



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
JANUARY 13, 2022

1519 Fairview Street

Use Permit #ZP2021-0113 to construct a new 2,019 square-foot, three-story single-family dwelling, with an average height of 28 feet, and a building separation of 12 feet at the rear of the lot behind an existing triplex.

I. Background

A. Land Use Designations:

- General Plan: Medium Density Residential
- Zoning: R-2(A)-Restricted Multiple-Family Residential

B. Zoning Permits Required:

- Use Permit (UP), under Berkeley Municipal Code (BMC) Section 23.202.020.A, to construct a new dwelling unit; and
- Administrative Use Permit, under BMC Section 23.304.040.A, to reduce the required building separation to 12 feet where 16 feet is required.

C. CEQA Recommendation: It is staff's recommendation to ZAB that this project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15303 ("New Construction or Conversion of Small Structures"). The determination is made by ZAB.

D. Parties Involved:

- Applicant/Owner Fairview 1519, LLC (c/o of Steven Chan), 275 Sea View Avenue, Piedmont

Figure 1: Vicinity Map



Legend

- R-2A: Restricted Multiple-Family Residential District
- C-SA: South Area Commercial District

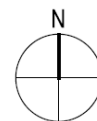


Figure 2: Proposed Site Plan

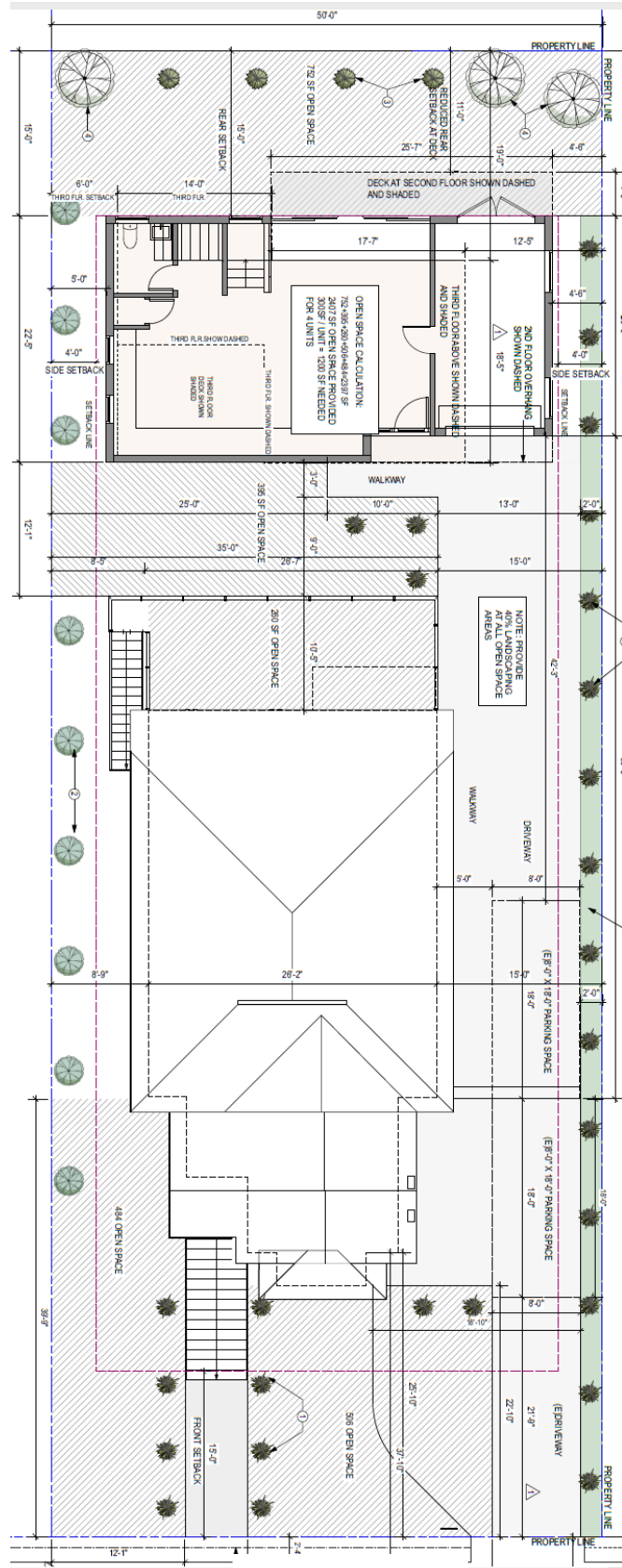


Figure 3: Proposed Streetscape Elevation



Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Multiple-Family Dwelling	R-2(A) – Restricted Multi-Family Residential	Medium Density Residential
Surrounding Properties	North	Multiple-family Dwelling		
	South	Multiple-family Dwelling		
	East	Multiple-family Dwelling		
	West	Multiple-family Dwelling		

