

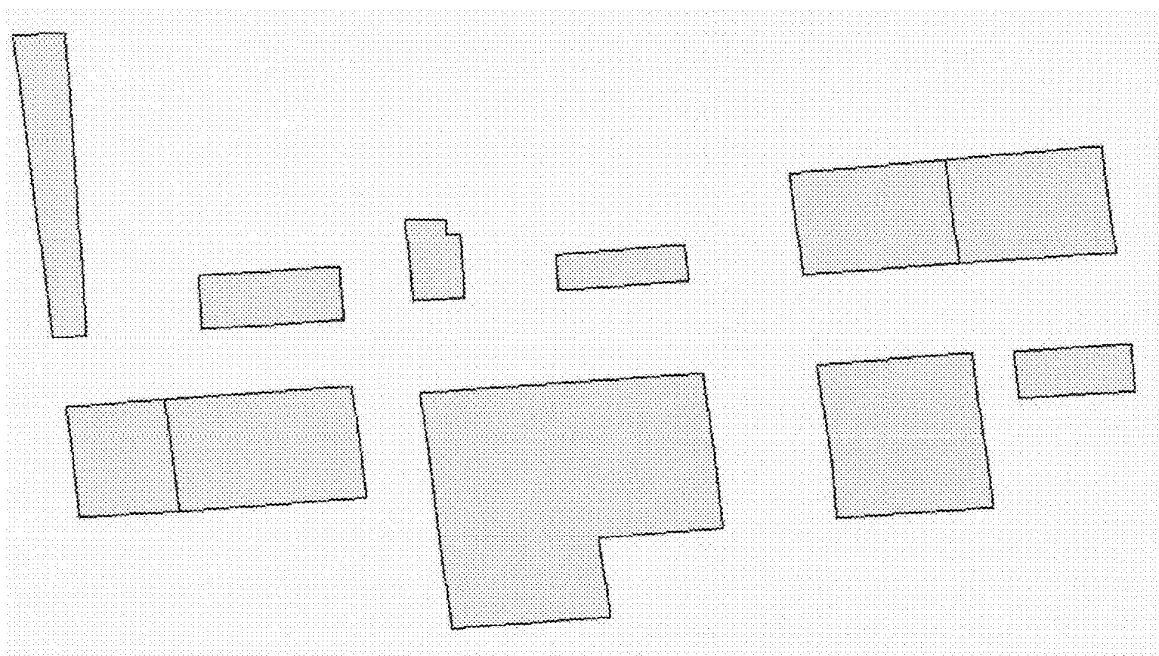
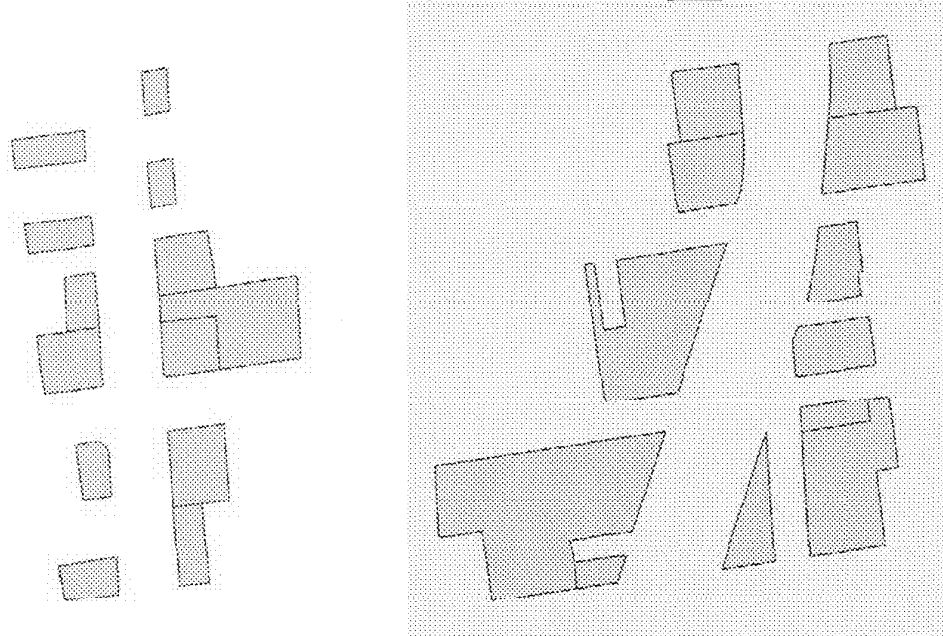
July 24, 2006

Stephen Wollmer
1823 'B' Berkeley Way
Berkeley, CA 94703

Mayor Bates and Berkeley City Council

Re 1201 San Pablo Appeal's discussion of the impact of re-fronting lot to Harrison Street.

