



Office of the City Manager

CONSENT CALENDAR

October 24, 2006

To: Honorable Mayor and
Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Claudette R. Ford, Director of Public Works

Subject: Major Encroachment Permit for David Brower Center Solar Panels

RECOMMENDATION

Adopt a Resolution authorizing the issuance of a major encroachment permit to Equity Community Builders, L.L.C., to encroach upon the public right-of-way on the north side of Allston Way for the installation of solar panels for the David Brower Center, conditional to acceptance of design and approval by the City Engineer.

FISCAL IMPACTS OF RECOMMENDATION

No cost to City.

CURRENT SITUATION AND ITS EFFECTS

Equity Community Builders has applied to the City for a proposed solar panel and bracing system for the David Brower Center that would encroach up to six feet over the public right-of-way on the north side of Allston Way. The design for the new building incorporates green building techniques including solar power panels. The project location is 2200 Oxford Street, the site of a City-owned parking lot.

BACKGROUND

The David Brower Center is a joint project involving the City of Berkeley, Equity Community Builders, L.L.C., and Resources for Community Development. The Center will utilize a design that is environmentally responsible and incorporates green building technologies. The structure supporting the photovoltaic panels (solar cells) serves several purposes. Its main purpose is to support the solar panels, but it also provides shelter at doors and windows, and a signature architectural expression of green technology as part of the project's efforts to achieve a LEED (Leadership in Energy and Environmental Design the nationally accepted benchmark for design, construction and operation of green buildings) "platinum" rating.

Section 16.18.080 of the Berkeley Municipal Code (BMC) requires that all seven criteria (A-G as discussed below) be satisfied prior to granting of an encroachment permit. All the applicable criteria have been met to the satisfaction of the City Engineer, as follows:

Criterion A requires that the applicant be “substantially damaged” by failure of the City to issue the permit. The applicant argues that the project will be substantially damaged if the encroachment permit is not granted, by reducing the size of the photovoltaic (PV) panel structure, thereby reducing the amount of energy that could be generated on site. The PV structure is also the building’s signature expression of green building practices. The extent that this is compromised may reduce the effectiveness of the project’s mission as the core for the green building.

Criterion B requires that no other method of obtaining the desired results is available. The applicant claims there is no other reasonable alternative, which achieves the purposes of solar energy generation, the panels provide. The placement of the panels on the roof or other locations is not feasible due to the structural design. There is no alternative placement that would allow installation of the panels, as a result, disapproval of the permit would preclude solar panel installation.

Criterion C requires that granting of the permit not be detrimental to the public interest, safety, health and welfare and not be injurious to other property. This encroachment does not pose any safety hazards to the public and does not damage any surrounding properties.

Criterion D requires that the proposed encroachment comply with the Public Works' standards and specifications. Engineering has verified the encroachment does, in fact, comply with all applicable standards.

Criterion E requires that a minimum sidewalk clear space of 6 feet be maintained. The proposed project complies with this criterion.

Criterion F requires that a minimum height of an encroachment be greater than 12 inches above the base of the encroachment. This is to insure that the encroachment is not a trip hazard. This criterion is satisfied since the panels will be mounted on the roof.

Criterion G requires that a clear color differentiation exists between the sidewalk paving and the proposed encroachments. This requirement does not apply to the type of encroachment proposed.

Chapter 16.18 .050 (B) of the BMC requires that Public Works poll the abutting property owners for their response to the proposed encroachment. Public Works then reviews the results of the public noticing in conjunction with the information supplied with the application to evaluate compliance with the approval criteria under BMC Section 16.18.080. Based upon this evaluation, the Director of Public Works makes a recommendation to the City Council who makes the final decision to approve the issuance of the encroachment permit. Staff posted the notice in June and solicited comments. A notice was posted on four power poles at the site including one at the southwest corner of Oxford and Allston, one on the north side of Allston mid-block between Shattuck and Oxford, one on a pole adjacent to the Gaia Building, and one on the northwest corner of Oxford and Kittredge Streets. The notice included a copy of the schematic drawings showing the proposed encroachment. No comments were received

ALTERNATIVE ACTIONS CONSIDERED

The main alternative considered, to place the solar panels on the roof, is not feasible since there would be conflicts with the proposed roof equipment and structures. Without the recommended encroachment permit the building will not be able to incorporate solar power, which is a key element of the buildings “green “design.

CONTACT PERSON

Jeffrey L. Egeberg, Manager of Engineering 981-6400

Attachments

- 1: Resolution
- 2: Schematic Drawing

RESOLUTION NO. ##,###-N.S.

