by the Planning Commission.
5. Uphold the appeal and overturn the Planning Commission's decision thereby denying the project. This option would require the City Council to continue the item to a future hearing so that staff can prepare and the Council has an opportunity to review the proposed findings and resolution for denial.


Item: \_\_\_\_\_  
City Council  
September 18, 2007

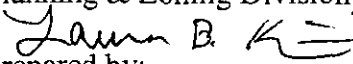
**ACTION REQUESTED OF THE CITY COUNCIL**

1. Affirm staff's environmental determination.
2. Affirm the Planning Commission's approval of a Conditional Use Permit to construct a four (4) unit residential building in the R-50 Zone, a Tentative Parcel Map for a subdivision of one lot to create four residential condominium units within a new residential building, and a minor height variance of (2) feet for a total height of 32 feet where 30 feet is required at 1727 E. 24<sup>th</sup> Street.

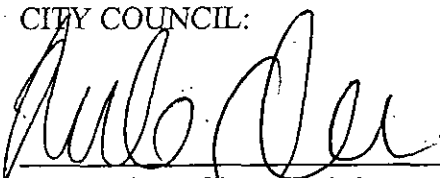
Respectfully submitted,

  
**CLAUDIA CAPPIO**  
Director of Development  
Community and Economic Development Agency

  
Reviewed by:  
Scott Miller  
Zoning Manager  
Planning & Zoning Division

  
Prepared by:  
Laura B. Kaminski  
Planner II  
Planning & Zoning Division

APPROVED AND FORWARDED TO THE  
CITY COUNCIL:

  
Office of the City Administrator

**ATTACHMENTS:**

- A. Planning Commission Staff Report including Project Drawings and approved conditions (dated March 7, 2007)
- B. Appeal Letter (dated March 19, 2007)
- C. Aerial of the neighborhood
- D. Planning Commission Staff Report original Staff recommended Conditions (dated February 28, 2007)

Item: \_\_\_\_\_  
City Council  
September 18, 2007

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2007 SEP -6 PM 12:16

APPROVED AS TO FORM AND LEGALITY

*F. Faiz*

DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**A RESOLUTION DENYING THE APPEAL AND SUSTAINING THE DECISION OF THE PLANNING COMMISSION FOR CONSTRUCTION OF A FOUR (4) UNIT CONDOMINIUM IN THE R-50 ZONE WITH A TWO (2) FOOT HEIGHT VARIANCE LOCATED AT 1727 E 24<sup>TH</sup> STREET (CASE FILE NUMBER(S) A07-103; CMDV05-507; & TPM8859.**

**WHEREAS**, on October 5, 2005, the developer Dave Miller applied for a Conditional Use Permit to construct four units in the R-50 zone, Design Review for building 4 new residential units, a Minor Variance for a 32 foot height building where 30 feet is required, Tentative Parcel Map to create 4 residential condominium units within a new residential building located at 1727 E 24<sup>th</sup> Street; and

**WHEREAS**, on February 28, 2007 a public hearing was held before the City Planning Commission for the project; and

**WHEREAS**, on February 28, 2007, the Planning Commission independently reviewed, considered and determined that the Project is categorically exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA") pursuant to sections 15303 (b), 15183, and 15315 of the State CEQA Guidelines and the Planning Commission continued the meeting to March 7, 2007 to adopt the revised findings; and

**WHEREAS**, on March 7, 2007 the item was approved on the Consent agenda for the City Planning Commission; and

**WHEREAS**, an appeal of the Planning Commission's March 7, 2007 actions were filed by Modupe Ogunyemi on March 19, 2007, on behalf of the San Antonio Neighborhood Association ("Appellant"); and

**WHEREAS**, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council in a duly noticed public hearing on September 18, 2007; and

