



# 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

FOR BOARD ACTION  
JULY 28, 2016

## 2067 University Avenue

Use Permit #ZP2015-0266 to demolish an existing 4,862 square foot, one-story commercial building and construct a 31,977 square foot, seven-story mixed-use building with 50 dwelling units, 1,500 square feet of commercial space on the ground floor, and 48 bicycle parking spaces.

### I. Background

#### A. Land Use Designations:

- General Plan: Downtown (DT)
- Downtown Area Plan: Downtown Mixed-Use District, Outer Core
- University Avenue Strategic Plan: Downtown Node, Sub-Area 4
- Zoning: Downtown Mixed Use District (C-DMU) Outer Core Sub-Area

#### B. Use Permits Required to allow:

- **Demolition:** Demolish the existing commercial building, pursuant to BMC Section 23C.08.050.A;
- **Mixed Use Development:** Establish a mixed-use development involving residential and commercial uses in one building pursuant to BMC Section 23E.68.030.A;
- **Construction of new Floor Area:** Construct more than 10,000 square feet of new floor area, pursuant to BMC Section 23E.68.050;
- **Open Space In-Lieu Fee:** Make an in-lieu fee payment to reduce the on-site requirement for privately-owned public open space, pursuant to BMC Section 23E.68.070.D; and
- **Parking Waiver, Parking In-Lieu Fee:** Make an in-lieu fee payment to reduce the number of required vehicle parking spaces to zero, pursuant to BMC Section 23E.68.080.D.

#### C. Administrative Use Permit Required to allow:

- **Rooftop equipment, height modification:** Allow for an increase in building height to accommodate a mechanical penthouse and elevator override, pursuant to BMC Section 23E.04.020.C.

**D. Waiver/Modifications Pursuant to State Density Bonus Law (Cal. Gov't. Code Section 65915):**

- Height modification to exceed the maximum 60-foot height limit to permit an additional story; and
- Side yard modifications to eliminate the required 5-foot setback on the portion of the building greater than 65 feet from lot frontage and more than 20 feet in height.

**E. CEQA Determination:** Categorically exempt pursuant to Section 15332 of the CEQA Guidelines ("Infill"). The project meets all of the requirements of this exemption, as follows:

- a. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
- b. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
- c. The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
- d. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions would address potential impacts related to traffic, noise, air quality, and water quality.
- e. The site is already served by required utilities and public services, which would also adequately serve the project.

Furthermore, the project does not trigger any of the exceptions in CEQA Guidelines Section 15300.2. In particular, the project would not have any significant effects due to unusual circumstances, nor any cumulatively significant impacts (such as traffic), nor would it adversely impact any historical resources. The site is not included on any list of hazardous waste sites compiled pursuant to Government Code Section 65962.5. City Standard Conditions would address potential impacts related to hazardous materials.

**F. Parties Involved:**

- Applicant David Trachtenberg, Trachtenberg Architects, 2421 Fourth Street, Berkeley, CA 94710
- Property Owner 2067 University Avenue Apartments, 4288 Dublin Blvd, Suite 218, Dublin, CA 94568

**G. Application Materials and Staff Reports are available on the Internet:**  
[http://www.ci.berkeley.ca.us/Planning\\_and\\_Development/Zoning\\_Adjustment\\_Board/2067\\_University.aspx](http://www.ci.berkeley.ca.us/Planning_and_Development/Zoning_Adjustment_Board/2067_University.aspx)



