




Office of the City Manager

ACTION CALENDAR  
December 17, 2013

To: Honorable Mayor and Members of the City Council  
From:  Christine Daniel, City Manager  
Submitted by: Eric Angstadt, Director, Planning & Development  
Subject: Structural Alteration Permit Appeal Hearing: 2201-2205 Blake Street

RECOMMENDATION

Adopt a Resolution affirming the Landmarks Preservation Commission's approval of Structural Alteration Permit No. 2013-0005 for the construction of three dwelling units at the rear of the Bartlett Houses (2201-2205 Blake Street), a City of Berkeley Landmark, and affirming all of the findings and conditions.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The property is located in the R-2A Restricted Multiple-Family Residential Zoning District, generally characterized by a mix of existing single-family homes and small to medium sized multi-family structures. The R-2A District also serves as a transition to the R-3 Zoning District, which is adjacent to the north, within the Southside Plan Area, and encourages development of relatively high density residential areas. On May 21, 2013 the applicant submitted applications for Use Permits to construct: (1) an approximately 3,224 square-foot three-story duplex at the rear of 2204 Dwight Way (Dwight Way); (2) an approximately 3,000 square-foot two-story duplex at the rear of 2201-2205 Blake Street (Blake Street); and (3) convert an approximately 432 square-foot one-story accessory structure at the rear of 2201-2205 Blake Street to a dwelling unit.

Because Section 3.24.200 of the Berkeley Municipal Code requires Landmarks Preservation Commission review of any proposed construction on a designated landmark for which a City permit is required, an associated Structural Alteration Permit application was filed to allow the construction at the rear of the landmarked Bartlett Houses (2201-2205 Blake Street). On September 12, 2013 the Commission held a public hearing and approved the Structural Alteration Permit with conditions, by a 7-2-0 vote (Yes: Linvill, Ng, Olson, Parsons, Pietras, Ruegg, Wagley; No: Hall, Schwartz; Abstain: None; Absent: None). On October 29, 2013, Lozeau Drury LLP submitted a notice of appeal on behalf of Berkeley resident Gale Garcia and "No Mini-Dorm Village for LeConte Neighborhood". The effect of the appeal was to stay all proceedings by all parties in connection with the matter until the determination of the appeal. The Clerk set the matter for review by the Council on December 17, 2013.

## BACKGROUND

On December 5, 2005 the Landmarks Preservation Commission designated the Bartlett Houses a City of Berkeley Landmark. In designating a local landmark, the Commission first considers whether the proposed landmark meets the criteria for designation in the Landmark Preservation Ordinance, and then includes “a description of the characteristics which justify its designation and a description of the particular features that should be preserved.” (Administrative Record)

In this case, the Commission found that the houses collectively met the Ordinance criteria for educational and historic value (Sections 3.24.110.A3 and 3.24.110.A.4) “in their original setting” due to their representation of Victorian Berkeley, their cultural and historical value (Sections 3.24.110.A.2 and 3.24.110.A.4) by virtue of their association with their owner, Berkeley pioneer Alfred Bartlett, and for the “exceptional value they add as part of the neighborhood fabric of the Blake tract.” (Section 3.24.110.A.1.c) The Commission found that the 1877 Bartlett house individually met the specific landmark criterion for architectural merit (3.24.110.A.1.b) as an outstanding example of a Victorian Italianate residence.

The Commission then called out the characteristics that justified designation and a description of the particular features that should be preserved, as follows:

The primary landmark element, the 1877 Bartlett House at 2201 Blake Street with the following features:

