

EMERYVILLE PLANNING COMMISSION

STAFF REPORT

Agenda Date: April 25, 2019

Report Date: April 18, 2019

TO: Planning Commission

FROM: Community Development Department
Miroo Desai, Senior Planner

SUBJECT: **Reconsideration of Marketplace Redevelopment Project, “Parcel B”
(Office and Garage) following City Council Remand (FDP18-001R)**

PROJECT LOCATION: 6200 Shellmound Street
(APN: 49-1556-16)

APPLICANT: City Center Realty Partners, (CCRP) (Mark Stefan)
170 Grant Avenue, Sixth Floor
San Francisco, CA 94108

OWNER: AG-CCRP Public Market, L.P.
170 Grant Avenue, Sixth Floor
San Francisco, CA 94108

PROJECT DESCRIPTION: Reconsideration of a new Final Development Plan (FDP) for “Parcel B” of the Marketplace Redevelopment Project Planned Unit Development (PUD04-12) and rescinding of Final Development Plan FDP15-001 that was approved by the Planning Commission on June 23, 2016. The previously approved FDP included 26,000 square feet of retail space and 300 parking spaces. The proposed FDP includes 14,000 square feet of retail space, 150,000 square feet of office/lab space, and 565 parking spaces. (Project previously approved by Planning Commission on January 24, 2019, appealed to City Council on February 8, 2019, and remanded to Planning Commission by City Council on March 19, 2019.)

GENERAL PLAN: Mixed Use with Residential and Major Transit Hub

ZONING DISTRICT: Planned Unit Development (PUD-2)

**ENVIRONMENTAL
STATUS:**

Environmental Impact Report for Marketplace Redevelopment Project PUD certified by City Council on January 15, 2008 (Resolution No. 08-126). CEQA Guidelines Section 15164(e) provides that a brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's findings on the project, or elsewhere in the record. The Kimley Horn Trip Generation Evaluation Memo dated December 12, 2018 and the Environmental Checklist Public Market Proposed Final Development Plan Project enclosed as Attachments 2 and 3, respectively, provide support for the decision not to prepare a subsequent EIR pursuant to Section 15162.

**RECOMMENDED
COMMISSION
ACTION:**

1. Open public hearing and take testimony regarding the project.
2. Close public hearing and consider Staff Report and Resolution.
3. Adopt Resolution CPC No. FDP18-001R approving the project and rescinding Resolution CPC No. FDP15-001.

BACKGROUND

The Planning Commission approved a new Final Development Plan (FDP) for Parcel B of the Marketplace Redevelopment Project Planned Unit Development (PUD04-12) for a building that included 14,000 square feet of retail space, 150,000 square feet of office/lab space, and 565 parking spaces at the January 24, 2019 meeting. This approval rescinded a previously approved FDP (FDP15-001) for Parcel B that did not include office space. The Planning Commission decision was appealed by Wareham Development to the City Council on February 8, 2019. The Council remanded the appeal to the Planning Commission on March 19, 2019 (Resolution No. 19-29) and directed the Commission to consider the issues raised in the appeal letter from Wareham Development and to hold a new public hearing on the project. Accordingly, the Planning Commission's review of the FDP is limited to the issues raised in the Wareham appeal letter only.

APPEAL LETTER AND STAFF RESPONSE

The appeal letter dated February 8, 2019 (attached) states that the Project does not comply with mitigation measures that were outlined in the Environmental Impact Report (EIR) prepared for the Marketplace Redevelopment Project Planned Unit Development/Preliminary Development Plan (PUD/PDP). The appeal letter also raises issues about the City's tower separation requirements.

Below are issues from the appeal letter *in italics* followed by staff response.

(1) *Requirement AES 1 calls for the final designs to create a "vital streetscape that enhances the pedestrian experience, avoid blank walls or box-like forms".*

The original 2008 approval indeed included large buildings along the railroad tracks. However, in that original approval they have varying and modulated heights and façade, with several important openings and livable gaps between different building masses.

