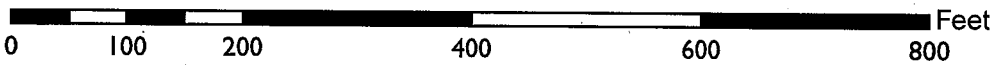


Case File Number: PLN16046-A01 (PLN16046)

November 2, 2016

Location:	585-22 nd Street and 570-610 21 st Street - See map on reverse
Assessor's Parcel Numbers:	(008-0647-013-00, 008-0647-014-00, 008-0647-015-00, 008-0646-028-04)
Proposal:	Appeal of the Zoning Manager's issuance of a Regular Design Review permit for the new construction of a five-story, 78 unit residential building with ground floor parking and amenity spaces; along with the relocation and restoration of two historic buildings on 21 st street.
Original Applicant/Contact:	Kahn Design Associates / (510) 213-2821
Appellant/Contact:	Meridian Condominium Homeowners Association – Sven Dummer/ (510)292-1853
Owner:	585-22 nd Street, LLC (585-22 nd St.) & Ms. Rosa M. Moran (570 & 600-21 st .)
Case File Number:	PLN16046-A01
Original Case File Number:	PLN16046
Planning Permits Required:	Design Review for new construction of a 78 unit residential building and relocation with restoration of two historic buildings.
General Plan:	Central Business District
Zoning:	CDB-R Central Business District Residential Zone.
Environmental Determination:	Exempt, Section 15332 of the State CEQA Guidelines; In-fill development. Section 15183 of the State CEQA Guidelines; projects consistent with a community plan, general plan or zoning.
Historic Status:	Cathedral District API: 585-22 nd Street - vacant parking lot; 570-21 st Street – Potential Designated Historic Property (PDHP) C1+; 600-21 st Street – Potential Designated Historic Property (PDHP) C1+
Service Delivery District:	Metro
City Council District:	3
Status:	Application approved by Zoning Manager on August 2, 2016; Appealed August 12, 2016.
Staff Recommendation:	Deny the Appeal and uphold the Zoning Manager's approval
Finality of Decision:	Final (Not administratively Appealable Pursuant to OMC Sec. 17.132.030)
For Further Information:	Contact case planner Michael Bradley at (510) 238-6935 or mbradley@oaklandnet.com

CITY OF OAKLAND PLANNING COMMISSION



Case File: PLN16046-A01

Appellant: Meridian Condominium Homeowners Association – Sven Dummer

Address: 585-22nd Street and 570-610 21st Street

Zone: CBD-R

SUMMARY

The proposed project is for a new five story building containing 78 dwelling units in the upper four stories above ground floor parking and amenity spaces, along with the restoration and relocation of two historic buildings from the subject site to an adjacent lot. The project site consists of four lots, a majority of which are surface parking lots on 21st and 22nd Streets between San Pablo Avenue/Martin Luther King Jr Way and Telegraph Avenue in the Cathedral District Area of Primary Importance (API). The overall project consists of approximately 30,000 square feet of lot area which includes a 7,000 square foot surface parking lot where the two historic buildings are proposed for restoration and relocation and 23,000 square feet of lot area where the 78 dwelling units are proposed.

The original application was submitted on February 18, 2016 to the Bureau of Planning. The application was considered an administrative case under Zoning Manager review and approval based on the scope and size of the project which consists of less than 100,000 square feet of floor area proposed (*Attachment B*). On April 18, 2016, planning staff submitted design modification comments to the applicant after a thorough review by planning staff members, Michael Bradley; District Supervisor, Pete Vollmann; and Historic Preservation Planner, Betty Marvin. On April 20, 2016 these same planning staff members met with the applicant to discuss the request for design modifications. The applicant acknowledged the revision re-presented the project with the requested modifications in a meeting with the above staff planners on April 27, 2016. The project was then brought before the Landmarks Preservation Advisory Board (LPAB) on May 9, 2016 (*Attachment E*). At that meeting the Board requested a subcommittee meeting for Board members, Chair Chris Andrews and Vice-Chair, Peter Birkholz to meet directly with Planning staff, the applicant, and interested parties. The subcommittee was held on May 20, 2016 and included the LPAB chair, vice-chair, planning staff, the applicant, Oakland Heritage Alliance (OHA), and the appellant. At the conclusion of that meeting the applicant made further revisions and submitted them to the LPAB for a second meeting before the Board on June 13, 2016. At the meeting the Board requested further revisions and continued work with subcommittee. On June 30, 2016 a second subcommittee meeting was held that included the LPAB chair, vice-chair, planning staff, the applicant, Oakland Heritage Alliance (OHA), and the appellant. After a presentation of the third revisions at the meeting the Board members stated that the project was appropriate for the district and that the design was sufficient. As a follow up to report back to the remaining Board members the project was brought back a third time to the LPAB meeting on July 11, 2016 where the applicant presented the final versions of the plans and reported the discussions from the subcommittee. The Board gave its support of the project. On August 2, 2016 the project was approved by the Zoning Manager with a 10 day appeal period that ended on August 12, 2016 at 4:00 PM. All interested parties including the LPAB members, planning staff, Oakland Heritage Alliance, neighbors, and the appellant were sent the decision letter. As to further bring the project to all interested parties attention, the project outcome was brought to the LPAB meeting on August 8, 2016 for a fourth time. On August 12, 2016, a timely appeal was filed by the appellant, Meridian Condominium Homeowners Association, represented by Sven Dummer and Noelle Martin. Meridian Condominium Homeowners Association is located directly adjacent to the project at 589-599 22nd Street to the west and north of the subject project.

