

CITY OF BERKELEY  
CITY CLERK DEPT  
Law Offices of

**ELLEN E. S. RODIN, ATTORNEY AT LAW** AUG 1 8: 26

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ellenrodin@california.com

July 31, 2006

CITY CLERK, CITY OF BERKELEY  
2180 Milvia Street  
Berkeley, CA 94704

### NOTICE OF APPEAL

RE: Use Permit No. 06-10000010  
1017 Miller Avenue, Berkeley  
Zoning Board Decision 07/13/06

TO THE CLERK AND ALL PARTIES:

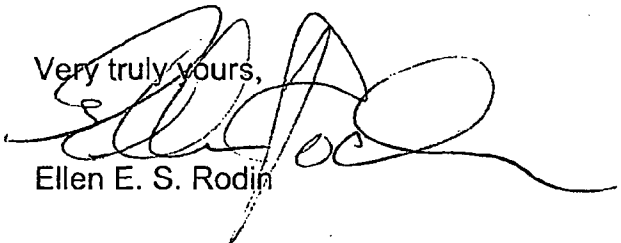
Leo and Ingrid Vallely hereby APPEAL the decision of the Zoning Board in the above-referenced matter. The issues raised on Appeal include, but are not limited to, the following:

- the Environmental Impact Report and all its sub-parts and attachments;
- the Soil Engineering Report and all its sub-parts and attachments;
- the calculation of the footprint of the proposed structure;
- stability of the hillside after the proposed cuts into the hillside;
- size of the proposed structure relative to the neighborhood;
- lack of green space in the proposed project, relative to the neighborhood;
- improper or inadequate protection of native trees, drip line and root structure;
- inadequate attention/protection of the neighborhood relative to the cumulative environmental impact of all aspects of the structure;
- loss of view approximately 45 – 50%;
- inadequate attention by Zoning Board and Planning Department to possible mitigation of impact by imposition of relatively minor conditions on proposed structure, relative to the entire project;
- timing of issuance of the decision by the Zoning Board.

As stated in the cover letter, the City is requested to extend the time for filing this Notice of Appeal an additional 45 days to permit Appellants opportunity to Amend this Appeal to state the issues more completely.

Please correspond with this office concerning this matter.

Very truly yours,

  
Ellen E. S. Rodin

**ELLEN E. S. RODIN, ATTORNEY**

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July 31, 2006

CITY CLERK, CITY OF BERKELEY  
2180 Milvia Street  
Berkeley, CA 94704

RE: Use Permit No. 06-10000010  
1017 Miller Avenue, Berkeley  
Zoning Board Decision 07/13/06

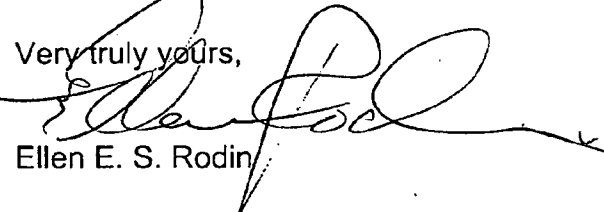
TO THE CLERK AND ALL PARTIES:

This letter is a request for an extension of time of 45 days to file an Amended Notice of Appeal concerning the above-referenced Use Permit and Zoning Board Decision relating to the referenced property. Adjacent neighbors immediately South of the subject property have engaged in the hearing process but were not sent a Notice of the Decision of the Zoning Board until they called about it, and did not receive the Notice of Decision until July 25, 2006. Therefore, Appellant has not had adequate time to prepare his Appeal, and requests time to file an Amended Appeal.

Moreover the reports and hearings in this matter are extensive, and the Appellant is required to raise all issues at the Appeal. An extension is needed in order for the Appellant to have a fair opportunity to address all issues in the Amended Appeal.

Please address your correspondence to this office. Thank you for your anticipated cooperation.

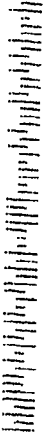
Very truly yours,



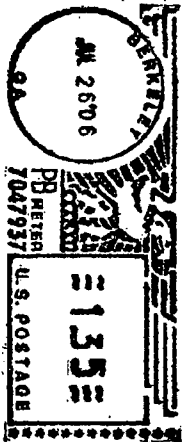
Ellen E. S. Rodin

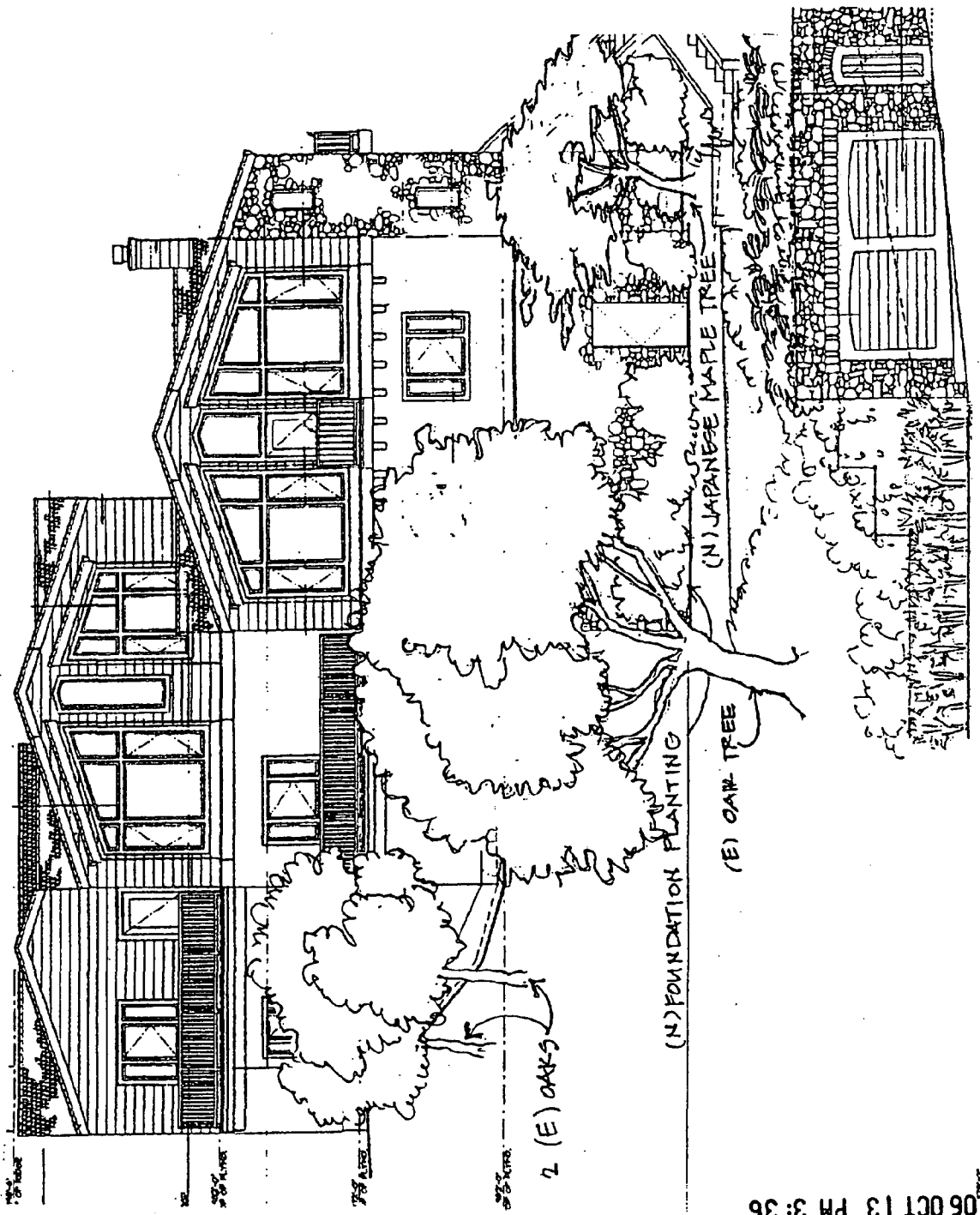


Planni  
Land I  
2120 Milvia Street  
Berkeley, CA 94704-1113



LEO VALLEY  
1010 GRIZZLY PEAK  
BERKELEY, CA 94708





1 WEST ELEVATION W/LANDSCAPING

GARAGE

1017 MILLER AV.

27 JUL 2000

**KAREN & MARK SPRINGER**  
**619 VISTAMONT**  
**Berkeley, CA 94708**  
**Phone (510) 524-1630**  
**Cell (510) 504-0365**  
**FAX (510) 524-9580**

