



Z O N I N G
A D J U S T M E N T S
B O A R D
S T A F F R E P O R T

FOR BOARD ACTION
JULY 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’.

I. Background

A. Land Use Designations:

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

B. Zoning Permits Required:

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

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

D. Parties Involved:

- Applicant David Bogstad, 590 Ygnacio Valley Road, Suite 310, Walnut Creek
- Property Owner Todd Whitlock, Integrated Property Company II, LLC, 120 Railroad Avenue, Point Richmond

Figure 1: Vicinity Map



Figure 2: Site Plan

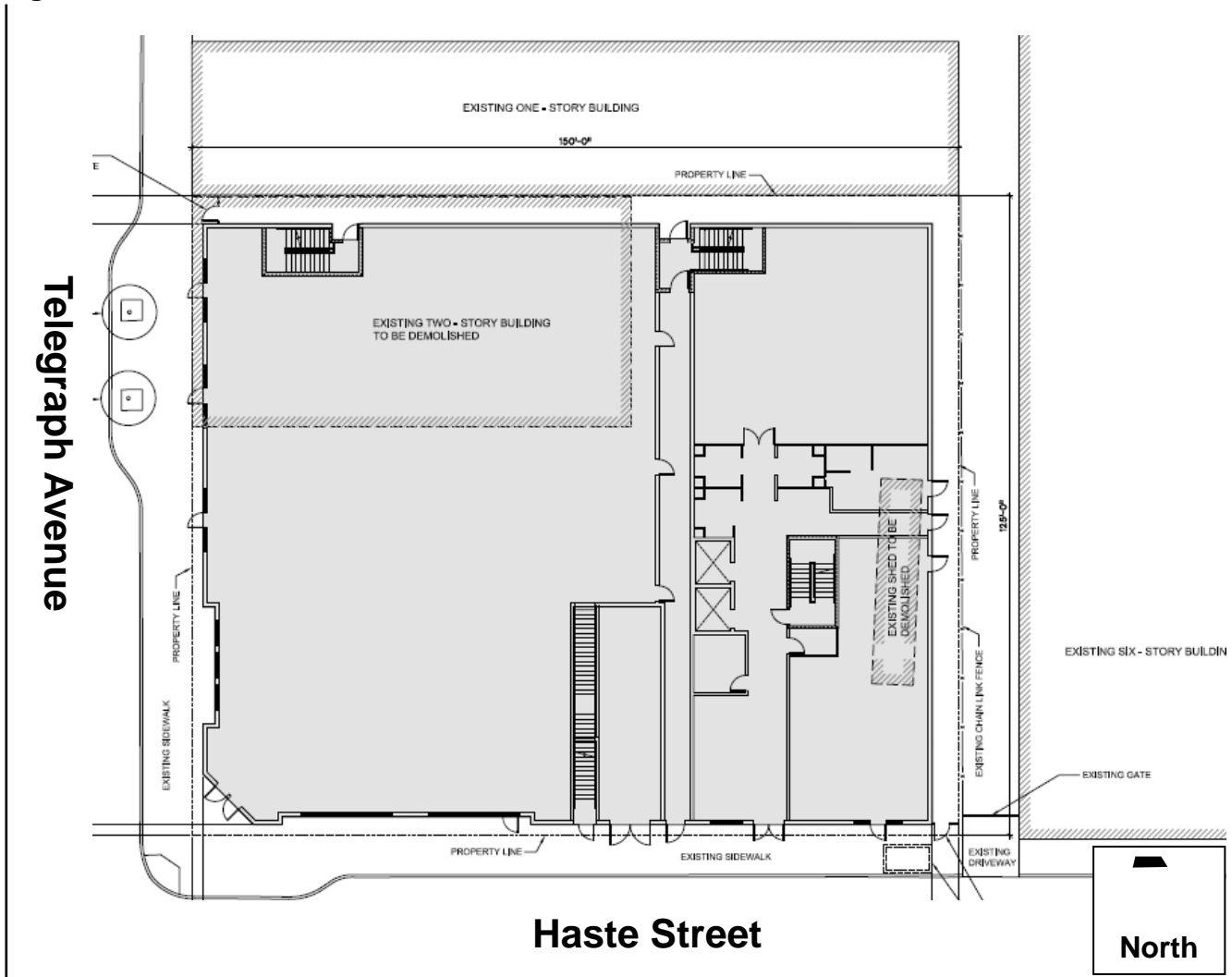


Table 1: Land Use Information

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 – Maximino Martinez Commons/ Anna Head School	R-S	High-Density Residential

