

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

2711 SHATTUCK AVENUE

Use Permit #ZP2015-0206 to Modify an approved Use Permit (#09- 10000077 as modified by #ZP2014-0021) to change the use of an approved four-story residential building from 22 residential hotel rooms to 22 dwellings, and to Modify the parking waiver.

I. Background

A. Land Use Designations:

- General Plan: AC (Avenue Commercial)
- Zoning: C-SA (Commercial - South Area)

B. Zoning Permits Approved in 2010:

- Use Permit, per §23E.04.020.C, to allow architectural features to exceed the height limit;
- Use Permit, per §23E.52.030, to create a residential hotel building;
- Use Permit, per §23E.52.030 and §23E.52.050, to construct a building with greater than 3,000 square feet gross floor area; and
- Use Permit, per §23E.52.070.D.7, to modify setback, lot coverage and parking.

C. Zoning Permits Approved in 2014:

- Use Permit, per §23B.56.020, to modify an approved use permit, expanding the building footprint and increasing the floor area.

D. Zoning Permits Required in 2015:

- Use Permit, per §23B.56.020, to modify an approved use permit to change from the approved use for residential hotel units to instead allow dwelling units; and
- Use Permit, per §23E.52.070.E, to increase the parking waiver from 4 to 8 spaces.

E. CEQA Determination:

- Categorically exempt pursuant to Section 15332 of the CEQA Guidelines (“Infill”).

F. Parties Involved:

- Cara Houser, Panoramic Interests, 2116 Allston Way, Suite 1, Berkeley, CA 94704

