



Z O N I N G  
A D J U S T M E N T S  
B O A R D  
S T A F F R E P O R T  
— P R O J E C T P R E V I E W —

MAY 12, 2011

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

Use Permit #10-10000078 to rehabilitate and construct new buildings within the existing footprint of the McFarlane Building (1979-87 Shattuck), and the Ace Hardware Building (2145 University Avenue); to rehabilitate the facades of the Acheson Physicians Building (2125 University Avenue); and the relocation or demolition of the buildings at 1922 & 1930 Walnut Street to allow the construction of a new mixed use building.

**I. Application Basics**

**A. Land Use Designations:**

- General Plan: Avenue Commercial – Downtown Plan
- Zoning: C-1, General Commercial

**B. Zoning Permits Required:**

- Landmarks Alteration Permit to rehabilitate and/or expand City of Berkeley Landmark buildings;
- Design Review to allow the construction of new floor area and buildings;
- Use Permit to provide less than the minimum number of residential parking spaces;
- Use Permit to provide less than the minimum square footage of usable open space;
- Use Permit to demolish 2 residential buildings and to eliminate 8 dwelling units;
- Use Permit to construct more than 5,000 sq ft of new floor area;
- Use Permit to exceed the 3-story/36-foot height limit;
- Use Permit to create three live-work units;
- Variance to provide less than 60% of a Live/work unit as work space;
- Variance to exceed the C-1 District 4-story/50-foot height limit; and
- Variance to exceed the C-1 District Floor Area Ratio limit of 3.0.

