



# Oakland City Planning Commission

## Minutes

Chris Pattillo, Chair  
Jim Moore, Vice Chair  
Jahaziel Bonilla  
Michael Coleman  
Adhi Nagraj  
Emily Weinstein

**March 5, 2014**  
**Regular Meeting**

### **ROLL CALL**

**Present:** Pattillo, Moore, Bonilla, Coleman, Nagraj, Weinstein.

**Staff:** Scott Miller, Aubrey Rose, Celena Chen, Cheryl Dunaway.

### **WELCOME BY THE CHAIR**

### **Agenda Discussion**

Item #2 has been removed from this agenda. Items #1 and 3 will be heard.

### **Committee Reports**

Commissioner Coleman and Vice Chair Moore gave a report on Design Review Meeting held on February 26, 2014 on the skilled medical facility at 1230 37<sup>th</sup> Avenue.

### **Commission Matters**

Mr. Miller announced that there will be an upcoming retreat for the Planning Commissioners and encouraged them to submit their agenda items so that it may be ready by next week.

Commissioner Weinstein asked if there is a Zoning Update Committee Meeting scheduled for March 12, 2014.

Mr. Miller replied, no. A Zoning Update Committee Meeting was tentatively scheduled for March 12, 2014 but there were no items to be placed onto the agenda.

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***For further information on any case listed on this agenda, please contact the case planner indicated for that item. For further information on Historic Status, please contact the Oakland Cultural Heritage Survey at 510-238-6879. For other questions or general information on the Oakland City Planning Commission, please contact the Community and Economic Development Agency, Planning and Zoning Division, at 510-238-3941.***

♿ This meeting is wheelchair accessible. To request materials in alternative formats, or to request an ASL interpreter, or assistive listening device, please call the **Planning Department at 510-238-3941** or **TDD 510-238-3254** at least three working days before the meeting. Please refrain from wearing scented products to this meeting so attendees who may experience chemical sensitivities may attend. Thank you.



Chair Pattillo asked if some history be provided on an urban agricultural related issue coming up on a future Planning Commission agenda, since none of the current Planning Commissioners were serving on the Planning Commission when this issue was previously Presented. Mr. Miller will refer this request to the appropriate staff to follow up on.

**CONSENT CALENDAR**

Item #1 moved on consent of the Planning Commission.

Vice Chair Moore made a motion to approve, seconded by Commissioner Bonilla.

Action on the matter: Approved 6 ayes, 0 noes.

<b>1.</b>	<b>Location:</b>	<b>1930 12<sup>th</sup> Avenue / 1221 E 20<sup>th</sup> Street (APN 021-0262-001-002)(7-3-13)</b>
	<b>Proposal:</b>	Revision of CMD08174 (approved) to add three (3) new antennas and three (3) radio Remote Units (RRU's) within an existing roof top screen device / penthouse containing 6 existing antennas ( for a new total of 9 antennas and 3 RRU's). The roof top screening penthouse will be expanded to accommodate the new antennas..
	<b>Applicant:</b>	Christy Beltran Roberts/ The CBR Group
	<b>Contact Person/Phone Number:</b>	(415)806-2323
	<b>Owner:</b>	East 19 <sup>th</sup> Street Associates
	<b>Case File Number:</b>	REV130014
	<b>Planning Permits Required:</b>	Major Conditional Use Permit and Regular Design Review for macro-telecommunication facilities in a residential zone, and Minor variance for expansion of an existing screening penthouse within the 1:1 required rooftop setback.
	<b>General Plan:</b>	Mixed housing Type Residential
	<b>Zoning:</b>	RM-2
	<b>Environmental Determination:</b>	Exempt, Section 15301 of the State of CEQA Guidelines; existing facilities.
	<b>Historic Status:</b>	Not a PDHP, post-1945 or modernized, ; rating, F3
	<b>Service Delivery District:</b>	3
	<b>City Council District:</b>	2
	<b>Status:</b>	pending
	<b>Action to be Taken:</b>	Based on staff recommendation
	<b>Finality of Decision:</b>	Appealable to City Council within 10 days
	<b>For Further Information:</b>	Contact case planner <b>Moe Hackett</b> at <b>(510) 238-3973</b> or by email: <b>mhackett@oaklandnet.com</b>

Vice Chair Moore made a motion to approve, seconded by Commissioner Bonilla.

