

Public Market - Parcel B FDP

Appeal response

April 25, 2019

Applicant Presentation

Public Market District 2019



Public Market District 2019



Parcel B History

- » 2007 – In connection with the Marketplace PDP and EIR, Wareham commented on massing and design (Final EIR Comment B5) and City responded
- » 2008 – City certified the EIR and approved PDP
- » 2010 – Emery Station West approved, *after* PDP approved
- » 2016 – First Parcel B FDP approved
- » 2018 – Modified Parcel B plan proposed at Study Session
- » January 24, 2019 – Parcel B FDP approved by Planning Commission
- » February 8, 2019 – Wareham appeal
- » March 19, 2019 – City Council remanded appeal to Planning Commission
- » AG-CCRP made attempts to meet with appellant
- » April 25, 2019 – Parcel B FDP appeal hearing

City Council remand

- » Limited to consideration of issues raised in the appeal

RESOLVED that the City Council hereby remands Planning Commission Resolution No. FDP18-001 to the Planning Commission for reconsideration, to consider the issues raised in the appeal letter from Wareham Development dated February 8, 2019, and directs the Commission to hold a new public hearing; and be it further

- » This is supported by the Zoning Code:
 - Zoning Code: “All appeals shall be filed in writing within 15 days of the date of the... decision from which the appeal is taken.” (9.7.1403)

Comment 1 – Project design does not conform with PDP's design requirements

- » The Parcel B design fulfills the original vision of the PDP. The current plan – Parcels A & B – presents less visual impacts than the PDP.
- » The Shellmound Street realignment, along with ground floor retail will create a vital streetscape – just as the PDP envisioned.
- » Parcel B design has been articulated at the two ends of the building and in the middle, resulting in more interesting retail corners and ped. spaces.
- » The East wall design has been carefully designed. The East and West facades of the building are similar in their size, proportion, quality of windows, wall systems, expressed frame system, articulation of roofscape elements, open parking level design and expression, and articulation in the massing.
 - This design strategy was embraced by the Planning Commission at the December 13, 2018 Study Session and January 24, 2019 hearing where the plan was unanimously approved.
- » The Public Market Art Plan will result in vibrant art on Parcel B and along the Parcel A staircase.

Comment 2 – Wind study required on pedestrian bridge

- » WIND 1 requiring wind analysis of “roof deck terraces” and within the “fourth floor breezeway between Amtrak bridge” is not relevant/applicable to Parcel B.
- » For the purpose of additional disclosure, a wind analysis was conducted:
- » *The presence of naturally-ventilated parking garage space in the bottom half of the structure means that any upwind and downwind pressure differences generated at the top floors of the building would result in airflow through the parking garage floors and not wind accelerations at ground level. 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 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.*
 - Don Ballanti, certified meteorologist (who previously prepared a Wind Analysis Memorandum evaluating the PDP in 2007)

Comment 3 – Avoid gaps where wind could accelerate

- » With respect to wind acceleration, because the inherent design of the Parcel B building will not cause wind impacts, it will not result in wind patterns in the area between Parcel A and B.
- » With respect to the distance between buildings, the 176 foot distance mentioned in the appeal referred to the prior Parcel B plan, which was approved in 2016 but determined to be not economically feasible. The City has agreed that the proposed 68 foot distance between Parcel A and B substantially conforms with the 76 foot distance as conceptually drawn in the PDP.
- » Finally, the area between Parcels A and B has been designed to provide less obstruction to views than the 4.5 level parking garage in the approved PDP.

Comment 4 – TDM and Traffic

- » A TDM Plan has been prepared and updated regularly. An updated figure was included as Exhibit F in our submittal. It includes, for example, valet parking during periods of peak parking demand, imposing time limits on commercial parking, monitoring site parking demand and surveying site residents in annual commute and parking surveys.
- » Kimley Horn further responded to the comment that office uses generate trips at different times than retail uses.
- » *[The commenter is] correct that the vehicle trips for an office use occur at different times than for a retail use. However, the trip generation analysis that was conducted in the Emeryville Public Market Parcel B – Trip Generation Evaluation Final Letter, dated December 12, 2018 (Attachment A) accounts for these differences. This evaluation concluded that the proposed Parcel B project would generate fewer AM and PM peak hour trips.*

Table 5 – Parcel B Trip Generation Comparison

| Scenario | AM Peak | | | PM Peak | | |
|---------------|---------|-----|-----|---------|-----|-----|
| | Total | In | Out | Total | In | Out |
| 2008 EIR | 77 | 67 | 10 | 124 | 36 | 88 |
| 2018 Proposed | 41 | 31 | 10 | 70 | 18 | 52 |
| Difference | -36 | -36 | 0 | -54 | -18 | -36 |

