

Oakland City Planning Commission

Design Review Committee

STAFF REPORT

Case File Number PLN16092, PLN16092-A01, PLN16092-A02

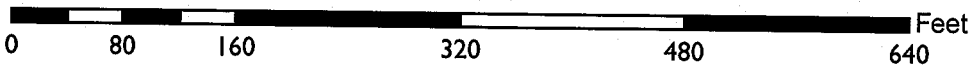
October 25, 2017

Project Name and Location:	605-9 th Street, located at the intersection of 9 th Street and Jefferson Street. APN: 001-0211-006-00
Proposal:	To demolish an existing one-story commercial building and construct a new 25 residential unit, eight-story building.
Applicant/Owner:	Ninth & Jefferson – Joe Hernon (415)705-9922
Appellant/Contact:	Christopher J. Roberts/ (510)891-0413 Miller Starr Regalia/ (925)935-9400
Planning Permits Required:	<p>Regular Design Review for new construction of 25 residential units. Minor Variance for a side yard setback encroachment on the south side of the building for floors 6,7 and 8 due to the stairs and elevator not stepping inward at a one foot for every five feet above portions of the building over 55 feet. Minor conditional Use Permits for (1) an elevator penthouse above 12 feet with a proposal of 19 feet; (2) 23 off-street parking spaces where 24 are required (24 parking spaces required due to an excess of bicycle parking spaces provided, thus a reduction from 25 parking spaces).</p> <p><i>A Minor Conditional Use Permit for off-street parking was also approved for 23 off-street parking spaces where 24 were required. However, the Planning Code was revised to eliminate off-street parking for multifamily dwelling projects in the CBD zone (Oakland Planning Code Section 17.116.060(A)(1)). As a result, the Minor Conditional Use Permit for off-street parking is no longer required.</i></p> <p><i>The project was approved upon Appeal on August 2, 2017. The Planning Commission adopted findings for approval of the above permits.</i></p>
General Plan:	Central Business District
Zoning:	CBD-R Central Business District
Environmental Determination:	<p>Exempt, per Section 15332 of the State CEQA Guidelines; In-fill development and Section 15183 of the State CEQA Guidelines; projects consistent with a community plan, general plan or zoning.</p> <p><i>The project was approved upon Appeal on August 2, 2017. The Planning Commission affirmed staff's environmental determination.</i></p>
Historic Status:	Not A Potential Designated Historic Property; Survey Rating: F3
City Council District:	District 3
Action to be Taken:	Conduct Final Design Review of the South Wall
Finality of Action:	Final
For Further Information:	Contact case planner Michael Bradley at (510) 238-6935 or by e-mail at mbradley@oaklandnet.com

SUMMARY

On August 2, 2017, the Planning Commission voted to deny the Appeals (Case File PLN16092-A01 and Case File PLN16092-A01) of a Zoning Manager decision to approve the Residential Design Review per for new construction of 25 residential units, a Minor Variance for a side yard setback, and associated Minor Conditional Use Permits (Case File PLN16092), thereby affirming staff's decision. However, the Planning Commission also

CITY OF OAKLAND PLANNING COMMISSION



Case File: PLN16092
Appellants: Ninth & Jefferson Associates, LLC
Address: 605 – 9th Street
Zone: CBD-R
Height Area: 2,85 ft

added a new Condition of Approval (#48) requiring the Applicant to explore design alternatives for the south facing wall of the proposed building and that staff should present these alternatives at a future Design Review Committee (DRC) meeting.

The purpose of this staff report is present the Applicant's proposal to the DRC. Revisions to the south facing wall now include cladding materials similar to the material on the exposed street fronting facades. Specifically, two different metal panel finishes, along with cement plaster, will be used in similar scale and proportion to the three other facades. Structural concrete no longer remains exposed on the south wall and is now treated with cement plaster as applied at the west and east elevations, thus now wrapping around the corner to the South elevation. The south facing property line wall has also been stepped away from the property line, allowing for a visual break in the elevation and thus allowing for fenestration.

BACKGROUND

The project Applicant, Joe Hernon, is proposing to demolish an existing one-story commercial building and construct an eight-story building containing 25 residential dwelling units above ground floor parking for 23 spaces and an entrance lobby (*Attachment A*). The project is located at the corner of Jefferson and 9th Streets and is surrounded by the Oakland Flower Market, which wraps the site.

The original application was submitted to the Bureau of Planning on April 4, 2016. The application was considered an administrative case, subject to Zoning Manager review and approval, based on the scope and size of the project. The Applicant held two community meetings, one of which staff attended, to discuss the project and any potential concerns. The project was also publicly noticed twice. After a thorough review of all public comments, the project was approved by the Zoning Manager on October 25, 2016 with specific findings for approval and subject to Conditions of Approval (including Standard Conditions of Approval). All interested parties, including neighbors and the Appellants, were notified of the decision.

The 10-day Appeal period ended on November 4, 2016 at 4:00 PM and two, separate and timely Appeals were filed by Christopher J. Roberts (PLN16092-A01) and Liang Hoi Phua (Bill Phua), Linli Lee, Lee Chin Phmah, Lee Chye "Eddie" Phmah, and Wei Keng "Joel" Phmah, represented by Miller Starr Regalia (the "Miller Starr Appellants") (PLN16092-A02).

Under Planning Code 17.132.020, the Administrative Appeal Procedure, the Appellant must state where an error or abuse of discretion was made by the Zoning Administrator or where the Zoning Administrator's decision is not supported by evidence in the record. The arguments raised by both Appellants were heard by the Planning Commission on August 2, 2017. The Planning Commission denied the Appeal based on the Appellants failure to assert error, abuse of discretion or lack of evidence in the Zoning Manager's decision, and thereby, upheld the Zoning Administrator's approval. With the denial of the Appeal, a new Condition of Approval (#48) was added to explore design alternatives for the south facing wall of the proposed building.

The Applicant has worked diligently with Planning staff to develop the design alternatives for the south facing wall of the proposed building. This staff report and the attached plans show the efforts by the Applicant to address Condition of Approval # 48.

PROJECT DESCRIPTION

The proposed development would include demolition of an existing one-story commercial building and construction of an eight-story, 32,945 square foot, 25-unit residential building. The project proposes 23 off-street parking spaces where currently none are required.

The intersection at the project site has a five-story multi-unit building at each corner and the proposal will create a vertical volume at the subject corner consistent with the other three corners in the established intersection. The project would contain earth-tone exterior plaster and metal panels at the upper levels with a terracotta base and dark bronze accents at the windows and ground floor level. The color and material palette is similar to that of other residential buildings in the area. The proposed design will relate well with surrounding buildings in terms of setting, scale, bulk, height, materials, and textures.

DESIGN CONSIDERATIONS

To address the Planning Commission’s Condition to explore design alternatives for the south facing wall of the proposed building, the Applicant has made the following revisions.

- The south facing wall now includes cladding materials similar to the material on the exposed street fronting facades. Specifically, two different metal panel finishes, along with cement plaster, will be used in similar scale and proportion to the three other facades;
- Structural concrete no longer remains exposed on the south wall and is now treated with cement plaster as applied at the west and east elevations, thus now wrapping around the corner to the South elevation.
- The south facing property line wall has also been stepped away from the property line, allowing for a visual break in the elevation and thus allowing for fenestration.

CONCLUSIONS


Staff recommends the DRC support the proposed design and give final approval of the project with satisfaction of Condition of Approval #48. However, if the DRC is not supportive of the proposed design, and requests additional south facing wall design alternatives, staff is requesting that the Committee provide comments and direction and allow staff to solve those design concerns directly with the applicant without returning to the DRC.

Prepared by:



Michael Bradley
Planner II

Reviewed by:

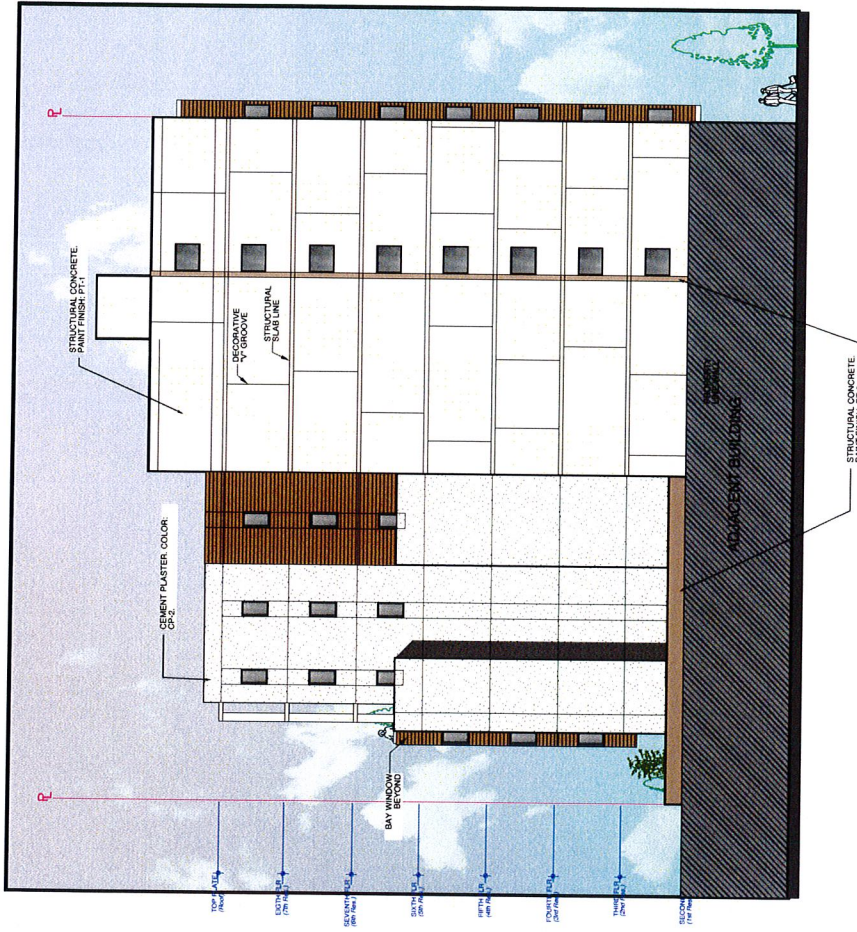


Scott Miller
Zoning Manager

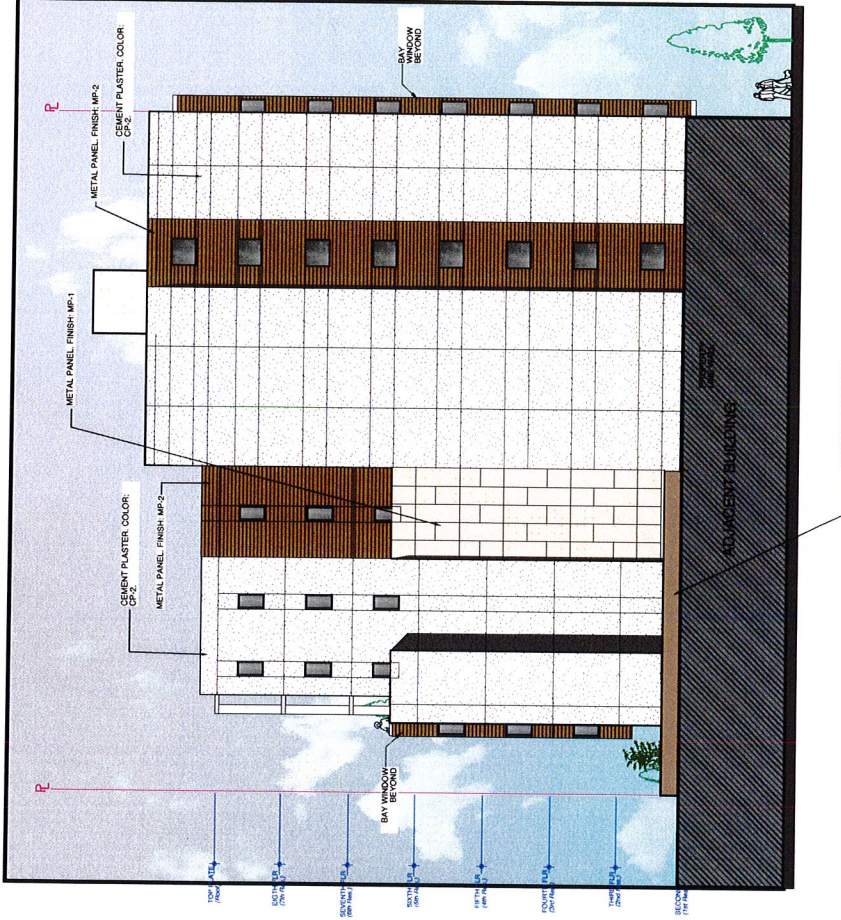
ATTACHMENTS:

- Attachment A: Project Plans Including the New Alternative South Wall Design and Photographs
- Attachment B: Project Architect’s Project Design Statement
- Attachment C: August 2, 2017 Planning Commission Staff Report

