

RESOLUTION R-4731

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND ADOPTING FINDINGS AND CONCLUSIONS GRANTING DESIGN REVIEW APPROVAL OF AN ALTERNATIVE DESIGN FOR THE BANK OF AMERICA/MERRILL GARDENS MIXED USE PROJECT AT 101 KIRKLAND AVENUE. (FILE NO.: DRC 07-0006; APPEAL CASE NO.: APL08-0001)

WHEREAS, the applicant, SRM Development LLC, applied for design review approval of the Bank of America/Merrill Gardens five-story mixed use project ("the Project") located at 101 Kirkland Avenue; and

WHEREAS, on January 17, 2008, the Kirkland Design Review Board issued its decision granting design review approval to the Project; and

WHEREAS, the appellant, Citizens for a Vibrant Kirkland, a Washington non-profit corporation ("CiViK"), timely filed an appeal of the Design Review Board's decision; and

WHEREAS, on April 15, May 6, May 20, June 3, July 1, and August 5, 2008, the Kirkland City Council heard the appeal in an open record proceeding; and

WHEREAS, at the conclusion of the May 6, 2008, portion of the hearing, the City Council voted to reverse the Design Review Board's decision granting design review approval to the Project; and

WHEREAS, Kirkland Zoning Code 142.40.11.b requires that the City Council adopt findings and conclusions; and

WHEREAS, the City Council adopted Resolution No. R-4707 on August 5, 2008, adopting findings and conclusions; and

WHEREAS, SRM Development LLC and other related corporate entities ("SRM") filed a Land Use Petition and Complaint against the City, King County Superior Court Cause No. 08-29048-4SEA, based on the Council's adoption of Resolution R-4707. Pursuant to RCW 36.70C.040(2)(d), SRM named CiViK as a respondent to the Land Use Petition portion of the Superior Court Action; and

WHEREAS, on November 4, 2008, SRM, CiViK and the City Council approved a Settlement Agreement, in which SRM agreed to propose, the City Council agreed to consider, and CiViK agreed to support an alternative design for the Project ("Alternative Design"), a copy of which is attached to and incorporated in this Resolution as Exhibit A; and

WHEREAS, on November 7, 2008, King County Superior Court Judge Catherine Shaffer entered a Stipulation and Order on Remand, which remanded the matter back to the City Council for further proceedings pursuant to RCW 36.70C.140; and

WHEREAS, during its regular meeting on November 18, 2008, the City Council reviewed and considered the Alternative Design and its compliance with the Kirkland Zoning Code, Downtown Plan, and other applicable City codes and requirements;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The Alternative Design for the Project is hereby approved. In support of this decision, the City Council hereby adopts the Findings, Conclusions and Decision attached to and incorporated in this Resolution as Exhibit B.

Section 2. Severability. Should any provision of this Resolution, the Findings, Conclusions and Decision attached hereto, or their application to any person or circumstance be held invalid, the remainder of the Resolution and the Findings, Conclusions and Decision or the application of the provision to any other persons or circumstances shall not be affected.

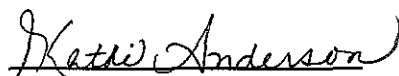
Passed by majority vote of the Kirkland City Council in open meeting this 18th day of November, 2008.

Signed in authentication thereof this 18th day of November, 2008.



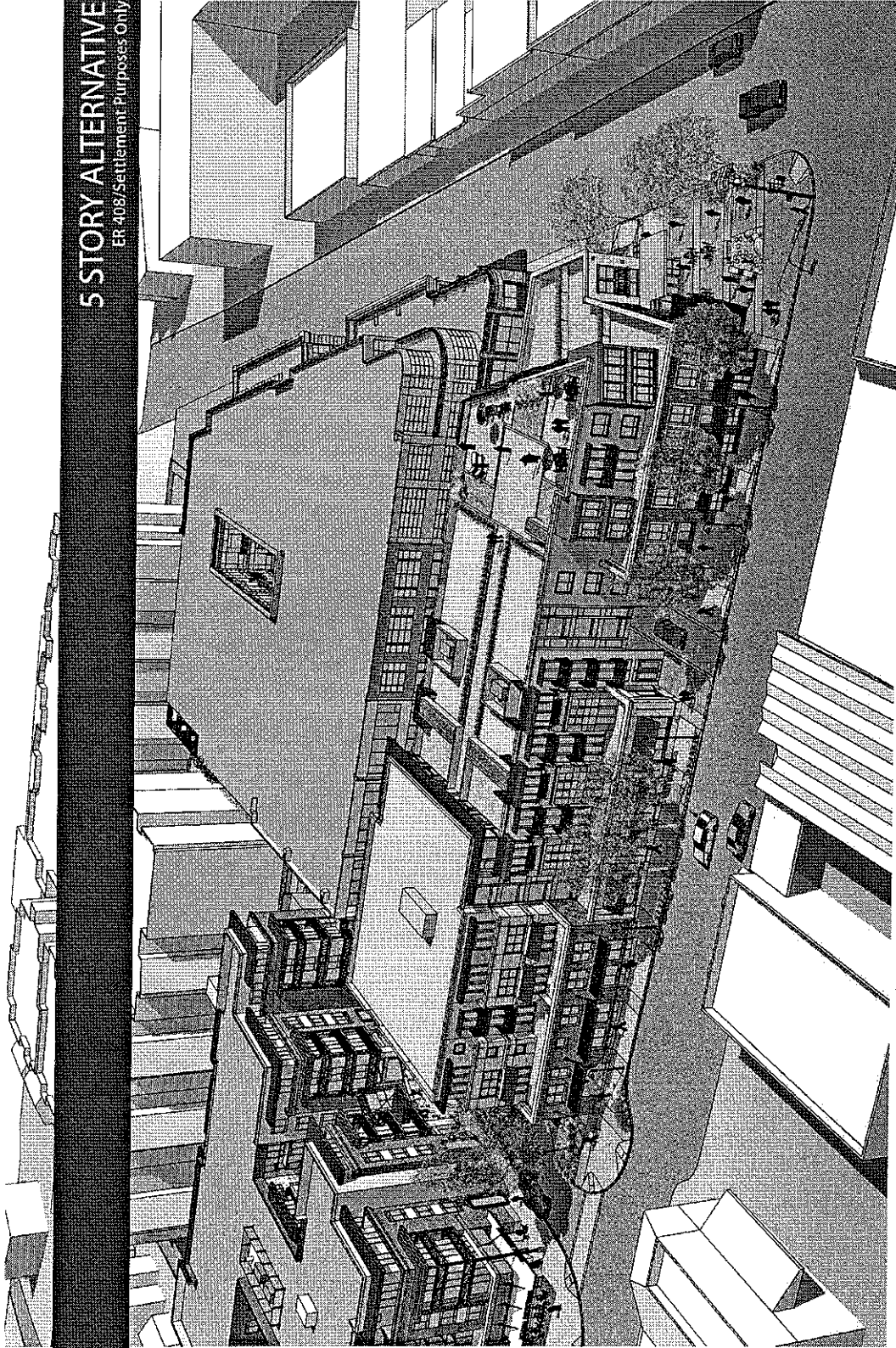
MAYOR

Attest:

