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| Location: | 5315 College Avenue |
| Assessor's Parcel Number: | 014 124901103 |
| Proposal: | Appeal of an administrative approval of an addition and alteration to an existing commercial structure for a childcare (Community Education Civic) activity for 48 students. |
| Applicant: | Mehdi Shafiei |
| Phone Number: | 510-926-7745 |
| Owner: | Mahta Marashi and Mehdi Shafiei |
| Appellant | Jake Allen |
| Case File Number: | PLN22189 |
| Planning Permits Required: | Minor Conditional Use Permit for a Community Education Civic Activity. Regular Design Review for alterations to an existing facility. |
| General Plan: | Neighborhood Center Mixed Use |
| Zoning: | Neighborhood Center Mixed Use – 1 (CN-1) |
| Environmental Determination: | 15301 of the State CEQA Guidelines: Minor alterations to existing facilities; and 15183 – Projects Consistent with a Community Plan, General Plan, or Zoning. |
| Historic Status: | Potential Designated Historic Property (PDHP): OCHS Survey rating: C3 |
| City Council district: | 1 |
| Status: | Approved by the Zoning Manager |
| Staff Recommendation: | Deny appeal |
| Finality of Decision: | Final |
| For further information: | Contact Case Planner Neil Gray at (510) 238-3878 or by email at ngray@oaklandca.gov |

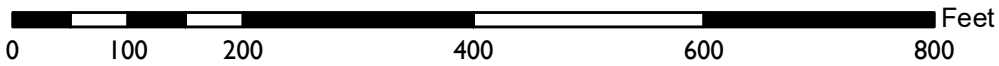
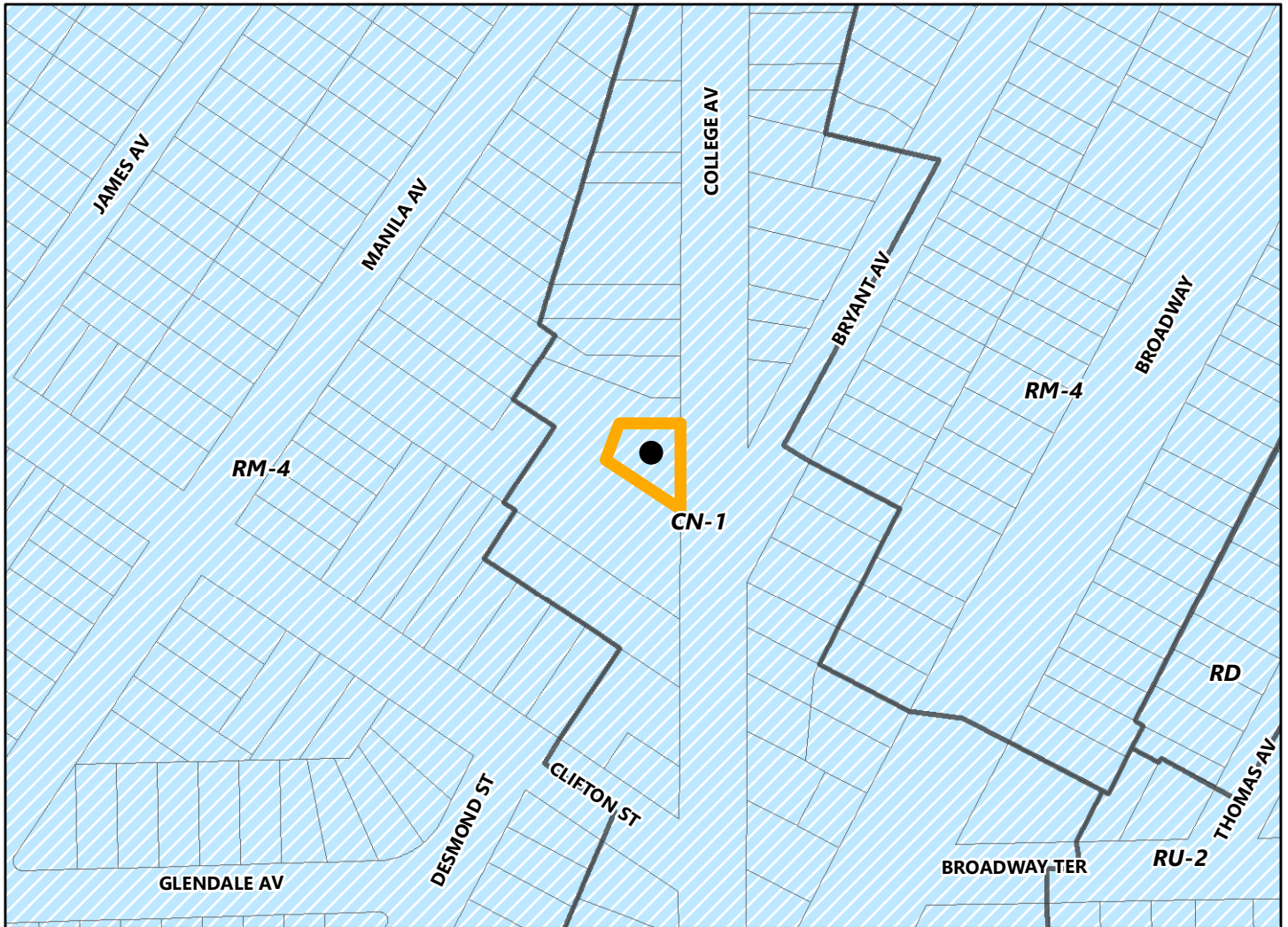
SUMMARY