Attachment A

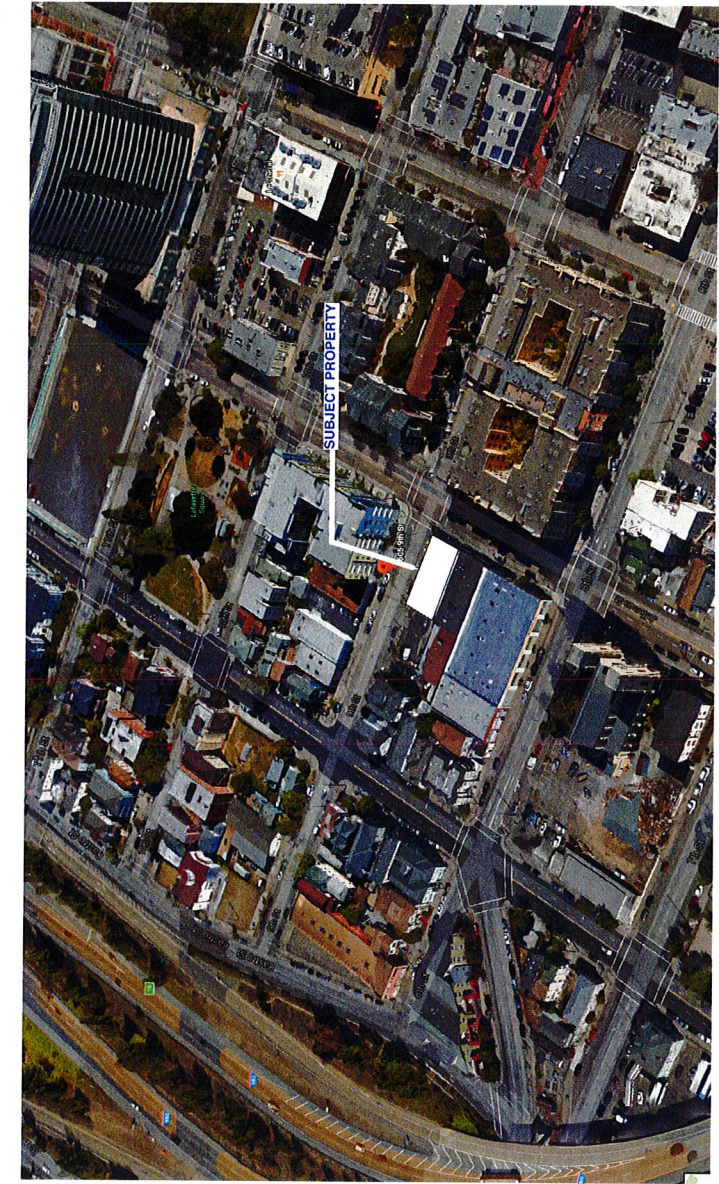


SOUTH ELEVATION AS ORIGINALLY SUBMITTED 1

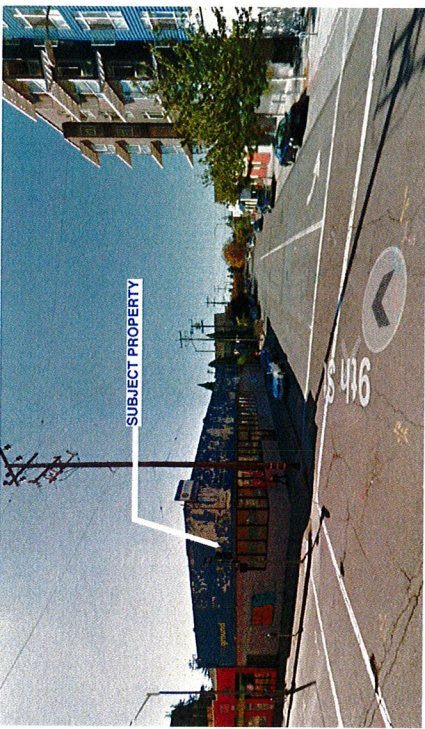


REVISED SOUTH ELEVATION 2

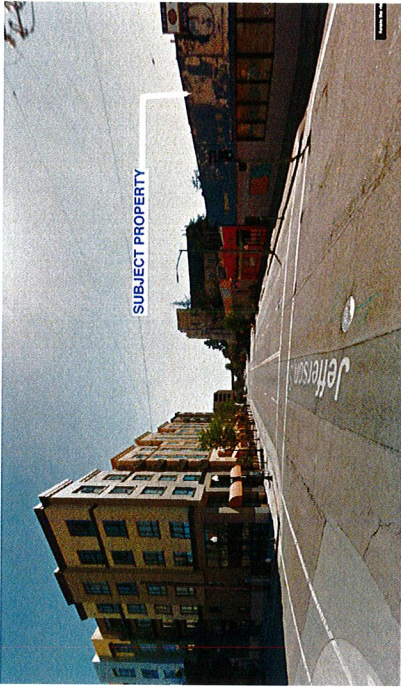
605 9th STREET
OAKLAND CA



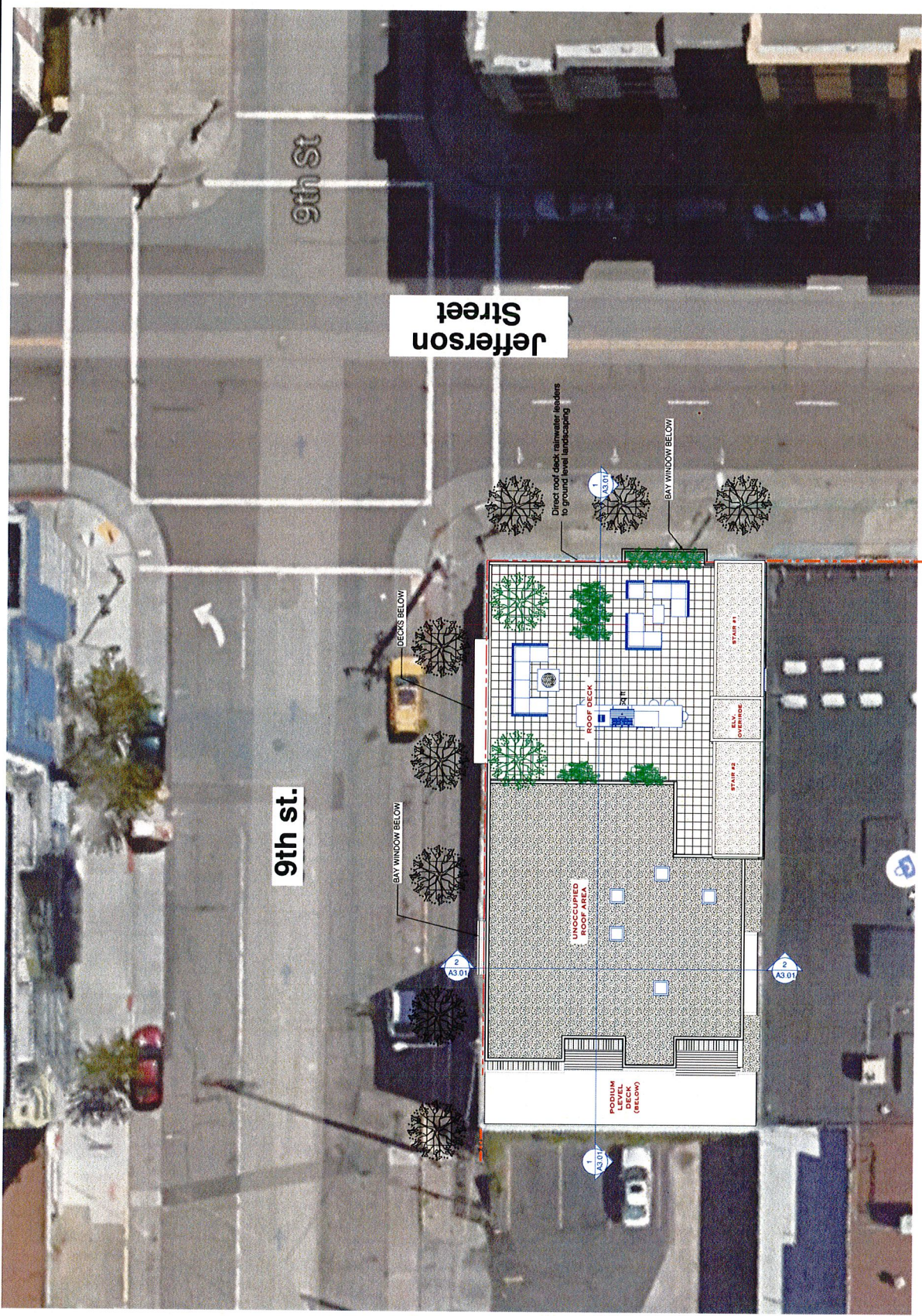
AERIAL VIEW OF SUBJECT PROPERTY



VIEW LOOKING DOWN 9TH STREET



VIEW LOOKING DOWN JEFFERSON STREET



Storm water Management

- 1) The project will create or replace between 2,500 and 10,000 square feet of impervious surface. The project will adhere to one of the site design measures listed in the NPDES Municipal Regional Permit, Section C.
- 2) The Proposed approach is to direct storm water run off from the common roof deck to landscaped areas at the ground level.



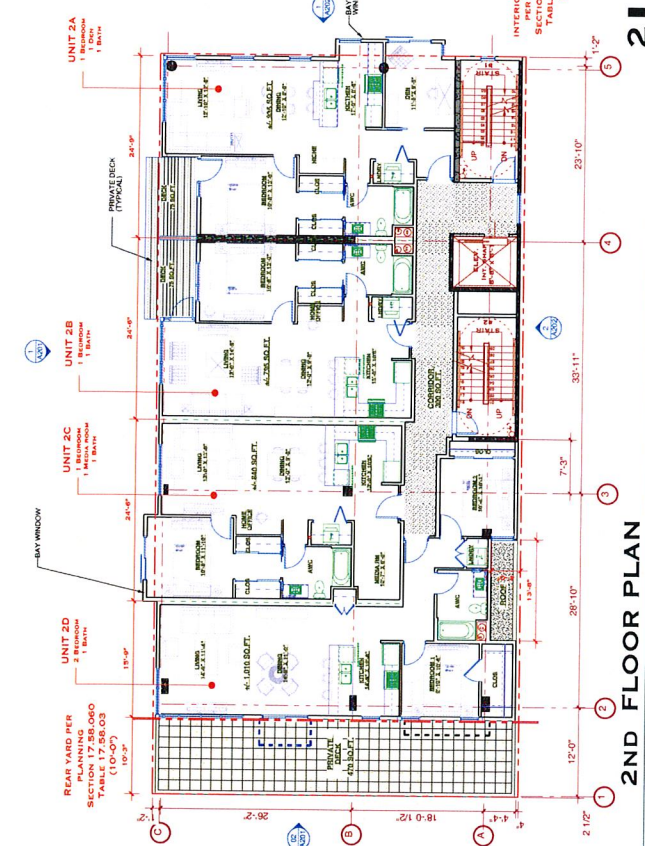
1

SITE PLAN



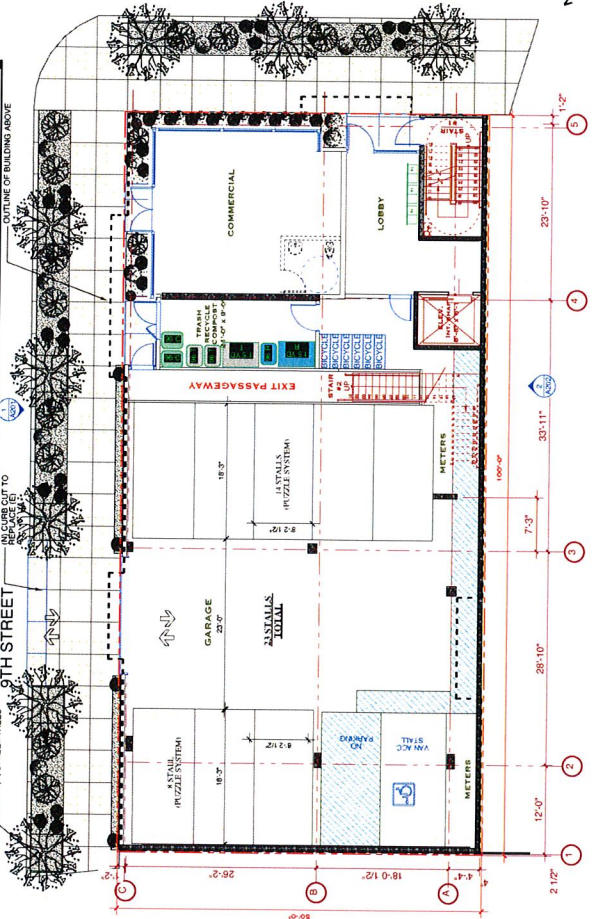
STERNBERG
 ENGINEERS
 1234 MARKET STREET
 OAKLAND, CA 94612
 WWW.STERNBERGENGIN.COM

1 BEDROOM UNITS:	4
1 BEDROOM / BATH UNITS:	4
2 BEDROOM / BATH UNITS:	4
2 BEDROOM / BATH UNITS:	4
TOTAL:	25



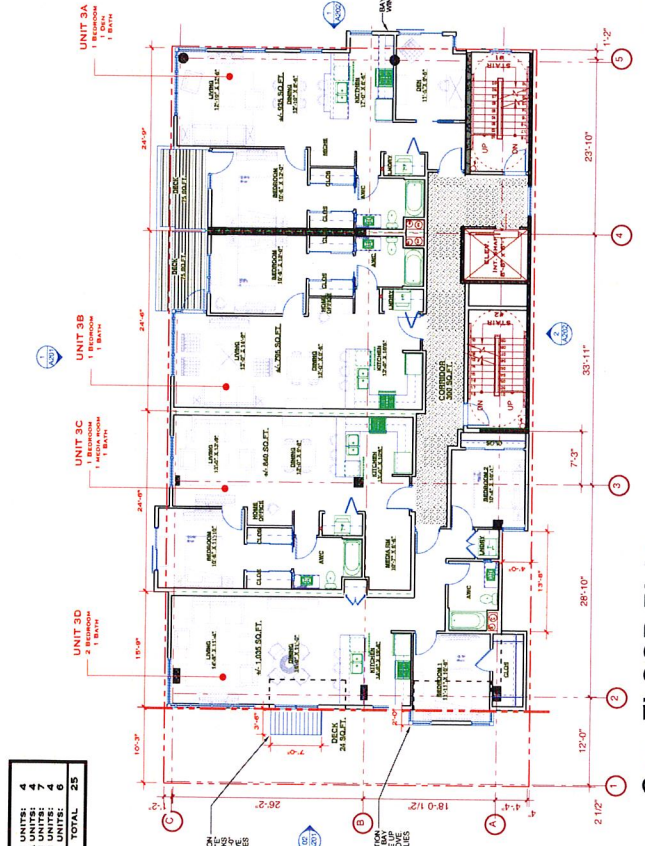
2ND FLOOR PLAN

2



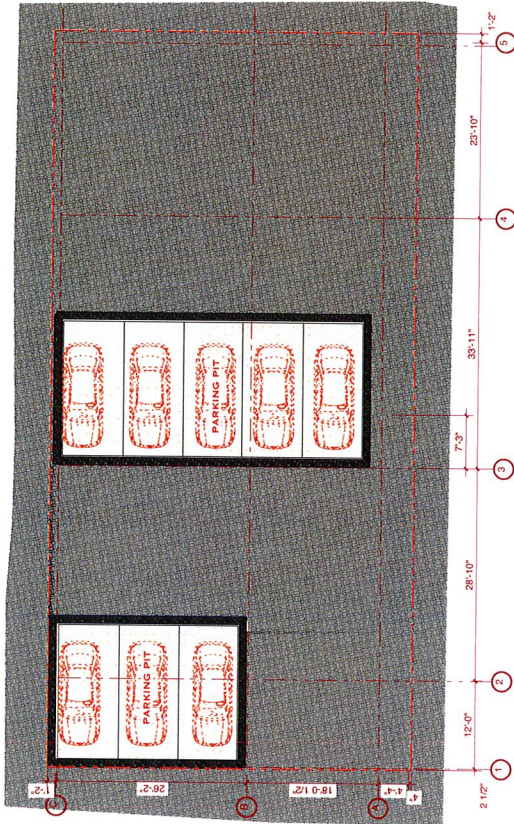
GROUND FLOOR/SITE PLAN

1



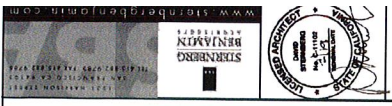
3RD FLOOR PLAN 4TH THRU 5TH SIMILAR

3



PARKING PIT PLAN

3

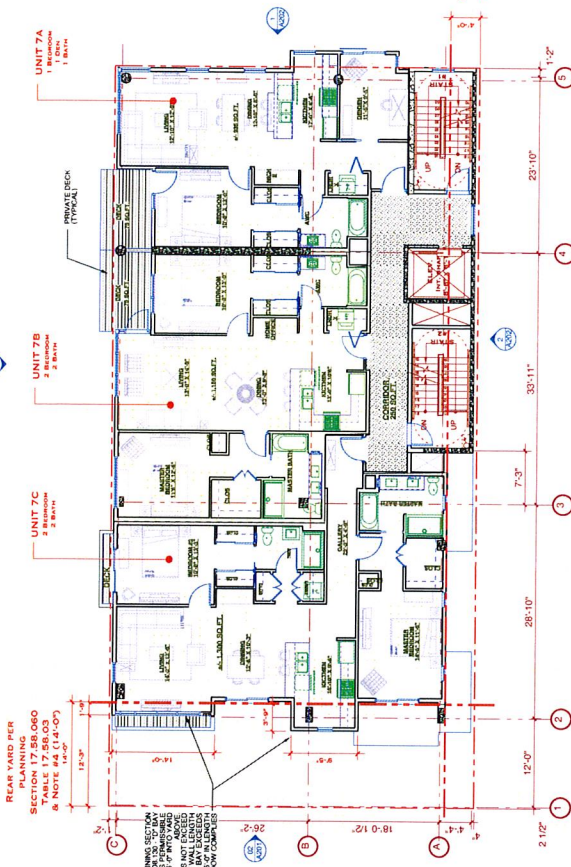


SITE/ROUND FLOOR & TYP. RESIDENTIAL FLOOR PLANS

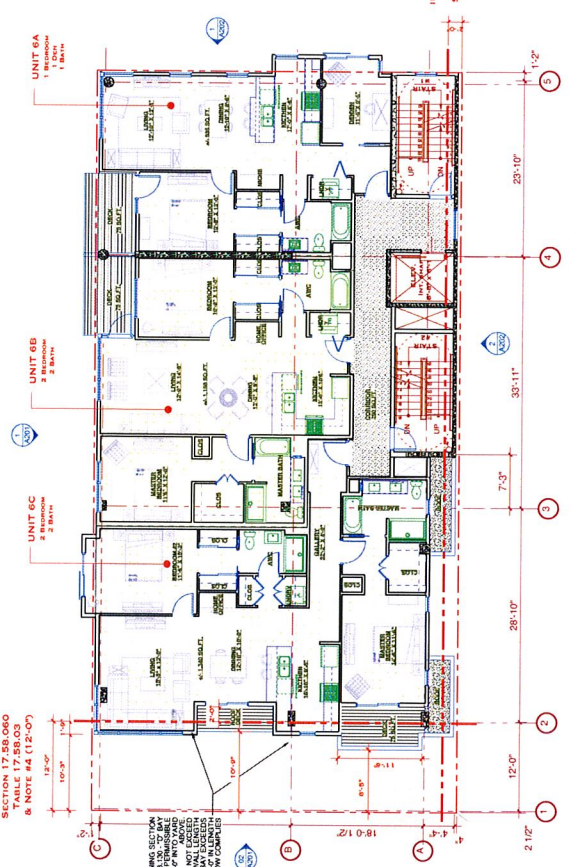
605 9TH STREET OAKLAND, CA RESIDENTIAL PROJECT

PLANNING PERMIT	03.18.2018
DATE:	ASB
SCALE:	ASB
DRAWN:	ASB
CHECKED:	ASB
SHEET:	

