



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

JUNE 28, 2018

[Text that has been revised or added from the May 10, 2018, ZAB Staff Report is indicated in bold text.]

3000 Shattuck Avenue

Use Permit #ZP2015-0229 to demolish a gas station structure and construct a five-story, 40,557 square foot mixed-use building with ground-floor retail uses and 23 dwellings.

I. Background

A. Land Use Designations:

- General Plan: AC, Avenue Commercial
- Area Plan: South Berkeley Area Plan
- Zoning: C-SA, South Area Commercial

B. Zoning Permits Required:

- Use Permit for a Mixed Use Development of 5,000 sq. ft. or more in the C-SA District, under BMC Section 23E.52.030.A;
- Use Permit for demolition of a non-residential building, under BMC Section 23C.08.050;
- Use Permit for the construction of more than 3,000 square feet of gross floor area, under BMC Section 23E.52.050;
- Use Permit to exceed the maximum height requirement of 36 feet, 3 stories for a mixed use building, under BMC Section 23E.52.070.D.7;
- Use Permit to modify side, front and rear setbacks, under BMC Section 23E.52.070.D.7;
- Use Permit to exceed 40% lot coverage, under BMC Section 23E.52.070.D.7;
- Use Permit to allow for a reduction in the off-street parking required for dwellings, under BMC Section 23E.52.070.D.7;
- Administrative Use Permit for a Quick/Full Service Restaurant with more than 1,000 square feet, under BMC Section 23E.52.030.A; and
- Administrative Use Permit for Rooftop Equipment to exceed the C-SA District height limit, under BMC Section 23E.04.020.

C. CEQA Determination: Negative Declaration prepared pursuant to Article 6 of the CEQA Guidelines (see Attachments 4 and 5).

D. Applicant & Property Owner: 3000 Shattuck Avenue LLC., 1958A University Avenue, Berkeley, CA

Figure 1: Zoning & Vicinity Map

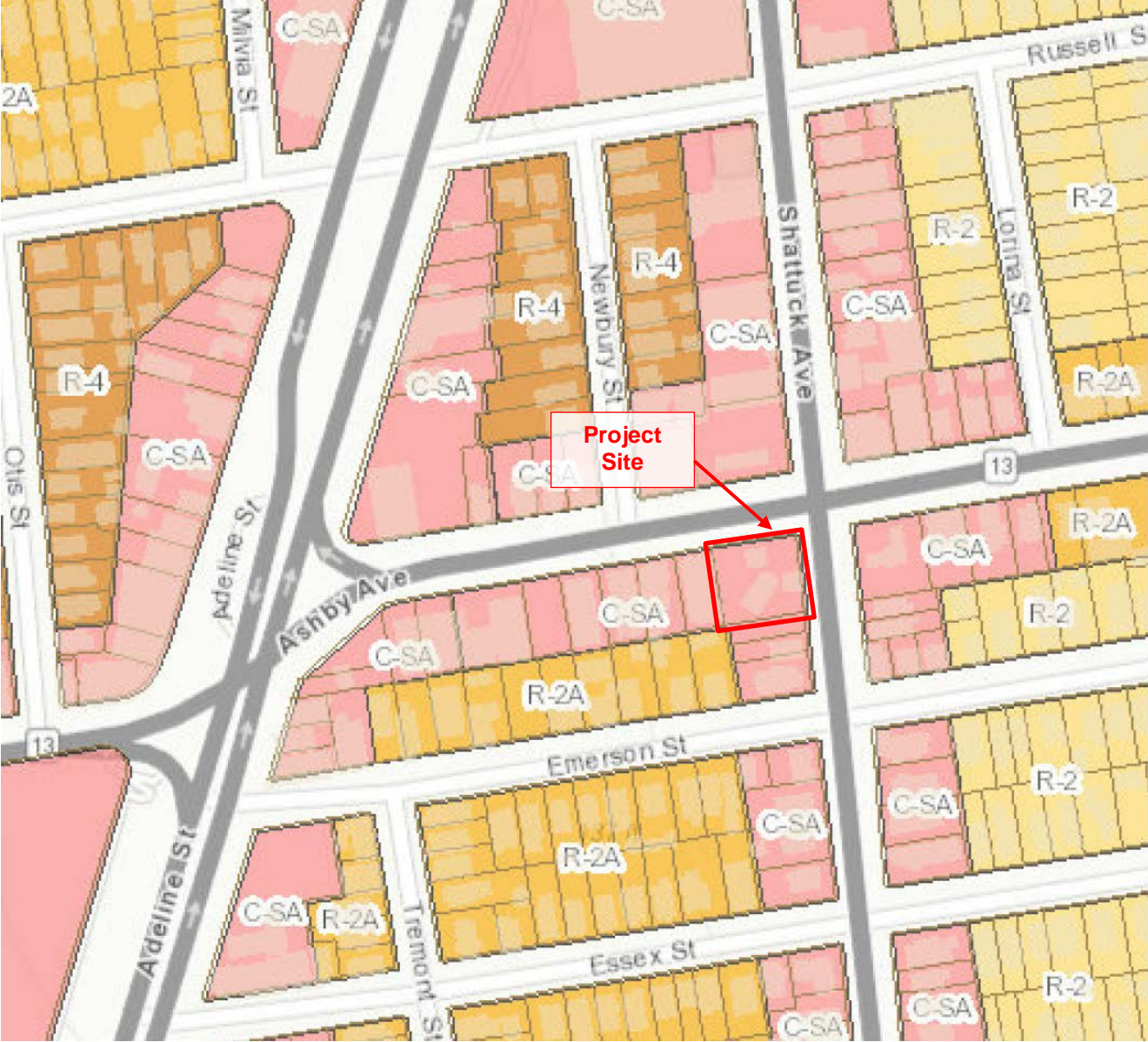


Figure 2: Resubmitted Site Plan/Ground Level Floor Plan (May 24, 2018) – in response to ZAB’s May 10, 2018 direction, revisions highlighted in blue for legibility.
(For scaled plans see Attachment 2)