This item is an appeal of an administratively approved proposal to: 1) lift an existing 2,429 square-foot historic building with a main floor and a basement 8'-3" to create two stories over a basement; 2) build a 2,270 square-foot rear addition; 3) rotate the building to be perpendicular to College Avenue, and 4) establish a childcare center with no more than 48 students and ten employees. The childcare center would operate from 8:00am to 6:00pm, Monday through Friday, and the enrollees would age from one to five years old.

Among other issues, the appellant has expressed concerns that there is insufficient play area for the students; noise would disturb the mental health therapy offices on the property surrounding the site; the City applied inappropriate California Environmental Quality Act (CEQA) exemptions; and there will be harmful effects related to noise, traffic, and student pick-up and drop off.

Staff recommends denial of the appeal. Noise and traffic studies indicate, as conditioned, the childcare center and the office tenants in the adjacent lot should be able to successfully coexist. The studies show that the noise created by the childcare center would be inaudible within the therapy offices, and a plan requiring staggered drop-off times, a crossing guard, a carpool program, and two drop off spaces in front of the site would avoid negative effects on College Avenue traffic flow. Finally, the CEQA exemptions applied by staff are consistent with State law.

CITY OF OAKLAND PLANNING COMMISSION



-  Site Boundary
-  S-13 Combining Zone

Case File: PLN22189
Applicant: Mehdi Shaffiei
Address: 5315 College Avenue
Base Zone: CN-1
Combining Zones: S-13

BACKGROUND

The applicant applied for Minor Conditional Use Permit (CUP) and Regular Design Review approval for the proposed childcare center and addition to an existing building on November 18, 2022. On October 12, 2023, after several discussions with Historic Preservation staff that resulted in the approved design (see **Attachment A** for plans) and preparation of a traffic study (see **Attachment D**), staff approved the proposal with project specific conditions requiring a pick-up/drop-off transportation plan and window details.

The decision letter approving the project is contained in **Attachment B**.

Jake Allen, the owner of the property surrounding the site, submitted a timely appeal on October 20, 2023 (see **Attachment C** for the appeal), which was based on alleged “Erroneous Determinations and Findings of City Staff”.

Staff describes and responds to the appellant’s claims in the “Response to Appeal” section of this report.

PROPERTY AND NEIGHBORHOOD DESCRIPTION

The site is a 3,733 square-foot flat lot fronting College Avenue in the vibrant Rockridge Commercial District in North Oakland. A building on the site was originally constructed in the 1890’s as a home, last used as a law office, and is a Potentially Designated Historic Property (PDHP) with a “C” historic rating by the Oakland Cultural Heritage Survey. The building is an ornate and intact Queen Anne cottage, which is one story over a basement that is partially underground. The L-shaped building has a hip-roofed main body and a gable-roofed wing at the left front and has a porch, front door, and a window recessed under the hip roof. The front façade of the building contains horizontal wood siding, with woodwork details, including spindles over the porch, an assortment of applied diamond-shaped blocks and bullseyes, egg and dart moldings, corner boards and friezes, and scrolled corner brackets and pendants. Other than a missing finial at the top of the gable end facing the street, the only noticeable alteration is the porch railings, which were originally wood and have been replaced with wrought iron.