Figure 1: Vicinity Map

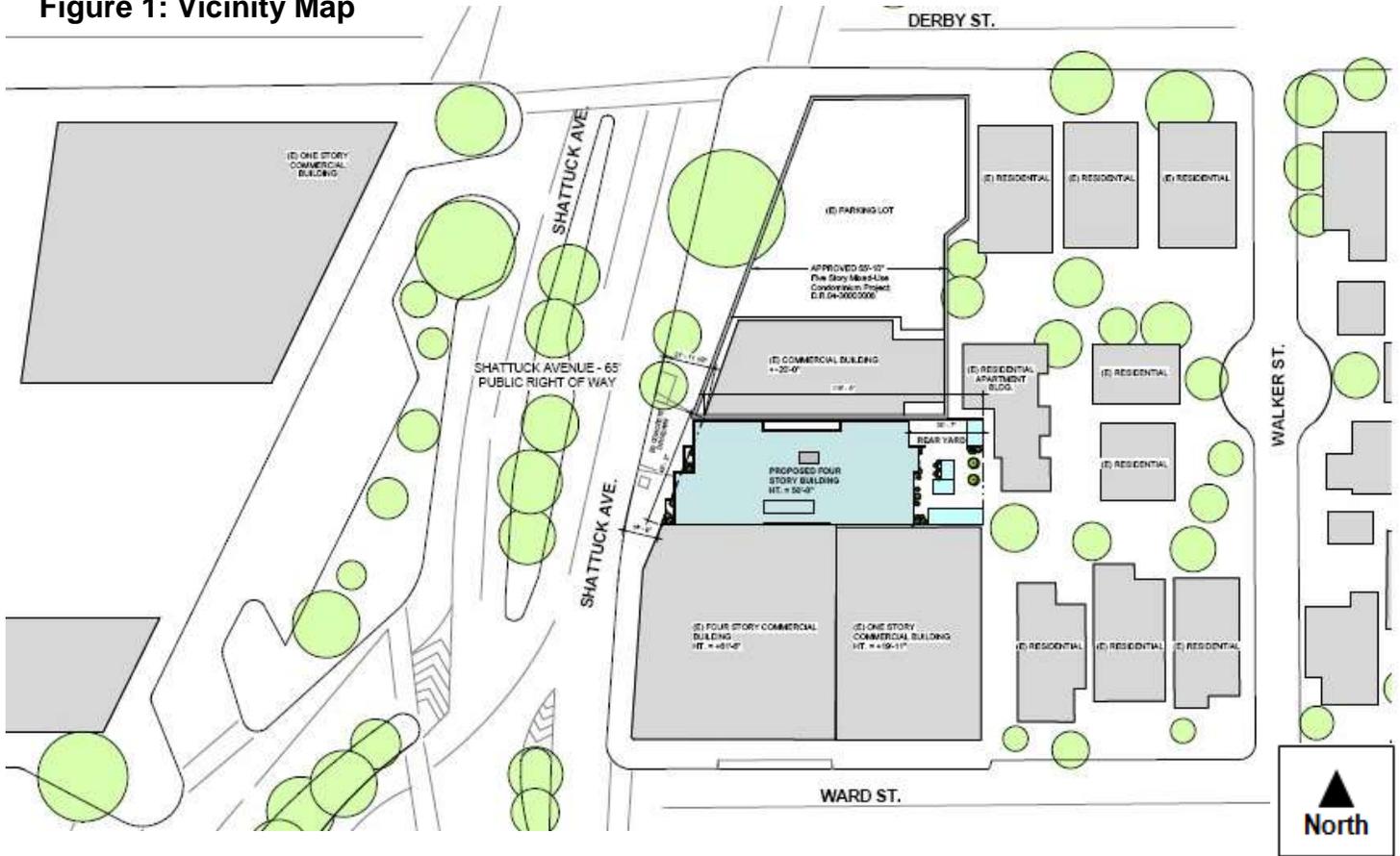


Figure 2: Site & Ground Floor Plan



Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Commercial: Parking Lot	C-SA	Avenue Commercial
Surrounding Properties	South	Commercial: UC Storage	C-SA	Avenue Commercial
	North	Commercial: Former Auto Dealer		
	West	Commercial: Auto Dealer		
	East	Multi-Family Residential	R-2	Low-Medium Density Residential

Table 2: Special Characteristics

Characteristic	Explanation
Alcohol Use	Not a characteristic of this project.
Bike Planning	The City's Bike Plan designated Milvia Street (1 block to the west of the project site) and Russell Street (3 blocks to the south of the site) as Bike Priority Streets; Adeline Street has a dedicated bike lane.
City Carshare	The existing onsite Carshare pod will be retained with this proposal.
Creek Buffer	The City's Creek Ordinance applies to a portion of Derby Creek located in a culvert approximately 700' west of the site.
CGS Hazards	None apply to this site.
Density Bonus	Not a characteristic of this project.
Environmental Management Area	To address potential issues relating to the quality of the soil, the standard conditions of approval for infill development will apply to this project.
Flood Zone	Site is not located in an area of special flood hazard (>100Yr reoccurrence).
Historic Resources	There are no designated historic resources within a 300' radius of this site.
Noise Levels	The site is located within an area that has existing noise levels which require special design considerations for residential uses to comply with the noise levels established by the City's General Plan. To address issues relating to noise, the standard conditions of approval for infill development will apply to this project.
Oak Trees	Not a characteristic of this site.
RPP	The surrounding residential blocks participate in the City's Residential Preferred Parking program.
Transit	AC Transit Transbay Lines F & 800 and local Line 18 serve the project area. The Ashby BART station is within ½ mile of the site.

Table 3: Project Chronology

Date	Action
February 25, 2010	ZAB approved Use Permit #09-10000077 (8-0-1-0), to construct a residential building with 22 residential hotel rooms within a 8,821 square foot, four-story, residential building with no off-street parking spaces.
September 9, 2014	Application to modify Use Permit #09-10000077 submitted.
October 16, 2014	Design Review Committee: Preliminary Design Review.
November 20, 2014	Design Review Committee: Favorable Recommendation to the ZAB.
December 11, 2014	ZAB approved Use Permit Modification #ZP2014-0021 (9-0-0-0), to expand the building footprint by 8-feet and to increase the floor area by 1,278 square feet.
September 29, 2015	Application to modify Use Permit #09-10000077 submitted.
November 12, 2015	ZAB review, continued.
November 24, 2015	Public hearing notices mailed.
December 10, 2015	ZAB hearing on this application.

