December 16, 2009

Location: 6100 Broadway (See map on reverse)

Assessors Parcel Numbers: APN 045-5295-042-00

Appeal of the Zoning Manager's approval of revisions to previously

Proposal: approved Conditional Use Permit CM76-296 and CM80-191 for additions and alterations at the College Preparatory School (CPS).

Appellant: Tim Durham

Applicant/Owner: College Preparatory School

Planning Permits Required: Revision to a previously approved Conditional Use Permit (CM76-

296 and CM80-191) for additions and alterations at the College Preparatory School (CPS) including the relocation of two portable classrooms, construction of a new 4,500 square foot World Languages building, and parking lot and driveway improvements (phase 1); construction of a 2,300 square foot English building and a 587 square foot addition to the Music building (phase II); and construction of a 10,431 square foot Theater Arts building (phase III), to permit 340 students where 325 was previously permitted, and to allow the Theater Arts building and the English building to exceed the R-30 height limit

pursuant to Section 17.108.020 of the Oakland Planning Code.

General Plan: Detached Unit Residential

Zoning: R-30 Single Family Residential Zone

Environmental Determination: Exempt, Section 15314 of the State CEQA Guidelines:

Additions to existing schools

Section 15183 of the State CEQA Guidelines:

Projects consistent with a community plan, general plan or zoning Not a Potentially Designated Historic Property. Survey Rating: F3

Historic Status: No Service Delivery District: II

City Council District: 1

Action to be Taken: Uphold Zoning Manager's Decision and deny the appeal.

Finality of Decision: Final

For further information: Contact case planner Leigh McCullen at 510-238-4977 or

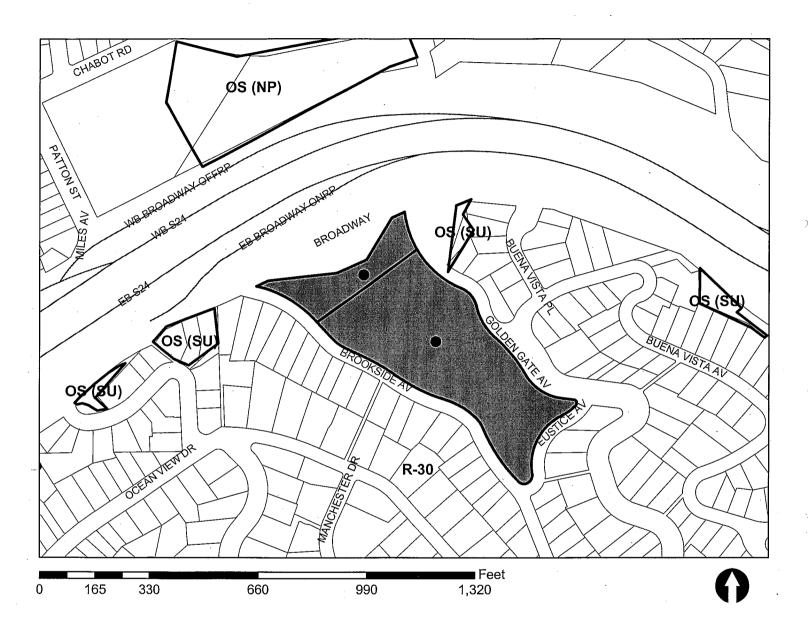
lmcullen@oaklandnet.com.

SUMMARY

This report addresses an appeal of the Zoning Manager's approval of revisions to a previously approved Conditional Use Permit CM76-296 and CM80-191 for additions and alterations at the College Preparatory School (CPS). The Zoning Manager, determining that the proposal met all of the required findings required, approved the application on September 24, 2009. An appeal of that decision was submitted on October 2, 2009.

Staff recommends that the Planning Commission uphold the Zoning Administrator's approval based on this report, which details the basis for granting the approval and responds to the issues raised in the appeal.

