



Planning and Development Department
Land Use Planning

U S E P E R M I T

CITY OF BERKELEY ZONING ORDINANCE Berkeley Municipal Code Title 23

USE PERMIT # 10-10000078

Property Address:

2133 UNIVERSITY AVENUE
1979-1987 Shattuck Avenue
2101-2113 University Avenue
2125-2145 University Avenue and
1922 & 1930 Walnut Street

Permittee Name:

EQUITY RESIDENTIAL

Use and/or Construction Permitted:

The proposed project would create 205 new dwelling units, convert 16,824 square feet of office use to residential, reuse approximately 30,000 square feet of existing commercial space (approximately 8,000 square feet of food service use and 22,000 square feet of retail use) and relocate or demolish the residential structures with eight dwelling units at 1922 & 1930 Walnut Street. 80 parking spaces are proposed.

- Use Permit, per BMC Sections 23C.08.010 & 23C.08.020, to demolish 2 residential buildings;
- Administrative Use Permit, per BMC Section 23C.08.050.B, to allow the demolition of two non-residential accessory structures;
- Administrative Use Permit, per BMC Section 23E.28.080.H, to allow a driveway over 20-foot wide along Berkeley Way;
- Administrative Use Permit, per BMC Section 23E.04.020.C, to allow mechanical penthouses, elevator equipment rooms, and other architectural elements to exceed the height limit;
- Use Permit, BMC Section 23E.68.030, to construct dwellings within a mixed-use development;
- Use Permit, BMC Section 23E.68.050, to construct more than 10,000 sq ft of floor area;
- Use Permit, BMC Section 23E.68.070.A, to exceed the 60-foot height limit; and
- Use Permit, BMC Section 23E.68.080.D, to provide less than the minimum required number of residential parking spaces by paying an in-lieu fee to provide for enhanced transit services.

FINDINGS, CONDITIONS AND APPROVED PLANS ATTACHED

The Use Permit herein described has been duly granted by the Zoning Adjustments Board and is in effect on July 8, 2013.

ATTACHMENT 1 - FINDINGS &
CONDITIONS
ZONING ADJUSTMENTS BOARD
JUNE 13, 2013

**Acheson Commons – 2133 University Avenue
1979-1987 Shattuck Avenue, 2101-2113 University Avenue, 2125-
2145 University Avenue & 1922 & 1930 Walnut Street.**

Use Permit #10-10000078.

PROJECT DESCRIPTION

The proposed project would create 205 new dwelling units, convert 16,824 square feet of office use to residential, reuse approximately 30,000 square feet of existing commercial space (approximately 8,000 square feet of food service use and 22,000 square feet of retail use) and relocate or demolish the residential structures with eight dwelling units at 1922 & 1930 Walnut Street. 80 parking spaces are proposed.

CEQA FINDINGS

An Environmental Impact Report (EIR) was prepared in accordance with the California Environmental Quality Act. On November 29, 2012, the ZAB held a hearing regarding the EIR, and voted 7-0-0-2 to Certify the EIR.

The project was later revised, and to comply with CEQA, the City prepared an Addendum (Attachment 4). Pursuant to *CEQA Guidelines* Section 15164, an Addendum to previously certified EIR is needed “if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.” Section 15162 specifies that no subsequent EIR shall be prepared for a project unless:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - A. The project will have one or more significant effects not discussed in the previous EIR or negative declarations;
 - B. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - C. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - D. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Pursuant to *CEQA Guidelines* Section 15164(e), within the attached Addendum is a discussion of the: 1) proposed changes to the project that have occurred since certification of the Final EIR; 2) less-than-significant environmental impacts associated with these changes; and 3) reasons for the City's conclusion that changes to the proposed project (and associated environmental effects) do not meet the conditions described in Section 15162 calling for preparation of a subsequent EIR.

Based on the analysis in the attached Addendum, the City concludes that the Final EIR adequately addresses the environmental effects of the proposed revisions to the project, and that the proposed changes to the project constitute a minor refinement of the project description. The City finds that this minor refinement would not result in significant environmental effects or require implementation of new mitigation measures not already identified in the Final EIR

GENERAL NON-DETRIMENT FINDING

1. Pursuant to Berkeley Municipal Code Sections 23B.32.040, General Non-Detriment Finding, and 23E.68.090, the Zoning Adjustments Board finds that the project described above, under the circumstances of the particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City, for the following reasons:
 - A. The DRC has unanimously granted the project a favorable recommendation, finding the project is consistent with the City's Design Guidelines. Thus, the project is compatible with the surrounding buildings;
 - B. The project addresses State-mandated Housing Needs by providing 184 market-rate units, and 21 permanently affordable housing units for very-low income households (or 205 market-rate units and a payment of \$5.7 Million to provide for affordable housing), which is a significant benefit of the project;
 - C. The project would rehabilitate and revitalize the facades of four important and prominent historic resources at the intersection of Shattuck, Walnut and University Avenues;
 - D. The project will increase high density housing, within the Downtown and in close proximity to alternative forms of transportation; and
 - E. The project provides infill development on an under-utilized site that embodies principles of sustainable planning and construction, and is compatible with existing city character, neighboring land uses, and architectural scale and design.