**CITY OF BERKELEY**  
**CITY CLERK DEPT**

**06 OCT 13 PM 3:37**

October 24, 2006

Member of the City Council  
City of Berkeley  
2120 Milvia Street  
Berkeley, Ca 94704

RE: Proposed house at 1017 Miller Ave, Berkeley, CA 94708  
Application # 06-10000010

Dear Members of the Berkeley City Council:

Regarding the appeal of the ZAB ruling granting a use permit for the construction of a single family dwelling with accessory unit at 1017 Miller Ave.:

We, the owners of the above mentioned property, ask that you affirm the decision by ZAB to grant a use permit for our project. By denying the neighbors appeal of ZAB's 7-1-1 decision to grant the permit, you would be recognizing that the Planning staff provided to the Board all the necessary information and material that was required in order to make that decision. Also, you would be recognizing that the members of the Board gave careful and diligent consideration to all the pertinent issues that were involved.

Having worked with the Planning staff, our architect, the soils engineers, the arborists and the neighbors, we know first hand how thoroughly each aspect of the proposed design was considered. As stated in the enclosed July 13, 2006 letter to ZAB, the design grew out of the desire to comply with the City's requirements and to reasonably respect the views of our neighbors. We asked for no variances or additional use permits beyond the garage in the 20 foot front set back. Before and after the application was submitted, we met with Planning Staff and the City Forester, Jerry Koch, to accomplish these goals. Our consultations with them resulted in modifications to the plans and the inclusion of various mitigating measures. The staff report that was submitted to ZAB was able to recommend granting of the permit because we worked with them to meet all of the requirements.

Yet even with the positive staff recommendations, members of ZAB had questions that required us to provide more information and erect more story poles. Only after most of the members had visited the site, seen the views in question and listened to the comments of neighbors, did they vote in favor of granting the permit.

ZAB's decision reflects a thorough understanding of the proposed project and we ask that you allow it to stand. The appeal raises no issues that have not been given thorough review and consideration by Planning staff and ZAB.

Addressing the issue of neighbors' views, the appeal against the ZAB decision to grant the Use Permit should be denied because:

The proposed house does not obstruct the westward view of any of our neighbors on Grizzly Peak Blvd. (see photo #1).

The proposed house does not obstruct the westward view of the neighbor adjacent to our property to the south (1018 Grizzly Peak) because we are north of them. The westward view of 1018 Grizzly Peak (San Francisco, the Golden Gate Bridge, Alcatraz Island, downtown Berkeley, the Marin headlands, etc.) is obstructed by their own trees. These trees also substantially obstruct the views of their neighbors to the east. (see photo #2)

The only view from 1018 Grizzly Peak Blvd. that is in any way diminished is a partial view of downtown Albany (see photo #3). This limited view was enhanced by ZAB requiring that we lower our roof by one foot.

Thank you for your consideration.

Respectfully,

*Karen Springer - Mark Springer*

Karen & Mark Springer

KAREN & MARK SPRINGER  
619 VISTAMONT  
Berkeley, CA 94708  
Phone (510) 524-1630  
Cell (510) 504-0365  
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#06-10000010  
1017 Miller

July 13, 2006

Zoning Adjustment Board  
City of Berkeley  
2120 Milvia St.  
Berkeley, Ca 94704

RECEIVED  
JUL 07 2006  
LAND USE PLANNING

Dear Members of the Zoning Adjustment Board:

In order to address the view issues raised by the owners of the properties to the east and south of the single family dwelling we are proposing to build, it is necessary to look at the process that has brought us to this unique design that is now before ZAB.

#### THE VIEWS

Before our house was designed to meet our needs, criteria were put in place to deal with several critical issues: the steep topography, the soils and drainage conditions, the native oaks and other trees that are on or adjacent to the subject property and the significant views that are available to the neighboring properties. To assess the view requirements, we contacted the owners of the houses that have views through our property. We went to their homes to talk to them about the views and to take photographs and measurements.

The structure was then designed to follow the lay of the land and therefore reduce the need for excessive excavation. It was also designed to provide sufficient space for the existing trees and their root systems. And most relevant to this discussion, it was designed with a specific height ceiling and position so as to preserve the significant primary view for the house at 1012 Grizzly Peak and the secondary view for the house at 1018 Grizzly Peak. (See attached revised Sheets A0.5.1 and A0.5.2) Only after these criteria were satisfied, did the design process consider our specific requirements.

We believe that the resulting design achieves an admirable and delicate balance among the disparate demands that have been placed upon it. The design requires no exceptions to the zoning ordinances aside from the garage being placed in the front yard setback. Given how fine the balance is, significant changes to any one aspect of the design would negatively impact other critical aspects. This can be appreciated in the contradictory 'demands' that the owners of 1012 and 1018 Grizzly Peak have made both in writing and verbally to ZAB. They are demanding that the house be lowered between 10 to 12 feet and then say that the proposed excavation is too deep and that the retaining walls are too high. Please refer to the submitted letters from Leo and Ingrid Vallely, dated 4/24/06, and Paul Snyder, dated 3/17/06.

Hopefully you have had or you will have a chance to see the site and adjoining properties for yourselves and see the views that are at issue. It should be clear that the views that these neighbors are talking about are NOT the views that Chapter 23E-96.020 A is referring to.

For photos of additional story poles taken from 1012 and 1018 Grizzly Peak, please refer to the most recent report by submitted by Amy Skewes-Cox.

For Paul Snyder, the owner of 1012 Grizzly Peak, the vista of San Francisco Bay and all of the significant landmarks as seen from his deck, adjacent living room and dining area are maintained in all its glory. The view he presently has from his rear yard is a different story. When we erect a 6 foot fence or plant a 6 foot hedge to establish privacy for our rear yard, a good portion of his bay view will be lost. This is unavoidable because it is a view across level ground from one property to the other. The height of the proposed house is not the controlling factor regarding the view from this position. Yet he has written that he wants the rear portion of the our house reduced 10 feet.

With Leo and Ingrid Vallely, the owners of 1018 Grizzly Peak, we are dealing with a very unusual situation. Their home, situated on a promontory overlooking San Francisco Bay, could afford sweeping, unobstructed views of the Bay and all of its the landmarks. But, by either choice or neglect, they have allowed their trees and other vegetation to severely encroach upon their Bay views of the Presidio, the Golden Gate Bridge, Alcatraz Island, the Marin Headlands and a large portion of the Bay and the East Shore. They have also allowed these same trees to obliterate the views that should be available to their neighbors to the east. The attached photo taken from the main deck in front of the living room at 1016 Grizzly Peak clearly shows these losses. (see photo #1)

In vehement opposition to the design of our proposed house at 1017 Miller, the Vallelys have focused on a very limited and narrow view of Mt. Tam, the North Bay and downtown Albany. They are demanding that we reduce the height of our proposed house by 10 - 12 feet to preserve this already limited view. To them, it doesn't matter that the story poles show that they still have the view of Mt. Tam and the Bay from the north side of their house. To them, it doesn't matter that they have made no effort to maintain their own magnificent western view or that they have allowed the Bay view of their eastern neighbors to be obliterated.

It should be noted that normally there is no expectation of significant Bay or landmark views from the sides of homes that sit side by side on an east/west axis. Usually Bay views are from the western side of the structures. Along the sides, where the homes are close together, there usually are no significant views. In this particular case, the topography allows for a view from the Vallely's home over our proposed home. This fortunate circumstance for them should not be used as a bludgeon to drive our house deep into the ground so that they can see downtown Albany.

