



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
FEBRUARY 9, 2017

2501-2509 Haste Street/2433 Telegraph Avenue - “El Jardin”

Use Permit #12-1000012 to demolish a 6,950 square-foot retail building at 2433 Telegraph Avenue, and to construct a new 6-story, 111,726 square-foot mixed-use building with 22,465 square feet of retail space at the basement and ground floor, a group living accommodation on floors 2-6 that will include housing for 238 persons, and no off-street parking spaces, on a 18,724 square-foot site that is currently 3 parcels.

I. Background

A. Land Use Designations:

- General Plan: AC, Avenue Commercial
- Area Plan: Southside Plan
- Zoning: C-T, Commercial - Telegraph

B. Zoning Permits Required:

- Use Permit, under BMC 23C.08.050, to demolish the non-residential building at 2433 Telegraph Avenue;
- Use Permit, under BMC Section 23E.56.030.A and under BMC Section 23E.56.050.A to construct a mixed-use building;
- Use Permit, under BMC 23E.56.030 to establish a Group Living Accommodation;
- Use Permit, under BMC 23E.56.070.E.2 to increase the density of a Group Living Accommodation;
- Use Permit, under BMC 23E.56.080.C to eliminate the existing parking space;
- Use Permit, under BMC 23E.56.050.E to reduce the rear yard setback from 15' to 5'; and
- Administrative Use Permit under BMC 23E.04.020, to allow mechanical penthouses, elevator equipment rooms, and other architectural elements, to exceed the height limit.

