

<b>Location:</b>	<b>5100-5110 Telegraph Avenue, 450-478 51<sup>st</sup> Street &amp; 5107 Clarke Street (See map on reverse)</b>
<b>Assessors Parcel Numbers:</b>	014-1226-003-03, -004-03, -005-02, -006-02, -007-02, -008-00, -009-01, -009-02 & -014-00
<b>Proposal:</b>	Construct a new mixed-use development consisting of 67 residential units and 2,990 square feet of commercial space.
<b>Applicant/Owner:</b>	5110 Telegraph Avenue, LLC
<b>Contact Person/Phone Number:</b>	Roy Alper / (510) 550-7177
<b>Planning Permits Required:</b>	Major Interim Conditional Use Permit to allow an increase in the residential density pursuant to the Neighborhood Center Mixed Use General Plan Land Use Classification; Major Variance to allow an increase in residential density pursuant to the Mixed Housing Type Residential General Plan Land Use Classification; Regular Design Review (Planning Commission) to construct more than 25,000 square feet of new floor area; and Minor Variances to allow: 1) Building height up to 65 feet where 40 feet is the maximum allowed and building height up to 59 feet where 25 feet (30 feet with a pitched roof) is the maximum allowed; 2) Front yard setback of three feet where 20 feet is the minimum required; and 3) Courtyard between buildings measuring 10 feet where 39 feet is the minimum required and 16 feet where 50 feet is the minimum required.
<b>General Plan:</b>	Neighborhood Center Mixed Use & Mixed Housing Type Residential
<b>Zoning:</b>	C-28 Commercial Shopping District Commercial Zone (portion of site); R-35 Special One-Family Residential Zone (portion of site); R-40 Garden Apartment Residential Zone (portion of site); S-18 Mediated Residential Design Review Combing Zone
<b>Environmental Determination:</b>	Exempt, Section 15332 of the State CEQA Guidelines; in-fill development projects
<b>Historic Status:</b>	Not a Potentially Designated Historic Property (the site is vacant)
<b>Service Delivery District:</b>	2
<b>City Council District:</b>	1
<b>Date Filed:</b>	September 16, 2005
<b>Status:</b>	The application was previously reviewed by the Design Review Committee on November 16, 2005.
<b>Action to be Taken:</b>	Decision on application based on staff report and public testimony
<b>Staff Recommendation:</b>	Approval subject to conditions
<b>Finality of Decision:</b>	Appealable to City Council
<b>For Further Information:</b>	Contact the case planner, <b>Darin Ranelletti</b> , at <b>(510) 238-3663</b> or by e-mail at <b>dranelletti@oaklandnet.com</b> .

**SUMMARY**

The applicant proposes to construct a new mixed-use development containing 67 residential units and approximately 2,990 square feet of ground floor commercial space. The project site is located in the Temescal neighborhood of North Oakland at the corner of Telegraph Avenue and 51<sup>st</sup> Street.

The proposed project requires a number of planning approvals including a Major Interim Conditional Use Permit and a Major Variance to allow an increase in the residential density pursuant to the Oakland General

Plan, Regular Design Review, and Minor Variances to exceed the maximum allowed building height and reduce the minimum required front yard setback and courtyard width.

The proposal was previously reviewed by the Design Review Committee on November 16, 2005. The Committee expressed overall support for the design of the project. Staff believes the project is consistent with the goals and policies of the General Plan and recommends approval of the project subject to the attached findings and conditions.

### **PROJECT DESCRIPTION**

The project consists of a new mixed-use development containing 67 residential units and approximately 2,990 square feet of ground floor commercial. The project drawings for the proposal are attached to this report (see Attachment A). The development would be comprised of four buildings. Building 1, located at the corner of Telegraph Avenue and 51<sup>st</sup> Street, would contain four stories of residential units over one story of ground floor commercial space for a total of five stories. The majority of Building 1 would be 55 feet tall with the building rising to 65 feet at the corner of Telegraph Avenue and 51<sup>st</sup> Street. Buildings 2, 3, and 4 would be entirely residential. Building 2, located at the corner of 51<sup>st</sup> Street and Clarke Street in the eastern portion of the site, would be four stories tall with a height ranging from 47 to 49 feet (with the building stepping down to three stories and 38 feet tall right at the corner of 51<sup>st</sup> Street and Clarke Street). Building 3, located along Clarke Street, would contain three stories with a pitched roof that ranges from 35 feet to 41 feet in height. Building 3 would be articulated into two visually distinct sub-volumes to give the appearance of two single-family homes. Both Buildings 2 and 3 would contain ground floor residential units that would be entered directly from the sidewalk. Building 4, located in the central interior of the site would be five stories tall and range from 47 to 59 feet in height (with the building stepping down to three stories and 37 feet tall near Clarke Street).

The project contains a proposed plaza at the corner of Telegraph Avenue and 51<sup>st</sup> Street in front of Building 1 and a common courtyard for use by the project residents located in the central portion of the site. Off-street parking would be located in an underground parking garage containing 100 parking spaces. The entrance and exit to the parking garage would be located on Clarke Street near 51<sup>st</sup> Street.

### **PROPERTY DESCRIPTION**

The site is located at the intersection of Telegraph Avenue and 51<sup>st</sup> Street in the Temescal neighborhood of North Oakland. The site is an irregularly shaped property measuring approximately 40,790 square feet in area. The subject property stretches from the corner of Telegraph Avenue and 51<sup>st</sup> Street along 51<sup>st</sup> Street to Clarke Street in the east. The topography of the site is relatively level. The site includes a portion of City-owned right-of-way along 51<sup>st</sup> Street that consists of remnant parcels created when 51<sup>st</sup> Street was widened in the 1970s. The site is the former location of an adult movie theater located at the corner of Telegraph Avenue and 51<sup>st</sup> Street that has since been demolished. The eastern portion of the site near Clarke Street is currently being used as an off-site parking lot for Children's Hospital and Research Center.

In the vicinity of the site, Telegraph Avenue contains primarily one- and two-story commercial buildings. Adjacent to the north of the site near the intersection of Telegraph Avenue and Claremont Avenue are an existing approximately 30-foot tall commercial building (currently occupied by Global Video) and an approximately 48-foot tall 1920s multi-unit apartment building. To the south of the site along 51<sup>st</sup> Street is a mixture of one- and two-story commercial buildings transitioning to residential buildings further to the east. To the east of the site along Clarke Street are one- and two-story single-family homes.

### **GENERAL PLAN ANALYSIS**

The site contains two General Plan Land Use Designations. The western portion of the site towards the corner of Telegraph Avenue and 51<sup>st</sup> Street is designated Neighborhood Center Mixed Use (NCMU) by the General Plan. The maximum residential density allowed under the NCMU designation is 125 units per gross acre. According to the General Plan, the intent and desired character of the NCMU designation is the following:

The Neighborhood Center Mixed Use classification is intended to identify, create, maintain and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses. Future development within this classification should be commercial or mixed uses that are pedestrian-oriented and serve nearby neighborhoods, or urban residential with ground floor commercial. (Page 149)

The eastern portion of the site towards Clarke Street is designated Mixed Housing Type Residential (MHTR) by the General Plan. The maximum residential density allowed under the MHTR designation is 30 units per gross acre. According to the General Plan, the intent and desired character of the MHTR designation is the following:

The Mixed Housing Type Residential classification is intended to create, maintain, and enhance residential areas typically located near the City's major arterials and characterized by a mix of single family homes, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate. Future development within this classification should be primarily residential in character, with live-work types of developments, small commercial enterprises, schools, and other small scale, compatible civic uses possible in appropriate locations. (Page 146)

Given the above General Plan designations for the site and the size of the site, the maximum number of residential units allowed on the site under the General Plan is 67 units, equal to the number of units proposed in the project. The proposal includes a mixed-use residential and commercial building (Building 1) located at the corner of Telegraph Avenue and 51<sup>st</sup> Street within the NCMU General Plan designation. Building 1 would contain ground-floor neighborhood-oriented commercial space with continuous street frontage as called for by the General Plan. The remaining buildings in the development would be located within the MHTR General Plan designation. Buildings 2 and 3 along the perimeter of the site are designed with the character of single-family homes, townhouses, and small multi-unit apartment buildings consistent with the desired character of the MHTR designation.

