# INDEX TO ADMINISTRATIVE RECORD

1444 FIFTH STREET  
Use Permit #ZP2018-0172  
Prepared: April 22, 2019

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<td>309</td>
<td>2</td>
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1444 Fifth Street

Administrative Use Permit #ZP2018-0172 to construct four detached, three-story, approximately 1,900 square-foot single-family dwellings, each with an average height of 33 feet, on a 5,744 square-foot vacant lot.

I. Background

A. Land Use Designations:
   - General Plan: MU – Manufacturing Mixed Use
   - West Berkeley Plan Area
   - Zoning: MU-R – Mixed Use Residential District

B. Zoning Permits Required:
   - Administrative Use Permit, under BMC Section 23E.84.030, to construct four new dwelling units.

C. CEQA Determination: Categorically exempt pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development”).

D. Parties Involved:
   - Applicant/Owner: 1444 5th Street, LLC, 805 Jones Street, Berkeley
Figure 1: Vicinity Map
Figure 2: Site Plan

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>Vacant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>North</td>
<td>Single-family residential</td>
<td>MU-R – Mixed Use Residential</td>
<td>MU – Mixed Use</td>
</tr>
<tr>
<td>South</td>
<td>Four new detached dwelling units (developed by same applicant) currently under construction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>East</td>
<td>Residential, commercial</td>
<td></td>
<td></td>
</tr>
<tr>
<td>West</td>
<td>Industrial, Warehouse</td>
<td>MU-LI – Mixed Use-Light Industrial</td>
<td></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>This fee applies to projects with net new 7,500 sq. ft. of non-residential floor area. The project involves only new residential floor area, and thus this requirement does not apply.</td>
</tr>
<tr>
<td>Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)</td>
<td>No</td>
<td>This fee applies to projects with net new 7,500 sq. ft. of non-residential floor area. The project involves only new residential floor area, and thus this requirement does not apply.</td>
</tr>
<tr>
<td>Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)</td>
<td>No</td>
<td>This fee applies to projects that propose 5 or more rental dwelling units. This project involves 4 new units, and thus this requirement does not apply.</td>
</tr>
<tr>
<td>Inclusionary Housing Requirements (Per BMC Chapter 23C.12)</td>
<td>No</td>
<td>This requirement applies to dwellings that are offered for sale as condominiums; at the time of this writing, the applicant has not applied for a condominium map at the project site. Moreover, the requirement applies to construction of less than 5 condominium units only on lots whose zoning designation allows for the construction of 5 or more units. Given the density standards in the MUR District, the existing lot can accommodate only 4 units. Thus, if the applicant did apply for a condominium parcel map, this fee would not apply.</td>
</tr>
<tr>
<td>Coast Live Oak Trees (BMC Section 6.52.010)</td>
<td>Yes</td>
<td>One Coast Live Oak tree that is subject to the moratorium on the removal of such trees is located near the south property line of the subject property. Two Conditions of Approval were added by the ZAB to an entitlement on the adjacent parcel at 1446 Fifth Street to ensure appropriate protection measures are taken during and after construction. Those Conditions of Approval are also included in the conditions for this project.</td>
</tr>
<tr>
<td>Creeks</td>
<td>No</td>
<td>The project site is not within a creek buffer zone.</td>
</tr>
<tr>
<td>Density Bonus</td>
<td>No</td>
<td>The applicant has not applied for a State Density Bonus.</td>
</tr>
<tr>
<td>Green Building Score</td>
<td></td>
<td>This project exceeds the minimum requirements of the GreenPoint Rated Checklist and must comply with the City’s Building Code regarding project planning and design; energy, water, resources and material efficiency and conservation; and environmental quality. These requirements represent the minimum standards for green building in Berkeley, and the applicant may pursue further measures upon actual construction of this project is approved.</td>
</tr>
<tr>
<td>Historic Resources</td>
<td>No</td>
<td>The project does not involve the demolition of any building, nor is there any evidence to suggest that the site qualifies as a historic resource.</td>
</tr>
<tr>
<td>Rent Controlled Units</td>
<td>No</td>
<td>No rent-controlled units are at this site.</td>
</tr>
<tr>
<td>Residential Preferred Parking (RPP)</td>
<td>No</td>
<td>The neighborhood surrounding the subject site does not participate in the City’s Residential Preferred Parking program.</td>
</tr>
</tbody>
</table>

File: G:\LANDUSE\Projects by Address\Fifth\1444\ZP2018-0172\Drafts\2019-19-24 ZAB\2019-19-24 _ZAB_Staff Report_1444 Fifth.docx
### Characteristic

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Applies to Project?</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seismic Hazards (SHMA)</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 applicant submitted a geotechnical investigation for the project (Peters &amp; Ross, December 2016, May 2017, and October 2018), which concluded that the project is feasible from a geotechnical engineering standpoint provided the recommendations in the reports are followed. The City’s geotechnical consultant peer reviewed the geotechnical investigations in memoranda of February 2017, May 2017, and October 2018 and concluded that the Peters &amp; Ross report satisfactorily addresses the site geotechnical issues.</td>
</tr>
<tr>
<td>Soil/Groundwater Contamination</td>
<td>No</td>
<td>The project site is not listed on the Cortese List (an annually updated list of hazardous materials sites), however it is located within the City’s Environmental Management Area. Standard Toxics Conditions of Approval apply.</td>
</tr>
</tbody>
</table>

### Table 3: Project Chronology

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 31, 2018</td>
<td>Application submitted</td>
</tr>
<tr>
<td>November 19, 2018</td>
<td>Application deemed complete</td>
</tr>
<tr>
<td>January 10, 2019</td>
<td>Public hearing notices mailed/posted</td>
</tr>
<tr>
<td></td>
<td>Staff Level Design Review approval posted on site</td>
</tr>
<tr>
<td>January 24, 2019</td>
<td>ZAB hearing</td>
</tr>
</tbody>
</table>
Table 4: Development Standards

<table>
<thead>
<tr>
<th>Standard BMC Sections 23E.84.070-080</th>
<th>Existing</th>
<th>Proposed Total</th>
<th>Permitted/Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Area (sq. ft.)</td>
<td>5,744</td>
<td>No Change</td>
<td>N/A</td>
</tr>
<tr>
<td>Gross Floor Area (sq. ft.)</td>
<td>0</td>
<td>Approximately 7,672 (1,900 per unit)</td>
<td>N/A</td>
</tr>
<tr>
<td>Floor Area Ratio</td>
<td>0</td>
<td>1.3</td>
<td>1.5 max</td>
</tr>
<tr>
<td>Dwelling Units Total</td>
<td>0</td>
<td>4</td>
<td>4 max</td>
</tr>
<tr>
<td>Building Height Average</td>
<td>N/A</td>
<td>33'</td>
<td>35' max</td>
</tr>
<tr>
<td>Stories</td>
<td>N/A</td>
<td>3</td>
<td>3 max</td>
</tr>
<tr>
<td>Building Setbacks Front</td>
<td>N/A</td>
<td>5'</td>
<td>5' min</td>
</tr>
<tr>
<td>Rear</td>
<td>N/A</td>
<td>4'</td>
<td>0' min</td>
</tr>
<tr>
<td>Left Side</td>
<td>N/A</td>
<td>4'6&quot;</td>
<td>4'7&quot; min²</td>
</tr>
<tr>
<td>Right Side</td>
<td>N/A</td>
<td>8'</td>
<td>4'7&quot; min²</td>
</tr>
<tr>
<td>Lot Coverage (%)</td>
<td>0</td>
<td>42%</td>
<td>N/A</td>
</tr>
<tr>
<td>Usable Open Space (sq. ft.)</td>
<td>N/A</td>
<td>816</td>
<td>600 min (150 per unit)</td>
</tr>
<tr>
<td>Parking Automobile</td>
<td>N/A</td>
<td>4</td>
<td>4 min (1 per unit)</td>
</tr>
<tr>
<td>Bicycles</td>
<td>0</td>
<td>0</td>
<td>None Required</td>
</tr>
</tbody>
</table>

1 The originally submitted application included a proposal for 7,672 square feet of gross floor area. However, the applicant provided revised plans on December 24, 2018 to accommodate the required open space for each unit. The revised plans propose a reduction of approximately 30 square feet.

2 Per BMC Section 23E.84.070.E, if a side of a lot abuts a property with one or more dwelling units, the side yard shall be either 10', or 10% of the lot width, whichever is less.

II. Project Setting

A. Neighborhood/Area Description: The project is in West Berkeley on the west side of Fifth Street between Page Street to the north and Jones Street to the south. A similar development project, which was proposed by the same applicant and also includes four detached, three-story dwelling units, is currently under construction at the southern abutting lot. One- and two-story residential buildings are located further south of the property for the length of the block to Jones Street and directly across Fifth Street.

This portion of the MU-R District provides a transition between the more exclusively residential areas to the east and the industrial areas to the west. The west side of the subject block, along Fourth Street, where the MU-LI District begins, includes industrial and warehouse uses. The east side of the block, along Fifth Street, where the project site is located, includes a residential concentration of one- and two-story buildings. The neighborhood further eastward features a mix of uses, including one- to three-story residential and commercial buildings. The concentration of residential uses increases further eastward.

B. Site Conditions: The project site is generally level, rectangular in shape and currently vacant, with no buildings or structures onsite. The western portion of the site is used
as part of a private parking area for the industrial and warehouse buildings on the west side of the block, including 1435, 1445, and 1453 Fifth Street. The site contains one small Coast Live Oak tree located roughly 45 feet from the street near the southern property line. Several small trees are located along Fifth Street, in the public right-of-way in front of the project site.

III. Project Description

The applicant proposes to construct four detached dwelling units. Each building would be three stories, with an average height of 33 feet, and would each provide approximately 1,900 square feet of gross floor area. The buildings would be located towards the south side of the property. A driveway serving each of the four proposed attached one-car garages would be aligned along the north side of the property and would be part of a proposed shared access easement that would also provide access to the northern abutting parcels at 1442 Fifth Street and 770 Page Street (see above, Figure 2).

The applicant has designed all four buildings according to the same general floor plan scheme. The ground floors would each include a garage, one bedroom, and one bathroom. The second floors would each include two bedrooms and a bathroom. The third floors would feature open floor plans, with connected living areas, dining areas, and kitchens. The front and rear buildings would have third floor decks with views of the street and rear yard, respectively. The two middle buildings would have rooftop decks with views in all directions. The proposed design of the buildings is similar to that of the recently approved development at the southern abutting lot, 1446 Fifth Street, which is currently under construction. Their design is intended to reference modern architecture and the industrial context of West Berkeley and would include wood and metal siding.

IV. Community Discussion

A. Neighbor/Community Concerns: As noted above, the same developer received an entitlement last year to develop the adjacent parcel at 1446 Fifth Street. That project also involved the construction of four new, detached, three-story dwellings on a vacant lot. Approvals by staff and the ZAB were appealed four times (once to the DRC, once to ZAB, and twice to City Council), and the application was ultimately approved at the City Council in July 2018. The appeal issues included concerns that the applicant was not meeting several City requirements, including the in-lieu fee required by the Inclusionary Housing Requirements, adequate review by Design Review staff, code-compliant parking spaces, protection of the Oak tree onsite, and notification of neighborhood residents.

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1 According to zoning records for these buildings, the off-street parking spaces for the existing businesses were provided on the same property as the businesses. While the parking does not occur entirely on the same property as these buildings (it occurs at portions of the eastern abutting properties), it appears that the City did not confirm the location of the parking spaces when zoning certificates were approved. However, per BMC Section 23B.20.020, because the approved zoning certificates do not contain evidence that required parking would be provided on different property, they do not validate approval of parking at the subject parcel.

2 The attached Findings and Conditions include Conditions of Approval that apply to protection of the Coast Live Oak tree (#15) and proposed removal of any of the existing street trees (#16).
During the appeal process, in June 2018, the applicant obtained a Lot Line Adjustment of the property line between the subject parcel to 1446 Fifth Street, which shifted south by approximately 4 feet. The size of 1446 Fifth Street decreased to 5,744 square feet, and the size of the subject parcel increased to 5,744 square feet. Given the density standards in the MU-R District, each newly created lot can accommodate a maximum of four units. As noted in Table 2, the result of this change is that the Inclusionary Housing Requirements in BMC 23C.12 would not apply if the applicant chooses to submit a condominium parcel map for either parcel.

As allowed by BMC Section 23B.28.030 (Referral of Applications for AUPs to Board), because of the similarity between the proposed project and the neighboring approved project, and given the level of recent neighborhood interest, the Zoning Officer has scheduled the AUP application for a public hearing before the ZAB, instead of issuing a notice of decision administratively. In this case, the Board must review and act upon the application in the same manner as it acts upon other Use Permit Applications.

Prior to submitting this application to the city, a pre-application poster was erected by the applicant, and the applicant held a community meeting on August 23, 2018, which was attended by six people (meeting minutes are included as Attachment 4). On January 9, 2019, the City mailed public hearing notices to property owners and occupants within 300 feet of the subject site, and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations. At the time of this writing, staff has not received any communications regarding the project.

**B. Committee Review:** Since the project site is in a nonresidential zoning district, Staff Level Design Review is required. The applicant submitted a Staff Level Design Review application in conjunction with the Administrative Use Permit application on August 31, 2018. Design Review Staff concluded that the project is compatible with City-wide Design Guidelines and posted notices on-site on January 9, 2019. The Staff Level Design Review Approval included standard design review conditions for further review of building details and the landscape plan during the building permit process. The appeal and comment period for this approval is currently underway and will end on January 23, 2019, at 4:00 PM.

**V. Issues and Analysis**

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

1. The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density;³ and

³ 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.
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.

Staff Analysis: The proposed project complies with applicable, objective general plan and zoning standards, including maximum height, density, and FAR, and minimum setbacks, useable open space, and number of parking spaces. Thus, the Housing Accountability Act applies. Staff is not aware of any basis to make the findings listed above.

B. New Dwelling Units in the MU-R District and Neighborhood Compatibility:
Pursuant to BMC Section 23E.84.090, the proposed project is consistent with the purposes of the MU-R District and the West Berkeley Plan because it would strengthen the residential concentration in this neighborhood. The project would protect neighboring residents from unreasonably detrimental effects of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare because the proposal would add residences (not industrial uses) to the existing cluster of residential buildings at this block. Given the existing residential concentration on this block face, the project is also not likely to contribute to a cumulative change of use in buildings away from the mix of uses that surround this area of West Berkeley. Moreover, the proposed use and its industrial aesthetic would help contribute to a neighborhood that acts as a transition between the residential districts to the east and the industrial districts to the west.

The proposed project complies with all applicable MU-R District development standards (see Table 4). The applicant proposes to construct four units on a lot that can accommodate four units; a floor area ratio of 1.3 where the maximum allowed is 1.5; average height of 33 feet at all four buildings where the maximum average height allowed is 35 feet; and 816 square feet of useable open space where the minimum required is 600 square feet (150 per unit). The project would provide the required number of parking spaces, one per unit, and the City’s Traffic Engineer has confirmed that the proposed parking and driveways would operate acceptably. (To ensure compliance with Traffic Engineering standards, Condition of Approval #12 requires that the applicant provide the recorded easements prior to issuance of a building permit.) The project would meet the required front yard setback and would exceed all side and rear yard setbacks.

Staff believes the proposal is consistent with the overall scale and development pattern of the one-, two-, and three-story residences and commercial and manufacturing spaces in the neighborhood, including the approved development on the southern abutting parcel. In addition, Design Review Staff found that the application is consistent with applicable design review guidelines and with the surrounding aesthetic context.

Sunlight: Staff believes the project would not result in significant loss of direct sunlight on abutting residences for several reasons. No residences occur to the west and new shadows cast towards the east would occur primarily along Fifth Street, and not any dwellings. The project would cast shadows on the northern abutting dwelling at 1442 Fifth Street during the winter solstice and on the southern abutting dwellings (currently
under construction) at 1446 Fifth Street during the summer solstice. However, in both cases, shadows would only affect some windows and occur during some morning hours. Because impacts to neighboring residences would be limited to certain hours a day and certain months of the year, staff believes these shading impacts would not be detrimental.

Air: Staff believes the proposal would be consistent with the existing development and building-to-building separation pattern – or air – in this MU-R neighborhood because the buildings would exceed minimum setback and useable open space requirements and would be three stories where the maximum allowed is three.

Views: Staff expects that the proposed project would not result in additional obstruction of significant views in the neighborhood because there are no significant views as defined in BMC Section 23F.04 (Definitions) available to residences in the area. The area is generally flat, developed with one- to three-story buildings, and includes mature vegetation which provides visual screening.

C. General Plan Consistency: The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.

2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.

3. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.

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

Staff Analysis: The proposed project is an infill development that would add four new dwellings on a vacant lot in a primarily residential neighborhood. The massing, proportions, design, and use of the buildings would be compatible with the surrounding neighborhood. As noted above, the project meets or exceeds all development standards in the MU-R district.