C. CEQA Determination: Categorically exempt pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development”).

D. Parties Involved: Property Owner / Applicant: Ken Sarachan, 1000 Rispin Drive, Berkeley

Figure 1: Vicinity Map



Figure 2: Site/First Floor Plan

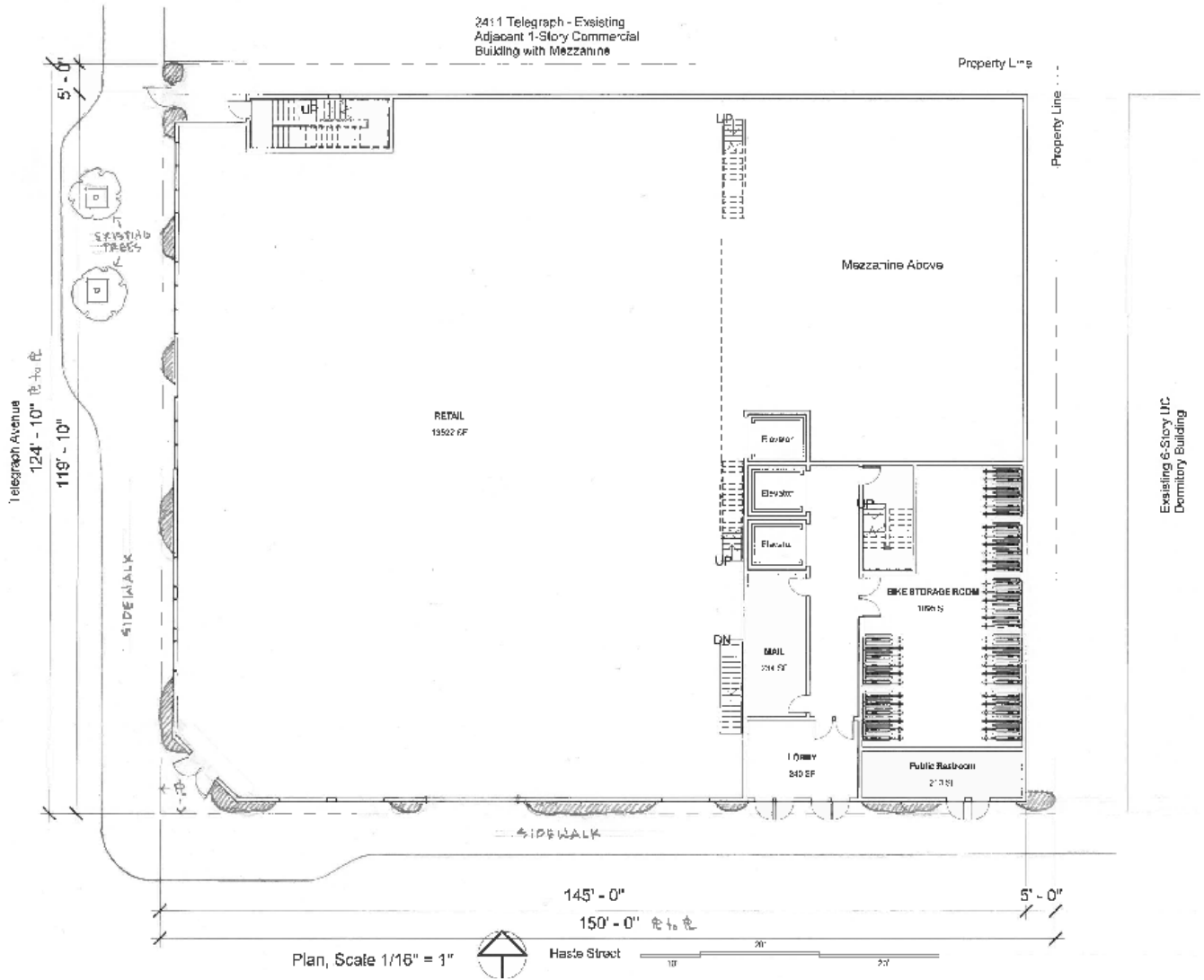


Table 1: Land Use Information

Location		Existing Uses	Zoning	General Plan Designation
Subject Property		2-story Commercial Building, Vacant Parcel (former Berkeley Inn) Vacant Parcel (former Woolley House)	C-T	Avenue Commercial
Surrounding Properties	North	Commercial: Rasputin Music		
	South	Commercial: Amoeba Records		
	West	Mixed Use: Sequoia Building		
	East	UC Housing/ Anna Head School		
			R-S	High-Density Residential

Table 2: Special Characteristics

Characteristic	Explanation
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	BMC Section 22.20.065 requires developers to pay an Affordable Housing Mitigation fee based on the number of market rate units a project has proposed. This project proposes Group Living Accommodations in the residential spaces, instead of dwelling units. Therefore, this requirement does not apply to this project.
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	This fee applies to new non-residential gross floor area; the project would include 22,465 square feet of new floor area subject to this Resolution. A payment of \$1.25 per square foot of new gross area devoted to commercial and retail/restaurant space will be required via a condition of approval.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	This fee applies to new non-residential gross floor area; the project would include 22,465 square feet of new floor area subject to this Resolution. The applicant may either: (1) create one unit of housing off-site within the City of Berkeley (with an average size of two bedrooms) affordable to households whose income is at or below 30% of the area median income ("Affordable Housing"); or (2) pay an equivalent In-Lieu Impact Fee ("Fee") \$4.50 per gross new square foot. As the applicant has not proposed new dwellings, a payment of \$4.50 per square foot of new gross area devoted to commercial and retail/restaurant space will be required via a condition of approval.
Alcohol Service/ Food Service	None Proposed
BMC 17.08 Creeks	No creek or culvert exists within 300' of the site.
Density Bonus	None proposed
Green Building: - LEED - Solar Ready	Pending
Historic Resources	On April 4, 2013, the demolition of 2433 Telegraph Avenue was referred to the LPC. Because the building did not appear to meet California Register or City of Berkeley Landmark Preservation Ordinance criteria, the LPC took no action with regard to the building pursuant to Section 23C.08.050.C. On August 22, 2013, the ZAB approved Use Permit & Variance #07-1000023 to allow the relocation of the Woolley House Landmark building, from 2509 Haste Street to 2506 Dwight Way. In 2014, the Woolley house was relocated to 2506 Dwight Way.
Housing Accountability Act (Govt. Code 65589.5(j))	The project is a not "housing development project" because it does not include dwellings units.
Oak Trees	No Coast Live Oak trees are located on the site.
Residential Permit Parking Program (RPP)	Per BMC Section 23E.56.080.B, residents of the proposed building shall not be entitled to receive parking permits under the Residential Permit Parking Program.
Seismic Hazards	Site is not within area mapped for liquefaction, landslide, or fault rupture zone.
Soil/Groundwater Contamination	The project site is not listed on the Cortese List (an annually updated list of hazardous materials sites). Standard Conditions of Approval would apply.
Transit	AC Transit: F Transbay and the 6, 49, 51B & 52, BART: The Ashby & Downtown Berkeley stations are roughly 1 mile to the southwest or northwest of the site. The Berkeley Shuttle service (BEAR Transit) and the Lawrence Berkeley National Laboratory Shuttle service also serve the site.

