



# 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 25, 2018

## 2546-2580 Bancroft Way

Use Permit #ZP2017-0083 to demolish the Bancroft Center Building (2558-2588 Bancroft Way) and demolish the rear half of the City Landmark Fred Turner Building (2546-2554 Bancroft Way); and to construct a new mixed-use building with approximately 122 dwelling units, 11,000 square feet of ground-floor commercial space, and a 37 parking space subterranean commercial garage.

### I. Background

#### A. Land Use Designations:

- General Plan: AC – Avenue Commercial
- Zoning: C-T– Telegraph Avenue Commercial

#### B. Zoning Permits Required:

- Use Permit to demolish a non-residential building, under BMC 23C.08.050.A
- Use Permit to establish dwelling units, under BMC Section 23E.56.030
- Use Permit to create new gross floor area over 1,500 square feet, under BMC Section 23E.56.050.A.2
- Use Permit to establish a commercial parking structure, under BMC Section 23E.56.030
- Administrative Use Permit to allow architectural projections (e.g. elevator enclosures) to exceed the height limit, under BMC 23E.04.020.C

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

- Exceed the standard FAR of five, under BMC 23E.56.070.3
- Exceed the standard 65-foot maximum height, under BMC 23E.56.070.B

#### D. Incentives/Concession Under State Density Bonus Law (Govt. Code §65915(d)):

- To permit dwelling units on the ground floor as not permitted under BMC 23E.56.030

**E. CEQA Determination:** The Zoning Adjustments Board certified the Final Environmental Impact Report (EIR) prepared to evaluate the potentially significant environmental impacts of the proposed project, pursuant to the California Environmental Quality Act, at their September 27, 2018 meeting. All Staff Reports, Environmental Documents, and Application Materials for this project are available online at:  
[https://www.cityofberkeley.info/Planning\\_and\\_Development/Zoning\\_Adjustment\\_Board/2580\\_Bancroft.aspx](https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/2580_Bancroft.aspx)

**F. Parties Involved:**

- Applicant Dave Johnson, Johnson Lyman Architects, 1375 Locust Street #202, Walnut Creek, CA 94596
- Property Owner Landmark Properties, Inc., 455 Epps Bridge Parkway, Athens, GA, 30606