**WHEREAS**, the Appellants and all other interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

**WHEREAS**, the public hearing on the Appeal was closed by the City Council on September 18, 2007.

**Now, Therefore, Be It**

**RESOLVED:** The City Council independently finds and determines that this Resolution complies with CEQA, as the Project is categorically exempt from CEQA pursuant to CEQA Guideline Section 15303 "New Construction of Small Structures" and, and as a separate and independent basis, the Project is also exempt from CEQA pursuant to Section 15315, "Minor Land Divisions" of the State CEQA Guidelines and Section 153183, "Projects Consistent with a Community Plan, General Plan or Zoning" of the State CEQA Guidelines. The Environmental Review Officer is directed to cause to be filed a Notice of Exemption with the appropriate agencies; and be it

**FURTHER RESOLVED:** That the City Council, having independently heard, considered, and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellant has **not** shown, by reliance on evidence in the record, that the 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. This decision is based, in part, on the September 18, 2007, City Council Agenda Report and the March 7, 2007, Planning Commission report, which are hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's decision approving the Tentative Parcel Map, Conditional Use Permit, and Design Review is upheld, subject to the final conditions of approval adopted by the Planning Commission, as may be amended here; and be it

**FURTHER RESOLVED:** That, in support of the City Council's decision to approve the Project, the City Council affirms and adopts the March 7, 2007 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 September 18, 2007, City Council Agenda Report, attached hereto as Exhibit "B," (including without limitation the discussion, findings, and conclusions), except where otherwise expressly stated in this Resolution; and be it

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

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

1. the Project application, including all accompanying maps and papers;

2. all plans submitted by the Applicant and his representatives;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City.
4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application and appeal;
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations; and be it

**FURTHER RESOLVED:** That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1<sup>st</sup> floor, Oakland, CA; and be it

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

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2007

**PASSED BY THE FOLLOWING VOTE:**

AYES-

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

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

**LEGAL NOTICE:**

ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION, PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.

## Exhibit A

[March 7, 2007 Planning Commission Staff Report]



Exhibit B

[September 18, 2007 City Council Agenda Report]

# CITY OF OAKLAND

## AGENDA REPORT

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency  
DATE: September 18, 2007

RE: **Conduct a Public Hearing and Upon Conclusion Adopt a Resolution Denying the Appeal (Case # A07103) and Upholding the Planning Commission Approval of Case #CMDV05-507/TPM8859, for Construction of a Four (4) Unit Condominium in the R-50 Zone with a Two (2) Foot Height Variance at 1727 E. 24<sup>th</sup> Street**

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### SUMMARY

On March 7, 2007, the City Planning Commission approved (by a 6-0 vote) a Conditional Use Permit to construct a 4 unit residential building in the R-50 zone that totals 4,988 square feet. A Tentative Parcel Map for a subdivision of one lot to create four residential condominium units within a new residential building was also approved. The residential building will be 2 stories in height over one level of parking for a total height of 32 feet where 30 feet is required. A two foot height variance was granted by the Planning Commission, which was contrary to staff recommendation.

On March 19, 2007, Modupe Ogunyemi, representing the San Antonio Neighborhood Association, filed an appeal of the Planning Commission's decision. The appellant argues that the City's Planning Commission failed to take into account impacts on the neighbors, topography, General Plan requirements, parking, and site suitability among other items.

Staff believes that the findings made for approval of the project as outlined in the March 7, 2007 Planning Commission staff report (Attachment A) clearly state the reasons why the project complies with the applicable regulations. Staff believes that the stated information in the appeal document does not depict any instance of "error" or "abuse of discretion" by the Planning Commission and therefore staff recommends that the Council deny the appeal, thereby upholding the Planning Commission's decision to approve the project. The Council has several options available regarding this appeal and this project (as outlined on page 11 in the Alternative City Council Actions section), including choosing to deny the appeal but also deny the variance (therefore upholding the approval).

Item: \_\_\_\_\_  
City Council  
September 18, 2007

## **FISCAL IMPACT**

The project is a private development on private property. No public funds are required for the project so there would be no direct fiscal impact to the City. The project does have the potential to result in indirect fiscal impacts to the City. The new development would increase the property tax valuation of the property, thereby providing a positive fiscal impact to the City through increased property tax revenue. All staff time required to process the applications for planning and building permits is fully cost-covered through fees.

