

ATTACHMENT 1

DRAFT FINDINGS / CONDITIONS

AUGUST 13, 2015

2211 Harold Way

Structural Alteration Permit LMSAP#13-4000002

PROJECT DESCRIPTION

Construction of a proposed 18-story mixed-use development (Project) with: 302 dwelling units, 10,535 square feet of ground-floor commercial space, a six-theater cinema complex, and 177 underground parking spaces; located in Downtown Berkeley on the landmarked Shattuck Hotel site. The project includes removal of the 1926 and portions of the 1913 additions to the landmarked Shattuck Hotel.

CEQA FINDINGS

The City hereby makes the findings required by the California Environmental Quality Act that are set forth in Exhibit A attached hereto, which are incorporated herein by reference.

The City hereby adopts a monitoring program for the mitigation measures that are set forth in Exhibit B attached hereto, which are incorporated herein by reference.

DOWNTOWN DESIGN GUIDELINES FINDINGS

Per BMC Section 23E.12.020 the LPC has considered the design of the Project in relation to its urban context, focusing on the application of the following design guidelines:

Building Design: Facades

- *Articulate side and rear facades in a manner compatible with design of front façade.*

The Project illustrates glass curtain wall on both the north and south shoulders, articulating all facades of the shoulders in a manner compatible with the design of the front façades.

- *Avoid large blank wall surfaces on side and rear facades which are visible from public areas. In these locations, display windows, store entrances and*

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upper windows are encouraged. When this is not feasible, consider the use of ornament, murals, or landscaping along large blank walls.

The blank wall of the “hyphen” has been revised to incorporate theatre signage, poster display cases, and landscaping to avoid a large blank wall surface on the side façade while serving to separate the new construction from the Shattuck Hotel. Further development will be reviewed through Final Design Review in order to address this guideline.

- *The facades of Downtown’s historic buildings are comprised of load-bearing walls and frames, the limits of which give similar scale and expression. Maintain the typical rhythm of structural bays and enframed storefronts of 15-30 feet spacing at ground level, in order to enhance continuity with existing buildings and pedestrian scale.*

The five-story base is made of traditional materials and designed to give similar scale and expression to that of load-bearing walls and frames, to maintain the typical rhythm of structural bays and enframed storefronts at ground level, and to enhance continuity with existing buildings and pedestrian scale.

- *Curtain walls, if used, should be designed with rhythm, patterns and modulation to be visually interesting.*

The Project includes varied fenestration patterns and shading devices to break up curtain wall systems used on the shoulders, which are set back from the base, ensuring that the glazing on the shoulders be high quality and well-detailed. Further development will be reviewed through Final Design Review in order to address this guideline.

Site Design: Frontages, Setbacks, & Heights

- *Consider massing alternatives that would reduce shadow impacts on streets and relate new construction to the scale of nearby buildings.*

The Project includes setbacks above the fifth floor base to relate new construction to the scale of nearby buildings.

- *Maintain and reinforce Downtown’s historic streetwall at the property line. Upper floor setbacks are desirable above 60 feet (usually the fifth floor for residential construction), and should be used above 75 feet.*

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The base of the corner tower and public plaza elements have been redesigned to maintain and reinforce Downtown's historic street wall at the property line in order to meet this guideline.

- *Consider ways that buildings with upper-story setbacks can avoid the "wedding cake effect," such as by incorporating features that tie buildings together visually.*

The Project design incorporates a vertical curtain wall tower element at the primary corner that ties the building together visually. The Design Review Committee forwarded a favorable recommendation for the Project including the balconies, with specific direction for design refinements of the under sides visible from the corner plaza below.

- *Consider how the building's form and orientation can take advantage of sun and shade to appropriately heat and cool the building.*

The Project will achieve LEED Gold. Solar panels are an integral part of the design, as are the glass systems which will have low U-Values in order to provide insulation.

