

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  
MARCH 30, 2023

## 2403-07 San Pablo Avenue Berkeley Moshav

Use Permit # ZP2021-0220 to demolish a one-story commercial building and construct a four-story mixed-use development comprised of a 603 square-foot retail tenant space and 36 dwelling units (condominium), with 19 automobile parking spaces, 42 bicycle parking spaces, and a maximum height of 50 feet.

### I. Background

#### A. Land Use Designations:

- General Plan: AC (Avenue Commercial)
- Zoning: C-W (West Berkeley Commercial District)

#### B. Zoning Permits Required:

- Use Permit to demolish a non-residential building, under Berkeley Municipal Code (BMC) Section 23.326.070
- Use Permit to construct a mixed-use development of more than 20,000 square feet, under BMC Section 23.204.140(B)(2)(a)
- Use Permit to construct new gross floor area, under BMC Section 23.204.030(B)(1)
- Administrative Use Permit to allow for roof top projections that exceed the allowed height limits, under BMC Section 23.304.050(A)

- 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 Section 21000, et seq. and California Code of Regulations, Section 15000, et seq.) pursuant to CEQA Guidelines Section 15332 ("Infill Development"). 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 parcel within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
- The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Study prepared for the project was reviewed by the City's Transportation Division which concurred with the findings that the project meets the City's vehicle miles traveled (VMT) screening criteria and would result in a less-than-significant impact to VMT; therefore, further VMT analysis is not required. 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.

**D. Parties Involved:**

- Applicant                      Adriana Urbistondo Perez, Studio KDA, Berkeley, CA
- Property Owner                Robert Studley, Albany, CA

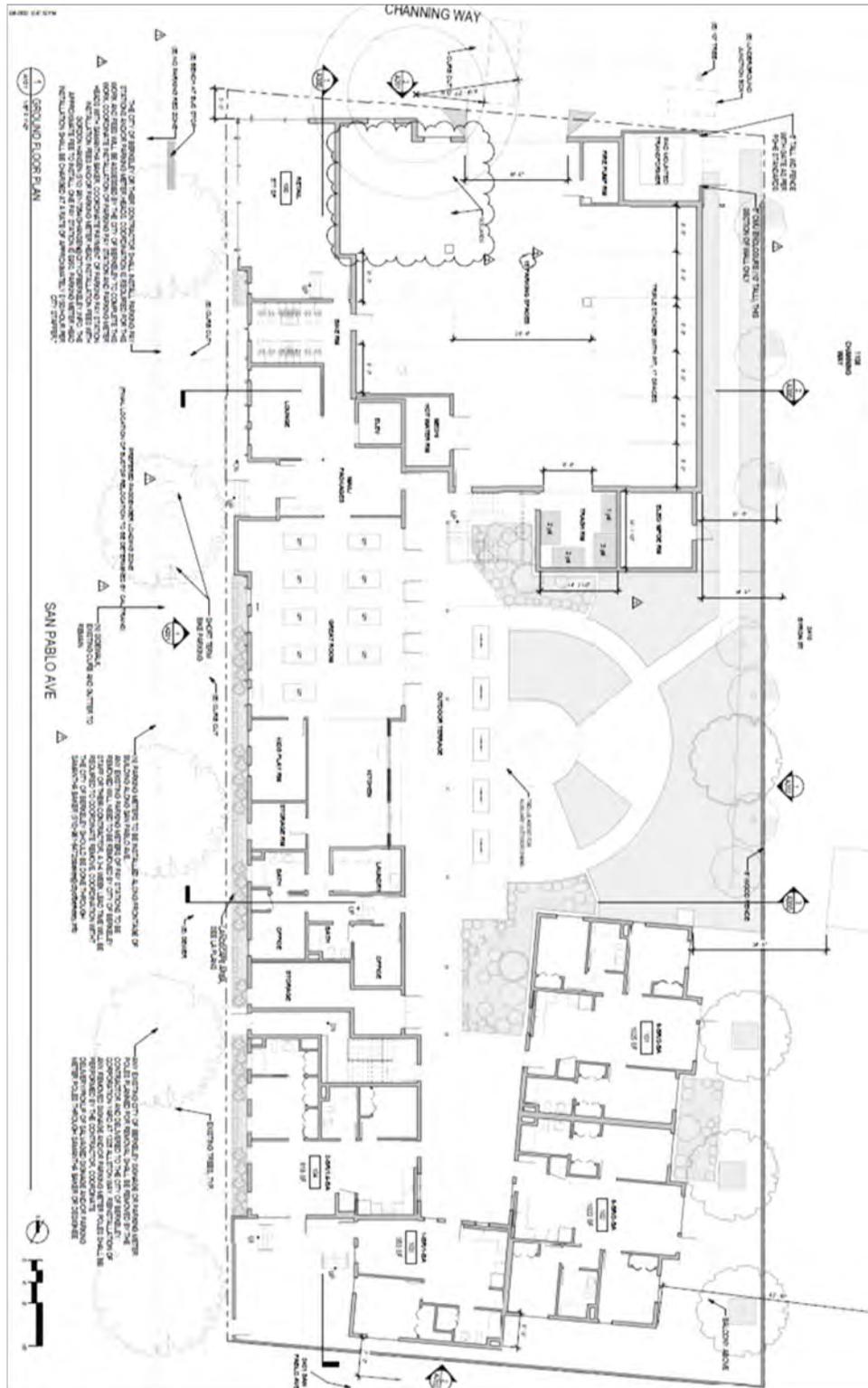
**Figure 1: Vicinity Map**



*\*map not to scale*

- Zoning Districts**  
C-W: West Berkeley Commercial  
R-1A: Limited Two-Family Residential  
R-2: Restricted Two-Family Residential

Figure 2: Site Plan



**Figure 3: Proposed Elevations**

*West Elevation*



*East Elevation*



**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Vacant – commercial building and accessory structures	C-W	Avenue Commercial
Surrounding Properties	North	Commercial (furniture store)		
	South	Multifamily building		
	East	Single-family dwelling	R-2	Restricted Two-Family Residential
	West	Commercial (salvage store)	C-W	Avenue Commercial

**Table 2: Special Characteristics**

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This fee applies to net new nonresidential floor area over 7,500 square feet. The proposed project provides 603 square feet of commercial floor area and is not subject to this requirement.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	Yes	Project would provide three Below Market Rate (BMR) units at the Very Low-Income (VLI) rate, and pay a fee to satisfy the requirements of BMC Section 22.20.065.
Creeks	No	The site is not located near a mapped creek or a creek culvert.
Density Bonus	No	The project is not a density bonus project.
Natural Gas Prohibition (Per BMC 12.80.020)	Yes	This project is an application for new construction and was submitted after January 1, 2020; therefore it is subject to the Natural Gas Prohibition.
Historic Resources	No	The project site is not designated as a Landmark by the City and has not previously been surveyed individually for historical significance under local, state, or federal historic significance criteria.
Housing Accountability Act (Gov't Code Section 65589.5(j))	Yes	The project would develop 36 units, and meets the definition of a "Housing Development Project" per Government Code Section 65589.5(h). <sup>1</sup> The project complies with applicable, objective general plan and zoning standards, and thus section (j) of the Housing Accountability Act applies. See Section III.B of this report for additional discussion on compliance with the Housing Accountability Act.
Housing Crisis Act of 2019 (SB330)	Yes	The project meets the definition of a "Housing Development Project" per Government Code

<sup>1</sup> Government Code Section 65589.5(h)(2) "Housing development project" means a use consisting of any of the following: (A) residential units only, (B) mixed-use developments consisting of residential and nonresidential uses in which at least two-thirds of the square footage is designated for residential use, and (C) transitional or supportive housing.