**Figure 1: Vicinity Map**

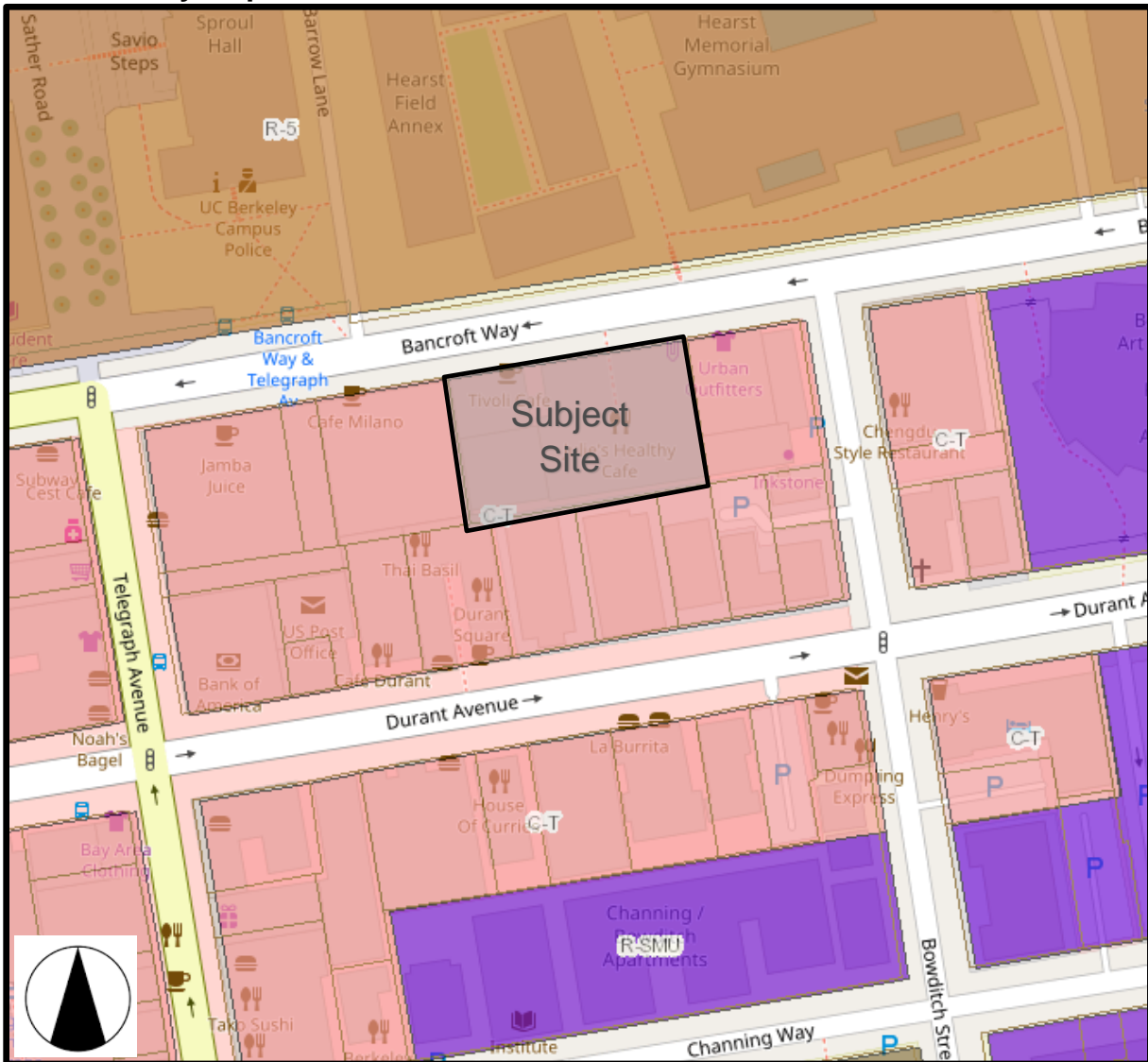
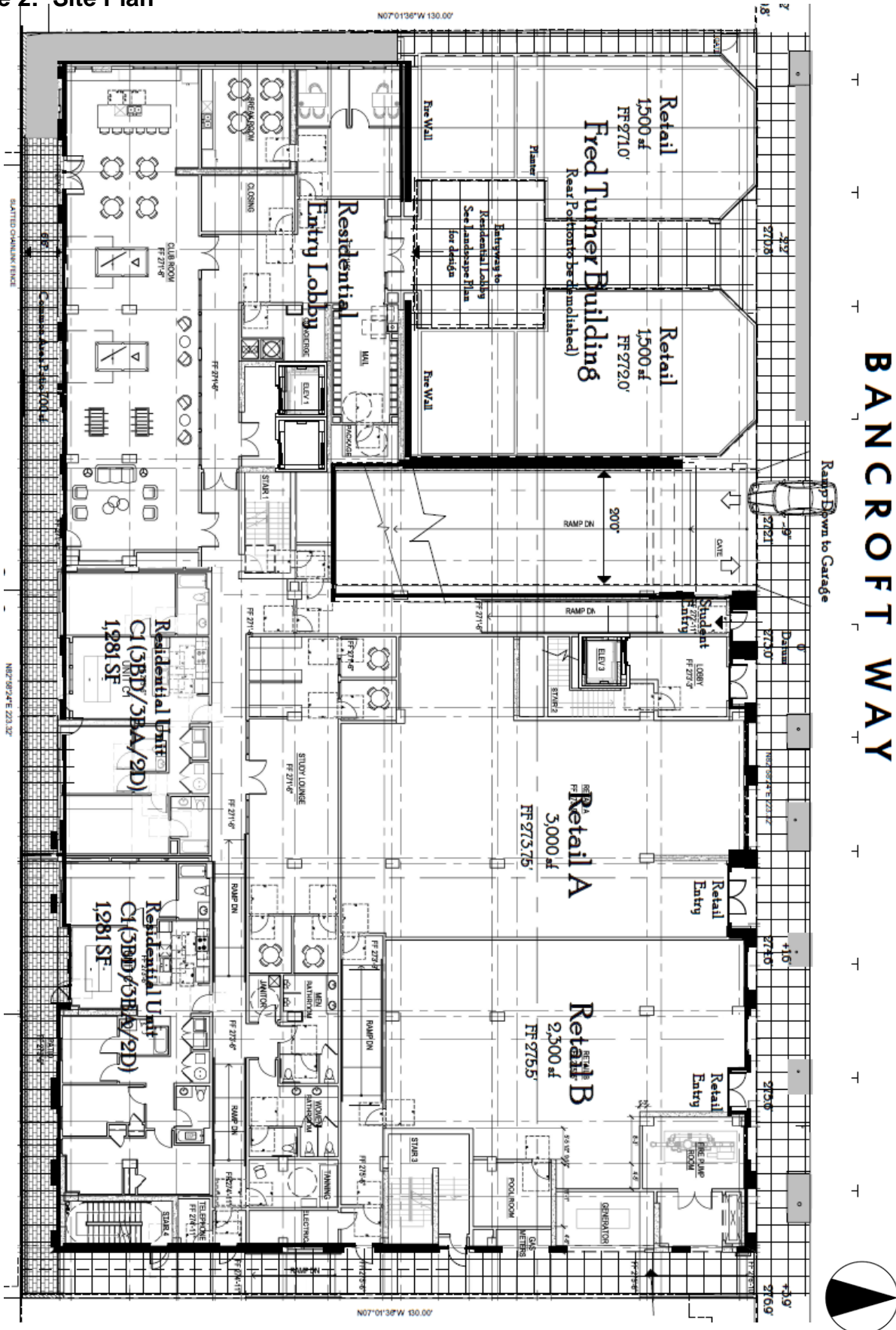


