



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 9, 2020

3000 San Pablo Avenue

Use Permit #ZP2019-0155 to 1) demolish an existing two-story commercial building; and 2) construct a six-story, mixed-use building with 78 dwelling units (including seven Very Low-Income units), 1,248 square feet of commercial space, 2,320 square feet of usable open space, 50 bicycle parking spaces and 43 vehicular parking spaces.

I. Background

A. Land Use Designations:

- General Plan: AC – Avenue Commercial
- Zoning: C-W – West Berkeley Commercial District

B. Zoning Permits Required:

- Use Permit to demolish a non-residential structure, pursuant to Berkeley Municipal Code (BMC) Section 23C.08.050.A.
- Use Permit to construct a new mixed-use development, pursuant to BMC Section 23E.64.030.
- Administrative Use Permit to allow architectural elements to exceed the height limit in a commercial district, pursuant to BMC Section 23E.04.020.C.

C. Waivers/Concessions Pursuant to State Density Bonus Law:

- Waiver of BMC Section 23E.56.070.B.2 to exceed height, to be 69'-0", where 50' is the limit.
- Waiver of BMC Section 23E.56.070.A.3 to exceed the maximum floor area ratio (FAR), to be 4.05, where 3.0 is the limit.
- Concession to decrease the required parking to 43 spaces where 45 spaces are required.
- Concession to decrease the usable open space requirement in the Proposed Project by eliminating the roof deck where a roof deck is provided in the Base Project, providing 2,320 square feet of usable open space where 3,120 is required.

D. CEQA Recommendation: It is staff's recommendation to ZAB that the project is Categorically exempt pursuant to Section 15332 (In-Fill Development Projects) of the CEQA Guidelines. The determination is made by ZAB.

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. Standard Conditions of Approval 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.

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.

E. Parties Involved:

- Applicant David Trachtenberg, 2421 Fourth Street, Berkeley, CA 94710
- Property Owner RI Berkeley, LLC, 2025 Fourth Street, Berkeley, CA 94710

