



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 11, 2020

2023-25 Shattuck Avenue

Use Permit #ZP2019-0041 to construct a 24,178 square-foot, seven-story, 73'5" tall, mixed-use building with 48 dwelling units (including 4 units available to very-low-income households) and 1,250 square feet of ground floor commercial space. The project would provide no vehicle parking; it would provide secure storage for 34 bicycles.

I. Background

A. Land Use Designations:

- General Plan: Downtown (DT)
- Downtown Area Plan: Downtown Mixed-Use District, Core
- Zoning: Downtown Mixed Use District (C-DMU), Core Area

B. Zoning Permits Required by the Berkeley Municipal Code:

- Use Permit, under Berkeley Municipal Code (BMC) Section 23E.68.030.A (Downtown Mixed Use District, Core Area), to construct multi-family dwelling units.
- Use Permit, under BMC Section 23E.68.050, to construct more than 10,000 square-feet of floor area.
- Administrative Use Permit, under BMC Section 23E.04.020.C, to allow architectural elements to exceed the height limit in a commercial district.

C. Concessions/Waivers Pursuant to State Density Bonus Law (Cal. Gov't. Code Section 65915):

- Height modification to exceed the maximum 60' height limit to permit a 73'-5" building.
- Setback modifications to reduce the side setbacks above 20' in height from 5' to 0' to accommodate the density bonus units.
- Concession to reduce the open space requirement from 3,840 square feet to 1,325 square feet.
- Concession to reduce the required off-street parking spaces from 18 to 0.

D. CEQA Determination: 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”).

The project meets all of the requirements of this exemption, as follows:

- The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
- The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
- The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
- The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions would address potential impacts related to traffic, noise, air quality, and water quality.
- The site can be adequately served by all required utilities and public services.

E. 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.

F. Parties Involved:

- Applicant: David Trachtenberg, Trachtenberg Architects,
2421 Fourth Street, Berkeley
- Property Owner: Mevlararumi LLC,
3456 Sacramento Street, San Francisco,