The property is surrounded by 5295 College Avenue, which is owned by the appellant and contains a clothing store and restaurant facing College Avenue, and several offices for mental health professionals. An existing building on this neighboring site is also a PDHP and has a “Dc” historic rating by the Oakland Cultural Heritage Survey

PROJECT DESCRIPTION

The proposal would: 1) lift the existing 2,429 square-foot building with a main floor and a basement 8’-3” to create two stories over a basement; 2) build a 2,270 square-foot rear addition; 3) rotate the building to be perpendicular to College Avenue, and 4) establish a childcare center with no more than 48 students and ten employees.

The daycare would operate from 8:00am to 6:00pm, Monday through Friday, and the enrollees would age from one to five years old. As conditioned, the applicant will submit for review and approval of the Bureau of Planning and the Department of Transportation a plan to limit traffic disruption on College Avenue and assure the safety of students. The plan will include:

1. Two passenger loading areas in front of the parcel for the use of dropping off and pickup up students during peak hours;
2. A plan to stagger drop off times during morning peak hours to reduce congestion in front of the site;
3. An advertised carpool program to be included in literature for parent and guardians;

4. A crossing guard at the intersection of College and Bryant Avenues during peak hours to assist in street crossing and assure that drop off is not creating double parking on College Avenue; and
5. A requirement for a review and inspection by the Bureau of Planning and the Department of Transportation after six and twelve months of operation to assure the center is adhering to the transportation plan.

With the exception of the wrought iron porch railing, the front façade of the new ground floor would contain a porch, bay window, materials and detailing that match the existing described in the “Property and Neighborhood Description” section, above. The lifted ground floor porch would be converted to a second-floor balcony with wood railing. The rear addition would be two-stories above a partially underground basement, have a flat roof, and cover the rear 24-feet of the site. The applicant proposes to install horizontal wood siding on the exterior of the building to match the existing building.

The application also includes a 1,336 square foot landscaped yard at the southern side and a 446 square foot landscaped yard at the northern side of the parcel, respectively.

GENERAL PLAN ANALYSIS

The site is in the *Neighborhood Center Mixed Use* area under the General Plan’s Land Use and Transportation Element (LUTE). The intent of the LUTE’s *Neighborhood Center Mixed Use* land use classification is: “to identify, create, maintain and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking place, personal and business services, and small scale educational, cultural, or entertainment uses.” The LUTE contains the following Neighborhood Objective: “Provide for healthy, vital, and accessible commercial areas that help meet local consumer needs in the neighborhoods.” The proposal is consistent with the following LUTE Policies:

- Objective N2: Encourage adequate civic, institutional, and educational facilities located within Oakland, appropriately designed and sited to serve the community.
- Policy N12.3 Making Day Care Available. High quality day care should be available throughout Oakland, appropriately sited and designed based on its capacity and attributes. The City should, when appropriate and feasible, require major development projects to provide on and off-site facilities or other means to address potential childcare inadequacies and encourage the inclusion of childcare centers in major residential and commercial developments near transit centers, community centers, and schools.
- Policy T2.2 Guiding Transit-Oriented Development. Transit-oriented developments should be pedestrian oriented, encourage night and daytime use, provide the neighborhood with needed goods and services, contain a mix of land uses, and be designed to be compatible with the character of surrounding neighborhoods.
- Policy N1.8 Making Compatible Development: The height and bulk of commercial development in "Neighborhood Mixed-Use Center" and "Community Commercial" areas should be compatible with that which is allowed for residential development.
- Policy N9.9 Respecting Architectural Integrity: The City encourages rehabilitation efforts which respects the architectural integrity of a building's original style. (see the Historic Preservation Element for more information).

ZONING ANALYSIS

Intent

The proposal is in the Neighborhood Commercial – 1 (CN-1) Zone. The intent of the CN-1 Zone is to maintain and enhance vibrant commercial districts with a wide range of retail establishments serving both short and long term needs in attractive settings oriented to pedestrian comparison shopping. The existing building was originally constructed as a single-family home and is not suitable for retail use, and a childcare facility will bring customers to the restaurants and stores in the Rockridge Commercial District. Therefore, the proposal is consistent with the intent of the District.

