



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 REVIEW AND COMMENT
AUGUST 14, 2008

1200 Ashby Avenue

Preliminary consideration (no formal action) of Use Permit #07-10000133 to construct a 5-story mixed use building with 98 residential condo units, 11,900 square feet of ground-floor commercial space, and 135 parking spaces on a 34,210 square-foot lot. (C-W; C. Wagner/A. Sage)

I. Application Basics

A. Zoning Permits Required:

- Use Permit to construct a Mixed Use Development, under BMC Section 23E.64.030.A
- Use Permit to construct more than 5,000 square feet of new floor area, under BMC Section 23C.08.050.B.1
- Use Permit to allow a full-service restaurant of up to 2,000 square feet, under BMC Section 23E.64.030.A
- Use Permit to allow alcohol service incidental to a food service establishment, under BMC Sections 23E.64.030.A and 23E.16.040.A
- Use Permit to waive off-street commercial loading space, under BMC Sections 23E.32.020 and 23E.64.080.H
- Administrative Use Permit to construct fence in excess of 6 feet, under BMC Section 23E.04.040.A
- Administrative Use Permit to allow Sidewalk Café Seating, under BMC Section 23E.24.010.A
- Administrative Use Permit to allow commercial operating hours of 6:00 a.m. to 12:00 a.m., under BMC Section 23E.64.060.A

B. Permits Requested Pursuant to State Density Bonus Law:

- (Requested to Allow Density Bonus) Variance to allow 5 stories, where 4 stories is otherwise permitted (23E.64.070.B)
- (Requested to Allow Density Bonus) Variance to allow average height of 60 feet, 3 inches, where 50 feet is otherwise permitted (23E.64.070.B)
- (Requested to Allow Density Bonus) Variance to allow floor area ratio of 3.3,

- where 3.0 is otherwise permitted (23E.64.070.A)
- (Requested to Allow Density Bonus) Use Permit to waive required 15-foot setbacks at northeast and southeast corners of site (Ashby Avenue and Carrison Street) (25E.04.050.E)¹
 - (Concession to Provide for Affordable Housing Costs) Variance to allow inclusionary (below market rate) units to be located only on the second, third and fourth floors, and not on the fifth floor, where such units are otherwise required to be “reasonably dispersed” throughout the project (23C.12.040.D)

C. CEQA Determination:

Staff has not yet determined the project’s status under the California Environmental Quality Act (CEQA), because traffic analysis is still underway. Planning and Office of Transportation staff are working with the project applicants to assess and minimize potential impacts to the San Pablo/Ashby intersection and adjacent residential streets. A complete traffic study and CEQA analysis will be provided to the ZAB and made available to the community prior to the formal public hearing on the project.

D. Parties Involved:

- Property Owner
RB Tech Center, LP Ashby
5715 Claremont Avenue
Oakland, CA 94618
- Applicants
Ali Kashani, Memar Properties, INC
5715 Claremont Avenue
Oakland, CA 94618
&
David Greensfelder, Rawson, Blum & Leon
456 Montgomery Street, Suite 1000
San Francisco, CA 94104

E. Purpose of Workshop:

Although all comments are welcome, this preliminary workshop is intended to focus on density bonus issues and options for arranging the building height and mass. Recommendations from the ZAB on these issues will guide the Design Review Committee’s (DRC) review of the project. After DRC review, the ZAB will consider the project again for final action.

¹ If the ZAB makes the required finding for this Use Permit (Section 23E.04.050.E), the Permit would not be considered a waiver/modification under State law. Staff has listed this Permit as a waiver/modification because it does not appear the finding can be made.