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

https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/3000_San_Pablo.aspx

Figure 1: Vicinity Map

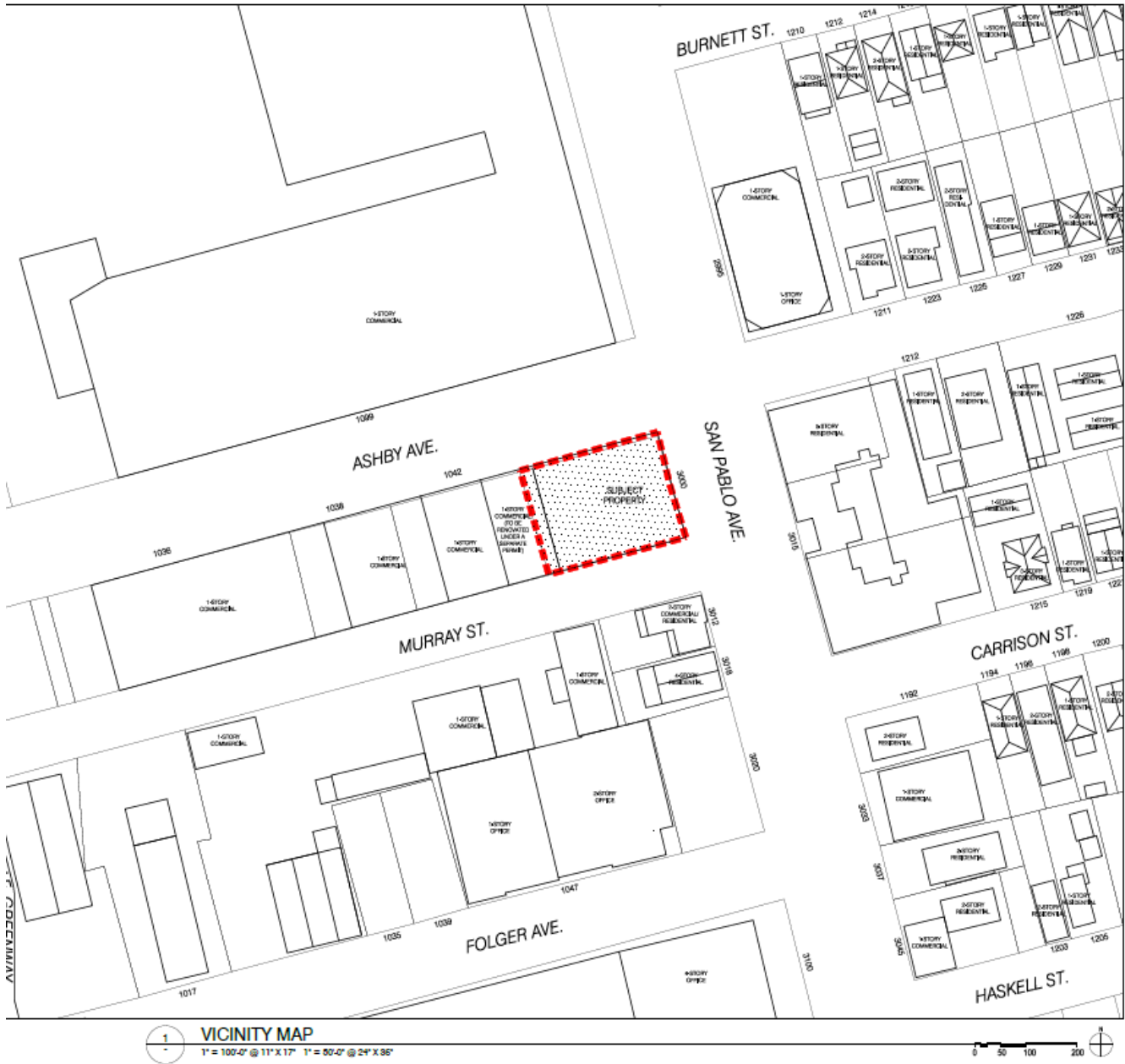


Figure 2: Zoning Map

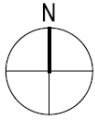
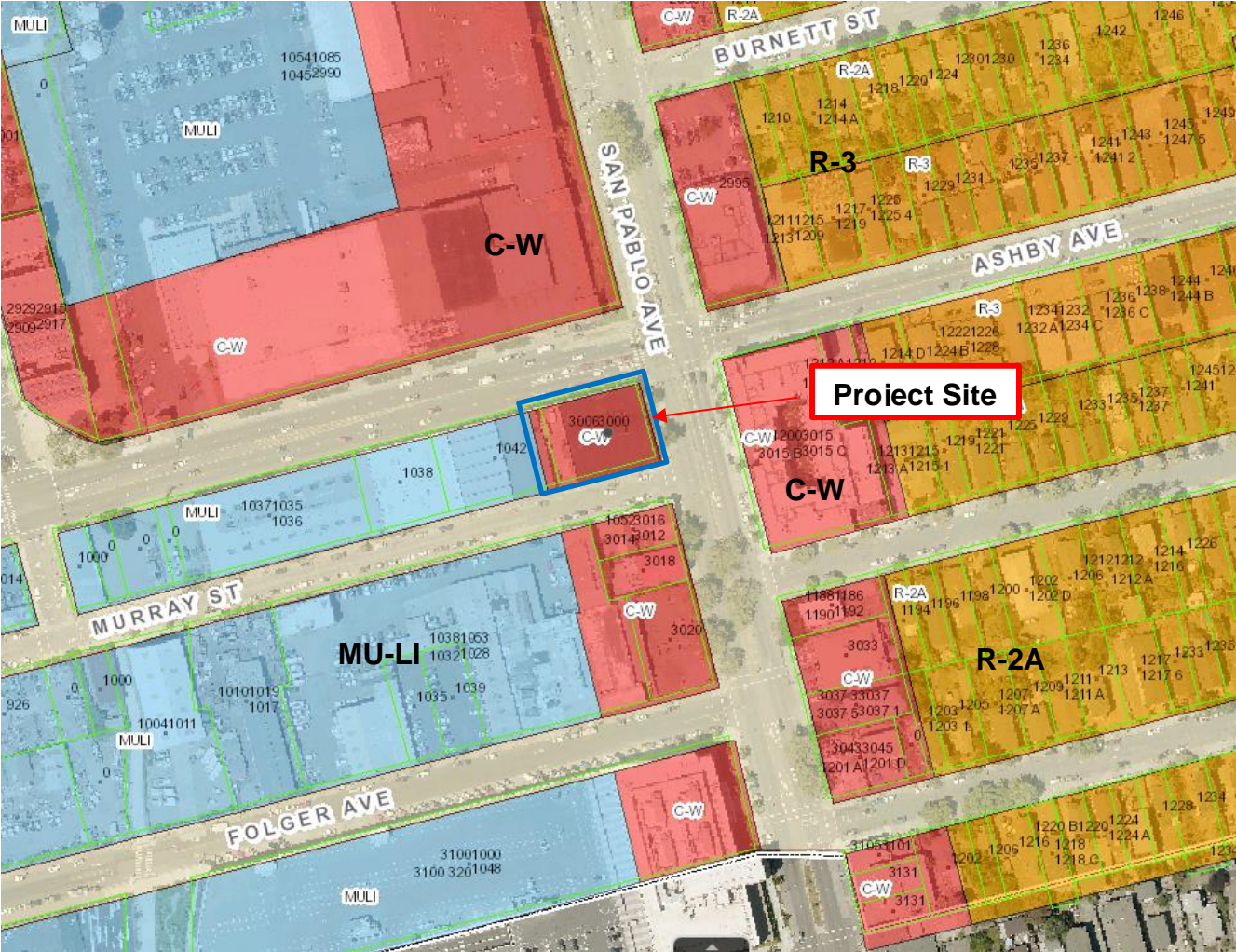