- V-rustic wood siding; Hipped roof form with flattened top; Broad, projecting eaves; The south and west projecting gable-roofed wings; The east non-projecting gable; The mouldings in the gable; The gable porthole windows; Curved brackets under the eaves; Delicate fretwork with pendant ornaments at the peaks of the gables; Long, narrow one-over-one double hung wood sash windows; Two-story slanted bay on the south (front) façade; One-story slanted bay on the west facade; Raised and beveled panels in the entablature above the bays and below the windows of the bays; The hoods above the bays and the moulding underneath the hoods; Slender colonettes on the sides of the windows in the bays; The segmented top arches of the windows in the bays and on the lower floor of the east facade; Hoods supported by brackets on remaining windows; The front porch with its truncated, curved hipped roof; The one freestanding and two engaged porch columns with Tuscan-like capitals; The two shallow arches between the porch columns; The low porch railing with its beveled scrollwork; and The arch-topped transom windows above the front and side doors; and
- Further contributing elements included the two accessory structures: the stable and the servant’s quarters, including the basic forms of the structures, the v-rustic wood siding, and on the servant’s quarters, the double-hung wood sash windows.

The Commission did not identify the rear yard(s) as historic landscapes, or include any yard(s) or important landscape features, such as mature trees and vegetation, fencing,

flagstones, steps, or paving, or any site furnishings such as fountains or statuary, in the list of “physical characteristics of the landmark that account for or convey its historical significance for inclusion in the local register.”

On May 21, 2013 a Structural Alteration Permit application associated with two Use Permits was submitted to allow the construction at the rear of the landmarked Bartlett Houses (2201-2205 Blake Street). The Commission staff report described the project and included correspondence opposing the project. In recommending approval of the project, the staff report noted that the neighborhood is fairly dense, that the new construction was proposed to be sited in the rear corner in order to avoid obscuring character-defining features that characterize the landmark, and designed to be differentiated from the landmark while maintaining compatibility of scale and materials in order to protect the integrity of the landmark.

On September 12, 2013 the Commission held a public hearing. One community member supported many parts of the project but asked the Commission to look carefully at the open space requirements. Three community members spoke in opposition, stating concerns with the re-use of the stable, the trees, the relationship of the new project to the grounds, the mini-dorm design of the duplex units, and rehabilitation beyond restoration. Two letters opposing the project were submitted at the meeting. Two persons spoke in favor of the project, stating support for the owner’s current and proposed rehabilitation of the once dilapidated site. The Commission considered the project, discussing the lot coverage and concerns raised including the significance of the site and privacy. When one commissioner asked about the site, others replied that sites were included in landmark designations as a legal description of location, and that as a result it was not uncommon for the Commission to see applications for construction at the rear of residential properties. Some commissioners noted that many of the concerns were zoning issues relegated to the Zoning Adjustments Board.

In particular, the Commission was concerned that the new construction be designed in a manner that makes clear what is historic and what is new, in conformance with the Secretary of the Interior’s Standards. A subcommittee was appointed to review the design details at the site in order to be sure that new details do not duplicate those of the historic houses. The Commission then approved the Structural Alteration Permit with conditions, by a 7-2-0-0 vote (Yes: Linvill, Ng, Olson, Parsons, Pietras, Ruegg, Wagley; No: Hall, Schwartz; Abstain: None; Absent: None). On October 29, 2013, Lozeau Drury LLP submitted a notice of appeal on behalf of Berkeley resident Gale Garcia and “No Mini-Dorm Village for LeConte Neighborhood”, which had the effect of staying all proceedings by all parties in connection with the matter until the determination of the appeal. The Clerk set the matter for review by the Council on December 17, 2013.

#### RATIONALE FOR RECOMMENDATION

The notice of appeal raised four main issues, each of which is summarized below, followed by staff’s responses. For the sake of brevity, the appeal issues are not always

re-stated in their entirety, but summarized; refer to the attached notice of appeal for full text.

Issue A: The Project will Result in Adverse Changes to a Historical Resource by Allowing Alterations to Site Features

The appellants contend that construction of the project in the rear yard will result in an adverse change to the site, and therefore to the historical resource. This statement is based on the opinion of an architectural historian retained by appellants that “the proposed project adversely impacts the site, which is the historical resource.”

