

Figure 5b Photographs of the Project Site



Left to right: View of project site along Hearst Avenue, southeast to southeast corner (1173 Hearst Avenue; Camellia building)



Left to right: Driveway entrance to off-street parking between 1155 Hearst Avenue and 1161 Hearst Avenue (Azalea and Begonia buildings).
View of parking area and 1157 Hearst Avenue (Freesia building)

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Figure 5c Photographs of the Project Site



Left to right: View of parking area and Freesia to east; view of parking area and Azalea to southwest; view of Azalea and Begonia to south; view of parking area and Begonia to southeast

4. Class 32 Exemption Analysis

Criterion (a)

The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

The proposed project would involve rehabilitation of seven existing residential dwelling units and infill development of six new dwelling units. The proposed project is consistent with the City of Berkeley's General Plan designation of High Density Residential (HDR) and applicable policies in the City's General Plan. The project would provide six new residential units located within one quarter mile of the San Pablo/University intersection that is served by existing AC Transit bus lines and would comply with the City's Inclusionary Ordinance by either providing one below market rate unit for a Low Income Household and payment into the Affordable Housing Trust Fund of the remainder 0.2 unit fee, or payment of the in-lieu fee.

The project is also consistent with the Restricted Multiple-Family Residential District (R-2A) zoning designation and regulations. The proposed project is consistent with the general use designation, density, building intensity, and applicable standards specified for the project area in the City's Zoning Ordinance, specifically with the R-2A zoning district.

Consistency with applicable BMC requirements for the R-2A zone is analyzed below and shown in Table 3.

BMC Section 23D.32.070B states that one dwelling unit is allowed for each 1,650 square feet of lot area with one additional dwelling unit permitted if the remainder lot area is no less than 1,300 square feet. Therefore, the 1155-63 Hearst Avenue parcel can accommodate up to eight residential units ($13,469 \text{ SF} / 1,650 \text{ SF} = 8.16$) and the 1173 Hearst Avenue parcel can accommodate up to five residential units ($8,204 \text{ SF} / 1,650 \text{ SF} = 4.97$), resulting in a combined total of 13 residential units.

The proposed project would meet the purposes of the R-2A District as stated in BMC Section 23D.32.020, as it would provide smaller multiple-family garden-type apartment buildings with the maximum feasible amount of usable open space consistent with this type of development. The buildings would be constructed with sufficient separation on the subject lot, and with ample distance from adjacent single-family residences. The project would further the goals of the R-2A District by providing medium density housing development in a transit-oriented location and rehabilitating the units fronting Hearst Avenue.

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Table 3 Consistency with Zoning Ordinance Requirements

R-2A Standard BMC Sections 23D.32.070-080	Permitted/Required	Existing	Proposed
1155-1163 Hearst Avenue (APN 057 208601400)			
Lot Area (SF)	5,000 SF min	13,469 SF	13,469 SF
Gross Floor Area (SF)	–	5,300 SF	9,665 SF
Dwelling Units (DU)	8 DU max	6 DU	8 DU
Lot Coverage (%)	40% max for 2-story main building	32.8%	38.7%
Usable Open Space (SF)	300 SF/DU 2,400 SF min	2,560 SF	2,409 SF
Maximum Building Height	28 feet	23 feet	28 feet
Automobile Parking	8 spaces (1 space/DU)	6 spaces	12 spaces
1173 Hearst Avenue (APN 057 208601300)			
Lot Area (SF)	5,000 SF min	8,204 SF	8,204 SF
Gross Floor Area (SF)	–	3,323 SF	6,042 SF
Dwelling Units (DU)	8 DU max	1 DU	5 DU
Lot Coverage (%)	40% max for 2-story main building	17.5%	39.9%
Usable Open Space (SF)	300 SF/DU 2,400 SF min	5,599 SF	2,502 SF
Maximum Building Height	28 feet	23 feet	28 feet
Automobile Parking	5 spaces (1 space/DU)	1 space	1 space
Setbacks			
Front	15 feet	–	–
Rear	15 feet	15'10"	16'3" minimum
Side	4 feet	3'10" (west), 4'6" (east)	3'10" (west), 4'6" (east)
Street Side	6 feet	4'10" – 10'6"	4'10" – 10'6"
SF = square feet			

BMC Section 23D.32.070D lists setback standards for the project site. The project site contains the following existing non-conforming setbacks:

- Front yard setback by the existing Azalea (1155-57 Hearst Avenue) and Begonia (1161-63 Hearst Avenue) buildings
- Side yard setback on the west side of the project site by the existing Azalea building

The rehabilitation and new construction on existing buildings would maintain the non-conforming setbacks pursuant to BMC Section 23C.04.070.B, as noted above in Table 3. All new buildings (Geranium, Daffodil, and Edelweiss) would be constructed to meet setback standards and the remainder of the development standards of the R-2A District for building height, usable open space, lot coverage, and parking.

An Administrative Use Permit (AUP) is requested to allow an extension of the non-conforming front and side yard setbacks per BMC Section 23C.04.070.B, and to reduce the building separation between the Freesia and Geranium buildings (from 8 feet on the first floor and 12 feet on the

second floor, to 6 feet and one inch) per BMC Section 23D.32.070.D.4. The reduction in building separation between the Freesia and Geranium buildings is also conditionally permissible.

Implementation of the project would not require a General Plan land use or zoning designation amendment since the proposed project is consistent with existing land use and zoning designations. Therefore, the project is consistent with criterion 'a' of State CEQA Guidelines Section 15332, pertaining to Class 32 exemptions for infill development projects.

Criterion (b)

The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

The project site is comprised of two parcels which are 21,673 square feet or approximately 0.5 acre total. The project site vicinity is a developed urban neighborhood, and the site is immediately surrounded by urban residential uses on all sides, as summarized in Table 2 above. The project site is developed with residential uses, and proposed new buildings would constitute infill development on site. Therefore, the project is consistent with criterion 'b' of State CEQA Guidelines Section 15332, pertaining to Class 32 exemptions for infill development projects.

Criterion (c)

The project site has no value as habitat for endangered, rare, or threatened species.

The project site is developed with a paved surface parking lot, three residential duplex buildings, and one single-family dwelling. The project site is located in a developed urban residential neighborhood that lacks habitat that would be suitable for sensitive animal or plant species. Vegetation on the project site consists of maintained ornamental shrubs and trees. The vegetation on site does not provide quality or sufficient habitat for sensitive species due to the small size, lack of native vegetation, and urban context. Therefore, the project is consistent with criterion 'c' of State CEQA Guidelines Section 15332, pertaining to Class 32 exemptions for infill development projects.

Criterion (d)

Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

The following discussion provides an analysis of the project's potential effects with respect to traffic, noise, air quality and greenhouse gas, and water quality.

A. Traffic

The following analysis of potential traffic impacts from the proposed project is based on the trip generation and parking analysis completed by Abrams Associates Traffic Engineering, Inc. (Abrams Associates) in January 2016. Abrams Associates was retained by the project applicant to prepare the trip generation and parking analysis, which was then peer reviewed by City Planning staff and the City's Senior Traffic Engineer. The analysis report is included as Appendix B.

The trip generation and parking analysis provides an analysis of impacts based on the previous project design, which entailed construction of 11 new units in addition to the seven rehabilitated

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units for a total of 18 units on the project site. A total of 18 off-street parking spaces with 26 secure bicycle parking spaces were included with the previous project design.

Trip Generation

The proposed project would entail the rehabilitation of seven existing dwelling units and construction of six new units on a 0.5-acre lot.

Trip rates used in the trip generation and parking analysis were based on estimates from Trip Generation, 9th Edition (Institute of Transportation Engineers [ITE], 2012), which are based on a compilation of empirical trip generation surveys at locations throughout the country to forecast the number of trips that would be generated by the project. The trip rate for “Apartments” (ITE code 220) was applied to the new dwelling units. Table 4 provides trip generation rates for the previously designed 11 new dwelling units (included in Appendix B) and adjusted rates for the proposed project. The proposed project is expected to generate an increase of 40 new daily trips, with three AM peak hour trips and four PM peak hour trips.

Table 4 Trip Generation

Land Use	New Units	Daily Trip Rate Per Unit	AM Trip Rate Per Unit	PM Trip Rate Per Unit	Daily Trips	AM Peak Hour Trips	PM Peak Hour Trips
ITE Apartment Rates – Trips per unit	–	6.65	0.51	0.62	–	–	–
Previous Design	11	–	–	–	73	6	7
Proposed Project ¹	6	–	–	–	40	3	4

¹ Adjusted for proposed project, which entails construction of six new dwelling units.

Source: Abrams and Associates 2016 (Appendix B)

The trip generation and parking analysis states that since the project site is located in an area with numerous bus connection and in walking distance to the North Berkeley BART Station (approximately 0.5 mile east), the vehicle trip rate per unit would be less than that of a typical apartment that is not located in a transit district. However, no reductions were taken in the analysis to account for existing transit connections in proximity to the project site in order to complete a conservative analysis.

Intersection Impacts

The trip generation and parking analysis did not include an intersection impact analysis based on the project. The portion of Hearst Avenue that fronts the project site to the south is a collector street in a residential neighborhood that discourages vehicular speeds above 25 miles per hour and is designed to maintain a smooth flow of traffic. Hearst Avenue had an average total daily traffic volume of 6,132 vehicles in 2000 (City of Berkeley 2007). The additional 40 daily trips generated by the proposed project would account for approximately 0.07 percent of the total daily traffic volume along Hearst Avenue. The increase in trips resulting from the project would result in a minimal amount of traffic generated by the project relative to existing traffic volumes on local roadways. Therefore, a detailed intersection analysis was not required; the project would have a less than significant impact on intersection operations.

Parking Supply and Demand

Per BMC Section 23D.32.080, the project is required to provide one parking space per unit. The proposed project entails the provision of 13 off-street parking spaces (plus one tandem space for the single-family residential dwelling at 1173 Hearst Avenue), which would meet the City's requirements. The project also includes the provision of 13 bicycle parking spaces for residential use on the east side of the Begonia building, though none are required according to the BMC.

The trip generation and parking analysis states that residential parking demand from the project may be further limited due to the location of the project site in a transit district (in proximity to established AC Transit bus routes and stops, the North Berkeley BART Station, and car sharing locations within 0.5-mile of the project site).