Figure 3: Ground Floor Plan

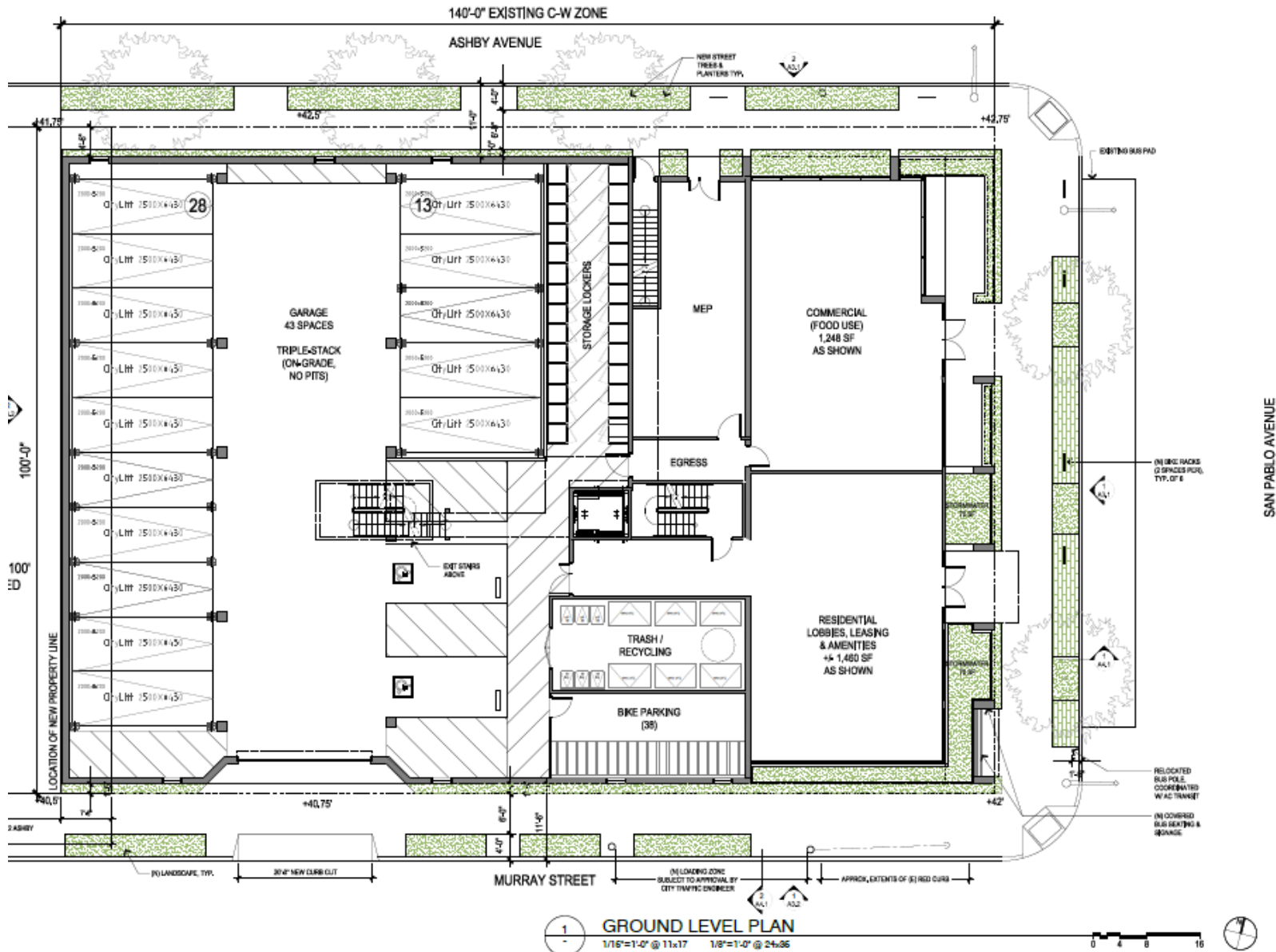


Figure 4: San Pablo Avenue (East) Elevation

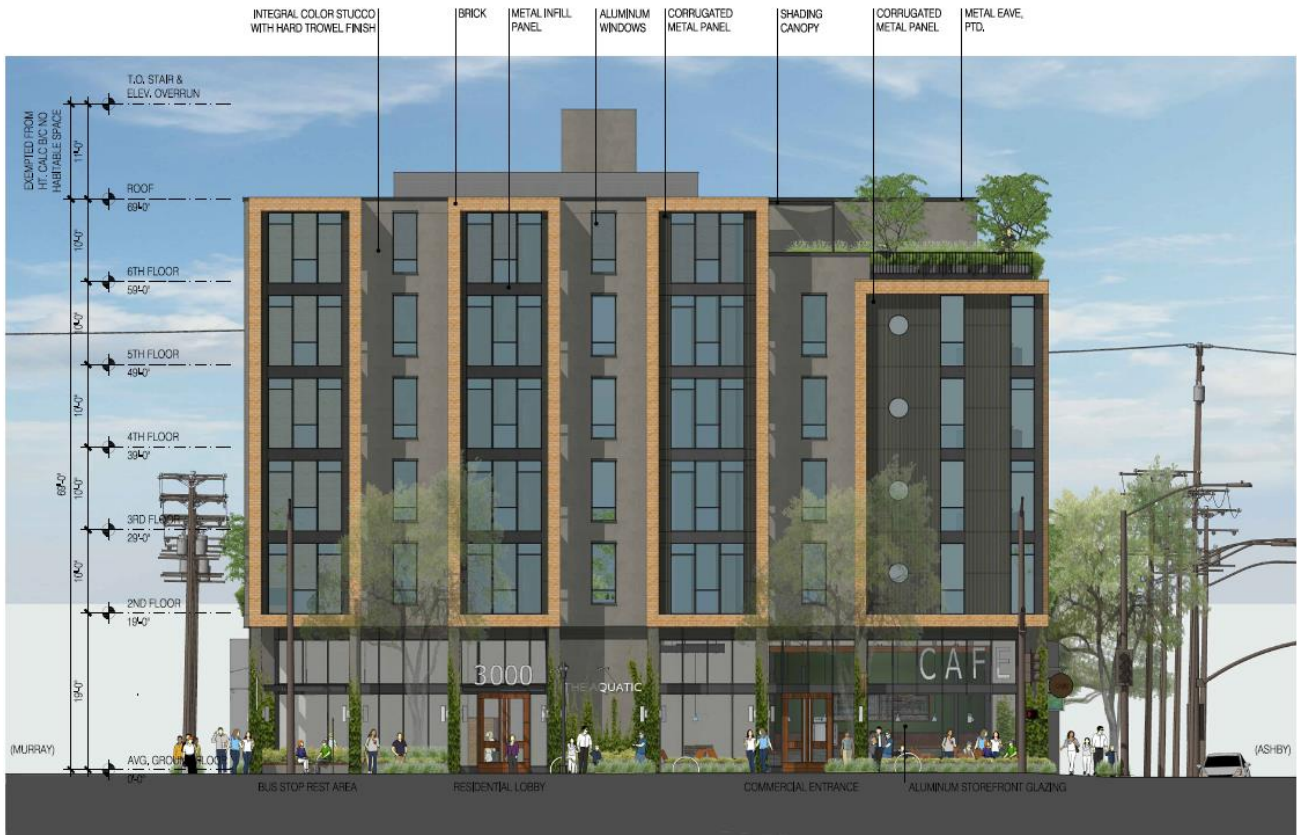


Figure 5: Ashby Avenue (North) Elevation



Table 1: Land Use Information

| Location | | Existing Use | Zoning District | General Plan Designation |
|------------------------|-------|------------------------------------|-----------------|--------------------------|
| Subject Property | | Commercial, Discount Fabric Retail | C-W | Avenue Commercial |
| Surrounding Properties | North | Ashby Plaza | C-W | Avenue Commercial |
| | South | Retail – Liquor Store | C-W | Avenue Commercial |
| | East | Residential | C-W | Avenue Commercial |
| | West | Warehouse | MU-LI | Avenue Commercial |

Table 2: Special Characteristics

| Characteristic | Applies to Project? | Explanation |
|---|---------------------|--|
| Affordable Child Care Fee & Affordable Housing Fee for qualifying non-residential projects (Per Resolutions 66,618-N.S. & 66,617-N.S.) | No | The project includes 1,248 square feet of commercial space, which is less than the 7,500 square feet requirement. Therefore, the project is not subject to the fees resolutions. |
| Affordable Housing Mitigations for rental housing projects (Per BMC Section 22.20.065) | Yes | The project includes 5 or more dwelling units and therefore is subject to the City's Affordable Housing Mitigation Fee. |
| Alcohol Sales/Service | No | The project is not proposing alcohol sales or service with this permit. |
| Property and Business Improvement District (PBID) | No | The project site is not located in a PBID. |
| Creeks (Per BMC Section 17.08.045) | No | No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30' of the site. |
| Density Bonus (Per Gov't Code Chapter 65915) | Yes | The project would provide 11% of the Base Project units (7 units) as affordable to Very Low Income households, which qualifies it for a 35% density bonus. The project is requesting three waivers/modifications and two concessions, pursuant to the Density Bonus regulation. |
| Green Point Rating Version 7.0 (minimum score is 50 and maximum score is 404) | Yes | The project is designed to attain a score of 112 points, including green building measures such as water-efficient fixtures and a greywater system, on-site renewable energy generation, and meets or exceeds energy compliance pathway and Title 24 performance standards. |
