




City Manager's Office

ACTION CALENDAR
November 29, 2005

To: Honorable Mayor and
Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning and Development

Subject: 2901 Otis Street – Appeal of Zoning Adjustments Board (ZAB) approval of Use Permit

RECOMMENDATION

Adopt a Resolution approving Use Permit No. 04-10000090 to construct a three-story triplex at 2901 Otis Street, dismissing the appeal, and approving an additional use permit to remove more than fifty percent of the roof and exterior walls of the existing dwelling.

FISCAL IMPACTS OF RECOMMENDATION

None

CURRENT SITUATION AND ITS EFFECTS

Pursuant to Section 23B.32.080.F of the Zoning Ordinance, the Council must take action within 30 days of opening the public hearing or the decision of the ZAB is deemed affirmed.

BACKGROUND

At its November 15, 2005 meeting, the Council held a public hearing on this item, and after careful consideration, directed staff to prepare a resolution dismissing the appeal and approving the project at 2901 Otis Street.

RATIONALE FOR RECOMMENDATION

Based on the record, including the information received at the Council's November 15, 2005 public hearing, the Council determined that the project satisfied the required findings in the Zoning Ordinance.

CONTACT PERSON

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

Attachment:
1: Resolution

RESOLUTION NO. N.S.

APPROVING USE PERMIT #04-10000090 TO CONSTRUCT A THREE-STORY TRIPLEX AT 2901 OTIS STREET, DISMISSING THE APPEAL, AND APPROVING AN ADDITIONAL USE PERMIT TO REMOVE MORE THAN FIFTY PERCENT OF THE ROOF AND EXTERIOR WALLS OF THE EXISTING DWELLING

WHEREAS on July 27, 2004, Xin Jin, Danny Tran, and Eric Geleynse filed for a Use Permit to enlarge an existing single-family dwelling to create two additional dwellings, and to remove more than fifty percent of the roof and exterior walls of the existing dwelling, thus constituting a “demolition” as defined in Berkeley Municipal Code (BMC) Section 23F.04.010; and

WHEREAS on August 26, 2004, the application was deemed complete; and

WHEREAS on March 31, 2005, 320 public hearing notices were posted in the project vicinity and mailed to residents and owners of property within 300 feet of the project; and

WHEREAS on April 14, 2005, revised public hearing notices were posted and mailed to give notice of an additional permit not listed on the first notice; and

WHEREAS on April 28, 2005, the Zoning Adjustments Board (ZAB) opened a public hearing to consider the project, continued the hearing to June 9, and on June 9 continued the hearing again to June 23; and

WHEREAS on June 23, 2005, the applicants submitted revised plans that they claimed would retain at least 50 percent of the existing exterior walls, thereby removing the requirement for a Use Permit for “demolition” under BMC Section 23C.08.010. However, because the plans were submitted at the hearing, staff did not have sufficient time to determine whether they had been adequately revised to avoid this requirement; and

WHEREAS on June 23, 2005, the Zoning Adjustments Board, after closing the public hearing, voted 8-1 to approve the project with the understanding that it did not involve a “demolition” under BMC Section 23C.08.010; and

WHEREAS on July 5, 2005, notice of the Zoning Adjustments Board’s decision, which erroneously included a Use Permit for “demolition” under BMC Section 23C.08.010 and the original project plans rather than the revised plans approved by the ZAB on June 23, 2005, was issued; and

WHEREAS after issuance of the notice of decision, staff reviewed the plans approved by the ZAB, and determined that they involved removal of more than 50 percent of the exterior walls, and therefore the project remained a “demolition” as defined in BMC Section 23F.04.010 and continued to require a Use Permit under BMC Section 23C.08.010; and

WHEREAS on July 19, 2005, Shari Ser and David Ramin of 1930 Russell Street, and D. Mayeron (address unknown) appealed the ZAB’s decision to the City Council; and