Table 3: Project Chronology

Date	Action
October 16, 1989	The Woolley House was designated a City of Berkeley Landmark.
November 9, 1987	The Berkeley Inn was designated a City of Berkeley Landmark. In 1990, a fire damages the Berkeley Inn and the building was subsequently demolished.
April 19, 2012	Use Permit UP #12-10000012 Application Submitted.
April 4, 2013	The demolition of 2433 Telegraph Avenue was referred to the LPC. Because the building did not appear to meet California Register or City of Berkeley Landmark Preservation Ordinance criteria, the LPC took no action with regard to the building pursuant to Section 23C.08.050.C.
June 20, 2013	DRC: Preview/advisory Comments.
July 11, 2013	LPC: Public Hearing to Approve Structural Alteration Permit to allow the relocation of the Woolley House to Dwight/Regent.
August 22, 2013	ZAB: Public Hearing to Approve Use Permit & Variance to allow the relocation of the Woolley House Dwight/Regent.
December 12, 2013	ZAB: Public Hearing to Preview Project.
January – February 2014	Materials Request
February – August 2014	ZAB: Public Hearing Continued
October 16, 2014	DRC: Favorable recommendation to the ZAB
January 26, 2017	ZAB: Public Hearing Notice Released
February 9, 2017	ZAB: Public Hearing

Table 4: Development Standards

Standard BMC Sections 23E.56.070 & 23E.56.080		Existing Conditions	Proposed	Permitted/ Required
Lot Area (SqFt)		18,781	No Change	N/A
-2433 Telegraph		6,963		
-2501 Haste		8,818		
-2509 Haste		3,000		
Gross Floor Area (SqFt) - Total		6,950	111,726	No Limit
- Residential Floor Area (SqFt)		0	76,137	
- Retail (SqFt)		6,950	22,465	
Floor Area Ratio		0.58	5.97	5 6 with a Use Permit (see Section V.A)
Residential Uses				
-Dwelling Units		0	0	No Limit
-Group Living Accommodations		0	238 persons	53 Use Permit to exceed (See Section V.B)
Building Footprint (SqFt)		Approx. 3,475	15,875	No Limit
Lot Coverage (%)		Approx. 18	84	
Building Height	Average Height	N/A	72'	35' Min/65' Max 75' allowed with a Use Permit (see Section V.A)
	Stories	2	6	None required
Building Setbacks	East Property Line (Rear)	N/A	5'	15' Use Permit to Reduce (see Section V.C0)
	Telegraph Avenue (Front)		0'	None Required
	Haste Street (Street Side)		0'	
	North Property Line (Interior Side)		5'	
Roof-top Projections		N/A	95'	Requires Use Permit (see Section V.E)
Usable Open Space (SqFt)		215	13,124	3,160
2 nd floor		N/A	1,583	None Required
4 th floor			1,010	
5 th floor			381	
Roof Deck			10,150	
Parking	Automobile - Total	1	0	None Required
	- Dwelling Units	0		
	- Group Living Accommodations	N/A		
	- Retail	0		
	Bicycle			
- Commercial Uses	0	11	11	
- Residential Uses	N/A	238	0	