**C. CEQA Determination:** An Environmental Impact Report will be prepared.

**D. Applicant:** Applicant Equity Residential, 26970 Aliso Viejo Parkway #250, Aliso Viejo, CA

Figure 1: Vicinity Map

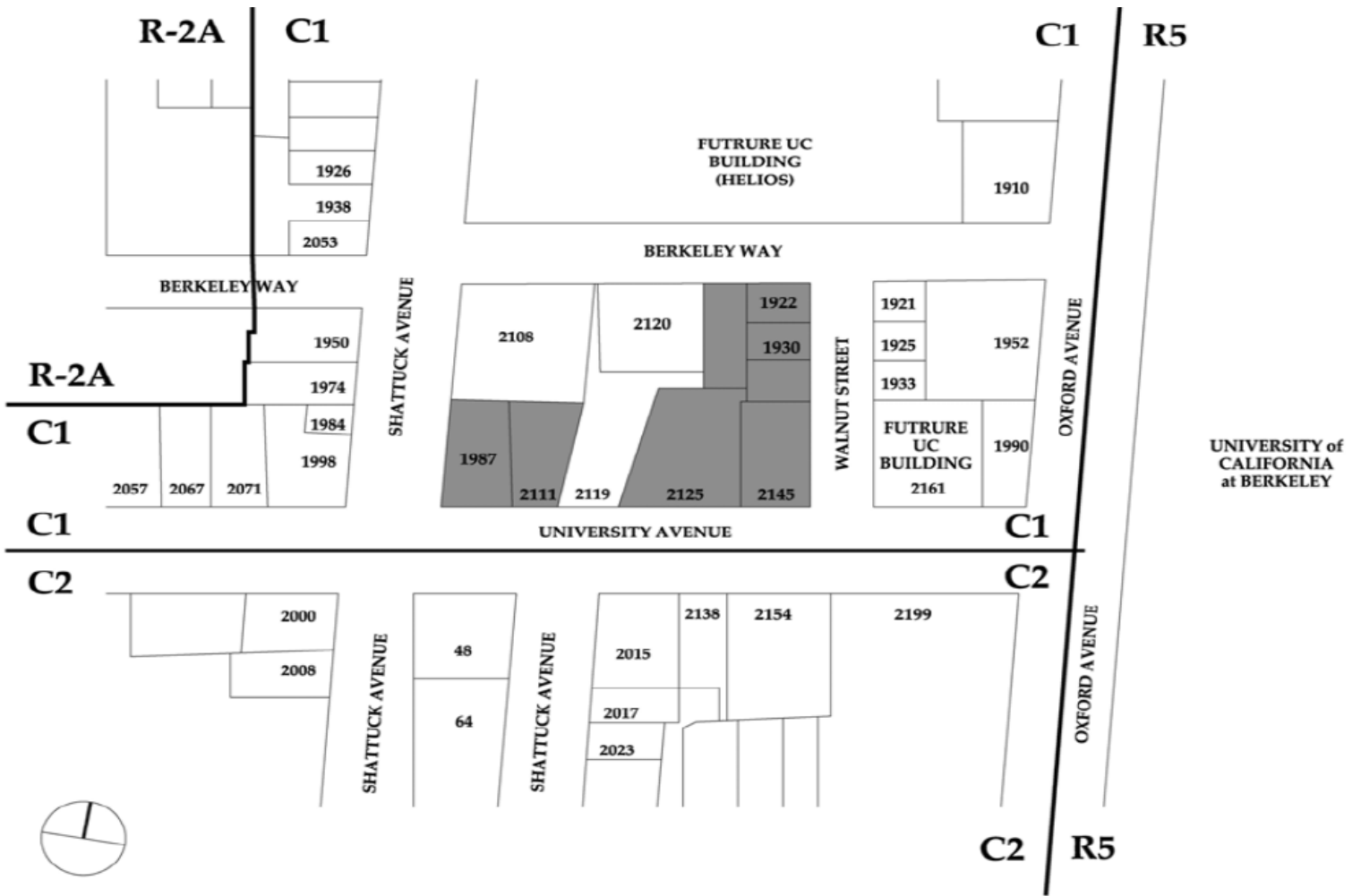
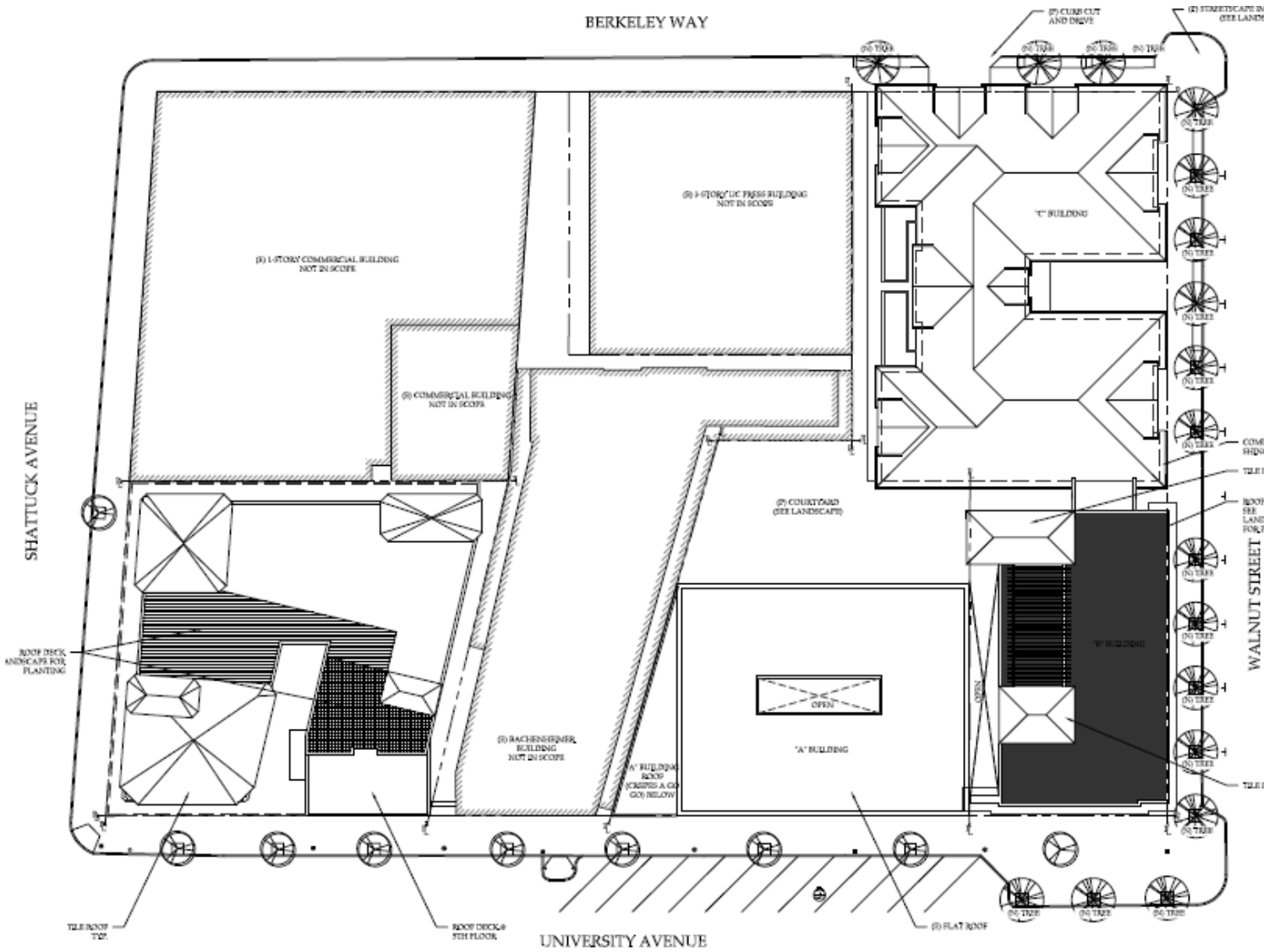