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

Staff Analysis: The applicant proposes to add four new dwelling units to the City of Berkeley housing stock.
6. **Policy EM-5—“Green” Buildings:** Promote and encourage compliance with “green” building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)

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

**Staff Analysis:** The project would be constructed to comply with current green building standards that are required by the Building Code.

**D. West Berkeley Plan Consistency:** The 1993 West Berkeley Area Plan contains several policies applicable to the project, including the following:

1. **Land Use Goal 1, Policy A:** Retaining, through planning, zoning and land use policies which shield manufactures from economic and physical incompatibilities with other uses, sufficient land and buildings to maintain the current level of manufacturing employment at a minimum.

2. **Land Use Goal 2, Policy D:** Create a Mixed Residential district as a special mixed use district which will recognize and support the continued evolution of a unique mix of residential, light industrial, and arts and crafts uses, with a particular effort to strengthen residential concentrations existing there.

**Staff Analysis:** Since the proposed residential units would be located on a block that already contains a concentration of residential uses, the project would shield manufacturers elsewhere in the MU-R district from incompatibilities with residences that are too proximate. Given this compatibility of the proposed use, the project would support the mixed nature of the existing neighborhood.

3. **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:** As discussed above in Sections V.B and V.C, the proposed massing and scale would be compatible with the surrounding neighborhood context and would reflect the industrial nature of West Berkeley. The project would also provide four new dwelling units that meet all applicable zoning requirements for new residential uses.

**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 **APPROVE #ZP2018-0172** pursuant to Section 23B.28.060.C.1 and subject to the attached Findings and Conditions (see Attachment 1).

**Attachments:**

1. Findings and Conditions
2. Project Plans, received January 8, 2019
3. Notice of Public Hearing
4. Neighborhood Meeting Notes and Attendance
5. Correspondence Received

**Staff Planner:** Abe Leider, Contract Planner, aleider@rinconconsultants.com, (510) 671-0175 and Leslie Mendez, LMendez@cityofberkeley.info, (510) 981-7426
Findings and Conditions

1444 Fifth Street

Administrative Use Permit #ZP2018-0172 to construct four detached, 3-story, approximately 1,900 square-foot single-family dwellings, each with an average height of 33 feet, on a 5,744 square-foot vacant lot.

PERMITS REQUIRED

- Administrative Use Permit, under BMC 23E.84.030, to construct four new dwelling units.

I. CEQA FINDINGS

1. 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 Section 15332 of the CEQA Guidelines ("In-Fill Development").

2. 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 would not affect any historical resource.

II. FINDINGS FOR APPROVAL

1. As required by Section 23B.32.040.A of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

   - The proposed development on this parcel is equal to or below the Mixed-Use Residential (MU-R) standards set by BMC 23E.84.070 for maximum residential density, floor area, and height (four dwelling units on the 5,744 square-foot lot, where four dwelling units is the maximum allowed based on the size of this lot; floor area ratio of 1.3, where the maximum allowed is for residential development 1.5; average height of 33', where the maximum allowed is 35'). The proposed project also meets or exceeds the requirements for setbacks, parking, and useable open space (1 parking space per dwelling unit, and 816 square feet of useable open space, where 600 square feet are required (150 square feet per unit));

   - The proposed project retains the mixed but primarily residential character of the surrounding street and is consistent with the overall scale of the one-, two-, and three-story residences and commercial and manufacturing spaces in the neighborhood. The proposed design references the industrial context of West Berkeley and its mix of uses and aesthetics;

   - No substantial land use conflicts are expected from the project due to the site’s location in a mixed area of commercial and residential development, because the project’s density will be within the range of the surrounding development, and because no substantial privacy or shadow impacts will occur;
• Sunlight: The Board finds that the project will not result in significant loss of direct sunlight on abutting residences for several reasons. No residences occur to the west and new shadows cast towards the east will occur primarily along Fifth Street, and not any dwellings. The project will cast shadows on the northern abutting dwelling at 1442 Fifth Street during the winter solstice and on the southern abutting dwellings (currently under construction) at 1446 Fifth Street during the summer solstice. However, in both cases, shadows will only affect some windows and occur during some morning hours. Because impacts to neighboring residences will be limited to certain hours a day and certain months of the year, these shading impacts are not deemed detrimental;

• Air: The Board finds that the proposal is consistent with the existing development and building-to-building separation pattern – or air – in this MU-R neighborhood because the buildings will exceed minimum setback and useable open space requirements and will be three stories where the maximum allowed is three; and

• Views: The proposed project will not result in additional obstruction of significant views in the neighborhood because there are no significant views as defined in BMC Section 23F.04 (Definitions) available to residences in the area. The area is generally flat, developed with one-to three-story buildings, and includes mature vegetation which provides visual screening.

2. Pursuant to Berkeley Municipal Code Section 23E.84.090, the Zoning Adjustments Board finds that the proposed project is consistent with the purposes of the MU-R District for the following reasons:

• The project will strengthen the residential concentration in this neighborhood. The residential use of the project will protect neighboring residents from the unreasonably detrimental effects of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare;

• The project is consistent with the West Berkeley Plan because the proposed massing and design is appropriate for the neighborhood and reflects the nature of the MU-R District;

• The project is not likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential, live/work, light industrial, or arts and crafts uses because the site location is in an area of West Berkeley known for a diverse mix of land uses and because the project will continue the residential pattern on the west side of Fifth Street at this block; and

• The proposed project is able to meet the applicable performance standards as described in BMC 23E.84.070.H because no additional performance standards are applicable to this project.
III. 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 (BMC 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 (BMC 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.

5. **Plans and Representations Become Conditions (BMC 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 (BMC 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 (BMC 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 (BMC 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.

IV. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD
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. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual’s name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. Please designate the name of this individual below:

☐ Project Liaison

Name

Phone #

Prior to Issuance of Any Building Permit:

11. The applicant shall file an “Address Assignment Request Application” with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Administrative Use Permit. The new address(es) shall be assigned prior to issuance of a building permit.

12. The applicant shall provide the recorded driveway easements, as depicted on the Site Plan, to the Zoning Officer.
13. Geotechnical Plan Review. The applicant shall follow all conditions and recommendations outlined in the geotechnical report and response letters prepared by Peters and Ross (December 16, 2016, May 12, 2017, and October 2018) and the peer reviews prepared by Cotton, Shires and Associates, Inc. (February 6, 2017, May 24, 2017, and October 2018). In addition, the applicant's geotechnical consultant shall review and approve all geotechnical aspects of the project building and grading plans (i.e., site preparation and grading, site drainage improvements and design parameters for foundations, retaining walls, and driveway) to ensure that their recommendations have been properly incorporated. In addition the consultant shall review project drainage and grading plans and verify that proposed site drainage discharge is acceptable from a geotechnical perspective. The results of the plan review shall be summarized by the geotechnical consultant in a letter and submitted to the City Engineer for review and approval prior to issuance of building permits.

14. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:

A. Environmental Site Assessments:
   1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old*) shall be submitted to TMD for developments for:
      - All new commercial, industrial and mixed use developments and all large improvement projects.
      - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
      - EMA is available online at: http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf
   2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
   3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.

B. Soil and Groundwater Management Plan:
   1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
   2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
   3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Administrative Use Permit.

C. Building Materials Survey:
   1) 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.

D. Hazardous Materials Business Plan:
1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at http://cers.calepa.ca.gov/ within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at http://ci.berkeley.ca.us/hmr/

15. The Coast Live Oak tree on the site, near the north property line, and its roots shall be protected from all injuries that could endanger survival. The applicant shall consult with the City’s Arborist and, prior to excavation work or issuance of any building permit, provide a plan to protect and preserve the tree during and after construction for the City Arborist’s approval. The plan shall include the following conditions for construction work:
- The applicant shall provide an onsite sign that is visible from the street and includes the contact information of the person responsible for monitoring the site and ensuring tree protection measures are followed.
- The applicant shall install a 6’ fence, which shall remain for the duration of construction, to protect the area within the drip-line. No construction activity, including storage, may occur within the fenced area.
- If roots are damaged, construction shall cease until a certified arborist has been contacted and comes on site and provides direction to protect the trees as necessary.
- Failure to adequately protect the existing oak tree from damage such that one or more branch is removed through negligence or intentional action shall require corrective measures as determined by the Zoning Officer.
- Any pruning that involves the removal of more than one-fourth of the functioning leaf, stem, or root system of a Coast Live Oak tree in any 24 month period is prohibited.

16. Any proposed street tree removal shall be subject to the approval of a street tree removal permit by the City Forester.

17. Any proposed new trees, including planting, irrigation and maintenance methods, in the public right of way shall be approved by the City’s Arborist and the Public Works Department prior to issuance of a building permit.
During Construction:

18. **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, pedestrian paths or vehicle travel lanes (including bicycle lanes);
   - Storage of building materials, dumpsters, debris anywhere in the public ROW;
   - Provision of exclusive contractor parking on-street; or
   - 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, 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 1947 Center 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.

19. 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.

20. 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.

21. 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.

22. 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 in thickness and secured to the ground.

23. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.

24. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.

25. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.

26. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
27. 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.

28. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

29. **Halt Work/Unanticipated Discovery of Tribal Cultural Resources.** In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.

30. **Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).** Pursuant to CEQA Guidelines Section 15064.5(f), “provisions for historical or unique archaeological resources accidentally discovered during construction” should be instituted. Therefore:
   A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
   B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
   C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
   D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
   E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

31. **Human Remains (Ongoing throughout demolition, grading, and/or construction).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to CEQA Guidelines Section 15064.5 (e)(1) . If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to Health and
Safety Code Section 7050.5(c), and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

32. **Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).** In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

**Prior to Issuance of Occupancy Permit or Final Inspection:**
33. All construction at the subject property shall substantially conform to the approved Administrative Use Permit drawings or to modifications approved by the Zoning Officer.

34. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated January 8, 2018.

**At All Times (Operation):**
35. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.

36. **Drainage Patterns.** 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.

37. **Electrical Meter.** Only one electrical meter fixture may be installed per dwelling unit.
LANDSCAPE PLAN
EXISTING ONE STORY HOUSE

AREA OF PERMEABLE PAVING DRIVEWAY ON 1442 5TH = 525 SF

AREA OF PERMEABLE PAVING DRIVEWAY ON 1444 5TH = 1,265 SF

HOUSE 1: IMPERVIOUS FOOTPRINT 576 SF

HOUSE 2: IMPERVIOUS FOOTPRINT 606 SF

HOUSE 3: IMPERVIOUS FOOTPRINT 606 SF

HOUSE 4: IMPERVIOUS FOOTPRINT 576 SF

OPEN SPACE

258 SF (12' X 21.5')

OPEN SPACE

150 SF (10' X 15')

OPEN SPACE

150 SF (10' X 15')

OPEN SPACE

150 SF (10' X 15')

EXISTING ASPHALT DRIVEWAY & PARKING ON 770 PAGE ST.

AREA OF PERMEABLE PAVING DRIVEWAY ON 1442 5TH = 525 SF

AREA OF PERMEABLE PAVING DRIVEWAY ON 1444 5TH = 1,265 SF

HOUSE 2:

IMPERVIOUS FOOTPRINT: 606 SF

HOUSE 1:

IMPERVIOUS FOOTPRINT: 576 SF

HOUSE 4:

IMPERVIOUS FOOTPRINT: 576 SF

HOUSE 3:

IMPERVIOUS FOOTPRINT: 606 SF

EXISTING ONE STORY HOUSE

SITE OPEN SPACE & IMPERVIOUS COVERAGE

1442 5TH STREET

1446A 5th STREET

1446C 5th STREET

1446B 5th STREET

1446D 5th STREET

1444 5TH STREET -- AUP

REVISED DECEMBER 2018
SITE UNDERGROUND UTILITY PLAN

1) PROPOSED GAS / ELECTRIC LOCATIONS TO BE CONFIRMED BY PG&E.
2) PROPOSED WATER METER LOCATIONS TO BE CONFIRMED BY EBMUD.
3) ALL TRENCHING TO BE DONE PER UTILITY AND / OR CITY STANDARDS.

770 PAGE STREET
1442 5th STREET

Protected Coast Live Oak Tree

Water Meters
Gas Meters
Electric Meters

KEY

4" Sanitary Sewer
1 1/4" Water

DUAL SERVICE

GENERAL NOTES

PROPOSED GAS / ELECTRIC LOCATIONS TO BE CONFIRMED BY PG&E.
PROPOSED WATER METER LOCATIONS TO BE CONFIRMED BY EBMUD.
ALL TRENCHING TO BE DONE PER UTILITY AND / OR CITY STANDARDS.
5th STREET - EAST ELEVATION

1452 5TH STREET
EXISTING TWO STORY HOUSE

1446 5TH STREET
APPROVED PROJECT

1444 5TH STREET
PROPOSED PROJECT

1442 5TH STREET
EXISTING ONE STORY HOUSE

WEST ELEVATION
Administrative Use Permit #ZP2018-0172 to construct four detached, three-story, approximately 1,900 square-foot single-family dwellings, each with an average height of 33 feet, on a 5,744 square-foot vacant lot.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the January 24, 2019 at the Berkeley Unified School District meeting room, 1231 Addison Street, (wheelchair accessible). The meeting starts at 7:00 p.m.

PERMITS REQUIRED:
- Administrative Use Permit to construct four new dwelling units

APPLICANT: 1444 5th Street, LLC, 805 Jones Street, Berkeley

ZONING DISTRICT: MU-R – Mixed Use Residential District

ENVIRONMENTAL REVIEW STATUS: Categorically exempt under Section 15332 of the California Environmental Quality Act (CEQA) Guidelines (“In-Fill Development”).

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

Communication Disclaimer
- 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
Communications and Reports
Items received by the deadlines for submission will be compiled and distributed as follows. If no items are received by the deadline, no supplemental packet will be compiled for said deadline. All materials will be made available via the Zoning Adjustments Board Agenda page: https://www.cityofberkeley.info/zoningadjustmentboard/

- To distribute correspondence to Board members as an attachment to the Staff Report -- 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.

- Supplemental Communications and Reports 1 - All Materials submitted between noon the Thursday the week before the meeting and noon Tuesday the week of the meeting, will be made available by 5:00 p.m. on Tuesday the week of the meeting.

- Supplemental Communications and Reports 2 - All Materials submitted after noon on Tuesday the week of the meeting and before noon on Wednesday, the day before the meeting, will be made available at 5:00 that Wednesday. Any correspondence received after this deadline will be given to the Zoning Adjustment Board just prior to the meeting.

- Members of the public may submit written comments themselves at the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Zoning Adjustments Board Clerk. Correspondence received later, and after the meeting, will be posted to the web site following the meeting.

- Please Note: You are strongly advised to submit written comments prior to noon Wednesday, the day before the meeting, as Board members do not have an opportunity to read written materials handed out at the meeting.

- Written comments should be directed to the ZAB Secretary at: Land Use Planning Division (Attn: ZAB Secretary), 1947 Center Street, Berkeley, CA 94704 OR at zab@cityofberkeley.info

Notice of Decision Requests
Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@cityofberkeley.info

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 1947 Center Street, Third Floor, 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, Leslie Mendez, at (510) 981-7426 or LMendez@cityofberkeley.info. All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning Counter), 1947 Center Street, Third Floor, during normal office hours.
Neighborhood Meeting re: Proposed Development at 1444 Fifth Street
August 23, 2018, 6:00-7:30 p.m.

Drawings displayed on the tables:
Site Plan
Floor Plans
Roof Plan
Elevations
Rendering of Street Elevation

Attending:
Matthew Wadlund, Architect
Elisa Mikiten, Land Use Consultant
Neighbors (see sign in sheet)

Comments by Category:

Adjacent Commercial Space
1. Commercial tenant in building on Fourth Street wanted to know that they would be able to use their rear entrance. Yes, there is a five foot exterior walkway on the east side of that commercial property. Matthew will remove the shed at 770 Page Street to open the walkway to Page street. Tenant suggested that a gate would be appropriate at the north end of the walkway. This would be the responsibility of the commercial property owner.
2. Neighbor at 1448 Fifth Street mentioned that the new security light on the commercial building is shining into her house. Tenant agreed to shield it or direct it downward.
3. Neighbor wanted to know who owns the commercial building.

