

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
DECEMBER 11, 2008

1200 Ashby Avenue

Use Permit #07-10000133 to construct a 5-story mixed use building with 98 residential condominium units, 7,770 square feet of ground-floor commercial space, and 114 parking spaces on a 34,210 square-foot lot.
(C-W; A. Sage/C. Wagner)

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 service of beer, wine and distilled spirits incidental to a food service establishment (ABC type 47), under BMC Sections 23E.64.030.A and 23E.16.040.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
- Administrative Use Permit to construct fence in excess of 6 feet, under BMC Section 23E.04.040.A
- Administrative Use Permit to allow mechanical room, stairwell, and elevator shaft to exceed height limit (23E.04.020.C)

B. Permits Requested Pursuant to State Density Bonus Law:

- (Requested to Allow Density Bonus) Variance to allow 5 stories, where 4 stories are 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)

Figure 1: Vicinity Map

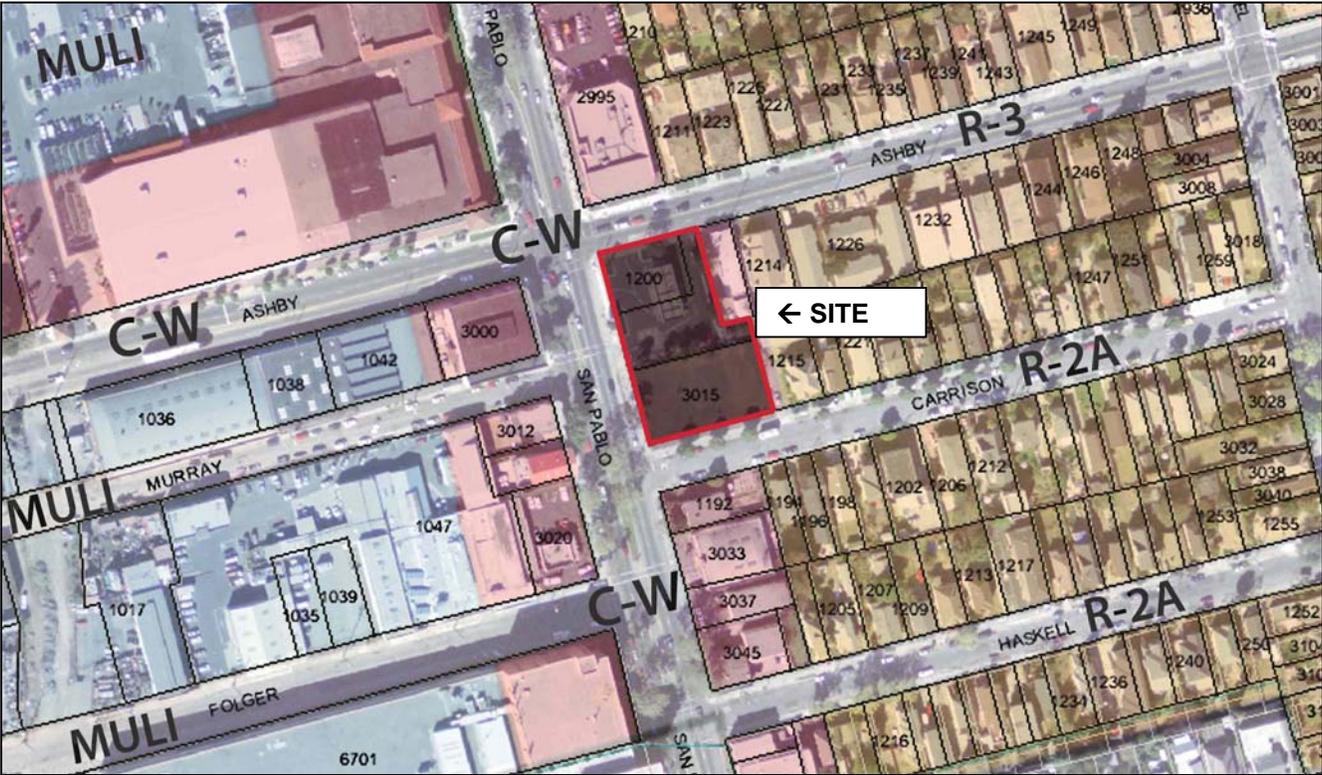


Figure 2: Site/Ground Floor Plan

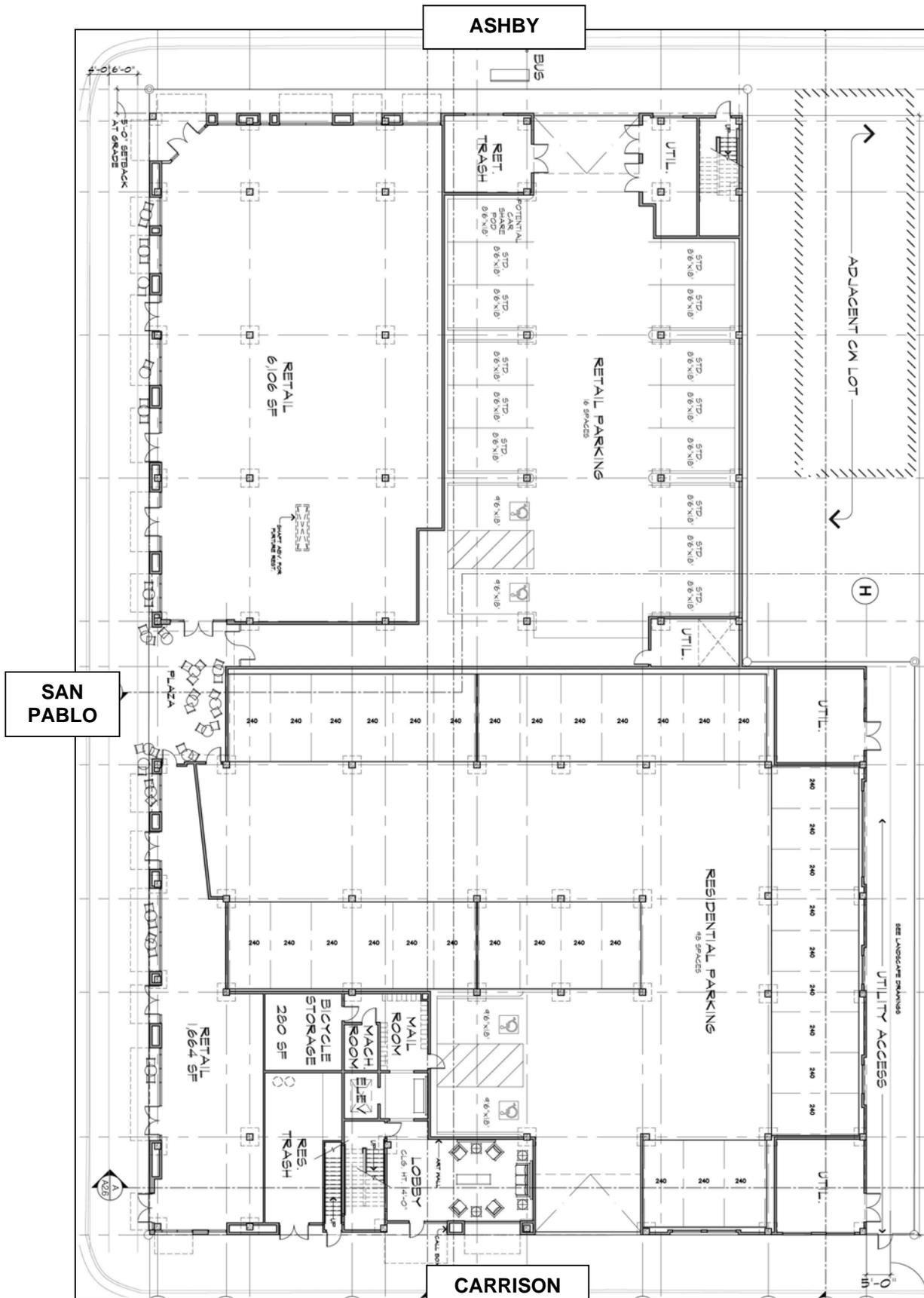


Table 1: Use Information

		<u>Existing Use</u>	<u>Zoning District</u>	<u>General Plan Designation</u>
Subject Property		Vacant (former gas station)	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	Project includes service of beer, wine and distilled spirits incidental to a food service establishment (ABC type 47). See under "Issues and Analysis" for further discussion.
Creeks	No	No creeks within 30 feet of the site.
Density Bonus	Yes	Applicants are requesting a density bonus of 31.7 percent (24 units) under State Government Code 65915.
Historic Resources	No	Project site is vacant, and there are no designated historic resources abutting the project site.
Housing/Child Care Mitigation Fees	Yes	Project is subject to child care mitigation fee because it exceeds 7,500 sq. ft. of commercial space (see Condition 41); housing fee does not apply because project mitigates its own housing impacts through proposed inclusionary units.
Inclusionary Housing	Yes	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	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
