



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
JULY 9, 2020

1367 University Avenue

Use Permit #ZP2019-0173 to construct an approximately 9,273-square-foot, four-story 39-unit Group Living Accommodation (GLA) operating as a Single-Room Occupancy (SRO) Residential Hotel on a vacant parcel.

I. Background

A. Land Use Designations:

- General Plan: AC – Avenue Commercial
- Zoning: C-1 – General Commercial within the University Avenue Strategic Plan Overlay area

B. Zoning Permits Required:

- Use Permit to establish Group Living Accommodations under Berkeley Municipal Code (BMC) Section 23E.36.030
- Use Permit for construction of 5,000 square feet or more of gross floor area under BMC Section 23E.36.050.A

C. Density Bonus Waivers/Modification (Govt. Code §65915(e))

- Reduce the rear yard setback from the required solar setback to 4'
- Reduce the front yard setback at the first floor from an average of 2' to 0'
- Increase the height of the building from 36' to 40'

D. Density Bonus Concessions (Govt. Code §65915(d))

- Eliminate the commercial use within the project
- Eliminate off-street vehicle parking
- Reduce the Useable Open Space from 3,600 to 615 square feet

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

A. Parties Involved:

- Applicant Trachtenberg Architects – Isaiah Stackhouse, 2421 Fourth Street, Berkeley
- Property Owner 1367 University LLC, c/o Panoramic Interests, 1321 Mission Street, San Francisco