It should also be noted that Paul Snyder at 1012 Grizzly Peak has the opportunity to add another story to his home without obstructing the views of any neighbors to the east. The Vallelys at 1018 Grizzly Peak could also build up or out, subject to consideration of their neighbors' views. On the other hand, we will never be able to add any additional height to our proposed house.

Based on these facts, we would strongly suggest that our neighbors' demands to diminish and relocate our proposed house are not about the vistas or landmark views that are addressed in the ordinances and in the Definitions (Sub-title 23F) but rather they are about their views of a vacant lot. For as long as Paul Snyder and Leo and Ingrid Vallely have lived in their homes, they have had the visual use of the adjoining open land without having to purchase it, pay taxes on it or be responsible for it. This has been a wonderful gift to them and they do not want lose this

enhancement to their lives. It is understandable that they are upset about this pending loss but the fact is they had the opportunity on two occasions to purchase the property on the open market, in 2000 and again in 2003. They took no steps to take control of this aspect of their lives. They exercised no initiative or imagination and now they want ZAB to do for them what they would not do for themselves. It is their desire that they not see the proposed structure at all, which is what Paul Snyder has told us on several occasions. This desire is understandable but unrealistic in an urban setting.

In the language of the **Hillside Overlay District Provisions**, the views that are referred to in 23E.96.020 paragraph C have been given more than reasonable protection. Therefore, we should be **allowed** the proposed **appropriate development** of this property.

### **THE WESTERN ELEVATION OF THE PROPOSED HOUSE**

At the ZAB meeting on June 8, 2006 when our project was first being considered, Board member Bob Allen voiced concern about the appearance of the western elevation of the house as it would be seen from the street. In order to assess the impact of this aspect of the house, the Board asked us to erect story poles to represent this elevation of the proposed house. We have done this and we hope that the Board members have had the opportunity to view these poles.

If you have walked up Miller Ave from north to south, we think that you will agree that the existing coastal live oaks do an admirable job of capturing your attention and of screening what would be the western side of the proposed house. (see photos #2 & 3) This screening continues well up the street until you come clear of the oak closest to the street. At this point, disregarding the bushes that will be replaced by the garage and the new plantings, you are looking at the house from an oblique angle.

From the beginning of our planning, it has been our intension to feature the mature oaks that are on the property such that the house becomes, from the street, a 'tree house' – a house appearing to be in the trees. We intend to enhance this feeling by adding Podocarpus trees at the base of the western elevation and adding one or two Japanese maple trees near the base of the elevator shaft. The resulting effect can be seen in the enclosed drawing (see West Elevation with Landscaping) and in the model that we will bring to the July 13<sup>th</sup> meeting. Additionally, as the original elevations show, each of the three levels of this elevation is finished with different materials: stone, stucco and wood siding. And at the top, the bay windows breakup the façade as they project out.

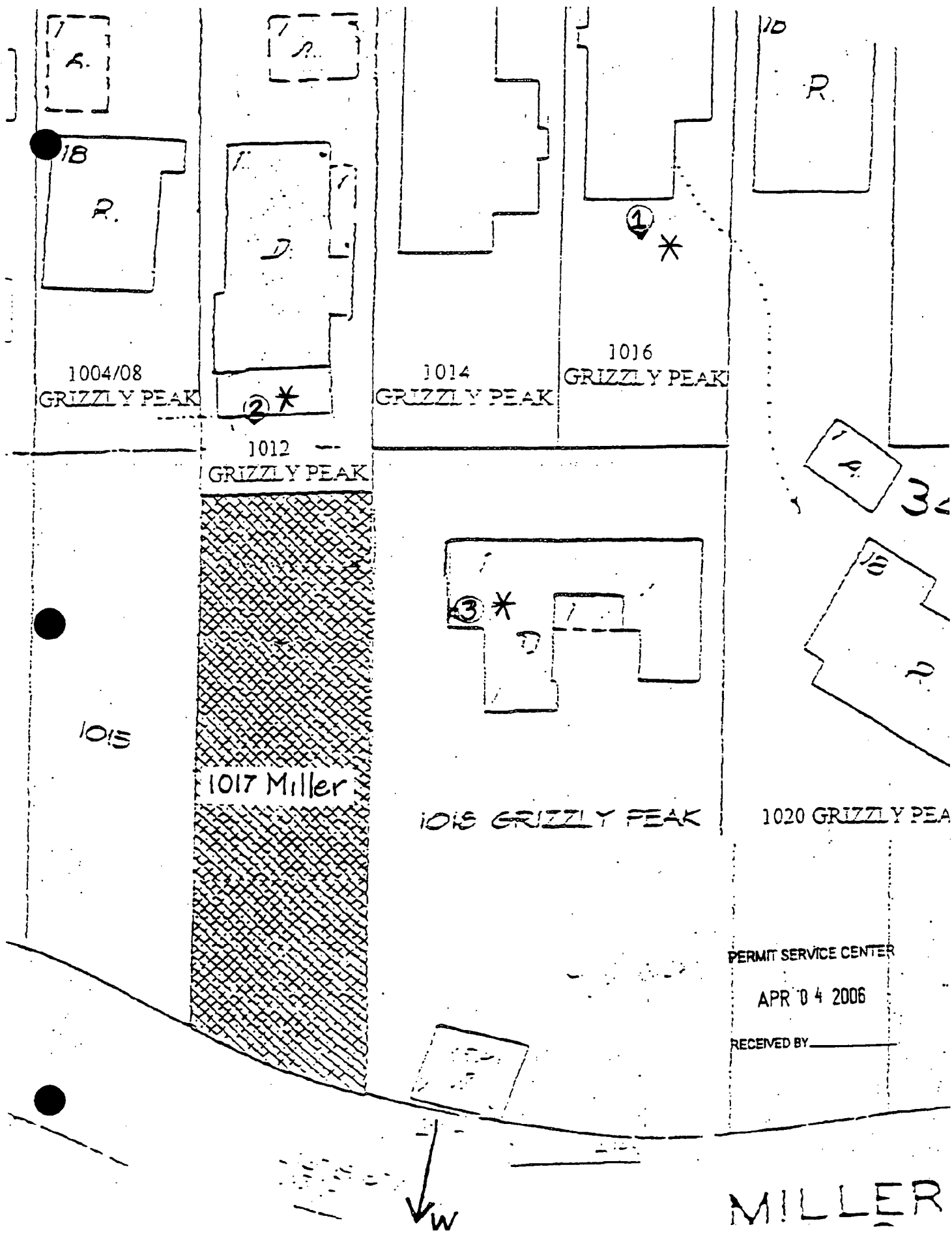
We hope that you can see that this house will float comfortably in the trees and that it will be a natural addition to what surrounds it.

