



# 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 24, 2019

## 1581 Le Roy Avenue – The Hillside School

Use Permit #ZP2019-0061 to convert the vacant, elementary school property to residential use: to establish the approximately 50,000-sq. ft., main building as a single-family residence and accessory dwelling unit, incorporating several former classrooms as private (non-commercial) art studio space; to install an unenclosed swimming pool and hot tub within a new roof deck; to construct an approximately 36-sq. ft., elevator penthouse above the second story (but below the third story roof ridge); to convert a former multi-purpose room to a garage; to create a new, surface parking lot and to locate up to five, new storage sheds within portions of the former playground to be partially re-purposed as an outdoor (non-commercial) art practice space; and to complete landscape improvements along the public interface.

### I. Background

#### A. Land Use Designations:

- General Plan: Low Density Residential
- Zoning: Single-Family Residential/Hillside Overlay (R-1/H)

#### B. Zoning Permits Required:

- Use Permit, under BMC (Berkeley Municipal Code) Section 23D.16.030, to create a dwelling unit in the R-1 district;
- Administrative Use Permit, under BMC Section 23D.12.080, to locate parking spaces with the required front yard setback of a residential property;
- Administrative Use Permit, under BMC Section 23D.16.030, to install an unenclosed hot tub on a residential property; and
- Administrative Use Permit, under BMC Section 23D.16.070.C, to construct a residential building addition greater than 14 ft. in average height.

#### C. CEQA Determination: Categorically exempt pursuant to the following Sections of the CEQA Guidelines: Section 15301 for “Existing Facilities,” 15303 for “New Construction or Conversion of Small Structures,” and 15331 for “Historical Resources Restoration/Restoration.”

**D. Parties Involved:**

- Applicant/Architect Jerri Holan, AIA, Holan & Associates, 1323 Solano Ave., Albany, CA
- Property Owner Samuli Seppälä, 1581 Le Roy Avenue, Berkeley, CA

