

Landmarks Preservation Advisory Board

STAFF REPORT

Case File Number PLN21084

February 7, 2022

Location:	5616 - 5626 Martin Luther King Jr. Way
Assessor's Parcel Number	014 -1210-018-01
Proposal:	To demolish two existing buildings, one of which housed the first headquarters of the Black Panther Party, and construct a new 5-story 20-unit mixed-use development.
Applicant:	Gunkel Architects
Phone Number:	510-984-1112
Owner:	Kim McClure
Case File Number:	PLN21084
Planning Permits Required:	Regular Design Review for demolition of two existing buildings and construction of a new mixed-use development involving 20 residential units on the upper floor over ground floor commercial
General Plan:	Neighborhood Center Mixed Use
Zoning:	CN-3 (Neighborhood Center Mixed Use Commercial)
Environmental Determination:	To be determined
Historic Status:	5616 MLK Jr. Wy: Dc3; 5622-26 MLK Jr. Wy: X not rated (under 50 years old when surveyed in 1999)
City Council District:	1
Status:	Pending
Action to be Taken:	To review and comment on the findings of the Historical Resource Evaluation for the project, receive public comment and comment on project
For further information:	Contact Case Planner Rebecca Wysong at 510-238-3123 or by e-mail rwysong@oaklandca.gov

SUMMARY

Staff seeks input on the adequacy of a Historical Resource Evaluation (Attached) as well as recommendations on how to proceed regarding the applicant's proposal to demolish two existing buildings, the larger (5622-26 MLK Jr. Wy) of which, reportedly served as the first headquarters of the Black Panther Party (BPP), and to construct a new mixed-use development involving twenty residential units (including two very-low-income units) and ground floor commercial. The proposed ground floor commercial spaces are designed to continue accommodating the existing commercial uses on the site: a bakery and a barber shop.

The project is located in the Bushrod Neighborhood of North Oakland. The site is not located in an API (Area of Primary Importance) or ASI (Area of Secondary Importance). The small 1922 commercial building at 5616 MLK has a survey rating of Dc3, minor to secondary importance, and is thus a PDHP under the Preservation Element. The larger building that arrived in 1966 at 5622-26 MLK has a rating of X (Not Rated, because it was less than 50 years old when surveyed in 1999) on the Oakland Cultural Heritage Survey (OCHS). Although the building is not rated nor identified on the Oakland Register of Historical Resources, recent information about its history as the first headquarters of the Black Panther Party warrants an investigation into merits of preservation or commemoration.

In light of recent information about the historic use of the property, staff determined it was important to present the findings of the HRE to the Landmarks Preservation Advisory Board to determine its adequacy, as well as take public testimony from interested parties, and recommend the appropriate review processes for both the proposed demolition of the existing structures and the applicable California Environmental Quality Act (CEQA). Under the City of Oakland’s CEQA thresholds, a project is considered to have a significant impact pertaining to cultural and historic resources if the project would cause a substantial adverse change in the significance of an historical resource, where a substantial adverse change includes physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of the historical resource would be “materially impaired.” The significance of an historical resource is “materially impaired” when a project demolishes or materially alters, in an adverse manner, those physical characteristics of the resource that convey its historic significance and justify its inclusion on, or eligible for inclusion on, an historic resource list.

A draft Historic Resource Evaluation (HRE; Attachment A) has been prepared by Mark Hulbert, a Preservation Architect & Historic Resources Consultant of Preservation Architecture. The conclusion of the HRE states that while there is historic significance of the site associated with historical events and historical people, the building itself does not have adequate integrity to convey that historic significance. The HRE states that the only component of the existing property that conveys its historical significance is a commemorative display within the building that the HRE describes as “impermanent and lean.” Nonetheless, the site does have a period character authentic to the historic events and persons associated with the site. One suggestion is to have a commemorative display within the proposed development. Staff requests that the LPAB evaluate the HRE as well as take public testimony from interested parties and advise Staff as to whether or not it agrees with the findings and conclusions.

