

2001 Ashby Ave Applicant Statement, Attachment 1 Compliance with Objective Zoning Standards

Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5).

Projects that comply with objective standards cannot be required to obtain a discretionary use permit. See Gov. Code § 65913.4(a).

See Gov. Code § 65913.4(a)(5) (consistency with objective standards is determined after “excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915”).

Table 1: Chapter 23E.52 – C-SA South Area Commercial District Provisions		
Provision	Applicability	Compliance
Section 23E.52.030 Uses Permitted		
<p>A. The following table sets forth the permits required for each listed item. Each use or structure shall be subject to either a Zoning Certificate (ZC), an Administrative Use Permit (AUP), a Use Permit approved after a public hearing (UP(PH)) or is prohibited.</p> <ul style="list-style-type: none"> Mixed Use Development of 5,000 sq. or more – UP(PH) subject to the Standards of Section 23E.52.010.D.7 Community Centers – UP(PH) Automated Teller Machines – UP(PH) 	<p>The requirement to seek a conditional use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. See Gov. Code § 65913.4(a); see also HCD’s SB 35 Streamlined Ministerial Approval Draft Guidelines (9/28/18), § 300(b)(2).</p>	<p>Not applicable.</p>
Section 23E.52.050 Construction of New Floor Area -- Requirements for Use Permits		

Table 1: Chapter 23E.52 – C-SA South Area Commercial District Provisions		
Provision	Applicability	Compliance
Gross floor area of three thousand (3,000) square feet or more shall not be created unless a Use Permit is obtained. Creation of new floor area includes construction of new buildings or Accessory Buildings; additions to existing buildings; or the installation of new floor or Mezzanine levels within or onto existing buildings. (Ord. 6478-NS § 4 (part), 1999)	The requirement to seek a conditional use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. <i>See</i> Gov. Code § 65913.4(a); <i>see also</i> HCD’s SB 35 Streamlined Ministerial Approval Draft Guidelines (9/28/18), § 300(b)(2).	Not applicable.
Section 23E.52.070 Development Standards		
23E.52.070.A The Floor Area Ration (FAR) shall not exceed four.	Applicable objective criteria. The lot is 26,303 sq. ft. and a FAR of four equates to 105,212 sq. ft.	Compliant. The base project comprises 31,780 sq. ft. for a FAR of 1.21. The proposed project comprises 90,500 sq. ft. for a FAR of 3.44.

Table 1: Chapter 23E.52 – C-SA South Area Commercial District Provisions		
Provision	Applicability	Compliance
<p>23E.52.070.A The height for a Main Building shall not exceed the following limits, and shall satisfy the following requirements:</p> <p>Mixed Use:</p> <ul style="list-style-type: none"> • Height – 36 ft. • Stories (number) 3 • The third floor shall be used for residential purposes entirely. 	<p>Applicable objective criteria.</p>	<p>Compliant.</p> <p>The base project contains three stories and 36 ft. The third floor is entirely residential.</p> <p>The proposed project contains 6 stories and reaches 70' measured to the top of the parapet and 75' measured to the top of the penthouse stairs.</p> <p>The project will be requesting a waiver/modification to exceed the height standard. Please see the Density Bonus statement for an explanation.</p>

<p>23E.52.070.B No yards for Main Buildings, Accessory Buildings or Accessory Structures shall be required, except that: When the subject lot is adjacent to an abutting or confronting lot in a residential zone, the requirements of Section 23E.04.050 and 23E.04.060 shall apply for additional yard and building feature requirements.</p> <p>23E.04.060 Special Building Feature Requirements for C- Lots Abutting Residential Zones</p> <p>A. For lots that are located in a commercial District that abuts or confronts a lot or lots in a residential District the following building features shall conform to the specified requirements, unless otherwise specified by the provisions of an individual District:</p> <p>B. Display windows and customer entrances, other than required exits, shall be oriented in a manner so they do not face abutting lots in a residential District;</p> <p>C. Exterior lighting shall be shielded in a manner which avoids direct glare onto abutting lots in a residential District;</p> <p>D. A solid wall or fence, measuring six (6) feet in height from existing grade, shall be erected at the lot line of an abutting lot in a residential District in order to provide screening;</p> <p>E. Exhaust air ducts shall be located or oriented in a manner which directs vented air flows away from any residential District, and equipment which mitigates odors shall be installed;</p>	<p>Requirements under subsections C and E do not apply pursuant to SB 35 as they are non-objective standards.</p> <p>Requirements under subsections B and D apply as they are objective and there is a residential structure abutting the property to the east.</p>	<p>Compliant.</p> <p>For both the base project and proposed project there are no display windows or customer entrances facing the residential properties to the east. Instead, they are all located on the Adeline St. side to the west.</p> <p>For both the base project and proposed project there will be a 6' high fence screening the residentially zoned properties District.</p>
<p>Section 23E.52.070 Development Standards – 23E.52.070.D Mixed Use Building Standards</p>		

