Components of a Garden Roof® Assembly

There are a number of components that can comprise a typical Hydrotech Garden Roof® Assembly. Each of the components in the assembly serves a specific purpose with the goal of creating a waterproof building with elements that promote vigorous plant growth.

- **Carefully Selected Plants** - Extensive plants for low maintenance landscaping including drought resistant species and varieties available from Hydrotech. There is a wide range of plants for intensive landscaping that can be supplied by plant nurseries around the United States.

- **LiteTop® Engineered Lightweight Growing Media** - Vegetable bedrock internal structure and low weight with ideal aggregate size and components, pH values, nutrients, degree of porosity and permeability. The type and depth of the growing media ultimately determines the plant choices as well as the structural loads imposed on the roof structure. Hydrotech’s LiteTop® blends are engineered to meet the requirements of each project.

- **Systemfilter** - Prevents fine particles from being washed out of the growing media, out of the root zone and into the drainage systems.

- **Gardendrain® Retention/Drainage/Aeration Component** - Hydrotech’s Gardendrain® retains water in the profiled cups, even on low slope roofs. Excess water drains away through channels between the cups. Strategically located holes in Gardendrain® provide necessary aeration and ensures that excess moisture found below the cups can air diffuse up into the growing media.

- **Moisture Mat (optional)** - This is made from non-deteriorating fibers to retain additional moisture. Contact Hydrotech for recommendations.

- **Air Layer (optional)** - When a moisture mat is placed directly over Dow Insulation, an air layer between the moisture mat and insulation is required. Contact Hydrotech for recommendations.

- **Dow Insulation** - Situated above the roof membrane and root barriers, an extruded polystyrene insulation is utilized. Dow Chemical’s STYROFOAM® brand insulation exhibits excellent moisture resistance, is closed cell, dimensionally stable and has a high R-value.

- **Root Stop** - Prevents roots from damaging the roof membrane. The Root Stop type, thickness and method of installation depend on the nature of the landscape planted, the plants selected and the slope of the roof. **Root Stop HD**

- **Roofing Membrane** - Only the best; with a track record of over 50 years proven performance worldwide, Hydrotech’s Monolithic Membrane 6125® EV-FR (Environmental Grade) fabric reinforced assembly is the ideal membrane for a vegetated roof (depicted with protection layer).

- **Structural Roof Deck** - Must be designed to support the weight of the vegetated roof as well as any other dead and live loads. Acceptable deck types include cast-in-place concrete, precast concrete, metal deck with cover board and plywood.

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### Garden Roof® Assembly Components

**Monolithic Membrane 6125®EV**

Hydrotech’s Monolithic Membrane 6125®EV (MM6125) is a seamless, rubberized asphalt membrane that can be applied to structural concrete decks, plywood or gypsum board over metal decks. It consists of one coat of membrane at 90 mils (2.3 mm) into which Hydrotech’s MaxiTop® (a spouted polyurethane foam) is embedded. A second coat of Membrane is then installed at 125 mils (3.2 mm). The total membrane thickness is 215 mils (6.9 mm).

- **Weight**: 1.4 lbs./S.F. installed (7.5 kg/100 sq ft)
- **Size**: 48 lbs. solid cakes
- **Thickness**: 215 mils (total installed thickness)
- **Recycled Content**: Up to 25% post-consumer by weight

**Hydroflex® 30**

Hydroflex® 30 is a modified asphalt protection course that is embedded into MM6125® while still hot to provide a primary protection layer that allows for light foot traffic while completing the rest of the roof construction.

- **Weight**: 0.75 lbs./S.F. (3.6 kg/100 sq ft)
- **Size**: 36.4% x 86.6 mils (196.5 S.F.) - East (11 mil x 20.1 mil) 19.3% x 50.25 mils (104.5 S.F.) - West (11 mil x 13.3 mil)
- **Thickness**: 0.090” (2.2 mm)

**Root Stop (10 mil)**

Root barriers are intended to prevent damage of the roof membrane from the growth of plant roots. The type of root barrier is determined by the type of vegetation.

- **Weight**: 0.91 lbs./S.F. (0.024 kg/100 sq ft)
- **Size**: 15” x 100’ rolls (4.5 m x 30.5 m)
- **Effective coverage**: 950 S.F. with 5’ laps, 1218 S.F. with 2.5’ taped laps
- **Thickness**: 0.090” (10 mil, 0.25 mm)

**Root Stop HD (18 mil)**

Root Stop HD is used when vegetation consists of larger, woody-type perennials, shrubs and trees when an added measure of root penetration protection is required.

- **Weight**: 0.17 lbs./S.F. (0.03 kg/100 sq ft)
- **Size**: 15” x 100’ rolls (4.5 m x 30.5 m)
- **Effective coverage**: 1160 S.F. with 5’ laps, 1288 S.F. with 2.5’ taped laps
- **Thickness**: 0.030” (30 mils, 0.76 mm)

**Root Stop Bamboo (60 mil)**

**When clumping bamboo is included in the mix of vegetation,** Root Stop Bamboo root barrier is required. Root Stop Bamboo will stop the aggressive roots of clumping bamboo.

- **Weight**: 0.32 lbs./S.F. (0.44 kg/100 sq ft)
- **Size**: 5’ x 100’ rolls (1.5 m x 30.5 m)
- **Effective coverage**: 600 S.F. with 5’ laps, 720 S.F. with 2.5’ taped laps
- **Thickness**: 0.060” (60 mils, 1.5 mm)

**Root Stop Tape**

Root Stop Tape is a white, single-sided tape combining a weather resistant polyethylene backing with an aggressive rubber adhesive. Root Stop Tape is designed to help seal the laps between sheets of Hydrotech’s Root Stop, Root Stop HD, and Root Stop Bamboo.

- **Size**: 3” x 210’ rolls
**Hydroflex® RB II**
A heavy-duty, granular surfaced, modified asphalt sheet with a factory-applied rain inhibitive, used in intensive vegetative roof applications or wherever aggressive root growth is anticipated. It is also used in sloped applications as the granular surface provides additional slip resistance. S-Pot must be field applied at all seams and lap edges. Available in one-gallon cans.

- **Weight**: 0.81 lbs./S.F. (4.4 kg/sq.m)
- **Size**: 39.4 x 33.4 ft (11 x 10.3 m)
- **Effective coverage**: 91 S.F. per roll
- **Thickness**: 0.100" (160 mils, 4.0 mm)

**Dow STYROFOAM®**
STYROFOAM® an extruded polystyrene insulation provides a design R-Value of 5 per inch of thickness. STYROFOAM® provides thermal insulation to the building, protection to the membrane, and is ideally suited to wet environments due to its low water absorption.

- **Weight**: 0.17 lbs./S.F. per inch of thickness (0.83 kg/sq.m)
- **Size**: 2 x 8' (6.1 x 2.4 m)
- **Thickness**: 1" to 4" thickness available
- **Compressive Strength**: 40, 60, or 100 psi (276, 413, 688 kPa)
- **R-Value**: 5 per inch of thickness
- **Recycled Content**: 40% post-industrial by weight

**Systemfiller**
Systemfiller helps prevent soil particles from washing through the system and potentially clogging drainage layers and drains. It is also used to retain aggregate ballast where required (i.e., vegetation-free zones).

- **Weight**: 0.04 lbs./S.F. (1.86 g/ft²)
- **Size**: 12.5" x 130 rolls
- **Recycled Content**: 38.6 lb (17.5 kg)
- **Thickness**: 0.010" (10 mils, 0.25 mm)

**Gardendrain® GR15**
Hydrotech's Gardendrain® drainage/infiltration/infiltration components are designed specifically for vegetated roofs. Drainage channels above as well as below ensure that excess water is free to drain out of the system, even in the presence of heavy root growth. Cups designed into the panels provide water storage capacity, while holes in the panels provide air and vapor circulation. Gardendrain® GR15 is generally used in extensive vegetated roof conditions.

- **Weight**: 1.0 lb./S.F. (4.9 kg/sq.m) empty/wet
- **Size**: 3 x 8" panels (9.0 x 2.4 m)
- **Recycled Content**: 100% post-industrial by weight

**Gardendrain® GR30**
With more drainage and water storage capacity than GR15, GR30 is commonly used in intensive and intensive roofs. Cups can be filled with lightweight aggregates which help to provide additional water storage capacity, as well as support greater growing media depths above.

- **Weight**: 1.6 lb./S.F. (7.61 kg/m²) empty/wet
- **Size**: 4 x 8" (1.2 x 2.1 m) panels
- **Recycled Content**: 100% post-industrial by weight

**Gardendrain® GR50**
With even more drainage and water storage capacity than GR15 or GR30, GR50 is commonly used in intensive roofs. Cups must be filled with lightweight aggregates which help to provide additional water storage capacity.

- **Weight**: 2.0 lb./S.F. (9.76 kg/m²) empty/wet
- **Size**: 4 x 8" (1.2 x 2.1 m) panels
- **Recycled Content**: 100% post-industrial by weight

**Hydrodrain® AL or 300**
Hydrodrain® AL or 300 are prefabricated layer mats of a three-dimensional, crush-proof core to which is bonded a white non-woven, needle-punched filter fabric. The Hydrodrain® mat is designed to be used as the air space between the layer of STYROFOAM® insulation and Moisture Mat when extra water holding capacity is desired in the assembly.

- **Weight**: 0.24 lbs./S.F. (1.17 kg/sq.m)
- **Size**: 4' x 75' rolls (1.2 x 22.9 m)
- **Recycled Content**: 100% post-industrial by weight
- **Moisture Retention Mat**
Moisture Mat, with its ranged mesh of fibers, traps and stores additional water that is released through diffusion/ evaporation up through the holes of the Gardendrain® components.

- **Weight**: 1.2 lbs./S.F. wet weight (5.3 kg/sq.m)
- **Size**: 7' x 100' rolls (2.1 x 30.5 m)
- **Recycled Content**: 315 S.F./per roll (98.4 sq ft per roll)
- **Thickness**: 3/16" (0.188"; 4.8 mm, 188 mm)

**Gardimat® LT**
Emission control blankets help to provide wind and water surface erosion protection to assist in the establishment of the vegetation.

- **Weight**: 0.073 lbs./S.F. (0.10 kg/sq.m)
- **Size**: 6.67' x 100' rolls (2.03 m x 30.5 m)
- **Thickness**: 0.28" (7.1 mm)

**Gardimat® N**
For projects where an added measure of erosion control is needed, especially in high wind applications, Hydrotech offers Gardimat® N. Gardimat® N is a UV-resistant polyethylene netting with approximately 1/2" square openings.

- **Weight**: 0.021 lbs./S.F. (0.031 kg/sq.m)
- **Size**: 7.5' x 200' rolls (2.29 m x 61 m)
- **Thickness**: Nominal

**Disk Anchors**
Disk Anchors are used to secure Gardemats® LT or N and InstaGard®® Sedum Carpet and InstaGard®® Sedum Tiles to the vegetated roof. Permanent and biodegradable disk anchors are available. Color may vary depending on recycled content. Contact Hydrotech for placement and spacing requirements.

- **Base**: 5" dia. x 0.193" thick (nom.)
- **Shaft**: 12" ft. x 0.257" dia.
- **Top Disk**: 4.75" dia. x 0.0625" thick (nom.)

**GardenEdge® Metal Edging**
Hydrotech offers a range of metal edging products to create division between vegetation free zones and the life@top® growing media. Fabricated from uncoated aluminum or stainless steel, it is available in straight and flat edge configuration that allows free-form curves. A powdered epoxy coating with a wide range of colors is also available. Aluminum leveling strips that bolt to the edging are available to accommodate variable roof slopes. Contact Hydrotech for details.
GardenEdge® is made of 0.1 inch thick unfinished aluminum bent at a 90 degree angle, with a slotted vertical leg to allow for drainage. FlexEdge® with "fingered" horizontal legs are also available to assist in bending curved sections. Stainless steel and other finishes are also available.

**BASIC USE**

GardenEdge is specifically designed to provide a transition between Hydrotech's extensive LiteTop® growing media and hardscape elements like stone or concrete paver ballast at vegetation-free zones, building perimeters, roof penetrations, etc.