- *At least one publicly-accessible street-level entrance to be provided for every 40 feet along a street facing frontage. Any remainder exceeding 30 feet shall also have a publicly-accessible street-level entrance. No two entrances shall be separated by more than 50 feet.*
- *Clear Glass shall comprise at least 60% of the street facing façade where it is between 3 feet and 8 feet above elevation of adjacent sidewalk*
- *The design of the ground floor shall be visually open to pedestrians such that the main activities of the proposed use can be carried out towards the front of the space.*

The Project design provides at least one publicly-accessible street-level entrance for every 40 feet along its street facing frontages, with clear glass storefronts that are visually open to pedestrians.

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Subareas Where Historic Resources are Concentrated

- *Building alterations, new construction, and public improvements should be designed with particular concern for compatibility with their surroundings, while recognizing the need for continued growth and increased building densities in Downtown's mixed-use areas.*

The Project design incorporates features which illustrate particular concern for compatibility with its surroundings, including: physical separation from historic buildings; setbacks above the base; and variations in massing, rooflines and materials. The Project's location near historic buildings of similar heights, on narrow urban side streets, results in a contextual high-rise infill mixed-use project that is compatible with its surroundings while recognizing the need for continued growth and increased building densities in Downtown's mixed-use area.

In order for the design of the glass curtain wall systems on the shoulders to be more simple and unobtrusive, and to provide a more subordinate backdrop to the repose of the landmarked Shattuck Hotel; its windows should comprise approximately 25-50% consistent with design guidelines for windows on upper facades visible from public areas. Further development will be reviewed through Final Design Review to incorporate translucent panels in order to address this guideline.

- *Design new construction and alterations to resonate with prevalent architectural characteristics of historic development in the vicinity of the project including but not limited to: materials, color, cornice, fenestration patterns, structural bays, roof form, vertical projections, overhanging elements, and motif. New features should not precisely replicate but should generally reinforce patterns associated with historic development.*

The design features, such as strong visual separations and design differentiations between the tower and shoulder elements provide varied massing and scale, which do not precisely replicate but reinforce patterns associated with historic development.

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SECRETARY OF THE INTERIOR'S STANDARDS FINDINGS

Standard Number 2

The Project allows for the preservation of the Mission Revival style original hotel, together with all of its 1912 and most of its 1913 additions. The Hotel will still form a significant presence on Shattuck Avenue, retaining its distinctive form, stucco walls, decorative tile work, wall surface ornamentation, squared towers, hipped roof forms, arched or arcaded wall openings, varied roof heights, red clay tile roof cladding, and broad eave overhangs with exposed rafter tails; with the new building rising behind.

Standard Number 9

The Project incorporates the following design elements that are in keeping with Standard No. 9:

The Project is kept visually and physically separate from the Shattuck Hotel. On Allston Way, the existing alley is retained and separates the project from the 1912 restaurant addition. On Kittredge Street, a two-story "hyphen" (corresponding to one of the movie theatre spaces) separates the Shattuck Hotel from the southern shoulder.

On Harold Way, and Kittredge Street, floors six and higher are set back approximately 15 feet from the project base below. On Allston Way, floors six and higher are set back approximately 38 feet from the project base below. The height of the base is subordinate to the Shattuck Hotel, and is in keeping with the Elks Lodge across Harold Way and the Public Library across Kittredge Street. The use of traditional building materials such as brick enhances the compatibility of the base.

The modulated tower with varying levels of height and scale are similar to the varying heights and eras of construction established in Downtown.

In addition, the Final EIR identifies mitigating design measures for the new construction to bring the Project design more clearly in line with this Standard:

CR-2(a) Incorporation of a horizontal belt course, projecting from the face of the building that corresponds to the cornice and parapet of the 1912 addition. By incorporating this belt, the proposed project, despite being considerably taller than the Shattuck Hotel, would better maintain the scale and feel of the historic building frontage along Allston Way.