Figure 2: Site Plan



**Table 1: Special Characteristics**

Characteristic	Applies?	Explanation
Alcohol Sales/Service	Yes	1981 Shattuck Avenue - Zatar: Incidental Beer/Wine 2129 University Avenue - Long Life Vegi House: Incidental Beer/Wine
Creeks	No	Strawberry Creek is 800-feet to the southeast.
Density Bonus	No	None requested at this time.
Downtown Plan (2011 Draft)	Yes	Outer Core
Green Point Rating	Yes	Total Targeted Points: 136 (50 point minimum)
Inclusionary Housing	No	The dwelling units would be rented.
City Landmark?	Yes	The Site contains three designated landmarks: 1987 Shattuck Avenue (MacFarlane Building), 2131 University Avenue (Acheson Physicians Building), and 2145 University Avenue (Sills Grocery & Hardware Company)
Oak Trees	No	Fully developed downtown commercial / residential properties.
Seismic Hazards	No	Site is not within area mapped for liquefaction, landslide, or fault rupture zone.
Soil/Groundwater Contamination	Potentially	This site is within the City's Environmental Management Area. Development in this area may encounter potential health and environmental concerns during construction involving underground excavation or dewatering.

**Table 2: Project Chronology**

Date	Action
June 3, 2010	LPC Preview (of preliminary plan)
November 22, 2010	Application submitted
December 21, 2010	Application incomplete
March 1, 2011	Application incomplete
April 12, 2011	Application incomplete
Pending	Application deemed complete
April 25, 2011	Public hearing notices mailed/posted for the LPC and ZAB meetings
May 5, 2011	LPC Preview
May 12, 2011	ZAB Preview
May 19, 2011	DRC Preview
August 2011	EIR Notice of Preparation/ Scoping Meeting

**Table 3: Development Standards**

Standard		Existing	Proposed Total	Permitted/ Required
BMC Sections 23E.36.070 & 23E.36.080				
Lot Area (sq. ft.)		52,110	52,110	N/A
Floor Area, Parking (sq. ft.)		0	8,494	No Limit
Floor Area,	Residential (sq. ft.)	6,590	155,681	
	Commercial (sq. ft.)	0	32,295	
	Office, per assessor (sq. ft.)	33,360	0	
	Retail (sq. ft.)	24,022	tbd	
	Live Work (sq. ft.)	0	3,064	
	Food Service (sq. ft.)	15,832	tbd	
Floor Area total (sq. ft.) <i>excludes parking</i>		79,804	197,040	156,330
Floor Area Ratio ( <i>excludes parking</i> )		1.53	3.66	3
Dwelling Units	1-Bedroom	Not available	128	0
	2-Bedroom	Not available	74	
	Below Market Rate	Not available	0	
	Total	8	202	No Limit
Building Height, Max	Acheson (ft) Stories	54'-6" 4	No change	50' 4
	Ace (ft) Stories	28' 1	86'-6" 6	
	McFarlane (ft) Stories	26' 1	78'-8" 6	
	Walnut (ft) Stories	Not available 3	78'-0" 6	
	Usable Open Space	- at grade	0	
	- Podium level	N/A	1,600	
	- Roof	N/A	11,510	
	Total (sq. ft.)	0	19,297	40,400
	- Landscaped	0	8,583	16,160
Parking Required - Food Service		Not available		tbd
Parking Required - Retail		Not available		tbd
Parking Required - Live Work		N/A		6
Parking Required - Office		64	tbd	0
Parking Required - Residential		7		156
Total Required				199
Parking Provided - Garage		N/A	50	
Parking Provided - Surface		37	0	N/A
Parking Provided - Total		37	50	
Bicycles		N/A	Not available	tbd

