

REVISED

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APPROVED AS TO FORM AND LEGALITY

Mark F. Walsh
DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. 80333 C.M.S.

A RESOLUTION DENYING THE APPEAL AND SUSTAINING THE DECISION OF THE PLANNING COMMISSION APPROVING CONSTRUCTION OF A NEW MIXED-USE DEVELOPMENT LOCATED AT 4700 TELEGRAPH AVENUE (CASE FILE NUMBER(S) A06-379; CMDV06-188; & TPM9164), WITH REVISED CONDITIONS OF APPROVAL

WHEREAS, on April 13, 2006, the 4700 Telegraph, LLC applied for a Major Interim Conditional Use Permit, Minor Variances, and Design Review and subsequently on May 24, 2006, filed for a Vesting Tentative Parcel Map (collectively called "Development Permits"), to construct a new mixed-use development consisting of 51 residential condominium units and 5,050 square-foot commercial space located at 4700 Telegraph Avenue; and

WHEREAS, the Design Review Committee of the Planning Commission conducted a duly noticed public hearing on the Project on May 24, 2006; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on the Project on July 12, 2006; and

WHEREAS, on July 12, 2006, 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 Section 15332 of the State CEQA Guidelines; and

WHEREAS, on July 12, 2006, the Planning Commission approved the application for a major interim conditional use permit, regular design review, minor variances, and a vesting tentative parcel map (collectively called "Development Permits"); and

WHEREAS, an appeal of the Planning Commission's July 12, 2006 actions were filed by Robert Temple on July 24, 2006, on behalf of the Telegraph Avenue Coalition ("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 October 31, 2006; and

WHEREAS, the appeal was postponed, and 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 December 5, 2006; 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 continued to December 19, 2006, where Appellants and all other interested parties were again given the opportunity to participate in the public hearing by submittal of oral and written comments, after which the hearing was closed by the City Council; now, therefore, be it

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 December 5 and 19, 2006 memoranda from CEDA, the October 31, 2006, City Council Agenda Report, the July 12, 2006, Planning Commission report, and the May 24, 2006, Design Review Committee report, which are hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's environmental determination is upheld (and revised), and the Planning Commission's decision approving the Development Permits is upheld, subject to the final conditions of approval adopted by the Planning Commission, as amended herein; and be it

FURTHER RESOLVED: That the following additional/revised conditions of approval are imposed on the Project, as detailed in Exhibit A, attached hereto and incorporated by reference; and be it

FURTHER RESOLVED: That in support of the City Council's decision to approve the Project's Development Permits, the City Council affirms and adopts, as its findings, the December 5 and 19, 2006 memoranda from CEDA; the October 31, 2006, City Council Agenda Report, the July 12, 2006, Planning Commission report, and the May 24, 2006, Design Review Committee report; and be it

FURTHER RESOLVED: That the City Council independently finds and determines that this Resolution complies with CEQA, as the Project is categorically exempt from CEQA pursuant to CEQA Guidelines section 15332, and, as a separate and independent basis, the Project is also exempt from CEQA pursuant to CEQA Guidelines section 15183. 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, including without limitation technical studies and all related/supporting materials, and all notices relating to the Project application and attendant hearings;
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, 1st floor, Oakland, CA; and be it

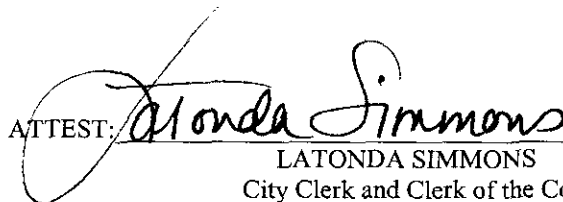
FURTHER RESOLVED: That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, DEC 19 2006, 2006

PASSED BY THE FOLLOWING VOTE:

AYES- ~~YIPKING~~, BRUNNER, CHANG, KERNIGHAN, NADEL,
REID, QUAN, AND PRESIDENT DE LA FUENTE - 7
NOES- 0
ABSENT- 0
ABSTENTION- Brooks - 1

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.