August 14, 2008	ZAB workshop on density bonus and massing options
August 21, September 18, October 16, November 20, 2008	DRC preliminary design review hearings (approved Nov. 20)
November 26, 2008	Notices mailed/posted for ZAB hearing
December 11, 2008	ZAB hearing
December 31, 2008	PSA deadline (includes extension)

Table 4: Development Standards

Standard BMC Sections 23E.64.070-080		Proposed Project	Permitted/ Required
Lot Area (sq. ft.)		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.)	100,352	N/A
Commercial Space	Units	2-8	N/A
	Gross Floor Area (sq. ft.)	7,770	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.)		6,424	3,920
Parking	Automobile (total)	114	117
	Residential	98	98
	Commercial	15	19
	Shared Vehicle	1	N/A
	Bicycle	30	4

^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, both of which are State highways under the jurisdiction of the California Department of Transportation (Caltrans). 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). Further to the north, a four-story mixed-use building was recently completed at 2700 San Pablo Avenue, and four- and five-story mixed-use buildings have been approved but not yet built at 2720, 2747, and 2748 San Pablo Avenue.

The site abuts two residential properties to the east. To the east on Ashby Avenue 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 east on Carrison Street 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. Photos of the neighborhood and site are provided in Attachment 3.

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 (along with underground fuel tanks) in January 2005. The Toxics Management Division has found that all soil and groundwater contamination associated with the service station has been satisfactorily abated, and has requested regulatory closure from the State Regional Water Quality Control Board. A chain link fence surrounds the site and weeds and dirt cover the vacant lot. No significant trees or vegetation are located on the site.

III. Project Description