DEMOLITION FINDINGS

2. Pursuant to Berkeley Municipal Code Sections 23C.08.010.B & 23C.08.020.A of the Zoning Ordinance, the Zoning Adjustments Board finds that, the demolition of eight dwellings is not materially detrimental to the housing needs and public interest of any affected neighborhood or the City because the applicant will provide eight additional below market-rate units (at no more than 50% of AMI) either by relocating the two brown shingle buildings or by providing the units within the project. In addition, the demolition is necessary to permit construction approved pursuant to this Ordinance, of at least the same number of dwelling units as the demolished structures because the demolition will allow for a replacement building with more floor area and 197 more dwelling units than currently exist to better serve the purposes of the C-DMU District.
3. The Zoning Adjustments Board also finds that regarding the dwellings within 1922 and 1930 Walnut Avenue, Berkeley Municipal Code Sections 23C.08.030.E & 23C.08.030.F of the

Zoning Ordinance do not apply to the project because: 1) Sections 23C.08.030.E & 23C.08.030.F only apply to controlled rental units, which are defined, in part, as units that are available for rent; 2) six of the units were vacant and were not placed on the rental market since 2003, one was vacant and not on the rental market since 2005, and one unit was vacant and not on the rental market since 2010; 3) all eight dwelling units were vacant when Equity Residential took ownership of the property and have remained vacant since; and 4) there is no evidence of wrongful eviction, which might occur if an owner wants to sell the property as vacant.

4. Pursuant to Berkeley Municipal Code Section 23C.08.050.B, the demolition of two accessory structures: 1) a single-story, 622 square foot building behind the Krishna Copy building; and 2) a single-story, 1,467 square foot building behind the Acheson building, exceeds the by right limit of 300 square feet, and thus an Administrative Use Permit is required. The Zoning Adjustments Board finds that the demolition would remove two buildings that are not used for any commercial purpose and that the removal allows the construction of the mixed-use housing project.

C-DMU FINDINGS

5. Pursuant to Berkeley Municipal Code Section 23E.68.090 of the Zoning Ordinance, the proposed furthers the purposes of the CD-MU District for the following reasons:
 - A. The project will attain LEED Gold, or equivalent;
 - B. The project would redevelop an underutilized site and would promote the objectives and goals of the Downtown Area Plan. Specifically, the proposed project would be consistent with and further Land Use Goals 1, 2, 3, and 4;
 - C. The project will implement the Streets and Open Space Improvement Standards of the Downtown Area Plan for the abutting public right-of-way;
 - D. The project will make a payment of an impact fee to assist the City's effort to implement the Streets and Open Space Improvement Plan;
 - E. The project facilitates complete rehabilitation of the deteriorating Landmark Acheson Physicians building, and partial rehabilitation of the deteriorating Landmark MacFarlane and Ace Hardware Buildings, and the Boldt/Krishna Copy Building which is eligible of the California Register; and
 - F. Regarding Historic Resources in general, the project works to harmonize and balance the twin goals of preserving and enhancing historic resources and encouraging new and complementary development, in line with the Historic Preservation and Urban Design Strategic Statement of the Downtown Area Plan by clearly breaking additions at historical building envelopes, providing minimal setbacks, and differentiating from the historical facades in terms of style, materials and colors. Because of this, the ZAB finds that no designated landmark structure, structure of merit, or historic district in the vicinity would be adversely affected by the appearance or design of the proposed additions.

C-DMU PARKING IN-LIEU FINDINGS

6. Pursuant to Berkeley Municipal Code Section 23E.68.090.H of the Zoning Ordinance, the Zoning Adjustments Board finds that while the project is required to provide 83 parking spaces, a payment of an in-lieu fee will be made in exchange for every space that will not be provided. This in-lieu fee will support a fund established by the City to provide for enhanced transit services.

