To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Carol Johnson, Director, Planning & Development
Subject: ZAB Appeal: 1310 Haskell Street

RECOMMENDATION
Conduct a public hearing and upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit No. ZP2015-0087 to demolish an existing single-family dwelling and accessory structure and construct three new detached, two-story dwellings totaling approximately 6,229 square feet, and dismissing the appeal.

FISCAL IMPACTS OF RECOMMENDATION
None.

CURRENT SITUATION AND ITS EFFECTS
On March 10, 2016, the Zoning Adjustments Board held a public hearing and approved the application submitted by Baran Studio, 5621 Lowell St., STE F, Oakland, CA 94608, on behalf of CS Development & Construction Inc., 119 Plaza Circle, Danville, CA 94526, by a 5-3-0-0 vote (Yes: Allen, Donaldson, Hauser, O'Keefe and Williams; No: Hahn, Tregub, Pinkston). On March 21, 2016, staff issued the notice of the ZAB decision. An appeal was filed with the City Clerk on April 4, 2016, by Mary Trew, on behalf of the neighbors who spoke at the ZAB hearing. The Clerk set the matter for review by the Council on July 12, 2016.

At the public hearing of July 12, 2016, the City Council heard testimony from Planning staff, the applicant, the appellants, and from numerous members of the public. At the conclusion of the public hearing, the City Council determined that potential impacts would be unreasonably and unnecessarily detrimental to the adjacent properties, and that the Council could not make the required non-detriment finding in favor of approval, and passed Resolution No. 67,512-N.S denying Use Permit No. ZP2015-0087, without prejudice by a 5-0-4-0 vote. (Yes: Anderson, Arreguin, Maio, Moore and Bates; No: None; Abstain: Capitelli, Droste, Wengraf and Worthington; Absent: None).

On July 19, 2016, the California Renters Legal Advocacy and Education Fund submitted a letter to the City Council alleging that the City Council violated California Government Code § 65589.5, the Housing Accountability Act, when the City Council denied the use
permit. Later, on October 7, 2016, this organization filed a civil suit, Bay Area Renter’s Federation, et al. v. City of Berkeley, with the Superior Court of the State of California, County of Alameda, alleging the City Council did not base its decision upon written findings supported by substantial evidence in the record that both of the following conditions exist:

1. The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density.

2. There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

On October 10, 2016, the civil suit was settled subject to the following terms:

1. Resolution No. 67, 512-N.S., denying Use Permit No. ZP2015-0087 is rescinded;

2. The Berkeley City Council schedule a rehearing of the appeal of Use Permit to occur within two to four months from date of settlement;

3. In its decision on the rehearing of the appeal, the City Council shall comply with the Housing Accountability Act;

4. The City must now conduct a Housing Accountability Act analysis for all pending and future housing construction, including the subject project; and,

5. The City must pay attorney’s fees and costs.

In compliance with the terms of settlement, the Clerk set the matter for review by the Council on February 28, 2017. On February 14, 2017, Staff posted the public hearing notice at the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations.

BACKGROUND
The project approved by the ZAB would allow the demolition of the existing single-family dwelling and detached accessory structure, and the construction of three detached, two-story, three-bedroom dwellings, ranging in size from 1,798 to 1,985 sq. ft. in gross floor area. The project would increase the number of dwellings on the site from one to three, the number of bedrooms from two to nine, and each unit would have an attached one-car garage at the ground level. Upon appeal, the City Council discussed at length the proposed project’s impacts on the neighboring properties, and concluded that project,
as proposed, would be 1) 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; 2) detrimental or injurious to property and improvements of the adjacent
properties, the surrounding area or neighborhood; and 3) detrimental or injurious to the
general welfare of the City. As stated above, the Council then denied the project.

**ENVIRONMENTAL SUSTAINABILITY**
The project is in compliance with all state and local environmental requirements.

**RATIONALE FOR RECOMMENDATION**
The analysis below addresses the project’s compliance with Government Code
§65589.5(j), the Housing Accountability Act. All appeal points previously considered by
the City Council, and Staff’s responses, may be found in the attached Council Staff
report dated July 12, 2016, in Attachment No. 4.

**Issue 1:** Project’s compliance with the Housing Accountability Act (§65589).

**Response 1:** The Housing Accountability Act §65589.5(j) requires that when a
proposed housing development complies with the applicable, objective
general plan and zoning standards, but a local agency proposes to deny
the project or approve it only if the density is reduced, the agency must
base its decision on written findings supported by substantial evidence
that:

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

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

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

The proposed project has no element which does not comply with
applicable, objective general plan and zoning standards. Therefore,
Government Code § 65589.5(j) applies to this project as currently
proposed.

**ALTERNATIVE ACTIONS CONSIDERED**
Pursuant to BMC Section 23B.32.060.D, the Council may (1) continue the public
hearing, (2) reverse or affirm, wholly or partly, or modify the ZAB’s decision, or (3)
remand the matter to the ZAB.
Action Deadline:
Pursuant to BMC Section 23B.32.060.G, if the disposition of the appeal has not been determined within 30 days from the date the public hearing is closed by the Council (not including any Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSONS
Carol Johnson, Director, Planning & Development Department, (510) 981-7401
Immanuel Bereket, Associate Planner, Planning & Development Department, (510) 981-7426

Attachments:
1: Resolution
   Exhibit A: Findings and Conditions
   Exhibit B: Project Plans date stamped March 10, 2016
2: Mary Trew Appeal Letter date stamped April 4, 2016
3: March 10, 2016, ZAB Staff Report
4: July 12, 2016 City Council Staff Report
5: Index to Administrative Record
6: Administrative Record
7: Public Hearing Notice
RESOLUTION NO. ##,###-N.S.

UPHOLD THE ZONING ADJUSTMENTS BOARD (ZAB) DECISION TO APPROVE USE PERMIT NO. ZP2015-0087 TO DEMOLISH AN EXISTING SINGLE-FAMILY DWELLING AND ACCESSORY STRUCTURE AND CONSTRUCT THREE NEW DETACHED, TWO-STORY DWELLINGS TOTALING APPROXIMATELY 6,229 SQUARE FEET. THE PROJECT WOULD INCREASE THE NUMBER OF DWELLING UNITS ON THE SITE FROM ONE TO THREE AND THE NUMBER OF BEDROOMS FROM TWO TO NINE.

WHEREAS, on April 8, 2015, Baran Studio, (c/o Cassidy Chang), filed an application for a Use Permit to demolish an existing single-family dwelling and accessory structure and construct three new detached, two-story dwellings totaling approximately 6,229 square feet at 1310 Haskell Street (“project”); and

WHEREAS, on December 3, 2015, the Landmarks Preservation Commission reviewed the proposed demolition and declined to initiate the building because the building did not appear to meet historical resource criteria; and

WHEREAS, on January 16, 2016, staff deemed this application complete, and on January 20, 2016, determined that the project was categorically exempt from the California Environmental Quality Act under Sections 15303 (“New Construction or Conversion of Small Structures”) and 15332 (“In-Fill Development Projects”); and

WHEREAS, on February 25, 2016, staff mailed 162 notices to adjoining property owners and occupants within 300 feet of the site, and to interested neighborhood organizations and posted a Notice of Public Hearing at the site in three locations; and

WHEREAS, on March 10, 2016, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, and approved the use permit application; and

WHEREAS, on March 21, 2016, staff issued the notice of the ZAB decision; and

WHEREAS, on April 4, 2016, Mary Trew, on behalf of the neighbors, filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on June 28, 2016, staff posted the public hearing notice at the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations; and

WHEREAS, on July 12, 2016, the Council held a public hearing to consider the ZAB’s decision, and, in the opinion of this Council, the facts stated in, or ascertainable from the public record, including comments made at the public hearing, did not warrant approving the project; and
WHEREAS, on July 12, 2016, the Council determined that the project would be: 1) 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; 2) detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood; 3) detrimental or injurious to the general welfare of the City; and denied the application; and

WHEREAS, on July 19, 2016, the California Renters Legal Advocacy and Education Fund submitted a letter to the City Council alleging that the City Council violated California Government Code § 65589.5, the Housing Accountability Act, when the City Council denied the use permit; and

WHEREAS, on October 7, 2016, the California Renters Legal Advocacy and Education Fund filed a civil suit, Bay Area Renter’s Federation, et al. v. City of Berkeley, with the Superior Court of the State of California, County of Alameda, alleging the City Council did not base its decision upon a written findings supported by substantial evidence on the record; and

WHEREAS, on October 10, 2016, the civil suit was settled subject to the following terms:
(1) Resolution No. 67,512-N.S., denying Use Permit No. ZP2015-0087 is rescinded; (2) the Berkeley City Council schedule a rehearing of the appeal of Use Permit to occur within two to four months from date of settlement; (3) in its decision on the rehearing of the appeal, the City Council shall comply with the Housing Accountability Act; (4) the City must now conduct a Housing Accountability Act for all pending and future housing constructions, including the subject project; and (5) the City must pay in attorney’s fees and costs; and

WHEREAS, on February 14, 2017, Staff posted the public hearing notice at the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations; and

WHEREAS, on February 28, 2017, the Council held a public hearing to consider the ZAB’s decision, and, in the opinion of this Council, the facts stated in, or ascertainable from the public record, including comments made at the public hearing, the Council cannot make the required findings under Government Code §65589.5(j) to deny the project or reduce the proposed density, and that the evidence in the record warranted the approval the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby approves Use Permit No. ZP2015-0087 based on the attached findings and conditions, as set forth in Exhibit A, for the project depicted in Exhibit B.