| Historic Resources (Per Gov't Code §15064.5 or BMC Chapter 3.24) | No | The project site is not designated as a Landmark by the City and has not previously been surveyed individually for historical significance under local, state, or federal historic significance criteria. See Section IV.C for additional discussion on the Landmarks review of this property. |

Table 2: Special Characteristics

| Characteristic | Applies to Project? | Explanation |
|--|---------------------|--|
| Housing Accountability Act (Govt. Code 65589.5(j)) | Yes | The base project complies with applicable, objective general plan and zoning standards, and thus the Housing Accountability Act applies. See Section III.C of this report for additional discussion on compliance with the Housing Accountability Act. |
| Public Art on Private Projects (Per BMC Chapter 23C.23) | Yes | The project is subject to the Percentage for Public Art on Private Projects ordinance. Prior to issuance of any building permit for this work, the applicant would pay the required in-lieu fee of 0.8% of the total building permit valuation for the development. |
| Rent Controlled Units (Per BMC Chapter 13.76) | No | There are no rent-controlled units on the property. |
| Residential Preferred Parking (RPP) (Per BMC Chapter 14.72) | No | The Residential Preferred Parking Program does not apply to properties near the project site. |
| Seismic Hazards Mapping Act (Per State Hazards Mapping Act) | No | The site is not located within an area susceptible to liquefaction, Fault Rupture, or Landslides as shown on the State Seismic Hazard Zones map. |
| Soil/Groundwater Contamination | Yes | The project site is located within the City's Environmental Management Area, but is not on the Cortese List (an annually updated list of hazardous materials sites). A Phase I report submitted by applicant was reviewed by the Toxics Management Division which uncovered no Recognized Environmental Concerns (RECs). |
| Transit and Bicycle Access | Yes | The site is on the corner of Ashby Avenue and San Pablo Avenue, which are served by AC Transit lines 80,81, 72, 72R, 72M, and 802, and there is a bus stop directly in front of the subject property at the southeast corner. In addition, the site is located one block from a Bike Way, which runs north/south along 9th street to the west, as well as being located two blocks from a Bike Way that runs east/west along Russell Street. |