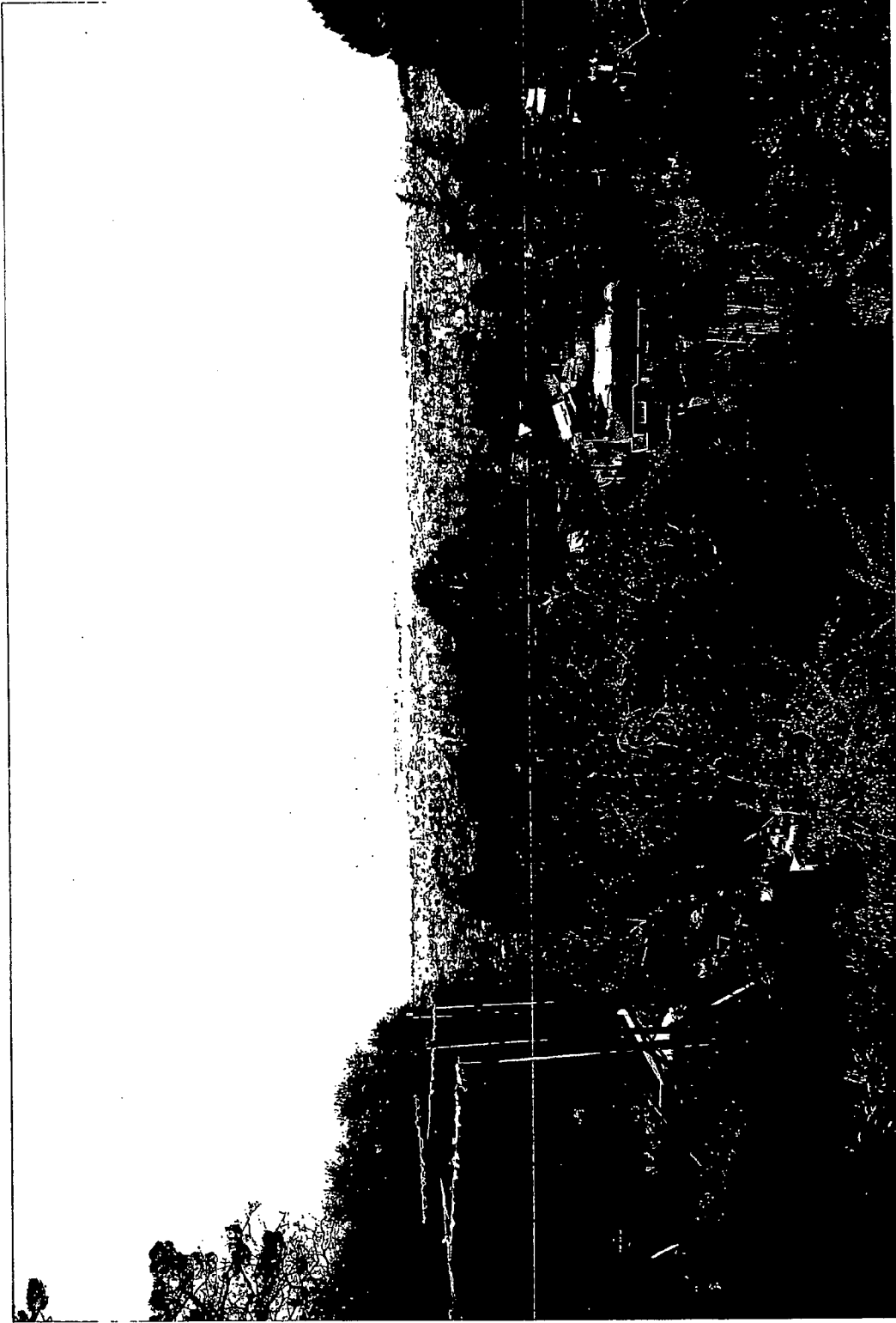
One other point: Bob Allen also expressed concern about the possibility of a second house on the lot to the north. It should be noted that a house on this lot would have to be even further back from the street in order to be clear of the mature oak that is centered on the property. Again, a house filtered by and floating in the trees.

Respectfully,

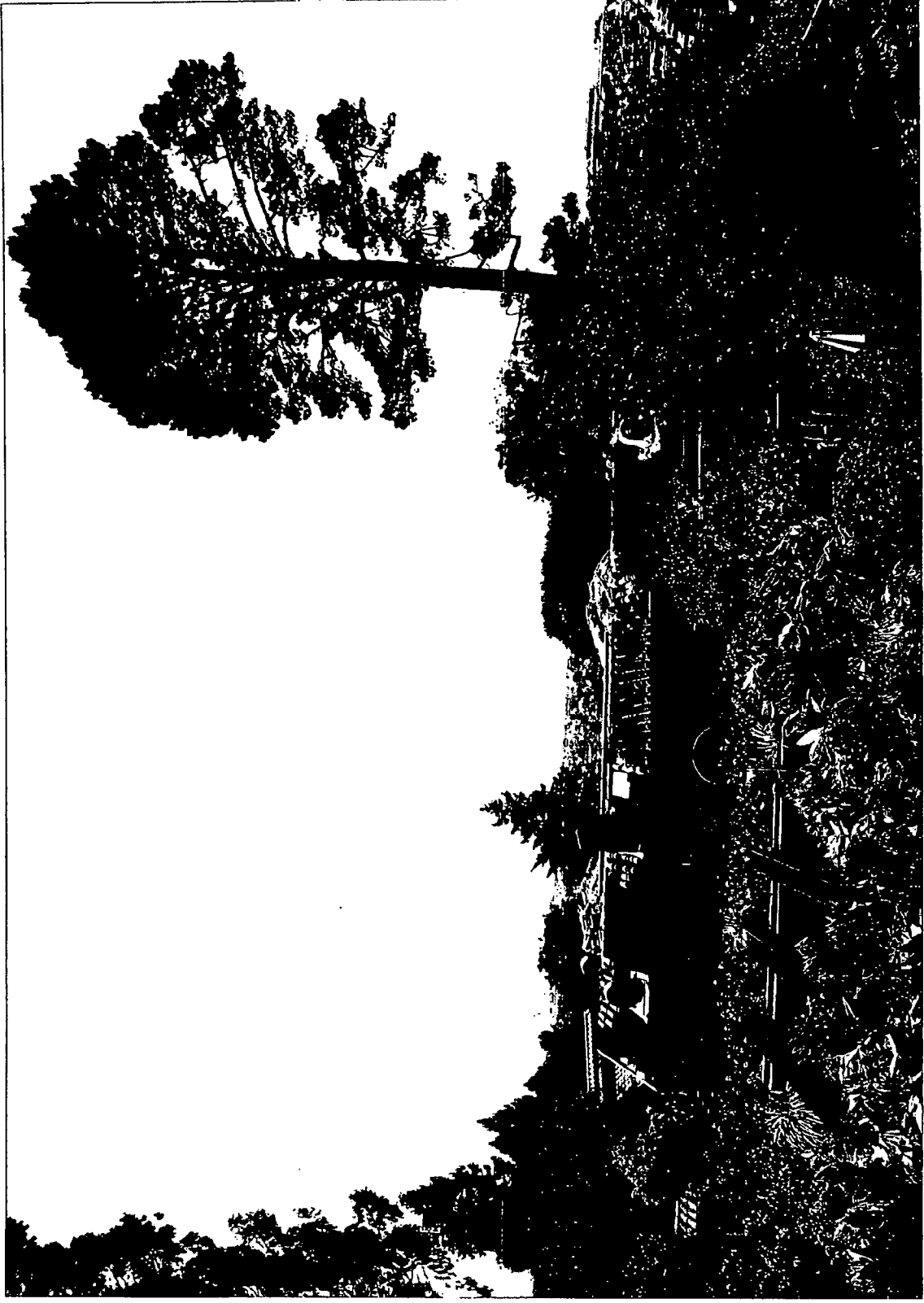
*Karen Springer - Mark Springer*

Karen & Mark Springer





PROJECT AT 1017 MILLER AVE.  
LOOKING SOUTHWEST FROM DECK OF 1012 GRIZZLY PEAK BLVD. STANDING AT THE CENTER EDGE OF  
THE DECK.



PROJECT AT 1017 MILLER AVE.  
LOOKING SOUTHWEST FROM DECK OF 1016 GRIZZLY PEAK BLVD. AT 1018 GRIZZLY PEAK BLVD.



PROJECT AT 1017 MILLER AVE.  
LOOKING NORTH WEST AT THE BAY AND MARIN FROM 1018 GRIZZLY  
PEAK. SEATED IN THE BREAKFAST ROOM. STORY POLES WITH LINES  
REPRESENTING THE SHAPE OF THE BUILDING. THE LINES SHOW THE  
ROOF LOWERED ONE FOOT AS REQUIRED BY ZAB.

CITY OF BERKELEY  
CITY CLERK DEPT

06 OCT 13 PM 3: 37

MICHAEL D. IRWIN AND CHARLENE STERN  
1016 Grizzly Peak Boulevard  
Berkeley, CA 94708-1526  
T: 510 527-3457 F: 510 527-3482

October 10, 2006

Members of the City Council  
City of Berkeley  
2120 Milvia Street  
Berkeley, CA 94708

RE: Proposed Home At 1017 Miller, Berkeley, CA 94704

Dear Members of the Berkeley City Council:

We are the owners and residents of a home at 1016 Grizzly Peak Boulevard. The proposed home at 1017 Miller Avenue sits northwest and downhill from our home. From our home we can see the proposed rooflines of the home.