**Figure 1: Vicinity Map**



Figure 2: Proposed Site Plan

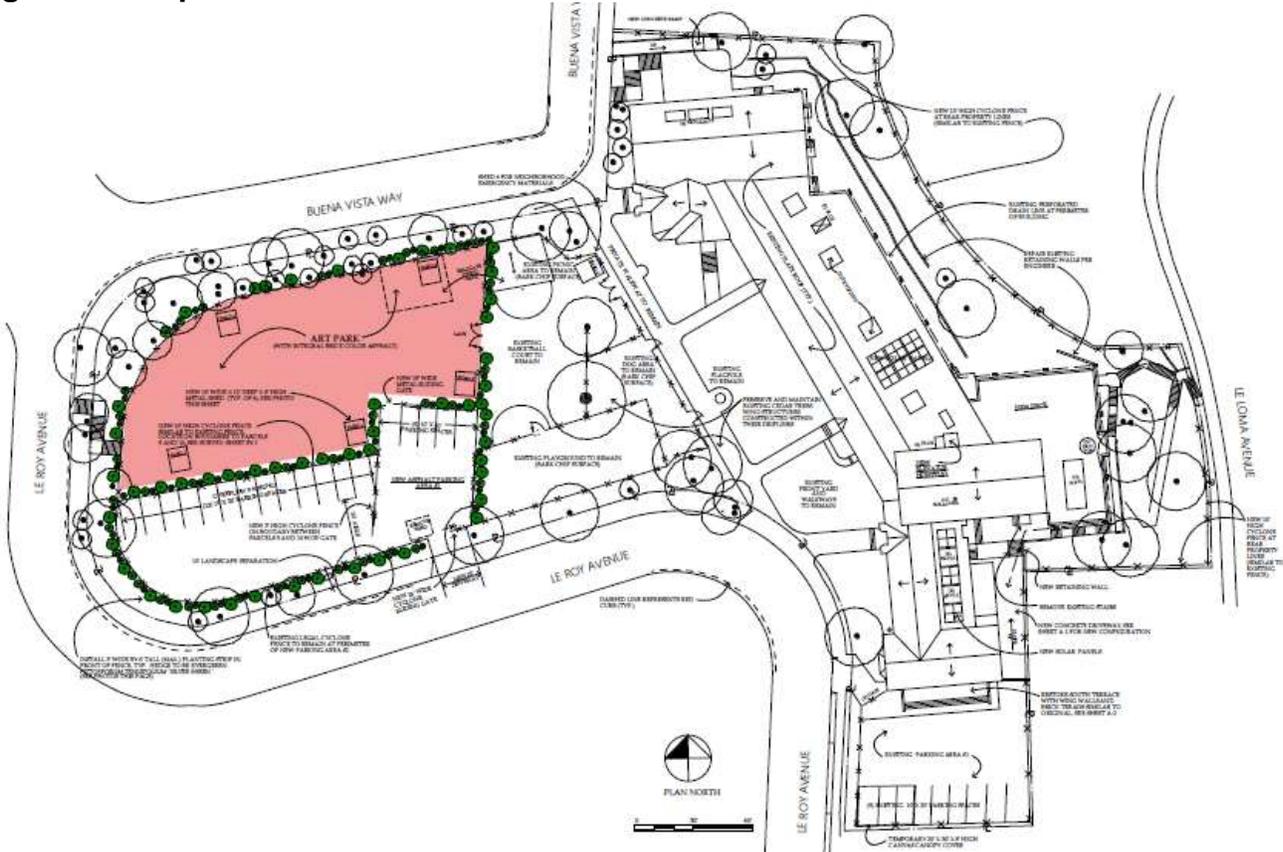


Figure 3 : Partial Aerial photograph of subject building, looking northeast



**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		School	R-1/H	Low Density Residential
Surrounding Properties	North	Single-Family Residences		
	South			
	East			
	West			

**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 ordinances do not apply to this application which for a residential conversion of less than five units.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)		
Creeks	No	This site is not located within 30 ft. of the center line of an open creek.
Historic Resources	Yes	This property is listed on the National Register of Historic Places, and was designated as a City Landmark in 1982. On August 1, 2019, the Landmarks Preservation Commission approved the Structural Alteration Permit for this conversion request; the approval is subject to appeal and certification by City Council.
Housing Accountability Act Gov't Code Section 65589.5(j)	Yes	Because this proposal conforms to the objective standards of the BMC, it would be subject to the HAA; see Section V of this report.
Oak Trees	Yes	This site features coast live oak trees, and these trees would not be affected by the proposed conversion request.
Residential Preferred Parking (RPP)	Yes	This area is included in the RPP program.
Seismic Hazards (SHMA)	Yes	This site is located in SHMA area of the Berkeley. This proposal, however, is not subject to an investigation because it is not defined as a "project," owing to its limited scope, minimum construction and conversion from a more intense use (e.g.: K-12 school) to a less intense use as a residence.
Soil/Groundwater Contamination	No	This project site is not located in an Environmental Management Area of Berkeley nor does it appear on the lists of hazardous waste sites compiled by the Secretary of Environmental Protection.
Transit Proximity	Yes	This site is located within two blocks of AC Transit Line 65.

**Table 3: Project Chronology**

Date	Action
April 1, 2019	Application submitted
June 6, 2019	LPC opened and continued the Structural Alteration Permit hearing awaiting staff recommendations for final action.
August 1, 2019	LPC approved the Structural Alteration Permit pursuant to certain Findings & Conditions; see Attachment 1 of this report.
October 9, 2019	Public hearing notices mailed/posted
October 24, 2019	ZAB hearing

**Table 4: Development Standards**

Standard BMC Sections 23D.16.070-080	Existing School (approximate)	Proposed Residence	Permitted/ Required
Lot Area (sq. ft.)	117,500	No change	5,000 min
Gross Floor Area (sq. ft.)	50,300		Not regulated
Dwelling Units	0	1+ADU	1+ADU max
Building Height	Average	No change	28 max
	Maximum		30 max
	Stories		3 max
Building Setbacks	Front		20 min
	Rear		20 min
	Left Side		min
	Right Side		min
Lot Coverage (%)	22		
Usable Open Space (sq. ft.)	22,000	10,000	800 min
Parking	7	30	1 min

**II. Project Setting**

**A. Neighborhood/Area Description:** The project site is located the 1500-block of Le Roy Avenue, in the Berkeley Hills neighborhood. This is a low-density, residential neighborhood that primarily features single-family residences along with schools, churches and City parks. It is characterized by sloping terrain, mature vegetation, winding street patterns, and expansive westward-facing views of the San Francisco Bay.

