



# 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 PREVIEW AND COMMENT  
DECEMBER 9, 2021

## 1201-1205 San Pablo Avenue

**Project Preview of Use Permit #ZP2021-0070 to construct a six-story, mixed-use building on a vacant lot, with 66 units (including five Very Low Income units), 1,720 square feet of commercial space, 2,514 square feet of usable open space, and 17 to 28 ground-level parking spaces.**

### I. Background

#### A. Land Use Designations:

- General Plan: AC – Avenue Commercial
- Zoning: C-W–West Berkeley Commercial District, Gilman and San Pablo Designated Node

#### B. Zoning Permits Required:

- Administrative Use Permit under Berkeley Municipal Code (BMC) §23D.04.020.C to construct rooftop projections, such as mechanical appurtenances or architectural elements which exceed the maximum average height limit for the district;
- Use Permit under BMC §23E.64.030.A to construct a mixed-use development with floor area of more than 9,000 square feet;
- Use Permit under BMC §23E.64.030.A to construct new dwelling units; and
- Use Permit under BMC §23E.64.050.B, to create new gross floor area of 5,000 square feet or more.

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

- Waiver of BMC §23E.64.070.A to increase maximum FAR to 3.6 where 3.0 is the limit;
- Waiver of BMC §23E.64.070.B to increase maximum average building height to be 68'-3", where 50' is the limit for a mixed-use building;
- Waiver of BMC §23E.64.070.B to increase maximum number of stories to be 6 stories, where 4 stories is the limit for a mixed-use building; and
- Concession to reduce the Usable Open Space requirement from 2,640 to 2,514 square feet.

**D. CEQA Recommendation:** It is staff's recommendation to ZAB that the project is categorically exempt pursuant to §15332 ("In-Fill Development Projects") of the CEQA Guidelines. The determination is made by ZAB.

The project meets all of the requirements of this exemption, as follows:

- The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
- The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
- The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
- The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by City Transportation Division which concurred with the findings of less than significant impacts. Standard Conditions of Approval would address potential impacts related to traffic, noise, air quality, and water quality.
- The site can be adequately served by all required utilities and public services.

Furthermore, none of the exceptions in CEQA Guidelines §15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code §65962.5, and (f) the project would not affect any historical resource. See Section III.E for discussion of the project's CEQA review.