Figure 3: Level 2

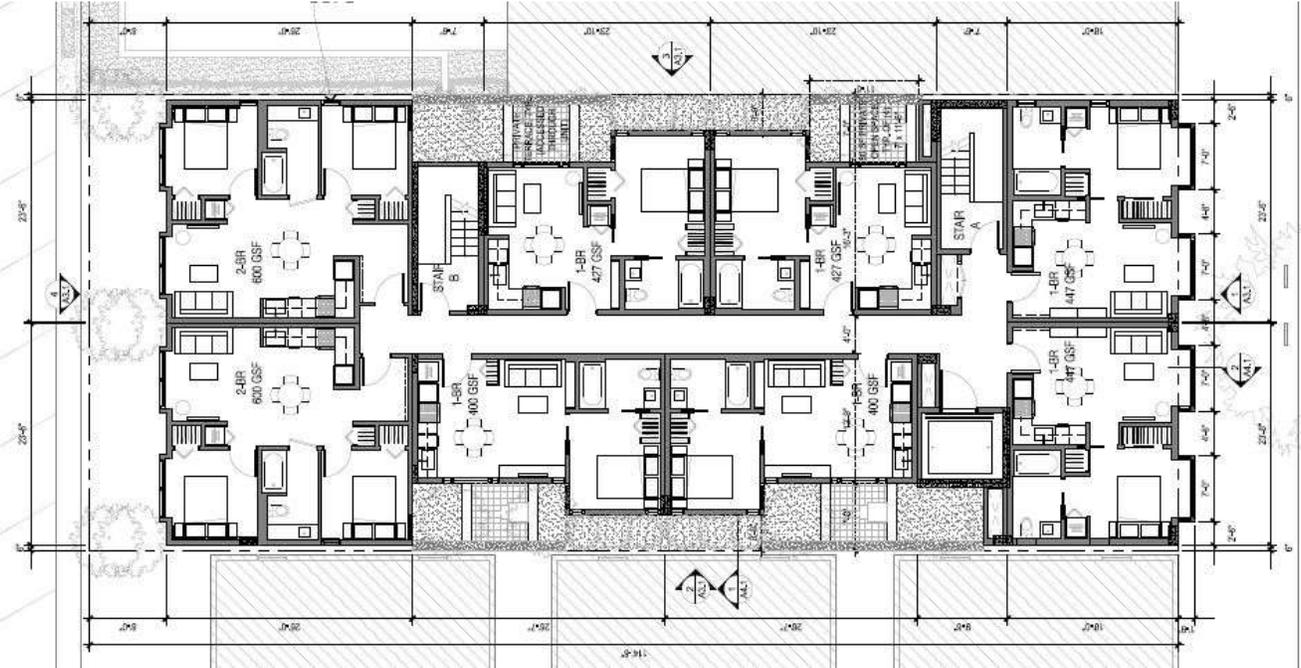


Figure 4: Levels 3 through 7

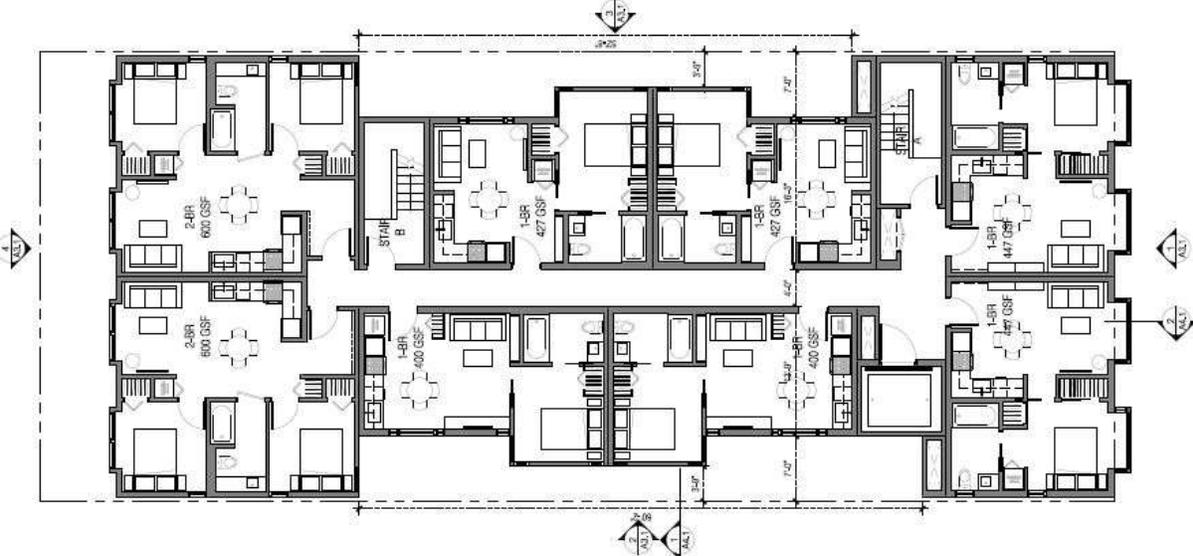
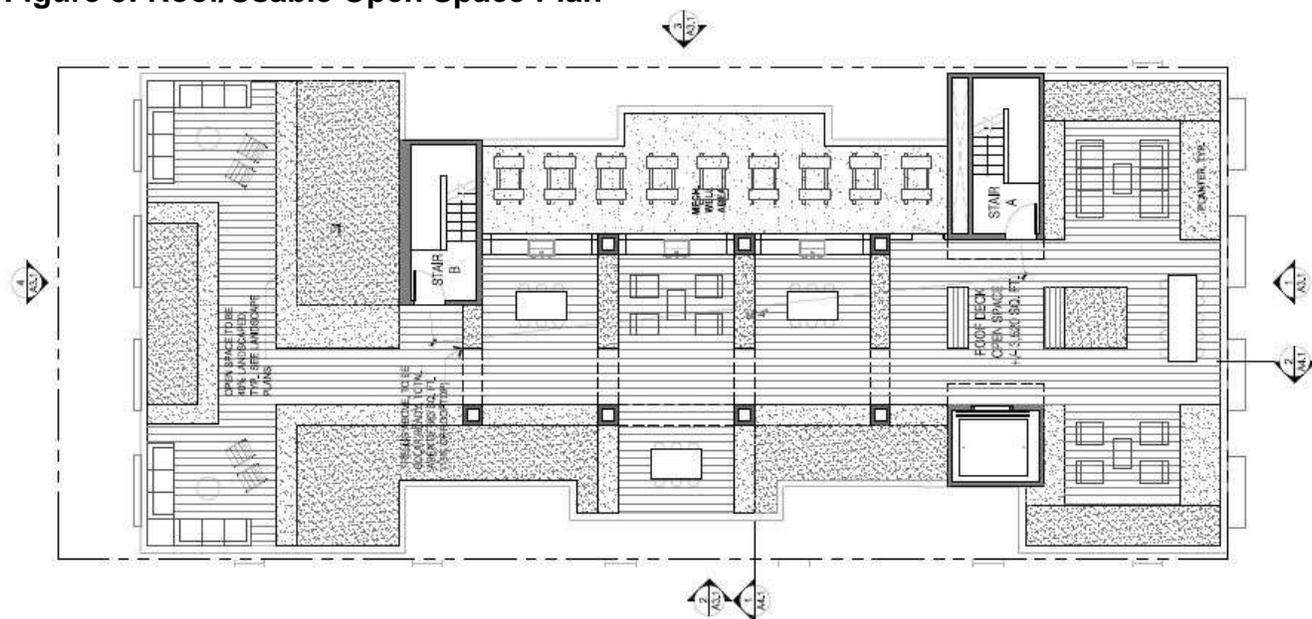