**B. Site Conditions:** The subject property is a large, approximately 117,500-sq. ft., through lot parcel that is oriented in the east-west direction, with street frontage on Le Roy Avenue and Buena Vista Way on its western end, and La Loma Street on its eastern end. The parcel is irregularly-shaped, and laterally abuts several interior parcels on the north and south.

The Hillside School, the subject main building, was constructed in 1925 and then substantially rehabilitated between 1934 and 1938. It was designed in the Tudor Revival style by prominent Berkeley architect Walter H. Ratcliff Jr. (1881-1978). The

building ranges from one to three stories in height. In 1963, a modern-era, single-story addition designed by the Ratcliff firm was constructed on the eastern portion. The building is approximately 50,000 sq. ft. in total area and located on the west side of the subject parcel.

The subject building consists of five primary segments:

- Auditorium wing – one story with a basement
- Central classroom wing – two stories
- Southern classroom wing- three stories
- Kindergarten wing – one story
- 1963 building addition – one story

There are landscaped and terraced areas immediately surrounding the building, and a large, approximately 44,000-sq. ft. open area featuring the school playground on the east side of the property, which is partially landscaped but primarily paved with asphalt.

This property is listed on the National Register of Historic Places, and was designated as a City Landmark in 1982.

The building and site operated as a school until 2017, when the last school organization relocated and sold the property after concluding that the structural and seismic rehabilitation program required for an expanded school use at this site would be cost-prohibitive. The current owner is a private individual who purchased the property in 2018.

### **III. Project Description**

The applicant proposes to convert the former elementary school site and building to residential use. In accordance with the Development Standards for maximum residential density in the R-1 district, the proposal requests that the interior of the 50,000-sq. ft., three-story school building be re-purposed and partially remodeled to include a total of two new dwelling units: a single-family residence and an accessory dwelling unit. The proposed dwelling units and vast, interior building space have been designed for private individuals whose lifestyle includes an active and varied art practice.

The primary dwelling unit would be located on the two upper stories of the southern classroom wing, and would feature a total of five bedrooms, three full bathrooms, two half-bathrooms, a living room, a family room, a kitchen and other amenities such as a laundry facilities. A new elevator would serve the primary unit, and a new penthouse would be created on the roof of the central classroom wing. The accessory dwelling unit would be located on the lower story of the central classroom wing, and total 800 sq. ft. in

area. The remaining eight classrooms would be used as artist studio space, for the private use of the property's residential occupants and their guests.

The school's former multi-purpose room, on the lower story of the three-story classroom wing, would be converted to a garage for up to three vehicles. A new vehicle door would be created on the southern elevation of this area of the building, and accessed via a new sloped driveway that would be created on the east side of the kindergarten wing. A new rooftop, outdoor space with a new safety rail, an unenclosed swimming pool and hot tub would be installed in the roof of the 1963 building addition.

The auditorium, existing restrooms and most storage rooms would maintain as such. The auditorium would be used for entertaining and hosting events by the residential occupants for themselves and their guests. Some, smaller rooms and interior spaces would be converted to service use for the proposed improvements and new uses, such as an elevator shaft and pool equipment room.

The applicant anticipates that residential occupants of this site would host a small number guests on a regular basis (as many of five) and, occasionally, would host large, non-commercial events by invitation only. For this reason, the proposal includes the introduction of an on-site, surface parking lot serving up to 18 vehicles, to be located on a portion of the existing blacktop within the former school yard. An existing, 10 ft.-tall chain-link fence that encloses the area would remain, and new trees would be planted to supplement the existing, mature vegetation along the right-of-way interface in order to provide a continuous, organic visual screen for the proposed surface parking lot and outdoor art practice space.

A portion of the open, school yard would be used for outdoor art activities. This area has been delineated on the proposed site plan as an "Art Park," and would feature as many as five, detached storage sheds of not larger than 120 sq. ft. or taller than 10 ft. in average height.

The proposed projects plans are included in Attachment 3 of this report. The applicant's detailed description of the intent and purpose of this conversion project is provided in the Applicant Statement, Attachment 4.

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

**A. Neighbor/Community Concerns:** Prior to submitting this Use Permit application on April 1, 2019, the applicant installed two Proposed Development signs at the site: near the Le Roy Avenue entrance, and near the La Loma Avenue street frontage.

