

Project Title:	The Creekside
Location:	5132 Telegraph Avenue (see map on reverse)
Assessors Parcel Number:	014-1226-013-00
Proposal:	Demolish an existing commercial building and construct a new mixed-use development containing 105 residential units and approximately 7,200 square feet of commercial space.
Applicant:	George F. Hauser
Contact Person/Phone Number:	George F. Hauser/ (415) 519-5398
Owner:	Daniel S. Jun
Planning Permits Required:	Regular Design Review to allow new construction; General Plan Determination to determine if the project is in conformance with the written goals and policies of the General Plan; Interim Conditional Use Permit to apply the density policies of the General Plan to the project; Conditional Use Permit to apply the parking standards of the S-12 zone; and Minor Variances to allow: 1) Maximum building height of 65 feet where 40 feet is the maximum allowed in the C-28 zone (along Telegraph Avenue); 2) Maximum building height of 45 feet where 25 feet is the maximum allowed in the R-40 zone (along Clarke Street); 3) Three-foot front yard setback where 20 feet minimum is required in the R-40 zone (along Clarke Street); and 4) 105 off-street parking spaces where a minimum of 132 spaces are required.
General Plan:	Neighborhood Center Mixed Use (western portion of site); Mixed Housing Type Residential (eastern portion of site)
Zoning:	C-28 Commercial Shopping District Zone (western portion of site); R-40 Garden Apartment Residential Zone (eastern portion of site)
Environmental Determination:	An environmental determination has not yet been made. An environmental analysis is being conducted.
Historic Status:	Not a Potential Designated Historic Property; Survey rating: X
Service Delivery District:	2
City Council District:	1
Date Filed:	February 22, 2007
Status:	The project was previously reviewed by the Design Review Committee at its April 25, 2007, meeting. The project will be considered by the full Planning Commission at a future public hearing.
Action to be Taken:	Meeting concerning the design of the proposal.
Staff Recommendation:	Take public testimony concerning the design of the proposal and provide direction to staff and the applicant.
Finality of Decision:	No decision will be made on the project at this time.
For Further Information:	Contact the case planner, Darin Ranelletti , at (510) 238-3663 or by e-mail at dranelletti@oaklandnet.com .

SUMMARY

The applicant proposes to construct a new mixed-use development containing 105 residential units and approximately 7,200 square feet of commercial space at 5132 Telegraph Avenue located at the intersection of Telegraph Avenue and Claremont Avenue in the Temescal neighborhood of North Oakland.

The project was previously reviewed by the Design Review Committee at its April 25, 2007, meeting. Please refer to the staff report for the April meeting for more information concerning the project, project site, relevant General Plan and zoning regulations, status of the environmental analysis of the project, and key design issues associated with the project. At the April meeting, members of the Committee made a number of comments and recommendations concerning the project (see "Results from Previous Meeting and Revisions to Project" section below).

The purpose of today's meeting is to hear comments from the public and the Design Review Committee concerning the design of the proposal. No action will be taken at today's hearing. The decision on the project will occur at a future hearing in front of the full Planning Commission.

RESULTS FROM PREVIOUS MEETING AND REVISIONS TO PROJECT

Below is a list of the design-related issues and recommendations identified by members of the Design Review Committee and/or the staff report at the April 25, 2007, meeting, the applicant's response to each item, and staff's response to the applicant's response.

1. **Density:** The project was too dense. The number of residential units should be reduced.

Applicant's Response: The number of residential units has been reduced from 115 to 105. The project still exceeds the number of units allowed by the zoning and General Plan designations for the site as they are currently mapped. (Note: More information concerning the zoning and General Plan designations for the site is contained in the April 25, 2007, staff report.) The applicant is now seeking a General Plan Determination from the City, in accordance with the Oakland Planning Code, to determine that the project, including the proposed density, is in conformance with the written goals and policies of the General Plan despite being in conflict with the General Plan land use designations as they are currently mapped for the site.