Action on the matter: Approved 6 ayes, 0 noes.



**PUBLIC HEARINGS**

**PLEASE NOTE: ITEM NO. 2, BELOW, IS REMOVED FROM THIS AGENDA**

<b>2.</b>	<b>Project Name:</b>	<b>Leo's Club</b>
	<b>Location:</b>	<b>5447 Telegraph Avenue APN014-1221-027-001</b>
	<b>Proposal:</b>	<b>Group Assembly (nightclub) and Alcoholic Beverage Service</b>
<b>Contact Person/Phone Number:</b>		<b>Jason Perkins or Michael O'Connor (888) 477-9288</b>
	<b>Owner:</b>	<b>Jason Perkins and Michael O'Connor</b>
	<b>Case File Number:</b>	<b>CMVM14-005</b>
<b>Planning Permits Required:</b>		<b>Major Conditional Use Permit to allow Alcoholic Beverage Service and Group Assembly for a musical nightclub; and Variance for proximity within 1000 feet of other Alcoholic Beverage Service and other sensitive activities</b>
	<b>General Plan:</b>	<b>Community Commercial</b>
	<b>Zoning:</b>	<b>CC-2 Community Commercial Zoning District</b>
<b>Environmental Determination:</b>		<b>Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15301</b>
	<b>Historic Status:</b>	<b>Potential Designated Historic Property, rating Fe3, potentially secondary importance</b>
	<b>Service Delivery District:</b>	<b>2</b>
	<b>City Council District:</b>	<b>1</b>
<b>Commission Action to Be Taken:</b>		<b>Approve Staff Recommendation</b>
	<b>Appeal:</b>	<b>To City Council within 10 days</b>
<b>For Further Information:</b>		<b>Contact David Valeska at (510) 238-2075 or <a href="mailto:dvaleska@oaklandnet.com">dvaleska@oaklandnet.com</a></b>

**APPEALS**

<b>3.</b>	<b>Location:</b>	<b>601 MacArthur Boulevard + 620 Wesley Avenue + O MacArthur Boulevard</b>
	<b>Assessor's Parcel Numbers:</b>	<b>023 -0427-001-00, 008-03, 002-00</b>
	<b>Proposal:</b>	To Appeal the Zoning Manager's Determination dated November 22, 2013 indicating City Zoning entitlements for a 32-unit apartment building project are expired. (Application no. CMD00046 was approved November 6, 2002 and extension permits expired December 13, 2012)
	<b>Appellant /</b>	<b>Mr. Michael Gray / East Bay Builders</b>
	<b>Phone Number:</b>	<b>(510) 435-1556</b>
	<b>Case File Number:</b>	<b>A13335 (DET13057)</b>
	<b>General Plan:</b>	<b>Mixed Housing Type Residential</b>
	<b>Zoning:</b>	<b>RM-3 Mixed Housing Type Residential Zone (previous: R-70 High Density Residential Zone)</b>
	<b>Environmental Determination:</b>	<b>Exempt, Section 15270 of the State CEQA Guidelines: Projects Which Are Disapproved; Exempt, Section 15321 of the State CEQA Guidelines: Enforcement Actions by Regulatory Agencies</b>
	<b>Historic Status:</b>	<b>Non-historic properties (vacant lots; Potential Designated Historic Property single family home once existed at 601 MacArthur Blvd); 601 MacArthur Blvd and 620 Wesley Av are located in the Haddon Hill Area of Primary Importance</b>
	<b>Service Delivery District:</b>	<b>3</b>
	<b>City Council District:</b>	<b>2</b>
	<b>Date Filed:</b>	<b>December 2, 2013</b>
	<b>Action to be Taken:</b>	<b>Deny the Appeal and Uphold the Zoning Manager's Determination</b>
	<b>Finality of Decision:</b>	<b>Final (non-appealable)</b>
	<b>For Further Information:</b>	<b>Contact case planner Aubrey Rose AICP, Planner II at (510) 238-2071 or <a href="mailto:arose@oaklandnet.com">arose@oaklandnet.com</a></b>

Staff Member Aubrey Rose gave a presentation.