Response: The appellants cite the Landmark Application and Notice of Decision, which refer to the houses in their original setting, as probably the most pristine representation of Victorian Berkeley still in existence. This reference is used to support the architectural historian’s assertion that the entire site is an historic landscape because “historic landscapes include residential gardens.” While “historic landscapes include residential gardens,” not all residential gardens (or yards) qualify as historic landscapes. The significance and integrity of the yard as a component of a historic property must be considered. The current garden and landscaping do not have historic value simply because they exist on a parcel on which historic buildings also exist.

Based on personal observations of the site and review of the Landmark application and current Structural Alteration permit documents, the architectural historian concluded that the features of the site’s historic landscape include “the front, side and rear yards; mature trees and vegetation; and the low concrete perimeter wall.”

The two historic houses sit in their original locations on a corner lot fronting onto Blake Street, with the side of the primary landmark 1877 Bartlett House on Fulton Street. A historic photograph indicates standard front and side yards which include evidence of the largest of several existing mature Cedar trees (Figure 1). Other mature Cedar trees in the side yard are not evident in the historic photograph. The photograph also indicates two young deciduous trees, no longer existing. The existing refurbished low concrete perimeter retaining wall is also evident in the front and side yards in the historic photograph (Figure 2). The existing stable at the northeast rear corner appears on a 1903 Sanborn Fire Insurance map, and is currently framed by modern-era concrete-block garage and two-story apartment building on the north and east property lines. The rear yard includes one mature tree, not evidenced in historic photographs.