II. Project Setting

- A. Neighborhood Conditions:** The project site is located on the eastern side of Telegraph Avenue at Haste Street. The site is located approximately ¼ of a mile from the UC Berkeley Campus and within the Southside Plan Area. This portion of Telegraph Avenue generally consists of one to four story commercial and mixed-use buildings, and abuts a 6-story student housing project to the east. Photos of the surrounding area are provided in the project plans (see A0.01).
- B. Site Conditions:** The existing site is made up of 3 parcels. The first, along the northern portion of the site contains a building known as the “Galaxxi Building.” This building was last used for retail use, and is a 2-story concrete building with a flat roof. The vacant parcel at the corner of Haste and Telegraph is the site of the former Berkeley Inn. This building was demolished in the 1990’s and the site has remained vacant. The last portion of the site along Haste Street, is a vacant parcel that was the site of the Woolley House, which was relocated to 2506 Dwight Way in 2014.

III. Project Description

The project involves the demolition of an existing two-story commercial building at 2433 Telegraph Avenue and the construction of a new six-story mixed-use building. The project would include commercial spaces at the basement, ground floor and mezzanine levels. The residential use, Group Living Accommodations, would be on the second – sixth floors.

Each residential level is arranged around the courtyard at the podium level, with a mix of four-bedroom Living Accommodations, two-bedroom Living Accommodations and studios. The fourth and fifth floors also provide access to outdoor terraces at the corner of Haste and Telegraph. A larger roof deck above the sixth floor would provide the bulk of the usable open space (see Table 3 for detail).

The project provides no off-street parking, but the applicant has proposed two rooms for bike storage, one on the ground floor, and one at the basement, which will provide enough bike parking for every resident in the building.

IV. Community Discussion

The applicant held a neighbor meeting in April 2012. In 2013 and 2014, multiple public hearings were held to allow the public and the Board to learn of the project and provide comments. The pre-application poster was re-installed at the site on January 25, 2017. On January 26, 2017, the City mailed 468 public hearing notices to property owners and occupants, and to interested neighborhood organizations and the City posted notices within the neighborhood in three locations. At the time of this writing, staff has not received any communications regarding the project.

V. Issues and Analysis

A. Compliance with the C-T District Development Standards: BMC Sections 23E.56.030.A and 23E.56.050.A.2 allow mixed-use development in the C-T District, but require approval of a Use Permit, subject to the Board making a finding of Non Detriment, and the findings noted in Section 23E.56.090.B and 23E.56.090.F of the Zoning Ordinance (the same as Findings #2-5 below).

In addition, the C-T District limits building height to 65' and allows for a maximum Floor Area Ratio of 5, but allows 75' and an FAR of 6, subject to approval of a Use Permit. With a proposed height of 72' and FAR of 5.99, this project exceeds the district limits. The ZAB may approve this Use Permit if it makes the following findings:

1. At least 50% of the total building floor area is designed for residential use;
2. Be compatible with the purposes of the District;
3. Encourage and maintain the present street frontage of the District, will not interfere with the continuity of retail or compatible service facilities at ground level and will not interrupt a continuous wall of building facades;
4. Be compatible in design and character with the District and the adjacent residential neighborhoods;
5. Not generate traffic or parking demand significantly beyond the capacity of the Commercial District or significantly increase impacts on adjacent residential neighborhoods.
6. The project will not result in a significant reduction in sunlight on Telegraph Avenue sidewalks.

