

RECEIVED AT  
COUNCIL MEETING OF: 154.

DEC 10 2002

RESOLUTION NO. -N.S.

OFFICE OF THE CITY CLERK  
CITY OF BERKELEY

AFFIRMING THE DECISION OF THE ZONING ADJUSTMENTS BOARD TO ADOPT A MITIGATED NEGATIVE DECLARATION AND APPROVE USE PERMIT #02-10000021 TO RECONFIGURE AND ADD 12 NEW DWELLINGS TO AN EXISTING 12 UNIT APARTMENT BUILDING LOCATED AT 2500 BENVENUE AVENUE

WHEREAS, on August 1, 2001, the applicant filed an application for permits to reconfigure an existing 12 unit dwelling to add 12 new units at 2500 Benvenue; and

WHEREAS, a Mitigated Negative Declaration (MND) was prepared pursuant to the California Environmental Quality Act (California Public Resources Code, Division 13) and circulated for public review and comment from April 18 to May 8, 2002; and

WHEREAS, on April 25, 2002, the Zoning Adjustments Board (ZAB) received a staff report and Initial Study, and continued the project to May 9, 2002, without opening the public hearing regarding the application; and

WHEREAS, on May 9 and May 23, the ZAB considered the application and received public testimony; and

WHEREAS, on June 13, 2002, after receiving additional public testimony, the ZAB closed the public hearing, adopted the proposed Mitigated Negative Declaration and approved Use Permit #02-10000021 to construct said project; and

WHEREAS, on July 17, 2002, Sharon Hudson on behalf of the Benvenue Neighbors Association appealed the decision of the Zoning Adjustments Board; and

WHEREAS, the record of proceedings before the Zoning Adjustments Board has been considered and reviewed by this Council, and, in the opinion of this Council, the facts stated in, or ascertainable, from such records and testimony warrants denying the appeal and upholding the Zoning Adjustments Board's action to approve the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby dismisses the appeal of 2500 Benvenue Avenue, upholds the Zoning Adjustments Board's action to adopt the Mitigated Negative Declaration and approve Use Permit #02-10000021 based on the findings and subject to the conditions contained in the Notice of Decision dated July 3, 2002, and adopts the Mitigated Negative Declaration and the Zoning Adjustments Board's findings.

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RESOLUTION NO. -N.S. DEC 10 2002

AFFIRMING THE DECISION OF THE ZONING ADJUSTMENTS BOARD TO ADOPT A MITIGATED NEGATIVE DECLARATION AND APPROVE USE PERMIT #01-10000075 TO RECONFIGURE AND ADD SIX NEW UNITS WITHIN AN EXISTING 15 UNIT DWELLING, AND TO CONSTRUCT A NEW FIVE STORY, MIXED USE BUILDING WITH OFFICE/CLASSROOM SPACE AND 23 NEW DWELLING UNITS LOCATED AT 2508 AND 2514 BENVENUE AVENUE

WHEREAS, on August 1, 2001, the applicant filed an application for permits to reconfigure an existing 15 unit dwelling to add six new units and to construct a five story mixed use building with office and classroom space and with 23 new dwelling units at 2508 and 2514 Benvenue; and

WHEREAS, a Mitigated Negative Declaration (MND) was prepared pursuant to the California Environmental Quality Act (California Public Resources Code, Division 13) and circulated for public review and comment from April 18 to May 8, 2002; and

WHEREAS, on April 25, 2002, the Zoning Adjustments Board (ZAB) received a staff report and Initial Study, and continued the project to May 9, 2002, without opening the public hearing regarding the application; and

WHEREAS, on May 9 and May 23, the ZAB considered the application and received public testimony; and

WHEREAS, on June 13, 2002, after receiving additional public testimony, the ZAB closed the public hearing, adopted the proposed Mitigated Negative Declaration and approved Use Permit #01-10000075 to construct said project; and

WHEREAS, on July 17, 2002, Sharon Hudson on behalf of the Benvenue Neighbors Association appealed the decision of the Zoning Adjustments Board; and

WHEREAS, the record of proceedings before the Zoning Adjustments Board has been considered and reviewed by this Council, and, in the opinion of this Council, the facts stated in, or ascertainable, from such records and testimony warrants denying the appeal and upholding the Zoning Adjustments Board's action to approve the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby dismisses the appeal of 2508 and 2514 Benvenue Avenue, and upholds the Zoning Adjustments Board's action to adopt the Mitigated Negative Declaration and approve Use Permit #01-10000075 based on the findings and subject to the conditions contained in the Notice of Decision dated July 3, 2002, and adopts the Mitigated Negative Declaration and the Zoning Adjustments Board's findings.

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RESOLUTION NO. -N.S.