ROOFTOP PROJECTIONS FINDINGS

7. Per BMC Section 23E.04.020.C, mechanical penthouses, elevator equipment rooms, and cupolas, domes, turrets, and other architectural elements that exceed a District's height limit requires approval of an Administrative Use Permit. This section limits these features to no more than 15% of the average floor area of all of the building's floors; and no tower or similar structure shall be used as habitable space or for any commercial purpose, other than that which may accommodate the mechanical needs of the building. The Macfarlane/Krishna Building and the Ace Hardware Building would each include architectural features and enclosed elevator/stair roof access that will extend above the 75-foot building height. The elevator/stair access for both buildings would be enclosed, and would only provide access to the roof; the three architectural elements that are partially enclosed for the Macfarlane/Krishna Building do not provide habitable space. The Macfarlane/Krishna Building average floor area is 10,890, and the enclosed elevator/stair roof access rooms are no more than 1,357 square feet. The Ace Hardware Building average floor area is 5,338, and the enclosed elevator/stair roof access rooms are no more than 773 square feet. For both buildings, the area of these features would not exceed 15% of the average floor area of the building's floors.

STANDARD CONDITIONS

1. **Conditions and Mitigation Monitoring and Reporting Program Shall be Printed on Plans**
The Conditions of Approval & Mitigation Monitoring and Reporting Program shall be printed starting on the second sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions' or 'Mitigation Monitoring and Reporting Program'. 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; separate 8-1/2" by 11" sheets are not acceptable.
2. **Applicant Responsible for Compliance with Conditions**
The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.
3. **Uses Approved Deemed to Exclude Other Uses** (Section 23B.56.010)
 - A. This Permit authorizes only those uses and activities actually proposed in the application and exclude other uses and activities.
 - B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it upon demolition of the existing building at the site.
4. **Modification of Permits** (Section 23B.56.020)
No change in the use for which this Permit is approved is permitted unless the Permit is modified by the Zoning Adjustments Board, in conformance with Section 23B.56.020.A.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.
5. **Plans and Representations Become Conditions** (Section 23B.56.030)
Except as expressly specified herein, the final site plan, floor plans, building elevations and any additional information or representations submitted by the applicant during the Staff review and public hearing process leading to the approval of this Permit, whether oral or written, which indicated the proposed structure or manner of operation are deemed conditions of approval.
6. **Subject to all City and Other Regulations** (Section 23B.56.040)
The approved use and/or construction are subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies.
7. **Exercised Permit for Use Survives Vacancy of Property** (Section 23B.56.080)
Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8 below.

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

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has (1) applied for a building permit or (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold 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.

ADDITIONAL CONDITIONS

Pursuant to BMC Section 23B.32.040.D, the Zoning Adjustments Board attaches the following conditions to this Permit:

Prior to Submittal of Any Building Permit:

- 10. Address Assignment.** The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (2120 Milvia Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application

Prior to Issuance of Any Building Permit:

- 11. Compliance with Conditions and Environmental Mitigations.** The building permit application is subject to verification of compliance with the adopted **Mitigation Monitoring and Reporting Program**. The applicant shall be responsible for demonstrating compliance with all conditions of approval and mitigation measures per the timeline set forth by this use permit. The applicant shall deposit \$10,000 with the City, or less with the approval of the Zoning Officer, to pay for the cost of monitoring compliance with these Conditions of Approval and other applicable conditions and regulations. Should compliance-monitoring expenses exceed the initial deposit, the applicant shall deposit additional funds to cover such additional expenses upon the request of the Zoning Officer; any unused deposit will be refunded to the applicant.
- 12. Design Review.** The applicant shall receive approval of Final Design Review by the Design Review Committee for the Walnut Building.
- 13. Landmarks Preservation Review.** The applicant shall receive approval of Final Design Review by the Landmarks Preservation Commission Subcommittee assigned to this project for the alterations to the MacFarlane Building, the Krishna Copy Center Building, the Crepes a Go-Go Building, the Acheson Physicians Building and the Ace Hardware Building.
- 14. Green Building.** This project shall comply with all applicable standards of the Stopwaste Small Commercial Checklist, or equivalent, as determined by the Zoning Officer. The rating shall be appropriate to the use type of the proposed construction.

