



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
MARCH 10, 2016

2121 Durant Avenue & 0 Bancroft Way (APNs 055 189300700 & 055 189301702)

Use Permit #ZP2015-0014 to remove an existing 3-story, 5-unit building and construct a six-story mixed-use building with 50 dwelling units, including 5 available to very low income households, approximately 413-square-feet of commercial space, and ground level garage parking for 12 automobiles and 50 bicycles.

I. Background

A. Land Use Designations:

- General Plan: DT – Downtown
- Zoning: C-DMU – Downtown Mixed Use District: Buffer and Outer Core Subareas

B. Zoning Permits Required:

- Use Permit to construct a new main building with mixed-use development, per 23E.68.030;
- Use Permit to construct greater than 10,000 sq. ft. gross floor area, per 23E.68.050;
- Use Permit to demolish (i.e. relocate) a residential building, per 23C.08.020¹;
- Use Permit to allow a side yard setback of less than five feet when over 20 feet in height and over 65' from the lot frontage, per 23E.58.070.C; and
- Use Permit to reduce the vehicle parking space requirement, per 23E.68.080.D).

C. Waivers/Reductions of Development Standards Under State Density Bonus Law (Govt. Code §65915(e)):

- Increase in maximum building height from fifty (50) feet to sixty three (63) feet within the Buffer Sub Area.

¹ The relocation of a building from a lot is considered a demolition per 23C.08.060

D. CEQA Determination: Categorically exempt pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development Projects”).

- The proposed project is consistent with the applicable General Plan designation and policies (see “General Plan Consistency” for further discussion), and with the applicable zoning designation and regulations, with the exception of mandated density bonus waivers/modifications (see under “Key Issues” for further discussion).
- The project occurs within the Berkeley city limits on a project site of no more than five acres substantially surrounded by urban uses.
- The site was previously developed and has no value as habitat for endangered, rare or threatened species.
- The project would not result in any significant effects related to traffic (see under “Key Issues” for further discussion), noise, air quality or water quality.
- The site can be adequately served by all required utilities and public services.

Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource (see under “Committee Review–Landmarks Preservation Commission” for further discussion).

D. Parties Involved:

- Applicant Darshan Amrit, Kahn Design Associates, 1810 Sixth St., Berkeley, CA 94710
- Property Owner Vero Properties, LLC, 2278 Shattuck Ave., Berkeley, CA 94704

Table 1: Project Chronology

Date	Action
January 22, 2015	Application Submitted
October 1, 2015	LPC Design Review Referral
October 15, 2015	DRC: Preliminary Design Review
November 19, 2015	DRC: Preliminary Design Review – Approved
December 12, 2015	Application Deemed Complete
February 25, 2016	Public Hearing Notices Mailed/Posted
March 10, 2016	ZAB Hearing