Staff's Response: The General Plan land use map is generalized, and does not necessarily depict the accuracy of each parcel or very small land areas. Applying the density policies of the Neighborhood Center Mixed Use land use designation (currently mapped over the western portion of the site) to the eastern portion of the site currently mapped as Mixed Housing Type Residential would result in a maximum of 146 units allowed on the site. In order to approve the General Plan Determination sought by the applicant, the City would need to make a finding that the existing average density of the surrounding land uses is different from that shown on the General Plan land use map and is appropriate for the area in question and that the project is in conformance with the written goals and policies of the General Plan. Staff points out that even with the reduced number of units in the current proposal, the project density still exceeds the density of other recently approved development projects along Telegraph Avenue which are generally considered to be higher in density than the density of the surrounding land uses. It is questionable if the applicant would be able to demonstrate, as required for the General Plan Determination, that the existing average density of the surrounding land uses exceed the density allowed by the Mixed Housing Type Residential designation, the designation which the applicant

which the applicant is seeking to exceed, such that applying the density limitations of the Neighborhood Center Mixed Use designation to the entire site would be more consistent with the density of the surrounding land uses. If the City is unable to make the required findings for granting the General Plan Determination, a total of 85 units would be allowed with the granting of an Interim Conditional Use Permit and a Major Variance. As staff pointed out in the April 2007 staff report, the standards for granting a Major Variance are high. It is questionable whether the applicant would be able to demonstrate that the findings for the Major Variance can be made. The Planning Commission regularly grants Interim Conditional Permits for projects to exceed the density allowed by the zoning and apply the density policies of the General Plan land use designations as mapped on the General Plan land use map. If the Planning Commission is able to make the findings for an Interim Conditional Use Permit but not for a Major Variance or General Plan Determination, a maximum of 76 units would be allowed on the site.

Staff points out that under the current draft of the proposed new land use regulations for the Temescal area currently being reviewed and discussed, the entire project site would be redesignated Neighborhood Center Mixed Use in the General Plan but the maximum number of units on the site under the proposed new zoning would be 71 units, or 92 units for a mixed-use development incorporating a specified community benefit.

2. **Massing:** The project appeared too massive. The project should be broken up to reduce its visual mass.

Applicant's Response: The top (sixth) floor of the 5140 Claremont building has been set back 25 to 40 feet from the front of the building so that the building appears to be five stories tall (55 feet) from the street. The southern portion of the 5120 Telegraph building facing Telegraph Avenue has been set back 25 feet from Telegraph Avenue to create a plaza area in front of the building.

Staff's Response: These changes break up the mass of the project vertically and horizontally as seen from Telegraph Avenue and Claremont Avenue. Since the 5140 Claremont building appears shorter than the 5120 Telegraph building and a portion of the 5120 Telegraph building is set back considerably from the street, the project breaks up into three visual sub-volumes or buildings consisting of 5140 Claremont, the northern portion of 5120 Telegraph, and the southern portion of 5120 Telegraph.

3. **Building Height:** The proposal was too tall. The height should be reduced from six stories along Telegraph Avenue and Claremont Avenue to five stories (with the fifth floor set back from the front of the building). The top (fourth) floor along Clarke Street should be set back from the front of the building.

Applicant's Response: The height of 5120 Telegraph remains largely the same (six stories at approximately 65 feet tall). The top (sixth) floor of 5140 Claremont has been set back 25 to 40 feet from the front of the building so that the building appears to be five stories tall (55 feet) from the street. The overall height of the building remains largely unchanged (approximately 65 feet tall). The top (fourth) floor of 5115 Clarke has been set back eight to 11 feet from the front of the building along Clark Street thereby reducing the height at the front of the building to 34 feet and reducing potential shadow impacts on FROG Park. Beyond the eight- to 11-foot top-story setback the building rises to approximately 45 feet (largely unchanged from the previous proposal). The applicant continues to seek a Variance to allow the proposed building heights.

Staff's Response: The revised design still exceeds the height recommended by the Design Review Committee. The Committee recommended that the height be reduced from six stories along Telegraph Avenue and Claremont Avenue to five stories (with the fifth floor set back from the front of the building). The revised design for 5115 Clarke may be appropriate; by incorporating the upper-story setback, the project's visual height from the street is reduced. The height of 5115 Clarke is now slightly lower than the height of the adjacent Civiq building on Clarke Street (34 feet for 5115 Clarke versus 37 feet for Civiq).

