



# 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

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FOR BOARD ACTION  
OCTOBER 24, 2019

## 2352 - 2390 Shattuck Avenue

Use Permit ZP#2018-0135 to 1) demolish two existing commercial buildings; 2) split the lot into two; and 3) construct two, eight-story, mixed-use buildings with 204 units (including 14 Very Low Income units), 12,154 square feet of commercial space, 17,012 square feet of usable open space, and 90 ground-level parking spaces.

### I. Background

#### A. Land Use Designations:

- General Plan: AC – Avenue Commercial, HDR – High Density Residential
- Zoning: C-DMU – Downtown Mixed Use District, Corridor and Buffer Sub-Areas

#### B. Zoning Permits Required:

- Use Permit to demolish a commercial building, under BMC 23C.08.050.A;
- Use Permit to construct a new mixed-use development, under BMC 23E.68.030; and
- Use Permit to construct new floor area of 10,000 square feet or more, under BMC 23E.68.050.

#### C. Waivers/Concessions Pursuant to State Density Bonus Law:

##### North Building (Phase 1)

- Waiver to exceed height, to be 85'-3" (plus 5' parapet), where 60' is the limit in Corridor Sub-Area, and where 50' is the limit in Buffer Sub-Area (5' parapet allowed by right);
- Waiver to construct rooftop projections, such as mechanical appurtenances or architectural elements which exceed the maximum height limit for the district;
- Waiver to reduce the front, side, and rear yards:
  - Shattuck Avenue setback (front) – 0'-0", where 15' minimum is required above 65' in height;
  - Interior side setback – 5'-0", where 15' minimum is required above 75' in height and over 65' from lot frontage;
  - Rear setback – 5'-0", where 15' minimum is required above 75' in height; and

- Waiver to provide no Privately Owned Public Open Space (POPOS), where 143 square feet is required.

### **South Building (Phase 2)**

- Waiver to exceed height, to be 84'-6" (plus 5' parapet), where 60' is the limit in Corridor Sub-Area (5' parapet allowed by right);
- Waiver to construct rooftop projections, such as mechanical appurtenances or architectural elements which exceed the maximum height limit for the district;
- Waiver to reduce the front, side, and rear yards:
  - Front setback – 0'-0", where 15' minimum is required above 75' in height;
  - Shattuck Avenue setback (street side) – 0'-0", where 15' minimum is required above 65' in height;
  - Interior side setback – 5'-0", where 15' minimum is required above 75' in height and over 65' from lot frontage;
  - Rear setback – 5'-0", where 15' minimum is required above 75' in height; and
- Waiver to reduce the commercial parking requirement, to provide 7 parking spaces, where 8 are required.

### **Project Concessions**

- Concession to expand the floor-to-floor height in Proposed Project over the Base Project floor-to-floor height; and
- Concession to provide ground-level parking in Proposed Project where parking is below ground in the Base Project.

**D. CEQA Determination:** An Infill Environmental Checklist (IEC) was prepared for the project, pursuant to Section 15183.3 ("Streamlining for Infill Projects") of the CEQA Guidelines. All related analysis is available on the City's website link that is provided below. See Section V.A for discussion of the project's CEQA review.

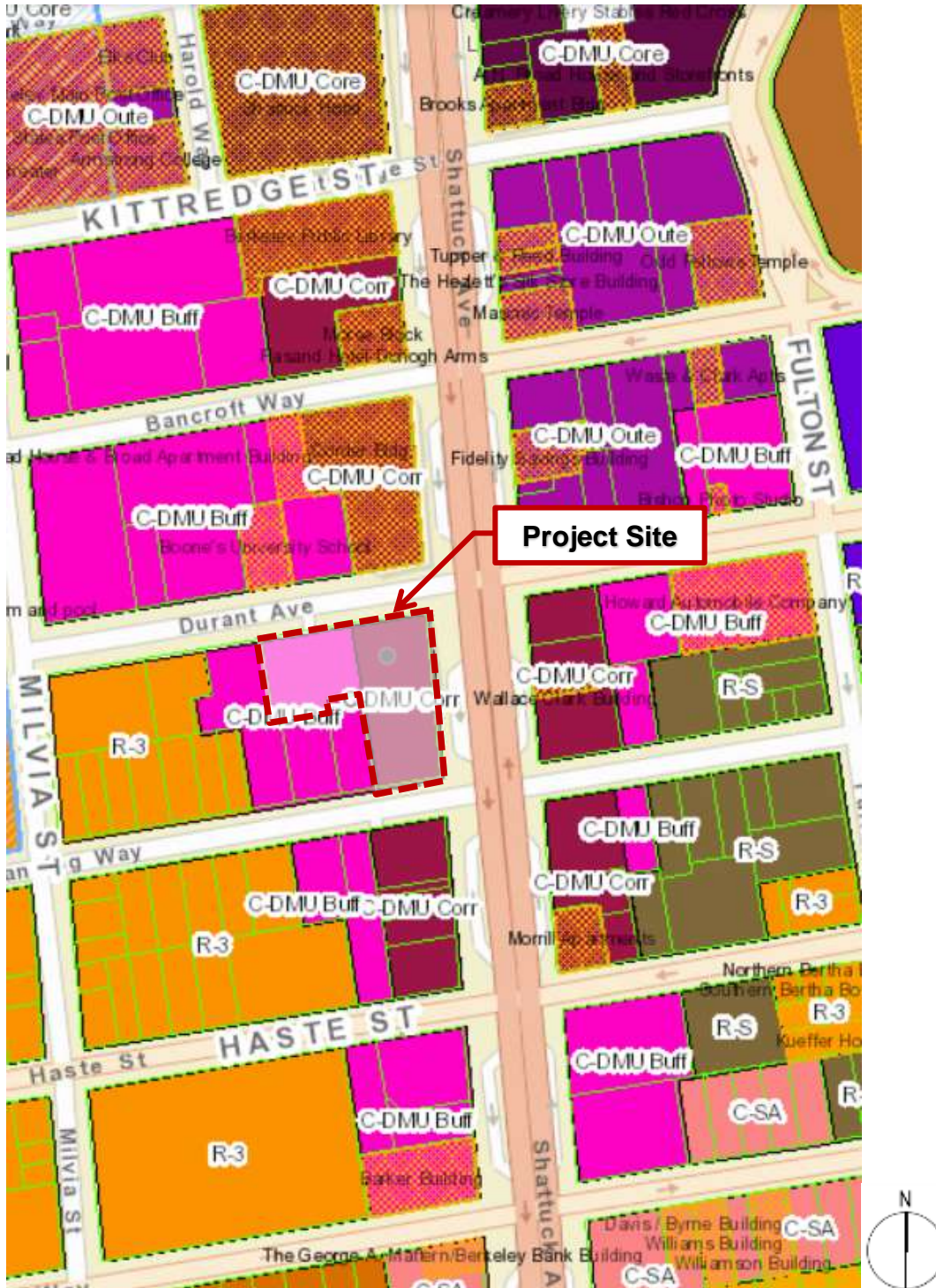
### **E. Parties Involved:**

- Applicant                      Dave Johnson, 1375 Locust Street, #202, Walnut Creek, CA 94596
- Property Owner              The Austin Group, LLC, 64 Oak Road, Alamo, CA 94507

