



Office of the City Manager

ACTION CALENDAR

September 27, 2005

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Daniel Marks, Director, Planning and Development

Subject: 2750 Adeline Street - Appeal ZAB Decision Use Permit #03-70000064

RECOMMENDATION

Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Use Permit #03-70000064, to eliminate a live/work unit, add a fourth-floor and construct up to two-dwelling units, and dismissing the appeal.

CURRENT SITUATION AND ITS EFFECTS

On June 9, 2005, the ZAB approved an application to modify a prior use permit to eliminate a live/work unit, add a fourth-floor and construct up to two-dwelling units. Notice of the ZAB's decision was issued on June 21, 2005. On June 29, 2005, Natasha Shawver, of 211 Santa Clara Avenue #1, Oakland, appealed the ZAB decision to the City Council.

BACKGROUND

The existing three-story building was built shortly after 1906 as a warehouse; in 1972, 1979, and 1983, Use Permits were approved to allow the conversion of the building to live/work, crafts and retail uses. However, the related upgrades required to establish legal residential occupancy were never applied for or completed (i.e. no building permit was ever approved to establish residential living areas). Accordingly, starting in the early 1970's, the City issued notices of violation relating to illegal construction of residential uses within the building. Starting in December 1989, the City notified the prior owner that the building was potentially hazardous as an unreinforced masonry building. From 1991-2004, the City issued several notices relating to enforcement efforts pursuant to the City's Unreinforced Masonry Building Mitigation Ordinance.

On November 20, 2003, the City received a use permit application to modify prior use permits to alter the floor plan and permitted uses in the building. On August 9, 2004, the Landmarks Preservation Commission designated the building as a City of Berkeley Landmark. On February 15, 2005, the application was revised to request approval of the elimination of a live/work unit, the addition of a dwelling unit and the addition of a fourth-floor. As proposed, the project would replace the existing live/work and storage areas on the third floor with a dwelling unit; would decrease the crafts center areas to 4,168 square feet on the first and second floors; and would increase the first-floor retail floor area to 3,199 square feet.

On June 9, 2005, the ZAB opened a public hearing to review the project and take public testimony. Seven speakers spoke in support of the project and two in opposition. After some discussion, the ZAB voted 6-3-0-0 to approve the use permit.

In approving the project, the ZAB made all required findings for approval, as follows:

1. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the proposed expansion of the existing retail, living area, and the light-industrial "crafts center" uses into other portions of the existing building, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City, because:
 - A. The physical changes to the building's exterior (providing more windows on building's street frontages, providing an open space on the building's rear by removing a portion of the third floor, a new fourth floor and a fourth floor roof deck):
 - 1) Will not significantly increase the shadowing of adjoining residential properties since the fourth floor addition is located away from the edges of the building and at its highest will only rise six-feet above the existing parapet;
 - 2) Will not significant decrease the privacy of adjoining residential neighbors because the new windows face the public streets and the new third-floor and fourth-floor decks are adjacent to a parking lot and or the street.
 - B. The waiver of one required parking space will not be detrimental to the neighborhood because the property is about one-third of a mile from the Ashby BART Station.
 - C. The changes of the building's uses will decrease the building's parking demand as is suggested by the calculation of the building's parking requirement as currently allowed and as proposed.
2. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15301(e) of the CEQA Guidelines
3. Pursuant to Berkeley Municipal Code Section 23E.52.090.B, Findings, the Zoning Adjustments Board finds:
 - A. That the proposed project would be compatible with the purposes of the District in that:
 - 1) The project would continue to provide commercial floor area with the potential to provide community-serving retail space, that would provide opportunities for the establishment of businesses which are owned and operated by local residents and that would support pedestrian activity; and,
 - 2) That it would provide a residential unit.
 - B. That the proposed project compatible in design and character with he District and the adjacent residential neighborhoods; because the project would not significantly change the exterior of the building it will maintain an existing historic structure and landmark in the area.
 - C. That the proposed project would not result in the domination of one type of commercial/retail use in any one area of the District because it does not significantly change the scale and types of uses in the area.

