



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 20, 2012

2107 Dwight Way

Use Permit #12-1000008 to demolish three commercial buildings and construct a 6-story, 63-foot-tall mixed-use building with 99 dwelling units, 5,607 square feet of commercial space, and 45 parking spaces

I. Background

A. Land Use Designations:

- General Plan: Avenue Commercial
- Zoning: C-DMU, Downtown Mixed Use

B. Zoning Permits Required:

- Use Permit to demolish three commercial buildings, under BMC Section 23C.08.050.A
- Use Permit to construct a mixed use development, under BMC Section 23E.68.030.A
- Use Permit to create over 10,000 square feet of gross floor area, under BMC Section 23E.68.050
- Use Permit to increase building height from 50 feet to 60 feet, under BMC Section 23E.68.070.A¹
- Use Permit to reduce north setback from 5 to 0 feet for portion of building over 20 feet tall, under BMC Section 23E.68.070.C
- Administrative Use Permit to allow architectural features to exceed proposed main building height by 8 feet, 6 inches, under BMC Section 23E.04.020.C

C. Requested Pursuant to State Density Bonus Law:

- Concession to increase building height from 60 feet to 63 feet

¹ Although this part of the project can be approved under normal Zoning Ordinance provisions, it is necessary to accommodate the project's density bonus and is therefore required under State Density Bonus law.

D. CEQA Determination: Categorically exempt pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development Projects”).

E. Parties Involved:

- Applicant/Owner Paul Smith, 10 Crow Canyon Ct., Suite 210, San Ramon, CA 94583
- Architect Richard Christiani, 665 Third St., Suite 350, San Francisco, CA 94107

Figure 2: Site Plan



Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Commercial (primarily offices and retail)	C-DMU Buffer	Avenue Commercial
Surrounding Properties	North	5-story mixed-use building	C-DMU Buffer	Avenue Commercial
	South	Parking Lot	C-SA	Avenue Commercial
	East	Multi-family Residential	C-SA	High Density Residential
	West	Office building	C-DMU Buffer	Avenue Commercial

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Alcohol Sales/Service	N	None proposed.
Creeks	N	None within 40 feet of subject property.
Density Bonus	Y	Project has requested a density bonus and one concession. The density bonus (20 units) would be accommodated by adding a 6 th story. The requested concession is to increase the building height from 60 to 63 feet, in order to allow taller ceilings on all 6 stories.
Historic Resources	N	No designated historical resources on site. LPC considered proposed demolitions and took no action.
Inclusionary Housing	Y	Project will provide 9 below-market-rate dwelling units.
Oak Trees	N	None on site.
Seismic Hazards	N	Site is not within any seismic hazard area.
Soil/Groundwater Contamination	N	Phase I report found no "recognized environmental conditions" and recommended no further investigation.
Green Building Score	Y	Per BMC Section 23E.68.065, the project will achieve a minimum score of 120 on the GreenPoint Rated checklist (LEED Gold equivalent). The applicants have submitted a draft checklist with a score of 150 points.

Table 3: Project Chronology

Date	Action
April 30, 2012	Application submitted
May 30, 2012	Application deemed complete
August 17, 2012	Design Review Preview
September 6, 2012	LPC considers proposed demolitions and takes no action
September 20, 2012	DRC grants favorable recommendation on preliminary design review
December 6, 2012	Public hearing notices distributed
December 20, 2012	ZAB hearing

Table 4: Development Standards

Standard BMC Section 23E.68.070-080		Existing	Addition/ (Reduction)	Proposed Total	Permitted/ Required
Lot Area (sq. ft.)		23,164	--	23,164	No requirement
Gross Floor Area (sq. ft.)		21,114	78,899	100,013	No requirement
Floor Area Ratio		.91	3.41	4.32	No requirement
Dwelling Units	Total	0	99	99	No requirement
	Affordable	0	9	9	No requirement
Building Height	Average (ft.)	~35	~28	63*	50 (60 with Use Permit)
	Stories	3	3	6	No requirement
Building Setbacks (ft.)	Front (Shattuck)	0	0	0	0
	Rear (East)	40	(25)	15	5 (applies to portion >20' tall)
	Left Side (North) – <65' from front	0	0	0	0
	Left Side (North) – >65' from front	0	0	0	5 (0 with Use Permit; applies to portion >20' tall)
	Right Side (Dwight)	0	0	0	No requirement
Lot Coverage (%)		~58	~29	87	No requirement
Usable Open Space (sq. ft.)		0	8,296	8,296	8,032
Parking	Residential	0	36	36	33
	Commercial	34 (6 tandem)	(25)	9	9
	Bicycle	0	28	28	3 (required for commercial only)

* Requested under State density bonus law.

