



Office of the City Manager

ACTION CALENDAR

October 25, 2005

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submit by: Daniel Marks, Director, Planning and Development

Subject: 1732-34 La Vereda Road - Appeal of Zoning Adjustments Board's decision

RECOMMENDATION

Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Administrative Use Permit #03-20000117 to construct a single-story, 977 square-foot accessory structure (3 car garage with two spaces in tandem to serve 1732 La Vereda Road) on a vacant lot at 1734 La Vereda Road and dismissing the appeal.

FISCAL IMPACTS OF RECOMMENDATION

No significant additional staff resources will be required if the above recommendation is adopted.

CURRENT SITUATION AND ITS EFFECTS

On 14 August 2003, the project applicant submitted an Administrative Use Permit (AUP) application to construct a 977 square foot accessory structure (3 car garage with two spaces in tandem to serve 1732 La Vereda Road) on a vacant lot at 1734 La Vereda Road.

On 21 April 2004, the Zoning Officer circulated a draft Mitigated Negative Declaration for 21 days and on 12 May 2005 the Zoning Officer adopted the Mitigated Negative Declaration. On 13 May 2004, the Zoning Officer approved the application for an AUP subject to conditions and based on the required Zoning Ordinance findings (see Attachment). On 1 June 2004, the City received appeals from three neighbors.

The ZAB considered these appeals on 8 July 2004, and decided to set the matter for a public hearing. Shortly before the ZAB public hearing on 23 September 2004, staff noted the existence of three Coast Live Oak trees proximate to the proposed accessory structure. The applicant revised the plans to ensure the trees would be protected and submitted supplemental engineering reports and an arborist report. On 23 September 2004, the ZAB continued the public hearing off-calendar so that Staff could assess the new materials and revise the Mitigated Negative Declaration.

The applicant elected to make further minor revisions to the plans, prepare detailed engineering plans, and prepare a supplemental arborist report. These materials were submitted on 31 March 2005. This seven-month delay was due to the applicant and owner's decision to first resolve an

appeal of their application at 1650 La Vereda Road, and the time needed to prepare these materials.

Staff subsequently revised the Mitigated Negative Declaration to address proposed work in the adjacent public right-of-way, potential impacts on existing trees, and additional information on construction-related effects. On 23 June 2005, the revised mitigated negative declaration was circulated for 21 days.

