

CITY OF OAKLAND
AGENDA REPORT

OFFICE OF THE CITY CLERK
RECEIVED 12/06/05 5:34

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Public Works Agency
DATE: December 6, 2005

RE: RESOLUTION DENYING THE APPEAL FILED BY NEIL KAPLAN AGAINST THE DECISION OF THE PUBLIC WORKS AGENCY APPROVING THE ISSUANCE OF TREE REMOVAL PERMIT DR05-073 IN ORDER TO BUILD A SIX-UNIT RESIDENTIAL PROJECT AT 436 OAKLAND AVENUE

SUMMARY

This report provides background information and a recommendation regarding a Tree Removal Permit for the proposed removal of four (4) trees for a development related project. In order to preserve the appellant's right to appeal the staff decision approving the permit application, staff requests the concurrence of the City Council in waiving the three (3) appeal related deadlines contained in the Protected Tree Ordinance (PTO): (a) the appeal shall be filed within five (5) working days after the date of a decision by the Public Works Agency (PWA); (b) the hearing date set by the City Clerk shall be not more than thirteen (13) working days from the date of the decision by the PWA; and (c) if the appeal is not finally disposed of by the City Council within eighteen (18) working days of the date of the decision by the PWA, said decision shall be deemed affirmed, and the permit appeal denied.

Staff approved the Tree Removal Permit on the basis that the trees proposed for removal are growing within the footprint of the proposed development on the site: a six-unit multi-family dwelling with a parking garage under the units. There is no reasonable redesign of the site plan that would save the trees. The cost of their preservation to the property owner, including any additional design and construction expenses, exceeds the value of the trees. Staff has prepared a resolution that will enable the City Council to implement a decision that denies Neil Kaplan's appeal and allows the issuance of the tree permit.

FISCAL IMPACTS

There is no fiscal impact to the City's budget if the appeal is denied or upheld.

BACKGROUND

On September 17, 2003, the City Planning Commission considered the application to build the project at 436 Oakland Avenue and voted to approve the variance and design review permit subject to the conditions of approval. An appeal of the Planning Commission's approval was heard by the City Council on November 18, 2003. The appeal was denied with minor additional conditions imposed on the project.

Item: _____
City Council
December 6, 2005

On June 30, 2005, Tree Services approved a permit to remove two (2) five-inch diameter Coast Live Oak trees, one (1) fourteen-inch diameter Blackwood Acacia and one (1) multi-stemmed Plum from an undeveloped lot. The undeveloped lot is 45 feet wide and 130 feet deep.

Neil Kaplan filed an appeal of the tree removal permit on August 25, 2005. He lives on the third floor of a 53-unit condominium complex behind the proposed project. Mr. Newton's three-page appeal is attached. The tree related comments are the following:

- The acacia trees to be removed in themselves may not have great value, but...They do provide a visual and pollutant buffer between buildings and busy roadways nearby.
- All other vegetation is to be removed. The excavation for the garage and pavement surrounding building in its current design will forbid any new natural vegetation. Only potted plants are possible.
- The condo apartment building proposed will crowd the site to such an extent as to lower the values of properties nearby *especially* in the North corner of the Cedars. Any future trees planted in the narrow remaining land between buildings would not be able to develop a full root system (because of basement garage) and utilize enough sunlight.
- Resulting noise from people living there being so close to adjacent property without trees to buffer. (Again, loss of value.)
- I recommend a design revision that will allow a rear yard (save the trees) and roof heights closer to that of neighboring buildings.

KEY ISSUES AND IMPACTS

The first key issue is to waive the appeal related deadlines in the PTO. Due to report preparation timeframes (and public notification due to the Sunshine Ordinance) the City Clerk is unable to set a hearing date within 13 working days and the City Council cannot dispose of the appeal within 18 days from the date of the decision by PWA. The City Council should still allow the appeal. A waiver of the deadlines has been a routine request to the City Council in previous tree permit appeal hearings.

The second key issue is whether staff correctly followed the PTO guidelines in approving the tree removal application. Staff believes the PTO was properly applied and recommends that the City Council approve the resolution denying the appeal. The resolution allows the removal of four trees and requires the applicant pay an in lieu fee of \$600 due to the site having an insufficient planting area for replacement trees on the property.

Section 12.36.050 of the PTO lists the criteria used to determine if trees should be removed or preserved (see Attachment C). This criteria review is a two-step process:

1. The tree removals must be necessary in order to accomplish at least one of five possible objectives. In this case, the trees are within close proximity to a proposed structure which complies with objective (A) (1).
2. Regardless of the first determination, a finding of any one of five possible situations listed in the PTO is grounds for permit denial. For this project, two possible situations apply: Section 12.36.050 (B)(1)(a), removal of a healthy tree could be avoided by reasonable redesign of the site plan, prior to construction, and Section 12.36.050 (B)(4), the value of the trees is greater than the cost of their preservation to the property owner.

PWA was unable to support findings for denial based on the following:

- A re-design of the site plan, prior to construction, is not reasonable. The lot is long and narrow, limiting the options to locate the project on the site. It is also unreasonable to ask for significant changes to a project of this size to accommodate four small trees.
- The value of the trees is less than the cost of their preservation to the property owner. Since the combined value of the trees is so low, the applicant was not asked to re-design and save the trees. The two oak trees are only five-inch diameter. Plum and Blackwood Acacia are only given 30 out of a possible 100 basis points for species when calculating their value, using the formula developed by the International Society of Arboriculture, resulting in a low appraisal figure for the trees.

SUSTAINABLE OPPORTUNITIES

The construction of six new residential units meets the Mayor and City Council's Priority Objective to improve the housing opportunities of the city's neighborhoods. Property tax revenues paid to the county will increase as a result of the construction of the new apartment condominiums.