**F. Application Materials, Staff Reports and Correspondence are available on the Internet:**

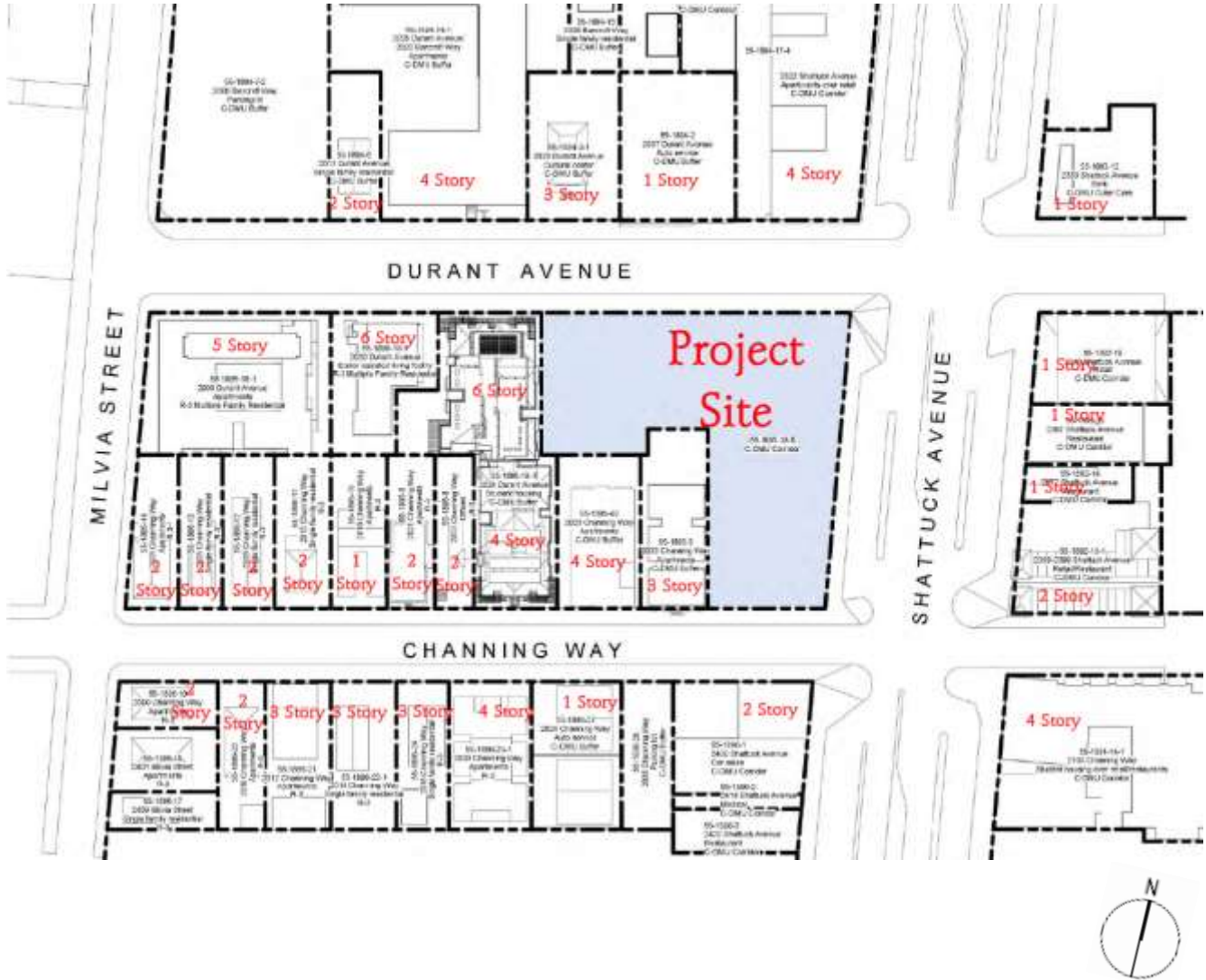
[https://www.cityofberkeley.info/Planning\\_and\\_Development/Zoning\\_Adjustment\\_Board/2352\\_Shattuck.aspx](https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/2352_Shattuck.aspx)

**Figure 1: Zoning Map**



- Legend**
- AC Transit Bus Route
  - C-DMU:** Downtown Mixed Use District
  - Corr:** Corridor Sub-Area
  - Buff:** Buffer Sub-Area
  - R-3:** Multiple-Family Residential District

Figure 2: Vicinity Map



**Figure 3: Shattuck Avenue (East) Elevation**



**Figure 4: Durant Avenue (North) Elevation**



**Figure 5: Channing Avenue (South) Elevation**



**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Commercial – Bank/Food Service/Office Supplies	C-DMU	Avenue Commercial (AC)
Surrounding Adjacent Properties	North and Northeast	Commercial and Residential – Multi-Family/Office/Auto Service/Multi-Family		
	East	Commercial – Retail/Food Service		
	Southeast	Multi-Family Residential		
	South	Commercial – Auto Service/Parking Lot/Auto Sales		
	West	Multi-Family Residential		

**Table 2: Special Characteristics**

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee & Affordable Housing Fee for qualifying non-residential projects (Per Resolutions 66,618-N.S. & 66,617-N.S.)	Yes	This fee applies to projects with more than 7,500 square feet of new non-residential gross floor area. The project includes 12,000 square feet of non-residential gross floor area, and the project would be subject to the fee.
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	Yes	Because the project would have 5 or more dwellings, the project is subject to the affordable housing provisions of BMC 22.20.065. The applicant has stated that they intend to pay the Mitigation Fee. See Section V.E for discussion.
Alcohol Sales/Service	No	The project is not proposing alcohol sales or service with this permit.
Creeks	No	The project site is not within a creek buffer.
Density Bonus	Yes	<u>North Building:</u> The project would provide 8 Very Low Income units, or 7% of the Base Project units, and qualifies for a 25% density bonus (28 bonus units possible, 26 included in project). <u>South Building:</u> The project would provide 6 Very Low Income units, or 11% of the Base Project units, and qualifies for a 35% density bonus (18 bonus units possible, 18 included in project). See Sections V.B and V.C for discussion.
Green Building Score	Yes	The Greenpoint Checklist minimum score is 50, and the maximum is 381. The project achieves a score of 139.