		Section 65589.5(h). Therefore, SB 330 applies. See Section III.A of this report for additional discussion on the applicability of SB330 sections. .
Oak Trees	No	There are no oak trees on the project site.
Rent Controlled Units	No	There are no dwelling units on site.
Residential Preferred Parking (RPP)	No	The project is not eligible for RPP permits per BMC Section 14.72.080(C)(1), no permits shall be issued to residents in newly constructed residential units.
Seismic Hazards (SHMA)	Yes	The site is located within an Environmental Management Area and Liquefaction Zone; therefore, it is subject to standard conditions of approval.
Soil/Groundwater Contamination	No	The project site is not listed on the Cortese List (an annually updated list of hazardous materials sites pursuant to Government Code Section 65962.5). Per Section 15300.2 of the CEQA Guidelines, a categorical exemption may be used on sites not listed on the Cortese List.
Transit	Yes	The site is located at the corner of San Pablo Avenue and Channing Way. The site is served by Alameda County (AC) transit lines 72, 72M, and 802. The site is also proximate to cross-town AC transit line 36. Parallel to the site, across San Pablo Avenue, is a Bay Wheels bike share location.

**Table 3: Project Chronology**

<b>Date</b>	<b>Action</b>
December 15, 2021	Application submitted
January 10, 2022	Application deemed incomplete
February 4, 2022	Application resubmitted
February 25, 2022	Application deemed incomplete
March 11, 2022	Application resubmitted
April 6, 2022	Application deemed incomplete
June 7, 2022	Application resubmitted
July 6, 2022	Application deemed incomplete
August 24, 2022	Application resubmitted
September 23, 2022	Application deemed incomplete
December 12, 2022	Application resubmitted
December 23, 2022	Application deemed complete
August 4, 2022	LPC hearing
August 18, 2022	DRC hearing
March 16, 2023	Public hearing notices mailed/posted
March 30, 2023	ZAB hearing

**Table 4: Development Standards**

Standard		Existing	Proposed Total	Permitted/ Required
BMC Sections 23.204.140				
Lot Area (sq. ft.)		23,122	No change	N/A
Gross Floor Area (sq. ft.)		8,252	53,013	N/A
Floor Area Ratio		0.36	2.29	3 max
Dwelling Units	Total	0	36	N/A
	Affordable	0	0	N/A
Building Height	Average (ft.)	15	50	50 max
	Maximum (ft.)	15	50	50 max
	Stories	1	4	4 max
Building Setbacks (ft.)	Front	0	No change	N/A
	Rear	10	No change	10 or 10% of lot depth
	Left Side (interior)	5	3	0 min
	Right Side (street)	0	No change	0 min
Lot Coverage (%)		36	56	100 max
Usable Open Space (sq. ft.)		N/A	10,199	1,440min
Parking	Automobile	0	19	19 max
	Bicycle	0	36	27 min

## II. Project Setting

**A. Neighborhood/Area Description:** The project site is located along the San Pablo Avenue commercial corridor, within the West Berkeley Plan Area and is situated at the intersection of Channing Way and San Pablo Avenue. The commercial block on which the site is located, between Channing and Dwight Way, is characterized by two-story multifamily buildings, automotive and retail uses. Several sites along this section of San Pablo Avenue have current applications for redevelopment in progress. The majority of these projects are infill, mixed-use developments, that propose residential and commercial floor area. The rear of the project site (east) abuts a residential zoning district comprised of single- family dwelling units and duplex units. The project site is proximate to several parks (Strawberry Creek, San Pablo, and Aquatic), multimodal transit routes, and commercial areas (Fourth Street and University Avenue).

**B. Site Conditions:** The project site spans two lots, is rectangular, relatively flat, with about 232 feet of frontage along San Pablo Avenue and about 100 feet of frontage along Channing Way. The site is currently developed with a one-story commercial

building and several accessory structures. The lot is accessed by two curb cuts fronting San Pablo Avenue and one curb cut along Channing way.

### III. Project Description

**A. Proposed project:** The proposed project would demolish a single-story commercial building and several accessory structures, to construct a new mixed-use building with the following components:

- 36 condominium, dwelling units (14 three-bedroom, 18 two-bedroom, and 4 one-bedroom) for a total of 82 bedrooms
- 603 square feet of commercial floor area
- 36 long-term bicycle parking spaces onsite
- Residential amenities on the ground floor include communal rooms, kids play room, and on-site laundry facilities
- 10,199 square feet of open space (private balconies, third floor terrace, ground floor courtyard)

### IV. Community Discussion

**A. Neighbor/Community Concerns:** Prior to submitting this application to the city, the applicant invited interested neighborhood organizations as well as owners and occupants within 300 feet of the project to a project preview meeting. The meeting was held on December 6, 2021, and attended by 10 people (meeting minutes are included as Attachment #4). A pre-application poster was posted by the applicant in December 13, 2021. On March 13, 2023, the City mailed public hearing notices to property owners and occupants, and to interested neighborhood organizations and the City posted notices within the neighborhood in three locations. At the time of this writing, staff has received 10 communications regarding the project.

**B. Design Review Committee:** On August 18, 2022, the Design Review Committee (DRC) reviewed the current project design for the project, gave a favorable recommendation on the design as presented, and provided the following conditions and recommendations for Final Design Review (FDR):

#### Conditions

- Provide a livelier San Pablo elevation, with an emphasis on a more pedestrian-friendly ground floor. Consider wider and more recessed windows or additional details, as well as more color.
- Provide all exterior details at FDR, including railings and windows.
- Provide parking garage door details at FDR, and include any mechanical specifications.
- Provide a takeout window in the commercial space.

#### Recommendations

- As presented, the east elevation is richer and friendlier. Recommend bringing some of that inner courtyard quality to the San Pablo elevation.

- Consider recessing windows on all facades, or at least a deeper sill line, but most-importantly on the San Pablo elevation.
- Use the landscaped setback on San Pablo frontage for a livelier plant selection.
- Recommend more adaptability for easier retrofit to accessible units as needed for aging in place.
- Permeable pavers recommended between trees and sidewalk. Staff and applicant to check with both Public Works and Caltrans.
- 4<sup>th</sup> floor open space is near bedrooms windows. Management should monitor that open space accordingly.

