To: Honorable Mayor and Members of the City Council

From: Christine Daniel, City Manager

Submitted by: Eric Angstadt, Director, Planning & Development

Subject: ZAB Appeal: 2024 Durant Avenue/2025 Channing Way

RECOMMENDATION

Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Use Permit No. 12-10000017 to demolish a church and construct a six-story, 78-unit, apartment building with a mix of one, two, and three bedroom units and basement level parking with 34 parking spaces.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On March 14, 2013, the Zoning Adjustments Board (ZAB) held a public hearing and approved the application by a 5-2-1-0 vote (Yes: Allen, Donaldson, Matthews, Tregub, Williams; No: Hahn, Mikiten; Abstain: Alvarez Cohen; Absent: None). There was one seat on the nine member board vacant at the time of this meeting. On March 19, 2013, staff issued the notice of the ZAB decision. On April 1, 2013, Stephen Stine filed an appeal signed by over 25 neighbors with the City Clerk. The Clerk set the matter for review by the Council on June 25, 2013.

BACKGROUND

The project proposes to demolish the existing church building located at 2024 Durant Avenue, merge the lot with 2025 Channing Way, and construct a 78-unit apartment building. The portion of the building located on 2025 Channing Way would be four stories with a maximum height of 41.5 feet, while the portion of the building located at 2024 Durant Avenue would be six stories with a maximum height of 60 feet. The project includes a ground level patio, a roof top garden/deck, an exercise room, a lobby, a lounge area, and a basement level parking for 40 bicycles and 34 vehicles with access off of Durant Avenue. The 78-units are a mix of one, two, and three bedroom units, all with full kitchens, baths, and in-unit laundry.

As the project involves demolition of a non-residential building greater than 40 years old, staff forwarded the application to the Landmarks Preservation Commission (LPC) for review prior to consideration of the Use Permit. At the September 6, 2012 LPC meeting, the LPC took no action to initiate a Landmark or Structure of Merit designation.
After a preview (July 19, 2012) and two preliminary meetings (August 16, 2012 continued to December 13, 2012), the Design Review Committee (DRC) passed a recommendation for approval by a 4-1-0-2 vote and provided conditions for final design review (Yes: Allen, Blake, McCulloch, Woltag; No: Olson; Abstain: None; Absent: Goring, Williams).

Refer to the attached ZAB reports for further background.

RATIONALE FOR RECOMMENDATION
The issues raised in the appellant’s letter, and staff’s responses, are as follows. For the sake of brevity, the appeal issues are not always re-stated in their entirety; refer to the attached appeal letter for full text.

Issue 1: “Project will cause severe detriments to the vulnerable population of low-income senior residents […] living next door at the Stuart Pratt senior home.” [p. 1 of attached appeal letter]

Response 1: This is a summary statement. Please see responses to issues below for comment and analysis on specific appeal points.

Issue 2: “[…] 75% of the senior home units facing the 2024 Durant lot are studio apartments with only one window. The seniors, many of whom are disabled and who do not get out of the building much, depend on their one window for natural light and ventilation, and the 2024 Durant project will block 80% to 90% of the direct and indirect sunlight to their windows.” [p. 1, 9-10, 25-26]

Additionally, the appellant contests the accuracy of staff’s evaluation of direct and indirect sunlight impacts on the neighboring senior home. [p. 2-3, 9, 10-11]

Response 2: The project will represent a substantial increase over the current, almost minimal shading impacts on the senior housing complex. Both the six-story senior housing complex at 2020 Durant and the three-story multi-family housing at 2023 Channing will experience increased shading throughout the year during the morning hours. However, even during the winter months, all shading impacts will end by 11:00 a.m.

As the senior housing complex (Stuart Pratt) is located adjacent to the project on the northeast, it will experience greater shading impacts from the project than other adjacent buildings. The Stuart Pratt senior home was not constructed to maximize sunlight. Due to the orientation and fenestration of the eastern facing units, these units only get direct sunlight during the morning hours as is. The project would shade all six stories of the Stuart Pratt during winter mornings.

Although the appellant is correct that 75% of the senior units facing the 2024 Durant lot are studio apartments with only one window, these 15
units (three on each of five floors) represent 34% of the building’s total 44 dwelling units. The 24 senior units located on the west side of the Stuart Pratt building (55% of the total) will not experience any shading or light impacts from the proposed project. Additionally, the Stuart Pratt's outdoor patio area, which is available to all the senior residents and is located at the southwest end of the building, will also experience no light or shading impacts from the proposed project.

When staff concluded that, “At no time of year would the proposed project cause adjacent properties to lose access to direct sunlight for more than a couple of hours per day,” staff was not referring to the literal number “two” but to the colloquial use of “a few.” The visual representation (i.e. shadow studies) presented to the Board resolved any ambiguity. The Board was clearly informed that the proposed project would block all direct sunlight on the senior home’s east facing windows until 11:00 a.m. during the winter months, with lessening shading impacts during fall/spring and summer.

Staff stands by the analysis in the staff report that the Stuart Pratt senior home would still receive indirect lighting during the day, throughout the year as it currently experiences. Even if a building is shadowed, natural lighting still enters the windows. The west face of the Durant adjacent to the senior units retains a minimum 8-foot setback to the property line and a 28-foot separation to the façade of the Stuart Pratt (23 feet to the face of the seniors’ balconies). The distance between the buildings allows for indirect lighting throughout the day time hours.

Although the ZAB understood the level of shadowing the project would cause, it found that such shading impacts are to be expected in the Berkeley downtown urbanized area and that, under these circumstances the shadowing is reasonable.

**Issue 2a:**

“Seasonal Affective Disorder, depression, and impaired health outcomes for seniors deprived of sunlight.” [p. 11-14]

**Response 2a:** Although some of the seniors are disabled, there is no evidence presented to suggest that they have no ability to leave their apartments either on their own, or with the assistance of a care giver and/or mobility device. Additionally, the Stuart Pratt senior home has common amenities that all residents are welcome to use, including the outdoor patio and community room. The outdoor patio is located at the rear of the building (southwest) and will not experience any shadow impacts from the Durant at any time of year.1

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1 According to the American Psychiatric Association DSM-IV criteria, Seasonal Affective Disorder (SAD) is not regarded as a separate disorder. It is called a “course specifier” and may be applied as an added description to the pattern of major depressive episodes in patients with major depressive disorder or
Issue 3: “[..] The 2020 Durant Stuart Pratt senior home was sponsored by the 2024 Durant church […] and the senior home was built to depend on the quiet, two-story scale of the church to receive adequate natural light and ventilation.” [p. 1]

Response 3: Since its construction, the senior housing development has enjoyed the benefits of the underdeveloped property at 2024 Durant. However, as related by the Presbytery of San Francisco (“Presbytery”) in its letter dated September 18, 2012, “The development of the Stuart Pratt senior housing at 2020 Durant was not done in conjunction with uses at 2024 Durant, nor intended to limit future uses of 2024 Durant.” The Presbytery was fully aware of the proposed development when it sold the property to the applicant and chose not to place any restriction (such as an easement or deed restriction) limiting the scope of future development.

Issue 4: “The 2024 Durant project will severely impact the low-income, disabled seniors’ privacy. Their lives will be on display as they live their lives in their one-room studio apartments” [p. 1, 9]

Response 4: The new development could potentially cause greater privacy impacts to the senior units compared to the existing office/church. The project went though several design modifications to limit potential privacy impacts. Such modifications included the removal of balconies facing the senior housing, reducing the window size facing the senior housing, setting the rooftop decks away from the building’s edge, and retaining a minimum of an 8-foot side yard setback along the Durant parcel facing the senior complex. As discussed in Response 2 above, there is a 28-foot separation to the façade of the Stuart Pratt senior home and a 23-foot separation to its balconies. Additionally, as previously stated, 55% of the senior units are located on the west side of the Stuart Pratt facing away from proposed project and will, therefore, experience no privacy impacts; the fourth (most northern) unit on the east side of the Stuart Pratt building is a one bedroom apartment with a window on the northern façade. Due to these factors, the ZAB found that the privacy impacts to the neighbors were of a permissible level.

Issue 5: “The project spans two lots, a footprint much more suitable for the Core and Corridor downtown commercial areas, not suitable within a quiet residential neighborhood.” [p. 2, 16-17]

Response 5: A project that spans two frontages (Durant and Channing) is suitable for the existing commercially zoned buffer location. As described in the staff

patients with bipolar disorder. For adults, the risk of SAD decreases as they get older (http://en.wikipedia.org/wiki/Seasonal_affective_disorder).

2 The September 18, 2012 letter from the Presbytery of San Francisco was included as a Supplemental Item at the DRC meeting of September 20, 2012.
report, the neighborhood is a mix of two- to six-story multi-family residential structures along Durant and Channing, and one- to two-story commercial buildings adjacent and fronting Shattuck Avenue, including two automotive repair shops. The subject site is located within the buffer area of the newly implemented Downtown Mixed-Use District with the R-3 Multi-Family Residential District to the west (previously zoned R-4) and the Downtown Mixed Use Corridor Area and Shattuck Commercial district to the east (previously zoned C-SA). As such, at 60 feet, the proposed project represents a transition between the lower massing of the R-3 District (35-foot height limit) and the 75-height limit of the Downtown Corridor. The project is also compatible with the existing development scale, which includes the massing of the neighboring six-story, approximately 57-foot tall Senior Pratt building, and the Downtown Corridor.\(^3\) Construction noise from one project spanning both parcels (such as the current proposal) would be shorter than under a scenario in which two separate projects, each with its own construction periods, are built on the two parcels.

Issue 6:  
"The developer and architect have made only minimal adjustments to their design, changes which will not significantly mitigate the severe detriments to the neighbors." [p. 2, 26-27]

Response 6:  
The developer and architect worked with staff, the DRC, and ZAB to minimize potential neighborhood detriment through modifications to the project as described in Response 4 above and 7 below. For a more detailed description of the design modifications please refer to the March 14, 2013 ZAB staff report.

Issue 7:  
"In an abdication of their municipal duties, neither the DRC or [sic] ZAB adequately pursued any potential mitigations to the detriments that this [sic] seniors will face. They approved a project that is clearly detrimental to the low-income seniors and other neighbors." [p. 2]

Response 7:  
The project went before the DRC three times before it received a recommendation of approval on December 13, 2012. Among the changes made at the request of the DRC and described in more detail in the ZAB staff report, were the reduction in size of Useable Open Space areas; incorporation of noise attenuation features to reduce the noise impacts on the adjacent residences; and the elimination of certain balconies and minimization of window size to protect the privacy of adjacent residences. The ZAB suggested certain mitigations that were also incorporated in the project design and/or conditions of approval prior to receiving ZAB approval. These included an increase in the number of bicycle parking provided on site to further reduce any parking

\(^3\) As submitted in the application packet for the renovation of the Stuart Pratt (Use Permit #11-10000024), the Senior Pratt building is 56’-10” in average height and 60’-4” maximum height.
and traffic demand (see Issue 9 below); a reduction in the daily construction hours to ensure neighbors aren’t inconvenienced during early mornings, evenings, or on Sundays or Federal Holidays; and a condition (#45) requiring a live-in building manager and a Noise Management Plan that is distributed to all abutting and confronting residential units. As approved, the ZAB found the project to not be detrimental, in part as a result of these measures.

Issue 8: "ZAB did not approve the project using a clear, workable standard of what defines a detriment—their decision was arbitrary and capricious, and was not based on a principled application of zoning goals, policies, and statements. [...]" [p. 2, 19-23]

Response 8: The determination required by the Zoning Ordinance is whether a project’s impacts are detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood, taking into consideration “the circumstances of the particular case existing at the time at which the application in granted,” (BMC §23B.32.040). The Zoning Ordinance itself acknowledges that detriment is contingent on place and time and other particular circumstances, and requires a flexible, case-by-case analysis. There is no uniform application or definition of detriment, nor would one be appropriate. The ZAB is an experienced decision making body that balances the needs and desires of often opposing interests while ensuring that its decisions are consistent with underlying Zoning and General Plan standards, goals, and policies. The ZAB’s determinations reflect its view that in a built out urban area such as Berkeley, a new development project will inevitably cause some impacts to surrounding properties, but that these are not detrimental taking the larger planning context into consideration. The ZAB understood the project’s noise, privacy, and shading impacts and weighed them against the benefits of providing 78 new dwelling units in a LEED Gold or equivalent building that is located in close proximity to transit, jobs, basic goods and services, and the UC campus, and which will provide car share spaces and transit benefits, as well as pay an impact fee to implement the Streets and Open Space Improvement Plan (SOSIP) to help pay for the design and construction of the SOSIP Major Projects. The ZAB decision was, therefore, neither arbitrary nor capricious, but was a balance in consideration of the project’s impacts to the neighborhood (both positive and negative) in relation to the underlying goals and policies of the new Downtown Mixed-Use Commercial District and Downtown Area Plan.

Issue 9: “The project […] will dangerously increase traffic and parking demands in the area,” endangering seniors and bicyclists. [p. 3, 27-28]
Response 9: As discussed in the ZAB staff report of March 14, 2013, the project proposes 34 vehicle parking spaces in the basement level garage, which are eight more spaces than required for the 78 dwelling units (1 space for 3 units). In accordance with the City’s Climate Action Plan, as well as to advance more general sustainability goals, the new C-DMU Zoning District employs strategies to reduce vehicle reliance and promote alternative modes of transportation. In accordance with these policies, the project proposes the installation of four electric vehicle charging stations and secure parking for 40 bicycles.

Additionally, as required by the new zoning standards and as conditioned in the project approval, one of the 36 vehicle parking spaces will be reserved as a vehicle sharing spot to be offered to a vehicle sharing service provider at no cost; parking spaces will be leased separately from the unit or bedroom; occupants of the building will not be eligible for Residential Parking Permits (RPP); and the property owner will be required to provide one of the following transportation benefits at no cost to every residential unit: a pass for unlimited local bus transit service, or a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass.

The availability of car sharing, the provision of transit passes, the ineligibility for RPPs, as well as the project’s proximity to public transit, jobs, goods and services, and the University, will help reduce car ownership and help ensure that parking demand does not exceed the project’s parking supply. The traffic study submitted by the applicant determined that the project will not exceed significance criteria for any intersections or residential streets.

The City Traffic Engineer reviewed the project’s traffic study and concurred with its finding that there will be no significant traffic impacts. Staff does not believe, and ZAB concurred, that there will be undue parking and traffic impacts to the neighborhood.

Issue 10: “Downtown Area Plan Policy LU-7.1 ordered all R-4 properties in the neighborhood to be downzoned to R-3 zoning, […] 2024 Durant was upzoned to C-DMU commercial-use zoning in violation of the DAP […]” [p.3, 6-8, 25, 29-32]

Response 10: The rezoning of the subject parcels from R-4 to C-DMU was not, and is not, a matter considered by ZAB. The rezoning was discussed and recommended by the Planning Commission to the Council. In accordance with the Zoning Ordinance (BMC §23A.20.030.B.2), prior to Council action the Public Hearing Notices were posted on site; mailed to all property owners, tenants, and neighborhood organizations; and published twice in a newspaper of general circulation. City Council action on April 3, 2012 (2nd reading) adopted the Downtown Area Plan (DAP) and related C-DMU zoning and stated that the DAP is part of the
General Plan. The City Council action was properly noticed and was the culmination of numerous years of the DAP planning process. The time for challenging the validity of any part of those actions has long passed.

Issue 11: “The seniors and other community members were prejudicially disadvantaged by city staff […] city staff did not in fact forward the public comments in a timely fashion to the ZAB members, but waited to print out the public comments and hand them out to the ZAB members Thursday at the meeting […].” [p. 4, 24]

Response 11: Planning Department policy specifies that all public comment received up to seven days before a ZAB meeting will be included in the packet that gets distributed to ZAB members the Friday before the meeting. Staff provides all subsequent correspondence in a supplemental packet, to the ZAB members at the beginning of the meeting. This policy is clearly stated in both the mailed and posted public hearing notices. Staff mails public hearing notices to all interested parties, and to owners and occupants within 300 feet of the subject site; posts it on the site; and posts it at two nearby locations. By applying this policy consistently, City staff ensures fair review of public comments from all parties, without preference or prejudice.

Wording from the public hearing notice [emphasis added]:

Send written comments to: Zoning Adjustments Board, Permit Service Center, 2120 Milvia Street, Berkeley, CA 94704, or e-mail to: ZAB@CityofBerkeley.info, or fax to: (510) 981-7420. To ensure inclusion in the packet, submit correspondence seven (7) days before the hearing. For any correspondence submitted less than seven days before the meeting, submit 15 copies for staff to deliver to the Board at its meeting.4

Issue 12: “[…] Berkeley should facilitate the sale of the 2024 Durant church building to one of the two church groups that want to buy it. Demolishing the in-demand church building will diminish cultural and religious diversity downtown […].” [p. 5, 33-34]

Response 12: It is not the role of the City to facilitate transaction of private property between private individuals or to use its zoning power to advance religious enterprises. The current property owner contacted an interested party who expressed interested in purchasing the church; however, the interested party never followed up. The property owner is interested in pursuing the current proposal.

