Oakland City Planning Commission

Design Review Committee **STAFF REPORT**

Case File Number: CMDV07-064 **April 25, 2007**

Project Title:	**The Creekside**
Location:	**5132 Telegraph Avenue (see map on reverse)**
Assessors Parcel Number:	014-1226-013-00
Proposal:	Demolish an existing commercial building and construct a new mixed-use development containing 115 residential units and approximately 9,421 square feet of commercial space.
Applicant:	George F. Hauser
Contact Person/Phone Number:	George F. Hauser/ (415) 519-5398
Owner:	Daniel S. Jun
Planning Permits Required:	Regular Design Review to allow new construction; Interim Conditional Use Permit to apply the density limitations of the Neighborhood Center Mixed Use designation of the General Plan; Major Variance to apply the density limitations of the Mixed Housing Type Residential designation of the General Plan; and Minor Variances to allow: 1) Maximum building height of 69 feet where 40 feet is the maximum allowed in the C-28 zone (along Telegraph Avenue); 2) Maximum building height of 45 feet where 25 feet is the maximum allowed in the R-40 zone (along Clarke Street); 3) No front yard setback where 20 feet minimum is required in the R-40 zone (along Clarke Street); and 4) 106 off-street parking spaces where a minimum of 146 spaces are required.
General Plan:	Neighborhood Center Mixed Use (western portion of site); Mixed Housing Type Residential (eastern portion of site)
Zoning:	C-28 Commercial Shopping District Zone (western portion of site); R-40 Garden Apartment Residential Zone (eastern portion of site)
Environmental Determination:	An environmental determination has not yet been made. An environmental analysis is being conducted.
Historic Status:	Not a Potential Designated Historic Property; Survey rating: X
Service Delivery District:	2
City Council District:	1
Date Filed:	February 22, 2007
Status:	The project will be considered by the full Planning Commission at a future public hearing.
Action to be Taken:	Public hearing concerning the design of the proposal.
Staff Recommendation:	Take public testimony concerning the design of the proposal and provide direction to staff and the applicant.
Finality of Decision:	No decision will be made on the project at this time.
For Further Information:	Contact the case planner, **Darin Ranelletti**, at **(510) 238-3663** or by e-mail at **dranelletti@oaklandnet.com**.

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SUMMARY

The applicant proposes to construct a new mixed-use development containing 115 residential units and approximately 9,421 square feet of commercial space at 5132 Telegraph Avenue located at the intersection of Telegraph Avenue and Claremont Avenue in the Temescal neighborhood of North Oakland.

The proposed project requires a number of planning approvals including Regular Design Review to allow the construction of the development, an Interim Conditional Use Permit and a Major Variance to apply the density limitations of the General Plan, and Minor Variances for building height, setbacks, and parking.

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

PROJECT DESCRIPTION

The project consists of a new mixed-use development comprised of three buildings constructed over a ground-floor podium level and sub-grade basement level. Building 1 (labeled as "5120 Telegraph" by the applicant) would contain 59 residential units and approximately 5,463 square feet of ground-floor commercial space in six above-grade stories totaling 65 to 69 feet in height. Building 2 (labeled as "5140 Telegraph" by the applicant) would contain 65 residential units and approximately 3,463 square feet of ground-floor commercial space in six above-grade stories totaling 65 to 69 feet in height. Building 3 (labeled as "5115 Clarke" by the applicant) would contain 24 residential units in four above-grade stories totaling 42 feet and six inches to 45 feet in height. In total, 115 residential units are proposed. The project would include a mixture of studio, one-bedroom, and two-bedroom units. Buildings 1 and 2 would front on Telegraph Avenue and Building 3 would front on Clarke Street. Project drawings for the proposal are attached to this report (see Attachment A).

The off-street parking for the project would be located in the ground-floor podium level behind the commercial spaces and in an underground basement level. There would be a total of 106 parking spaces. The driveway entrance and exit to the parking garage would be located on Clarke Street.

Group usable open space would be located on the podium level (second floor) and on the roof of each building.