Figure 1: Vicinity Map

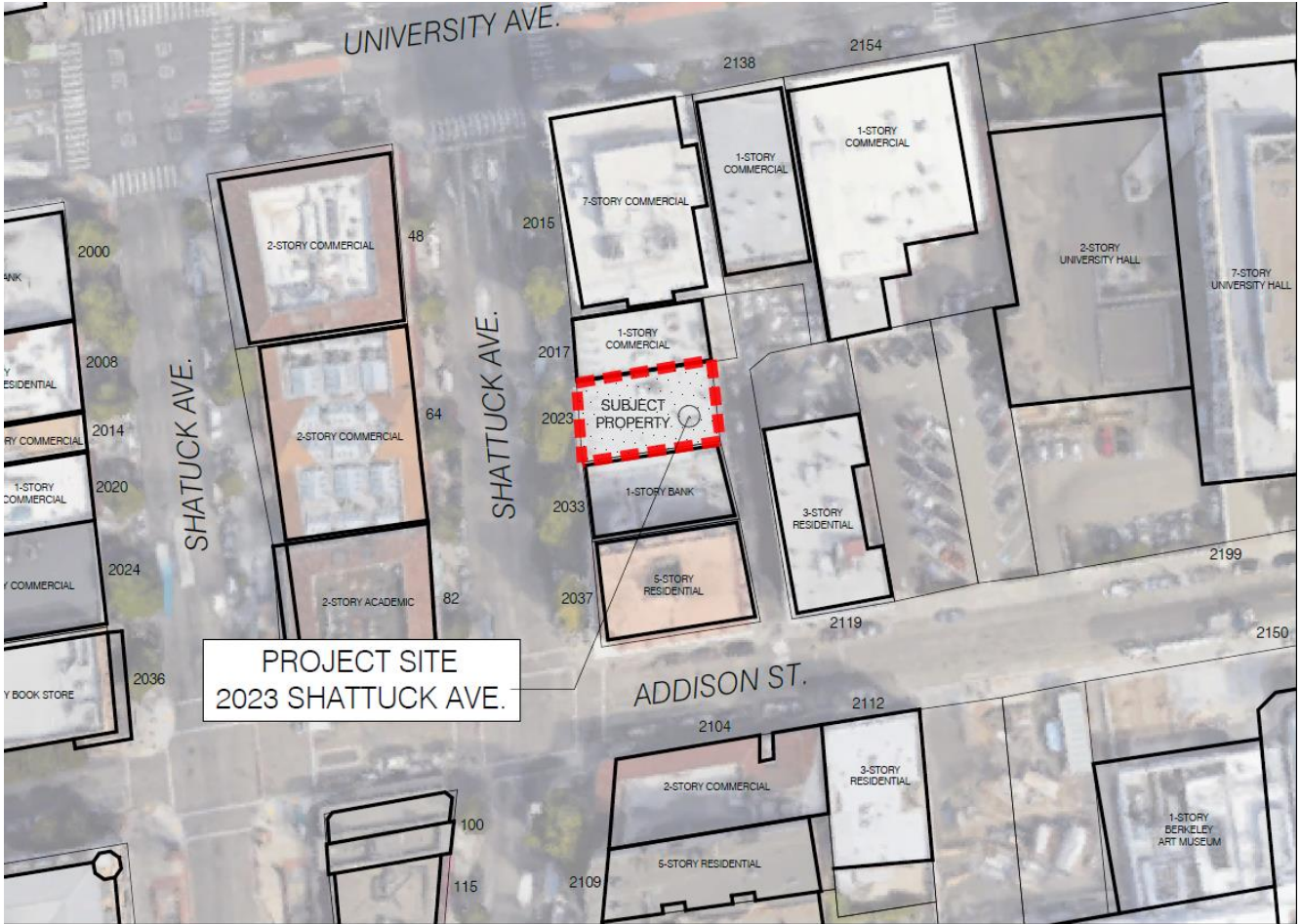


Figure 2: Downtown Area Plan Land Use Map Detail

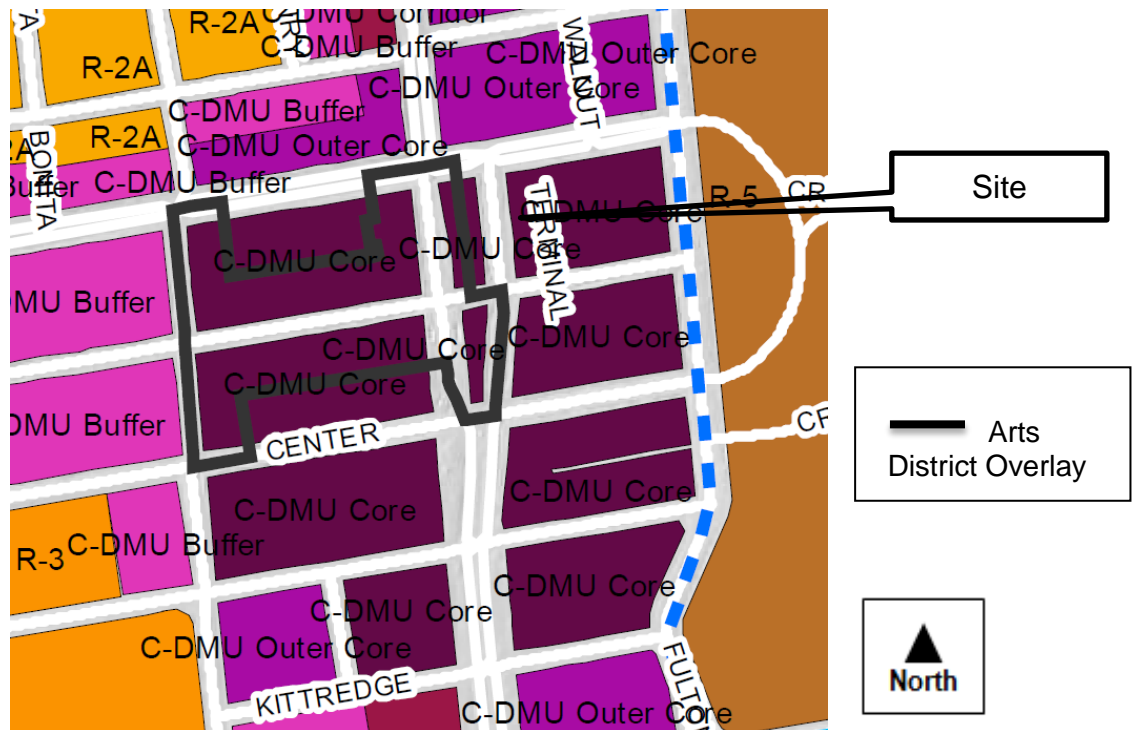
