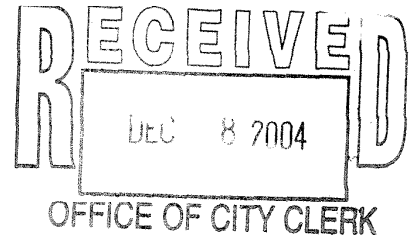


JEREMYS

December 3, 2004

City of Berkeley
City Clerk Department
2180 Milvia Street,
Berkeley, CA 94704



Re: ZAB Approval Appeal by Business Competitor

Dear City Council Members.

Jeremys is a locally founded and owned retail store serving the Elmwood community. The company was founded in 1987 and has been operating in its current location since 1992. I am the founder and I live in the Elmwood community where the store is located.

Jeremys serves the community of the Elmwood offering a variety of apparel and accessories for women, men and children. We are the only men's store in the area, which is a market that we are interested in improving with this expansion.

Back in March of this year, we had applied to expand our store into the adjacent space to facilitate several pressing needs of our company. These needs include a clean, well-ventilated, quiet space for staff members to take breaks and have lunch, as well as office space to interview new prospective employees and conduct meetings for our staff.

When we applied to expand into this adjacent space we were aware of the quota system, and that many stores have applied for a use permit and have been approved without a public hearing. We were told that we must have a public hearing and ZAB approval in order to have the application approved, even though none before us have been so required. We were subsequently approved on August 26th of this year and had met all of the requirements of the current quota regulations.

This decision was appealed by Jason Weyman who owns Elements which is a clothing store in the Elmwood and the main competitor of Jeremys. As he has stated in his appeal the "expansion would be a detriment to his business." This is a free market and zoning is not meant to be used to create advantages of one business over another.

In appeal:

Mr. Waymen: "We are filing this appeal quite simply to get the zoning board decision overturned and force it to comply with its own rules and regulations and to get the decision that not only 90% of the merchant community wants but that 90% of the surrounding community desires."

Fact: Jeremys has, in truth, the overwhelming support of merchants (see enclosed 54 merchant signatures) as well as the overwhelming support of the community. In addition, Jeremys has complied with every rule of the law pertaining to zoning

Jeremy M. Kidson
2961 College Avenue, Berkeley, CA 94705
415-882-4930 Direct Line 415-896-6741 Fax

regulations in the Elmwood and again has both the overwhelming support of Elmwood Merchants and local residents.

Mr. Waymen: "This business also occupies an additional two buildings"

Fact: The contiguous storefronts are part of *one* building that I own.

Mr. Waymen: "Creating a 5000 square foot business...6000 foot superstore"

Fact: As Mr. Waymen states, "square footage limitation does not include retail spaces". Additionally Jeremys will have 2505 of combined retail floor space, still less than the appellant.

Mr. Waymen: "Approval did displace a current tenant"

Fact: The tenant George Oram does have a suitable alternative space on College Ave. to use until his business relocates.

Mr. Waymen: "We request enough time to get written proof of the feelings of the residents before the board."

Fact: There was a public hearing at the ZAB where the local merchants and residents were invited by city notification to testify. No residential neighbors from the Elmwood were present in opposition of the Jeremys expansion while many were there on the record in strong support. Also, after the ZAB decision date of August 26, 2004, the appellant had until October 6, 2004 to gather any support from the residents that he is claiming to be in opposition. I believe six weeks for his appeal is plenty of time to gather proof opposition, if it so exists. The community has been heard.

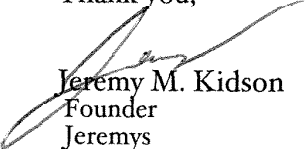
Mr. Waymen and myself may agree that there needs to be changes in the current quota system in Berkeley. These changes are long over due and would greatly improve the quality of the retail environment in the district.

However, as far as the current zoning regulations are concerned, I have met every requirement under the current zoning laws relating to the quota system. I have presented to the ZAB, in a public hearing where community members and merchants were notified and given an opportunity to speak. As mentioned, Jeremys has 54 signatures in clear and strong support from the local merchants and as mentioned earlier there were also many residents in attendance on the record in support of this expansion. There were none in opposition.

At this point in time, I have lost the valuable holiday season and spent eight months meandering through a very tedious process. All have been heard and a conclusion has already been reached.

I respectfully request that the City Council affirm the decision of the ZAB and the wishes of the many merchants and neighbors who overwhelmingly support our growth in the Elmwood.

Thank you,


Jeremy M. Kidson
Founder
Jeremys
Elmwood, Berkeley

I am a Merchant located in the Elmwood District in Berkeley.