Table 1: Chapter 23E.52 – C-SA South Area Commercial District Provisions

Provision	Applicability	Compliance
<p>23E.52.070.D.1 Any Mixed Use building (residential and commercial) shall satisfy all of the standards and requirements of this District, including new construction or additions to existing buildings, except in accordance with the following requirements</p> <p>1. The height shall be limited to the requirements set forth in Section 23E.52.070.B;</p>	<p>Applicable objective criteria.</p>	<p>Compliant. See discussion above under section 23E.52.070.B</p>

<p>23E.52.070.D.2. Yards and building separations shall be the same as set forth in the R-4 District requirements, except that the Rear Yard shall have a minimum depth of 15 feet;</p> <p>R-4 Yard Requirements 23D.40.070.D:</p> <p>Front Yard: 15'</p> <p>Rear Yard: 15' (per 23E.52.070.D.2)</p> <p>Side Yard:</p> <p>4' at 1st and 2nd stories 6' at 3rd story 8' at 4th story 10' at 5th story 12 ft at 6th story</p> <p>Street Side Yard:</p> <p>6' at 1st story 8' at 2nd story 10' at 3rd story 12' at 4th story 14' at 5th story 15' at 6th story</p> <p>Building Separation Yard:</p> <p>8' at 1st story</p>	<p>Applicable objective criteria.</p> <p>Per the definitions, the front of a corner lot is the shorter of the two frontages. Therefore, the front of this corner lot is the Ashby frontage.</p>	<p>Compliant.</p> <p>In the base project, the front and rear yard setbacks are 15', the street side yard is 10', and the side yard is 6' at its smallest point.</p> <p>In the proposed project, there are no setbacks for the front and street side yards. There is a 17' setback for the rear yard. The side yard includes a 6'-6" first floor setback and a 13'-6' setback for floors 2-6.</p> <p>The proposed project requests waivers to exceed the standards for front and street side setbacks.</p>
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Provision	Applicability	Compliance
12' at 2nd story 16' at 3rd story 20' at 4th story 24' at 5th story 28' at 6th story		
23E.52.070.D.3. Each Dwelling Unit shall have Usable Open Space of at least 40 square feet, with no dimension less than six feet;	<p>Applicable objective criteria.</p> <p>The base project includes 30 units which requires 1,200 sq. ft.</p> <p>The density bonus project includes 87 units which requires 3,480 sq. f.t</p>	<p>Compliant.</p> <p>The base project provides 12,115 sq. ft. of useable open space within the setbacks and a large courtyard and rear yard space.</p> <p>The proposed project provides 7,903 sq. ft. of useable open space including 7,788 sq. ft. on the ground level in the rear yard, side yard, and within the courtyard. The project also includes 115 sq. ft. on a second floor deck.</p>