ISSUING A MAJOR ENCROACHMENT PERMIT TO EQUITY COMMUNITY BUILDERS, L.L.C., FOR THE INSTALLATION OF SOLAR PANELS

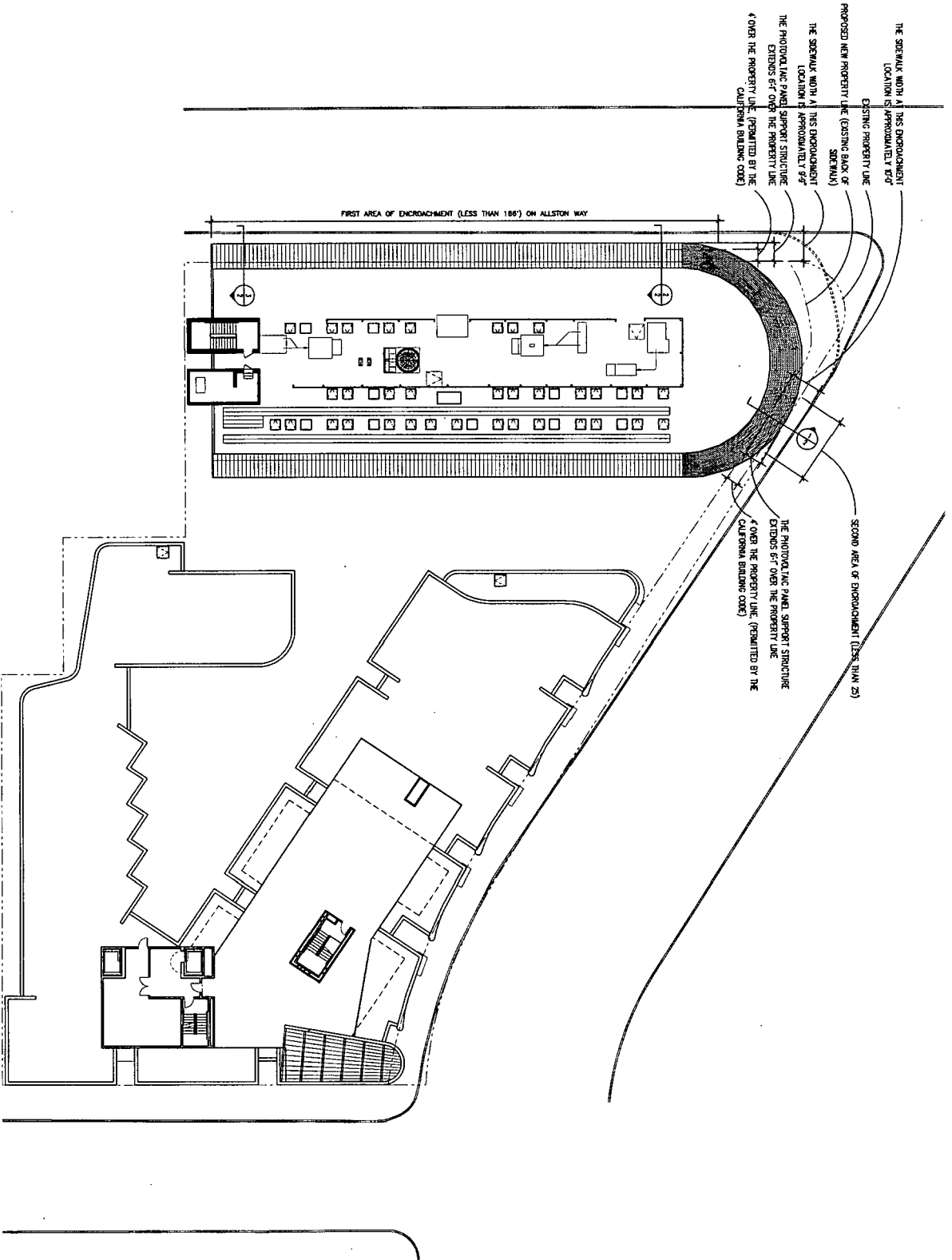
WHEREAS, the City owns the property on Allston Way between Shattuck Avenue and Oxford Street, which property is for use as a street right-of-way; and

WHEREAS, a portion of the solar panels and supporting structure at 2200 Oxford Street are to be located partially in the subject right-of-way.

