


Office of the City Manager

ACTION CALENDAR
November 9, 2004

To: Honorable Mayor and
Members of the City Council

From:  Phil Kamlarz, City Manager

Subject: University Avenue Strategic Plan Building Height and Setback Standards (referred by Council on February 17, 2004); and Review of Consistency between the West Berkeley Plan and the University Avenue Strategic Plan (CF162-01)

RECOMMENDATION

The recommendations include:

1. Adopt the second reading of an ordinance amending Berkeley Municipal Code Chapter 23E.36 to implement the University Avenue Zoning Overlay in order to establish specific building height and setback standards as provided for in the University Avenue Strategic Plan (UASP); and
2. Authorize the Office of Transportation and Department of Public Works to define a scope of study for consideration of funding to prepare a Comprehensive Parking Study and Plan for Streetscape Improvements in the University Avenue corridor, as recommended in the University Avenue Strategic Plan (UASP).

SUMMARY

At the second reading of the proposed zoning amendments, the Council had a brief discussion regarding the impact of the residential-only development prototype and the impact of the increase in density bonus to take affect in January 2005. Council directed Staff to respond to the questions regarding qualifying affordable housing projects using the residential-only projects model. The request is outlined in a memo to the Council prepared by Planning Commissioner Poschman, dated October 19, 2004 (Attachment 1).

This report addresses the issues raised by Commissioner Poschman. The report provides an illustration of the residential-only prototype, illustrating the zoning envelope created by the proposed development standards. The Planning Commission considered the implications of the proposed zoning amendments with respect to residential-only projects in light of a density bonus of up to 35% and concluded that it was not necessary to reconsider its previous recommendations. The report continues to recommend that the Council adopt the UASP zoning amendments as submitted to Council in the October 12, 2004 action agenda.

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FISCAL IMPACTS OF RECOMMENDATION

Previously addressed in the October 12, 2004 report.

CURRENT SITUATION AND ITS EFFECTS

The UASP zoning amendments sent to Council by the Planning Commission on October 12, 2004 include a provision for allowing residential-only projects. These projects are limited in height to three stories and are not permitted in the development nodes, where retail sales, personal and household services, and food services are required pursuant to the ground-level commercial standards included in the UASP zoning amendments.

Residential-Only Projects

During the deliberations, the Planning Commission determined:

- A basic premise of the UASP is to distinguish nodes of commercial activity serving the local residents from the remaining length of University Avenue. The UASP found that the continuous length of commercial uses dissipates the vitality of the commercial uses.
- One of the means of promoting more vital local serving commercial activity is to permit residential-only projects in the non-node areas. This would help to concentrate desirable commercial activity at the nodes and reinforce the vision of nodes with taller buildings and pedestrian-oriented services.

Zoning Envelope for Residential-Only Projects

During the subcommittee deliberations, confirmed by the entire Planning Commission, extensive conversations addressed the appropriate development height and setback standards for the non-node areas. The zoning envelope was represented to the Commission with cross-section illustrations of a "mixed-use prototype" showing a ground floor with commercial frontage and ground level parking. The development capacity was explored for various heights utilizing the solar setback on the north and the privacy setback on the south. The illustrations indicated the bulk of the zoning envelope together with the existing 25% density bonus that would be required for qualifying affordable housing projects. (See Council October 12, 2004 Staff Report.)

For ease of comparison, the non-node areas were reviewed by the Planning Commission with an indication of a range of density bonuses. The smaller density bonus reflected a project with no residential on the ground floor (it could be parking or it could be a combination of parking and commercial uses). The larger density bonus reflected the same building profile but with residential on the ground floor contributing to the size of the base project subject to density bonus.

Commissioner Poschman's October 19, 2004 memo requires a more explicit depiction of the development capacity focusing on the qualifying residential-only affordable housing projects

utilizing the increased density bonus of 35 % recently signed by the Governor. (See SB 1818, effective January 1, 2005.) The Council's brief debate on October 19 expressly asked to see an illustration of this condition. The zoning envelope is shown in figure 1.