**C. Landmarks Preservation Commission:** The project would demolish one commercial building that is over 40 years in age. Pursuant to BMC Section 23.326.070(C)(1), the proposed demolition was brought before the Landmarks Preservation Commission (LPC) for review. A historic resources evaluation of the property (Preservation Architecture January 24, 2022) concluded that the existing buildings do not meet the criteria for the California/National Register or a City of Berkeley Landmark. At the August 4, 2022, LPC Meeting, the LPC took no action to initiate these properties for local register consideration (i.e., Landmark or Structure of Merit designation).

## V. Issues and Analysis

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

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

The March 30, 2023 ZAB hearing represents the first public hearing for the proposed project since the project was deemed complete. The City can hold up to four additional public hearings on this project, if needed. One of those hearings must be reserved for any possible appeal to the City Council.

2. Government Code §65913.10(a) requires that the City determine whether the proposed development project site is a historic site at the time the application for

the housing development project is deemed complete. The determination as to whether the parcel is a historic site must remain valid during the pendency of the housing development project, unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.

As discussed in an historic resource evaluation prepared for the property in January 2022, the property does not appear to be historically significant and therefore is not eligible for listing on the California Register of Historical Resources or as a City of Berkeley Landmark or Structure of Merit. The demolition referral was heard at the August 4, 2022 LPC Agenda, and no action was taken. Therefore, it was determined the site is not a historic resource. Further, standard conditions of approval have been included to halt work in case of any unanticipated discovery of archeological, paleontological, or tribal cultural resources.

3. Government Code §65950(a)(5) requires a public agency to approve or disapprove a project within 60 days from the determination that the project is exempt from the CEQA. The project was deemed complete on December 23, 2022. Should ZAB determine the application is categorically exempt from CEQA at the March 30, 2022 public hearing, the application must be approved or disapproved by May 30, 2023.

**B. Housing Accountability Act Analysis:** The Housing Accountability Act (HAA), California Government Code Section 65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

1. The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and
2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

The proposed project and rooftop elements above the district height limit, complies with applicable, objective general plan and zoning standards.

The project complies with the applicable general plan and zoning standards. The ZAB still has the discretion to approve, deny or modify the request according to the zoning findings, provided the action does not reduce the project density or effectively deny the project by making it infeasible, unless the ZAB is also able to make the required findings for denial set forth under Section 65589.5(j), above. Staff is not aware of specific adverse impacts that could occur with the construction of the of the project.

**C. Demolition of Non-Residential Building:** As required by BMC Section 23.326.070(D), the ZAB must find that the demolition of a non-residential building will not be materially detrimental to the commercial needs and public interest of the impacted neighborhood and that the demolition is required to allow a proposed new building. The proposed project requires the demolition of the existing commercial building and several accessory structures, in order to construct a new mixed-used

use building comprised of 36 dwelling units and 603 square feet of commercial space. The proposed commercial retail space is located at the ground floor of the project, fronting both Channing Way and San Pablo Avenue. The proposed project would not be detrimental to the commercial needs of the area because it provides commercial space that is consistent with other mixed-use developments located along San Pablo Avenue.

- E. Roof top Projections:** The project proposes a staircase/elevator penthouse, less than 100 square feet that extends about eight feet over the 50-foot-tall roof height. BMC Section 23.304.050(A) requires an Administrative Use Permit for roof-top projections (e.g., mechanical penthouses, elevator equipment rooms or stair towers) that would exceed the maximum height limit. Roof-top projections are limited to no more than 15 percent of the average floor area of all of the building's floors, and cannot be used as habitable space or for commercial purposes. The proposed penthouse represents less than one percent of the 13,253-square-foot average of all the floor areas. Therefore, the projection is permissible.
- F. Non-Detriment Findings:** As required by BMC Section 23.406.040(E), the ZAB must find that the proposed structure will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons and adjacent properties for any Use Permit in the C-W.

- 1) Shadows: According to the shadow studies submitted for the project (see Attachment 2, Project Plans – sheets G003 – 5) new shadows shade an existing single-family dwelling units to the east (1108 Channing, 2414 Byron, 2422 Byron, 2418 Byron) primarily during the summer and winter months. The project also results in additional shadows that extend across San Pablo Avenue, shadowing existing commercial buildings throughout the year. These changes in sunlight pattern are found to be reasonable given the orientation of these properties in relation to the subject building and their close proximity given the urban residential environment. These affects are not found to be detrimental because limited in duration and will not persist for extended periods throughout the year.

Shadow impacts on adjacent buildings are to be expected, because the subject site is located in the C-W district, which allows heights of up to 50 feet with a use permit and roof top projections beyond the base height with an administrative use permit. Staff believes that shadow impacts from the project would be reasonable and not detrimental.

The project is also subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

**D. District Purposes Consistency:** In addition to the general non-detriment findings, per BMC Section 23.204.140(F), the ZAB must determine that several findings specific to the C-W zoning district can be made. The proposed project redevelops a low intensity site, by adding 36 dwelling units and commercial space to support local retailing and use of transit amenities. The development will activate the subject underutilized lots and will positively impact the streetscape along the commercial corridor. Further, the project will not unreasonably obstruct light or air from abutting residential and commercial properties. Therefore, the project is consistent with the purposes of C-W commercial zoning district.

## VI. Other Considerations

The following analyses of conformance with policies and goals included in the 2002 General Plan and West Berkeley Plan, are provided for informational purposes only, to provide context.

**A. 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.
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 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.
5. 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.
6. 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.
7. Policy T-16-Access by Proximity: Improve access by increasing proximity of residents to services, goods, and employment centers.

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

1. Develop incentives to encourage new construction to be 2-4 stories in height (and to incorporate residential and office uses above the ground floor) along these corridors, especially at nodes.
2. Encourage infill buildings on vacant and low intensity use sites along these corridors. Residential and/ or office uses should be encouraged where appropriate.

3. Develop incentives to encourage housing along these corridors, such as reduction in parking and other site developments.

## V. Recommendation

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

- A. **APPROVE** Use Permit ZP2021-0220 pursuant to Section 23.406.040.D and subject to the attached Findings and Conditions (see Attachment 1).