We understand our neighbors, Leo and Ingrid Vallely, have appealed to the City Council to review their petition that the Planning & Development, Permit Servicing Center and Zoning Adjustments Board approvals for the proposed home construction at 1017 Miller Avenue be reviewed and reversed. You will find our initial letter addressing the Zoning Adjustments Board, dated March 21, 2006, attached. For your information, the Vallely's home is immediately downhill from our home and our living room, master bedroom, kitchen, two decks and backyard garden directly face their property.

We believe the Berkeley City Council should deny a hearing to review their case, We understand the Springers are meeting current Berkeley zoning and building codes, and have been approved through a process within appropriate City channels.

We have additional rationale against giving the Vallelys any more time on this matter. When we purchased our home in May, 1998, we assumed there was a re-roofing project in progress in front of our home. At that time, we asked Mr. Vallely when he expected to complete the roof. He told us "during the summer." The roofing project has sat unfinished at the center of our view for the past 8 ½ years.

We understand in fact, this roof has remained in this state for well over those 8 ½ years. The builder of our home, Scott Cameron, had offered to finish the Vallelys roof during our home's construction as a generous offer that he also knew would help sell the two homes he was building at the time. The Vallelys declined the offer. Other neighbors, including ourselves, spoke to the Vallelys on numerous occasions over the next 8 ½ years, to help solve any issues standing in the way of finishing this roof, even sourcing

the rest of the roof tile that Mr. Vallely said he could no longer find, and offering to actually pay for and install the roof at the neighbors expense. All this was done in a most neighborly way to help them finish their roof. They ignored all requests and sincere offers to finish the roofing project.

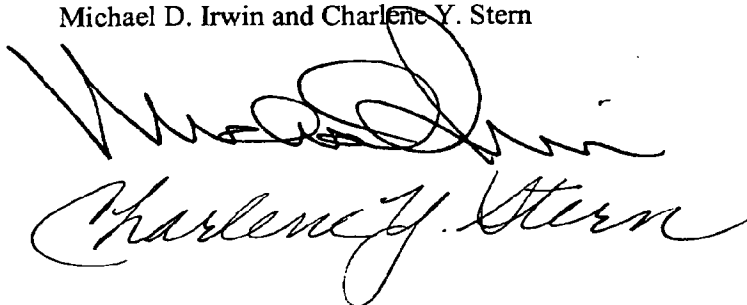
Meanwhile, we learned that money was not an issue with Mr. and Mrs. Vallely. While their roof continues to sit undone, the Vallelys have added an addition to their home, remodeled their kitchen, re-stuccoed their home, rebuilt their front entry, replaced their front and back doors, painted their home, installed a stone patio, installed a stone driveway, created front brick planter boxes across the front of their home, built a fence, and had solar panels professionally installed on their incomplete roof, this within the past year.

In addition, Mr. Morris and Mrs. Becky Wright, our neighbors to the south, who originally owned Mr. and Mrs. Vallely's property, sold it to them with an easement written into the deed of sale that allows Mr. and Mrs. Wright to have all trees and bushes on the Vallely's property trimmed within six feet of the roof line, with the exception of the single tall pine tree. The Wrights, we and our neighbors have paid thousands of dollars on two separate occasions to trim these trees. The first time, despite many delays initiated by the Vallely's, we were able to trim the trees obstructing our key views. The second time, over this past year, the Vallely's wouldn't let us use the same professional tree trimmer. Instead they dictated who they would allow to trim their trees. That tree company wouldn't take the trees down to the six foot limit, as their primary relationship was with Mr. and Mrs. Vallely. As a result, we and our neighbors to the north are losing our views, significantly. The overgrown trees now frame the undone roof, making the unfinished condition of the Vallely home even more prominent, reducing both the extraordinary pleasure we had in purchasing our home with a view of San Francisco, the Golden Gate Bridge, Berkeley, Alcatraz, Albany and Marin County, and potentially reducing its future resale value.

So, in closing, we continue to support the construction of the proposed home approved residence at 1017 Miller Avenue and urge you to deny hearing the Vallely's appeal. If, in addition, you can recommend a process whereby we could get our view restored and the blight of their undone roof resolved we would be most grateful. Thank you for your time in reading this letter.

Very truly yours,

Michael D. Irwin and Charlene Y. Stern

The image shows two handwritten signatures in black ink. The top signature is for Michael D. Irwin, featuring a large, stylized 'M' and 'I'. The bottom signature is for Charlene Y. Stern, written in a more cursive, flowing script.



2006 ↕



1998

MICHAEL D. IRWIN AND CHARLENE STERN  
1016 Grizzly Peak Boulevard  
Berkeley, CA 94708-1526  
T: 510 527-3457 F: 510 527-3482

RECEIVED  
MAR 27 2006  
LAND USE PLANNING

March 21, 2006

Mr. Steven Ross (Email: sdross@ci.berkeley.ca.us)  
Ms. Amy O. Skewes-Cox, AICP (Email: amysc@rtasc.com)  
Land Use Planning Division  
City of Berkeley  
2120 Milvia Street  
Berkeley, CA 94704

RE: Proposed Home At 1017 Miller, Berkeley, CA 94708

Dear Mr. Ross and Ms. Skewes-Cox:

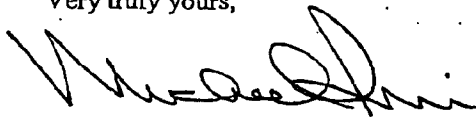
We are the owners and residents of a home at 1016 Grizzly Peak Boulevard. The proposed home at 1017 Miller sits northwest and downhill from our home. From our home we can see the proposed rooflines of the home.

First, we are satisfied that the proposed home does not negatively impact the views we currently have. Second, we were very pleased with both Mark and Karen Springer, the proposed home's developers, who took the time to visit us in our home and explain what they intended to build. They showed us the full set of plans including elevations, how they modified the design to respectfully provide a valuable new residence while minimizing loss of the neighbors' views. During our meetings they asked us for both comments and criticisms. They informed us that all City codes and restrictions were followed. We are satisfied that the proposed home will be a positive addition to the neighborhood.

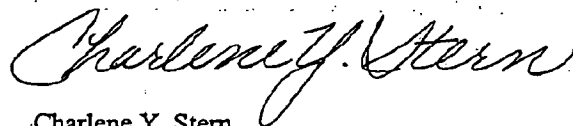
As long time Berkeley residents (since 1975), we know that opportunity existed when we owned our first home in Berkeley next to 4 empty lots on Shasta Road just above Tamalpais Road. We decided we wanted a "green belt" with no further housing development. We worked with both the neighbors and the City of Berkeley to purchase the land, remove it from the market, declare it as open space in perpetuity, and, finally, donated it to the City. We are aware that twice in the past seven years opportunities arose when the land on Miller was available. The neighbors around this property, either individually or collectively, decided not to purchase the property. Therefore, we believe the use of this land for a residence by the Springers should be upheld.

In closing, we support the construction of the proposed home as designed and positioned at 1017 Miller.

Very truly yours,



Michael D. Irwin



Charlene Y. Stern

4

CITY OF BERKELEY  
CITY CLERK DEPT

06 OCT 16 PM 12:29

October 10, 2006

Peter Hirschfeld  
1030 Miller Ave.  
Berkeley, CA 94708

Re: Council decision for appeal of development on 1017 Miller Ave.

Dear Council Member:

This letter is to provide strong support to send the appeal to the Planning Department for reconsideration for a development on 1017 Miller Avenue. There are many reasons this project needs to be reevaluated before any construction takes place as there are quite a few serious negative aspects of this project that either were not considered in the initial decision or where the decision was based upon incomplete or incorrect information.

