



# Z O N I N G A D J U S T M E N T S B O A R D S T A F F R E P O R T

FOR BOARD ACTION  
OCTOBER 10, 2013

## 2201 Dwight Way

**Use Permit #12-1000021 to demolish an existing one-story office building and construct a 5-story apartment building with 77 units and 4 to 10 parking spaces for shared vehicles.**

### I. Application Basics

#### A. Land Use Designations:

- General Plan: High Density Residential
- Zoning: R-S (Residential Southside)

#### B. Zoning Permits Required:

- Use Permit to demolish a main building used for non-residential purposes, under BMC Section 23C.08.050.A
- Use Permit to construct new dwelling units, under BMC Section 23D.48.030.A
- Use Permit to allow height of four stories and 45 feet, under BMC Section 23D.48.070.C.2<sup>1</sup>
- Administrative Use Permit to allow rooftop mechanical equipment to project up to 15 feet above main building height (67 feet maximum), under BMC Section 23D.04.020.C
- Administrative Use Permit to allow rooftop hedges and guardrails to project above main building height, under BMC Section 23D.04.020.D
- Administrative Use Permit for reduction of front (Dwight Way) setback requirement from 10 feet to 3 feet, under BMC Section 23D.48.070.E<sup>1</sup>

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<sup>1</sup> These permits, although allowed under the Zoning Ordinance, are necessary to physically accommodate the project's density bonus and are therefore required by State density bonus law (Government Code Section 65915(e)).

**C. Approvals Under State Density Bonus Law (Not Otherwise Allowed Under Zoning Ordinance):**

Waivers/Reductions of Development Standards (Govt. Code §65915(e)):

- Increase in maximum building height from four stories (45 feet) to five stories (54 feet)
- Reduction of (Fulton) street side setback requirement from 6, 8, or 10 feet (depending on story) to 3 feet, 9 inches for all stories
- Reduction of rear yard setback requirement at fourth story from 17 feet to 10 feet
- Reduction of east side setback requirement at fourth story from 8 feet to 6 feet at middle volumes and 7 feet at north and south volumes<sup>2</sup>

Incentives/Concessions (Govt. Code §65915(d)):

- Reduction of required off-street parking from 71 spaces to 4-10 spaces for shared vehicles
- Additional floor area on fifth floor (approximately 1,300 sq. ft.), in order to relocate two units from ground floor to fifth floor to accommodate ground-floor security/farm sales office and resident lounge

**CEQA Determination:** An Environmental Impact Report (EIR) was prepared in accordance with the California Environmental Quality Act (CEQA). The Draft EIR was released for public review and comment on January 30, 2013, and the comment period ended on March 18. The ZAB reviewed and commented on the Draft EIR on March 14. The Response to Comments (RTC) document, which includes revisions to the Draft EIR, was released on September 26, 2013 (see Attachment 5). Prior to approving the project, the ZAB must certify the EIR and make the findings required by CEQA (see Attachment 1, Exhibit A).

**D. Parties Involved:**

- Applicant  
Randall Miller, 2201 Dwight Way, LLC  
2201 Dwight Way, Berkeley, CA 94704
- Property Owner  
Anthony Levandowski  
2917 Ashby Avenue, Berkeley, CA 94705







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<sup>2</sup> "Volume" here (and throughout this report) refers to the 18 separate "towers," ranging in height from 3 to 5 stories, that comprise the building.

Figure 1: Vicinity Map:



Map Legend:

 Project Site	 California Historic Resource Inventory
 + # Landmark or Historic Structure	 Photo Locations (See Figures III-5a through III-5c)
 + # Tall Building (4+ stories)	
 City of Berkeley Landmark	

NOTE: Building numbers are keyed to the list provided on page 28 of the DEIR.

**Table 1: Land Use Information**

Location		Existing Uses	Zoning District	General Plan Designation
Subject Property		Office building, surface parking lot	R-S	High Density Residential
Surrounding Properties	North	Apartments	R-3 (Multiple Family Residential)	High Density Residential
	South	Apartments/duplex	R-3	High Density Residential
	East	Apartments	R-3	High Density Residential
	West	Duplex (2424 Fulton), triplex (2426 Fulton), two duplexes (2430-36 Fulton) fourplex (2185 Dwight)	R-3 (2424-36 Fulton) R-S (2175-85 Dwight)	High Density Residential

**Table 2: Special Characteristics**

Characteristic	Applies to Project?	Explanation
Alcohol Sales/Service	N	No commercial space proposed.
Creeks	N	No protected creeks or culverts within 40 feet of subject property.
Density Bonus	Y	Density bonus and concessions requested.
Historic Resources	Y	No demolition/alteration of designated landmarks proposed. However, Draft EIR evaluates potential aesthetic impacts on nearby City landmarks.
Affordable Housing	Y	Project will provide 8 units affordable to Very Low Income households.
Oak Trees	N	None on subject property.
Seismic Hazards	N	Subject property is not mapped within a designated seismic hazard area.
Soil/Groundwater Contamination	Y	Subject building is a former automotive facility; Draft EIR includes mitigation measures to address potential adverse impacts associated with disturbance/removal of residual contamination at the site.
Green Building Score	Y	Based on preliminary GreenPoint Rated Checklist, project would earn a green building score of 159 points, which would be equivalent to LEED Gold or higher.