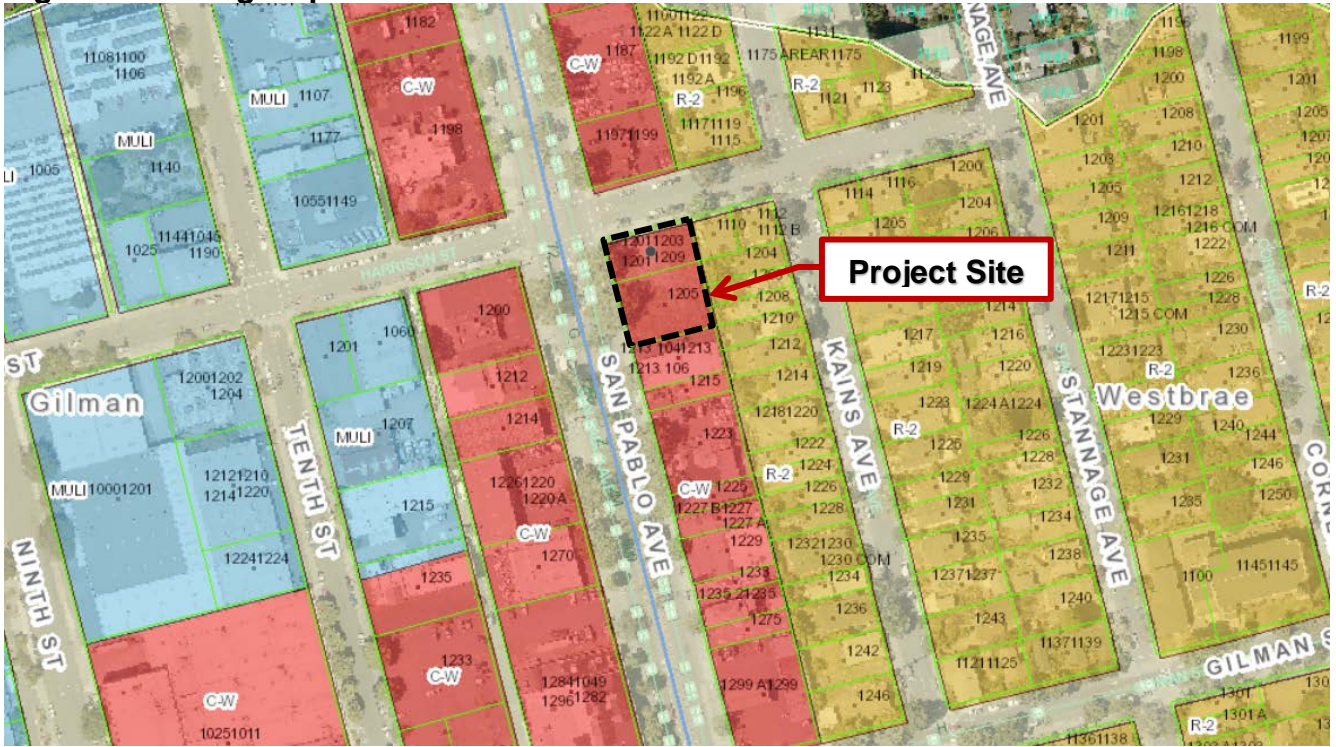
**E. Parties Involved:**

- Applicant                      Isaiah Stackhouse, Trachtenberg Architects, 2421 Fourth Street, Berkeley, CA 94710
- Property Owner              Lanhai Su, 4500 Great America Parkway, Santa Clara, CA 95054


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

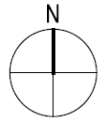
[https://www.cityofberkeley.info/Planning\\_and\\_Development/Zoning\\_Adjustment\\_Board/1201-1205\\_San\\_Pablo.aspx](https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/1201-1205_San_Pablo.aspx)

Figure 1: Zoning Map



Legend

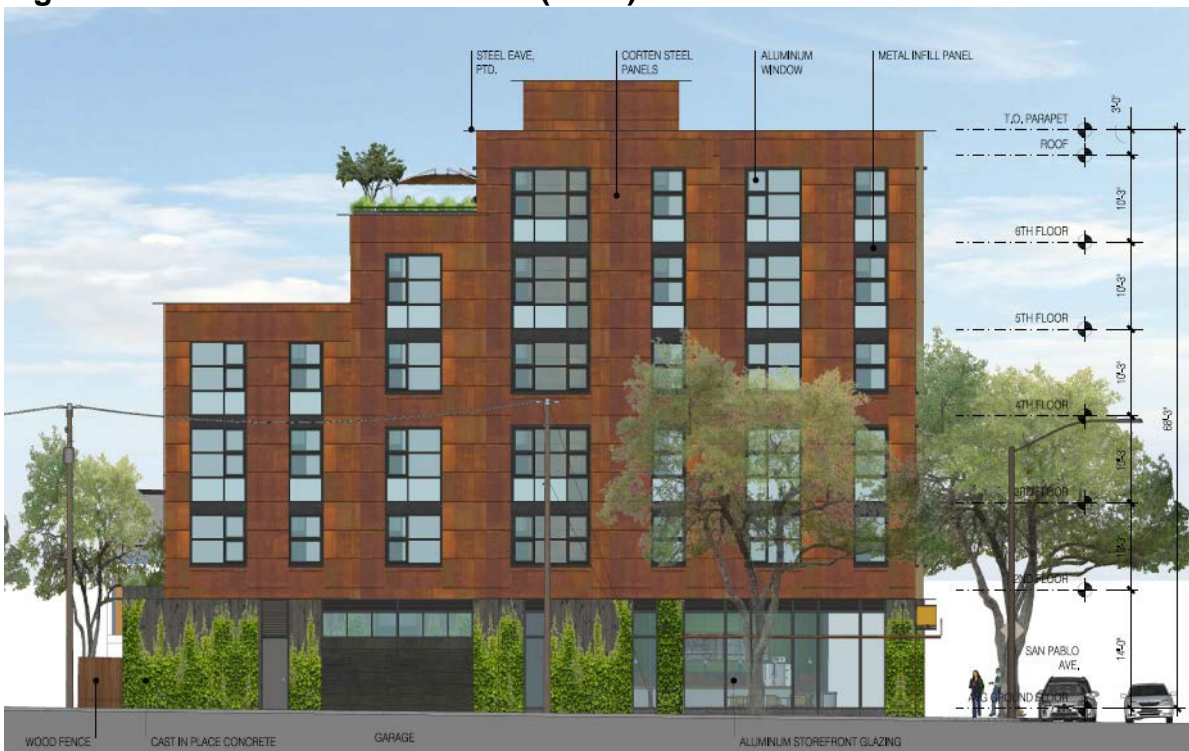
-  AC Transit Bus Route
- C-W: West Berkeley Commercial District
- MU-LI: Mixed Use-Light Industrial District
- R-2: Restricted Two-Family Residential District