Design
1. Neighbor asked about materials. Matthew described factory finished metal and wood, similar to the materials on Berkeley Bowl West.
2. Neighbor would like to see a physical model and material samples. Matthew invited her to his office.
3. Neighbors reviewed the driveway location and the maneuvers required to enter the garages. Several neighbors questioned the location of the garage door on the backside of the front unit. We discussed the ZAB request to move the door to the back side, and the pros and cons, such as the more complex maneuver required to park in the garage, but the improved aesthetic of the street façade, and the preservation of linear feet for on-street parking because of the reduced driveway width. Neighbors did not take a position.
4. A neighbor asked if residents could be limited to one car. No.
5. Neighbor at 1448 Fifth discussed security issues. At times, there have been people wandering down along the interior fence. She is concerned about people climbing over the fence. We discussed adding a security light to the side of the rear unit at 1446 Fifth. (1446 Fifth is not part of this application, however, Matthew welcomed the opportunity to resolve concerns at that site as well.) The neighbor would like the extra security, but is concerned about glare. Matthew will pursue a glare-free solution.
6. A resident of one of Matthew's prior developments suggested incorporating natural east/west or skylight ventilation. Matt confirmed that both are provided in the proposed houses.
Landscape
1. A neighbor reviewed tree locations, including two plum trees on 1446 Fifth (not part of this application), one of which is dead, and the locations of new trees, driveway, street trees, and pole locations. There were no requests for changes.
2. Neighbors discussed the fences. Someone had the idea of omitting the fence along the interior property line between 1444 and 1446 Fifth. There was general agreement that that would provide a more neighborly experience and feeling. Matthew will consider it from a design perspective.
3. The neighbor at 1448 Fifth discussed security relative to the fences. Matthew will repair the fence at 1446 Fifth as needed.

Construction
1. Neighbors wanted to know the timing of construction and how it will be staged. 1444 Fifth Street will take at least 1 year for permitting.
2. The fence along Fifth Street will remain as long as possible during construction at 1446 Fifth Street.
3. Materials will be brought onto the construction site from the large paved area at 770 Page Street. This is to minimize the impact of construction on Fifth Street.
You are invited to a Neighborhood Meeting

Date: Thursday, August 23, 2018

Time: Drop in anytime from 6:00 pm to 7:30 pm

Location: Community Meeting Room
West Branch, Berkeley Public Library
1125 University Avenue

You are invited to review plans for a proposed four house development at 1444 5th Street, Berkeley.

The owner and the architect will be present for conversation.

Please contact Elisa Mikiten (510) 990-6965 or Matthew Wadlund (510) 332-6468 with questions.

If you have questions regarding the City process, please contact the City of Berkeley Planning Department at (510) 981-7400 or through their website at www.cityofberkeley.info/planning
-----Original Message-----
From: Daro Quiring [mailto:daro.quiring@gmail.com]
Sent: Wednesday, January 16, 2019 10:36 AM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; All Council <council@cityofberkeley.info>
Cc: Mendez, Leslie <LMendez@cityofberkeley.info>; Simon Black <sblack2136@aol.com>; Will Yoon <willyoon18@gmail.com>; Renee Choi <reneeychoi@gmail.com>; Matthew Hunter <huntma2@hotmail.com>; Graham Hicks <gmh@gmhgmh.com>; Bonnie Testa <btesta1005@gmail.com>
Subject: Proposed Project at 1444 Fifth Street

Please find attached a support letter for the Proposed Project at 1444 Fifth Street, Administrative Use Permit #ZP2018-0172.

Thank you in advance for your consideration.

Daro Quiring, President, Oceanview Townhouse Association
January 16, 2019

Zoning Adjustments Board
1947 Center Street
City of Berkeley (e-mailed to ZAB@CityofBerkeley.info)

SUBJECT: 1444 Fifth Street
Administrative Use Permit #ZP2018-0172

Dear Zoning Adjustments Board:

The Oceanview Townhouse Association (OTA) would like to support the proposed development on the property located at 1444 Fifth Street in West Berkeley.

Our homeowners’ association was formed in 2015 by the owner residents of 1461-1463-1465-1467 Fifth Street. We thoroughly enjoy the West Berkeley neighborhood and its wide variety of land uses, including residential, commercial, offices, arts and crafts, light and general manufacturing. We are proud of this neighborhood for its eclectic nature – there is no set architectural context; within this Mixed Residential land use there is diversity.

Our residences benefit from a lot of pedestrian traffic, such as parents with kids in strollers, people walking their dogs, and employees returning to their parked cars. When we’re outside of our homes, whether it’s removing weeds, picking up litter, or just getting into our cars, many of these pedestrians stop to take photos and ask questions. Some of them have called it “industrial chic” or modern-contemporary, but all have been complimentary about the appearance.

This proposed project, as a group of four single-family detached homes, is similar to Matt Wadlund’s projects that created our four homes, the four homes on Page Street in 2017, and the four homes currently being constructed on Fifth Street. Each of the four projects convert property with one residence into four residences, thereby helping to meet the housing needs of West Berkeley.

We urge the Zoning Adjustments Board to approve this proposed project as it will be an asset to, and enhance the special nature of, our Ocean View neighborhood.

Thank you for your consideration.

Daro Quiring, President
Oceanview Townhouse Association

cc: City Council Members (council@cityofberkeley.info)
Leslie Mendez, City Project Planner (LMendez@CityofBerkeley.info)
Renee Choi & Will Yoon, 1461 Fifth Street
Simon Black, 1463 Fifth Street
Matthew Hunter & Graham Hicks, 1465 Fifth Street
Bonnie Testa & Daro Quiring, 1467 Fifth Street
From: Stuart Knowles [mailto:sknowles@trilogyasset.com]
Sent: Tuesday, January 15, 2019 4:45 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Mendez, Leslie <LMendez@cityofberkeley.info>; All Council <council@cityofberkeley.info>
Cc: Matthew Wadlund | W+ Design Studio <mwadlund@wdsplus.com>
Subject: 1444 Fifth Street, ZP2016-0247

Resending with attachment – please ignore earlier email.

Please see the attached letter of support.

Stuart A Knowles

sknowles@trilogyasset.com

Trilogy Asset Management, Inc.
2936 Domingo Avenue, Suite 3
Berkeley, California 94705
Tel: 510.330.4875
Fax: 510.330.4865
January 15, 2019

Via Email

Zoning Adjustment Board
City of Berkeley
Land Use Planning Division

Re: 1444 Fifth Street, ZP2016-0247

Dear Members of the Zoning Adjustment Board;

I am writing on behalf of Trilogy Limited Properties, LLC (“Trilogy”) in support of the proposed development on the property located at 1446 Fifth Street (the “Project”). Trilogy is the owner of 1435 – 1439 Fifth Street adjacent to the Project. We support the Project for the following reasons:

1. The addition of housing units such those designed by Matthew Wadlund on Fifth Street and Page Street have brought vitality to the neighborhood. The project at 1446 Fifth Street and the Project will add more vibrancy to the neighborhood.

2. The addition of additional residents provides more activity in the area and customers for the local businesses.

3. The buildings fit the eclectic feel of the mixed used district.

4. The City of Berkeley is facing a dire shortage of housing and needs to allow for a broad mix of housing types. The large projects being built in other areas of the city fulfil one aspect of the need and the Project fits a different need – higher density single family detached.

I urge the ZAB to approve this project, as proposed, as it clearly provides much needed housing and enhances the special nature of our neighborhood.

Trilogy Limited Properties, LLC

Stuart Knowles
From: Stuart Knowles [mailto:sknowles@trilogyasset.com]
Sent: Tuesday, January 15, 2019 4:11 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Mendez, Leslie <LMendez@cityofberkeley.info>
Cc: Matthew Wadlund | W+ Design Studio <mwadlund@wdsplus.com>
Subject: 1444 Fifth Street, ZP2016-0247

Please see the attached letter of support.

Stuart A Knowles

sknowles@trilogyasset.com

Trilogy Asset Management, Inc.
2936 Domingo Avenue, Suite 3
Berkeley, California 94705
Tel: 510.330.4875
Fax: 510.330.4865
January 21, 2019

Berkeley City Council, and
Lucy Sundelson, Assistant Planner
CITY OF BERKELEY
Land Use Planning Division

Re: 1444 Fifth Street, ZP2016-0247

City of Berkeley and Planning Staff:

I am writing in support of the proposed development of the above-referenced project. I am the owner of commercial property near Fifth and Jones Street, and have maintained an office at that location for over 20 years and I am very familiar with the neighborhood.

The proposed residential project above will benefit this West Berkeley neighborhood by:

1. Increasing the density of properties providing increased housing in the neighborhood
2. This infill project will upgrade the property to a new energy efficient and more environmentally aware design
3. The increased housing will promote growth in the neighborhood economy.
4. Increased foot traffic will promote safer, healthier, and cleaner neighborhoods
5. The new buildings promote pride in ownership
6. Existing neighbors are encouraged to upgrade their properties which stabilizes the neighborhood
7. City tax base increases

I have confidence in Matt Wadlund, Architect, because his past two projects have been successful. I personally request the City Council to approve this proposed project.

Sincerely,

HIROSHI MORIMOTO
623 Vistamont Avenue
Berkeley, CA 94708
Ocean View Neighborhood Council Members  
January 23, 2019  

To: City of Berkeley Zoning Adjustments Board and City Planning Department  
1947 Center Street City of Berkeley  

SUBJECT: 1444 Fifth Street  

DRSL2018-0013  
Design Review Appeal  
Appeal Items:  

1. Notices for Design review were not sufficiently sent out to the community, 
the deadline for the appeal was only accessible in the Staff Report for  
1444th ZP2018-0172 which was online only Friday January 18th.  
2. Replicated designs 1444 5th street is a replication of 1446 5th. Piecemeal  
developments should be somewhat different and have variation.  
3. Community Impact of the replicated design should be reviewed, the  
community would like to see more variation in the design, and variations in  
the set back from the 5th Street.  
4. A variation from the metal glaring siding would be welcome. More wood  
siding and more color.  
5. We would like to see parking spaces not minimally designed garages that  
people will likely not park in but use as storage, people will likely park on  
the street. Parking in our neighborhood is already minimal.  
6. The front unit garage 1444A can only be backed into. This is unsafe  
because carbon monoxide fumes can build up and enter the residence.  
7. Because the developer reduced the lot sizes to avoid affordable housing  
requirements the developer now is requesting an easement driveway on  
770 Page Street and 1442 5th street. The city should not allow this  
easement and the driveway design should be redone.  
8. The City should pause on this project because of the pending lawsuit for  
1446 Fifth Street.  

Sincerely,  
Ocean View Neighborhood Council
RACHEL DOUGHTY (Cal. Bar No. 255904)
JESSICA BLOME (Cal. Bar No. 314898)
IVAN JIMENEZ (Cal. Bar No. 313644)
GREENFIRE LAW. PC
2550 Ninth Street, Suite 204B
Berkeley, CA 94702
Telephone: 510-900-9502
Email: rdoughty@greenfirelaw.com
jblome@greenfirelaw.com
ijimenez@greenfirelaw.com

JONATHAN WEISSGLASS (Cal. Bar No. 18508)
LAW OFFICE OF JONATHAN WEISSGLASS
410 12th Street, Suite 250-B
Oakland, CA 94607
Telephone: 510-836-4200
E-mail: jonathan@weissglass.com

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

Case No.: RG18927113

FIRST AMENDED VERIFIED
PETITION FOR ALTERNATIVE AND
PEREMPTORY WRIT OF MANDATE

UNLIMITED CIVIL CASE

MATTHEW WADLUND, an individual; 1442
FIFTH STREET LLC, a California Limited
Liability Company; 1444 FIFTH STREET,
LLC, a California Limited Liability Company;
1446 FIFTH STREET, LLC, a California
Limited Liability Company, 770 PAGE
STREET, LLC, a California Limited Liability
Company; and ROES 1 through 10, inclusive.

Real Parties in Interest.

2019 JAN 23 AM 11:08
By this verified petition ("Petition"), Petitioners OCEANVIEW NEIGHBORHOOD COUNCIL, an unincorporated citizen group, JEFFREY SPAHN, an individual, and NIELS TRAYNOR an individual allege as follows:

**INTRODUCTION**

1. This lawsuit seeks to prevent the City of Berkeley from making decisions that condone evasion of the City’s affordable housing requirements. Through separate actions of the Berkeley City Council and Department of Public Works, a development at 1446 Fifth Street (the “Project”) has been allowed to proceed without either including at least 20 percent of the units as inclusionary units meant to be affordable or paying an in-lieu fee as required by the City’s affordable housing laws.

2. Petitioners challenge the decision of the Department of Public Works to approve a lot line adjustment for the Project, which was made for the purpose of bringing the size of the Project below the minimum required to trigger Berkeley’s affordable housing laws. Petitioners also challenge the decision of the Berkeley City Council, which approved the Project despite this evasion.

**PARTIES**

**Petitioners**

3. Petitioner OCEANVIEW NEIGHBORHOOD COUNCIL is comprised of residents of the Oceanview Neighborhood, where the proposed Project is located.

4. Petitioner JEFFREY SPAHN is the owner and resident of real property at 809 Page Street, located across the street from the Project.

5. Petitioner NIELS TRAYNOR is the owner and resident of real property at 1419 Fifth Street, located one block from the proposed Project.

**Respondents**

6. Respondent CITY OF BERKELEY CITY COUNCIL is the legislative body of the City of Berkeley, the jurisdiction where the proposed Project would be located. The City Council has principal responsibility for determining whether projects within the City of Berkeley are consistent with the City’s General Plan, zoning and land use ordinances, and other applicable laws.

7. Respondent CITY OF BERKELEY DEPARTMENT OF PUBLIC WORKS, a public entity, is a local agency of the City of Berkeley. The Department is responsible for,
among other things, deciding whether to approve lot line adjustments. The Department approved a lot line adjustment for the Project, provides guidance and oversight to the City on all CEQA environmental review processes. The Planning Department issued categorical exemptions on May 16, 2017, and June 22, 2018, both finding the Project exempt entirely from review under CEQA.

8. Respondent JANE DOE is the City Engineer. JANE DOE’s responsibility includes review and making decisions on whether to approve lot line adjustments.

9. Petitioners do not know the true names and capacities, whether individual, corporate, associate, or otherwise, of Respondents Doe 2 through Doe 10, inclusive, and therefore sue said Respondents under fictitious names. Petitioners will amend this Petition to show their true names and capacities when the same have been ascertained. Each of these Respondents is the agent and/or employee of Respondent City, and each performed acts on which this action is based within the course and scope of such agency and/or employment.

Real Parties in Interest

10. Real Party in Interest MATTHEW WADLUND is the applicant for the lot line adjustment on behalf of 1442 Fifth Street, LLC, 1444 Fifth Street, LLC, and 1446 Fifth Street, LLC. Mr. Wadlund is an architect and developer for 1435, 1442, 1444, 1446 Fifth Street and 770 and 776 Page Street, which are all located in the same block. Mr. Wadlund is reported as the managing member for each of 770, 1442, 1444, and 1446 limited liability corporations, which own, respectively, the properties synonymous with their names.

11. Real Party in Interest 1442 FIFTH STREET, LLC, is a California Limited Liability Company, with a principal place of business at 805 Jones Street, Berkeley, California.

12. Real Party in Interest 1444 FIFTH STREET, LLC, is a California Limited Liability Company, with a principal place of business at 805 Jones Street, Berkeley, California.

13. Real Party in Interest 1446 FIFTH STREET, LLC, is a California Limited Liability Company, with a principal place of business at 805 Jones Street, Berkeley, California.

14. Real Party in Interest 770 PAGE STREET, LLC, is a California Limited Liability Company, with a principal place of business at 805 Jones Street, Berkeley, California.

15. Petitioners do not know the true names and capacities, whether individual, corporate, associate, or otherwise, of Real Parties Roe 1 through Roe 10, inclusive, and therefore sue said Real Parties under fictitious names. Petitioners will amend this Petition to show their
true names and capacities when the same have been ascertained.

JURISDICTION AND VENUE

16. This Court has jurisdiction over this action pursuant to Code of Civil Procedure sections 1085 (traditional writ of mandate) and 1094.5 and 1094.6 (administrative writ of mandate). Venue is proper pursuant to Code of Civil Procedure sections 393 (actions against public officers), 394 (actions against a city, county or local agency), and 395 (actions generally) because the Respondents include local agencies of the State of California and public officers of local agencies of the State of California.

17. This Court also has venue because Petitioners, Respondents, and some of Real Parties in Interest reside in the City of Berkeley, which is in the County of Alameda, and all real property at issue in this matter is located within the City.

BACKGROUND

18. Per the U.S. census, the median household income in Berkeley in 2017 was $75,709. Berkeley classified 19.8 percent of residents as “persons in poverty.”

19. The City of Berkeley is suffering from a lack of affordable housing and homelessness.

20. In 1999 Berkeley City Council adopted Ordinance 6478-NS, Inclusionary Housing Requirements, the purpose of which is to “promote achievement of the City Housing Element goals for developing affordable housing for Households with incomes below the median, as defined in this chapter, or, in the case of Limited Equity Cooperatives, households with incomes below 120% of the median income by requiring the inclusion of affordable Dwelling Units in specified proposed developments, hereinafter referred to as projects.” (Codified at Berkeley Mun. Code § 23C.12.010.)

21. Demonstrating the continued importance of affordable housing in Berkeley, in 2018, two thirds of Berkeley voters voted for Measure O, which authorizes the City of Berkeley to create a $135 million bond for the development and preservation of affordable homes for low and moderate-income households.