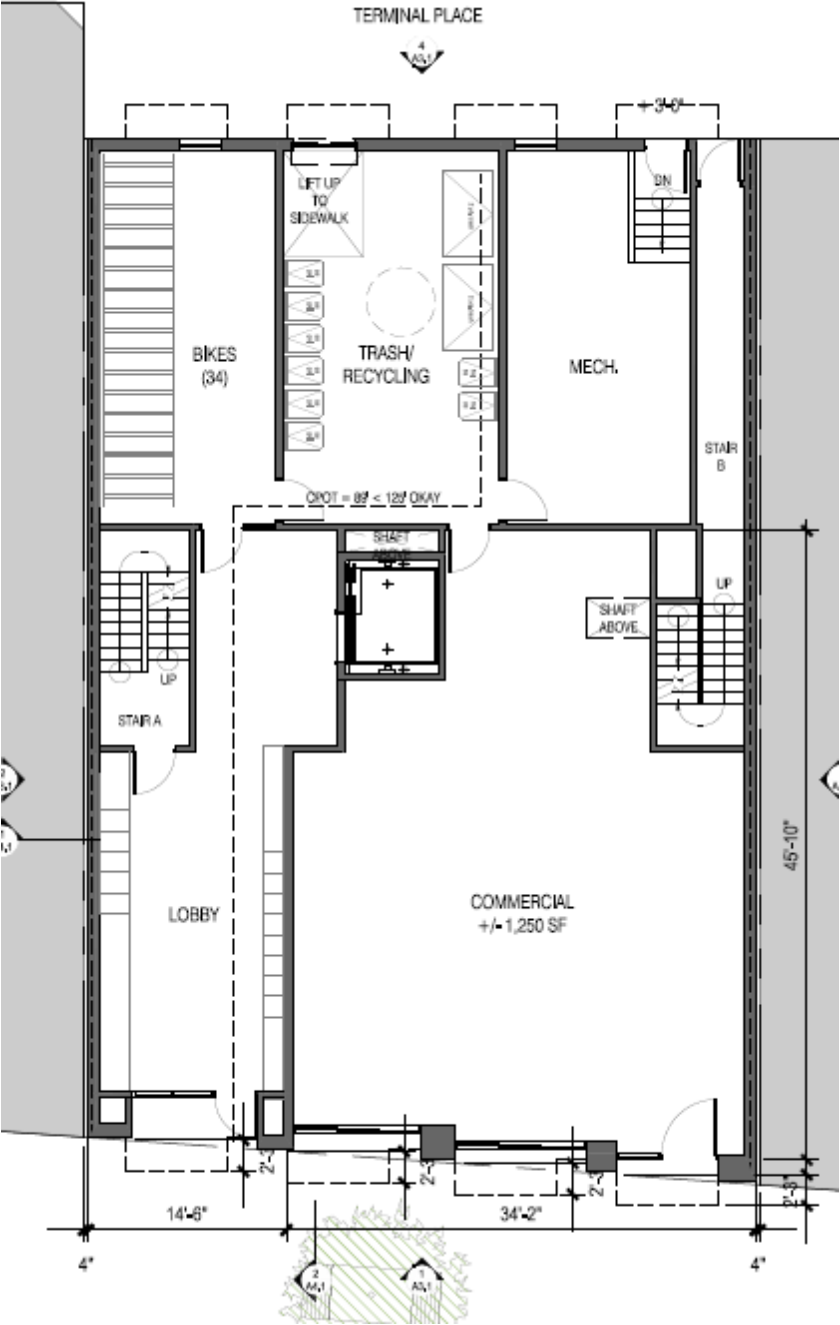


Figure 3: Site Plan and First Floor Plan



See attachment for scaled plans.