Figure 2: Site Plan



**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Mixed Commercial	C-T	Avenue Commercial
Surrounding Properties	North	Hearst Field Annex (UC Berkeley Campus)	R-5	Institutional
	South	Multi-Family and Church	C-T	Avenue Commercial
	East	Commercial	C-T	Avenue Commercial
	West	Commercial	C-T	Avenue Commercial

**Table 2: Special Characteristics**

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	These do not apply to the project as it is not constructing net commercial area greater than 7,500 square feet.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	Yes	As a project constructing five or more new dwelling units, this applies to the project.
Housing Accountability Act (Gov't Code Section 65589.5)	Yes	As a project constructing two or more dwelling units, the HAA applies to the project.
Alcohol Sales/Service	No	There is no alcohol service or sales proposed.
Creeks	No	There are no creeks in or around the project.
Density Bonus	Yes	The project is requesting a Density bonus.
Green Building Score	Yes	The project is targeting 50 points on the GreenPoint New Home Rating System, Version 7.0.
Historic Resources	Yes	The project site includes a City Landmark, the Fred Turner Building (2546-2554 Bancroft Way).
Oak Trees	No	There are no oak trees on the site.
Rent Controlled Units	No	There are no dwelling units on the site.
Residential Preferred Parking (RPP)	Yes	The project site is in RPP Zone I.
Seismic Hazards (SHMA)	No	The site is not located in a seismic hazard zone.
Soil/Groundwater Contamination	No	There is no history of ground water contamination on the site and it is not located in the Environmental Management Area.
Transit Oriented Development	Yes	The project site is within 500 feet of two UC Berkeley Bear Transit Shuttle bus stops, several AC Transit bus lines, and approximately 0.7-mile east of the Downtown Berkeley BART Station.