## **BACKGROUND**

### **Project Description**

The proposal is to construct a four unit residential building that totals approximately 4,988 square feet. The residential building will be three stories in height, with the ground level for parking. A subdivision of one lot to create four residential condominium units within the new residential building is also proposed. Each unit will have a one car garage, two bedrooms, and two bathrooms.

### **Property Description**

The subject location is a 7,000 square foot site fronting on E. 24<sup>th</sup> Street. The parcel is currently vacant. Directly northwest of the property is a single family home and directly southeast of the property is a triplex residential building. The surrounding uses are a mixture of mostly single family homes with some duplexes, triplexes, quadplexes, and a larger seven unit apartment building. The property is part of the San Antonio Hills neighborhood and there are two Designated Historic Properties on the same side of street as this property, at 1807 and 1819 E. 24<sup>th</sup> Street. The two properties are both of a Victorian style.

### **Design**

The design utilizes porch elements, gable roofs, brackets, and wood hung windows in keeping with characteristics of the neighborhood. The garages are sunk slightly into the hill to help minimize the overall height of the building and face the side of the property. The massing of the building in the front and rear is broken up by open porch elements on the third floor with gables and open truss work over them. The materials will include painted wood windows, painted Portland cement plaster, horizontal ship lap siding, asphalt shingle roofing, and painted wood fascia.

### **Traffic and Transportation**

The proposal will add four new residential units with access on E. 24<sup>th</sup> Street. This will add four required parking spaces to the project site (one per dwelling). The project would not impact any existing level of service for public streets, as E. 24<sup>th</sup> Street is within a neighborhood with a street grid that has connections to both 17<sup>th</sup> Avenue and 19<sup>th</sup> Avenue, and the addition of four dwelling

Item: \_\_\_\_\_  
City Council  
September 18, 2007

units into this grid corridor would not create a significant impact. An arterial, 14<sup>th</sup> Avenue, is located approximately 400 feet away.

### **General Plan Conformity**

The property is located within the Mixed Housing Type Residential General Plan Land Use Classification. This land use classification is intended to create, maintain, and enhance neighborhood residential areas typically located near the City's major arterials and characterized by a mix of single family homes, townhouses, small multi unit buildings and neighborhood businesses where appropriate. Mixed Housing Type Residential encompasses a range of densities, from one or two units per lot up to a maximum of 30 units per gross acre. The proposed density is consistent with the General Plan density.

The Mixed Housing type residential General Plan Area allows for a maximum residential density of one unit per 1,089 square feet of lot area, which would allow for a maximum total of 6 dwelling units on this site of 7,000 square feet. The property is well within the allowable density for the site.

### **Zoning Conformity**

The subject property is located within the R-50, Medium Density Residential Zone. The R-50 zone is intended to create, preserve, and enhance areas for apartment living at medium densities in desirable settings, and is typically appropriate to areas of existing medium density residential development. The proposed development meets the medium density requirement. Every unit will have a private deck as well as a group open space in the rear yard for a total of 1,334 square feet, where only 800 square feet of group open space (with no private open space) is required. Four parking spaces are provided, which meets the one parking space per unit requirement.

### **Allowed Density**

The R-50 Zone allows 2 units as permitted by right and allows up to 5 units with a conditional use permit for this 7,000 square foot lot. As stated above, the Mixed Housing Type Residential Land Use classification would allow 6 units on this 7,000 square foot lot. The proposed project of four dwelling units complies with the R-50 Zone density upon approval of a conditional use permit.

### **Height Variance**

The allowable maximum height limit is 30 feet, with some allowed projections. In **Section 17.108.30C**, gable ends up to 15 feet in width located on principal and accessory Residential Facilities can exceed the height limit by 10 feet if the maximum aggregate coverage of the building's horizontal area does not exceed 10 percent, but in all cases, no higher than the maximum height of the roof section on which they are located. There is no restriction of minimum horizontal distance from any abutting residentially zoned lot if the vertical projection above the prescribed height does not exceed four feet.