PROPERTY DESCRIPTION

The project site is approximately 32,139 square feet in area. The irregular-shaped lot has frontage on both Telegraph Avenue and Clarke Street. The topography of the site is relatively flat. A two-story commercial building (currently occupied by the Global Entertainment video store) currently exists on the site. The existing building would be demolished as part of the project.

The site is located on Telegraph Avenue at the intersection of Telegraph Avenue and Claremont Avenue in the Temescal neighborhood of North Oakland. The adjacent property to the south and east of the site is currently vacant and the site of the approved "Civiq" project located at 5110 Telegraph Avenue. The adjacent property to the north of the site contains a four-story multi-family residential building.

In the vicinity of the site, Telegraph Avenue and Claremont Avenue contain primarily one- and two-story commercial buildings. Further to the east of the site is Clarke Street and the Temescal residential neighborhood which is comprised primarily of one- and two-story single-family homes.

GENERAL PLAN INFORMATION

The site contains two General Plan land use designations. A map showing the General Plan designations for the site is attached to this report (see Attachment B). The western portion of the site along Telegraph Avenue and Claremont Avenue is designated Neighborhood Center Mixed Use ("NCMU") by the General Plan. Approximately 14,518 square feet of the site is designated NCMU. The maximum residential density allowed under the NCMU designation is 125 units per gross acre.[1] 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. (p. 149)

The eastern portion of the site towards Clarke Street is designated Mixed Housing Type Residential ("MHTR") by the General Plan. Approximately 17,621 square feet of the site is designated MHTR. 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. (p. 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 would range from 85 to 146 units depending upon how the density policies of the General Plan are applied to the site (this is further discussed under the "Key Design Issues" section of this report (see below)).

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." (p. 124)

Below are policies in the Land Use and Transportation Element of the General Plan which are applicable to the project.

[1] The General Plan specifies residential density as "principal units per gross acre." Gross acreage includes all land in the neighborhood, including streets and parks. To calculate permitted density on a particular parcel, the allowed gross density must be translated into net density in accordance with the Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations.

- 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.

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

- 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.

- 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.

- 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.

- 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.

- 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.

- 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.

- 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.

- Policy N9.1: Recognizing Distinct Neighborhoods. The City should encourage and support the identification of distinct neighborhoods.

- Policy N9.7: Creating Compatible but Diverse Development. Diversity in Oakland's built environment should be as valued as the diversity in population. Regulations and permit processes should be geared toward creating compatible and attractive development, rather than "cookie cutter" development.

- Policy N9.8: Preserving History and Community. Locations that create a sense of history and community within the City should be identified and preserved where feasible.

- 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.

- Policy N11.3: Requiring Strict Compliance with Variance Criteria. As variances are exceptions to the adopted regulations and undermine those regulations when approved in large numbers, they should not be granted lightly and without strict compliance with defined conditions, including evidence that hardship will be caused by unique physical or topographic constraints and the owner will be deprived privileges enjoyed by similar properties, as well as the fact that the variance will not adversely affect the surrounding area nor will it grant special privilege to the property. In those instances where large numbers of variances are being requested, the City should review its policies and regulations and determine whether revisions are necessary.

Below are policies in the Housing Element of the General Plan which are applicable to the project.

- Policy 1.7: Regional Housing Needs. The City will strive to meet its fair share of housing needed in the region.

- Policy 2.4: Inclusion of Affordable Units in Market Rate Projects. Seek voluntary agreements with private developers of market rate housing to include units affordable to lower-income households, especially those projects involving Redevelopment Agency support or requiring major planning approvals.

- Policy 3.1: Expedite and Simplify Permit Processes. Continue to implement permit processes that facilitate the provision of housing and annually review and revise permit approval processes.

- Policy 3.2: Flexible Zoning Standards. Allow flexibility in the application of zoning, building, and other regulations.

- Policy 7.2: Energy Conservation. Encourage the incorporation of energy conversation design features in existing and future residential development.

- Policy 7.3: Infill development. Continue to direct development toward existing communities and encourage infill development at densities consistent with surrounding communities.

- Policy 7.4: Compact Building Design. Work with developers to construct new housing that reduces the footprint of new construction, preserves green spaces, and supports the use of public transit.