Exhibits:
Exhibit A: Findings and Conditions
Exhibit B: Project Plans date stamped March 10, 2016
1310 Haskell Street

Use Permit #ZP2015-0087 to demolish an existing single family dwelling and accessory structure and construct three new detached, two-story dwelling units totaling approximately 6,229 square feet. The project would increase the number of dwelling units on the site from one to three and the number of bedrooms from two to nine.

PERMITS REQUIRED

- Use Permit to demolish a dwelling unit, under Berkeley Municipal Code (BMC) Section 23C.08.010.B;
- Use Permit to demolish a building containing a residential unit, under BMC Section 23C.08.020.A;
- Use Permit to construct residential units, under BMC sections 23D.28.030; and
- Use Permit to construct six or more bedrooms on a single parcel, under BMC Section 23D.32.050.A.

I. CEQA FINDINGS

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 Guidelines Section 15303 for “construction and location of limited numbers of new, small facilities or structures.” In urbanized areas, up to three new single-family residences may be constructed under this exemption. The proposed two new single-family residences on an urbanized site in a developed neighborhood would be categorically exempt. Additionally, the project is categorically exempt pursuant to Guidelines Section 15332 for “projects characterized as in-fill development.” 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.

II. GENERAL NON-DETREMENT FINDING

Pursuant to Berkeley Municipal Code (BMC) Section 23B.32.040, the Zoning Adjustments Board 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:

- The use of the project site will remain residential, consistent with the purposes of the General Plan and Zoning Ordinance. The General Plan envisions the Medium Density Residential classification as an area of “single-family homes and small multi-family
structures with two or three units...intensity will range from 20 to 40 dwelling units per net acre” and population density range “from 44 to 88 persons per acre.” The purpose of the R-2A District is to implement the General Plan Policy by “encouraging the development of medium density residential areas characterized by small multiple-family and garden-type apartment structures with a maximum of open space” and make “housing for persons who desire apartment-type accommodations with a maximum of open space.” The project would provide three two-story dwelling units on the property, which would fit within the allowed range of single-family homes to small garden-type apartments in the R-2A District. By meeting the required usable open space area, the project would make available housing with a relatively large amount of open space.

- No substantial land use conflicts are expected from the project, due to the project site’s location in a mixed area of single-family and multi-family development, because the project’s density would be within the range of the surrounding development, and because no substantial privacy or shadow impacts would occur.

- The proposed project conforms to the applicable General Plan policies related to dwelling unit creation and protection by maintaining the allowed residential use and density on the site.

- The proposed project conforms to the applicable provisions of the Berkeley Municipal Code including for height, location, setbacks and minimum on-site parking spaces in BMC Sections 23D.32.070 (Development Standards) and 23D.32.080 (Parking). The project, which would conform to all applicable setback provisions, will not result in substantial aesthetic, privacy, or health and welfare concerns because of sufficient separation from neighboring residences and the lack of direct views into their windows; and because the units would be below the maximum allowable height for the R-2A District.

- The project would increase the number of bedrooms on the site from two to nine. The resulting three-bedroom units will be relatively large, detached dwelling units with above-minimum usable open space in a mixed-density neighborhood, and are expected to be attractive to larger families.

III. DEMOLITION FINDINGS

Pursuant to Berkeley Municipal Code Section 23C.08.010, the Zoning Adjustments Board finds that the elimination of the existing dwelling unit would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City, because the project would replace one dwelling unit with three new units, for a net gain of two dwelling units.

Pursuant to Berkeley Municipal Code Section 23C.08.020.A, the Zoning Adjustments Board finds that demolition of the structure is necessary to permit construction of the new units.
STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans
   The conditions of this Permit shall be printed on the second sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title ‘Use Permit Conditions.’ Additional sheets may also be used if the second 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 issued is permitted unless the Permit is modified by the Zoning Officer, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

5. Plans and Representations Become Conditions (Section 23B.56.030)
   Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)
   The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

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. Indemnification Agreement
   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 attorney’s fees that may result.

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC 23B.32.040.D, the Zoning Officer attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

10. Project Liaison. The applicant shall provide the project planner with the name and telephone number of the individual empowered to manage complaints generated from the project. The individual’s name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis.

☐ Project Liaison _______________________________________________________________________

Name Phone #

11. Address Assignment. 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 address(es) shall be assigned prior to issuance of a building permit.

Prior to Issuance of a Building Permit:

12. Plans submitted for Building Permits shall show a two-foot-wide landscaped strip between the paved driveway and the western property line to provide a sufficient buffer to the neighboring residence at 1306 Haskell Street.

14. **Demolition.** Demolition of the existing building cannot commence until a complete application is submitted for the replacement buildings.

15. **Water Efficient Landscaping.** Applicant shall provide an updated Bay-Friendly Basics Landscape Checklist that includes detailed notes of any measures that will not be fully met at the project. Landscape improvements shall be consistent with the current versions of the State’s Water Efficient Landscape Ordinance (WELO) and the East Bay Municipal Utility District’s Section 31: Water Efficiency Requirements.

16. **Building Materials Survey.** Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building 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, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition 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. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

**Prior to Demolition or Construction:**

17. **Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:

- 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 relevant
- Significant truck activity.

The applicant shall secure the City Traffic Engineer’s approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, 3rd floor, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

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). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.
During Construction:

18. 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.

STORMWATER REQUIREMENTS

19. 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 Best Management Practices (BMPs) 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 stormwater pollution. Where feasible, landscaping shall be designed and operated to treat runoff. Where feasible, xeriscape and drought tolerant plants shall be incorporated into new development plans.

D. Design, location and maintenance requirements and schedules for any stormwater 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 stormwater 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. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.

20. Public Works – Create > 500 sf of Impervious Surface. All private or public projects that create and/or replace 500 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 a Stormwater Requirement Checklist and 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).

21. **Public Works.** Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

22. **Public Works.** The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.

23. **Public Works.** Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

24. **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.

25. **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.

26. **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.

27. **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.

28. **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.

29. **Public Works.** The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season 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.

30. **Public Works.** Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season 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.
31. **Public Works – Construction.** During construction, the project sponsor should require the construction contractor to implement the following BAAQMD’s basic dust control measures:

   A. Water all active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.

   B. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).

   C. Pave, apply water 3 times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.

   D. Sweep streets (with water sweepers using reclaimed water if possible) at the end of each day if visible soil material is carried onto adjacent paved roads.

32. **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.

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

33. **Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated January 20, 2016 except as modified by conditions of approval.

34. **Construction and Demolition Diversion.** A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City’s Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.

**At All Times (Operation):**

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

36. **Electrical Meter.** Only one electrical meter fixture may be installed per dwelling unit.

37. The applicant shall plant at least one *Pistacia chinensis* (Chinese pistache) tree in the confronting right-of-way planting strip, no closer than five feet from any underground utility or a driveway. The new tree shall be greater than a 24 inch box tree that has a single, central dominant leader structure. An automatic irrigation system, with 2 bubblers that curve over the stop of the tree’s root ball, shall be installed at the applicant’s sole expense. The irrigation shall be controlled by an electric clock that provides 20 gallons of water per week between March 15th and October 15th. The tree shall be planted at the correct depth and adequately staked to support the tree. No turf, grass, plants or weeds shall be permitted to grow within one foot of the trunk of the tree. Mulch may be installed to suppress weeds. String trimmers shall not to be used around the tree. The tree is required to survive for at least three years. The property owner is responsible for replacing the tree if it does not survive.
1304 / 1306 HASKELL STREET

The project shadow is based on the December morning shadow, which is the largest shadow casted on the property. As shown in the study, the shadow does not reach any of the second story openings and would shrink as the day goes on.

EXISTING SHADOW
PROPOSED SHADOW

THE PROJECT SHADOW IS BASED ON THE DECEMBER MORNING SHADOW, WHICH IS THE LARGEST SHADOW CASTED ON THIS PROPERTY. AS SHOWN IN THE STUDY, THE SHADOW DOES NOT REACH ANY OF THE SECOND STORY OPENINGS AND WOULD SHRINK AS THE DAY GOES ON.

