



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
JUNE 25, 2015

2631 Durant Avenue

Use Permit #2013-1000016 to demolish a 2-story, 18-dwelling unit, rent controlled apartment building and construct a 5-story, 56-dwelling unit apartment building.

I. Background

A. Land Use Designations:

- General Plan: High Density Residential (HDR)
- Zoning: Residential Southside Mixed Use District (R-SMU)

B. Zoning Permits Required:

- Use Permit to allow demolition of 18 existing units, under BMC Section 23C.08.010;
- Use Permit to allow demolition of a residential building, under BMC Section 23C.08.020;
- Use Permits to eliminate controlled rental units, under BMC Section 23C.08.030.E;
- Use Permit to allow more than 4-stories, under BMC Section 23D.52.070.C.2;
- Use Permit to allow less than a 10-foot rear yard setback, under BMC Section 23D.52.070.E.1; and
- Use Permit to allow more than 40% lot coverage, under BMC Section 23D.52.070.F.1.

C. CEQA Determination: The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq. and California Code of Regulations, Section 15000, et seq.) pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development Projects”).

D. Parties Involved:

- Applicant and owner: OPCHA, LLC, 1415 Summit Road, Berkeley, CA 94708

Figure 1: Zoning Designations

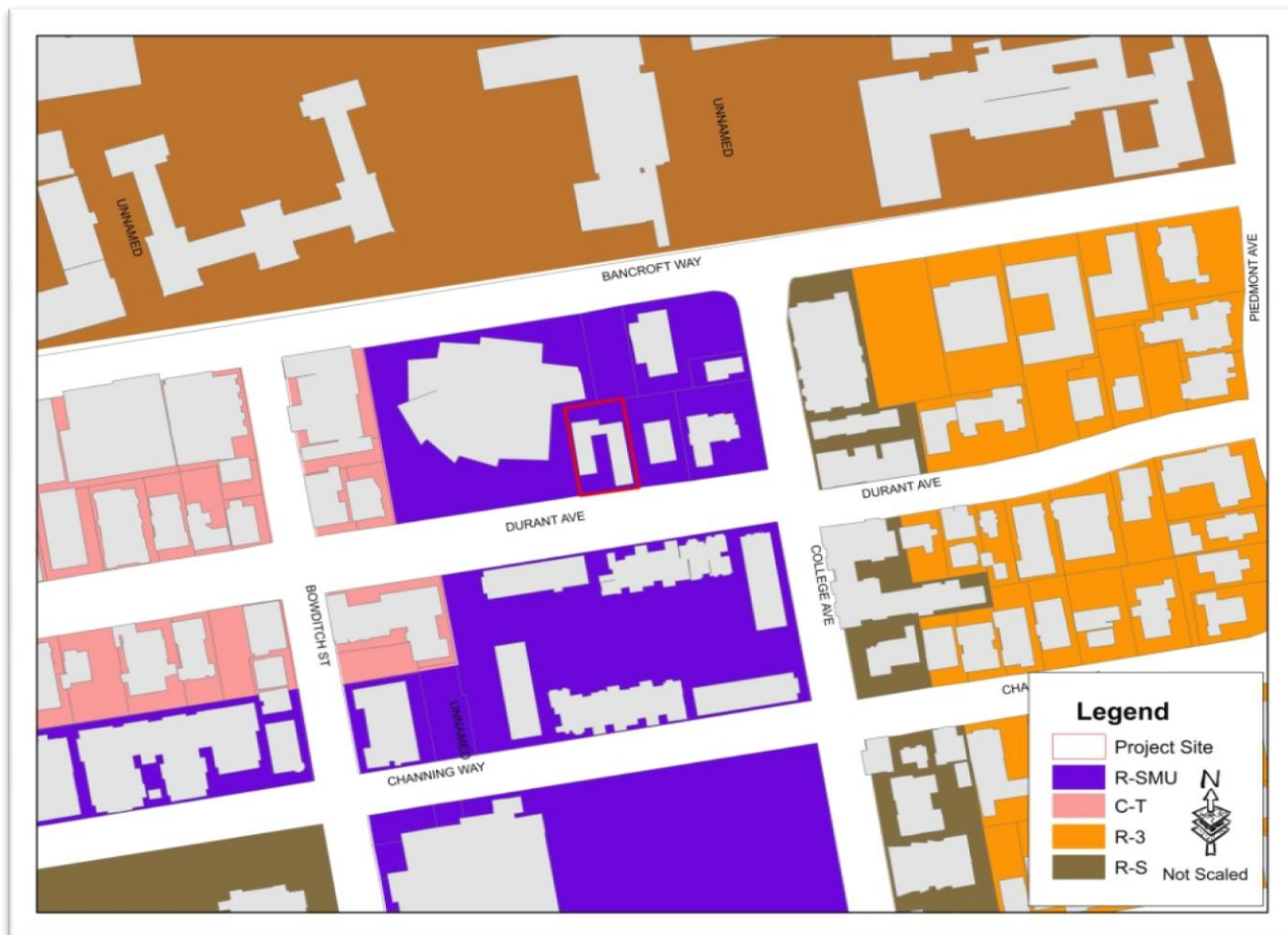