### Attachments:

1. Findings and Conditions
2. Project Plans, received December 12, 2022
3. Notice of Public Hearing
4. Community Meeting Notes (December 6, 2021)
5. Correspondence Received

**Staff Planner:** Katrina Lapira, [klapira@cityofberkeley.info](mailto:klapira@cityofberkeley.info), (510) 981-7488



### 2403-07 San Pablo Avenue

**Use Permit # ZP2021-0220 to demolish a one-story commercial building and construct a four-story mixed-use development comprised of a 603 square-foot retail tenant space and 36 dwelling units (condominium), with 19 automobile parking spaces, 42 bicycle parking spaces, and a maximum height of 50 feet.**

#### PERMITS REQUIRED

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- Use Permit to demolish a non-residential building, under Berkeley Municipal Code (BMC) Section 23.326.070
- Use Permit to construct a mixed-use development of more than 20,000 square feet, under BMC Section 23.204.140(B)(2)(a)
- Use Permit to construct new gross floor area, under BMC Section 23.204.030(B)(1)
- Administrative Use Permit to allow for roof top projections that exceed the allowed height limits, under BMC Section 23.304.050(A)

#### I. CEQA FINDINGS

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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 (“Infill Development”). 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 Study prepared for the project was reviewed by the City’s Transportation Division which concurred with the findings that the project meets the City’s vehicle miles traveled (VMT) screening criteria and would result in a less-than-significant impact to VMT; therefore, further VMT analysis is not required. 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.
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

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1. The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with applicable, objective general plan and zoning standards, a local agency may not deny the project or approve it with reduced density unless the agency makes written findings supported by substantial evidence that:
  - A. The development would have a specific adverse impact on public health or safety unless disapproved or approved at a lower density; and
  - B. 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 includes construction of 36 dwelling units. Because the project would comply with applicable, objective general plan and zoning standards, §65589.5(j) does apply to this project. No significant, quantifiable, direct and unavoidable impacts, based on objective, identified written public health or safety standards, polices, or conditions, have been identified by staff.

2. As required by Section 23.406.040(E) 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 a higher-density development in proximity to mixed-use, residential/commercial uses of a similar density, transit, commercial districts, and amenities that is compatible with the purposes of the zoning district and the surrounding uses and buildings. The project site is located within the West Berkeley Commercial District (C-W). The project provides 36 new dwelling units (ownership) sized from one- to three-bedrooms. The proposal also includes private balconies and an outdoor courtyard that amounts to 10,199 square feet of useable open space – over 500 percent more than the space required. The project provides 36 long term and 6 short term bicycle parking spaces. The project site is well served by public transportation, with an AC transit bus stop fronting the project at the corner of Channing Way and San Pablo Avenue. The project adds additional dwelling units and supportive amenities, furthering the mixed residential and commercial uses that is compatible with the neighborhood and the objectives of the West Berkeley Area Plan.
  - A. New shadows primarily affect the existing single/two-family residential dwelling units that abut the rear (east) of the proposed project throughout the year. These changes in sunlight pattern are found to be reasonable given the orientation of these properties in relation to the subject building and their close proximity given the urban residential environment. These affects are not found to be detrimental because limited in duration and will not persist for extended periods throughout the year and;
  - B. The project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

### **III. OTHER FINDINGS FOR APPROVAL**

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3. As required by BMC Section 23.204.140(F), the Zoning Adjustments Board finds that the proposed project is consistent with the West Berkeley Area Plan and the purposes of the West Berkeley Commercial Zoning District.
  - A. The proposed project redevelops a low intensity site, by adding 36 dwelling units and commercial space to support local retailing and use of transit amenities;
  - B. The development will activate the subject underutilized lots and will positively impact the streetscape along the commercial corridor; and
  - C. Further, the project will not unreasonably obstruct light or air from abutting residential and commercial properties, as the majority of the project's massing is centered towards San Pablo Avenue and Channing Way.
  
4. As required by BMC Section 23.326.070(D), the Zoning Adjustments Board finds that the demolition of a non-residential building will not be materially detrimental to the commercial needs and public interest of the impacted neighborhood and that the demolition is required to allow a proposed new building. The proposed project requires the demolition of the existing commercial building and several accessory buildings and structures, in order to allow a new mixed-used use building composed of 36 dwelling units and 603 square feet of commercial space. The proposed commercial retail space is located at the ground floor of the project, fronting both Channing Way and San Pablo Avenue. The proposed project is not detrimental to the commercial needs of the area as it provides commercial space as part of the project that is consistent with similar mixed-use developments along San Pablo Avenue and requires the development of a new building.
  
5. As required by Section 23.304.050(A) of the BMC, the Zoning Adjustments Board finds that the proposed rooftop equipment, which exceeds the district height limit (50 feet), does not exceed 15 percent the average floor area of the building's floors. None of the equipment structures are used as habitable or commercial space.

#### **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. Compliance Required (BMC Section 23.102.050)**

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

**3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)**

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

**4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)**

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

**5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)**

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

**6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)**

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

**7. Permit Modifications (BMC Section 23.404.070)**

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. 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.

**8. Permit Revocation (BMC Section 23.404.080)**

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, ZAB, or City Council referral.

**9. Indemnification Agreement**

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

**V. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD**

Pursuant to BMC 23.406.040.E, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

**Prior to Submittal of Any Building Permit:**

10. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

**Project Liaison** \_\_\_\_\_  
Name Phone #

11. Final Design Review. The Project requires approval of a Final Design Review application by the Design Review Committee.

12. Address Assignment. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated 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. Fee Deferrals.** All zoning project application fees that were deferred at the time of application submittal shall be paid in full.
- 16. 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.
- 17. 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.

18. Demolition. Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.
19. 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.
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 2 years 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](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 2 years 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**

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21. Parcel Merger. The applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.
22. Percent for Public Art: Consistent with BMC §23C.23, the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.
23. Affordable Housing Mitigation Fee: Consistent with BMC §22.20.065, and fee resolution applicable to this project, the applicant shall provide a schedule, consistent with a schedule approved by the City Manager or her designee, outlining the timeframe for payment of the AHMF, and they shall pay this fee.
24. HVAC Noise Reduction. Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.
25. "(New du's in areas over 65dB on General Plan Noise Map )" ..\Standard COAs\GP Noise Contour Map over 65 db.pdf 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.
26. Solar Photovoltaic (Solar PV) and Battery Energy Storage Systems (ESS). A solar PV system shall be installed, subject to specific limited exceptions, as specified by the Berkeley Energy Code (BMC Chapter 19.36). Energy storage system (ESS) readiness (new single-family, duplex, and townhouse homes) or ESS installation (new multifamily and most nonresidential buildings) shall be completed as specified by BMC Chapter 19.36. Location of the solar PV system and the ESS, if applicable, shall be noted on the construction plans.
  27. Electric Vehicle (EV) Charging. At least 5 percent of the project parking spaces for residential parking shall have installed Level 2 (40 amp) electric vehicle (EV) charging stations, at least 25 percent shall have installed low power Level 2 EV charging receptacles (20 amp), and at least 20 percent shall be "EV Capable" equipped with raceway, electrical panel service capacity, and an electrical system to support future Level 2 (40 amp) EV charging stations, or any more stringent EV charging requirements as specified by the Berkeley Green Code (BMC Chapter 19.37). Required Level 2 charging stations and low power Level 2 EV charging receptacles shall be installed, maintained, and made available for building resident use. EV charging station installations, EV charging receptacles, and EV Capable spaces shall be noted on the construction plans. Public access parking spaces shall provide any applicable mandatory accessibility provisions.
  28. Water Efficient Landscaping. Landscaping, totaling 500 square feet or 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<sub>o</sub>) for Berkeley is 41.8.
  29. Prohibition of Natural Gas Infrastructure in New Buildings. The project shall comply with the City of Berkeley Prohibition of Natural Gas Infrastructure in New Buildings (BMC Chapter 12.80). The building permit plan set submission shall both include a cover sheet declaration: 'Natural Gas-Free Design as required by BMC Chapter 12.80.'
  30. 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).
  31. 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.
  32. Required Parking Spaces for Persons with Disabilities. Per BMC Section 23.322.040.H of the Zoning Ordinance, "If the number of required off-street parking spaces in a non-residential district is reduced as allowed by this chapter, the number of required parking spaces for persons with disabilities shall be calculated as if there had been no reduction in required spaces."

