

Case File Number CDV05-163

June 1, 2005

Location:	6465 San Pablo Avenue (See map on reverse)
Assessors Parcel Number:	(016-1505-001-00)
Proposal:	Construct a 56,490 square foot mixed use building containing 30 dwelling units, 2,268 square feet of ground floor commercial space, and podium parking.
Applicant	Paul Parkman
Contact Person/Phone Number	Paul Parkman (510) 610-7867
Planning Permits Required:	Minor Interim Conditional Use Permit to apply the General Plan Floor Area Ratio of 5.0, Minor Variances for a 0'00" rear yard setback where 10'00" is required, a street side yard of 0'00" where 10'00" is required and to allow 50% of the parking spaces to be compact, and Regular Design Review for new construction in excess of 25,000 square feet
General Plan:	Community Commercial
Zoning:	C-30 District Thoroughfare Commercial Zone, S-18 Mediated Review Combining Zone
Environmental Determination:	Exempt 15332; State CEQA Guidelines, Infill Development Project
Historic Status:	Not a Potentially Designated Historic Property. Survey Rating: x-
Service Delivery District:	II
City Council District:	2
Date Filed:	April 8, 2005
Staff Recommendation:	Approve with attached conditions.
Finality of Decision:	<i>Appealable to City Council</i>
For Further Information:	Contact case planner Leigh McCullen at 510-238-4977 or by email at lmccullen@oaklandnet.com

SUMMARY

This project would provide for the construction of a six story, 56,490 square foot, mixed use building at the southwest corner of 65th Street and San Pablo Avenue. The first floor of the building would contain 2,268 square feet of ground floor commercial space fronting San Pablo Avenue and podium parking for 30 vehicles with access from 65th Street. Thirty residential units would be located in a 65-foot tall, 5-story mass fronting San Pablo Avenue. To create a transition between the lower density residential development located along 65th Street and San Pablo Avenue, the five story mass of the building would be setback 43.5 feet from the rear lot line. A 2,890 square foot landscaped group open space would be situated behind the main building mass and on top of the parking podium. The building has been successfully designed to create an urban edge along San Pablo Avenue while transitioning to the lower density neighborhood located along 65th Street.

Pursuant to the Design Review procedures of the Planning Code, the project requires Planning Commission approval because the total floor would exceed 25,000 square feet. Although relatively large in terms of floor area, the scale and design of the building is appropriate at the subject site and well proportioned to the scale of San Pablo Avenue.

In recent years redevelopment interests have steadily increased along this segment of San Pablo Avenue and will continued to do so. This project would provide a positive example for future development. Staff recommends that the Planning Commission approval the project subject to the attached conditions.

PROJECT DESCRIPTION

The subject site is located at the southwest corner of 65th Street and San Pablo Avenue. This section of San Pablo Avenue is designated as a regional transit street and is part of the state highway system. The existing infrastructure and the easily accessible regional transit service in place along San Pablo Avenue make the site ideal for high density mixed use development.

The site is currently improved with a suburban model restaurant featuring a one-story building with a large open parking area. In preparation for the proposed development, the applicant has obtained permits to demolish the existing structure. As proposed the site would be redeveloped with a mixed use building, containing 30 residential units, 2,268 square feet of ground floor commercial space, and enclosed parking for 30 vehicles.

When viewed from San Pablo Avenue, the primary 5 story mass of the building would appear to float above glass enclosed ground floor store fronts except where anchored to the ground by a stucco stair tower, which would be articulated with narrow horizontal and vertical windows, and a separate elevator tower located on the 65th Street elevation. The 65th Street elevation of the building would feature a six-story tall glass enclosed lobby and landing for the residential units. The glass store fronts would continue beyond the plate height of the first floor to form a guardrail for a second floor balcony overlooking San Pablo Avenue. The second through fifth floors of the building would be stepped back from the one-story pedestrian oriented street frontage along the majority of San Pablo Avenue. This transition in height gives the building a better sense of scale when viewed from the sidewalk. The upper facades of the building would be articulated with bay windows on the front elevation, glass and metal balconies on the rear elevation, and a basket weave pattern which would be created by the window openings, horizontal and vertical stucco reveals, and alternating paint colors.