WHEREAS on September 19, 2005, a revised notice of the ZAB's decision was issued, with the Use Permit for "demolition" under BMC Section 23C.08.010 removed, and the correct plans attached; and

WHEREAS on October 18, 2005, the City Council reviewed the record and set the matter for a public hearing because of the conflicting decisions regarding the project by the ZAB and the Landmarks Preservation Commission (LPC), and because of the need for consideration of an additional Use Permit under Section 23C.08.010 to remove more than fifty percent of the roof and exterior walls; and

WHEREAS on November 15, 2005, the City Council held a duly noticed public hearing to consider the LPC's decision to designate the existing dwelling as a Structure of Merit, considered the facts in the public record and public comment at the hearing, and overturned the LPC's decision, and, therefore, the dwelling is not a historical resource for the purposes of the California Environmental Quality Act; and

WHEREAS, on November 15, 2005, the City Council opened a duly noticed public hearing to consider the proposed Use Permit, considered the testimony of the public, the appellants and the applicants, and closed the public hearing; and

WHEREAS the project is Categorical Exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15303(b) and 15332 of the CEQA Guidelines; and

WHEREAS attached hereto are the findings and conditions of approval applicable to this permit ("Attachment 1") that are included by reference as though fully incorporated herein; and

WHEREAS attached hereto is a reduced copy of the approved plan (received July 27, 2004 and June 23, 2005 and marked as "Attachment 2") that is included by reference as though fully incorporated herein; and

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley hereby makes the findings, and adopts the conditions, in Exhibit A, approves Use Permit #04-10000090 to remove more than fifty percent of the roof and exterior walls of the existing dwelling and construct a three-story triplex at 2901 Otis Street, subject to the plans in Exhibit B, and dismisses the appeal.

**FINDINGS AND
CONDITIONS**

NOVEMBER 15, 2005

2901 Otis Street**Use Permit #04-1000090**

CEQA FINDING

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Sections 15303(b) and 15332 of the CEQA Guidelines (“New Construction or Conversion of Small Structures,” “In-Fill Development Projects”). The project will not have a substantial adverse impact on a historic resource, because the City Council has determined the existing dwelling to be ineligible for inclusion in the local register of historical resources.

GENERAL NON-DETRIMENT FINDING

2. Pursuant to Berkeley Municipal Code Section 23B.32.040, the City Council finds that the proposed alteration and expansion of an existing dwelling to add two dwelling units, 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, for the following reasons:
 - A. The building is not a designated City Landmark or Structure of Merit, nor is it listed in the State Historic Resources Inventory (SHRI).
 - B. Although the project substantially alters the existing dwelling, it preserves the entire north portion of the dwelling’s exterior, including both bay windows, and the new construction matches the existing wood siding and composition shingles.
 - C. The project is well within the maximum development standards for this zoning district (R-4) and is generally in scale with other buildings in the neighborhood, which include a range of building heights and sizes. The project will be harmonious with the smaller scale and height of its immediate neighbors due to the generous proposed setbacks and sloping roof, which will obscure much of the bulk of the third story. In addition, the use of traditional design elements and building materials such as wood siding will help reinforce the predominantly traditional design qualities of the neighborhood.
 - D. The project will not have any detrimental shadow impacts because most of its shadows will be cast on Russell Street to the north, rather than an immediately adjacent neighbor.

- E. The project is consistent with applicable General Plan and South Berkeley Area Plan policies, because it is an appropriate in-fill project that intensifies the use of a residential property in close proximity to transit and commercial activities, while respecting and maintaining the historic, lower-density character of the existing dwelling and the surrounding neighborhood.
- F. The project is considerably less intense than the maximum standards of the R-4 District would allow, and therefore the project appropriately balances the City's goals for transit-oriented housing production and neighborhood preservation.