RECOMMENDATION AND RATIONALE

Staff recommends that the City Council waive the appeal deadlines mandated by the PTO. Staff believes that it is important for the appellants to have the opportunity to present their case before the City Council.

Staff recommends that the City Council approve the resolution denying the appeal of tree permit application DR05-073 and allowing the issuance of a tree removal permit for four trees at 436 Oakland Avenue.

ALTERNATIVE RECOMMENDATION

The City Council can reverse staff's decision and require the preservation of the four trees. The City Council can require changes or impose additional conditions of approval that, in its judgment, are necessary to ensure the tree permit decision conforms to the PTO conditions of approval in section 12.36.060. This action would be taken if the City Council found that staff made an error or abused their discretion when they approved the removal of the four trees. Section 12.36.060 (E) of the PTO allows any other conditions that are reasonably necessary to implement the provisions of the chapter. This alternative would require the property owner to redesign the project.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the resolution denying the appeal of tree permit DR05-073 and allowing the issuance of a tree removal permit for four trees at 436 Oakland Avenue. The Conditions of Approval for the tree removal permit require the property owner to pay an in lieu fee of \$600.00 due to insufficient planting area existing for native tree replacements to grow to maturity.

Respectfully submitted,



RAUL GODINEZ II, P.E.
Director, Public Works Agency

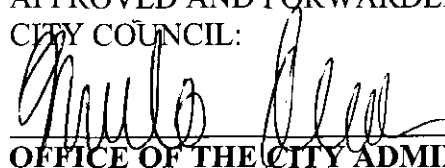
Reviewed by:
Bruce Saunders, Assistant Director
Department of Infrastructure and Operations

Prepared by:
Dan Gallagher, Tree Supervisor II
Tree Services Section

Attachments:

- A. Appeal filed by Neil Kaplan
- B. PWA decision letter, with conditions of approval
- C. OMC Section 12.36.050 Criteria for Tree Removal Permit
- D. Tree survey and site plan

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



OFFICE OF THE CITY ADMINISTRATOR

FACSIMILE COVER SHEET

DATE: JULY 26, 2005

TO: JERRY SMITH

FAX #: 510-615-5845

FROM: NEIL KAPLAN (3 SHEETS)

FAX # 856-964-0510

OF PGS. (NOT INCLUDING COVER SHEET):

MEMO:

Re: TREE REMOVAL PERMIT (No. DR05-073)

I'LL BE BACK IN THE BAY AREA TUES AUG 2, 2005

Gedans House

925 827-2200 X 118

Joseph Brook - Home Owners Ass.

THINGS TO CONSIDER WITH REGARD TO GRANTING TREE REMOVAL PERMIT

Most people do not appreciate a building's size and effect upon an area until construction is well underway. An appeal was made back in November 2003 with regard to said project and was unanimously denied. Main reason was that there was not enough support for the appeal. The only concessions the owner was forced to make were the elimination of a rear stair tower, roof deck and lowering the building's eave by 1 foot. (big deal)

The trees to be removed in themselves may not have great value, but.....

They do provide a visual and pollutant buffer between buildings and busy roadways nearby.

The condo apartment building proposed will crowd the site to such an extent as to lower the values of properties nearby *especially* in the North corner of the Cedars.

It will be dark for much of the day in #117 and #217 of the Cedars because the rear façade of the proposed building would be so close. (Loss of value)

Loss of privacy for those owning and living in units in the north corner of the Cedars. (Loss of value)

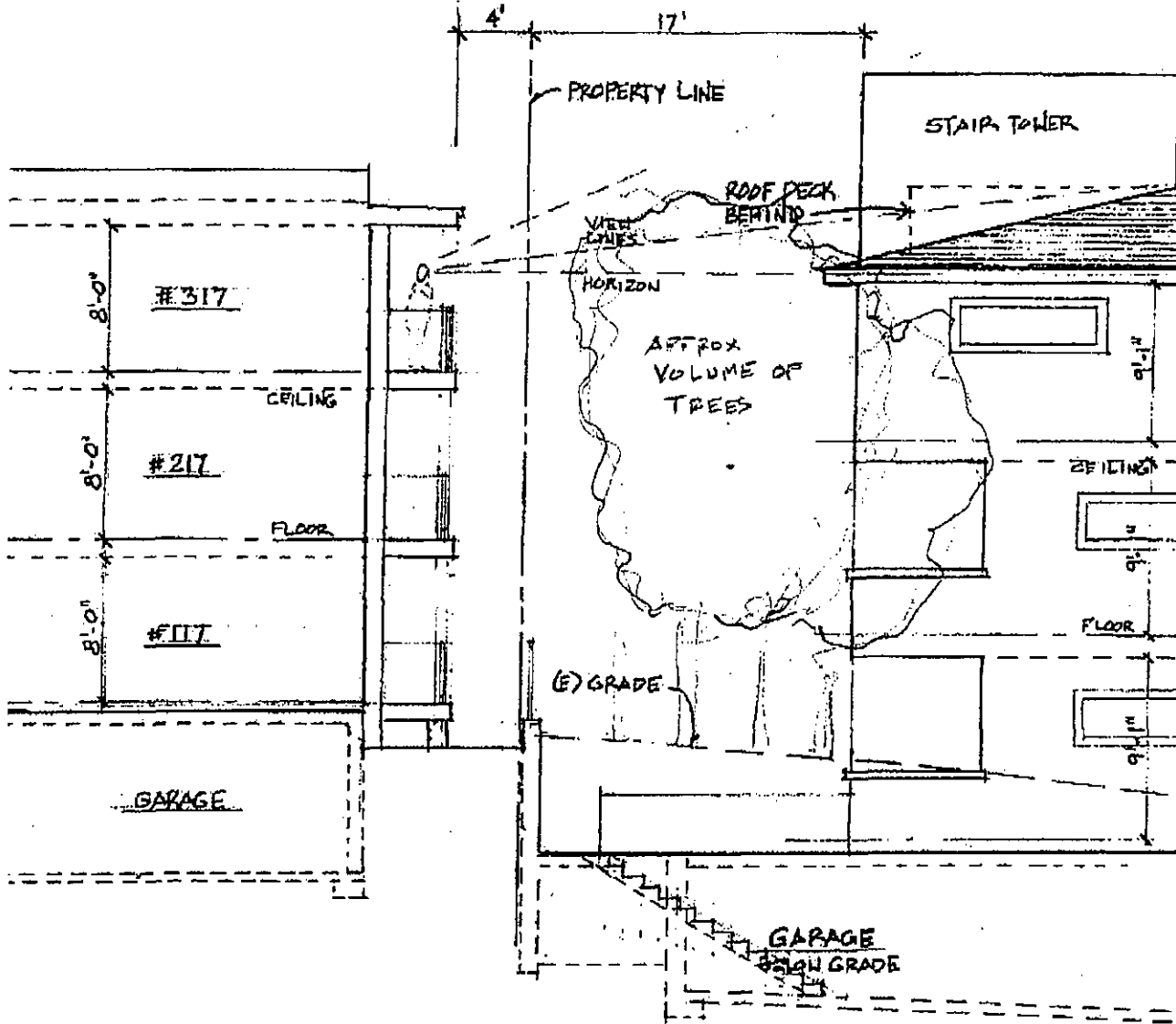
Resulting noise from people living there being so close to adjacent property without trees to buffer. (Again, loss of value).