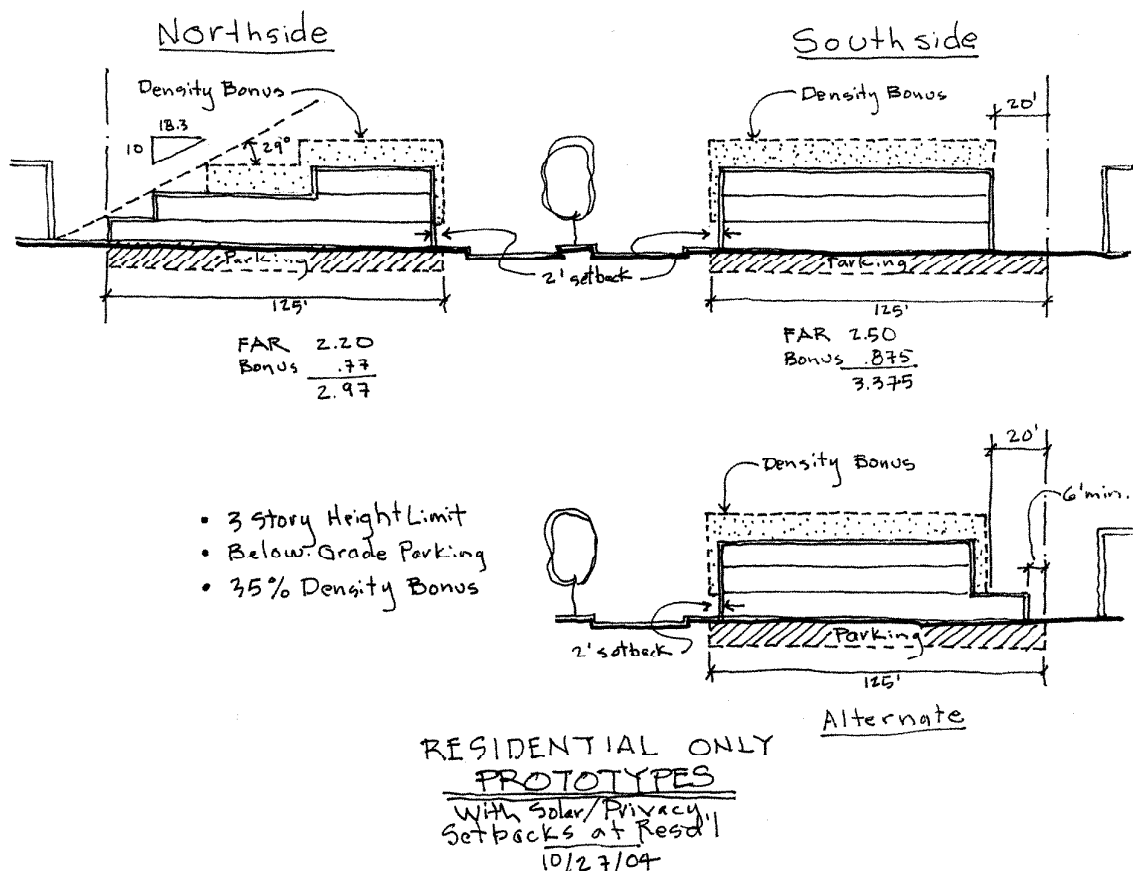


Figure 1

Figure 1 illustrates the zoning envelope for the north and south sides. It represents the largest development program. It assumes that the entire ground floor is residential, resulting in the largest base project subject to density bonus. Parking is indicated as "below grade." The shorter story heights of the residential-only projects shift the envelope to the north property line on the north side of the Avenue. The south side is illustrated with a base project of three stories and a density bonus resulting in a fourth floor. An alternate is also shown taking advantage of a provision included in the UASP zoning amendments. Subject to a Use Permit under section 23E.36.070.C.1.b, a developer may locate the ground floor within 6 feet of the south property line (at a residentially zoned parcel) if the upper floors are reduced an equivalent area. This provision, proposed by the neighborhood, permits an alternative stepped profile on the south property line.