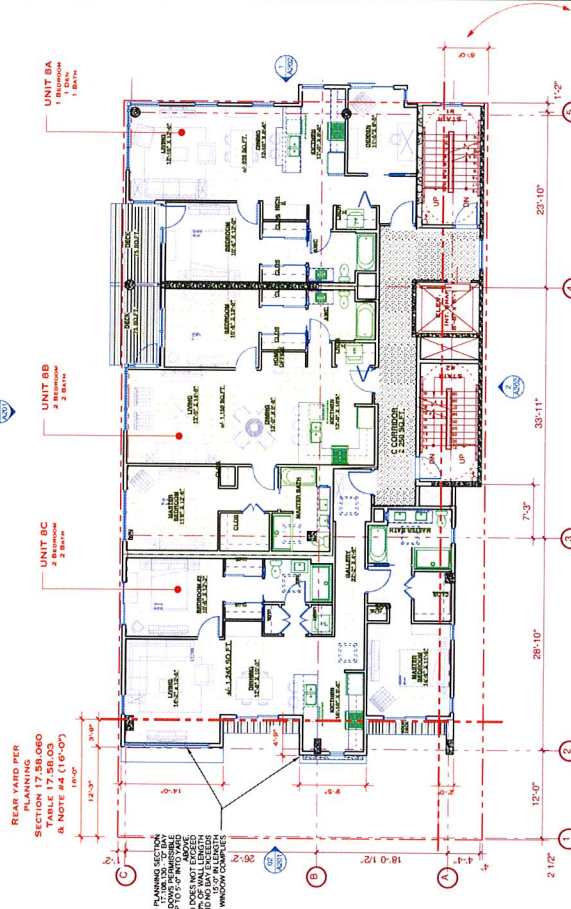
A1.01



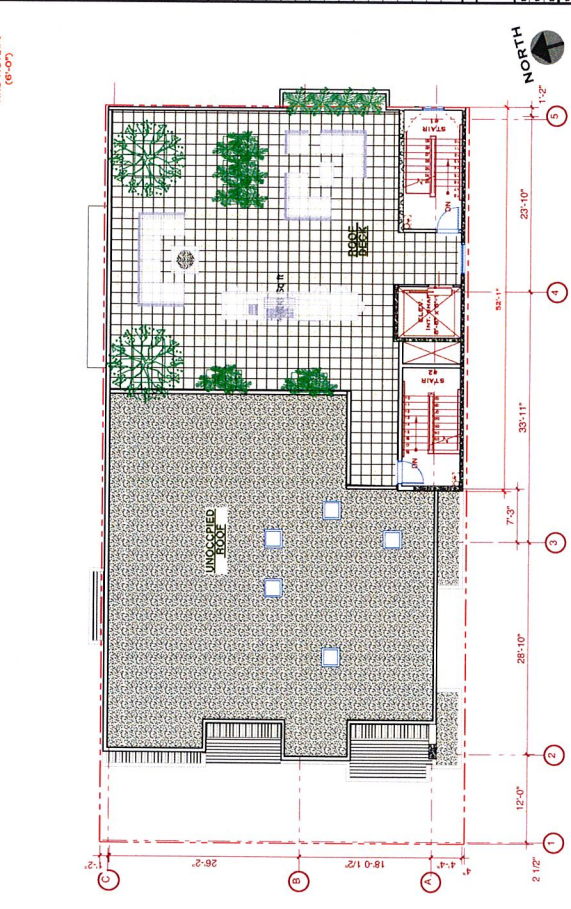
7TH FLOOR PLAN



6TH FLOOR PLAN



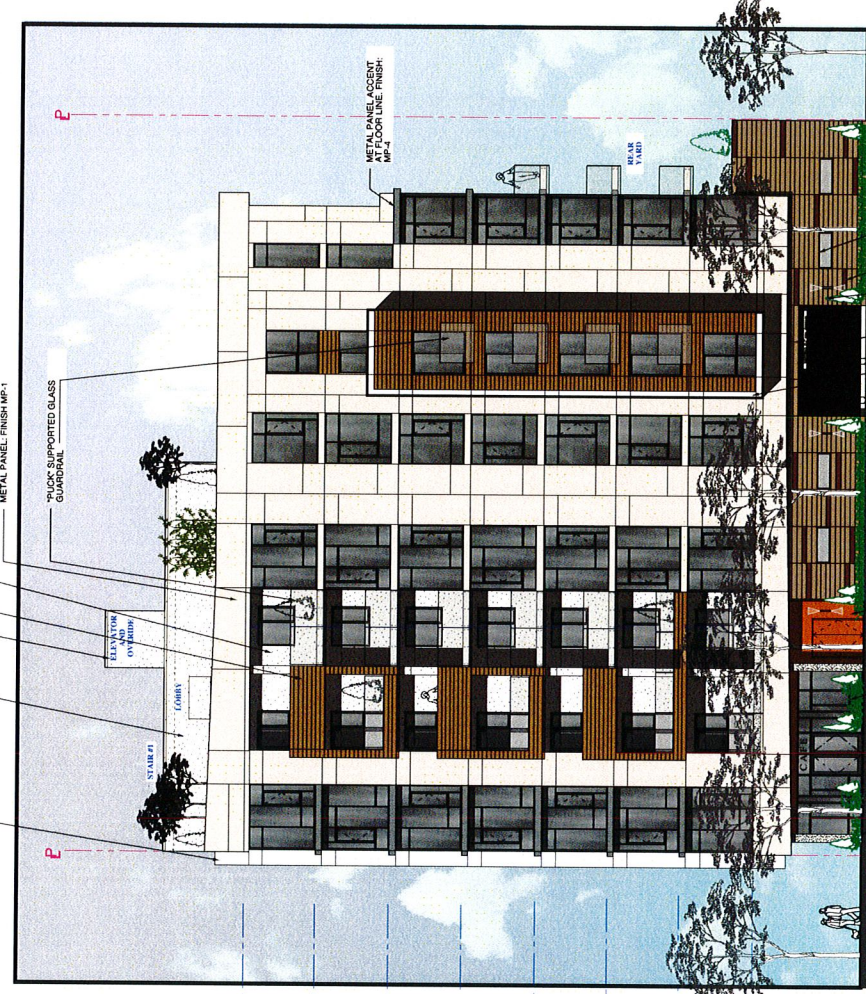
8TH FLOOR PLAN



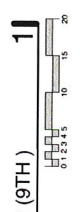
ROOF PLAN

METAL PANEL ACCENT AT BAY WINDOW BEYOND FINISH MP-3
 PENTHOUSE BEYOND CEMENT
 PLASTER FINISH TYP. ALL SIDES.
 COLOR: P-2
 METAL PANEL FINISH MP-2
 CEMENT PLASTER COLOR: CP-2, AT BALCONY INTERIOR
 METAL PANEL FINISH MP-1
 THICK SUPPORTED GLASS
 GUARDRAIL

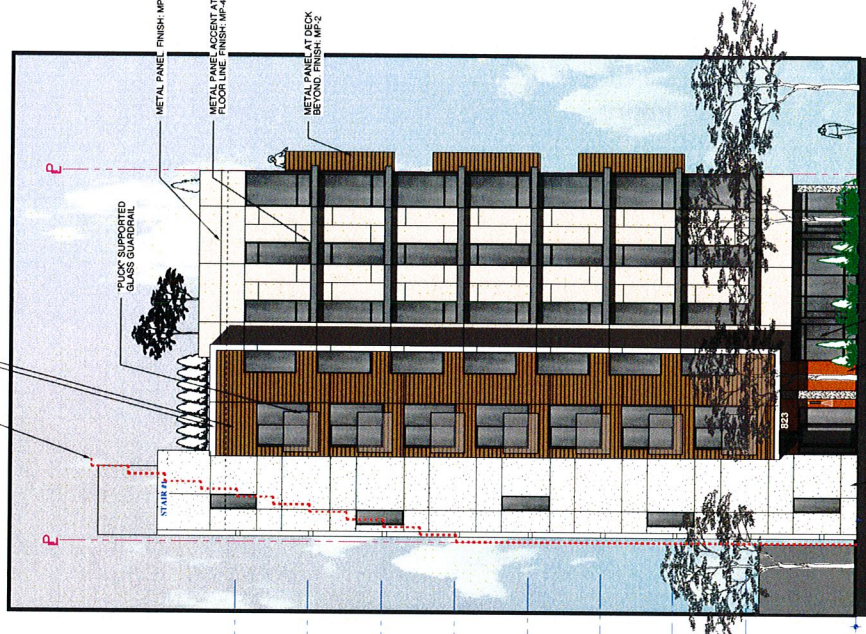
STAIR FL.
 LOBBY
 ELEVATION
 OVERLAP



METAL PANEL ACCENT FLOOR LINE FINISH MP-4
 BRONZE ANODIZED WINDOW W/ TRANSLUCENT GLASS
 TERRA COTTA PLANK COLOR: TC-1
 WALL SOURCE TYP.
 8.5' MENA INTERIOR SOUL UP GARAGE DOOR BRONZE ANODIZED FINISH
 METAL PANEL ACCENT FINISH MP-3
 CEMENT PLASTER COLOR:
 BRONZE ANODIZED ALUMINUM STOREFRONT SYSTEM
 EXPOSED CONCRETE COLUMN TYP.

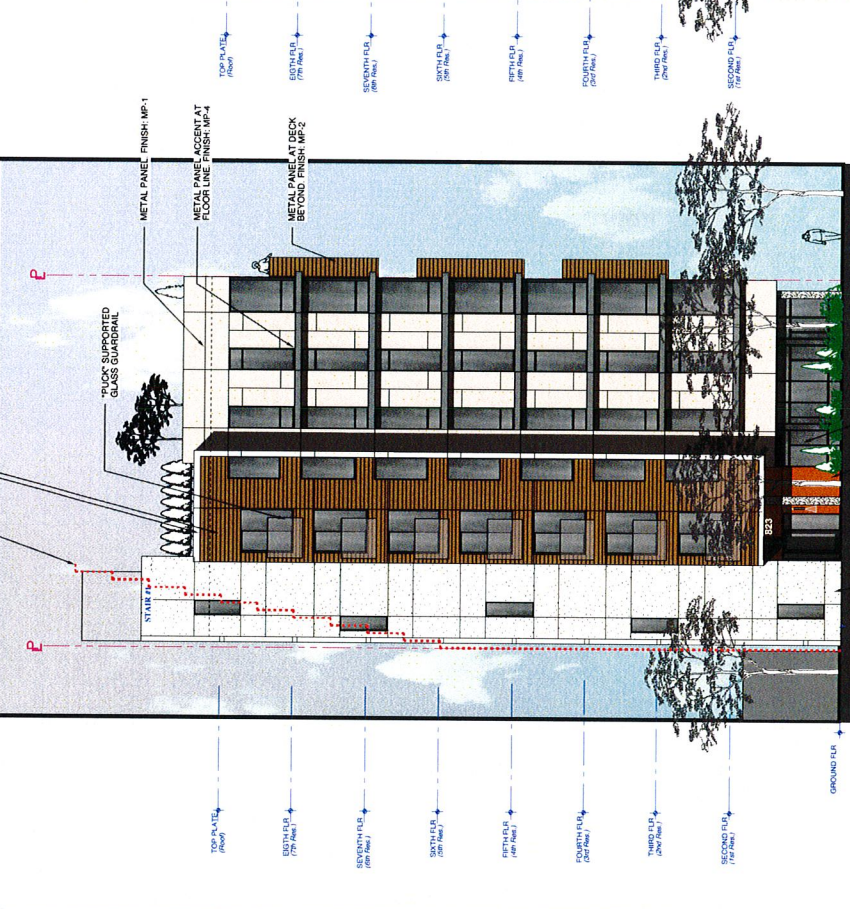


PER PLANNING SECTION
 17.56.090-1.4 REQUIRED SETBACK LINE
 METAL PANEL ACCENT FINISH MP-3
 METAL PANEL FINISH MP-2
 THICK SUPPORTED GLASS GUARDRAIL

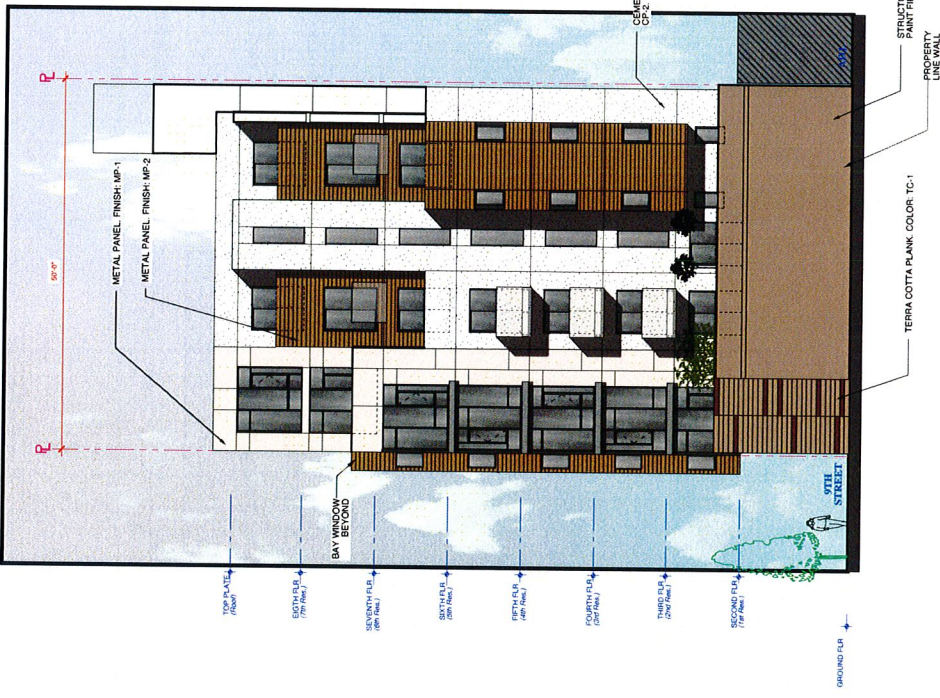


METAL PANEL ACCENT AT DECK BEYOND FINISH MP-2
 METAL PANEL ACCENT AT FLOOR LINE FINISH MP-4
 METAL PANEL FINISH MP-1
 BRONZE ANODIZED ALUMINUM STOREFRONT SYSTEM
 CEMENT PLASTER COLOR: CP-1
 CEMENT PLASTER COLOR: CP-2

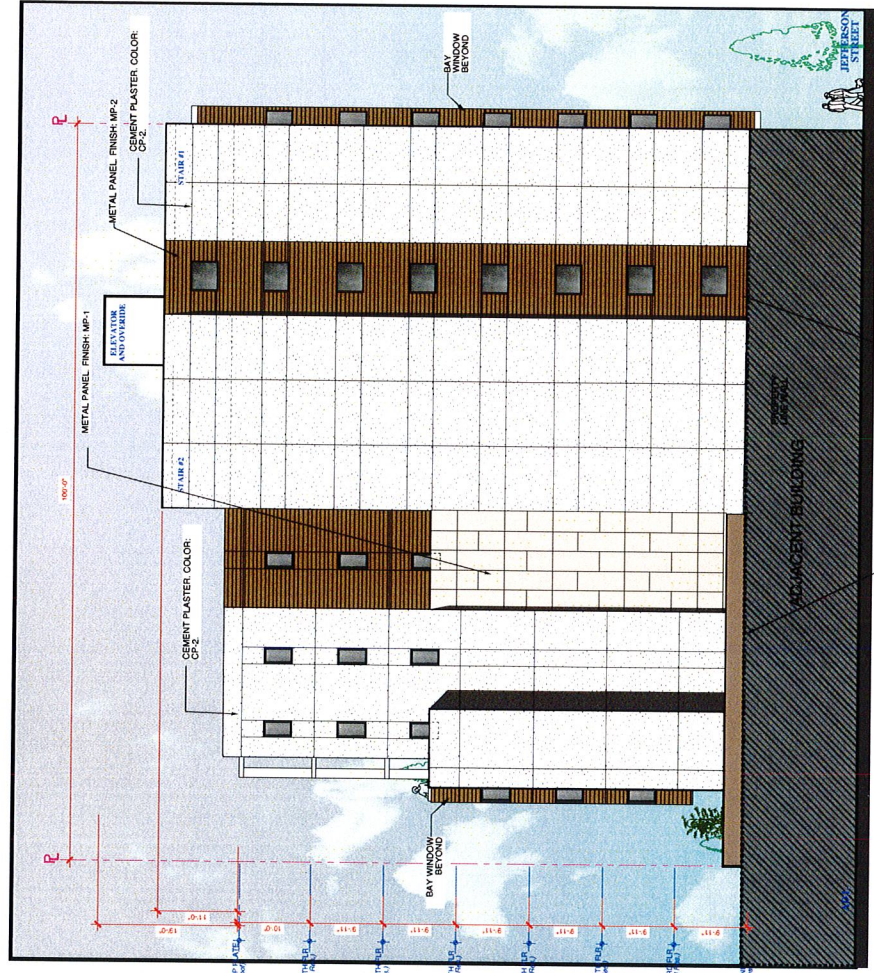
STAIR FL.
 MAIN ENTRY LOBBY



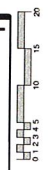
EAST ELEVATION (JEFFERSON STREET) 2



WEST ELEVATION 2



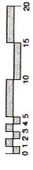
SOUTH ELEVATION 1





STAIR #1
 METAL PANEL FINISH-MP-1
 METAL PANEL FINISH-MP-2
 METAL PANEL ACCENT FINISH-MP-3
 THICK SUPPORTED GLASS GUARDRAIL
 EXPOSED CONCRETE COLUMN TYP.
 BRONZE ANODIZED ALUMINUM STOREFRONT SYSTEM
 LANDSCAPE
 CEMENT PLASTER ACCENT COLOR CP-2
 AT THICK CHIMNEY, SS TYP. FIN MOUNTED BUILDING ADDRESS. WHITE EXACT ADDRESS NUMBER TBD.
 CEMENT PLASTER COLOR CP-1
 THICK SUPPORTED GLASS GUARDRAIL
 CEMENT PLASTER COLOR CP-2, AT BALCONY INTERIOR