Commissioner Nagraj asked staff to explain the condition of approval 2A on page 4 in the beginning paragraph.

Mr. Rose responded stating that the conditions in 2002 were very brief, which indicated that the next permit must be applied for, obtained and work started. The intent was that the work would be completed, but if not, it will revert to the initial permit. Standard conditions of approval have since been expanded to clarify this.

Mr. Miller further explained as Aubrey stated, the language from 2002 is vague and simple and clearly wasn't the intent that all that was needed was to dig a whole, start work and the project would be vested forever. There are other sections in the code that states work must continue until completed.

Commissioner Nagraj asked Mr. Miller to clarify the other sections in the code that indicate that work must be completed. Is it plausible that the appellant relied on that one sentence, but since there were other language in the code that states the work must be completed?

Mr. Miller responded stating that any discussions with the appellant would've been clear, but he isn't certain that the appellant and staff had discussions in 2002 concerning this project. He doesn't believe



that it was the appellant's intent to start the project and abandon it later on, this happened due to circumstances beyond his control.

Commissioner Coleman asked what will be the implication to start the application process all over again.

Mr. Rose responded stating that the applicant would have to follow the current application process which may include, but not limited to: a Design Review permit and any other associated required permits depending on the proposal; it may or may not come before this Planning Commission.

Chair Pattillo asked if the density of this project as it is currently designed, meet the new zoning laws.

Mr. Rose and Mr. Miller responded stating no, because it has been rezoned. Previously, the maximum units allowed was 32, now the maximum units allowed is 13 with the 3 sites merged together.

Mr. Miller further explained that the information that Mr. Rose just stated can be found on page 5 of the staff report under the zoning analysis. It states that 13 units is the maximum amount if it's a market rate project, but and could ask for up to 27 units maximum if it's an affordable housing project.

**Appellant:** Michael Gray gave an argument of why the appeal application should be approved.

Vice Chair Moore asked where the job cards, compaction tests, drilling and permits are to show substantial progress. He also didn't see any evidence of piers, foundation, etc. on the site and asked were all of them removed as a part of remediation. It appeared to be one to one on the cut at the Mac Arthur Boulevard side where there is a stacked retaining wall holding up that side of the hill.

Mr. Gray responded stating that he has obtained all of the necessary permits, but he is open to make minor changes if the Planning Commission or staff instructs him to do so. As far as the evidence of piers and foundation, as you view the site from the left you will see where the graffiti he painted over was, you can see where the shoring goes back in there. They left the shoring, because of the way it was made with the tightness of the space. On the right side he installed a sewer connection which is how the wall remains standing. It's supposed to be by the Earth's Mechanics who were the consultants that for the soil, it should be a one to one which is why the hill hasn't fallen down so far because there are materials still there underground. Mr. Gray explained his answer by showing Vice Chair Moore the area on a set of plans.

Commissioner Weinstein stated that in the staff report, it shows that the City of Oakland tried to contact Mr. Gray in 2008 without success concerning need for the hillside to be stabilized and the City of Oakland pulled the necessary permit to stabilize it themselves. She asked Mr. Gray to explain what occurred between 2008 and 2010 concerning this matter.

Mr. Gray responded stating that he received a loan from a private company who later bailed on the project somewhere around the beginning of 2008 when they received information of the hillside needing to be stabilized. Although he had just obtained the loan, the private loan company wanted out. He offered to pay some of his own money to combine with the private loan company's money to secure the site and they refused his offer. He stated that he has always kept the City of Oakland informed of the project's process and they've always had his current contact information.