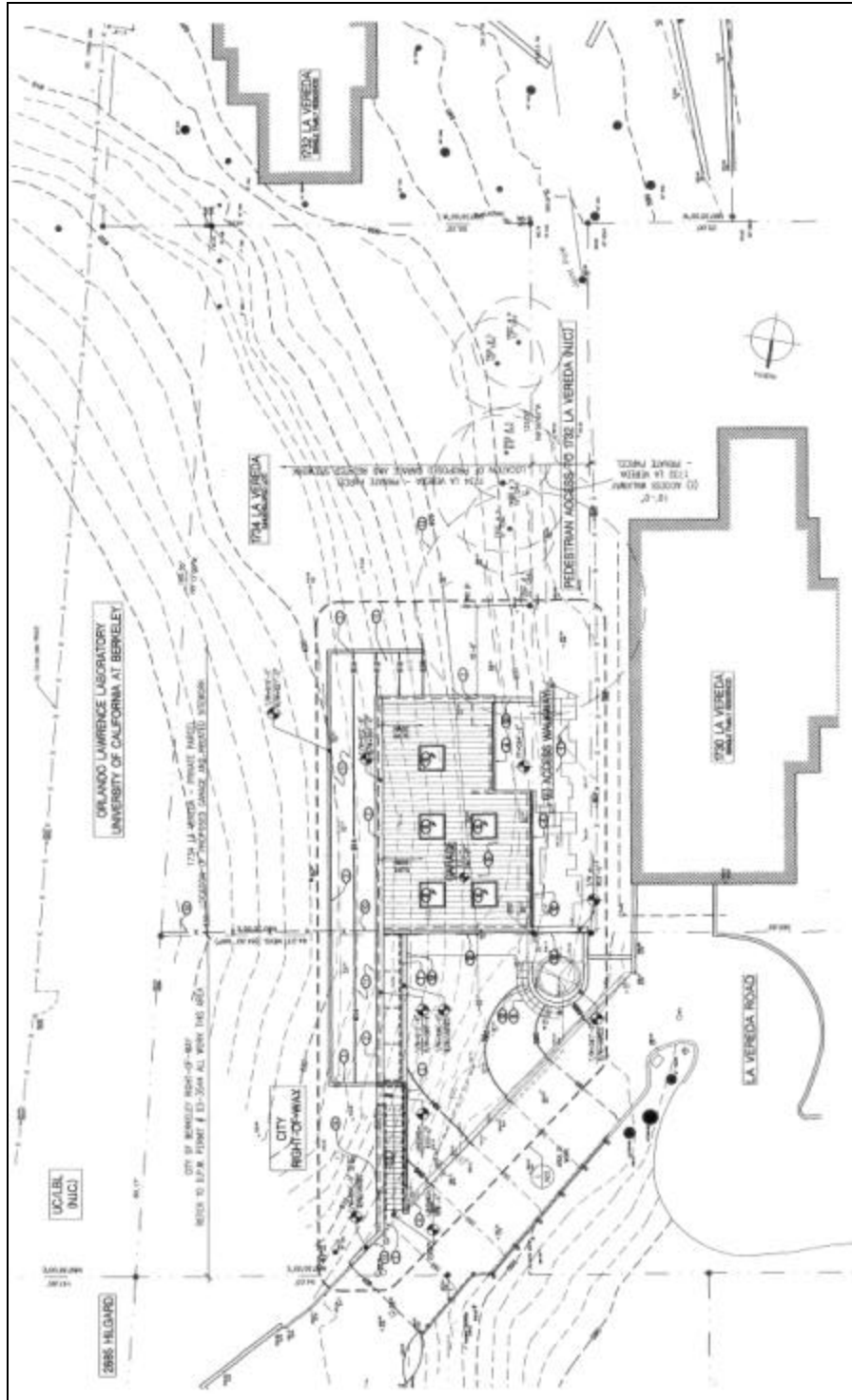
On 14 July 2005, the ZAB held a new public hearing on the appeal of the AUP, to consider the revised project and the revised Mitigated Negative Declaration. The ZAB unanimously adopted the revised Mitigated Negative Declaration, approved the project, and dismissed the appeals. The ZAB found that the project would be consistent with the Zoning Ordinance and the General Plan, and would not result in unreasonable detriment to neighboring properties.

On 2 August 2005, seven interested parties (“appellant”) appealed the ZAB’s decision.

Figure 1: Vicinity Map



Figure 2: Site Plan



BACKGROUND

Site and surrounding area conditions

The project site incorporates: a vacant 9,854 square foot lot at 1734 La Vereda Road; 1732 La Vereda Road, which is an adjacent developed lot that is held under the same ownership as 1734 La Vereda Road; and an adjacent area of the public right-of-way.

An existing walkway provides pedestrian access from the public right-of-way to the single-family dwelling unit at the rear of 1732 La Vereda Road. This lot lacks adequate street frontage to accommodate a driveway or parking structure without utilizing 1734 La Vereda Road.

The site is near the top end of a cul-de-sac in a single-family residential neighborhood in the Berkeley Hills. The land to the east of the project site is owned by the University of California. Single-family dwelling units exist on lots to the north (1731 and 1735 La Vereda Road) and west (1730 La Vereda Road) of the site.

Project description

The applicant proposes a 977 square foot accessory structure on the vacant lot at 1734 La Vereda Road and minor work at the adjacent street frontage of 1732 La Vereda Road. The accessory structure would be used for a garage and would accommodate a total of three cars, two of which would be parked in tandem, so that two vehicles would be independently accessible from the garage at any one time. The proposed accessory structure would be set into the existing hillside, and would require the excavation of approximately 710 cubic yards on 1732 and 1734 La Vereda Road.

The project also involves improvements to the public right-of-way that adjoins these lots (not part of the AUP application). The improvements are not encroachments since they would be dedicated to the City. The Public Works Department has jurisdiction over this aspect of the project. The City Engineer would need to approve design plans for a construction permit prior to the work being carried out. Public Works staff reviewed concept design plans, and final approval is pending resolution of this appeal.