- Policy 7.5: Mixed Use Development. Encourage a mix of land uses in the same zoning district or on the same site in certain districts.

ZONING INFORMATION

The site is located in two different zoning districts. The western portion of the site near Telegraph Avenue and Claremont Avenue is located in the C-28 Commercial Shopping District Commercial Zone. The eastern portion of the site near Clarke Street is located in the R-40 Garden Apartment Residential Zone. A map showing the zoning designations for the site in relationship to the General Plan designations for the site is attached to this report (see Attachment B). Approximately 19,397 square feet of the site is in the C-28 zone and approximately 12,742 square feet of the site is in the R-40 zone.

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-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 existing zoning for the site allows a maximum of 48 units, or 64 units with an approved density bonus requiring the granting of a Conditional Use Permit. The proposal exceeds the number of units allowed by the zoning (115 units are proposed). The policies of the General Plan, adopted in 1998, supersede the Zoning Regulations. In many areas of the city, particularly along major transit corridors such as Telegraph Avenue, the residential density allowed under the General Plan is significantly higher than the density allowed by the zoning. Pursuant to the Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations, an Interim Conditional Use Permit is required in order to apply the density policies of the General Plan to a project where the proposed density exceeds the density allowed by the zoning. In accordance with the Guidelines, when reviewing a proposal for an Interim Conditional Use Permit to apply the density policies of the General Plan, the City selects a zoning designation for the site (the "best-fit zone") that is appropriate for the project given the General Plan designation, surrounding area, and circumstances surrounding the project. In the case of this project, staff recommends that the existing zoning for the site (C-28 zone and R-40 zone) be considered the best-fit zones such that the development standards of the existing zoning, except for allowable density which is controlled by the General Plan, would apply. For the portion of the site located in the Mixed Housing Type Residential General Plan designation, a Major Variance (rather than an Interim Conditional Use Permit) is required in order to apply the density policies of 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.) The relationship between the zoning and General Plan as it relates to the allowed density on the site is further discussed under the "Key Design Issues" section of this report (see below).

The applicant is seeking Variances to waive a number of zoning standards, including Variances to allow a maximum building height of 69 feet where 40 feet is the maximum allowed in the C-28 zone (along Telegraph Avenue), a maximum building height of 45 feet where 25 feet is the maximum allowed in the R-40 zone (along Clarke Street), no front yard setback where 20 feet minimum is required in the R-40 zone (along Clarke Street), and 106 off-street parking spaces where a minimum of 146 spaces are required. Staff has identified a number of other zoning standards not being met by the current proposal. The Variances sought by the

applicant and the other standards not being met by the project are further discussed under the "Key Design Issues" section of this report (see below).

The City is currently in the process of preparing new zoning regulations for the Temescal area. There have been a number of community meetings regarding this effort. No new regulations have been adopted yet. A draft proposal of the new zoning regulations was released in February 2007. The City received numerous comments on these proposed new regulations and is preparing a revised draft proposal for public review. As of this report writing, the revised draft proposal had not yet been released.

ENVIRONMENTAL DETERMINATION

An environmental determination has not yet been made for this project. An environmental analysis is currently being conducted to determine the appropriate level of environmental review. The analysis will evaluate potential effects of the project on the environment, including effects related to traffic, shadows, historical resources, and noise.

KEY DESIGN ISSUES

Below is a summary of the key design issues related to the proposal:

Density

The project would consist of 115 residential units. As stated above in the "General Plan Information" and "Zoning Information" sections of this report, the zoning for the site and the General Plan designations for the site would allow a range of maximum residential densities on the site. This range is based upon the varying City approvals required to achieve different levels of density. Below is a discussion of the different density scenarios that could apply to the site.

1. **Existing Zoning**: The existing zoning would allow a maximum of 48 units on the site.

2. **Existing Zoning with Density Bonus**: The existing zoning would allow a maximum of 64 units on the site with the approval of a density bonus. A Conditional Use Permit would be required.

