

29

Kelly, Sherry

From: quercus *** [quercus40@hotmail.com]
Sent: Friday, July 19, 2002 6:37 PM
To: Dean, Shirley; Maio, Linda; Breland, Margaret; Shirek, Maudelle; Spring, Dona; Hawley, Miriam; Olds, Betty; Worthington, Kriss; Armstrong, Polly; Cosin, Wendy; Rucker, Weldon; Kelly, Sherry
Cc: jlam@dnai.com; quercus40@hotmail.com
Subject: 2323 Glen Avenue Appeal - July 23 Council Meeting

Dear Mayor Dean and City Council:

I am writing to urge you to uphold the appeal and reverse the action of the ZAB on the variance to the Creek Ordinance and issuance of a use permit for a proposed residential expansion at 2323 Glen Avenue. The action by the ZAB clearly subverts the intent of the Creek Ordinance and will seriously weaken creek protection, restoration, and daylighting efforts in the City of Berkeley.

Putting our creeks in culverts and building over them over the last 100 years has resulted in destruction of the natural environment of the city and loss of habitat and open space throughout the city. It was very short-sighted of our city fathers and mothers to have allowed the wholesale burying of the city's creeks. In addition, it has resulted in situations such as we are now seeing on Strawberry Creek where the old culvert is failing and eight houses sit on top of it. It is unconscionable that the city would continue to allow this practice today with all that we know of the dangers of building over these culverts and, more importantly, our commitment to protect and restore our creeks which are once again a valued element of the city's landscape.

The ZAB's action sets a terrible precedent for the city's lack of commitment to creek protection and restoration. This is very upsetting to me as one who sees Berkeley as a long-time leader in creek restoration and daylighting of buried creeks. Why take five steps back now when we should be moving forward away from the mistakes of the last century???

I strongly urge you to reverse the ZAB's decision to issue a use permit and variance to the Creek Ordinance for the proposed 2323 Glen Avenue project.

Sincerely,

Christopher Kroll
1605 Curtis Street
528-2277

Send and receive Hotmail on your mobile device: [Click Here](#)

7/19/2002

30

Kelly, Sherry

From: Stephanie Antalocy [antalocy@mindspring.com]
Sent: Saturday, July 20, 2002 8:03 PM
To: Kelly, Sherry
Subject: Rejection of 2323 Glen Ave. Project

Dear City Clerk of Berkeley,

I urge you to consider the widespread opposition to the variance and permit granted by the Berkeley Zoning Adjustment Board for the project at 2323 Glen Avenue, which would allow building over part of Codornices Creek, and to vote against them at the July 23rd meeting.

As a member of the Friends of Five Brooks, I have been elated to participate in and see how the clearing of El Cerrito Creek has transformed the area on the north side of Albany Hill. All the creeks in our city too need the protection that the City of Berkeley has formally voted to provide. To allow the Glen Avenue project to go ahead runs right against this commitment, and this investment in the natural beauty of the city, as well as the structural soundness of buildings right near the creeks.

Berkeley's own Department of Public Works has expressed worry about the safety of buildings built on culverts. In addition, this variance and permit are opposed by
the City Staff of the Mayor and City Council
the City Attorney
the Sierra Club
Urban Creeks Council
Center for Biological Diversity.

And I hope you will join them.

Sincerely,
Stephanie Antalocy antalocy@mindspring.com

31

Kelly, Sherry

From: Lriebel@aol.com

Sent: Thursday, July 18, 2002 8:10 AM

To: Kelly, Sherry; Dean, Shirley; Maio, Linda; Breland, Margaret; Shirek, Maudelle; Spring, Dona; Hawley, Miriam; Olds, Betty; Worthington, Kriss; Armstrong, Polly; Cosin, Wendy; Rucker, Weldon

Subject: 2323 Glen

PLEASE reverse your decision on 2323 Glen. We need to daylight more creeks, not pave them over! I have worked in Berkeley for 23 years and have been sad to see downtown blight. Surely this hurts the economy and tax base as businesses leave. Wouldn't a nicer environment HELP? Linda Riebel, 927 Contra Costa, El Cerrito.

7/18/2002

Kelly, Sherry

From: Hammettjb@aol.com
Sent: Thursday, July 18, 2002 11:07 AM
To: Kelly, Sherry; Dean, Shirley; Maio, Linda; Breland, Margaret; Shirek, Maudelle; Spring, Dona; Hawley, Miriam; Olds, Betty; Worthington, Kriss; Armstrong, Polly; Cosin, Wendy; Rucker, Weldon
Subject: Protecting Cordonices Creek

July 18, 2002

Dear Mayor Dean and Berkeley City Council Members,

I am writing to urge you to reverse the ZAB decision of April 11, 2002, in which a variance to the Berkeley Creeks Ordinance, and a use permit, were issued for a proposed residential expansion at 2323 Glen Avenue.

Many people have voiced their opposition to this project and the precedent it would set for creek protection in Berkeley. The Sierra Club, the Urban Creeks Council, Friends of Strawberry Creek, and the Center for Biological Diversity have also submitted a formal, substantive legal appeal opposing the ZAB's decision, prepared by the law offices of Thomas N. Lippe, an experienced environmental law firm that has worked for clients such as Save the Bay, the Sierra Club, and Golden Gate Audubon Society.

Your own City Staff recommended denial of this project to the ZAB, and stated that a variance to the Creeks Ordinance should not be issued, due to its impacts and to its inconsistency with the City's goals and regulations to protect, restore, and daylight its creeks. Moreover, City Staff stated that the 2323 Glen Avenue property does not constitute an "exceptional circumstance" from a zoning standpoint, and in no way justifies the issuance of a variance. Your own City Attorney concurred with City Staff's assessment that this project does indeed violate the Berkeley Creeks Ordinance. Representatives from Berkeley's Department of Public Works have openly acknowledged that the danger posed by buildings on culverts - and thus the structural, environmental, and water quality risks emanating from these situations - may well be one of the most serious infrastructure issues that the City is facing.