OTHER REQUIRED FINDINGS

- 3. Pursuant to Berkeley Municipal Code Section 23C.08.010, the City Council finds that the proposed removal of the entire roof and more than fifty percent of the enclosing exterior walls of an existing dwelling, thereby constituting a "demolition" as defined in BMC Section 23F.04.010, will not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City, for the following reasons:
 - A. The project maintains and enlarges the existing dwelling, creating two additional dwellings, and therefore will help alleviate rather than exacerbate the neighborhood's housing needs.
 - B. The building is not a designated City Landmark or Structure of Merit, nor is it listed in the State Historic Resources Inventory (SHRI).
 - C. Although the project substantially alters the existing dwelling, it preserves the entire north portion of the dwelling's exterior, including both bay windows, and the new construction matches the existing wood siding and composition shingles.

STANDARD CONDITIONS

1. Conditions Shall be Printed on Plans

The following conditions shall be printed on the first sheet, or on the next sheet thereafter as may be practical, of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'City of Berkeley Conditions of Approval'.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

- A. This Permit authorizes only those uses and activities actually proposed in the application and exclude other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use for which this Permit is approved is permitted unless the Permit is modified by the Zoning Adjustments Board, in conformance with Section 23B.56.020.A.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project. The Zoning Officer may also approve a maximum two-foot variation to Board approved plans, provided, that such variation does not increase a structure's height, reduce the minimum distance to any property line, and/or does not conflict with any special objective sought by the Board. In the case of modifications to Use Permits for construction of, or additions of changes to single family homes which required Board review, the Zoning Officer shall follow Board policy adopted March 13, 1997, as follows:

- A. Upon applications for modifications to a home where a Use Permit has been granted, Staff shall review the Use Permit to determine if any explicit conditions were placed on the Use Permit that would be affected by the proposed modification.
- B. If, prior to acting on a Building Permit, Staff becomes aware of controversy over an earlier application, Staff may choose to conduct a more detailed review of the record to determine if conditions were implied by the Board or offered by the applicant (but not included in the Use Permit conditions) that would be affected by the proposed modification (this does not imply that Staff will review the whole Use Permit record for all applications).
- C. If there are explicit conditions (#A) or implied conditions (#B) affected by the proposed modification, the project shall be brought back to the Board as a Use Permit Modification.
- D. If there are no explicit conditions that would be affected by the proposed modification, and if Staff is not otherwise aware of implied conditions, and the project would otherwise meet the requirements of the Zoning Ordinance, Staff will approve the Building Permit without Board or public review.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as expressly specified herein, the site plan, floor plans, building elevations and any additional information or representations submitted by the applicant during the Staff review and

public hearing process leading to the approval of this Permit, whether oral or written, which indicated the proposed structure or manner of operation are deemed conditions of approval.

6. Subject to all City and Other Regulations (Section 23B.56.040)

The approved use and/or construction are subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8 below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has (1) applied for a building permit or (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

ADDITIONAL CONDITIONS

Pursuant to BMC Section 23B.32.040.D, the City Council attaches the following conditions to this Permit:

Prior to Issuance of Any Building Permit

- 9. Plans submitted for building permit shall show a two-foot-wide landscaped strip and solid, view-obscuring fence at least six feet in height along the rear (east) property line, in order to comply with BMC Section 23D.12.080.C.3.
- 10. Prior to issuance of a building permit, the applicant shall file an "Address Assignment Request Application" with the Permit Service Center for the proposed dwelling units. The addresses shall be assigned and entered into the City's database prior to final inspection or issuance of an occupancy permit.

11. Prior to issuance of a building permit, the applicant shall provide the project planner with the name and telephone number of the individual empowered to manage construction noise from the project. The individual's name, telephone number, and responsibility for noise management shall be posted at the project site for the duration of construction in a location easily visible to the public. The individual shall record all noise complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on request.

Noise Management Individual _____
Name Phone #

12. Prior to issuance of a building permit, the applicant shall complete a "Construction and Demolition Recycling Plan," submit the plan to the Solid Waste Management Division for approval, and attach the approved plan to the construction drawings. The plan is available at www.ci.berkeley.ca.us/onlineservice/forms.htm#planning (look under "Land Use Planning") or by contacting Land Use Planning at 510-981-7410. After completing the form contact Solid Waste Management at 981-6368 for approval.