Staff welcomes board members’ comments on the contents of the HRE and other appropriate ways of appropriately commemorating the site’s historical legacy.

SITE DESCRIPTION

The property is a flat, rectangular, 6,387 square-foot, midblock parcel containing a two-story, 1947/1966 commercial building (5622-26) currently occupied by a bakery with residential units on second floor, and a one-story 1922 commercial building (5616) occupied by a barber shop. The site is on the east side of Martin Luther King Jr. Way (previously called Grove Street), across from the elevated train tracks of BART.

History and Context

5622-5626 Martin Luther King Jr Way

According to research presented in the HRE, the existing two-story building located on the northeastern portion of lot was built in 1947 with two storefronts and four apartments at a lot across the street at 5523-5527 Grove Street (previous name of Martin Luther King Jr. Way). The building was moved to its current location in 1966 and was occupied starting in 1967. The first owners were Dr. James L. Wood and Maxine Wood from 1966 to 1973, who apparently leased space in the building to the newly formed Black Panther Party for Self Defense (BPP) starting in the beginning of the 1967. The BPP was formed in late 1966. By 1968, the BPP had moved into another building at 4421 Grove St, according to directory records.

5616 Martin Luther King Jr Way

The existing building located on the southwestern portion of lot was built in 1922 as an individual storefront.

It is a representative, largely intact small commercial building of its period, but not distinctively significant in design or historical associations. Its Dc rating makes it a PDHP but not a Local Register or CEQA resource.

PROJECT DESCRIPTION

The proposed project (Attachment B) would create a new 31,900 square-foot building that consists of commercial and parking on the ground floor and residential on the upper floors. The ground floor would have a tile frontage and glass storefronts. The upper stories would be clad in Parklex panels, horizontal siding, and a plaster rim surrounding the floors. There will be four balconies, including the group open space fronting the street.

The ground floor would contain 10 parking spaces (3,330 square feet), a 2,240 square-foot commercial space, and 840 square feet of residential amenities. Floors 2-5 would consist of 20 residential units.

GENERAL PLAN ANALYSIS

Applicable policies are found in the Land Use and Transportation Element (LUTE) and the Historic Preservation Element (HPE) of the Oakland General Plan.

Land Use and Transportation Element (LUTE)

The site is in the Neighborhood Center Mixed Use land use classification, which has a maximum nonresidential floor area ratio (FAR) of 4.0 and maximum residential density of one unit per 350 square feet of lot area. The intent of Neighborhood Center Mixed Use classification is “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.”

The proposal to construct a mixed-use building is consistent with and meets the policies (noted below) through residential intensification and the maintenance of ground floor commercial spaces.

The project conforms to the following LUTE Policies and Objectives:

Policy I/C3.4 Strengthening Vitality.

The vitality of existing neighborhood mixed use and community commercial areas should be strengthened and preserved.

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 take place throughout the City of Oakland.

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 N9.6 Respecting Diversity

The city's diversity in cultures and populations should be respected and built upon.

Policy N9.8 Preserving History and Community

Locations that a sense of history and community within the City should be identified and preserved where feasible.

Historic Preservation Element (HPE) of the Oakland General Plan.

The HPE sets out a hierarchy of historic properties based on OCHS ratings and local, state, and federal designations. About 20% of Oakland's buildings are classified as Potential Designated Historic Properties (PDHPs) which "warrant consideration for possible preservation" (HPE Policy 1.2).

One of the existing buildings (5616 MLK) is a PDHP and there is potential for an OCHS rating on the other existing building (5622-26 MLK). The policies and goals of the HPE apply to the project including the following:

Policy 3.1 Avoid or Minimize Adverse Historic Preservation Impacts Related to Discretionary City Actions

The City will make all reasonable efforts to avoid or minimize adverse effects on the Character-Defining Elements of existing or Potential Designated Historic Properties which could result from private or public projects requiring discretionary City actions.

