



Office of the City Manager

PUBLIC HEARING

January 21, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Interim Director, Department of Planning & Development

Subject: ZAB Appeal: 0 (2435) San Pablo Avenue

RECOMMENDATION

Conduct a public hearing, and upon conclusion adopt a Resolution affirming the Zoning Adjustments Board decision to approve Use Permit #ZP2018-0229, to construct a four-story, 20,526-square-foot, mixed-use building with 42 Group Living Accommodation rooms and 800 square feet of ground floor commercial/retail space on two vacant parcels, and dismissing the appeal.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On August 27, 2020, the Zoning Adjustments Board (ZAB) held a public hearing and approved Use Permit #ZP2018-0229 by a vote of 6-2-0-1 (Yes: Clarke, Pinkston, Tregub, Olson, Hauser, O'Keefe; No: Sheahan, Selawsky; Abstain: None; Absent: Kim). On September 1, 2020, staff issued the public notice of the ZAB decision. On September 22, 2020, Toni Mester (Appellant) filed an appeal with the City Clerk. Thirty-four individuals signed a petition in support of the appeal. The Clerk set the matter for review by the Council on January 21, 2021.

BACKGROUND

The 7,349 square-foot project site, comprised of two adjacent parcels (APN 56-1928-19 and 56-1928-20) with 74 feet of frontage along the east side of San Pablo Avenue, is located within a Designated Node of the West Berkeley Commercial (C-W) District. The site is currently a paved lot that has informally been used as parking for the adjacent commercial businesses to the south, which are on a separate parcel. On December 6, 2018, Studio KDA submitted a Use Permit application on behalf of Wang Brothers Investments, LLC (Applicant) to construct a four-story mixed use building on the lots.

The project was initially presented to the ZAB on December 12, 2019. After review, public comment, and discussion, the ZAB continued the item off calendar. The Applicant

submitted a revised application on May 22, 2020 that addressed comments made at ZAB. The revised project proposes a four-story building that would include 42 residential units, operating as a Group Living Accommodations (GLA), specifically a Residential Hotel.¹

Each residential floor (floors 2 through 4) would include communal kitchens and a shared outdoor balcony, with the three eastern facing units on the fourth floor having a private balcony. Common usable open space would also include an approximately 1,800-square-foot roof top terrace located on the west side facing San Pablo Avenue. A shared laundry room and toilet facilities would also be located on the roof. Each unit (exclusive of shared kitchen/living areas) would be single occupancy for a total of 42 residents. Consistent with uses permitted in a designated node, the ground floor would include approximately 800 square feet of retail/commercial space, the entrance lobby with mail room, utility rooms, storage, trash room and an 853-square-foot bike storage room with secure parking for 56 bicycles and a bike repair station.

On August 27, 2020, after review of the written record, public comment, and discussion, the ZAB approved the project.

ENVIRONMENTAL SUSTAINABILITY

The project approved by ZAB would be in compliance with all State and local environmental requirements.

RATIONALE FOR RECOMMENDATION

The issues raised in the Appellant's letter, and staff's responses, are as follows. For the sake of brevity, the appeal issues are not re-stated in their entirety; refer to the appeal letter (Attachment 2) for full text.

Issue 1: Health and Safety: COVID-19 Pandemic

Response 1: The project is intended to serve as a residential occupancy that provides a choice of living environments. The immediate pandemic is not considered directly in zoning and building code evaluations; however, overall health and safety are regulated through these codes and would be protected to the extent feasible through building design and operations.

Issue 1A: The proposed kitchen to bedroom ratio (15:1 on the second and third floor and 12:1 on the fourth) will cause the kitchens to be unsanitary and not allow physical distancing.

¹ Residential Hotels, like all GLAs and Dwelling Units, are non-transient by definition. Occupancy for these residential uses must exceed 14 days.

Response 1A: After concerns related to building operations were expressed at the December 12, 2019 ZAB meeting, the project proponent retained the services of Common (<https://www.common.com/real-estate-partners>), a property management firm specializing in GLAs and co-living communities. Common operates approximately 50 properties with over 1,600 residents in seven metropolitan areas, including the Bay Area, 80% of which are non-traditional housing typologies, including GLAs designed for independent professionals. In collaboration with Common, an operation plan for 2435 San Pablo has been outlined. This plan includes an overview of staffing and responsibilities, tenant support services, processes ensuring safety and providing conflict resolution, and general policies, including cleaning of all shared areas. Cleaning of the common spaces will occur at a minimum once a week, and more often if needed. This schedule is based on the need required by similar buildings also managed by Common. The shared kitchen includes bins for trash, recycling and compost. These will be emptied and cleaned by the staff. Private rooms are not cleaned by the building staff. See Attachment 3 to the August 27, 2020 ZAB staff report (p. 206 of the Administrative Record) for a description of the management plan.

In addition to a robust management plan implemented by a well-regarded management firm,² the current project includes a large common kitchen on each floor combined with common indoor and outdoor space. By comparison, this project provides a lower bedroom to kitchen ratio than the most recent Residential Hotel GLAs that were considered by ZAB: 2338 Telegraph Avenue (Carlton Hotel) has a 120:1 bedroom to kitchen ratio and 1367 University Avenue has a 40:1 bedroom to kitchen ratio. Additionally, unlike many apartment buildings that have multi-bedroom dwelling units, the proposed project limits each unit to single occupancy and thereby 42 residents, and provides cleaning service for the kitchen area, thereby assuring the resident-to-kitchen ratio is both stable and sanitary.

Issue 1B: It is unsanitary to not provide for bathroom lavatories with hot and cold running water.

Response 1B: The project proposes single-occupancy rooms that include a sink with hot and cold water outside the bathroom, and in response to comments at the December 2019 ZAB meeting, the project was revised to also include a water efficient hand washing sink built into the toilet tank that

² ZAB Member Denise Pinkston stated at the August 27, 2020 ZAB meeting, "Common is the best in class operator of these new shared living facilities that rented by the bedroom [...]" (p. 355 of the Administrative Record).

only has cold water. The two sink system allows for handwashing after using the facilities, as well as use of a hot/cold water sink in the main room area for uses beyond the bathroom needs. With only one resident per each approximately 200-square-foot room, the provision of two sinks is ample, and meets the provisions of the Building Code. Regardless, presuming personal hygiene habits of future residents is not within the realm of the finding required for project approval under the Zoning Ordinance.³

Issue 2A: “The project stiffs the Housing Trust Fund.”

Response 2A: The Berkeley Municipal Code (BMC) Section defines a GLA as:

Group Living Accommodations: A building or portion of a building designed for or accommodating Residential Use by persons not living together as a Household, but excluding Hospitals, Nursing Homes and Tourist Hotels.

Specific types of GLAs identified in the Zoning Ordinance include Senior Congregate Housing, Fraternities, Sororities, Dormitories, and Residential Hotels (BMC Section 23F.04).

Based on input given to the Applicant during a pre-application meeting, the project was originally submitted as a Dormitory, defined as a building providing Group Living Accommodations, occupied by individuals not sharing a common household, characterized by separate sleeping rooms without individual kitchen facilities and containing congregate bath and/or dining facilities or rooms. However, after project submittal, the Land Use Planning Manager made a policy determination that a dormitory must be associated with an overarching mission or association with occupancy limited to those associated with the mission or association, such as a university, convent, or the like. When a housing development is available to the general public, such as the proposed project, it does not qualify as a dormitory. Subsequently, the Land Use Planning Manager determined that the project does meet the definition of Residential Hotel consistent with BMC Section 23F.04:

Hotel, Residential: A building which provides rooms for rent for residential purposes, including Single Residential Occupancy

³ For comparison, on June 2020 ZAB approved a Use Permit for another Single-Residential Hotel with 39 units located at 1367 University Avenue which only had one sink per room, located outside the bathroom in most units, and inside the bathroom in the ADA units. None of the units had two sinks.

(SRO) Hotels. Residential Hotels are a type of Group Living Accommodation.

When Council passed Resolution No. 65,920–N.S. adopting the first Affordable Housing Mitigation Fee (AHMF) pursuant to BMC Section 22.20.065 on October 16, 2012, the resolution incorporated the exemption applied to certain GLAs in the City’s Inclusionary Housing Ordinance, BMC Section 23C.12.020.B. Dormitories, Fraternity and Sorority Houses, Boarding Houses and Residential Hotels are exempted from the AHMF and the provisions of the Inclusionary Ordinance. Council has subsequently adopted updated AHMF resolutions—most recently No. 68,074–N.S. on June 27, 2017—all of which have carried over the BMC 23C.12.020.B exemption. This project is, therefore, not subject to the AHMF.

Issue 2B: The project is not “affordable by design.”

Response 2B: The Appellant is correct that the August 27, 2020 ZAB staff report for the project stated that the project is “per the applicant statement, affordable by design.” Due to the cost of land acquisition, construction costs, and market demand, market rate rents for new construction in Berkeley are expensive. A unit with a communal kitchen will be more affordable to build and to rent than one with an individual kitchen. Regardless, affordability of the units is not a required finding for project approval, nor is it subject to review by the City.

Issue 3: Concern that the project is not manageable.

Response 3: As stated in Response 1A above, the Applicant has consulted with Common, a property management company that specializes in operating Group Living Accommodations, to manage the property, including an on-site residential manager. A project of this size is required to have an on-site manager, but a dedicated manager unit is not required. Due to confusion at the ZAB hearing regarding the practice of not requiring the in-house manager to live in a specific unit, the project now does include a designated on-site residential unit located on the second floor near the elevator. In addition to the on-site manager, property management would include a support team of specialists such as leasing, cleaning, maintenance, and other services.

The Applicant has represented that property management would ensure provision and re-stocking of shared kitchen items, including all appliances, cookware such as pots and pans, cutlery, oils and spices, bowls, plates, and silverware.

While staff appreciates the concern for the quality of life of future tenants and as an extension, the neighborhood, it is in the Applicant's interest to have a well-managed building. In addition, it is not under the purview of the City to assess the specific details of the management plan for this or any project.

Issue 4: The Zoning Ordinance does not regulate the establishment of Residential Hotels (and other types of GLAs), therefore approval is questionable.

Response 4: As addressed in Response 2A above, Section 23F.04 of the Zoning Ordinance defines a Residential Hotel as a type of GLA, and defines a Residential Use as including GLAs as well as Residential Hotels; the project is not proposing efficiency dwelling units. Therefore, contrary to the Appellant's claim, the Zoning Ordinance allows for the establishment of both GLAs and Residential Hotels in the C-W zoning District and regulates development standards for all new construction (FAR, setbacks) as well as development standards for buildings based on use type (Height, Useable Open Space, and Parking). The project proposes a mixed-use building that complies with all the development standards of the zoning district, with the exception of the Use Permit request to eliminate parking, which is an allowable request.

Issue 5A: "The proposed project casts significant afternoon shadows" on properties located on the west side of Byron Street.

Response 5A: Studies illustrating the shadow impacts of the proposed project are included in the project plans (sheets G051-G053). Staff analyzed the shading impacts in the staff reports presented to ZAB that stated the times of day and year that adjacent properties would experience new shading (see page 14-15 of the August 27, 2020 ZAB staff report). The shadow impact analysis states that, given that the existing project site is a surface parking lot in a zoning district that permits multi-story buildings, any new construction at the site would have increased shadow impacts upon the dwelling units to the east.

All properties that would experience new shading would only do so for part of the day during parts of the years as outlined in the staff report. Those properties, however, would still receive indirect lighting during the day. Even if a building is shadowed, natural lighting still enters the windows. The eastern façade of the proposed new building retains a 10-foot setback on the first three floors, with the fourth floor stepped back an additional 10 feet. The abutting homes on Byron Street have rear yard setbacks ranging from approximately 15 feet (2443 Byron) to 35

feet (2438 Byron). The distance between the buildings allows for indirect lighting to enter the affected windows throughout the daytime hours.

The ZAB concluded that such shading impacts are to be expected in Berkeley's commercial corridors and that, under these circumstances, the shadowing is reasonable.

Issue 5B: Staff erred in finding that "the proposed use or structure...not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply."

Response 5B: For clarification, staff presents information and analysis for consideration by the ZAB, and the decision body makes the required findings. As stated in the August 27, 2020 ZAB staff report, as part of the project submittal, the applicant submitted an On-Street Parking Occupancy Survey. The survey, which was prepared by Abrams Associates Traffic Engineering Consultants and peer reviewed by the City's Traffic Engineer, concluded that at the most impacted hour, 5:00 to 6:00 p.m. on a weekday, approximately 19% of the 295 on-street parking spaces located within about a block of the project site were available, which is both sufficient for residents who choose to own vehicles, as well as not so plentiful as to encourage car ownership, which is consistent with policy recommendations from the Planning Commission and staff that are pending consideration by City Council.⁴

The decision to eliminate on-site parking from the project was made to align with the City's Climate Action Plan goals by aiding in the reduction of vehicle miles traveled and greenhouse gas emissions. The project would encourage alternative modes of transportation by providing no vehicle parking on site, by providing secure bicycle parking for 56 bicycles, and by including a Transportation Demand Management (TDM) condition of approval that includes provision of the cost equivalent to an unlimited local bus pass to each residential unit (see condition of approval #61).

ZAB considered the technical information prepared and peer reviewed by professional Traffic Engineers, as well as the City's Climate Action Plan and goals, when it found that parking impacts from the project were non-detrimental.

⁴ Zoning Ordinance amendments to reform residential off-street parking, which will be heard before Council in January, 2021, recommend that no parking be required for GLAs in the C-W Zoning District.

Issue 6: “The project bears no relationship to the densities recommended in the general plan.”

Response 6: The project site is located in the Avenue Commercial land use designation of the General Plan. The General Plan lists population density ranges for areas of the City. For the Avenue Commercial District, the General Plan states that the population density will *generally* range from 44 to 88 persons per acre. Population density standards cited in the general plan are visions for the districts as a whole and are not intended to be applied on a parcel by parcel basis. The project, located in a district with a mix of commercial, institutional, and under-developed parcels of all uses, contributes to the general density range cited in the General Plan. In addition, the project density is not out of character with other recent developments. The current project proposes 42 single-occupancy bedrooms on a 7,349-square-foot lot; by comparison, on July 23, 2020, ZAB reviewed and approved a development that included 97 bedrooms on a 9,576-square-foot lot located at 2720 San Pablo Avenue, roughly twice the density of the proposed project.

Issue 7: The recusal of Board member Charles Kahn

Response 7: On August 20, 2020, Charles Kahn notified the Councilmember who appointed him that his architectural office was presenting a project at the August 27, 2020 ZAB meeting. In that letter Commissioner Kahn requested an excused absence to avoid a conflict of interest and to avoid having to recuse himself during the meeting. The excused absence was granted by the Councilmember. Due to the excused absence no recusal was required.

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23B.32.060.D, the Council may: (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB’s decision, or (3) remand the matter to the ZAB.

ACTION DEADLINE:

Pursuant to BMC Section 23B.32.060.G, if the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council (not including Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSONS

Jordan Klein, Interim Director, Planning & Development Department, (510) 981-7534
Leslie Mendez, Senior Planner, Planning & Development Department, (510) 981-7426

Attachments:

1: Resolution

 Exhibit A: Findings and Conditions

 Exhibit B: Project Plans dated May 22, 2020

2: Appeal Letter, dated September 22, 2020

3: ZAB Staff Report, dated August 27, 2020

4: Index to Administrative Record

5: Administrative Record

6: Public Hearing Notice

RESOLUTION NO. ##,###-N.S.

APPROVING USE PERMIT #ZP2018-0229 TO CONSTRUCT A 4-STORY, 20,526 SQUARE FOOT, MIXED USE BUILDING WITH 42 GROUP LIVING ACCOMMODATION ROOMS AND 800 SQUARE FEET OF GROUND FLOOR COMMERCIAL/RETAIL SPACE ON TWO VACANT PARCELS IN THE WEST BERKELEY COMMERCIAL (C-W) ZONING DISTRICT

WHEREAS, on December 6, 2018, Studio KDA Architects filed an application on behalf of Wang Brother Investments, LLC (“Applicant”) to develop two vacant parcels (APN 56-1928-19 and 56-1928-20) to the north of the northeast corner of San Pablo Avenue and Dwight Way with a four story, mixed use commercial/Group Living Accommodation (GLA) building with approximately 800 square feet of commercial space and 42 residential single-occupancy hotel rooms (“Project”); and

WHEREAS, on May 16, 2019, at a duly noticed meeting, the Applicant presented a preview of the project to the Design Review Committee (DRC); and

WHEREAS, on July 18, 2019, at a duly noticed public hearing, the DRC reviewed and forwarded to ZAB a favorable recommendation on Preliminary Design Review on the Project; and

WHEREAS, on October 28, 2019, staff deemed this application complete; and

WHEREAS, on December 12, 2019, at a duly noticed public hearing, the Zoning Adjustments Board reviewed the Project, heard public testimony, and continued the Project off-calendar due to concerns regarding design and building operations; and

WHEREAS, on March 12, 2020 and May 22, 2020, the Applicant resubmitted additional and revised application materials to address concerns raised at the ZAB meeting; and

WHEREAS, on August 27, 2020, at a duly noticed public hearing, the Zoning Adjustments Board approved Use Permit #ZP2018-0229 for the reasons set forth in a notice of decision released on September 1, 2020; and

WHEREAS, on September 2, 2020 staff issued the notice of the ZAB decision; and

WHEREAS, on September 22, 2020 Toni Mester on filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on January 21, 2021, the Council held a public hearing to consider the ZAB’s decision, and, in the opinion of this Council, the facts stated in or ascertainable from the public record, including comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby adopts the findings in Exhibit A, affirms the decision of the ZAB to approve Use Permit #ZP 2018-0229, adopts the conditions in Exhibit A and the project plans in Exhibit B, and dismisses the appeal.

Exhibits

A: Findings and Conditions

B: Project Plans, dated May 22, 2020

ATTACHMENT 1

FINDINGS AND CONDITIONS

AUGUST 27, 2020

0 (2435) San Pablo Avenue

Use Permit ZP2018-0229 to construct a 4-story, 20,526 square foot, mixed use building with 42 Group Living Accommodation rooms and 800 square feet of ground floor commercial/retail space on two vacant parcels.

PERMITS REQUIRED

- Use Permit under BMC Section 23E.64.030.A, to construct a mixed-use development with more than 20,000 square feet of gross floor area
- Use Permit under BMC Section 23E.64.030.A, to establish Group Living Accommodations
- Use Permit under BMC Section 23E.64.030.A, to establish Group Living Accommodations
- Use Permit under BMC Section 23E.64.050.B, to construct more than 5,000 square feet of gross floor area
- Use Permit under BMC Section 23E.64.080.H, to modify the off-street parking requirement
- Administrative Use Permit under BMC Section 23E.04.020.C, to allow architectural features to exceed the height limit

I. CEQA FINDINGS

1. The 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 15332 of the CEQA Guidelines (“In-Fill Development Projects”).

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

- A. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
 - B. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
 - C. The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
 - D. 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 the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions would address potential impacts related to traffic, noise, air quality, and water quality.
 - E. The site can be adequately served by all required utilities and public services.
2. Furthermore, none of the exceptions in CEQA Guidelines Section 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 Section 65962.5, and (f) the project would not affect any historical resource.

