



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
DECEMBER 10, 2015

2539 Telegraph Avenue

Use Permit #2013-0061 to demolish an existing 7,100 square foot, 1-story office building to construct a 65,489 square foot, 6-story, 70' tall, mixed use building with 70 residential units, 5,219 square feet of commercial floor area (retail floor area or food service with incidental service of beer and wine), 9 automobile and 144 bicycle parking spaces.

I. Application Basics

A. Land Use Designations:

- General Plan: Avenue Commercial, Medium Density Residential
- Southside Plan
- Zoning: C-T (Telegraph Avenue Commercial) and R-3 (Multiple Family Residential)

B. Zoning Permits Required:

- Use Permit to demolish a main building (BMC Section 23C.08.050.A);
- Use Permit to allow more than 5 bedrooms in the R-3 District (BMC Section 23D.36.060);
- Use Permit to construct a mixed-use development (BMC Section 23E.56.030.A);
- Use Permit to create more than 1,500 square feet of new floor area (BMC Section 23E.56.050.A.2);
- Use Permit to allow architectural features to exceed the height limit (BMC Section 23E.04.020.C);
- Use Permit to reduce the side yard setback below 5' when adjacent to a residential district (BMC Section 23E.04.050.E);
- Administrative Use Permit to establish a full service restaurant greater than 1,500 square feet (BMC 23E.56.030.A);
- Use Permit to establish a quick service restaurant greater than 1,500 square feet, (BMC Section 23E.56.040.B);
- Use Permit to exceed the numerical limitations for quick service restaurants (BMC 23E.56.040.A); and
- Administrative Use Permit to allow incidental sales of beer and wine within a quick or full service restaurant (BMC 23E.56.030.A).

C. Waiver/Modifications Pursuant to State Density Bonus Law:

- To exceed the height/story limit of 50'4 stories to propose 70'6 stories in the C-T District;
- To exceed the height/story limit of 35'3 stories to propose 41'6"4 stories in the R-3 District;

- To reduce the minimum interior sideyard setback from 4' to 0' in the R-3 District;
- To exceed the maximum allowable lot coverage limit of 35% in the R-3 District, and
- To reduce the minimum setback from Regent Street from 15' to 2' in the R-3 District.

D. Concession Pursuant to State Density Bonus Law:

- Reduce the R-3 District residential parking requirement from 9 required spaces to 3 spaces to allow for 6 spaces to be used by any tenant or occupant of the building.

E. CEQA Determination:

The project is eligible for streamlined review for infill projects pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15183.3. The City determined that the infill project would result in new specific effects or more significant effects than what was analyzed under the Southside Plan EIR and prepared an Infill Environmental Impact Report (EIR). The Draft EIR was distributed to the members of the Zoning Adjustments Board (ZAB) and Landmarks Preservation Committee (LPC) and made available for public review on November 3, 2014. The public review and comment period on the Draft EIR ended on January 2, 2015. The Response to Comments document of the EIR was made available on June 4, 2015, and included Responses to Comments, as required by law, and changes to the Draft EIR. On June 11, 2015, the ZAB Certified the EIR (See Attachment 1 for Resolution). An Addendum was prepared to reflect the changes made to the project after the EIR was Certified (See Attachment 2 for Addendum).

F. Parties Involved:

- Applicant Daniel Backman, Lowney Architecture
360 17th Street, Suite 100
Oakland, CA 94612
- Property Owner Panoramic Interests
2116 Allston Way, Suite 1
Berkeley, CA 94704

