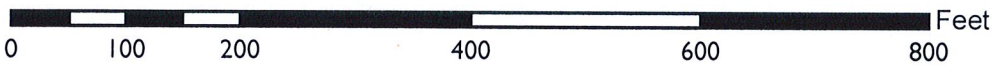


<b>Location:</b>	1433 Webster Street (See map on reverse)
<b>Assessor's Parcel Number:</b>	008-0624-035-00; -036-00
<b>Proposal:</b>	Appeal of an Administrative decision to approve a revision to the previously approved project for a 29-story mixed use building. The revised proposal would include a 15-story building containing 168 dwelling units over ground floor retail. The project includes 7 units available as very low income to achieve a 20% density bonus for the project including a concession request for open space and a development waiver for height within the CBD Height Area 2 to exceed the 85-foot height limit for a portion of the property fronting on 15 <sup>th</sup> Street.
<b>Applicant:</b>	Randy Miller / RadUrban
<b>Owners:</b>	Village Glen Oakland 1, LLC
<b>Appellant:</b>	Mark Brustman
<b>Planning Permits Required:</b>	Regular Design Review for new construction
<b>General Plan:</b>	Central business District
<b>Zoning:</b>	CBD-P; CBD-C
<b>Environmental Determination:</b>	A CEQA Analysis was prepared for this project which concluded that the proposed project satisfies each of the following CEQA Guideline provisions: Section 15332, In-fill development projects; Section 15183 - Projects consistent with a community plan, general plan, or zoning; Section 15183.3 – Streamlining for Qualified infill projects; and/or Sections 15168 & 15180 – Projects consistent with a Redevelopment program EIR; Each of which provides a separate and independent basis for CEQA compliance.
<b>Historic Status:</b>	Potentially Designated Historic Property (PDHP); Rating: 359 15 <sup>th</sup> Street - Ed2* (15 <sup>th</sup> & Webster ASI)
<b>City Council District:</b>	3
<b>Status:</b>	The original development application was approved by the Planning Commission on February 21, 2018. A revision to the approved application was filed to reduce the scale of the project on May 23, 2018. The revised application was approved by Zoning on October 8, 2018. The appellant filed an appeal of the approval on October 15, 2018.
<b>Action to be Taken:</b>	Decision on appeal
<b>Staff Recommendation:</b>	Deny the appeal thereby upholding the approval of the application
<b>Finality of Decision:</b>	Final
<b>For Further Information:</b>	Contact case planner <b>Peterson Z. Vollmann</b> at (510) 238-6167 or by email at <b>pvollmann@oaklandnet.com</b> .

# CITY OF OAKLAND PLANNING COMMISSION



Case File:	PLN16-117-R01-A01
Applicant/Appellant:	Mark Brustman
Address:	1433 Webster Street
Zone:	CBD-P, CBD-C;
Height Area:	Height Area 2 (85'); Height Area 7 (no limit)

**SUMMARY**

The subject development proposal was initially filed in 2016 and appeared before the Design Review Committee and the full Planning Commission on multiple occasions before being approved by the Planning Commission on February 21, 2018. After receiving approval, the applicant came back to zoning to file a revision to reduce the scale of the project from the approved 29-story mixed use building to a 15 story primarily residential building with ground floor retail. Given the reduction in size of the proposal, the Conditional Use Permit associated with the initial approval was no longer required, thus making the project an administrative case limited to Design Review that did not require approval by the Planning Commission.

On October 8, 2018, the revised project was approved after going through the required public notice process. Prior to the end of the 10-day appeal period Mark Brustman filed an appeal of the administrative decision for consideration by the Planning Commission.

**PROPERTY DESCRIPTION**

The subject property consists of two lots on the southwest corner of Webster and 15<sup>th</sup> Streets, 1433 Webster Street and 359 15<sup>th</sup> Street, each of which contains an existing two story commercial building. The corner property at 359 15<sup>th</sup> Street is located within the 15<sup>th</sup> & Webster Historic District, which is an Area of Secondary Importance (ASI). The property at 359 15<sup>th</sup> Street is a contingency contributor to the district, meaning it may contribute if it were restored. The district consists of a mix of one to five story buildings, but with a very prominent tall one to two story height context along the south side of 15<sup>th</sup> Street. The tallest building in the district is the five story YWCA Building on the northwest corner of 15<sup>th</sup> & Webster Streets which is an A2+ rated building designed by Julia Morgan.

