

Location:	2315 Valdez Street, 320-326 23rd Street, and 2330 Webster Street
Assessors Parcel Number:	(see map on the reverse) (APN: 008-0668-004-00 through 008-0668-006-00, 008-0668-009-07)
Proposal:	Demolition of 2, two-story commercial buildings and construction of a 22-story, high-rise building containing 281 units, 10,603 sq. ft of ground floor retail, 10,613 sq. ft. of 2 nd story commercial with building services, and 535 parking stalls.
Applicant:	Walter Cohen / (415) 221-2534
Owners:	PPD Merritt I, LLC & Catherine Syce
Planning Permits Required:	Interim Major Conditional Use Permit for a maximum density that exceeds the zoning but is consistent with the General Plan; Minor Variances for the amount of commercial space, 2 loading berths, and for parking dimensions where adjacent to a column or other obstruction; Design Review.
General Plan:	Community Commercial
Zoning:	C-40 Community Thoroughfare Commercial Zone
Environmental Determination:	Infill Exemption; CEQA Guidelines Section 15332
Historic Status:	The building at 320 23 rd Street is a Potentially Designated Historic Properties (PDHP); Survey rating: C3. The building at 326 23 rd Street is not a PDHP; Survey rating Ed3. The majority of the project site is currently used as a surface parking lot.
Service Delivery District:	Downtown Metro
City Council District	3
Date Filed:	October 12, 2005
Staff Recommendation	Decision based on staff report
Finality of Decision:	Appealable to City Council within 10 days
For further information:	Contact case planner Heather Klein at 510 238-3659 or by e-mail at hklein@oaklandnet.com .

SUMMARY

An Interim Major Conditional Use Permit and Design Review application, at this location, was originally approved on January 23, 2002 along with certification of a Mitigated Negative Declaration (Case File Number CMD01-334 and ER01-030). This previously approved project proposed construction of a 234' tall mixed-use building containing 237 residential units, 491 parking spaces (of which 242 would be allocated for public parking) and 5,000 sq. ft. of retail space. Demolition of the buildings located at 320-326 23rd Street were not included in this project. Revisions to this project, allowed either construction of the approved project or construction of a mid-rise project including 204 units, 5,000 sq. ft. of retail, and 376 parking stalls without the high-rise tower. These revisions were approved administratively by the Planning Director on April 30, 2003.

PPD Merritt I, LLC has submitted an application to construct a residential high-rise at this same location. The new project proposes the demolition of 2 two-story commercial buildings and the construction of (241'-6") 281 units, 10,603 sq. ft. of ground floor retail, 10,613 sq. ft. of 2nd story commercial with building services, and 535 parking spaces of which 242 would be allocated for public parking. The project site is located in the Valdez District neighborhood and specifically on a corner-lot bounded by Webster, 23rd, and Valdez Streets.

(Contains map showing the project site and general vicinity)

The architectural style of the building is consistent with modern urban high-rise design. The project is compatible in mass, bulk, and scale with many buildings in the area including the 22-story recently approved 100 Grand Project across 23rd Street, the 8-story YMCA parking garage located across Webster, the 21-story City National Bank, the 16-story Nara Bank, and the 16-story Caltrans office building.

The project requires an Interim Major Conditional Use Permit for a maximum density that exceeds the zoning but is consistent with the General Plan; and Minor Variances for amount of commercial parking, 2 loading berths, and for parking dimensions where adjacent to a column or other obstruction. Design review is also required for the project. Additional discussion of these issues is provided later in the ZONING COMPLIANCE and DESIGN ISSUES sections of this report.

Overall, staff believes that the project will be a positive contribution to this neighborhood and recommends approval of the project subject to the findings and conditions. The required variances are justified given the constraints of this site and the nature of the project.

SITE DESCRIPTION

Existing Conditions

The project site is located on a corner lot bounded by Webster Street, 23rd Street, and Valdez Street. Two commercial buildings, containing restaurants and an auto body shop, are located on the project site. The building at 320 23rd Street, which houses the auto body shop, is a Potentially Designated Historic Property (PDHP) with a survey rating of C3. The majority of the site is used as surface parking. A long-term parking agreement runs with the property which requires the project sponsor to provide parking for 242 cars. These spaces are to be made available for the tenants of the nearby 155 Grand Ave and One Kaiser Plaza office buildings on a preferential basis.

Surrounding Area

The site is located within the Valdez District of Downtown Oakland. To the north, along the interior side property line are the Creative Growth Arts Center, an automotive repair shop, and a 4-story apartment building. Directly across Webster Street to the west are a public parking lot and the YMCA. A 4-story apartment building and a parking lot are located to the east. To the south, across 23rd Street are a parking lot and the site of the recently approved 100 Grand Project.

PROJECT DESCRIPTION

The project proposes the construction of a 22-story building (241'-6" tall) on a corner site bounded by Webster, 23rd, and Valdez Streets. Plans show the building built directly to the property lines except a 7' setback is shown adjacent to the Creative Growth Arts Center. Plans call for the demolition of 2 two-story commercial buildings and the construction of a 281-unit condominium project with 10,603 sq. ft. of ground floor retail space, and 10,613 sq. ft. of 2nd story commercial space.

The building construction type will be concrete and is "urban" in architectural style. The project plans show a 4-story building mass along the interior side property line; a 5-story building mass along Valdez Street; and a 3-story building mass along Webster Street that steps up to 22-story high-rise tower at the corner of Webster and 23rd Streets. Due to the change in mass and the increase in the number of stories, the building presents different views from each street front.

On the Webster Street elevation, the base is delineated by a 3-story mass. This mass is broken up through the use of a pre-cast base, metal grills, spandrel glass, and storefront windows. The top of the base is defined by apertures or portal elements that frame views from the interior open space, metal railings, and G.F.R.C. panels. The 22-story tower rises up at the corner. The mass and bulk of the building is broken

through recessed planes and projecting balconies. The middle portion of the building continues the G.F.R.C. panel material at the base which is punctured by large 2-story windows in varying proportions. The top of the building is delineated by floor to ceiling windows, metal sunshades, and metal trellises. The corner is an open colonnade offset by tall planting.