**Table 3: Project Chronology**

Date	Action
May 26, 2017	Application submitted
October 3, 2017	Notice of Preparation released
October 26, 2017	ZAB EIR Scoping meeting
November 2, 2017	LPC EIR Scoping Meeting & Demolition Referral Bancroft Center
November 17, 2017	Application deemed complete
November 16, 2017 and January 18, 2018	DRC Preliminary Design Review
February 1, March 1, April 5, and June 7, 2018	LPC Structural Alteration Permit and design review previews
April 17, 2018	Publication of Draft EIR and Notice of Availability
May 3, 2018	LPC Hearing on DEIR
May 24, 2018	ZAB Hearing on DEIR
September 12, 2018	Public Hearing Notices mailed/posted
September 27, 2018	ZAB EIR Certification Hearing
September 20, 2018	Public Hearing Notices mailed/posted
October 4, 2018	LPC SAP Hearing
October 10, 2018	Public Hearing Notices mailed/posted
October 25, 2018	ZAB UP Hearing

**Table 4: Development Standards**

Standard BMC Sections 23E.56.070-080		Existing	Proposed	Permitted/ Required
Lot Area (sq. ft.)		29,032	no change	---
Gross Floor Area (sq. ft.)		25,649	148,355	145,160
Floor Area Ratio		0.88	5.1	5 max. (6 w/UP)
Total Dwelling Units		0	122	---
Below Market Rate Units		0	11	11 VLI for 35% bonus
Building Height	Average (ft.)	20	86	35 min. 65 max. (75 w/UP)
	Maximum (ft.)	28	89	---
	Stories	1	8	---
Building Setbacks (ft.)	Front	0	0	0
	Rear	0	5	0
	Left Side	0	5	0
	Right Side	0	5	0
Lot Coverage (%)		88	85	---

Usable Open Space (sq. ft.)		n/a	4,920	4,880 min. (40 sq. ft. per DU)
Parking	Automobile	44	37	0
	Bicycle	0	56	0

## II. Project Setting

**A. Neighborhood/Area Description:** The property is located just south of the UC Berkeley campus across from Bancroft Way between Telegraph Avenue to the west and Bowditch Street to the east. The neighborhood is campus oriented, with a mix of commercial uses located along Bancroft Way and Telegraph Avenue, predominantly located in lower one- to two-story buildings. Numerous four- to six-story multi-unit apartment buildings, dormitories (GLAs), and institutional buildings are interspersed throughout the neighborhood. On-street parking is limited, and pedestrian traffic is heavy, especially during the school year.

**B. Site Conditions:** The project site is a rectangular parcel (Assessor’s Parcel Number [APN] 55-1877-19-2) that encompasses 29,032 square feet (0.67 acres). The site is fully developed with two existing, one-story, multi-tenant commercial buildings: the Bancroft Center at 2558-2588 Bancroft Way and the Fred Turner Building at 2546-2554 Bancroft Way. A commercial parking garage operates in the 44-space subterranean parking lot below the Bancroft Center. The project site is within 500 feet of two UC Berkeley Bear Transit Shuttle bus stops, several AC Transit bus lines, and approximately 0.7-mile east of the Downtown Berkeley BART Station.

## III. Project Description

The project is a proposed eight-story, 171,320-square-foot residential and commercial mixed-use development with presumed four separate commercial tenant spaces with a total of 11,000 square feet; 122 dwelling units; 11,238 square feet of amenities for residents; and, a one-level, 22,965-square-foot subterranean commercial parking garage for 37 vehicles. The dwelling units would be a mix of studios through six bedroom/five bathroom units, with a total of 301 bedrooms and 331 beds within the project. Approximately 5,000 square feet of Useable Open Space would be available for tenants in the form of a second floor courtyard, an eighth level terrace, and a few private balconies. For a breakdown of proposed unit type by floor, see the Residential Summary on Page A0 of the Plan Set in Attachment 2.