**Table 3: Development Standards**

Standard		Proposed Total	Permitted/ Required
BMC Sections 23D.48.070-080			
Site Area (sq. ft.)		27,223	5,000 min.
Gross Floor Area (sq. ft.)		63,708 <sup>3</sup>	65,335 <sup>4</sup>
Floor Area Ratio		2.34	2.4 <sup>4</sup>
Dwelling Units	Total	77	No limit
	Affordable	7	None required if housing fee is paid; 7 required to qualify for full fee waiver
Building Height	Average (ft.)	54	35 (45 with Use Permit)
	Stories	5	3 (4 with Use Permit)
Building Setbacks (ft.)	Front (Dwight)	3	10 (0 with AUP)
	Rear (North)	10 (all stories)	10 (17 at 4 <sup>th</sup> story)
	West Side (Fulton)	3'-9" (all stories)	1 <sup>st</sup> story: 6 2 <sup>nd</sup> story: 8 3 <sup>rd</sup> -4 <sup>th</sup> stories: 10
	East Side	6' at middle volumes (all stories) 7' at north & south volumes (all stories)	1 <sup>st</sup> -2 <sup>nd</sup> stories: 4 3 <sup>rd</sup> story: 6 4 <sup>th</sup> story: 8
Lot Coverage (%)		54.6	60 <sup>5</sup>
Usable Open Space (sq. ft.)		8,900	3,850
Parking	Automobile	4-10 spaces for shared vehicles <sup>6</sup>	71 <sup>7</sup>
	Bicycle	234 <sup>8</sup>	0

<sup>3</sup> Per BMC definition of "Gross Floor Area," calculation excludes garage, stairs and elevator above the ground floor, and unenclosed walkways. See under "Key Issues," item 1 for further discussion.

<sup>4</sup> Does not include density bonus. Because there is no floor area limit in this district, this number is based on the maximum building footprint for a 4-story building (60%) times the lot area times 4 stories.

<sup>5</sup> 60% is the standard for a 4-story building; there is no standard for 5-story buildings in this district.

<sup>6</sup> Vehicle count to be adjusted as necessary to provide minimum 96 percent availability for resident trips.

<sup>7</sup> Per BMC 23D.12.050.B, unenclosed walkways and stairs have been included in parking calculation, because the parking standards were created based on an assumption that building circulation counts as floor area.

<sup>8</sup> Includes 154 in-unit ceiling-mounted spaces, 58 basement and ground-level lockers, 14 ground-level racks for visitors, and 8 sidewalk racks.

**Table 4: Project Chronology**

<b>Date</b>	<b>Action</b>
May 14, 2012	Application submitted
August 1, 2012	Application deemed complete
October 18, 2012	Initial Study and Notice of Preparation of EIR released
January 30, 2013	Draft EIR released
February 25, 2013	LPC/ZAB preview notices mailed/posted
March 7, 2013	LPC reviews demolition and Draft EIR; building not initiated for landmark status
March 14, 2013	ZAB conducts project preview and considers Draft EIR; requests that project be reviewed by Design Review Committee (DRC)
March 18, 2013	Draft EIR comment period ends
April 18, 2013	DRC meeting; project continued
May 16, 2013	DRC meeting; project continued
June 20, 2013	DRC meeting; project continued
July 18, 2013	DRC meeting; project given favorable recommendation to ZAB
September 26, 2013	ZAB public hearing notice and Response to Comments on Draft EIR distributed
October 10, 2013	ZAB public hearing

## **II. Project Setting**

### **A. Neighborhood/Area Description:**

The project site is located within the Southside area of the City, four blocks south of the UC Berkeley campus and one block east of Shattuck Avenue, one of the City's main commercial corridors. The site is primarily surrounded by multi-family residential uses, as detailed in Table 1 above. There are also a number of residential and commercial structures near the site that are designated as City of Berkeley Landmark structures (see Figure 1).

### **B. Site Conditions:**

The project site is developed with a one-story commercial building on the southern portion, fronting on Dwight Way, and a surface parking lot on the northern portion. The building was built in 1947 as an automobile dealership and service facility, and was converted to offices in 1983.

### III. Project Description

#### A. Changes from Previous Design:

The ZAB reviewed this project at a “preview” hearing on March 14. The current proposal includes several changes from the design previously considered by the ZAB. The most significant changes are as follows:

- Building height along Fulton Street reduced from five stories to four
- Total units reduced from 81 to 77
- Total floor area reduced by approximately 10,000 sq ft. (12 percent)
- Total residents reduced from 266 to 236 (11 percent)
- Setbacks from Fulton and Dwight increased by 3 feet
- Central ground-level courtyard (running north-south through middle of site) increased to 14 feet in width adjacent to interior volumes, and 15 feet at north and south volumes; other open spaces also increased
- Stairs and elevator relocated to improve privacy and sunlight by allowing interior volumes to be off-set from each other
- Roof farm added, height of elevator shaft increased to provide access (see below for further details)
- Basement plan revised to provide farm processing space and bike parking

#### B. Overall Description:

The proposed project would demolish the existing building and construct a new 5-story apartment building with 77 units and four to ten parking spaces for shared vehicles. The proposed units would be designed to appeal primarily to UC Berkeley students, would be fully furnished, and would include full kitchens and common living space. There would be 36 two-bedroom, 664-square-foot units, and 41 four-bedroom, 994-square-foot units. Seven of the proposed units (three two-bedrooms and four four-bedrooms) would be reserved for “very low income” households earning 50 percent or less of area median income. These Below Market Rate (BMR) units qualify the project for a 35-percent density bonus and two “concessions or incentives” under State density bonus law, and also exempt the project from the City’s new affordable housing mitigation fee for rental projects.