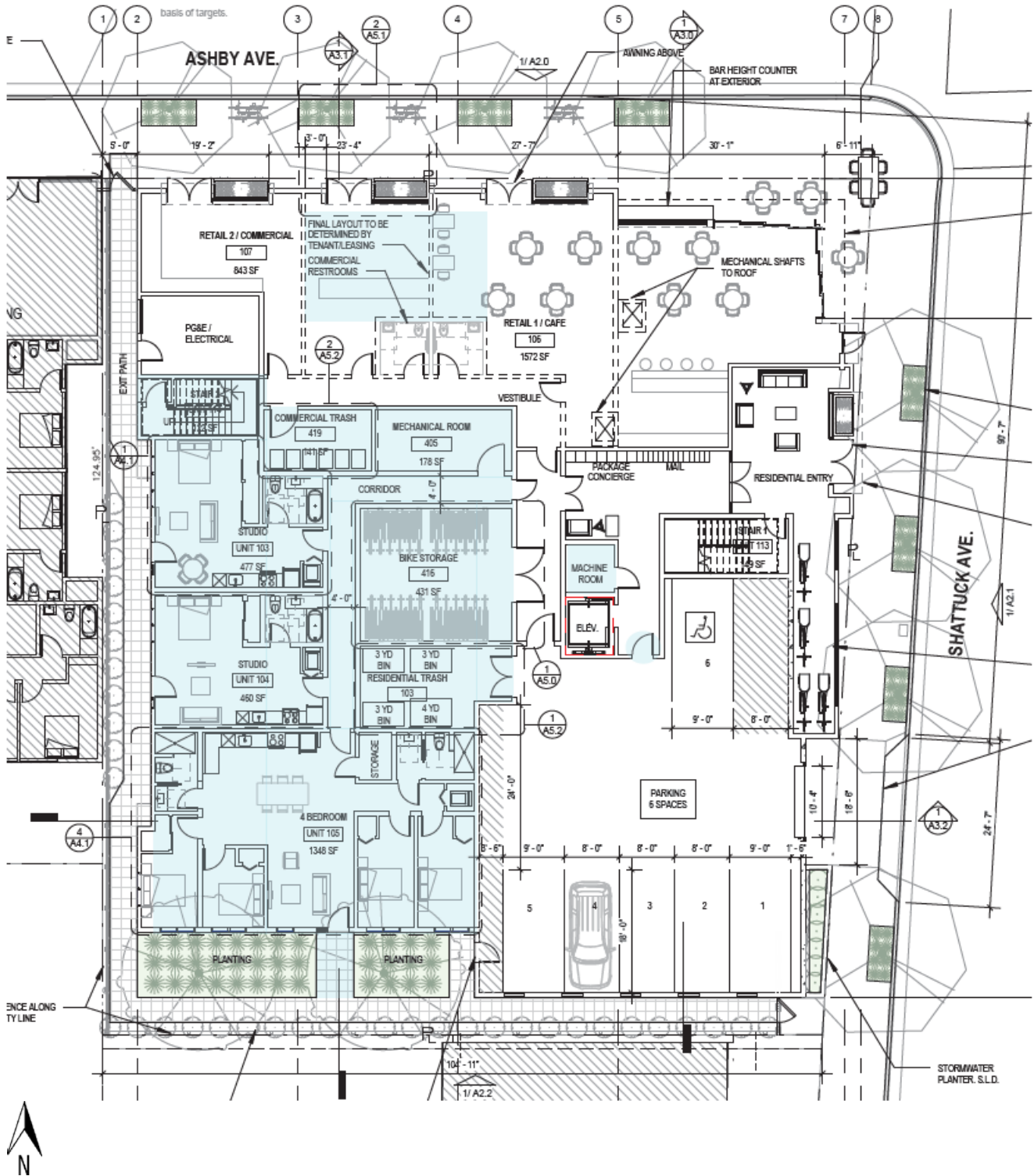


Figure 3a: North Elevation at Ashby Avenue (From January 30th, 2018)
(For scaled plans see Attachment 2)



Figure 3b: East Elevation at Shattuck Avenue (From January 30th, 2018)
(For scaled plans see Attachment 2)