Site Access

As shown in Figure 4, the 12 off-street parking spaces would be centrally located on the project site, for use by the residents of the 12 duplex units (6 rehabilitated plus 6 new). Two of the off-street parking spaces would be located on the ground floor of the Geranium building, and one of the 12 spaces would be ADA compliant. The centrally located parking spaces would be accessed through a shared driveway between the Azalea and Begonia buildings, as is currently the case.

The single-family dwelling located in the southeast corner of the project site would retain the attached parking garage that would provide one covered parking space, plus one tandem parking space inside the garage for up to two off-street parking spaces for use by the residents of the single-family dwelling.

No changes would be made to the existing driveway that serves one-way traffic from Hearst Avenue onto the project site. The driveway, parking spaces, and garage would be subject to all applicable City and Fire Department requirements. Therefore, no significant impacts would occur with regard to site access.

Construction Traffic

Construction traffic impacts could be significant if the project would create a prolonged impact due to lane closure; impede emergency vehicle access; create traffic hazards to bicycles and/or pedestrians; or result in similar substantial impediments to circulation or safety. Based on the following assumptions, project construction is not anticipated to cause significant traffic impacts:

It is anticipated that the construction vehicles, haul trucks, and construction workers would travel along University Avenue, San Pablo Avenue, Sacramento Street, and Hearst Avenue. According to BMC Section 14.56.070, Hearst Avenue between San Pablo Avenue and Sacramento Street is a "restricted street" whereby commercial trucks exceeding three tons gross vehicle weight are prohibited. As stated Section 2, *Project Description*, construction of the project would involve approximately three round-trip hauling trips during the grading phase. The project construction schedule would be approximately 12-14 months, and would be roughly as follows: two to three months for site preparation, grading, and excavation; eight to ten months for establishing the foundation for the three new proposed buildings, and rehabilitation and construction; one to two months for paving and architectural coating. Thus, over approximately two to three months during the grading and excavation phase, there would be approximately one round-trip haul trip per day for about three days, or up to three in one day to export approximately 55 cubic yards of soil from

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the site (assuming 20 cubic yards of soil per truck, which would entail approximately three round-trip hauling truck trips).

Assuming that a maximum of three trips are spread out over a 12-hour construction day (7:00 AM to 7:00 PM in accordance with BMC Section 13.40.070), less than one trip would generally occur per hour. Therefore, construction trucks would not significantly disrupt the flow of traffic on Hearst Avenue, San Pablo Avenue, University Avenue, or Sacramento Street. Furthermore, the total number of construction trips would generally be staggered throughout the day for the duration of the construction period, with most trips occurring during off-peak hours.

The proposed project would not involve road closures during the construction period that would significantly affect emergency vehicle access or create significant hazards to bicycles and pedestrians.

To reduce temporary disruptions on the adjacent roadway network due to construction activities, the project would be subject to the standard City of Berkeley conditions of approval requiring preparation and approval of a Construction Management Plan prior to the issuance of grading permits and initiation of construction activities. This plan would address the following items:

- Maintain existing access for land uses in proximity of the project site during project construction
- Schedule deliveries and hauling of construction materials to non-peak travel periods, including night hours and weekends
- Coordinate deliveries and hauling to reduce the potential of trucks waiting to load or unload for extended periods of time
- Minimize obstruction of through traffic lanes on Hearst Avenue
- Meet the requirements of the Planning and Development Department and Public Works/Transportation Departments with respect to construction scheduling and coordination with other construction near the project site, heavy hauling and material delivery routing, types of trucks, use limitations per hour, hours of operations, traffic plan submission for different stages, pedestrian and vehicular access, street use permit process, daily street cleanliness and maintenance and safety after work, and parking management for construction workers.

Additionally, on-street parking of construction-related vehicles is not allowed. The maximum number of construction parking spaces would be identified, and the applicant would be required to accommodate parking either at the project site or at a nearby site from which workers would be transported to the site. With the provision of such parking, it is anticipated that for workers traveling to the project site there would be sufficient on-site access. Therefore, no additional management plans for construction workers would be necessary.

Finally, it should be noted that construction traffic impacts are temporary by their nature, and would have no effect on traffic and circulation beyond the construction period.

Conclusion

Based on the assessment of traffic impacts, parking supply and demand, site access, and construction impacts, implementation of the project would have no significant impacts related to traffic.

B. Noise

Noise Characteristics and Measurement

Noise level (or volume) is generally measured in decibels (dB) using the A-weighted sound pressure level (dBA). The A-weighting scale is an adjustment to the actual sound power levels to be consistent with that of human hearing response, which is most sensitive to frequencies around 4,000 Hertz (about the highest note on a piano) and less sensitive to low frequencies (below 100 Hertz).

One of the most frequently used noise metrics that considers duration as well as sound power level is the equivalent noise level (L_{eq}). The L_{eq} is defined as the steady A-weighted level that is equivalent to the same amount of energy as that contained in the actual varying levels over a period of time (essentially, L_{eq} is the average sound level).

Noise Standards

The City of Berkeley's General Plan incorporates comprehensive goals, policies, and actions related to noise and acceptable noise levels. These policies address unnecessary, excessive, and annoying noise levels and sources, such as vehicles, construction, special sources (e.g., radios, musical instrument, animals) and stationary sources (e.g., heating and cooling systems, mechanical rooms).

For traffic-related noise, impacts would be significant if project-generated traffic results in the exposure of sensitive receptors to a perceptible increase in roadway noise. Roughly a doubling of traffic volume would be necessary to generate a perceptible increase in roadway noise levels of 3 dBA or more.

Impacts relating to onsite activities are significant when project-related activities create noise exceeding the standards as identified for the applicable noise zone for the project site. The project is located in an area zoned for multi-family residential use. The nearest sensitive receptors to the project site are the adjacent residences located north, east, and south of the project site. Multi-family residential buildings are located approximately 70 feet to the south and approximately 15 feet to the west of the project site, and single-family residential dwellings are located approximately 30 feet to the north and east of the project site.

Existing Ambient Noise Levels

The primary source of noise in the vicinity of the project site is motor vehicle traffic, including automobiles, trucks, buses, and motorcycles. San Pablo Avenue and University Avenue produce vehicle traffic noise as major streets. Secondary sources of roadway noise include traffic on Hearst Avenue and Curtis Street, which are collector streets. While typical backyard and rooftop/balcony activities such as conversations may occur at nearby residences, traffic is the main contributor to existing ambient noise levels.

According to the City's General Plan Environmental Management Element, the project site is within the 65 to 70 dBA day-night noise level (L_{DN}).

Construction Noise

The project would result in temporary noise level increases during site preparation, excavation, paving, and building. The grading phase of project construction tends to create the highest construction noise levels because of the operation of heavy equipment. As shown in Table 5, noise

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levels associated with heavy equipment typically range from about 76 to 89 dBA at 50 feet from the source, as measured from the property line. Since construction of the three new proposed buildings would occur within 15 feet of the nearest sensitive receptors (multi-family buildings adjacent to the west) and grading up to the property line could occur, noise levels may be even higher. Pursuant to the City’s noise ordinance (BMC Section 13.40.070), a significant impact would occur if construction activities occurring on the project site would exceed 75 dBA for short-term operation (less than ten days) of mobile equipment or 60 dBA for long-term operation (ten days or more) of stationary equipment between 7:00 AM to 7:00 PM on the weekdays or 9:00 AM to 8:00 PM on weekends and Federal Holidays.

While construction noise would be a short-term annoyance to adjacent residences, it would be temporary and restricted to the hours permitted by the City’s noise ordinance. Because no activities generating unusually high noise levels, such as pile driving or major excavation, are proposed, construction noise would be typical of that associated with small- to medium sized construction projects in residential neighborhoods. Furthermore, the project would be required to comply with modified construction hours per the City’s conditions, which limit construction activities to between the hours of 8:00 AM to 6:00 PM on the weekdays, between 9:00 AM and 12:00 PM on Saturdays, and no construction-related activities on Sunday or any Federal Holiday. Thus, impacts due to construction noise would be less than significant.

Table 5 Typical Noise Levels at Construction Sites

Equipment	Typical Level (dBA) 50 Feet from the Source	Typical Level (dBA) 30 Feet from the Source
Air Compressors	81	85
Backhoe	80	84
Concrete Mixer	85	89
Jackhammer	88	92
Paver	89	93
Saw	76	74
Scraper	89	93
Truck	88	92

Source: Federal Highway Administration 2006

Construction Vibration

Vibration is a unique form of noise because its energy is carried through buildings, structures, and the ground, whereas most ambient noise is simply carried through the air. Thus, vibration is generally felt rather than heard. Some vibration effects can be caused by noise (e.g., the rattling of windows from truck pass-bys). This phenomenon is caused by the coupling of the acoustic energy at frequencies that are close to the resonant frequency of the material being vibrated. Typically, groundborne vibration generated by manmade activities attenuates rapidly as distance from the source of the vibration increases and vibration rapidly diminishes in amplitude with distance from the source. The ground motion caused by vibration is measured as particle velocity in inches per second and is referenced as vibration decibels (VdB) in the U.S.

The vibration velocity level threshold of perception for humans is approximately 65 VdB. A vibration velocity of 75 VdB is the approximate dividing line between barely perceptible and distinctly perceptible levels for many people. Most perceptible indoor vibration is caused by sources within buildings such as operation of mechanical equipment, movement of people, or the slamming of doors. Typical outdoor sources of perceptible groundborne vibration are construction equipment, steel wheeled trains, and traffic on rough roads. If a roadway is smooth, the groundborne vibration from traffic is barely perceptible. The range of interest is from approximately 50 VdB, which is the typical background vibration velocity, to 100 VdB, which is the general threshold where minor damage can occur in fragile buildings.

Significant impacts occur when vibration or groundborne noise levels exceed the Federal Railroad Administration (FRA) maximum acceptable level threshold of 65 VdB for buildings where low ambient vibration is essential for interior operations (such as hospitals and recording studios), 72 VdB for residences and buildings where people normally sleep (including hotels), and 75 VdB for institutional land uses with primary daytime use (such as churches and schools).

Construction activities that would occur on the project site have the potential to generate groundborne vibration. Table 6 identifies various vibration velocity levels for the types of construction equipment that are likely to operate at the project site during construction.