Item: \_\_\_\_\_  
City Council  
September 18, 2007

The front and rear gables that are above the decks off of the great room meet this allowed projection and are 32 feet in height (for a two foot projection). The hip roofs above the garages that are 32 feet in height do not meet this requirement, and hence require a variance.

Staff's original recommendation called for denial of the two foot height variance. This recommendation was based on the ability to reduce the hip roof height to 30 feet and still generate the desired appearance.

### **Planning Commission's Approval**

At the February 28, 2007 hearing, the Oakland Planning Commission took public testimony from various interested parties, including the appellants, who objected outright to the development of the project and its impact on the neighborhood. The Planning Commission approved the project including the variance. Findings in support of the variance, based on the Commission's determination were submitted for the Planning Commission's March 7, 2007 meeting. The Planning Commission approved the project on March 7, 2007 by a 6-0 vote.

The Planning Commission found that the project complies with all the necessary requirements for approval and is consistent with the relevant policies of the General Plan and voted unanimously to approve the project. The staff report for the Planning Commission, which contains a more thorough discussion of the project and the findings made by the Planning Commission to approve the project, is included as Attachment A.

### **KEY ISSUES AND IMPACTS—ISSUES RAISED ON APPEAL**

#### ***Appellant's Arguments***

On March 19, 2007, Modupe Ogunyemi, representing the San Antonio Neighborhood Association, filed an appeal of the Planning Commission's decision. The appellant's letter is attached to this report (Attachment B). The appellant argues that the City's Planning Commission failed to take into account impacts on the neighbors, topography, General Plan requirements, parking, and site suitability among other items. Listed below in **bold** text is a summary of the arguments raised by the appellant. Staff's response to each argument follows each item in *italicized* text.

#### **Issues**

- 1. Limit the use to a single family or triplex to keep with what is on either side of the property. The historic properties are mentioned as concerns. The project does not maintain and enhance desired characteristics of the neighborhood.**

*Staff Response: The overall context of the neighborhood along with the zoning and the General Plan are all looked at in order to analyze the appropriate density. There are a mixture of single family homes, secondary units, duplexes, triplexes, along with four quadraplexes across the*

Item: \_\_\_\_\_  
City Council  
September 18, 2007

street and one seven unit building across the street. The zoning allows for a maximum of a five unit residential building with a conditional use permit and the General Plan of Mixed Housing Type allows for a maximum of 6 residential units. Therefore, the applicant is not asking for the maximum density and the project meets the findings for the Conditional Use Permit to allow four units.

The design of the condominiums takes into account the historic architecture of the neighborhood. The front of the four units is designed to appear as one unit and uses porch elements, gable roofs, brackets and wood hung windows. Today it is too expensive to replicate the existing historic houses that are in the neighborhood nor would one want to do so because this would take away from the importance of these historic structures. Instead, it is appropriate to utilize certain elements of these houses in order to maintain the character of the neighborhood without trying to duplicate them.

Staff also notes that if scale and overall design are a concern, a single family house could be of the same overall size, scale, and design as the proposed project. The four unit density is well within the intensity found in the immediate area.

- 2. The General Plan analysis states that “the land use classification of mixed housing type is intended to create, maintain, and enhance neighborhood residential areas typically located near the City’s major arterials...” Neither of these conditions are met by this project. This project should be deemed not consistent with the general plan and rejected. If not rejected outright, it should be subject to further scrutiny, and an EIR report required. The maintain and enhance portion is not accomplished by putting in a condo and E 24<sup>th</sup> Street, 17<sup>th</sup> Avenue, and 29<sup>th</sup> Avenue are not major arterial streets.**