**TECHNICAL DATA**

**THICKNESS:** 0.1 inch  
**DIMENSIONS:** Standard vertical legs of 3 inches - 8 1/2 inches available in 1/2 inch increments; 8 foot long sections (custom sizes available)  
**SLOTS:** 0.375 inch effective slot mean diameter; 0.11 sq.in. total opening; 12 slots per linear foot  
**ACCESSORIES:** Corner sections, clips and connection bolts are also available.

**INSTALLATION**

- GardenEdge can be placed either on top of the insulation layer or the water retention/drainage element, and is held in place by the weight of the growing media placed over the horizontal leg.  
- Splices and corner pieces are easily assembled with nuts and bolts to complete the assembly.  
- GardenEdge is not intended to be mechanically attached to or through the roofing membrane assembly.  
- GardenEdge is not intended to be used to support a load, such as at the bottom of a sloped roof along the eave.

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**GardenHatch® Inspection Chambers**

- **Size:** 11" x 11" and 18" x 18"  
- **Height:** 4.34"  
- **Extensions:** 1", 3" and 8.5" in each size

**Sedum Cuttings**

- **Packaging:** 18" x 18" x 3" boxes  
- **Weight:** 20 to 25 lbs per box

**Plugs**

- **Sizes:** 50-count and 72-count size in full flats  
- **Packaging:** Dependent upon size of order

**InstaGroGreen® Sedum Carpet**

- **Size:** 4 x 6' (25.5 ft) rolls  
- **Weight:** 80 lbs/roll - dry  
- **Weight:** 120 lbs/roll - wet  
- **Packaging:** Rolled and shipped on pallets

**InstaGroGreen® Sedum Tile**

- **Size:** 16" x 30" (2.06 sq/ft) or 12" x 24" (2.00 sq/ft)  
- **Blends:** Four Seasons, Shade, Full Color, and Rugged (contact Hydrotech for specific blend information)  
- **Weight:** 4.6 lbs./S.F. - wet  
- **Packaging:** Shipped on pallets

**GardNet®**

- **Depth:** Available in various depths: 3", 6", 8" and 12"  
- **Contact:** Hydrotech for detailed installation guidelines.
March 8, 2017

LANDSCAPE SET
2527 San Pablo Ave
Berkeley, California

Contact Information

Legend

Planting Notes

1. PLANT ALL TREES & SHRUBS PER DETAIL
2. PLANTER LOCATIONS TO BE VERSUS ON SITE BY LANDSCAPE ARCHITECT
3. CONTRACTOR SHALL LOCATE AND TAG ALL TREES AT NURSERY AT TRUE TO ACCEPTANCE OF CONTRACT TO ENSURE AVAILABILITY OF HEALTHY SPECIMENS. PLANT MATERIALS TO BE APPROVED BY LANDSCAPE ARCHITECT PRIOR TO SITE DELIVERY.
4. ALL PLANTING AREAS SHALL RECEIVE 3 LAYERS OF MULCH EXCEPT EXTENSIVE GREEN ROOF (SOIL TYPE B & GREEN ROOF)
August 16, 2017

City Clerk
City of Berkeley
2180 Milvia Street, 1st Floor
Berkeley, CA 94704

Re: Appeal of Zoning Adjustment Board (ZAB) decision pursuant to BMC 23B.32.050, Opposition to waiver of BMC Section 22.20.065.C.2 requirements and calculation of the density bonus re: 2527 San Pablo Avenue (#ZP2016-0207).

Dear City Clerk, Mayor Jesse Arreguin and members of the Berkeley City Council:

Pursuant to Berkeley Municipal Code (BMC) 23B.32.050, please accept this letter in appeal of the recent August 2, 201, decision by the Zoning Adjustment Board (ZAB). The appeal covers two subjects: the waiver and the density bonus calculations.

I. Specifically, we appeal the ZAB decision to grant a waiver of BMC Section 22.20.065.C.2 requirements as to the property at 2527 San Pablo Avenue (“the project”).

We understand that the waiver was granted by the ZAB as a “reasonable accommodation” pursuant to BMC Section 23B.52.010. However, for the reasons set out below, the City should either reverse the waiver outright, or suspend the waiver pending a more complete analysis of federal, state and local fair housing and disability civil rights mandates as they pertain to this property.

Recognition of City and Developer Commitment to Furthering Fair Housing and Community-Building Opportunities

At the outset, we would like to emphasize and commend the expressed and demonstrated fair housing interests of both the City of Berkeley and the 2527 San Pablo LLC (the “Developer”). Berkeley’s commitment is revealed in its history of enacting local ordinances addressing disability discrimination and reasonable accommodation, which are aimed at implementing and extending the federal and state civil nondiscrimination laws to which the City is also subject. The Developer’s commitment is clearly articulated in the May 11, 2017, letter submitted by its counsel Goldfarb & Lipman LLP in support of the waiver request (the “Developer’s Letter”).

In particular, we commend the Developer’s Letter for recognizing two critical and longstanding aspects of disability discrimination as it pertains to housing:

(1) that people with disabilities are disproportionately affected by housing discrimination, and are often relegated to living in isolation, and

(2) that housing discrimination often results from presumptions about, or neglect of, the actual reality of disability.
We specifically recognize the thought and care that the Developer has devoted to identifying and addressing the concerns and needs of people with intellectual/developmental disabilities (I/DD). As the Developer’s Letter notes, there is indeed a lack of housing that is welcoming to people with I/DD, and we are glad that the project seeks to change that. However, proposals that focus on the entitlements of I/DD residents are still subject to broader disability rights considerations.

**Housing Access for I/DD Residents Need Not Come at the Expense of Access for People with Other Disabilities**

Berkeley is justifiably proud to be the home of the disability civil rights and independent living movements. These movements were founded on the principle that people with disabilities are united by a common history of discrimination, and that all people with disabilities deserve full and integrated access to their communities. These movements are grounded in the idea that access for people with some types of disabilities should not (and need not) come at the expense of people with other types of disabilities. The explicitly cross-disability nature of these movements recognizes that genuine disability knowledge must come from (and reflect) the accurate lived experience of people with a wide range of disabilities. That range includes physical and sensory disabilities, medical conditions, and cognitive and mental health disabilities.

Unfortunately, while the Developer’s Letter reflects a familiarity with I/DD, it does not demonstrate the same intimacy with the disabilities that create eligibility for Berkeley’s Shelter+Care Program. Specifically, the Developer’s Letter presumes that Shelter+Care participants would inherently be “unsafe” neighbors, and that their exclusion is necessary to ensure an appropriate living situation for people with I/DD. Zoning decisions influenced by these kinds of prejudicial ideas about people with low incomes or mental health disabilities pose a significant barrier to the creation of appropriate affordable and supportive housing. Such stereotypes are not based in evidence, and they are at odds with the disability rights philosophy that should animate the City’s review of the project. They are also at odds with federal, state and local fair housing and disability rights mandates.

**The Project Waiver Must Be Reconsidered Given Federal, State and Local Fair Housing and Disability Rights Mandates**

Federal law includes several cross-disability civil rights laws applicable to the City, including Section 504 of the Rehabilitation Act of 1973 (Section 504), the Fair Housing Amendments Act of 1988 (the FHAA), and the Americans with Disabilities Act of 1990 (the ADA). These laws have been subject to interpretation by courts, as well as by the executive agencies that enforce them, including the U.S. Department of Justice (DOJ) and the U.S. Department of Housing & Urban Development (HUD).

California laws incorporate these federal laws as a floor of protection. But California also offers independent disability rights protections that may exceed federal mandates. These independent state laws, which have been consistently reaffirmed and expanded over the
years, include the California Fair Employment and Housing Act (FEHA) and California Government Code Section 11135.

Consonant with the central role Berkeley has played in disability rights history, there are also local mandates to take into account. In assessing requested modifications of zoning or subdivision regulations, the City must consider, among other relevant factors, the extent to which there is a conflict with other legitimate purposes of its existing zoning or subdivision regulations. BMC section 23B.52.010, Berkeley’s Housing Element, and its community planning mechanisms, clearly confirm that local law must promote fair housing opportunities, and cannot act as a constraint. The City must implement its “reasonable accommodation” procedures consistent with this framework, which recognizes the entitlements of all people with disabilities.

From the available public record, it does not appear that the ZAB fully analyzed any of these legal mandates. Such analysis is critical to determining the validity of the waiver that the Developer has requested.

Again, we commend the Developer for pursuing a project intended to be “a model for community-building among people with multiple disabilities.” But such a goal is inherently compromised by the ZAB waiver, which is grounded in stereotypical exclusion of Shelter+Care participants from certain aspects of the Project. The City should either reverse the waiver outright, or suspend it pending a more thorough legal analysis.

II. The members of the Zoning Adjustment Board were distracted by the applicant’s emotional narrative regarding the disability of his son and failed to consider the implementation of the density bonus, specifically the lack of a City density bonus ordinance and the effects thereof, staff’s calculation of the density bonus, the excessive density of this project by comparable standards in Berkeley and nearby cities, and the impact of the first six story building on San Pablo Avenue in Berkeley.

a. The density bonus calculation is not fully compliant with two sections of the State Density Bonus Law.

65915. (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

The City’s planning staff has resisted the creation of a city density bonus ordinance with a variety of spurious arguments, depending on the situation. Other East Bay cities have adopted such ordinances, which provide Berkeley with a large number and variety of
models. There is simply no reason for this protracted delay in creating an ordinance other than “flexibility” - a sorry euphemism for staff’s power and control of land use through adroit manipulation of the City Council and their appointees.

In a memo from Land Use staff to the Zoning Adjustment Board on September 15, 2014, they justify and explain their method:

“In Berkeley, most new multi-family housing projects are located in zoning districts that do not have density standards that are applied on a parcel—by—parcel basis. Therefore, over the years, staff has developed and refined procedures for deriving the “maximum allowable density” for any density bonus projects. The basic approach is as follows:

• Step 1: Calculate the “base project,” i.e., the largest project allowed on the project site that is fully consistent with the lot development, parking and open space standards in the Zoning Ordinance, using the average unit size and other basic characteristics of the proposed project.
• Step 2: Calculate the density bonus based on the number of below market rate (BMR) units in the proposed project and the size of the base project (i.e., the percentage of below market rate units in the base project).
• Step 3: If concessions/incentives are requested, determine whether these are necessary to provide for the project’s affordable housing costs.
• Step 4: Waive or reduce development standards as needed to accommodate the project, with the density bonus and concessions. These steps are described in greater detail below.

Footnotes:
1 Although the City’s General Plan includes land use classifications with density ranges, the Plan states that these classifications “are not intended to be used as standards to determine the maximum allowable density on a specific parcel.” (2002 General Plan, page LU-23)
2 These procedures have been challenged multiple times in court, and upheld each time.
3 Many such standards can be modified with an AUP or Use Permit. The “base project” assumes no such modifications.”

The following screen shots of the enlarged first page of the project plans show the computation of the density bonus for 2527 San Pablo Avenue, using the above methodology.
STATE DENSITY BONUS BASE CALCULATIONS (Government Code Section 65915):
BASE PROJECT (47 base units) (Government Code Section 65915)(10.21.2016)

Zoning: C-W
Building height allowed under C-W = 50' & 4 STORIES.
Site Area: 13,330 SF.
(*) Total allowed FAR under C-W zoning = 1 x 13,330 = 39,990 sf
Setbacks required
5' Setback required at east side next to R2 Zoning
No setback required at north (C-W) zoning
No setback required at west (San Pablo) and south sides (Blake Street).

Project Construction type to be 3A under 2016 CBC

CONFIRMATION: PROJECT "GFA IN COMPLIANCE W/ C-W ZONING & CBC 2013"
Construction type 3A (Note Express windows not required for Type 3A per CBC 1028.1.1).
Total GFA allowed = 39,990 SF.
1.) Ground level GFA = 3,960 SF. (Retail A 1,579 sf + Retail B 1,576 sf) + (Residential lobby=374 sf + Community room=242 sf + Garbage room=199 sf = 3,890 sf (garage and bicycle lockers area not included in GFA, Stairs areas counted at level 2)
2.) Level 2: 15 Units & GFA under SDB = 12,196 sf. (level 2 stairs area included in GFA 239.04.010)
3.) Level 3: 15 Units & GFA under SDB = 11,792 sf. (deduct stair #1=148 sf + Stair #2=176 sf + 80 sf for Elevator shaft)
4.) Level 4: 15 Units & GFA under SDB = 11,792 sf. (Deduct stairs & Elevator shaft)
5.) Roof: 251 sf. (Mechanical 200 sf + Elevator machine room 51 sf
Confirmation of Total GFA (of 3 = 39,990 sf) building under current zoning.

