



# 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

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FOR BOARD ACTION  
AUGUST 28, 2014

## 1974 University Avenue

**Use Permit 2013-0036 to redevelop an approximately 22,838-square-foot parcel, which includes the demolition of a one-story masonry auto repair building; and the construction of an 8-story, mixed-use building with approximately 8,700 square feet of commercial space on the ground level, a below grade parking garage with 76 vehicle spaces and bicycle storage, and 98 residential units, including 8 available to very low income households.**

### I. Background

#### A. Land Use Designations:

- General Plan: Downtown
- Zoning: C-DMU (Downtown Mixed Use; Buffer Area)

#### B. Zoning Permits Required:

- Use Permit for construction of a new main building with mixed-use development, under BMC Section 23E.68.030;
- Use Permit for construction of >10,000 sq. ft. gross floor area, under BMC Section 23E.68.050
- Use Permit for demolition of a non-residential building, under BMC Section 23E.23C.08.050.A;
- Use Permit to allow an increase of the maximum height of the building from 50 feet to 60 feet maximum, under BMC 23E.68.070.A<sup>1</sup>
- Administrative Use Permit to allow architectural projections to exceed the height limit, under BMC Section 23E.04.020.C;
- Use Permit to establish a quick or full service restaurant >2,000 sq. ft., under BMC Section 23E.68.030.

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<sup>1</sup> The increase in height from 50 to 60 feet also qualifies as a waiver of development standards to accommodate the density bonus units (Govt. Code §25915(e)).

- Administrative Use Permit for alcoholic beverage service (beer and wine) incidental to food service, under BMC Section 23E.68.030

**C. Approvals Under State Density Bonus Law:**

Waivers/Reductions of Development Standards (Govt. Code §65915(e)):

- (1) Increase in maximum building height from fifty (50) feet to seventy (70) feet

Incentives/Concessions (Govt. Code §65915(d)):

- (1) A height increase of 19.5 feet which incorporates:
  - a. A 15-foot-tall, commercial ground floor with 8,700 square feet of commercial space, in order to provide a vibrant, pedestrian-oriented, commercial presence at a major intersection of the Downtown
  - b. A half-foot increase in residential floor to floor height from ten feet up to ten and a half feet (10'-6") in order to maintain the proposed 8'-9" interior floor to ceiling height. This would result in a total of four and half feet (4'-6"). The increase in height is due to the change in structural system and fire-proofing requirements from Type V wood to Type 1 concrete and steel construction for high rise buildings.
- (2) An increase in average unit size on the top residential floor from 930 square feet to 1,394 square feet, which would allow development of a full upper story.

**D. CEQA Determination:** Project is eligible for streamlined review for infill projects pursuant to CEQA Guidelines Section 15183.3. The project is found to have no significant effects on the environment that have not either already been analyzed in a prior EIR or that are more significant than previously analyzed, or that uniformly applicable development policies would not substantially mitigate. Pursuant to Public Resources Code Section 21094.5, CEQA does not apply to such effects. (See Attachment 3 for Appendix N, Infill Environmental Checklist Summary, and Appendix M, Satisfaction of Performance Standards per Public Resources Code Section 21094.5.)

**E. Parties Involved:**

- Applicant/ Architect Dave Johnson, Johnson Lyman Architects, 1375 Locust Street, #202, Walnut Creek, CA 94596
- Property Owner Bridgestone Retail Operations, LLC, c/o Bill Schrader, 164 Oak Road, Alamo, CA 94507