Figure 5: Roof/Usable Open Space Plan



**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Restaurant	C-DMU Outer Core	Downtown
Surrounding Properties	North	Berkeley Way Parking Lot	C-DMU Buffer	Downtown
	South	Commercial, Mixed Use	C-DMU Core	
	East	Commercial, Restaurant	C-DMU Outer Core	
	West	Commercial, Mixed Use, (Nash Hotel over Commercial)	C-DMU Outer Core	

**Table 2: Special Characteristics**

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	The proposed non-residential floor area is less than 7,500 sq. ft. and therefore this project is not subject to this resolution.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	The proposed non-residential floor area is less than 7,500 sq. ft. and therefore this project is not subject to this resolution.
Affordable Housing Mitigation Fee (AHMF) for rental housing projects (Per BMC 22.20.065)	Yes	To comply with City of Berkeley Affordable Housing rental requirements, the project would also be providing additional Affordable Units and/or/or-in-combination- with providing an in-lieu Mitigation Fee per the City of Berkeley requirements.
Alcohol Sales/Service	No	No alcohol sales or service is proposed.
Creeks (BMC Section 17.08.050)	No	The open creek or culvert exists within 40 ft. of the site.
Density Bonus	Yes	The project includes 4 Very-Low Income units, and per Government Code Section 65915(f)(2). The project qualifies for a bonus of 32.5%, or 13 units. See Section III Project Description for details.
Green Building Score	Yes	The project is designed and will be required by a condition of approval to attain a LEED Gold rating or higher as defined by the USGBC, or the equivalent, as determined by the Zoning Officer.
Historic Resources	No	The project would involve demolition of a non-residential building that is greater than 40 years old. A Historic Resource Evaluation (HRE) found that the property and building did not meet eligibility criterion for listing on the CA Register of Historical Resources or as a City of Berkeley Landmark or Structure of Merit. The project and the HRE were referred to the Landmarks Preservation Commission (LPC) on May 5, 2016. The LPC took no action.
Oak Trees	No	There are no oak trees on the property.
Rent Controlled Units	No	There are no rent controlled units on the property.
Seismic Hazards	No	The project site is not mapped within any hazard zones.
Soil/Groundwater Contamination	No	The project site is located within the City's Environmental Management Area. A Phase I Environmental Assessment was submitted as part of the application. The assessment revealed no evidence of any recognized environmental conditions in connection with the subject property. Therefore, standard Toxic Management Division conditions of approval shall apply to the project. The project is not on the Cortese list.