It is not a question of if these culverts will fail, it is a question of when.

We concur with all of these objections to the project, as well as with the extensive and substantive problems outlined in the legal appeal

submitted
jointly by the environmental organizations listed above. Specifically,
these
include:
... the violation of the City's Creek Ordinance by building within 30
feet
of the Cordonices Creek centerline;
... the overall detrimental legal precedent to creek protection in
Berkeley
that approval of this project would set, by establishing that variances
can
and will be regularly issued, even in violation of clear City
regulations
and goals.
... the risk to endangered species habitat under the Endangered Species
Act
(the Cordonices Creek watershed is a designated "critical habitat" area
for
federally-listed steelhead trout);
... the risk and potential liability to the City from damage to
neighboring
properties, due to increased structural pressures on a poorly-sited and
at-risk culvert (it sits on the Hayward fault, and on a very unstable,
loose
amalgamation of fill soils, as shown in the soils and geology report and
confirmed by City Staff); and ... the failure of ZAB to adequately
analyze
the environmental impacts of the project, both short-term and
cumulative.

Simply put, we should not be exacerbating past poor site choices and
building designs by expanding them (note the ever-worsening problems on
Strawberry Creek, related to a failing culvert behind the Strawberry
Lodge)
- and certainly not at the expense of our ecologically precious creeks
and
watersheds. There is clear evidence that issuing a variance at this site
allows for the establishment of legal precedent for a host of other
sites
along Berkeley's creeks; there is even a property directly opposite from
2323 Glen Avenue that falls in this category!

While we sympathize with the owners of the 2323 Glen Avenue property,
affirming the ZAB decision would open a floodgate for future variances.
Our
creeks (and our culverts) cannot withstand such an assault. The owners
purchased the property well after the Creeks Ordinance was implemented,
and
were notified at the start of the permit application process that the
City
Planning department would not be able to support the proposed project,
because of the variance requirement. Zoning regulations - which we all
subscribe to - are there to protect the larger community, even if at
times
this means preventing individuals from doing exactly what they want to
do on
a site.

The City's rules on creek setbacks are designed to prevent damage to
both
buildings and to the creeks themselves. There is no reason whatsoever to
ignore those rules - and the goals behind them - for this project, and
every
reason to uphold them. Approving this project would set a terrible
precedent

for the City, and would be particularly inappropriate at a time when the City has committed to protecting its watersheds and restoring its creeks.

We and so many others have worked hard to support the protection and restoration of our urban creeks; approval of this project would directly contradict - and threaten - all of this valuable work. Please, we ask that

the City uphold its own commitment to creek protection, and to its own Creek

Ordinance, by reversing the ZAB's decision to issue a use permit and variance to the Creeks Ordinance for the proposed 2323 Glen Avenue project.

Sincerely
Jennifer Hammett and David Jung
1201 Ordway Street
Berkeley, CA

Kelly, Sherry

33

From: caitsmi@earthlink.net
Sent: Wednesday, July 17, 2002 10:40 AM
To: Kelly, Sherry; Dean, Shirley; Maio, Linda; Breland, Margaret; Shirek, Maudelle; Spring, Dona; Hawley, Miriam; Olds, Betty; Worthington, Kriss
Subject: Reverse 2323 Glen Avenue expansion on Creek

July 17, 2002

Dear Mayor Dean and City Council,

I am writing to request that you reverse the ZAB approval of a use permit for a residential expansion at 2323 Glen Avenue. Such an approval is inconsistent with the City's laws to protect, restore, and daylight Berkeley's creeks. The project at 2323 Glen Avenue property does not constitute an "exceptional circumstance." Indeed, this was noted by your own staff and City Attorney. Moreover, Berkeley's Department of Public Works has acknowledged that a serious danger exists by buildings on culverts.

By allowing approval of this project, ZAB would establish dangerous legal precedent for building on creeks and the destruction of habitat.

Again, I ask you to reverse the ZAB decision and to stand by your commitment to creek protection.

Best regards,

Caitlin Smith

<<http://all176.g.akamai.net/7/1176/5697/v0001/www.mail2web.com/images/new1.gif>
f> Advertise with us About mail2web Terms and Conditions Privacy Policy Help

mail2web - Check your email from the web at
<http://mail2web.com/> .

To: Mayor Dean and City Councilmembers
Re: Please Reverse ZAB Decision Issuing A Variance to the Berkeley Creeks Ordinance and Approving 2323 Glen Avenue Proposed Residential Expansion
Date: July 12, 2002

Dear Mayor Dean and City Councilmembers:

We join the Sierra Club, the Urban Creeks Council, Friends of Strawberry Creek, the Center for Biological Diversity, and many Berkeley citizens in asking you to reverse the ZAB decision of April 11, 2002, which granted a variance to the Berkeley Creeks Ordinance for a proposed residential expansion at 2323 Glen Avenue. This project will come before you, on appeal, on July 23, 2002.

