

ATTACHMENT 1

FINDINGS AND CONDITIONS

JULY 12, 2018

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

Use Permit Modification #ZP2018-0091 to modify approved Use Permit #12-1000012, which allowed the construction of a 6-story mixed-use building, to add 16 beds to the Group Living Accommodation for a total of 254, reduce the total non-residential floor area by 11,264 square feet by eliminating the basement, alter the layout of the ground floor, second floor, and roof deck, and increase the average height from 72' to 75'.

PERMITS REQUIRED

- Use Permit, under BMC Section 23B.56.020, to modify an approved use permit.

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development”).
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. FINDINGS FOR APPROVAL

This permit modifies Use Permit #12-1000012. Revisions to the findings and conditions necessary to address the modified project are shown with strikeouts (~~strikeout~~) for deleted text and underlines (underline) for added text.

GENERAL NON-DETRIMENT FINDING

1. As required by Section 23B.28.050.A of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the 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 because:
 - The project would accommodate ~~238~~ 254 residents and ground floor commercial within walking distance of the University of California and is located in an area that is well served by transit, including the rapid bus line on Telegraph Avenue and the Downtown Berkeley BART stations within one mile of the site.
 - The project would further the purposes of the district in that it would create additional housing in the district for those who work or study nearby in a new mixed-use building.
 - The project includes ground floor commercial space that will cater to the needs of the District’s population, especially the University population and the surrounding resident population.

- The project would reinforce the City's effort to redevelop underutilized development sites in a way that would increase the quality of the built environment and provide new housing and commercial opportunities, while providing an appropriate transition to medium density residential districts to the east.
- The construction of ~~461 bedrooms~~ 254 beds in an area with above-average transit service furthers the City's policies on infill development and will help reach Climate Action Plan goals by providing transit-oriented, sustainable and accessible housing opportunities as further discussed below.
- The project will help foster increased pedestrian and economic activity by increasing the residential population (and potential customer base) of the Southside area.
- The project complies with applicable policies of the General Plan and Southside Plan (including Design Guidelines) as further described below.
- The project will provide parking for ~~238~~ 254 bicycles, one space per resident, and residents will not be eligible for Residential Preferential Parking (RPP) permits, and the nearest non-RPP area is several blocks away. These factors will help reduce car ownership in the project and discourage use of on-street parking.

DEMOLITION OF EXISTING BUILDING

2. Pursuant to Berkeley Municipal Code Section 23C.08.050.D, the Zoning Adjustments Board finds that the proposed demolition of the existing two-story commercial building will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City because the demolition will allow the construction of a proposed mixed-use building.

MIXED USE PROJECT WITH OVER 1,500 SQUARE FEET OF FLOOR AREA

3. Pursuant to Berkeley Municipal Code Section 23E.56.090.B.1, the Zoning Adjustments Board finds that the project will further the purposes of the district in that it will create additional housing, ~~and affordable housing,~~ in the District for those who work or study nearby in a new mixed-use building. The project includes ground floor commercial that will cater to the needs of the District's population, especially the University population and the surrounding resident population. The project will also provide pedestrian-oriented uses within a new building with glass storefronts and pedestrian-scaled lighting along the sidewalk.

The project will 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 will 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.

4. Pursuant to Berkeley Municipal Code Section 23E.56.090.B.1, the Zoning Adjustments Board finds that the project will further the purposes of the district in that it will create additional housing, ~~and affordable housing,~~ in the District.
5. Pursuant to Berkeley Municipal Code Section 23E.56.090.B.1, the Zoning Adjustments Board finds that the project will further the purposes of the district in that it will create additional housing, in the District for those who work or study nearby in a new mixed-use building. The project includes ground floor commercial space that will cater to the needs of the District's population, especially the University population and the surrounding resident population. The project will also provide pedestrian-oriented uses within a new building with glass storefronts and pedestrian-scaled lighting along the sidewalk.