I understand that Jeremys would like to expand its location at 2961 College Avenue into the adjacent space at 2963 College Avenue.

I would approve of this expansion and believe that it would be a benefit to the merchants and the community in the Elmwood District.

Date	Store Name	Printed Name/Signature	Phone Number
4-8-04	Elmwood Gumbo Gallery	MARYAM ETTEHADHA <i>[Signature]</i>	510-8489685
4-9-04	Beauty Center	Barbara Eagle	845-2485
4-9-04	LOCANDA OMO	JUDITH C. OCULISTI	848-5544
4/9/04	Tups Out Travel	Ellen Tatchell <i>[Signature]</i>	548-0950
4/9/04	Peterson's Elmwood Corner	Rachel Peterson <i>[Signature]</i>	543-8980
4/9/04	ELMWOOD VIDEOS	JOHN HOFFMAN <i>[Signature]</i>	540-0222
4/9/04	Jin Ling	Kenneth Ohng	841-1688
4/9/04	Copy Central	James Trevors <i>[Signature]</i>	848-3114
4/9/04	Papyrus	Jana M	848-9824
4/9/04	c i c c i c c i c c	Kathy Kim	845-2838
4/9/04	Supercents	JOSEFINA BERIC <i>[Signature]</i>	849-1188
4/10/04	LA TOUR	Lam HA	883-1999
4/15/04	Mem Gallery	Maurice Ewen	843-4728
4/21/04	Elmwood Market	Margaret Zwick	883-0870
5/13/04	TRATTORIA CUCINA ITALIANA	<i>[Signature]</i>	704-1474
5/18/04	PRIME-O-RAMA	Kate Bark	644-2356
5/18/04	ARENZ'S CLEANING	<i>[Signature]</i>	548-6138

I am a Merchant located in the Elmwood District in Berkeley.

I understand that Jeremys would like to expand its location at 2961 College Avenue into the adjacent space at 2963 College Avenue.

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Date	Store Name	Printed Name/Signature	Phone Number
5-25-04	Slash	Carla Bell	510 841 7803
5-25-04	Loce's Closet	Amber Isherwood	(510) 845-357
5/25/04	ESPRESSO ROMA	JORGE MENDOZA	(510) 644 3773
5-25-04	Copy Central	James Trevors	510-848-3114
5/25/04	KING YEN	Li Yu Tsou	510-845-1286
5/25/04	ELMWOOD NAIL	Joy Nguyen	510 644 0026
5/26/04	Dryclean club of America	Sanna Tung	(510) 644-2777
5/26/04	7/11	Chih	510-841-8281
5/26/04	Sonam Tibet	sonam - 1-0-0-7	510-666-1329
5/26/04	Filippo's	LEONARDI A. LUCAR	510-644-3848
5-26-04	SIEMHUA	jean R	(510) 841-1777
5-26-04	BEANERY	Roy Jay	
5-27-04	LA FOOT	Mark Bull	(510) 644-3668
5-27-04	A.G. FERRARI	FRANCESCA THOMAS	510 849-2701
5-27-04	Wells Fargo Bank	Joy Kelly - Debra	(510) 464-2165
5-27-04	Derby Food	Derby	510-841-0572
5-27-04	SWEET DREAMS	GARY GERRIN	510-5491211

I am a Merchant located in the Elmwood District in Berkeley.

I understand that Jeremys would like to expand its location at 2961 College Avenue into the adjacent space at 2963 College Avenue.

I would approve of this expansion and believe that it would be a benefit to the merchants and the community in the Elmwood District.

Date	Store Name	Printed Name/Signature	Phone Number
5/18/2004	STATE FARM	Steve Baveir <i>[Signature]</i>	510-548-2929
5/18/2004	Sole Salon	Guy Bargiullo Thuy Anguill <i>[Signature]</i>	510-848-5633
5/18/2004	DESOUZA LAW OFFICES, PC	LYNIA R. JOHNSTON <i>[Signature]</i>	510-649-3420
5/18/2004	ELMWOOD THEATRE	<i>[Signature]</i>	(510) 540-6482
5/18/2004	Dream Fluff Dons	Kanya Siewby <i>[Signature]</i>	510 649-0471
5/18/2004	WRITERS ANTONIETTA	DELO MILLAR <i>[Signature]</i>	510-841-2740
5/18/2004	MAGONSARDON SALON	WILLIAM CROMER <i>[Signature]</i>	510-841-4696
5/18/04	Sevin's Books	YOUNG HEWITT <i>[Signature]</i>	510 8434451
5/19-04	manupuku	suk soo <i>[Signature]</i>	510 848-2538
5-19-04	Go Lono.	C. SHABAZI <i>[Signature]</i>	888-2064
5.19.04	Picture it Sold!	Kevin McKinnis <i>[Signature]</i>	644-1113
5.19.04	Honyland	Mati M... <i>[Signature]</i>	6657670
5-25-04	Elwood Stat.	Andrey... <i>[Signature]</i>	841-3073
5/25/04	Body Time.	Kristin Wardinsky <i>[Signature]</i>	510) 845-2101
5/25/04	The Mailbox Place	Go Mahmood/ <i>[Signature]</i>	510-883-9505
5-25.04	7.11	DAS. <i>[Signature]</i>	841-6291
5/25/04	Rejuvenate	Matt Massey <i>[Signature]</i>	540-7100
5/25/04	NAAN-N-CURRY	RAHAT REHMAN <i>[Signature]</i>	841-1688