Figure 1: Historic Photo

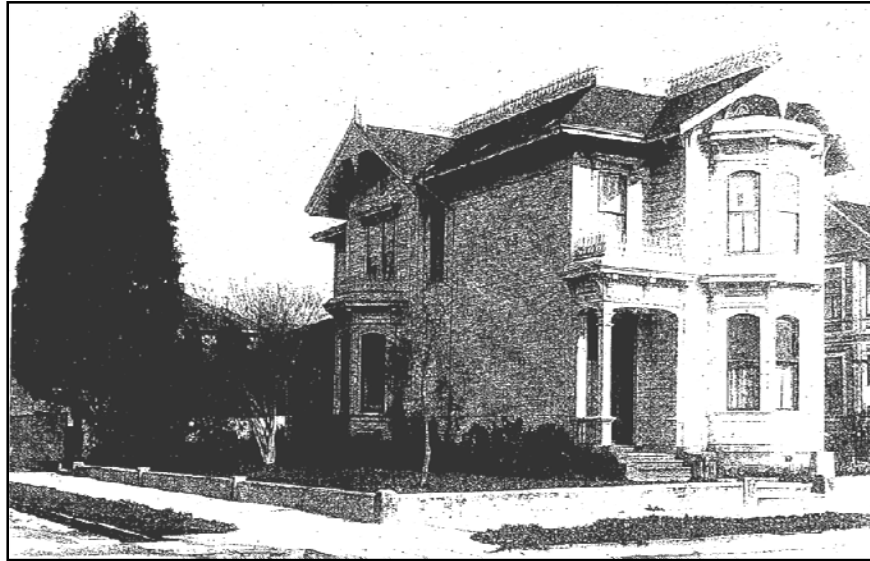


Figure 2: Existing Photograph

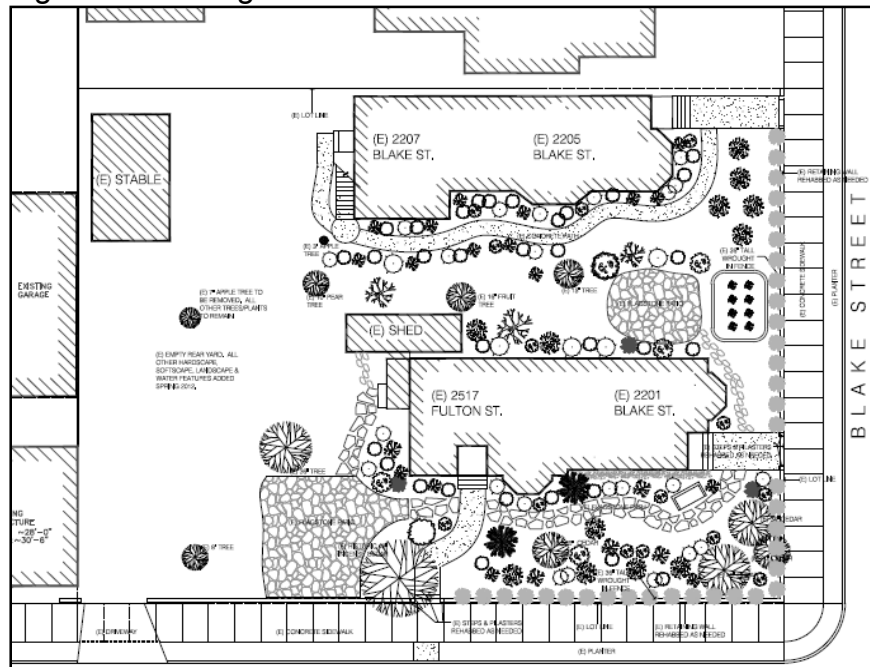


Photographs (Figure 3), the applicant statement (Administrative Record), and the Existing Overall Site Plan (Figure 4), all describe the existing utilitarian, packed-earth, shared rear yard as un-landscaped grounds having been used for surface parking since the mid-twentieth century.

Figure 3: Rear Yard



Figure 4: Existing Site Plan



Consistent with existing conditions, the 2005 Landmark application itself does not reference any significant landscaping elements. The Commission Notice of Decision for the “Bartlett Houses, Designation as a Landmark,” reflects the Landmark application’s silence on any potential landscape elements. The designation location is recorded on the legal meets and bounds description of the site as required by Ordinance, but neither the

setting nor the landscaping is included in the list of characteristics and particular features of the houses which justify their designation.

According to the City Arborist, growth can vary due to species, soil, availability of water and sunlight, and the presence or absence of disease and insect infestations. All things considered, a Cedar tree will grow a half-inch in diameter every year. A very conservative estimate could find that a 20-inch tree might be 40 years old and a 40-inch tree might be 80 years old.

The appellant's architectural historian also noted that "Other features which appear to have been added or altered... include: fencing; flagstones, steps, and paving; and site furnishings, such as fountains and statuary." According to the current and previous owners these elements, along with young trees and landscape plantings indicated on the Existing Site Plan, have been recently added to the site.

A project that may cause a substantial adverse change in the significance of an historical resource is one that would demolish or materially alter specifically those physical characteristics that convey its historical significance and that justify its designation. A project does not cause a substantial adverse change in a historical resource simply because it materially alters a physical characteristic of a resource if the feature that is altered does *not* convey its historical significance or justify the designation. Photographic and physical evidence, verbal testimony, and written applications and decisions support the Commission's analysis in this case that while the historic houses sit on one lot and share a setting which includes a rear yard, that rear yard does not include a garden or any landscaping that qualifies as an historic landscape or as a character defining feature justifying the designation of the landmark houses.

Issue B: Class 31 and 32 CEQA Exemptions are not Applicable Because the Project is Inconsistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards).

The appellant contends that "rather than being limited merely to 'maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources' as permitted by Section 15331," because the project proposes alterations to the rear yard, the project would not be consistent with the Standards, and would therefore adversely impact an important historic landscape and its features, and as a result the public. The appellant cites the architectural historian's statement that "The spatial organization and relationships between the two residences, the accessory structures, the open space, and all other features of the property is a character-defining feature which has been not considered nor analyzed for impact by the proposed project."