## II. Project Setting/ Description

**A. Site Conditions:** The majority of the parcels on the block bounded by University Avenue on the south, Shattuck Avenue on the west, Walnut Street on the east and Berkeley Way on the north are in common ownership and include 1979-1987 Shattuck Avenue, 2101-2113 University Avenue, 2125-2145 University Avenue & 1922 & 1930 Walnut Street. The property at 2119 University Avenue (Bachenheimer Building) is also included in the common ownership but is not part of the development plan.

**B. Project Description:** Proposed additions and infill are proposed for mixed-use residential/commercial development. The project would create 203 dwelling units,

three live/work units and retain approximately 32,000 sq.ft. of commercial floor area. The Acheson Physicians building will be rehabilitated at its current height and mass with conversion of the upper floor of office use to new housing, while retaining ground floor commercial space. Additional stories (5) are proposed for both the MacFarlane and Sills Grocery & Hardware buildings (1987 Shattuck and 2145 University Avenue) as well as for the one story retail building at 2111-2113 University Avenue. Two brown shingle multi-unit residential buildings on Walnut Street (1922 and 1930) would be relocated or demolished to make room for a new six (6) story residential apartment building.

#### IV. Community Discussion

- A. Neighbor/Community Concerns:** Prior to submitting the application to the City, a pre-application poster was erected by the applicant in November 2010. On April 25, 2011, the City mailed 250 notices to adjoining property owners and occupants, and to interested neighborhood organizations. Comment letters in response to the public hearing notice may be found in Attachment 6.
- B. Landmarks Preservation Commission:** The Landmarks Preservation Commission conducted a public hearing on May 5, 2011 to preview the project. A summary of that meeting may be found in Attachment 5.
- C. Design Review Committee:** The Design Review Committee will preview the project on May 19, 2011 to preview the project.

#### V. Issues and Analysis

- A. Demolition/Rental Removal Ordinance:** The applicant may relocate or demolish the residential buildings at 1922 and 1930 Walnut Avenue. If the residential buildings are relocated, Sections 23C.08.010 and .020 would apply. The findings to approve follow:

**23C.08.010 Demolition or Elimination of Dwelling Units--General Requirement**

- A. No Dwelling Unit or units may be eliminated or demolished except as authorized by the provisions of this chapter.
- B. The Board may approve a Use Permit for the elimination or demolition of dwelling units only if, in addition to any other findings required by this Ordinance, it finds that the elimination of the dwelling units would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.

**23C.08.020 Demolitions of Buildings with Residential Uses**

- A. The Board may approve a Use Permit to demolish a building containing one or more dwelling units if it makes the findings required by the foregoing section, and that:
1. The demolition will remove a structure that is hazardous, unusable or is infeasible to repair; or

2. The demolition is necessary to permit construction approved pursuant to this Ordinance, of at least the same number of dwelling units as the demolished structure.

We believe that the findings to support the demolition can be made to comply with Sections 23C.08.010 and .020. However, if the residential buildings cannot be relocated, and the buildings would be demolished, in addition to the above sections, Sections 23C.08.030 E & F (the former Rental Removal Ordinance) would also apply to the project. The findings to approve follow:

**23C.08.030 Elimination of Dwelling Units and Accessory Dwelling Units (Conversions and Changes of Use)**

E. The Board may approve a Use Permit to eliminate a controlled rental unit if it makes all of the following findings:

1. The dwelling unit to be eliminated is neither occupied nor has a rent set at a level that is affordable by a person or a family of very low income, low income or moderate income, as defined by HUD Section 8 program guidelines;
2. The elimination of the dwelling unit will not adversely affect the supply of housing in the City;
3. The applicant cannot make a fair return on investment by maintaining the dwelling unit as a part of the rental housing market;

F. Notwithstanding the above, the Board shall approve a Use Permit to eliminate a controlled rental unit only when it finds that:

1. The dwelling unit is in a building that is seriously deteriorated beyond the conditions which might reasonably be expected due to normal use in the written determination of the Building Official and will be rehabilitated to meet City housing code requirements;
2. The replacement dwelling unit shall be available for occupancy to Households for Lower Income or Very Low Income Households;
3. The elimination of the dwelling unit will not cause displacement of any tenant against that tenant's will; and
4. A signed statement supporting the application has been filed from all of the tenants whose units will be physically modified and from all tenants who may be required to move temporarily.