3. **General Plan Density (portion) and Existing Zoning (portion)**: Applying the Neighborhood Center Mixed Use density of the General Plan to the area currently mapped as Neighborhood Center Mixed Use (the western portion of the site along Telegraph Avenue and Claremont Avenue) and applying the zoning density of the existing R-40 zone (the eastern portion of the site along Clarke Street) would allow a maximum of 76 units. An Interim Conditional Use Permit would be required.

4. **General Plan Density as Mapped**: Applying the Neighborhood Center Mixed Use density of the General Plan to the area currently mapped as Neighborhood Center Mixed Use (the western portion of the site along Telegraph Avenue and Claremont Avenue) and applying the Mixed Housing Type Residential density of the General Plan to the areas currently mapped as Mixed Housing Type Residential (the eastern portion of the site along Clarke Street) would allow a maximum of 85 units. An Interim Conditional Use Permit and a Major Variance would be required.

5. **General Plan Density as Determined**: Applying the Neighborhood Center Mixed Use density of the General Plan to the entire site would allow a maximum of 146 units. An Interim Conditional Use Permit and a General Plan Determination would be required.

Scenario 4 would require a Major Variance in addition to an Interim Conditional Use Permit. The standards for approval of a Major Variance are high. The applicant would need to demonstrate, and the City would need to make a finding, that, among other findings, a practical difficulty or unnecessary hardship exists due to unique physical or topographic circumstances or conditions of design. The applicant has applied for a Major Variance for density as part of this application.

Scenario 5 would require a General Plan Determination. Section 17.01.120 of the Oakland Planning Code states that the General Plan land use designations have been broadly applied to areas without parcel by parcel specificity and that the General Plan land use map is largely illustrative of the General Plan's written goals and policies. Because the land use map is generalized, and does not necessarily depict the accuracy of each parcel or very small land areas, a determination of project consistency with the General Plan can be made by the City. The applicant must demonstrate that the predominant use, or average density, is different from that shown on the land use map and is appropriate for the area in question and that the project is in conformance with the written goals and policies of the General Plan. In the case of the subject project, the City would need to determine that the application of the Neighborhood Center Mixed Use density of the General Plan to the entire site is appropriate given the surrounding area and is consistent with the written goals and policies of the General Plan. Currently, the applicant has not applied for a General Plan Determination on this project.

Under the draft new zoning regulations for the Temescal area released in February 2007, the maximum number of units allowed on the site would be 71 units, or 92 units for a mixed-use development.

Building Height

Building 1 (5120 Telegraph) and Building 2 (5140 Telegraph) would be six stories tall totaling 65 to 69 feet in height along Telegraph Avenue. The top two floors of Building 1 and Building 2 would be set back from the front wall of the building along Telegraph Avenue. Building 3 (5115 Clarke) would be four stories tall totaling 42 feet and six inches to 45 feet in height along Clarke Street. Building 1 and Building 2 are both located in the C-28 zone where the maximum allowed building height is 40 feet. Building 3 is located in the R-40 zone where the maximum allowed building height is 25 feet. The applicant is seeking Variances to exceed the maximum allowed height in these zones.

The site is located along Telegraph Avenue which has a street 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 looses 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). Along Telegraph Avenue the height-to-width ratio of the project would be 1:1.4 where the project is at its highest (69 feet), within the range of recommended height-to-width ratios. If the height of the project was 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. A building height in the range of 50 feet to 100 feet along Telegraph Avenue would result in an optimum height-to-width ratio.

Clarke Street has a street right-of-way width of 60 feet. The project's height-to-width ratio along Clarke Street would be 1:1.3 where the project is at its highest (45 feet), within the range of recommended height-to-width ratios. If the height of the project was reduced to 25 feet in compliance with the Zoning Regulations, the height-to-street ratio would be 1:2.4, outside of the range of recommended height-to-width ratios. A building height in the rage of 30 feet to 60 feet along Clarke Street would result in an optimum height-to-width ratio.

Under the draft new zoning regulations for the Temescal area released in February 2007, the maximum building height allowed on the site would 45 feet, or 55 feet with the incorporation of an upper-story setback and community benefits/public improvements (e.g., streetscape improvements) into the project.

