

April 22, 2015

ZAB Secretary

Zoning Adjustment Board

Land Use Planning Division (Attn: ZAB Secretary)

2120 Milvia Street

Berkeley, CA 94704

Via e-mail: zab@ci.berkeley.ca.us

RE: Comments on the 2211 Harold Way Mixed Use Project Environmental Impact Report (Harold Way EIR) AGENDA ITEM #6 (April 23, 2015)

SUMMARY: The Harold Way EIR cannot be approved by Berkeley until after the “significant community benefits” associated with the project are identified within the EIR and then examined for their environmental effect

Although the Harold Way EIR sought to define the environmental aspects of the Harold Way project, the EIR did not address the environmental aspects of the “significant community benefits” that are required as a condition of project approval. To have the Council approve the project without having considered the environmental effects of these “significant community benefits” would result in the Board taking discretionary action without the benefit of environmental review.

The Berkeley Municipal Code, states that:

In order to approve a Use Permit for buildings over 75 feet in height under Section 23E.68.070.B, the Board must find that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the City, beyond what would otherwise be required by the City. These may include, but are not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities. The applicable public benefit requirements of this Chapter shall be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest. (Section 23E.68.090, Findings)

Several critical conditions that are applicable to CEQA review follow from the above requirement.

First, the determination of “significant community benefits” is a critical “condition of [project] approval” and thus an integral part of the Harold Way “project” that must be reviewed in the in the CEQA process. Absent this finding, the Board cannot approve the project.

Second, “significant community benefits” could include benefits directly provided by the developer and thus could involve alterations, modifications or changes to either the project as currently reviewed or to other portions of Berkeley. The developer, for example, has proposed to physically alter Shattuck Avenue to provide a transit information display. None of these physical changes are considered in the EIR.

Third, the “significant community benefits” could include numerous other potential projects resulting in physical and environmental change to Berkeley. Section 23E.68.090, for example, specifically includes “affordable housing...green features, open space, [and] transportation demand management features”

none of which are examined for their environmental effects. As approval of the Harold Way project would enshrine these benefits into the conditions of approval, the Board would be approving these projects.

Fourth, there are no “uniformly applicable standards or policies” as to how the Board determines that a developer has provided sufficient community benefits to gain project approval. The process developed by Berkeley sought to create a development “beauty contest” with fixed deadlines where applicants would compete against each other for project approval. The lack of “uniformly applicable standards or policies” is even recognized by the City Council, which, several years after the adoption of the Downtown Action Plan is finally convening a public workshop to begin the process of better defining the scope and type of these benefits. Absent uniformly applicable policies, the Council would be engaging in discretionary decision-making, without the benefit of environmental review, if they approve the project.

The EIR completely dismisses and does not address the environmental effects of the “significant community benefits.” For example, in response to the comments of Christopher Adams (Response 8.2) the EIR concludes that;

[W]hile the proposed project would be required to provide significant community benefits which would be included as conditions of approval for the proposed project it is not within the purview of the Draft EIR to determine whether significant community benefits would be provided by the proposed project, but rather the role of decision makers. (emphasis added)

The EIR goes on in Response 8.3 to state that:

The commenter states an opinion that the EIR must establish the link between the project objective, “leveraging the full development potential” of the project, being sought by the applicant and the community benefits to be gained by the City, which requires that the “benefits” be defined. The commenter opines that the EIR must include a discussion of the tradeoffs between the “leverage” the applicant is seeking and the “benefits” the City is receiving so that decision makers can determine if the necessary overriding considerations are present to justify approval of the project. The commenter states an opinion that the EIR is deficient by not providing this information. However, this information is outside of the scope of the EIR, which focuses on physical impacts to the environment...(emphasis added)

In stating the above, the EIR is incorrect in two respects. First, CEQA does require the consideration of economic effects if they would have a physical effect on the environment.¹ Second, and more importantly, even if the economic aspects of the “significant community benefits” are beyond the scope of the EIR, the potential “physical impacts to the environment” of these benefits, which according to both the EIR and adopted City law are necessary for project approval, are clearly and squarely within the scope of the EIR.

