

<b>Location:</b>	<b>801 International Boulevard (020-0121-001-00, 020-0121-002-00, 020-0121-009-00)</b>
<b>Proposal:</b>	Construct a five story tall mixed use building containing 44 dwelling units, 6,298 square feet of ground floor commercial space, and underground parking.
<b>Applicant:</b>	Allen Yee
<b>Contact Person/Phone Number:</b>	Allen Yee (510) 839-1200
<b>Case File Number:</b>	<b>CDV05-097</b>
<b>Planning Permits Required:</b>	Minor Interim Conditional Use Permit for increased density consistent with the General Plan, Minor Variance to apply the S-12 dimensional requirements for parking spaces and maneuvering aisles and rear yard setback of 0'00" at the podium level where 15'00" is required, and Regular Design Review for new construction in excess of 25,000 square feet
<b>General Plan:</b>	Neighborhood Center Mixed Use and Housing and Business Mix
<b>Zoning:</b>	C-40 Community Thoroughfare Commercial Zone
<b>Environmental Determination:</b>	Exempt 15332; State CEQA Guidelines, Infill Development Project
<b>Historic Status:</b>	Potentially Designated Historic Property. Survey Rating: C3
<b>Service Delivery District:</b>	III
<b>City Council District:</b>	3
<b>Status:</b>	Pending
<b>Action to be Taken:</b>	Action to be taken based on staff report.
<b>Finality of Decision:</b>	Appealable to City Council
<b>For Further Information:</b>	Contact case planner Leigh McCullen at <b>(510) 238-4977</b> or by email at <b>lmccullen@oaklandnet.com</b>

**SUMMARY**

On January 18, 2005, the Planning Commission directed staff to prepare findings for approval of this project. Findings are attached for adoption.

- RECOMMENDATIONS:**
1. Affirm staff's environmental determination.
  2. Approve the Minor Conditional Use Permit, Minor Variance, and Design Review applications subject to the attached findings and conditions.

Respectfully submitted:

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GARY V. PATTON  
Deputy Director of Planning and Zoning

Prepared by:

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Leigh McCullen  
Planner III

**FINDINGS FOR APPROVAL**

This proposal meets the required findings under Section 17.134.050 of the Oakland Planning Code (General Use Permit Criteria) and Section 17.148.050(a) of the Oakland Planning Code (Minor Variance findings), as set forth below. Required findings are shown in **bold** type; explanations as to why these findings can be made are in normal type.

**SECTION 17.134.050 – General Use Permit Criteria:**

- A. 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 harmful effect, if any upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

The subject site is situated at the southwest corner of International Boulevard and 8<sup>th</sup> Avenue in the Eastlake Business District. The Eastlake Commercial District, with a mixture of historic and modern themes, is evolving with no overall architectural context. However, the surrounding buildings are rather modest in scale and are similar in height and bulk. Building heights are between one to three stories and typically contain ground floor commercial space and residential units on the upper floors.

This project would provide for the construction of a five story tall mixed use building containing 44 dwelling units, 6,298 square feet of ground floor commercial space, and underground parking. This mixed use building, containing all required parking and open spaces, would be a positive addition to the surrounding business district by increasing residential opportunities and retail spaces.

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.**

The subject site is ideal for residential development due to its proximity to community services and public transportation. The project has been designed to reflect the pattern of neighborhood development and would provide for a functional and attractive living environment.

- C. 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.**

The proposed mixed use building would enhance the successful operation of the surrounding business district. The increase in ground floor retail will enhance the pedestrian experience along International Boulevard and 8<sup>th</sup> Avenue and the new residential units would increase the neighborhood consumer base.

- D. That the proposal conforms to all applicable design review criteria set forth in the DESIGN REVIEW PROCEDURE of Chapter 17.136 of the Oakland Planning Code.**

See below.

- E. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.**

The General Plan Land Use Designation of the front 140 feet of the subject site is the Neighborhood Center Mixed Use and the rear 50 feet is Housing and Business Mix. The Neighborhood Center Mixed Use areas are characterized by pedestrian-oriented, continuous street frontage with a mix of retail, housing, offices, active open space, eating and drinking places, personal services, and civic uses. The Housing and Business Mix designation also encourages a mix of residential and commercial activities. The proposed building incorporates

many desired elements of the General Plan with pedestrian oriented retail spaces and housing. The project would also be consistent with Neighborhood Objectives and Policies N1, N3, N6, and N9 of the City of Oakland General Plan. These objectives and policies encourage neighborhood oriented retail and in-fill housing development.

