



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: **November 27, 2018**

Item Number: **38**

Item Description: Conduct a public hearing and, upon conclusion, uphold the appeal and adopt a resolution to approve the project based on the Findings and Conditions presented by staff to the Zoning Adjustments Board (ZAB) on June 28, 2018, for Use Permit #ZP2015-0229, to demolish a gas station structure and construct a five-story, 40,557 square foot mixed-use building with ground-floor retail uses and 23 dwelling units.

Submitted by: **Timothy Burroughs, Director, Planning and Development Dept.**

Staff have prepared this supplemental information in response to areas of Council interest as expressed during the first appeal hearing for this matter, on November 13, 2018.



Office of the City Manager

PUBLIC HEARING
November 27, 2018

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Timothy Burroughs, Director, Planning and Development Department
Subject: Supplemental information for ZAB Appeal: 3000 Shattuck Avenue

RECOMMENDATION

Conduct a public hearing and, upon conclusion, uphold the appeal and adopt a resolution to approve the project based on the Findings and Conditions presented by staff to the Zoning Adjustments Board (ZAB) on June 28, 2018, for Use Permit #ZP2015-0229, to demolish a gas station structure and construct a five-story, 40,557 square foot mixed-use building with ground-floor retail uses and 23 dwelling units.

SUMMARY

This supplemental report provides information in response to areas of Council interest as expressed at its meeting of November 13, 2018, during which the public hearing for this appeal was opened.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The following issues were raised by Council Members on November 13, 2018. Please see the original staff report from that meeting for staff recommendations and responses to the appeal itself.

Loading zone: At the November 13, 2018 Public Hearing, City Council expressed concerns regarding commercial loading, deliveries, and passenger pick-up and drop-offs at the proposed development and requested that the applicant work with the City's Traffic Engineer to determine where loading zone(s) would be feasible at the project site.

Staff Response: The Traffic Engineer has determined that a loading zone along Shattuck Avenue adjacent to the site would not be feasible because the two southbound travel lanes in that area require room to merge into a single lane, which means that a loading zone would block travel. A loading zone could be located along Ashby Avenue where there is ample frontage; the City's Traffic Engineer recommends a 30-foot commercial loading zone that could also be used for passenger pick-up and drop-off,

plus at least 40 feet of the frontage adjacent to the property with a red curb (no parking) to provide sight distance and allow turning movements on Ashby at Shattuck. On-street parking could also be provided along this frontage.

Co-living and Group Living Accommodations: At the November 13, 2018, Public Hearing, the City Council had concerns, which had been shared by the ZAB, regarding the way the applicants' proposed "co-living" model would function in the units, particularly those with five or six bedrooms, and whether these may essentially be considered Group Living Accommodations (GLA)¹.

Staff Response: The applicant has proposed that the project will be a "co-living" development, and explained that this would be arranged as groups of roommates in each unit. Although the applicant has stated that all units, regardless of bedroom count, will have a single lease, concerns were raised whether this would be feasible for units with five or six bedrooms.

In general, the City does not regulate who may live together in what arrangements, but there are certain types of arrangements that can cause concern to neighborhoods and are thus regulated separately. In particular, GLAs - such as fraternity / sorority and single-room occupancy hotels - are required to obtain a Use Permit. In most cases, however, apartments are assumed to be occupied by a "household"² and not GLA, unless evidence is presented to the contrary.

Many of the "co-living" developments operating in the Bay Area and recently highlighted in the national media are operated by organizations such as Common, Coliving.com, and OpenDoor provide variable term leases to each resident, in apartments that are fully furnished and serviced by the agency, with easy move-in and move-out privileges. The zoning ordinance does not currently recognize this living arrangement as distinct from a dormitory or boarding house.