Table 3: Project Chronology

| Date | Action |
|--------------------|--|
| September 27, 2019 | Application submitted |
| October 25, 2019 | Application deemed incomplete |
| December 20, 2019 | Revised application submitted |
| January 17, 2020 | Application deemed incomplete |
| February 7, 2020 | Revised application submitted |
| February 26, 2020 | Interdepartmental Roundtable Meeting |
| March 6, 2020 | Application deemed incomplete |
| April 6, 2020 | Revised application submitted |
| April 13, 2020 | Application deemed complete |
| June 18, 2020 | Design Review Committee - Preliminary Review |

| | |
|---------------|--------------------------------------|
| June 25, 2020 | Public hearing notices mailed/posted |
| July 9, 2020 | ZAB Hearing |

Table 4: Development Standards

| C-W Standards BMC Sections 23E.64.070-.080 | | Existing | Proposed | Permitted/Required |
|--|----------------------------------|----------|--|--|
| Lot Area (sq. ft.) | | 14,000 | No change | n/a |
| Gross Floor Area (sq. ft.) | | 10,734 | 56,075 | 42,000 max. |
| Residential | | 0 | 54,827 | |
| Commercial | | 10,734 | 1,248 | |
| FAR | | 0.76 | 4.05 | 3.0 max. |
| Dwelling Units | Total | 0 | 78 | --- |
| | Affordable (VLI) | 0 | 7 | 7 VLI for 35% bonus |
| Building Height | Average | 30'-0" | 69'-0" | --- |
| | Maximum | 31'-0" | 69'-0" *79'-0" at Top of Stair and Elevator | 50' max. |
| | Stories | 2 | 6 | --- |
| Building Setbacks | Front (San Pablo) | 0'-0" | 0'-0" | 0' |
| | Rear | 0'-0" | 0'-0" | 0' |
| | Right Street Side (Ashby Avenue) | 0'-0" | 4'-6" | 0' |
| | Left Street Side (Murray Street) | 0'-0" | 1'-6" | 0' |
| Lot Coverage (%) | | 76.3% | 86.3% | --- |
| Usable Open Space (sq. ft.) | | --- | 2,320 | 3,120 min. (40 sq. ft. per dwelling unit) |
| Parking | Commercial (1,125 sq. ft.) | 0 | 2 | 2 |
| | Residential | n/a | 41 | 43 |
| | Total | 0 | 43 | 45 |
| | Bicycle | 0 | 38/12 (long term/short term) | 2 |
| <p>■ = Waiver, pursuant to State Density Bonus Law, requested to modify the district standard.</p> <p>■ = Concession, pursuant to State Density Bonus Law, requested to modify the district standard.</p> <p>* AUP requested to allow architectural elements to exceed the height limit in a commercial district, pursuant to BMC Section 23E.04.020.C</p> | | | | |

II. Project Setting

A. Neighborhood/Area Description: The project site is located in west Berkeley, bounded by Ashby Avenue, San Pablo Avenue, and Murray Street. The neighborhood is commercial oriented, located at the border of the C-W and MU-LI Zoning Districts, which with a mix of mostly one- and two-story commercial and mixed-use buildings located along San Pablo Avenue. The site abuts a warehouse property to the west, and commercial buildings to the north and south. A recent major project in the immediate area includes a five-story mixed-use building directly across San Pablo at 1200 Ashby Avenue/3015 San Pablo (known as “The Higby Apartments”). Four- and five-story mixed-use buildings have also been approved and constructed further north at 2720, 2747, and 2748 San Pablo Avenue.

The subject property is located approximately one mile west of the Ashby BART station and is served by local bus lines (AC Transit) that operates along San Pablo and Ashby Avenues. There is a bicycle way on Ninth Street to the west and another on Russell Street to the north.

B. Site Conditions: The 14,000 square-foot project site (0.32-acre) is a rectangular corner lot with 100’ of frontage on San Pablo Avenue and 140’ of frontages on Ashby Avenue to the north and Murray Street to the south. The site contains an approximately 10,734 sq. ft. two-story retail commercial building, constructed in 1926 in a simple Moderne architectural style by an unknown designer. A portion of the west side of the property also contains a portion of a separate existing warehouse building that was built over the property line. While the applicant has indicated this portion of the separate building would be demolished, the owner of the adjacent parcel, which contains the majority of that building, separately received an Administrative Use Permit in May 2020 to remove the entirety of this accessory warehouse building. The subject site contains one retail tenant space which is currently occupied by Discount Fabrics, and has previously been occupied by Dolan Bros. Wrecking Company, the Braun Mattress Company, and then by the Great Western Furniture Company of San Francisco.