CITY OF OAKLAND PLANNING COMMISSION



Case File: A09208 (appeal of REV09004)

Applicant: Dan Wetherell Address: 6100 Broadway

Zone: R-30

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PROPERTY AND PROJECT DISCRIPTION

The bowl-shaped subject site is bounded by Golden Gate Avenue to the east, Brookside Avenue to the west, and Eustice Avenue to the south, with single-family residential development beyond, and EBMUD property to the north. In 1976, and in again in 1980, the City approved a Conditional Use Permits to establish The College Preparatory School (CPS), a private high school, on the site. Several building additions and increases of student population have occurred over time. In 1993 the student population was increased from 250 to 325. The current project would provide for the construction of new buildings, improvements to the campus entry and parking area, and an increase of the student population by 15, from 325 students to 340 students.

GENERAL PLAN ANALYSIS

The Oakland General Plan designation for the subject site is Detached Unit Residential. Community Education Activities are listed as conforming to the Urban Residential designation under Guidelines for General Plan Conformity. The General Plan Land Use and Transportation Element states future development in Detached Unit Residential areas should remain residential in character with appropriate allowances for schools. The proposed expansion of an exiting school would be consistent with the desired characteristics of this designation and is permitted by the General Plan.

ZONING ANALYSIS

The subject site is zoned R-30 Detached Unit Residential Zone. Community Education Activities are conditionally permitted and Civic (Community Education) Facilities are permitted in the R-30 zone. A Conditional Use Permit (CUP) was granted in 1976, and reaffirmed in 1980, to establish Community Education Activities (The College Preparatory School) on the subject site. The proposed additions and alterations to the school were processed as a Revision to the prior CUP since the new facilities are permitted by right and the educational activities have already been established through the grant of previous Conditional Use Permits.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines list projects that qualify as categorically exempt from environmental review. Section 15314 of the State CEQA Guidelines states that minor additions to existing schools where the addition does not increase student capacity by 25 percent or 10 classrooms, whichever is less, is categorically exempt from environmental review. The addition involves a net increase of 4 classrooms (10 classrooms to be demotions and 14 new classrooms to be constructed) and would increase study capacity by 4.6 percent. The project does not exceed either threshold. Therefore, the project is exempt from environmental review. In addition, this project is not precluded from this exemption by any other CEQA guidelines.

An Environmental Impact Report (EIR) was prepared in 1976 to establish the school. The only significant impacts identified involved extensive tree removal and construction impacts. Parking was identified as a potential impact but not as a clear significant impact and no mitigation measures involving parking were required. The EIR suggested that administrative efforts to minimize traffic be established.

In 1993 the student population was increased to 325. Staff and the Planning Commission concluded at that time that the analysis and conclusions of the original EIR were valid for the increased enrollment. A limited traffic study, which included a Transportation Management Plan, was prepared at that time. The Transportation Management Plan is currently in effect.

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The proposed improvements to the parking area would provide for 105 parking spaces and new landscaping. The Planning Code would only require 67 parking spaces for the school. The 1976 Conditional Use Permit (CUP) required 40 off-street parking spaces for 250 students, or 0.16 spaces per student, while the 1980 CUP required 50 off-street parking spaces, 0.20 spaces per student. At 0.30 parking spaces per student, more parking would be provided as a result of the proposed improvement than previously required by the original CUP. The proposed minor increase in student enrollment from 325 to 340, which would represent a less than 5 percent increase in student population, would not result in any new significant impacts to traffic or parking.

The current project would require the removal of four protected trees. The removal of four protected trees would not result in a significant impact particularly given that these trees would be replaced with native species at a three to one ratio.

The current uniformly applied standard conditions of approval regarding construction activities and all other relevant impacts of the development would reduce any potential impacts of the proposed project to less than significant levels.