4. Pursuant to Berkeley Municipal Code Section 23E.52.090.C, *Findings*, the Zoning Adjustments Board finds that the Use Permit for this mixed use project satisfies the general purpose of providing consistency with the purposes of the District as listed in Section 23E.52.020.

RATIONALE FOR RECOMMENDATION

The appellant raised the following points (staff's responses follow each point):

Issue 1: "The uprooted displacement of long term tenants who were proven to be providing a valuable resource to the community."

Response: It is Staff's understanding that prior to submittal of this application, the former tenants of the building were formally removed by the applicant pursuant to the Ellis Act. A component of the current application involved the conversion of the live/work unit to a dwelling unit. The elimination of a live/work unit in the C-SA District does not require a discretionary permit (i.e. an AUP or UP). Accordingly, the ZAB's discretionary review related to the change in the floor plan, addition of a dwelling unit and the creation of a fourth floor.

Issue 2: "The loss of affordable housing."

Response: The protections offered for rent-controlled dwellings, or the more general standards for demolition or elimination of dwellings units by the Zoning Ordinance (BMC Chapter 23C.08) only apply to lawfully established dwellings. As noted in the background section of this report, despite the presence of residential occupancies in the building, residential uses were never lawfully established. Thus, a permit subject to 23C.08 was not required. Accordingly, the ZAB's review was based on the conversion of the building as detailed in the project description.

Issue 3: "The inconsistency with city staff over legal requirements given to property owners and how those requirement were implemented and enforced."

Response: Starting in 1973, the City informed the various property owners that construction and/or conversion within the building had occurred without approval of a building permit. The present application would offer a remedy by proposing activities and construction that would conform to City codes and regulations.

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23B.32.060, the Council may take one of the following actions on appeals of ZAB decisions:

1. Affirm ZAB Decision: If the Council determines that the facts ascertainable from the record prepared by the Zoning Officer do not warrant further hearing, the Council shall

affirm the decision of the ZAB and dismiss the appeal, in which case the application is approved.

2. Set for Public Hearing: If the Council determines that the facts ascertainable from the record prepared by the Zoning Officer warrant further hearing, the Council shall set the matter for a public hearing.
3. Remand to ZAB: If the Council determines that the facts ascertainable from the record prepared by the Zoning Officer warrant reconsideration of the application by the ZAB, or if the applicant has submitted revisions to the application, the Council shall remand the matter to the ZAB to reconsider the application, in which case it shall specify whether or not the ZAB shall hold a new public hearing, and shall identify those issues which the ZAB is directed to reconsider. (Council must specify issues that the ZAB is directed to investigate and reconsider. A new decision may be appealed in the normal manner unless otherwise directed by Council. If 60 days pass, and the ZAB has made no subsequent decision, then the original decision and the original appeal of that decision shall be placed back on the Council agenda in the same manner as a new decision and appeal.)

Action Deadlines:

1. Date appeal first appeared on Council agenda: September 20, 2005.
2. If none of the three actions shown above is taken by October 20, 2005 (30 days from the date appeal first appeared on the agenda), the decision of the ZAB is deemed affirmed.
3. A public hearing must commence within 60 days of the date the vote to hold a hearing is taken.

CONTACT PERSON

Mark Rhoades, Land Use Planning Manager, (510) 981-7410

Attachments:

1: Resolution

Exhibit A: Conditions of Approval

Exhibit B: Project Plans, Stamped June 20, 2005

2: Notice of Appeal

3: Notice of Decision - Zoning Adjustments Board

4: Zoning Adjustments Board Reports, Attachments and Correspondence

RESOLUTION NO. ##,###-N.S.