Telegraph Avenue in the Temescal neighborhood is also designated as a "Grow and Change" area in the General Plan. Areas designated Grow and Change are located primarily in Downtown Oakland and along the City's major arterials. According to the General Plan, Grow and Change areas should "emphasize significant changes in density, activity, or use, which are consistent with the Land Use Diagram, Transportation Diagram, and the Policy Framework and other Elements of the General Plan." (Page 124)

Below are additional policies in the General Plan which are applicable to the project. Following each policy is an analysis of the project's consistency with the policy.

- Policy N1.1: Concentrating Commercial Development. Commercial development in the neighborhoods should be concentrated in areas that are economically viable and provide opportunities for smaller scale, neighborhood-oriented retail.

Proposal: The commercial space included in the project would be located on Telegraph Avenue within the existing economically vibrant Temescal commercial district. The proposed commercial space would be designed to accommodate neighborhood-serving commercial uses.

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

Proposal: The project provides for 67 new housing units, the maximum number of units permitted under the General Plan.

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

Proposal: The project involves the reuse of an existing underutilized site located within the existing urbanized area of the city.

- Policy N3.8: Required High-Quality Design. High-quality design standards should be required of all new residential construction. Design requirements and permitting procedures should be developed and implemented in a manner that is sensitive to the added costs of those requirements and procedures.

Proposal: The project involves high-quality design in that it employs high-quality materials, finishes, and details. The project complies with the design review criteria of the Planning Code (see attached Findings).

- Policy N3.9: Orienting Residential Development. Residential developments should be encouraged to face the street and to orient their units to desirable sunlight and views, while avoiding unreasonably blocking sunlight and views for neighboring buildings, respecting the privacy needs of residents of the development and surrounding properties, providing for sufficient conveniently located on-site open space, and avoiding undue noise exposure.

Proposal: All the proposed buildings located along the street frontage of the site face the street. The site layout, including the unit orientations and courtyard location, has been designed to provide for adequate solar access to the new units. Due to the distance between the proposed development and nearby homes, potential solar access impacts to nearby homes located on Clarke Street would be limited. A shadow analysis conducted for the project shows that the project would not block sunlight to nearby residential properties located on Clarke Street except for sunlight to the front yard areas of nearby homes in the late afternoon during Spring, Summer, and Fall (and in the early afternoon during Winter). Due to the topography and location of the site, there are no views in the area which the new units could take advantage of or which the proposal would block from nearby homes.

- Policy N3.10: Guiding the Development of Parking. Off-street parking for residential buildings should be adequate in amount and conveniently located and laid out, but its visual prominence should be minimized.

Proposal: The amount of proposed off-street parking complies with the parking requirements of the Zoning Regulations. Off-street parking would be located in a new underground parking garage, located underneath the proposed building so that it is convenient to the new units and screened from view from surrounding streets.

- Policy N6.1: Mixing Housing Types. The City will generally be supportive of a mix of projects that provide a variety of housing types, unit sizes, and lot sizes which are available to households with a range of incomes.

Proposal: The project includes units ranging in size from studios to three-bedroom units in different housing types (multi-unit apartments and townhouses).

- Policy N7.1: Ensuring Compatible Development. New residential development in Detached Unit and Mixed Housing Type areas should be compatible with the density, scale, design, and existing or desired character of surrounding development.

Proposal: The eastern portion of the project located within the Mixed Housing Type Residential designation is designed to reflect the density, scale, design, and character of the existing nearby homes located along Clarke Street in that the proposed buildings in this area will be articulated into smaller identifiable sub-volumes to appear like single-family homes and will employ similar building forms as the existing nearby homes.

- Policy N8.2: Making Compatible Interfaces Between Densities. The height of development in urban residential and other higher density residential areas should step down as it nears lower density residential areas to minimize conflicts at the interface between the different types of development.

Proposal: The height of the development steps down from 65 feet at the corner of Telegraph Avenue and 51<sup>st</sup> Street to buildings ranging in height from 36 to 41 feet in the eastern portion of the site along Clarke Street.

- Policy N10.1: Identifying Neighborhood “Activity Centers.” Neighborhood Activity Centers should become identifiable commercial, activity and communication centers for the surrounding neighborhood. The physical design of neighborhood activity centers should support social interaction and attract persons to the area. Some of the attributes that may facilitate this interaction include plazas, pocket parks, outdoor seating on public and private property, ample sidewalk width, street amenities such as trash cans and benches, and attractive landscaping.

Proposal: The proposal includes a plaza at the corner of Telegraph Avenue and 51<sup>st</sup> Street which could be used for outdoor seating and social interaction to encourage community activity.

## ZONING ANALYSIS

The site is located in three different base zoning districts with one combining zoning district overlaying the entire site. The western portion of the site near the corner of Telegraph Avenue and 51<sup>st</sup> Street is located in the C-28 Commercial Shopping District Commercial Zone. The western portion of the site near the corner of 51<sup>st</sup> Street and Clarke Street is located in the R-35 Special One-Family Residential Zone and the northern portion of the site located along Clarke Street is located in the R-40 Garden Apartment Residential Zone. The S-18 Mediated Residential Design Review Combining Zone is an overlay zone that covers the entire site. The S-18 Zone contains special procedural requirements for design review. The requirements of the S-18 Zone do not apply to the proposal because they are only applicable to one- and two-unit residential developments.

The intent of the C-28 Zone is the following:

[T]o create, preserve, and enhance major boulevards of medium-scale retail establishments featuring some specified higher density nodes in attractive settings oriented to pedestrian comparison shopping, and to encourage mixed-use residential and nonresidential developments, and is typically appropriate along major thoroughfares near residential communities. (OPC Sec. 17.44.010)

The intent of the R-35 Zone is the following:

[T]o create, preserve, and enhance areas containing a mixture of single- and two-family dwellings in desirable settings for urban living, and is typically appropriate to areas of existing lower or lower-medium density residential development. (OPC Sec. 17.18.010)

The intent of the R-40 Zone is the following:

[T]o create, preserve, and enhance areas containing a mixture of single- or two-family dwellings and garden apartments in spacious settings for urban living, and is typically appropriate to attractive areas of existing lower medium density residential development. (OPC Sec. 17.22.010)

The zoning for the site would allow a maximum of 25 residential units on the property. The proposal exceeds the number of units allowed by the zoning (67 units are proposed). The Zoning Regulations came into effect largely in 1965. Since that time, the City has adopted a new General Plan in 1998. The policies of the General Plan supersede the Zoning Regulations. In many areas of the city, particularly along major transit corridors such as Telegraph Avenue, the maximum residential density allowed under the General Plan is significantly higher than the density allowed by the zoning. The City is currently working to update the zoning districts so that they contain development standards that are consistent with the policies contained in the General Plan. Pursuant to the Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations, a Major Interim Conditional Use Permit is required to increase the project's residential density to the maximum allowed under the General Plan for the portion of the site located in the Neighborhood Center Mixed Use General Plan designation. For the portion of the site located in the Mixed Housing Type Residential General Plan designation, a Major Variance is required to increase the project's residential density to the maximum allowed under the General Plan. (Note: The Mixed Housing Type Residential designation is the only General Plan designation where a Major Variance, rather than an Interim Conditional Use Permit, is required to exceed the maximum density allowed by the Zoning Regulations.)

The project complies with all other zoning standards except for the maximum building height allowed and minimum front yard setback and courtyard width required. The applicant is seeking variances to waive these standards. Specifically, the proposal is seeking to allow: 1) Building height up to 65 feet where 40 feet is the maximum allowed and building height up to 59 feet where 25 to 30 feet is the maximum allowed; 2) Front yard setback of three feet where 20 feet is the minimum required; and 3) Courtyard between buildings measuring 10 feet where 39 feet is the minimum required and 16 feet where 50 feet is the minimum required. Each of these variances are further discussed under the "Key Issues and Impacts" section of this report.

