

BERKELEY CITY COUNCIL
RE: USE PERMIT 04-10000063

DEC. 03, 2004

WE HAVE FILED AN APPEAL FOR THE FOLLOWING REASONS:

- 1) THE ZONING BOARD VIOLATED THE REGULATIONS IN ISSUING THE PERMIT FOR 2963 COLLEGE AVE. AND THEREFORE ALL OTHER ACTIONS THAT FOLLOW TO AUGMENT THIS USE ARE ILLEGAL
- 2) THE ZONING BOARD FAILED TO FOLLOW THROUGH ON THIS INCORRECTLY ISSUED PERMIT IN NOT ISSUING A TIMELY WITHDRAWAL/ REVERSAL OF THE ERRANT USE PERMIT
- 3) THE ZONING BOARD CHOSE (INCORRECTLY) TO NOT PURSUE ITS LEGAL OBLIGATION TO REVERSE THE ILLEGALLY ISSUED PERMIT UNDER THREAT OF SUIT BY JEREMY'S
- 4) THE ZONING BOARD FAILED TO EVEN INFORM THE MERCHANT ASSOCIATION , THE MERCHANTS INDIVIDUALLY OR THE RESIDENTIAL COMMUNITY AT LARGE OF ANY OF THIS SO THAT WE MIGHT HAVE THE OPPORTUNITY TO FORM SOME SORT OF ACTION OURSELVES AS WE ARE THE ONES DIRECTLY AFFECTED
- 5) THE ZONING BOARD HAS COMPOUNDING THE ILLEGALITY AND THE ECONOMIC AND OTHER DAMAGES THAT NATURALLY FLOWED FROM THE ISSUANCE OF THE PERMIT FOR 2963 COLLEGE AVE. BY ALLOWING THE EXTENSION OF THIS USE INTO 2961 COLLEGE AVE. IN SPITE OF THE OVERWHELMING DESIRE ON THE PART OF THE MERCHANT COMMUNITY AND THE RESIDENTIAL ASSOCIATIONS TO NOT ALLOW IT.
- 6) THE ISSUANCE OF THE ORIGINAL PERMIT AND THE MISTAKEN DECISION OF THE ZAB TO ALLOW EXPANSION HAS CAUSED ECONOMIC LOSS FOR INDIVIDUAL BUSINESSES THE HAVE MADE DECISIONS ABOUT THEIR BUSINESSES IN RELIANCE ON THE ENFORCEMENT OF THE REGULATIONS REGARDING THE ISSUANCE OF USE PERMITS IN THIS TINY MERCHANT AREA... AND BUSINESSES SUCH AS OURS MAY BE FORCED TO SEEK LEGAL REDRESS AGAINST THE CITY AND/ OR ABANDON THEIR BUSINESS PLANS OR LEAVE ENTIRELY.
- 7) THE ARBITRARY AND SELCTIVE NATURE OF THE APPLICATION OF THESE REGULATIONS VIOLATIVE OF THE INTENT , THE HEART AND LEGALITY OF THESE LAWS AND THEIR PAST AND PRESENT APLICATIONS AND IS TANTAMOUNT TO THE VIOLATION OF EQUAL RIGHTS BY A CITY THAT PRIDES ITSELF ON THAT VERY PHILOSOPHY AND MAY SUBJECT THE CITY OT SUITS BY PREVIOUSLY DENIED PETITIONERS AND FUTURE AGGRIEVED PARTIES.

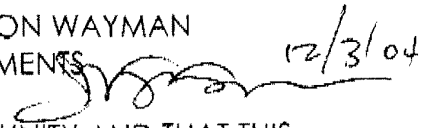
IT HAS BEEN BROUGHT TO OUR ATTENTION BY VARIOUS NEIGHBORHOOD ASSOCIATIONS, INDIVIDUAL RESIDENTS AND INDIVIDUAL MERCHANTS THAT THEY WOULD LIKE THIS MATTER SET FOR

CALENDAR IN FEBRUARY SO THAT THEY MAY ATTEND A FULL HEARING AND WIEGH IN ON THE MATTER DIRECTLY WITH THE VERY COUNCIL PERSONS WHO CHOSEN THE MEMBERS OF THE ZAB TO REPRESENT (OR MISREPRESENT) THEM ON THE MATTER. THEY ARE SET TO HAVE A MEETING ON JAN. 26, 2005 AT THE ST. JOHN'S CHURCH.