**PROJECT DESCRIPTION**

*Prior Approval*

The approved project under the initial development application consisted of a 29-story high rise containing 179 dwelling units and 60,000 square feet of office space over ground floor retail. The proposal was taking advantage of the affordable density bonus and was to include 8 units available at very-low income levels.

*Current Revised Approval Under Appeal*

The approved revised project reduced the number of stories from 29 to 15, reduced the number of dwelling units from 179 to 168, and eliminated the office component of the project. The project is still taking advantage of the affordable density bonus and will include 7 units available at very-low income levels. The applicant is still requesting the concession for open space and a development waiver for height within the 85-foot height limit portion of the project site along 15<sup>th</sup> Street, as was previously approved by the Planning Commission.

**GENERAL PLAN ANALYSIS**

The General Plan's Land Use and Transportation Element (LUTE) classifies the project site as being located in the Central Business District (CBD) General Plan area. This land use classification is intended

to encourage, support, and enhance the downtown area as a high density mixed use urban center of regional importance and a primary hub for business, communications, office, government, high technology, retail, entertainment, community facilities, and visitor uses. The CBD classification includes a mix of large-scale offices, commercial, urban high rise residential, institutional, open-space, cultural, educational, arts, entertainment, service, community facilities, and visitor uses.

Among the General Plan Land Use and Transportation policies and objectives applicable to the proposed Project are the following:

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 12<sup>th</sup> Street, 19<sup>th</sup> 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.

Policy N3.2 – Encourage In-fill Development – In order to facilitate the construction of needed housing units, in-fill development that is consistent with the General Plan should take place throughout the City of Oakland.

The proposed Project meets the referenced policies and objectives and the general intent of the Central Business District land use designation by constructing a new high-density residential building containing 168 dwelling and active ground floor commercial within close walking distance to the 12<sup>th</sup> Street and 19<sup>th</sup> Street BART stations.

## **ZONING ANALYSIS**

The subject property is located within both the CBD-C and CBD-P Zones within Height Areas 7 and 2. The portion of the site on Webster Street (1433 Webster) is within the CBD-C Zone and Height Area 7. The portion of the site on 15<sup>th</sup> Street (363 15<sup>th</sup> Street) is within the CBD-P Zone and Height Area 2. The intent of the CBD-C Zone is to create, maintain, and enhance areas of the Central Business District appropriate for a wide range of ground-floor office and other commercial activities. Upper-story spaces are intended to be available for a wide range of residential and office or other commercial activities. The intent of the CBD-P Zone is to create, maintain, and enhance areas of the Central Business District for ground-level, pedestrian-oriented, active storefront uses. Upper story spaces are intended to be available for a wide range of office and residential activities. The Height Area 7 does not set any restriction on building height above the 120 foot building base height and allows a density of one dwelling unit per 90 square feet of lot area and a Commercial FAR of 20.0. The Height Area 2 allows a maximum height of 85 feet above a 55 foot tall building base and allows one dwelling unit per 200 square feet of lot area with a commercial FAR of 6.0.

### **Height**

As mentioned above the subject development site is split by two different Height Areas. The portion of the site fronting onto 15<sup>th</sup> Street is within a Height Area 2 which allows a maximum building height of 85 feet, while the portion on Webster Street is within the Height Area 7 and does not set a maximum height above the 120-foot base height. Height Area 7 also requires that a tower above the base height not exceed

85% of the site area to allow for a more slender tower. The proposed project complies with the Height Area 7 regulations with regard to height and tower coverage, but exceeds the height allowances of Height Area 2 by extending the full building height above the 85 feet within Area 2. The applicant has requested a Density Bonus Waiver of Development Standards pursuant to Planning Code Section 17.107.095 to allow a waiver of this height restriction as part of providing affordable housing within the development project as a means of feasibly incorporating the units achieved by the density bonus. The Planning Code also allows for a 30-foot encroachment of the adjacent Height Area into the Height Area 2 pursuant to Section 17.154.060.C as part of the Design Review process, so the additional height above the 85-foot limit would cover the remaining 35 feet of the area of the site out to 15<sup>th</sup> Street. This enables the development to provide the density bonus units, which would otherwise be physically precluded due to the height and structural limitations of the tubular steel construction proposed for the project.

