




Office of the City Manager

PUBLIC HEARING
July 13, 2010

To: Honorable Mayor and Members of the City Council
From:  Phil Kamlarz, City Manager
Submitted by: Dan Marks, Director, Planning and Development Department
Subject: ZAB Appeal: 2421 Ninth Street

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution dismissing the appeal and approving Use Permit #05-10000084 to construct a two-story, 1,279 square-foot, detached dwelling unit with a reduced rear yard setback of 10 feet at the rear of a 6,500 square-foot lot with an existing single-family dwelling unit, consistent with the Zoning Adjustment Board (ZAB) approval of May 14, 2009.

FISCAL IMPACTS OF RECOMMENDATION

No fiscal impact.

CURRENT SITUATION AND ITS EFFECTS

On May 14, 2009, the ZAB discussed and approved use Permit #05-10000084 with a vote of 5-3-1 [5 ayes: (Allen, Anthony, Doran, Mikiten, Williams); 3 nays: (Cohen, Matthews, Shumer); 1 abstain: (Koon)].¹ On June 18, 2009, Lorena Aranda, et. al., filed an appeal with the City Clerk.²

The project was first presented to the Council on the October 27, 2009, at which time the Council voted 8-0-1 to set the item for hearing on a date to be determined [8 ayes: Anderson, Arreguin, Bates, Capitelli, Moore, Wengraf, Worthington, Wozniak; 1 recused: Maio]. The item was later set for hearing on the January 19, 2010 City Council agenda, at which time the applicant requested a continuance off calendar in order to work out design issues with the appellants. The Council voted unanimously 9-0-0 to refer the item to the Agenda Committee to reschedule the public hearing to a date agreeable to both parties.

¹ The Notice of Decision mailed on May 19, 2009 and the subsequent Notice of Decision mailed on June 6, 2009 incorrectly state that Board Member Danfeng Koon voted for the project.

² Appellants are Lorena Aranda, Victor Reyes, Susan Henderson, David Nold, Mya and David Kesler, Tanja Zimmerman, Jeb Evans, Lisa and Brian Joseph.

BACKGROUND³

On April 9, 2009, the applicant submitted project plans for an approximately 1,596-square-foot, two-story house that would be added to the rear of a property that currently has a single-family residence in the front. The home consisted of an 857-square-foot ground floor level that included an entry, living room, kitchen, dining room, half bath, and office/guest room, and a 739-square-foot second floor level that included a master bedroom suite (bedroom, walk-in closet, bathroom) and deck, a bathroom, and two smaller bedrooms, one with a rear deck.

At the May 14, 2009, meeting, the ZAB opened the public hearing, heard public testimony, discussed the project, and approved the project according to staff's recommendation to remove a minimum of 200 square feet from the southwest side of the second floor. The Board approved the project with the following condition of approval:

"Prior to submittal for a building permit, the Applicant shall submit a revised plan for review and approval by the Zoning Officer. The revised plan shall remove at least 200 square feet from the southwest side of the second floor, in the area occupied by the Master Bedroom suite (master bedroom, bathroom, closet) on the plans dated April 9, 2009. A small deck (75 sq. ft. max) may remain in the area occupied by the master bathroom and closet, but the area occupied by the master bedroom shall not be used as a deck. A Notice of Limitations shall be filed with the County Recorder prohibiting its use as a deck in order to maintain the privacy of the property to the south. This roof area may be used for the installation of solar energy equipment."

The ZAB approval was appealed by several immediate neighbors.

The item was set for the October 27, 2009 City Council meeting. At the meeting, the Council voted to hear the project, and set the hearing date for January 19, 2010. At the January 19th Council meeting, the applicant requested, and was granted, a continuance to prepare additional revisions to the plans in coordination with the appellants. The applicant worked with the various neighbors, and resubmitted a revised plan set on May 18, 2010. The current design has been revised and refined to address the condition of approval imposed by the ZAB, as well as the concerns of the neighbors as raised in the letter of appeal. The May 18, 2010 plan set is included as Attachment 1, Exhibit B to the draft Council Resolution.

CURRENT PROJECT/SUMMARY OF CHANGES

In order to accomplish the required condition of approval while maintaining the architectural integrity of the building, the project has been revised to be a two-story, 1,279 square-foot, three bedroom detached dwelling unit at the rear of a 6,500 square-foot lot with an existing one story, 1,295-square-foot, single-family dwelling unit located

³ For further background detail dating back to the initial project submittal, please refer to the City Council staff report of January 19, 2010 included in Attachment 2.

at the front of the lot.⁴ Project details and summary of revisions from the ZAB approved project are as follows:

1. **Second story reduction.** The current project proposes a second story with two bedrooms and a full bath for a total of 380 square feet of gross floor area. This represents a reduction of 359 square feet from the second floor approved by ZAB on May 14, 2009. The revised design places all massing on the south (right) side of the new structure. The proposed second story is now set back 20 feet from the rear property line (ZAB approved at 16 feet) and set back 30.75 feet from the left property line (ZAB approved at 20.5 feet). The revisions comply with the intent of the ZAB condition of approval, which was to address the appellants' sun light, privacy, and massing concerns related to second floor massing at the north (left) and east (rear) sides of the proposed house.⁵
2. **Second story balconies.** The current plan has eliminated all second story balconies. This design exceeds the ZAB condition of approval that allowed a 75-square-foot second story balcony. The elimination of all balconies greatly reduces potential privacy impacts to the neighbors and is consistent with the ZAB approval.
3. **First story massing.** In order to further reduce the massing impacts to the rear abutting neighbor, the current design increases the rear yard setback for the southern (right) portion of the first story. Although the master bedroom area (north/left side) of the first story still proposes a 10-foot rear yard setback in order to accommodate the required off-street parking, the remainder of the first story foot print is setback 21 feet from the rear property line. This is an increase of 3.5 feet from the ZAB approved 17.5-foot setback. The shift in the first story massing, would further mitigate the perceived massing impacts to the abutting properties to the east and south, while retaining a 14.3-foot separation between the buildings on the subject lot.
4. **Height.** The height of the proposed building has been reduced by an additional 2.25 feet from the ZAB approved height of 24 feet, 3 inches. The current project proposes a building with a maximum height of 22 feet measured from a shed roof element located on the south façade of the building, five feet from the south property line and 45 feet from the north property line. The ZAB approved building has an approved height of 24.25 feet, with the highest point (roof ridge) located approximately 29.5 feet from the northern (left) property line. The reduction and shift in the building height would result in minimized sunlight impacts to both the properties to the north and east of the subject site.

⁴ The ZAB staff reports refer to the existing home as having gross floor area of 1,384 square feet. This number is actually the lot coverage area of the home and includes roofed porches. Per the Alameda County Assessor, the taxable floor area of the existing, front house is 1,295 square feet.

⁵ The appellants live to the left/north (2419 Ninth Street) and to the rear/east (2418, 2420, and 2424 Tenth Street); the neighbor to the right/south of the subject property has no objections to the project.

5. **Overall massing reduction.** The first floor plan is currently proposed as 899 square feet and includes the kitchen, laundry/utility room, dining room, living room, and master bedroom. The proposed square footage represents a 42-square-foot increase from the 857-square-foot, first story floor plan approved by ZAB on May 14, 2009. The increase in square footage is distributed throughout the footprint and does not result in a reduction of any of the previously approved setbacks. Overall, the proposed 1,279-square-foot house represents a reduction of 317 square feet from the project submitted before the ZAB in May 2009. Staff believes the revised floor plans are consistent with the ZAB approved design and conform with the intention of the ZAB condition of approval.

RATIONALE FOR RECOMMENDATION

The appeal letter is included in Attachment 3 of this report. The primary points of the appeal and staff responses can be found in the January 19, 2010 City Council staff report included in Attachment 2 of this report. Because the final revised project reduces any potential impacts of the previous design, staff's responses to the original appeal still apply.

CONTACT PERSON

Debra Sanderson, Land Use Planning Manager, Planning Department, (510) 981-7411

Attachments:

- 1: Resolution
 - Exhibit A: Findings and Conditions
 - Exhibit B: Project Plans dated May 18, 2010
- 2: City Council Staff Report, dated January 19, 2010
- 3: Appeal Letter from the 2421 Ninth Street neighbors dated June 17, 2009
- 4: ZAB Staff Report, dated May 14, 2009
- 5: Index to Administrative Record
- 6: Administrative Record
- 7: Public Hearing Notice

RESOLUTION NO. ##,###-N.S.

TO APPROVE USE PERMIT 05-10000084 TO CONSTRUCT A TWO-STORY, 1,268 SQUARE-FOOT, DETACHED DWELLING UNIT AT THE REAR OF A 6,500 SQUARE-FOOT LOT WITH AN EXISTING SINGLE-FAMILY DWELLING UNIT, CONSISTENT WITH ZAB'S APPROVAL OF MAY 14, 2009, AND DISMISSING THE APPEAL

WHEREAS, on July 7, 2005, an application was filed by Gregory VanMechelen on behalf of Fereydoon Shalileh, requesting approval to construct a two-story dwelling unit in the rear yard area of a lot with an existing single-family dwelling unit located at 2421 Ninth Street and

WHEREAS, on January 30, 2008, the applicant submitted a revised plan set to address neighbors' concerns; and

WHEREAS, on April 4, 2008, staff deemed this application complete; and

WHEREAS, on June 25, 2008 the applicant and property owner entered into a mediation session with concerned neighbors resulting in no resolution; and

WHEREAS, on July 31, 2008, staff posted three Notices of Public Hearing in the project vicinity and mailed public hearing notices to neighborhood groups with an interest in this area, and all property owners and occupants within 300 feet of the project site; and

WHEREAS, on August 14, 2008, the Zoning Adjustments Board held a public hearing, and continued the item to the September 11, 2008 ZAB meeting; and

WHEREAS, on September 4, 2008, the applicant submitted revised plan in response to neighbors' concerns; and

WHEREAS, on September 11, 2008, the Zoning Adjustments Board held a public hearing, and continued the item to the October 6, 2008 ZAB meeting; and