**SECTION 17.148.050(a) - MINOR VARIANCE FINDINGS:**

- A. That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.**

Rear Setback: A 10-foot rear yard setback is required for residential buildings (no rear setbacks are required for commercial buildings). The applicant has proposed a 15 to 20-foot rear yard setback for all but the ground floor podium level that contains the parking garage, for which no rear yard setback is proposed. The adjacent one story brick industrial building situated adjacent to the proposed podium would not be adversely affected by a zero-foot setback. Conversing required the setback would result in a dead space with no practical purpose. Denial of the rear setback variance for the parking podium would negatively impact the operation efficiency of the parking area. The intent of the require setback to provide adequate light and air to residential units would be achieved since a 15 to 20-foot setback would be provided between the rear lot line and the residential portion of the building.

Parking: Proposed parking for the mixed use facility would be located below grade. A total of 63 parking spaces are required. Given the minimum amount of horizontal site area available, the parking area had to be designed to S-12 parking standards. The S-12 standards permit a relief in parking space and maneuvering aisle dimensions. The S-12 zone is intended to create, preserve, and enhance areas with high concentrations of Residential Facilities, to ensure that adequate off-street parking is provided for those facilities, and to maximize the general availability of on-street parking, and is typically appropriate in high density residential neighborhoods, adjacent commercial areas, and other neighborhoods where high concentrations of Residential Facilities may contribute to on-street parking congestion. Although not zoned S-12, the site has many of the characteristics defined above. The proposed project, with its mixture of neighborhood servicing retail and 44 residential uses, could not be built on this site without applying S-12 standards. Approval of the variance to apply S-12 parking standards would facilitate construction of the project with sufficient parking.

- B. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.**

Requiring a rear setback would result in a dead space between a parking podium and the solid wall of a zero lot line industrial building that would serve no practical purpose. Denial of the rear setback variance for the parking podium would negatively impact the operation efficiency of the parking area. The intent of the require setback to provide adequate light and air to residential units would be achieved since a 15 to 20-foot setback would be provided between the rear lot line and the residential portion of the building.

Due to the minimum amount of horizontal site area available, the parking area had to be designed to S-12 parking standards. Although not zoned S-12, the site has many of the characteristics of areas zoned S-12. The proposed project, with its mixture of neighborhood servicing retail and 44 residential uses, could not be built on this site without applying S-12 standards. Approval of the variance to apply S-12 parking standards would facilitate construction of the project with sufficient parking.

- C. That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy.**

The rear lot line of the subject site abuts the adjacent industrial buildings zero foot side yard setback. Allowing a zero foot setback for the parking podium would be consist with the setback on the adjacent building and would not adversely affect the abutting property.

The S-12 parking standards have been found to provide adequate parking dimensions and maneuverability. The proposed parking area adequately provides all required parking pursuant to these standards and therefore would have no impact to the surrounding area.

**D. That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations.**

The variance will not constitute a grant of special privilege as it will only serve to facilitate the residential development of the subject property in a manner consistent with the surrounding neighborhood.

**E. For proposals involving one or two dwelling units on a lot: That the elements of the proposal requiring the variance (e.g. elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the design review criteria set forth in the design review procedure at Section 17.136.070.**

The proposed variance involves more than two dwelling units.

**F. For proposals involving one or two dwelling units on a lot and not requiring design review or site development and design review: That all elements of the proposal conform to the "Special Residential Design Review Checklist Standards and Discretionary Criteria" as adopted by the City Planning Commission.**

The proposed variance involves more than two dwelling units.

**G. For proposals involving one or two residential dwelling units on a lot: That, if the variance would relax a regulation governing maximum height, minimum yards, maximum lot coverage or building length along side lot lines, the proposal also conforms with at least one of the following criteria:**

- a. **The proposal when viewed in its entirety will not adversely impact abutting residences to the side, rear, or directly across the street with respect to solar access, view blockage and privacy to a degree greater than that which would be possible if the residence were built according to the applicable regulation and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height; or**
- b. **Over 60 percent of the lots in the immediate vicinity are already developed and the proposal does not exceed the corresponding as-built condition on these lots and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height. The immediate context shall consist of the five closest lots on each side of the project site plus the ten closest lots on the opposite side of the street (see Illustration I-4b); however, the Director of City Planning may make an alternative determination of immediate context based on specific site conditions. Such determination shall be in writing and included as part of any decision on any variance.**

The proposed variance involves more than two dwelling units.

**Section 17.136.070 (Design Review Criteria):**

**1. That the proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures;**

The proposed development would be comprised 44 of dwelling units, 10,175 square feet of ground floor commercial space divided into four tenant spaces, and underground parking for 66 vehicles. A combination of

group open space, located above the first floor of the building, and private opens spaces, in the form of balconies, would exceed the minimum required open space.