In preparing the EIR, the City has relied on the provisions of Senate Bill 743 and Senate Bill 226 (Stats. 2011, Ch. 469) which provide for a streamlined environmental review of infill projects. The City has relied on these provisions, for example, to determine that it is not legally required to consider project aesthetics (such as the view from Campanile Way).

It should be noted, however, that Senate Bill 226 also notes that in determining the “significant effect” of an infill project, an infill project is defined as both “the project or project site.” Since the community

¹ Section 15162

benefits provided by the project (even if not located on the “project site” are an essential component of project approval, they must be examined as part of the EIR.

Secondly, in adopting SB226, the Legislature allowed infill projects to not consider as significant environmental effects if there are “uniformly applicable development policies or standards” that would apply to the project and mitigate its effects. In filling out the Infill Checklist (Appendix M of the CEQA Guidelines), the City noted that there were not “uniformly applicable development policies or standards.”

One of the fundamental tenets of CEQA is that an EIR review be performed when government agencies are exercising discretionary, as opposed to ministerial authority. The goal of CEQA is to inform decision-makers as to the project’s environmental effects. In the case of Harold Way, approval of the EIR at this time would have the Board (and/or Council) taking discretionary action on the issue of “significant community benefits” without benefit of any environmental review.

Accordingly, it is premature at this time for the Board to adopt the EIR.

Respectfully,

James Hendry

April 23, 2015

To: Zoning Adjustment Board

CC: Jesse Arreguin, District 4, Saving Shattuck@gmail.com,
council@cityofberkeley.info, SZarnowitz@CityofBerkeley.info

Re: Response to Final EIR

From: Kelly Hammargren, Resident Berkeley District 4

The premise of establishing Priority Development Areas with increased density at transit hubs is based on the theory that placing high density housing at transportation hubs will result in decreased transportation by automobile and thereby decreasing vehicle pollution, impact on the environment and impact on climate change.

To meet the theory goal of reducing vehicle pollution through high density housing at transportation hubs, the housing at such hubs needs to be inclusive with housing for low income, very low income and moderate income. Building housing for professionals and empty nesters at transportation hubs flies in the face of common sense and is unsupported by displacement of workers to distant locations with housing that is affordable forcing transportation to work by automobile increasing vehicle pollution.

The target residents of 2211 Harold Way as described in the Residences at Berkeley Plaza documents are empty nesters who are older, likely retired and not commuting to work and professionals who might otherwise seek a similar product in San Francisco. It should be noted that demand for BART is exceeding capacity and during peak transit times BART trains are at times too full to stop to pick up passengers commuting from San Francisco to the East Bay. Professionals who do commute by vehicle have the financial capability of buying/leasing efficient hybrid and electric vehicles. Workers paid low wages who are displaced through expensive housing at transportation hubs who are unable to afford the high priced efficient hybrid and electric vehicles are forced into their automobiles to commute and thereby increasing vehicle pollution.

Transportation is accepted as an impact condition of the EIR and therefore as outlined here affordable housing needs to be inclusive and included as a condition of approval. To meet the theory goal of reducing vehicle transportation affordable housing buildings like Oxford Plaza at 2175 Kittredge should be the building at 2211 Harold Way.

Additionally, sustainable technology has advanced and LEED Gold is now substandard as a sustainable building. With California in what is described by climate scientists as perpetual drought with an occasional wet year, 2211 Harold Way needs to be built with the latest water conservation measures including unit metering, low flow water plumbing and appliances, rain water capture and gray water reuse at least twice. Additionally, increasing population will not increase water allocations. With perpetual drought, water rationing shall be expected to increase and the reality of this climate needs to be uppermost in the review of the Final EIR and approval process of 2211 Harold Way, not the climate of the past.

2211 Harold Way is already a design of the past, not the present and not the future. This reality calls for denial of certification of the Final EIR and calls for the redesign of the building in total.

Kelly Hammargren

April 23, 2015

To: Zoning Adjustment Board

CC: Jesse Arreguin, District 4, Saving Shattuck@gmail.com,
aBurns@cityofberkeley.info, council@cityofberkeley.info,
SZarnowitz@CityofBerkeley.info

Re: Response to Final EIR

From: Kelly Hammargren, Resident Berkeley District 4

The purpose of CEQA is to inform decision makers of the environmental impact of a proposed project and/or building. Basic to assessing environmental impact is accurate representation of size, mass and scope of the project and/or building. The Zoning Adjustment Board cannot make a determination in the absence of such information.