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The traditional brick base is accented with pre cast panels at its top level as well as at the ground floor, creating horizontal relationships that tie to the adjacent Shattuck Hotel. Horizontal band details are incorporated into the brick, corresponding directly to the adjacent Shattuck Hotel. Further development will be reviewed through Final Design Review in order to address this mitigating design measure.

CR-2(b) Incorporation of punctured openings or other architectural elements into the design of the two story “hyphen” that separates the Shattuck Hotel from the 12- and 18-story portions of the project to the west. By incorporating these, the project would better maintain an active street frontage that is more in keeping with the ground floors of nearby historical resources.

The blank wall of the “hyphen” is limited in size and has been revised to incorporate theatre signage, poster display cases, and landscaping to avoid a large blank wall surface on the side façade while serving to separate the new construction from the Shattuck Hotel. Further development will be reviewed through Final Design Review in order to address this mitigating design measure.

CR-2(c) Modification of the proportion of void to wall in the wall systems on the shoulders of the proposed project; by replacing them with punched wall systems, or breaking them up with windowless bays; in order to make them more compatible with those exhibited in nearby historical resources.

In order for the design of the glass curtain wall systems on the shoulders to be more simple and unobtrusive, and to provide a more subordinate backdrop to the repose of the landmarked Shattuck Hotel; its windows should comprise approximately 25-50% consistent with design guidelines for windows on upper facades visible from public areas. Further development will be reviewed through Final Design Review to incorporate translucent panels into the curtain wall design in order to make them more compatible with those exhibited in nearby historical resources and to address this mitigating design measure.

CR-2(d) Incorporation of entry plaza design features at the corner of Harold Way and Kittredge Street that maintain the zero lot-line setback characteristic of the nearby historical resources.

The design has been revised in response to LPC design review comments to maintain the zero lot-line set back, and as such this design measure has been met.

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CR-3 While the project would partially obscure views from the base of UC Berkeley's Campanile and Campanile Way, view impacts related to historic resources would be less than significant.

The Project addresses these views as an urban design issue and further reduces this potential impact.

LANDMARKS PRESERVATION ORDINANCE FINDINGS

3.24.260 Permit application – Review standards and criteria

B. In all instances, the proposed work shall be as appropriate for and as consistent with the purposes of this chapter as is possible within the peculiar circumstances of the owner of the property and preservation or enhancement of the characteristics and particular features specified in the designation.

C. Approval of permit applications (for construction, alteration or repair) pursuant to this section may be granted only upon determination that the proposal conforms to the criteria set forth ... Below:

1.a. For applications relating to Landmark sites, the proposed work shall not adversely affect the exterior architectural features of the Landmark and, where specified in the designation for a publicly owned Landmark, its major interior architectural features; nor shall the proposed work adversely affect the special character or special historical, architectural or aesthetic interest or value of the Landmark and its site, as viewed both in themselves and in their setting.

Consistent with Standard No. 2, the Project allows for the preservation of the Mission Revival style original hotel, together with all of its 1912 and most of its 1913 additions, and seismic retrofit of the first floor retail located within the hotel building. The Hotel will still form a significant presence on Shattuck Avenue, retaining its distinctive form, stucco walls, decorative tile work, wall surface ornamentation, squared towers, hipped roof forms, arched or arcaded wall openings, varied roof heights, red clay tile roof cladding, and broad eave overhangs with exposed rafter tails; with the new building rising behind. Mitigation measures are included to reduce any construction related impacts to the hotel, and as such the project will not adversely affect its features.

Consistent with Standard No. 9, the Project is kept visually and physically separate from the Shattuck Hotel. On Allston Way, the existing alley is retained and separates the project from the 1912 restaurant addition. On Kittredge Street, a two-story "hyphen" (corresponding to one of the movie theatre spaces) separates the Shattuck Hotel from the project.

