

CONSENT CALENDAR

Date:

9-9-03

To: Honorable Mayor and
Members of the City Council

From: Councilmember Dona Spring

Subject: Clarification on Major Residential Additions

RECOMMENDATION: Request that the Planning and Zoning Commissions review and clarify how "“addition by right”" interfaces/effects nearby property owners' views and rights to solar protection granted in the Berkeley's "solar protection ordinance" ~~as well as with landmark issues.~~ In addition, the Commissions should consider whether "“addition by right”" could occur with additional sq. ft from a demolition on the same property. The Commissions should also clarify that the "“addition by right”" be allowed one time only on each property.

BACKGROUND:

On July 15, 2003, the Council held over this additional referral to the Planning and Zoning Commissions. The attached is the background material of this item for the Council only. The previous Council agenda item on 749 Contra Costa Avenue is not being referred to the Commissions. If the Commissions are going to be examining the by

right issue, then they should review all of the issues that have previously led to major disputes.

The City of Berkeley has a policy of encouraging solarization residences and businesses. If an “addition by right” casts a shadow over a neighboring resident's roof, it may affect their solar heating system and thereby the affected parties should be able to weigh in on the addition. The City of Berkeley regularly requires shadow studies if an addition casts a shadow on a nearby residence.

It seems that if neighboring residents' panoramic views are affected by an addition, then they should also have standing regarding the addition.

The City staff have written that they allow “addition by right” in combination with demolitions, but yet there is no clarification as to how large the demolition is allowed to accumulate with the by right addition of 499 sq. ft. This could mean the by right addition could as could accumulate much as 600 to 1000 plus square feet in combination with a demolition. This provision needs clarification.

It was probably assumed that the “by right addition of 499 sq. ft. “ would be allowed one time only on a property, yet this is not specified in the zoning code so that a property may have two or three “additions by right” overtime resulting in 1500 sq. ft. of additions without input from surrounding neighbors.

FINANCIAL IMPLICATIONS: NONE

CONTACT PERSON: Councilmember Dona Spring 981-7140

MIRIAM HAWLEY

Berkeley City Council
District 5

CONSENT CALENDAR

June 24, 2003

Emergency Item

To: Honorable Mayor and Members of the City Council

From: Councilmember Miriam Hawley
Councilmember Betty Olds

Subject: **REVIEW OF “BY-RIGHT” ADDITION AT 749 CONTRA COSTA BLVD.**

RECOMMENDATION

Refer to the Zoning Adjustments Board for review and consideration of a hearing on the staff-designated by-right addition to the house at 749 Contra Costa Blvd. Refer to the Landmarks Preservation Commission a review of the impacts of the addition to the landmarked house at 1962 Yosemite Ave.

BACKGROUND

The owners of 749 Contra Costa Blvd., a single-family residence, have been granted a permit to:

- Raise the existing single story house and develop a limited basement laundry area into 145 square feet of habitable space
- Move the house approximately 3 feet east on the lot
- Reduce the first floor footprint by 252 feet
- Add a 607 feet second story

The permit was granted on a by-right basis, so there was no review by the Zoning Adjustments Board and no comments entertained from neighbors. The project is currently under way.

There are lingering questions about certain aspects of the job and whether they meet the criteria required to be considered as by-right:

- The original non-conforming front yard set back – 13’9” – is being increased to only 16’9”; still a nonconforming setback. (The neighbors maintain that the original proposal for the project included the required 20’ setback.)

MIRIAM HAWLEY

Berkeley City Council
District 5

- The total square footage of the addition (slightly less than 500 square feet) was accumulative; a small portion of the existing home was deleted and its area was subtracted from the footage of the new addition.
- An existing single story home with a limited basement/laundry, will, when finished, become, at the street front, a 3-story home.

Though staff contends that no particular aspect of the job triggers an administrative use permit, the cumulative impacts of the project on its neighbors are tremendous and should be reviewed and possibly mitigated.

The property most impacted is directly behind the project: a landmarked house at 1962 Yosemite. The landmark status is due, in part, to the design of the home that incorporates architectural elements to maximize the view – a view that is obliterated by the addition and renovation of 749 Contra Costa. The LPC can consider views as part of a landmark determination, and may want to review the impacts of this project on the landmarked home.

FINANCIAL IMPLICATIONS

Staff time to report to Commissions.

CONTACT PERSON

Mim Hawley, Councilmember, District 5 981-7150
Betty Olds, Councilmember, District 5 981-7160

Mark Nicas
753 Contra Costa Avenue
Berkeley, CA 94707
(510) 528-5227

June 16,2003

Mr. Phil Kamlarz
Interim Planning Director
City of Berkeley
Fax Number: 981-7490

Dear Mr. Kamlarz

I am writing to follow up on an issue which I believe was brought to your attention by City Council Member Miriam Hawley last week. It concerns a ministerial building permit which I contend was issued illegally by Planning and Development for a construction project at 749 Contra Costa Avenue. The nature of the project clearly required an Administrative Use Permit. There a number of issues involved in this case, but below I summarize only two items involving (1) the square footage of new construction, and (2) the nonconforming front setback.

I am requesting that the building permit for this project properly be revoked and that the current plans be evaluated through an Administrative Use Permit application should the property owners desire to proceed with the project. Let me mention that City Council Member Dona Spring requests that you issue an immediate stop order on the project due to the front setback issue. You can confirm Ms. Spring's position, as verbally communicated to me this morning, by calling her at 981-7140.