II. Project Setting

A. Neighborhood/Area Description:

The project site is located at the northeast corner of Shattuck Avenue and Dwight Way, at the southern boundary of the Downtown Area Plan. The Downtown Berkeley BART station is located seven blocks (0.4 miles) north of the site. This portion of Shattuck Avenue is developed with a broad mixture of building types and uses, ranging from 5-story mixed-use buildings such as the Fine Arts Building at Shattuck and Haste, to one-story retail buildings such as the ones housing Aaron Brothers and Tuesday Morning at 2450-80 Shattuck.

B. Site Conditions:

The site has an area of 23,164 square feet and is developed with approximately 30 surface parking spaces, and the following three buildings:

- The largest building is a two-story office building located along Shattuck Avenue and extending across the middle portion of the lot. The original portions of this building were built sometime between 1911 and 1929 as separate buildings. At some point prior to 1980, these original portions were joined together, and a second story was added in 1996.
- A narrow, two-story office building located along the north property line, east of the two-story building along Shattuck.
- A three-story building at the corner of Dwight and Shattuck. It houses retail and parking on the ground floor, and offices on the second and third floors.

III. Project Description

The proposed project would demolish the existing buildings and construct a new mixed-use building. The building would be six stories and 63 feet tall. The ground floor would have a 5,607-square-foot commercial space along Shattuck, a residential lobby, and a 45-space parking garage. Floors two through six would have a total of 99 rental apartments, nine of which are to be reserved for households earning 50 percent or less of area median income. According to the applicant, the market-rate apartments will be marketed primarily to students.

Based on the number of affordable units proposed, the project is entitled to a density bonus and concessions or incentives under Government Code Section 65915. The applicant has requested both an increase in the building height from 50 feet to 60 feet in order to accommodate the density bonus (which can be granted with a Use Permit under the C-DMU provisions), and a concession to further increase the height to 63 feet. See under “Key Issues” below for further details.

The project provides the required usable open space in a podium-level courtyard, a rooftop terrace, and a ground-level area along the east property line. The project would also provide improvements (or an in-lieu payment to fund such improvements) to the public right-of-way in accordance with the Streets and Open Space Improvement Plan, as directed by the Public Works Department.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting the application to the City, a pre-application poster was erected by the applicant in April 2012. On December 6, 2012, the City mailed notices to adjoining property owners and occupants, and to interested neighborhood organizations. At this writing (December 13), staff has received one communication from a current tenant at the site, who is concerned about the loss of medical office space and the difficulties of relocating to another space (see Attachment 8). Staff will forward any additional communications to the ZAB at the hearing, and if necessary, address additional issues raised in a supplemental report.

B. Committee Review:

Landmarks Preservation Commission: As noted in Table 3, on September 6, 2012, the LPC considered the proposed demolitions and took no action.

Design Review Committee: As noted in Table 3, the DRC held a preview of the project on August 17, 2012, and granted a favorable recommendation to the ZAB for preliminary design review on September 20, 2012. The DRC's decision was unanimous, and includes the following recommendations for items to be addressed at final design review:

- Show the inclusion of an art element at ZAB. Courtyard or garage door are recommended locations.
- Availability of wireless internet on roof space may attract users.
- Do not put noisy mechanical equipment near open space on the roof.
- Plant street trees on Shattuck to fill in areas where trees are dying or missing.
- Consider wire mesh or glazing on railing to extend views outward.
- Show fastener details for Swiss Pearl at Final Design Review (FDR).
- Detail concrete base carefully, including sealing and treatment for anti-graffiti. There was a recommendation for a tile base, but it was not a majority.
- Provide details for columns and railings at FDR, especially in courtyard space.
- Not sure of multi-color direction; it may need to be simplified. Review at FDR.
- Show tenant sign program at FDR.