The proposed building would be composed of 18 distinct but connected volumes, ranging from three to five stories in height (a maximum of 52 feet tall). The 12 volumes forming the building’s perimeter would be five stories in height along the north and east sides of the building, and along the Dwight Way frontage (except at the southwest corner), and four stories along the Fulton Street frontage. The six interior volumes would be comprised of two three-story volumes at the center, two four-story volumes on the west side, and two five-story volumes on the east side. The building would be constructed using factory-built modules (two modules per two-bedroom unit, and three modules per four-bedroom unit). This approach is intended to reduce the length of construction and waste generated during the construction process.

**C. Rooftop Farm:**

As shown in the attached plans, the majority of the project's rooftops would be used for growing crops. The rooftop farm would be operated pursuant to BMC Section 23C.20.010.B, a zoning amendment adopted by the City Council in 2012, which allows "the sale or donation of non-processed edibles grown or raised on the premises ... as an accessory use in all residential districts", provided that certain requirements are met (see "Key Issues" for further discussion).

Further details of the farm's design and operation are provided in Attachment 4. The key elements of the farm would be as follows:

- Two to three employees would be needed to operate the farm.
- In accordance with one of the new zoning requirements, sales of farm products would occur within a "security and farm office" located at the entrance to the project on Dwight Way, and/or at farmer's markets in the area.
- Products and supplies would be delivered to and from the rooftop via the on-site garage and elevator.
- A lift within the garage would provide access to a "farm processing" area in the basement, with a wash station, freezers and refrigerators.
- In order to minimize erosion, dust, and the need for replacement of soils, the rooftop farming areas would include perimeter hedges to block the wind, and a liquid-based compost delivery system.

See "Key Issues" for further discussion.

**D. Parking/Transportation Benefits:**

As noted earlier, the project applicants have requested a concession under State density bonus law to waive the 71 off-street parking spaces required for the project (which would otherwise be provided in a two-level underground garage) and instead provide a small ground-level garage with space for four to ten shared vehicles. The number of vehicles would be adjusted as necessary to ensure that vehicles are available for at least 96 percent of residents' desired trips. Residents would have access to these vehicles as part of their leases, and the applicants would manage the car sharing service using software provided by "Getaround", an online car sharing service. Further details of the proposed car sharing program are provided in Attachment 4. Also see "Key Issues" for further discussion.

The project also includes 234 bicycle parking spaces, comprised of 154 ceiling-mounted spaces within the dwelling units, 58 basement and ground-level lockers, 14 ground-level racks for visitors, and eight sidewalk racks intended for visitors. In addition, the applicants have agreed to provide at least two monthly transit passes per unit, and Bike Link locker cards with an initial value of ten dollars (good for 200-300 hours) for every resident.



Based on the proposed car sharing service, bike parking and transportation benefits, the project has qualified for GreenTRIP certification, a program operated by TransFORM, a sustainable transportation advocacy group.

#### **IV. Community Discussion**

##### **A. Neighbor/Community Comments:**

Prior to submitting the application to the City, a yellow pre-application poster was erected at the site by the applicants. On September 26, 2013, the City mailed 557 notices to property owners and occupants within 300 feet of the site, and to neighborhood organizations requesting notification of projects within this area. Comment letters submitted in response to the public hearing notice (and other non-EIR comments) may be found in Attachment 14. Comments submitted in response to the Draft EIR are provided in the RTC document (Attachment 5).

##### **B. Landmarks Preservation Commission:**

The Landmarks Preservation Commission (LPC) considered the proposed demolition on March 7, 2013, and did not initiate the building for landmark status. The LPC also provided comments on the Draft EIR, which are provided in the RTC document, along with responses.

##### **C. Design Review Committee:**

Per BMC Section 23E.08.020.A, design review is not required for entirely residential projects in the R-S District. However, at the ZAB's request, the Zoning Officer required that the project be reviewed by the Design Review Committee (DRC). From April 18 to July 18, 2013, the DRC held four meetings on the project, and granted the project a unanimous favorable recommendation with one member abstaining at the July 18 meeting, with the following conditions to be addressed at Final Design Review:

- Committee was mixed on whether bike parking in the units was adequate as the only option for residents.
- Look at proposed window coverings at FDR.
- Provide more detailed layout of open space seating at FDR. Benches should have backs.
- Final design of fence shown on Fulton will be reviewed at FDR. Darker finish on fence will fade away and allow more view of landscape beyond.
- Corten steel edge on sidewalk planter may not be appropriate in this location. Provide design alternate at FDR.
- Street trees should be shown accurately in renderings.