Figure 1: Vicinity Map



Figure 2: Ground Floor Plan - June 2015



Figure 3: Ground Floor Plan - December 2015



Figure 4: Floor Plan, Floors 2 - 4 June 2015



Figure 5: Floor Plan, Floors 2 - 4 December 2015



Figure 6: Floor Plan, Floors 5 - 6 June 2015

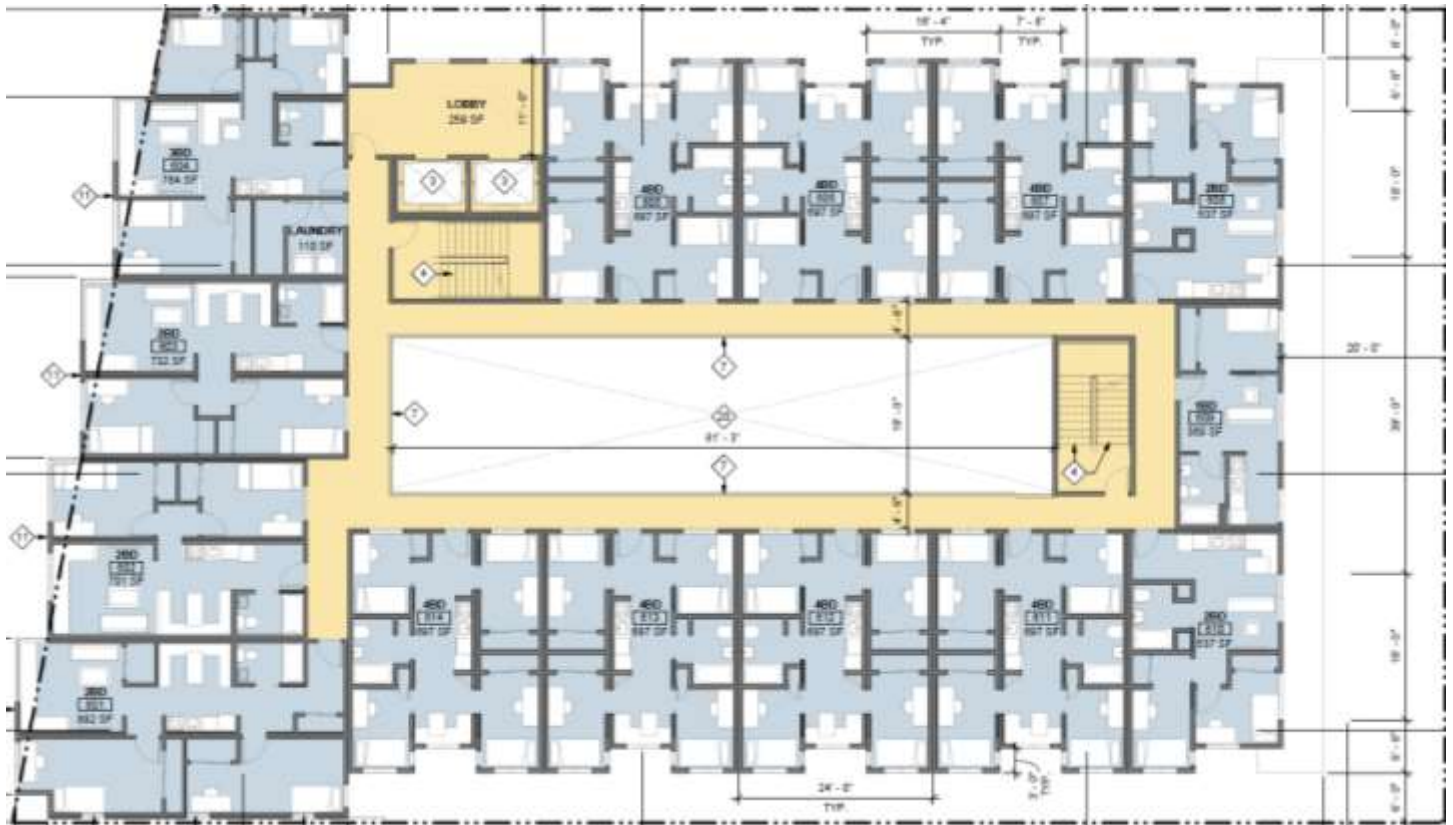


Figure 7: Floor Plan, Floors 5 - 6 December 2015



Figure 8: North Elevation - June 2015



Figure 9: North Elevation - December 2015



Table 1: Land Use Information

Location		Existing Uses	Zoning District	General Plan Designation
Subject Property		Office (Former Center for Independent Living)	C-T, R-3	Avenue Commercial, Medium Density Residential
Surrounding Properties	North	Restaurant/retail (2529 Telegraph); 8-unit apartment building (2520 Regent)	C-T, R-3	Avenue Commercial, Medium Density Residential
	South	Restaurant/retail (2565-89 Telegraph); Triplex (2526-30 Regent)	C-T, R-3	Avenue Commercial, Medium Density Residential
	East	16-, 17- and 22-unit apartment buildings (2521-31 Regent)	R-3	Medium Density Residential
	West	4-story, 45-unit mixed-use building (2550 Telegraph), restaurant/retail building (2556 Telegraph)	C-T	Avenue Commercial

Table 2: Special Characteristics

Characteristic	Explanation
Affordable Housing Density Bonus	This project would provide 6 units affordable to “Very Low Income” households and is therefore eligible for a 35% density bonus with accompanying modifications and one concession (see Section V for details).
Affordable Housing Mitigation Fee	This fee is partially met with the inclusion of 6 VLI units, however, per 22.20.065; this project would still make a payment into the City’s Housing Trust Fund of \$80,000.
Affordable Housing/Childcare Mitigation Fees	The project would include less than 7,500 square feet of non-residential floor area and therefore the Affordable Housing and Childcare Mitigation Fees do not apply.
Alcohol Sales/Service	Incidental service of beer and wine is proposed within a quick or full service restaurant (ABC Type 41).
Creeks	No protected creeks or culverts within 30’ of subject property.
Green Building Score	Based on a preliminary checklist, the project would qualify for a GreenPoint Rated score of 110, which would be roughly equivalent to a LEED Gold rating.
Historic Resources	Demolition of National Register-eligible ¹ building proposed (not a designated City landmark). Pursuant to BMC Section 23C.08.050.C, the project was referred to the LPC for the proposed demolition on July 3, 2014. The LPC concurred with the findings in the Historical Resources Evaluation (HRE) regarding the historical significance of the building, and took no action to initiate landmark designation of the building.
Oak Trees	None on subject property.
Seismic Hazards	Subject property is not mapped within a designated seismic hazard area.
Soil/Groundwater Contamination	The project site is not listed on the Cortese List, Govt. Code Section 65962.5 (an annually updated list of hazardous materials release sites).

¹ For further information, see Historic Resource Evaluation at http://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_LPC/2014-07-03_LPC_ATT1_2539%20Telegraph_Historic%20Resource%20Evaluation.pdf.