Staff Response: The General Plan “Mixed House Type Residential classification is intended to create, maintain, and enhance neighborhood residential areas typically located near the City’s major arterials and characterized by a mix of single family homes, townhouses, small multi-unit buildings and neighborhood businesses where appropriate.” The proposed project is a small-multi-unit building which is located near the major arterial of 14<sup>th</sup> Avenue (1 ½ blocks away). The designation of the land as Mixed Housing Type Residential, means that the property is near a major arterial, otherwise it would be designated a different general plan category. The proposal also is below the General Plan density, which would allow 6 dwelling units on the site. The existing neighborhood has a mixture of single family and small multi-unit buildings. This proposal is designed from the front elevation to appear as a single family home and therefore will maintain and enhance the neighborhood. An EIR is not required because this 4 unit project satisfies criteria for a CEQA exemption (15303 and 15183)

- 3. The appellants are opposed to granting a permit to do harm to the neighborhood. They are opposed to the variance finding providing a grant of special privilege (Staff findings, Feb 28, 1007 section 17.148.050(a) subsection D).**

Staff Response: The Planning Commission determined that the higher pitch of the roof would create a better overall appearance to the front elevation of the condominiums instead of a lower

*pitch. Therefore this is not considered a grant of special privilege since it provides a better design solution.*

*The appellants, Mary Becker and Robert Klinger were granted a height variance of 3 feet 6 inches above the 30 foot height requirement for a 1,666 square foot addition that is 33 feet six inches tall on their property at 2302 17<sup>th</sup> Avenue in June of 2001, case #VDRD01-187. The variance was granted in part because it matched the height of the existing building, which shows that the height variance to allow a 32 foot height matches the character of the neighborhood which already has some buildings that are over the 30 foot height limit. Therefore this would not be a grant of special privilege and it would deprive the applicant of privileges enjoyed by owners of similarly zoned property in this very neighborhood if the variance was denied.*

*As previously noted, Staff did not recommend this height variance. The council could choose to deny the appeal but also deny the variance.*

- 4. The appellants bring up an older proposed project that had included this lot along with the property next door, stating that the true development project has not been presented. This approval will be used for justification for the second phase of the original project. A memo from David Mog dated December 9, 2005 is mentioned where a shared access facility is stated as a condition of approval.**

*Staff Response: The previously mentioned project was turned down and was proposed by a different developer. A new owner has purchased the property at 1727 E 24<sup>th</sup> Street. The only project that was approved at the Planning Commission was for a 4 unit residential condominium. The previous project was lacking in architectural detail and was proposed as an apartment building. If a project is proposed at the neighboring property, it will be reviewed as a separate permit. The Planning Commission can not deny a project based on the speculation of what may be proposed on a neighboring property that currently has a different owner. Any new project on a neighboring property will be reviewed on its own merit as to whether it meets the zoning and General Plan requirements.*

*The memo from Dave Mog on December 9, 2005 references driveway regulations which are under the "Shared Access Facilities – Guidelines for Development and Evaluation" for the four condominium units on this lot, it does not mention the driveway being shared by the adjacent lot.*

- 5. The garages will be used as a third bedroom for each unit.**

*Staff Response: The only way for the garages to be legally used as a bedroom is to obtain a zoning permit to approve this along with a building permit. Zoning will not approve the conversion of a garage into a bedroom because the property would then not maintain its required parking of one space per unit. If an owner were to convert the garage illegally to a bedroom, code enforcement action would be taken and the owner would be required to convert the garage back to its original use or face penalties. The Planning Commission can not base their decision on what speculative illegal changes an owner may make. The better design solution is for the garages to be constructed into the hillside in order to have less impact on the*

*property by being incorporated into the overall design of the condominiums and not a row of freestanding garages. If the garages were separated, this would also create much greater impervious surfaces on the property along with the potential of not being able to have enough space in order to meet the requirement for 4 parking spaces.*

- 6. The project is on an incredibly steep hill and is at least 25 feet higher than neighboring properties on 17<sup>th</sup> Avenue, therefore the project will be 57 feet above the neighboring houses.**