**Prior to Demolition or Start of Construction:**

- 33. 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:**

- 34. 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.
- 35. 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.
- 36. 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.
- 37. 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.
- 38. 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.
- 39. 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.
- 40. 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.

- 41. 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.

- 42. 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.
- 43. 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.
44. 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.
45. 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.
46. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).
- A. Qualified Paleontologist. The project applicant shall retain a Qualified Paleontologist prior to excavations or ground disturbance that will exceed three feet in depth. The Qualified Paleontologist shall direct all mitigation measures related to paleontological resources. A qualified professional paleontologist is defined by the SVP standards as an individual preferably with an M.S. or Ph.D. in paleontology or geology who is experienced with paleontological procedures and techniques, who is knowledgeable in the geology of California, and who has worked as a paleontological mitigation project supervisor for a least two years (SVP 2010).

- B. *Paleontological Worker Environmental Awareness Program (WEAP)*. Prior to ground disturbance, the applicant shall incorporate information on paleontological resources into the Project's Worker Environmental Awareness Training (WEAP) materials, or a stand-alone Paleontological Resources WEAP shall be submitted to the Department of Planning and Development at the City of Berkeley. The Qualified Paleontologist or his or her designee shall conduct training for construction personnel regarding the appearance of fossils and the procedures for notifying paleontological staff should fossils be discovered by construction staff. The Paleontological WEAP training shall be fulfilled simultaneously with the overall WEAP training, or at the first preconstruction meeting at which a Qualified Paleontologist attends prior to ground disturbance. Printed literature (handouts) shall accompany the initial training. Following the initial WEAP training, all new workers and contractors must be trained prior to conducting ground disturbance work.
- C. *Paleontological Monitoring*. The extent of required paleontological monitoring for the project shall be determined by the Qualified Paleontologist based on an evaluation of the previously undisturbed geologic units exposed during ground disturbing activity. The Qualified Paleontologist shall conduct an initial spot check and evaluation of geologic conditions for ground disturbing activity for excavations between 5-10 feet below ground surface (BGS). The evaluation shall be based on field evidence including lithology of geologic units and results of microscreening or other inspections for fossil resources. If the paleontologist determines that geologic units exposed between 5-10 feet BGS have high paleontological sensitivity, then full-time monitoring shall be conducted for the duration of ground disturbing activity. If sediments between 5-10 feet BGS are determined to not be paleontological sensitive, spot checks should be conducted again for ground disturbance between 10-15 feet BGS and again for ground disturbance between 15-20 feet BGS, and again to the full depth of ground disturbance. If spot checks indicate low or no paleontological sensitivity, or if full time monitoring results in no fossil discoveries once the full depth of ground disturbance has been reached, paleontological monitoring can be discontinued for the remainder of project activity. Monitoring shall be reinstated if any new ground disturbances are required to depths exceeding previous depths of previous work, and reduction or suspension shall be reconsidered by the Qualified Paleontologist at that time.
- D. In the event of a fossil discovery by the paleontological monitor or construction personnel, all work in the immediate vicinity of the find shall cease. A Qualified Paleontologist shall evaluate the find before restarting construction activity in the area. If it is determined that the fossil(s) is (are) scientifically significant, the Qualified Paleontologist shall complete the following conditions to mitigate impacts to significant fossil resources:
- 1) *Salvage of Fossils*. If fossils are discovered, the paleontological monitor shall have the authority to halt or temporarily divert construction equipment within 50 feet of the find until the monitor and/or lead paleontologist evaluate the discovery and determine if the fossil may be considered significant. Typically, fossils can be safely salvaged quickly by a single paleontologist and not disrupt construction activity. In some cases, larger fossils (such as complete skeletons or large mammal fossils) require more extensive excavation and longer salvage periods. In this case, the Construction Contractor may be requested to supply heavy equipment and an operator to assist in the rapid removal of a large fossil specimen(s) or sediment sample(s). Bulk matrix sampling may be necessary to recover small invertebrates or microvertebrates from within paleontologically- sensitive Quaternary old alluvial deposits.
  - 2) *Preparation and Curation of Recovered Fossils*. Once salvaged, significant fossils shall be identified to the lowest possible taxonomic level, prepared to a curation-ready

condition, and curated in a scientific institution with a permanent paleontological collection (such as the UCMP), along with all pertinent field notes, photos, data, and maps. Fossils of undetermined significance at the time of collection may also warrant curation at the discretion of the Qualified Paleontologist.

- E. *Final Paleontological Mitigation Report.* Upon completion of ground disturbing activity (and curation of fossils if necessary) the Qualified Paleontologist shall prepare a final report describing the results of the paleontological monitoring efforts associated with the project. The report shall include a summary of the field and laboratory methods, an overview of the project geology and paleontology, a list of taxa recovered (if any), an analysis of fossils recovered (if any) and their scientific significance, and recommendations. The report shall be submitted to the Department of Planning and Development at the City of Berkeley. If the monitoring efforts produced fossils, then a copy of the report shall also be submitted to the designated museum repository.
47. 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.
48. 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 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 private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).
  - H. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.
  - I. 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.
  - J. All loading areas must be designated to minimize “run-on” or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
  - K. 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.
  - L. 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.
- 49. 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.

50. 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.
51. 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.
52. 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.
53. 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.
54. 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:**

55. 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.
56. 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 received December 12, 2022, except as modified by conditions of approval.
57. Transportation Demand Management. Prior to issuance of a Certificate of Occupancy, the property owner shall facilitate a site inspection by Planning Department staff to confirm that the physical improvements required in Section 23.334.030(C) and 23.322.090 (bike parking) have been installed. The property owner shall also provide documentation that the programmatic measures required in 23.334.030(A) and 23.334.030(B) will be implemented.
  - A. Consistent with Section 23.334.030(A), all parking spaces provided for residents be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling units, such that potential renters or buyers shall have the option of renting or buying a dwelling unit at a price lower than would be the case if there were a single price for both the dwelling unit and the parking space(s).
  - B. Consistent with Section 23.334.030(B), at least one of the following transit benefits shall be offered, at no cost to the resident, for a period of ten years after the issuance of a Certificate of Occupancy. A notice describing these transportation benefits shall be posted in a location or locations visible to all employees.
    1. One monthly pass for unlimited local bus transit service for every bedroom in each dwelling unit, up to a maximum of two benefits per dwelling unit.

