



Planning and Development  
Land Use Planning Division

October 14, 2021

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Sent via email to:  
[rnandwana@ipd-oak.com](mailto:rnandwana@ipd-oak.com)

**Re: Application for Use Permit #ZP2021-0043 for 2213 Fourth Street.**

Mr. Nandwana -

The Land Use Division has reviewed the above referenced application, submitted on March 24, 2021, revised materials received on September 14, 2021 to demolish three existing non-residential buildings and one existing duplex on-site and construct a new 124,667 square-foot, five-story parking garage containing 415 off-street automobile parking spaces to serve uses in the vicinity of the project site.

**Application** – The application includes the following approval requests:

1. Use Permit pursuant to BMC Section 23C.08.050.A to demolish main buildings used for non-residential purposes.
2. Use Permit pursuant to BMC Section 23C.08.020, to demolish a duplex.
3. Use Permit pursuant to BMC Section 23E.80.045.B, to remove protected floor area used for manufacturing, wholesale trade, warehousing or Material Recovery Enterprise.
4. Administrative Use Permit pursuant to BMC Sections 23E.80.030.B and 23E.84.030.B to construct a parking structure on a split-zoned parcel in the MU-LI and MU-R districts.
5. Administrative Use Permit pursuant to BMC Section 23E.04.020.C to allow architectural elements to exceed the height limit in a mixed-use district.

Staff has determined that the application is incomplete. Please review the comments below, as well as the list of items required to complete the application. Staff is unable to take further action on the project until all the items listed below are corrected and/or submitted.

**Items Required for Submittal or Correction-** The following required items were missing from the application submittal, and must be submitted for application completeness, per the Zoning Project Submittal Requirements:

1. Applicant Statement. Please revise the applicant statement to address the following comments:
  - a. The required findings for the proposed demolition of 2212 Fifth in order to allow construction of the proposed new parking structure are below, please confirm

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under which finding this application is being submitted, and provide the required information to make such finding.

- i. The applicant statement includes the suggested finding under BMC Section 23C.08.020.A.1 that the building is “hazardous and unusable and is infeasible to repair...and demolition...and establishment of a parking garage to support expanded light industrial and R&D is an appropriate use of the lot...”, per the Historical Resource Evaluation prepared on November 23, 2020. According to the State Historic Preservation Officer (SHPO) practices and requirements, DPR Forms do not suggest alternative uses for a site where a potential resource is located. To do so would be inappropriate and outside the scope and purpose of the evaluation. In order to establish the finding suggested under 23C.08.020A.1 that the building is “hazardous or unusable and is infeasible to repair,” please provide a structural evaluation completed by an independent, fully credentialed structural engineer that evaluates whether, in the operator’s opinion, the structure is hazardous and unusable, and infeasible to repair. **RESPONSE: The Applicant is no longer proposing that staff make findings under this BMC section. Please see response below and on Page 3 of the revised Applicant Statement.**
- ii. The applicant statement includes the suggested finding under BMC Section 23C.08.020.A.2 that “the project sponsor is committed to advertising the availability of the 2212 Fifth Street structure for purchase, at a cost of \$1, if the purchaser agrees to relocate the structure to an off-site location within Berkeley.” In order to make this finding, a condition of approval would be that prior to submittal of any building and safety permit (grading, building, etc.), the project sponsor would provide evidence that the existing duplex has been relocated to a different location within the City of Berkeley with no net loss of units and no change in the affordability levels of the units. **RESPONSE: Please see Page 3 of the attached revised Applicant Statement for draft findings per BMC Section 23.326.030.2(b).**

### Design Review Comments

Design Review application is complete, no further comments.