4. **Unit Sizes:** One member of the Committee felt there were too many small studio units. One Committee member felt the smaller units would provide more affordable housing opportunities.

Applicant's Response: The number of studio units has increased from 11 units (approximately 10 percent of the total) to 24 units (approximately 23 percent of the total).

Staff's Response: The revised design continues to provide a range of unit sizes including studio, one-, two-, and three-bedroom units.

5. **Interior Passageway:** The interior passageway proposed between the two buildings fronting on Telegraph Avenue and Claremont Avenue was unnecessary and a potential security risk.

Applicant's Response: The passageway has been eliminated.

Staff's Response: The revision is consistent with the recommendation of the Design Review Committee.

6. **Units Fronting Greenway:** The applicant should explore incorporating residential units that front on the project's greenway to be located adjacent to the public walkway being installed as part of the Civiq project on the adjacent property to the east.

Applicant's Response: The revised design continues to locate the wall of the above-ground parking garage along the project's greenway and the Civiq walkway. The applicant argues that locating residential entries on the greenway will have the effect of privatizing the greenway because the greenway (and presumably the Civiq walkway) would appear private to the casual user due to the presence of private residential entries. This would create a tension, the applicant argues, between the occupants of the units, who will be looking for privacy, and pedestrians. In addition, the applicant argues that incorporating units along the greenway will further reduce the amount of parking in exchange for residential spaces of very limited quality.

Staff's Response: There are narrow public spaces and walkways all over the world bordered by entries to private residences where the public nature of the space is not compromised. Staff believes locating entries to residential units along the greenway would enhance safety and security along the greenway and Civiq walkway without adversely affecting the public nature of the walkway. The Civiq walkway will be adequately identified to the pedestrian as a public walkway so that the walkway user will not be confused as to whether the walkway is public or private. The principles of Crime Prevention Through Environmental Design (CPTED), endorsed by the Oakland City Council, maintain that the security of a public area is enhanced with natural surveillance. According to CPTED principles, public spaces should be designed so that users feel that

they will be observed if doing something illegal. Locating units along the walkway would allow the occupants to “keep an eye” on the walkway. This surveillance would reduce crime and enhance safety. The privacy of the occupants of the units fronting the walkway can be maintained by providing a minimal vertical transition from the walkway to the units via raised entries or stoops. From staff’s perspective, the revised design is even less successful than the previous design in terms of safety on the walkway. In the previous design, the length of the garage wall fronting the greenway was less (approximately 60 feet in the previous design versus approximately 140 feet in the revised design) due to the presence of the interior passageway leading to Telegraph Avenue, and the height of the parking garage wall was less (one story on the previous design versus one and one-half stories in the revised design) because one story of the two-level garage was underground whereas now only one-half of a story of the two-level garage is underground. The proposed upper-story units fronting the walkway (at a raised height) would not be as successful as ground-level units fronting the walkway, in terms of security, because ground-level units with entries would allow occupants to enter and exit via the walkway (adding to the surveillance of the walkway) and the walkway would be less immediately visible from upper-story units.

7. **Building Entrances:** The pedestrian entrances to the three buildings should be prominent and easily identifiable from the street.

Applicant’s Response: The entrance to 5120 Telegraph is now accessed via the new plaza area located in front of the southern portion of the building and is identified by large address lettering on the building. The entrances to the other buildings appear largely unchanged.

Staff’s Response: The revised entrance to 5120 Telegraph appears successful. The design would benefit from incorporating relatively minor design elements (for example, through the use of projections and signage) to the other entrances to enhance identification of the entrances. These changes could be applied during the preparation and review of the construction drawings.

8. **Storefront Design:** The proposed storefront design should be revised to include (a) a clear visual distinction/demarcation between the ground floor and upper floors, (b) high-quality, durable materials (e.g., stone, tile) along the base of the building, (c) 12- to 15-foot finished ceiling heights, and (d) three- to five-foot tall transom windows above the storefront windows.