At least 50% of the total floor area is devoted to residential use, so this project will comply with #1. Findings #2-5 are evaluated as follows:

Finding #2: The project is compatible with the purposes of the district because it will create housing and commercial opportunities for those who work or study nearby in the form of a mixed use development on a currently mostly vacant lot, a portion of which is occupied by a vacant building. It will include ground floor commercial uses that will cater to the needs of the District's population, especially the surrounding residential and UC Berkeley populations. The commercial space would also provide pedestrian-oriented uses within a new building with glass storefronts and pedestrian-scaled lighting along the sidewalk.

In addition, the project would further General Plan *Policy H-19–Regional Housing Needs* by including housing to help the City attain the fair share housing goal established by ABAG's Regional Housing Needs Determination for Berkeley. The project would advance the objectives and policies of the City's Housing Element, including Objective 3, that new housing should be developed to expand housing opportunities in Berkeley to meet the needs of all groups.

The project would also create new housing without generating substantial vehicular traffic. It would accommodate 238 persons within walking distance of the University of California and is located in an area that is well served by transit, including the several

AC Transit bus lines and the Downtown Berkeley BART stations within one mile of the site.

Findings #3 and #4: With six stories along Telegraph Avenue and Haste Street (five residential stories above ground floor commercial) the project would reinforce the City's effort to maintain the street frontage of the district and redevelop underutilized sites in a way that would increase the quality of the built environment with new housing and commercial opportunities.

The DRC's positive recommendation of the design demonstrates that the project is compatible with the adjacent commercial and residential development. Therefore, it would further General Plan *Policy UD-24–Area Character*, which calls for 'new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.'

Finding #5: While the project provides no off-street vehicle parking, the applicant has proposed 238 bicycle parking spaces, enough for one bicycle per resident. Given the fact that residents of the proposed building shall not be entitled to receive parking permits under the Residential Permit Parking Program, its intended residents (students), and the project's proximity to the UC Berkeley campus and the variety of transit options, traffic and parking impacts are expected to be minimal.

Finding #6: The proposed six-story building would cover more area of the site and include a new building at a greater height than what exists today, and thus new shadows would be cast in the vicinity. To assess the shadows, the applicant submitted shadow studies to depict shadows that would result from a 35' tall building (the minimum height allowed in the C-T District for new buildings), 65' (the maximum height allowed without a use permit) and 72' (the project) (see Sheet A 1.0-04 in the Project Plans). Shadows from any building height occur at the greatest extent during the winter solstice, primarily in the morning. Because the C-T requires new buildings with a minimum height of 35', Staff has used the shadows cast from such a building as the baseline condition to compare the increased impacts from a building at 65' and the proposed project.

Winter Shadows: At 35' in height, a new building would cast shadows over a portion of Telegraph Avenue in the morning, but would not extend to the sidewalk along the west side of the street (A1.04). At 65' in height, a new building would also cast shadows over Telegraph Avenue in the morning, and would cover all of Telegraph to the north of the project site, including sidewalks, as well as the southern portion of the intersection at Channing Way (A1.03). The project would cast roughly the same extent of shadow as a similar project with a height of 65' would, including on Telegraph Avenue and a portion of the intersection at Channing Way (A1.02). Thus, Staff believes that during the winter the Board can support the finding to allow the proposed height increase.

Summer Shadows: During the summer solstice, the proposed project will also cast shadow across Telegraph Avenue in the mornings, but by noon, no shadows would

fall on Telegraph Avenue. In the evenings, the project would cast shadow to the south across Haste Street to People's Park, but the extent and duration would be much less than during the winter (A1.0).

The moderate increase in shading from a height of 35' to a height of the proposed project on streets and sidewalks is consistent with what is to be expected in an urbanized area, and is therefore found to be reasonable and generally non-detrimental. Staff recommends that the Board approve this project with a finding that the potential sunlight impacts are consistent with the urban in-fill context of this project where shadowing is likely to occur with any new construction due to surrounding building heights and the fact that a portion of the subject property is currently vacant, and that the reduction in sunlight on Telegraph Avenue sidewalks that would result from a building taller than 65' is negligible.