II. FINDINGS FOR APPROVAL

1. As required by Section 23B.32.040.A of the BMC, 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 because:
 - A. The project is consistent with the applicable zoning standards for the C-W District. While this area has been characterized by low-scale, commercial auto-oriented buildings, the project's design and scale are supported by the policy and direction of the West Berkeley Plan and is consistent with new development patterns in this area of San Pablo Avenue.
 - B. Given the existing site is a surface parking lot in a zoning district that permits greater heights, any new construction at the site would have increased shadow impacts upon the dwelling units to the east. The shadows that would be created by the proposed project are lessened due to the step backs on the eastern side of the building. This degree of shading is to be expected along the San Pablo corridor and is not deemed detrimental.
 - C. The project site is currently a surface parking lot with an approximately 20-foot curb cut off of San Pablo Avenue. The elimination of the existing driveway would reduce conflicts between pedestrians and drivers and create a more pedestrian-friendly environment along this stretch of San Pablo Avenue. In addition, the construction of the new development would contribute to the residential population, and therefore, pedestrian activity in the area.
 - D. The project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements. In addition, due to the abutting residentially zoned district to the east, staff has included the standard condition of approval for construction hours typically reserved for residential district projects only. The inclusion of the conditions of approval ensure 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.

III. OTHER FINDINGS FOR APPROVAL

2. As required by Section 23E.64.090.B of the BMC, the Zoning Adjustments Board finds that the project:
 - A. Is consistent with the purposes of the District: The project is a mixed-use project that would support local commercial uses by adding 42 new GLA units and 800 square feet of commercial space to a site that is well served by public transit. As a mixed-use building that would front on San Pablo Avenue and replace a surface parking lot, the project would realize the City's plans for redeveloping underutilized sites to increase the quality of the built environment and provide new housing and commercial opportunities. The increased population, new street level commercial, and increased street activity would assist to extend the attractiveness and vitality of San Pablo Avenue.
 - B. Is compatible with the surrounding uses and buildings: Though taller than surrounding development, the 50-foot tall project meets the District's height standard and would be consistent with the new development pattern of four- to six-story mixed use buildings along

San Pablo Avenue. In addition, as the project site abuts an R-2 residential zone to the east, the proposed building is constructed with the required 10-foot required rear yard setback and is stepped back an additional 10 feet 3 inches on the fourth floor to further reduce the massing adjacent to the residential neighbors. The proposed predominantly residential uses are permissible in the District and would help revitalize the existing neighborhood commercial business.

- C. Is consistent with the adopted West Berkeley Plan: The project would be consistent with the West Berkeley Plan because it would enhance the San Pablo Avenue commercial corridor by providing a new non-residential tenant space along San Pablo Avenue. The project would also visually improve this stretch of San Pablo Avenue by replacing a surface parking with a new mixed-use building of four stories along the San Pablo Avenue frontage and removing a curb cut, thereby strengthening the “streetwall” of buildings along the corridor.
- D. Will 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: The project would enhance the urban fabric of the street and area by replacing a surface parking lot with a new mixed use building. The project sponsor worked with AC Transit and siting of the bus stop, as well as incorporating commercial space and the entrance to the residential lobby along the street frontage.
- E. Will provide an intensity of development which does not underutilize the property: The project is built to the 50-foot height limit of the District and is providing a 2.79 FAR where a maximum of 3 is permissible by the C-W development standards. The project is not underutilizing the property.
- F. Capable of meeting any applicable performance standards for off-site impacts: Staff Analysis: The project’s occupancy and use would not generate noise, glare, dust, vibration, or hazardous materials, etc. that will be inconsistent with adjacent residential uses. Additionally, as a mixed-use development, it will not involve any manufacturing or industrial activities with the potential to generate off-site impacts typically involving regulation through performance standards. Potential construction period impacts, including noise and dust control, are subject to standard conditions of approval as set forth in Attachment 1, Findings and Conditions.
- G. Not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply: The project is a co-living GLA that would encourage alternative modes of transportation by providing no vehicle parking on site, by providing secure bicycle parking for 56 bicycles, and by including a Transportation Demand Management (TDM) condition of approval that includes provision of the cost equivalent to an unlimited local bus pass to each residential unit. As part of the project submittal, the applicant submitted an On-Street Parking Occupancy Survey that determined that at the most impacted hour, approximately 19% of the 295 on-street parking spaces located within about a block of the project site were available, which is both sufficient for residents who choose to own vehicles, as well as not so plentiful as to encourage car ownership. The project is conditioned to work with Traffic Engineering to request a white curb for deliveries and shared mobility.

3. As required by Section 23E.64.090.C of the BMC, the Zoning Adjustments Board finds that the reduction approval of this project within a designated node supports the development of strong

retail commercial, pedestrian oriented environment at the node by including new retail space with a store entrance and display area fronting San Pablo Avenue. To accommodate the existing bus shelter, the commercial entrance is located at the northern end of the node thereby providing a more prominent display area that will allow passerby and patrons waiting for the bus a view of the items in the display window, thus serving to activate the pedestrian zone of the building at all times. The addition of up to 42 new residents within the node will provide a greater volume of pedestrian activity and clientele for new and existing businesses in the area.

4. As required by Section 23E.64.090.D of the BMC, the Zoning Adjustments Board finds that the reduction of the otherwise applicable parking requirement on a mixed use property containing residential uses is not expected to cause a serious shortage of parking in the area as the project is a co-living GLA that would encourage alternative modes of transportation by providing no vehicle parking on site, by providing secure bicycle parking for 56 bicycles, and by including a Transportation Demand Management (TDM) condition of approval that includes provision of the cost equivalent to an unlimited local bus pass to each residential unit. As part of the project submittal, the applicant submitted an On-Street Parking Occupancy Survey that determined that at the most impacted hour, approximately 19% of the 295 on-street parking spaces located within about a block of the project site were available, which is both sufficient for residents who choose to own vehicles, as well as not so plentiful as to encourage car ownership. The project is conditioned to work with Traffic Engineering to request a white curb for deliveries and shared mobility.

In addition, the project is in a transit rich neighborhood: There is extensive bus transit service provided by Alameda-Contra Costa County (AC) Transit along San Pablo Avenue. Routes 72, 72M, 72R and all-nighter Route 802 all operate directly adjacent to the project site. Please note the nearest bus stop is directly adjacent to the site on San Pablo Avenue. Route 36 also operates along Dwight Way less than one block south of the site. North Berkeley BART station is located a little more than one mile from the project site. This station is located on the Richmond-Fremont Line which connects to other destinations in the Bay Area at the MacArthur Station. There is also direct service to Downtown San Francisco as well as continuing service to the San Francisco Airport.

IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.

- 13. Construction Noise Reduction Program.** The applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:
- A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.
 - B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
 - C. Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
 - D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
 - E. Prohibit unnecessary idling of internal combustion engines.
 - F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
 - G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
 - H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
 - I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.
- 14. Damage Due to Construction Vibration.** The project applicant shall submit screening level analysis prior to, or concurrent with demolition building permit. If a screening level analysis shows that the project has the potential to result in damage to structures, a structural engineer or other appropriate professional shall be retained to prepare a vibration impact assessment (assessment). The assessment shall take into account project specific information such as the composition of the structures, location of the various types of equipment used during each phase of the project, as well as the soil characteristics in the project area, in order to determine whether project construction may cause damage to any of the structures identified as potentially impacted in the screening level analysis. If the assessment finds that the project may cause damage to nearby structures, the structural engineer or other appropriate professional shall recommend design means and methods of construction that to avoid the potential damage, if feasible. The assessment and its recommendations shall be reviewed and approved by the Building and Safety Division and the Zoning Officer. If there are no feasible design means or methods to eliminate the potential for damage, the structural engineer or other appropriate professional shall undertake an existing conditions study (study) of any structures (or, in case of large buildings, of the portions of the structures) that may experience damage. This study shall:

- establish the baseline condition of these structures, including, but not limited to, the location and extent of any visible cracks or spalls; and
- include written descriptions and photographs.

The study shall be reviewed and approved by the Building and Safety Division and the Zoning Officer prior to issuance of a grading permit. Upon completion of the project, the structures (or, in case of large buildings, of the portions of the structures) previously inspected will be resurveyed, and any new cracks or other changes shall be compared to pre-construction conditions and a determination shall be made as to whether the proposed project caused the damage. The findings shall be submitted to the Building and Safety Division and the Zoning Officer for review. If it is determined that project construction has resulted in damage to the structure, the damage shall be repaired to the pre-existing condition by the project sponsor, provided that the property owner approves of the repair.

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

- 15. Construction Noise Management - Public Notice Required.** At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within **500 feet** of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities during extended work hours and reason for extended hours, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, and (5) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.
- 16. Construction Phases.** The applicant shall provide the Zoning Officer with a schedule of major construction phases with start dates and expected duration, a description of the activities and anticipated noise levels of each phase, and the name(s) and phone number(s) of the individual(s) directly supervising each phase. The Zoning Officer or his/her designee shall have the authority to require an on-site meeting with these individuals as necessary to ensure compliance with these conditions. The applicant shall notify the Zoning Officer of any changes to this schedule as soon as possible.
- 17. Construction and Demolition Diversion.** Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.
- 18. Low-Carbon Concrete.** The project shall verify compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25%.
- 19. First Source Agreement.** The applicant and/or end user(s) shall enter into a First Source Agreement with the City of Berkeley. First Source promotes the hiring of local residents on local projects. The agreement requires contractors/employers to engage in good faith efforts to hire locally, including utilizing graduates of local job training programs. Please call (510) 981-4970 for further information, or visit the City's Employment Programs office at 2180 Milvia, 1st Floor.

20. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:

A. Environmental Site Assessments:

- 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old*) shall be submitted to TMD for developments for:
 - All new commercial, industrial and mixed use developments and all large improvement projects.
 - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
 - EMA is available online at:
 - http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf
- 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
- 3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.

B. Soil and Groundwater Management Plan:

- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
- 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.

C. Building Materials Survey:

- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification

must be made and the J number must be made available to the City of Berkeley Permit Service Center.

D. Hazardous Materials Business Plan:

- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

Prior to Issuance of Any Building (Construction) Permit

21. Parcel Merger. The applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.
22. Interior Noise Levels. Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.
23. Solar Photovoltaic (Solar PV). A solar PV system, on the solar zone specified in Section 110.10 of the 2019 Energy Code, shall be installed (subject to the exceptions in Section 110.10) as specified by the Berkeley Energy Code (BMC Chapter 19.36). Location of the solar PV system shall be noted on the construction plans.
24. Water Efficient Landscaping. Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State's Model Water Efficient Landscape Ordinance (MWELo). MWELo-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ET_o) for Berkeley is 41.8.
25. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
26. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

Prior to Demolition or Start of Construction:

27. Construction Meeting. The applicant shall request of the Zoning Officer an on-site meeting with City staff and key parties involved in the early phases of construction (e.g., applicant, general contractor, foundation subcontractors) to review these conditions and the construction schedule. The general contractor or applicant shall ensure that all subcontractors involved in subsequent phases of construction aware of the conditions of approval.

During Construction:

28. Construction Hours. Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.

- 29. Construction Hours- Exceptions.** It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite period of time. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. The project shall not be allowed more than 15 extended working days.
- 30. Project Construction Website.** The applicant shall establish a project construction website with the following information clearly accessible and updated monthly or more frequently as changes warrant:
- Contact information (i.e. "hotline" phone number, and email address) for the project construction manager
 - Calendar and schedule of daily/weekly/monthly construction activities
 - The final Conditions of Approval, Mitigation Monitoring and Reporting Program, Transportation Construction Plan, Construction Noise Reduction Program, and any other reports or programs related to construction noise, air quality, and traffic.
- 31. Public Works - Implement BAAQMD-Recommended Measures during Construction.** For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
- A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
 - H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- 32. Air Quality - Diesel Particulate Matter Controls during Construction.** All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with **one** of the following measures:

- A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or
- B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.

In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:

- An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
- A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

- 33. Construction and Demolition Diversion.** Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.
- 34. Low-Carbon Concrete.** The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25%. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff.
- 35. Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
 - Storage of building materials, dumpsters, debris anywhere in the public ROW;
 - Provision of exclusive contractor parking on-street; or
 - Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

- 36. Avoid Disturbance of Nesting Birds.** Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.
- 37. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).** Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:
- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
 - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
 - C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.

- D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
- E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
- 38. Human Remains (Ongoing throughout demolition, grading, and/or construction).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.
- 39. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).** In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.
- 40. Halt Work/Unanticipated Discovery of Tribal Cultural Resources.** In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
- 41. Stormwater Requirements.** The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.

- B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
 - C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
 - D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
 - E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - G. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
 - H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - I. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 42. Public Works.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
- 43. Public Works.** The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

44. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
45. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
46. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
47. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

Prior to Final Inspection or Issuance of Occupancy Permit:

48. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit. Occupancy is subject to verification of compliance with the conditions of this Use Permit.
49. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated May 22, 2020, except as modified by conditions of approval.
50. Loading Zone. The project applicant shall request that the Public Works Department install a white loading zone along the project frontage to accommodate transportation network companies and deliveries.

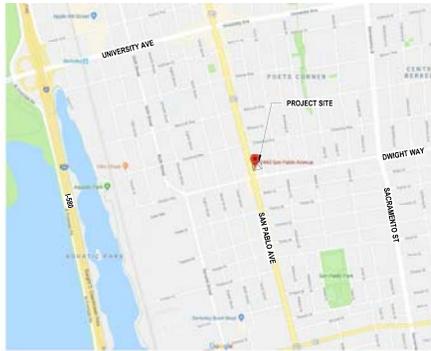
At All Times:

51. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
52. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
53. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.
54. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
55. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.

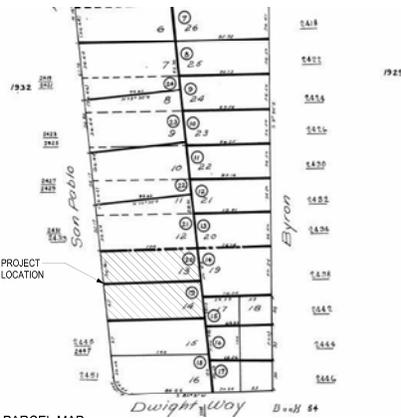
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- 56. Bike Parking.** Secure and on-site bike parking for at least 56 bicycles shall be provided for the life of the building.
- 57. Transportation Demand Management.** A Transportation Demand Management compliance report shall be submitted to the Transportation Division Manager, on a form acceptable to the City, prior to occupancy, and on an annual basis thereafter, which demonstrates that the project is in compliance with the applicable requirements and the following:
- A. Subject to the review and oversight of the Transportation Division Manager, the cost equivalent to an unlimited local bus pass shall be provided on a Clipper Card, or equivalent card that can be used by major Bay Area transit systems, shall be provided, at no cost, one per residential unit.
 - B. Transit information shall be provided in the residential lobby, updated at a minimum once a year. The information panels shall be shown in the construction drawings and shall be installed **prior to occupancy.**
 - C. Transportation Information Officer will gather and provide information regarding transit and other alternative transportation to residents and commercial tenants and their employees. Information may pertain to the City, regional transit agencies, car sharing, Spare the Air, 511 and other relevant programs. This information package shall be provided to all residents/employees on arrival plus once a year.
-



1 LOCATION MAP
NTS



2 VICINITY MAP
NTS



3 PARCEL MAP
NTS

ZONING INFORMATION				
SITE INFORMATION				
ADDRESS: 2435 SAN PABLO AVENUE, BERKELEY, CA				
APN: 56-1928-19 AND 56-1928-20				
ZONING DISTRICT: CV				
OVERLAY / SPECIAL DISTRICT: NONE				
SEISMIC SAFETY				
ALOUJST PRIOLLO NO	LIQUEFACTION ZONE: YES			
LANDSLIDE ZONE NO	UNREINFORCED MASONRY NO			
HISTORIC INFO				
HISTORIC PRESERVATION NO				
LANDMARK / STRUCTURE OF MERIT NO				
ENVIRONMENTAL SAFETY				
CREEK BUFFER NO	FIRE ZONE: 1			
ENVIRONMENTAL MGMT AREA NO	FLOOD ZONE: NO			
PLANNING INFORMATION				
	EXISTING	PROPOSED	PERMITTED / REQUIRED	NOTES / CODE REFERENCE
BUILDING / LOT INFO				
LOT AREA	7,349 SF	No Change	NA	
BUILDING FOOTPRINT	NA	5,403 SF	NA	
LOT COVERAGE	NA	74%	-	
FLOOR AREA RATIO	NA	2.79	3	23E 64.70A (22,047 SF ALLOWED)
AREAS				
COMMERCIAL FLOOR AREA	None	801 SF		
RESIDENTIAL FLOOR AREA	None	19,725 SF		
GROSS FLOOR AREA	None	20,526 SF		
USABLE OPEN SPACE	NA	3,820 SF	1,680 SF	40SF PER ROOM, 42 ROOMS
IMPERVIOUS SURFACE AREA	7,349 SF	5,481 SF	-	
HEIGHT				
# STORIES	0	4	4	TABLE 23E 64.070
MAX BLDG HEIGHT	0	50'-0"	50'-0"	TABLE 23E 64.070
SETBACKS				
FRONT YARD (WEST)	NA	1'-0"	0	23E 64.070C
SIDE YARD (NORTH)	NA	1'-0"	0	23E 64.070C
SIDE YARD (SOUTH)	NA	6'-0"	0	23E 64.070C
REAR YARD (EAST)	NA	10'-0"	10'-0"	23E 64.050
UNITS				
UNIT COUNT				
GROUP LIVING ACCOMMODATIONS	-	42 ROOMS	-	23E 64.080 (USES PERMITTED)
PARKING				
CAR PARKING	NA	0	12*	23E 64.080 (1PERS RES, +1 MGR, +2 COMMERCIAL)*
ADA PARKING	NA	0	-	
*NOTE: 10 RESIDENTS CALCULATED PER ROOM; 42 RESIDENTS (42*1.0) + 1 MGR. + 2 COMMERCIAL*12				
BIKE PARKING (SHORT TERM)	NA	2	1	1 PER 2000 SF GFA COMMERCIAL ONLY
BIKE PARKING (LONG TERM)	NA	56	0	BIKE ROOM INSIDE BUILDING

OWNER:
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4 PROJECT TEAM

POET'S PLACE

2435 SAN PABLO AVE.
BERKELEY, CA 94702

KWP03 - ZAB SUBMITTAL - MAY 22, 2020



5 PROJECT DESCRIPTION

THE PROPOSED PROJECT IS A 4-STORY MIXED-USE BUILDING ON AN EXISTING VACANT LOT AT 2435 SAN PABLO AVE, JUST NORTH OF DWIGHT WAY. THE BUILDING WILL OFFER GROUP LIVING ACCOMMODATIONS WITH 42 PRIVATE ROOMS EACH WITH A PRIVATE BATHROOM. THE CVW DISTRICT ALLOWS GROUP LIVING ACCOMMODATIONS (GLA) AS A PERMITTED USE. EACH RESIDENTIAL FLOOR WILL INCLUDE COMMUNITY KITCHENS AND AN OUTDOOR BALCONY. COMMON USABLE OPEN SPACE WILL ALSO INCLUDE A WEST-FACING SHARED ROOF DECK.

THE GROUND FLOOR WILL INCLUDE A RETAIL SPACE AND RESIDENTIAL LOBBY ACCESSIBLE FROM SAN PABLO AVE. THE GROUND FLOOR WILL INCLUDE A SECURE BIKE PARKING ROOM WITH SPACES FOR 56 BICYCLES ACCESSED VIA AN EASEMENT FROM DWIGHT WAY.