STATE DENSITY BONUS BASE PROJECT CALCULATIONS (Government Code Section 65915):
1.) Ground level. Qualified Residential Accessory areas under SDB = 1,669 sf*
2.) Level 2: 15 Units & GFA under SDB = 12,161 sf.
3.) Level 3: 15 Units & GFA under SDB = 11,757 sf. (Deduct stair #1=148 sf + Stair #2=176 sf + 80 sf for Elevator shaft)
4.) Level 4: 15 Units & GFA under SDB = 11,757 sf. (Deduct stair #1=148 sf + Stair #2=176 sf + 80 sf for Elevator shaft)
Total area allowed under (SDB) base building = 37,264 sf. (allowed under the GFA of 39,990 sf)

*Ground level areas qualified under residential accessory = 1,669 sf.
1) Lobby=373 s.f. 2) Residential Community Room=242 sf. 3) Exit stair / passage ways, Stair # 1 = 188 s.f. 4) Stair 2= exit passageway @ ground level=188 s.f. 5) Gatehouse room=189 sf. 6) Bicycle lockers A=229 sf + (B) 92 sf + (C) 209 sf. (Note Area of Bicycle lockers is allowed as Accessory residential use but are not accounted as part of the FAR)

Proposed 11% Very Low Income Units which qualify for 35% area/units increase over SDB base. (We request that the BMR Very Low Income (50% AMI) units and the additional Low Income (80% AMI) by Use Permit Condition be dedicated to qualified persons with Developmental Disabilities.

AVERAGE UNIT SIZE (65915 f):
Average unit size under SDB=37,264 sf / 47 units = 795 sf / unit
AVERAGE UNIT SIZE (65915 ():
Average unit size under SDB=37,364 sf / 47 units = 795 sf / unit

STATE DENSITY BASE PROJECT UNITS (65915 ():
97,364 sf / 795 sf/unit = 47 base project units

STATE DENSITY BONUS UNITS (65915 ():
47 base project units X 35% increase ( based on 11% VLI ) = 16.45 round up to 17 units

STATE DENSITY BONUS AREA ALLOWED
17 bonus units x 795 sf= 13,466 sf

ALLOWABLE PROJECT WITH BASE, SDB UNITS AND AREA PLUS ADDED STATE DENSITY BONUS AREAS
(Government Code Section 65915):
Total allowed area with added State Density Bonus = (base) 37,364 sf + (SDB) 13,466 sf = 50,832 sf

1.) Ground level Qualified Residential Accessory areas under SDB =1,689 sf
2.) Level 2: 15 Units & GFA under SDB =12,191 s.f. (exit stairs area included in GFA of level 2 (20F-)
3.) Level 3: 16 Units & GFA under SDB =11,757 s.f. ( deduct stair #1=148 sf + Stair # 2=176 sf + 80 sf. for Elevator shaft)
4.) Level 4: 16 Units & GFA under SDB =11,757 s.f. ( deduct stair #1=148 sf + Stair # 2=176 sf + 80 sf. for Elevator shaft)

State Density Bonus allowed units (17) and allowed area (13,466 sf) are added at levels 5 & 6

5.) Level 5: 11,757 sf area max floor plate would allow 14.8 units or 14 units x 795 sf (unit size under SDB base)=11,130 sf
6.) Level 6: 3 Residential units @ 795 sf. remaining as allowed SDB units = 2,385 sf. (area required to accommodate the balance of 2 State Density bonus Units.

PROPOSED PROJECT UNDER THIS APPLICATION WITH LARGER SIDE & REAR SETBACKS
Ground level Qualified Residential Accessory areas under SDB =1,689 sf
Level 2: 14 Units @ 10,707 s.f. GFA
Level 3: 14 Units @ 10,327 s.f. GFA ( deduct stairs 148 sf x 2 + 80 sf. for Elevator shaft)
Level 4: 14 Units @ 10,327 s.f. GFA ( deduct stairs 148 sf x 2 + 80 sf. for Elevator shaft)
Level 5: 13 Units @ 10,307 s.f. GFA ( deduct stairs 148 sf x 2 + 80 sf. for Elevator shaft)
Level 6: 6 Units @ 6,881 s.f. GFA ( deduct stairs 148 sf x 2 + 80 sf. for Elevator shaft) Including toilet)
Utility Roof Level=250 sf.
Total area under proposed With State Density Bonus and with larger setback @ R-2 (east)= 50,498 sf.

Total Building GFA including the retail =50,496 sf (12 Deduct bicycle areas that part of garage & not included in the FAR (-229-52=529 sf)) +(Retail areas 1,570 sf + 1,579 sf)
(50,498 sf - 529 sf) + 3,165 sf = TOTAL GFA OF 53,124 sf
Total project FAR with the State Density Bonus area=53,124 / 13,330 = FAR of 3.99
Garage GFA 7,062 s.f. is not included in the FAR or SDB base areas based on Zoning criteria.

The above methodology is a complicated alternative to commonly applied density standards, typically expressed as residential units per acre. More work and energy has been spent justifying such arcane calculations than would be needed to develop easily understood and utilized density standards similar to those used in most other cities.

The second section of the State Density Bonus with which the City of Berkeley fails to comply is:

(o) (2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.
To: Berkeley City Clerk  
August 16, 2017  
Appeal of ZAB Decision  
Use Permit #ZP2016-0207  
Page 7

The September 2014 staff memo dismisses the General Plan density ranges, and while those numbers are not intended for use on a parcel basis, they can be made so by updating, adapting, and replacing the out-of-date population standards and by removing that disclaimer in a density bonus implementation ordinance that amends the General Plan and zoning code. This long overdue ordinance would provide certainty, guidance, and reassurance to the community and developers.

The density numbers in the General Plan describe population, not units. Categorized as Avenue Commercial, the West Berkeley mixed-use C-W zone includes San Pablo Avenue, lower University Avenue, and Fourth Street.

**Avenue Commercial**  
These areas of Berkeley are characterized by pedestrian-oriented commercial development and multi-family residential structures. These areas are typically located on wide, multi-lane avenues served by transit or BART. Appropriate uses for these areas include: local serving and regional-serving commercial, residential, office, community service, and institutional. Building intensity will generally range from a Floor Area Ratio (FAR) of less than 1 to an FAR of 4. **Population density will generally range from 44 to 88 persons per acre.**

The lot area of 2527 San Pablo Avenue is 13,330 square feet, which is .31 acre (one acre = 43,560 square feet). The number of bedrooms in the proposed project at 2527 San Pablo Avenue is 98, equivalent to a population density of 316 per acre (98/.31), more than three-and-a-half times the recommended population density in the General Plan. It’s time to update these ranges to dwelling units/acre at an appropriate density.

The State requires cities to adopt such an ordinance. The last sentence in (a)(1) “Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section” is clearly intended to protect the rights of an applicant to a density bonus, not to allow a city to forestall its obligation to formulate an ordinance required to undergo public participation and scrutiny rather than a complicated and proprietary staff methodology.

The City of Berkeley has delayed executing a density bonus implementation ordinance because the City Council has allowed themselves to be directed by staff rather than conversely, and I can't think of a nicer way of stating the obvious.

b. The City’s calculation method intentionally increases the density of this and other projects, exceeding that of comparable zones in nearby cities, in order to ensure financial feasibility at the very least and to boost profits at most, by cramming as many units into the maximum building envelope at the expense of indoor amenities serving the future residents of the building, especially one intended for the disabled. Additional heights shadow one and two story homes, intrude upon the privacy of neighbors, and strain public infrastructure.
Detriment is increased by the lack of required step-downs and setbacks to adjacent properties.

The base project of 2527 San Pablo Avenue is 47 units on a 13,330 square foot lot, which is .31 acre (one acre = 43,560 square feet), a residential density of 152 units/acre (47+. 31). Adding the density bonus for a total of 63 dwelling units, the residential density rises to 203 units/acre, a far greater density than other approved projects on San Pablo Avenue listed in the 2009 housing element, Table 4-3, excerpted below.

<table>
<thead>
<tr>
<th>Address</th>
<th>Total number of units</th>
<th>Density (units/acre)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1800 San Pablo</td>
<td>51</td>
<td>109</td>
</tr>
<tr>
<td>1201 San Pablo</td>
<td>27</td>
<td>90</td>
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<tr>
<td>2577 San Pablo</td>
<td>28</td>
<td>164</td>
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<tr>
<td>2700 San Pablo</td>
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<td>2747 San Pablo</td>
<td>39</td>
<td>98</td>
</tr>
<tr>
<td>2748 San Pablo</td>
<td>27</td>
<td>118</td>
</tr>
<tr>
<td>3020 San Pablo</td>
<td>29</td>
<td>139</td>
</tr>
</tbody>
</table>

Even the monumental 1500 San Pablo Avenue, approved last year, with 170 total units has a density of 145 DU/acre because the lot is 74,429 square feet or 1.17 acres and spans two zones, C-W and R-1A. The R-1A section supports 11 townhouses on Tenth Street. The C-W area is 49,296 square feet or 1.13 acres, which supports 169 units at a density of 150 DU/acre. Not counting the bonus apartments, the C-W base project of 134 units has a density of 119 DU/acre.

This is closer to the densities allowed in nearby major cities with mixed-use zones along San Pablo Avenue. In Oakland, the comparable mixed-use zones on northern San Pablo Avenue are CN3 (neighborhood center) with a zoning density of one-unit/550 square feet of lot area (79 DU/acre) and CC2 (community commercial) with a density of one-unit/450 square feet of lot area (97 DU/acre). The zoning regulations along San Pablo Avenue in Oakland include step-downs and setbacks to protect the neighboring properties. The Oakland General Plan land-use densities for the corridor mixed use classifications (urban residential, neighborhood center commercial, and community commercial) are all 125 units/gross acre.

In Richmond, upper San Pablo Avenue (CM-3) has a density of 15-50 DU/acre and CM-4 can go as high as 75 DU/acre. These are both mixed-use zones in Richmond's new and sensitively designed general plan and zoning ordinance. In the city center, the density can go as high as 125 DU/acre. The land use element and zoning ordinance are consistent,
with key corridors like San Pablo Avenue designated as medium intensity mixed-use with maximum densities of 50 and 75 DU/acre.

Most West Berkeley homeowners and business people would probably support densities between those of Richmond and Oakland on our section of the old Lincoln Highway. Higher densities are problematic, especially considering the history of the surrounding residential neighborhoods, both in terms of architectural heritage and ethnic/racial composition, the age of the infrastructure, and the drainage and flooding problems. As a regional corridor, San Pablo Avenue should support mixed-use buildings at heights and densities that intensify as one approaches downtown Oakland.

Development along San Pablo Avenue is progressing without a vision and the fine-tuning of zoning standards that would be produced by a specific corridor plan like the University Avenue Plan, which features more usable open space as well as step-downs and setbacks protecting adjacent properties. C-W has no exterior or interior design standards including common amenities for passive and active recreation. In 2527 San Pablo Avenue, there are only a tiny office at the entry and a laundry and small common room on the top floor. The entire usable open space is the roof deck. West Berkeley businesses owners and residents have been promised a San Pablo Avenue Plan for the past 20 years, with three referrals from the City Council to the Planning Commission without fruition. In short, property owners have been denied our constitutional right to protective zoning as well as our California rights to citizen participation in planning. In 2006-2008, a joint subcommittee of three commissions created an ordinance that would have provided uniform building features and transitions along San Pablo Avenue and elsewhere, but all their efforts came to naught. That’s an important and relevant back-story, pertinent to this appeal, but a foray into that history here would distract from our argument.

The current method of computation rewards the maximum use of all available floor area for private apartments, the sum of which then increases the density bonus. That creates greater profits but less livability as the resulting product is essentially a big dormitory with a roof deck. The measure of “average unit size” is an abstraction that does not accurately describe the material project, for better or worse. It’s just a hypothetical figure used to create the density bonus.

