



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: March 6, 2018

TO: Carolyn Lehr, City Manager

FROM: Charles S. Bryant, Community Development Director

SUBJECT: Resolution Of The City Council Of The City Of Emeryville Approving Modifications To The Conditions of Approval and Approved Plans Of A Conditional Use Permit To Add Square Footage, To Add Private Open Space In The Form Of Room Decks, And To Make Exterior Modifications To Two Previously Approved Residential Units At 1258 Ocean Avenue (APNs: 049-1489-18 And -19) (CEQA Determination: Exempt Pursuant To CEQA Guidelines Sections 15303 Which Applies To Construction Of Small, New Structures)

RECOMMENDATION

The Planning Commission and staff recommend that the City Council adopt the attached resolution approving an amendment to the conditions of approval and approved plans of a Conditional Use Permit and Design Review Permit to add square footage, to add private open space in the form of roof decks, and to make exterior modifications to two previously approved residential units at 1258 Ocean Avenue.

BACKGROUND

On March 22, 2007, the Planning Commission considered an application for a Conditional Use Permit and Design Review permit to demolish an existing single-family residence and construct two detached approximately 1,700 square foot single family units, and a variance to allow a 4-foot rear yard setback where 15 feet is the required minimum setback on a site at 1258 Ocean Avenue. The Planning Commission was deadlocked 3-3 on the project with one recusal, and forwarded it to the City Council without a recommendation. Subsequently, the City Council approved the project on April 17, 2007 on a 4-0 vote with one recusal. The Council subsequently approved a request for a one-year permit extension at their January 20, 2009 meeting.

On April 20, 2010, during consideration of a second permit extension request, the Council expressed a desire to see immediate demolition of the existing house as it was an eyesore and constituted a health hazard. Staff informed the Council that existing zoning and building codes precluded issuance of a demolition permit prior to issuance of a building permit for the replacement permit. The Council then directed staff to make appropriate amendments that would allow demolition of a residential structure before a building permit for the replacement structure is issued. On September 21, 2010, the City Council adopted

Ordinance No. 10-013 amending the Planning Regulations at [then] Section 9-4.65.7 of Chapter 4 of Title 9 (“Findings for Approval” for Demolition of a Residential Structure) and the Building Regulations at Section 8-1.1.04 of Chapter 1 of Title 8 (“Planning Commission or City Council Approval Required” for demolition of residential structures) of the Emeryville Municipal Code. The Ordinance allows the City Council to authorize demolition of a residential structure if doing so is in the best interest of the public health, welfare, or safety.

The request for a two-year permit extension and a finding approving demolition of the existing house prior to the issuance of a building permit for the replacement structure was considered by the Planning Commission at their December 9, 2010 meeting. The Commission recommended denial of the request on 4-2 vote with one recusal.

This item was scheduled for the January 18, 2011 City Council meeting, but was continued due to a small typographical error in the notice sent out to the neighborhood. At the February 1, 2011 City Council meeting, the Council decided, on a 4-1 vote, to grant the permit extension to April 17, 2011, but to deny the request to demolish the existing single-family residence prior to issuance of the building permit for the replacement structure. The Council felt that the existing structure had fallen into disrepair but that it did not amount to a public hazard and amended the conditions of approval to require the applicant to immediately secure the existing building until ready to start construction of the new buildings. A resolution memorializing this vote was passed on a 4-1 vote on February 15, 2011.

Meanwhile, the applicant applied for building permits for the two new houses on January 18, 2011. The building permit was extended to July 18, 2012 by the Chief Building Official on November 21, 2011. Permit applications were approved and ready to issue but expired on July 18, 2012.

The owner submitted a tree removal application (TREE12-001) on June 15, 2012 to accommodate the approved driveway on Ocean Avenue. Although the building permit had expired, it was anticipated that the owner would apply for a new building permit as soon as title issues on the property were resolved. The tree removal permit was approved by the Planning Commission on September 27, 2012 on a 4-1 vote, with one recusal and one absence.

On March 13, 2014, the City received a letter from the Alameda County District Attorney saying that the applicant was the victim of a crime by which the property was fraudulently “sold” several times beginning on March 8, 2011 when a deed with a forged signature was recorded with the Alameda County Recorder. The DA requested the City to “place the property rights back into position held as of March 8, 2011.” Thus, planning and building permits were still considered valid, and were reactivated after a temporary suspension.