There is already too many people living on this block and additional cars will clog Oakland Avenue certain times of day.

Say any other relevant comments you can think of.

EXISTING BUILDING
THE CEDARS

NEW BUILDING
436 OAKLAND AVE.



ELEVATION BETWEEN BUILDINGS
LOOKING SOUTHWEST

05 AUG 25 PM 2:06

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OUR OBJECTION TO GRANTING TREE REMOVAL PERMIT

Most people do not appreciate a building's size and effect upon an area until construction is well underway. An appeal was made back in November 2003 with regard to an approved six unit apt/condo and was unanimously denied. Main reason was that there was not enough support for the appeal (most neighbors were conveniently unaware of the consequences). The only concessions the owner was forced to make were the elimination of a rear stair tower, roof deck and lowering the building's eave by 1 foot. (big deal)

The acacia trees to be removed in themselves may not have great value, but..... They do provide a visual and pollutant buffer between buildings and busy roadways nearby.

All other vegetation is to be removed. The excavation for the garage and pavement surrounding building in its current design will forbid any new natural vegetation. Only potted plants are possible.

The condo apartment building proposed will crowd the site to such an extent as to lower the values of properties nearby *especially* in the North corner of the Cedars. Any future trees planted in the narrow remaining land between buildings would not be able to develop a full root system (because of basement garage) and utilize enough sunlight.

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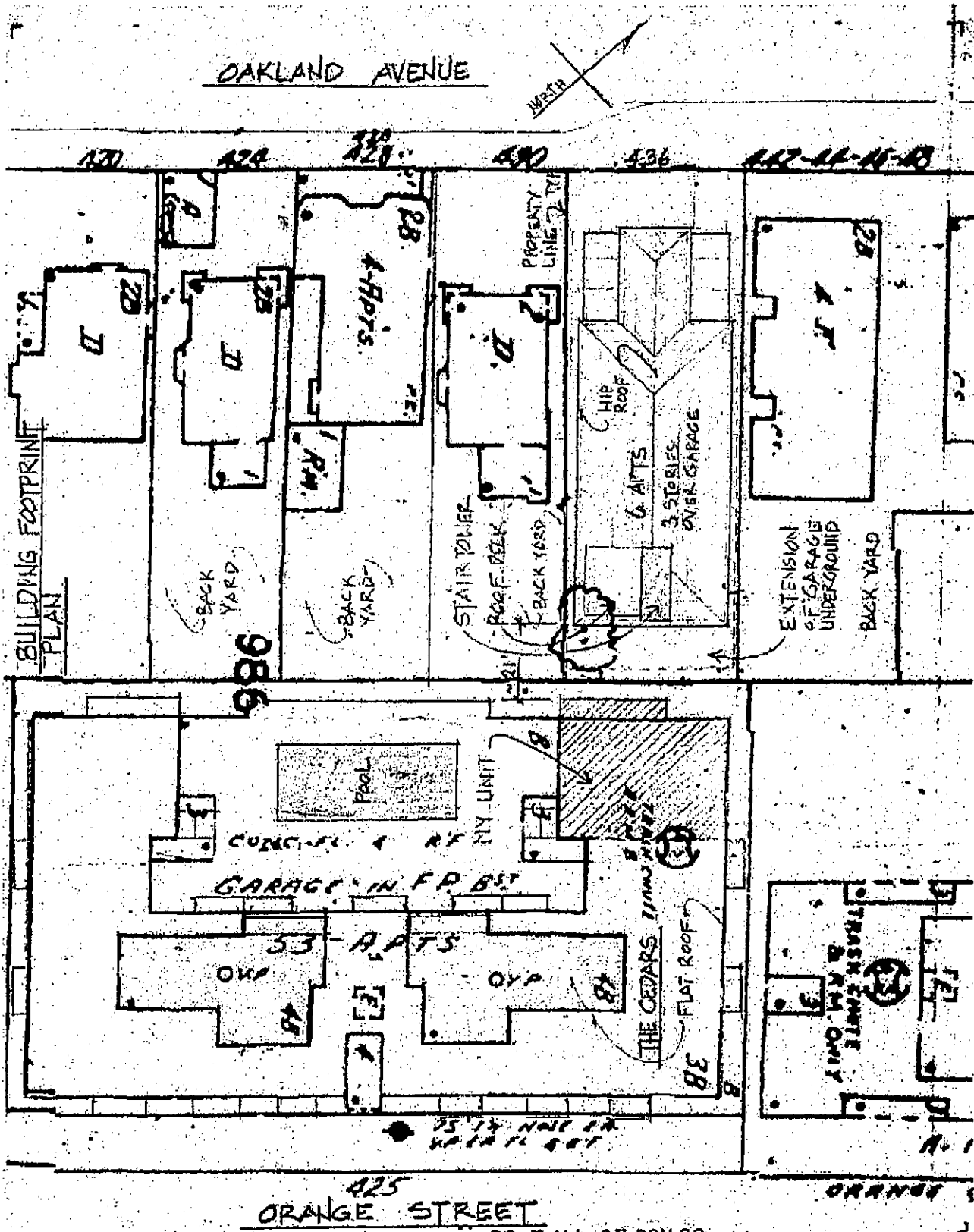
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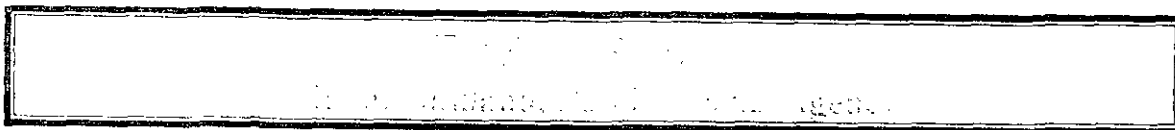
There is already too many people living on this block and additional cars will clog the Oakland Avenue entrance to eastbound I-580 freeway certain times of day.

