To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Timothy Burroughs, Interim Director, Planning & Development Department
Subject: ZAB Appeal: 739 Channing Way, Use Permit ZP No. 2017-0039

RECOMMENDATION
Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board decision to approve Use Permit No. ZP2017-0039 to construct three detached, three-story buildings with ten dwelling units, four live-work units for arts and crafts, one office space, and 16 off-street parking spaces.

FISCAL IMPACTS OF RECOMMENDATION
None.

CURRENT SITUATION AND ITS EFFECTS
On October 26, 2017, the Zoning Adjustments Board (ZAB) held a public hearing and approved the application submitted by David Trachtenberg by a 8-0-0-0 vote (Yes: Clarke, Kahn, Olson, O'Keefe, Pinkston, Selawsky, Shah and Tregub). On November 6, 2017, staff issued the notice of the ZAB decision. An appeal was filed with the City Clerk on November 22, 2017, by West Berkeley Artisans and Industrial Companies (WEBAIC) and David Baker of Poly Seal Industries, who had spoken at the ZAB hearing and are hereafter referred to as Appellants. The Clerk set the matter for review by the Council on February 27, 2018. On or before February 13, 2018, staff posted the public hearing notice at the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations.

BACKGROUND
The project approved by the ZAB would allow construction of: three detached, three-story, 34-foot tall buildings containing ten dwelling units on the portion of the lot in the Mixed-Use Residential (MU-R) District; four live-work units for arts and crafts and an office space on the portion of the lot in the Mixed Use-Light Industrial (MU-LI) District; and a total of 16 off-street parking spaces and four secure bike racks.

ENVIRONMENTAL SUSTAINABILITY
The project is in compliance with all state and local environmental requirements.
RATIONALE FOR RECOMMENDATION

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

Issue 1: The Appellants contend that the ZAB made its decision based on inadequate information, specifically that the property abutting to the west was identified as an empty lot with no industrial activity. [p. 1 of appeal letter]

Response 1: As described in detail in Attachment 3, the ZAB staff report includes a vicinity map that identified the height of existing structures and current uses of all abutting and confronting properties (the Appellants’ property is identified as one-story industrial use); a zoning map (showing the different zoning designations in the immediate area); correspondence received from the Appellant that identifies the existing structure as an active industrial use by a company named Poly Seal Industries and provides detailed information about the history of Poly Seal Industries and the existing structure; and other pertinent information such as the proposed setbacks, density, usable open space, off-street parking, and building articulation.

In addition, at the ZAB hearing, the ZAB received presentations from staff, the applicant, the Appellants and members of the public, all of whom identified the land use immediately to the west of the project site as a surface parking lot associated with an existing industrial use. The proximity of the one-story light-industrial building occupied by Poly Seal Industries to the west of their parking area may not have been consistently indicated in the staff report, however the ZAB material and the various presentations, particularly by those provided by Mr. Auerbach of WEBAIC and Mr. Baker of Poly Seal Industries, made it clear to all members of ZAB that within the one story brick building at the corner of Fourth Street and Channing Way is an industrial factory that has been in operation for over 40 years.

In making a decision to approve the Use Permit, the ZAB relied on the totality of evidence—including the staff report, Findings and Conditions, and staff and public testimony, and at the conclusion of the hearing the ZAB unanimously approved the project (as also recommended by the Design Review Committee (DRC)) because the ZAB determined that the project would not interfere with the adjacent industrial uses nor create economic, physical and social constraints caused by incompatible uses. The appeal does not present new information to suggest that the decision of the ZAB was in error.
Issue 2: The Appellants contend that the Berkeley Municipal Code, West Berkeley Plan and General Plan demonstrate the strong intention to avoid conflicts between industrial and residential uses, and the ZAB did not take into account the ways in which the proposed project violates those intentions. The Appellants assert that the proposed project is incompatible with the industrial uses in the MU-LI district as it would result in land use conflicts that will erode the industrial uses in West Berkeley. [pp. 1 and 2 of appeal letter]

Response 2: As detailed in Attachment 3, the project site is split by a zoning district boundary such that the eastern portion of the site (approximately 12,500-square-feet) is in the MU-R District and the western portion (approximately 3,800-square-feet) is in the MU-LI District. As proposed, the residential dwellings would be constructed in the MU-R District and the live-work units and office space would be constructed in the MU-LI District. As detailed in Exhibit A and Attachment 3, the proposal to create four live-work units and an office on the subject property would be consistent with the purpose of the MU-LI District because:

- Live-work units and an office space are allowed uses in the MU-LI District and conform to the MU-LI District standards including setbacks, height, location, Floor Area Ratio (FAR), usable open space and minimum on-site parking spaces. In addition, the project, as proposed and approved by ZAB, represents the MU-LI District’s intended flexibility for creation of live-work units without displacing industrial uses (the project site is currently used as a parking lot).

- The proposed live-work units and an office space would create new opportunities for artists to live and work in the District while not impeding the operation of light industrial uses. The construction of live-work units, housing, arts and crafts uses and an office space would be compatible with the mix of adjacent uses, and would provide a transition between the residential uses to the east and the abutting industrial use to the west.

- The project is not likely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings in the District from manufacturing, wholesale trade, or warehousing uses. As opposed to other areas of the MU-LI District, where warehouses and manufacturers occupy large contiguous lots, the project site is vacant land and no pre-existing use would be displaced. Thus, the proposed project would not cause the district to lose any existing manufacturing uses.
• The project is consistent with the West Berkeley Plan. The proposed massing and design is appropriate for a live/work building and reflects the nature of the MU-LI District and the neighborhood, where most of the existing buildings are one- and two-story industrial and residential buildings. According to the West Berkeley Plan, “live/work generates life in neighborhoods which are otherwise moribund at night, increasing activity and safety.” In other words, the design and use of the proposed project would improve the experience of residents and visitors in the neighborhood and district.

• As recommended by the DRC and approved by the ZAB, the approved plans include provisions to buffer the adjacent industrial uses from the live-work units by limiting the number of windows facing west to three per unit (one per each floor) and by requiring all west facing windows to be of translucent material.

• The project is consistent with the purposes of the General Plan, which envisions the Mixed Use-Light Industrial classification as an area where “building intensity will generally range from a Floor Area (FAR) of less than 1 to an FAR of 2.” The proposed four live-work units and an office space will fit within the allowed range of density in the MU-LI District and will not remove industrial uses, nor introduce new uses where land use conflicts could jeopardize industrial or manufacturing uses.

• As conditioned by the ZAB, the new live-work units and office space would function predominantly as workspaces and will provide opportunities for people to live and work in a mixed use industrial area without the conflicts that purely residential uses can create. The applicants are required to notify the occupants of the live-work units that they are in the MU-LI District and that light manufacturing is the primary activity in the District (see Condition of Approval #37).

As the creation of live-work units and an office space in the MU-LI District would be consistent with the purposes of the District, and would be compatible with the neighborhood, the ZAB concluded that there would not be detrimental effects. The appeal does not provide any evidence to suggest the ZAB erred in approving the project, and staff recommends that the Council find this appeal point without merit and reject the appeal as to this issue.
HOUSING ACCOUNTABILITY ACT ANALYSIS

The Housing Accountability Act (HAA) 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 a preponderance of evidence that:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

The proposed project has one element that does not comply with applicable, objective general plan and zoning standards (reduction of required street side yard setback), so the HAA does not apply to this project.