Density and Height Comparison to Other Projects

A number of new development projects have recently been approved or are currently under review in the Temescal area. Below is a comparison of the density and height of the subject proposal to two other projects recently approved on Telegraph Avenue by the City.

	"The Creekside" (5132 Telegraph Ave.)	**"Civiq" (5110 Telegraph Ave.)**	**"Centrada" (4700 Telegraph Ave.)**
Density (units per net acre[2])	156 units/ac.	72 units/ac.	107 units/ac.
No. of Stories (along Telegraph Ave.)	6	5	5
Height (along Telegraph Ave.)	65 ft. – 69 ft.	52 ft. – 57 ft.	54 ft. – 56.5 ft.
No. of Stories (along rear of site)	4	3	3
Height (along rear of site)	42.4 ft. – 45 ft.	37 ft.	34 ft.

As shown in the above table, the subject proposal would be taller and denser than other recently approved projects on Telegraph Avenue in the Temescal area. The existing four-story apartment building located immediately to the north of the project site along Telegraph Avenue is approximately 40 feet tall. The approved Civiq project located immediately to the south of the project site along Telegraph Avenue will be five stories tall and reach a maximum height of 57 feet at the corner of Telegraph Avenue and 51st Street. Both the Civiq project and the Centrada project were granted a Variance for building height. Both of these projects contain upper-story setbacks to reduce the visual height and mass of the building, as does the subject proposal. In approving the height Variance for the Civiq project located next door to the subject proposal, the City found that the approved height was appropriate given the width of Telegraph Avenue, the prominent location of the site at a primary intersection, and the desire for a prominent building at the intersection with a height that would anchor the corner and act as a visual landmark in the district. One could argue that by exceeding the height of the Civiq project, the proposed project could lessen Civiq's effectiveness as a prominent corner anchor for the intersection. On the other hand, one could also argue that the height of the proposal is appropriate given its strategic location near the convergence of three major arterials—Telegraph Avenue, 51st Street, and Claremont Avenue. Staff is generally supportive of height along transit corridors such as Telegraph Avenue, but the height should relate well to the surroundings so that the height of the project transitions down to the surrounding neighborhood.

[2] Net acreage includes only land on the subject parcel.

Setbacks

The project complies with all the setbacks required by the Zoning Regulations except for the setback from the property line along Clarke Street. The applicant is seeking a Variance to provide no setback at this location where a minimum setback of 20 feet is required. It is questionable whether the findings for approval of the Variance can be made.

Materials

The exterior materials of the buildings would be primarily metal and cement fiber panels (i.e., "Hardi-plank") with metal and glass railings for the exterior balconies.

Open Space

A total of 21,600 square feet of usable open space is required for the project. Group usable open space would be located on the podium level (second floor) and on the roof of each building. The majority of the units would also contain private balconies. A total of 23,062 square feet of usable open space is proposed.

Off-Street Parking

A total of 146 to 161 off-street parking spaces would be required to serve the project depending upon the type of uses that occupy the commercial spaces. 16 spaces would be required for the commercial spaces if they are occupied by General Retail Sales businesses (i.e., retail stores), and 31 spaces would be required if the commercial spaces are occupied by General Food Sales businesses (i.e., restaurants, cafes, and markets). One space per unit is required for the residential units located in the C-28 zone and one and one-half space per unit is required for the residential units in the R-40 zone for a total of 130 residential spaces required.

Off-street parking for the project would be located in the ground-floor podium level behind the commercial spaces and in an underground basement level. There would be a total of 106 parking spaces. The driveway entrance and exit to the parking garage would be located on Clarke Street. The applicant is seeking a Variance to reduce the required amount of off-street parking.

Creek Culvert

An underground culvert that conveys Temescal Creek through the site is located under the western portion of the site. The culvert is owned and operated by the Alameda County Flood Control and Water Conservation District and is located within an easement granted by a former owner of the property to the District in the 1970s. The District's rights under the terms of the easement are limited to below the surface. The District has no above ground rights in the easement. The easement also explicitly grants to the property owner the right to construct structures over and across the easement. The existing commercial building located on the site is currently located over and across the easement.