Figure 1: Vicinity Map



Figure 2: Proposed Site Plan

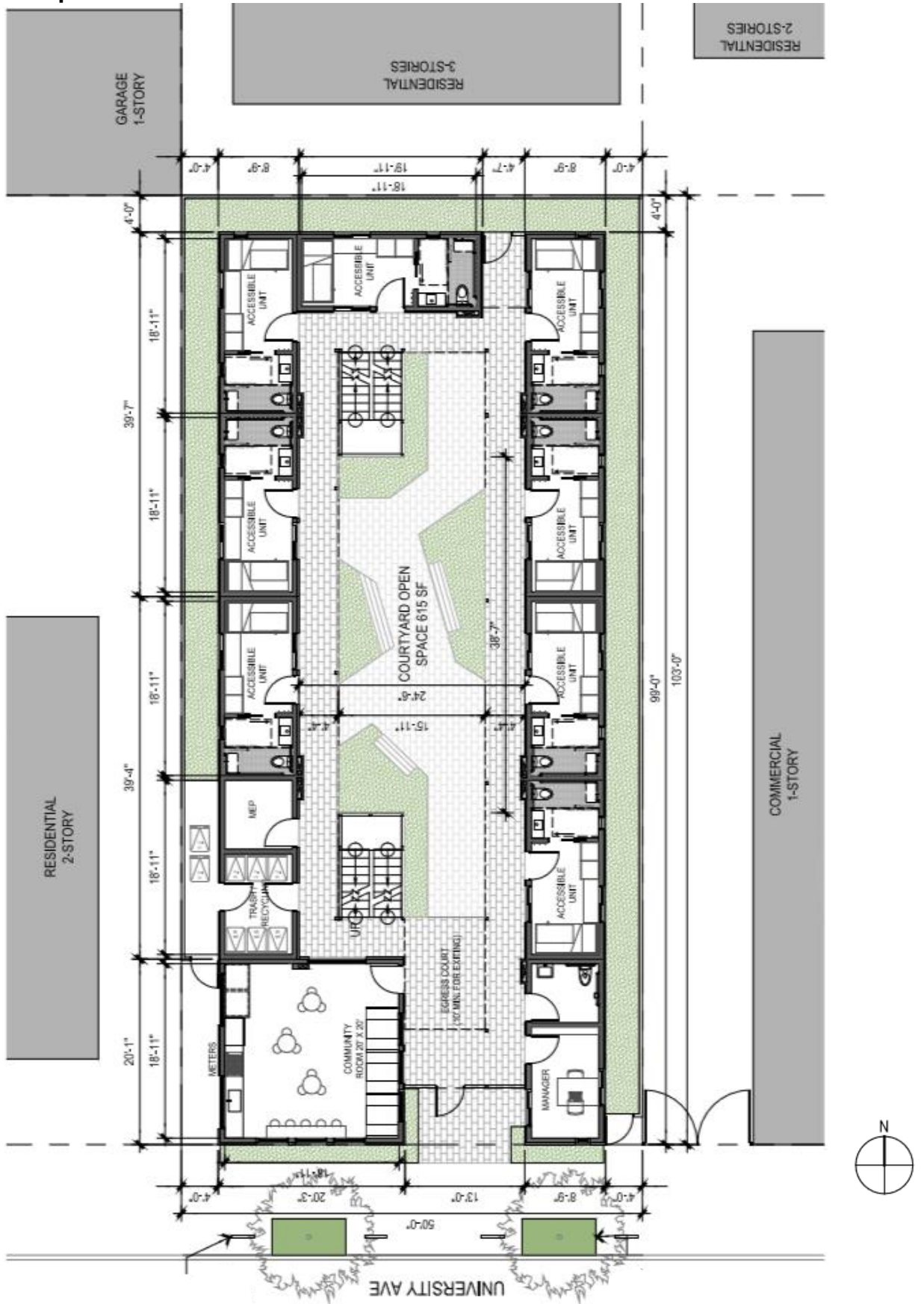


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Vacant Lot	C-1	Avenue Commercial (AC)
Surrounding Properties	North	Multi-Dwelling Unit Apartment Building	R-2	Low Medium Density Residential (LMDR)
	South	Multi-Dwelling Unit Apartment Building	C-1	Avenue Commercial (AC)
	East	Commercial Building (Copy World)	C-1	Avenue Commercial (AC)
	West	Multi-Dwelling Unit Apartment Building	C-1	Avenue Commercial (AC)

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Housing Mitigations for rental housing projects (BMC 22.20.065) Inclusionary Unit Requirements for ownership housing projects (BMC 23C.12.020)	No	The project is not subject to BMC Section 22.20.065 Affordable Housing Mitigation Fee (AHMF) or BMC Section 23C.12 Inclusionary Housing Requirements, because it is a residential hotel, which is exempt from the fees.
Coast Live Oaks (BMC Section 6.52.010)	No	There are no oak trees on or near the project site
Creeks	No	The project site is not within a creek buffer
Housing Accountability Act (Govt. Code 65589.5(j))	Yes	The base project complies with applicable, objective general plan and zoning standards, and thus the Housing Accountability Act applies. See Section V.A., below.
SB330, Housing Crisis Act of 2019.	Yes	This project meets the definition of Housing Development project as defined in 65589.5 and is subject to the streamlining under Senate Bill 330. The following amended or added code sections under SB330 apply to this application (See Section V.B. below): (1) 65905.5 – Public Hearings – Maximum Allowable (2) 65913.10(a) – Determination of Historic Sites (3) 65950(a)(5) – Deadlines for Project Approval Compliance
Green Building Score	Yes	Infill development projects such as this are a sustainable form of development for urbanized contexts like Berkeley and the Bay Area. In addition, the applicant submitted a New Home GreenPoint Rated Multifamily checklist for the project. The project is targeting 112 points out of a possible total of 342 points for the dwellings.
Historic Resources	No	There are no buildings or structures on the parcel.
Residential Parking Program	No	The project is not within Residential Parking Program zone.
Seismic Hazard Mapping Act (SHMA)	No	The project site is not located in an area susceptible to liquefaction and is not within an area susceptible to

Characteristic	Applies to Project?	Explanation
		fault rupture or landslide, as defined by the State Seismic Hazards Mapping Act (SHMA).
Soil/Groundwater/Site Contamination	No	The project site is not listed on the Cortese list and is not located within the City's Environmental Management Area or on a site with a history of soil or groundwater contamination. In addition, excavation would be limited to that necessary for foundations.
Transit	Yes	The project is on a block of University Avenue, which is served by Alameda-Contra Costa (AC) Transit lines 51B and 800, and is within 0.3 miles of the North Berkeley BART station.

