



ZONING ADJUSTMENTS BOARD – STAFF REPORT

FOR BOARD ACTION

JUNE 12, 2025

1153-1173 Hearst Avenue – Hearst Gardens

Use Permit Modification #ZP2024-0157 to modify conditions of approval for a residential project originally approved under #ZP2016-0028. The modification revises Conditions of Approval #16 and #58 in #ZP2016-0028 to allow a condominium conversion application to convert units from rent-controlled apartments into for-sale condominium units.

I. Background

A. Land Use Designations:

- General Plan: MDR – Medium Density Residential
- Zoning District: R-2A – Restricted Multiple-Family Residential

B. Zoning Permits Required for the Use Permit Modification:

- Use Permit pursuant Berkeley Municipal Code (BMC) 23.404.070(A) to modify an approved Use Permit to modify two conditions of approval to allow the applicant to process condominium conversions of existing dwelling units.

C. Zoning Permits Required for the Original Use Permit:

- Use Permit for construction of dwelling units, pursuant to BMC Section 23D.32.030¹
- Use Permit for the addition of a sixth or greater bedroom in existing dwellings on a parcel, pursuant to BMC 23D.32.050.A
- Administrative Use Permit to construct residential additions greater than 14' in average height, BMC Section 23D.32.070.C
- Administrative Use Permit to allow an extension of a non-conforming front and side yard, pursuant to BMC Section 23C.04.070.B
- Administrative Use Permit to reduce the building separation from 8' on the first floor and 12' on the second floor to 6'-1", pursuant to BMC Section 23D.32.070.D.4

¹ BMC Section citations reference BMC numeration prior to December 2021.

1153-1173 HEARST AVENUE – ZP2024-0157

June 12, 2025

D. CEQA Recommendation:

It is staff's recommendation to the Zoning Adjustments Board 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 15301 ("Existing Facilities").

E. Project Recommendation:

Approval. The project is, on balance, consistent with the Zoning Ordinance and General Plan.

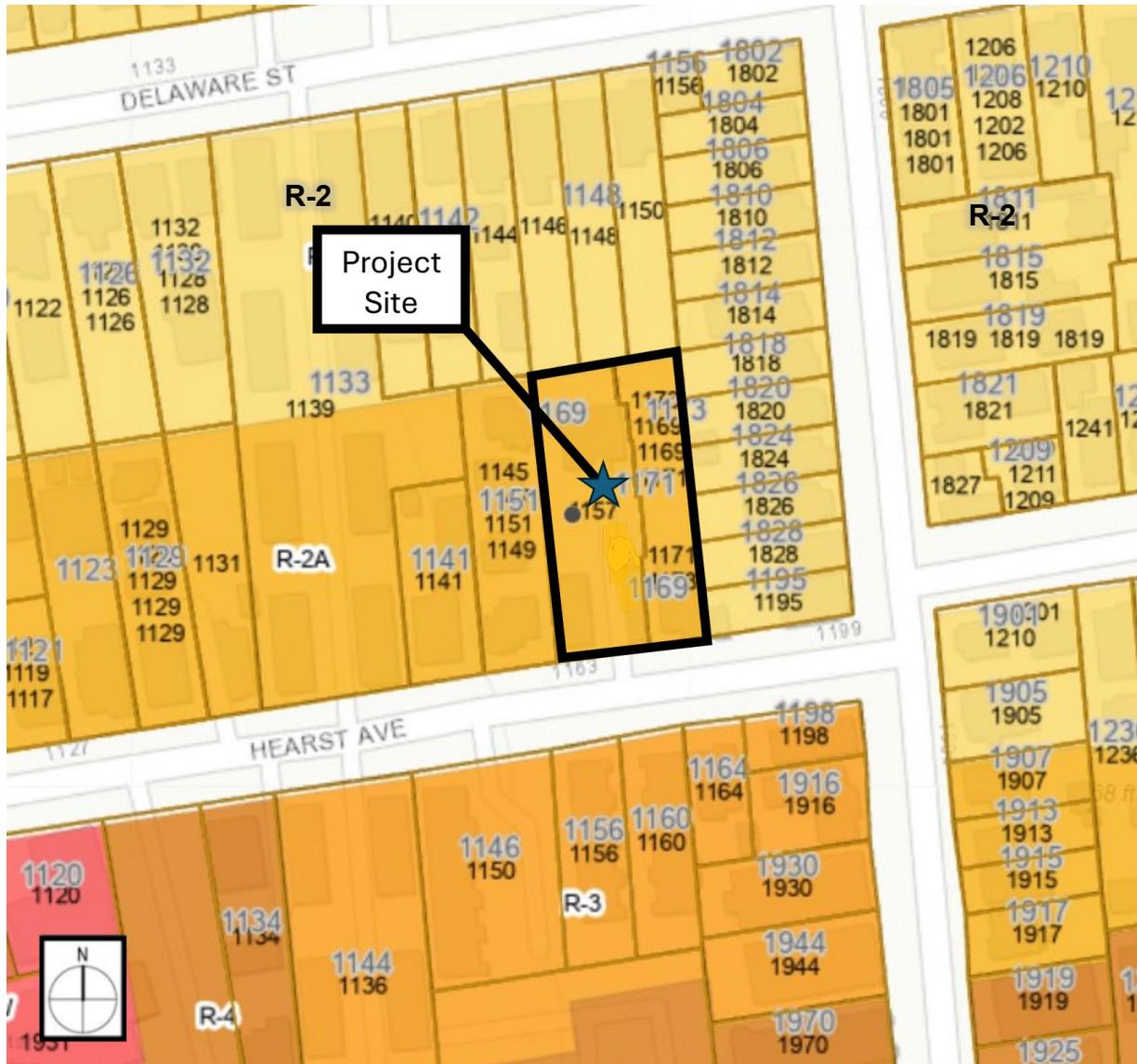
F. Parties Involved:

- Applicant: Hearst Avenue Cottages, LLC, c/o Rhoades Planning Group, 2140 Shattuck Avenue, Suite 705, Berkeley, CA 94704
- Property Owner: Hearst Avenue Cottages, LLC, 2140 Shattuck Avenue, Suite 705, Berkeley, CA 94704

1153-1173 HEARST AVENUE – ZP2024-0157

June 12, 2025

Figure 1: Vicinity and Zoning Districts Map



Legend:

Zoning

- R-2 – Restricted Two-Family Residential
- R-2A – Restricted Multiple-Family Residential
- R-3 – Multiple-Family Residential District
- R-4 – Multi-Family Residential District

1153-1173 HEARST AVENUE – ZP2024-0157

June 12, 2025

Figure 2: Previously Approved Site Plan (No changes to site layout proposed)

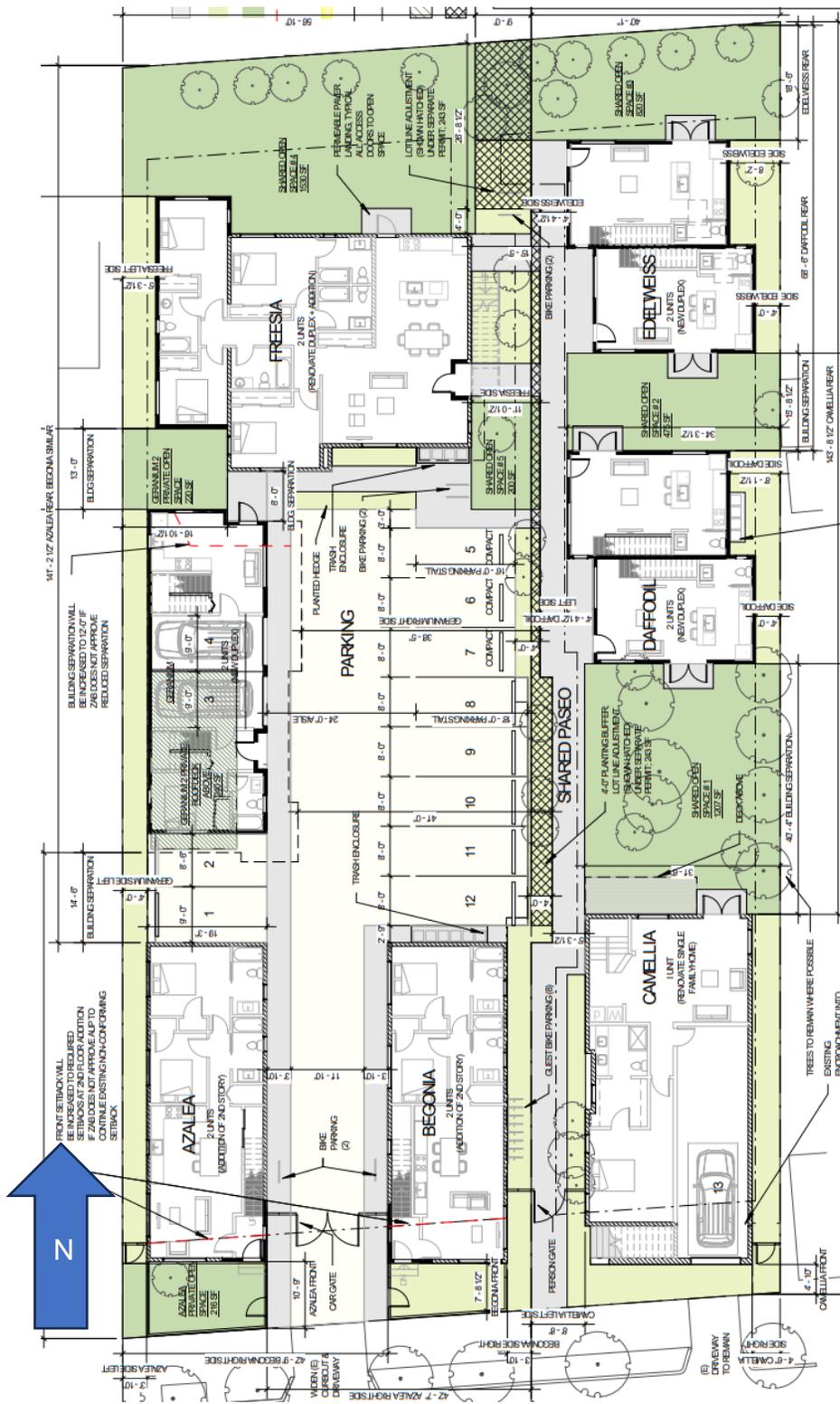


Figure 3: Rent Controlled Units, Status of Construction

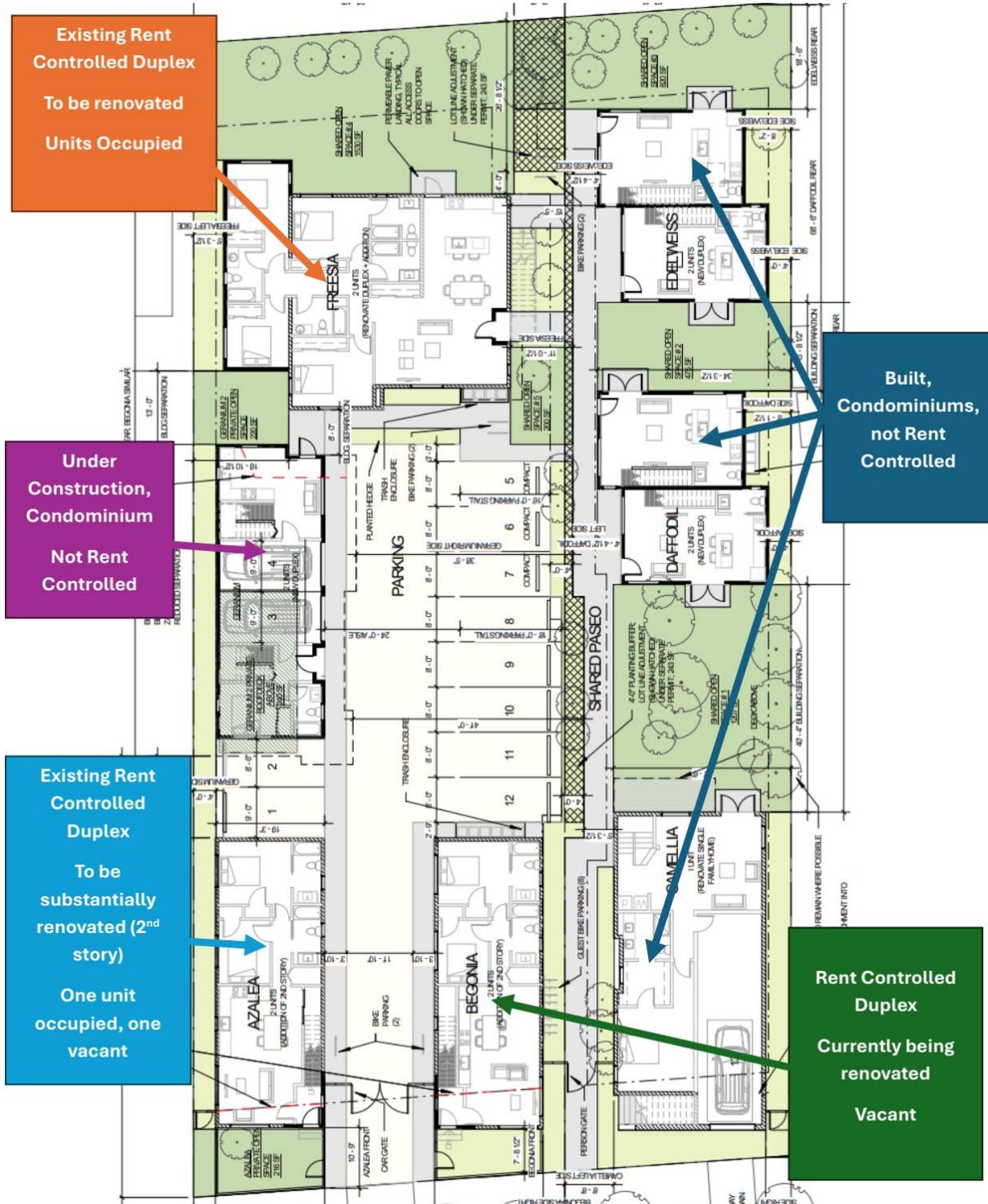


Table 1: Land Use Information

1153-1173 HEARST AVENUE – ZP2024-0157
 June 12, 2025

ZAB Staff Report
 Page 6 of 17

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Residential – Single Family Home and 2 new duplex buildings, Under Construction duplex “Geranium” and “Begonia” and one existing duplex to be renovated	R-2A	MDR – Medium Density Residential
Surrounding Properties	North	Single Family Residential	R-2	LMDR – Low Medium Density Residential
	South	Multi-Family Residential	R-3	MDR
	East	Single Family Residential	R-2	LMDR
	West	Single Family and Multi-Family Residential	R-2A	MDR

Table 2: Special Characteristics

Characteristic	Applicability	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This fee applies to net newly constructed nonresidential gross floor area over 7,500 square feet. The project does not propose construction of non-residential uses; therefore, the fee does not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable / Inclusionary Housing Requirements (BMC Chapter 23C.12)	Yes	The previously approved use permit was subject to the inclusionary housing provisions of BMC Chapter 23C.12 and a Regulatory Agreement was recorded on the property. The City may re-evaluate the modified project’s eligibility for Affordable/Inclusionary requirements pursuant to BMC at the time the applicant submits for the condominium conversion subdivision pursuant to BMC 21.28 “Condominiums and Other Common Interest Subdivisions” and 23.326 “Demolition and Dwelling Unit Controls” which have specific requirements for affordable/inclusionary housing related to condominium conversions.
Bird Safe Buildings (BMC Section 23.304.150)	No	The project modification is exempt from these provisions because no physical changes to the project are proposed that would be subject to this section.