Figure 1: Vicinity Map

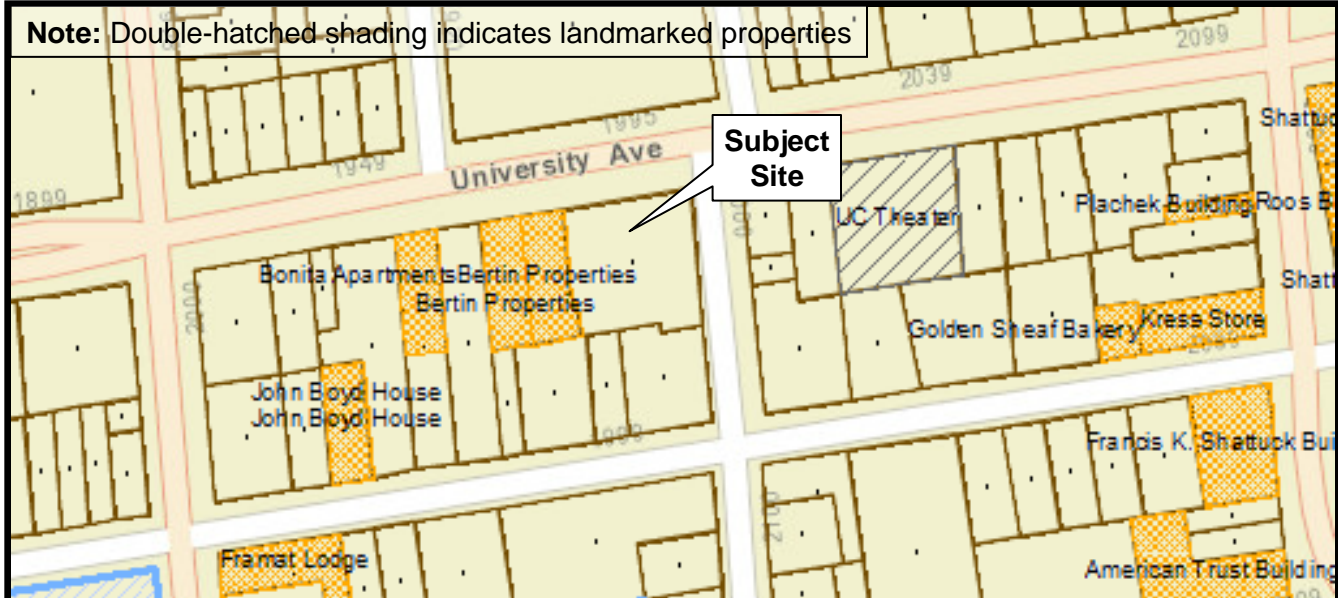
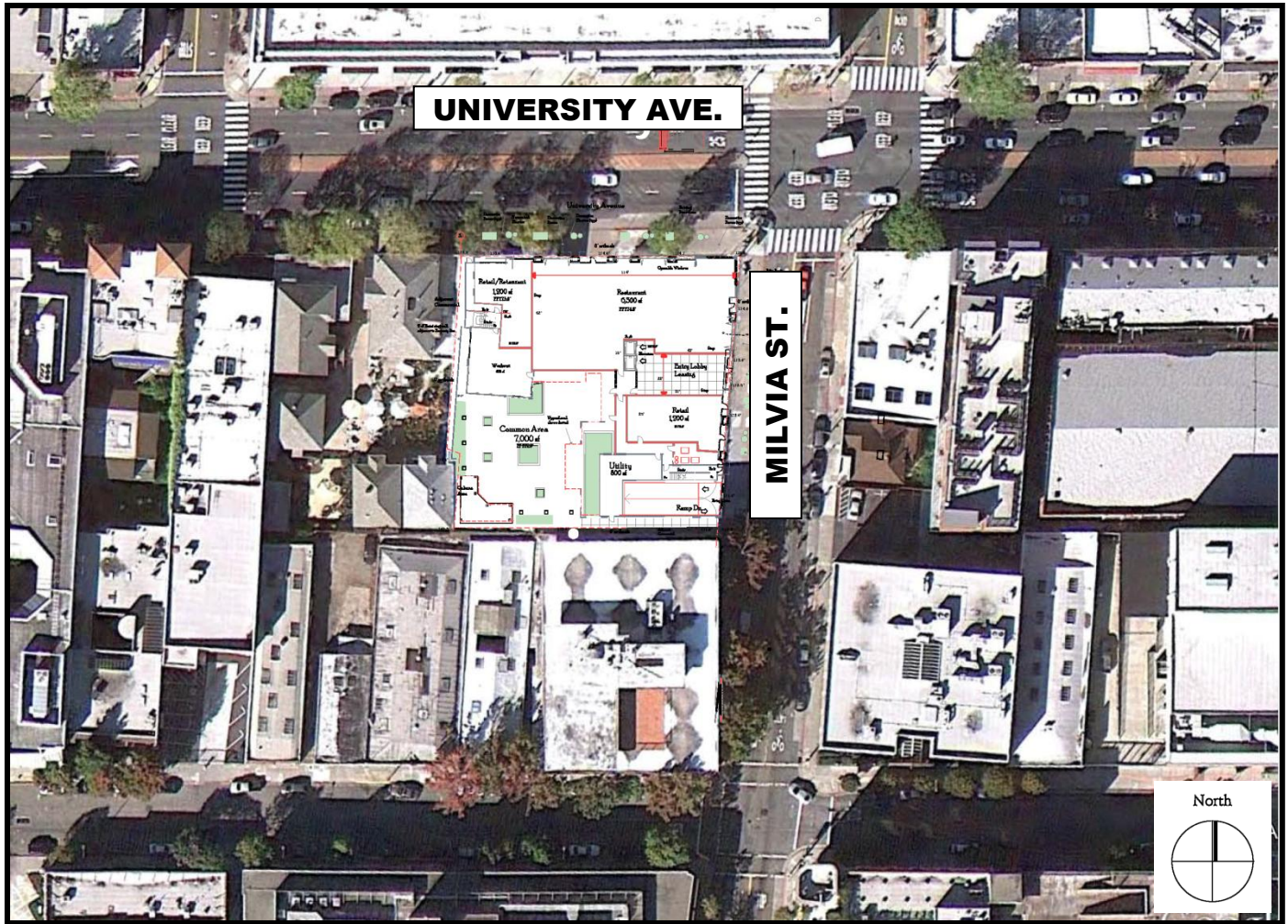