REMANDING THE APPEAL OF THE LANDMARKS PRESERVATION COMMISSION DESIGNATION OF 2414 AND 2416 BENVENUE AVENUE, THOMPSON HOUSES, AS STRUCTURES OF MERIT WITH DIRECTION TO VACATE THE DECISION

WHEREAS, on February 5, 2002, the City received the verified application of at least fifty residents of the City to initiate 2514-2516 Benvenue Avenue; and,

WHEREAS, on February 22, 2002, the City mailed a public hearing notice of pending designation to property owners having property and each residential or other unit within three hundred feet of 2514-2516 Benvenue Avenue and to the neighborhood groups that are on file with the zoning officer and whose regular geographic area of interest includes the area of the proposed designation; and,

WHEREAS, on February 22, 2002, the property owner, American Baptist Seminary of the West, through its Board of Trustees, formally and unanimously resolved during a noticed public forum held on that date, after receiving testimony, to object to the application of special conditions and restrictions associated with landmark or structure of merit status to its noncommercial property located at 2514-2516 Benvenue Avenue, based on the finding of American Baptist Seminary of the West that the application of such special conditions and restrictions will cause American Baptist Seminary of the West to suffer substantial hardship, which is likely to deprive it of the reasonable use of American Baptist Seminary of the West or the appropriate use of American Baptist Seminary of the West in furtherance of its religious mission; and,

WHEREAS, on March 4, 2002, Staff presented a report to the Landmarks Preservation Commission that recommended that the Commission discontinue the designation of the structures at 2514-2516 Benvenue Avenue; and,

WHEREAS, on March 4, 2002, the Landmarks Preservation Commission opened a public hearing and took public testimony regarding the pending designation from members of the public and representatives of the property owner; and,

WHEREAS, on March 4, 2002, David Levy, representing ABSW, orally presented the action made by ABSW to object to the pending designation; and,

WHEREAS, on March 4, 2002, the Landmarks Preservation Commission requested a formal opinion from the City Attorney regarding the action taken by American Baptist Seminary pursuant to California Government Code Section 37361; and,

WHEREAS, on March 22, 2002, the City Attorney issued an opinion that stated that the Landmarks Preservation Commission had no legal authority to designate either property under the Landmarks Preservation Ordinance because ABSW had properly invoked Section 37361 with respect to 2514 and 2516 Benvenue; and,

WHEREAS, on April 8, 2002, the Landmarks Preservation Commission designated the structures at 2514 and 2516 Benvenue Avenue, the Thompson Cottages, as Structures of Merit; and,

WHEREAS, on November 26, 2002, the City released the Notice of Decision, starting the 15-day appeal period of the LPC decision; and

WHEREAS, on December 3, 2002, the City received an appeal of the Structure of Merit decision from David C. Levy, Attorney at Law, representing American Baptist Seminary of the West, stating the following grounds:

1. State law prohibits the City from designating the Seminary's property over the Seminary's objection because state law occupies the field;
2. The LPC's action was contrary to the evidence in the record, and was therefore arbitrary and capricious and constituted an abuse of discretion;
3. The LPC's action violated federal law.

WHEREAS, the record of proceedings before the Landmarks Preservation Commission has been considered and reviewed by this Council; and

WHEREAS, on December 10, 2002, the City Council considered the City Attorney's March 22, 2002, opinion and the staff recommendation to remand the designation to the Landmarks Preservation Commission to vacate the decision because the Landmarks Preservation Commission has no authority to designate the structures; and

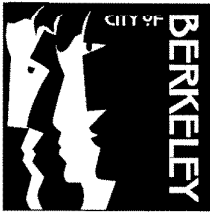
WHEREAS, the Council determines that the Landmarks Preservation Ordinance (BMC chapter 3.24) should be interpreted and applied in a manner consistent with state law; and

WHEREAS, interpreting the Landmarks Preservation Ordinance in this manner, and based on its review of the record, the staff report and the City Attorney's opinion, the Council determines that no further consideration or investigation of this matter under the Landmarks Preservation Ordinance (BMC §3.24.300.B.1) is required or appropriate under the circumstances.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the appeal filed by David Levy for the American Baptist Seminary of the West is hereby granted and the designation of 2514 and 2516 Benvenue as Structures of Merit is remanded to the Landmarks Preservation Commission with the direction that said designation be vacated at the Commission's next meeting, which is currently scheduled to occur on January 13, 2003.

BE IT FURTHER RESOLVED that if the Landmarks Preservation Commission does not vacate the designation of 2514 and 2516 Benvenue as Structures of Merit at its next meeting after the date on which this resolution is adopted, said designation shall be deemed null and void and of no effect without the necessity of any further action by any party.

155.



Landmarks Preservation Commission

10 December, 2002

Tom Bates, Mayor  
Members of the City Council  
City of Berkeley

RECEIVED AT  
COUNCIL MEETING OF:  
DEC 10 2002  
OFFICE OF THE CITY CLERK  
CITY OF BERKELEY

Re: Landmark designation of: 2514 Benvenue Ave.

Dear Mr. Bates and City Council Members,

On April 8, 2002, the Landmarks Preservation Commission considered the worthiness of the Thompson Cottages at 2514 Benvenue as a City of Berkeley Landmark. Even though there was some question whether or not the LPC has to power to formally designate the property because of its ownership, the commission did indeed find the property worthy of landmark status, and designated them as a Structure of Merit. We ask that you set the matter for a public hearing, and upon conclusion, find that the property must undergo focused environmental review to adequately analyze the potential impacts to the historic resource under the California Environmental Quality Act (CEQA).

As clearly documented in the Montgomery Ward case in Oakland, California several years ago (find it here: [http://ceres.ca.gov/ceqa/cases/1997/oakland\\_arch.html](http://ceres.ca.gov/ceqa/cases/1997/oakland_arch.html)), a property may be considered a historic resource under CEQA, regardless of whether or not it appears on a local register. Sufficient evidence was found by our commission to warrant that finding, which was a separate motion made by the commission at the same meeting as the actual landmark designation of the Thompson Cottages.

Sincerely,

Carrie Olson  
Chair, Landmarks Preservation Commission