22. Berkeley’s Inclusionary Housing Requirements apply to “[r]esidential housing projects proposed on lots whose size and zoning designation is such to allow construction of five or more Dwelling Units.” (Berkeley Mun. Code § 23C.12.020.A.3.)
23. Projects subject to the Inclusionary Housing Requirements must either include at least 20 percent of the total number of dwelling units as inclusionary units, or pay an in lieu fee into the City’s Housing Trust Fund. (Berkeley Mun. Code §§ 23C.12.030 and 23C.12.035.)

24. The in-lieu fee is calculated after the units are sold using the actual sales price. The amount owed the City’s Housing Trust Fund is 62.5% of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant. (Berkeley Mun. Code § 23C.12.035.C.1.) Payment is due “no later than the closing date of the sale of a unit as a condition of said closing.” (Id. at E.)

25. Berkeley City Ordinance 6478-NS (1999) prohibits lot line adjustments or size changes which result in lot conflicts with the provisions of the Zoning Ordinance. (Berkeley Mun. Code § 23A.12.020.)

26. A purpose of Berkeley’s Zoning Ordinance is: “Promote the development of affordable housing for all citizens and in particular for citizens with low and moderate incomes.” (Berkeley Mun. Code § 23A.04.030(J)).

27. Per Berkeley Municipal Code section 23E.8.00.B, “There shall be no more than one dwelling unit or one live/work space per each 1,250 feet of lot area; provided, however, there may be one additional unit for any remaining lot area which may be less than 1,250 square feet but greater than 750 square feet.”

28. Per the Berkeley Municipal Code, “[l]ot line adjustments are changes in the boundary between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed is not thereby created.” (21.32.020.)

29. Applications for lot line adjustments are made to the City Engineer. Upon receipt of an application for a lot line adjustment, the City Engineer must “make a report approving, conditionally approving or disapproving the map and the exceptions requested and may impose conditions as he/she finds necessary. Such report shall be made within twenty days after assurance of compliance with the building ordinance and the zoning ordinance from the departments concerned.” (Berkeley Mun. Code, 23.32.050.)

30. The Project is located within West Berkeley’s Arts and Artisans District.
31. The City’s Arts and Culture Plan establishes a policy to increase affordable housing for artists and indicates the City will incentivize development of affordable housing for artists. (City of Berkeley Arts and Culture Plan, Policy 1.2.)

32. On December 14, 2016, Matthew Wadlund, of 1446 Fifth Street, LLC, submitted applications for an Administrative Use Permit (“AUP”) and Staff Level Design Review (“DRSL”) to construct four new single-family dwellings at 1446 Fifth Street, which was at that time 6,250 square feet in size.

33. On May 24, 2017, staff deemed the application complete, and on June 5, 2017, staff issued a Notice of Administrative Decision to approve the AUP and DRSL applications.

34. On June 15, 2017, Niels Traynor filed an appeal of the AUP and DRSL approval (“First Appeal”).

35. On July 20, 2017, the Design Review Committee (DRC) held a public meeting, dismissed the First Appeal, and approved the DRSL application, with conditions.

36. On September 14, 2017, the Zoning Adjustment Board (“ZAB”) held a public hearing, dismissed the appeal, and approved the AUP application, with conditions.

37. On September 19, 2017, staff issued the notice of the ZAB decision, and on October 2, 2017, Jeffrey Spahn and Paul Bontekoe filed an appeal of the ZAB decision with the City Clerk. On February 6, 2018, the City Council held a public hearing and remanded the application to the ZAB with direction.

38. On March 9, 2018, the applicant submitted revised project plans that included one change: a lot line adjustment to realign the northern property line by 4 feet, which would reduce the subject lot from 6,250 to 5,744 square feet.

39. On information and belief, the lot line adjustment also reduced the lot at 1444 Fifth Street from 6,250 to 5,750 feet and increased the lot sizes at 1442 Fifth Street and 770 Page Street.

40. On April 12, 2018, the ZAB held a public hearing to consider the remand, and discussed the issues identified by the Council and the proposed reduction in lot area, concluded that the appeal points should be dismissed, and approved the revised AUP application with additional conditions unrelated to the lot size or affordable housing.

41. On April 18, 2018, staff issued the notice of the ZAB decision, and on May 2, 2018, Jeffrey Spahn and Niels Traynor filed an appeal of the ZAB decision with the City Clerk,
asserting, among other things, that the proposed lot line adjustment(s) is illegal, "goes against the West Berkeley plan," and is "fundamentally wrong."

42. On information and belief, on or before July 10, 2018, staff posted the public hearing notice at the site and three nearby locations and mailed notices to property owners and occupants within 300 feet of the project site and to interested neighborhood organizations. A public hearing was held on June 24, 2018, to resolve the appeal of the ZAB decision.

43. At a meeting on July 24, 2018, the City Council considered the appeal of the ZAB decision. Petitioners Spahn and Traynor spoke in opposition to approval of the Project.

44. The City Council denied the appeal and approved the Project. The City Council did so in part on the basis of a forthcoming lot line adjustment that was sought for the purpose of not paying the in-lieu fee. Notice of the City Council's decision was sent on August 3, 2018.

45. The City of Berkeley considers lot line adjustments to be ministerial acts.

46. Upon information and belief, the Department of Public Works and City Engineer have made a lot line adjustment(s) at the behest of 1446 Fifth Street LLC, which decreases the size of the lot at 1446 Fifth Street, Berkeley, California, 94710, from 6,250 square feet to 5,744 square feet.

47. On information and belief, the lot line adjustment also reduced the lot at 1444 Fifth Street, Berkeley, California 94710 from 6,250 to 5,750 feet and increased the lot sizes on 1442 Fifth Street, Berkeley, California 94710 and 770 Page Street, Berkeley, California 94710.

48. The lot line adjustment at 1446 Fifth Street results in a reduced maximum number of units allowed on the lot from five to four.

49. The publicly disclosed reason 1446 Fifth Street requested the lot line reduction was to avoid mandatory compliance with Berkeley Inclusionary Housing Requirements found at Berkeley Municipal Code Chapter 23C.12.

50. The lot line adjustment at 1444 Fifth Street results in a reduced maximum number of units allowed on the lot from five to four.

51. Upon information and belief, the Department of Public Works and City Engineer granted the requested lot line adjustment at 1446 Fifth Street.

52. Upon information and belief, the Department of Public Works and City Engineer granted the requested lot line adjustment at 1444 Fifth Street.

53. Upon information and belief, the Department of Public Works and City Engineer
granted the requested lot line adjustment at 1442 Fifth Street.

54. Upon information and belief, real party in interest 1444 Fifth Street, LLC is now seeking an easement on land that was previously part of their lot in order to provide access for a planned four unit development on the 1444 Fifth Street lot.

55. Petitioners originally filed this lawsuit against the City Council with respect to approval of the Project and did not understand that they needed to sue Real Parties in Interest. Petitioners now amend this lawsuit to sue Real Parties in Interest and to bring a cause of action against the Department of Public Works.

56. Petitioners have a beneficial interest in issuance of a writ of mandate and will be prejudiced in the absence of its issuance.

57. Petitioner Oceanview Neighborhood Council is comprised of residents of the neighborhood in which the area, many of whom are artists of moderate incomes, who have an interest in maintaining affordability for artists.

58. Petitioner Jeffrey Spahn makes his living as an art dealer and the lack of affordable housing in the area of the Project is changing the character of the Arts and Artisans Arts District in West Berkeley. Petitioner Spahn is also a member of the Oceanview Neighborhood Council.

59. Petitioner Niels Traynor lives in the neighborhood and makes his living as a landscape designer who lives in the neighborhood, down the street from the project, and is a member of the Oceanview Neighborhood Council.

60. All petitioners have relied upon the City’s representations, expressed through the Inclusionary Requirements and the Arts Overlay, that the Oceanview Neighborhood where the Project is located would remain affordable and welcoming to artists.

CLAIMS FOR RELIEF
FIRST CAUSE OF ACTION
(Writ of Mandate; CCP §1085)

61. Petitioners hereby reallege and incorporate all of the above paragraphs as if fully set forth herein.

62. Upon information and belief, the Department of Public Works and City Engineer have made lot line adjustment(s) at 1442 Fifth Street, 1444 Fifth Street, 1446 Fifth Street, 770 Page Street based on a request made for the purpose of avoiding compliance with Berkeley
Inclusionary Housing Requirements.

63. The Department of Public Works and City Engineer had a nondiscretionary obligation to deny the requested lot line adjustment because it is incompatible with Berkeley's Inclusionary Housing Requirements.

64. Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law within the meaning of Code of Civil Procedure section 1086, because the Department of Public Works' and City Engineer's decision to approve the lot line adjustment is not reviewable in a manner that provides an adequate remedy other than through this lawsuit.

65. Respondents Department of Public Works and City Engineer are able to perform the duties required by the City's Inclusionary Housing Requirements. Notwithstanding such ability, Respondents have failed to perform their duties. Unless compelled by this Court to perform their duties, Respondents will continue to fail and refuse to do so.

66. A writ of mandate is required to direct the Department of Public Works and City Engineer to revoke the lot line adjustment(s) for the property at 1442 Fifth Street, 1444 Fifth Street, 1446 Fifth Street, and 770 Page Street.

SECOND CAUSE OF ACTION
(Writ of Mandate; CCP §§1094.5 & 1094.6)

67. Petitioners hereby reallege and incorporates all of the above paragraphs as if fully set forth herein.

68. Respondent City of Berkeley City Council prejudicially abused its discretion by approving the Project, including by failing to proceed in the manner required by law, failing to have a decision supported by the findings, and failing to make findings supported by the evidence.

69. The City Council failed to proceed in the manner required by law, including because it did not properly take into account the City's Inclusionary Housing Requirements in Berkeley Municipal Code Chapter 32C.12.

70. The City Council’s approval of the Project is not supported by the findings because it failed to explain how the decision is compatible with the City’s Inclusionary Housing Requirements.

71. The City Council’s finding that the Project would not be detrimental to the City is not supported by the evidence. The evidence shows that the project will contravene the City’s
Inclusionary Housing Requirements in Berkeley Municipal Code Chapter 32C.12.

72. Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law within the meaning of Code of Civil Procedure section 1086 because the City Council’s decision is not otherwise reviewable in a manner that provides an adequate remedy.

73. The City Council is able to perform the duties required by the City’s Inclusionary Housing Requirements. Notwithstanding such ability, the City Council has failed to perform its duties. Unless compelled by this Court to perform its duties, Respondent City Council will continue to fail and refuse to do so.

74. A writ of mandate is required to direct the City Council to revoke its approval of the Project.

PRAYER

WHEREFORE, Petitioners pray for the following relief:

1. For an alternative and peremptory writ of mandate directing Respondents to revoke the lot line adjustment(s) at 1442 Fifth Street, 1444 Fifth Street, 1446 Fifth Street, and 770 Page Street.

2. For an alternative and peremptory writ of mandate directing Respondents to revoke the approval of the 1446 Fifth Street permit.

3. For the costs of suit.

4. For an award of attorneys’ fees pursuant to Code of Civil Procedure section 1021.5 and any other applicable provisions of law.

5. For any other legal and equitable relief as this Court deems just and proper.

Dated: December 14, 2018

GREENFIRE LAW, P.C.

Rachel Douglass
Attorneys for Petitioners

FIRST AMENDED VERIFIED PETITION FOR ALTERNATIVE AND PEREMPTORY WRIT OF MANDATE
VERIFICATION

I, Niels Traynor, am a Petitioner in this action. I have read the foregoing First Amended Verified Petition for Alternative and Peremptory Writ of Mandate and know its contents. The facts alleged in the above Petition are within my own knowledge and I know these facts to be true, except as to matters alleged therein on information and belief.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration is executed on December 27, 2018 at Berkeley, California.

Niels Traynor
Petitioner
VERIFICATION

I, Jeffrey Spahn, am a Petitioner in this action. I have read the foregoing First Amended Verified Petition for Alternative and Peremptory Writ of Mandate and know its contents. The facts alleged in the above Petition are within my own knowledge and I know these facts to be true, except as to matters alleged therein on information and belief.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration is executed on December __, 2018 at Berkeley, California.

Jeffrey Spahn
Petitioner

FIRST AMENDED VERIFIED PETITION FOR ALTERNATIVE AND PEREMPTORY WRIT OF MANDATE
Ocean View Neighborhood Council Members  
January 23, 2019
City of Berkeley Zoning Adjustments Board and City Planning Department
1947 Center Street City of Berkeley

SUBJECT: 1444 Fifth Street

Appeal of 1444 Fifth Street ZP2018-0172
Appeal Items:

1. A lawsuit for 1446 Fifth Street has been filed in Alameda County. ZAB should postpone any decision on 1444 Fifth Street until the lawsuit has been resolved. We request a continuance of this ZAB hearing.

2. Lot line adjustments and the preamble, lot line adjustments are not automatic. The preamble to the lot line law states that lot line adjustments are non-discretionary only if the preamble is met such that it does not violate or contradict existing ordinances and laws.

3. Mat Wadlung presented the Ocean View Neighborhood Council Member's a letter stating that he would volunteer to pay in-lieu fees “based on rental units” not ownership fees, for 1446 Fifth Street. Does the developer admit that he owes fees for this project and future projects? What should this amount be? If the 20% fees based on the purchase price of each unit is too high for the developer, the city should review this Berkeley Municipal Code and fix it, but do not let developers manipulate property lines to avoid inclusionary fees. Fix 23C.12.035. Inclusionary Unit Requirements for Ownership Projects*

4. The Community wants more affordable units in our neighborhood, even if that means more density.

5. The City of Berkeley has given the developer economic advantage over other people and property owners by allowing the developer to manipulate property lines, this gives him unfair advantage over other people who want to develop similar sized lots. If they can not reduce the lot size then they will have to pay inclusionary fees. It is likely they may not proceed with the development because of this precedent. The city is making it even more difficult for other developers by allowing this to happen, thereby reducing future housing stock, which is not the goal. We need more modest and affordable housing.
6. Because the developer reduced the lot sizes to avoid affordable housing requirements the developer now is requesting an easement driveway on 770 Page Street and 1442 5th street. The city should not allow this easement and the driveway design should be redone.

7. The developer proceeded to grade and remove soil from 1444 5th street prior to the permit being issued. There are some environmental concerns that are listed in the Environmental Site Assessment Report or Geotechnical Plan Review by Peters & Ross December 16, 2016 that should have been evaluated before this work was done. Specifically contaminated soil and testing for lead and asbestos and possible past water VOC contamination from across the street located at 1455 fifth. These items should not prevent development, however because of the piecemeal nature of these projects they are not being addressed properly. We ask the Planning Department to review the developer’s environmental due diligence and view these projects as a whole including 1446 5th, 1444 5th, 1442 5th, 770 Page and 776 Page Street.

8. Should the Coast Live Oak tree die during construction, a new same size oak tree should be planted to replace it.

Sincerely,

Ocean View Neighborhood Council Members
July 10, 2018

Ocean View Neighborhood Council
809 Page Street
Berkeley, CA 94710

Dear Ocean View Neighborhood Council Members,

Thank you for expressing your concern about affordable housing in West Berkeley. As Berkeley residents and business owners, we are concerned too about affordable housing, and about the statewide deficit of housing at all levels of affordability.

The housing mitigation fee calculated by city staff for this modest four unit project would have been approximately $600,000 – prohibitively expensive, and disproportionate to rental projects of the same scale and development cost. Development patterns in Berkeley during the past 10 years have plainly demonstrated that such a prohibitive mitigation fee stifles the creation of much needed housing and results in zero dollars contributed to the City’s Affordable Housing Trust Fund. In short, everyone loses.

This leads us to propose an alternate solution that addresses our shared concern: We propose to voluntarily contribute monies to the City of Berkeley Affordable Housing Trust Fund based on the current affordable housing mitigation fee formula for new development rental projects, which is $37,000 per unit. Doing so would accomplish several objectives:

- Satisfy the stated purpose of your appeal—to subsidize affordable low income housing.
- Express our commitment to generate affordable housing.
- Support the City’s Affordable Housing Trust Fund.
- Enable this project to proceed and provide much-needed ownership housing.

We would agree to contribute monies to the City despite the fact that our project is legally exempt from, and not subject to, the mitigation fee, and despite that the City is legally obligated under the state law Housing Accountability Act to approve projects like ours that comply with the development standards of the City’s Zoning Ordinance.
We ask you to support the following proposal:

1. 1446 5th Street, LLC would voluntarily contribute the sum of $148,000 ($37,000 x 4 units) to the City’s Affordable Housing Trust Fund upon the closing of the sale of all the units in the project. This commitment would be memorialized by the City as a binding and enforceable condition of approval for our project.

2. In exchange, all current appeals of this project by Ocean View Neighborhood Council, its members, and their affiliates would be withdrawn before July 20, 2018, and no lawsuit will be filed by any of the same persons or parties to set aside the City’s approval of the project. The continuation of the current administrative appeal or the filing of such a lawsuit would void our obligation to contribute any monies to the Affordable Housing Trust Fund. Instead, those monies would be wasted on attorney’s fees and court costs.