The work in the public right-of-way would provide pedestrian and vehicular access to 1732 and 1734 La Vereda Road. The work in the public right-of-way would include excavation of approximately 330 cubic yards immediately to the north of the proposed garage and south of the existing roadway. The newly constructed area in the public right-of-way would provide access to the applicant's garage and provide improved pedestrian, vehicular, and emergency vehicle access to the cul-de-sac at the end of La Vereda Road.

A new staircase would be constructed in the public right-of-way to provide access from La Vereda Road to the existing upper path and gate to the Lawrence Berkeley Laboratory (LBL) property to the east of, and above the site. The new stair would replace existing dirt steps and the path at this location.

The revised Mitigated Negative Declaration addresses the entire project, that is, proposed work on private property, and work in the public right-of-way. The AUP is limited to proposed work on private property. As indicated above, the Public Works Department has jurisdiction over the portion of the project that is in the public right-of-way. Permits would need to be issued by Public Works before this work could be carried out.

RATIONALE FOR RECOMMENDATION

The appeal of the ZAB decision relied on sixteen issues, which are summarized below (see Attachment for the full-text appeal) and followed by a Staff response.

Issue 1:

The owners and their architect have been engaged in an on-going seven-year construction project that has had an enormous long-term impact on the neighborhood. By dividing up this project into a number of separate ones, they have avoided the possibility that the zoning authorities would have to take into account at each stage the full impact of other parts of the project.

Response 1:

This issue was raised in the appeal considered by the ZAB. The ZAB determined that no provisions of the Zoning Ordinance or General Plan would have required this project to be combined or carried out at the same time as the improvements that were previously made to the existing dwelling located at 1732 La Vereda Road. Standard time limits for carrying out the building work contemplated by this project will be regulated by any building permits that are issued. The ZAB noted that there are other circumstances, however, when related projects are considered together. For example, the work proposed in the public right-of-way was considered together with the work proposed on 1732-34 La Vereda Road for environmental review undertaken pursuant to the California Environmental Quality Act (CEQA) (*ZAB Staff Report* dated 14 July 2005, pp. 11-12).

Issue 2:

Over the course of six or seven years, construction traffic, construction materials and construction worker parking associated with the site has blocked access for residents of La Vereda Road.

Response 2:

The appellant raised this issue in the appeal to the ZAB. The ZAB considered the issue and it is addressed in detail in Section XV in the revised Mitigated Negative Declaration. The ZAB determined that there would be an increase in traffic during the construction phase of the project associated with the movement of workers, materials, and construction equipment and that vehicular access by the residents of 1730 and 1735 La Vereda Road would only be intermittently interrupted, mainly during excavation and construction of the proposed retaining walls.

The ZAB required that a traffic-construction management plan be implemented to ensure that transport/traffic effects, such as access to La Vereda Road, would be appropriately managed (see condition of approval #12 and *ZAB Staff Report* dated 14 July 2005, pp. 10-11). The management plan is required to address such matters as:

1. The delineation of material and equipment storage sites;
2. Scheduling of site operations which may block traffic;
3. Approximate truck delivery and hauling schedules;
4. Provisions for notifying neighbors prior to the start of each phase of excavation and construction;
5. Procedures and schedule for updating the elements of the plan as excavation and construction proceed;
6. Only one truck will be on site at a time being loaded, and only one truck will be on an adjoining street in a queue to work;
7. The waiting truck will move into loading position when the loaded truck departs;
8. During excavation and construction of the retaining walls the applicant will provide an on-site traffic controller at all times when trucks or construction vehicles may block access;
9. When notified, the on-site traffic controller will move an obstructing vehicle to provide access;
10. The applicant will provide the neighbors five days written notice in advance of operations that will interrupt their vehicular access;
11. The contractor will make arrangements to transport construction workers to and from the site to further mitigate potential transportation and traffic impacts; and
12. During non-working hours, there will be no trucks or equipment left in the road.

ZAB concluded that these measures would ensure minimal inconvenience to neighbors.

Issue 3:

The project is a private taking of public property. The plans call for a large, circular structure to be built in the right-of-way, exclusively to provide access to the owners' property. The public right-of-way will be paved with slate tiles and will appear to be a private driveway.