Table 6 Vibration Source Levels for Construction Equipment

Equipment	Approximate VdB	
	25 Feet	50 Feet
Large Bulldozer	87	81
Loaded Trucks	86	80
Jackhammer	79	73
Small Bulldozer	58	52

Source: Federal Transit Administration 2018

Based on the information presented in Table 6, vibration levels could be approximately 87 VdB at the existing single-family residences located 30 feet north and east of the project site. As noted above, impacts would be significant if vibration levels exceeded 72 VdB during recognized sleep hours (as established by the Federal Transit Administration for places where people normally sleep). Though vibration levels may exceed 72 VdB at nearby sensitive receptors, construction activities would be limited to daytime hours between 8:00 AM to 6:00 PM Monday through Friday per the City's conditions for the project. Therefore, vibration levels would not affect residents during sleep hours. In addition, the project would not exceed vibration levels that could potentially damage nearby buildings.

Construction activity would be temporary, and the use of heavy equipment would be primarily limited to the excavation, site preparation, and exterior construction phases. As construction of the outer shell of the building progresses, the building itself would contain much of the construction activity, and the likelihood of utilizing bulldozers and jackhammers decreases. Trucks would still be anticipated to bring construction materials to the site, which may periodically generate vibration levels which may be felt by nearby receptors. However, truck vibrations would not persist for long periods of time. Because vibration would be a temporary impact during construction and would not occur during normal sleep hours, impacts would be less than significant.

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Operational Noise

Existing uses near the project site may periodically be subject to noises associated with operation of the proposed project, including noise that is typical of residential development such as conversations, music, trash hauling, engine noise from the movement of vehicles in the parking area, beeping from locking and unlocking vehicles, and noise associated with rooftop ventilation and heating systems. Additionally, conversations taking place on the ground-floor outdoor paseo may be heard at adjacent residences. However, this activity would not substantially contribute to average ambient noise levels and would be comparable to similar activities at the existing residential uses on neighboring properties.

In addition, the proposed project would generate traffic noise from vehicles traveling to and from the project site. As shown in Table 4, the proposed project would generate approximately 40 average daily trips, with three AM peak hour trips and four PM peak hour trips. As stated above in the analysis for Intersection Impacts, the additional 40 daily trips generated by the proposed project would account for approximately 0.07 percent of the total daily traffic volume along Hearst Avenue. Roughly a doubling of traffic volume would be necessary to generate a perceptible increase in roadway noise levels of 3 dBA or more. Therefore, the minimal amount of traffic generated by the proposed project relative to existing traffic volumes on local roadways would not result in a perceptible increase in roadway noise.

Conclusion

The proposed project would not result in a significant long-term increase in traffic noise levels, and temporary construction noise impacts would be less than significant based on compliance with the City's time restrictions on construction activities per the City's standard conditions for the project. The project's operational noise would be similar to noise from other nearby residences, and would be less than significant in the context of the existing noise in the surrounding area. Therefore, noise-related impacts resulting from implementation of the proposed project would be less than significant.

C. Air Quality

A significant adverse air quality impact may occur when a project individually or cumulatively interferes with progress toward the attainment of the ozone standard by releasing emissions that equal or exceed the established long term quantitative thresholds for pollutants, or causes an exceedance of a state or federal ambient air quality standard for any criteria pollutant. Primary criteria pollutants are emitted directly from a source (e.g., vehicle tailpipe, an exhaust stack of a factory, etc.) into the atmosphere. Commonly found primary criteria pollutants include reactive organic gases (ROG), nitric oxides (NO_x), carbon monoxide (CO), and particulate matter (PM₁₀ and PM_{2.5}). PM₁₀ is particulate matter measuring no more than 10 microns in diameter, while PM_{2.5} is fine particulate matter measuring no more than 2.5 microns in diameter.

The project site is located in the San Francisco Bay Area Air Basin (Basin), which is under the jurisdiction of the Bay Area Air Quality Management District (BAAQMD). The BAAQMD has developed screening criteria to provide lead agencies and project applicants with a conservative indication of whether a project could result in potentially significant air quality impacts. If all of the screening criteria are met by a project, then the lead agency or applicant would not need to perform a detailed air quality assessment of their project's air pollutant emissions. These screening levels are generally representative of new development on greenfield sites without any form of mitigation

measures taken into consideration. For projects that are infill, such as the proposed project, emissions would be less than the greenfield-type project on which the screening criteria are based (BAAQMD 2017b). For multi-family residences (low-rise apartments), the BAAQMD's operational criteria pollutant screening size is 451 dwelling units and the construction-related screening size is 240 dwelling units. The proposed project consists of 11 dwelling units and is well below the screening criteria.

Conclusion

The proposed project is below the BAAQMD's screening criteria for operational and construction pollutants. Therefore, the project would not generate significant air quality impacts. Additionally, as discussed in the analysis for criterion d.a. (Traffic), this project would not result in significant increases in traffic at intersections based on estimated project trip generation. Thus, the project would not require analysis for CO hotspots, based on the BAAQMD's recommendations.

D. Greenhouse Gas Emissions

Climate Change and Greenhouse Gases

Climate change is the observed increase in the average temperature of the earth's atmosphere and oceans along with other substantial changes in climate (such as wind patterns, precipitation, and storms) over an extended period of time. Climate change is the result of numerous, cumulative sources of greenhouse gases (GHG), gases that trap heat in the atmosphere, analogous to the way in which a greenhouse retains heat. Common GHGs include water vapor, carbon dioxide (CO₂), methane (CH₄), nitrous oxides (N₂O), fluorinated gases, and ozone. GHGs are emitted by both natural processes and human activities. Of these gases, CO₂ and CH₄ are emitted in the greatest quantities from human activities. Emissions of CO₂ are largely by-products of fossil fuel combustion, whereas CH₄ results from off-gassing associated with agricultural practices and landfills. Man-made GHGs, many of which have greater heat-absorption potential than CO₂, include fluorinated gases, such as hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF₆) (CARB 2019).

The accumulation of GHGs in the atmosphere regulates the earth's temperature. Without the natural heat-trapping effect of GHGs, Earth's surface would be about 34° C cooler (CARB 2019). However, it is believed that emissions from human activities, particularly the consumption of fossil fuels for electricity production and transportation, have elevated the concentration of these gases in the atmosphere beyond the level of naturally occurring concentrations.

Proposed Project GHG Emissions

The BAAQMD developed screening criteria to provide lead agencies and project applicants with a conservative indication of whether a project could result in potentially significant GHG impacts. If all of the screening criteria are met by a project, then the lead agency or applicant would not need to perform a detailed GHG assessment of their project's GHG emissions (BAAQMD 2017b). For multi-family residences (low-rise apartments), the operational GHG screening size is 78 dwelling units. The proposed project consists of 11 dwelling units and is well below the screening criteria. Therefore, a detailed GHG assessment is not required for the project since the project would not result in GHG emissions above thresholds that were established by BAAQMD to identify projects that require additional mitigation measures to achieve statewide GHG targets.

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The proposed project entails infill development in an urban area. The project would not conflict with the 2017 Climate Change Scoping Plan developed per Assembly Bill 32, the land use assumptions in the Plan Bay Area, or regulations adopted by the City of Berkeley to reduce greenhouse gas emissions. Therefore, the project will have a less than significant impact related to GHG emissions.

Conclusion

The proposed project is below the BAAQMD's screening criteria for operational GHG emissions. Therefore, the project would not generate significant climate change impacts.

E. Water Quality

The following analysis of potential water quality impacts from the proposed project is partially based on the Stormwater and Flooding Assessment and Mitigation Design assessment (Assessment) completed by Clearwater Hydrology in January 2016 (revised July 2017). Clearwater Hydrology was retained by the project applicant to complete the stormwater and flooding assessment for the project site, and design and analyze the efficacy of proposed onsite stormwater management systems. The Assessment was peer reviewed by Balance Hydrologics on behalf of the City. The report is included as Appendix A.

The project would be required to comply with Alameda County C.3 Guidelines of the Municipal Regional Stormwater Permit (MRP) adopted by the San Francisco Bay Regional Water Quality Control Board (Clearwater Hydrology 2017) since the project would create and/or replace more than 10,000 square feet of impervious surface on site. The guidelines require development projects to provide a combination of stormwater controls that include site design measures (as discussed above and analyzed in the Assessment), source control measures, and low impact development (LID) treatment measures.

The project would include a trapezoidal grassed swale with side slopes 3:1, channel slope of 1 percent, and a minimum depth of 0.3 feet extending eastward from the parking lot to the eastern project boundary. The Assessment concluded that such a grassed swale area located adjacent to proposed and existing buildings would capture and filter roof runoff before being discharged to the site drainageways. A minimum area of 436 square feet (or 4 percent of the total impervious surface area footprint on site) would be required based on the volume of discharge needing treatment.

Construction Runoff

Construction activities on the project site would have the potential to cause soil erosion from exposed soil, an accidental release of hazardous materials such as vehicle fuels and lubricant, or temporary siltation from storm water runoff. Soil disturbance would occur during excavation for the proposed building foundations, demolition of the existing buildings, and grading of the project site. However, proponents of development projects are required to comply with BMC Chapter 17.20 relating to the requirements of the City's National Pollutant Discharge Elimination System (NPDES) permit, and construction contractors are responsible for implementing and monitoring erosion and sedimentation control/drainage plans to ensure that contaminants are not released into urban runoff, in order to prevent significant adverse impacts to water quality.

The project would be also subject to standard conditions of the City's Toxics Management Division (TMD) requiring that a Soil and Groundwater Management Plan (SGMP) be submitted to the TMD with the project's building permit application and be approved by TMD prior to issuance of the

building permit. The SGMP is required to identify procedures for soil and groundwater management, including identification of pollutants and disposal methods, and is required to comply with the hazardous materials and waste management standards required by BMC Section 15.12.100, the RWQCB's Order No. R2-2015-0049 C.3 and C.6, California hazardous waste generator regulations (Title 22 California Code of Regulations (CCR) 66360 et seq.), and the East Bay Municipal Utility District's Ordinance 311. Furthermore, the following requirements for construction and development are applicable to the project per BMC Section 17.20.050:

1. Any construction contractor performing work in the City shall provide filter materials at catch basins to retain any debris, dirt, or other pollutants generated by such work to prevent said pollutants from flowing into the city's storm drain system.
2. Any applicant for a building or grading permit from the City shall, as a condition of receiving such permit, sign a certification stating that the applicant has read and shall use, to the maximum extent practicable, applicable portions of the State stormwater best management practices manual for construction activity, a copy of which shall be available to the applicant where building and grading permits are obtained.
3. The City Manager may establish controls on the volume and rate of stormwater runoff from new developments and redevelopments as may be appropriate to minimize the discharge and transport of pollutants into the storm drain system.

