

# 2587 Telegraph Avenue Project

## Applicant Statement

September 13, 2023

### OVERVIEW AND PROJECT INTRODUCTION

The applicant team is pleased to submit this application package for a new 52-unit multifamily residential infill project at 2587 Telegraph Avenue in Berkeley. This applicant statement includes:

1. Project Description
2. Project Background
3. Compliance with General Plan and Zoning Code
4. Project Analysis
5. CEQA Analysis and Legislative Context
6. Required Findings
7. Project Team Contact Information



Figure 1: Proposed project at 2587 Telegraph Avenue

### Property Information

APN: 055-1839-19-1  
Parcel Area: 18,780 SF/0.43 acres  
General Plan Designation: Avenue Commercial (AC)  
Zoning District: Telegraph Avenue Commercial District (C-T)  
Area Plan: Southside Area Plan (Telegraph Commercial Subarea)

### 1. PROJECT DESCRIPTION

The proposed project includes the demolition of the existing commercial building to construct 52 dwelling units with 219 bedrooms in a new 112,562 gross square foot building. The proposed housing development project is submitted pursuant to Senate Bill 330 (Gov. Code § 66300) and subject to the modifications and protections of State Density Bonus Law (Gov. Code § 65915) and the Housing Accountability Act (Gov. Code § 65589.5). The project includes six affordable units (which is 15% of the base



Figure 2: View of Project Site and Existing Building

project) for rent to Very-Low Income households (earning less than 50% of the Area Median Income (AMI)). That affordability entitles the project to a 50% density bonus for a total of 52 units. An Affordable Housing Mitigation Fee of approximately \$950,070 will also apply to the project and be paid to the City of Berkeley.

The project site is an 18,780 square foot lot (0.43 acres) that is zoned C-T, Telegraph Avenue Commercial District, a designation that encourages “the creation of additional housing in the district which is affordable, including housing for those who work or study nearby.” (BMC § 23.204.110(A)(9)). The new mixed-use development will have (4) Studios, (30) 4-bedroom units, (13) 5-bedroom units, and (5) 6-bedroom units. The proposed project will add 219 bedrooms to Berkeley’s housing stock to help alleviate the housing pressure near the University of California’s Berkeley (UCB) campus. The project will have residential amenities such as rooftop decks, ground-level open space, lounges/study rooms, fitness facilities, a package room and secure bicycle parking.

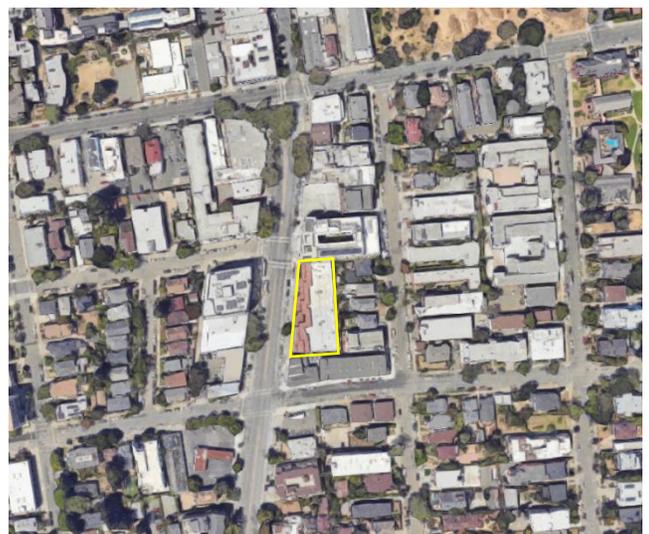
**Table 1: Unit Mix**

<b>Unit Type</b>	<b>Unit Count</b>
<b>Studio</b>	4
<b>4-Bedroom</b>	30
<b>5-Bedroom</b>	13
<b>6-Bedroom</b>	5
<b>Total</b>	52

The existing commercial building has zero dwelling units, and the proposed project will construct 52 units. This will result in a net increase of 52 units with a total of 219 bedrooms. The project will be able to add 6 units to the City of Berkeley’s deed-restricted affordable housing stock as well as increasing the residential density onsite. There will be no residential units on the ground floor, only residential amenity spaces and 2,903 square feet of ground-level commercial space fronting Telegraph Avenue.

The project site is on the east side of Telegraph Avenue between Blake Street and Parker Street. 2587 Telegraph Avenue is approximately 0.4 miles south of the UCB campus. Telegraph Avenue is a transit and commercial corridor with a wide variety of goods and services. The location of this project will provide future residents with outstanding access to the campus and the downtown area.

The site is highly accessible via public transit or active transportation. It is located 1 mile from the Downtown Berkeley BART station and is well served by multiple bus routes (lines 6 and 51B). The project will not provide any vehicle parking because the site is so well served by transit. The project will provide ample bicycle parking with 73 long term spaces for residents and 6 short term spaces for their guests. This proposed urban infill project is exceptionally well-suited for future residents to rely



*Figure 3: Aerial View of Neighborhood Vicinity*

solely on sustainable modes of transportation. The building itself will be designed as solar-ready, with designated areas for photovoltaic solar panels in the future.

The proposed project will satisfy its open space requirements with ground-level open space, a deck on Level 3, and two rooftop decks on Level 8 that will have beautiful views of the Bay and Berkeley Hills. There is also open space provided on the ground floor and with private balconies. The ground floor of the project includes 2,903 square feet of commercial space, residential amenities such as a lobby, fitness room, bike room, and package room, as well as the trash room, back of house service areas and utilities.