The average unit of 2527 San Pablo Avenue is 795 square feet. Only eight units fall in the range of 780 to 820 square feet, the smallest two bedroom apartments. Twenty-nine of the units are studios or one-bedrooms, designed for single occupancy. The DU/acre density standard is easy to use and creates predictable densities and competition among developers to design permanent and desirable habitats that might feature amenities including communal spaces suitable for the disabled and families with children. Berkeley doesn’t have a density bonus; we have a density bonanza.
To: Berkeley City Clerk  
August 16, 2017  
Appeal of ZAB Decision  
Use Permit #ZP2016-0207  
Page 10

This calculation method allows the first building at six stories on San Pablo Avenue without a specific plan or EIR to properly assess the impacts of such height and density. Development without planning is unfair to the neighbors, whose rights of due process and citizen participation under the City’s general plan and State planning law have been violated. San Pablo Avenue development should advance in accordance with CEQA including a program EIR that would analyze cumulative impacts in a sensitive area.

We can’t continue this way. West Berkeley deserves the best in modern urban planning practices, not a pastiche of upgrades, building by building, rationalized by a housing crisis that has been exacerbated, if not caused, by such incoherent and piecemeal planning.

Sincerely,

Susan Henderson  
susan.henderson@mac.com  
510-823-8049

Toni Mester  
tonimester@comcast.net  
510-848-8234

contacts for group of six appellants  
see attached signature page
To: Berkeley City Clerk  
August 15, 2017  
Appeal of ZAB Waiver Decision  
Use Permit #ZP2016-0207  
Page 14

Appellants' Signatures:

[Signature]

Susan Henderson, 2420 Tenth Street, Berkeley, CA 94710

[Signature]

Toni Mester, 2431 Tenth Street, Berkeley, CA 94710

[Signature]

Frances Ann Haselsteiner, 1202 Dwight Way, Berkeley, CA 94702

[Signature]

Melissa Rallis, 2522 San Pablo Ave, Berkeley, CA 94702

[Signature]

Ben Seidl, 2518 San Pablo Avenue, Berkeley, CA 94702

[Signature]

Cynthia Merriman, 2520 San Pablo Ave, Berkeley, CA 94702
December 13, 2017

Ms. Leslie Mendez
City of Berkeley
Planning and Development
Land Use Planning Division
2120 Milvia Ave
Berkeley, CA 94704

Re: Response to Appeal Letter related to the Zoning Adjustment Board Approvals for 2527 San Pablo Avenue Project; ZP#2016-0207

Dear Ms. Mendez:

On August 2, 2017, the Zoning Adjustment Board ("ZAB"), as authorized under Section 23B.52 of the Berkeley Municipal Code ("BMC"), approved a reasonable accommodation for the project located at 2527 San Pablo Avenue (the "Project"), a waiver of all requirements imposed under BMC Section 22.20.065.C.2 and an occupancy restriction on the below market rate units such that those units will be available to and occupied by persons or households with intellectual/developmental disabilities (I/DD). An appeal of the ZAB's decision was filed on August 16, 2017 which challenged the approval on the grounds that the City's density bonus is not compliant with State Density Bonus Law and on the grounds that the reasonable accommodation may allegedly result in fair housing violations.

We are writing on behalf of 2527 San Pablo LLC and Mr. Rony Rolnizky, the parent advocate that established the LLC (collectively, the "Project Sponsor"), to support the ZAB's approvals for the Project and to address the concerns expressed in the appeal letter.

I. The Project is consistent with existing zoning and density bonus laws.

The Project Sponsor applied for a density bonus for the Project pursuant to Government Code Section 65915 and BMC Section 22.20.065. As a result of the ZAB Approval, the Project will include a total of sixty three (63) units consisting of fifty-one (51) market rate units and twelve (12) below market rate units (even though only eleven units are required). Six (6) of the below market rate units will be made available to and occupied by Very-Low Income Households and an additional six (6) of the below market rate units will be made available to and occupied by Low-Income Households.

In the appeal letter, the Project opponents allege that the City's density bonus calculation is not fully compliant with State Density Bonus Law. Contrary to the claims
in the appeal letter, the City's calculation of the Project allowable density bonus are consistent with existing zoning and State Density Bonus Law.

The appeal letter incorrectly claims that Berkeley does not have a density bonus ordinance. Section 23C.12.050 of the Berkeley Municipal Code codifies the State Density Bonus Law's requirements. The appellants object to the City's calculation of the base density for the Project by applying the City's standard methodology based on development standards as opposed to a straight dwelling units per acre calculation. Utilizing dwelling units per acre is one approach to calculating base density, nonetheless Berkeley's methodology for calculating base density has been litigated and upheld by the Court of Appeals. (Wollmer v. City of Berkeley (2011) 193 Cal. App. 4th 1329.) In Wollmer, the Court specifically upheld the City's approach to calculating density that the appeal letter questions.

The appeal letter correctly states that the Project's density is higher than some of the other multi-family projects approved along the San Pablo Corridor. Notwithstanding approval of other projects proposed at lower densities, the City Planning Staff correctly applied the zoning standards and State Density Bonus Law to correctly and accurately calculate the density for this Project. The Project as reviewed and approved by City planning and the ZAB, allows for 6 stories in order to accomplish the 35% State Density Bonus allowed by law. Accordingly, and contrary to the appeal letter's claim, the Project is consistent with the existing zoning and the State Density Bonus Law, and it is these existing applicable laws and regulations that enabled the City to approve the Project as proposed. Despite the appeal, the approved Project has wide and strong community and neighborhood support evidenced by the many letters of support submitted by neighbors and by the families of persons within I/DD community.

II. The reasonable accommodation for the Project is consistent with applicable federal, state and local fair housing laws because it ensures equal access to housing for by persons or households with intellectual/developmental disabilities.

A. Summary of ZAB Approved Reasonable Accommodation.

The Project Sponsor submitted, and the ZAB approved, a reasonable accommodation for the Project that results in the waiver of all requirements imposed under BMC Section 22.20.065.C.2 and the imposition of a restriction on the below market rate units being constructed at the Project, such that the below market rate units will be restricted and made available to and occupied by persons or households with intellectual/developmental disabilities (I/DD), as defined the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4400 et. seq. and Title 17, Section 54000 of the California Code of Regulations, and who are receiving services from the East Bay Regional Center or another regional center. The ZAB approval also results in the waiver of the requirement that 40% of the Very Low-Income units at the Project be reserved for holders of City of Berkeley Shelter + Care certificates and another 40% of the Very Low-Income units at the Project be reserved for holders of City of Berkeley Housing Authority Section 8 Vouchers (a requirement that was not
introduced into the code until February 14, 2017, well after the application for the Project was deemed complete by City Planning Staff in 2016).

The appellants do not argue that the Project Sponsor cannot restrict the below market rate units at the Project to persons with disabilities — rather they argue that limiting the units to persons with one particular type of disability is not allowable under applicable federal, state and local fair housing laws.

B. Summary of applicable federal, state and local fair housing laws.

As a privately funded development, the Project is subject to the Fair Housing Act, the California Fair Employment and Housing Act ("FEHA"), and local fair housing laws. The Federal Housing Act and FEHA prohibit discrimination in the renting, selling, and advertising of dwelling units on the basis of race, color, religion, sex, familial status, or national origin, or handicap (under the Fair Housing Act) and disability (under FEHA). The applicability of some of the fair housing laws identified in the appeal letter are triggered if funding is provided for a housing project. Because the Project is 100% privately funded and is not receiving any federal or state funding, Section 504 of the Rehabilitation Act of 1973 and California Government Code Section 11135 are inapplicable.

Contrary to the appellant's assertions, the Project Sponsor can reserve housing for people with one particular disability; without violating the applicable federal, state and local fair housing laws and regulations.

The Federal Fair Housing Act, expressly states that a housing provider "may lawfully restrict occupancy to persons with handicaps."¹ The Fair Housing Act prohibits discrimination against disabled persons separate from other anti-discrimination provisions and emphasizes that with respect to disability-based discrimination, the action that is prohibited are discriminatory acts against persons with disabilities.² Implementing regulations imply that designating units for people with particular types of disabilities is permissible.

California's Fair Employment and Housing Act (FEHA), unlike the Fair Housing Act, does not segregate the prohibition on discrimination against people with disabilities from the prohibition on other types of discrimination. Rather, discrimination on the basis of disability is prohibited. The broad prohibition could be used to argue that housing that excludes non-disabled people is illegal. However, a court is unlikely to find such a practice illegal because in Government Code Section 12955.6, FEHA expressly states that FEHA should not be construed to afford fewer rights or remedies than the Fair Housing Act.

The appellants do not argue that the City and the Project Sponsor cannot restrict the below market rate units at the Project to persons with disabilities — rather they argue that limiting the

² Chapter 3, Section B, Between the Lines: A Question & Answer Guide on Legal Issues in Supportive Housing.
units to persons with one particular type of disability is not allowable. Contrary to the appellant's claims, the Project Sponsor is allowed to reserve the housing units for persons with one particular disability, so long as the restrictions are reasonable, not arbitrary, and the housing provider provides adequate justification for the restriction.

A preference may be permissible under federal and state fair housing laws, if the local agency imposing the preference can articulate a clear public purpose or policy goal that will be furthered by the preference and if the policy does not act to exclude members of a protected class, and is sufficiently narrowly tailored. Even if the imposition of a preference results in statistical disparities on protected classes, under Texas Dept. of Housing and Community Affairs, et al. v. Inclusive Community Project, et al. 135 S. Ct. 2507 (2015), the United States Supreme Court emphasized the "robust causality requirement" reinforcing the concept that liability will not result, unless the plaintiff can prove that there is another means to achieving that governmental interest with less disparate impact, which is more narrowly tailored to achieve the governmental interest.

In the American with Disabilities Act of 1990 (the "ADA"), Congress described the isolation and segregation of individuals with disabilities as a serious and pervasive form of discrimination (see, 42 U.S.C §§12101(a)(2), (5)). Under Title II of the ADA, a public entity is authorized to provide services, benefits or advantages to persons with disabilities or any class of people with disabilities, if a federal, state or local law or program authorizes such action, or if such action is necessary to provide people with disabilities, or people with a particular class of disabilities, with benefits or services that are as effective as those provided to others. The ADA promotes integration of persons with disabilities and is the basis for the Supreme Court's decision in Olmstead v. L.C. by Zimring, 527 U.S. 581 (1999). The Olmstead decision requires that individuals with disabilities receive services in the most integrated setting appropriate to their needs. Most of the decisions that have followed Olmstead have determined that supportive housing that allows individuals to live on their own and receive services to support their integration into the community is the most integrated setting for many individuals with physical or mental disabilities.

In addition to fair housing laws, the Lanterman Developmental Disabilities Services Act (enacted as AB 846 in 1977) impacts how the I/DD community in California is treated in relation to housing and services. Specifically, the Lanterman Act gives people with developmental disabilities and their families the legal rights to services and supports that enable them to live independently.

The approval of the reasonable accommodation grants the City the ability and opportunity to meet the housing needs of the I/DD community without any form of public subsidy. The ZAB’s decision to grant the reasonable accommodation is reasonable, not arbitrary, and based on an adequate justification to provide access to equal housing to a population that is critically underserved.
The I/DD population is vastly underserved and largely isolated group that desperately needs community and positive social integration. There are more than 4 million Americans who have an intellectual or developmental disability, and of those receiving services more than sixty percent (60%) live with their families. The Association of Regional Center Agencies ("ARCA") states that the "Lanterman ... Act establishes the State's responsibility to provide services to the more than 267,000 people in California who have developmental disabilities." According to ARCA, in the last ten years the number of people with developmental disabilities served by Regional Centers in California has increased by over 37% and more than half of the total population served by Regional Centers around the State are younger than 22 years of age. As of 2014, the number of persons with developmental disabilities living with their parents increased to over 76%, according to ARCA, "Although number of people within the [I/DD] community that would like to live independently and be a part of the mainstream society is increasing, it has become increasingly difficult." Moreover, ARCA estimates that up to 38,000 persons with I/DD need safe, decent affordable housing with options that will keep families together and people out of institutions. Locally, according to the Developmental Disabilities Board Area 5 Housing Needs of Individuals with a Development Disability, Alameda County as a region has an estimated need of 5,653 units of housing for persons with developmental disabilities. The City of Berkeley has a projected need for approximately 232 units of housing for persons with development disabilities.