Under Planning Code 17.132.020, the Administrative Appeal Procedure, the appellant must state where an error or abuse of discretion was made by the Zoning Administrator or where the Zoning Administrator's decision is not supported by evidence in the record. The arguments

raised by the appellant fail to assert error, abuse of discretion or lack of evidence, and are summarized below in the *Basis for the Appeal* portion of this report, along with staff's response to each argument. For the reasons stated in this report and attachments, staff recommends the Planning Commission deny the appeal, thereby upholding the Zoning Administrator's approval.

PROJECT DESCRIPTION

The proposed project is a new five story building containing 78 dwelling units in the upper four stories above ground floor parking and amenity spaces, along with the relocation of two buildings to an adjacent lot. The ground floor would consist of an amenity space, lobby, leasing office, utility rooms, trash rooms, bicycle parking, automobile parking and a dog washing area of approximately 15 feet in height on the through-lot with frontage on 21st and 22nd Streets. Entrances to the residential units will have lobby areas on both 21st and 22nd Streets. The leasing office and amenity space will be located on 21st Street to provide an attractive and active space along the 21st Street frontage which is a more densely developed street. Entrances to the garage are proposed in the most feasible location and are to be located at 22nd street in a manner that allows continuity of the residential pedestrian experience with only one driveway curb cut whereas currently the site has three curb cuts (two of which are on 22nd Street). The building footprint allows for a five (5) foot setback on 22nd Street to allow for sight lines east and west of the proposed building to view the contributing neighboring potential designated historic properties and designated historic properties in the Cathedral District API. Also, to further increase visibility of the directly adjacent API contributors, the building has a property line side yard setback of three (3) feet from 591-22nd Street, four (4) feet from 567-22nd Street, and four (4) feet from the newly proposed relocated buildings at 610-21st street, thus combined with those buildings property line side yard setbacks for an even greater separation. The project also involves the extensive restoration and relocation of two Potential Designated Historic Properties, which will receive alterations to restore the original character defining elements of the buildings.

PROPERTY DESCRIPTION

The project site consists of four lots, a majority of which are surface parking lots on 21st and 22nd Streets between San Pablo Avenue/Martin Luther King Jr Way and Telegraph Avenue in the Cathedral District Area of Primary Importance (API). The overall project consists of approximately 30,000 square feet of lot area which includes a 7,000 square foot surface parking lot where the two historic buildings are proposed for restoration and relocation and 23,000 square feet of lot area where the 78 dwelling units are proposed. The property is located in Downtown Oakland in the CBD-R Central Business District Residential Zone.

GENERAL PLAN ANALYSIS

The subject property is located within the Central Business District General Plan designation. The proposed project is consistent with the Corridor Design Guidelines and constructing a new high density residential building within close proximity to the 19th Street BART station would be consistent with the Central Business District land use classification. The proposal is consistent with the following General Plan objectives and policies:

Objective N3 of the Oakland General Plan Land Use and Transportation Element states:
"Encourage the construction, conservation, and enhancement of housing resources in order to

meet the current and future needs of the Oakland community”. This proposal to construct 78 residential units with ground floor amenity spaces and 15 foot high lobby entries conforms to the City of Oakland Comprehensive General Plan and is consistent with the Central Business District designation.

Objective 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 take place throughout the City of Oakland. The project is an infill development utilizing an underutilized site located within close proximity to transit bus lines and has adequate public infrastructure to serve the development.