1312 HASKELL STREET

The project shadow is based on the December evening when it is most prominent. As shown in the study, the building does cast a fairly large shadow covering some of the openings on the side of 1312 Haskell Street. Also shown is the shadow casted by the existing building. Based on study, there is no adverse impact to light values.

EXISTING SHADOW
PROPOSED SHADOW

SHADOW CASTED BY EXISTING STRUCTURE

SHADOW CASTED BY PROPOSED STRUCTURE
Planned changes to 1310 Haskell Street:

- **Haskell Street:**
  - Emergency access drive: 19' - 10" wide and 2' public planter.
  - Proposed gas, sewer, and water to run along driveway.
  - 4" public planter.
  - Area of setback = 752 SF, 54% landscape, 46% hardscapes.
  - Proposed tree to be removed and replaced.
  - All new underground must be located at least 5' from proposed tree location.

- **Electric, phone, and cable overhead.
- Gas, sewer, and water to run along proposed drive.
- 1' - 6" to trunk.

**Incomplete:**
- 2' public planter.
- (N) Pistacia chinensis, with 2 bubblers controlled by an electric clock that provides 20 gallons of water per week between March 15th and October 15th.

**Proposed site plan and landscape plan:**
- 6' - 0" to edge of garage door.
- Proposed site plan and landscape plan.
1310 Haskell Street

BUILDING 1
1027 SF FOOTPRINT

BUILDING 2
871 SF FOOTPRINT

BUILDING 3
1036 SF FOOTPRINT

HASKELL STREET

TOTAL LOT COVERAGE = 2,934 SF
= 39%

TOTAL AREA OF SETBACK = 752 SF
LANDSCAPE = 407.5 SF (54%)
HARDSCAPE = 344.5 SF (46%)

NOTE: ALL LANDSCAPE AREAS NOT DESIGNATED WALKWAY AND DRIVEWAY

NOTE: ALL NEW UNDERGROUND MUST BE LOCATED AT LEAST 5' FROM PROPOSED TREE LOCATION

AREA OF LANDSCAPE VS HARDSCAPE WITHIN FRONT SETBACK

SCALE: 1" = 10'-0"
To the Berkeley City Council

Regarding Proposed Demolition and Construction at 1310 Haskell Street, Berkeley

We, the undersigned, respectfully ask that City Council schedule a session to hear this matter. We oppose, in the strongest terms, the Zoning Adjustments Board’s approval of this project and ask that the Council reverse this decision, block the proposed development, and protect the character of our long-established neighborhood.

This development would demolish a single-family, single-story, two-bedroom house and replace it with three two-story, three-bedroom houses, an increase from two to nine bedrooms crammed onto a single lot, and provide only three off-street parking spaces.

We understand that the Planning Department must adhere to the codified specifications of the law (set-back, height, density given the size of the lot, etc.) as to our designated R-2A code, however mistakenly that code might be applied to our neighborhood, compared to a R-2 code, for instance, which has greater restrictions. In contrast, we rightly expected ZAB to look at the full letter and spirit of the law and apply it to us. “Permit only that intensity of use which will be compatible with low density structures and will not be detrimental to the immediate neighborhood.” (Municipal Code §23D.32.020(D) and Ord. 6478-NS §4). R-2A also states that Planning and ZAB “[i]mplement Master Plan policy by encouraging the development of medium density residential areas characterized by small multiple-family and garden-type apartment structures with a maximum of open space consistent with this type of development”.

ZAB’s approval of this permit in no way took this code into full consideration regarding compatibility with “low density structures” and “maximum of open space”. While the R-2A code is woefully inadequate, it does offer protections that we are simply not being afforded by this decision. There were few serious considerations of the many detrimental effects this project would create: loss of sunlight, privacy, and quiet to immediate homes, as well as increased traffic, congestion, noise, lack of open space, and parking difficulties for the whole area.

In fact more than one member of the Board expressed a lack of knowledge or concern about what the term “detrimental effects” might actually mean. Is it not the very job of ZAB to recognize and weigh such negative effects? One member waxed poetic about his “faith in the history” and admiration of the architect, raising serious worries about this member’s ability to examine our case objectively.

We are a diverse neighborhood with modest homes. We look out for one another and assist when we can. We have vegetable gardens, raise chickens, watch children as they play in one another’s yards and in the street, and treat each other with respect. That same respect should be granted to us by City Council us as an ideal residential neighborhood in Berkeley.

While we endorse Council’s desire to increase density where feasible to help remedy the shortage of housing, projects such as this in our neighborhood would not only blight the area with crammed box-like structures out of keeping with our area, but provide greater density without affordable housing for those in need.

(Please see over.)
Despite our nearly unanimous opposition as a community, with petitions, letters, emails, telephone calls, and testimonials at the ZAB hearing on a rainy night by so many people, ZAB narrowly voted to approve by only a two-vote margin, after a convoluted argument about the aesthetics of the design which some members suggested is not within their mandate to vote on. If design is not actually in their mandate, it perhaps should be since this design is totally out of keeping with the very nature and existing design of our neighborhood.

The developer, CS Development and Construction, based in Danville, was represented by architect Matthew Baran. It must be said that ZAB was misled by Matthew Baran. At the hearing he asserted that it was a "matter public record" that we, as a community, refused to meet with him and the developer regarding the project. This was a blatant attempt to discredit the sincerity of the concerns we have raised. The exact opposite is the truth. In violation of Berkeley’s requirement that any such permit applications be submitted only after immediate neighbors were called to a meeting for consultation, the developer only called such a meeting in June 2015, two full months after their application, and only because the application had been put on hold because of their non-compliance with the law. Once word spread about the meeting, over twenty people attended and unanimously voiced grave concerns and opposition. All this is a matter of record on the Planning Department’s Web site. There was no second invitation to a meeting after the one required to move their application forward.

Mr. Baran also tried to mislead us at the June meeting by stating that the permit for his project had been all but approved by Planning, hoping to discourage us from objecting. It was pointed out that, in fact, the project was at that time on hold. When asked how we might cope with the increased parking congestion, Mr. Baran cynically suggested that we ride bicycles instead of driving cars. This was not a practical option for many of the seniors in our neighborhood, or others. Essentially, he proposed that we solve the problem that he and the developer would create by the unwarranted density of their proposed project.

All this is to say nothing about the commotion of the demolition of an existing house that is so compatible with our neighborhood and that could be renovated to provide the developer with a decent profit. When asked to reduce the density, the suggestion was refused, citing financial considerations, in other words, monetary gain at our expense.

The developer and architect are clearly trying to use the system to their advantage without consideration of the neighborhood impact. They have maxed out this project to the very limits of the code, only made minor tweaks in their design to comply, refused to reduce density despite the interests of the neighborhood, tried to maximize their profit at our expense, not abided by the true spirit of the law, and shown contempt for the quality of our lives. We asked for respectful consideration of our concerns and got only two inches off the roofline and frosted glass on some second-story windows.

We call on the City Council to intervene in this matter of great concern to our neighborhood and to provide a democratic and meaningful hearing of our concerns. Please reject ZAB’s approval or, at the very least, send the decision back to ZAB for reconsideration between the developer and neighbors about a proposal that would best comply with the spirit of the code and our interests.

For your reference:
http://cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/1310_Haskell.asp

43 signatures included

Mary Teves
1306 Haskell St.
510-652-1585
Appeal to Berkeley City Council
Regarding 1310 Haskell Street, Berkeley

We, the undersigned neighbors of 1310 Haskell Street, endorse this letter and strongly object to the demolition of the existing single-story, single-family dwelling and construction of three two-story houses on one lot in our R-2A district. Based on the reasons our letter outlines, we protest the Zoning Adjustments Board's approval of this project and respectfully ask that the City Council hold a public hearing at one of its sessions to hear our concerns.

Name (please print)       Address (please print)       Telephone (required by the City Clerk)       Signature

Susan Karlsson 1309 6th Street Berkeley CA 94702 510-394-2581

Allison Washington 3101 Mabel street Berkeley CA 94702 510-334-2981

Gandiva Moss 1331 67th St Berkeley CA 94702 510-334-2916

MariKO Katayama-Moss 1331 6th St Berkeley CA 94702

Mark Nowak 1237 Haskell St Berkeley CA 94702 (510) 915-2672

Mariama Nance 1332 67th St Berkeley CA 94702 206-4890

Tahir Omari 1314 Haskell St Berkeley CA 94702 510-418-3447

AVENUE COURT 1314 Haskell St Berkeley CA 94702

Edward Schocker 1320-B Haskell St Berkeley CA 94702

Walter Johnson 1320 A Haskell St Berkeley CA 94702 510-517-9480

10
 Appeal to Berkeley City Council  
Regarding 1310 Haskell Street, Berkeley  

We, the undersigned neighbors of 1310 Haskell Street, endorse this letter and strongly object to the demolition of the existing single-story, single-family dwelling and construction of three two-story houses on one lot in our R-2A district. Based on the reasons our letter outlines, we protest the Zoning Adjustments Board’s approval of this project and respectfully ask that the City Council hold a public hearing at one of its sessions to hear our concerns.