Turning the corner onto 23rd Street, the tower massing, materials, and architectural elements are the same. However, the top also includes a deep alcove of floor to ceiling windows. At the base, the 2-story residential lobby is partially visible through a metal fence, entry gate, another aperture covered with a metal grill, and landscaping in the courtyard. The lobby canopy extends out over the entrance from the street and the gym and lounge overlook the lobby roof. The building mass then steps up to 5-stories at the corner of 23rd and Valdez. This building has a pre-cast base, large floor to ceiling windows, a projecting bay, well integrated balconies, and metal sunshades.

On the Valdez elevation the 5-story mass continues around from 23rd Street. Again the materials and architectural elements are the same, except this side is more indicative of a lower density residential building. This mass is broken up by projecting bays and balconies and large windows. The aperture or portal element ends the street elevation and is identical to the element on the opposite (Webster Street) elevation. The architect uses stoops to transition between the street and the units. These stoops include a metal gate and fence.

The project is proposing 4 parking levels that would include parking for the residential component (281 stalls plus 12 stalls for guest parking) and the public (242 stalls). Plans show 166 parking stalls on the 2nd basement level and 158 stalls on the 1st basement level. These stalls would be available for the public. The ground floor plan shows the main residential entrance/lobby to the high-rise tower; 5 townhouses, 10,603 sq. ft. of ground floor retail, 99 stalls of residential parking; and the garage and loading entrances. The ground floor retail spaces are located at the corner of Webster and 23rd Street and 23rd and Valdez Street. These spaces will provide 301 linear feet of and will offer 10' clear heights. Metal canopies shade the storefront windows. Five, 2-story, 2-bedroom town homes are accessed from stoops fronting onto Valdez Street. The 2nd level plans show 112 residential stalls, 10,613 sq. ft. of commercial space or building services, and the upper level of the town homes. The 3rd story is the beginning of the residential levels. This floor shows 10 town homes on the interior side property, 25 units, a large group open space, and the building gym and lounge area. The 5th level shows 25 units. Levels 6-20 contain only the high-rise units with approximately 12 units per floor. Level 21 and 22 contain 11, 2-story penthouse units. The project contains a mix of units including town homes which range in size from 1,200-1,464 sq. ft. The remaining units are typical condominiums which include a combination of one bedroom units that range from 769 to 918 sq. ft.; two bedroom units that range from 1,009 to 1,258 sq. ft.; and penthouse units that range from 1440 sq. ft. to 2100 sq. ft.

Open space is provided through a 2,443 sq. ft. landscaped courtyard in front of the residential lobby off of 23rd Street. Group open space is also provided through a 17,488 sq. ft. landscaped courtyard that includes a pool, a spa, an outdoor gas fireplace, and a water feature. Additional private open space totaling (22,438 sq. ft.) is provided through balconies located on the exterior facades.

Attachment A provides the site plan, floor plans, and building elevations for the project, along with supplementary plans and details.

GENERAL PLAN ANALYSIS

Land Use and Transportation Element

The Land Use and Transportation Element (LUTE) General Plan designation for the project site is Community Commercial (CC). The maximum residential density provided in the CC category is 125

dwelling units per gross acre or 166 dwelling units per net acre. The 1.68 acre project site could support a maximum of 281 units. The 281-unit project meets the maximum allowable density. The Community Commercial designation has a maximum Floor Area Ratio (FAR) of 5.0 while the project is only proposing a commercial FAR of .14.

The General Plan states that the *intent* of the CC designation is to “identify, create, maintain, and enhance areas suitable for a wide variety of commercial and institutional operations along the City’s major corridors and in shopping districts or centers.” The General Plan states that the *desired character* of future development in the area may include “neighborhood center uses and larger scale retail and commercial uses, such as auto related businesses, business and personal services, health services and medical uses, educational facilities, and entertainment uses. Community Commercial areas can be complemented by the addition of urban residential development and compatible mixed-use development.” The General Plan also states that “the higher end of allowable density/intensity range is most appropriate along the arterials.”

The following General Plan Land Use and Transportation Policies and Objectives apply to the proposed project:

Policy D6.1: Construction on vacant land or to replace surface parking lots should be encouraged throughout the downtown, where possible. **The proposed project effectively uses the site by providing 10,603 sq. ft. of ground floor commercial space, 10,613 sq. ft. of 2nd story commercial space, and 281 residential units over what are now small under utilized commercial buildings and a surface parking lot.**

Policy D10.1 Housing in the downtown should be encouraged as a vital component of a 24-hour community presence. **The General Plan envisions fairly high density in this area which would help achieve a twenty-four hour presence in the Downtown and enhance a sense of community. The General Plan states that the higher end of the allowable density is appropriate along the major arterials. The proposed project will add 281 new residential units to Oakland’s housing stock in the Valdez District near Grand Avenue and Broadway, which are major arterial streets.**

Policy D10.2: Housing in the downtown, should be encouraged in identifiable districts, within walking distance of the 12th Street, 19th Street, City Center, and Lake Merritt BART stations to encourage transit use, and in other locations where compatible with surrounding uses. **Adding housing units near BART stations, and throughout the City, is a key goal of the General Plan. The project is proposing 281 residential units at the northern edge of Downtown in the Valdez area. The project site is located within walking distance (5 blocks) from the 19th Street Bart station. In addition to the BART, the site can be readily served by 12 AC Transit bus routes including the 40, 40L, 43, 51, 59, 59A, 12, 11, 15, and 72.**

Policy D10.5: Housing in the downtown should be safe and attractive, of high quality design, and respect the downtown’s distinct neighborhoods and history. **The proposed project is designed with high quality materials including G.F.R.C. panels; metal spandrels; metal and cement plaster balconies; translucent glass spandrel and decorative metal grills; metal and glass canopies; and residential stoops. The project also includes extensive streetscape improvements.**

As far as respecting the district neighborhood and history, the surrounding area does not exhibit a distinct architectural style and the neighborhood is slated for dramatic change with possible approval of the Kaiser Master Plan and construction of the 100 Grand project. The proposed structure will be woven into a downtown urban fabric that includes many high-rise office buildings.