Figure 1: Vicinity Map



Figure 2: Site Plan

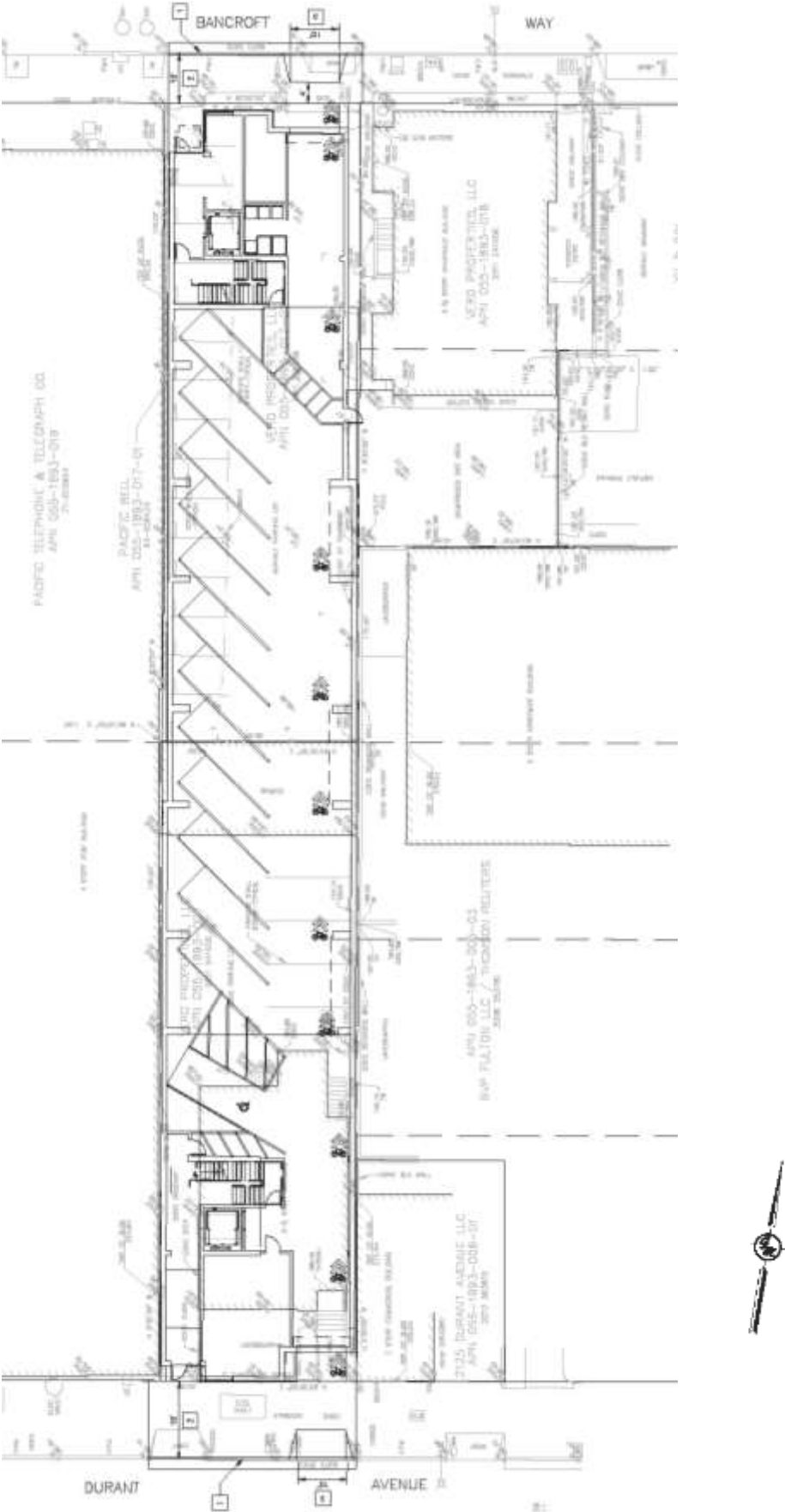


Table 2: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Multi Family & Parking Lot	C-DMU Buffer & Outer Core	Downtown
Surrounding Properties	North	Mixed-Use	C-DMU Outer Core	Downtown
	South	Retail, Parking Lot, Toyota garage	C-DMU Buffer	Downtown
	East	Bishop Art Studio, 4-story mixed-use building, 3-story Apart. Building	C-DMU Buffer & Outer Core	Downtown
	West	AT&T Building, bank	C-DMU Outer Core	Downtown