*Staff Response: Relatively speaking, this property is not that steep. The Planning Commission can only look at whether the project is meeting the height limitation on the lot itself, height is not measured from a neighboring lot. This would severely limit development on any hillside properties. There is an existing house between this property and those located on 17<sup>th</sup> Avenue, which creates a buffer between this project and those on 17<sup>th</sup> Avenue. The approximate cross slope of the parcel is 10%. Foundation design required for the project will be commensurate with the soils and slope of the site.*

- 7. The balconies and decks will overlook the neighbors' properties.**

*Staff Response: The balconies enhance the overall design of the project by breaking up the mass of the building with voids and add architecture details instead of creating a box. All of the balconies meet the setback requirements. The rear balcony exceeds the rear yard setback with a 26 foot rear setback where only 15 feet is required and the side balconies exceed the side yard setback with a 14 1/2 foot side yard setback where only 4 feet is required on the side of the condominium that faces toward 17<sup>th</sup> Avenue. The balconies on the other side have a setback of 19 feet, where 4 feet is required. All of the balconies are enclosed within the existing envelope of the condominium, which will reduce the areas from which one can look out. There is also another property in between the balconies and the houses along 17<sup>th</sup> Avenue. In short, no documentation has been submitted to substantiate privacy impacts to surrounding neighbors. Staff notes that the lot size and historic development pattern are more important factors than balcony size and placement.*

- 8. The appellants refer to a Sanborn map from the 1970's for building coverage.**

*Staff Response: The Sanborn map clearly does not represent the development that is there today. An attached aerial map (Attachment C) of the area shows development within a lot of the backyards of the houses behind 1727 E 24<sup>th</sup> Street along with buildings that are longer and take up large portions of the yards. The average coverage of the surrounding lots today is compatible with what is proposed. The Sanborn map is a snapshot in time that is not necessarily representative of today's neighborhood.*

- 9. The appellants question adequate parking and places for children to play. They continue to assert that the steepness of the hill prevents children from playing on the street in front of their house.**



*Staff Response:* The proposed development meets the parking requirement for the R-50 zone and exceeds the open space requirement by providing both group and private open space. The Planning Commission can not hold this property to a higher standard than is required on other lots or by code. The mention of children not being able to play in the street is not something that staff would ever recommend and the zoning regulations for open space do not assume that some of the open space used for a property would be for children to be playing in the street. It is also speculative to assume any children will live in the project.

**10. The appellant is concerned about traffic impacts; they state the project puts a shared driveway between this project and the parcel next door, therefore creating a street. They further state the four units will bring too much traffic compared to two units.**

*Staff Response:* As stated earlier, the project proposes for the driveway to be used on this property only, the Planning Commission can not deny a project based on what may or may not be proposed on a future neighboring project that is owned by a different owner. This driveway is not a street. The difference in traffic for 2 units compared to 4 units is not considered significant. At worst it is the difference between 12 trips average per day and 24 trips average per day.

**11. This is a neighborhood of basically single family homes that is quiet and friendly, street parking is available, low levels of traffic allow children to play in the street, there is relatively low crime, people know each other. This project will not enhance these issues.**

*Staff Response:* The neighborhood does have a mixture of single family homes along with secondary units and multi-family homes. Both the zoning and General Plan allow for small multi-family developments. The proposal is for condominiums that allow for individual ownership as opposed to rental apartments. Parking requirements are met, traffic will not be significantly increased. It is never recommended that children play in the street. Building a 4 unit condominium with asking prices of approximately \$400,000 or greater is indicative of a strong commitment, through reinvestment in a neighborhood, for the owners in the building to become part of the community the same as if it were a single family home.

