

Re: proposed project at 3000 Shattuck Ave

Dear Zoning Adjustment Board Members,

To the best of my knowledge, the project proposed for 3000 Shattuck Ave would be the first South Berkeley mixed-use development (built or entitled) in at least 30 years to contain no units of below-market-rate housing. This is not a precedent that this Board should set, and you have ample discretionary power to make findings to deny an all-market-rate project at this location.

Numerous "findings of fact," which are meant to assure the public that ZAB makes discretionary decisions based on evidence, are not factual. Some contradict recent findings made by ZAB in other land use decisions within the District.

Allowing the height to increase from 3 to 5 stories must satisfy at least one of the following purposes (BMC 23E.52.090.C):

- 1) To encourage utilization of public transit and existing off-street parking facilities in the area of the proposed building;
- 2) To permit consistency with the building setbacks in the immediate area where a residential building setback would not serve a useful purpose;
- 3) To facilitate the construction of affordable housing as defined by the U.S. Department of Housing and Urban Development (HUD) Guidelines;
- 4) To provide consistency with the purposes of the District as listed in Section 23E.52.020.

In 2013, ZAB found that "*Findings #1 and 2 are not applicable to this requested Use Permit modifying the height standard*" in their decision to deny UP #12-10000039 at 2701 Shattuck.

Unlike Purposes 1 and 2, Purpose #3 is unique to the C-SA District. This purpose applies only if the height increase is necessary to facilitate construction of at least 20% BMR units on site.

Again from UP #12-10000039:

The Zoning Adjustments Board is unable to find that the height modification satisfies Finding #3, because the project will not facilitate the construction of affordable housing as defined by the U.S. Department of Housing and Urban Development (HUD) Guidelines, for the following reasons:

1. *This finding can only be made when the affordable housing, as defined by HUD Guidelines, is inclusionary (built as part of the project seeking approval). The project will not provide at least 20% of the units within the project as affordable housing, as defined by HUD guidelines; and*
2. *Even if the argument were made that a payment to the City of Berkeley's Affordable Housing Mitigation fund was an acceptable substitute, Berkeley's Affordable Housing Mitigation Trust Fund specifically states that housing built with the Trust funds may not meet HUD Guidelines for*

affordable housing. Therefore, payments to the Fund could never be a substitute for the requirement that a project be built with 20% inclusionary units that meet the HUD Guidelines' definition of affordable housing.

Finding II.A (Findings and Conditions, page 1) erroneously claims that the height and massing is compatible with the surrounding area. Examples given: 2598-2600 Shattuck ("Parker Place"), 2902 Adeline, and an entitled (approved but not built) mixed-use development at 2701 Shattuck.

Other projects approved under the same C-SA zoning regulations and purposes that exist today, but in lower-height areas of the District, include:

2076 Ashby Ave (the building abutting 3000 Shattuck to the west). This 3-story, 11-unit mixed use project was proposed at 4 stories; neighbors and ZAB agreed to the waiver of 7 required parking spaces in return for reduced height. Approved on 4/24/03. At the time, it was Planning policy to recommend an additional floor over the height limit if necessary to make inclusionary BMR units more feasible. It's my understanding, based on Planning documents, that the City also granted this additional floor (not two or three) to projects requesting the State Density Bonus, which at the time gave up to a 20% density increase over a City's maximum to qualifying projects.

3231 Sacramento St/1500 Harmon St, approved at 3 stories on 9/25/08. One of the non-detriment findings: the project is "consistent with the goals and policies of the General Plan, including its density standard for 'Avenue Commercial' areas." Planning and ZAB also found that this project "provides an appropriate intensity of development that does not underutilize the property by providing 5,734 sf of residential and commercial floor area on a 5,067 sf site." Although this project was not built, the Use Permit has not expired.

2701 Shattuck. On 7/18/07, ZAB approved a 24-unit mixed use project with a partial 5th floor at 2701 Shattuck, where the height limit is 4 stories. This project included 20% BMR units but didn't request a density bonus.