SHEET #	SHEET NAME	ZONING
GENERAL		
G000	COVER SHEET	*
G001	ABBREVIATIONS/ SYMBOLS	*
G010	GREEN BUILDING CHECKLIST	*
G011	GREEN BUILDING CHECKLIST	*
G012	GREEN BUILDING CHECKLIST	*
G013	AREA DIAGRAMS	*
G041	STREET STRIP ELEVATIONS	*
G042	PERSPECTIVE VIEWS - PHOTO MONTAGE	*
G043	RENDERINGS	*
G044	MATERIAL BOARD	*
G051	SHADOW STUDIES - DECEMBER 21	*
G052	SHADOW STUDIES - JUNE 21	*
G053	SHADOW STUDIES - DECEMBER 7	*
G061	LANDSCAPE PLAN	*
SURVEY		
S1.0	SURVEY	*
CIVIL SHEETS		
C1.0	SITE PLAN	*
C2.0	PRELIM GRADING	*
ARCHITECTURAL		
A100	SITE PLAN	*
A111	GROUND FLOOR PLAN	*
A112	SECOND & THIRD FLOOR PLAN	*
A113	FOURTH & ROOF PLAN	*
A201	BUILDING ELEVATIONS	*
A202	BUILDING ELEVATIONS	*
A301	BUILDING SECTIONS	*
A401	ENLARGED ROOM PLANS	*
A402	ENLARGED SHARED KITCHEN PLAN	*



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POET'S PLACE

2435 SAN PABLO AVE.
BERKELEY, CA 94702



ZAB SUBMITTAL

PROJECT ISSUE RECORD

12/12/2019 ZAB SUBMITTAL

PROJECT #: KWP03

ISSUE DATE: 05/22/2020

COVER SHEET

G000

Project Name: Poet's Corner Project Street: 2435 San Pablo Avenue Project City: Berkeley Project Zip: 94702		Points Achieved	Community	Energy	IAQ/Health	Resiliency	Water
N5. Social Interaction							
TBD	N5.1 Residence Entries with Views to Callers		1				
TBD	N5.2 Entrances Visible from Street and/or Other Front Doors		1				
TBD	N5.3 Porches Oriented to Street and Public Space		1				
N6. Passive Solar Design							
TBD	N6.1 Heating Load			2			
TBD	N6.2 Cooling Load			2			
N7. Adaptable Building							
No	N7.1 Universal Design Principles in Units	0	1		1		
TBD	N7.2 Full-Function Independent Rental Unit		1				
N8. Resiliency							
TBD	N8.1 Vulnerability Assessment (Cal-Adapt, Fortified Standard, HAZUS, FEMA P58, or Seis...)		1		1	1	
TBD	N8.2 Strategies to Address Assessment Findings		1		1	1	
N9. Social Equity							
TBD	N9.1 Diverse Workforce (Supplier Diversity or Local Hire)		1			1	
Yes	N9.2 Community Location (Disadvantaged Community)	2	1	1			
N10. Affordability							
TBD	N10.1 Dedicated Units for Households Making 80% of AMI or Less		2				
TBD	N10.2 Units with Multiple Bedrooms for Households Making 80% of AMI or Less		1				
TBD	N10.3 At Least 20% of Units at 120% AMI or Less are For Sale		1				
N11. Mixed-Use Developments							
TBD	N11.1 Live/Work Units Include a Dedicated Commercial Entrance		1				
TBD	N11.2 At Least 2% of Development Floor Space Supports Mixed Use		1				
TBD	N11.3 Half of the Non-Residential Floor Space is Dedicated to Community Service		1				
Q. OTHER							
TBD	Q1. GreenPoint Rated Checklist in Blueprints		R	R	R	R	R
TBD	Q2. Pre-Construction Kickoff Meeting with Rater and Subcontractors			0.5		1	0.5
TBD	Q3. Orientation and Training to Occupants—Conduct Educational Walkthroughs			0.5	0.5	0.5	0.5
TBD	Q4. Builder's or Developer's Management Staff are Certified Green Building Professionals			0.5	0.5	0.5	0.5
Q5. Home System Monitors							
TBD	Q5.1 Energy Home System Monitors		1				
TBD	Q5.2 Water Home System Monitors					1	
Q6. Green Building Education							
TBD	Q6.1 Marketing Green Building		2				
TBD	Q6.2 Green Building Signage			0.5		0.5	
TBD	Q7. Green Appraisal Addendum		R	R	R	R	R
TBD	Q8. Detailed Durability Plan and Third-Party Verification of Plan Implementation					1	
TBD	Q9. Residents Are Offered Free or Discounted Transit Passes		2				
TBD	Q10. Vandalism Deterrence Practices and Vandalism Management Plan					1	
TBD	Q11. Smokefree Buildings				2		
TBD	Q12. Integrated Pest Management Plan					1	
P. DESIGN CONSIDERATIONS							
P1. Acoustics: Noise and Vibration Control			1	1			
Enter the number of Tier 1 practices							
Enter the number of Tier 2 practices							
P2. Mixed-Use Design Strategies							
TBD	P2.1 Tenant Improvement Requirements for Build-Outs				1	1	
TBD	P2.2 Commercial Loading Area Separated for Residential Area				1		
TBD	P2.3 Separate Mechanical and Plumbing Systems				1		
P3. Commissioning							
TBD	P3.1 Design Phase			1	1		
TBD	P3.2 Construction Phase			2	1		
TBD	P3.3 Post-Construction Phase			2	1		
TBD	P4. Building Enclosure Testing		1	1	1		
Summary							
Total Available Points in Specific Categories		374	46	111	69	94	54
Minimum Points Required in Specific Categories		50	2	25	6	6	6
Total Points Achieved		82.0	7.0	26.0	11.0	27.0	11.0



POET'S PLACE
2435 SAN PABLO AVE.
BERKELEY, CA 94702



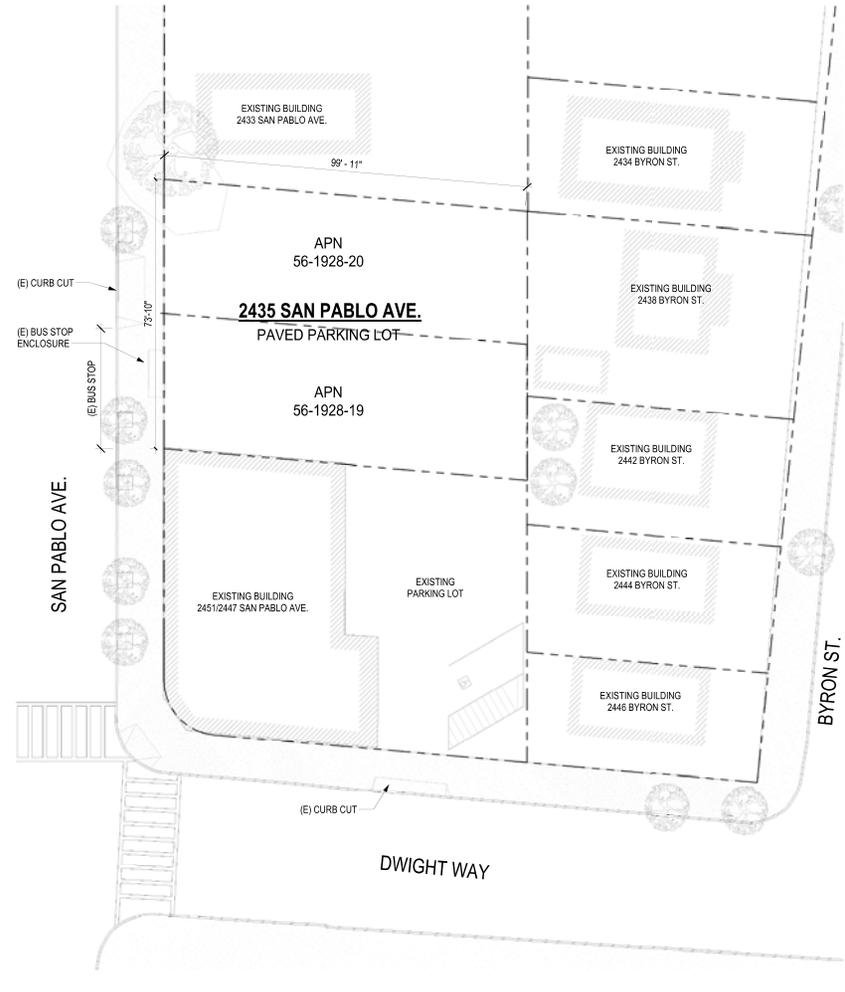
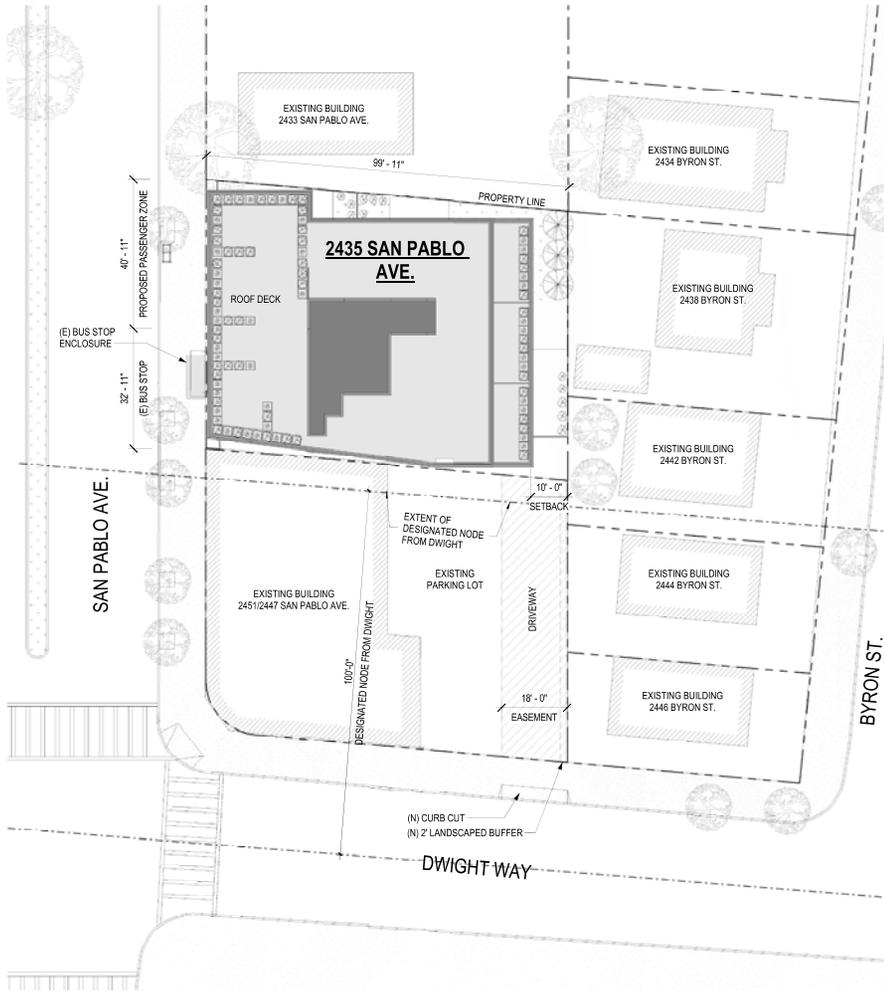
ZAB SUBMITTAL

PROJECT ISSUE RECORD

Issue ID	Description	Responsible Party	Status	Resolution Date

PROJECT #: KWPROJ
ISSUE DATE: 05/22/2020
GREEN BUILDING CHECKLIST

G012



2 PROPOSED SITE PLAN / ROOF PLAN
1/16" = 1'-0"



1 EXISTING SITE PLAN / ROOF PLAN
1/16" = 1'-0"



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POET'S PLACE

2435 SAN PABLO AVE.
BERKELEY, CA 94702



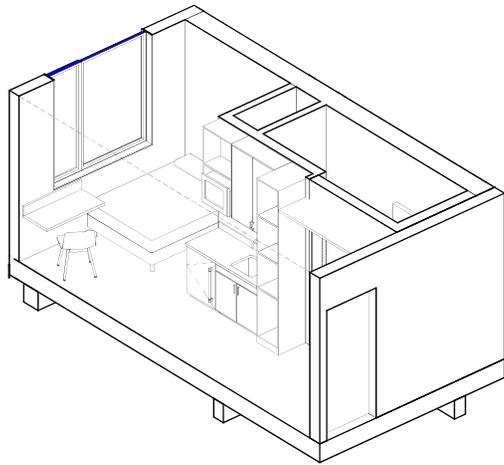
ZAB SUBMITTAL

PROJECT ISSUE RECORD	
DATE	DESCRIPTION
12/12/2019	ZAB SUBMITTAL

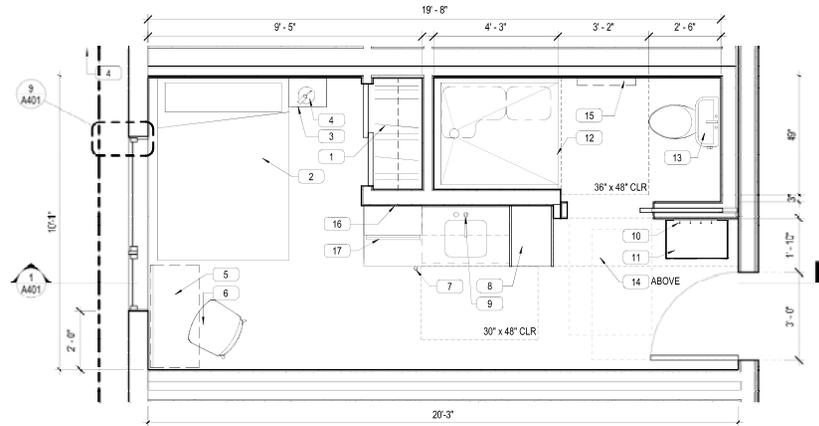
PROJECT # : KWP03
ISSUE DATE : 05/22/2020
SITE PLAN

A100

5/22/2020 2:28:15 PM

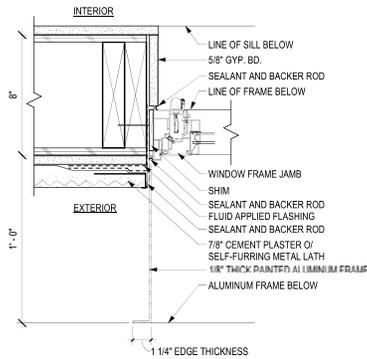


KEYNOTE LEGEND	
NUMBER	NOTE
1	CLOTHES CLOSET
2	FULL SIZE BED
3	REF. SIDE TABLE
4	DESK LAMP
5	FOLDING DESK
6	CHAIR
7	UNDERCOUNTER REFRIGERATOR
8	PANTRY STORAGE
9	SINK
10	COAT HANGER
11	STOOL
12	SHOWER
13	TOILET W/ INTEGRATED SINK
14	OVERHEAD STORAGE
15	MEDICINE CABINET
16	220V OUTLET
17	MICROWAVE

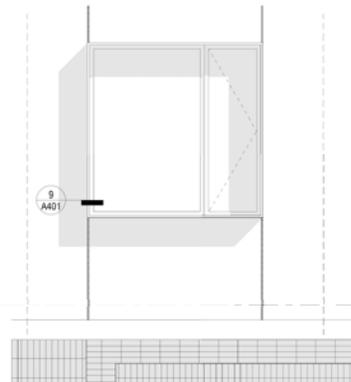


10 AXONOMETRIC VIEW - TYPICAL UNIT

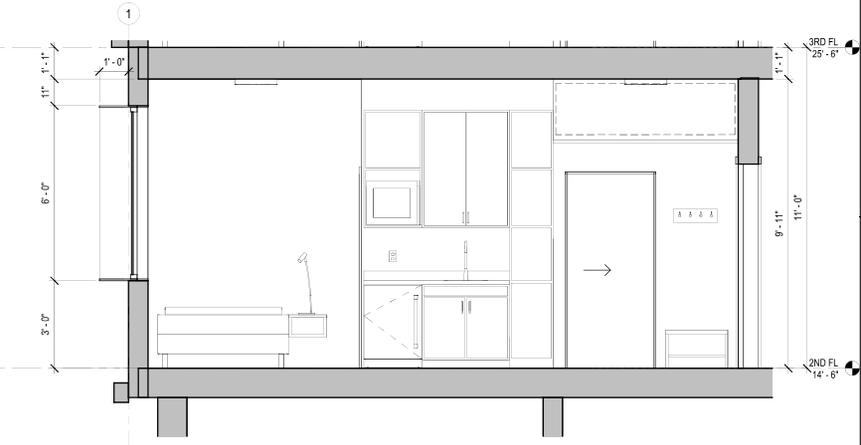
2 ENLARGED PLAN - TYPICAL PRIVATE ROOM
1/2" = 1'-0"



9 WINDOW FRAME JAMB @ CFMENT PLASTER, TYP
3" = 1'-0"



5 PARTIAL ELEVATION - TYPICAL PRIVATE ROOM
1/2" = 1'-0"



1 ENLARGED SECTION - TYPICAL PRIVATE ROOM
1/2" = 1'-0"



NO.	DATE	DESCRIPTION

SEP 14 2020

CITY OF BERKELEY
CITY CLERK DEPARTMENT

APPEAL TO THE BERKELEY CITY COUNCIL

CITY OF BERKELEY
CITY CLERK DEPARTMENT

We the undersigned neighbors hereby appeal the Zoning Adjustments Board approval of the project at 0 (2435) San Pablo Avenue (Use permit ZP 2918-0229) on August 27, and petition the Berkeley City Council to deny the application on health and safety grounds, which is allowable under the Housing Accountability Act and possibly other code, specifically unknown to the appellants, that grant police powers to the City. We also find that in establishing a residential hotel without City zoning regulation, the project deliberately avoids paying the City's affordable housing mitigation fee, does not provide any affordable housing for low income people, circumvents state regulation of utility dwelling units, and establishes precedent in use that bypasses the Planning Commission. The management plan that ZAB requested is inadequate to ensure health, safety, and harmony among the residents. Furthermore, the project exceeds the allowable density of the municipal general plan, imposes detrimental shadowing, intrusion into privacy, and noise on adjacent properties, provides inadequate justification for elimination of parking, and fails to protect the residents of nearby streets from parking and litter impacts, especially the 2400 Byron Street from having their street used as a traffic shortcut and parking lot for the project.

1. Health and Safety

We assert that the project is unsafe in the current COVID-19 pandemic environment by encouraging daily gathering in communal kitchens that do not allow for social distancing or kitchen rotation because of a high bedroom to kitchen ratio (15:1 on two floors and 12:1 on another) nor facilitate hand washing by not providing a bathroom lavatory with hot and cold running water in each private room in violation of CDC guidance on shared and congregate housing (appendix 1). Although Whit Ingram and Toni Mester wrote to ZAB prior to the August 27 meeting with our concerns and included the CDC guidance, the ZAB ignored our cautions and except for Board member Sheahan did not mention or discuss the many health and safety problems posed by the large communal kitchens on each floor and lack of bathroom sinks with hot water. The planning staff and ZAB avoided confronting the potential longevity of the pandemic that might necessitate restrictions and precautions and proceeded as if COVID-19 were a temporary inconvenience that did not require pre-emptive planning and zoning measures to protect residents, the neighbors, and the larger community. We consider such willful blindness as dereliction of duty, which unfortunately has gained widespread political traction due to the actions and behavior of public officials in the Party of Denial.

Even if COVID-19 were magically to disappear, the structure of the living quarters - specifically the high bedroom to kitchen ratio, lack of separate bathroom lavatories with hot and cold running water, and inadequate cleaning schedule in the management plan - create sanitation problems that could lead to food spoilage and contamination, infestation, and disease as we and others have asserted from the advent of this project.

1-A: The bedroom to full kitchen ratio is 15:1 on floors 2 and 3, and 12:1 on floor 4. Other recently approved projects (2720 San Pablo Avenue and 3000 Shattuck Avenue) include apartments with a maximum of 6 bedrooms to one full kitchen and bathroom, although most of the units in both projects are smaller. These projects are called “co-living” - a marketing term for shared apartments. The management of co-living, however, differs from the master tenant model of leasing in that bedrooms are leased separately. 2435 San Pablo Avenue (SPA) differs from these earlier “co-living” projects in several ways, especially in the large bedroom to kitchen ration, which is unmanageable.