ALTERNATIVE ACTIONS CONSIDERED

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

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

CONTACT PERSONS
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Steven Buckley, Manager, Land Use Planning Division, (510) 981-7411
Immanuel Bereket, Project Planner, Land Use Planning Division, (510) 981-7425

Attachments:
1: Draft City Council Resolution
   Exhibit A: Findings and Conditions
   Exhibit B: Project Plans dated October 11, 2017
2: WEBIAC and David Baker’s Appeal Letter dated November 22, 2017
3: ZAB Staff Report, dated October 26, 2017
4: Administrative Record
5: Public Hearing Notice
RESOLUTION NO. ##,###-N.S.

UPHOLD THE ZONING ADJUSTMENTS BOARD (ZAB) DECISION TO APPROVE USE PERMIT NO. ZP2017-0039 TO CONSTRUCT THREE DETACHED, THREE-STORY BUILDINGS WITH TEN DWELLING UNITS, FOUR LIVE-WORK UNITS FOR ARTS AND CRAFTS, ONE OFFICE SPACE, AND 16 OFF-STREET PARKING SPACES

WHEREAS, on March 17, 2017, David Trachtenberg, 2421 Fourth Street, Berkeley, CA 94710, filed an application for a Use Permit to construct three detached, three-story buildings with ten dwelling units, four live-work units for Arts and Crafts, one office space, and 16 off-street parking spaces; and

WHEREAS, on April 6, 2017, staff deemed this application incomplete and requested additional information; and

WHEREAS, on July 5, the applicant submitted revised application and additional material in support of the project; and

WHEREAS, on July 17, staff deemed the application complete and on approximately July 12, 2017, determined that the project was categorically exempt from the California Environmental Quality Act ("CEQA") under Sections 15303 ("New Construction or Conversion of Small Structures") and 15332 ("In-Fill Development Projects"); and

WHEREAS, on August 17, 2017, the Design Review Committee ("DRC") conducted Preliminary Design Review and continued discussion of the application; and

WHEREAS, on September 17, 2017, the DRC conducted Preliminary Design Review and passed a favorable recommendation to the ZAB on a 5-0-1-1 vote; and

WHEREAS, on October 11, 2017, staff mailed 160 notices to adjoining property owners and occupants within 500 feet of the site, and to interested neighborhood organizations and posted a Notice of Public Hearing at the site in six locations; and

WHEREAS, on October 26, 2017, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, determined that the project was categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15332 ("In-Fill Development Projects"), and approved the use permit application; and

WHEREAS, on November 6, 2017, staff issued the notice of the ZAB decision; and

WHEREAS, on November 22, 2017, West Berkeley Artisans and Industrial Companies (WEBAIC) and David Baker filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on or before February 13, 2018, staff posted the public hearing notice at the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations; and
WHEREAS, on February 27, 2018, the City Council held a public hearing to consider the ZAB decision, and, in the opinion of this Council, the facts stated in, or ascertainable from the public record, including comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that it hereby approves Use Permit No. ZP2017-0039 based on the attached findings and conditions as set forth in Exhibit A for the project depicted in Exhibit B.

Exhibits:
Exhibit A: Findings and Conditions
Exhibit B: Project Plans dated October 11, 2017
739 Channing Way

Use Permit #ZP2017-0039 to construct two detached, three-story, 34 feet tall buildings with 10 dwellings, four Arts and Crafts live-work units, one office space, and 16 off-street parking spaces on a vacant lot.

PERMITS REQUIRED

- Use Permit with a Public Hearing, under Berkeley Municipal Code (BMC) Section 23A.16.030 Paragraph B, to eliminate required 5-ft street side yard setback by applying requirements of the MU-LI District to the M-UR District;
- Use Permit with a Public Hearing, under BMC Section 23E.80.030 Paragraph A, to construct four new arts and crafts live/work units;
- Use Permit with a Public Hearing, under BMC Section 23E.84.030, to construct 10 dwelling units in the MU-R District;
- Administrative Use Permit, under BMC Section 23E.80.030 Paragraph A, to construct an office spaces less than 3,000 square feet in area; and,
- Administrative Use Permit, under BMC Section 23E.04.040, for construction of fence above six feet.

I. CEQA FINDINGS

The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Guidelines Section 15332 (In-Fill Development Projects), of the CEQA Guidelines. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource.

II. GENERAL NON-DETRIMENT FINDING

Pursuant to Berkeley Municipal Code Section 23B.32.030, the Zoning Adjustments Board finds that the proposed project, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City, for the following reasons:

1. As described in detail the October 26, 2017 Staff Report, this proposal: (1) to construct 10 dwellings, four live-work units and an office of the subject property conform to the MU-R and MU-LI Districts standards for Uses Permitted; (2) conforms to the applicable provisions of the Berkeley Municipal Code including for height, location, Floor Area Ratio (FAR), usable open space and minimum on-site parking spaces; (3) recognizes and
adheres to an existing pattern of development; (4) protects adjacent neighbors from unreasonable obstructions of sunlight and air; (5) represents the MU-R District's intended flexibility for increased residential density; and (6) the project will create 10 dwellings in the MU-R District and four live-work units for arts/crafts studios and an office space in the MU-LI Industrial area, consistent with the Goals and Policies of the West Berkeley Area Plan encouraging the development that will allow small Berkeley-based businesses, particularly arts and crafts businesses to flourish in West Berkeley.

2. The proposed residential use in the MU-R District is consistent with the purposes of the General Plan, which envisions the Mixed Use-Residential classification as an area “which allows a maximum FAR of 1 to 1.5 and a maximum building height of 28 to 35 feet” and population density range “from 22 to 44 persons per acre.” The proposed dwellings would provide 10 two-story dwellings, which will fit within the allowed range of density in the MU-R District. The proposed dwellings will not remove industrial uses nor introduce new residential uses where land use conflicts could jeopardize industrial or manufacturing uses.

3. The proposed four live-work units and an office space in the MU-LI District are consistent with the purposes of the General Plan, which envisions the Mixed Use-Light Industrial classification as an area where “building intensity will generally range from a Floor Area (FAR) of less than 1 to an FAR of 2.” The proposed 4 live-work and an office space will fit within the allowed range of density in the MU-LI District and will not remove industrial uses nor introduce new residential uses where land use conflicts could jeopardize industrial or manufacturing uses.

4. Due to the relatively flat slope of this neighborhood and its low elevation above sea level, the project will not obstruct or significantly reduce any prominent views of surrounding neighbors. Prominent views are generally considered to be views such as the East Bay Hills, Golden Gate or Bay Bridges, the Downtown San Francisco skyline, the bay, and Treasure Island. Although the project could further obstruct views of the East Bay Hills or Golden Gate or Bay Bridges from nearby two-story structures, such views are already partially obstructed and would not be substantially degraded.

5. No substantial land use conflicts are expected from the project due to the project site's location in a mixed area of commercial and residential development, because the project's density would be within the range of the surrounding development, and because no substantial privacy or shadow impacts would occur.

6. The Board further finds that the project has been reviewed by the Design Review Committee and that recommendations made by the Committee to ensure that the design is appropriate for the industrial district, while reducing potential impacts on the adjoining neighbors, have been incorporated into the design, thereby minimizing potential detriments to persons working or residing in the surrounding area.
III. FINDING REGARDING CREATION OF LIVE-WORK AND OFFICE IN THE MU-LI

Pursuant to Berkeley Municipal Code Section 23E.80.090.G, the Zoning Adjustments Board finds:

1. Pursuant to Berkeley Municipal Code Sections 23E.80.090 G 1 and 3, the applicant will make adequate provisions to insure that the occupants of the live-work spaces will only engage in the occupations listed in the definitions of art/craft studios by virtue of the conditions of approval that require informed consent, and acknowledgement thereof, with respect to the permitted arts and crafts work, and with respect to the presence, nearby, of industrial activities.