Response: The Standards include four kinds of treatments for historic properties: Preservation, Rehabilitation, Restoration, and Reconstruction. The Standards address new additions and construction under Rehabilitation: "... unlike Preservation, the dual goal of Rehabilitation is to – respectfully – add or alter [including relocate] a building in order to meet new use requirements." In the case of an historic property located in a zoning district allowing medium sized multi-family structures, the addition of residential units is addressed in the chapter of the Standards entitled *New Additions to Historic Buildings*. These guidelines recommend "placing a new addition on a non-character-defining elevation." The intent of this recommendation is to maintain the character of an historic house from the street, by retaining its location, orientation, and setbacks, as well as mature landscaping and architecture. The project proposed new construction at the rear corner of the yard in order to follow these guidelines. Relocating the accessory structure allowed use of the rear corner location for new construction, as well as a new use for the accessory structure. Neither of these changes affects an element of primary significance for the houses, while retaining their basic form and v-rustic wood siding features as called out in the landmark designation. While construction of the project would alter the rear yard, as discussed above, and the location of the yard is part of the setting, the vegetation is not mature, and the size of the yard does not define the entire setting. By nature of being in the rear corner of the site, the new units will not obscure primary views of the site. The existing low concrete perimeter retaining wall has been refurbished and will be retained together with the mature trees. The project would maintain front, side and rear yards for the historic houses in their original orientations, with separations and open space requirements exceeding those required by zoning, as noted on the Cover Sheet of the plan set.

The guidelines also recommend "limiting the size and scale in relationship to the historic building." The project complies with this recommendation. At 24' – 6" the average height of the new two-story duplex would be approximately six feet below that of the two-story 1892 Queen Anne house directly in front of it, and approximately three feet below that of the 1877 primary landmark house diagonally in front of it at the front corner of the site. The accessory building would be relocated directly behind the 1877 primary landmark house and maintain an average height of 15-feet.

The appellants also express concern for potential construction impacts from the basement parking structure on the historic houses. The construction will be subject to the California Building Code, which requires new foundations to be designed for all possible load combinations based on site specific conditions, in order to protect existing structures. Vibration would normally be expected from large-scale drilling operations,



associated with the construction of tall multi-story buildings with large footprints. The foundation associated with the proposed wood-framed, two-story residential building would typically consist of basement retaining walls and slab on-grade construction, none of which would require drilling equipment with substantial vibration levels.

As stated above, the appellant further contends that new construction in the rear yard will result in adverse effects on the public, noting the landmark findings relative to neighborhood fabric, and citing the architectural historian's opinion that "the proposed changes would be fully visible to the public, would result in the total loss of integrity of the setting, and would diminish the public's perception of the landmarked site." The landmark is not located within an historic district. While the 1877 house was landmarked as an outstanding example of a Victorian Italianate architecture, the 1892 house was not found to be an outstanding example, but met the broader criterion for its value as part of the neighborhood fabric. The new construction is designed to be compatible in scale with the overall massing of the eclectic neighborhood setting. While the proposed project would be visible, it would not obstruct the views of the houses from the public right-of-way or tower over them. The two-story duplex is proposed to be lower than both of the landmark houses, located in the back corner of the double lot, silhouetted by an existing modern apartment building built over a garage on the adjacent lot beyond to the east.

Issue C: The Class 32 In-fill Exemption is not Applicable Because the Project is Inconsistent with the Landmarks Preservation Ordinance (Chapter 3.24 Landmarks Preservation Commission), and may have Noise Impacts.

The appellant contends that the project fails to meet Landmarks Preservation Ordinance criteria for alterations to local landmark sites, because the project will adversely affect the special historical, architectural or aesthetic interest or value of the landmark and its site, as viewed both in itself and in its. The appellant further states that the decision does not include discussion to support a conclusion that the Project would not result in significant noise impacts.

Response: As noted in the responses to Issues A and B, the Commission found that the project would not adversely affect the landmark and its site, for the reasons stated above. In addition, in determining that work on a landmark site will be as appropriate for and as consistent with the purposes of the Ordinance, which include the "protection, enhancement, perpetuation and use of [landmark] structures, sites and areas," the Landmarks Preservation Ordinance allows the Commission to consider "the peculiar circumstances of the owner of the property and preservation or enhancement of the characteristics and particular features specified in the designation." The Commission's review and approval of the proposed

project are consistent with the Ordinance in that they took into consideration the particular circumstances of the owner and the preservation of the particular features of the property.