gaining @
Pembell.n

Cox, Sara

From: Jeremy Kidson [jeremy@jeremys.com]
Sent: Monday, December 13, 2004 4:43 PM
To: Berkeley Mayor's Office
Cc: Wozniak, Gordon; Olds, Betty; Spring, Dona; Clerk; Capitelli, Laurie; Maio, Linda; Moore, Darryl; Worthington, Kriss; Anderson, Maxwell
Subject: 2963 College Avenue; Appeal #27 clarification. Signed letter to follow.

December 13, 2004

Mayor Tom Bates

Members, Berkeley City Council

2180 Milvia Street

Berkeley, CA 94704

Re: 2963 College Avenue; Appeal (#27, December 14, 2004 Agenda),
further expansion clarification.

Dear Mayor Bates and Council Members:

I understand that some concerns have been raised that either I or my company, Jeremy's Retail, Inc., intends to expand into the restaurant space now leased by the Holy Land Restaurant at 2965 College Avenue.

While I did not have and do not have any intention of expanding in the space now leased by the Holy Land Restaurant, and I thought that I had made that point at the Zoning Adjustment Board hearing(s) on this matter, I feel that it is important to reiterate my position.

I, in my individual capacity and as CEO of Jeremy's Retail, Inc., will not ask to nor will I expand Jeremy's retail space into the space now occupied by the Holy Land Restaurant. **In addition, the current lease for the Holy Land Restaurant is through 2017.**

I fully understand that this letter may be placed into the Planning and Zoning file for my address as well as that for the Holy Land Restaurant.

Thank you for your support. If you vote to AFFIRM tonight (Tuesday), I will be able to use the additional space for what could be the busiest days of the holiday season.

12/14/2004

Very truly yours,

Jeremy M. Kidson

Jeremy M. Kidson

JEREMYS

Founder and CEO

Two South Park

San Francisco CA 94107

Phone 415-882-4930

Fax: 415-896-6738

12/14/2004

Cox, Sara

From: Rena Rickles [rrlaw@mindspring.com]
Sent: Tuesday, December 14, 2004 10:44 AM
To: Berkeley Mayor's Office; Clerk; Maio, Linda; Moore, Darryl; Anderson, Maxwell; Spring, Dona; lcappitelli@ci.berkeley.ca.us; Olds, Betty; Worthington, Kriss; Wozniak, Gordon
Cc: Jeremy Kidson
Subject: 2693 College Avenue--grounds to affirm

Attached please find my letter in support of the ZAB decision. We ask that you vote tonight to AFFIRM. Jeremy has already suffered significant delay in what has historically been an Administrative Use Permit. He has already missed most of the holiday season because of these delays. It took 4 1/2 months to arrive at the ZAB for final vote; the Notice of Decision was issued 27 days after the ZAB vote instead of before the next ZAB meeting as required by the Zoning Ordinance.

Thank you.

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

12/14/2004

RENA RICKLES
ATTORNEY AT LAW

1970 BROADWAY, SUITE 1200
OAKLAND, CA 94612
TEL: (510) 452-1600 • FAX: (510) 451-4115

December 14, 2004

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

VIA FACSIMILE, Email and Hand Delivery

Re: 2963 College Avenue; Request to Affirm the Zoning Adjustments Board ("ZAB")

Dear Mayor Bates and Councilmembers:

On behalf of Jeremy Kidson, Elmwood resident, and owner of Jeremy's, I urge you to vote tonight to AFFIRM the Zoning Adjustments Board's ("ZAB") decision to grant a use permit to expand into an adjacent space last used as a real estate office. In arriving at its decision, the ZAB held three hearings May 27, 2004, June 9, 2004 and August 26, 2004--two on the general issue of allowing a retail use to expand into an adjacent space (although the use permit before you tonight dominated both hearings) and one specifically relating to the use permit now at issue. Thus the ZAB has heard fully all of the considerations supporting and opposing this use permit.