Policy D11.1: Mixed-use developments should be encouraged in the downtown for such purposes as to promote its diverse character, provide for needed goods and services, support local art and culture, and give incentive to reuse existing vacant or underutilized structures. **The project proposes 10,603 sq. ft. of ground floor retail. These spaces will encourage a more active street front and will substantially contribute to a Valdez shopping district, providing for needed goods and services. The inclusion of housing strengthens the neighborhood cohesion and identity and is within walking distance to the Lake Merritt Office District, Lake Merritt, and Snow Park.**

The proposed project meets the referenced objectives, the general intent of the CC land use designation, and is a good fit for this area.

The current zoning potentially conflicts with the CC land use designation in that the C-40 zone does not permit a maximum density equal to the General Plan. In these situations, pursuant to the *Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations* (as amended July 2004), the General Plan governs, and the higher density is permitted with a Interim Major Conditional Use Permit. (Section 17.01.100.B)

Historic Preservation Element

There are no existing historical resources on the project site, and the site is not located within a historic district. There are, however, historic and potential designated historic properties on and in the immediate vicinity of the project site. The project is proposing the demolition of a PDHP at 320 23rd Street. The building is currently occupied by the H & K Body Shop. The one-story concrete building is an early 20th century service garage built in 1923 by R. Vane Woods. This property has a rating by the Oakland Cultural Heritage Survey (OCHS) of C3 [C, Secondary Importance; 3, not in an Area of Primary Importance (API) or Area of Secondary Importance (ASI)]. The demolition of this building is not considered to be a significant impact for CEQA purposes. Staff has included findings required per Policy 3.5 for the demolition of this structure in the Findings section and a condition of approval per Policy 3.7 later in the report.

There are other potentially designated historic properties surrounding the site, including the Newsom Apartments, 2344-50 Webster Street, 367 24th Street, 355-63 24th Street/2355-59 Valdez Street, 25th Street Garage District, Waverly Street Residential District. However, the project is not proposing to demolish these structures or materially damage them so that they would be ineligible for the Register of Historic Places.

ZONING COMPLIANCE

Density

The project site is zoned C-40, Community Thoroughfare Commercial Zone. The maximum residential density is set forth in the R-70 regulations, which permits 1 unit per 450 sq. ft. of lot area. Staff has calculated that 163 units would be permitted on the site with a lot area of 73,548 sq. ft. The project exceeds the maximum allowed density for this zone by 118 units. As stated above in the GENERAL PLAN ANALYSIS, the 281 units is permitted with approval of an Interim Major Conditional Use Permit.

The following table depicts the project’s comparison to the C-40 development standards:

Zoning Regulation Comparison Table

Criteria	Requirement C-40	Proposed	Comment
Yard – Front	0’*	0’	Meets the C-40 requirements.

Yard- Corner Lot Line	0'	0'	Meets the C-40 requirements.	
Yard – Interior Lot Line	0'	0'-7'	Meets the C-40 requirements.	
Height	No maximum	241'-6" to the parapet and 254' to the mechanical enclosure	Meets the C-40 requirements.	
Usable Group Open Space	150 sq. ft. / unit = 42,150 sq. ft.	19,931 sq. ft. of group open space and 22,438 sq. ft. ** of private open space = 64,807 sq. ft.	Meets the C-40 requirements.	
Parking	Commercial	1 space / 400 sq. ft. = 26 spaces	0 spaces	Does not meet the C-40 requirements. Variance required
	Residential	1 space / unit = 281 spaces	281 spaces	Meets C-40 requirements.
Loading	Residential floor area between 150,000 and 449,999 sq. ft. =2 berths Commercial floor area between 10,000 and 24,999 sq. ft. = 1 berth Total =3 berths	1 berth	Does not meet the C-40 requirements. Variance required.	
Residential Density	1 unit / 450 sq. ft. = 163 units	281 units	Does not meet the C-40 requirements but is permitted with an Interim Major Conditional Use Permit.	
FAR	3.3	.14	Meets the C-40 requirements.	

Table Notes:

* According to the definition of a front yard, the project site is a thorough lot which has 2 front yards and therefore no rear yard.

** Per Section 17.126.020, each square foot of private usable open space conforming to the provisions of Section 17.126.040 shall be considered equivalent to two square feet of required group usable open space and may be so substituted.

The criteria for review and approval of this facility at this location includes the following: The General Use Permit Criteria in Section 17.134.050, the criteria for Variances in Section 17.148.050 apply, the Design Review Criteria in Section 17.136.070 (including the additional design review criteria for higher residential density projects), and the findings per Policy 3.5 of the Historic Preservation Element. All applicable criteria are analyzed and appropriate findings are made in the *FINDINGS* Section of this report.

ENVIRONMENTAL DETERMINATION

As stated above, an Interim Major Conditional Use Permit and Design Review application, at this location, was originally approved on January 23, 2002 along with certification of a Mitigated Negative Declaration (Case File Number CMD01-334 and ER01-030). When the Mitigated Negative Declaration was prepared, California Environmental Quality Act (CEQA) Section 15332, regarding the Infill Exemption, was under litigation and not available for project review. Had this exemption been available, staff would have used the exemption, since all the mitigation measures outlined in the Mitigated Negative Declaration, including construction air quality, construction noise, water quality and cultural resources are actually standard conditions of approval imposed regardless of CEQA. These conditions of approval are included as numbers 12-21.

Based on the size and location of the project site, as well as the findings of the traffic report, historic analysis, noise report, and wind study, staff has concluded that the project is able to satisfy the in-fill exemption under the CEQA, Section 15332. The categorical exemption criterion follows with a brief summary of staff's analysis in bold print:

- 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; **As demonstrated in the General Plan Analysis section of this report, the application is consistent with all applicable General Plan policies and the Community Commercial designation. The Zoning Analysis and Required Findings sections demonstrate that, with approval of the CUP's and Variances, the project is consistent with the Zoning Ordinance.**
- b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; **The project site encompasses approximately 1.68 acres. The site is located within downtown Oakland and is currently occupied by 2 commercial buildings and a surface parking lot. The project is substantially surrounded by commercial, civic, and residential urban uses.**
- c) The project site has no value as habitat for endangered, rare or threatened species; **The project site contains no known endangered, rare, or threatened species and is currently occupied by existing structures and a parking lot.**
- d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; **A traffic report was completed specifically for this project and submitted on November 30, 2005 (See Attachment B for Executive Summary). Traffic impacts from the project were reviewed at several intersections within proximity to the project site. The project is anticipated to generate approximately 1,242 new net daily trips, 86 AM peak hour trips and 107 PM peak hour trips. Level of Service (LOS) was calculated for 10 intersections. The report's findings indicate that all intersections would operate at a LOS E or better even in the cumulative 2010 and 2025 conditions.**

The 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. There may, however, be minimal localized temporary impacts to air quality during demolition and construction, as well as temporary noise impacts. The applicant is required to comply with all applicable City regulation and operation procedures as part

of the issuance of building or grading permits, including standard dust control measures. Standard and uniformly applied construction noise conditions of approval have been imposed for this project. Further, the proposed residential units would be required to comply with California Code of Regulations Title 24 noise insulation standards. The project must also comply with the NPDES water quality requirements since the project exceeds one acre. These measures have been incorporated into the conditions of approval. Recommended conditions (Nos. 12-22) specify the required construction period management procedures.