I recommend a design revision that will allow a rear yard (save the trees) and roof heights closer to that of neighboring buildings.

05 AUG 25 PM 2:06
FILED
OFFICE OF THE CITY CLERK
OAKLAND



FILED
 OFFICE OF THE CITY CLERK
 OAKLAND
 05 AUG 25 PM 2:06



436 Oakland Avenue

Approved:
Expires: One year from date of issuance

Applicant: John Newton

#1	Coast Live Oak	#3	Coast Live Oak
#2	Blackwood Acacia	#4	Plum
		▶ All other protected trees	

As per Chapter 12.36 of the Oakland Municipal Code, this Development-related permit approves the removal of four (4) protected trees, subject to conditions of approval. This permit is effective five (5) working days after the date of this decision unless appealed as explained below. This permit is defined as a Development-related permit due to the six unit multi-family dwelling proposed for development on the site.

This decision of the Public Works Agency, Tree Services Section may be appealed by the applicant, or the owner of any "adjoining" or "confronting" property, to the City Council within five (5) working days after the date of this decision and by 5:00 p.m. The term "adjoining" means immediately next to, and the term "confronting" means in front of or in back of. An appeal shall be on a form prescribed by and filed with the City Clerk, at One Frank H. Ogawa Plaza, second floor. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the City or wherein such decision is not supported by the evidence in the record and must include payment of \$50.00, in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal this decision and raise any and all issues in your appeal may preclude you from challenging this determination in court.

OAKLAND MUNICIPAL CODE SECTION 12.36.050(A) FINDINGS

The application complies with Section 12.36.050(A)(1) of the Oakland Municipal Code. Four trees need to be removed to construct the multi-unit dwelling. The trees are located within the footprint of the project and must be removed to allow space for the construction.

OAKLAND MUNICIPAL CODE SECTION 12.36.050(B) FINDINGS

Tree removal cannot be avoided by reasonable re-design (OMC Section 12.36.050(B)(1)(a)).

A re-design of the site plan, prior to construction, is not reasonable. The lot is 45 feet wide and the multi-unit building will use the entire lot. Significant redesign would be required to save the trees. A section of the building, approximately 40 feet by 15 feet, would have to be eliminated to provide enough growing space for the three trees at the rear of the lot. A small, multi-stemmed plum tree is located within the proposed driveway. None of the proposed removals are significant trees and redesign would be unreasonable.

Tree removal cannot be avoided by trimming, thinning, tree surgery or other reasonable treatment (OMC Section 12.36.050 (B)(1)(b)).

Trimming or thinning will not create the space needed to build the proposed project.

Adequate provisions for drainage, erosion control, land stability or windscreen have been made (OMC Section 12.36.050(B)(2)).

As a result of the tree removals, Tree Services does not anticipate any problems with drainage, erosion control and land stability or windscreen. The trees' canopies intercept rainfall and reduce surface erosion. The root systems help stabilize the upper portion (top 3 feet) of the soil. When the trees are removed, their ability to assist with reducing soil erosion and stabilizing the site will be lost. This loss will be offset by the dwelling because it will cover soil that was once exposed to rainfall.

The value of the trees is not greater than the cost of their preservation to the property owner (OMC Section 12.36.050 (B)(4)).

The cost of preservation, including any additional design and construction expenses, would exceed the monetary value of the trees. Therefore, there are no grounds for permit denial.

OAKLAND MUNICIPAL CODE SECTION 12.36.070(E) CEQA REVIEW

No environmental review is required.