Table 3: Project Chronology

Date	Action
December 30, 2013	Application submitted
April 27, 2014	Application deemed complete
June 26, 2014	Public Notice: EIR Notice of Preparation (NOP)/ Scoping Meeting
July 3, 2014	LPC conducts demolition referral and EIR scoping session. Initiates designation of City of Berkeley Landmark Structure of Merit for mural.
July 10, 2014	ZAB conducts EIR scoping session and project preview.
July 17, 2014	DRC conducts preliminary design review (continued to August 21 st)
July 28, 2014	End of 30-Day NOP comment period
August 21, 2014	DRC (continued from July 17 th)
September 4, 2014	LPC re-initiates designation of City of Berkeley Landmark Structure of Merit for mural
September 18, 2014	DRC (continued from August 21 st)
October 2, 2014	LPC hearing on designation of mural as City Landmark Structure of Merit (continued to November 6 th)
October 30, 2014	Public Notice Availability of Draft EIR, Public Comment, and Hearings for ZAB and LPC
November 3, 2014	Publication of Draft EIR
November 6, 2014	LPC hearing on designation of mural as City Landmark Structure of Merit (continued to December 4 th)
December 4, 2014	LPC Hearing on Draft EIR. LPC declines to designate mural as City Landmark Structure of Merit
December 11, 2014	ZAB hearing on Draft EIR
January 2, 2015	Close Draft EIR comment period (45-day comment period extended from December 17, 2014)
February 19, 2014 and March 19, 2014	DRC confirmation of Draft EIR
May 28, 2015	Public Notice ZAB hearing
June 5, 2015	Public Notice ZAB hearing and Certification of EIR
June 11, 2015	ZAB hearing on EIR and Use Permit. EIR Certified.
August – November 2015	Application Revised
November 24, 2015	Public Notice ZAB hearing
December 10, 2015	ZAB hearing

Table 4: Development Standards

Standard		Existing	Proposed		Permitted/Required	
			June 2015	December 2015	C-T	R-3
BMC Sections 23E.56.070, 23E.56.080, 23D.36.070 & 23D.36.080						
Lot Area (sq. ft.) - R-3 District		2,000	2,000	2,000	N/A	
Lot Area (sq. ft.) - C-T District		14,679	14,679	14,679	N/A	5,000
Lot Area (sq. ft.) - Total		16,679	16,679	16,679	N/A	
Lot Coverage (sq. ft.) - R-3 District			N/A	1,740	N/A	800
Lot Coverage (sq. ft.) - C-T District				14,679	14,679	N/A
Lot Coverage - Total		7,103	14,778	16,214		
Lot Coverage - %					100%	40%
Commercial Floor Area (sq. ft.)	Office	7,103	565	565	N/A	0
	Retail or Food Service	0	5,461	5,219	N/A	0
Residential Floor Area (sq. ft.)		0	60,135	58,193	N/A	
Gross Floor Area (sq. ft.) - Total		7,103	63,498	65,489	66,056	2,400
Floor Area Ratio		0.43	3.81	3.93	4.50 Max	N/A
Building Height	Average - R-3 District		N/A	70'	N/A	36'
	Average - C-T District	N/A	70'	52'	50'	N/A
	Stories - R-3 District		6	6	N/A	3
	Stories - C-T District	1	N/A	4	4	N/A
Building Setbacks C-T District	Telegraph Avenue	0	0	0	0	
	Interior Side - Ground Floor (when abutting R District)		0	0	5', all floors	
	Interior Side - Floors 2-6 (when abutting R District)		6' - 9'	6'6" - 9'	5', all floors	
	Interior Side - Ground Floor (when <u>not</u> abutting R District)	N/A	0	0	0	N/A
	Interior Side - Floors 2-6 (when <u>not</u> abutting R District)		6' - 9'	6'6" - 9'	0	
	Rear - Floors 2-4		15'	2' - 3'	N/A	
	Rear - Floors 5-6			30' - 35'	0	
Building Setbacks R-3 District	Interior Side - Ground Floor	N/A	N/A	0	N/A	4'
	Interior Side - Floors 2-4			6'6" - 9'	N/A	4' - 6'
	Regent Street	28'	15'	2' - 3'	N/A	15'
Dwelling Units	Affordable Units	N/A	6	6	6 Min	
	Market Rate Units		64	64	N/A	
	Total	0	70	70		
	Studio		6	6		
	1-Bedroom		0	0		
	2-Bedroom	0	15	18	N/A	
	3-Bedroom		12	15		
	4-Bedroom		26	31		
	Bedrooms - Total	0	176	211	N/A	
Usable Open Space (sq. ft.)	Private Patios		0	0		
	Common Area: 2 nd floor	N/A	1,543	1,634		
	Common Area: above 6 th floor		3,514	3,514		
	Total	N/A	2,646	5,148	4,240	
Parking	Residential	0	8	3	0	9
	Commercial	12		6		N/A
	Total	12	8	9	0	9
	Bicycle	0	72	144	3	N/A

II. Project Setting

- A. Neighborhood/Area Description:** The project site is located on the eastern side of Telegraph Avenue at Blake Street, one block south of Dwight Way. The site is located approximately 1/3 of a mile from the UC Campus and within the Southside Plan Area. This portion of Telegraph Avenue generally consists of 1 to 4 story commercial and mixed-use buildings, and abuts a medium-density residential neighborhood to the east. Photos of the surrounding area are provided in the project plans (Attachment 4).
- B. Site Conditions:** The 16,679 square foot site abuts Telegraph Avenue on the west and Regent Street on the east. The majority of the site is located in the Commercial Telegraph District (C-T); however, a 20' strip along the eastern frontage with Regent Street lies within the Multiple Family Residential District (R-3). The site is currently developed with a 7,103 square foot office building that was once the site of the Center for Independent Living (CIL).