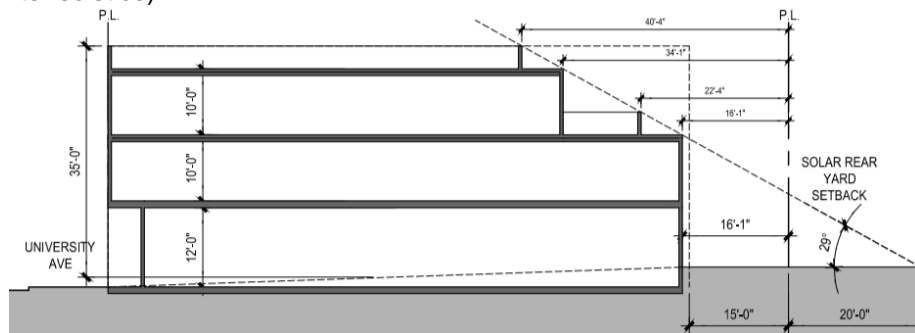
Table 3: Project Chronology

Date	Action
October 18, 2019	Application submitted
March 27, 2020	Application deemed complete
June 18, 2020	Design Review Committee Preliminary Review
June 25, 2020	Public hearing notices mailed/posted
July 9, 2020	ZAB hearing

Table 4: Development Standards: For Mixed-Use in Strategic Plan Non-Node Area

C-1 Standards BMC Sections 23E.36.070-080		Existing	Proposed	Permitted/ Required
Lot Area (sq. ft.)		5,150	No change	n/a
Gross Floor Area (sq. ft.)		0	9,273	11,330
GLA Units		0	39	n/a
Building Height	Average Height	n/a	40'	36' max.
	Stories	n/a	4	3 max. / 2 min.
Building Setbacks	Front	n/a	0'	2' avg. at 1 st story 0'
	Rear	n/a	4'	Solar setback ¹ : ≈ 0' @ 1 st story 16'-1" min. @ 2 nd story 34'-1" @ 3 rd story
	Left Side	n/a	4'	0' min.
	Right Side	n/a	4'	0' min.
Lot Coverage (%)		0	49%	n/a
Floor Area Ratio (FAR)		0	1.8	2.2
Usable Open Space (sq. ft.)		n/a	615	3,600 min. (90 sf/GLA resident)
Automobile Parking		0	0	11 min. (1 space/ 5 resident + 1 per manager + 1/500 sq. ft. commercial)

- Buildings on the north side of University Avenue shall not cast a shadow at noon more than 20 feet onto any lot in a residential zone as calculated when the sun is at a 29 degree angle above the horizon (winter solstice):



II. Project Setting

A. Neighborhood/Area Description: The subject neighborhood is characterized by one- and two-story residential buildings in the residential neighborhood to the north, and a mix of commercial, residential, and mixed use buildings and surface parking lots to the south, east, and west along University Avenue ranging in height from one to five stories. The project site is also located approximately 0.3 miles southwest of the North Berkeley BART station.

B. Site Conditions/Background: The generally level, rectangular, 5,150 square-foot project site is currently a vacant lot. It is located on the north side of University Avenue between Acton Street to the east and West Street to the west.

III. Project Description

The proposed project is the construction of a four-story Residential Hotel type of Group Living Accommodation (GLA) consisting of 39 units, an approximately 400-square-foot community room, a manager's office, and an office/janitor's room. The building would be constructed out of modular units built in a "U" shape opening to University Avenue with an approximately 615-square-foot central courtyard. Rooms are accessed by exterior stairs and hallways. Each living unit is approximately 178 square feet (20'-4" x 8'-9") and consists of a toilet, bathing facilities, sink, bed, and built in cabinet. No parking would be provided.