OAKLAND MUNICIPAL CODE SECTION 12.36.060 CONDITIONS OF APPROVAL

- 1. Limitations on Tree Removals.** Tree removals, as defined in the Protected Trees Ordinance, Section 12.36.020 of the Oakland Municipal Code, may not commence unless and until the applicant has obtained all other necessary permits pertinent to site alteration and construction.
- 2. Defense, Indemnification & Hold Harmless.** *Within ten (10) business days of the filing of a claim, action or proceeding that is subject to this provision, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes this condition of approval.*

The applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, Oakland Redevelopment Agency, Oakland City Planning Commission and their respective agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Planning and Zoning Division, Oakland City Planning Commission, the City of Oakland Redevelopment Agency or City Council relating to this project. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

3. **Debris.** All debris from the tree removal work shall be removed from the property within two weeks of it being cut. It shall be properly disposed of in a legal manner.
4. **Fee.** The applicant shall pay a fee of \$600 (\$300 per tree) to the City of Oakland as required by the Protected Tree Ordinance (PTO). The PTO requires a replacement tree or in lieu fee when Coast Live Oaks are approved for removal. Insufficient room exists on the applicant's property to plant replacement trees, therefore, an in lieu fee is charged. The Office of Public works uses the fee to plant trees along streets and in City parks.
5. **Payment.** The tree permit shall be held until the in lieu fee is paid to Tree Services. The permit will be released from Tree Services to the building department once the fee is paid.
6. **Site Posting.** The applicant shall post a copy of the tree removal permit in plain view on site while tree removal work is underway.
7. **Recordation of Conditions.** The applicant/owner(s) shall record the conditions of approval attached to this permit with the Alameda County Recorder's Office in a form prescribed by the Director of Public Works.


Arboricultural Inspector 6/30/05
Date

For  6/30/05
Director Date

OAKLAND MUNICIPAL CODE SECTION 12.36.060 CONDITIONS OF APPROVAL**1. Limitations on Tree Removals**

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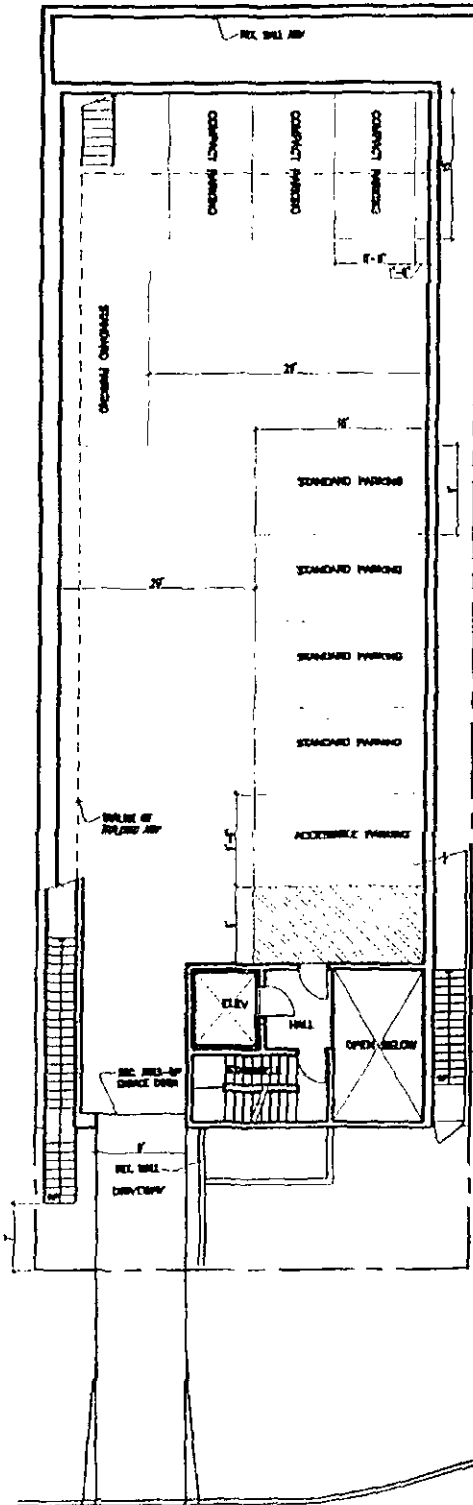
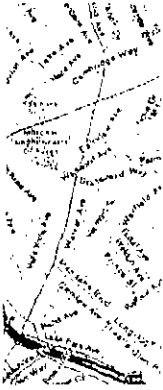
- 3. Debris.** All debris from the tree removal work shall be removed from the property within two weeks of it being cut. It shall be properly disposed of in a legal manner.
- 4. Tree Planting.** Insufficient planting area exists for two native replacement trees to grow to maturity. An in lieu fee of \$300.00 per native tree removed, in accordance with the City of Oakland Master Fee Schedule, shall be paid to be applied toward tree planting in city parks, streets and medians.

Trees and plants shown on the landscape plan (L-1) dated February 7, 2005, shall be installed prior to the issuance of a certificate of occupancy. All trees planted in the public right-of-way shall require prior approval by the Public Works Agency's Tree Services Section in accordance with the City of Oakland's Street Tree Plan dated January 27, 1998.