### **DENSITY BONUS FOR AFFORDABLE HOUSING**

The applicant has proposed as part of their development proposal to include affordable units within the project in order to take advantage of a density bonus and concessions pursuant to Planning Code Section 17.107 and California Government Code 65915. The applicant proposes to include 5% of baseline allowed dwelling units at Very Low Income (less than 50% of Median Income) resulting in 7 affordable units.

In addition to the bonus in density allowed on-site the applicant is also able to take advantage of one density bonus concession/incentive that would relax other Zoning Regulations. The applicant has requested a concession to the open space regulations within the CBD Zone as a means of accommodating the development of the proposed project. Concessions are allowed as a means to create cost savings to development projects that incorporate affordable units into the project. In this case the cost savings would be the reduction of numerous balconies on the exterior of the building to establish the minimum open space requirement.

In addition, as previously discussed in the staff report, the applicant is also looking to take advantage of the Waiver of Development Standards for height in order to physically provide the density bonus units in a feasible manner.

### **ZONING MANAGER'S DECISION**

On October 8, 2018, the revised application was approved finding that the proposal complies with all the necessary criteria for approval. Attached is the Zoning Manager's decision letter containing the required findings and the reasons the findings were met (see Attachment B). The primary reasons for approving the application were the following:

1. **General Plan Consistency:** The proposed project is consistent with the intent and desired character of the Central Business District General Plan area given that it is a high density residential development located within the downtown core and in close proximity to regional and local transit options.
2. **Appropriate Building Design:** The proposed residential building was found to be consistent with the required Design Review Criteria and is generally consistent with the larger tower design that was approved by the Planning Commission, with minor changes incorporated to better relate to the reduced scale of the building, such as the rooftop feature, and wrapping the terra cotta around the

entire base of the building to clearly define the base element in context with the surrounding historic district versus the upper elements of the building.

### **BASIS OF THE APPEAL**

On October 15, 2018, the appellant, Mark Brustman, submitted an appeal of the Zoning Manager's decision to approve the project. The applicant's appeal letter received October 15, 2018 contains arguments challenging the Zoning Manager's approval of the Application (see Attachment C). The appellant's arguments are summarized below. Staff's response to the argument follows.

**Appellant's Argument #1: The main basis of the appeal is Appellant's claim that the proposed project required an Environmental Impact Report (EIR) under CEQA (1) because of new information concerning the existence of an "equinox observatory" in the Oakland skyline, (2) because a project that would block views of downtown from Lake Merritt could not be consistent with the General Plan LUTE Draft EIR, and (3) because the project would create an adverse environmental impact to a historic resource. Specifically, Appellant claims that the proposed project would block the view of the equinox sunset along the side of the Central Bank Building at 1400 Broadway as seen from the appellant's building at 2122 Lake Shore Avenue and the side of the lake in front of his building, which Appellant has deemed a historic "equinox observatory." The background of the appellant's theory is included in section 10 of the filed appeal.**