The applicant and property owner meet with members of the neighborhood on several occasions before and after submitting this application to discuss the residential conversion proposal and provide information about the intended private art practice. Those meetings occurred on July 10, 30 and August 20, 2019, at the home of the President of the Hillside Association of Berkeley. A meditation session

with SEEDS occurred on September 30, 2019, at the Hillside School site. While some neighbors were supportive of the project and appreciative of the proposed improvements to the property, many others were opposed to the project. The themes of their objections are summarized in Table 5, below, along with a brief staff response. Correspondences received on this matter are provided as Attachment 6 of this report.

On October 9, 2019, City staff mailed and posted notices of tonight’s hearing, in accordance with BMC Section 23B.32.020 (Public Notice Requirements).

**B. Landmarks Preservation Commission (LPC) Review:** Because the subject property is listed on Berkeley’s register of historically significant properties, this project is subject to prior Structural Alteration Permit approval, in accordance with BMC Section 3.24.200. On June 6 and August 1, 2019, the LPC reviewed the applicant’s proposal for exterior changes to the property and main building, and then approved the project subject to certain Findings and Conditions of Approval; see Attachment 2 of this report. Some Commissioners requested that staff forward the following comments for ZAB’s consideration of this Use Permit application:

- Limit the number of sheds to not more than five in order to control for the proliferation of unsightly structures in the open area, which is prominently located.
- Reduce the number of parking spaces in the new surface parking lot to the minimum needed to accommodate the anticipated guests.

Several members of the public attended the Structural Alteration Permit hearings, and many others wrote letters to the City. All letters received, whether addressed to the LPC or ZAB, are attached for ZAB’s consideration; see Attachment 6. While some neighbors were supportive of the project and appreciative of the proposed improvements to the property, many others who spoke during Public Comment were opposed to the project. The themes of their objections are summarized in Table 5, below, along with a brief staff response.

**Table 5 – Summary of Public Comments**

General Comment	Staff Response
The proposed change to residential use is exclusively private.	The proposal to convert the former school site to a private residence is permissible under the BMC, and does not warrant concern with respect to Zoning requirements; see Section V.B.
The new property owner may preclude public access to this site, the play area and the private walkway between Buena Vista Way on the north and Le Roy Avenue on the south.	At this time, the City has no interest in pursuing an access easement at this site. The neighbors’ request for such an easement is a civil matter, and City staff would not compel the property owner to enter into such an agreement. See Section V.G.

General Comment	Staff Response
The nature and scale of a private residential art practice at the site is unknown.	The applicant has described all aspects, including the scale, of the proposed residential art practice in her Applicant Statement; see Attachment 4 and staff's discussion in Sections V.C and F of this report.
Future occupants' will have the ability to host large events.	Anticipated events at this site are discussed in Section V.F.

## V. Issues and Analysis

**A. Housing Accountability Act.** The Housing Accountability Act 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<sup>1</sup> on public health or safety unless disapproved or approved at a lower density; 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.

This conversion project where no new construction is proposed, meets the applicable regulatory standards of the BMC related to maximum residential density and minimum usable open space and off-street parking. Therefore, §65589.5(j) **does** apply to this project as currently proposed.

**B. Creation of dwelling units on a former school site in R-1 district.** The proposal to convert the former school site to residential use and achieve the maximum residential density permitted in the R-1 district is found to be reasonable and generally non-detrimental. This proposal adheres to the R-1 district standards for dwelling unit density, and exceeds the requirements for minimum usable open space and off-street parking; see Table 5, above. Further, the proposal is compatible with the *Purposes* of the district (BMC Section 23D.16.020), which are:

- A. *Recognize and protect the existing pattern of development in the low density, single family residential areas of the City in accordance with the Master Plan;*
- B. *Make available housing for persons who desire detached housing accommodations and a relatively large amount of Usable Open Space;*

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<sup>1</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.”

- C. *Protect adjacent properties from unreasonable obstruction of light and air; and*
- D. *Permit the construction of community facilities such as places for religious assembly, Schools, parks and libraries which are designed to serve the local population when such will not be detrimental to the immediate neighborhood.*

Specifically, this proposal would re-use a vacant school site while introducing minimal changes to the building and its scale and massing, thereby maintaining the existing pattern of development in the immediate area and avoiding sunlight or air obstructions. The proposal would establish a low-density residential use on a site with abundant open space.

