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COUNCIL MEETING OF:

Howie & Connie Muir

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OCT 22 2002

Sent: Tuesday, October 22, 2002 10:31 AM

To: Weldon Rucker; 'Mayor Dean'; 'City Clerk'; 'Councilmember Arnold'; 'Councilmember Ireland'; 'Councilmember Hawley'; 'Councilmember Maio'; 'Councilmember City'; 'Councilmember Shirek'; 'Councilmember Spring'; 'Councilmember Worthington'

Subject: Regarding 2006 University Avenue Appeal on 22 October 2002

Dear Mayor and City Councilmembers,

I write to support the Berkeley Architectural Heritage Society's appeal concerning the project proposed for 2006 University Avenue (and to echo the concerns about the project's density contained in the appeal by Herbert Friedman), and to extend the grounds of the appeal further. I agree that the ZAB approval of a MND and Use Permits for the project should be overturned and believe that it is inappropriate for the City Council to "to review the decision of the Landmarks Preservation Commission designating the existing building as a Structure of Merit and not approving the demolition permit" for a project, the most recent Notice of Decision, approved months ago, has still (inexplicably) yet to be issued by the Planning Department.

The ZAB acted without sufficient guidance, and thus arbitrarily, in approving this project which is too residentially dense for its site. The Initial Study was inadequate to the task of justifying dramatically expanded FAR, elimination of parking and the extraordinary residential density proposed.

Residential Density

The 1977 Master Plan did not provide a population density guideline for the area in which this project site is located, in spite of State law [Government Code Section 65302(a)] requiring that "The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan." This project application was completed on 8 September 2001, well before initial elements of the new General Plan were adopted. Thus, the 1977 Master Plan is the general plan that applies to the adjudication of this project.

Nor does the Zoning Ordinance provide guidance about the population density standards for the C-2 Zoning District in which the site of the proposed project is located.

Even if the new General Plan were applicable to consideration of this project, one finds that the project is far denser than the Land Use Element's Land Use Classifications foresaw as appropriate for this project site. The site's location is designated as "Downtown," which is anticipated to have a population density ranging from 88 to 220 persons per acre, which under the Plan is the equivalent of 40 to 100 units per net acre. The current proposal approved by the ZAB, with 35 units on a 7,650 square-foot lot houses the equivalent of 199 units per net acre. This density is 199% of the residential density indicated as appropriate by the General Plan.

The Staff Report to you provides no basis for how the maximum residential density for this site was determined. Why? Because there is no applicable standard provided by either ordinance or general plan. The Planning Department has attempted to substitute building intensity ("building envelope") for population density purposes, but California courts have established that the concepts and measurements of "density" and "intensity" are *not* equivalent. To quote from the Governor's Office of Planning and Research publication, "General Plan Guidelines":

"Again, the *Twain Harte* court has provided the most complete interpretation of building intensity to date. ... **building intensity is not synonymous with population density.** Intensity will be dependent upon the local plan's context and may be based upon a combination of variable such as maximum dwelling units per acre, height and size limitations, and use restrictions."

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Ex post facto justifications of a methodology for determining residential density are not an adequate substitution for a legal policy and implemented standard.

The City cannot, therefore, justify the excessive density of this project, and the ZAB's decision should be overturned.

If the State Density Bonus Law was invoked for this project (it is not clear from the documents provided at the City's website), the City of Berkeley lacks a sufficient regulatory framework for evaluating the population density of projects or for calculating the basic maximum residential density of a site for the purposes of determining a density bonus under state law. That law, clearly states that the density bonus is "at least 25 percent over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the developer to the city...." [Gov. Code Section 65915(f)]. The City lacks the legal framework to determine the "otherwise maximum allowable residential density" at this site.

Cumulative Density Impacts under CEQA

The 32 projects approved by the City in the last 10 years, for which I can locate data, have averaged 2.5 times the density deemed appropriate by the Land Use Classifications of the General Plan for their respective sites. This density trend appears to be maintained by some 13 pending projects. In just the past year and a half, many large and excessively dense projects have been approved, raising a question of cumulative impacts rising far beyond those reasonably foreseen by the Environmental Impact Report prepared in support of the General Plan. The list of recently approved and pending projects would include the following:

Address	Date Approved	No. of Units	Equivalent Density (units / acre)	G.P. Guidelines (units / acre)	Excess Density
1719-25 University	4/26/01?	29	135	40	337%
1392 University	7/24/01	71	140	40	350%
2020 Kittredge	10/11/01	176	148	100	119%
2616-20 Telegraph	1/10/02	20	101	40	252%
2517 Sacramento	5/28/02	40	98	40	245%
1797 Shattuck	7/11/02	65	147	40	369%
2700 San Pablo	7/23/02	35	91	40	227%
2451-71 Shattuck	7/23/02	100	174	40	435%
2119 University	7/23/02	44	141	100	141%
	Date Proposed				
1607 Shattuck	1/11/00	35	123	40	308%
2577 San Pablo	2/26/02	28	168	40	420%

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2628 Telegraph	4/3/02	16	100	40	251%
1950 MLK Jr	9/11/02	197	196	40	490%

These densities are dramatically in excess of the General Plan guidelines and the assumptions of its EIR. They are a portion of the evidence that suggests that the City is abusing its discretionary powers by proceeding with ad hoc density evaluations, which are consistently well above the General Plan guidelines. It is unavoidable that there should be a cumulative impact examined (in an EIR) under CEQA before proceeding. Density in excess of that for which the City is planning, will have direct and indirect consequences for a wide range of infrastructure and public services, not the least of which includes traffic, parking, sewers, schools, police, health, fire, seismic preparedness, and so on. While offering a commendable contribution to the municipal housing supply, the project proposal constitutes nothing less than **unplanned** growth, adding materially to the City's increased density well beyond that for which the public planning process (the General Plan and its EIR) prepared. Further, by providing reduced or no parking at all (the documents are contradictory on this point), the project also materially contributes to negative parking impacts, already increasingly exacerbated by a sustained series of recent approvals of large residential projects that have typically reduce parking requirements without an established policy framework that examines the cumulative and overall impact of such practice.

Notice for ZAB's Public Hearing

It must be observed that the notice provided for the ZAB hearing was both technically flawed. Notice was not posted at the bulletin board at the Zoning Counter in accordance with Berkeley Municipal Code section 23B.32.020.C. Nor was notice posted under the heading "Mitigated Negative Declaration" on the Zoning Counter bulletin board. This problem is systemic, for the Planning Department appears never to post notice on the referenced bulletin board in conformance with ordinance, thereby depriving the general public of even this minimal public noticing method. Instead, notices evidently lurk in a binder tucked around the corner from where the public business is generally conducted, and thus virtually invisible to those not "in the know." This is completely contrary to the intention and spirit of public notice.

Conclusion

The ZAB's approval of an MND and Use Permits for this project was inappropriate. I urge that the project be remanded to the ZAB for further consideration so that it has the opportunity to remedy these and the other deficiencies raised by the appellants. Alternatively, a public hearing would allow a project denial based on its clear procedural deficiencies.

Respectfully - Howie Muir