Policy 3.5 Historic Preservation and Discretionary Permit Approvals

For additions or alteration to Heritage Properties or Potential Designated Historic Properties requiring discretionary City permits, the City will make a finding that: (1) the design matches or is compatible with, but not necessarily identical to, the property's existing or historical design; or (2) the proposed design comprehensively modifies and is at least equal in quality to the existing design and is compatible with the character of the neighborhood; or (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

Policy 3.8, excerpted below doesn't seem to strictly apply at the moment, however since the HRE identifies it as a CEQA resource significant under California Register criteria 1 & 2, it may be possible that Policy 3.8 findings and mitigations may be relevant if upon its review the LPAB discover sufficient evidence to reclassify the site to fit the criteria.

POLICY 3.8: DEFINITION OF "LOCAL REGISTER OF HISTORICAL RESOURCES" AND HISTORIC PRESERVATION "SIGNIFICANT EFFECTS" FOR ENVIRONMENTAL REVIEW PURPOSES.

For purposes of environmental review under the California Environmental Quality Act, the following properties will constitute the City of Oakland's Local Register of Historical Resources¹:

- 1) All Designated Historic Properties, and
- 2) Those Potential Designated Historic Properties that have an existing rating of "A" or "B" or are located within an Area of Primary Importance.

Until complete implementation of Action 2.1.2 (Redesignation), the Local Register of Historical Resources will also include the following designated properties: Oakland Landmarks, S-7 Preservation Combining Zone properties, and Preservation Study List properties.

Complete demolition of a Historical Resource will normally be considered a significant effect that cannot be mitigated to a level less than significant and will, in most cases, require preparation of an Environmental Impact Report.

A proposed addition or alteration to a Historical Resource that has the potential to disqualify a property from Landmark or Preservation District eligibility or may have substantial adverse effects on the property's Character-Defining Elements will normally, unless adequately mitigated, be considered to have a significant effect. Possible mitigation measures are suggested in Action 3.8.1.

ZONING ANALYSIS

The subject property is within the CN-3 Neighborhood Commercial Zone. The intent of the CN-3 Zone is: "to create, preserve, and enhance mixed use neighborhood commercial centers. The centers are typically characterized by smaller scale pedestrian oriented, continuous and active store fronts with opportunities for comparison shopping." The base allowable density is one unit per 450 square-feet of lot area.

Development Standards

The following table describes key development standards for the project.

Regulation	Required	Proposed
Maximum Residential Density	1 unit per 450 square-feet of lot area.	1 unit per 320 square-feet of lot area, due to 35% density bonus that increases the number of units by 4 units.
Maximum Height	45'	56' due to waiver request to accommodate density bonus
Minimum Usable Open Space	150 per unit. – 3,000 square-feet	877 square-feet due to waiver request
Minimum Parking	1 space per unit or 20 spaces.	10 includes 50% reduction.

Planning Permits Required

Regular Design Review

The construction of residential units requires Regular Design Review approval pursuant to Planning Code Sections 17.101G.020 and 17.136.050 and is subject to the following Design Review Criteria:

Section 17.136.050. A – Regular Design Review Criteria (Residential Facilities)

1. That the proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures;
2. That the proposed design will protect, preserve, or enhance desirable neighborhood characteristics;
3. That the proposed design will be sensitive to the topography and landscape;
4. That, if situated on a hill, the design and massing of the proposed building relates to the grade of the hill;
5. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

Section 17.136.075, Demolition Findings – at least Category 3 for PDHPs (per HPE Policy 3.5)

1. The design quality of the proposed replacement project is at least equal to that of the original structure and the proposed replacement project is compatible with the character of the neighborhood.
2. The public benefits of the proposed replacement project outweigh the benefit of retaining the original structure.
3. The existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

ENVIRONMENTAL DETERMINATION

An analysis of the project’s compliance with CEQA has not been completed and is contingent upon the outcome of whether or not the LPAB finds the HRE adequate and any additional or new information it may get from taking public testimony.