I live a few houses up the street from the intended development and have taken the opportunity to review the full report submitted to the Planning Department as well as the Traffic Management Plan for this proposed development, so I believe my perspective is based upon complete information as well as first-hand observations of the property, neighborhood and surroundings. And I would be one of the many, many people negatively impacted by this project.

#### Summary

The primary reasons this project needs to be reconsidered are:

- 1) There is very widespread and strong opposition to this project from a large majority of the neighbors for several blocks in each direction. I do not believe the Planning Department was aware of how many people are opposed and the strength of this opposition. Most people were unaware of the massive scope of this project and all the associated impacts until the towering sight poles were erected a few months ago.
- 2) There will be considerable disruption on the lives of over 100 people during the several years of construction on these 2 enormous houses due to constant road closure of Miller Ave, as well as a major interference of City services including waste removal, recycling, and green waste which could cost the City of Berkeley thousands of dollars in overtime costs. Plus all delivery services, such as US mail, Fedex and UPS will be rerouted and negatively impacted. Finally all emergency services will also be delayed which could have very serious implications.
- 3) The steep hillside where these 2 massive houses are planned to be built appears to have many active underground streams during the wet season. The plan is to essentially build a large, deep "dam" on the hillside behind the houses which will cause all these underground streams to find alternative routes onto neighboring

and downhill properties. The effect of this could be to destabilize the hillside and have strong potential to cause landslides, settling and leaks on about 10 affected houses. This was not considered in the original report to the Planning Department as the soil analysis on the property seems to have been done in dry season, while the underground streams are only active for several days (or weeks) after rains. I'm sure the seriousness of this issue and potential for resultant costly damage was not fully realized by the Department.

- 4) Parking is very limited on Miller Ave. already and during the several years of construction there not only will be a loss of about a dozen parking places but an armada of trucks will descend upon Miller Ave. every morning, most likely resulting in blocking of driveways, mailboxes and causing great inconvenience to residents. This neighborhood consists primarily of retired individuals and students so there will not be an opening of many spaces by commuters as indicated in the Traffic Management Plan for this project. Plus the residents are active in the neighborhood during the day, receiving visitors and deliveries, so not having any parking available for several blocks will also cause further difficulty, such as requiring elderly individuals to walk several blocks to unload groceries since spaces near their house will be blocked by trucks.
- 5) The end result of this project will be the creation of 2 monstrous "McMansions" that will completely dwarf the surrounding buildings and anything else in the neighborhood. They will be visible for blocks around, based upon the sight poles currently erected on the property. Note that what is being referred to on the plans as an "accessory unit" is in reality a second large home. However, the plans call for only 2 off-street parking spaces in a single garage and the elimination of at least 4 on-street parking spaces so these two houses will not have adequate parking without further infringing on the tight parking in this neighborhood.

#### Further Discussion

There is much more information regarding each of the preceding points that seems more appropriate to bring up for consideration of the Zoning Adjustment Boards rather than require you to wade through many more pages of text for this Council meeting. But I wanted to touch on a few aspects to help your decision.

The neighborhood in question is a mature neighborhood of modest size houses from 30 to 80 years old and has developed a character that typifies the best of Berkeley, both visually and in the diversity of the residents. Unlike the Oakland hills with lots of large new homes (an unfortunate aspect of the 1989 fire) inhabited by mainly wealthy individuals, this neighborhood has many residents who have been living here for much of their lives and have grown up supporting the ideals that have contributed to Berkeley's uniqueness. This project in its current form will put the desires of one developer ahead of the lives of over one hundred long-term Berkeley residents if allowed to proceed with the current plans.

Like most other residents, I was not aware of the size and impact of this project until after the initial approval and the wooden poles were built on the property. Now it has become a "hot" topic of conversation among most neighbors, many of whom weren't aware of the appeal submitted so they didn't include their signature on that, and are now willing to try and influence this disruption of their lives. This project will literally disturb residents along the entire length of Miller Ave., as all the large construction trucks, cement mixers, excavation equipment and dump trucks will be routed to Shasta and driving the length of Miller every morning and evening for the duration of the project. Plus most residents will need to take a circuitous detour.

In reviewing the Planning Department report, I noticed some areas that were inconsistent with my personal observation of the property, which most likely led to an approval that should have had further study. For example the issue of underground springs did not receive attention, outside of citing that nothing was noticed during someone's ground analysis. However, I walk this road every day with my dog and can personally attest that quite a large amount of water flows off this property not only during rains but for quite some time after. And it does not seem to be surface water, but active flowing streams coming out the ground by the street. Residents living here can attest to many underground streams that flow after the rains, but these have all achieved some level of stability over the past 50 years and come out of the ground at predictable points. When these are blocked and diverted, as this project at 1017 Miller will do, the streams will likely be now running under other properties and potentially could destabilize the whole hillside, as well as cause lots of long-term damage to several houses on the sides and downhill from this project.

Even the street description for the project property is different from described. The report describes a hillside with a sidewalk and curb on it, but simple observation shows nothing of the sort. In fact, due to the constant water from the streams, the hillside is into the road at all times. Where this become important is that there is no flat area except on Miller Ave. itself, which I measured today to be 19 feet wide at this property. Therefore all materials, staging, trucks and much work will take place in the street effectively blocking it. For reference, the majority of trucks are between 11 and 12 feet of width so even if only one truck is parked in front of this project during construction, the road will be completely blocked for all vehicles, especially those for city services, deliveries and emergency use. The impact this will have on the City of Berkeley is that the garbage, recycling and green collection trucks will need to drive up Miller to the closed section, then back down a narrow winding road until they reach the last intersection. From that point a lengthy detour must take place and then the trucks must do the same from the other direction. This will probably add about 20 minutes to each of the 3 routes, which will likely result in substantial overtime pay to cover this extra time. And any emergency vehicle responding to a problem on Miller such as police, fire or ambulance will find the road blocked and need to take a long, unsuitable detour. Please note that the detour proposed on the project application requires going up Forest (a narrow road allowing one vehicle direction at a time), making a 120 degree blind hairpin turn onto Grizzly Peak Blvd. (which is impractical, if not impossible, for larger vehicles) then coming back down

Latham. The reverse of the detour requires a completely blind turn from Latham onto Grizzly Peak which I can first hand attest to is highly risky.

Here is photo of the property at 1017 Miller so you can verify my observations:



*Note the old Live Oak (one of two) that is supposed to be preserved. Given the massive, deep excavations planned on 3 sides of it, will it survive?*

Regarding the duration of this project, a project of similar scope was recently completed on Grizzly Peak Blvd. and while it only involved constructing one house it had a similar degree of excavation and the size of the resulting house is similar to what is proposed here. I passed that construction site several times a week and can report that for over 2 ½ years there were large trucks in front every day blocking part of the roadway. And that house had a reasonable size front yard to allow staging and materials, plus Grizzly Peak is about 35 feet wide at that point so it didn't cause closure but did require "pushing" one lane aside to clear the trucks. So no matter what timetable the applicant for 1017 Miller states, it is quite reasonable to expect a similar length of time for this project, actually probably longer since a second house will also be built at this location. Therefore, it is not unrealistic to expect a project of this size on Miller Ave. to effectively block and close the street for 3 to 4 years.

I can't speak for others, but for myself, I am not opposed to building a house on this property but it needs better planning to reduce the neighborhood impact and needs a reduction in the scope of the project to alleviate probable damage to the hillside and neighboring properties. I sincerely hope the Council will appreciate the large, negative effects this project will have on many residents and City services and ask that it go back for reconsideration and a reduction in scope.

Thanks!

5

Sarita Waite 1020 Miller Avenue Berkeley, California 94708

CITY OF BERKELEY  
CITY CLERK DEPT  
06 OCT 16 PM 4:46

October 14, 2006

HAND DELIVERED OCTOBER 16, 2006

Shelley M. Kelley, City Clerk  
Zoning Adjustment Board  
2180 Milvia  
Berkeley, California 94704.