Characteristic	Applies to Project?	Explanation
Historic Resources	No	The Landmarks Preservation Commission took no action to initiate a Landmark or Structure of Merit designation and recommended that the ZAB approve the demolition. A historic evaluation was not required for the existing south commercial building because it was constructed in 1993 and is less than 40 years old. See Section IV.B for discussion.
Housing Accountability Act (Govt. Code 65589.5(j))	Yes	The project is a "housing development project" consisting of a mixed-use building, and requests no modifications to development standards beyond waivers and concessions requested under density bonus law. Therefore, the HAA <i>findings</i> apply to this project, and the project cannot be denied at the density proposed unless the findings for denial can be made. See Section V.D for discussion.
Public Art on Private Projects (BMC Chapter 23C.23)	Yes	The project is subject to the Percentage for Public Art on Private Projects ordinance. The applicant is electing to pay the fee of \$400,000 (0.8% of total building permit valuation) to comply.
Rent Controlled Units	No	There are no rent-controlled units in the existing commercial building to be demolished.
Residential Preferred Parking	No	New dwelling units in the C-DMU district are not eligible for RPP. Additionally, the parking will be leased separately from the rental of the dwelling units.
Seismic Hazards (SHMA)	No	The project site is not located in an area susceptible to liquefaction, fault rupture or landslide, as defined by the State Seismic Hazards Mapping Act (SHMA). Thus, the project is not subject to additional review to comply with the Act. However, the applicant has submitted a geotechnical report that has been reviewed under CEQA in the IEC. In the Geology and Soils section of the IEC, the report concluded that no further study or EIR is required.
Soil/Groundwater Contamination	Yes	The project site is located within the City's Environmental Management Area and is on the Cortese List (an annually updated list of hazardous materials sites). Per §15300.2 of the CEQA Guidelines, a categorical exemption may not be used on sites listed on the Cortese List. An Infill Environmental Checklist has been prepared for the project, and the Phase I report submitted by applicant has been reviewed. In the Hazards and Hazardous Materials section of the IEC, the report concluded that no further study or EIR is required. The Phase I report has also been reviewed by the City Toxics Management Division. Standard toxics conditions will be included with the permit.
Transit	Yes	The project site is served by multiple bus lines (local, rapid, and transbay) that operate along Shattuck Avenue, and is 3 blocks from the Downtown Berkeley BART Station.

**Table 3: Project Chronology**

<b>Date</b>	<b>Action</b>
June 28, 2018	Application submitted
July 26, 2018	Application deemed incomplete
August 29, 2018	Revised application submitted
September 28, 2018	Application deemed incomplete
October 16, 2018	Revised application submitted
November 15, 2018	Application deemed incomplete
November 29, 2018	Revised application submitted
December 21, 2018	Application deemed incomplete
February 4, 2019	Revised application submitted
March 6, 2019	Application deemed incomplete
March 13, 2019	Interdepartmental Roundtable Meeting
March 22, 2019	Application deemed incomplete
April 9, 2019	Revised application submitted
April 10, 2019	Application deemed complete
May 8, 2019	Public hearing notices mailed/posted
May 23, 2019	ZAB Preview
June 20, 2019	DRC Preview
July 18, 2019	DRC Preliminary Design Review; project continued
August 15, 2019	DRC Preliminary Design Review; project continued
August 26, 2019	Revised plans submitted
September 19, 2019	DRC Preliminary Design Review; recommendations provided
September 20, 2019	Revised plans submitted
October 9, 2019	Public hearing notices mailed/posted
October 24, 2019	ZAB Hearing



**Table 4: Development Standards – North Building**

<b>NORTH BUILDING C-DMU Standards, Corridor and Buffer Sub-Areas BMC Sections 23E.68.070-080</b>		<b>Existing - Entire Lot</b>	<b>Proposed - North Lot</b>	<b>Permitted/Required</b>	
Lot Area (sq. ft.)		47,045	30,475	n/a	
Gross Floor Area (sq. ft.)		25,649	162,229	n/a	
Commercial Floor Area		25,649	7,141	n/a	
FAR		0.55	5.3	n/a	
Dwelling Units		0	135	n/a	
Building Height	Maximum	36'-0"	85'-3" Corridor	60' max.in Corridor (5' max. parapet by right)	
			85'-3" Buffer	50' max.in Buffer (5' max. parapet by right)	
	Stories	1	8	n/a	
Building Setbacks	Front (Shattuck)	0'-0"	0'-0"	15' min. (bldg. ht.>65')*	
			0'-0"	0'-5' (bldg. ht.≤20') 0' (bldg. ht.>20' and ≤75') 15' (bldg. ht.>75')	
	Rear	48'	5'-0"	0' (bldg. ht.≤20') 5' (bldg. ht.>20' and ≤75') 15' (bldg. ht.>75')	
	Left Side (interior)	0'-65' from frontage	0'-0"	5'-0"	0' (bldg. ht.≤20') 0' (bldg. ht.>20' and ≤75') 5' (bldg. ht.>75' and ≤120')
				5'-0"	0' (bldg. ht.≤20') 5' (bldg. ht.>20' and ≤75') 15' (bldg. ht.>75' and ≤120')
Right Side (Durant)		0'-0"	0'-0"	n/a	
Lot Coverage (%)		55	91	n/a	
Usable Open Space (sq. ft.)		n/a	11,073	10,800 min. (80 s.f./d.u.)	
Privately Owned Public Open Space (sq. ft.)		n/a	0	143 (1 s.f./50 s.f. of commercial)	
*Requirement for lots with Shattuck Avenue frontage, south of Durant Avenue. = Waiver requested to modify the district standard.					

<b>NORTH BUILDING</b> C-DMU Standards, Corridor and Buffer Sub-Areas BMC Sections 23E.68.070-080		Existing - Entire Lot	Proposed - North Lot	Permitted or Required Corridor/Buffer
Parking	Commercial (7,141 sq. ft.)	31	12	11 min. (1.5 spc/1,000 s.f.)
	Residential	0	48	45 min. (1 spc/3 du)
	Total	31	60	56
Bicycle Parking		0	81/10 (long term/short term)	4 <sup>1</sup> (1 spc/2,000 s.f. commercial)
<sup>1</sup> Currently there is no bicycle parking requirement for residential use. However, the Transportation Division provides recommended bike parking ratios of 1 long term space per 3 bedrooms and 1 short term space per 40 bedrooms, which yield a requirement of 45 long term and 3 short term bike parking for 135 bedrooms in the building.				