The project would involve demolition of the existing, single-story Bancroft Center commercial building and its 44-space subterranean parking garage; as well as demolition of the southern half (rear) of the single-story Fred Turner Building, a City Landmark. Defined as a demolition under the Zoning Ordinance as more than 50% of the exterior walls and roof will be removed (50.3% and 57.1% respectively) the project proposes to rehabilitate and repair the northern half (front) of the building, including the main façade. The main façade contains much of the character-defining features of Julia Morgan’s original design. The portion slated for demolition would be confined to areas significantly altered by previous tenants and owners.

As stated, as defined under the Zoning Ordinance, the Fred Turner building would be demolished, as more than 50% of the exterior walls and 50% of the roof would be removed. This demolition definition is specific to Zoning and does not reflected in either the Landmarks Preservation Ordinance (LPO) or the California Building Code. The Secretary of the Interior (SOI)'s Standards for the Treatment of Historic Properties defines Rehabilitation as “the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.” The subject development proposal under the LPO, therefore, represents a Rehabilitation project because it includes alterations of the historic Turner Building and the construction of new building addition and expansion while retaining the majority of the character defining characteristics. As such, the LPC approved the SAP for the project on October 4, 2018.

Based on the developer’s commitment to provide 11% of the 92 dwelling unit base project, or 11 dwelling units, affordable to Very Low Income families ( $\leq 50\%$  AMI), the project qualifies for a 35% density bonus, or 33 units, for a total of 125 dwelling units. The applicant is proposing a total of 122 dwelling units. The project’s density bonus calculations and illustrative graphics are provided in Attachment 4.

In order to accommodate the 30 density bonus units, the proposed project would add 21 feet over the base project (i.e. two stories) for a total of 86 feet, and would increase FAR from 5 to 5.1. The additional height and increased FAR requests are permissible as waivers of development standards per Government Code Section 65915(e)(1).<sup>1</sup> In addition, the applicant is proposing locating dwelling units on the ground floor as one of the two concessions to which the project is entitled under Government Code Section 65915(d).

**Table 5: Density Bonus Calculations**

Base Project	Base # Units	Base # Units	% VLI units	# VLI Units	#VLI Units	Bonus %	# DB Units	# DB Units	Total Units
sq. ft. - see calculation below	base project/avg. unit size	Base Units/Max. Residential Density (rounded down)	VLI = Very Low Income <50 AMI	% VLI x Base # Units			%Bonus x Base # Units (rounded up)	%Bonus x Base # Units (rounded up)	base unit + DB Units (rounded up)
100,598	91.10	92.00	11%	10.12	11.00	35.0%	32.20	33.00	125

<sup>1</sup> 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.

## IV. Community Discussion

**A. Neighbor/Community Concerns:** Prior to submitting this application to the City, the applicant erected a yellow pre-application poster at the site. The applicant held a community meeting on July 12, 2017 at the First Presbyterian Church in Berkeley. Six members of the public attended and asked questions about construction timing and overall size of the project. People also expressed concern as to the impacts of the project on the homeless and how to control loitering on the property site.

As listed in Table 3, Project Chronology, and described below, there have been multiple notices and hearings for scoping and CEQA document review, and well as DRC Preliminary Design Review and LPC Structural Alteration Permit review.

On October 10, 2018, the City mailed public hearing notices to property owners and occupants, and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations. As of the writing of this staff report, staff has received no public comment regarding the project merits. Any future correspondence received will be in Attachment 5.

**B. Design Review Committee Review:** LPC referred project design to the DRC, who reviewed the project on November 16, 2017 and January 18, 2018. The DRC provided advisory comments to LPC on the relationship to the landmark/neighborhood context, building design, design of the main entrance, and open space.

**C. Landmarks Preservation Commission Review:** On November 2, 2018, the proposed demolition of the Bancroft Center (2558-2588 Bancroft Way) was brought before the Landmarks Preservation Commission (LPC) for review prior to consideration of the Use Permit. The LPC took no action to initiate a Landmark or Structure of Merit designation.