Figure 2: Vicinity Map

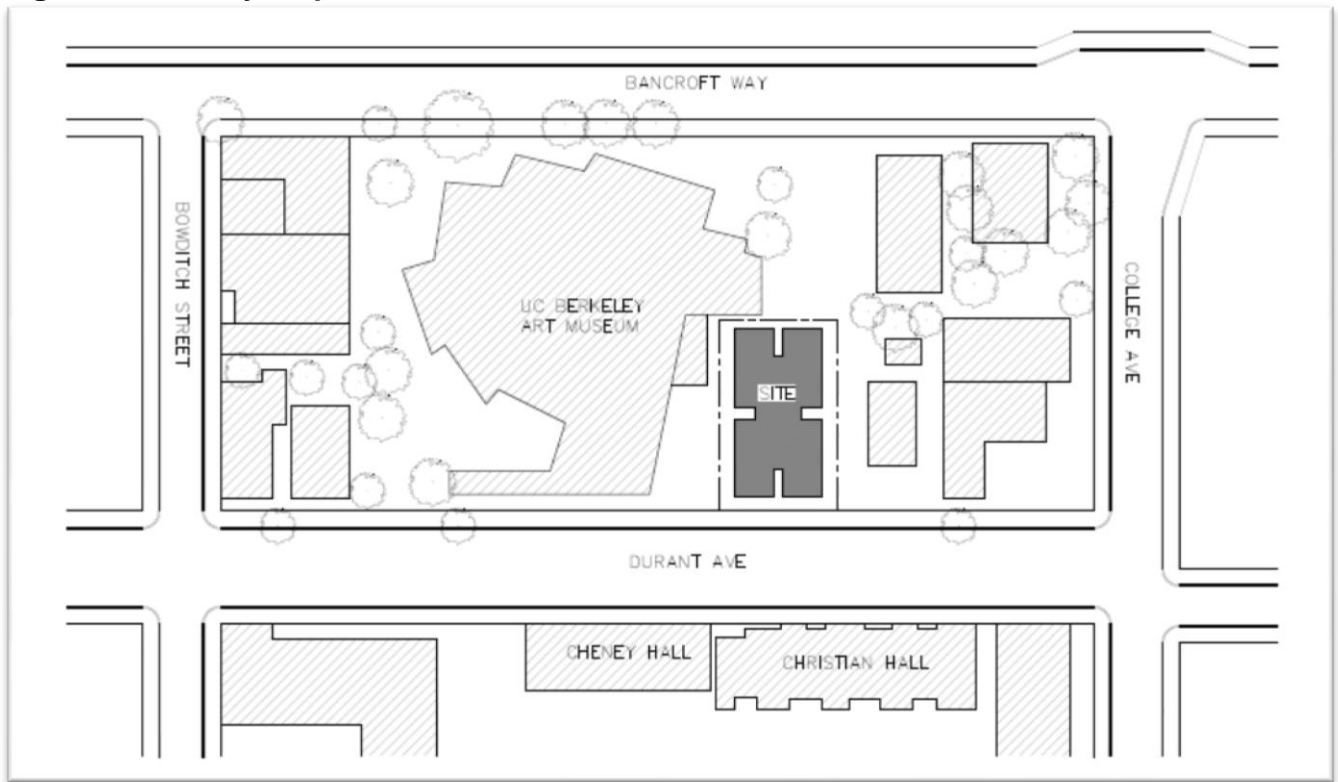


Figure 3: Proposed Ground Floor Plan

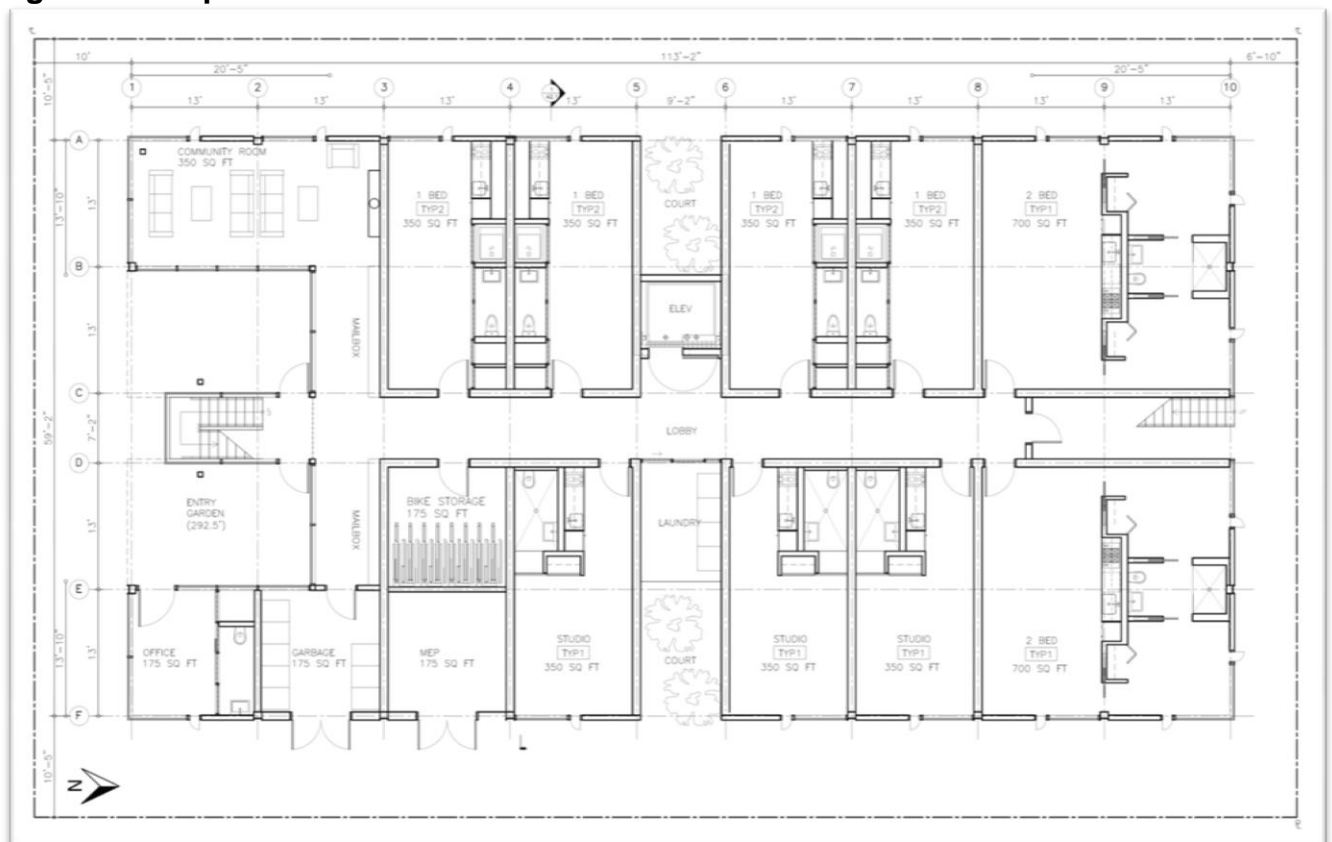


Figure 4: Proposed Roof Plan

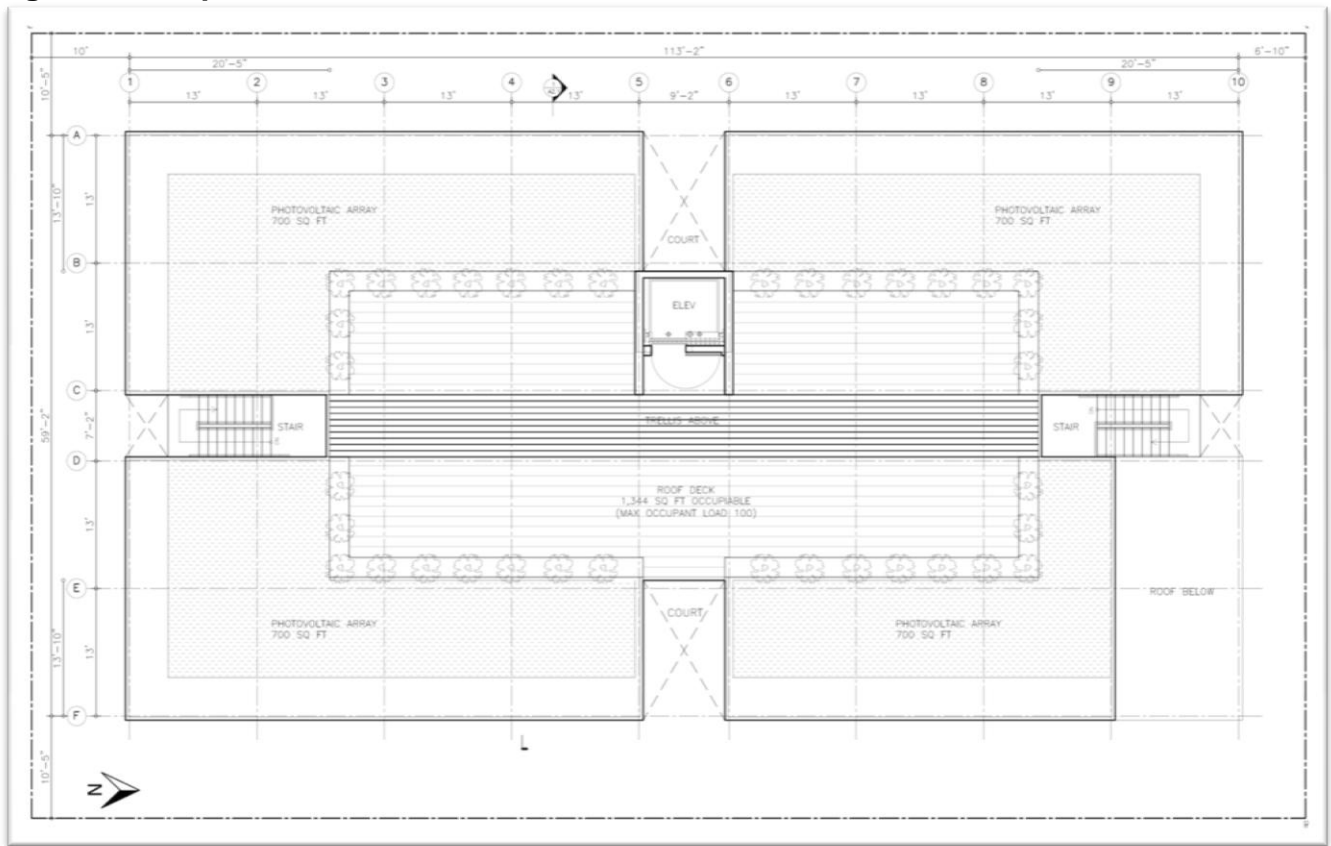


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		3-story building with 18 dwellings	Residential Southside Mixed Use District (R-SMU)	High Density Residential (HDR)
Surrounding Properties	North	Surface parking lot and adjacent hotel		
	South	Group Living Accommodation: UC Student Dormitory		
	East	Berkeley Art Museum (Landmark/Structure of Merit)		
	West	Group Living Accommodation: Theta Xi Fraternity (Landmark/Structure of Merit)		