Figure 2: Proposed Site Plan

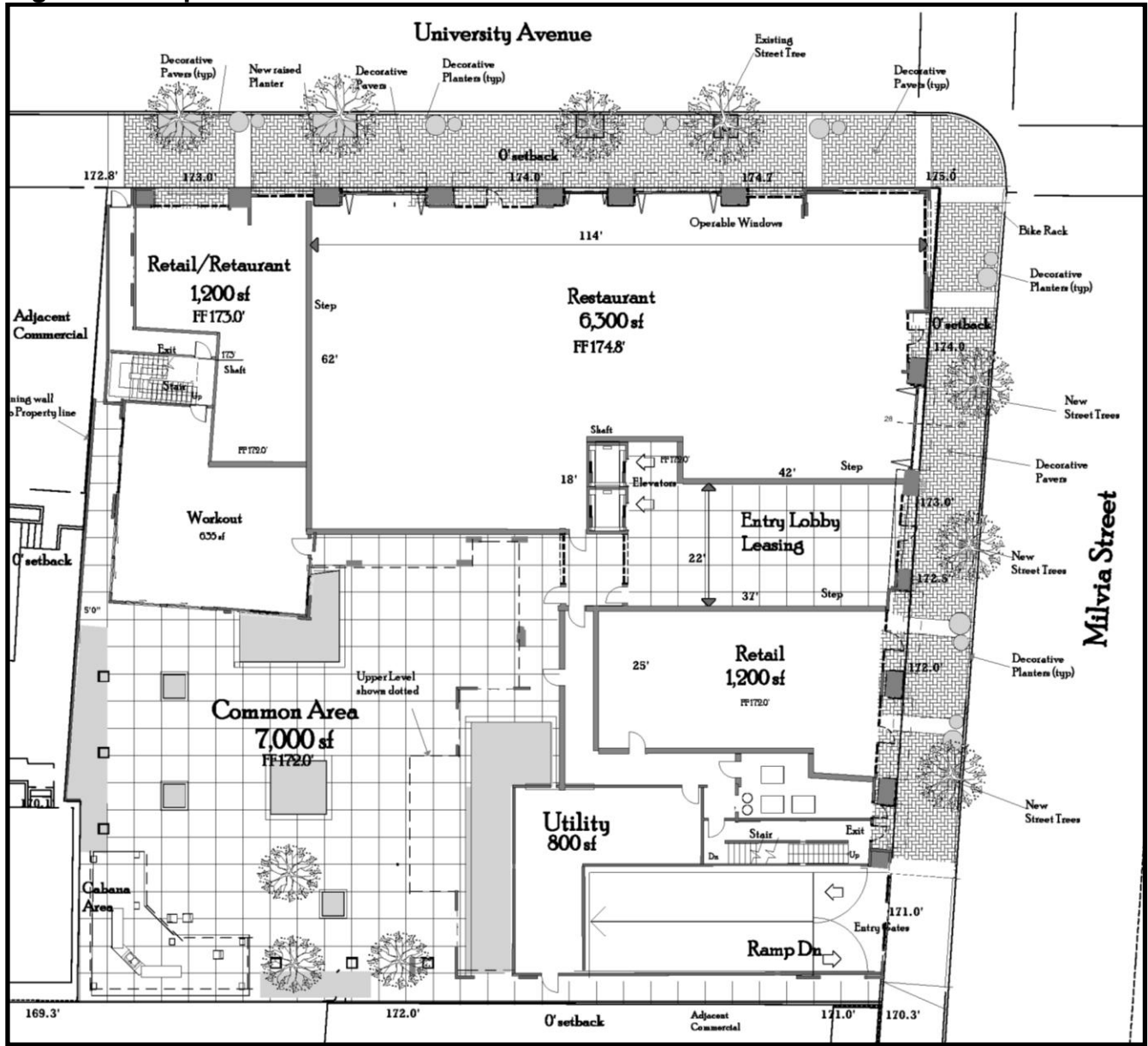


Table 1: Land Use Information

Location		Existing Uses	Zoning District	General Plan Designation
Subject Property		Auto Repair and Auto Parts Retail Store	C-DMU (Buffer Sub-Area)	Downtown
Surrounding Properties	North	Office	C-DMU (Core Sub-Area)	Downtown
	South	Mixed-Commercial	C-DMU (Corridor and Buffer Sub-Areas)	Downtown
	East	Mixed-Commercial, Residential	C-DMU (Core Sub-Area)	Downtown
	West	Mixed-Commercial	C-DMU (Outer Core Sub-Area)	Downtown