Activity

A childcare center falls under the Community Education Civic Activity use classification in Chapter 17.10 of the Planning Code. Per Section 17.33.030 of the Planning Code, the establishment of this activity requires the granting of a Conditional Use Permit (CUP) and meeting the following special findings:

1. That the proposal will not detract from the character desired for the area;
2. That the proposal will not impair a generally continuous wall of building facades;
3. That the proposal will not weaken the concentration and continuity of retail facilities at ground level, and will not impair the retention or creation of an important shopping frontage;
4. That the proposal will not interfere with the movement of people along an important pedestrian street; and
5. That the proposal will conform in all significant respects with any applicable district plan which has been adopted by the City Council.

The proposal must also meet the following General Use Permit Criteria, which is contain in Section 17.134.050 of the Planning Code:

1. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development;
2. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment;
3. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region;
4. That the proposal conforms to all applicable Regular Design Review criteria set forth in the Regular Design Review procedure at Section 17.136.050;
5. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan or development control map which has been adopted by the Planning Commission or City Council.

As described in the decision letter for this project (see **Attachment B**), the project meets these required findings.

Development Standards

The following table describes the applicable and relevant development standards for the CN-1 Zone and how the proposal complies with these standards.

| | Proposed | Required | Compliance Status |
|--|-----------------|---|---|
| Minimum/Maximum Setbacks | | | |
| Minimum Front Setback | 6'4" | 0 ft. | Complies |
| Maximum Front Setback | 6'4" | 10 ft. | Complies |
| Minimum Side Setback | 0 ft. | 0 ft. | Complies |
| Minimum Rear Setback | 0 ft. | 0 ft. | Complies |
| Minimum Facade Transparency for Ground Floor Nonresidential Facilities | 40% | 65% with an exception for unique facilities such as convention centers, gymnasiums, parks, gas stations, theaters and other similar facilities. | Complies (see Note, below) |
| Minimum Parking | 0 spaces | 0 spaces | Complies |
| Minimum Play Area | N/A | N/A | Not regulated in Oakland Planning Code. Determined and enforced by State of California. |

Note: The existing and proposed building qualifies as a “unique facility” because it is a historic building originally designed as a home. The requirement is intended to provide sufficient transparency for storefronts, not a converted Queen Anne home.

ENVIRONMENTAL DETERMINATION

The project is exempt from the California Environmental Quality under two independent sections of the State CEQA Guidelines: 15301 of the State CEQA Guidelines: Minor alterations to existing facilities; and 15183 – Projects Consistent with a Community Plan, General Plan, or Zoning. Staff’s response to Appellant Issue #2, below, provides more detail on how these exemptions apply to the proposal.

APPELLANT ISSUES AND STAFF RESPONSES

As mentioned, Jake Allen submitted a timely appeal on October 20, 2023 (see **Attachment C**). The following lists the issues highlighted in the appeal (in **bold**) and staff responses (in *italic*).

Issue #1: Non-Compliance with state laws and regulations, in violation of Paragraph 3 of Conditions of Approval. A childcare center of the character and size proposed is required to be licensed under California law, and meet regulations specified in Title 22 of the California Administrative Code. The proposed childcare center cannot comply with the Cal. Code Regs. Title 22 Sections 101238.2 and 101238.3, which require that licensed childcare must have at least 35 square feet of indoor space and 75 square feet of outdoor activity per child, based on total licensed capacity. For 48 children, the total outdoor square footage required would be 3600, which covers nearly the entire square footage of the proposed property.

Issue #1a: In finding 2 under Section 17.134.050 – General Use Permit Criteria the city states “The development will have ample room at the site for playground space...” without citation to

how ample outdoor space is determined. The City states there is ample playground space with no justification for doing so.

Staff Response: The Planning Code does not regulate the amount of play space required for a childcare center, and is, therefore, out of the jurisdiction of the City. The regulation cited is enforced by the State of California Community Care Licensing Division during the licensing process. In the making of this finding, staff assessed the general sufficiency of play space at the facility, but the determination of compliance of the play area is the responsibility of the State. The State may also limit the number of students to fewer than 48 based on application of State licensing requirements. This would further lessen the potential for noise and/or traffic impacts that concern the appellant.

Issue #2: Environmental Determination – State code sections allowing for CEQA exemption do not apply to this project. An EIR must be performed to evaluate the environmental impacts of the project.

Staff Response: The proposal is exempted from CEQA per Section 15301 of the State CEQA Guidelines: Minor alterations to existing facilities; and Section 15183 – Projects Consistent with a Community Plan, General Plan, or Zoning. Therefore, an environmental impact report is not required for approval of the proposal.