The sole reference which resembles a type of "co-living" model is found in Chapter 21.28, titled "Condominiums and Other Common Interest Subdivisions" and defines "Co-housing Communities" as "[t]ypes of residential development which foster

¹ BMC Chapter 23F.04 defines Group Living Accommodations as "A building or portion of a building designed for or accommodating Residential Use by persons not living together as a Household, but excluding Hospitals, Nursing Homes and Tourist Hotels." Other examples include fraternity/sorority, dormitory, and residential hotel.

² BMC Chapter 23F.04 defines Household as "One or more persons, whether or not related by blood, marriage or adoption, sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or rental agreement for all members of the Household and other similar characteristics indicative of a single Household."

community...”, however this Section is found under Title 21, Subdivisions, which does not address rental units.³

Although the BMC does not use the number of bedrooms or unit size to define housing as GLA, it is often the case that larger buildings/units are more accommodating to this type of living arrangement in which there is a common organization that arranges the roommate placements and common household responsibilities are generally managed by an entity on behalf of the residents.

GLAs are an allowable use in the higher density residential and commercial zoning districts. If the applicant were to operate all or a portion of the property as a GLA, a separate Use Permit would be required. The density of GLA developments is regulated according to persons per acre, which would require conditions of approval and monitoring to ensure compliance. No such Use Permit has been applied for, so the City Council would need to remand the application to the ZAB to consider a new application if this were pursued.

Affordable Housing Mitigation Fee: At the November 13, 2018 Public Hearing, the City Council expressed concern, which had been shared by the ZAB, regarding the fact that affordable housing units would not be provided on-site, but the applicant would instead pay the Affordable Housing Mitigation Fee (AHMF). The Council noted that the AHMF would be calculated according to a formula that may not reflect the potential impact of the development because the number of units was low but the total development was of a larger scale. The Council asked if the fee should be calculated as if some or all of the project were GLAs (in which case the fee would be calculated differently), and requested that the applicant provide additional information regarding the impact of the AHMF on the financials of the project.

Staff Response: The applicant has stated that Council-adopted increases to the Affordable Housing Mitigation Fee (AHMF) following the submittal of the application made the cost of the project infeasible unless other approaches to reduce the fee were taken. The applicant therefore reduced the unit count and hence the fee that would be due⁴. Information provided by the applicant at the November 13, 2018, Public Hearing demonstrated the rate of return for several hypothetical project configurations and timeframes and indicated that there would be a negative rate of return for some situations. If the project were reclassified wholly or partially as GLA, the AHMF would

³ “Community Apartments” are referenced under Chapter 21.28, however this term is understood to be similar to other common interest development such as a condominium or stock cooperative, per California Civil Code Section 4100. Additionally, California Civil Code Section 4105 states: “Community apartment project” means a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon.

⁴ BMC Section 22.20.065 and Resolution 68,074-NS are the current governing provisions. They allow the developer to elect whether to pay a fee or provide inclusionary units, and set the fee based on the market-rate unit count (for dwelling units) or the number of bedrooms (for GLAs).

be calculated at a rate based on the number of bedrooms (2 bedrooms equal 1 “unit” for purposes of the fee), which would increase the fee by between \$400,000 and \$600,000, to a total of approximately \$1.4 million.

Shadows: At the November 13, 2018 Public Hearing, the City Council had concerns regarding the shadow impacts of the proposed development on the units to the west of the subject property located at 2706 Ashby Avenue.

Staff Response: The ZAB was provided plans showing the adjacent building floor plans and a shadow study. The adjacent 3-story building (approved in 2003) has six one-bedroom units with bedroom windows facing the proposed development (eastward). The new building would be 12 feet from those bedroom windows. The living and dining room windows of these units are along the building’s west elevation, where common walkways, stairs and decks are located. Plans and photos are attached to this supplemental report as Attachment A. Staff believes the finding can be made that the proposed project would not cause adjacent units to unreasonably lose access to direct sunlight because the living and dining room windows would remain unobstructed and the bedrooms would still receive indirect light.