1153-1173 HEARST AVENUE – ZP2024-0157

June 12, 2025

Characteristic	Applicability	Explanation
Coast Live Oak Trees (BMC Chapter 6.52)	No	There are no Coast Live Oak (<i>Quercus agrifolia</i>) trees on the project site.
Creeks	No	No protected or culverted creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30 feet of the project site. An unprotected creek and historic trace of a creek cross the project site in a diagonal in the southeast portion of the site.
Density Bonus	No	The previously approved project did not include a density bonus. The Use Permit Modification is for revised conditions of approval and will not involve a density bonus request.
Hard Hats (BMC Chapter 13.107)	No	The use permit modification is not subject to the Hard Hat requirements. In addition, the previously approved project consists of less than 50,000 square feet and therefore, the Hard Hat requirements do not apply.
Historic Resources	No	There are no historic resources on the site.
Housing Accountability Act (HAA) (Gov't Code Section 65589.5(j))	No	The previously approved project is a "Housing development project" consisting of dwelling units only. The Use Permit Modification is for changes to the conditions of approval, proposes no physical changes to the approved project, and is compliant with objective planning standards. Therefore, this section does not apply to the project.
Housing Crisis Act of 2019 (SB 330)	No	The project is for a Use Permit Modification to revise conditions of approval for a previously approved residential development and SB 330 does not apply.
Rent Controlled Units	Yes	The Use Permit Modification would revise conditions of approval to allow the applicant to process a condominium conversion of the existing rent-controlled units. Any future conversion of the existing rent-controlled units would be consistent with BMC. See Section III.B, Replacement of Demolished Units.
Residential Preferred Parking (RPP)	No	The site is not located in an RPP zone. The project is not eligible for RPP permits per BMC Section 14.72.080(C)(1) as no permits shall be issued to residents in newly constructed residential units.
Seismic Hazards (SHMA)	No	Project site is not in a landslide, liquefaction or earthquake fault rupture zone.
Soil/Groundwater Contamination	No	The project site not located within the City's Environmental Management Area and is not on the Cortese List. ^a Standard Conditions of Approval related to hazardous materials would apply.

1153-1173 HEARST AVENUE – ZP2024-0157

June 12, 2025

Characteristic	Applicability	Explanation
Transit	Yes	The project site is within one quarter mile of the San Pablo/University intersection that is served by AC Transit's 72 Rapid bus line, 49, 51B, 52, FS, G, 72, 72M, and 800 and 802 lines. The North Berkeley BART Station is located less than 0.5 miles from the site.
Notes: a. Cortese List is an annually updated list of hazardous materials sites compiled pursuant Government Code Section 65962.5.		

Table 3: Project Chronology

Date	Action
August 23, 2018	ZAB Approval of Use Permit #ZP2016-0028
January 29, 2019	City Council Appeal Hearing on Use Permit #ZP2016-0028 – Project was remanded back to ZAB for CEQA review
May 9, 2019	ZAB Public Hearing on Use Permit #ZP2016-0028 – No action taken; project went back to City Council
June 9, 2019	City Council approves Use Permit #ZP2016-0028
October 10, 2024	Neighborhood Meeting
October 28, 2024	Use Permit Modification Application submitted
November 27, 2024	Application deemed incomplete
January 17, 2025	Application resubmitted
February 14, 2025	Application deemed complete
February 14, 2025-April 14, 2025	Application processing ^a
May 29, 2025	Public hearing notices mailed/posted
June 12, 2025	ZAB hearing
Notes: a. Application processing reflects the project compliance review, including CEQA if applicable, after the application is deemed complete. Submittals are reviewed within 30 days of receipt, pursuant to the Permit Streamlining Act.	

1153-1173 HEARST AVENUE – ZP2024-0157

June 12, 2025

II. Project Setting

A. Neighborhood/Area Description:

The property is located in a West Berkeley neighborhood; University Avenue is located one block to the south and San Pablo Avenue (State Highway 123) is located one block to the west. The neighborhood consists predominantly of one- to two-story single and multi-family dwellings, with a few three- and four-story structures located towards the west/San Pablo Avenue. As can be seen from the Vicinity Map in Figure 1 above, the neighborhood is comprised of a mix of zoning districts ranging in residential density from R-2, R-2A, R-3 and R-4. The neighborhood is in close proximity to several bus transit lines, commercial businesses, and the West Berkeley Library.

B. Site Conditions:

The site consists of two separate rectangular parcels located on the north side of Hearst Avenue on the block bound by San Pablo Avenue to the west and Curtis Street to the east. The eastern parcel contains two (2) existing condominium buildings, containing two dwelling units each (Daffodil and Edelwiess) and a single-family residence (Camellia). The buildings were constructed pursuant to the Use Permit #ZP2016-0018 and sold as condominium units. The western parcel contains a total of four buildings, two of which are under construction. The four buildings include two existing duplexes; one located in the rear of the site (Freesia) and one in the front of the site (Azalea). These duplexes would be renovated when they are vacated by the existing tenants. Two duplexes are under construction/renovation (Geranium), pursuant to Use Permit #ZP2016-0018, and are located in the central portion of the site along the western property line and in the front of the property. The western-most parcel also contains the main driveway into the site and parking for both parcels.

III. Project Description

A. Background:

The original Use Permit #ZP2016-0028 was approved by the Zoning Adjustments Board (ZAB) on August 23, 2018. An appeal of the ZAB decision was filed by an attorney representing a neighbor of the project and raised concerns regarding the use of a CEQA exemption, drainage, flooding and overall detrimental impacts to the surrounding neighborhoods. Twenty-nine additional individuals signed a petition in support of the appeal.

The Clerk set the matter for review by the City Council on January 29, 2019. At the public hearing, the Council decided to remand the project back to ZAB to undertake further CEQA analysis, review the project based on CEQA findings and analyze the detriment to rent-controlled units.

The project was brought back to the ZAB on May 9, 2019. To address the concerns of impacts to the rent-controlled units, conditions of approval (#16 and #58) were added to the project to prevent the existing rent-controlled units from being converted to condominium for-sale units. The conditions were developed by the applicant, Land Use staff, and Rent Stabilization Board Staff. The applicant agreed to the conditions at the

1153-1173 HEARST AVENUE – ZP2024-0157

June 12, 2025

May 9, 2019 meeting, and the ZAB took no action on the project, thereby returning the item to City Council. The City Council approved the project at the June 9, 2020 meeting.