- e) The site can be adequately served by all required utilities and public services. **The project site is located in a highly urbanized area within downtown Oakland. The site is occupied by two existing structures that are currently served by utility and public services.**

Staff has also concluded that the project would not cause a cumulative impact. The project, with planned landscaping along street frontages and including at least nineteen street trees along Valdez, 23rd, and Webster Streets, would not result in cumulative hazardous wind conditions (based on a Wind Tunnel Study prepared by Donald Ballanti, Certified Consulting Meteorologist, December 4, 2001 and associated letter from David Powers and Associates, November 8, 2005). The project would not. The traffic report's findings indicate that all intersections would operate at a LOS E or better even in the cumulative 2010 and 2025 conditions. The historical report completed for the project (Attachment D) determined that the PDHP located at 320 23rd Street was not a historic resource per CEQA and that the project would not result in a substantial adverse change to a historic resource.

KEY ISSUES

Staff believes that the overall site plan, height, and architectural character are appropriate to the area. The proposed project is consistent with the neighborhood in terms of building bulk and massing with many buildings in the area, including the 22-story residential tower (100 Grand Project) recently approved across 23rd Street. Staff has identified several variance and design issues in the next section of the report.

Variations

- *Commercial Parking:* The Planning Code requires that parking be provided for general retail, general food sales, and general office uses when new buildings containing these uses are located in the C-40 zone. The amount of required parking varies from 1 space per 200 sq. ft. for food sales to 1 space per 600 sq. ft. for general office use. The applicant has not decided on the future use of this space, therefore, between 17 and 52 spaces would be required. The applicant is not proposing any dedicated commercial parking stalls at this time. It is anticipated that the retail space would be leased to a neighborhood serving retail tenant. Staff believes that a parking management plan, submitted by a qualified parking consultant, can be practically established so that a portion of the spaces that are allocated for residential or public parking can be used during the day for commercial use. Particularly, employee parking, which is longer term should be accommodated. The project's public parking is the result of a long term parking agreement that runs with the subject property and which requires the project sponsor to provide parking for 242 cars. Staff recommends such approach and the city has used it in other downtown locations with success.
- *Loading Berth:* Pursuant to Section 17.116.120, two loading berths are required for residential use with floor area between 150,000 and 449,999 sq. ft. In addition, a loading berth is also required for commercial space between 10,000 and 24,999 sq. ft. of floor area. The project is

providing one loading berth on-site. Staff believes that a variance for the loading berths can be supported since the project will entail the construction of condominiums and not for-sale units. In addition, the applicant is not expecting a “destination” commercial tenant which would require the use of a specifically designated loading berth. A condition of approval for a parking management plan is already recommended for the amount of commercial parking. Staff believes that this parking management plan could also include provisions for use of the loading berth. An example provision could include residential loading only on weekends or after normal business hours.

- *Parking Space Dimension when Adjacent to a Wall or other Obstruction and Maneuvering Aisle Width:* Section 17.116.200 states that when a parking space abuts a wall or other similar obstruction, the stall width shall be increased by 3'. Staff reviewed the plans and found that 29% of the parking spaces were compact spaces. Staff believes that the findings can be met for the variance based on the following rationale: Strict compliance would preclude an effective design solution that fulfills the basic intent of the Planning Code's regulations, and maximizes the number of off-street spaces available for the project. Staff has already recommended a parking management plan that includes a requirement that the Covenants, Conditions and Restrictions (CC&Rs) for the units stipulate residents' awareness that many parking spaces are deficient in additional width. Further, these parking spaces will be used consistently by the same group of people on a daily basis, thus creating familiarity with how to maneuver in and out of the spaces.

Design Issues

Staff presented the project before the Design Review Committee (DRC) on October 26, 2005. Staff's main concern was the residential entry. Staff felt that the space was more an extension of the lobby than a public space. By opening this space up to pedestrian activity between the retail areas, that area could act more as a widened sidewalk or as an outdoor space for the retail use. Commissioner Lee liked the design of the overall project and thought that the seat walls along the street were a unique element. Commissioner Jang thought the lobby area had an institutional feel and that the public/private space could be better defined. The applicant has submitted sketches for this area which shows outdoor seating, a trellis, and a large planter. Although this area is still being refined, staff believes that the revisions further define the private and public space. Staff has recommended a condition of approval that these details will be submitted to staff as design development for the project continues.

CONCLUSION

The proposal seeks to develop a high-density, mixed-use project in the Valdez neighborhood. The project will be woven into a downtown urban fabric that includes urban high rises and office buildings. The project meets the primary goal of providing new housing units and an active ground floor in the downtown. The proposal will enhance the area and will be a major addition to this neighborhood. Furthermore, the project is clearly in conformance with the General Plan goals and policies. The conditional use permit and variances for amount of commercial space, 2 loading berths, and for parking dimensions are warranted and are not anticipated to create adverse impacts, pursuant to the attached Findings and Conditions of Approval.

RECOMMENDATIONS:

1. Affirm staff's environmental determination for Infill Exemption.

2. Approve the Interim Major Conditional Use Permit, Minor Variances and Design Review, subject to the Conditions of Approval based on the attached findings.