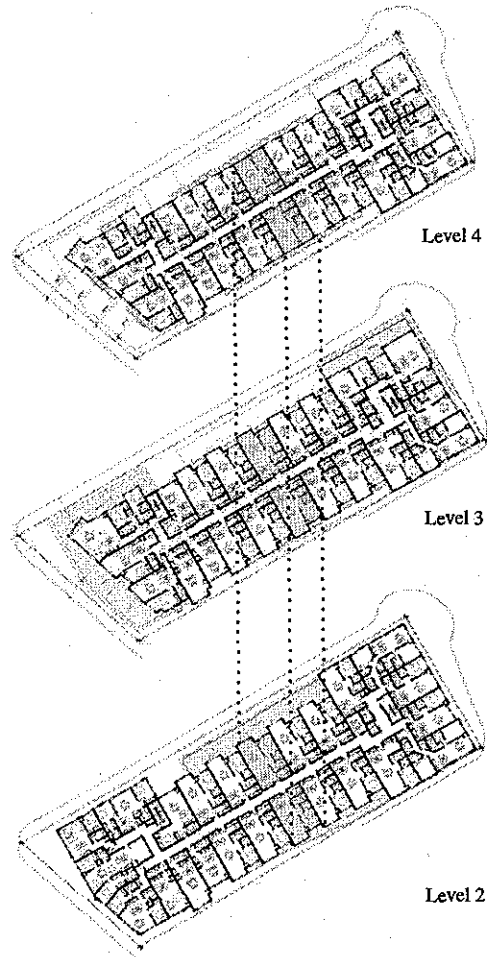


City Clerk

5 STORY ALTERNATIVE - 10.31.08
ER 408/Settlement Purposes Only/Do NOT Distribute



4 Story Settlement Design 10.31.08

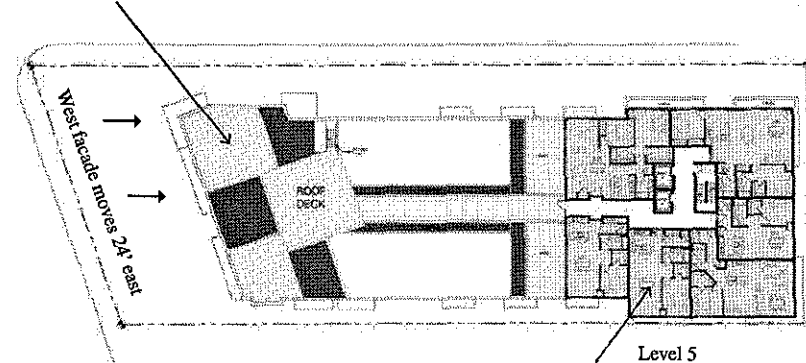


remove 6 units from the center
of the 4 story building



5 Story Alternative 10.31.08

Re-establish roof top deck



relocate the 6 units to a small fifth level on the east building

Why this alternative?

The 5 story alternative is presented as a way of maintaining the economics of the building, yet providing significant pedestrian enhancements. By simply reallocating 6 units in the body of the 4 story building to a very small 5th floor, most of the west facade can be moved east by 24', the width of these units. This allows for a plaza 25% larger than what was approved by the DRB, restores an 35% larger cafe space onto Lake Street, and creates a lasting public amenity on one of the main corners of downtown Kirkland.

ER 408/Settlement Purposes/Do NOT Distribute

SETBACK/STEP BACK CHART
November 3, 2008

<i>Project Elements</i>	<i>Settlement Design 2 5 story - (10.31.08)</i>
1 st floor setback Lake St* <i>step back</i>	19' - 51' N/A
2 nd floor setback Lake St* <i>step back</i>	12' - 29.5' 0'
3 rd floor setback Lake St* <i>step back</i>	44' - 48' 6' - 37.5'
4 th floor setback Lake St* <i>step back</i>	44' - 48' 0' - 4'
5 th floor setback Lake St* <i>step back</i>	175' - 200' 125' - 150'
1 st floor setback Kirkland Ave* <i>step back</i>	10.5' - 13.5' N/A
2 nd floor setback Kirkland Ave* <i>step back</i>	10.5' - 28' 0' - 16'
3 rd floor setback Kirkland Ave* <i>step back</i>	19' - 28' 8' - 14.5'
4 th floor setback Kirkland Ave* <i>step back</i>	19' - 28' 0' - 4'
5 th floor setback Kirkland Ave* <i>step back</i>	24' 4'
Plaza square footage	2,800 sf
Plaza Dimensions	19' - 51'

*Setbacks are minimum and maximum from edge of curb. The curb edge to the property line is 7'-9" on both Lake Street and Kirkland Avenue.

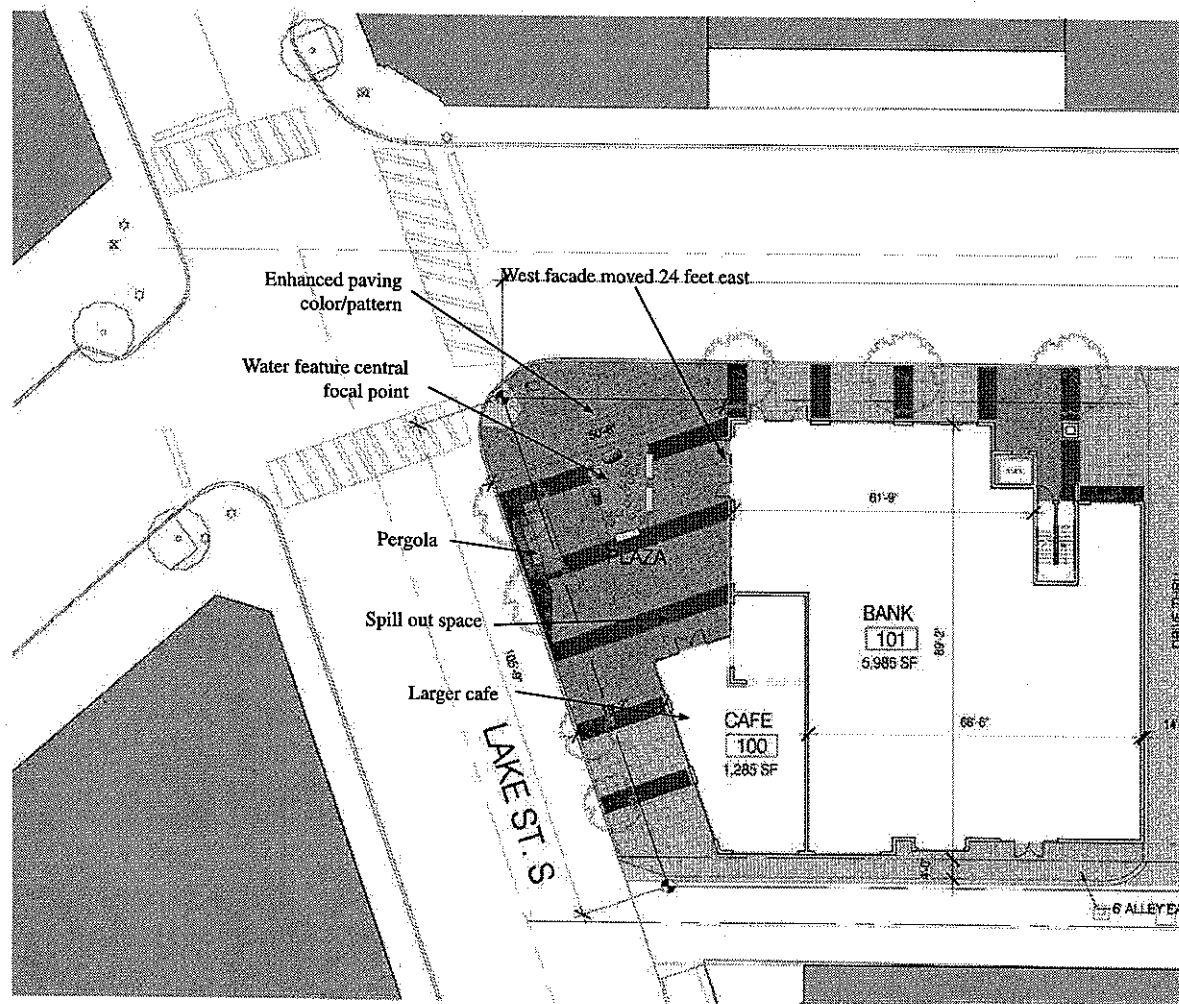
5 STORY ALTERNATIVE - 10.31.08

ER 408/Settlement Purposes Only/Do NOT Distribute

Plaza Square Footage

Original DRB Approved Design	2,085 SF
Settlement Design 9.26.08	1,375 SF
Settlement Design 10.31.08	1,475 SF
5TH STORY ALTERNATIVE	2,800 SF