In all three kitchens, there appears to be two adjacent stoves, refrigerators, and dishwashers, two cooking “stations” in effect. Two residents can prepare a meal at one time, and if social distancing were in effect, would carry the dinners to their rooms if necessary. A dinner usually takes about an hour to cook, so the kitchen rotation would stretch dinner preparation for 15 cooks to 7 hours from 4 pm to midnight. The kitchens would be in use 24/7, making noise and odors for the entire floor, creating chaos. Residents would have to voluntarily organize themselves to make collective food buying, storage, preparation, and cleanup workable within the usual dinner hours. Such cooperation is unusual in even smaller arrangements; it’s an unrealistic expectation. To prevent theft of food and spoilage, individual refrigerator lockers would need to be provided. Locked cubbies would have to be provided for dry goods, as suggested by a Board member in December. Overcrowding of the kitchen facilities would prevent equitable access to food storage, preparation, and consumption.

ZAB member Patrick Sheahan observed, “the structural problem with this project is these kitchens and these bathrooms and these common kitchens I believe are a clear health and safety problem on many levels and security problem. And those are structural issues that I think are very difficult to overcome convincingly. It can’t be done with a management plan or a resident manager.... This requires 24-hour security and monitoring for this type of arrangement. You can’t just have this free-for-all kitchen. We have not seen anything like this.”

In the management plan, there is no schedule for the cleaning of the kitchens and appliances, the monitoring for food spoilage, provision of knives

and other implements, and collection of food wastes into the composting green can. A kitchen of that size, serving a dozen or more people at an appropriate hour requires staff. These are institutional kitchens without an institution to safely organize and implement food service.

The Design Review summary of July 19, 2019 recommends, "Look closely at the individual room to common area/kitchen ratio what the standard is for this use and how livable it can be," and at the December ZAB meeting, Board Member Denise Pinkston suggested a ratio of 5 or 6 bedrooms per kitchen, both of which were ignored by the applicant team.

Creating standards for co-living, including a feasible bedroom to full kitchen ratio is should start with the Planning Commission, to whom the Council should refer this matter. In an academic study, "[Best Practices For Urban Coliving Communities](#)" Common, the company purportedly willing to manage 2435 SPA, typically manages properties with apartments with 4-5 bedrooms per kitchen; in one large building the average bedroom size is 392 square feet (pages 30-36). J.D. Robert from Common said that his company manages other properties "like this" without giving an example of a similar property with such a large bedroom to kitchen ration,

Possible floor plan revisions:

Option 1: replace one full kitchen with three smaller kitchens on floors 2 and 3 and two on 4 to allow for social distance and COVID safe "bubbles"

Option 2: redesign the residential floors into large units with shared kitchen and bathrooms like 2720 San Pablo Avenue

Option 3: eliminate the communal kitchens altogether, leaving communal space with a sink and counter for serving drinks and snacks when and if health orders allow and expanding the individual rooms into efficiency dwelling units and/or small studios.

1-B. No provision for bathroom lavatories with hot and cold running water.

The private bathroom does not have a sink with hot and cold running water. The faucet feature over the toilet tank is an appliance developed for prisons, and it only has cold water. California Health and Safety Code (17920.3) considers lack of hot and cold running water to be substandard. To thoroughly wash hands as prescribed by the CDC and to brush teeth and perform grooming, the resident would need to use the kitchenette sink, not a sanitary practice, as it will often be filled with dishes for food and drink. Also a towel should not be used for kitchen and bathroom purposes. Such hygiene is especially important if the resident is self-isolating due to infection, which will be difficult enough in such cramped quarters. For a truly livable private space in the COVID-19 future, these little suites could be expanded to fully equipped studios and/or efficiency dwelling units. Both types of micro-units can be

designed for approximately 300 square feet and be comfortable for single occupancy.

2. Affordable housing

Berkeley residents and government share a common goal of creating and supporting housing that is affordable to lower income people. In this section we examine whether this project provides such housing.

2-A. The project stiffs the Housing Trust Fund

Staff has gone to extraordinary efforts to exempt this project from the Affordable Housing Mitigation Fee by designating it as a residential hotel, a sub category of Group Living Accommodation (GLA). Both types of housing are defined in the Berkeley Zoning Ordinance (BEZO) but not regulated with standards. The exemption is actually not mentioned in the BMC section 22.20.065 listed in Table 2 of the staff report. It's a treasure hunt to find the exemption. The first sentence of that section says that "The City may by resolution adopt and affordable housing impact fee...." Which leads to resolution 68,074-N.S. and this paragraph:

"3. For purposes of this resolution, "new rental housing" includes group living accommodations, except for those categories that are currently exempt pursuant to BMC Section 23C.12.020.B, at an equivalency rate of one new rental unit per two bedrooms in a group living accommodation, such that one-half the fee adopted by this resolution shall be imposed on each bedroom."

This leads us finally to the exemption by ordinance and found in the BMC: "**23C.12.020 Applicability of Regulations**

A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

1. Residential housing projects for the construction of five or more Dwelling Units;
2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
3. Residential housing projects proposed on lots whose size and zoning designation is such to allow construction of five or more Dwelling Units.

B. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units....."

After first classifying the project as a dormitory, staff offered the residential hotel exemption in an email from the project architect Eric Waterman, found on the project page and dated 2019-8-22 as RESUB response and begins:

“Leslie,

Charles met with Steve Buckley last week and it was determined that we could define our GLA as a non-transient Residential Hotel, a type of GLA, and allowed in the CW zone, and thus should not be subject to the Affordable Housing Mitigation Fee. (Consistent with Section 23E.20.080 exemption). I have added a sentence in our Applicant Statement to include this clarification, please see attached.”

I sought a legal opinion from Jessica Blome, who concludes that the applicant is required to pay the fee (Appendix 2).

2-B: Affordable by design?

Otherwise staff refers to the project as a “co-living GLA” and advertises it as “affordable-by-design” – another trendy marketing term of questionable validity except. From the latest staff report:

“Affordability: Residential hotels are, per Ordinance, one of several types of GLAs that are exempt from the Affordable Housing Mitigation Fee. The project is, however, per the applicant statement, affordable by design. Compared to a studio apartment that includes an individual kitchen, the GLAs with shared kitchens, will rent for approximately 25% less. This figure is derived from a traditional studio costing \$2,400 a month, plus an addition \$240 for utilities wifi/cable, laundry, and furnishings. The expected rent for a GLA room will be approximately \$2,000 a month with utilities, wifi/cable, laundry, cleaning services and furnishings included. Not only will the GLA be more affordable, it will provide an array of inclusive amenities (utilities, furnishings, cleaning service, etc.) that are not typically provided in the Berkeley rental market.”

The Berkeley rental market, like most of the country, is in a state of flux due to the ravages of the COVID-19 pandemic, which has altered demand through dramatic population and economic shifts. These trends include mass unemployment, more employees working from home and needing larger living quarters, tenants breaking leases and relocating, re-negotiation of leases, and reductions in rents up to 20%. Staff has not presented a realistic analysis of how these market changes may have altered the viability of the project. It is no longer true to say that \$2,000 for a mini-studio is an affordable

choice compared to the current rent for an existing studio with a full kitchen. Compare the choices of prospective tenants. These rooms are not “affordable by design”, and the rent projections do not conform to the realities of the current housing market caused by the pandemic. We do not know how long these conditions will last.

Comparing rents by the square foot shows that the \$2000/month projected rents of a typical 202 square foot unit at 2435 SPA (approximately \$10/sf) is almost twice the average rent of luxury downtown apartments (\$5.41) as calculated by EPS for a community benefits feasibility analysis presented to ZAB on October 25, 2018.

ATTACHMENT 4
ZAB 10-25-18
Page 8 of 103

Memorandum
Community Benefits Feasibility Analysis

August 10, 2018
Page 5

Figure 1 Selected Downtown Berkeley Apartments Rental Rates

Building Name	Year Built	Vacancy Rate	Effective Rent		Average Unit Size
			Per Unit	Per SqFt	
ARTech	2003	11.11%	\$4,553	\$6.58	692
Gaia Apartments	2000	3.30%	\$4,033	\$6.08	664
Allston Place	2002	10.00%	\$2,172	\$3.85	564
Berkeley Central	2012	2.80%	\$4,147	\$4.63	896
Varsity Berkeley	2015	5.13%	\$3,996	\$4.88	824
Berkeleyan	1998	1.79%	\$3,775	\$6.23	606
Hillside Village	2005	5.32%	\$4,358	\$5.53	786
Fine Arts Apartments	2004	4.00%	\$3,408	\$5.82	586
Telegraph Gardens	2013	0.00%	\$3,321	\$3.50	950
Renaissance Villas	1998	5.88%	\$3,311	\$4.80	690
The Overture	2016	6.98%	\$2,910	\$4.32	692
New Californian	2010	0.00%	\$3,020	\$4.31	701
Touriel Apartments	2004	2.86%	\$3,703	\$7.46	497
Bachenheimer	2004	3.57%	\$3,754	\$5.66	663
K Street Flats	2006	9.09%	\$3,761	\$5.33	706
Stonefire Berkeley	2017	10.20%	\$4,226	\$4.74	891
Parker Apartments	2016	5.81%	\$3,517	\$4.96	709
Addison Arts	2016	0.00%	\$3,529	\$5.24	673
The Dwight	2015	1.00%	\$3,776	\$5.57	667
Stadium Place	2006	6.80%	\$3,487	\$5.49	635
Average / Wtd Average	-	4.78%	\$3,841	\$5.41	705

Sources: CoStar Group; Economic & Planning Systems, Inc.

Roommates could rent a spacious apartment with full kitchen and bathroom for the same amount or less in a deluxe new building downtown, like the Stonefire where the cost per square foot averages \$4.74 according to this study. No such analysis has looked at rents in West Berkeley, but it's doubtful they would be more than downtown.

Access to a full kitchen is an affordability factor. Cooking from scratch in one's own kitchen is the most economical and healthy way to eat. A recent article in Forbes magazine discovered that restaurant food is five times more expensive than preparing food at home. During the current stay-at-home orders, Americans are saving more from not eating out as much as usual. And so it may appear that the cost of a "co-living" bedroom may be cheaper than a studio, but there are hidden costs to losing control over one's kitchen, not to mention the social stress of losing privacy..

The claim that 2435 SPA is "affordable by design" is a ploy to disguise the excessive rents that these tiny units would generate in profit over the long haul.

3. Is this project manageable?

At the December 12 ZAB hearing, several Board members requested a management plan, and Board member Teresa Clarke also demanded a manager's on-site unit. The applicant returned in August without designating a manager's unit and with a generic promotional brochure intended for perspective "members", which says very little about the day-to-day operation of this building. The brochure is available on the project page as management plan. The actual tasks get the barest outline:

Overview of Support Staff

Support and operations for Poet's Place will be a combination of on-site staff and centralized staff dedicated to supporting the property and its members.

On-Site Staff

- Leasing Specialist
 - Onsite tours / Virtual Tours
- Porter
 - Property oversight / cleanliness
 - Shared goods restocking
 - Support of community events
 - Unit make-ready
- Property Technician
 - Maintenance Issues / Ticket requests

Centralized Staff (HQ)

- Member Support
 - Ticket resolution and reactive member support to requests/issues
 - Routing if issues/tickets to the right team member
 - Proactive engagement and renewals
- Member Experience & Success
 - Community and engagement initiatives
- Sales + Leasing
 - Inside Sales / Lead generation / Marketing
 - Lease Administration
- Asset Management
 - Financial Reporting
- Legal
 - Lease management / Regulation Compliance / Tenant Issues

Here's what's missing:

Meaning of "property oversight" (sic)

Cleaning schedule including:

Private rooms

Common space

Kitchen: refrigerator, dishwasher, sinks, counters
Recycling and solid waste:
Composting? Green bin?
Solid waste reduction
Supervision of recycling and waste
What are “shared goods”?
Kitchen knives and implements
Kitchen plates, cups, glasses, etc.
Paper towels and toilet paper
Garbage liners
Responsibility for conflict resolution, kitchen rotations
Will refrigerator lockers be provided and locked cubbies for dry goods?
How will personal food be secured in the mass kitchen?
Will the on-site manager be responsible for leasing? What is the difference between a member and a tenant? Will “members” // tenants with time on their leases from other Common properties be given priority over new tenants? Does Common vet their members? Do they discriminate or have standards that ensure homogeneity among the residents? Will the on-site manager be responsible for repairs?
After the applicant failed to respond to Board Member Clarke’s demand in December that a manager’s on-site unit be designated, ZAB made a 400 feet manager’s unit a condition of approval in August, but its location is still uncertain.

4. Building on Swiss Cheese

As its name suggests, the Zoning Adjustments Board is responsible for changes in the application of the Berkeley Zoning Ordinance (BEZO) because buildings and their sites differ in ways that often demands adaptations of the rules. But the ZAB should not be required to accommodate applications when there are no sections of the BEZO that apply to that new building. In 2435 SPA and other recent projects, the absences in the code are as noticeable as holes in Swiss Cheese.

The BEZO has no sections that regulate the establishment of residential hotels, dormitories, co-living hostels, or efficiency dwelling units, and in many zones like the C-W along San Pablo Avenue, no densities or shadowing protections for adjacent homes, and parking requirements are “more honored in the breach than the observance.”

Without applicable code, ZAB is put in a questionable position that demands they exceed the scope of their authority. For these reasons, we question their approval of this project, which came to them with inadequate zoning regulation and objective justification, a situation that demanded an excess of discretion from them. The vacuum was filled with exhaustion,

prejudice, and confusion. In their closing remarks, the Board members who were favorable speak of “concepts” and “building type” rather than regulations and those who were skeptical found it difficult to specify their objections for the same reason: no applicable regulations. Only Patrick Sheahan, an architect who has worked on residential hotels, was firm in his objection on for the reasons noted above, and John Selawsky disapproved for several reasons. See the captioner transcript for details.

4-A A residential hotel

As shown above in the August 22 memo, the designation of residential hotel was found after the application was submitted in order to avoid paying the affordable housing mitigation fee. The project is designed for maximum rental income, not utility for the residents. As presented originally, there wasn't even a manager's on-site unit or front desk. Kevin Wang, the developer, told the ZAB in December that his project was meant to house the homeless, and we've heard the same from neighborhood business owners. This makes the project sound noble in intent, but the projected rent is not what the homeless can afford, even with government subsidies like SSI that average \$800 a month.

The BEZO does not have standards for residential hotels, only a definition that differentiates a residential hotel, which is supposed to provide permanent residence, from a transient hotel. The expected stay for their “members” in Common co-living properties averages 15-24 months, according to Mr. Robert, so as a hotel, this project is neither fish nor fowl. However, it could be redesigned to function as a mid-range hostel to ensure that residents staying for various lengths of tenancy could integrate harmoniously and safely cook meals from raw ingredients.

State code has designations and requirements in case the City wanted to develop standards for residential hotels. Ms. Blome has outlined some of the aspects of state law governing congregate housing in Appendix __.

In the absence of code, the application for this project should have been rejected or delayed and the matter referred to the Planning Commission, which we recommend.

4-B The Efficiency Dwelling Unit

At the December ZAB meeting, Board member Denise Pinkston said that the rooms resembled efficiency dwelling units, another allowance under state code that is not found in BEZO. The State has standards for such units, which have incomplete kitchen and bathroom facilities, such as hot plates and microwaves instead of stovetops and ovens. The state standards prevail unless a city passes an ordinance with its own standards. Otherwise the units are deemed substandard. If the dysfunctional communal kitchens were

removed from the plan, the micro-units would have to be redesigned to meet State standards for efficiency dwelling units, and the applicant would have to pay the affordable housing mitigation fee. The regulations are explained in Ms. Blome's letter in Appendix 3.

Staff should have presented these and other state law governing efficiency dwelling units and other aspects of congregate housing to ZAB, who rely on staff for all relevant information. In the August meeting, Board member Sheahan said the project resembled a studio apartment building, and the units should be small studios without the communal kitchens. Without a relevant code, the ZAB looked at this project like the blind men and the elephant, each seeing what was suggested by a part, not the whole. No public official, whether paid staff or volunteers like ZAB should be making zoning decisions in a vacuum,

5. The detriments

We assert that ZAB erred in not finding detriment in approving the use permits to build this project, as spelled out in section: "23B.32.040 Findings for Issuance and Denial and Conditions:

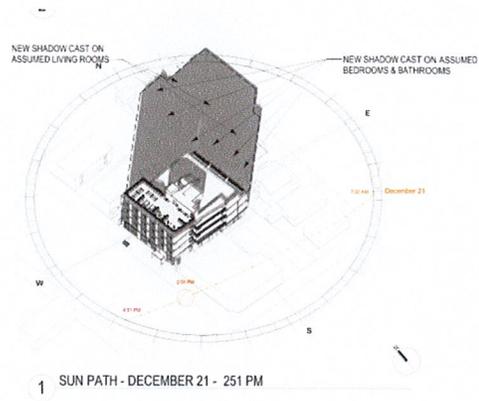
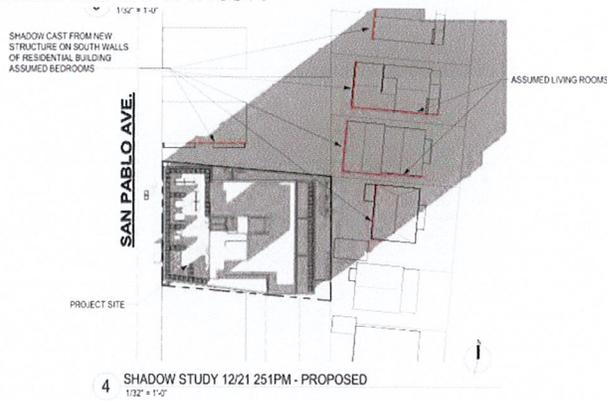
A. The Board may approve an application for a Use Permit, either as submitted or as modified, only upon finding that the establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, 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."

5-1: Shadows

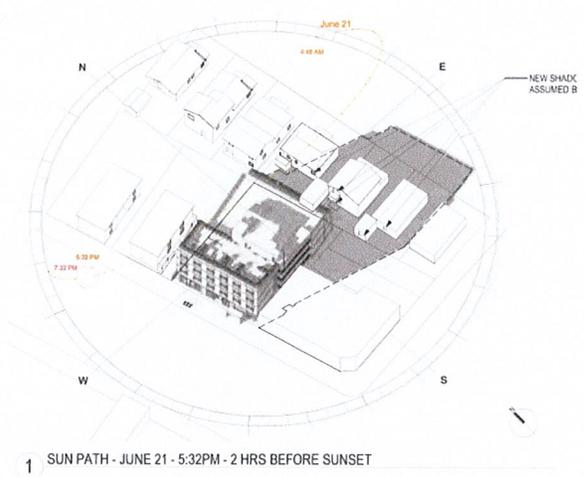
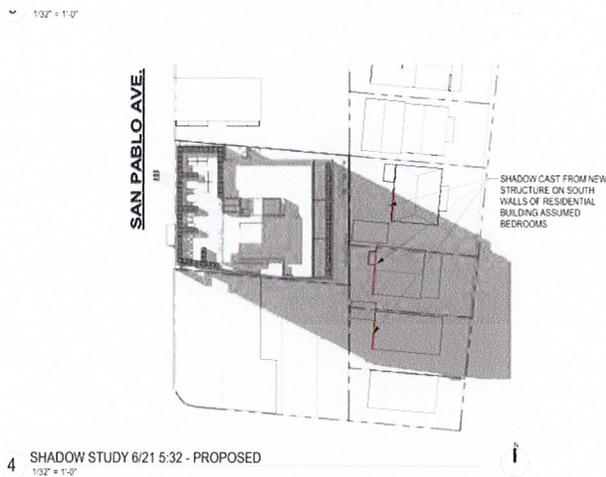
The proposed project casts significant afternoon shadows in summer and winter, as shown in the shadow study, that envelope the entire area of the following six adjacent properties, thus destroying the owners' enjoyment of their property for hours over months and lowering their property values:

(North to south on Byron Street)
2430 Cloe Guesdon
2432 Jaqueline Earle
2434 Ben King and Family
2438 Don Forman and Katherine Roberts
2442 Elisha and Jane Robinson
2444 Verne "Scott" Fanning

Shadows in winter:



Shadows in summer:



In their analysis of the shadow study in the staff report, the staff mischaracterizes the extent of the shadows cast on these homes by saying shadows would be cast on parts of the adjacent properties and not pointing out that for hours at a time through the winter and summer months, the entire properties would be cast into shadow. Their conclusion is “This degree of shading is to be expected along the San Pablo corridor and is not deemed detrimental”, which is a subjective and prejudicial statement that dismisses property rights of homeowners in the San Pablo Avenue corridor. WHO does not deem the shadowing of an entire home property for hours and months, NOT to be detrimental? Where is it written that the homeowners along San Pablo Avenue corridor have lesser rights than those who live in the hills, where the slightest reduction of views are given the most minute investigation by the City Council. Why does such class prejudice continue to be perpetrated in a City that prides itself for equitable treatment of its citizens?