NEIGHBORHOOD CONTEXT

The parcel is located in an area of San Pablo Avenue that has a number of vacant and underutilized lots. The area is expected to experience a transition and revitalization as residential and commercial development spread to San Pablo Avenue from Emeryville. For example, two new high density residential projects are currently under development in the 6500 and 6600 block of San Pablo Avenue. Industrially zoned land with a Housing and Business Mix General Plan land use designation is located to the northwest of the site with residential development located adjacent to the west of the site. 65th Street is primarily characterized by single family residential development transitioning into a mixture of higher density residential, commercial and industrial developments in Emeryville.

GENERAL PLAN ANALYSIS

The General Plan designation for the site is Community Commercial. The Community Commercial designation is intended to create, maintain, and enhance areas suitable for a wide variety of commercial and institutional uses along the City's major corridors complimented by urban residential development and compatible mixed use development. The proposed mixed use development would be consistent with this designation.

"Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations" (the Guidelines) were adopted by the Planning Commission on May 6, 1998. These Guidelines outline the appropriate density and intensity for development in each General Plan designation by establishing maximum floor area ratios and maximum density. The Floor Area Ratio (FAR) represents the relationship of the size of a building to its site area and is used to establish the bulk or mass of a building. By defining bulk of a building through a FAR the intensity of a development is established. A FAR of

3.0 would be permitted under the site's current C-30 zoning whereas an FAR of 5.0 would be permitted by the General Plan. The Guidelines states that projects in conformance with the General Plan but not allowed by zoning may be permitted upon the grant of a conditional use permit. The use permit process for general plan conformity is intended to facilitate implementation of the Plan.

The right-of-way of San Pablo Avenue is 100 feet wide and carries four lanes of traffic. A larger building at this site would better reflect the intensity and scale of San Pablo Avenue. The building has been designed to orient the massing to San Pablo Avenue. To create a transition between the lower density residential development located along 65th Street and San Pablo Avenue, the five story mass of the building would be setback 43.5 feet from the rear lot line. A 2,890 square foot landscaped group open space would be situated behind the main building mass and on top of the one-story parking podium. The building has been successfully designed to create an urban edge along San Pablo Avenue while transitioning to the lower density neighborhood located along 65th Street.

ZONING ANALYSIS

The site is located within the C-30 District Thoroughfare Commercial Zone. This zone is intended to create, preserve, and enhance areas with a wide range of retail establishments serving both short and long term needs in convenient locations, and is typically appropriate along major thoroughfares. Consistent with the intent of this zone the proposed project would provide for a continuous retail frontage along San Pablo Avenue which would serve the proposed dwelling units located on the upper floors of the building and the adjoining residential neighborhood.

For residential facilities located in the C-30 zone a setback of 10-feet from the rear lot line is required, except accessory buildings, such as parking structures, may be located in the required rear yard if they do not cover more than 50 percent of the area of the rear yard. This setback requirement is intended to create an open space area and landscape buffer. In this case a minor variance is required to allow the one-story parking podium to cover more than 50 percent of the area of the required 10-foot rear yard setback. To mitigate potential impacts, the proposed parking podium would be lowered to a height of 10 feet along the length of the rear property line. To preserve the neighbor's acoustic and visual privacy, a 15-foot wide landscape strip, with no tenant access, would be planted along the rear of the parking podium. The parking podium is also setback from the rear property line at Peabody Lane and 65th Street. These areas would have at-grade landscaping to create a further landscape buffer. The proposed design successfully achieves the intent of the required setback.

For corner lots located in commercial zoning districts which are adjacent to a key lot in a residential zone, a street side yard setback of one-half of the required front yard of the key lot is required. In this case, a 10-foot street side yard setback along 65th Street is required. This setback requirement is intended to create a visual transition between buildings located in a commercial zoning district and adjacent residential buildings. The proposed design provides for a desirable urban edge at the corner of 65th Avenue and San Pablo Avenue by placing the commercial store fronts and the pedestrian entry for the residential units along the property line and near the corner of San Pablo and 65th Street. The building then transitions from this urban edge to the adjacent residential zone by setting back the parking podium between 9 and 10 feet from 65th Street. The proposed design successfully meets the intent of the zoning regulations by creating a transitional setback from San Pablo Avenue to the rear of the lot.