Key elements of the project include:

- 52 total units in 8 stories
- 6 units affordable to very low-income households @ 50% AMI
- 79 total bicycle parking spaces, 0 vehicle parking spaces
- Common Open Space at the ground-level, and on three separate decks, with two at the rooftop level
- Lounges/study rooms and a fitness room
- Affordable Housing Mitigation Fee of approximately \$950,070 paid to City of Berkeley Affordable Housing Trust Fund.

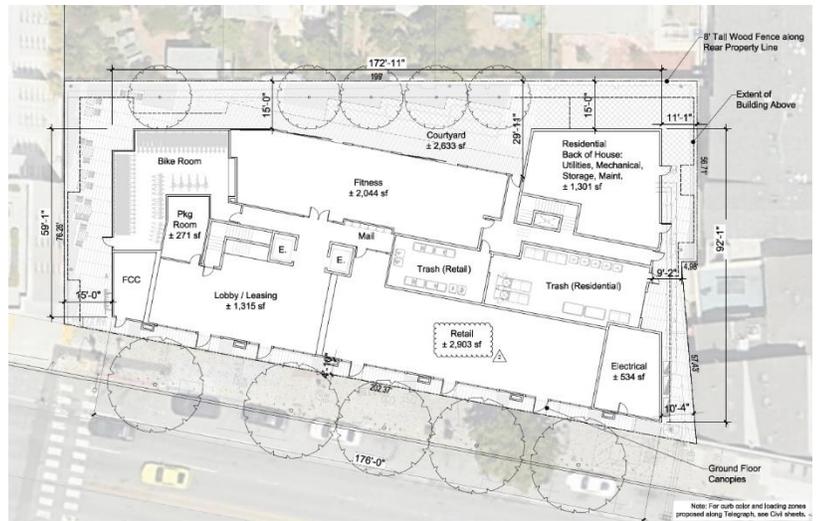


Figure 4: Ground Floor Plan

## 2. PROJECT BACKGROUND

### **Existing Conditions**

The existing commercial building located at 2587 Telegraph Avenue will be demolished and replaced with an eight-story mixed-use building that will increase the residential density along the Telegraph Avenue commercial corridor. The existing building is a two-story commercial structure with 14,427 square feet. There are six commercial spaces fronting Telegraph Avenue, two of which are currently vacant. The proposed project seeks to increase the residential density onsite from the current density of 0 dwelling units per



Figure 5: Aerial View of Site

acre to the proposed project’s density of 121 dwelling units per acre.

**Environmental Conditions**

A Historic Resource Evaluation (HRE) was completed for this project in March 2023. The evaluation was conducted by Mark Hulbert, of Preservation Architecture. The HRE concluded that the existing commercial building is less than 40 years old. The HRE is included in Section 5 of this Applicant Statement in the CEQA analysis.

The project does not appear on the California Environmental Protection Agency’s (CalEPA) Cortese Lists. The project site does not contain any hazardous materials onsite. Refer to the Hazardous Waste and Substances Statement and the Phase I and Phase II Environmental Site Assessment Reports that are included as part of this project application packet for more information.

**Table 2: Surrounding Uses and Zoning**

<u>Direction</u>	<u>Uses</u>	<u>Zoning</u>
<b>North</b>	Multi-Family Residential (The Panoramic)	C-T
<b>East</b>	Single Family & Multi-Family Residential	R-3
<b>South</b>	Commercial	C-T
<b>West</b>	Multi-Family Residential (The Laureate) & Commercial	C-T

The project site does not have any protected, culverted, or historic creek beds on the property. As such, the Creek Protection Documentation required as part of the City of Berkeley’s Zoning Project Application is not applicable to this project.

The proposed project should be deemed to be exempt from the CEQA Guidelines pursuant to Section 15332, Infill Development Projects section. The project meets each of criteria A through E of that section, as also noted in the CEQA discussion in Section 5 of this Applicant Statement.

**3. PROJECT COMPLIANCE WITH GENERAL PLAN AND ZONING CODE**

The City of Berkeley General Plan designates this project site as Avenue Commercial (AC). The Avenue Commercial designation is characterized by pedestrian-oriented commercial development and multifamily residential structures. This site is located in the Southside Area Plan, within the Telegraph Avenue Commercial Subarea.

The proposed project site is zoned Telegraph Avenue Commercial District (C-T) which seeks to encourage both “the redevelopment of single-story structures that are not historically significant resources with housing and mixed-use development,” as well as “the creation of additional housing in the district which is affordable, including housing for those who work or study nearby.” (BMC §23.204.110(A)(9) and (13))



Figure 6: City of Berkeley Zoning Map

The proposed project will meet all of the zoning district development standard requirements except as modified pursuant to SDBL. The project complies with the C-T zone development standards for front and side setbacks, lot coverage, useable open space, required landscaped useable open space, and vehicle and bicycle parking requirements. State Density Bonus Law waivers are required for the following zoning development standards: maximum building height and stories, FAR, and the rear setback. Table 3 identifies the applicable development standards and how the proposed project complies with them.