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4 Although the requirements and policy are as stated, as a courtesy staff includes all public comment in the ZAB packet that is received up until the publishing of the packet, which is typically around noon on Friday prior to the meeting. All materials received 7 days prior, however, are guaranteed to be included in the ZAB packet. Also, as a courtesy, if submittals received after 7 day deadline received as a single-copy, staff will make sufficient copies to distribute to the ZAB.
Moreover, the existing “church” building has been used as offices for the Presbytery and has not been used as a church since 1992. Thus the project will not affect the cultural and religious diversity in the downtown, as the use will change from office to residential.

Issue 13: “[…]Furthermore, it is fundamentally wasteful and unenvironmental to demolish a perfectly-useable church building [...].” [p. 5, 33]

Response 13: Demolition is often part of redevelopment. The current project was reviewed by the Landmark Preservation Commission and deemed not to meet the eligibility criteria for a historical resource. Although it might be considered “environmental” if all the materials of the existing church were incorporated into the new construction, the construction of 78 new dwelling units in a LEED Gold or equivalent building that is located in close proximity to transit, jobs, basic goods and services, and the UC campus, and which will provide car share spaces, electric vehicle charging spaces, secure parking for 40 bicycles, and transit benefits for all the residents who will live within easy access to public transportation, is consistent with the principals of the City’s Climate Action Plan and also environmentally beneficial.

ALTERNATIVE ACTIONS CONSIDERED
Pursuant to BMC Section 23B.32.060.B, the Council may (1) affirm the ZAB decision and dismiss the appeal, (2) set the matter for a public hearing, (3) remand the matter to the ZAB.

Action Deadline:
Pursuant to BMC Section 23B.32.060.C, if none of the three actions described above has been taken by the Council within 30 days from the date the appeal first appears on the Council agenda (not including Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSONS
Debra Sanderson, Land Use Planning Manager, Planning & Development Department, (510) 981-7411
Leslie Mendez, Associate Planner, Planning & Development Department, (510) 981-7426

Attachments:
1: Resolution
   Exhibit A: Findings and Conditions
   Exhibit B: Project Plans dated May 27, 2011
2: Appeal Letter dated April 1, 2013
3: ZAB Staff Report, dated March 14, 2013
4: Index to Administrative Record
5: Administrative Record
RESOLUTION NO. ###.###-N.S.

AFFIRMING THE ZONING ADJUSTMENTS BOARD’S APPROVAL OF USE PERMIT NO. 12-10000017 TO DEMOLISH A CHURCH AND CONSTRUCT A SIX-STORY, 78-UNIT, APARTMENT BUILDING WITH A MIX OF ONE, TWO, AND THREE BEDROOM UNITS AND BASEMENT LEVEL PARKING WITH 34 PARKING SPACES IN THE DOWNTOWN MIXED USE (C-DMU) BUFFER AREA ZONING DISTRICT AND DISMISSING THE APPEAL

WHEREAS, on May 4, 2012 Dave Johnson, architect, filed an application on behalf of Bill Schrader and the Austin Group LLC (“applicant”) for a Use Permit to construct a multi-unit apartment building at 2024 Durant Avenue and 2025 Channing Avenue (“project”); and

WHEREAS, on July 19, 2012, the Design Review Committee held a public meeting for a project preview, heard public testimony, discussed the project, and made design recommendations; and

WHEREAS, on August 16, 2012 the Design Review Committee held a public meeting, heard public testimony, discussed the project, and continued the item; and

WHEREAS, on September 6, 2012 the Landmarks Preservation Commission held a public meeting, heard public testimony, discussed the demolition of the existing church, and project, and took no action to initiate a Landmark or Structure-of-Merit designation; and

WHEREAS, on September 20, 2012, the Design Review Committee held a public meeting, heard public testimony, discussed the project, and gave it a favorable recommendation; and

WHEREAS, on November 19, 2012, the applicant submitted a revised density bonus project; and

WHEREAS, on December 10, 2012, staff deemed this application complete; and

WHEREAS, on December 13, 2012, the Design Review Committee held a public meeting, heard public testimony, discussed the revised project, and gave it a favorable recommendation; and

WHEREAS, on January 10, 2013, staff posted notices in the project vicinity and mailed public hearing notices to neighborhood groups with an interest in this area, and all property owners and occupants within 300 feet of the project site; and

WHEREAS, on January 24, 2013, the Zoning Adjustments held a public hearing and continued the hearing to February 28, 2013; and
WHEREAS, on February 14, 2013, staff posted notices in the project vicinity and mailed public hearing notices to neighborhood groups with an interest in this area, and all property owners and occupants within 300 feet of the project site; and

WHEREAS, on February 28, 2013, the Zoning Adjustments held a public hearing, the applicant offered to resubmit the original (non-density bonus) project for consideration, and the ZAB continued the hearing to March 14, 2013; and

WHEREAS, on March 14, 2013, the Zoning Adjustments held a public hearing and approved Use Permit No. 12-10000017; and

WHEREAS, on March 19, 2013, the notice of the ZAB decision was issued; and

WHEREAS, on April 1, 2013, Stephen Stine filed an appeal signed by over 25 neighbors with the City Clerk; and

WHEREAS, attached hereto are the findings and conditions adopted by the ZAB (Exhibit A); and project plans (Exhibit B) that are included by reference as though fully incorporated herein; and

WHEREAS, on June 25, 2013, the Council considered the record of the proceedings before the ZAB, and the staff report and correspondence presented to the Council, and, in the opinion of this Council, the facts stated in, or ascertainable from this information, do not warrant further hearing.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley hereby adopts the findings made by the ZAB in Exhibit A, affirms the decision of the ZAB to approve Use Permit No. 12-10000017, adopts the conditions in Exhibit A and the project plans in Exhibit B, and dismisses the appeals.

Exhibits
A: Findings and Conditions
B: Project Plans dated March 1, 2013
2024 Durant/2025 Channing

Use Permit #12-10000017 to demolish a church and construct a six-story, 78-unit, apartment building with a mix of one, two, and three bedroom units and basement level parking with 34 parking spaces.

CEQA FINDINGS

1. 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 of the CEQA Guidelines ("In-Fill Development Projects"). The project meets all of the requirements of this exemption, as follows:

   A. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations, with the exception of waivers/modifications and concessions pursuant to State density bonus law.

   B. The project occurs within the Berkeley city limits on a project site of no more than five acres, and is surrounded by urban uses.

   C. The parcels within the project site have already been developed with commercial/institutional uses, have been paved and have no value as habitat for endangered, rare or threatened species.

   D. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. Regarding traffic, the project will not exceed significance criteria for any intersections or residential streets. The traffic engineer has reviewed the project’s traffic study and concurs with its finding that there will be no significant traffic impacts.

   E. The site is already served by required utilities and public services, which will also adequately serve the project.

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 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 adversely affect any historical resources. It should also be noted that the project will be subject to all applicable mitigation measures of the Downtown Area Plan EIR.
2. Pursuant to Berkeley Municipal Code Section 23B.32.040, the City finds that the proposed project, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood of such proposed use 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, for the following reasons:

A. The proposed project is located in the buffer area of the newly implemented Downtown Mixed-Use District with the R-3 Multi-Family Residential District to the west and the Downtown Mixed Use Corridor Area and Shattuck Commercial district to the east. As such, the proposed project represents a transition between the lower massing of the R-3 District (35-foot height limit) and the 75-height limit of the Downtown Corridor. At six stories and 60-feet, the project is compatible with the scale of the surrounding one- to six-story buildings, and will be proportionate with the new development opportunities in the C-DMU.

B. To reduce impacts on the Stuart Pratt senior housing development, the project is designed with an average of 21.3 feet west side setback instead of expanding the footprint to the maximum allowable setback (5 feet). Useable open space (an outdoor patio) is located adjacent to the Stuart Pratt, thereby providing ample spacing between the two buildings. Additionally, both driveway access and trash bin storage are located on the commercial (northeast) side of the building, while placing the lobby entrance and landscaping next to the senior housing complex. To further limit impacts on the adjacent residences, all proposed balconies on “The Durant” are restricted to the front corners of the building and to areas that are above the neighboring buildings.

C. To mitigate potential noise impacts from the useable open space, the project has been designed so that the Channing rooftop garden is primarily a visual landscaped backdrop from the windows in the workout room and is now considered a "passive" landscape area not designed for outdoor gathering. The Durant rooftop garden has been redesigned to provide more intimate gathering patio areas. Each of these patios has been pulled away from the building’s west edge, away from the senior housing project, to help reduce noise impacts on the neighboring property and screening elements (green screens, planters, etc.) have been incorporated into the design to provide windbreaks and additional buffering of the ambient noise. The ground level patio area has been redesigned to absorb and reduce noise away from the neighboring property by incorporating such features as natural fencing, a 45% slanted screen on the west fence to deflect noise back into The Durant, and outdoor drapery material to absorb and soften the sound, and a water feature as mechanism for masking ambient noise.
D. The shadow studies submitted with the application illustrate that the properties immediately to the west of the subject project (the six-story senior housing complex at 2020 Durant and the three-story multi-unit residence at 2023 Channing) will experience shading during the morning hours throughout the year, with all shading impacts over by 11:00 a.m., even during the winter months. Similarly, the properties immediately to the east of the project (the five-story multi-family housing complex at 2029 Channing and the Staples parking lot at 2352 Shattuck Avenue) will experience shading during the afternoon hours throughout the year. At no time of year would the proposed project cause adjacent properties to lose access to direct sunlight for more than a couple of hours per day. Such shading impacts are to be expected in the Berkeley downtown urbanized area. Shadow impacts are, therefore, found to be non-detrimental.

E. The project exceeds the C-DMU parking requirement by eight spaces. Pursuant to Section 23E.68.080.I, the project will make one space available to car sharing services such as City Carshare or Zipcar. In addition, residents will not be eligible for Residential Preferential Parking (RPP) permits, and the nearest non-RPP area is several blocks away. These factors will help reduce car ownership in the project and discourage use of on-street parking by residents who do not park on site.

F. Pursuant to Section 23E.68.070.D, the project provides private open space for project residents. The Design Review Committee (DRC) has reviewed and approved the landscaping plan for this area and the other open spaces on the site, subject to further details to be worked out during final design review. Furthermore, the project will be subject to any fee adopted by the Council to implement the Streets and Open Space Improvement Plan (SOSIP), in an amount not to exceed $2.23 per square foot of net new residential floor area and $1.68 per square foot of net new commercial gross floor area.

G. The project would provide seventy-eight housing units, which would help the City to meet its housing goals.

H. The project would promote environmental sustainability by achieving a LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC), or by attaining building performance equivalent to this rating.

I. The project helps encourage transit use and reduce greenhouse gas emissions from motor vehicles by constructing additional housing in close proximity to transit, jobs, basic goods and services, and the UC campus, and by providing car share spaces and transit benefits.

DEMOLITION OF EXISTING BUILDINGS

3. Pursuant to Berkeley Municipal Code Section 23C.08.050.D, the City finds that the proposed demolition of the existing church building will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City,
because the building is not architecturally or historically significant and does not provide any substantial benefits to the neighborhood or the City that would equal the benefits of the proposed project. Furthermore, on September 6, 2012, the Landmarks Preservation Commission (LPC) considered information regarding the history of the buildings and took no action to initiate it as a landmark or structure of merit. The City also finds that this demolition is necessary to allow construction of the proposed multi-family building.

OTHER REQUIRED FINDINGS

4. Pursuant to Berkeley Municipal Code Section 23E.68.090.B, the City finds that the proposed project is consistent with the purpose of the C-DMU District, because it is consistent with the goals and policies of the Downtown Area Plan as discussed in the project staff report dated March 14, 2013. The City also finds that the project is compatible with the surrounding uses and buildings, as discussed in Findings 2.A, 2.B and 2.C above.

5. Pursuant to Berkeley Municipal Code Section 23E.68.090.D, the City finds that the new building is compatible with the visual character and form of the District, as the project received a favorable recommendation from the DRC. The City also finds that no designated landmark structure, structure of merit, or historic district in the vicinity would be adversely affected by the appearance or design of the proposed project.

6. Pursuant to Berkeley Municipal Code Section 23E.68.090.F, the City finds that the modified setback along the west property line of the site will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk, because the area of the modification is not located immediately adjacent to any residential windows or open space. See discussion in Finding 2.D. above. The modified increased setbacks along both frontages will result in less solar and wind impacts on the sidewalks as the building will have greater than standard setback from the public right-of-way.

7. Pursuant to Berkeley Municipal Code Section 23E.04.050.E, the City finds that the reduction in the front yard setback of that portion of the Channing frontage that confronts residentially zoned property from 15' down to 13' is permissible in that it allows a continuous setback for the subject building which confronts both residential and commercially zoned properties. The continuous 13' setback provides, on average, a greater overall building setback than if built 15' at the residential portion and with no setback along the commercial portion as required. The reduction in setback, therefore, provides overall greater privacy to the lot in the residential District.
STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

1. **Conditions Shall be Printed on Plans**

   The conditions of this Permit shall be printed on the first sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. The second sheet may also be used if the first sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. **Applicant Responsible for Compliance with Conditions**

   The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. **Uses Approved Deemed to Exclude Other Uses** (Section 23B.56.010)

   A. This Permit authorizes only those uses and activities actually proposed in the application and excludes other uses and activities.

   B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. **Modification of Permits** (Section 23B.56.020)

   No change in the use or structure for which this Permit is approved is permitted unless the Permit is modified by the Zoning Adjustments Board, in conformance with Section 23B.56.020.A.

   Changes in the plans for the construction of a building or structure may be modified prior to the completion of construction, in accordance with Section 23B.56.020.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project. The Zoning Officer may also approve a maximum two-foot variation to Board approved plans, provided that such variation does not increase a structure's height, reduce the minimum distance to any property line, and/or conflict with any special objective sought by the Board.

5. **Plans and Representations Become Conditions** (Section 23B.56.030)

   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.

6. **Subject to all City and Other Regulations** (Section 23B.56.040)

   The approved use and/or construction are subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies.

7. **Exercised Permit for Use Survives Vacancy of Property** (Section 23B.56.080)

   Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8 below.

8. **Exercise and Lapse of Permits** (Section 23B.56.100)

   A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.

   B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.

   C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has (1) applied for a building permit or (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

**CONDITIONS BY PROJECT TYPE**

**Prior to Issuance of Any Building Permit**

10. **Parcel Merger** – Prior to issuance of a building permit, the applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.
11. **Affordable Housing Mitigation Fee**: Consistent with BMC §22.20.065, the applicant shall pay the affordable housing impact fee prior to issuance of a certificate of occupancy, consistent with a schedule approved by the City Manager or her designee.

12. **SOSIP Impact Fee**: As required by BMC Section 23E.68.075, the project shall pay an impact fee to implement the Streets and Open Space Improvement Plan (SOSIP), as adopted by the City Council. The City shall deposit this payment into the Downtown Streets and Open Space Improvement Fund (SOSIF), or its equivalent, to help pay for the design and construction of the SOSIP Major Projects. In no case shall the required fee exceed $2.23 per square foot of the project’s net new residential gross floor area. “Gross Floor Area” shall be as defined in BMC Section 23F.04.010. The fee shall be calculated and assessed consistent with the policies of the Downtown Area Plan Streets and Open Space Improvement Fee Nexus Study, (Draft July 2011,) or subsequent iterations as adopted by the City Council. At the City’s discretion, the City Manager or her designee may reduce the required SOSIP Impact Fee, on a $1 to $1 ratio, as a credit for constructing all or a portion of a major SOSIP Improvement Project. The fee shall be paid according to a schedule established by the City Manager or her designee.

13. **Address Assignment**: Prior to applying for a building permit, the applicant shall file an “Address Assignment Request Application” with the Permit Service Center (2120 Milvia Street) for any address change or new address associated with this Use Permit. The new addresses shall be assigned and entered into the City’s database prior to issuance of the building permit.

14. **Green Building**: This project shall attain a LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC), or shall attain building performance equivalent to this rating, as determined by the Zoning Officer. The applicant shall review the Draft LEED NC Checklist and submit any changes that affect the project’s score, along with comments on revised measures, to the project planner.

15. **Building Height**: Project plans submitted for a building permit shall include both a North South section that labels the height of each floor, including top of roof, as well as a detailed section of the roof area. The section should clearly demonstrate that the building is a maximum of sixty feet (60’) in height as measured to the top of the plate and the parapet shall not exceed sixty-five feet (65’).

16. **Noise Management—Construction**: Prior to issuance of a building permit, the applicant shall provide the project planner with the name and telephone number of the individual empowered to manage construction noise from the project. The individual's name, telephone number, and responsibility for noise management shall be posted at the project site for the duration of construction in a location easily visible to the public. The individual shall record all noise complaints received and actions taken in response, and submit this record to the project planner upon request.

- Noise Management Individual ___________________________
17. **Noise Management—Operation.** The applicant shall work with the Downtown Area Police liaison to develop a plan to address crime prevention and noise issues through environmental design and other means. A written copy of this plan ("Noise Management Plan") shall be submitted to the project planner.