Table 3: Special Characteristics

Characteristic	Explanation
Affordable Housing Mitigations (Per BMC 22.20.065)	The project is subject to the ordinance and will provide 10% Very Low Income (VLI) Below Market Rate (BMR) units or pay an in lieu fee. A minimum of 3 VLI BMR units will be provided on site (see Density Bonus section below).
Density Bonus	The project will provide 7% or 3 VLI BMR units plus 2 additional BMR units per Government Code Section 65915(c)(3). The project, therefore, qualifies for 25%, or 11 density bonus units with accompanying modifications and one concession. The applicant has elected to incorporate 9 density bonus units and no concessions.
Green Building	Project is required under C-DMU zoning to qualify for a minimum LEED Gold rating or equivalent.
Historic Resources	The building proposed for relocation is listed on the State Historical Resource Inventory (SHRI). There are two abutting landmark properties to the east (Waste & Clark Apts. and the Bishop Photo Studio). See discussion under Landmarks Preservation Commission below.
Rent Controlled Units	The 5-unit building to be relocated is rent controlled. Relocation of the building will not require a new Certificate of Occupancy so the rent controlled units will be preserved.
Soil/Groundwater Contamination	Proposed project is located within a Toxic Division's Environmental Management Area. The applicant submitted a Phase I Environmental Assessment and the project will be subject to standard soil/groundwater conditions of approval (Soil and Groundwater Management Plan).

Table 4: Development Standards

Standard BMC Sections 23E.68.070-080			Existing	Proposed Total	Permitted/ Required	
Lot Area (sq. ft.)			5,200 + 5,070	10,270	--	
Gross Floor Area (sq. ft.)			3,541	41,388	--	
Dwelling Units	Total		5	50	--	
	Affordable		0	3 - 5	3 min VLI + 2 @ current rate ¹ (required for Density Bonus)	
Maximum Building Height (ft.)	@ Roof		32.5	63	Buffer: 50 (60 w/UP) Outer Core: 60 (75 w/UP)	
	@ Parapet		n/a	66	+5 over roof	
	@ Mechanical Penthouse		n/a	69	per AUP 23E.04.020.C (≤ 15% roof area)	
	Stories		3	6	--	
Building Setbacks (ft.)	Front (Durant)		14.25	0	0 - 5 max. (where building height ≤ 20') 0 (where building height >20')	
	Front (Bancroft)		n/a	1.5		
	(distance from lot frontage)	West Side	0-65'	7.7	0	0 (building height ≤ 20') 5 (building height >20'-≤75')
			>65'	n/a	0	0 (building height ≤ 20') 5 (building height >20'-≤75')
		East Side	0-65'	2	0	0 (building height ≤ 20') 5 (building height >20'-≤75')
			>65'	n/a	0	0 (building height ≤ 20') 5 (building height >20'-≤75')
Lot Coverage (%)			14	94.3	---	
Usable Open Space (sq. ft.)			328	4,636	4,000 (80 sq. ft per DU)	
Privately Owned Public Open Space (sq. ft.)			0	0	4 (1 sq. ft per 50 sq. ft.)	
Parking	Automobile		21	13	17 (for DUs: 1:3 units)	
	Bicycle		0	50	0	

1. Per Government Code Section 65915(c)(3), see Discussion under Key Issue Density Bonus below.
2. Includes 1,520 square feet of Useable Open Space on adjacent parcel 2126 Bancroft.

II. Project Setting

A. Neighborhood/Area Description: The subject site is located within, and surrounded by the Downtown Mixed Use District and is split zoned between the Outer Core and Buffer Subareas. The neighborhood is a mixed residential and commercial district with a range of predominantly four- to five-story buildings; the one exception being the adjacent one-story Bishop Photo studio at 2125 Durant Avenue. Several of the

buildings, including the adjacent Bishop Photo Studio and Waste & Clark Apartments at 2126 Bancroft Way, are City Landmarks. The neighborhood is influenced by the vibrant commercial district of Shattuck Avenue at western boundary, and by the commercial services and multi-family housing of UC Berkeley less than one block to the northeast. The project neighborhood is well serviced by public transportation, including BART and AC Transit bus routes.

- B. Site Conditions:** The subject site is comprised of two separate, relatively flat parcels [2121 Durant Avenue and 0 Bancroft Way (055 189301702)] located mid-block between Durant Avenue to the south and Bancroft Way on the north, and between Shattuck Avenue on the west and Fulton Street on the east. The parcel at 2121 Durant Avenue is a 5,200-square-foot, 40' x 130' lot currently developed with a three-story, wood clapboard house that was built in 1901. The, second parcel abutting to the north, is a 5,070-square-foot, 39' x 130' lot currently developed with a parking lot.