15. Green Building. This project shall attain a LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC), or shall attain building performance equivalent to this rating, as determined by the Zoning Officer. The applicant shall review the Draft LEED NC Checklist and submit any changes that affect the project's score, along with comments on revised measures, to the project planner. Provided that the project qualifies, the applicant shall also apply for PG&E's "Savings by Design" program for new commercial construction and submit a copy of the application to the project planner
16. Electric Vehicle (PEV) Charging System. At least 10% of the project parking spaces for residential parking and 3% of the parking spaces for non-residential parking shall be pre-wired to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (PEV) charging system installation, as specified by the Office of Energy and Sustainable Development. Any Level 2 PEV charging systems installed at parking spaces will be counted toward the applicable pre-wiring requirement.
17. Solar Readiness. The project shall be solar ready to accommodate the future installation of a photovoltaic (PV) solar energy system and/or solar hot water system as specified by the Office of Energy and Sustainable Development. Exemptions are permitted for sufficient demonstration that the accommodation of a PV solar energy system and/or solar hot water heater would be impractical due to poor solar resources at the site or a substitute renewable energy or hot water system will be installed at the time of construction.
18. First Source Agreement. The applicant and/or end user(s) shall enter into a First Source Agreement with the City's WorkSource program, a referral service for Berkeley residents seeking jobs. The agreement requires employers to consult WorkSource before hiring construction workers or permanent employees, but leaves the final hiring decision with the employer. Please call (510) 981-7551 for further information, or visit WorkSource at 1947 Center Street.
19. Affordable Housing. Consistent with BMC Chapter 22.20 and Resolutions 65,920 N.S. AND Resolution 66,015-N.S., the applicant shall select one and relinquish the other of the following two options:
 - A. Provide rental units at rates affordable to Very Low-Income Households for the life of the project, consistent with the requirements of BMC Chapter 22.20. The applicant shall enter into a Regulatory Agreement with the City to include any terms and affordability standards determined by the City to be necessary to ensure such compliance.
 - Or-
 - B. Pay the affordable housing impact fee prior to issuance of a certificate of occupancy in compliance with the requirements of BMC Chapter 22.20 and Resolutions 65,920-N.S. AND Resolution 66,015-N.S..
20. Replacement Units. Provide eight rental units at rates affordable to Very Low-Income Households for the life of the project. These units shall be subject to the terms and affordability defined in a Regulatory Agreement with the City. These units shall be provided by either a) Relocating one or both of the building(s) containing the units to a different location within the City of Berkeley with no net loss of units; or b) Providing new units that are equal in number and comparable in size to any units that are demolished. These units shall be provided within the project and will be in addition to any below-market rate units required by Condition #19.

- 21. Construction Phases.** The applicant shall provide the Zoning Officer with a schedule of major construction phases, a description of the activities and anticipated noise levels of each phase, and the name(s) and phone number(s) of the individual(s) directly supervising each phase. The Zoning Officer or his designee shall have the authority to require an on-site meeting with these individuals as necessary to ensure compliance with these conditions. The applicant shall notify the Zoning Officer of any changes to this schedule as soon as possible.
- 22. Public Works.** Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.
- 23. Transportation Management Permit.** The applicant and all persons associated with the project are hereby notified that a Transportation Management Permit (TMP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks or pedestrian paths
 - Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
 - Storage of building materials, dumpsters, debris anywhere in the public ROW
 - Provision of exclusive contractor parking on-street
 - Significant truck activity.

Contact the Permit Service Center (PSC) at 2120 Milvia Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Contact the Public Works Traffic Engineering Division (981-6400) regarding the Transportation Management Permit.

The Transportation Management Permit may include designation of a specific truck haul route. Meter heads (if in the construction area) shall be removed only by City staff. Contact the site inspector 72 hours in advance of required removal so arrangements can be made.

- 24. Public Notice of Construction.** In addition to Mitigation Measure NOISE-2, the notice to businesses and residents within 500 feet of the project site shall include: (1) project description, (2) description of construction activities, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Noise Management Individual for the project, (5) commitment to notify neighbors at least four days in advance of authorized extended work hours and the reason for extended hours, and (6) that construction work is about to commence. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.
- 25. Construction and Demolition Recycling Plan.** The applicant shall complete a "Construction and Demolition Recycling Plan", submit the plan to the Solid Waste Management Division for approval and attach the approved plan to the construction drawings. The plan template is available at www.ci.berkeley.ca.us/onlineservice/forms.htm#planning (look under "Land Use Planning") or by contacting Land Use Planning at 510-981-7410. After completing the form contact Solid Waste Management at 981-6368 for approval. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.
- 26. Demolitions.** Prior to approving any permit for on-site partial or complete demolition activities, a hazardous materials survey must be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead based paint, asbestos, PCB containing

equipment, treated wood and mercury containing devices. The survey shall include hazardous materials removal and disposal procedures to be implemented pursuant to state and local recycling and hazardous waste rules. If the survey identifies hazardous materials, the removal and disposal procedures included in the survey shall become conditions of any building or demolition permit for the project. Hazardous materials disposal and/or reuse must be submitted to TMD within 30 days of demolition.

27. Construction Traffic Management Plan. The applicant shall secure the City Traffic Engineer's approval of a Construction Traffic Management plan. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, 3rd floor, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The Construction Traffic Management Plan shall be incorporated into the overall Construction Management Plan (required by Condition 18) and shall be consistent with any other requirements of the construction phase. The City 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.