Building Opportunities for Self-Sufficiency, or BOSS, will be the master tenant at 1367 University Ave, which will operate it as supportive housing for people experiencing homelessness. BOSS was founded in 1971 by a group of volunteers from the Hillel Streetwork Project in Berkeley who responded to the needs of mentally ill individuals being released to the streets by state hospital closures. Today, BOSS maintains its mission housing individuals with severe and persistent mental illness and further develops solutions to mass homelessness, mass incarceration and community violence. BOSS is a 501c3 non-profit. BOSS will finance the master lease with subsidies provided to BOSS by the Housing Authority of the County of Alameda (HACA) and authorized by Alameda County Health Care Services Agency. While the applicant will be responsible for the project planning, financing and construction, BOSS will be responsible for all operations and property management.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting this application to the City, the applicant erected a yellow pre-application poster at the site in October 2019. On September 24, 2019, the applicant hosted a community meeting at the West Berkeley Branch Library from 6:30 to 7:30 p.m. Seven members of the public attended the meeting where the applicant team and representatives presented the project and answered questions from the public. Members of the public raised concerns predominantly about safety issues surrounding a transitional housing development. BOSS presented information on their existing facilities and operations.

On June 25, 2020, the City mailed public hearing notices to property owners and occupants, and to interested neighborhood organizations within 300 feet of the project site, and the City posted notices within the neighborhood in three locations.

As of the writing of this report, staff has received one piece of correspondence regarding this project: a Notice of Approval sent out by the applicant team. This notice was sent based on the applicant team's assertion that the categorical exemption determination under CEQA is made by staff and not the ZAB, thereby effecting the date that project decision must occur under the Permit Streamlining Act (PSA). It is the City's position, however, that ZAB has the responsibility to make any necessary

CEQA findings and that staff's recommendation to ZAB is preliminary, non-binding, and not a final "determination by the lead agency" that would commence the running of time to approve or disapprove a project under Government Code section 65960(a). See Attachment 3 for all correspondence.

B. Committee Review: On June 18, 2020, the DRC reviewed the project and forwarded a favorable recommendation to the ZAB (5-0-0-1), with the following direction:

Conditions for ZAB:

- Plans shall show adequate program service spaces, as well as maintenance and janitorial services; and
- Plans and representations shall provide consistent residential unit count proposed.

Due to the programming discussion that arose at the DRC meeting, the applicant modified the ground floor plan to change one of the modular rooming units into an office and janitor's room, reducing the unit count from 40 to 39.

Conditions for Final Design Review (FDR):

- Remove corten cladding from the exterior wall finishes and replace with a warmer material;
- Present options for further articulation on the tall light colored tower on the University front;
- Provide more character, such as detail, color, and additional windows to the east and west elevations; and
- Provide a detailed landscape plan, including at least three 24" box trees in the ground floor courtyard and a privacy buffer at the ground floor unit entrances.

Recommendations:

- Consider a more robust plant palette for the main courtyard, possibly a tropical theme;
- A mural on the exterior walls would add more interest; and
- Consider a change of the paving pattern at the main entrance.

V. Issues and Analysis

A. Housing Accountability Act: The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with applicable, objective general plan and zoning standards, a local agency may not deny the project or approve it with reduced density unless the agency makes written findings supported by substantial evidence that:

1. The development would have a specific adverse impact on public health or safety unless disapproved or approved at a lower density¹; and

¹ As used in the Act, a "specific, adverse impact" means a "significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, polices, or conditions as they existed on the date the application was complete.

2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval or approval at a lower density.

The project employs State Density Bonus law. Therefore, the Zoning Adjustments Board may not preclude the construction of the conforming base project with density bonus units and associated waivers and concessions. The project includes no other aspects that do not comply with applicable, objective general plan and zoning standards, therefore, §65589.5(j) *does apply* to this project. No significant, quantifiable, direct and unavoidable impacts, based on objective, identified written public health or safety standards, polices, or conditions, have been identified by staff.

B. SB 330 – Housing Crisis Act of 2019: The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development. Housing development is defined as a project that is: all residential; a mixed use project with at least two-thirds of the square-footage residential; or for transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

1. Government Code §65905.5(a) states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in affect at the time an application is deemed complete, then the city shall not conduct more than five (5) hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at any of the five hearings consistent with applicable timelines under the Permit Streamlining Act (Chapter 4.5 (commencing with §65920)).