III. Project Description

The project proposes to relocate the existing three-story, five-unit building to 1940 Haste Street (see UP ZP#2015-0015), demolish the existing garage, and merge the lots (APNs 055 189300700 and 055 189301702) to allow construction of a 41,533-square-foot, six-story, mixed use building with the following main components:

- Ground floor retail (413 square feet) and garage parking for 12 automobiles and 50 bicycles;
- Five residential levels with 50 Dwelling, comprised of 10 studios, 30 1-bedroom, 2 2-bedroom, and 18 3-bedroom units; and
- Useable open space comprised of: 1,002 square feet of private patios, 2,390 square feet of private balconies, a 476-square-foot common on-site patio; and a 1,520-square-foot shared courtyard on the adjacent property at 2126 Bancroft Way.

IV. Community Discussion

- A. Neighbor/Community Noticing:** Prior to submitting this application to the city, the applicant invited interested neighborhood organizations as well as owners and occupants within 300 feet of the project to a project preview meeting that was held on January 8, 2013, and attended by six people. Prior to submitting an application, a pre-application poster was erected by the applicant in January 2015. On February 25, 2016, the City mailed public hearing notices to property owners and occupants within 300 feet of the subject site, and to interested neighborhood organizations and the City posted notices within the neighborhood in three locations. At the time of this writing, staff has not received any communications regarding the project.

- B. Landmarks Preservation Commission:** The project includes the relocation of the five-unit residential structure from the source site at 2121 Durant Avenue. The applicant submitted a separate Use Permit application (ZP2015-0015) to allow the construction (relocation) of the structure to the receiving lot at 1940 Haste Street. Listed on the State Historical Resource Inventory (SHRI), the structure was found ineligible for the National Register (6Y) by consensus through the Section 106 review

process for the AC Transit Bus Rapid Transit project in 2006. Staff referred the relocation to the Commission under BMC 23E.12.020, which states that the Design Review Committee or staff has responsibility for design review of projects which involve a structure listed on the SHRI, and such applications shall be referred to the LPC for comment prior to the approval of the Design Review application. At the October 1, 2015 LPC meeting, the LPC provided advisory comments and concurred with the Historic Resource Evaluation prepared by Left Coast Architectural History (revised September 22, 2015), that the house to be relocated does not possess sufficient historical significance to qualify as a historic resource for individual listing in the California Register of Historical Resources, or as a Berkeley Landmark. Further, the HRE concludes that the house does not coincide closely enough in age, use, character, or associations with neighboring Landmarks and buildings to be considered a Structure of Merit. No vote is required for advisory comments.

C. Design Review Committee:

The Design Review Committee (DRC) reviewed the project on October 15, 2015 and voted to continue the project with recommendations for redesign (5-0-0-2). The applicant responded to the recommendations and submitted revised drawings on November 5, 2015, which the DRC reviewed at its November 19, 2015 meeting. At the meeting DRC made a favorable recommendation to ZAB (7-0-0-0) with direction for Final Design Review.

V. Issues and Analysis

A. Issue 1: Relocation of Residential Building – The project proposes to relocate the existing five-unit, rent controlled residential building from 2121 Durant Avenue to a receiving lot located at 1940 Haste Street. The relocation of a building from a lot is considered a demolition for purposes of the Zoning Ordinance (BMC 23C.08.060). The proposal to relocate the building meets the demolition findings of BMC Section 23C.08.010.B (General Requirements), which requires that the Board may approve the “demolition of dwelling units only if it finds that the elimination of the dwelling units would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.” Section 23C.08.020.B (Demolition of Buildings with Residential Uses) provides that the Board may approve the demolition of a dwelling unit if it finds that “the demolition is necessary to permit construction approved pursuant to this Ordinance, of at least the same number of dwelling units as the demolished structure.” In this case, the demolition would be followed by the construction of 50 new dwelling units with a net addition of 45 housing units for the City of similar size to the units being relocated.

