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.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23B.32.020, on Thursday, October 26, 2017 at the Maudelle Shirek Building, 2134 Martin Luther King, Jr. Way, second floor Council chambers (wheelchair accessible). The meeting starts at 7:00 p.m.

PROJECT DATA:

- 10 dwelling units
- Four Live-Work units for Arts and Crafts
- One office space
- 16 off-street parking spaces

PERMITS REQUIRED:

- Use Permit with a Public Hearing 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 to construct four live-work units for arts and crafts;
- Use Permit with a Public Hearing to construct 10 dwelling units in the MU-R District;
- Administrative Use Permit to construct an office spaces less than 3,000 square feet in area; and,
- Administrative Use Permit for construction of fence above six feet.

APPLICANT: David Trachtenberg, 2421 Fourth Street, Berkeley, CA 94710

ZONING DISTRICT: MU-LI: Mixed-Use Light Industrial and MU-R: Mixed Use-Residential

ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to Sections 15303 (New Construction or Conversion of Small Structures) and 15332 (In-Fill Development Projects) of the CEQA Guidelines.
The Zoning Application and application materials for this project is available online at:  
http://www.cityofberkeley.info/zoningapplications

The agenda and staff report for this meeting will be available online 3 to 5 days prior to this meeting at: http://www.cityofberkeley.info/zoningadjustmentsboard

Correspondence and Notice of Decision Requests

- Communications to Berkeley boards, commissions or committees are public record and will become part of the City’s electronic records, which are accessible through the City’s website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

- To distribute correspondence to Board members prior to the meeting date -- submit comments by 12:00 noon, seven (7) days before the meeting. Please provide 15 copies of any correspondence with more than ten (10) pages or if in color or photographic format.

- Correspondence received by 5:00 p.m. on the Tuesday before the meeting will be posted on the ZAB web site for review by the Board and public prior to the meeting. Correspondence received later, and after the meeting, will be posted to the web site following the meeting.

- Any correspondence received after this deadline will be given to Board members on the meeting date just prior to the meeting.

- Staff will not deliver to Board members any additional written (or e-mail) materials received after 12:00 noon on the day of the meeting.

- Members of the public may submit written comments themselves early in the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Zoning Adjustments Board Clerk just before or at the beginning of the meeting.

- Written comments, or a request for a Notice of Decision should be directed to the ZAB Secretary at: Land Use Planning Division (Attn: ZAB Secretary), 2120 Milvia Street, Berkeley, CA 94704 OR at zab@ci.berkeley.ca.us.

Accessibility Information / ADA Disclaimer
This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB 343 Disclaimer
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Permit Service Center, Planning and Development Department located at 2120 Milvia Street, Berkeley, during regular business hours.
Notice Concerning Your Legal Rights
If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Adjustments Board at, or prior to, the public hearing.

2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.

3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.

4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.

5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
   A. That this belief is a basis of your appeal.
   B. Why you believe that the decision or condition constitutes a “taking” of property as set forth above.
   C. All evidence and argument in support of your belief that the decision or condition constitutes a “taking” as set forth above.
If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

Further Information
Questions about the project should be directed to the project planner, Immanuel Bereket, at (510) 981-7425 or ibereket@cityofberkeley.info. All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, during normal office hours.
City of Berkeley Zoning Adjustments Board
Regarding: Proposed Project at 739 Channing Way, use permit #ZP2017-0039

Poly Seal Industries is a 43 year old company, in a 72 year old building that has been in continuous operation as a molding facility since 1945. Our building located at 725 Channing Way has been cited by several prominent historical preservation architects as being one of the most beautiful and significant historical industrial buildings in West Berkeley due to its unique design and use of multi-pane clerestory windows (incorporating over 1500 window panes) that bring in natural sunlight during the day, and cause the building to glow as the setting sun refracts through the building.