18. **Transportation Management Permit.** The applicant and all persons associated with the project are hereby notified that a Transportation Management Permit (TMP) would be required under any of the following circumstances:

- Alterations, closures, or blockages to sidewalks or pedestrian paths
- Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
- Storage of building materials, dumpsters, debris anywhere in the public ROW
- Provision of exclusive contractor parking on-street
- Significant truck activity.

Contact the Permit Service Center (PSC) at 2120 Milvia Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Public Works Traffic Engineering (981-6400) reviews all submitted TMP requests.

The TMP may include designation of a specific truck haul route. Meter heads (if in the construction area) shall be removed only by City staff. Contact the site inspector 72 hours in advance of required removal so arrangements can be made.

19. **Final Design Review.** The Project requires approval of a Final Design Review application by the Design Review Committee. Final plans shall address the following conditions:

- South elevation of the Durant side of the project requires more windows and articulation.
- Address reflective roof surface on the Channing side of the project and reduce its visual impact as much as possible.
- Now that the units will be open to families, not just students, reconsider the proposed horizontal railings for a safer design and present at Final Design Review.
20. **Interior Noise.** As required by the International Building Code, Section 1207.12, prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic professional certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard. Mechanical ventilation meeting Building Code requirements shall be provided in dwelling units that cannot meet the applicable noise standard with windows opened.

21. **DAP MM NOI-5:** Prior to the issuance of building permits, the applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction indicated in Condition 33 of this Use Permit, as well as technically and economically feasible controls to meet the requirements of the Berkeley Municipal Code. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:

- Construction equipment should be well maintained and used judiciously to be as quiet as practical.
- Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
- Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
- Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
- Prohibit unnecessary idling of internal combustion engines.
- If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
- Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
- Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
- Route construction related traffic along major roadways and away from sensitive receptors where feasible.
- Businesses, residences or other noise-sensitive land uses within 500 feet of construction sites should be notified of the construction schedule in writing prior
to the beginning of construction. Designate a "construction liaison" that would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. Conspicuously post a telephone number for the liaison at the construction site.

22. Storm Water Requirements. The applicant shall demonstrate compliance with the requirements of the City’s National Pollution Discharge Elimination System (NPDES) permit as described in Berkeley Municipal Code Section 17.20. The following conditions apply:

A. The project plans shall identify and show site-specific BMP’s appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.

B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.

C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to storm water pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.

D. Design, location and maintenance requirements and schedules for any storm water quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City’s overall storm water quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.

E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.

F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project,
unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.

G. Beginning August 15, 2006, all private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).

H. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.

23. Soil and Groundwater Management Plan. A Soil and Groundwater Management Plan (SGMP) shall be required for all non-residential projects, and residential and mixed-use projects with four or more units, that: (1) are located in the Environmental Management Area (EMA), as shown on the most recent City of Berkeley EMA map, and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be submitted to the Toxics Management Division (TMD) with the project’s building permit application and shall be approved by TMD prior to issuance of the building permit. The EMA map is available online at: [http://www.ci.berkeley.ca.us/Planning_and_Development/Toxics_Management/Environmental_Management_Area.aspx](http://www.ci.berkeley.ca.us/Planning_and_Development/Toxics_Management/Environmental_Management_Area.aspx)

The SGMP shall identify procedures for soil and groundwater management including identification of pollutants and disposal methods, and shall comply with the hazardous materials and waste management standards required by Berkeley Municipal Code Section 15.1.12.100, the San Francisco Bay Regional Water Quality Control Board’s Order No. R2-2009-0074 C3 and C6, California hazardous waste generator regulations (Title 22 California Code of Regulations (CCR) Section 66360, et. seq.), and the East Bay Municipal Utility District’s Ordinance 311.

The SGMP shall also include:

- A requirement that TMD be notified within 24 hours of the discovery of any previously undiscovered contamination;
- Procedures to manage odors, dust and other potential nuisance conditions expected during development;
- A requirement that the name and phone number of the individual responsible for implementing the SGMP and responding to community questions and
complaints be posted at the construction site on the same notice required under Condition 19 for noise management.

TMD shall review the SGMP and may require additional information or impose additional conditions as deemed necessary to protect human health and the environment. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.

24. **Demolitions.** Prior to approving any permit for partial or complete demolition activities, a hazardous materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead based paint, asbestos, PCB containing equipment, treated wood and mercury containing devices. The survey shall include hazardous materials removal and disposal procedures to be implemented that fully comply with hazardous waste generator requirements (Title 22 California Code of Regulations (CCR) Section 66360 et seq). If the survey identifies hazardous materials, the removal and disposal procedures included in the survey shall become conditions of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition.

**During Construction:**

25. The control measures of the Noise Reduction Program required under Condition 23 shall be implemented throughout construction of the project. Pile driving shall be prohibited. The use of vibratory rollers or tampers capable of generating substantial vibrations within adjacent structures shall be avoided.

26. The height and location of the proposed structure, property lines and spot elevations shall be verified by a licensed surveyor or engineer on site after foundation forms are placed, but before pouring concrete or placing construction material in its permanent position. This verification shall be to the satisfaction of the Zoning Officer.

27. **DAP MM CUL-3:** If archaeological resources are uncovered during construction activities, all work within 50 feet of the discovery shall be redirected until a qualified archaeologist can be contacted to evaluate the situation, determine if the deposit qualifies as an archaeological resource, and provide recommendations. If the deposit does not qualify as an archaeological resource, then no further protection or study is necessary. If the deposit does qualify as an archaeological resource, then the impacts to the deposit shall be avoided by project activities. If the deposit cannot be avoided, adverse impacts to the deposit must be mitigated. Mitigation may include, but is not limited to, archaeological data recovery. Upon completion of the archaeologist’s assessment, a report should be prepared documenting the methods, findings and recommendations. The report should be submitted to the City, the project proponent and the Northwest Information Center (NWIC). The archaeologist shall be selected by the City and the applicant shall pay for all required work by the archaeologist under this mitigation.
28. **DAP MM CUL-4**: Should paleontological resources be encountered during construction or site preparation activities, such works shall be halted in the vicinity of the find. A qualified paleontologist shall be contacted to evaluate the nature of the find and determine if mitigation is necessary. All feasible recommendations of the paleontologist shall be implemented. Mitigation may include, but is not limited to, infield documentation and recovery of specimen(s), laboratory analysis, the preparation of a report detailing the methods and findings of the investigation, and curation at an appropriate paleontological collection facility. The paleontologist shall be selected by the City and the applicant shall pay for all required work by the paleontologist under this mitigation.

29. **DAP MM CUL-5**: If human remains are encountered during construction activities, all work within 50 feet of the remains should be redirected and the County Coroner notified immediately. At the same time, an archaeologist shall be contacted to assess the situation. If the human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Native American Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and any associated grave goods. The archaeologist shall recover scientifically-valuable information, as appropriate and in accordance with the recommendations of the MLD. Upon completion of the archaeologist’s assessment, a report should be prepared documenting methods and results, as well as recommendations regarding the treatment of the human remains and any associated archaeological materials. The report should be submitted to the City, the project proponent and the NWIC.

30. **DAP MM AIR-3**: The following dust and particulate control measures shall be implemented during construction:

   **Dust (PM10) Control Measures:**
   A. Water all active construction areas at least twice daily and more often during windy periods. Active areas adjacent to residences should be kept damp at all times.
   B. Cover all hauling trucks or maintain at least two feet of freeboard.
   C. Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.
   D. Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.
   E. Hydrosed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).
   F. Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles.
   G. Limit traffic speeds on any unpaved roads to 15 mph.
   H. Replant vegetation in disturbed areas as quickly as possible.
I. Suspend construction activities that cause visible dust plumes to extend beyond the construction site.

**Diesel Particulate Matter and PM2.5 Control Measures:**
A. Clear signage at all construction sites will be posted indicating that diesel equipment standing idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks could keep their engines running continuously as long as they were onsite or adjacent to the construction site.
B. Opacity is an indicator of exhaust particulate emissions from off-road diesel powered equipment. The project shall ensure that emissions from all construction diesel powered equipment used on the project site do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately.
C. The contractor shall install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g. compressors).
D. Properly tune and maintain equipment for low emissions.

31. **Construction Hours.** Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday. It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite period of time. The project shall not be allowed more than 15 extended working days. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.

32. **Construction Noise.** To ensure compliance with the City of Berkeley’s Noise Ordinance, the Zoning Officer is authorized to place additional limitations on the hours of operation and/or halt construction until corrective measures are taken.

33. **Public Works.** The removal or obstruction of any fire hydrant shall require the submission of a plan to the City’s Public Works Department for the relocation of the fire hydrant during construction.

34. **Public Works.** If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.
35. **Public Works.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.

36. **Public Works.** The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

37. **Public Works.** Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.

38. **Public Works.** After construction is complete, all drainage culverts shall be inspected for accumulated sediment. If sediment accumulation has occurred, these drainage structures shall be cleared of debris and sediment.

39. **Public Works.** Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season (between October 15 and April 15), the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

40. **Public Works.** The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season (November through March) to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.

41. **Toxics Management, Clean up.** Contaminated sites shall be assessed and cleaned up as required by the TMD under authority of BMC 15.12.100 and Title 23, CCR, Chapter 16, Section 2652 et seq. The cleanup shall be risk based and follow California Environmental Protection Agency policies and procedures including State Water Board’s Leaking Underground Fuel Tank (LUFT) Manual, Site Cleanup Program (SCP) and other CalEPA guidance.

**Prior to Final Inspection or Issuance of Occupancy Permit:**

42. The project shall conform to the plans and statements in the Use Permit.

43. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated March 1, 2013.

44. **Green Building.** Proof of Compliance to LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC), or equivalent.
At All Times:

45. The project shall have a live-in building manager. The contact information for the building manager shall be distributed to all abutting and confronting residential units. The building manager shall have a copy of the Noise Management Plan (see condition #17) at all times and shall make the Plan available for review by any concerned party.

46. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.

47. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

48. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.

49. Hazardous Materials Building Plan. A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted to TMD within 30 days if on-site hazardous materials exceed in aggregate any of the following: 55 gallons for liquids, 500 pounds for solids, or 200 cubic feet of gases at standard temperature and pressure.

Transportation/Parking Requirements:

50. Residential Permit Parking. Consistent with BMC 23E.68.080.F, no Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.

51. Parking to be Leased or Sold Separately. Consistent with BMC 23E.68.080.G, all residential parking spaces shall be leased or sold separate from the rental or purchase of dwelling units.

52. Transit Subsidy. Consistent with BMC 23E.68.080.H, and subject to the review and oversight of the Transportation Division Manager, the property owner shall provide at least one of the following transportation benefits at no cost to every employee, residential unit, and/or GLA resident and a notice describing these transportation benefits shall be posted in a location or locations visible to employees and residents.
   A. A pass for unlimited local bus transit service; or
B. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.

53. **Car Sharing Spaces.** Consistent with BMC 23E.68.080.1, at least one vehicle sharing space shall be provided on the site as follows:

A. At least 90 days prior to issuance of a certificate of occupancy, the property owner shall offer the spaces at no cost to recognized vehicle sharing service providers, or VSSPs (e.g., City CarShare and Zipcar), and shall provide written documentation of such offers to the Zoning Officer and Transportation Division Manager.

B. Prior to issuance of a certificate of occupancy, the property owner shall provide to the Zoning Officer and Transportation Division Manager either (1) a signed agreement with a V SSP to provide shared vehicles at the site, or (2) written documentation that no VSSPs have accepted the owner’s offer.

C. Vehicle sharing spaces shall be available to VSSPs for the life of the building. If no VSSP requests a space, the space may be leased for use by other vehicles, but must be made available to a VSSP requesting such space within 90 days of such request.

D. If a VSSP discontinues use of a vehicle sharing space or spaces, the property owner shall offer the space(s) to other VSSPs within 30 days, and provide written documentation of such offers to the Zoning Officer and Transportation Division Manager. Prior to leasing the space(s) to other users, the property owner shall follow the procedure in paragraph B above.

E. Vehicle sharing spaces at the site shall be accessible to all VSSP members in the same manner and during the same hours as other vehicles offered by the VSSP.

54. **Parking TDM Plan.** Consistent with BMC 23E.68.080.J, a Parking Transportation Demand Management (PTDM) compliance report shall be submitted to the City’s Public Works Department, on a form acceptable to the City, prior to occupancy, and on an annual basis thereafter, which demonstrates that the project is in compliance with the applicable requirements of Conditions 52, 53, and 54.
North-South Section

The Durant - Berkeley
View from Channing Way looking Northeast

View from Channing Way looking Northwest

View from Channing Way looking Southeast

View from Durant Avenue looking Northeast

View from Durant Avenue looking Southwest

View from Durant Avenue looking Southeast

The Durant - Berkeley
March 31, 2013

Hello Mayor Tom Bates and the City of Berkeley City Council,

The seniors of the low-income Stuart Pratt senior home at 2020 Durant and other neighbors are filing this application to appeal the Zoning Adjustment Board’s decision to approve the project to build a six-story building at 2024 Durant.

Here is a quick summary of many of the reasons for which we are appealing, followed by more detailed explanations. Please view the accompanying illustrations located at the end of this document.

- The project will cause severe detriments to the vulnerable population of low-income senior residents, many of whom are disabled, and many of whom have various health issues, living next door at the Stuart Pratt senior home.

- An unusual circumstance which merits special consideration is that 75% of the senior home units facing the 2024 Durant lot are studio apartments with only one window. The seniors, many of whom are disabled and who do not get out of the building much, depend on their one window for natural light and ventilation, and the 2024 Durant project will block 80% to 90% of the direct and indirect sunlight to their windows. The 2020 Durant Stuart Pratt senior home was sponsored by the 2024 Durant church in 1968, the architect was an agent of the church, and the senior home was built to depend on the quiet, two-story scale of the church to receive adequate natural light and ventilation. (Please see accompanying images 01 through 11 at the end of this document).

- The 2024 Durant project will severely impact the low-income, disabled seniors’ privacy. Their lives will be on display as they live their lives in their one-room studio apartments. With a six-story apartment building next door, the seniors will be compelled to close
their curtains over their only windows to maintain their privacy, thus depriving of their only source of natural light and ventilation. (Please see accompanying images 01 through 11 at the end of this document).

- The project spans two lots, a footprint much more suitable for the Core and Corridor downtown commercial areas, not suitable within a quiet residential neighborhood.

- The developer and architect have made only minimal adjustments to their design, changes which will not significantly mitigate the severe detriments to the neighbors. In an abdication of their municipal duties, neither the DRC or ZAB adequately pursued any potential mitigations to the detriments that this seniors will face. They approved a project that is clearly detrimental to the low-income seniors and other neighbors.

- ZAB did not approve the project using a clear, workable standard of what defines a detriment--their decision was arbitrary and capricious, and was not based on a principled application of zoning goals, policies, and statements. Four of the ZAB members gave statements that reflected a detriment to the low-income seniors, and yet two of those for voted for the project, showing that the decision was arbitrary and capricious and that an examination of the evidence clearly shows a severe detriment to the low-income seniors.

- The ZAB staff report contained inaccuracies, such as stating that the senior home would lose direct sunlight for only a "couple" (meaning two) hours a day, when in fact it will lose between four and five-and-a-half hours of direct sunlight a day; the staff report said that the senior home would still receive much indirect light, when in fact, due to the proximity of the six-story project and the Stuart Pratt’s shadowing of the 2024 Durant project after noon, causing a dark chasm between the buildings, the Stuart Pratt will lose up to 80% to 90% of their indirect light. (Please see accompanying images 01 through 11 at the
end of this document).

- The project, with 156 or more residents and around 35 parking spaces, will dangerously increase traffic and parking demands in the area, will cause people to circle the block looking for parking and will increase the amounts of double parking, which will endanger the seniors, many of whom have mobility and vision disabilities, as they walk around the neighborhood, and will endanger the bicyclists using the Channing bicycle lane. (Please see accompanying images 14 and 15 at the end of this document).

- Downtown Area Plan Policy LU-7.1 ordered all R-4 properties in the neighborhood to be downzoned to R-3 zoning, with a three-story maximum building height. Both the 2024 Durant lot and the 2020 Durant Stuart Pratt senior home lot were zoned R-4 previous to the DAP. 2020 Durant was properly downzoned to R-3 zoning in accordance with Policy LU-7.1, and as the church and the senior home were built to function as a pair, and as both were R-4, and as both were ordered to be downzoned to R-3 by the DAP, it is arbitrary, capricious, and discriminatory that 2020 Durant was downzoned, but 2024 Durant was not. 2024 Durant was upzoned to C-DMU commercial-use zoning in violation of the DAP, a decision based solely on increasing the economic value of the land to the 2024 Durant landowner, which is a discriminatory, unfair, inequitable application of zoning laws for the illegitimate reason of profiting a single landowner to the detriment of the health and wellbeing of the low-income, disabled seniors next door. (Please see accompanying images 11 through 13 at the end of this document).