2. Pursuant to Berkeley Municipal Code Sections 23E.80.090 G 2, the development of live-work units on this site will be compatible with nearby industrial uses because the adjacent uses are industrial. Beyond this, surrounding uses to the west and north include light industrial buildings, but none are believed to house activities with off-site impacts of sufficient magnitude to substantially impact the health and well-being of occupants and workers on the proposed site.

3. The proposed live/work units comply with the provisions of Chapter 23E.20.

4. The establishment of the live/work units will not interfere with the lawful operation of manufacturers and other industries existing in or adjacent to the District, nor will it interfere with the future establishment of such uses, because the site is in a mixed-use district with compatible residential and commercial uses, and no other manufacturing uses are located in the immediate vicinity.

5. A condition of approval requires that the applicant record a statement with the County recorder acknowledging that the live/work unit is being established in a District where manufacturers and other industries operate lawfully and that he/she will not seek to impede their lawful operation. In addition, the applicant will require any tenants to sign such a statement, and require all persons purchasing live/work units to sign and record such a statement.

IV. FINDING REGARDING CREATION OF DWELLINGS IN THE MU-R DISTRICT

Pursuant to Berkeley Municipal Code Section 23E.84.090.B, the Zoning Adjustments Board finds that the proposed 10 dwellings in the MU-R District:

1. Will be consistent with the purposes of the District in that the proposed project creates 10 dwellings that are compatible with uses in the vicinity; the proposed project provides a transition from residential uses to the east and south while supporting residential concentrations in the District; and will not displace or cause change in the District from manufacturing, wholesale trade or warehousing uses as the project site is currently vacant.

2. The project is consistent with the normal use and operation of surrounding uses and buildings, including residential and industrial buildings, in that the project proposes residential, of live-work units and an office uses in an area that contains a mix of residential and industrial uses.
3. The project is consistent with the goals and policies of the West Berkeley Plan, in that the project proposes residential uses in the MU-R District and live-work units and an office space in the MU-LI District that are compatible and in scale with the surrounding residential and industrial uses. As such, the project is not likely to induce or contribute to a cumulative change of use in buildings away from residential, live/work, light industrial, or arts and crafts uses.

V. FINDING REGARDING ELIMINATION OF STREET SIDE YARD

Pursuant to Berkeley Municipal Code Section 23A.16.030.B, the Zoning Adjustments Board finds that the proposed application of the MU-LI District’s setback standards to a portion of the MU-R District to eliminate the required side yard setback is acceptable because:

1. The aggregate amount of development of the proposed project, as measured by density (FAR), will not exceed the sum of the development potential of all of the parts of the lot if each part that is zoned differently were developed under that respective District’s regulations only.

2. No part of the lot will be used other than for the uses permitted in the District in which it is located.

IV. OTHER REQUIRED FINDINGS

Pursuant to Berkeley Municipal Code Section 23E.04.040.A, the Zoning Adjustments Board finds:

1. That eight-foot fence’s location, design, color, and material will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood or the public health, welfare and safety. The fence will not block significant views from the primary living areas of adjacent neighbors. The DRC has reviewed and approved the design and material of the proposed fence, which is meant to provide privacy and security for the proposed project.
STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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

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

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

3. **Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)**
   A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
   B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. **Modification of Permits (Section 23B.56.020)**
   No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Zoning Officer, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

5. **Plans and Representations Become Conditions (Section 23B.56.030)**
   Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. **Subject to All Applicable Laws and Regulations (Section 23B.56.040)**
   The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. **Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)**
   Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.
8. Exercise and Lapse of Permits (Section 23B.56.100)
   A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
   B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
   C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

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

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:
10. The applicant shall develop a site-specific noise study, prepared by a qualified acoustical consultant for the proposed project, to insure interior noise standards for residences outlined in BMC Chapter 13.40 are met. The study shall identify existing and projected noise levels, including noise from industrial uses in the district. The study shall explicitly list the building features or materials that provide noise attenuation, and these features or materials shall be called out on the project plans. The study shall be reviewed and approved by Planning staff.

11. All windows on the west elevation shall be made translucent or opaque, and the final design of the windows shall be called out on the project plans.
12. All balcony railings on the office and live-work units shall be no less than five (5) feet. The final design and detail of the railings be called out on the project plans.

13. Project Liaison. The applicant shall provide the project planner with the name and telephone number of the individual empowered to manage complaints generated from the project. The individual’s name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis.

☐ Project Liaison ____________________________________________

Name Phone #

14. Address Assignment. The applicant shall file an “Address Assignment Request Application” with the Permit Service Center (2120 Milvia Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned prior to issuance of a building permit.

Prior to Issuance of a Building Permit:

15. Construction and Demolition. Applicant shall submit a Waste Diversion Form and Waste Diversion Plan that meet the diversion requirements of BMC Chapters 19.24 and 19.37.

16. Water Efficient Landscaping. Applicant shall provide an updated Bay-Friendly Basics Landscape Checklist that includes detailed notes of any measures that will not be fully met at the project. Landscape improvements shall be consistent with the current versions of the State’s Water Efficient Landscape Ordinance (WELO) and the East Bay Municipal Utility District’s Section 31: Water Efficiency Requirements. Additionally, Building Plans shall show irrigation systems to maintain the proposed landscaping.

17. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to storm water pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.

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

19. Geotechnical Investigation. The building permit plans for the new buildings shall demonstrate compliance with the recommendations in the geotechnical report prepared by Summit Engineering, date received October 6, 2016, including but not limited to recommendations regarding site preparation, grading, foundation, pavement type, and drainage.

Prior to Construction or Demolition:

20. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks or pedestrian paths
- Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
- Storage of building materials, dumpsters, debris anywhere in the public ROW
- Provision of exclusive contractor parking on-street relevant
- Significant truck activity.

The applicant shall secure the City Traffic Engineer’s approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, 3rd floor, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 2120 Milvia Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

21. Construction and demolition Hours. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.

STORMWATER REQUIREMENTS (During Construction and Demolition)

22. The applicant shall demonstrate compliance with the requirements of the City’s National Pollution Discharge Elimination System (NPDES) permit as described in Berkeley Municipal Code Section 17.20. The following conditions apply:
   A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City’s storm drainage system, regardless of season or weather conditions.
   B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the
City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.

C. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.

D. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.

E. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.

F. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.

23. Public Works – Create > 500 sf of Impervious Surface. All private or public projects that create and/or replace 500 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).

24. Public Works. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

25. Public Works. The applicant is responsible for ensuring that all contractors and subcontractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.

26. Public Works. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.
27. **Public Works.** The removal or obstruction of any fire hydrant shall require the submission of a plan to the City’s Public Works Department for the relocation of the fire hydrant during construction.

28. **Public Works.** If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

29. **Public Works.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.

30. **Public Works.** The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

31. **Public Works.** Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.

32. **Public Works.** The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.

33. **Public Works.** Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

34. **Public Works.** The project sponsor should require the construction contractor to implement the following BAAQMD’s basic dust control measures:
   A. Water all active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
   B. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
   C. Pave, apply water 3 times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
   D. Sweep streets (with water sweepers using reclaimed water if possible) at the end of each day if visible soil material is carried onto adjacent paved roads.
35. **Public Works.** After construction is complete, all drainage culverts shall be inspected for accumulated sediment. If sediment accumulation has occurred, these drainage structures shall be cleared of debris and sediment.

**Prior to Issuance of Occupancy Permit or Final Inspection:**

36. **Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated October 11, 2017 except as modified by conditions of approval.

37. **Construction and Demolition Diversion.** A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City’s Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.

