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Berkeley, After Travail, Gets a New Condo

City Forced Builder To Redesign After Construction Began

By JOHN MCCLLOUD

BERKELEY, Calif.

A builder who faced problems dealing with the Berkeley buildings bureaucracy has a condominium project on the market at last, the first new private-market residential building in the city's downtown in several decades.

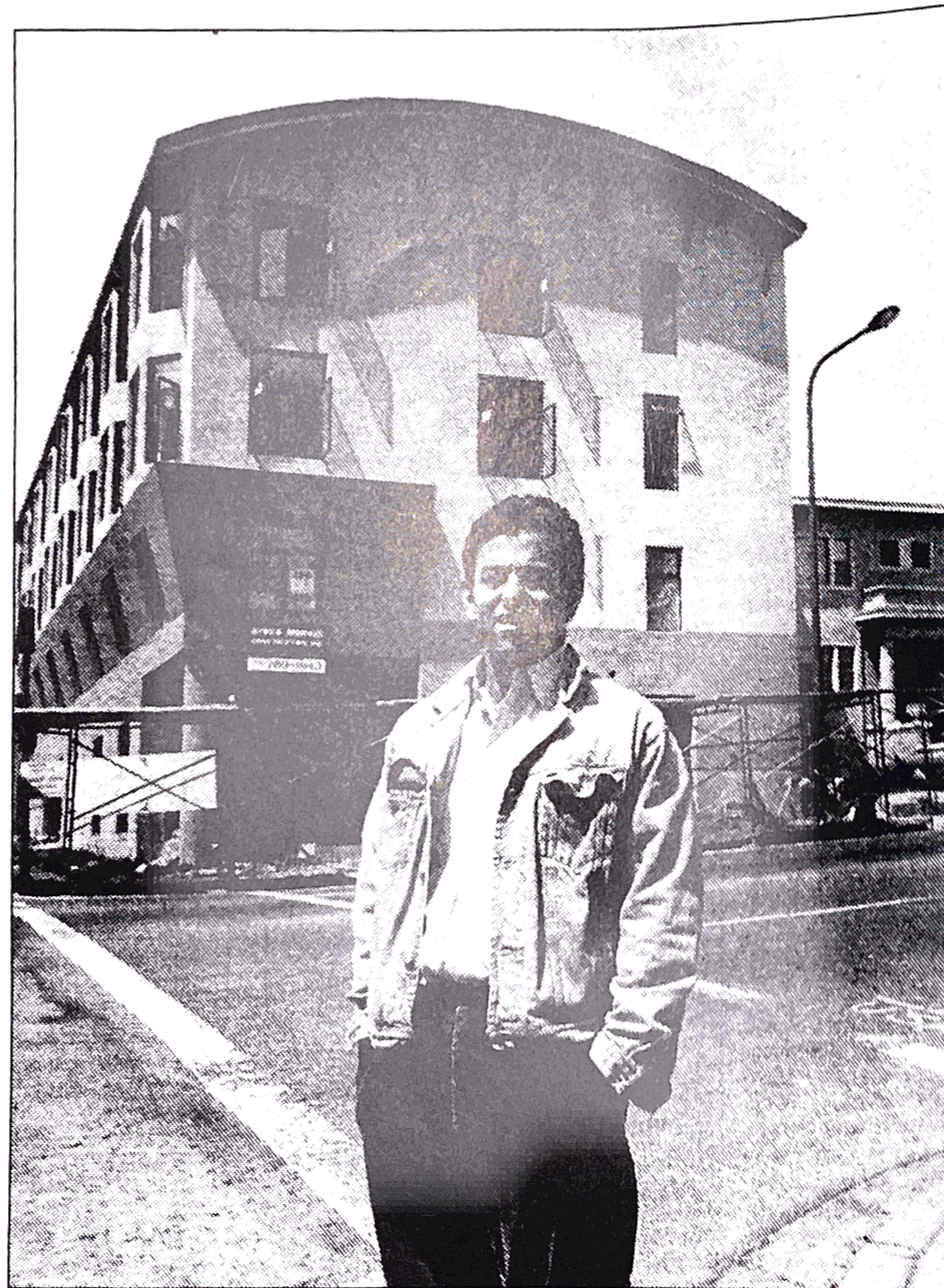
It will not, however, be the last. Despite a controversial city decision that forced him to tear out and rebuild a portion of his work, the developer, Patrick Kennedy of Panoramic Interests, said he had not soured on Berkeley and had a similar project in the wings, with hopes to build at least three others.

Mr. Kennedy's project, which opened for sale this month, is a four-story building with 24 one- and two-bedroom condominium residences and two ground-floor commercial spaces rented to a cafe and magazine shop. A garage that includes a system allowing double-stacking of cars provides parking for 15 cars.