The 2400 block of Byron Street is the narrowest parallel block along San Pablo Avenue, measuring just 200 feet in width along Dwight Way. Wallace Street is almost as narrow but widens more at the north end. As a result, the impacts of development along San Pablo Avenue are greater, especially the shadowing. In an area plan, this factor would be considered so that ideally, a ratio of heights and widths could be created. Instead, neighbors, long time residents and taxpayers, have been threatened, bullied, and insulted. At a meeting with the Byron Street neighbors at the KDA office, Mr. Waterman and Mr. Kahn told them that if they didn't like the proposal, they could build a six-story density bonus building instead.

Besides shadowing, the proposed project rises three stories without setback until the fourth floor, just ten feet from the property line, which impacts their privacy of the homes. The building should be setback on the lower stories, providing terraces for the residents as well as greater separation.

The 2400 block of Byron Street is an integrated neighborhood of working class folks, typical of this area, who represent the best of Berkeley. They deserve to have their homes protected. The reason that such detriment is "to be expected" is that residents of the San Pablo Avenue corridor have been denied a comprehensive area plan for over 20 years so that San Pablo Avenue can be used as a dumping ground for anomalous and deviant buildings like this within an envelope that has not been finessed in the past 30 years. And it's ironic that the City through a joint subcommittee process, attempted to find objective standards for shadowing while staff still indulges in subjective findings.

5-2 Traffic and parking

Staff erred in finding that "the proposed use or structure ... not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply." (23E.64.090 B7)

In C-W, group living accommodations require one parking space for each 5 residents and one for the manager. With 40 residents and one manager, the parking provided should be 9 spaces. That number should not have been reduced because some residents will require a vehicle for a variety of reasons: working at night, disabilities, family and other duties. The neighborhood is not safe for women to walk alone at night. In fact, it's not safe for men either according to contemporary crime stats provided by the police department. In the last five months, there have been more than a dozen felony thefts and robberies along the stretch of San Pablo Avenue between University and Ashby Avenues. Despite these realities the Planning Department insists that everybody walk, use transit, or bike at all hours when it's not safe to do so.

The first iteration of this project had five vehicle parking spaces for vehicles; now there are none. Mr. Waterman keeps saying that's because of neighborhood "pushback" about traffic, which is not true. The neighbors complain about traffic on Dwight Way because it's obnoxious and keeps getting worse, but they never asked for less parking.

The parking and traffic analysis by Abrams Associates is faulty for the usual reasons: they are snap shots of conditions on the street that don't reflect the experience of residents and workers in the area over time, and they don't account for the impacts from projects that have been approved but not yet built. Only a study for an area plan EIR that analyzes the cumulative impacts of development would adequately demonstrate changes in traffic and parking. Singular studies, one project at a time, do not provide a complete picture. The closest cumulative impacts study was the traffic analysis in the EIR for the West Berkeley Project, and that's already out of date.

The Abrams shows parking available on side streets and Dwight Way, which gets cleaned at night. If cars are parked overnight along Dwight, the debris will pile up, and it's already filthy with discarded take-out food packaging, plastic bottles, and paper. Our block, 2400s Tenth Street, is at capacity, as the study shows. That's because many of our permanent residents do not have off-street parking, and workers in nearby industries and Businesses Park on the street during the day. At night, patrons of restaurants and cafes take those spaces. We don't have room for more. This project takes advantage of no residential permit parking in our neighborhood and should provide their fair share of parking, at least one space for the manager, one for disabled, and one for deliveries to prevent back-up and double parking on San Pablo Avenue. Not granting permits in a no-permit neighborhood is a ridiculous condition of approval. West Berkeley is never getting permit parking.

No accurate depiction has been presented showing the easement and adjacent parking spaces for the businesses at the corner of Dwight and San Pablo Avenue. The space for back-ups and reversals will be shared in practice, so a configuration for vehicle use should be represented. The driveway in the combined easement and parking area should be restricted to lower weight vehicles and is already in use. Will the separation at the property line between the driveway and the houses at 2444 and 2446 Byron be improved with a buffer as suggested by the residents of 2446 in their letter of May 16, 2019?

The residents of the 2400 of Byron Street are concerned that the project will exacerbate the problem of drivers using it as a shortcut to avoid the corner of Dwight and San Pablo as well as for parking, as it's the closest residential street. The traffic engineer hasn't offered a single mitigation

against the auto glut that will fill the street that already serves the customers of near-by restaurants and shops.

6. Density

The project bears no relationship to the densities recommended in the general plan. The current SRO submission envisions a tenant population of 42. On a lot of 7.349 square feet or .17 acres, that's a population density of 247 persons per acre for this project while the general plan describes the density of "avenue residential" including San Pablo Avenue as 44 to 88 persons per acre. The density of this project is almost triple that imagined in the general plan.

California government code 65869 demands that zoning be consistent with the general plan:

"65860.

(a) County or city zoning ordinances shall be consistent with the general plan of the county or city by January 1, 1974. A zoning ordinance shall be consistent with a city or county general plan only if both of the following conditions are met:

(1) The city or county has officially adopted such a plan.

(2) The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the plan.

(b) Any resident or property owner within a city or a county, as the case may be, may bring an action or proceeding in the superior court to enforce compliance with subdivision (a). Any such action or proceeding shall be governed by Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure. No action or proceeding shall be maintained pursuant to this section by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days of the enactment of any new zoning ordinance or the amendment of any existing zoning ordinance.

(c) In the event that a zoning ordinance becomes inconsistent with a general plan by reason of amendment to the plan, or to any element of the plan, the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan as amended.

(d) Notwithstanding Section 65803, this section shall also apply to a charter city."

7. The recusal of Charles Kahn

At least one neighbor has been concerned about the influence of Charles Kahn, the architect of record for this project and a member of the ZAB and design review. Whether his influence was subliminal or something

more is a matter of interpretation and investigation, but there are requirements for recusal in the case of financial interest, so we asked for a legal opinion on that as well (Appendix 4).

8. Conclusion

Our appeal is not to be construed as a condemnation of group accommodations but an assertion that zoning regulations of GLAs including co-living hostels, residential hotels, and other congregate housing must originate in the Planning Commission and be approved by the City Council before individual projects can be processed by staff and brought before design review and the ZAB. 2435 San Pablo Avenue entered the permit room through the back door, creating some revelatory discussion, but not a healthy process, and process matters. Approving a new use in this way sets a terrible precedent.

9. Writer's statement

I wrote this appeal to reflect neighborhood concerns at personal sacrifice because I suffer from advanced macular degeneration, and the work was a strain on my vision. Also I've never had to hire an attorney to write a land use appeal before. So for my pains, I am going to exercise the privilege of authorship with some opinions of my own.

The City of Berkeley has been without a professional planner as head of Planning and Development since Carol Johnson departed in May of 2017. Hiring another insider or anybody other than a professional planner would be a mistake. The Department needs fresh leadership from the outside, somebody who will take up the reigns and crack the whip to modernize the general plan, create consistency with and upgrade the BEZO with density and other objective standards, re-negotiate the Bayer Agreement, and preside over a San Pablo Avenue area plan.

The great revelation in writing this piece was the dysfunction of continuing to impose the affordable housing mitigation fee by the unit, which distorts and limits the possibilities of creating new housing including the congregate types. I understand that Council member Rigel Robinson has suggested using square footage as the basis for the fee, and I couldn't agree more.

Toni Mester
September 13, 2020

APPENDIX 1

CDC GUIDANCE ON SHARED AND CONGREGATE HOUSING

6 pages



Coronavirus Disease

[MENU >](#)

COVID-19 Guidance for Shared or Congregate Housing Guidance for Shared or Congregate Housing

Updated Aug. 22, 2020

The following guidance was created to help owners, administrators, or operators of shared (also called “congregate”) housing facilities – working together with residents, staff, and public health officials – prevent the spread of COVID-19.

For this guidance, shared housing includes a broad range of settings, such as apartments, condominiums, student or faculty housing, national and state park staff housing, transitional housing, and domestic violence and abuse shelters. Special considerations exist for the prevention of COVID-19 in shared housing situations, and some of the following guidance might not apply to your specific shared housing situation.

People living and working in this type of housing may have challenges with social distancing to prevent the spread of COVID-19. Shared housing residents often gather together closely for social, leisure, and recreational activities, shared dining, and/or use of shared equipment, such as kitchen appliances, laundry facilities, stairwells, and elevators.

Be sure to consider the unique needs of your residents, such as people with disabilities, cognitive decline, or no access to technology. This guidance does not address infection prevention and control in healthcare settings. If your facility offers healthcare services, please consult CDC Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings

There may also be specific guidance for certain types of shared housing, such as homeless shelters, that may apply to your facility.

State, territorial, local, and tribal public health departments can give you specific information on COVID-19 transmission and policies in your community, which can help you decide when and if you need to scale up or loosen prevention measures.

Plan and prepare

Review, update, and implement emergency operations plans (EOPs)

Some shared housing facilities have already experienced an outbreak of COVID-19, others have a handful of cases, and others have not yet had infection introduced. Regardless of the status of a facility, the most important thing is for all facilities to **plan and prepare**. No matter the level of transmission in a community, every shared housing facility should have a plan in place to protect residents, workers, volunteers, and visitors from the spread of COVID-19. This should be done in collaboration with state and local public health departments, housing authorities, local or state regulatory agencies, and other relevant partners. Focus should be on components, or annexes, of already-existing plans that address infectious disease outbreaks. If your shared housing facility does not have an emergency operations plans (EOP), now is the time to develop one.

Reference key resources while developing, reviewing, updating, and implementing the EOP

- Multiple federal agencies have developed resources on emergency preparedness, which may be helpful for administrators of shared housing facilities.
 - The National Multifamily Housing Council (NHMC) [\[link\]](#) provides guidance on emergency preparedness and response resources for the apartment industry. HUD also provides guidance for public health disaster readiness and preparation [\[link\]](#) .
- CDC has specific consideration for people with disabilities as they may be at higher risk of getting COVID-19 or having severe illness.
- Additionally, FEMA's Planning Considerations for Organizations in Reconstituting Operations During the COVID-19 Pandemic [\[link\]](#) outlines key considerations for planning to resume operations while protecting the well-being and safety of employees and communities.

Planning strategies to include:

- Informing residents, workers, volunteers, and visitors about COVID-19. Develop information-sharing systems that are tailored to the needs of your setting. For instance, administrators can support residents who have no or limited access to the internet by delivering print materials to their residents. Printable materials for community-based settings are available on the CDC website.
- Promoting healthy behaviors that reduce spread, maintaining healthy environments and operations, and knowing what to do if someone gets sick.
- Taking action to prevent or slow the spread of COVID-19. This includes limiting the number of non-essential visitors to workers, volunteers, and visitors who are essential to preserving the health, including the mental health, well-being, and safety of residents.
- Consider identifying residents who have unique medical needs and behavioral health needs and encourage them to develop a plan for if they or their primary caregiver(s) become ill.

To maintain safe operations

- Review the CDC guidance for businesses and employers to identify strategies to maintain operations and a healthy working and living environment.
- Develop flexible sick leave policies. Require staff to stay home when sick, even without documentation from doctors. Use flexibility, when possible, to allow staff to stay home to care for sick family or household members or to care for children in the event of school or childcare dismissals. Make sure that employees are aware of and understand these policies.
- Create plans to protect the staff and residents from spread of COVID-19 and help them put in place personal preventive measures.
- Clean and disinfect shared areas (such as exercise room, laundry facilities, shared bathrooms, and elevators) and frequently touched surfaces using EPA-registered disinfectants [\[link\]](#) more than once a day if possible.
- Identify services and activities (such as meal programs, religious services, and exercise rooms and programs) that might need to be limited or temporarily discontinued. Consider alternative solutions (e.g., virtual services) that will help programs continue while being safe for residents.
- Identify a list of healthcare facilities and alternative care sites where residents with COVID-19 can receive appropriate care, if needed.

Encourage staff and residents to prepare and take action to protect themselves and others

- Follow the guidance and directives on community gatherings from your state and local [health departments](#).
- Encourage social distancing by asking staff and residents to stay at least 6 feet (2 meters) apart from others and wear masks in any shared spaces, including spaces restricted to staff only.
- Consider any special needs or accommodations for those who need to take extra precautions, such as older adults, people with disabilities, and people of any age who have serious underlying medical conditions.
- Limit staff entering residents' rooms or living quarters unless it is necessary. Use virtual communications and check ins (phone or video chat), as appropriate.
- Limit the presence of non-essential volunteers and visitors in shared areas, when possible.
- Use physical barriers, such as sneeze guards, or extra tables or chairs, to protect front desk/check-in staff who will have interactions with residents, visitors, and the public.
- Provide COVID-19 prevention supplies for staff and residents in common areas at your facility, such as soap, alcohol-based hand sanitizers that contain at least 60% alcohol, tissues, trash baskets, and, if possible, masks that are washed or discarded after each use.
- Consider any special communications and assistance needs of your staff and residents, including persons with disabilities.
- Suggest that residents keep up-to-date lists of medical conditions and medications, and periodically check to ensure they have a sufficient supply of their prescription and over-the-counter medications.
- If possible, help residents understand they can contact their healthcare provider to ask about getting extra necessary medications to have on hand for a longer period of time, or to consider using a mail-order option for medications.
- Make sure that residents are aware of serious symptoms of their underlying conditions and of COVID-19 symptoms that require emergency care, and that they know who to ask for help and call 911.
- Encourage residents who live alone to seek out a "buddy" in the facility who will check on and help care for them and safely make sure they are getting basic necessities, including food and household essentials.

Note: Surgical masks and N-95 respirators are critical supplies that must continue to be reserved for healthcare workers and other medical first responders, as recommended by current CDC guidance. All staff and residents should wear a mask covering when in shared areas of the facility and maintain social distancing to slow the spread of the virus.

Communicate to staff and residents

Identify platforms such as email, websites, hotlines, automated text messaging, newsletters, and flyers to help communicate information on:

- Guidance and directives from state and local officials and state and local [health departments](#).
- How your facility is helping to prevent the spread of COVID-19.
- How additional information will be shared, and where to direct questions.
- How to stay healthy, including videos, fact sheets, and posters with information on COVID-19 symptoms and how to stop the spread of germs, how to wash your hands, and what to do if you are sick.
- How staff and residents can cope and manage stress and protect others from stigma and discrimination.
- Identify and address potential language, cultural, and disability barriers associated with communicating COVID-19 information. Communications may need to be framed or adapted so they are culturally appropriate for your audience and easy to understand. For example, there are resources on the CDC website that are in many languages.

Considerations for common spaces in your facility, to prevent the spread of COVID-19

- Consider how you can use multiple strategies to maintain social (physical) distance between everyone in common spaces of the facility.
- Consider cancelling all public or non-essential group activities and events.
- Offer alternative methods for activities and social interaction such as participation by phone, online, or through recorded sessions.

- Arrange seating of chairs and tables to be least 6 feet (2 meters) apart during shared meals or other events.
- Alter schedules to reduce mixing and close contact, such as staggering meal and activity times and forming small groups that regularly participate at the same times and do not mix.
- Minimize traffic in enclosed spaces, such as elevators and stairwells. Consider limiting the number of individuals in an elevator at one time and designating one directional stairwells, if possible.
- Ensure that social distancing can be maintained in shared rooms, such as television, game, or exercise rooms.

- Make sure that shared rooms in the facility have good air flow from an air conditioner or an opened window.
- Consider working with building maintenance staff to determine if the building ventilation system can be modified to increase ventilation rates or the percentage of outdoor air that circulates into the system.
- Clean and disinfect shared areas (laundry facilities, elevators, shared kitchens, exercise rooms, dining rooms) and frequently touched surfaces using EPA-registered disinfectants more than once a day if possible.

Considerations for specific communal rooms in your facility

Shared kitchens and dining rooms

- Restrict the number of people allowed in the kitchen and dining room at one time so that everyone can stay at least 6 feet (2 meters) apart from one another.
 - People who are sick, their roommates, and those who have higher risk of severe illness from COVID-19 should eat or be fed in their room, if possible.
- Do not share dishes, drinking glasses, cups, or eating utensils. Non-disposable food service items used should be handled with gloves and washed with dish soap and hot water or in a dishwasher. Wash hands after handling used food service items.
- Use gloves when removing garbage bags and handling and disposing of trash. Wash hands

Laundry rooms

- Maintain access and adequate supplies to laundry facilities to help prevent spread of COVID-19.
- Restrict the number of people allowed in laundry rooms at one time to ensure everyone can stay at least 6 feet (2 meters) apart.
- Provide disposable gloves, soap for washing hands, and household cleaners and EPA-registered disinfectants for residents and staff to clean and disinfect buttons, knobs, and handles of laundry machines, laundry baskets, and shared laundry items.
- Post guidelines for doing laundry such as washing instructions and handling of dirty laundry.

Recreational areas such as activity rooms and exercise rooms

- Consider closing activity rooms or restricting the number of people allowed in at one time to ensure everyone can stay at least 6 feet (2 meters) apart.
- Consider closing exercise rooms.
- Activities and sports (e.g., ping pong, basketball, chess) that require close contact are not recommended.

Pools and hot tubs

- Consider closing pools and hot tubs or limiting access to pools for essential activities only, such as water therapy.
 - While proper operation, maintenance, and disinfection (with chlorine or bromine) should kill COVID-19 in pools and hot tubs, they may become crowded and could easily exceed recommended guidance for gatherings. It can also be challenging to keep surfaces clean and disinfected.
 - Considerations for shared spaces (maintaining physical distance and cleaning and disinfecting surfaces) should be addressed for the pool and hot tub area and in locker rooms if they remain open.

Shared bathrooms

- Shared bathrooms should be cleaned regularly using EPA-registered disinfectants  , at least twice per day (e.g., in the morning and evening or after times of heavy use).
- Make sure bathrooms are continuously stocked with soap and paper towels or automated hand dryers. Hand sanitizer could also be made available.
- Make sure trash cans are emptied regularly.
- Provide information on how to wash hands properly. Hang signs  in bathrooms.
- Residents should be instructed that sinks could be an infection source and should avoid placing toothbrushes directly on counter surfaces. Totes could also be used for personal items to limit their contact with other surfaces in the bathroom.