**Figure 2: San Pablo Avenue Elevation (West)**



**Figure 3: Harrison Street Elevation (West)**



**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Vacant Land	C-W	AC
Surrounding Adjacent Properties	North	Auto Repair Shop		
	East	Single-Family Residential	R-2	
	South	Multi-family Residential	C-W	
	West	Tattoo Parlor/Art Gallery/ Fast Food Restaurant (vacated) – ZP2019-0192 approved for 104-unit mixed-use building, November, 2020		

**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.)	No	These fees apply to projects with more than 7,500 square feet of net new non-residential gross floor area. The project includes 1,720 square feet of net new non-residential gross floor area. Therefore, the project would not be subject to these fees.
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)	Yes	The project would include five or more market rate dwelling units and is therefore subject to the affordable housing provisions of BMC 22.20.065.
Alcohol Sales/Service	No	The project is not proposing alcohol sales or service with this permit.
Coast Live Oaks	No	There are no oak trees on the project site.
Creeks	No	The project site is not within a creek buffer.
Density Bonus	Yes	The project would provide five Very Low Income units, or 10% of the Base Project units, and qualifies for a 32.5% density bonus, or 17 bonus units. See Section III.B for discussion.
Green Building Score	No	The project is not located in the C-DMU, Downtown Mixed Use District, and is not subject to this requirement.
Historic Resources	No	The project site is vacant, and does not to contain any known historic resource.

Characteristic	Applies to Project?	Explanation
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 findings apply to this project, and the project cannot be denied at the density proposed unless the findings for denial can be made. See Section III.C 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 (0.8% of total building permit valuation) to comply.
Rent Controlled Units	No	The project site is vacant, and there are no rent-controlled units to be demolished.
Residential Preferred Parking	No	The site is not located in an RPP zone.
Seismic Hazards (SHMA)	No	The project site is located in an area susceptible to liquefaction, as defined by the State Seismic Hazards Mapping Act (SHMA). The applicant has submitted a geotechnical report that has been peer reviewed by the City’s consultant. Conditions of approval will be included in the permit to ensure oversight by the applicant’s geotechnical consultant.
Soil/Groundwater Contamination	Yes	The project site is located within the City’s Environmental Management Area. The applicant has submitted a Phase I report. No further investigation is recommended. Standard Conditions of Approval related to hazardous materials would apply.
Transit	Yes	The project site is served by multiple bus lines (local, rapid, and Transbay) that operate along San Pablo Avenue, and is approximately 1.3 miles from the North Berkeley BART Station.

**Table 3: Project Chronology**

Date	Action
April 1, 2021	SB 330 Preliminary Application deemed complete
May 11, 2021	SB 330 Use Permit Application submitted
June 9, 2021	Application deemed incomplete
July 13, 2021	Revised application submitted
August 10, 2021	Application deemed incomplete
August 30, 2021	Revised application submitted
September 22, 2021	Application deemed complete
November 23, 2021	Public hearing notices mailed/posted
December 9, 2021	ZAB Preview