Each of the 7 requested Use Permits represent a lost opportunity to reward developments that provide affordable housing. The incentives that other cities reserve for projects that include BMR units as part of their State Density Bonus obligations have been given away to this project: height, lot coverage, setbacks, and reduced residential parking.

Justifying height increases for 100% market-rate projects by comparing them to projects that received an extra story and/or relaxed lot coverage standards to make on-site affordable housing more feasible is not consistent with the letter or intent of the State Density Bonus Law:

Berkeley's implementation of the State Density Bonus Law has become so twisted that it no longer functions as a tool to increase affordable housing. It exists as a method of removing discretion from the permitting process. Berkeley's Zoning Ordinance was written generously

under the assumption that decision-makers would use discretion to review each individual project.

Density Bonuses and Other Incentives

65917. *In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city... pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. **In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.*** [emphasis added]

What incentives has Berkeley held in reserve for affordable housing?

Please review the findings and conditions, and please read the South Berkeley Area Plan before taking action. This project is not consistent with the community area plans or with the City's past policies related to affordable housing. As proposed, with no units of very-low or low-income housing, it is not in the public's best interest to approve this project.

Sincerely,

Marianne Sluis

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: Parking impacts of proposed buildings like 3000 Shattuck

-----Original Message-----

From: Russ Tilleman [mailto:russ.tilleman@gmail.com]
Sent: Tuesday, June 26, 2018 9:49 AM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; All Council <council@cityofberkeley.info>
Subject: Parking impacts of proposed buildings like 3000 Shattuck

Berkeley should consider excluding new buildings like 3000 Shattuck from the Residential Permit Parking (RPP) program.

That would prevent cars registered to the address from parking nearby on the street for more than two hours, and should address neighbors' concerns about building residents using up badly-needed street parking.

If the intent of not building parking is to prevent building residents from owning cars, as opposed to just increasing profits for developers, the City shouldn't undermine that goal by licensing these residents to park on the street.

Under the current RPP rules, at least 69 cars registered to 3000 Shattuck would be allowed to park overnight on the street.

Regards,

Russ Tilleman
Campaign for Police Accountability ID# 1400286
2670 Parker St
Berkeley, CA 94704
www.ElectThePolice.org
510-485-6044
russ.tilleman@gmail.com

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: 3000 Shattuck Ave.

From: sallie hannarhyne [mailto:salliehannarhyne@gmail.com]
Sent: Monday, June 25, 2018 4:28 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>
Cc: Berkeley.Southside.housing@mail.com
Subject: 3000 Shattuck Ave.

Dear People:

I have lived in this neighborhood 50 years, first as a renter and now 27 years as a homeowner. I am VERY concerned about gentrification here. It used to be MUCH more diverse of a neighborhood. Many black families have had to move. This is NOT the Berkeley WAY! we want to live live with people of all ethnicities, all colors, all incomes. The housing development we want here is AFFORDABLE and 3 stories, not 5. We want green building standards.

Thank you for your attention..... salliehannarhyne@gmail.com

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: 3000 Shattuck

From: janice greenberg [mailto:ghawk24@gmail.com]
Sent: Monday, June 25, 2018 2:14 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Berkeley Mayor's Office <mayor@cityofberkeley.info>; Bartlett, Ben <BBartlett@cityofberkeley.info>
Subject: 3000 Shattuck

As a neighborhood we voted to demand:

1. Affordable housing on-site in all new developments
2. No exemptions to zoning limits unless there is 100% affordable housing beyond limits
3. Green building standards

J. Greenberg

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Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: 3000 Shattuck #ZP2015-0229

From: Larisa Cummings [mailto:pidicummings@gmail.com]
Sent: Saturday, June 23, 2018 7:34 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>
Cc: Berkeley Mayor's Office <mayor@cityofberkeley.info>; Bartlett, Ben <BBartlett@cityofberkeley.info>
Subject: Re: 3000 Shattuck #ZP2015-0229

Dear ZAB Representatives,

This is to follow up my last communications to you below. Since the last hearing, I have researched the Zoning Ordinance and have a much better understanding of your function and how you should not have allowed this project to get this far. You should unquestionably deny the use permits unless serious consideration is given to attaching conditions that fit the needs, purposes and goals of this community and the requirements of the Zoning Ordinance itself.

