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September 26, 2006

Mayor Tom Bates
Members of the City Council
2180 Milvia Street
Berkeley, CA 94704

RECEIVED AT
COUNCIL MEETING OF:
SEP 26 2006
OFFICE OF THE CITY CLERK
CITY OF BERKELEY

Re: 1201 San Pablo Avenue/1100 Harrison; AFFIRM Zoning Adjustments Board ("ZAB") approving inclusionary owner-occupied housing; DENY Appeal.

Dear Mayor Bates and Councilmembers:

On behalf of Jim Hart (Planning Staff, Design Review Commission and ZAB), I request that you vote tonight to AFFIRM the ZAB decision approving a condominium project on San Pablo Avenue, a major thoroughfare in the C-W Commercial District and a Designated Node. The appellant's claims although passionate and detailed, are based on misstatements of law and/or fact. They are asking that you deny to Jim Hart a project that will provide crucially needed entry level home ownership.

The 30-unit condominium ZAB-approved project before you tonight conforms with the dictates of the C-W zoning (+ Designated Node), General Plan, sustainable development, and parking requirements. **It has the least density of any comparable project "in the pipeline"**¹. It provides 30 units; at least 44 units would be allowed under Density Bonus standards. **If quality, starter size home ownership which conforms to the neighborhood, the zoning and is located on a major thoroughfare, can't be permitted, then the cited City policy favoring the opportunity for first-time home buyers is no more than an empty statement.**

For 18 months and at least that many public hearings and mediations Jim Hart has met with and negotiated with neighbors and complied with every ZAB and Planning request to re-design and cut down his proposal. After the ZAB vote approving his project, he, under the direction of Councilmember Maio, attended three more mediation sessions.

Background and Project Description Once this project is completed it will be virtually impossible for most of the opponents who are now complaining to view it. It creates 30 entry level home ownership opportunities. The Design

¹ It is 66% of the allowed FAR, without the Density Bonus; with the Density Bonus, it is 57% the FAR.

Review Commission unanimously approved the design which went before the ZAB. Notwithstanding Design Review and ZAB approval, Jim Hart continued to make a series of concessions. The most recent reduces the height four feet and removes five bedrooms and bathrooms from the highest floor. Further he has withdrawn, at the request of Councilmember Anderson, his (allowed) request for a concession to limit the location of the inclusionary units. Still, a large group of 'neighbors' most living two blocks from the project insist upon denial, relying essentially upon the fact that because so many of them oppose the project, this Council should do likewise.²

Berkeley, its future homeowners and immediate neighbors will benefit

- Thirty entry-level home ownership opportunities
- No public subsidy requested
- On-site required parking provided; 1.6 spaces/unit—largest ration of any project this century
- Units generously sized, 858 square foot average
- 20% Inclusionary Units are of equal location and size
- 3,500 square feet retail space along San Pablo
- All units ADA compliant
- \$200,000 Transfer Fees to the City of Berkeley
- Fifty (50) new construction jobs; Berkeley First hiring
- Enhance San Pablo Avenue property values by replacing weed infested lot
- Creates safety and security by adding 30 new families to be 'eyes' on the Avenue.

Appellants' issues are based on misstatements of law and fact

In contrast with Appellants' arguments, Parking, Traffic, Retail Quantity, Density, Set Backs comply with the requirements of the Zoning Ordinance.

The Staff Report and statements by Zoning Officer Mark Rhoades at the September 19, 2006 Public Hearing refutes each and every allegation of 'irregularity' or 'error' made by the opposition.

Opponents dislike this project because it does exactly what a project in the C-W Zone is intended to do: it provides "Intensity [of] development around transit transfer points"; and "Define[s] Urban area of San Pablo Avenue by developing identifiable areas of concentrated development."³ Opponents want the project less dense, with less units and height.

² See opponants' submission to Council before last week's meeting in which they list the quantity of speakers opposed to the project in comparison to those supporting it.

³ 23E.64.030 of the Zoning Ordinance describing "Designated Nodes."

Appellants' claim that the mere fact of their opposition justifies the granting of their appeal; case law holds otherwise.

California law is unequivocal on this point. "If public opinion *by itself* could justify the denial of constitutional rights, then those rights would be meaningless"(*Ross v. City of Yorba Linda* (1 Cal.App. 4th 954, 964) Opposition cannot substitute as a rational basis for a decision. (*Supra* at 967) Essentially no California will support a decision based on the fact of public opposition.