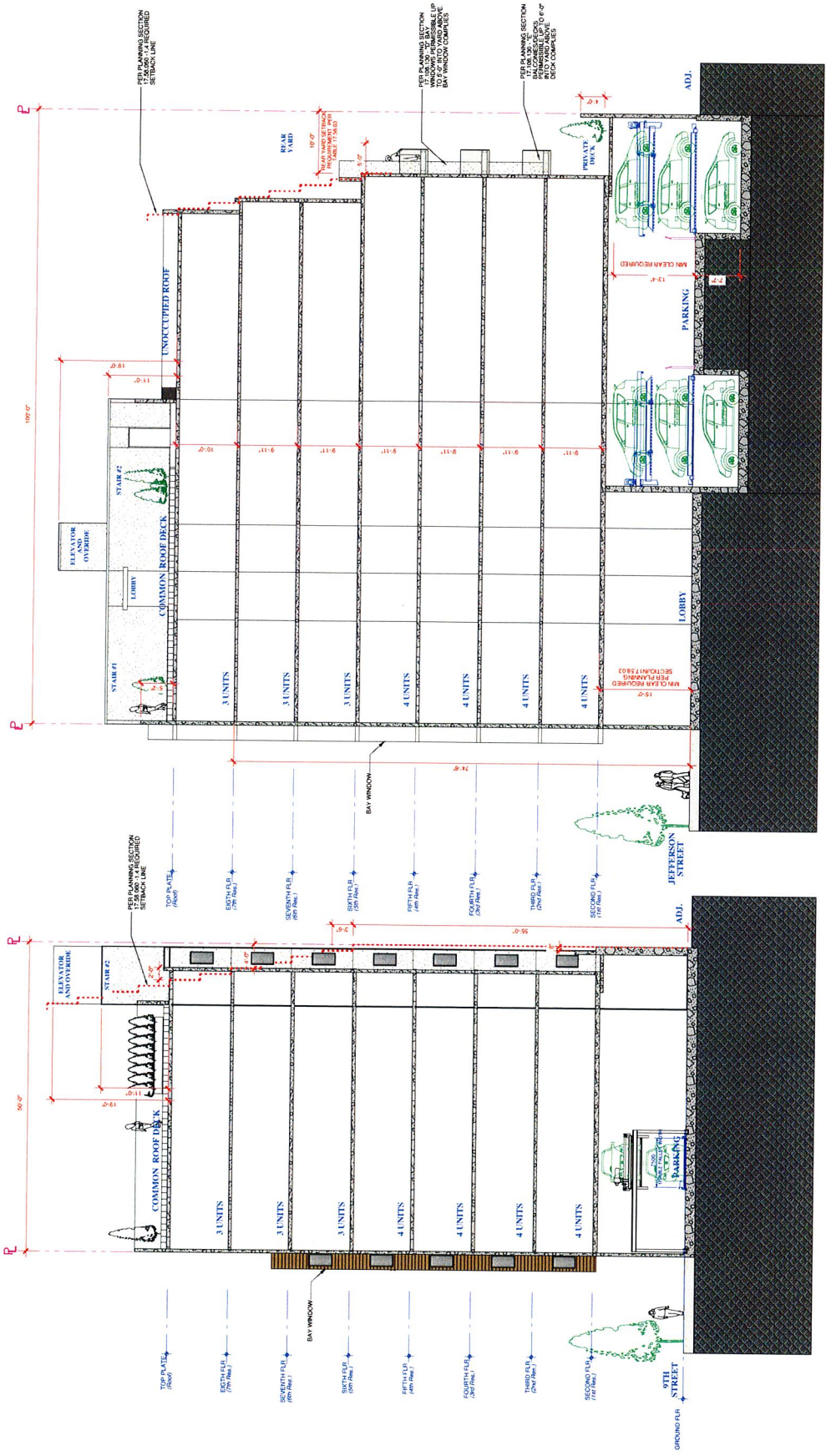
EAST ELEVATION (JEFFERSON STREET) 2



EXPOSED CONCRETE COLUMN TYP.
 BRONZE ANODIZED ALUMINUM STOREFRONT SYSTEM
 LANDSCAPE
 S.S. MESH AUTOMATIC ROLL UP GARAGE DOOR, BRONZE ANODIZED FINISH
 WALL SOUNGE TYP.
 TERRA COTTA PLANK COLOR: TC-1
 W/ ACCENT COLOR TC-2
 BRONZE ANODIZED WINDOW W/ TRANSLUCENT GLASS

NORTH ELEVATION (9TH) 1





BUILDING SECTION (LOOKING SOUTH) 1

BUILDING SECTION (LOOKING EAST) 2

September 20, 2017

Michael Casey Bradley
City of Oakland
Bureau of Planning
250 Frank H. Ogawa Plaza
Suite 2114
Oakland, CA 94612

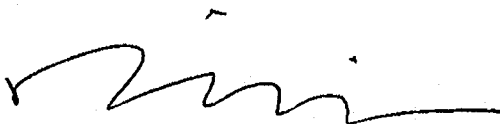
RE: 605 9th Street. PLN16092

Dear Mr. Bradley;

At the Planning Commission Hearing on August 7th, 2017, Commission members requested we take another look at the selected cladding finishes of the South facing property line elevation.

The elevation was considered too stark and insufficiently articulated when compared to the street facing elevations. Previously, the majority of the façade consisted of exposed structural concrete walls, with remaining areas of cement plaster. As a property line wall, this façade may eventually be covered by new construction at the neighboring property. While potentially hidden, we have now introduced cladding materials as used on the exposed facades. Two different metal panel finishes along with cement plaster are employed in similar scale and proportion to the three other facades. Structural concrete no longer remains exposed. Where cement plaster is applied at the West and East elevations, it now wraps around the corner to the South elevation. Although a property line wall, portions have been stepped away from the property line, allowing for a visual break in the elevation and permitting additional fenestration.

Sincerely,



Mitchell Benjamin

Case File Number: PLN16092-A01 & PLN16092-A02 (PLN16092)

August 2, 2017

Location: 605-9th Street - See map on reverse

Assessor's Parcel Numbers: (001-0211-006-00)

Proposal: Appeal of the Zoning Manager's approval of a Regular Design Review, Minor Variance, and Conditional Use Permit application to demolish an existing one-story commercial building and construct an eight-story, 25-unit residential building with ground floor parking and lobby space.

Original Applicant/Contact: Joe Hernon / (415)705-9922

Appellant/Contact: Christopher J. Roberts/ (510)891-0413
Miller Starr Regalia/ (925)935-9400

Owner: Ninth & Jefferson Associates, LLC (Joe Hernon)

Case File Number: PLN16092-A01 & PLN16092-A02

Original Case File Number: PLN16092

Planning Permits Required: Regular Design Review for new residential construction; Minor Variance for a side yard setback encroachment on the south side of the building for floors 6,7 and 8 due to the stairs, elevator and a 2-foot section of living space not stepping inward at a one foot for every five feet above portions of the building over 55 feet; and Minor Conditional Use Permit for an elevator penthouse above 12 feet with a proposal of 19 feet.

Note: A Minor Conditional Use Permit for off-street parking was also approved for 23 off-street parking spaces where 24 were required. However, the Planning Code was revised to eliminate off-street parking for multifamily dwelling projects in the CBD zone (Oakland Planning Code Section 17.116.060(A)(1)). As a result, the Minor Conditional Use Permit for off-street parking is no longer required.

General Plan: Central Business District

Zoning: CDB-R Central Business District Residential Zone.

Environmental Determination: Exempt, State CEQA Guidelines Section 15332; In-fill Development and Section 15183; Projects consistent with a Community Plan, General Plan or Zoning.

Historic Status: Not A Potential Historic Property; Survey Rating: F3

Service Delivery District: Metro

City Council District: 3

Status: Application approved by the Zoning Manager on October 25, 2016; Project appealed on November 4, 2016.

Staff Recommendation: Deny the Appeal and uphold the Zoning Manager's approval.

Finality of Decision: Final (not administratively Appealable pursuant to OMC Sec. 17.132.030)

For Further Information: Contact case planner Michael Bradley at (510) 238-6935 or mbradley@oaklandnet.com

CITY OF OAKLAND PLANNING COMMISSION



0 80 160 320 480 640 Feet



Case File: PLN16092-A01 and PLN16092-A02
Appellants: Christopher J. Roberts & Miller Starr Regalia
Address: 605 – 9th Street
Zone: CBD-R

SUMMARY

The project applicant, Joe Hernon, is proposing to demolish an existing one-story commercial building and construct an eight-story building containing 25 residential dwelling units above ground floor parking for 23 spaces and an entrance lobby (*Attachment A*). The project is located at the corner of Jefferson and 9th Streets and is surrounded by the Oakland Flower Market, which wraps the site.

The original application was submitted to the Bureau of Planning on April 4, 2016. The application was considered an administrative case, subject to Zoning Manager review and approval, based on the scope and size of the project. The applicant held two community meetings for the neighborhood to discuss the project and any potential concerns. Staff attended one of these meetings. The project was also publicly noticed twice (*Attachment B*). After a thorough review of all public comments, the project was approved by the Zoning Manager on October 25, 2016 with specific findings for approval and subject to conditions of approval (including Standard Conditions of Approval). All interested parties, including neighbors and the appellants, were notified of the decision.

The 10-day Appeal period ended on November 4, 2016 at 4:00 PM (*Attachment C*) and two, separate and timely Appeals were filed by Christopher J. Roberts (PLN16092-A01) and Liang Hoi Phua (Bill Phua), Linli Lee, Lee Chin Phmah, Lee Chye "Eddie" Phmah, and Wei Keng "Joel" Phmah, represented by Miller Starr Regalia (the "Miller Starr Appellants") (PLN16092-A02). Christopher Roberts resides in the multi-family development on the opposite diagonal corner and Bill Phua is the owner of the Oakland Flower Market property located directly adjacent to the project on both 9th Street and Jefferson Street.

Under Planning Code 17.132.020, the Administrative Appeal Procedure, the appellant must state where an error or abuse of discretion was made by the Zoning Administrator or where the Zoning Administrator's decision is not supported by evidence in the record. The arguments raised by both appellants are summarized below in the *Basis for the Appeal* portion of this report, along with staff's response to each argument (*Attachment D*). For the reasons stated in this report and attachments, including the appellants failure to assert error, abuse of discretion or lack of evidence in the Zoning Manager's decision, staff recommends the Planning Commission deny the Appeals, thereby, upholding the Zoning Administrator's approval.

PROPERTY DESCRIPTION

The 5,004-square foot project site lot is located at the corner of Jefferson and 9th Streets and contains an existing one-story, vacant commercial warehouse constructed in 1958 (per County of Alameda public records). The other parcels on the corner at the Jefferson and 9th Street intersection consist of 585-9th Street (constructed in 2008), 555-10th Street (constructed in 1998) and 619-10th Street (constructed in 2009). The subject block consists of a majority of one-story warehouses on 8th, 9th and Jefferson Streets (east side of the block) and two to three-story residential buildings at the end of the block and facing Martin Luther King Jr. Way (west side of the block). The project site is located approximately 450 feet and separated by a five-story building on a fully developed city block from the Old Oakland Historic District and is surrounded by the Oakland Flower Market that wraps the site and has a surface parking lot to the west of the building.

PROJECT DESCRIPTION

The proposed development would include demolition of an existing one-story commercial building and construction of an eight-story, 32,945 square foot, 25-unit residential building. The project proposes 23 off-street parking spaces where currently none are required (see *Zoning Analysis* section).

The intersection at the project site has a five-story multi-unit building at each corner and the proposal will create a vertical volume at the subject corner consistent with the other three corners in the established intersection. The project would contain earth-tone exterior plaster and metal panels at the upper levels with a terracotta base and dark bronze accents at the windows and ground floor level. The color and material palette is similar to that of other residential buildings in the area. The proposed design will relate well with surrounding buildings in terms of setting, scale, bulk, height, materials, and textures.

GENERAL PLAN ANALYSIS

The subject property is located within the Central Business District (CBD) classification per the Land Use and Transportation Element (LUTE) of the General Plan. The CBD classification is intended to encourage, support and enhance the downtown area as a high-density mixed-use urban center of regional importance and a primary hub for business, communications, office, government, high technology, retail, entertainment and transportation in Northern California. The desired character and uses includes a mix of large-scale offices, commercial, urban (high-rise) residential, institutional, open space, cultural, educational, arts, entertainment, service, community facilities and visitor uses. The intensity/density of the CBD is a maximum FAR of 20 and allowable residential density is 300 units per gross acre, although the LUTE notes that in some areas lower intensity/densities may be appropriate. Although not a comprehensive list, the following General Plan objectives and policies apply to the project:

Objective N3 of the Oakland General Plan Land Use and Transportation Element states: "Encourage the construction, conservation, and enhancement of housing resources in order to meet the current and future needs of the Oakland community".

Policy N3.1 – Facilitating Housing Construction – Facilitating the construction of housing units should be considered a high priority for the City of Oakland.

Policy N3.2, Encouraging Infill Development: In order to facilitate the construction of needed housing units, infill development that is consistent with the General Plan should take place throughout the City of Oakland.

Policy D10.1 – Encouraging Housing – Housing in the downtown should be encouraged as a vital component of a 24-hour community.

Policy D10.2 – Locating Housing – Housing in the downtown should be encouraged in identifiable districts, within walking distance of the 12th Street, 19th Street, City Center, and Lake Merritt BART stations to encourage transit use, and in other locations where compatible with surrounding uses.

The proposal would construct a new medium to high density residential building on an underutilized site. The project would be located within close proximity to Downtown, Old Oakland, 12th Street BART station, and bus lines. The site also has adequate public infrastructure to serve the development. The project, with 25-units, on a 5,004-square foot site, is under the maximum General Plan density of 34-units by nine (9) units. Therefore, the project is consistent with the CBD classification and LUTE policies.

ZONING ANALYSIS

The subject property is located within the CDB-R Central Business District Residential Zone and Height Area 2 which has an 85-foot height limit. The CBD-R zone is intended to create, maintain, and enhance areas of the Central Business District appropriate for residential development with small-scaled compatible ground-level commercial uses. The maximum permitted zoning density for the site is 25 units which is the proposed project's density.

The project was approved with a Minor Variance for a side yard setback encroachment on the south side of the building for floors 6,7 and 8 due to the stairs, elevator and a 2-foot section of living space not stepping inward at a one foot for every five feet above portions of the building over 55 feet; and Minor Conditional Use Permits for (1) an elevator penthouse above 12 feet with a proposal of 19 feet; (2) 23 off-street parking spaces where 24 are required (24 parking spaces required due to an excess of bicycle parking spaces provided, thus a reduction from 25 parking spaces).

Since the approval of the Minor Conditional Use Permit for off-street parking, the Planning Code was revised to no longer require off-street parking for multifamily dwelling projects in the CBD zone (see Oakland Planning Code Section 17.116.060(A)(1)). As a result, the Minor Conditional Use Permit for off-street parking is no longer required. It should be noted that the project is near several forms of transit on Broadway and 11th Street. Further, there are several auto-fee parking lots in the area including the 171-parking space lot at 12th Street and Jefferson Street that is approximately three blocks from the subject site. The provided parking will not affect the general quality and character of the neighborhood since it is appropriately screened and within the volume of the building.

The proposed project is also consistent with the Regular Design Review Criteria. Staff made the appropriate findings for approval of all permits (*Attachment C*).

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines list the projects that qualify as categorically exempt from environmental review. The proposed project is exempt from CEQA pursuant to Section 15332, Infill Development and Section 15183, Projects consistent with a Community Plan, General Plan or Zoning. Although a fuel tank was once located on the parcel, the site does not appear on any California EPA Cortese List database. The project will be subject to all uniformly applied development standards adopted by the City Council and applied as standard Conditions of Approval to address any environmental impacts as a result of the project. Furthermore, as discussed above and as a separate and independent basis, the project is consistent with the General Plan's goals and policies.

APPLICATION REVIEW PROCESS

The original application was submitted to the Bureau of Planning on April 4, 2016. The application was considered an administrative case, subject to Zoning Manager review and approval, as it consists of less than 100,000 square feet of floor area proposed (a total of 32,945 square feet proposed). On June 17, 2016, the project was publicly noticed for a 17-day comment period. On August 8, 2016, the applicant organized a voluntary community meeting for the neighborhood to discuss the project and any potential concerns. On September 20, 2016, the applicant held another voluntary community meeting with Planning staff in attendance. On September 30, 2016, the project was re-noticed for another 17-day comment period due to minor revisions and clerical errors in the initial August 8th public notice. After a thorough review of all public comments, the project was approved by the Zoning Manager on October 25, 2016 with specific Findings for approval. All interested parties, including neighbors and the appellants, were sent a copy of the decision letter.

BASIS FOR THE APPEAL

Appellant Christopher J. Roberts and Appellants Liang Hoi Phua (Bill Phua), Linli Lee, Lee Chin Phmah, Lee Chye "Eddie" Phmah, and Wei Keng "Joel" Phmah represented by Miller Starr Regalia (the "Miller Starr Appellants"), collectively referred to as "Appellants," filed two separate and timely Appeals of the Zoning Administrator's October 25, 2016 decision to approve the project.

The Appeals allege that:

- (1) the project is inconsistent with the General Plan and forthcoming Downtown Oakland Specific Plan,
- (2) the Zoning Manager's findings are legally inadequate,
- (3) a categorical exemption is inappropriate, and
- (4) unusual circumstances exist precluding the use of an exemption.

The following is a summary of the specific issues raised in the Appeal along with staff's response to each point. The basis for the appeal is shown in **bold** text and the staff response follows each point in regular type.