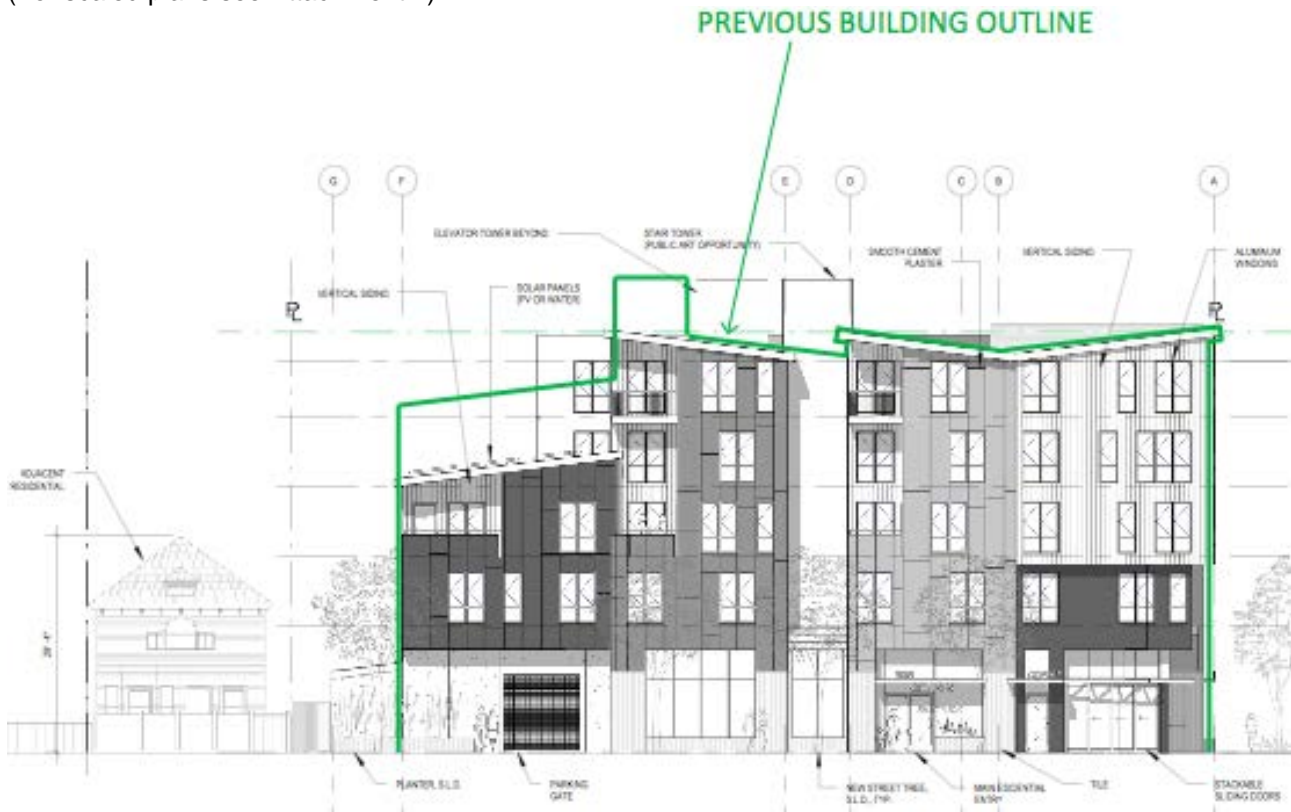


Figure 3c: West Elevation (From January 30th, 2018)

(For scaled plans see Attachment 2)

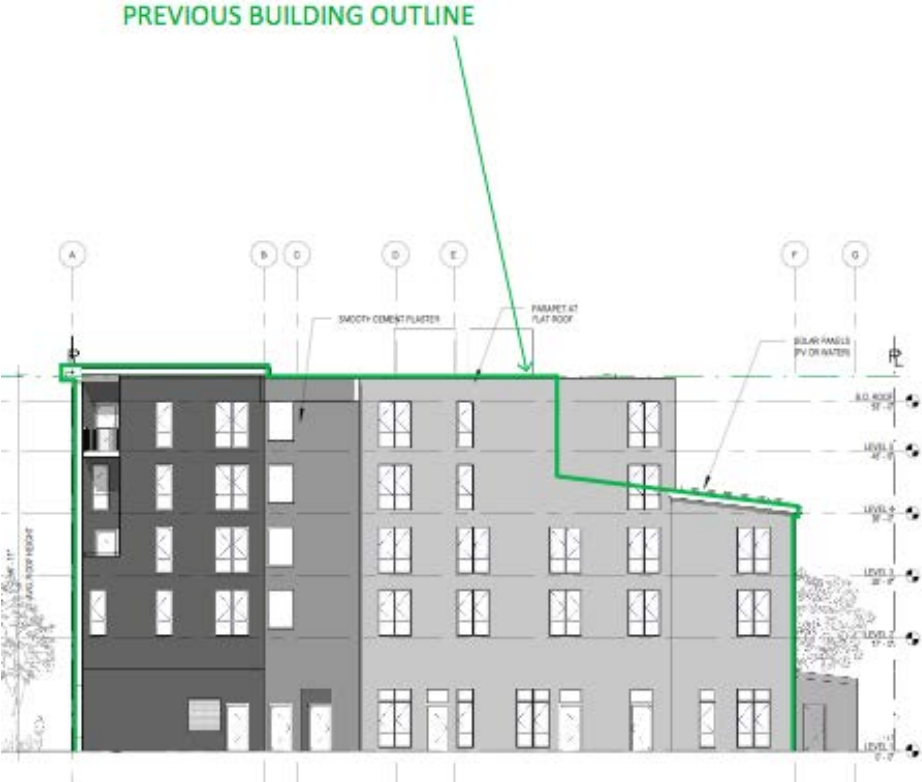


Figure 3d: South Elevation (From January 30th, 2018)

(For scaled plans see Attachment 2)