Construction contractors are responsible for implementing and monitoring erosion and sedimentation control/drainage plans to ensure that the above requirements are being met, and that contaminants are not released into urban runoff, in order to prevent significant adverse impacts to water quality. For all the reasons stated above, the project would not violate water quality standards or otherwise substantially degrade water quality, and this impact would be less than significant.

Conclusion

Required compliance with existing regulations would ensure that the project would have a less than significant impact on water quality.

Criterion (e)

The site can be adequately served by all required utilities and public services.

The project site is in an urbanized area, served by existing public utilities and services. The project entails rehabilitation of seven existing residential dwelling units and infill development of six new residential dwelling units, for a total of 13 dwelling units on site. A substantial increase in demand for services or utilities would not occur with implementation of the proposed project. The East Bay Municipal Utilities District (EBMUD) provides water and sewer services to the existing residential buildings and would continue to provide these services to the proposed project. The City provides solid waste collection services to the project site and vicinity, and would continue to provide services to the proposed project. Other services, including gas and electricity, would also continue to be provided to the proposed project by existing service providers. Therefore, the project is consistent with criterion 'e' of State CEQA Guidelines Section 15332, pertaining to Class 32 exemptions for infill development projects.

5. Exceptions to the Exemption Analysis

Criterion (a)

Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

This exception only applies to Class 3, 4, 5, 6, and 11 categorical exemptions. The proposed project is an infill development project, consistent with a Class 32 categorical exemption. Therefore, exception criterion ‘a’ does not apply to the project.

Criterion (b)

Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

The project site is located in a developed residential neighborhood. Existing uses in the immediate vicinity of the project site consist of single- and multi-family residential dwellings. There are several similar residential renovation, rehabilitation, and/or construction projects within a 0.25-mile radius of the project site, summarized in Table 7. The proposed project entails residential uses on a site that is developed with existing residential uses. As stated in the analysis above for Class 32 categorical exemption criterion ‘a,’ the proposed project is consistent with development standards applicable to the existing zoning district. The proposed project would also be subject to City of Berkeley conditions of approval to ensure construction would result in less than significant environmental impacts to residents in the immediate vicinity of the project site. All of the projects listed in Table 7 are likewise subject to City conditions and/or mitigation measures applied on a project-by-project basis. Therefore, exception criterion ‘b’ does not apply to this project.

Table 7 Cumulative Projects within 0.25-mile Radius of Project Site

Address	Use	Project Type	CEQA Status	Year
1818 Curtis Street	Single-family residence	Addition	Exempt §15301	2018
1157 Virginia Street	Single-family residence	New construction	Exempt §15332	2018
1923 Ninth Street	Multi-family residence	New construction	Exempt §15332	pending
2129 Ninth Street	Single-family residence	New construction	Exempt §15332	2018
2100 San Pablo Avenue	Mixed-use, Residential care facility	New construction	ND (Coretese List)	2019
2198 San Pablo Avenue	Mixed-use	New construction	Exempt §15332	pending
1111 Allston Way	Single- and Multi-family residence	New construction	TBD	pending
1110 University Avenue	Mixed-use	New construction	MND (Cortese List)	pending
1250 University Avenue	Commercial – Gas Station	Addition/Renovation	MND (Cortese List)	2018
1353 Berkeley Way	Single-family residence	New construction	Exempt §15303	2018

Source: City of Berkeley 2019. www.Berkeley.buildingeye.com/planning

Criterion (c)

Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

A project-specific hydrology report was completed by Clearwater Hydrology (included as Appendix A) and peer reviewed by Balance Hydrologics on behalf of the City. The hydrologic conditions at the project site were evaluated to determine whether unusual circumstances that preclude application of a categorical exemption exist (Appendix A). The project contains a historic trace of Strawberry Creek and there is evidence of flooding in the backyards of the neighborhood. Stormwater runoff backs up along Curtis Street, north of the Hearst Avenue intersection, and discharges over residential driveways into a topographic depression west of Curtis Street (Clearwater Hydrology 2017). The depression and uneven topography create ponding of stormwaters up a depth of one foot in the backyards of the properties on the west side of Curtis Street during intense storm events, prior to discharging west-southwest through the project site and Hearst Avenue. Minor nuisance ponding of accumulated stormwater occurs in the southwestern corner of the parking lot on the project site before it is discharged through the side yard corridor to the Hearst Avenue gutter located between 1153-1155 Hearst Avenue.

The City completed field visits to the project site during and following heavy rain events on November 29, 2018 and on January 16, 2019, and observed runoff flowing through the existing Hearst Avenue gutter with no impediments. City Public Works engineering staff stated no concerns regarding the existing storm drain system and its ability to accommodate additional flow, in its current state, from the proposed infill project.

Occasional flooding is not unique to this project site nor this neighborhood, and the project site is not located in a FEMA flood zone. Several areas throughout the City experience seasonal flooding including the northwest corner of University and San Pablo Avenues; Derby Street near Martin Luther King Jr. Way; Derby Street between Shattuck and Telegraph Avenues; and the area around Malcolm X Elementary School south of Ashby Avenue and west of the Ashby BART station, among other similar urbanized areas (City of Berkeley 2019c). These areas are generally over either historic traces of streams or underground creek beds, labeled "Not Protected" on the City's GIS maps (City of Berkeley 2019a). Ponding and flooding conditions vary throughout the City, but are not uncommon or otherwise unusual on the numerous properties overlaying historic traces of hydrologic features. Therefore, exception criterion 'c' does not apply to the project.

Criterion (d)

Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

The project site is not located near designated scenic highways (Caltrans 2018). The project site is relatively flat, and located in an urbanized residential neighborhood. Therefore, exception criterion 'd' does not apply to the project.

City of Berkeley
1155-1173 Hearst Avenue Project

Criterion (e)

Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

The project site is not listed as a hazardous waste site according to the EnviroStor and GeoTracker databases (DTSC 2019; SWRCB 2015). Therefore, exception criterion 'e' does not apply to the project.

Criterion (f)

Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

The project site is fully developed and contains four residential buildings: three duplexes on the 1155-1163 Hearst Avenue parcel and one single-family dwelling on the 1173 Hearst Avenue parcel. The project entails rehabilitation of the existing buildings which contain seven residential dwelling units, and the construction of three new buildings which would contain six residential dwelling units. There are no buildings or structures of historic significance on the project site or immediate vicinity (City of Berkeley 2016).

No known cultural resources have been identified on the project site. As noted in Section 2, *Project Description*, ground disturbance during project construction would occur in order to excavate and establish for the foundations of the new proposed buildings. Excavation would result in approximately 55 cubic yards of exported soil.

The project would comply with the City's standard conditions pertaining to tribal cultural resources, archaeological resources, human remains, and paleontological resources should such resources, previously unknown, be encountered during ground disturbing construction activities. The City's standard conditions would ensure that procedures are in place to halt work until found resources are appropriately handled, assessed, and/or recorded by qualified personnel to prevent damage to found resources.

Therefore, the proposed project would not have a significant impact on historic resources, and exception criterion 'f' does not apply to the project.

6. Summary

Based on this analysis, the proposed 1155-1173 Hearst Avenue Project meets all criteria for a Class 32 Categorical Exemption pursuant to Section 15332 of the State CEQA Guidelines. There are no exceptions, pursuant to State CEQA Guidelines Section 15300.2, to the Class 32 Categorical Exemption that apply to the project.

7. References

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City of Berkeley
1155-1173 Hearst Avenue Project

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Appendix A

Stormwater and Flooding Assessment and Mitigation Design for the Hearst Avenue Project
1161-1173 Hearst Ave., Berkeley, CA

Appendix B

Trip Generation and Parking Analysis for the Proposed Residential Project at 1153 and 1173 Hearst Avenue

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: #ZP2016-0028 1155-1173 Hearst Ave. project

From: Mary Jo Thoresen [mailto:maryjo@chezpanisse.com]
Sent: Thursday, May 02, 2019 6:30 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>
Subject: #ZP2016-0028 1155-1173 Hearst Ave. project

Zoning Adjustments Board

1947 Center St. 2nd Floor

Berkeley, CA 94702

Re: 1155-1173 Hearst Ave. project

#ZP2016-0028

Good day,

I am writing in regard to the proposed project referenced above. My husband and I have lived at 1195 Hearst Avenue (next door to the proposed project) for 30 years. My neighbors and I are greatly concerned about this project for many reasons. I am very concerned that our rent controlled neighbors risk *losing their homes*. I am not confident that anyone but the neighborhood group cares about this fact. Mr. Rhodes has been at best evasive, at worst dishonest about what will happen to them. The story keeps changing and I now believe nothing he says. He has been exposed using this “evasiveness” at at least two of our city council meetings, not to mention conversations with the tenants. This is all about money and has nothing to do with providing housing for people who need it. If he cared about that, he would not be so eager to kick out existing tenants.

The other concern is of course the creek and seasonal flooding. Our neighborhood group has been so thorough in explaining this to ZAB and the city council over the years. We have presented compelling evidence that this issue is a big problem and will become a bigger one if a CEQA study is not conducted, as recommended at our last meeting. There is substantial evidence in the record of a fair argument that there may be a significant effect on the environment. We have all seen the photos and videos of the tremendous amounts of water streaming down Hearst Ave during the rainy season. I live at the corner of Curtis and Hearst and I can tell you, the parking strip is completely under water and I sometimes keep a piece of plywood in my trunk so I can safely cross the “river” to get to my car. My neighbors on Curtis experience terrible flooding in their yards each year.....one neighbor shared a picture of her kids swimming in her back yard...lake Curtis. This is no joke, this is real and it has potential to cause major damage. Who will be liable for this?