III. Project Description

- A. Background:** As originally proposed, the Project would have had 6 stories and a maximum height of 70'. It would have had a gross floor area (GFA) of 67,180 square feet (including 6,000 square feet of ground floor retail space), 8 automobile parking spaces (6 spaces for employees of proposed retail uses, 2 spaces for city carshare vehicles and no parking for the dwellings), and 65 bicycle spaces. The ZAB reviewed this project at a project "preview" and EIR scoping session on July 10, 2014, and later on December 11, 2014, during the Draft EIR comment period. In response to comments made during the scoping sessions and comments on the DEIR, the project was changed. The most significant changes from the original 2014 project to the project last seen by the ZAB in June 2015 are listed below:
- Building shape changed from a T-shape with 16' – 6" side setbacks to a courtyard shape with 6' side setbacks and a 19' wide interior courtyard (this change happened after the July 2014 meeting but was already incorporated by the December 2014 meeting).
 - Stepped back massing of 5th and 6th floors facing Regent Street.
 - Reconfigured typical unit plans.
 - Added windows to interior-facing bedrooms to provide natural light and ventilation.
 - Replaced community room at each floor with a larger elevator lobby that would also include a lounge on each floor and relocated the laundry and utility rooms. The lounges would be furnished as resident community spaces and feature views of the Campanile.
 - Widened driveway at entrance per traffic engineering requirements.
 - Telegraph-facing storefront abuts street rather than following "saw tooth" pattern above.
 - Project includes request for food service with incidental beer/wine service.
 - Addition of Universal Design features.
- B. Revised Project - December 2015:** In response to comments made at the June 2015 hearing, the project was changed to increase the setback for floors 5 & 6 along Regent Street from 15' to a minimum of 30' to a maximum of 35'. To accommodate this setback, dwellings would be relocated from these floors to fill in a portion of the Regent Street

setback (see Figure 9 for details). The revised project would also now have more bike parking than before (144 spaces instead of 72) and would provide 3 ADA parking spaces instead of 1. The project would now also have a larger courtyard & trash room.

IV. Community Discussion

A. Neighbor/Community Outreach: A pre-application poster was erected by the applicant in November of 2013. Subsequent to submitting the application to the city, the applicant invited interested neighborhood organizations as well as owners and occupants within the vicinity to a project preview meeting on January 30, 2014, which was well attended.

On July 10, 2014 the ZAB conducted a noticed public hearing for a project preview and to receive comments on the scope of the EIR. On December 11, 2014, the ZAB held a noticed public hearing on the Draft EIR. At both meetings, several speakers voiced concerns over the project's height and density of as well as the potential traffic and parking issues.

On November 24, 2015, the City mailed 630 public hearing notices to property owners and occupants within 300' of the site, to interested neighborhood organizations and posted notices within the neighborhood in 3 locations. Comments are attached.

B. Design Review Committee: Starting in July 2014, the DRC reviewed the project over the course of 3 meetings and referred the project to ZAB with a positive recommendation on September 18, 2014 (4-2-0-0; Goring, Edwards- no).

C. CEQA: On June 11, 2015, the ZAB adopted a resolution to Certify the EIR (Attachment 1). To reflect the change to the project described in III.B of this report, the City prepared an Addendum to the EIR, as allowed by *CEQA Guidelines* Section 15164 which states: "The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred." (See Attachment 2 for Addendum).

D. Statement of Overriding Considerations [No change from June 11, 2015 Staff Report]: Because the EIR identified potential impacts to cultural resources, specifically the demolition of the CIL building and mural, would be significant and unavoidable, pursuant to Public Resources Code Section 21081 and CEQA Guidelines Sections 15091 *et. seq.*, the City must balance, as applicable, the economic, legal, social technological and other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project (14 C.C.R. 15093(a)).

To approve the project, the ZAB must first adopt a Statement of Overriding Considerations which concludes, based upon substantial evidence in the record before it, that the significant unavoidable impacts related to cultural resources, even after incorporation of all feasible mitigation measures, would be outweighed by the project's benefits and constitute an overriding considerations warranting approval of the project.

