

CITY OF BERKELEY
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9 May 2002

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Ref: Use Permit #01-10000088 for 2119 University Avenue

To the Honorable Mayor, Shirley Dean, and Members of the City Council:

We hereby appeal, in its entirety, and in the public interest, the Zoning Adjustments Board's 2 April 2002 approval of Use Permits for the above-referenced project. We also hereby appeal the finding made by the Zoning Adjustments Board that the project is exempt from the California Environmental Quality Act - CEQA. It is our determination that this project is subject to CEQA review, and that an Environmental Checklist and Environmental Initial Study should be prepared for this project, leading to either a Negative Declaration or an Environmental Impact Report (EIR). This appeal is based in part on the following grounds, a list that is not meant to be exhaustive.

Residential Density

This project substantially exceeds the residential density guidelines established by the Land Use Element of the new General Plan as well as those of the earlier 1977 Master Plan. Its excessive density is unjustified when measured against the adopted official policy of the City of Berkeley, and is not supported by the Environmental Impact Report made in conjunction with the new General Plan. This otherwise welcome project needs to be scaled back before proceeding.

This project, consisting of 44 units, on a parcel asserted to be 13,560 square feet, proposes a residential density equivalent to 141 units per acre.

Yet, the Land Use map of 1977 Berkeley Master Plan, in effect at the time the application for this project was made, clearly shows this parcel to be situated in an area of Berkeley, the residential density of which was to range between 41 and 100 units per acre. Further, the Land Use Element of the new General Plan, adopted on 18 December 2001 and in force at the time the ZAB approved this project, clearly describes the downtown area of the C-1 General Commercial District as "high-density," defined as 40 to 100 units (or 88-220 persons) per acre.¹ Thus, under both the former and present general plans, the maximum residential density for the downtown area was and remains 100 units per acre—which is the highest residential density the City of Berkeley defines anywhere within its boundaries.

To avoid surpassing the upper limit of 100 units per acre, the project should have offered no more than 31 units, instead of the 44 it is proposing. (The Planning Department calculated a base-line density of 33 units, and then allowed an additional 8 units to the project.) The project, at 141% of the residential density guidelines, is substantially in excess of the density range prescribed by the General Plan for Berkeley's downtown, and of the density on which the General Plan's EIR was based.

¹ Land Use Element of the General Plan, as described in the draft version of July 2001, page 28.

(absent a density bonus)—8 affordable units would have been necessary. Alternatively, if 35 units had been the project base-line, the 20% affordability requirement would have been 7 units, and a 25% State density bonus would have brought the total unit-count to... 44 units! Note that Section 8 units pay subsidized market-rate rents whether occupied or not, hardly justifying a larger bonus for their feasibility.

The City is granting an increased residential density of 13 extra units (approving 44 units rather than the 100-units-per-acre limit of 31 units). However, the increase of residential density is **not** numbered among the measures listed in BMC 23C.12.040.F that the City may adopt “to reduce costs or increase profitability.” Nor is it clear that the ZAB has the authority to increase density under the provisions of the C-1 General Commercial District, although no specific reference to density of mixed-use buildings is made in BMC 23E.36.070. However, BMC 23E.36.070.D states that such buildings “shall satisfy all of the standards and requirements” of the district, allowing modifications **only** for “Off-street Parking and Useable Open Space.” In light of the Planning Department’s acknowledgement that there is a residential density maximum (determined by the Staff to be 33 units), there appears to be no authorization for the ZAB to exceed the maximum residential density threshold.

Open Space

Excessive residential density has a cascading impact; one such impact is on the provision of sufficient open space. The required open space for this project is 8,800 square feet,⁸ yet it appears that the proposed open space is only 6,563 square feet according to the architectural plans (dated as approved by the ZAB on 2 April 2002) appended to the Notice of Decision. Please note that Standard Condition #3, “Plans and Representations Become Conditions (Section 23B.56.030),” states that:

“Except as expressly specified herein, the site plan, floor plans, building elevations and any additional information or representations submitted by the applicant during the Staff review and public hearing process leading to the approval of this permit, whether oral or written, which indicated the proposed structure or manner of operation are deemed conditions of approval.”

The clear implication of the attachment of the architectural plans to the Notice of Decision is that these plans are a part of the conditions of approval. Their date underscores their degree of currency.