## **ENVIRONMENTAL DETERMINATION**

This project is categorically exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15332 of the State CEQA Guidelines ("In-Fill Development Projects"). The criteria for the in-fill exemption, and staff's analysis of each criterion, are listed below.

- a) 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.

Analysis: The project is consistent with the General Plan designations for the site and with applicable General Plan policies as demonstrated in the “General Plan Analysis” and “Findings” sections of this report. The project is consistent with the zoning designations for the site and with applicable zoning regulations as demonstrated in the “Zoning Analysis” and “Findings” sections of this report. A number of variances to waive certain zoning standards are required for the project. The project complies with the variance procedures contained within the Zoning Regulations and satisfies the required findings for approval of the variances as demonstrated in the “Findings” section of this report. In the past, the Planning Commission has applied the in-fill exemption to projects that require variances finding that the project satisfies the zoning consistency requirement of the in-fill exemption because the findings for approval of the variances were made in accordance with the procedures outlined in the Zoning Regulations. The Planning Commission has not applied the in-fill exemption to projects that require a rezoning of the site to a different zoning designation. This project does not require rezoning the site.

- b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

Analysis: The project site is located within the city limits of the City of Oakland and consists of 40,790 square feet (0.94 acres). The site is surrounded by commercial and residential urban uses.

- c) The project site has no value as habitat for endangered, rare or threatened species.

Analysis: The project site is located in an urbanized area on a previously-developed lot. A portion of the site currently contains an existing parking lot and the other portion of the site previously contained a movie theater.

- d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

Analysis: A traffic impact analysis was prepared for the project. Potential traffic impacts from the project were reviewed at the key intersections surrounding the site. The project is anticipated to generate approximately 778 net new daily vehicle trips, including 70 AM peak hour trips and 90 PM peak hour trips. The Level of Service (LOS) for each of the four intersections studied would remain unchanged except for the intersection of Clarke Street and 51<sup>st</sup> Street where the LOS is anticipated to drop from LOS D to LOS E. The potential impact to the intersection of Clarke Street and 51<sup>st</sup> Street, an unsignalized intersection, is considered less than significant under CEQA because the project would not satisfy the Caltrans Peak Hour Volume Warrant for a new traffic signal because the minimum required threshold volume for the Clarke Street approach to the intersection is 100 vehicles per hour and the peak hour volume of the project is expected to be only 42 vehicles per hour.

Potential noise impacts of the project are anticipated to be limited. The project would consist primarily of residential uses consistent with the residential uses in the surrounding neighborhood. The proposed commercial uses would be located at the corner of Telegraph Avenue and 51<sup>st</sup> Street and is expected to generate noise consistent with the existing uses in the Temescal commercial district. Potential noise impacts related to construction of the project would also be limited. Standard noise reduction measures would be incorporated into the project (see Conditions of Approval #15 and #16).

Potential air quality impacts of the project would be limited. The vehicle trips associated with 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. Potential air quality impacts related to construction of the project would also be limited. Standard dust control measures would be incorporated into the project to limit potential air quality impacts during construction (see Condition of Approval #13).

Potential water quality impacts of the project would be limited. The project involves the creation of less than one acre of new impervious surface, the minimum threshold for requiring on-site stormwater treatment facilities to remove stormwater pollutants under the National Pollutant Discharge Elimination System Permit issued by the San Francisco Bay Regional Water Quality Control Board to the Alameda Countywide Clean Water Program (of which the City of Oakland is a member). Potential water quality impacts related to construction of the project would also be limited. Standard construction-related water quality control measures would be incorporated into the project to limit potential water quality impacts during construction (see Condition of Approval #14).

- e) The site can be adequately served by all required utilities and public services.

Analysis: The project site is located in an urbanized area of the City of Oakland. Existing utilities and public services are located near the site.

Section 15300.2(f) of the CEQA Guidelines states that a categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of an historical resource. Section 5020.1(q) of the California Public Resources Code defines the term “substantial adverse change” as follows: “‘Substantial adverse change’ means demolition, destruction, relocation or alteration such that the significance of an historical resource would be impaired.” The project does not have the potential to result in a substantial adverse change in the significance of an historical resource. The site contains no existing buildings, is not a Designated Historic Property, and is not located in a Preservation District. The Temescal Commercial Historic District, a designated Preservation District (Area of Secondary Importance), is located across 51<sup>st</sup> Street south of the site on the east side of Telegraph Avenue stretching from 49<sup>th</sup> Street to 51<sup>st</sup> Street. Because the project is located across the street from the Historic District, the project would not result in the demolition, destruction, relocation, or alteration of any of the existing structures in the Historic District.

## **PUBLIC PARTICIPATION AND COMMENTS**

Beginning in 2000, the community surrounding the project site held a series of meetings to develop a set of goals for development of the site. Recently the applicant held a series of community meetings regarding the specific proposal. At a recent community meeting the applicant distributed a handout listing the goals developed for the site by the community and how the project fulfills these goals (see Attachment B). The applicant argues that the project fulfills virtually all of the goals developed by the community.

Staff has received 23 letters and e-mails from interested members of the community regarding the project (see Attachment C). 19 of the letters and e-mails are in support of the proposal while four of the letters and e-mails are opposed to the proposal. Staff also received a petition opposing the project signed by 315 local residents. The letters and e-mails opposed to the project are primarily concerned about the height of the project, the existence of Temescal Creek under the project site, the possibility of extending the nearby Rockridge Temescal Greenbelt through the site, and traffic generated by the project, among other concerns. Each of these issues is discussed in more detail under the “Key Issues and Impacts” section of this report.

## **RESULTS OF PREVIOUS HEARING**

This proposal was reviewed by the Design Review Committee of the Planning Commission on November 16, 2005. Overall, the Committee expressed support for the design of the project including the proposed height and density of the proposal. One member of the Committee felt that the design of the tower feature located at the corner of Telegraph Avenue and 51<sup>st</sup> Street was somewhat generic or predictable (referring to the tower as the “Barnes and Noble” tower). The current proposal includes minor modifications to interior floor plans of the units. The exterior elevations and site planning for the project remain unchanged from the previous version reviewed by the Committee.

## **KEY ISSUES AND IMPACTS**

### ***Density***

As mentioned under the “General Plan Analysis” and “Zoning Analysis” sections of this report, the proposal is consistent with the residential density limitations of the General Plan but exceeds the maximum density allowed by the Zoning Regulations. A Major Interim Conditional Use Permit (for the portion of the site designated Neighborhood Center Mixed use near the corner of Telegraph Avenue and 51<sup>st</sup> Street) and a Major Variance (for the portion of the site designated Mixed Housing Type Residential near Clarke Street) are required for the project. At the Design Review Committee meeting on November 16, 2005, the Committee expressed support for the proposed density. Staff feels that the proposed density is appropriate for the site given the housing policies of the General Plan, the high level of design quality incorporated into the project, and the location of the proposal at the intersection of two major arterials well-served by public transit. The density of the project is arranged so that the majority of units are incorporated into larger buildings near the commercial corridor of Telegraph Avenue and fewer units are incorporated into smaller buildings located near the existing residential neighborhood along Clarke Street.

### ***Building Height***

As stated under the “Zoning Analysis” section of this report, the proposal exceeds the maximum building heights allowed by the Zoning Regulations. Building 1 would be primarily 55 feet tall (rising to 65 feet at the corner of Telegraph Avenue and 51<sup>st</sup> Street) where the maximum allowed height is 40 feet. Building 2 would be primarily 47 to 49 feet tall (stepping down to 38 feet at the corner of 51<sup>st</sup> Street and Clarke Street) where 25 feet (or 30 feet for a pitched roof) is the maximum height allowed. Building 3 would be 35 feet tall to the top of the building wall and 41 feet tall to the top of the pitched roof where 25 feet (or 30 feet for a pitched roof) is the maximum height allowed. Building 4 would be primarily 47 feet tall (with a sawtooth roof rising to 59 feet) where 25 feet (or 30 feet for a pitched roof) is the maximum height allowed.