V. Issues and Analysis

A. Key Issues:

1. CEQA Determination: As noted above, staff has determined that the project is categorically exempt from the California Environmental Quality Act (CEQA) under the "In-Fill Development Projects" exemption. The project meets all of the requirements of this exemption, as follows:
 - a. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations, with the exception of waivers/modifications and concessions pursuant to State density bonus law. The requested concession requires only 3 feet of building height beyond the maximum otherwise allowed by the Zoning Ordinance.
 - b. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
 - c. The parcels within the project site are already developed and have no value as habitat for endangered, rare or threatened species.

- d. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. Regarding traffic, the project will not exceed significance criteria for any intersections or residential streets. The traffic engineer has reviewed the project's traffic study and concurs with its finding that there will be no significant traffic impacts.
- e. The site is already served by required utilities and public services, which will also adequately serve the project.

Furthermore, the project does not trigger any of the exceptions in CEQA Guidelines Section 15300.2. In particular, the project will not have any significant effects due to unusual circumstances, nor any cumulatively significant impacts (such as traffic), nor will it adversely impact any designated historical resources. The existing buildings are not designated historical resources, and the LPC declined to initiate them for City landmark status at their meeting in September 2012.

The applicant has submitted an analysis of potential air quality impacts and greenhouse gas emissions, and the analysis shows that the project would be consistent with the guidelines of the Bay Area Air Quality Management District.

The applicant also submitted a Phase I report to document potential hazardous materials at the site. This report found no recognized environmental conditions and did not recommend any further investigation. The City's Toxics Management Division has reviewed these reports and concurs with their findings. The site is not included on any list of hazardous waste sites compiled pursuant to Government Code Section 65962.5.

2. Density Bonus: As noted earlier, the project is entitled to a density bonus and two concessions or incentives under Government Code Section 65915. Under the City's density bonus procedures, the project's "base project"² has been calculated at 79 units and 50 feet tall. Based on the applicant's commitment to provide nine affordable units (11.4 percent of the base project), the project qualifies for a density bonus of 35 percent or 28 units. The applicant has requested a bonus of 20 units, for a total of 99 units in the project. In order to accommodate the bonus, the applicant has requested an increase in the building height to 60 feet, which is normally allowed with a Use Permit under Section 23E.68.070.A.

The project is also entitled to two concessions or incentives. The applicant has requested one concession, an additional height increase to 63 feet in order to allow taller ceiling heights and higher rents. State law provides that the City may deny a concession if it finds "the concession ... is not required in order to provide for affordable housing costs ... or for rents for the target [affordable] units...." The City's established procedure for determining whether this finding can be made is

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.

to request a pro forma from the applicant showing the rate of return on investment under four scenarios: (1) base project without affordable units, (2) base project with affordable units, (3) project with density bonus, and (4) project with density bonus and concession(s). This approach shows the cost to the applicant of providing the affordable units, and whether the density bonus and concession compensate the applicant for these costs through additional revenues. This approach supports the main purpose of the Density Bonus Law, which is to promote construction of affordable housing by providing developers with adequate financial incentive to do so.

The applicant’s pro forma is provided in Attachment 6. The City’s Housing and Community Services Department has reviewed the pro forma for accuracy and has concurred with its findings. The pro forma shows that the rate of return would change in the four scenarios described above as follows:

Table 5: Financial Impact of Density Bonus and Concession

		Scenario 1: Base Project	Scenario 2: BMR Units Added	Scenario 3: Density Bonus Added	Scenario 4: Concession Added
Dwelling Units	Market Rate	79	70	90	90
	Affordable	0	9	9	9
	Total	79	79	99	99
Affordable Housing Fee		\$2.2 million*	0**	0**	0**
Ceiling Heights	Residential	8'-6"	8'-6"	8'-6"	9'-0"
	Commercial	12'-0"	12'-0"	12'-0"	13'-0"
Rate of Return		5.09%	4.97%	5.03%	5.10%

Notes:

* Based on adopted fee of \$28,000 per unit times 79 units.