The proposed parking podium would accommodate 30 required parking spaces. Half of the spaces would be standard size and half would compact. This ratio of standard to compact spaces would be consistent with the S-12 Parking Combining Zone District. Since the subject site is not zoned S-12 a variance will be required to achieve the standards of the S-12 District. The S-12 regulations effectively reduce the amount of land area needed for parking in an urban area. Imposing the normally required parking ratio of

two thirds standard to one thirds compact would most likely result in the loss of the proposed retail frontage of the building. Utilizing the S-12 standards for the subject site would still ensure that adequate parking is provided while maintaining desirable retail frontage along San Pablo Avenue.

Pursuant to the Design Review procedures of the Planning Code, the project requires Planning Commission approval because the total floor would exceed 25,000 square feet. Although relatively large in terms of floor area, the scale and design of the building is appropriate at the subject site and well proportioned to the scale of San Pablo Avenue.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines lists projects that qualify as categorical exemptions from environmental review. The project falls under the category exemption listed in Section 15332, which states that projects characterized as in-fill development meeting certain conditions are exempt from environmental review. These conditions are listed below. The type in **bold** is how the project meets these conditions.

1. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. **The application is consistent with all General Plan Policies and the General Plan Designation. The General Plan designation for the site is Community Commercial. The Community Commercial designation is intended to create, maintain, and enhance areas suitable for a wide variety of commercial and institutional uses along the City's major corridors complimented by urban residential development and compatible mixed use development. The proposed mixed use development would be consistent with this designation. The site is located within the C-30 District Thoroughfare Commercial Zone. This zone is intended to create, preserve, and enhance areas with a wide range of retail establishments serving both short and long term needs in convenient locations, and is typically appropriate along major thoroughfares. Consistent with the intent of this zone the proposed project would provide for a continuous retail frontage along San Pablo Avenue which would serve the proposed dwelling units located on the upper floors of the building and the adjoining residential neighborhood. The project is consistent with all application Design Review, Interim Conditional Use Permit, and Variance findings.**
2. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. **The project covers less than an acre of land and is surrounded by urban uses.**
3. The project site has no value as habitat for endangered, rare, or threatened species. **The project is located in a highly urbanized area that contains no known endangered, rare, or threatened species.**
4. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. **According to the Institute of Transportation Engineers, *Trip Generation, 6th Edition, 1997* (ITE Manual) the project would generate approximately 54 additional vehicle trips during the AM peak and 99 additional during the PM peak. This level would result in an insignificant traffic increase in an urban area that has adequate road capacity. Further, the project would generate far fewer than the 2,000 vehicle trips per day that the Bay Area Air Quality Management District (BAAQMD) considers the normal minimum traffic volume that should require a detailed air quality analysis. The project would result in short-term localized impacts to air quality due to emissions from**

excavation and construction equipment and grading and construction activities. No significant decrease in air quality beyond that anticipated for the area under the Open Space, Conservation, and Recreation (OSCAR) Element of the Oakland General Plan is expected as a direct result of the proposal. Regardless, the applicant would be required to comply with all applicable City regulations and operating procedures prior to issuance of building or grading permits, including standard dust control measures.

5. The site can be adequately served by all required utilities and public services. **The site is located in an urbanized area that is well served by utilities and public services.**

KEY ISSUES AND IMPACTS

The following are key issues and impact staff has identified regarding the project.

Setbacks

The portions of the proposed building would be setback zero feet from the rear lot line and zero feet from 65th Street.

Staff recommends approval of the rear setback variance for the following reasons:

- To mitigate potential impacts, the proposed parking podium would be lowered to a height of 10 feet along the length of the rear property line;
- To preserve the neighbor's acoustic and visual privacy, a 15-foot wide landscape strip, with no tenant access, would be planted along the rear of the parking podium;
- The portions parking podium are also setback from the rear property line at Peabody Lane and 65th Street;
- The proposal meets all the height requirements of the Planning Code;
- Requiring a 10-foot rear yard setback would severely impact the feasibility of a project that represents a significant opportunity for a neighborhood in need of revitalization;
- The small site constrains the ability of the developer to gain enough room for parking and maneuvering aisles while retaining the desired commercial space on San Pablo Avenue.