The proposed height of the project is one of the primary concerns of some neighborhood residents, specifically that the proposal is out of scale with the existing buildings along the Telegraph Avenue commercial corridor and the existing homes in the surrounding residential neighborhood. At the Design Review Committee meeting on November 16, 2005, the Committee expressed support for the proposed height of the project. The Committee felt that the height of the proposal was appropriate given the location and design of the project. The site is located at the intersection of Telegraph Avenue and 51<sup>st</sup> Street, two of the widest streets in Oakland. Both Telegraph Avenue and 51<sup>st</sup> Street have a right-of-way width of 100 feet. Accepted urban design principles place a high level of importance on the relationship of building height to street width. If buildings are too short in relation to the width of the street, the street space is less defined and loses a sense of enclosure. The optimum height-to-width ratio is between 1:1 (where the height of the building equals the width of the street) and 1:2 (where the height of the building is one-half the height of the street width). At the corner of Telegraph Avenue and 51<sup>st</sup> Street, where the proposal is 65 feet tall, the height-to-width ratio is 1:1.5, within the range of recommended height-to-width ratios. If the height of the building is reduced to 40 feet in compliance with the Zoning

Regulations, the height-to-street ratio would be 1:2.5, outside of the range of recommended height-to-width ratios. The height of the proposed project steps down in the east towards Clarke Street. In addition, the project is designed to reduce the visual height and mass of the buildings as seen from the street. All of the proposed buildings fronting on the surrounding streets contain upper-story setbacks thereby reducing their perceived height and preserving the pedestrian scale of the neighborhood. Building 1 is primarily five stories tall but the two top floors of the building are set back from the street. The corner feature of Building 1 at the intersection of Telegraph Avenue and 51<sup>st</sup> Street does not contain an upper-story setback because it is important to incorporate a prominent corner feature at the intersection to visually anchor the intersection and to provide visual interest. The corner of the project will be one of the signature buildings for the Temescal commercial district so the corner should be prominent. The prominence of the corner feature is aided by the additional height of the building at the corner. Stepping back the top portion of the building at the corner would weaken the architectural prominence and visual interest of the building. The top floor of Building 2 is set back from 51<sup>st</sup> Street and the top floor of the Building 3 is set back from Clarke Street. The proposal further reduces the visual height, mass, and scale of the buildings by incorporating significant façade articulation (projections and recesses) and varied materials and textures.

In order to reduce the height of the project, the proposal would need to reduce the number of units, reduce the size of the units (while maintaining the same number of units), or redistribute the units to other areas of the site (while maintaining the same number of units). According to the applicant, reducing the number of units would not allow the remaining number of units to cover the expense of providing underground parking. In staff's experience, providing underground parking is enormously expensive. Therefore reducing the number of units would require above-ground parking which would dramatically affect the appearance of the proposal because the parking would be more visible from the street which would be inconsistent with Policy N3.10 of the General Plan (see above "General Plan Analysis" section of this report) regarding parking visibility. Reducing the size of the units while maintaining the same number of units would reduce the variety of unit sizes and types in the proposal which would be inconsistent with Policy N6.1 of the General Plan (see above "General Plan Analysis" section of this report) regarding unit sizes and types. Redistributing the units within the site to reduce the building height while maintaining the same number of units would reduce the amount of open space in the project thereby reducing solar access to individual units and reducing the livability of the development. The height of the proposal is the result of complying with the policies of the General Plan and providing a livable, attractive development. The General Plan designates Telegraph Avenue as a Grow and Change area envisioning a significant change in the density of development along the corridor which requires buildings taller than existing buildings. Staff believes that the height of the project is appropriate given the site's location and the techniques utilized to reduce the visual height and mass of the buildings.

### ***Site Plan***

The project is designed so that the proposed buildings line the perimeter of the site resulting in active street frontages. A large common courtyard is located in the central portion of the site. The Zoning Regulations require a front yard setback of 20 feet along Clarke Street. The proposal contains units fronting on Clarke Street with front porches located approximately three feet from the front property line. The applicant is seeking a variance to reduce the required front yard setback along Clarke Street. Staff believes the variance is appropriate because it allows for front porches close to the sidewalk to activate the street while maximizing the size of the interior courtyard. The Zoning Regulations require a minimum separation between buildings on opposite sides of the courtyard in order to provide for adequate light and area into the units. The courtyard width requirement is satisfied for the majority of the proposed units but because the courtyard is triangular in shape reflecting the triangular shape of the eastern portion of the site, the units at the ends of each building do not meet the minimum separation requirement. The east end of Building 2 is separated from the south end of Building 3 by 10 feet where a 39-foot separation is required and the west end of Building 2 is separated from the south end of Building 4 by 16 feet where

a 50-foot separation is required. Staff believes the variance for courtyard width is appropriate given the unique shape of the site. If the western portion of the site was rectangular in shape, the project would be able to meet the building separation requirement.

### ***Traffic***

As discussed above in the “Environmental Determination” section of this report, a traffic impact analysis was prepared for the project. The results of the analysis indicate that the anticipated traffic generated by the project would be considered less than significant under state environmental law (CEQA). The project is anticipated to generate approximately 778 net new daily vehicle trips, including 70 AM peak hour trips and 90 PM peak hour trips. The Level of Service (LOS) for each of the four intersections studied would remain unchanged except for the intersection of Clarke Street and 51<sup>st</sup> Street where the LOS is anticipated to drop from LOS D to LOS E. The potential impact to the intersection of Clarke Street and 51<sup>st</sup> Street, an unsignalized intersection, is considered less than significant under CEQA because the project would not satisfy the Caltrans Peak Hour Volume Warrant for a new traffic signal because the minimum required threshold volume for the Clarke Street approach to the intersection is 100 vehicles per hour and the peak hour volume of project is expected to be only 42 vehicles per hour.

### ***Parking***

The Zoning Regulations require a minimum of 93 off-street parking spaces to serve the residential units in the development (the C-28 Zone in the western portion of the site requires one space per unit while the R-35 and R-40 Zones in the eastern portion of the site require one and one-half spaces per unit). No off-street parking is required for the proposed 2,990 square-foot commercial space because it is less than the minimum 3,000 square-foot size threshold for commercial parking. The proposal includes 100 off-street parking spaces in the underground garage. The seven parking spaces provided beyond the minimum number required would be used by employees of the commercial space.

### ***Rockridge Temescal Greenbelt Extension***

To the north of the site lies the Rockridge Temescal Greenbelt consisting of a path alongside Temescal Creek. The Greenbelt terminates at FROG Park, located just north of the site at the intersection of Clarke Street and Redondo Avenue. Some neighborhood residents are calling for the extension of the Greenbelt from FROG Park to the south through the project site connecting the Greenbelt to the intersection of Telegraph Avenue and 51<sup>st</sup> Street. Staff believes extending a public walkway from FROG Park through the site could potentially provide a tremendous community benefit by providing a neighborhood amenity and improving pedestrian circulation in the area. However, staff does not believe the Planning Commission has the legal authority to require public access across the site to serve this purpose. In order for the City to require such a condition of approval, the City must demonstrate that the impact of the project that the condition seeks to mitigate is directly related to the condition of approval, meaning there must exist a “nexus,” or relationship, between the impact and the condition. Staff does not believe that a nexus exists in this case because the condition of approval would require public access across the property where no public access currently exists (the site is fenced private property). The proposal does include a north-south path through the site, however, this pathway would remain private and access could be restricted.

### ***Temescal Creek Underground Culvert***

After leaving FROG Park, Temescal Creek enters an underground culvert which traverses the site near the corner of Telegraph Avenue and 51<sup>st</sup> Street. Some neighborhood residents are interested in removing the culvert to open and restore Temescal Creek on the site. If the creek was restored to its natural state with natural creek banks on each side, the width required to accommodate such a restoration would be

substantial in size, reaching far out into the public right-of-way of Telegraph Avenue and far into the western portion of the site, rendering such a proposal infeasible. If the culvert was opened so that the creek became visible from above but remained in an engineered channel, because of the size of the culvert (10 feet wide), the creek would occupy almost the entire plaza area at the corner of Telegraph Avenue and 51<sup>st</sup> Street. It is questionable if replacing the plaza with an open culvert would equal the community benefit of the plaza since the creek would only be exposed for a short distance. In order to acknowledge the presence of the creek underneath the site, staff is recommending a condition of approval that requires that the design and improvement of the plaza located at the corner of Telegraph Avenue and 51<sup>st</sup> Street include an acknowledgement of the presence of the creek, such as a design feature that represents the creek and an informational plaque concerning the creek (see Condition of Approval #20).