** No fee required based on proposed affordable units.

The rate of return in Scenario 4, which reflects an anticipated two percent increase in rents from the increased ceiling heights requested by the applicant, would exceed the rate of return in Scenario 1 by .01 percent. Therefore, under the procedure described above, the ZAB would be able to make the required finding to deny the concession. However, staff believes it would still be appropriate to grant the concession, for the following reasons:

- Density bonus law does not require that a concession request be denied if the findings of denial could be made.
- The rate of return with the concession is essentially the same as the base project (5.10 percent vs. 5.09), so the concession meets the intent of the City’s policy in that it does not result in a substantial net benefit for the developer.

- The applicant has only requested a bonus of 20 units where he would be entitled to 28 units; if the full bonus had been requested, the City may have had to allow an even taller building height than the proposed 63 feet.
3. Height and Bulk: The proposed height of 63 feet is about 7.5 feet taller than the adjacent Fine Arts Building (2451 Shattuck), which would make it the tallest building in the immediate area. However, the proposed height is appropriate for this location for several reasons:
- As noted above, the DRC has unanimously granted the project a favorable recommendation, and height and bulk are one of the main issues considered by the DRC.
 - The width of Shattuck Avenue, which is one of the widest streets in Berkeley, would reduce the apparent height of the building.
 - The site is located at the southern end of the Downtown and the proposed height would help create a visual “anchor” and prominent southern gateway to the Downtown.
 - The proposed height exceeds the maximum allowed in the C-DMU District by only 3 feet.
 - The blocks immediately to the south are zoned C-SA and allow heights of up to 60 feet, or taller with a Use Permit.

With regard to bulk, the building is well articulated with bays, recesses and varied materials that reduce its bulkiness and lend visual interest to the façade, similar to the adjacent Fine Arts Building.

4. Shadows: The project has been designed to avoid shadows on the courtyard and windows of the adjacent Fine Arts Building by aligning the blank walls on the north side of the building with the blank walls on the south side of the Fine Arts Building, and keeping the majority of the courtyard unobstructed. Due to its height, the building would cast fairly substantial new afternoon and evening shadows on the residential building to the east, primarily during spring, summer and fall months when the sun stays in the west for longer periods of the day. The impact could be as much as several hours, depending on time of year. However, this impact would not be considered unreasonable given that the adjacent property was recently rezoned from residential (R-4) to commercial (C-SA), and the project provides an east setback of 15 feet, where only 5 feet are required. Furthermore, the property to the east would continue to receive adequate sunlight during the morning and midday.
5. Parking: As noted in Table 4, the project exceeds the C-DMU parking requirement by three spaces. Pursuant to Section 23E.68.080.I, the project will make two spaces available to car sharing services such as City Carshare or

Zipcar. The availability of car sharing, in addition to the proximity of transit, jobs, goods and services, and the University, will help reduce car ownership and ensure that parking demand does not exceed the project's parking supply.

In addition, under Section 23E.68.080.F, project residents will not be eligible for Residential Parking Permits (RPPs) for on-street parking, and the nearest non-RPP area is several blocks away. Therefore, in the unlikely event that the project's parking demand exceeds the proposed number of spaces, the lack of RPPs will serve as a "protective" measure that would further discourage use of on-street parking by project residents and help maintain the availability of on-street parking in the neighborhood. The lack of RPPs is also an important measure given that under Section 23E.68.080.G, parking spaces must be leased separately from the dwelling units, a requirement that can promote non-auto travel modes but can be undermined if there is free on-street parking available nearby.

6. Open Space Improvements: Pursuant to Section 23E.68.070.D, the project provides both private open space for project residents, and privately-owned public open space (POPOS) based on the amount of commercial floor area proposed. The proposed POPOS would be located in a roughly 200-square-foot area at the southeast corner of the site, adjacent to the east property line and Dwight Way. The DRC has reviewed and approved the landscaping plan for this area and the other open spaces on the site, subject to further details to be worked out during final design review. Furthermore, the project will be subject to any fee adopted by the City Council to implement the Streets and Open Space Improvement Plan (SOSIP).

B. General and Area Plan Consistency:

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

Compatibility with Design and Scale of Surrounding Area:

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.

Staff Analysis: As discussed in “Key Issues” above, the project is consistent with these policies.

Pedestrian Environment/Landscaping:

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-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.
8. 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.