Staff recommends approval of the street side setback variance for the following reasons:

- The proposed design provides for a desirable urban edge at the corner of 65th Avenue and San Pablo Avenue by placing the commercial store fronts and the pedestrian entry for the residential units along the property lines. The building then transitions from this urban edge to the adjacent residential zone by setting back the parking podium between 9 and 10 feet from 65th Street.
- The proposed design successfully meets the intent of the zoning regulations by creating a transitional setback from San Pablo Avenue to the rear of the lot.

Design

When viewed from San Pablo Avenue, the primary 5 story mass of the building would appear to float above glass enclosed ground floor store fronts except where anchored to the ground by a stucco stair tower, which would be articulated with narrow horizontal and vertical windows, and a separate elevator tower located on the 65th Street elevation. The 65th Street elevation of the building would feature a six-story tall glass enclosed lobby and landing for the residential units. The glass store fronts would continue beyond the plate height of the first floor to form a guardrail for a second floor balcony overlooking San

Pablo Avenue. The second through fifth floors of the building would be stepped back from the one-story pedestrian oriented street frontage along the majority of San Pablo Avenue. This transition in height gives the building a better sense of scale when viewed from the sidewalk. The upper facades of the building would be articulated with bay windows on the front elevation, glass and metal balconies on the rear elevation, and a basket weave pattern which would be created by the window openings, horizontal and vertical stucco reveals, and alternating paint colors.

In recent years redevelopment interests have steadily increased along this segment of San Pablo Avenue and will continued to do so. The scale and design of the building is appropriate at the subject site and well proportioned to the scale of San Pablo Avenue and would provide a positive example for future development.

CONCLUSION

The structure’s height and massing creates a strong architectural presence along the San Pablo Avenue. The design of the building will provide a positive example of innovative development in the area. The ground floor commercial space fulfills the General Plan’s intent of encouraging commercial development along major corridors. Overall, the project would set a positive example for future development in this transitioning neighborhood. Staff recommends approval of the subject to the attached conditions.

RECOMMENDATIONS:

1. Affirm staff’s environmental determination.
2. Approve the Conditional Use Permit, Variance and Design Review subject to the attached findings and conditions.

Prepared by:

Leigh McCullen
Planner III

Approved for forwarding to the
City Planning Commission:

GARY PATTON
Deputy Director of Planning and Zoning

ATTACHMENTS:

- A. Plans

FINDINGS FOR APPROVAL:

This proposal meets the required findings under Conditional Use Permit findings (Section 17.134.050), Special Use Permit Findings (Section 17.102.212). Required findings are shown in **bold** type; explanations as to why these findings {can *or* cannot} 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 right-of-way of San Pablo Avenue is 100 feet wide and carries four lanes of traffic. A larger building at this site would better reflect the intensity and scale of San Pablo Avenue. The building has been designed to orient the massing to San Pablo Avenue. To create a transition between the lower density residential development located along 65th Street and San Pablo Avenue, the five story mass of the building would be setback 43.5 feet from the rear lot line. A 2,890 square foot landscaped group open space would be situated behind the main building mass and on top of the one-story parking podium. The building has been successfully designed to create an urban edge along San Pablo Avenue while transitioning to the lower density neighborhood located along 65th Street.

- 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 site is currently improved with a suburban model restaurant featuring a one-story building with a large open parking area. In preparation for the proposed development, the applicant has obtained permits to demolish the existing structure. As proposed the site would be redeveloped with a mixed use building, containing 30 residential units, 2,268 square feet of ground floor commercial space, and enclosed parking for 30 vehicles.

The subject site is located at the southwest corner of 65th Street and San Pablo Avenue. This section of San Pablo Avenue is designated as a regional transit street and is also part of the state highway system. The existing infrastructure and the easily accessible regional transit service in place along San Pablo Avenue make the site ideal for high density mixed use development.

- 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 existing infrastructure and the easily accessible regional transit service in place along San Pablo Avenue make the site ideal for high density mixed use development. The proposed commercial spaces, which would serve immediate neighbors and the proposed residential component of the project, would have a positive impact upon surrounding neighborhood and would provide additional places for neighbors to meet and interact.