Please make no mistake or be misled by those who urge you to approve any housing in South Berkeley at any cost to this community, as the 3000 Shattuck project represents.

This community has sought affordable housing to support its diverse community for decades. And still does. According to the requirements of the Zoning Ordinance, which requires adherence to District regulations and the South Berkeley Area Plan, we are entitled to it, nothing less, nothing contrary.

I hope you will review the following **bolded** Zoning Ordinance sections before the hearing on 6/28 -- 23B.32.040A and B, and 23E.52.020. Proper application of these sections should require you to deny all of the height, setbacks and coverage use permits sought for the project. Not abstain, not approve -- deny. In order to approve the use permits, section 23B.32.040 requires the Board to make the following findings, which it reasonably cannot do, or it must attach conditions to allow it to make those findings, as set forth below. I did not hear the Board address any of the requirements at the last hearing. On the contrary.

23B.32.040 Findings for Issuance and Denial and Conditions

A. The Board may approve an application for a Use Permit, either as submitted or as modified, only upon finding that the establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

This finding cannot be made because none of the required standards can be met.

The primary detriment is to the peace, morals, comfort, and general welfare of the neighborhood, South Berkeley, and the City as a whole due to the lack of any affordable housing. The in lieu "loophole" after reduction of units discussed at the last hearing is especially offensive to these standards. Following these ordinance requirements, the community should get inclusionary affordable housing - and not just a few units following scaling down of the units

from 44 to 23 - while the shell and scale of the structure and all use permits remain sought. The project is extra large and odd for the area (it looks mostly like a dormitory unsuitable for families).

It also lacks a pickup/drop off zone for 80 residents without cars. This is an obvious safety hazard that has not been addressed in the traffic study but which you are required to consider. Shattuck and Ashby is a very busy and heavily trafficked corner, which the City recognized as such over 20 years ago. See 1997 South Shattuck Strategic Plan, <https://www.cityofberkeley.info/ContentDisplay.aspx?id=464>. It is extra hazardous because Shattuck narrows to one lane going south at Ashby and Ashby is a state highway.

B. Prior to approving any Use Permit the Board must also make any other findings required by either the general or District regulations applicable to that particular Use Permit.

This finding also cannot be made because the use permits fly in the face of the District regulations that prioritize affordable housing and preserving this diverse community. This district's regulations are found at section 23E.52.020, copied below.

C. The Board shall deny an application for a Use Permit if it determines that it is unable to make any of the required findings, in which case it shall state the reasons for that determination.

Please be prepared to state the reasons for determining that the Board is unable to make any of the required findings above.

D. The Board may attach such conditions to any Use Permit as it deems reasonable or necessary to achieve the purposes of this Ordinance, and which otherwise promote the municipal health, safety and welfare. (Ord. 6478-NS § 4 (part), 1999)

In the event the Board decides to consider approving these permits, at least two conditions to safeguard this community should attach: 1) a reasonable number of the units must be affordable, such as all of the units above three stories the area is zoned for, and 2) the project must include a suitable pickup/drop off zone onsite.

23E.52.020 The purposes of the South Area Commercial (C-SA) Districts are to:

A. Implement the Master Plan's designations for Community Commercial, and the Commercial/Residential areas, as well as the policies of the South Berkeley Area Plan. See [https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/South%20Berkeley%20Area%20Plan%20\(1990\)_Document%201.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/South%20Berkeley%20Area%20Plan%20(1990)_Document%201.pdf) - and Goals 1 and 2 on p. 3 - "ensure access to affordable housing" and "preserve the diversity of South Berkeley's population."

The project is clearly incompatible with longstanding Goals 1 and 2 established in 1990 - which couldn't be more concerning 28 years later in a housing crisis that has produced gentrification and active displacement of the most vulnerable communities in the area, especially communities of color. Exclusive market-rate housing meets none of this District's purposes or goals.