**Table 3: Project Chronology**

Date	Action
December 23, 2015	Original Application submitted
February 24, 2016	Revised Application submitted
March 25, 2016	Application deemed complete
May 5, 2016	Landmarks Preservation Commission (LPC) Review. No action taken.
May 19, 2016	Design Review Committee (DRC) Preliminary Design Review (PDR)
May 19, 2016	DRC favorable PDR recommendation
July 14, 2016	ZAB Public hearing notices mailed/posted
July 28, 2016	ZAB hearing

**Table 4: Development Standards**

Standard	Existing	Proposed Total	Permitted/ Required
BMC Sections 23E.68.070-080			
Lot Area (sq. ft.)	5,520	5,520	No minimum
Gross Floor Area (sq. ft.)	4,862	31,977	No maximum
Dwelling Units	Total	0	No maximum
	Affordable	0	4 min. VLI (required for Density Bonus)
Building Height <sup>1</sup>	Maximum	23'	40' min. to 60' max. permitted; Up to 75' with UP
	Stories	1	No maximum
Building Setbacks (ft.)	Front	0	0' min. (if building height ≤75')
	Rear	0	0' min. (if building height ≤ 20'); 5' min. (if building height 20'>75')
	Side	0	0' min. (0-65' from lot frontage);
	Side <sup>2</sup>	0	5' min. (>65' from lot frontage where building height >20') <sup>2</sup>
Projections Over R-O-W	0'	1'9"-3'	Encroachment Permit Required <sup>3</sup>
Lot Coverage (%)	88	92	100 maximum
Open Space (sq. ft.)	Residential	0	4,000 of Usable Open Space minimum (80 sq. ft. per unit)
	Commercial	0	30 of privately-owned public open space minimum (1 sq. ft. per 50 sq. ft.)
Parking	Vehicle	0	17 + 2 = 19 spaces minimum (1/three units + 1.5/1000sq. ft. of commercial space)
	Bicycle	0	1 minimum (1:2,000 sq. ft. of commercial space)

<sup>1</sup> The applicant has requested a modification to exceed the maximum 60-foot height limit.

<sup>2</sup> The applicant has requested a modification to eliminate the required 5-foot setback on the portion of the building greater than 65 feet from lot frontage and more than 20 feet in height.

<sup>3</sup> The project design includes features that would project over the right-of-way: upper-story bay windows, a canopy, and building cornices.

## II. Project Setting

**A. Neighborhood/Area Description:** The subject site is located within, and surrounded by, the Downtown Mixed Use Commercial (C-DMU) District. The parcel itself is in the Outer Core Area of the Downtown Area Plan. The site is surrounded by mixed-use buildings, restaurants, theaters, and personal services. Additionally, many of the surrounding buildings, including the two neighbors to the west and the majority of the buildings across University, currently provide no side yard setbacks.

There is a public surface parking lot to the north (Berkeley Way Lot). The City Council recently approved an agreement to develop the Berkeley Way Lot with approximately 112 public parking spaces, approximately 94 affordable units, approximately 30 permanent supportive temporary housing units, a services center and administrative office spaces.

Surrounding building heights vary, with typical heights of one to three stories. Across University Avenue, there is an existing six-story building to the west and a seven-story office building to the east of the project site. The building immediately to the east is a single story commercial building that is currently undergoing a façade remodel and is under plan check review for tenant improvements for a quick-service restaurant. The building immediately to the west of the project site is a three-story mixed-use building.

The site is within the Downtown Plan Area and is well served by public transportation including the Downtown Berkeley BART station three blocks to the south. There are also bus stops less than one block from the site that provide access to five different AC Transit bus routes including a transbay route (Route FS), an all-nighter (Route 800), as well as connections to intercity express routes.

**B. Site Conditions:** The 5,520 square-foot (0.13 acres), rectangular subject site consists of a single-story building and small cement covered rear exterior lot. There is no designated parking area. A restaurant (Ang Hong Vietnamese Cuisine) has occupied the site for over 30 years.

## III. Project Description

The project would involve demolition of an existing 4,862 square foot, one-story building and construct a 31,977 square foot, seven-story mixed-use development with 50 dwelling units, including 38 one-bedroom apartments (two on the ground floor which include one bedroom and an open home office area), and 12 two-bedroom apartments. Four of the units would be affordable housing units for very low-income residents. The proposal also includes 1,500 square feet of commercial space and 48 secure interior bicycle parking spaces on the ground floor. No vehicle parking is proposed.

Since the project includes four dwellings that would be affordable to very-low income households, the project is entitled to a density bonus and concessions or incentives under Government Code Section 65915. As shown in Table 5 that follows, under the

City’s density bonus procedures, the project’s “base project”<sup>1</sup> was calculated at 37 units and six stories. With the applicants’ commitment to provide four (4) below market rate (BMR) units (10% of the base project), the project qualifies for a density bonus of 32.5% percent, or 13 units, which would increase the total allowable units to 50.

According to the applicant the project was designed with larger setbacks than required on the middle portion of the left side setback in order to align with existing neighboring light wells to the west of the site.