The building footprint would cover the entire site with zero foot setbacks on the ground floor. The second through fifth floors would be setback 15 feet from the rear lot line and the interior side lots lines. The five story building would be approximately 50 feet tall along International Boulevard and rising to 56 feet at the rear of the building.

The International Boulevard elevation of the proposed building features tall vertical stucco masses articulated with windows and undulating recesses. The first floor elevation along International Boulevard consists of glass store fronts with ribbed concrete columns. The entries to the retail spaces are recessed approximately 2 feet from the exterior walls. The corner of the building at 8<sup>th</sup> and International is defined by a tower element which is balanced by a matching element on the International Boulevard elevation. The tower is repeated at the pedestrian entry located along 8<sup>th</sup> Avenue. The 8<sup>th</sup> Avenue elevation, which is 190 feet in length, features a pattern similar to the International elevation with vertical masses broken up by recesses and bays. The ground level elevation along 8<sup>th</sup> Avenue has been revised from the previous designs to include street facing store. The first bay along 8<sup>th</sup> Avenue has also been redesigned as two vertical projections which differentiate from the other bays on the building. The ground floor building materials consist of ribbed concrete, wood storefront systems and a marble base. The upper floors would be finished in stucco.

The Eastlake Commercial District, with a mixture of historic and modern themes, is evolving with no overall architectural context or theme. It is anticipated that many of these surrounding properties will be redeveloped. Given the lack of a neighborhood context, the proposed building would not distract from the surrounding buildings.

**2. That the proposed design will be sensitive to the topography and landscape.**

The subject site does not contain any topographic features or landscaping. The project would include on site landscaping and new street trees along San Pablo Avenue and 65<sup>th</sup> Street.

**3. That if situated on a hill, the design and massing of the proposed buildings relates to the grade of the hill.**

The building is not situated on a hill.

**4. That the proposed design conforms in all respects with the Oakland Comprehensive Plan and with any applicable district plan or development control map which has been adopted by the City Council.**

The General Plan Land Use Designation of the front 140 feet of the subject site is the Neighborhood Center Mixed Use and the rear 50 feet is Housing and Business Mix. The Neighborhood Center Mixed Use areas are characterized by pedestrian-oriented, continuous street frontage with a mix of retail, housing, offices, active open space, eating and drinking places, personal services, and civic uses. The Housing and Business Mix designation also encourages a mix of residential and commercial activities. The proposed building incorporates many desired elements of the General Plan with pedestrian oriented retail spaces and housing. The project would also be consistent with Neighborhood Objectives and Policies N1, N3, N6, and N9 of the City of Oakland General Plan. These objectives and policies encourage neighborhood oriented retail and in-fill housing development.

**CONDITIONS OF APPROVAL**

**STANDARD CONDITIONS:**

**1. Effective Date, Expiration, and Extensions**

***a. Ongoing.***

This approval of the Tentative Parcel Map shall expire two (2) calendar years from the effective date of its granting, unless the applicant files a Parcel Map with the City Engineer within two (2) years from the date of this letter. Failure to file a Parcel Map within these time limits shall nullify the previous approval or conditional approval of the Tentative Parcel Map. Upon written request and payment of appropriate fees submitted no later than the expiration date of this approval, the Zoning Administrator may grant an extension of this Tentative Parcel Map, and up to two subsequent extensions upon receipt of a subsequent written request and payment of appropriate fees received no later than the expiration date of the previous extension.

The approval of the Conditional Use Permit, Minor Variance, and Design Review application shall expire two (2) calendar years from the date of recordation of the Parcel Map unless actual construction or alteration has begun under necessary permits by this date. Expiration of any valid building permit for this project may invalidate this approval. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Zoning Administrator may grant an extension of this permit, and up to two subsequent extensions upon receipt of a subsequent written request and payment of appropriate fees received no later than the expiration date of the previous extension.

**2. Scope of This Approval**

***a. Ongoing.***

The project is approved pursuant to the Planning Code and the Subdivision Regulations of the Municipal Code only and shall comply with all other applicable codes, requirements, regulations and guidelines, including but not limited to those imposed by the City's Building Services Division and the City's Fire Marshal. The proposal shall specifically comply with any conditions required by the Building Services Division, per the attached memoranda, dated April 30, 2004.

**3. Changes to Approval**

***a. Ongoing.***

Changes to approved plans that would amend the Tentative Parcel Map shall be submitted to and approved by the Zoning Administrator prior to recordation of the Final Parcel Map. Minor changes to approved plans may be approved administratively by the Zoning Administrator. Major changes to the approved plans shall be reviewed by the Zoning Administrator to determine whether such changes require submittal and approval of a new, independent permit. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction.