Since the approval of Use Permit #ZP2016-0028, the applicant has completed the construction of two duplex buildings and the renovation of the existing single-family home on the eastern parcel. All of these units, five in total, were sold as townhome condominium units. In addition, half of the original tenants have moved out of the rent controlled units on the western parcel.

Conditions #16 and #58 were primarily added to the project to protect the original tenants of the six existing rent controlled units, but now, only three of the rent controlled units are occupied. If these conditions were eliminated, Berkeley Municipal Code would still protect the existing tenants of the rent-controlled units from eviction and require exclusive right to purchase for tenants. Rent Board staff has been involved in the drafting and editing of the revised conditions and they are comfortable with the revised language.

B. Proposed Project Details:

Use Permit Modification #ZP2024-0157 proposes to modify the conditions of approval for the residential project originally approved under #ZP2016-0028 for the substantial rehabilitation of seven existing dwelling units and construction of six new dwelling units. The modification proposes to modify Conditions of Approval #16 and #58, which restrict the developer from applying for or processing condominium conversions of the existing rent-controlled units. The revised conditions would allow the developer to apply for and process the conversion of the units from rent controlled apartments to condominium for-sale units, consistent with Berkeley Municipal Code requirements², upon vacancy by the existing tenants.

No physical changes are proposed to the building design or layout of the project.

1. Condition of Approval #16 currently states:

COA #16, *“All owners of record of the subject property shall sign and record with the Alameda County Clerk-Recorder a “Notice of Limitation on Use of Property” and provide a recorded copy thereof to the project planner. This Notice of Limitation shall stipulate that none of the six existing rent controlled units (1155-57 Hearst, 1159 A& B Hearst, 1161-63 Hearst) shall undergo condominium conversion, Tenancy in Common, or any work that would require a new Certificate of Occupancy for the building; and shall remain subject to rent control in perpetuity.”*

² Code requirements include BMC Chapter 21.28 “Condominiums and Other Common Interest Subdivisions”, Chapter 23.326 “Demolition and Dwelling Unit Controls” and Chapter 13.76 “Rent Stabilization and Eviction for Just Cause Ordinance”.

1153-1173 HEARST AVENUE – ZP2024-0157

June 12, 2025

Proposed Revised Condition:

Notice of Limitation. The Notice of Limitation recorded with Alameda County shall be rescinded and a new Notice of Limitation shall be filed stipulating that all owners of record of the subject property shall sign and record with the Alameda County Clerk-Recorder that all of the six existing apartments: 1153 & 1155 Hearst Avenue; 1161 & 1163 Hearst Avenue, and 1165 & 1167 Hearst Avenue may be allowed to convert to condominiums, but that existing tenants as of October 24, 2024 shall be permitted to remain in their unit(s) until they choose to vacate their unit(s). The new Notice of Limitation shall include the names of the existing tenants and describe the address and location of their dwelling units. Each tenant-occupied, condominium-converted unit shall remain subject to rent control and will not be sold separately from the other unit in the duplex until both units are vacated by the existing tenants unless the existing tenants purchase their unit. No work that requires a new Certificate of Occupancy shall be performed on any one of the two occupied duplexes until that building is vacant. Conversion of the existing rental units to condominium units shall be processed consistent with BMC Chapter 21.28 “Condominiums and Other Common Interest Subdivisions”, Chapter 23.326 “Demolition and Dwelling Unit Controls” and Chapter 13.76 “Rent Stabilization and Eviction for Just Cause Ordinance”.

2. Condition of Approval #58 currently states:

COA #58, *“The existing six dwelling units shall not undergo condominium conversion, Tenancy in Common, or any work that would require a new Certificate of Occupancy for the building; and shall remain as rental units subject to rent control under the Rent Stabilization Ordinance.”*

Proposed Revised Condition:

Rent Control. The existing six dwelling units may be permitted to be converted to condominiums and all existing tenants who occupied the existing rental units as of October 24, 2024, the filing date of #ZP2024-0157 (the application to modify #ZP2016-0028), shall be allowed to remain in their dwelling units until they choose to vacate their unit(s). Each of the three existing rental units that are currently occupied shall continue to be subject to rent control under the Rent Stabilization Ordinance (BMC Chapter 13.76), and will not be sold separately from the other unit in the duplex even if a unit is converted to condominiums, until such times as those units are vacated by the existing residents and then sold. No work that would require a new Certificate of Occupancy shall be performed on any one of the two occupied duplexes until that building is vacant. Conversion of the existing rental units to condominium units shall be processed consistent with BMC Chapter 21.28 “Condominiums and Other Common Interest Subdivisions”, Chapter 23.326 “Demolition and Dwelling Unit Controls” and Chapter 13.76 “Rent Stabilization and Eviction for Just Cause Ordinance”.

C. Replacement of Demolished Units:

Government Code Section 66300(d) prohibits the demolition of residential dwelling units unless the project will create at least as many residential units as the greatest number

1153-1173 HEARST AVENUE – ZP2024-0157

June 12, 2025

of residential dwelling units that existed on the project site within the last five years; prohibits the demolition of occupied or vacant protected units (i.e. rent-controlled or affordable units), unless replaced according to replacement provisions therein; and does not supersede any local ordinance that reserves greater protections/provisions for lower income households or displaced households. This Use Permit Modification does not propose the demolition of any residential dwelling units.