B. Provide locations for both community-serving and regional-serving businesses, particularly those which reflect the culture of the surrounding area.

C. Provide an area of neighborhood and lower intensity community Commercial Uses, serving as a transition between the Downtown area and the neighborhood-serving area south of Ashby Avenue.

D. Encourage the location of a wide variety of community-oriented retail goods and services in South Berkeley.

E. Encourage residential development for persons who desire both the convenience of location and more open space than is available in the Downtown.

This must not be to the exclusion of onsite affordable housing given overarching purposes and goals stated above.

F. Provide limited locations for other activities such as offices which may be compatible with both retail and Residential Uses.

G. Encourage development and amenities that support pedestrian-oriented uses.

While the project is situated near mass transit, once again it's been identified by the city as a dangerous intersection for more than 20 years - 1997 South Shattuck Strategic Plan, <https://www.cityofberkeley.info/ContentDisplay.aspx?id=464>.

H. Encourage appropriate mixed-use development (retail/office/residential) on appropriate sites in the District.

The project is not appropriate - no affordable units, out-of-scale - height, setbacks, coverage - same large shell despite decreasing number of units from 44 to 23, more residents/bedrooms - dormitory style, traffic concerns, no loading zone. It is ill-conceived and situated at a dangerous intersection, altogether against the health, safety, peace, morals, comfort and general welfare of this community and the City as a whole, especially as any sort of precedent-setting development.

I. Increase the opportunities for the establishment of businesses which are owned and operated by local residents.

Has this been addressed with respect to the cafe?

(Ord. 6478-NS § 4 (part), 1999)

Once again, thank you for your attention and due consideration,

Larisa Cummings

On Tue, May 15, 2018 at 2:56 PM, Larisa Cummings <pidicummings@gmail.com> wrote:

Dear ZAB Representatives, I attended the hearing the other night re 3000 Shattuck and spoke mainly about the lack of affordable housing in the plans and expressed serious concerns about a crisis of gentrification and the ongoing obvious displacement of low and moderate income people out of South Berkeley, where these projects do nothing to help by not including affordable housing. I explained that I have lived in South Berkeley since 1994.

I was met with unexpected responses from several ZAB members - which I have had a chance to review on video - stating among other things that gentrification is not happening in South Berkeley and essentially that my concerns are illogical and "off the rails" and it's only happening in North Berkeley. Excuse me?

This on top of other statements that it will take years to use the Housing Trust fund to build affordable housing. We heard several of you say that building affordable housing is not imminent. It may not concern all of you, but it is largely a segregated model, which at least ZAB member John Selawsky agreed is concerning.

What should happen in the meantime to help people in this community? Let these projects build only market rate?

See/listen 3:13-17 hours/minutes in, "getting a few [affordable] units in a larger project [inclusionary housing] is nothing"; [re gentrification furthered by market rate housing development] "that whole logic train is off the rails, it doesn't make any sense ... I am shocked that people have absolutely no logic to their thinking in our city. If we don't build more housing, we are going to have more and more encampments on our street."

How does ZAB believe that market rate housing projects will get people off the street and provide housing to low and moderate members of this community?

See/listen also: 3:22, where gentrification was dismissed again as not happening here but in North Berkeley, which is the least dense and "they are not building a lot of anything."

Please forgive my ignorance, but let me be clear, my concern is that gentrification is indeed happening in South Berkeley and new market rate housing in this community does not help solve the problem, especially anytime soon including under the circumstances ZAB acknowledged above.

I am more perplexed and alarmed after attending the hearing. See:

<http://www.dailycal.org/2017/11/21/maps-by-uc-berkeley-researchers-show-advanced-gentrification-in-berkeley-northern-california/>

We also learned that by reconfiguring the units to a smaller number, practically half but adding more beds and more people to the project, the developer is leaving \$745,000 out of the Housing Trust fund for affordable housing. The ZAB engaged in laughter over this "loophole". Perhaps it was uncomfortable laughter. See/listen 3:24 and elsewhere as that discussion was sprinkled throughout the hearing.