Policy D6.1 – Developing Vacant Lots – Construction on vacant land or to replace surface parking lots should be encouraged throughout the downtown, where possible.

Policy D10.1 – Encouraging Housing – Housing in the downtown should be encouraged as a vital component of a 24-hour community.

Policy D10.2 – Locating Housing – 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.

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

ZONING ANALYSIS

The subject property is located within the CDB-R Central Business District Residential Zone. The CBD-R zone is intended to create, maintain, and enhance areas of the Central Business District appropriate for residential development with small-scaled compatible ground-level commercial uses. The proposal meets applicable CDB-R zoning and City of Oakland general use permit regulations. (*Attachment C*)

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines lists the projects that qualify as categorical exemptions from environmental review. The proposed project is categorically exempt from the environmental review requirements pursuant to Section 15332, infill development in urbanized areas; and Section 15183, projects consistent with a community plan, general plan or zoning. (*Attachment C*)

BASIS FOR THE APPEAL

Appellant Meridian Condominium Homeowners Association represented by Sven Dummer and Noelle Martin filed a timely appeal (*Attachment A*) of the Zoning Administrator’s approval of the Regular Design Review application (PLN16046) on August 12, 2016. The appeal is based on the claim (1) that Planning staff did not take into account private third party easements

between the property owners and the Meridian Condominium Homeowners Association; (2) that Planning staff did not take into account private third party parking agreement between the property owners and the Meridian Condominium Homeowners Association; (3) that the tree removal permit was not properly reviewed or noticed; (4) that Planning staff fast-tracked the market rate project without requiring the project developer to include affordable housing; (5) that the building height is not appropriate for the downtown Oakland site and (6) that the project was fast-tracked and Meridian Condominium Homeowners Association wasn't properly noticed or included in the public notice process.

The following is a list of the specific issues raised in the appeal along with staff's response to each point. The basis for the appeal is shown in **bold** text and the staff response follows each point in regular type.

1. The appellant believes the approval letter does not mention private easements between Meridian Condominium Homeowners Association and the property owners. The appellant states: "No mention of the easements, legal rights of those easements and shared land between the Meridian Condo which consists of three (3) historic Edwardians and stated in approval, 'Two Potential Designated Historic Properties, which will receive alterations to restore the original character defining elements of the buildings' owned by Moran/Pomper. Important keyword of concern: encroachment. – Important to note we have a disabled owner who needs to be able to enter/exit using remote control access. Special vehicles will need enough easement to enter/exit without any obstacles. The rights of this individual need to be documented and preserved. The ADA was not reference in the approval letter."

Staff's Response:

Planning Staff's interpretation of the above appellant statement is that the appellant would like the Bureau of Planning to have been involved in third party easement agreements with the Meridian Homeowners Association and the property owner. The plans show an existing easement to the Meridian condominiums and the easement remaining to the property. The project as approved would not hamper the use of the easement. The Bureau of Planning would not be involved in any alterations to the existing easement and those would be a private matter if negotiations are proposed.

2. The appellant disagrees with the proposed parking requirement with the site and believes the Bureau of Planning should be involved in a third party agreement between the Meridian Homeowners Association and the property owner. The appellant states: "Planning staff has failed to properly review the existing parking agreement between Moran/Pomper (and the HOA). Not enough time was given to the HOA to discuss in detail '(this includes meetings)' or hire legal counsel/experts/consultants that would have provided a second opinion to review the parking study. Planning Staff's approval states that the parking requirements are satisfied and 'there should be little to no parking impacts on the neighborhood'. The study that was done to make this assumption was not available to HOA to counter and there was not enough time for the HOA to state the discrepancies. The number of parking stalls on the approval letter do not match the 'one per unit' requirement. There is also a discrepancy if Moran/Pomper properties will be supplied with 10-11 parking spaces. The Planning Staff did not review this with developer or provide the HOA to comment/counter"

Staff's Response:

The appellant would like the Bureau of Planning to have been involved in third party parking agreement with the Meridian Homeowners Association and the property owner. The plans show an existing easement for access to parking for the Meridian condominiums and the easement remaining to the property. The project as approved would not hamper the use of the easement. The Bureau of Planning would not be involved in any alterations to the existing easement and those would be a private matter if negotiations are proposed.

