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1543 Josephine Street  
Berkeley CA 94703

City Clerk  
City of Berkeley  
2180 Milvia Street  
Berkeley CA 94704

August 16, 2005

RE: Appeal of Zoning Adjustment Board Decision regarding Use Permit # 04-10000079  
(1532 Martin Luther King Jr. Way)

Dear Ms. Kelly,

We are writing to appeal the Zoning Adjustment Board's decision to grant a Use Permit in the above named project. We respectfully request the Berkeley City Council to hold a public hearing regarding this project, as authorized by Berkeley Municipal Code §23B.32.060.

This Use Permit allows demolition of a classic bungalow and construction of a two-story duplex and rear yard dwelling unit on one average-sized lot. This Use Permit is detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing in the neighborhood, and is detrimental and injurious to property and improvements of adjacent properties. Therefore, we believe that the Use Permit should not have been granted.

***This proposed project is detrimental to residents of the neighborhood and injurious to adjacent properties for the following reasons:***

**Parking**

According to the Berkeley Zoning Code Section 23.D.12.080 regarding the site location and screening of Parking Spaces, offsite parking must be screened from view. In order to be granted a Use Permit, developers had to provide 1 to 1 parking and meet the open space requirements. Front yard parking spaces must be screened from view, therefore the developers tried to squeeze 3 parking spaces into a carport in the front yard. The Zoning Adjustment Board was concerned about the parking plan from the beginning and at the end barely approved it and only with the unenforceable requirement that the gate be shut at all times. The screening and the overall parking plan is inadequate and sets a precedent for allowing parking in front yards in future developments on MLK.

The negative impact of the bare minimum parking requirements would be mitigated if the scope of the project were reduced.

**Loss of Privacy – Rear Yard Setback**

In the Use Permit Findings and Conditions, Section 1B, the ZAB states that the exception to the rear yard setback will not cause detriment because the cottage is single story and will not cause significant shadowing impacts.

Yet, if the variance to the 10-foot rear-yard setback is allowed, the three western neighbors will now have an occupied dwelling perched over their back yards. The setback requirements are in place to help minimize the impact on adjacent neighbors, so this variance significantly affects the privacy of the western adjoining properties, and injures the property value of these properties.

Use Permit Findings and Conditions 1.E. states that the project would not significantly affect the privacy of adjoining properties, because it does not offer direct view into the interior living area of an adjoining home and because a project overlooking a neighboring lot's outdoor space is not considered a detriment.

The loss of privacy to the existing low-density (single family homes) adjacent properties is significant. The project proposes to place three dwelling units in the space where there is now just one single-family home. The imposition of three units creates a disproportionate and inappropriate number of people into the area, which will affect the privacy of neighbors.

From our examination of the drawings, it appears that the project may allow viewing into the interior living areas of the adjacent western homes. The proximity of the rear cottage means a family will very nearly be living in the west neighbor's back yard.

### **Shadowing**

Use Permit Findings and Conditions 1.C. states that the principal impact of the two-story building is shadowing and that shadowing is not significant. This is not true; the shadowing impact is significant and adjacent neighbors have written several letters and testified before the ZAB to that effect.

Berkeley Zoning Code §23D.32.020 A. states that the purposes of Restricted Multiple-Family Residential Districts are to encourage the development of medium density residential areas characterized by small multiple-family apartment structures and to protect adjacent properties from unreasonable obstruction of light and air.

The shadow impact on the single-family home to the north is significant. This family has occupied the home for 46 years. The height and proximity of the proposed project will result in an almost total loss of sunlight to the entire home and backyard of this neighbor for more than one quarter of a year

The shadow impact also affects the light and air of three other adjacent properties to the south and west, by impinging on light and air currently enjoyed by these properties. Because the current dwelling unit at 1532 Martin Luther King is a single story bungalow,

the four adjacent properties view unlimited light and air over that space. The proposed project would replace this light and air with a large obstructive structure.