There are no articulated facts to support a finding of denial.

The benefits to the City, the neighborhood and future owners were set out above. Staff has refuted the opponent's claims of inconsistency with current zoning. The only remaining argument is the amorphous 'interface' with the 'neighborhood'.

The original and modified project interfaces well with the neighborhood while complying with the requirements of a project within a "Designated Node" in the C-W District.

This project steps away from the residential neighborhood to the rear. As the attached diagram shows, the parking level is 17 feet from the nearest residence. ⁴ The 2nd and 3rd floors are 24 feet away from the closest residence. The top floor articulates and thus its distance varies from 29-35 feet from the closest residence. Ironically most of the opponants are blocks, and uphill, from the project and their view, if any, will be quite limited.

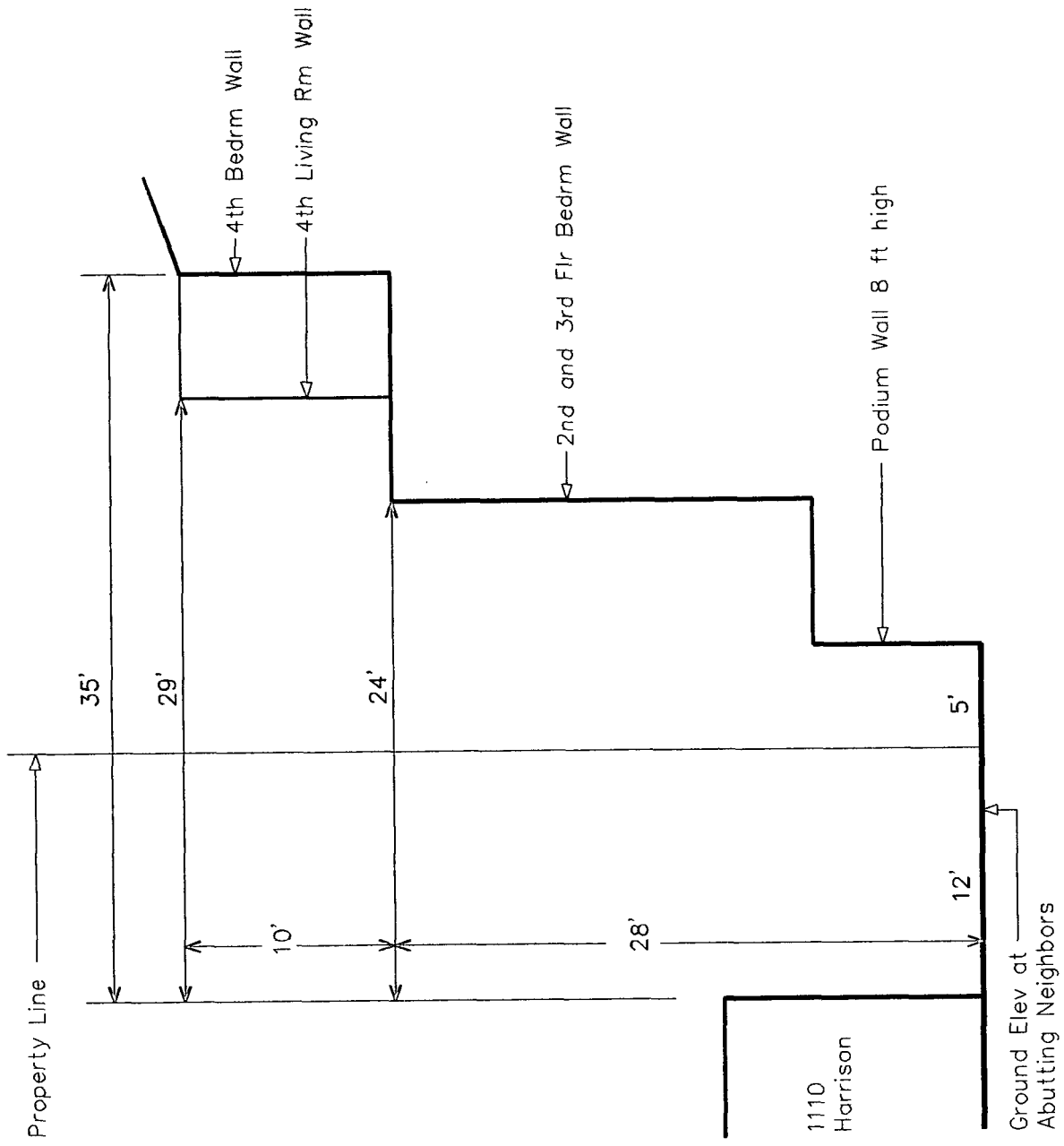
Conclusion

As the petition and letters provided to you today and the testimony of the closest neighbor demonstrate, Appellants do not speak for the entire neighborhood. Many neighbors support this new housing on San Pablo Avenue. Jim Hart's biggest problem with these opponants is that his original proposal was reasonable leaving him little room