Over the past 43 years of operation Poly Seal Industries has employed hundreds of local workers who were able to earn a good living in jobs where they learned valuable manufacturing skills. We have produced millions of dollars of industrial products that have been sold not only all over the US but 21 foreign countries, and we continue to make high value products for over 100 companies that are incorporated into devices used in sophisticated biopharmaceutical facilities, food manufacturing, paper production, construction equipment, beverage manufacturing, wine production, genetic testing equipment, healthcare products, water treatment, chemical mixing, gas and oil production, and aircraft maintenance products.

For the past nearly 50 years the adjoining property at 739 Channing sat vacant and unproductive while a succession of speculator/developers bought and sold it. We tried several times over the years to purchase the property but the various owners were asking far more than the property was worth (anticipating an increase in value to justify the price they paid for it to the owner before). In the past few months we again approached the owners about purchasing just the MUR zoned strip of land that is part of the parcel but they would not name a price and were clearly not interested in selling.

I am writing today to object to the plans that have been submitted to the city as part of this development.

Our main concern is the proposed design will be built right on the property line, with living space, windows, and worst of all, open decks overlooking our facility, looking directly into the large East wall of windows of our factory. The building will tower over our facility, thereby looking down into it. There are 5 live-work units that are planned, all located along that wall, with outdoor decks looking right down on our parking area and directly into our manufacturing space through a continuous wall of glass made up of hundreds of panes of glass. Aside from the privacy issue of folks being able to look directly down onto our production floor...
and seeing our folks at work at all times day and night, and the issue that
someone could watch our processes in detail (some of which involve trade
secrets and proprietary techniques), I have serious concerns about renters in the
live/work spaces complaining (once they get moved in and want to use those
decks and outside spaces) about our operation (with the noise, bright lights, and
smells that are part and parcel of our operation as a rubber molding factory), and
quickly forgetting that they acknowledged they were moving next to an active
manufacturing facility: one that has been in continuous operation since World
War II. This is going to be even more likely as we increase our operations to a
24/7 schedule which will likely happen in the next year. Someone could object to
the following aspects of our operation if they were so inclined:

- air compressors coming on and off at all times during operation (these are
  located in an outbuilding right on the property line)
- hydraulic pumps coming on and off every few minutes during production; we
  have some units located just outside the wall facing the project
- the smell of rubber as it is being molded. Just 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 molding machines going up to 300
  tons, 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.

To be honest, I cannot imagine that most people could tolerate living so close to
an operation like ours: the high wall of the new building will create a canyon
between it and ours which will cause the sound to reflect back and forth thus
intensifying the sound in any of those live work spaces that will be only 30 feet
away from building. And even though our being in a MULI zone protects our
ability to do the kinds of things we do here despite who lives next door, it does not
prevent someone from complaining and causing problems for us in the future.

I understand that anyone renting the live work apartments would have to sign a
disclosure agreement acknowledging the fact they are moving next to an active
business, however that will not necessarily prevent them from complaining once
they move in and conveniently forget that they signed that agreement. This is not
an imagined problem. Over the 37 years I have been employed here I have had
several residents along Channing and 5th St. complain that they could hear our
machinery early in the morning. This caused city officials to respond to the
complaints, which caused us to spend time defending our right to operate at all
hours. In every case we were found to be within acceptable sound levels and that the hours we were operating were in conformance to zoning laws.

As far as I know this is the first time in our area that a high density housing project has been proposed immediately adjacent to an active factory engaged in heavy industrial fabrication. Assuming that is true, this is not a good precedent to set in West Berkeley, the last area of its type in the entire city. I believe it just sets the stage for needless conflict in the future.

I have asked the owners of the development to redesign the project to place their parking area adjacent to the property line as a buffer, or to place the open deck spaces on the opposite side of the live work units so they do not look directly down into our interior space, but they have refused to entertain the idea. I am asking you to please review this design and deny the project as submitted, insisting that it be changed to provide adequate buffer space to prevent conflict after the project is completed.