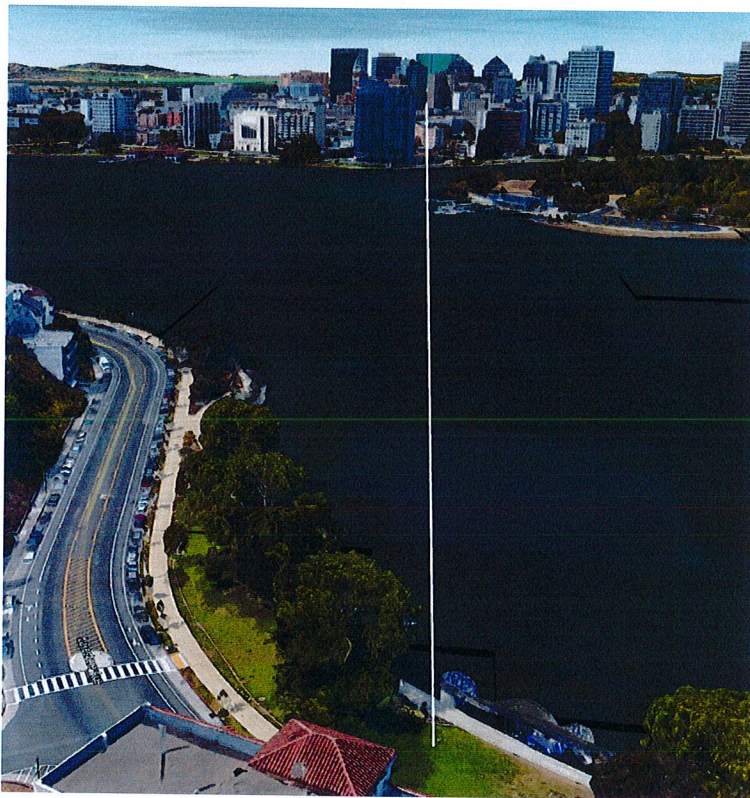
Staff Response: Appellant's argument that new information compelled an EIR misunderstands the CEQA requirements for subsequent environmental review for a later discretionary approval. The CEQA guidelines do not require subsequent environmental review unless (in relevant part) the City determined that new information shows environmental effects of a proposed project exist that are more severe than the project previously approved. Appellant mistakenly cites CEQA guidelines that pertain to initial review of a project subject to in-fill streamlining, but the appeal is only with respect to the Zoning Manager's decision to alter a previously-approved project. Appellant cannot challenge the original approval at this time. The subject development was originally approved in February 2018 as a 29-story building. In connection with the appeal of the Zoning Manager's administrative decision to reduce the building's height to 15 stories, Appellant claims that in May 2018 staff was made aware of an "equinox observatory" that would be blocked by any building over 10 stories. The Planning Commission had already approved a taller building, finding no significant impact concerning views. Any information provided to staff regarding the project's height reduction could not have resulted in more severe impacts than those considered by the Planning Commission for the 29-story iteration of the project.

Appellant's second CEQA argument that the project is inconsistent with the General Plan because the project would block a view, thus requiring an EIR, is invalid. The Appellant cites policies from the OSCAR Element of the General Plan that make statements about protecting the character of existing scenic views of Lake Merritt and Downtown and minimizing adverse impacts in scenic vistas. The proposed development would not impact any views of downtown, but rather the building would become a part of the overall downtown skyline that is viewed from across the Lake. During the CBD Zoning update in 2010 the issue of view corridors was specifically discussed and The Zoning Update Committee only identified two views from across the Lake of Downtown that should be considered for protection. The two views were of City Hall and the Tribune Tower from the E. 18<sup>th</sup> Street Pier. The Planning Commission ended up recommending that the proposal for view corridors not be adopted. This item was again raised for discussion by staff to the Planning Commission on this very project as the original proposal would have entirely blocked the view of City Hall from the E. 18<sup>th</sup> Street Pier. The Planning Commission directed staff not to consider the view as protected and resume the completion of the CEQA document for the project and return with findings for approval, which was done and the project was

approved in February of 2018. The appellant argues that the lack of proposed view corridors is inconsistent with the Mitigation Measure in the Draft EIR for the LUTE that states that the City “define view corridors and, based upon these views, designate appropriate height limits and other requirements. Views of Lake Merritt, the Estuary, and architecturally or significant buildings should be considered.” The city has in fact established new height limits throughout the City’s corridors and set height limits for sloped properties to try to maintain views as feasible and incorporated certain view protections into design guidelines for lower density housing on sloped sites. As stated previously, the City also considered view corridors through downtown to maintain views of certain historic landmarks, but those proposed regulations, after being considered, were rejected.