City Monitor: Solid Waste Mgmt. Staff _____
Signature Date

13. Prior to issuance of a building permit, the applicant shall secure the City Traffic Engineer's approval of a construction traffic management plan. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, 3rd floor, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The City Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety, or convenience of the surrounding neighborhood.

City Monitor: Traffic Engineer _____
Signature Date

During Construction:

14. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday.

15. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

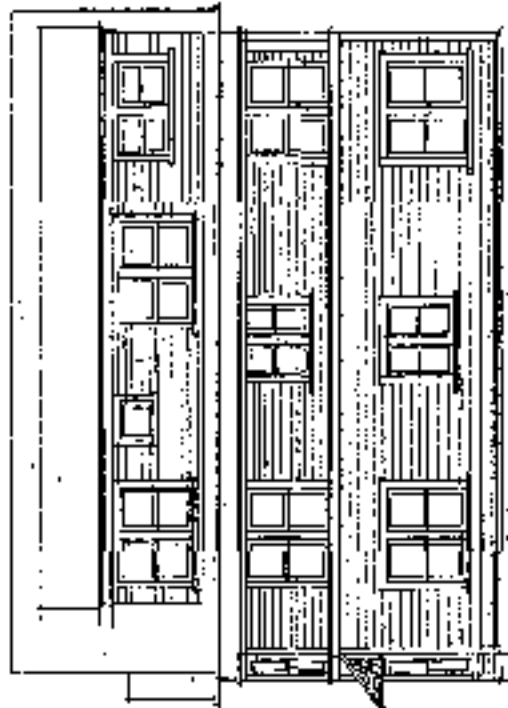
16. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.

Prior to Issuance of Occupancy Permit or Final Inspection:

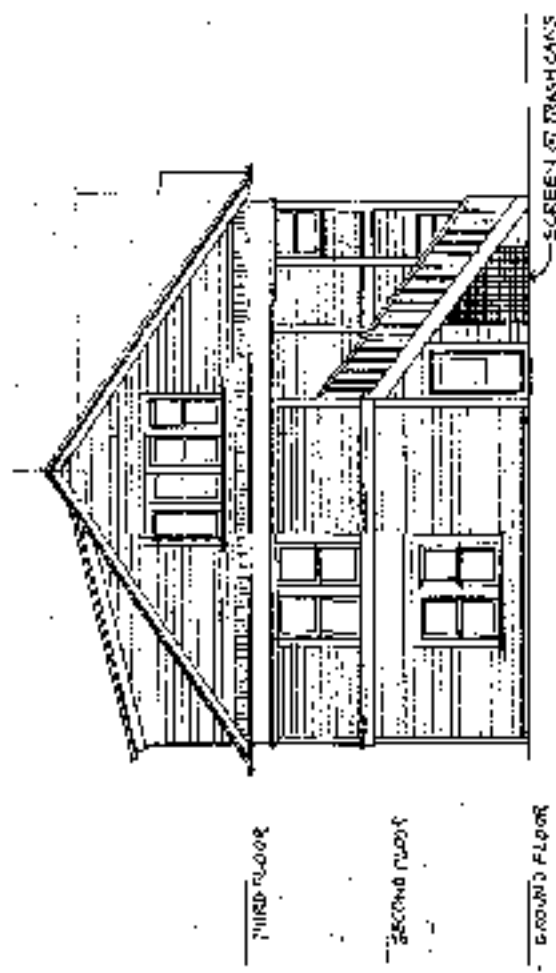
17. The project shall conform to the plans and statements in the Use Permit.
18. Except as modified in these conditions, all landscape, site and architectural improvements shall be completed per the attached approved drawings received by staff on July 27, 2004 and June 23, 2005. In the case of any conflict, the drawings submitted on the latter date shall supercede the former.