Prepared by:

Heather Klein
Planner II, Major Projects

Approved for forwarding to the
City Planning Commission:

Gary Patton
Major Projects Manager

Claudia Cappio
Development Director

ATTACHMENTS:

- A. Plans and Elevations
- B. Executive Summary for the Traffic Study; Korve Engineering; dated December 1, 2005 (The full traffic report is available to the public at the Planning and Zoning division office.)
- C. Wind Tunnel Study, December 4, 2001 and associated letter from David Powers and Associates, November 8, 2005
- D. Historic Analysis; David Powers and Associates; dated November 8, 2005
- E. Noise Impact Study; Rosen Goldberg & Der; dated November 8, 2005

FINDINGS FOR APPROVAL

This proposal meets the required findings under Section 17.134.050 (General Use Permit Findings); Section 17.148.050 (Variances findings); Section 17.136.070.A (Residential Design Review findings, including the additional design review criteria for higher residential density projects), and the findings per Policy 3.5 of the Historic Preservation Element, as set forth below. Required findings are shown in bold type below and are also contained within other sections of this report and the administrative record; explanations as to why these findings can be made are in normal type.

Section 17.134.050 (Interim Major Conditional Use Permit Criteria)

- A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

An Interim Major Conditional Use Permit is requested for a maximum density that exceeds the zoning regulations but is consistent with the General Plan. Although the project is larger in height than many buildings directly adjacent to the side property line, the project is consistent with many of the high-rise office buildings in the area. These buildings include the 22-story recently approved 100 Grand Project across 23rd Street, the 8-story YMCA parking garage located across Webster, the 21-story City National Bank, the 16-story Nara Bank, and the 16-story Caltrans office building. The General Plan designation of CC encourages urban high-rise residential and high densities and intensities of development, especially along arterial streets. The proposed project will not adversely affect the livability or appropriate development of abutting properties, nor will the proposed project negatively affect the neighborhood character. The proposed project steps the building mass down to 4 stories along the interior side property line and 5 stories along Valdez Street. The high-rise component is located at the corner of 23rd and Webster Street, far away from the lower residential uses. As there is no distinct and identifiable neighborhood character or architectural style, the project's design will enhance and promote the unique character of the Oakland Valdez neighborhood. The project will provide the area with active street front uses, an attractive streetscape, a building with high quality materials and appropriate site planning. The addition of new residents will provide a 24-hour presence in the area.

- 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 project will provide living and shopping opportunities that are close to the downtown area and are accessible by public transportation. The residential use will contribute to creating a convenient and functional living and working environment that is encouraged by the General Plan. The building's design and materials are of high-quality and are modern or urban in character, which is appropriate for a Downtown location. The project proposes streetscape improvements including street trees, as well as planting areas and seat walls off the public sidewalk.

- 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 development will enhance the surrounding area in its basic community functions by providing housing and neighborhood serving retail opportunities near transit. The project will promote the Valdez shopping district with the ground floor and 2nd level commercial uses. These spaces will activate the street and continue the ground floor retail pattern approved in the 100 Grand project across 23rd Street. The proposed project will provide a mix of units, several with residential stoops, which will strengthen the neighborhood identity and promote a 24-hour presence. The project will enhance the area by affectively utilizing a Downtown site for a mixed-use project that would have remained an underutilized parking lot with small retail spaces. The project will further the General Plans policies and goals, as described elsewhere in this report.

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

The proposed project conforms to all applicable design review criteria including the residential design review findings as outlined later in this section.

- 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 proposed project conforms in all significant respects with the “Community Commercial” General Plan land use designation. The project will support the objectives and policies of the Land Use and Transportation Element (LUTE) for this area including construction on vacant land to replace surface parking lots (Policy D6.1); encouraging the construction of housing units to provide a 24-hour community presence (Policy D10.1); encouraging mixed-use developments in the Downtown in identifiable district near transit (Policy D10.2 and D11.1); and construction with high quality design and materials (Policy D10.5).

In addition, the project meets the objectives and policies of the Historic Preservation Element which acknowledge that it would be unrealistic to believe that lands adjacent to and containing historical landmarks will remain vacant or unchanged. A city like Oakland will continue to grow and change primarily through redevelopment of existing buildings and underused parcels. The General Plan policies and objectives encourage such actions. New construction adjacent to a historic building or district, in and of itself, is not an impact to the historical resource. Rather, design attention and major revisions have been completed to assure that the characteristics and qualities historic properties will not be materially altered. Further policies and conditions outline the findings if PDHP’s are to be demolished (320 23rd Street). Staff has made the appropriate findings and included property relocation per Policy 3.7 as a condition of approval.

Section 17.148.050(A) Minor Variance Findings

- 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.**

- a) *Two Loading Berths:* Pursuant to Section 17.116.120, two loading berths are required for residential use with floor area between 150,000 and 449,999 sq. ft. In addition, a loading berth is also required for commercial space between 10,000 and 24,999 sq. ft of floor area. The project is providing one loading berth on site. Strict compliance would preclude operational efficiency within the garage which was designed to accommodate the public parking that would be removed from the surface lot as well as residential spaces. Since the building would contain 1 loading berth, staff believes that a variance for the additional loading berths can be supported since the project will entail the construction of condominiums and not for-sale units. In addition, the applicant is not expecting a “destination” commercial tenant which would require the use of a specifically designated loading berth. A condition of approval is recommended for establishment of a parking management plan to avoid conflicts between loading activities. Staff believes that this plan could also include provisions for use of the loading berth. An example provision could include residential loading only on weekends or after normal business hours. Staff recommends such an approach and the City has used it in other downtown locations with success.

- b) *Amount of Residential Parking:* The Planning Code requires that parking be provided for general retail, general food sales, and general office uses when new buildings containing these uses are located in the C-40 zone. The amount of required parking varies from 1 space per 200 sq. ft for food sales to 1 space per 600 sq. ft. for general office use. The applicant has not decided on the future use of this space, therefore between 17 and 52 spaces would be required. The applicant is not proposing any dedicated commercial parking stalls at this time. Strict compliance with this regulation would increase the number of parking spaces, and therefore the height and ground floor appearance of the building. Since it is anticipated that the retail space would be leased to a neighborhood serving retail tenant, staff believes that a parking management plan can be practically established so that a portion of the spaces that are allocated for residential or public parking can be used during the day for commercial use. Particularly, employee parking, which is longer term should be accommodated. The project’s public parking is the result of a long term parking agreement that runs with the subject property and which requires the project sponsor to provide parking for 242 cars.