Figure 1: Vicinity Map

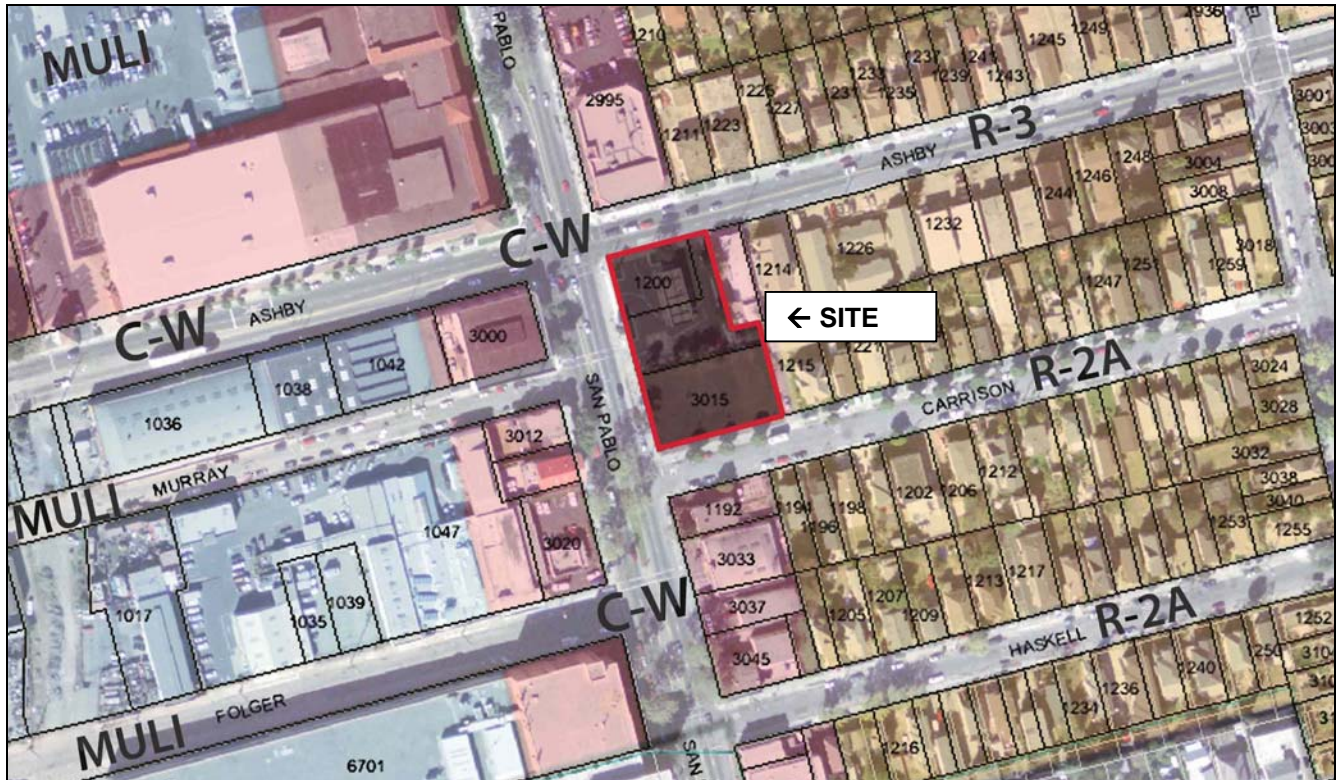


Figure 2: Site/Ground Floor Plan

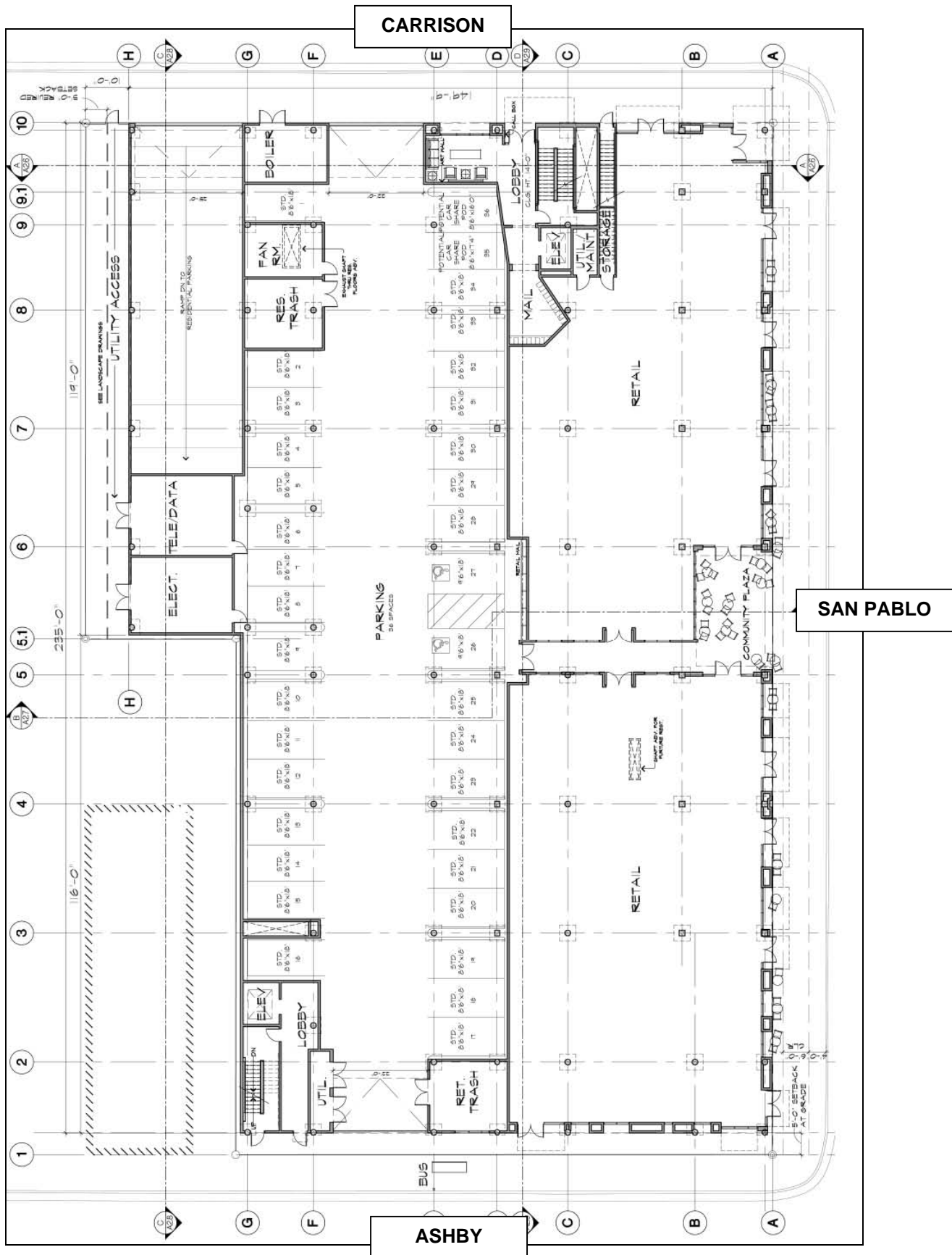


Table 1: Land Use Information

		<u>Existing Use</u>	<u>Zoning District</u>	<u>General Plan Designation</u>
Subject Property		Vacant	C-W	Avenue Commercial
Surrounding Properties	North (across Ashby Avenue)	Walgreens Drug Store	C-W/R-3	Avenue Commercial/ Medium Density Residential
	South (across Carrison Street)	Multi-family residential on San Pablo Avenue and single-family residential dwellings immediately east of San Pablo Avenue	C-W/R-2A	Avenue Commercial/ Medium Density Residential
	East	Multi-family and single-family residential dwellings	C-W (R-3, R-2A further east)	Avenue Commercial (Medium Density Residential further east)
	West (across San Pablo Avenue)	2-story commercial office building	C-W (MU-LI further west)	Avenue Commercial (Manufacturing further west)

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Alcohol Sales/Service	Yes	The application includes a Use Permit to allow alcohol service incidental to a food service establishment.
Creeks	No	No creeks within 30 feet of the site.
Density Bonus	Yes	The applicants are requesting a 31.5 percent density bonus under State Government Code 65915.
Historic Resources	No	The project site is vacant and has no designated historic resources, and there are no designated resources adjacent to the project site.
Inclusionary Housing	Yes	The project would provide 15 below market rate for-sale units: 8 units at prices affordable to households earning 50 percent of area median income (AMI), and 7 units at prices affordable to households earning 60 percent of AMI.
Oak Trees	No	No trees on project site.
Seismic Hazards	No	Although the area is mapped within a potential liquefaction zone, the geotech report for the project concludes that the liquefaction hazard at the site is very low and mitigation measures are not required, and the City's peer reviewer concurs with the report.
Soil/Groundwater Contamination	No	The project site is located in the City's Environmental Management Area. Soil and groundwater clean-up efforts have been completed, and a site-closure letter is currently pending approval by the Regional Water Quality Board. All building plans will be routed to Toxics for review.
Green Building Score		31 points on LEED Checklist, qualifies as certified LEED project.