As stated in a legal appeal that was prepared by the law offices of Thomas N. Lippe and submitted jointly by the environmental organizations listed above, the project should not have been approved for many reasons, including:

- the violation of the City's Creek Ordinance by building within 30 feet of the Codornices Creek centerline;
- the detrimental legal precedent to creek protection in Berkeley that approval of this project would set, by establishing that variances can and will be regularly issued, even in violation of clear City regulations and goals.
- the risk to endangered species habitat under the Endangered Species Act (the Codornices Creek watershed is a designated "critical habitat" area for federally-listed steelhead trout);
- the risk and potential liability to the City from damage to neighboring properties, due to increased structural pressures on a poorly-sited and at-risk culvert (it sits on the Hayward fault, and on a very unstable, loose amalgamation of fill soils, as shown in the soils and geology report and confirmed by City Staff); and
- the failure of ZAB to adequately analyze the environmental impacts of the project, both short-term and cumulative.

These problems were noted by City Staff, which recommended that ZAB deny the project. Berkeley's City Attorney's office concurred with City Staff's assessment that this project does violate the Berkeley Creeks Ordinance. City Staff stated that a variance to the Creeks Ordinance should not be issued, due to its impacts and its inconsistency with the City's goals and regulations to protect and restore its creeks. City Staff also stated that the 2323 Glen Avenue property does not constitute an "exceptional circumstance" from a zoning standpoint, so the issuance of a variance is not justified.

Representatives from Berkeley's Department of Public Works have openly acknowledged that the danger posed by buildings on culverts - and thus the structural, environmental, and water quality risks emanating from these situations - may well be one of the most serious infrastructure issues that the City is facing. These culverts will fail eventually, and some of them are failing now (note the ever-worsening problems on Strawberry Creek, related to a failing culvert behind the Strawberry Lodge).

Zoning and environmental regulations exist to protect the larger community, even if at times this

means preventing individuals from doing exactly what they want to do on a site. The City's rules on creek setbacks are designed to prevent damage to both buildings and to the creeks themselves. There is no reason whatsoever to ignore those rules - and the goals behind them - for this project, and every reason to uphold them. Issuing a variance at this site allows the establishment of legal precedent for a host of other similar sites along Berkeley's creeks, and would be particularly inappropriate at a time when the City has committed to protecting its watersheds and restoring its creeks. It is critical that the City accept its responsibility for consistently enforcing its regulations, rather than making neighbors do that job.

We sympathize with the owners of the 2323 Glen Avenue property (and would like to work with them in the future to attempt a solution that includes creek restoration), but affirming the ZAB decision would open a floodgate for future variances. We should not be exacerbating past poor site choices and building designs by expanding them - and certainly not at the expense of our ecologically precious creeks and watersheds. Our creeks (and our culverts) cannot withstand such an assault. The owners purchased the property well after the Creeks Ordinance was implemented, and were notified at the start of the permit application process that the City Planning department would not be able to support the proposed project, because of the variance requirement.

We, and so many others, have worked hard to protect and restore our urban creeks, and are already seeing great accomplishments coming from these efforts. Approval of this project would directly contradict - and threaten - all of this valuable work. Please, we ask that the City uphold its own commitment to creek protection, and to its own Creeks Ordinance, by reversing the ZAB's decision to issue a use permit and variance to the Creeks Ordinance for the proposed 2323 Glen Avenue project.

Sincerely,

Juliet Lamont and Phil Price
2249 Glen Ave.
Berkeley, CA 94709

Cc: Manuela Albuquerque and Laura McKinney, City Attorneys
Wendy Cosin, Greg Powell, and Mark Rhoades, Office of Planning and
Development
Rene Cardinaux, Danny Akagi, and Lorin Jensen, City of Berkeley
Dept. of Public Works
Paul Merrick and Steve Bloom, Sierra Club
Lisa Viani and Carole Schemmerling, Urban Creeks Council
Janet Byron, Friends of Strawberry Creek
Jane and Tom Kelly, Friends of Strawberry Creek
Brent Plater, Center for Biological Diversity
Jeff Miller, Alameda Creek Alliance
Alan Gould, Live Oak Codornices Creek Neighborhood Association
Keith Lichten and Ann Riley, Regional Water Quality Control Board

Kelly, Sherry

From: JLamont [jlam@dnai.com]
Sent: Wednesday, July 17, 2002 3:40 PM
To: Kelly, Sherry; Kelly, Sherry
Cc: jlam@dnai.com
Subject: Fwd: Variance for 2323 Glen Ave.



jandtkelly.vc
f

>Delivered-To: jlam@moe.sfrn.dnai.com
>Date: Mon, 15 Jul 2002 21:26:39 -0700
>From: Thomas and Jane Kelly <jandtkelly@igc.org>
>Reply-To: jandtkelly@igc.org
>X-Accept-Language: en
>To: Kriss Worthington <Worthington@ci.berkeley.ca.us>,
> Dona Spring <spring@ci.berkeley.ca.us>, Linda Maio
><maio@ci.berkeley.ca.us>,
> Mim Hawley <hawley@ci.berkeley.ca.us>, Betty Olds
<olds@ci.berkeley.ca.us>,
> Shirley Dean <dean@ci.berkeley.ca.us>,
> Polly Armstrong <armstrong@ci.berkeley.ca.us>,
> Margaret Breland <breland@ci.berkeley.ca.us>,
> Maudelle Shirek <shirek@ci.berkeley.ca.us>
>CC: clerk <clerk@ci.berkeley.ca.us>, WRucker
<WRucker@ci.berkeley.ca.us>
>Subject: Variance for 2323 Glen Ave.
>Status: U

>Dear Members of the City Council,
>
>Recently the ZAB approved a variance to the Berkeley Creek Ordinance for
>the owners of 2323 Glen Ave. The variance, if not overturned by you,
>will allow the owners to expand the existing structure within the 30
>foot setback established to protect Berkeley's creeks and the buildings
>that lie along their banks. This ordinance gives Berkeley property
>owners and prospective owners ample notice that the City values its
>creeks and that ownership of creekside property comes with limitations.
>Should this variance be permitted, a precedent will be established that
>will remove the teeth from the Creek Ordinance and will effectively
>prevent the future daylighting and restoration of Berkeley's numerous
>creeks.
>
>The owners of 2323 Glen Ave. have other options that will allow them to
>expand their house without encroaching on the setback. We ask that you
>consider the recommendations of the City staff (Planning, Public
>Works, and City Attorney) who argued against issuing a variance and vote
>to overturn the variance.