III. Project Description

A. Proposed Project: The project would demolish the existing building to construct a new mixed-use building with the following primary components:

- 78 dwelling units (30 studios, 20 lofts (studios with separate sleeping area), 20 one-bedroom, and eight two-bedroom units, for a total of 86 beds);
- 1,248 square-feet of commercial space for one tenant space on the ground floor at the northeast corner of the property fronting Ashby and San Pablo Avenues (Note: tenant has not yet been selected for this space);
- A bicycle storage room for 38 bicycles on the ground floor and 12 total off-site bicycle racks located along Ashby Avenue and San Pablo Avenue;
- A residential lobby with access to San Pablo Avenue;
- A parking garage accessed from Murray Street that would provide 43 parking spaces using triple-stack parking lifts; and
- Useable open space of 2,320 square feet, which consists of the following areas:

- Nine private patios on the podium level (2nd floor), ranging in size from 68 sq. ft. to 115 sq. ft. and totaling approximately 736 sq. ft., of which 360 sq. ft. count towards the usable open space required for those particular units only¹;
- Two 980 square-foot commonly accessible roof decks on the northwest and northeast corners, both located on the sixth floor, for a total of 1,960 square feet of commonly accessible usable open space.
- The project team has identified their desire to work with the City’s Traffic Engineer to locate a loading zone next to the site on Murray Street. This loading zone would be located just west of the San Pablo intersection, next to the existing red zone (shown on Sheet A2.2 of the Project Plans). This loading zone would provide short-term parking for deliveries and car share operations. Staff has included a condition (Condition #11) to require the applicant work with the Traffic Engineer to determine the feasibility of this location for a loading zone.

B. Base Project and Density Bonus: The applicant has requested a density bonus under the State Density Bonus Law. Under the City’s density bonus procedures, the project’s “base project”² is 58 units and four stories. The Density Bonus calculations are provided in more detail, 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 | 3,007 | 0 | 3,007 | 0 |
| 2 nd | 12,582 | 19 | 10,783 | 16 |
| 3 rd | 12,582 | 19 | 10,783 | 16 |
| 4 th | 12,582 | 20 | 10,783 | 16 |
| 5 th | -- | -- | 10,783 | 16 |
| 6 th | -- | -- | 8,688 | 14 |
| Totals: | 40,752 | 58 | 54,827 | 78 |
| Average Unit Size | Base Project: 703 sq. ft. | | Proposed Project: 703 sq. ft. | |
| Qualifying Units | Desired Density Bonus | Required % Very Low Income | Raw # (11% of Base Units) | Rounded Up |
| 7 | 35% | 11% | 6.38 | 7 |
| Seven VLI Units Allows For: | | Rounded Up | | Total (Base+DBU) |
| 20.3 DBU | | 21 DBU | | 79 Units (78 proposed) |

To accommodate the additional units, the project would use two waivers/modifications: 1) exceed the height limit of 50’ and propose 69’ in height, and 2) exceed FAR of 3.0 and propose a FAR of 4.05. The project is eligible for two concessions, and would use these concessions to: 1) decrease the required parking from 45 spaces to 43 spaces,

¹ BMC Section 23D.04.050.C: An area which is accessible and/or usable only by the occupants of a particular dwelling unit shall be used to satisfy the usable open space area requirements of only that particular dwelling unit.
² 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.
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and 2) decrease the minimum usable open space from 3,120 square feet to 2,320 square feet.

C. Housing Accountability Act: The Housing Accountability Act (HAA), California Government Code Section 65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

1. The development would have a specific adverse impact³ on public health or safety unless disapproved, or approved at a lower density; and
2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

As described in Table 5 above, 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), above. Staff is aware of no specific adverse impacts that could occur with the construction of the base project.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting the application to the City on September 27, 2019, three pre-application posters were installed by the applicant at the project site (one on each street frontage). On September 4, 2019, a neighborhood meeting was held to review the project and discuss concerns, and was attended by four members of the public. Two main topics were discussed at the meeting, which are:

1. Artist Protections: It was indicated that there is a major concentration of artists in this part of Berkeley. Meeting attendees were concerned regarding any evictions of artists, and whether an arts component could be added to the project. The attendee requested information on what the rent would be on the units.
2. Marketing of units: Specifically, whether standard marketing procedures would be followed.

On June 25, 2020, the City mailed public hearing notices to property owners and occupants within 300' of the site, and to interested neighborhood organizations and the City posted notices within the neighborhood in five locations. No communications regarding the project were received as of the writing of this staff report.

B. Design Review Committee: The Design Review Committee (DRC) heard the application at the June 18, 2020 DRC meeting. The project received a favorable recommendation to the ZAB. The DRC added the following conditions for the project, prior to Final Design Review:

1. Provide a second door directly to the outside cafe space for better circulation.

³ As used in the Act, a "specific adverse impact" means a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existing on the date the applicant was complete."
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2. At FDR, present detailed design of corner seating space and show safety measures from nearby traffic;
3. Provide roof plan that illustrates adequate sun exposure for solar arrays;
4. Provide complete window details, including locations of operable sections;
5. Develop the railing design at the roof deck;
6. Further develop the final plant palette; and
7. Provide detailed sidewalk improvements, including the transition west on Ashby.