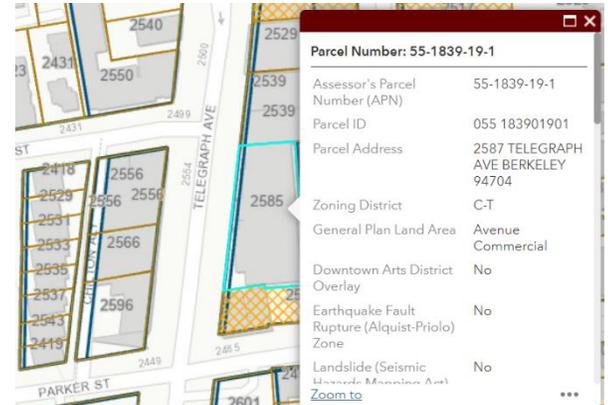


Figure 7: City of Berkeley General Plan Map

**Table 3: Major Development Standards (C-T)**

<u>Municipal Code Standards</u>		<u>C-T Standard</u>	<u>Proposed</u>	<u>Compliance</u>
<b>Building Height</b>	Main Building Height Maximum, South of Dwight Way	65 feet and 5 stories  [Maximum 65 feet and 5 stories allowed with Use Permit]	90 feet 3 inches and 8 stories	Compliant through SDBL
<b>FAR</b>	Floor Area Ratio, Maximum	4.0	6.0	Compliant through SDBL
<b>Lot Area</b>	New Lots, Minimum	5,000 square feet	N/A	N/A
<b>Lot Line Setbacks, Minimum</b>	Front	No Minimum	0 feet	Compliant
	Rear	10 feet (abutting a residential zone)	5 feet	Compliant through SDBL
	Interior Side (North)	No Minimum	1 foot	Compliant
	Interior Side (South)	No Minimum	1 foot	Compliant
<b>Lot Coverage, Maximum</b>	All Lots	100%	89%	Compliant

<b>Useable Open Space (UOS)</b>	Per Dwelling Unit	40 square feet per Dwelling Unit  52 units = 2,080 square feet required	5,105 square feet  (Common UOS = 4,065 SF, Balconies = 1,040 SF)	Compliant
<b>Landscaped UOS</b>	40% of required UOS	40% of 2,080 SF = 832 SF required	833 SF	Compliant
<b>Parking</b>	Automobile Parking	0	0	Compliant per BMC § 23.322.030(B)(3)
	Long Term Bicycle Parking	1 space per 3 bedrooms	73	Compliant
	Short Term Bicycle Parking	2, or 1 space per 40 bedrooms	6	Compliant

**4. PROJECT ANALYSIS**

***Density Bonus Eligibility***

The proposed project is eligible for the State Density Bonus because it:

- a) Meets all objective development standards, and
- b) Provides a sufficient number of units as affordable housing.

**Table 4: Density Bonus**

<u>Project Proposals</u>	<u>Market Rate Units</u>	<u>Below Market Rate Units</u>	<u>Total Units</u>
<b>Base Project</b>	29	6 (15% of base)	35
<b>Density Bonus Project</b>	46	6	52 (50% SDBL)

The proposed base project that meets all objective standards includes 35 dwelling units, six of which are affordable for very low-income households (less than 50% AMI). These six affordable units comprise 15% of the proposed base project. Per State Density Bonus Law, that makes this project eligible for a 50% density bonus. With this density bonus, the project is entitled to use an unlimited number of waivers and up to three concessions for development standards that impede the project’s ability to utilize the density bonus or increase feasibility. The average unit size for the base project is 2,043 SF and density bonus project is 2,046 SF. The following Table 5 shows the waivers that are requested to be granted to accommodate the project. Without these waivers being granted, the proposed project could not physically be built.

**Table 5: Waivers Requested to Accommodate Density Bonus**

<u>Standard</u>	<u>Required</u>	<u>Proposed</u>
<b><i>Waivers Requested</i></b>		
Building Height and Stories <i>(per BMC Table 23.204-32)</i>	65 feet and 5 stories	90 feet, 3 inches and 8 stories
Floor Area Ratio <i>(per BMC Table 23.204-32)</i>	4.0	6.0
Rear Setback <i>(per BMC Table 23.204-32)</i>	10 feet	5 feet

***Project Design***

In response to the Design Review comments provided by the City on August 18, 2023, the units under the third story common open space deck (Units D1.1, D1.2, and E2.1) have been revised. The balconies have been removed at Level 2, and instead the units were expanded to provide more glazing closer to the eastern property line. This will increase the amount of ambient light that may enter the units. In addition, particular attention will be given to the double height structure as well as the soffit treatment for the 3rd story deck to further aid in the ambient lighting present for these units.



Figure 8: Rendering of Proposed Project

The removal of the balconies along the eastern elevation under the third story common open space deck of the building also provides more privacy for the adjacent neighbors. With the removal of the balconies protruding towards the adjacent single-family homes and the low-rise apartment, adjacent neighbors can enjoy more privacy because the proposed project has limited the noise and intrusive sight of residents looking down into the adjacent neighbors’ properties from Level 2. Please reference Plan Set Sheet A1.2: Building Plan – Level 2 for the revised unit footprints.

The front façade design is comprised of four projecting bays with private balconies in the recessed carve-outs. The ground floor entry is also carved out to create a defined entryway, set back from the public right of way, to accentuate the residential and commercial entrances to the building. The overhang of the projecting bays, paired with metal canopies, creates the pedestrian-scale ground-level design for this building. The recessed entryway and metal canopies provide shade along Telegraph Avenue.

The alternating pattern of projecting bays and recessed balconies adds visual interest to the building and significantly breaks up the massing with this volumetric articulation. Materiality

also increases the articulation of the building, with highly textured panels. This project site is quite large, so yields a commensurately sized building. The size of the building is roughly the same as the newly constructed “Panoramic” project adjacent to the North. However, that building is on a through lot, so the sides of the building are the longest facades. This proposed project has its longest facade fronting the street on Telegraph Avenue. The front façade of the proposed project is quite large, but the massing is articulated through a repeating pattern projecting bays and recessed balconies. There are three banks of balconies flanked by projecting bays. Of the four projecting bays, the northern-most bay only goes up seven stories (as opposed to eight) because there are rooftop decks at the top. This variation in height diminishes the overall mass of the building fronting Telegraph Avenue and increases the visual interest of the front façade.