The CEQA Guidelines lay out a three-tiered review process to ensure that cities take environmental considerations into account as part of the decisionmaking process. Under the first tier, the City determines whether an activity is a “project” under CEQA, which generally includes permitting actions by the City. Under the second tier, the city looks at whether a project is exempt from CEQA. This takes place prior to any formal environmental evaluation. Categorical exemptions are established for classes of projects that the Secretary of the California Natural Resources Agency has found not to have a significant effect on the environment. If a project is categorically exempt, it is not subject to CEQA requirements. The City does not proceed to the third tier of preparing an environmental review document such as an initial study, negative declaration or environmental impact report. No further environmental review is necessary.

Issue #2a: Section 15301 allows for a CEQA exemption for minor alterations to existing facilities. This project is not a minor alteration to an existing facility. Applicant’s design review shows that new construction will add 2,270 square feet to square footage of the buildings, which represents a 93.5% increase in usable square footage. In addition, the City acknowledges that the use of the facility will change significantly from a quiet office building to an active childcare facility. In addition to an entirely new floor, new square footage and insulation is being added to every floor of the buildings. The layout of each of the floors will be converted from individual office use to a more open floor plan to accommodate children and staff. The proposal cannot be considered a minor alteration due to the significant changes in size, layout, and use of the buildings.

Staff Response: Section 15301 of The State CEQA Guidelines states that Section 15301 “consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.”

This section provides examples of the types of projects that fall under this exemption. Subsection (e) includes: Additions to existing structures provided that the addition will not result in an increase of more than 10,000 square feet if the project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and the area in which the project is located is not environmentally sensitive.

The proposed addition is 2,270 square feet - far below the 10,000 square foot threshold

described in the Guidelines; and the site is in a highly urbanized area where all public services and facilities are available for the maximum development permissible under the General Plan and is not at an environmentally sensitive location. Therefore, the Section 15301 exemption is appropriate for this project.

Additionally, staff notes that a separate categorical exemption, Class 3, exempts new construction of up to four commercial buildings not exceeding 10,000 square feet on sites zoned for such uses if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available, and the surrounding area is not environmentally sensitive. Staff have concluded that Class 1 more appropriately applies in this circumstance where the proposal does not demolish the existing building; nonetheless, the Class 3 exemption provides context to show that construction of the size and nature proposed here is well within categorical exemptions that the state has found to not have a significant effect on the environment.

Further, there is substantial evidence that there is no unusual circumstance related to the proposal that would preclude a Categorical Exemption under CEQA. The site is not on the Cortese List of contaminated sites and does not contain any endangered or rare species. It is not unusual to site a moderately-sized childcare center in a Commercial Zone and, as described in staff's response to Issue #2b, the proposal will not create significant noise, traffic, or other impacts.

Issue #2b: Section 15183 allows a CEQA Exemption for Projects Consistent with a Community Plan, General Plan, or Zoning. However, the exemption specifically applies to projects “for which an EIR was certified that do not require additional environmental review.” Based on information presented, we have not received materials that would suggest that an EIR was certified for this project. This CEQA exemption seeks to avoid repetitive environmental reviews. However, no formal environmental review was conducted for major alterations and a novel use of a buildings in the neighborhood in which this project is located. An EIR is critical to understand the effects of the project on noise, traffic, and parking in the neighborhood.

Staff Response: The City certified an EIR for its General Plan Land Use and Transportation Element (LUTE) in 1998. The LUTE identifies policies for utilizing Oakland's land as changes occur and sets forth an action program to implement the land use policy through development controls and other strategies. As described in the “General Plan Analysis” section of this report, the proposal is consistent with the LUTE, including several of the LUTE objectives and policies. Among those is Policy N12.3, stating that high quality day care should be available throughout Oakland, appropriately sites, and designed based on its capacity and attributes.

The LUTE EIR analyzed the environmental impacts of implementation of the LUTE, including issues pertaining to noise and transportation. Among other things, the EIR identified that proposed general plan map changes would allow a mix of commercial and residential uses that could pose noise compatibility problems. The EIR found this to be a less than significant impact due to proposed policies in place as part of the LUTE as well as additional measures identified in the EIR. The mitigation measures identified in the Environmental Impact Report for the 1998 LUTE that would apply to the environmental effects of the proposed project are implemented through Oakland's Standard Conditions of Approval. These uniformly applied development standards substantially mitigate environmental effects under CEQA and were included in the approval letter for this project.