The Board is not required to make Findings for the elimination of rent controlled units, as the Chief Building Official confirmed that the relocation of the existing building would not require a new Certificate of Occupancy and would, therefore, not lose its rent controlled status. The five rent controlled units would be relocated from the source lot (2121 Durant) to the receiving lot (1940 Haste).

Aside from preserving the existing stock of rent controlled units, as discussed in further detail below (“Density Bonus”), the project is required to replace the five rent controlled

units on the receiving site as well, with units of equivalent size or type, or both, to be made available at affordable rent, and occupied by, persons and families in the same or lower income category. The replacement units are subject to a recorded affordability restriction for at least 55 years.

- B. Issue 2: Density Bonus** – Based on the developer’s commitment to include below market rate (BMR) units in the project, the project qualifies for a density bonus. Using the project plans originally submitted by the applicant in January 2015, staff calculated a “base project” of 36,825 square feet, with a total of 44 (44.21) “base” dwelling units for this site. The Base Project is the version of the project that could be built without any modification of development standards under the Zoning Ordinance, using the average unit size proposed by the applicant. The current calculation is derived from the number of those average sized-units that could be accommodated in within the 50-foot height limit of the C-DMU Buffer subarea and the 60-foot height limit of the C-DMU Outer Core subarea.

Based on the applicant’s commitment to provide seven percent (7%) of the base project, or three units, affordable to Very Low Income families ($\leq 50\%$ AMI), the project qualifies for a 25 percent density bonus, or 11 units, for a total of 52 dwelling units. The applicant has elected, however, to construct a total of 50 units. The project’s density bonus calculations and illustrative graphics are provided in Attachment 3.

In order to accommodate the density bonus units, the applicant proposes to construct a full sixth story with a maximum roof height of 63 feet. Although permissible up to 75 feet with Use Permit approval in the Outer Core subarea, the proposal requires a waiver for height for the portion of the building within the Buffer subarea.²

Additionally, pursuant to California Assembly Bill, approved September 27, 2014, as the subject site currently houses five rent controlled units, the project will need to replace all five units with at least the same number of units of equivalent size or type, or both, to be made available at affordable rent, and occupied by, persons and families in the same or lower income category.³ The replacement units are inclusive of those which qualify for the density bonus. The project, therefore, will provide two additional income restricted units, subject to a recorded affordability restriction for at least 55 years. The recorded restriction will ensure a level and duration of affordability that typically exceeds that of existing rent controlled units.

- C. Issue 3: Neighborhood Compatibility** –The subject site is located within, and surrounded by the Downtown Mixed Use District and is split zoned between the Outer Core and Buffer Subareas. Downtown Mixed-Use District. The neighborhood is a mixed residential and commercial district with a range of predominantly four- to five-story buildings; the one exception being the adjacent one-story Bishop Photo studio at 2125 Durant Avenue. Several of the buildings, including the adjacent Bishop Photo Studio and Waste & Clark Apartments at 2126 Bancroft Way, are City Landmarks.

² Government Code Section 65915(e)(1) allows an applicant to submit to the City a proposal for waiver or reduction of any development standard, and states that in no case may a city apply any development standard that will have the effect of physically precluding the construction of a housing development project that qualifies for a density bonus.

³ Government Code Section 65915(c)(3).

The project design uses a clever mix of articulation, balconies, and changes in color and material to both minimize the massing impacts and respect the scale of the smaller adjacent landmarks to the east while maximizing the development potential of a site that is fairly constrained in width. The Landmarks Preservation Commission reviewed the project for its interface with the adjacent Landmark buildings and found no detriment.