**At All Times (Operation):**

38. **Exterior Lighting.** All exterior lighting shall be energy efficient where feasible and shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property. All outdoor lighting shall be designed to provide security lighting only and shall use low energy light fixtures.

39. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

40. **Covenants, Conditions and Restrictions (CC&Rs) for the condominium map shall require driveway easements for shared driveways; maintenance of low-water irrigation for all landscaping. In addition, notification shall be provided to future occupants that the property is located within the West Berkeley Plan area and Mixed-Use Residential District, that light manufacturing is a permitted activity in the district, that primary production manufacturing or construction products manufacturing are permitted uses in nearby districts, including the Manufacturing District located 500 feet to the west, that these uses may involve 24-hour operations, and that noise up to legal limits is common and accepted in industrial areas.

41. **Bicycle Parking.** Secure and on-site bicycle parking for at least four (3) bicycles shall be provided for the life of the building. These spaces shall be located either in a locker or in a rack suitable for secure locks, in accordance with BMC section 23E.28.070.

42. **Electrical Meter.** Only one electrical meter fixture may be installed per dwelling unit.

43. Subject to review and approval by the City’s arborist, the applicant shall plant at least six large trees in the confronting right-of-way planting strip, no closer than five feet from any underground utility or a driveway. The new tree shall be greater than a 24 inch box tree that has a single, central dominant leader structure. An automatic irrigation system, with 2 bubblers that curve over the top of the tree’s root ball, shall be installed at the applicant’s sole expense. The irrigation shall be controlled by an electric clock that provides 20 gallons of water per week between March 15th and October 15th. The trees shall be planted at the
correct depth and adequately staked to support the tree. No turf, grass, plants or weeds shall be permitted to grow within one foot of the trunk of the tree. Mulch may be installed to suppress weeds. String trimmers shall not to be used around the tree. The tree is required to survive for at least three years. The property owner is responsible for replacing trees that do not survive.
OWNER/APPLICANT: EAST BAY CHANNING WAY, LLP.
ARCHITECT: David Trachtenberg, Principal
TRACHTENBERG ARCHITECTS
2421 Fourth Street
Berkeley, CA 94710
510.649.1414
www.TrachtenbergArch.com

LANDSCAPE ARCHITECT: Robert Trachtenberg
Garden Architecture, Inc
931 Pardee Street
Berkeley, CA 94710
(510) 525-9517

PROJECT ADDRESS: 739 CHANNING WAY, BERKELEY, CA 94710
(APN'S: 056 194500704 & 056 194500600)

SCOPE OF WORK:
PROPOSED CONSTRUCTION OF 10 NEW 3-STORY RESIDENTIAL TOWNHOUSES ON THE MU-R PORTION OF THE LOT AND 4 NEW 3-STORY COMMERCIAL ARTS-AND-CRAFTS LIVE/WORK UNITS AND OFFICE ON THE MU-LI PORTION OF THE LOT, WITH A SHARED EXTERIOR PARKING COURT WITH 16-SPACES.

ZONING CODE SUMMARY
BASED ON THE BERKELEY MUNICIPAL ZONING CODE
SEE SHEET A0.1 FOR COMPLETE ZONING & BUILDING CODE DATA

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NOTE: SIDE YARD PER MU-LI PART OF LOT AT THIS LOCATION WITH USE PERMIT PER BMC 23A.16.030.B, WITH SETBACK ON 5TH STREET VOLUNTARILY INCREASED FROM 5' TO 10'.

10'-0" EXTERIOR PARKING COURT 16-SPACES (PERMEABLE PAVERS)

CHANNING WAY 11'-0" DRIVEWAY (N) CURB CUT

AVG. (N) STREET TREES AND PLANTING STRIPS, TYP. U.O.N.

EXISTING EDGE OF SIDEWALK/PLANTING 2'-0"

EL. +26'-1" (E) JP

EL. +25'-9" (N) 7'-0" TALL FENCE

EL. +27'-3" (E) STOP SIGN

EL. +27'-3" (N) STOP SIGN

EL. +26'-9" 6'-0" TALL FENCE TYP. AT FRONT GARDENS

EL. +26'-9" 5'-4" TALL FENCING TYP. AT FRONT GARDENS

EL. +26'-9" 5' VISIBILITY TRIANGLES TO PEDESTRIAN PATH

PROPOSED VOLUNTARY STREET TREES ON CHANNING WAY, TO BE DETERMINED AT THE TIME OF CONSTRUCTION PERMITTING AND FINANCING BASED ON FINANCIAL FEASIBILITY EVALUATION OF RELOCATING AN EXISTING GAS LINE THAT CURRENTLY RUNS BELOW THE PLANTING STRIP, TYP. OF (7) TREES.

1 739 Channing Way
739 Channing Way
Berkeley, CA 94710

5TH & CHANNING MIXED-USE
739 Channing Way
Berkeley, CA 94710
FIFTH STREET STRIP ELEVATION

1/32" = 1'-0" @ 11X17  1/16" = 1'-0" @ 24X36

CHANNING STREET STRIP ELEVATION

1/32" = 1'-0" @ 11X17  1/16" = 1'-0" @ 24X36
739 Channing Way
Berkeley, CA 94710
PERSPECTIVE VIEWS

A3.5

VIEW LOOKING SOUTH ALONG 5TH STREET

VIEW LOOKING NORTH-WEST ALONG 5TH STREET
VIEW LOOKING SOUTH ALONG 5TH STREET - AFTER

VIEW LOOKING SOUTH ALONG 5TH STREET - BEFORE
A3.7

VIEW LOOKING NORTH-WEST ALONG 5TH STREET - AFTER

VIEW LOOKING NORTH-WEST ALONG 5TH STREET - BEFORE
NOTE: STREET TREES NOT SHOWN FOR CLARITY
NOTE: STREET TREES NOT SHOWN FOR CLARITY

LOOKING UP CHANNING WAY

A3.8.4

5TH & CHANNING MIXED-USE
739 Channing Way
Berkeley, CA 94710

07.16.2017 ZONING REVISIONS
09.06.2017 DRC
10.11.2017 ZAB

TRACHTENBERG ARCHITECTS
2421 Fourth Street
Berkeley, California 94710
510.649.1414
www.TrachtenbergArch.com
NOTE: STREET TREES NOT SHOWN FOR CLARITY
01
Integrally colored lime plaster - hard steel trowel finish

02
Face fastened corten steel panels

03
Integrally colored lime plaster - Hard steel trowel finish

04
Painted steel brick soldi, transom, panel, window surround and cornice

05
Painted Hardie shiplap
BenMoore 1608
"Ashland Slate"
WEBAIC and Daniel Baker, owner of Polyseal Industries are appealing the Zoning Adjustments Board’s approval of the proposed project at 739 Channing Way.(permit #ZP2017-0039).

The reasons for our appeal are as follows:

Polyseal Industries is a 40+ year old successful Berkeley manufacturing facility that provides good jobs with good pay and benefits for people without college education, a majority of the employees being people of color. Polyseal has operated in harmony with the neighborhood it is part of, because it adheres to the law in terms of emissions, light, and noise, and the fact that there is a reasonable distance between the plant and residential neighbors. WEBAIC and Mr. Baker believe that the proposal to build live-work residences right up to Polyseal’s property line would create exactly the incompatibilities that the BMC zoning and the West Berkeley Plan specifically tried to prevent. There is already a long history in Berkeley of conflict between residents and industry in West Berkeley. None exists presently on this site, but the proposed project would create those conflicts. We believe the ZAB did not take these issues into account in their decision.

The staff report the ZAB relied on to make their decision erroneously (in three places) stated that the lot adjacent to the proposed project was an empty lot with no industrial activity while in fact a 40+ year manufacturing plant exists there.