**Table 5: Development Standards – South Building**

<b>SOUTH BUILDING</b> C-DMU Standards, Corridor Sub-Area BMC Sections 23E.68.070-080		Existing - Entire Lot	Proposed - South Lot	Permitted or Required	
Lot Area (sq. ft.)		47,045	16,594	n/a	
Gross Floor Area (sq. ft.)		25,649	82,244	n/a	
Commercial Floor Area		25,649	5,013	n/a	
FAR		0.55	5.0	n/a	
Dwelling Units		0	69	n/a	
Building Height	Maximum	36'-0"	84'-6"	60' max. (5' max. parapet by right)	
	Stories	1	8	n/a	
Building Setbacks	Front (Channing)	0'-0"	0'-0"	0'-5' (bldg. ht. ≤20') 0' (bldg. ht. >20' and ≤75') 15' (bldg. ht. >75')	
	Rear	48'	5'-0"	0' (bldg. ht. ≤20') 5' (bldg. ht. >20' and ≤75') 15' (bldg. ht. >75')	
	Left Side (interior)	0'-65' from frontage	0'-0"	5'-0"	0' (bldg. ht. ≤20') 0' (bldg. ht. >20' and ≤75') 5' (bldg. ht. >75' and ≤120')
		>65' from frontage	0'-0"	5'-0"	0' (bldg. ht. ≤20') 5' (bldg. ht. >20' and ≤75') 15' (bldg. ht. >75' and ≤120')
	Right Side (Shattuck)	0'-0"	0'-0"	15' min. (bldg. ht. >65')*	
*Requirement for lots with Shattuck Avenue frontage, south of Durant Avenue. [Grey Box] = Waiver requested to modify the district standard.					

<b>SOUTH BUILDING C-DMU Standards, Corridor Sub-Area BMC Sections 23E.68.070-080</b>		<b>Existing - Entire Lot</b>	<b>Proposed - South Lot</b>	<b>Permitted or Required</b>
Lot Coverage (%)		55	89	n/a
Usable Open Space (sq. ft.)		n/a	5,939	5,520 min. (80 s.f./d.u.)
Privately Owned Public Open Space (sq. ft.)		n/a	685	100 (1 s.f./50 s.f. of commercial)
Parking	Commercial (5,013 sq. ft.)	31	7	8 min. (1.5 spc/1000 s.f.)
	Residential	0	23	23 min. (1 spc/3 du)
	Total	31	30	31
Bicycle Parking		0	42/7 (long term/short term)	3 <sup>1</sup> (1 spc/2,000 s.f. commercial)
<p>■ = Waiver requested to modify the district standard.</p> <p><sup>1</sup> Currently there is no bicycle parking requirement for residential use. However, the Transportation Division provides recommended bike parking ratios of 1 long term space per 3 bedrooms and 1 short term space per 40 bedrooms, which yield a requirement of 23 long term and 2 short term bike parking for 69 bedrooms in the building.</p>				

## II. Project Setting

**A. Neighborhood/Area Description:** (See Figure 1: Zoning Map, and Figure 2: Vicinity Map.) The subject site is located on the west side of Shattuck Avenue, between Durant Avenue and Channing Way. The subject parcel itself spans two sub-areas of the Downtown Mixed Use District (C-DMU); the eastern portion of the site and properties to north, east and south are in the Corridor Sub-Area of the district, and the western portion of the site and parcels to the west are in the Buffer Sub-Area of the district.

Adjacent parcels in the Corridor (along Shattuck) to the north, east, and south contain one- to four-story buildings with commercial and mixed-use buildings, and parcels in the Buffer to the west contain three- to six-story buildings with mixed-use and residential buildings. Further west is a residentially-zoned neighborhood (R-3), with one- to six-story, single-family and multi-family residential buildings.

The subject site is two blocks away from the southwest corner of the U.C. Berkeley campus. The site is approximately three blocks to the south of the Downtown Berkeley BART station and is served by multiple bus lines (local, rapid, and transbay) that operate along Shattuck Avenue.

**B. Site Conditions/Background:** The subject site is an L-shaped, 47,045-square-foot parcel that has a 265'-frontage (approximate) along Durant Avenue, a 261'-frontage (approximate) along Shattuck Avenue, and a 105'-frontage along Channing Way. The portion of the site along Shattuck Avenue is in the Corridor Sub-Area while approximately half of the site length along Durant is in the Buffer Sub-Area. The site

is occupied by two, one-story commercial buildings<sup>1</sup> totaling 25,649 square feet that contain a bank, restaurants, and an office supply store. A parking lot is behind each building on the western portions of the parcel. Prior to the construction of these buildings, the site had been occupied by auto-oriented businesses, including auto sales, auto repairs and a gas station. The site is on the state's Cortese List of sites that contain or has contained underground hazardous materials. Cleanup for the site is listed as complete as of October 10, 1989.<sup>2</sup>

### III. Project Description

The proposed project would demolish the two existing commercial buildings, split the lot into two lots, and construct two, mixed-use buildings in two phases, with the following main components:

#### North Building (Phase 1)

- 8-stories, 85'-3" maximum height (plus parapet)
- 135 dwelling units – 6 studios; 37, 1-bedroom; 86, 2-bedroom; and 6, 3-bedroom units
- 233 bedrooms total
- 8 Very Low Income (VLI) units
- 7,141 square feet of ground-floor commercial space
- 11,073 square feet of usable open space – private balconies, two second-floor podium courtyards, and roof terrace
- 60 vehicle parking spaces
- 91 bicycle parking spaces

#### South Building (Phase 2)

- 8-stories, 84'-6" maximum height (plus parapet)
- 69 dwelling units – 21, 1-bedroom; 42, 2-bedroom; and 6, 3-bedroom units
- 123 bedrooms total
- 6 Very Low Income (VLI) units
- 5,013 square feet of ground-floor commercial space
- 5,939 square feet of usable open space – private balconies and second-floor podium courtyard
- 30 vehicle parking spaces
- 49 bicycle parking spaces

(See Figures 3 through 5: Elevations. The full project plan set is included with this report as Attachment 1.)

The project would be constructed in two phases that would be initiated approximately two years apart. While the proposed North Building (Phase 1) is being built, the commercial tenants occupying the existing south building (Chase Bank, Heat Café, and Sweet Sensations) would remain in the building, and would be established in the new North

<sup>1</sup> The north building was constructed in 1947 and remodeled in 1993, and the south building was constructed in 1993.

<sup>2</sup> The State Water Resources Control Board GeoTracker website provides mapped information on Cortese List sites. As of the date of the application, the site was documented on this map.