Table 4: Development Standards

Standard BMC Sections 23E.52.070-080 & 23D.40.070-080		Approved Project (Including 2014 Modifications)	Proposed Project (2015)	Permitted/ Required
Lot Area (sq. ft.)		5,674	5,674	N/A
Gross Floor Area - Main Building (sq. ft.)		10,332	10,332	22,696
Accessory Structures		234	234	
Floor Area Ratio		1.82	1.82	4
Dwellings		0	22	N/A
Building Height	Average	50'	46' 5"	50'
	Stories	4	4	4
Building Setbacks	Front	2'8" – 20'8"	2'11" – 20'8"	15'
	Rear	41'3"	41'3"	15' – 17'
	Side	8"	8"	4' – 8'
Lot Coverage (%)		54%	54%	35%
Usable Open Space (sq. ft.)		1,980 (90 sq. ft. per resident)	1,980	880 (40 sq. ft. per dwelling)
Parking	Automobile	1 (5 required: 1 per every five residents, plus one for manager)	1	9 ¹ (1 space per 1,000 SF of Residential Floor Area)
	Bicycles	22	22	0

II. Project Setting

A. Neighborhood/Area Description: This project is located on the east side of Shattuck Avenue between Derby Street and Ward Street. The development pattern of the area surrounding the project site is mixed, urbanized, and consists of a wide range of commercial and residential uses. With the exception of the 60' tall UC Storage building abutting the site to the south (at the corner of Ward Street and Shattuck Avenue), the typical building pattern along this portion of Shattuck Avenue and in the immediate vicinity is 1 and 2-story buildings with varied lot coverage. To the north and northwest of the site, the City has approved 5-story buildings at 2701 Shattuck Avenue (abutting this site) and at 2598/2600 Shattuck Avenue, which is currently under construction. The parcel with the R-2 District abutting the site to the east includes a complex of 2- and 3-story stucco buildings with 8 residential units, while the majority of the remaining buildings to the east are 2-story, single-family dwellings.

B. Background: In February 2010, the Zoning Adjustments Board approved Use Permit #09-10000077 to allow the construction of a residential building with 22 residential hotel rooms within a 8,821 square foot, 4-story, residential building with no off-street parking spaces. The approved building included a setback from the public right-of-way to allow for 960-square feet of open space adjacent to the sidewalk; and a setback from the property line to the east to create a landscaped courtyard at the rear of the site. This project also included an on-site resident manager. The approved project limited the rents at a level affordable to moderate-income individuals. The approved building also included secure parking for 22 bicycles within a detached structure in the rear yard.

¹ Per Section 23E.52.080.C of the Zoning Ordinance, 'The first 1,000 square feet of new gross floor area may be exempted from providing Off-street Parking Spaces.'

In December 2014, the Zoning Adjustments Board approved a modification to the project (ZP2014-0021) to increase the overall length of the building by 8 feet (adding 1,278 sq. ft. of floor area), to revise the floor plans to creating larger and more usable kitchens and opening up the living and sleeping areas. Other changes included increased window heights, revised landscaping, and the addition of 1 car-share parking space in the rear yard. The number of residential hotel rooms did not change.

The ZAB reviewed this request on November 12, 2015, and then asked that the applicant to return with documentation of their stated challenges related to the financing of the previously approved residential hotel development as well as projected rents for the currently proposed residential use. In response, the applicant has provided the documents contained in Attachment 2 of this report; please review. Also, the ZAB asked that staff provide a new analysis of the project in regards to the request to reduce the parking requirement to 1 space, to exceed the lot coverage limit of 35%, and to reduce the side and front yard setbacks. This analysis follows in Section IV of this report.

III. Use Permit Modification

With this Use Permit Modification, the applicant is requesting that the Zoning Adjustments Board approve a change in the type of use from a residential hotel use to conventional dwelling units (i.e. studio apartments) with 2 Below-Market-Rate units. No modifications to the design approved with ZP2014-0021 are requested. The Use Permit waiving 4 off-street parking spaces would be modified to waive a total of 8 parking spaces.