Table 2: Special Characteristics

Characteristic	Applies?	Explanation
Affordable Housing Mitigations (Per BMC 22.20.065)	Yes	The proposed project is subject to conformance to BMC Section 22.20.065.
Creeks	No	There are no creeks within 30 feet of the site.
Green Building Score	Yes	The project achieves a total of 90 points where a minimum of 50 points is required.
Historic Resources	No	The project site is not a historic resource.
Oak Trees	No	None on the project site.
Rent Controlled Units	Yes	The project site currently contains 18 units subject to the City's Rent Stabilization Program. The applicant voluntarily proposes to subject 20 of the new units to a form of rent control and rent increases would be voluntarily limited to 65% of the increase in the CIP in the region. This agreement would be voluntarily executed with the Rent Stabilization Board.
Seismic Hazards	No	The site is not within a designated Liquefaction Zone; a geotechnical engineering investigation is not required by the State Seismic Hazards Mapping Act.
Soil/Groundwater Contamination Southside Area Plan: - EIR - Residential Parking Permit (RPP)	No Yes No	None on the project site Project Conditions includes relevant Southside Area Plan Mitigation Measures Occupants of new dwelling units shall not be eligible for RPP

Table 3: Project Chronology

Date	Action
3/5/2013	City received application to demolish existing 18 unit building and construct new 6 story, 71 unit apartment building.
9/12/2013	Because the building did not appear to meet historical resource criteria, the Landmarks Preservation Commission took no action with regard to the building.
9/19/2013	Design Review Committee conducted a Preliminary Design Review of a 6-story 71-unit apartment building, and requested modifications to the design.
5/15/2014	City received revised application to demolish existing 18 unit building and construct new 5 story, 56 unit apartment building, DRC hearing continued to July 17, 2014
5/15/2014	Design Review Committee: Preliminary Design Review, Continued to July 17, 2014
7/17/2014	Design Review Committee: Preliminary Design Review; Continued to August 21, 2014
8/21/2014	Design Review Committee: Preliminary Design Review; Continued to September 18, 2014
9/18/2014	Design Review Committee: Preliminary Design Review; Continued to October 16, 2014
10/16/2014	Design Review Committee: Preliminary Design Review; Continued to January 15, 2015
1/15/2015	Design Review Committee: Preliminary Design Review; Continued to February 19, 2015
2/19/2015	Design Review Committee: Preliminary Design Review; Continued to March 19, 2015
3/19/2015	Design Review Committee: Preliminary Design Review: Forwarded the application to ZAB with a positive recommendation regarding the design.
6/11/2015	Public hearing notices mailed/posted
6/25/2015	ZAB hearing

Table 4: Development Standards

Standard BMC Sections 23D.52.070-080.		Existing	Proposed Total	Permitted/ Required
Lot Area (sq. ft.)		10,400	10,400	5,000 min
Gross Floor Area (sq. ft.)		13,908	30,530	N/A
Dwelling Units	Total	18	56	N/A
	Affordable	0	1	N/A
Building Height	Average (ft.)	25	47.6	60 (65 w/UP) ¹
	Maximum (ft.)	25	57.6 ²	60 (65 w/UP) ¹
	Stories	3	5	4 (5 w/UP)
Building Setbacks (ft.)	Front (ft.)	5	10	10 (0-10 w/AUP)
	Rear (ft.)	10	6.5	10 (0-10 w/AUP)
	Left Side (ft.)	10	10.5	10 (0-10 w/AUP)
	Right Side (ft.)	10	10.5	10 (0-10 w/AUP)
Lot Coverage (%)		40	60	40
Usable Open Space (sq. ft.)		3,058	2,240	2,240 (40 sq. ft./du)
Parking	Automobile	0	0	0
	Bicycle	0	16 spaces in bike room 16 spaces in rear yard area 1 space in each 1-bdrm unit 2 spaces in each 2-bedrm unit Total = 104 spaces	0

1. Per BMC Section 23D.50.070.C.2., within the portions of the District located east of Telegraph Avenue and/or more than 130 feet south of Bancroft Way, the Board may approve a Use Permit to increase a project's maximum height to 5 stories and 65 feet.
2. This includes 10-ft tall rooftop trellis.

II. Project Setting

A. Neighborhood/Area Description: The immediate area includes the UC Berkeley Art Museum to the west, which is a 5-story concrete building; a 2-story with half basement fraternity house to the east; a hotel and parking lot directly to the north; and the UC's 5- to 8-story student housing dormitory directly across the street. The broader area comprises of mostly Group Living Accommodation uses; cultural, institutional and religious uses, such as the Young Women's Christian Association ("YWCA"), the Lutheran Campus Ministry, and the Christian Science Organization; and hotels and other commercial uses scattered throughout the neighborhood.

B. Site Conditions: The project site is a rectangular shaped lot with frontage on Durant Avenue. The parcel is relatively flat and it is approximately 130 feet deep and 80 feet wide. It is developed with a 2-story, U-shaped, 18 unit apartment building with the open end facing Durant Avenue. The building contains a full height basement under the majority of the west wing and a 2- to 4-foot crawlspace throughout the remainder of the building footprint. The building was constructed with wood framed walls, floors, ceiling and roof using conventional light-frame construction. An addition appears to have been constructed at the northwest (rear) corner of the building. The building has a sloped roof surrounded by parapet walls. Roof top access is provided by a full set of stairs through a penthouse located at the rear of the building. The main roof is finished with a built-up or modified roofing membrane, while the visible roof elements are finished with Spanish tile. The exterior of the building is sheathed with what

appears to be horizontal boards with a cement stucco finish. The building has been vacant since June 1, 2014.