While there are various means of increasing the housing stock available for the I/DD community, ARCA recognizes that "one way of increasing the stock of rental housing through partnerships and collaborations with developers to create housing units reserved for people with developmental disabilities in larger apartment complexes. This is a very economical way for regional centers and non-profit housing organizations to increase the stock of affordable housing at little to no cost. Non-profit housing organizations can facilitate this opportunity by developing partnerships and collaborations with developers that are planning to develop housing and requesting that a number of units be restricted for people with developmental disabilities for the term of the financing, usually 55 years." ARCA cites the existence of not less than 15 projects where nonprofits partnered with local governments and regional centers to create set-aside units specifically targeting people with development disabilities.

Rony Rolnizky is a parent advocate that created the 2527 San Pablo project. Mr. Rolnizky's main mission in developing the Project is to create a privately-financed mixed income

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4 Developmental Disabilities Board Area 5 Housing Needs of Individuals with a Development Disability, February 20, 2014.
6 id.
8 id.
development that creates a sustainable opportunity for people living with I/DD to live in an integrated, safe, supportive housing community. Creating a strong, supportive and integrated I/DD housing and community project is a life-long mission of the Project Sponsor. The objective is to provide equal housing opportunities for a core group of twelve I/DD residents, while also creating a space where families and caregivers could also choose to live, providing opportunities for integration into the immediate neighborhood and the supportive accessible community of Berkeley. The Project has purposefully been designed to promote the integration of persons with I/DD into the larger community. The common areas of the building have been designed to be fully accessible and all housing units will be fully adaptable to universal design. The project includes various community gathering spaces and recreational areas that will ideally allow an opportunity for all residents of the building to meet and know each other and provide additional opportunities for the community to monitor the well-being of the I/DD residents.

The residents of the 12 units occupied by members of the I/DD community will have their own services agreement with a regional center and will have their own choice of supported living and services in accordance with their respective Individual Program Plans. In addition to the physical design considerations, the Project Sponsor intends for the Project to provide twelve I/DD households, the ability to live independently while promoting quality of life activities, reducing isolation and increasing safety by the residents. The Project Sponsor intends to provide housing service coordination specifically tailored to advocate, assist and promote specialized group activities, outings, and community integration for the I/DD residents. The goal of this Project is to integrate I/DD residents into the mainstream and to prevent isolation into separate disabled-only institutions or buildings, as is so often the case. The Project Sponsor will coordinate with local nonprofits for community building and integration activities and is committed to hiring building management with training and experience working with members of the I/DD community and their service providers. The creation and promotion of an integrated I/DD community results in higher cost to the Project Sponsor. Restricting all twelve of the below market rate units is necessary and reasonable because it provides the Project Sponsor the ability to take advantage of the economies of scale required to reduce delivery costs and to justify the cost of several integrative design features. Any reduction in number of I/DD restricted units would negatively impact the Project's financial feasibility and would seriously undermine the Project Sponsor's ability to provide a strong, supportive and integrated I/DD housing community project.

By granting the reasonable accommodation and allowing the Project Sponsor to restrict the below market rate units to persons or households living with I/DD as proposed, the City policy brings about equal access to quality, safe, and sanitary housing to a population that is routinely denied this right. The reasonable accommodation is narrowly tailored and will allow for a core group of I/DD persons or households to live in the Project, in close proximity to family, caregivers, and supportive services and create opportunities for integration into the Project, the immediate neighborhood and will address the tremendous need for appropriate affordable housing options for members of the I/DD community. The Project Sponsor will implement the preference in a manner that will to the greatest extent feasible accommodate housing voucher
certificate holders and individuals with I/DD that also qualify for Shelter + Care. Nevertheless, even if the accommodation works to exclude individuals with other types of disabilities, there is no other means to achieving that governmental interest of providing persons or households living with I/DD equal access to quality, safe, and sanitary housing. In sum, the approval of the reasonable accommodation to allow the Project Sponsor to restrict twelve units to persons or households with I/DD will address the enormous need for equal access for quality housing for the I/DD community in a manner that is consistent with the fair housing laws, the ADA, the Olmstead decision, and the Lanterman Act. This Project is an exemplary realization of the intent of those laws.

The Project Sponsor is appreciative of the support from the ZAB, the City and members of the I/DD community and their families. The Project Sponsor will continue to conduct outreach to both the residential and commercial neighbors and the I/DD community, as the success of the Project is dependent on community support.

Best Regards,

[Signature]

RAFAEL YAQUIÀN
Goldfarb & Lipman, LLP
2527 San Pablo Avenue

Use Permit #ZP2016-0207 to demolish an existing vacant service station building and construct a 6-story, mixed use building with 63 dwelling units, including 12 below market rate units for qualified persons with intellectual and developmental disabilities (I/DD); 3,179 square feet of combined ground floor commercial space for restaurant use including incidental service of beer and wine; and ground level parking for 49 vehicles.

I. Background

A. Land Use Designations:
   - General Plan: Avenue Commercial
   - Zoning: C-W – West Berkeley Commercial District, Designated Node

B. Zoning Permits Required:
   - Use Permit for construction of a new dwelling unit(s), per BMC 23E.64.030
   - Use Permit for demolition of a non-residential building, per BMC 23C.08.050
   - Use Permit for construction greater than 5,000 square feet, per 23E.64.050
   - Administrative Use Permit to allow architectural projections to exceed the height limit, per BMC 23E.04.020.C
   - Administrative Use Permit to establish a quick or full service restaurant greater than 1,500 square feet, per BMC 23E.64.050
   - Administrative Use Permit to establish incidental service of beer and wine at a quick or full service restaurant, per BMC 23E.64.050

C. Waiver/Modifications Pursuant to State Density Bonus Law:
   - Waiver from BMC 23E.64.070.A to increase the maximum Floor Area Ratio (FAR) from 3 to 3.99
   - Waiver from BMC 23E.65.070.B to increase the maximum average height from 50 feet and four stories, to 65 feet and six stories

D. Incentives/Concessions Pursuant to State Density Bonus Law:
   - Waiver from 0.6 remainder Affordable Housing Mitigation Fee per BMC 22.20.065
E. Reasonable Accommodation Request pursuant to BMC 23B.52:
Waiver from the requirement of BMC 22.20.065.C.2, which requires 40% of the Very Low-Income units be reserved for holders of Berkeley Housing Authority Section 8 vouchers, and 40% shall be reserved for holders of City of Berkeley Shelter + Care certificates to allow units to be available to households with persons with disabilities.

F. CEQA Determination: Negative Declaration prepared pursuant to Article 6 of the CEQA Guidelines (see Attachment 4).

G. Parties Involved:
- Applicant / Property Owner 2527 San Pablo LLC, Rony Rolnizky, 121 Devonshire Way, San Francisco, CA 94131
Figure 1: Vicinity Map

= Dwight Designated Node
Figure 2: Site Plan/Proposed Ground Level Floor Plan
### Table 1: Land Use Information

<table>
<thead>
<tr>
<th>Location</th>
<th>Existing Use</th>
<th>Zoning Districts</th>
<th>General Plan Designations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject Property</td>
<td>Vacant Service Station</td>
<td>C-W</td>
<td>AC, Avenue Commercial</td>
</tr>
<tr>
<td><strong>Surrounding Properties</strong></td>
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<td></td>
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<td>North</td>
<td>Mixed-Use</td>
<td>C-W</td>
<td>AC, Avenue Commercial,</td>
</tr>
<tr>
<td>South</td>
<td>Commercial</td>
<td>C-W</td>
<td>AC, Avenue Commercial</td>
</tr>
<tr>
<td>East</td>
<td>Multi-Family, Single-Family beyond</td>
<td>R-1</td>
<td>LDR, Low Density Residential</td>
</tr>
<tr>
<td>West</td>
<td>Commercial</td>
<td>C-W</td>
<td>AC, Avenue Commercial</td>
</tr>
</tbody>
</table>

### Table 2: Special Characteristics

<table>
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<tr>
<th>Characteristic</th>
<th>Applies to Project?</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affordable Child Care and Housing Fee for non-residential projects (Per Resolution 66,617-N.S. and 66,618-N.S.)</td>
<td>No</td>
<td>Proposed project includes 3,179 square feet of commercial space, which is less than the 7,500 square feet requirement.</td>
</tr>
<tr>
<td>Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)</td>
<td>Yes</td>
<td>The project is subject to the affordable housing provisions of BMC 22.20.065</td>
</tr>
<tr>
<td>Alcohol Sales/Service</td>
<td>Yes</td>
<td>Incidental service of beer and wine proposed at quick/full service food establishment space(s)</td>
</tr>
<tr>
<td>Density Bonus</td>
<td>Yes</td>
<td>The project will provide 11% of the base project as BMR for Very Low-Income (VLI) and qualifies for 35% density bonus (17 units) with accompanying modifications and two concessions.</td>
</tr>
<tr>
<td>Green Building Score</td>
<td>Yes</td>
<td>Minimum score is 50 and Maximum score is 381. Proposed project scores 110 GreenPoint Rated, New Home Multifamily Checklist 6.1; Certification Level: Gold</td>
</tr>
<tr>
<td>Historic Resources</td>
<td>No</td>
<td>The buildings proposed for demolition do not meet the criteria for the California Register or a City of Berkeley Landmark.</td>
</tr>
<tr>
<td>Reasonable Accommodation</td>
<td>Yes</td>
<td>Project requests a waiver of the of BMC 22.20.065.C.2, requiring 40% of the VLI units be reserved for holders of Berkeley Housing Authority Section 8 vouchers, and 40% shall be reserved for holders of City of Berkeley Shelter + Care certificates to allow units to be available to households with persons with disabilities.</td>
</tr>
<tr>
<td>Seismic Hazards (SHMA)</td>
<td>Yes</td>
<td>A geotechnical report was submitted as part of the application as the project site is located in an area identified as having potentially liquefiable soil. All recommendations in the report are included as a condition of project approval.</td>
</tr>
<tr>
<td>Soil/Groundwater Contamination</td>
<td>Yes</td>
<td>Proposed project is included on a list compiled pursuant to Section 65962.5 of the Government Code. A Phase I and Phase II have been conducted, a tank removed and a Closure Letter issued. Standard soil/groundwater conditions of approval (Soil and Groundwater Management Plan) will deal with the likelihood of</td>
</tr>
</tbody>
</table>
encountering residual contamination during construction activity.