Table 3: Project Chronology

Date	Action
November 16, 2007	Application submitted
January 17, 2008	DRC preview
April 3, 2008	Application deemed complete
July 14, 2008	Revised design submitted
July 31, 2008	Notices mailed/posted for ZAB workshop
August 14, 2008	ZAB workshop on density bonus and massing options

Table 4: Development Standards

Standard BMC Sections 23E.64.070-080		Existing	Proposed Project	Permitted/ Required
Lot Area (sq. ft.)		34,210	34,210	N/A
Total Gross Floor Area (sq. ft.)		--	112,893 ^a	102,630
Floor Area Ratio		--	3.3 ^a	3.0
Residential Space	Units	--	98	N/A
	Gross Floor Area (sq. ft.)	--	100,993	N/A
Commercial Space	Units	--	2-8	N/A
	Gross Floor Area (sq. ft.)	--	11,900	N/A
Building Height	Average (ft.)	--	60'-3" ^{a,b}	50
	Stories	--	5 ^a	4
Building Setbacks (ft.)	Front (Ashby) ^c	--	0 ^a	0-15'
	Front (Carrison) ^c	--	0 ^a	0-15' ^b
	East Side	--	0-10	0-5'
	West Side (San Pablo)	--	0	0'
Usable Open Space (sq. ft.)		--	6,568	3,920
Parking	Automobile (total)	--	136	126
	Residential	--	98	98
	Commercial	--	38 (includes 2 car share spaces)	28
	Bicycle	--	30	6

^a Waivers/modifications of these item are requested under State density bonus law.

^b Building height shown on submitted plans (58 feet) is not accurate as it is not measured to the top of the parapet. Height will be shown correctly on plans submitted at next public hearing.

^c Per Section 23F.04.010, the site is a through lot with two parallel front yards on Ashby Avenue and Carrison Street, and no rear yard. Front setbacks are required only where the site confronts a residential district.

II. Project Setting

A. Neighborhood/Area Description:

The project site is located in West Berkeley, at the southeast corner of San Pablo Avenue and Ashby Avenue. This portion of San Pablo Avenue is generally developed with one- and two-story commercial and mixed-use buildings, and abuts a lower-density residential neighborhood to the east and a light industrial district to the west. Recent major projects in the immediate area include a five-story mixed-use building at 1001 Ashby Avenue (completed), the West Berkeley Bowl grocery store at 920 Heinz Avenue (under construction), and a five-story mixed-use building at 3020 San Pablo Avenue (approved but not under construction). Four- and five-story mixed-use buildings have also been approved (but not yet built) further north at 2720, 2747, and 2748 San Pablo Avenue.

The site abuts two residential properties to the east. To the northeast is a relatively narrow lot that is zoned C-W but developed with a single-story, four-unit apartment building located along its east property line. To the southeast is a relatively wide lot that is mainly in the R-2A District with a narrow strip along the west side zoned C-W; the lot is developed with a three-story residential building at the front that is set back about 25 feet from the west property line, and a single-story residential building at the rear; a parking area occupies the southwest portion of the lot.

B. Site Conditions:

The site is currently vacant and has an area of 34,210 square feet (0.79 acre) and three street frontages: Ashby Avenue on the north, San Pablo Avenue on the west, and Carrison Street on the south. The most recent land use was a service station, which was removed in January 2005. A chain link fence surrounds the site and vegetation and dirt cover the vacant lot. No significant trees or vegetation are located on the site.

III. Project Description

The proposed project is a five-story mixed use building with 98 residential condominium units and 11,900 square feet of ground floor commercial space. The commercial space would include from 2 to 8 tenant spaces including one full-service restaurant of up to 3,000 square feet. An 18' by 25' community plaza (about 500 square feet) would be provided at ground level at the midpoint of the San Pablo frontage, in alignment with Murray Street to the west. The adjoining commercial spaces would be designed to have direct access to and from this plaza.

The building would have an average height of 60 feet, 3 inches and would cover the majority of the lot. The residential units are designed around a common courtyard of about 3,600 square feet at the second floor level. The building also includes a common roof deck at the southeast corner on the fourth floor. The majority of the building is 5 stories, except at the southeast portion where the building is three and four stories.

The building provides a 10-foot setback along the southeast property line; this area would be landscaped with tall trees to help provide a visual buffer between the building and the adjacent neighborhood. Along the northeast property line, the building has no

setback for the first 46 feet from Ashby Avenue, and then is set back about 8 feet starting at the second floor level. Along Ashby Avenue, the building is setback 5 feet in order to allow construction of a dedicated westbound left turn lane onto San Pablo Avenue. Along San Pablo Avenue and Carrison Street, the building façade generally abuts the property line, but with several portions recessed from the property line up to 2 feet in order to provide visual articulation and interest. Removable awnings are also provided at several points along the street frontages to enhance the building’s appearance.