**Table 2: Special Characteristics**

Characteristic	Applies to Project?	Explanation
Alcohol Sales/Service	Y	Incidental service of beer and requested at proposed full-service restaurant.
Density Bonus	Y	The project qualifies for, and will incorporate, 35% density bonus units with accompanying modifications and two concessions.
Historic Resources	N	The building proposed for demolition does not meet the criteria for the California Register or a City of Berkeley Landmark. There is an adjacent landmark property to the west.
Affordable Housing	Y	Project will provide 11% BMR units to Very Low Income families.
Soil/Groundwater Contamination	Y	The project site is included on a list compiled pursuant to Section 65962.5 of the Government Code. Remediation of the project site has been completed; standard soil/groundwater conditions of approval (Soil and Groundwater Management Plan) will deal with the likelihood of encountering residual contamination during construction activity.
Green Building	Y	Project is required under C-DMU zoning to qualify for a minimum LEED Gold rating or equivalent.

**Table 3: Project Chronology**

Date	Action
July 26, 2013	Application Submitted
September 19, 2013	DRC Preliminary Meeting
October 17, 2013	DRC Preliminary Meeting Continued
December 5, 2013	LPC Demo Referral Meeting
March 20, 2014	DRC Preliminary Meeting Continued; favorable recommendation granted
April 24, 2014	ZAB Preview Meeting
July 28, 2014	Application Deemed Complete
August 13, 2014	Public hearing notices mailed/posted
August 28, 2014	ZAB hearing
September 26, 2014	PSA deadline <sup>1</sup>

1. Project must be approved or denied within 60 days after being determined to be exempt from CEQA, or 60 days after adoption of a negative declaration, or 180 days after adoption of an EIR (Govt. Code Section 65950).

**Table 4: Development Standards**

Standard BMC Sections 23E.68.070-080		Existing	Proposed	Permitted/ Required	
Lot Area (sq. ft.)		23,053	23,053	---	
Gross Floor Area (sq. ft.)		2,300	113,385	---	
Floor Area Ratio		0.1	6.13	---	
Dwelling Units	Base Project	---	72	---	
	VLI Affordable	---	8	---	
	Density Bonus	---	26	26 <sup>(2)</sup>	
	Total	0	98	---	
Building Height	Average (ft.)	22	89.5	---	
	Maximum (ft.)	22	89.5 + 3.5 parapet	50 + 5 parapet 60 + 5 parapet (with Use Permit)	
	Maximum Architectural Projection	---	94	(With Administrative Use Permit) <sup>(3)</sup>	
	Stories	1	8	---	
Building Setbacks (ft.) <sup>(1)</sup>	Front (Milvia)		100	0	0 - 5 max. (building height ≤ 20') 0 (building height >20'-≤75') 15 (building height >75')
	Rear		0	0 up to 78' 5 above 78'	0 (building height ≤ 20') 0 (building height >20'-≤75')
	Street Side (University)		5	0	---
	Interior Side (distance from lot frontage)	0-65'	0	5	0 (building height ≤75')
		>65'	0	5	0 (building height ≤ 20') 5 (building height >20'-≤75')
Lot Coverage (%)		10	71	---	
Usable Open Space (sq. ft.)	Residential	n/a	8780	80 per unit 7,840 total	
	Commercial (privately owned public open space)	n/a	0	1 per 50 sq.ft 174 total	
Parking	Automobile	40	76	33 for DUs: 1:3 units 13 for commercial: 1.5:1K sqft	
	Vehicle Sharing	0	2	2 of the 46	
	Bicycle	0	16 court yard 65 garage level 10 R.O.W. <sup>(3)</sup>	4 for commercial: 1:2K sqft	

(1) All setbacks may be modified by a Use Permit

(2) A project qualifies for a 35% density bonus when 11% of the units are designated Very Low Income

(3) No such architectural element shall represent more than fifteen percent (15%) of the average floor area of all of the building's floors; and no tower or similar structure shall be used as habitable space or for any commercial purpose, other than that which may accommodate the mechanical needs of the building (BMC §23E.04.020.C)

(4) Number and location subject to review and approval by Department of Public Works

## II. Project Setting

### A. Neighborhood/Area Description:

This site is located in the Buffer sub area of the C-DMU Downtown Mixed Use zoning district, at the southwest corner of Milvia Street and University Avenue. The area is characterized by a mixture of commercial and mixed-use buildings. The site is one quarter mile from the Downtown Berkeley BART station, and there is a high level of transit service and pedestrian activity.