Building permits were approved and ready to be issued in December 2016 pending payment of permit fees. On December 12, 2016, the City received a permit application to demolish the existing house. The demolition permit was issued on June 2, 2017, and building permits for the two new units were issued on June 7, 2017.

An application to modify the approved plans and conditions of approval to add square footage to the unit along Peabody Lane, and to make exterior modifications and add private open space to both units in the form of roof decks was submitted on December 4, 2017.

Section 9-7.214(b) stipulates that modifications to approved plans or conditions of approval that are not deemed minor require the approval of the original decision-makers by following the same procedure required for the initial application for the permit. As this project was approved by City Council, this amendment to the conditions of approval and approved plans also requires City Council approval, with a recommendation from the Planning Commission.

On January 25, 2018, the Planning Commission held a public hearing to consider the requested modifications. The Commission received copies of emails from neighbors regarding the project which are also attached to this report. During public comment, one neighbor spoke raising concerns about the height and bulk of the proposed modifications, and stating that the project did not fit in with the neighborhood. The Planning Commission voted by 4 ayes (Commissioners Banta, Guerrero, Kang, and Keller), 1 no (Chair Donaldson), 1 abstention (Vice Chair Barrera), and 1 absent (Commissioner Thomson) to recommended approval to the City Council.

DISCUSSION

Project Description

The approved plans include one 1,708 square foot residential unit along Ocean Avenue and one 1,725 square foot residential unit along Peabody Lane. The applicant proposes adding overhangs and roof decks to both units that are surrounded by “living walls” of plants on all elevations. Both roof decks also include a trellis topped with solar panels. The applicant is not proposing any changes to exterior materials or colors.

The exterior modifications to the Ocean Avenue unit include changes to the second floor windows on the west and south (facing Ocean Avenue) elevations, and the addition of an enclosed stairwell to access the roof deck on the north elevation, which faces the middle of the project area and is not visible from Ocean Avenue or Peabody Lane. The square footage in the Ocean Avenue unit is not changing.

The exterior modifications to the Peabody Lane unit include adding a window to the ground floor of the east elevation, modifying second story windows, and extending the enclosed stairwell facing Peabody Lane to provide access to the roof deck. The applicant also proposes bumping out the second floor to the east of the stairwell, which provides a slight recess for the enclosed stairwell and unifies the building articulation to the east of the stairwell. The applicant also proposes pushing out the bathroom wall on the second floor of the west façade so that it is in line with the office wall to the north. This change will make the bathroom slightly larger and not be visible from Peabody Lane. These changes

increase the square footage of the Peabody Lane unit by 28 square feet, from 1,725 square feet to 1,753 square feet.

These proposed modifications require Design Review findings for the changes to the exterior, and Conditional Use Permit findings for increasing the square footage of the project, as discussed further below.

General Plan and Zoning

Land Use Classification: The General Plan Land Use Diagram (Figure 2-2) classifies the project site as Medium Density Residential, which is described as: “Single family detached and attached housing. Multifamily housing types may be a conditional use, as specified in the Zoning Ordinance. Incidental retail uses that serve the neighborhood are also permitted.”

The Areas of Change and Stability – 2009 map (Figure 2-1) designates the project site as an area of stability, which is described as “those parts of the city that are not anticipated to change significantly in character, land use or development intensity over the next 20 years. These include the older residential neighborhoods on the east side of town as well as the Watergate residential neighborhood on the peninsula, the Watergate office complex, Pacific Park Plaza, and more recent developments such as residential projects in the North Hollis and North Bayfront areas, the Emery Station complex and the Woodfin and Marriott hotels.” It should be noted that this designation does not preclude demolition of existing structures or the construction of new structures. The proposed Ocean Lofts Modification does not add any units to the project and is under the maximum Floor Area Ratio (discussed below) and therefore conforms to the General Plan designation of this neighborhood as an “area of stability”.

Zoning District and Use: The site is zoned Medium Density Residential (RM) and is located within the North Hollis District (N-H) Overlay Zone. The project is classified as a Two Unit Residential use type, which is permitted in the RM Zone. The N-H Overlay Zone does not modify these use regulations.

