



Office of the City Manager

INFORMATION CALENDAR

October 25, 2005

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by : Dan Marks, Director, Planning and Development Department

Subject: Landmarks Preservation Commission Notice of Decision: 91 Shattuck Square -
Approval of Structural Alteration Permit

INTRODUCTION

The attached Notice of Decision is submitted to the Mayor and City Council pursuant to Berkeley Municipal Code (BMC) Section 3.24.160, which states that “A copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting. (Ord. 4694-NS § 4.1, 1974.)”.

CURRENT SITUATION AND ITS EFFECTS

None.

BACKGROUND

BMC Section 3.24.300 allows the Council to review any action of the Landmarks Preservation Commission in granting or denying a structural alteration permit. In order for the Council to review any of the above decisions on their merits, the Council must appeal the Notice of Decision. To do so, a Councilmember must move this Information Item to Action and then move to “certify” the relevant decision. Such action must be taken within 15 days from the mailing of the Notice of Decision or by October 26, 2005. Such certification to the Council shall stay all proceedings in the same manner as the filing of a notice of appeal.

If the Council chooses to appeal the action of the Landmarks Preservation Commission, a public hearing will be set within 25 days pursuant to BMC Section 3.24.300. The Council must then rule on the application within 30 days from the date that the public hearing is opened or the decision of the Landmarks Preservation Commission is automatically deemed affirmed.

Unless the Council wishes to review the determination of the Landmarks Preservation Commission and make its own decision, the attached Notice of Decision is deemed received and filed.

POSSIBLE FUTURE ACTION

The Council could choose to appeal (certify) a decision by the LPC, setting a public hearing at a later date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

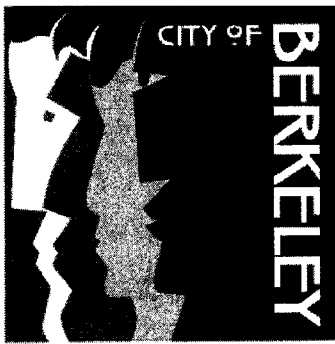
Additional staff time would be required to prepare necessary Council reports and resolutions.

CONTACT PERSON

Mark Rhoades, Land Use Planning Manager, Planning and Development Department, 981-7410

Attachments:

- 1: LPC NOD: 91 Shattuck Square – Approval of Structural Alteration Permit
(September 12, 2005)



L A N D M A R K S
P R E S E R V A T I O N
C O M M I S S I O N

N o t i c e o f D e c i s i o n

MEETING OF: September 12, 2005

Property Address: **91 Shattuck Square**
Also Known As: **Shattuck Square**
Action: **Structure Alteration Permit Approval**
Application Number: **05-4000027**
Applicant: **Tim Hansen**

WHEREAS, Shattuck Square, including 91 Shattuck Square, was designated a City of Berkeley Landmark on February 27, 1984; and

WHEREAS, on February 29, 1988, the LPC approved a street-level façade renovation plan for the building including construction of the arcade; and

WHEREAS, on September 12, 2005, the applicant submitted a request for a structural alteration permit for the reconfiguration of doors and windows on the building; and,

WHEREAS, on September 12, 2005, at their regular meeting, the LPC took testimony, reviewed the plans and, after discussion, moved to approve the plans as submitted with encouragement to not include the proposed guardrails if possible.

NOW, THEREFORE, BE IT RESOLVED that Structural Alteration Permit (#05-4000027), is hereby approved.

VOTE: 7-0-0-1-1
Aye: Samuels, Dacey, Emmington, Gartner, Johnson, Korte, Olson, Winkel, and Packard.
Nay: None
Abstain: None
Absent: Korte
Recused: Olson

ATTEST:

A handwritten signature in black ink, appearing to read 'Gisèle M. Sorensen', written over a horizontal line.

Gisèle M. Sorensen

Secretary, Landmarks Preservation Commission

DATE NOTICE MAILED: October 11, 2005
THE APPEAL PERIOD EXPIRES (15 DAYS) AT 5 PM: October 26, 2005

Appeal must be filed with City Clerk by this date.