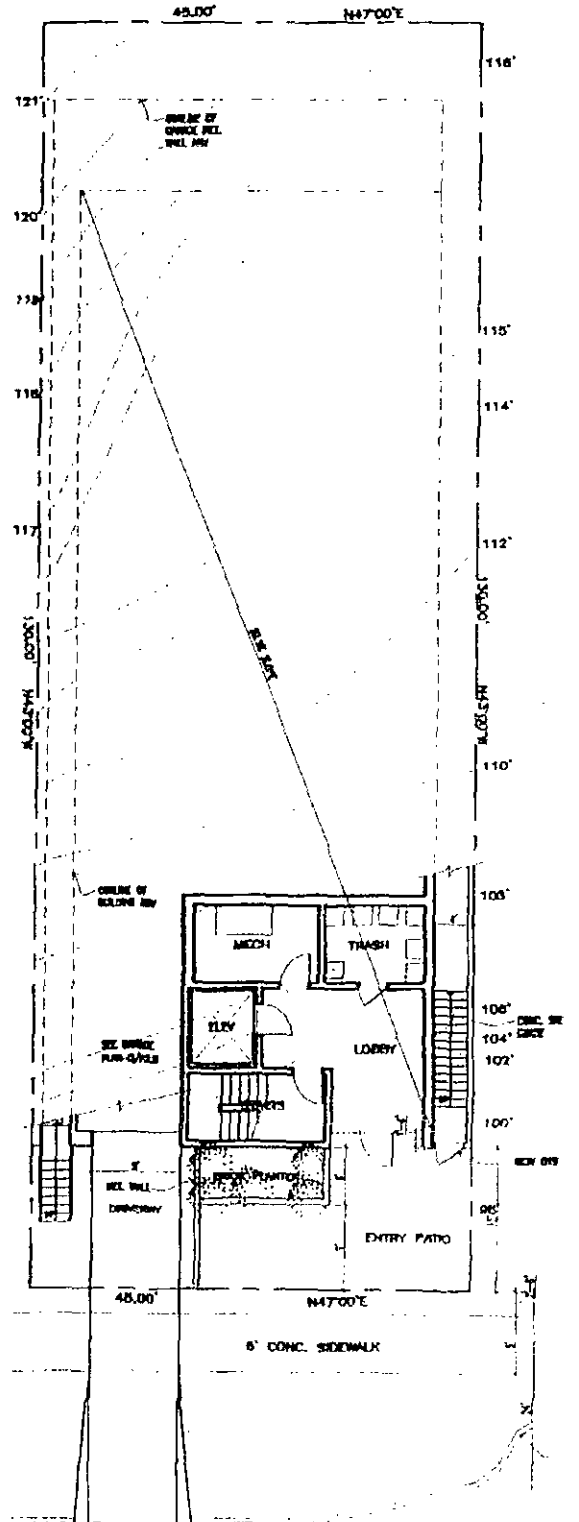
- 5. Tree Watering.** An appropriate amount of water must be applied each week, for three years, to establish the replacement trees in the landscape. The trees shall be watered by an irrigation system and timer. Any replacement tree(s) not alive and healthy within one year of planting shall be replaced at the applicant's expense.
- 6. Site Posting.** The applicant shall post a copy of the tree removal permit in plain view on site while tree removal work is underway.

7. **Recordation of Conditions.** The applicant/owner(s) shall record the conditions of approval attached to this permit with the Alameda County Recorder's Office in a form prescribed by the Director of Public Works.

APARTMENT CONDOMINIUM

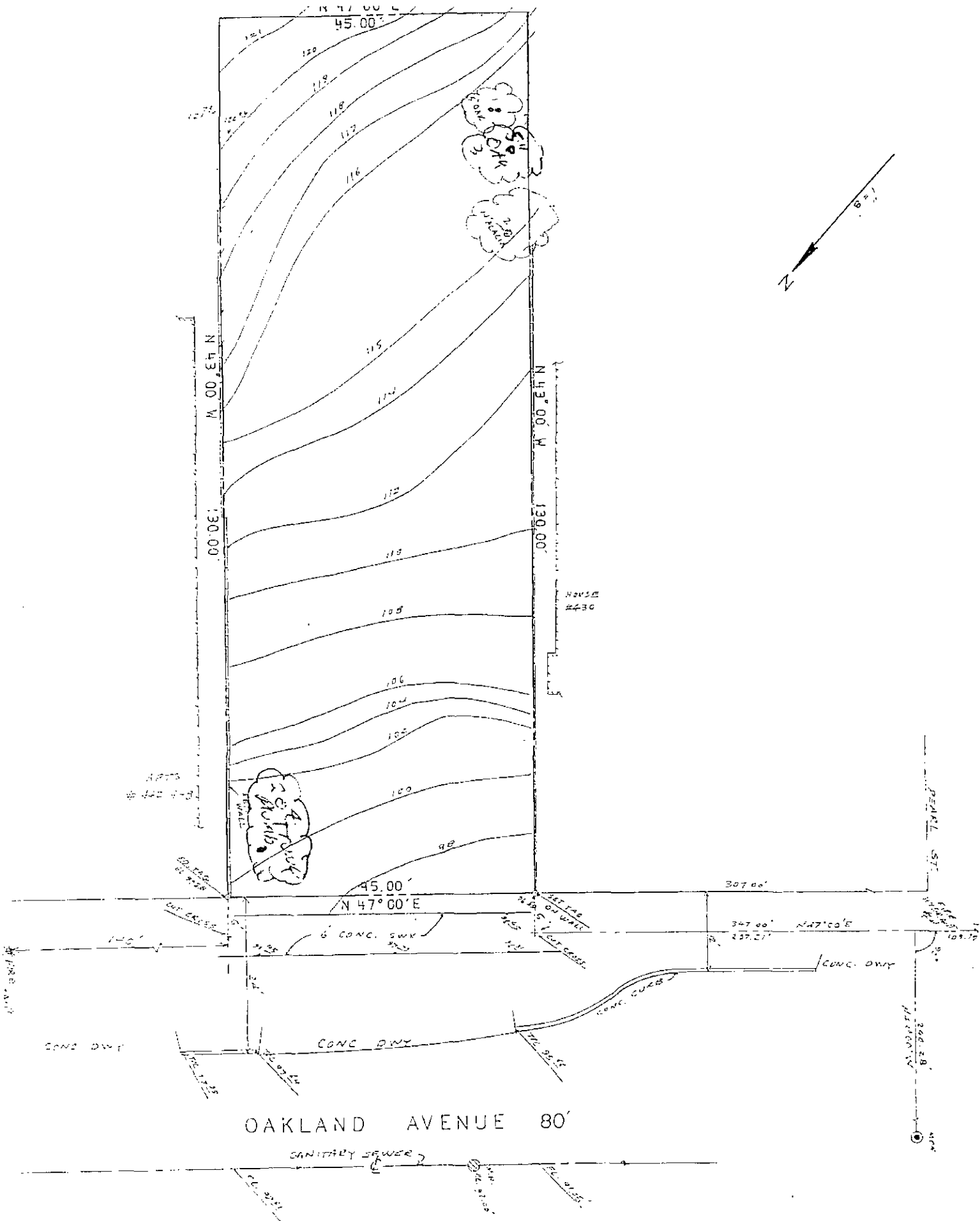


3 GARAGE PLAN
1/8"=1'-0"



1 LOBBY PLAN
1/8"=1'-0"





1. 44
 2. 77
 3. 7
 4. 4
 5.