Name (please print)  Address (please print)  Telephone (required by the City Clerk)  Signature

Michiko H. Murillo  3112 Mabel St  510.918.0592  

Yoneko Murillo  3112 Mabel St  510.925.6301  

Mary Trew  1306 Haskell St  652.6585  

Hiroshi Murillo  3112 Mabel St  510.701.806  

Noriko J. Murillo  3112 Mabel St  Berkeley CA 94702  

Sujatha Baliga  3115 Mabel Street  94702  510.394.6668  

Jason Walsh  3115 Mabel Street  94702  510.249.4807  

Monika Martick  1333 67th St, Berkeley  94702  831.295.0766  

Cedric Massey  1327 Haskell St  94702  510.284.540  

Leonard Harvey  1309 67th Street, Berkeley  94702  


Appeal to Berkeley City Council
Regarding 1310 Haskell Street, Berkeley

We, the undersigned neighbors of 1310 Haskell Street, endorse this letter and strongly object to the demolition of the existing single-story, single-family dwelling and construction of three two-story houses on one lot in our R-2A district. Based on the reasons our letter outlines, we protest the Zoning Adjustments Board’s approval of this project and respectfully ask that the City Council hold a public hearing at one of its sessions to hear our concerns.

Name (please print)       Address (please print)       Telephone (required) by the City Clerk       Signature

Floyd Castille 3038 Mabel  510-355-6802  Floyd Castille

Michael Castille 3038 Mabel  (510)-575-7523  Michael Castille

Nina Rodnick 1324 Haskell  510-681-7541

Minka Lamb 1324 Haskell  510-593-5303

Larry C. Stephens 3101 Mabel  510-379-6227

Bruce M. Curtis 1314 Haskell  510-689-2935

Keith Nickolaus 1346 Haskell St.

Margaret Nickolaus 1346 Haskell St.

Kurt Caule 1304 Haskell  510-467-2341

George Woodward 1235 Haskell  510-524-3002
Appeal to Berkeley City Council
Regarding 1310 Haskell Street, Berkeley

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Name (please print) Address (please print) Telephone (required by the City Clerk) Signature

Martha Brown 1253 Haskell St. 510-320-8918 Martha Brown

Anthony Brown 1253 Haskell 510

Bill McLawhon 1231 Haskell St 415-205-7803

Henry Welch 1312 Haskell 510-693-5403

Brenda Savage 1307 Haskell St. 510-653-8248 Brenda Savage

Steven Johnson 1328 67th St 654-2954

Lynda Roti 1328 67th St 435-4402 Lynda Roti

Sara Wolf 1321 67th St 510-755-4511

Chris French 1321 67th St 510-755-6139

Daisy DeRamus - 1312 1/2 Haskell St - 510-684-8366
Appeal to Berkeley City Council
Regarding 1310 Haskell Street, Berkeley

We, the undersigned neighbors of 1310 Haskell Street, endorse this letter and strongly object to the demolition of the existing single-story, single-family dwelling and construction of three two-story houses on one lot in our R-2A district. Based on the reasons our letter outlines, we protest the Zoning Adjustments Board’s approval of this project and respectfully ask that the City Council hold a public hearing at one of its sessions to hear our concerns.

Name (please print) Address (please print) Telephone (required) Signature

Amy Merri 1285 Haskell St Berkeley 94702 510 506 3821

510 926 8778

Jocelyn Galvez 1280 Haskell St Berkeley 94702

Signature

Jocelyn Galvez

2
Appeal to Berkeley City Council
Regarding 1310 Haskell Street, Berkeley

We, the undersigned neighbors of 1310 Haskell Street, endorse this letter and strongly object to the demolition of the existing single-story, single-family dwelling and construction of three two-story houses on one lot in our R-2A district. Based on the reasons our letter outlines, we protest the Zoning Adjustments Board's approval of this project and respectfully ask that the City Council hold a public hearing at one of its sessions to hear our concerns.

Name (please print)       Address (please print)       Telephone (required by the City Clerk)       Signature

Elizabeth Castañeda

Elizabeth Castañeda  1305 - 62nd St  (510) 653 - 9210

[Signature]

[Phone Number]

[Address]
1310 Haskell Street

Use Permit #ZP2015-0087 to demolish an existing single family dwelling and accessory structure and construct three new detached, two-story dwelling units totaling approximately 6,229 square feet. The project would increase the number of dwelling units on the site from one to three and the number of bedrooms from two to nine.

I. Background

A. Land Use Designations:
   - General Plan: MDR – Medium Density Residential
   - Zoning: R-2A – Restricted Multiple-Family Residential

B. Zoning Permits Required:
   - Use Permit to demolish a dwelling unit, under Berkeley Municipal Code (BMC) Section 23C.08.010.B;
   - Use Permit to demolish a building containing a residential unit, under BMC Section 23C.08.020.A; and
   - Use Permit to construct residential units, under BMC sections 23D.28.030; and
   - Use Permit to construct six or more bedrooms on a single parcel, under BMC Section 23D.32.050.A.

C. CEQA Determination: Categorically exempt pursuant to sections 15303 (New Construction or Conversion of Small Structures) and 15332 (In-Fill Development Projects) of the CEQA Guidelines.

D. Parties Involved:
   - Applicant: Baran Studio, (c/o Cassidy Chang), 5621 Lowell St., STE F, Oakland, CA 94608
   - Property Owner: CS Development & Construction Inc., 119 Plaza Circle, Danville, CA 94526
Figure 1: Vicinity Map

Figure 2: Zoning Map
Figure 3: Aerial Photograph
Figure 4: Proposed and Existing Site Plans
### 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 Property</td>
<td>Single Family Dwelling</td>
<td>R-2A</td>
<td>MDR – Medium Low Density</td>
</tr>
<tr>
<td>North</td>
<td>Residential Duplex</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South</td>
<td>Single Family Residential</td>
<td></td>
<td></td>
</tr>
<tr>
<td>East</td>
<td>Developed with two detached units. The front units are two-story buildings and the second units are smaller, single-story dwelling units situated near the rear of the lots.</td>
<td>R-2A</td>
<td>MDR – Medium Low Density</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>Creeks</td>
<td>No</td>
<td>The project site is not near a creek or within a creek buffer.</td>
</tr>
<tr>
<td>Green Building Score</td>
<td>Yes</td>
<td>The applicant submitted a GreenPoint checklist for the project. The minimum required points are 50 out of a possible 140 points, and the checklist indicates a score of 81 points.</td>
</tr>
<tr>
<td>Historic Resources</td>
<td>No</td>
<td>On August 5, 2015, the applicant prepared and submitted the Department of Parks and Recreation Primary Record (DPR) forms. According to the DPR forms, the existing residence and garage were constructed in 1925 and consist of a Craftsman bungalow. Unpermitted rear addition occurred in 1950s and extensive renovations were carried out in 1985. According to the DPR form, the residence did not directly contribute to any significant historic events or trends is not the work of a master architect or builder, and there is no evidence to suggest that the previous property owners were considered important to history, or that the site may yield important information about prehistory or history. The property was listed on the Landmarks Preservation Commission (LPC) agenda of December 3, 2015, and the LPC concluded the property does not meet the historic designation criteria for the National, State, or local level of historic significance.</td>
</tr>
<tr>
<td>Liquefaction (Seismic Hazards Mapping Act)</td>
<td>Yes</td>
<td>The project site is located within an area susceptible to liquefaction as shown on the State Seismic Hazard Zones map.</td>
</tr>
<tr>
<td>Oak Trees</td>
<td>No</td>
<td>There are no oak trees on the property.</td>
</tr>
<tr>
<td>Soil/Groundwater Contamination</td>
<td>No</td>
<td>The project site is not located in the City’s Hazards Management Area or on a site known to have a history of industrial or other uses associated with direct soil or groundwater contamination. In addition, excavation would be limited to that necessary for foundations.</td>
</tr>
</tbody>
</table>
Table 3: Project Chronology

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 8, 2015</td>
<td>Application submitted</td>
</tr>
<tr>
<td>December 3, 2015</td>
<td>LPC: Demo Referral</td>
</tr>
<tr>
<td>January 16, 2015</td>
<td>Application Deemed Complete</td>
</tr>
<tr>
<td>February 25, 2016</td>
<td>Public hearing notices mailed/posted</td>
</tr>
<tr>
<td>March 10, 2016</td>
<td>ZAB hearing</td>
</tr>
</tbody>
</table>