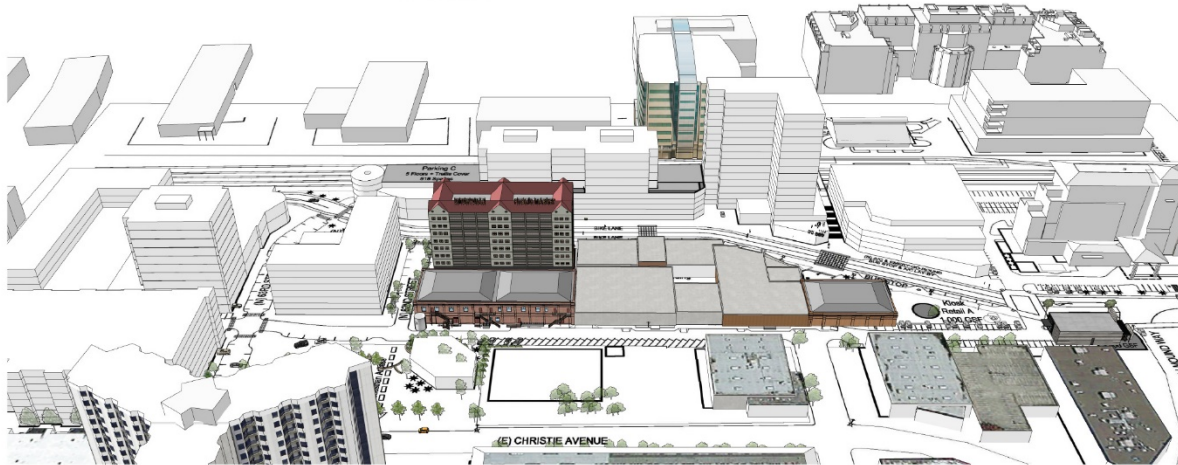
Comment 5 – Tower Separation

- » The tower separation provision of the Code is not applicable since it was adopted after the adoption of the PDP. (Zoning Code, Section 9-3.310)
- » As noted in the staff report, if applicable retroactively, the appellant's building would be in violation since it was approved after the Marketplace PDP.
- » Further, the tower separation ordinance applies to buildings over 100 feet in height. Since the Parcel A building is less than 100 feet, this section of the Code would not be applicable.
- » Finally, we understand that the City is considering whether to amend the tower separation requirement, which is a relevant reflection of the city's current policy direction.

Views not protected under CEQA, PDP, common law or private rights

- » View impacts not actually mentioned in the appeal
- » Private views not protected under CEQA. Recent CEQA amendments exempt infill projects from aesthetic impacts. In urbanized areas, compliance with zoning regulations regarding scenic quality is only relevant question.
- » Emeryville zoning regulations – conformance with the PDP (Zoning Code 9-7.1004(b))(but no Emeryville view or light ordinance)
- » No common law right to views, air or light. ([Venuto v Owens-Corning Fiberglas Corp. \(1971\) 22 CA3d 116](#), 127 (California courts' rejection of an implied or inherent right to a view or to light and air across another's property is based on a *public policy that favors using real property over keeping it vacant for the sake of another's view*))
- » No private right to view (i.e. no view or solar easement, no CC&Rs)
- » *We note that Wareham's leases (posted online) do not grant tenants any right to views and explicitly acknowledge that future development in the vicinity may block views (paragraphs 7.4 and 25.19)