Standard Conditions of Approval #24 and #25 in the approval letter reduce the effects of construction-related noise to less than significant. Staff further recommends the following additional Standard Condition of Approval be added to the decision:

#. Project-Specific Construction Noise Reduction Measures

Requirement: 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 noise impacts on mental health therapy offices. The project applicant shall implement the approved Plan during construction.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Building

Monitoring/Inspection: Bureau of Building

This condition was not in the original approval because it is only applied in projects for which a noise study was prepared during the project review process, and no noise study was prepared prior to approval of the project.

The noise study that was prepared for the operation of the childcare center (see **Attachment E**) indicates that the proposal will fulfill Condition of Approval #26, which requires that the activity comply with the performance standards contained in Chapter 17.120 of the Oakland Planning Code and Chapter 8.18 of the Oakland Municipal Code. Condition of Approval #26 states:

26. 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

Approval of the project is conditioned, through the Oakland standard conditions of approval, upon the applicant's adherence to the City's interior and exterior noise limits. In other words, the project is prohibited from operating above noise performance standards and if exceedances are identified must alter operations until noise reduction measures have been installed. The use of categorical exemptions with conditions requiring compliance with noise performance standards have been upheld in court. See *Walter v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, where neighbors unsuccessfully challenged the City's reliance on categorical exemption under CEQA for the issuance of a conditional use permit for a carwash adjacent to residential uses. The challengers in that case similarly argued that a condition of approval requiring adherence to City noise limits violated CEQA's requirement that environmental impacts, if any, be reviewed and mitigated before approval of the land use project. The court rejected the argument, finding that the imposition of the condition was appropriate to ensure that any violation of the noise ordinance would be corrected.

The noise study does show that a small area behind the neighboring retail building at the southern property line at the edge of the playground may reach a noise level of 66 dB when the maximum allowable receiving sound level limit over 20 cumulative minutes in a 1-hour time period is 65 dB in a commercial zone and 60 dB in a commercial zone for simple tone noises, including noise primarily consisting of speech (see Figure 10 of the noise study in **Attachment E**). Note that the receiving noise level at the office buildings is well below the maximum. Staff has informed the applicant that the City's Code Compliance Division will monitor this area to assure the noise does not exceed noise standards. Alternatively, the applicant can install an

eight-foot tall, approximately 25-foot-long wall at the location with the design described in the noise study. Discussions with the applicant indicate that they are amenable to the latter option. Figure 11 of the study indicates that installation of the wall will bring the noise well below the maximum.

The potential for noise exceedances identified in the noise study is not of a significant degree, or of a certain level of certainty, to conclude that the project will have a significant environmental effect such that a categorical exemption does not apply. The majority of receiver locations shown in the noise study showed that sound levels were predicted to be between 42 and 50 dB, well below Oakland's noise performance standards. The locations showing potential for noise exceedances are not areas where it is anticipated persons would be exposed to excess noise such that a significant impact is identified as a certainty. Again, the City's existing conditions of approval prohibit such exceedances from occurring and it is the applicant's obligation to ensure compliance for the life of the project

*Traffic impacts for the project are analyzed in **Attachment D**, which shows that there are no CEQA-related impacts anticipated related to traffic during operation of the facility. Established California case law states that parking is not considered an impact under CEQA.*

Issue 2c: Cal. Public Resources Code Section 21151(a) specifically requires an EIR when a proposed project “may have a significant effect on the environment.” *Stanislaus Audubon Society, Inc. v. Stanislaus County* (1995) 33 Cal.App.4th 144, 151 states that where substantial evidence in the record supports a “fair argument” the project may have significant environmental effect, an EIR is required even if other substantial evidence indicates there will not be such an effect.

Issue 2d: Cal. Code Regs Title 14 Section 15382 defines a “significant effect” under CEQA as “a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project,” which includes a project’s effects on... ambient noise.

The Appellant cites to the wrong standard. The Public Resources Code section appellant cites provides the standard for when an Environmental Impact Report must be prepared, absent the availability of an applicable categorical or statutory exemption. Section 21151(a) provides that where a project may have a significant effect on the environment, it is not appropriate to prepare a negative declaration. Similarly, Appellant cites to a case that pertains to a local agency decision to prepare and certify a negative declaration. Neither the cited code provision nor the case analyzes the standard appropriate for a local agency to determine whether a categorical exemption to CEQA applies or the appropriateness of tiering off of a previously prepared EIR.