to negotiate. That situation while angering opponents, is not relevant to your decision tonight. What is relevant is that the project before you exceeds the requirements and intent of the Zoning Ordinances, the General Plan, and your stated supported of concentrated attractive housing on San Pablo Avenue. I thank you in advance for your attention and courtesy to this matter.

Very truly yours,


RENA RICKLES

⁴ Figures given are for the adjacent, closest residence. All other homes are significantly further away.



NORTH (HARRISON STREET) ELEVATION
SCHEMATIC

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OFFICE OF THE CITY CLERK
CITY OF BERKELEY

**2104 Sixth Street
Remodel and
Renovation**
City of Berkeley
Public Hearing
Presentation
September 26, 2006

Rempel Architects | 1819 5th Street | Berkeley, CA 94710 | 510.845.9777

01 02 03 04 05 06 07 08 09 10 11 12



2108 6th Street

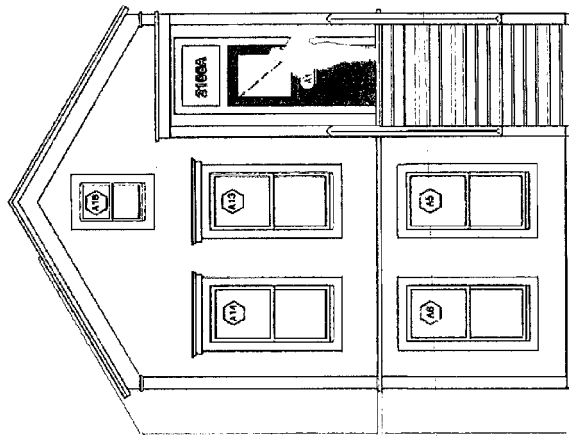
2104 6th Street

Before renovation

Rempel Architects | 1819 5th Street | Berkeley, CA 94710 | 510.845.9777

2108: COLOR SCHEME

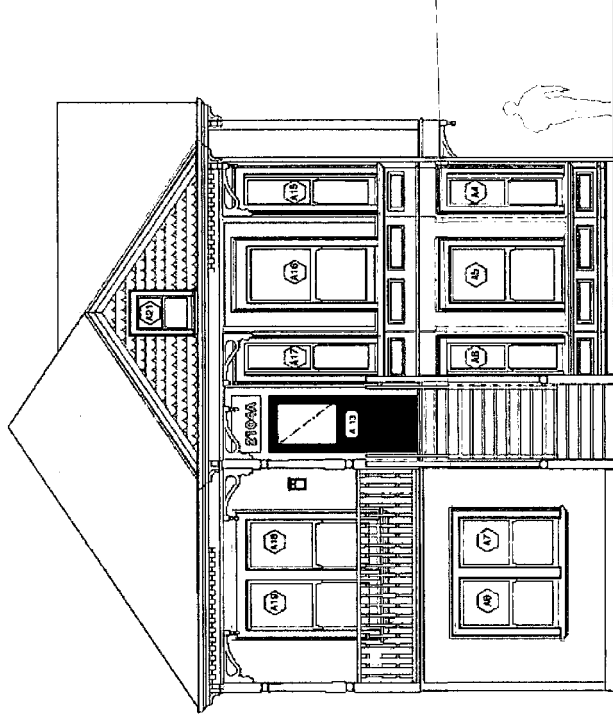
Window Sash: White from manufacturer
Window Trim: DEW 380 - White LRV 93 or equivalent to match windows
Siding: Benjamin Moore - Mistled Green - 2138-50
Entry Door(s): Benjamin Moore - Stone - 2112-40