A below grade parking garage (98 spaces, including parking lifts) would provide parking for residential units and a ground-level parking garage (38 spaces, all at grade) would provide parking for commercial uses. 30 bicycle parking spaces (20 for residents and 10 for businesses) would be provided in the basement garage.

According to the applicants, the building will be designed to qualify for LEED certification at minimum; they hope to achieve a silver rating. The applicant statement in Attachment 2 provides further details regarding LEED certification and other aspects of the project.

A. Residential Units:

The proposed unit mix is shown in Table 5 below. The project qualifies for a State density bonus because it would provide 8 units at prices affordable to households earning up to 50 percent of area median income (AMI) and 7 units at prices affordable to households earning up to 60 percent of AMI. See under “Key Issues” for further discussion.

Table 5: Proposed Unit Mix

		Unit Type			
		Jr. One Bedroom	One Bedroom	Two Bedroom	Total
Building Floor	Second	2	15	9	26
	Third	2	15	9	26
	Fourth	2	15	7	24
	Fifth	2	14	6	22
Total Units		8	59	31	98
Size Range (sq. ft.)		654	594-819	990-1210	--
Average Size		654	731	1092	844

IV. Community Discussion

A. Neighbor/Community Concerns:

Prior to submitting the application, the applicants contacted neighbors and businesses within 300 feet of the project site (and beyond 300 feet in some cases), and held two community meetings to introduce preliminary plans. In addition, the applicants held an open house at the project site on October 27, 2007. The main

concerns raised during these meetings related to potential parking and traffic impacts. Communications from community members are provided in Attachment 6.

B. Committee Review:

The Design Review Committee (DRC) conducted a “preview” of the project on January 17, 2008 and provided initial feedback on the design to the applicants. The DRC expressed concern with the overall size and massing of the project, the project’s relationship to the surrounding neighborhood (especially to the east), and its façade articulation (especially on San Pablo Avenue). The applicants have submitted revised project plans that they believe address the DRC’s concerns (see plans, Attachment 1 and applicant statement, Attachment 2). The project is scheduled for formal preliminary design review on August 21, 2008, at which time DRC will consider the revised plans and any direction provided by the ZAB.

V. Issues and Analysis

A. Inclusionary Housing/Density Bonus Calculations:

1. Base Project: The project’s density bonus calculations are provided in Attachment 4. Because commercial districts in Berkeley do not have residential density standards, the City defines a “base project” for the site based on the maximum floor area ratio, height limit, setbacks, and other applicable standards, but not including features that require additional discretionary approval (e.g., Use Permits for reduced setbacks or additional stories). In addition, voluntary reductions in the building volume (e.g., increased setbacks and articulation, larger courtyards, etc.) are taken into account since these reductions will occur in the final design, and the percentage of affordable units in the base project must be based on actual residential units provided, rather than a theoretical maximum number of units which is not actually provided. Staff has calculated the base project at 74 units.

If the applicant were to eliminate the community plaza and interior courtyard, increase the massing at the southeast corner, and otherwise take full advantage of the allowable building envelope based on minimum zoning requirements, the base project could be about 25 percent (19 units) larger. At the applicant’s request, this theoretical “maximum building scenario” is also provided for reference purposes only on page 4 of Attachment 4.

2. Inclusionary Housing: Pursuant to BMC Chapter 23C.12, at least 20 percent of the 74 base project units, or 14.9 units, are required to be affordable to households earning no more than 80 percent of area median income (AMI). As stated earlier, the applicants propose to meet this requirement by providing 8 units at prices affordable to households earning up to 50 percent of AMI and 7 units at prices affordable to households earning up to 60 percent of AMI.
3. Density Bonus: Government Code Section 65915 requires cities to grant a density bonus and incentives to housing projects that meet certain affordability levels. Projects that provide 20 percent of the base project units to households earning up to 80 percent of AMI are entitled to a 35 percent density bonus (26

units) above the otherwise maximum allowable residential density under the Zoning Ordinance. The applicants have requested a density bonus of 24 units, or 32.4 percent.²

B. Waivers/Modifications:

Government Code Section 65915 requires the City to grant waivers or modifications of development standards that would otherwise inhibit the construction of density bonus units. Section 65915 does not specify a required number of waivers/modifications for a project. The City can deny a waiver/modification request only if it finds that the waiver/modification is either not required to provide for affordable housing costs, or would have a specific adverse impact upon public health and safety, the physical environment, or a property listed on the California Register of Historical Resources. However the City may determine what waivers/modifications to grant, in order to minimize detrimental impacts.