Sincerely,

Daniel K. Baker
President/CEO
Poly Seal Industries, Inc.
PROOF OF SERVICE

DATE: November 6, 2017

TO: Whom It May Concern

FROM: Melinda Jacob, OSII

SUBJECT: USE PERMIT #ZP2017-0039 – 739 CHANNING WAY

I, the undersigned, certify that I am employed in the City of Berkeley, County of Alameda, California; that I am over eighteen years of age; that I am not a party to the within action; and that my business address is 2120 Milvia Street, Berkeley, California 94704. On this date, I served the following documents:

DECISION OF ZONING ADJUSTMENTS BOARD FOR USE PERMIT #ZP2017-0039 – 739 CHANNING WAY

On the parties stated below by placing true copies thereof in sealed envelope(s) addressed as shown below by the following means of service:

David Trachtenberg  East Bay Channing LLP
2421 Fourth Street  2421 Fourth Street
Berkeley, CA 94710  Berkeley, CA 94710

☒ By First Class Mail - I am readily familiar with the City's practice for collecting and processing of correspondence for mailing. Under the practice, the correspondence is deposited with the U.S. Postal Service on the same day as collected, with First Class postage thereon fully prepaid, in Berkeley, California, for mailing to the addressee following ordinary business practices.

☐ By Personal Service - I caused each such envelope to be given to the City of Berkeley mail service person to personally deliver to the office of the addressee.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 6, 2017 at Berkeley, California.

Melinda Jacob, OSII
DATE OF BOARD DECISION: October 26, 2017
DATE NOTICE MAILED: November 6, 2017
APPEAL PERIOD EXPIRATION: November 22, 2017
EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification)\(^1\): November 23, 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.

The Zoning Adjustments Board of the City of Berkeley, after conducting a public hearing, APPROVED the following permits:

- 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.

APPLICANT: David Trachtenberg, 2421 Fourth Street, Berkeley, CA 94710

ZONING DISTRICT: Mixed-Use Light Industrial (MU-LI) and Mixed Use-Residential (MU-R)

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\(^1\) Pursuant to BMC Section 23B.32.090, the City Council may certify any ZAB decision for review during the 14-day appeal period after the notice of the ZAB’s decision is issued. Certification has the same effect as an appeal. However, BMC Section 1.04.070 suspends or “tolls” the Council’s deadline to certify when the Council is on recess. Thus, in cases where the 14-day appeal period is scheduled to end during a Council recess, the certification deadline is extended past the end of the recess for the remainder of the appeal period. In cases where the appeal period begins during a Council recess, the certification deadline is extended until 14 days after the first Council meeting after the recess. Extension of the certification deadline has no effect on the appeal deadline.
ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to Section 15303 ("New Construction or Conversion of Small Structures") and Section 15332 of the CEQA Guidelines ("In-Fill Development Projects").

The Zoning Application and application materials for this project is available online at: http://www.cityofberkeley.info/zoningapplications

FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE

BOARD VOTE: 8-0-0-0

YES: CLARKE, KAHN, O'KEEFE, OLSON, PINKSTON, SELAWSKY, SHAH, TREGUB

NO:

ABSTAIN:

ABSENT:

TO APPEAL THIS DECISION (see Section 23B.32.050 of the Berkeley Municipal Code):

To appeal a decision of the Zoning Adjustments Board to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1st Floor, Berkeley; or by facsimile to (510) 981-6901. The City Clerk’s telephone number is (510) 981-6900.

2. Submit the required appeal fee (checks and money orders payable to “City of Berkeley”):
   a. The fee for persons other than the applicant is $500. This fee may be reduced to $100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
   b. The fee for all appeals by Applicants is $2500.

3. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).
If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

NOTICE CONCERNING YOUR LEGAL RIGHTS:
If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision 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 Zoning Adjustments Board at, or prior to, the public hearing.

2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.

3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.

4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.