*In contrast, as stated by the California Supreme Court, where a project meets a categorical exemption, the potential for a significant environmental effect is not alone sufficient to trigger the unusual circumstances exception and thus require further environmental review. (See *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1097-98.) “[A]ny project that comes within a class 1 categorical exemption has been inherently determined by the Secretary of Natural Resources Agency not to have significant environmental impacts.” (*Arcadians for Environmental Protection v. City of Arcadia* (2023) 88 Cal.App.5th 418, 432.) If an agency properly determines that an exemption applies, the project is excused from environmental review. (Guidelines Sec. 15002(k)(1).)*

A city can rely on a CEQA exemption where substantial evidence supports the application of the exemption, and substantial evidence supports that an exception to the exemption does not apply.

As discussed above, substantial evidence supports application of the class 1 categorical exemption since the project consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing private structures involving negligible or no expansion of existing or former uses. The class 1 exemption specifically includes interior alterations involving interior partitions as well as additions to existing structures provided that the expansion not exceed 10,000 square feet in areas where the project is served by public services. While not originally identified, the proposal also meets the class 3 exemption for the conversion of small structures.

No unusual circumstances that would except application of the exemption has been identified. A potentially significant environmental effect itself does not constitute an unusual circumstance. The siting of a childcare center in a commercial district is also not an unusual circumstance. An unusual circumstance exists where there is a showing that the project has some feature that distinguishes it from others in the exempt class. No such feature exists here. Similar day care facilities exist throughout the City and are often located inside repurposed single-family homes. In many circumstances these day care facilities in residential zones as well.

The City also relies on Public Resources Code Section 21083.3(b)/CEQA Guidelines Section 15183, which state that a certified EIR for a general plan may be used to eliminate environmental review for later development projects that are consistent with that general plan. The proposed project is consistent with the Oakland General Plan Land Use and Transportation Element. Under Section 21083.3, CEQA review of a later project is limited to significant environmental impacts that are “peculiar to” the affected project that were not addressed as significant impacts in the previous EIRs. No such circumstance is present here: both noise and transportation related impacts were studied extensively in a systemic manner, and identified impacts were used to develop the City’s Standard Conditions of Approval.

Issue 3: The City cites Oakland Planning Code Section 17.33.030 to support building use for Limited Child Care Activity.

- a. Oakland Planning Code Section 17.10.150 specifically notes that Limited Child-Care Civic Activities includes the provision of day-care services for fourteen (14) or fewer children... When the project was originally presented, childcare was to be offered to six children in the home. The project has now greatly exceeded what is actually permitted in the CN-1 Zone.**
- b. CN-1 Zone permits Limited Child-Care Activities, with the caveat that the activities are only permitted upon the granting of a Conditional Use Permit when located on the ground floor of a street fronting.**

Staff Response: The project was approved as a Community Education Civic Activity as described in the notice and approval letter and not as Limited Child-Care. This activity is conditionally permitted in the CN-1 Zone.

Issue 4: City staff notes that in accordance with Section 17.134.050, the location, size, design, and operating characteristics of the proposed development will be compatible with and not adversely affect the livability or the appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to... the harmful effect, if any, upon the desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to other relevant impacts of development.

Issue 4a: A childcare center serving 48 children will present a major disruption to existing neighboring uses, which includes the tenancy of approximately 40 psychotherapists who

have offered mental health services for decades from the abutting buildings. These professionals offer an essential service to the community, and require a calm, controlled, and quiet environment for their clients.

*Staff Response: As described in staff's response to Issue 2b, the proposal will meet the City's performance standards for noise. The noise study (see **Attachment E**) indicates that the project noise will be inaudible inside the offices:*

The sound level inside offices on the adjacent property will be a function of the sound level outdoors and the noise reduction provided by office windows facing the parking lot. Building 5305/5309/5313 windows appear to have double-hung wood frames with single glazing; this type of assembly provides about 15 dB of noise reduction, so interior noise level due to traffic is about 40 dB average and 55 dB maximum. The project noise will be about 10 dB less than the traffic noise and therefore inaudible (underline added by staff for emphasis).

Therefore, the calm, controlled, and quiet environment within the offices will be preserved during operation of the childcare facility.

Note that the text: "the harmful effect, if any, upon the desirable neighborhood character" is no longer part of this requiring finding, because it was deleted as part of the Council approval of the Housing Element-related code amendments that became effective on October 30th, 2023.