### B. Site Conditions:

The project site is an almost square, 22,838-square-foot lot at the southwest corner of University Avenue and Milvia Street. The lot is developed with a 7,352-square-foot, single-story masonry building located along the western portion of the parcel. The building use is divided between a Firestone auto repair and auto parts retail shop. The remaining portion of the lot is a paved, surface parking lot.

## III. Project Description

The proposed project would demolish the existing Firestone auto repair/retail building and construct a new mixed-use building. The new building would have the following main components:

- Below grade parking for 76 vehicles, including 6 micro car spaces, 12 three-car stacking units, and 8 two-car stacking units;
- Seven residential levels with a total of 98 units: 36 one-bedroom and 62 two-bedroom;
- Private 7,000-square-foot interior courtyard and 635-square-foot workout room;
- 7,500 square feet of potential full-service restaurant space, with incidental service of beer and wine; this space may also be used for retail;
- 1,200 square feet of additional commercial space

## IV. Community Discussion

### A. Neighbor/Community Concerns:

Prior to submitting the application to the City, the applicant erected a yellow pre-application poster at the site. On August 9, 2013, the developer sent invitations to all neighboring owners and occupants to a community meeting that he held on August 14 at the project site. No one attended. Since the meeting, the developer has met individually with many of the surround business and land owners to review the proposed project. Two weeks prior to the ZAB preview on April 24, 2014, the City mailed public hearing notices. On August 13, 2014, the City sent out public hearing notices to adjoining property owners and occupants, and to interested neighborhood organizations. Since project submittal, staff has received a few letters of support for the project. See Attachment 10 for all public correspondence.

**B. Landmarks Preservation Commission:**

The project involves demolition of a commercial building over 40 years in age. Pursuant to BMC Section 23C.08.050.C, the proposed demolition was brought before the Landmarks Preservation Commission (LPC) for review prior to consideration of the Use Permit. At the December 5, 2013 LPC meeting, the LPC took no action to initiate a Landmark or Structure-of-Merit designation.

**C. Design Review Committee:**

The Design Review Committee (DRC) held a preliminary review of the project on September 19, 2013; October 17, 2013; and March 20, 2014. At the March 20<sup>th</sup> meeting the DRC made a favorable recommendation to ZAB (6-0-0-0).

**V. Issues and Analysis**

**A. Key Issues:**

1. CEQA Determination: On January 4, 2013 the Secretary for the California Natural Resources Agency adopted CEQA Guidelines implementing Public Resources Code Section 21094.5 and 21094.5.5 (SB 226—Infill Streamlining) developed pursuant to SB 226 (Simitian, 2011) . The purpose of the guidelines is to streamline the CEQA process for qualifying urban infill projects that meet the newly adopted standards by limiting the topics subject to review at the project level where the effects of infill development have been addressed in a planning level decision or by uniformly applicable development policies.<sup>2</sup>

Pursuant to the newly adopted guidelines (§15183.3), staff has determined that the project is eligible for the streamlining procedures in that:

- i. It is located in an urban area on a site that has been previously developed and that adjoins existing qualified urban uses on at least seventy-five percent of the site's perimeter.
- ii. It satisfies the performance standards provided in Appendix M—see Attachment 3; and
- iii. It is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in a community with a Sustainable Communities Strategy (Plan Bay Area), which was approved on July 18, 2013.<sup>3</sup>

Through Completion of Appendix N: Infill Environmental Checklist, staff has determined that the proposed infill project would not have any significant effects on the environment that either have not already been analyzed in a prior EIR or that are more significant than previously analyzed, or that uniformly applicable development policies would not substantially mitigate. Pursuant to Public Resources Code Section 21094.5, CEQA does not apply to such effects.