Staff has prepared the following points for consideration to provide a basis for a Statement of Overriding Considerations regarding the project's significant and unavoidable impacts:

1. The Project would provide infill development on an under-utilized site that embodies principles of sustainable planning and construction.
2. The Project would add 70 dwelling units to the City's housing stock, including 6 units that are affordable to very-low income households. This would increase the amount of housing, and affordable housing, in the City, directly advancing objectives and policies of the City's Housing Element including Objective 1, that Berkeley residents should have access to quality housing at a range of prices and rents, and Objective 3, that new housing should be developed to expand housing opportunities in Berkeley to meet the needs of all groups.
3. The Project will address State-mandated housing needs by providing 64-market rate units and 6 permanently affordable housing units for very-low income households. The very-low income and market rate units will help the City to satisfy the ABAG Regional Fair Share Housing Needs and are necessary to comply with the State's requirement that the City accommodate its share of regional housing needs, as described in the City's Housing element.
4. The Project will attract new retail tenants to Telegraph Avenue through improved retail space and an increase in the potential customer base. This will further Policy LU-14 of the City's Housing Element, which encourages production of mixed-use buildings with housing above retail uses throughout the Commercial (C-T) Subarea, as well as Policy LU-27 which encourages the creation of ground floor commercial areas in new development along Telegraph Avenue.
5. The Project will create 140 construction jobs and 25 ongoing jobs.
6. The Project will redevelop an underutilized site that was identified as a priority site and would promote the objectives and goals of the Southside Plan.
7. The Project will support use of alternative modes of transportation, including public transportation, bicycling, and walking, by constructing a nearly car-free housing development close to jobs, UC, and regional housing needs. This would promote policies of the City's Housing Element, including Policy H-12, to encourage construction of new medium- and high-density housing on major transit corridors in proximity to transit stations consistent with zoning, applicable area plans, design review guidelines, and the Climate Action Plan.
8. The Project would increase high density housing in close proximity to alternative forms of transportation. This would further express objectives and policies of the City's General Plan, including Land Use Element, Policy LU-23, to Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service; and Transportation Element, Policy T-16, to improve access by increasing proximity of residents to services, goods, and employment centers.
9. The Project will increase available housing supply in close proximity to the University of California, furthering express objectives and policies of the City's General Plan, including Housing Element Objective 5, Policy H-21, which encourages and promotes construction of additional housing for students, staff and faculty, within walking distance of the University campus.
10. The Project will incorporate Universal Design components into the Project, above and beyond ADA requirements. This would further express policies of the City's

Housing Element, including Policy H-24, to exceed California Title 24 Disabled Access Regulations to increase the proportion of housing throughout Berkeley that is accessible or adaptable for use by Berkeley citizens with physical disabilities.

11. The Project will increase the tax revenue from various sources for the City for the first year by an estimated \$52,000 above current levels.

The ZAB must adopt a Statement of Overriding Considerations in order to approve the project.

V. State Density Bonus Law

As noted earlier, because the project includes 6 dwellings that would be affordable to very-low income households, the project is entitled to a density bonus and concessions or incentives under Government Code Section 65915. The City’s base project procedures, and the math used to calculate the Density Bonus, are depicted in Table 6, below.

Table 6: Base Project, Density Bonus

City of Berkeley Step 1		Applicant Statement Step 2		State Law (Cal Gov't Code 65915) Step 3							
City of Berkeley Base Project		Based on the Proposed Project		Maximum Allowable Residential Density 65915(f)	Qualifying Units (for this Project) 65915(f)						
Residential Floor Plates	Floor	Residential Floor Plates	Dwellings		%VLI	Raw #	Rounded up	%DB Req.			
planner add # here only											
1,040	1 st	1,040	Total # of Dwellings		5%	2.35	3	20.0%			
14,238	2 nd	12,583	70		6%	2.82	3	22.5%			
14,238	3 rd	12,583			7%	3.29	4	25.0%			
13,810	4 th	12,583	Total # of Affordable Dwellings:		8%	3.76	4	27.5%			
0	5 th	9,702	6	Project Qualifies for this bonus →	9%	4.23	5	30.0%			
0	6 th	9,702	Income Level:		10%	4.7	5	32.5%			
0	7 th	0	VLI		11%	5.17	6	35.0%			
					Results						
Base Project Gross Square Feet	43,326	Proposed Project Gross Square Feet	58,193	Base Project	52	Bonus	18.2	Bonus (Rounded)	19	Total Units	71
		Average Unit Size:	831								
based on plans submitted by the Applicant, fact checked by City		Total of all proposed floors (58,193); / # of dwellings (70)		base project (43,326) / avg. unit size (831) (rounded down)		Base # Units (52) x 35% Bonus		35% Bonus (rounded up per 65915(f)(5))		base units (52) + DB Units (19)	