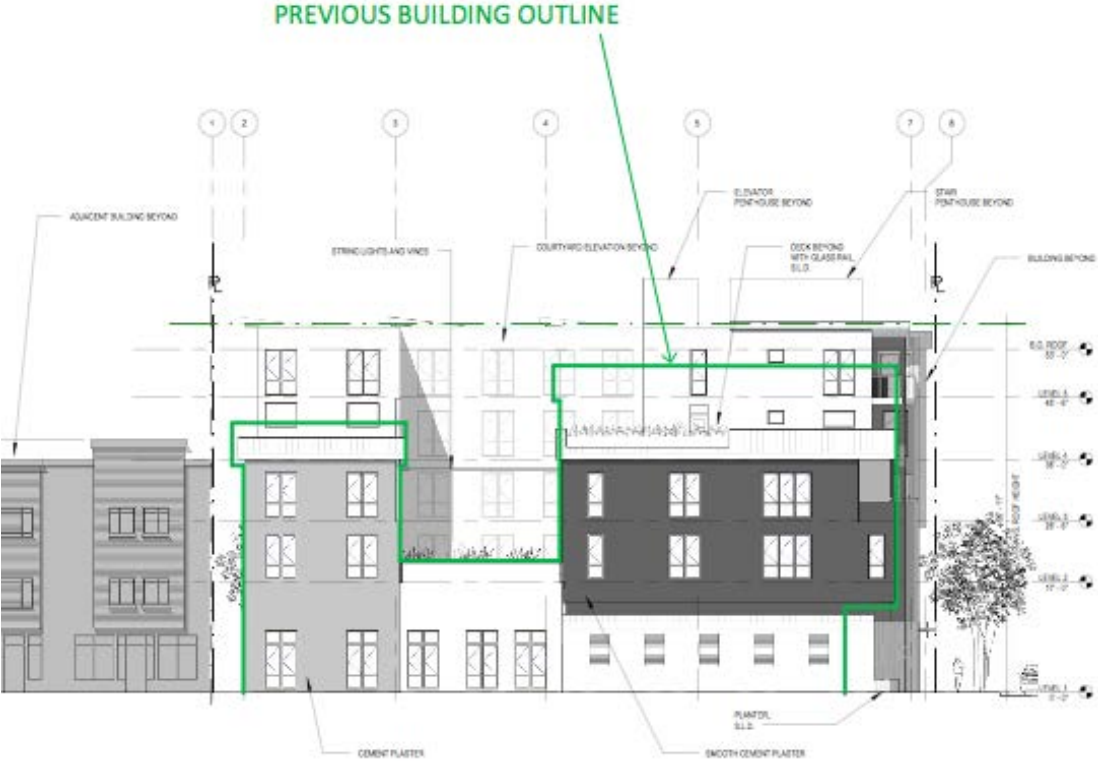


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Existing Gas Station with Service	C-SA	Avenue Commercial
Surrounding Properties	North	Existing Gas Station	C-SA	Neighborhood Commercial
	South	Single Family Residence		Avenue Commercial
	East	Rental Car Service		Neighborhood Commercial
	West	Mixed Use Building		Avenue Commercial

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care and Housing Fee for non-residential projects (Per Resolution 66,617-N.S. and 66,618-N.S.)	No	This fee applies to projects with more than 7,500 square feet of new non-residential gross floor area. Proposed project includes 3,522 square feet of commercial space, which is less than the 7,500 square feet requirement.
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	Yes	Because the project would have 5 or more dwellings, the project is subject to the affordable housing provisions of BMC 22.20.065
Percent for Art (Per BMC Chapter 23C.23)	Yes	The project is subject to the City's Public Art on Private Projects Ordinance.
Historic Resources	No	The project site is not designated as a Landmark by the City and has not previously been surveyed individually for historical significance under local, state, or federal historic significance criteria. The demolition was referred to the Landmarks Preservation Commission (LPC) on July 6, 2017, and the LPC made no comments and took no action. The building proposed for demolition do not meet the criteria for the California Register or a City of Berkeley Landmark. See Section IV.B.
Housing Accountability Act (Govt. Code §65589.5)	No	The project has multiple elements which do not comply with standards. See Section V.E for discussion.
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	Yes	Proposed project is located within the City's Environmental Management Area and is included on a list compiled pursuant to Section 65962.5 of the Government Code. Standard soil/groundwater conditions of approval (Soil and Groundwater Management Plan) will address any construction-related impacts that may be encountered during construction activity.
Residential Preferred Parking (RPP)	No	The site is in a RPP area; the project would not be eligible for RPP permits due to the provision of a parking waiver. See Section V.C.

Table 3: Project Chronology

Date	Action
October 26, 2015	Application submitted
May 5, 2016	LPC Demolition Referral: No Action Taken
January 19, 2017	DRC Preview Meeting: Favorable Recommendation
May 25, 2016	Interdepartmental Roundtable
April 30, 2017	Application deemed complete
June 12, 2017	Proposed CEQA Negative Declaration mailed/recorded
June 15 2017	DRC Preliminary Design Review w/CEQA Determination
July 13, 2017	Close of Public Review Period IS-ND
July 20, 2017	Final Negative Declaration and Response to Comments
July 27, 2017	ZAB hearing
February 2, 2018	Resubmittal of Plans and Revised applicant statement
April 26, 2018	ZAB Public hearing notices mailed/posted
April 27, 2018	Final TIA submitted
May 10, 2018	ZAB hearing, item continued to a date certain, June 28, 2018
June 28, 2018	ZAB hearing

Table 4: Development Standards

Standard		Existing	Proposed Total	Permitted/Required
BMC Sections 23E.52.070-080				
Lot Area (sq. ft.)		13,561	13,561	n/a
Gross Floor Area (sq. ft.)		1,168	40,557	n/a
Floor Area Ratio		0.09	2.9	4
Dwelling Units	Total	0	23	n/a
	Affordable	0	4 units and in-lieu payment of remainder 0.6 or payment of AHMF	4.6 units or payment of AHMF
Building Height	Average (ft.)	17'	56'11"	n/a
	Maximum (ft.)	12'	64'	36' (modifiable with Use Permit)
	Stories	1	5	3 (modifiable with Use Permit)
Building Setbacks (ft.)	Front (Ashby Ave)	35'	0' - 3'	15' (modifiable with Use Permit)
	Rear	41'	5'6" - 15'+	15' (modifiable with Use Permit)
	Interior Side (East, along Shattuck Ave)	35'	0' - 3'	6' - 14' (modifiable with Use Permit)
	Interior Side (West)	26'	5' - 7'	4' - 10' (modifiable with Use Permit)
Lot Coverage (%)		19	81.9	40 (modifiable with Use Permit)
Usable Open Space (sq. ft.)		n/a	2,034	920 (40 sq. ft. per unit)
Parking	Automobile	12	6	40 (modifiable with Use Permit)
	Bicycle	0	48	2

II. Project Setting

A. Background: The project was **first** heard by the ZAB on July 7, 2017. During the public hearing, the ZAB directed the applicant team to revise their plans to decrease the mass adjacent to the neighboring mixed use building to the west (right side) and the single family residential dwelling unit to the south (rear). The ZAB also heard public testimony and the project's public hearing was continued to allow the applicant team to revise their plans. Revisions **included**:

- Reduction in the number of units from 44 to 23.
- Reconfiguration of ground floor; including decrease in commercial square footage, decrease in the number of parking spaces to 6 for commercial portion, revision of interior parking area including complete enclosure of parking area, and three ground floor units at south and west sides of building.
- Relocation of fifth floor deck to fourth floor.
- Reduction of height of southeast portion of building (along Shattuck Avenue from four to three stories resulting in three stories along entire south (rear) elevation.
- Relocation of mass from southeast portion of building to southwest
- Increased side yard area along west (right side) property line.