The other issue for me is the parking. There is not adequate parking with this proposed project. I have difficulty parking next to my own house! I sometimes have to park 1-2 blocks away and walk at night. This has been getting more and more difficult over the past years and I actually stress about it before I even leave work.

Who cares about the residents who live here and are trying so hard to keep our neighborhood livable for all? Doesn't everyone count? Haven't our presentations and stories given you pause? Is this fair? Who in the city is our advocate? Something is fishy here. It seems that developers are given more consideration than the folks who actually **ARE** the neighborhood. We have legitimate concerns and have done our best to inform you of them. I think this project should be denied.

Mary Jo Thoresen
1195 Hearst Ave.

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: 1155-1173 Hearst Avenue. Use Permit #ZP2016-0028

-----Original Message-----

From: Vijay Venugopal [mailto:vcv@sbcglobal.net]
Sent: Thursday, May 02, 2019 11:54 AM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Planning Dept. Mailbox <planning@cityofberkeley.info>; Mendez, Leslie <LMendez@cityofberkeley.info>
Cc: All Council <council@cityofberkeley.info>; Berkeley Mayor's Office <mayor@cityofberkeley.info>
Subject: 1155-1173 Hearst Avenue. Use Permit #ZP2016-0028

Dear ZAB members

I live at 1826 Curtis St and am writing in re: permit number ZP2016-0028 ahead of the third ZAB review on May 9th of the proposed development at 1155-1173 Hearst Ave. First of all, thank you for the time you volunteer to serve on ZAB. After viewing the 9/28/17 hearing on the topic, I came away with a greater appreciation for how difficult it is to walk the fine line between development needs of the city for current and future residents and maintaining the quality of life for current residents.

As you are likely aware, this is the fourth public review of this project. And yet, we are going into this meeting with significant questions unanswered/unaddressed by the developer. I wish to communicate my concerns ahead of the meeting in writing and would greatly appreciate it if they can be addressed during the meeting.

a) The primary concern remains the hydrology plan. In the developer's 6/20/18 response to the Planning department, Mr. Rhoads is still citing a report that pre-dates the previous ZAB meeting on 9/28/17 where it was already deemed inadequate. A reading of the report shows that it is based on many assumptions made due to inadequate data. At the City Council meeting on Jan 21st this year, it was convincingly proven and a directive to undertake a full CEQA study provided. Yet, here we are with the Planning Department continuing to recommend approval for this project without any further study. This has the biggest potential for damage to neighboring property and must be addressed more rigorously before any approval is granted.

b) The next biggest concern is the soil stability and the impact of new development on the stability of the existing housing around the proposed development. This area is in a liquefaction zone despite the statement to the contrary in the Planning Department's report. They are relying on maps that show this area as "Not studied" while other more detailed maps (shown at the Jan 21st City Council meeting) show that it is so. My own property has shown signs of subsidence and I have had to undertake extensive foundation repairs on my property already. The presence of an underground creek is evident in the drainage issues as well as the very spongy nature of the soil in the area in question. I am yet to see a proper geotechnical assessment of the safety of the proposed development as well as the impact on existing structures around the proposed development. I hope that prior to approval, ZAB will require a comprehensive study that assesses soil stability and composition, and the impact of a high water table and underground water pathways. I also request that this study be made available to the community for review prior to any project approval/additional hearings on the topic.

c) Mr. Rhoads 6/20/18 response to the current residents of 1155-1173 Hearst Ave that no work will be undertaken on the rent-controlled units until they voluntarily vacate the units. However, I am still concerned about the enforceability of the assurance and would request that some legally enforceable commitment on this matter is made by the developer prior to any approval by ZAB. Mr. Rhoads has proven himself to be particularly untrustworthy on this matter with varying statements on this matter depending on the time and audience and his continuing to demonstrably lie at every

single public hearing. Please also note that even the mildest of Mr. Rhoads responses on this matter still result in the permanent loss of 6 rent-controlled units.

d) The parking proposal looks problematic for several reasons.

(i) In his 6/20/18 response to the planning department, Mr. Rhoads claims to have received approval from the City Traffic Engineer. The cited email is not included in the documents uploaded.

(ii) The developer proposes to provide parking for the additional units on 1173 Hearst in the 1155 Hearst lot. This is not in keeping with the requirement at the 9/28/17 ZAB meeting that the lots cannot be merged. I request that ZAB critically review this proposal to avoid end-runs around lot consolidation requirements.

(iii) The developer cites a study by Abrams and Associates that parking in the neighborhood will not be impacted by the addition of so many new units. First of all, that study has not been provided for review. Second, as current residents of the neighborhood, who already struggle to find street parking, this is clearly not be a realistic assessment for a proposal that adds 7 new units with potentially 22-44 new residents and just 6-7 additional parking spaces. I request that a more realistic assessment of the impact on neighborhood parking is made and offered to the community for review before approval by ZAB.

This protracted fight is a consequence of the very real negative impact this project could have on the neighborhood (ranging from property damage to displacement and loss of livelihoods of valuable members of the community), the duplicitous behavior of the developer, and a strangely pliant Planning Department. The resulting tension in the community and the cost to the city (and, hence, us as taxpayers) is not good. Recent tragic events such as the balcony collapse in 2015 are a stark reminder of the cost to the community of irresponsible development and improper/inadequate oversight. As appointees of our elected representatives who have already voiced their support of the neighborhood concerns, we look to you to help make sure that any development is undertaken in a responsible manner with proper study and due consideration to the existing members of the community.

Regards

Vijay

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: 1157-1173 HEARST

-----Original Message-----

From: teal major [mailto:tealmajor@gmail.com]
Sent: Thursday, May 02, 2019 11:46 AM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; All Council <council@cityofberkeley.info>; Mendez, Leslie <LMendez@cityofberkeley.info>; Planning Dept. Mailbox <planning@cityofberkeley.info>; Berkeley Mayor's Office <mayor@cityofberkeley.info>
Cc: strawberryfork@yahoogroups.com
Subject: 1157-1173 HEARST

Hello Zoning Adjustment Board, City Council, and Planning Department

Regarding 1173-1157 Hearst my neighbors have stayed very eloquently and clearly the same objections and concerns I have.
This is not a question of not wanting a building project on this property. This is a matter of an unusual parcel of land not being fit for this kind of development. The uniqueness of this property cannot and should not be overlooked. It is what has gotten us to this point. I invite all of you to visit my yard to see how it is sinking.

The question of maintaining the rent controlled units is equally if not more important. You cannot claim missing middle and then eliminate current tenants.

The developers of this project were well aware of the shortcomings of this property and we came together to bring those shortcomings to your attention. Our elected officials agreed that this needs a full CEQA study and anything less is potentially negligent.

Teal Major
1814 Curtis Street

Jacob, Melinda

From: Mary Jo Thoresen <mthoresen@sonic.net>
Sent: Wednesday, May 01, 2019 6:36 PM
To: strawberryfork@yahoogroups.com
Cc: Zoning Adjustments Board (ZAB); Planning Dept. Mailbox; All Council; Berkeley Mayor's Office; Mendez, Leslie
Subject: Re: [strawberryfork] 1155-1173 HEARST AVENUE Use Permit #ZP2016-0028

Excellent & passionate!
Nice work here. Thank you Tracey.

Sent from my iPhone

On May 1, 2019, at 4:23 PM, tracey emerson emersontracey2003@yahoo.com [strawberryfork] <strawberryfork@yahoogroups.com> wrote:

SUBJECT: 1155-1173 HEARST AVENUE
Use Permit #ZP2016-0028

Dear Mayor Arreguin, Berkeley City Councilmembers, members of ZAB, and the Planning Department,

I am writing to ask the ZAB board to deny the proposed 1155-1173 Hearst Avenue Project or at least hold the developer accountable to complete an Environmental Impact Review. This project should NOT move forward for the following reasons:

- 1) It will have significant effect on the environment and should NOT be exempt from completing an Environmental Impact Review
- 2) It will result in displacement of current rental tenants, **including myself**
- 3) Its developers have repeatedly failed to take into consideration the neighborhood's input and concerns

Based on the evidence provided to ZAB and City Council, the CEQA review process is required, by law, given (1) the existence of an unusual circumstance (the creek) and (2) a fair argument that there may be a significant impact on the environment. A complete Environmental Impact Review is necessary to ensure that this development will not result in harm to the health and safety of people living here. The records show that a buried creek DOES run through the property. This is both a sensitive and culturally, historic significant environment.

There is already severe seasonal flooding on the property and the neighboring properties. The developer's drainage plan has already been deemed incomplete and inadequate by at least two peer reviewers. This development will exacerbate existing flooding problems and harm neighboring properties. The proposed drainage plan to discharge more water into the Hearst Ave drains, which has been proven (as evidenced in videos and photographs) to overflow during heavy rains, will lead to more flooding on the streets and sidewalks, creating safety concerns, especially for older folks and

people with disabilities. Since there are grave health and safety risks, the city and developers will be liable for any hazards and injuries that arise once this project is built. A full EIR should be conducted to quantify and qualify this project's environmental impact and allow for public feedback and more oversight to hold the developers accountable.

Secondly, as a public school teacher, I rely on my current rent control situation. For the last ten years, I have lived in Berkeley and served the East Oakland community. If this project is approved, the loss of the nonrenewable resource of rent controlled housing will greatly impact my life and my career. Given the current lack of affordable housing in Berkeley and the Bay Area, when displaced, I will not be able to find comparable affordable housing, especially on a 30 day notice. I will have to leave my beloved neighborhood and more than likely the school where I've been teaching for a decade, building relationships, and helping families in East Oakland. Rent control makes it possible for me to be a public school teacher in this country.

After three years of the developer's deceit and blatant lies, I do NOT feel that my housing will remain secure. Mark Rhoades has repeatedly stated that the ultimate plan of this project is to demolish rent-controlled units in order to build market-rate condominiums. The developer has attempted to negotiate deals with individual residents at the expense of others in order to garner buy-in. The developer has been asked numerous times to address the logistics of tenant quality of life during and after construction. Every time, he has been evasive and condescending, failing to provide any sort of intelligible answer. The developer has continuously ignored tenant protections in the past, and I have absolutely no confidence that current renters' long-term housing will be protected. New housing should not come at the expense of existing and affordable housing.