28. Environmental Site Assessments

- A. Applicants shall provide all available Phase I and Phase II Environmental Site Assessment investigations to TMD for review at the time of submittal of a development application.
- B. In the absence of Phase I investigations, the Toxics Management Division (TMD) shall require a Phase I to be developed per ASTM standards for all non-residential projects and residential projects with three or more units which are in the Environmental Management Area and which include excavations over 3 feet below grade. Phase I reports that are older than 5 years or where the land use has substantially changed shall be updated.
- C. All projects located on a site where a Phase I report suggests the presence of contamination will require a Phase II Assessment or equivalent.
- D. A Soils and Groundwater Management Plan (SGMP) shall be submitted for all non-residential projects and residential projects with three or more units that are located in the Environmental Management Area (EMA) with excavations exceeding 5 feet below grade. The SGMP will address soils and groundwater management from identification of pollutants to disposal, and will comply with state and local soil and water handling restrictions of the East Bay Municipal Utility District, Berkeley Municipal Code, National Pollution Disposal Elimination Service, and California hazardous waste generator regulations Title 22 California Code of Regulations Section 66360.

The SGMP shall include provisions to notify TMD of previously undiscovered contamination conditions. The SGMP shall include management of odors, dust and other nuisance conditions expected during development. The developer shall advertise a phone number for community questions and complaints.

29. Parking Lift. Any parking lift in a structure shall have coverage by fire sprinklers at all levels, both above and below grade. Any parking lift with below grade pits greater than 6 feet in depth, with a capacity of more than two vehicles shall have an emergency access gallery for the below grade area. The gallery can be located on either long axis of the pit. The gallery shall have at least a clear headroom height of 7 feet and clear width of 3 feet. The gallery

shall be accessed from the grade of the drive aisle level by stairs or if directly into a pit access may be by ladder with an angle of no greater than 60 degrees, minimum 4 inch wide treads and a hand rail on both sides. When any pit is greater than 3 vehicles in width, access shall be provided at each end of the gallery. An exhaust fan override switch shall be located at the fire department entrance point to the parking area. The override switch shall turn the exhaust fan on at a maximum exhaust rate.

30. Parking Lift. Parking lifts shall be used for parking of vehicles only. Vehicles that can tip over, such as two-wheeled vehicles, shall be provided with a rack to prevent tipping over. No storage shall be allowed on or in parking lifts or pit areas. Vehicles shall not be used for storage while parked on or in the lifts. Any parking spaces open to the public shall require a parking attendant.
31. Parking In-Lieu Fee. Consistent with BMC 23E.28.080.D, the applicant shall pay a fee in lieu into a fund to be established by the City Council that provides for enhanced transit services. 83 parking spaces are required for this project. Should less than 83 spaces be provided, prior to the issuance of the Building Permit, the applicant shall pay a fee for every parking space that is not provided, per the fee schedule set by the City Council.
32. Storm Water Treatment. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in Berkeley Municipal Code Section 17.20. The following conditions apply:
 - A. The project plans shall identify site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants into the City's storm drainage system, regardless of season or weather conditions.
 - B. The project plans shall include erosion control measures to prevent soil, dirt, and debris from entering the storm drain system, in accordance with BMC Chapter 17.20.
 - C. Trash enclosures and/or recycling areas shall be covered; no other area shall drain onto these areas. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. The applicant shall contact the City and East Bay Municipal Utility District (EBMUD) for specific connection and discharge requirements prior to building permit issuance. Discharges to the sanitary sewer are subject to the review, approval, and conditions of the City and EBMUD.
 - D. Landscaping shall be designed with efficient irrigation to reduce runoff and promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where feasible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
 - E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F. All on-site storm drain inlets/catch basins **must** be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.

- 33. Streets and Open Space Improvement Plan: Street Frontage Improvements.** Consistent with the Proposed Streets and Open Space Improvement Plan (SOSIP)¹, and the Downtown Area Plan², the developer shall construct and install the curb, gutter, sidewalk, dividers, street trees, benches and planters along the project's street frontage, consistent with the proposed Streets and Open Space Improvement Plan (SOSIP), or subsequent iterations as adopted by the City. Such improvements shall be included with the building permit submittal, designed and constructed as directed by the Public Works Department, and constructed prior to occupancy.

These improvements include the standard right-of-way requirements plus that portion of the "Shattuck Square/University Ave" SOSIP Improvement Project (Shattuck Sq. Project) located along the project's University Avenue frontage, between the property's southern property line and the centerline of University Avenue.

The developer may choose to submit a payment to the City in lieu of building its portion of the Shattuck Sq. Project. This payment shall equal the estimated cost to the City, as determined by the City Engineer, to construct these waived improvements. Such payment shall be submitted according to a schedule to be established by the Zoning Officer, in consultation with the Transportation Division Manager, with the first installment due prior to issuance of building permit.