**Table 4: Development Standards**

C-W Standards, BMC §23E.64.070-080		Existing	Proposed	Permitted/Required
Lot Area (sq. ft.)		5,500 +7,500	13,000	n/a
Gross Floor Area (sq. ft.)		n/a	47,036	39,000
Commercial Floor Area (sq. ft.)		n/a	1,720	n/a
FAR		n/a	3.6	3
Dwelling Units		n/a	66	n/a
Building Height	Average	n/a	68'-3"	50' max./ 25' min. (in node)
	Maximum	n/a	68'-3"	n/a
	Stories	n/a	6	4 max. 2 min. (in node)
Building Setbacks	Front (Harrison)	n/a	0'-0" (1'-6" overhang into ROW)	0' min.
	Rear	n/a	0'-0"	0' min.
	Left Side	n/a	5'-0"	5' min.
	Right Side (San Pablo)	n/a	0'-0" (1'-6" overhang into ROW)	0' min.
Lot Coverage (%)		n/a	93	n/a
Usable Open Space (sq. ft.)		n/a	2,514	2,640 min. (40 s.f./d.u.)
Parking	Commercial (1,720 sq. ft.)	n/a	4	4 min. (2 spaces/1,000 sq.ft.)
	Residential	n/a	13 to 24 <sup>1</sup>	0 min./33 max. (0.5 spaces/du max.)
	Total	n/a	17 to 28	4 min./33 max.
Bicycle Parking	Commercial - Short Term (1,720 sq. ft.)	n/a	2	2 (1 space/2,000 s.f. commercial)
	Residential - Long Term	n/a	64	26 (1 space/3 bedrooms)
	Residential - Short Term	n/a	6	2 (1 space/40 bedrooms, or 2)
	Total	n/a	64/8 (long term/short term)	26/4 (long term/short term)
<p>■ = Waiver or Concession requested to modify the district standard.</p> <p><sup>1</sup> The applicant would determine the final amount of parking spaces/parking lifts prior to the application for building permits, based upon financial considerations. The amount proposed falls within the range of minimum and maximum parking requirements.</p>				

## II. Project Setting

- A. Neighborhood/Area Description:** The project site is located on the southeast corner of the intersection of San Pablo Avenue and Harrison Street, along the San Pablo Commercial Corridor, within the Gilman and San Pablo Node of the West Berkeley Area Plan. Adjacent parcels to the east are occupied by single- and multi-family residential developments in the R-2, Restricted Two-Family Residential District. Further north and south along San Pablo Avenue, in the C-W, West Berkeley Commercial District are mostly one-story commercial buildings, excepting the two parcels just south of the project site, which are occupied by a two-story apartment building and a one-story, single-family dwelling, respectively. Parcels directly west of the site, across San Pablo Avenue, are currently occupied by one-story commercial buildings. Entitlements for a six-story, 104-unit, mixed-use building were obtained for these three parcels in November, 2020 (ZP2019-0192). San Pablo Avenue is served by multiple bus lines (local, rapid, and Transbay). The site is approximately 1.3 miles from the North Berkeley BART Station (to the northeast). (See Figure 1: Zoning Map.)
- B. Site Conditions/Background:** The project site is composed of two rectangular parcels – 1200/1209, and 1205 San Pablo Avenue – which have a combined total area of 13,000 square feet, a combined frontage along San Pablo Avenue measuring 130', and a combined frontage along Harrison Street measuring 100'. The parcel is vacant. Entitlements were obtained for the project site in 2006 to construct a five-story, 27-unit, mixed-use building, and an application for a building permit (B2019-05125) to construct the approved project was submitted in 2019, but never issued.

## III. Project Description

- A.** The proposed project would involve the merging of two lots into one, and the construction of a mixed-use building with the following main components:
- Six stories, 68 feet, 3 inches in height
  - 66 dwelling units – 22 studios, 34 one-bedroom, and 10 two-bedroom
  - 76 bedrooms total
  - Five Very Low Income (VLI) units
  - 1,720 square feet of ground-floor commercial space
  - 2,514 square feet of usable open space – second-floor podium courtyard, private patios, and sixth-floor roof deck
  - 17 to 28 vehicle parking spaces in ground-level garage<sup>1</sup>
  - 64-space bike room

(See Figure 2 and 3: Elevations.)