An analysis of the project's consistency with the Southside Plan Design Guidelines is provided on pages 21-22.

## V. Issues and Analysis

### A. Key Issues:

1. Density Bonus and Concessions: As noted earlier, the project is entitled to a density bonus and two concessions or incentives under Government Code Section 65915. Under the City's density bonus procedures, the project's "base project"<sup>9</sup> has been calculated at 64 units and 3 stories (35 feet) tall, with a lot coverage of 65 percent. Based on the applicants' commitment to provide seven BMR units (10.9 percent of the base project), the project qualifies for a density bonus of 32.5 percent, or 21 units, which would increase the total allowable units to 85. However, in order to address community concerns about the overall mass and bulk of the project, the applicants have requested a bonus of only 13 units. The project's density bonus calculations are provided in Attachment 6, and illustrative graphics showing the base project are provided in Attachment 8.

The calculations in Attachment 6 are consistent with staff's determination that the project's unenclosed walkways do not meet the Zoning Ordinance definition of lot coverage and need not be counted in the base project. However, concern was expressed during the DRC meetings that these walkways should be counted, and that by not counting them, the allowable size of the project was being artificially inflated. In order to address this concern, the applicants decided to further reduce the project size so that even if the walkways were counted as coverage, the project would still comply with the Zoning Ordinance and density bonus law. The applicants have provided alternate density bonus calculations (see Attachment 7) which show that if the walkways are counted, the base project would be reduced to 57 units, which would qualify for a density bonus of 20 units. Therefore, whether or not the walkways are counted, the project would not exceed the maximum allowable density bonus based on the R-S development standards.

Pursuant to Government Section 65915(e)(1), the applicants have requested the following waivers and reductions to accommodate the additional density permitted under State law:

- Increase in maximum building height from four stories (45 feet) to five stories (54 feet)
- Reduction of (Fulton) street side setback requirement from 6, 8, or 10 feet (depending on story) to 3 feet, 9 inches for all stories;
- Reduction of rear yard setback requirement at fourth story from 17 feet to 10 feet; and
- Reduction of east side setback requirement at fourth story from 8 feet to 6 feet at middle volumes and 7 feet at north and south volumes.

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<sup>9</sup> The "base project" is the project that could be built on the site without any additional Use Permits to expand the building envelope (e.g. through increased height or reduced setbacks) or waive development standards for parking, open space, etc.

In addition, the applicants have requested two concessions or incentives under Government Section 65915(d):

- The first concession would allow two two-bedroom units that would otherwise be located on the ground floor of the base project to be located on the fifth floor, thereby expanding the building envelope by approximately 1,300 square feet. The purpose of this concession is to allow a resident lounge and a security and farm sales office to be provided on the first floor without reducing the number of dwelling units in the project. This request can be accommodated with the waivers/reductions already required for the density bonus, such that no further waivers/reductions would be needed.
- The second concession would allow a reduction of the project's off-street parking requirement from 71 spaces to between four and 10 spaces for shared vehicles, primarily to avoid the need for an underground garage. (See under "Key Issues" for further discussion.)

Government Code Section 65915(d) provides that the City may deny a concession if it finds "the concession ... is not required in order to provide for affordable housing costs ... or for rents for the target [affordable] units...." The City's established procedure for determining whether this finding can be made is to request a *pro forma* from the applicants showing the rate of return on investment (ROI) under four scenarios:

1. Base project without affordable units (but with housing mitigation fee)
2. Base project with affordable units (and without fee)
3. Project with density bonus but not concession(s)
4. Project with density bonus and concession(s)

This approach shows the cost to the applicants of providing the affordable units (in terms of impact to ROI), and whether the density bonus and concession(s) compensate the applicants for these costs through additional revenues. This approach supports the main purpose of the Density Bonus Law, which is to promote construction of affordable housing by providing developers with adequate financial incentive to do so. It also helps the City ensure that concessions are not granted without a clear basis for doing so.

The applicants' *pro forma* is provided in Attachment 9. The *pro forma* shows that the project's ROI would change in the four scenarios described above as follows:

**Table 5: Financial Impact of Density Bonus and Concessions**

		<b>Scenario 1: Base Project</b>	<b>Scenario 2: BMR Units Added</b>	<b>Scenario 3: Density Bonus Added</b>	<b>Scenario 4: Concessions Added</b>
Dwelling Units	Market Rate	57	51	70	70
	BMR	0	6	7	7
	Total	57	57	70	70
Affordable Housing Fee		\$1.14 million	0	0	0
Parking Spaces		53	53	72 <sup>10</sup>	4-10
<b>Return on Investment</b>		<b>5.7%</b>	<b>5.4%</b>	<b>5.2%</b>	<b>5.7%</b>

As shown above, the ROI in Scenario 4 (the proposed project) would not exceed the ROI in Scenario 1. Therefore, based on State law, the requested concessions must be granted.