Other than parking and ground floor changes discussed further below, and exterior design changes during DRC review, the project is essentially the same as the version the ZAB reviewed on August 14. Much of the following description is repeated from the August 14 staff report, for the benefit of new ZAB members. The applicant statement in Attachment 4 provides further details.

A. Height and Massing:

The proposed building would have an average height of 60 feet, 3 inches and would cover almost all of the lot. The majority of the building is 5 stories, except at the southeast portion where the building is three and four stories. The residential stories (two through five) are designed around a common courtyard of about 3,500 square feet at the second story. The building also includes a common roof deck at the southeast corner on the fourth story.

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.¹ See Item D under “Issues and Analysis” for further discussion of this improvement.

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. An 18’ by 25’ community plaza (about 500 square feet) would be provided at ground level about halfway along the San Pablo frontage, in alignment with Murray Street to the west. The adjoining commercial spaces would have direct access to the plaza, and a “key hole” opening at the second story would provide a visual connection between the plaza and the interior courtyard. Removable awnings, in compliance with Caltrans standards, are also provided at several points along the street frontages to enhance the building’s appearance.

B. Ground Floor Parking/Commercial Uses

In order to reduce costs, the applicants have revised the project’s parking and commercial space since the ZAB workshop on August 14. The underground residential parking garage has been eliminated in favor of a ground-level garage with access from Carrison Street. 30 residential bicycle parking spaces would be provided adjacent to the mail room on the ground floor, and public bicycle racks would be provided on the sidewalks adjacent to the building. Commercial parking has been reduced from 38 to 15 spaces (plus one space for a shared vehicle), and the Carrison Street entry to the commercial garage has been eliminated, with access now proposed only from Ashby.