At All Times:

19. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
20. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
21. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.



SOUTH



EAST

THIRD FLOOR
SECOND FLOOR
GROUND FLOOR

ELEVATIONS
SCALE 1/8" = 1'-0"

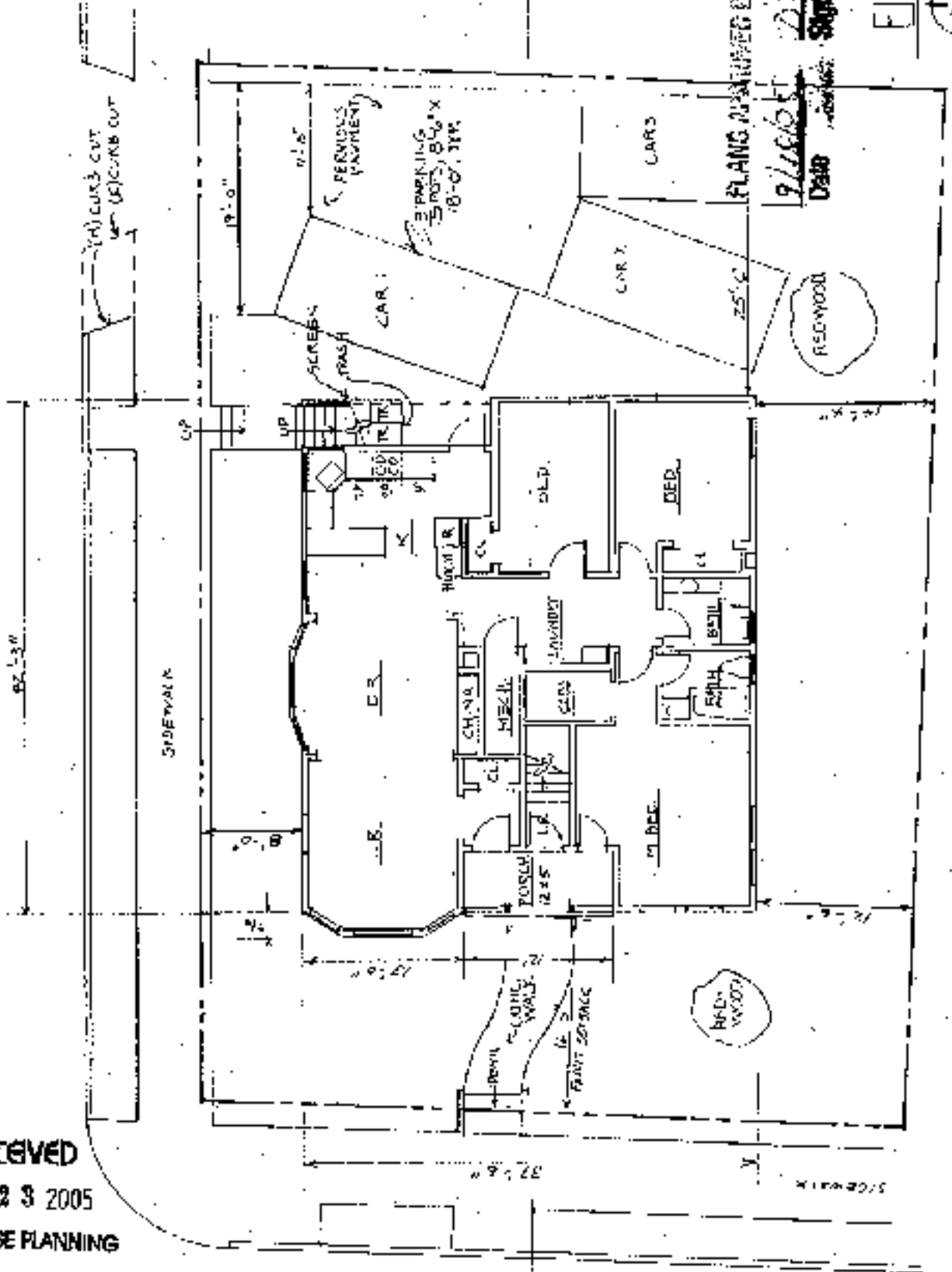
RECEIVED
JUL 27 2004
LAND USE PLANNING

Two New Living Units at 2801 Olds Street
 APN 58 1528 1
 Property Address 2801 Olds Street, Berkeley, CA 94703
 Owner Eric Galera, Xr1 Jin and Dancy D. Tran
 Zoning R4
 Architect David Sofia 510 841 1797
 2343 Stuart Street, Berkeley, CA 94705

PLANS APPROVED BY BOARD OF ADJUSTMENT

Date 7/16/05
 Signature [Signature]

RECEIVED
 JUL 23 2005
 LAND USE PLANNING



PLANS APPROVED BY BOARD OF ADJUSTMENTS
 9/18/05
 Date
 Signature
 SCALE 1/8" = 1'-0"
 JUN 2005
 FIRST LEVEL PLAN

Two New Living Units at 2001 Ohio Street
 APN 58 1598 1
 Property Address 2001 Ohio Street, Berkeley, CA 94703.
 Owner Eric Gellman, Xin Jin and Danny D. Tran
 2343 Stuart Street, Berkeley, CA 94706