>Sincerely,
>
>Jane and Tom Kelly
>1809 San Ramon Ave.
>Berkeley, CA 94707

>Content-Type: text/x-vcard; charset=us-ascii;
> name="jandtkelly.vcf"

Kelly, Sherry

From: JLamont [jlam@dnai.com]
Sent: Wednesday, July 17, 2002 3:41 PM
To: Kelly, Sherry; Kelly, Sherry
Cc: jlam@dnai.com
Subject: Fwd: Proposed residential expansion at 2323 Glen Avenue

>Delivered-To: jlam@barney.sfrn.dnai.com
>X-Sender: scrimm@mail.direcpc.com
>Date: Wed, 17 Jul 2002 15:00:54 -0700
>To: clerk@ci.berkeley.ca.us, sdean@ci.berkeley.ca.us,
>lrmaio@ci.berkeley.ca.us,
> mbreland@ci.berkeley.ca.us, mshirek@ci.berkeley.ca.us,
> dspring@ci.berkeley.ca.us, mhawley@ci.berkeley.ca.us,
> bolds@ci.berkeley.ca.us, Kworthington@ci.berkeley.ca.us,
> parmstrong@ci.berkeley.ca.us, WCosin@ci.berkeley.ca.us,
> WRucker@ci.berkeley.ca.us
>From: Suzanne Jones <sljones@robelia.com>
>Subject: Proposed residential expansion at 2323 Glen Avenue
>Status: U

>July 16, 2002

>Dear Mayor Dean and City Council,

>I am contacting you on behalf of the Richmond Environmental Defense
>Fund, a local citizens' group focused on development and
>environmental issues in Richmond and surrounding areas. We ask that
>you reverse the April 11, 2002 ZAB decision to allow residential
>expansion at 2323 Glen Avenue onto a culverted portion of Cordonices
>Creek.

>It is difficult to defend the ZAB decision in light of the fact that
>City Staff recommended denial of this project due to its
>inconsistency with the City's goals and regulations to protect,
>enhance, and daylight Berkeley creeks. Furthermore, the dangers of
>building on culverts are well known, as members of Berkeley's
>Department of Public Works staff have acknowledged. To approve this
>project would set an undesirable precedent by encouraging further
>exceptions to be granted to the Creek Ordinance, and will make it
>impossible to restore this portion of the creek in the foreseeable
>future.

>Berkeley's commitment to preserving and enhancing its creeks is one
>of many examples of what makes Berkeley a leader to other
>communities on social and environmental issues. Citizens and
>elected officials worked hard to put Berkeley's Creek Ordinance in
>place. Approval of this project would undermine that work, and
>would not live up to the high standard of environmental awareness
>that usually characterizes the City of Berkeley. Please demonstrate
>that the City of Berkeley takes its environmental ordinances
>seriously and reverse the ZAB's decision.

>Sincerely,

>Suzanne Jones
>President, Richmond Environmental Defense Fund

>P.O. Box 70953
>Richmond, CA 94807-0953

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>

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>We have been having intermittent problems
>with our ISP. If you reply to this message and
>it is sent back to you, please try again. We're
>very sorry for the inconvenience!

Dr. Juliet Lamont
Ph.D., Environmental Planning
E-mail: jlam@dnai.com
Mail: 2249 Glen Ave.
Berkeley, CA 94709
Phone: 510-909-5403

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Dear Mayor Dean and City Council,

Please reverse the ZAB decision of April 11, 2002, in which a variance to the Berkeley Creeks Ordinance, and a use permit, were issued for a proposed residential expansion at 2323 Glen Avenue. Many people have voiced their opposition to this project and the precedent it would set for creek protection in Berkeley. The Sierra Club, the Urban Creeks Council, Friends of Strawberry Creek, and the Center for Biological Diversity have also submitted a formal, substantive legal appeal opposing the ZAB's decision, prepared by the law offices of Thomas N. Lippe, an experienced environmental law firm that has worked for clients such as Save the Bay, the Sierra Club, and Golden Gate Audubon Society.

Your own City Staff recommended denial of this project to the ZAB, and stated that a variance to the Creeks Ordinance should not be issued, due to its impacts and to its inconsistency with the City's goals and regulations to protect, restore, and daylight its creeks. Moreover, City Staff stated that the 2323 Glen Avenue property does not constitute an "exceptional circumstance" from a zoning standpoint, and in no way justifies the issuance of a variance. Your own City Attorney concurred with City Staff's assessment that this project does indeed violate the Berkeley Creeks Ordinance. Representatives from Berkeley's Department of Public Works have openly acknowledged that the danger posed by buildings on culverts - and thus the structural, environmental, and water quality risks emanating from these situations - may well be one of the most serious infrastructure issues that the City is facing. It is not a question of *if* these culverts will fail, it is a question of *when*.