The existing culvert was originally constructed in 1892. Some maintenance work was performed on the culvert in the 1980s. Because the project involves new construction and excavation for the underground parking garage within approximately 10 feet of the culvert, extreme care must be taken to ensure that the construction of the project does not affect the integrity of the culvert. Staff is recommending a condition of approval that requires a statement from a licensed engineer certifying that the project is designed and engineered in a manner that does not compromise the integrity of the culvert (see Condition of Approval #23).

**CONCLUSION**

Staff recommends approval of the proposal subject to the attached findings and conditions of approval. Staff believes the project is consistent with the goals and policies of the General Plan. The proposal would replace an existing underutilized site located along a major transit corridor with needed housing opportunities and neighborhood-oriented commercial uses. Potential adverse impacts of the proposal on the surrounding neighborhood would be limited and the project incorporates high-quality design.

**RECOMMENDATIONS:**

1. Affirm staff's environmental determination.
2. Approve the Major Interim Conditional Use Permit, Major Variance, Regular Design Review, and Minor Variances subject to the attached findings and conditions.

Prepared by:

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DARIN RANELLETTI  
Planner III

Approved by:

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GARY PATTON  
Deputy Director of Planning and Zoning

Approved for forwarding to the  
City Planning Commission:

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CLAUDIA CAPPIO  
Director of Development

**ATTACHMENTS:**

- A. Project Drawings (Dated December 15, 2005)
- B. Community Goals for Project (submitted by applicant)
- C. Public Comments

**FINDINGS FOR APPROVAL**

This proposal meets the required findings under Sections 17.134.050 (General Conditional Use Permit Criteria), 17.136.070A (Residential Design Review Criteria), and 17.148.050 (Variance Findings) of the Oakland Planning Code. The proposal also meets the required findings for an Interim Conditional Use Permit as required by the Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations. Required findings are shown below in **bold** type; explanations as to why these findings can be made are in normal type.

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

Subject: Increase in the residential density pursuant to the Neighborhood Center Mixed Use General Plan Land Use Classification (western portion of the site)

- 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 proposal will be compatible with and will not adversely affect abutting properties and the surrounding neighborhood. All of the proposed buildings contain ground-floor pedestrian-oriented entries, architectural articulations and detailing, and upper-story setbacks to preserve the pedestrian scale of the neighborhood. The use of multiple separate buildings, a mixture of materials, façade articulations, and upper-story setbacks of the proposal reduce the perceived visual bulk of the project. Substantial exterior plazas and a generous interior courtyard limit the site coverage of the project to a level consistent with the surrounding neighborhood. The proposed density will be greater than the surrounding neighborhood but because it is arranged in a manner, through the use of separate buildings and multiple unit types, upper-story setbacks, and generous plazas and open space, to reduce the perceived density of the proposal, the project harmonizes with the surrounding neighborhood.

Adequate civic facilities and utilities are available nearby to serve the site.

The proposal will not harm the character of the neighborhood. The character of the Temescal commercial district consists of pedestrian-oriented buildings containing neighborhood-oriented commercial uses. The proposal will preserve the pedestrian orientation of the area as described above and contain neighborhood-oriented commercial space. The character of the nearby Temescal residential neighborhood consists of predominantly single-family homes and small multi-unit apartment buildings. The portion of the project near the Temescal residential neighborhood is designed to preserve the existing character of the residential neighborhood by utilizing building forms and massing arrangements similar to the surrounding neighborhood.

According to a traffic analysis prepared for the project, traffic impacts of the development are anticipated to be less than significant.

No other impacts are anticipated from the development.

- 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 proposal will provide for a convenient and functional living, working, shopping, and civic environment. New living units will be located adjacent to Telegraph Avenue which provides public transportation and commercial opportunities for the new residents. Due to its proximity to public transit, the proposed commercial space will be highly accessible to employees and shoppers. The proposed plaza at the intersection of Telegraph Avenue and 51<sup>st</sup> Street will support civic-oriented social activity.

The proposal incorporates high-quality design, materials, and finishes providing an attractive appearance to the community.

- 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 residential units will provide needed housing opportunities and the proposed commercial space and additional residents will contribute to the economic vitality of the Temescal commercial district.

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

The proposal satisfies this Criterion (see responses below to criteria for Section 17.136.070A).

- 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 proposal conforms with the Oakland General Plan (formerly the Oakland Comprehensive Plan). There is no other plan or development control map adopted by the City Council or the site.

The site contains two General Plan Land Use Designations. The western portion of the site towards the corner of Telegraph Avenue and 51<sup>st</sup> Street is designated Neighborhood Center Mixed Use (NCMU) by the General Plan. The maximum residential density allowed under the NCMU designation is 125 units per gross acre. According to the General Plan, the intent and desired character of the NCMU designation is the following:

The Neighborhood Center Mixed Use classification is intended to identify, create, maintain and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses. Future development within this classification should be commercial or mixed uses that are pedestrian-oriented and serve nearby neighborhoods, or urban residential with ground floor commercial. (Page 149)

The eastern portion of the site towards Clarke Street is designated Mixed Housing Type Residential (MHTR) by the General Plan. The maximum residential density allowed under the MHTR

designation is 30 units per gross acre. According to the General Plan, the intent and desired character of the MHTR designation is the following:

The Mixed Housing Type Residential classification is intended to create, maintain, and enhance residential areas typically located near the City's major arterials and characterized by a mix of single family homes, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate. Future development within this classification should be primarily residential in character, with live-work types of developments, small commercial enterprises, schools, and other small scale, compatible civic uses possible in appropriate locations. (Page 146)

Given the above General Plan designations for the site and the size of the site, the maximum number of residential units allowed on the site under the General Plan is 67 units, equal to the number of units proposed in the project. The proposal includes a mixed-use residential and commercial building (Building 1) located at the corner of Telegraph Avenue and 51<sup>st</sup> Street within the NCMU General Plan designation. Building 1 would contain ground-floor neighborhood-oriented commercial space with continuous street frontage as called for by the General Plan. The remaining buildings in the development would be located within the MHTR General Plan designation. Buildings 2 and 3 along the perimeter of the site are designed with the character of single-family homes, townhouses, and small multi-unit apartment buildings consistent with the desired character of the MHTR designation.

Telegraph Avenue in the Temescal neighborhood is also designed as a "Grow and Change" area in the General Plan. Areas designated Grow and Change are located primarily in Downtown Oakland and along the City's major arterials. According to the General Plan, Grow and Change areas should "emphasize significant changes in density, activity, or use, which are consistent with the Land Use Diagram, Transportation, and the Policy Framework and other Elements of the General Plan." (Page 124) The proposal introduces a significant level of density into the neighborhood.

Below are additional policies in the General Plan which are applicable to the project. Following each policy is a finding on the project's consistency with the policy.

- Policy N1.1: Concentrating Commercial Development. Commercial development in the neighborhoods should be concentrated in areas that are economically viable and provide opportunities for smaller scale, neighborhood-oriented retail.

Finding: The commercial space included in the project would be located on Telegraph Avenue within the existing economically vibrant Temescal commercial district. The proposed commercial space would be designed to accommodate neighborhood-serving commercial uses.

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

Finding: The project provides for 67 new housing units, the maximum number of units permitted under the General Plan.

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

Finding: The project involves the reuse of an existing underutilized site located within the existing urbanized area of the city.

- Policy N3.8: Required High-Quality Design. High-quality design standards should be required of all new residential construction. Design requirements and permitting procedures should be developed and implemented in a manner that is sensitive to the added costs of those requirements and procedures.

Finding: The project involves high-quality design in that it employs high-quality materials, finishes, and details. The project complies with the design review criteria of Section 17.134.050 of the Planning Code.

- Policy N3.9: Orienting Residential Development. Residential developments should be encouraged to face the street and to orient their units to desirable sunlight and views, while avoiding unreasonably blocking sunlight and views for neighboring buildings, respecting the privacy needs of residents of the development and surrounding properties, providing for sufficient conveniently located on-site open space, and avoiding undue noise exposure.