Figure 4: Front (West) Elevation along Shattuck Avenue



See attachment for scaled plans.

Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Vacant lot	C-DMU, Core Downtown Mixed Use	Downtown
Surrounding Properties	North	Commercial – restaurants, offices		
	South	Commercial – bank, mixed use		
	East	Terminal Place (alley) and parking lots		
	West	Commercial – restaurant and offices		

Table 2: Special Characteristics

Regulatory Topic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	The proposed non-residential floor area is less than 7,500 sq. ft. and therefore this project is not subject to this resolution.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	The proposed non-residential floor area is less than 7,500 sq. ft. and therefore this project is not subject to this resolution.
Affordable Housing Mitigation Fee (AHMF) for rental housing projects (Per BMC 22.20.065)	Yes	Project would provide four BMR units (Very Low Income), and pay fee to satisfy the requirements of BMC Section 22.20.065 (See discussion below).
Creeks (BMC Section 17.08.045)	No	The site is not near a mapped creek or a creek culvert.
Density Bonus	Yes	The project qualifies for a 35 percent density bonus under State Density Bonus law (See discussion below).
Green Building Score	Yes	Per BMC 23E.68.085.A, construction of new buildings and additions of more than 20,000 square feet shall attain a LEED Gold rating or higher, or shall attain building performance equivalent to this rating. The applicant submitted a GreenPoint checklist for the project. The minimum required points are 50 out of a possible 404 points, and the checklist indicates a score of 112 points.
Historic Resources	No	The lot is vacant.
Housing Accountability Act (Gov't Code Section 65589.5(j))	Yes	The base project complies with applicable, objective General Plan and Zoning standards. Therefore, the City may not deny the base project or approve the base project at a reduced density without basing its decision on the written findings under Section 65589.5(j).
Oak Trees	No	There are no oak trees on the property.
Percent for Art (Per BMC Chapter 23C.23)	Yes	The project is subject to the City's Public Art on Private Projects Ordinance.
Privately Owned Public Open Space (POPOS)	Yes	The applicant has indicated they will pay the in-lieu fee.
Rent Controlled Units	No	There are no rent controlled units on the property.
Residential Preferred Parking (RPP)	Yes	The site is in RPP area zone "I"; the project would not be eligible for RPP permits per BMC Section 23E.68.080.F which prohibits residents of newly constructed or converted units in the C-DMU Zoning District from eligibly for RPP permits.

Table 2: Special Characteristics

Regulatory Topic	Applies to Project?	Explanation
Seismic Hazards (SHMA)	No	The project site is not located within a mapped seismic hazards zone.
Soil/Groundwater Contamination	No	The project site is not listed on the Cortese List (an annually updated list of hazardous materials sites). Per §15300.2 of the CEQA Guidelines, a categorical exemption may be used on sites not listed on the Cortese List.
Streets and Open Space Improvement Plan (SOSIP) Fee	Yes	As required by BMC Section 23E.68.075, the project will pay an impact fee to implement the Streets and Open Space Improvement Plan (SOSIP) per the fee schedule adopted by the Council by resolution.
Transit	Yes	The site has direct access to transit via bus lines on Shattuck Avenue and is also less than a quarter mile from the Downtown Berkeley BART station.