Below are some references from the BMC, West Berkeley Plan, and General Plan that demonstrate the strong intention to avoid conflicts between industry and residents that we believe the ZAB did not take into account and that the proposed project violates:

**BMC:**

Under BMC Live/Work Provisions - Chapter 23E.20 - Section 23E.20.020 Purposes, Purpose E. states that this section is “To protect existing and potential industrial uses from conflicts which neighboring and nearby residential uses can cause.”

WEBAIC and Daniel Baker of Polyseal Industries contend that the project as proposed, by installing residences in four live-work units built to the property line of Polyseal Industries, would create exactly the kind of “conflicts which neighboring and nearby residential uses can cause.”

Under MULI Chapter 23E.80: MU-LI Mixed Use-Light Industrial - Section 23E.80.090 Findings, Finding G states that: “In order to approve a Use Permit to establish or modify a Live/Work Unit, the Zoning Officer or Board must make the findings required in Chapter 23E.20, as well as the following:

2. Development of such Live/Work Units is not incompatible with adjacent and nearby industrial uses;

WEBAIC and Daniel Baker of Polyseal Industries contend that the project as proposed, by installing residences in four live-work units built to the property line of Polyseal Industries, would create units that are “incompatible with adjacent and nearby industrial uses;”

Purpose C. of Chapter 23E.80 MU-LI Mixed Use-Light Industrial District Provisions states that the purpose of the MULI is to “Encourage development of an area where light manufacturers can operate free from the economic, physical and social constraints caused by incompatible uses;”
WEBAIC and Daniel Baker of Polyseal Industries contend that the project as proposed, by installing residences in four live-work units built to the property line of Polyseal Industries, would create exactly the kind of “economic, physical and social constraints caused by incompatible uses;” this Purpose seeks to avoid.

**West Berkeley Plan:**

The West Berkeley Plan and General Plan are clear on their intent to retain industry and protect it from incompatibilities and forces that might impede its success. This is seen in Land Use Goal 1, Policy A, which states:

A. Retaining, through planning, zoning and land use policies which shield manufactures from economic and physical incompatibilities with other uses

**Berkeley General Plan:**

The Berkeley General Plan’s Goal 2 Rational states that "The Plan supports continued implementation of the West Berkeley Plan with its emphasis on protecting industry."

Land Use Element Objectives: #4. Goal is to "Maintain and protect Berkeley's remaining industrial areas."

Policy LU-34 Industrial Protections: stated goal is to "Protect industrial uses in West Berkeley."

WEBAIC and Daniel Baker of Polyseal Industries contend that the project as proposed, by installing residences in four live-work units built to the property line of Polyseal Industries, would create exactly the incompatibility the BMC, the West Berkeley Plan, and the Berkeley General Plan strenuously intend to avoid.

WEBAIC and Daniel Baker of Polyseal Industries do not oppose the building of residences on the MUR portion of the 739 Channing property, but we do oppose the building of the proposed live-work units in the location and configuration as currently proposed.

WEBAIC and Daniel Baker have attempted to negotiate with the developers through Trachtenberg Architects to come to a mutually agreeable solution and believed we had an agreement. This agreement we believed we had was subsequently not agreed by the developer on the afternoon of the last day of the appeal period, thus this appeal.

Below is a brief description of activity of Polyseal Industries. This may go on 24 hours a day. We are concerned that residents that live too close to this activity will create exactly the kinds of “economic, physical, and social constraints” the BMC, the West Berkeley Plan, and the General Plan clearly intend to avoid:

- air compressors coming on and off at all times during operation (these are located in an outbuilding right on the property line)
- hydraulic pumps come on & off every few minutes during production; some units located just outside the wall facing project
- the smell of rubber as it is being molded. like a tire dealership, we have rubber products that have a distinct odor that not everyone finds appealing
- bright lights that will pour from the East facing bank of windows at night
- the sounds of metal grinding as metal inserted parts are fabricated
- sandblasting machines
- the deep clanging sound of hydraulic die cutting machines as they die cut rubber/fabric sheet material
- the sound of cycle alarms and flashing lights that come on every 2 to 15 minutes on every machine in our facility. We have 25 machines, so that means during a full production cycle one could hear these alarms and flashing warning lights come on as much as 1500 times in a production day. These are clearly audible from outside the building.
739 Channing Way

Use Permit #ZP2017-0039 to construct three detached, three-story buildings with 10 dwellings, four live-work units for Arts and Crafts, one office space, and 16 off-street parking spaces.

I. Background

A. Land Use Designations:
   - General Plan: Manufacturing (M) and Manufacturing Mixed Use (MMU)
   - Zoning: Mixed-Use Light Industrial (MU-LI) and Mixed Use-Residential (MU-R)
   - West Berkeley Plan: Manufacturing and Mixed Use/Residential

B. Zoning Permits Required:
   - Use Permit with a Public Hearing, under Berkeley Municipal Code (BMC) Section 23A.16.030 Paragraph B, to eliminate required 5-ft street side yard setback by applying requirements of the MU-LI District to the M-UR District;
   - Use Permit with a Public Hearing, under BMC Section 23E.80.030 Paragraph A, to construct four live-work units for arts and crafts;
   - Use Permit with a Public Hearing, under BMC Section 23E.84.030, to construct 10 dwelling units in the MU-R District;
   - Administrative Use Permit, under BMC Section 23E.80.030 Paragraph A, to construct an office spaces less than 3,000 square feet in area; and,
   - Administrative Use Permit, under BMC Section 23E.04.040 Paragraph A, for construction of fence above six feet.

C. CEQA Determination: Categorically exempt pursuant to Section 15303 ("New Construction or Conversion of Small Structures") and Section 15332 of the CEQA Guidelines ("In-Fill Development Projects").

D. Parties Involved:
   - Applicant: David Trachtenberg, 2421 Fourth Street, Berkeley, CA 94710
   - Property Owner: East Bay Channing, LLP 2421 Fourth Street, Berkeley, CA 94710
Figure 1: Vicinity Map

Figure 2: Zoning Map

MU-LI: Mixed-Use Light Industrial
MU-R: Mixed Use-Residential
R-1A: Limited Two-Family Residential
Figure 3: Site Plan (For scaled plans, please see Attachment #2)

Figure 4: South Elevation (Channing Street)
Figure 5: East Elevation (Fifth Street)

Table 1: Land Use Information

<table>
<thead>
<tr>
<th>Location</th>
<th>Existing Use</th>
<th>Zoning District</th>
<th>General Plan Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject Property</td>
<td>Partially a surface parking lot (22 spaces) and partially undeveloped lot.</td>
<td>MU-LI: Mixed Use Light Industrial; and, M-UR: Mixed-Use Residential</td>
<td>M: Manufacturing; and, MMU: Manufacturing Mixed Use</td>
</tr>
<tr>
<td>North</td>
<td>Surface Parking Lot</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South</td>
<td>Residential and light industrial uses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>East</td>
<td>One-story dwellings</td>
<td>M-UR: Mixed-Use Residential</td>
<td>MMU: Manufacturing Mixed Use</td>
</tr>
<tr>
<td>West</td>
<td>Surface Parking Lot</td>
<td>MU-LI: Mixed Use Light Industrial</td>
<td>M: Manufacturing</td>
</tr>
</tbody>
</table>