FINDINGS

- D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.070.**

See attached findings.

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

The General Plan designation for the site is Community Commercial. The Community Commercial designation is intended to create, maintain, and enhance areas suitable for a wide variety of commercial and institutional uses along the City's major corridors complimented by urban residential development and compatible mixed use development. The proposed mixed use development would be consistent with this designation.

"Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations" (the Guidelines) were adopted by the Planning Commission on May 6, 1998. These Guidelines outline the appropriate density and intensity for development in each General Plan designation by establishing maximum floor area ratios and maximum density. The Floor Area Ratio FAR represents the relationship of the size of a building to its site area and is used to establish the bulk or mass of a building. By defining bulk of a building through a FAR the intensity of a development is established. A FAR of 3.0 would be permitted under the site's current C-30 zoning whereas an FAR of 5.0 would be permitted by the General Plan. The Guidelines states that projects in conformance with the General Plan but not allowed by zoning may be permitted upon the grant of a conditional use permit. The use permit process for general plan conformity is intended to facilitate implementation of the Plan.

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;**

This project would provide for the construction of a six story, 56,490 square foot, mixed use building at the southwest corner of 65th Street and San Pablo Avenue. The first floor of the building would contain 2,268 square feet of ground floor commercial space fronting San Pablo Avenue and podium parking for 30 vehicles with access from 65th Street. Thirty residential units would be located in a 65-foot tall, 5-story mass fronting San Pablo Avenue. To create a transition between the lower density residential development located along 65th Street and San Pablo Avenue, the five story mass of the building would be setback 43.5 feet from the rear lot line. A 2,890 square foot landscaped group open space would be situated behind the main building mass and on top of the parking podium. The building has been successfully designed to create an urban edge along San Pablo Avenue while transitioning to the lower density neighborhood located along 65th Street.

- 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 65th Street.

FINDINGS

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 designation for the site is Community Commercial. The Community Commercial designation is intended to create, maintain, and enhance areas suitable for a wide variety of commercial and institutional uses along the City's major corridors complimented by urban residential development and compatible mixed use development. The proposed mixed use development would be consistent with this designation.

The project is also consistent with the following General Plan Policies:

- Policy I/C1.4 Investing in Economically Distressed Areas of Oakland
- Policy IC3/1 Locating Commercial Businesses.
- Policy I/C3.4 Strengthening Vitality
- Policy N1.1 Concentrating Commercial Development
- Policy N1.2 Placing Public Transit Stops
- Policy N3.1 Facilitating Housing Construction
- Policy N3.2 Encouraging Infill Development
- Policy N3.8 Required High Quality Design
- Policy N5.3 Supporting Live-Work Development
- Policy N6.1 Mixing Housing Types
- Policy N8.1 Making Compatible Interfaces Between Densities

SECTION 17.01.100B – MINOR CONDITIONAL USE PERMIT FINDINGS FOR PROPOSALS CLEARLY IN CONFORMANCE WITH GENERAL PLAN BUT NOT PERMITTED BY ZONING REGULATIONS

- A. **That the proposal is clearly appropriate in consideration of the characteristics of the proposal and the surrounding area.**

A FAR of 3.0 would be permitted under the site's current C-30 zoning whereas an FAR of 5.0 would be permitted by the General Plan. The Floor Area Ratio FAR represents the relationship of the size of a building to its site area and is used to establish the bulk or mass of a building. By defining bulk of a building through a FAR the intensity of a development is established. The Guidelines states that projects in conformance with the General Plan but not allowed by zoning may be permitted upon the grant of a conditional use permit. The use permit process for general plan conformity is intended to facilitate implementation of the Plan.

The right-of-way of San Pablo Avenue is 100 feet wide and carries four lanes of traffic. A larger building at this site would better reflect the intensity and scale of San Pablo Avenue. The building has been designed to orient the massing to San Pablo Avenue. To create a transition between the lower density residential development located along 65th Street and San Pablo Avenue, the five story mass of the building would be setback 43.5 feet from the rear lot line. A 2,890 square foot landscaped group open space would be situated behind the main building mass and on top of the one-story parking podium. The building has been successfully designed to create an urban edge along San Pablo Avenue while transitioning to the lower density neighborhood located along 65th Street.