- B. Base Project and Density Bonus:** By committing to provide five VLI units, the project is eligible for a density bonus under Government Code §65915. Under the City's density bonus procedures, the Base Project was calculated to have 50 units, as the

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<sup>1</sup> The applicant would determine the final amount of parking spaces/parking lifts prior to the application for building permits, based upon financial considerations.



maximum allowable density for the site.<sup>2</sup> The Base Project has an average unit size of 657 square feet in a four-story building. Five VLI units, or 10 percent of the Base Project, qualifies the project for a 32.5 percent density bonus or 17 bonus units, of which the project would utilize 16. The resulting Proposed Project would be a six-story building with 66 units, with an average unit size of 664 square feet. (See Table 5: Density Bonus.)

**Table 5: Density Bonus – CA Gov’t Code 65915**

Base Project Units*	Qualifying Units	Percent Density Bonus	Number of Density Bonus Units*	Proposed Project Units
50	5 VLI (10% of BP)	32.5%	16 (17 max.) (32.5%x50)	66

\*Per Gov’t Code 65915(q), all unit calculations are rounded up to the nearest whole number.

**C. Housing Accountability Act:** The Housing Accountability Act (HAA), California Government Code §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.

The Base Project complies with applicable, objective general plan and zoning standards. Further, §65589.5(j)(3) provides that a request for a density bonus “shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.” Therefore, the City may not deny the Base Project or density bonus request or reduced the density with respect to those units without basing its decision on the written findings under §65589.5(j), above. Staff is aware of no specific adverse impacts that could occur with the construction of the Base Project or the density bonus units. Therefore, §65589.5(j) **does apply** to the Proposed Project. All findings discussed below are subject to the requirements of Government Code §65589.5.

<sup>2</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, §65915(f).  
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## IV. Community Discussion

**A. Neighbor/Community Concerns:** After receiving the application on May 11, 2021, the City mailed a Notice of Received Application to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations.<sup>3</sup> Staff received one email from a neighbor on Stannage Avenue describing concerns over excessive building height, excessive density, and inadequate parking (17 spaces) provided in the project, which would contribute to congestion in the neighborhood.

On November 23, 2021, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations. No further communications regarding the project were received as of the writing of this staff report.

**B. Landmarks Preservation Commission:** This application is not subject to review by the Landmarks Preservation Commission.

**C. Design Review Committee:** The Design Review Committee is scheduled to hold a Preliminary Design Review meeting at its December 16, 2021 meeting.

## V. Issues and Analysis

**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 projects. A “housing development project” means a use that is: all residential; mixed use with at least two-thirds of the square footage as residential; or 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 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 December 9, 2021 ZAB Preview represents the first public hearing for the proposed project since the project was deemed complete. The City can hold up to

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<sup>3</sup> The Pre-Application Yellow Poster and Neighborhood Outreach components of the land use application submittal requirements were temporarily suspended at the time of the application submittal due to City emergency health orders. The suspension was lifted on July 1, 2021.

four additional public hearings on this project, if needed. One of those hearings must be reserved for a potential appeal to the City Council.

2. Government Code §65913.10(a) requires that the City determine whether the proposed development project site is an historic site at the time the application for the housing development project is deemed complete. The determination as to whether the parcel is an 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.

The site is vacant, and there is no known cultural resource associated with the site. Therefore, it was determined that the site is not an historic resource. Standard conditions of approval have been included to halt work if 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 September 22, 2021. The ZAB will determine whether the application is categorically exempt from CEQA at the public hearing, which is anticipated to occur in Spring, 2022.
4. Government Code §66300(d) prohibits the demolition of residential dwelling units unless the project will create at least as many residential units as will be demolished. The project does not propose the demolition of housing units. Therefore, this section does not apply to the project.

**B. Density Bonus Waivers and Concessions:** The project is entitled to two concessions (or incentives), under Government Code §65915(d) for providing at least 10 percent of total units to very low income households, and an unlimited number of waivers, under §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 one concession to reduce the Usable Open Space requirement from 2,640 to 2,514 square feet, to eliminate the cost of providing an additional occupiable roof deck.

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>

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<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.”