Applicant’s Response: The ground floor is distinguished from the upper floors through a signage band, podium canopy, and change in materials. The base of the building would be concrete. The ceiling height of the commercial space increased from 12 and one-half feet to sixteen feet. Transom windows have been incorporated.

Staff’s Response: The storefront design has improved. Staff would need to see detailed, labeled elevation drawings to further evaluate the revised design.

9. **Clarke Street Setback:** There should be a setback along Clarke Street equal to the average setback along that street.

Applicant’s Response: The setback along Clarke Street has been increased from no setback to three feet.

Staff's Response: The revised setback along Clarke Street may be appropriate. A three-foot setback would allow sufficient room for landscaping at the base of the building and would serve as a transition from the adjacent Civiq building, which will be set back approximately 10 feet near the subject site, to the existing apartment building located on the corner of Claremont Avenue and Clarke Street, which has no setback.

10. **Loading Dock:** The Committee recommended that the loading dock area off Clarke Street not be enclosed and incorporated into the building, as recommended by the staff report, because doing so would add additional building mass to the project.

Applicant's Response: The loading area off Clarke Street remains uncovered.

Staff's Response: Staff supports the current design of the uncovered loading area as long as it is visually obscured from the street by being enclosed on all sides.

11. **Parking:** Not enough parking was provided for the residential units. At least one parking space for every residential unit should be provided.

Applicant's Response: The parking ratio increased from approximately 0.92 spaces per unit to one space per unit. There would be a total of 105 parking spaces in the project serving 105 residential units and 7,200 square feet of commercial space. The Zoning Regulations would require 120 spaces for the residential units (one space per unit for the units in the C-28 zone and one and one-half spaces per unit for the units in the R-40 zone) and 12 to 24 spaces for the commercial space depending upon the type of commercial use proposed for a total of 132 to 144 required parking spaces. The applicant continues to seek a Variance for parking and is proposing a managed parking system where the parking could be used for commercial parking during business hours when there is less demand for residential parking.

Staff's Response: Some degree of parking variance may be appropriate at the site given its proximity to transit. However, with the level of development occurring in the vicinity of the site, available on-street parking is likely to be scarce in the neighborhood. The revised design replaces the previously proposed one underground parking level and one above-ground parking level with one-half underground parking level and one and one-half above-ground levels. A third, underground, parking level could accommodate additional off-street parking in the project. Obviously, such an alternative would involve substantial additional costs.

12. **Creek Culvert:** The applicant should explore opening a portion of the underground creek culvert on the site so that the water is visible from the surface.

Applicant's Response: The applicant has explored the considerations involved with opening a portion of the underground creek culvert on the site and has submitted engineering and legal opinions to argue that opening up the culvert would be problematic due to liability, structural, cost, processing, aesthetic, maintenance, security, hydrological, and flooding concerns. These concerns are listed below.

Liability. The applicant's attorney states the following concerning liability implications:

There is a significant potential for liability on the part of the owner, the City of Oakland and any governmental agency that

participates in the decision to open this ancient culvert for any reason.

As a general rule the owner of property owes no duty to mere trespassers to keep property in a safe condition, but the maintenance of an attractive nuisance with knowledge of owner, alluring to children but inherently dangerous to them, constitutes negligence out of which liability will arise for injuries resulting from such negligence.

Here the condition that would result from opening the culvert would present a falling and drowning danger. It could provide a potential area for vagrants and others that could pollute, damage or cause drainage issues with the culvert. Most importantly, in the event of a significant rainfall incident where the waterfall was high, adventurous persons might attempt to traverse, swim in, or even boat in the culvert. This would be an extreme hazard since there are no other openings in the system. As such, the risks associated with opening this drainage feature are likely to create hazardous conditions that will eventually result in injury to persons or property, and potential deaths are foreseeable. (Letter from Gordon & Rees, LLP, dated May 8, 2007)

Structural & Cost. The applicant's structural engineer states the following concerning structural and cost implications:

This approach would require demolishing this section of the existing site culvert, excavating along the open length and constructing an entirely new open concrete channel. In order to maintain the natural flow this channel would require retaining walls ranging from 14'-6" to 17'-0" feet [sic] deep.