- The low-income seniors were systematically discriminated against in the Downtown Area Plan and in the zoning process. They were not directly notified of the proposed upzoning of 2024 Durant, an upzoning which clearly would negatively impact them, a proposed upzoning which they had basically zero percent chance of learning about on their own. They are low-income, and don’t have the discretionary income to subscribe to local newspapers and scan the
backs of the newspapers for zoning notices which could apply to them; they don’t have computers and internet connections and don’t scan the city website for zoning notices; they can’t afford lawyers to scan newspapers and the city website for zoning notices; many of them are disabled, so they get out much less and are less likely to pick up a local newspaper and happen upon a zoning notice relevant to them in the back of a local newspaper; the majority of the seniors are Chinese and don’t speak English, and cannot hire an interpreter, and so have not been able to participate and be heard at DRC and ZAB meetings; many cannot afford transportation to the DRC and ZAB meetings; many are disabled and so cannot easily make it DRC and ZAB meetings. They have been systematically discriminated against and shut out of the General Plan amendment process and in the zoning process, which violates the General Plan citizen participation element which demands that the city make sure that citizens who will be affected by zoning changes, such as direct neighbors, are maximally involved in the amendments and zoning changes.

- The seniors and other community members were prejudicially disadvantaged by city staff—for nearly a whole week between the Friday ZAB staff report was issued and the Thursday of the ZAB hearing, the seniors and many community members emailed public comments to city staff to send to ZAB; however, for six days, for Saturday through Thursday, city staff did not in fact forward the public comments in a timely fashion to the ZAB members, but waited to print out the public comments and hand them out to the ZAB members that Thursday at the meeting, when they would not have time to actually adequately read the public comments. So the seniors and other community members were deprived of the right to have ZAB members read their public comments in a thorough and timely matter. This is highly undemocratic and non-transparent and prejudicially harms citizens trying to participate in life-changing zoning decisions that can severely negatively affect their health and welfare.

- There are only two church buildings in the downtown area, the church building at issue at 2024 Durant, and the church building on
Channing. The church building on Channing is being used as a Buddhist church; two church groups want to buy the only available church building downtown, the 2024 Durant church building that would need to be demolished to build the 2024 Durant project. As Berkeley wants a vibrant, thriving downtown, and as more and more apartments are being built downtown, which will ensure a growing downtown population, Berkeley should facilitate the sale of the 2024 Durant church building to one of the two church groups that want to buy it. Demolishing the in-demand church building will diminish cultural and religious diversity downtown; there will only be one house of worship, and of only one religious denomination, serving the growing downtown area. Furthermore, it is fundamentally wasteful and unenviromental to demolish a perfectly-useable church building that two church groups want to buy to use as their house of worship. The city should allow the four story section of the project at 2025 Channing, but should facilitate the sale of the 2024 Durant church to one of the two church groups who want to buy it; this will preserve the church and senior home as a functional pair, it will prevent the excessive shadowing detriments that a six-story building would cause to the low-income senior home, it will uphold the promises and orders of the Downtown Area Plan to protect the neighborhood by downzoning 2024 Durant to R-3 zoning, and it will increase, not decrease, cultural and religious diversity in downtown Berkeley. (Please see accompanying images 03 through 05 at the end of this document).

- There are many other reasons why were are appealing, please see the detailed explanations below, and please view the accompanying images and illustrations at the end of this document.

This is a very specific set of circumstances it is up to citizens, elected officials, and city staff to carefully consider how new development will impact an existing neighborhood, both pro and con. The developer and his architect have done virtually nothing to mitigate the potential shading, noise, and privacy concerns that the senior residents face. Sadly, the DRC and the ZAB have both seen fit to ignore the detriments that this project
will introduce to the neighborhood and have given the developer and his architect a pass on what is, in dissenting views beyond the seniors’ and including those of several DRC and ZAB members, a lacking design (in particular, note DRC and ZAB comments regarding the poor, short-sighted apartment layouts, an issue independent of arguments we have made regarding neighborhood impacts), in addition to several ZAB members expressed reservations over what any reasonable person would clearly label severe detriments to the low-income, disabled seniors of the Stuart Pratt senior home. We owe our elders and the citizens of Berkeley more than what this project proposes; we owe it to the citizens of Berkeley to deliver on and enforce the community benefits and neighborhood protections promised and ordered in the Downtown Area Plan.

Promised and ordered community benefits and neighborhood protections

As with the recent opposition to the Acheson Commons project, which City Council remanded to ZAB, the community benefits and neighborhood protections promised and ordered in the Downtown Area Plan are not being delivered and enforced with the 2024 Durant project. The goals and policies of the DAP are being circumvented, bent, and violated, to the detriment of the low-income seniors of the Stuart Pratt low-income senior home and other neighbors. The seniors and other neighbors now know that they were fleeced and sold a bill of goods when they voted for the Downtown Area Plan; as with the Acheson Commons project, the Sierra Club and the citizens of Berkeley are learning that the city and developers are not following through on the community benefits and neighborhood protections promised by the Downtown Area Plan, a situation that the city of Berkeley should be ashamed of and should remedy. The city must uphold the bargains and promises of community benefits and neighborhood protections that the citizens of Berkeley voted for and which the Downtown Area Plan promised.

First of all, the citizens of Berkeley specifically voted for the southwest downtown residential area to be protected--the DAP explicitly designates this area as a protected area that is to be downzoned from R-4 to R-3 residential zoning, with a three story maximum building height, to protect
the residential neighborhood from undue development pressure and to maintain the existing scale and character of the neighborhood. Well, guess what—we are here today because undue development pressures are being exerted on 2024 Durant and the rest of the protected residential neighborhood, as a result of the city’s violation of the neighborhood protection promises and orders in the DAP. In particular, the city upzoned 2024 Durant from R-4 zoning to C-DMU commercial mixed use zoning, with a maximum building height of six stories, instead of downzoning 2024 Durant to R-3 zoning, with a maximum building height of three stories. The downzoning was promised by the Downtown Area Plan and explicitly ordered by Goal LU-7 and Policy LU-7.1, as well as the following text in the DAP:

“Residential Neighborhoods. Several residential blocks lay in the northwest and southwest corners of the Downtown Area. Residents have expressed their desire to maintain their scale and character of these residential areas. Downtown Area Plan policies seek to reduce development pressures in and maintain the general character of these residential areas.”

“Residential Neighborhoods. Few opportunity sites exist in residential-only areas, but when development does occur, it will be subject to residential zoning. Many residents have expressed their desire to maintain the scale and character of these residential areas. To reduce development pressures that could result in inappropriate development, Plan policies call for downzoning the southwest portion of the Downtown Area from R-4 to R-3.”

“Goal LU-7: Maintain the existing scale and character of residential-only areas”

“Policy LU-7.1: Neighborhood Protections.

Seek to reduce development pressures in residential-only areas, to promote the preservation and rehabilitation of older structures—and to conserve the scale of their historic fabric (see Policy HD-1.5).
a) Maintain the R-2A zoning designation and downzone R-4 areas to R-3 (as shown in Figure LU-1), except for the north side of Dwight Way east of Shattuck Avenue.

In the case of 2024 Durant, the explicit promises that “when development does occur, it will be subject to residential zoning” and that “policies call for downzoning the southwest portion of the Downtown Area from R-4 to R-3” have been broken, as 2024 Durant was part of the R-4 residential-only southwest downtown neighborhood, and the city subjected 2024 Durant to commercial-mixed use C-DMU zoning, instead of downzoning it to residential R-3 zoning.

The city snuck this upzoning past the residents who will be directly affected, as the city did not notify the low-income seniors or any other neighbors directly, but rather left the low-income seniors to stumble across a notice in the back of some local newspaper or to find a notice on the city’s website, which of course is highly unlikely to have happened—the city owed it to the low-income seniors, many of whom are disabled, seniors to notify them and consult them, to not have done so is highly undemocratic and non-transparent and violates the General Plan’s citizen participation element, which orders that citizens living and working in neighborhoods affected should be involved to the maximum extent possible in General Plan amendments and zoning changes, so that they can have fair and timely input into such amendments and changes, and so that they can make public comments and sue in a timely manner if they so desire. The city blatantly violated the citizen participation element of the General Plan by not making sure the low-income seniors were aware of the proposed upzoning of the 2024 Durant church property right next door.

Excessive detriments to the low-income seniors as a result of the city’s breaking the promises and violating the policies of the Downtown Area Plan

The detriments to the low-income, disabled seniors caused by the city’s breaking the promises of the Downtown Area Plan and approving a six-story building at 2024 Durant are severe:
The six-story 2024 Durant project will block 80% to 90% of the seniors’ direct sunlight, and possibly 80% to 90% of the seniors’ indirect sunlight.

First of all, the low-income seniors are significantly dependent on sunlight, on solar access for their health. The majority of the Stuart Pratt seniors (75%) live in studio apartments with only one window for natural lighting and ventilation. Many are disabled and do not get outside of their apartments much due to their disabilities, such as mobility and vision disabilities, so their single window is their main source of sunlight and natural ventilation. The 2024 Durant project will block their sunlight; furthermore, if a six-story apartment building is built next door, the seniors’ lives, living in their single studio apartment room will be on display, like birds in a cage or fish in a fishbowl, so the seniors will be compelled to close their curtains for privacy, further depriving them of their sunlight and natural ventilation.

The ZAB staff report erroneously misstated the amount of sunlight the 2024 Durant project will block to the Stuart Pratt senior home.

The ZAB staff report erroneously states that direct sunlight will be blocked to the senior home for at most “a couple” (meaning two) hours. This is entirely false. It is a fact that in Berkeley, sunrise throughout the year is typically between 5:30AM and 7:00AM. The shadow studies provided clearly indicate that Stuart Pratt will be entirely shadowed by the 2024 Durant project until 11AM for most of the year, and sunrise starts between 5:30AM and 7:30AM. Being in shadow from 5:30AM or 7AM until 11AM every day means that the senior home will be entirely shadowed by 2024 Durant between four and five-and-a-half hours every day, which means that the seniors will lose four to five-and-a-half hours of their direct sunlight each day. At noon the sun will pass overhead to the west, so typically the east side of the senior home gets between five and six-and-a-half hours of direct sunlight a day. Thus, the seniors will lose the vast majority, four to five-and-a-half of their typical five to six-and-a-half hours of direct sunlight every day—they will lose 80% to 90% of their direct sunlight daily, and will
only receive maybe an hour of direct sunlight a day, from 11AM to 12PM.

The ZAB staff report erroneously misstated or ignored the extent to which the 2024 Durant project will block indirect sunlight to the Stuart Pratt senior home.

Not only will the six-story 2024 Durant project block 80% to 90% of direct sunlight to the senior home, it will block perhaps 80% to 90% of the indirect sunlight to the senior home. Currently, once the sun passes over the senior home from the east to the west around 12PM, the east side of the senior home still gets significant amounts of indirect sunlight reflected off of the Berkeley hills and the rest of the cityscape. However, a six-story 2024 Durant project twenty feet outside of the Stuart Pratt studio apartment windows will block all of the reflected light from the Berkeley hills and cityscape to the Stuart Pratt studios; the six story building will block all of the reflected light.

Furthermore, because of the symmetry of the sun’s path in the sky, starting around 1PM, as the sun is to the west of the Stuart Pratt senior home, the Stuart Pratt senior home to the west will shadow the 2024 Durant project to the east, from around 1PM until sunset, just as the 2024 Durant project will shadow the Stuart Pratt from dawn to around 11AM. So from 1PM to sunset, typically between 5PM and 8PM, for between four and seven hours, the Stuart Pratt senior home will shadow the 2024 Durant project twenty feet to the east. So the seniors will be looking out at a dark, shadowed wall of the 2024 Durant project to the east from around 1PM to between 5PM and 8PM. The Stuart Pratt will be shadowed from dawn to 11AM, and will shadow 2024 Durant from 1PM to between 5PM and 8PM. The seniors will receive direct sunlight typically only between 11AM and 12PM, and then will receive indirect sunlight typically only between 12PM and 1PM; for the rest of the day, for the vast majority of the day, the seniors will live in shadows, shadows created both by the 2024 Durant project before noon, and by shadows created by the Stuart Pratt senior home on the 2024 Durant project after noon.

For evidence of this deprivation of indirect sunlight, we’ve included a photo
of the shadows created after noon by the 2029 Channing building on the 2035 Channing building to the east. The buildings are roughly 20 feet apart, and you can clearly see how after noon, the 2035 Channing to the east is shadowed by 2029 Channing to the west, and how the residents of 2029 Channing live in darkness after noon since they are looking out at the shadowed wall of 2035 Channing after noon, a dark, shadowed wall that blocks reflected and indirect light from the Berkeley hills and the rest of the cityscape. There is a dark chasm between the buildings, as there will be a dark chasm between the Stuart Pratt senior home and the 2024 Durant project if the city allows this ill-conceived project, which violates the promised, goals, and policies of the Downtown Area Plan, to be built.

**Seasonal Affective Disorder, depression, and impaired health outcomes for seniors deprived of sunlight**

Access to sunlight is vital for seniors, and has been proven to decrease mental problems such as dementia, and wards of depression caused by seasonal affective disorder. Depression disproportionately occurs in seniors, and has a severely negative effect on their health outcomes and their ability to recover from illness. The seniors of Stuart Pratt, many of whom are disabled, absolutely depend on getting light into their studio apartments through their single studio apartment windows facing the quiet, two-story church building, for their health and wellbeing. A six-story building at 2024 Durant will block 80% to 90% of their direct and indirect sunlight, severely impacting their health and wellbeing.

Here are some statistics on the importance of access to sunlight for seniors, and the devastating impacts of lack of sunlight, seasonal affective disorder, and depression:

From the BBC:

"Spending more time in the sun could help older people cut their risk of heart disease and diabetes say experts."
Sun exposure helps the skin make vitamin D - a vitamin older people are generally deficient in due to their lifestyles and ageing processes.

A team at Warwick University has shown a deficiency increases the risk of metabolic syndrome, which is linked to diabetes and cardiovascular disease.”

‘When we are older we may need to spend more time outdoors to stimulate the same levels of vitamin D we had when we were younger’ (Lead researcher Dr. Oscar Franco) .

Sunshine vitamin: Vitamin D is mainly obtained from exposure to the sun...

There are concerns that many people, including the elderly, pregnant women and those who wear all-concealing clothing do not get enough of the vitamin.”

“Lorna Layward from Age Concern and Help The Aged said: "We have always advocated that older people get out into the sunshine for a bit each day if they can. A bit of sun is good for you.”

(Note that since many of the Stuart Pratt seniors are disabled, it is much harder for them to get out in the sun, they depend on the sunlight through their windows).

"Vitamin D is mental health aid’

From the Mercury News:

“Feeling depressed, sleepy, and out of sorts this winter? You could
have seasonal affective disorder, also known as SAD.

The symptoms of depression include pervasive sadness, feelings of hopelessness worthlessness, or helplessness, loss of interest in once pleasurable activities, decreased energy, eating too much or too little, and in the most severe cases, thoughts of suicide.

What is your advice to those who may be dealing SAD?

... 

2. Around October, as the days become shorter, make an effort to be exposed to sunlight in the morning."

From WebMD, on the terrible health impacts of depression on elders, which can often be caused from lack of sunlight and vitamin D:

"Depression doubles an elderly person’s risk of cardiac diseases and increases their risk of death from illness. At the same time, depression reduces an elderly person’s ability to rehabilitate. Studies of nursing home patients with physical illnesses have shown that the presence of depression substantially increases the likelihood of death from those illnesses. Depression also has been associated with increased risk of death following a heart attack. For that reason, making sure that an elderly person you are concerned about is evaluated and treated is important, even if the depression is mild.

Depression also increases the risk of suicide, especially elderly white men. The suicide rate in people ages 80 to 84 is more than twice that of the general population. The National Institute of Mental Health considers depression in people age 65 and older to be a major public health problem."
Furthermore, the "stressful life event" of having the city upzone 2024 Durant to C-DMU without notifying them, having the quiet, peaceful church demolished, and being walled in by a six-story apartment building, losing their sunlight and views, is likely to cause grief and depression in the Stuart Pratt seniors:

From WebMD:

"What Are Risk Factors for Depression in the Elderly?

Factors that increase the risk of depression in the elderly include:

• Being female

• Being single, unmarried, divorced, or widowed

• Lack of a supportive social network

• Stressful life events"

Such stressful life events should be prevented, the city should limit the 2024 Durant project to three stories, and the best outcome would be for the city to facilitate the sale of the church building to the two church groups who want to buy it—that would be a win-win for the seniors and for cultural and religious diversity in the downtown area.

Violation of city statement on detrimental blocking of solar access and significant view, and privacy impacts

As the 2024 Durant project clearly blocks a significant amount of sunlight
to the Stuart Pratt senior home, as much as 80% to 90% of the direct and indirect sunlight; as the project will severely impact the seniors' privacy, since they live their lives in one studio apartment room with only one window; since the project will rob the seniors of their significant, protected views of the Campanile and the Berkeley hills, ZAB should have denied permits to the project, as clearly described in this statement from the City of Berkeley website:

"How does the ZAB decide whether to approve a UP?

To approve an UP, the ZAB must find that the project would not be "detrimental" to neighbors or to the City’s general welfare, and make any other findings required by the Zoning Ordinance. Staff may place conditions on a project if necessary to make the required findings or promote the public welfare.