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee (Per Resolution 66,618-N.S.) & Affordable Housing Fee (Per Resolution 66,617-N.S.), for qualifying non-residential projects	Yes	These fees apply to projects with more than 7,500 square feet of new non-residential gross floor area. The project includes 11,201 square feet of new commercial floor area, and thus, the applicant will be required to comply with these requirements.
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	The Group Living Accommodation portion of the project meets the Zoning Ordinance Definition of "Dormitories," a type of housing that is exempt from the City's Inclusionary and affordable housing requirements.
Alcohol Sales/Service	No	None proposed.
Creeks (Per BMC Chapter 17.08)	No	No creek or culvert defined by BMC Chapter 17.08 exists on or within 30' of the site.
Coast Live Oak Trees (Per BMC Section 6.52.010)	No	There are no Coast Live Oak trees on or abutting the project site.
Density Bonus	No	The applicant has not requested a State Density Bonus.
Historic Resources	Yes	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 (Gov't Code Section 65589.5)	No	The approved project received several exceptions to applicable zoning standards (e.g. the reduction of the rear yard setback), and thus the Housing Accountability Act does not apply.
Percent for Art (Per BMC Chapter 23C.23)	Yes	The project is subject to the City's Public Art on Private Projects Ordinance.
Rent Controlled Units (Per BMC Chapter 13.76)	No	There are no rent controlled units on the property.
Residential Preferred Parking (RPP)	No	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 (Per State Hazards Mapping Act)	No	The project is not located within an area susceptible to liquefaction, fault-rupture, or landslide.
Soil/Groundwater Contamination	No	The project site is not listed in the City's Hazards Management Area and the site is not listed on any list maintained pursuant to the Cortese List.
Transit	Yes	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 to 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
February 9, 2017	ZAB: Use Permit @12-10000012 Approved
May 4, 2017	Use Permit Modification application submitted
June 22, 2018	Project deemed complete
June 28, 2018	ZAB: Public Hearing Notice Released
July 12, 2018	ZAB: Public Hearing

Table 4: Development Standards

Standard BMC Sections 23E.56.070 & 23E.56.080		Existing	Approved	Proposed	Permitted/ Required
Lot Area (SqFt)		18,781			
-2433 Telegraph		6,963	No Change	No Change	N/A
-2501 Haste		8,818			
-2509 Haste		3,000			
Gross Floor Area (SqFt) - Total		6,950	111,726	92,938	
- Residential Floor Area (SqFt)		0	76,137	81,737	No Limit
- Retail (SqFt)		6,950	22,465	11,201	
Floor Area Ratio		0.58	5.97	4.94	5.0 Max 6.0 allowed with a Use Permit (see Section V.A)
Residential Uses					
-Dwelling Units		0	0	No Change	No Limit
-Group Living Accommodations		0	238 persons	254	53 (based on lot area) Use Permit to exceed (See Section V.B)
Building Footprint (SqFt)		Approx. 3,475	15,875	No Change	No Limit
Lot Coverage (%)		Approx. 18	84	No Change	
Building Height	Average Height	N/A	72'	75'	35' Min/65' Max 75' allowed with a Use Permit (see Section V.A)
	Stories	2	6	7	No Limit
Building Setbacks	East Property Line (Rear)		5'	No Change	15' Use Permit to Reduce
	Telegraph Avenue (Front)	N/A	0'	No Change	None Required
	Haste Street (Street Side)		0'	No Change	
	North Property Line (Interior Side)		5'	No Change	
Roof-top Projections		N/A	95'	No Change	Allowed with Administrative Use Permit
Usable Open Space (SqFt)		N/A	13,124	10,762	None Required
Parking	Automobile - Total	1	0	No Change	None Required
	- Dwelling Units	0			
	- GLA	N/A			
	- Retail	0			
	Bicycle				
- Commercial Uses	0	11	No Change	11	
- Residential Uses	N/A	227	243	None Required	