The applicant has not provided a basis to support the findings required within Sections 23C.08.030 E and F to approve the Use Permits.

**B. Compliance with the C-1 District Development Standards.** The C-1 District limits building height/stories to 50' / 4 stories, respectively, and allows a maximum Floor Area Ratio of 3.0. However, the project exceeds the height, stories and FAR limits (86' height, 6 stories, 3.66 FAR proposed). Originally, the application included a request for a density bonus, per State Density Bonus Law (Cal Gov't Code 65915). However, the most recent submittal proposes to omit any below market rate units in exchange for a payment to the City, an option that is not presently allowed by the City's Zoning Ordinance.

Under the Zoning in place today, the project requires Variances to proceed. The applicant’s basis for the Variances may be found in attachment 2.

Zoning to implement the Downtown Plan is being prepared. Until that zoning is in place, the project would require the City to grant Variances for height, stories and FAR.

**C. Usable Open Space:** As noted within Table 3, the project would provide roughly half the square footage of open space required for development in the C-1 District. Table 4 that follows provides data to compare the proposed project to other approved housing projects.

**Table 4: C-1 Projects – Required and Approved Useable Open Space (UOS, in Sq.Ft.)**

Street #	Street Name	UOS Approved (total)	UOS Approved/ Unit	UOS Required/ Unit	UOS Required (total)	# of units
1797	Shattuck	13,000	200.0	200	13,000	65
1801	Shattuck	4,485	154.7	200	5,800	29
2620	Telegraph	4,053	202.7	200	4,000	20
1122	University	14,000	172.8	200	16,200	81
1392	University	7,388	104.1	200	14,200	71
1535	University	4,730	59.1	200	16,000	80
1698	University	4,377	175.1	200	5,000	25
1719	University	4,104	152.0	200	5,400	27
1885	University	14,500	98.0	200	29,600	148
2119	University	6,640	150.9	200	8,800	44
	<b>Average/Unit</b>		<b>147</b>			
PROJECT		19,297	<b>95</b>	200	40,600	203

As shown above, while only two projects provided 100% of the required open space (the Zoning Ordinance allows reductions), most mixed use projects have provided more open space per unit than what is proposed by this project, with one notable exception: 1535 University Avenue. That project provided an average of 59 sq ft per unit; the ZAB approved the reduction from 200 sq ft because it was an affordable, senior housing project that included outdoor areas, community rooms and a multi-purpose room to serve the needs of the residents. In addition, the applicant demonstrated that the costs to provide the minimum area needed would be cost-prohibitive for an affordable housing development and would hinder the applicant’s commitment to the community to remain as a four-story development.

1885 University Avenue provided roughly the same average per unit, and the City approved this reduction after finding that what would be provided was well designed and incorporates amenities that would appeal to the future tenants. Furthermore, the City found that the reductions are common for similar large mixed-use projects in Berkeley, due to the difficulty in providing enough open space to meet the requirement for high density projects.

To proceed with the approximately half of the required useable open space proposed by the applicant, the ZAB would need to grant an open space reduction (as allowed by



23E.36.070.D), after making a non-detriment finding, and the following findings (as applicable) from the C-1 District:

**23E.36.090 Findings**

C. For any Use Permit under Section 23E.36.070.D or E, the proposed use or structure must satisfy at least one of the following general purposes:

1. To encourage use of the ground floor for commercial purposes where appropriate.
2. To encourage utilization of public transit and existing off-street parking facilities in the area of the proposed building.
3. To facilitate the construction of residential or tourist hotel uses where appropriate.
4. To permit consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose.

The applicant’s basis for the Use Permit may be found in Attachment 2.

**D. Parking:** As of the writing of this report, the floor area for the ground floor uses is not yet final, thus a final determination regarding project compliance to the Zoning Ordinance standards for parking cannot be made. However, as noted in Table 3 of this report, we have made a preliminary determination that that project would need 199 spaces to comply with the Zoning Ordinance. Table 5 that follows provides data to compare the proposed project to other approved housing projects.