Finding: All the proposed buildings located along the street frontage of the site face the street. The site layout, including the unit orientations and courtyard location, has been designed to provide for adequate solar access to the new units. Due to the distance between the proposed development and nearby homes, potential solar access impacts to nearby homes located on Clarke Street would be considered limited. A shadow analysis conducted for the project shows that the project would not block sunlight to nearby residential properties located on Clarke Street except for sunlight to the front yard areas of nearby homes in the late afternoon during Spring, Summer, and Fall (and in the early afternoon during Winter). Due to the topography and location of the site, there are no views in the area which the new units could take advantage of or which the proposal would block from nearby homes.

- Policy N3.10: Guiding the Development of Parking. Off-street parking for residential buildings should be adequate in amount and conveniently located and laid out, but its visual prominence should be minimized.

Finding: The amount of proposed off-street parking complies with the parking requirements of the Zoning Regulations. Off-street parking would be located in a new underground parking garage, located underneath the proposed building so that it is convenient to the new units and screened from view from surrounding streets.

- Policy N6.1: Mixing Housing Types. The City will generally be supportive of a mix of projects that provide a variety of housing types, unit sizes, and lot sizes which are available to households with a range of incomes.

Finding: The project includes units ranging in size from studios to three-bedroom units in different housing types (multi-unit apartments and townhouses).

- Policy N7.1: Ensuring Compatible Development. New residential development in Detached Unit and Mixed Housing Type areas should be compatible with the density, scale, design, and existing or desired character of surrounding development.

Finding: The eastern portion of the project located within the Mixed Housing Type Residential designation is designed to reflect the density, scale, design, and character of the

existing nearby homes located along Clarke Street in that the proposed buildings in this area will be articulated into smaller identifiable sub-volumes to appear like single-family homes and will employ similar building forms as the existing nearby homes.

- Policy N8.2: Making Compatible Interfaces Between Densities. The height of development in urban residential and other higher density residential areas should step down as it nears lower density residential areas to minimize conflicts at the interface between the different types of development.

Finding: The height of the development steps down from 65 feet at the corner of Telegraph Avenue and 51<sup>st</sup> Street to buildings ranging in height from 36 to 41 feet in the eastern portion of the site along Clarke Street.

- Policy N10.1: Identifying Neighborhood “Activity Centers.” Neighborhood Activity Centers should become identifiable commercial, activity and communication centers for the surrounding neighborhood. The physical design of neighborhood activity centers should support social interaction and attract persons to the area. Some of the attributes that may facilitate this interaction include plazas, pocket parks, outdoor seating on public and private property, ample sidewalk width, street amenities such as trash cans and benches, and attractive landscaping.

Finding: The proposal includes a plaza at the corner of Telegraph Avenue and 51<sup>st</sup> Street which could be used for outdoor seating and social interaction to encourage community activity.

**Guidelines to Determine Project Conformity (Interim CUP for General Plan Density):**

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

The proposal is clearly appropriate given the characteristics of the proposal and the surrounding area. The site is located along a major arterial in an area designated as Grow and Change by the General Plan. The additional density is appropriate for the site; the site is well-served by transit, will contribute to the economic vitality of the Temescal commercial district, and is designed to minimize visual impacts of the project.

- **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 proposal is clearly consistent with the General Plan as discussed under Criterion E above.

- **That the proposal will clearly promote implementation of the General Plan.**

The proposal will clearly implement the General Plan as discussed under Criterion E above.

**Section 17.136.070A – Residential Design Review Criteria:**

Subject: Design of the proposal

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 design will relate well to the surrounding area. The project is designed so that proposed buildings front the surrounding streets to create an active pedestrian-oriented streetscape. All of the proposed buildings contain ground-floor pedestrian-oriented entries, architectural articulations and detailing, and upper-story setbacks to preserve the pedestrian scale of the neighborhood. The use of multiple separate buildings, a mixture of materials, façade articulations, and upper-story setbacks of the proposal reduce the perceived visual bulk of the project. The height of the project relates well to the surrounding area in that the height transitions from the commercial corridor of Telegraph Avenue successfully by stepping down to the east towards the surrounding residential neighborhood. The proposed upper-story setbacks also contribute to reducing the perceived height of the proposed buildings. The height of the building at the corner of Telegraph Avenue and 51<sup>st</sup> Street is appropriate given the immense width of Telegraph Avenue and 51<sup>st</sup> Street. The project's height will enhance the street definition of Telegraph Avenue and 51<sup>st</sup> Street and increase pedestrian comfort by more successfully creating a sense of enclosure on the street. The project incorporates a variety of materials and textures to further reduce the visual bulk of the building. The proposed materials and textures are similar to those found in the surrounding neighborhood.

**2. That the proposed design will protect, preserve, or enhance desirable neighborhood characteristics.**

The proposed design will preserve and enhance desirable neighborhood characteristics. The proposal incorporates pedestrian-oriented elements as discussed under Criterion 1 (see above) in order to preserve the pedestrian character of the neighborhood. The proposed off-street parking will not impact the visual character of the neighborhood because parking will be located in an underground parking garage thereby minimizing its visibility. The project's height will enhance the street definition of Telegraph Avenue and 51<sup>st</sup> Street and increase pedestrian comfort by more successfully creating a sense of enclosure on the street. The proposed plaza at the corner of Telegraph Avenue and 51<sup>st</sup> Street will contribute to the sense of community in the area by providing a social gathering space and by recognizing the presence of Temescal Creek underneath the site.

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

Except for the presence of Temescal Creek running underneath the site, there are no significant natural topographic or landscape features on the site. The project will be sensitive to the creek by acknowledging its presence in the plaza at the corner of Telegraph Avenue and 51<sup>st</sup> Street and by taking additional precautions to protect the integrity of the creek culvert during construction.

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

The site is not located on a hill.

**5. That the proposed design conforms in all significant 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 proposed design conforms in all respects to the Oakland General Plan (formerly the Oakland Comprehensive Plan) as discussed under Criterion E of Section 17.134.050 (see above).

**Section 17.148.050 – Variance Findings:**

Subject: Major Variance to allow an increase in residential density pursuant to the Mixed Housing Type Residential General Plan Land Use Classification (eastern portion of the site); and Minor Variances to allow 1) building height up to 65 feet where 40 feet is the maximum allowed and building height up to 59 feet where 25 to 30 feet is the maximum allowed, 2) front yard setback of three feet where 20 feet is the minimum required, and 3) courtyard between buildings measuring 10 feet where 39 feet is the minimum required and 16 feet where 50 feet is the minimum required.

- 1. 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.**

Density: Strict compliance with the maximum density allowed by the Zoning Regulations would result in practical difficulty due to unique circumstances. There are two General Plan Land Use Classifications for the site. The western portion of the site is designated Neighborhood Center Mixed Use. The eastern portion of the site is designated Mixed Housing Type Residential. Due to its large size and location at the intersection of two major arterials, the more appropriate General Plan designation for the entire site would be Neighborhood Center Mixed Use. Under the Neighborhood Center Mixed Use designation, a Major Variance would not be required in order to exceed the density limitations of the Zoning Regulations. Complying with the density limitations of the Zoning Regulations would require a significant reduction in the number of units. With a reduction in the number of units, the proposed underground parking garage would not be financially feasible thereby requiring unsightly above-ground parking.

Building Height: Strict compliance with the maximum building height regulations would preclude an effective design solution improving livability. In order to reduce the height of the project, the proposal would need to reduce the number of units, reduce the size of the units (while maintaining the same number of units), or redistribute the units to other areas of the site (while maintaining the same number of units). Reducing the number of units would not allow the remaining number of units to cover the expense of providing underground parking which would require above-ground parking. Above-ground parking would dramatically affect the appearance of the proposal because the parking would be more visible from the street which would be inconsistent with the policies of the General Plan regarding parking visibility. Reducing the size of the units while maintaining the same number of units would reduce the variety of unit sizes and types in the proposal which would be inconsistent with the policies of the General Plan regarding unit sizes and types. Redistributing the units within the site to reduce the building height while maintaining the same number of units would reduce the amount of open space in the project thereby reducing solar access to individual units and reducing the livability of the development.