KEY ISSUES

Historic Resource

One key issue is whether or not 5622-26 MLK, which currently has a rating of X (Not Rated, because it was less than 50 years old when surveyed in 1999) on the Oakland Cultural Heritage Survey (OCHS) preliminary survey is a Historic Resource and under which definitions, and this means in terms of the project. The HRE identifies it as a CEQA resource significant under California Register criteria 1 & 2. Typically, a property that is not officially classified as historic cannot be reclassified midstream when an application is already under review. However, depending on the revelation of new information that comes to light, there may be exceptions to that rule, especially where demolition of the existing structures is involved.

Historic status: California Register eligibility as CEQA resource

Below are excerpts of the Historic Resource Evaluation (please see Attachment A) with a summary of findings and conclusion:

The HRE concludes that 5622-26 MLK has direct associations to events and persons of identifiable historic importance (i.e., the Black Panther Party) and thus meets two California Register criteria 1 and 2. The building at 5616, a representative 1922 small commercial building with a survey rating of Dc3, was not found to meet California Register criteria.

Integrity Considerations

For a finding of historic significance, under the National Register (NR) and California Register (CR) criteria, the subject resource must also possess integrity, i.e., be able to convey its identified significance in the present as the authentic, recognizable historic resource.

The HRE discusses integrity and argues that 5622-26 MLK does not convey its associations to persons and events of identifiable historic importance under the NR evaluation criteria for integrity of *location and setting; association and feeling; design, materials and workmanship* (see HRE, page 7).

Location is a relatively important aspect of this site, set as it is in its North Oakland neighborhood, where the significant event and persons associated with the BPP germinated in the Civil Rights Era. The setting opposite the BART tracks was taking its present shape during the Panther era, and BART construction probably occasioned the move of the building from across the street in 1966. The building's design, materials, and workmanship, though not architecturally significant, are unchanged enough from 1967 that the HRE cites "a definitive 1967 photograph" to support identification of the site. In terms of feeling and association, the building is representative of postwar neighborhood mixed-use construction and the kind of quarters where a young community organization might find office space, as recognized by oral tradition. The association is further supported by an extant and ongoing commemorative display in one of the businesses on site, which interprets the history of the site and organization.

The HRE concludes that "despite identifiable significance specific to the founding and founders of the BPP in the year 1967, neither the subject site nor its building convey this significance. Therefore, under the CR and NR, the 5616-5626 MLK Jr. Way site and 5622-5626 building lack potential historic significance."

However, this conclusion of non-significance seems open to alternate interpretations in technical terms of National Register Bulletin 15, as well as in terms of growing interest in non-traditional and minority cultural resources. Staff is not aware that the project applicants or consultants have sought or received input from Black Panther Party representatives or community members.

Commemorative Mitigation

Under the NR evaluation criteria, commemorative properties may be found to have potential significance in their own right (NR Criteria Consideration F). In a sense, 5622-5626 MLK Jr. Way is itself a commemorative site – a memorial to the origins of the BPP in its North Oakland neighborhood, thanks to the ongoing commemorative display that has resuscitated and conveys the association of this site to historic cultural events and institutions, along with those individuals that were direct participants. The c.2000 display wall in the bakery space is impermanent and lean, as befitting a cultural history in which financial and material resources have always been impermanent and lean. Display materials are xeroxed, much as the records of the BPP were newsprinted and mimeographed.

The extant commemoration conveys and interprets the historical events and persons associated with the 5622-5626 MLK Jr. Way in its original location and setting.

CONCLUSION:

Staff agrees with the HRE finding that the site is of historic significance due to historic events and people however staff is unsure about the conclusion that the building itself is not of historic significance, Staff is therefore seeking the LPAB’s assessment of the adequacy and findings of the HRE as well as any public testimony that would assist in making a sound evaluation of the subject site and proposed project.

RECOMMENDATIONS:

1. Receive any testimony from the applicant and/or interested parties;
2. Provide direction and recommendations to staff and the applicant regarding the adequacy of the Historical Resource Evaluation (HRE), appropriate review process, and project design.

Prepared by:



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Reviewed
by:



Robert D. Merkamp,
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Attachments:

- A. 5616-5622-26 MLK Jr. Way, Oakland, Historic Resource Evaluation
- B. 5616-5622 MLK Jr Way Plans