Given the size of the requested parking concession, staff has conducted a more extensive review of the pro forma than in previous cases. Staff conferred with City Housing staff to verify that the BMR rents in the pro forma comply with applicable regulations. Staff also required a third-party review of the pro forma by Economic and Planning Systems, Inc. (EPS), a Berkeley-based consulting firm with expertise in land use economics and project feasibility analysis. As discussed in the attached memo (see Attachment 10), EPS has reviewed the pro forma and has determined that the revenues, vacancy rate, construction costs, and soft costs fall within a reasonable range for similar types of development.

The EPS memo notes that all scenarios would generate a rate of return that is lower than the typical expected rate of 7.5 percent for urban multi-family development. However, as the memo notes, there are often legitimate reasons why a developer may choose to accept a lower rate of return, such as expectation of cost savings from a shorter construction period, strong tenant prospects and fast lease-up, anticipation of future improvements in market conditions, access to low-cost funding, long-term value appreciation prospects, or pioneering new construction methods to be applied to future projects.

It should be noted that State density bonus law does not define the rate of return that is considered feasible. As stated in Government Code Section 65915(d) and (k), density bonus law provides that concessions are proposed by the applicants (rather than determined by the City) in order to provide “identifiable, financially

<sup>10</sup> Applicant’s parking number is higher for this scenario than the actual requirement of 71 spaces, because applicant’s pro forma included 1,000 sq. ft. of common space, which is not counted toward the parking requirement as it does not contribute to parking demand. This discrepancy does not change the basic findings of the pro forma.

sufficient, and actual cost reductions.” As the EPS memo notes, the proposed concessions do improve the project’s financial feasibility, and there are legitimate reasons why a lower rate of return may be accepted by the applicants. The applicants have proposed the above concessions based on their expectation that they will be financially sufficient to justify construction of the project. Therefore, granting the requested concessions with a lower rate of return than is normally considered acceptable is not inconsistent with State law.

2. Shared Parking Program: Although the parking waiver is necessary to provide for the project’s affordable housing costs and must therefore be granted under State law, staff has nevertheless conducted a thorough analysis of the impacts of this waiver on neighborhood parking supply, recognizing that this is often an area of great concern.

As noted earlier, the project includes a small ground-level garage with space for four to ten shared vehicles, which would be provided and managed by the applicants. Residents would have access to these vehicles as part of their leases. The number of vehicles provided would be increased as necessary to maintain an availability rate of 96 percent of residents’ trips. In order to ensure the program’s effectiveness in meeting this goal, and in reducing resident car ownership and parking demand, the applicants have agreed to a yearly review by Transportation staff. The applicants have also agreed that if transportation staff determine that the applicants are not effectively managing the program to meet the above goals, the spaces will be offered to a recognized car sharing service such as City Carshare or ZipCar. These requirements have been included in the attached conditions of approval (see Condition 48).

In order to provide adequate data for the ZAB to determine whether the requested parking reduction would have substantial adverse impacts on neighborhood parking supply, staff required a study of the project’s parking demand by Nelson/Nygaard (see Attachment 11). Nelson/Nygaard surveyed residents and visitors of three nearby student-oriented housing projects with relatively low parking ratios to determine car ownership rates and trip mode choice (walk, bike, transit, drive alone, etc.). Based on the survey results, and data on car sharing from the Transportation Research Board, the study estimated the number of vehicles that would need on-street parking as follows:

**Table 6: Estimated Private Vehicles**

Number of Shared Vehicles	Total Private Vehicles <sup>11</sup>	Private Vehicles Parked Off Street <sup>12</sup>	Private Vehicles Parked On Street <sup>13</sup>
0	35 (236 residents x 15%)	21	14
4	15 [35 - (4x5)]	6	9
5	10 [35 - (5x5)]	4	6
6	5 [35 - (6x5)]	2	3
7+	0 [35 - (7x5)]	0	0

As indicated in the above table, increasing the number of shared vehicles would reduce the number of private vehicles, such that if the minimum of four shared vehicles were provided, nine private vehicles would be expected to require on-street parking, but if seven or more shared vehicles were provided, no private vehicles at all would be expected. The study also notes that the actual parking demand would likely be less than estimated above due to the following factors:

- “Because no off-street parking and no access to RPP [Residential Preferential Parking] will be provided at this development, the [project] will likely attract an even lower ratio of tenants with private vehicles than typical student-oriented private apartment buildings in Berkeley.”
- “Residents of [the project] may be expected to be more likely than residents of comparable apartment buildings to pay for off-site parking. This option, chosen by 40% of parkers at surveyed buildings, will be the only available option for those residents of the [project] who do choose to keep a vehicle. Off-street parking (both covered and uncovered) is regularly advertised for rent in this part of Berkeley.”
- “A small number of residents may choose to park vehicles overnight on-street in areas not covered by RPP zones. The nearest non-RPP area is located approximately 0.4 miles from the site, at Shattuck Avenue and Carleton Street. Although it would require a walk of 10-15 minutes from these locations to reach the project site, some residents may choose to park

<sup>11</sup> Based on 15% vehicle ownership rate from Nelson/Nygaard survey of nearby student-oriented developments, and reduction of 5 private vehicles per shared vehicle from Transportation Research Board study.

<sup>12</sup> “Off street” means a private, off-site garage or parking lot offering leased parking. Based on Nelson/Nygaard survey indicating that 40% of survey respondents owning a vehicle use such parking.