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	The project is not subject to BMC Section 22.20.065 Affordable Housing Mitigation Fee (AHMF) or BMC Section 23.328 Inclusionary Housing, because the applicant proposes only one new dwelling unit and the lot is not big enough to accommodate five dwellings, thus this requirement does not apply. There will be four units in total on the lot.
Creeks	No	The project site is not within a creek buffer zone.
Density Bonus	No	The project is not requesting a Density Bonus.
Natural Gas Prohibition (Per BMC 12.80.020)	Yes	The building would not be eligible for natural gas infrastructure.
Historic Resources	No	No designated landmarks or buildings on State Historic Resources Inventory on the site.
Housing Accountability Act (Gov't Code Section 65589.5(j))	Yes	Project is a "housing development project" consisting of dwelling units only. See Section V.B of this report for additional discussion on compliance with the Housing Accountability Act.

Housing Crisis Act of 2019 (SB330)	Yes	The project is all residential. See Section V.A of this report for additional discussion on the sections of SB330 that apply to the project.
Oak Trees	No	There are no Coast Live Oak trees on the site.
Rent Controlled Units	No	No rent-controlled units would be affected, nor would the new unit be subject to rent control restrictions.
Residential Preferred Parking (RPP)	No	The project site is not within a City of Berkeley Residential Preferred Parking Zone.
Seismic Hazards (SHMA)	No	The site is not located within an area susceptible to liquefaction, Fault Rupture, or Landslides as shown on the State Seismic Hazard Zones map.
Soil/Groundwater Contamination	No	The project site is not listed on the Cortese List (an annually updated list of hazardous materials sites), nor is it within the City's Environmental Management Area.
Transit	Yes	The project is served by AC Transit Route 88 and 688 stops on Sacramento Street, and is a 0.5 mile walk from the Ashby BART Station.

Table 3: Project Chronology

Date	Action
June 29, 2021	Application submitted
July 29, 2021	Application deemed incomplete
December 22, 2021	Public hearing notices mailed/posted
January 4, 2022-	Application deemed complete
January 13, 2022	ZAB hearing

Table 4: Development Standards

Standards-New Rear Unit BMC Sections 23.202.090, 23.304.030.B, 23.304.040, 23.322		Existing	Proposed Total	Permitted/ Required
Lot Area (sq. ft.)		6,750	No change	5,000 min.
Gross Floor Area (sq. ft.)		2,658	4,677(+2,019)	n/a
Dwelling Units	Total	3	4	4 max.
Building Height	Average (ft.)		28'	28' max.
	Maximum (ft.)		28'-11"	n/a
	Stories		3	3 max.
Building Setbacks (ft.)	Front (front building)	25'-6"	25'-6"	15' min
	Rear		15'	15' min
	Left Side		5'	4' min (1 st and 2 nd Story)
			6'	6' min (3 rd Story)
	Right Side		4.5'	4' min (1 st and 2 nd Story)
12'-5"			6' min (3 rd Story)	
Building Separation (ft.)			12'	16' (seeking AUP for reduction)
Lot Coverage (%)			35	35% max
Usable Open Space (sq. ft.)			1,200+	1,200 min
Parking	Automobile	2	3	2 min ¹

II. Project Setting

A. Neighborhood/Area Description: The project site is located on the north side of Fairview Street between California Street and Sacramento Street in South Berkeley, in the Lorin neighborhood. This is a residential area with a mix of one- to three-story single-family and multiple-family dwellings on generally rectangular lots. Given the flat terrain, there are generally few significant views to the Bay or the Berkeley hills. The area transitions to South Area Commercial (C-SA) along Sacramento Street one block west, and is served by a designated bike way lane along California Street one block east, and AC Transit bus stops on Sacramento Street and two blocks south on Alcatraz Avenue.

B. Site Conditions: The rectangular project site is 50 feet wide along Fairview Street and approximately 135 feet deep. The site contains an existing two-story triplex and an existing driveway on the right side of the parcel. The site currently has an existing building permit (B2020-02097) and Administrative Use Permit (ZP2021-0081) for the

¹ No new parking required, but existing number of parking spaces must remain. Two parking spaces were required when the three units in the front building were legalized in the 1950s.

remodel and renovations to the existing triplex, which are underway. There are no protected Coast Live oak trees on the site.

