TO:     HONORABLE CITY COUNCIL

FROM:    CITY MANAGER    DEPARTMENT: PLANNING AND COMMUNITY ENVIRONMENT

DATE:    SEPTEMBER 15, 2008     CMR: 364:08

SUBJECT: APPEAL OF DIRECTOR’S APPROVAL OF A MAJOR ARCHITECTURAL REVIEW APPLICATION FOR A FOUR STORY COMMERCIAL MIXED USE RETAIL/OFFICE BUILDING, INCLUDING DESIGN ENHANCEMENT EXCEPTIONS TO EXCEED THE MAXIMUM HEIGHT AND FLOOR AREA, AND A VARIANCE APPLICATION FOR AN ENCROACHMENT INTO THE BRYANT STREET SPECIAL SETBACK AT 278 UNIVERSITY AVENUE

RECOMMENDATION
Staff, the Planning and Transportation Commission, and the Architectural Review Board recommend that the City Council deny the appeal and approve the following:

1. A Record of Land Use Action approving the Major ARB application for the construction of a new four story office/retail building, including a Variance to allow the building to encroach 3 feet into the seven foot special setback on Bryant Street and Design Enhancement Exceptions for height to 1) allow a five foot encroachment beyond the 50 foot height limit and to 2) exempt the basement from the floor area calculation, subject to the findings and conditions of approval contained in the draft Record of Land Use Action (Attachment A)

PROJECT DESCRIPTION
The applicant proposes to demolish the existing two-story, un-reinforced masonry building at 278 University Avenue and to construct a new 18,206 square foot, four-story, office and retail building. The first and possibly the second floors would be retail and the third and fourth floors would be office. The building would have a two-story retail base with a pedestrian oriented ground floor attractive and inviting to pedestrians on the sidewalk. The third floor would be smaller and set back from the first and second floors to reduce the apparent height and mass of the building. The fourth floor would be set back even further than the third floor to further reduce the apparent height and mass and increase light and air reaching to the street level.
BOARD/COMMISSION REVIEW AND RECOMMENDATIONS

ARB Review
The application was reviewed by the Architectural Review Board (ARB) on June 5, 2008. The ARB unanimously recommended approval of the project, including Design Enhancement Exceptions (DEEs) for height and to exclude basement area from square footage calculations. The approved design also included a three foot encroachment into the required seven foot special setback on Bryant Street. The Director of Planning and Community Environment (Director) approved the project on June 12, 2008. On June 30, 2008, the approval was appealed by Palo Alto resident Lynn Chiapella. On July 21, 2008, the Council set the date of September 15, 2008 to hear the appeal.

PTC Review
The Zoning Ordinance permits that an appeal of a Major ARB and DEE goes directly to City Council for review. The Zoning Ordinance requires, however, that a request for hearing of a Variance be heard by the PTC before it is heard by the City Council. For this reason, the Variance was considered by the PTC on July 30, 2008. The PTC recommendation in this staff report is specific to the Variance for the special setback encroachment only as the Commission did not review the other project elements. The PTC voted to approve the Variance for the three foot encroachment into the seven foot special setback. Four Commissioners believed the findings could be made, as reflected in the Record of Land Use Action (Attachment A). They indicated that the corner lot was highly constrained by the narrow lot width and by having sidewalks on three sides. The proposal for the three foot encroachment made sense from an urban design perspective and a 15 foot wide sidewalk on Bryant Street would be inappropriate and unnecessary. The vote was 4-3-0-0. Three Commissioners believed that the findings could not be made. They discussed how this lot was similar to other corner lots with the special setback requirement and that they believed it was not a “special” circumstance.

DISCUSSION
The appellant cited multiple reasons for the appeal including 1) the height exception, 2) the setback exception, 3) the exemption for the basement exclusion from the floor area calculation, 4) the use of the seismic bonus for new construction versus rehabilitation and the use of existing basement square footage in the seismic bonus calculation.

1. **Height**
   Staff believes that the five foot design enhancement exception (DEE) for height results in negligible impacts. The fourth floor is considerably smaller in its footprint than the floors below it and the taller portion of the building that exceeds the 50 foot height limit is centered in the middle such that the building would not be perceptible from the street level. The code allows for 15 additional feet in height for mechanical equipment roof screens and the proposed height is 10 feet below that allowable height (partly because the equipment is to be located in the basement). The Downtown Urban Design Guidelines encourage larger buildings at the corners to reinforce the streetscape. The proposed height fits the context of the block in that there are taller buildings at University Avenue and Ramona.
Street and at Hamilton Avenue and Bryant Street. Staff and the ARB believe that
the increased height enhances the building design and DEE findings are included
in the Record of Land Use Action (ROLUA) (Attachment A).