With the 5 story alternative the plaza is 25% larger than the original design and 50% larger than any of the settlement designs presented to date. The water feature is again the central feature and the cafe has a significant presence on the plaza with spill out space for tables and chairs. The sidewalk in front of the cafe is over 19' wide and the plaza opens up to nearly 50' on the north end. The pergola and enhanced paving remain.

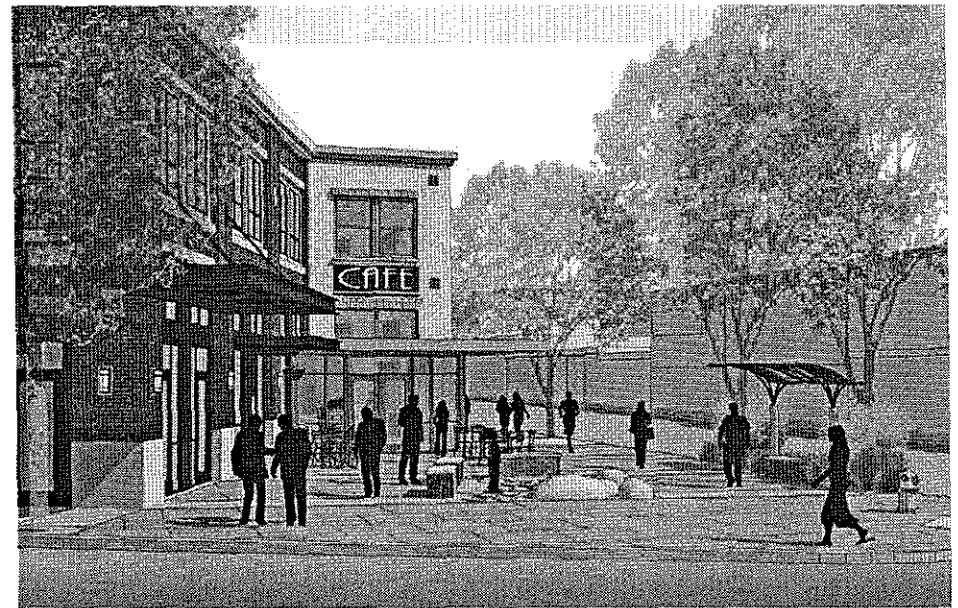


5 STORY ALTERNATIVE - 10.31.08

ER 408/Settlement Purposes Only/Do NOT Distribute



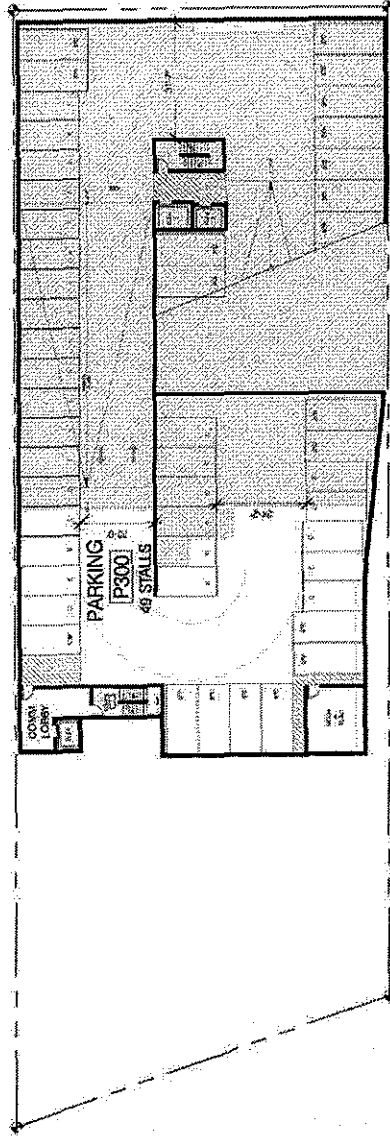