III. Project Description

A. Proposed Project. The project would involve construction of a new three-story 2,019 square-foot detached four-bedroom single-family dwelling unit with an attached one-car garage at the rear of the site, behind the existing triplex. The new unit would consist of 845 square-feet on the ground floor (including a 223 square-foot garage), 902 square-feet on the second floor (plus an uncovered rear balcony), and 495 square-feet on the third floor, with an approximately 137 square-foot third floor roof deck. The roof deck would be located towards the interior of the lot adjacent to the left (east) side of the parcel. The average roof height would be 28 feet. Vehicular access would remain on the right (east) side of the parcel off Fairview Street providing access to two uncovered spaces and one garage space.

The proposed three-story dwelling unit would adhere to all required development standards and setbacks from adjacent properties, with the exception of the required building separation. The total number of bedrooms on the parcel would be 11 upon completion of the proposed project.

IV. Community Discussion

A. Neighbor/Community Concerns: On October 13, 2021, the City mailed postcards to neighboring property owners and occupants within 300 feet to inform the public of the receipt of a Zoning Permit application at this site². Staff received two communications from neighbors (one email and one phone call) expressing concern about required on-site parking and the availability of street parking along Fairview Street. The project meets the code required on-site parking regulations; however, in response to these communications, the applicant revised the project plans to include a new enclosed one-car garage space attached to the proposed new unit at the rear while providing two unenclosed 8' x 18' parking spaces along the driveway in the front half of the parcel. On December 22, 2021, the City mailed public hearing notices to property owners and occupants, and to interested neighborhood organizations within 300 feet of the project site and the City posted notices within the neighborhood in three locations. All communications received for this project can be found in Attachment 4.

B. Committee Review: This project is not subject to review by the Design Review Committee or the Landmarks Preservation Commission because it is not located in a commercial or manufacturing district, and does not involve the demolition of a non-residential building.

V. Issues and Analysis

² To comply with Public Health Orders related to Covid-19, the standard protocol for installation of a Project Yellow Poster and/or neighborhood contact, and signatures were waived at the time this project application was submitted

A. SB 330 – Housing Crisis Act of 2019: The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development. Housing development is defined as a project that is: all residential; a mixed-use project with at least two-thirds of the square-footage residential; or for transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

1. Government Code §65905.5(a) states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, then the city shall not conduct more than five (5) hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at any of the five hearings consistent with applicable timelines under the Permit Streamlining Act (Chapter 4.5 (commencing with §65920)).

The January 13, 2022, ZAB hearing represents the first public hearing for the proposed project since the project was deemed complete. The City can hold up to four additional public hearings on this project, if needed. One of those hearings must be reserved for any possible appeal to the City Council.

2. Government Code §65913.10(a) requires that the City determine whether the proposed development project site is a historic site at the time the application for the housing development project is deemed complete. The determination as to whether the parcel is a historic site must remain valid during the pendency of the housing development project, unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.

In July 2021, the applicant requested a waiver to the historic resource evaluation required for the addition to the front dwelling, and staff accepted a historical research statement in lieu of a formal evaluation. Standard conditions of approval have been included to halt work in case of any unanticipated discovery of archeological, paleontological, or tribal cultural resources.

3. Government Code §65950(a)(5) requires a public agency to approve or disapprove a project within 60 days from the determination that the project is exempt from the California Environmental Quality Act. The project was deemed complete on January 4, 2022. Should ZAB determine the application is categorically exempt from CEQA at the January 13, 2022, public hearing, the application must be approved or disapproved by March 14, 2022.

B. 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 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; 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.

As described in Table 4 above, the project complies with applicable, objective general plan and zoning standards. Therefore, the City may not deny the project or approve the project at a reduced density without basing its decision on the written findings under Section 65589.5(j), above. Staff is not aware of specific adverse impacts that could occur with the construction of the project.

C. Reduction of Building Separation: In the R-2A District, if there are two or more main buildings with a dwelling, the required building separation may be reduced with approval of an AUP. The project applicant is requesting an AUP to reduce the required building separation from 16 feet to 12 feet. This reduction would allow the project to maintain an adequate private rear yard for the new dwelling unit while also still providing a large shared open space between the existing front triplex and the proposed rear building.

D. Findings for Use Permit Approval in the R-2A District: Pursuant to BMC Section 23.202.020.A, a new dwelling unit is allowed in the R-2A District with a Use Permit, provided that its siting meets applicable development standards and subject to the non-detriment finding. Furthermore, as described in the sections below, staff believes the project would not unreasonably obstruct sunlight, privacy, air, or views.

Staff believes the project would not be detrimental to the health, safety, peace, morals, comfort, or general welfare of residents or workers in the area because it would be consistent with the development pattern in the area. The applicant proposes to construct a three-story single-family dwelling unit in a neighborhood of single- and multi-family dwellings that range in height from one to three stories, and with a siting/design that would be compatible with the surrounding built environment. Staff believes that the proposed project would not unreasonably obstruct sunlight, privacy, air, or views as analyzed below.