C. Proposed Projects within Vicinity: There are no other development proposals in the vicinity of this project.

III. Project Description

The proposed project would demolish the existing 18-unit residential building with 10 1-bedroom and 8 2 bedroom units to allow construction of a new 5-story, 56-unit residential building with 40 studios and 16 2-bedroom units, common facilities, bike storage facility, office on the first floor and 2,240 sq. ft. of usable open space on the rooftop deck covered by trellis (see Attachment 2). Public entry would be from Durant Avenue. Table 5 summarizes the basic project components.

Table 5: Project Overview

		Existing	Proposed
Controlled Rental Units		18	20 ¹
Controlled Rental Unit Square footage		8,722	8,750
Dwelling Units	Studios	10	40
	1-Bedroom	7	0
	2-Bedroom	1	16
<i>Total</i>		18	56
Net Residential Floor Area		8,772	25,200
Unit sizes (sq. ft)	Studios	372	350
	1-Bedroom	653	n/a
	2-Bedroom	680	700

All units would include a full kitchen and bath. Shared laundry facilities would be provided on each floor, and no off-street parking would be provided. The project is intended to be for-rent, student housing. All floors would be accessible by an elevator.

To replace the existing controlled rental units, the applicant has voluntarily proposed to restrict future rent increases for 20 dwelling units to 65% of the consumer price index, although rents would be allowed to increase to market rate upon vacancy.¹ These 20 units represent habitable square footage comparable to as the existing 18 units, and would accommodate the same number tenants.

The applicant also intends to comply with the City's Affordable Housing Mitigation Fee pursuant to BMC Section 22.20.065. The applicant's plan for compliance is twofold: First, the applicant plans to provide 1 in lieu income restricted dwelling unit, which be available to a very low income household or person. The 1 in lieu dwelling unit would reduce the affordable housing mitigation fee required by BMC 22.20.065. Second, the

¹ The applicant has stated that 20 new units would be subject to rent control. However, under the Costa-Hawkins Rental Housing Act, new construction is exempt from rent control. If the applicant maintains this offer, staff recommends that a notice of limitation be recorded against the property. The applicant has not stated that the *initial* rents will be set a rate that is below market rates, nor has it committed to limiting future rent increases upon vacancy.

applicant intends to make payments to the City's Affordable Housing Mitigation Fee pursuant to BMC Section 22.20.065 for all market rate units.

IV. Community Discussion

A. Neighbor/Community Concerns: A pre-application poster was erected by the applicant in March of 2013, and reposted on April of 2015. On June 10, 2015, the City mailed 250 public hearing notices to property owners and occupants, and to interested neighborhood organizations and the City posted notices within the neighborhood in three locations. At the time of this writing, staff has not received any communications regarding the project.

B. Landmarks Preservation Commission Review: The proposed demolition of an 18-unit apartment building over 40 years was referred to the LPC commission. On September 12, 2015, the LPC took no action because the building did not appear to meet historical resource criteria.

C. Design Review Committee: As stated above in Table 3, the DRC first reviewed the application on September 9, 2013, and requested design modifications over the course of 5 additional DRC meetings. After changing architects, the project was completely redesigned, and the revised project was reviewed by the DRC on January 15, 2015 and continued. On February 19, 2015, the DRC passed a favorable recommendation to ZAB, on a vote of 3-2, with the following conditions and specific direction for Final Design Review:

- One of the stairwells shall be covered;
- Flexibility is given to propose consistent window coverings in lieu of honeycomb insert in window glazing;
- Roof deck shall be developed further before Final Design Review;
- One unit shall be removed from the 5th floor in the northeast corner;
- Submit document that shows that the rear property owner acknowledges how close this project is to their parcel; and
- Landscape plan shall be finalized at Final Design Review, and shall follow the recommendations noted below:
 - Plants between sidewalk and entry are too large for the space – propose an alternate species that won't require sheering;
 - Add evergreen plants at the entrance court so they will be on-going greenery when the grasses are cut back in winter; and
 - Locate tall deciduous trees – 40' tall and fast growing – in the East and West planting areas so that there will be at least 4 – 5 trees spaced in concert with the building. Deciduous varieties with open branching are recommended.

In addition to the City's adopted design review guidelines, the DRC considered many viewpoints during the design review process. The Design Review Committee provided the applicant with specific direction relating to needed design changes. Many aspects of the project were modified significantly as a result of the direction provided by the Design Review Committee leading to preliminary design review approval (e.g. a dwelling unit was removed from the 5th floor in compliance with the

DRC's directions, the building was limited to 5- stories). As with all projects subject to Preliminary Design Review, project approval would be conditioned to require final design review by the DRC.

D. Rent Stabilization Board: On April 3, 2015, Planning staff referred the proposed demolition to the Rent Stabilization Board ("RSB"). On June 10, 2015, the RSB noted that the dwelling units at the project site are subject to the Rent Stabilization Ordinance and therefore are "controlled" rental units. The RSB further noted that the proposed demolition would eliminate 18 dwelling units that are part of Berkeley's older and more affordable rental housing the stock (Attachment No. 4).

V. Issues and Analysis

A. Environmental Review: The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq. and California Code of Regulations, Section 15000, et seq.) pursuant to Section 15332 of the CEQA Guidelines ("In-Fill Development Projects"). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no significant cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource.