**RE: Appeal ZAB Decision Use Permit #06-10000010 (1017 Miller Avenue)**

To the Board:

I am writing my third letter to the City with regard to the effect on my property directly across the street from the development project cited above.

**Insufficient Notice:**

Neither of my prior letters this Spring to Peter Elkan, Traffic Engineer, or three telephone calls to him, or my letter to the staff Amy O. Skewes-Cox or Steven D. were answered or acknowledged. **However, these two prior letters are in the August 16, 2006 Appeal Agenda packet.**

My third letter here is to point out the deleterious effects of parts of the EIR, and the resulting Use Permit now on Appeal, which contain vague and inconsistent language which gave me, and I assume others, insufficient Notice of the actual terms of the City's requirements which will significantly affect my property or them.

**Damage to my property interests from removing on street parking in favor of this Project:**

The driveway and the garages setback variance of 8 inches for the project at 1017 Miller places an unacceptable burden on my property in an attempt to mitigate traffic issues created by the Applicant's unusual proposed location of the garage and the insufficient set back for that particular site.

My property consists of three lots: 1018, 1020 and 1022 Miller Avenue. The center lot, 1020 Miller, is my home, the south lot (1024) has my garage and the north lot (1018) is currently a large organic garden. I obtained a permit for and put in a curb cut and apron for driveways at 1018 and 1022 in 1978.

All annotated street and parcel plans have continued to identify my third and northern lot across the street from one of the two lots of the Springer property as "1017 Keith Avenue" when it is **1018 Miller.**

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Within the fifty (50) feet street frontage of 1018 Miller, at least one street parking space must be allowed to remain along with a driveway sufficient for a future two car garage. A City restriction which disallowed any less on-street parking for that a lot in order to favor of either of the Springer lots, would, I believe, raise Conditional questions.

As to my center and southern lots, immediately in front of my home at 1020 Miller, I indicated to the Traffic Engineer that I was willing to agree to the removal of on-street parking that was directly across from the proposed 1017 Miller garage, providing at least two street spaces remained in front of my home and garage lots. Mr. Ekland and I walked the area and he agreed that was sufficient to remedy his traffic concerns.

In March of this year, after I met at the site with Mr. Ekland, I then asked him by letter for details with regard to the specific no parking locations he was going to recommend. He never answered despite three follow up calls. The only official documents I have seen on Traffic mitigation were not sent to me by the City and do not clearly indicate the actual areas that would be designated as no parking in front my property or elsewhere for that matter.

The City's position is still not clear as to where the no parking areas would be located. The Reports only says "south of the project and directly across the street from the garage". "South of the project" is ambiguous. Is it all of the lots south of the project? If not, which ones? Is it intended to protect from parking 100% of the frontage of both lots of the Springers so there is no parking at all "south of this (first) garage in front of their two lots??

The phrase "Directly across the street the garage" was also it discussed with the Traffic but neither he nor any City documents I have seen has clarified that in meaningful terms of length of street frontage and where.

There should be no further restriction on parking in front of my home or lots in order for the City to further assist the development by the Springers. I would see that as an impermissible taking of my property rights to a future development of 1018 as a home site, enacted simply for the benefit of the Springers for one or both of other lots that they hope to develop.

#### **Sidewalks.**

As represented to me by the Applicant and the City engineer, the Applicant would see that there was a public sidewalk, curb and gutter at their lot frontage. On page 10 of Report Section 7. The Report says that "As part of the project, this sidewalk and

October 14, 2006

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curbs/gutter would need to be repaired to the satisfaction the Public Works Department. Refer to Contrition of Approval No., 21 in Attachment #1."

However Attachment #1 only says that upon the approval of Public Works Department, the Applicant "shall repair any damage to the Public Street and/or sidewalks by **construction vehicles traveling to and from the project sites.**" (emphasis added)

**Thus this mandate does not even address the issue raised of requiring the Applicant to see that there is existing sidewalk, gutters and curb at their property and in good repair, as required of other homeowners. This amazing language and oversight could be interpreted by the Applicant as not requiring any public sidewalk, curb or gutter at that address.**

I sought clarification of this point in my letter of March 13, 2006. Under the headings "1. Sidewalks" and "2. Landscaping", but I was never contacted on this the matter either. Simply put this has never been clarified. What does the City intend with regard to a public sidewalk at the Springer property?

Now and in the futures, without a public sidewalk, curb and gutter, a large number of recreational walkers on Miller will continue to be forced to walk in the street downhill, hidden by a curve, which the Traffic Engineer considered a line of sight problem for oncoming downhill autos.

#### **Drainage.**

**The Repot says there have been 'no reports of flooding' at the catch basin where the Applicants are to be allowed to direct their storm water run off.**

However, I have reported such flooding in my letter of March 13, 2006 and the Sanders letter in the Packet also raises that concern.

The catch basin 300 feet away will not be adequate to collect the added storm water run off from 1017 Miller once the lot is developed. That empty sloped lot had barely been able to absorb the amount of rain water now. As noted by others' letters, most of the land is proposed to be covered by the structures with little soil surface available to accept and hold the amount of rain fall. The current resulting substantial ground slippage into the street now, over the past ten years, should be ample evidence that when built on, the site will no longer accept most of the storm water that falls there. It will run down Miller in a torrent.

October 14, 2006

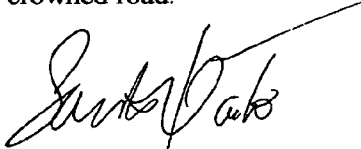
Page Four

**I have lived here thirty year and with what I have see, the street will flood south of the project, on its way to the distant the catch basin.**

**A new catch <sup>basin</sup> should be required for 1017 Miller run off to prevent flooding over the severely crowned road on the way 300 feet south.**

**Conclusion:**

Our City Staff has the duty to protect the public and property owners from foreseeable damages to the surrounding properties, due to a proposed project; to protect pedestrians from traffic dangers which should be eliminated by this developer; and other to protect property owners from the dangers of flooding from this especially steep lot and steeply crowned road.



Sarita Waite

Law Offices of

**ELLEN E. S. RODIN, ATTORNEY** 06 OCT 16 PM 4: 55

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Oakland, California 94612

TEL:(510) 835-0850 / FAX:(510) 835-0851

ellenrodin@california.com

October 16, 2006

CITY CLERK, CITY OF BERKELEY  
2180 Milvia Street  
Berkeley, CA 94704

RE: Use Permit No. 06-10000010  
1017 Miller Avenue, Berkeley  
Zoning Board Decision 07/13/06

TO THE CITY COUNCIL, PLANNING DEPARTMENT, AND ALL PARTIES:

Leo and Ingrid Valley hereby APPEAL the decision of the Zoning Adjustments Board in the above-referenced matter. The issues raised on Appeal include, but are not limited to, the following:

1. The Environmental Impact Report and all its sub-parts and attachments: The Environmental Initial Study is flawed in that it fails to adequately address the actual environmental impact of the project, and consistently understates that impact. Specifically, the blocking of 50% of the Valley view, Item 1 (a) par. 2. "From the kitchen area and sitting area, the new residence would block views of ....North Berkeley...Albany, including Albany Hill, and views of the San Francisco Bay..." is characterized as "Less Than Significant".

Additionally, in Item 1(b) damage to the root structure of a mature Live Oak tree and a mature Monterey Pine is characterized as "No Significant Impact", and this despite public policy Berkeley CO 6462-NS and additional published information in the file stating that the tree must be protected to the drip line (20' - 30' from the trunk); the Environmental Report characterizes cutting earth 12' from the trunks of both the listed trees as "Less Than Significant w/Mitigation". (Item IV(e) of the Report).

Further, part VI of the Report minimizes the Geology and Soil requirements, and characterizes the potential for landsliding as "Less Than Significant w/Mitigation" even despite movement and slippage in the area as noted in the letter dated 03/17/06 of Valley documenting slippages at 1231 Grizzly Peak; 1118 Cragmont; and 48 Hill Street. A suggested more appropriate and not much greater mitigation would be to require additional setback for the foundation to 4 feet inside the retaining wall, which the Planning Department has not required.