Commissioner Nagraj asked if it were true that the tentative map was granted, but the final map wasn't.

Mr. Gray responded stating that his requirement was to file the map and from his understanding, the consultants he hired at that time did so.

Mr. Miller further explained that the relevancy of the tentative map doesn't have much bearing on the decision made on the other permits such as: Design review and Conditional Use permit. He believes that Mr. Gray believes that they are connected due to the state law he cited that discusses planning unit developments. Since this project isn't a planning unit development that provision of the state law doesn't apply. The tentative map has expired and again, is irrelevant. From staff's perspective, it's important that the zoning permits for the conditional use permit and design review have also expired as of December 31, 2011. The last request for an extension was during the first cycle when the City Council authorized extensions; they applied for that in early 2011 which was valid until December 31, 2011. There were no more extensions requested beyond their expiration date. Staff hadn't heard from Mr. Gray concerning this project until mid to late 2013.

Mr. Gray responded by discussing planned unit which he originally wasn't going to discuss. The City of Oakland and State resolutions both state that all permits and associated permits will be extended. He feels that the laws were written by attorneys and were not made in a vacuum. The law assumes that the developer understands other codes issued by the City of Oakland and knowledge of prior judicial actions taken such as; once you start the project on a permanent basis, you are vested.

Commissioner Weinstein asked what the process is for the developer to be granted an extension.

Mr. Miller responded stating that the request for an extension on permits must be made prior to the permits expiration date and they are not automatically extended.

Commissioner Coleman asked why wasn't the development completed and why didn't he request an extension in a timely manner.

Mr. Gray responded stating that the development wasn't completed because of the fallen economy. He thought because he filed the tentative map before the permit expiration date, he was automatically going to be extended. He also stated that he went by the language in the City Of Oakland and state resolution.

Chair Pattillo asked Mr. Gray if he reimbursed the City Of Oakland for shoring the property.

Mr. Gray responded stating yes, he had a \$250, 000 bond on the property that the City Of Oakland used a portion of it to shore up the property and the other portion for legal fees.

**Speaker:** Joshua Stolaroff.

#### **Planning Commission Questions, Comments and Concerns:**

Vice Chair Moore stated that his first impression, with the timeline given by the staff report is that there is a rhythm of inactivity at times where there should've been action and activity. Particularly, stabilizing the site and the break in the sewer line, the natural inclination is to try to extend, approve and get as much as possible built. He has a problem with how long the permits have been expired and how many times it's come to a crossroads in the project and the response by the appellant, rather than trying to advance the



project it seems to be going in the opposite direction. This is why the City Of Oakland had to stabilize the site and cap the sewer. As far as the Planned Unit Development, he feels that this isn't a Planned Unit Development, which the state law refers to. He doesn't feel that he can support the appeal because the appellant failed to properly follow the permit process.

Commissioner Weinstein stated that, while reading the timeline she sees where the developer may've gotten confused about the vested permits. This is a site that has had this prolonged history that had to endure the ups and downs of the market and now exceeds what would now be allowed. Even if there was some ambiguity from the developer about the City Of Oakland resolutions, he should've contacted or had some discussions with the City Of Oakland staff to inform them of every step of the way whether the permits were still valid. She doesn't see based on the staff report and the comments that those concerted efforts were made to make sure that the site was secure so that construction could resume once the market rebounded. She can't follow the rationale and has a tough time supporting this appeal.

Commissioner Weinstein made a motion to deny the appeal, seconded by Commissioner Coleman.

Action on the matter: Denied 6 ayes, 0 noes.

**Approval of Minutes**

Vice Chair Moore made a motion to approve the February 5, 2014 Planning Commission minutes, seconded by Commissioner Coleman.

Action on the matter: Approved 6 ayes, 0 noes.

**ADJOURNMENT**

6:40 P.M.

**SCOTT MILLER**  
Zoning Manager Planning and Zoning  
Division

**NEXT MEETING:** March 19, 2014