Neighborhood Meetings

According to the project applicant, prior to submitting their application to the City, the school sent an invitation of neighbors within a 300 foot radius to attend a meeting on December 16, 2008 to review the proposed campus plans and provide feedback. No one from the neighborhood attended to meeting. The proposed project was formally submitted to the Planning Department on March 4, 2009. The school and project architects also met with the Rockridge Community Planning Council on March 25, 2008. A public notice of the project was mailed by the City on April on April 3, 2009. The school met with neighbors on April 30th at the appellant's house. The school had two follow-up meetings with neighbors on May 6th and May 28th. To accommodate continued negotiations with the neighbors the school asked the City to extend the end of the public comment permit twice; both extension requests were granted. City staff, the school's representative and neighbors met on July 16th to discuss the project and potential conditions of approval. The Zoning Manager issued a decision on September 24, 2009.

BASIS FOR APPROVAL

The Zoning Manager approved this project on September 24, 2009. The proposed improvements and the construction of new civic facilities to accommodate existing Community Educations Activities would be compatible with the historic use of the site. With implementation of the conditions of approval, the proposed project would not adversely affect the livability or appropriate development of abutting properties.

BASIS FOR THE APPEAL

On October 2, 2009, the appellant, Tim Durham, filed an appeal of the Administrator's decision (see Attachment B, Appeal request and supporting documentation). The appeal claims that the Zoning Manager abused his discretion by allowing the expansion of the school.

The following discussion combines related appeal issues where appropriate for efficiency and clarity of the report. Each key point of the appeal is summarized in <u>underlined italics</u> with Staff's responses to each point immediately following in regular text.

1. <u>Appellant alleges that the applicant's ability to expand the school's population and the use of the property should require a California Environmental Quality Act review.</u>

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Staff Response

The project is exempt from review under the California Environmental Quality Act (CEQA). The CEQA Guidelines list projects that qualify as categorically exempt from environmental review. Determining if a project meets one of the categorical exempt is the first step of the CEQA review process. Section 15314 of the State CEQA Guidelines states that minor additions to existing schools where the addition does not increase original student capacity by 25 percent or 10 classrooms, whichever is less, is categorically exempt from environmental review. The addition involves a net increase of 4 classrooms (10 classrooms to be demotions and 14 new classrooms to be constructed) and would increase study capacity by 4.6 percent. The project does not exceed either threshold. Therefore, the project is exempt from environmental review. In addition, no exception to application of the categorical exemption applies. The appellant has not demonstrated how the proposed additions to the school are not compatible with this categorical exception.

An Environmental Impact Report (EIR) was prepared in 1976 to establish the school. The subject site was undeveloped at that time. The only significant impacts identified involved impacts related to extensive tree removal and construction impacts. There are no changes proposed that would involve any significant new impacts, nor a substantial increase in the severity of an impact, nor changes in circumstances under which the project is undertaken that would necessitate any further environmental review (see CEQA Guidelines section 15162, 15163.

The appellant generally alleges that cumulative increases of past permits that expanded the campus population and its building complex have resulted in a substantial increase in utilization and environmental impact. However, there is no evidence that any significant cumulative impact would result from the proposed school addition. The appellant does not indicate what the alleged impacts are. When the student population was increased to 325 students in 1993 Staff and the Planning Commission concluded that the analysis and conclusions of the original EIR were valid for the increased enrollment. Other building additions over time did not increase student enrollment and where only intended to support the student population existing at the time of their construction. Therefore, these projects did not result in significant cumulative effects in conjunction with other similar projects on campus.

The proposed improvements and the construction of new civic facilities to accommodate existing Community Education Activities would be compatible with the historic use and as built conditions of the site. The proposed minor increase in student enrollment from 325 to 340, which would represent a less than 5 percent increase in student population, would not result in any new significant impacts to traffic or parking or any other factors of development. With implementation of the conditions of approval, the proposed project would not result in any new significant impacts.

On a separate and independent basis, the project complies with CEQA Guidelines Section 15183 because it is consistent with zoning and the general plan.

2. Appellant alleges that staff has vastly expanded the schools ability to use the facilities during non-school hours by defining a 'major event' and by allow the construction of a new performing arts theater.