2108 COLOR SCHEME - 5.31.2006

2104: COLOR SCHEME

Window Sash: DEW 380 - White LRV 93
Window Trim: DEW 380 - White LRV 93
Siding: Benjamin Moore - Greenbrier Beige - HC-79
Entry Door(s): Benjamin Moore - Stone - 2112-40



2104 COLOR SCHEME - 5.31.2006

Approved elevations

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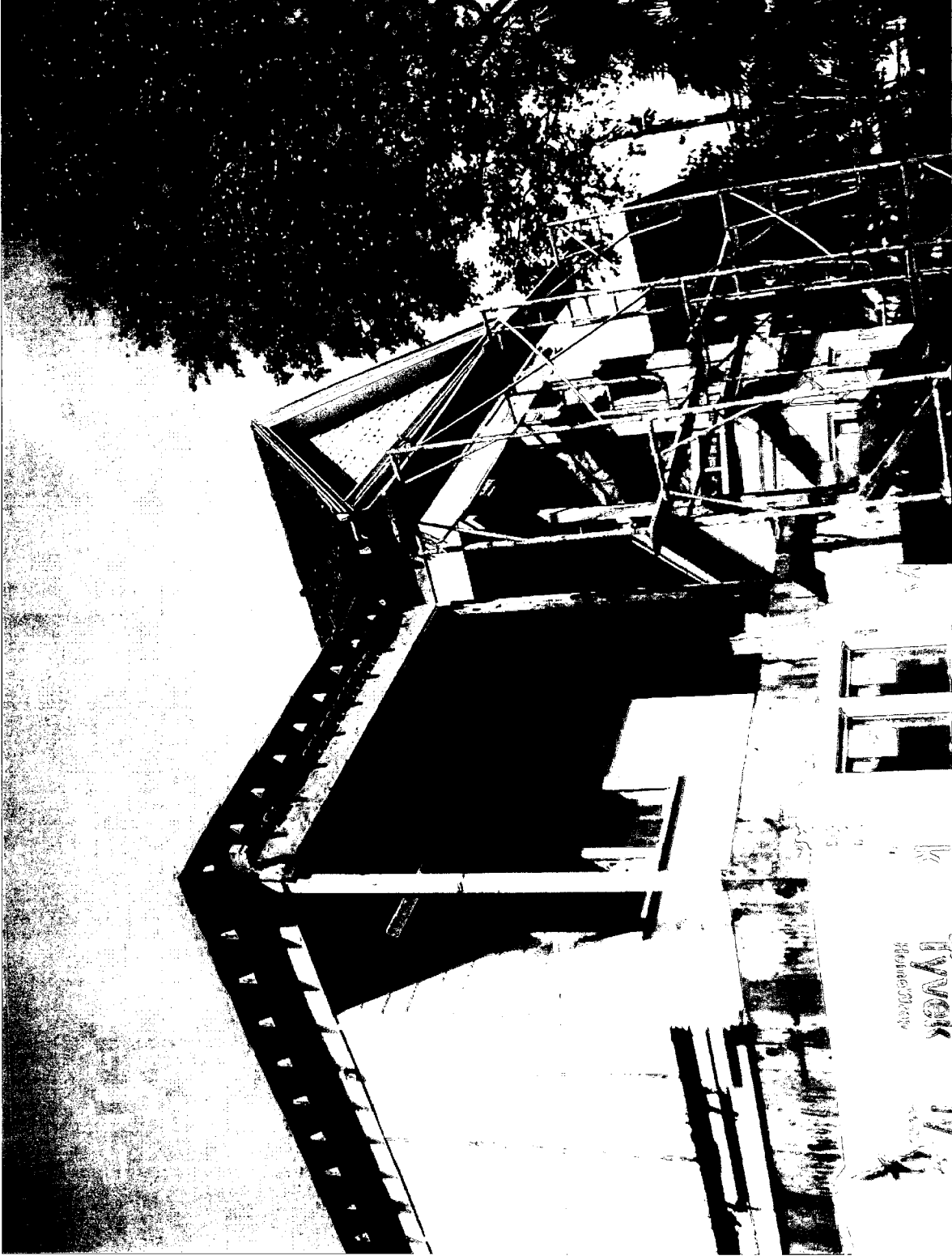


2108 6th Street

2104 6th Street

Current condition 9.06

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Roof detail 2104 Sixth Street

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