The front façade materials include a flat panel and a profiled panel that are applied in either silver or a medium gray. The color of the panels alternates every two floors, creating a banding effect that breaks up the vertical massing of the building. The front façade design plays with the pattern of profiled panels and flat panels to vary the texture of the building. These silver and medium gray panels on the upper stories contrast with the ground-level entryway and the recessed balconies, which are both designed with dark gray plaster material.



Figure 9: Rendering of the proposed entryway

The ground-level primarily uses a warm, wooden paneling material that is punctuated with columns featuring a dark grey brick that will also feature a masonry veneer. The materials at the ground level are complementary in their matching horizontal orientations. The colors and textures of the wooden material and masonry veneer contrast nicely as well to provide visual interest at the street level.

The windows will be high-quality vinyl and will have a varied fenestration pattern with multiple window sizes, orientations, and sash designs. The balconies on the front façade will have glass railings, and the other facades will have railings made of wood and metal materials that will provide a solid visual screen. The side and rear facades will have light gray plaster on the upper stories and dark gray plaster on the lower levels. The material break between the upper and lower floors will be varied to provide visual interest on all sides of the building.

### ***Landscaping***

The landscape concept for the proposed project centers around California native plants, with 96% of the planting palette comprised of native species. The landscape design uses drought-tolerant species appropriate for today’s climate. The planting palette includes shrubs (California Lilac, Flowering Currant, Cherry Monkey Flower, etc.), grasses (Tufted Hair Grass, California Fescue), succulents (Giant Chalk Dudleya, Chalk Liveforever), perennials (Yarrow, Beach

Primrose, Sacred Datura, etc.) and groundcover plants (Creeping Barberry, Redwood Sorrel, Hummingbird Sage, etc.). The botanical selection will facilitate a local ecosystem for pollinators, including hummingbirds, butterflies, and bees.

Raised planters are included on the rooftop decks to provide greenery, visual interest, and screening from the adjacent residential neighbors. Mature redwood trees will be planted along the rear property line to provide visual and noise screening for the adjacent neighbors along Regent Street. The existing street tree on Telegraph Avenue will be removed, but it will be replaced with five new trees, for a net gain of four new street trees along this block of Telegraph Avenue.



Figure 10: Ground Floor Landscape Plan

The design concept for the two rooftop decks is to have the east-facing deck be a “sunrise” themed space and have the west-facing deck be the “sunset” space. The sunrise deck is more contemplative space for quiet activities, and the west-facing deck is a more social space to gather in groups. This design theme that encourages different activities and tempos in each outdoor space will make the deck adjacent to the neighbors be quieter and more peaceful, and the more social deck will be oriented toward Telegraph Avenue.

### ***Southside Design Guidelines***

The proposed project is located in the City of Berkeley’s Southside Plan Area and is within the Telegraph Commercial Sub-Area. The proposed project complies with many of the Southside Design Guidelines. The project team has carefully designed the building to meet today’s need for housing and to respect the architectural context and history of this Berkeley neighborhood. The Southside Design Guidelines do not contain objective standards and as such, are not applicable to the project.

There are many ways in which the proposed project is compatible and compliant with the goals and standards of the Southside Design Guidelines:

#### **Building Design:**

- The proposed project does exceed the historical scale of 3-5 stories because the need for housing in Berkeley and by the University of California campus is so great. The proposed project also matches the scale of the new housing developments that were recently constructed nearby (The Panoramic, adjacent to the North, and The Laureate, adjacent to the East).
- The street façade of the ground floor level includes elements of pedestrian scale and interest.

- The building design has an architectural hierarchy with a defined base, middle, and top. The ground floor features a double height commercial space and uses different colors and materials to distinguish the ground level from the rest of the building. The top of the building includes material accents that provide visual termination.
- The building design maintains a continuous zero front setback except for the recessed storefront and residential entrances at the ground floor.
- The building design provides a continuous upper façade to maintain the continuity of urban form while also breaking up the massing with the push-and-pull articulation of the projecting bays and recessed balconies.

Building Entrances/Storefronts:

- The primary building entrances are all along Telegraph Avenue and open right onto the street. The side bike room entrance will be partially visible from the street through a decorative gate (for security reasons).

Streetscape:

- The proposed project will plant five new street trees, for a net gain of four street trees along this block of Telegraph Avenue.
- The new street trees will have tree grates and guards installed to unify new trees with the streetscape character of Telegraph Avenue.
- Building lighting is provided at the ground level to illuminate the storefront of the commercial space, the residential entry to the building, and the public sidewalk. These light features are positioned to prevent glare for pedestrians and vehicles and are located to complement the design of the building's façades.

***Sustainability***

The proposed building will be all electric, in conformance with the City of Berkeley's 2019 All-Electric Building Ordinance. The proposed project will be solar-ready, with a rooftop area reserved for future installation of solar photovoltaic (PV) panels. The proposed project will use Bird Safe Glass on windows up to 75 feet, in compliance with Berkeley's new Bird Safe Building Ordinance.

The project site is very well-located for future residents to use sustainable modes of transportation. The proposed project is 0.4 miles (a 7-minute walk) from the Downtown Berkeley BART station and is adjacent to multiple AC Transit bus lines (Line 6 and 51B), as well as City of Berkeley bicycle routes. There is no vehicle parking provided onsite, just bicycle parking. The proposed project will have a Transportation Demand Management (TDM) Program that will provide unlimited local bus passes to each unit.