6. Pursuant to Berkeley Municipal Code Sections 23E.56.090.B.2 and 23E.56.090.B.3, the Zoning Adjustments Board finds that, the project will reinforce the City's effort to redevelop underutilized sites in a way that would increase the quality of the built environment and provide new housing and commercial opportunities. Doing so will 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.' DRC's positive recommendation regarding the design demonstrates that the project is compatible with the adjacent commercial and residential development. For these reasons, staff believes that the project is consistent with Findings 23E.56.090.B.2 & 3.
7. Pursuant to Berkeley Municipal Code Section 23E.56.090.B.4, the Zoning Adjustments Board finds that the number of additional trips that will be added to the roadway system by the project is negligible and thus will not worsen the traffic conditions along nearby roadways and intersections.

The project is located within one mile of the Ashby and Downtown Berkeley BART stations and is in an area served by several bus and shuttle lines including: AC Transit lines 6, 51B, 49, 52; the Berkeley Shuttle service (BEAR Transit); and the Lawrence Berkeley National Laboratory Shuttle service. The construction of ~~161 bedrooms~~ 254 beds for residents who will not be entitled to receive parking permits under the Residential Permit Parking Program (RPP), and in an area with above-average transit service will help further General Plan *Policy LU-23-Transit-Oriented Development* that encourages greater commercial and residential density in areas well served by public transportation, and *Policy T-16-- Access by Proximity*, that encourages improved access by increasing proximity of residents to services, goods, and employment centers.

ROOFTOP PROJECTIONS

8. Pursuant to Berkeley Municipal Code Section 23E.04.020.C, the Zoning Adjustments Board finds that the rooftop projections will not be habitable, will not be used for commercial purposes, and that the combined floor area of the projections represents less than 15% of the average floor area of the building.

REDUCE THE REAR YARD BELOW 15'

9. Pursuant to Berkeley Municipal Code Section 23E.04.050.C, the Zoning Adjustments Board finds that the reduction in the setback when adjacent to the R-S District, will not create significant privacy concerns for the adjacent residences because 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. In addition, 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).

III. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

9. Indemnification Agreement

~~The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorney's fees that may result.~~

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

IV. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

- 10. Final Design Review.** The Project requires approval of a Final Design Review application by the Design Review Committee.
- 11. Final plans for Final Design Review shall address the following conditions, required by the Board:**
 - The livability of the Group Living Accommodations should be improved where possible.
 - The size of windows at living spaces should be increased where possible.
 - A sample of the "faux stone" material shall be presented and approved at Final Design Review.
 - The lobby should accommodate a front desk and management offices.
 - The project must comply with all ADA accessibility requirements of the California Building Code.
- 12. Resident Manager Required.** At least one full-time resident manager shall be provided, and the dwelling shall include at least two bedrooms.
- 13. Front Desk.** ~~The Front Desk shall be staffed and open 24 hours a day. The building shall provide a front desk, which shall be staffed and open based on hours approved by the Zoning Officer.~~
- 14. Onsite Management Plan.** The applicant shall develop an onsite management plan for the building, which shall include a full-time resident manager, and at least one unit for the manager, as noted above, in COA #12. This plan shall be subject to the review and approval of the Zoning Officer.

15. Security Plan. The applicant shall develop a plan to address the security of all residents. This plan shall be subject to the review and approval of the Berkeley Police Department and the Zoning Officer.

16. Settlement Agreement. The applicant shall comply with all conditions listed in the Settlement Agreement, dated October 15, 2013, and as amended on February 9, 2018, between Kenneth Sarachan, Laurie Brown, and the City of Berkeley.

Prior to Final Inspection or Issuance of Occupancy Permit:

48. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated ~~February 3, 2017~~ June 20, 2018 except as modified by conditions of approval.

All other Conditions of Approval included in Use Permit #12-10000012 shall apply and remain unchanged.