**Table 5: C-1 Projects – Required and Approved Residential Parking**

Street #	Street Name	Res GFA	Parking Approved	Parking Approved/Unit	Parking Required (Total)	# of units
1797	Shattuck	42,379	42	.62	42	65
1801	Shattuck	32,980	29	1	33	29
2620	Telegraph	19,587	18	.9	20	20
1122	University	60,408	68	.84	60	81
1392	University	58,212	71	1	58	71
1535	University	45,613	30	.38	46	80
1698	University	25,555	25	1	26	25
1719	University	33,579	32	1.19	34	27
1885	University	123,924	109	.74	124	148
2119	University	36,053	30	.68	36	44
	<b>Average/unit</b>			<b>.84</b>		
PROJECT		155,681	7	<b>.25</b>	156	203

As shown above, no project has proposed as few spaces per unit as what is proposed for this project (that is, aside from 1535 University Avenue, which was granted a parking reduction as a senior housing project). When compared with housing projects in the Downtown (C-2 District) the project would still provide far fewer spaces per unit than any other approved project.

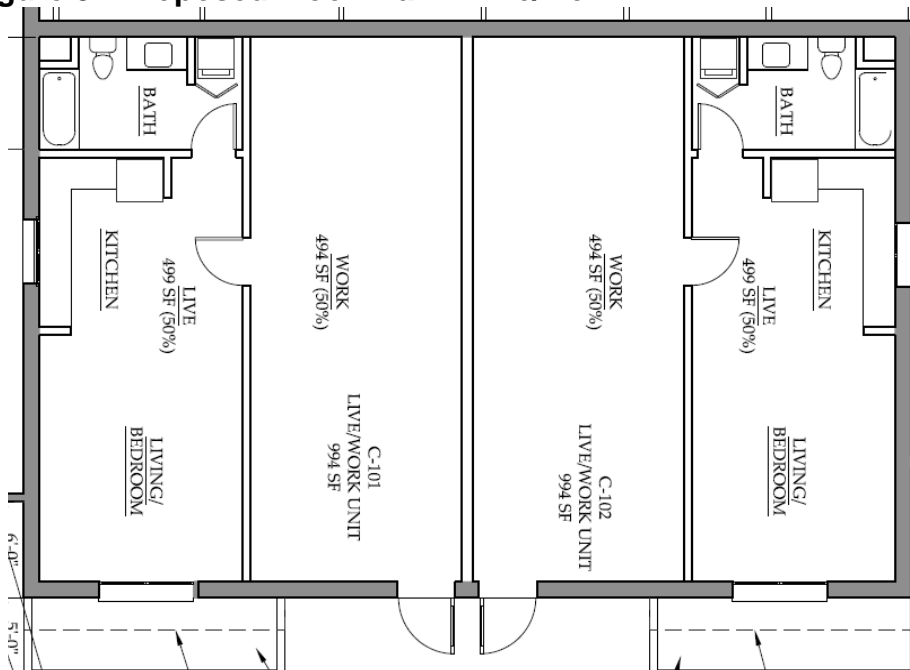
The applicant may revise the project to provide more spaces -or- may choose to apply for the Use Permit to waive the spaces. The floor plate for the proposed parking

garage appears to offer sufficient clearance to provide lift parking, even without excavation. Doing so could nearly double or triple the number of spaces provided. So far the applicant has not provided an explanation as to why lifts could not be used. If the project is not modified to provide more parking, the ZAB would need to grant a parking waiver (as allowed by 23E.36.070.D), after making a non-detriment finding, and the same findings as noted above for Useable Open Space.

So far the applicant has not presented a basis to make the required findings to approve the Use Permit to allow the parking reduction.

**E. Compliance with Zoning Ordinance Definition for Live/Work Units.** The floor area, by use, depicted on Sheet CA2.1 of the attached plan set does not provide the minimum workspace area required by the Zoning Ordinance (the minimum work area must be sixty percent (60%) of the total gross floor area of the Live/Work Unit). The applicant claims that they chose to provide only fifty percent (50%) to comply with the building code. However to provide less than 60%, the ZAB would need to grant a Variance.