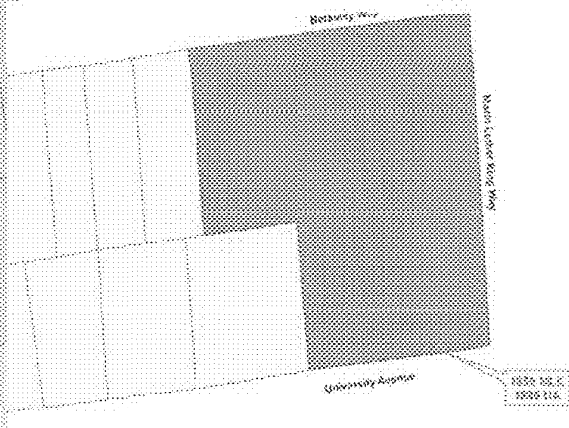
This not Rorschach ink blot test. Check the shapes below that meet **your** definition of 'irregularly shaped':



If you were observant, you may have noticed among the shapes three recent project lots where Staff, in their wisdom, declared the front of the lot to be other than the clearly identified, customary front of the lot even though the zoning ordinance you passed provides an exception to the general rule applied to 1201 San Pablo for 'irregularly shaped lots'. Here are the shapes with the subject lots highlighted:



Satellite Homes re-fronted to Sacramento



My favorite project: 1950 MLK re-fronted to UA



2701 Shattuck re-fronted from Shattuck Avenue to Derby Street

Staff's discretionary actions fail to meet letter and the spirit of the zoning ordinance standard of **"or in the case of an irregularly shaped lot, the Zoning Officer shall determine the front in such a manner as to best promote the orderly development of the immediate area."**

Staff's re-fronting decisions effectively eliminate Zoning Ordinance required rear setbacks or yards between commercial and residential districts, replacing them with almost derisory 5-ft side setbacks to 4 and 5-story buildings. Additionally, as this discretionary action takes place before Staff's calculation of the 'developable envelope' it results in a significantly increased base project 'envelope' and density bonus project.

Is it merely coincidence that in each of these recent cases the 'winner' is a rich and/or powerful developer and the 'losers' are exceedingly modest neighborhoods? Can Staff point to a single case where a lot was

re-fronted in a manner that increased setbacks to a neighborhood at the expense of a developer? I attach Staff's response to my question about their decision to re-front 1950 MLK LLC's project to 1885 University so you can review their logic, and evaluate whether this type of sophistry meets YOUR standard for 'orderly development of the immediate area'. I also include a annotated lot diagram for your reference.

Clearly the shape of the 2701 Shattuck and 1950 MLK/1885 UA parcels could have been found to meet the ordinance's 'irregular shaped lot' standard, and that retaining the yards and setbacks designed to ease the transition between commercial and residential districts would 'best promote the orderly development of the immediate area' standard.

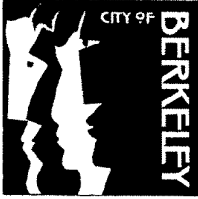
Fortunately, Staff determinations are not entitlements, and can be appealed to and/or reversed by either the ZAB or the City Council. I ask you to consider whether these decisions meet the letter and spirit and the City's Zoning Ordinance as you understand it, and if not, direct Staff to reverse the preliminary staff determination of the front lot of these two pending decisions.

Sincerely yours

Stephen Wollmer

Attachments:

May 3, 2004 Letter Steve Solomon to Steve Wollmer on front of 1950 MLK project lot.
Lot diagram of 1885 UA/1950 MLK



Planning and Development Department

Land Use Planning Division

May 3, 2004

Mr. Stephen Wollmer
1823 B Berkeley Way
Berkeley CA, 94703

Re: 1895 University/1950 Martin Luther King, determination of the front property line.

Dear Mr. Wollmer,

In response to your questions about the application of the Zoning Ordinance standards and definitions as they apply to the above project, I note the following.

1. The question has been raised as to which street frontage is defined as the front property line for this property, the result of which would determine the required setbacks from the property lines.