### Advisory Comments

#### 1. Planning Division Comments.

- a. If the application to demolish the duplex is being submitted with the finding under BMC Section 23C.08.020.A.2, staff suggests that in addition to advertising in Berkeleyside, to reach out to the applicants supporting the initiation of 2212 Fifth Street as a City Landmark or Structure of Merit. The application record number is LMIN2021-0001 and the application materials can be found online at: <https://permits.cityofberkeley.info/citizenaccess/Default.aspx>

**RESPONSE: Noted, Applicant will also advertise on the Berkeley Architectural Heritage Association (BAHA) website, and will reach out to the person that filed the landmark application for 2215 Fifth Street.**

- b. In order to generate energy for garage operations, including EV chargers, providing a canopy for the purpose of supporting solar PV may be advantageous to this project. BMC Section 23E.04.020, Heights, permits solar equipment to exceed the height limit of the district. Consider providing a solar canopy, and if

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feasible, provide one to the extent possible. Providing a solar canopy would support the goals of the City of Berkeley Climate Action Plan to reduce conventional energy use through a greater reliance on renewable energy, such as solar.

**RESPONSE: Per the Berkeley Reach Code, amendments to the Berkeley Energy Code, the photovoltaic requirement for the 787 Bancroft proposed development will be fulfilled by placing solar PV on the top level of the parking garage located at 2213 Fourth Street. See A107.1 for PV plan, which shows the extent of PV installation.**

Berkeley Climate Action Plan:

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Berkeley%20Climate%20Action%20Plan.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Berkeley%20Climate%20Action%20Plan.pdf)

- c. Implementation of the Transportation Demand Management Plan dated September 13, 2021 will be a condition of approval.

**RESPONSE: Noted. Please see updated TDM, dated 12.22.21.**

Additional comments received during the roundtable meeting 11/10/2021.

- a. Distance to elevator:  
Per the code Section 11B-206.2.3.2, an accessible means of vertical access (ramp, elevator or lift) shall be provided within 200'-0" of travel of each stair or escalator. Current distance between the elevator and the exit stair at SE corner of the garage exceeds the 200'-0".

**Response: Per the code Section 11B-206.2.3.2 exception, the distance requirement doesn't apply to the stair used solely for emergency egress. The exit stair at SE corner of the garage has been revised to egress only stair to satisfy the code requirements. Fencing enclosure is provided with a door on each level and the exit door at the discharge level does not include operable hardware on the exterior side. See A103 for this change.**

- b. Width of entrance canopy:  
City was concerned with a conflict between the street trees and the proposed pedestrian entrance canopy. It was recommended to reduce the width of canopy to avoid potential conflicts.

**Response: The width of canopy has been revised from 4'-3" to 3'-0". See A109.1 for the change.**

- c. Doors close to the south property line:

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Per CBC table 705.8, it is not allowed to have any opening within 3'-0" from property line. Two doors currently proposed close to the south property line need to be either removed or revised.

**Response: The east door has been removed. The west door has been recessed to maintain 5'-0" fire separation, which allows 15% protected opening per CBC table 705.8. Required fire rating will be provided to the door. See A103 for the change.**

Revised submittal items should be submitted in electronic form (uploaded to the project folder on [Box.com](#)). Should you have questions regarding this letter or your application, please feel free to contact me.

Sincerely,



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December 22, 2021

**Revised Applicant Statement for theLAB Parking Garage Administrative Use Permit Application #ZP2021-0043.**

I. Project Overview for theLAB (old Peerless site)

The applicant’s goal is to develop the west and east blocks in three phases beginning with Phase I building and site renovation as well as interior spec tenant improvement buildout. The Phase II project includes the demolition of four structures on the East Block and the development of a 4.5 level above-ground parking structure with 415 stalls to add to the current surface parking and fulfill the total parking demand of the R&D and light manufacturing uses of the full phased two-block project. Phase III of the project will include the development of a new three-story R&D facility on the west block that conforms to current zoning height and setbacks. A separate Administrative Use Permit will be submitted for the renovation of an existing building (716 Allston). The goal for all phases is the renovation and expansion of existing light manufacturing and R&D at the project. The uses for all the phases are consistent with current zoning and as proposed, exceed City parking requirements. Detailed parking calculation tables are attached to this statement.