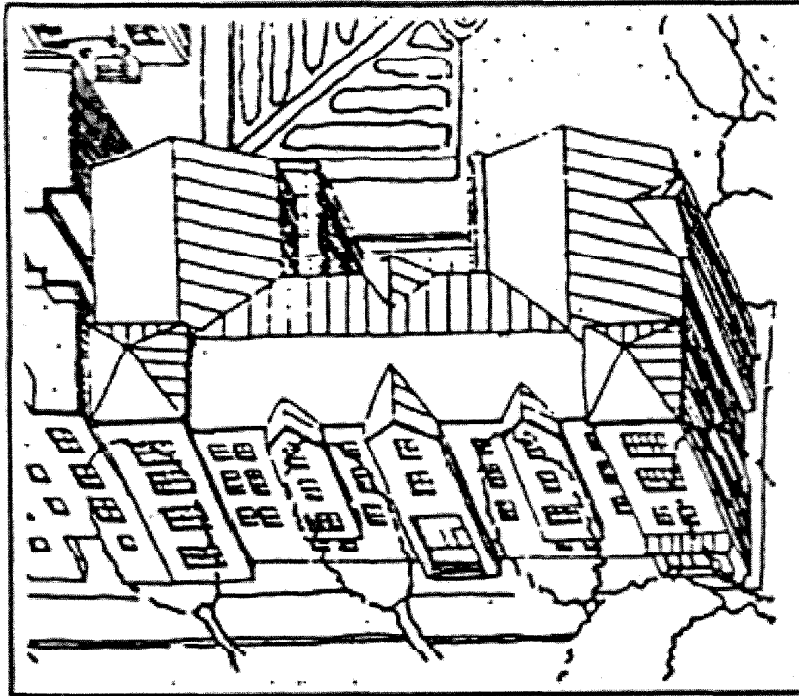
This requested illustration indicates that:

- The standards for FAR, building height and setbacks result in a zoning envelope similar to the mixed-use prototypes considered by the Planning Commission and included in the October 12, 2004 Council Staff Report. (See Figure 1.)

Comparison to R-3 Development Standards

Commissioner Poschman presented a technical analysis comparing the development capacity for residential-only projects with the R-3 standards. As the Commissioner notes in his memo, the prevailing C-1 standards permit residential-only projects but utilize the R-3 District development setbacks and lot coverage (15-foot front and rear yard setbacks, 4 to 6 foot side yard setbacks, and a maximum lot coverage of 40%).

This comparison, however, masks the charge given to the Commission by the Council to implement the height and setback standards of the UASP. The UASP set the framework for a “mixed-use” Avenue with “Avenue Residential” development prototypes, illustrated in the Plan and incorporated in the Plan’s Design Guidelines. See Figure 2.



Avenue Residential

Figure 2

The Policy framework of the UASP envisions a mixed-use commercial corridor, not a residential district, and appropriately illustrates projects for University Avenue with no side-yard setbacks or 15-foot street setbacks that would result in gaps in the development fabric of the Avenue. This basic premise is fundamental to the Plan, and the Planning Commission appropriately considered the trade-offs associated with the R-3 development standards and rejected them as inappropriate to the urban design vision for the Avenue. See attachment 2.

The Planning Commission determined that:

- A strong pedestrian oriented frontage was preferable to the 15-foot front-yard setback in the R-3 standards;
- The 4 to 6 foot side-yard setbacks in the R-3 District would not produce the Avenue Residential qualities envisioned in the UASP; and
- The explicit solar setback on the north side and privacy setback on the south side directly captured the specific boundary relationships included in the UASP better than the R-3 setback provisions. In general, the UASP increases the rear yard setbacks.

Planning Commissioner Poschman asks the Commission to reconsider these decisions (and the basic urban design elements in the UASP) based on a comparison of the square footage of development that would be approved under the current C-1 District standards for a residential-only project. In this comparison, the 40% coverage limitations are the limiting factor in the R-3 standards, where the UASP standards would result in a 100% increase in square footage. (See attachment 1.)

Without this 40% coverage limitation, however, the comparison of the proposed UASP zoning amendments to R-3 standards would be less than a 28% increase in square footage for the residential-only prototypes for the base project. (The increase in the State density bonus to 35% would not alter this percentage increase.)