The revised application was considered at the May 10, 2018 ZAB hearing. After a presentation by the applicant team, public comment, and discussion by ZAB, ZAB continued the project to the June 28, 2018 meeting date. ZAB directed the applicant team to make the following revisions to the project (See Table 5):

- **Provide ground floor units interior access to the lobby area including trash and bicycle rooms;**
- **Provide more common area in units with more bedrooms (such as those with five or six bedrooms);**
- **Expand the kitchen area of the common space on the second floor;**
- **Provide bulk storage for units with 4 or more bedrooms;**
- **Provide information regarding a property management plan and on-site resident manager;**
- **All units on the ground floor are to be fully accessible;**
- **Final Design review shall address a plant buffer along the West and South property lines;**
- **Windows along west elevation shall address privacy concerns; and**
- **Provide a Condition of Approval that should the project be subdivided in the future, the project shall be subject to the fees at that time.**

B. Neighborhood/Area Description: The property is located on the southwest corner of Shattuck Avenue and Ashby Avenue (State Highway 13) and the neighborhood surrounding the project site is both commercial and residential. The commercial portions along Shattuck and Ashby Avenues include one- to three-story mixed-use buildings occupied by many small businesses, including restaurants, retailers, and household services. In addition to the one- to three-story apartment buildings along the corridors, the interior residential areas are comprised of a mix of single family dwelling units, small duplexes and multi-unit developments. Ashby BART station is approximately 0.3 miles to the west. The site is served by several AC Transit bus

lines, including the 18, 80 and 81 lines, the Transbay route (F), and one all-nighter route (Route 800), all of which are within two blocks of the project site.

C. Site Conditions: The approximately 13,561-square-foot project site comprises two parcels, and is currently developed with a gas station that includes a mini-market with an office, car repair services, smog test center, two gas station canopies with pump islands, and surface parking for 10 automobiles. Access to the site is provided from both Ashby and Shattuck Avenues.

III. Project Description

The proposed project would demolish the existing commercial buildings, and construct a new five-story, mixed-use building with the following main components:

- 23 dwelling units consisting of: 2 studios, 2 one-bedroom units, 1 two-bedroom unit, 6 three-bedroom units, 5 four-bedroom units, 6 five-bedroom units, and 1 six-bedroom unit;
- **3,522** square feet of ground level commercial space, including 1,926 of retail and **1,593** square feet of café/quick service use;
- 2,034 square feet of open usable space comprised of second floor courtyard level and roof deck with common open space on the fourth floor. Ground floor units include ground level planting area and some upper floor units include individual balconies, which do not meet the minimum open space dimensions and are not calculated towards the usable open space requirement;
- Ground level parking for 6 vehicles; and
- 48 secure bicycle parking spaces.

The ground floor of the main building facing Ashby Avenue would include retail/restaurant space. Entrances to the residential lobby, bike storage room, and parking garage would be provided from Shattuck Avenue.

The proposed project has been designed as a “co-living” development. The revised applicant statement submitted in conjunction with the revised project plans describes the project as providing “opportunities for housing that is affordable through buildings that are designed to be shared. The project will preserve private bedrooms but allow residents to share living rooms and kitchens with two to five other unit-mates.” The applicant statement describes this building design and design unit configuration as resulting in the more affordable rents.

Following the direction from ZAB on May 10th, the following changes have been made to the project:

Table 5: Requested Changes from ZAB

Direction from ZAB	Response
Provide ground floor units interior access to the lobby area including trash and bicycle rooms	Ground floor has been revised. See Attachment 2.a and 2.c (Plans)

Direction from ZAB	Response
Provide more common area in units with more bedrooms (such as those with five or six bedrooms)	Common areas have been revised, see Attachment 2.a and 2.c (Plans)
Expand the kitchen area of the common space on the second floor	Kitchen has been revised, see Attachment 2.a and 2.c (Plans)
Provide bulk storage for units with 4 or more bedrooms	Bulk storage incorporated, see Attachment 2.a and 2.c (Plans)
Provide information regarding on-site resident manager and property management plan	See Attachment 2.b (Applicant Statement) and additional Condition of Approval included, see Attachment 1.
All units on the ground floor are to be fully accessible	See Attachment 2.b (Applicant Statement).
Final Design review shall address a plant buffer along the West and South property lines	Additional Condition of Approval included, see Attachment 1.
Windows along west elevation shall address privacy concerns	Additional Condition of Approval included, see Attachment 1.
Provide a Condition of Approval that should the project be subdivided in the future, the project shall be subject to the fees at that time	Additional Condition of Approval included, see Attachment 1.

To comply with the City’s affordable housing requirement of 20% of the total units, the applicant would either be required to place 4 units in the project and a .6 in-lieu fee for the remaining fraction or provide payment of the in-lieu fee. The 4 below market rate units would consist of 2 units available for households of Very Low Income (at 50% of the Area Median Income) and 2 units available for households for Low Income (80% of the AMI). If the owner pays the in-lieu fee instead of placing the affordable units in the project, the fee would be \$782,000 if paid at issuance of Building Permit or \$851,000 if paid at issuance of Certificate of Occupancy) to fully comply with the requirements of BMC Section 22.20.065.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting this application to the City, the applicant erected two yellow pre-application posters at the site. The applicant invited all owners and occupants located within a 300 hundred foot radius to a community meeting, held on September 21, 2015 at the project site. Approximately 15 local residents and small business owners attended the meeting and signed in, and 3 other members of the public declined to sign in. The project architect discussed the proposal, answered questions and presented the project plans, draft floor plans and elevations. A second neighborhood meeting was held on June 19, 2017 at Gio’s Restaurant at 2420 Shattuck Avenue and two neighbors attended. The project team presented updated renderings and floor plans and answered questions.