If a resident in your facility has COVID-19 (suspected or confirmed)

- Have the resident seek advice by telephone from a healthcare provider to determine whether medical evaluation is needed.
- Residents are not required to notify administrators if they think they may or have a confirmed case of COVID-19. If you do receive information that someone in your facility has COVID-19, you should work with the local health department  to notify anyone in the building who may have been exposed (had close contact with the sick person) while maintaining the confidentiality of the sick person as required by the Americans with Disabilities Act (ADA) and, if applicable, the Health Insurance Portability and Accountability Act (HIPAA).
- Provide the ill person with information on how to care for themselves and when to seek medical attention.
- Encourage residents with COVID-19 symptoms and their roommates and close contacts to self-isolate – limit their use of shared spaces as much as possible.
 - If possible, designate a separate bathroom for residents with COVID-19 symptoms.
 - Consider reducing cleaning frequency in bedrooms and bathrooms dedicated to persons with COVID-19 symptoms to as-needed cleaning (e.g., soiled items and surfaces) to avoid unnecessary contact with the ill persons.
 - Follow guidance on when to stop isolation.
- Minimize the number of staff members who have face-to-face interactions with residents who have suspected or confirmed COVID-19.
- Encourage staff, other residents, caregivers such as outreach workers, and others who visit persons with COVID-19 symptoms to follow recommended precautions to prevent the spread.
- Staff at higher risk of severe illness from COVID-19 should not have close contact with residents who have suspected or confirmed COVID-19, if possible.
- Those who have been in close contact (i.e., less than 6 feet (2 meters) with a resident who has confirmed or suspected COVID-19 should monitor their health and call their healthcare provider if they develop symptoms suggestive of COVID-19.

- Be prepared for the potential need to transport persons with suspected or confirmed COVID-19 for testing or non-urgent medical care. Avoid using public transportation, ride-sharing, or taxis. Follow guidelines for cleaning and disinfecting any transport vehicles.

Accepting new residents at facilities that offer support services

First, review and follow the guidance and directives from your state and local officials.

If your situation is not restricted by their guidance and directives, then consider the following guidance:

- At check-in, provide any new or potential resident with a clean mask and keep them isolated from others. Shelters can use this tool to screen for symptoms at entry.
- Medical evaluation may be necessary depending on the symptoms.
- If your facility is full, your facility space is inadequate to maintain physical distancing (such as is recommended in the guidance for homeless shelters), or you do not have the resources (staff, prevention supplies) to accept additional residents, reach out to community- or faith-based organizations to help meet individuals' needs, including:
 - A safe place to stay
 - Ability to obtain basic necessities, such as food, personal hygiene products, and medicine
 - Access to any needed medical or behavioral health services
 - Access to a phone or a device with internet access to seek out resources and virtual services and support

Additional CDC resources to help prevent spread of COVID-19 in shared or congregate housing settings

More detailed guidance is available for specific types of facilities. Some of the information in these guidance documents is applicable to that specific type of facility only, and some of the information would be applicable to other congregate housing facilities.

- Assisted living facilities
- Retirement communities and independent living
- Homeless shelters
- Community- and faith-based organizations
- Colleges and universities
- Households with suspected or confirmed COVID

APPENDIX 2

BLOME OPNION ON THE
AFFORDABLE HOUSING MITIGATION FEE
3 pages



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Date: September 11, 2020
To: Toni Mester
From: Jessica L. Blome, Senior Associate Attorney
RE: 2435 San Pablo Ave.

The Berkeley Municipal Code (BMC) gives the City Council authority to adopt an affordable housing impact fee by resolution, which “shall be imposed on the development of new rental housing in Berkeley, subject to limitations set forth in this Chapter and any additional limitations set forth in the Resolution.” (BMC §22.20.065(C).) The BMC does not exempt Group Living Accommodations from the requirement to pay the affordable housing impact fee. (Id.) The BMC defines “Group Living Accommodation” as “a building or portion of a building designated for or accommodating Residential Use by persons not living together as a Household.” (BMC § 23F.04.)

The City Council adopted Resolution No. 68,074-N.S. on June 27, 2027, which set the fee at \$37,000 per “new rental housing” unit. (See Berkeley Resolution No. 68,074-N.S., ¶ 1.) “New rental housing” includes “Group Living Accommodations, except for those categories that are currently exempt pursuant to BMC Section 23C.12.020.B.” (Id. at ¶ 3.) The Council singled out Group Living Accommodations because it wanted to limit the fee for co-living arrangements, “such that one-half the fee shall be imposed on each bedroom.” (Id.) The BMC expressly delegated authority to Council to set the fee by resolution, so the Council had authority to set fee policy in this way. However, with the resolution, the City also attempted to exempt certain Group Living Accommodations from the requirement to pay the affordable housing mitigation

fee altogether, which violates state and local requirements for amending the BMC. (See BMC §23C.12.020.B (exempting “Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels, or Live/Work Units”).)

Although the two terms are often used interchangeably, “ordinance” and “resolution” are two distinct methods by which local governments can act. (*City of Sausalito v. County of Marin* (1970) 12 Cal.App.3d 550, 565 [hereinafter *City of Sausalito*].) An “ordinance” is a local law which is “adopted with all the legal formality of a statute.” (Id.) A “resolution” is usually “a mere declaration with respect to future purpose or proceedings” of the government entity, such as the setting of a fee schedule or penalty matrix. (Id.; see also *616 Croft Ave., LLC v. City of West Hollywood* (2016) 3 Cal.App.5th 621, 625.) When a state statute requires local legislative action by ordinance, action by “resolution” does not satisfy the statutory requirement “under any circumstances.” (Id.) Moreover, resolutions adopted without the “formality” required of an ordinance cannot morph into an ordinance. (*City of Sausalito, supra*, at 566; see also *Pinewood Investors, Inc. v. City of Oxnard* (1982) 133 Cal.App.3d 1030, 1037-1038 (invalidating the City sewer fee, which was unlawfully adopted by resolution when state law required the fee be adopted by ordinance).) An ordinance is a law of the state, a resolution “is not.” (Id.) Accordingly, courts frequently void city actions taken via resolution if the city was required by law to take such action via ordinance. (See e.g. Id.; see also *San Diego City Firefighters, Local 145 v. Bd. of Admin. of San Diego City Emples. Ret. Sys.* (2012) 206 Cal.App.4th 594, 608-09 (voiding a city resolution terminating a resolution related to retirement funding because the city charter required the city to adopt an ordinance for “all provisions related to the city’s retirement program”).)

The California Government Code authorizes the legislative body of any county or city to adopt zoning regulations by ordinance in order to “regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purpose.” (Gov’t Code § 65850(a) (emphasis added).) Government Code, section 36931, *et seq.* sets forth the specific

provisions a municipality must follow to duly enact a zoning ordinance. (Id. at § 36931, et seq.) For example, each ordinance or amendment must be published at least once in a newspaper of general circulation within fifteen days after the ordinance is first read at a city council meeting. (Id. at § 36933.) The proposed ordinance or amendment must be read a second time at a duly notice council meeting and does not go into effect for thirty days after its final passage. (Id. at § 36937.) Zoning restrictions that do not comply with the Government Code are not valid. (*City of Sausalito*, 12 Cal.App.3d 550, 565 (invalidating the Marin County general plan because the Board of Supervisors adopted the plan by resolution instead of ordinance, as required by the Government Code.)

Consistent with the Government Code, the BMC obligates Council to adopt a new ordinance if it wants to amend an existing ordinance to be “less restrictive” than the provision it replaces. (BMC §23A.20.010, *et seq.*; See also id. at §23A.20.070(B).) There can be no doubt that the adoption of an exemption to an ordinance is “less restrictive” than the ordinance itself. The Council’s attempt to exempt certain Group Living Accommodations from BMC §22.20.065 by resolution is, therefore, invalid, and the affordable housing mitigation fee applies to this project.

APPENDIX 3
BLOME LETTER ON CONGREGATE RESIDENCE
LOCAL AND STATE CODE
2 pages



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Date: September 13, 2020
To: Toni Mester
From: Jessica L. Blome, Senior Associate Attorney
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Congregate Residences

Under the California Building Code, which is incorporated by referenced into local law at BMC §19.28.010, a “hotel” is defined as “[a]ny building containing six or more guest rooms intended or designed to be used, or which are used, rented, or hired out to be occupied, or which are occupied *for sleeping purposes* by guests.” (See California Building Code, §202 (emphasis added).) “Congregate residence,” on the other hand, is “[a]ny building or portion thereof that contains facilities for living, sleeping, *and* sanitation, as required by this code, *and may include* facilities for eating and cooking, for occupancy other than a family. A congregare residence may be a shelter, convent, monastery, dormitory, fraternity or sorority house, but does not include jails, hospitals, nursing homes, hotels, or lodging houses.” (Id. (emphasis added).)

Transient hotels or congregare residences (occupancy of a dwelling or sleeping unit for not more than 30 days) must comply with code requirements for Occupancy Classification R-1, and non-transient hotels or congregare residences (occupancy for more than 30 days) must comply with code requirements for Occupancy Classification R-3. (See *id.* at § 202, 310.2, 310.4.) Most of the code requirements for R-1 and R-3 are located at Section 240 of the California Building Code.

The BMC’s definition of “Group Living Accommodation” is similar to the California Building Code’s definition of “congregare residence.” Under the BMC, a “Group Living Accommodation,” is [a] building or portion of a building designed for or accommodating Residential Use by persons not living together as a household, but excluding Hospitals, Nursing Homes, and Tourist Hotels.” (BMC § 23F.04.) Separately, the BMC defines “Hotel, Residential” as “[a] building which provides rooms for rent for residential purposes, including Single Residential Occupancy (SRO)¹ Hotels. Residential Hotels are a type of Group Living Accommodation.” (Id.)

¹ A “Single Residential Occupancy (SRO) Room” is “[a] room for residential or sleeping purposes in a Residential Hotel which is designed for occupancy of one (1) person only.” (BMC § 23F.04.)

Based on a plain reading of these definitions, it appears that the BMC has simply attached the term “Group Living Accommodation” to what the California Building Code classifies as a “Congregate Residence.” The BMC then explicitly includes a “Residential Hotel” as a type of Group Living Accommodation. The terms “Group Living Accommodation” and “Residential Hotel” do not appear in the California Building Code, but both BMC classifications, by definition, plainly fall under the umbrella category of “Congregate Residence.”

The developer intends to rent rooms at a rate of \$2,000/month with utilities, wifi/cable, cleaning services, and furnishings included. According to the project applicant, the average tenant in past projects has rented a room under similar circumstances for 15-24 months. A month-to-month occupancy of a congregate residence is non-transient in nature, so this project should comply with the California Building Code for non-transient congregate residences. The City Council should direct staff to confirm that the project complies with the correct code standards, as the developer’s repeated insistence that this project is a hotel has confused this issue and may have resulted in staff’s authorization of non-compliant project plans for what is truly a congregate residence under the California Building Code.

APPENDIX 4
BLOME LETTER ON POTENTIAL
CONFLICT OF INTEREST
2 pages



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Date: September 13, 2020
To: Toni Mester
From: Jessica L. Blome, Senior Associate Attorney
RE: 2435 San Pablo Ave.

Potential Conflict of Interest Violation

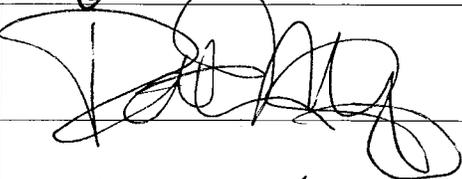
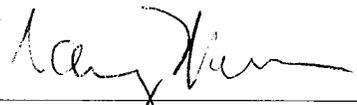
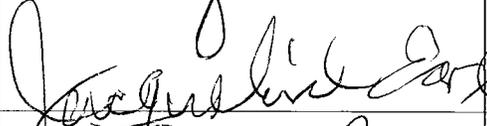
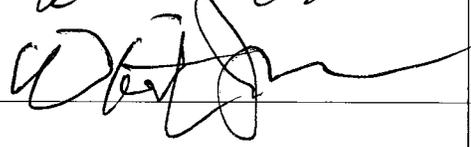
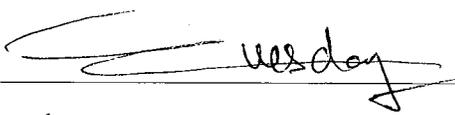
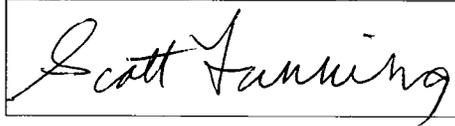
The state Political Reform Act, Government Code Section 8100, *et seq.*, and the Berkeley Conflict of Interest Code adopted pursuant to the Act prohibit any commissioner from making, participating in making, or attempting to influence the making of any City decision if the commissioner knows or has reason to know that it is reasonably foreseeable that the decision will have a material financial effect on specified interests of the commissioner distinguishable from the public generally. (See Gov't Code, §87105; see also Berkeley Commissioner's Manual, Chap. II, § E, p. 24-25.) In addition to filing a Form 700 disclosure statement identifying such conflicts of interest (Res. No. 68,201-N.S. §3, App. B-39), any financial conflict of interest must be publicly disclosed and noted in the official record of the commission meeting. (Gov't Code, §87105(a)(1); Res. No. 68,201-N.S. §5.) In such cases, a commissioner must announce the conflict "in detail sufficient to be understood by the public," recuse himself, and physically remove himself from the proceedings until after matter has concluded. (Gov't Code, §87105(a)(1), (2).)

We understand that the architect for this project is Berkeley's own StudioKDA, which is owned and operated by Charles Kahn and his two partners. As you know, Mr. Kahn is also a member of ZAB. Mr. Kahn undoubtedly had a foreseeable material financial interest in whether

ZAB approved the project for which is firm served as the principal architect. (See Gov't. Code, §87103(a), (d).)

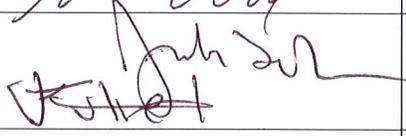
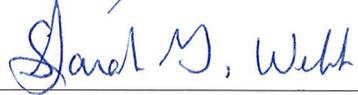
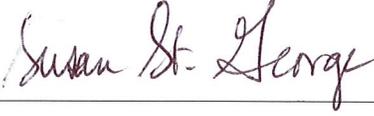
We also understand that Mr. Kahn obtained an excused absence for the December 12, 2019, and August 27, 2020, ZAB meetings at which the project was under consideration. However, Mr. Kahn did not disclose his conflict of interest on the record, before attending the meeting as a member of the general public. (Gov't Code, §87105(a)(4) (allowing conflicted public officials to “speak on the issue during the time that the general public speaks on the issue”).) The Fair Political Practices Commission has not offered advice regarding whether a commissioner's excused absence absolves him of his duties to comply with the Political Reform Act's explicit public disclosure requirements, but Mr. Kahn's failure to do so may render this ZAB decision vulnerable to reversal if the FPPC were to investigate and find a violation. (See Gov't Code, §91003 (authorizing a court to void a conflicted decision if it finds that the action would not have been taken but for the action of the conflicted official).)

Signatories

Signature	Print Name	Address
	DAVID B. KING	2434 BYRON ST BERKELEY, CA 94702
	PATRICIA M. PRICE	2446 Byron St. Berkeley, CA 94702
	TAREE KLAUSNER	2411 CLYDE ST Berkeley, CA 94702
	WANIE BIGGS	2426 BYRON BERKELEY, CA 94702
	Nancy Newman	2427 10th St. Berkeley CA 94710
	Jacqueline Earle	2432 Byron Berkeley CA 94702
	ALICIA CARTER	2426 10th St Berkeley, CA. 94710
	Whit J. Harris	2437 Byron St Berkeley 94702
	Janie Robinson	2442 BYRON ST Berkeley, CA. 94710
	Elisha Robinson Jr	2442 Byron St. Berkeley, CA. 94702
	Joe Guesdon	2430 Byron Berkeley CA 94702
	Kim Maplestone	2434 Byron Berkeley CA 94702
	SCOTT Fanning	2444 Byron St Berkeley CA 94702

<i>Frances Haselstein</i>	FRANCES HASELSTEIN	94702 1202 DWIGHT WAY
<i>Heinrich Lehner</i>	Heinrich Lehner	2427 - 10 th St 94710
<i>Laura Azzolina</i>	LAURA AZZOLINA	2429 BYRON ST (SINCE 1994) 94702
<i>Graham Holoch</i>	Graham Holoch	1115 DWIGHT WAY 94702
<i>Maggie Nguyen</i>	Maggie Nguyen	1115 Dwight Way 94702
<i>Robin Simonett</i>	ROBIN SIMONETT	2429 BYRON ST 94702 (SINCE 1992)
<i>Jefferson Douglas</i>	JEFFERSON DOUGLAS	2417 10 th St 94710
<i>Julie Brettin</i>	JULIE BRETTIN	"
<i>W/A Hayes Ingram</i>	W/A Hayes INGRAM	2437 BYRON ST. 94702
<i>Douglas F. Smith</i>	Douglas F. Smith	2422 Byron St 94702
<i>Rickey Collins</i>	21 Rickey Collins 2429 San Pablo AVE #A	2429 SAN PABLO 94702
<i>Jan R. Bobkoff</i>	Jan Bobkoff 2423 10th St Berkeley, CA 94710	2423 70 th ST Berkeley, CA 94710
<i>Dave Nold</i>	Dave Nold	2420 10 th St Berkeley 94710
<i>Susan Henderson</i>	Susan Henderson	2420 Tenth St Berkeley 94710

5

Sign	Print Name	address
	Fred Weed	2428 Tenth St.
	Julie Feldman	2428 10th St
	Toni Mester	2431 10th St.
	Matt Hornby	2919 Byron
	J Marks	1805 Tacoma
	EMILY A Stone	2438 Browning Berkeley, CA 94702
	Sarah G. Webb	2438 Browning St.
	SUSAN ST. GEORGE	2427 10th St

09/09/2020

In **36** Support of Tomi Mester's appeal
of the decision of ZAB on 8/27/2020
to approve the proposed development
at 2435 Saw Pabla **✓** Ave.

Mitchell  2433 Byron St.
Berkeley CA 94702



Marcia DuBois 2433 Byron St.



Signed in support of  Toni Mester's appeal of the decision of ZAB to approve the proposed development ^{on 8/27/20} at 2435 San Pablo Ave.



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
AUGUST 27, 2020

0 (2435) San Pablo Avenue

Use Permit #ZP2018-0229 to construct a 4-story, 20,526 square foot, mixed use building with 42 Group Living Accommodation rooms and 800 square feet of ground floor commercial/retail space on two vacant parcels.

I. Background

A. Land Use Designations:

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

B. Zoning Permits Required:

- Use Permit under BMC Section 23E.64.030.A, to construct a mixed-use development with more than 20,000 square feet of gross floor area
- Use Permit under BMC Section 23E.64.030.A, to establish Group Living Accommodations
- Use Permit under BMC Section 23E.64.030.A to establish a Residential Hotel
- Use Permit under BMC Section 23E.64.050.B, to construct more than 5,000 square feet of gross floor area
- Use Permit under BMC Section 23E.64.080.H, to modify the off-street parking requirement
- Administrative Use Permit under BMC Section 23E.04.020.C, to allow architectural features to exceed the height limit

C. CEQA Recommendation: It is staff's recommendation that the 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 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/paved 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 the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions 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 Section 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 Section 65962.5, and (f) the project would not affect any historical resource.