WHEREAS, on September 22, 2008, the applicant and property owner entered into a second session of mediation with concerned neighbors resulting in no resolution; and

WHEREAS, on October 6, 2008, the Zoning Adjustments Board held a public hearing, voted to approve the project, but failed to reach a majority, and continued the item to the November 13, 2008 ZAB meeting; and

WHEREAS, on October 29, 2008, the applicant submitted a revised plan set to address neighbors' concerns; and

WHEREAS, on November 13, 2008, The Zoning Adjustments Board held a public hearing, and approved the application as Use Permit #05-10000084; and

WHEREAS, on November 20, 2008, staff issued the notice of the ZAB decision; and

WHEREAS, on December 4, 2008, Lorena Aranda, et. al. filed an appeal of the ZAB's decision with the City Clerk; and

WHEREAS, on January 29, 2009, staff sent out the corrected notice of the ZAB decision; and

WHEREAS, on February 11, 2009, the Traffic Engineer verified that the ZAB-approved driveway and parking design did not comply with City standards; and

WHEREAS, on March 10, 2009, the Council considered the record of the proceedings before the Zoning Adjustments Board; the staff report and correspondence presented to the Council, and remanded Use Permit #05-10000084 back to the ZAB to reconsider the project in light of the changes required to accommodate a satisfactory driveway and parking plan; and

WHEREAS, on April 9, 2009, the applicant submitted a revised applicant statement and plan set with a driveway and parking configuration approved by the Transportation Division; and

WHEREAS, on April 30, 2009, staff posted three Notices of Public Hearing in the project vicinity and mailed public hearing notices to neighborhood groups with an interest in this area, and all property owners and occupants within 300 feet of the project site; and

WHEREAS, on May 14, 2009, The Zoning Adjustments Board held a public hearing, and approved the application as Use Permit #05-10000084 with the reduction of a minimum of 200 square feet from southwest side of the second story; and

WHEREAS, on May 19, 2009, staff issued the notice of the ZAB decision; and

WHEREAS, on June 4, 2009, staff issued a revised notice of ZAB decision with an extension of the appeal period; and

WHEREAS, on June 18, 2009, Lorena Aranda, et. al. filed an appeal of the ZAB's decision with the City Clerk; and

WHEREAS, on October 27, 2009, the Council considered the record of the proceedings before the Zoning Adjustments Board; the staff report and correspondence presented to the Council, and set the item for hearing at a date to be determined; and

WHEREAS, on January 14, 2010, staff posted the required Notices of Public Hearing and mailed public hearing notices to neighborhood groups with an interest in this area, and all property owners and occupants within 300 feet of the project site; and

WHEREAS, on January 19, 2010, Council, on request of the applicant, voted to refer the item to the Agenda Committee to reset the date for the public hearing to a date agreeable to both parties; and

WHEREAS, on May 18, 2010, the applicant submitted a revised plan set consistent with ZAB's approval; and

WHEREAS, on July 9, 2010, staff posted the required Notices of Public Hearing and mailed public hearing notices to neighborhood groups with an interest in this area, and all property owners and occupants within 300 feet of the project site; and
WHEREAS, attached hereto are findings and conditions (Exhibit A) and the revised project plans (Exhibit B) that are included by reference as though fully incorporated herein; and

WHEREAS, on July 13, 2010, the Council considered the record of the proceedings before the Zoning Adjustments Board, the revised project plans, the staff report and correspondence presented to the Council, and, in the opinion of this Council, the facts stated in, or ascertainable from this information, warrant approving Use Permit #05-10000084; and

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley hereby approves Use Permit #05-10000084 for the project located at 2421 Ninth Street subject to the Findings and Conditions contained in Exhibit A and the Project Plans in Exhibit B, and dismisses the appeal.

Exhibits

A: Findings and Conditions

B: Project Plans

**NOTICE OF PUBLIC HEARING - BERKELEY CITY COUNCIL
CITY COUNCIL CHAMBERS, 2134 MARTIN LUTHER KING JR. WAY**

ZAB APPEAL OF USE PERMIT #05-1000084: 2421 NINTH STREET

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, JULY 13 at 7:00 P.M.** a public hearing will be conducted to consider dismissing the appeal against a decision of the Zoning Adjustments Board and approving Use Permit #05-1000084 to construct a two-story, 1,279 square-foot, detached dwelling unit with a reduced rear yard setback of 10 feet at the rear of a 6,500 square-foot lot with an existing single-family dwelling unit, consistent with the Zoning Adjustment Board (ZAB) approval of May 14, 2009.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **July 8, 2010**

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet. Comments received no later than Tuesday, July 6, 2010 will be included in Council agenda packets. Comments received thereafter will be submitted to Council as supplemental communications at the meeting. For further information, call Deanna Despain, City Clerk, 981-6900. FAX: (510) 981-6901. TDD: (510) 981-6903.

For further information, please contact Debra Sanderson at (510) 981-7410.

Published: July 2, 2010

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on or before July 8, 2010.



Deanna Despain, CMC, City Clerk