Staff Analysis: The project would dramatically improve the pedestrian friendliness of the site by removing two unattractive, poorly executed buildings from one of the City’s most important intersections, and construct an attractive, appropriately scaled building with substantial ground floor space that could accommodate a retail or food service use that would generate new pedestrian activity. The project will also foster increased pedestrian and economic activity by increasing the residential population (and potential customer base) of the Downtown.

Affordable Housing:

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

Staff Analysis: As noted earlier, the project would provide nine units affordable to very-low-income households, which would help the City to meet its affordable housing goals.

Sustainability:

10. Policy H-13 Energy Efficiency: Improve the safety and energy efficiency of new and existing homes and apartments.

11. Policy EM-5 "Green" Buildings: Promote and encourage compliance with "green" building standards.
12. Policy UD-33 Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: Pursuant to BMC Section 23E.68.085 and Policy LU-2.1 of the Downtown Area Plan (see below), the project is required to achieve a minimum LEED Gold rating or equivalent. The project has opted to use Green Point Rated, a widely used green building rating system, and has committed to achieving a score of at least 120, which would be equivalent to LEED Gold.

Downtown Area Plan Policy Analysis: The Downtown Area Plan, adopted in 2012, also contains several policies applicable to the project, including the following:

1. Policy LU-2.1—Contributions Required of All Development: New buildings and substantial additions, regardless of height, shall provide the following public benefits, except as noted for historic rehabilitations and adaptive re-use of existing buildings.

Staff Analysis: The project provides all public benefits that were required by Council in the C-DMU zoning, including LEED Gold rating or equivalent, on-site public open space, car share spaces, and transit passes. These benefits are required in the proposed conditions of approval.

2. Policy LU-2.4: Developer Contributions for Open Space: New development shall help pay for streetscape and public open space improvements and maintenance.

Staff Analysis: As discussed in "Key Issues" above, the project will be subject to any SOSIP fee adopted by the Council.

3. Policy LU-3.1: Housing Needs: Accommodate a significant portion of Berkeley's share of regional housing growth as defined by Regional Housing Needs Assessments (RHNA) within the Core Area, Outer Core, Corridor, and Buffer areas, as compared with other appropriate areas in Berkeley.

Staff Analysis: As discussed in "Key Issues" above, the project provides nine very-low-income units within the Buffer area of the Downtown.

4. Policy LU-4.1: Transit-Oriented Development: Encourage use of transit and help reduce regional greenhouse gas emissions, by allowing buildings of the highest appropriate intensity and height near BART and along the Shattuck and University Avenue transit corridors.

Staff Analysis: The project helps encourage transit use and reduce greenhouse gas emissions from motor vehicles by constructing additional housing in close

proximity to transit, jobs, basic goods and services, and the UC campus, and by providing car share spaces and transit benefits. As discussed in “Key Issues” above, the proposed height is appropriate given the width of Shattuck Avenue and the site’s importance as a southern gateway to the Downtown.

5. Policy LU-4.2: Development Compatibility: Encourage compatible relationships between new and historic buildings, and reduce localized impacts from new buildings to acceptable levels. The size and placement of new buildings should: reduce street-level shadow, view, and wind impacts to acceptable levels; and maintain compatible relationships with historic resources (such as streetwall continuity in commercial areas).

Staff Analysis: As discussed earlier, the LPC did not object to the demolition of the existing buildings or forward any comments to the ZAB regarding the building’s relationship to nearby historic resources. Shadows on the public right-of-way will not be excessive because the site is located north of Dwight and east of Shattuck. Therefore, for most of the year the project will cast shadows on the street only in the morning hours, when the sky is often overcast. View impacts will be acceptable given that there are no substantial public vistas currently available across the site. Wind impacts would be less than significant, based on analysis conducted for the Downtown Plan EIR (see Policy LU-1.5).

VI. Recommendation

Because of the project’s consistency with the Zoning Ordinance, General Plan and Downtown Area Plan, its benefits to the Downtown area and minimal impact on surrounding properties, Staff recommends that the Zoning Adjustments Board APPROVE Use Permit #12-10000008 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 13, 2012
3. Shadow Studies
4. Photos
5. Applicant Statement
6. Density Bonus Pro Forma
7. Notice of Public Hearing
8. Correspondence Received

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