A. Parties Involved:

- Applicant Erik Waterman/Studio KDA, 1810 Sixth Street, Berkeley, CA
- Property Owner Wang Brother Investments, LLC, 1 Bates Blvd., Suite 400 Orinda, CA

Figure 1: Vicinity Map

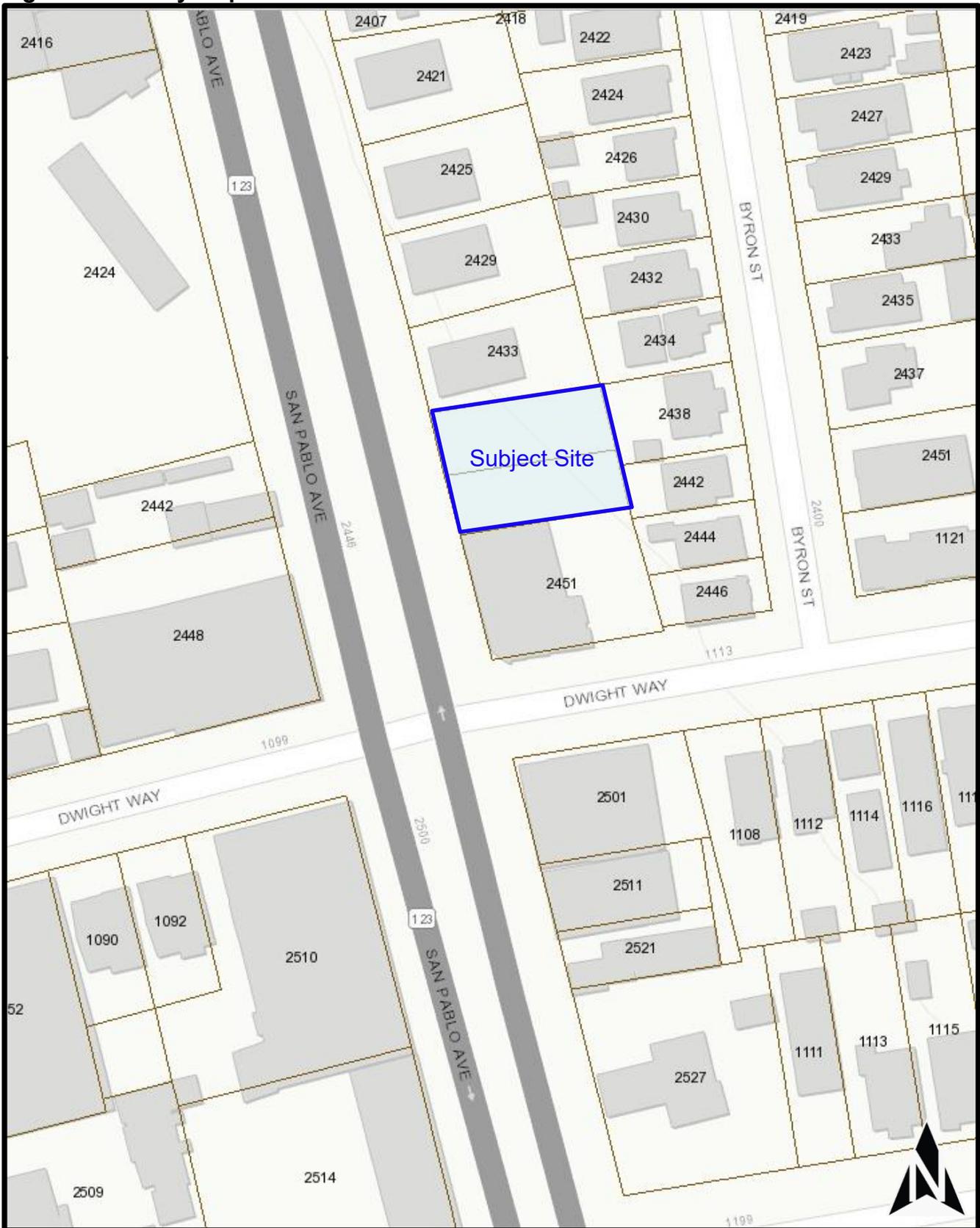


Figure 2: Proposed Site Plan

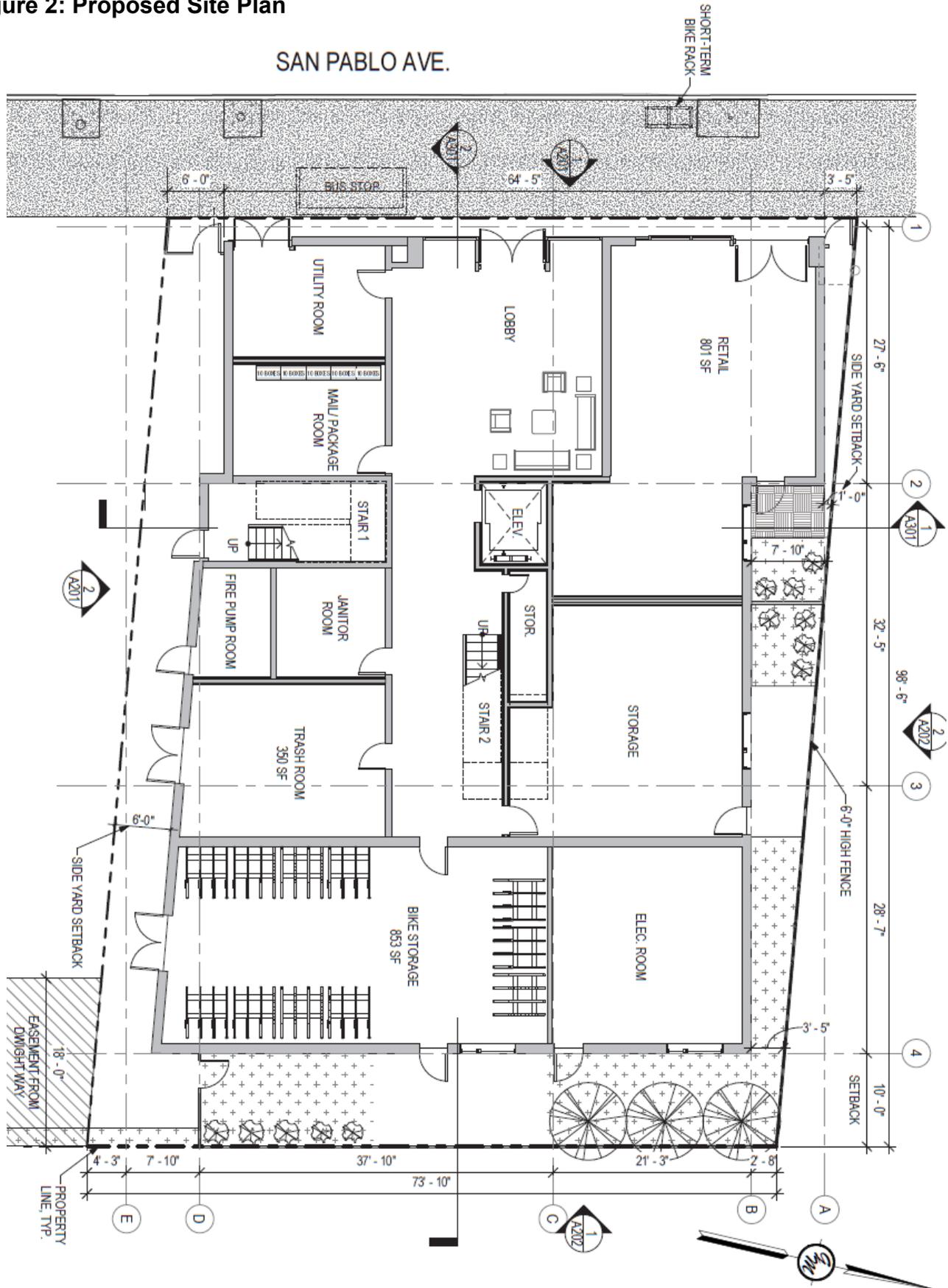


Table 1: Land Use Information

Location		Existing Use	Zoning Districts	General Plan Designations
Subject Property		Vacant	C-W	Avenue Commercial
Surrounding Properties	North	Two-Story Multi-Unit Apartment Building	C-W	Avenue Commercial
	South	Single-Story Commercial Building (retail) w/Surface Parking in rear	C-W	Avenue Commercial
	East	One- and Two-Story Single-Family Dwellings	R-2	Low Medium Density Residential
	West	Single-Story Commercial Buildings (car repair, beauty salon) & Surface Parking Lots	C-W	Avenue Commercial

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care and Affordable Housing Fee for non-residential projects (Resolution 66,617-N.S. and 66,618-N.S.)	No	The project includes 800 square feet of commercial space, which is less than the 7,500 square feet required to trigger these fees.
Affordable Housing Mitigations for rental housing projects (BMC Section 22.20.065)	No	The GLA project is considered a residential hotel which is exempt from this fee.
Coast Live Oaks	No	There are no coast live oaks on the site.
Creeks (BMC Section 17.08.045)	No	There is no creek or culvert defined by BMC Chapter 17.08 within 30' of the site.
Density Bonus	No	The project is not requesting a Density Bonus,
GreenPoint Rating Version 7.0	Yes	The project is designed to attain a score of 82 points equivalent to a silver rating.
Historic Resources	No	The land is a surface parking lot which is not listed on the City's inventory as an historic resource.
Housing Accountability Act (Gov't Code Section 65589.5(j))	No	The project is requesting a modification of the parking requirements and, therefore, does not comply with applicable, objective general plan and zoning standards, and thus section j of the HAA does not apply.
SB330, Housing Crisis Act of 2019	No	This project meets the definition of Housing Development project as defined in 65589.5, but was deemed complete in 2019 and is, therefore, not subject to the streamlining under Senate Bill 330.
Public Art on Private Projects (BMC Chapter 23C.23)	No	The project is not a proposed commercial or industrial structure, and does not include five or more dwelling units.
Rent Controlled Units	No	There are no rent controlled units on the property.
Residential Preferential Parking	No	The site is not in an RPP zone.
Seismic Hazards Mapping Act (Liquefaction, Fault Rupture, Landslides)	Yes	The site is located within an area susceptible to liquefaction as shown on the State Seismic Hazard Zones map. The applicant submitted a geotechnical report that was peer reviewed by the City's geotechnical consultant, who concluded that the potential for liquefaction has been satisfactorily addressed. Recommended conditions have been incorporated into conditions of approval.

Characteristic	Applies to Project?	Explanation
Soil/Groundwater Contamination	Yes	The site is located within the City's Environmental Management Area (EMA), but it is not listed on the Cortese List. A Phase Environmental Site Assessment (ESA) was submitted as part of the application which identified minimal contamination in connection with the subject property. Standard Conditions of Approval used to address a site within the EMA are included.
Transit and Bicycle Access	Yes	The site is on the San Pablo Avenue transit corridor, which is served by AC Transit Lines 72, 72R, 72M, and 802, and is three parcels north of Dwight Way, which is served by AC Transit line 36. The site is two blocks east of Ninth Street and one block south of Channing Way, both of which are designated Bicycle Boulevards.

Table 3: Project Chronology

Date	Action
December 6, 2018	Application submitted
May 16, 2019	DRC Preliminary Design Review Meeting (PDR): item continued
July 18, 2019	DRC PDR Meeting: Favorable Recommendation
October 28, 2019	Application deemed complete
November 26 2019	Public hearing notices mailed/posted
December 12, 2019	ZAB hearing: item continued off calendar
May 22, 2020	Application resubmitted
August 13, 2020	Public hearing notices mailed/posted
August 27, 2020	ZAB hearing

Figure 3: View of Project Site Looking East from San Pablo Avenue



Table 4: Development Standards

Standard BMC Sections 23.64.070-080		Existing	Proposed Total	Permitted/ Required
Lot Area (sq. ft.)		7,349	no change	---
Gross Floor Area (sq. ft.)		0	20,526	22,047 max.
Floor Area Ratio		---	2.79	3 max.
Group Living Accommodation Units			42	---
Building Height	Average	---	50'	25' min. / 50' max.
	Stories	---	4	2 min. / 4 max.
Building Setbacks	Front	---	0	0 min.
	Rear	---	10'	10' min.
	Left	---	1'	0 min.
	Right Side	---	6'	0 min.
Lot Coverage (%)		0	74	---
Usable Open Space (sq. ft.)		---	3,820	---
Parking	Automobile	---	0	13 ⁽¹⁾ (1 per 5 res. + 1 per manager + 1 per 500 sq. ft. commercial)
	Bicycle	---	2 short term 56 long term	1 min. (1 per 2K commercial sq. ft.)

(1) The Board may issue a Use Permit to modify the off-street parking requirements where it finds such modification promotes any of the general purposes of the District (BMC 23E.64.080.H)

II. Project Setting

A. Neighborhood/Area Description: The property is located along the along San Pablo Avenue (State Highway 123) corridor that features bus stops, private driveways, and parallel metered on-street parking in each direction. The area consists predominantly of one-story commercial buildings and one- to two-story residential and mixed-use buildings, interspersed with a few ground level parking lots. Four- to six-story mixed use buildings, constructed, under construction or entitled, are also interspersed along the San Pablo Avenue corridor. A predominantly single-family residential neighborhood lies adjacent to the east and west of the San Pablo Avenue corridor.

B. Site Conditions: The project site is comprised of two adjacent parcels (APN 56-1928-19 and 56-1928-20) totaling approximately 7,349 square feet, with approximately 74 feet of frontage along the east side of San Pablo Avenue. As part of the southern parcel is located 100 feet from Dwight Way, the entirety of the subject site is included in the Dwight and San Pablo designated node of the West Berkeley Commercial District. The site is currently a paved lot that has been used as parking for the adjacent commercial businesses to the south. The site can be currently accessed via an approximately 20-foot wide curb cut off of Dwight Way and 18-foot wide access easement that runs along the eastern side of the abutting property to the south, as well as well as through an approximately 20-foot wide curb cut off of San Pablo Avenue. In addition to the curb cut, two street trees, two street lamps, and an AC

Transit bus stop are located in the sidewalk along the project site frontage along San Pablo Avenue.

III. Project Description and Revisions in Response to ZAB December 2019

The project proposes to merge the two parcels and construct a four-story mixed use building. The proposed building would offer 42 residential units, operating as a Group Living Accommodations, specifically a Residential Hotel as defined in the Zoning Ordinance Section 23F.04:

Group Living Accommodations: A building or portion of a building designed for or accommodating Residential Use by persons not living together as a Household, but excluding Hospitals, Nursing Homes and Tourist Hotels.

Hotel, Residential: A building which provides rooms for rent for residential purposes, including Single Residential Occupancy (SRO) Hotels. Residential Hotels are a type of Group Living Accommodation.

Each residential floor (floors 2 through 4) would include community kitchens and a shared outdoor balcony, with the three eastern facing units on the fourth floor having a private balcony. Common usable open space would also include an approximately 1,800-square-foot roof top terrace located on the West side (facing San Pablo Avenue). A shared laundry room and toilet facilities would also be located on the roof. Each unit would be single occupancy for a total of 42 residents. Consistent with uses permitted in a designated node, the ground floor would include approximately 800 square feet of retail/commercial space, the entrance lobby with mail room, utility rooms, storage, trash room and an 853-square-foot bike storage room with secure parking for 56 bicycles and a bike repair station. Due to an existing AC Transit bus stop and shelter located and the southwest corner of the San Pablo frontage, the lobby and commercial entrances are shifted to the northwest. The indoor bike parking area can be accessed via the 18-foot wide easement from Dwight Way to the back southeast corner of the building.

To address the comments and concerns raised at the December 12, 2019ZAB meeting, the following modifications have been made and information provided:

Design: The current plan set includes revisions incorporated many of the suggestions raised by ZAB. On the ground floor, the mail/pack room and heat pump/hot water storage rooms were switched, placing the mail room with a window replacing the utility doors along the San Pablo frontage. Also, a bathroom has been added to the ground floor adjacent to the janitor room for staff use; and a bike repair station has been added to the bike storage room. See plan set page A111 for the floor plan and A201 for the western elevation.

The applicant looked into the possibility of reducing the room count and adding studies, but found greater inefficiencies and loss of space due to the circulation requirement, which lessened the communal intent of the building design. However, the common rooms on each residential floor were revised to increase usability by increasing shared storage along the north wall, providing a more flexible furniture layout and more fixtures including two sinks, two ranges, two dishwashers, and two refrigerators. Additional, the electrical room has been moved to the south to create a corridor and better separation between the

room on the east side and the common space. (See plan set sheets A112, A113 and A402.).

Per ZAB's request, the plan now show furnishings in the typical room plan which are to be provided by the owner. This includes added features for additional storage including shelves, hooks, and a hanging peg-board. Furnishings and appliances include a full size bed, a built-in closet, a folding desk and chair, a microwave and an under counter refrigerator. To address ZAB's sanitation concerns, a toilet with an integrated sink over the tank has been included in the bathroom to provide in-room hand washing. (See plan sheet A401.)

On the roof plan, per the neighbors' request, the two roof decks have been consolidated into one larger deck now located on the west side of the building. Also, a shared bathroom has been added to the roof plan, and the laundry room has been enlarged to include a washer/dryer ration of over 1 per 8 residents. (See plan sheet A113.)

Operations and Safety: The majority of the comments at the ZAB meeting concerned the operations of the building. In order to best address these comments, the Owner has retained the services of Common, one of the country's premiere property management firms specializing in GLAs and co-living communities. Common operates over 48 properties with over 1,600 residents in seven metropolitan areas, including the Bay Area, 80% of which are non-traditional housing typologies, including GLAs designed for independent professionals (<https://www.common.com/real-estate-partners>). In collaboration with Common, an operation plan for 2435 San Pablo has been outlined. This plan includes an overview of staffing and responsibilities; tenant support services, including 24/7 assistance with maintenance and technical issues; processes ensuring safety and providing conflict resolution, if needed; general policies including standards leases describing pets (not allowed, except service dogs), guests (quantity and frequency), community activities, and programs to encourage tenant interaction. The operations plan also provides a description of the lease options—12 months is the length of the primary lease option—and the process for optimizing lease renewal. See Attachment 3 for a description of the management plan.

Affordability: Residential hotels are, per Ordinance, one of several types of GLAs that are exempt from the Affordable Housing Mitigation Fee. The project is, however, per the applicant statement, affordable by design. Compared to a studio apartment that includes an individual kitchen, the GLAs with shared kitchens, will rent for approximately 25% less. This figure is derived from a traditional studio costing \$2,400 a month, plus an addition \$240 for utilities wifi/cable, laundry, and furnishings. The expected rent for a GLA room will be approximately \$2,000 a month with utilities, wifi/cable, laundry, cleaning services and furnishings included. Not only will the GLA be more affordable, it will provide an array of inclusive amenities (utilities, furnishings, cleaning service, etc.) that are not typically provided in the Berkeley rental market.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting this application to the City, the applicant erected a yellow pre-application poster at the project site and invited interested neighborhood organizations, as well as owners and occupants within 300

feet of the project, to a community meeting. The meeting was held on December 3, 2018 and attended by approximately ten members of the public.

Prior to and at the duly noticed December 2019 ZAB meeting, several neighbors sent in comments and spoke at the hearing to express concerns regarding traffic impacts, parking impacts, massing, neighborhood compatibility, and increased density; staff also received comments supporting new housing.¹

On August 13, 2020, the City mailed public hearing notices to property owners and occupants within a 300-foot radius of the project site, and to interested neighborhood organizations. In addition City staff posted notices within the neighborhood in three locations. As of the writing of this staff report, staff has not received any further public correspondence.