We concur with all of these objections to the project, as well as with the extensive and substantive problems outlined in the legal appeal submitted jointly by the environmental organizations listed above. Specifically, these include:

- the violation of the City's Creek Ordinance by building within 30 feet of the Codornices Creek centerline;
- the overall detrimental legal precedent to creek protection in Berkeley that approval of this project would set, by establishing that variances can and will be regularly issued, even in violation of clear City regulations and goals.
- the risk to endangered species habitat under the Endangered Species Act (the Codornices Creek watershed is a designated "critical habitat" area for federally-listed steelhead trout);
- the risk and potential liability to the City from damage to neighboring properties, due to increased structural pressures on a poorly-sited and at-risk culvert (it sits on the Hayward fault, and on a very unstable, loose amalgamation of fill soils, as shown in the soils and geology report and confirmed by City Staff); and
- the failure of ZAB to adequately analyze the environmental impacts of the project, both short-term and cumulative.

7/17/2002

Simply put, we should not be exacerbating past poor site choices and building designs by expanding them (note the ever-worsening problems on Strawberry Creek, related to a failing culvert behind the Strawberry Lodge) - and certainly not at the expense of our ecologically precious creeks and watersheds. There is clear evidence that issuing a variance at this site allows for the establishment of legal precedent for a host of other sites along Berkeley's creeks; there is even a property directly opposite from 2323 Glen Avenue that falls in this category!

While we sympathize with the owners of the 2323 Glen Avenue property, affirming the ZAB decision would open a floodgate for future variances. Our creeks (and our culverts) cannot withstand such an assault. The owners purchased the property well after the Creeks Ordinance was implemented, and were notified at the start of the permit application process that the City Planning department would not be able to support the proposed project, because of the variance requirement. Zoning regulations - which we *all* subscribe to - are there to protect the larger community, even if at times this means preventing individuals from doing exactly what they want to do on a site.

The City's rules on creek setbacks are designed to prevent damage to both buildings and to the creeks themselves. There is no reason whatsoever to ignore those rules - and the goals behind them - for this project, and every reason to uphold them. Approving this project would set a terrible precedent for the City, and would be particularly inappropriate at a time when the City has committed to protecting its watersheds and restoring its creeks.

We and so many others have worked hard to support the protection and restoration of our urban creeks; approval of this project would directly contradict - and threaten - all of this valuable work. Please, we ask that the City uphold its own commitment to creek protection, and to its own Creek Ordinance, by reversing the ZAB's decision to issue a use permit and variance to the Creeks Ordinance for the proposed 2323 Glen Avenue project.

Sincerely,

Carole S. Norris and Alan S. Kay

1218 Oxford St.

Berkeley 94709

Dr. Juliet Lamont

Ph.D., Environmental Planning

E-mail: jlam@dnai.com

7/17/2002

Mail: 2249 Glen Ave.

Berkeley, CA 94709

Phone: 510-909-5403

Kelly, Sherry

From: JLamont [jlam@dnai.com]
Sent: Wednesday, July 17, 2002 3:44 PM
To: Kelly, Sherry; Kelly, Sherry
Cc: jlam@dnai.com
Subject: Fwd: 2323 Glen Avenue Variance - Please Reverse Decision

>Delivered-To: jlam@moe.sfrn.dnai.com
 >X-Originating-IP: [198.217.113.15]
 >From: "jae jae" <jammelia@hotmail.com>
 >To: WRucker@ci.berkeley.ca.us, WCosin@ci.berkeley.ca.us,
 > clerk@ci.berkeley.ca.us, sdean@ci.berkeley.ca.us,
 lrmaio@ci.berkeley.ca.us,
 > mbreland@ci.berkeley.ca.us, mshirek@ci.berkeley.ca.us,
 > dspring@ci.berkeley.ca.us, mhawley@ci.berkeley.ca.us,
 > bolds@ci.berkeley.ca.us, Kworthington@ci.berkeley.ca.us,
 > parmstrong@ci.berkeley.ca.us
 >Cc: jlam@dnai.com
 >Date: Wed, 17 Jul 2002 12:05:22 -0700
 >X-OriginalArrivalTime: 17 Jul 2002 19:05:22.0618 (UTC)
 >FILETIME=[E6A491A0:01C22DC4]
 >Status: U
 >
 >July 17, 2002
 >
 >Dear Mayor Dean and City Council,
 >
 >Please reverse the ZAB decision of April 11, 2002, in which a
 >variance to the Berkeley Creeks Ordinance, and a use permit, were
 >issued for a proposed residential expansion at 2323 Glen Avenue.
 >Many people have voiced their opposition to this project and the
 >precedent it would set for creek protection in Berkeley. The Sierra
 >Club, the Urban Creeks Council, Friends of Strawberry Creek, and the
 >Center for Biological Diversity have also submitted a formal,
 >substantive legal appeal opposing the ZAB's decision, prepared by
 >the law offices of Thomas N. Lippe, an experienced environmental law
 >firm that has worked for clients such as Save the Bay, the Sierra
 >Club, and Golden Gate Audubon Society.
 >
 >Your own City Staff recommended denial of this project to the ZAB,
 >and stated that a variance to the Creeks Ordinance should not be
 >issued, due to its impacts and to its inconsistency with the City's
 >goals and regulations to protect, restore, and daylight its creeks.
 >Moreover, City Staff stated that the 2323 Glen Avenue property does
 >not constitute an "exceptional circumstance" from a zoning
 >standpoint, and in no way justifies the issuance of a variance.
 >Your own City Attorney concurred with City Staff's assessment that
 >this project does indeed violate the Berkeley Creeks Ordinance.
 >Representatives from Berkeley's Department of Public Works have
 >openly acknowledged that the danger posed by buildings on culverts -
 >and thus the structural, environmental, and water quality risks
 >emanating from these situations - may well be one of the most
 >serious infrastructure issues that the City is facing. It is not a
 >question of if these culverts will fail, it is a question of when.
 >
 >We concur with all of these objections to the project, as well as
 >with the extensive and substantive problems outlined in the legal
 >appeal submitted jointly by the environmental organizations listed
 >above. Specifically, these include:
 >
 >... the violation of the City's Creek Ordinance by building within 30

39

Kelly, Sherry

From: JLamont [jlam@dnai.com]
Sent: Wednesday, July 17, 2002 3:46 PM
To: Kelly, Sherry; Kelly, Sherry
Cc: jlam@dnai.com
Subject: Fwd: Reverse the ZAB Variance to the Berkeley Creeks Ordinance and Use Permit for a proposed residential expansion at 2323 Glen Avenue.