WHEREAS, the City Council, pursuant to Berkeley Municipal Code Section 16.18.060, hereby finds as follows:

- a) The applicant will be substantially damaged by refusal to grant the permit since the only alternatives are to either reduce the size of solar panels or eliminate them completely. Reducing the size of the photovoltaic panel structure would substantially reduce the amount of energy that could be generated on site. The PV structure is also the building's signature expression of green building, and to the extent that this is compromised, it reduces the effectiveness of the project's mission, as a center for green building.
- b) No other reasonable alternative achieves the purpose of solar energy generation which the panels provide; and placement of the panels on the roof or other locations is not feasible due to physical conflicts.
- c) The granting of the permit will not be materially detrimental to the public interest, safety, health and welfare or injurious to other property.
- d) The applicant's plans comply with the Department of Public Works specifications to the extent that such specifications are applicable.
- e) The encroachment will not reduce the clear sidewalk area to less than six (6) feet wide.
- f) The proposed encroachment will satisfy Section 16.18.080 F and G as required.

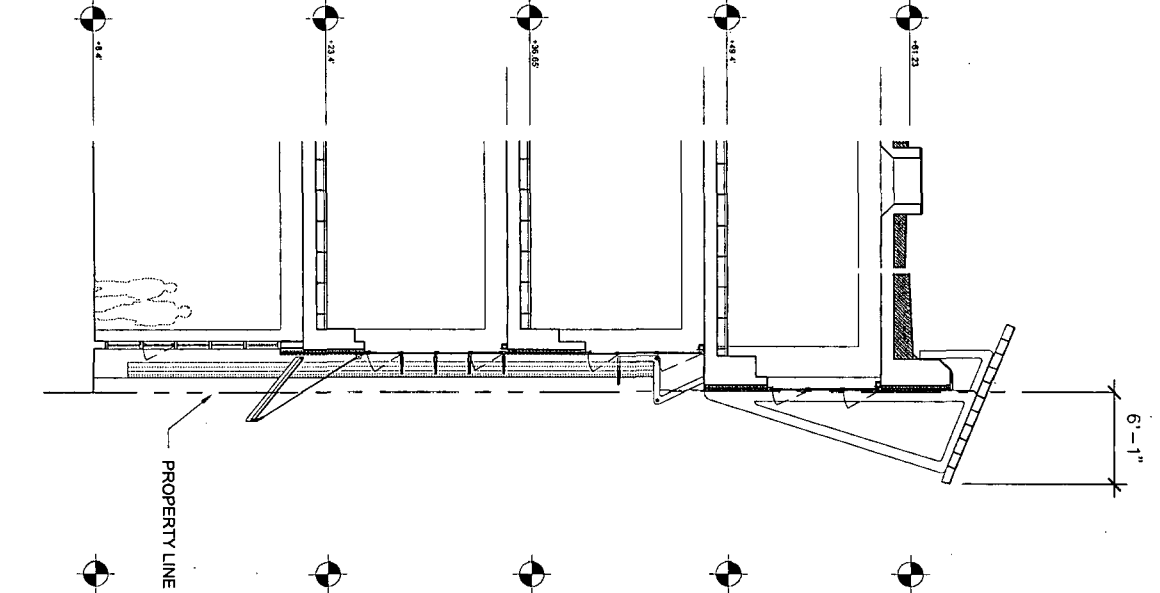
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley the issuance of a major encroachment permit to Equity Community Builders, L.L.C., to encroach upon the public right-of-way on the north side of Allston Way for the purpose of constructing solar panels and supporting structure for the David Brower Center, subject to the approval and conditions of the City Engineer. A record signature copy of said encroachment permit to be on file in the Office of the City Clerk.



Brower Center/ Oxford Plaza 2500 Oxford Street Berkeley, CA	
Project Owner: The David Brower Center/ Resources for Community Development <small>© 2008 Resources for Community Development</small>	
Job Number: 3183-0200	Drawn By: MHI
Date: February 24, 2008	Scale: 1/2" = 1'-0"
Title: Encroachment Diagram	
Sheet: 1	
Preparation: Not for Construction	