Contrary to the appellant's assertion, staff has not expanded the School's ability to use the facilities during non-school hours, but in fact have created a threshold to define major events. Staff has simply taken away the ability of the School to use their discretion to determine what

constitutes a major event. The School would still be limited to no more than 12 major night and weekend events. Again, this definition was created specifically due to a request by the appellant and neighbors.

The 1980 Conditional Use Permit included a condition that stated "...major evening and weekend activities shall be permitted provided they are limited to twelve events per year". A major event was not defined. During the review of the current project, the appellant and neighbors specifically requested that staff create a definition for a major event. To satisfy this request staff has defined a major event as a gathering of 300 people or more. This definition was derived from the thresholds in the Planning Code for group assembly activities (300 or more) and small scale entertainment activities (less than 300). Further, the existing campus auditorium has a maximum capacity of 300.

The appellant further asserts that the new CUP would allow an "unlimited" number of night and weekend events up to 299 persons, "vastly" expanding the School's ability to use the facilities during non-school hours for "minor" events. The current and past conditional use permits are clear that the facilities are for school purposes and must "be utilized *primarily* between the hours of 8 a.m. and 6 p.m. Monday through Friday. The requirement to "primarily" use the facilities during school hours would prohibit the School from "vastly" expanding the number of "minor" events.

The use of the new theater would be subject to the same existing use restrictions, specifically no more than 12 major events night and weekend events, as other facilities on campus. An additional condition of approval (Condition #42) imposed on the new project would further limit the use of the new theater.

3. Appellant asserts that Staff erred in their interpretation of the original conditional use permit (CM76-296) resulting in the approval of certain aspects of the current application. Specifically that the buildings are not being constructed entirely on the valley floor, away from Eustice Avenue and toward Broadway.

Staff Response

To allow the proposed changes to the campus master plan, the Zoning Manager approved a Revision to the original CUP. All the required Conditional Use Permit findings contained in Section 17.134.050 have made by the Zoning Manager (see Attachment E). This is not an error in interpretation of the original CUP, but a revision that was made in accordance with standards and procedures established in the Planning Code. The Zoning Manager's findings for approval are supported by substantial evidence.

The appellant's basis of this assertion relies on the Condition No. 1 of the Planning Commission's August 1976 approval of the original conditional use permit. This condition states "that the location of the academic and administrative building complex shall be moved away from Eustice Avenue and toward the center of the valley floor or closer to Broadway". The Planning Commission's decision, which included this condition, was appealed to the City Council. In October 1976 the Council found that "buildings can be grouped in the valley floor and on the lower slopes to fit the contours of the site; play areas and parking spaces can be interspersed through the valley floor...". The Council further resolved to remand a portion of the decision regarding the location of a soccer field back to the Planning Commission. The Commission subsequently approved a soccer field on the north end of the site (Broadway). That decision was appealed to the Council. The Council denied the appeal finding that in order to accommodate a

soccer field, buildings could not be located in the valley floor thereby amending their prior finding. This action also resulted in a de facto amendment to the Commission's condition regarding the location of the buildings.

The 1976 Conditional Use Permit expired in 1980 because construction had not begun. The School submitted a new application for a Conditional Use Permit. In May 1980 The Planning Commission approved the project again. That decision was appealed to the Council. The Council denied the appeal and found (1) "with careful site planning, buildings can be grouped on the lower slopes to fit the contours of the site; play areas and parking spaces can be interspersed through the valley floor...'. and (2) "in order to accommodate a soccer field, the academic and administrative buildings can not be located on the valley floor". The approved site plan (Attachment C) shows the buildings grouped on the lot slopes toward the south end of the site. A revised site plan, approved 1993, replaced the soccer field with the existing parking area.