II. Project Setting

- A. Neighborhood/Area Description:** The project site is located on the eastern side of Telegraph Avenue at Haste Street. The site is located approximately $\frac{1}{4}$ 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, including Amoeba Records across Haste Street and a new 5-story mixed-use building across Telegraph Avenue, which contains Raleigh's and Café Mezzo on the ground floor and housing above. The Anna Head School and Maximino Martinez Student Housing, both owned by the UC abut the subject property to the east. People's Park also occurs east of the project site, across Haste Street.
- 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

In February 2017, the ZAB approved Use Permit #12-10000012, which allowed the demolition of the existing retail building and the construction of a new 6-story with retail at the basement and ground floor, and group living accommodations (GLA) for 238 persons on floors 2-6.

The applicant has requested the following modifications to the approved project plans:

- The addition of 16 beds, for a total of 254;
- The addition of 16 bicycles to serve residents, for a total of 254;
- Removal of the basement and reorganization of the ground floor to accommodate 5 retail tenant spaces, a bicycle storage room, lobby, office, and trash and utility rooms;
- Conversion of the mezzanine to a second floor to accommodate a resident amenity area (with study, lounge, laundry, and fitness rooms), thereby increasing the total number of stories from 6 to 7;
- Minor changes to layout of residential portion of the building, including increased window sizes other changes to improve livability; and
- Modified roof plan, including the addition of a restroom within one of the approved tower elements and a reduced roof deck to accommodate mechanical equipment and solar panels, thereby reducing the proposed useable open space from 13,124 to 10,762.

IV. Community Discussion

A. Neighbor/Community Concerns: The applicant held a neighbor meeting in April 2012. In 2013, 2014, and 2017, multiple public hearings were held to allow the public and the Board to learn of the project and provide comments. Prior to submitting this Use Permit Modification application to the city, the applicant erected a new pre-application poster in May, 2018. On June 28, 2018, the City mailed 461 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.

B. Committee Review: The Design Review Committee forwarded a favorable recommendation to the ZAB in October 2014. Given that the proposed modification to the approved plans would not substantially alter the exterior appearance of the building, a modification to the Design Review application is not required.

The applicant will be required to obtain approval of a Final Design Review application prior to approval of building permits for the project.

V. Issues and Analysis

A. Modifications to Required Findings – Compliance with the C-T District: 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. In February, 2018, the ZAB approved the project with a height of 72' and FAR 5.99. The proposed modification would increase the height to 75' and decrease the FAR to 4.94. The ZAB may approve this proposed modification to the approved 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.

Staff believes that the findings made by the ZAB for the original project can still be used with minor changes (see attachment 1, Revised Findings and Conditions). The project would continue to be compatible with the purposes of the district because it would create housing and commercial opportunities for those who work or study nearby and would activate the street at a currently underutilized lot. At least 50% of the total floor area continues to be designated for residential uses, and the proposed changes would not significantly change the shadow impacts created by the building. Moreover, while the applicant proposes minor changes to the exterior, including a height increase of 3' to accommodate the roof deck, the building would still reinforce the City's efforts to maintain the street frontage of the district, redevelop underutilized sites, and increase the housing supply.

The applicant proposes to add 16 beds to the approved project, for a total of 254. While the project includes no off-street parking spaces, the applicant has also proposed to increase the number of bicycle parking spaces for the residents by 16. Since residents of the proposed building would not be entitled to receive parking permits under the Residential Parking Program and the intended residents of the buildings are students, and given the project's proximity to the UC Berkeley campus and a variety of transit options, staff believes that the proposed increase in beds will not significantly impact traffic and parking in the neighborhood.

B. Modifications to Required Findings – Group Living Accommodations: 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, the approved project includes 238, and the applicant proposes 254. The Board may approve the use permit modification if it believes that the following findings, which were made last year, can still be 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.