Table 3: Project Chronology

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 22, 2016</td>
<td>Pre-Application Submitted</td>
</tr>
<tr>
<td>October 21, 2016</td>
<td>Application submitted</td>
</tr>
<tr>
<td>December 16, 2016</td>
<td>Application deemed complete</td>
</tr>
<tr>
<td>February 16, 2017</td>
<td>DRC Preliminary Design Review Meeting (PDR): Item Continued</td>
</tr>
<tr>
<td>March 2, 2017</td>
<td>LPC Demolition Referral: No Action Taken</td>
</tr>
<tr>
<td>March 16, 2017</td>
<td>DRC PDR Meeting: Favorable Recommendation</td>
</tr>
<tr>
<td>June 15, 2017</td>
<td>Notice of Intent of CEQA Negative Declaration mailed/recorded</td>
</tr>
<tr>
<td>June 29, 2017</td>
<td>DRC PDR with CEQA Determination</td>
</tr>
<tr>
<td>July 12, 2017</td>
<td>ZAB Public hearing notices mailed/posted</td>
</tr>
<tr>
<td>July 17, 2017</td>
<td>Close of Public Review Period Initial Study-Negative Declaration</td>
</tr>
<tr>
<td>July 27, 2017</td>
<td>ZAB hearing</td>
</tr>
</tbody>
</table>
Table 4: Development Standards

<table>
<thead>
<tr>
<th>Standard BMC Sections 23.65.070-080</th>
<th>Existing</th>
<th>Proposed Total</th>
<th>Permitted/Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Area (sq. ft.)</td>
<td>13,330</td>
<td>no change</td>
<td>---</td>
</tr>
<tr>
<td>Gross Floor Area (sq. ft.)</td>
<td>2,000</td>
<td>52,894</td>
<td>---</td>
</tr>
<tr>
<td>Floor Area Ratio</td>
<td>0.15</td>
<td>3.98&lt;sup&gt;(1)&lt;/sup&gt;</td>
<td>3 max.</td>
</tr>
<tr>
<td>Dwelling Units</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>0</td>
<td>63</td>
<td>---</td>
</tr>
<tr>
<td>VLI BMR</td>
<td></td>
<td>6</td>
<td>6 min. &lt;sup&gt;(2)&lt;/sup&gt;</td>
</tr>
<tr>
<td>LI BMR</td>
<td></td>
<td>5</td>
<td>---</td>
</tr>
<tr>
<td>Building Height</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average</td>
<td>15</td>
<td>65&lt;sup&gt;(1)&lt;/sup&gt;</td>
<td>25 min. / 50 max.</td>
</tr>
<tr>
<td>Maximum</td>
<td>15</td>
<td>66.8</td>
<td>---</td>
</tr>
<tr>
<td>Stories</td>
<td>1</td>
<td>6&lt;sup&gt;(1)&lt;/sup&gt;</td>
<td>2 min. / 4 max.</td>
</tr>
<tr>
<td>Building Setbacks</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Front (Blake Street)</td>
<td>33</td>
<td>0</td>
<td>0 min.</td>
</tr>
<tr>
<td>Rear (north)</td>
<td>0</td>
<td>0</td>
<td>0 min.</td>
</tr>
<tr>
<td>Left Street Side (San Pablo Avenue)</td>
<td>30</td>
<td>0</td>
<td>0 min.</td>
</tr>
<tr>
<td>Right Side (east)</td>
<td>0</td>
<td>5</td>
<td>5 min.</td>
</tr>
<tr>
<td>Lot Coverage (%)</td>
<td>15</td>
<td>94.5</td>
<td>---</td>
</tr>
<tr>
<td>Usable Open Space (sq. ft.)</td>
<td>---</td>
<td>3,240</td>
<td>40 per D.U.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(18 private</td>
<td>2,520 min.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>balconies + 2,520 common)</td>
<td></td>
</tr>
<tr>
<td>Parking</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Automobile</td>
<td>10</td>
<td>49</td>
<td>11 commercial</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(@ 1:300 sq. ft.)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>32 residential</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(@ 0.5: 1 du)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(3)</td>
</tr>
<tr>
<td>Bicycle</td>
<td>0</td>
<td>60</td>
<td>2 min.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(1 per 2K commercial sq. ft.)</td>
</tr>
</tbody>
</table>

Notes:
1. Waivers requested under State Density Bonus Law, Government Code Section 65915(e)(1)
2. Per the State Density Bonus scenario, the project would require 6 VLI BMR units.

II. Project Setting

A. The property is located along the West Berkeley commercial corridor, along a stretch of San Pablo Avenue (State Highway 123) that features a landscaped median strip separating the two lanes of traffic and parallel metered on-street parking in each direction. The area consists predominantly of one- to two-story commercial and mixed-use buildings, interspersed with a few ground level parking lots. The four-story Margaret Breland senior housing development is located a half block to the south. A predominantly single-family residential neighborhood lies adjacent to the east, and a light-industrial area that includes the Bayer Campus, lies to the west of the commercial district.
B. Site Conditions:
The approximately 13,720 square-foot project site is located on the northeast corner of San Pablo Avenue and Blake Street. The property is asphalt paved and houses a former, (circa 1960) service station and accessory buildings that were used as an auto repair garage after 1979. The property is currently vacant and secured with a perimeter cyclone fence. The majority of the site area is paved surface parking lot.

Figure 3: Existing Site Conditions (looking northeast)

III. Project Description
The proposed project would demolish the existing buildings, and construct a new six-story, mixed-use building with the following main components:

- 63 dwelling units consisting of: 9 studios, 12 junior one-bedroom units, 8 one-bedroom units, 33 two-bedroom units, and 1 three-bedroom unit;
- 12 Below Market Rate (BMR) units on site, including 6 for Very Low Income (VLI) households and 6 for Low Income (LI) households with persons living with Intellectual and Developmental disabilities;
- 3,179 square feet of ground level commercial space;
- 3,240 square feet of useable open space comprised of 18 private decks and rooftop common open space;
- Rooftop community multi-purpose room and common laundry room;
- Ground level parking for 49 vehicles, including 44 in stacked lifts, 2 ADA compliant, and 1 van surface space accessed by a relocated curb cut off of Blake Street; and
- 60 secure bicycle parking spaces.

The 2527 San Pablo project’s main mission is to provide a privately-financed and financially sustainable opportunity for people living with Intellectual and Developmental disabilities (ID/DD) to live in an integrated, safe, supportive housing community. The project applicant is promoting the possibility of housing for persons with developmental disabilities along with housing for families and parents of persons with developmental disabilities,
integrated within housing for the general population in the same building, as well as to provide opportunities for integration into the immediate neighborhood and the supportive accessible community of Berkeley. Part of the project proposal, therefore, is to allocate the Below Market Units (BMR) to qualified VLI and LI persons with ID/DD under the project Use Permit Conditions.

In the words of the applicant, “The target population is vastly underserved, invisible and does not fit the stereotype of “people with disabilities.” This group is mostly invisible to the able community, owing to their requirement of 24/7 care and assistance of caregivers and family members. They often need assistance devices to be able speak or communicate. It is a group that desperately needs community and positive social integration and rarely is considered for affordable housing - resulting in loneliness and isolation.”

“It is also our intention to promote 2527 San Pablo Avenue as a model for community-building and a resource center for DD/ID community and families - as the families/caregivers of persons with DD/ID are also very isolated and would be greatly helped by opportunities that such a project can provide.”

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting this application to the City, the applicant erected a yellow pre-application poster at the site. The applicant invited all owners and occupants located within a 300 hundred foot radius to a community meeting, held on August 30, 2016 at the project site. Approximately 15-20 local residents and small business owners attend the meeting. The project architect presented the project, plans and renderings, and discussed the plan to create affordable housing for people with developmental disabilities. The neighbors were supportive of the project.

On June 14, 2017, the City mailed the Notice of Intent (NOI) to adopt a CEQA Negative Declaration to adjoining property owners and occupants, and to interested neighborhood organizations; the applicant filed the NOI with the County Clerk. On June 15, 2017, the applicant submitted the Draft Initial Study and Negative Declaration (IS-ND) with the State Clearinghouse for distribution to interested state and regional agencies.

On July 12, 2017, the City mailed public hearing notices to property owners and occupants, and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations. Since project submittal, staff has received several letters of support and a few letters of opposition. See Attachment 10 for all correspondence.

B. Landmarks Preservation Commission: The project involves demolition of a commercial building over 40 years in age. Pursuant to BMC Section 23C.08.050.C, the proposed demolition was brought before the Landmarks Preservation Commission (LPC) for review prior to consideration of the Use Permit. At the March 3, 2017 LPC meeting, the LPC took no action to initiate a Landmark or Structure of Merit
designation. The Commission did request further study of significant persons in the context of Berkeley’s African American community for the administrative record. This is provided in Attachment 6 to this report.

C. Design Review Committee Review: The Design Review Committee (DRC) held a preliminary review of the project on February 16, 2017 and March 16, 2017. At the March 16th meeting the DRC made a favorable recommendation to ZAB (5-1-0-1) with the following conditions and recommendations:

**Conditions:**
- Provide more detailed drawings for ZAB (i.e. closets, shafts, railings, dimensions, etc.).
- Provide a storefront base with a minimum 18” height.

**Recommendations:**
- Stronger color palette needed overall; perhaps a deeper brown and paler blue.
- Railing frame seems too lightweight; details should be consistent, even if some have ornament and some not. Consider ornamental vines.
- It would be better if the base below the entry bay was wider.
- Look carefully at Corten planter at sidewalk edge; there may be an alternative design that works better with this building design.
- Soffits in ground floor commercial spaces should step back at least 6’ so space gets light.

On June 29th, the project went back to the DRC for follow up on the preliminary design review with updated CEQA information. The DRC made a favorable recommendation to ZAB (4-0-0-2), with additional direction for Final Design Review to be added to those previously given in March 2017:

**Recommendations:**
- Recommend a more random pattern on the railing.
- Look carefully at the specific perforated metal pattern so that it will work well with the ornamental metal elements.
- Recommend more variety in the landscape in the rear flow-thru planter areas.

V. Issues and Analysis

A. **CEQA:** Based on a review of regulatory databases, including listed hazardous materials release sites compiled pursuant to Government Code Section 65962.5, the project site is listed as a Non-Case Information Site. As the site is included on a list compiled pursuant to Section 65962.5 of the Government Code, an Initial Study was prepared to determine potential significant effects of the project. The Initial Study found that with incorporation of the City’s standard conditions of approval, impacts on the environment from the proposed project were less than significant (see Attachment 4).

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Staff received one comment letter in response to the Notice of Intent from the Native American Heritage Commission. The comment and staff’s response to the comment can be found in Attachment 5.

B. Reasonable Accommodation Request: The project applicant has submitted a request for reasonable accommodation pursuant to BMC 23B.52. As stated in the ordinance, “It is the policy of the City to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act to provide reasonable accommodation by modifying the application of its zoning and subdivision regulations for persons with disabilities seeking fair access to housing.”

Specifically, the Developer requests the following modifications and waivers:

1. Approval of the imposition of a voluntary restriction on the below market rate units being constructed at the project pursuant to Section 22.20.065 of the Berkeley Municipal Code, such that the below market rate units shall be restricted to persons or households with intellectual/developmental disabilities (I/DD), as defined in the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4400 et. seq. and Title 17, Section 54000 of the California Code of Regulations, and who are receiving services from the East Bay Regional Center or another regional center.

2. The waiver of the requirements under BMC §22.20.065.C.2 that 40% of the Very Low-Income units to be constructed at the project be reserved for holders of City of Berkeley Shelter + Care certificates.

3. The waiver of the requirements under BMC §22.20.065.C.2 that 40% of the Very Low-Income to be constructed at the project be reserved for holders of City of Berkeley Housing Authority Section 8 Vouchers.

In order to approve a request for reasonable accommodation the ZAB must consider the following factors:

1. Need for the requested modification, including alternatives that may provide an equivalent level of benefit;

2. Physical attributes of any proposed changes to the subject property and structures;

3. Whether the requested modification would impose an undue financial or administrative burden on the City;

4. Whether the requested modification would constitute a fundamental alteration of the City’s zoning or subdivision program;

5. Whether the requested accommodation would result in a concentration of uses otherwise not allowed in a residential neighborhood to the substantial detriment of the residential character of that neighborhood; and

6. Any other factor that may have a bearing on the request.

Support of the reasonable accommodation request can be found in the memo prepared by Rafael Yaquian of Goldfarb & Lipman Attorneys (see Attachment 7).
C. **Density Bonus:** Based on the developer’s commitment to include qualifying below market rate (BMR) dwelling units in the project, the project is eligible for a density bonus (Government Code Section 65915). Using the project plans submitted by the applicant, staff calculated a “base project” of 37,364 square feet, with a total of 48 (47.73) “base” dwelling units for this site.\(^2\) The Base Project is the version of the project that could be built without any modification of development standards under the Zoning Ordinance, using the average unit size proposed by the applicant, prior to the changes in project design as a result of the DRC’s recommendations. The current calculation is derived from the number of those average sized units that could be accommodated in the four-story height limit in the C-W District within the required setbacks and FAR, minus the square footage dedicated to commercial space and required vehicle parking.

Based on the applicant’s commitment to provide 11% of the base project, or six dwelling units, affordable to Very Low Income families (≤ 50% AMI), the project qualifies for a 35% density bonus, or 17 units, for a total of 65 dwelling units. The project’s density bonus calculations are provided in Attachment 8.

In order to accommodate the density bonus units, the project proposes to increase FAR from 3.0 to 3.9 and to add two additional residential stories—full fifth story, partial sixth story—which are permissible as waivers of development standards per Government Code Section 65915(e)(1).