**4. Modification of Conditions or Revocation**

***a. Ongoing.***

The City Planning Department reserves the right, after notice and public hearing, if required, to alter Conditions of Approval or revoke this permit if it is found that the approved facility or use is violating any of the Conditions of Approval, any applicable codes, requirements, regulations or guidelines, or is causing a public nuisance.

**5. Defense, Indemnification & Hold harmless**

***a. Within ten (10) business days of the filing of a claim, action or proceeding that is subject to this provision, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes this condition of approval.***

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

**ADDITIONAL CONDITIONS:**

**6. Exterior Materials Details.**

**a. *Prior to issuance of building permit.***

The applicant shall submit for review and approval of the Planning and Zoning Division, plans that show the details of the building exterior. These details shall include the labeling of all the materials and treatments proposed for the exterior of each building. The applicant shall also provide a material and color board for review and approval of the Planning and Zoning Division. All materials and treatments shall be of high quality that provides the building with significant visual interest. All materials at ground level shall be made of durable material that can be maintained in an urban environment.

**7. Street Trees**

**a. *Prior to issuance of building permit.***

The landscape and irrigation plan shall include a minimum of minimum one 24 inch box sized street tree per every 25 feet of street frontage. The species and locations shall be subject to review and approval by the Zoning Administrator and the Tree Division.

**8. Utilities**

**a. *Prior to issuance of building permit.***

All new electric and telephone facilities (including transformers); fire alarm conduits; street light wiring; and other wiring, conduits, and similar facilities shall be placed underground by the developer from the applicant's structures to the point of service. This change shall be indicated on the building permit plan set and shall be subject to review and approval by the Zoning Administrator.

**b. *Prior to issuance of building permit.***

The building permit plan set shall indicate the location of all proposed utility meters and transformers. These features shall be 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. This change shall be indicated on the building permit plan set and shall be subject to review and approval by the Zoning Administrator.

**9. Landscape maintenance**

**a. *Ongoing.***

All proposed landscaping shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with all applicable landscaping requirements.

**10. Construction hours**

**a. *During all construction activities.***

Construction shall only take place between 7:30AM and 6:00PM, on Monday through Friday; 9:00AM to 5:00PM on Saturdays. No construction shall occur on Sundays or Federal holidays.

**11. Neighbor Noticing of Access Obstructions**

**a. *During all construction activities.***

Construction vehicles, materials and other equipment shall not block the road so that neighbors would be adversely affected from getting to and from their properties. The applicant shall ensure that immediately adjacent property owners are notified in writing no less than 48 hours before any major delivery, hauling, detours, or lane closures related to the project's construction activities occur.

**12. Encroachment Permit**

**a. Prior to issuance of any building permit.**

The applicant shall obtain any encroachment permits, privately constructed public improvements, waiver of damages or other approvals required by the Building Services Division, prior to grading permit and building permit issuance location of any permanent or temporary elements located in the public right of way.

**13. Site Maintenance**

**a. During all construction activities.**

The applicant shall ensure that debris and garbage is collected and removed from the site daily.

**14. Lighting Plan**

**a. Prior to issuance of building permit.**

The applicant shall submit a lighting plan for review and approval by the Planning and Zoning Division, with referral to other City departments as appropriate. The plan shall include the design and location of all lighting fixtures or standards. The plan shall indicate lighting fixtures that are adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. All lighting shall be architecturally integrated into the site.

**15. Public Improvements Plan**

**a. Prior to issuance of a building permit.**

The applicant shall submit Public Improvement Plans for adjacent public rights-of-way showing all proposed improvements and compliance with conditions of approval and City requirements, including but not limited to curbs, gutters, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above-ground utility structures, the design, specifications locations of facilities required by the East Bay Municipal Utility District (EBMUD), street lighting, on-street parking and accessibility improvements compliant with applicable standards, and any other improvements or requirements for the project as provided for in this approval. Encroachment permits shall be obtained as necessary for any applicable improvements. The Planning and Zoning Division, Building Services Division and the Public Works Agency will review and approve designs and specifications for the improvements. Improvements shall be completed prior to issuance of certificate of occupancy.

**16. Underground Utilities**

**a. Prior to issuance of building permits.**

The applicant shall submit plans for review and approval of the Planning and Zoning Division, Building Services Division and the Public Works Agency, and other relevant agencies as appropriate, plans that show all new electric and telephone facilities; fire alarm conduits; street light wiring; and other wiring, conduits, and similar facilities placed underground by the developer from the applicant's structures to the point of service. The plans shall show all electric and telephone facilities installed in accordance with standard specifications of the serving utilities.

**APPROVED BY:** City Planning Commission: \_\_\_\_\_(date)\_\_\_\_\_ (vote)  
City Council: \_\_\_\_\_(date)\_\_\_\_\_ (vote)