"Detriment" is determined on a case-by-case basis, depending on the project type and setting. Staff can provide further guidance during preliminary review as to whether or not a particular project may cause detriment. A project may be considered detrimental if it has the following impacts:

a) Residential areas:

- Substantial loss of direct sunlight or privacy in a dwelling or an adjacent dwelling
- Unreasonable obstruction of a neighbor’s significant view
- Construction that is incompatible with the scale and character of the neighborhood"

Clearly the 2024 Durant project causes "Substantial loss of direct sunlight or privacy in a dwelling or an adjacent dwelling" and "unreasonable
obstruction of a neighbor’s significant view,” since 80% to 90% of the seniors' direct and indirect light will be blocked, and their significant, protected views of the Campanile and of the Berkeley hills will be completely blocked, where 2024 Durant was ordered to be downzoned to R-3 zoning, with a maximum height of three stories, by the Downtown Area Plan. ZAB undemocratically abdicated its duty to the city and to the community by its arbitrary and capricious decision to approve the 2024 Durant project permits in violation of the statements above regarding substantial shadowing and blockage of protected views.

The 2024 Durant project, spanning two lots, will create double the construction impact, debris, pollution, noise, and traffic, and is totally inappropriate for this quiet, residential neighborhood, next to a low-income senior home, where many of the seniors are disabled and have health complications.

The huge footprint of the 2024 Durant project, spanning two lots, 2024 Durant and 2025 Channing, is highly inappropriate for this protected, residential-only neighborhood, and for construction right next to a low-income senior home, with its many disabled residents with health problems. The simultaneous construction of a six-story and a four-story building will create twice the construction noise, air pollution, debris, and construction activity as a normal one-lot project. Such a large footprint is appropriate in the commercial Core or on commercial Corridors such as on University or Shattuck, but halfway in the block in this quiet, residential-only neighborhood, right next to the senior home, in place of a quiet, two-story church, is totally inappropriate. To avoid the noise and air pollution and debris, the seniors will have close their only windows in their studio apartments, and the lack of air and the pollution and debris and noise can exacerbate sensitive health conditions for the seniors, many of whom are disabled and who have delicate health conditions. This is the exact wrong place for such a large project, which belongs only in the Core or Corridor, not in this quiet, residential neighborhood.

The traffic itself and construction activity from the simultaneous construction on two lots will severely impact the neighborhood and
endanger the seniors walking around the neighborhood and the bicyclists using the Channing bicycle avenue. This is the wrong place for such a huge project. The city should allow the building of the four story project on 2025 Channing, but limit the 2024 Durant lot to three stories as promised and ordered in the Downtown Area Plan; the best outcome is to facilitate the sale of the 2024 Durant church building to one of the church groups who want to buy it for use as their church home and house of worship.

Rebuttal to Presbytery of San Francisco land use attorney

Note that contrary to statements by the attorney of the former owner (the Presbytery of San Francisco), 2024 Durant was part of the residential-only neighborhood/area, even though there are some commercial properties on the east end of the block. Note that Goal LU-7 and Policy LU-7.1 refer to “residential-only areas.” Residential-only areas are not delineated by blocks, but by contiguous residential-only zoning, and 2024 Durant has consistently been included in city materials as part of the southwest residential-only area. All R-4 properties to the west of 2024 Durant and 2025 Channing on the same block were downzoned to R-3 as part of the residential-only neighborhood/area, and 2024 Durant was shown as having been downzoned to R-3 in the May 2011 draft; Berkeley High, which is used for institutional purposes, was downzoned from R-4 to R-3 also, as Berkeley High was residentially zoned and part of the R-4 residential-only neighborhood, even though both Berkeley High and 2024 Durant were used for institutional uses, not as actual residences; clearly Policy LU-7.1 applies to all R-4 properties on the block, including 2024 Durant, which are clearly all part of the residential-only neighborhood/area to which Goal LU-7 and Policy LU-7.1 apply.

The residential-only neighborhood/area is not delineated by blocks, but rather by contiguous residential-only zoning, and 2024 Durant has been part of the contiguous-residential-only zoned R-4 neighborhood in the southwest downtown area for decades. The Stuart Pratt senior home right next door at 2020 Durant was downzoned to R-3, it is highly prejudicial, arbitrary, and discriminatory that 2020 Durant was downzoned to R-3 but 2024 Durant was not, for no good reason, in violation of the goals, policies,
and express promises to the citizens of Berkeley of the Downtown Area Plan.

Not only that, but the 2024 Durant and 2020 senior home were conceived and built to function as a functional pair. The church was built in 1948, and the Presbytery in 1968 or so conceived of and sponsored construction of the senior home, and the senior home architect was an agent of the church. In fact, the senior home, Stuart Pratt, is named after the acting pastor of the 2024 Durant church at the time, Stuart S. Pratt. The senior home was built to the scale of the quiet, two-story church building, with only one window planned per studio apartment—if the architect had known that a six story building would have been built instead of the church one day, he likely would have included ventilation shafts with windows, or a central courtyard, so that the seniors could have more than one source of light. Since the two buildings were created as a functional pair, it doesn’t make sense to downzone 2020 Durant to R-3 but not 2024 Durant; they are a pair, both should be downzoned to R-3 and limited to three stories, as promised and ordered in the Downtown Area Plan.

To downzone one but not the other, for the explicit monetary gain of the owner of 2024 Durant, is arbitrary and capricious, and could have been ruled as illegal spot zoning if the seniors had been notified of the upzoning in time and if they could have sued within the 90 day statute of limitations—the city undemocratically denied the seniors of their right to sue in a timely manner by not bothering to notify the seniors of the proposed zoning change which so obviously would have a huge, negative impact on their lives, their health and welfare. We are disappointed because we thought Berkeley was a city that prided itself on being open and transparent, and which treated low-income people, elderly people, non-English speakers (the majority of the senior home residents are Chinese), and the disabled with care and compassion. This situation proves that Berkeley has little regard for the low-income, the disabled, the elderly, and non-English speakers, and apparently thinks they do not belong in downtown Berkeley, that they should not be consulted or notified when the city is considering violating explicit zoning rules for the profit of a single landowner and developer.
Rebuttal to city staff regarding number of stories of the Stuart Pratt senior home and other issues, and to arguments regarding smooth building height transitions

Contrary to what is stated in the ZAB staff report, the Stuart Pratt is technically five or five and a half stories, reaching 55 feet. The 2024 Durant project would be an entire floor, ten feet, taller than the senior home, reaching 65 feet. There are no six-story, 85 foot-tall buildings in the neighborhood.

Note that there are no exceptions in the DAP Goal LU-7 and Policy LU-7.1’s orders to maintain the scale and character of the neighborhood and to downzone R-4 properties to R-3 zoning to create smooth height transitions by upzoning certain R-4 properties to C-DMU; this is the opposite of what these goals and policies promise and order.

Goal LU-7 orders the city to maintain the existing (not future) scale and character of the southwest residential neighborhood that 2024 Durant was part of. Note that the scale and character of the 2024 Durant project is two-stories and residential; to the north is a four story residential building that was zoned R-4 residential; to the east is a flat parking lot (zero stories) that was zoned R-4 residential (and there is a lease on it until 2038), to the south is a zero story lot that was zoned R-4 residential, and to the west is a five story residential building that has been downzoned to R-3; overwhelmingly, the existing scale and character around 2024 Durant is three stories or less, and was 100% residential. As such, 2024 Durant should be limited to three stories and kept residential in accordance with Goal LU-7, not upzoned to C-DMU with a six story building height—the upzoning blatantly violates of the goals and promises of the Downtown Area Plan, to the detriment of the low-income seniors and other neighbors.

Problems with the ZAB hearing

There are systematic problems with the Berkeley zoning process and the ZAB hearing for 2024 Durant.
First of all, while ZAB can only issue permits for projects if ZAB finds that there are no detriments caused to the neighbors by a project, there are absolutely no standards as to what actually constitutes a detriment. As there are no standards as to what constitutes a detriment, ZAB members are free to make up whatever rationales they want as to whether something constitutes a detriment, and community members impacted have absolutely no standards by which they can argue that something about a project constitutes a detriment. Let me make this clear: this allows ZAB members to absolutely make up whatever reason they want as to why something does or not constitute a detriment. For example, ZAB member Igor Tregub admitted that he had a personal bright line for the 2024 Durant project, that he would be opposed to an eight story building, but not a six story building--this is completely arbitrary and capricious.

There should be standards, such as that depriving a neighbor of a certain percentage of the available sunlight constitutes a detriment, etc. Otherwise, ZAB members like Igor Tregub can set their own personal standards that the community members might not know about, such as that an eight story building will cause a detriment, but a six story building will not. So the entire ZAB detriment finding process is completely unfair, arbitrary, and capricious, since there are no workable standards. How many projects has ZAB ever denied? If blocking 80% to 90% of the direct and indirect sunlight to low-income, disabled seniors who live in studio apartments with one window is not a detriment, what is? Is this like the old pornography debate, that ZAB members will know a detriment when they see one, but the public has no idea what the standards are and thus have no way to meaningfully participate in the debate since they have no standards to which projects can be objectively measured and critiqued? This is a totally undemocratic, unworkable system that systematically discriminates against community members, especially low-income, disabled, non-English speaking seniors who cannot afford to travel to public hearings, hire interpreters, and hire lawyers to argue on their behalf.

Furthermore, lack of standards allow findings of non-detriment, when to any reasonable observer, several ZAB members who voted for the project basically admitted that the project caused detriments to the seniors. For
example, ZAB member George Williams stated something to the effect that
the 2024 Durant project would definitely take away a lot from the seniors,
and that they should be compensated in some way, such as perhaps giving
the seniors access to the open space of the 2024 Durant project. To any
reasonable person that would be interpreted as an admission that the
project constitutes a detriment to the seniors, that the seniors are having a
lot taken away from them and should be compensated--thus George
Williams should have voted against the project. But with no standards
defining what is and what is not a detriment, George Williams could
acknowledge a detriment and yet vote for the project.

Similarly, ZAB member Igor Tregub acknowledged something the effect
that the project would cause negative impacts to the seniors. He state that
he has a bedroom with a window significantly shadowed by a neighboring
building, and something to the effect that he would not like it if that were his
only window, and that the seniors with only one window will be negatively
impacted by the 2024 Durant project’s blocking of much of their sunlight;
that the seniors and other neighbors had many real and legitimate
concerns about the project, but that he knew the project would be
appealed to City Council, so that in the spirit of “pragmatism” he would vote
to approve the project, and hoped that City Council would listen to the
seniors and neighbors’ real and legitimate concerns. To any reasonable
observer, Igor Tregub stated and admitted that the 2024 Durant project
creates a detriment to the seniors. However, once again, without any
standards, Igor Tregub, like George Williams, could enumerate negative
impacts to the seniors from the project, and yet still vote to approve the
project, without requiring mitigation of the negative impacts on the seniors
and other neighbors.

So technically, four out of eight ZAB members expressed negative impacts
of the project on the seniors and other neighbors, and those negative
impacts should be counted as detriments. To not count those negative
impacts as detriments is undemocratic and illogical, arbitrary and
capricious, and shows that a standard for what constitutes detriment is
required so that community members have a fair chance to hold ZAB to a
standard. ZAB members having arbitrary standards personal to
themselves, such as Igor's "bright-line" rule that he would have denied an
eight story project but that he would approve a six-story project, is totally
arbitrary, capricious, unreasonable, and is an abdication of civic duties to
actually apply zoning goals, policies, and ordinances to the nuanced
context of the projects and sites at hand.

According to Berkeley Municipal Code 23B.32.040, the burden on finding a
non-detriment is the responsibility of ZAB and the developer; it is not the
community's burden to prove that a detriment exists.

"23B.32.040 Findings for Issuance and Denial and Conditions

A. The Board may approve an application for a Use Permit, either as
submitted or as modified, only upon finding that the establishment,
maintenance or operation of the use, or the construction of a building,
structure or addition thereto, under the circumstances of the particular case
existing at the time at which the application is granted, will not be
detrimental to the health, safety, peace, morals, comfort or general welfare
of persons residing or working in the area or neighborhood of such
proposed use 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.

However, ZAB member Robert Allen seemed to state, incorrectly, that the
burden should be placed on community members, not on ZAB and the
developer, with his following statements as quoted in the Berkeleyside
news site:

"Commissioner Hahn agreed, adding that the layout of the units was "not
conducive to family living." She said she had "very serious concerns,"
particularly in relation to impacts on sunlight for nearby residents and the
"detriment to neighbors" overall. Hahn asked her fellow commissioners to
delay their decision and direct the developer to come back with designs
that would allow more light to fall on neighboring buildings and re-think unit
layouts. But only Commissioner Tregub voted in support of her idea. Commissioner Allen took issue with Hahn’s request, saying it would have thrown the approval process “into chaos.” (The city’s Design Review Committee, on which Allen sits, discussed the plans four times between July and December 2012.) “How can we get anything built in this town if this is what the applicant has to go through to get a building?” he asked. “I think it’s wrong.”

Note that Berkeley Municipal Code 23B.32.040 does not make exceptions for developer effort, DRC effort, etc, does not take any burdens off of developers and place them on community members: the ordinance only asks if the project presents detriments to neighbors or not.

Thus, Robert Allen’s statements to his fellow ZAB members that if they require the developer to make efforts to mitigate detriments, the approval process will be thrown “into chaos” and that nothing can get built in this town “if this is what the applicant has to go through to get a building” are wholly undemocratic, go against the BMC 23B.32.040, are an abdication of municipal duty, and are entirely inappropriate: ZAB members are not to weigh any efforts or expense exerted by the developer against any potential detriments, but need to focus exclusively on whether detriments are caused to the neighbors, according to BMC 23B.32.040. It is ZAB’s and DRC’s duty to make sure the best projects only are built, and that the developers create projects that minimize shadow impacts to neighbors, and minimize impacts to neighbors. That’s what ZAB and DRC are for; if after four DRC hearings the project doesn’t meet ZAB and DRC’s approval, there should be more design modifications; ZAB and DRC should not just throw up their hands and approve the project, as Robert Allen seems to be stating that ZAB should consider doing. That is a clear abdication of ZAB and DRC’s municipal duty to the citizens of Berkeley, who depend on ZAB and DRC and City Council to protect them from detrimental projects.

Detriments to neighbors should not be discounted just because Robert Allen doesn’t want developers to have to try harder to make appropriate, non-detrimental projects, for his unfounded fear that making developers try to make appropriate projects will scare developers away from Berkeley.
Developers smell the money to be made, and already see Berkeley breaking the promises of the Downtown Area Plan, for the benefit of developers and landowners, as the city has done by upzoning 2024 Durant to C-DMU in direct violation of the DAP, and by approving the 2024 Durant project, in spite of obvious detriments to the low-income, disabled seniors next door at the Stuart Pratt senior home. Enforcing the zoning and design goals and policies is the responsibility of ZAB and DRC; they should not balk at requiring developers to try their best to actually meet the explicit zoning goals and policies and ordinances. ZAB member Robert Allen’s statement thus should be censured by City Council as entirely inappropriate, and the project should be judged exclusively by whether detriments exist to the neighbors, and clearly significant detriments will be caused by the project and it should be rejected.

Furthermore, the public comment process for ZAB was flawed. One week before the ZAB hearing, after the Friday on which the ZAB staff report was published, the city planning department would not forward public comments received by email during that week to ZAB members; many members of the public sent the planning department public comments to send to ZAB that Saturday through Thursday, however, the planning department staff did not forward those emails to ZAB, but rather printed them out and handed them out to ZAB on Thursday, depriving the citizens of Berkeley of the ability to have their public comments read by ZAB until minutes before the actual hearing, when they would not have time to read the public comments. This also deprives citizens of being able to rebut the staff report in writing and have their comments read in the week before the ZAB meeting. City policy should dictate that public comments sent to staff for ZAB should be forwarded to ZAB before the actual ZAB meeting; having one week before the meeting in which staff will not forward comments to ZAB is highly undemocratic and is an unnecessary suppression of the public’s ability to participate in the zoning process. As such, the seniors and other neighbors who sent in comments in the week before ZAB did not adequately have the chance to have ZAB read their public comments and hear their concerns before the meeting, which may have influenced and caused ZAB to approve the project, having not been given the public comments by staff until minutes before the actual hearing at the Thursday ZAB public hearing.
Violation of Downtown Berkeley Design Guidelines

On page 63 of the Downtown Berkeley Design Guidelines (2012), guideline #4 directs:

"New buildings should step down to respect the height of existing residential buildings where they are on parcels with a residential zoning designation."

("New buildings" here refers to C-DMU zoned buildings).

Thus, the 2024 Durant project should step down to respect the height of 2020 Durant, as ordered by the Downtown Berkeley Design Guidelines, whereas currently, the 2024 Durant project is 10 feet taller, one whole story taller than the 55 foot senior home. Note that 2020 Durant has been downzoned to R-3, limited to three stories in accordance with Policy LU-7.1, so if the owners in the future sell it and someone tries to build a new building, it will be limited to three stories. At the very least, 2024 Durant should step down to the height of 2020 Durant; in actuality, it should be limited to three stories as promised and ordered by the Downtown Area Plan.

Violations of General Plan Policy UD-32

General Plan Policy UD-32 (Shadows) states:

"New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

Action:
A. In appropriate cases where a project could have significant impact on views or access to sunlight, require evaluation of those potential impacts.