1. **The Miller Starr Appellants allege that the project is inconsistent with the General Plan and forthcoming Downtown Oakland Specific Plan. The Miller Starr Appellants state: "The Project cannot be approved because it is inconsistent with numerous applicable General Plan policies, including the following: [the Appeal goes on to list eleven (11) General Plan policies]. The Zoning Manager's findings do not address any of these applicable policies. Moreover, the [City] cannot comply with the plain language of the many policies that new infill development respect, or be compatible with, existing development – which is fundamental, mandatory, and clear – if it approves the Project because the Project's eight-story height, in this neighborhood, is inherently incompatible with my clients' one-story building and with the neighborhood in general. A Project that is seven stories higher than my client's adjacent one-story commercial building, and three stories higher than the existing five-story buildings at each corner of**

the intersection, cannot be deemed consistent with these applicable General Plan policies.”

Staff's Response:

The Appellants believe the project will be consistent with the General Plan and forthcoming Downtown Oakland Specific Plan if the project is substantially revised, in particular by reducing the project's height from eight stories to five stories. The Appellants have placed an emphasis on the proposed building height and surrounding context as the basis for the project's inconsistency with the General Plan.

The Appellants failed to state anywhere in the General Plan where the proposed building height would not be consistent with the intent or goals of both. As noted above, the intensity/density of the CBD is a maximum FAR of 20 and allowable residential density is 300 units per gross acre, although in some areas lower intensity/densities may be appropriate. However, these policies are related to density and intensity and not necessarily height. The General Plan specifically notes that the desired character and uses includes urban (high-rise) residential. Furthermore, the property is zoned for an 85' height limit. Also, the property is located in Downtown and the history of downtown development, and continuing today, includes smaller buildings next to larger structures as the Downtown continues to evolve. As such, an eight-story building next to a one-story building and across the street from five-story buildings is not out of context in the CBD area.

While Planning staff's determination is that the 25-unit project, as currently proposed, is consistent with the General Plan, it is important to note that the General Plan includes the following language:

The General Plan contains many policies which may in some cases address different goals, policies and objectives and thus some policies may compete with each other. The Planning Commission and City Council, in deciding whether to approve a proposed project, must decide whether, on balance, the project is consistent (i.e., in general harmony) with the General Plan. The fact that a specific project does not meet all General Plan goals, policies and objectives does not inherently result in a significant effect on the environment within the context of the California Environmental Quality Act (CEQA). (City Council Resolution No. 79312 C.M.S.; adopted June 2005)

Below are the eleven (11) General Plan policies that the Miller Starr Appellants list as being inconsistent with the project and staff's response.

Land Use and Transportation Element

Policy I/C4.1 – Protecting Existing Activities. Existing industrial, residential, and commercial activities and areas which are consistent with long term land use plans for the City should be protected from the intrusion of potentially incompatible land uses.

Staff's Response:

This Policy is located under the Objective I/C4 which is intended to minimize land use compatibility conflicts in commercial and industrial areas through achieving a balance between economic development values and community values. The proposed residential development is not located in a solely commercial or industrial area but in the CBD land use designation which intends a variety of uses. Even more specifically, in 2010, the CBD was rezoned creating several CBD sub-zones intended to specify residential, commercial,

pedestrian-retail and mixed-use areas in order to further implement the General Plan designation. The site was rezoned to the CBD-R Zone, a residential zone that also allows for ground floor retail.

The project is consistent with the long-term land use plans for the Central Business District and CBD-R zone and protects the area from the intrusion of incompatible land uses such as industrial uses, although smaller scale businesses are permitted. As such, the proposal is consistent with the long-term plans for the City and a residential use is not an intrusion into this area. Finally, the proposal will provide Oakland housing stock with an active, well-lit ground floor space that will include approximately 300 square feet of local-serving retail (in addition to a resident lounge). Residents of the proposed development are likely to patronize commercial businesses in the neighborhood, thus bringing greater commerce to the area. Therefore, the project meets this Policy.

Policy D1.4 – Planning for Old Oakland. Old Oakland should be respected and promoted as a significant historic resource and character-defining element, with Washington Street as its core. Residential development in Old Oakland should be of mixed housing type, with ground-floor retail where feasible.

Staff's Response:

The project is located in the Old Oakland sub-district, per the LUTE, which is generally bounded by Broadway, I-580, I-880 and 14th Street. This sub-district includes many different uses, buildings of differing architectural character and style. The project is not located in the Old Oakland Area of Primary Importance (API) historic district and is three blocks from the core of Old Oakland. It is separated from the API and surrounded by recent residential developments to the north, east and south which exhibit a different character from that of Old Oakland.

The project design respects Old Oakland by including a contemporary design with complementary colors and materials that do not detract from the API or its contributing properties nor tries to create a false replication of them, while recognizing the district's Grow and Change designation in the LUTE's Strategy Diagram. Therefore, the project meets this Policy.

Policy D2.1 – Enhancing the Downtown. Downtown development should be visually interesting, harmonize with its surroundings, respect and enhance important views in and of the downtown, respect the character, history, and pedestrian-orientation of the downtown, and contribute to an attractive skyline.

Staff's Response:

The project uses a color and material palette similar to that of other residential buildings in the area, resulting in a visually pleasing design that harmonizes with its surroundings. Further, it will fill in the established mid-rise intersection and thereby contribute to an attractive skyline.

The proposal will enhance desirable neighborhood characteristics by redeveloping a one-story vacant, graffiti covered building site with an attractive 25-unit residential building that is compatible with the neighborhood. Further, the building's site design proposes the driveway towards the rear on 9th Street thus not detracting from the entrance to the retail establishments on Jefferson Street. Additionally, the proposal provides an active well-lit,

corner ground floor retail space and resident lounge, which will emanate light outward and add eyes on the street. Therefore, the project meets this Policy.

Policy D4.2 – Fostering a Positive Business Climate. A positive business climate which encourages attraction of new businesses and retention and expansion of existing businesses in downtown Oakland should be fostered, promoting Oakland’s locational (transportation) advantages and other amenities.

Staff’s Response:

The project will demolish an under-utilized vacant and graffiti covered building and construct 25 residential units that will bring residents to the area, encouraging new businesses and helping to retain and expand existing businesses. In addition, the project will provide approximately 300 square feet of local-serving retail (in addition to a resident lounge) in the ground floor. Therefore, the project meets this Policy.

Policy D10.5 – Designing Housing. Housing in the downtown should be safe and attractive, of high quality design, and respect the downtown’s distinct neighborhoods and its history.

Staff’s Response:

The project is of high-quality design, and uses a color and material palette complimentary to other residential buildings in the area, thereby respecting the neighborhood. The project would contain earth tone exterior plaster and metal panels at the upper levels with a terracotta base and accents of dark bronze in the windows and ground floor level. The other materials include glass guardrails, metal awnings, exposed concrete columns, and mesh roll up door for the parking area. The project does not include false historicism and is similar to the residential buildings across the street.

Policy D10.6 – Creating Infill Housing. Infill housing that respects surrounding development and the streetscape should be encouraged in the downtown to strengthen and create distinct districts.

Staff’s Response:

The project is an infill housing development designed to respect the surrounding development and to provide a streetscape that strengthens the existing district. The proposal will enhance desirable neighborhood characteristics by redeveloping a one-story vacant, building site with an attractive 25-unit residential building that is compatible with the neighborhood. Further, the building’s site design proposes the driveway towards the rear on 9th Street to not detract from the retail entrances on Jefferson Street. Additionally, the proposal provides an active well-lit, corner ground floor retail space and resident lounge, which will emanate light outward and add eyes on the street. The project respects the neighborhood and is designed to accommodate future development at adjacent sites.

Policy D11.1 – Promoting Mixed-Use Development. Mixed use developments should be encouraged in the downtown for such purposes as to promote its diverse character, provide for needed goods and services, support local art and culture, and give incentive to reuse existing vacant or underutilized structures.

Staff’s Response:

The project is replacing a vacant, single-story commercial building with an eight-story, 25-unit residential development. The project is outside the Downtown and Old Oakland cores,

in an area that transitions from downtown and its vibrant mixed uses to a residential neighborhood consisting of single-family residences and small, multi-family developments.

The project provides much needed housing and includes approximately 300 square feet of local-serving retail at the corner of 9th and Jefferson Street. A resident lounge will also be provided on the ground floor.

In addition, the project applicant has offered to host artwork on the exterior of the building, on the stairwell facing the Flower Market roof, which could highlight the location of the Flower Market.

Policy N11.3 – Requiring Strict Compliance with Variance Criteria. As variances are exceptions to the adopted regulations and undermine those regulations when approved in large numbers, they should not be granted lightly and without strict compliance with defined conditions, including evidence that hardship will be caused by unique physical or topographical constraints and the owner will be deprived of privileges enjoyed by similar properties, as well as the fact that the variance will not adversely affect the surrounding area nor will it grant special privilege to the property.

Staff's Response:

The requested Variance will not undermine the project's consistency with the General Plan's goals and policies. The Variance is for a side yard encroachment on the south side of the building due to the stairs, elevator and a 2-foot section of living space not stepping inward at a one foot for every five feet above portions of the building above 55 feet. The Variance is warranted due to unique site constraints. In particular, the small size of the lot (5,004 square feet) and the lot dimensions make it difficult to provide the one foot step inward for every five feet above 55 feet without compromising the most efficient project design. Justification for the Minor Variance is based on the proposed project meeting the Residential Design Review criteria, and because strict compliance with the interior lot line step-back over 55 feet would decrease the livability and operational efficiency precluding an effective design solution. The most effective place for emergency access stairs and elevator for equitable access to all the units is on the interior lot line side of the building which needs access directly to a street. This design allows for the placement of pedestrian and auto access on 9th Street and ground floor glazing at the corner and street facing elevations (**Attachment A, page A2.01**). Due to this appropriate placement, a staircase and elevator cannot step inward whatsoever due to the required vertical shaft from ground floor to roof for construction. The Variance would allow for a minimal encroachment (104 square feet on the sixth floor; 208 square feet on the seventh floor; and 312 square feet on the eighth floor with an additional 64 square feet of floor area). This minimal encroachment would have little to no effect on adjacent properties.

Noise Element

Policy 3 – Reduce the community's exposure to noise by minimizing the noise levels that are received by Oakland residents and others in the City. (This policy addresses the reception of noise whereas Policy 2 addresses the generation of noise.)

Staff's Response:

This Policy includes Actions related to enforcing noise insulation standards as part of building permit applications and reviewing performance standards related to noise.

The project design will meet all State requirements for residential buildings, including the State's Noise Insulation Standards, which establish uniform minimum noise insulation performance standards to protect persons within new dwellings from the effects of excessive noise, including but not limited to hearing loss or impairment and persistent interference with speech and sleep. Charles A. Salter, a noise expert, has prepared a noise analysis for the project on behalf of the project sponsor, which Staff has independently reviewed and which can be relied upon. The noise analysis confirms that the project will be able to comply with the City's noise level standards and that the design of the project will minimize future residents' noise exposure. The noise analysis also confirms that the project will be able to meet City guidelines during project construction (*Attachment E-4*).

The project includes Condition 28: Construction Days and Hours, Condition 29: Construction Noise, Condition 30: Extreme Construction Noise, Condition 31: Construction Noise Complaints, and Condition 32: Operational Noise. These Conditions require restrictions on construction activities related to noise, noise reduction measures, noise management plan, notification of extreme noise, a compliant plan and compliance with performance standards. These Conditions which are uniformly applied development standards, initially and formally adopted by the Oakland City Council by Ordinance in 2008, apply to all development projects that meets certain standard thresholds and have been found to substantially mitigate environmental effects. Therefore, the project is consistent with this noise policy and noise impacts will be reduced with implementation of the Conditions.

Safety Element

Policy HM-1 – Minimize the potential risks to human and environmental health and safety associated with the past and present use, handling, storage and disposal of hazardous materials.

Staff's Response:

The project is a residential development and will not involve the routine use, handling, storage and disposal of hazardous materials. While the project is not on the Cortese List, a fuel tank was once located on the parcel as part of the site's previous use as a gas station. It is possible that hazardous materials may be found on the site and/or hazardous materials may be used during construction.

The project includes Condition 24: Hazardous Materials Related to Construction and Condition 25: Site Contamination. These Conditions require Best Management Practices, a Phase I Environmental Site Assessment, possibly a Phase II Assessment, a Health and Safety Plan to minimize negative effects to human health. These Conditions which are uniformly applied development standards have been found to substantially mitigate environmental effects. Therefore, the project is consistent with this policy and hazards or risks to human health will be reduced with implementation of the Conditions.

In addition, a Phase I and limited Phase II prepared for the project confirm that there has been no impact to subsurface soil or groundwater in the area where the fuel tank was once located, and that there are no elevated levels of any contaminant that could pose a threat to human health or the environment (*Attachment E-1*). Staff has independently reviewed these and the documents can be relied upon

Policy HM-2 – Reduce the public's exposure to toxic air contaminants through appropriate land use and transportation strategies. Staff's Response:

The City is responsible for establishing land use and transportation strategies that would reduce the public's exposure to toxic air contaminants (TACs). This Policy in the Safety Element includes Actions to continue enforcing performance standards related to TACs and particulate matter; discourage sources of air contaminants and encourage best available control technology; support efforts by the Bay Area Air Quality Management District related to permitting of stationary sources and emitting facilities; integrations of land use and transportation planning; and commenting on regional and state air quality plans.

As noted above, the City has adopted uniformly applied development standards imposed as Standard Conditions of Approval that reduce the public's exposure to air quality impacts during construction by requiring implementation of Condition 18 related to dust and emission reduction measures. The project also includes Condition of Approval 19, which requires implementation of health risk reduction measures, thereby reducing the proposed resident's exposure to TACs. As a residential project, it is not an emitter or a stationary source. Therefore, the project is consistent with this policy and air quality hazards or risks to human health will be reduced with implementation of the Conditions.

Furthermore, First Carbon Solutions' in-house air quality expert conducted a health risk evaluation that compared the proposed project to three other Downtown Oakland projects, which Staff has independently reviewed and which can be relied upon. Based upon that comparison, the expert confirmed that the potential construction impacts from the project would be substantially less than the City's significant thresholds (*Attachment E-2*).

2. **The Miller Starr Appellants also believe the project would violate applicable provisions of the forthcoming Downtown Oakland Specific Plan, including Key Recommendations A, B, and F for Old Oakland. The Miller Starr Appellants state: "The proposed eight-story Project is not appropriately scaled and in character with the neighborhood but rather in stark contrast to it. At a minimum, the Project should be revised so that it is no taller than the five-story buildings that already frame the intersection of 9th and Jefferson."**

Staff's Response:

The Downtown Specific Plan has not yet been adopted by the City Council and the Key Recommendations could change during the continued planning process. Until the Downtown Specific Plan is adopted, staff is under no obligation to consider the draft document when making decision on applications. However, Planning staff's determination is that the project, as currently proposed, is consistent with the draft Key Recommendations in the Downtown Oakland Specific Plan noted in the Appeal.

A. Transform 9th Street to include context sensitive infill and safer street design.

Staff's Response:

The project continues the transformation of 9th Street by filling in the last corner at the intersection of 9th Street and Jefferson Street. The project is in context with the surrounding development, will add seven new street trees, and will locate the garage entry a safe distance from the 9th Street/Jefferson Street intersection. The project will comply with the

requirement for pedestrian and streetscape improvements along with a well-lighted entry and ground floor to provide a safe pedestrian experience in front of the building.

B. Fill in vacant or underutilized lots with scale-appropriate buildings that contribute to the public realm of the street.

Staff's Response:

The project is an infill development on an underutilized site. It will comply with the City's streetscape improvement requirements by installing seven street trees and making necessary pedestrian improvements. It includes ground floor retail space and resident lounge, which wrap along Jefferson Street to 9th Street, providing visual interest at a pedestrian scale as well as "eyes on the street." The historically vacant and graffiti covered one-story warehouse will be replaced with an attractive residential building that will provide much needed housing and possibly provide for greater patronage of commercial uses in the area.

F. Respect the scale and character of the neighborhood with new construction and rehabilitations of small warehouses, apartment buildings, and single-family homes.

Staff's Response:

The project respects the scale and character of the neighborhood by providing a high-quality well-designed building that is in keeping with the setting, scale and character created by the surrounding buildings. It uses a color and material palette similar to other residential buildings in the area, and fills in the established intersection with a building similar in scale to those in the surrounding area, providing a transition from the taller downtown office buildings to the lower scale single family and multi-family buildings to the west. As designed with projections and recesses including balconies, the massing is broken up and with the flat roof design and stepping of the building away from the rear property line eight stories will complement the five-story buildings at the three other corners and not appear substantially taller.

3. The Miller Starr Appellants allege that the Zoning Manager's findings are legally inadequate because they are alternately conclusory or belied by evidence. The Miller Starr Appellants state: "The findings adequately address the proposed Project's materials and textures, but gloss over the relationship of the Project in its setting, scale, bulk, and height to the surrounding area. In fact, the findings assert that the Project does not 'over mass' the other corner buildings, but they do not explain how this can possibly be so. The findings do not describe the height of the other corner buildings and how the Project's height compares with those existing buildings. Moreover, the findings do not even purport to assert that the Project will not 'over mass' my clients' adjacent one-story commercial building, presumably because no such assertion could feasibly be made." The Miller Starr Appellants also state: "In addressing [the General Use Permit Findings] requirements and attempting to explain how the tallest building at the 9th and Jefferson intersection could be compatible with and not adversely affect abutting properties such as my clients' one-story commercial building and the neighborhood, which presently has buildings no taller than five stories in height, the findings imply recite the required considerations without explanation." The Miller Starr Appellants also state: "Accordingly, the findings required to grant a minor variance have not been and cannot be made; the solution, instead, is to revise the

Project by reducing its height so that it does not require special treatment relative to surrounding properties.”