The Meridian HOA stated above that they would like to have "countered" a parking study but they never saw one, thus even though one does not exist, the HOA would have liked to challenge one. There was no independent parking study ever submitted to the Bureau of Planning. The project plans proposed at minimum one parking space per unit. The project proposed 81 parking spaces for 78 new dwelling units, thus giving the project a surplus in parking along with 24 bicycle parking spaces along with a distance of approximately 800 feet (approximately 2-3 blocks) from the 19th Street BART station and four major City corridors (San Pablo Avenue, Martin Luther King Jr Way, Telegraph Avenue, and Broadway). (*Attachment B*) Additionally one of the two historic properties proposed for relocation has one potentially legal off-street parking space which can be maintained in the new development. Further, effective November 3, 2016 residential development projects such as this one would not be required to provide any parking for proposed dwelling units.

3. The appellant believes that the tree removal permit was not properly reviewed or noticed. The applicant states: "Planning staff based decision to approve on an arborist report submitted by developer and did not provide HOA enough time for legal counsel or to counter report".

Staff's Response:

The applicant submitted an application to remove protected trees and preservation of one. As shown in the appellant's submitted photos, the trees were tagged with a tree removal tag and gave a date for comments from February 18, 2016 until April 13, 2016. The notices are to remain up for a minimum of 30 days. All tree removal and preservation applications are reviewed by the City Of Oakland, Public Works Agency, Tree Services Division. During the time period of the notice or even after the appellant did not contact the Tree Services Division to challenge the Tree permit, nor request mediation, or to provide comments regarding the tree removal. On August 2, 2016, the Bureau of Planning granted approval of the Project requiring through Conditions of Approval that a Tree Removal and Preservation permit would be required and must be granted for the project. Along with those Conditions of Approval, the Bureau of Planning also required the installation of street trees although the applicant had already, voluntarily proposed nine (9) new street trees associated with the project. On August 29, 2016, the Tree Services Division granted approval for the removal and preservation of the on-site trees several months after the original public notice for the Tree Removal and Preservation permit. (*Attachment F*)

4. The appellant asserts that the Planning staff “fast-tracked” this market rate unit project without considering affordable housing. The appellant states: “Planning staff did not request (the) developer to provide any proposal to include affordable housing. The developers ‘report’ was to discourage HOA to delay/appeal project. Developers stated that after 9/1 (Inclusionary Act Enforcement) the design might be changed to accommodate affordable units, meaning they would make the apartment complex higher. Planning staff did not provide enough time for the HOA to confirm this or counter this ‘report’.”

Staff’s Response:

The project was submitted February 18, 2016. While overall in Oakland there is a need for more affordable housing for very low and low income households, the Bureau of Planning does not and cannot dictate a project applicant to provide affordable housing units.

Planning staff’s interpretation of the above statement by the appellant is that if the developer had wished to include an affordable housing component to the project, the applicant could have then asked for a density bonus along with a density incentive to building above the allowable height. Planning staff cannot confirm this hypothetical affordable housing proposal and whether it would be approved or denied by the Zoning Administrator. Further, an Affordable Housing Impact fee did not become established until September 1, 2016 and this project was approved on August 2, 2016. The project is not subject to the Affordable Housing Impact fees as the Planning permit was approved on August 2, 2016 and the Building permits were submitted on August 19, 2016.

5. The appellant believes that the proposed height of the building is not consistent with the height context of the Cathedral District API per 17.136.055 Special Regulations for Historic Properties in the Central Business District nor the Zoning Code Bulletin April 16, 2010, Character-Defining Height Level for Select API’s. The appellant states: “For this API, it specifies the Wall Height to 30 feet and Roof Peak to 45 feet. The two buildings that were measured for reference for the Cathedral District API as part of this Zoning Bulletin actually are on 22nd Street (618-622). The planned apartment building height is 55 feet and clearly exceeds the API height specifications given in the Zoning Bulletin.”

Staff’s Response:

Although, this topic of a character-defining height was not specifically mentioned in the 17 day public comment period by the HOA, the 17.136.055 Special Regulations for Historic properties in the Central Business District were made in the approval letter. Additionally, the Zoning Code Bulletin States: “This bulletin identifies Areas of Primary Importance (APIs) in the downtown with a consistent height context and the character-defining height level of those APIs to clarify section 17.136.055 of the Oakland Planning Code (specifically, subsections 17.136.055B2e, 17.136.055B2giii, and 17.136.055C1c that indicate the character-defining height of APIs with a consistent height context will be designated on zoning maps). Section 17.136.055 requires specific additional findings (such as compatibility with the visual cohesiveness of the API and transitions to soften the visual impact on neighboring historic buildings) for construction over the character-defining height level in APIs with a consistent height context. This section also states that construction above the height level in these APIs requires review by the Landmarks Preservation Advisory Board.” This project did receive review by the Landmarks Preservation Advisory Board (LPAB) with discussions of the project at four LPAB meeting and an additional

