

Action Calendar – Public Hearing - October 14, 2003

1. Appeal: 1936 Delaware Street

a. From: City Manager (*October 14, 2003*)

Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution approving the proposed project subject to findings and conditions that incorporate certain parameters set forth in a neighborhood agreement and dismissing the appeal.

Contact: Dan Marks, Planning, 981-7400

1. Communications (*October 14, 2003*)

1. David C. Levy, Morrison & Foerster LLP
2. Rena Rickles

MORRISON & FOERSTER LLP

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October 6, 2003

Via E-Mail

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Hon. Mayor Bates and City Council
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

**Re: 1936 Delaware Street - Use Permit Appeal - Request to Approve
Revised Project per Settlement with Appellants**

Dear Mayor Bates and Council Members:

On behalf of the applicant for the above-referenced use permits, I respectfully request that you approve the revised project now before you. This revised project has been arrived at through over four months of negotiations between the applicant, the appellants, and other concerned neighbors. The appellants' September 10, 2003 letter (attached), as well as their other recent correspondence in your packets, confirms their support for this revised project and their request for you to approve it as well. City staff has included the conditions set forth in the parties' settlement agreement as conditions of project approval.

In summary, the revised project would consist of a new one-story dwelling unit at the rear of the property, and the expansion of the one-story, single dwelling unit at the front of the property to a three-story building with two units. The previously approved project would have resulted in two two-story buildings on the property, also containing three units total. The appellants' main contention was that the previous project, and particularly the two-story rear building, would diminish light, air and privacy in their rear yard. The revised project avoids those impacts by reducing the height of the rear building to one story. The proposed three-story front building is slightly shorter than

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Mayor and Council Members
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appellants' house next door, and is consistent with the many other three- and four-story structures on the block.¹

We appreciate the continuances you previously granted to allow the parties to work out the compromise that is now before you, and look forward to your speedy and final resolution of this matter. Representatives of the parties will be present at the hearing on October 14 should you have any questions about the revised project. Thank you.

Very truly yours,



David C. Lery

Enclosure

cc: Sherry M. Kelly, City Clerk
Messrs. Mark Rhoades and Steve Solomon, Planning Department
Zachary D. Cowan, Esq., Office of the City Attorney
Rena Rickles, Attorney for Appellant
Ahmet Kahya, Applicant
Integrated Structures, Architects for Applicant

¹ The previous project would have lifted the existing one-story front structure and constructed a second story underneath that, thereby retaining most of the existing structure. That is more difficult with the revised three-story structure, thus an amount of demolition sufficient to trigger the need for a demolition use permit (greater than 50 percent of the building) is required. In other words, the additional demolition use permit is requested only because it is necessary to implement the revised project. It was not a planned addition to the application.

THE KLUGERS

Mayor Tom Bates
Berkeley Councilmembers
2180 Milvia Street
Berkeley, CA 94704

Re: 1936 Delaware Street Appeal

9/10/2003

Dear Mayor Bates and Councilmembers:

I am writing to inform you that I, the appellant in this case, and the affected neighbors formally withdraw our opposition to the case - upon the conditions that the amended version of the plans, as signed by the neighbors, be approved, and that the legal agreement between the two parties be incorporated as a condition of approval.

The applicant's architect has redesigned and slightly downsized the project to the extent that everyone is satisfied. Our attorneys have drafted a settlement agreement, and all parties have signed off. A new reduced set of plans has been reviewed and signed by myself and the neighbors.

Thank you for your time and consideration in this matter.

Sincerely,

Ted Kluger
Ted Kluger

Jayne Kluger
Jayne Kluger

Sydney Ternchek
Sydney Ternchek

James Mellgren
James Mellgren

Deede Sloan
Deede Sloan

David Horn
David Horn

Kelly, Sherry

From: Rena Rickles [rrlaw@mindspring.com]
Sent: Wednesday, October 08, 2003 12:01 PM
To: Doctor, Jennifer P.; Kelly, Sherry; Wozniak, Gordon; Berkeley Mayor's Office; Breland, Margaret; Hawley, Miriam; Maio, Linda; Olds, Betty; Shirek, Maudelle; Spring, Dona; Worthington, Kriss
Cc: Levy, David C.; Rhoades, Mark; Solomon, Steve; Cowan, Zach; estimate@pacificpainting.com; teddyklugs@aol.com
Subject: Re: 1936 Delaware Street

I agree on the behalf of the affected neighbors with the content of David Levy's letter. So long as the Staff Report supports the Agreement in its entirety , the neighbors (as separately set out in their letter to the Mayor and City Council) agree to support the revised proposed project. I will be sending a letter as their representative under separate cover.

RENA RICKLES
Attorney at Law
1970 Broadway, Suite 1200
Oakland, CA 94612
(510) 452-1600

----- Original Message -----

From: Doctor, Jennifer P.
To: clerk@ci.berkeley.ca.us ; Wozniak, Gordon (E-mail) ; Bates, Tom (E-mail) ; Breland, Margaret (E-mail) ; Hawley, Miriam (E-mail) ; Maio, Linda (E-mail) ; Olds, Betty (E-mail) ; Shirek, Maudelle (E-mail) ; Spring, Dona (E-mail) ; Worthington, Kriss (E-mail)
Cc: Levy, David C. ; MRhoades@ci.berkeley.ca.us ; ssolomon@ci.berkeley.ca.us ; ZCowan@ci.berkeley.ca.us ; rrlaw@mindspring.com ; estimate@pacificpainting.com
Sent: Monday, October 06, 2003 3:18 PM
Subject: 1936 Delaware Street

Dear Mayor Bates and Council Members:

At David Levy's request, please see the attached letter:

<<Request to Approve Project - Integrated Structures.pdf>>

Thank you very much.

Jennifer Doctor
Legal Secretary
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
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Email: JDoctor@mofo.com

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