CITY OF OAKLAND



CITY HALL • ONE FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

JANE BRUNNER
 Councilmember
 District 1

(510) 238-7001
 FAX (510) 238-6910
 TTD (510) 238-7413

REVISED

To: Fellow Members of the Oakland City Council
 From: City Councilmember Jane Brunner
 Date: December 19, 2006
 Re: Appeal of Mixed-Use Development at 4700 Telegraph Avenue (Item 14.2)

I'd like to move approval of the mixed-use development at 4700 Telegraph Avenue, and denial of the appeal, subject to the following new or revised conditions of approval and the additional CEQA findings presented by CEDA on December 5, 2006:

1. That the south 57 feet of the Telegraph façade of the building be reduced to 3 stories.
2. That the portion of the building set back from the 3 story façade be limited to 4 stories in height along the south 48 feet of the building.
3. The height of the roof eave set back from the 4 story façade on Telegraph Avenue will be reduced by 2 feet from 56'6" to 54;6".
4. That the roof eve of the tower feature on the corner of Telegraph Avenue and 48th Street be reduced from 57'10" to 56'0". Attachment 1A visually describes the changes included in items 1 through 4.
5. The height of the roof eave will be reduced 4 feet on the entire east elevation from 48' to 44'.
6. A stoop entry from street shall be added to first floor unit facing 48th Street to permit direct entry from 48th Street.
7. The solid parapet walls at the top of the third floor northeast corner and along east elevation shall be replaced with open rails.
8. The redesigned Project shall be submitted to the Planning Director for confirmation of conformance with these modifications. The Planning Director's determination is final and not administratively appealable.
9. The number of units in the project shall be reduced from 51 to 48.
10. In addition to the previously imposed Planning Commission condition no. 15; Relocation of Potentially Designated Historic Structures, the Applicant will take the following steps to relocate one of the three existing buildings on the project site:

- a. Using commercially available compilations of county records, Applicant will identify all vacant parcels larger than 3,500 square feet located in the area surrounded by Interstate 580 on the south, State Highway 24 on the west and north, and a line following Broadway, Pleasant Valley and Piedmont Avenue on the east. Applicant shall provide the list of identified properties to the City and the City may, within 30 days of delivery of the list, add such other properties in the defined area of which the City is aware. In addition, applicant shall post the building for availability with a large sign, using minimum dimension of 6 x 8 ft.
- b. Applicant will compile an information packet about the structure, including physical description, known conditions, and house moving permit and building permit requirements. Applicant will submit the information packet to the Planning Director for review and said packet shall be deemed acceptable unless the Planning Director rejects said packet within 15 days of its submittal and provides specific changes that must be made to the packet to obtain approval. Applicant will contact by letter the owner of record of each identified property to inquire about their desire to take the structure onto their property, including the information packet Applicant shall document to the City all such contacts and the responses it receives to the contact letters within 60 days of this approval.
- c. For all responses Applicant receives from property owners interested in taking a structure, Applicant will conduct reasonable commercial due diligence with regard to their financial capability, ability to move the building within 6 months of this approval, insurance provided and suitability of the proposed site for the building. Suitability shall include a check with the Building and Planning Departments to inquire about zoning and housing code requirements which may apply to the proposed site. Applicant will submit the results of the due diligence to the Planning Director for review subject to the confidentiality and privacy rights of the interested property owners, and in conformance with the City's Sunshine Ordinance and State Public Records Act. Upon submittal the applicant will request an appointment for a meeting with the Planning Director which shall occur within 15 days of the submittal. A decision on acceptability of said due diligence must be made by the Planning Director within 15 days of its submittal or a meeting must take place with the Applicant within 15 days. If no such decision is made within the 15 day period and a meeting with the Planning Director has not taken place then the Applicant shall bring the issue to the Applicant's Councilmember and the Rules

Committee of the Oakland City Council to be scheduled on the Council Agenda at the next City Council meeting.

- d. Applicant will undertake reasonable commercial efforts to enter into an agreement with a willing property owner identified by the due diligence as a satisfactory taker of a building. Prior to entering into contract negotiations with prospective takers of a building, Applicant shall submit the form of agreement it would enter into to the Planning Director for review and said agreement shall be deemed acceptable unless the Planning Director rejects said agreement within 15 days of its submittal and provides specific changes that must be made for the agreement to obtain approval.
- e. Applicant will offer the affected tenants in the building the Tenant Relocation Assistance Program included in this approval.
- f. Applicant shall provide the City a letter detailing compliance with these requirements. Upon submittal of said letter the applicant will request an appointment for a meeting with the Planning Director which shall occur within 15 days of the submittal. A decision on the completeness of the above steps must be made by the Planning Director within 30 days of submittal of said letter or a meeting must take place with the Applicant within 30 days. If no such decision is made within the 30 day period and a meeting with the Planning Director has not taken place, then the Applicant shall bring the issue to the Applicant's Councilmember and the Rules Committee of the Oakland City Council to be scheduled on the Council Agenda at the next City Council meeting. If the Planning Director refuses to certify the completeness of the above steps, the Planning Director must issue a written determination that Applicant has materially and substantially failed to meet subconditions d. through f. and stating the specific actions or omissions of Applicant that are the basis for such determination.
- g. Applicant shall not receive a demolition permit to demolish the existing buildings unless and until all steps listed in d. through f. above have been completed.