Response 3:

The project is not a private taking of public property. The City will own and control the improvements, even though the applicant will pay for them. The Public Works Department has jurisdiction over, and has reviewed the portion of the project that is in the public right-of-way (the relative position of property lines are shown on drawing no. A0.4).

The driveway is not proposed to be paved with slate tiles, it is proposed to be reinforced concrete (see note 31 on drawing number A2.0). The only pavers are the landscape pavers shown on private property on 1732-34 La Vereda Road (see note 8 and 9 on drawing number A2.0).

The applicant has proposed the circular retaining wall in the public right-of-way on the western side of the proposed driveway to transition from the steeply sloping road to the driveway and the accessory structure. The retained area will also connect the existing pedestrian walkway access to 1732 La Vereda Road to the driveway.

Issue 4:

The owners have justified the project on the grounds that it “provides improved pedestrian, vehicular and emergency access to the cul-de-sac at the end of La Vereda Road” (p. 2, Environmental Initial Study). The only pedestrians and vehicles that use this portion of the cul-de-sac are those with business at 1734 or 1735 La Vereda Road. There are no benefits, and many costs, for everybody else.

Response 4:

The ZAB determined that the project would improve pedestrian and vehicular access at the top of La Vereda Road (*ZAB Staff Report* dated 14 July 2005, p. 13).

Pedestrian access will be improved since a new staircase will be constructed in the public right-of-way to provide access from La Vereda Road to the existing upper path and gate to the Lawrence Berkeley Laboratory (LBL) property to the east of, and above the site. This new stair will replace the existing dirt steps and path at this location (*ZAB Staff Report* dated 14 July 2005, p. 7).

The newly constructed area in the public right-of-way will provide additional area for vehicle maneuvering for drivers that enter this portion of La Vereda Road. In addition, the proposed accessory structure would provide off-street parking for the residents of 1732 La Vereda Road and reduce the demand for parking in the public right-of-way.

Issue 5:

The 977 square foot project is out of proportion and character with the neighborhood. It significantly exceeds the average size of the garages in the neighborhood. It exceeds both the 12 foot maximum height allowance and the 24 foot maximum length allowance. An indicator of the extent to which the project exceeds City norms is that no fewer than five distinct administrative use permits are required as part of the application process.

Response 5:

The ZAB determined that the accessory structure would be compatible with the character of the area (*ZAB Staff Report* dated 14 July 2005, p. 14). Design features of the project, which assist in achieving this include:

1. Setting the accessory structure into the hillside and sloping the roof so that the complete structure will not be readily visible from the public street;

2. Making the accessory structure only two-cars wide at the street and creating the third off-street parking space in tandem at the rear of the structure; and
3. Partly covering the most visible walls of the structure, namely the northern façade (front) and western wall (side), in parallel plank cedar siding material, to improve the visual appearance of the structure from the public street.

The ZAB also considered the height and length of the accessory structure and found the project consistent with the purposes of the Hillside Overlay (H) District (*Findings and Conditions* dated 14 July 2005, pp. 3). The proposed height and length of the structure are justified for the following reasons:

1. Provisions of the Zoning Ordinance allow for modifications of maximum height and length requirements having regard to such factors as steep topography;
2. The accessory structure would be less than the allowable average building height, which takes into account of changes in topography;
3. The maximum height would be approximately 16.5 feet high measured at the north-eastern corner of the garage, where it is set into the hillside. A conforming solution would be not to set the structure into the hillside, creating a level building pad by cutting and filling. This alternative would substantially increase the amount of grading, and would detract from the appearance of the project from the public street and adjoining lots;
4. The length of the accessory structure has been increased to provide the third off-street parking space in tandem at the rear of the garage. Creating the parking space in tandem (as opposed to three-cars wide) would reduce the length and bulk of the structure fronting the street;

In addition, the ZAB determined that the proposed modification of site location, maximum length and height requirements would not result in:

1. The loss of any significant views from adjacent properties;
2. Any significant loss of privacy for adjacent neighbors;
3. Any significant additional shadowing effects on neighboring habitable structures; and
4. The loss of air circulation on the subject site or on adjacent sites (*Findings and Conditions* dated 14 July 2005, pp. 2-3).