Six of the existing units are considered “protected” units as defined in Section 66300(d) because they were subject to rent-control within the last five years. Government Code Section 66300 (SB 330) requires that the units be replaced in compliance with the jurisdiction’s rent or price control ordinance because the project proposes the future conversion of the six rent-controlled units into for-sale units.

The replacement of the rent-controlled units pursuant to SB 330 will be implemented with the future condominium conversion subdivision. The scope of this Use Permit Modification is limited to the modification of the conditions of approval that would allow for the future application for the condominium conversion subdivision.

IV. Community Discussion

A. Neighbor/Community Concerns:

Prior to submitting this application to the city, the applicant invited interested neighbors located within 300 feet of the project site to a project preview meeting. The meeting was held on October 10, 2024, and attended by eight individuals (meeting minutes are included as Attachment 3). The City also posted notices within the neighborhood at nearby three locations. At the time of writing this report, staff had not received any communications regarding the project.

V. Issues and Analysis

A. CEQA Approach and Recommendation

Section 15301 - Existing Facilities:

It is staff’s recommendation that the project qualifies for a Class 1 Categorical Exemption pursuant to CEQA Guidelines Section 15301 (“Existing Facilities”). The project complies with this exemption because the site contains existing duplexes and condominiums that were approved under Use Permit #ZP2016-0018. The Use Permit Modification proposes to revise conditions of approval and does not include any physical changes to the project or site. The revisions to the conditions of approval would allow the developer to submit a condominium conversion subdivision for the existing duplexes, which is currently prohibited by the conditions. Examples of projects exempt pursuant to Section 15301 include (k) Division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt. The Use Permit Modification involves negligible expansion of the existing use.

In addition, none of the exceptions to eligibility for a categorical exemption, as listed under CEQA Guidelines Section 15300.2, apply to the project:

1153-1173 HEARST AVENUE – ZP2024-0157

June 12, 2025

- The project is currently characterized as developed by the California Natural Diversity Database;³ therefore, it is not located in an environmentally sensitive area;
- The cumulative impact of successive projects of the same type in the same place, over time would not be significant;
- There are no “unusual circumstances” at the project site that would result in significant environmental effects;
- There are no eligible or designated scenic highways within the City of Berkeley;⁴ therefore, the project site is not in view of a state scenic highway;
- The site is not included on a list compiled pursuant to Government Code Section 65962.5;⁵ and
- The project would not result in a substantial adverse change in the significance of a historical resource.

B. Housing Accountability Act Analysis:

Pursuant to the Housing Accountability Act (HAA), California Government Code Section 65589.5(j), 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 safety⁶ 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 previously approved project is a “Housing development project” consisting of dwelling units only. The Use Permit Modification is for changes to the conditions of approval, proposes no physical changes to the approved project, and is compliant with objective planning standards. Therefore, this section does not apply to the project.

C. Housing Crisis Act of 2019 – Senate Bill (SB) 330:

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. A “housing development project” can include any of the following: residential units only; mixed use consisting of residential and nonresidential uses in which at least two-thirds

³ California Department of Fish and Wildlife. California Natural Diversity Database. Available: <https://apps.wildlife.ca.gov/bios6/?tool=cnddbqv>

⁴ California Department of Transportation. California Scenic Highway Program’s Scenic Highway System List. Available: <https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-i-scenic-highways>

⁵ California Environmental Protection Agency. Cortese List Data Resources. Available: <https://calepa.ca.gov/sitecleanup/corteselist/>

⁶ A “specific, adverse impact” means “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.”

1153-1173 HEARST AVENUE – ZP2024-0157

June 12, 2025

of the square-footage is designated residential, and transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

- 1. Government Code Section 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 hearings in connection with the approval of that housing development project.

The previously approved project is a “housing development project” consisting of all residential uses. The original Use Permit #ZP2016-0018 did not comply with all of the objective zoning standards when it was approved and it was determined that Section 65905.5(a) would not apply to the project.

The Use Permit Modification does not change the design or layout of the previously approved project; therefore, Section 65905.5(a) does not apply to the Use Permit Modification.

- 2. Government Code Section 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.

The use permit modification does not include physical changes to the previously approved project, and therefore, this section would not apply to the modification. In addition, the staff report for the original Use Permit #ZP2016-0018 identified that the property was determined to not be historically significant, or eligible for listing on the California Register of Historical Resources or as a City of Berkeley Landmark or Structure of Merit.

- 3. Government Code Section 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. Should ZAB determine the application is categorically exempt from CEQA at the May 22, 2025 public hearing, the application must be approved or disapproved by July 21, 2025.

D. General Non-Detriment Finding:

BMC Section 23.406.040(E) states that before the ZAB approves an application for a Use Permit, it must find that the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City. The Use Permit Modification will not result in any physical changes to the previously approved project.

1153-1173 HEARST AVENUE – ZP2024-0157

June 12, 2025

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.

E. District purposes

The Use Permit Modification would be consistent with the District purposes which include:

1. Implement the General Plan by encouraging the development of medium-density residential areas characterized by small multiple-family and garden-type apartment structures with a maximum of open space consistent with this type of development;
2. Make available housing for persons who desire apartment-type accommodations with a maximum of open space;
3. Protect adjacent properties from unreasonable obstruction of light and air; and
4. Permit only land use intensity which is compatible with existing low-density residential structures and is not detrimental to the immediate neighborhood.

The revision to the conditions of approval would not result in a revision to the project that would make the project incompatible with the District purposes. Removing the condominium restriction from the original Use Permit #ZP2016-0018 would still meet the intent of the District to provide small multiple-family or apartment-type structures. The Use Permit Modification does not involve any changes to the project design or layout.