2. Subject to the review and approval of the Zoning Officer in consultation with the Transportation Division Manager, a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass.

C. Consistent with Section 23.334.030(C), publicly-available, real-time transportation information in a common area, such as a lobby or elevator bay, on televisions, computer monitors or other displays readily visible to residents and/or visitors, shall be provided. Transportation information shall include, but is not limited to, transit arrivals and departures for nearby transit routes.

Property owners may be required to pay administrative fees associated with compliance with this Condition.

58. Dwellings that are approved as rental units, but in which a condo map is approved prior to issuance of an occupancy permit, shall be subject to the affordability requirements within BMC 23C.12, which applies to the any of the following:

- A. Residential housing projects for the construction of five or more Dwelling Units;
- B. 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;
- C. Residential housing projects proposed on lots whose size and zoning designation is such to allow construction of five or more Dwelling Units.

If a density bonus was granted for the project, the regulatory agreement shall reflect the number of qualifying units set forth in Section 65915(f)(4) that are needed to support the bonus that was granted.

**At All Times:**

59. Transportation Demand Management Compliance. The property owner shall submit to the Planning Department periodic TDM Compliance Reports in accordance with Administrative Regulations, subject to the review and oversight of the Zoning Officer. Property owners may be required to pay administrative fees associated with compliance with this Condition, pursuant to BMC Section 23.334.040(B).

60. 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.

61. 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.

62. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review Committee approval.

63. 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.

64. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
65. Loading. All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. daily.
66. Residential Permit Parking. No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.
67. Bike Parking. Secure and on-site bike parking for at least 42 bicycles shall be provided for the life of the building.
68. Tenant Notification. The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial, food service and entertainment uses, and that each occupant shall not seek to impede their lawful operation.



























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**BERKELEY  
MOSHAV**  
2403 - 2407 SAN PABLO AVE  
BERKELEY, CA



**ENTITLEMENT  
SET**



**2 SOUTH ELEVATION**  
A202 1/8" = 1'-0"

**MATERIALS LEGEND:**

- C-01 CERAMIC SIDING, CERACLAD RUSTIC WOOD, COLOR: COFFEE
- C-02 CEMENT SIDING, HARDIE PANEL WITH HARDIE TRIM BATTENS, COLOR: KELLY MOORE KM5156-5 THAI BASIL
- C-03 CEMENT SIDING, HARDIE PANEL, COLOR: BM 2062-20 PATRIOT BLUE
- M-01 STOREFRONT WINDOW SYSTEM, ANODIZED ALUMINUM, COLOR: BLACK
- M-02 PAINTED GALVANIZED MEAL, COLOR: BLACK
- M-03 PAINTED GALVANIZED METAL, COLOR: MB 2020-10 BUMBLE BEE YELLOW
- M-04 PAINTED GALVANIZED METAL, COLOR: BM CW-695 LAMPBLACK
- P-01 CEMENT PLASTER, 16/20 MEDIUM SAND FLOAT FINISH, COLOR: BM OC-19 SEAPEARL
- P-02 CEMENT PLASTER (PARGE COAT), COLOR: DARK COOL GREY BM 1596 NIGHTFALL
- P-03 CEMENT PLASTER (PARGE COAT), COLOR: MEDIUM DARK COOL GREY BM CSP-60 CITY SHADOW
- P-04 CEMENT PLASTER, 16/20 MEDIUM SAND FLOAT FINISH, COLOR: BM 2064-20 PATRIOT BLUE
- P-05 CEMENT PLASTER, 16/20 MEDIUM SAND FLOAT FINISH, COLOR: KELLY MOORE KM5156-5 THAI BASIL
- T-01 PORCELAIN EXTERIOR GRADE TILE
- W-02 WOOD GUARDRAIL, COLOR: NATURAL CLEAR STAIN
- W-02 WOOD HORIZONTAL LAP SIDING, COLOR: NATURAL CLEAR STAIN

**BUILDING ELEVATION**  
1/8" = 1'-0"



**1 EAST ELEVATION**  
A202 1/8" = 1'-0"

PROJECT ISSUE RECORD:

NO.	DATE	DESCRIPTION

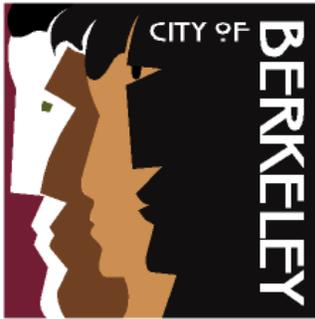
PROJECT #: MOS01  
ISSUE DATE: 03/11/22  
BUILDING ELEVATIONS

**A202**









Z O N I N G  
A D J U S T M E N T S  
B O A R D

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NOTICE OF PUBLIC HEARING

## 2403-2407 San Pablo Avenue Berkeley Moshav

Use Permit # ZP2021-0220 to demolish a one-story commercial building and construct a four-story mixed-use development comprised of a 603 square-foot retail tenant space and 36 dwelling units (condominium), with 19 automobile parking spaces, 42 bicycle parking spaces, and a maximum height of 50 feet.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.404.

**When:** Thursday, March 30, 2023, 7:00 PM.

**Where:** Berkeley Unified School District meeting room, 1231 Addison Street, (wheelchair accessible) with remote/hybrid option (via Zoom).

Please see the Agenda for details: [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-03-30\\_ZAB\\_Agenda.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-03-30_ZAB_Agenda.pdf)

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION AVAILABLE FOR MEMBERS OF THE PUBLIC.**

*For in-person attendees, face coverings or masks that cover both the nose and mouth are encouraged. If you're feeling sick, please do not attend the meeting in-person as a public health precaution.*

*Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons that need to distance for personal health reasons.*

### A. Land Use Designations:

- General Plan: AC (Avenue Commercial)
- Zoning: C-W (West Berkeley Commercial District)

### B. Zoning Permits Required:



**Further Information:**

All application materials are available online at:  
<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>.

The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>.

Questions about the project should be directed to the project planner, Katrina Lapira, at (510) 981-7488 or [klapira@cityofberkeley.info](mailto:klapira@cityofberkeley.info).

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at [zab@cityofberkeley.info](mailto:zab@cityofberkeley.info).

**Communication Disclaimer:**

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, 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 secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

**Written Comments, Communications, and Reports:**

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: [zab@cityofberkeley.info](mailto:zab@cityofberkeley.info). All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>

All persons are welcome to attend the hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

**Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board.** Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.



**Accessibility Information / ADA Disclaimer:**

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

**SB 343 Disclaimer:**

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@cityofberkeley.info) to request hard-copies or electronic copies.