All of the mixed-use development prototypes considered by the Planning Commission result in a smaller development envelope than the current C-1 District standards. The resulting development capacity of the UASP zoning amendments, estimated for the Planning Commission, is as follows:

- 40% reduction in 3 story mixed use prototype on the north side;
- 23% reduction in the 3 story mixed use prototype on the south side;
- 24% reduction in the 4 story mixed use prototype (node) on the north side;

BACKGROUND

The Planning Commission (and the Drafting Subcommittee) deliberated considerably the appropriateness of a residential-only prototype along University Avenue and the appropriate

development standards for this use. Residential-only developments currently exist along University Avenue.

The Planning Commission considered the development standards in light of previous state density bonus provisions. They also reviewed illustrations of draft recommendations for development incentives up to .3 FAR greater than the 25% state density bonus (equivalent to an additional 15% increase in development capacity, i.e. 25% plus 15% or 40% total increase). Although those alternatives were ultimately rejected, the impacts were illustrated and discussed.

On October 27, 2004, the Planning Commission discussed the matter that was referred by the Council regarding the residential-only projects and the 35% density bonus. During the discussion on October 27, 2004, members of the Planning Commission observed:

- The potential size of residential-only projects was an important consideration in the recommendations to the Council and all commissioners expressed a strong interest in getting the recommendations right;
- That pulling one piece out of the recommendations would be disruptive to the balance struck in negotiating among interested parties;
- That the short time available between Oct 19 (Council referral to Staff) and Oct 27 (Planning Commission meeting) did not permit a detailed consideration by the Planning Commission of Commissioner Poschman's memorandums and the Draft Staff Report to Council;

At the conclusion of the discussion on October 27, 2004, the Planning Commission:

- Determined that the matter did not need to return at this time and supported the Draft Staff Report to Council.

RATIONALE FOR RECOMMENDATION

The present arguments have been adequately considered and a balanced recommendation has been provided to Council.

ALTERNATIVE ACTIONS CONSIDERED

1. One alternative is to refer the question of development standards for residential-only projects to the Planning Commission for reconsideration, while adopting the remaining zoning amendments to implement the University Avenue Overlay district. In this alternative:

- The recommended amendments to Section 23E.36.070.E would be eliminated. The added subsection 2 would be struck from the ordinance revisions. The R-3 District standards for building site area, height, yard, coverage, usable open space and parking requirements would continue to be in place for Residential-Only projects.

- All other provisions in the recommended amendments establishing the UASP Zoning Overlay would become effective 30 days after the second reading and adoption by Council.
- The Council would refer to the Planning Commission for further consideration the standards for residential-only projects for **building site area, height, yard, and coverage**.

2. A second alternative to the recommended action is for the Council to remove the amendments to the C-1 District that refer to the building site area, height, yard, coverage, usable open space and parking requirements for Residential-Only projects and to adopt the remaining provisions in the Planning Commission's recommendations to implement the UASP Zoning Overlay. In this alternative:

- As in alternative 1, the recommended amendments to Section 23E.36.070.E would be eliminated. The added subsection 2 would be struck from the ordinance revisions. The R-3 District standards for building site area, height, yard, coverage, Usable Open Space and parking requirements would continue to be in place for Residential-Only projects.
- The recommended amendments to the UASP zoning Overlay, as amended by Council, would become effective 30 days after the second reading and adoption by Council.
- The Council would **not** refer to the Planning Commission for further consideration the standards for residential-only projects.

CONTACT PERSON

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Approved:



Dan Marks, Director
Planning and Development Department

Attachments:

- 1: Commissioner Poschman's October 19, 2004 Memo to the Council
- 2: UASP excerpt from the Land Use Framework, p 32.

Attachment 1: Commissioner ^{DAN MARKS} Poschman's October 19, 2004 Memo to the Council

Tuesday, October 19, 2004

From: Gene Poschman
To: Members of the City Council

Re: Council Discussion on October 12, 2004 of University Avenue Rezoning and the Impact of a 35% Density Bonus and the new UASP Residential Only Development

✓ KLLAN
✓ DEER RESPONSE
✓ UASP
DAN
10.2004

Perhaps this memo ought to be entitled—"How can 40% more density bonus (25% to 35%) on a possibly 94% larger building envelope make "no difference?" **The Council should not include the new UASP residential only provision if it passes the UASP rezoning on second reading tonight.** (Please note: I am writing only for myself and not as a representative of the Planning Commission.)