**Table 5. Base Project, Density Bonus**

Floor	Base Project		Proposed Project	
	Base Units	Residential Gross Floor Area (GFA)	Total Units (Base + Density Bonus Units)	Residential GFA with DBU
Ground	2	2,957	2	2,968
2 <sup>nd</sup>	7	3,933	8	4,485
3 <sup>rd</sup>	7	3,933	8	4,485
4 <sup>th</sup>	7	3,933	8	4,485
5 <sup>th</sup>	7	3,933	8	4,485
6 <sup>th</sup>	7	3,933	8	4,485
7 <sup>th</sup>	--	--	8	4,485
<b>Totals:</b>	<b>37</b>	<b>22,622</b>	<b>50</b>	<b>29,878</b>
<b>Average Unit Size:</b>	<b>Base: 611 sq. ft.</b>	<b>Proposed: 598 sq. ft.</b>	<b>Difference: -13 sq. ft. (2.1%)</b>	
<b>Qualifying Units per CA Gov’t Code 65915(f)</b>	<b>Desired Density Bonus</b>	<b>Required % Very Low Income</b>	<b>Raw # (10% of base units)</b>	<b>Rounded Up</b>
	32.5%	10%	3.7	4
<b>Proposing 4 VLI Units allows for:</b>	<b>Base Project</b>	<b>Base Units x 32.5%</b>	<b>Rounded Up</b>	<b>Total (Base+DBU)</b>
	37	12.95 DBU	13 DBU	50 Units

Two modifications are requested in order to accommodate the density bonus units<sup>1</sup>: 1) a height modification for seven floors at a height of 73’2” and 2) side yard setback modifications for the rear 50 feet of the property (northerly portion beyond 65 feet from frontage).

#### IV. Community Discussion

**A. Neighbor/Community Concerns:** Prior to submitting this application to the city, the applicant invited interested neighborhood organizations as well as owners and occupants within 300 feet of the project to a project preview meeting in December

<sup>1</sup> Government Code Section 65915(e)(1) allows an applicant to submit to the City a proposal for waiver or reduction of any development standard, and states that in no case may a city apply any development standard that will have the effect of physically precluding the construction of a housing development project that qualifies for a density bonus.

2015. The meeting had no attendees. A pre-application poster was posted by the applicant in December 2015.

On July 14, 2016, the City posted notices within the neighborhood in 3 locations and mailed public hearing notices for the July 28, 2016 ZAB hearing to property owners and occupants within a 300 foot radius, as well as to interested neighborhood organizations. No communications were received as of the writing of this report.

**B. Landmarks Preservation Commission Review:** The project involves demolition of the existing one-story structure that is greater than 40 years old. A Historic Resource Evaluation (HRE) found that the property and building at 2067 University Avenue do not meet any eligibility criterion for listing on the California Register of Historical Resources or appear to qualify to be listed as a City of Berkeley Landmark or Structure of Merit. The project and the HRE were referred to the Landmarks Preservation Commission (LPC) on May 5, 2016. The LPC took no action.

**C. Design Review Committee Review:** The Design Review Committee (DRC) conducted Preliminary Design Review (PDR) for the project on May 19, 2016. The DRC passed a motion to forward a favorable recommendation to the ZAB in a 4-0-0-3 vote (Anno, Edwards, Hall – absent) with the following comments and recommendations:

- *Variation illustrated in rain screen wall cladding is a nice feature.*
- *Look carefully at roof decking material. Provide more information at Final Design Review.*
- *For open space, more of a variety in seating arrangements is recommended, some larger, some smaller.*
- *As a general comment, it would be good to amend the 40% landscape requirement to less when open space is on a roof deck.*
- *Ceiling heights could be higher.*

## V. Key Issues

**A. Density Bonus Waivers/Modifications:** Two modifications are being requested in order to accommodate the density bonus units: 1) a height modification for seven floors at a height of 73'2" and 2) side yard setback modifications for the rear 50 feet of the property (northerly portion beyond 65 feet from frontage). As demonstrated on Plan Sheet A0.3A, a modification for only additional height, rather than height and side yard setback modifications, would require 9 total stories and 91 feet, 8 inches to accommodate the 13 density bonus units (see Non-Proposed Alternate Density Bonus Project) and would not meet the standards of the zoning district.

Pursuant to BMC Section 23E.68.070, with the issuance of a Use Permit, a building within the C-DMU District would be allowed a maximum height of 75 feet and a reduction to side yard setbacks. However, the Applicant is requesting modifications to the development standards under Government Code Section 65915 rather than pursuing Use Permits for these deviations from the standards.

- B. Shadows:** The building would be taller and cover more area than the existing building, and thus new shadows would be cast. To assess the shadows, the applicant submitted shadow studies for the project (see Sheets A0.4A and B of Attachment 2). The project shadow studies illustrate that under current conditions, the neighboring properties receive shadows from the existing building on the east side of the subject site, which would increase with the proposed project.