FINDINGS

B. That the proposal is clearly consistent with the intent and desired character of the relevant land use classification or classifications of the General Plan and any associated policies.

The General Plan designation for the site is Community Commercial. The Community Commercial designation is intended to create, maintain, and enhance areas suitable for a wide variety of commercial and institutional uses along the City's major corridors complimented by urban residential development and compatible mixed use development. A higher FAR is allowed in this designation to encourage larger buildings along the City's corridors. The scale and design of the building, with the increase in floor area, would be appropriate at the subject site and well proportioned to the scale of San Pablo Avenue.

C. That the proposal will clearly promote implementation of the General Plan.

An increase of the FAR at the subject site would ensure implementation of the goals of the General Plan to encourage higher density, mixed use developments along the City's primary corridors.

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.

For residential facilities located in the C-30 zone a set back of 10-feet from the rear lot line is required, except accessory buildings, such as parking structures, may be located in the required rear yard if they do not cover more than 50 percent of the area of the rear yard. This setback requirement is intended to create an open space area and landscape buffer. In this case a minor variance is required to allow the one-story parking podium to cover more than 50 percent of the area of the required 10-foot rear yard setback. To mitigate potential impacts, the proposed parking podium would be lowered to a height of 10 feet along the length of the rear property line. To preserve the neighbor's acoustic and visual privacy, a 15-foot wide landscape strip, with no tenant access, would be planted along the rear of the parking podium. The parking podium is also setback from the rear property line at Peabody Lane and 65th Street. These areas would have at-grade landscaping to create a further landscape buffer. The proposed design successfully achieves the intent of the required setback.

For corner lots located in commercial zoning districts which are adjacent to a key lot in a residential zone, a street side yard setback of one-half of the required front yard of the key lot is required. In this case, a 10-foot street side yard setback along 65th Street is required. This setback requirement is intended to create a visual transition between buildings located in a commercial zoning district and adjacent residential buildings. The proposed design provides for a desirable urban edge at the corner of 65th Avenue and San Pablo Avenue by placing the commercial store fronts and the pedestrian entry for the residential units along the property lines. The building then transitions from this urban edge to the adjacent residential zone by setting back the parking podium between 9 and 10 feet from 65th Street. The proposed design successfully meets the intent of the zoning regulations by creating a transitional setback from San Pablo Avenue to the rear of the lot.

FINDINGS

The proposed parking podium would accommodate 30 required parking spaces. Half of the spaces would be standard size and half would compact. This ratio of standard to compact spaces would be consistent with the S-12 Parking Combining Zone District. Since the subject site is not zoned S-12 a variance will be required to achieve the standards of the S-12 District. The S-12 regulations effectively reduce the amount of land area needed for parking in an urban area. Imposing the normally required parking ratio of two thirds standard to one thirds compact would most likely result in the loss of the proposed retail frontage of the building. Utilizing the S-12 standards for the subject site would still ensure that adequate parking is provided while maintaining desirable retail along San Pablo Avenue.

- 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.**

Effective design solutions have been proposed for each of the proposed variances. To mitigate potential impacts of the rear yard setback, the proposed parking podium would be lowered to a height of 10 feet along the length of the rear property line. To preserve the neighbor's acoustic and visual privacy, a 15-foot wide landscape strip, with no tenant access, would be planted along the rear of the parking podium. The proposed design successfully meets the intent of the street side yard setback requirement by creating a transitional setback from San Pablo Avenue to the rear of the lot. Utilizing the S-12 parking standards for the subject site would still ensure that adequate parking is provided while maintaining desirable retail along San Pablo Avenue.

- 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.**

Effective design solutions which mitigate any negative impacts have been established for each of the proposed variances.

- 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 proposed design solutions ensure that the proposal meets the intent of the zoning regulations and as such approval of the variances would not constitute a special privilege.