Table 3: Project Chronology

Date	Action
March 5, 2019	Application Submitted
April 5, 2019	Application Deemed incomplete
April 22, 2019	Application Resubmitted
May 8, 2019	Interdepartmental Roundtable held
August 12, 2019	Submitted TIA
September 10, 2019	Deemed Complete
September 26, 2019	Public hearing notices mailed/posted
October 10, 2019	ZAB Preview Hearing
October 17, 2019	DRC Preview Meeting held
March 19, 2020	DRC Review – canceled due to Shelter In Place order
May 21, 2020	DRC Preliminary Review Meeting – recommended approval
June 11, 2020	ZAB Hearing

Table 4: Development Standards

Standard BMC Sections 23E.68.070-080		Existing	Proposed Total	Permitted/Required
Lot Area (sq. ft.)		3,662	3,662	n/a
Gross Floor Area (sq. ft.)			24,178	
<i>Residential</i>		0	22,543	n/a
<i>Non-residential</i>			1,250	
Dwelling Units	Total	-	48	48
	Affordable (VLI)	-	4	4 minimum for density bonus
Building Height	Average	-	73'-5"	n/a
	Maximum	-	74'-11"	60' Max 75' Max (with Use Permit)
Building Setbacks	Front (Shattuck)	-	0'	0' Min / 5' Max
	Second Front (Terminal Place)	-	0'	0' Min / 5' Max
	Left Side	-	0' (with waiver)	0' when less than 65' from frontage 5' Min when greater than 65' from frontage and above 21' in height
	Right Side	-	0' (with waiver)	0' when less than 65' from frontage 5' Min when greater than 65' from frontage and above 21' in height
Lot Coverage		-	97%	n/a
Usable Open Space		-	1,325 sq. ft. (with concession)	3,840 sq. ft. minimum (80 sq. ft. per unit)
Privately-Owned Public Open Space		-	25 sq. ft.	1 sq. ft. for every 50 sq. ft. of non- residential floor area or pay the in- lieu fee
Parking	Automobile - Residential - Non-Residential	-	0 spaces (with waiver)	Residential: 18 spaces minimum (1 space / three units) Non-Residential: 2 spaces minimum (1.5 space / 1,000 sq. ft.)
	Bicycle	-	34 spaces	1 space (1 space / 2000 sq. ft. of GFA)

II. Project Setting

A. Neighborhood / Area Description: The project site is located in downtown Berkeley, along the east side of Shattuck Avenue between University Avenue and Addison Street. East of the project site is Terminal Place, a small alley used primarily for loading and access to parking. The surrounding area consists of commercial, mixed use and office buildings ranging from three to seven stories in height. The Downtown Berkeley BART station is within a short walking distance to the southwest. In addition, bus service is available via transit lines on Shattuck and University Avenues.

A. Site Conditions: The 3,662 square-foot property has two street frontages: the main frontage on Shattuck Avenue and another along Terminal Place which would function as the rear of the building. Until Fall 2015, the site was developed with a one-story commercial building that was occupied by the Mandarin Garden restaurant. A fire and subsequent removal of the remains of the building now leave the site as vacant and unused (the exterior walls are shored in place and the site is fenced).

III. Project Description

The project would demolish the remaining portions of structure following the 2015 fire and construct a new seven-story, 48 unit mixed-use residential building totaling 24,178 square feet in floor area, with street frontage off of Shattuck Avenue providing access to residents and patrons and rear access from Terminal Place for trash pick-up. The building would have following main components:

- 1,250 square feet of ground-floor commercial space
- 34 bicycle parking spaces in a secure ground-floor room
- Ancillary ground floor space including a lobby and circulation
- 48 studio apartments on floors 2 through 7
- 4 of those dwelling units would be affordable to Very-Low-Income households
- 1,325 square feet of usable open space to be located on a roof deck

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting this application to the City, the applicant invited interested neighborhood organizations, as well as owners and occupants within 300 feet of the project to preview the project. The meeting was held on Wednesday February 6th, 2019 at the Berkeley Public Library – West Branch, and there were no attendees. A pre-application poster was erected by the applicant in March 2019, prior to submitting the application to the City. On May 28, 2020, the City mailed public hearing notices to property owners and occupants within 300' of the project site, 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. Design Review Committee: The project is subject to review by the Design Review Committee. A Preview hearing was held on October 17, 2019 and a Review meeting was held on May 21, 2020. The project received a favorable recommendation to ZAB with the following conditions and recommendations for Final Design Review (FDR)

Conditions:

- Provide final color and material palette;
- Elevations with all material and expansion joints noted;
- Awning detail at residential entry;
- Railing detail with further design refinements for a stronger statement;
- Exterior lighting;
- Roof deck details, including shading measures for western sun; provide 24" box tree; and
- Strategy for adapting the floor plan for future connection to back alley.