Still further, the calculation of the footprint of the entire structure excludes the garage. The "subterranean garage" is actually only 1/3 "subterranean"; although the garage is being dug into the hillside, it is not fully into the hillside; moreover, the garage will be connected to the house by an elevator. The City Planning Department has determined that the structure's footprint does not include the garage, however, it is required to include the garage as a connected part of the structure which is *not* subterranean. BMC Section 23E.04.030. Moreover, the cutting of the hillside to build the garage, together with the real footprint of the entire structure including the garage, combine to further undermine the stability of the hillside, increasing the risk of slippage. None of these issues have been adequately addressed by the proposed mitigation approved by the Planning Department and the Zoning Adjustment Board.

2. The Planning Department approval of the Permit in this matter fails to consider adequately the size of the proposed structure relative to the neighborhood; the lack of green space in the proposed project, relative to the neighborhood; and provides inadequate attention to/protection of the neighborhood relative to the cumulative environmental impact of all aspects of the structure.

All of the issues mentioned above in Item 1 of this Appeal letter must be taken together so that the true impact of the proposed building is really seen. The Valley home is arguably a "Structure of Merit" under the Berkeley Neighborhood Protection Ordinance currently in effect.

The Valley house is built to be surrounded by green, and it currently is almost entirely surrounded by trees. The house has large windows on three sides, so that, sitting in the kitchen or the sitting area or the sun room is almost like sitting outdoors on the deck, which surrounds the house on two sides. The house was built within the hillside greenery, which has grown and matured around the house, as planned by the architect, so that living inside is much like living outdoors. Such a home is unusual for Berkeley, and should be protected, and is protected by the designation "Structure of Merit" in the current ordinance. With the new project approved and built, that home simply will no longer have the same "green" character, nor will the neighborhood. Protection of the Valley green space *and view* as a Structure of Merit, and within its very green neighborhood, has not been adequately considered, or considered *at all*, by the Planning Department.

Moreover, Measure J on the ballot presently is the subject of hot political debate in Berkeley, to be decided in less than three (3) weeks. The Valley Appeal requested a 45 day extension of time to file the Appeal, in part because of irregularities in the mailing such that they received the Notice of the Zoning Adjustment Board decision only a few days before the Appeal was due. No extension was given. However, in view of the highly political character of the entire development issue in Berkeley right now, it can be seen that the Board and the Council are rushing this project through in case they lose at election on Measure J. It is urged by the Valley Appeal that the Extension requested should be given by the Council, so that this project can be evaluated by City staff in the climate *after* the election, when the category "Structure of Merit" has either been affirmed by the voters, or some other category is approved and the Valley's and the neighborhood's rights viz a viz the new project are defined, and then given adequate consideration at that time by the Planning Department.

3. Inadequate attention by Zoning Board and Planning Department to possible mitigation of impact by imposition of relatively minor conditions on the proposed structure, relative to the entire project.

It has been proposed that a practical and relatively minor condition, relative to the project as a whole, would be to eliminate the 'accessory unit' and replace module 3 with the bedroom(s) of the main unit, thereby eliminating one of the smaller modules, the upper module. This would reduce the height of the entire project by approximately 8 feet, which would (1) greatly reduce the impact to the views of the adjacent home; (2) reduce the footprint of the structure by less than 20%, but substantially reduce the potential landsliding danger; (3) reduce the impact on the Monterey Pine which under the permit if approved is greatly imperilled; (4) open the area to 20% more green space for the neighborhood and the adjacent home; and (5) remove that section of the house which most greatly affects the immediate neighbors and the neighborhood. That proposal has never been considered.

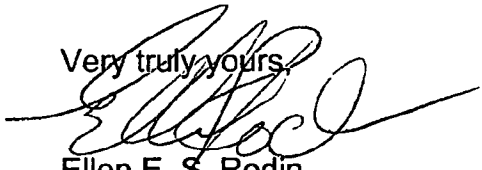
4. Timing of issuance of the decision by the Zoning Board.

The Zoning Board "Hearing" on this matter was scheduled for June 8, 2006. However, on June 6, 2006 the Board emailed its Decision and its Findings to the interested parties, the Vallelys. It appears the decision of the Zoning Board was made before the Hearing. If so, the political nature of the Decision and Findings is even more apparent, and the Due Process rights of all the interested parties and neighbors are adversely affected.

5. Timing of the Appeal.

The City was initially requested to continue this matter 45 days to permit Appellants opportunity to Amend this Appeal to state the issues more completely, because the Appellants received the City's Notice of Decision very late, only days before the Appeal was due. Taken together with the timing issue Item #4 raised above, the City appears to be rushing to decision on this matter, and depriving the Appellants of the full opportunity to present the issues to the Planning Department, the Zoning Adjustment Board, and the Council.

Very truly yours,



Ellen E. S. Rodin

**Kelly, Sherry**

---

**From:** Joan Martin [joan.martin21@verizon.net]  
**Sent:** Monday, October 16, 2006 11:10 AM  
**To:** Clerk  
**Subject:** Appeal for 1017 Miller Avenue Project

My name is Joan Martin and I am the owner of the property at 1013 Miller Avenue. I have concerns about the building project at 1017 Miller Avenue. I think that my property will be negatively impacted by the present scope of its development. As a result, I strongly support the appeal that has been submitted to the council and also the concerns contained in the letter to the council submitted by Mr. Peter Hirschfeld.

I thank you for your consideration of the many concerns regarding this project.

Joan Martin

8

GERD H. ILG  
1159 Cragmont Avenue  
Berkeley, CA 94708-1641

CITY OF BERKELEY  
CITY CLERK DEPT

October 16, 2006

06 OCT 17 AM 11:34

Mr. Mayor, Councilmembers  
CITY OF BERKELEY  
2180 Milvia Street  
Berkeley, CA 94704


Re: Appeal of Use Permit #06- 1000001 / ZAB Decision: 7-13-06  
Project location: 1017 Miller Ave., Berkeley

Mr. Mayor and City Council Members:

On November 28, 2000 I wrote a letter concerning the many oaks residing on this property. A copy went to Mr. Rhodes and the ZAB. Despite this effort the owner of the above mentioned property, Mr. Springer, decided to cut trees contrary to the revised City Ordinance. He also cut a large overhanging limb of the neighbor's tree without the benefit of an approved permit. Several members of the ZAB visited this property presumably investigating detriments of the contemplated house to the neighbors. The ZAB involved the good offices of Mr. Herbert's BDRS, however, in this meeting the applicant did not feel like compromising anything. It therefore came as a surprise that the ZAB still rewarded this applicant with a Building Permit. This action must be considered a disregard to the City's policy to attempt mitigation of adverse circumstances and therefore it undermines the Zoning process. In the 17 years since I have been involved in neighborhood issues there were many successes in compromising by previous Boards. This one is definitely unfair to the adjoining neighbors. I do not understand why the ZAB decided that 60½ feet high houses, equal to 6 ¾ stories, would be an asset to the Berkeley Hill's neighborhood. Also the Board may not have been aware of the fact that the adjacent property is also owned by the applicant and one neighbor has already been told of this impending prospect. One can easily assume that this "Manhattan Project" is soon to be followed by another one. MANSIONISATION of the Berkeley Hills is very much alive despite opposition by previous Zoning Boards to such unfitting projects. In this ZAB decision the reduction of property value by the adjoining houses is very obvious. This house is artificially pumped up in the air to maximize their view by reducing the view of the neighbors behind. The mini-lawn on top of the garage to circumvent footprint requirements may be legal but highly undesirable in this case and so are the top floor 10ft. ceilings. At any rate, this is an offensive Spec-House and these neighbors deserve better.

I certainly hope that the City Council will look in to this with more scrutiny and change this one-sided decision by the Zoning Board, possibly remand it back to the ZAB with certain minimum conditions attached. This way it would afford the applicant the opportunity to re-evaluate his design and still build a comfortable house by compromising with these affected neighbors and their justified objections.

Sincerely,

  
Gerd H. Ilg