D. Issue 4: Useable Open Space – In order to provide the maximum amount of Useable Open Space practicable for this narrow in-fill site, the applicant is proposing a combination of balconies, and small private and common patios on-site, as well as proposing a developed, 2,000-square-foot common courtyard on the neighboring property to the east at 2126 Bancroft, the six-unit Waste & Clark Apartment property. At a requirement of 80 square feet of Useable Open Space per dwelling unit, the common courtyard exceeds the current 480-square-foot requirement for the six existing dwelling units, and could contribute 1,520 square feet of Useable Open Space for the proposed development. Both properties are owned by the same party, and a condition of project approval includes filing an access easement on 2126 Bancroft for use of the residents next door. The benefit of this arrangement is that it will transform what is currently an unimproved dirt area into a developed passive recreational courtyard with outdoor seating on concrete pavers and new landscaping that will be an amenity for residents of both properties.

E. Issue 5: Sunlight/Shadows – The project proposes to construct a six-story, 63-foot building on what currently houses one three-story wood building and a paved parking lot. As such, the project will create greater shadowing impacts over existing conditions. To assess the shadowing impacts, the applicant submitted shadow studies for the project (see Attachment 2). The studies illustrate that under current conditions, the neighboring properties receive minimal shading impacts from the existing development on the subject site; shading impacts increase with the planned development.

Due to the north/south orientation of the relatively narrow (40') subject site that is wedged between predominantly four and five story buildings, the shading from the proposed project will, for the most part, be subsumed by existing shading. The properties most affected by new shading will be the one-story Bishop Photo Studio structure located immediately to the east of the subject site at 2125 Durant and the four-story mixed use building just beyond at 2310 Durant. As the new shading will be limited to the evening hours of the summer months only, and as the new shading on the Bishop studio will only affect the structure's roof the increase in shading on these properties is minimal and below what is to be expected in the Berkeley downtown urbanized area. Shadow impacts are, therefore, found to be non-detrimental.

F. Issue 4: Parking/Traffic – The project proposes 13 vehicle parking spaces in the ground level garage. This is four spaces less than the 17 spaces required for 50 dwelling units (1 space per 3 dwelling units). In accordance with the City's Climate Action Plan, as well as to advance more general sustainability goals, the new C-DMU zoning district employs strategies to reduce vehicle reliance and promote alternative modes of transportation. In accordance with these policies, the District allows the

reduction of parking spaces in exchange for an in-lieu fee payment per every waived space. The \$60,000 in-lieu fee will support a fund established by the City to provide structured parking in the downtown or be used for a variety of enhanced transit and transportation demand management programs based on Downtown Area Plan Policy AC-1.3.⁴

Additionally, as required by the new zoning standards and as conditioned in the project approval, parking spaces will be leased separately from the units; one space must be offered and made available free of charge to a vehicle sharing service provider; occupants of the building will not be eligible for Residential Parking Permits (RPP); and the property owner will be required to provide one of the following transportation benefits at no cost to every residential unit: a pass for unlimited local bus transit service, or a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass.

The project also includes 50 secure bicycle parking spaces in the garage, while none are required by the District provisions. The abundance of bicycle parking, the provision of transit passes, the ineligibility for RPPs, as well as the project's proximity to public transit, jobs, goods and services, and the University, will help reduce car ownership and help ensure that parking demand does not exceed the project's parking supply.

Traffic impacts for the projected Downtown build out was analyzed as part of the Final Environmental Impact Report for the Berkeley Downtown Area Plan (April 2009, State Clearinghouse Number 2008102032). The subject project was included in the projected build out (it would bring the total of approved housing units within the Downtown Area to 448, which is less than 15% of the anticipated 3,100 new units). The Traffic Engineer determined that, due to the small scale of this project, significance criteria are not expected to be exceeded for any intersections or residential streets, and a Traffic Impact Analysis was not required.

Staff, therefore, does not believe that there will be undue parking and traffic impacts to the neighborhood.

G. General Plan Consistency: The 2002 General Plan contains several policies applicable to the project, including the following:

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-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.
3. 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.