As strong supporters of low income housing in Berkeley, we hope that you will support this proposal. We are available to discuss, or you are welcome to respond to us in writing. Contact the Planning Department staff to discuss your options and to withdraw your appeal.

Thank you for your consideration.

Sincerely,

[Signature]

1446 5th Street, LLC

CC: Appellant Jeffery Spahn  
Appellant Niels Traynor  
Susan Younger  
Monica Von Geise  
Paul Botelho  
Mayor Jesse Arreguin  
Councilmember Lionel Maio  
Councilmember Cheryl Davila
To Be Proposed
By Developer
15 Dwelling Units
Total piecemealed over time.
PROOF OF SERVICE

I, the undersigned, certify that I am employed in the City of Berkeley, County of Alameda, California; that I am over the age of eighteen years and not a party to the within action; that my business address is 2180 Milvia Street, 4th Floor, Berkeley, California 94704. On this date, I served the following document(s):

JOINDER IN DEMURRER TO FIRST AMENDED PETITION FOR WRIT OF MANDATE

on the parties stated below, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below by the following means of service:

Attorneys for Real Parties in Interest
Philip J. Sciranka
Lubin Olson & Niewiadomski LLP
The Transamerica Pyramid
600 Montgomery Street, 14th Floor
San Francisco, CA 94111
(415) 981-0550
(415) 981-4343 (fax)
psciranaka@lubinolson.com
eolson@lubinolson.com
fjsommer@lubinolson.com

Attorneys for Petitioners
Rachel Doughty
Jessica Blome
Ivan Jimenez
Greenfire Law, PC
2550 Ninth St., Suite 204B
Berkeley, CA 94702
(510) 900-9502
rdoughty@greenfirelaw.com;
jblome@greenfirelaw.com;
jimenez@greenfirelaw.com;
charnez@greenfirelaw.com

Jonathan Weissglass
Law Office of Jonathan Weissglass
410 – 12th St., Suite 250-B
Oakland, CA 94607
(510) 836-4200
jonathan@weissglass.com

X: Pursuant to Code of Civil Procedure section 1010.6 and Rule 2.251 of the California Rules of Court; a Joint Stipulation re Electronic Service is in effect provided each of the above e-mail addresses are served. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 17, 2019 at Berkeley, California.

Joanna K. Rudy

Proof of Service
Case No. RG18927113
Ocean View Neighborhood Council Members  
January 23, 2019  
City of Berkeley Zoning Adjustments Board and City Planning Department  
1947 Center Street City of Berkeley  

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Thank you for your consideration.

Sincerely,

1446 5th Street, LLC

CC: Appellant Jeffery Spahn
     Appellant Niels Traynor
     Susan Younger
     Monica Von Geirke
     Paul Botekoe
     Mayor Jesse Arreguin
     Councilmember Linda Malo
     Councilmember Cheryl Davila
Subject: FW: 1444 5th St Staff Report and Conditions - Corrections

-----Original Message-----
From: Matthew Wadlund | W+ Design Studio [mailto:mwadlund@wdsplus.com]
Sent: Tuesday, January 22, 2019 2:06 PM
To: Mendez, Leslie <LMendez@cityofberkeley.info>
Cc: Buckley, Steven <StBuckley@cityofberkeley.info>; Abe Leider <aleider@rinconconsultants.com>; Elisa Mikiten <elisa@mikitenland.com>; Sean Kenmore <skenmore@gmail.com>; Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>
Subject: 1444 5th St Staff Report and Conditions - Corrections

Hello Leslie,

Thanks to you, Abe, and Lucy for getting the Staff Report and Conditions of Approval ready for the upcoming ZAB meeting.

Upon giving the documents a close reading, please make note of several corrections that ZAB should be made aware of:

STAFF REPORT:
1) Project Setting, section A (paragraph one) - mentions one and two story residential buildings on Fifth Street further south - there are four (4) three story residential buildings (houses) on that same block of Fifth Street. The text should read "one, two, and three story houses..."

2) Project Setting, section B - incorrectly states the “western portion of the site is used as part of a private parking area for the industrial and warehouse buildings on the West side of the block, including 1435, 1445, 1453 Fourth Street.”

The western portion of 1444th 5th Street WAS (not is) used for parking of 1435, 1445, 1453 FOURTH (not Fifth) Street. There is no provision for parking on adjacent property (1444 5th St, or any other adjacent property) in the Use Permit of those properties. When all those properties on 4th and 5th were owned by the same party, 1444 5th was used for 1435, 1445, 1453 Fourth Street parking. Ownership is now separate, and tenants of 1435, 1445, 1453 Fourth Street are NOT allowed to park on 1444 5th Street or any other adjacent property.

FINDINGS AND CONDITIONS OF APPROVAL:
1) Item 14 - applies to projects of five or more dwelling units and / or demo - this project does not mean that condition, thus does NOT apply to this project. Remove all of item 14.

2) Item 15 - Coast Live Oak is near the SOUTH (not north) property line.

3) Item 18 - Transportation Construction Plan - for 1446 5th Street (currently under construction) Peter Chun, City Traffic Engineer was contacted and informed us this condition should have been removed as it does not apply. This same applies to 1444 5th, please confirm with Peter Chun. Remove all of item 18.

Thank You,
Matthew Wadlund
March 20, 2018

By Electronic Mail: amoroso@cityofberkeley.info

Mr. Alex Amoroso  
Secretary  
City of Berkeley  
Planning Commission  
Land Use Planning Division  
1947 Center Street  
Berkeley, CA 94704

RE: 1050 Parker Street / 2621 Tenth Street, Berkeley

Dear Mr. Amoroso:

Kaiser Permanente is interested in establishing a medical office building in Berkeley that will employ over 200 people and bring services closer to our many members who live in the city.

The new building that is being planned by Wareham Development at the vacant site at 1050 Parker Street / 2621 Tenth Street meets Kaiser Permanente’s location requirements. The site’s location on San Pablo Avenue, with the immediate proximity to public transportation and the West Berkeley Shuttle connection to BART, are particularly attractive since it provides our staff and members with the opportunity to access the building without the need for an automobile journey.

Our real estate team is currently discussing terms with Wareham for a long term lease for the whole building, however, the current City of Berkeley zoning does not allow medical office use in the entire building. Zoning would have to be changed to Commercial West Berkeley (CW) to allow Kaiser Permanente’s use of the whole building.

Our initial projections are that the medical services to be provided from 2621 Tenth Street would include primary care and associated specialties.

I hope that this information is of use and ask that you share this letter with members of the Planning Commission.

Sincerely,

Jeff A. Collins  
Senior Vice President and Area Manager  
Oakland, CA. 94612
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<th>ZAB DATE:</th>
<th>AGENDA TOPIC</th>
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<th>SUPPORT</th>
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ITEM #8

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC

1444 55th St

PROJECT ADDRESS

NAME
Kara Lucier

(Please Print to be sure we spell your name correctly)

SUPPORT ___ OPPOSITION X

(Optional)

RESIDENT X BUSINESS OWNER

OTHER

SIGNATURE: [signature]

PHONE: 510-268-2683 DATE: 1/24/19

(In case we would like to contact you)
ROUGHLY EDITED COPY

BERKELEY
ZONING ADJUSTMENTS BOARD
REMOTE BROADCAST CAPTIONING
THURSDAY, JANUARY 24, 2019

Services provided by:
QuickCaption, Inc.
4927 Arlington Avenue
Riverside, CA 92504
Telephone - 951-779-0787
Fax Number - 951-779-0980
quickcaption@gmail.com
www.quickcaption.com

* * * * *

This text is being provided in a rough draft format. Communication Access Realtime Translation (CART) is provided in order to facilitate communication accessibility and may not be totally verbatim record of the proceedings.

* * * * *
>> VICE CHAIR D. PINKSTON: OKAY. SO I WANT TO MOVE ONTO THE NEXT ITEM, WE DO HAVE A NUMBER OF CARDS AND IT'S LATE. SO THE NEXT ITEM IS 1444, FIFTH STREET. A NEW PUBLIC ON ADMINISTRATIVE USE PERMIT. STAFF REPORT? IS THERE A STAFF REPORT?

>> STAFF: GOOD EVENING, MY NAME IS ABE. ASSISTING THE STAFF ON THIS NEXT ITEM. I'LL GIVE A QUICK OVERVIEW OF THE PROJECT. AND I'LL GO OVER STAFF'S RECOMMENDATION ON FINDINGS A FEW CORRECTIONS TO THE STAFF REPORT AND CONDITIONS AND QUICKLY DISCUSS CORRESPONDENCE RECEIVED ON THE PROJECT. THE PROJECT IS AN ADMINISTRATIVE USE PERMIT TO CONSTRUCT FOUR DETACHED THREE STORY THREE BEDROOM 1900 SQUARE FOOT SINGLE FAMILY DWELLINGS, EACH 33 FEET TALL ON A 5744 SQUARE FOOT VACANT LOT AT 1444, FIFTH STREET IN WEST BERKELEY’S MIXED USE, M-UR DISTRICTS. IT INCLUDES A DRIVEWAY EASEMENT TO SHARE ACCESS FROM FIFTH STREET TO THE NORTH AT 1142 AND 744 PASSAGE STREET. THIS PROJECT IS VERY SIMILAR TO A RECENT PROJECT TO THE ADJOINING PROJECT ON THE SOUTH. CURRENTLY UNDER CONSTRUCTION. AND IT'S A SIMILAR DESIGN. IT'S SIMILAR IN PRETTY MUCH EVERY WAY TO THE PROJECT YOU ARE LOOKING AT TONIGHT. THIS PROJECT RECEIVED A STAFF LEVEL DESIGN REVIEW. AND THE APPEAL PERIOD FOR THAT ENDS JANUARY 28, THAT IS THE FIRST CORRECTION, WHICH SAYS THE 2. THE APPEAL PERIOD ENDS THE 28. STAFF ANALYZED THE PROJECTS AND, IN THE STAFF, REPORT THE PROJECT COMPLIES WITH THE GENERAL PLAN AND ZONE STANDARDS, HEIGHT, DENSITY, FAR, USEABLE OPEN SPACE AND NUMBER OF PARKING
SPACES, THIS THEREFORE IS A HOUSING ACCOUNTABILITY, THE HAA APPLIES, STAFF ISN'T REQUIRED TO MAKE FINDINGS. IN ADDITION, STAFF BELIEVES THE FINDINGS CAN BE MADE IN NON-DETREMINENT FOR THE M, R DISTRICT, CONSISTENCY WITH THE GENERAL SCALE AND PATTERN OF THE NEIGHBORHOOD AND CONSISTENT WITH THE M-UR DISTRICT AND THE WEST BERKELEY PLAN WOULDN'T CONVERT THE SITE FROM M-UR CONSISTENT USES. A COUPLE OF DIRECTIONS ON THE STAFF REPORT GOING BY PAGE. FIGURE 1, AND I THINK THIS CAME FROM THE CITY'S GS, IT SHOULD BE FIFTH STREET NOT SIXTH STREET AS LABELED. NEXT, THERE IS A IN TABLE 2 UNDER SPECIAL CHARACTERISTICS, WE FORGOT TO PUT A YES NEXT TO GREEN BUILDING SCORE, THAT SHOULD SAY YES. NEXT THERE IS A ONE THING HAS TO BE CORRECTED IN TABLE 4, THE DEVELOPMENT STANDARDS, IT IS EIGHT FEET. EITHER WAY COMPLYING. MOVING ONTO THE CONDITIONS. JUST A TYPO IN CONDITION NUMBER 15. WHICH IS ABOUT TREE PROTECTION. IT SHOULD SAY, LIVE OAK TREE NEAR THE NORTH PROPERTY LINE -- SOUTH, NOT THE NORTH PROPERTY LINE. AND CONDITION NUMBER 34, ALSO HAS A DATE PRESENTED WRONG. IT SHOULD BE PLANS DATED JANUARY 8, 2019. AND I THINK THAT DOES IT FOR CORRECTIONS. AS FAR AS CORRESPONDENCE STAFF RECEIVED THREE LETTERS OF SUPPORT. INCLUDING ONE FROM THE OCEAN VIEW TOWNHOUSE ASSOCIATION AND TWO LETTERS OF OPPOSITION FROM THE OCEAN VIEW NEIGHBORHOOD COUNCIL GROUP, ONE ASSOCIATED WITH THE STAFF REVIEW DECISION BASED ON PROJECT DESIGN AND PARKING AND THE PROPOSED SHARED ACCESS EASEMENT. AND ANOTHER LETTER IN
OPPOSITION REFERRING TO THE PREVIOUS PROJECT AND ITS RELATIONSHIP TO THIS PROJECT AND THE TREE. MS. ALLEN WANTS TO SAY MORE ABOUT THAT.

>> STAFF: ABE MENTIONS TWO LETTERS THAT CAME IN FROM THE OCEAN VIEW NEIGHBORHOODS COUNCIL MEMBERS. I BELIEVE THEY ARE HERE TO SPEAK OR REPRESENTATIVES ARE HERE TO SPEAK THIS EVENING. IT IS MENTIONED THERE IS A LAWSUIT UNDERWAY FOR THE PROJECT APPROVED AT 1446, 6TH STREET AND A REQUEST BY THIS OCEAN VIEW NEIGHBORHOOD THE ZAB NOT MOVE FORWARD WITH THIS APPLICATION WHILE THAT LAWSUIT IS UNDERWAY. CITY STAFF WOULD LIKE TO POINT OUT THE LAWSUIT PERTAINS TO A DIFFERENT PROPERTY AND THE CITY BELIEVES THERE IS NO MERIT TO THE CLAIMS MADE UNDER THE LAWSUIT AND ZAB COULD MOVE ON THIS PROJECT THIS EVENING THAT ADDRESSES THE LAWSUIT AND ONE OF THE ELEMENTS OF THE LAWSUIT IS THE LOT LINE ADJUSTMENT PREVIOUSLY APPROVED. IT DISCUSSED AN AGREEMENT BETWEEN THE APPLICANT AND OCEAN VIEW NEIGHBORHOOD COUNCILMEMBERS. AND THAT'S A PRIVATE AGREEMENT BETWEEN THOSE GROUPS. IT IS NOT -- IT'S NOT AN ISSUE FOR ZAB DISCUSSION. THERE IS A STATEMENT THE CITY OF BERKELEY GIVEN THE DEVELOPER ECONOMIC THROUGH THE PREVIOUS APPROVALS. STAFF DISAGREES, THE TOOLS ARE AVAILABLE TO EVERYONE. THEY REQUESTED THAT ZAB NOT APPROVE -- SHOULD NOT ALLOW THE EASEMENT FOR THE DRIVEWAY. AND THERE IS NO LAND USE PERMIT REQUIREMENT FOR THE EASEMENT, THE ZAB HAS NO PURVIEW OVER THIS ELEMENT BEYOND THE CONDITION OF APPROVAL.
BEFORE THE PERMIT IS GRANTED. THE ISSUE OF PIECEMEALING THIS
PROJECT AND THE ADJACENT PROJECT IS A POINT RAISED IN LETTERS
FROM THIS GROUP OF NEIGHBORS. AND IT'S THE CLARIFIES THAT CITY
STAFF WOULD LIKE TO MAKE, THE APPLICATIONS COME TO THE CITY AND
WE PROCESS THEM AS THEY ARE APPLIED FOR. AND THAT THE CITY
HASN'T SEEN A MASTER USE PERMIT APPLICATION OR ANY KIND OF
MASTER PLAN FOR THE PROPERTIES THAT ARE OWNED BY THIS GROUP OR
SOME COMBINATION OF AN OWNERSHIP GROUP. WE WANTED TO BE
RESPONSIVE TO THIS LATE CORRESPONDENCE. AND THEN AS ABE
MENTIONED, THERE IS A SECOND LETTER THAT IS AN APPEAL OF THE
DESIGN REVIEW THAT WAS A STAFF-LEVEL DESIGN REVIEW. HOWEVER,
THAT IS A FEE AND SOME OTHER INFORMATION THAT'S REQUIRED TO MAKE
THIS APPLICATION COMPLETE. WE CONSIDER THIS A PREVIEW OF THE
APPEAL TO COME. THE POINTS THAT I THINK ARE OF INTEREST TO ZAB
THAT ABE MENTIONED, THEIR DESIRE FOR VARIATION IN DESIGN, BE IT
SETBACKS OR MATERIALS FROM THIS PROJECTS VERSUS THE PROJECT THAT
WAS ALREADY APPROVED NEXT DOOR COULD BE A DISCUSSION TOPIC FOR
THE ZAB THIS EVENING. THE STAFF-LEVEL DESIGN REVIEW IF APPEALED
WILL GO TO THE DRC, IF THAT'S APPEALED IT WILL GO TO ZAB. WE SAW
THIS ON THE SKY DECK SIGNAGE DOWNTOWN. THEY MOVED FORWARD
INDEPENDENTLY OF THE APPLICATION. AND THAT IS THE PROCESS, WHILE
IT IS RARE THAT DESIGN REVIEW IS APPEALED IT HAS HAPPENED IN
THOSE TWO PROCESSES CAN MOVE FORWARD INDEPENDENTLY.
>> VICE CHAIR D. PINKSTON: QUESTIONS OF STAFF? OKAY. SHOULD WE -- GO AHEAD.