Additionally, the DRC added the following recommendations:

1. Show design studies at FDR for a lighter frame detail (brick).
2. Consider relocating the unit entries nearest the roof decks to allow for more privacy.
3. Railings shown at the roof deck may be too busy.
4. Further develop the mullion pattern for a more unified, classic appearance.
5. Consider adding a door to Murray Street from residential lobby.

C. Landmarks Preservation Commission: The project involves the demolition of a commercial building that is over 40 years in age. Specifically, the subject building was constructed in 1926 as a retail commercial building, with a simple Moderne architectural style; was originally occupied by the Dolan Bros. Wrecking Company and later by the Braun Mattress Company; between 1953 and the late 1970s the building was occupied by the Great Western Furniture Company of San Francisco. The site maintained a furniture retailer, and other bulk sale retailers from the later 1970s through early 2000's. The current tenant, Discount Fabrics, has occupied the tenant space since 2001.

Pursuant to BMC Section 23C.08.050.C, the proposed demolition was brought before the Landmarks Preservation Commission (LPC) for review prior to the consideration of the use permit. The LPC reviewed the demolition referral for the existing building on February 6, 2020, and took no action.

V. Issues and Analysis

A. SB 330 – Housing Crisis Act of 2019: The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development. Housing development is defined as a project that is: all residential; a mixed-use project with at least two-thirds of the square-footage residential; or for transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

1. Government Code §65905.5(a) states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in affect at the time an application is deemed complete, then the city shall not conduct more than five (5) hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at

any of the five hearings consistent with applicable timelines under the Permit Streamlining Act (Chapter 4.5 (commencing with §65920)).

The July 9, 2020 ZAB hearing represents the second public hearing for the proposed project since the project was deemed complete. The City can hold up to three additional public hearings on this project, if needed. One of those hearings must be reserved for any possible appeal to the City Council.

2. Government Code §65913.10(a) requires that the City determine whether the proposed development project site is a historic site at the time the application for the housing development project is deemed complete. The determination as to whether the parcel is a historic site must remain valid during the pendency of the housing development project, unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.

As discussed in an historic resource evaluation prepared for the property in August of 2019, the property does not appear to be historically significant and therefore is not eligible for listing on the California Register of Historical Resources or as a City of Berkeley Landmark or Structure of Merit. The demolition referral was heard at the February 6, 2020 Landmark Preservation Commission Agenda, and no action was taken. Therefore, it was determined the site is not a historic resource. Further, standard conditions of approval have been included to halt work in case of any unanticipated discovery of archeological, paleontological, or tribal cultural resources.

3. Government Code §65950(a)(5) requires a public agency to approve or disapprove a project within 60 days from the determination that the project is exempt from the California Environmental Quality Act. The project was deemed complete on April 13, 2020. Should ZAB determine the application is categorically exempt from CEQA at the July 9, 2020 public hearing, the application must be approved or disapproved by September 9, 2020.

B. Demolition of Non-residential Building: BMC Section 23C.08.050.D allows the ZAB to approve a Use Permit for demolition of an existing commercial structure only if the demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and makes one of the following findings that the demolition of the structure: (1) is required to allow a proposed new building or other proposed new use; (2) will remove a building which is unusable for activities which are compatible with the purposes of the District in which it is located or which is infeasible to modify for such uses; (3) will remove a structure which represents an un-abatable attractive nuisance to the public; or (4) is required for the furtherance of specific plans or projects sponsored by the City or other local district or authority.

The current use of the structure is retail. The demolition of the structure is proposed to allow the proposed mixed-use building, which includes 1,248 square feet of commercial area on the ground floor to be used as one commercial tenant space. In addition, there are several other retail tenant spaces within one block of the project

site. As such, residents in the area would continue to have access to retail uses even with the demolition of the structure.

Per BMC Section 23E.64.020, the purposes of the West Berkeley Commercial (C-W) District include “increase[ing] the opportunities for development of housing in commercial areas to support local retailing and use of transit lines and opportunities for mixed use projects combining pedestrian-oriented neighborhood-serving uses with mixed income housing in locations abutting residential districts.” The demolition of this retail use and proposed construction of ground floor commercial area within the new building would conform to the adjacent uses permitted in the C-W District along San Pablo Avenue, and further the purposes of the District, which encourages mixed Commercial and Mixed Uses that serve residents in the District.

Because the demolition of the non-residential structure is required in order to authorize construction of the proposed new building and new use, staff believes the ZAB can make finding #1 to approve the proposed demolition under BMC Section 23C.08.050.D. As noted in Section IV.C above, the non-residential structure is not eligible for the California Register or a City of Berkeley Landmark or Structure of Merit designation, and the Landmarks Preservation Commission considered the item at the February 6, 2020 meeting at did not take action. The proposed project includes a mixed-use building which will provide dwellings and commercial space in this District, and thus will be compatible with adjacent and nearby commercial and residential uses.