Building when it is finished. One of the tenants in the existing north building (Extreme Pizza) would vacate during Phase 1 construction and would return to the new North Building. The commercial area of the new South Building (Phase 2) would be occupied by new retail tenants to be pre-leased during the Phase 1 construction.

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

**A. Neighbor/Community Concerns:** Prior to submitting the application to the City on June 28, 2018, a pre-application poster was installed by the applicant at the project site. On July 10, 2018, a neighborhood meeting was held to review the project and discuss concerns, and was attended by seven members of the public.

On July 20, 2018, an email was received by staff from a neighbor residing at 2024 Durant Avenue, who expressed concerns over the building height. Concerns included severe impacts to views from their unit and rooftop garden, undesirable aesthetics of the proposal, and increased shadows. The neighbor strongly suggested that the proposed building be confined to six stories tall (not eight stories), to match their own building at 2024 Durant Avenue. (See Attachment 3, 2018-07-20 Neighbor Letter.)

On April 4, 2019, an email was received by staff from a neighbor residing at 2034 Channing Way, who expressed concerns over the building height and the proximity of the building to their east-facing unit and windows. Concerns included severe impacts to views, increased shadows, and increased noise. (See Attachment 3, 2019-04-04 Neighbor Letter.)

On May 22, 2019, an email was received by staff from the same neighbor at 2034 Channing Way, expressing the same concerns as the previous email (building height and proximity), and further elaborating on the impacts of the reduced views to nature (sky, greenery) and to the mental health of residents in her building and in the Varsity building at 2024 Durant Avenue. The neighbor requested that the project not be granted a waiver for the side setback adjacent to her building and the Varsity building. (See Attachment 3, 2019-05-22 Neighbor Letter.)

On May 23, 2019, a letter was received by staff from a neighbor residing at 2020 Durant Avenue, expressing concerns over the lack of parking provided in the project, in an area where parking is already scarce, and potential increase in traffic from cars looking for parking. The neighbor also expressed concerns over the small amount of affordable housing provided in the project. (See Attachment 3, 2019-05-23 Neighbor Letter.)

On May 23, 2019, the ZAB Preview for the project was held. Neighbor comments included concerns that the project is too big, out of character, and does not provide enough low income units; and concerns over construction impacts to senior housing at 2020 Durant. ZAB comments included: concerns for lack of missing middle housing; concerns over privacy/window alignment/setbacks from neighbors; and suggestions that less parking could reduce building heights; that the building greenpoint score could be better; that the project include electrification; that the courtyard could be

reoriented to get more sun; and that the project could follow DAP design guidelines better.

On July 18, 2019, a letter was received by staff from a neighbor residing in the downtown area, expressing concerns over: the lack of greenery and inviting public spaces in the project; the inconsistency of the façade design with the existing adjacent buildings; the low number of affordable units being provided, especially in the low and moderate income range, and for university students; and, the height of the building and impact on light and shading. (See Attachment 3, 2019-07-18 Neighbor Letter.)

On October 9, 2019, the City mailed public hearing notices to property owners and occupants within 300' of the site, and to interested neighborhood organizations and the City posted notices within the neighborhood in three locations.

On October 16, 2019, an email and letter was received by staff from nine neighbors residing at 2024 Durant Avenue, who expressed concerns over the building's height and proximity to their building. Concerns included severe impacts to views from their units and rooftop garden, the blockage of sunlight to their living spaces, and the loss of rental value for their units.

**B. Landmarks Preservation Commission:** The project involves the demolition of a commercial building that is over 40 years in age – the existing north building on the site. The existing south building is less than 40 years in age, and was not reviewed by LPC. The project site is not designated as a Landmark by the City and has not previously been surveyed individually for historical significance under local, state, or federal historic significance criteria. A Historic Resource Evaluation was prepared for the existing north commercial building that was constructed in 1947, which concluded that the building does not meet the criteria for the California Register or a City of Berkeley Landmark. Pursuant to BMC Section 23C.08.050.C, the proposed demolition was brought before the Landmarks Preservation Commission (LPC) for review prior to the consideration of the use permit. The LPC reviewed the demolition referral for the existing buildings on March 7, 2019 took no action to initiate a Landmark or Structure of Merit designation.

**C. Design Review Committee:** The Design Review Committee (DRC) held a Preview of the project on June 20, 2019, and provided comments to the applicant. Following revisions to the project, the DRC held Preliminary Design Review (PDR) meetings on July 18, and August 15, and forwarded the North Building (Phase 1) portion of the project to the ZAB with a favorable recommendation for the building design with conditions and direction for Final Design Review (FDR) with recommendations; the South Building (Phase 2) was continued to September 19, 2019 for further design refinement. [MOTION (Kahn, Edwards) VOTE (6-0-0-1) Pink – absent.]

The DRC held a final PDR meeting on September 19, 2019 and forwarded the South Building (Phase 2) portion of the project to the ZAB with a favorable recommendation for the building design with conditions and direction for FDR. [MOTION (Clark, Mitchell)

VOTE (6-0-0-1) Pink – absent.] See Attachment 4 for full DRC conditions and recommendations for both buildings.

## V. Issues and Analysis

**A. CEQA Review – Infill Environmental Checklist:** Pursuant to Government Code Section 21094.5 of the California Environmental Quality Act (CEQA), and Section 15183.3 of the CEQA Guidelines, this project qualifies as an “infill project” on a site that is included in the City’s Downtown Area Plan (DAP), for which an Environmental Impact Report (EIR) was prepared and certified (April 2009, State Clearinghouse #2008102032). Qualifying projects can undergo a streamlined CEQA review with an Infill Environmental Checklist (IEC). An IEC dated September, 2019 was prepared by a City-selected CEQA consultant to help inform the ZAB and the general public of potential project impacts. Projected project impacts in the Noise category were deemed significant, but would not constitute a greater impact than previously identified within the DAP EIR.

Therefore, the IEC concluded that the project would not have any significant effects on the environment that either have not already been analyzed in the prior DAP EIR, or that are more significant than previously analyzed, or that uniformly applicable development policies would not substantially mitigate. Therefore, no new mitigation measures or further study in an EIR would be warranted, and a Notice of Determination per Government Code Section 15094 will be filed if the project is approved. (See Attachment 6, Infill Environmental Checklist.)