Due to the relocation of residential parking to the ground floor, the amount of commercial space has been reduced from 11,900 to 7,770 square feet, although a large (6,106 sq. ft.) space has been maintained at the northwest corner to help “anchor” the building. The applicants have requested flexibility to provide 2 to 8 commercial spaces, including one full-service restaurant of up to 2,000 square feet with alcohol service.

¹ The landscaping and ground floor plans (sheets L1.0 and A1.1) show the curb along Ashby in its existing location; the curb will be relocated five feet to the south to accommodate a westbound left turn lane, and the landscaping along this frontage will need to be revised, subject to DRC approval.

C. Residential Units:

The proposed unit mix is shown in Table 5 below. The project qualifies for a State density bonus because it would provide 20 percent of the “base project” units (15 of 74 units) for households earning up to 60 percent of area median income (AMI). The applicant has agreed to provide a greater affordability level than the City’s requirement of 80% of AMI, in order to help the City qualify for a State grant. The applicant ultimately intends to sell the units as condominiums, but may rent the units in the short term depending on market conditions.² See under “Key Issues” for further discussion.

Table 5: Proposed Unit Mix

		Unit Type							
		Studio		1/1.5 Bedroom		2 Bedroom		Total	
		Market Rate	Inclusionary	Market Rate	Inclusionary	Market Rate	Inclusionary	Market Rate	Inclusionary
Building Story	Second	1	1	13	2	7	2	21	5
	Third	2	0	11	4	8	1	21	5
	Fourth	2	0	12	3	5	2	19	5
	Fifth	2	0	14	0	6	0	22	0
Total Units		7	1	50	9	26	5	83	15
Average Size (sq. ft.)		571*	571	742*	750	1,081*	1,117	835*	860
Size Range (sq. ft.)		571*	571	595-828*	667-828	983-1,194*	1,074-1,194	571-1,194	667-1,194

* - Ranges and averages are for entire building.

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), held two community meetings to introduce preliminary plans and 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 and to the overall size and appearance of the building. Communications from community members are provided in Attachment 11.

B. ZAB Preview:

The ZAB previewed this project on August 14, 2008 to provide recommendations to the Design Review Committee (DRC) regarding the project’s height, mass and density bonus request. While Board members Arreguin and Shumer felt the project was too large, other ZAB members commented favorably on the project’s height, bulk and mass. Board member Allen (also on the DRC) said the design was off to a

² Per Section 23C.12.060, if the applicant rents the units and Section 8 rental subsidies are available, 8 of the inclusionary units would have to be affordable to households earning no more than 50% of AMI. This has been reflected in the proposed conditions of approval (see Attachment 1, Conditions 68).

“pretty good start,” but that the massing should be reduced at the southeast corner and the blank wall on the east side improved. Board members Arreguin, Judd and Shumer expressed concerns about how the density bonus had been calculated, and Arreguin and Shumer specifically expressed reservations about the concession related to distribution of inclusionary units. See below under “Issues and Analysis” for further discussion.

C. Committee Review:

The Design Review Committee (DRC) conducted a “preview” of the project on January 17, 2008 and preliminary design review in August, September, October and November. On November 20, the DRC voted 6-0 (1 member was absent) to grant the project a favorable recommendation.

The DRC’s comments to be addressed during final design review are provided in Attachment 5; these comments relate to execution of details, colors, and building maintenance issues, rather than the overall design program. The DRC had one comment for the ZAB: that the two second-floor units adjacent to the community plaza (labeled P1E) appear to be long and narrow and it may be better to have bigger units there than the small open space looking down into the courtyard.

V. Issues and Analysis

A. Inclusionary Housing/Density Bonus Calculations:

1. Base Project: The project’s density bonus calculations have not changed since the ZAB workshop on August 14, and are provided again 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.

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 15 inclusionary housing units (20.3 percent of the base project) for 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 after rounding) 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.

B. Waivers/Modifications:

Government Code Section 65915 requires the City to grant waivers or modifications of development standards that would otherwise prevent 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 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.

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

The required finding to reduce the front yard setbacks 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. It does not appear the finding can be made, because reduction of these setbacks would locate additional building volume in proximity to the residential districts, thereby potentially increasing aesthetic and solar impacts. Therefore, staff has listed this Permit as a waiver/modification under State law, and the finding is not required.