Issue 6:

There does not appear to be any domestic justification for a garage of this size. The owners have already carved out two parking spots for their personal use from the public right-of-way. In fact, they park three of their cars there regularly. The only apparent justification for five parking spaces might be that the occupants are running part of their business from out of their home.

Response 6:

This issue was raised in the appeal considered by the ZAB (*ZAB Staff Report* dated 14 July 2005, p. 13). The owners of 1732-34 La Vereda Road are not entitled to exclusive use of the two on-street parking spaces since the spaces are in the public right-of-way. The current project is for a

two-car wide accessory structure with a third space in tandem to provide off-street parking for the residents of 1732 La Vereda Road.

The ZAB did not find the proposed parking to be excessive for the residential use of 1732 La Vereda Road. Although the minimum requirement for off-street parking would be exceeded, the ZAB determined that the project would be consistent with the Zoning Ordinance and the General Plan. The ZAB also found that the work in the right-of-way would improve access and maneuvering at the top of La Vereda Road, and reduce the demand for parking in the public right-of-way.

The appellants have not provided any evidence that a business is being operated at 1732 La Vereda Road, and the mere presence of a three-car garage does not lead to such a conclusion.

Issue 7:

The La Vereda Road cul-de-sac is a uniquely configured location, entailing significant and specialized hazards for a construction project, and as such deserves very special attention. It is located on an extremely steep hillside, very close to the Hayward fault line. This project calls for extensive excavations that threaten to permanently destabilize the hillside, endangering neighboring property.

Response 7:

This issue was raised in the appeal considered by the ZAB (*ZAB Staff Report* dated 14 July 2005, pp. 9-10). The applicant's engineers prepared geotechnical and soils engineering reports, and detailed civil engineering drawings. These materials exceeded standard submittal requirements for planning applications. City Staff sent the project materials to an independent geotechnical engineering firm (Cotton Shires and Associates) for peer review. The third-party peer review engineers found that the proposed excavation and grading work will not endanger abutting properties as long as the applicant adheres to the recommendations made in the applicant's engineering reports as well as those made in the associated peer review reports. Mitigation measure VI.2 requires that plans submitted for the project incorporate the recommendations of these geotechnical investigations (*Findings and Conditions* dated 14 July 2005, p. 6).

Issue 8:

It is probable that construction vehicles, particularly dump trucks, will fail to negotiate the curb immediately to the southwest of the apron in front of 1731 La Vereda Road. Because of the steepness of the terrain they may be immobilized. Because of this hazard, garbage trucks and airport shuttles do not attempt to negotiate this turn. A truck that fails to make this turn may damage property and block access to the cul-de-sac for an extended period of time.

Response 8:

This issue was raised at the public hearing at the ZAB meeting on 14 July 2005. The ZAB determined that the anticipated movement of construction vehicles on La Vereda Road would not have significant effects. Construction vehicles routinely navigate steep, winding streets in the Hillside area. Like other motorists, truck drivers have a duty of care and liability for damage to property. In this case, the applicant expects that smaller dump truck vehicles, with a capacity of five cubic yards, would be used to haul excavated material because of the constraints of La Vereda Road. These vehicles are likely to have more ground clearance than other vehicles such as cars and airport shuttles.

Issue 9:

The plans specify a wall running from west to east, starting at the retaining wall that supports the carport on 1730 La Vereda Road and ending at the circular structure referred to in item (3). If built, it would entirely block any access to the strip of Mr. Simon's property to the east of his retaining wall. The northern end of the strip would be the only natural location for Mr. Simon's garbage cans, once construction has been completed: these cans are currently located in a niche in the right-of-way, which will be removed during construction.

Response 9:

The owner of 1730 La Vereda Road (appellant) should note that the keeping of garbage containers in the public right-of-way, except for collection by the City, is not permitted pursuant to Section 12.32.030.E of the BMC.

The wall shown on drawing numbers A1.0 and A2.0 appears to be a minor drafting error. The applicant has indicated that this item on the drawings was intended to depict an existing wooden retaining wall in the public right-of-way associated with 1730 La Vereda Road. It is actually at the end of, and to the east of, a concrete retaining that extends into the public right-of-way from Mr. Simon's property. The applicant has indicated that the current scope of work does not involve any changes to the wooden retaining wall or involve the construction of any new retaining walls (except others clearly shown on the project plans).