The Use Permit before you tonight was granted after the ZAB gave full scrutiny the history of the present use, evaluations of use limitations ("quotas"), and the square foot limitations contained in the Elmwood Commercial District (23E.44), far more scrutiny than that given to any other applicant's (including one of the appellants) request to expand into an adjacent tenant space.

At least six current Elmwood businesses—Elements' (allowed to expand to 3000 square feet), Mediteranee, Basic Bird, Focal Point, Shen Hua, King Yen and Jeremy's have been allowed to expand into adjacent tenant spaces with only an Administrative Use Permit ("AUP"); i.e. Staff approval, no hearing required. For this expansion into an adjacent tenant space, Jeremy's was subjected to the full Use Permit process even though the ZAB, at its June 9, 2004 meeting, had not granted Staff permission to change the prior practice of requiring only an AUP as set out the Zoning Ordinance.(23E.44.050B)¹

¹ Jeremy Kidson agreed to pay the additional fees and submit to the additional requirements of the Use Permit when it became obvious that appealing Staff's decision would take longer to obtain a final result.

Thus, despite the claims asserted by appellants, Jeremy's application was subject to more public process than any similar permit. Even though prior applications to expand (even uses subject to "use quotas") into adjacent tenant spaces were allowed to do so with merely an Administrative Use Permit; Jeremy Kidson was required to obtain a Use Permit. Administrative Use Permit fees and waiting time are considerably less than that of Use Permit fees and waiting time. In essence for the Use Permit currently before you, Jeremy Kidson's application was subjected to a higher level of review than any similar application.

The Elmwood Commercial District Zoning Ordinance Permits the Granting of an Exception to the Numerical Limitations ("use quotas") with a Use Permit.

Appellants complain bitterly that the rules, procedures and "intent" of the Elmwood Commercial District were violated. They claim that the intention of the Elmwood Commercial District was to never allow an exception to the use quotas and that clothing stores were meant to be subject to square foot limitations. Neither claim is true. Exceptions to exceed the numerical limitations with a Use Permit are specifically allowed in the Elmwood Commercial District (23E.44.090). Square foot limitations are not imposed on clothing stores (*Table 23E.44.04*).

Even though this application was not officially treated as one that exceeded the use quotas because the only issue before the ZAB (and this City Council) was whether to allow expansion of an already permitted use, the application was subjected to exactly the same scrutiny of as an application to exceed use quotas. "In approving the Permit, the ZAB considered the request to expand in light of the use restrictions (including quota limitations and square foot limitations." (City Manager report, December 14, 2004, page 5, emphasis supplied). To exceed the quota limitations the Ordinance requires, in addition to eight (8) specific Use Permit findings, that "the exception shall result in a positive enhancement of the purposes of the [Elmwood] District, as evidenced by resident and merchant support and ...other information indicating probable substantial patronage by surrounding neighbors." (23E.44.090)

Even though not required under this permit to do so, Jeremy Kidson provided the evidence requisite to support an exception to the use quotas. Petitions in support of this application, signed by over 54 Elmwood merchants were provided to the ZAB. (Pp.91-94 of December 14, 2004 Agenda # 27) In addition, over 100 local residents signed petitions in support, wrote letters or testified in support of this application.(pp. 81-89).

In sum, the granting of the Use Permit in this case followed the language and intent of the Elmwood Commercial District. The intent regarding both the use quotas and square foot limitations were, after intense Staff and ZAB scrutiny strictly, if not excessively applied to this particular application.²

² The granting of the instant Use Permit enhances the purposes of the Elmwood District in that an office use will be converted to retail use.

Conclusion

The appellants complain that procedures and the law were not followed. As shown above, if anything, in the application, use permit and decision now before you, Jeremy Kidson was subjected to a longer, more expensive and more intensive and thorough review than any prior similar application to expand into an adjacent tenancy.

The questions of whether and/or how quota limitations should be applied, or whether they should exist at all for many of the current uses, the amount of square footage any one use should have are questions that good public policy requires should be referred to the Planning Commission for review. At that time, the Planning Commission can also address the very real underlying concern addressed by other Planning Commission regarding the passage of legislation to prevent the take over of small commercial districts by large chain stores.

Whatever comprehensive review this Council thinks should be applied to the current Elmwood Commercial ordinance, Jeremy Kidson's application before you tonight followed all of the existing rules. He should not be subjected to further delay. Your vote tonight to AFFIRM the ZAB will allow Jeremy Kidson, Jeremy's and the City of Berkeley to benefit from the remainder of the holiday retail season.

I thank you in advance for your courtesy and attention to this matter.

Very truly yours,

Rena Rickles