**Notice Concerning Your Legal Rights:**

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above. If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

4. NEIGHBORHOOD MEETING TOOK PLACE 12/06/21

Berkeley Moshav – Neighbor Open House – <sup>December 6</sup> December 5, 2021

Name & Address	Email	Phone
Christine Staples	christineannestaples@gmail.com	
Doug Smith	douglas.frederic.smith@yahoo.com	510-684-3884
Christina Darlin		415-846-2459
David Bradshaw		"
GREGORY LEMIEUX 113 CHANNING WAY	gregory.lemieux@gmail.com	510-847-6519
Toni Mester	tonimester@comcast.net	
R. ROSSIN		510 841-7579
Julius	(Lives at Chmaga Salvage)	
Paul Randall - 1108 Channing	randalizer@yahoo.com	510-295-7461
Marilyn Hesketh McCarty	marilyn_hesketh@yahoo.com	415.272.3331

studio KDA  
1810 SIXTH STREET • BERKELEY, CA • 510 841 3555

2403-07 SAN PABLO NEIGHBOURHOOD OUTREACH  
PAGE 8 OF 9

The meeting was well attended (see sign-up sheet). The architect, owner as well as (2) future residents presented the project.

They liked the open central courtyard, diverse unit designs and parking availability. They also appreciated that the parking was accessed through Channing Way.

The neighbors were excited to see the proposed building as planned and understood that if we would have pursued a density bonus project, it would be a much different 6 story structure with up to 82 units of housing that would fill almost the entire site. Neighbors were also pleased that this was not a speculative development, but was assembled by a core group of potential future residents.

The only concern came from the Futon Business owner @ 2397 San Pablo Ave (Christine & David) that were concerned we were not providing sufficient parking for the residents.



**Jacob, Melinda**

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: Berkeley Moshav

**From:** Leonard Schultz <leonardschultz@gmail.com>  
**Sent:** Friday, March 17, 2023 3:18 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Cc:** Roger Studley <roger@urbanmoshav.org>  
**Subject:** Berkeley Moshav

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Sirs/Madams:

I write this note in support of the Berkeley Moshav project, PLN 2021-0051, at 2403-2407 San Pablo. Though my wife and I currently reside in Tucson, Arizona, our daughter and her family are 15-year Berkeley residents, and we plan to join them there upon completion of the Moshav, hopefully in 2024. Please be advised that this is indeed a trailblazing co-housing project, which I'm sure will be a welcome addition to the Berkeley community.

Sincerely,

Leonard Schultz M.D.

**Jacob, Melinda**

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 2403-2407 San Pablo

**From:** Sandra Rosenblum <sandrarosenblum@yahoo.com>  
**Sent:** Friday, March 17, 2023 11:41 AM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** 2403-2407 San Pablo

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Zoning Adjustments Board,

I'm writing to express my support for the proposed project at 2403 San Pablo (application number PLN2021-0051.)

This project is a multi-family building being developed by the future residents as a multi-generational cohousing community and will be a fantastic addition to the neighborhood. Despite the fact that we are probably about 3 years out from move-in, 15 households have already committed to the 36-unit project and our members range in age from 3 months to 80ish.

My husband and I have lived in the East Bay for most of our adult lives and have owned a home here for 18 years. We are planning to sell our single family home in order to live in this building because we value housing that is designed to foster community and to promote sustainability.

We believe that this project is thoughtfully designed and that it will serve as a model for a type of multi-family development that strengthens community.

Thank you,

Sandra Rosenblum  
Richmond, CA

**Jacob, Melinda**

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: PLN2021-0051

**From:** Jacki Silber <jackisilber@gmail.com>  
**Sent:** Thursday, March 16, 2023 10:52 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** PLN2021-0051

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

I am writing about the Berkeley Moshav Cohousing Unit that we are hoping to build at 2403-2407 San Pablo. Currently, I live in Redwood City. I am looking forward to moving to Moshav to live in housing, where the members care for each other and the local community. Because most of us will own our own unit, the city can be assured the property will be well maintained.

Personally, my goal is to reduce the number of hours I work, I am close to semiretirement, and become a contributing member of the mental health community. Just today I had the pleasure to virtually speak at a organization that provides education to the community about mental health and available services. The nonprofit is located in Oakland. My personal area of expertise is perinatal mental health. I have volunteered at Sequoia Hospital in Redwood City, for many years. I speak at the New Parent's Group monthly. Before Covid, I ran my own in person group there weekly. Lastly, I look forward to getting to know Berkeley, especially the restaurants and music venues.

Thank you for considering our project.

Sincerely,  
Jacki Silber

--

Jacki Silber  
Licensed Marriage Family Therapist  
(650) 260-4883  
[supportivesolutionsforyou.com](http://supportivesolutionsforyou.com)

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**Jacob, Melinda**

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: application number (PLN2021-0051)

**From:** Mlehrmsw <mlehrmsw@gmail.com>  
**Sent:** Thursday, March 16, 2023 5:55 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** application number (PLN2021-0051)

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

To whom it may concern:

I'm writing in support of the design plan of Berkeley Moshav, located at 2403-2407 San Pablo. The plan is on the agenda for March 30.

I am part of the group of mostly local residents who are developing the project. This will be an owner-occupied multi family building. The plan is beautiful and reasonably sized, while also focusing on sustainability. We are a community-minded group and will be excellent neighbors.

As one of the few out-of-town participants, I will be relocating to Berkeley specifically because of this project. I look forward to living there.

Thank you for your kind consideration.

Sincerely,  
Maura Lehr

Sent from my iPad

**Jacob, Melinda**

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: Statement in support of Berkeley moshav

**From:** Noah Brod <noahbrod@gmail.com>  
**Sent:** Thursday, March 16, 2023 7:51 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** Statement in support of Berkeley moshav

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Moshav item public comment:

My name is Noah Brod and I am a Berkeley resident in Southside as well as a member of the Berkeley Moshav. This means that I am planning on living in the community after it is built and am helping to pay the costs for the project alongside of the other members. The Berkeley moshav is one of the first new co-housing communities being planned in the city of Berkeley in decades. The last cohousing community to form here was in 1994. Our project was started in earnest when we acquired the land in 2019 (although there was planning and organization work prior to that effort). It is a Cohousing project built around Jewish life that is inclusive of both secular and religious Jews and welcoming of people from other religions. The heart of a Cohousing project is that those who live in the space all know one another and work together, which is part of why our design has a large amount of shared space so that we can share community meals together.

This project was designed in conjunction with the people who will live there, so it's quite different from other projects that might have come before this group. Many of our members are already Berkeley residents as well and a big reason that Berkeley was chosen as a community for this project is because there's a cultural fit, an alignment of values, and history of support for community oriented projects in the City of Berkeley. 

This particular project really is community focused and driven - from the initial creation and it's intentions, through the design, planning and execution. We're working with professionals at every stage, but the professionals we've chosen to work with understand that we're building Cohousing and what that is. That's why our design has much more shared community space than might be seen in other developments. 

Being community focused means that we've approached this project not just with our internal community in mind, but also the neighborhood and our future neighbors. Members of our project worked with and listened to our future neighbors in designing this space so that we could be sure that our new community was a welcome one, that it's going to enhance their lives and the neighborhood as it is. I believe we may even have some of those neighbors on the call tonight to speak to that support for us and our current design as it is.

