



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
MARCH 12, 2020

Supplemental Report

2150-2176 Kittredge Street

Use Permit #ZP2019-0027 to demolish a five-story commercial building at 2176 Kittredge Street and a one-story convenience store and gas station/carwash facility at 2150 Kittredge Street; to merge the two parcels for a total lot area of approximately 32,600 sq. ft.; and to construct a new, 75 ft.-tall, seven-story mixed-use building of approximately 177,000 sq. ft. in total gross floor area containing: 23,000 sq. ft. of commercial floor area on the ground level; a total of 165 dwellings units on the second through seven stories; approximately 13,250 sq. ft. of usable open space within a series of rooftop patios; and a sub-surface parking garage providing 52 off-street parking spaces.

I. Application Basics

A. Land Use Designations:

- General Plan: Downtown
- Zoning: Downtown Mixed Use (Outer Core)/C-DMU

B. Zoning Permits Required:

- Use Permit, under Berkeley Municipal Code (BMC) Section 23C.08.050, to demolish a non-residential building
- Use Permit, under BMC Section 23E.68.030, to construct a mixed-use building in the C-D/MU district
- Use Permit, under BMC Section 23E.68.050, to construct more than 10,000 sq. ft. of new, gross floor area in the C-D/MU district
- Use Permit, under BMC Section 23E.68.070.A, to construct a building in the C-D/MU district with an average height that is greater than 60 ft. but not greater than 75 ft.
- Use Permit, under BMC Section 23E.68.070.C, to modify the minimum required interior side yard setbacks in the C-D/MU district

- Use Permit, under BMC Section 23E.68.070.D.2-3, to pay a fee in lieu of providing on-site publicly-accessible open space (POPOS) in the C-D/MU
- Use Permit, under BMC Section 23E.68.080.D, to waive or reduce required on-site vehicle parking spaces through payment of an in lieu fee in the C-D/MU district
- Administrative Use Permit, under BMC Section 23E.04.020.C, to create rooftop projections that exceed the C-D/MU district building height limit of 75 ft. with a Use Permit
- Administrative Use Permit, under BMC Section 23E.68.020, to establish food service uses greater than 3,000 sq. ft. in total area

C. CEQA Determination: Infill Environmental Checklist pursuant to Section 15183.3 and appendix M of the *CEQA Guidelines* has been prepared for the proposed project. As discussed in the Infill Environmental Checklist (attached via web link), the proposed project qualifies as an infill project under *CEQA Guidelines* Section 15183.3.

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2020-01-23_ZAB_ATT4_215076%20Kittredge_CQA%20Infill%20Checklist.pdf

D. Parties Involved:

- Applicant Amir Massih, East Beach Development, 95 Federal Street, Suite D, San Francisco, CA
- Property Owners Michael and Katherine Shimek, 1943 Granite Valley, Way, Petaluma, CA
Plaza 5th Avenue Partners/Scott Braunstein, 1261 Redwood Lane, Lafayette, CA

E. Application Materials, Staff Reports and Correspondence are available on the Internet:

https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/2176_Kittredge.aspx

II. Background

A. Application and Project Chronology

On January 23, 2020, the Zoning Adjustments Board (ZAB) opened the public hearing on this request, received a report and favorable recommendation from staff and a presentation by the project applicant.

The full chronology of this application and the pending Use Permit hearing are provided in Table 2, below.

Table 1: Project Chronology

Date	Action
February 7, 2019	Application submitted
March 8, 2019	Application deemed incomplete
March 21 through May 8, 2019	Resubmitted and revised application material arrived
May 16, 2018	Preliminary Design Review occurred but was continued
August 15, 2019	Preliminary Design Review concluded with a favorable recommendation
October 1 through December 23, 2019	Resubmitted and revised application material arrived
December 24, 2019	Application deemed complete
January 3, 2019	CEQA Infill Exemption Checklist finalized Project deemed categorically exempt
January 8, 2020	Public hearing notices mailed/posted
January 23, 2020	ZAB hearing – opened and continued to March 12, 2020
January 24 through March 2, 2020	Applicant met with commercial and residential neighbors. Staff met with all parties and other City staff, including Toxics Management and Economic Development.
March 12, 2020	ZAB hearing resumes Supplemental Applicant Statement will be submitted

B. Previous hearing – January 23, 2020

At the hearing on January 23, 2020, several members of the public spoke during Public Comment, including: representatives of the Odd Fellow Lodge 270, located immediate adjacent to the project site, at 2288 Fulton Street; Tai Yu, manager of the Great China Restaurant at 2190 Bancroft Way, across Bancroft Way from the project site; and Susan Carlson, a private resident and owner of the multi-unit building at 2138 Kittredge, abutting the project site on the west site.