**12. The residential design review requires that the proposed design will be sensitive to the topography and landscape.**

*Staff Response:* The creeks and underground streams map that was presented by the appellant are on the west side of 14<sup>th</sup> Avenue while this project is two blocks over and east of 17<sup>th</sup> Avenue. The zoning ordinance has requirements for creek permits if a project is within 100 feet from a creek, this proposal does not fall within that requirement so no creek permit is required. Engineering stated a soils report may be required and a Geotechnical report has been prepared and will be analyzed by the Engineering department for any potential problems with construction. As far as landscape, trees were cut down by a previous owner and there is nothing that the new owner can do about trees that were removed prior to his purchase of the property. The developer is proposing extensive landscaping including 14 new trees along with shrubs and

*other plantings. As a condition of approval, staff has required that an automatic irrigation system be put in place to maintain the landscaping of the property.*

**13. The site is not physically suitable for this type of development, the site is on a very steep hill and is riddled with underground streams, and the site is located in an area of the hill which has problems with land slides. The project proposes an underground garage which will divert underground streams and cause problems. The geotechnical report presented by the developer found evidence of underground water consistent with underground streams. The project proposes to cover 81% of the surface area and will create problems with water runoff which the area is particularly susceptible to due to the steepness of the hill and the unstable (sliding) hill side.**

*Staff Response: The site is not on a "very steep hill," there is approximately a 10% slope from one side of the property to the other. According to Oakland standards it does not even fall into the City's different zoning standards when a property has greater than a 20% or 40% slope. There is no history of slides for this particular property and none were found in the Geotechnical report. There is no record of underground streams and the Geotechnical report did not state any existence of underground streams. Water that was found was attributed to a form of artificial discharge. There is no evidence to refute this factor except for speculation by the neighbors. Even if there are underground streams there are engineering measures that can be taken to work around the situation. USGS maps show a landslide area on the west side of 17<sup>th</sup> Avenue and they show a liquefaction area west of 14<sup>th</sup> Avenue, both of these areas are well west of the proposed site. The Geotechnical supports the USGS maps, therefore the experts from USGS and the consultant who did the Geotechnical report are more reliable than speculation by the neighbors.*

**14. The project does not meet the criteria for a Categorical Exemption under section 15303 (b); is not consistent with the General Plan. We request that an EIR be required under this determination.**

*Staff Response: The appellant generally states the project does not meet the criteria for Categorical Exemption but does not provide any substantial basis as to why they believe it does not meet section 15303 (b). It states that the project is not consistent with the General Plan but meeting the General Plan is not a specified criteria for 15303(b). Staff has found this project to be consistent with the General Plan (see Staff Response from Issue #2 on page 5 and 6). If the project did not meet the General Plan, a General Plan amendment would be required which would trigger additional CEQA analysis.*

*Section 15303 of the California Environmental Quality Act (CEQA) states:  
Class 3 consists of construction and location of limited numbers of new, small facilities or structures: installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include but are not limited to:*

Item: \_\_\_\_\_  
City Council  
September 18, 2007

*(b) A duplex or similar multi-family residential structure totaling no more than four dwelling units. In urbanized areas, this exemption applies to apartments, duplexes, and similar structures designed for not more than six dwelling units.*

*This is a four unit project which clearly falls under the six dwelling unit maximum in an urbanized area. Furthermore, the project is not precluded from using a categorical exemption pursuant to section 15300.2 (Exceptions) under CEQA. The project does not fall into the following Exceptions: (a) Location, the project is not in a particularly sensitive environment to be considered significant; (b) Cumulative Impact, there are not successive projects of the same type in the same place to create a cumulative impact; (c) Significant Effect, this project activity will not have a significant effect on the environment due to unusual circumstances; (d) Scenic Highway, this is not on a scenic highway; (e) Hazardous Waste Sites, this is not a hazardous waste site; and (f) Historical Resources, there is no significant impact on historic resources.*

**15. The project does not provide adequate facilities for trash storage and laundry.**

*Staff Response: Each unit will have individual garbage containers that will be wheeled out to the street from the garages like any other home owner. There is adequate storage space within the garage for garbage. At the Planning Commission meeting the applicant stated there will be laundry facilities within each unit, but this is up to the applicant and is not a City requirement. It makes the units more marketable if they have laundry space and hook-ups within, but owners can utilize a Laundromat if necessary.*

**SUSTAINABLE OPPORTUNITIES**

The project would provide the following economic, environmental, and social equity benefits:

Economic: The project would contribute to the economic vitality of the San Antonio neighborhood by developing a vacant lot and bringing additional home ownership opportunities. The project would also increase the property tax valuation of the property thereby providing a positive fiscal impact to the City through increased property tax revenue. Since the project would involve residential condominiums, sales and resales of the residential units in the project would also generate transfer taxes for the City.