ISRCB 7-24
1476 95

PLANS APPROVED BY BOARD OF ADJUSTIN

gibbs

Date

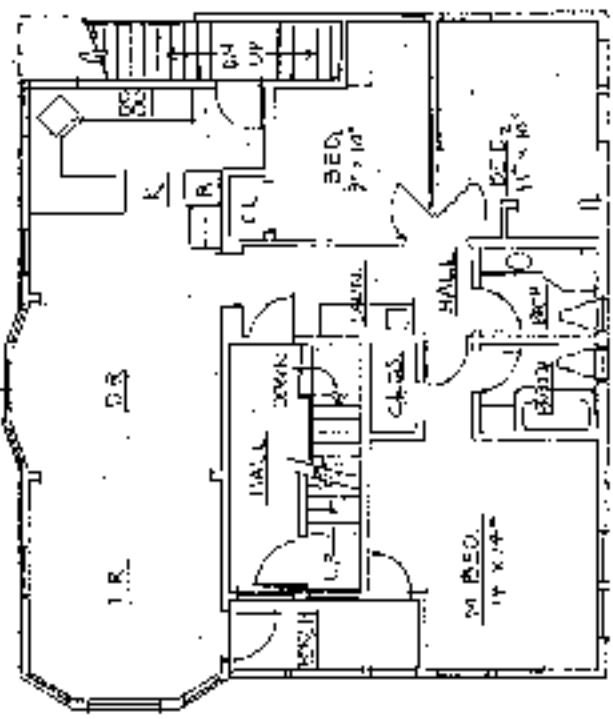
Signature

5.16.05

SECOND LEVEL PLAN



SCALE 1/8" = 1'-0"
21 JUNE 2005

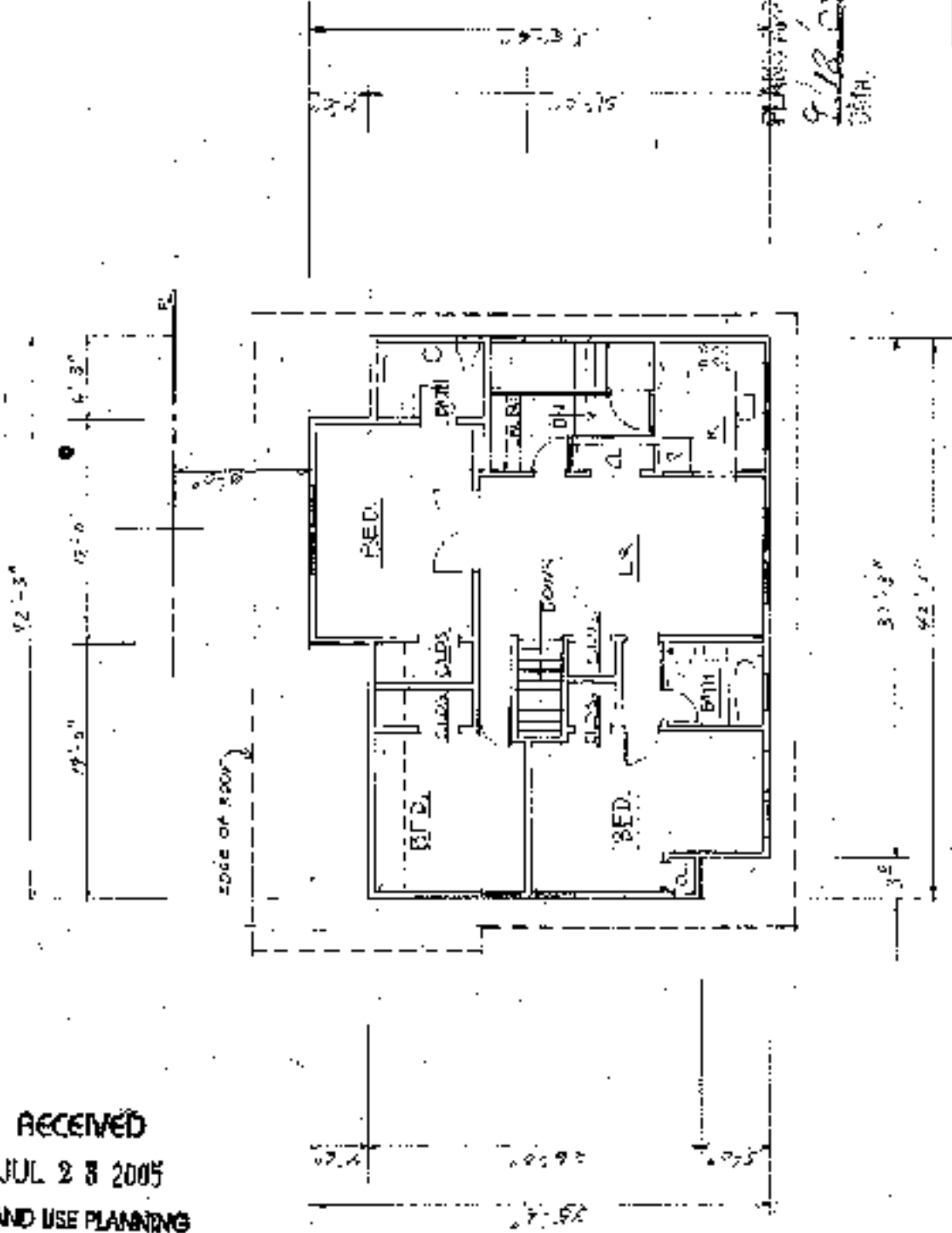


RECEIVED
JUL 23 2005
LAND USE PLANNING

Two New Living Units at 2301 Oils Street
53 1598 1
2301 Oils Street, Berkeley, CA 94703
APN
Property Address

RECEIVED
 JUL 28 2005
 LAND USE PLANNING

15.5 @ 7.50
 14.5 @ 9.0



PLANS PREPARED BY BOARD OF ADJUSTMENT

Gilbert
 SIGNATURE 6046
 DATE

THIRD LEVEL PLAN



SCALE 1/8" = 1'-0"
 27 JUNE 2005

Two New Living Units at 2801 Onis Street
 APN 53 1588 1
 Property Address 2801 Onis Street, Berkeley, CA 94705
 Owner Eric Gelertis, Kim Jitt and Darryl D. Trso.
 2345 Stuart Street, Berkeley, CA 94705