Lastly, I am shocked and very disappointed that this project has been given multiple chances to finagle an approval. I do not understand how the ZAB continues to give Rhoades leeway to bully the current tenants while ignoring the community's concerns. I find it appalling how the ZAB and this project have allowed Rhoades to repeatedly lie to the current tenants about the future of their living situations. It is negatively impacting the quality of life of the tenants and the neighborhood, adding unnecessary stress, confusion, and anger. How can the board approve this project and ignore all the current tenants' and neighboring homeowners'/renters' cries to deny?

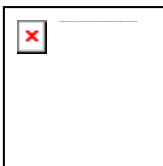
Thank you for your time and consideration to my concerns.

Sincerely,

Tracey Emerson
1157 Hearst Avenue
Berkeley, CA

Posted by: tracey emerson <emersontracey2003@yahoo.com>

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Make your opinions known! Write a letter or email to:

Councilmember Linda Maio
2180 Milvia Street, 5th Floor
Berkeley, CA 94704

Lmaio@cityofberkeley.info

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Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: 1155-1173 HEARST AVENUE Use Permit #ZP2016-0028

From: tracey emerson [mailto:emersontracey2003@yahoo.com]
Sent: Wednesday, May 01, 2019 4:24 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Planning Dept. Mailbox <planning@cityofberkeley.info>; All Council <council@cityofberkeley.info>; Berkeley Mayor's Office <mayor@cityofberkeley.info>; Mendez, Leslie <LMendez@cityofberkeley.info>
Subject: 1155-1173 HEARST AVENUE Use Permit #ZP2016-0028

SUBJECT: 1155-1173 HEARST AVENUE
Use Permit #ZP2016-0028

Dear Mayor Arreguin, Berkeley City Councilmembers, members of ZAB, and the Planning Department,

I am writing to ask the ZAB board to deny the proposed 1155-1173 Hearst Avenue Project or at least hold the developer accountable to complete an Environmental Impact Review. This project should NOT move forward for the following reasons:

- 1) It will have significant effect on the environment and should NOT be exempt from completing an Environmental Impact Review
- 2) It will result in displacement of current rental tenants, **including myself**
- 3) Its developers have repeatedly failed to take into consideration the neighborhood's input and concerns

Based on the evidence provided to ZAB and City Council, the CEQA review process is required, by law, given (1) the existence of an unusual circumstance (the creek) and (2) a fair argument that there may be a significant impact on the environment. A complete Environmental Impact Review is necessary to ensure that this development will not result in harm to the health and safety of people living here. The records show that a buried creek DOES run through the property. This is both a sensitive and culturally, historic significant environment.

There is already severe seasonal flooding on the property and the neighboring properties. The developer's drainage plan has already been deemed incomplete and inadequate by at least two peer reviewers. This development will exacerbate existing flooding problems and harm neighboring properties. The proposed drainage plan to discharge more water into the Hearst Ave drains, which has been proven (as evidenced in videos and photographs) to overflow during heavy rains, will lead to more flooding on the streets and sidewalks, creating safety concerns, especially for older folks and people with disabilities. Since there are grave health and safety risks, the city and developers will be liable for any hazards and injuries that arise once this project is built. A full EIR should be conducted to quantify and qualify this project's environmental impact and allow for public feedback and more oversight to hold the developers accountable.

Secondly, as a public school teacher, I rely on my current rent control situation. For the last ten years, I have lived in Berkeley and served the East Oakland community. If this project is approved, the loss

of the nonrenewable resource of rent controlled housing will greatly impact my life and my career. Given the current lack of affordable housing in Berkeley and the Bay Area, when displaced, I will not be able to find comparable affordable housing, especially on a 30 day notice. I will have to leave my beloved neighborhood and more than likely the school where I've been teaching for a decade, building relationships, and helping families in East Oakland. Rent control makes it possible for me to be a public school teacher in this country.

After three years of the developer's deceit and blatant lies, I do NOT feel that my housing will remain secure. Mark Rhoades has repeatedly stated that the ultimate plan of this project is to demolish rent-controlled units in order to build market-rate condominiums. The developer has attempted to negotiate deals with individual residents at the expense of others in order to garner buy-in. The developer has been asked numerous times to address the logistics of tenant quality of life during and after construction. Every time, he has been evasive and condescending, failing to provide any sort of intelligible answer. The developer has continuously ignored tenant protections in the past, and I have absolutely no confidence that current renters' long-term housing will be protected. New housing should not come at the expense of existing and affordable housing.

Lastly, I am shocked and very disappointed that this project has been given multiple chances to finagle an approval. I do not understand how the ZAB continues to give Rhoades leeway to bully the current tenants while ignoring the community's concerns. I find it appalling how the ZAB and this project have allowed Rhoades to repeatedly lie to the current tenants about the future of their living situations. It is negatively impacting the quality of life of the tenants and the neighborhood, adding unnecessary stress, confusion, and anger. How can the board approve this project and ignore all the current tenants' and neighboring homeowners'/renters' cries to deny?

Thank you for your time and consideration to my concerns.

Sincerely,

Tracey Emerson
1157 Hearst Avenue
Berkeley, CA

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: May 9th: 1155-1173 HEARST AVENUE Use Permit #ZP2016-0028

-----Original Message-----

From: Masanori Oba [mailto:mah-chin@sbcglobal.net]
Sent: Wednesday, May 01, 2019 10:27 AM
To: Mendez, Leslie <LMendez@cityofberkeley.info>; Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>
Cc: Strawberry Fork Listserve <strawberryfork@yahoogroups.com>
Subject: May 9th: 1155-1173 HEARST AVENUE Use Permit #ZP2016-0028

Masanori Oba
1159 Hearst Ave. Apt. A
Berkeley, CA 94702

May 1, 2019

Zoning Adjustments Board
1947 Center Street, 2nd Floor
Berkeley, CA 94704

SUBJECT: 1155-1173 HEARST AVENUE
Use Permit #ZP2016-0028

To whom it may concern,

I am writing to voice my concern about the proposed condo development at 1155-1173 Hearst Avenue, zoning application permit #ZP2016-0028, Hearst Avenue.

My wife and I have been living in the address above for more than 24 years. We are planning on retiring soon, but we are afraid that we will not be able to live in the Bay Area once this development starts for the following reasons.

1. Once the property is converted to a condo, we cannot afford to purchase it and will have to move out.
2. If we have to relocate during the construction, we have to move to a remote area far from where we are, because there is a ceiling on the amount of rent the owner is required to subsidize our rent difference.
3. Once the construction is done and we move back, Mr. Rhodes initially told us there would be no change in the monthly rent. He did not tell us that the cost of renovation would be added to the current rent. He admitted it when one of the neighbors asked him at the meeting on 8/1/17. He said it would be minimum, but he did not give us any estimates on how much it will be.
4. Our original contract with the landlord is that we have a parking space and an external storage space that was later demolished and converted to a parking space. We have 2 parking spaces right now. Currently, there are 9 cars parking in the 6-unit apartment lot. After the renovation, it will be one each for each unit. The street parking here is already getting worse and I am afraid that we have to park the car far away from our unit and walk back during the night. The situation is true for during the construction, too.

This is the city we love because of its cultural diversity and progressive environment. That is why we settled and educated our children here. It will be hard for us as an old couple to live outside the Bay Area because we have lived here most of our lives. Our apartment has been a rent controlled unit. Once we are forced to move out, it will be sold as a condo, and the city will lose 6 affordable housing units.

Sincerely,

Masanori Oba 5/01/2019

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: the proposed development on 1155-1173 Hearst Ave.

From: Hisako Oba [mailto:oba_hisako@sbcglobal.net]
Sent: Monday, April 29, 2019 10:57 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>
Subject: the proposed development on 1155-1173 Hearst Ave.

Dear Mayor Arreguin, Berkeley City Councilmembers, members of ZAB, and the Planning Department,

I am writing in regards to the development of 1155-1173 Hearst Ave. I moved to Berkeley in 1985 and have been renting the unit at 1159 Hearst Ave since 1995.

Mr. Mark Rhoades told us that this development is for community. If so, I would like to be included in that community. I don't want to be displaced by the development. I believe that I've been contributing to the Berkeley community all these years. I worked as a preschool teacher and took care of the Berkeley children almost 20 years. I also volunteered countless hours at my daughters' schools. Now I am taking care of people including many seniors with their aches and pains providing affordable bodywork in Berkeley.

In our society, taking care of children and people does not pay well. Without the Rent Control, I haven't been able to do what I believed in to help our community. If number of the rent controlled units are reduced, the low wage workers won't be able to live in Berkeley. And those low wage workers' contributions shouldn't be underestimated.

I hope that the Rent Control protects us from the profit oriented development, so I can continue serving people in Berkeley.

Sincerely,
Hisako Oba

Mendez, Leslie

From: Yashu Jiang <yashujiang@gmail.com>
Sent: Sunday, April 28, 2019 10:58 AM
To: Zoning Adjustments Board (ZAB); Planning Dept. Mailbox; Mendez, Leslie; All Council; Berkeley Mayor's Office
Subject: May 9th ZAB agenda, 1155-1173 Hearst Ave

Dear Mayor Arreguin, Berkeley City Councilmembers, members of ZAB, and the Planning Department,

I am writing, yet again, in regards to the proposed development on Hearst Ave. As a longtime resident of Berkeley, I am disheartened and disappointed to see that the Planning Department is allowing this project to go to ZAB, yet again, on May 9th, without mandating a CEQA study. We have repeatedly brought forth concerns about the creek and historical flooding on this property, and the potential harmful impact any new development will have on new and existing residents. Based on the deluge of evidence brought forth to City Council, the CEQA review process is required, by law, given (1) the existence of an unusual circumstance (the creek) and (2) a fair argument that there may be a significant impact on the environment. A complete Environmental Impact Review is necessary to ensure that this development will not result in harm to the health and safety of folks living here. Why is the Planning Department, yet again, failing to hold the developers publicly accountable?! Why is this project being rubber stamped, yet again, despite City Council's unanimous recognition that CEQA is mandated?!

The developers have shown again and again, that they are sloppy and lack integrity. They will only do the bare minimum to satisfy the city's requirements, checking off boxes and not listening to any feedback. This is dangerous, which is why we need CEQA to ensure that public feedback is heard and potential environmental impacts are investigated in a manner that is thorough and unbiased. An approval for this project without an Environmental Impact Review demonstrates negligence and laziness, not to mention a disregard to California Law and our environment.

