

Cox, Sara

From: Robert Lauriston [robert@lauriston.com]
Sent: Monday, October 17, 2005 10:01 AM
To: Clerk; Berkeley Mayor's Office; Maio, Linda; Moore, Darryl; Max Anderson; Anderson, Maxwell; Spring, Dona; Dona Spring; Capitelli, Laurie; Laurie Capitelli; Olds, Betty; Worthington, Kriss; Wozniak, Gordon
Cc: news@berkeleydailyplanet.com
Subject: 2901 Otis appeal: parking in required Rear Yard (10/18/05 agendaitem 33)



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Attached is my memo in support of neighbors appeal of the 6/23/05 ZAB decision on 2901 Otis Street, UP 04-10000090.

To: City Council

From: Robert Lauriston (1918 Woolsey St., 649-6942)

Date: October 16, 2005

Re: Oct. 18 agenda item 33: appeal of ZAB decision re 2901 Otis Street

Recommendation

1. Remand this matter to the ZAB to reconsider parking in the required Rear Yard in light of the City Attorney's findings provided to the Planning Commission.
2. Have staff explain why those findings were not provided to the ZAB during its hearings on 2901 Otis, or included in the staff report for this appeal.
3. Have the City Attorney prepare a detailed, written explanation of any legal rationale for not applying those findings to 2901 Otis.
4. Discuss the underlying policy issue—should Berkeley encourage or discourage the type of infill development exemplified by 2901 Otis?—and provide guidance to planning staff, the ZAB, and the Planning Commission.

Error in the Notice of Decision (23D.12.080.B)

The ZAB voted to allow parking spaces within ten feet of the rear windows of the proposed building. The relevant section of the Zoning Ordinance is 23D.12.080.B, not 23D.12.080.A as stated in the Notice of Decision.

Parking in the Required Rear Yard (23D.12.080.A)

The City Attorney has found that locating parking in a required Rear Yard abutting a street is allowed by an AUP pursuant to section 23D.12.080.A. The required Rear Yard of 2901 Otis conforms to the City Attorney's definition of "abutting a street." If the required Rear Yard did not abut a street, locating parking spaces in that area would require a variance.¹

Staff's argument in the October 18 staff memo that a "different interpretation" was in effect during the hearings on 2901 Otis has no legal basis. The City Attorney never provided the ZAB with written findings regarding this application, nor did planning staff cite any such findings in the memo to the Planning Commission. No representative of the City Attorney's office ever appeared before the ZAB to support either that interpretation or staff's since-reversed assertion that parking in required Yards was allowed by right, or to answer ZAB members' questions regarding those issues.

¹ See 7/13/05 staff memo to Planning Commission, "Zoning Amendments for the Definition of a Yard and the Location of Residential Parking Spaces," page 1 and Attachment D. During its September 28 hearing on the matter, the Planning Commission discussed amending the Zoning Ordinance to allow parking in any required yard pursuant to an AUP. No member expressed support for staff's request to allow such parking by right.

Parking in 2901 Otis's required Rear Yard is not allowed except pursuant to an AUP, and granting such an AUP is discretionary. The ZAB never discussed the detriment from locating parking spaces in the required Rear Yard, which is a necessary prerequisite to such a discretionary action.

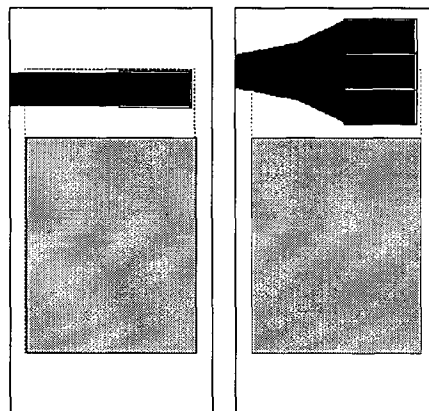
Vehicle-Related Paving in Required Yard Abutting a Street (23D.12.080.D)

Per the City Attorney's findings, the rear 15 feet of the 2901 Otis lot is a required Rear Yard abutting a street. Per Zoning Ordinance section 23D.12.080.D, no more than 50% of that area may be devoted to vehicle-related paving. In the current plans, roughly 85-90% of the required Rear Yard is driveway and parking spaces.

General Policy Issue

2901 Otis and 3045 Shattuck exemplify a very specific type of infill development, in which a small single-story, single-family house is converted into three market-rate units, with off-street parking requirements satisfied by converting a landscaped rear yard into a parking lot.

The diagram at right illustrates how allowing parking in the required Rear Yard affects typical 5000 square-foot corner lots in much of Berkeley, including R-2A, R-3, R-4, and C-SA districts. The white area outside the dotted line represents the required Yards; the white area within the dotted line is the non-required yard in which parking is allowed by right. The gray box represents a building with 45% lot coverage.



With parking allowed only in the non-required portion of the rear yard (left diagram), there is room for only one space. With parking allowed in the required Rear Yard as well (right diagram), there is room for three spaces, giving developers a strong incentive to convert single-family homes with ample rear yards to three-story, three-unit apartment buildings with the legal minimum of open space.

Apartments with parking lots instead of yards are unsuitable for families with children. Three-unit buildings are too small to fall under the Zoning Ordinance's inclusionary housing requirements. Is that the sort of infill development you want to promote?

It seems to me that parking in required Yards is fundamentally detrimental to the immediate neighbors, the neighborhood, and the city as a whole. Thus it should be allowed only when it allows some offsetting benefit to the immediate neighbors, such as preserving open space on another part of the lot, or allowing construction of affordable housing that would otherwise not be practical.

Parking should not be allowed in required Yards simply to let developers make more money than they would were it located inside the building or if the number of units were reduced.