The Fred Turner Building (2546-2554 Bancroft Way), as well as the project site as a whole, is a designated City Landmark. The Landmarks Preservation Ordinance requires a Structural Alteration Permit (SAP) to carry out any construction or alterations on a designated City landmark for which a City permit is required (BMC § 3.24.200). The project went before the LPC as a preview for design comments on February 1, 2018, March 1, 2018, April 5, 2018, and June 7, 2018. The SAP was heard at the October 4, 2018 LPC meeting. At the meeting the LPC adopted the ZAB-certified EIR and approved the SAP (vote: 7-0-0-2) subject to findings recommended by staff with some revisions, including a requirement for Final Design Review approval by the Landmarks Preservation Commission in accordance with BMC Section 23E.12.040.

## V. Issues and Analysis

**A. Housing Accountability Act Analysis:** The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes



to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

1. The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density;<sup>2</sup> and
2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

However, as a project employing State Density Bonus law, the Zoning Adjustments Board may not preclude the construction of the base project with density bonus units, which is the proposed eight-story, 122 dwelling unit project, with eleven on-site dwelling units affordable to Very Low Income households. The City does retain discretion over the Use Permit to establish a commercial parking structure.

**B. Purposes of the C-T District/Neighborhood Compatibility:** BMC Sections 23E.56.030.A and 23E.56.050.A.2 allow mixed-use development in the C-T District with approval of a use permit, subject to the Board making a finding of non-detriment, and the findings in Section 23E.56.090.B, listed below. In order to approve a Use Permit in the Telegraph Commercial District, the Board must find that the proposed use or structure:

1. Be consistent with the purposes of the C-T 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 C-T District, which implements the Southside Plan, lists 21 purposes, which generally emphasize the redevelopment of underutilized properties with new housing and commercial uses to serve the University population and surrounding residential neighborhoods, while reinforcing the pedestrian orientation of the District and not generating substantial vehicular traffic.

The project would further the purposes of the district in that it would create additional housing, predominantly for those who study in the neighborhood. The project includes ground floor commercial space that, although unspecified, is expected to be student oriented, which would maintain the street level activity and cater to the needs of the District's population, especially the University population and the surrounding resident population.

As analyzed in the EIR, considering the location of the significant impacts identified in the South Side Plan EIR, the net new trips generated by the project, trip generation

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<sup>2</sup> As used in the Act, a "specific, adverse impact" means a "significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, polices, or conditions as they existed on the date the application was complete.

form the project would not be significant and is not expected to generate traffic or parking demand significantly beyond the capacity of the Commercial District or significantly increase impacts on adjacent residential neighborhoods.

With seven stories and 122 dwelling units developed over ground level commercial space on a property that is currently developed with two single-story commercial buildings, 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 opportunities while retaining the continuity of retail and compatible services at the ground level. LPC's approval of the SAP regarding the design and rehabilitation of the existing city landmark demonstrates that the project is compatible with the adjacent commercial and residential development.

- C. Demolition of a Commercial Building:** The project proposes to demolish the two commercial buildings on the site: full demolition of the Bancroft Center, and partial demolition of the Fred Turner Building (see discussion in Project Description above). 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 finds 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. This finding can be made as the demolition of the structures would allow the proposed mixed-use project to be built, which would replace 11,000 square feet of ground level commercial space. The project would rehabilitate a City Landmark and would further enhance the neighborhood by providing 122 new dwelling units whose residents would be new client base to both the existing and newly proposed commercial businesses.
- D. Sunlight/Shadows:** The project proposes to construct an eight-story building on what is currently developed with single-story structures. As such, the project would create greater shadowing impacts over existing conditions. To assess the anticipated shading impacts, the applicant submitted shadow studies for the project which show that the majority of new shading will fall on the UC Campus during the winter months: Sproul Hall and the Hearst Field Annex during the morning hours, and the Hearst Gymnasium in the evenings. No residential units would be impacted. Shading impacts are, therefore, deemed non-detrimental.
- E. Roof-Top Projections:** BMC 23E.04.020.C requires an Administrative Use Permit for roof-top projections, such as mechanical penthouses, elevator equipment rooms or stair towers, that would exceed the maximum height limit. Such projections are limited to no more than 15 % of the average of the building's floor area, and cannot be used as habitable space or for commercial purposes. The project proposes rooftop mechanical equipment that is enclosed by a 4-foot tall screen, as well as one 180-square-foot staircase penthouse that projects 10 feet over 86-foot tall roof height. The penthouse represents less than 1% of the 18,544-square-foot average all the floor areas. The projection is, therefore, permissible.
- F. General Non-Detriment:** Use Permits to establish dwelling units, create new gross floor area, and establish a commercial parking structure require findings of non-