Finally, the appellant also argues that his theory of the construction of the Central Bank Building as an “equinox observatory” is pertinent in that the blockage of the sunset during the equinox would amount to an impact under CEQA on a historic resource. This argument is invalid since the CEQA threshold to be considered with regard to sunlight is that the shadow would materially impair the resource’s historic significance by materially altering those physical characteristics of the resource that convey its historical significance and that justify its inclusion on or eligibility for listing in the National Register of Historic Places, California Register of Historical Resources. The Central Bank Building is considered a historic resource currently without the concept of the equinox observatory, and the loss of the view of the sunset adjacent to the building during the equinox would not make the building lose its status as a historic resource.

Additionally, it should be noted that the view of the sunset during the equinox in question is quite likely to be blocked by the project currently under construction at 601 12<sup>th</sup> Street. See images below with 601 12<sup>th</sup> Street added into the view:



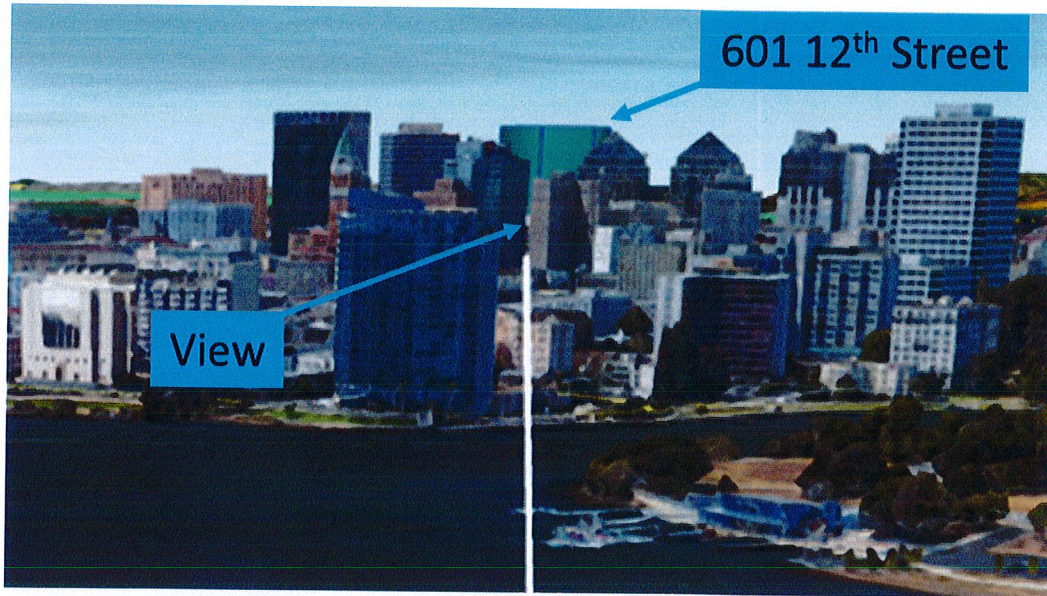


Image – 1: View Line in question from 2122 Lake Shore Avenue

**Appellant’s Argument #2:** The appellant argues that the project was not allowed to be reviewed at a staff level due to Planning Code Section 17.140.110, which states that revisions to projects shall be subject to the same procedural requirements as the initial approval.

Staff Response: The section cited by the appellant is from the Planned Unit Development Section in the Planning Code. The proposed project was not a Planned Unit Development and this section does not apply to the project. As stated in the staff report, the original project was required to obtain a Major Conditional Use Permit due to the size of the project. The revised project reduced the size of the development below the threshold requiring the Use Permit and was only subject to an Administrative Design Review application.

**Appellant’s Argument #3:** The appellant argues that during the Planning Commission discussions on view corridors for the project at 1433 Webster Street, a Planning Commissioner should have been required to recuse themselves from the item since they were involved in a project downtown at 1510 Webster Street that would have view implications.