On June 12, 2017, the City mailed Notices of Intent (NOI) to adopt a CEQA negative declaration to adjoining property owners and occupants, and to interested neighborhood organizations; and the applicant filed the NOI with the County Clerk. On June 12, 2017, the applicant submitted the Draft Initial Study and Negative Declaration (IS-ND) with the State Clearinghouse for distribution to interested state and regional agencies.

Following the first ZAB hearing on July 27, 2017, the project team met with three neighbors, representing a larger neighborhood group on November 29, 2017 and reviewed revised plans and answered questions.

On April 26, 2018 the City mailed public hearing notices to property owners and occupants, and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations. **Following the previous ZAB hearing on May 10, 2018, staff has received two emails;** these correspondences are compiled and included as Attachment 7. The correspondences compiled and included as an attachment to the previous staff reports, as well as supplemental and late items received prior to the ZAB hearings on July 27, 2017 **and May 10, 2018** are available on the City's project website.

B. Landmarks Preservation Commission: The project involves demolition of a commercial building over 40 years in age. Pursuant to BMC Section 23C.08.050.C, the proposed demolition was brought before the Landmarks Preservation Commission (LPC) for review prior to consideration of the Use Permit. At the May 5, 2016 LPC meeting, the LPC took no action to initiate a Landmark or Structure of Merit designation.

C. Design Review Committee Review: The Design Review Committee (DRC) held a preview of the project on January 19, 2017 and provided comments to the applicant that the massing and window configuration should be quieter and fit better into the neighborhood as well as the busy Ashby Corridor. A revised design was reviewed by the DRC at the Preliminary Design Review (PDR) of the project on June 15, 2017 and included the podium open space re-oriented for more light. The corner, as well as the window layout in general, was redesigned in response to the Committee's recommendations. The ground floor corner suite was recessed to allow for a more spacious seating area adjacent to the sidewalk.

At the June 15th meeting the DRC made a favorable recommendation to ZAB (5-0-0-2) with the following recommendations:

- Recommend solid wall panels, not faux wood texture.
- Consider more detail and pattern on the west elevation; West elevation colors could be lighter.
- Only the east vertical tower has been designated for an art element, but other towers on building would also be a good art opportunity.
- Look at adjusting the height of the tile base or the awnings so that they work better with the transom.
- Look carefully at the specific tile pattern. Tile colors shown on the rendering look better than the tile sample. DRC will review at Final Design Review (FDR).
- Recommend the panels wrap the sides of the recesses as well, not just the backs.
- Corner café should work with closed doors as well, not just open.
- Control joint / reglet design is an important element in this design. Show in more detail at FDR.
- Look carefully at downspouts.

- Look carefully at lighting for the corner cafe.
- Recommend bollards at the corner.
- Roof line at corner should line up with existing angles or make flat. (Minority recommendation.)

Following the July 27, 2017 ZAB hearing, the project team met with Land Use and Design Review staff to discuss preliminary revised plans. Staff later presented the subsequently revised plans to the DRC Chair for direction. The DRC Chair reviewed the changes and determined as to the majority of the changes occurred on the West and South elevations, with the Ashby Avenue street frontage remaining the same and a decrease in mass along the southern portion of the Shattuck Avenue street frontage. The final revised plans will be reviewed at Final Design Review.

V. Issues and Analysis

A. CEQA: Based on a review of regulatory databases, including listed hazardous materials release sites compiled pursuant to Government Code Section 65962.5, the project site is listed as a Cleanup Program Site and Leaking Underground Storage Tanks (LUST) Cleanup Site.¹ As the site is included on a list compiled pursuant to Section 65962.5 of the Government Code, an Initial Study was prepared to determine potential significant effects of the project. The Initial Study found that with incorporation of the City's standard conditions of approval, there were no potentially significant effects on the environment from the proposed project (see Attachment 4).

Following the release of the Initial Study, the City received several comment letters. One comment was regarding the eligibility of the site for inclusion within a historic district. The information was given to the applicant's historic preservation consultant who determined that the additional information does not alter the Department of Parks and Recreation finding that the existing gas station is not a historic resource and would not be considered a contributing resource to the potential historic district. An additional comment letter was received from the Native American Heritage Commission with comments regarding mitigations for Tribal Cultural Resources and Human Remains. Standard Conditions of Approval are included regarding Archaeological Resources and Human Remains. (Conditions of Approval 33-35). The remaining comment letters expressed concerns regarding the project's size, remediation of tanks at the project site and traffic impacts. None of the comments received on the Draft IS constitute new information that warrants recirculation of the Draft IS. The comments received do not identify new impacts nor result in a substantial increase in the severity of impacts. A Final Negative Declaration and Response to Comments was issued on July 20, 2017 (see Attachment 5).

B. Height/Massing/Neighborhood Compatibility: The development pattern of the area surrounding the project site is mixed-use, medium density, and consists of a wide range of commercial and residential buildings. Buildings in the area vary between one- to three-stories in height. The subject site is within South Area Commercial (C-SA) District which continues directly to the west and south, as well across Shattuck and Ashby Avenues to the east and north. A three-story mixed use

¹ State Water Board Geotracker website <https://geotracker.waterboards.ca.gov/>, (accessed May 11, 2017)

development and a two-story single family dwelling are located adjacent to the subject property to the west and south, respectively. The properties adjacent the intersection of Shattuck and Ashby Avenues are developed with auto-oriented uses, including a gas station to the north and a car rental service to the east. The property to the northeast is a three-story mixed-use building with a café use on the ground floor. The interior residential areas to the southwest are within the Restricted Multiple Family Residential (R-2A) district, and are characterized by smaller, one- to two-story single-family, duplex and multi-family dwellings.