1. Sunlight/Shadow: Shadow studies submitted by the applicant document the shadow angles and lengths at three times each day at the summer and winter solstice that would result from the project.

- During the winter solstice, new shadows would be cast upon the adjacent residences to the north at 1520 Woolsey Street and 1522 Woolsey Street, covering two living room windows at 1522 Woolsey Street two hours after sunrise. At noon, shadows would partially cover two living room windows at

1522 Woolsey Street. Two hours before sunset, shadows would cover a living room and bedroom window, and the lower third of a second bedroom window at 1524 Woolsey Street, and cover a living room and a bathroom window at the rear building at 1523 Fairview Street.

- Two hours after sunrise on the summer solstice, a bathroom window would be covered by shading, and the lower portion of a home office window would be shaded at 1515 Fairview Street. Two hours before sunset on the summer solstice, a corner of a bedroom window would be shaded at the rear building at 1523 Fairview Street, and at the front building, a kitchen window, a bathroom window, a home office window, a bedroom window would be covered by shadows, and the lower left corner of a bathroom window would be shaded.

While shadows would be cast on portions of these residential buildings, such impacts to light access are limited in duration and is considered typical of urban settings and is not considered substantial or detrimental.

2. Privacy: The proposed dwelling would meet or exceed the District minimum for both side and rear setbacks (see Table 4 above). New openings are provided on all elevations of the first, second, and third floors, but the building will comply with all setbacks, so detrimental impacts to neighbors are not anticipated.

There would also be a third-floor roof deck located towards the interior of the parcel and adjacent to the western side setback area of the new dwelling, which would create new sightlines toward adjacent dwellings but would not be detrimental because:

- The roof deck would face the interior of the building separation and would only have views from the south and west of the subject deck/parcel.
- A 1-foot 10-inch-wide planter box is proposed at the south end of the roof deck, setting the deck area back and providing additional privacy.
- The roof deck would be approximately 6.5 feet from the western property line, exceeding the required 6-foot side setback.

3. Air: As discussed above, the proposed single-family dwelling unit meets or exceeds all side setback requirements in the R-2(A) Zoning District and would be consistent with the existing development and building-to-building separation pattern – or air – in this neighborhood. The proposed building would exceed the required side setbacks along the east (right side) elevations, as well as meet the required rear 15-foot setback. Additionally, the proposed project would exceed the usable open space requirement of 1,200 square-feet.

4. Views: Per BMC Section 23.502.020, a significant view is a view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark or any other significant vista that substantially enhances the value and enjoyment of real property. As described above under Project Settings, this neighborhood is generally flat in nature and surrounding residential structures and mature vegetation block most views of the Berkeley hills or the Golden Gate Bridge from off-site view angles. As such, staff believes the proposed project would not unreasonably obstruct views.

VI. Other Considerations

The following lists of zoning district purposes and 2002 General Plan goals and policies are provided for information purposes only, to provide context; they do not require findings of conformance because the proposed project is HAA-compliant.

A. Compatibility with District Purposes: The proposed project would meet the following purposes of the Restricted Multiple-Family Residential, R-2A Zoning District:

1. Implement Master Plan policy by encouraging the development of medium density residential areas characterized by small multiple-family and garden type apartment structures with a maximum amount of open space consistent with this type of development;
2. Make available housing for persons who desire apartment-type accommodations with a maximum of open space;
3. Protect adjacent properties from unreasonable obstruction of light and air;
4. Permit only that intensity of use which will be compatible with existing low density residential structures and will not be detrimental to the immediate neighborhood

B. 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 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 proposed project would increase the number of dwelling units from three to four dwellings on a parcel located in the R-2A District which meets the lot size requirements for four dwellings. The project would add a new dwelling unit to a residential property located in a residential district near transit. As described in the Issues and Analysis Section above, the proposed rear residential building height is consistent with the character of the neighborhood and the project will meet most of the zoning standards for the R-2A District. The project would be compatible with the parcels in the immediate neighborhood and the development pattern for the broader area that is characterized by a mix of one-, two- and three-story residential buildings, multiple units per parcel, and parking accessed by a common driveway.

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

Staff Analysis: See discussion of Key issues above

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

Staff Analysis: The proposed project would increase the number of dwelling units on the property and help the City meet housing production goals established by ABAG’s Regional Housing Needs Determination, as well as goals to provide housing suitable for larger families.

VII. 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 #ZP2021-0113 pursuant to BMC Section 23.406.040.E and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received January 4, 2022
3. Notice of Public Hearing
4. Correspondence Received

Staff Planner:

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