The builder began taking nonbinding reservations on the condominiums in June and had a dozen reservations for the units, which range from 575 to 1,000 square feet, by mid-July.

To get to this stage, however, required patience through an acrimonious development experience. Six weeks into construction a group of community activists, angered by marketing materials that mistakenly proclaimed the project 100 percent accessible to the disabled, demanded that the city withdraw its permits. The city complied.

Although the project had obtained a building permit, the protesters challenged the approval on several points. The elevator terminated at the third floor where there are two bilevel units, they noted, leaving a



Darcy Padilla for The New York Times

Patrick Kennedy outside the condominium he built in Berkeley, Calif.

planned roof garden reachable only by stairs. While some units had counters built at wheelchair height and plumbing and lighting fixtures easily maneuverable by people with limited manual dexterity, not all did.

According to Mr. Kennedy, the project exceeded the requirements of the Americans With Disabilities Act in terms of accessibility. Units that are not specifically tailored for the disabled were designed to be quickly and easily adapted for their use. In addition, all units have generous outdoor decks. Only the marketing claim was in error.

Nonetheless, Berkeley officials insisted that Mr. Kennedy correct the deficiency, which meant undoing much of what had already been done. Failure to comply might have jeopardized the project's financing, which included a low-interest loan from the city's Department of Housing and Community Development. In exchange for the city's assistance, the builder agreed to price 10 units well under market — \$79,000 to \$84,000 compared with \$134,000 to \$199,000 for the market-rate units — and offer them to buyers with incomes up to \$31,050 in the case of single-person households, or 80 percent of median income for the area.

The developer's experience represented an extreme form of a practice that other developers and consultants who work for them say is not unusual in the nine-county San Francisco Bay Area. Many local governments impose changes on projects after construction begins, they report.

"It comes up fairly routinely," said Jeremy Paul, a principal in Quick Draw Permit Consulting, a San Francisco firm that helps developers and owners wend their way through the maze of local planning and building bureaus. "It's a problem of multiple levels of discretion. An inside plan checker may decide something is acceptable, but a field inspector may say, no, I won't accept this and won't sign off on this."

Andy Serkin, a lawyer who formed a partnership to develop a former taxi garage into 19 residential lofts on lower Haight

Street in San Francisco, estimated that reversals and obstructions from various city agencies added considerably to his costs. Units that he would have offered for sale beginning at \$160,000 to \$170,000 instead came on the market at \$20,000 higher.

"San Francisco does not follow the Uniform Building Code. It has its own code that's been added to and amended over the years, so it's a mishmash of contradictory regulations," Mr. Serkin said. "Every building inspector seems to have a different interpretation."

In Berkeley, the plans for Mr. Kennedy's project had been cleared not only by every government department, Federal as well as local, whose approval was required, but also by the Center for Independent Living, a local nonprofit organization both serving and run by people with physical disabilities.

Tom Barfield, a Housing and Community Development project manager, said however, that both the city and the developer had failed to recognize a distinction between "totally accessible" and "adaptable" to disabled people.

"I've since found out that under the Americans With Disabilities Act, this is a legal distinction," Mr. Barfield said. "What he should have said was the project was totally adaptable."

In Mr. Kennedy's view, his problem was mainly the result of excessive mayoral responsiveness to anti-development forces in Berkeley. But last December Berkeley elected Shirley Dean as its Mayor, making her the first mayor in 20 years to win without the support of Berkeley Citizens Action, a political organization known for its anti-development stances.

Mayor Dean said she was working to avoid a repetition of Mr. Kennedy's experience.

"We're trying to make sure people know what the rules are ahead of time," she said. "So many people tell me they don't want to attempt to do anything because rules seem to be up to the whim of this or that faction. We're putting together written guidelines that will try to spell out all the things that people have to do to get a project built."

Mayor Dean said she strongly endorsed developments like Mr. Kennedy's, which was designed to meet the goals of the city's downtown plan. The plan specifically calls for more downtown housing with a mix of income levels and mixed-use development.

"I think a strong downtown is essential for economic revitalization," she said. "Every success story I know of includes a vibrant downtown. And housing is a key component of that."

As it turns out, Mr. Kennedy is now pleased that the elevator in his building goes to the roof. Among the buyers is an older university student compelled to live most of the day in an iron lung. He will be able to get to the roof by way of the elevator during the few hours he can be free of the iron lung.

"I didn't have a problem with having to make the elevator go to the roof," the developer commented. "It was making me do it after the shaft was in place that I objected to."

Mr. Kennedy hopes to have a similar project under construction by fall, and he is readying a proposal for a 60-unit downtown project across from the campus of the University of California. Studios there, he said, could sell for as low as \$70,000 without city assistance. In addition, he is negotiating for two other downtown parcels on which he hopes to build yet more housing.

"I have a lot of confidence in downtown Berkeley," Mr. Kennedy said. "I think it's going to be really great here in a few years."