- c) *Parking Space Dimension when Adjacent to a Wall or other Obstruction and Maneuvering Aisle Width:* Section 17.116.200 states that when a parking space abuts a wall or other similar obstruction, the stall width shall be increased by 3’. The variance related to the width of standard sized parking spaces adjacent to walls or other obstructions is requested in order to maintain the maximum number of parking spaces within the limited confines of the parking structure, and restricted by the necessary ramps and column and sheer wall placement. Strict compliance would preclude an effective design solution that improves livability for the residents, operational efficiency and appearance, and that balances the City’s desired density for this site (pursuant to the General Plan policies and housing goals outlined earlier in this report) without increasing the size of the parking area. Strict compliance would also reduce the total number of off-street parking spaces. Further, these spaces will be consistently used by residents who are familiar with how to maneuver in and out of the garage. No conflicts with doors opening or vehicles entering or exiting the spaces should occur because of the positioning of the columns toward the rear of the spaces. Staff has proposed a condition of approval requiring a parking management plan, which should alleviate any potential parking space conflicts (Condition No. 24).

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.**
- a) *Two Residential Loading Berths:* The intent of the loading berth regulation was to provide designated off-street spaces for loading. If the project were to comply with the loading berth requirement, parking spaces would need to be removed or the retail spaces reduced. Replacement of the retail square footage would increase the need for additional parking levels and therefore, affect the height and appearance of the building. This would also result in an inefficient site plan. Loading would only be required for residents moving in and out of the units and for retail deliveries. This would take place infrequently since 1) the units are for-sale and not rental and 2) the retail spaces will be neighborhood serving commercial. Since the project is providing one loading berth on site, staff believes that a management plan can be established that would eliminate loading conflicts between the uses, as well as maximize the functionality of the project site. Granting the loading berth variance would provide an effective design solution for the project.
 - b) *Amount of Commercial Parking:* The intent of the commercial parking regulation is to provide parking stalls for employees and customers on-site and off the street. The project is already proposing 535 parking stalls. Of these spaces 242 stalls are for public parking per the requirements of a long term lease. These spaces are to be provided on a preferential basis and can be shared with other uses. Strict compliance would require additional parking levels and therefore affect the appearance of the building. Staff believes that a variance can be supported since the project is providing parking spaces that can be shared between different uses. Staff has recommended a parking management plan as a condition of approval so that portions of the public or residential parking can be used for commercial use.
 - c) *Parking Space Dimension when Adjacent to a Wall or other Obstruction and Maneuvering Aisle Width:* Strict compliance with the additional width of parking spaces adjacent to walls or columns would preclude the project's effective design solution that fulfills the basic intent of the Planning Code's regulations. It would require the parking garage to be larger to maintain the same number of parking spaces or reduce the total number of spaces. Pursuant to proposed Condition No. 24, with proper parking assignment and management, the lack of additional width should not have detrimental effects.
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.**
- a) *Two Residential Loading Berths:* The lack of two additional loading berths on-site is not expected to cause significant traffic or circulation problems in the vicinity and is not expected to adversely affect the character or livability of the neighborhood. As stated above, loading would be used to accommodate residents moving in and out of the units. Since these units will not be rental, loading is expected to occur infrequently and by moving vans. Furthermore, the neighborhood serving retail spaces are not expected to generate the need for a designated commercial loading berth. Staff has required as a condition of approval that the applicant submit a parking management plan that would eliminate conflicts between the commercial and residential loading activities.

- b) *Amount of Commercial Parking:* The variance for the amount of commercial parking will not affect the character or livability of the surrounding area. The project is providing 535 parking spaces that could be shared and accommodate the commercial uses. The retail spaces are not anticipated to generate a high parking demand. The reasons for a low parking demand include the limited floor area of each retail space, the likelihood that the spaces would be used as neighborhood serving commercial and not “destination” commercial spaces; and the high pedestrian foot traffic. In order to reduce any parking impact on the surrounding neighborhood, staff has required that a parking management plan be implemented so that that a portion of the residential spaces or public spaces can be used during the day for commercial use. This plan would insure that employee parking which is longer term, can be accommodated.
- c) *Parking Space Dimension when Adjacent to a Wall or other Obstruction and Maneuvering Aisle Width:* The variance for the width of parking spaces adjacent to walls or similar obstructions will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area. The variance will result in minor effects to the internal operations of the garage and will not be detrimental to the public welfare. Granting of the variance will ensure that the design of the project is compatible with the scale and architectural character of the area and is consistent with plans and development policies for the area. If the variance is not granted and the project remained at its current size, the project would need to provide fewer parking spaces or additional space for parking, likely raising the height of the building or eliminating commercial/office space on the ground floor along the street.
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.**

a-c) The project meets the intent of the zoning regulations by supporting an appropriate layout that is well-suited to the surrounding properties in mass, scale, height, materials, and setbacks. This compatibility will enhance and benefit the surrounding neighborhood. The variances can be supported and meet the general intent of the zoning regulations. The implementation of a parking management plan to accommodate the lack of designated commercial spaces 2 loading berths, and the deficiency in parking space dimensions is consistent with the intent of the zoning regulations to provide parking and loading on-site. Loading will be only used for residents moving in and out of the building. This will be infrequent since the units will be for-sale.

Section 17.136.070A (Residential Facilities Design Review Findings)

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;**

As stated above in the report, the project site is located in an area with many high-rise office buildings including the 8-story YMCA parking garage located across Webster, the 21-story City National Bank, the 16-story Nara Bank, and the 16-story Caltrans office building. Furthermore, the project is similar in bulk, height, and mass to the recently approved 100 Grand Project located directly across 23rd Street. The project is consistent with modern urban high-rise design. The applicant is proposing high quality materials including G.F.R.C. panels; metal spandrels; metal and cement plaster balconies; translucent glass spandrel and decorative metal grills; metal and glass

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canopies; and residential stoops. The project is consistent with the allowable density, and facilitates the construction of housing, which is a major goal of the General Plan in Downtown.

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

As stated above, the area has many high-rise buildings with different architectural styles and no real identifiable characteristics. This neighborhood is slated to change dramatically with the possible approval of the Kaiser Master Plan and construction of the 100 Grand project. The proposed project will enhance the neighborhood by affectively utilizing a Downtown site for a well-designed mixed-use, high-rise building. The project will have an urban look that is appropriate for the Downtown area. Furthermore, the project will help to provide a 24-hour presence in the area, near transit and will be constructed of high quality materials.