Delivered-To: jlam@barney.sfrn.dnai.com

Date: Sun, 14 Jul 2002 12:28:30 -0700

Subject: Reverse the ZAB Variance to the Berkeley Creeks Ordinance and Use

Permit for a proposed residential expansion at 2323 Glen Avenue.

From: "Norie Clarke" <norieclarke@earthlink.net>

To: clerk@ci.berkeley.ca.us, sdean@ci.berkeley.ca.us, lirmaio@ci.berkeley.ca.us,

mbreland@ci.berkeley.ca.us, mshirek@ci.berkeley.ca.us,

dspring@ci.berkeley.ca.us, mhawley@ci.berkeley.ca.us,

bolds@ci.berkeley.ca.us, Kworthington@ci.berkeley.ca.us,

parmstrong@ci.berkeley.ca.us, WCosin@ci.berkeley.ca.us,

WRucker@ci.berkeley.ca.us

X-Priority: 3

Status: U

July 14, 2002

Dear Mayor Dean and City Council,

Please reverse the ZAB decision of April 11, 2002, in which a variance to the Berkeley Creeks Ordinance, and a use permit, were issued for a proposed residential expansion at 2323 Glen Avenue. Many people have voiced their opposition to this project and the precedent it would set for creek protection in Berkeley. The Sierra Club, the Urban Creeks Council, Friends of Strawberry Creek, and the Center for Biological Diversity have also submitted a formal, substantive legal appeal opposing the ZAB's decision, prepared by the law offices of Thomas N. Lippe, an experienced environmental law

7/17/2002

firm that has worked for clients such as Save the Bay, the Sierra Club, and Golden Gate Audubon Society.

Your own City Staff recommended denial of this project to the ZAB, and stated that a variance to the Creeks Ordinance should not be issued, due to its impacts and to its inconsistency with the City's goals and regulations to protect, restore, and daylight its creeks. Moreover, City Staff stated that the 2323 Glen Avenue property does not constitute an "exceptional circumstance" from a zoning standpoint, and in no way justifies the issuance of a variance. Your own City Attorney concurred with City Staff's assessment that this project does indeed violate the Berkeley Creeks Ordinance. Representatives from Berkeley's Department of Public Works have openly acknowledged that the danger posed by buildings on culverts - and thus the structural, environmental, and water quality risks emanating from these situations - may well be one of the most serious infrastructure issues that the City is facing. It is not a question of *if* these culverts will fail, it is a question of *when*.

We concur with all of these objections to the project, as well as with the extensive and substantive problems outlined in the legal appeal submitted jointly by the environmental organizations listed above. Specifically, these include:

... the violation of the City's Creek Ordinance by building within 30 feet of the Codornices Creek centerline;

... the overall detrimental legal precedent to creek protection in Berkeley that approval of this project would set, by establishing that variances can and will be regularly issued, even in violation of clear City regulations and goals.

... the risk to endangered species habitat under the Endangered Species Act (the Codornices Creek watershed is a designated "critical habitat" area for federally-listed steelhead trout);

... the risk and potential liability to the City from damage to neighboring properties, due to increased structural pressures on a poorly-sited and at-risk culvert (it sits on the Hayward fault, and on a very unstable, loose amalgamation of fill soils, as shown in the soils and geology report and confirmed by City Staff); and

... the failure of ZAB to adequately analyze the environmental impacts of the project, both short-term and cumulative.

Simply put, we should not be exacerbating past poor site choices and building designs by expanding them (note the ever-worsening problems on Strawberry Creek, related to a failing culvert behind the Strawberry Lodge) - and certainly not at the expense of our ecologically precious creeks and watersheds. There is clear evidence that issuing a variance at this site allows for the establishment of legal precedent for a host of other sites along Berkeley's creeks; there is even a property directly opposite from 2323 Glen Avenue that falls in this category!

While we sympathize with the owners of the 2323 Glen Avenue property, affirming the ZAB

decision would open a floodgate for future variances. Our creeks (and our culverts) cannot withstand such an assault. The owners purchased the property well after the Creeks Ordinance was implemented, and were notified at the start of the permit application process that the City Planning department would not be able to support the proposed project, because of the variance requirement. Zoning regulations - which we *all* subscribe to - are there to protect the larger community, even if at times this means preventing individuals from doing exactly what they want to do on a site.

The City's rules on creek setbacks are designed to prevent damage to both buildings and to the creeks themselves. There is no reason whatsoever to ignore those rules - and the goals behind them - for this project, and every reason to uphold them. Approving this project would set a terrible precedent for the City, and would be particularly inappropriate at a time when the City has committed to protecting its watersheds and restoring its creeks.

We and so many others have worked hard to support the protection and and restoration of our urban creeks; approval of this project would directly contradict - and threaten - all of this valuable work. Please, we ask that the City uphold its own commitment to creek protection, and to its own Creek Ordinance, by reversing the ZAB's decision to issue a use permit and variance to the Creeks Ordinance for the proposed 2323 Glen Avenue project.