Environmental: The project has had a geotechnical report performed and engineering will ensure that any required mitigation will be performed before and during construction.

Social Equity: The project involves a four unit housing development and increases housing opportunities for the City of Oakland.

**DISABILITY AND SENIOR CITIZEN ACCESS**

Any housing constructed on the property will be required to comply with local, state, and federal ADA access requirements.

Item: \_\_\_\_\_  
City Council  
September 18, 2007

## STAFF RECOMMENDATION AND RATIONALE

Staff recommends that the City Council adopt the attached Resolution denying the appeal and uphold the Planning Commission's approval of the project for the following reasons: 1) The Planning Commission's decision was based on a thorough review of all pertinent aspects of the project and consideration of the objections raised by the appellant; 2) The project and the approval of the project comply in all significant respects with applicable general plan policies and zoning regulations and review procedures; and 3) The appellant has failed to demonstrate that there was an error or abuse of discretion in the Planning Commission's decision or that the Planning Commission's decision is not supported by substantial evidence in the administrative record;

## ALTERNATIVE CITY COUNCIL ACTIONS

The City Council has the option of taking one of the following alternative actions instead of the recommended action above:


1. Uphold the Planning Commission's decision, but impose additional conditions on the project and/or modify the project.
2. Uphold the Planning Commission's decision, but impose the original conditions given by staff for the February 28, 2007 Planning Commission meeting and eliminate the height variance and change the hip roof over the two interior decks to a flat one (see Attachment D).
3. Continue the item to a future hearing for further information or clarification.
4. Refer the matter back to the Planning Commission for further consideration on specific issues/concerns of the City Council. Under this option, the item would be forwarded back to the City Council with a recommendation after review by the Planning Commission.
5. Uphold the appeal and overturn the Planning Commission's decision thereby denying the project. This option would require the City Council to continue the item to a future hearing so that staff can prepare and the Council has an opportunity to review the proposed findings and resolution, for denial.


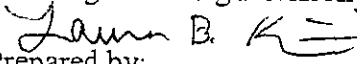
Item: \_\_\_\_\_  
City Council  
September 18, 2007

**ACTION REQUESTED OF THE CITY COUNCIL**

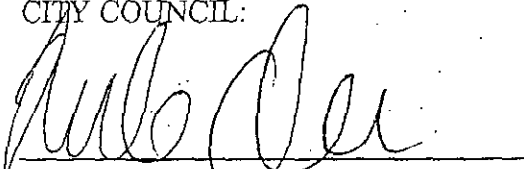
1. Affirm staff's environmental determination.
2. Affirm the Planning Commission's approval of a Conditional Use Permit to construct a four (4) unit residential building in the R-50 Zone, a Tentative Parcel Map for a subdivision of one lot to create four residential condominium units within a new residential building, and a minor height variance of (2) feet for a total height of 32 feet where 30 feet is required at 1727 E. 24<sup>th</sup> Street.

Respectfully submitted,

  
**CLAUDIA CAPPIO**  
Director of Development  
Community and Economic Development Agency

  
Reviewed by:  
Scott Miller  
Zoning Manager  
Planning & Zoning Division  
  
Prepared by:  
Laura B. Kaminski  
Planner II  
Planning & Zoning Division

APPROVED AND FORWARDED TO THE  
CITY COUNCIL:

  
Office of the City Administrator

**ATTACHMENTS:**

- A. Planning Commission Staff Report including Project Drawings and approved conditions (dated March 7, 2007)
- B. Appeal Letter (dated March 19, 2007)
- C. Aerial of the neighborhood
- D. Planning Commission Staff Report original Staff recommended Conditions (dated February 28, 2007)

Item: \_\_\_\_\_  
City Council  
September 18, 2007