The proposed buildings would be constructed over the culvert. The underground parking garage would be located adjacent to the underground culvert easement. Staff has requested a preliminary structural analysis of the culvert to understand the potential effects the project may have on the structural integrity of the culvert. Staff is also currently communicating with the District concerning the culvert and the proposal. At the time of this report writing, staff had not received comments from the District on this matter.

In order for the owner to exercise his right to construct over the easement, the applicant must obtain approval from the City of the proposed project. Generally, the City discourages constructing buildings over underground culverts due to maintenance concerns. The City also has an adopted policy of encouraging the restoration or "daylighting" of underground creeks. The following policy is in the Open Space, Conservation and Recreation Element of the Oakland General Plan:

> Policy OS-8.2: Creek Daylighting. Support programs to restore or "daylight" sections of creek that have been culverted or buried in the storm drain system, provided that the following conditions exist: (1) broad-based community support for the project; (2) availability of financial resources for the project; (3) no significant health, safety, flooding, or erosion hazards would result from the project. Place priority for daylighting on properties where additional opportunities for recreational access would be created.
>
> *Commercial areas*. In neighborhood commercial districts, daylighted creeks can potentially become an amenity to draw patrons and make the area more attractive for business. Potential enhancement areas include **Temescal Creek at Telegraph (Temescal District)** [emphasis added], Glen Echo Creek in the Piedmont Avenue District and in the area near Broadway and 29th, Sausal Creek at MacArthur (Dimond District), Peralta Creek at MacArthur (Laurel District), and Seminary Creek at Foothill (Fairfax District).

Construction of the proposed project over the culvert would prohibit the daylighting of the creek on the site. If the Planning Commission found that the current proposal to construct the project over the culvert was inconsistent with City policy, the project would have to be modified so that the proposed buildings are relocated. If the Planning Commission required the relocation of the proposed buildings so that they would not be constructed over the culvert, there would be a number of alternative scenarios to consider. The culvert is approximately 11.5 feet tall and the top of the culvert is located approximately five feet below the surface, meaning that the flow line of the creek at the bottom of the culvert is approximately 16.5 feet below the surface. Alternative 1 would involve restoring the creek to its natural state with a vegetated creek bank on each side. Restoration of the creek to its natural state would require a significant amount of land area to accommodate the creek banks. A large portion of the site would be undevelopable and the physical alterations to the site may extend into and interfere with the public right-of-way along Telegraph Avenue and Claremont Avenue. Alternative 2 would involve "opening up" the culvert, meaning the creek would still lie within the culvert but the soil above the culvert and the top of the culvert would be removed so that the creek would be visible from above. Alternative 3 would involve locating the buildings such that they would not be located over the culvert. This alternative would not involve daylighting the creek but would provide the opportunity to consider Alternative 2 at a future point in time. Alternative 1 and Alternative 2 would be extremely expensive, but both would provide a unique amenity to the Temescal district by placing a potentially aesthetically pleasing element to the site, reintroducing nature into the urban environment, and contributing to a sense of community. Alternative 2 and Alternative 3 would still result in a substantial amount of developable area on the site. Under Alternative 2 or Alternative 3, a narrow strip of land would exist to the west of the culvert which could be utilized as a plaza with outdoor seating serving the proposed commercial space or occupied by a small building or kiosk. The Design Review Committee may wish to consider whether or not it would be appropriate to require the applicant to explore one of these alternatives prior to consideration by the full Planning Commission.

Greenway and Passageway

The project includes an area labeled as a "greenway" by the applicant located at ground level along the eastern boundary of the site. This greenway would primarily be a landscaped area running parallel to the proposed public walkway in the Civiq project located on the adjacent property to the east. The greenway would contain a creek-like water feature. In response to interest in the community to have a pedestrian walkway serving as an extension of the Rockridge-Temescal Greenbelt that would connect FROG Park located at the corner of Clarke Street and Redondo Street to the Temescal commercial district along Telegraph Avenue, the developers of the Civiq project agreed to provide a public walkway through the site in exchange for City-owned property located along 51st Street which would be incorporated into the project. The public walkway property will be transferred to the City so that the public has legal rights to use the walkway. The walkway will be maintained by the Civiq homeowners' association. The applicant for the subject proposal intends to open the proposed greenway to the public but the area would be privately owned and controlled such that the greenway could be closed to the public at the sole discretion of the property owner. Since neither the greenway nor the Civiq walkway have been fully designed in detail, it is not clear at this point precisely how the two spaces would relate physically and operationally to one another.