The provisions for identifying the front property line of a nonresidential parcel are set forth in BMC § **23E.04.010** *Lot Requirements*.

B. The shorter of the two (2) intersecting lot lines along the rights-of-way of a corner lot shall be deemed to be the front of the lot for purposes of determining the lot frontage, and for yard requirements. In the case of a lot having equal frontage, or in the case of an irregularly shaped lot, the Zoning Officer shall determine the front in such a manner as to best promote the orderly development of the immediate area.

The application of the basic rule, in this case, seems straightforward. The property is shaped as a stubby L (but generally rectangular), the lengths of the street frontage property lines for the property are:

University Avenue	139'
Berkeley Way	209'
Martin Luther King	250'

Pursuant to the definition University Avenue is the front property line, and, Martin Luther King is clearly a street side yard. And since the property is a through lot, it has two front yards—University Avenue and Berkeley Way.

This ordinance section provides only one area of discretion; the Zoning Officer determines the front property line of irregularly shaped lots. However, the Zoning Ordinance does not provide guidance as to what is considered an irregularly shaped lot,

but in the Department's practice it is a lot where it is unclear how to apply the basic shortest frontage rule. In this case, the application of the rule is clear.

2. The second question that I believe you raised with Debbie Sanderson is what setback standards will apply to the exclusively residential building proposed in the northwest corner of the property. The Zoning Ordinance is less clear on the application of its standards than it was above in 1. The C-1 District standards for yards provide:

C. No yards for Main Buildings, Accessory Buildings or Accessory Structures shall be required, except that:

1. When a lot is adjacent to an abutting or confronting lot in a residential zone, the requirements of Section 23E.04.050 and 23E.04.060 shall apply to require additional yard and building feature standards.

D. *Any Mixed Use building* (residential and commercial) shall satisfy all of the standards and requirements of this District, except that the Off-street Parking and Usable Open Space requirements for the Residential Use portion shall be as set forth in the R-3 District requirements, except that the Board may issue a Use Permit to modify the Off-street Parking and Usable Open Space requirements where it finds such modification promotes any of the general purposes set forth in Section 23E.36.090.C.

E. *Exclusive Residential Uses* shall be subject to the building site area, height, yard, coverage, Usable Open Space and parking requirements of the R-3 District standards (height for R-3 District is the same as the standards set forth in Section 23E.36.070.B for residential buildings); except that the Board may issue a Use Permit to modify any R-3 requirement where it finds such modification is necessary to promote any of the general purposes set forth in Section 23E.36.090.C. (Ord. 6478-NS § 4 (part), 1999)

The application of this section is awkward in that determining whether the provisions of §E, regarding exclusively residential *uses*, apply to an exclusively residential *building* or only to an exclusively residential property or project. To resolve this point will require some additional research, but I don't think it matters much as I show in the following.

The setback standards applicable to this building are either those of the general commercial provision under BMC § 23E.04.050 (§C.1) or the R-3 district standard setbacks (§E):

Standard	Front Yard	Rear Yard	Interior Side Yard
23E.04.050	15'	0	5'
R-3	15'	15'	4'/4'/6' (for the 1 st , 2 nd , and 3 rd floors)

1950 Martin Luther King

3.

Here the biggest difference is the rear yard standard that I believe would have only minor impact on the residential neighbors. Given the above definitions, the building in question would have three adjacent property lines.

Front	On Berkeley Way, with R-2A properties across the street.
Interior side yard	To the west, adjacent to the existing residential property.
Rear	Opposite Berkeley, adjacent to another C-1 zoned property.

Thus under either case, for the westerly residential property, the side yard setback standard is similar, either 5-feet or 4 to 6 feet. However, it would be of greater value to the residential neighbors in the adjacent residential district for this to be considered a Mixed-Use project. In either of the above cases, the applicant could request that the ZAB grant exceptions to the yard requirements. The findings for granting the yard exception are much tougher under 23.E.04.050 (that such smaller yard would provide greater privacy or improved amenity to a lot in the residential District) than under the above §E (to promote the general purposes).

I hope this goes some way in answering your questions. Since I am now the project planner, please feel free to contact me if you have any further questions.

Sincerely,



Steve Solomon
Senior Planner
Berkeley Planning and Development

Dan Marks, Director of Planning and Development
Mark Rhoades, Current Planning Division Manager
Debbie Sanderson, Principal Planner
Chris Hudson, project applicant.