Table 4: Development Standards

<table>
<thead>
<tr>
<th>Standard</th>
<th>Existing</th>
<th>Addition/ (Reduction)</th>
<th>Proposed Total</th>
<th>Permitted/ Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot Area (sq. ft.)</td>
<td>7,500</td>
<td>No change</td>
<td>No change</td>
<td>5,000</td>
</tr>
<tr>
<td>Gross Floor Area (square feet)</td>
<td>1,597</td>
<td>3,320</td>
<td>4,917¹</td>
<td>N/A</td>
</tr>
<tr>
<td>Dwelling Units</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>3 (One unit per 1,650 sq. ft area)</td>
</tr>
<tr>
<td>Bedrooms</td>
<td>2</td>
<td>7</td>
<td>9</td>
<td>4 (without AUP or UPPH)</td>
</tr>
<tr>
<td>Building Height (tallest unit)</td>
<td>Maximum (feet)</td>
<td>18’6”</td>
<td>22’8”</td>
<td>NA</td>
</tr>
<tr>
<td></td>
<td>Average (feet)</td>
<td>17’</td>
<td>22’8”</td>
<td>22’8”</td>
</tr>
<tr>
<td></td>
<td>Stories</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Building Setbacks (ft.) (for closest unit to each setback)</td>
<td>Front (Haskell St)</td>
<td>17’9”</td>
<td>(2’7”)</td>
<td>15’2”</td>
</tr>
<tr>
<td></td>
<td>Rear</td>
<td>44’6”</td>
<td>(29’6”)</td>
<td>15’ ½”</td>
</tr>
<tr>
<td></td>
<td>Left (west) Side</td>
<td>13</td>
<td>(9)</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Right (east) Side</td>
<td>10</td>
<td>(2’)</td>
<td>12</td>
</tr>
<tr>
<td>Usable Open Space (sq. ft.)</td>
<td>5,903</td>
<td>(4,362)</td>
<td>1,541</td>
<td>900</td>
</tr>
<tr>
<td>Lot Coverage (%)</td>
<td>21</td>
<td>17</td>
<td>39</td>
<td>40</td>
</tr>
<tr>
<td>Parking (Auto)</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
</tbody>
</table>

¹. Per BMC Section 23F.04.010, the calculated gross floor area of 4,917 square feet for the project does not include an attached one-car garage in each dwelling unit.

II. Project Setting

A. Neighborhood/Area Description: The project site is located on the south side of Haskell Street between Mabel and Acton Streets. All confronting (north) and adjacent properties to the east and the west are developed with detached two units per parcel. The buildings closes to Haskell Street consist of two-story buildings. The abutting residences to the south consist of single-family residences with detached accessory buildings, and are all within the R-2A district. A block to the southwest are the City’s jurisdictional boundaries with the City of Oakland.

The development pattern of the properties abutting and confronting to the subject property is listed below in Table 5:
### Table 5: Development Pattern Confronting and Abutting Properties

<table>
<thead>
<tr>
<th>Location</th>
<th>Address</th>
<th>Type of development</th>
<th># of Stories</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>1301 Haskell Street</td>
<td>Single-family dwellings</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1307 Haskell Street</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1309 Haskell Street</td>
<td>Multi-Family dwelling buildings</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>1313-1317 Haskell Street</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1319 Haskell Street</td>
<td>Single-family dwelling</td>
<td>1</td>
</tr>
<tr>
<td>South</td>
<td>1301 Sixty-Seventh Street</td>
<td>Multi-Family dwelling units (triplex)</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>1309 Sixty-Seventh Street</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1311 Sixty-Seventh Street</td>
<td>Single Family Residences</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>1315 Sixty-Seventh Street</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1307 Sixty-Seventh Street</td>
<td></td>
<td></td>
</tr>
<tr>
<td>East</td>
<td>1312 Haskell Street</td>
<td>Two detached dwelling units.</td>
<td>2</td>
</tr>
<tr>
<td>West</td>
<td>1306 Haskell Street</td>
<td>Two detached dwelling units. The unit in the front has unfinished basement and living spaces are on the second floor.</td>
<td>2</td>
</tr>
</tbody>
</table>

The street strip elevation below Figure 4 illustrates the heights of the dwellings adjacent to the project site, when viewed looking south.

**Figure 5 : Street Strip Elevation (looking south towards the site)**

![Street Strip Elevation](image)

**B. Site Conditions:** The site is generally level, rectangular in shape, and developed with a single-story, approximately 1,597 square-foot dwelling and a 120 square-foot garage located in the rear yard. According to the DPR 523 forms prepared for the property, the dwelling and the garage were constructed prior to 1925 (exact date unknown) and later additions were made in the rear. The character-defining façade of the Craftsman-style dwelling has remained largely unaltered. A wooden fence encloses the backyard of the site, and an existing driveway abuts the western property line.
III. Project Description

The applicant proposes to demolish the existing single-family dwelling unit and a detached garage and construct three, two-story, three-bedroom dwelling units, ranging in size from 1,798 to 1,985 sq. ft. in gross floor area. The new dwelling units would be built in modern architectural style, with flat roofs and a mix of stucco, horizontal wood screen, and annodized window frames. The proposed units would have the following characteristics:

- Unit 1 (the front unit, in the northern portion of the property) would be two stories and 1,734 square feet in size, with three bedrooms, two bathrooms and an attached enclosed 251 square-foot one-car garage. The ground floor would have an approximately 17’ front yard setback and the second floor would have approximately 15’-2” front yard setback. It would have a 4’ (west) and 12’ (east) side yard setbacks.

- Unit 2 (the unit located in the middle of the parcel) would be two stories and approximately 1,541 square feet in size, with three bedrooms, two bathrooms and attached enclosed 271 square-foot one-car garage. It would be located approximately 15’-7” behind Unit 1 and approximately 14’-5” in front of Unit 3. It would have a 4’ (west) and 12’ (east) side yard setbacks.

- Unit 3 (the rear unit, in the southern portion of the property) would be two stories and 1,656 square feet in size, with three bedroom, two bathrooms and attached enclosed 260 square-foot one-car garage. This dwelling would have an approximately 16’ rear yard setback. It would have 4’ side yard setbacks.

The existing 10-foot curb cut on Haskell Street would be expanded to 13 feet and 6 inches. It would lead to a permeable concrete driveway on the western edge of the site and would provide access to an enclosed garage in each dwelling unit. A two feet wide landscape strip along the western edge of the driveway would also be installed.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting this application to the city, the applicant erected the pre-application poster and sent notice of the proposed project to immediate neighbors via certified mail. Shortly after submittal, the City received multiple phone calls and e-mail correspondence from neighbors that expressed concerns about the project. On May 7, 2015, staff forwarded the application for mediation by SEEDS Community Resolution Center (SEEDS).

Communications with the neighbors are summarized below, and copies of letters and meeting summaries are provided in Attachment #4.

- On May 7, 2015, staff received a letter from Mary Trew (owner of 1306 Haskell Street) and Kurt Caudle (resident at 1304 Haskell Street). The letter expressed objection to the proposed density and shadow impacts caused by the project.
• On May 26, 2015, the applicant’s architect, with the help of SEEDS, sent a letter to neighboring residences inviting them to a meeting on June 4, 2015.

• On May 28, 2015, staff received an email from Jerri Grindle (owner of 1320 Sixty-Seventh Street) who expressed objection to the proposed density and height.

• On June 1, 2015, staff received a petition with 24 signatures opposing the project.

• On June 4, 2015, mediators from SEEDS facilitated a meeting between the applicant’s architect and the nearby residents. According to meeting minutes compiled by the applicant, the neighbors, and the SEEDS, the neighbors expressed concerns about:
  o The height and density of the project;
  o Privacy, specifically the buildings in the back of the lot overlooking the neighbor’s yard;
  o Parking;
  o Lack of backyard open space; and
  o Blocking views.

• On June 8, 2015, Mary Trew, (owner of 1306 Haskell Street) submitted a summary of the meetings. According to Ms. Trew:
  o Over 20 people attended the meeting; and
  o Almost all of the immediate neighbors expressed concerns about setback, sunlight, and privacy issues.

• On July 9, 2015, the applicant submitted revised plans in response to public comments. The revised plans show:
  o Increased side yard setback (east) from four feet to four feet and six inches;
  o Reduced building height by 1 foot, from 23’-8” to 22’-8”;
  o Reduced building foot prints for each unit in order to create greater separation from the neighboring properties;
  o Increased front yard setback to 17’ on the ground floor; and
  o All second floor windows facing eastern neighboring properties would be frosted.