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

The proposed project site is flat and is currently occupied by 2 small commercial buildings and a surface parking lot. The site contains no notable landscaping. Therefore, the project will have no affect on the existing topography or landscape.

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

See response #3

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 City Council.

The proposed project is consistent with the General Plan land use designation for the site, with Conditional Use Permit, and Variance findings, and with the Design Review Criteria as discussed in more detail throughout the report.

Additional Criterion for Higher Residential Density Projects:

That the proposal will provide for its residents sufficient sunlight, privacy, and quiet, and in general, a convenient, attractive, and functional living environment, with consideration given to site planning, building and room orientation, circulation, and similar relevant factors.

The proposed project provides sufficient sunlight, privacy, and quiet for the residents. The units are a mix of town homes with stoops, garden town homes, condominium units, and penthouse units. The plans show adequate usable open space with a large outdoor pool deck and landscaped courtyard, private balconies, and private patios. The units are oriented along a double loaded corridor each with a view to the outside for adequate light. The site planning with the different residential masses and the amount of commercial/retail space is appropriate for the location and will provide an attractive and functional living environment.

Policy 3.5 of the Historic Preservation Element (Alterations to Historic Resources findings)

Policy 3.5 of the Historic Preservation Element states that for additions or alterations to Potential Designated Historic Properties (PDHPs) requiring discretionary City permits, the City will make a

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finding that:

- 1. the design matches or is compatible with, but not necessarily identical to, the property's existing or historical design; or**
- 2. the proposed design comprehensively modifies and is at least equal in quality to the existing design and is compatible with the character of the neighborhood; or**
- 3. the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.**

The project is proposing the demolition of a Potentially Designated Historic Property at 320 23rd Street. The building is currently occupied by the H & K Body Shop. The one-story concrete building is an early 20th century service garage built in 1923 by R. Vane Woods. This property has a rating by the Oakland Cultural Heritage Survey (OCHS) of C3 [C, Secondary Importance; 3, not in an Area of Primary Importance (API) or Area of Secondary Importance (ASI)]. The demolition of this building is not considered to be a significant impact for CEQA purposes. The demolition of the building meets Policy 3.5 finding number 3. The building does not meet the criteria for individual listing on the National Register of Historic Places, because it appears to lack sufficient design distinction and historical associations. It is not located within a historic district; nor is it listed as a City of Oakland landmark. Furthermore, the building can never be rehabilitated to achieve a higher rating. The surrounding area is a mix of small commercial buildings, potential historic properties, high-rise buildings, surface parking lots, and recently approved projects. There is no identifiable neighborhood character or style. However, the proposed design is compatible with the high-rise character of the neighborhood and the materials are of high quality.

CONDITIONS OF APPROVAL

GENERAL STANDARD 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 dated **November 9, 2005** and as amended by the following conditions. Any additional uses other than those approved with this permit, as described in the project description, will require a separate application and approval.

2. Effective Date, Expiration, and Extensions

a. Ongoing.

This permit shall become effective upon satisfactory compliance with these conditions. **This permit shall expire on December 7, 2007** unless actual construction or alteration, or actual commencement of the authorized activities in the case of a permit not involving construction or alteration, has begun under necessary permits by this date. Upon written request and payment of appropriate fees, the Zoning Administrator may grant a one-year extension of this date, with additional extensions subject to approval by the City Planning Commission.

3. Scope of This Approval; Major and Minor Changes

a. Ongoing.

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

4. Modification of Conditions or Revocation

a. Ongoing.

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

5. Recording of Conditions of Approval

a. Prior to issuance of building permit or commencement of activity.

The applicant shall execute and record with the Alameda County Recorder's Office a copy of these conditions of approval on a form approved by the Zoning Administrator. Proof of recordation shall be provided to the Zoning Administrator.

6. Reproduction of Conditions on Building Plans

a. Prior to issuance of building permit.

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

7. Indemnification

a. Ongoing.

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

8. Waste Reduction and Recycling

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

Prior to issuance of any building permits including the grading and/or demolition permit the project applicant will submit a demolition/construction waste diversion plan and operational waste reduction plan for review and approval by the Public Works Agency. The plan will specify the methods by which the development will make a good faith effort to divert 50% of the demolition/construction waste generated by the proposed project from landfill disposal. After approval of the plan, the project applicant will implement the plan. The operational diversion plan will specify the methods by which the development will make a good faith effort to divert 50% of the solid waste generated by operation of the proposed project from landfill disposal. After approval of the plan, the project applicant will implement the plan. Contact the City of Oakland Environmental Services Division of Public Works at (510) 238-7283 for information.

9. Litter Control

a. Prior to issuance of building permit

A litter control plan that ensures that the premises and surrounding area are kept free of litter shall be submitted to and approved by the Zoning Administrator prior to application for a building permit. The plan shall include, but not be limited to:

- Distribution of proposed locations of litter receptacles on site and in the public right of way. The design and location of litter receptacles shall be consistent and coordinated with the City's street furniture program.
- A management schedule for keeping the premises and surrounding area free from litter originating from the operation of the commercial activities; and
- Daily sweeping and trash collection of the premises, the public sidewalk and the gutter area of the public street immediately adjacent to the project.

10. 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 Department.

11. Improvements in the Public Right-of-Way

a. Prior to issuance of 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, the design specifications 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.

The applicant shall submit public improvement plans that that comply City specifications. Review and confirmation of the street trees by the City's Parks and Recreation 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 certificate of occupancy.

STANDARD CONDITIONS FOR CONSTRUCTION PERIOD MANAGEMENT

12. Construction Hours for Major Projects.

a. During all construction activities.

The project sponsor shall require construction contractors to limit standard construction activities as required by the City Building Department. 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 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.

13. Construction Period Parking and Traffic

a. Prior to issuance of a demolition or building permit

The project sponsor and construction contractor shall meet with the Traffic Engineering and Parking Division of the Oakland Public Works Agency (PWA) and other appropriate City of Oakland agencies to determine traffic management strategies to reduce traffic congestion and the effects of parking demand, to the maximum feasible extent, by construction workers during construction of this project and other nearby projects that could be simultaneously under construction.

