



Planning Commission

CONSENT CALENDAR  
June 29, 2010

To: Honorable Mayor and Members of the City Council  
From: Planning Commission  
Submitted by: Jordan Harrison, Secretary, Planning Commission  
Subject: Zoning Ordinance Amendment to Allow Development Flexibility for Existing Public Libraries

RECOMMENDATION

Adopt Negative Declaration and first reading of an Ordinance to add BMC 23C.04.076 to allow (1) existing public libraries to be changed, expanded, or demolished and a new public library constructed, and (2) modification of any Zoning Ordinance requirement applicable to such projects with a Use Permit, rather than a Variance.

FISCAL IMPACTS OF RECOMMENDATION

By removing the requirement for Variances, the amendment would result in reduced application fees for qualifying library projects.

CURRENT SITUATION AND ITS EFFECTS

The proposed zoning amendment would add a new section (23C.04.076) within BMC Chapter 23C.04 (“Conforming and Non-Conforming Uses, Buildings, and Lots”) that would allow existing public libraries, whether conforming or non-conforming, to be changed, expanded, or demolished and a new public library constructed, and would also allow modification of Zoning Ordinance requirements applicable to such projects with a Use Permit, rather than a Variance. On May 26, 2010, the Planning Commission recommended approval of the proposed amendment.

BACKGROUND

On November 4, 2008, Berkeley voters approved Measure FF, which authorized up to \$26 million in general obligation bonds to “renovate, expand, and make seismic and access improvements at four neighborhood branch libraries”. The Library’s web site provides the following information about the proposed improvements:

“Most of Berkeley’s neighborhood branch libraries have not been renovated in more than 30 years, and findings from the recently completed Branch Libraries Facilities Master Plan indicate the buildings have crowded spaces, suffer from structural and infrastructure impairment, are not ADA-accessible and lack the infrastructure to meet current and future technology needs. With more than 800,000 visits during the year, the branches need substantial upgrades to ensure a safe environment and an

efficient operating system. The revenue from the bond will bring the buildings up to current code standards; meet seismic requirements; make all of the branches fully accessible to Berkeley's diverse population; provide environmentally sustainable "green" operations; and create adequate space for the Tool Library and the adult literacy program, *Berkeley Reads*. Renovations will include the restoration and preservation of historic features at the branch libraries."

The existing branch libraries were constructed between 1923 and 1961 and are lawful non-conforming uses and/or buildings. This status is based in part on intervening changes to the Zoning Ordinance and the current configurations of the sites. It has become clear during the preparation of schematic designs that the improvements being proposed would not comply with several requirements of the Zoning Ordinance, including but not limited to off-street parking, lot coverage, and setbacks. Although the improvements are not intended to expand library collections, programs, or staffing, it has proven difficult to comply with current zoning requirements because the libraries are located on relatively small sites with insufficient space to accommodate wider corridors, larger bathrooms and staff areas, and other needed upgrades while still meeting the zoning requirements.

Under the current Zoning Ordinance, there is no provision to modify these requirements for libraries, except with a Variance. Given the difficulty of making the required findings for a Variance, and the public support for the proposed improvements as evidenced by passage of Measure FF, staff prepared this Zoning Ordinance amendment to allow the Zoning Adjustments Board to modify the requirements of the Zoning Ordinance with a Use Permit.

On May 12, 2010, the Planning Commission set a public hearing for May 26, 2010 to consider the amendment. There was brief discussion of possible alternate language to clarify the intent of the amendment, and a question regarding whether Variances could still be approved for the projects (see under "Rationale for Recommendation" for staff's response to the Variance issue). On May 26, the Commission held a public hearing. Two speakers raised concerns about the amendment, primarily regarding their desire for additional time to review the Proposed Negative Declaration and Initial Study, whether the library projects were consistent with the intent of Measure FF (due to the proposed demolition of two branches, and because the amount of new book shelving is not proportional to the new floor area being created), and alleged "de-emphasis" of physical books at the libraries (see Attachment 6). Two Commissioners expressed opposition to the amendment because they felt it would give special treatment to a particular use, and because they felt Variances could still be approved for the projects. The Commission voted 7-2 to recommend approval of the amendment to the City Council.