The second Appeal makes similar allegations, stating: “The allowed increase in height by a full 19 feet over the required 85 feet level is not supported by evidence in this matter and appears arbitrary. ... The Minor Variance for the additional height is not an effective design solution for a building that should be no more than 85 feet.”

Staff's Response:

The project is located on a small 5,000-square foot lot at the corner of 9th Street and Jefferson Street. The other three lots at the intersection range from 15,000 to over 62,000 square feet. Four to six story structures exist on these larger lots, each of which is separated from the project by either 9th Street or Jefferson Street.

Because of the small lot, the project achieves its density vertically. The vertical mass complies with the 85-foot height limit and is two to four stories higher than the other structures at the intersection. The separation of the project from these shorter structures by the street and intersection provides perspective and context, creating visual interest and variety in building type, avoiding a uniform and monochrome development pattern. It creates a development pattern that is consistent with the variety of heights comprising Downtown Oakland. A two to four story height differential, separated by a public right-of-way, does not overshadow surrounding buildings but rather provides interesting variation and context in a vibrant urban core.

The lot adjacent to and surrounding the project is over 12,300 square feet. It is currently occupied by a single story commercial structure, the Oakland Flower Market. The Oakland Flower Market site, like the project site, is permitted to go up to 85 feet in height. Any future development of the site would not be adversely affected and the current use would not be impacted as it is a concrete single story structure and parking lot.

The neighborhood is in transition with single-story commercial structures and vacant lots being redeveloped as mixed-use and multifamily residential development. This redevelopment is consistent with the vision of the neighborhood under the General Plan and the draft Downtown Oakland Specific Plan. Neighborhoods in transition often have structures of varying heights, as is reflected in the current conditions where the structures across the intersection of 9th Street and Jefferson are taller than the Flower Market.

As designed with projections and recesses including balconies, the massing is broken up and with the flat roof design and stepping of the building away from the rear property line, eight stories will complement the five-story buildings at the three other corners and not appear substantially taller. Further, the bulk and mass of the structure is broken down by metal panel accents at the floor lines and at the decks, breaks that relate the building to the surrounding buildings.

The project at 85-feet is compliant with the Planning Code height limits. A Minor Variance is requested from the sideways setbacks required above 55-feet along the side yard. The project lot is small and the setbacks required are infeasible and place undue hardship on the project. The two stair egresses and elevator core are located along the interior side yard wall to allow the placement of pedestrian and auto access on 9th Street, and ground floor glazing at the corner and street facing elevations. Requiring a stepped side yard setback would push these required

mechanical and life safety features into the structure, shrinking and eliminating residential units, which is contrary to the City's stated goal of developing more housing. The stair and elevator encroachment is also very minimal with approximately 104 square feet on the sixth floor, 208 square feet on the seventh floor, and 312 square feet on the eighth floor with an additional 64 square feet of floor area. Strict compliance with the setback requirement would also decrease the livability and operational efficiency.

The project required Minor Conditional Use Permit for an elevator penthouse above 12 feet with a proposal of 19 feet. The proposed additional height of seven feet for the elevator penthouse is an effective design solution as many newer elevator shafts are requiring the additional height for safety mechanical equipment. The proposed elevator penthouse will consist of approximately 53 square feet on top of the building and will not be very visible from the street below. Therefore, granting the Minor Conditional Use Permit for the elevator penthouse will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

The Minor Conditional Use Permit for off-street parking is no longer required and whether the findings were adequate is moot.

- 4. The Miller Starr Appellants assert that the use of a categorical exemption is inappropriate. The Miller Starr Appellants state: "Under CEQA's well-established standards, an agency is required to prepare an EIR, whenever substantial evidence in the record supports a 'fair argument' that a project may have a significant effect on the environment. ... Under the 'fair argument' standard, a categorical exemption does not apply where there is a fair argument, based on substantial evidence, that the project will have significant environmental impacts. In other words, if credible evidence shows that a project may cause a significant effect on the environment, the lead agency cannot make use of the exemption." The Miller Starr Appellants note: "'Substantial evidence' is defined by the CEQA Guidelines to include 'facts, reasonable assumptions predicated on facts, and expert opinion supported by facts.'" The Miller Starr Appellants further state: "In this case, there is a wealth of substantial evidence demonstrating that the proposed Project would have significant and adverse impacts on the environment, as well as unique or unusual circumstances."**

Staff's Response:

The information presented in support of the allegation that substantial evidence exists of a fair argument is general information regarding topics such as hazards, air quality, noise, traffic, shadows and shading. As the Miller Starr Appellants state, substantial evidence is defined by the CEQA Guidelines to include "facts, reasonable assumptions predicated on facts, and expert opinion supported by facts." (14 Cal. Code Regs. sections 15384(a), 15064(f)(5).) CEQA and the CEQA Guidelines also provide: "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous, or evidence of social or economic impacts which do not contribute to or are not caused by, physical impacts on the environment, is not substantial evidence." (14 Cal. Code Regs. section 21082.2(c); CEQA Guidelines section 15384.)

Appellants have not presented any facts or expert opinions. Rather, the information in the appeals classifies as argument, speculation and/or unsubstantiated opinion or narrative and, therefore, does not classify as substantial evidence.

Substantial evidence in the record exists and proves that the project qualifies for the exemptions used. As previously noted, technical studies have been prepared by experts in the field of noise, hazards, air quality and transportation, which Staff has independently reviewed and which can be relied upon. These studies amount to substantial evidence in support of the project's conclusions. Copies of these studies and reports are attached and their conclusion cited below.

Charles M. Salter, a noise consultant, prepared a noise analysis prepared for the project hat confirmed that with implementation of sound rated façade and windows/doors, any noise impacts to future residents is within acceptable levels. The noise study also confirmed that construction noise and vibration from the project would be fully addressed through compliance with the City's established noise ordinance guidelines. As noted in the study, the project will comply with the following Standard Conditions of Approval related to noise: SCA 29: Construction Noise, SCA 30: Extreme Construction Noise, SCA 31: Construction Noise Complaints, SCA 32: Operational Noise, and SCA 41: Window and Door Details. In addition, although it is not expressly included in the Standard Conditions of Approval imposed by the City, the project would nevertheless have to comply with SCA 63(communitiy noise exposure, per Oakland Planning Code section 17.130.070, which directly relates to window treatments. The recommendations provided above would comply with and implement SCA 63.

Applied Remedial Service, Inc. ("ARS, Inc.) prepared Phase I and limited Phase II based of the site. It included a subsurface Physical Anomalies Survey where the site was explored for the potential of buried tanks, and four shallow soil gas samples were collected from the immediate vicinity of the former underground tank. The Phase I and limited Phase II confirmed there has been no impact to subsurface soil or groundwater in the area of the fuel tank and that there are no elevated levels of any contaminant that could pose a threat to human health or the environment.

First Carbon Solutions prepared an analysis of the health risk associated with the development of the project based a comparison of the project's land use intensity to that of three other downtown Oakland projects. The evaluation confirmed that given the size of the project and the findings of the other analyses in downtown Oakland, the project's potential construction impacts would be substantially less than the City's significance thresholds and would not have an air quality impact.

Finally, Fehr & Peers prepare a traffic analysis based on the City's current vehicle miles travelled ("VMT") standard (*Attachment E-3*), which Staff has independently reviewed and which can be relied upon. The traffic analysis confirmed the project would not result in substantial additional VMT and any project impacts with respect to VMT would be less-than-significant.

Staff reviewed the project and concluded that the project met the Infill Development criteria for compliance with CEQA. The site is not on any State list of contaminated sites, substantial evidence exists in the record to support this determination and the project will be required to implement the City's standard Conditions of Approval, which address and reduce any potential impact from the project to a less than significant level.

- 5. The Christopher J. Roberts Appellant alleges that Planning staff failed to do any realistic design review and the matter should be referred to the Planning Commission. The design was accepted "as is" and not compatible with the block, surrounding area, or Downtown Oakland. The appellant goes on to state: "This area at the outer edge of**

the Old Oakland neighborhood is unique and staff should not have compared this project with those located at 14th and Broadway. To do so is in error and arbitrary. Using such a comparison demonstrates that no valid design review has taken place.”

Staff Response:

The City performed adequate design review, but the appellant does not like the design. The appellant apparently feels the proposed design of the building is not compatible with the immediate area; however, the proposed design actually borrows many design elements from the contemporary corner building located directly across the street at 619-10th Street with the use of projections and recesses to break up the massing. Further, the project site is not located in the Old Oakland historic district nor is it located in an Area of Primary (API) or Secondary Importance (ASI). The project site is located approximately 450 feet and separated by a five-story building on a fully developed city block from the Old Oakland Historic District. The appellant suggests a false historic design would have been appropriate at the subject site and references the building design to projects located at 14th Street and Broadway although the Design Review findings in no way compare the project to any of the existing historic or contemporary buildings at that intersection.

- 6. The Appellant alleges that granting the Minor Variance and Minor Conditional Use Permit is not supported by the findings or is necessary for the quality development. Granting these permits would negatively the neighboring properties and there is no need for the permits and the permits do not protect or preserve neighborhood characteristics.**

Staff Response:

As noted above, the Minor Variance is for a side yard encroachment on one side of the building (south side) due to the stairs, elevators and a 2-foot section of living space which do not step inward one foot for every five feet above portions of the building above 55 feet. The Minor Variance is warranted due to the small size of the lot (5,004 square feet) and the lot dimensions which require staff to balance unit accessibility and emergency access directly to a street pursuant to Building Code requirements, pedestrian and auto access on 9th Street which is the principal street, ground floor glazing at the corner and street facing elevations with the interior side step back from the smaller building. (*Attachment A, page A2.01*). Due to this appropriate placement, a staircase and elevator cannot step inward whatsoever due to the required vertical shaft from ground floor to roof for construction. The Minor Variance would allow for a minimal encroachment (104 square feet on the sixth floor; 208 square feet on the seventh floor; and 312 square feet on the eighth floor with an additional 64 square feet of floor area). This minimal encroachment would have little to no effect on adjacent properties.

- 7. Both Appellants allege that there are unusual circumstances as a result of the site's former use as a gas station, which the project qualifies for an exception to the exemption. Specifically, the Miller Starr Appellants state: "Unusual circumstances exist here given the Project site's former use as a gas station and given the excess**

building height proposed at this corner of 9th and Jefferson relative to the existing five-story buildings at that intersection.” The second appeal states: “This case is an unusual circumstance because there is a reasonable possibility that activity will have a significant effect on the environment even though it is not on any State list.” Further, “Due to the use of underground storage tanks at the east end of the site and auto service and repair activity taking place the west end of the site, there is a reasonable possibility that the ground is still contaminated with gasoline, motor oil, and solvents containing volatile organic compounds (VOCs) used in an auto repair activity and that the underground gasoline tanks are still in place.”

Staff's Response:

The proposed project will not have a significant effect on the environment due to unusual circumstances. The existing commercial building was constructed in 1958 and it is likely that project would have addressed any hazards as part of construction. Furthermore, Oakland has many former gas station sites that have been and currently are undergoing re-development. As such, redevelopment of a former gasoline service station site is not unusual.

ARS conducted a Phase I Environmental Site Assessment for the site in conformance with the scope and limitations of ASTM Standard E 1527-13. The purpose of the Phase I ESA was to identify current and historical potential and actual recognized environmental conditions for the Property, which are defined in ASTM Standard E 1527-13 as “the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of future release.”

The Phase I ESA indicated the presence of an auto service station on the Property from the 1930s to the 1950s. As a result, a subsurface Physical Anomalies Survey was conducted to search for underground storage tanks (USTs) on the property using a variety of electronic instrumentations such as a magnetometer, a radar cone penetrating meter. Four shallow soil gas samples were also collected and analyzed from the immediate vicinity of the former UST location. The limited Phase II prepared for the project by ARS, Inc. confirmed that that there has been no impact to subsurface soil or groundwater in the area of the fuel tank and that there are no elevated levels of any contaminant that could pose a threat to human health or the environment. The Phase I also confirmed that the site is not on the Cortese List. Based on its expert opinion, ARS, Inc. concluded there has been no impact to subsurface soil or groundwater in the area of the former USTs, that there were no elevated levels of any contaminant that could pose a threat to human health or the environment and that no further investigation is warranted as any contaminates detected levels were at background residual levels for an industrial area.

As with all development in Oakland, the project will be required to comply with the City's standard Conditions of Approval which include specific requirements for addressing any potential hazardous materials or contaminates discovered during construction. Compliance with these conditions is not an unusual circumstance and as the project has complied with the pre-construction evaluation and assessment requirements and as that evaluation and assessment has determined there are no unusual hazardous conditions on the site, the fact that the site was a former gas station

is not an unusual circumstance. Regarding the building height, an 85' building height is not an unusual circumstance and is not in and of itself a CEQA issue.

Finally, the Appellants have not presented any facts or expert opinions. The information in the Appeals is argument, speculation and/or unsubstantiated opinion or narrative and, therefore, does not classify as substantial evidence.

CONCLUSION

The Appellants have not demonstrated an error or abuse in discretion by the Zoning Administrator and has not shown where his decisions are not supported by substantial evidence. City of Oakland Planning staff believes that the proposed project satisfies applicable zoning criteria and meets the General Plan and Findings for approval. Furthermore, staff conducted appropriate environmental review for the project. Therefore, staff believes that the project approval of the application was issued correctly and the Appeal should be denied.

RECOMMENDATIONS:

1. Uphold staff's CEQA environmental determination
2. Deny the Appeal and uphold the Zoning Administrator's approval of the project based on this Appeal report.

Prepared by:



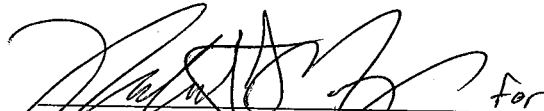
Michael Bradley
Planner II

Reviewed by:



Scott Miller
Zoning Manager

Approved for forwarding to the
City Planning Commission:



for
Darin Ranelletti, Interim Director
Department of Planning and Building

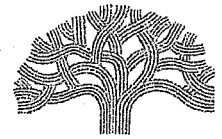
ATTACHMENTS:

- A. Project Plans and Photos
- B. Public Notices and Community Meeting documents
- C. Approval Letter dated October 25, 2016
- D. The Two Appeals Filed by Christopher J. Roberts and the Miller Starr Appellants
- E. Applicant's Attorney July 13, 2017 Letter with accompanying Technical Reports
 - E1- ARS Inc., Phase I and Limited Phase II Environmental Site Analysis
 - E2- First Carbon Solutions, Health Risk Assessment
 - E3- Fehr and Peers, Vehicles Miles Traveled (VMT) Assessment
 - E4- Salter Associates Inc., Environmental Noise Study

LEGAL NOTICE:

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

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • SUITE 3315 • OAKLAND, CALIFORNIA 94612

Planning and Building Department
Bureau of Planning

(510) 238-3941
FAX (510) 238-6538
TDD (510) 238-3254

Sent via U.S. Mail and Electronic Mail

August 16, 2017

Christopher J. Roberts
555 – 10th Street, #426
Oakland, CA 94607

RE: Case File No. PLN16092-A01 (PLN16092); 605-9th Street; APN: 001-0211-006-00

Dear Mr. Roberts:

On August 2, 2017, the Oakland Planning Commission, by a 5-0 vote, **DENIED** your appeal of an October 25, 2016 Zoning Administrator's issuance of a Regular Design Review, Minor Variance, and Conditional Use Permit application to demolish an existing one-story commercial building and construct an eight-story, 25-unit residential building with ground floor parking and lobby space. This action of the City Planning Commission is final immediately and is not administratively appealable.

As a result, the October 25, 2016 Zoning Administrator's approval of the Regular Design Review, Minor Variance, and Conditional Use Permit remains valid, and the applicant may proceed with the intended project at the above referenced location.

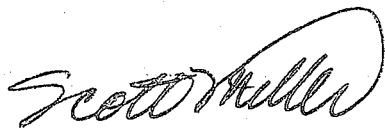
The following table summarizes the proposed project:

Proposal:	To demolish an existing one-story commercial building and construct a new 25 residential unit, eight-story building.
Planning Permits Required:	Regular Design Review for new construction of 25 residential units. Minor Variance for a side yard setback encroachment on the south side of the building for floors 6,7 and 8 due to the stairs and elevator not stepping inward at a one foot for every five feet above portions of the building over 55 feet. Minor conditional Use Permits for (1) an elevator penthouse above 12 feet with a proposal of 19 feet; (2) 23 off-street parking spaces where 24 are required (24 parking spaces required due to an excess of bicycle parking spaces provided, thus a reduction from 25 parking spaces).
General Plan:	Central Business District
Zoning:	CBD-R Central Business District Residential Zone.
Environmental Determination:	Exempt, Section 15332 of the State CEQA Guidelines; In-fill development. Section 15183 of the State CEQA Guidelines; projects consistent with a community plan, general plan or zoning.
Historic Status:	Not A Potential Historic Property; Survey Rating: F3
City Council District:	Metro

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

If you have any questions, please contact the case planner, **Michael Bradley** at (510) 238-6935 or mbradley@oaklandnet.com.