• On November 22, 2015, staff received a complaint that demolition of the existing structures began without a permit. On December 15, 2015 the Code Enforcement staff visited the site and observed no demolition activities on the site. They contacted the property owner to grant them a permission to enter the property. On December 16, 2015, Code Enforcement staff inspected the property and observed that no demolition activity occurred.
SEEDS Summary, dated February 17, 2016, notes over 20 persons from 15 nearby households attended the meeting, and all attendees opposed the proposed project.

On February 25, 2016, the City mailed 162 notices to owners and occupants of properties located within a 300-foot radius of the subject property and to interested neighborhood organizations, and posted the public notice at and around the project site in three locations. Please see Attachment #5.

B. Landmarks Preservation Commission: The property was listed on the Landmarks Preservation Commission agenda of December 3, 2015, and no comments were received from the public or LPC members; the LPC took no action to initiate a Landmark or Structure-of-Merit designation.

C. Rent Stabilization Board: The Rent Stabilization Board (RSB) Director submitted a memorandum to Planning and to the ZAB on July 14, 2015 indicating the RSB has no record that would suggest the residential unit at 1310 Haskell Street was rented after the inception of rent control in 1980. RSB records indicate the property was owner-occupied from 1980 until at least 2012. Given its history of owner-occupancy and the lack of rental history, the RSB determined that 1310 Haskell Street does not contain any "controlled" rental units. Please see Attachment #6.

V. Issues and Analysis

A. Demolition of Existing Single Family Residence: The ZAB may approve a Use Permit for the elimination or demolition of dwelling units only if, in addition to other findings required for the project, it finds that the elimination of the dwelling units would not be materially detrimental to the housing needs of the neighborhood and City, and that the demolition is necessary to permit construction of at least the same number of dwelling units. These provisions are described in BMC Section 23C.08 (Demolition and Dwelling Unit Controls).

The proposed demolition of the existing structure and construction of three new dwelling units would result in an increase in the number of units on site from one to three. Further, the existing vacant single family home does not have a history of being rent controlled and the demolition of the structure would not displace any persons. Therefore, the proposed demolition would not be materially detrimental to the housing needs of the City. Staff believes that this finding can be made (see Finding #3 of Attachment #1). Additionally, the condition of approval require demolition cannot occur until building permit plans for the new dwellings issued (see condition #16, Attachment #1).

B. R-2A District Purposes: The purposes of the Restricted Multiple-Family Residential (R-2A) District are intended to implement the Master Plan policy by encouraging the development of medium density residential areas characterized by small multiple-family and garden-type apartment structures with a maximum of open space consistent with this type of development; make available housing for persons who
desire apartment-type accommodations with a maximum of open space; protect adjacent properties from unreasonable obstruction of light and air; and permit only that intensity of use which will be compatible with existing low density residential structures and will not be detrimental to the immediate neighborhood. Per the City’s 2002 General Plan, the density of the R-2A district ranges “from 20 to 40 dwelling units per net acre, and the population density will generally range from 44 to 88 persons per acre.” The proposed project includes three new two-story dwelling units in the R-2A District. An analysis of the project’s consistency with the R-2A District follows.

1. Open Space and Development Pattern:

   a. Conformity with Zoning Standards: As stated in Table 4 above, the project complies with the District requirements for height, lot coverage, open space, setbacks and building separation requirements. The R-2A District allows a density of one dwelling per 1,650 square feet of lot area. The construction of three new dwelling units would result in an increase in the number of units on site from one to three with private usable open spaces, consistent with one of the district purposes. Usable open space would be provided in private yards for each unit; the smallest of these would be 378 square feet for the rear unit, exceeding the R-2A District requirement of 300 square feet per unit.

   As stated in Table 4 above, the project also complies with the District requirements for height, lot coverage, open space, setbacks and building separation requirements. The front yard setback would be 17 feet on the ground floor and 15 feet and two inches on the second floor where a 15 feet front yard setback is required. The right side yard setback (east) would be four feet and six inches where a minimum of four feet is required. The proposed left side yard setback (west) would vary from a minimum of at least four feet to 12 feet, which would comply with the R2A district standards. The rear yard setback of 15 feet would meet District standards. Therefore, the project would conform to zoning standards in the RA-2 District.

   b. Compatibility with Neighborhood Scale and Character: The proposed number of units would be consistent with the varied single- and multi-family residential development pattern of properties in the vicinity. Between Mabel (west) and Acton (east) Streets, Haskell Street has approximately 11 one-dwelling lots and 10 lots with at least two dwelling units, while the north side of Sixty-Seventh Street (abutting block to the south) has approximately 12 one-dwelling lots and two lots with at least two dwelling units. The adjacent property to the west (1306 Haskell Street) contains two units on a 7,500 square foot lot. The adjacent parcel to the east (1312 Haskell Street) contains two 2 units on a 4,644 square foot lot.

   As illustrated in Figure 4, the height of the proposed two-story buildings would be consistent with abutting and confronting properties on Haskell Street. The front unit would present a two-story façade adjacent to Haskell Street with similar height and setback to those abutting properties. In addition, the
proposed two-story height of the new buildings would be compatible with this broader area that is characterized by a mixture of one- to two-story buildings. The lots in this area with two detached residences have similar height, size, and bulk to the proposed two-story buildings. Furthermore, although the materials proposed for the new dwelling would be less consistent with other dwellings in the neighborhood, it would add character to the already eclectic architectural style of the neighborhood. For these reasons, the proposed dwelling would be compatible with the neighborhood scale and character.

2. Density: The General Plan envisions the Medium Density Residential classification as an area of “a mix of single-family homes and small to medium sized multi-family structures intensity” and density range “from 20 to 40 dwelling units per net acre.” Consistent with the intended range of housing densities from single-family homes to small apartments in this area, the project would provide three two-story dwelling units on the property. As the project would be consistent with the purposes of the land use and zoning designations, and would be compatible with the neighborhood in terms of unit density, no substantial detrimental effects are anticipated regarding the proposed increase in residential density. The proposed development would meet all the R-2A development regulations for height, lot coverage, usable open space residential density, setbacks, and parking.

3. Light, Privacy, Air, and views:

a. Shade/Shadows: The applicant prepared a shadow study for the proposed project showing existing and proposed conditions in June, December and March. Shadow impacts to the adjacent property to the west, 1304-06 Haskell Street, may be summarized as follows:

- The east-facing ground level living room window at 1306 Haskell Street, which is currently shaded during spring and fall mornings, would experience increased shading during winter and summer mornings.
- The east-facing windows at 1304 Haskell Street (back house) would experience increased shading during winter and summer mornings.
- The south elevations on 1304 Haskell Street would be subject to new shading during summer mornings.
- New shadows would fully cover the front yard in winter mornings and partially cover it in summer mornings.
- Rooftop solar access would not be diminished.

Shadow impacts to the adjacent property to the east, 1312 Haskell Street, may be summarized as follows:

- The west-facing bedroom windows would experience new shading in winter at midday and the afternoon and in spring and fall afternoons.
- The west-facing bathroom window would now be fully shaded by the project in spring and fall afternoons and partially shaded in winter afternoons.
• New shadows would fully cover the rear yard in spring and fall afternoons and partially cover it in summer afternoons.
• Rooftop solar access would not be diminished.

In summary, the proposed buildings would increase shading beyond existing conditions at living room and kitchen windows at 1304-06. The living room and kitchen windows at 1312 Haskell Street are currently shaded for the majority of the year, and the project would further reduce exposure to light at these windows. The rear yard of abutting properties to the south (1309 and 1311 Sixty-Seventh Street) would experience shading during summer evenings. Although shadow conditions would increase on the aforementioned portions of neighboring properties, shadow impacts would be typical of urban settings. Therefore, the project would not unreasonably obstruct sunlight and would not be substantially detrimental in this regard.

b. Privacy: The project would affect the privacy of adjacent residences by introducing three two-story residences on a site that currently has one single-story residence. The adjacent neighbors to the east and west expressed concerns about the project’s impacts on privacy. The wooden fence that rings the existing backyard on the subject site would remain and would obstruct the line of sight from the ground floor of the new residences toward adjacent residences. Second-story windows in the new residences that face the eastern, and western property lines, however, would create new views to and from the adjacent properties. Views from these windows into adjacent properties would reduce the privacy of neighbors, especially in outdoor yards. All three units would have windows on second story bedrooms, bathrooms, study/den and stair landing areas. All windows in bedroom and study/dens would be completely opaque; and those windows that will not be opaque would be located on stair landing and/or are located high on the walls. As such, these windows would not would not impact the privacy of neighbors.