To summarize, the site plan approved by the City Council in 1980 grouped buildings on the lower slopes of the Eustice Avenue end of the site, with pedestrian pathways and passive recreational areas located on the valley floor between the buildings. A soccer field and small parking area were located at the Broadway end of campus. The 1993 permit expanded the parking area into the soccer field. As detailed above, the proposed site plan, which would locate new buildings in the existing building cluster at the south end of campus with improvements to the existing parking area, is substantially compliant with the site plan approved by the City Council in 1980 and the revised 1993 site plan.

4. Appellant asserts that new construction could have been approved on the 38 extraneous parking spaces that are located near Broadway.

Staff Response

The appellant suggests that, as an alternative, the new buildings be constructed in the parking area, thereby reducing parking to 67 parking spaces as required by the Planning Code. Staff, however, believes that maintaining the existing parking and allowing the construction of the new buildings as proposed would maintain and improve the operational efficiency of the site.

In addition, the alternative proposed by appellant is contrary to requests made by neighbors during the review process. Specifically, in a letter dated May 7, 2009 the neighbors requested that 118 parking spaces be provided. In a June 18th letter they requested that 100 parking spaces be maintained. Given these requests it is likely that the neighbors would have protested a reduction in parking.

5. <u>None of the planned structures are being built toward the Broadway end of campus.</u>

Staff Response

The appellant again is relying upon the original condition of approval from 1976 regarding the placement of the buildings. This condition, as detailed above, was subsequently revised by findings made by the City Council and the approved 1980 site plan.

The approximate one acre portion of undeveloped land adjacent located between Broadway and the school's parking area is owned by East Bay Municipal Utility District. Therefore, the parking area could not be relocated closer to Broadway nor could buildings be constructed between Broadway and the parking area. Further, given written requests by neighbors to maintain at least

100 parking spaces, it would be counterintuitive to build the proposed structures in the parking area thereby reducing the amount of existing parking.

6. <u>The Theater Arts Building</u>, while being built on the valley floor, is so large that it exceeds the R-30 height limit and consumes the entire slope of the hillside.

Staff Response

The Planning Code allows the height of a civic facility to be taller than permitted by the zoning district upon the granting of a conditional use permit and if the facility has one foot of additional setback for every foot of additional height. The increased setbacks are intended to protect surrounding properties from impacts that could otherwise be created by the increased height. At its tallest point the Theater Arts building has a 31-foot setback from the property line abutting Golden Gate Drive would be required, whereas, at its tallest point, it is setback 77 feet. The building well exceeds this one to one ratio of height to setback. Further, the surrounding residential structures are sited up-slope of the proposed building. Given these factors the proposed Theater Arts building would not impact views, privacy or solar access to adjacent properties. Findings were made to approve all aspects of the project by the Zoning Manager, see attached decision letter (Attachment D).

CONCLUSION

The Zoning Manager, after thorough review of the project, has found that the proposed project is consistent with the Conditional Use Permit Criteria as stated in staff's findings of September 24, 2009. The appellant has not provided substantial evidence to substantiate his allegations or to provide a basis for overturning staff's determination.

RECOMMENDATIONS:

- 1. Affirm staff's environmental determination.
- 2. Deny the Appeal and uphold the Zoning Administrator's decision to approve the Tentative Parcel Map and Minor Conditional Use Permit based on the attached findings and subject to the conditions of approval contained in the attached Zoning Administrator letter dated September 24 (Attachment D).

MEall

Prepared by:

Leigh A. 🛭 cCullen

Planner III

Approved by:

Scott Miller

Zoning Manager

Approved and Forwarded to the Planning Commission by:

Walter Cohen

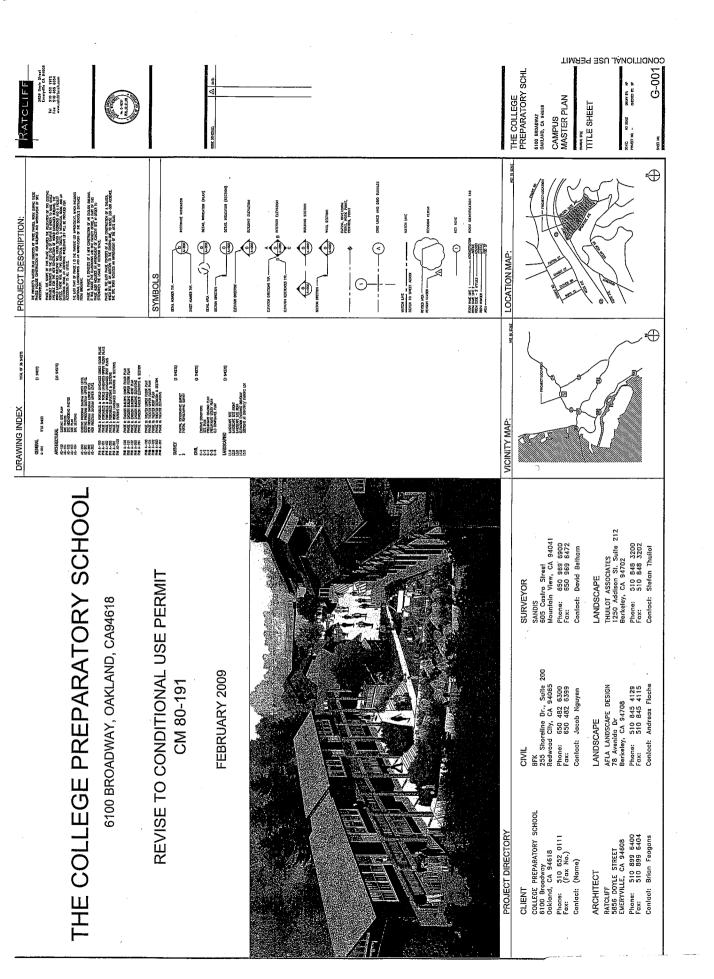
Director, Community and Economic Development Agency