>> S. O'KEEFE: SINCE WE HAVE OUR LEGAL REPRESENTATIVE HERE, I WAS WONDERING IF WE CAN COMMENT ON THE ISSUES BROUGHT UP, NOT TOO EXTENSIVELY UNLESS YOU WANT TO, SENSE HE'S HERE. HE SAT THROUGH THE WHOLE MEETING SO FAR, HE SHOULD CONTRIBUTE.

>> STAFF: [OFF MIC]

>> VICE CHAIR D. PINKSTON: YOU HAVE TO GET YOUR MIC ON. SORRY. CAPTIONER CAN'T HEAR YOU.

>> I THOUGHT IT WAS ON WHEN THE LIGHT WAS GREEN BUT APPARENTLY NOT. I CAN COMMENT ON IT. I WILL BE RESTATING WHAT SHANNON SAID. THERE IS A LAWSUIT RELATED TO THE SIMILAR PROJECT THAT WAS APPROVED NEXT DOOR. THE CITY BELIEVES IT HAS STRONG DEFENSES IN THAT LAWSUIT, BOTH ON STATUTE OF LIMITATIONS GROUNDS AND ON THE MERITS. THE LAWSUIT IS PRIMARILY BEING PROSECUTED BY THE REAL PARTY IN INTEREST, THE DEVELOPER BASED ON INDEMNITY AGREEMENT WITH THE CITY. AND THAT WILL PROCEED AND WE BELIEVE THE CITY WILL EVENTUALLY PREVAIL. I DON'T BELIEVE THERE IS ANY REASON OR ANY BASIS FOR DEFERRING ACTION ON THAT PROJECT BASED ON THAT LAWSUIT.

>> S. O'KEEFE: YOU CONCUR WITH SHANNON? THANK YOU FOR BEING HERE.

>> VICE CHAIR D. PINKSTON: QUESTIONS OF STAFF? TERESA?
T. CLARKE: CAN YOU EXPLAIN THERE IS NO REQUIREMENT ABOUT THE DRIVEWAY AND THAT THING WITH THE EASEMENT. CAN YOU GO OVER THAT ONCE MORE?

STAFF: I THINK WHAT MS. ALLEN WAS SAYING, NO PERMIT REQUIREMENT FOR EASEMENT. THE EASEMENT IS REQUIRED TO PROVIDE ACCESS SO THERE IS A CONDITIONAL USE PERMIT THAT REQUIRES THE EASEMENT IF THE PROJECT IS BUILT.

T. CLARKE: WHAT IS THE PURPOSE OF THE EASEMENT?

STAFF: TO ALLOW ACCESS TO THE SITE AND THE NEIGHBORING PROPERTIES TO THE NORTH.

T. CLARKE: CAN YOU SHOW ME ON THE DRAWING, I WASN'T SURE WHY THEY PUT AN EASEMENT THERE. JOE, CAN YOU PLEASE PUT THE IMAGE ON THE SCREEN?

STAFF: THE VICINITY MAP. IT'S IN THE STAFF -- LET'S SEE.

T. CLARKE: THAT'S FOR THE 77 PAGE FOUR PARKING SPACES.

VICE CHAIR D. PINKSTON: WE HAVE THE VICINITY MAP, IT'S THE COVER SHEET OF THE ENLARGED SET. WHERE IS IT PHYSICALLY? TO THE LEFT.

T. CLARKE: IT IS A SHARED EASEMENT. THEY BOTH HAVE ONE ON EACH DRIVEWAY.

SHARED DRIVEWAY.

T. CLARKE: IS A NEW ONE. OR A LOT LINE ADJUSTMENT?

IT'S PROVIDING ACCESS TO THE PROPOSED PROJECT. ON THE OTHER SIDE FROM THE --
T. CLARKE: WHICH PROPERTY -- WHICH, LET ME SAY IT ANOTHER WAY. WHICH A.P.N. NUMBER IS THE DRIVEWAY SERVING? A.P.N. NUMBERS?

>> IT WOULD SERVE THE SUBJECT LOT FROM FIFTH STREET AND THE TWO LOTS TO THE NORTH, ONE AN PAGE STREET AND ONE IS ON FIFTH STREET. ADJACENT, 1442 FIFTH AND 1770 PAGE.

>> T. CLARKE: TO ACCESS THE FIFTH STREET, NOT JUST THE 770. MAYBE I CAN ASK APPLICANT WHY.

>> IT WOULD ALLOW ACCESS TO THE PARKING LOT IN PARK OF 770 PAGE WHICH ALSO IS ADJACENT TO 1442 FIFTH.

>> T. CLARKE: THE DRIVEWAY IS MOSTLY FOR 770 PAGES. THERE IS NO PARKING FOR 1442 FIFTH.

>> STAFF: PERHAPS THE APPLICANT CAN ANSWER THAT BETTER EXACTLY WHO ACCESSES THAT PARKING FROM WHERE.

>> VICE CHAIR D. PINKSTON: ARE WE READY TO HAVE THE APPLICANT MAKE A PRESENTATION, TYPICALLY WE GIVE THE APPLICANT FIVE MINUTES. ARE YOU GUYS READY?

>> OKAY. HI. I'M GOING TO SAY A FEW THINGS AND THEN I'M GOING TO PAUSE AND SEE WHAT YOU WANT ME TO TALK ABOUT. THERE IS A BATHTUB APPROACH WHEN SOMEBODY WANTS TO OBJECT TO A DEVELOPMENT AND THEY NEED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES SO THERE IS A LOT OF THINGS IN THE BATHTUB. AS ALWAYS, I BRING YOU COMPLIANT PROJECTS SO WE CAN MOVE FORWARD AND I'LL TALK ABOUT THE DRIVEWAY FOR A MINUTE. SIMILAR TO YOUR DISCUSSION
ABOUT PARKING IN THE PRIOR APPLICATION WE THINK DRIVeways AND PARKING ARE A LOUSY USE OF LAND. THERE IS AN INTENT TO CONSOLIDATE THE DRiveways. INSTEAD OF hAVING A DRiveway AND SEPARATE PARKING FOR EACH OF THOSE THREE PARCELS, THERE IS ONE SHARED DRiveway TO ACCESS ALL AND THAT'S ONE OF THE GOALS IS TO REDUCE CURB CUTS ON THE STREET CAN WHICH OPENS UP ON-SCREEN PARKING FOR OTHER PEOPLE. IT'S AN EFFICIENCY AND IT'S A COMMON STRATEGY TO HAVE AN EASEMENT THAT STRADDLES TWO PROPERTIES AND EACH IS ENTITLED TO USE THOSE TO ACCESS PARKING. IF YOU HAVE QUESTIONS ABOUT THAT, I CAN ANSWER. LET ME PAUSE FOR A SECOND AND SEE WHAT ISSUES YOU WANT ME TO TOUCH ON. GO AHEAD.

>> T. CLARKE: THERE IS ALREADY A DRiveway FOR THE 1442 FIFTH PROPERTY. IS THAT CORRECT?

>> THAT'S CORRECT BUT EVENTUALLY IT WILL GO AWAY.

>> T. CLARKE: THE SAME OWNER OWNS THAT PROPERTY AS WELL THE 770 PAGE.

>> CORRECT. AND 776.

>> T. CLARKE: OKAY.

>> IS THERE ANYTHING ELSE, I COULD TALK ABOUT THE OAK TREE, THE SITE PLAN?

>> VICE CHAIR D. PINKSTON: GEEK OUT ON DRIVeways. How does 770 PAGE CURRENTLY GET INTO THEIR PARKING?

>> 770 CURRENTLY HAS ACCESS ON PAGE.
VICE CHAIR D. PINKSTON: YOU ARE PROPOSING TO ELIMINATE THE ACCESS OR CREATE A SECONDARY WAY TO GET TO THE PARKING?

VICE CHAIR D. PINKSTON: OKAY. OTHER QUESTIONS? WAS THERE SOMETHING ELSE YOU WANTED TO HIT ON?

ANYBODY WANT TO DISCUSS THE OAK TREE?

VICE CHAIR D. PINKSTON: TELL US ABOUT THE OAK TREE.

SO THE OAK TREE I BROUGHT PICTURES OF IT. AND ACTUALLY, AFTER THIS APPLICATION IS ALL DONE, CARRIE, I'LL SEE YOU AT THE PLANNING COMMISSION WITH RECOMMENDATIONS ON HOW TO IMPROVE THE ORDINANCE. THE CITY'S ARBORIST AND DEVELOPER'S ARBORIST MET I AGREED THE TREE WAS DISEASED AND POTENTIALLY GOING TO DIE. WE ACTUALLY OFFERED TO REPLACE IT WITH MULTIPLE OAK TREES ON THE SITE. AND I THINK THE CITY WOULD HAVE BEEN HAPPY TO ACCEPT THE OFFER. BECAUSE THE ORDINANCE OFFERS ZERO DISCRETION, NOBODY COULD SAY, YES, TO THAT. WE GOT THE ADVICE THAT WE SHOULD COUNSEL THE PLANNING COMMISSION AND GET THE RULE CHANGED. THAT IS NEVER MY GOAL WHEN MAKING AN APPLICATION. I JUST WANT TO BRING YOU A COMPLIANT PROJECT. WHEN THIS IS ALL DONE, I THINK IT MIGHT BE HELPFUL TO HAVE A CITY ARBORIST BE ABLE TO MAKE A DISCRETIONARY DECISION FOR A REPLACEMENT OR ESPECIALLY OF A VERY SMALL AND DISEASED TREE THAT THEY PREDICT MAY NOT SURVIVE. ALTHOUGH IT'S DOING A LITTLE BIT BETTER NOW.
VICE CHAIR D. PINKSTON: OKAY. ANY OTHER QUESTIONS? WHY DON'T WE MOVE TO THE PUBLIC HEARING? WE HAVE SEVERAL CARDS. ARE FOLKS READY? THE FIRST CARD IS MELANIE TRAINER, FOLLOWED BY MARY LAW. IF PEOPLE COULD COME TO THE FRONT, WE'LL GIVE YOU EACH TWO MINUTES. THANKS FOR COMING, MELANIE.

THANKS FOR HAVING ME. I'M A RESIDENT ON FIFTH STREET ABOUT A BLOCK NORTH. I WANT TO BRING UP BOARD MEMBER CLARKE YOU TALKED ABOUT MORE HOUSING AND MAKING THE PROCESS SIMPLER. I AGREE BUT I DON'T THINK THAT SHOULD EXCLUDE THE POSSIBILITY OF WORK WITHIN THE INCLUSIONARY ACT. BY THE CITY ALLOWING THE LOT LINES TO MOVE IT ALLOWED THE DEVELOPMENT TO SKIRT IT AND USE LOOP HOLES, HOW TO SHIFT TO HAVE ORDINANCES THAT PROTECT THESE CONTIGUOUS LAWS FROM THE PIECEMEAL. YOU ALLOWED OR PASSED THE FIRST FOUR HOUSES AND STATED THESE WERE NOT RELATED. YOU WERE TALKING EARLIER ABOUT THE PROJECTS BEING RELATED AND THE APPLICANT STATED THESE DRIVeways ARE GOING AWAY BECAUSE OF THE INTENTION TO REMODEL. IT WENT FROM FOUR TO EIGHT HOUSES AND HOW MANY NOW, 12 TO 15? IN THAT PROCESS YOU LOSE WELL OVER A MILLION DOLLARS OF MONEY GOING INTO THE HOUSING TRUST FUND. SO I URGE YOU BACK IN NOVEMBER WE VOTED ON MEASURE O AND P TO HELP SUPPORT AFFORDABLE HOUSING AND BUILD INTO THE HOUSING TRUST. THIS IS A PERFECT EXAMPLE WHERE THE CITY IS LOSING THE OPPORTUNITY BY ALLOWING -- I KNOW THERE IS COMPLIANCE WITH WHAT IS ALLOWED. HOW CAN WE LOOK AT THE CITY ORDINANCES TO NOT ALLOW THIS PIECEMEAL
DEVELOPMENT WHERE WE LOSE OUR OPPORTUNITY TO PAY INTO THAT HOUSING TRUST? I URGE YOU MAKE THE REQUEST TO DENIAL THIS PROPOSAL. LOOKING FORWARD TO SEE HOW WE CAN PREVENT THE DEVELOPERS FROM BUILDINGS RESPONSIBLY. I DON'T DISAGREE WITH DEVELOPING IN MY NEIGHBORHOOD, I WELCOME THAT. I WANT IT DONE RESPONSIBLY. AND IN THE AREA FULL OF ARTIST, IT'S A LOWER INCOME AREA AND WE WOULD LIKE TO SEE OPPORTUNITIES CONTINUE. THANKS.

>> VICE CHAIR D. PINKSTON: MARY LAW, FOLLOWED BY IVAN JEMENEZ.

>> I'M A POTTER IN WEST BERKELEY, I LIVE IN THE SAME BLOCK THAT MELANIE LIVES IN AND I REQUEST THE APPLICATION BE DENIED ALLOWING THE -- DENIED. ALLOWING THE DEVELOPER TO MOVE THE LINES FOR THE EXPRESS PURPOSE OF NOT PAYING INTO THE AFFORDABLE HOUSING FUND OR BUILDING AFFORDABLE HOUSING IS UNCONSCIONABLE AND SETS A BAD PRECEDENT. DON'T WE NEED AND WANT MORE AFFORDABLE HOUSING IN BERKELEY? WE, HIS OCEAN VIEW NEIGHBORS, CERTAINLY DO. THANK YOU.

>> VICE CHAIR D. PINKSTON: THANK YOU. IVAN JEMENEZ, FOLLOWED BY JEFFREY SPAWN.

>> MY NAME IS IVAN, ATTORNEY WITH THE FIRM, GREEN FIRE LAW. WE REPRESENT THE OCEAN VIEW NEIGHBORHOOD GROUP. THIS BOARD HAS A VERY IMPORTANT DECISION TO MAKE AS APPROVING THE PROJECTS WITH ARE NOT REQUIREMENTS BUT ASPIRATIONS. THIS BOARD APPROVED AN APPLICATION FOR A LOT LINE ADJUSTMENT TO REDUCE 1446 FIFTH
STREET, ADJACENT TO THE CURRENT PROJECT. THE RESULTS OF THAT
ADJUSTMENT OF THE APPLICANT NO LONGER HAD TO COMPLY WITH
INCLUSIONARY HOUSING POLICY. AS YOU MAY BE AWARE THE POLICY
APPLIES WHENEVER A LOT CAN ACCOMMODATE FIVE OR MORE UNITS. HE
REduced THE SIZE. THAT MEANS I DON'T HAVE TO COMPLY. THAT'S WHAT
HE'S TRYING TO DO WHERE THIS LOT LINE ADJUSTMENT. BERKELEY CITY
ORDINANCE 647-N7 PROHIBITS LOT LINE ADJUSTMENTS WHEN CONFLICT
WITH THE ORDINANCE. THE INCLUSIONARY REQUIREMENTS ARE PART OF
THE ORDINANCE. THAT MEANS LOT LINE SHOULd NEVER HAVE BEEN
APPROVED FOR 1446 AND SHOULD NOT HERE. IT WILL ALLOW DEVELOPERS
TO IGNORE THE COMMUNITY'S STATED GOAL, WHICH HAS BEEN APPROVED
VARIOUS DIFFERENT RESOLUTIONS, MEASURES THAT THE CITY WANTS MORE
AFFORDABLE HOUSING. THIS SHOULD NOT BECOME A TREND. AND AS BOARD
MEMBER CLARKE MENTIONED WE NEED MORE HOUSING. DEVELOPERS SHOULD
BUILD FIVE UNITS WHEN THE LOT CAN ACCOMMODATE IT. THIS BOARD
SHOULD REJECT THE APPLICATION OR ALTERNATIVELY CONTINUE UNTIL
THE LAWSUIT ON 1446 IS RESOLVED.

>> VICE CHAIR D. PINKSTON: JEFFREY SPAWN, FOLLOWED BY ROSA,
NOT SURE HOW TO PRONOUNCE THE LAST NAME.