F. 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 LU-7–Neighborhood Quality of Life, Action A:** Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. **Policy UD-16–Context:** The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
4. **Policy UD-24–Area Character:** Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

1153-1173 HEARST AVENUE – ZP2024-0157

June 12, 2025

Staff Analysis: The Use Permit Modification does not involve any changes to the project design or layout. Revising the conditions of approval to eliminate the condominium restriction placed on the project would not alter the project’s design or consistency with General Plan policies.

5. **Policy LU-23–Transit-Oriented Development:** Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley.
6. **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.
7. **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.

Staff Analysis: The project site is located one block east of San Pablo Avenue and one block north of University Avenue, two major transit thoroughfares. The project provides housing opportunities located within one quarter mile of the San Pablo/University intersection that is served by the following AC Transit bus lines: 72 Rapid, 49, 51B, 52, FS, G, 72, 72M, 800 and 802.

8. **Policy H-33–Regional Housing Needs:** Encourage adequate housing production to meet City needs and the City’s share of regional housing needs.
9. **Policy H-8–Maintain Housing:** Maintain and preserve the existing supply of housing in the City.

Staff Analysis: Revising the conditions of approval to eliminate the condominium restriction placed on the project would provide more for-sale condominium units for entry-level home ownership opportunities in the City.

VI. Recommendation

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

1. **FIND** that the project is categorically exempt from the provisions of the CEQA pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”); and
2. **APPROVE** Use Permit #ZP2024-0157 pursuant to Section 23.406.040(D) and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

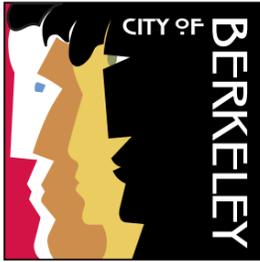
1. Findings
2. Conditions

1153-1173 HEARST AVENUE – ZP2024-0157

June 12, 2025

3. Project Plans, received March 17, 2025
4. Neighborhood Meeting Minutes
5. Notice of Public Hearing

Staff Planner: Sharon Gong, sgong@berkeleyca.gov, and Lisa Gordon, lgordon@rinconconsultants.com, (805) 324-7207



PLANNING AND
DEVELOPMENT

ZONING ADJUSTMENTS BOARD – FINDINGS

June 12, 2025

1153-1173 Hearst Avenue – Hearst Gardens

Use Permit Modification #ZP2024-0157 to modify conditions of approval for a residential project originally approved under #ZP2016-0028. The modification revises Conditions of Approval #16 and #58 in #ZP2016-0028 to allow a condominium conversion application to convert units from rent-controlled apartments into for-sale condominium units.

ZONING PERMITS REQUIRED

- Use Permit pursuant Berkeley Municipal Code (BMC) 23.404.070(A) to modify an approved Use Permit to modify two conditions of approval to allow the applicant to process condominium conversions of existing dwelling units.

I. CEQA FINDINGS

- A. 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 Section 15301 (“Existing Facilities”).
- B. 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 will not affect any historical resource.

II. HOUSING ACCOUNTABILITY ACT FINDINGS

- A. The Housing Accountability Act, Government Code Section 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: (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.

- B.** The previously approved project is a “Housing development project” consisting of dwelling units only. The Use Permit Modification is for changes to the conditions of approval, proposes no physical changes to the approved project, and is compliant with objective planning standards. Therefore, this section does not apply to the project.

III. FINDINGS FOR APPROVAL

- A.** As required by BMC Section 23.406.040(E), Findings for Approval, the project, under the circumstances of this particular case existing at the time at which the application is granted, will 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. The Use Permit Modification will not result in any physical changes to the previously approved project.

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

- B.** As required by BMC Section 23.202.090 the project is consistent with the purposes of the underlying district.

The Use Permit modification for the revision to the conditions of approval will not result in a revision to the project that would make the project incompatible with the District purposes. Removing the condominium restriction from the original Use Permit #ZP2016-0018 would still meet the intent of the District to provide small multiple-family or apartment-type structures. The Use Permit Modification does not involve any changes to the project design or layout.

C. 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 LU-7–Neighborhood Quality of Life, Action A:** Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. **Policy UD-16–Context:** The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
4. **Policy UD-24–Area Character:** Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

The Use Permit Modification will not involve any changes to the project design or layout. Revising the conditions of approval to eliminate the condominium restriction placed on the project will not alter the project’s design or consistency with General Plan policies.
5. **Policy LU-23–Transit-Oriented Development:** Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley.
6. **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.
7. **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.

The project site is located one block east of San Pablo Avenue and one block north of University Avenue, two major transit thoroughfares. The project provides housing opportunities located within one quarter mile of the San Pablo/University intersection that is served by the following AC Transit bus lines: 72 Rapid, 49, 51B, 52, FS, G, 72, 72M, 800 and 802.
8. **Policy H-33–Regional Housing Needs:** Encourage adequate housing production to meet City needs and the City’s share of regional housing needs.
9. **Policy H-8–Maintain Housing:** Maintain and preserve the existing supply of housing in the City.

Revising the conditions of approval to eliminate the condominium restriction placed on the project will provide more for-sale condominium units for entry-level home ownership opportunities in the City.



USE PERMIT #ZP2024-0157 CONDITIONS OF APPROVAL

May 22, 2025

1153-1173 Hearst Avenue – Hearst Gardens

Use Permit Modification #ZP2024-0157 to modify conditions of approval for a residential project originally approved under #ZP2016-0028. The modification revises Conditions of Approval #16 and #58 in #ZP2016-0028 to allow a condominium conversion application to convert units from rent-controlled apartments into for-sale condominium units.

I. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

Pursuant to Berkeley Municipal Code (BMC) Title 23 Zoning Ordinance and Title 13 Public Peace, Morals, and Welfare, 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.
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 re-establish 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 comply 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 BMC 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, Zoning Adjustments Board (ZAB), or City Council referral.

9. Hold Harmless. The permittee agrees as a condition of approval of this application to indemnify, protect, defend with counsel selected by the City, and hold harmless, the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents, from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorney's fees and disbursements (collectively, "Claims") arising out of or in any way relating to the approval of this application, any actions taken by the City related to this entitlement, or any environmental review conducted under the California Environmental Quality Act, Public Resources Code Section 210000 et seq., for this entitlement and related actions. The indemnification shall include any Claims that may be asserted by any person or entity, including the permittee, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents. The permittee's duty to defend the City shall not apply in those instances when the permittee has asserted the Claims, although the permittee shall still have a duty to indemnify, protect and hold harmless the City.

II. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC Section 23.404.050(H) Conditions of Approval, 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 #

At All Times:

11. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit.

SPECIAL CONDITIONS

12. Previous Use Permits. This permit is subject to all applicable and ongoing Conditions of Approval attached to Use Permit #ZP2016-0018 that are not otherwise superseded by subsequent conditions or updated land use and building code.

13. Revised Condition #16 from Use Permit #ZP2016-0018

Notice of Limitation. The Notice of Limitation recorded with Alameda County shall be rescinded and a new Notice of Limitation shall be filed stipulating that all owners of record of the subject property shall sign and record with the Alameda County Clerk-Recorder that all of the six existing apartments: 1153 & 1155 Hearst Avenue; 1161 & 1163 Hearst Avenue, and 1165 & 1167 Hearst Avenue may be allowed to convert to condominiums, but that existing tenants as of October 24, 2024 shall be permitted to remain in their unit(s) until they choose to vacate their unit(s). The new Notice of Limitation shall include the names of the existing tenants and describe the address and location of their dwelling units. Each tenant-occupied, condominium-converted units shall remain subject to rent control and will not be sold separately from the other unit in the duplex until both units are vacated by the existing tenants unless the existing tenants purchase their unit. No work that requires a new Certificate of Occupancy shall be performed on any one of the two occupied duplexes until that building is vacant. Conversion of the existing rental units to condominium units shall be processed consistent with BMC Chapter 21.28 "Condominiums and Other Common Interest Subdivisions", Chapter 23.326 "Demolition and Dwelling Unit Controls" and Chapter 13.76 "Rent Stabilization and Eviction for Just Cause Ordinance".

14. Revised Condition #58 from Use Permit #ZP2016-0018

Rent Control. The existing six dwelling units may be permitted to be converted to condominiums and all existing tenants who occupied the existing rental units as of October 24, 2024, the filing date of #ZP2024-0157 (the application to modify #ZP2016-0028), shall be allowed to remain in their dwelling units until they choose to vacate their unit(s). Each of the three existing rental units that are currently occupied shall continue to be subject to rent control under the Rent Stabilization Ordinance (BMC Chapter 13.76), and will not be sold separately from the other unit in the duplex even if a unit is converted to condominiums, until such times as those units are vacated by the existing residents and then sold. No work that would require a new Certificate of Occupancy shall be performed on any one of the two occupied duplexes until that building is vacant. Conversion of the existing rental units to condominium units shall be processed consistent with BMC Chapter 21.28 "Condominiums and Other Common Interest Subdivisions", Chapter 23.326 "Demolition and Dwelling Unit Controls" and Chapter 13.76 "Rent Stabilization and Eviction for Just Cause Ordinance".

Neighborhood Meeting & Community Outreach

The project team held numerous meetings with neighbors, including a large community meeting. A series of meetings were held with individual neighbors to the north and the east of the project site to address issues of massing, parking, and hydrology. The proposed site plan responds to those meetings and issues.

The large community meeting was held on November 30th, 2015. Prior to the meeting, notices were sent to all property owners and occupants within 300 feet of the site based on a list of addresses provided by the City of Berkeley. The meeting was held in the driveway at the project site. About 25 area residents stopped by the site during the meeting time. To each of these neighbors, the project applicant and the architect presented the project. Draft floor plans and renderings were posted for attendees to view, and the project team answered questions and discussed the proposal with the attendees. The sign in sheet and flier that was mailed are included in this application. A couple of neighbors expressed enthusiasm about the redevelopment of this historically troublesome property. Other neighbors expressed concerns about massing and parking.

The project was modified significantly subsequent to the neighborhood meetings. The diagram below shows the significant aspects of the project's changes to address concerns.

A recent community meeting was held on October 10, 2024 on zoom to update the existing tenants and neighbors on the progress of construction on the site, including the commencement of work on the approved new duplex (Geranium building) on the 1155 Hearst Avenue parcel, as well as to provide notice of the request to modify ZP#2016-0028 to revise two Conditions of Approval. The meeting was held on Zoom and notices were sent to all addresses within 300 ft of the project site. A total of eight people joined the meeting which included three members of the Applicant/developer team. Two tenants joined the meeting, the owners of a duplex unit on the 1173 Hearst parcel, and Delaware Street neighbors. Questions from the Delaware Street neighbors were regarding the commencement of work on the new duplex, as well as duration and extent of construction on the site. The existing residents who joined asked questions about parking, address changes, and ability to remain in their units indefinitely. The owners on the 1173 Hearst parcel asked about parking and location of trash bins during and after construction.