B. Demolition and/or Elimination of Residential Buildings and Dwelling Units:

1. Demolition of Buildings with Residential Uses: An application to demolish a residential building and to remove dwelling units is governed by BMC Sections 23C.08.010 and 23C.10.020. The ZAB must make required findings in order to approve this application. The required findings are reproduced and discussed below:

The Board may approve a Use Permit for the elimination or demolition of dwelling units only if, in addition to any other findings required by this Ordinance, it finds that the elimination of the dwelling units would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City (BMC Section 23C.08.010.B).

In support of making this finding, staff notes that the proposed project would replace the existing 18 dwelling units with 56 units (16 2-bedrooms, 40 studios). Approval of the project would result in net gain of 38 new units. From purely a housing supply perspective, in staff's opinion, because the project would add 38 net new dwelling units to the City's housing stock, it would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City. Also, doing so would be in furtherance of the Southside Plan Policy Land Use F9 (Policy LU-F9), which encourages "infill development in the Residential Mixed Use Subarea" and would increase the amount of housing in the Southside for UC students, faculty, staff and employees of Southside businesses.

Thus, staff believes that the ZAB could make this finding and that the ZAB can approve this Use Permit.

The Board may approve a Use Permit to demolish a building containing one or more dwelling units if it makes the findings required by the foregoing section, and that (1) the demolition will remove a structure that is hazardous, unusable or is infeasible to repair structure (BMC Section 23C.08.020.A.1); or (2) the demolition is necessary to permit construction approved pursuant to this Ordinance, of at least the same number of dwelling units as the demolished structure (BMC Section 23C.08.020.A.2).

With respect to structural integrity of the building, the Building Official recently conducted inspection and documented findings in a memorandum dated January 20, 2015 (Attachment No. 5). The Building Official noted the following:

- The building is not on the City Inventory of potentially hazardous soft-story buildings;
- The building is not on the City Inventory of potentially hazardous unreinforced masonry buildings; and
- The building does not have a history of any outstanding Housing Code violations.

During the inspection, the Building Official also noted that the building was not secured against unauthorized entry despite staff's prior instructions to board up all openings to the building. The Building Official further observed holes in the walls and ceilings; unsafe electrical conditions; damaged and missing plumbing systems; unprotected holes cut in the roof allowing water intrusion; waste accumulation including discarded clothing, bedding, decaying food and other deficient conditions and inadequate maintenance. At the roof level, the Building Official observed that the building had suffered recent damage to the roof covering and sheathing with openings cut into the roof sheathing/boards by chainsaw at multiple locations. In his memorandum, the Building Official notes the ceiling framing appeared undamaged, though the finishes had been removed at the openings.

Finally, the Building Official notes the applicant submitted a building permit application for demolition on January 8, 2015, which indicated that Berkeley Fire Department, with prior permission from the building owner, conducted fire-emergency training exercises at the subject building in November and December of 2014. During their training, the Fire Department cut many holes in the roof. The Building Official's memorandum notes that the damage to the building attributed to the Fire Department's recent exercises is equivalent to or less than the anticipated damage due to Fire Department's operations in a structure fire. Incidental damage due to fire department drill - operations is normally repairable after the incident. The Building Official concluded that the building was securable and that the building did not present a hazard public collapse. Therefore, staff cannot make a finding in support of BMC Section 23C.08.020.A.1.

In support of making the second finding, and per BMC Section 23C.08.020, the ZAB only needs to make one of the two findings, staff notes that the removal of the existing building would allow the proposed development to occur with at least the same number of dwelling units as the demolished structure. Thus, staff believes the ZAB can make the finding in support of granting a Use Permit per BMC Section 23C.08.020.A.2. .

2. Elimination of Rent Controlled Units Under BMC Section 23C.08.030.E: As stated above, the existing building on the site proposed for demolition contains 18 controlled rental units. Per BMC. Section 23C.08.030, subdivision (E), a Use Permit is required for an application to eliminate a controlled rental unit. The required findings from subdivision (E) are reproduced and discussed below:

The dwelling unit to be eliminated is neither occupied nor has a rent set at a level that is affordable by a person or a family of very low income, low income or moderate income, as defined by HUD Section 8 program guidelines (23C.08.030.E.1).

Staff notes the applicant allowed the 18-unit rent controlled building to become vacant, and, at least since June of 2014, has made no effort to rent them. As each unit became vacant, it was removed from the rental market. There is no evidence of wrongful eviction of those tenants. Staff further notes controlled rental units are not necessarily income restricted to a person or a family of very low-, low- or moderate-income households. As each controlled rental unit becomes vacant, the rent level is reset to market rate. In fact, the last recorded rent history for the project indicate rent rates above the HUD Section 8 program guidelines and none of the previous tenants received Section 8 assistance. Thus, as the dwellings are not occupied, nor restricted to a person or a family of very low income, low income or moderate income, as defined by HUD Section 8 program guidelines, staff believes that the ZAB can make this finding.

The elimination of the dwelling unit will not adversely affect the supply of housing in the City (23C.08.030.E.2).

Staff believes that the ZAB can make this finding, based on the analysis provided in section V.A.2, above.

The applicant cannot make a fair return on investment by maintaining the dwelling unit as a part of the rental housing market (23C.08.030.E.3).