Floor Area Ratio (FAR): The base FAR is 0.5, with a maximum allowable FAR of 1.0 with a bonus. The previously approved Ocean Avenue unit is 1,708 square feet and the previously approved Peabody Lane unit is 1,725 square feet. The total square footage for both approved units is 3,433 square feet, equal to an FAR of 0.61 on the 5,600 square foot project lot. As noted above, the applicant proposes adding 28 square feet of floor area to the Peabody Lane unit, resulting in an FAR of 0.62, which requires a conditional use permit. Bonus points are not required in the RM Zone; however, the findings listed in Section 9-4.204(f)(1), in addition to the conditional use permit findings required by Section 9-7.505, are required to approve the amendment, as discussed further below.

Building Height: The base height permitted is 30 feet; no bonus is available. Parapet walls are allowed to extend up to three feet above the top of the building in the 30-foot height district (Section 9-4.202(c)(2)). With the exception of the enclosed stairwells, which are 30

feet tall, the highest point on the modified units ranges between 23 feet 10 inches, up to 26 feet 5½ inches including the proposed two-foot parapet walls.

Other roof top features that are not parapet walls may project up to 15 feet above the roof of the building in the 30-foot height district (Section 9-4.202(c)(2)). Roof top features that project more than five feet above the roof of the building are limited to a maximum aggregate coverage of ten percent of the building's horizontal roof area (Section 9-4.202(c)(3)). The proposed living walls project 5 feet 6 inches, providing a privacy screen around the perimeter of the roof decks, and constitute less than ten percent of the building's horizontal roof area. Solar panels are exempt from design review (Section 9-7.403(g)) and are not subject to the limitations placed on roof top projections (Section 9-4.202(c)(6)).

Setbacks: There are no proposed changes to the approved setbacks. The portions of the building that are proposed to be added to the second floor of the Peabody Lane unit are in line with, and do not extend beyond, other building features.

Design Review: In making a decision on the project, the Council will need to determine whether it conforms to the Emeryville Design Guidelines and the North Hollis Area Urban Design Program, including, but not limited to, building massing, building form and articulation, architecture and building materials, and residential unit design.

Findings

Conditional Use Permit

In order to approve this Conditional Use permit amendment, the City Council must make the findings required by Section 9-7.505.

Staff and the Planning Commission believe that these findings can be made for the following reasons:

1. The proposed use is consistent with the General Plan:

LU-G-4 *A mix of housing types- A diversity of housing types to accommodate a variety of household sized and incomes.*

The proposed project maintains the existing unit mix while providing for more private open space in the form of roof decks for both units, and adds additional floor area providing more bathroom and closet space for the Peabody Lane unit.

LU-G-5 *Preservation of residential neighborhoods- Residential use, structures, low-rise scale, and character of the Triangle, Doyle Street, and Watergate neighborhoods preserved, and the scale of other areas of stability maintained.*

The proposed project preserves the residential use, scale, and character of the Ocean Avenue neighborhood because it does not change the footprint of the building, and conforms to the maximum permitted height limit while providing more green-scape in the unique form of a living wall.

LU-P-10 Maximum building height will be defined by the Maximum Building Heights diagram, Figure 2-4.

The proposed project is consistent with the maximum building height of 30 feet as set forth in Figure 2-4.

LU-P-11 Maximum floor area ratios (FARs) and residential densities for sub-areas of the city, will be defined by Figure 2-3 and 2-6, respectively.

The proposed project is consistent with the maximum floor area ratio and residential densities as set forth in Figure 2-3 and 2-6.

2. The location, size, coverage, density, design and operating characteristics of the proposed use will be compatible with, and will not adversely affect, the surrounding area, including neighborhood character, street design and capacity, safety, noise, and lighting.

The proposed project is consistent with the coverage, density, design, and operating characteristics of the surrounding area, as required by the Planning Regulations. Neighborhood character, design, and quality will not be adversely affected because the previously approved two residential units are maintained in a neighborhood that is primarily residential.

3. The proposed use is consistent with the capability of the water supply, wastewater disposal, fire, and police systems to operate adequately and cost effectively.

The proposed project is consistent with the capability of the water supply, waste water disposal, fire, and police systems to operate adequately and not add to their burden because the proposed development maintains the existing residential use and is compliant with all maximum FAR, building height, and residential density maps (Figures 2-3, 2-4, and 2-6) in the General Plan.

4. The proposed use at its proposed location will provide a service or facility that will contribute to the general well being of the surrounding neighborhood or community.

The proposed project maintains the number of approved dwelling units at this location and will contribute to the general well being of the surrounding

neighborhood and community by providing additional green scaping and local renewable energy production.