Privacy: At the November 13, 2018 Public Hearing, the City Council expressed concerns regarding the privacy impacts of the proposed development on the units to the west of the subject property located at 2706 Ashby Avenue.

Staff Response: At the final ZAB hearing on June 28, 2018, the ZAB discussed a substitute motion with potential conditions of approval regarding window patterns to ensure privacy impacts between the buildings.

The applicant’s final resubmitted plans prior to that hearing reflected a revised west elevation in which the corridor and adjacent stairwells were redesigned in order to eliminate windows at the end of the stairwells, to maintain privacy for the existing building to the west. Additionally, the applicant has stated that the windows will be staggered as to make sure that the windows of both the proposed and existing buildings will not directed face each other. Condition of Approval #56 was included to require these changes to be reviewed by the Design Review Committee upon Final Design Review, which states: “Signage and any other exterior modifications, including but not limited to landscaping, including a plant buffer on the west and south elevations, windows on the west elevation, and lighting, shall be subject to Design Review approval”. Staff believes these conditions would adequately address potential impacts.

CONTACT PERSONS

Timothy Burroughs, Director, Planning & Development Department, (510) 981-7437
Steven Buckley, Land Use Planning Manager, (510) 981-7411
Layal Nawfal, Project Planner, (510) 981-7424

Attachments:

- 1: Floor Plans and Photo of adjacent building at 2076 Ashby

NANCY UWON
ARCHITECT
816 Bancroft W.
Berkeley, CA 947
tel (510) 813-09
fax (510) 813-09
info@nancyuwon.com

