

RESOLUTION NO. 63,841–N.S.

AFFIRMING THE DECISION OF THE ZONING ADJUSTMENTS BOARD TO APPROVE
USE PERMIT NO. 06-10000117, 1625 BERKELEY WAY

WHEREAS, on September 18, 2006 a Use Permit application was submitted to construct an addition to an existing dwelling located at 1625 Berkeley Way; and

WHEREAS, the project is deemed categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”); and

WHEREAS, on April 12, 2007, the Zoning Adjustments Board held a public hearing and approved (5-2-1-0-1; Recused: Doran; Absent: Judd) Use Permit No. 06-10000117, by making the required findings and adopting conditions of approval; and

WHEREAS, on May 1, 2007 a Notice of Decision of the Zoning Adjustments Board’s action was issued, with a right of appeal allowed for 14 days thereafter; and

WHEREAS, on May 15, 2007 the Zoning Adjustments Board’s decision was appealed to the City Council by a neighbor located at 1625 Berkeley Way, Berkeley; and

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

WHEREAS, attached hereto is a reduced copy of the approved plans (dated October 29, 2006 and received on October 31, 2006 and marked as Exhibit B) that is included by reference as though fully incorporated herein; and

WHEREAS, the Council has considered the record of the proceedings before the Zoning Adjustments Board; the recent Staff reports and correspondence presented to the City Council, and, in the opinion of this Council, the facts stated in, or ascertainable from this information, warrant affirming the decision of the Zoning Adjustments Board to approve the subject Use Permit, and dismissing the appeal.

NOW THEREFORE, BE IT RESOLVED the Council of the City of Berkeley hereby affirms the decision of the Zoning Adjustments Board to approve Use Permit No. 06-10000117 to construct an addition to an existing dwelling located at 1625 Berkeley Way based on the findings, and subject to the conditions of approval contained in Exhibit A, and dismisses the appeal.

* * * * *

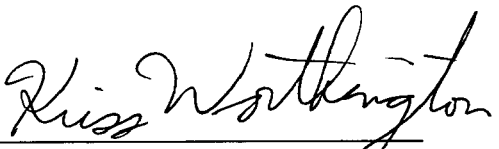
The foregoing Resolution was adopted by the Berkeley City Council on September 18, 2007 by the following vote:

Ayes: Anderson, Capitelli, Moore, Wozniak and Bates.

Noes: Olds and Worthington.

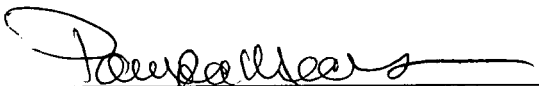
Absent: Noné.

Abstain: Maio and Spring.



Kriss Worthington, Vice Mayor

Attest:



Pamyla Means, MMC, City Clerk

1625 Berkeley Way

Use Permit #06-10000117 to construct a 624 foot second story addition and legalize a 407 square foot addition on an existing single-family dwelling unit that is non-conforming for lot coverage and west (left) side yard setback

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).

GENERAL NON-DETRIMENT FINDING

2. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the proposed project “...*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 proposal would be consistent with policies and purposes of the General Plan, University Avenue Strategic Plan, and the Restricted Multiple-Family Residential (R-2A) District, and compatible with the existing built environment of the area, since:
 - i. The existing non-conforming front (south) setback would not be altered since the addition would be a partial second story addition setback 32 feet from the street. The existing left (west) side yard setback is non-conforming since it is two feet, whereas three feet is required. This setback would be continued vertically to construct the new addition. However, the privacy and shadowing effects on the neighbor located to the west (1623 Berkeley Way) would not be significant for the reasons outlined in the findings related to shadowing and privacy, below;
 - ii. The average height of the proposed addition would only be approximately two feet greater than the height of the existing partial second story (the ridge of the proposed addition would be approximately five feet higher than the ridge of the existing partial second story). The finished average height of the dwelling unit would be approximately 25 feet, which is less than the maximum average height of 28 feet permitted in the District. The finished average height of the dwelling unit would be compatible with other dwelling units in the area; and
 - iii. The proposed bulk of the addition would be compatible with existing residential buildings in the street since there is a mixture of one and two story dwellings in

the area. The addition would only result in a partial second story that would be setback from the area. In addition, lot coverage would not be increased and it is currently only 46 per cent, whereas 40 per cent is permitted. The dwelling itself would comply with the permitted lot coverage, however an accessory structure (shed) with an area of 210 square feet makes lot coverage non-conforming;