Issue 10:

The risks discussed in detail in item (8) above have not been taken into account and should be addressed.

Response 10:

Refer to the response to Issue 8, above.

Issue 11:

Mitigation Measure XV.1 does not adequately protect the neighbors from inconvenience due to construction traffic and parking. Indeed, the protections provided to the neighbors are weaker

than in previous projects. Previously there had been a restriction that at most two construction-related vehicles could be parked in the cul-de-sac at any one time.

Response 11:

The ZAB considered potential transportation/traffic effects associated with this project, which would be different than those experienced with the construction of the addition to 1732 La Vereda Road. In this case the ZAB determined that transportation/traffic effects would not be significant. This would be ensured through the implementation of a detailed traffic-construction management plan (*ZAB Staff Report* dated 14 July 2005, pp. 10-11). The ZAB identified a number of measures that must be included in the management plan (refer to the list in the response to Issue 2, above). These measures far exceed (and are different than) those previously required to construct the addition to 1732 La Vereda Road. Current measures include: transporting workers to and from the site; providing an on-site traffic controller on-site; and restricting the movement of hauling trucks.

Issue 12:

There should be a provision in the traffic mitigation plan that stipulates in the most explicit possible language that there should not at any time be any construction-related vehicle and/or material blocking access to any part of the cul-de-sac, or to the carports at 1730 La Vereda Road and 1731 La Vereda Road.

Response 12:

The ZAB determined that traffic would increase during construction of the project, due to the movement of workers, materials, and construction equipment and that only vehicular access by the residents of 1730 and 1735 La Vereda Road may be intermittently interrupted. This would be mainly during excavation and construction of the proposed retaining walls.

The ZAB found that these traffic effects would not be significant and required that a traffic-construction management plan be implemented to ensure that transport/traffic effects would be managed (see condition of approval #12 and *ZAB Staff Report* dated 14 July 2005, pp. 10-11). The measures the ZAB required to be included in the traffic-construction management plan are described in the response to Issue 2, above.

Issue 13:

Paragraph 3D in the Notice of Decision claims that effects on the existing storm-drain system will be negligible. Based on the experience of the neighborhood in previous construction periods, this claim is clearly erroneous. The existing storm drain system is fragile and will inevitably be overloaded by a project of the proposed magnitude. There has been no demonstration of why previous experience will not be replicated.

Response 13:

This paragraph of the Notice of Decision relates to post-construction drainage and does not relate to erosion control during construction, which appears to be the appellant's concern (*Findings and Conditions* dated 14 July 2005, p. 2).

The ZAB imposed conditions of approval requiring the applicant to control erosion during construction (see conditions of approval nos 9, and 31 to 34, *Findings and Conditions* dated 14 July 2005, pp. 5-6, 9). Implementation of these conditions would adequately protect the storm drain system since they impose controls such as:

1. Prior to performing any work with the potential for soil disturbance during the normal rainy season, the applicant shall obtain approval for an erosion prevention plan. The plan must include appropriate measures to prevent erosion and landslides. The applicant is responsible for following erosion prevention measures;
2. All piles of loose materials must be adequately covered at night and during rainy weather;
3. All active construction areas must be watered at least twice daily, and all loose materials must be watered or covered; and
4. Public streets must be swept (preferably with water sweepers) of all visible soil material carried from the site.

Issue 14:

The unique characteristics of our cul-de-sac have not been fully taken into account. (As just one example, the issue raised in item (8) above—the transport of earth by 325 dump trucks—has not been realistically addressed.) We therefore request that the neighbors be provided with an opportunity-to-review the preliminary draft of the traffic plan, and participate in the process of finalizing this draft, as necessary.

Response 14:

The ZAB has taken into account specific characteristics of the site and the surrounding area, including issues such as traffic/transport, drainage, geotechnical conditions, existing vegetation, privacy, shadowing and views. The appellant may disagree with the outcomes; however, these characteristics have been considered and addressed at length in the response to appeal issues in ZAB Staff Reports, at public hearings, and in the revised Mitigated Negative Declaration.

