



# Attachment 7

[Commission Name]

ACTION CALENDAR  
September 19, 2006

To: Honorable Mayor and  
Members of the City Council

From: Zoning Adjustments Board

Submitted by: Debbie Sanderson, Secretary, Zoning Adjustments Board

Subject: Item #25. Development Standards Related to Density Bonus

## RECOMMENDATION

That the Council consider three recommendations approved by the Zoning Adjustments Board at its September 14, 2006 meeting concerning Zoning Ordinance amendments that address Density Bonus.

## FISCAL IMPACTS OF RECOMMENDATION

See Companion Document

## CURRENT SITUATION AND ITS EFFECTS

The Board recommended (6 yes, 1 no, 2 absent) that the Council adopt Planning staff's Density Bonus recommendations presented to the Planning Commission at its September 13, 2006 meeting. These changes comprise changes in development standards, covering setbacks, open space, ground floor uses and parking lifts.

The Board also recommended (5 yes, 2 no, 2 absent) that the Council strengthen staff's proposal by limiting to 25% the percentage of required open space which may be placed on the roof of a building without a use permit, rather than 75% as staff recommends.

The Board adopted (6 yes, 3 absent) a third recommendation that the Board submit a brief discussion for Council's consideration summarizing why the Board believes it is important that the City act now to bring City standards into line with the realities of today's entitlement process. This discussion is presented below.

## BACKGROUND

The Zoning Adjustment Board acted on the recommendations of the Joint Density Bonus Subcommittee, for Council consideration.

## RATIONALE FOR RECOMMENDATION

To implement its third recommendation above, the Board submits the following text for Council's consideration in this matter. Staff forwards the text of this discussion as prepared by

the Chair of the ZAB Density Bonus Subcommittee, on behalf of all Board members present at the time of the vote.

*From the Zoning Adjustments Board to the City Council:*

ZAB's role is to apply the Zoning Ordinance to applications. For us, the Zoning Ordinance represents Council's best efforts, as elected representatives, to guide development in the public interest. However, we now see large residential projects which try to take advantage of state density bonus law to achieve results which weren't intended by the Zoning Ordinance (or by state law), and threats, both explicit and implied, to tie the Board's hands legally if we modify projects. Our predicament results from several factors. Basically, Berkeley does not limit the number of units which can be built in most districts which attract apartment development. State density bonus law, which requires that cities increase their density limits, therefore presents Berkeley with a challenge almost no other city faces: increasing a non-existent limit. The City has met this challenge by providing, through a complicated mechanism, bonuses which, compared to densities realistically to be expected under the Zoning Ordinance, are more generous than in any other city the joint subcommittee could find. (Rick Judd, a land use attorney on the ZAB, wrote a memo for the joint subcommittee, which is available for those who wish to delve into the steps in this process.)

ZAB's concern is not with these bonus densities, and the staff recommendations are not intended to reduce overall densities. Our concern is with how density is implemented. All the ZAB members on the joint subcommittee, representing a wide spectrum of views on appropriate density, agree that preserving discretion in approving how density is achieved is critical. Berkeley's Zoning Ordinance as written did not have to limit density because it relied to an extraordinary degree on staff, ZAB and ultimately Council discretion through the use permit process. Reliance on use permits is particularly important because, outside downtown (which is not affected by staff's or the subcommittee's recommendations), Berkeley relies on narrow corridors along major streets (such as San Pablo, Shattuck and Telegraph) for apartment development. Development along these strips, with no density limits, inevitably affects residents in adjacent residential neighborhoods. **Under the existing Zoning Ordinance and state law, preserving discretion in considering individual projects is the only way to reconcile apartment development with the legitimate concerns of neighbors.**

After more than a year of work, the staff recommendations represent an approach which will restore an element of essential discretion. Current process computes bonus densities using a "base project" which fills every theoretically possible foot of space the Zoning Ordinance allows, assuming nothing added on any side or at any level to the Code-required minimum setbacks, and with every part of the building reaching Code-maximum height. Base projects also indulge the assumptions that every parking space—even those for commercial uses in the building--may be on a parking lift--and that all public open space may be on a roof—however unattractive or inadequate that might be in a particular case. These "base projects" are not real projects, and would not have been approved under the Zoning Ordinance as written. State density bonus law, however, gives the City precious little choice but to approve projects which are 35% larger than

the hypothetical base project, setting aside as many existing development standards as it takes. By making sensible refinements in development standards, which were written generously with the expectation they would be applied with moderation through the use permit process, the City can restore some balance to the base project. Traditional use permit discretion would be required only for buildings more than 35% larger than the maximum envelope under the development standards, and would be available to approve them. Every one of the staff recommended development standards can be loosened by use permit.

The Council may hear that these modest changes will stop development. ZAB members believe this claim is overblown. Though developers regularly participated in its discussions, the subcommittee never heard about any recent Berkeley building that could not have been approved under the proposed revisions. (In fact, no one has identified any apartment building disallowed by use of the City's discretion.) The proposed Trader's Joes project at University and Martin Luther King, probably the City's highest profile current density bonus project, is being pursued vigorously even though its large mixed-use component and residential density substantially in excess of what state law requires make it depend entirely on favorable exercise of City discretion. If development stops, the City can fix its development standards. Although Proposition 90, if passed, will limit changes which restrict development, it will not limit those which ease development.

Simply put, the ZAB recommends that Council modify development standards to provide better tools for the City—staff, ZAB and Council—to manage development. In the long run, this is the right approach for development and for neighboring residents.

#### ALTERNATIVE ACTIONS CONSIDERED

The Board considered a recommendation that the Council require a use permit for a fourth floor in the C-W district. This motion failed (4 yes, 1 no, 1 abstain, 3 absent).

#### CITY MANAGER

See Companion report.

#### CONTACT PERSON

Mark Rhoades, AICP, Land Use Planning Manager, Planning and Development Department, 981-7411.

(

(

(