The July 9, 2020 ZAB hearing represents the second public hearing for the proposed project, the June 18, 2020 DRC meeting being the first. The City can hold up to three additional public hearings on this project, if needed. One of those hearings must be reserved for any possible appeal to the City Council.

2. Government Code §65913.10(a) requires that the City determine whether the proposed development project site is a historic site at the time the application for the housing development project is deemed complete. The determination as to whether the parcel is a historic site must remain valid during the pendency of the housing development project, unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.

The property is a vacant parcel that does not appear to be historically significant and, therefore, is not eligible for listing on the California Register of Historical Resources or as a City of Berkeley Landmark or Structure of Merit. Standard conditions of approval have been included to halt work if any unanticipated discovery of archeological, paleontological, or tribal cultural resources.

3. Government Code §65950(a)(5) requires a public agency to approve or disapprove a project within 60 days from the determination that the project is exempt from the

California Environmental Quality Act. The project was deemed complete on March 27, 2020. If ZAB determines the application is categorically exempt from CEQA at the July 9, 2020 public hearing, the application must be approved or disapproved by September 7, 2020.

C. Density Bonus: Based on the developer's commitment to include qualifying below market rate (BMR) dwelling units in the project, the project is eligible for a density bonus (Government Code Section 65915). Section (r) of Government Code Section 65915 requires that State Density bonus law be interpreted liberally in favor of producing the maximum number of total housing units. Therefore, with the exception of common interest development, which requires provision of *dwelling* units, and student housing, which has a specific definition of unit found in Section 65915 (b)(1)(F)(IV)(ii) which refers to dwelling units, a residential unit for purposes of State Density Bonus Law can be any of the following as defined in the California Building Code (CBC):

- **DWELLING UNIT.** A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
- **SLEEPING UNIT.** A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.
- **LIVEWORK.** A dwelling unit or sleeping unit in which a significant portion (> 50%) of the space includes a nonresidential use that is operated by the tenant.

Unless otherwise specified by State law, all occupants of a qualifying residential unit must be under one lease and operate as a Household as defined by the Zoning Ordinance.

Using the project plans submitted by the applicant, staff calculated a "base project" of 6,720 square feet, with a total of 29 "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.

Based on the applicant's commitment to provide 15% of the base project, or six dwelling units, affordable to Very Low Income families (\leq 50% AMI), the project qualifies for a 35% density bonus, or 11 units, for a total of 40 units. The project's density bonus calculations are provided on project plan sheet A0.3.

In order to accommodate the density bonus units, the project proposes to reduce the rear yard setback from the solar setback (see footnote 1 to Table 4 above) to 4 feet, reduce the front yard setback at the ground floor from a 2-foot average to zero, and to increase the height from 36 feet to 40 feet. These requests are permissible as waivers of development standards under Government Code Section 65915(e)(1).

The applicant is requesting three concessions to which the project is entitled under Government Code Section 65915(d) for providing 15% of the units for Very Low

Income Households. The concessions are to eliminate the otherwise-required commercial use at the ground floor; to eliminate off-street vehicle parking; and to reduce the Useable Open Space from the 3,600-square-foot requirement down to 615 square feet.

The City may only deny a concession if it finds that the concession does not result in identifiable and actual cost reductions to provide for affordable housing costs or for rents for the targeted units; the concession would have a specific, adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources; or the concession is contrary to state law.

All three concessions would result in an identifiable and actual cost reduction for a project that proposes 15% of units on site as below market rate, they would not have a specific, adverse impact on public health and safety or the physical environment or historic resource, nor is it contrary to state law. Staff, therefore, believes the findings for denial cannot be made.²

D. Non-Detriment Findings: Pursuant to BMC Section 23B.28.040, the project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby further ensuring that the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the city. The Board may approve an application for a Use Permit in the C-W zoning district if the non-detriment finding can be made.