Table 2: Special Characteristics

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Applies to Project?</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)</td>
<td>No</td>
<td>Proposed project would include 6,635 square feet of commercial and office floor area (live-work is considered a commercial use), which is less than the 7,500 square feet requirement.</td>
</tr>
<tr>
<td>Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)</td>
<td>No</td>
<td>Proposed project would include 10 dwellings. Therefore, it is subject to the provisions of BMC Section 22.20.065. The applicant has indicated they intend to comply by paying the required fee.</td>
</tr>
<tr>
<td>Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>
### Table 3: Project Chronology

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 17, 2017</td>
<td>Application submitted</td>
</tr>
<tr>
<td>April 6, 2017</td>
<td>Application deemed incomplete</td>
</tr>
<tr>
<td>July 5, 2017</td>
<td>Revised application submitted.</td>
</tr>
<tr>
<td>July 17, 2017</td>
<td>Application deemed complete</td>
</tr>
<tr>
<td>August 17, 2017</td>
<td>DRC Preliminary Design Review hearing, continued</td>
</tr>
<tr>
<td>September 21, 2017</td>
<td>DRC conducts preliminary design review and conditionally makes favorable recommendation to the ZAB.</td>
</tr>
<tr>
<td>October 11, 2017</td>
<td>Public hearing notices mailed/posted</td>
</tr>
<tr>
<td>October 26, 2017</td>
<td>ZAB hearing</td>
</tr>
</tbody>
</table>

### Characteristic

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Applies to Project?</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Creeks</td>
<td>No</td>
<td>The project site is not within a creek buffer.</td>
</tr>
<tr>
<td>Green Building Score</td>
<td>Yes</td>
<td>The applicant submitted a GreenPoint checklist for the project. The minimum required points are 50 out of a possible 404 points, and the checklist indicates a score of 112 points.</td>
</tr>
<tr>
<td>Housing Accountability Act (Gov't Code Section 65589.5)</td>
<td>Yes</td>
<td>Project is a &quot;Housing development project&quot; consisting of dwelling and commercial spaces. See Section V.A.</td>
</tr>
<tr>
<td>Oak Trees</td>
<td>No</td>
<td>None on the project site.</td>
</tr>
<tr>
<td>One Percent for Public Art</td>
<td>Yes</td>
<td>The project is subject to the requirements of BMC Chapter 23C.23. The applicant has indicated they intend to comply by paying the required fee.</td>
</tr>
<tr>
<td>Seismic Hazards Mapping Act (Liquefaction, Fault-rupture, Landslide)</td>
<td>Yes</td>
<td>The project site is located within an area susceptible to liquefaction as shown on the State Seismic Hazard Zones map. The geotechnical investigation for the project (LAI &amp; Associates, October 2016), which determined that the land is suitable for the proposed new construction. The report identified the potential hazards of seismic shock and differential settlement, as is common for sites in the vicinity of the project. The report recommended shallow footings supported at depths of at least 18 inches, along with recommendations for site preparation, grading, pavement type, and drainage. Implementation of these recommendations are required by COA #16.</td>
</tr>
<tr>
<td>Soil/Groundwater Contamination</td>
<td>No</td>
<td>The project site is located in the City’s Hazards Management Area. However, the site is not on any list maintained pursuant to the Cortese List and no site specific conditions of approval are needed.</td>
</tr>
</tbody>
</table>
### II. Project Setting

#### A. Neighborhood/Area Description: The project site is located in West Berkeley at the northwest corner of Fifth Street and Channing Way. As detailed in Table 1 above, the abutting properties to the north and west are vacant/surface parking lots while the

<table>
<thead>
<tr>
<th>Standard</th>
<th>Existing</th>
<th>MU-LI Portion</th>
<th>MU-R Portion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Area (sq. ft.)</td>
<td>MU-R: 12,500, MULI: 3,800, Total: 16,300</td>
<td>No Change, N/A</td>
<td>No Change, N/A</td>
</tr>
<tr>
<td>Gross Floor Area (sq. ft.)</td>
<td>0, 6,635</td>
<td>7,600 max., 13,826</td>
<td>18,750 max.</td>
</tr>
<tr>
<td>Floor Area Ratio</td>
<td>0, 1.7</td>
<td>2 max., 1.1</td>
<td>1.5 max.</td>
</tr>
<tr>
<td>Live-Work Units</td>
<td>0, 4</td>
<td>N/A, 0</td>
<td>N/A</td>
</tr>
<tr>
<td>Dwelling Units</td>
<td>0, 0</td>
<td>N/A, 10</td>
<td>10 max. (1/1,200)</td>
</tr>
<tr>
<td>Office (sq. ft.)</td>
<td>0, 1 (1,123)</td>
<td>N/A, N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Building Height</td>
<td>Average (ft.)</td>
<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>Maximum (ft.)</td>
<td>0, 34</td>
<td>45 max., 34</td>
<td>35 max.</td>
</tr>
<tr>
<td>Stories</td>
<td>0, 3</td>
<td>N/A, 3</td>
<td>3 max.</td>
</tr>
<tr>
<td>Building Setbacks (ft.)</td>
<td>Front (Fifth St.)</td>
<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>Rear (west)</td>
<td>0, 0</td>
<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>Right Side</td>
<td>0, 0</td>
<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>Street Side (Channing Way)</td>
<td>0, 0</td>
<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>Lot Coverage</td>
<td>0, 66%</td>
<td>N/A, 42%</td>
<td>N/A</td>
</tr>
<tr>
<td>Usable Open Space (sq. ft)</td>
<td>0, 380</td>
<td>160 min., 2,140</td>
<td>1,500 min.</td>
</tr>
</tbody>
</table>

#### II. Project Setting

#### A. Neighborhood/Area Description: The project site is located in West Berkeley at the northwest corner of Fifth Street and Channing Way. As detailed in Table 1 above, the abutting properties to the north and west are vacant/surface parking lots while the
confronting properties to the south and east are single-family residences. The area around the site is characterized by diverse uses, including residential, warehouse and light manufacturing. Vik’s Market is one block west on Channing Way, and San Pablo Avenue and the C-W District is three blocks east of the site. San Pablo Avenue is identified in the General Plan as a Primary Route and is well served by transit that provides direct north/south access to Albany, El Cerrito, Emeryville and Oakland, as well as local service within Berkeley.

B. Site Conditions: The 16,300-square-foot (0.37-acre) lot is generally level, square in shape, and is partially a surface parking lot (22 spaces) and partially undeveloped vacant lot. The parking spaces are leased on a month-to-month basis to three local companies (Polyseal Industries, Sacred Space Land Corporation, and John McNeil Studio) for their parking overflow. It is a corner lot with street frontages on Fifth Street to the east and Channing Way to the south. The property features two curb cuts along Channing Way and a curb cut on Fifth Street. As shown in Figure 2 above, this property has a split zoning where the eastern two-thirds of the site (approximately 13,900-square-foot) is in the MU-R District and the western one-third (approximately 2,300-square-foot) is in the MU-LI District.

III. Project Description

The proposed project would involve the construction of three detached, three-story, 34 feet tall buildings which would be arranged into three distinct building forms along the site’s split zoning boundaries. The main components of the project would be:

- Construction of 10 dwellings on the MU-R District portion off the lot; dwellings would range in size from 1,182 sq. ft. to 1,514 sq. ft. Six dwellings would face Fifth Street and four dwellings would face Channing Way;
- Four live work-work units for arts and crafts and an office space would be constructed on the MU-LI District portion of the lot. The live-work units would be approximately 1,378 sq. ft. and the office space would be approximately 1,123 sq. ft.;
- The project would provide 10 parking spaces for dwellings, two parking spaces for the office space, and four parking spaces the live-work units, for a total of 16 off-street parking spaces;
- The project would provide four secure bike racks;
- Three existing curb cuts would be removed and replaced with a curb cut off of Channing Way to serve the proposed off-street surface parking spaces;
- Open space for the dwellings would be located on the ground level in front yard setbacks. Four units would also have additional open space on rooftop decks; and,
- Open space for the live-work units and the office space would be provided on balconies on third floor.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting this application to the city, the applicant invited interested neighborhood organizations as well as owners and occupants within 300 feet of the project for preview meetings. The meeting was held
on November 30, 2016, and attended by 51 people. Because of comments received, the project was reduced from 14 to 10 dwellings with five live-work units for arts and crafts. (meeting minutes are included as Attachment #4).