Generally, the properties along Ashby and Shattuck Avenues vary between one- to three-story mixed use and apartment buildings. Although the proposed five-story, **40,557** square feet building would be greater in height and volume than immediately surrounding developments; more recent construction is similar or greater in height and volume as the proposed project, including the five-story buildings at 2600 and 2598 Shattuck. Additionally, more recently submitted and entitled projects contribute similar or greater heights along the major corridors in the South Area Commercial district. Such projects include the six-story building located at 2902 Adeline Street, proposed five-story mixed use developments at 3031 Adeline Street and 2701 Shattuck Avenue. The project is broken down into smaller masses through individual dynamic roofs and color differentiation. The proposed massing is consistent with recent development and contributes to the continued evolution of such transit rich corridors within Berkeley as Shattuck and Ashby Avenues with in-fill development that is compatible with existing development patterns.

The proposed project provides a 5' to 7' setback adjacent to the existing mixed use building to the west (2076 Ashby Avenue). Additionally, the building steps down from five stories along Ashby Avenue (northern property line) to three stories along the southern lot line. This will match the three story height of the neighboring mixed use residential building located to the west. A 5'6" setback is provided adjacent to the single-family dwelling at 3010 Shattuck Avenue (to the south), and the adjacent parking area is completely enclosed. The remaining portion of the ground floor and upper floors are setback 15'. Additionally, the second story courtyard also steps the building back of approximately 50' (see Attachment 2).

To provide a residentially scaled and appealing pedestrian oriented experience, the building is designed with a varying 0 to 6' setbacks along the Ashby Street frontage and varying 0 to 3' setbacks along the Shattuck Street frontage. The building entries are recessed and marked with large glass areas and awnings, and the corner is marked by prominent flexible commercial space with 17' floor-to-ceiling height.

- C. Parking/Traffic:** The project proposes a ground level private parking garage with a total of 6 parking spaces for commercial use. This represents **34** less spaces than the **40** required per code: 33 spaces for 32,602 square feet residential space (one space per 1,000 square feet) and **7** spaces for **3,522** square feet of commercial space in the C-SA district (two spaces per 1000 square feet of retail, minus the first 1,000 square feet and one space per 300 square feet of food service). The applicant is, therefore, requesting Use Permit approval under BMC 23E.52.070.D.7 to waive **34** required spaces. The applicant is also requesting an Administrative Use Permit to

allow for **1,596** square feet of the ground floor area to be used as a café or quick service use.

The applicant submitted a Transportation Impact Analysis (TIA), prepared by Abrams Associates, which evaluated the proposed project's estimated parking demand (see Attachment 6). The TIA, reviewed and approved by the City Traffic Engineer, estimates the parking demand using several sources, including the Institute of Traffic Engineers (ITE) parking generation rates, residential parking demand based on U.S. Census data, and on-street parking surveys.

The TIA supports the reduction of parking spaces with the following justifications:

- 1) The project is proposing 48 bicycle parking spaces for residential use although there is no residential bicycle parking requirement. To ensure the bicycle parking is effective and utilized (and to meet the requirements of the Berkeley Municipal Code) it has been provided in an easily accessible bike storage room that would be accessed directly from the lobby of the building.
- 2) There are numerous shopping, employment and education centers in the area.
- 3) There are numerous existing car sharing locations within 0.5 miles of the project site, including a Zipcar location at the Ashby BART Station and a location on Adeline Street approximately 0.2 miles from the subject property.
- 4) There is extensive bus transit service provided by Alameda-Contra Costa County (AC) Transit along Shattuck and Ashby Avenues. Routes 18, 80 and 81, an all-nighter (Route 800) operate directly adjacent to the project site and one Transbay route (F) less than two blocks from the site as well as the Ashby BART Station approximately a 5 minute walk (0.3 miles) from the site to the west.

In addition to parking, the TIA also evaluated the traffic impacts of the proposed project on the surrounding environs including the following: demolition and construction; site access and circulation; and emergency vehicle access on and surrounding the project. Based on the project's design and a detailed analysis conducted according to the City's guidelines the study concluded there would be no significant transportation impacts according to established traffic engineering standards and no off-site traffic or transportation mitigations would be required.

As required for projects requesting a parking waiver, and as conditioned in the project approval, occupants of the building would not be eligible for Residential Parking Permits (RPP) thereby reducing the attractiveness for car ownership. The abundance of bicycle parking, the ineligibility for RPPs, as well as the project's proximity to public transit, jobs, goods and services, would help reduce car ownership and lessen the parking demand on the neighborhood's parking supply. Additionally, each dwelling unit will be provided subsidized transit vouchers. At least one transportation benefit at no cost to every commercial tenant is required to be provided, consisting of the cost equivalent to an unlimited local bus, at no cost to every employee. The parking waiver would also encourage utilization of the nearby public transit, thereby advancing general sustainability goals in accordance with the City's Climate Action Plan. To ensure that no further non-residential parking is required to be waived, only **1,596** square feet of quick or full service food use is allowed and the balance of the non-residential floor area must only be used by a

retail use or a use with an equivalent parking standard such as Personal and Household Services.

- D. Sunlight/Shadows:** The project proposes to construct a five-story building on what is currently developed with smaller one-story structures. As such, the project is expected to create greater shadowing impacts over existing conditions. To assess the anticipated shading impacts, the applicant submitted shadow studies for the project (see Sheets A7.0 and A7.1 of Attachment 2).

The shadow studies illustrate that during the summer months the abutting mixed use building to the west (2076 Ashby) and the car rental service and the duplex and multi-family residence along Shattuck Avenue to the east will receive new shadows during the morning and evening hours respectively. The shadows will impact the eastern facing windows of the bedrooms of the residential units at 2076 Ashby. During the winter months, new shadows will impact the car service use and the gas station site to the north primarily during morning hours.