E. Findings for Use Permit Approval in the C-1 District: In order to approve any Use Permit in the C-1 District, the ZAB must make the findings, pursuant to Berkeley Municipal Code Section 23E.36.090.B, subject to the limitations imposed by the Housing Accountability Act regarding the applicability of non-objective standards. The findings are that the proposed use or structure is:

1. Compatible with the purposes of the District;

Staff Analysis: The proposed project would result in the construction of a residential building with 39 single-occupancy units on what is now an underutilized site: a vacant lot. The project is an infill housing development that would provide vibrancy over existing (vacant) conditions, revitalizing this portion of University Avenue by providing housing and clientele for local businesses.

2. Compatible with the surrounding uses and buildings;

Staff Analysis: The four-story building with its open courtyard design would have compatible massing with the abutting structures: the two story multi-family building to the west, the one story commercial building to the east, and the three story multi-

² Government Code Section 65915(d)(4) states that, "The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive."

family building to the south. The building would provide 39 new residences in a neighborhood that is a mix of residential and commercial uses.

3. Not interfere with the continuity of retail and service facilities at the ground level;

Staff Analysis: As the project site is currently vacant, the new development would not be interfering with the continuity of retail and service facilities at the ground level. Although not commercial uses, the project as would locate the community room and the manager's office at the street frontage, which are services for the proposed project. This layout would provide a level of activity and engagement that would enhance the vitality of the street frontage.

4. Not exceed the amount and intensity of use that can be served by the available traffic capacity and potential parking supply;

Staff Analysis: The project would serve as transitional housing for those who are housing insecure. The majority, if not all of the residents, would not have resources to own and maintain an automobile. Regardless of potential vehicle ownership, the project would promote transit oriented development. The project is on a block of University Avenue that is served by Alameda-Contra Costa (AC) Transit lines 51B and 800, and is within 0.3 miles of the North Berkeley BART station. The project is, therefore, not expected to exceed the amount and intensity of use that can be served by the available traffic capacity and potential parking supply.

VI. Other Considerations

The following Conformance with 2002 General Plan and 1996 University Avenue Strategic Plan goals and policies are provided for information purposes only, to provide context; they do not require findings of conformance because the proposed project is HAA-compliant.

A. General Plan Consistency: The following 2002 General Plan goals and policies are provided for information purposes only, to provide context, as the proposed project is HAA-compliant.

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 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.
3. 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. (Also see Transportation Policy T-16.)
4. Policy LU-25 Affordable Housing Development: Encourage development of affordable housing in the Downtown Plan area, the Southside Plan area, and other transit-oriented locations.

5. 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.
6. Policy H-12–Transit-Oriented New Construction: Encourage construction of new medium and high-density housing on major transit corridors and in proximity to transit stations consistent with zoning, applicable area plans, design review guidelines, and the Climate Action Plan.
7. Policy H-19–Emergency Shelters and Transitional Housing: Recognizing that the City’s priority for new homeless housing opportunities is for permanent housing, to the extent feasible and until they can access permanent housing, provide emergency shelter and transitional housing to homeless individuals and families, including people with mental, physical, and developmental disabilities, victims of domestic violence, youth, and seniors.
8. Policy H-33–Regional Housing Needs: Encourage adequate housing production to meet City needs and the City’s share of regional housing needs.
9. Policy T-16–Access by Proximity: Improve access by increasing proximity of residents to services, goods, and employment centers.
10. Policy EM-5–“Green” Buildings: Promote and encourage compliance with “green” building standards.
11. Policy UD-33–Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

B. Specific Plan Consistency: The following 1996 University Avenue Strategic Plan goals and policies are provided for information purposes only, to provide context, as the proposed project is HAA-compliant.

1. Policy LU-6: Strengthen University Avenue as a mixed-use residential and commercial boulevard.
2. Policy H-14: Encourage a diversity of new housing opportunities in the University Avenue study area, in terms of tenure, income, and unit type.

VII. 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 #ZP2019-0173 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, dated July 9, 2020
3. Correspondence received
4. Notice of Public Hearing

Staff Planner: Leslie Mendez, Senior Planner, LMendez@cityofberkeley.info, (510) 981-7426