SUSAN MC KAY
LANDSCAPE
ARCHITECT

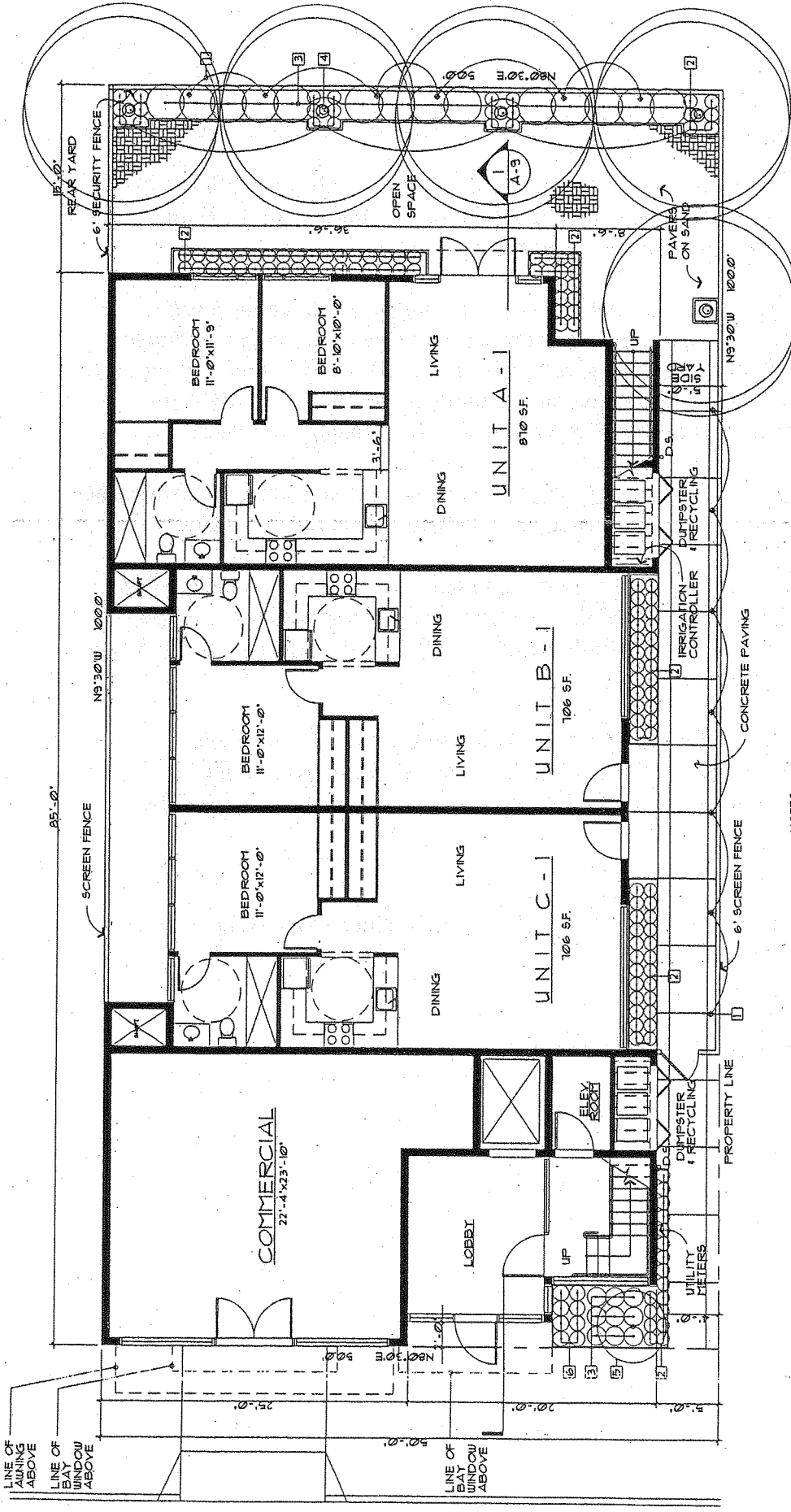
MAGCANAS HOUSING
2076 ASHBY AVENUE
BERKELEY, CALIFORNIA 94704

FINAL
DRC SUBMITTAL

GROUND
FLOOR PLAN
W/
LANDSCAPING

DATE 29 APRIL 2003
SCALE 0015
SHEET 05

A-1

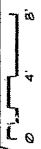


- LEGEND**
- 1 FIGUS PUMILLA SPACE EVENLY @ 12" OC. - 5 GAL.
 - 2 CAMPANULA FORTEN SCHLANGIANA / TURALA
 - 3 POLYSTICHUM MUNITUM / FERN - 1 GAL. 2'-4" x 7'-4" HEIGHT/WIDTH AT MATURITY EVERGREEN.
 - 4 BETULA PENDULA 24" BOX
 - 5 PODOCARPUS GRACILIOR 24" BOX 30" x 40" HEIGHT, 20" WIDTH AT MATURITY (SHAPE TO CONTAIN IN SMALLER AREA) EVERGREEN.
 - 6 LIRIOPE MUSCARI - 1 GAL. 18" x 18" HEIGHT/WIDTH AT MATURITY EVERGREEN, PURPLE SPIKEY FLOWERS.

- NOTES**
1. IRRIGATE ALL PLANTING AREAS
 2. BACKFLOW PREVENTION DEVICE SHALL BE INSTALLED BETWEEN DOMESTIC WATER SUPPLY AND IRRIGATION CONNECTION.
 3. LOCATE CONTROLLER IN DUMPSTER CLOSET.
 4. SLOPE PAVEMENT AND FINISH GRADE OF PLANTING AREAS AWAY FROM BUILDING MINIMUM 2% TO DRAIN RESPONSIBILITY OF OWNER