Sincerely,

Eleanor C. Clarke

1309 Bonita Avenue

Berkeley, CA 94709

7/17/2002

Kelly, Sherry

40

From: gary cook [baikalwatch@earthisland.org]
Sent: Wednesday, July 17, 2002 2:54 PM
To: Kelly, Sherry; Dean, Shirley; Maio, Linda; Breland, Margaret; Shirek, Maudelle; Spring, Dona; Hawley, Miriam; Olds, Betty; Worthington, Kriss; Armstrong, Polly; Cosin, Wendy; CMO

July 16, 2002

Dear Mayor Dean and Berkeley City Council,

I ask that you please reverse the Berkeley Zoning Adjustments Board's decision of April 11, 2002, in which a variance to the Berkeley Creeks Ordinance, and a use permit, were issued for a proposed residential expansion at 2323 Glen Avenue.

My family has lived in the Berkeley hills for nearly a century. And it was our impression that Berkeley was embarking on a program to bring our creeks back to life, which gave us reason to be proud of living in Berkeley.

We therefore strongly encourage you to help Codornices and other creeks restore themselves. This decision of the ZAB does not appear to help the environment at all!

We look forward to you taking positive action on this issue.

Sincerely,

gary cook
for the Einarrson family at
699 Santa Barbara
Berkeley

41

Kelly, Sherry

From: Rebecca Sutton [rsutton@nature.Berkeley.EDU]
Sent: Wednesday, July 17, 2002 7:53 PM
To: Kelly, Sherry
Cc: Dean, Shirley; Maio, Linda; Spring, Dona; Hawley, Miriam; Olds, Betty; Worthington, Kriss; Armstrong, Polly; Cosin, Wendy; Rucker, Weldon; Breland, Margaret; Shirek, Maudelle
Subject: 2323 Glen Ave - please reverse!

Dear Mayor Dean and City Council,

Please reverse the ZAB decision of April 11, 2002, in which a variance to the Berkeley Creeks Ordinance, and a use permit, were issued for a proposed residential expansion at 2323 Glen Avenue. The decision is not only extremely unpopular, it makes no legal or zoning sense. City Staff recommended denial of this project to the ZAB, due to its impacts and to its inconsistency with the City's goals and regulations to protect, restore, and daylight its creeks. Moreover, City Staff stated that the 2323 Glen Avenue property does not constitute an "exceptional circumstance" from a zoning standpoint, and in no way justifies the issuance of a variance. The City Attorney concurred with City Staff's assessment that this project does indeed violate the Berkeley Creeks Ordinance. Representatives from Berkeley's Department of Public Works have openly acknowledged that the danger posed by buildings on culverts - and thus the structural, environmental, and water quality risks emanating from these situations - may well be one of the most serious infrastructure issues that the City is facing. Collapse of a portion of the Strawberry Creek culvert by North Valley Street, near the Strawberry Creek Lodge, highlights this risk. It is not a question of if these culverts will fail, it is a question of when.

I agree with all of these objections to the project, as well as with the extensive problems outlined in the legal appeal submitted jointly by several environmental organizations including the Sierra Club and Friends of Strawberry Creek. Specifically, these include:

- ... the violation of the City's Creek Ordinance by building within 30 feet of the Cordonices Creek centerline;
- ... the overall detrimental legal precedent to creek protection in Berkeley that approval of this project would set, by establishing that variances can and will be regularly issued, even in violation of clear City regulations and goals;
- ... the risk to endangered species habitat under the Endangered Species Act (the Cordonices Creek watershed is a designated "critical habitat" area for federally-listed steelhead trout);
- ... the risk and potential liability to the City from damage to neighboring

properties, due to increased structural pressures on a poorly-sited and at-risk culvert (it sits on the Hayward fault, and on a very unstable, loose amalgamation of fill soils, as shown in the soils and geology report and confirmed by City Staff); and ... the failure of ZAB to adequately analyze the environmental impacts of the project, both short-term and cumulative.

Simply put, we should not be exacerbating past poor site choices and building designs by expanding them (note the ever-worsening problems on Strawberry Creek, related to a failing culvert behind the Strawberry Lodge) - and certainly not at the expense of our ecologically precious creeks and watersheds. There is clear evidence that issuing a variance at this site allows for the establishment of legal precedent for a host of other sites along Berkeley's creeks; there is even a property directly opposite from 2323 Glen Avenue that falls in this category!

Affirming the ZAB decision would open a floodgate for future variances. Our creeks (and our culverts) cannot withstand such an assault. The owners purchased the property well after the Creeks Ordinance was implemented, and were notified at the start of the permit application process that the City Planning department would not be able to support the proposed project, because of the variance requirement. Zoning regulations - which we all subscribe to - are there to protect the larger community, even if at times this means preventing individuals from doing exactly what they want to do on a site.

The City's rules on creek setbacks are designed to prevent damage to both buildings and to the creeks themselves. There is no reason whatsoever to ignore those rules - and the goals behind them - for this project, and every reason to uphold them. Approving this project would set a terrible precedent for the City, and would be particularly inappropriate at a time when the City has committed to protecting its watersheds and restoring its creeks.

I and so many others have worked hard to support the protection and restoration of our urban creeks; approval of this project would directly contradict - and threaten - all of this valuable work. Please uphold our city's commitment to creek protection, and to its own Creek Ordinance, by reversing the ZAB's decision to issue a use permit and variance to the Creeks Ordinance for the proposed 2323 Glen Avenue project.