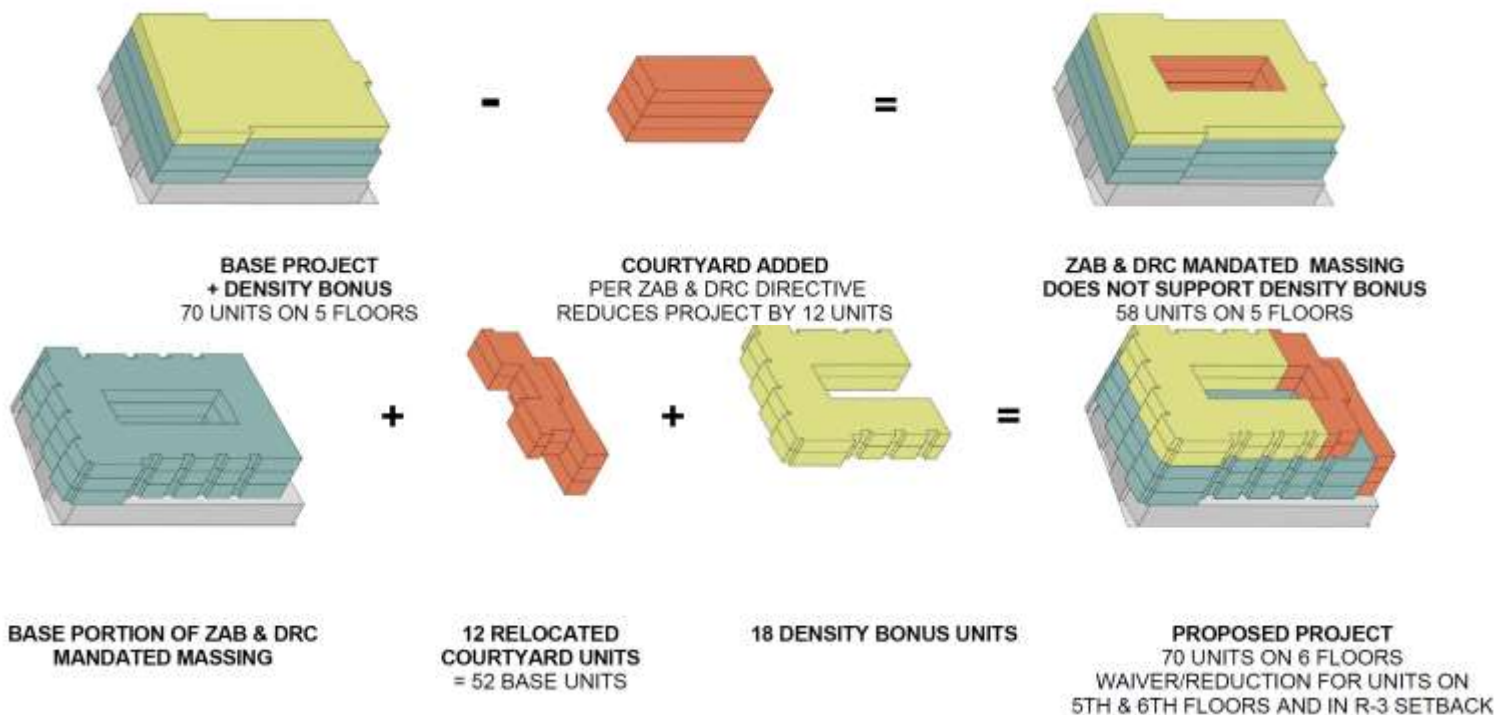
As shown above in Table 6, under the City’s density bonus procedures, the project’s “base project”² was calculated at 52 units and 4 stories. With the applicants’ commitment to provide 6 below market rate (BMR) units (11% of the base project), the project qualifies for

² 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.

a density bonus of 35% percent, or 18 units, which would increase the total allowable units to 71, but the applicant has only requested 70 dwellings.

The bonus could *fit* within 5 floors and be entirely within the C-T District, but as described in Section III.A of this report, the design was changed in 2014 at the request of the City to accommodate the central courtyard. This required the location of units on a 6th floor. Later, at the request of the ZAB in June 2015, the design was changed again to provide a greater setback for the 5th and 6th Floors. The direction provided by the City now requires the location of units on a 6th Floor and along Regent Street. Figure 10 provides a graphic depiction of the evolution of the design to show how the applicant revised the project to respond to direction from the City.

Figure 10: Base Project and Density Bonus Diagrams – December 2015



Pursuant to Government Section 65915(d), the applicants have requested the following concession or incentives under Government Section 65915(d):

- Reduce the R-3 District residential parking requirement from 9 required spaces to 3 spaces to allow for 6 spaces to be used by any tenant or occupant of the building.

To accommodate the density bonus that is required for this project, the applicant has requested the following waivers/modifications:

- To exceed the height/story limit of 50'4 stories to propose 70'6 stories in the C-T District;
- To exceed the height/story limit of 35'3 stories to propose 41'6"4 stories in the R-3 District;
- To reduce the minimum interior sideyard setback from 4' to 0' in the R-3 District;
- To exceed the maximum allowable lot coverage limit of 35% in the R-3 District, and
- To reduce the minimum setback from Regent Street from 15' to 2' in the R-3 District.

VI. General Plan and Zoning Ordinance Conformance

A. Demolition of Existing Building [No change from June 11, 2015 Staff Report]:

Following the referral to the LPC, BMC Section 23C.08.050.D allows the Zoning Adjustments Board to approve the Use Permit for demolition of the structure if the Board makes certain findings, including a finding that the demolition would not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City and a finding that the demolition is required to allow a proposed new building or new use.

Staff believes that the ZAB can find that the demolition of the structure would not be materially detrimental to the commercial needs of the neighborhood or the City, because the proposed building would provide replacement floor area with food service or retail uses within a mixed-use building that is designed to provide services to residents in the immediate vicinity. The Board can also find that the demolition is required in order to allow the proposed new mixed-use project to be built.

For the reasons stated above, Staff believes that the Board may grant a Use permit for demolition of the existing structure under BMC Section 23C.08.050.D. Project approval includes a condition of approval to ensure that the demolition of the existing buildings would not occur until complete construction plans are submitted to the City for the replacement building.