In the context of the R-2A District, where up to three-story buildings are allowed and these neighborhoods are a generally a mix of one- to three-story residences, any loss of privacy due to the project would be no greater than typical for urban setting. The proposed new buildings would comply with the District standard for setbacks and are therefore expected to achieve a reasonable building-to-building separation, which would also help ensure a reasonable expectation of privacy on each side. Staff believes that the project would not significantly impair the privacy of neighbors.

c. Air: As discussed in the Conformity with Zoning Standards section, the project would meet the District’s setback requirements. The proposed front and rear yard setbacks of at least 15 feet and left side yard setback of at least four feet would meet District standards. The proposed right side yard of 12 feet for buildings #1 and #2 would exceed the District’s minimum requirement, and would meet the District’s minimum side yard setback requirement for building #3. Because the project would conform to zoning standards in the R-2A District,
there would be adequate air between the proposed residences and adjacent properties.

d. **Views:** Due to the relatively flat slope of this neighborhood and its low elevation above sea level, views of significant features are not generally available. East-facing windows in the area may provide partially obstructed views of the East Bay Hills, especially from two-story residences, as screened by intervening buildings and trees. Although the project could further obstruct views of the East Bay Hills from nearby two-story residences, such views are already partially obstructed and would not be substantially degraded.

**C. Number of Bedroom:** The R-2A District requires a Use Permit to create six or more bedrooms on a single parcel\(^1\). The project would create nine bedrooms on a parcel that currently has two, resulting in net addition of seven bedroom. The ZAB may approve a Use Permit for the addition of six or more bedrooms if the additional bedrooms would not be considered detrimental to persons living or working in the neighborhood, or be detrimental to the adjacent properties, surrounding neighborhood and the general welfare of the City. In Staff’s view, the creation of three bedroom dwelling units would accommodate families that want ample interior space. The location of the buildings on the site and amount of open space would support the number of bedrooms proposed in the project.

**D. Parking and curb cut:** As required under BMC Section 23D.32.080.A, the proposed project provides three covered off-street parking spaces (one per unit) and would expand the existing 10 foot curb cut on Haskell Street to 13 feet and six inches, and install a two feet wide landscape strip along the western edge of the driveway. Additionally, as required under BMC Section 23D.04.050.H, areas of the lot which are not designated as driveways, off-street parking spaces or required walkways would be retained as landscape and softscape.

The proposed curbcut expansion would lead to removal of an existing street tree (Chinese pistache) depicted in Figure 4 above. The removal is necessary because the City typically requires a five feet buffer between trees and driveways. The applicant would need to provide replacement tree no closer than five feet from any underground utility or the new driveway. The replacement tree must meet the requirements outlined in Condition #37 in Attachment #1.

**E. General Plan Consistency:** 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

\(^1\) “Bedroom” means any Habitable Space in a Dwelling Unit or habitable Accessory Structure other than a kitchen or living room that is intended for or capable of being used for sleeping with a door that closes the room off from other common space such as living and kitchen areas that is at least 70 square feet in area, exclusive of closets and other appurtenant space, and meets Building Code standards for egress, light and ventilation. A room identified as a den, library, study, loft, dining room, or other extra room that satisfies this definition will be considered a bedroom for the purposes of applying this requirement.

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construction, and is compatible with neighboring land uses and architectural design and scale.

Staff Analysis: The project will add residential density to a property located in the R-2A district consistent with the district requirements. As described in Key Issue above, the proposed height is consistent with other two-story buildings in the vicinity.

2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.

Staff Analysis: The project will meet all of the zoning standards of the R-2A district, including height, lot coverage, setbacks and parking. The uses in the neighborhood are residential and the adjacent uses include multiple units on one lot.

3. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.

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: The proposed three residential units would replace an existing residential unit, thus maintaining the use but increasing density while maintaining consistency with the allowed zoning ordinance maximum density and building intensity. The proposed density would also be consistent with the General Plan density for the R-2A district. As discussed above, the new construction would be compatible in use, scale, massing and design with a neighborhood characterized by one to two-story buildings reflecting a mix of architectural styles.

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

Staff Analysis: The proposed three residential units would cast new shadows on neighboring properties. However, the buildings’ mass has been appropriately arranged and articulated to limit impacts on the adjacent neighbors, including limiting the height to 22 feet and eight inches to protect adjacent properties from unreasonable obstruction of light and air. As discussed above, rooftop solar access would not be diminished.

5. 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 proposed project would support the City’s housing production goals by providing two additional dwellings.

F. South Area Plan Consistency: The South Berkeley Area Plan, adopted in 1990, also contains several policies applicable to the project, including the following:

1. **Housing Element 3.2**: Develop incentives and enforceable mechanisms for returning vacant and abandoned residential structures to the housing market.

2. **Land Use Policy A.1**: Preserve the character and quality of life of residential areas.

   Staff Analysis: The subject property is located in the R-2A Restricted Multiple-Family Residential Zoning District, generally characterized by a mix of single-family homes and small to medium sized multi-family structures. The zoning for this site also serves as a transition to the adjacent R-3 Zoning District immediately north of the site, which is located within the Southside Plan Area and encourages the development of relatively high density residential areas.

   Although the number of units and bedrooms would increase, the residential use would be maintained on the site and would not adversely affect the quality of life in the neighborhood. The new construction is designed to be compatible in scale with the overall massing of the eclectic neighborhood setting. The two-story dwelling units are proposed to be similar in height to the adjacent buildings. The new construction would be compatible in use, scale, massing and design with a neighborhood characterized by one to two-story buildings reflecting a mix of architectural styles.

VI. Recommendation

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

A. APPROVE Use Permit #ZP2015-0087 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Applicant Statement Project Plans, received January 20, 2016
4. Letters and Correspondences received from the neighbors.
5. SEEDS Community Resolution Center report, dated February 17, 2016
6. Rent Board Memorandum, dated July 14, 2015
7. Correspondence Received

Staff Planner: Immanuel Bereket, ibereket@ci.berkeley.ca.us, (510) 981-7425
To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Carol Johnson, Acting Director, Planning & Development

Subject: ZAB Appeal: 1310 Haskell Street

RECOMMENDATION
Conduct a public hearing and upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2015-0087 to demolish an existing single-family dwelling and accessory structure and construct three new detached, two-story dwellings totaling approximately 6,229 square feet, and dismissing the appeal.

FISCAL IMPACTS OF RECOMMENDATION
None.

CURRENT SITUATION AND ITS EFFECTS
On March 10, 2016, the Zoning Adjustments Board held a public hearing and approved the application submitted by Baran Studio, 5621 Lowell St., STE F, Oakland, CA 94608, on behalf of CS Development & Construction Inc., 119 Plaza Circle, Danville, CA 94526, by a 5-3-0-0 vote (Yes: Allen, Donaldson, Hasuer, O'Keefe and Williams; No: Hahn, Tregub, Pinkston). On March 21, 2016, staff issued the notice of the ZAB decision. An appeal was filed with the City Clerk on April 4, 2016, by Mary Trew, on behalf of the neighbors who spoke at the ZAB hearing. The Clerk set the matter for review by the Council on July 12, 2016. On June 28, 2016, staff posted the public hearing notice at the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations.

BACKGROUND
The project approved by the ZAB would allow the demolition of the existing single-family dwelling and detached accessory structure, and the construction of three detached, two-story, three-bedroom dwellings, ranging in size from 1,798 to 1,985 sq. ft. in gross floor area. The project approved by the ZAB would increase the number of dwellings on the site from one to three, the number of bedrooms from two to nine, and each unit would have an attached enclosed one-car garage at the ground level.
ENVIRONMENTAL SUSTAINABILITY
The project is in compliance with all state and local environmental requirements.

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

Issue 1: The ZAB failed to fully consider “the many detrimental effects this project would create: loss of sunlight, privacy, and quiet to immediate homes, as well as increased traffic, congestion, noise, lack of open space, and parking difficulties for the whole area.” [p. 1 of attached appeal letter]

Response 1: The March 10, 2016, ZAB Staff Report (Attachment 3) describes in detail the proposed setbacks, density, usable open space, off-street parking, building separation and building articulation, documenting the basis on which the ZAB determined that the project would result in a development that is compatible with the design and character of the district, and the existing buildings in the adjacent residential district.

The project site is located on the south side of Haskell Street in the Restricted Multiple-Family Residential (R-2A) zoning district, between Mabel and Acton Street. All confronting (north) and abutting properties to the east and the west are developed with detached two dwelling units per parcel. Each abutting and confronting parcel contains a two-story dwelling unit facing Haskell Street, ranging in height approximately from 23 feet to 26 feet in average height.

Each proposed dwelling would be two stories and have a maximum height of 22 feet, eight inches, which is less than the three-story, 28 foot height allowed in the R-2A zoning district. In addition to proposing development that is much like what is found in the area, the proposed project complies with the R-2A zoning district requirements for lot coverage, open space, setbacks, off-street parking and building separation requirements.

In making a decision to approve the Use Permit, the ZAB found the project would conform to zoning standards in the R-2A zoning district. The appeal does not present new information to suggest that the decision of the ZAB was in error.