- 34. Streets and Open Space Improvement Plan: Impact Fee:** As required by BMC Section 23E.68.075, the project shall pay an impact fee to implement the Streets and Open Space Improvement Plan (SOSIP), as may be adopted by the City Council, if said fee is adopted prior to issuance of the Certificate of Occupancy. The City shall deposit this payment into the Downtown Streets and Open Space Improvement Fund (SOSIF), or its equivalent, to pay for the design and construction of the SOSIP Major Projects. In no case shall the required fee exceed \$2.23 per square foot of the project's net new residential gross floor area, and \$1.68 per square foot of net new commercial gross floor area. "Gross Floor Area" shall be as defined in BMC Section 23F.04.010.

The fee shall be calculated and assessed consistent with the policies of the *Downtown Area Plan Streets and Open Space Improvement Fee Nexus Study*, (Draft July 2011,) or subsequent iterations as adopted by the City Council. At the City's discretion, the City Manager or her designee may reduce the required SOSIP Impact Fee, on a \$1 to \$1 ratio, as a credit for constructing all or a portion of a Major SOSIP Improvement Project.

The fee shall be paid according to a schedule established by the City Manager or her designee.

Prior to the Start of Construction or Demolition:

- 35. Construction Meeting.** The applicant shall request of the Zoning Officer an on-site meeting with City staff and key parties involved in the early phases of construction (e.g., applicant, general contractor, foundation subcontractors) to review these conditions and the construction schedule. The general contractor or applicant shall ensure that all subcontractors involved in subsequent phases of construction aware of the conditions of approval.

¹ See *Proposed Downtown Streets & Open Space Improvement Plan*, page 139, lines 4333 through 4354. Also Page 142, "Policies and Actions."

² *Downtown Area Plan, Public Review Draft*, February 2012, Goal LU-2.4, "Developer Contributions for Open Space," page LU-14.

During Construction:

36. DAP MM AIR-3: The following dust and particulate control measures shall be implemented during construction:

Dust (PM10) Control Measures:

- A. Water all active construction areas at least twice daily and more often during windy periods. Active areas adjacent to residences should be kept damp at all times.
- B. Cover all hauling trucks or maintain at least two feet of freeboard.
- C. Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.
- D. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.
- E. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).
- F. Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles.
- G. Limit traffic speeds on any unpaved roads to 15 mph.
- H. Replant vegetation in disturbed areas as quickly as possible.
- I. Suspend construction activities that cause visible dust plumes to extend beyond the construction site.

Diesel Particulate Matter and PM2.5 Control Measures:

- A. Clear signage at all construction sites will be posted indicating that diesel equipment standing idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were onsite or adjacent to the construction site.
- B. Opacity is an indicator of exhaust particulate emissions from off-road diesel powered equipment. The project shall ensure that emissions from all construction diesel powered equipment used on the project site do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately.
- C. The contractor shall install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g. compressors).
- D. Properly tune and maintain equipment for low emissions.

37. Construction Hours. Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday. It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite period of time. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. The project shall not be allowed more than 15 extended working days.

38. Construction Noise. To ensure compliance with the City of Berkeley's Noise Ordinance, the Zoning Officer is authorized to place additional limitations on the hours of operation and/or halt construction until corrective measures are taken.
39. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
40. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.
41. Public Works. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
42. Public Works. 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.
43. Public Works. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
44. Public Works. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
45. Public Works. After construction is complete, all drainage culverts shall be inspected for accumulated sediment. If sediment accumulation has occurred, these drainage structures shall be cleared of debris and sediment.
46. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season (between October 15 and April 15), the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
47. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season (November through March) to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
48. Toxics Management, Clean up. Contaminated sites shall be assessed and cleaned up as required by the TMD under authority of BMC 15.12.100 and Title 23, CCR, Chapter 16, Section 2652 et seq. The cleanup shall be risk based and follow California Environmental Protection Agency policies and procedures including State Water Board's Leaking Underground Fuel Tank (LUFT) Manual, Site Cleanup Program (SCP) and other CalEPA guidance.

Prior to Issuance of Occupancy Permit or Final Inspection:

49. Compliance with Conditions and Environmental Mitigations. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit. Occupancy is subject to verification of compliance to the Mitigation Monitoring and Reporting Program.
50. Conformance to Approved Plan. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **June 6, 2013**, except as modified by conditions of approval herein.
51. Green Building. The applicant shall update, sign, and submit an *As-Built GreenPoint Checklist* reflecting final as-built conditions, including the total green building score, to the project planner. The applicant shall provide the project planner with a *Final Energy Conservation Summary Form* for the project, which shall be completed either by PG&E or by a qualified consultant retained by the applicant. If the applicant has requested that PG&E complete this form, and PG&E is unable to do so prior to occupancy permit or final inspection approval, the applicant may satisfy this condition by submitting documentation that PG&E intends to complete the form to the project planner.
52. Green Building. Proof of Compliance to LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC), or equivalent.
53. Construction and Demolition Recycling. A Construction and Demolition Recycling Summary Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Solid Waste Management Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.
54. Hazardous Materials Business Plan. A Hazardous Materials Business Plan (HMBP) per BMC 15.12.040 and shall be submitted to TMD for a development site if on-site hazardous materials exceed in aggregate any of the following: 55 gallons for liquids; 500 pounds for solids; or 200 cubic feet of gases at standard temperature and pressure.