Aerial Vantage Point of Enlarged Plaza

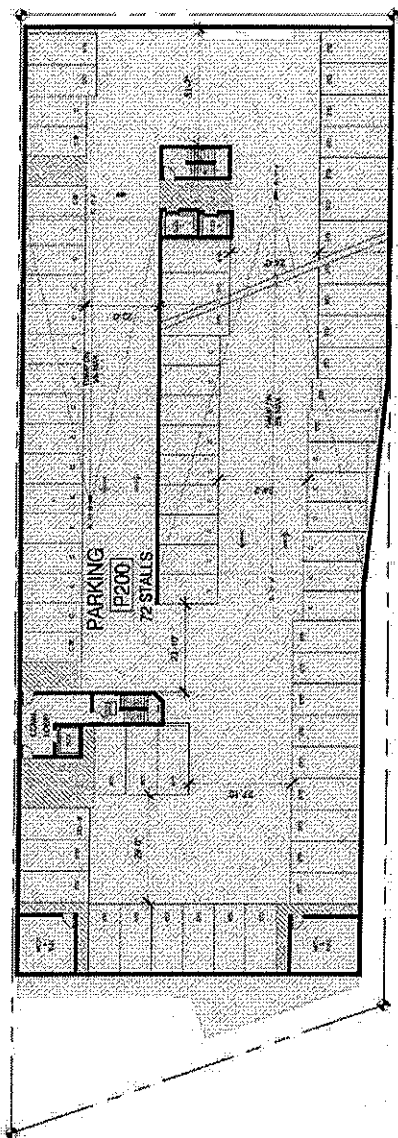


Pedestrian Perspective of Plaza

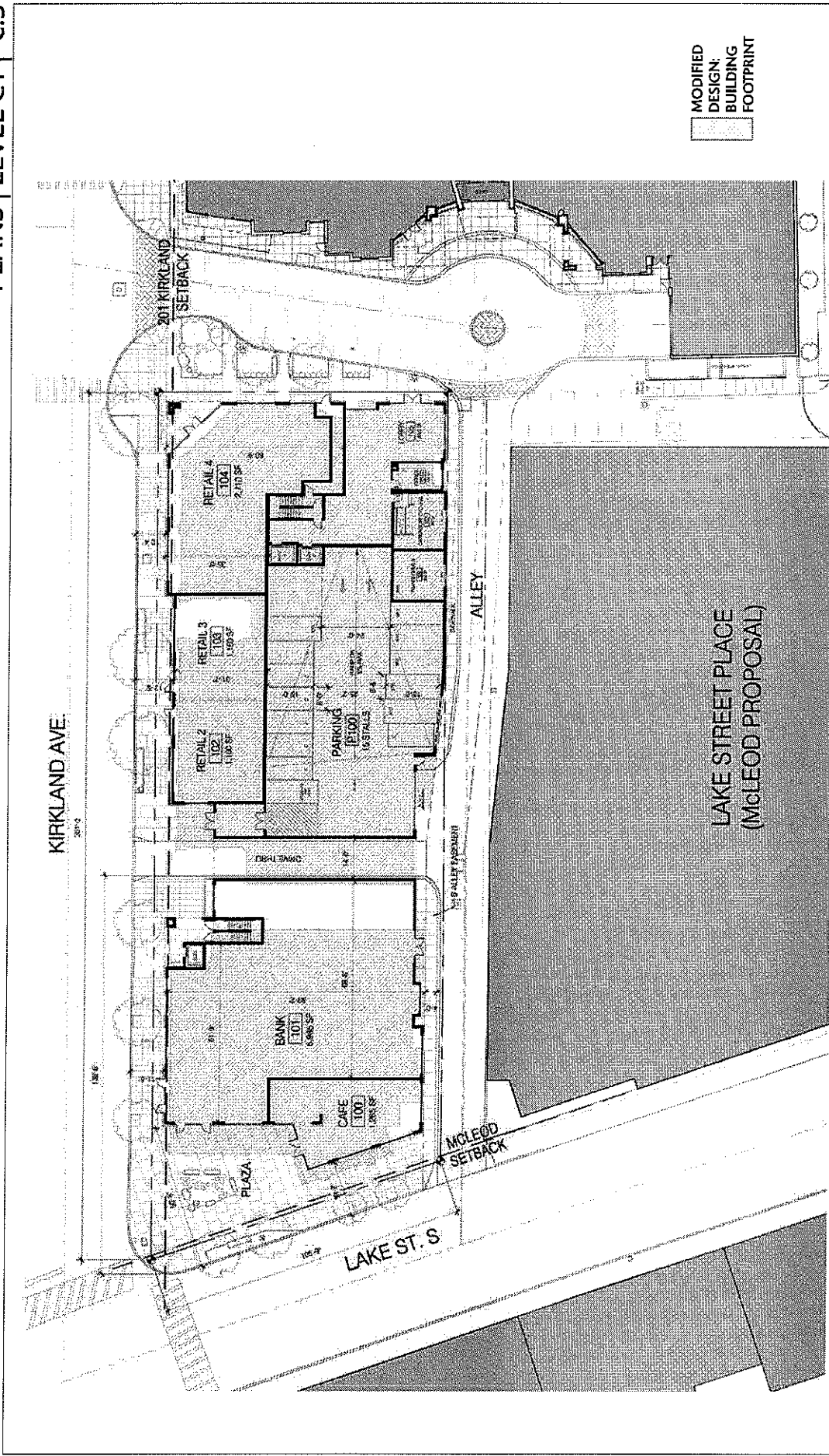
Enlarged Plaza Features

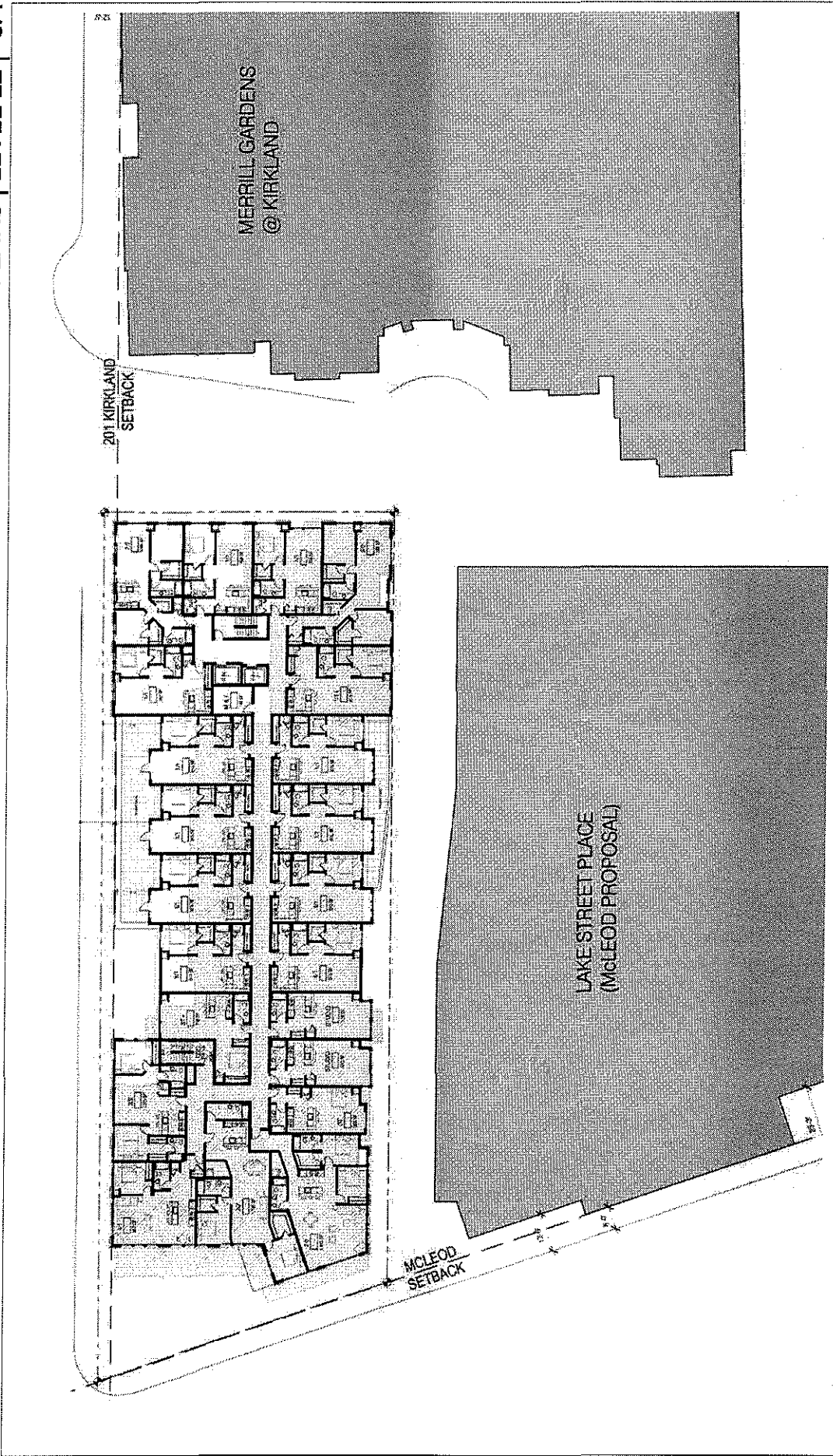
- Moved west facade east 24 feet
- 19' sidewalk in front of cafe
- Plaza 50' widest point
- Interactive water feature reinstated as central focal point
- Cafe has large presence on the plaza with spill out space for tables and chairs
- Pergola over east facing bench
- Enhanced paving with concrete banding and coloring in plaza area
- Roof deck reinstated providing activity at multiple levels along Lake St.