There were also ZAB responses re need to look a hundred years ahead to carry out due diligence here. I must ask what you think allowing this project with numerous use permits and no affordable housing will do for the trends in further project development, so very focused on this side of town? Excused here, not next time, everywhere? What ground will you stand on?

My take away is that ZAB has discretion to stick with some laws/regulations and ignore others while speaking to various "community values" and blithely dismissing concerns such as mine. And the "trends" of concerns are changing:

See ZAB sharing my concerns re very similar proposed project just a few blocks away, less than one year ago:

"At the meeting, ZAB members expressed their reluctance to allow the additional two stories if the complex only allows two units of affordable housing, as Dinar proposed at the meeting. ZAB member John Selawsky [not only Selawsky] said he would like to see as many as 10 units of affordable housing in the complex, adding that two seemed "like an insult" to the community."

<http://www.dailycal.org/2017/06/11/zoning-adjustments-board-critiques-proposed-development-near-ashby-bart/>

I never received any response to my emails below. Once more, I request a response, this time addressing all of my concerns stated above, especially explaining how the ZAB does not see gentrification happening in South Berkeley and why now there is no expressed reluctance to allow the project without any units of affordable housing. Perhaps, if given a response, I will be more suitably informed before the next hearing and not berated.

Thank you for your attention and the courtesy of a response.

Larisa Cummings

On Tue, May 1, 2018 at 2:37 PM, Larisa Cummings <pidicummings@gmail.com> wrote:

Dear representatives, please see below for several efforts I've made to reach out to you with my concerns about the proposed development that is coming soon before the zoning adjustment board. How are my concerns being taken into consideration? I am certainly not alone in this effort.

Sincerely,
Larisa Cummings

----- Forwarded message -----

From: Larisa Cummings <pidicummings@gmail.com>

Date: Sun, Mar 4, 2018 at 11:07 AM

Subject: Re: 3000 Shattuck #ZP2015-0229

To: bbartlett@cityofberkeley.info <bbartlett@cityofberkeley.info>, mayor@cityofberkeley.info <mayor@cityofberkeley.info>, zab@cityofberkeley.info <zab@cityofberkeley.info>

CC: berkeley.southside.housing@gmail.com <berkeley.southside.housing@gmail.com>

Dear representatives and civil servants, I am re-sending an email I sent last summer because I understand that the development in question may be heard by ZAB this month and I did not receive any response. Once again, please respond.

Thank you,
Larisa Cummings

On Wed, Aug 23, 2017 at 2:57 PM, Larisa Cummings <pidicummings@gmail.com> wrote:

Dear representatives and civil servants,

I have lived on the southside of town on Newbury Street since 1994. This community has a very diverse and inclusive history but unfortunately many people are being driven out by the ever increasing high cost of housing. There can be no doubt that there is a crisis of homelessness too.

I look around me and see numerous major housing developments proposed and being built, more than anywhere else in the city. I am writing to express my concerns about the disproportionate focus on South Berkeley and the failure of the city to ensure that new housing includes adequate affordable or below market housing.

I ask you why the city is not taking all steps necessary to ensure adequate affordable housing and why the southside is getting targeted as it is by new extra high-rise high-end development.

The proposed project at 3000 Shattuck is a good example of what is wrong with the city's focus or lack thereof. No provision for affordable or below market housing is included.

To add insult to injury, it is my understanding that the developer wants an exception to build two extra stories as other developers have done and will likely seek to do without considering impacts on us who live here.

My neighbors and I will not stand by in the face of these inequities. We will not look the other way as developers gentrify the most diverse part of town. We need your priorities to match ours in order for you to

carry out your civic duty to protect our vulnerable community. Please take our concerns very seriously. I would appreciate a response that addresses how you are focused on these concerns.

Thank you for your attention.

Larisa Cummings
2913 Newbury Street
Berkeley, CA. 94703