<p>23E.52.070.D.4. For the Residential Use portion of a Mixed Use development, the density, coverage, and off-street parking requirements shall be the same as set forth in the R-4 District requirements;</p> <p>R-4 Lot Coverage Requirements 23D.40.070.E for corner lots:</p> <p>50% maximum for a 1 or 2 story main building 45% maximum for a 3 story main building 40% maximum for a 4 to 6 story main building</p> <p>R-4 Off-Street Parking Requirements 23D.40.080.E: Dwellings: One per 1000 sq. ft. of gross floor area Offices, other: One per 400 sq. ft. of gross floor area</p>	<p>Applicable objective criteria.</p> <p>Under SB-35, a local government may not impose automobile parking standards if the project is within ½ mile of public transit. 2001 Ashby is sited across the street from the Ashby Bart station and is, at most, 1/5 of a mile away.</p>	<p>Compliant.</p> <p><i>Density</i> There is no density standard within the R-4 District requirement.</p> <p><i>Lot Coverage</i> The base project covers 11,836 sq. ft which meets the 45% lot coverage standards for a three-story building on a corner lot.</p> <p>The proposed project covers 17,520 sq. ft of the lot for a 67% lot coverage ratio. The project requests a density bonus waiver to exceed the 40% lot coverage standard required for a six-story building on a corner lot.</p> <p><i>Parking</i> The base project is required to provide 31 spaces for the 30,510 sq. ft. of residential space. The project provides 7 surface parking spots and 28 interior spaces in a stacked parking structure.</p> <p>The proposed project is exempt from automobile parking requirements as it is within ½ mile of public transit. The project is electing to provide 45 which includes 4 spaces designated for commercial parking as well as the required number of handicapped spaces.</p>
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<p>23E.52.070.D.7. A Mixed Use development which either does not meet all the requirements listed in Section 23E.52.070.D.1-4, and/or has a total of 5,000 square feet or more in gross floor area, including any existing floor area which is to be incorporated into the project, may be allowed subject to obtaining a Use Permit by the Board, and any of the findings set forth in Section 23E.52.090.C.</p>	<p>The requirement to seek a conditional use permit does not apply pursuant to SB 35. Projects that comply with objective standards cannot be required to obtain a discretionary use permit. <i>See</i> Gov. Code § 65913.4(a); <i>see also</i> HCD’s SB 35 Streamlined Ministerial Approval Draft Guidelines (9/28/18), § 300(b)(2).</p> <p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5). As set forth below in Chapter 23E.52 of the Berkeley Municipal Code, the standards for issuance of a Use Permit involve personal or subjective judgment and are not uniformly verifiable to any uniform benchmark or criterion.</p>	N/A
23E.52.080 Parking -- Number of Spaces		

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23E.52.080.B. The district minimum standard parking requirement for commercial floor area is two spaces per 1,000 square feet of gross floor area. (note – this is more restrictive than the R-4 standards listed for residential uses)	Applicable objective criteria.	Compliant. Please see the response to the parking standards listed above in response to section 23E.52.070.D.4.
23E.52.080.D. Bicycle parking spaces shall be provided for new construction at the ratio of one space per 2,000 square feet of gross floor area of commercial space, and in accordance with the requirements of Section 23E.28.070 of the Berkeley Municipal Code.	Applicable objective criteria.	Compliant. The base project provides less than 2,000 sq. ft. of commercial space and provides 1 bicycle parking space. The proposed density bonus project contains 2,000 sq. ft. of commercial space triggering a requirement for 1 bicycle parking space. The project provides 72 bicycle parking spaces.

Table 4: Chapter 14.78 - Design and Transportation Review—Multiple-Family, Public and Community Facilities, Office and Administrative, and Commercial Districts		
Provision	Applicability	Compliance
14.78.020 - Requirement for administrative design review.		
<p>A. No building permit shall be issued for any new main or accessory structure, or addition or alteration thereto within an R3, PCF, PUD, PC, OA or C district, until such construction has received administrative design review approval by the community development director or their designee. Window replacements, reroofing and rooftop venting and exhausting equipment, and mechanical equipment are exempt from this requirement.</p> <p>B. Whenever, as determined by the community development director or their designee, the construction, expansion or modification of a main or accessory structure may be in conflict with the design review findings contained in this chapter, the project shall be referred to the planning and transportation commission for action on the design review approval.</p>	<p>Under SB 35, the only applicable standards are those “that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” Gov. Code § 65913.4 (a)(5). Any required “design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction.” Gov. Code § 65913(c).</p> <p>The requirements listed under this section are not objective requirements as described above and are therefore not applicable.</p>	N/A