As an addendum, I am the sole renter on the property that attended the meeting with Mark Rhoades and the Rent Board attorneys. Many of us are weary of dealing with Mr. Rhoades after years of equivocation and outright lies. And yes, my questions were answered. I learned that (1) we as renters have very minimal protections and limited recourse in dealing with disruptions and hazards during construction, and the onus will be on us as the renters to make a case to city that living in an active construction zone is indeed harassment; (2) Mr. Rhoades will gladly pay us money to leave (though we'd have to be willing to negotiate with him, a scary prospect indeed) because (3) the goal is to build condominiums here ultimately and to demolish existing rent controlled units, which are vital to preserving affordability in Berkeley. With Mr. Rhoades and co as the owners, and this project moving forward, I remain very much worried that my housing is secure and protected.

Thank you again for your time, dedication, and consideration to my concerns over these last few years.

Yashu

Yashu Jiang
1163 Hearst Ave
678-559-4213

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: 1155-1173 Hearst Avenue. Use Permit #ZP2016-0028

From: Wayne Cory [mailto:cory888@gmail.com]
Sent: Sunday, April 28, 2019 5:18 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; All Council <council@cityofberkeley.info>; Planning Dept. Mailbox <planning@cityofberkeley.info>; Berkeley Mayor's Office <mayor@cityofberkeley.info>; cstewart@cottonshires.com; Mendez, Leslie <LMendez@cityofberkeley.info>; Maio, Linda <LMaio@cityofberkeley.info>
Cc: strawberryfork@yahoo.com
Subject: Fwd: 1155-1173 Hearst Avenue. Use Permit #ZP2016-0028

About 1155-1173 Hearst Avenue, Use Permit #ZP2016-0028.

The Planning and Development Department has recommended that ZAB approve and "Exempt" from a CEQA study, they are disregarding the recommendation from the Berkeley City Council to properly have a CEQA study done. In fact it looks like their going out of their extra way not to have one done. WHY?

The notice that went out in the mail from the city of Berkeley Planning and Development Department suggest that the property at 1155-1173 Hearst Ave is exempt pursuant to section 15332 of the CEQA guidelines (infill development projects). But this is not accurate! As stated on the California CEQA website at <http://resources.ca.gov/ceqa/guidelines/art19.html>.

"15332. In-Fill Development Projects.

Discussion: This section is intended to **promote** infill development within urbanized areas. The class consists of environmentally benign in-fill projects which are consistent with local general plan and zoning requirements. This class is not intended to be applied to projects which would result in any significant traffic, noise, air quality, or water quality effects. Application of this exemption, as all categorical exemptions, is limited by the factors described in section 15300.2."

"Is intended to **promote**" not exempt every infill property!

"Significant water quality effects" At the last City Council Meeting, one of the neighbors shown the ruining water video on Hearst Ave. If the project pumps out excess water to Hearst Ave., more flooding is going to effect the quality of the run off water in the street as there are no city street storm drains on Hearst Ave. With the excess water on the street this project may cause the city to put in expensive city street storm drains. Without storm drains the excess water may potentially effect near by and down stream property's with excessive water and possible property damage.

As one can see in section 15300.2. (c) Exceptions

"(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a **reasonable** possibility that the activity will have a **significant effect on the environment due to unusual circumstances.**"

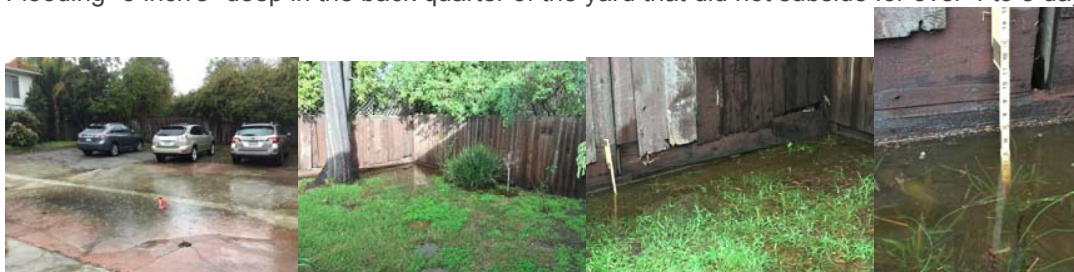
In this instance the **"significant effect on the environment due to unusual circumstances"**. Is the flooding to the surrounding homes. Most likely the cause of the filled in creek. The flooding and the property damage to the surrounding homes has been documented and is a **reasonable circumstance**. If more buildings are to be built on 1155-1173 Hearst Avenue it is reasonable that there will be even more excessive water and flooding. The developer has stated that they will pump excess water out to Hearst Ave where there are NO STORM DRAINS to take the excess water. By pushing more excess water into the over flooding street it will become a bigger problem for the city street. This excessive water will overwhelm the streets. Potentiality affecting nearby neighbors properties by flooding and may cause more property damage. If developing a property is possibly going to cause other property owners damage this is violating other owners property rights. This in itself should be reason to properly test and investigate the problems (CEQA) or to stop the project.

The property at 1146 Delaware St. drains their excess water by a private drainage system from their property onto the property of 1155-1173 Hearst Ave., they have been doing this for years. Which also indicates that there is a problem with excess water in this area as well.

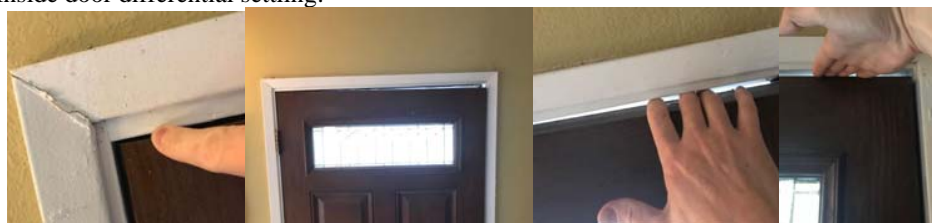
If the city plan is to approve developers projects for more housing, making areas more dense and pushing projects through than the city needs to be responsible for city services such as city storm drains, that do not exist in this area of Hearst Ave at this time.

I have been living at 1159 Hearst Ave for around 30 years and have firsthand experience of the differential settling of the building. The owner only acquired the property recently and therefore has not had the opportunity to observe this overtime as I have, BUT I have made known in recent years about my front door that at times could not open or close do to the differential settling and the owner has adjusted/shaved down the door several times in the past few years. At this time the top of the door frame gap at one end is 1/16 of an inch and with an open gap at the other end of 13/16 of an inch, one can put their fingers through this gap. There are also stucco and drywall cracks, I have observe the differential settling over the past several years. The management company and myself have filled in cracks over the past few years. (See attached pictures. I have also attached a few back yard flooding pictures, the pounding area in the driveway is a low point on the property that may indicate the location of the buried part of Strawberry Creek).

Flooding "5 inch's" deep in the back quarter of the yard that did not subside for over 4 to 5 days long:



Inside door differential settling:



Outside stucco cracks, patches and water intrusion:





Here is a city map of the creek. The solid grey line indicates “unprotected” underground creek, dotted grey line indicates “historic trace” of underground creek. Both are approximate as no boring has been done to identify the exact location of the creek. CEQA is recommended to be done prior to building by the last Berkeley City Council meeting on this property.



It's been recommend that the city and ZAB require a CEQA study to be done before approving of this project. Really that's what the CEQA study is designed for to protect the property rights for all and protect the city from future punitive damages or possible legal issues. If the city does NOT require proper testing and does not do their due diligence by circumventing this required CEQA study the city is negligent in their duties.

The land owners and citizens are asking only to do the proper testing that is required by law and to recognize their property rights.

Respectfully,

Wayne Cory
1159 Hearst Ave

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: 1155-1173 Hearst Avenue. Use Permit #ZP2016-0028
Attachments: Capture.JPG; Capture7.JPG; Capture6.JPG; Capture2.JPG; Capture3.JPG; Capture8.JPG; Crack along fireplace Hearst Ave2.JPG; Crack along fireplace Hearst Ave.jpg; Crack along fireplace CU Hearst Ave.jpg; crack along steps Hearst Ave.jpg; City map.PNG; crack along steps Hearst Ave2.jpg; Crack by frunt door Hearst Ave.jpg; crack along steps Hearst Ave3.JPG; Flooding driveway Hearst Ave.jpg; looking down of crack that extends one fl Hearst Ave2.JPG; inside door showing differential settling 1 Hearst Ave.jpg; looking at crack that extends one fl Hearst Ave.jpg; IMG_1627.JPG; IMG_2069.JPG

From: Wayne Cory [mailto:cory888@gmail.com]
Sent: Sunday, April 28, 2019 3:32 PM
To: strawberryfork@yahoogroups.com; Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Planning Dept. Mailbox <planning@cityofberkeley.info>; Mendez, Leslie <LMendez@cityofberkeley.info>; All Council <council@cityofberkeley.info>; Berkeley Mayor's Office <mayor@cityofberkeley.info>
Subject: 1155-1173 Hearst Avenue. Use Permit #ZP2016-0028

About 1155-1173 Hearst Avenue, Use Permit #ZP2016-0028.

Why is the Berkeley City Zoning Adjustment Board above the Berkeley City Council? ZAB is disregarding the recommendation from the Berkeley City Council to properly have a CEQA study done. In fact it looks like ZAB is going out of their way not to have one done. WHY?

The Berkeley City Zoning Adjustment Board has stated that the property at 1155-1173 Hearst Ave is exempt pursuant to section 15332 of the CEQA guidelines (infill development projects). But this is not accurate! As stated on the California CEQA website at <http://resources.ca.gov/ceqa/guidelines/art19.html>.