Staff Analysis: Throughout the year, an increase in morning shading would be cast across the majority of the mixed-use building directly to the west of the subject property and the single-story commercial properties to the east would be impacted by afternoon shading. However, the entrances and windows of the buildings to the east are located to the south along University Avenue and to the east along Shattuck Avenue and are already shaded by the buildings themselves. There would be no significant shadow impacts from the proposed building. The surface parking lot directly north of the project site would experience the larger increase in morning and afternoon shading during the winter.

The shadowing on the mixed-use building to the west would be more prominent. There are six existing east-facing windows on the building at 2051 University Avenue that would be completely physically blocked or effectively blocked by the proposed development and would consequently receive no sunlight at all. The Applicant has been in contact with the adjoining property owner and has met with City building officials regarding this issue. It was concluded that the impacted rooms would be able to be reconfigured and the east-facing windows potentially sealed off to mitigate for the loss of privacy and light. The building would still meet all code regulations for accessibility and light even with the loss of these windows.

The moderate increase in shading on the properties to the north, east, and south is below what is to be expected in the Berkeley downtown urbanized area, and is therefore found to be non-detrimental. The impacts to the property to the west would be mitigated through the reconfiguration of rooms and the sealing up of east-facing windows. Therefore, staff believes that the ZAB can make the necessary findings of non-detriment.

- C. Mixed-use Development:** BMC Section 23E.68.030.A allows mixed-use development in the C-DMU District subject to the approval of a Use Permit and the ZAB making a finding of Non-Detriment listed in BMC Section 23B.32.040, and the findings listed in BMC Section 23E.68.090. The ZAB may rely on these findings to consider the building as a whole (specific features of this project are addressed later in this report). In order to approve these Use Permits the ZAB must find that the proposed use or structure:

1. Be compatible with the purposes of the District; and
2. Be compatible with the surrounding use and buildings.

The required findings are evaluated as follows:

***#1: Be compatible with the purposes of the District.***

Staff Analysis: The purpose of the C-DMU Downtown Mixed Use District is to implement the vision and goals of the Downtown Area Plan (adopted 2012), which include policies that specifically address the proposed mixed-use development:

- 1. Environmental Sustainability:** Consistent with DAP Goals ES-1, ES-3, and ES-5, the Project would integrate environmentally sustainable development and practices in the Downtown area. In addition, the project would encourage alternative means of transportation by including a total of 48 bicycle parking spaces and in-lieu fees instead of the required 19 parking spaces. The project would be required to attain a LEED Gold rating or higher as defined by the USGBC, or the equivalent, as determined by the Zoning Officer. Evidence for certification would be provided prior to issuance of building permits.
- 2. Land Use:** Consistent with DAP Goals LU-2, LU-3, and LU-4 the project would contribute its fair share in necessary fees, provide a range of housing opportunities by including four very-low income housing units, and would incorporate sustainable characteristics in to the building design and use.
- 3. Access:** Consistent with DAP Goals AC-1, and AC-4, the Project would contribute towards making visiting the Downtown area as car-free as possible while promoting the use of public transit. The Project site is well served by public transportation, including a BART station only three blocks away. There are also bus stops less than one block from the site that provide access to five different AC Transit bus routes including a transbay route (Route FS), an all-nighter (Route 800), as well as connections to intercity express routes. A total of 48 bicycle parking spaces would be provided by the development. Instead of providing the required 19 parking spaces, the project would pay in lieu fees. In addition, the property owner would be required, as a Condition of Approval, to provide one of the following transportation benefits at no cost to every residential unit: a pass for unlimited local bus transit service, or a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass.
- 4. Housing and Community Health & Services:** Consistent with DAP Goals HC-3 and HC-4, the proposed project would add an additional 50 housing units to the Downtown area and offer diverse housing opportunities for people, including households of varying size and four affordable housing units for very low-income residents.
- 5. Economic Development:** Consistent with DAP Goal ED-10, the proposed project would provide housing for all income groups and contribute towards a growing base of residents who support Downtown businesses.

For the reasons outlined above, staff believes that the project is consistent with the findings in BMC Section 23E.68.090.B.1.

**#2: *Be compatible with the surrounding uses and buildings.***

Staff Analysis: The subject site is located within the Outer Core Subarea of the Downtown Mixed Use District. The neighborhood is a mix of residential and commercial uses, including offices, food service establishments, and personal service establishments. Existing structures in the neighborhood vary in height up to seven stories. Staff believes that the development of a seven-story, mixed-use residential/commercial building would be compatible with the surrounding land uses and building sizes. Therefore, ZAB can find that the project is consistent with the finding in BMC Section 23E.68.090.B.2.