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 FAR and height (maximum height and number of stories) 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 not identified any evidence that would support such a finding.<sup>6</sup>

## VI. Other Considerations

The following analyses of conformance with district purposes, use permit findings for non-detriment, and the 2002 General Plan goals and policies are provided for information purposes only, to provide context; they are not required because the proposed project is HAA-compliant.

**A. Findings for Use Permits in C-W District:** Pursuant to BMC §23E.64.090.B, in order to approve any Use Permit in the district, the Board must make the following findings. The proposed use or structure must:

1. Be consistent with the purposes of the District. The project is consistent with the following district purposes:
  - Implement the West Berkeley Plan's designation of a Commercial District;
  - Provide locations for commercial services which primarily serve area residents and/or businesses;
  - Support the retention and attraction of a balance of both smaller and larger stores and restaurants;
  - Provide appropriate locations, consistent with West Berkeley Plan policies, for commercial services which serve a citywide or broader clientele;
  - To provide a relatively compact, clearly bounded set of commercial areas in West Berkeley, so as to both improve the quality of West Berkeley shopping environments and to prevent commercial overspill into industrial areas;
  - Increase the opportunities for development of housing in commercial areas to support local retailing and use of transit lines and opportunities for mixed use projects combining pedestrian-oriented neighborhood-serving uses with mixed income housing in locations abutting residential districts;

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<sup>6</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."

- Encourage appropriately intense development in underutilized portions of commercial streets; and
  - Promote development compatible with adjacent commercial, residential and industrial areas;
2. Be compatible with surrounding uses and buildings;
  3. Be consistent with the adopted West Berkeley Plan;
  4. Be supportive of an increase in the continuity of retail and service facilities at the ground level to the degree feasible and does not substantially degrade the existing urban fabric of the street and area;
  5. Be, for projects which include construction of new floor area, providing an intensity of development which does not underutilize the property;
  6. Be capable of meeting any applicable performance standards for off-site impacts; and
  7. Not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.

The proposed mixed-use building at this location would be an appropriate utilization of the currently vacant and underutilized site that would bring 66 new residential units (including five below-market-rate units) and 1,720 square feet of commercial space to the district and the neighborhood. The project would further the purposes of the district by increasing the neighborhood population with new residents of mixed income who would patronize the local businesses, and help to engage the adjacent residential neighborhood (R-2) to the east of the site, to contribute to the livability and character of this underutilized portion of the San Pablo Avenue commercial corridor. New residents and business patrons from the project and surrounding neighborhood would increase street-level activity near this intersection of San Pablo Avenue and Harrison Street, and would extend the existing ground-level activation near the Tokyo Fish Market (1220 San Pablo) on the west side of San Pablo Avenue to the east side of the avenue. The project's corner commercial space and primary building orientation toward San Pablo Avenue, along with a similar configuration at the approved mixed-use building to be constructed across the street at 1200-1214 San Pablo, would serve to engage both the southwest and southeast corners of this intersection, and would contribute to the continuity of ground-level activation in the Gilman node of the West Berkeley Plan area.

At six stories tall, the proposed project would be taller than the existing one- and two-story residential and commercial buildings in the vicinity. The building design mitigates this height differential by stepping down toward the dwellings to the east of the site at the sixth floor, and again at the fifth floor. There is also a 43-foot-wide, 47-foot-deep podium level (second floor) garden, and a ten-foot setback along the length of the east property line at the ground level, to soften the transition to the residential neighborhood to the east.

The project would help realize the development potential in the C-W district along San Pablo Avenue in the West Berkeley Area Plan, which allows up to four stories by right (for mixed-use buildings), and would add to the trend of taller, mixed-use development along San Pablo Avenue in, north of University Avenue, which includes projects such

as: 1406 San Pablo – a three-story, mixed- use building, approved in 2004 and built soon after; 1500 San Pablo – a five-story, mixed use building approved in 2016, which completed construction in 2021; 1800 San Pablo – a four-story, mixed-use building, approved in 2004 and built in 2006; and 1200-1214 San Pablo (across the street from the subject site) – a six-story, mixed-use building, approved in November, 2020, and currently obtaining building permits.