II. Purpose of the Parking Garage Use Permit Application

The purpose of this Use Permit (“UP”) Application is to address Phase II of the Project to construct a multi-level, concrete frame, 415 stall parking structure. Phase II will require the approval to demolish the east block buildings 2213 & 2221 4th Street and 2212 & 2216 5th Street. Per the Berkeley Reach Code, amendments to the Berkeley Energy Code, the photovoltaic requirement for the 787 Bancroft proposed development will be fulfilled by placing solar PV on the top level of the parking garage located at 2213 Fourth Street.

III. Approval Process

The Phase II Parking Garage will require a Use Permit and Building Permit because it involves the creation of more than 10,000 square feet of gross floor area in the MU-R District (BMC Section 23E.84.050B), and because it involves the creation of more than 20,000 square feet of gross floor area in the MU-LI District (BMC Section 23E.80.050.C).

IV. Project Findings to Satisfy the Zoning Ordinances

**Non-Detriment and Demolition Findings**

Pursuant to Berkeley Municipal Code Section 23B.32.040, the construction of a new parking garage will 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, for the following reasons:

A. In its current location and state, the single-family dwelling at 2212 Fifth Street is currently hazardous, unusable and invites vandalism; the buildings located at 2216 Fifth Street and 2221 Fourth Street are vacant, underutilized and outdated. The dwelling at 2212 Fifth St. will be offered for sale for \$1 so that it

can be relocated, as discussed further below. Therefore, the demolition of the structures and establishment of a parking garage to support the expanded light industrial and R&D project is an appropriate re-use of the lot as discussed further in the finding responses below.

B. The proposed improvements will remove neglected and underutilized structures and establish parking which will benefit the surrounding light industrial uses; and

C. The demolition of the existing structures and the establishment of the parking garage use will allow additional parking for the expanded light industrial and R&D project which will be beneficial to the surrounding community and the City at large.

Per BMC Section 23C.08.050.1, the proposed demolition of 2216 Fifth Street, and 2221 Fourth Street is necessary to provide for a new parking garage that will serve the buildings located at 2222 Fifth Street, 2246 Fifth street, 2229 Fourth Street, and 2233 Fourth Street. The aforementioned buildings will be renovated and new floor area will be added in the form of mezzanine space. The renovated and improved spaces will be used for Research and Development and Light Manufacturing, preserving the protected use in the MU-LI and MUR zoning districts. In addition, the new parking garage will also serve tenants on the West Block of the proposed project which will include tenants of 716 Allston Way/2200 Fourth Street, and the new research and development building which has the proposed address of 787 Bancroft Way (current addresses are 747, 701, 703, 705, and 705A Bancroft Way, and 2220 Fourth). The proposed building at 787 Bancroft Way will be a Class A Research and Development building, and having a secure, covered parking garage to serve this building is necessary to attract tenants that will expect this amenity. The proposed parking garage may also have a certain number of spaces designated for public use, subject to availability. The Traffic Analysis performed by Fehr and Peers, dated September 14, 2021 (included in the Applicant Response to Comments submittal) supports the number of proposed parking spaces based on anticipated demand for the class of tenants that will occupy the buildings.