CONDITIONS OF APPROVAL**STANDARD CONDITIONS:**

1. **Approved Use.**
 - a. **Ongoing.**

The project shall be operated in accordance with the authorized use as described in the staff report dated June 1, 2005 and the use described in the application and the site plan and building elevations dated April 8, 2005. Any additional uses other than those approved with this permit, as described in the project description, will require a separate application and approval.
2. **Effective Date, Expiration, and Extensions**
 - a. **Ongoing.**

This permit shall become effective upon satisfactory compliance with these conditions. This permit shall expire on June 1, 2007, unless actual construction or alteration, or actual commencement of the authorized activities in the case of a permit not involving construction or alteration, has begun under necessary permits by this date. Upon written request and payment of appropriate fees, the Zoning Administrator may grant a one-year extension of this date, with additional extensions subject to approval by the City Planning Commission.
3. **Scope of This Approval; Major and Minor Changes**
 - a. **Ongoing.**

The project is approved pursuant to the Planning Code only and shall comply with all other applicable codes and requirements imposed by other affected departments, including but not limited to the Building Services Division and the Fire Marshal. Minor changes to approved plans may be approved administratively by the Zoning Administrator; major changes shall be subject to review and approval by the City Planning Commission.
4. **Modification of Conditions or Revocation**
 - a. **Ongoing.**

The City Planning Commission reserves the right, after notice and public hearing, to alter Conditions of Approval or revoke this conditional use permit if it is found that the approved facility is violating any of the Conditions of Approval, any applicable codes, requirements, regulations, guidelines or causing a public nuisance.
5. **Recording of Conditions of Approval**
 - a. **Prior to issuance of building permit or commencement of activity.**

The applicant shall execute and record with the Alameda County Recorder's Office a copy of these conditions of approval on a form approved by the Zoning Administrator. Proof of recordation shall be provided to the Zoning Administrator.
6. **Reproduction of Conditions on Building Plans**
 - a. **Prior to issuance of building permit.**

These conditions of approval shall be reproduced on page one of any plans submitted for a building permit for this project.

7. Indemnification**a. Ongoing.**

The applicant shall defend, indemnify, and hold harmless the City of Oakland, its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Office of Planning and Building, Planning Commission, or City Council. 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.

PROJECT SPECIFIC CONDITIONS**8. Final Architectural Details****a. Prior to the issuance of a building permit**

The building plan sets shall include all final architectural details for review and approval by the Zoning Administrator. The plans shall indicate that the all exterior stucco finishes shall be smooth coat and applied wet at the site. The plans shall also include a window and door schedule, including cross-sections and elevations, and final architectural details of the structure. Details shall show natural anodized aluminum framed windows that have a minimum two inch recess from the surrounding exterior walls.

9. Lighting Plan**a. Prior to the issuance of a building permit**

A lighting plan shall be submitted to the Zoning Administrator for review and approval. The lighting plan shall show the location and design of all proposed exterior lighting fixtures. The light fixed shall be architecturally integrated into the design of the building. The plan shall include a cut sheet of a light fixtures detailing that each light will be adequately shielded to a point below the light bulb and reflector to prevent glare onto adjacent properties. Street lights shall be installed per the specifications of the Department of Public Works.

10. Landscaping**a. Prior to the issuance of a building permit**

A landscape plan shall be submitted to the Zoning Administrator for review and approval. The plan shall include size, species and types of all proposed plant materials both on-site and in the public right-of-way. Per the review and approval of the Tree Division of the Office of Parks and Recreation, A minimum one 24" box street tree shall be planted for every 25 feet of street frontage along San Pablo Avenue and 65th Street unless modified by the requirements of the Tree Division.

11. Building Colors and Materials**a. Prior to the issuance of a building permit**

The building plan sets shall indicate the final building colors and materials to be used for all exterior finishes.

12. Bicycle Parking**a. Prior to the issuance of a building permit**

The applicant shall coordinate with the Oakland Public Works Agency to design and locate a bicycle parking facility. The building plan sets shall include the location and design of the bicycle parking facility as approved by Public Works.

CONDITIONS OF APPROVAL

- 13. Meter shielding**
 - a. *Prior to issuance of building permit***

The applicant shall submit for review and approval by the Zoning Administrator plans that show any and all utility meters, transformers, and the like screened from view from any public right of way.

- 14. 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.

- 15. 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.

- 16. 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.

- 17. 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.

- 18. 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.

- 19. Site Maintenance**
 - a. *During all construction activities.***

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

CONDITIONS OF APPROVAL