- **Extent of New Construction:** The proposed project adds more than 500 square feet of new construction. The project will add 607 square feet onto a brand new second floor of the house, and will add at least 145 square feet of living space in a nonhabitable basement. This is 752 square feet of new construction, and thereby requires an Administrative Use Permit. Instead, Planning and Development gave a "credit" for removing a bit more than 252 square feet of the existing building at the rear, and argued that the new construction was now just under 500 square feet.

The Administrative Use Permit ordinance makes no provision for giving a "credit" by removing square footage elsewhere. Further, giving such a credit was not intended by the City Council when it adopted the ordinance on Administrative Use Permits. As far as I can tell, this "credit" maneuver was implemented by Planning and Development without giving notification to, and without obtaining the consent of, the Berkeley City Council. A letter from Mr. Rhoades (dated March 24,003) stated that "Ministerial permits are actions involving little or no personal judgment or exercise of discretion by the public official or

agency as to the effects of carrying out the project” [emphasis added] Completely changing the explicit meaning of the 500 square foot rule does not constitute “little or no” discretion.

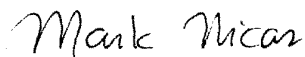
Planning and Development claimed that giving this credit was their “long-standing interpretation and practice”, but they provided exactly no proof that this has indeed been a long-standing practice, nor that their practice had been legally reviewed prior to this project.

• **Nonconforming Front Setback:** On the plans for the project, it appears that the front setback (the distance from the existing first-story front wall to the front property line) is listed as 13 feet 9 inches, while the required front setback is 20 feet. After the project is completed, it appears that the distance from the first-story front wall to the front property line will be only 16 feet 9 inches, which is less than the required 20 feet., and is another circumstance which requires an Administrative Use Permit. I also note that the approved plans carry a table that appears to list the proposed front setback at the conforming 20 feet value. How the table can represent that the project will conform with the 20-foot requirement (in an unqualified fashion) when the drawings appear to show a front setback of 16 feet 9 inches is a mystery to me. Unfortunately, Planning and Development did not permit us to obtain a copy of the drawings, but you can directly confirm those figures on the plans possessed by your staff.

According to verbal statements made by Mr. Steve Solomon of Planning and Development to Patricia Hawthorne (an affected neighbor), Planning and Development used the distance from the new second-story front wall to the front property line as the criterion for meeting the required 20-foot setback. This appears to be a novel but improper (and illegal) interpretation of an ordinance that clearly intends the first-story front wall setback to conform to the 20-foot rule, and requires an Administrative Use Permit if it does not conform.

Thank you for addressing this matter.

Respectfully,



Mark Nicas

cc: City Council Members
Tom Bates, Mayor

REVISED ITEM
Consent Calendar
July 15, 2003

To: Honorable Mayor
Members of the City Council

From: Councilmember Miriam Hawley
Councilmember Betty Olds
Councilmember Dona Spring

Subject: **CLARIFICATION ON INTERPRETATION OF MAJOR
RESIDENTIAL ADDITIONS**

RECOMMENDATIONS:

That the City Council refer to the Zoning Adjustments Board and the Planning Commission the following issues for discussion and review; that the ZAB report to the Planning Commission with recommendations for guidelines for interpretation by staff and/or clarifying language for related Zoning Ordinances; that the Planning Commission return to the Council within 120 days with proposed language for modifications to the Zoning Ordinance:

1. The number of vertical feet allowed in a story in residential construction
2. The "no-net change" interpretation of the 499 square foot addition, allowed by right
3. The interpretation of additions to existing nonconforming residential buildings.
4. Consider that an "addition by right" be allowed one time only on each property.

BACKGROUND:

Berkeley's zoning guidelines require an AUP for residential additions greater than 500 square feet. Smaller additions that meet all other zoning requirements are granted "by right" with no review by the Zoning Adjustments Board, and no process by which affected parties can comment on the project. Staff's current interpretation of the "499 square foot" calculation is accumulative: larger additions can be approved by right if there is a reduction in the existing building whereby the total increase in area is less than 500 square feet.

Staff's interpretations of the appropriate yet ambiguous zoning regulations - including the square footage calculations, the height limitations and the consideration of nonconforming houses - though consistent, often lead to confusion and frustration on the part of the public. Many of these projects escalate into divisive neighborhood conflicts and extended staff time in dealing with them. Clarification of standard interpretations through ordinance revision or published guidelines would hopefully prevent unneeded confusion.

Questions to be included during this review:

- 1 What was the intent of City Council and staff when this ordinance was adopted?
How does staff interpret this regulation?
- 2 Can appeals and legal challenges be minimized if we clear up the
misunderstandings and loopholes in the language of the ordinances?
- 3 How can detriment be minimized in "by-right" permits when no notification to
neighbors is required and staff does not check the permit site for detrimental
consequences to neighbors?

Hopefully, some of the confusion that has led to legal challenges recently will be
minimized if we can clarify these issues.

FINANCIAL IMPLICATIONS:

Staff time for research, discussion and recommendation.

CONTACT PERSON:

Miriam Hawley, Berkeley City Council District 5 981-7150
Betty Olds, Berkeley City Council District 6 981-7160
Dona Spring, Berkeley City Council District 4 981-7140