Issue 2: The proposed project would increase density on the parcel. [p. 1 of attached appeal letter]

Response 2: The ZAB considered the proposed project in light of the density range expected by the Zoning Ordinance and General Plan and the existing density of the neighborhood. Testimony was presented from City staff,
the applicant and neighbors (including the appellants) who raised issues related to unit density and the number of bedrooms on the site.

The project would increase the density above what exists on the site today. To ensure the proposed density increase was appropriate for the site, staff reviewed the density limits imposed by the Zoning Ordinance, and the guidance offered by the General Plan regarding density. With respect to the density limit imposed by the Zoning Ordinance, based on lot size and the R-2A zoning, this lot could support four dwellings, or one more than proposed by this application. With respect to General Plan Density, staff notes the General Plan envisions the Medium Density Residential classification as an area of “a mix of single-family homes and small to medium sized multi-family structures intensity” and density range “from 20 to 40 dwelling units per net acre.” Consistent with the intended range of housing densities from single-family homes to small apartments in this area, this lot could support four dwelling units, or one more than proposed by the application. As the project would be consistent with the purposes of the land use and zoning designations, and would be compatible with the neighborhood in terms of unit density, the ZAB concluded that there would not be substantial detrimental effects.

With respect to bedroom counts, staff notes the R-2A Zoning District allows six or more bedroom on a single parcel with a Use Permit. The project would create nine bedrooms on a parcel that currently has two, resulting in net addition of seven bedrooms. The ZAB considered the increase in bedrooms, and found the creation of three bedroom dwelling units would accommodate families, and that doing so for this site would not introduce detrimental impacts to persons living or working in the neighborhood, or to the adjacent properties. The ZAB also concluded that the location of the buildings on the site and amount of open space would support the number of bedrooms proposed in the project.

Because the appeal does not present new information to suggest that the decision of the ZAB was in error, staff recommends the Council dismiss this appeal point.

Issue 3: The ZAB ignored the neighbor’s opposition expressed “as a community, with petitions, letters, emails, telephone calls, and testimonials at the ZAB hearing” and “voted to approve by only a two-vote margin.” [p. 2 of attached appeal letter]

Response 3: Staff provided the ZAB with advance copies of petitions and letters, both in support and opposition of the application. At the hearing, staff also provided to the ZAB supplemental materials, petitions and letters in support of, and in opposition to, the application. The ZAB reviewed all written materials, as well as the public testimony.
In making a decision to approve the Use Permit, the ZAB relied on the totality of evidence—including the staff report, Findings and Conditions, and staff and public testimony. At the hearing, a minority of the ZAB members agreed with the neighbors and considered a substitute motion to retain the existing dwelling unit and add to more units on the parcel. However, the motion did not pass.

The appeal does not present new information to suggest that the decision of the ZAB was in error.

Issue 4: The proposed project would demolish “an existing house that is so compatible with our neighborhood and that could be renovated.” [p. 2 of attached appeal letter]

Response 4: As described above, the proposed number of units would be consistent with the varied single- and multi-family residential development pattern of properties in the vicinity.

The front unit would present a two-story façade adjacent to Haskell Street with similar height and setback to those abutting properties. In addition, the proposed two-story height of the new buildings would be compatible with this broader area that is characterized by a mixture of one- to two-story buildings. The lots in this area with two detached residences have similar height, size, and bulk to the proposed two-story buildings. Furthermore, although the materials proposed for the new dwelling would be less consistent with other dwellings in the neighborhood, it would add character to the already eclectic architectural style of the neighborhood. For these reasons, the proposed dwelling would be compatible with the neighborhood scale and character.

The appeal does not provide any evidence to suggest that the ZAB erred in approving the project. Thus, staff recommends that the Council find this appeal point as without merit and reject the appeal as to this issue.

ALTERNATIVE ACTIONS CONSIDERED
Pursuant to BMC Section 23B.32.060.D, the Council may (1) continue the public hearing, (2) reverse or affirm, wholly or partly, or modify the ZAB’s decision, or (3) remand the matter to the ZAB.

Action Deadline:
Pursuant to BMC Section 23B.32.060.G, if the disposition of the appeal has not been determined within 30 days from the date the public hearing is closed by the Council (not including any Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.
CONTACT PERSONS
Carol Johnson, Acting Director, Planning & Development Department, (510) 981-7401
Immanuel Bereket, Associate Planner, Planning & Development Department, (510) 981-7426

Attachments:
1: Resolution
   Exhibit A: Findings and Conditions
   Exhibit B: Project Plans date stamped March 10, 2016
2: Mary Trew Appeal Letter date stamped April 4, 2016
3: March 10, 2016, ZAB Staff Report
4: Index to Administrative Record
5: Administrative Record
6: Public Hearing Notice
RESOLUTION NO. ##,### -N.S.

UPHOLD THE ZONING ADJUSTMENTS BOARD (ZAB) DECISION TO APPROVE USE PERMIT #ZP2015-0087 TO DEMOLISH AN EXISTING SINGLE-FAMILY DWELLING AND ACCESSORY STRUCTURE AND CONSTRUCT THREE NEW DETACHED, TWO-STORY DWELLINGS TOTALING APPROXIMATELY 6,229 SQUARE FEET

WHEREAS, on April 8, 2015, Baran Studio, (c/o Cassidy Chang), (“applicant”) filed an application for a Use Permit to demolish an existing single-family dwelling and accessory structure and construct three new detached, two-story dwellings totaling approximately 6,229 square feet at 1310 Haskell Street (“project”); and

WHEREAS, on December 3, 2015, the Landmarks Preservation Commission (“LPC”) reviewed the proposed demolition and declined to initiate the building because the building did not appear to meet historical resource criteria; and

WHEREAS, on January 16, 2016, staff deemed this application complete, and on approximately January 20, 2016, determined that the project was categorically exempt from the California Environmental Quality Act (“CEQA”) under Sections 15303 (“New Construction or Conversion of Small Structures”) and 15332 (“In-Fill Development Projects”); and

WHEREAS, on February 25, 2016, staff mailed 162 notices to adjoining property owners and occupants within 300 feet of the site, and to interested neighborhood organizations and posted a Notice of Public Hearing at the site in three locations; and

WHEREAS, on March 10, 2016, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, and approved the use permit application; and

WHEREAS, on March 21, 2016, staff issued the notice of the ZAB decision; and

WHEREAS, on April 4, 2016, Mary Trew, on behalf of the neighbors, filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on June 28, 2016, staff posted the public hearing notice at the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations; and

WHEREAS, on July 12, 2016, the Council held a public hearing to consider the ZAB’s decision, and, in the opinion of this Council, the facts stated in, or ascertainable from the public record, including comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby approves Use Permit No. 2015-0087 based on the attached findings and conditions, as set forth in Exhibit A, for the project depicted in Exhibit B.

Exhibits:
Exhibit A: Findings and Conditions
Exhibit B: Project Plans date stamped March 10, 2016
# Index to Administrative Record

**1310 Haskell Street**  
**Use Permit #ZP2015-0087**  
**Prepared: June 6, 2016**

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<td>1 ZAB Materials: staff report, attachments, supplemental items, speaker cards, and late items</td>
<td>3/10/2016</td>
<td>1</td>
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<td>B CAPTIONER'S RECORD</td>
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<tr>
<td>2 ZAB captioner's record</td>
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<td>122</td>
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<tr>
<td>C REMAINDER OF ADMIN RECORD</td>
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<tr>
<td>3 Application Materials</td>
<td>4/8/2015</td>
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<td>168</td>
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<tr>
<td>4 Incomplete letter</td>
<td>4/22/2015</td>
<td>169</td>
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<td>5 Receipt for fees paid</td>
<td>4/29/2015</td>
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<td>6 Incomplete letter</td>
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<td>12 Permit Mediation Report from SEEDS</td>
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<td>4/4/2016</td>
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<td>17 Letter from City Clerk</td>
<td>4/14/2016</td>
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Administrative Record
ZAB Appeal:
1310 Haskell Street

This attachment 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/
Notice is hereby given by the City Council of the City of Berkeley that on **FEBRUARY 28, 2017 at 7:00 PM** a public hearing will be conducted to consider an appeal regarding a decision by the Zoning Adjustments Board to approve Use Permit No. ZP2015-0087 to demolish an existing single family dwelling and accessory structure and construct three new detached, two-story dwelling units totaling approximately 6,229 square feet. The project would increase the number of dwelling units on the site from one to three and the number of bedrooms from two to nine.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of February 16, 2017.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet. For further information regarding the project, please contact Immanuel Bereket, (510) 981-7425

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Mark Numainville, City Clerk

Mailed & Posted: February 14, 2017

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** If you object to a decision by the City Council to approve or deny (Code Civ. Proc. § 1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.