Sincerely,

A handwritten signature in cursive script that reads "Scott Miller". The signature is written in black ink and is positioned above the typed name.

SCOTT MILLER
Zoning Manager

cc: Ninth & Jefferson Associates, LLC
c/o Joe Hernon
1714 Franklin Street. #100-244
Oakland, CA 94612

Attachments:

- A. Conditions of Approval, including Standard Conditions of Approvals and added Project Specific Conditions of Approval made by the Planning Commission during the hearing on August 2, 2017.

ATTACHMENT A: CONDITIONS OF APPROVAL

The proposal is hereby approved subject to the following Conditions of Approval:

1. Approved Use

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials, and approved plans dated **March 18, 2016** and submitted **September 26, 2016**, as amended by the following conditions of approval and mitigation measures, if applicable ("Conditions of Approval" or "Conditions").

2. Effective Date, Expiration, Extensions and Extinguishment

This Approval shall become effective immediately, unless the Approval is appealable, in which case the Approval shall become effective in ten calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire **two years** from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

3. Compliance with Other Requirements

The project applicant shall comply with all other applicable federal, state, regional, and local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Bureau of Building, Fire Marshal, and Public Works Department. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.

4. Minor and Major Changes

- a. Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning.
- b. Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent permit/approval. Major revisions shall be reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval.

5. Compliance with Conditions of Approval

- a. The project applicant and property owner, including successors, (collectively referred to hereafter as the "project applicant" or "applicant") shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.

- b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant's expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.
- c. Violation of any term, Condition, or project description relating to the Approval is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Approval or Conditions.

6. Signed Copy of the Approval/Conditions

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times.

7. Blight/Nuisances

The project site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60 days of approval, unless an earlier date is specified elsewhere.

8. Indemnification

- a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called "City") from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b. Within ten (10) calendar days of the filing of any Action as specified in subsection (a) above, the project applicant shall execute a Joint Defense Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

9. **Severability**

The Approval would not have been granted but for the applicability and validity of each and every one of the specified Conditions, and if one or more of such Conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid Conditions consistent with achieving the same purpose and intent of such Approval.

10. **Special Inspector/Inspections, Independent Technical Review, Project Coordination and Monitoring**

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with the Bureau of Building, if directed by the Building Official, Director of City Planning, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

11. **Public Improvements**

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement ("p-job") permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Bureau of Building, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

12. **Compliance Matrix**

The project applicant shall submit a Compliance Matrix, in both written and electronic form, for review and approval by the Bureau of Planning and the Bureau of Building that lists each Condition of Approval (including each mitigation measure if applicable) in a sortable spreadsheet. The Compliance Matrix shall contain, at a minimum, each required Condition of Approval, when compliance with the Condition is required, and the status of compliance with each Condition. For multi-phased projects, the Compliance Matrix shall indicate which Condition applies to each phase. The project applicant shall submit the initial Compliance Matrix prior to the issuance of the first construction-related permit and shall submit an updated matrix upon request by the City.

13. **Construction Management Plan**

Prior to the issuance of the first construction-related permit, the project applicant and his/her general contractor shall submit a Construction Management Plan (CMP) for review and approval by the Bureau of Planning, Bureau of Building, and other relevant City departments such as the Fire Department and the Public Works Department as directed. The CMP shall contain measures to minimize potential construction impacts including measures to comply with all construction-related Conditions of Approval (and mitigation measures if applicable) such as dust control, construction emissions, hazardous materials, construction days/hours, construction traffic control, waste reduction and recycling, stormwater pollution prevention, noise control, complaint management, and cultural resource management (see applicable Conditions below). The CMP shall provide project-specific information including descriptive procedures, approval documentation, and drawings (such as a site logistics plan, fire safety plan, construction phasing plan, proposed truck routes, traffic control plan, complaint management plan, construction worker parking plan, and litter/debris clean-up plan) that specify how potential construction impacts will be minimized and how each construction-related requirement will be satisfied throughout construction of the project.

14. Regulatory Permits and Authorizations from Other Agencies

Requirement: The project applicant shall obtain all necessary regulatory permits and authorizations from applicable resource/regulatory agencies including, but not limited to, the Regional Water Quality Control Board, Bay Area Air Quality Management District, Bay Conservation and Development Commission, California Department of Fish and Wildlife, U. S. Fish and Wildlife Service, and Army Corps of Engineers and shall comply with all requirements and conditions of the permits/authorizations. The project applicant shall submit evidence of the approved permits/authorizations to the City, along with evidence demonstrating compliance with any regulatory permit/authorization conditions of approval.

When Required: Prior to activity requiring permit/authorization from regulatory agency

Initial Approval: Approval by applicable regulatory agency with jurisdiction; evidence of approval submitted to Bureau of Planning

Monitoring/Inspection: Applicable regulatory agency with jurisdiction

15. Graffiti Control

Requirement:

- a. During construction and operation of the project, the project applicant shall incorporate best management practices reasonably related to the control of graffiti and/or the mitigation of the impacts of graffiti. Such best management practices may include, without limitation:
 - i. Installation and maintenance of landscaping to discourage defacement of and/or protect likely graffiti-attracting surfaces.
 - ii. Installation and maintenance of lighting to protect likely graffiti-attracting surfaces.
 - iii. Use of paint with anti-graffiti coating.
 - iv. Incorporation of architectural or design elements or features to discourage graffiti defacement in accordance with the principles of Crime Prevention Through Environmental Design (CPTED).
 - v. Other practices approved by the City to deter, protect, or reduce the potential for graffiti defacement.
- b. The project applicant shall remove graffiti by appropriate means within seventy-two (72) hours. Appropriate means include the following:
 - i. Removal through scrubbing, washing, sanding, and/or scraping (or similar method) without damaging the surface and without discharging wash water or cleaning detergents into the City storm drain system.
 - ii. Covering with new paint to match the color of the surrounding surface.
 - iii. Replacing with new surfacing (with City permits if required).

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

16. Landscape Plan

a. *Landscape Plan Required*

Requirement: The project applicant shall submit a final Landscape Plan for City review and approval that is consistent with the approved Landscape Plan. The Landscape Plan shall be included with the set of drawings submitted for the construction-related permit and shall comply with the landscape requirements of chapter 17.124 of the Planning Code.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Planning

Monitoring/Inspection: N/A

b. *Landscape Installation*

Requirement: The project applicant shall implement the approved Landscape Plan unless a bond, cash deposit, letter of credit, or other equivalent instrument acceptable to the Director of City Planning, is provided. The financial instrument shall equal the greater of \$2,500 or the estimated cost of implementing the Landscape Plan based on a licensed contractor's bid.

When Required: Prior to building permit final

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Building

c. *Landscape Maintenance*

Requirement: All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. The property owner shall be responsible for maintaining planting in adjacent public rights-of-way. All required fences, walls, and irrigation systems shall be permanently maintained in good condition and, whenever necessary, repaired or replaced.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

17. Lighting

Requirement: Proposed new exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

18. Construction-Related Air Pollution Controls (Dust and Equipment Emissions)

Requirement: The project applicant shall implement all of the following applicable air pollution control measures during construction of the project:

- a. Water all exposed surfaces of active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever feasible.
- b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- c. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d. Pave all roadways, driveways, sidewalks, etc. within one month of site grading or as soon as feasible. In addition, building pads should be laid within one month of grading or as soon as feasible unless seeding or soil binders are used.
- e. Enclose, cover, water twice daily, or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).

- f. Limit vehicle speeds on unpaved roads to 15 miles per hour.
- g. Idling times on all diesel-fueled commercial vehicles over 10,000 lbs. shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485, of the California Code of Regulations). Clear signage to this effect shall be provided for construction workers at all access points.
- h. Idling times on all diesel-fueled off-road vehicles over 25 horsepower shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes and fleet operators must develop a written policy as required by Title 23, Section 2449, of the California Code of Regulations ("California Air Resources Board Off-Road Diesel Regulations").
- i. All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- j. Portable equipment shall be powered by electricity if available. If electricity is not available, propane or natural gas shall be used if feasible. Diesel engines shall only be used if electricity is not available and it is not feasible to use propane or natural gas.

19. Exposure to Air Pollution (Toxic Air Contaminants)

a. *Health Risk Reduction Measures*

Requirement: The project applicant shall incorporate appropriate measures into the project design in order to reduce the potential health risk due to exposure to toxic air contaminants. The project applicant shall choose one of the following methods:

- i. The project applicant shall retain a qualified air quality consultant to prepare a Health Risk Assessment (HRA) in accordance with California Air Resources Board (CARB) and Office of Environmental Health and Hazard Assessment requirements to determine the health risk of exposure of project residents/occupants/users to air pollutants. The HRA shall be submitted to the City for review and approval. If the HRA concludes that the health risk is at or below acceptable levels, then health risk reduction measures are not required. If the HRA concludes that the health risk exceeds acceptable levels, health risk reduction measures shall be identified to reduce the health risk to acceptable levels. Identified risk reduction measures shall be submitted to the City for review and approval and be included on the project drawings submitted for the construction-related permit or on other documentation submitted to the City.

- or -

- ii. The project applicant shall incorporate the following health risk reduction measures into the project. These features shall be submitted to the City for review and approval and be included on the project drawings submitted for the construction-related permit or on other documentation submitted to the City:
 - Installation of air filtration to reduce cancer risks and Particulate Matter (PM) exposure for residents and other sensitive populations in the project that are in close proximity to sources of air pollution. Air filter devices shall be rated MERV-13 or higher. As part of implementing this measure, an ongoing maintenance plan for the building's HVAC air filtration system shall be required.
 - Where appropriate, install passive electrostatic filtering systems, especially those with low air velocities (i.e., 1 mph).
 - Phasing of residential developments when proposed within 500 feet of freeways such that homes nearest the freeway are built last, if feasible.

- The project shall be designed to locate sensitive receptors as far away as feasible from the source(s) of air pollution. Operable windows, balconies, and building air intakes shall be located as far away from these sources as feasible. If near a distribution center, residents shall be located as far away as feasible from a loading dock or where trucks concentrate to deliver goods.
- Sensitive receptors shall be located on the upper floors of buildings, if feasible.
- Planting trees and/or vegetation between sensitive receptors and pollution source, if feasible. Trees that are best suited to trapping PM shall be planted, including one or more of the following: Pine (*Pinus nigra* var. *maritima*), Cypress (*X Cupressocyparis leylandii*), Hybrid popular (*Populus deltoids X trichocarpa*), and Redwood (*Sequoia sempervirens*).
- Sensitive receptors shall be located as far away from truck activity areas, such as loading docks and delivery areas, as feasible.
- Existing and new diesel generators shall meet CARB's Tier 4 emission standards, if feasible.
- Emissions from diesel trucks shall be reduced through implementing the following measures, if feasible:
 - Installing electrical hook-ups for diesel trucks at loading docks.
 - Requiring trucks to use Transportation Refrigeration Units (TRU) that meet Tier 4 emission standards.
 - Requiring truck-intensive projects to use advanced exhaust technology (e.g., hybrid) or alternative fuels.
 - Prohibiting trucks from idling for more than two minutes.
 - Establishing truck routes to avoid sensitive receptors in the project. A truck route program, along with truck calming, parking, and delivery restrictions, shall be implemented.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Building

b. Maintenance of Health Risk Reduction Measures

Requirement: The project applicant shall maintain, repair, and/or replace installed health risk reduction measures, including but not limited to the HVAC system (if applicable), on an ongoing and as-needed basis. Prior to occupancy, the project applicant shall prepare and then distribute to the building manager/operator an operation and maintenance manual for the HVAC system and filter including the maintenance and replacement schedule for the filter.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

20. Asbestos in Structures

Requirement: The project applicant shall comply with all applicable laws and regulations regarding demolition and renovation of Asbestos Containing Materials (ACM), including but not limited to California Code of Regulations, Title 8; California Business and Professions Code, Division 3; California Health and Safety Code sections 25915-25919.7; and Bay Area Air Quality Management District, Regulation 11, Rule 2, as may be amended. Evidence of compliance shall be submitted to the City upon request.

When Required: Prior to approval of construction-related permit

Initial Approval: Applicable regulatory agency with jurisdiction

Monitoring/Inspection: Applicable regulatory agency with jurisdiction

21. Archaeological and Paleontological Resources – Discovery During Construction

Requirement: Pursuant to CEQA Guidelines section 15064.5(f), in the event that any historic or prehistoric subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant shall notify the City and consult with a qualified archaeologist or paleontologist, as applicable, to assess the significance of the find. In the case of discovery of paleontological resources, the assessment shall be done in accordance with the Society of Vertebrate Paleontology standards. If any find is determined to be significant, appropriate avoidance measures recommended by the consultant and approved by the City must be followed unless avoidance is determined unnecessary or infeasible by the City. Feasibility of avoidance shall be determined with consideration of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery, excavation) shall be instituted. Work may proceed on other parts of the project site while measures for the cultural resources are implemented.

In the event of data recovery of archaeological resources, the project applicant shall submit an Archaeological Research Design and Treatment Plan (ARDTP) prepared by a qualified archaeologist for review and approval by the City. The ARDTP is required to identify how the proposed data recovery program would preserve the significant information the archaeological resource is expected to contain. The ARDTP shall identify the scientific/historic research questions applicable to the expected resource, the data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. The ARDTP shall include the analysis and specify the curation and storage methods. Data recovery, in general, shall be limited to the portions of the archaeological resource that could be impacted by the proposed project. Destructive data recovery methods shall not be applied to portions of the archaeological resources if nondestructive methods are practicable. Because the intent of the ARDTP is to save as much of the archaeological resource as possible, including moving the resource, if feasible, preparation and implementation of the ARDTP would reduce the potential adverse impact to less than significant. The project applicant shall implement the ARDTP at his/her expense.

In the event of excavation of paleontological resources, the project applicant shall submit an excavation plan prepared by a qualified paleontologist to the City for review and approval. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by a qualified paleontologist, as appropriate, according to current professional standards and at the expense of the project applicant.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

22. Human Remains – Discovery During Construction

Requirement: Pursuant to CEQA Guidelines section 15064.5(e)(1), in the event that human skeletal remains are uncovered at the project site during construction activities, all work shall immediately halt and the project applicant shall notify the City and the Alameda County Coroner. If the County Coroner determines that an investigation of the cause of death is required or that the remains are Native American, all work shall cease within 50 feet of the remains until appropriate arrangements are made. In the event that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of section 7050.5 of the California Health and Safety Code. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery,

determination of significance, and avoidance measures (if applicable) shall be completed expeditiously and at the expense of the project applicant.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

23. Construction-Related Permit(s)

Requirement: The project applicant shall obtain all required construction-related permits/approvals from the City. The project shall comply with all standards, requirements and conditions contained in construction-related codes, including but not limited to the Oakland Building Code and the Oakland Grading Regulations, to ensure structural integrity and safe construction.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

24. Hazardous Materials Related to Construction

Requirement: The project applicant shall ensure that Best Management Practices (BMPs) are implemented by the contractor during construction to minimize potential negative effects on groundwater, soils, and human health. These shall include, at a minimum, the following:

- a. Follow manufacture's recommendations for use, storage, and disposal of chemical products used in construction;
- b. Avoid overtopping construction equipment fuel gas tanks;
- c. During routine maintenance of construction equipment, properly contain and remove grease and oils;
- d. Properly dispose of discarded containers of fuels and other chemicals;
- e. Implement lead-safe work practices and comply with all local, regional, state, and federal requirements concerning lead (for more information refer to the Alameda County Lead Poisoning Prevention Program); and
- f. If soil, groundwater, or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the project applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notifying the City and applicable regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval, as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

25. Site Contamination

a. *Environmental Site Assessment Required*

Requirement: The project applicant shall submit a Phase I Environmental Site Assessment report, and Phase II Environmental Site Assessment report if warranted by the Phase I report, for the project site for review and approval by the City. The report(s) shall be prepared by a qualified environmental assessment professional and include recommendations for remedial action, as appropriate, for hazardous materials. The project applicant shall implement the approved recommendations and submit to the City evidence of approval for any proposed remedial action and required clearances by the applicable local, state, or federal regulatory agency.