The appellant's request to further participate in the process of preparing the traffic-construction management plan was considered by the ZAB at its meeting on 14 July 2005. The ZAB did not agree with the request since:

1. Traffic effects would not be significant and would be managed by implementing a traffic-construction management plan, including all the features included in condition of approval 12 (see response to Issue 2, above and *Findings and Conditions* dated 14 July 2005, pp. 6-7);

2. Standard practice is for the management plan to be approved by the City Traffic Engineer;
3. The condition of approval was modified to also require the Zoning Officer's approval of the plan, and to require the applicant to provide a copy of the plan to abutting and confronting neighbors on La Vereda Road; and
4. Traffic-construction management plans of this complexity are not normally required for projects of this type, and neighbor participation is not sought for management plans associated with more complex projects, including major projects in downtown Berkeley.

Issue 15:

The following example illustrates the way in which the owners have failed to comply with regulations imposed by the city. It concerns the Port-o-Let transporter, which, during a previous phase of the owners' construction project, would arrive at 6:11 a.m. every Thursday morning, for over a year, to service the port-a-potty at the site. The driver would park underneath the bedroom window of 1730 La Vereda Road, leave the engine running while servicing the potty, then beep loudly as he backed out of the cul-de-sac. Week after week Mr. Simon would call Creative Spaces' foreman, Bob Jones, to request that the Port-O-Let truck should be instructed to confine its visits to the admissible hours of operation; week after week, Mr. Jones would respond, "gee, I called them last week and they assured me they would come later in the day." The service schedule never changed until, finally, the Port-O-Let was removed, at 6 a.m. on a Sunday morning.

Response 15:

Port-a-potties associated with construction activity on the site should be serviced only during approved construction hours. The ZAB imposed condition of approval 11 limiting construction hours to "...between the hours of 8:00 AM and 6:00 PM on Monday through Friday and between 9:00 AM and Noon on Saturdays and that no construction-related activity of any type should occur on Sunday or on a national holiday" (*Findings and Conditions* dated 14 July 2005, p. 9).

Condition of approval 11 requires the contact information for the individual empowered to manage construction, including noise, to be supplied to City Staff and to be posted at the project site (*Findings and Conditions* dated 14 July 2005, p. 6). If the construction manager fails to resolve complaints, neighbors should contact City Staff. City Staff would investigate and respond to complaints on request.

Issue 16:

We have been advised that notwithstanding the steady stream of complaints issued by the neighbors during previous phases of the project, these have never once resulted in a red tag. We respectfully request, therefore, that we be provided with the names and contact information (phone number and emails) of the City officials who will be responsible for monitoring

compliance for this project. In particular, since there have been many curfew violations in the past, we respectfully request contact information in the event that violations occur outside of the City's regular hours of operation. We also respectfully request that the city set forth a list of potential violations which would result in a red-tag of the project. We believe that this list would facilitate the enforcement of the permit conditions imposed by the City.

Response 16:

Building projects may be red tagged at the discretion of City Staff if either: (1) work is commenced without a permit; or (2) work deviates from an approved building permit. The Building and Safety Division may also issue other types of notices for violations associated with building permits. Different remedies to these are available and used by City Staff to ensure conformance with Use Permit conditions.

As indicated in the response to Issue 15, condition of approval 11 requires the contact information for the individual empowered to manage construction to be supplied to City Staff and to be posted at the project site (*Findings and Conditions* dated 14 July 2005, p. 6). This individual should be the first point of contact in relation to conformance with Use Permit conditions during construction. If this is unsuccessful, City Staff can be contacted to investigate the complaint. The appellants should request up to date contact information for relevant City Staff at the time building work is commenced on the site.

Summary

The ZAB considered the issues that have been raised in this appeal, information in the administrative record, and held public hearings. After considering public hearing comments, project revisions, and a new Mitigated Negative Declaration, the ZAB unanimously denied the appeals and approved the project, finding that it would be consistent with the Zoning Ordinance and General Plan, and would not result in unreasonable detriment to neighboring properties.

ALTERNATIVE ACTIONS CONSIDERED

Section 23B.32.060 of the Berkeley Municipal Code (BMC) provides that the Council may take one of the following actions on the appeal of the ZAB decision:

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; and
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 investigate and reconsider.