**B. Density Bonus Units:** The project is eligible for a density bonus under Government Code Section 65915, through the inclusion of 14 VLI units in the project. As the project is proposed to be constructed in two phases, each phase must meet the requirements of the Density Bonus law. Under the City’s density bonus procedures, the Base Projects were calculated to have 109 units in the North Building (NB) and 51 units in the South Building (SB) as the *maximum allowable density* for the site.<sup>3</sup> The NB Base Project has an average unit size of 1,092 square feet in a six-story building. The NB Proposed Project includes eight (8) VLI units, for a 25% density bonus or 28 possible bonus units, but is including 26 bonus units in an eight-story, 135-unit proposed building. The SB Base Project has an average unit size of 1,040 square feet in a six-story building. The SB Proposed Project includes six (6) VLI units, for a 35% density bonus or 18 possible bonus units, and is including 18 bonus units in an eight-story, 69-unit proposed building. (See Tables 6 and 7: North Building, Base vs. Proposed Project and Density Bonus; and Tables 8 and 9: South Building, Base vs. Proposed Project and Density Bonus.)

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<sup>3</sup> Per the City’s Density Bonus Procedures (DBP), the Base Project is the largest project allowed on the site that is fully compliant with district development standards (i.e. height, setbacks, usable open space, parking, etc...), or, the *maximum allowable density* for the site. The City uses the DBP to calculate the maximum allowable density for a site where there is no density standard in the zoning district, and to determine the number of units in the Proposed Project, which is the number of Base Project units plus the number of density bonus units that can be added according to the percentage of BMR units proposed, per Government Code, section 65915(f).

**Table 6: North Building Base vs. Proposed Project**

Floor	Base Project		Proposed Project	
	Residential Gross Floor Area (GFA)	Base Units	Total Units [Base + Density Bonus Units (DBU)]	Residential GFA with DBU
1	15,136	109*	135*	2,509
2	22,781			22,127
3	22,781			20,949
4	22,781			21,833
5	22,781			21,833
6	12,148			21,833
7	-			21,833
8	-			14,499
<b>Totals:</b>	118,408			147,416
<b>Average Unit Size:</b>	<b>1,092 sq. ft.</b>			
*Per Gov't Code 65915(q), all unit calculations are rounded up to the nearest whole number.				

**Table 7: North Building Density Bonus – Per CA Gov't Code 65915**

Qualifying Units	Density Bonus Achieved	Base Project Units*	Number of DBU Achieved*	Proposed Project Units
8 VLI (7% of BP)	25% (35% max.)	109	28 max. (25%x109)	135 (26 of 28 DBU applied)
*Per Gov't Code 65915(q), all unit calculations are rounded up to the nearest whole number.				

**Table 8: South Building Base vs. Proposed Project**

Floor	Base Project		Proposed Project	
	Residential Gross Floor Area (GFA)	Base Units	Total Units [Base + Density Bonus Units (DBU)]	Residential GFA with DBU
1	1,060	51*	69*	1,898
2	10,300			10,029
3	10,300			10,029
4	10,300			9,999
5	10,300			9,999
6	10,300			9,999
7	-			9,999
8	-			9,785
<b>Totals:</b>	52,560			71,737
<b>Average Unit Size:</b>	<b>1,040 sq. ft.</b>			
*Per Gov't Code 65915(q), all unit calculations are rounded up to the nearest whole number.				



**Table 9: South Building Density Bonus – Per CA Gov’t Code 65915**

Qualifying Units	Density Bonus Achieved	Base Project Units*	Number of DBU Achieved*	Proposed Project Units
6 VLI (11% of BP)	35% (35% max.)	51	18 max. (35%x51)	69 (18 of 18 DBU applied)
*Per Gov’t Code 65915(q), all unit calculations are rounded up to the nearest whole number.				

**C. Density Bonus Waivers and Concessions:** The project is entitled to two concessions (or incentives), under Government Code Section 65915(d), and an unlimited number of waivers, under Section 65915(e).

Concession. A concession or incentive is a modification of a zoning code requirement that results in identifiable and actual cost reductions to provide for affordable housing costs.<sup>4</sup> The applicant is requesting two concessions for the project: 1) to expand the floor-to-floor height in Proposed Project over the Base Project floor-to-floor height, and 2) to provide ground-level parking in Proposed Project where parking is below-ground in the Base Project.

The City may only deny the concessions if it finds that the concessions would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact<sup>5</sup> without rendering the development unaffordable to low-income, very-low income, and moderate-income households, or if the concession would be contrary to State or Federal law. Staff has identified no basis for making such a finding.

Waiver. A waiver is a modification of a development standard that would otherwise physically preclude the construction of the project with the permitted density bonus and concessions. Waivers for height, setbacks, and POPOS in the NB and for height, setbacks, and parking in the SB are requested because they are necessary to physically accommodate the full density bonus project on the site.

The City may only deny the waivers if it finds that the waivers would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low-income, very-low income, and moderate-income households, or if the waiver would be contrary to State or Federal law. Staff has identified no basis for making such a finding.

**D. Housing Accountability Act Analysis:** The Housing Accountability Act (HAA), California Government Code Section 65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning

<sup>4</sup> Because of revisions to Government Code, Section 65915 (Density Bonus) pertaining to incentives and concessions that became effective in January 2017, applicants cannot be required to submit a pro forma financial statement to support concession requests.

<sup>5</sup> A “specific, adverse impact” means “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.”

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>6</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.

For density bonus projects, the HAA must be applied to the Base Project, without regarding to any concessions or waivers sought by the applicant. (Gov. Code, § 65589.5(j)(B)(3).) Both the NB and SB Base Projects comply with applicable, objective general plan and zoning standards. Therefore, the City may not deny the Base Projects or approve the Base Projects at a reduced density without basing its decision on the written findings under Section 65589.5(j), above. Staff has not identified specific adverse impacts that could occur with the construction of the Base Projects.

**E. Affordable Housing Mitigation Fee:** Pursuant to BMC Section 22.20.065, the project is subject to the Affordable Housing Mitigation Fee (AHMF). The AHMF ordinance allows a project to provide BMR units (10% VLI and 10% LI) or make an in-lieu payment, and provides a formula to calculate these amounts. The applicant can choose whether to pay the fee, provide the in-lieu units in the project, or provide a combination of both. Based on the total number of market rate units in the project, with credit for the eight (8) qualifying VLI units provided in the NB, and six (6) VLI units provided in the SB of the project under DBL<sup>7</sup>, the fee is calculated to be NB: \$3,034,908 at building permit issuance, or \$3,302,694 at the time the Certificate of Occupation issuance; SB: \$1,151,172 at building permit issuance, or \$1,252,746 at the time the Certificate of Occupation issuance.<sup>8</sup>

**F. Demolition of a Commercial Building:** Pursuant to BMC Section 23C.08.050, the Board may approve a Use Permit to demolish a building used for commercial use if it finds that the demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and that at least one of the findings in BMC section 23C.08.050.D can be made. Staff believes that the following findings in this section are satisfied:

1. The demolition is required to allow a proposed new building or other proposed new Use.
2. Is required for the furtherance of specific plans or projects sponsored by the City or other local district or authority.