Staff Response: the appellant’s argument is incorrect since the issue in question at that hearing was regarding view blockage of City Hall from the E. 18<sup>th</sup> Street Pier as part of the development proposal at 1433 Webster Street. No current or future proposed development at 1510 Webster Street would block the view of City Hall from the E. 18<sup>th</sup> Street Pier due to its physical location, and thus there would be no conflict of interest in the subject discussion of views at the meeting. See image below:



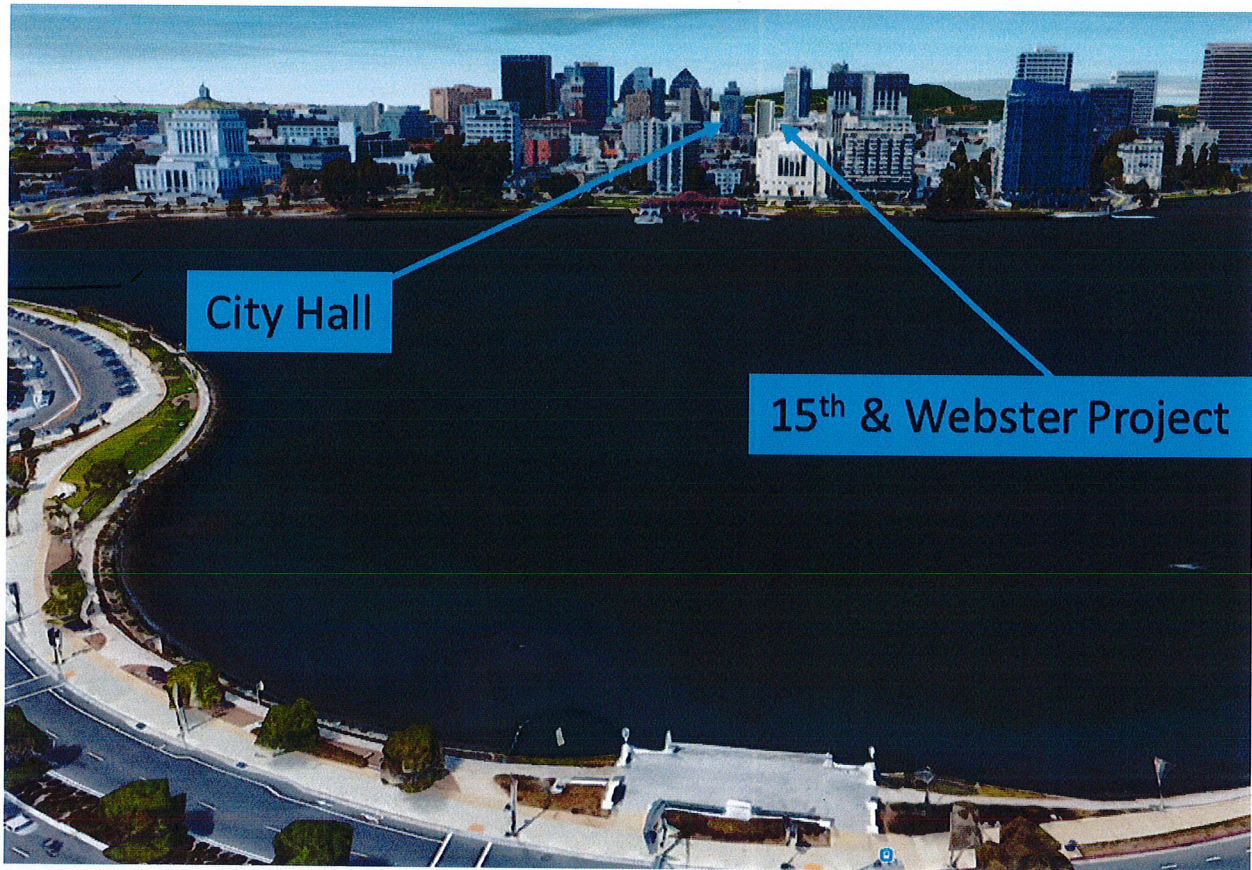


Image - 2: View of City Hall from the E. 18<sup>th</sup> Street Pier

**Appellant's Argument #4:** The appellant argues that the Development Waiver of the height in the CBD Height Area 2 as part of the affordable density bonus procedure should not be granted. The argument is that the request should be denied since it would result in an adverse impact on real property listed in the California Register of Historical Resources.

