

APPEAL OF THE DECISION OF THE BOARD OF ZONING ADJUSTMENTS

# 1188 E 14<sup>TH</sup> STREET MIXED-USE RESIDENTIAL

APL21-0001 **New 196-Unit Retail, Grocery, & Residential Development**



City Council Public Hearing July 6, 2021

# Project Overview

The Board of Zoning Adjustments (BZA) approved a 286,204 sq. ft. five-story mixed-use building with 28,849 sq. ft. of ground floor grocery and retail space, a two-level parking structure and 196 apartment units located in Downtown San Leandro on May 6, 2021



**196 UNITS**

Studio, 1, 2, 3 Bedrooms  
19,941 SQFT Open Space



**286 SPACES**

W/ Shared Residential  
& Commercial Parking



**2,400 SQFT**

Pedestrian  
Public Plaza

**28,849 SQFT**

Street Level Grocery &  
Retail Space

**±300'**

Distance from nearest  
Tempo Bus Rapid Transit  
Platform on Davis St.

**BZA Conditions of  
Approval include:**

Electric HVAC, Solar and  
increase inclusionary  
housing from 5 to 10 units

# Fully complies with DA-1(S) zoning regulations



## LOT AREA

71,640 SF  
Exceeds min. 10,000 SF



## LOT WIDTH

Min. 225.4' (Callan Av)  
Exceeds min. 100'



## HEIGHT

65'-8" Top of Roof  
Below max height 75'



## DENSITY

120 du/acre  
100 du/ac + 20% bonus



## COVERAGE

92% (66,263 SF)  
Below max of 100%



## FAR

2.78 (198,947 SF)  
Below max of 3.5



## SETBACKS

7' along E 14<sup>th</sup> St  
Meets min. 7' setback  
17' Ped Zone on E 14<sup>th</sup>



## OPEN SPACE

19,941 SF (102 SF/du)  
Exceeds 60 SF/du  
Balconies & Courtyard



## PARKING

286 spaces  
Qualified for Exception  
under ZC §5.08.124 C.4

# Downtown TOD Strategy (2007)

- ✓ Project scope was conceived in 2007 Downtown TOD Strategy
- ✓ Development criteria is site-specific to Special Policy Area 3



**SP3 Retail Mixed Use, Town Hall Square and Vicinity.**

# Community benefits

- Aligns with Community and City Vision under the Downtown Transit-Oriented Development Plan
  - First mixed-use housing/retail development under the Plan
- Catalyst Project
  - Activates vacant property in central intersection
  - Provides needed market rate and moderate income “workforce” housing to address City deficiency under the current State housing production goals
  - Adds customer base for existing downtown businesses and spurs development of nearby sites
- Valuable Grocery Store
  - Meets community need/desire for greater food access
- Attractive Urban Design - fits contextually into neighborhood, includes a custom mural for public art

# Economic & Sustainability benefits

- Economic Benefits
  - Property Sale - \$1.29 million (based on appraisal)
  - Increased Sales Tax (est. \$90 - \$150,000/year to city)
  - Increased Property Tax (est. \$120,000/year to city)
  - Development impact Fees (over \$5.4 M)
- Sustainability Benefits
  - Smart sustainable growth near major public transit and retail/food
  - All electric HVAC and Solar
  - Substantial bicycle parking (including 2 large high-capacity locker rooms)
  - electric vehicle charging stations (29 spaces)
  - All electricity sourced from 100% renewable sources

# APPEAL TO THE CITY COUNCIL

## 1) East Bay Residents for Responsible Development

- The Project Will Cause New Significant and Unmitigated:
  - *Housing Impacts.*
  - *Air Quality Impacts*
  - *Health Risk Impacts*
  - *Hazardous Materials Impacts*
  - *Greenhouse Gas Emission Impacts*
  - *Noise Impacts*
  - *Traffic Impacts*
- The City's "Agreement for Payment of Planning Fees" Violates Appellants Due Process Rights

## 2) Laborers International Union of North America, Local 304

- Neither the 2035 General Plan EIR or Infill Checklist analyzed the Project's potential indoor air quality impacts [Formaldehyde]

## APPEAL TO THE CITY COUNCIL

- **The City Council shall affirm, modify, or reverse the decision of the Board of Zoning Adjustments**
- **When a decision is modified or reversed, the City Council shall state the specific reasons for modification or reversal**
- **Failure to act within the time limits prescribed in §5.20.116(A) shall be deemed affirmation of the original decision**
- **Must meet the substantial evidence test to require additional analysis through an EIR**
- **“Substantial evidence” does not include argument, speculation, unsubstantiated opinion or narrative, or evidence that is erroneous or inaccurate**



# Housing Impacts

## Claim

The Project Will Cause New Significant and Unmitigated Housing Impacts.