The project also includes an area labeled as a "public passage" by the applicant located at ground level between the two commercial spaces and underneath Building 1. This passageway would provide a pedestrian connection from Telegraph Avenue through the site to the greenway and potentially to the Civiq walkway. The applicant intends to open the passageway to the public during business hours. During the remainder of the time, the passageway would be restricted to residents of the project.

Although the Design Review Committee may be interested in considering whether or not it would be appropriate to require the applicant to provide guaranteed legal public access on either the greenway or passageway, likely through a land dedication to the City or a public access easement, as a condition of approval, staff cautions the Committee that it is questionable whether or not the City has the authority to impose such a requirement. In general, there must exist a "nexus" or relationship between the condition of approval and the impact of the development that the condition seeks to mitigate. In this case, there currently is no public access through the site so the condition to provide public access through the site would not be mitigating an impact of the project.

Currently, the proposal locates the wall of the parking garage podium along the greenway. As an alternative, staff recommends that the project be revised so that the portion of the building facing the greenway is lined with residential unit entries to mimic what is proposed on the Civiq walkway. These units could be accessed via the Civiq walkway. Security would be enhanced on the Civiq walkway if units from each project were oriented to the walkway on each side.

Streetscape Improvements

The property survey for the site indicates that a portion of the public sidewalk along Claremont Avenue is located within the boundaries of the site. Since the proposal involves building the project out to the front property line along Claremont Avenue, the applicant would be required to relocate the sidewalk in the public right-of-way. The traffic study being prepared for the project will evaluate whether or not it is feasible from a transportation engineering perspective to relocate the sidewalk and what effect it would have on traffic and the public right-of-way.

In July 2005 the City prepared a plan for the Telegraph Avenue Pedestrian Streetscape Improvements Project which provides recommendations for streetscape improvements along the Telegraph Avenue corridor. One of the recommendations in the report is to reconfigure the Telegraph Avenue and Claremont Avenue intersection to remove the slip lane along the frontage of the project site in order to

reduce traffic speeds and provide a more pedestrian-oriented environment. At this point in time, no funding exists for this improvement. Although the reconfigured intersection and the resulting plaza area are included in many of the three-dimensional exhibits included in the drawings for the project, the applicant is not proposing to implement this improvement as part of the project. Staff recommends that the Design Review Committee consider requiring the applicant to install this improvement as a condition of approval.

Shadows

The project will likely cast shadows on the Temescal Library, a designated City landmark, located to the northwest of the project site across Telegraph Avenue, and on FROG Park, located to the northeast of the project site across Clarke Street. Shadow diagrams and charts are included with the project drawings (see Attachment A). The project would likely cast a shadow on the Temescal Library roughly between 9:00 a.m. and 10:00 a.m. during the winter solstice when the shadow would be at its greatest. The project would cast no other shadows on the library during the remainder of the day or at any time of the day during the spring, summer, or fall. The project would likely cast a shadow on FROG Park roughly between 1:30 p.m. and 4:30 p.m. during the winter solstice when the shadow would be at its greatest, roughly from 4:00 p.m. onward during the spring equinox, and roughly from 3:00 p.m. onward during the fall equinox. No shadows would be cast on the park during the summer months. It is important to note that FROG Park is a heavily wooded park with many existing mature trees that currently result in shade and shadows on the park.

Miscellaneous Zoning Recommendations

Staff recommends that the proposal be modified to comply with the following additional zoning standards:

1. Courts: Courts of a minimum width are required between opposite walls in a project that contain legally required living room windows. 20 feet is proposed in a light well on the south side of Building 1 (5120 Telegraph) where at least 50 feet is required. 20 feet is also proposed between the east side of Building 2 (5140 Telegraph) and the west side of Building 3 (5115 Claremont) where at least 50 feet is required.