<sup>13</sup> Based on total private vehicles minus vehicles parked off street.

on-street overnight in these areas. It is generally not feasible for residents who do not have RPP permits to park in RPP areas, since this requires moving vehicles every two hours during the daytime to avoid tickets.”

Even if the above factors did not reduce the number of vehicles seeking on-street parking in the vicinity, there appears to be adequate on-street parking capacity to accommodate the worst-case estimate of nine vehicles. According to a parking survey conducted by the applicants’ transportation consultant in March 2012 (see Attachment 12), 15 percent (18-19 spaces) of the 124 on-street parking spaces located on Dwight Way between Shattuck and Ellsworth, and Fulton Street between Channing and Parker, are typically available during weekday evening hours. Based on this data, and the data provided in the Nelson/Nygaard survey, staff believes that the project will not have a substantial impact on the availability of on-street parking in the vicinity. In addition, it should be noted that the proposed shared parking program is likely to result in an overall reduction in vehicle trips and greenhouse gas emissions from a more conventional, larger parking garage, which would be consistent with the City’s climate action goals.

3. Historical Resources: As noted earlier, there are several City landmarks in the immediate vicinity of the site, including three directly across Fulton Street to the west (see Figure 1). Although the project would not have any direct physical impacts on these landmarks, the Draft EIR includes an analysis of whether the proposed five-story building would alter the setting of these landmarks to a degree that would affect their significance as historical resources under CEQA. The Draft EIR concluded that, while the building would change the setting of the landmarks somewhat, no significant impacts would result, for the following reasons:

- The project would not demolish a building, or eliminate an undeveloped open space or scenic view, associated with the late 19th century Dwight Way Station neighborhood. The subject building is much later than the period of significance of Dwight Way Station.
- The association between the Fulton Street Landmarks and the commercial buildings near Dwight and Shattuck has already been somewhat altered by the demolition of nearby structures from the same period, namely the Haste Mansion at the project site, and dwellings at the northwest corner of Dwight and Fulton, leaving a significant gap in the original neighborhood fabric.
- The surrounding neighborhood is already characterized by a wide variety of building heights, setbacks, sizes, ages, and architectural styles, which have also altered the original setting of the Fulton Street Landmarks. For example, the three-story apartment buildings north of the project site on the east side of Fulton Street have no setback and are generally taller and bulkier than the Fulton Street Landmarks.

- The project site is not directly adjacent to the Landmark structures, and the perceived scale and bulk of the new building would generally be less than that of other large buildings in the neighborhood, because the project is divided into 18 smaller volumes rather than a single large volume.

The City has responded to all comments regarding historical resource issues in the attached RTC document. None of the information presented in these comments changes the above conclusions.

4. Rooftop Farm: As noted earlier, the project's rooftop farm has been proposed pursuant to a recent zoning amendment which makes the farm a "by-right" use, provided it complies with the following requirements:
  1. Sales are directly to the end consumer of the Non-Processed Edibles<sup>14</sup> (i.e., not to wholesale or commercial customers).
  2. Sales-related activities take place between the hours of 8 a.m. and 8 p.m. and are located either indoors or in an area generally shielded from view from the public right-of-way to the extent practical based on the accessibility of the subject lot.
  3. The sale of Non-Processed Edibles does not involve hazardous materials or processes or create offensive or objectionable noise, vibration, odors, heat, dirt, or electrical disturbance perceptible by the average person beyond the lot line of the subject lot.
  4. The sale of Non-Processed Edibles does not involve more than ten customer visits to the premises in one day.

These requirements have been included in the attached conditions of approval (see Condition 49) to ensure compliance. In addition, the Design Review Committee, based on input from the Committee's landscape architect, reviewed the applicants' "Design and Operation Overview" (Attachment 4), and concluded that the farm had been appropriately designed to avoid adverse impacts such as dust and erosion. Therefore, staff believes the farm will comply with the requirements of Section 23C.20.010.B and no detrimental impacts to the neighborhood will occur. Furthermore, the farm will help improve the community's health and reduce greenhouse gas emissions by providing locally grown, organic produce.

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<sup>14</sup> Under the Zoning Ordinance, "Non-Processed Edibles" are defined as follows: "Foods, including fruit, vegetables, nuts, honey, and shell eggs from fowl or poultry, grown or raised in accordance with the Berkeley Municipal Code, that are whole and intact and have not been processed, but not including cannabis as defined in Chapter 12.26 or meat. Washing, trimming, bundling, and similar handling of otherwise whole and intact foods shall not be considered processing."



5. Other Impacts Discussed in EIR: In addition to historical (i.e., cultural) resources, the Draft EIR also considers whether the project would have any significant impacts in the topics of aesthetics or hazards and hazardous materials. All other required topics were discussed in the initial study and determined not to involve any significant and unavoidable impacts from the project. The impacts identified in the EIR, along with required mitigations for each impact, are as follows:

- Impact HAZ-1: With development of the parking garage variant, construction activities may encounter contaminated soil and groundwater which could pose a risk to public health or the environment.