Issue 4b: The traffic analysis has not been made available to us, and we reserve the right to review and comment on such a study. The proposed project seeks to serve 48 children, without offering any staff parking and only two pick-up and drop-off street parking spaces. During rush hour when caregivers need to drop off their children, it is unlikely that there will not be issues of congestion, illegal parking, and danger to children who must cross the street to get to school. The proposed crossing guard is being asked simultaneously to direct traffic, prevent illegal parking, and escort children across a very busy intersection.

Staff Response: The following is the condition staff placed on the project regarding a transportation plan:

36. Transportation Plan

Requirement: The applicant shall submit and have approved a transportation plan to limit traffic disruption on College Avenue and assure the safety of students and other patrons on the business. The plan shall include:

- A. Two passenger loading areas in front of the parcel for the use of dropping off and pickup up students during peak hours.*
- B. A plan to stagger drop off times during morning peak hours to reduce congestion in front of the site.*
- C. An advertised carpool program to be included in literature for parent/guardians.*
- D. A crossing guard at the intersection of College and Bryant Avenues during peak hours to assist in street crossing and assure that drop off is not creating double parking on College Avenue.*
- E. A review and inspection by the Bureau of Planning and the Department of Transportation after six and twelve months of operation to assure the center is adhering to the transportation plan.*

When Required: Prior to Issuance of Building Permit

Initial Approval: Bureau of Planning/Department of Transportation

Monitoring/Inspection: Bureau of Building

The City's Department of Transportation reviewed the above condition and determined it sufficient for the operation. Staff believes that the crossing guard will not be overwhelmed with drop-off car traffic, particularly with the requirements to stagger drop off times, the establishment of a carpool program, the proximity of the Rockridge BART Station and AC Transit stops, and residential neighborhoods within walking distance. Staff inspections after six and twelve months will assure that the condition is adhered to.

Issue 4c: The neighborhood is currently relatively quiet, filled with small commercial stores and office buildings. A noise and vibration study to determine the disturbance that will be generated by 48 children must be conducted, particularly in light of the long-standing use of psychotherapy offices in the buildings next door. There is insufficient evidence to show that the sound-rated partitions will be sufficient to keep noise at a manageable level, and the landscaping is unlikely to prevent the noise of children outside of the buildings. Findings of City staff do not appear to take into account the scale of the project.

Staff Response: As described in staff's response to Issue 2b, the proposal will meet the City's performance standards for noise. The noise study (see **Attachment E**) indicates that project noise will be inaudible inside the offices.

Issue 4d: The neighboring buildings currently hold an easement on the property for emergency egress, which will be negatively impacted by construction and the proposed change in elevation of the buildings. The project will interfere with the use of an existing and critical easement, and the applicant may threaten to attempt to extinguish the easement again.

Staff Response: Any dispute regarding a private easement is a civil issue between the two property owners and is not relevant to this application.

KEY ISSUES AND IMPACTS

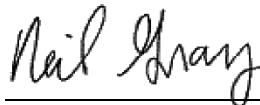
As addressed in the “Appellant Issues and Staff Responses” Section of this report, staff believes, as conditioned, the childcare center and the office tenants in the adjacent lot would successfully coexist. Traffic and noise analyses indicate that the project will not create CEQA Impacts, and a Condition of Approval requiring a drop off area, a crossing guard, a carpool program, and staggered drop off times will assure a safe operation that will not impede traffic on College Avenue. The noise study also indicates that student play in at the site will be inaudible within the offices. The CEQA exemptions applied by staff are consistent with State law.

Therefore, staff recommends denial of the appeal with the additional Standard Condition of Approval described in staff’s response to Issue 2b, above, related to construction noise and sensitive receptors.

RECOMMENDATIONS:

1. Affirm staff’s environmental determination.
2. Deny the appeal with the additional Standard Condition of Approval described in staff’s response to Issue 2b.

Prepared by:



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Reviewed by:



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Approved for forwarding to the Planning Commission:



Ed Manasse, Deputy Director
Bureau of Planning

ATTACHMENTS:

- A. Project Plans
- B. October 12, 2023, Approval Letter
- C. October 20, 2023, Appeal
- D. November 20, 2023, Traffic Impact Study
- E. January 2, 2024, Preschool Play Yard Noise Study
- F. Additional input/peer reviews from Appellant sent to staff 2/9/23