Recommendations:

- Consider more place-making in the lobby; provide seating;
- Look carefully at side elevations and consider extending material from front elevation or provide details for further articulation where possible; and
- Green building measures should be increased if possible.

V. Issues and Analysis

A. Density Bonus: In the C-DMU Core Zoning District, a Use Permit may be granted to allow a building to be up to 75' in height; however, the applicant has not requested an additional Use Permit in order to achieve the proposed 74'11" height. Instead, the proposed project solely utilizes State Density Bonus law. As shown in Table 5 below, under the City's density bonus procedures, the project's "base project"¹ was calculated at 35 units and five stories. With the applicants' commitment to reserve 11% of the base project units as affordable to Very-Low-Income households, the project qualifies for a density bonus of 35% percent, which would allow for 13 additional units, for a total of 48. (See Table 5 below).

Table 5: Base Project, Density Bonus

Floor	Base Project		Proposed Project	
	Residential Gross Floor Area (GFA)	Base Units	Residential GFA with Density Bonus Units (DBU)	Total Units (Base + DBU)
1 st	1,493	0	1,909	0
2 nd	2,988	7	3,439	8
3 rd	2,988	7	3,439	8
4 th	2,988	7	3,439	8
5 th	2,988	7	3,439	8
6 th	2,988	7	3,439	8
7 th	-	-	3,439	8
Totals:	16,433	35	22,543	48
Average Unit Size	Base Project: 470 sq. ft.		Proposed Project: 470 sq. ft.	
Qualifying Units	Desired Density Bonus	Required % Very Low Income	Raw # (11% of Base Units)	Rounded Up
4	35%	11%	3.85	4
4 VLI Units Allows For:		Rounded Up	Total (Base+DBU)	
12.25 DBU		13 DBU	48 Units	

The project is entitled under density bonus law to two "concessions or incentives" and is requesting to reduce the open space requirement from 3,840 square feet to 1,325 square feet and to reduce the required 18 parking spaces to 0.

Additionally, the applicant has requested two modifications to accommodate the density bonus units: 1) a waiver of the height limit to exceed the maximum 60-foot height limit to permit an additional story and allow 74 feet 11 inches where 60 feet is the maximum within the C-DMU core and 75 feet is the maximum permitted with a Use Permit; and 2) setback modifications to reduce the setbacks above 20' from 5' to 0', to accommodate the density bonus units. These requests are considered waivers to modify zoning standards that would otherwise have the effect of physically precluding the construction of a qualified density bonus development pursuant to Government Code Section 65915(e)(1).

¹ The "base project" is the project that could be built on the site without any additional Use Permits to expand the building envelope (e.g. through increased height or reduced setbacks) or waive development standards for parking, open space, etc.

The City may only deny the waivers if it finds that the waivers would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low-income, very-low income, and moderate-income households, or if the waiver would be contrary to State or Federal law. Staff believes such a finding cannot be made.

- B. Massing and Height:** The proposed seven-story, 74'11" high building is located on a project site that is between two commercial buildings fronting on Shattuck Avenue. On the north side immediately adjacent to the subject property is a two-story restaurant building and beyond this building to the north is a seven-story commercial building. On the south side immediately adjacent to the subject property is a two-story bank and beyond that a four-story mixed-use building. Buildings on the west side of Shattuck Avenue are generally three or five stories. East of the project site is Terminal Place, a small road used primarily for loading and access to parking, and beyond that there are commercial, mixed use and office buildings ranging from three- to seven-stories.
- C. Shadows:** In the C-DMU Zoning District, a Use Permit request for modification of setback requirements would require the ZAB to make findings that the "modified setbacks will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk" per BMC Section 23E.68.090.F. Although the applicant is requesting the proposed setbacks as a Density Bonus modification request, shadow studies show that the impacts of the proposed building's setbacks and height would not have a significant impact on solar access in the area.