At the ZAB’s public hearing, the Planning Staff asserted that development standards for attributes such as open space and parking did not apply to “bonus units.” Even if this were true, this quantity of open space is 47 feet less than the 6,600 square feet that would be necessary in relation to the 33-unit density that Planning asserts is appropriate at this site. The interpretation that there is an exemption from development standards, however, is not supported by Berkeley Zoning Ordinance or by the State Density Bonus Law, to which Staff specifically referred at the hearing. Indeed, HCD staff stated⁹ that they had never heard of such an interpretation. Thus, the project is 2,237 square feet short of the required open space for 44 units (a 25% deficiency).

No required finding to permit a reduction appears to have been made by the ZAB pursuant to BMC 23E.36.070.D, which reference criteria under 23E.36.090.C. It appears that the project offers inadequate open space without proper authorization or findings.

Parking

Another impact suffered from excess residential density is that upon the quantity of parking needed. While the Notice of Decision indicates in its finding that 30 new parking spaces are to be created where 33 spaces are required, the architectural plans appended the Notice indicate that a total of 30 spaces are being provided where 41 spaces are necessary. There is a disconnection. Are the appended architectural plans or the findings in error? Based on the area-data provided on page A1 of the architectural drawings and the parking ratios stated in the zoning ordinance, 41 spaces appear to be the

⁸ BMC 23E.36.070.D, which refers to 23D.36.070.F, requiring 200 square feet per unit.

⁹ In a telephone conversation with Howie Muir, on 2 April 2002.

under the State Density Bonus Law is not relevant to the issue. The fact remains that the project exceeds the maximum height and number of floors allowed under the site's zoning.

◆ Required Finding in §15332 (d):

"Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality."

This project would result in significant effects relating to traffic, noise, and air quality. Since the project fails to meet the parking requirements of the site's zoning, the parking space shortage in the Downtown area will worsen. The site is at one of the most heavily used intersections in Berkeley. Existing levels of traffic, vehicular noise, and vehicular pollution are already unbearable. This project would make existing terrible conditions worse. An Environmental Initial Study is needed to see if existing levels of traffic, noise, and pollution in this vicinity exceed city and state limits, and to see how much worse these conditions would be were this project to be built.

Construction related impacts will clearly be significant. This is already one of the highest (if not the highest) traffic volume intersections in the City. The pedestrian crossing across Shattuck Avenue between the northwest and northeast corners of University Avenue is the most dangerous in the city. Construction staging for this project will be extremely problematic, exacerbating existing traffic problems and posing a threat to pedestrians. Construction noise will make the painful level of cumulative traffic noise in this area even worse. Construction activity, including excavation- and construction-related vehicles will clearly cause a significant increase in air pollution.

An Environmental Initial Study is needed to properly address and mitigate the construction related, and permanent, traffic, noise, and air-quality impacts that this project would generate.

◆ Required Finding in §15332 (e):

"The site can be adequately served by all required utilities and public services."

The statement on page 3 of the Staff report that "the site is currently served by all required utilities and public services" fails to address the issue at hand: whether the site "can" be adequately served by all required utilities and public services if the project is built. Serious questions can be raised about the Fire Department's ability to respond to a fire, and to simultaneously provide rescue services in the back areas of the proposed project. Access appears extremely difficult. An Environmental Initial Study is needed to properly address the issue of fire safety and rescue.

Please note that §14332 of the CEQA Guidelines states the following:

"Discussion: This section is intended to promote infill development within urbanized areas. The class consists of environmentally benign in-fill projects which are consistent with local general plan and zoning requirements. This class is not intended to be applied to projects which would result in any significant traffic, noise, air quality, or water quality effects. Application of this exemption, as all categorical exemptions, is limited by the factors described in section 15300.2."

Planning Staff and the Zoning Adjustments Board clearly overreached in concluding that this project was exempt from CEQA review. In the recent past, the CEQA arguments concerning projects of generally the same size as the proposed 2119 University Avenue project have been over whether an EIR or a Negative Declaration should be prepared. In 1988, the City of Berkeley required the preparation of an environmental impact report (EIR) for a proposed 38,680 square foot office building three blocks away at 2161 Allston Way (a project *smaller* than the proposed 2119 University Avenue development). And in 1989, the City required an EIR for the proposed 47,181 square foot Promenade Building at 1936 University Avenue, just two blocks from the site of the currently proposed project. Thus it makes no sense to allow the currently proposed 39,610 square foot building at 2119 University Avenue to be approved with no CEQA review or environmental analysis at all. All of the multi-story residential development projects that have been approved in the last few years in and around Downtown Berkeley have been deemed subject to CEQA review, and have been the subject of Environmental Initial Studies and Checklists.