Sincerely,
Rebecca Sutton
877 The Alameda
Berkeley, CA 94707

42

Kelly, Sherry

From: David Steichen [djsteichen@earthlink.net]
Sent: Friday, July 19, 2002 3:53 PM
To: Kelly, Sherry; Dean, Shirley; Shirek, Maudelle
Cc: Spring, Dona; Hawley, Miriam; Olds, Betty; Worthington, Kriss; Armstrong, Polly; Cosin, Wendy; Rucker, Weldon
Subject: [No Subject]

Dear Mayor Dean and City Council,

Please reverse the ZAB decision of April 11, 2002, in which a variance to the Berkeley Creeks Ordinance, and a use permit, were issued for a proposed residential expansion at 2323 Glen Avenue. Many people have voiced their opposition to this project and the precedent it would set for creek protection in Berkeley. The Sierra Club, the Urban Creeks Council, Friends of Strawberry Creek, and the Center for Biological Diversity have also submitted a formal, substantive legal appeal opposing the ZAB's decision, prepared by the law offices of Thomas N. Lippe, an experienced environmental law firm that

has worked for clients such as Save the Bay, the Sierra Club, and Golden Gate Audubon Society.

Your own City Staff recommended denial of this project to the ZAB, and stated that a variance to the Creeks Ordinance should not be issued, due to its impacts and to its inconsistency with the City's goals and regulations to protect, restore, and daylight its creeks. Moreover, City Staff stated that

the 2323 Glen Avenue property does not constitute an "exceptional circumstance" from a zoning standpoint, and in no way justifies the issuance of a variance. Your own City Attorney concurred with City Staff's assessment that this project does indeed violate the Berkeley Creeks Ordinance.

Representatives from Berkeley's Department of Public Works have openly acknowledged that the danger posed by buildings on culverts - and thus the structural, environmental, and water quality risks emanating from these situations - may well be one of the most serious infrastructure issues that the City is facing. It is not a question of if these culverts will fail, it is a question of when.

We concur with all of these objections to the project, as well as with the extensive and substantive problems outlined in the legal appeal submitted jointly by the environmental organizations listed above. Specifically, these include:
... the violation of the City's Creek Ordinance by building within 30 feet of the Cordonices Creek centerline;

... the overall detrimental legal precedent to creek protection in Berkeley that approval of this project would set, by establishing that variances can and will be regularly issued, even in violation of clear City regulations and goals;
... the risk to endangered species habitat under the Endangered Species Act (the Cordonices Creek watershed is a designated "critical habitat" area for federally-listed steelhead trout);
... the risk and potential liability to the City from damage to neighboring properties, due to increased structural pressures on a poorly-sited and at-risk culvert (it sits on the Hayward fault, and on a very unstable, loose amalgamation of fill soils, as shown in the soils and geology report and confirmed by City Staff); and
... the failure of ZAB to adequately analyze the environmental impacts of the project, both short-term and cumulative.

Simply put, we should not be exacerbating past poor site choices and building designs by expanding them (note the ever-worsening problems on Strawberry Creek, related to a failing culvert behind the Strawberry Lodge) - and certainly not at the expense of our ecologically precious creeks and watersheds. There is clear evidence that issuing a variance at this site allows for the establishment of legal precedent for a host of other sites along Berkeley's creeks; there is even a property directly opposite from 2323 Glen Avenue that falls in this category!

While we sympathize with the owners of the 2323 Glen Avenue property, affirming the ZAB decision would open a floodgate for future variances. Our creeks (and our culverts) cannot withstand such an assault. The owners purchased the property well after the Creeks Ordinance was implemented, and were notified at the start of the permit application process that the City Planning department would not be able to support the proposed project, because

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We and so many others have worked hard to support the protection and restoration of our urban creeks; approval of this project would directly

contradict - and threaten - all of this valuable work. Please, we ask that the

City uphold its own commitment to creek protection, and to its own Creek Ordinance, by reversing the ZAB's decision to issue a use permit and variance to the Creeks Ordinance for the proposed 2323 Glen Avenue project.

Sincerely,
David Steichen
1816 62nd St.
Berkeley, CA 94703

Kelly, Sherry

43

From: JLamont [jlam@dnai.com]
Sent: Monday, July 22, 2002 5:03 PM
To: Kelly, Sherry; Kelly, Sherry
Subject: Fwd: 2323 Glen Avenue

>Delivered-To: jlam@moe.sfrn.dnai.com
>Date: Mon, 22 Jul 2002 16:32:01 -0700
>From: "Carol Thornton" <CT@rb2.swrcb.ca.gov>
>To: <armstrong@ci.berkeley.ca.us>, <breland@ci.berkeley.ca.us>,
> <dean@ci.berkeley.ca.us>, <hawley@ci.berkeley.ca.us>,
> <maio@ci.berkeley.ca.us>, <olds@ci.berkeley.ca.us>,
> <shirek@ci.berkeley.ca.us>, <spring@ci.berkeley.ca.us>,
> <worthington@ci.berkeley.ca.us>
>Subject: 2323 Glen Avenue
>Status: U
>

>Dear Mayor Dean and City Council Members
>I am writing to ask you to support City staff's position to deny the
>request for a variance to the City's Creek Ordinance. The Creek
>Ordinance protects both our existing open creeks and helps protect
>the city from damages that may occur from building over our 100 year
>old culverts. We are already experiencing that problem with
>homeowners whose homes sit on top of a crumbling Strawberry Creek
>culvert. Allowing this construction would set a very bad precedent,
>one that could potentially cause future liability to the City.
>I believe that many commissions, including the ZAB, are not familiar
>with the Creek Ordinance, nor the condition of the culverts in the
>city. Perhaps they see this variance as just another small building
>variance, but it is not.
>Please support the position of city staff and the City Attorney by
>denying this request for variance.
>Thank you very much.
>Carol Thornton

Dr. Juliet Lamont
Ph.D., Environmental Planning
E-mail: jlam@dnai.com
Mail: 2249 Glen Ave.
Berkeley, CA 94709
Phone: 510-909-5403