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On Harold Way, and Kittredge Street, floors six and higher are set back approximately 15 feet, and on Allston Way they are set back approximately 38 feet from the five-story base below. The height of the base is subordinate to the Shattuck Hotel, and is in keeping with the Elks Lodge across Harold Way and the Public Library across Kittredge Street. The use of traditional building materials such as brick enhances the compatibility of the base. The modulated tower with varying levels of height and scale are similar to the varying heights and eras of construction established in Downtown.

The Final EIR also identifies mitigating design measures for the new construction to bring the Project design more clearly in line with this Standard.

3.24.260 Permit application – Review standards and criteria

2. For permit applications for demolition: the commission shall find that the designated landmark, or portion thereof is in such condition that it is not feasible to preserve or restore it, taking into consideration the economic feasibility of alternatives to the proposal, and balancing the interest of the public in preserving the designated landmark, or portion thereof and the interest of the owner of the landmark site in its utilization.

3.24.270 Permit application – Finding of hardship authorized when -- Effect.

Regardless of whether or not the standards set forth in Section 3.24.260 above are met, the commission may approve a permit application to carry out alterations or construction on a Landmark site, if the applicant presents clear and convincing evidence to the commission that such disapproval will work immediate and substantial hardship because of conditions peculiar to the particular structure or feature involved, and that failure to disapprove the application will be consistent with the purposes of this chapter. If hardship is found to exist under this section, the commission shall make a written finding to that effect, and shall also specify in writing the facts relied upon in making such finding. Nothing in this section shall prohibit the commission from acting to modify or suspend action on any application pursuant to Sections 3.24.220 through 3.24.250.

The partial removal of the 1913 and total removal of the 1926 addition constitute a significant impact to historical resources. Even after mitigation measures for documentation, salvage, on-site interpretation, and contribution to the Historic Preservation Fund; the impact would remain significant and unavoidable (CR-1). Taking into consideration: the project objectives; the extent to which project alternatives would achieve the project objectives; and the identified mitigation measures to reduce potential impacts to less than significant; the Commission

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may find that because of conditions peculiar to the particular site, structures and features involved, failure to disapprove the application will be consistent with the purposes of the Landmarks Preservation Ordinance under the particular circumstances of this case; consistent with the CEQA Findings and Statement of Overriding Considerations for the Project, Exhibit A, attached hereto which are incorporated herein by reference.

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Landmarks Preservation 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 Permit, under the title 'Structural Alteration 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. Plans and Representations Become Conditions

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.

3. Subject to All Applicable Laws and Regulations

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.

4. Exercise and Lapse of Permits (Section 23B.56.100)

- A. 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.
- B. 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

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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.

5. Indemnification Agreement

The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

FINAL DESIGN REVIEW CONDITIONS

The following additional conditions are attached to this Permit:

1. The traditional brick base is accented with pre cast panels at its top level as well as at the ground floor, creating horizontal relationships that tie to the adjacent Shattuck Hotel. Additionally, horizontal band details are incorporated into the brick, corresponding directly to the adjacent Shattuck Hotel. Further development will be reviewed through Final Design Review in order to address mitigating design measure CR-2 (a).
2. The blank wall of the “hyphen” is limited in size and has been revised to incorporate theatre signage, poster display cases, and landscaping to avoid a large blank wall surface on the side façade while serving to separate the new construction from the Shattuck Hotel. Further development will be reviewed through Final Design Review in order to address mitigating design measure CR-2(b).
3. In order for the design of the glass curtain wall systems on the shoulders to be more simple and unobtrusive, and to provide a more subordinate backdrop to the repose of the landmarked Shattuck Hotel; its windows should comprise approximately 25-50% consistent with design guidelines for windows on upper facades visible from public areas. Further development will be reviewed through Final Design Review to incorporate translucent panels into the curtain wall design in order to make them more compatible with those exhibited in nearby historical resources and to address mitigating design measure CR-2(c).

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