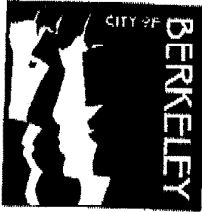
IN ANY CASE WE WILL BE PREPARED TO PRESENT A CASE BEFORE THE COUNCIL THAT WILL CLEARLY SHOW DECEIT, ABUSE OF POSITION AND UTTER MISMANAGEMENT IN THIS MATTER AS WELL AS LAY THE GROUNDWORK FOR WHATEVER FURTHER LEGAL ACTIONS MAY BE NECESSARY DOWN THE ROAD.

FURTHER DOCUMENTATION WILL BE SUBMITTED PRIOR TO THE HEARING INCLUDING TRANSCRIPTS FORM THE ZAB HEARINGS THAT LED TO THIS DISASTROUS DECISION.

THANK YOU FOR YOUR TIME,
JASON WAYMAN
ELEMENTS

A handwritten signature in black ink, appearing to read 'Jason Wayman', is written over the printed name. To the right of the signature, the date '12/3/04' is handwritten.

IT IS OUR HOPE THAT YOU WILL HEAR THE COMMUNITY AND THAT THIS IS NOT A MINOR ISSUE AND ALLOW FOR THE OPEN PUBLIC HEARING IN FEBRUARY



City Clerk Department

November 2, 2004

Jason Wayman
2937 College Avenue
Berkeley, CA 94705

RE: 2916-2963 College Avenue – Appeal ZAB Decision Use Permit #04-10000063

Dear Mr. Wayman:

This will acknowledge receipt of your appeal of the Zoning Adjustments Board decision of August 26, 2004, approval of Use Permit under Section 23E.44.050 of the Zoning Ordinance to combine a 1,585 square foot storefront with a 1,227 square foot storefront. Your appeal has been referred to the Planning Department.

The Planning Department will transmit to Council a statement setting forth the reasons for the Zoning Adjustments Board decision. This report, as well as a copy of the appeal, will appear on the Council agenda of December 14, 2004. This meeting of the Council will commence at 7:00 p.m. and will be held in the Council Chambers located at 2134 Martin Luther King Jr. Way. At that time, the Council may do one of three things: 1) affirm the decision of the Zoning Adjustments Board and dismiss the appeal; 2) refer the matter back to the Zoning Adjustments Board; or 3) set the matter for public hearing at a future date.

Customarily, the staff report is quite complete and provides the Council with sufficient information when combined with the facts contained in the appeal to enable them to decide on one of the three actions open to them. If the Council needs further information, the Council will request a public hearing at which time the Council would take verbal comments from interested parties.

Communications submitted by December 6, 2004 will be included in the agenda packet. Communications received after that date will be considered supplemental and distributed at the Council meeting. If the communication includes maps or photos or any other material not reproducible on a copy machine, twenty copies should be provided to the City Clerk. Communications should be mailed or delivered directly to the City Clerk to ensure receipt by all Councilmembers.

6601 BBN: CITY CLERK

2180 Milvia Street, Berkeley, CA 94704 • Tel: (510) 981-6900 • TDD: (510) 981-6903 • Fax: (510) 981-6901
E-Mail: clerk@ci.berkeley.ca.us Website: <http://www.ci.berkeley.ca.us/clerk>

GAAGENDA\CC\APPEAL-PUBLIC HEARING\and Use\College Avenue-2961-2963\Appeal Receipt - Appellant Wayman.doc

RE: 2916-2963 College Avenue - Appeal ZAB Decision Use Permit #04-1000063

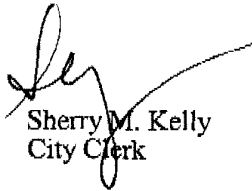
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If you have any additional questions regarding this matter, please do not hesitate to contact me at (510) 981-6910.

A copy of the staff report and a City Council agenda will be available in this office after 4:00 p.m. on December 9, 2004 or can be viewed on our website at:

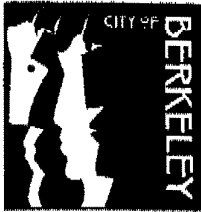
www.ci.berkeley.ca.us/citycouncil/agendaindex.htm

Sincerely,



Sherry M. Kelly
City Clerk

cc: Mark Rhoades, Zoning Officer
Stephen Ford, Staff Planner



City Clerk Department

12/6/04 4:48 P.M.

ATTN: CITY CLERK

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6201 ATTN: CITY CLERK