This in-fill project is also consistent with the Zoning Ordinance and the Berkeley General Plan. The General Plan contains several policies applicable to the project, including Policy LU-7–Neighborhood Quality of Life, encouraging new in-fill development that is consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area. 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 of 2204 Dwight Street, which is located within the Southside Plan Area and encourages development of relatively high density residential areas. A key consideration for the Commission on these projects is the ability of property owners to continue the use of historic properties while meeting in-fill goals of the City to meet housing needs and reduce greenhouse gas emissions.

The City of Berkeley requires each development project to adhere to a standard set of conditions of approval to mitigate potential noise impacts that could result from construction activities. Implementation of these standard conditions of approval are contingent upon various factors, including the size and type of development proposed and the surrounding land uses that could be potentially affected. The implementation of the City's standard conditions of approval in addition to any project-specific conditions would reduce potential impacts associated with construction-related noise to a less-than-significant level. Therefore, all technically and economically feasible noise reduction standard conditions of approval shall be included in the project to reduce construction noise impacts to the maximum extent technically and economically feasible, as required by the Municipal Code. Such conditions shall include restrictions on the hours of construction.

The California Building Code regulates acceptable noise levels according to occupancy types through plan check review of construction permits.

#### ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 3.24.300.B, the Council may (1) refer the matter back to the Commission for further consideration; (2) affirm the decision of the Landmarks Preservation Commission and dismiss the appeal; or (3) set the matter for hearing.

ACTION DEADLINE

Pursuant to BMC Section 3.24.300.C, if none of the three actions described above has been taken by the Council within thirty (30) days from the date that the appeal first appears on the Council agenda (not including Council recess), then the decision of the Commission shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSONS

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Attachments:

- 1: Resolution
- 2: Appeal Letter dated October 29, 2013
- 3: Index to Administrative Record
- 4: Administrative Record

RESOLUTION NO. ##,###-N.S.

AFFIRMING THE DECISION OF THE LANDMARKS PRESERVATION COMMISSION TO APPROVE STRUCTURAL ALTERATION PERMIT APPLICATION NO. 2013-0005 FOR THE CONSTRUCTION OF THREE DWELLING UNITS AT THE REAR OF THE BARTLETT HOUSES (2201-2205 BLAKE STREET), A CITY OF BERKELEY LANDMARK

WHEREAS, on May 21, 2013 Nathan George submitted a Use Permit application to construct a two-story, approximately 3,000 square-foot duplex and single-story, approximately 432 square-foot dwelling unit within a relocated accessory structure at the rear of 2201-2205 Blake Street; and

WHEREAS, on May 21, 2013 Nathan George submitted an associated Structural Alteration Permit application for proposed construction on a designated landmark for which a City permit is required; and

WHEREAS, on August 29, 2013, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 3.24.140; and

WHEREAS, on September 12, 2013, the Commission held a public hearing in accordance with BMC Section 3.24.140, and approved the Structural Alteration permit; and

WHEREAS, on October 14, 2013, the Commission Notice of Decision was issued; and

WHEREAS, on October 29, 2013, Lozeau Drury LLP submitted a notice of appeal on behalf of Berkeley resident Gale Garcia and No Mini-Dorm Village for LeConte Neighborhood, staying all proceedings by all parties in connection with the matter until the determination of the appeal; and

WHEREAS, on December 17, 2013 the Council considered the record of the proceedings before the Commission, and the staff report and correspondence presented to the Council.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby dismisses the appeal and affirms the decision of the Commission to approve the Structural Alteration permit to construct a two-story, approximately 3,000 square-foot duplex and single-story, approximately 432 square-foot dwelling unit within a relocated accessory structure at the rear of 2201-2205 Blake Street.