At All Times:

55. Environmental Mitigations. Occupancy is subject to ongoing compliance to Mitigation Measures adopted as part of the Mitigation Monitoring and Reporting Program.
56. Exterior Lighting. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
57. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an applicant for a Use Permit modification, subject to Board review and approval.
58. Exterior Signs. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review and/or Landmarks Preservation Commission approval.

59. Parking to be Leased or Sold Separately. Consistent with BMC 23E.68.080.G, all residential parking spaces shall be leased or sold separate from the rental or purchase of dwelling units.
60. Residential Permit Parking. Consistent with BMC 23E.68.080.F, no Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.
61. Transit Subsidy. Subject to the review and oversight of the Transportation Division Manager and consistent with BMC 23E.68.080.H, the property owner shall provide at least one of the following transportation benefits at no cost to every employee, residential unit, and/or GLA resident and a notice describing these transportation benefits shall be posted in a location or locations visible to employees and residents:
- A. A pass for unlimited local bus transit service; or
 - B. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.
62. Car Sharing Spaces. Car share parking spaces shall be provided as set forth in BMC 23E.68.080.I. All vehicle sharing spaces shall:
- A. Be offered to vehicle sharing service providers at no cost.
 - B. Remain available to a vehicle sharing service provider as long as providers request the spaces, for the life of the building. If no vehicle sharing service provider requests a space, the space may be leased for use by other vehicles. When a vehicle sharing service provider requests such space, the property owner shall make the space available within 90 days.
 - C. Be accessible to all vehicle sharing service provider members in the same manner and during the same hours as other vehicles offered by the vehicle sharing service provider.

Contracts with the vehicle sharing service provider shall be provided to the City, and the applicant shall inform the City of any cancellation or contract lapse.

63. Parking TDM Plan. Consistent with BMC 23E.68.080.I, a Parking Transportation Demand Management (PTDM) compliance report shall be submitted to the City's Public Works Department, on a form acceptable to the City, prior to occupancy, and on an annual basis thereafter, which demonstrates that the project is in compliance with the applicable requirements of Conditions 62, 63, and 64.
64. Parking Allocation. At least 22 spaces within the parking garage shall be reserved for use by the occupants/tenants of the commercial floor area within the Ace Hardware building. The owners of record of the Walnut building shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" (or by an equivalent instrument) and provide a recorded copy thereof to the project planner. This Notice shall stipulate that 22 spaces within the parking garage are reserved for use by the occupants/tenants of the

commercial floor area within the Ace Hardware building, unless and until permission is requested of the City of Berkeley and authorized through a Use Permit, Administrative Use Permit, or Zoning Certificate, whichever is applicable to modify this permit. This Notice may not be revised or removed from this property without the prior written permission of the Zoning Officer of the City of Berkeley.

65. Usable Open Space Allocation. At least 4,129 square feet of the open space provided within the Acheson and Ace Hardware buildings shall be made available for residential occupants of the Walnut building. The owners of record of the Acheson and Ace Hardware buildings shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" (or by an equivalent instrument) and provide a recorded copy thereof to the project planner. This Notice shall stipulate that at least 4,129 square feet of the open space provided within the Acheson and Ace Hardware building shall be made available for residential occupants of the Walnut building, unless and until permission is requested of the City of Berkeley and authorized through a Use Permit, Administrative Use Permit, or Zoning Certificate, whichever is applicable to modify this permit. This Notice may not be revised or removed from this property without the prior written permission of the Zoning Officer of the City of Berkeley.
66. Applicability of Use Permit. All owners of record of the subject properties (Assessor's Parcel Numbers 057 204601100, 057 204601000, 057 204600803, 057 204600802, 057 204600600, 057 204600400 & 057 204600500) shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" (or by an equivalent instrument) and provide a recorded copy thereof to the project planner. This Notice shall stipulate that all construction and use shall be governed by this Use Permit (#10-10000078) unless and until permission is requested of the City of Berkeley and authorized through a Use Permit, Administrative Use Permit, or Zoning Certificate, whichever is applicable to modify this permit. This Notice may not be revised or removed from this property without the prior written permission of the Zoning Officer of the City of Berkeley.
67. Incidental beer and wine service conditions & Number of Type 41 licenses. After completion of shell improvements for the ground floor commercial spaces at 1979-1987 Shattuck Avenue, 2101-2109 University Avenue, 2125-2135 University Avenue, at least Four Type 41 ABC Licenses are allowed. The conditions of approval for the existing food service establishments that allowed incidental beer and wine service (UP 9578, B0704, UP 8104, B0601) are hereby replaced with the conditions of approval that follow. All owners of record of the subject properties (Assessor's Parcel Numbers 057 204601100 & 057 204600803) shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" (or by an equivalent instrument) and provide a recorded copy thereof to the project planner. This Notice shall stipulate that the conditions of approval for the existing food service establishments that allowed incidental beer and wine service (UP 9578, B0704, UP 8104, & B0601) are hereby replaced with the conditions of approval that follow.