It should be remembered that the Planning Commission included a new "residential only" category as part of the UASP in response to stakeholder concerns about vacant commercial spaces on the Avenue. But when it did so, the Commission removed all of the traditional residential front setbacks on all stories as well as all side yard setbacks making the envelope of the residential building virtually the same as a building with commercial, mixed use square footage.

Because "residential only" is 100% residential, the new provision with a 35% density bonus raises a serious set of concerns. While the density bonus does not apply to commercial space, it applies to all of residential space. To meet this 35%, will it be necessary to give up all the open space and most of the required parking? There will be nothing else to be flexible with to meet the increased square footage requirement of the density bonus. This raises serious concerns for the neighbors and the potential residents.

Nobody knows the extent of the potential impacts because no one has had the figures. (Please see attachment 1, for my technical analysis of the potential impact. However, because the impact is potentially serious, and the Council should want to be sure that everything it enacts has been carefully considered, this memorandum requests that Council permit the staff to measure the impacts that the new 35% requirement will have on UASP residential only projects in comparison with the existing density bonus on the existing C-1 residential only. After considering those impacts, Council has the discretion of determining the best course of action.

The Council should not pass a second reading of the new UASP with the residential only provision but instead hold this provision over to give staff time to report back. The Council did not have before it accurate information necessary to decide on the ramifications of the new 35% density bonus on the UASP residential only category vs. the existing C-1 residential only category. (Again, see Attachment 1, Technical Analysis.)

Three other important and closely related issues:

1. The probability of the whole 35% density bonus being required in Berkeley:

While it was stated by staff that the 35% was part of a sliding scale and represented the maximum, my conclusion is that the 35% will be the norm in Berkeley. It will be quite easy to reach the 35% figure.

2. The real issue is the impact on new University Avenue residential only building now—not all City wide until later:

The UASP residential only building envelope appears to be approximately 94% larger than the existing C-1 residential development standards and similar standards in the rest of the City. The issue was raised about the impact on the whole City of the 35% density bonus. This is an important issue, but what the UASP plan does now on University Avenue is to strip out the setback protections that other C-1 and similar districts still have in residential only development. The 35% impact will be much less in the districts other than University Avenue, even though the Planning Commission should look at these impacts also,

While Councilmember Wozniak seemed to make a motion that the issue of the impact of the 35% density bonus on all districts be referred to the Planning Commission, the summary of the October 12, 2004 meeting only contain the following action.

“ Moved, seconded, carried (Worthington/Breland; Noes – Hawley; Abstain – Shirek, Olds) a motion to direct the Planning Department to provide a separate progress and density bonus impacts report on University Avenue as part of the housing element.”

3. The meaning of the reduction of the base envelope is to absorb the density bonus:

It is difficult to overstress this important point – It should not be City policy to build a building to these lower dimensions with, for example, a 15-foot front yard setback. The policy is to use the lower base square footage dimensions produced by the 15 foot setback and then reduce the 15 foot front to say 2 feet with that square footage dedicated to satisfying part of the 35% density bonus square foot requirement. If the 35% density bonus is put on top of the huge basic envelope given by the new UASP residential only –no setbacks except in back and with a base lot coverage over 100% more than existing C-1 residential lot coverage, the increase in the base for the density bonus is massive. In the existing C-1 residential, ZAB has the authority to adjust the base envelope outward and if need be upward to absorb the density bonus. (23E.36.E).

Attachment 1—Technical Analysis

The Council simply did not have before it accurate information necessary to decide on the ramifications of the new 35% density bonus on the UASP residential only category vs. the existing density bonus on the existing C-1 residential only category.