The adjacent building to the north has the 2<sup>nd</sup> level set back considerably from Martin Luther King. The proposed building, on the other hand, is 2 stories tall at the front of the structure. This detail, not clearly obvious from the plans and drawings, contributes to the shading issues of the north neighbor and is out of character with the other buildings.

### **Loss of View**

Use Permit Findings and Conditions 1. D. states that the project could not affect the views of nearby properties because they are located in the Berkeley Flats and do not have significant long-distance views.

In fact, the two western adjoining properties have beautiful long-distance views of the Berkeley hills. The North and south adjacent properties have views of trees, gardens, and open space.

### **Drainage Problems**

The Land Use Planning staff did not address this issue, and the project developers assured ZAB that it was not an issue.

The project is located on higher ground that slopes to the west. The western neighbors of 1532 MLK are situated in the low spot of the block. The amount of water usage and drainage created by three-unit occupancy will cause an increased amount of water to pool under the property of the western neighbors.

Despite the engineer's approval of drainage plans, western neighbors are concerned that tripling the density on the lot will cause unforeseen drainage issues and possible damage to their properties.

### **Demolition**

Berkeley Municipal Ordinance allows demolition of buildings that are hazardous, unusable or infeasible to repair, and where the housing units will be replaced. Berkeley Municipal Code §23C.08.020.

Here the housing unit is to be demolished, but the building is not hazardous, unusable or infeasible to repair. In fact, tenants currently occupy it. At least one ZAB member expressed concern over the unnecessary demolition of the bungalow.

### ***Purposes of Restricted Multiple-Family Residential (R2A) Districts***

The findings of the Land Use Planning Division Staff state that this proposed project meets the requirements for lot size, square footage, parking required by the Berkeley Zoning Ordinance.

However, the Berkeley Zoning Code §23D.32.020 states that the development of medium density residential areas have a maximum of open space, and protect adjacent properties from unreasonable obstruction of light and air.

### ***Conclusion***

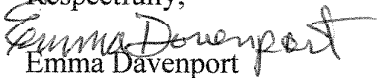
This Use Permit allows three dwelling units where there now is one. The large scope of this project creates many issues for the adjacent homes and nearby neighbors, many of which could be mitigated if the project is reduced in scope. Shadowing, loss of privacy, hill views, parking, and drainage issues will be diminished if the units are smaller in size than currently proposed, or if only two units are permitted.

Four of the nine Zoning Adjustment Board members voted against the project and one of the Board members who voted for it had not sat in on the previous two public hearings and was clearly conflicted whether to vote for this project or not. We had hoped to participate in mediation with the developers for a solution that would work better for everyone. The developers did not agree to mediation before the Zoning Board made its decision, nor would they consider reducing the scope of the project when ZAB members raised that suggestion. In response to our offer to mediate, the developer's refusal, the Zoning Adjustment Board suggested that it wasn't fair to ask the developers to mediate at this late stage. Unfortunately the neighbors were at a disadvantage in this process and were unaware that mediation was available until just before the third hearing.

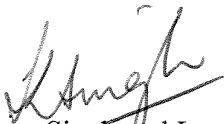

At no time during the process, both with ZAB or when the developers first met with the neighbors, did the developers ever truly consider reducing the scope of the project to minimize the impact and detriment to the neighborhood. ZAB Commissioner Bob Allen stated at the first hearing the project "tries to squeeze too much onto the property." Neighbors raised this criticism at their initial meeting with the developer, and at subsequent meetings. Nevertheless the developers felt they didn't need to make any modifications beyond cosmetic ones, and never considered lower impact options.

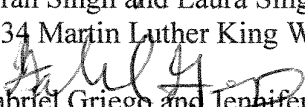

The neighbors alone are being negatively impacted by this project and need the City Council's help to balance the scale. The objective of this process is to minimize detriment and impact on neighborhoods while allowing healthy development that will benefit all of Berkeley's citizens. Too much house on not enough property causes all of the aforementioned issues; therefore if the City Council grants a public hearing and rules differently on the use permit or remands it to ZAB, with direction to explore options that are smaller in scope, then a balance of benefit and detriment may be reached for all interested parties.

Respectfully,

  
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