The shoring, demolition and construction activities associated with this option would be extremely costly and the costs would be increased because the culvert would need to remain operational throughout. (Culvert report by Santos & Urrutia, Inc., dated May 8, 2007)

Processing. The applicant's civil engineer states the following concerning processing implications:

The approval processing for day-lighting the culvert would require acceptance by numerous public agencies, including City of Oakland Public Works Agency, Alameda County Public Works Agency, California Department of Fish and Game, U.S. Army Corps of Engineers, and the San Francisco Bay Regional Water Quality Control Board (RWQCB). The process would be time-consuming and costly, and any of these agencies could require costly mitigation or modification that could override an aesthetically-pleasing result. (Technical Memorandum by TODD Engineers, dated May 9, 2007)

Aesthetics. The applicant's civil engineer states the following concerning aesthetic concerns:

The resulting open culvert would also be approximately 10' wide and 20' below-grade, which would present a limited and largely overhead view of the water. Safety concerns also necessitate that a relatively high safety barrier be constructed to prevent persons from falling into the open culvert (see Figure 3) [attached to this report as Attachment B]. The safety barrier would further constrain the view. Clearly, viewing a concrete culvert through a barrier may not be consistent with the idealized motion of day-lighting a creek. (Technical Memorandum by TODD Engineers, dated May 9, 2007)

Maintenance. The applicant's civil engineer states the following concerning maintenance implications:

A major concern of day-lighting the culvert is the tendency for debris to be thrown into the culvert. Large items could become lodged in the culvert and cause a reduction in flow capacity. Also, if items thrown into the culvert are not extracted, the aesthetic purposes of the culvert would be marred. Typical flows in the culvert are on the order of a few inches, so flow could not be relied upon to clear the debris. (Technical Memorandum by TODD Engineers, dated May 9, 2007)

Security. The applicant's civil engineer states the following concerning security implications:

An opening in the culvert presents the obvious enticement to some people to enter the culvert. This would be difficult but not impossible and were it to happen there is the attendant prospect of vandalism and injury. (Technical Memorandum by TODD Engineers, dated May 9, 2007)

Hydrology. The applicant's civil engineer states the following concerning hydrological implications:

From a hydrologic standpoint, exposing the culvert presents several areas of concern. First, there would be an increased prospect for turbulent flow in the vicinity of the exposed section, particularly when pressurized flow conditions occur during and after large rainfall events. The turbulent flow has the consequence of reducing the capacity of the culvert. Additionally, a rise in head under pressurized flow conditions would promote accumulation of floatable debris in the exposed segment. In addition to decreasing the flow capacity of the culvert, turbulent flow would create eddies resulting in siltation within the culvert. These issues would be exacerbated if the exposed segment had a different configuration relative to the upstream and downstream culvert segments (e.g., if the exposed culvert segment were widened to make for a more pleasing view

of the water). (Technical Memorandum by TODD Engineers, dated May 9, 2007)

Flooding. The applicant's civil engineer states the following concerning flooding implications:

Localized flooding would be more immediate and widespread if the culvert was exposed, because rising water would encounter less friction than under the existing, closed conduit conditions. A flooding event could result in a citation by the RWQCB for an un-permitted waste discharge. This culvert was created to control the undesirable impacts of flooding that periodically occur. Because the culvert is a closed system, water flow into the culvert is restricted during flood conditions (when the culvert is full). Although this condition may result in localized flooding all over the tributary area, it could prevent large, extremely damaging flows of water at the lower end of creek. Opening the culvert changes this dynamic and allows a more rapid outflow of water into the surrounding area under flood conditions. This could conceivably inundate the adjacent important intersection of Telegraph Avenue and 51st Street during times when emergency access is critical. It could also result in public and private property damage to cars, buildings, streets, utilities and other property and it could also result in injury and death. (Technical Memorandum by TODD Engineers, dated May 9, 2007)

In the revised proposal, the applicant is not proposing to open up the culvert. Instead, the applicant has set back the southern portion of 5120 Telegraph to create a plaza area over a portion of the underground culvert thereby creating a public space and preserving the possibility of day-lighting a portion of the creek in the future. The "faux creek" proposed in the previous design located in the greenway running along the Civiq public walkway has been eliminated and replaced in the revised design by a water feature located in the 5120 Telegraph plaza and a pavement design over the underground culvert that acknowledges the presence of the creek below.