In the Marketplace PUD/PDP, Parcel A and Parcel B are the buildings sited along the railroad tracks and referenced by the appellant above. The table below shows the approved PDP/PUD heights of the two buildings and their approved FDP heights.

	PUD/PDP	FDP
Parcel A	175 feet	86 feet – northern end 50 feet – southern end
Parcel B	120 feet	112 feet

Figure 1 (attached) was prepared by the applicant in response to the appeal, and shows a build-out comparison of the 2008 PDP and the approved FDPs between 2014-2019. When the above table is seen together with Figure 1, it is clear that the approved FDP designs for both Parcel A and Parcel B are in conformance with the PDP, with substantially shorter building heights for Parcel A and a smaller overall massing impact on the site.

Attached Figure 1 also shows that, contrary to the appellant’s contention, the buildings continue to have varying heights and are much lower for Parcel A and 8 feet shorter for Parcel B, with similar gap widths between the buildings. Furthermore, the designs for both Parcel A and Parcel B were fine-tuned after several Planning Commission study sessions to create interesting facades on all four sides of the two buildings.

(2) Requirement WIND 1 calls for a wind study to review the winds that will exist on the pedestrian bridge. No such wind study was presented. It certainly seems that the current design, with only the narrowest gaps between buildings, will create a wind tunnel here and that those conditions deserve extra study.

Marketplace EIR Mitigation Measure WIND-1 is directed at the pedestrian bridge connection over the railroad and calls for a wind analysis “to ensure that roof areas that would be used by site patrons or residents would be designed such that wind acceleration would be reduced to less-than-significant levels” (Marketplace EIR-Response to Comments (RTC) document). There are no proposed usable roof areas on Parcel B, and the pedestrian bridge connection is proposed at Parcel A and not Parcel B. The Marketplace RTC does note that the project has “the potential to increase ground level winds”.

The applicant has conducted a wind analysis study (see Attachment 3) that concludes that “based on the exposure, massing and orientation of the proposed building it would not have the potential to adversely affect ground-level winds near its base, at the proposed landscaped open spaces areas at the north and south ends of the site, within adjacent Parcel A to the south, or at properties east of the site on the far side of the UPRR train tracks.”

(3) *WIND-1 also specifically says that any Final Design should “avoid narrow gaps between the buildings where winds could be accelerated”. The current design does exactly the opposite.*

The prior approved design for Parcel B has roughly 170-foot gap between it and the approved Parcel A building. The most recent approved design reduced the gap by almost half, to only less than 80 feet. This narrow gap eliminates any real visual connection between the eastern side of the railroad station and EmeryStation campus and the Marketplace, while increasing negative wind patterns. This is not to mention the fact that the prior wider gap was filled with a single-story retail pad building, possibly a restaurant, which would be an attractive area of activity. The current narrow gap only houses the dumpster that will serve the new building.

The appellant is referencing FDP15-001 that was approved for Parcel B in June 2016, and that included parking and ground floor retail space and no office use. The applicant subsequently proposed a new design for Parcel B that included office space in order to make the project economically viable. In approving an FDP, the Planning Regulations require that the Planning Commission find that it substantially conforms to the approved PDP, not to a previously approved FDP for the same site. Thus, comparing the currently proposed FDP to the one approved in 2016 is irrelevant. What matters is whether the currently proposed FDP substantially conforms to the approved PDP.

Figure 1 shows that the gap between the Parcel A and Parcel B buildings in the 2008 PDP is 76 feet and the gap between the buildings in the approved FDP is 68 feet. However, the Parcel A building as allowed by the PDP is substantially taller than the approved FDP for Parcel A as outlined in the table above. Furthermore, while the approved PDP sets maximum building heights, it does not set horizontal dimensions. The building gap of 76 feet in the PDP noted above was scaled off the illustrative drawings. There is no minimum or maximum distance between the buildings on Parcel B and Parcel A specified in the PDP. Thus, the proposed building separation of 68 feet substantially conforms to the PDP.