Finally, the project would be an appropriate intensity of use that would not exceed local traffic and parking capacities. The use permit for a similar, but denser, mixed-use building at 1200-1214 San Pablo (#ZP2019-0192) was approved in November, 2020 by the City with both a parking waiver and a parking reduction pursuant to State density bonus provisions. In addition, the City's parking reform ordinance (effective March, 2021) eliminated the residential parking requirement and established parking maximums for this district. The proposed 17 to 28 parking spaces falls within the minimum and maximum requirements.

**B. Findings for Use Permits in C-W District Node:** Pursuant to BMC §23E.64.090.C, in order to approve any Use Permit in a District Node, the Board must find that the use supports the development of a strong retail commercial, pedestrian oriented environment at the node. Factors the Board should consider shall include, but are not limited to, the placement of store entrances relative to the street and parking lots and the size and prominence of display windows and areas facing the sidewalk.

Though the specific use and tenant has not yet been determined, the commercial space has floor-to-ceiling windows all along the ground level, with its longer, entry (west) side oriented toward San Pablo Avenue, to activate both the Harrison Street and San Pablo Avenue sidewalks. Floor-to-ceiling windows continue along the ground floor, west side of the building at the residential lobby, which has a lounge just inside the windows, through the bike room. Together, floor-to-ceiling windows along the commercial space, lobby, and bike room line approximately 90 percent of the project's San Pablo elevation with active spaces behind transparent glazing.

The project's strong orientation toward the San Pablo Avenue streetscape would add to the pedestrian activity and interest on this portion of the Avenue that already draws visitors daily. The Tokyo Fish Market, across San Pablo and west of the project site, is a food market that has occupied its site for several decades, and is a popular lunchtime destination. The project would contribute to the existing pedestrian activity near this business by bringing new residents to the area, and by helping to draw in local visitors, and potentially, those from beyond the immediate neighborhood.

**C. General Non-Detriment Finding:** BMC §23B.32.040.A states that before the ZAB approves an application for a Use Permit, it must find that the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the 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.

Shadows: According to the shadow studies submitted for the project (See Attachment 1, Project Plans – Sheets A.0.4A through A.0.4E). New shadows would affect the existing residences to the east of the site and the existing apartment building to the south, casting new shadows in the winter and summer months in the hours before sunset. Shadows would be cast onto the approved mixed-use building to the west (when constructed) at 1200 San Pablo, in the hours after sunrise in the summer months.

Shadow impact on adjacent dwellings are to be expected, because the subject site is located in the C-W district, which allows heights of up to 50 feet and four stories for mixed-use buildings, by right. The proposal would include a waiver for additional height beyond the district height limits to accommodate the density bonus units (see section V.B for a discussion of waivers) and allow a 68-foot, 3-inch-tall, six-story building. The additional height above the district limits would cast shadows in the affected directions further than if the project were limited to the base district height standards. Staff believes that shadow impacts from the project would be reasonable and not detrimental.

**D. General Plan Consistency:** The following analysis of conformance with the 2002 General Plan goals and policies is provided for information purposes only, to provide context. They do not require findings of conformance because the proposed project is HAA-compliant:

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy LU-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.
4. 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.
5. 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.
6. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

As discussed in section VI.A through VI.C, the project would improve the utilization of the site with development that is of appropriate intensity, that is compatible with the existing surrounding development, and that would further improve the neighborhood character and quality of life by increasing existing street-level

activity, bringing in new residents and new business patrons to an intersection in a designated node along a major commercial and transit corridor. The project site is served by multiple bus lines, including local, rapid, and Transbay lines, that operate along San Pablo Avenue, and a nearby BART Station.

7. Policy UD-33–Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.
8. 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.
9. 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.)

The project would help Berkeley meet its regional housing needs by adding 66 new housing units, including five VLI units. The project would be subject to standard conditions of approval that promote sustainable building design, including conditions for solar PV systems, electric vehicle charging, water efficient landscaping, and natural gas prohibitions.

## VI. Recommendation

Staff recommends that the ZAB hold a public hearing and provide advisory comments and direction regarding the building design and its compatibility with the neighborhood, and the proposed waivers of development standards. Staff also requests that the ZAB provide advisory comments regarding additional issues and analysis that the next staff report should address.

### Attachments:

1. Project Plans, received August 30, 2021
2. Notice of Public Hearing

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