To meet this basic assessment, members of the community and members of the Design Review Committee have requested repeatedly of the developer and the consultant Mark Rhoades a model of the 2211 Harold Way building. The community and members of the Design Review committee have requested repeatedly storey poles and/or balloons to show the actual height and mass of 2211 Harold Way. It should be further noted that the Design Review Committee and the community have requested accurate representation of the impact of 2211 Harold Way on night light. The developer of 2211 Harold Way has failed to fulfill these reasonable requests.

It is also noted by the community that the visual simulations as presented in the draft EIR and Final EIR Response to Comments Document SCH#2014052063 of the size, mass and height of 2211 Harold Way in comparison to other Berkeley buildings are out of scale with 2211 Harold Way appearing smaller than what would be the actual size. This distortion minimizes the impact of 2211 Harold Way leading commissioners to make determinations on wishful impact rather than actual impact. This distortion further minimizes the perceived impact on views from Campanile Way and the downtown, views that are specifically described in the Downtown Area Plan to be protected. It is for this alone that storey poles and balloons must be demanded of the developer now. In all such actions, the City of Berkeley shall notify the public according to city policy that the storey poles and/or balloons are to be placed. And, in light of distortion in the model presented to the Landmarks Preservation Commission on March 5, 2015 and Design Review Committee on March 19, 2015 it shall furthermore be demanded that the accuracy of such storey poles and/or balloons be validated by an unbiased independent agent.

It shall be noted that the developer failed to provide accurate visual impact of 2211 Harold Way through visual printed simulations and downtown model within the Draft EIR response period. It shall be noted that it appears such delays and the inaccuracy of the finally presented model on March 5, 2015 to the Landmarks Preservation Commission and to the Design Review Committee on March 19, 2015 were deliberate attempts to minimize and distort the impact of the proposed 2211 Harold Way project.

April 23, 2015

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The often requested model of 2211 Harold Way when finally brought to the Landmarks Preservation Commission on March 5, 2015 and the Design Review Committee on March 19, 2015 represented the Wells Fargo Building at 2140 Shattuck and the Great Western Bank Building at 2150 Shattuck as the same height as the proposed 2211 Harold Way. When members from the community questioned the accuracy of the model and representation of the size and mass of 2211 Harold Way in comparison to the Wells Fargo Building and 2150 Shattuck, the Design Review Committee staff person Anne Burns insisted on the accuracy of the model and the consultant Mark Rhoades insisted that these buildings were the same height. As noted in the email of March 20, 2015 these buildings are not the same height.

- Proposed 2211 Harold Way 194 feet
- Wells Fargo Building 2140 Shattuck Avenue, Main Roof Height 148 feet, Total Height 162 feet
- Great Western Building 2150 Shattuck Avenue, Main Roof Height 158.5 feet, Total Height 166.71 ft

reference: <http://www.emporis.com/buildings/130229/wells-fargo-building-berkeley-ca-usa>

It is the responsibility of the developer of 2211 Harold Way to accurately meet the request of the Design Review Committee, the forwarding of that request to the Zoning Adjustment Board and the community for storey poles and balloons to accurately represent the size, height and mass of 2211 Harold Way. It is a reasonable request to accurately represent the impact on night light. It is the responsibility of the developer to correct the model accurately displaying the height of the building in comparison to the other tall buildings in downtown Berkeley. On these points of process it should be foremost that the developer has failed to follow through with reasonable requests from the community and commissioners. Certification of the EIR must be withheld until such requests are fulfilled and accuracy is validated by an unbiased independent agent.

Kelly Hammargren
Berkeley Resident, District 4

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: Save the Shattuck

From: Gary Foltz [<mailto:garyfoltz@gmail.com>]

Sent: Thursday, April 23, 2015 3:23 AM

To: Zoning Adjustments Board (ZAB)

Subject: Save the Shattuck

The Shattuck Theatre is an essential part of the Berkeley Arts District. It would be a cultural and economic disaster if it were closed. My wife and I go there regularly and eat downtown afterward. The Shattuck has become a part of our lives, as if has for many people. Please, make whatever zoning adjustment is necessary to keep the Shattuck intact.

Gary Foltz, Albany