5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must including the following information:
   A. That this belief is a basis of your appeal.
   B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
   C. All evidence and argument in support of your belief that the decision or condition constitutes a “taking” as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.
PUBLIC COMMENT:
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FURTHER INFORMATION:
Questions about the project should be directed to the project planner, Immanuel Bereket, at (510) 981-7410 or ibereket@cityofberkeley.info. All project application materials, including full-size plans, may be viewed at the Land Use Planning Division, 1947 Center Street, 2nd floor, Monday through Friday from 8:30 a.m. to 4 p.m. (except on holidays and reduced service days; check City’s website for details).

ATTACHMENTS:
1. Findings and Conditions
2. Project Plans, received OCTOBER 11, 2017

ATTEST: Shannon Allen, Secretary
Zoning Adjustments Board

cc: City Clerk
Building and Safety Division
Central Library - Reference Desk
Public Works Engineering Division
ZAB Members
First Source
Amy Davidson, Housing Department
Applicant:
David Trachtenberg
2421 Fourth Street
Berkeley, CA 94710

Property Owner:
East Bay Channing LLP
2421 Fourth Street
Berkeley, CA 94710

Interested Party:
Rich Auerbach
rickauerbach@webaic.org
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.
PROJECT DIRECTORY

PROJECT DESCRIPTION

DRAWING LIST

PROJECT ADDRESS: 739 CHANNING WAY, BERKELEY, CA 94710

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 1 OFFICE ON THE MU-LI PORTION OF THE LOT, WITH A SHARED EXTERIOR PARKING COURT WITH 16 SPACES.

AXON VIEW LOOKING NORTH-WEST

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

October 26, 2017

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

GROUND LEVEL / SITE PLAN

PROJECT SITE

DRAWING LIST

5TH & CHANNING MIXED-USE

739 Channing Way
Berkeley, CA 94710

07.18.2017 ZONING SUBMITTAL
09.06.2017 DRC
10.11.2017 ZAB

ATTACHMENT 2
ZAB 10-26-17
Page 1 of 32

Attachment 4 - Admin Record
Page 786 of 819
## GREEN POINTS CHECKLIST

### 5TH & CHANNING MIXED-USE

**739 Channing Way, Berkeley, CA 94710**

**Job:** 07.18.2017 ZONING REVISIONS

**Sheet:** 09.06.2017 DRC

**Page 6 of 32**

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**Attachment 4 - Admin Record**

**Page 791 of 819**

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**TRACHTENBERG ARCHITECTS**

241 Fourth Street
Berkeley, California 94710
510.649.1414
www.TrachtenbergArch.com
739 Channing Way
Berkeley, CA 94710

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TRACHTENBERG ARCHITECTS

5TH & CHANNING MIXED-USE

PROPOSED SITE PLAN

A1.1
LEVEL 3 PLAN

5TH & CHANNING MIXED-USE

739 Channing Way
Berkeley, CA 94710
view looking south along 5th street - after

view looking south along 5th street - before

attachment 2
zab 10-26-17
page 18 of 32
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
NOTE: STREET TREES NOT SHOWN FOR CLARITY

LOOKING UP CHANNING WAY
NOTE: STREET TREES NOT SHOWN FOR CLARITY
5TH & CHANNING MIXED-USE

739 Channing Way
Berkeley, CA 94710

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TRACHTENBERG ARCHITECTS

340 Fourth Street
Berkeley, California 94710
510.649.1414
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SITE SECTION

A4.1
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 scale, transom, panel, window surround and cornice

05. Painted Hardie shiplap

Ben|Moore 1608
"Ashland Slate"
COLOR & MATERIALS

A9.3

02 Perforated Corten Steel Fence
Painted Steel Gate

05 Painted Hardie ShipLap

03 Integral Color Stucco

04 Painted Steel brise soleil,
transom and window surround

02 Corten Steel siding

PreCast Pavers

Anodized Alum. Sash
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.