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<sup>6</sup> "Specific, adverse impact" has the same meaning as set forth in Footnote 5, above.

<sup>7</sup> The total number of market rate units in the project is NB: 135 project units – 8 VLI units = 127 market rate units, and SB: 69 project units – 6 VLI units = 63 market rate units.

<sup>8</sup> The Affordable Housing Mitigation Fee is currently \$34,884 per unit if paid at issuance of a building permit and \$37,962 if paid at the time Certificate of Occupancy is issued. The following equation will be used to calculate the proportional discount to the fee based on the portion of units provided at Low-Income and Very Low-Income rents:  $[A \times \text{Fee}] - [(B+C)/(A \times 20\%) \times (A \times \text{Fee})]$ , where A = Total # Market Rate Units; B = # of Very-Low Income Units; & C = # of Low-Income Units in the project.

Demolition of the two existing, one-story, commercial buildings (25,649 square feet in total) would allow the construction of a project that would add housing and new businesses to the area. The project would establish tenants of the existing commercial buildings into the new North Building and provide 5,000 square feet of new retail space in the new South Building, to maintain and bring new employment opportunities to the area. The two mixed-use buildings with residential units on the top floors and commercial on the ground floor would have a prominent presence along Shattuck Avenue, and would contribute to the activation of the streetscape. Thus, the project would help to further the purposes of the C-DMU District and the Downtown Area Plan (DAP). (See section V.G below for an analysis of the project's compatibility with district purposes.)

**G. Findings for Use Permit in C-DMU District:** Pursuant to BMC Section 23E.36.090.B, in order to approve any Use Permit in the district, the Board must make the following required findings. The proposed use or structure must:

1. Be compatible with the purposes of the District;

The purposes of the C-DMU, Downtown Mixed Use District are embodied in the DAP. The project is consistent with the following land use goals of the DAP:

- Goal LU-1: Encourage a thriving, livable Downtown that is a focal point for the city and a major destination for the region, with a unique concentration of housing, jobs and cultural destinations near transit, shops and amenities.
- Goal LU-2: New development shall contribute its fair share toward Downtown improvements. Coordinate development fees and other funding opportunities with public improvements for the orderly and attractive transformation of Downtown.
- Goal LU-3: Cultivate Downtown as an attractive residential neighborhood with a range of housing opportunities, and an emphasis on affordable housing and family housing.
- Goal LU-4: New development should enhance Downtown's vitality, livability, sustainability, and character through appropriate land use and design.
- Goal LU-5: Enhance Downtown as a center for employment and innovative businesses.

The two mixed-use buildings with residential units on the top floors and commercial on the ground floor would have a prominent presence along Shattuck Avenue, and would contribute to the activation of the streetscape. The project would establish tenants of the existing commercial buildings into the new North Building, as well as provide 5,000 square feet of new retail space in the new South Building, to maintain and bring new employment opportunities to the area. The project would bring 209 new residential units, including 14 below market rate units, to the district and the neighborhood, to increase the neighborhood population who would patronize the local businesses and contribute to the vitality, livability, and character of the downtown area.

2. Be compatible with surrounding uses and buildings;

The proposed buildings would be eight stories, 85'-3" (NB) and 84'-6" (SB) tall (plus 5' parapet), where 60' is the maximum height in the Corridor Sub-Area in the district; and 85'-3" (NB) where 50' is the maximum height in the Buffer Sub-Area. (See Figure 2: Vicinity Map and Table 4 and 5, Development Standards.) As shown in Figure 2: Vicinity Map, buildings along Shattuck Avenue, north, east, and south of the site are one to four stories, and buildings to the west of the site are three to six stories. At eight stories tall, the proposed buildings would be the tallest of the buildings on the surrounding sites in the C-DMU district, but would be closer in height to the existing buildings west of the site, and would be granted the height in excess of the district standards through waivers and concessions under density bonus law. (See section V.C for the discussion on waivers and concessions.)

**H. Findings for Use Permit to Construct New Floor Area:** Pursuant to BMC Section 23E.36.090.D, in order to approve any Use Permit to be granted under Section 23E.68.050 for new floor area, the Board must find that:

1. The addition or new building is compatible with the visual character and form of the District; and
2. No designated landmark structure, structure of merit, or historic district in the vicinity would be adversely affected by the appearance or design of the proposed addition.

The proposal has been reviewed by the DRC and has received favorable recommendations at PDR. (See section IV.C for details.) Also, as discussed in V.G.2 above, the proposed buildings would be compatible with surrounding buildings. Further, the LPC has reviewed the demolition proposal and took no action to initiate a Landmark or Structure of Merit designation. (See section IV.B for details.)

**I. Sunlight/shadow:** According to the shadow studies submitted for the project (See Attachment 1, Plan Set – Sheets A.22 through A.24), shading on adjacent properties from the eight-story, proposed buildings would increase significantly over the shading from the one-story buildings currently on the site. Additional shadows would be cast onto:

1. 2024 Durant Avenue (multi-family) – dwelling units to the west (of northern parcel of the project site) during the few hours after sunrise in the winter and the summer;
2. 2035 Channing Way (multi-family) – dwelling units to the west (of southern parcel of the project site) during the few hours after sunrise in the winter and the summer, and during the few hours before sunset in the summer;
3. 2025 Durant Avenue (multi-family) – dwelling units to the northeast during the few hours after sunrise in the winter;
4. 2322 Shattuck Avenue (mixed-use) – dwelling units to the north during the few hours after sunrise, around noon, and the few hours before sunset in the winter; and
5. 2100 Channing Way (mixed-use) – to the southeast during the few hours before sunset in the summer.

Shadow impact on adjacent dwellings are to be expected, because the subject site is located in the C-DMU district, which allows heights of up to 50' in the Buffer Sub-Area,

with up to 10' more with a discretionary permit; and 60' in the Corridor Sub-Area, with up to 15' more with a discretionary permit. At approximately 85' in height (plus 5' parapet), the proposal would include waivers for additional height beyond the district height limits to accommodate the density bonus units (see section V.C for a discussion of waivers). The additional height would cast shadows in the affected directions further than if the project were limited to the base district height standards.

Dwellings at 2322 Shattuck Avenue to the north of the site would experience the most impact from the new shadows throughout the day in the winter. Dwellings at 2035 Channing Way would experience noticeable impact, two times a day in one season and once a day in another season in the year. The remaining affected properties would experience impact limited to once a day, during one or two seasons in the year. Revisions made to the South Building in response to DRC comments during PDR nominally reduced the shadow duration on the 2035 Channing apartments (adjacent, west) in the hours after sunrise in the winter. Therefore, shadow impacts from the project would be reasonable and not detrimental.