Front Yard Setback: Strict compliance with the minimum front yard setback requirement for the buildings located along Clarke Street would preclude an effective design solution improving livability. Increasing the front yard setback would require reducing the size of the proposed units, reducing the size of the interior courtyard, or eliminating the front porches, each of which would impact the livability of the project.

Courtyard Width: Strict compliance with the minimum courtyard width regulation would result in a hardship due to unique circumstances. The courtyard width requirement is satisfied on the majority of the proposed units but because the courtyard is roughly triangular in shape reflecting the triangular shape of the eastern portion of the site, some of the units at the ends of each building do not meet the minimum separation requirement. Due to the triangular shape of the lot, units at the ends of buildings

are facing one another. If the western portion of the site was rectangular in shape, the project would be able to meet the courtyard width requirement. Altering the proposal to comply with the courtyard width requirement would adversely affect the appearance of the project by requiring additional separation between the buildings which would result in visual “gaps” in the building frontage along the street.

- 2. 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.**

Density: Strict compliance with the maximum density allowed by the Zoning Regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property. Other similarly zoned properties located similarly along major arterials are typically designated in a General Plan land use classification other than Mixed Housing Type Residential where a Major Variance is not required to exceed the density limitations of the Zoning Regulations.

Building Height: Strict compliance would preclude an effective design solution as discussed under Finding 1 above.

Front Yard Setback: Strict compliance would preclude an effective design solution as discussed under Finding 1 above.

Courtyard Width: Strict compliance would preclude an effective design solution as discussed under Finding 1 above.

- 3. 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.**

Density: The proposed building height will not adversely affect the surrounding area. The proposed density will be greater than the surrounding neighborhood but because it is arranged in a manner, through the use of separate buildings and multiple unit types, upper-story setbacks, and generous plazas and open space, to reduce the perceived density of the proposal, the project harmonizes with the surrounding neighborhood.

Building Height: The proposed building height will not adversely affect the surrounding area. The height of the project relates well to the surrounding area in that the proposed height transitions from the commercial corridor of Telegraph Avenue successfully by stepping down to the east towards the surrounding residential neighborhood. The proposed upper-story setbacks also contribute to reducing the perceived height of the proposed buildings. The height of the building at the corner of Telegraph Avenue and 51<sup>st</sup> Street is appropriate given the immense width of Telegraph Avenue and 51<sup>st</sup> Street. The project’s height will enhance the street definition of Telegraph Avenue and 51<sup>st</sup> Street and increase pedestrian comfort by more successfully creating a sense of enclosure on the street.

Front Yard Setback: The proposed front yard setback will not adversely affect the surrounding area. The front yard setback reduction is for the purpose of the proposed front entry porches along Clarke Street. The porches are consistent with existing elements in the neighborhood and will enhance the neighborhood by acting as transitional space between the public realm of the street and the private realm of the dwelling unit. Residents will be able sit on the front porches thereby interacting with passersby on the sidewalk to enhance the sense of community.

Courtyard Width: The proposed courtyard width will not adversely affect the surrounding area. The intent of the courtyard width regulation is to provide for adequate light and air into the units on the site which has no bearing on the surrounding area. Adequate separation will be maintained between the buildings to provide light and air into the units and to provide a visual sense of separation between the buildings as seen from the surrounding area.

- 4. 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 variances will not constitute a grant of special privilege. Other similarly zoned properties under similar circumstances have been, and will be in the future, given similar considerations.

- 5. 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 proposal does not involve one or two dwelling units so this finding does not apply.

- 6. 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 proposal does not involve one or two dwelling units so this finding does not apply.

- 7. 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 sixty (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 proposal does not involve one or two dwelling units so this finding does not apply.

**CONDITIONS OF APPROVAL**

This proposal is subject to the following conditions:

**STANDARD GENERAL CONDITIONS:**

**1. Approved Use**

***a. Ongoing***

The project shall be constructed and operated in accordance with the authorized use as described in this staff report and the plans submitted on **December 15, 2005** and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and approved plans, 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 in **three years** from the date of this approval, 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 submitted no later than the expiration date, 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, requirements, regulations, and guidelines 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 use or facility is violating any of the Conditions of Approval, any applicable codes, requirements, regulation, guideline or causing a public nuisance.

**5. Reproduction of Conditions on Building Plans**

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

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

**6. 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 Zoning Division, Planning Commission, 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.

**7. Waste Reduction and Recycling**

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

The applicant may be required to complete and submit a “Waste Reduction and Recycling Plan,” and a plan to divert 50 percent of the solid waste generated by the operation of the project, to the Public Works Agency for review and approval, pursuant to City of Oakland Ordinance No. 12253. Contact the City of Oakland Environmental Services Division of Public Works at (510) 238-7073 for information.

**8. Recycling Space Allocation Requirements**

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

The design, location and maintenance of recycling collection and storage areas must substantially comply with the provision of the Oakland City Planning Commission “Guidelines for the Development and Evaluation of Recycling Collection and Storage Areas”, Policy 100-28. A minimum of two cubic feet of storage and collection area shall be provided for each dwelling unit and for each 1,000 square feet of commercial space.

**9. Electrical Facilities**

**a. *Prior to installation***

All new electric and telephone facilities, fire alarm conduits, streetlight wiring, and similar facilities shall be placed underground. Electric and telephone facilities shall be installed in accordance with standard specifications of the servicing utilities. Street lighting and fire alarm facilities shall be installed in accordance with the standard specifications of the Building Services Division.

**10. Improvements in the Public Right-of-Way**

**a. *Prior to issuance of a building permit for work in the public right-of-way***

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, locations of facilities required by the East Bay Municipal Utility District (EBMUD), 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. Review and confirmation of the street trees by the City’s Tree Division is required as part of this condition. The Planning and Zoning Division and the Public Works Agency will review and approve designs and specifications for the improvements. Improvements shall be completed prior to the issuance of a certificate of occupancy.

**STANDARD CONSTRUCTION CONDITIONS:**

**11. Construction Hours**

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

The project sponsor shall require construction contractors to limit standard construction activities as required by the City Building Services Division. Such activities are generally limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, with pile driving and/or other extreme noise generating activities greater than 90 dBA limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday, with no extreme noise generating activity permitted between 12:30 p.m. and 1:30 p.m. No construction activities shall be allowed on weekends until after the building is

***CONDITIONS OF APPROVAL***

enclosed, and then only within the interior of the building with the doors and windows closed, without prior authorization of the Building Services Division, and no extreme noise generating activities shall be allowed on weekends and holidays. Saturday construction activity prior to the building being enclosed shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a survey of resident's preferences for whether Saturday activity is acceptable if the overall duration of construction is shortened. No construction activity shall take place on Sundays or Federal holidays.

## 12. Construction Management

### *a. Prior to issuance of a demolition or building permit*

The project sponsor shall submit a construction management and staging plan to the Building Services Division with the application for the building permit for the project for review and approval. The plan shall include at least the following items and requirements:

- A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. In addition, the information shall include a construction-staging plan for any right-of-way.
- Provision for parking management and spaces for all construction workers to ensure that construction workers do not park in on-street spaces.
- Notification procedures for adjacent property owners and public safety personnel (about 48 hours) regarding when major deliveries, detours and lane closures will occur.
- Provision for accommodation of pedestrian flow.
- Location of construction staging areas.
- Provisions for monitoring surface streets used for haul routes so that any damage to the street paving and debris attributable to the haul trucks can be identified and corrected.
- A temporary construction fence to contain debris and material and to secure the site.
- Provisions for removal of trash generated by project construction activity. The applicant shall ensure that debris and garbage is collected and removed from the site daily.
- At least one copy of the approved plans that include the Approval Letter and the Conditions of approval for this project shall be available for review at the job at all times.
- All work shall apply the "Best Management Practices" (BMPs) for the construction industry, including BMPs for dust, erosion, and sedimentation abatement per Chapter 15.04 of the Oakland Municipal Code, as well as all specific construction-related conditions of approval attached to this project.
- Dust control measures as set forth in Condition #13, below.
- Noise control measures as set forth in Conditions #15 and #16, below.
- A process for responding to, and tracking, complaints pertaining to construction activity, including the identification of an on-site complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. The Planning and Zoning Division shall be informed who the Manager is prior to the issuance of a building permit.