⁴ Resolution No. 66,178-N.S. set the in-lieu parking fee for the Downtown Plan Area in a graduated range from \$15,000 to \$30,000 per space, with spaces 1-5 costing \$15,000 per space, spaces 6-15 costing \$20,000 per space, spaces 16-25 costing \$25,000 per space and spaces 26 and up costing \$30,000 per space.

Staff Analysis: Please see discussion under Key Issue 3 above.

4. Policy H-19–Regional Housing Needs: Encourage housing production adequate to meet the housing production goals established by ABAG’s Regional Housing Needs Determination for Berkeley.

Staff Analysis: The project would provide a total of 50 new dwelling units, five of which will be below market rate. The project will, therefore, help the City to meet its general housing goals.

5. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

Staff Analysis: Please see discussion under Key Issue 5 above.

6. Policy H-13 Energy Efficiency: Improve the safety and energy efficiency of new and existing homes and apartments.

7. Policy EM-5 "Green" Buildings: Promote and encourage compliance with "green" building standards.

8. Policy UD-33 Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: Pursuant to BMC Section 23E.68.085 and Policy LU-2.1 of the Downtown Area Plan (see below), building construction will attain a LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC).

H. Plan Consistency: The Downtown Area Plan, adopted in March 2012, also contains several policies applicable to the project, including the following:

1. Policy ES-2.1 – Contributions Required of All Development: New buildings and substantial additions, regardless of height, shall provide the following public benefits, except as noted for historic rehabilitations and adaptive re-use of existing buildings.

Staff Analysis: The project provides all public benefits that were required by Council in the C-DMU zoning, including LEED Gold rating or equivalent, on-site public open space, car share spaces, and transit passes. These benefits are required in the proposed conditions of approval.

2. Policy LU-3.1 – Housing Needs: Accommodate a significant portion of Berkeley’s share of regional housing growth as defined by Regional Housing Needs Assessments (RHNA) within the Core Area, Outer Core, Corridor, and Buffer areas, as compared with other appropriate areas in Berkeley.

3. Policy LU-3.2 – Housing Diversity & Affordability: Offer diverse housing opportunities for persons of different ages and incomes, households of varying size and the disabled, and give Downtown a significant role in meeting Berkeley’s continuing need for additional housing, especially affordable housing.

Staff Analysis: The project will provide 50 dwelling units of varying size (studio, one-, two- and three-bedroom units). Five of the units will be Below Market Rate at levels of affordability consistent with State Density Bonus Law. The project is located in the Downtown Buffer area that is well serviced by public transportation and is within walking/biking distance to UC Berkeley campus.

4. Policy LU-4.1: Transit-Oriented Development: Encourage use of transit and help reduce regional greenhouse gas emissions, by allowing buildings of the highest appropriate intensity and height near BART and along the Shattuck and University Avenue transit corridors.

Staff Analysis: The project helps encourage transit use and reduce greenhouse gas emissions from motor vehicles by constructing additional housing in close proximity to transit, jobs, basic goods and services, and the UC campus, and by providing car share spaces and transit benefits. As discussed in “Key Issues” above, the proposed height is required by law to accommodate the project’s density bonus units and is appropriate as it is a half block east of the Shattuck Avenue transit corridor.

5. Policy LU-4.2: Development Compatibility: Encourage compatible relationships between new and historic buildings, and reduce localized impacts from new buildings to acceptable levels. The size and placement of new buildings should: reduce street-level shadow, view, and wind impacts to acceptable levels; and maintain compatible relationships with historic resources (such as streetwall continuity in commercial areas).

Staff Analysis: See Analyses in Key Issues 3 and 5 above.

VI. Recommendation

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 #ZP2015-0014 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans with Shadow Studies, dated March 1, 2016
3. Density Bonus Calculations and Graphics, updated November 17, 2015
4. Notice of Public Hearing
5. Correspondence Received

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