The 2024 Durant project clearly does not minimize shadows to the low-income, disabled Stuart Pratt senior home. It fills out nearly the maximum building massing allowed; it requires a use permit to exceed the standard 50 feet height, to 65 feet; it requires a use permit to waive the required 20 foot setbacks above 50 feet. The city can only “minimize impacts on solar access and minimize detrimental shadows by enforcing the 50 foot height limit; enforcing the step down ordered by the Downtown Berkeley Design Guidelines; enforce the 20 foot setbacks above 45 feet; and the city should enforce Goal LU-7 and Policy LU-7.1 by downzoning 2024 Durant to R-3 as promised and ordered by the DAP, or otherwise limit the property to three stories, and facilitate the sale of the church to one of the two church groups that want to buy it.

The Zoning Adjustments Board violated Policy UD-32 by not requiring the developer to submit additional design plans with increased setbacks and multiple setbacks as requested by ZAB member Sophie Hahn; without viewing additional alternative plans, the city cannot ensure that the building has minimal impact on solar access to the neighboring low-income senior home.

No concessions from the developer; the developer used state density bonus law as a threat against the seniors and other neighbors to try to quell their opposition to his project.

Bill Schrader, the developer of the 2024 Durant project, has not made only the most minimal concessions and mitigations to the project that were requested by the seniors and other neighbors--there are still balconies facing the Stuart Pratt senior home, which will violate the privacy of the seniors who live in studio apartments with their lives on display through their single windows; the developer still wants to build to 65 feet instead of the standard 50 feet; the developer still wants to have the 20 foot setback above 45 feet waived. The developer even threatened the seniors that if they opposed his six-story building, he would push for and receive the right
to build an eight story building using state density bonus law, so the seniors and neighbors had better not oppose his six story building. This crass, undemocratic attempt to use state density bonus law to deprive the seniors’ right to publicly oppose the developer’s six-story project is undemocratic, callous, cruel, and should be censured by City Council. The developer tried to threaten the neighbors not to oppose his project, and has not made any good faith efforts to mitigate the severe impacts on the neighbors.

The developer has continuously stated that he cannot meet the required 20 foot setbacks above 45 feet, cannot have multiple setbacks, cannot reduce the height of his building, cannot build to the standard 50 feet, because he will lose units. What the developer means is that he will receive slightly less profit than the tens or however many millions of dollars of profits he will receive by exceeding the standard 50 feet height limit and by getting waived the required setbacks.

The city should not place the burden on neighbors by always allowing developers to build beyond the maximum standard envelope and building size, and to protect developer profit above all other considerations. The city should not put maximum developer profits above the health and welfare of the low-income, disabled seniors, religious diversity, and the value of enforcing the promises, goals, and policies of the Downtown Area Plan, which ordered the city to downzone 2024 Durant to R-3, with a maximum height of three stories.

Dangerous Parking and Traffic Impacts

The 2024 Durant/2025 Channing project with 78 units will house at least 156 residents, with only around 35 parking spaces. Visitors, friends, family, food service deliverers traveling to visit the 156 residents will dangerously increase traffic to the quiet residential neighborhood, and will dangerously increase parking demands. Already it is nearly impossible to find parking in the neighborhood at most times of the day and night, and so many people drive in circles around the block looking for parking and resort to double parking. This double parking will increase with 156 new residents
in the neighborhood, and the increased traffic and double parking will be very dangerous for the seniors, many disabled, who walk around the neighborhood, and to the bicyclists on the Channing bicycle avenue. So on Durant the increased traffic and parking demands will endanger the seniors, and on Channing will endanger the bicyclists partaking in environmentally-friendly travel on the Channing bicycle lane. The quiet, residential neighborhood on the outskirts of downtown is not appropriate for this huge, two-lot project, and traffic and parking demand increases will endanger its residents and travelers on the Channing bicycle avenue.

Especially when 1,000 or more new apartment units are proposed to be built downtown, there will be much overflow traffic to outlying neighborhoods. Already parking is so hard to find by 2024 Durant/2025 Channing that people are using the 2025 Channing lot as an impromptu, ad hoc parking lot--this shows how hard parking is to find, and once 2025 Channing is built up, de facto the parking situation will be even worse in the neighborhood, causing more people circling the blocks to find parking and double parking, endangering the seniors and bicyclists.

**Rebuttal to developer Bill Schrader regarding setbacks**

Despite what developer Bill Schrader has said, enforcing 20 foot setbacks above 45 feet will significantly reduce shadowing to the Stuart Pratt senior home, as it will allow solar access to an entire additional floor--just look at the solar access studies the developer has provided. The developer likes to say that the setback will just prevent shadowing to the street, but the shadow study clearly shows that the setback allows solar access to an entire addition story of the senior home.

But even this is not enough--the project should be limited to three stories, or a stepped setback, a wedding-cake setback of twenty feet at four stories, and forty feet at five stories, and fifty feet at six stories, or some other such multiple setback design designed to maximize solar access and minimize shadows to the senior home. The best option is to limit the project to three stories and facilitate the sale of the church building to one of the church groups wanting to buy the building.
Also, there is only an 8 foot setback where it matters, in front of the senior home windows, even though the developer likes to state that on average, there is a 21 foot setback between the 2024 Durant project and the senior home. Note that the larger setback between the building is exactly where it is not needed; there are no senior home windows where there is a larger setback; and where a larger setback is needed, by the senior home windows, there is only an 8 foot setback.

Furthermore, Bill Schrader loves to say that his project will be a few feet farther away from the senior home than the church. This not relevant, however, as the church, even if a few feet closer to the senior home, is only two small stories tall, and causes minimal shadow impact on the senior home, as can be seen in the shadow studies, while the proposed six-story project causes significant, substantial shadows, even if it is a few feet farther from the senior home; it will block 80% to 90% of direct and indirect sunlight to the senior home. Furthermore, the church has a huge setback, probably thirty feet or more, from the Durant sidewalk, and thus blocks far less of the east-facing windows than the Durant project does, which has a far smaller setback from the Durant sidewalk.

The Downtown Area Plan's neighborhood protection promises, goals, and policies have not been delivered and enforced—they have been circumvented and violated for the profit of a single landowner and developer.

The neighborhood protections promised and ordered in the Downtown Area Plan are not being enforced, violating the DAP and everything the citizens of Berkeley voted for when they voted for Policy LU-7.1 and other neighborhood protections. The explicit neighborhood protection promises of the Downtown Area Plan have not been kept and the order to downzone R-4 to R-3 properties (DAP Policy LU-7.1) has been violated. The city broke its promise to protect this neighborhood in exchange for taller building height in the Core and Corridor of downtown by upzoning 2024 Durant instead of downzoning it. Policy LU-7.1 orders all R-4 properties (including 2024 Durant) not on the north side of Dwight east of
Shattuck to be downzoned to R-3. 2024 Durant is not on the north side of Dwight east of Shattuck, it was part of the R-4 residential-only neighborhood that stretched from the Staples parking lot west of Shattuck on Durant past Berkeley High, and Policy LU-7.1 explicitly applied to this area, which included 2024 Durant and the rest of the R-4 properties on the block. The direct neighbors, 2020 Durant and 2023 Channing, and everything west of 2024 Durant and 2025 Channing were properly downzoned--however, 2024 Durant was granted an undemocratic exception, for the express reason of profiting the owner, with the tradeoff of breaking the promise of protecting the neighborhood by downzoning all R-4 properties.

2024 Durant was shown as properly downzoned in the May 2011 draft of the DAP. But the owner of 2024 Durant asked the city to upzone 2024 Durant from R-4 to C-DMU commercial mixed use zoning, the direct opposite action of the downzoning promised and ordered by the Downtown Area Plan, in order to preserve and enhance the economic value of the owner’s land at 2024 Durant. The city then, without contacting or otherwise notifying the directly neighboring low-income seniors and other neighbors, granted the exception to the Downtown Area Plan’s ordered downzoning and upzoned the property instead, in direct violation of the promises to downzone the property, in direct violation of the citizens of Berkeley’s votes to downzone and protect the residential neighborhood, all for the economic gain of one property owner. The city did not notify the seniors, despite the fact that the General Plan includes a citizen participation element that describes the extreme importance of directly involving affected neighbors in General Plan amendments and other important zoning decisions.

The upzoning of 2024 Durant and the zoning process disenfranchised and systematically discriminated against the low-income, disabled, non-English speaking seniors of the Stuart Pratt senior home

The city’s upzoning of 2024 Durant and the choice to not notify the seniors absolutely disenfranchised and created systematic discrimination against the low-income, disabled seniors of 2020 Durant. The low-income,
disabled seniors were discriminated against in favor of landowners and developers with money, access to lawyers, and mobility. The low-income seniors do not have the disposable income to subscribe to local newspapers and then browse the backs of the newspapers looking for city zoning notices; most of the low-income seniors do not have the income to buy computers and have internet connections, and do not regularly monitor the city website for zoning notices that might apply to them; many of the seniors are mobility impaired, they do not get out of the building as much as non-disabled, non-senior people, and are less likely to pick up and read local newspapers around the city, and are thus less likely to happen upon a zoning notice in the back of a local newspaper; they do not have the income to hire a lawyer to monitor city zoning notices for them; the majority of the residents are Chinese and do not speak English; and they do not belong to a nice local neighborhood homeowner association or other neighborhood association which might monitor zoning notices.

By not directly notifying the seniors, the city absolutely disenfranchised and discriminated against the low-income, disabled seniors. The city had a duty to notify the low-income seniors so that they could get involved in the major General Plan amendment of upzoning 2024 Durant to C-DMU zoning instead of downzoning it to R-3 as ordered by the Downtown Area Plan, since the chance was realistically zero that the low-income, disabled seniors would on their own discover the property owner and the city’s discussions regarding violating the Downtown Area Plan and upzoning the property instead of upholding the neighborhood protection and downzoning ordered by the Downtown Area Plan. Thus, the seniors were disenfranchise of their legal rights to publicly comment on and sue against the upzoning decision within the required 90 day statute of limitations. The city thus deprived the low-income, disabled seniors of their legal rights, all for the profit of the landowner, and in clear violation of the explicit goals and policies of the Downtown Area Plan and of the citizens’ clear votes to protect the residential neighborhood by downzoning it to R-3, with a maximum height of three stories. Like taking candy and municipal rights from low-income, disabled seniors can be a new motto when applied to the City of Berkeley’s treatment of the elderly, the low-income, non-English speakers, and the disabled.
The owner of the property, the Planning Commission, and City Council all had the municipal, moral, and ethical responsibility to directly inform the low-income, disabled seniors of the proposed upzoning that would clearly have the potential to greatly affect the health and wellbeing of the seniors, since what was at stake was the neighborhood protections promised in the Downtown Area Plan and the health and welfare of the seniors. The city had the responsibility to ask the low-income seniors whether they were okay with the city trading away the neighborhood protections promised to the seniors and the neighborhood in the Downtown Area Plan, and to notify the seniors so that they could publicly comment on the issue and sue to oppose the illegitimate upzoning.

The answer, if the city would have had the respect to notify the seniors and ask, is that the seniors and neighbors are not okay with the city trading away the promised neighborhood protections that they voted for; the seniors and neighbors are now fighting as hard as they can to have the city uphold the promises and orders of the Downtown Area Plan to protect the neighborhood by downzoning it to three stories, by rejecting the current project, to enforce a three-story height limit, to enforce the standard zoning restrictions, and to encourage the city to facilitate the sale of the 2024 Durant church building to the two church groups that want to buy it, instead of wastefully demolishing the church building for developer profit instead.

Not only that, but the ZAB and DRC zoning process has systematically discriminated again the low-income, disabled, non-English speaking seniors. They do not have transportation to the meetings; because of health issues, they often cannot sit for long periods of time at the hour-long ZAB and DRC meetings, so many seniors have come to the DRC and ZAB meetings but had to leave before they got a chance to speak; Chinese interpreters were not provided, and they cannot afford to hire interpreters; they cannot afford a lawyer to represent themselves; etc. They are disproportionately disadvantaged by and discriminated against in the entire zoning process, and city council should protect them as their voices have been stifled systematically, their voices have not been heard; their input was not solicited regarding the upzoning, even though the city had to realize that the chance that the seniors would discover the proposed upzoning on their own was close to zero. So, did the city intentionally shut
out the seniors from deliberations over the proposed upzoning for the profit of a single landowner and developer? Is this how Berkeley treats its citizens, and its most vulnerable, low-income, senior, disabled, non-English speaking seniors?

Demolishing the in-demand 2024 Durant church is the least environmental option, and will significantly reduce cultural and religious diversity for the growing downtown population.

Demolishing the church is the least environmental option available, to demolish the perfectly-useable and in-demand church building, while the Downtown Area Plan purports to have environmentalism as a goal with its goals of green construction, environmentalism, and LEED compliance. The most environmental option is not to demolish a useable and rare church building, the most environmental option, that will also create the least detriment to the low-income seniors and will also have the effect of complying with and upholding the explicit promises, orders, goals and policies of the Downtown Area Plan, is to facilitate the sale of the church building to one of the two church groups who want to buy it to use as their house of worship. Demolishing the church building will severely reduce cultural and religious diversity downtown, as there is only one other church building downtown, the Buddhist temple on Channing. As Berkeley desires a vibrant, thriving, diverse downtown experience, and as more and more apartments are built downtown, which will significantly increase the downtown area population, clearly having more than one church building, and clearly having more than one religious denomination serving the community downtown area will significantly increase cultural and religious diversity downtown.

Why push religious diversity out of downtown Berkeley? Does Berkeley value a maybe 40 more apartment units on the 2024 Durant lot (the rest are on the 2025 Channing lot) more than the health and wellbeing of low-income, disabled seniors and more than religious and cultural diversity downtown? There are several arts institutions downtown, the Freight and Salvage, the Jazz School, Berkeley Rep, La Note, several bookstores, plenty of esteemed eateries and fine stores; and yet, with this abundance
of culture, there will only be one church building downtown if the 2024 Durant church is demolished. Is that fitting for a diverse and thriving downtown, to have so many arts venues and stores and restaurants, but only one church building, despite the fact that two church groups want to make the 2024 Durant church their church home and house of worship? Does Berkeley value developer profit and secular arts and commerce over religious diversity that it has bent zoning rules to upzone 2024 Durant for developer profit and would prefer to demolish the only available church building downtown than to have it used for religious services for the downtown community? Developer profit over cultural and religious diversity downtown? That sentiment and choosing developer profit to the detriment of the seniors, and demolishing the in-demand church building, seems to go against the spirit of a thriving, diverse downtown Berkeley. We all expect better of Berkeley and are incredulous that Berkeley would sacrifice fair governance, the promises of the Downtown Area Plan, the health and welfare of low-income, disabled seniors, and would demolish a perfectly usable, in-demand church, all for the express profit of a single landowner and developer.

Already one church group may have to leave the downtown area, as their rented office space used as their church home is being demolished. Why decrease religious diversity downtown even more, why push religious diversity out of downtown by demolishing the only available church building downtown, which will leave only one church building downtown, the Buddhist Temple on Channing? Clearly Berkeley should retain the church building at 2024 Durant instead of demolishing it and building a six-story apartment building, which will decrease religious diversity, cause environmental waste of a perfectly reusable church building, and will severely cause health and welfare detriments to the neighboring low-income seniors by blocking a majority of their direct and indirect sunlight, as well as causing privacy detriments, and creating safety hazards by dangerously increasing traffic and parking demands in the neighborhood.

Conclusion

For all of these reasons, the city of Berkeley should reject the 2024 Durant
project, should reject permits to demolish the church building which two church groups want to buy, should reject permits to build above the 50 foot height limit to 65 feet, should reject permits to waive the required 20 foot setbacks above 65 feet, should require stepdowns ordered by the Berkeley Downtown Design Guidelines, should downzone the property to R-3 zoning as promised and ordered by the Downtown Area Plan, should limit the project to three stories as promised and ordered by the Downtown Area Plan, and should facilitate the sale of the church to one of the two church groups who want to buy it. The city should uphold the votes of the citizens of Berkeley, should deliver on and enforce the community benefits and neighborhood protections promised and ordered in the Downtown Area Plan, and should protect the most vulnerable citizens in Berkeley, among those the low-income seniors, many of whom are disabled, minority, and non-English speaking, the seniors of the Stuart Pratt senior home at 2020 Durant.