The building is so close to goods and service that the project expects the majority of trips to be completed by active transportation or public transit modes. With the provision of free bus passes, the TDM Program will provide an additional incentive for future residents to use public transit. There are also two grocery stores nearby in a ½ - 1 mile walking distance. Therefore, the project contributes to Berkeley's Climate Action Plan goals of providing housing in locations close to goods and services, and oriented to use of public- and active-transportation, serving to reduce the City's overall per capita carbon footprint.

***Statement Regarding Natural Gas Prohibition, Berkeley Energy Code and Berkeley Green Code***

The proposed new building will not include any natural gas infrastructure in compliance with BMC Chapter 12.80. The proposed project is designed to comply with the Berkeley Energy Code (BMC Chapter 19.36) and Berkeley Green Code (BMC Chapter 19.37), adopted by the City Council on December 3, 2019, including a solar PV system as well as energy and water efficiency measures in an all-electric building.

***Public Art Declaration***

The proposed project is subject to the City of Berkeley's Public Art requirement because it is larger than 10,000 square feet and will have more than five dwelling units. This project will aesthetically enhance the neighborhood with its visually interesting and articulated facades; however, the project proposes to pay the City of Berkeley's Public Art in-lieu fee. For a project of this size, the City's public art in-lieu fee is estimated to be \$139,044. The purpose of this contribution to the City's Private Percent Art Fund is to provide arts and cultural services to the community at large. The fund is dedicated to implementing the City of Berkeley's Arts and Cultural Plan by providing grants for nonprofit arts and cultural organizations, commissioning art in public place, and conserving the City's existing collection of public art. The project is pleased to be able to contribute to the City of Berkeley's Private Percent Art Fund in this way.

**5. CEQA OVERVIEW AND LEGISLATIVE CONTEXT**

The housing crisis continues to have a significant impact on Californians across the state. The Government Code sections discussed below are state legislative efforts that recognize the severity of California's housing crisis and the difficulties associated with developing new housing at appropriately zoned, transit-oriented, and urbanized locations. These pieces of legislation are applicable to the proposed project:

- California Environmental Quality Act Class 32 Categorical Exemption (CEQA Guideline § 15332)
- Permit Streamlining Act (Gov. Code § 65920 et seq.)
- State Density Bonus Law (Gov. Code § 65915)
- Housing Accountability Act (Gov. Code § 65589.5)
- Housing Crisis Act of 2019 (Gov. Code § 66300)

***CEQA, Infill Project***

This project is eligible for a categorical exemption from CEQA. Because the proposed project is located in an urbanized area and because it is an infill development project, the CEQA Class 32 "Infill" Categorical Exemption applies.

Class 32 Exemption characteristics:

- “(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can adequately be served by all required utilities and public services.”

The proposed project This proposed infill project is consistent with the City of Berkeley’s objective design and development standards with the use of State Density Bonus Law, so it is subject to the categorical exemption under CEQA. The proposed development occurs within the City of Berkeley, on a site that is 0.43 acres and 100% surrounded by urban uses. The project site is already fully developed with an existing commercial building, so the site has no value for endangered, rare, or threatened species.

In terms of CEQA, this project is environmentally benign as it will not result in any significant traffic, noise, air quality, or water quality impacts. The project does not provide vehicle parking, so will not generate any traffic or air quality impacts. There will be residential noise which will not constitute an impact. The proposed project provides a Stormwater Control Plan to protect water quality. The site is on an urbanized parcel that has existing service connections to all required utilities and public services.

***Historic Resource Evaluation***

The following Historic Resource Evaluation was provided by Mark Hulbert of Preservation Architecture. The subject property is not eligible to be a historic resource because it is less than 40 years old. Relevant historical factors are addressed below and in order to clarify the property’s historical status, specifically as current City of Berkeley planning information identifies the property as housing a Berkeley Landmark/Structure of Merit.

To begin with, the building dates to 1985-1986, so is less than 40 years old. Under the California Environmental Quality Act (CEQA) and specific to the criteria for potential inclusion on the California Register of Historical Resources (CR), built resources less than 50 years of age (typically 45 years of age for jurisdictional planning purposes) are generally not CR eligible. While there is an allowance for the evaluation and listing of more recent resources, such resources must be of exceptional importance. In this case, there is no conceivable historical, cultural or architectural exceptionality. Consequently, the subject property and building do not qualify for historic resource evaluation under CEQA.

Though the building is of very recent age, the City of Berkeley's property information indicates that 2565-2589 Telegraph Ave. houses a Berkeley Landmark/Structure of Merit. Such indication is evidently a mapping error as there is no identified Landmark/Structure of Merit on this site. The error may stem from the adjacent property to the north, where the Center for Independent Living (CIL) was located in the former building at 2539 Telegraph Ave., which building was removed in the mid-late 2010s when the CIL relocated to the Ed Roberts Campus on Adeline St.

The existing building at 2565-2589 Telegraph Ave. was permitted in 1982. Construction was delayed (due to the intensive storms of 1982-83) so the building shell was not completed until July 1985 followed by the completion of tenant improvements in 1986. Thus, the subject commercial store building dates to 1985-86. Its then owner and developer was Jerry J. Boddum and the building was then identified as the Boddum Building. Per permit records and drawings, the extant building was designed for Boddum by Hamilton & Williges, engineers. No architect was associated with its design.