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<sup>2</sup> The updated Guidelines can be found: [http://opr.ca.gov/s\\_sb226.php](http://opr.ca.gov/s_sb226.php)

<sup>3</sup> For more information on Plan Bay Area, see: <http://onebayarea.org/regional-initiatives/plan-bay-area.html>



2. Density Bonus and Concessions: Based on the developer's commitment to include below market rate (BMR) units in the project, the project qualifies for a density bonus. Using the project plans submitted by the applicant in August 2013, staff calculated a "base project" of 79,895 square feet, with a total of 72 (72.77) "base" dwelling units for this site. The Base Project is the version of the project that could be built without any modification of development standards under the Zoning Ordinance, using the average unit size proposed by the applicant prior to the changes in project design as a result of the DRC's recommendations. The current calculation is derived from the number of those average sized-units that could be accommodated in five residential floors within the 50-foot height limit of the C-DMU Buffer area,<sup>4</sup> minus square-footage along University Avenue, which is listed as a public-serving frontage in the Downtown Area Plan (DAP).<sup>5</sup>

Based on the applicant's commitment to provide 11 percent of the base project, or eight units, affordable to Very Low Income families ( $\leq 50\%$  AMI), the project qualifies for a 35 percent density bonus, or 26 units, for a total of 98 dwelling units. The project's density bonus calculations and illustrative graphics are provided in Attachment 4.

In order to accommodate the density bonus units, the applicant proposes to add two residential stories, which would increase the building height to seven stories and 70 feet.<sup>6</sup>

The project is also entitled under density bonus law to two "concessions or incentives," unless the ZAB finds that the concessions are "not required in order to provide for affordable housing costs."<sup>7</sup> The first concession requested by the applicant is for a 19.5-foot increase in building height above the 70-foot height achieved through the density bonus.<sup>8</sup> This additional height would incorporate:

- A 15-foot-tall, commercial ground floor with 8,700 square feet of commercial space, in order to provide a vibrant, pedestrian-oriented, commercial presence at a major intersection of the Downtown.
- A half-foot increase in residential floor to floor height from ten feet up to ten and a half feet (10'-6") in order to maintain the proposed 8'-9" interior

<sup>4</sup> An amendment to the 2010 California Building Code permitted residential (R) occupancies in the podium level of a building; previous to 2010, R occupancies were prohibited (Speciation Provisions Section 509). Therefore, to be in compliance with State Density Bonus law, in calculating the "maximum allowable residential density" of a parcel, residential units are assumed in the podium level unless otherwise prohibited or requiring a discretionary permit by the Zoning Ordinance.

<sup>5</sup> The DAP identifies appropriate uses for street-facing street-level uses along Public-Serving Frontages that will encourage high levels of foot traffic and visual/physical connections between public and interior space (DAP Goal LU-1(c)).

<sup>6</sup> Government Code Section 65915(e)(1) allows an applicant to submit to the City a proposal for waiver or reduction of any development standard, and states that in no case may a city apply any development standard that will have the effect of physically precluding the construction of a housing development project that qualifies for a density bonus.

<sup>7</sup> Government Code Section 65915(d)

<sup>8</sup> The total proposed height of the building is 94 feet, which includes a 3.6-foot tall parapet allowed by right (BMC §23E.68.070.A) and a 94-foot architectural tower element that is permissible upon approval of an Administrative Use Permit per BMC §23E.04.020.C.

floor to ceiling height. The increase in height is due to the change in structural system and fire-proofing requirements from Type V wood to Type 1 concrete and steel construction for high rise buildings that will be required with the addition of a 15-foot tall ground floor.<sup>9</sup>

The second requested concession would allow for an increase in actual average unit size<sup>10</sup> on the top floor from the 930 square feet presented in the October 2013 plan submittal, up to approximately 1,394 square feet. The increase in unit size would allow for development of a full seven stories of residential units as opposed to six and three quarters stories.<sup>11</sup> The result would provide larger units, more suitable for families of different sizes.

Government Code Section 65915(d) provides that the City may only 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 to request a *pro forma* from the applicants showing the rate of return on investment (ROI) under four scenarios:

1. Base project without affordable units (but with housing mitigation fee)
2. Base project with affordable units (and without fee)
3. Project with density bonus but not concession(s)
4. Project with density bonus and concession(s)

This approach shows the cost to the applicants of providing the affordable units (in terms of impact to ROI), and whether the density bonus and concession(s) compensate the applicants 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 offsetting some of the costs associated with this type of development.

The applicant hired Economic & Planning Systems (EPS) a professional land economics consulting firm to conduct a development feasibility review (pro forma) for the proposed project (see Attachment 5). A third party consultant, the Chief Economist at PlaceWorks, peer reviewed the pro forma to verify the assumptions and calculations in the analysis. (See Attachment 6 for the peer reviewer comments, the applicant’s response, and the final peer review summary.) The pro forma shows that the project’s ROI would change in the four scenarios described above as follows:

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<sup>9</sup> The California Building Code defines a high-rise building as one having floor used for human occupancy located more than 75 feet above the lowest floor level having building access (§403).

<sup>10</sup> “Actual” average unit size is calculated by the square-footage within the unit, as opposed to the average unit size used for the density bonus calculations, which includes all areas of circulation and residential amenities.