(4) *Requirement TRAF-1b states that the applicant will submit a Transportation Demand Management Plan to the City for review and approval prior to completion of the FDP. This did not occur as far as we can tell.*

The traffic timing and impacts of the proposed office use are very different than those of retail. Office use primarily creates heavy commute-time trips while retail trips are much more dispersed throughout the day. The fact that the staff report says that total traffic counts are slightly less than the prior approval disregards the very real timing impact of those trips. The change of uses proposed with the latest Parcel B proposal deserves such detailed analysis.

First, it should be noted that a Transportation Demand Management Plan (TDM) is not the same thing as a traffic analysis. A traffic analysis looks at the traffic impacts of a project and may identify strategies to address that traffic. A TDM Plan is one such strategy and identifies ways to reduce trip generation by promoting alternative means of transportation and other measures. The issues raised in the second paragraph above relate to traffic analysis, not to TDM. In fact, a detailed traffic analysis was included in the EIR for the project, and a building-specific traffic analysis has been done for each subsequent FDP. Concerning TDM, the conditions of approval

for the PDP stipulate that the applicant shall submit a TDM plan for each FDP prior to approval of the FDP. Thus, a TDM plan has been prepared and has been updated regularly. The last update occurred in September 2017 to incorporate a recommendation from Fehr and Peers' transportation assessment for Parcel B. Concerning traffic analysis for Parcel B, Kimley Horn prepared a Trip Generation Evaluation dated December 12, 2018 prior to the approval of the FDP that concluded that the proposed office, retail and parking uses would result in fewer AM and PM peak hour trips when compared to the approved 2008 PDP. (Please see Attachment 4). Further, the applicant's response to the appeal letter includes a further update by Kimley Horn entitled "Traffic Response to Appeal Letter" that confirms this conclusion. (See Attachment 5).

(5) We have been told that the City's "tower separation ordinance", which requires certain distances between the buildings over 100 feet tall, does not apply in this case because the three buildings in question all were approved prior to the ordinance. Even if that is technically correct, the ordinance was put in place as the policy of the City for important planning and aesthetic reasons that matter regardless of some technicality. Built right out the limits of its property lines, the new project is closer to our new EmeryStation West project than the ordinance allow, and is much, much closer to the existing Marketplace Tower than the ordinance allows.

PUD/PDPs are issued for large development projects phased over a relatively long time period. One of the purposes of such permits is to allow developers to propose a phased project with the confidence that the applicable development standards will not change with updates in the City's General Plan and Planning Regulations. Therefore, it is not simply a question of a technicality that a current rule regarding tower separation does not apply but ensuring that the City is in compliance with its own rules and providing confidence to all developers that their permit conditions will not be modified as a result of citizen objection. Furthermore, if the current tower separation regulation were applied retroactively, it would be the EmeryStation West project that would be out of compliance since it was approved in 2010, after the Marketplace Redevelopment Project was approved in 2008.

PROJECT PROPOSAL

Attached is the staff report and project plans prepared for Parcel B approval consideration by the Commission on January 24, 2019. There are no changes to the project proposal as a result of the appeal. Attached is a resolution for Commission consideration that rejects the appeal and affirms the Commission's approval for the project proposed for Parcel B.

RECOMMENDATION:

After hearing a presentation from staff, the applicant, and the appellant, and receiving public testimony, staff recommends that the Planning Commission adopt the attached resolution approving the project subject to the attached Conditions of Approval and rescinding Final Development Plan FDP15-001 approved for Parcel B on June 23, 2016.

Attachments:

1. Wareham Appeal Letter dated February 8, 2019
2. Figure 1: PDP 2008 and FDP 2019 FDP Massing Studies from West and South-East
3. Wind Analysis Study by Donald Ballanti dated March 22, 2019
4. Kimley Horn Trip Generation Evaluation Memo dated December 12, 2018 and February 21, 2019
5. Applicant's Response Letter to the Appeal dated March 25, 2019
6. January 24, 2019 Staff Report Prepared for Parcel B (without attachments)
7. Draft Resolution
8. Conditions of Approval
9. FDP Plans