Since approval of the bond measure, the Library has conducted extensive public outreach as part of its design process, including meetings with neighbors, library users,

and the Landmarks Preservation Commission. Schematic designs have been completed, and Use Permit applications have been submitted, for the North, South and Claremont branch libraries. The North and Claremont branches were previewed by the Zoning Adjustments Board on June 10, and will return for formal action on July 8. If the ZAB approves the projects at that time, approval would be conditioned upon Council approval of this amendment, and Variances would not be required. The South branch project requires an environmental impact report (EIR) because it would demolish the existing library which is considered to have potential historical significance (although it is not a designated City landmark). The EIR is currently underway, and this project will not be ready for ZAB review until later this year. The application for the West branch project is expected to be submitted within the next two months, and will also require an EIR due to demolition of a potential historical resource. See below for a summary of the CEQA review for the proposed amendment.

Regarding the concerns raised by community members as to whether the proposed projects are consistent with Measure FF, the City Attorney has confirmed that Measure FF does not require expansion or retention of book shelving, and does not prohibit demolition. However, the City Attorney has also advised that Measure FF funds should not be used for demolition absent a validation action. Thus, at present there are no plans to use Measure FF funds for demolition. Rather, current plans are to use other funds for demolition. Because Measure FF expressly referred to "construction," Measure FF funds may be used for construction of new libraries.

#### RATIONALE FOR RECOMMENDATION

The proposed amendment is necessary and appropriate for the following reasons:

- As discussed above, Berkeley voters have expressed support for the proposed branch library improvements by passing Measure FF. Without a zoning amendment, the Measure FF improvements would be more difficult to carry out due to the need for Variances.
- Variances are generally quite difficult to approve. Although one of the Commissioners suggested that the City could be more flexible in its interpretation of the Variance findings, the current approach to the Variance findings is based on the plain language of the findings, and on consistent, longstanding advice from the City Attorney. Deviation from the current approach would be more vulnerable to legal challenge.
- The amendment would more easily allow for substantial public benefits such as improved accessibility, seismic safety, and energy efficiency in the City's branch libraries.

- The Measure FF improvements are not intended to expand library collections, programs, or staffing, therefore the proposed amendment is unlikely to result in any such expansion project in the foreseeable future.
- Staff has written the amendment to allow a broad range of improvements at the existing branch libraries, so that if future expansion or improvement of the libraries should be necessary, such projects could be carried out without Variances. Such projects would still be subject to a Use Permit, with a public hearing, a finding of no detriment, and an opportunity for appeal to the City Council.
- Allowing broad flexibility to modify zoning requirements is appropriate because the branch library projects are still in the schematic design phase, and because it cannot be anticipated at this time what the nature of future library improvements might be. In addition, there are adequate protections through the normal Use Permit process and the California Environmental Quality Act to ensure that any detrimental impacts of public library projects would be reduced or avoided.

ALTERNATIVE ACTIONS CONSIDERED

None.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

A Proposed Negative Declaration and Initial Study were made available for public review from May 26 to June 15, 2010, with a finding that the proposed amendment would not have a significant effect on the environment (see Attachment 4). At this writing, no comments on the Negative Declaration have been received. Staff will forward any comments it receives to the Council. As discretionary projects, all projects proposed under this amendment would still be subject to review pursuant to CEQA.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Planning Commission's Report.

CONTACT PERSON

Debbie Sanderson, Manager, Land Use Planning, 981-7410

Attachments:

- 1: Ordinance
- 2: Public Hearing Notice
- 3: Staff Reports
- 4: Proposed Negative Declaration / Initial Study
- 5: Planning Commission minutes, May 12 and May 26, 2010
- 6: Correspondence submitted to Planning Commission

ORDINANCE NO. -N.S.

ADDING BERKELEY MUNICIPAL CODE SECTION 23C.04.076 TO ALLOW EXISTING PUBLIC LIBRARIES, WHETHER CONFORMING OR NON-CONFORMING, TO BE CHANGED, EXPANDED, OR DEMOLISHED AND A NEW PUBLIC LIBRARY CONSTRUCTED, AND ALLOW MODIFICATION OF ANY ZONING ORDINANCE REQUIREMENT APPLICABLE TO SUCH PROJECTS WITH A USE PERMIT, RATHER THAN A VARIANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 23C.04.076 is added to read as follows:

Section 23C.04.076 – Exemptions for Existing Public Libraries

Notwithstanding any other provision of this Title, any conforming or lawful non-conforming public library existing as of May 1, 2010 may be (1) changed, (2) expanded, or (3) demolished and a new public library constructed on the same site, subject to issuance of a Use Permit, unless such change, expansion or new library is otherwise allowed by this Title. The Board may modify any requirement of this Title applicable to such change, expansion or new library as part of the Use Permit.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.