<sup>11</sup> As proposed, the top floor is not a “full” story, but recessed from the building façade along the street frontages with the exception of the northeast tower element. The square footage of the proposed eighth story is 13,550 square feet, while that of floors two through seven is 14,900 square feet.

**Table 5: Financial Impact of Density Bonus and Concessions**

		<b>Scenario 1: Base Project</b>	<b>Scenario 2: BMR Units Added</b>	<b>Scenario 3: Density Bonus Added</b>	<b>Scenario 4: Concessions Added</b>
Dwelling Units	Market Rate	72	64	90	90
	BMR	0	8	8	8
	Total	72	72	98	98
<b>Return on Investment (%)</b>		<b>6.1</b>	<b>6.0</b>	<b>5.4</b>	<b>6.3</b>

Scenario 1 is the rate of return on a project with 72 market rate unit with no retail. The ROI is reduced in Scenario 2 due to the inclusion of 8 very low income BMR units within the project. Although Scenario 3 includes the addition of 26 density bonus units, the increase in construction costs associated with project construction from wood to steel frame produces the lowest ROI (5.4%) of the four scenarios. As shown above, the ROI in Scenario 4 (the proposed project with ground floor commercial uses and increased unit size on the top floor) would increase the ROI back to at least the ROI in Scenario 1, which is not attainable through the density bonus alone. Therefore, there is not substantial evidence to support a finding that the requested concessions are not required in order to provide for affordable housing costs or for rents for the target [affordable] units.

3. Neighborhood Compatibility: The neighborhood is a commercial district with a range of one- to five-story buildings, with a six-story building at the beginning stages of construction (1931-35 Addison). The subject lot, though at the edge of the Buffer area, is located at what could be considered the northwest corner of the Downtown. The Design Review Committee worked hand and hand with the developer to achieve a 'distinguished' building design, as it will be the first view of the Downtown for persons coming into the City on University Avenue.

Although the L-shaped design developed in consultation with the DRC results in an overall taller structure, it successfully distributes the massing towards the street frontages and major thoroughfares of University Avenue and Milvia Street, providing what is promising to be a vibrant commercial ambience. By siting the large (7,000 sq. ft) open courtyard at the southwest corner, the project design respects the adjacent rose garden and development pattern of smaller-scale buildings located to the south and west.

4. Sunlight/Shadows: The project proposes to construct an eight-story, 92-foot structure on a lot that currently houses a one-story masonry building and large surface parking lot. As such, the project will create greater shadowing impacts over existing conditions. To assess the shadowing impacts, the applicant submitted shadow studies for the project (see Attachment 2). The studies illustrate that under proposed conditions throughout the year in the morning hours, the eastern edge of the adjacent rose garden would be shaded; impacts similar to current conditions. The biggest shading impacts will be on the UC Berkeley Golden Bear Building, located to the north of the project site across University Avenue (1955 University). The building would experience shading on its southern façade during the winter months, from the morning through early

afternoon. Other buildings that will experience increased shading in the afternoon/evening hours throughout the years are those across Milvia Street. The proposed shadows will primarily affect commercial buildings. The residential uses that will experience increased shading are the units located on the western side of the Toriel Building (2004 University Avenue) and the apartment on the second story of 1949 Milvia. The Toriel Building will experience shadows throughout the year in the late afternoons/evenings, while the 1949 Milvia apartments will only experience shading in the late afternoon during the winter months. The shading impacts of the project are to be expected in the Berkeley downtown urbanized area, and as they are limited to certain hours at various times of the year, the shadow impacts are not detrimental.

5. Parking/Traffic: The project proposes 76 vehicle parking spaces in the basement level garage. This is 30 more spaces than the 46 spaces required (13 commercial, 33 residential). In accordance with the City's Climate Action Plan, as well as to advance more general sustainability goals, the new C-DMU zoning district employs strategies to reduce vehicle reliance and promote alternative modes of transportation. In accordance with these policies, the project proposes installation of three electric vehicle charging stations and bicycle storage for 65 bicycles in the garage, and additional secure parking for 16 bicycles at the courtyard level.

The project will result in the creation of up to three new metered on-street parking spaces by eliminating three existing curb cuts. Additionally, as required by the new zoning standards and as conditioned in the project approval, parking spaces will be leased separately from the units; two of the spaces will be offered to a vehicle sharing company; occupants of the building will not be eligible for Residential Parking Permits (RPP); and the property owner will be required to provide one of the following transportation benefits at no cost to every residential unit: a pass for unlimited local bus transit service, or a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. The abundance of bicycle parking, the provision of transit passes, the ineligibility for RPPs, as well as the project's proximity to public transit, jobs, goods and services, and the University, will help reduce car ownership and help ensure that parking demand does not exceed the project's parking supply.