The site is located in an environmentally sensitive area (earthquake fault rupture and landside) and previous engineering assessments found that extensive structural and seismic improvements would be required in order to continue and expand its K-12 school use to full capacity. These upgrades proved cost-prohibitive to the most recent K-12 occupant, who then decided to relocate to a more suitable school site and to sell the property. Under these circumstances, staff concludes that it is not likely that a school would occupy this site at this time.

Owing to its alignment with the regulations of the R-1 district and consistency with the district *Purposes*, staff concludes that proposed conversion to residential use is permissible and recommends that the Board take favorable action on this request.

**C. Private, residential art practice.** The proposal to accommodate a private, residential art practice in dwelling units on a converted former-school site is found to be reasonable and generally non-detrimental. As a private residence located in a residential district, this site is not permitted to establish an “*arts/craft studio*” use (BMC Section 23F.04, “Definitions”), generally defined as an *establishment*, which staff interprets to be a commercial or institutional, or otherwise non-residential, land use activity. The analogous but permitted residential activity is defined as follows:

*Artist Studio: A detached accessory building used by residents of a main dwelling Unit on the same lot, to create original works of art and craft products, but not for living quarters or sleeping purposes. (BMC Section 23F.04)*

In this case, the applicant proposes such a use, though not located in a detached, accessory building and, instead, contained within a large main building and a confined outdoor area. Staff concludes, therefore, that the art activity is permissible on this residential property and, further, that the proposed location within the main building would be reasonable because the approximately 50,000-sq. ft. building could provide adequate space to sufficiently maintain both the dwelling uses and the art practice.

The outdoor art practice, similarly, could be found reasonable and consistent with the use of a residentially zoned property. Outdoor activity in R zones is generally un-

regulated and presumed to align with the primary use of the site. To ensure that the proposed art activities would not result in excessive noise, light glare or other disturbances, staff recommends that the Board consider an approval with specific conditions to limit hours of late-night outdoor activity and require downcast lighting, and adherence to the Community Noise Ordinance (BMC 13.42).

The Board must consider this request and the specific circumstances of this case, which appear to support a finding that the proposed residential art practice at this location would be reasonable, consistent with the BMC provisions for activity in residential districts, and not likely to result in detrimental impacts for the immediate neighborhood.

**D. New surface parking lot within required front yard setback.** The applicant proposes to establish an 18-vehicle parking lot in a portion of the former school's playground area. As a proposed single-family residence, this conversion request would require only one off-street parking space, in accordance with BMC Section 23D.16.080A (*Parking*). However, the applicant proposes a total of 30 spaces: 7 spaces in the existing parking area of the former school that would be maintained, 3 interior spaces in the new garage, and 18 new spaces in a surface lot. The 18-vehicle surface lot is intended to address the anticipated demand for parking that would result from visitors arriving by car for occasional events. The applicant arrived at the number 18 of spaces based on the estimated rate of regular visitors to the site (the equivalent of approximately five vehicles) as well as the anticipated number of visitors for the occasional events.

The BMC does not suggest a formula for this kind of over-flow parking in a residential context. In BMC Section 23D.16.080, the R-1 district sets standards for other uses, such as care facilities and libraries. BMC Section 23D.16.080.B (*Parking*) reads:

*Other Uses requiring a Use Permit, including but not limited to Child Care Centers, Clubs, Lodges, and community centers, shall provide the number of Off-Street Parking Spaces determined by the Board, based on the amount of traffic generated by the particular Use and comparable with specified standards for other Uses.*

After discussing this Use Permit application with the City Traffic Engineer, staff concluded that the applicant's proposal of 18 spaces is reasonable given the limited frequency of the proposed events. The Traffic Engineer did not formally comment on the applicant's rationale for arriving at 18 over-flow spaces and, instead, suggested that the applicant employ professional to review the proposal and assess the parking demand. Some interested parties, including some members of the LPC, believe 18 is "too many" spaces and requests that the Board consider approving the project with fewer spaces.

If the Board considers approving fewer spaces, then staff recommends that the reduction in space occur in areas of the proposed surface parking lot nearest the front property line in order to maintain an unobstructed front yard setback.

The proposal to maintain the existing chain-link fence and supplement the existing mature vegetation along the right-of-way with select new plantings would provide an effective yet visually penetrable screen. Such a screen would be preferred over a solid fence or other kind of screen, and would ensure continuity of the natural, organic character of the former playground area and the public interface.