B. Mixed-Use Project with over 1,500 Square Feet of Floor Area [No change from June 11, 2015 Staff Report]:

BMC Sections 23E.56.030.A and 23E.56.050.A.2 allow mixed-use development in the C-T District, but require approval of a Use Permit, subject to the Board making a finding of Non Detriment, and the findings noted in Section 23E.56.090.B of the Zoning Ordinance. The Board may rely on these findings to consider the building as a whole (specific features of this project are addressed later in this report). In order to approve these Use Permits, the Board must find that a proposed use or structure must:

1. Be compatible with the purposes of the District;
2. Encourage and maintain the present street frontage of the District, will not interfere with the continuity of retail or compatible service facilities at the ground level and will not interrupt a continuous wall of building facades;
3. Be compatible in design and character with the District and the adjacent residential neighborhoods; and
4. Not generate traffic or parking demand significantly beyond the capacity of the Commercial District or significantly increase impacts on adjacent residential neighborhoods.

The required findings are evaluated as follows:

BMC §23E.56.090.B.1 requires that the project be compatible with the purposes of the District:

Staff Analysis: The project would include 70 housing units (including 6 affordable dwellings) and ground floor commercial within walking distance of the University of California and is located in an area that is well served by transit, including the rapid bus

line on Telegraph Avenue and the Downtown Berkeley BART stations within 1 mile of the site.

The project would further the purposes of the district in that it would create additional housing, and affordable housing, in the District for those who work or study nearby in a new mixed-use building. The project includes ground floor commercial that would cater to the needs of the District's population, especially the University population and the surrounding resident population. The project would also provide pedestrian-oriented uses within a new building with glass storefronts, pedestrian-scaled lighting along the sidewalk and r-o-w improvements to include new sidewalks and street trees.

The project would further General Plan *Policy H-19-Regional Housing Needs* by including housing to help the City attain the fair share housing goal established by ABAG's Regional Housing Needs Determination for Berkeley. The project would advance the objectives and policies of the City's Housing Element, including Objective 1, that Berkeley residents should have access to quality housing at a range of prices and rents, and Objective 3, that new housing should be developed to expand housing opportunities in Berkeley to meet the needs of all groups.

For these reasons, staff believes that the project is consistent with Finding 23E.56.090.B.1.

BMC §23E.56.090.B.2 requires that the project encourage and maintain the present street frontage of the District, not interfere with the continuity of retail or compatible service facilities at the ground level and not interrupt a continuous wall of building facades and BMC §23E.56.090.B.3 requires that the project be compatible in design and character with the District and the adjacent residential neighborhoods

Staff Analysis: With 6 stories along Telegraph Avenue (five residential stories above commercial) and 5 stories along Regent Street, the project would reinforce the City's effort to redevelop underutilized sites in a way that would increase the quality of the built environment and provide new housing and commercial opportunities, while providing an appropriate transition to medium density residential districts to the east. Doing so would further General Plan *Policy UD-24-Area Character* which calls for '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.'" DRC's positive recommendation regarding the design demonstrates that the project is compatible with the adjacent commercial and residential development. For these reasons, staff believes that the project is consistent with Findings 23E.56.090.B.2 & 3.

BMC §23E.56.090.B.4 requires that the project not generate traffic or parking demand significantly beyond the capacity of the Commercial District or significantly increase impacts on adjacent residential neighborhoods

Staff Analysis: A trip generation analysis was prepared to evaluate additional traffic generated from the proposed Project (See Infill Initial Study Checklist in Draft EIR, Appendix A Item 16). This analysis concluded that the project would add no more than 17 peak hour trips, which is approximately 1 trip every 3 minutes. The City's Traffic Engineer determined that the number of additional trips that would be added to the

roadway system by the project is negligible and thus would not worsen the traffic conditions along nearby roadways and intersections.

In addition to the trip generation analysis noted above, the project is located within 1 mile of the Downtown Berkeley BART station and is in an area served by several bus and shuttle lines including: AC Transit lines 1, 1R, 51B, 49A; the Berkeley Shuttle service (BEAR Transit); and the Lawrence Berkeley National Laboratory Shuttle service. The construction of 70 new dwelling units in an area with above-average transit service would help further General Plan *Policy LU-23–Transit-Oriented Development* that encourages greater commercial and residential density in areas well served by public transportation, and *Policy T-16-- Access by Proximity*, that encourages improved access by increasing proximity of residents to services, goods, and employment centers.

For the reasons stated above, Staff believes that the Board may grant a Use Permit under BMC Sections 23E.56.030 and 23E.56.050.A.

- C. Rooftop Projections [No substantive change from June 11, 2015 Staff Report]:** BMC Section 23E.04.020.C allows building projections to exceed the maximum height limit subject to approval of an Administrative Use Permit.

Staff Analysis: The project proposes penthouse structures for stairwells and elevator mechanical equipment, as well as a decorative metal cornice architectural element; all of these features would exceed the 70' average height of the building, the tallest being the elevator penthouse located on the northwest side of the structure, which would extend to 82'-6". The elevator penthouse would extend above the roof to accommodate the elevators and stairway access to the rooftop usable open space. The projections are relatively small in nature and would not change the overall massing and character of the building. Additionally, the projections have been reviewed by the DRC for conformance with design guidelines. Consistent with 23E.04.020.C, the combined total of the rooftop projections would be less than 15 percent of the average floor area of the building.