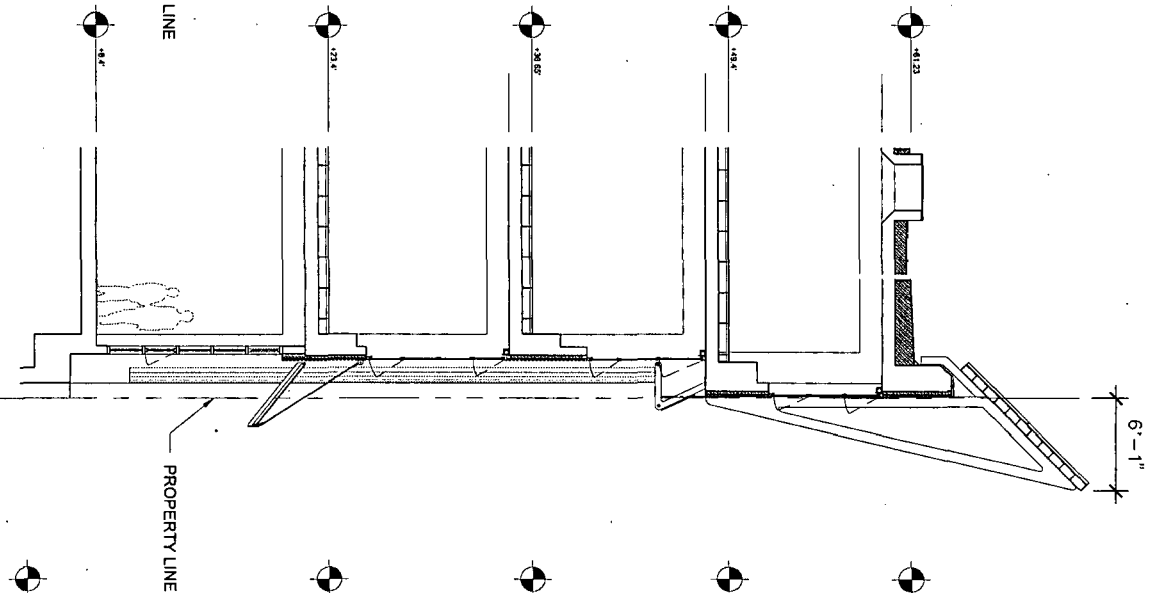
EAST WALL SECTION AT RESTAURANT
SCALE: 1/8" = 1'-0"

1
2



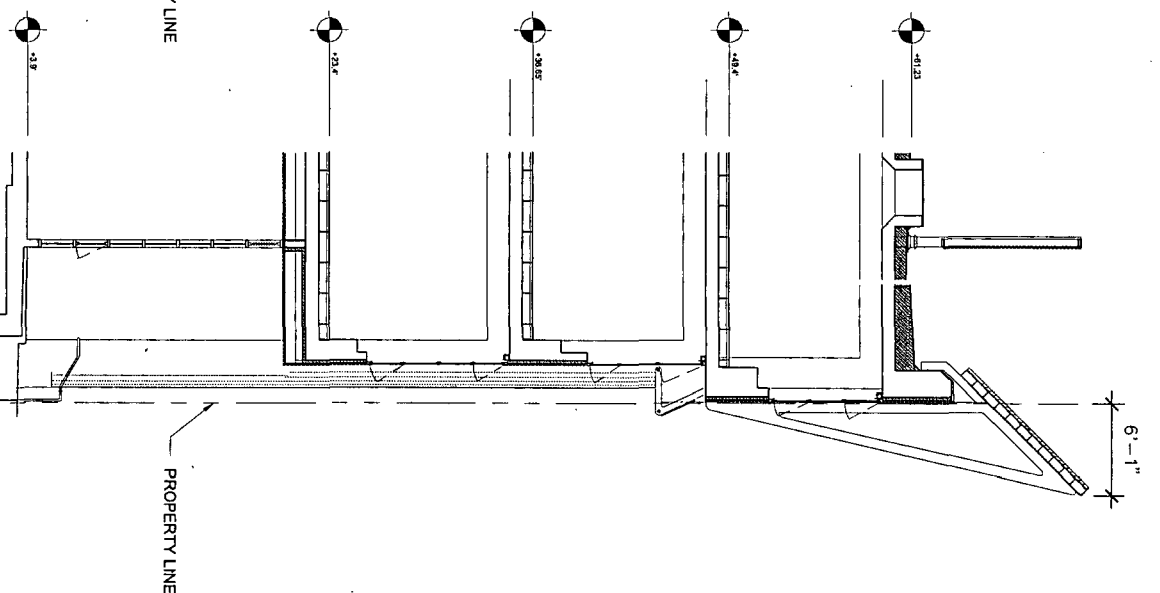
NORTH WALL SECTION AT RESTAURANT
SCALE: 1/8" = 1'-0"

2
2



NORTH WALL SECTION AT GALLERY
SCALE: 1/8" = 1'-0"

3
2



<p>Brower Center/ Oxford Plaza 2500 Oxford Street Berkeley, CA</p>	
<p>Project Sponsor: The David Brower Center/ Resources for Community Development 450 Grove Street, Berkeley, CA</p>	
<p>Job Number: 3102420</p>	<p>Drawn By: LHM</p>
<p>Date: February 24, 2008</p>	<p>Scale: 1/8" = 1'-0"</p>
<p>Title: Entrenchment Wall Sections</p>	
<p>Sheet: 2</p>	
<p>Preparatory: NOT FOR CONSTRUCTION</p>	