## 13. Dust Control Measures

### *a. During all construction activities*

Dust control measures shall be instituted and maintained during construction to minimize air quality impacts. The measures shall include:

- Watering all active construction areas at least twice daily, or as required to control dust;

- Water or cover stockpiles of debris, soils, sand, or other material that can be blown by the wind;
- Pave, apply water three times daily, or apply non-toxic soil stabilizers on all unpaved roads, parking areas, and staging areas at construction sites;
- Sweep daily (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites,
- Sweeping adjacent public rights of way (preferably with water sweepers) and streets daily if visible soil material or debris is carried onto these areas.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard;
- Hydroseed or apply non-toxic soil stabilizers to inactive construction areas;
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.);
- Install sandbags or other erosion control measures to prevent silt runoff onto public roadways; and
- Replant vegetation in disturbed areas as quickly as possible.

#### **14. Grading, Erosion and Drainage Plan.**

##### ***a. Prior to issuance of grading permit and during construction.***

The applicant shall submit for review and approval by the Building Services Division a Site Grading, Drainage, and Erosion Control plan in conformance with City standards and “Best Management Practices” (BMP) for use during construction.

- The plan shall indicate the methods, means, and design to conduct site stormwater run-off, attenuate storm drainage flow, and minimize sedimentation and erosion during and after construction activity (utilizing a combination of permeable surfaces, subsurface-drainage, silt debris barriers, drainage retention systems, and/or filtration swale landscaping). All graded slopes or disturbed areas shall be temporarily protected from erosion by implementing seeding, mulching and/or erosion control blankets/mats until permanent erosion control measures are in place. No grading shall occur without a valid grading permit issued by the Building Services Division or within the period of October 15 through April 15 unless specifically authorized in writing by the Building Services Division. The plan will be in effect for a period of time sufficient to stabilize the construction site throughout all phases of project development. Furthermore, storm drainage facilities shall be designed to meet applicable regulations.
- In order to minimize potential water quality impacts to surface runoff during construction, the proposed project will require standard erosion control measures as part of the project prior to issuance of grading or building permits. The applicant will be required to prepare a construction period erosion control plan and submit the plan to the Building Services Division for approval prior to issuance of a grading or building permit. The plan will be in effect for a period of time sufficient to stabilize the construction site for all phases of the project. These standard measures will address construction period erosion on the site by wind or water.
- Construction operations, especially grading operations, shall be confined as much as possible to the dry season in order to avoid erosion of disturbed soils.

#### **15. Construction Related Noise Control**

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

To reduce daytime noise impacts due to construction, to the maximum feasible extent, the City

shall require the applicant to develop a site-specific noise reduction program, subject to city review and approval, which includes the following measures:

- Signs shall be posted at the construction site that include permitted construction days and hours, a day and evening contact number for the job site, and a day and evening contact number for the City in the event of problems.
- Designate an on-site complaint and enforcement manager shall be posted to respond to and track complaints.
- A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices are completed prior to the issuance of a building permit (including construction hours, neighborhood notification, posted signs, etc.).
- Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds, wherever feasible).
- Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed-air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed-air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, which could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible.
- Stationary noise sources shall be located as far from sensitive receptors as possible, and they shall be muffled and enclosed within temporary sheds, or insulation barriers or other measures shall be incorporated to the extent feasible.

**16. Pile Driving and other Extreme Noise Generators**

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

- To further mitigate other extreme noise generating construction impacts, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. This noise reduction plan shall be submitted for review and approval by the City to ensure that maximum feasible noise attenuation is achieved. These attenuation measures shall include as many of the following control strategies as feasible and shall be implemented prior to any required pile-driving activities:
- Erect temporary plywood noise barriers around the construction site, to shield adjacent uses;
- Implement “quiet” pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;
- Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site;
- Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings; and
- Monitor the effectiveness of noise attenuation measures by taking noise measurements.

- A process with the following components shall be established for responding to and tracking complaints pertaining to pile-driving construction noise:
- A procedure for notifying City Building Services Division staff and Oakland Police Department;
- A list of telephone numbers (during regular construction hours and off-hours);
- A plan for posting signs on-site pertaining to complaint procedures and who to notify in the event of a problem;
- Designation of a construction complaint manager for the project; and
- Notification of neighbors within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities.

**17. Site Maintenance**

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

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

**18. Cultural Resources found during Site Work and Construction**

***a. Prior to issuance of any grading permits and throughout construction***

In accordance with the California Environmental Quality Act (CEQA) Section 15064.5, if the applicant discovers any previously unidentified cultural resources during any onsite or offsite construction phase of the proposed project, the project applicant is required to cease work in the immediate area until such time as a qualified archaeologist and the City of Oakland can assess the significance of the find and make mitigation recommendations, if warranted. To achieve this goal, the contractor shall instruct the construction personnel on the project as to the potential for discovery of archeological, pre-historic, historic, cultural, or human remains. The contractor shall ensure that all construction personnel understands the need for proper and timely reporting of such finds, and the consequences of any failure to report them. Any recommendations of the qualified archeologist shall be implemented prior to resumption of work in the affected area.

**19. Special Instructor**

***a. Throughout construction***

The project sponsor may be required to pay for on-call special inspector(s) as needed during the times of most intense construction or as directed by the Building Official.

**SPECIFIC CONDITIONS (CASE NO. CMDV05-469):**

**20. Landscape Plan**

***a. Information to be included on the plans submitted for a building permit***

The project drawings submitted for a building permit shall include a detailed landscape plan for review and approval by the Planning and Zoning Division. The landscaping plan shall include proposed surface materials and design details for all common areas in the development. A

detailed planting schedule showing sizes, quantities, and names of plant species as well as the proposed method(s) of irrigation is required. The design of the plaza located at the corner of Telegraph Avenue and 51<sup>st</sup> Street shall acknowledge the presence of Temescal Creek under the site. Examples of appropriate forms of acknowledgment include a design feature that represents the creek and an informational plaque concerning the creek. Pursuant to Section 17.124.030 of the Oakland Planning Code, one fifteen-gallon street tree, as approved by the Public Works Agency, Tree Division, shall be provided for every twenty-five (25) feet of street frontage or for every twenty (20) feet of street frontage if a curbside planting strip exists. Fire and drought-resistant species are encouraged. The landscape plan shall also show the proposed design, height, and location of all proposed fencing and gates.

**b. *Prior to issuance of a certificate of occupancy***

The applicant shall install all proposed landscape features indicated on the approved landscape plan prior to the issuance of a certificate of occupancy, unless bonded pursuant to the provisions of Section 17.124.50 of the Oakland Planning Code. The amount of such bond or cash deposit shall equal the greater of \$2,500 or the estimated cost of the required landscaping, based on a licensed contractor's bid.

**c. *Ongoing***

All installed planting shall be permanently maintained in a healthy condition.

**21. Final Elevations**

**a. *Information to be included on the plans submitted for a building permit***

The final proposed building elevations shall be reviewed and approved by the Planning and Zoning Division. All proposed exterior windows and doors shall be recessed a minimum of three inches from the surrounding wall surface and/or incorporate window trim or a pronounced sill. Detailed window section drawings are required.

**22. Final Building Colors and Materials**

**a. *Information to be included with the materials submitted for a building permit***

The final proposed building colors and materials shall be submitted for review and approval by the Planning and Zoning Division. The material proposed for the base of Building 1 shall be a high-quality, durable material (e.g., stone, tile). Concrete or stucco is not allowed along the base of Building 1 unless the applicant can demonstrate that the proposed material will provide for a high level of quality and durability.

**23. Temescal Creek Culvert**

**a. *Information to be included with the materials submitted for a building permit***

The applicant shall submit a statement from a licensed engineer certifying that the project is designed and engineered in a manner that does not compromise the integrity of the Temescal Creek culvert located on the site.

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