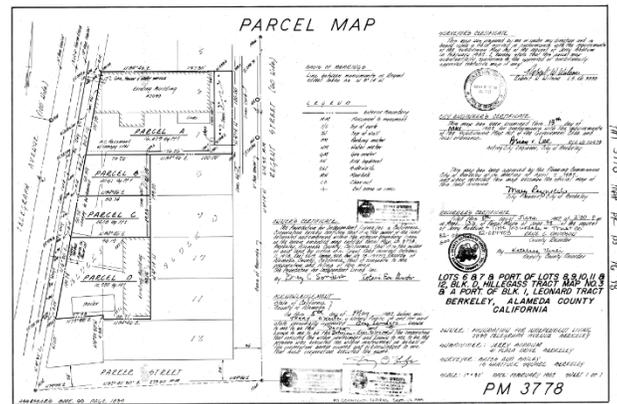


Figure 11: Parcel Map from 1982

Per permit records, Boddum presumably acquired the property in 1982 (no deed research has been undertaken) when he was the identified entity behind the 1982 parcel map (attached) and when the property owner was the Foundation for Independent Living.

The c.1990 Sanborn map recorded the common yet by then former CIL ownership of the properties spanning the addresses 2539-2541-2587 Telegraph and where, on the latter, there were several structures, including 2 for parking and a "wheelchair repair" building. That latter building was a concrete block repair garage erected in 1957 for Doten Pontiac. A 1982 permit, again for Boddum, recorded its demolition. Permits also record the assignment of new addresses in 1985. While the new building at 2565-2589 Telegraph was not added to the c1990 Sanborn map, a note thereon indicated that the building was "new 11-3-86."

From 1975 until their relocation to the Ed Roberts Campus, the CIL was located at 2539 Telegraph. Per the State of CA Historic Resource Information System, that building and its property were identified as National Register (NR) eligible and thereby listed in the CR in 2006. An attempt to Landmark the CIL building at 2539 Telegraph was denied by Berkeley's Landmarks Preservation Commission in 2014. Thereafter, despite its NR/CR status, that building was removed and replaced with new housing.

As noted above, as a building less than 40 years of age and without potential exceptional qualities or values, under CEQA, the subject building is not historic resource eligible.

Under the City of Berkeley's Landmarks Preservation Ordinance and its Landmark/Structure of Merit criteria, there is no specific age threshold or criteria. In addition to the fact that no resources of any such recent age have been so designated, in sum, the 1985-86 commercial building at 2565-2589 Telegraph Ave.:

- Has no potential cultural, historical, architectural or educational values or importance;
- Is not associated with any cultural or historical period or events;
- Is not a first, last, prototypical or important example of its type;
- Is not contemporary with any nearby landmarks.

Consequently, the property and building at 2565-2589 Telegraph Ave. has no potential eligibility as a City of Berkeley Landmark or Structure of Merit.

***SB 330/Housing Crisis Act***

On February 13, 2023, an SB 330 Preliminary Application was submitted to the City of Berkeley that locked in the standards and fees applicable at the time of submission. The Housing Crisis Act (Gov. Code § 66300) prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project that provides affordable housing. The act also requires that a development project must comply with applicable, objective general plan and zoning standards and criteria that were in effect at the time the application was deemed to be complete. The law also requires the city or county to consider and either approve or disapprove the housing development project within the 5 allowable public hearings under HCA, and consistent with the applicable timelines under the Permit Streamlining Act.

***Permit Streamlining Act***

The project is required to go through a completeness review under the Permit Streamlining Act ("PSA"), Government Code § 65920 et seq. The PSA imposes several relevant obligations on the City as it conducts its completeness review of the project's application.

First, the City is required to compile lists that include the information required for a complete submittal (Gov Code § 65940 et seq). The City has several checklists and application documents governing what needs to be included in planning applications. Second, Gov Code § 65943 spells out a jurisdiction's obligations after submittal:

Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the application is determined to be incomplete, the lead agency shall provide the applicant with an exhaustive list of items that were not complete. That list shall be limited to those items actually required on the lead agency's submittal requirement checklist. In any subsequent review of the application determined to be

incomplete, the local agency shall not request the applicant to provide any new information that was not stated in the initial list of items that were not complete.

The section above requires a jurisdiction to:

1. Return a completeness determination within 30 days of submittal.
2. An incomplete determination must be exhaustive.
3. A jurisdiction's review must be limited to only those items found on the agency's submittal requirement checklist.
4. Subsequent completeness determinations may not request new information.

Lastly, if the City determines that the application is incomplete, the City is required to "specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete" (Gov Code § 65943).

### ***Housing Accountability Act***

The project is subject to the Housing Accountability Act (Gov. Code § 65589.5) which requires the City of Berkeley to approve the project because it is consistent with all objective standards. Under the Housing Accountability Act, the City is only permitted to reject a project if it can make findings based on a *preponderance* of evidence that the project would have a significant, unavoidable, and quantifiable impact on "objective, identified written public health or safety standards, policies, or conditions." (Gov. Code §65589.5(j)). The Legislature recently affirmed its expectation that these types of conditions "arise infrequently." (Ch. 243, Stats. 2018, § 1 (adding subdivision (a)(3) to Gov. Code § 65585.5)). Here, there is no evidence, let alone a preponderance of evidence, that the project would have any impact on public health and safety.

The following legislative findings (from Government Code § 65589.5(a)(2)) are instructive of how, and why, the City must interpret and implement these laws:

California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives...

The Legislature's intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters. That intent has not been fulfilled...