The applicant is requesting one of the two concessions to which the project is entitled under Government Code Section 65915(d). On June 27, 2017, City Council modified the Affordable Housing Mitigation Fee (AHMF) Ordinance, BMC 22.20.065, increasing the fee and changing the formula.\(^3\) In response, the applicant revised the project to include one additional low income unit within the project, for a total of 12 below market rate units (6 at Very Low Income and 6 at Low Income) and is requesting a waiver of the 0.6 remainder fee of $111,000 payable at Certificate of Occupancy.

The City may only deny the concession if it finds that the concession does not result in identifiable and actual cost reductions to provide for affordable housing costs or for rents for the targeted units; the concession would have a specific, adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources; or the concession is contrary to state law.

As the waiver of $111,000 will result in an identifiable and actual cost reduction for a project that proposes 19% of units on site as below market rate, and as the waiver would not have a specific, adverse impact on public health and safety or the physical

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\(^2\) Per 65915(q), “Each component of any density calculation, including base density and bonus density, resulting in any fractional units shall be separately rounded up to the next whole number.”

\(^3\) Council adopted the second reading of Ordinance No. 7,562-N.S. amending BMC Section 22.20.065 on July 11, 2017. The revised ordinance becomes effective on August 10, 2017 and applies to all projects that have not yet received final approval upon the effective date of the ordinance.
D. **Height/Massing/Neighborhood Compatibility:** Within Berkeley, the majority of San Pablo Avenue, including the subject site area, is developed with one- to two-story flat-roof buildings, interspersed with surface parking lots. The subject site abuts the Single-Family Residential (R-1) district directly to the east and southeast, and the Restricted Two-Family Residential (R-2) district to the northeast; an area characterized by smaller, one- to two-story single- and multi-family dwellings. The proposed six-story, 52,675 square-foot building would, therefore, be markedly greater in height and volume than surrounding development. More recent construction, however, contributes greater heights (four-and five-stories) along the length of the avenue, including the four- and five-story buildings located at 1800, 2577, 2700 and 3015 San Pablo Avenue. Additional submitted and entitled projects that have not yet been constructed, will further contribute to this more intense development pattern. These projects include the four- and five-story buildings at 1201, 1500, 2100, 2720, 2747, 2748, and 3020 San Pablo Avenue. The project’s proposed massing, therefore, is consistent with recent development and contributes to the continued evolution of the corridor.

To activate the commercial node while simultaneously respecting the abutting residential district, the building is designed with zero setbacks along the rear (north) and street frontages; and proposes a tiered setback along the east property line abutting the residential district: the ground floor has a five-foot setback; levels two through five have a 12-foot setback along the first half of the building, and a 21.8-foot setback along the rear half; and the sixth floor has a 21.8-foot setback along the first half of the building and 59.5-foot setback along the rear half. The increased setbacks towards the back half of the lot further respects the siting of the abutting fourplex at 1111 Blake Street that is sited towards the rear of the lot (see Figures 4 and 5 below). The result is a compatible juxtaposition of massing between the proposed project and the adjacent residentially zoned neighborhood.

Along the Blake Street frontage, the applicant proposes to incorporate the 1% for Public Art in an art/mural display with a disability theme, as well as to incorporate community boards affixed to the façade. At the pedestrian level along the San Pablo Avenue frontage, instead of a uniform static setback, the massing is mitigated through angled setback articulation, ranging from zero to five feet, as well as ample fenestration, softened by awnings. Additionally, the frontage would be activated by the commercial tenant spaces, creating a degree of fluidity between the private and public realm and meeting the purposes of the designated node by helping to define the urban form of San Pablo Avenue by developing an identifiable area of concentrated development (BMC 23E.64.040.4).

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4 Government Code Section 65915(d)(4) states that, “The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.”
E. Parking/Traffic: The project proposes a ground level private parking garage with a total of 49 parking spaces that includes 37 parking spaces in three-tier lifts, seven spaces in two-tier lifts, and five surface spaces, two of which are ADA compliant and one of which is van accessible. This represents six more spaces than the required 43 spaces; 11 commercial spaces for the 3,149 square feet of commercial space, parked at one space per 300 square feet to allow for restaurant use, per the Zoning Ordinance; and State Density Bonus Law: 32 residential spaces for the 63 dwelling units, parked at one half space (0.5) per dwelling unit for a project that consists solely of rental units.
with an affordable housing cost to lower income families and is located within ½ mile of a high-quality transit corridor (Government Code Section 65915(p)(3)(A)).

Although the project is “over parked” by seven spaces, the applicant has included the current number in response to conversations he had with community members during the neighborhood meeting. The project also proposes 60 secure spaces for bicycles and is conditioned to provide, upon review and approval of Public Works, a minimum of two spaces of sidewalk bicycle parking, to serve the commercial uses.

The applicant submitted a Transportation Impact Analysis (TIA), prepared by Abrams Associates, which included the analysis of the proposed project’s estimated parking demand (see Attachment 9). The TIA, reviewed and approved by the City Traffic Engineer, estimates the parking demand using several sources, including the Institute of Traffic Engineers (ITE) parking generation rates, residential parking demand based on U.S. Census data, and on-street parking surveys. The TIA supports the 49 proposed spaces with the following justifications:

1) Census data for the area indicates the project residents would generate a peak parking demand of about 44 vehicles. Combining this with the City requirement for 8 parking spaces for the commercial area indicates a project parking demand of 52 spaces, which would be accommodated by the proposed on-site parking for 49 vehicles and the creation of five new on-street parking spaces.

2) The project is proposing to exceed the requirements for bicycle parking. To ensure the bicycle parking is effective and utilized (and to meet the requirements of the Berkeley Municipal Code) it has been provided in an easily accessible bike storage room that would be accessed directly from the lobby of the building.

3) There are numerous shopping and employment centers in the area.

4) There are numerous existing car sharing locations in the area. Please note that within ½ mile of the project site there are six City Carshare locations and four Zipcar locations.

5) There is extensive bus transit service provided by Alameda-Contra Costa County (AC) Transit along San Pablo Avenue. Routes 72, 72M, 72R and all-nighter Route 802 all operate directly adjacent to the project site.

6) The project will create a total of up to five new on-street parking spaces. Three new parking spaces on San Pablo Avenue and two new parking spaces on Blake Street would be added by closing three of the four existing driveway curb cuts.

Although not mentioned in the TIA, eleven of the units would be set aside for persons with intellectual and developmental disabilities, a population that relies heavily on para transit as a mode of travel.

In addition to parking, the TIA also evaluated the traffic impacts of the proposed project on the surrounding environs including the following: demolition and construction; site

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5 A high quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. Both AC Transit Lines 72/72M and 72R meet this interval standard; the bus stop is 331 feet from the project site.
access and circulation; and emergency vehicle access on and surrounding the project. Based on the project’s design and a detailed analysis conducted according to the City’s guidelines, the study concluded there would be no significant transportation impacts according to established traffic engineering standards and no off-site traffic or transportation mitigations would be required.6

F. **Sunlight/Shadows:** The project proposes to construct a six-story building on what is currently developed with smaller one-story structures. As such, the project is expected to create greater shadowing impacts over existing conditions. To assess the anticipated shading impacts, the applicant submitted shadow studies for the project (see Sheet A0.4 of Attachment 2).

The shadow studies illustrate that the abutting property to the north (2521 San Pablo Avenue), would be the most heavily impacted by new shadows. The southern façade, which includes windows for one dwelling unit on the second floor, would be shaded throughout the winter months, as well as during midday of the summer months. The southern façade of the building further to the north (2511 San Pablo Avenue), would receive new shadows from morning through midday during the winter months, affecting a second floor balcony area that serves the triplex.

The abutting fourplex to the east (111 Blake Street) would receive new shadows on the west façade in the afternoon hours of both the winter and summer months. Windows on the dwelling just further to the east (1113 Blake Street) would also receive new shading on the southernmost window on the west façade during summer afternoons.

Although shadow impacts from the project are expected to affect direct sunlight on certain residential windows, these areas would still experience indirect lighting during these hours, as well as have direct light from other windows. At no time of year would the proposed project cause adjacent properties to lose access to direct sunlight from all the windows at any time of the year. Such shading impacts are to be expected in an urbanized area along a major corridor.

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

1. The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density;7 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.

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7 As used in the Act, a “specific, adverse impact” means a “significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, polices, or conditions as they existed on the date the application was complete.
However, as a project employing State Density Bonus law, the Zoning Adjustments Board may not preclude the construction of the base project with density bonus units, which is a six-story, 63 unit project, with six dwelling units affordable to Very Low Income households. The City retains discretion over AUP approval to allow architectural projects to exceed the height limit, and for establishment of a restaurant greater than 1,500 square feet with incidental service of beer and wine.

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

4. **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.

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

6. **Policy UD-24—Area Character:** Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

**Staff Analysis:** The project’s proposed massing is consistent with recent development and contributes to the continued evolution of the corridor. The project would activate the commercial node while simultaneously respecting the abutting residential district; the building is designed with zero setbacks along the rear (north) and street frontages, and proposes a tiered setback along the east property line abutting the residential district. Please see Key Issue D above for further discussion.

7. **Policy UD-32—Shadows:** New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.
Staff Analysis: As more fully described in the discussion under Key Issue F above, shadow impacts from the project are expected to affect direct sunlight on certain residential windows. However, these areas would still experience indirect lighting during these hours, as well as have direct light from other windows. At no time of year would the proposed project cause adjacent properties to lose access to direct sunlight from all the windows at any time of the year. Such shading impacts are to be expected in an urbanized area along a major corridor.

8. Policy H-33-Regional Housing Needs: Encourage adequate housing production to meet City needs and the City’s share of regional needs.

9. Policy H-1-Extremely Low, Very Low, Low and Moderate-Income Housing: Increase the number of housing units affordable to Berkeley residents with lower income levels.

10. Policy H-18-Housing for People with Disabilities: Encourage provision of an adequate supply of suitable housing to meet the needs of people with disabilities, including developmental, behavioral health (mental health as well as alcohol and other drug dependence), and physical (including HIV/AIDS) disabilities. (See also policies and actions under Fair and Accessible Housing and under Homeless Housing.)

11. Policy LU-25-Affordable Housing Development: Encourage development of affordable housing in the Downtown Plan area, the Southside Plan area, and other transit-oriented locations.

Staff Analysis: The project, located along transit oriented San Pablo Avenue (State Highway 123), would construct a total of 63 dwelling units, six of which will be affordable to Very Low Income households and five of which would be affordable to Low Income households. All below market rate units would be made available to people with severe intellectual and developmental disabilities. All common building areas would be accessible and provide accessible routing. All dwelling units would be adaptable and accessible into and throughout the dwelling unit. The project would, therefore, help the City to meet its affordable and general housing goals along a transit corridor and for people with disabilities.

12. 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. (Also see Land Use Policies LU-18, 23, 25 and Transportation Policy T-16.)

13. 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.
14. **Policy T-16-Access by Proximity**: Improve access by increasing proximity of residents to services, goods, and employment centers.

   **Staff Analysis**: The project would help encourage transit use and reduce greenhouse gas emissions from motor vehicles by constructing additional housing in close proximity to transit, jobs, and basic goods and services. There is extensive bus transit service provided by Alameda-Contra Costa County (AC) Transit along San Pablo Avenue. Routes 72, 72M, 72R and all-nighter Route 802 all operate directly adjacent to the project site.

15. **Policy EM-5-“Green” Buildings**: Promote and encourage compliance with “green” building standards.

16. **Policy UD-33-Sustainable Design**: Promote environmentally sensitive and sustainable design in new buildings.

   **Staff Analysis**: The project proposed a score of 110 on the GreenPoint Rated Checklist, New Home Multifamily Checklist 6.1 with a Gold certification level.

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**I. Plan Consistency**: The West Berkeley Plan, adopted in 1993, also contains several goals and policies applicable to the project, including the following:

1. **Physical Form Policy 1.1**: Encourage nodal development, to intensify commercial use at major intersections along commercial streets. Nodal development should be encouraged at and around the intersections of: San Pablo & University, San Pablo & Dwight Way, San Pablo & Gilman, San Pablo & Ashby, 4th & University/Hearst, and Ashby & Seventh.

2. **Physical Form Policy 1.4**: Require retail trade as the ground level use in nodes, with residential or office uses above the ground floor.

3. **Physical Form Policy 1.5**: Encourage neighborhood-serving retail business to locate at these nodes.