TO APPEAL THIS MATTER:

Pursuant to Section 3.24.300 of the Landmarks Preservation Ordinance: "An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Art Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter". Any appeal submitted by the public must be in writing, specifying the reasons for the appeal. The appeal fee is \$64.00. The City Clerk's Department is located on the first floor at 2180 Milvia Street, Berkeley, CA 94704; Phone (510) 981-6900.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to a decision by the Landmarks Preservation Commission to approve or deny a Structural Alteration Permit, the following requirements and restrictions apply:

1. You must appeal to the City Council within 15 days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed. It is your obligation to inquire with the Current Planning Division (981-7410) to determine when a Notice of Decision is mailed.
2. No lawsuit challenging a City decision to deny (Code Civ. Proc. Section 1094.6(b) or approve (Gov. Code Section 65009(c)(5)) a Structural Alteration Permit may be filed more than 90 days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that 90-day period will be barred.
3. In any lawsuit that may be filed against a City Council decision to approve or deny a Structural Alteration Permit, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.
4. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
 - a. That this belief is a basis of your appeal.
 - b. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - c. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

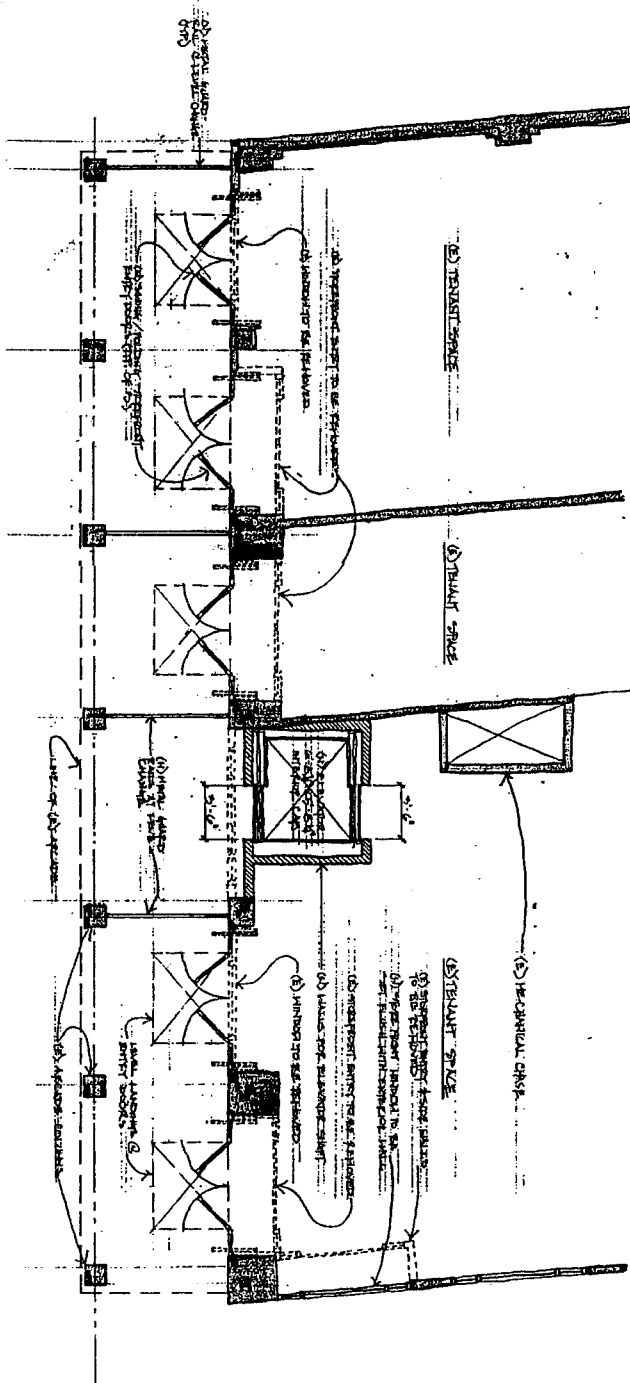
Attachment:

Plans dated 8/17/05

cc:

City Clerk's Office
2180 Milvia Street
Berkeley, CA 94704

Paul Goldstone
c/o MRE Commercial
6001 Shellmound St., Ste. 825
Emeryville, CA 94608



GROUND FLOOR PLAN



Scale: 1/8 inch equals 1 foot

91 SHATTUCK SQUARE
BERKELEY, CALIFORNIA

Aug. 17, 2005