1 GROUND FLOOR PLAN W/ LANDSCAPING

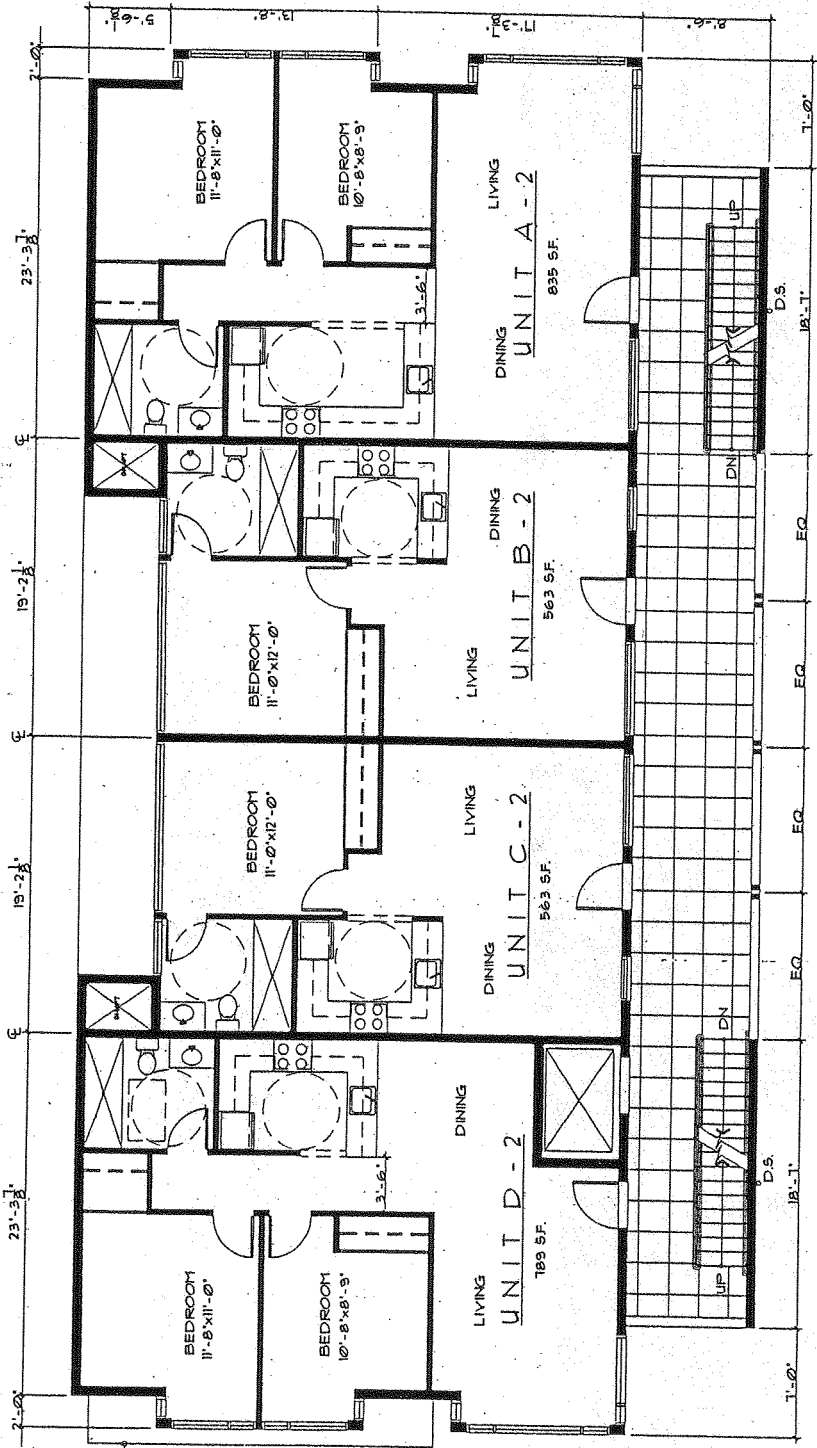


PLANS APPROVED BY BOARD OF ADJUSTMENTS


7/1/03 *[Signature]*


Date *[Signature]*

LANDSCAPING



NOTE:
 PROVIDE BLOCKING IN WALLS THROUGHOUT UNITS
 TO ALLOW CUSTOMIZED GRAB BAR LOCATIONS

1 SECOND (& THIRD SIM.) FLOOR PLAN  N

PLANS APPROVED BY BOARD OF ADJUSTMENTS
 7/1/03 
 Date 



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