B. Group Living Accommodations (GLA): Per the Zoning Ordinance definition, "Group Living Accommodations occur in buildings or portions of buildings designed for or accommodating Residential Use by persons not living together as a Household, but excluding Hospitals, Nursing Homes and Tourist Hotels." In the C-T district, Group Living Accommodations are allowed with a Use Permit above the ground floor only (BMC 23E.56.030).

Per BMC Section 23E.56.070.E, this project is subject to the density limitations of the R-3 District, but the C-T Districts allows for an increase via a Use Permit. The lot size would accommodate 54 residents, but the project proposes 238. The Board may approve the use permit if the following findings are made:

1. At least 50% of the total building floor area is designated for residential use;
2. The increase in density will not be detrimental to the immediate neighborhood;
and
3. The project meets the purposes of the District.

Staff Analysis: For reasons stated in Section A above, Staff believes that the project is consistent with Findings #1 and #3.

As for Finding #2, while the applicant has proposed a substantial increase in density, Staff believes that the applicant has provided on-site amenities to alleviate the potential off-site impacts from such an increase to the immediate neighborhood. The project includes 13,124 square feet of useable open space for residents, approximately 55 square feet per resident. The C-T district does not provide a useable open space requirement for this project, but the 55 square feet per resident would be greater than what is required for this use in the adjacent residential district to the east (the R-S district, which requires 20 square feet per resident). Thus, with more than twice what would be required in the adjacent district, this project provides ample opportunity for residents to enjoy usable open space within the project boundaries. Also, while the Zoning Ordinance does not require bicycle parking for residential uses, the project would include 238 bicycle parking spaces.

In addition, Staff believes that the immediate neighborhood uses are compatible with the proposed project. While the project abuts a residential district, the abutting property

in the R-S district is the Anna Head School and the Maximino Martinez Commons, a six-story UC Berkeley student housing project that houses 416 students. Given this surrounding neighborhood of dense student housing, the project's street frontage on a major commercial corridor, and its proximity to the UC Berkeley campus, Staff believes the increase in density will not be detrimental to the immediate neighborhood.

- C. Setback when Adjacent to Residential District:** When a Commercial lot abuts a Residential District (as in this case), Section 23E.04.050.C, requires a setback for just the abutting lot line (in this case, the rear to the east) of 10', or 10% of the depth of the lot, whichever is greater, but allows for a reduction via a Use Permit. For this site, the required setback is 15', but the proposed would only be setback 5'. To approve this Use Permit, the ZAB must find that such smaller yard would provide greater privacy or improved amenity to a lot in the residential District.

Staff Analysis: The Southside plan calls for a high-density residential and commercial mixed-use edge to the University of California campus and the "spine" along Telegraph Avenue and the construction of infill buildings, particularly new housing and mixed-use developments, on currently underutilized sites such as surface parking lots and vacant lots. The proposed yard reduction will allow this project to further these goals by maximizing the floor area for desired uses (retail and residential). In addition, the eastern abutting building (Maximino Martinez Commons) provides a setback that is approximately 12' from the property line shared with this site. With the proposed 5' setback from the same property line, each building will be separated by approximately 17' to ensure adequate light and air for both buildings.

- D. Demolition Ordinance:** BMC Section 23C.08.050.D allows the Zoning Adjustments Board to approve the Use Permit for demolition of the existing structure at 2433 Telegraph if the demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City and a that the building is required to allow a proposed new building or new use.

Staff Analysis: The demolition of the existing commercial building at 2433 Telegraph Avenue is necessary to allow the proposed mixed-use development to be constructed. The project would create substantially more floor area than the existing building, and therefore would provide more residential and commercial opportunities in the district. In addition, the proposed demolition of the existing building will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, because the building is not architecturally or historically significant and does not provide substantial benefits to the neighborhood or the City.