**D. Construction of Over 10,000 Square Feet of New Floor Area/Neighborhood**

**Compatibility:** In order for any Use Permit to be granted under BMC Section 23E.68.050 for new floor area, the ZAB must find that the project meets the findings noted in BMC Section 23E.68.090.D of the Zoning Ordinance, which requires that:

1. The addition or new building is compatible with the visual character and form of the District; and
2. 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 addition.

Staff Analysis: The subject neighborhood includes a mix of residential and commercial uses. Existing structures in the neighborhood vary in height up to seven stories. Proposed massing has a strong street wall presence at the property line on University Avenue with recessed entrances for the main residential lobby and an adjacent café tenant space. The rear elevation is set back 8' from the north property line and allows for two garden units on the ground level. The massing is set in on both sides in the middle, allowing for light and air to the units in the center of the plan.

Ground floor storefront design uses the larger floor area for additional glazing and transom elements, and extends similar proportions as the storefront openings adjacent to the east. Exterior materials proposed include a rain screen cladding, painted exterior cement plaster, Aluminum storefront windows, aluminum residential windows with corresponding spandrel panels, and frameless glass railings at the roof deck and a frameless glass cornice below.

A Historic Resource Evaluation found that the property and building at 2067 University Avenue does not meet any eligibility criterion for listing on the California Register of Historical Resources or as a City of Berkeley Landmark or Structure of Merit. 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 addition. In addition, no Berkeley landmarks are located on the subject block nor is the block located in a current or proposed historic district

Therefore, staff concludes that the ZAB may find that the project is compatible with the visual character and form of the District and that no designated landmark in the vicinity would be adversely affected.

- E. Parking Waiver, In-lieu Fee:** In order to approve a Use Permit to allow a reduction of required vehicle parking spaces required by BMC Section 23E.68.080.D, the ZAB must find that the applicant would pay an in-lieu fee to a fund established by the City that provides enhanced transit services.

Staff Analysis: The C-DMU district parking regulations require at least one space per three dwelling units for residential developments and 1.5 parking spaces per 1000 square feet of commercial development. The project would be required to provide 19 parking spaces. However, the Applicant is proposing to not provide any parking at all and instead pay an in-lieu fee. The fee schedule adopted by the Council by resolution (66,178) set the fee at \$15,000 per space for spaces 1-5 waived or reduced, \$20,000 per space for spaces 6-15 waived or reduced, \$25,000 per space for spaces 16-25 waived or reduced, and \$30,000 per space for spaces 26 and greater waived or reduced. Payment of the fee, totaling \$375,000, is required as a Condition of Approval.

- F. Privately-Owned Public Open Space, In-Lieu Fee:** Pursuant to BMC Section 23E.68.070.D.3, the ZAB must grant a Use Permit to allow payment of an in-lieu fee to provide funding for open space improvements that would serve the needs of both project residents and other people living in and using the downtown. Based on the size of the commercial portion of the proposed mixed-use building, 30 square feet of Privately-Owned Public Open Space is required by BMC Section 23E.68.070.D. The Applicant is requesting to pay an in-lieu fee rather than provide this space on the project site.

Staff Analysis: Staff determines that the ZAB could find that the proposed project satisfies this requirement by the implementation of the Conditions of Approval, which require the project to pay an in-lieu fee to address the shortfall of Privately-Owned Public Open Space and that this money would be deposited in the City's "Street and Open Space Improvement Fund" to enhance downtown consistent with the DAP.

- G. Rooftop Equipment, Height Modification:** BMC Section 23E.04.020.C requires an Administrative Use Permit for rooftop projections including mechanical penthouses, elevator equipment rooms and other architectural features which exceed a District's height limit. No such structure shall represent more than fifteen percent (15%) of the average floor area of all the building's floors; and no tower or similar structure shall be used as habitable space or for any commercial purposed, other than that which may accommodate the mechanical needs of the building.

Staff Analysis: The proposed rooftop equipment, including trellises, stairwells, and an elevator extension, that exceeds the maximum district height limit (75 feet) would total 393 square feet, which is 8.6% of the average floor area of the building. The open rooftop area would be used as common open space for the residents of the building and none of the equipment structures would be used as habitable or commercial space. Therefore, Staff determines that the rooftop equipment height modification meets the intent of BMC Section 23E.04.020.C and ZAB can find that the increased height for the rooftop equipment would not be detrimental to the neighborhood.