Sincerely,

The Seniors of Stuart Pratt (see the attached signatures)

Channing/Durant neighbors

Stephen Stine
Accompanying images:

Appeal images 01:
5:30AM-7AM shadow study

Sunrise (5:30AM to 7:00AM) to or nearly to 9:00 AM, all year long
Appeal images 02:
- Developer’s shadow study

June 21 - 9am
June 21 - 9:11am

March/September 21 - 9am
March/September 21 - 11am

December 21 - 9am
December 21 - 11am

The Durant - Berkeley
Appeal images 03:
-Picture of church building
Appeal images 04:
-Picture of church building and senior home
Appeal images 05:
-Picture of church building and senior home
2020 Durant floor plan (Stuart Pratt low-income senior home)

Floors 1-5: The balcony window is the only window for 3 out of 4 east-facing units.
Appeal images 07:
-Protected views of the Campanile and Berkeley hills, and indirect light, as seen from the Stuart Pratt senior home
Appeal images 08:
- View showing how close the church is to the senior home
Appeal images 09:
- View showing how close the 2024 Durant project will be to the senior home, and illustrating how Stuart Pratt will shade the 2024 Durant project after noon, and how 2024 Durant project will block the majority of indirect light to the Stuart Pratt
Appeal images 10:
-View of the dark chasm between 2029 Channing and 2035 Channing after noon, caused by 2029 Channing shadowing 2035 Channing to the east, even though it’s a bright day out, and the west side of 2029 Channing gets adequate light, the east side of 2029 Channing is in a dark chasm caused by the shadowing and by 2035 Channing blocking any indirect light.
Appeal images 11:
-Previous R-4 neighborhood zoning, including 2024 Durant
Appeal images 12:
The scale and character of the neighborhood around 2024 Durant
Appeal images 13:
-May 2011 Downtown Area Plan draft, showing 2024 Durant as properly downzoned to R-3 zoning.
Appeal images 14:
-Congested parking by 2025 Channing
Appeal images 15:
-Congested parking by 2024 Durant
2024 Durant/2025 Channing – “The Durant”

Use Permit #12-10000017 to demolish a church and construct a six-story, 78-unit, apartment building with a mix of one, two, and three bedroom units and basement level parking with 34 parking spaces.

I. Background

A. Land Use Designations:
   • General Plan: DT – Downtown
   • Zoning: C-DMU – Downtown Mixed Use District Buffer

B. Zoning Permits Required:
   • Use Permit for construction of dwelling units, under BMC Section 23E.68.030
   • Use Permit for construction of >10,000 sq. ft. gross floor area, under BMC Section 23E.68.050
   • Use Permit for demolition of a non-residential dwelling unit, under BMC Section 23C.08.050.A
   • Use Permit to allow an increase the maximum height of the building from 50 feet to 60 feet maximum, under BMC 23E.68.070.A
   • Use Permit to allow a front yard setback of greater than five feet, under BMC Section 23E.58.070.C
   • Use Permit to allow a front yard setback less than fifteen feet when confronting a residentially zoned property, under BMC Section 23E.04.050.E
   • Use Permit to reduce the required 20-foot setback where the building exceeds 45 feet, on an interior side or rear lot line that abuts a residentially zoned lot, under BMC Section 23E.58.070.C
   • Use Permit to reduce the required 5-foot setback on the portion of the building greater than 65 feet from lot frontage and more than 20 feet in height, under BMC Section 23E.68.070.C
- Administrative Use Permit to allow architectural projections (e.g. elevator enclosures) to exceed the height limit, under BMC Section 23E.04.020.C

D. CEQA Determination:
Categorically exempt pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development Projects”).

- The proposed project is consistent with the applicable General Plan designation and policies (see “General Plan Consistency” for further discussion), and with the applicable zoning designation and regulations, with the exception of mandated density bonus waivers/modifications (see under “Key Issues” for further discussion).
- The project occurs within the Berkeley city limits on a project site of no more than five acres substantially surrounded by urban uses.
- The site was previously developed and has no value as habitat for endangered, rare or threatened species.
- The project would not result in any significant effects related to traffic (see under “Key Issues” for further discussion), noise, air quality or water quality.
- The site can be adequately served by all required utilities and public services.

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 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 (see under “Committee Review–Landmarks Preservation Commission” for further discussion).

E. Parties Involved:

- Applicant/Architect: Dave Johnson, Johnson Lyman Architects, 1375 Locust Street, #202, Walnut Creek, CA 94596
- Developer: Bill Schrader, The Austin Group LLC, 164 Oak Road, Alamo, CA 94507
- Property Owner 2024 Durant: Presbytery of San Francisco, 2024 Durant Street, Berkeley, CA 94704
- Property Owner 2025 Channing: Tu Casa Properties Inc., 2140 Santa Cruz Avenue B204, Menlo Park, CA 94025
Figure 1: Vicinity Map
Figure 2: Site Plan
### Table 1: Land Use Information

<table>
<thead>
<tr>
<th>Location</th>
<th>Existing Use</th>
<th>Zoning District</th>
<th>General Plan Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject Properties</td>
<td>Church Offices &amp; Vacant Lot</td>
<td>C-DMU Buffer</td>
<td>Downtown</td>
</tr>
<tr>
<td>North</td>
<td>Multi-Family Residential</td>
<td>C-DMU Buffer</td>
<td>Downtown</td>
</tr>
<tr>
<td>South</td>
<td>Auto Repair &amp; Multi-Family Residential</td>
<td>C-DMU Buffer &amp; R-3</td>
<td>Downtown &amp; High Density Residential</td>
</tr>
<tr>
<td>East</td>
<td>Multi-Family, Parking Lot, Commercial</td>
<td>C-DMU Buffer</td>
<td>Downtown</td>
</tr>
<tr>
<td>West</td>
<td>Senior Housing, Multi-Family Housing</td>
<td>R-3</td>
<td>High Density Residential</td>
</tr>
</tbody>
</table>

### Table 2: Special Characteristics

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Applies to Project?</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Density Bonus</td>
<td>N</td>
<td>The project does not qualify for a density bonus</td>
</tr>
<tr>
<td>Encroachments into Public Right-of-Way</td>
<td>N</td>
<td>The project does not propose any encroachments into the public right-of-way.</td>
</tr>
<tr>
<td>Historic Resources</td>
<td>N</td>
<td>The church to be demolished does not meet the criteria for the California Register or a City of Berkeley Landmark. There are no abutting or confronting historic resources.</td>
</tr>
<tr>
<td>Below Market Rate Units</td>
<td>N</td>
<td>The project does not include Below Market Rate (BMR) units</td>
</tr>
<tr>
<td>Seismic Hazards</td>
<td>N</td>
<td>Site is not mapped within any hazard zones.</td>
</tr>
<tr>
<td>Soil/Groundwater Contamination</td>
<td>N</td>
<td>Site has no history of soil or groundwater contamination.</td>
</tr>
<tr>
<td>Green Building</td>
<td>Y</td>
<td>Project approval is conditioned to meet LEED Gold or higher.</td>
</tr>
</tbody>
</table>
### Table 3: Project Chronology

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 4, 2012</td>
<td>Application submitted</td>
</tr>
<tr>
<td>July 19, 2012</td>
<td>DRC Preview Meeting</td>
</tr>
<tr>
<td>August 16, 2012</td>
<td>DRC Preliminary Meeting</td>
</tr>
<tr>
<td>September 6, 2012</td>
<td>LPC Demo Referral Meeting</td>
</tr>
<tr>
<td>September 20, 2012</td>
<td>Continuation DRC Preliminary Meeting</td>
</tr>
<tr>
<td>November 19, 2012</td>
<td>Density Bonus Plan Set Submitted</td>
</tr>
<tr>
<td>December 10, 2012</td>
<td>Application deemed complete</td>
</tr>
<tr>
<td>December 13, 2012</td>
<td>DRC Preliminary Meeting</td>
</tr>
<tr>
<td>January 10, 2013</td>
<td>Public hearing notices mailed/posted</td>
</tr>
<tr>
<td>January 24, 2013</td>
<td>ZAB hearing—Continued to March 14, 2013</td>
</tr>
<tr>
<td>February 8, 2013</td>
<td>PSA deadline¹</td>
</tr>
<tr>
<td>February 14, 2013</td>
<td>Public hearing notices mailed/posted</td>
</tr>
<tr>
<td>February 28, 2013</td>
<td>ZAB hearing</td>
</tr>
<tr>
<td>March 14, 2013</td>
<td>ZAB hearing continued</td>
</tr>
</tbody>
</table>

¹. Project must be approved or denied within 60 days after being determined to be exempt from CEQA, or 60 days after adoption of a negative declaration, or 180 days after adoption of an EIR (Govt. Code §65950).
## Table 4: Development Standards

<table>
<thead>
<tr>
<th>Standard</th>
<th>Existing Conditions</th>
<th>Proposed (Lot Merge)</th>
<th>Permitted Required</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2024 Durant</td>
<td>2025 Channing</td>
<td></td>
</tr>
<tr>
<td>Lot Area (sq. ft.)</td>
<td>13,474</td>
<td>9,230</td>
<td>22,704</td>
</tr>
<tr>
<td>Gross Floor Area (sq. ft.)</td>
<td>8,959</td>
<td>0</td>
<td>75,558</td>
</tr>
<tr>
<td>Floor Area Ratio</td>
<td>0.66</td>
<td>0</td>
<td>3.33</td>
</tr>
<tr>
<td>Dwelling Units Total</td>
<td>0</td>
<td>0</td>
<td>78</td>
</tr>
<tr>
<td>Affordable</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Building Height Average (ft.)</td>
<td>18</td>
<td>0</td>
<td>60</td>
</tr>
<tr>
<td>Maximum (ft.)</td>
<td>26</td>
<td>0</td>
<td>60 (40 on the Channing parcel)</td>
</tr>
<tr>
<td>Stories</td>
<td>2</td>
<td>0</td>
<td>6 (4 on the Channing parcel)</td>
</tr>
<tr>
<td>Front (Durant) n/a</td>
<td>11</td>
<td>0 - 5 max.</td>
<td>0 (where building height ≤ 20')</td>
</tr>
<tr>
<td>Front (Channing) n/a</td>
<td>13</td>
<td>0 - 5 max.</td>
<td>15 (portion of lot confronting R-3)</td>
</tr>
<tr>
<td>Building Setbacks (ft.)</td>
<td>5</td>
<td>0 (to the faces of building on the Durant parcel)</td>
<td>5 (to the faces of building on the Channing parcel)</td>
</tr>
<tr>
<td>West Side</td>
<td>5</td>
<td>n/a</td>
<td>5</td>
</tr>
<tr>
<td>East Side</td>
<td>5</td>
<td>n/a</td>
<td>3.75 (to balconies)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(6.5 to faces of building on the Durant parcel)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(5 on the Channing parcel)</td>
</tr>
<tr>
<td>Lot Coverage (%)</td>
<td>58</td>
<td>0</td>
<td>65</td>
</tr>
<tr>
<td>Usable Open Space (sq. ft.)</td>
<td>n/a</td>
<td>n/a</td>
<td>8,167</td>
</tr>
<tr>
<td>Parking</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Automobile</td>
<td>13</td>
<td>0</td>
<td>34</td>
</tr>
<tr>
<td>Vehicle Sharing</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Bicycle</td>
<td>0</td>
<td>0</td>
<td>40</td>
</tr>
</tbody>
</table>

(1) 2025 Channing Way holds an easement on 2025 Channing Way limiting building height to 47-feet.
(2) Parapets may exceed the height limit above by up to five (5) feet as of right (BMC §23E.68.070.A)
(3) As typical of many through lots, this property has two frontages and no rear.
(4) All setbacks may be modified by a Use Permit.
(5) When a side yard abuts a lot in a residential District, the minimum width of the side yard shall be five (5) feet (BMC §23E.04.050).
II. Project Setting

A. Neighborhood/Area Description:
The properties (2024 Durant and 2025 Channing) are located in the buffer sub-area of the Downtown Mixed Use zoning district, in what was previously the R-4 residential district before the 2012 City adoption of the Downtown Plan and subsequent Ordinance revisions. The Durant side of the project has apartment buildings across the street and to the west, including Satellite senior housing (Stuart Pratt Manor) directly adjacent to the parcel. The parking lot of a large commercial retail building is directly to the east. Further east of the project site is Shattuck Avenue's commercial strip, which is characterized by a mix of commercial uses, predominately retail and food service establishments. On the Channing side, there are apartment buildings to the east and across the street, with smaller residential structures to the west.

B. Site Conditions:
The subject site is comprised of two separate parcels (2025 Channing Way and 2024 Durant Avenue) located mid-block between Channing Way to the south and Durant Avenue on the north, and between Milvia Street on the west and Shattuck Avenue on the east.

The parcel at 2024 Durant Avenue is a 13,474-square foot, L-shaped lot that is 130 feet deep, with 89 feet of frontage on Durant Avenue and 123 feet along the rear. The west edge of the property makes a right angle jog between front and rear. The property is occupied by a church, a small garden, and a surface parking lot in the northeast corner.
The parcel at 2025 Channing Way is an 8,959-square-foot rectangular lot that is 130 feet deep and 71 feet wide. In the early 1990s, the site was left vacant after serving as a parking lot for a commercial building at 2029 Channing Way. In 1995, the commercial building at 2029 Channing Way was demolished and replaced with a 20-unit, five-story/50-foot apartment building. 2029 Channing Way holds an easement on the subject parcel limiting building height to 47-feet.

There is a current entitlement on the property at 2025 Channing Way, approved as Use Permit #02-1000031, and modified by Use Permit Modification #11-7000012, for a four-story, 43.75-foot tall, 13,843-square-foot building to contain 30 dwelling units and basement-level parking for 15 vehicles and 20 bicycles. This current project will supersede all previous entitlements.

III. Project Description

The project proposes to demolish the existing church building located at 2024 Durant Avenue, merge the lot with 2025 Channing Way, and construct a 78-unit apartment building. The portion of the building located on 2025 Channing Way, would be four stories with a maximum height of 41.5 feet, while the portion of the building located at 2024 Durant Avenue, would be six stories with a maximum height of 60 feet.

The project includes a ground level patio, a roof top garden/deck, an exercise room, a lobby, a lounge area, and a basement level parking for 40 bicycles and 34 vehicles with access off of Durant Avenue. The 78-units are a mix of one, two, and three bedroom units, all with full kitchens, baths, and in-unit laundry.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting the application to the City, a pre-application poster was erected by the applicant in May, 2012. On Wednesday, May 23, 2012, the applicant held a community meeting located on site at the San Francisco Presbytery offices. The applicant invited nineteen community groups; seven people attended the meeting. On January 10, 2013, the City mailed notices to adjoining property owners and occupants, and to interested neighborhood organizations.

Since project submittal, staff has received numerous public comments and a petition against the project. Project specific comments address the height, massing, and sunlight impacts of the proposed project. These points are discussed in Key Issues below. A multitude of public correspondence questions the underlying zoning and general plan designation of the subject site. Since these topics are not project specific but are related to the adoption of the Downtown Area Plan, they are not discussed in the staff report. Staff response to these issues is, however, included with the correspondence. As correspondence was previously submitted with the staff report for February 28, 2013, correspondence included with this staff report (Attachment 4) only includes public comment received since the February 28th ZAB
meeting. For all public comment received since the inception of the project, please see the online file: http://192.168.100.22/Planning_and_Development/Zoning_Adjustment_Board/2024_Durant.aspx.

B. Committee Review:

1. Landmarks Preservation Commission: The project involves demolition of the existing church building that is located at 2024 Durant Avenue and was constructed in 1947-48. Pursuant to BMC Section 23C.08.050.C, any application for a Use Permit to demolish a non-residential building that is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review prior to consideration of the Use Permit. The applicant hired an architectural historian who prepared a historic evaluation of the building (DPR 523A Primary Record and 523B Building, Structure, and Object Record). The historic evaluation concluded, and staff concurred, that the property does not appear to meet California Register nor City of Berkeley Landmark criteria. At the September 6, 2012 LPC meeting, the LPC followed staff recommendation and took no action to initiate a Landmark or Structure-of-Merit designation.

2. Design Review Committee: The Design Review Committee (DRC) previewed the project on July 19, 2012 and provided several advisory comments including redesigning the useable open space (e.g. roof decks) with more definition and reducing noise impacts to adjacent neighbors; and redesigning the interior spaces so that all bedrooms have natural lighting (i.e. windows). After incorporating these comments, the applicants resubmitted a plan set and the revised project was reviewed for preliminary design on August 16, 2012. At the meeting, the DRC continued the preliminary design review with the following comments:

- **Balconies appear to be too close to adjacent building.**
- **Bedroom windows on the side elevations are too big for the proximity to nearby buildings.**
- **Open space at ground floor should be predominately passive.**
- **Recommend moving viewing patio back from edge of building.**
- **Strongly opposed that living spaces still have no natural light.**

The applicants revised the plan set and went before the DRC on September 20, 2012. The DRC made a favorable recommendation (vote: 5-1-0-0) to the ZAB on the proposed design with specific direction for Final Design Review, including:

- **Every habitable space shall have natural light and ventilation.**
- **Common living spaces shall not be separated from kitchen/eating spaces.**
- **Gathering areas on the roof remain small and manageable.**
- **All roof top equipment shall be shown at Final Design Review (FDR).**
- **Rooftop mechanical equipment shall be designed so the noise does not affect the open space.**
- **Window coverings shall be shown at FDR.**
• Provide screening between the ground floor bedrooms and the adjacent walkway.

The DRC was mixed on whether the balconies on the northwest corner of the building should remain in the design. The Committee requested that ZAB make a determination as to whether the balconies should remain as a quality design element or whether the impact on the existing adjacent residential units is too much. The DRC also requested the applicants to provide a furniture layout so that ZAB can better determine the adequacy of the living spaces.