C. Density Bonus Waivers and Concessions: The project is entitled to two concessions (or incentives), under Government Code Section 65915(d), and an unlimited number of waivers, under Section 65915(e).

Concessions. The applicant is requesting two concessions for the project to: 1) decrease the required parking from 45 spaces to 43 spaces, and 2) decrease the minimum usable open space from 3,120 square feet to 2,320 square feet.

The City may only deny the concessions if it finds that the concessions 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 concession would be contrary to State or Federal law. Staff believes such a finding cannot be made.

Waiver. A waiver is a modification of a development standard that would otherwise physically preclude the construction of the project with the permitted density bonus and concessions. Waivers for height and FAR are requested because they are necessary to physically accommodate the full density bonus project on the site.

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.⁴

- D. Sunlight/Shadows:** The project proposes to construct a six-story building on what is currently developed with a two-story structure. As such, the project would create greater shadowing compared to existing conditions. To assess the anticipated shading impacts, the applicant submitted shadow studies for the project which show that the majority of new shading will fall on the commercial building to the north. In the evenings during the winter solstice, new shadows would be cast on a living room window of one residential unit across the street at the Higby Apartments. Additionally, in the evenings during the summer solstice, new shadows would be cast on a portion of bedroom windows of two of the units in the Higby Apartments. During fall and spring months, in the evenings, new shadows would be cast on the bottom half of a number of residential windows on the second floor of the Higby Apartments. While evening shadows would be cast on a portion of a handful the west-facing residential units at 3015 San Pablo Avenue, such impacts to light access are limited in duration and is considered typical of urban settings and is not considered substantial or detrimental.
- E. Roof-Top Projections:** BMC 23E.04.020.C requires an Administrative Use Permit for roof-top projections, such as mechanical penthouses, elevator equipment rooms or stair towers, that would exceed the maximum height limit. Such projections are limited to no more than 15% of the average of the building's floor area, and cannot be used as habitable space or for commercial purposes. The project proposes a staircase/elevator penthouse, totaling 579 square feet that projects 10 feet over 69-foot-tall roof height. The penthouses represent 5.4% of the 10,649-square-foot average all the floor areas. The projection is, therefore, permissible.
- F. General Non-Detriment:** Use Permits to establish dwelling units and create new gross floor area require findings of non-detriment. As described above, the proposed project furthers the purposes of the zoning district, provides new ground floor commercial space, and new shading would be limited on nearby residential uses. In addition, the project approval is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would 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.

VI. Other Considerations

The following analysis of conformance with District Purposes and the 2002 General Plan goals and policies is provided for information purposes only, to provide context; they do not require findings of conformance because the proposed project is HAA-compliant.

⁴ A "specific, adverse impact" means "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."
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A. Purposes of the C-W District/Neighborhood Compatibility: BMC Section 23E.64.030.A allows mixed-use development in the C-W District with approval of a Use Permit, subject to the Board making a finding of non-detriment, and the findings in Section 23E.64.090.B, listed below. In order to approve a Use Permit in the West Berkeley Commercial District, the Board must find that the proposed use or structure would be:

1. Consistent with the purposes of the C-W District;
2. Compatible with the surrounding uses and buildings;
3. Consistent with the West Berkeley Plan
4. Supportive of an increase in the continuity of retail and service facilities at the ground level to the degree feasible and does not substantially degrade the existing urban fabric of the street and area;
5. For projects which include construction of new floor area, provide an intensity of development which does not underutilize the property;
6. Capable of meeting any applicable performance standards for off-site impacts; and
7. Not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.

The C-W District, which implements the West Berkeley Plan, lists 11 purposes, which generally emphasize the development of commercial uses, increasing the opportunities for development of housing in commercial areas, and encouraging appropriately intense development, and development compatible with adjacent commercial, residential, and industrial areas.

The project would further the purposes of the district in that it would create additional housing, likely of individuals who will utilize the retail in the neighborhood. The project includes ground floor commercial space that, although unspecified, is expected to be a café/restaurant use, which would maintain the street level activity and cater to the needs of the District's population.

With six stories and 78 dwelling units developed over ground level commercial spaces on a property that is currently developed with two-story commercial building, the project would 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 opportunities while retaining the continuity of retail and compatible services at the ground level.

B. General Plan Consistency: 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.
2. Policy H-33 – Regional Housing Needs: Encourage housing production adequate to meet City needs and the City's share of regional housing needs.

3. 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.
4. 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.
5. Policy UD-24 – Area Character: Regulate 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.
6. 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.
7. Policy LU-27 – Avenue Commercial Areas: Maintain and improve Avenue Commercial areas, such as University, San Pablo, Telegraph, and South Shattuck, as pedestrian-friendly, visually attractive areas of pedestrian scale and ensure that Avenue areas fully serve neighborhood needs as well as a broader spectrum of needs.
8. 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.
9. 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.
10. Policy T-16 – Access by Proximity, Action E: In locations served by transit, consider reduction or elimination of parking requirements for residential development.
11. 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.
12. 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.
13. Policy UD-32 – Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.
14. Policy T-16-Access by Proximity: Improve access by increasing proximity of residents to services, goods, and employment centers.

VII. 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 ZP2019-0155, pursuant to BMC Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received June 29, 2020
3. Notice of Public Hearing

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