Staff's Response: Staff acknowledges that there are a number of issues that affect the feasibility of opening up the culvert. Staff believes it may be possible to design the open culvert in a way that addresses the aesthetic concerns and provide for an exciting amenity. A portion of the side retaining walls bordering the creek, for example, could be terraced and landscaped to provide a rich visual element in the plaza. Certainly, such a design would be costly. Considering the alternative, simply opening up a portion of the culvert with deep retaining walls on either side of the creek, it is questionable whether the aesthetic value gained by opening up the culvert would exceed the costs associated with making it happen.

13. **Streetscape Improvements:** The applicant should be required to implement the streetscape improvements at the intersection of Telegraph Avenue and Claremont Avenue identified in the Telegraph Avenue Streetscape Improvements Project as part of the project.

Applicant's Response: The applicant is not proposing to implement the reconfigured intersection. The applicant argues that the new proposed plaza area in front of the southern portion of 5120 Telegraph will more successfully fulfill the function of the reconfigured intersection, and the intersection plaza would compete with and dilute the effect of the 5120 Telegraph plaza, create an undefined pedestrian experience, and undermine the viability of the proposed commercial space because pedestrians would not be required to walk immediately adjacent to the commercial space. The applicant believes that the amount of pedestrian traffic in the area will not support two plazas and argues that the cost of the intersection improvements is substantial and can not be supported by the project.

Staff's Response: The intersection reconfiguration and the proposed 5120 Telegraph plaza would not fulfill the same function and would not compete with each other. The intent of the intersection reconfiguration would be to reduce traffic speeds and provide a more pedestrian-oriented environment, whereas the purpose of the 5120 Telegraph plaza would be to reduce visual building bulk and provide an outdoor area for the adjoining commercial space. The reconfigured intersection would enhance the pedestrian environment of the area thereby attracting pedestrians to the area and contributing to the economic vitality of the commercial uses. Staff anticipates a noticeable increase in pedestrian traffic in the area after all the proposed and approved development projects in the vicinity are completed and occupied. The intersection reconfiguration would mitigate the effect of the additional vehicle traffic associated with the project and support pedestrian travel in the area. Staff will continue to recommend that the applicant be required to implement these improvements as part of the project's frontage improvements.

14. Miscellaneous Zoning Standards: The project should be modified to comply with a variety of zoning standards related to courts and parking design.

Applicant's Response: The revised design complies with these zoning standards. In accordance with the Zoning Regulations, the applicant is now seeking a Conditional Use Permit to apply the parking standards of the S-12 zone to the project.

Staff's Response: At the time of this report writing, staff had not received floor plan drawings of the parking garage at a conventional scale to confirm compliance with the parking standards. From a cursory review of the plans submitted, it appears the revised proposal still does not provide for three feet between the side of a parking space and an adjacent wall as required by the Zoning Regulations.

CONCLUSION

Staff recommends that the Design Review Committee take public testimony on the design of the proposal and provide direction to staff and the applicant on the key design issues surrounding the proposal. Overall, staff feels certain aspects of the revised proposal are an improvement over the previous proposal but not all of the concerns of the Committee or staff have been adequately addressed, particularly concerns related to building heights, unit entries on the greenway, and the intersection improvements at Telegraph Avenue and Claremont Avenue. Staff is seeking specific feedback from the Committee on these three issues, along with feedback on density, massing, parking, and the underground creek culvert. Staff is also seeking general feedback on the proposal and whether the Committee feels it is or is not able to support approval of the proposal as currently designed.

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Approved for forwarding to the
Design Review Committee:

CLAUDIA CAPPIO
Director of Development

ATTACHMENTS:

- A. Revised Project Drawings (received May 9, 2007)
- B. Section Drawing of Open Culvert (Figure 3 of Technical Memorandum by TODD Engineers, dated May 9, 2007)