The speakers testified about their concerns related to the construction phase of the project such as noise disturbances, increased traffic congestion and circulation diversions or obstructions, as well as damages that may result from both foreseeable and unknown incidents. Each stated that they were not opposed to the proposed development, in general, and expressed optimism about the creation more dwelling units for this neighborhood.

Upon close of the public comment at the January 23, 2020 hearing for this application, some ZAB members expressed concern about proceeding to final action on this Use Permit proposal. After describing their concerns and receiving some direction from staff and more detailed information from the applicant, the

Board voted to continue the matter and itemized the following topics for further consideration by the applicant:

Table 2: Summary of ZAB Comments and Responses to Date

ZAB Comment	Applicant's Response	Staff Recommendation
<p>1. Consider on-site affordable housing.</p>	<p>Considered both on-site and payment in-lieu options during the conceptual stages of this project. Understood that a payment in-lieu would be preferred after conferring with individuals familiar with the City's housing production needs at that time.</p>	<p>Refer to the provisions of BMC Section 22.20.065 for Affordable Housing Mitigations, and note the option to make a payment in-lieu of providing on-site units.</p> <p>In this case, the project applicant would be required to submit a payment of approximately \$6 million into the City's Housing Trust Fund, which is used to fund below-market rate housing projects throughout the City.</p>
<p>2. Commit to greater outreach and coordination with commercial and residential neighbors during the construction phase of the project.</p>	<p>Conferred with Great China Restaurant management, Ms. Carlson of 2138 Kittredge and Odd Fellows Lodge 270 (OFL) representatives. In response to these meetings, will implement innovative outreach measures such as: noticing via email in advance of critical events during construction; establishing a "badge system" to identify workers requiring assistance accessing work sites during construction; patronizing local restaurants to cater construction employee lunches.</p>	<p>Refer to Conditions of Approval (COA) #10, 14, 15, 17, 21, 38-44 and 49. Note that COA#17 has been revised to require email updates to interested parties.</p> <p>Be advised that the applicant has conferred with the commercial and residential neighbors who testified at the January 23, 2020 hearing and has committed to maintaining a cooperative relationship prior to and during construction of the project. To date, all except the representatives of the OFL have expressed a level of satisfaction with these exchanges and the understandings that have resulted.</p>
<p>3. Continue work to reach a final agreement with Odd Fellows Lodge (OFL) regarding exterior access to their non-conforming windows located on the shared interior side property line (west) for the life of the project.</p>	<p>Actively engaged with OFL representatives to craft and finalize language for pending agreements, including an access lease agreement for window maintenance.</p> <p>Awaiting responses to most recent communications.</p>	<p>Refer to a copy of the draft access lease agreement that is provided as Attachment 2 of this supplemental report.</p> <p>Be advised that the applicant and representatives of the OFL have met and continue to identify solutions to the other concerns that they raised at the January 23, 2020 hearing and during meetings prior. Some of OFL concerns are zoning-related, but most are private matters and require the OFL to consider pro-active measures that can effectively address the specific features of their property, some of which are non-conforming.</p>