Mitigation: A Soils and Groundwater Management Plan (SGMP) must be submitted to the City's Toxics Management Division (TMD) for review and approval prior to issuance of a building permit. The SGMP would provide further details regarding how the contractor would comply with applicable regulations for the handling of any contaminated soil or groundwater encountered during construction. This mitigation would reduce the impact to less-than-significant.

- Impact HAZ-2: Hazardous materials transport and use during construction activities could result in adverse effects to public health or the environment.

Mitigation: The contractor must designate suitable areas for storage of hazardous construction materials, maintain Material Safety Data Sheets on the site, promptly repair and leaking vehicles, and other routine safety procedures. This mitigation would reduce the impact to less-than-significant.

- Impact HAZ-3: Demolition of the existing project site building may result in the release of lead, asbestos, and/or other hazardous materials which could pose a risk to construction workers, the general public, and the environment.

Mitigation: A hazardous materials survey must be prepared and submitted to the TMD prior to start of construction. The survey would identify asbestos, lead-based paint, and similar materials that could be disturbed during demolition, and would include procedures for proper removal and disposal of such materials. This mitigation would reduce the impact to less-than-significant.

## **B. General and Area Plan Consistency:**

General Plan Policy Analysis: The 2002 General Plan contains several policies applicable to the project, including the following:

### **Compatibility with Design and Scale of Surrounding Area:**

1. Policy LU-3 Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy UD-16 Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
3. Policy UD-17 Design Elements: In relating a new design to the surrounding area, the factors to consider should include height, massing, materials, color, and detailing or ornament.
4. Policy UD-24 Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.
5. Policy UD-25 Facades and Exterior Features: Buildings should have significant exterior features and facades that stimulate the eye and invite interested perusal.

Staff Analysis: As noted earlier, the project has received a nearly unanimous favorable recommendation from the DRC, with one member abstaining, and the current design includes numerous changes from the original design that improved its relationship to surrounding buildings. Most notably, the building's mass and bulk are broken into 18 individual volumes, rather than a single large volume, thereby providing a more harmonious and pleasing relationship to smaller buildings in the vicinity, and reducing shadows on the public right-of-way and adjacent properties. In addition, the building will have high-quality, attractive materials and landscaping, and the facades will be well articulated with window boxes and wood panels to provide a rich, visually interesting texture and rhythm.

### **Pedestrian Environment/Landscaping:**

6. Policy UD-26 Pedestrian-Friendly Design: Architecture and site design should give special emphasis to enjoyment by, and convenience and safety for, pedestrians.

7. Policy UD-30 Planting: Ensure that, where feasible, new developments respect and contribute to the urban landscape by retaining existing on-site trees and/or, if appropriate, planting suitable new ones on-site or in the street right-of-way.

Staff Analysis: The project would substantially improve the appearance and pedestrian friendliness of the site by removing a relatively unattractive building with no setbacks, and a surface parking lot, and constructing an attractive, appropriately scaled building with street-level landscaping and new street trees.

**Affordable Housing:**

8. Policy H-1 Low and Moderate Income Housing: Increase the number of housing units affordable to low- and moderate-income Berkeley residents.

Staff Analysis: As noted earlier, the project would provide seven affordable units to very-low-income households, which would help the City to meet its affordable housing goals.

**Sustainability:**

9. Policy H-13 Energy Efficiency: Improve the safety and energy efficiency of new and existing homes and apartments.
10. Policy EM-5 "Green" Buildings: Promote and encourage compliance with "green" building standards.
11. Policy UD-33 Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: The project will comply with the California Energy Code, one of the nation's strictest codes in terms of energy efficiency. In addition, the project includes a number of advanced "green" features that reduce greenhouse gas emissions and help achieve the City's climate action goals, including manufactured housing techniques, shared parking, transit passes, bicycle parking, and a rooftop farm.

Southside Plan Policy Analysis: The Southside Area Plan, adopted in 2011, also contains several policies applicable to the project, including the following:

1. Policy LU-A1.A: Encourage a variety of housing types to be built in the Southside, including houses, condominiums, townhouses, apartment buildings, group living quarters, and loft-style housing, and encourage owner-occupied housing, rental housing, cooperatives and co-housing.
2. Policy LU-F2: A variety of building types are recommended, including houses, condominiums, townhouses, apartment buildings, group living facilities, and loft-

style housing that would serve a variety of populations including students, families, UC staff and faculty, and others who desire to live in this vibrant, easily-accessible neighborhood.

Staff Analysis: The project increases the quantity and variety of housing in the Southside by providing an unusual building form with individual volumes allowing greater sunlight and privacy, and by providing unusually large, four-bedroom dwelling units.

3. Policy LU-A1.B: Require that new housing developments include units that are affordable to households that qualify as low income through the City's inclusionary housing ordinance or other regulatory mechanism.

Staff Analysis: The project includes seven dwelling units that will be affordable to "very low income" households (earning no more than 50 percent of area median income).

4. Policy LU-A1.E: Adopt zoning regulations for new R-SMU and R-S zoning districts with relaxed standards pertaining to parking, open space, lot coverage, and setbacks to encourage additional housing development.