INCIDENTAL BEER AND WINE SERVICE CONDITIONS (#71-91):

(These requirements are in addition to any other requirements under the City's Building, Health or Fire Codes or by agencies such as the Alcoholic Beverage Control Department of the State of California. The applicant is responsible for contacting these and other departments and agencies to identify and secure all applicable permits and licenses).

68. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
69. Changes in the nature of the operation including, but not limited to, the addition of seating, changes in hours, and the addition of live entertainment, shall require modification of this permit subject to approval by the Zoning Officer or the Zoning Adjustments Board.
70. Changes to the building's facade, including doors or windows, site plans, landscaping, signage, and awnings are subject to Design Review and approval prior to issuance of a building permit.
71. The hours of operation of the restaurant (s) shall be limited to: 6:00 AM and 2:00 AM. Hours of operation refer to arrival of the first patron and departure of the last patron. Any change in the hours of operation shall be approved by the Zoning Adjustments Board or designee. Hours of operation are subject to review and amendment by the Zoning Adjustments Board as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.
72. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
73. The operator of the restaurant shall place a waste receptacle near the entry way and shall insure that garbage on the sidewalk in front of the establishment and within 50 feet thereof will be picked up periodically during each day, so that the sidewalk remains clean.
74. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets. The operator shall give surveillance to public areas near the establishment, keep such areas free of trash and litter, provide lighting, and otherwise attempt to prevent conduct that might disturb the peace and quiet of residences in the vicinity. Furthermore, the operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.
75. All employees selling and/or serving alcohol, or directly supervising such sales and/or service, shall complete the Licensee Education on Alcohol and Drugs (LEAD) program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control within 6 months of employment at the establishment. Employees who have completed the course within the last five (5) years shall be exempt from this requirement.
76. Alcoholic beverage service shall be "incidental" to the primary food service use, as defined in Zoning Ordinance 23F.04.010. An incidental use shall not exceed twenty-five percent (25%) of the floor area of the primary use, and if it consists of the commercial sales of a different line of products or services than the primary use, such incidental use may not generate gross receipts in excess of thirty-three percent (33%) of the gross receipts generated by the primary use. In addition, the California Department of Alcohol Beverage Control (ABC) allows this

- alcohol use only as part of a “bona fide eating place” making “actual and substantial sales of meals,” and stringently enforces this requirement.
- 77.** The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
- 78.** The applicant shall comply with ABC regulations for License Type 41, which requires that the food establishment operate as a bona fide eating place, make actual and substantial sales of meals during normal meal hours, and that the establishment operate at least five days a week. In addition, the applicant shall request that the ABC place the following conditions on the ABC permit for this site, and this Use Permit shall only be operative for as long as these conditions are placed on the associated ABC license:
- A. The sale of alcoholic beverages for consumption off the premises is strictly prohibited;
 - B. There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service or consumption of alcoholic beverages directly to patrons for consumption;
 - C. During operating hours, 100% of the service area shall be designed and used for and must possess the necessary utensils, and condiment dispensers with which to serve meals to the public;
 - D. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
- 79.** A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
- 80.** Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
- 81.** Any operator of the licensed establishment shall not have had a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations to be confirmed by the Zoning Officer prior to issuance or transfer of a business license at this location.
- 82.** Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.
- 83.** Neither alcohol-dispensing facilities nor sign(s) advertising alcoholic beverages shall be visible from the public right-of-way.
- 84.** All alcohol served to patrons must be served in durable restaurant tableware – i.e. either cups or glasses. No alcohol may be distributed in its original bottle or can, or in any other potentially disposable container.
- 85.** There shall be no service or consumption of alcohol on the public right-of-way.
- 86.** No alcohol may be transported off-site from the establishment to any other establishment or to the public right-of-way.
- 87.** The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
- 88.** This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.