As noted above, Staff believes that Findings #1 and #3 can still be made.

The applicant has proposed to increase the residential density by 16 beds and to reduce the useable open space from 13,124 to 10,762 square feet, or approximately 42 square feet per resident. However, the applicant writes that project approved by the ZAB included the entirety of the roof in the useable open space calculation, and that the modified figure represents the useable open space that will be available given the space for solar panels and other mechanical equipment necessary for the functioning of the building.

The C-T District does not provide a useable open space requirement for this project, but the proposed useable open space 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 when living as a group living accommodation). Given that this modification includes enhanced interior amenity space for residents, including laundry, fitness, and study rooms, that the applicant proposes to maintain the approved exterior courtyard at the third floor and the two terraces at the fifth and sixth floors, and that the proposed plans include improved programming for all the outdoor spaces, staff believes that the building will comfortably accommodate the increase in density. Thus, the proposed modification will not be detrimental to the immediate neighborhood.

B. Additional Conditions of Approval Imposed by the ZAB: When the ZAB approved Use Permit #12-10000012 in February 2017, it added the following Conditions of Approval:

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 increase 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.

Staff Analysis: The proposed project plans include modifications to the residential portion of the building to maximize the size of windows at living spaces. The layout has also been modified to increase livability, and the applicant has added depictions of furniture to illustrate how the spaces can be comfortably used (see Attachment 2, beginning Sheet A1.31).

In addition, the applicant is currently preparing to submit a Final Design Review application soon after this modification is approved. Details for colors and materials have been added to building elevations, and the applicant is prepared to work with the Design Review Secretary and the DRC to confirm that all materials, especially the stone material at the ground floor, are consistent with the original aesthetic intent and the approved design.

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.
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.

Staff Analysis: The applicant has indicated the building will be leased by UC Berkeley for student housing. A representative from UC has submitted a letter to the City, which describes the management and security measures the university would take should a master lease be negotiated. Those measures include residential education staff that live in buildings and monitor behavior, serve as emergency response, enforce the residential and University codes of conduct and serve as a resource for roommate mediation and housing and campus programs.

The UC's measures also include on-duty security monitors according to the following hours: Sunday-Thursday, 6PM – 2AM, and Friday-Saturday, 6PM – 3AM. Given that the UC is likely to lease this building, the applicant has requested that the ZAB modify Condition #13. Accordingly, staff has updated the language in this condition:

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.

Should a master lease not be negotiated, or should the UC end its lease at some future date, the applicant has indicated that a new plan for management and safety will be created and provided for review by the Zoning Officer. For either case, the applicant has designated a 2-bedroom unit most likely to be used for resident manager on the project plans. Given the applicant's efforts to provide information regarding the UC's security measures and that similar measures will be required if the building is managed by another private entity, staff believes these additional conditions will be properly addressed.

14. Settlement Agreement. The applicant shall comply with all conditions listed in the Settlement Agreement, dated October 15, 2013, between Kenneth Sarachan, Laurie Brown, and the City of Berkeley.

Staff Analysis: Since the approval of the Use Permit last year, the settlement agreement has been amended. The modifications include the following:

- Updated language to reflect that the residential portion of the building qualifies as "dormitories," instead of dwelling units, which were originally proposed when the agreement was signed. By extension, the requirement for an onsite affordable dwelling unit was eliminated.
- The elimination of the requirement for an onsite public restroom. The applicant will instead be required to work with the City to pay an in-lieu fee, which will go towards the City's pending development of a strategic plan for public restrooms.

The applicant continues to work with the City to ensure that the requirements of the agreement are met. Moreover, Land Use Planning Staff has confirmed that

the project, including the proposed modifications, is consistent with the amended agreement.

C. 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 254 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 large 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 254 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.

D. 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.

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

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

Staff Analysis: The ZAB determined that the approved project would not create detrimental shadow impacts, and staff believes the proposed modifications would not substantially alter the impacts created by the building.

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 and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** Use Permit Modification #ZP2018-0091 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Revised Findings and Conditions
2. Project Plans, received June 22, 2018
3. Notice of Public Hearing

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