AFFIRMING THE DECISION OF THE ZONING ADJUSTMENTS BOARD TO APPROVE USE PERMIT #03-7000064 FOR THE PROJECT LOCATED AT 2750 ADELIN STREET AND DISMISSING THE APPEAL

WHEREAS, on November 8, 1972, the City approved Use Permit #7055, to convert the existing warehouse building into a crafts center, crafts outlet store and living quarters; and

WHEREAS, on January 26, 1979, the City approved Use Permit #8423 to allow the establishment of a facility selling used building materials; and

WHEREAS, on May 28, 1985, the City approved Use Permit #A692 to allow the sale of used toys and collectables on the ground floor; and

WHEREAS, on November 20, 2003, a use permit application was filed to alter the floor plan and permitted uses within the building; and

WHEREAS, on August 9, 2004, the Landmarks Preservation Commission designated the building as a City of Berkeley Landmark; and

WHEREAS, on November 1, 2004, the Landmarks Preservation Commission approved an alteration permit to allow the exterior changes to the building; and

WHEREAS, on February 15, 2005, the application was revised to request approval of the elimination a live/work unit, the expansion of ground-floor retail area, the decrease of arts and crafts floor area, the addition of a dwelling unit(s) and the addition of a fourth-floor; and

WHEREAS, on June 9, 2005, the Zoning Adjustments Board held a public hearing and approved Use Permit #03-7000064, finding that

1. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the proposed expansion of the existing retail, living area, and the light-industrial “crafts center” uses into other portions of the existing building, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City, because:
 - A. The physical changes to the building’s exterior (providing more windows on building’s street frontages, providing an open space on the building’s rear by removing a portion of the third floor, a new fourth floor and a fourth floor roof deck):

- 1) Will not significantly increase the shadowing of adjoining residential properties since the fourth floor addition is located away from the edges of the building and at its highest will only rise six-feet above the existing parapet;
- 2) Will not significant decrease the privacy of adjoining residential neighbors because the new windows face the public streets and the new third-floor and fourth-floor decks are adjacent to a parking lot and or the street.
- B. The waiver of one required parking space will not be detrimental to the neighborhood because the property is about one-third of a mile from the Ashby BART Station.
- C. The changes of the building's uses will decrease the building's parking demand as is suggested by the calculation of the building's parking requirement as currently allowed and as proposed.
2. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15301(e) of the CEQA Guidelines
3. Pursuant to Berkeley Municipal Code Section 23E.52.090.B, Findings, the Zoning Adjustments Board finds:
 - A. That the proposed project would be compatible with the purposes of the District in that:
 - 1) The project would continue to provide commercial floor area with the potential to provide community-serving retail space, that would provide opportunities for the establishment of businesses which are owned and operated by local residents and that would support pedestrian activity; and,
 - 2) That it would provide a residential unit.
 - B. That the proposed project compatible in design and character with the District and the adjacent residential neighborhoods; because the project would not significantly change the exterior of the building it will maintain an existing historic structure and landmark in the area.
 - C. That the proposed project would not result in the domination of one type of commercial/retail use in any one area of the District because it does not significantly change the scale and types of uses in the area.
4. Pursuant to Berkeley Municipal Code Section 23E.52.090.C, *Findings*, the Zoning Adjustments Board finds that the Use Permit for this mixed use project satisfies the general purpose of providing consistency with the purposes of the District as listed in Section 23E.52.020.

WHEREAS, on June 29, 2005, Natasha Shawver, of 211 Santa Clara Avenue #1, Oakland, appealed the ZAB decision to the City Council; and

WHEREAS, on September 20, 2005, the Council has considered the record of the proceedings before the Zoning Adjustments Board; Staff reports and correspondence presented to the City Council, and, in the opinion of this Council, the facts stated in, or ascertainable from this information, warrant approving the subject Use Permit and dismissing the appeal; and

WHEREAS, attached hereto are the findings and conditions of approval applicable to this permit (Exhibit A) that are included by reference as though fully incorporated herein; and

WHEREAS, attached hereto is a reduced copy of the approved plan (dated June 20, 2005 and marked as Exhibit B) that is included by reference as though fully incorporated herein.

NOW THEREFORE, BE IT RESOLVED the Council of the City of Berkeley hereby affirms the decision of the ZAB to approve Use Permit #03-70000064 based on the findings, and subject to the conditions of approval contained in Exhibit A and B, and dismisses the appeal.

Exhibits

A: Conditions of Approval

B: Project Plans, Stamped June 20, 2005