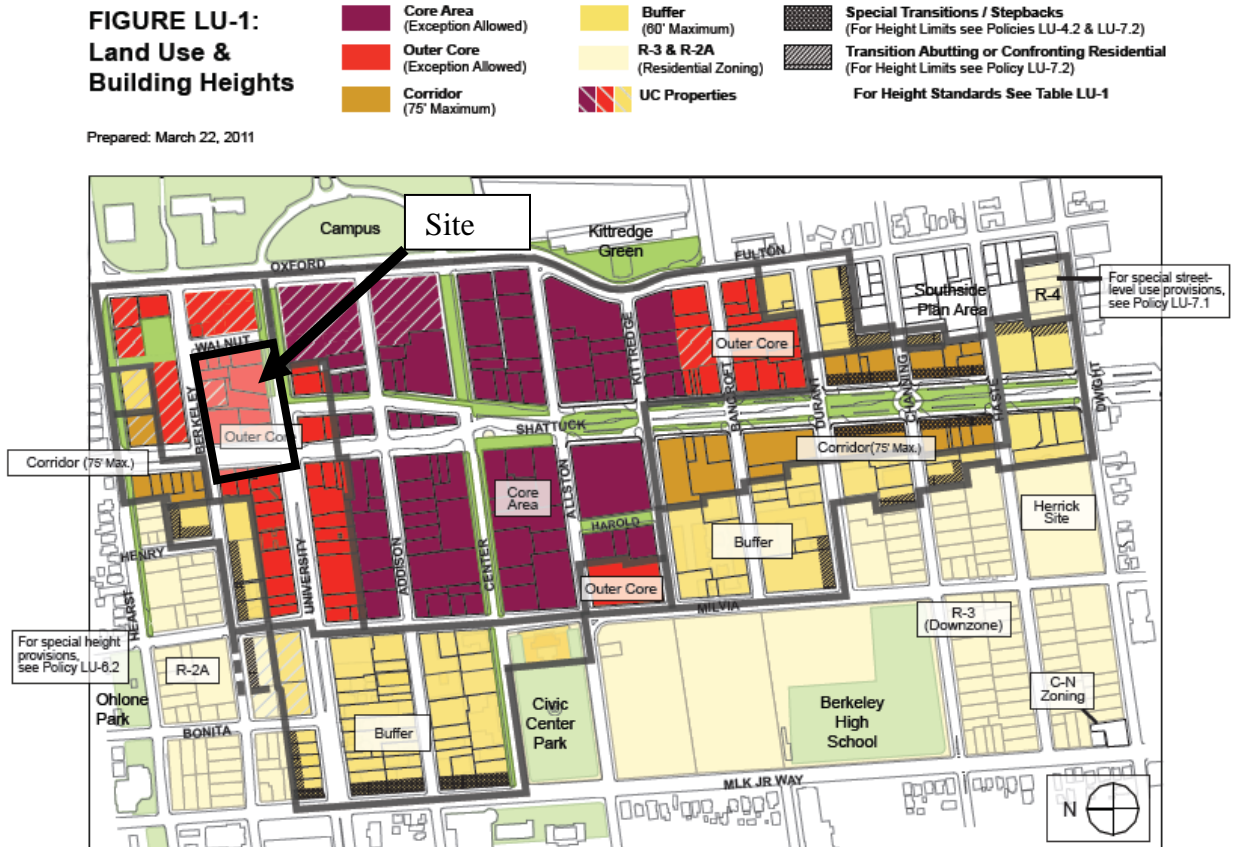
**Figure 3: Proposed Floor Plan – Live/work**



So far the applicant has not presented a basis to make the required findings to approve a Variance.

F. 2011 Downtown Plan. The Downtown Plan subareas are shown in Figure 4 that follows.

Figure 4:



The project is located in the Outer Core, and per Table LU-1 of the 2011 Plan, the minimum building height is 40', the generally allowed maximum is 60' and with a Use Permit, the Plan calls for a 75' overall maximum height limit. As shown in Table 3, the new buildings would exceed the 75' limit. Thus, while the Downtown Plan will allow greater heights that allowed under current zoning, the project would still not comply with the Plan.

Later this year we expect that zoning language will be drafted to implement the 2011 Downtown Plan; when this occurs, staff will provide additional analysis of this project.

## VI. Recommendation

Staff recommends that the ZAB provide advisory comments to the applicant.

### Attachments:

1. Project Plans, received February 16, 2011
2. Applicant Statement, received November 22, 2010
3. Notice of Public Hearing, dated April 25, 2011
4. Landmarks Preservation Commission Staff Report, dated May 5, 2011 (without attachments)
5. Landmarks Preservation Commission meeting summary
6. Correspondence Received

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