A new ZAB decision may be appealed in the normal manner unless otherwise directed by Council. If 60 days pass, and the ZAB have 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

The appeal first appeared on the City Council's agenda of 25 October 2005. If none of the three actions shown above is taken by 24 November 2005 (30 days from the date the appeal first appeared on the agenda), the decision of the ZAB is deemed affirmed. If the City Council resolves to hold a public hearing, a public hearing must commence within 60 days of the date of the resolution.

CONTACT PERSON

Christopher Wolf, Associate Planner, Planning and Development, (510) 981-7410

Mark Rhoades, AICP, Land Use Planning Manager, Planning and Development, (510) 981-7411

Attachments:

1: Resolution

Exhibit A: Project Plans

Exhibit B: Findings and Conditions

2: Appeal

3: Administrative Record

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

AFFIRMING THE DECISION OF THE ZONING ADJUSTMENTS BOARD TO APPROVE
ADMINISTRATIVE USE PERMIT #03-20000117, 1732-1734 LA VEREDA AVENUE

WHEREAS, on 14 August 2003 an Administrative Use Permit application was submitted to construct a 977 square -foot accessory structure (3 car garage with two spaces in tandem to serve 1732 La Vereda Road) on a vacant lot at 1734 La Vereda Road; and

WHEREAS, on 21 April 2004 a mitigated negative declaration was prepared pursuant to Article 6 of the CEQA Guidelines and was circulated for 21 days; and

WHEREAS, on 12 May 2004 the Zoning Officer adopted the mitigated negative declaration; and

WHEREAS, on 13 May 2004 the Zoning Officer approved the requested Administrative Use Permit; and

WHEREAS, on 13 May 2004 a Notice of Decision of the Zoning Officer's action was issued and posted for 20 days in three locations within one block of the proposed project location; and

WHEREAS, on 1 June 2004 the Zoning Officer's decision was appealed to the Zoning Adjustments Board by Leo Simon of 1730 La Vereda Road, Michael Weiss & Lynn Knight of 1724 La Vereda Road, and Michael Parker of 1700 La Vereda Road; and

WHEREAS, on 8 July 2005 the Zoning Adjustments Board considered the appeals and set the matter for a public hearing; and

WHEREAS, on 23 September 2004 the Zoning Adjustments Board opened a public hearing and decided to continue the hearing off calendar; and

WHEREAS, a revised mitigated negative declaration was prepared pursuant to Article 6 of the CEQA Guidelines to address work that would be undertaken in the adjacent public right-of-way, potential impacts on existing trees and additional information on constructed related effects; and

WHEREAS, on 23 June 2005 the revised mitigated negative declaration was circulated for 21 days; and

WHEREAS, on 14 July 2005 the Zoning Adjustments Board: (1) adopted the proposed revised mitigated negative declaration; (2) denied the appeals; and (3) approved the proposed project pursuant to Section 23B.32.040 of the Berkeley Municipal Code and subject to Findings and Conditions; and

WHEREAS, on 20 July 2005 a Notice of Decision of the Zoning Adjustments Board's action was issued, with a right of appeal allowed for 14 days thereafter; and

WHEREAS, on 2 August 2005 Leo Simon of 1730 La Vereda Road, Michael Weiss & Lynn Knight of 1724 La Vereda Road, Bob Zentner and Sharon Zentner of 1731 La Vereda Road, and Jan de Vries and Jeannie de Vries of 1701 La Vereda Road appealed the Zoning Adjustments Board's decision to the City Council; and

WHEREAS, attached hereto is a reduced copy of the approved plans (received 31 March 2005 and marked as Exhibit A) that is included by reference as though fully incorporated herein; and

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

WHEREAS, the Council has considered the record of the proceedings before the Zoning Adjustments Board; the recent 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 affirming the decision of the Zoning Adjustments Board to approve the subject Administrative Use Permit, and dismissing the appeal.

NOW THEREFORE, BE IT RESOLVED the Council of the City of Berkeley hereby affirms the decision of the Zoning Adjustments Board to approve Administrative Use Permit #03-20000117 to construct a 977 square foot accessory structure (3 car garage with two spaces in tandem to serve 1732 La Vereda Road) on a vacant lot at 1734 La Vereda Road based on the findings, and subject to the conditions of approval contained in Exhibit B, and dismisses the appeal.

Exhibits

A: Project Plans

B: Findings and Conditions