>> HI, GOOD EVENING. I KNOW SOME OF YOU. AND GOOD EVENING
TO THE ONES I DON'T KNOW. MY NAME IS JEFFREY SPAWN. I GUESS I
HAVE BEEN ELECTED AS CO-CHAIR OF THE OCEAN VIEW NEIGHBORHOOD
COUNCIL. AND I WAS GOING TO ASK YOU THIS EVENING ACTUALLY FOR A
CONTINUANCE OF THIS PROJECT. BUT IN ABSENCE OF A CONTINUANCE, I
ACTUALLY WANTED TO PROPOSE THE QUESTION THAT I THINK IS BEING ASKED TONIGHT, WHICH IS TO DENY THE PROJECT. AND IN ASKING YOU TO DENY THE PROJECT, WHAT I REALLY WANT TO DO IS ASK YOU AN OPEN QUESTION. WHICH IS, DO YOU AS A ZONING ADJUSTMENTS BOARD HAVE THE APPROPRIATE AMOUNT OF INFORMATION THAT YOU NEED TO APPROVE THIS A.U.P.? THE AMOUNT OF INFORMATION I WOULD NEED IF I WERE SITTING ON THIS BOARD TONIGHT IS THE INFORMATION ABOUT THE CONTIGUOUS LOTS THAT THE APPLICANT ACTUALLY BROUGHT UP IN THE PREVIOUS ZONING ADJUSTMENTS BOARD HEARINGS AND THE HEARING TONIGHT. WE'VE BEEN DOING A LOT OF COMMUNITY ORGANIZING AROUND THIS, A LOT, JUST SO YOU KNOW. THIS IS ABOUT TWO THINGS. IT'S ABOUT DESIGN TO BE HONEST WITH YOU. IT'S ABOUT A WALL OF BUILDINGS THAT GO DOWN AN ENTIRE STREET. AND IT'S ABOUT THE ART'S COMMUNITY WHERE AFFORDABLE HOUSING IS REALLY A TRUE CONCERN FOR US. AND THESE UNITS ARE SELLING FOR OVER A MILLION, 1.2 PER UNIT. THEY ARE NOT FOR AFFORDABLE UNITS. THAT'S WHAT I WOULD ASK YOU TO DO TO EITHER CONTINUE OR DENY THE APPLICATION.

THANK YOU.

>> VICE CHAIR D. PINKSTON: THANK YOU. ROSA LAVINO. THANK YOU.

>> HI, MY NAME IS ROSA, AND I AM A NEIGHBOR OF ALL THESE PEOPLE THAT ARE STILL HERE WITH US TONIGHT. AND I AM HERE ALSO TO REQUEST THAT YOU POSTPONE VOTING ON THIS PROJECT TO ALLOW FOR THE REVIEW OF OUR SUIT THAT IS PENDING. YOU ARE HEARING THE SAME
THING FROM ALL OF US. WE'RE CONCERNED ABOUT THE HOUSING THAT IS
BEING DENIED FOR OUR NEIGHBORHOOD. THE DEVELOPER HAS FIVE LOTS
THAT HE'S DEVELOPING PIECEMEAL BY PIECEMEAL. THE NEIGHBORHOOD
HASN'T HAD A CHANCE TO LOOK AT THE WHOLE PROPOSAL, WHAT IT'S
GOING TO DO TO THE REST OF THE AREA AROUND THERE. IT WOULD BE
THE -- ALLOWING OF THE LINE ADJUSTMENT DID NOT EFFECT ONE LOT
BUT AFFECTED THREE OTHER LINES. THERE IS THE DENIAL OF THE SPACE
WE HAVE TALKED ABOUT WHERE HE'S NOW ONLY BUILDING FOUR HOUSES OR
UNITS PER LOT INSTEAD OF FIVE. WE'RE LOSING AFFORDABLE HOUSING
BECAUSE WE'RE AN ART'S COMMUNITY. AND WE HOPE TO CONTINUE THAT.
SO WE HOPE YOU CONSIDER OUR REQUEST. THANK YOU.

>> VICE CHAIR D. PINKSTON: THANK YOU. IS THERE ANYTHING
ELSE YOU WANT TO TESTIFY ON THIS ITEM THIS EVENING? SEEING NONE,
LET'S CLOSE THE PUBLIC HEARING AND BRING IT BACK TO ZAB. I'M
SORRY, APPLICANT, THANKS FOR COACHING, GUYS. RESPOND TO SOME OF
THE QUESTIONS. ACTUALLY, I HAVE A QUESTION. I DON'T KNOW IF IT'S
FOR YOU, ALISE, OR FOR STAFF. CAN SOMEONE EXPLAIN THE CITY'S
INCLUSIONARY RULES AS IT RELATES TO UNIT PRODUCTION VERSUS FEES,
WHY A FOUR-UNIT --

>> GOES BY LOTS SIZE IF IT'S LARGE ENOUGH TO ACCOMMODATE
FIVE. TYPICALLY, WHAT A DEVELOPMENT TEAM DOES IS THEY ARE AWARE
OF THIS AND THEY ADJUST THE LOT LINE BEFORE THEY MAKE AN
APPLICATION. WE DIDN'T SEE IT COMING. IT CAME UP AS AN APPEAL
POINT. THE MATH WAS FOR THE PROPOSED FOUR UNITS AT 1446, THERE
FEE WOULD HAVE BEEN $600,000. WHICH ANYBODY WHO IS IN DEVELOPMENT KNOWS THAT THAT'S NOT ACHIEVABLE. AS EVIDENCE FOR THAT I ASKED THE PERSON WHO COLLECTS THE FEE FOR THE CITY OF BERKELEY. IN THE LAST 15 YEARS IN THE HOTTEST HOUSING MARKET IN THE HISTORY OF THE COUNTRY THAT FEE HAS BEEN COLLECTED ONE TIME. WHAT THAT RULE BASICALLY DID WAS SHUT DOWN HOUSING DEVELOPMENT ON LOTS OF A CERTAIN SIZE, OWNERSHIP PROJECTS OF LOTS OF A CERTAIN SIZE. AND STARTED IN AFFORDABLE HOUSING AND MOST OF WHAT I HAVE DESIGNED AND BUILT HAS BEEN AFFORDABLE HOUSING. AND WE CARE ABOUT AFFORDABLE HOUSING. WE DID NOT WANT TO ADD A FIFTH UNIT BECAUSE IT WOULD HAVE BEEN A SOLID BLOCK OF HOUSES. IT'S NOT THIS DEVELOPER'S PRODUCT TYPE. A DEVELOPMENT TEAM WOULD TYPICALLY PREDICT IT AND DO IT BEFORE FILING THE APPLICATION. IT'S A NONDISCRETIONARY DECISION. WE WEREN'T TRYING TO SKIRT AFFORDABLE HOUSING. ALL THIS IS LITIGATED SO YOU DON'T HAVE TO ANSWER THE QUESTION. WE VOLUNTARILY AT THE COUNCIL APPEAL OFFERED $150,000 CONTRIBUTION TO THE AFFORDABLE HOUSING TRUST FUND IF THE APPLICANT WOULD WITHDRAW THEIR APPEAL. AND THEY DID NOT DO THAT. SO NOW IT'S WASTED -- TIME IS MONEY AND ACTUAL MONEY IS BEING WASTED ON MERITLESS LAWSUIT GOING TO ATTORNEYS AND DELAYS. THAT IS UNFORTUNATE. BUT WE TRIED.

>> J. SELAWSKY: YOU SAY YOU OFFERED $152,000. MY UNDERSTANDING IS THAT THE HOUSING MITIGATION IS 34 TO 38,000. AND YOU OFFERED THE HIGHER AMOUNT PER UNIT.
THE FEE ON A FIVE UNIT CONDO, WE OFFERED SOMETHING ROUGHLY PROPORTIONAL TO A PROJECT. O'KEEFE COULD HAVE HOW MUCH IS THE FEE ON A CONDO.

ON A FOUR UNIT WHERE FIVE WOULD FIT PROGNOSIS 600,000.

T. CLARKE: HOW MUCH PER UNIT?

I DON'T KNOW HOW THAT WAS CALCULATED.

T. CLARKE: SHANNON, COULD YOU TELL US WHERE THAT IS LOCATED IN THE CODE?

STAFF: THE AFFORDABLE HOUSING MITIGATION FEE FOR RENTAL PROJECTS, BMC22.20065. IN THE SPECIAL CHARACTERISTICS TABLE, NO THIS FEE DOES NOT APPLY. FIVE OR MORE RESIDENTIAL DWELLING UNITS, THE PROJECTS INVOLVES FIVE NEW UNITS. THIS DOES NOT APPLY. IN THE INCLUSIONARY HOUSING IF WERE THESE WERE OFFERED FOR SALE UNITS AS CONDOMINIUMS AND AT THE TIME OF THE STAFF REPORT, THEY HAVE NOT APPLIED FOR A CONDO MAP. LESS THAN FIVE CONDOMINIUM UNITS WHOSE ZONING ALLOWS FOR THE CONSTRUCTION OF FIVE OR MORE UNITS, THE EXISTING LOT CAN ACCOMMODATE ONLY FOUR UNITS. SO EVEN IF THEY DID APPLY FOR A PARCEL MAP, THIS FEE WOULD NOT APPLY. AND I WOULD LIKE TO BE CLEAR. THERE ARE NO LOT LINE ADJUSTMENTS THAT ARE PROPOSED AS PART OF THIS PROJECT THAT WERE PREVIOUSLY APPROVED LOT LINE ADJUSTMENTS.

YEAH. BUT JUST TO CLARIFY. WHAT HAS THE NEIGHBORS RILED UP AND I UNDERSTAND WHY THEY ARE, LOOKS LIKE TO THEM, THAT THIS DEVELOPER IS DUCKING RESPONSIBILITY FOR AFFORDABILITY. WHAT I'M
HEARING IS THEY WOULDN'T PAY THE 34 OR 38,000, IT'S 125,000 PER UNIT?

>> STAFF: IF THEY HAD APPLIED FOR A CONDO MAP LATER:

>> VICE CHAIR D. PINKSTON: WHEN THEY APPLY THE HIGHER FEE IS DUE. LIKE A SIDE BAR, THAT IS AN ARTIFACT OF HOUSING POLICY FROM 20 YEARS AGO. RENTAL PROPERTY WAS NOT WORTH MUCH AND OWNERSHIP HOUSING WAS WORTH MORE SO YOU COULD GET AWAY WITH A BIG FEE. I THINK WE HAVE SEEN RENTAL VALUES ARE AS HIGH AS OWNERSHIP VALUES AND ARGUABLY DESIRABILITY TO HAVING MORE OWNERSHIP FORMS. AND BERKELEY'S FEE IS SO HIGH I THINK IT IS DISCOURAGING PEOPLE FROM BUILDING CONDOMINIUMS.

>> STAFF: WE'RE CONCERNED ABOUT AFFORDABILITY AND THE MISSING MIDDLE. WHAT THE COSTS TO BUY A HOUSE IN BERKELEY IS OBSCENE TODAY. I MEAN, I THINK IT'S TERRIBLE WE HAVE INSUFFICIENT RENTAL HOUSING AND AFFORDABLE HOUSING CERTAINLY AND ALSO INSUFFICIENT PURCHASE HOUSING. BEING ABLE TO BUY A HOUSE, WHICH YOU HOPE YOUR KIDS AND RELATIVES AND PEOPLE IN OUR CITY CAN DO. I KNOW A MILLION DOLLARS IS A LOT OF MONEY BUT IT'S NOT THE 2 MILLION IT IS IN MOST PARTS OF BERKELEY. I THINK WE NEED TO HAVE CONDOMINIUM HOUSES TOO. I DON'T KNOW. THIS IS NOT WHAT IS ON OUR DOCKET TONIGHT. I UNDERSTAND YOUR FEELINGS ABOUT THIS, IT LOOKS LIKE A DUCK OF RESPONSIBILITY. THEY OFFERED TO PAY THE $38,000 PER UNIT THAT DEVELOPERS WOULD HAVE TO PAY. YOUR THIS IS NOT A CONVERSATION AT THIS POINT. IT'S BACK TO THE ZAB.
>> [OFF MIC]

>> VICE CHAIR D. PINKSTON: THIS IS CONVERSATION UP HERE.

YEAH, JOHN.

>> J. SELAWSKY: I THINK IT WAS SUGGESTED THAT ZAB MADE THE LOT LINE ADJUSTMENT. I THINK I HEARD THAT FROM SOMEONE. WE DID NOT MAKE THE LOT LINE ADJUSTMENT. AND WANT STAFF TO PLEASE CLARIFY THAT. THAT WAS DONE BY THE DEPARTMENT OF PUBLIC WORKS I BELIEVE. AND IT WAS A DONE DEAL WHEN THE CAME HERE. WE COULDN'T OVER TURN THAT, OKAY? SO WE'RE CLEAR. BECAUSE I THINK IT WAS SUGGESTED THAT WE DID IT.

>> VICE CHAIR D. PINKSTON: OKAY. WOULD FOLKS LIKE TO TALK ABOUT HOW WE SHOULD ACT ON THIS THIS EVENING, GIVEN THE LATENESS OF THE HOUR AND THE FACT WE HAVE INTERESTING COMMUNITY FOLKS WHO WOULD LIKE US TO WRAP IT UP.

>> THIS IS THE HOUSING ACCOUNTABILITY ACT PROJECT ON THIS LOT THEY ARE ONLY ALLOWED TO BUILD FOUR UNITS. THEREFORE, THE INCLUSIONARY FEE DOES NOT APPLY. THAT WILL BE SETTLED IN THE COURTS ON THE OTHER LOT. I THINK THEY ARE HANDSOMELY DESIGNED BUILDINGS AND LIKE TO MOVE FOR APPROVAL.

>> SECOND.

>> VICE CHAIR D. PINKSTON: DISCUSSION ON THAT MOTION?

SEEING NO DISCUSSION, SHOSHANA. THERE YOU GO.

>> S. O'KEEFE: I HAVE A META COMMENT. I FEEL LIKE THE THEME OF THE NIGHT IS US BEING ASKED TO CONSIDER THESE PROJECTS IN A
GREATER CONTEXT AND I JUST DON'T FEEL COMFORTABLE WITH THAT IN GENERAL. AND I WANT TO CONSIDER WHAT IS IN FRONT OF ME. AND VOTE ON IT. AND THAT'S WHAT WE'RE ASKED TO DO. AND I THINK WHEN WE GO OUTSIDE OF THAT, OF WHAT OUR VERY NARROWLY SCOPED ROLE, I THINK WE GO INTO DANGEROUS TERRITORY. I'M A RULE FOLLOWER. I'M THE LAWYER ON THE BOARD. I THINK WE SHOULD DO WHAT WE'RE SUPPOSED TO DO, KEEP OUR HEADS DOWN AND MAKE COMMENTS BUT WHEN WE VOTE WE NEED TO MAKE IT CLEAR WE'RE VOTING ON WHAT WE'RE ASKED TO VOTE ON AND THAT APPLIES TO THIS AND THE PREVIOUS.

>> VICE CHAIR D. PINKSTON: JOHN AND THEN PATRICK.

>> P. SHEAHAN: I APPRECIATE YOU POINT OF VIEW AND PERSPECTIVE. MY ONLY PROBLEM WITH IT IS WE MAKE MISTAKES DOING IT THAT WAY AT TIMES. WHEN WE DON'T LOOK AT THE BIG PICTURE AND SEE WHAT'S GOING ON IN AN ENTIRE NEIGHBORHOOD OR BLOCK OR WHATEVER THE CASE MAYBE. WE CAN AND DO MAKE MISTAKES FROM MY POINT OF VIEW. I APPRECIATE YOUR POINT OF VIEW AND THINK YOU ARE CORRECT AS A ZAB MEMBER. I THINK THAT'S THE PROPER PERSPECTIVE.

>> VICE CHAIR D. PINKSTON: STAY FOCUSED ON THE MOTION THAT IS MADE. PHILOSOPHY IS GREAT TOO, MAYBE AFTER THE MEETING. PATRICK.

>> P. SHEAHAN: I THINK WE'RE CLEARLY CAUGHT IN BETWEEN HOUSING ACCOUNTABILITY LAW AND ZONING LAW, WHICH THE PROJECT AS ONLY THE PROJECT COMPLIES WITH. WHILE I SHARE THE CONCERN EXPRESSED ABOUT THE PIECEMEALING. IT'S REALLY IN THE NATURE OF,
I MEAN THE TERM HAS BEEN USED BEFORE, GAMING THE SYSTEM. IT'S THE DEVELOPER GAME THE SYSTEM, HE'S DONE SO IN STRICTLY LEGAL TERMS. WE'RE -- WE DON'T HAVE THE DISCRETION TO RULE ON WHAT I THINK IS ACTUALLY A MORAL ISSUE, THAT MORALLY IT'S OBVIOUS WHAT THE INTENT OF THE DEVELOPER IS. I WISH IT WERE OTHERWISE. BUT WE'RE POWERLESS TO RULE ON A MORAL BASIS. I'M SORRY TO SAY.