**H. General Plan Consistency:** The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy LU-3 – Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale; and
2. Policy LU-7 – Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area; and
3. Policy LU-17 – Downtown Development Standards, Action D: Encourage mixed-use projects that include both office space and housing above appropriate ground-floor uses to improve the balance between the number of jobs and the number of housing units in the Downtown; and
4. Policy LU-18 – Downtown Affordable Housing Incentives: Maximize the supply of affordable housing in the Downtown; and
5. Policy LU-23 – Transit-Oriented Development: Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley; and
6. Policy LU-24 – Car-free Housing in the Downtown: Encourage development of transit-oriented, low-cost housing in the Downtown; and
7. Policy LU-25 – Affordable Housing Development: Encourage development of affordable housing in the Downtown Plan area, the Southside Plan area, and other transit-oriented locations; and
8. Policy LU-29 – University Avenue Strategic Plan: Implement the University Avenue Strategic Plan and take actions to achieve the six goals of the Plan.
9. Policy H-1 – Extremely Low, Very Low, Low, and Moderate Income Housing: Increase the number of housing units affordable to Berkeley residents with lower income levels; and
10. Policy H-12 – Transit-Oriented New Construction: Encourage construction of new medium- and high-density housing on major transit corridors and in proximity to transit stations consistent with zoning, applicable area plans, design review guidelines, and the Climate Action Plan; and
11. Policy H-32 – Regional Housing Needs: Encourage housing production adequate to meet City needs and the City’s share of regional housing needs.
12. Policy T-16 – Access by Proximity, Action B: Encourage higher density housing and commercial infill development that is consistent with General Plan and zoning standards in areas adjacent to existing public transportation services; and
13. Policy T-16 – Access by Proximity, Action E: In locations served by transit, consider reduction or elimination of parking requirements for residential development; and
14. Policy T-43 – Bicycle Network, Action C: Encourage, and when appropriate, require new multi-family residential developments to provide secure locker space for resident bicycles...
15. Policy EM-5 – “Green” Buildings: Promote and encourage compliance with “green” building standards. (Also see Policies EM-26, EM-35, and EM-36); and

16. Policy UD-17 – Design Elements: In relating a new design to the surrounding area, the factors to consider should include height, massing, materials, color, and detailing or ornament; and
17. Policy UD-33 – Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: The project would help the City to meet its affordable and general housing goals by creating a total of 50 new dwelling units, including four units affordable to Very Low Income households. Building construction would attain a LEED Silver rating or higher as defined by the U.S. Green Building Council (USGBC), therefore establishing sustainable design elements into the project.

In addition, the Project site is well served by public transportation, including a BART station only three blocks away. There are also bus stops less than one block from the site that provide access to five different AC Transit bus routes including a transbay route (Route FS), an all-nighter (Route 800), as well as connections to intercity express routes. A total of 48 bicycle parking spaces would be provided by the development and instead of providing the required 19 vehicle parking spaces, the project would pay in lieu fees. In addition, the property owner would be required, as a Condition of Approval, to provide one of the following transportation benefits at no cost to every residential unit: a pass for unlimited local bus transit service, or a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass.

As a result, staff believes that the ZAB can find that the proposed project would be consistent with the goals and policies of the General Plan.

- I. Downtown Area Plan: The Project is located in Downtown Berkeley, within the C-DMU Downtown Mixed Use District. The purpose of this district is to implement the vision and goals of the Downtown Area Plan, adopted in 2012.

Staff Analysis: Please see discussion under “Key Issues” Section C above.

- J. University Avenue Strategic Plan: The proposed project is located within the University Avenue Strategic Plan, Downtown Node, Sub-Area 4 (adopted 1996) and as such, must also comply with the applicable policies set forth in the Plan, including the following:
  1. Public Safety Policy 5: All improvements along the University Avenue corridor shall be designed to consciously promote the safety of intended users and the surrounding neighborhood.
  2. Land Use Policy 6: Strengthen University Avenue as a mixed-use residential and commercial boulevard. Concentrate urban high density mixed-use commercial and housing development within the nodes along the avenue. Encourage lower density mixed-use outside the nodes. Protect and enhance the lower density character of surrounding neighborhoods.
  3. Urban Design Policy 8, Strategy 8A: ...East of MLK Way, the “Downtown Berkeley Design Guidelines” should apply. These Design Guidelines are intended

to encourage street-edge buildings, with active and interesting ground floor uses, upper story housing, as well as varied and articulate architecture.

4. Housing Policy 14: Encourage a diversity of new housing, opportunities in the University Avenue study area, in terms of tenure, income, and unit type. Provide incentives for developers to building new urban housing along University Avenue.
5. Housing Policy 16: The design of new and renovated housing along the University Avenue corridor should contribute to its character, without negatively impacting residents of adjacent residential areas.

Staff Analysis: Please see discussion under “Key Issues” Section J above.

## VI. Recommendation

Because of the project’s consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** Use Permit #ZP2015-0266 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

### Attachments:

1. Findings and Conditions
2. Project Plans, received July 21, 2016
3. Notice of Public Hearing, dated July 14, 2016

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