For all of these reasons, staff recommends that the Board consider approving the proposed surface parking lot, number of spaces as presented by the applicant, and the locations of some spaces within 20 ft. of the front property line.

**E. New building features: rooftop hot tub and elevator penthouse.** The proposal to install a hot tub and swimming pool within a new roof deck on the eastern side of the subject building, is subject to Administrative Use Permit approval, in accordance with BMC Section 23D.08.060.C (*Fences and Other Accessory Structures*). This ordinance requires that any pumping equipment be mounted and enclosed so that its sound is not audible beyond the nearest, shared property line. In this case, the nearest abutting residence is located to the east of the subject site, at 1530 La Loma Avenue, approximately 100 ft. to the south of the proposed hot tub location. As a Condition of Approval, the applicant would be required to enclose any such equipment or otherwise ensure compliance with this standard prior to building permit approval for installation of the hot tub.

The proposed elevator penthouse of the north side of the three-story classroom wing would be approximately 28 ft. in height, and would not exceed the R-1 district's maximum height limit of 28 ft., or extend beyond the existing building height of 30 ft. or roofline profile. The proposed size of approximately 36-sq. ft. is modest and would not result in a significant increase in total building area or massing and scale. For these reasons, it is found to be permissible and unlikely to result in any detrimental effects.

**F. Visitors and events on site – scale and frequency.** In her statement (Attachment 4), the applicant explains that the property owner anticipates hosting up to 25 regular visitors for art activities on a weekly basis for six to nine months of the year. During this time, the owner will also hold invitation-only events that may draw as many as a 100 visitors. These figures represent the greatest number of possible visitors and frequency of events, but the applicant believes the figures would be far lower in reality. Nevertheless, the approximately 2.5-acre site and 50,000-sq ft. building are large enough to accommodate groups of this size. Both the number of visitors and recurrence of events are generally lower and less intense than the historic school use at this site. Therefore, staff believes the applicant's request to use the site in this manner would be unlikely to worsen traffic, congestion and noise conditions for abutting neighbors and the area as a whole.

**G. Neighbors' request for an access easement.** Multiple neighbors of the site have requested that the property owner enter into a access easement agreement to ensure the public's ability to use the paved pathway that exceeds across the site provide a pedestrian and bicycle link between Buena Vista Way to the north and Le Roy Avenue to the south. This pathway has been unobstructed and used by the public for several past decades.

Since acquiring the property in 2018, the property owner has maintained the pathway unobstructed and indicates (via the Applicant Statement) that he remains open to this informal arrangement indefinitely at this time, and wishes for a cooperative relationship with the neighborhood. However, as a private individual, he also recognizes the responsibility, legal liability and potential intrusion of privacy this arrangement engenders and, therefore, reserves the right to reconsider this arrangement in the future should circumstances require it.

Public Works staff has confirmed that there is no interest in pursuing a public access easement for this site. Public safety staff has also confirmed that this site has not been identified as a possible location for City-sponsored public safety response activities or services, as some members of the public have suggested. So, City staff has taken no action in regard to, nor general interest in, this private property.

Given these circumstances, staff does not believe the Board should consider compelling the property owner to enter into an access easement agreement with the City or other parties.

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

1. 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.
2. Policy H-33–Regional Housing Needs: Encourage adequate housing production to meet City needs and the City's share of regional housing needs.
3. Policy UD-6: Encourage adaptive reuse of historically or architecturally interesting building in cases where the new use would be compatible with the structure itself and the surrounding area.

Staff Analysis: This proposal to establish two, new dwelling units within an existing, vacant school building and on site that may otherwise go under-utilized due to its location in an environmental sensitive area, is expected to result in highest and best use of the site at this time when only this proposal as come forward for consideration. By maintaining, improving and re-purposing this City

Landmark building and site, the proposal would be compatible with the scale, historic character and surrounding uses.

## **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. APPROVE Use Permit #ZP2019-0061 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

### **Attachments:**

1. Findings and Conditions
2. Approved Structural Alteration Permit Findings & Conditions (pending appeal and City Council certification)
3. Project Plans, dated October 10, 2019
4. Applicant Statement, dated October 9, 2019
5. Notice of Public Hearing
6. Correspondence Received

**Staff Planner:** Fatema Crane, Senior Planner LPC Secretary, fcrane@cityofberkeley.info, (510) 981-7413