   **Staff Analysis**: The project site is located in the West Berkeley Commercial Dwight Node. The project would replace a vacant car auto repair use with ground level commercial retail—preferably a food service establishment—with residential uses above. The proposed project would, therefore, meet the purposes of the designated node by intensifying retail and mixed use activity around a major intersection; reinforce the developing concentration of pedestrian-oriented uses with concentrated development within the node.

4. **Physical Form Policy 4.1**: Developments in such “edge” locations should seek to minimize—to the greatest degree possible—abrupt changes of building scale.

5. **Physical Form Policy 4.2**: Developments in these locations should use tools such as increased building setbacks or upper story stepbacks, landscaping, and other means to reduce the impacts of differences in scale, style, and site plan.
6. **Housing & Social Services Goal 4**: Encourage appropriately scaled and located housing development

Staff Analysis: As previously discussed in Key Issue D above, in order to activate the commercial node while simultaneously respecting the abutting residential district, the building is designed with zero setbacks along the rear (north) and street frontages; and proposes a tiered setback along the east property line abutting the residential district: the ground floor has a five-foot setback; levels two through five have a 12-foot setback along the first half of the building, and a 21.8-foot setback along the rear half; and the sixth floor has a 21.8-foot setback along the first half of the building and 59.5-foot setback along the rear half. The increased setbacks towards the back half of the lot further respects the siting of the abutting fourplex at 1111 Blake Street that is sited towards the rear of the lot. The result is a compatible juxtaposition of massing between the proposed project and the adjacent residentially zoned neighborhood.

**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:

A. **ADOPT** the proposed negative declaration; and

B. **APPROVE** Use Permit #ZP2016-0207 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

**Attachments:**
1. Findings and Conditions
2. Project Plans with shadow studies, dated July 27, 2017
4. Draft Initial Study-Negative Declaration (IS-ND), available online*
5. Final Initial Study-Negative Declaration with Response to Comments, memo dated July 20, 2017
6. HRE Supplemental, prepared by Mark Hulbert, Preservation Architect, dated March 31, 2017
7. Reasonable Accommodation Request, prepared by Goldfarb & Lipman Attorneys, dated May 11, 2017
8. Density Bonus Calculations (further calculations found on page 1 of Plan Set)
10. Correspondence Received

*All online documents can be found: [https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/2527_San_Pablo.aspx](https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/2527_San_Pablo.aspx)

**Staff Planner:** Leslie Mendez, lmendez@ci.berkeley.ca.us, (510) 981-7426
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<td>10/26/2017</td>
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<td>16 Resubmittal</td>
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<td>11/18/2016</td>
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<td>11/28/2016</td>
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<td>11/29/2016</td>
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<td>3/28/2017</td>
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<td>Email from Applicant regarding Accessibility Features</td>
<td>5/17/2017</td>
<td>944</td>
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<td>5/24/2017</td>
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<td>Report: Phase II Environmental Site Assessment</td>
<td>5/24/2017</td>
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<td>Report: Underground Waste Oil Tank Removal at Service Station</td>
<td>5/24/2017</td>
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<td>Letter of support from Sheragden Nicholau of SCDD</td>
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<td>Appeal of ZAB Decision</td>
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<td>Letter of support from Constatine Philipides</td>
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<td>Letter of support from Maria Rosa Keys</td>
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This attachment is on file and available for review at the City Clerk Department, or can be accessed from the City Council Website. Copies of the attachment are available upon request.

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

or from:

The City of Berkeley, City Council’s Web site
http://www.cityofberkeley.info/citycouncil/
Dear Mayor Areguin, City Council Members and Leslie Mendez, Project Planner:

My wife and I are writing to you in support of the proposed new development at 2527 San Pablo Avenue. My furniture shop, “The Woodworks,” at 2551 San Pablo Avenue, is on the corner just across from this new proposed project. I have been at this site for over 40 years. We are also Berkeley residents, living very near the shop.

We have had concerns about what we have seen as over-development in Berkeley without taking in the needs of the neighborhood communities. The reason we are supporting this project is because it is focusing on serving the needs of individuals with developmental and physical disabilities and their families. My wife has worked as a teacher and administrator with Special Education students with many different disabilities. She is also on the board of Ala Costa Centers, an organization that serves students and adults with developmental disabilities in order to support them in learning the skills and independence that this underserved population needs for success in life. For many years she has worked closely with families who are searching desperately for safe, integrated and supportive housing for their family members.

Rony Rolinzky, the architect and developer for this site, has informed us of his plan to include in this project 11 low-income units that can be used to house individuals with developmental disabilities and their caregivers. We whole-heartedly support this project because it will help fulfill a great need in our Berkeley community, which has prided itself on advocacy and services for individuals with disabilities.

Thank you for your time and attention,
Constantine and Elizabeth

Constantine Philipides and Elizabeth Kowal

Email: contact@berkeleywoodworks.com

The Woodworks

2523 San Pablo Avenue

Berkeley, CA 94703

510 843-8415
Dear Mayor Areguin, City Council Members and Leslie Mendez, Project Planner:

Last week I met with Rony Rolinzky, the architect, developer and visionary of the proposed project at 2527 San Pablo Avenue. For the first time since my eldest son, Ei, was born, I have hope and enthusiasm for his future living options. This letter is an attempt to explain why.

I have been a Berkeley resident since 1991. My husband owns a business in Berkeley, my boys have been through Berkeley schools and we’re fortunate to have a wide network of family and friends in our community. Eli was born with Down syndrome, an intellectual disability (ID) with associated physical complications. Eli is 20 years old and from the day he was born, I have been thinking and worrying about his future living options. While most individuals with ID end up living with their families, it is not what is best or even what is desired; it’s because there are few options. Eli, like many with ID, does not want to live in a segregated living community comprised solely of individuals with ID. It would not serve his needs for integration, autonomy and self-determination. Eli has worked hard to be a part of the Berkeley schools, community and workforce. He is used to being integrated and does best when he’s in an inclusive and diverse environment. A group home or segregated living community would be restrictive and not meet his needs. In Eli’s words “but I don’t want to eat the same thing and at the same time as everyone else… and what if I don’t want to go to the movie that everyone has to go to?” He, like all, is an individual and wants to make his own decisions. His decisions, however, need supervision, support and community involvement. An individual living unit would be too isolating and not allow for ease of services and supports. Though there are apartments reserved for individuals with disabilities, they are not designated for individuals with ID. The needs are disparate and community building is tough to come by in such a situation.

This is the brilliancy of the San Pablo project. It allows for a purposeful and integrated community of individuals with ID. Services (such as Independent Living Services and recreation programs) can be brought in because there are the numbers which then increases their efficiency accessibility. Family members can organize and work together to create and support options and opportunities within the community. Most importantly, it allows adults with ID to have choice and as much independence as possible within the context of a community that supports them.

Such a project could not happen if the needs were fragmented (i.e. mental health, physical disabilities, drug and homeless recovery, etc.) I, of course, support all those needs as well, but this project needs to be specific to a community that has been overlooked and forgotten about for hundreds of years. We have not yet recovered and created meaningful options from the days of institutions.

I work in the field of developmental disabilities, and know this is an opportunity for Berkeley to be a leader. It is with great pleasure, hope and conviction that I support this project.

Sincerely,

Jennifer Cooper
Dear Mayor Arreguin, City Council Members and Leslie Mendez, Project Planner:

My name is Maria Rosa Keys and I am no longer a Berkeley resident however, I am and have been a Berkeley U.S.D. teacher for 40+ plus years. During these years, I have worked with a number of children with physical and developmental disabilities. As a teacher and a parent, I worry a lot about the fate of our children as they grow up and have to face the world. It’s difficult enough in our world right now, without adding on the layers of poverty, disabilities, etc. As you well know, housing in the Bay Area is impossible to attain if you are not wealthy and/or privileged. I am so excited to hear that there is a chance that Berkeley will be the site for housing that can accommodate people with developmental disabilities.

The Intellectual / Developmental Disabilities (I/DD) population is greatly discriminated and undeserved for housing and services, but also due to the disabilities most are lonely and isolated. the 2527 San Pablo project is committed to help, promote & advocate for the I/DD community. The goal is to set a successful example for privately funded housing and community building models like 2527 San Pablo - in Berkeley and everywhere.

I hope that you will reaffirm Zoning Adjustment Board Use Permit approval #ZP2016-0207 of the 2527 San Pablo project and the Reasonable Accommodation request to reserve the 12 BMR apartments for persons with Intellectual / Developmental Disabilities (I/DD) as approved by the Zoning Adjustment Board.
Sincerely,

Maria Rosa Keys
From: Penny Cooper <penny.cooper@sbcglobal.net>  
Sent: Monday, October 30, 2017 5:20 PM  
To: All Council; Berkeley Mayor's Office; Mendez, Leslie; City Clerk  
Subject: ZP2016-0207  

re: ZP2016-0207  
Dear Mayor Arreguin, City Council Members and Leslie Mendez,  
Project Planner:

My name is Penelope Cooper and I do reside and have resided in Berkeley since 1961, for the past 56 years. I also maintained a business in Berkeley for many years. I have owned a commercial building in Berkeley for fifteen years.

The Intellectual / Developmental Disabilities (I/DD) population is greatly discriminated and undeserved for housing and services, but also due to the disabilities most are lonely and isolated. The 2527 San Pablo project is committed to help, promote & advocate for the I/DD community. The goal is to set a successful example for privately funded housing and community building models like 2527 San Pablo - in Berkeley and everywhere.

I hope that you will reaffirm Zoning Adjustment Board Use Permit approval #ZP2016-0207 of the 2527 San Pablo project and the Reasonable Accommodation request to reserve the 12 BMR apartments for persons with Intellectual / Developmental Disabilities (I/DD) as approved by the Zoning Adjustment Board.

Very truly yours.  
Penelope M. Cooper  
40 Northgate Ave.  
Berkeley, Ca.

Sent from my iPad
Bette Flushman
538 Santa Barbara Rd.
Berkeley, CA 94707

re: ZP2016-0207

Dear Mayor Arreguin, City Council Members, and Leslie Mendez, Project Planner:

My name is Bette Flushman. My husband and I have been Berkeley residents for 45 years, and those years follow our undergraduate years at UCB and then my husband years attending law school at Boalt.

I work in the Neonatal Intensive Care Unit at Benioff Children’s Hospital Oakland in neurodevelopment care of our most medically fragile neonates. My background also includes educational and special education work. I am very interested in the lives of those with intellectual and developmental disabilities.

The Intellectual/Developmental Disabilities (I/DD) population is greatly discriminated and undeserved for housing and services, but also due to the disabilities most are lonely and isolated. the 2527 San Pablo project is committed to help, promote and advocate for the I/DD community. The goal is to set a successful example for privately funded housing and community building models like 2527 San Pablo - in Berkeley and everywhere.

I hope that you will reaffirm Zoning Adjustment Board Use Permit approval #ZP2016-0207 of the 2527 San Pablo project and the Reasonable Accommodation request to reserve the 12 BMR apartments for persons with Intellectual / Developmental Disabilities (I/DD) as approved by the Zoning Adjustment Board.

Thank you for considering my input.

Sincerely,
Bette Flushman
538 Santa Barbara Rd. Berkeley, CA. 94707

Sent from my iPhone
NOTICE OF PUBLIC HEARING-BERKELEY CITY COUNCIL
CITY COUNCIL CHAMBERS, 2134 MARTIN LUTHER KING JR. WAY
ZAB APPEAL: 2527 SAN PABLO AVENUE, USE PERMIT #ZP2016-0207

Notice is hereby given by the City Council of the City of Berkeley that on JANUARY 23, 2018 at 6:00 P.M. a public hearing will be conducted to consider an appeal against a decision by the Zoning Adjustments Board’s approval of Use Permit #ZP2016-0207, to demolish an existing vacant service station building and construct a six-story, mixed use building with 63 dwelling units, including 12 below market rate units for qualified persons with intellectual and developmental disabilities (I/DD); 3,179 square feet of combined ground floor commercial space for restaurant use including incidental service of beer and wine; and ground level parking for 49 vehicles.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of Thursday, January 11, 2018.

For further information, please contact Leslie Mendez, Planning Department, (510) 981-7426. Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

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

Mark Numainville, City Clerk

Mailed: January 9, 2018

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

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.