OAKLAND CITY COUNCIL

2005 NOV 22 PM 5:35

RESOLUTION No. _____ C.M.S.

Margaret Fujita

INTRODUCED BY COUNCILMEMBER _____

RESOLUTION DENYING THE APPEAL FILED BY NEIL KAPLAN AGAINST THE DECISION OF THE PUBLIC WORKS AGENCY APPROVING THE ISSUANCE OF TREE REMOVAL PERMIT DR05-073 FOR 436 OAKLAND AVENUE

WHEREAS, on May 26, 2005, John Newton ("Applicant") submitted an application for Tree Removal Permit (TRP) DR05-073 to remove four trees from 436 Oakland Avenue in order to build a six-unit multifamily dwelling; and

WHEREAS, due notice of the application was given to all affected and interested parties; and

WHEREAS, on June 30, 2005, the Public Works Agency (PWA) approved the issuance of TRP DR05-073 for the removal of four protected trees from said property; and

WHEREAS, the decision was justified on the basis that Section 12.36.050 (A) (1) of the Protected Trees Ordinance justifies approval of the tree removals based on the trees' proximity to a proposed structure; and

WHEREAS, on August 25, 2005, Neil Kaplan ("Appellant"), filed an appeal with the Office of the City Clerk against the PWA decision approving TP DR05-073; and

WHEREAS, the appeal came before the City Council on December 6, 2005, and the appellant, and interested neutral parties were given ample opportunity to participate in the public hearing and were given a fair opportunity to submit relevant evidence to the City Council; and

WHEREAS, the public hearing on the appeal and application was closed by the City Council on December 6, 2005, after a public hearing of said appeal was conducted, and a motion to deny the appeal and to approve issuance of TRP DR05-073 subject to certain conditions noted below was passed; now, therefore, be it

RESOLVED: That the decision of the Public Works Agency is hereby affirmed; and be it

FURTHER RESOLVED: That the appeal filed by Neil Kaplan against the decision of the PWA approving the removal of trees in TRP DR05-073 is hereby denied; and be it

FURTHER RESOLVED: That in accordance with the criteria established in Sections 12.36.050 (A) (1) of the Oakland Municipal Code, the removal of four trees in TRP DR05-073 is hereby approved by the Office of Planning and Building; and be it

FURTHER RESOLVED: That in accordance with Section 12.36.060 (A) and (B) of the Oakland Municipal Code, the conditions of approval in the tree permit (attached as Attachment A and hereby incorporated by reference as if fully set forth herein) shall be provided during the construction period; and be it

FURTHER RESOLVED: That the City Council, having heard, considered and weighed all the evidence presented on behalf of all parties and being fully informed of the application, finds, for all the reasons stated in this resolution that the appeal should be denied. Therefore, the decision of the Director, PWA, approving tree removals is affirmed, the appeal is denied, and the application for tree removals is approved subject to the conditions of approval (attached as Attachment A and hereby incorporated by reference as if fully set forth herein); and be it

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

1. the application, including all accompanying maps and papers;
2. all plans submitted by the applicant and his representatives;
3. all staff reports, decision letters and other documentation and information produced by or on behalf of the City, and all notices in relation to the application and attendant hearings;
4. all oral and written evidence received by the City staff, and City Council before and during the public hearings on the application and appeals;
5. all matters of common knowledge and all official enactment's and acts of the City, such as (a) Oakland Municipal Code, (b) other applicable City policies and regulations; and (c) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the City Council hereby adopts the CEQA findings of the City's Environmental Review Officer and finds that the Project is exempt from CEQA under CEQA Guidelines Section 15311 and directs that the Review Officer prepare a Notice of Exemption for filing at the County Recorder; and be it

FURTHER RESOLVED: That the Office of the City Attorney has approved this resolution and a copy will be on file in the Office of the City Clerk; 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, _____, 2005

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST:

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

ATTACHMENT A
TREE PERMIT AND
CONDITIONS OF APPROVAL

TREE REMOVAL PERMIT
 CITY OF OAKLAND, PUBLIC WORKS AGENCY

436 Oakland Avenue

Approved: _____
 Expires: One year from date of issuance

Applicant: John Newton

#1	Coast Live Oak	#3	Coast Live Oak
#2	Blackwood Acacia	#4	Plum

		▶	All other protected trees
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As per Chapter 12.36 of the Oakland Municipal Code, this Development-related permit approves the removal of four (4) protected trees, subject to conditions of approval. This permit is effective five (5) working days after the date of this decision unless appealed as explained below. This permit is defined as a Development-related permit due to the six unit multi-family dwelling proposed for development on the site.

This decision of the Public Works Agency, Tree Services Section may be appealed by the applicant, or the owner of any "adjoining" or "confronting" property, to the City Council within five (5) working days after the date of this decision and by 5:00 p.m. The term "adjoining" means immediately next to, and the term "confronting" means in front of or in back of. An appeal shall be on a form prescribed by and filed with the City Clerk, at One Frank H. Ogawa Plaza, second floor. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the City or wherein such decision is not supported by the evidence in the record and must include payment of \$50.00, in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal this decision and raise any and all issues in your appeal may preclude you from challenging this determination in court.