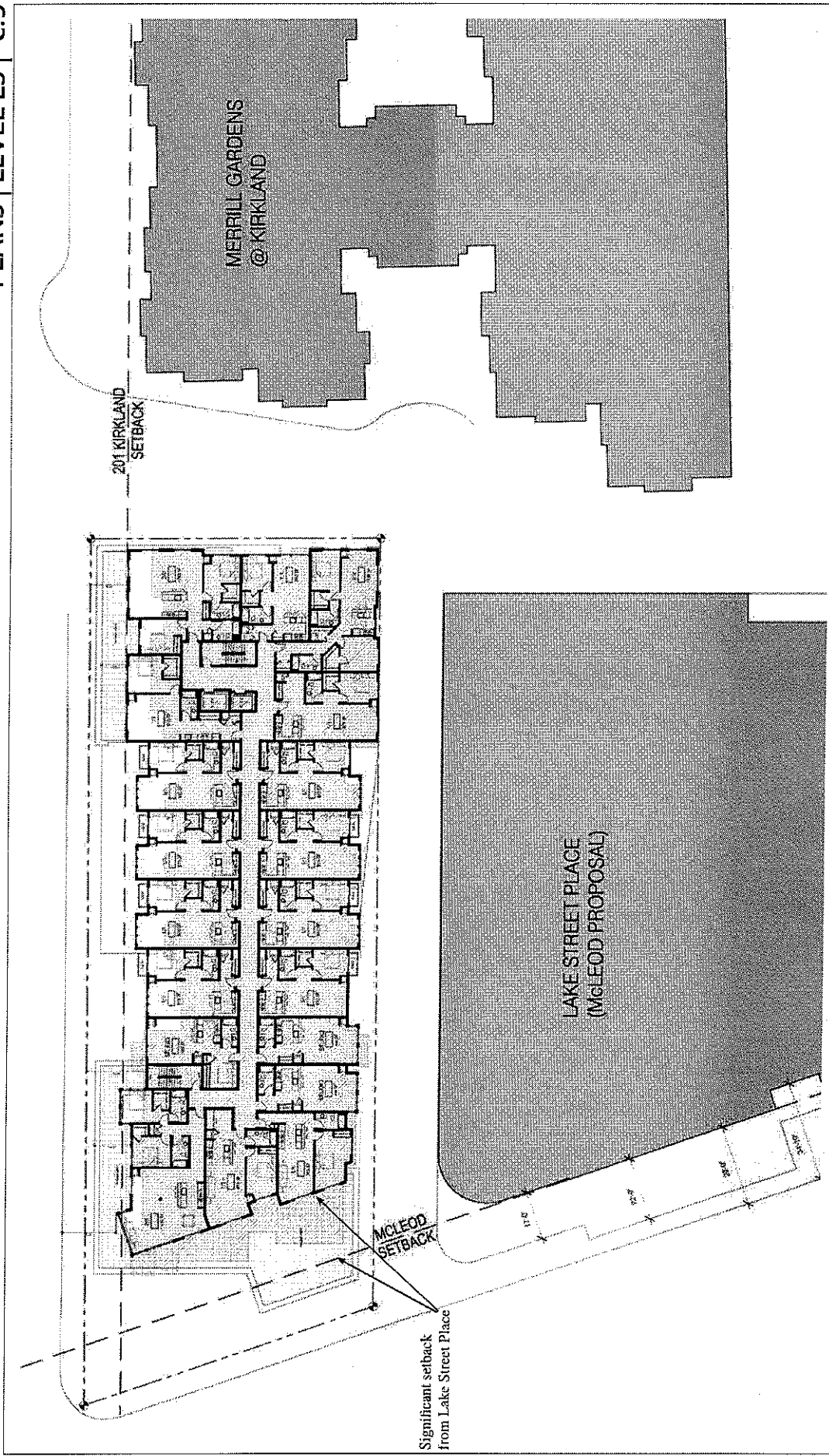


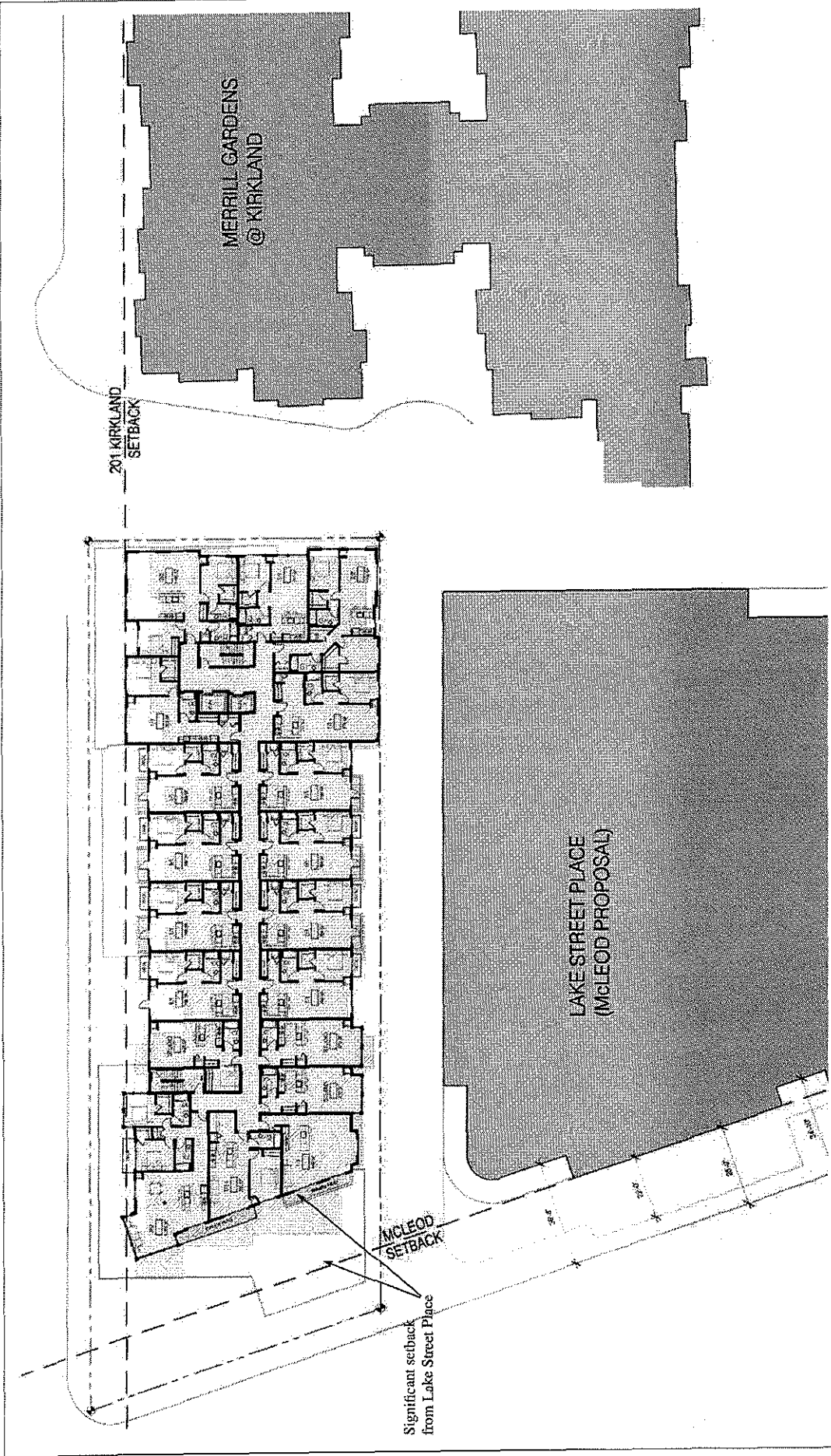


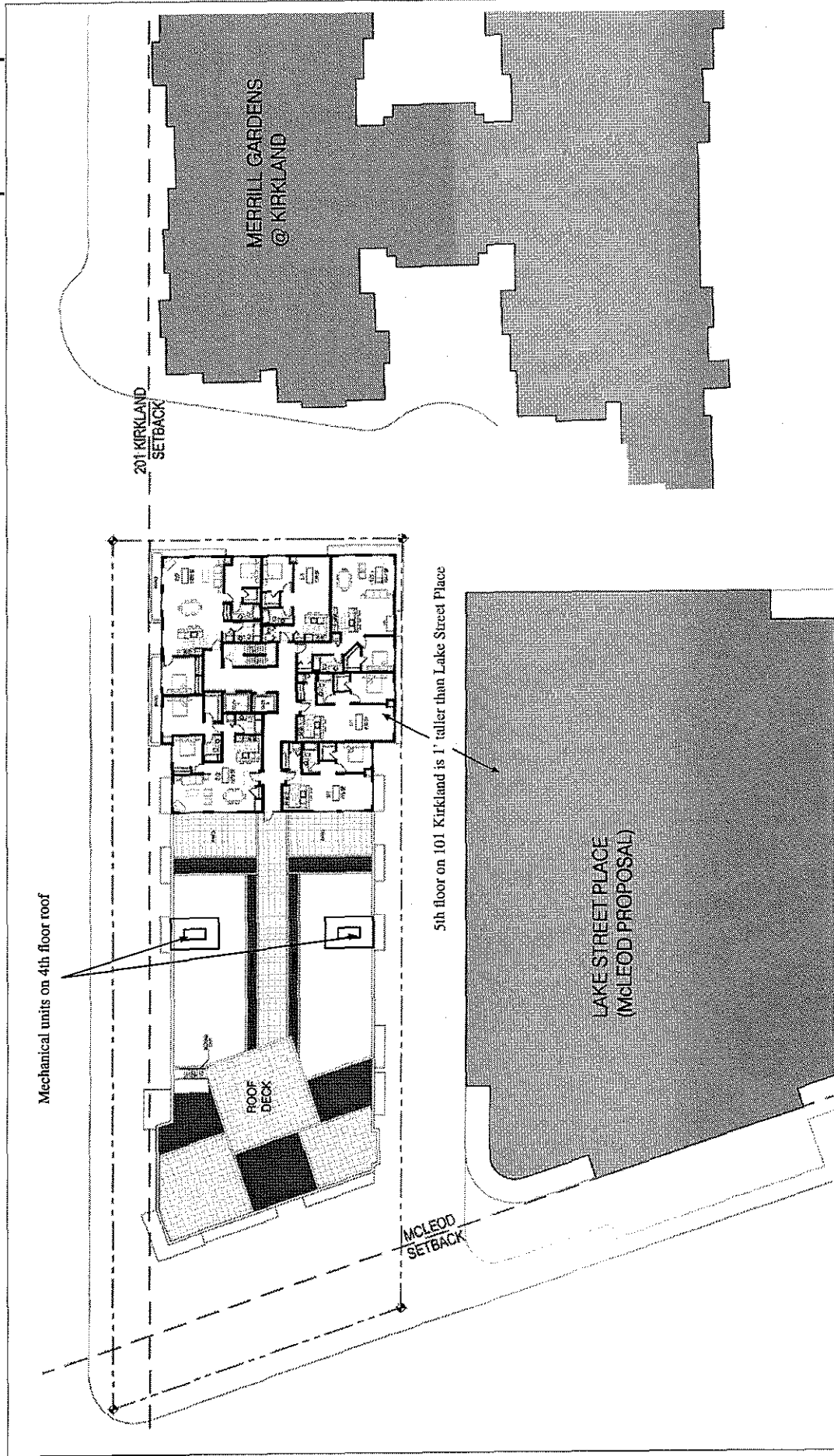
MODIFIED
DESIGN
BUILDING
FOOTPRINT











KIRKLAND AVE. LAKE ST MIXED USE
Feasibility Study

PROJECT DATA (5 story alt.) **DATE:** 11/3/2008

1.1 Location: 101 Kirkland Ave
1.2 Site Area: 28,390 SF
1.3 Zone: CBD 1B
1.5 Proposed Use: Mixed-Use

1.6 Type of Construction per IBC:
 Residential Bldg: Type 5
 Parking/ Comm: Type 1

1.7 Occupancy Classification per IBC:
 Business: B
 Residential: R-2
 Parking Garage: S-2

1.8 Apt. Building Floor Areas (gross):

APT.s	PARKING	RETAIL	RESIDENTIAL	LOBBY/ COMMON	M & E	CIRCULATION	TOTAL
P2	15,745			350	310	586	16,991
P1	23,167			254	597	586	24,604
C1	5,692	12,300		1,620	740	815	21,167
L2			18,618		146	2315	21,279
L3			15,010			1990	16,000
L4			15,500			2000	17,500
L5			5,975			992	6,967
Subtotal	44,604	12,300	56,303	2,224	1,793	9,284	126,508

	Studio +	1BR	2BR	total
L2	4	13	5	22
L3	3	13	3	19
L4	3	13	3	19
L5		3	3	6
	10	42	14	66

Parking Requirements: (per parking modification)
 see Memo from Thang Nguyen, City of Kirkland Transportation Engineer dated December 26, 2007

2.0 Residential Parking:
 1 per bedroom 80 stalls
 15% for guest stalls 12 stalls
 92 residential stalls required

Commercial Parking:
 restaurant - 1/125 11 stalls required
 retail - 1/350 32 stalls required
 total comm. 43

Total Required Parking:
 92 + 43 135 stalls required, however the
 Applicant paid \$15,077.53 into the LID for parking mitigation giving
 the property a credit of 3 stalls

135 - 3 = 132 stalls required by parking modification

Total Parking Provided:

level	Standard	Comp	Total
C1	8	7	15
P1	39	33	72
P2	19	30	49
Totals	66	70	136

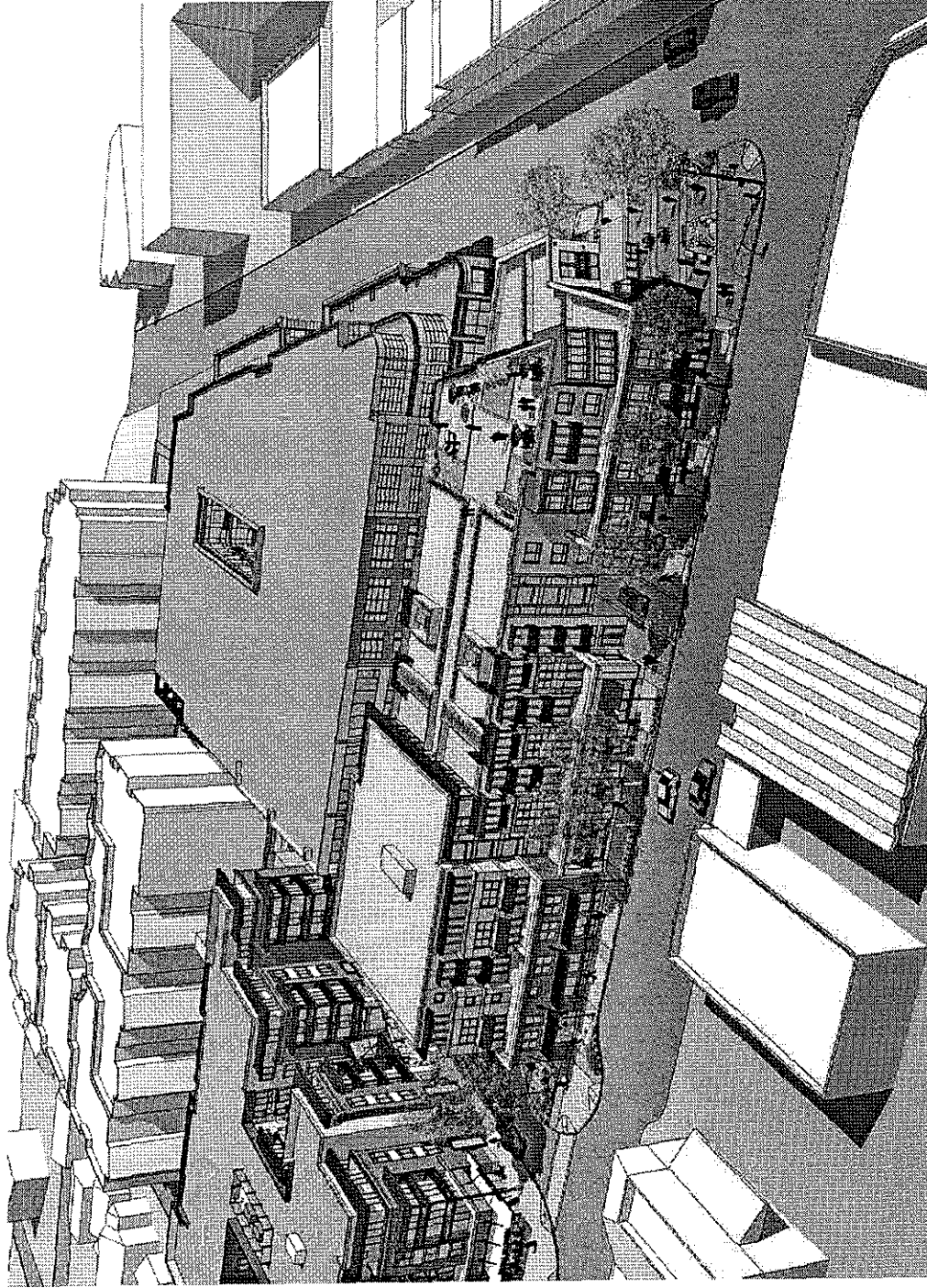
Unit Distribution

Unit Type	%	GSF	# of Units
St+	15%		10
1/1	64%		42
2/2	21%		14
Total Res. Units			66

Average Unit Size

Res	# of Units	Avg. GSF
56,303	66	853

Allowable height: 55'



Aerial View of 5 story alternative

EXHIBIT B**BEFORE THE KIRKLAND CITY COUNCIL**

APPEAL OF THE DESIGN REVIEW)	APPEAL CASE NO.: APL08-00001
BOARD DECISION ON THE BANK)	
OF AMERICA/MERRILL GARDENS)	CITY COUNCIL'S FINDINGS
MIXED USE PROJECT AT 101)	CONCLUSIONS, AND DECISION
KIRKLAND AVENUE)	
FILE NO.: DRC07-00006)	

I. PROCEDURAL FINDINGS

1.1 The Applicant, SRM Development, LLC ("Applicant") applied for design review approval of the Bank of America/Merrill Gardens five-story mixed use project ("the Project") at 101 Kirkland Avenue.

1.2 On January 7, 2008, the Kirkland Design Review Board voted to approve the project subject to conditions and issued its decision dated January 17, 2008, granting design review approval to the Bank of America project. *Design Review Board Decision.*

1.3 Citizens for a Vibrant Kirkland (CiViK) ("Appellant"), a Washington non-profit corporation, timely filed an appeal of the Design Review Board's Decision. *Letter from J. Richard Aramburu dated January 31, 2008.*

1.4 On April 15, May 6, May 20, June 3, and July 1, 2008, the Kirkland City Council heard the appeal in an open record proceeding. *April 15, May 6, May 20, June 3, and July 1, 2008, Proceedings.* During the course of the appeal, SRM modified the proposed design of the Project to better address applicable provisions of the Kirkland Zoning Code and the Kirkland Downtown Plan.

1.5 On August 5, 2008, the City Council adopted Resolution No. R-4707 adopting findings and conclusions and denying design review approval for the Project; and

1.6 Thereafter, SRM Development LLC and other related corporate entities ("SRM") filed a Land Use Petition and Complaint against the City, King County Superior Court Cause No. 08-29048-4SEA, based on the Council's adoption of Resolution R-4707. Pursuant to RCW 36.70C.040(2)(d), SRM named CiViK as a respondent to the Land Use Petition portion of the Superior Court Action.

1.7 On November 4, 2008, SRM, CiViK and the City Council approved a Settlement Agreement, in which SRM agreed to propose, the City Council agreed to consider, and CiViK agreed to support an alternative design for the Project ("Alternative

Design”), a copy of which is attached to and incorporated in these Findings, Conclusions and Decision as Exhibit A.

1.8 On November 7, 2008, King County Superior Court Judge Catherine Shaffer entered a Stipulation and Order on Remand, which remanded the matter back to the City Council for further proceedings pursuant to RCW 36.70C.140.

1.9 During its regular meeting on November 18, 2008, the City Council reviewed and considered the Alternative Design and its compliance with the Kirkland Zoning Code, Downtown Plan, and other applicable City codes and requirements.

2.0 Any Conclusion set forth below that is deemed a Finding of Fact is hereby adopted as such.

II. STANDARD OF REVIEW

2.1 Under KZC 142.35(3), a proposed design may receive design review approval if it complies with the applicable provisions of the Kirkland Zoning Code, the design guidelines for pedestrian-oriented business districts, as adopted in Chapter 3.30 KMC, the applicable neighborhood plans contained in the Comprehensive Plan for areas where Design Review is required (here, the Kirkland Downtown Plan), and the Design Principles for Residential Development contained in Appendix C of the Comprehensive Plan for review of attached and stacked dwelling units located within the Market Street Corridor.

III. FINDINGS OF FACT

3.1 The Central Business District (CBD) 1 zone permits a maximum height of structure of two to five stories above each abutting right of way for attached or stacked dwelling units. *CBD 1 Use Zone Chart KZC 50.12.080.*

3.2 Buildings exceeding two stories in CBD 1 must demonstrate compliance with the design regulations of Chapter 92 KZC and all provisions contained in the Downtown Plan. *KZC 50.10.*

3.3 The Downtown Plan provides guidance concerning the allowed building height in the eight height and design districts within Downtown Kirkland. *Downtown Plan, pages XV.D-9 to XV.D-15.*

3.4 The Downtown Plan provides that the maximum building height in Design District 1 should be between two and five stories with no minimum setback from property lines and requires that stories above the second story should be set back. *Downtown Plan, pages XV.D-10.*

3.5 South of Kirkland Avenue, building forms should step up from the north and west with the tallest portions at the base of the hillside to help moderate the mass of large buildings on top of the bluff. *Downtown Plan, Page XV.D-10.*

3.6 With respect to building heights along Lake Street South, the Downtown Plan, XV.D-10, provides, in pertinent part:

Buildings should be limited to two stories along all of Lake Street South to reflect the scale of development in Design District 2.

3.7 The scale of development of buildings in Design District 2 is a maximum height of one to three stories. *Downtown Plan, page XV.D-12, Design District 2.* The scale of development in Design District 2 across from the subject property is a maximum height of two stories.