- B. The proposal would not create any significant additional shadowing effects on neighboring habitable structures since:
 - i. Because of the orientation of the lots the proposed addition would not shadow one dwelling throughout the whole day; the east side of 1623 Berkeley Way would be affected in the morning, and the west side of 1627 Berkeley Way would be affected in the afternoon;
 - ii. The project site and the adjoining lots to the east and west are aligned lengthwise to the north and south, which is a more optimum orientation for providing solar access than east and west. As a result of this lot orientation the front (south) of each of the dwellings on these lots would have solar access throughout much of the day. The living areas are located on this side of each of these dwellings; and
 - iii. Solar access is maximized into at least some of the living areas of dwellings, rather than protecting all rooms of dwellings such as bedrooms and bathrooms or protecting yards;

- C. The project would not have significant privacy effects since:
 - i. The proposed addition on the second story would be for bedrooms and a bathroom, which are less likely than living areas to generate privacy conflicts;
 - ii. There would not be a direct line of sight between windows of the addition and windows of the existing dwellings located on 1623 and 1627 Berkeley Way because of the position of windows on these dwellings and since the addition is on a higher level (second story); and
 - iii. The dwelling is separated from the dwellings on 1623 and 1627 Berkeley Way by approximately 12 feet and 7.75 feet, respectively;

- D. The project would not have significant view effects on the resident to the east (1627 Berkeley Way) since:
 - i. The General Plan identifies significant views such as the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz Island;
 - ii. The proposed right (east) side yard setback would be 3.8 feet, whereas only 3 feet is required;
 - iii. The addition would be conforming with the average height limits specified for the District; and
 - iv. Other rooms in the dwelling (including the front living rooms) at 1627 Berkeley Way provide outlook to the front and rear yard;

- E. The applicant considered alternative options to minimize the potential effects of the project on abutting neighbors, particularly relating to shadowing and privacy;

- F. The additional rooms would not result in an increase in the need for parking. No off-street parking exists on the project site and it would be very difficult to provide it. The Zoning Ordinance requires off-street parking based on the number of dwelling units rather than the number of bedrooms. In addition, it does not require new off-street parking to be provided for additions if existing dwellings are non-conforming for off-street parking;
- G. Additions of this scale are commonly carried out throughout Berkeley without damaging landscaping in neighbor's yards, or involvement from the City in neighbor issues related to property lines.

STANDARD CONDITIONS

1. **Conditions Shall be Printed on Plans**

The conditions of this Permit shall be printed on the first sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. The second sheet may also be used if the first sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

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 Zoning Adjustments Board attaches the following conditions to this Permit:

Prior to Applying for a Building Permit

- 9. Prior to applying for 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 this record to the project planner upon request.

Noise Management Individual _____
Name Phone #

- 10. Prior to applying for 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

11. Prior to applying for 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

Prior to Issuance of Any Building Permit

12. The owner of 1627 Berkeley Way and the applicant shall agree in writing to details of a skylight to be installed in the kitchen/meals area of 1627 Berkeley Way at the applicant's expense. The applicant shall provide a copy of this agreement to the project planner. The City Zoning Officer may stipulate minimum requirements for the skylight should the owner of 1627 Berkeley Way and the applicant fail to reach agreement (see Condition 25 for timing of installation).

During Construction:

13. 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.
14. 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.
15. 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.
16. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
17. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.
18. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.

19. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
20. 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.
21. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season (between October 15 and April 15), the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department.
22. The applicant shall comply with any civil laws or responsibilities prohibiting trespass on adjoining properties, and repair/compensation for any damage to adjoining properties caused by construction activity.

Prior to Issuance of Occupancy Permit or Final Inspection:

23. The project shall conform to the plans and statements in the Use Permit.
24. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated October 29, 2006 and received on October 31, 2006.
25. A skylight shall be installed for 1627 Berkeley Way in accordance with the agreement required pursuant to Condition 12, unless the owner of 1627 Berkeley Way agrees to an alternative deadline for construction.
26. The applicant shall remove the existing eave overhangs on the eastern side of 1625 Berkeley Way, and the new addition shall not include eave overhangs. This work shall be shown on any building permit plans submitted for the project.
27. The applicant shall paint the eastern side of the 1625 Berkeley Way a lighter color to increase the amount of light into the windows of 1627 Berkeley Way.

At All Times:

28. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
29. 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.

