



Z O N I N G A D J U S T M E N T S B O A R D S T A F F R E P O R T

FOR BOARD ACTION
DECEMBER 14, 2017

2538-2542 Durant Avenue

Use Permit #ZP2016-0172 to merge two parcels and construct a new five-story, mixed use building with 32 dwelling units including Variance to permit dwelling units on the ground floor next to and behind an existing 12-unit apartment building.

I. Project Details

A. Land Use Designations:

- General Plan: Avenue Commercial
- Zoning: C-T – Telegraph Avenue Commercial District

B. Zoning Permits Required:

- Use Permit for construction of a new mixed use building, per BMC Section 23E.56.030;
- Variance from BMC Section 23E.56.070.F to allow dwellings on the ground floor of a mixed-use building;
- Use Permit for construction of more than 1,500 square feet of new floor area, per BMC Section 23E.56.050.A.2;
- Use Permit to decrease the 15-foot rear yard, per BMC Section 23E.04.050.E;
- Use Permit to reduce existing parking spaces for main buildings, per BMC Section 23E.56.080.C;
- Use Permit to exceed the 65' height limit, per BMC Section 23E.56.070.B.3;
- Administrative Use Permit to allow architectural projections (e.g. elevator enclosures) to exceed the height limit, BMC Section 23E.04.020.C;
- Zoning Certificate to allow a 1,200 square foot quick or full service restaurant, per BMC Section 23E.56.030; and
- Administrative Use Permit to permit alcoholic beverage service of beer and wine incidental to food service for on-site consumption at a quick or full service restaurant, per BMC Section 23E.56.030.

C. CEQA Determination: Categorically exempt pursuant to Section 15332 of the CEQA Guidelines ("In-Fill Development Projects").

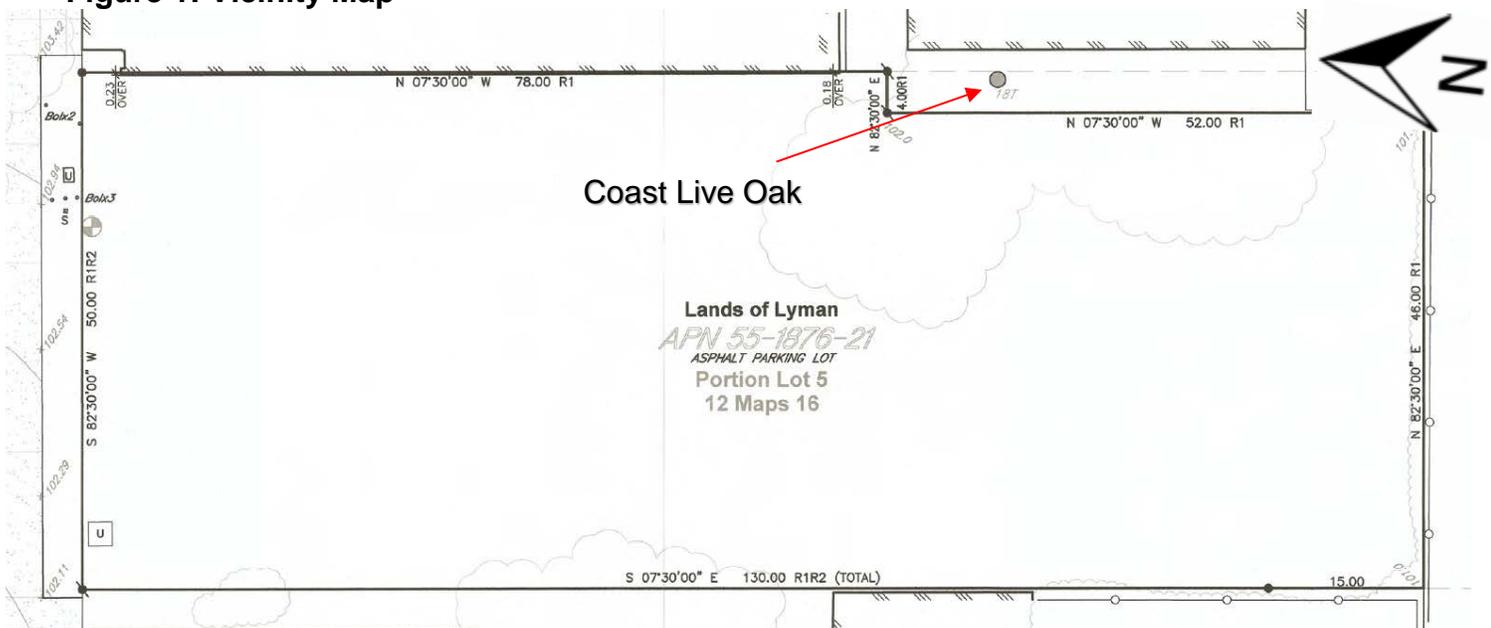
D. Parties Involved:

- Applicant Kirk Peterson & Associates Architects, 5253 College Avenue, Oakland
- Property Owner Tim & Marley Lyman, PO Box 10608, San Rafael

II. Background

On September 16, 2016, the applicant submitted the project application for the above referenced Use Permits and Variance. The materials submitted by the applicant documented that no construction activity was proposed within the drip line of a Coast Live Oak tree. Staff was made aware of the possible presence of an oak tree on the property in early November 2017, during preparation of the staff report. Upon notification, staff emailed the City Arborist for confirmation on the species of the tree. On December 1st, the City Forester, confirmed that the tree is a Coast Live Oak. Although the trunk is fully on the adjacent UC Berkeley owned property at 2350 Bowditch, most of the tree's canopy extends over the existing parking lot on 2542 Durant (see Figure 1 below).

Figure 1: Vicinity Map



The tree is subject to the City's Oak Tree Removal Ordinance. The Oak Tree Removal Ordinance (BMC Section 6.52.010, Moratorium on the Removal of Coast Live Oak Trees), enacted in 1998, prohibits the removal of any Coast Live Oak Tree unless a finding can be made that the tree is a "potential danger to life or limb due to the condition of the tree, or is a danger to property, and that the only reasonable mitigation would be removal of the tree."¹ The finding cannot be based on a proposed development, only on existing conditions.

¹ The ordinance allows for only two exceptions to permit tree removal at the Berkeley Rose Garden "for the purposes of restoring or maintaining view corridors," and tree relocation at 3000 Shasta Road in order to accommodate the Hills Fire Station. (In the event that the Hills Fire Station was not built, the moratorium would apply to the tree at that site.)

The City Arborist stated that the current separation between proposed building and tree would probably not be sufficient to preserve this tree and that even if it were, the developer would still need written permission from the UC to have this tree excessively pruned and the City would have to grant an exception to the coast live oak tree removal moratorium, due to the fact that more than 25% of the tree's canopy would need to be pruned to accommodate the building. The City Arborist determined that such severe pruning would result in the decline of the tree's health and likely cause the tree to be a continual maintenance challenge for the proposed building.

The City Arborist further stated that to assess this properly, the site should be marked to show where the building will be and that if the developer intends to preserve the tree, a report written by a Registered Consulting Arborist (RCA) with the American Society of Consulting Arborists (ASCA) will be required to be submitted for review. The report shall document:

1. Tree Protection Measures during construction, including monitoring by a Project Arborist;
2. Extent of both branch and root pruning necessary to construct the project;
3. Mitigation measures for the loss of roots and limbs; and
4. Long-term maintenance plan for the preservation of the tree.

If the tree cannot be preserved, the University of California would be required to request an exception to the coast live oak removal moratorium with justification for the tree removal.

III. Recommendation

Staff recommends that the Zoning Adjustments Board **continue the item off-calendar**, so that the applicant has time to prepare an arborist report and either acquire an exception to the Coast Live Oak removal moratorium or redesign the proposed development in a manner that ensures preservation of the tree.

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