IV. Issues and Analysis

- A. Change of Use:** In the C-SA Commercial District, both Residential Hotels and Dwelling Units are permitted subject to Use Permits with Public Hearings, per 23E.52.030 of the Zoning Ordinance. The floor and site plans and the building envelope were approved by the Design Review Commission and the Zoning Adjustments Board in 2014, and findings were made in support of the project with respect to the additional lot coverage, reduced side yard and front yard setback, and reduced parking. No change is needed to the floor or site plans to accommodate a change from residential hotel to dwelling units. To allow the change from a residential hotel to dwellings, minor revisions are required to three of the previous Findings (Findings 4, 5 and 6) in order to approve the project for dwellings under Berkeley Municipal Code (BMC) Section 23E.52.070.E. These revised findings are in Attachment 1.
- B. Affordable Housing:** The approved project was not subject to rent restrictions imposed by City Ordinance. Instead, the project was approved based on the applicant's representation that the residential hotel rooms would be rented to Moderate Income Households. The proposed change from residential hotel rooms to dwelling units triggers the City's Affordable Housing Mitigation Fee, BMC Section 22.20.065, which requires a payment of an in-lieu fee to the City or the provision of units affordable to Very Low Income Households. As allowed under subsection C, the applicant has elected to provide 10% of the market rate units, or 2 dwellings units, as affordable to Very Low-Income Households for the life of the project. Table 5 that follows provides a summary of the rents for residential hotel rooms and studio apartments.

To avoid the need for a parking waiver, a project configured in this manner would reduce the number of potential units to 18 dwellings (covering 3 floors). An alternative to providing fewer units would be the use of parking lifts to stack additional cars within the proposed building footprint. The use of lifts would either require additional excavation or an increase in the height of the proposed building. The City has not studied the costs or feasibility of a project alternative with lifts.

- **Parking within the Rear Yard.** If the parking were provided in the rear yard behind the building and the site plan was otherwise unchanged, roughly 3 regular and 1 ADA parking spaces would *fit* behind the 70'-long building. This configuration, as shown in Figure 4, would not retain at-grade usable open space or allow at-grade bike parking.

Figure 4: Sample Parking Plan – Parking within the Rear Yard



To avoid the need for a parking waiver, a project configured in this manner would reduce the number of potential units to 12 dwellings. However, for parking in the rear yard to fit, the landscape planters required by BMC Section 23E.28.080.E would not be possible along the north and south property lines (the lot would need to be 2'-6" larger north-south), rendering this project alternative infeasible.

- **Parking for 1 Space with Parking Waiver.** According to the applicant, providing the usable open space at grade as proposed is preferred over using this area for parking because the landscaped courtyard provides a better buffer between this site and the adjacent residential uses to the east, is a lower-cost option compared to roof-top usable open space, and affords the proposed project two additional points to help the project attain a LEED Platinum rating by not providing parking. Also, the project has no elevator, so relocating the open space to the roof would require a redesign to accommodate an elevator to provide ADA access. Also, ground level landscaping aids not only in providing an attractive recreation space for residents, but also in managing stormwater runoff.

BMC Section 23E.52.070.E of the Zoning Ordinance allows the ZAB to grant a Use Permit to reduce parking subject to a finding that the waiver is necessary to promote any of the findings

set forth in Section 23E.52.090.C. Staff believes that a project of this type with reduced parking supports the required findings because: 1) it would encourage use of public transit by discouraging ownership of private automobiles; and 2) by waiving the parking spaces, more dwellings are possible which will help the City attain its fair share housing goals. To help lessen off-site automobile parking impacts, the project would include at least 22 spaces to securely store bicycles and will provide 1 Carshare parking space.

The City's Transportation Element of the General Plan promotes parking reductions/waivers for residential development that is served by transit (Policy T-16). This project is adjacent to three AC Transit Lines, and is within ½ mile of the Ashby BART station, and is thus well served by 3. In accordance with Policy T-31 of the City's Transportation Element of the General Plan, occupants of this project may not apply for residential parking permits.

D. Development Standards for Lot Coverage and Setback: While the building envelope was approved by the City in 2014, and no change is needed for the conversion from a residential hotel to dwelling units, in response to direction from the ZAB, this report provides a new analysis of the building in relation to lot coverage and setback, as follows.