To respond to this required finding, the applicant submitted inspection reports and estimates for rehabilitation, with third-party bids. The inspection reports from 2012, and updated on October 2014, state the foundation is substandard and requires seismic retrofitting. Separate reports note that the wooden framing and supporting structures features are infested by termites; that the plumbing system has eroded and requires replacement; and that the roof needs replacement. These reports estimate the cost of rehabilitating the building at approximately \$2.35 million (\$2.40 per square foot). In June of 2015, the applicant retained a

construction cost estimator who revised the cost estimates to rehabilitate the structure from \$2.35 million to \$5.7 million.

The applicant prepared a pro forma (Attachment No. 6). The pro forma assumes annual revenue of \$274,392 and total expenses of \$172,536. The applicant's pro forma reflects a vacancy rate of 4% and annual operating expenses of 31% of total revenue. The pro forma concludes a 2.48% return on investment.

With respect to the applicant's pro forma, we note the pro forma assumes rent rates from 2013 and property tax expenses based on reassessed property value post-rehabilitation. It is, however, unclear why the pro forma assumes reassessed property value (increased property tax) while revenue for rehabilitated units would reflect 2013 conditions for the building in an un-rehabilitated condition. Thus, to help the ZAB make a determination as to the whether the applicant can make a fair return on investment by maintaining the dwelling units as a part of the rental housing market, staff revised the applicant's pro-forma with different expected rental rates, and adjusted the costs as noted below. As discussed above, controlled rental units are not necessarily income restricted to a person or a family of very low-, low- or moderate income household, as defined by HUD Section 8 program guidelines. Staff has no reason to expect the applicant to voluntarily place income restrictions on rehabilitated units.

To update the applicant's expected rents, Staff contacted the Rent Stabilization Board to obtain current rent rates for comparable residential units near the project area between Telegraph Avenue to the west, Prospect Street to the east, Durant Avenue to the south, and Bancroft to the north. To ensure that the rents would be most comparable with this site, this survey excluded mixed-use buildings along Telegraph Avenue and focused on buildings with residential uses only. Table 6 below summarizes the average and median rent for each bedroom category, for this area:

Table 6: Market Rent Ceilings

Market rents near 2631 Durant (between 1/1/15 and 6/1/15)			
Bedrooms	Count	Median	Average
Studio	18	\$1,495.00	\$1,418.61
1	22	\$1,725.00	\$1,692.27
2	5	\$2,495.00	\$2,698.00

When staff recalculates the applicant's pro forma using the above figures, the estimated annual revenue from rent would increase from \$274,392 to \$344,760.

To update the applicant's expected expenses, Staff reviewed Alameda County Assessor's website for information regarding current property tax levied against the subject property. According to the Alameda County Assessor's information, the property currently pays \$28,818 yearly in property tax whereas the applicant's pro forma assumes \$50,366. Even with this change, the applicants' representation of annual expenses is within the range found acceptable by the

City for other pro-formas of 30-40% of revenue (in this case, the expenses represent 31% of revenue).

Staff updated the pro-forma and found that the expected rate of return for a rehabilitated project would be 4.17%², which is an increase above the rate of return indicated on the applicant's pro forma (which was 2.48%). Staff then compared either rate of return with 4 other recent projects where financial data was presented to the ZAB. For these projects, the typical rate of return was 6.0-7.0%. In the past, the ZAB and staff have considered this range rate of return acceptable because of its consistency with the return of the market as a whole. Using the information in the revised pro-forma, it appears to Staff that the applicant cannot make a fair return on investment by maintaining the dwelling units as a part of the rental housing market (The applicant's pro-forma may be found in Attachment 6). Thus, staff believes the ZAB can make the finding in support of granting a Use Permit per BMC Section 23C.08.030.E.3.

3. Elimination of Rent Controlled Units Under BMC Section 23C.08.030.F: Per the City Attorney's memorandum dated June 10, 2015, provided as Attachment No. 8, BMC Section 23C.08.030.F does not apply to the proposed project because the project does not involve the combination and rehabilitation of rent controlled units.

C. R-SMU Development:

1. Sunlight/Shadow: The proposed project would be taller than the existing building and will create new shadows. As demonstrated in the attached plans (see Attachment 2), the proposed building would cast shadows on to the properties at 2680 Bancroft Avenue and 2639 Durant Avenue to varying degrees at different seasons. The most significant shading impacts would be on the property immediate to the east at 2639 Durant Avenue. This building would experience shading on its eastern façade during the winter months during the evening hours. 2680 Bancroft Avenue would also experience increased shading in the afternoon/evening hours during the winter months during the evening hours; however, the new shadows cast would primarily fall only on the parking lot. Because the shading impacts are limited to certain hours at various times of the year, the shadow impacts are not detrimental.
2. 5th floor: Per BMC Section 23D.50.070.C.2, a 5th floor may be allowed with issuance of a Use Permit if the ZAB makes findings that at least 50% of the total building floor area is designated for residential use and that the project meets the purposes of the District.

In support of a 5th story addition, staff notes the proposed height increase would be similar to the existing the Group Living Accommodation south of the site on Durant Avenue. Further, staff notes that the additional floor allows for 11 additional dwellings, to help the City meet its regional housing needs as well as

² Note that Staff's review of the pro-forma was not based on the higher rehabilitation costs provided by the applicant in June 2015. If the new costs were used, the return on investment would decrease.

increase the amount of housing in the Southside. In support of making the above findings, staff notes the proposed building is entirely designated for residential use and advances many of the District purposes, including but not limited to, creation of high density, multi-story residential development close to the University Campus.