2. **Setback Encroachment**
The proposed setback encroachment variance will result in a sidewalk width of 12
feet. This will be consistent with the 12 foot sidewalk width of University
Avenue. To require the entire seven foot setback would result in a 15 foot wide
sidewalk along Bryant Street. From an urban design perspective, the PTC and
ARB determined this would not be appropriate. PTC and staff believe the intent
of the special setback is to provide greater visibility and pedestrian orientation
from University Avenue down Bryant Street and that the proposed design
adequately achieves this purpose. The PTC findings for the variance are included
in the ROLUA (Attachment A).

3. **FAR Exemption**
The basement at 278 University Avenue already exists. While basement spaces
can be used for office or retail uses, they are not very desirable for these uses.
The applicant has proposed to use the basement to house all of the mechanical and
electrical equipment to hide it from public view, thus significantly improving the
alley elevation of the building. This will help to enliven and encourage pedestrian
activity within Centennial Alley. The basement areas would be excluded from
FAR calculations (DEE).

   Basement space deemed “not useable” by the Planning Director may be excluded
   from the floor area. Typically, this entails the applicant either filling in or walling
   off portions of the basement to reduce ceiling height to seven feet or less,
   considered “not habitable.” Recent Building Code changes now require eight feet
   clearance for access to basements creating practical difficulty in altering the
   basement to a “net habitable” condition. The Planning Director and the ARB in
   this case determined that including all of the equipment in the basement would
   enhance the design by 1) preventing equipment from being located in more visible
   locations outside or on the roof of the building, and 2) avoiding the need for the
   applicant to rebuild a smaller basement, contrary to preferred green building
   practices. The DEE findings are again located in the Record of Land Use Action
   (Attachment A).

4. **Seismic Bonus**
The City has a long history of encouraging voluntary seismic standard compliance
with use of the seismic bonus for both new construction and rehabilitation
projects. Sections 18.18.070 of the Zoning ordinance allows a bonus of zero
square feet or 25% of existing floor area (whichever is greater) where seismic
rehabilitation is proposed for a building in Seismic Category I, II or III (hazardous
condition). This includes the inclusion of existing basement square footage in the
calculation. Property owners in the Downtown are assessed for parking for the
square footage within the basements and it is typically counted in the floor area
calculation of a building. As noted in the applicant’s response letter of July 23, 2008, several other examples are available of Downtown projects where basement area was used for seismic bonus calculations, even though the basement was to be partially or completely demolished. To do otherwise would discourage redevelopment of Downtown properties to meet current seismic standards. No exceptions were required for the calculation.

**POLICY IMPLICATIONS**
The project is consistent with Comprehensive Plan policies and Downtown code and policies to encourage redevelopment of Downtown properties including Comprehensive Plan policies.

L-20: Encourage street frontages that contribute to retail vitality in all Centers. Reinforce street corners with buildings that come up to the sidewalk or that form corner plazas.

L-23: Maintain and enhance the University Avenue/Downtown area as the central business district of the City, with a mix of commercial, civic, cultural, recreational and residential uses. Promote quality design that recognizes the regional and historical importance of the area and reinforces its pedestrian character.

Retail and office uses are permitted uses within the CD-C(GF)(P) zone district. The ARB findings in the Record of Land Use Action (Attachment A) support approval of the project. The findings for the DEEs and the Variance can be made in the affirmative and are included in the Record of Land Use Action. Comprehensive Plan consistency is also addressed by the findings in the Record of Land Use Action.

**RESOURCE IMPACT**
The proposed project will generate additional annual General Fund resources in the form of property and sales taxes. Total annual revenues from these sources are projected to equal $54,321. In addition, one-time impact fees of $175,487 are expected from the project.

**ENVIRONMENTAL IMPACTS**
Pursuant to the requirements of the California Environmental Quality Act (CEQA), an Initial Study and Negative Declaration were prepared and circulated, with a required 20-day public review and comment period beginning on May 16th and ending on June 5, 2008. No public comments were received. No significant impacts were identified and no mitigation measures are required. A copy of the environmental document is included as Attachment H.

**PREPARED BY:**

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ATTACHMENTS
A: Draft Record of Land Use Action
B: Location Map
C: Appellant Letter, June 30, 2008 and July 9, 2008
E: PTC Staff Report, July 30, 2008
F: ARB Staff Report, June 5, 2008
G: PTC Verbatim Minutes of July 30, 2008
H: Draft Initial Study and Negative Declaration
I: Project Plans (Council packet only)

COURTESY COPIES:
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