The project sponsor shall submit a construction management and staging plan to the Building Services Division with the application for the first 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 above referenced 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 Section 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 14, below.
- Noise control measures as set forth in Condition No. 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 the grading permit.
- Such a plan shall be submitted for review and comment to the Creative Growth Arts Center and, to the extent feasible, shall include participation by the Center in the development of the plan. The plan should strive to minimize the use of 24th Street in front of the Center by construction vehicles and to reduce the loss of on-street parking during all stages of construction.

14. 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.

15. 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 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.
- Final project landscaping plan shall be submitted to the Planning Department for review and approval.

16. 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.
- Hold 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.

17. 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. A third-party peer review, paid for by the applicant, shall be required to assist the City in evaluating the feasibility and effectiveness of the noise reduction plan submitted by the applicant. A community meeting shall be held after the peer review but prior to approval of a noise reduction plan by the City. A special inspection deposit shall be determined by the Building Official, and the deposit shall be submitted by the project sponsor concurrent with submittal of the noise reduction plan. 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 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. Additional Noise and Dust Reduction measures

a. Prior to issuance of the demolition permit

The project sponsor shall research additional noise attenuating measures that can be reasonably implemented to reduce noise impacts particularly inside the Creative Growth Arts Center. The project sponsor shall prepare a plan for approval by the Planning Director prior to issuance of the demolition permit and shall be required to implement the approved plan. Pile driving for construction of the project is not allowed without application and approval to modify this use permit and additional noise mitigation measures.

18. Site Maintenance.

a. During all construction activities.

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

19. 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 discover 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.

20. Special Inspector

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. Prior to issuance of the demolition permit, the project sponsor shall establish a deposit with the Building Services Division to fund a special inspector who shall be available as needed, as determined by the Building Official or the Planning Director.

21. Water Quality

a. Prior to Issuance of a Building Permit

The applicant must comply with the NPDES Storm Water Quality requirements

STANDARD ENVIRONMENTAL CONDITION:**22. State, Federal, or County Authority Environmental Approval****a. *Prior to issuance of building permit***

The applicant shall demonstrate, through written verification that required clearances have been granted and any applicable conditions have been met for previous contamination at the site from the appropriate State, Federal or County authorities or submit a Phase 1 and/or Phase II report for the existing buildings. The Planning Director shall review and provide a determination on the completeness of the reports.

SPECIFIC PROJECT CONDITIONS**23. Final Design Review****a. *Prior to issuance of building permit.***

As the design development of the building proceeds, the design elements listed below shall be revised and shall be submitted for review and approval by the Planning Director prior to issuance of the building permit. Only high quality materials will be approved. The Planning Director may exercise his/her standard authority to refer the design revisions to an appointed sub-committee of the Planning Commission or to the Planning Commission.

- Provide staff with detailed drawings as the residential entrance is further designed for review and approval.
- Provide staff with a mock up of the cladding pattern, including the reveals, and attachments for review at full scale.
- The applicant shall submit the final materials and colors for staff's review.
- The applicant will submit information that affirms that any metal treatment used on the building will be coated or sealed to prevent rusting.
- The applicant must provide staff with cut sheets for the all windows and details showing the window profiles which includes the aluminum panels. The applicant shall provide a minimum 2" window recess.
- The applicant shall submit a detail or "cut-sheet" of the garage service doors for staff review.
- The applicant shall apply for Small Project Design Review for a master signage plan.

24. Covenants, Conditions, and Restrictions & Homeowner's Association**a. *Prior to certificate of occupancy***

The Covenants, Conditions and Restrictions (CC&Rs) for the units shall be submitted to the Planning and Zoning Division for review. The CC&Rs shall provide for the establishment of a non-profit homeowners association for the maintenance and operation of all on-site sidewalks, pathways, common open space and all common landscaping, driveways, and other facilities, in accordance with approved plans. Membership in the association shall be made a condition of ownership. The developer shall be a member of such association until all units are sold.

25. Parking Management Plan**a. *Prior to Certificate of Occupancy and On-going.***

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The applicant shall establish an on-site parking management plan. The parking management plan shall include but not be limited to the following components and requirements:

- The Covenants, Conditions and Restrictions (CC&Rs) for the units shall be submitted to the Planning and Zoning Division for review to affirm that they include the provisions listed here.
- Acknowledgement that many and specific parking spaces are deficient in additional width. (Due to column or wall locations.)
- Require purchasers to acknowledge that maneuverability of several of the parking spaces within the garage may be affected by the location of columns or walls and that due care and caution should be used.
- The management plan shall also stipulate that each unit shall be assigned a minimum of one off street parking space and that such space is included within the lease or ownership rights of the unit.
- Detailing that portion of the residential or public parking spaces may be used during off-peak hours for the commercial space in the project during designated hours. The goal of the parking management plan will be to share the available on-site parking with the various on-site uses which have different peak occupancies. The parking management plan would likely result in a portion of the residential parking or the public parking being made available to accommodate the required parking for the commercial use during the times that the commercial use will be open. The parking management plan shall be developed by the project sponsor and submitted to the Planning Director for review and approval, prior to occupancy of the commercial space.
- Scheduling of residential and commercial loading to eliminate potential conflicts between these activities.

26. Irrigation Plan and Landscape Maintenance

a. *Prior to issuance of building permit*

An irrigation plan shall be prepared by a licensed landscape architect or other qualified person and submitted in conjunction with the building permit submittal. All landscape and irrigation shall be installed prior to final building permit inspection.

b. *Ongoing*

All project landscaping shall be permanently maintained in a neat, safe, and healthy condition.

27. Lighting Plan

a. *Prior to issuance of building permit*

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

28. Compliance with Historic Preservation Policy 3.7 (Property Relocation Rather than Demolition).

a. *Prior to issuance of a demolition permit*

The project sponsor shall advertise the availability of the building located at 320 23rd Street for relocation, and post a sign on the building advertising the availability. The building shall be made

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available at no cost. The project sponsor shall not be responsible for the costs of relocation. The project sponsor shall make the building available for a period of 90 days after such advertisement.

APPROVED BY: City Planning Commission: _____(date)_____ (vote)
City Council: _____(date)_____ (vote)