Later, a pre-application poster was erected by the applicant in March 2017. Shortly after submittal, the City received a correspondence from one of the neighbors, expressing objection to the proposed height and density, parking/traffic impacts, and construction of building on property line and in close proximity to industrial uses. Correspondences received to date are included as Attachment #6.

On October 11, 2017, the City mailed 160 public hearing notices to property owners and occupants within 300-feet of the site, to interested neighborhood organizations, and posted notices within the neighborhood in six locations.

B. Committee Review: The Design Review Committee (DRC) held a Preliminary Design Review (PDR) the project on August 17, 2017, and provided comments to the architect. On September 21, 2017, the DRC completed PDR process and forwarded the project to the Zoning Adjustments Board with a recommendation of approval on a 5-0-1-1 vote. The summary from the September 21, 2017 DRC meeting is provided as Attachment #5 to this report.

V. Issues and Analysis

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

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

The project has one proposed element that does not comply with applicable, objective general plan and zoning standards in the zoning ordinance as follows:

- Reduction of required street side yard setback.

Therefore, § 65589.5(j) does not apply to this project, as currently proposed.

B. Purposes of the MU-R District: As detailed in Table 4 above, the MU-R District allows construction of 10 dwelling units at the project site under BMC Section 23E.84.070.B (Development Standards). In order to approve the live-work units the ZAB must make findings, as set out in BMC 23E.84.090.G and discussed below:

---

1 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.
1. **Consistency with MU-R District**: This project is permissible because it is consistent with the MU-R District provisions, development standards, and the general purposes. As listed in BMC Section 23E.84.020, the purposes of the MU-R Districts are to:

a) Implement the West Berkeley Plan’s designation of a Mixed Residential District;
b) Support the continued development of a mixed use District which combines residential, live-work, light industrial, arts and crafts and other compatible uses;
c) Strengthen residential concentrations which exist within the District;
d) Provide appropriate locations for a broad range of live-work activities to occur;
e) Provide a transitional district between the residential districts to the east of the MUR and the industrial districts to the west of the MU-R;
f) Encourage light manufacturers and wholesalers which are compatible with a mixed use-residential district;
g) Support the development of businesses of all types which contribute to the maintenance and improvement of the environment;
h) Protect residents from unreasonably detrimental effect of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare, to the extent possible and reasonable within a mixed use West Berkeley context;
i) To the extent feasible, protect industrial uses, particularly light industrial uses, from unreasonable intrusions on their ability to operate lawfully;
j) Permit retail and food service activities which are either limited or small scale, primarily serving persons living and/or working in the District, but not a citywide or regional clientele, or which are ancillary and designed to maintain and enhance the economic viability of manufacturers in the District.

Purposes a, b, c, e, h, and i are particularly applicable to the proposed project. The West Berkeley Plan describes the MU-R District as one of the Plan Area’s housing opportunities districts, and also states that “the Mixed Use/Residential focuses on those areas where the typical mix is residential and light industrial...The district’s proposed uses permit residential, live-work, light industrial, and office uses, but only limited, generally neighborhood serving retail.” The proposed project within the mixed context of the immediate neighborhood is consistent with the Plan’s vision for the MU-R District.

The proposed project would support the continued development of the MU-R District and would strengthen residential concentrations which exist within the District, particularly within the immediate vicinity of this project. It would also improve the housing stock in the neighborhood by constructing 10 new dwellings in the MU-R portion of the lot. The construction of dwellings on this site would also be consistent with the transitional nature of the area between the residential uses to the south and east and the industrial uses to the west. No unreasonably detrimental effects would be anticipated as discussed in section V.G below. In addition, CC&R’s (COA #37) would be required to notify future owners of the nature of the neighborhood’s mix of uses including light industrial operations.
Purposes d, f, g, and j are not applicable because no live-work, manufacturing or wholesaling, new business, or food service activities are proposed or would be displaced or adversely affected by the project.

2. Consistency with the normal use and operation of surrounding uses and buildings, including residential and industrial buildings. The proposed project is permissible because it would be consistent with the mixes of uses in the neighborhood where residential and light industrial uses exist.

3. Consistency with the adopted West Berkeley Plan. As described in Section H below, the project would be consistent with the West Berkeley Plan.

4. Would not induce or contribute to a cumulative change of use in buildings away from residential; live-work; light industrial, or arts and crafts uses. The proposed project would introduce residential use on the site which confronts existing residential uses. Land uses in the neighborhood include residential, light industrial and warehousing uses, and the introduction of residential uses on the site would not result in a cumulative change from other uses.

5. Supports the character and purposes of the District. The project would strengthen residential concentrations which exist within the District. The proposed design would reflect the industrial context through the use of corrugated siding and simplicity of massing and detail.

C. Arts and Crafts Live-Work Units. Pursuant to BMC Section 23E.80.030 Paragraph A, construction of live-work units for art/craft studios are allowed in the MU-LI District with a Use Permit. The proposed project would involve the construction of four live-work units. In order to approve the live-work units the ZAB must make three findings, as set out in BMC 23E.80.090.G and discussed below:

1. Finding G-1: The ZAB must determine that the applicant has made adequate provision to ensure that the occupants of the live-work units will only engage in occupations that qualify as art/craft studios.²

The plans illustrate four live-work units of equal size and identical floor plans with the non-residential use on the ground floor and residential uses on the second and third floors. The live-work units have been designed specifically to accommodate Art and Craft Studios and would function as workspaces. The live-work building

² Per BMC Section 23F.010 (Definitions) Art/Craft Studio is defined “an establishment engaged in the creation of art or crafts that requires artistic skill. Such an establishment may participate in periodic open studios, but otherwise is subject to the applicable district’s requirements for incidental sales of goods made on site. Art/Craft Studios also include rehearsal spaces not designed for public performances. Examples of individuals typically engaged in this work include, but are not limited to, woodworkers, potters/ceramicists, costume makers, set designers, stained-glass makers, glassblowers, textile artists and weavers, jewelry makers, painters, fine art printmakers, photographers/filmmakers, leather workers, metal workers, musical instrument makers, model makers, papermakers, installation artists, sculptors, video artists, and other makers of art and crafts that the Zoning Officer determines to be consistent with the definition above.”
provides a transition and buffer in this mixed-use area between the proposed dwellings and the light industrial uses to the west. Based on the floor plan layout, staff believes the proposed live-work units would be suitable for art/craft studios as defined in the Municipal Code, and has included a condition of approval requiring that the occupants of the live-work spaces must be artists that fit within the definition art/craft studios set out in the Municipal Code.

2. Finding G-2: The ZAB must find that the development of the live-work units is not incompatible with adjacent and nearby industrial uses.

Staff believes that this finding can be made because the adjacent land uses to the south and east are residential, not industrial, while the abutting lots to the west and north are vacant. The lots further to the west and north contain light industrial uses. The live-work units would provide a transition from residential to light industrial uses.

3. Finding G-3: The ZAB must determine that the applicant has made adequate provisions to ensure that each occupant is notified in writing that the site is in the MU-LI District and that light manufacturing is the primary activity in the District.