- **Lot Coverage.** All projects in the C-SA District are held to a residential development standard for lot coverage. As shown in Table 4, the building would cover 19% more of the lot than allowed.

Applying a residential lot coverage standard to this project would reduce the footprint from 3,084 square feet of proposed lot coverage to 1,985 square feet. Doing so would either reduce the gross floor area of each dwelling or would result in fewer dwellings (if dwelling size was held constant). Based on information supplied by the applicant, dwelling area cannot be reduced without detrimentally impacting room function. Therefore, staff believes that if the 35% lot coverage limit were applied to this project, a smaller project could provide a total of 16 dwellings, or 6 fewer dwellings than are proposed. This project alternative would also reduce this project's affordable housing contribution to City.

BMC Section 23E.52.070.E allows the ZAB to grant a Use Permit to modify the lot coverage limit, subject to a finding that the waiver is necessary to promote any of the findings set forth in Section 23E.52.090.C. The additional lot coverage allows for a project with a greater number of dwelling units, and, therefore, Staff believes that the ZAB should grant this Use Permit because doing so helps the City attain its fair share housing goal, and because doing so would also further Policy H-19 of the City's Housing Element. Also, greater floor area would increase the City's property tax base and the extra dwellings add customers to support Berkeley's local business and transit.

Further, Staff believes that the application of the residential lot coverage standard to control bulk is not necessary, as the significant rear yard setback in this project would protect the closest residential development to the east. Strict adherence to the residential lot coverage standard would result in development that underutilize the available land in the District in conflict with several General Plan and District purposes and, therefore, the City's practice has been to adjust this standard on a case-by-case basis. In this case, the greater residential density possible with a larger footprint will ensure that this parcel is not underutilized.

- **Setback:** All projects in the C-SA District are held to a residential development standard for setback. As shown in Table 4, the front and side yards are less than required, but the rear setback is more than the minimum.

Applying the residential front and side yard setbacks to this project would alter the building envelope, but would not necessarily decrease the overall floor area of the project (the project would be less wide north-to-south, but could be longer west to east to compensate). However, application of the side yard setbacks to this project would result in fewer dwellings because the width of the floor plates for each floor would be reduced by 8-feet at the 1st and 2nd floors, by 12-feet for the 3rd floor and 16-feet for the 4th. Based on information supplied by the applicant, dwelling unit width cannot be easily reduced without detrimentally impacting room function. Therefore, application of the residential setback standards would, based on the characteristics of the proposed project, result in a smaller project with a total of only 16 dwellings, or 6 fewer dwellings than are proposed. This project alternative would also reduce this project's affordable housing contribution to City.

Staff believes that the proposed front yard setback represents a balance between providing a continuous building line along Shattuck Avenue and allowing building articulation on-site while providing an amenity to the community with a landscaped area adjacent to the sidewalk. Also, this area provides an inviting residential entry to the project and allows privacy landscaping to screen the street-level ground floor dwellings.

Regarding side yard setbacks, staff believes that providing the residential setback would result in dark narrow "alleys" between this project and the buildings to the north or south and would interrupt the established building form present in the Commercial district. To ensure adequate access to natural light and air to the rooms, the units would include large windows facing Shattuck Avenue on the west and the landscaped yard to the east.

BMC Section 23E.52.070.E allows a modification to the setback standards with Use Permit approval subject to a finding that the modification is necessary to promote any of the findings set forth in Section 23E.52.090.C. In this case, the basis for modifying the residential setbacks for this project is the same as for lot coverage as provided in the above in this report.

V. Recommendation

Staff reviewed the original findings (UP #09-1000077) and the modified findings (ZP2014-0021) in light of the proposed change of use, and concludes that the same findings in support of the approval can be made with edits. Revisions to the findings and conditions necessary to address the modified plans are shown in Attachment 1 with strikeouts (~~strikeout~~) for deleted text and underlines (underline) for added text.

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE Use Permit Modification #ZP2015-0206**, pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Applicant's Submittal Regarding Financing and Rents

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