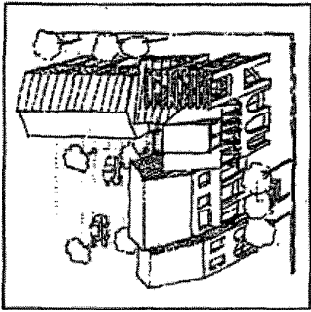
**Summary of
UASP Impact on
10,000 sq. ft Lot,
Southside**

	Existing C-1 Residential Only	Proposed UASP Residential Only	Difference in Square Feet	Percent Increase
BldgArea	16,250	31,519	15,269	94%
Lot Coverage	4,000	8,134	4,134	103%
BaseResidential	13,000	20,335	7,335	56%
Density Bonus	3,250	7,117	3,867	118%
Total Residential Increase	16,250	27,452	11,202	70%

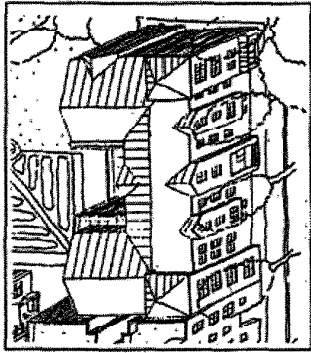
The higher density bonus on the larger BaseResidential figure creates a density bonus which is 118% larger. The bottom line from the Summary is that the total residential increase is a massive 70% larger figure. The residential C-1 as it exists with the current density bonus of 25% is 16,250 square feet and this is increased by the proposed 35% density bonus on a UASP base residential area of 20,335 to over 27,000 square feet. The change in building area from the existing C-1 to the Proposed UASP because of the setbacks eliminated in the front and on sides of each of the stories is from 16,250 to 31,519, an increase of 94%. (Please note that the figures are for the box-like South side but that the North side figures should be similar)

I have both checked and double-checked the impact. I believe the impact shown to be accurate but staff should carefully check my figures before Council approves this potentially massive change. The point is that while the final figures on the exact increase may be somewhat different, the Council ought to have final accurate figures before approving the UASP residential only provision of the UASP rezoning on the second reading tonight, October 19.

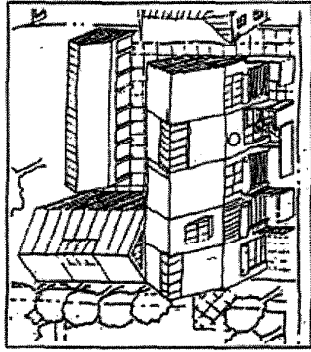
Building Types



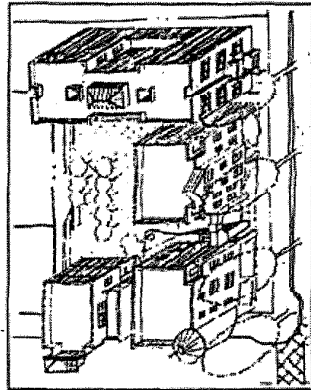
Corner Retail



Avenue Residential



Live-Work



Mixed-Use

Design Guidelines: Projects along the corridor should be encouraged to provide pedestrian-friendly uses at ground level, helping to activate and provide “eyes on the street.” Minimum and maximum building heights should be established to reinforce the Avenue Nodes concept and provide incentives for developers to build new mixed-use buildings.¹¹ Massing standards should address solar access and privacy issues. As described further in the Urban Design section, a series of design guidelines have been proposed that guide development into physical patterns that achieve these and other goals. The specifics of the University Avenue Design Guidelines should be incorporated into the new Zoning Overlay designation.

Permitted Uses: As mentioned earlier, University Avenue is currently home to a number of liquor stores, auto-oriented uses, and industrial/warehousing uses that do not fit with the desired character and function of the corridor. Like other commercial corridors in Berkeley, the list of permitted uses along University Avenue should be tailored to discourage or prohibit activities that are not consistent with the intent of this plan.

Although University Avenue does command interest from franchise businesses, the greatest demand for retail space in Berkeley generally stems from tenants who are already doing business in or are familiar with Berkeley. The concern that new fast food franchises along University Avenue work against the goals of the Strategic Plan has, though, led to a current moratorium. Given the City’s mixed success with fast food franchise quotas, this plan is recommending that new franchises be limited through strict design controls. Many other communities have successfully established design standards that prohibit drive through take-out and corporate identity buildings, while encouraging a design attitude that fits with the fine-grain, mixed-use character of an area.

Contaminated Sites: These sites are regulated primarily by the State Regional Water Quality Control Board, which maintains a current listing and status of any contaminated parcel within the study area. This information is updated regularly and is available to the community over the Internet.

West of 10th