Subsequent to the September 20th meeting, the applicant revised the project to include below market-rate housing and density bonus units, resulting in an 8 story building. The project went back to the DRC on December 13, 2012. The DRC passed a recommendation for approval (4-1-0-2). The DRC believes that the design quality of the project meets the City's guidelines and standards, and that the new 8 floor/4 floor massing has nice proportions, but felt that eight stories at this location appears to be in conflict with what was envisioned in the buffer area. The DRC offered the following conditions for the project:

Conditions:
• South elevation of the Durant side of the project requires more windows and articulation.
• Address reflective roof surface on the Channing side of the project and reduce its visual impact as much as possible.
• Now that the units will be open to families, not just students, reconsider the proposed horizontal railings for a safer design and present at Final Design Review.

On January 15, 2013, the applicant resubmitted project plan sets incorporating DRC conditions above. On March 1, 2013, the applicant resubmitted project plan sets for a six-story project, with no affordable dwelling units, that incorporates the DRC conditions listed above.

V. Issues and Analysis

A. Key Issues:

1. CEQA Determination: As noted above, staff has determined that the project is categorically exempt from the California Environmental Quality Act (CEQA) under the “In-Fill Development Projects” exemption. The project meets all of the requirements of this exemption, as follows:

   a. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations, with the exception of waivers/modifications pursuant to State density bonus law.

   b. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
c. The parcels within the project site have previously been developed (one is currently vacant) and have no value as habitat for endangered, rare or threatened species.

d. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. Regarding traffic, the project will not exceed significance criteria for any intersections or residential streets. The traffic engineer has reviewed the project’s traffic study and concurs with its finding that there will be no significant traffic impacts.

e. The site is already served by required utilities and public services, which will also adequately serve the project.

Furthermore, the project does not trigger any of the exceptions in CEQA Guidelines Section 15300.2. In particular, the project will not have any significant effects due to unusual circumstances, nor any cumulatively significant impacts (such as traffic), nor will it adversely impact any designated historical resources. The existing buildings are not designated historical resources, and the LPC declined to initiate them for City landmark status at their meeting in September 2012.

The site is not included on any list of hazardous waste sites compiled pursuant to Government Code Section 65962.5. Additionally, the applicant has submitted an analysis of potential air quality impacts and greenhouse gas emissions, and the analysis shows that the project would be consistent with the guidelines of the Bay Area Air Quality Management District.

2. Neighborhood Compatibility: The neighborhood is a mix of two- to six-story multi-family residential structures along Durant and Channing, and one- to two-story commercial buildings adjacent and fronting Shattuck Avenue. The subject site is located within the buffer area of the newly implemented Downtown Mixed-Use District with the R-3 Multi-Family Residential District to the west (previously zoned R-4) and the Downtown Mixed Use Corridor Area and Shattuck Commercial district to the east (previously zoned C-SA). As such, the proposed project represents a transition between the lower massing of the R-3 District (35-foot height limit) and the 75-height limit of the Downtown Corridor.

The project, which requests a Use Permit to exceed the 50-foot height limit to a maximum of 60-feet, is not out of scale with the existing development pattern of the neighborhood and will be proportionate with the new development opportunities in the C-DMU. The Channing portion of the building is proposed at four stories and 40 feet in height. There is a five-story, multi-family building to the east and a three-story, multi-family building to the west. The 60-foot, six story portion of the building proposed on the Durant parcel is flanked by the Staples parking lot on the east and a 6-story senior housing complex on the west. The latter building is itself non-conforming, as the R-3 District has a 3-story, 35-foot maximum height limit.
The project also requests use permit approval to reduce the required 20-foot setback down to eight feet where the building exceeds 45 feet on an interior side or rear lot line that abuts a residentially zoned lot. As shown in the illustration below, the building area that would receive the setback allowance has limited overlap with the window and balcony area of the adjacent senior housing. To reduce impacts on the Stuart Pratt senior housing development, the project requests a reduction in setback for the upper 15 feet of the project in order to provide a greater than minimum setback on the Durant Parcel as a whole. The project is designed to situate The Durant as far to the east away from Stuart Pratt (to the Staples side of the parcel) as possible on the ground level.

On the Stuart Pratt side (west), the building is setback 8 feet from the property line adjacent to the balcony/window area of the senior housing. The average setback on the Durant parcel, including air wells and useable open space, is approximately 21.3 feet.

Instead of expanding the footprint to the maximum allowable setback (5 feet), the project is designed with a usable outdoor patio adjacent to the Stuart Pratt that is accessible to all tenants of The Durant and that provides ample spacing between the two buildings. Additionally, both driveway access and trash bin storage are located on the commercial (northeast) side of the building, while placing the lobby entrance and landscaping next to the senior housing complex. To further limit impacts on the adjacent residences, all proposed balconies on The Durant are restricted to the front corners of the building and to areas that are above the neighboring buildings.

As designed, The Durant is, therefore, both compatible with, and sensitive to, the development pattern of the area and provides a suitable transition from the residentially zoned parcels to the west and to the mixed use zoning to the east.

3. **Noise Construction:** Concerns have been raised as to the impacts of construction noise on the adjacent residential properties. Construction noise is an inevitable, but limited impact of any new construction. Based on comments from the ZAB at the February 28th meeting, staff has revised the condition of approval (COA #30) for construction hours to begin at 8:00 a.m. Monday through Friday instead of
7:00 a.m. Staff wishes the ZAB and neighbors to consider that while conditioning a later start time reduces the noise impact duration per day, it will result in a longer overall construction period and resulting duration of construction noise impact overall. The condition limits construction to between 9:00 a.m. and noon on Saturday and prohibits construction-related activity on Sunday or on any Federal Holiday.

4. **Noise Operation:** Concerns have been raised as to the potential noise impact that would occur from the project, particularly from the congregation of residents in the useable open space areas: the ground level patio and the two roof decks. Originally, the project proposed a full rooftop garden for both the “Durant Rooftop” and the “Channing Rooftop” totaling approximately 12,000 square feet. The applicant worked closely with staff and DRC over a period of several meetings and responded to the concerns with a modified design resulting in a smaller amount of open space that is more useable by design and that helps reduce ambient noise. Details of the changes to the Useable Open Space are as follows:

   a. The Channing rooftop garden was scaled back from 2,482 square feet to approximately 735 square feet and is now designed to be used as a visual landscaped backdrop from the windows in the workout room on the 5th floor of the building and is not designed for outdoor gathering.

   b. The modified 6,057-square-foot Durant rooftop garden has been redesigned to provide more intimate gathering areas. Instead of one large open expanse with a reflecting pool, the open space is now organized into “outdoor patios” including: (1) a “viewing” patio (2) a “conversation” patio, and (3) a “sunning” patio. Although the spaces are smaller overall, they are more useable locations for the residents. In addition, each of these patios has been pulled away from the building’s west edge, away from the senior housing project, to help reduce noise impacts on the neighboring property. Additionally, screening elements (green screens, planters, etc.) have been incorporated into the design to provide windbreaks and additional buffering of the ambient noise.

   c. The applicant also redesigned the ground level patio area to absorb and reduce noise away from the neighboring property. In working with staff and the DRC, the applicant incorporated natural fencing made of woven mulberry branches and includes a 45% slanted screen on the west fence to deflect noise back into The Durant. The patio now also includes outdoor drapery material to absorb and soften the sound, and a water feature as mechanism for masking ambient noise.

5. **Sunlight/Shadows:** The project proposes to construct a four-story, 40-foot structure on what is currently a vacant lot, and a six-story, 60-foot structure on what currently houses a two-story church building with a 13-car surface parking lot. As such, the project is expected to create greater shadowing impacts over existing conditions. To assess the shadowing impacts, the applicant submitted
shadow studies for the project (see Attachment 3). The studies illustrate that under current conditions, the neighboring properties receive minimal shading impacts from the church. Only during the winter morning hours is there a thin shadow from the steeple on the adjacent senior housing project to the west and all shading is over by 11:00 a.m. On the eastern side, the church casts minimal shadows on the Staples parking lot in the afternoon hours throughout the year.

Shading impacts increase with the planned development. Both the six-story senior housing complex at 2020 Durant and the three-story multi-family housing at 2023 Channing will experience increased shading throughout the year during the morning hours. All shading impacts will end by 11:00 a.m., even during the winter months. Similarly, the properties immediately to the east of the project (the five-story multi-family housing complex at 2029 Channing and the Staples parking lot at 2352 Shattuck Avenue) will experience increased shading during the afternoon hours throughout the year.

As the senior housing complex is located adjacent to the project on the northeast, it will experience the greatest shadowing impact from the project. Due to the orientation of the building, the units only get direct sunlight during the morning hours as is. Even if built “by right” at fifty feet in height, the Durant would shade five stories of the Stuart Pratt during the winter months. At sixty feet, all six stories of the Stuart Pratt are in shade during the winter morning. Although direct sunlight would be impacted, the Stuart Pratt would still experience indirect lighting during the day, throughout the year as it currently experiences.

At no time of year would the proposed project cause adjacent properties to lose access to direct sunlight for more than a couple of hours per day. Such shading impacts are to be expected in the Berkeley downtown urbanized area. Staff concludes, therefore, that under these circumstances the shadowing is reasonable.

At the request of the ZAB, the applicant has also included a shading study of the project if it were designed to retain a 20-foot side yard setback over 45 feet in height (SH2A). Due to the orientation of the parcels and the fact that the affected area is on the northwest portion of the building, the reduction in shading of this design option is minimal. Only during the winter morning hours will the northern portion of the top floor of the senior center receive less shading; the rest of the shading impacts are the same.

6. Parking: The project proposes 34 vehicle parking spaces in the basement level garage, which is eight more spaces than required for the 78 dwelling units (1 space for 3 units). In accordance with the City’s Climate Action Plan, as well as to advance more general sustainability goals, the new C-DMU Zoning District employs strategies to reduce vehicle reliance and promote alternative modes of transportation. In accordance with these policies, the project proposes the
installation of four electric vehicle charging stations and secure parking for 40 bicycles.

Additionally, as required by the new zoning standards and as conditioned in the project approval, one of the 36 vehicle parking spaces will be reserved as a vehicle sharing spot to be offered to a vehicle sharing service provider at no cost; parking spaces will be leased separately from the unit or bedroom; occupants of the building will not be eligible for Residential Parking Permits (RPP); and the property owner will be required to provide one of the following transportation benefits at no cost to every residential unit: a pass for unlimited local bus transit service, or a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass.

The availability of car sharing, the provision of transit passes, the ineligibility for RPPs, as well as the project’s proximity to public transit, jobs, goods and services, and the University, will help reduce car ownership and ensure that parking demand does not exceed the project’s parking supply. Staff does not believe there will be undue parking impacts to the neighborhood.

B. General and Area Plan Consistency:

**General Plan Policy Analysis:** 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.

2. **Policy UD-17 Design Elements:** In relating a new design to the surrounding area, the factors to consider should include height, massing, materials, color, and detailing or ornament.

3. **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:** Please see discussion under Key Issue 2 above.

4. **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:** The project would provide a total of 78 new dwelling units. The project will, therefore, help the City to meet its general housing goals.

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

**Staff Analysis:** Please see discussion under Key Issue 5 above.
6. **Policy H-13 Energy Efficiency**: Improve the safety and energy efficiency of new and existing homes and apartments.

7. **Policy EM-5 "Green" Buildings**: Promote and encourage compliance with "green" building standards.

8. **Policy UD-33 Sustainable Design**: Promote environmentally sensitive and sustainable design in new buildings.

   **Staff Analysis**: Pursuant to BMC Section 23E.68.085 and Policy LU-2.1 of the Downtown Area Plan (see below), building construction will attain a LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC).

**Downtown Area Plan Policy Analysis**: The Downtown Area Plan, adopted in March 2012, also contains several policies applicable to the project, including the following:

1. **Policy ES-2.1 – Contributions Required of All Development**: New buildings and substantial additions, regardless of height, shall provide the following public benefits, except as noted for historic rehabilitations and adaptive re-use of existing buildings.

   **Staff Analysis**: The project provides all public benefits that were required by Council in the C-DMU zoning, including LEED Gold rating or equivalent, on-site public open space, car share spaces, and transit passes. These benefits are required in the proposed conditions of approval.

2. **Policy LU-3.1 – Housing Needs**: Accommodate a significant portion of Berkeley's share of regional housing growth as defined by Regional Housing Needs Assessments (RHNA) within the Core Area, Outer Core, Corridor, and Buffer areas, as compared with other appropriate areas in Berkeley.

3. **Policy LU-3.2 – Housing Diversity & Affordability**: Offer diverse housing opportunities for persons of different ages and incomes, households of varying size and the disabled, and give Downtown a significant role in meeting Berkeley's continuing need for additional housing, especially affordable housing.

   **Staff Analysis**: The project will provide 78 dwelling units of varying size (one-, two- and three-bedroom units). The project is located in the Downtown Buffer area that is well serviced by public transportation and is within walking/biking distance to UC Berkeley campus.

4. **Policy LU-4.1: Transit-Oriented Development**: Encourage use of transit and help reduce regional greenhouse gas emissions, by allowing buildings of the highest appropriate intensity and height near BART and along the Shattuck and University Avenue transit corridors.

   **Staff Analysis**: The project helps encourage transit use and reduce greenhouse gas emissions from motor vehicles by constructing additional housing in close
proximity to transit, jobs, basic goods and services, and the UC campus, and by providing car share spaces and transit benefits. As discussed in "Key Issues" above, the proposed height is required by law to accommodate the project’s density bonus units and is appropriate as it is a half block west of the Shattuck Avenue transit corridor.

5. **Policy LU-4.2: Development Compatibility**: Encourage compatible relationships between new and historic buildings, and reduce localized impacts from new buildings to acceptable levels. The size and placement of new buildings should: reduce street-level shadow, view, and wind impacts to acceptable levels; and maintain compatible relationships with historic resources (such as streetwall continuity in commercial areas).

**Staff Analysis**: As discussed earlier, the LPC did have concerns as to the demolition of the existing building or forward any comments to the ZAB regarding the building’s relationship to nearby historic resources. Shadows on the public right-of-way will not be excessive because the site is located north of Dwight and east of Shattuck. Therefore, for most of the year the project will cast shadows on the street only in the morning hours, when the sky is often overcast. View impacts will be acceptable given that there are no substantial public vistas currently available across the site. Wind impacts would be less than significant, based on analysis conducted for the Downtown Plan EIR (see Policy LU-1.5).

**VI. Recommendation**

Because of the project’s consistency with the Zoning Ordinance, General Plan and Downtown Area Plan, its benefits to the Downtown area and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board:

APPROVE Use Permit #12-10000017 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).

**Attachments:**
1. Findings and Conditions
2. Project Plans, dated March 1, 2013
4. Correspondence Received since February 28, 2013

**Staff Planner**: Leslie Mendez, lmendez@ci.berkeley.ca.us, (510) 981-7426
# INDEX TO ADMINISTRATIVE RECORD

**2024 DURANT AVENUE**  
UP#12-10000017 and DR#12-30000021

Prepared: April 16, 2013

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Attachment 5 to this report, ZAB Appeal: 2024 Durant Avenue/2025 Channing Way is on file and available for review at the City Clerk Department, or can be accessed from the City Council Website. Copies of the attachment are available upon request.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley, City Council’s Web site
http://www.cityofberkeley.info/citycouncil/
City Council meeting, May 21st, 2013, regarding conflict of interest 2024 Durant, et al.

I’m asking you to look at a flaw in Berkeley’s conflict of interest provision for non-monetary conflicts in the BMC. Now, 2 members on the DRC serve in key positions on that committee. They also serve in key positions on ZAB. These 2 got to vote a second time on 2024 Durant which they previously had made up their minds on. Their votes caused 2024 Durant to be passed on to ZAB, and the vote there caused it to be sent to the Council under appeal. They couldn’t help coming to ZAB as advocates for the applicant, and, according to the Conflict of Interest booklet of 2010 from the California Attorney General’s office: Commissioners have “to exercise the powers conferred on them with DISINTERESTED, skill, zeal and diligence and primarily for the BENEFIT of the PUBLIC.

Fidelity in a Commissioner is what is aimed for. It seems to me that serving on two or more committees or Commissions, and voting twice on any proposed building that one has already made up their mind on, is unethical in this case or any other. Neither the Yay’s nor the Nay’s should have any unearned advantage.

According to the Fair Political Practices Commission, you can add to or amend your Code of Ethics ordinance to limit the number of Commissions and committees that any individual may serve on. At least prohibit it in this case or any others like this that I’m not aware of yet. At least for now, make these 2 Committee and Commission members abstain, when they are asked to vote a second time on this and any future building in ZAB. Now, if my efforts to do this are thwarted, well, I’ll have to rest my case with the State Attorney General’s Office, and/or the Alameda County Grand Jury, and/or last but not all or least, the Fair Political Practices Commission. I think it’s about time that I establish a relationship with these organizations. I do this in lieu of Berkeley’s having a public Ethics Commission. Obviously, it would be wiser to have everything dealt with right here in Berkeley. Otherwise, the citizenry have a minimum of three Ethics Commissions to choose from. We will have our voice back.

Thank you ladies and gentlemen,

I am Avram Gur Arye

Citizen at the people’s service, the people you all represent. Now I’m not doing this to punish the government, I only want there to be a level playing field and have the people’s desires for a better City respected in the Commissions and Committees and the Council they come to, to have their voices heard.