two LPAB subcommittee meetings which dictated the direction of the buildings height and design. Through the multiple revisions at the direction of Planning staff and the LPAB members, the applicant came up with a final design that addressed the visual cohesiveness of the API with transitions to soften the visual impacts on neighboring historic buildings. These revisions to the 22nd Street side of the building involved removing the fifth story volume at each corner and placing decks to create a visual stepping of the building and reduction in perceived bulk to mimic the slopping inward in volume of the gable roofs of the historic buildings in the district. Further, the fourth and fifth floor were painted a lighter color with a change in siding material and were set back, along with the building footprint which went from a three foot front setback to a five foot front setback. To even further address the height of the buildings adjacent to the historic buildings in the district the project was revised based on the direction of the LPAB with greater side yard setbacks that went from 8'-1" to 10'-11" of building separation to the east and 4'-6" to 6'-6" of building separation to the west (HOA side) where the setback requirement is zero feet.

6. Throughout the appeal the appellant alleges that the Meridian Homeowner's Association (HOA) did not receive proper notice, involvement, or enough time to state additional concerns with the project. The appellant also asserts that the project was "fast-tracked".

Staff's Response:

Planning staff provided the HOA time to comment and be involved in the process. The list below states key dates in the Planning review process:

- 2/18/16 Application and project is submitted to the Bureau of Planning for review (PLN16046).
- 4/3/16 HOA submits comments regarding the project.
- 4/7/16 HOA contacts Planning staff for a meeting to discuss the project. Planning staff informs the HOA, that review hasn't started on the project and that an internal staff meeting would be held within a few days.
- 4/15/16 Planning staff informs the HOA that Planning would be requesting substantial design modifications to the project to the applicant. The HOA confirms, and elects to review the project after Planning meets with the applicant and new revisions are submitted.
- 4/18/16 Planning staff submitted design comments to the applicant requesting revisions
- 4/20/16 Planning staff meets with the applicant to further discuss design revisions.
- 4/27/16 Planning staff meets with the applicant to review submitted revisions.
- 5/9/16 The project is reviewed at the Landmarks Preservation Advisory Board (LPAB).
- 5/20/16 The project is reviewed at a subcommittee LPAB meeting attended by the HOA
- 6/3/16 The project architect meets with three members of the HOA
- 6/13/16 The project including the revisions are once again reviewed at the LPAB meeting. The HOA attends the meeting.
- 6/17/16 The project is sent out for Applications on File public notice to all property owners within a 300 foot radius. The HOA is included in this notice.
- 6/30/16 A second subcommittee LPAB meeting is held to discuss further revisions. The HOA attends the meeting.
- 7/11/16 The project is brought again to the LPAB meeting and the HOA attends.

- 8/2/16 The Zoning Manger approves the project. The HOA is sent a decision letter.
- 8/8/16 Planning Staff returns to the LPAB meeting to inform the Board that the project has been approved and that the appeal period ends 8/12/16 at 4:00 PM.
- 8/12/16 The HOA files an appeal of the project (PLN16046-A01).

CONCLUSION

The appellant has not demonstrated an error or abuse is discretion by the Zoning Administrator, thus City of Oakland planning staff believes that the proposed project satisfies applicable zoning criteria. Staff believes that the project approval of the Regular Design Review application, PLN16046 was issued correctly and the appeal should be denied.

RECOMMENDATIONS:

1. Uphold staff's CEQA environmental determination
2. Deny the appeal and uphold the Zoning Administrator's approval of the project based on this appeal report.

Prepared by:



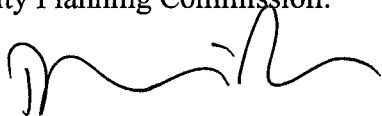
Michael Bradley
Planner II

Reviewed by:



Scott Miller
Zoning Manager

Approved for forwarding to the
City Planning Commission:



Darin Ranelletti, Interim Director
Bureau of Planning

ATTACHMENTS:

- A. Appeal filed by Meridian Condominium Homeowners Association
- B. Project Plans and Photos
- C. Approval Letter dated August 2, 2016
- D. Public Notices for the project and appeal
- E. Landmarks Preservation Advisory Board Meetings and Minutes
- F. Architectural Historian Report by Left Coast Architectural History dated June 10, 2016
- G. Tree Removal and Preservation approval by the Tree Services Division dated August 29, 2016 and Traverso Tree Service Arborist Report dated February 23, 2016

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE ANNOUNCEMENT OF A FINAL DECISION, PURSUANT TO THE CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.