Staff believes that because the rooftop projections would not be habitable and because the combined floor area of the projections represent less than 15% of the average floor area of the building the Board may grant a Use Permit under 23E.04.020.C.

- D. Reduce the side yard setback adjacent to the R-3 District below 5' [No substantive change from June 11, 2015 Staff Report]:** BMC Section 23E.04.050.E allows a reduction in the minimum 5 foot setback adjacent to a residential district if the Board finds that such smaller yard would provide greater privacy or improved amenity to a lot in the residential District.

Staff Analysis: The portion of the project within the Commercial District that abuts the adjacent R-3 District, is roughly 45' along the north property line, and is roughly 80' along the south property line. The project would provide no setback at the podium level along the northern and southern property lines, whereas 5' is required. All floors above

the podium would be setback from the side property lines by 6'6" - 9' and screening would be provided to aid in privacy concerns.

Because the reduction in the setback is only at the podium level, and the height of the podium at this point would be 8' from grade and no windows are included at that level, the reduction would not create significant privacy concerns for the adjacent residences.

- E. Exceed Quota and Floor Area Limit Quick Service Restaurant [No substantive change from June 11, 2015 Staff Report]:** BMC Section 23E.56.040.B limits the total number of quick service restaurants in the C-T District to 30, and the floor area of each such restaurant to 1,500 square feet, although these limits may be exceeded with a Use Permit. In order to allow these limitations to be exceeded, the ZAB must find that "granting an exception will result in enhancement of the purposes of the District", in addition to a second finding regarding parking and transportation impacts, which is discussed in the Section VII.B, above

Staff Analysis: The project may include up to 5,219 square feet of quick service restaurant with incidental beer and wine. The applicant has asked for flexibility in the sizing and the type of food service to help ensure that there is adequate space to attract a viable tenant.

Staff believes that granting the permit would further the purposes of the district in that the quick service restaurant would satisfy the demand for relatively fast, affordable food by University students and staff, and residents of the surrounding neighborhoods as well as the residents of the newly constructed mixed-use building. The addition of a quick service restaurant at this location would help reinforce the pedestrian orientation of the District by allowing a café-type use at a location that is served by multiple modes of transit and in a relatively dense neighborhood. The project would further General Plan policies *LU-1 Community Character*, *LU-7 Neighborhood Quality of life*, *LU-13 Basics Goods and Services* which encourage development that maintains the unique character of Berkeley while ensuring that neighborhoods are well served by commercial districts.

Project approval would include standard conditions of approval to ensure that the operation of the quick service restaurant does not cause detriment.

- F. Full Service Restaurant [No change from June 11, 2015 Staff Report]:** Per Section 23E.56.030, the establishment of a full service restaurant greater than 1,500 square feet requires an Administrative Use Permit and is subject to the finding that the use is compatible with the purposes of the C-T District. There is no size or numerical (quota) limit for full service restaurants in the C-T District.

Staff Analysis: Staff believes that granting the permit would enhance the purposes of the district in that the full service restaurant would satisfy the demand for full service, sit-down environment not often found in the C-T District. The food service would provide greater variety of dining options for residences within the proposed mixed-use building as well as those residents already living in the area. The full service restaurant would help to activate a pedestrian presence at the base of the building, and help to create a mix of uses on the block. The project would further General Plan policies *LU-1 Community Character*, *LU-7 Neighborhood Quality of life*, *LU-13 Basics Goods and*

Services which encourage development that maintains the unique character of Berkeley while ensuring that neighborhoods are well served by commercial districts.

- G. Beer and Wine Incidental to Food Service (either full or quick) [No change from June 11, 2015 Staff Report]:** BMC Section 23E.56.030 allows service of beer and wine incidental to quick and full service restaurants with an AUP.

Staff believes that Board may find that this service would not generally detrimental because such service does not generally create the same detrimental impacts as bars, since alcohol tends to be consumed in smaller quantities and with food, or as off-sale retail alcohol stores, since alcohol is consumed on-site and not taken from the premises.

Because onsite service of beer and wine is an incidental use to the main use, food service, no findings of public convenience or necessity are required. In addition, the granting of the permit would meet General Plan policies *Policy ED-4 Neighborhood and Avenue Commercial Districts and LU-27 Avenue Commercial Areas* that encourage the development of Avenue Commercial areas in a manner that provides goods and services to the neighborhood as well as a broader spectrum of needs.

Project approval would include standard conditions of approval to ensure that the incidental service of beer and wine does not cause detriment.

VII. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and State Density Bonus Law, staff recommends that the Zoning Adjustments Board:

- A. ADOPT** the Statement of Overriding Considerations and Mitigation Monitoring and Reporting Plan.
- B. APPROVE** Use Permit #2013-0061 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

- 1) Resolution to Certify the EIR, adopted by the ZAB on June 11, 2015
- 2) Use Permit Findings & Conditions, Including Statement of Overriding Considerations, MMRP & Addendum
- 3) Notice of Public Hearing, posted November 24, 2015
- 4) Plans Dated December 1, 2015 & Applicant Statement
- 5) Correspondence Received

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