- J. Parking and Traffic:** The North Building provides 60 parking spaces, where 56 are required, and exceeds the parking standards in the district. The South Building provides 30 parking spaces, where 31 are required, and requests a reduction of one (1) space through a waiver for commercial parking to accommodate the density bonus units on the site (see section V.C for a discussion of waivers).

A Transportation Impact Analysis (TIA) was prepared by the project traffic consultant and was reviewed by the City's Traffic Engineer. The TIA showed that traffic impacts that would result from site demolition and construction would be less-than-significant with an adequate Traffic Control Plan (required for building permit approval). Based on an analysis of the proposed site plan, traffic impacts related to site access and circulation and emergency vehicle access on and around the site are expected to be less-than-significant, and no mitigations are recommended or required. The TIA was evaluated in the Traffic section of the IEC, which concluded that the project would not result in new specific effects that were not addressed in the DAP EIR, and no new mitigation measures would be warranted, nor is further study required in an EIR.

- K. General Non-Detriment:** The project 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.
- L. 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 UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
  4. 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.
  5. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

Staff Analysis: As detailed in Section V, Issues and Analysis, the proposed project would be compatible with the scale of buildings and uses in the area, and the shadow impacts would be reasonable for the urban downtown site. Further, as detailed in the Land Use and Planning section of the IEC, the following conclusions were made:

- The project would involve infill mixed-use development, and would use high-quality building materials and architectural design as verified through the design review process.
  - The project would be compatible with surrounding land uses, which include residential, commercial, and mixed-use developments.
  - The proposed eight-story mixed-use development would be consistent with the C-DMU Zoning District provisions, with waivers for several development standards under DBL.
  - The project would not alter the neighborhood character such that it would impact nearby historic resources or architecturally significant buildings.
  - The proposed project would comply with applicable design guidelines according to PDR by the DRC.
6. 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.

Staff Analysis: The project site is located on Shattuck Avenue, which is a transit-rich intersection that is served by AC Transit bus lines 7, 18, 52, 800, and Transbay Line F; and is two blocks from Martin Luther King Jr. Way, which is served by AC Transit bus lines 12 and 79. The project site is also approximately three blocks (1/2-mile) away from the Downtown Berkeley BART station.

7. 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: By adding 209 net new housing units, including 14 VLI units, the project would help Berkeley meet its regional housing need.

8. Policy EM-5–“Green” Buildings: Promote and encourage compliance with “green” building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)
9. Policy UD-33–Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: The project proposed a score of 139 on the GreenPoint Rated Checklist, New Home Multifamily Checklist with a Silver certification level.

**M. Downtown Area Plan Consistency:** The 2012 Downtown Area Plan contains several policies applicable to the project, including the following:

1. Policy LU-1.5: Downtown Intensities & Building Heights. To advance Downtown as a vibrant city center and encourage car-free options near transit, accommodate urban intensities by using building heights that are appropriate and feasible. All new buildings shall deliver significant public benefits, many of which should be in proportion to building height. Buildings exceeding a height of 85 feet shall be subject to shadow studies and visual analysis, and buildings exceeding a height of 120 feet shall be subject to wind analysis to avoid detriment to residential areas, public streets and public open spaces, and if necessary require modifications to the project design including setbacks and step-backs to reduce view and shadow impacts. Provide appropriate transitions to Residential areas that surround Downtown.

Staff Analysis: The project would introduce 209 residential units to the project site, as well as 12,154 square feet of retail development. This is consistent with the zoning and land use designation of the site, as well as with the general character of the surrounding area. As mentioned previously, project shadow impacts would be reasonable for the urban downtown site. The DRC has made favorable recommendations for the project to the ZAB. A wind analysis is not required as the proposed buildings would be less than 120 feet in height.

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.

Staff Analysis: See General Plan Policy H-19 (#7) above.

3. 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: See General Plan Policy LU-23 (#6) above.

4. Policy HD-4.2: Solar, Visual & Wind Impacts. Design and position new buildings to avoid significant adverse solar-, visual- or wind-related impacts on important public open spaces. Also provide for adequate natural light in residential units through appropriate building form.
  - a) Strengthen standards and guidelines to better address potential solar access and wind impacts.
  - b) For buildings exceeding 85 feet, use solar, visual and wind simulations to evaluate and refine design alternatives.

Staff Analysis: The project would introduce two buildings with larger massing than the existing commercial buildings, resulting in additional shading. As detailed in section V.I, the shadow impacts would be reasonable for the urban downtown site. A wind analysis is not required as the proposed buildings would be less than 120 feet in height.

5. Policy AC-2.1: Pedestrian Safety and Amenities. Improve the safety, attractiveness, and convenience of pedestrian routes in downtown, as well as to and from surrounding areas. Encourage a wide range of pedestrian amenities to meet the needs and interests of those who live and work in and near Downtown.
6. Policy AC-3.3: Pedestrian Impacts. Locate and design new parking in ways that minimize negative impacts upon the pedestrian quality of.

Staff Analysis: The project would not alter existing sidewalks and other pedestrian facilities in the vicinity. Additionally, driveways into the parking areas of the site are proposed along Channing Way and Durant Avenue, instead of on the main project frontage along Shattuck Avenue. This would minimize pedestrian-vehicle conflicts at driveways.

7. Policy AC-3.2: New Parking. Provide sufficient parking for expected growth by evaluating future parking needs, funding parking facilities, and promoting alternatives to the car. In addition, replace on-street parking lost to street and other improvements with off-street garages. Consolidate parking in shared facilities to the extent possible.

Staff Analysis: The project includes 123 indoor bicycle storage spaces and 17 outdoor bicycle parking spaces. Additionally, the site is in close proximity to BART and multiple AC Transit and UC Berkeley shuttle stops.

## 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 ZP#2018-0135, pursuant to BMC Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

### Attachments:

1. Findings and Conditions
2. Project Plans, received September 19, 2019



3. Neighbor Letters: 2018-07-20 Neighbor Letter, 2019-04-04 Neighbor Letter, 2019-05-22 Neighbor Letter, 2019-05-23 Neighbor Letter, 2019-07-18 Neighbor Letter, 2019-10-16 Neighbor Letter, 2019-10-16 Neighbors Letter
4. DRC Conditions and Recommendations
5. Notice of Public Hearing
6. Infill Environmental Checklist (IEC)
7. Mitigation Monitoring and Reporting Program (MMRP)

The full Infill Environmental Checklist with appendices can be found on line at:

[https://www.cityofberkeley.info/Planning\\_and\\_Development/Zoning\\_Adjustment\\_Board/2352\\_Shattuck.aspx](https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/2352_Shattuck.aspx)

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