Staff recommends approval of the massing scenario contemplated by the above waivers because it achieves an appropriate balance between providing high density, transit-oriented development at an important node in the C-W District, amenities such as generous ground-floor retail space and a community plaza, and a reduction of mass at the southeast corner of the building where it is most necessary. While the project applicants are entitled to build a larger project under the Zoning Ordinance, they have elected to build a smaller project that does not “max out” the site.

- Use Permit to Waive 4 Commercial Parking Spaces: Due to the location of the residential parking garage and the additional residential parking requirement associated with the density bonus, it is necessary to provide a commercial parking waiver of 4 spaces. While there are 16 spaces in the commercial garage, one of these will be dedicated to a shared vehicle for project residents and employees, and therefore will not be available for customer parking. The proposed commercial parking is therefore 15 spaces, where 19 spaces are required.

The traffic study evaluated on-street parking occupancy in the project vicinity, and found that more than 30 percent of the total on-street parking spaces on the five nearest block faces were available during the afternoon the spaces were surveyed. In combination with the on-site parking, the study concluded that there would not be excessive impact on the neighborhood parking supply.

Staff expects that there will be some impact on neighborhood parking supply, but with the provision of a shared vehicle that will reduce the need for households residing in the project to own more than one vehicle, and with the relatively good transit service at the site, staff does not expect the parking impact to be excessive or detrimental to neighborhood quality of life. It should also be noted that the proposed retail and food service uses are intended to be primarily neighborhood-serving, and the amount of commercial space is consistent with this expectation. This will help encourage walking and biking trips to the site, and reduce the parking demand associated with the site’s commercial uses.

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 one concession: to locate all inclusionary units 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” because the 5th floor contains almost one quarter of the total units in the building, and there is no particular physical reason why such a large portion of the units cannot be on the fifth floor, since it is roughly the same size as the other floors. Furthermore, the fifth floor offers greatly enhanced views, and the City’s longstanding approach to “reasonable dispersion” is that inclusionary and market-rate units should be more or less comparable throughout the building, with respect to floors, views, and other amenities.

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. The ZAB has granted the same type of concession to other projects such as 2041-67 Center Street (“Arpeggio”) and 2747 San Pablo Avenue.

The applicant has provided information regarding the value and financial necessity of the requested concession, and the Housing Department has reviewed this information and found it to be accurate in its assumptions and findings (see Attachment 10). Because there is no basis for denying the concession under State law, staff recommends that the ZAB grant the requested concession.

D. Traffic and Circulation:

Due to the size and location of the project, staff required the applicant to submit a traffic study to determine whether or not the project would have any significant impacts on traffic congestion in the area. The study is provided in Attachment 7.

The study includes a new westbound left turn lane and signal on Ashby that is contingent on the project’s dedication of right-of-way along the Ashby frontage. This improvement is a mitigation measure that was required of Bayer in 1999, but which cannot be implemented without additional right-of-way from this site. The additional right-of-way would be dedicated after project approval but prior to building permit issuance, in order to allow the turn lane and signal to be installed concurrently with construction of the project. The turn lane is included in the cumulative (2030) traffic analysis but not the existing-plus-project analysis, in the event that the Caltrans approval process delays completion of the turn lane until after project occupancy. It should also be noted that the West Berkeley Bowl project is required to install a left-turn signal on eastbound Ashby, and this would be installed concurrently with the westbound signal.

According to the study, on a typical weekday the project would generate approximately 34 trips (9 inbound and 25 outbound) during the a.m. peak hour and 41 trips (27 inbound and 14 outbound) during the p.m. peak hour. On Saturdays, the project would generate approximately 71 trips (39 inbound and 32 outbound) during

the peak hour. The study concludes that the project would not have any significant impacts on traffic congestion in the area, for the following reasons:

- On weekdays, when approved projects and this project are added to existing traffic, all study intersections would continue to operate at LOS D, the City's minimum congestion standard.
- On Saturdays, although West Berkeley Bowl traffic plus existing traffic will cause the Ashby/San Pablo intersection to operate at LOS F, the addition of project traffic will not exceed the City's volume-to-capacity (V/C) threshold of 0.01 for intersections at LOS F. The westbound and eastbound left-turn signals on Ashby would improve operations at the intersection even with project traffic added.
- On weekdays in 2030, the Ashby/San Pablo and Ashby/Seventh intersections are projected to operate at LOS F. However, the westbound left turn lane and turn signals on Ashby at San Pablo would improve operations at the intersection even with project traffic added, and the addition of project traffic at Ashby/Seventh will not exceed the City's threshold for intersections at LOS F, so there is no significant cumulative impact.
- The project would increase weekday peak traffic by 5 percent on Mabel Street and 11 percent on Carrison Street. The weekend increase would be 4 percent on Mabel and 7 percent on Carrison. This increase is well below the threshold of 25 percent at which traffic increases become noticeable to most observers.

A City traffic engineer has reviewed the study and concurred with its findings. In addition, staff has met with the State Department of Transportation (Caltrans) to discuss the project and proposed traffic improvements.

E. Compatibility with Neighborhood:

By creating new ground-floor uses and a plaza adjacent to the street, and by locating a substantial number of new housing units at the intersection of several AC Transit bus lines, the project contributes to the further transit- and pedestrian-oriented development of San Pablo Avenue and the Ashby/San Pablo node. The commercial frontage along San Pablo Avenue greatly improves the pedestrian environment at what has long been an auto-oriented location, and is generally consistent with the San Pablo Avenue design guidelines.

As noted earlier, the ZAB generally responded favorably to the design and massing scheme at the preliminary hearing for the project in August. At the southeast corner, the building steps down to acknowledge the scale of the residential neighborhood to the east. While some ZAB members expressed a desire for reduced massing at this corner, the applicants state that they were unable to remove additional mass from this portion of the building while still maintaining the other proposed amenities (e.g., the courtyard on San Pablo) and the economic feasibility of the project.

While the project is considerably larger than its immediate neighbors, staff believes the impacts on immediate neighbors are outweighed by project benefits such as

improvements at the Ashby/San Pablo intersection, 15 affordable housing units, neighborhood-serving, pedestrian-oriented commercial space, and the addition of an attractive building to a prominent, gateway location in the City.

F. Restaurant with Alcohol Service:

The proposed full-service restaurant would include incidental service of beer, wine and distilled spirits (a Type 47 license from the State Alcoholic Beverage Control). There are no other type 47 licenses within 1,000 feet of this site, so findings of Public Convenience and Necessity under BMC 23E.16.040.B are not required. Full-service restaurants with incidental alcohol service do not generally create the same potential for detrimental impacts as bars or retail alcohol stores, since alcohol tends to be consumed in smaller quantities and with food. In any case, the Police Department has considered the proposed alcohol service and does not object (see memo, Attachment 9).

At this time there is no floor plan or operator for the restaurant; this would be determined later on, once the building is nearing completion and the developer has selected a restaurant tenant. In order to allow the Police Department an opportunity to review the restaurant before it operates, staff is recommending that the ZAB include a condition of approval on the Use Permit requiring that a detailed floor plan of the restaurant be submitted to the Police Department for approval prior to establishment of the restaurant (see Attachment 1, Condition 25).

VI. General Plan and West Berkeley Plan Consistency:

West Berkeley Plan Analysis: The 1993 West Berkeley Plan contains several policies applicable to the project, including the following:

1. Land Use Goal 2, Policy E: Create a Commercial district which will foster the continued vitality of West Berkeley's neighborhood and regional serving retail trade, in as pedestrian-friendly a manner as possible.
2. Economic Development Goal3. Policy A: Explore how neighborhood serving retail uses might be brought to San Pablo Avenue specifically.
3. Urban Design 1.6: Develop standards and incentives for facade and signage improvements along the commercial corridors. Encourage signage and facade design to improve the appearance of the street, and to minimize the appearance of strip commercial development. Signage and facade design should be urban instead of suburban in character, and pedestrian in scale. This can be done through the design of signs, building materials, storefront windows, and other exterior features.
4. Urban Design 1.8: Develop incentives to encourage new construction to be 2-4 stories in height (and to incorporate residential and office uses above the ground floor) along these corridors, especially at nodes.

5. Urban Design 1.10: Encourage infill buildings on vacant and low intensity use sites along these corridors. Residential and/or office uses should be encouraged, where appropriate.