>> VICE CHAIR D. PINKSTON: OTHER COMMENTS? I'M PREPARED TO SUPPORT THE MOTION. AND I WOULD LIKE TO HAVE AN OFF-MOTION REQUEST OF THE COUNCIL TO LOOK AT IT IMMEDIATELY. WHICH IS ON THESE SMALL CONDO PROJECTS WE CHARGE AT LEAST ON A PER UNIT BASIS THE SAME FEE WE CHARGE TO RENTAL PROJECTS. ON THE ONES THAT DON'T KICK INTO TO THE HIGHER FEE WE AT LEAST CHARGE THE FEE THAT WOULD BE OTHERWISE APPLICABLE TO A RENTAL PROJECT. I THINK ANY CONDO IN BERKELEY IS GOING TO MAKE MONEY --

>> T. CLARKE: THEY ARE GOING FOR LIKE PEOPLE SAID, A MILLION.

>> VICE CHAIR D. PINKSTON: SOME AMOUNT OF FEE TO GO INTO IS A HOUSING TRUST IS APPROPRIATE ON THE SMALLER PROJECTS. BUT THE FEE CAN BE SO PUNITIVE THEY WON'T BUILD HOUSING. CHARGE A FEE TO EVERYBODY BUT MAKE IT REASONABLE AT THE LOWER END. SECONDLY, WE NEED TO LOOK ADD OUR FREE STRUCTURE. IF THE EFFECT OF THE FEE IS TO DISCOURAGE OWNERSHIP HOUSING WHICH WE HAVE PUBLIC POLICY REASONS FOR WANTING, I THINK WE NEED TO REVISIT THAT. I WOULD LIKE US TO APPROVE THE MOTION AND MAKE THOSE TWO REQUESTS.
You can't pull arbitrary numbers out of the air. It takes some time. It takes some time.

Vice Chair D. Pinkston: Fair enough. They need to look at it.

I agree.

Vice Chair D. Pinkston: All right. We have a motion and it's been seconded. Any further discussion, Patrick?

P. Sheahan: You did make an offer to provide effectively an in-lieu fee more on the scale of a rental project. And recognizing that a lawsuit is an acrimonious situation and an unfortunate one, and I don't think anybody wishes that upon themselves or others. If you can see your way to honor the intent of that offer, I think that would go a long way at least with me and perhaps with your neighbors.

Vice Chair D. Pinkston: Okay. Further discussion? Would staff please call the roll on the motion?

[Roll call vote]

S. O'Keeffe: Yes.

T. Clarke: Yes.

P. Sheahan: Abstain.

C. Olson: No.

J. Selawsky: Yes.

C. Kahn: Yes.

Vice Chair D. Pinkston: Yes.
>> THAT'S FIVE VOTES.

>> VICE CHAIR D. PINKSTON: THAT CONCLUDES OUR AGENDA UNLESS THERE IS ANYTHING STAFF WOULD LIKE TO BRING UP?
I. ZONING PROJECT APPLICATION FORM

(This box for staff use only.)

ZP201 - 012

AP Administrative Use Permit
☐ Use Permit / Variance
☐ Modification of any of the Above

PLN201

☐ Pre-Application

Intake Planner: S9.

DATE STAMP HERE

RECEIVED

AUG 31 2010

LAND USE PLANNING

- Project Address: 1444 S 5TH STREET
  Unit/Suite #: 
  Project Description: FOUR NEW SINGLE FAMILY
  DETACHED, THREE STORY
  HOUSES IN MUR ZONE

- Property Owner Name: 1444 S 5TH STREET, LLC
  Owner's Mailing Address: 305 JONES ST, BERKELEY, CA 94710
  Phone #: 510.332.6468  ☐ Home  ☐ Mobile  ☑ Business  E-mail: mwa@blue.org

- Applicant Name (or write "same"): SAME
  Applicant's Mailing Address: 
  Phone #: ☐ Home  ☐ Mobile  ☐ Business  E-mail: 

For projects involving only the following four items and none of the items on pages 2-3 of this form, please refer to the handout indicated in the right-hand column instead of filling out this form.

1. Converting existing Rental or Tenant In Common (TIC) Units to Condominiums?
   Refer to the "Condominium Conversion Procedures: Guide for Applicants"

2. Demolition of, or exterior alterations to, a designated City of Berkeley Landmark, Structure of Merit, or structure in a City Historic District (or interior alterations to such buildings if publicly owned)?
   Refer to the "Landmark Preservation Commission: Structural Alteration Permit and Design Review Submittal Requirements"

3. Application to designate a City Landmark, Structure of Merit or Historic District?
   Refer to the "Landmark, Structure of Merit or Historic District Designation Form"

4. Exterior changes (including signs) to (1) any structure (new or existing) in a non-residential zoning district OR (2) a commercial or mixed-use building in the R-4 District?
   Refer to the Design Review Submittal Packet

Continued on Page 2
I. ZONING PROJECT APPLICATION FORM

Submittal Requirements Checklist – Instructions

1. Complete the checklist below and sign the bottom of page 3. (Owner must also sign, or provide a letter authorizing the applicant to sign on the owner’s behalf.)

2. For each question for which you check “yes”, review the Zoning Project Submittal Requirements to learn more and to provide the item indicated in the right-hand column.

3. Submit a pdf copy of the entire application, along with the paper application to the Planner at the Permit Service Center, Zoning Counter.

<table>
<thead>
<tr>
<th>Does the project include:</th>
<th>No</th>
<th>Yes</th>
<th>Handout / Application Requirement</th>
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<tbody>
<tr>
<td>1. Any work requiring an Administrative Use Permit, Use Permit, Variance, or Modification of any these permits?</td>
<td>☐</td>
<td>☑</td>
<td>Required For All Projects</td>
</tr>
<tr>
<td>2. Any new structure(s), addition(s), demolition(s), exterior alteration(s), or change(s) of use?</td>
<td>☐</td>
<td>☑</td>
<td>Required For All Projects Involving Construction</td>
</tr>
<tr>
<td>3. A new main building, OR a new accessory building/structure or main building addition within 2 feet of a required setback?</td>
<td>☐</td>
<td>☑</td>
<td>Boundary/Topographic Survey</td>
</tr>
<tr>
<td>4. More than 50 cubic yards of grading?</td>
<td>☐</td>
<td>☑</td>
<td>Grading Plan</td>
</tr>
<tr>
<td>5. A request to waive or reduce required parking?</td>
<td>☐</td>
<td>☑</td>
<td>Parking Survey</td>
</tr>
<tr>
<td>6. (1) a building over three stories in height, (2) a Density Bonus, (3) an FAR over 2.0, (4) over 10,000 sq. ft. of gross floor area; OR any wireless installation</td>
<td>☐</td>
<td>☑</td>
<td>Photo Simulations</td>
</tr>
<tr>
<td>7. A new main building or an addition exceeding 14 feet in average height in the ‘H’ Overlay District?</td>
<td>☐</td>
<td>☑</td>
<td>Section Drawings Story Poles</td>
</tr>
<tr>
<td>8. A new main building or an addition exceeding 14 feet in average height on a site adjacent to a residential use?</td>
<td>☐</td>
<td>☑</td>
<td>Shadow Study</td>
</tr>
<tr>
<td>9. A new main building (except accessory buildings/structures)?</td>
<td>☐</td>
<td>☑</td>
<td>Street Strip Elevation</td>
</tr>
<tr>
<td>10. Creation of (1) 10 or more dwelling or live/work units, or (2) additional condominium units resulting in 5 or more condominium units on the site?</td>
<td>☐</td>
<td>☐</td>
<td>Housing Affordability Statement Applicant Anti-Discriminatory Housing Policies</td>
</tr>
<tr>
<td>11. Under Government Code Section 65915:</td>
<td>☐</td>
<td>☐</td>
<td>Housing Affordability Statement Additional Incentives or Concessions Documents</td>
</tr>
<tr>
<td>a. A request for a Density Bonus?</td>
<td>☐</td>
<td>☑</td>
<td></td>
</tr>
<tr>
<td>b. A request for any concessions or incentives in addition to a Density Bonus?</td>
<td>☐</td>
<td>☑</td>
<td></td>
</tr>
<tr>
<td>12. Creation of (1) 10 or more dwelling units, (2) 5,000 sq. ft. of floor area, OR (3) 25 or more peak hour vehicle trips (based on ITE trip generation rates)?</td>
<td>☐</td>
<td>☑</td>
<td>Traffic Impact Analysis</td>
</tr>
<tr>
<td>13. Creation or replacement of 2,500 square feet or more of impervious surface area? (Includes additions and new buildings but not routine maintenance and re-surfacing)</td>
<td>☐</td>
<td>☑</td>
<td>Stormwater Requirements Checklist</td>
</tr>
<tr>
<td>14. Any new dwelling unit(s), or addition or renovation of 10,000 sq. ft. or more of non-residential space?</td>
<td>☐</td>
<td>☑</td>
<td>Green Building Checklist Energy Efficiency Analysis (nonresidential mixed-use only)</td>
</tr>
<tr>
<td>15. 2,500 sq. ft. or more of new landscape area or 2,500 sq. ft. or more of rehabilitated landscape?</td>
<td>☐</td>
<td>☑</td>
<td>Berkeley Water Efficient and Bay Friendly Landscape Requirements</td>
</tr>
<tr>
<td>16. A new building on a site with a history of soil and/or groundwater contamination or within Environmental Management Areas?</td>
<td>☐</td>
<td>☑</td>
<td>Phase I or II Assessment</td>
</tr>
<tr>
<td>17. A new building or addition in a liquefaction, landslide, or fault zone shown on the “Environmental Constraints Map”</td>
<td>☐</td>
<td>☑</td>
<td>Seismic Hazard Investigation</td>
</tr>
<tr>
<td>18. Federal funding, either directly or through the City of Berkeley Housing Trust Fund?</td>
<td>☐</td>
<td>☑</td>
<td>Area of Potential Effects (APE) Statement</td>
</tr>
<tr>
<td>19. A new business, or a new commercial space with tenant/operator already selected? (Does not include home occupations.)</td>
<td>☐</td>
<td>☑</td>
<td>Zoning Use Questionnaire</td>
</tr>
</tbody>
</table>
### ZONING PROJECT APPLICATION FORM

You must disclose whether or not any of the following are true of the project:

<table>
<thead>
<tr>
<th>Requirement</th>
<th>No</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over 7,500 square feet of office, retail, restaurant, hotel, lodging, manufacturing, light industrial, research and development, warehouse or storage? If so, Affordable Child Care and Affordable Housing Fees apply. Refer to Council Resolutions #66,618-N.S. &amp; #66,617-N.S.</td>
<td>☑️</td>
<td>☐️</td>
</tr>
<tr>
<td>Any new commercial or industrial building, more than five or more Dwelling Units; or an addition or more than 10,000 square feet. If so, Percent for Public Art on Private Projects Program applies, per BMC Chapter 23C.23.</td>
<td>☑️</td>
<td>☐️</td>
</tr>
<tr>
<td>Project involves the elimination or rehabilitation of any dwelling units, and/or are any of the dwelling units on the property controlled rental units? If so, your application will be referred to the Rent Stabilization Board. No action is required on your part. You may contact them at (510) 981-7368 if you have any questions.</td>
<td>☑️</td>
<td>☐️</td>
</tr>
<tr>
<td>Construction activity within the drip line of a Coast Live Oak tree with circumference over 18&quot; at 4'-6&quot; above ground (or 26&quot; aggregate circumference for multi-trunked trees)? If so, the Moratorium on the removal of Coast Live Oaks Ordinance applies, per BMC Chapter 6.52.</td>
<td>☐️</td>
<td>☑️</td>
</tr>
<tr>
<td>Removal of 25% or more of a main building’s exterior walls and roof (including replacement of existing structural members)? If so, the Demolition Ordinance may apply, per BMC Chapter 23C.08.</td>
<td>☑️</td>
<td>☐️</td>
</tr>
<tr>
<td>Smoke Shops or Drug Paraphernalia?</td>
<td>☑️</td>
<td>☐️</td>
</tr>
<tr>
<td>Cultivation, Distribution, Manufacture or Sale of Cannabis?</td>
<td>☑️</td>
<td>☐️</td>
</tr>
<tr>
<td>Demolition or substantial change of a building &gt;40 years old? If so, the Demolition Ordinance will apply, per BMC Chapter 23C.08, as well as Section 15300.2 of the CEQA Guidelines.</td>
<td>☑️</td>
<td>☐️</td>
</tr>
<tr>
<td>Construction on a parcel that is within 40’ of an open creek or 25’ of a culverted creek? If so, the Preservation and Restoration of Natural Watercourses Ordinance applies, per BMC Chapter 17.08.</td>
<td>☑️</td>
<td>☐️</td>
</tr>
</tbody>
</table>

Under penalty of perjury, I certify that:

1. The above information is true and complete to the best of my knowledge, and
2. The attached paper and electronic copies of this application are the same.

("Owner's signature, or signed letter authorizing applicant to apply on owner's behalf, is required for all applications.

Applicant Signature: ___________________________  Owner's Signature: ___________________________

Printed: ___________________________  Printed: Mathew Wadlund

Date: ___________________________  Date: 3.31.18
## I. ZONING PROJECT APPLICATION FORM

(This page is for staff use only.)

Zoning District(s):

<table>
<thead>
<tr>
<th>Zoning Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 23 E 84.030</td>
<td><strong>Construct 4 new SFRs.</strong></td>
</tr>
<tr>
<td>2. 23_____</td>
<td>UP/AUP to</td>
</tr>
<tr>
<td>3. 23_____</td>
<td>UP/AUP to</td>
</tr>
<tr>
<td>4. 23_____</td>
<td>UP/AUP to</td>
</tr>
<tr>
<td>5. 23_____</td>
<td>UP/AUP to</td>
</tr>
<tr>
<td>6. 23_____</td>
<td>UP/AUP to</td>
</tr>
<tr>
<td>7. 23_____</td>
<td>UP/AUP to</td>
</tr>
<tr>
<td>8. 23_____</td>
<td>UP/AUP to</td>
</tr>
<tr>
<td>9. 23_____</td>
<td>UP/AUP to</td>
</tr>
</tbody>
</table>
CITY OF BERKELEY
Receipt Date: 8/31/2018
Receipt Number: 543726

ATTACHMENT 4 - Administrative Record
Page 101 of 310

Applicant Information
Matthew Wadlund
805 JONES ST
BERKELEY CA 94710-1826

Property Information
Parcel Number: 059 232500500

Project Information
Type: Planning
Group: Zoning Permit
Category: NA
Sub-Category: NA
Project:
Work Description: Four new SFRs on vacant lot in MU-R.

Location
1444 FIFTH St
BERKELEY, CA 94710

Paid
Check #: 0102

Date Printed: 8/31/2018

PAYOR: 1444 Fifth Street, LLC

CASHIER: RASMITH

PAYMENT METHOD: Check

Fees:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>AUP020 - AUP Base Tier 2 - Intermediately complex projects in or adjacent to a Residential District</td>
<td>$1800.00</td>
</tr>
<tr>
<td>AUP110 - Records Management</td>
<td>$50.00</td>
</tr>
<tr>
<td>CPF1 - Community Planning Fee</td>
<td>$270.00</td>
</tr>
<tr>
<td>Total:</td>
<td>$2120.00</td>
</tr>
</tbody>
</table>

Property Address:
1444 FIFTH St
BERKELEY, CA 94710
### INVOICE

**Date**: 8/31/2018 11:44:52 AM  
**Invoice #**: 380394  
**Record #:** ZP2018-0172  
**Address**: 1444 FIFTH ST  

**Bill to:**  
Matthew Wadlund  
805 JONES ST  
BERKELEY CA 94710-1826

<table>
<thead>
<tr>
<th>Date Assessed</th>
<th>Invoiced Fee Item</th>
<th>Fee</th>
<th>Paid</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>8/31/2018</td>
<td>Records Management</td>
<td>$50.00</td>
<td>$0.00</td>
<td>$50.00</td>
</tr>
<tr>
<td>8/31/2018</td>
<td>Community Planning Fee</td>
<td>$270.00</td>
<td>$0.00</td>
<td>$270.00</td>
</tr>
<tr>
<td>8/31/2018</td>
<td>AUP Base Tier 2 - Intermediately complex projects in or adjacent to a Residential District</td>
<td>$1,800.00</td>
<td>$0.00</td>
<td>$1,800.00</td>
</tr>
</tbody>
</table>

**Totals**: $2,120.00  
**Paid**: $0.00  
**Balance**: $2,120.00  

Print Date: 8/31/2018
August 31, 2018

Re: 1444 Fifth Street
APN: 59-2325-006

Project Description:

New construction of four single family, detached houses.

Four (4) new houses will be constructed of high quality materials and finishes. Each house will be three stories, three bedrooms, and two bathrooms roughly 1,800 SF gross area. Construction is of wood framing with wood and metal siding. Each house has an enclosed garage. The houses share a drive aisle on the north side of the site and a landscaped commons on the south side. The houses will be built with photovoltaic (PV) electric generation systems resulting in net zero energy use.

The site will be designed and constructed using Low Impact Development (LID) principles of ecologically based stormwater management. Basic Laundry to Landscape greywater systems will be installed also.

Matthew Wadlund, Owner
1446 5th Street, LLC
1442 5TH Sreet - View from southwest  2.17.17