The applicants have requested the following waivers and modifications to allow construction of the 24 density bonus units.

1. Variance to allow 5 stories: Section 23E.64.070.B limits building height in the C-W District to 4 stories. The project includes a fifth story to accommodate the density bonus units.
2. Variance to allow height of 60 feet, 3 inches: Section 23E.64.070.B also limits building height in the C-W District to 50 feet. The project has an average height of about 60 feet, 3 inches. The additional height is requested to accommodate the density bonus units.
3. Variance to exceed the maximum floor area ratio (FAR): Section 23E.64.070.A limits properties in the C-W District to a maximum FAR of 3.0. The project proposes an FAR of 3.3 to accommodate the density bonus units.
4. Use Permit to reduce front setbacks: The project site has three street frontages (Ashby Avenue, San Pablo Avenue and Carrison Street). Pursuant to Section 23E.04.010, when a property has multiple frontages, the front yard is defined as the narrowest street frontage. For this property, Ashby is the narrowest frontage. In addition, because the lot has two parallel frontages, the lot is considered a through lot and has two front yards (at Ashby and Carrison), and no rear yard. Pursuant to Sections 23E.64.070.C.1 and 25E.04.050.E, a setback of 15 feet is required from portions of the front property lines that confront a residential zoning district. This equates to a 15' by 25' setback area at the northeast corner of the

² Section 65915 provides different sliding scales for calculating density bonuses, each based on a different maximum income level (% of AMI) for the affordable units. There is one scale for units at 50% of AMI, and another for units at 80% of AMI. For a project with units that meet both income levels, either scale may be used. Staff used the 80% AMI scale because all 15 of the proposed affordable units meet this level, and the project qualifies for a 35% bonus and two concessions on this scale, whereas only eight units meet the 50% AMI level, and these units would only qualify the project for a 32.5% bonus and one concession on the 50% AMI scale. It should also be noted that for all units needed to qualify for a density bonus, regardless of maximum income level, the maximum annual rent or mortgage payments are calculated at 30 percent of 60 percent of AMI.

site, and a 15' by 35' setback area at the southeast corner. The project proposes encroachments into these areas to accommodate the density bonus units.

The required finding for this Use Permit is that "such smaller yard would provide greater privacy or improved amenity to a lot in the residential District" (Section 23E.04.050.E). As noted earlier, if the ZAB makes this finding, the Permit would not be considered a waiver/modification under State law. Staff has listed this Permit as a waiver/modification because it does not appear the finding can be made. As discussed below, should the ZAB consider these setbacks to be essential, there are massing options that may allow them to be maintained, but probably with other impacts resulting elsewhere on the site due to relocation of the building mass currently located within the setbacks.

C. Concessions/Incentives:

Government Code Section 65915 also provides that the project shall receive incentives or concessions, which may include modification of development standards or code requirements, or other benefits that provide for the project's affordable housing costs. Based on the percentage of proposed affordable units, the project is entitled to two concessions, unless the City finds that the concessions either are not required to provide for affordable housing costs, or would have a specific adverse impact upon public health and safety, the physical environment, or a property listed on the California Register of Historical Resources.

The applicants have requested a single concession to provide for affordable housing costs: they propose that all inclusionary units be located on the second through fourth floors, and none on the fifth floor. This arrangement does not comply with Section 23C.12.040.D, which requires that inclusionary units be "reasonably dispersed throughout the project, be of the same size and contain, on average, the same number of bedrooms as the non-inclusionary units in the project." The applicants expect the units on the fifth floor to sell for more than the project's other units due to their enhanced views, and they claim this premium is necessary to offset the costs of the project's inclusionary units. Other projects, such as 2041-67 Center Street ("Seagate") and 2747 San Pablo Avenue have received similar concessions.

Prior to future Board hearings on this project, the applicant will provide further information regarding the value and financial necessity of the proposed inclusionary unit locations. Housing Department staff will review this information and provide a report to the ZAB.