B. Committee Review: The Design Review Committee (DRC) held a preliminary review of the project on May 16, 2019 and July 18, 2019. At the July 18th meeting the DRC made a favorable recommendation to ZAB (5-1-0-1) with the following conditions and recommendations:

Conditions:

- *Trellis shall be better integrated into the design.*
- *Ground floor design shall be further developed at FDR for more color and interest. Show required louvers accurately.*
- *Demonstrate views to neighborhood from south balconies when this comes to ZAB.*
- *Provide revised landscape plan and plant palette at FDR showing both active and quiet open space.*
- *Show closets in units when this comes to ZAB.*

Recommendations:

Building / Façade Design

- *Review colors at Final Design Review to ensure the best fit with the neighborhood.*
- *Green Point checklist appears to be meager.*
- *Consider color on the north elevation as well.*
- *Trellis should be visible from the street for added detail and interest.*

Ground Floor Design

- *Ground floor tile should add more color and interest.*
- *There is still some concern that the trash room may not be the best use of that street façade.*
- *Consider a shadow box / display window for live/work unit.*
- *Continue to develop the wall behind the AC transit shelter for more color and interest; Consider water feature, mosaic or other art element.*

¹ Correspondence received prior to and for the December 12, 2019 ZAB meeting can be found:

- https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2019-12-12_ZAB_ATT4_0_2435%20San%20Pablo_Correspondence%20Received.pdf
- https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2019-12-12_ZAB_Supplemental%20Item_Rd1_0_2435%20San%20Pablo.pdf
- https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2019-12-12_ZAB_Supplemental%20Item_Rd2_0_2435%20San%20Pablo.pdf
- https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2019-12-12_ZAB_Late%20Item_0_2435%20San%20Pablo.pdf

Residential Floors/ Common Areas

- *Recommend adding more storage, possibly near stairwells.*
- *Staff reports shall reflect use as GLA, not co-living.*

Open Space / Landscape Plan

- *Planters at roof deck should have a more substantial edge. Railing design and plants proposed shall have further review at FDR.*
- *East roof deck is good, but should be for quiet uses only. Provide a view study from roof deck when this comes to ZAB.*
- *Trees on the ground floor near east property line should be as large as possible for added privacy.*

V. Issues and Analysis

A. 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.

The project is requesting a modification of the parking standards so Paragraph j of the HAA does not apply.

B. Required C-W Findings for Approval: In order to approve any Use Permit in the C-W District, the ZAB must make the findings, pursuant to Berkeley Municipal Code Section 23E.64.090.B, that the proposed or structure is:

Consistent with the purposes of the District

Staff Analysis: The project is a mixed-use project that would support local commercial uses by adding 42 new GLA units and 800 square feet of commercial space to a site that is well served by public transit. As a mixed-use building that would front on San Pablo Avenue and replace a surface parking lot, the project would realize the City's plans for redeveloping underutilized sites to increase the quality of the built environment and provide new housing and commercial opportunities. The increased population, new street level commercial use, and increased street activity would assist to extend the attractiveness and vitality of San Pablo Avenue.

Compatible with the surrounding uses and buildings

Staff Analysis: Though taller than surrounding development, the 50-foot tall project meets the District's height standard and would be consistent with the new development pattern of recently approved four- to six-story mixed use buildings along San Pablo Avenue. As the project site abuts an R-2 residential zone to the

east, the proposed building is constructed with the required 10-foot required rear yard setback and is stepped back an additional 10 feet 3 inches on the fourth floor to further reduce the massing adjacent to the residential neighbors to the east. The proposed predominantly residential uses are permissible in the District and would help revitalize the existing neighborhood commercial business.

Consistent with the adopted West Berkeley Plan

Staff Analysis: The project would be consistent with the West Berkeley Plan because it would enhance the San Pablo Avenue commercial corridor by providing a new live/work space fronting San Pablo Avenue. The project would also visually improve this stretch of San Pablo Avenue by replacing a surface parking with a new mixed-use building of four stories along the San Pablo Avenue frontage and removing a curb cut, thereby strengthening the “streetwall” of buildings along the corridor. (See also Section H below.)

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

Staff Analysis: The project would enhance the urban fabric of the street and area by replacing a surface parking lot with a new mixed use building. The project sponsor worked with AC Transit and siting of the bus stop, resulting in the provision of new commercial space and the entrance to the residential lobby along the street frontage.

For projects which include construction of new floor area, providing an intensity of development which does not underutilize the property

Staff Analysis: The project is built to the 50-foot height limit of the District and is providing a 2.79 FAR where a maximum of 3 is permissible by the C-W development standards. The project is not underutilizing the property.

Capable of meeting any applicable performance standards for off-site impacts

Staff Analysis: The project’s occupancy and use would not generate noise, glare, dust, vibration, or hazardous materials, etc. that would be inconsistent with adjacent residential uses. Additionally, as a mixed-use development, it would not involve any manufacturing or industrial activities with the potential to generate off-site impacts typically involving regulation through performance standards. Potential construction period impacts, including noise and dust control, are subject to standard conditions of approval as set forth in Attachment 1, Findings and Conditions.

Not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply

Staff Analysis: The project is a residential hotel type GLA that would encourage alternative modes of transportation by providing no vehicle parking on site, by providing secure bicycle parking for 56 bicycles, and by including a Transportation Demand Management (TDM) condition of approval that includes provision of the

cost equivalent to an unlimited local bus pass to each residential unit. As part of the project submittal, the applicant submitted an On-Street Parking Occupancy Survey that determined that at the most impacted hour, 5:00 to 6:00 p.m. on a week day, approximately 19% of the 295 on-street parking spaces located within about a block of the project site were available, which is both sufficient for residents who choose to own vehicles, as well as not so plentiful as to encourage car ownership. The project is conditioned to work with Traffic Engineering to request a white curb for deliveries and shared mobility.

- C. Designated Node Finding:** To approve any Use Permit for a use and/or structure within a designated node, pursuant to BMC Section 23E.64.090.C, the Board must find the use supports the development of strong retail commercial, pedestrian oriented environment at the node. Staff believes this finding can be met as the project includes new retail space with a store entrance and display area fronting San Pablo Avenue. To accommodate the existing bus shelter, the commercial entrance has been shifted to the northern end of the node thereby providing a more prominent display area that would allow passerby and patrons waiting for the bus a view of the items in the display window, thus serving to activate the pedestrian zone of the building at all times. The addition 42 new residents within the node would provide a greater volume of pedestrian activity and clientele for new and existing businesses in the area.
- D. Parking Waiver:** Pursuant to BMC Section 23E.64.090.D, in order to approve a Use Permit for reduction of the otherwise applicable parking requirement on a mixed use property containing residential uses, the Board or the Zoning Officer must find that the reduction in the parking requirement is not expected to cause a serious shortage of parking in the area. As described in staff analysis in Section V.B.7 above, the project is a co-living GLA that would encourage alternative modes of transportation by providing no vehicle parking on site, by providing secure bicycle parking for 56 bicycles, and by including a Transportation Demand Management (TDM) condition of approval that includes provision of the cost equivalent to an unlimited local bus pass to each residential unit. As part of the project submittal, the applicant submitted an On-Street Parking Occupancy Survey that determined that at the most impacted hour, approximately 19% of the 295 on-street parking spaces located within about a block of the project site were available, which is both sufficient for residents who choose to own vehicles, as well as not so plentiful as to encourage car ownership. The project is conditioned to work with Traffic Engineering to request a white curb for deliveries and shared mobility.

In addition, the project is in a transit rich neighborhood: North Berkeley BART station is located a little more than one mile from the project site. This station is located on the Richmond-Fremont Line which connects to other destinations in the Bay Area at the MacArthur Station. There is also direct service to Downtown San Francisco as well as continuing service to the San Francisco Airport. There is extensive bus transit service provided by Alameda-Contra Costa County (AC) Transit along San Pablo Avenue. Routes 72, 72M, 72R and all-nighter Route 802 all operate directly adjacent to the project site. Please note the nearest bus stop is directly adjacent to the site on San Pablo Avenue. Route 36 also operates along Dwight Way less than one block south of the site.

For all of the above reasons, the parking supply provided by the project relative to projected demand would not be expected to be detrimental.

- E. Rooftop projections:** Pursuant to BMC Section 23E.04.020.C, domes, turrets, and other similar architectural projections as well as mechanical penthouses, elevator equipment rooms, and other non-habitable structures can exceed the district height limit so long as the structures may not represent more than 15% of the average floor area of all of the building's floors. The project includes such structures including a trellis, and a rooftop penthouse that include two stairways, an elevator, and a laundry room, which is defined in the Zoning Ordinance as non-habitable space. The total area of the proposed rooftop projects is 808 square feet or 15% of the average floor plate size of 5,396 square feet.
- F. General Non-Detriment Finding:** Pursuant to Section 23B.32.040.A of the Zoning Ordinance requires 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.
- 1. Shadows:** The proposed four-story building would be taller than the existing buildings surrounding it and would cast new shadows upon them, as shown in the Shadow Study prepared by the applicant (see Sheets G051 through G053 in the plan set in Attachment 2).

In the winter, when shadows are the longest, new shadows would be cast on the southern façades of the two two-story multifamily buildings to the north of the subject site (2429 and 2433 San Pablo Avenue) during the morning through early afternoon hours. In the afternoon hours through sunset, new shadows would be cast on the rear yard areas, and the rear and southern façades of four dwellings to the east of the subject site (2430, 2432, 2434, and 2438 Byron Street).

In summer, the project would shade the confronting commercial building across San Pablo Avenue (2442 San Pablo Avenue) during the morning hours. At noon there would be shading in portions of the side yard of the neighboring building to the north, and during the afternoon hours new shadows would affect the rear yards and rear facades of three dwellings located to the east of the subject site (2438, 2442, and 2444 Byron Street).

Given the existing site is a surface parking lot in a zoning district that permits greater heights, any new construction at the site would have increased shadow impacts upon the dwelling units to the east. The shadows that would be created by the proposed project are lessened due to the step backs on the eastern side of the building. This degree of shading is to be expected along the San Pablo corridor and is not deemed detrimental.
 - 2. 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. In addition, due to the abutting residentially zoned district to the east, staff has included the standard condition of approval for construction hours typically reserved for residential district projects only. The inclusion of the conditions of approval ensure 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.

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

Staff Analysis: The proposed project is an infill development project that would add 46 GLA units, one live-work unit, and one dwelling unit along a busy commercial corridor. The project would replace a surface parking lot on an underutilized site, providing additional housing opportunities in West Berkeley.

3. 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.
4. Policy UD-17 – Design Elements: In relating a new design to the surrounding area, the factors to consider should include height, massing, materials, color, and detailing or ornament.
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.

Staff Analysis: The project is consistent with the applicable zoning standards for the C-W District. While this area has been characterized by low-scale, commercial auto-oriented buildings, the project's design and scale are supported by the policy and direction of the West Berkeley Plan and is consistent with new development patterns in this area of San Pablo Avenue.

6. Policy LU-27 – Avenue Commercial Areas: Maintain and improve Avenue Commercial areas, such as University, San Pablo, Telegraph, and South Shattuck, as pedestrian-friendly, visually attractive areas of pedestrian scale and ensure that Avenue areas fully serve neighborhood needs as well as a broader spectrum of needs.

Staff Analysis: The project site is currently a surface parking lot with an approximately 20-foot curb cut off of San Pablo Avenue. The elimination of the existing driveway would reduce conflicts between pedestrians and drivers and create a more pedestrian-friendly environment along this stretch of San Pablo

Avenue. In addition, the construction of the new development would contribute to the residential population, and therefore, pedestrian activity in the area.

7. Policy H-12 – Transit-Oriented New Construction: Encourage construction of new medium- and high-density housing on major transit corridors and in proximity to transit stations consistent with zoning, applicable area plans, design review guidelines, and the Climate Action Plan.
8. Policy T-16 – Access by Proximity, Action B: Encourage higher density housing and commercial infill development that is consistent with General Plan and zoning standards in areas adjacent to existing public transportation services.
9. Policy T-16 – Access by Proximity, Action E: In locations served by transit, consider reduction or elimination of parking requirements for residential development.

Staff Analysis: The project would be well-served by transit. North Berkeley BART station is located a little more than one mile from the project site. This station is located on the Richmond-Fremont Line which connects to other destinations in the Bay Area at the MacArthur Station. There is also direct service to Downtown San Francisco as well as continuing service to the San Francisco Airport. There is extensive bus transit service provided by Alameda-Contra Costa County (AC) Transit along San Pablo Avenue. Routes 72, 72M, 72R and all-nighter Route 802 all operate directly adjacent to the project site. Please note the nearest bus stop is directly adjacent to the site on San Pablo Avenue. Route 36 also operates along Dwight Way less than one block south of the site. Due to the amount of transit in the immediate neighborhood and to encourage use of the available transit, the project proposes to eliminate all on-site parking from the development

10. Policy T-43 – Bicycle Network, Action C: Encourage, and when appropriate, require new multi-family residential developments to provide secure locker space for resident bicycles.

Staff Analysis: The project would provide a 56-space bicycle storage room and a bike repair station on the ground floor.

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

Staff Analysis: As noted in the analysis in Subsection E, Shadows, the shadow study shows that the proposed project would cause an increase in shading on the neighboring residential buildings to the east. However, these impacts would be consistent with those expected from a new mixed-use building at the site and the shadows would not be detrimental.

H. West Berkeley Plan Consistency: The West Berkeley Area Plan, adopted in 1993, also contains several policies applicable to the project, including the following:

1. Land Use Goal 4: Assure that new development in any sector is of scale and design that is appropriate to its surrounding, while respecting the genuine economic and physical needs of the development.

2. Housing & Social Services Goal 4: Encourage appropriately scaled and located housing development

Staff Analysis: As noted above, though taller than surrounding development, the 50-foot tall project meets the District's height standard and would be consistent with the new development pattern of 4- to 6-story mixed use buildings along San Pablo Avenue. In addition, as the project site abuts an R-2 residential zone to the east, the proposed building is constructed with the required 10-foot required rear yard setback and is stepped back an additional 10 feet 3 inches on the fourth floor to further reduce the massing adjacent to the residential neighbors.

3. Economic Development Goal 5: Continue to create employment opportunities, especially for Berkeley and West Berkeley residents.

Staff Analysis: The proposed project is intended to activate the commercial corridor along San Pablo Avenue and bring new residents to this West Berkeley neighborhood. The proposed commercial space would create an employment opportunity for residents in the area.

4. Transportation Goal 1: Improve traffic flow and air quality by reducing reliance on single occupant automobiles, by encouraging use of alternative means of transportation.

Staff Analysis: The project is located in a transit rich corridor with an AC Transit bus stop along the project frontage. Consisting of 42 GLA units, the project would encourage alternative modes of transportation by providing no vehicle parking on site, by providing secure bicycle parking for 56 bicycles, and by including a Transportation Demand Management (TDM) condition of approval that includes provision of the cost equivalent to an unlimited local bus pass to each residential unit. As part of the project submittal, the applicant submitted an On-Street Parking Occupancy Survey that determined that at the most impacted hour, approximately 19% of the 295 on-street parking spaces located within about a block of the project site were available, which is both sufficient for residents who choose to own vehicles, as well as not so plentiful as to encourage car ownership.

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 ZP2018-0229 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

VII. Recommendation

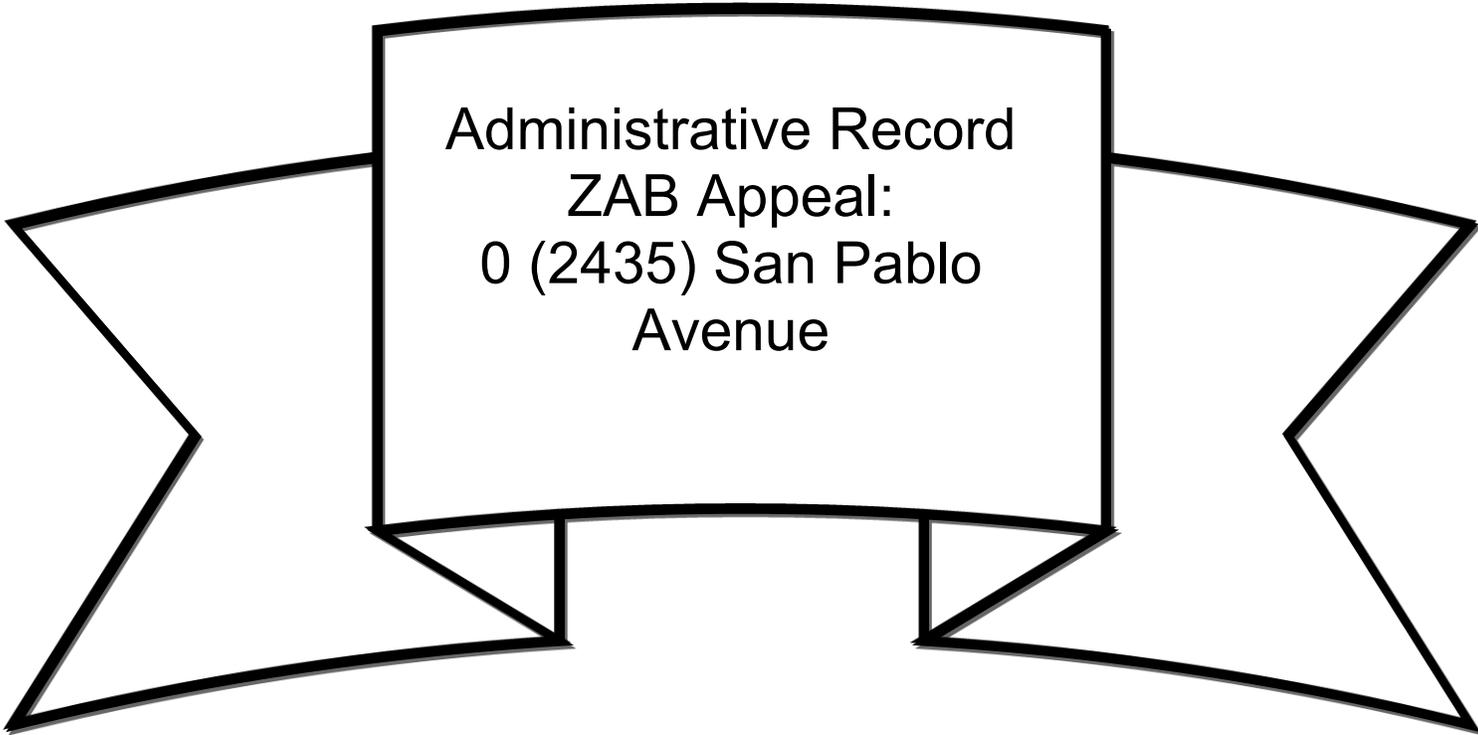
Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments

Board **APPROVE** Use Permit #ZP2018-0229 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, dated May 22, 2020
3. Management Plan
4. Correspondence received
5. Notice of Public Hearing

Staff Planner: Leslie Mendez, Senior Planner, LMendez@cityofberkeley.info, (510) 981-7426



Administrative Record
ZAB Appeal:
0 (2435) San Pablo
Avenue

This attachment is on file and available for review upon request from the City Clerk Department, or can be accessed from the City Council Website.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley, City Council's Web site
<http://www.cityofberkeley.info/citycouncil/>

**NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL
BERKELEY UNIFIED SCHOOL DISTRICT BOARD ROOM,
1231 ADDISON STREET
PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY**

ZAB APPEAL: USE PERMIT #ZP2018-0229, 0 (2435) SAN PABLO AVENUE

Notice is hereby given by the City Council of the City of Berkeley that on **THURSDAY JANUARY 21, 2021 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of a decision by the Zoning Adjustments Board to approve Use Permit #2018-0229, to construct a four-story, 20,526-square-foot, mixed-use building with 42 Group Living Accommodation rooms and 800 square feet of ground floor commercial/retail space on two vacant parcels.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **JANUARY 14, 2021**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Leslie Mendez, Project Planner at (510) 981-7426. Written comments should be mailed to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704 or emailed to council@cityofberkeley.info, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Mark Numainville, City Clerk

Mailed: by January 7, 2021

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the

ATTACHMENT 6

City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available by request from the City Clerk Department and posted on the City of Berkeley webpage prior to the public hearing.