3.8 The Downtown Plan, page XV.D-10, provides a fifth story may be considered by the Design Review Board for a building within Design District 1B where:

at least three of the upper stories are residential, the total height is not more than one foot taller than the height that would result from an office project with three stories of office over ground floor retail, stories above the second story are set back significantly from the street and the building form is stepped back at the third, fourth, and fifth stories to mitigate the additional building mass, and the project provides superior retail space at the street level . . .

3.9 The requirements for the design of retail space are established in the Zoning Code regulations for CBD 1, Design Regulations of KZC Chapter 92, the Downtown Plan, and the Design Guidelines for Pedestrian Oriented Business Districts.

3.10 The Project is located within the CBD 1 Zone of the Zoning Code and Design District 1B of the Downtown Plan. *Downtown Plan, page XV.D-10, Figure C-5.*

3.11 The Project Alternative Design proposes a five-story building. *Alternative Design plans.*

3.12 Along Lake Street South, the first and second stories of the building are proposed to be located from 19 to 51 feet from the curb. This will result in a public plaza of 2,800 square feet, nearly 800 feet larger than that approved by the Design Review Board. *Alternative Design plans at A.2 and B.1.* The public plaza will be 50 feet wide at its widest point, and include a 19-foot-wide sidewalk, an interactive water feature as a central focal point, a pergola over an east-facing bench, and enhanced paving with colored concrete banding. The public plaza is proposed for the corner of Kirkland Avenue and Lake Street South, one of the most prominent corners in the CBD.

3.13 Along Lake Street South, the third and fourth stories are proposed to be set back between 44 and 48 feet from the curb, and stepped back between six and thirty-seven-and-a-half feet from the edge of the second story. *Alternative Design plans at page A.2.*

3.14 A bank is proposed to occupy the northwest corner of the site and a drive through banking facility would be located within the building, so that automobiles enter on the alley and leave the building on Kirkland Avenue. *Alternative Design plans, page C.3.*

3.15 The four proposed retail spaces range in size from approximately 1,285 square feet for a café along Lake Street, two retail spaces along Kirkland Avenue at 1,160 square feet for each, one retail space along Kirkland Avenue at 2,710 square feet, and approximately 5,985 square feet for the bank. *Alternative Design plans at page C.3.*

3.16 Banking and related financial institutions are an allowed use in the CBD 1 zone, and a drive-through bank is allowed if a drive-through bank as existed on the site since prior to January 1, 2004. *KZC 50.12.025.* A Bank of America branch has been located on the Project site since prior to January 1, 2004.

3.17 Restaurants, delicatessens, and specialty shops, including fine apparel, gift shops, art galleries, import shops, and the like constitute the use mix and image contemplated in the Vision for Downtown. These uses provide visual interest and stimulate foot traffic and thereby provide opportunities for leisure time strolling along Downtown walkways for Kirklanders and visitors alike. *Downtown Plan, Page XV, D-4.*

3.18 *KZC 50.12.080*, Special Regulation 1 requires that retail uses occupying the street level floor of a building fronting on Lake Street South have a minimum depth of 30 feet.

3.19 The stories above the second story of the project are set back significantly from the street and south of Kirkland Avenue the building form is stepped back at the third, fourth, and fifth stories to mitigate building mass. *Alternative Design Plans at page E.1.*

3.20 The proposed Project building form steps up from the north and west with the tallest portion at the easternmost part of the structure, and when considered against other existing and approved structures on adjacent and nearby parcels, the building forms step up from the north and west with the tallest portions located at the base of the hillside to help moderate the mass of large buildings on top of the bluff. *Alternative Design Plans at page E.1.*

IV. CONCLUSIONS AS TO SUPERIOR RETAIL SPACE

4.1 In order for the Project to include a fifth story, all of the six criteria set forth in the Downtown Plan must be met. The Council concludes that these criteria are met.

4.2 Banks are listed in the Use Zone Chart as permitted uses in the CBD 1. Drive-through facilities for banks are permitted if they have existed since before January 1, 2004. Because a Bank of America branch has been located at the Project site since prior to January 1, 2004, a drive-through bank facility is permitted at the Project site under the Kirkland Zoning Code.

4.3 Banking and related financial services and/or drive-through facilities, in and of themselves, do not qualify as superior retail space sufficient to justify a fifth story. As explained in the Downtown Plan, page XV.D-6:

The desired pedestrian character and vitality of the core area requires the relatively intensive use of land and continuous compact retail frontage. Therefore, automobile drive-through facilities should be prohibited. Similarly, office uses should not be allowed to locate on the ground level. These uses generally lack visual interest, generate little foot traffic, and diminish prime ground floor opportunities for the retail uses that are crucial to the ambiance and economic success of the core area.

The attractiveness of the core area for pedestrian activity should be maintained and enhanced. . . .

4.4 The Alternative Design considered as a whole, however, meets the superior retail space requirement for several reasons. The Alternative Design provides that over half of the commercial frontage along Lake Street South, and nearly two-thirds of the frontage along Kirkland Avenue, will be retail space, including a café with spill-over space for outdoor tables and chairs, and a significant public plaza containing an interactive water feature and a pergola. The combination of the amount and dimensions of retail space, combined with the significant public plaza and pedestrian amenities, constitute superior retail space warranting approval of the limited fifth story over the eastern portion of the structure.

V. CONCLUSIONS AS TO HEIGHT ON LAKE STREET SOUTH

5.1 The Alternative Design also complies with the requirements of the Downtown Plan regarding height along Lake Street South.

5.2 The Downtown Plan states that "buildings *should* be limited to two stories along all of Lake Street South to reflect the scale of development in Design District 2." The term "should" is directive and not mandatory. Nevertheless, the Downtown Plan

uses different and stronger language in describing height along Lake Street than it does when describing height in other locations. For example, the next sentence of the Plan, which refers to buildings on other streets in Design District 1, says that the height of these buildings should only be limited "along street frontages."

5.3 Given this difference in wording, the Downtown Plan means that "buildings" that are "along" Lake Street South should be limited to two stories, and by using the word "should" the Plan requires an applicant who wishes to include a third or fourth floor to demonstrate that exceptional circumstances justify such additional height

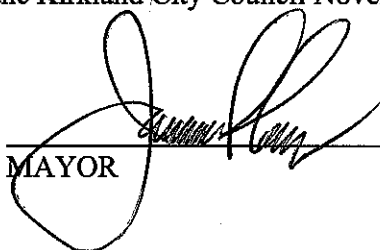
5.4 The Downtown Plan does not, however, require that an entire building located along Lake Street South be limited to two stories, regardless of the depth of the building, because the purpose of this limitation is to "reflect the scale of development in Design District 2." Under the Downtown Plan, it is intended that buildings abutting Lake Street South should create the impression, from a pedestrian's perspective, of being a maximum of two stories in height. This can be achieved by setting back the building a significant distance from the right-of-way, and by "stepping back" the upper stories sufficiently from Lake Street South to minimize their visibility.

5.5 The Alternative Design substantially increases both the setbacks and step backs from Lake Street, beyond those presented in previous proposals, to satisfy the two-story height limitation along Lake Street. Further, the Alternative Design has sufficiently increased both the setbacks and step backs of the project to mitigate the scale and mass of the proposed third, fourth and fifth stories.

VI. DECISION

For the reasons set forth in the foregoing Findings and Conclusions, the Alternative Design for the Project is hereby APPROVED.

Decision adopted by the Kirkland City Council November 18, 2008.


MAYOR