Staff Analysis: As discussed above in “Compatibility with Neighborhood,” the project would contribute to the further transit- and pedestrian-oriented development of San Pablo Avenue and the Ashby/San Pablo node, and the commercial frontage along San Pablo Avenue would greatly improve the pedestrian environment at what has long been an auto-oriented location. The project would be generally consistent with the San Pablo Avenue design guidelines and has received a favorable recommendation from the DRC. Although the project would exceed the 4-story limit called for in Urban Design policy 1.8, the fifth story is required under State law, and the creation of new housing and commercial space at the Ashby/San Pablo node would be consistent with the spirit of this policy to enliven pedestrian activity at the node.

General Plan: The 2002 General Plan contains several policies applicable to the project, including the following:

Character and Design

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 UD-16 Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
3. 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.
4. 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.
5. Policy UD-25 Facades and Exterior Features: Buildings should have significant exterior features and facades that stimulate the eye and invite interested perusal.
6. Policy UD-26 Pedestrian-Friendly Design: Architecture and site design should give special emphasis to enjoyment by, and convenience and safety for, pedestrians.
7. Policy UD-27 Relation to Sidewalk: Projects generally should be designed to orient the main entrance toward the public sidewalk, not a parking lot, and avoid confronting the sidewalk with a large windowless wall or tall solid fence.

8. Policy UD-30 Planting: Ensure that, where feasible, new developments respect and contribute to the urban landscape by retaining existing on-site trees and/or, if appropriate, planting suitable new ones on-site or in the street right-of-way.

Staff Analysis: The project design has been carefully reviewed by the DRC, which has addressed each of the above policies. The applicant modified the design as a result of DRC recommendations to resolve design inconsistencies with these policies.

9. Policy UD-31 Views: Construction should avoid blocking significant views, especially ones toward the Bay, the hills, and significant landmarks such as the Campanile, Golden Gate Bridge, and Alcatraz Island. Whenever possible, new buildings should enhance a vista or punctuate or clarify the urban pattern.

Staff Analysis: The project would not be tall enough to substantially affect any Bay views from properties at higher elevations to the east. There are very few residential properties to the west of the site with potential hill views across the site (e.g. 1001 Ashby), and any view impacts on these properties and on views from the public right-of-way must be balanced against the public benefits of relatively dense, transit-oriented development on the City's transportation corridors.

Design of Commercial Space

10. Policy UD-28 Commercial Frontage: Commercial buildings on streets with public transit generally should have no appreciable setback from that street's sidewalk, except in the case of occasional plazas or sitting areas that enhance the area's pedestrian environment.
11. Policy UD-29 Signs: Signs should contribute aesthetically to, rather than detract from, the site they are on and the general streetscape.

Staff Analysis: See "Compatibility with Neighborhood" discussion above.

Uses

12. 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.
13. Policy H-1 Low and Moderate Income Housing: Increase the number of housing units affordable to low- and moderate-income Berkeley residents.

Staff Analysis: See Permits Requested Pursuant to State Density Bonus Law and Compatibility with Neighborhood discussion in "Key Issues" section above.

Sustainability

14. Policy H-13 Energy Efficiency: Improve the safety and energy efficiency of new and existing homes and apartments.
15. Policy EM-5 "Green" Buildings: Promote and encourage compliance with "green" building standards.
16. Policy UD-33 Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.
17. Policy UD-32 Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

Staff Analysis: Green building design is a key component of the project, and as described above, the project was designed to be LEED certified. In addition, staff has included a condition of approval requiring the applicant to conduct a PG&E energy analysis prior to submitting for a building permit.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan (with required density bonus waivers/modifications and concessions), benefits to the surrounding neighborhood and the City, and lack of detrimental impacts on surrounding properties, Staff recommends that the Zoning Adjustments Board APPROVE Use Permit #07-10000133 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received December 5, 2008
3. Site Photos
4. Applicant Statement (revised October 2008)
5. Design Review Committee summary notes
6. Density Bonus Calculations
7. Traffic Impact Study, dated November 26, 2008
8. Public Hearing Notice
9. Memo from Police Department on Alcohol Service
10. Pro Forma and Housing Memo on Concession Request
11. Correspondence

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