11. The developers shall be required to provide the following:

- a. Three units to be sold to first time homebuyers of appropriate family size to the unit with an income of 80% AMI or less utilizing Fannie Mae, Freddie Mac, FHA or CalHFA loan products that do not result in negative amortization and requiring no more than 5% down payment from the borrower plus closing costs.
- b. Two units to be sold to first time homebuyers with an income of 100% AMI or less utilizing Fannie Mae, Freddie Mac, FHA or

CalHFA loan products that do not result in negative amortization and requiring no more than 5% down payment from the borrower plus closing costs.

- c. Units to be marketed through the various non-profit housing agencies and normal channels and a lottery system established for participants.
- d. Applicant will conduct outreach for buyers of the affordable units at least three (3) months before the sales of any other units in the building commence and will continue such outreach for three (3) months after the sale of any unit in the building.
- e. Applicant will reserve the 5 designated affordable units for three (3) months after entering into the first contract for the sale of any unit in the building.
- f. If any of the 5 designated affordable units remains unsold after three months from the time the first unit sells, applicant will be entitled to offer and sell those units to the general market at market prices.
- g. Units that are sold to buyers with 80% and 100% of AMI to have a recorded protection in the grant deed restricting the resale of the units to 80% or 100% AMI household respectively for 5 years.



SCHEME 1A
SCALE: 1/16"=1'-0" (APPROXIMATE)

TELEGRAPH AVE ELEVATION - STEP DOWN REVISION

kda 1810 sixth street, berkeley, ca. 94710
phone: 510.841.3555 fax: 510.841.1225
kahndesignassociates.com

CENTRADA TEMESCAL
4700-4770 TELEGRAPH AVE, OAKLAND, CA
12.13.2006

REVISED

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APPROVED AS TO FORM AND LEGALITY

DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION DENYING THE APPEAL AND SUSTAINING THE DECISION OF THE PLANNING COMMISSION APPROVING CONSTRUCTION OF A NEW MIXED-USE DEVELOPMENT CONSISTING OF 51 RESIDENTIAL UNITS AND 5,050 SQUARE FEET OF COMMERCIAL SPACE LOCATED AT 4700 TELEGRAPH AVENUE (CASE FILE NUMBER(S) A06-379; CMDV06-188; & TPM9164), WITH REVISED CONDITIONS OF APPROVAL

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WHEREAS, the Design Review Committee of the Planning Commission conducted a duly noticed public hearing on the Project on May 24, 2006; and

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WHEREAS, the public hearing on the Appeal was continued to December 19, 2006, where Appellants and all other interested parties were again given the opportunity to participate in the public hearing by submittal of oral and written comments, after which the hearing was closed by the City Council Council; ~~on October 31, 2006;~~ now, therefore, be it

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 December 5 and 19, 2006 memoranda from CEDA, the October 31, 2006, City Council Agenda Report, the July 12, 2006, Planning Commission report, and the May 24, 2006, Design Review Committee report, which are hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's environmental determination is upheld (and revised), and the Planning Commission's decision approving the Development Permits is upheld, subject to the final conditions of approval adopted by the Planning Commission, as ~~may be amended herein~~; and be it

FURTHER RESOLVED: That the following additional/revised conditions of approval are imposed on the Project, as detailed in Exhibit A, attached hereto and incorporated by reference; and be it

;

FURTHER RESOLVED: That in support of the City Council's decision to approve the Project's Development Permits, the City Council affirms and adopts, as its findings, the December 5 and 19, 2006 memoranda from CEDA; the October 31, 2006, City Council Agenda Report, the July 12, 2006, Planning Commission report, and the May 24, 2006, Design Review Committee report; and be it

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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;
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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, 1st floor, Oakland, CA; and be it

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

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

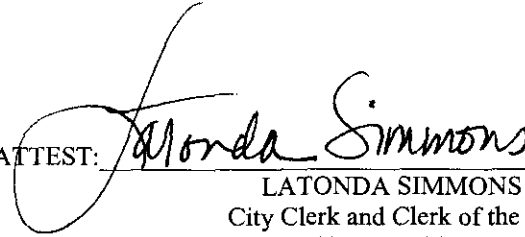
AYES-

NOES-

ABSENT-

ABSTENTION-

ATTEST:

A handwritten signature in black ink that reads "Latonda Simmons". The signature is written in a cursive style with a large, looping initial "L".

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.