Traffic impacts for the projected Downtown build out were analyzed as part of the Final Environmental Impact Report for the Berkeley Downtown Area Plan (April 2009, State Clearinghouse Number 2008102032). The subject project was included in the projected build out (it would bring the total of approved housing units within the Downtown Area to 460, which is less than 15% of the anticipated 3,100 new units). Regardless, the applicant submitted both a Trip Generation and Parking Analysis (Attachment 7), as well as a Transportation Impact Analysis (Attachment 3, Exhibit B) prepared by Abrams Associates and peer reviewed by the City Traffic Engineer. The TIA concluded that the project would not create any significant transportation impacts according to established standards and that no off-site traffic or transportation mitigations would be required.

## B. General and Area Plan Consistency:

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

1. Policy LU-3 Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy 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.
3. 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.

Staff Analysis: Please see discussion under Key Issue 3 above.

4. Policy H-1 Low and Moderate Income Housing: Increase the number of housing units affordable to low- and moderate-income Berkeley residents.
5. Policy H-19–Regional Housing Needs: Encourage housing production adequate to meet the housing production goals established by ABAG’s Regional Housing Needs Determination for Berkeley.

Staff Analysis: As noted earlier, the project would provide eight units affordable to Very Low Income households and a total of 98 dwelling units. The project will, therefore, help the City to meet its affordable and general housing goals.

6. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

Staff Analysis: Please see discussion under Key Issue 4 above.

7. Policy H-13 Energy Efficiency: Improve the safety and energy efficiency of new and existing homes and apartments.
8. Policy EM-5 "Green" Buildings: Promote and encourage compliance with "green" building standards.
9. 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), building construction will attain a LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC).

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

1. Policy ES-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.<sup>12</sup>

2. Policy LU-1.1: – Downtown Uses: Encourage uses that allow people who live, work and learn in Downtown to meet daily needs on foot.

Staff Analysis: The project will provide viable ground level commercial uses that will encourage foot traffic and will create a vibrant connection with the public-serving frontage.

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.

4. Policy LU-3.2 – Housing Diversity & Affordability: Offer diverse housing opportunities for persons of different ages and incomes, households of varying size and the disabled, and give Downtown a significant role in meeting Berkeley's continuing need for additional housing, especially affordable housing.

Staff Analysis: The project will construct 98 dwelling units, including eight that are available for households of Very Low Income (less than 50% of the AMI). The project is located in the Downtown Buffer area that is well serviced by public transportation and is within walking/biking distance to Berkeley City College and UC Berkeley campus.

5. 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"

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<sup>12</sup> Note: the Board is not required to make finding of 'significant community benefits' per BMC §23E.68.090 as there is no Use Permit request for a building over 75 feet in height under Section 23E.68.070.B. Rather, the proposed height of this building is being requested under State Density Bonus Law (Government Code §§ 65915-65918) and, if granted, would be pursuant to that law which specifies that "[t]he granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval." (Government Code § 65915(j).)

above, the proposed height is required by law to accommodate the project's density bonus units and is appropriate as it is on University Avenue, one block west of Shattuck Avenue, and within ¼ mile of the Downtown Berkeley BART station.

6. 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 building or forward any comments to the ZAB regarding the building's relationship to nearby historic resources. The project massing is designed to respect the lower density development and historical properties immediately to the west and will continue the commercial streetwall of the historic property. As discussed in Key Issue 4 above, shadows on the public right-of-way will not be excessive on the public right-of-way. 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) and supplemented by the wind analysis submitted by the applicant, which was prepared by a consulting meteorologist (see Attachment 8).

## VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board:

APPROVE Use Permit 2013-0036 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 with Shadow Studies, dated August 15, 2014
3. CEQA Appendix M & N, Infill Environmental Checklist Summary, per Public Resources Code § 21094.5  
Exhibit A – Greenhouse Gas Analysis by LSA, September 2013  
Exhibit B – Transportation Impact Analysis, by Abrams Associates, dated February 10, 2014
4. Density Bonus Calculations and Graphics
5. Development Feasibility Review, by EPS, dated August 1, 2014
6. Peer Review of Development Feasibility Review:  
Exhibit A – Peer Review of the Economic Feasibility Analysis, by PlaceWorks, dated June 18, 2014  
Exhibit B – Development Feasibility Peer Review Response, by EPS, dated July 28, 2014  
Exhibit C – Peer Review Final Summary of Pro Forma Assumptions, by PlaceWorks, dated July 13, 2014
7. Trip Generation and Parking Analysis, by Abrams Associates, dated August 26, 2013
8. Wind Analysis, by D. Ballanti, dated July 24, 2014
9. Notice of Public Hearing

10. Correspondence Received

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