2. Compact Parking Spaces: Of the 106 proposed parking spaces, 55 (or approximately 52 percent) are compact spaces. A maximum of one-third of the required parking spaces are allowed to be compact.

3. Parking Space Dimensions: The width of the proposed regular-sized parking spaces is eight feet. The spaces are required to be eight and one-half feet wide.

4. Aisle Width: The aisle in the parking garage ranges from 21 to 23 feet in width. The minimum allowed width is 24 feet.

5. Space Accessibility: Parking spaces 48, 49, and 50 do not appear to be conveniently accessible to vehicles.

6. Parking Space Width Next to Obstruction: The side of parking space 94 is located immediately adjacent to a wall. The space is required to contain an additional three feet in width.

Miscellaneous Design Recommendations

Below are additional design-related considerations and recommendations:

1. Massing: The exterior elevation of the project along Telegraph Avenue and Claremont Avenue is heavily articulated with projections, recesses, and upper-story setbacks to provide visual interest and texture to the buildings. However, the result of these fine-grain articulations is that the project appears to be one large mass comprised of many small squares and rectangles. Despite being comprised of two buildings, the façade of the project appears to be one large building. Staff recommends that the front façade be designed in a way such that the two buildings appear as two sub-volumes of the larger project to reduce the overall visual mass of the project.

2. Building Entrances: All of the pedestrian entrances to the residential portions of the three buildings are inconspicuous. The entrance to Building 1 (5120 Telegraph) (incorrectly labeled as "5130 Telegraph" on the elevation drawing) is prominently displayed but the height of the address signage is too high and out-of-scale with the entry. All three entrances to the buildings should be prominent and easily identifiable from the sidewalk and street.

3. Storefront Design: Staff recommends that the proposal incorporate the following modifications to the design of the proposed ground-floor commercial storefronts in order to reflect the common elements present in Temescal district storefronts and to maximize the viability of the commercial spaces:
    a) A clear visual distinction/demarcation, such as a change in materials and/or a horizontal beltcourse, between the ground floor commercial spaces and the upper floors;
    b) High-quality, durable materials, such as stone or tile, along the base of the building;
    c) 12- to 15-foot tall minimum finished ceiling heights; and
    d) Three- to five-foot tall transom windows above the storefront windows.

4. Clarke Street Façade: Incorporate an upper-story setback from the property line along Clarke Street on Building 3 (5115 Clarke Street) to reduce the visual height and mass of the building.

5. Loading Dock: The loading dock located off of Clarke Street is proposed to be uncovered. The loading dock should be enclosed and incorporated into the interior of the building to reduce its visibility from the street.

CONCLUSION

Staff recommends that the Design Review Committee take public testimony on the design of the proposal and provide direction to staff and the applicant on the key design issues surrounding the proposal. In particular, staff is looking for feedback on the following questions:

1. Is the density of the project appropriate?

2. Is the height of the project appropriate?

3. Is the Variance for the reduced setback along Clarke Street appropriate?

4. Are the exterior materials of the project appropriate?

5. Is the amount of off-street parking appropriate?

6. Is it appropriate to construct the project over the underground creek culvert? If "no," should the applicant explore restoring the creek to its natural state or opening up the culvert?

7. Does the Committee agree with staff's recommendation to locate residential units along the proposed greenway with the unit entries facing the greenway?

8. Does the Committee agree with staff's recommendation to require the applicant to implement the street improvements at the intersection of Telegraph Avenue and Claremont Avenue in accordance with the plan for the Telegraph Avenue Pedestrian Streetscape Improvements Project?

9. Does the Committee agree with staff's recommendations identified under the "Key Design Issues: Miscellaneous Zoning Standards" section of this report (page 14) or are Variances for some or all of these deficiencies appropriate?

10. Does the Committee agree with staff's recommendations identified under the "Key Design Issues: Miscellaneous Design Considerations" section of this report (page 15)?

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Approved for forwarding to the
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ATTACHMENTS:

A. Project Drawings (received April 6, 2007)
B. Zoning and General Plan map