5. The proposed use complies with all applicable standards and requirements of these Planning Regulations.

The proposed project complies with all applicable standards and requirements of the Planning Regulations, as outlined in the above section titled “Zoning Analysis.”

Major Design Review

In order to approve a Major Design Review permit, the City Council must make the findings required by Section 9-7.407. Staff and the Planning Commission believe that these findings can be made for the following reasons:

1. The design of the project is consistent with the General Plan, including but not limited to its Urban Design goals and policies.

UD-G-2 A diversity of building types and scales – Variation to reinforce the identity of individual districts and foster a variety of options for living and working, with continuity in development scale and character and careful transitions between densities and design typologies.

The proposed amendment is consistent with the North Hollis neighborhood, which contains a variety of buildings including brick, tilt-ups, residential homes with gabled roofs, and modern condominium complexes. The residential use type supports the identity of the district by maintaining the existing residential use and conforming to the Emeryville Design Guidelines and Planning Regulations. The roof decks provide privacy and screening using living walls that provide a unique design feature that is consistent in development scale and character with the surrounding area.

UD-G-5 Neighborhood Preservation - Preservation of the existing small-scale residential quality of older neighborhoods.

The proposed amendment maintains the previously approved two residential units.

2. The design of the project conforms to the Emeryville Design Guidelines and any other applicable design guidelines or criteria. If strict compliance with the provisions of such design guidelines or criteria is not achieved, the applicant must convincingly demonstrate that the intent of the guidelines or criteria is met.

F-2 Find opportunities for creativity with architectural features, such as integrating art into doors and entrance areas, and through colors and details.

By utilizing living walls the proposed amendment finds a creative way to maximize the utilization of roof top space for renewable energy production and private open space while providing privacy for both the occupants and neighbors.

G-3 Where balconies are provided, allow room for small gardens for growing plants.

The proposed amendment provides planter boxes on the roof decks.

3. The project is of a high design quality that is compatible with, and will not adversely affect, the surrounding area:

The proposed amendment modifies an approved design to incorporate more private open space, renewable energy infrastructure, and green-scaping through the use of living walls and roof top gardens. The living walls are used to screen the proposed roof decks, providing desirable features that are of a high design quality that is compatible with, and will not adversely affect the surrounding area.

Development Bonuses

In order to grant a Conditional Use Permit for bonus FAR in the RM zone the City Council must make the findings required by Section 9-4.204(f)(1). Staff and the Planning Commission believe that these findings can be made for the following reasons:

1. That the proposed project is compatible with the surrounding neighborhood with regard to building scale, form, materials, and street orientation.

The proposed amendment is compatible with the surrounding neighborhood with regard to building scale, form, materials, and street orientation and does not require an expansion in building footprint.

2. That the proposed project has been designed to minimize the appearance from the street of driveways, parking spaces, maneuvering aisles, and garage doors as much as possible given the size and shape of the lot, and that at least 70% of the street frontage is devoted to active non-parking related uses, except that a driveway of up to ten feet in width shall be allowed.

The proposed amendment does not modify the approved driveways, parking spaces, or garage doors. The lot is 50 feet wide, and the driveway and garage

entrance are 10 feet wide, so at least 70% of the street frontage is devoted to active non-parking related uses.

ENVIRONMENTAL REVIEW

This project is exempt from environmental review under State CEQA Guidelines Section 15303 which applies to construction of small, new structures.

FISCAL IMPACT

Approval of the project will have no fiscal impact on the City.

STAFF COMMUNICATION WITH THE PUBLIC

As noted above, the Planning Commission considered the proposed modifications at its January 25, 2018 meeting, and voted to recommend that the City Council approve the application. In addition, staff has received copies of emails from two neighbors, Vanessa Kuemmerle and Keith Boadwee, that were sent to the Planning Commission. These are attached for reference.

CONFLICT OF INTEREST

No Planning Commissioners or City Council Members have a conflict of interest with this project.

CONCLUSION

The Planning Commission and staff recommend that the City Council adopt the attached resolution approving the Ocean Lofts Modifications.

PREPARED BY: Navarre Oaks, Assistant Planner

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Carolyn Lehr, City Manager

Attachments:

1. Emails from neighbors
2. Previously Approved Plans dated April 17, 2007
3. Resolution
4. Exhibit A, Conditions of Approval and Attachments
5. Project Plans dated January 17, 2018