OAKLAND MUNICIPAL CODE SECTION 12.36.050(A) FINDINGS

The application complies with Section 12.36.050(A)(1) of the Oakland Municipal Code. Four trees need to be removed to construct the multi-unit dwelling. The trees are located within the footprint of the project and must be removed to allow space for the construction.

OAKLAND MUNICIPAL CODE SECTION 12.36.050(B) FINDINGS

Tree removal cannot be avoided by reasonable re-design (OMC Section 12.36.050(B)(1)(a).

A re-design of the site plan, prior to construction, is not reasonable. The lot is 45 feet wide and the multi-unit building will use the entire lot. Significant redesign would be required to save the trees. A section of the building, approximately 40 feet by 15 feet, would have to be eliminated to provide enough growing space for the three trees at the rear of the lot. A small, multi-stemmed plum tree is located within the proposed driveway. None of the proposed removals are significant trees and redesign would be unreasonable.

Tree removal cannot be avoided by trimming, thinning, tree surgery or other reasonable treatment (OMC Section 12.36.050 (B)(1)(b)).

Trimming or thinning will not create the space needed to build the proposed project.

Adequate provisions for drainage, erosion control, land stability or windscreen have been made (OMC Section 12.36.050(B)(2)).

As a result of the tree removals, Tree Services does not anticipate any problems with drainage, erosion control and land stability or windscreen. The trees' canopies intercept rainfall and reduce surface erosion. The root systems help stabilize the upper portion (top 3 feet) of the soil. When the trees are removed, their ability to assist with reducing soil erosion and stabilizing the site will be lost. This loss will be offset by the dwelling because it will cover soil that was once exposed to rainfall.

The value of the trees is not greater than the cost of their preservation to the property owner (OMC Section 12.36.050 (B)(4)).

The cost of preservation, including any additional design and construction expenses, would exceed the monetary value of the trees. Therefore, there are no grounds for permit denial.

OAKLAND MUNICIPAL CODE SECTION 12.36.070(E) CEQA REVIEW

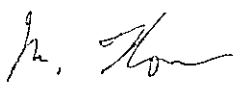
No environmental review is required.

OAKLAND MUNICIPAL CODE SECTION 12.36.060 CONDITIONS OF APPROVAL

1. **Limitations on Tree Removals.** Tree removals, as defined in the Protected Trees Ordinance, Section 12.36.020 of the Oakland Municipal Code, may not commence unless and until the applicant has obtained all other necessary permits pertinent to site alteration and construction.
2. **Defense, Indemnification & Hold Harmless.** *Within ten (10) business days of the filing of a claim, action or proceeding that is subject to this provision, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes this condition of approval.*

The applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, Oakland Redevelopment Agency, Oakland City Planning Commission and their respective agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Planning and Zoning Division, Oakland City Planning Commission, the City of Oakland Redevelopment Agency or City Council relating to this project. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

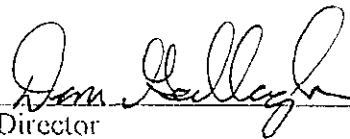
3. **Debris.** All debris from the tree removal work shall be removed from the property within two weeks of it being cut. It shall be properly disposed of in a legal manner.
4. **Fee.** The applicant shall pay a fee of \$600 (\$300 per tree) to the City of Oakland as required by the Protected Tree Ordinance (PTO). The PTO requires a replacement tree or in lieu fee when Coast Live Oaks are approved for removal. Insufficient room exists on the applicant's property to plant replacement trees, therefore, an in lieu fee is charged. The Office of Public works uses the fee to plant trees along streets and in City parks.
5. **Payment.** The tree permit shall be held until the in lieu fee is paid to Tree Services. The permit will be released from Tree Services to the building department once the fee is paid.
6. **Site Posting.** The applicant shall post a copy of the tree removal permit in plain view on site while tree removal work is underway.
7. **Recordation of Conditions.** The applicant/owner(s) shall record the conditions of approval attached to this permit with the Alameda County Recorder's Office in a form prescribed by the Director of Public Works.



Arboricultural Inspector Date

6-30-05

For



Director Date

6/30/05

OAKLAND MUNICIPAL CODE SECTION 12.36.060 CONDITIONS OF APPROVAL

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3. **Debris.** All debris from the tree removal work shall be removed from the property within two weeks of it being cut. It shall be properly disposed of in a legal manner.

4. **Tree Planting.** Insufficient planting area exists for two native replacement trees to grow to maturity. An in lieu fee of \$300.00 per native tree removed, in accordance with the City of Oakland Master Fee Schedule, shall be paid to be applied toward tree planting in city parks, streets and medians.

Trees and plants shown on the landscape plan (L-1) dated February 7, 2005, shall be installed prior to the issuance of a certificate of occupancy. All trees planted in the public right-of-way shall require prior approval by the Public Works Agency's Tree Services Section in accordance with the City of Oakland's Street Tree Plan dated January 27, 1998.

5. **Tree Watering.** An appropriate amount of water must be applied each week, for three years, to establish the replacement trees in the landscape. The trees shall be watered by an irrigation system and timer. Any replacement tree(s) not alive and healthy within one year of planting shall be replaced at the applicant's expense.

6. **Site Posting.** The applicant shall post a copy of the tree removal permit in plain view on site while tree removal work is underway.

7. **Recordation of Conditions.** The applicant/owner(s) shall record the conditions of approval attached to this permit with the Alameda County Recorder's Office in a form prescribed by the Director of Public Works.