The majority of the additional shadows produced by the proposed seven-story residential building would be cast on the neighboring commercial buildings at 2015 and 2017 Shattuck Avenue to the north during the winter including the morning and noon on the winter solstice (December 21). Additionally, the commercial buildings to the north at 2138 University Avenue would experience some shadow impacts during the evenings of the winter solstice (included in staff report Attachment 1, Project Plans). The shadows produced in the summer by the proposed project would mostly fall upon Shattuck Avenue and upon the fronts of the commercial and office buildings confront the subject property to the west in the morning on the summer solstice (June 21). The properties to the southeast at 2119 Addison Street would receive some additional shadows the evenings of the summer months which would impact the western and northern facing residential windows.

- D. Parking:** The C-DMU District regulations would require the project to provide 18 residential parking spaces (1 space per every three units). The applicant is requesting to waive these parking spaces as a Density Bonus concession rather than request to pay the Downtown parking in-lieu fee. Additionally, the project would provide on-site parking for 34 bicycles.
- E. General Plan:** 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; and
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; and
3. Policy LU-17 – Downtown Development Standards, Action D: Encourage mixed-use projects that include both office space and housing above appropriate ground-floor uses to improve the balance between the number of jobs and the number of housing units in the Downtown; and
4. Policy LU-18 – Downtown Affordable Housing Incentives: Maximize the supply of affordable housing in the Downtown; and
5. 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; and
6. Policy LU-24 – Car-free Housing in the Downtown: Encourage development of transit-oriented, low-cost housing in the Downtown; and
7. 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; and
8. Policy LU-29 – University Avenue Strategic Plan: Implement the University Avenue Strategic Plan and take actions to achieve the six goals of the Plan.
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; and
10. 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; and
11. Policy H-32 – Regional Housing Needs: Encourage housing production adequate to meet City needs and the City’s share of regional housing needs.
12. Policy T-16 – Access by Proximity, Action B: Encourage higher density housing and commercial infill development that is consistent with General Plan and zoning standards in areas adjacent to existing public transportation services; and
13. Policy T-16 – Access by Proximity, Action E: In locations served by transit, consider reduction or elimination of parking requirements for residential development; and
14. Policy T-43 – Bicycle Network, Action C: Encourage, and when appropriate, require new multi-family residential developments to provide secure locker space for resident bicycles...
15. Policy EM-5 – “Green” Buildings: Promote and encourage compliance with “green” building standards. (Also see Policies EM-26, EM-35, and EM-36); and
16. 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; and
17. Policy UD-33 – Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: The project would help the City to meet its affordable and general housing goals by creating a total of 48 new dwelling units, including 4 units affordable to Very Low Income households. Building construction would attain a LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC). The applicant also submitted a GreenPoint checklist for the project; the minimum required points are 50 out of a possible 404 points, and the checklist indicates a score of 112 points, therefore establishing sustainable design elements into the project.

In addition, the Project site is well served by public transportation, including a BART station two blocks away. There are also bus stops less than one block from the site that provide access to five different AC Transit bus routes including a transbay route (Route F), an all-nighter (Route 800), as well as connections to intercity express routes. A total of 34 bicycle parking spaces would be provided by the development. In addition, the property owner would be required, as a Condition of Approval, to provide one of the following transportation benefits at no cost to every residential unit: a pass for unlimited local bus transit service, or a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass.

As a result, staff believes that the ZAB can find that the proposed project would be consistent with the goals and policies of the General Plan.

- F. Downtown Area Plan:** The Project is located in Downtown Berkeley, within the C-DMU Downtown Mixed Use District. The purpose of this district is to implement the vision and goals of the Downtown Area Plan, adopted in 2012.

Staff Analysis: Please see discussion under “Key Issues” Section C above.

VI. Recommendation

Because of the project’s consistency with the Zoning Ordinance and General Plan, staff recommends that the Zoning Adjustments Board APPROVE Use Permit #ZP2019-0041 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, stamped received January 24, 2020
3. Notice of Public Hearing, dated May 28, 2020

Staff Planner: Loyal Nawfal, lnawfal@cityofberkeley.info, (510) 981-7424