Staff Analysis: As noted in Table 4 above, the project includes a request for a reduced front setback, in accordance with the R-S regulations. This reduction allows greater separation of the building's mass and bulk, without compromising the architectural integrity of the surrounding neighborhood. See item 9 below for further discussion.

5. Policy LU-C1: Suitable sites that are the highest priority for redevelopment and reuse in the Southside, in order of priority, include: ... D. Surface parking lots... E. Underutilized lots with single-story structures that are not historically significant....
6. Policy LU-F1: Housing is the recommended land use in the Residential Subareas and is the preferred land use for all opportunity sites in these subareas.
7. Policy LU-F4: Encourage new residential development in the R-S Residential High Density Subarea.
8. Policy LU-F5: Encourage housing to be built on surface parking lots in the Residential Subareas.

Staff Analysis: The project site is consistent with these policies because it introduces an appropriate amount of additional residential density to an underutilized site developed with a surface parking lot and single-story commercial building that does not offer an important benefit to the surrounding neighborhood.

9. Policy LU-F6: Ensure high quality architectural design for new construction in the Residential Subareas. A. Require project conformance with the Southside Design Guidelines to ensure that new buildings are compatible with the architectural character in these subareas.

Staff Analysis: The project is consistent with the Southside Design Guidelines, as follows:

- Building Mass and Height: New buildings should respect and respond to the pattern of residential height and massing of buildings in the subarea.

Analysis: The building provides a reduced four-story height along Fulton Street in order to respect the smaller scale and height of the buildings on the west side of Fulton Street. The building's overall height of five stories is not incompatible with the surrounding area, which has a large number of buildings of similar height, and the building's massing responds to its context due to the separation of the massing into 18 separate volumes.

- Setbacks: New building setbacks should conform with the neighborhood fabric and reflect or complement adjacent buildings.

Analysis: The proposed setbacks from Dwight Way and Fulton Street are appropriate given the setbacks and architectural design of surrounding buildings. The existing building, which is approximately 20 feet tall, has no setback along this frontage, and the project will improve this condition. In addition, there are several other buildings in the immediate vicinity (e.g. 2170, 2180 and 2200 Dwight, 2425 Fulton, 2206 Haste) with no setback, or minimal setback, from the street frontage, and the project will therefore be consistent with the existing development pattern of the immediately surrounding area.

- Building Design: The roof shape or cornice should be articulated in a manner to be compatible with the rooflines in the subarea. Where there is a prevailing pattern of roof pitch. Building façades should be articulated and roof orientation, the roof pitch and orientation of new buildings should complement the design of nearby buildings, particularly the historic ones.

Analysis: The project's flat roofs are compatible with the character of the surrounding neighborhood, which includes a number of similar roof forms, including the adjacent buildings at 2425 Fulton and 2206 Haste, and the buildings immediately across Dwight Way at 2180, 2208, and 2216 Dwight. While the building roofs on the west side of Fulton Street are pitched, this exemplifies the neighborhood's eclectic architectural character, rather than a prevailing pattern.

- **Materials:** New façade materials should be of high quality and durability. Building materials and details should be consistent throughout.

**Analysis:** The project includes attractive, high-quality materials that will contribute to the architectural richness of the neighborhood. The DRC carefully reviewed the proposed materials and found them to be adequate.

10. **Policy LU-F17:** Encourage and support transit and other alternatives to automobile use in the Southside. ...b. Residents of new housing that is constructed without parking in the Car-Free Overlay area shall not be eligible for Residential Parking Permits.

**Staff Analysis:** Although this project is not located in the Car-Free Overlay area, it is consistent with the spirit of this policy because it provides shared parking rather than individual private parking spaces, and it prohibits RPP permits for residents.

## VI. Recommendation

Based on the project's consistency with the City's Zoning Ordinance and General Plan (within the constraints of density bonus law), its lack of detrimental impacts on surrounding properties, and its benefits to the City's general welfare and surrounding neighborhood, Staff recommends that the ZAB:

- A. CERTIFY the project's EIR (see Attachment 1, Finding 1);
- B. ADOPT required CEQA findings and the Mitigation Monitoring & Reporting Program (see Attachment 1, Findings 2 and 3 and Exhibits A and B); and
- C. APPROVE Use Permit #12-10000021 pursuant to BMC Section 23B.32.040 and subject to the attached Findings and Conditions and Project Plans (Attachments 1 and 2).

### Attachments:

1. Findings and Conditions
  - Exhibit A – CEQA findings
  - Exhibit B – Mitigation Monitoring & Reporting Program
2. Project Plans, received October 4, 2013
3. Shadow Studies
4. Applicant Statement (includes Rooftop Farm and Car Sharing information)
5. Response to Comments Document\*
6. Density Bonus Calculation (walkways not counted)
7. Alternate Density Bonus Calculation (walkways counted)
8. Density Bonus Graphics
9. Applicant's Pro Forma for Concession Request
10. EPS Memo (Pro Forma Analysis)
11. Nelson/Nygaard Report on Parking
12. Applicant's Parking Survey

13. Notice of Public Hearing (postcard and poster formats)
14. Correspondence Received (not including comments on EIR; see Att. 4)

\* Hard copies of the RTC document were provided to the ZAB on September 25.  
Hard copies are available to others upon request.

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