detriment. As described above, the proposed project furthers the purposes of the zoning district, provides new ground floor commercial space, and new shading would not fall on residential uses. In addition, the project approval is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

**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 LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy LU-27-Avenue Commercial Areas: Maintain and improve Avenue Commercial areas, such as University, San Pablo, Telegraph, and South Shattuck, as pedestrian-friendly, visually attractive areas of pedestrian scale and ensure that Avenue areas fully serve neighborhood needs as well as a broader spectrum of needs.
4. 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.

Staff Analysis: As described more fully in Key Issue B above, 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. LPC's approval of the project design and rehabilitation plan for the existing landmarked building demonstrates that the project is compatible with the adjacent commercial and residential development.

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

Staff Analysis: As more fully described in the discussion under Key Issue D above, shadow impacts from the project are not expected to affect any residential windows or properties and are, therefore, deemed non-detrimental.

6. Policy H-33-Regional Housing Needs: Encourage adequate housing production to meet City needs and the City's share of regional needs.

Staff Analysis: The project, would increase the City's housing supply by 122 new dwelling units.

7. Policy H-12 Transit-Oriented New Construction: Encourage construction of new medium and high-density housing on major transit corridors and in proximity to transit stations consistent with zoning, applicable area plans, design review guidelines, and the Climate Action Plan.
8. Policy LU-23-Transit-Oriented Development: Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley.
9. Policy T-16-Access by Proximity: Improve access by increasing proximity of residents to services, goods, and employment centers.

Staff Analysis: The project would help encourage transit use and reduce greenhouse gas emissions from motor vehicles by constructing additional housing in close proximity to transit, university, jobs, and basic goods and services. Several AC Transit bus lines and two UC Berkeley Bear Transit shuttle bus stops are directly adjacent to the project site with direct service to the Berkeley BART Station. The downtown Berkeley BART station is located less than two-thirds of a mile from the project site, which has connecting service throughout the Bay Area.

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 proposes a score of 139 on the GreenPoint Rated Checklist, New Home Multifamily Checklist 6.0 with a targeted Gold certification level.

**H. Plan Consistency:** The Southside Plan, adopted in 2011, also contains goals and 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.

Staff Analysis: The project would provide 122 rental dwelling units over a commercial retail ground floor.

2. Policy LU-F18: Encourage and support transit and other alternatives to automobile use in the Southside

Staff Analysis: Consistent with the policies of the Southside and Climate Action Plans, the project would provide no off-street parking for the residential units, thereby encouraging other modes of transportation including transit and cycling.

## 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:

- A. ADOPT CEQA associated findings, statement of overriding considerations and the mitigation monitoring and reporting program (see Attachment 1, Exhibit A & B); and
- B. APPROVE Use Permit ZP2017-0083, pursuant to BMC Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).

### **Attachments:**

1. Findings and Conditions
  - Exhibit A: Findings of Fact Regarding Environmental Impacts, Mitigation Measures, Alternatives and Overriding Considerations
  - Exhibit B: Mitigation Monitoring and Reporting Program
2. Project Plans, dated May 1, 2018
3. Notice of Public Hearing
4. Density Bonus Calculations and Schematic
5. Correspondence Received

**Staff Planner:** Leslie Mendez, Senior Planner, [lmendez@CityofBerkeley.info](mailto:lmendez@CityofBerkeley.info), (510) 981-7426