Staff has included a condition of approval (#37) that would implement this requirement.

D. Construction of office space: Pursuant to BMC Section 23E.80.030 Paragraph A, construction of general office spaces under 20,000 sq. ft. are allowed in the MU-LI District with an Administrative Use Permit. The proposed office spaces would not displace any pre-existing industrial uses and would be integrated into the proposed live-work units for arts and crafts. As outlined in Table 4 above, the project would also meet parking requirements.

E. Construction of Fence over 6 feet: Pursuant to BMC Section 23E.04.040 Paragraph A, construction of a fence exceeding six feet in height at any point is subject to an Administrative Use Permit. The proposed eight-foot high fence would be located on the north property line and would be constructed on the property line. The eight-foot fence height is not uncommon in the West Berkeley and wouldn’t be readily visible to the public. The DRC has reviewed and approved the design and material of the proposed fence, which is meant to provide privacy and security for the proposed project. Staff sees no detrimental impacts from the proposed fence.

F. Elimination of required side yard setback: In cases where a lot features two zoning boundaries, such as the proposed project, the yard requirements of a district applying to one part of a lot may be applied to the part of the lot located in another district upon issuance of a Use Permit, under BMC Section 23A.16.030.B, and subject to the following limitations: (1) the aggregate amount of development of the proposed project or use, as measured by density (or FAR in this case), shall not exceed the sum of the development potential of all of the parts of the lot if each part that is zoned differently were developed under that respective District’s regulations only; and (2) no part of the lot shall be used other than for the uses permitted in the District in which it is located.
The project proposes an FAR of 1.7 where a maximum of 2 is allowed by the MU-LI District standards, and an FAR of 1.1 is proposed where a maximum of 1.5 is allowed by the MU-R District standards. Therefore, the proposed project complies with the sum of the development potential of each district. Further, the project would create four live-work units and an office space in the MU-LI District where such uses are permitted pursuant to BMC Section 23E.80.030.A, and would construct 10 dwellings/residential uses in the MU-R District where such uses are permitted pursuant to BMC Section 23E.84.030.A. Because the proposed reduction street side yard setback satisfies the regulatory requirement of BMC Section 23A.16.030.C, staff believes it can be approved.

Further, the proposed live-work units for arts and crafts would not remove industrial uses nor introduce new residential uses where land use conflicts could occur. The proposed four live-work units and an office space in the MU-LI District are consistent with the purposes of the General Plan as well as the West Berkeley Plan. The proposed four live-work and an office space would fit within the allowed range of density in the MU-LI. Due to the relatively flat slope of this neighborhood and its low elevation above sea level, the project would not obstruct or significantly reduce any prominent views of surrounding neighbors.

**G. General Plan Consistency:** The project site is designated as Mixed Use- Residential in the General Plan (2002). The Plan describes this designation as:

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.

   **Staff Analysis:** The project would meet the following standards of the MU-R District: FAR, height, usable open space and off-street parking. The project would also meet all applicable standards of the MU-LI I District. The proposed project in its entirety is considered compatible with the nearby residential and light industrial uses to the extent expected in West Berkeley where this mix of uses is common.

2. **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.

3. **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.

4. **Policy UD-19 Visually Heterogeneous Areas:** In areas that are now visually heterogeneous, a project should be responsive to the best design elements of the area or neighborhood.

5. **Policy UD-24 Area Character:** Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.
Staff Analysis: The proposed project is an infill development that has been designed to blend into the built-in environment. The lot features MU-LI and MU-R Districts. The project is designed to be compatible with the nearby light industrial uses to the extent expected in West Berkeley where this mix of uses is common. Although the density on site would be higher than most nearby residential densities by lot, it is within the range present in the larger vicinity and within ordinance maximums. As discussed above, the project has been approved through the design review process, and was found by design review staff to be compatible with the neighborhood.

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

   **Staff Analysis**: As illustrated in Sheet A5.0 of Attachment #2, shading impacts on nearby properties would be minimal.

7. **Policy LU-33-West Berkeley Plan**, Implement the West Berkeley Plan and take actions that will achieve the three purposes of the Plan:
   i. Maintain the full range of land uses and economic activities including residences, manufacturing, services, retailing, and other activities in West Berkeley.
   ii. Maintain the ethnic and economic diversity of West Berkeley's resident population.
   iii. Maintain and improve the quality of urban life, environmental quality, public and private service availability, transit and transportation, and aesthetic and physical qualities for West Berkeley residents and workers. (Also see Economic Development and Employment Policy ED-2).

   **Staff Analysis**: As noted above, although the density on site would increase, it is within the range present in the vicinity and within the district maximums. The increased density would provide new dwellings in West Berkeley.

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

1. **Land Use Goal 2**: Channel development – both new businesses and residences and the expansion of existing businesses – to districts which are appropriate for the various existing elements of the West Berkeley land use mix.
2. **Land Use Goal 4**: Assure that new development in any sector is of a scale and design that is appropriate to its surroundings, while respecting the genuine economic and physical needs of the development.

   **Staff Analysis**: The proposed project would be sensitive to the confronting residential structures by proposing low-rise townhouses. Also, the proposed project was carefully reviewed by the DRC, and recommended for approval by the ZAB.
3. **Social Services Goal 4**: Encourage appropriately scaled and located housing development.

   **Staff Analysis**: As detailed in Table 4 above, the proposed project would meet the following standards of the MU-R District: FAR, height, usable open space and off-street parking. As discussed above, the proposed dwellings are considered compatible with the nearby residential and light industrial uses to the extent expected in West Berkeley where this mix of uses is common. Additionally, the project would contribute to the citywide goal of adding housing units in MU-R District and would serve positive purpose of strengthening the residential character of the area’s residential enclaves.

4. **Policy LU-34-Industrial Protections**: Protect industrial uses in West Berkeley.

   **Action A**: Inform non-industrial uses that are considering moving into industrial areas that truck traffic, 24-hour operations, and noise up to legal limits are common and accepted in industrial areas. Non-industrial uses are expected to adjust to the practices of industrial operations.

   **Staff Analysis**: The conditions of approval include a requirement that future residents are notified that traffic, 24-hour operations, and noise up to legal limits are common and accepted in industrial areas, consistent with this policy. Additionally, the existing use of the property is residential; therefore, although the project would increase the residential density on the subject lot, it does not introduce a new residential use.

**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. **APPROVE** #ZP2017-0039 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

**Attachments:**

1. Findings and Conditions
2. Applicant Statement and Project Plans, received October 11, 2017
3. Notice of Public Hearing
6. Correspondence Received

**Staff Planner**: Immanuel Bereket, ibereket@cityofberkeley.info (510) 981-7425
Administrative Record
ZAB Appeal:
739 Channing Way

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/
NOTICE OF PUBLIC HEARING - BERKELEY CITY COUNCIL
CITY COUNCIL CHAMBERS, 2134 MARTIN LUTHER KING JR. WAY
739 CHANNING WAY

Notice is hereby given by the City Council of the City of Berkeley that on FEBRUARY 27, 2018 at 6:00 PM, a public hearing will be conducted to consider an appeal of a decision by the Zoning Adjustments Board to approve Use Permit #ZP2017-0039 to construct three detached, three-story buildings with ten dwelling units, four live-work units for arts and crafts, one office space, and 16 off-street parking spaces.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of February 15, 2018.

For further information, please contact Immanuel Bereket, (510) 981-7425.

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: February 13, 2018

NOTICE CONCERNING YOUR LEGAL RIGHTS: If you object to a decision by the City Council to approve or deny (Code of Civ. Proc. 1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny or approve a permit 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 permit, 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 City’s action 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 Berkley 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.