D. Massing Options:

As noted earlier, the ZAB has discretion over the waivers and modifications that are granted to accommodate the required density bonus units. Following is a discussion of the current massing proposal, and other options the ZAB may want to consider that would reduce and/or reconfigure the massing to change the way it impacts the surrounding area.

There are essentially two building volumes in the proposed massing scheme. The main volume, covering most of the site from San Pablo to about 42 feet from the southeast property line, is 5 stories and about 61 feet in height, surrounding the

central courtyard. A 25' by 18' ground-level courtyard at the midpoint of the San Pablo frontage helps break up this main volume and gives it the appearance of two separate volumes when approaching the site on San Pablo. A smaller volume at the southeast portion of the building is 3 stories and about 40 feet in height within 60 feet of the Carrison Street frontage, with a roof deck on top, and increases to 4 stories and about 47 feet between the 3-story portion and the jog in the east property line. and is setback 10 feet from the adjacent property line.

Staff has identified several potential options for reducing and/or reconfiguring the overall mass of the building. These are presented as general concepts at this point, and the feasibility of each would need to be further investigated. As discussed below, each option has certain trade-offs in terms of the benefits they would offer and the new impacts they would create.

- a) Provide setbacks on Ashby and/or Carrison: As noted earlier, the applicants have requested encroachments into the required setbacks at the northeast and southeast corners to accommodate part of the required density bonus. These encroachments increase the amount of building mass located on the east portion of the lot, adjacent to residential uses. This is of particular concern on Carrison Street, where residential uses are generally lower in density and building scale than Ashby. While the 3-story height of the southeast portion helps provide a transition between the main building volume and the Carrison Street neighborhood, a front setback at this area would further improve the transition and provide additional landscaping. If the ZAB felt that a setback at this location were critical, it could direct the applicant and DRC to consider relocating building mass from this area to another portion of the site, perhaps using one of the options discussed below.
- b) Reduce interior courtyard: The overall mass of the building could be reduced by reducing the interior courtyard to the minimum size necessary to meet building code requirements for light, air and emergency egress for the interior units, and by providing most of the required open space on the roof. The trade-offs for the ZAB to consider would be reduced quality of life for occupants of the interior units, versus reduced mass and height adjacent to the residential neighbors to the east. It should be noted that some DRC and ZAB members felt that two interior light/air corridors on the 1885 University Avenue project were too small.
- c) Eliminate roof deck and/or community plaza: Filling in these open spaces with enclosed residential space would also allow building mass to be reduced and/or shifted away from the east. However, eliminating the roof deck would increase the 4-story portion along the east of the site, and eliminating the community plaza would cause the San Pablo frontage of the building to appear larger and bulkier.
- d) Reduce retail ceiling height: The current plans show a retail ceiling height of about 15 feet. The DRC considers 12 feet to be a minimum height for retail space in mixed use buildings. By reducing the ceiling to 12 feet, the total building height could be lowered to about 57 feet. Trade-offs for the ZAB to consider would be a 3-foot reduction in building height versus potential impacts on the viability of the retail space and the range of tenants that would consider it, an important issue

given the prominent location of the site and the need for economic development in this area of Berkeley.

- e) Provide tower element for portion of site and reduce height elsewhere: Although this option may not be feasible due to increased construction costs, the basic concept would be to construct a tower element, perhaps 7 or 8 stories in height, at the corner of Ashby and San Pablo, and reduce the height elsewhere to 2 or 3 stories. This would shift building mass away from the south and east property lines, where compatibility with smaller-scale residential structures is more of a concern, but would make the project as a whole more highly visible to a wider area beyond the site.

In addition to these options, the applicant considered an option that would have taken the east portion of the fifth floor and relocated it to a sixth floor along San Pablo Avenue. As discussed in the applicant statement (see Attachment 2, page 20), the applicant rejected this option because the increased height would trigger a more expensive construction type for the entire building in order to meet building code requirements.

VI. Recommendation

Staff recommends that the Board consider the project design and density bonus calculations, and provide input on the building's massing and height and any other concerns.

Attachments:

1. Project Plans, dated 7/14/08
2. Applicant Statement (revised August 6, 2008)
3. Site Photos
4. Density Bonus Calculations
5. Public Hearing Notice
6. Correspondence

Contract Planner: Charity Wagner, Contract Planner, clwagner@rrmdesign.com (415) 331-8282

Staff Planner: Aaron Sage, AICP, Senior Planner, asage@ci.berkeley.ca.us (510) 981-7425