3. Reduce rear yard setback: The R-SMU District regulations require a rear yard setback of 10-feet; however, the required set back may be reduced if approved through an Administrative Use Permit with a finding that the reduction is appropriate given the setbacks and architectural design of surrounding buildings (BMC Section 23D.52.070.E.1). The proposed setback and the relationship of the proposed building to the surrounding properties was closely reviewed by the DRC. Prior to finding that the design was ready for the ZAB, the DRC requested that changes be made to the 5th floor to remove one dwelling from the northeast corner of the building to preserve the rear neighbor's view corridor. With the revised design, the rear elevation is broken into two parts so as to reduce the appearance of a solid building mass.

Staff reviewed adjacent development to determine if a rear yard setback reduction can be supported. Staff notes adjacent properties to the north are a vacant (parking lot) and a commercial building (hotel) which has a 10-ft setback. Given these facts, and DRC's recommendation, staff feels ZAB can make a finding to approve a reduced rear yard setback.

4. Increased Lot Coverage: Per BMC Section 23D.52.070.F.1, the maximum lot coverage for a 5-story building is 40 percent. However, for a main building that contains dwelling units or Group Living Accommodations or is located north of Durant Avenue, the lot coverage may be increased if approved through an Administrative Use Permit with a finding that the increase is appropriate given the setbacks and architectural design of surrounding buildings (BMC Section 23D.52.070.F.1). As noted above, prior to finding that the design was ready for the ZAB, the DRC reviewed the project design, including the proposed lot coverage. Staff reviewed adjacent development to determine if the proposed lot coverage can be supported. Staff notes adjacent properties to the north are a vacant (parking lot) and a commercial building (hotel) which has a 10-ft setback. Given these facts, and DRC's recommendation, staff feels ZAB can make a finding to approve a reduced rear yard setback.

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

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

Staff Analysis: The proposed project is an infill development project on underutilized parcel has been reviewed and recommended by the Design Review

Committee. The project would replace 18 units with 56 units, thereby creating 38 new units near the UC Campus. The project's location is ideal to take advantage of proximity to the University and Downtown as well as multiple public transit lines, which would reduce automobile dependence.

2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.

Staff Analysis: The project is consistent with the applicable zoning standards for the R-SMU Zoning District and would housing to the student population near the UC campus, and would thereby reduce traffic and transit demand generated by students.

3. 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.
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.

Staff Analysis: The building's mass has been appropriately arranged and articulated to limit impacts of the proposed setbacks and height, including removing a portion of the 5th floor to protect adjacent hotel from unreasonable obstruction of light and air.

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

Staff Analysis: The project involves the construction of a 5-story building on a parcel where a 2-story building currently exists. Thus it will create new shadows on neighboring properties. However, as discussed in Section V.A.4, new show cast would not be detrimental to adjacent properties.

6. Policy LU-23–Transit-Oriented Development: Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley.

Staff Analysis: The project provides 56 units where 18 units exist in a portion of the City that is served by multiple public transit lines and is close to the University campus.

7. Policy H-1 Extremely Low, Very Low, Low and Moderate Income Housing: Increase the number of housing units affordable to Berkeley residents with lower income levels.

Staff Analysis: The project voluntarily restricts 1 unit to very low income households and is subject to the City's Affordable Housing Mitigation Fee.

8. 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: By adding 38 new units, the project would help Berkeley meets its regional housing needs as well as increase the amount of housing in the Southside for UC students, year-round residents, and employees of the Southside businesses.

9. Policy H-21- University of California: Encourage and promote construction of additional housing for students, staff and faculty, particularly family housing, within walking distance of campus and work with the University, private developers and nonprofits to increase the supply of affordable housing for faculty and staff.

Staff Analysis: The project is within walking distance of the University Campus and is targeted for students.

10. Policy EM-5–“Green” Buildings: Promote and encourage compliance with “green” building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)
11. Policy UD-33–Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: The project intends to meet and/or exceed Title 24 energy conservation requirements, and would include the installation and use of Energy Star appliances, a 20-kilowatt PV solar rooftop system to power the common spaces, and would comply with water conserving landscaping and irrigation requirements.

E. Southside Area Plan Consistency: The Southside Area Plan, adopted n 2011, also contains several policies applicable to the project, including the following:

1. Policy LU-A1: Provide incentives to encourage development of a variety of different housing types that are affordable to students, University employees, and employees of Southside businesses:
2. Policy LU-A1.A: Encourage a variety of housing types to be built in the Southside, including houses, condominiums, townhouses, apartment buildings, group living quarters, and loft-style housing, and encourage owner-occupied housing, rental housing, cooperatives and co-housing.

Staff Analysis: The project is also located within the Southside Plan Area which encourages development of relatively high density in residential areas and a mix of housing types. The project would remove 18 units to be replaced by a new building that will provide 56 new units. The proposed building is compatible with the surrounding Group Living Accommodation uses. The benefits of the project

would include providing housing to the student population near the UC campus, and would thereby reduce traffic and transit demand generated by students, faculty and employees of the Southside Businesses.

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:

- A. APPROVE Use Permit **#2013-1000016** pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Applicant Statement, Project Plans, received June 15, 2015
3. Notice of Public Hearing
4. Rent Stabilization Board memorandum, dated June 10, 2015
5. Building Official's Durant Determination Memo, dated January 30, 2015
6. Developer's Pro Forma Analysis
7. Miller Starr Regalia letter, received May 29, 2015
8. City Attorney's Memorandum, dated June 10, 2015
9. Correspondence Received

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