ZAB Comment	Applicant's Response	Staff Recommendation
4. Obtain a survey of the foundation encroachment at OFL building, 2288 Fulton Street.	Previously provided survey of project site, which demonstrates that the subject encroachment is not within the project site.	Note that the OFL building encroaches into the right-of-way on Bancroft Way and does not encroach onto the project site. In that location, the encroachment would not affect the proposed development.
5. Ensure security for residents of 2138 Kittredge.	Met with owner, Ms. Carlson, explained Cal OSHA permit requirements for crane activity, and described their mandatory liability insurance to cover accidental damage to her property.	Be advised that the applicant has reached an understanding with the property owner and a draft private agreement is currently under consideration.
6. Consider Live/Work uses on ground floor rather than proposed retail and food service.	Is aware of the by-right Live/Work option and is confident of the viability of retail at this location.	Refer to BMC Sections 23E.20 and 23E.68.030, and note that the C-D/MU district permits the ministerial establishment of Live/Work uses in most cases. Be advised that Live/Work uses would be an option for ground floor tenants.
7. Gas station remediation is unclear.	Completed Phase 1 & 2 soils assessments and has prepared for the SF Bay Area Regional Water Quality Control measures applicable to redeveloped petroleum sites.	Refer to the CEQA Infill Environmental Checklist provided January 24, 2020 and COA #37. Defer to the SF Bay Area Regional Water Quality Control Board mandatory review of the project if approved.
8. Architectural design and details	Made revisions to the project design following the May 2019 DRC review, and then received a favorable recommendation for improvements to the design and compatibility with surroundings.	Uphold the DRC review and favorable recommendation for the project design (August 15, 2019).

III. Update – Neighbors, Downtown Construction and City Standard Practices

Since January 24, 2020, staff has reviewed the Board's list of concerns, meet with the applicant, representatives of the Odd Fellows Lodge 270 (OFL), Susan Carlson who resides at and owns the property at 2138 Kittredge Street (immediately adjacent to the project site), and staff from the Office of Economic Development and the Toxics Management Division. The applicant has communicated directly with the

operator of the Great China Restaurant, OFL representatives, and Ms. Carlson. At this time, Great China Restaurant management and Ms. Carlson have expressed their satisfaction with the outcome of discussions with the applicant, and they have re-iterated their desire to avoid delaying the Use Permit review. Staff concludes that their concerns have been addressed.

OED staff coordinates with the Downtown Berkeley Association and the property owners and business operators in Downtown. Through established and on-going coordination efforts, these groups monitor and ensure the continued viability of the Downtown commercial sector through its current period of expansion and growth. OED finds that the City's practice of including construction management and coordination measures in its standard Conditions of Approval for projects in the Downtown is sufficient for minimizing impacts to existing businesses.

Similarly, the Hazards Material Specialists from the Toxics Management Division have reviewed the Use Permit project plans as well as the Phase 1 and 2 soils reports for this site and development proposal, and believe that City's established procedures for ensuring compliance with all SF Regional Water Quality Control Board standards and practices for the remediation of sub-grade contaminants would be sufficient for this project. For these reasons, staff concludes that the concerns of some ZAB members have been addressed with the City's standard practices for reviewing and granting entitlements for development in the dense neighborhoods like Downtown and on sites containing hazardous materials.

At the time that staff completed this report, the applicant had not reached a final agreement with representatives of the OFL regarding access to the light well in the proposed project in order to monitor and maintain windows on the OLF building that are located on a shared property line. The applicant's draft agreement is provided for ZAB's information; see Attachment 2. The initial July 2019 list of OFL concerns expanded to include several new items at the January 23, 2020 ZAB hearing, and it has expanded again to include several more items; see Attachment 3 (Correspondences) of this report. OFL concerns about construction noise and vibration can be addressed with COAs #17 and 44; issues related to storm water drainage and existing infrastructure would be addressed by Public Works Engineering staff during building permit application review for an approved project. Concerns about the OFL building's non-compliant features and discharge/intake devices are not zoning matters and require cooperation of the two parties.

Given the purview of Zoning ordinance in these matters, staff concludes that ZAB has exercised the extent of its influence in this case and that the recommended Conditions of Approval will uphold the City's established practices for new developments and construction of this scale in the Downtown.

IV. Recommendation

- A. Refer to previous reports, analysis, environmental documents and information presented at the January 23, 2020, hearing for this Use Permit request.
- B. Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal indefinite impact on surrounding properties, staff recommends that the Zoning Adjustments Board:

APPROVE Use Permit pursuant to Section 23B.32.030 and subject to the attached Revised Findings and Conditions (see Attachment 1).

Attachments and internet links:

- 1. Revised Findings and Conditions, dated March 12, 2020
- 2. Draft agreement for light well/window access lease between project applicant and the Odd Fellows Lodge
- 3. Correspondences received, dated January 30, 2020

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