Staff Response: As stated earlier responses, the blockage of the sunset adjacent to the Central Bank Building from 2122 Lake Shore Avenue would not result in the property no longer being a historic resource. Furthermore, the portion of the site that has no limitation on height whatsoever would block the view in question, so the additional height along 15<sup>th</sup> Street is irrelevant to this issue. See images below with the view line through the development site minus the portion within the 85-foot height limit in Height Area 2.

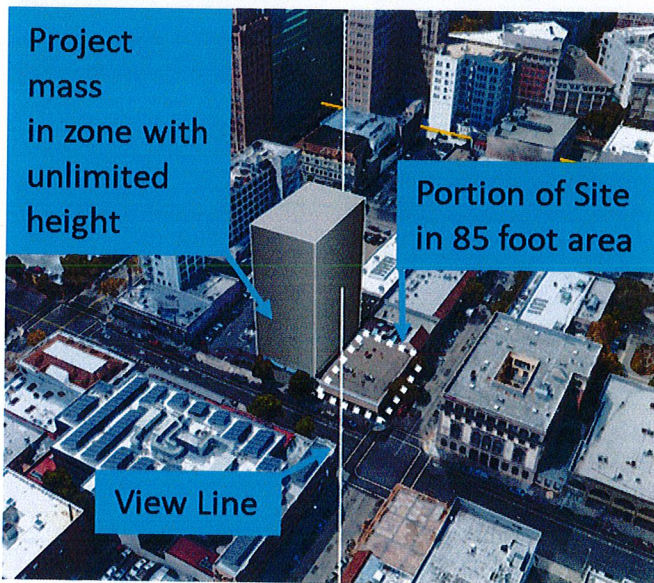


Image - 3: View line through 1433 Webster Street

**CONCLUSION**

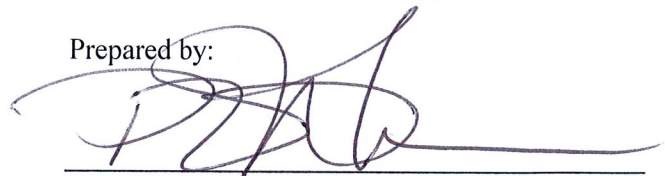
The Appellant has not demonstrated that the Bureau of Planning decision to approve the revision to the Design Review application was in error or was an abuse of discretion. The appeal is largely based upon view protections and potential impacts upon a historic resource. There are no view corridors throughout downtown that would protect any given views from across the Lake and the appellant has not provided evidence that the proposal would result in a historic building losing its status as a historic resource.

The proposed high density development project will provide new housing options within the downtown core within close proximity to local and regional transit and will provide for an active pedestrian oriented ground floor to enhance the streetscape in the neighborhood. The project also contains an attractive design that, while modern, relates to the building form context of the historic district's lower levels as viewable from the pedestrian vantage point.

**RECOMMENDATIONS:**

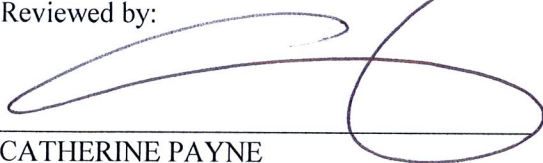
1. Affirm staff's environmental determination;
2. Uphold the October 8, 2018 Administrative approval by the Bureau of Planning to for the revision of the Design Review application.

Prepared by:



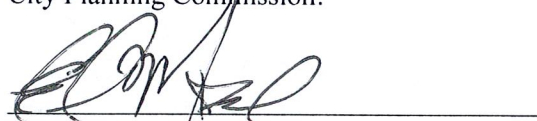
PETERSON Z. VOLLMANN  
Planner IV

Reviewed by:



CATHERINE PAYNE  
Acting Development Planning Manager

Approved for forwarding to the  
City Planning Commission:



ED MANASSE  
Interim Deputy Director  
Department of Planning & Building

**ATTACHMENTS:**

- A. Project Plans
- B. Renderings of Original Approval
- C. Zoning Administrator's Decision Letter
- D. Appellant's Letter