Parcel B – PDP vs. FDP Consistency



2008 PDP



2014-2019 FDP'S

Parcel B – PDP vs. FDP Consistency



2008 PDP



2014-2019 FDP'S

Parcel B – PDP vs. FDP Consistency

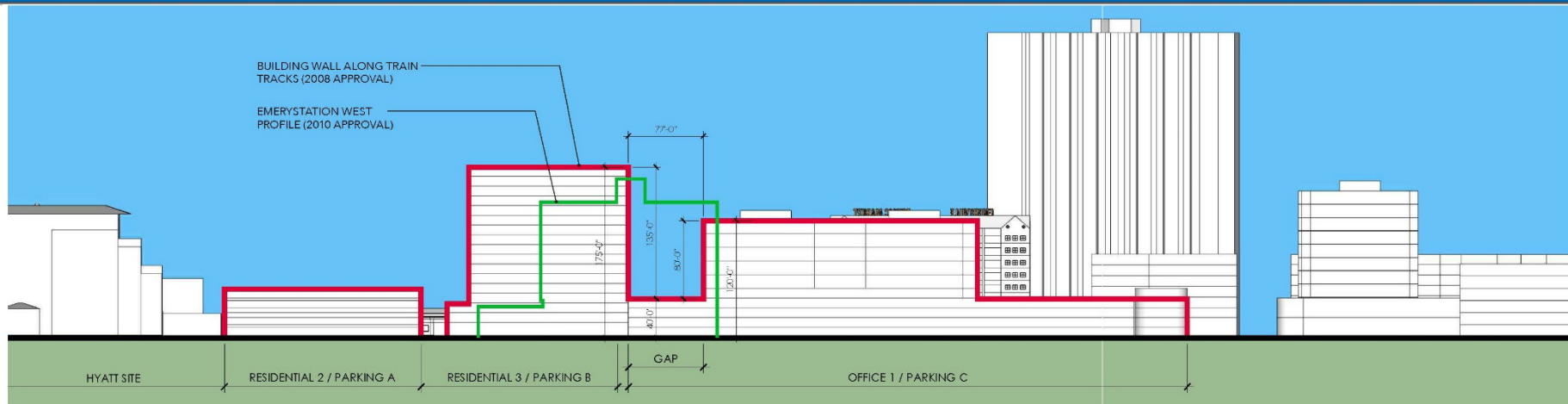


Figure 1: PDP

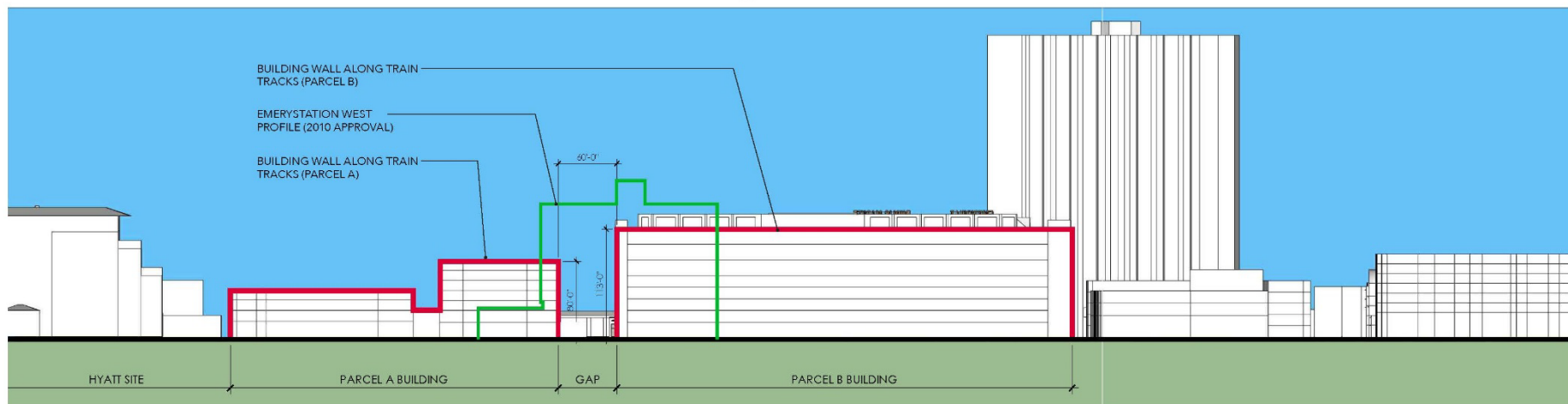


Figure 2: FDP

| | WALL AREA ALONG TRAIN TRACK FRONTAGE | Δ |
|---------------|--------------------------------------|----------|
| Figure 1. PDP | 85,021 SF | - |
| Figure 2. FDP | 72,768 SF | 15% LESS |

0 100 200'
1" = 100' at 11" x 17"

Applicant Rebuttal

Alternative plans

- » Alternatives are not responsive to appellant's own concerns:
 - Comment 1 – Project design does not conform with PDP's design requirements
 - Comment 2 – Wind study required on pedestrian bridge
 - Comment 3 – Avoid gaps where wind could accelerate
 - Comment 4 – TDM and Traffic
 - Comment 5 – Tower Separation
- » Alternatives do not reflect site, program and circulation constraints
- » Alternatives are cost-prohibitive
- » Alternatives don't provide the high-quality office, retail, or visitor experience

Parcel B – the final, critical piece of the Marketplace PDP

- » Fulfills the vision of the PDP
- » Completes the Shellmound Street realignment
- » Provides parking so that Parcel A can be developed as mixed use housing
- » Provides parking for Public Market food hall and office tenants pursuant to existing leases
- » Supports public amenities
- » None of points of the appeal have any validity