It is the policy of the state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

The Housing Accountability Act (Gov. Code § 65589.5) also requires the City of Berkeley to approve the project. The project is protected under the Housing Accountability Act because it complies with the City's objective standards and criteria, as demonstrated in document 009-MS-C of this application. The City is only permitted to reject a project under these circumstances if it can make findings based on a preponderance of evidence that the project would have a significant, unavoidable, and quantifiable impact on "objective, identified written public health or safety standards, policies, or conditions." (Gov. Code § 65589.5(j)). The Legislature recently affirmed its expectation that these types of conditions "arise infrequently." (Ch. 243, Stats. 2018, § 1 (adding subdivision (a)(3) to Gov. Code § 65585.5)). Here, there is no evidence, let alone a preponderance of evidence, that the project would have any impact on public health and safety.

A broad range of plaintiffs can sue to enforce the Housing Accountability Act, and the City would bear the burden of proof in any challenge (Gov. Code § 65589.5(k)). As recently reformed in the 2017 legislative session, the act makes attorney's fees and costs of suit presumptively available to prevailing plaintiffs, requires a minimum fine of \$10,000 per housing unit for jurisdictions that fail to comply with the act within 60 days, and authorizes fines to be multiplied by five times if a court concludes that a local jurisdiction acted in bad faith when rejecting a housing development.

## 6. REQUIRED FINDINGS

This section outlines the proposed project's compliance with the required findings for approval of the requested Use Permits for this project.

1. Use Permit, under BMC §23.204.020(A), to allow mixed use residential building
2. Use Permit, under BMC §23.204.020(A), to allow multi-family residential building
3. Use Permit, under BMC § 23.204.030(A)(1)(a) to construct new floor area
4. Use Permit, under BMC § 23.204.110(D)(4) to allow Height and FAR Increases
5. Use Permit, under BMC § 23.326.070(A): Demolition of a Non-Residential Building
6. Administrative Use Permit, under BMC § 23.304.050(A) to construct rooftop architectural elements which exceed the height limit for the district
7. Administrative Use Permit, under BMC § 23.304.080(A): to allow a fence more than 6 feet in height

### ***Use Permit Findings***

1. Use Permit, under BMC § 23.204.020(A), to allow a mixed-use residential building

*Table 23.204-1: Allowed Uses in the Commercial Districts.*

- Mixed-Use Residential: UP(PH)

Response: Because this Use Permit does not have any objective standards in the required findings, the density bonus project assumes the Use Permit to new construction of a mixed-use residential building. Mixed-use residential buildings are permitted and encouraged in the C-T district. The proposed project is appropriate in that it includes a commercial space and makes housing available in a convenient location proximate to downtown and campus. Future residents will also enjoy a reasonable amount of open space onsite, both on the ground floor, rooftop decks, and balconies. The future residents of the proposed housing project will also enjoy amenities designed for the student lifestyle and urban lifestyle, such as lounges/study rooms and ample bike parking.

2. Use Permit, under BMC § 23.204.020(A), to allow a multi-family residential building

*Table 23.204-1: Allowed Uses in the Commercial Districts.*

- Multi-Family Residential: UP(PH)

Response: The project will replace the existing underutilized commercial building with 52 new units that have a modern and sustainable design. The efficient project design will offer 219 bedrooms to help meet the demand for student-oriented and downtown-adjacent housing. The housing crisis is felt acutely here in Berkeley, with people paying extremely high rents to be able to live near campus or downtown because there are so few options available. The project at 2587 Telegraph Avenue will be able to offer six of the proposed units as affordable for very low-income households earning less than 50% of AMI. This project will supply some of this badly needed housing at market rate and below market rate, offering amenities tailored to the student lifestyle.

3. Use Permit, under BMC § 23.204.030(A)(1)(a) to construct new floor area

*Table 23.204-2: New Floor Area Permit Requirements*

- C-T District, over 1,500 sq. ft. or more = UP(PH)

Response: Because this Use Permit does not have any objective standards in the required findings, the density bonus project assumes the Use Permit to construct new floor area. The construction, establishment, maintenance, and operation of the proposed project will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of the neighborhood or the City as a whole. The project site is 18,780 SF and currently contains a 14,472 SF commercial building. The proposed project has 112,562 gross square feet, including a 2,903 SF retail space, and will significantly increase the intensity of development at this site by providing 52 units for a residential density of 121 dwelling units per acre.

4. Use Permit, under BMC § 23.204.110(D)(4) to allow Height and FAR Increases

*4. Height and FAR Increases.*

(a) Projects with 50 percent or more of the total building floor area for residential use are eligible for increased building height and FAR as shown in Table 23.204-33.

- **Table 23.204-33. C-T Allowed Heights and FAR Increases**

- **South of Dwight Way:**

- Allowed Increase in Height = 65 ft. and 5 stories
- Allowed Increase in FAR = No increase allowed

(b) The ZAB may allow the increased height and FAR with a Use Permit upon finding that the project will not result in a significant reduction in sunlight on Telegraph Avenue sidewalks.

Response: The proposed project complies with the objective standard of having 50% or more of the total building floor area dedicated to residential use, thus it is eligible for the Use Permit to increase building height and FAR. The other finding for this Use Permit related to sunlight is not objective, because a “significant reduction” is not a clear and measurable standard that can be interpreted by a third party. A “significant reduction” in sunlight is an arbitrary amount, which would need to be interpreted in a discretionary way by the Zoning Adjustments Board (ZAB). Because the proposed project does comply with the objective standard in the required findings for this UP, the proposed project assumes this Use Permit to allow increased building height and FAR in the proposed building design.

5. Use Permit, under BMC § 23.326.070(A): Demolition of a Non-Residential Building

A. Main Non-Residential Buildings. A main building used for non-residential purposes may be demolished with a Use Permit.