When Required: Prior to approval of construction-related permit

Initial Approval: Oakland Fire Department

Monitoring/Inspection: Oakland Fire Department

b. *Health and Safety Plan Required*

Requirement: The project applicant shall submit a Health and Safety Plan for the review and approval by the City in order to protect project construction workers from risks associated with hazardous materials. The project applicant shall implement the approved Plan.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

c. *Best Management Practices (BMPs) Required for Contaminated Sites*

Requirement: The project applicant shall ensure that Best Management Practices (BMPs) are implemented by the contractor during construction to minimize potential soil and groundwater hazards. These shall include the following:

- i. Soil generated by construction activities shall be stockpiled on-site in a secure and safe manner. All contaminated soils determined to be hazardous or non-hazardous waste must be adequately profiled (sampled) prior to acceptable reuse or disposal at an appropriate off-site facility. Specific sampling and handling and transport procedures for reuse or disposal shall be in accordance with applicable local, state, and federal requirements.
- ii. Groundwater pumped from the subsurface shall be contained on-site in a secure and safe manner, prior to treatment and disposal, to ensure environmental and health issues are resolved pursuant to applicable laws and policies. Engineering controls shall be utilized, which include impermeable barriers to prohibit groundwater and vapor intrusion into the building.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

26. Source Control Measures to Limit Stormwater Pollution

Requirement: Pursuant to Provision C.3 of the Municipal Regional Stormwater Permit issued under the National Pollutant Discharge Elimination System (NPDES), the project applicant is encouraged to incorporate appropriate source control measures to limit pollution in stormwater runoff. These measures may include, but are not limited to, the following:

- a. Stencil storm drain inlets "No Dumping – Drains to Bay;"
- b. Minimize the use of pesticides and fertilizers;
- c. Cover outdoor material storage areas, loading docks, repair/maintenance bays and fueling areas;

- d. Cover trash, food waste, and compactor enclosures; and
- e. Plumb the following discharges to the sanitary sewer system, subject to City approval:
- f. Discharges from indoor floor mats, equipment, hood filter, wash racks, and, covered outdoor wash racks for restaurants;
- g. Dumpster drips from covered trash, food waste, and compactor enclosures;
- h. Discharges from outdoor covered wash areas for vehicles, equipment, and accessories;
- i. Swimming pool water, if discharge to on-site vegetated areas is not feasible; and
- j. Fire sprinkler test water, if discharge to on-site vegetated areas is not feasible.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: N/A

27. **NPDES C.3 Stormwater Requirements for Small Projects**

Requirement: Pursuant to Provision C.3 of the Municipal Regional Stormwater Permit issued under the National Pollutant Discharge Elimination System (NPDES), the project applicant shall incorporate one or more of the following site design measures into the project:

- a. Direct roof runoff into cisterns or rain barrels for reuse;
- b. Direct roof runoff onto vegetated areas;
- c. Direct runoff from sidewalks, walkways, and/or patios onto vegetated areas;
- d. Direct runoff from driveways and/or uncovered parking lots onto vegetated areas;
- e. Construct sidewalks, walkways, and/or patios with permeable surfaces; or
- f. Construct bike lanes, driveways, and/or uncovered parking lots with permeable surfaces.

The project drawings submitted for construction-related permits shall include the proposed site design measure(s) and the approved measure(s) shall be installed during construction. The design and installation of the measure(s) shall comply with all applicable City requirements.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Planning; Bureau of Building

Monitoring/Inspection: Bureau of Building

28. **Construction Days/Hours**

Requirement: The project applicant shall comply with the following restrictions concerning construction days and hours:

- a. Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, except that pier drilling and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m.
- b. Construction activities are limited to between 9:00 a.m. and 5:00 p.m. on Saturday. In residential zones and within 300 feet of a residential zone, construction activities are allowed from 9:00 a.m. to 5:00 p.m. only within the interior of the building with the doors and windows closed. No pier drilling or other extreme noise generating activities greater than 90 dBA are allowed on Saturday.
- c. No construction is allowed on Sunday or federal holidays.

Construction activities include, but are not limited to, truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.

Any construction activity proposed outside of the above days and hours for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case-by-case basis by the City, with criteria including the urgency/emergency nature of the work, the proximity of residential or other sensitive uses, and a consideration of nearby residents'/occupants' preferences. The project applicant shall notify property owners and occupants located within 300 feet at least 14 calendar days prior to construction activity proposed outside of the above days/hours. When submitting a request to the City to allow construction activity outside of the above days/hours, the project applicant shall submit information concerning the type and duration of proposed construction activity and the draft public notice for City review and approval prior to distribution of the public notice.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

29. Construction Noise

Requirement: The project applicant shall implement noise reduction measures to reduce noise impacts due to construction. Noise reduction measures include, but are not limited to, the following:

- a. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds) wherever feasible.
- b. Except as provided herein, impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.
- c. Applicant shall use temporary power poles instead of generators where feasible.
- d. Stationary noise sources shall be located as far from adjacent properties as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.
- e. The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

30. Extreme Construction Noise

a. Construction Noise Management Plan Required

Requirement: Prior to any extreme noise generating construction activities (e.g., pier drilling, pile driving and other activities generating greater than 90dBA), the project applicant shall submit a Construction Noise Management Plan prepared by a qualified acoustical consultant for City review and approval that contains a set of site-specific noise attenuation measures to further reduce construction impacts associated

with extreme noise generating activities. The project applicant shall implement the approved Plan during construction. Potential attenuation measures include, but are not limited to, the following:

- i. Erect temporary plywood noise barriers around the construction site, particularly along on sites adjacent to residential buildings;
- ii. Implement "quiet" pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;
- iii. Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site;
- iv. Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings by the use of sound blankets for example and implement such measure if such measures are feasible and would noticeably reduce noise impacts; and
- v. Monitor the effectiveness of noise attenuation measures by taking noise measurements.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

b. Public Notification Required

Requirement: The project applicant shall notify property owners and occupants located within 300 feet of the construction activities at least 14 calendar days prior to commencing extreme noise generating activities. Prior to providing the notice, the project applicant shall submit to the City for review and approval the proposed type and duration of extreme noise generating activities and the proposed public notice. The public notice shall provide the estimated start and end dates of the extreme noise generating activities and describe noise attenuation measures to be implemented.

When Required: During construction

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

31. Construction Noise Complaints

Requirement: The project applicant shall submit to the City for review and approval a set of procedures for responding to and tracking complaints received pertaining to construction noise, and shall implement the procedures during construction. At a minimum, the procedures shall include:

- a. Designation of an on-site construction complaint and enforcement manager for the project;
- b. A large on-site sign near the public right-of-way containing permitted construction days/hours, complaint procedures, and phone numbers for the project complaint manager and City Code Enforcement unit;
- c. Protocols for receiving, responding to, and tracking received complaints; and
- d. Maintenance of a complaint log that records received complaints and how complaints were addressed, which shall be submitted to the City for review upon the City's request.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

32. Operational Noise

Requirement: Noise levels from the project site after completion of the project (i.e., during project operation) shall comply with the performance standards of chapter 17.120 of the Oakland Planning Code and chapter 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the City.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

33. Construction Activity in the Public Right-of-Way

a. *Obstruction Permit Required*

Requirement: The project applicant shall obtain an obstruction permit from the City prior to placing any temporary construction-related obstruction in the public right-of-way, including City streets and sidewalks.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

b. *Traffic Control Plan Required*

Requirement: In the event of obstructions to vehicle or bicycle travel lanes, the project applicant shall submit a Traffic Control Plan to the City for review and approval prior to obtaining an obstruction permit. The project applicant shall submit evidence of City approval of the Traffic Control Plan with the application for an obstruction permit. The Traffic Control Plan shall contain a set of comprehensive traffic control measures for auto, transit, bicycle, and pedestrian detours, including detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. The project applicant shall implement the approved Plan during construction.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Transportation Services Division

Monitoring/Inspection: Bureau of Building

c. *Repair of City Streets*

Requirement: The project applicant shall repair any damage to the public right-of way, including streets and sidewalks caused by project construction at his/her expense within one week of the occurrence of the damage (or excessive wear), unless further damage/excessive wear may continue; in such case, repair shall occur prior to approval of the final inspection of the construction-related permit. All damage that is a threat to public health or safety shall be repaired immediately.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

34. Bicycle Parking

Requirement: The project applicant shall comply with the City of Oakland Bicycle Parking Requirements (chapter 17.118 of the Oakland Planning Code). The project drawings submitted for construction-related permits shall demonstrate compliance with the requirements.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Building

35. Construction and Demolition Waste Reduction and Recycling

Requirement: The project applicant shall comply with the City of Oakland Construction and Demolition Waste Reduction and Recycling Ordinance (chapter 15.34 of the Oakland Municipal Code) by submitting a Construction and Demolition Waste Reduction and Recycling Plan (WRRP) for City review and approval, and shall implement the approved WRRP. Projects subject to these requirements include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3 type construction), and all demolition (including soft demolition) except demolition of type R-3 construction. The WRRP must specify the methods by which the project will divert construction and demolition debris waste from landfill disposal in accordance with current City requirements. The WRRP may be submitted electronically at www.greenhalosystems.com or manually at the City's Green Building Resource Center. Current standards, FAQs, and forms are available on the City's website and in the Green Building Resource Center.

When Required: Prior to approval of construction-related permit

Initial Approval: Public Works Department, Environmental Services Division

Monitoring/Inspection: Public Works Department, Environmental Services Division

36. Underground Utilities

Requirement: The project applicant shall place underground all new utilities serving the project and under the control of the project applicant and the City, including all new gas, electric, cable, and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits, and similar facilities. The new facilities shall be placed underground along the project's street frontage and from the project structures to the point of service. Utilities under the control of other agencies, such as PG&E, shall be placed underground if feasible. All utilities shall be installed in accordance with standard specifications of the serving utilities.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

37. Recycling Collection and Storage Space

Requirement: The project applicant shall comply with the City of Oakland Recycling Space Allocation Ordinance (chapter 17.118 of the Oakland Planning Code). The project drawings submitted for construction-related permits shall contain recycling collection and storage areas in compliance with the Ordinance. For residential projects, at least two cubic feet of storage and collection space per residential unit is required, with a minimum of ten cubic feet. For nonresidential projects, at least two cubic feet of storage and collection space per 1,000 square feet of building floor area is required, with a minimum of ten cubic feet.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Building

38. Green Building Requirements

a. *Compliance with Green Building Requirements During Plan-Check*

Requirement: The project applicant shall comply with the requirements of the California Green Building Standards (CALGreen) mandatory measures and the applicable requirements of the City of Oakland Green Building Ordinance (chapter 18.02 of the Oakland Municipal Code).

- i. The following information shall be submitted to the City for review and approval with the application for a building permit:
 - Documentation showing compliance with Title 24 of the current version of the California Building Energy Efficiency Standards.
 - Completed copy of the final green building checklist approved during the review of the Planning and Zoning permit.
 - Copy of the Unreasonable Hardship Exemption, if granted, during the review of the Planning and Zoning permit.
 - Permit plans that show, in general notes, detailed design drawings, and specifications as necessary, compliance with the items listed in subsection (ii) below.
 - Copy of the signed statement by the Green Building Certifier approved during the review of the Planning and Zoning permit that the project complied with the requirements of the Green Building Ordinance.
 - Signed statement by the Green Building Certifier that the project still complies with the requirements of the Green Building Ordinance, unless an Unreasonable Hardship Exemption was granted during the review of the Planning and Zoning permit.
 - Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance.
- ii. The set of plans in subsection (i) shall demonstrate compliance with the following:
 - CALGreen mandatory measures.
 - All pre-requisites per the green building checklist approved during the review of the Planning and Zoning permit, or, if applicable, all the green building measures approved as part of the Unreasonable Hardship Exemption granted during the review of the Planning and Zoning permit.
 - Per the appropriate checklist approved during the Planning entitlement process.
 - All green building points identified on the checklist approved during review of the Planning and Zoning permit, unless a Request for Revision Plan-check application is submitted and approved by the Bureau of Planning that shows the previously approved points that will be eliminated or substituted.
 - The required green building point minimums in the appropriate credit categories.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: N/A

b. *Compliance with Green Building Requirements During Construction*

Requirement: The project applicant shall comply with the applicable requirements of CALGreen and the Oakland Green Building Ordinance during construction of the project.

The following information shall be submitted to the City for review and approval:

- i. Completed copies of the green building checklists approved during the review of the Planning and Zoning permit and during the review of the building permit.

- ii. Signed statement(s) by the Green Building Certifier during all relevant phases of construction that the project complies with the requirements of the Green Building Ordinance.
- iii. Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance.

When Required: During construction

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

c. ***Compliance with Green Building Requirements After Construction***

Requirement: Within sixty (60) days of the final inspection of the building permit for the project, the Green Building Certifier shall submit the appropriate documentation to **Build It Green** and attain the minimum required certification/point level. Within one year of the final inspection of the building permit for the project, the applicant shall submit to the Bureau of Planning the Certificate from the organization listed above demonstrating certification and compliance with the minimum point/certification level noted above.

When Required: After project completion as specified

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Building

Site Specific Conditions of Approval

39. Garage Alert Buzzer

Ongoing

A buzzer warning system shall be installed in the garage that is triggered as vehicles inside the garage approach the sidewalk to serve as an alert to pedestrians that a vehicle is approaching from the garage. The buzzer volume shall be no louder than necessary for pedestrians to hear on the 9th Street sidewalk and the volume should be adjustable such that off-site impacts are avoided.

40. Encroachment Permit

Prior to issuance of building permit.

The applicant shall obtain any encroachment permits, waiver of damages or other approvals required by the Bureau of Building, for any privately constructed public improvements, or any permanent or temporary elements located in the public right of way.

41. Window and Door Details.

Prior to issuance of building permit.

The applicant shall submit to the Planning and Zoning Division for review and approval, a window and door schedule, including cross-sections and elevations, and final architectural details of the front and side elevations.

42. Meter Shielding.

Prior to issuance of building permits.

The applicant shall submit for review and approval by the Planning and Zoning Division, plans showing the location of any and all utility meters, transformers, and the like located within a box set within the building, located on a non-street facing elevation, or screened from view from any public right of way.

43. Signage

Ongoing.

All proposed signage must be applied for with the proper City of Oakland Planning and Building permits. Signage must meet the City of Oakland Small Project Design Guidelines.

44. Architectural Detailing and Building Materials

Ongoing.

All cement plaster stucco shall be smooth finish and applied wet at the job site.

45. Public Art for Private Development Condition of Approval – Residential Project

Prior to Building Permit Issuance and Ongoing.

This project is subject to the City's Public Art for Private Development Ordinance (C.M.S. 13275). As a residential project, the public art obligation is equivalent to 0.50% of the total building valuation for the project, as required by the Ordinance. The obligation can be provided through an on-site art installation or through payment to the City's established public art fund (or combination of an on-site art gallery and/or culture space and partial payment to the public art fund, pursuant to the Ordinance). The obligation must be satisfied prior to the City's issuance of a certificate of occupancy, unless a separate instrument is executed ensuring compliance within a timely manner, subject to City approval. On-site art installation shall be designed by independent artists, or artists working in conjunction with arts or community organizations, that are verified by the City to either hold a valid Oakland business license or be an Oakland-based 501(c)(3) tax designated organization in good standing.

Project Specific Conditions of Approval made by the Planning Commission during the hearing on August 2, 2017.

46. Statement of Disclosure

Ongoing.

The owner of the property shall provide a Statement of Disclosure on the lease or title to all new tenants or owners of the residential units acknowledging the commercial and industrial character of the district and acceptance of the potential for uses in the area to result in certain off-site impacts at higher levels than would be expected in residential areas. The statement of disclosure shall also state that the tenants may only engage in the activities allowed by the relevant General Plan Land Use and Zoning Designation. The statement described in this condition of approval shall also be provided to any new owners of the property or any of the new units before a unit or the property is sold.

47. Public Right-of-Way for Trash Receptacles, Street Tree wells, and Bicycle Racks

Ongoing.

- Trash Receptacles: At least one (1) non-flammable external litter receptacle shall be installed outside of the building in a place accessible to residents, employees and the public. The location and design of any permanent litter receptacle shall be reviewed and approved by the Planning and Building Department and Public Works Agency.
- Street Tree Wells: The eight (8) proposed street tree wells shall contain pea gravel or similar material which minimizes the odor from pet urine and feces. The location, design and materials of any permanent tree wells shall be reviewed and approved by the Planning and Building Department and Public Works Agency.

- Bicycle Racks: Two (2) short term visitor bicycle parking racks shall be placed in the public right-of-way. The location and design of any permanent bicycle racks shall be reviewed and approved by the Planning and Building Department and Public Works Agency.

48. Design Review Committee Review

Prior to Bureau of Planning Sign-off of a Building Permit for Issuance.

The applicant shall submit the proposed project for review by the City of Oakland Design Review Committee to explore design alternatives for the south facing wall of the proposed building.

49. Sound Attenuation from Windows

Prior to Bureau of Planning Sign-off of a Building Permit for Issuance.

The applicant shall submit to the Bureau of Planning a statement on the exploratory techniques used to evaluate the sound transmission through the proposed windows. Efforts should be made to decrease the dBA levels from out-side sources through the windows into the proposed residential units.

Applicant Statement

I have read and accept responsibility for the Conditions of Approval. I agree to abide by and conform to the Conditions of Approval, as well as to all provisions of the Oakland Planning Code and Oakland Municipal Code pertaining to the project.

Name of Project Applicant

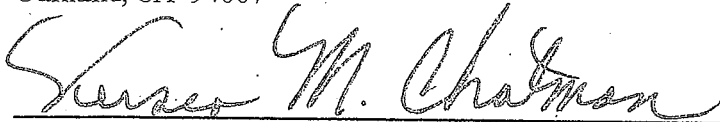
Signature of Project Applicant

Date

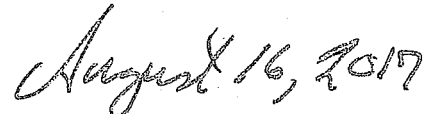
CERTIFICATE OF MAILING

I certify that on August 16, 2017 this decision letter, relating to Case File No. PLN16092-A01 (PLN16092); 605-9th Street; APN: 001-0211-006-00, was placed in the U.S. mail system, postage prepaid for first class mail, and sent to:

Christopher J. Roberts
555 - 10th Street, #426
Oakland, CA 94607



(NAME & SIGNATURE OF PERSON PLACING IN MAIL)



(DATE)