Pursuant to Berkeley Municipal Code Sections 23E.80.090 and 23E.84.090, the construction of the new parking garage is consistent with the purposes of both the MU-R District and MU-LI District because the parking garage will provide the parking required to support the expansion of floor area dedicated to light manufacturing uses, thereby encouraging development of an area where light manufacturers can operate free from the constraints caused by incompatible uses, and encouraging the availability of manufacturing and industrial buildings for manufacturing uses. The project also meets the MU-R District purpose of protecting residents from unreasonably detrimental effects of nonresidential uses by providing off-street parking for users of the project and creating a barrier between residential uses and the more intensive light industrial uses on the east side of the project. The subject portion of the project is already used largely as a parking lot, so adjacent properties are accustomed to this use. Furthermore, the property adjacent to 2212 Fifth Street is currently are used for parking, so construction of a parking garage in this location is consistent with the normal use and operation of surrounding uses and buildings. Also, because the parking garage is being constructed to support the expansion of space used for light industrial purposes, it is not likely under reasonably foreseeable circumstances to either induce or contribute to a cumulative change of use in buildings away from industrial or manufacturing uses. It will also be designed in such a manner to be supportive of the light industrial character of the MU-LI and MU-R Districts, and will be consistent with any applicable performance standards applicable in the MU-LI and MU-R Districts.

### **Demolition of a Dwelling Unit Findings**

Pursuant to BMC Section 23C.08.010 the Board may approve a Use Permit for the elimination or demolition of the duplex at 2212 Fifth Street only if it finds that the elimination of the two dwelling units would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.

Constructed in 1898, the duplex has not been inhabited in many years and has come to the end of its useful life. The project sponsor is committed to advertising the availability of the 2212 Fifth Street structure for purchase, at a cost of \$1, if the purchaser agrees to relocate the structure to an off-site location within Berkeley. In this way, the proposed project can make findings under BMC Section 23.326.030.2(b). The project team understands that a condition of project approval would state that prior to submittal of any building and safety permit (grading, building, etc.), the project sponsor would provide evidence that a good faith effort was made to relocate the existing duplex to a different location within the City of Berkeley with no net loss of units and no change in the affordability levels of the units." Relocation would result in no net loss of dwelling units. Additionally, based on the construction valuation of the garage, the proposed project would generate approximately \$250,000 in mitigation fees toward the City's Affordable Housing Trust Fund. The City has been successful in leveraging these funds toward the construction of affordable housing in recent years.

The dwelling units were never removed from the rental market under the Ellis Act. There have been no verified cases of harassment, nor threatened or actual illegal eviction. There are currently no tenants in the duplex. Therefore, the findings related to relocation and return benefits, and tenant notification, are not applicable.

### **Protected Use Requirements**

Pursuant to BMC Section 23E.80 includes existing uses devoted to warehouse and light manufacturing, which are required to be replaced. The loss of protected floor area that will result from the demolition of the building located at 2221 Fourth Street will be replaced in the new mezzanine floor area in the buildings located at 2222 Fifth Street, 2229 Fourth Street or 2246 Fifth Street. Replaced protected floor area in the amount of 3,060 sf will be provided, as noted on the existing and proposed square footage matrix, also attached. A Notice of Limitation will be filed to protect the replacement protected floor area.

V. Project Consistent with Goals and Policies of the West Berkeley Plan. The West Berkeley Area Plan, adopted in 1993, also contains several goals and policies applicable to the project, including the following:

1. *Land Use Goal 2, Policy C* – This project allows a wide range of light manufacturers to continue to operate and expand and limits loss of their spaces to other uses, while providing an opportunity for office development where it will not unduly interfere with light manufacturing uses, and for laboratory development in appropriate locations.
2. *Economic Development Goal 4* – The project fosters the growth of advanced technology manufacturing and advanced technology services (such as research laboratories) by providing space for such enterprises.
3. *Physical Form Goal 2, Policies 2.3 and 2.5* – The project provides parking both to support the expansion of floor are dedicated to light industrial uses, and creates a consolidated parking lot that would allow different uses to share parking in a consolidated location, while integrating the structure and lot with the surrounding areas.
4. *Transportation Goal 4* – The project, and specifically the development of the lots that are the subject of Phase III, creates and maintains adequate parking to support West Berkeley land use without creating increased incentives for single occupant automobile use. The project also proposes

a Transportation Demand Management (TDM) program to encourage alternative modes of transportation, included in the Response to Comments submittal and City Box Folder.