D. *Findings.* A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the ZAB or the Zoning Officer finds that:

1. The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and
2. The demolition:
  - (a) Is required to allow a proposed new building or other proposed new use;
  - (b) Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;
  - (c) Will remove a structure which represents an inhabitable attractive nuisance to the public; or
  - (d) Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.

Response: The demolition of this existing commercial building is necessary to allow the proposed new building to be constructed. The demolition of the existing two-story, 14,427 SF

building will not be materially detrimental to the commercial needs and public interest of the affected neighborhood. In fact, an intention of the Telegraph Avenue Commercial District (C-T) is to “encourage the redevelopment of single-story structures that are not historically significant resources with housing and mixed-use development.” (BMC § 23.204.100(A)(13) Though the existing property is a two-story building, it is an underutilized parcel with multiple vacant commercial tenant spaces. It is not a historically significant resource (and is not eligible since it is less than 40 years old) and will be replaced by a mixed-use development with 52 dwelling units containing a total of 219 bedrooms.

The proposed project includes a 2,903 SF retail space on the ground floor fronting Telegraph Avenue, so will retain a commercial use at this address. It is both compatible with the zoning district’s intent and will continue to maintain the present street frontage of the district. The proposed project will not interfere with the continuity of retail at the ground level, and the design of the building will maintain the continuous wall of building facades along Telegraph Avenue. This is a true infill development project, which will redevelop an underutilized parcel containing a two-story, partially vacant commercial building into a vibrant mixed-use residential address with an attractive pedestrian atmosphere.

6. Administrative Use Permit, under BMC § 23.304.050(A) to construct rooftop architectural elements which exceed the height limit for the district.

Response: Because this Administrative Use Permit does not have any required findings, the density bonus project assumes the AUP to construct rooftop architectural elements that exceed the C-T zone height limit.

7. Administrative Use Permit, under BMC § 23.304.080(A): to allow a fence more than 6 feet in height

Response: Because this Administrative Use Permit does not have any required findings, the density bonus project assumes the AUP to construct an 8-foot-tall wooden fence along the rear property line to provide lot line screening from the adjacent residential district, as required by the municipal code.

***Required Findings for Use Permits in the C-T Zone***

E. *Permit Findings.* To approve an AUP or Use Permit for a project in the C-T district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:

1. Is compatible with the purposes of the district;
2. Encourages and maintains the present street frontage of the district;
3. Does not interfere with the continuity of retail or compatible service facilities at the ground level;
4. Does not interrupt a continuous wall of building facades;

5. Is compatible in design and character with the district and the adjacent residential neighborhoods;
6. Does not generate traffic or parking demand significantly beyond the capacity of the district or significantly increase impacts on adjacent residential neighborhoods; and
7. Complies with the Southside Plan's adopted Mitigation Monitoring Program (MMP)

Response: The proposed project meets all the objective standards of the required findings for approving a Use Permit in the C-T zone. This SB 330 Housing Project is not subject to standards that are not objective. Items 1 and 5 are not objective standards, however the project does comply with them. Surrounding land uses include other multi-family residential developments of similar scale to the proposed project. The project is located within the Telegraph Avenue Commercial zone, which the City of Berkeley envisioned to support dense housing development near regional transit, shops, and amenities that the Downtown and campus areas provide.

The proposed project includes a 2,903 SF retail space on the ground floor fronting Telegraph Avenue. It is both compatible with the zoning district's intent and will continue to maintain the present street frontage of the district. The proposed project will not interfere with the continuity of retail at the ground level, and the design of the building will maintain the continuous wall of building facades along Telegraph Avenue.

This infill project is especially sustainable in its provision of housing opportunities so near to services and public transportation. The project is adjacent to the Downtown Berkeley BART Station and multiple AC Transit lines near Telegraph Avenue. Providing dense housing in close proximity to regional transit, bicycle routes, UC Berkeley campus, shops, and services will reduce vehicle miles traveled, air quality and greenhouse gas emissions impacts of the future residents.

The proposed project is not anticipated to generate significant traffic or parking demand because it is located in the City of Berkeley's Low Vehicle-Miles Traveled (VMT) Area. This Low VMT area includes the Telegraph Avenue commercial corridor because the VMTs per resident are an average of 15% less than the rest of the Bay Area. In addition, the proposed project will have a Transportation Demand Management Program. Future residents will not be eligible for Residential Parking Permits (RPP). The proposed project will comply with all objective standards in the Southside Plan's adopted Mitigation Monitoring Program (MMP). As a result, the project would not be materially detrimental to the housing needs or public interest of the affected neighborhood and the City of Berkeley.

## **7. PROJECT TEAM**

Developer:

Gilbane Development Company  
7 Jackson Walkway Providence, RI 02903  
[ccerria@gilbaneco.com](mailto:ccerria@gilbaneco.com)

571.551.7706

Architect:

KTGY

1814 Franklin St #400, Oakland, CA 94612

[jmusick@ktgy.com](mailto:jmusick@ktgy.com)

510.463.2073

Civil Engineer:

SANDIS

636 9<sup>th</sup> Street, Oakland CA 94607

[mkuykendall@sandis.net](mailto:mkuykendall@sandis.net)

510.590.3415

Landscape Architect:

PGAdesign Landscape Architects

444 17<sup>th</sup> Street, Oakland CA 94612

[garrett@pgadesign.com](mailto:garrett@pgadesign.com)

510.550.8852

Planning Consultant:

Rhoades Planning Group

2140 Shattuck Avenue, Suite 705, Berkeley CA, 94704

[info@rhoadesplanninggroup.com](mailto:info@rhoadesplanninggroup.com)

510.545.4341