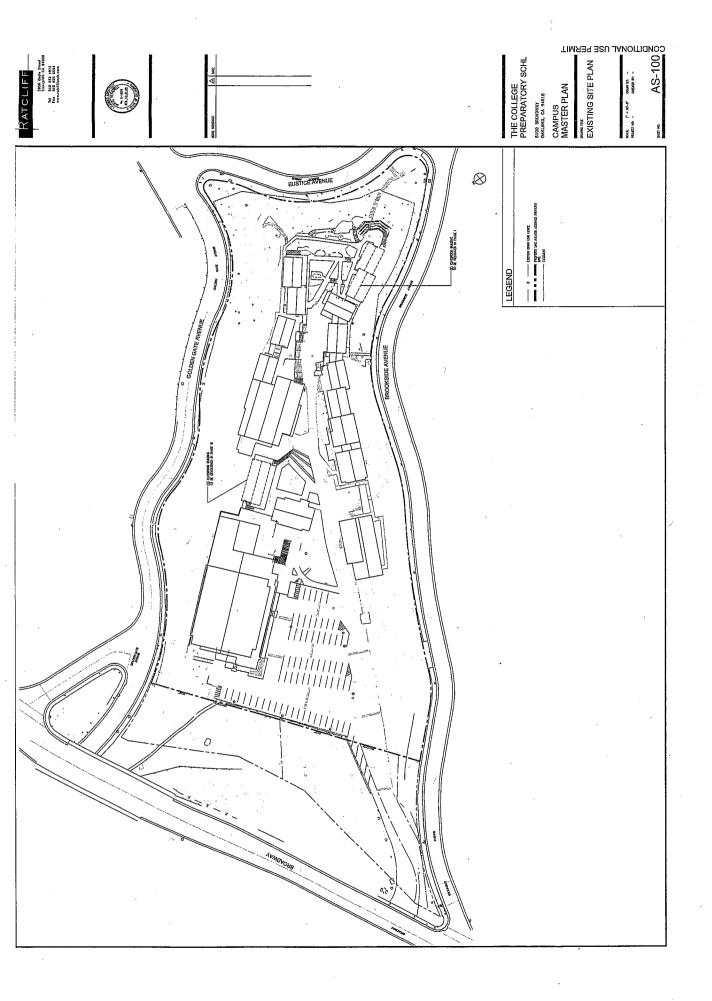
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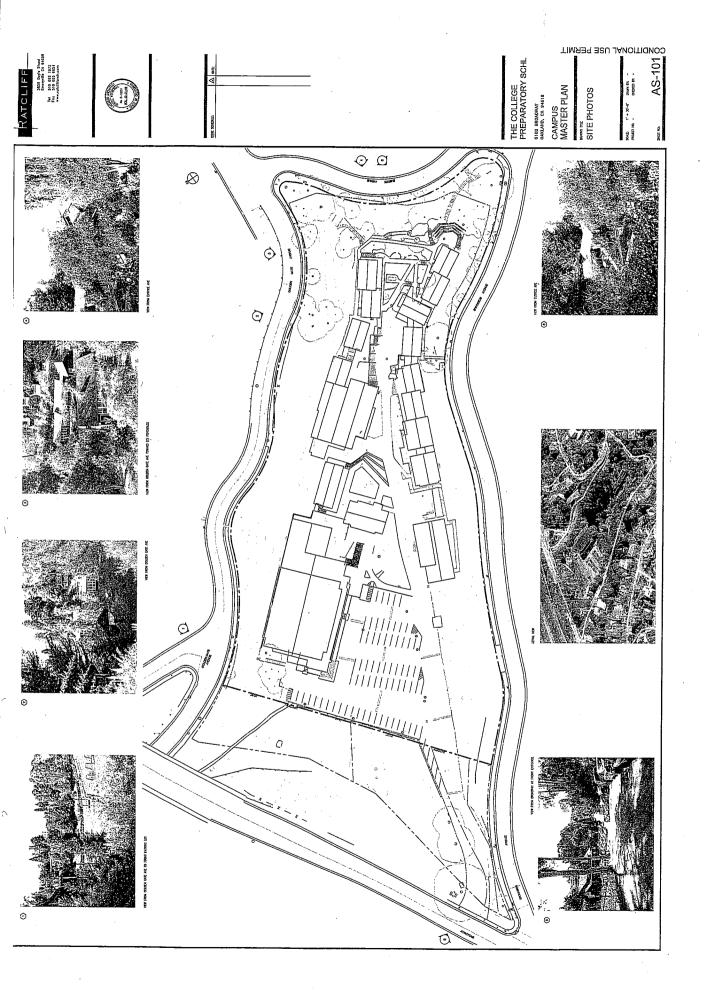
ATTACHMENTS:

- A. Site Survey and Plans
- B. Appeal request and supporting documentation
- C. Previous Conditional Use Permit documents
- D. Applicant's response to appeal and letters of support
- D. Zoning Manager's September 23, 2009 Findings and Conditions of Approval

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6339 BROOKSIDE AVE, OAKLAND, CA 94618

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2 EUSTICE AVE, OAKLAND, CA 94618















5609 GOLDEN GATE AVE, OAKLAND, CA 94618

5600 GOLDEN GATE AVE, OAKLAND, CA 94618

5610 GOLDEN GATE AVE, OAKLAND, CA 94618















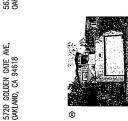














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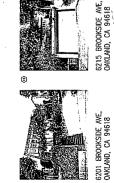












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CAMPUS MASTER PLAN	SITE NEIGHBORING PHOTOS	

6307 BROOKSIDE AVE, OAKLAND, CA 94618

6301 BROOKSIDE AVE, OAKLAND, CA 94618

6245 BROOKSIDE AVE, OAKLAND, CA 94618

6233 BROOKSIDE AVE, OAKLAND, CA 94618

6225 BROOKSIDE AVE, OAKLAND, CA 94618





THE COLLEGE PREPARATORY SCHL

6188 BROOKSIDE AVE, OAKLAND, CA 94618