- E. Rooftop Projections:** BMC Section 23E.04.020.C allows building projections to exceed the maximum height limit subject to approval of an Administrative Use Permit.

Staff Analysis: The project proposes penthouse structures for stairwells and elevator mechanical equipment, as well as a decorative architectural projections. All of these features would not be habitable and would exceed the 72' average height of the building, the tallest being the decorative structure located on the south side of the roof, at the elevation along Telegraph Avenue, which will exceed the 72' average height of

the building by 23'. The projections have been reviewed by the DRC for conformance with design guidelines. In addition, per 23E.04.020.C, the combined total of the rooftop projections will be less than 15 percent of the average floor area of the building.

F. Southside Area Plan Consistency: The Southside Area Plan, adopted in 2011, also contains several policies applicable to the project, including the following:

1. Policy LU-A1.A: Encourage a variety of housing types to be built in the Southside, including houses, condominiums, townhouses, apartment buildings, group living quarters, and loft-style housing, and encourage owner-occupied housing, rental housing, cooperatives and co-housing.

Staff Analysis: The project is located within the Southside Plan Area which encourages development of relatively high density in residential areas and a mix of housing types. The project would remove a non-residential building and construct a new building that will provide accommodation for 238 residents. The proposed building is compatible with the surrounding Group Living Accommodation and commercial uses. The benefits of the project would include providing housing to the student population near the UC campus, and would thereby reduce traffic and transit demand generated by students, faculty and employees of the Southside Businesses.

2. Policy LU-C: Encourage development consistent with the objectives of the Southside Plan on suitable underutilized sites in the Southside

Staff Analysis: The applicant proposes to build on an underutilized lot, a portion of which is vacant. The existing two-story commercial building, which the applicant proposes to demolish, is not historically significant, as determined by the LPC. The new building will provide more housing and commercial opportunities and will increase density in an area where the general plan has called for high-density mixed use development.

3. Policy LU-E1: Support neighborhood services by encouraging development of new housing at suitable locations within walking distance of the UC campus and as part of mixed-use developments in the Telegraph Commercial District and Downtown Berkeley

Staff Analysis: The project provides housing for 238 persons and is three blocks away from the UC Berkeley campus. The residential space is proposed within a mixed-use development and above ground-floor commercial space which will serve the residents and visitors in the Telegraph Commercial District.

G. General Plan Consistency: The 2002 General Plan contains several policies that apply to this project, as noted below.

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.

Staff Analysis: For reasons stated above in Section F (Policies LU-A1.A, LU-C, LU-E1), staff believes the proposed project meets this policy.

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.

Staff Analysis: The project is consistent with the applicable zoning standards for the C-T Zoning District and would further the Southside goal of providing a high-density residential and commercial mixed-use edge to the University of California campus and the “spine” along Telegraph Avenue.

3. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

Staff Analysis: As discussed above, in section V.A, Staff believes that the increased shadows caused by the proposed project are non-detrimental.

4. Policy EM-5–“Green” Buildings: Promote and encourage compliance with “green” building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)
Policy UD-33–Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: This project would be constructed to comply with new green building standards that are required by the Building Code.

5. Policy LU-27–Avenue Commercial Areas, Action A: Require ground-floor commercial uses to be oriented to the street and sidewalks to encourage a vital and appealing pedestrian experience.

Staff Analysis: The project provides ground-floor commercial uses with storefront windows and doors oriented to the street and sidewalks. The proposed style is architecturally unique in the neighborhood and will create interest and vitality for the pedestrian.

VI. Recommendation

Because of the project’s consistency with the Zoning Ordinance, Southside Plan and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board: **APPROVE** Use Permit #12-10000012 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 January 31, 2017
3. Notice of Public Hearing
4. Correspondence Received.

Staff Planner: Lucy Sundelson and Greg Powell, zab@cityofberkeley.info, (510) 981-7414