## Rebuttal

Alternative inclusionary housing agreements are permitted by code

City meets low and very low affordable housing RHNA goals but not market rate

Project will contribute 17% of City's Regional Housing Needs Assessment goal towards reducing current housing deficiency

Project contributes to inclusionary housing trust fund

# Air Quality Impacts

## Claim

The Project Will Cause New Significant and Unmitigated Air Quality Impacts.

## Rebuttal

Mixed-use TOD project

Uniformly applicable development policies adequately address potential air quality impacts

Prior General Plan EIR studies

Substantial evidence in record

Appeal cites incorrect methodology & data

Applicant's response

# Health Risk Impacts

## Claim

The Project Will Cause New Significant and Unmitigated Health Risk Impacts

## Rebuttal

Uniformly applicable development policies adequately address potential health risk impacts

Project conditioned to comply with Tier 4 EPA standards which reduce risk below BAAQMD thresholds

Applicant's response

Substantial evidence in record

# Hazardous Materials Impacts

## Claim

The Project Will Cause New Significant and Unmitigated Hazardous Materials Impacts

## Rebuttal

Uniformly applicable development policies adequately address potential Hazardous Materials impacts

Site investigation & initial study did not establish that such an effect exists

An EIR is not required for every project proposed on a Cortese-listed site

Pro-active investigation and remediation of the site in accord with Corrective Action Plan

# Greenhouse Gas Emission Impacts

## Claim

The Project Will Cause New Significant and Unmitigated Greenhouse Gas Emissions Impacts

## Rebuttal

The City's uniformly applicable development standards are adequate and enforceable

Pedestrian-oriented TOD project situated to reduce vehicle trips

Substantial evidence in record

Applicant's response

Additional Conditions of Approval imposed by BZA further reduce Greenhouse Gas Emissions

# Noise Impacts

## Claim

The Project Will Cause New Significant and Unmitigated Noise Impacts

## Rebuttal

The City's uniformly applicable development standards are adequate and enforceable, including indoor ambient noise criteria regulated by the Building Code and Noise Ordinance

The General Plan provides clear thresholds of significance

# Traffic Impacts

## Claim

The Project Will Cause New Significant and Unmitigated Traffic Impacts

## Rebuttal

Substantial evidence in the record supports the finding that the Project will not generate significant vehicle miles traveled

Truck loading areas were extensively analyzed and safely designed

Transit-oriented project located downtown, across the street from a qualified BRT station and in a major job center

Substantial active transportation options, bicycle parking lockers

# Appeal Fees

## Claim

The City's "Agreement for Payment of Planning Fees" Violates Appellants Due Process Rights

## Rebuttal

The claim is assumptive, has not and will not occur

Appeal was accepted for processing regardless of form provided

City provided reasonable accommodation to file remotely during COVID-19 closure



# Formaldehyde Impacts

## Claim

Neither the 2035 General Plan EIR or Infill Checklist analyzed the Project's potential indoor air quality impacts

## Rebuttal

The claim is assumptive

State and Federal agencies regulate emissions in building materials

CalGreen Code does not allow formaldehyde-based resins or ultra-low emitting formaldehyde resins in composite wood products & requires compliance with California Air Resources Board's Airborne Toxic Control Measures for materials

Uniformly applicable development standards address indoor air quality

## **PUBLIC OUTREACH**

**The appeal hearing was noticed in the same manner as the prior BZA public hearing held on May 6, 2021:**

- Legal advertisement in the East Bay Times - Daily Review newspaper**
- Posting of a hearing notice on the subject property**
- Mailing notifications to property owners and businesses within a 500-foot radius of the subject property**

# Staff Recommendation

No new information was presented in either appeal that meets the substantial evidence test to require additional analysis through an EIR.

Staff recommends that the City Council deny the appeals and uphold the decision of the Board of Zoning Adjustments (BZA) by adopting a resolution affirming the Board of Zoning Adjustment's decision.