Something that is important with co-housing projects is that the people who will live in the building are involved from the very beginning. And because the future homeowners are the developers and the funding for the project is coming from us, there aren't traditional investors looking for high returns on this project.

Accepting a lower return on investment in order to implement design changes is a lever that for profit developers can pull, but for us, every design decision that is made on this project has a one-to-one impact on the prices that we will pay for our own units.  This can also impact the composition of the community that we're trying to build. We would like an economically integrated community and some of our members are already close to being priced out of the community.

We've worked very hard to try to come up with a design that's respectful to our neighbors, that will build community and integrate us into our future neighborhood, and that looks and feels beautiful and inviting. I know that the purpose of this board is to ensure that our building meets the city's standards, is compatible with its context in the neighborhood, and that our project improves rather than detracts from the City of Berkeley.

We believe that by involving local professionals, local Berkeley residents - both neighbors and members who want to live in this project, and that the unique structure of this project as a Cohousing project have ensured that we have met those standards. It is my hope is that you walk away from the comments and the presentations that our consultant and architect have made tonight seeing that and agree.

Thank you for your time tonight I really appreciate your work

Noah Brod  
Southside Berkeley Resident (2314 Blake Street)  
Berkeley Moshav Member

**Jacob, Melinda**

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: [Berkeley Moshav] Letters to ZAB - by this Friday

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**From:** Keren Stronach <kerenstronach@gmail.com>  
**Sent:** Monday, March 13, 2023 11:18 AM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** FW: [Berkeley Moshav] Letters to ZAB - by this Friday

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear City of Berkeley Zoning Adjustment Board,

I'd like to voice my strong support for the cohousing 2403-2407 San Pablo (project PLN2021-0051). As a longtime resident of Berkeley, I believe that cohousing projects such as this one, with its community orientation and low carbon footprint (smaller apartments, shared communal spaces, car share, etc.) would be of great benefit both to the immediate neighborhood, as well as to the city of Berkeley as a whole.

Our project is co-designed by our members and will be multi-generational, drawing people from Berkeley, the surrounding Bay Area, as well as other states. Our communal philosophy of mutual assistance will help our older members age in place and stay independent for longer, and will help our young parents juggle demanding work life balance by providing built-in support and babysitting.

We very much appreciate your support of this project and hope that you will move it forward so that we can advance to making this community a reality.

Thank you,

Sincerely,

Keren Stronach, MPH  
510.205.5244

**Jacob, Melinda**

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: letter of support, 2403-2407 San Pablo

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**From:** Judith Hauptman <JUHAUPTMAN@JTSA.EDU>  
**Sent:** Monday, March 13, 2023 1:17 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** letter of support, 2403-2407 San Pablo

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

To the Zoning Adjustments Board:

I am writing in support of the proposed multi-unit building at **2403-2407 San Pablo**. I have lived my entire in New York City but am moving to Berkeley to join a co-housing community and be near family. I am a senior citizen. I have looked into buying an apartment in Berkeley but there are practically none available. I cannot consider buying a house at my age.

Multi-family housing is an excellent solution for seniors. We will be part of a community, avoid feelings of loneliness after the death of a long-time spouse (which is my personal situation), and be able to join communal meals and holiday celebrations. The 36-unit dwelling, in development by Berkeley residents, will be inter-generational. That too is good for someone like me. Although I will need to downsize from my current NYC apartment, that is a small sacrifice to make for what I will gain in terms of neighbors and communal spaces and events.

I look forward to ZAB approval of our request.

Thank you,  
Rabbi Judith Hauptman

Dear Berkeley Zoning Adjustments Board Members,

Re: Property at 2403-2407 San Pablo (application PLN2021-0051)

I am excited to move to the cohousing community referenced above. When I lived in UC Berkeley Davidson Hall in the late 1970's/early 1980's, I fantasized about living in a dorm-like setting in my elder years. When the opportunity to join this cohousing community arose, I thought that it exactly met my nostalgic fantasy.

I am a retired CPA who has enjoyed living in the Bay Area for 45 years. I raised my daughter here. Longing for grandchildren, I am excited that our community will be multi-generational (we just had our first cohousing baby). The design excites me. My husband and I look forward to living in a 3-bedroom condo, possibly with a balcony. We also are excited about all the shared spaces that will enable us to regularly socialize with our fellow co-housing residents.

Thank you very much for your continued interest in and support of our project.

Sincerely,

A handwritten signature in black ink, appearing to read "Norma Kaufman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Norma Kaufman

**Jacob, Melinda**

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: letter in support of project at 2403 San Pablo Avenue  
**Attachments:** Letter to Zoning Adjustment Board.docx

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**From:** Paul Randall <randalizer@yahoo.com>  
**Sent:** Friday, March 10, 2023 6:34 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** letter in support of project at 2403 San Pablo Avenue

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Hello

We support the project at 2403 San Pablo Avenue that will be under review during the Zoning Adjustments Board (ZAB) hearing on March 30. Please incorporate our attached letter of support as part of your review.

Thank you

Paul Randall  
1108 Channing Way  
Berkeley

Dear Zoning Adjustment Board Secretary --

We understand that the proposed project at 2403 San Pablo Avenue is coming before ZAB on March 30, 2023. We strongly support this project.

We have lived at 1108 Channing Way over the past 22 years. We are direct neighbors of the project, which includes our entire property line, that is separated by just a setback, not a backyard, between the proposed building and our home. Despite this close proximity, we understand that the proposed building is within zoning parameters and that its shape and courtyard were deliberately designed to reduce shadow and other impacts on our home.

We are also pleased with several other aspects of the project:

- It will be a neighborhood-oriented "cohousing" community, developed by its future residents; and
- The development team has been very responsive to our concerns, including property cleanup and graffiti removal.

We have met several of the future occupants and believe they will be excellent addition to our neighborhood.

The project site has been vacant for several years and is currently a blight on the neighborhood. We look forward to it being developed into community-oriented housing as soon as possible.

Sincerely yours,

Paul Randall and Natalie Studer  
1108 Channing Way, Berkeley

**Jacob, Melinda**

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**From:** Zoning Adjustments Board (ZAB)  
**Subject:** FW: 2403-2407 San Pablo Project

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**From:** Paul Neustein <paulneustein@gmail.com>  
**Sent:** Thursday, March 9, 2023 2:42 PM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>  
**Subject:** 2403-2407 San Pablo Project

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To: City of Berkeley Zoning Adjustments Board

From: Debra Feiger Paul Neustein

Re: Application PLN2021-0051

We are writing in support of application PLN2021-0051, a planned cohousing community. While we are currently residing in Southern California, we are interested in moving to Berkeley to be part of this community.

It is our belief that cohousing communities, such as the one being proposed, offer a sustainable option for multigenerational living in an urban environment. We believe the scale of the project will fit in well with its physical surroundings, and provide unique and secure home for young families and seniors alike.

This forward thinking project is a natural fit with the ethos of the neighboring community and urge the board to offer its full support.

Debra Feiger

Paul Neustein