Although shadow impacts from the project are expected to affect direct sunlight on certain residential windows, these areas would still experience indirect lighting during these hours. At no time of year would the proposed project cause adjacent properties to lose access to direct sunlight from all the windows at any time of the year. Such shading impacts are to be expected in an urbanized area along a major corridor.

- E. Housing Accountability Act Analysis:** The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:
1. The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density;² and
 2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

The project has multiple proposed elements that do not comply with applicable, objective general plan and zoning standards in the zoning ordinance including the Use Permits to modify the front and yard setbacks, exceed the lot coverage and reduce off-street parking. Therefore, § 65589.5(j) does not apply to this project as currently proposed.

- F. 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.

² As used in the Act, a “specific, adverse impact” means a “significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, polices, or conditions as they existed on the date the application was complete.

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.
3. Policy LU-27 Avenue Commercial Areas: Maintain and improve Avenue Commercial areas, such as University, San Pablo, Telegraph, and South Shattuck, as pedestrian-friendly, visually attractive areas of pedestrian scale and ensure that Avenue areas fully serve neighborhood needs as well as a broader spectrum of needs.
4. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
5. 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.
6. Policy UD-24–Area Character: Regulate 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.

Staff Analysis: The site is designated as Avenue Commercial in the City's General Plan and appropriate uses for these areas include local and community-serving commercial and residential uses as well as development and amenities that support pedestrian-oriented uses. The proposed project is consistent with the intent of the Avenue Commercial designation and these Policies as areas along wide, multi-lane corridors such as Ashby and Shattuck Avenues are characterized by pedestrian-oriented commercial development and multi-family residential structures, are served by bus transit or BART. The majority of the project's five story height is along the Ashby Avenue and Shattuck Avenue frontages and steps down to three stories in height to the rear (southern property line). Please see discussion under Key Issue B above.

7. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.
Staff Analysis: As described under Key Issue D above, the project would cast some new shadows during some hours of summertime, however indirect sunlight will still be provided during these hours and are to be expected within an urbanized area along a major corridor. New shadows would not be detrimental.
8. Policy H-33 Regional Housing Needs: Encourage adequate housing production to meet City needs and the City's share of regional needs.
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.
10. 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.

Staff Analysis: The project, located along transit oriented Shattuck Avenue and Ashby Avenue (State Highway 13), would construct a total of 23 dwelling units, with 4 units affordable to Low and Very Low Income households, or provide payment of fee to fully satisfy BMC Section 22.20.065. The project site is approximately 0.3 miles from the Ashby BART Station. The project would, therefore, help the City to meet its affordable and general housing goals along a transit corridor.

11. 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. (Also see Land Use Policies LU-18, 23, 25 and Transportation Policy T-16.)
12. 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.
13. Policy T-16 Access by Proximity: Improve access by increasing proximity of residents to services, goods, and employment centers.

Staff Analysis: The project would add 23 dwelling units and **3,522** square feet of commercial space in a location that is well served by public transit and would encourage transit use and reduce greenhouse gas emissions from motor vehicles by constructing additional housing in close proximity to transit, jobs, and basic goods and services. The project would redevelop an underutilized site along a major corridor that is well served by public transit services (routes 18, 80, 81, 800 and Transbay Route F as well as the Ashby BART Station which is an approximately 0.3 mile walk from the site to the west). The increased population and new street level retail, would enhance the attractiveness and vitality of the area.

14. Policy EM-5 "Green" Buildings: Promote and encourage compliance with "green" building standards.
15. Policy UD-33 Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: The project proposes the use of environmentally sustainable materials including interior and exterior finishes and materials, such as fiber cement panels, and the use of solar residential hot water or solar PV, flow-through planters, and amenities such as bicycle parking.

G. Plan Consistency: The South Berkeley Area Plan was adopted in 1990, also contains several goals and policies applicable to the project, including the following:

1. Housing Element Policy 3.7: Encourage the construction of new affordable housing units.
2. Housing Element Policy 3.10: Locate higher density housing in area with easy access to retail activity, the workplace, and public transportation.

Staff Analysis: As noted earlier, the project would provide 4 units affordable to Low and Very Low Income households or payment the in-lieu fee and a total of 23 dwelling units. The project is located in the Shattuck Corridor that is within walking distance to Ashby BART station, several bus lines, and the Berkeley Bowl market.

3. Housing Element Policy 5.2: Ensure that usable open space improvements are integrated into new housing and mixed use developments.

Staff Analysis: The project provides 2,034 square feet of usable open space at the courtyard level and roof deck and this area includes landscaping and seating.

4. Land Use Policy A. 1: Preserve the character and quality of life of residential areas.
5. Land Use Policy C.1.2: Regulate mixed development to ensure compatibility with adjacent residential neighborhoods.

Staff Analysis: The project steps down from five stories along Ashby Avenue (northern property line) to three stories along the southern lot line. This will match the three story height of the neighboring mixed use residential building located to the west and residential building to the south. The ground floor parking area is setback 5'6" adjacent to the single-family dwelling to the south and the second and third floors are setback 15'. The ground level parking area will be completely enclosed within the building. The second story courtyard also steps the building back of approximately 50'. The proposed building is broken down into smaller masses through individual dynamic roofs and color differentiation.

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:

- A. **ADOPT** the proposed negative declaration; and
- B. **APPROVE** Use Permit #ZP2015-0229 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. **Findings and Conditions**
2. Plans
 - a. **Project Plans, received May 24, 2018**
 - b. **Revised Applicant Statement, received May 24, 2018**
 - c. **Comparison Plan Sheets, received May 24, 2018**
3. Notice of Public Hearing, dated April 26, 2018
4. Draft Initial Study, Negative Declaration, available online*
5. Final Initial Study and Response to Comments, dated July 20, 2017
6. Transportation Impact Analysis and Technical Appendix by Abrams Associates, dated April 27, 2018, online*
7. Correspondence received since **May 10, 2018** ZAB hearing

*All online documents can be found:

http://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/3000_Shattuck.aspx

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