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In this instance the "**significant effect on the environment due to unusual circumstances**". Is the flooding to the surrounding homes. Most likely the cause of the filled in creek. The flooding and the property damage to the surrounding homes has been documented and is a **reasonable circumstance**. If more buildings are to be built on 1155-1173 Hearst Avenue it is reasonable that there will be even more excessive water and flooding. The developer has stated that they would pump excess water out to Hearst Ave where there are NO STORM DRAINS to take the excess water. By pushing more excess water into the over flooding street will become a bigger problem for the city streets to handle and overwhelm them. Potentiality affecting nearby neighbors properties to flood and could cause more property damage. If developing a

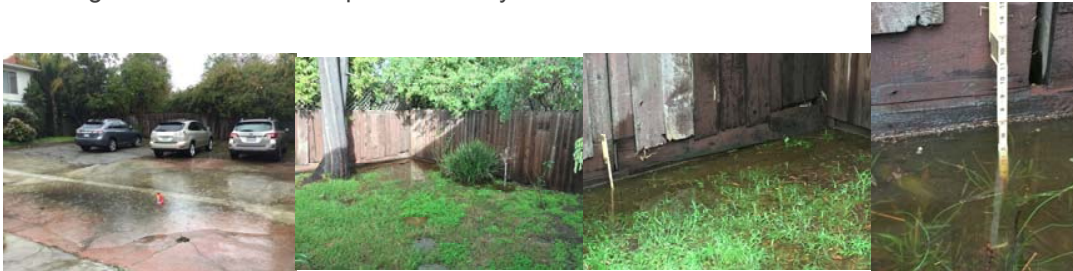
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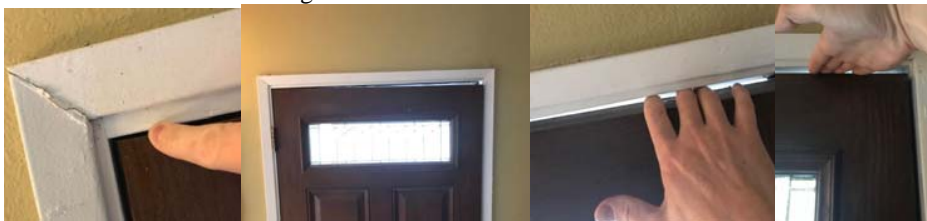
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It's been recommend that the city and ZAB require a CEQA study to be done before the approving of this project. Really that's what the CEQA study is designed for to protect the property rights for all and protect the city from future punitive damages or law suits. If the city does NOT require proper testing and does not do their due diligence by circumventing this required CEQA study the city is negligent in their duties.

The land owners and citizens are not asking for the city to reject this project just to do the proper testing that is required by law and to recognize their property rights.

Respectfully,

Wayne Cory
1159 Hearst Ave

ATTACHMENT 10
ZAB 05-09-19

Page 22 of 60













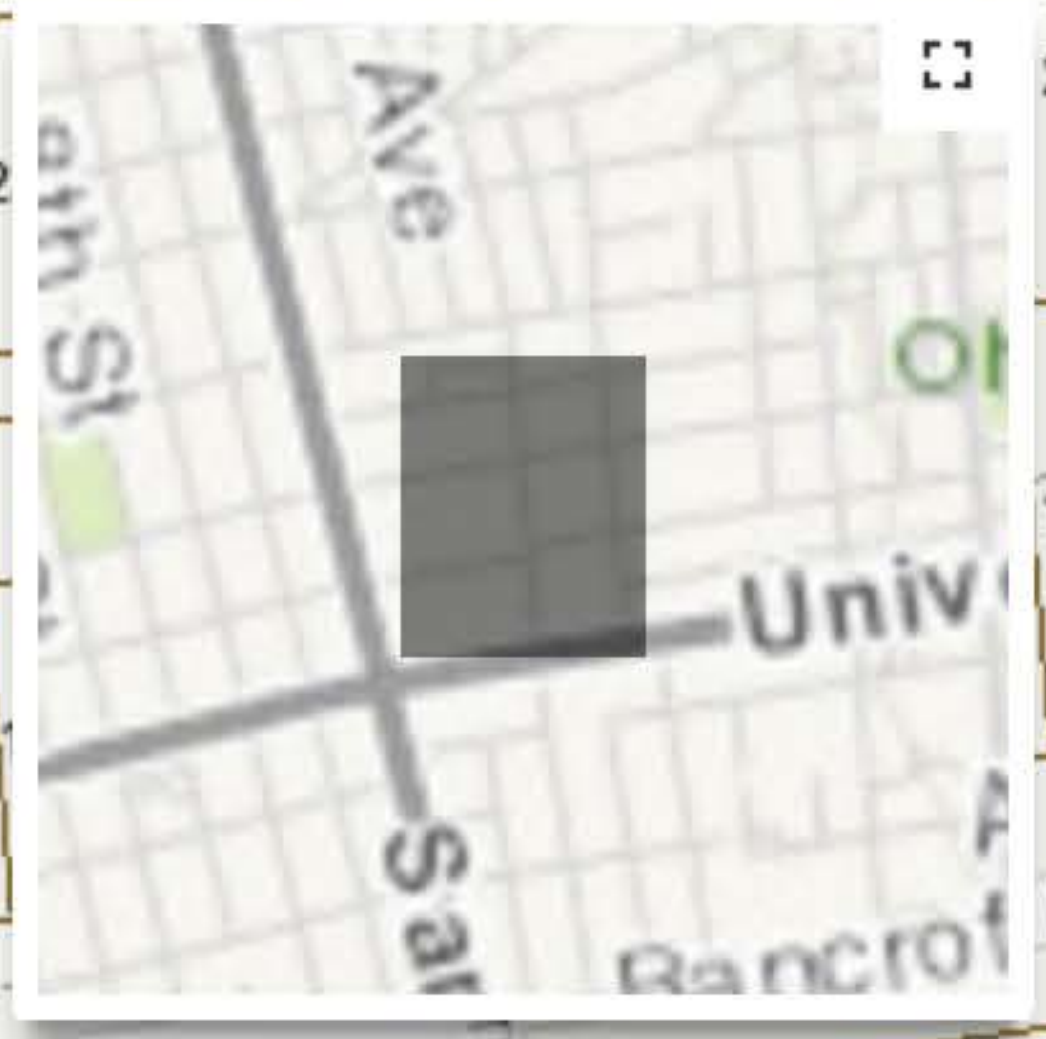
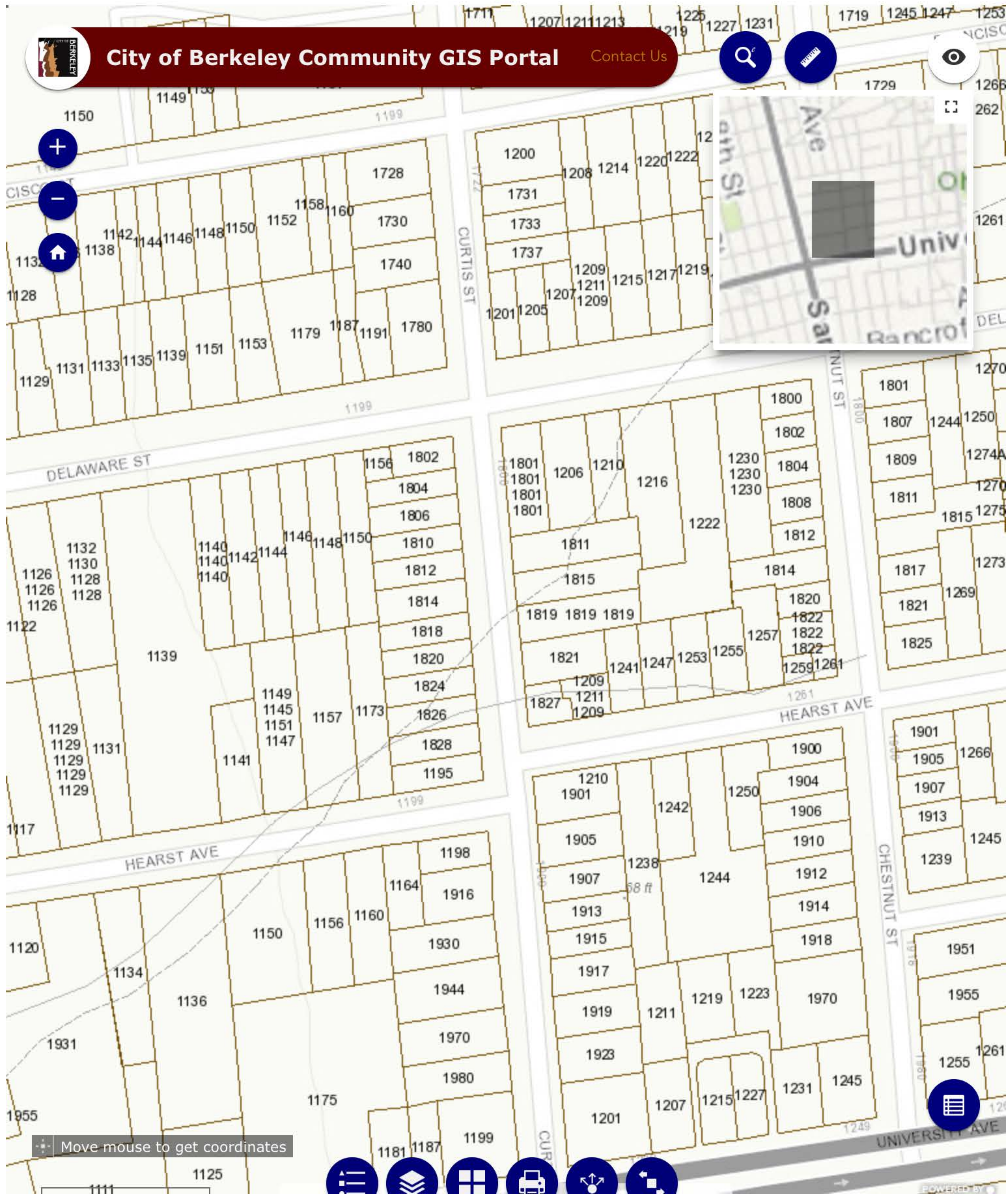


cityofberkeley.info



City of Berkeley Community GIS Portal

Contact Us



Move mouse to get coordinates





























Secretary to ZAB

Pam Ormsby
1148 Delaware St., Berkeley, Ca. 94702
(510) 524-6080 pormsby@aol.com

4/10/19

Dear ZAB Commissioner,

I am writing to inform you of the environmental issues on the 1155-1173 proposed development that neighbors believe warrant a CEQA evaluation. **At the 1/29/19 City Council Meeting, a vote of 8-1 was cast in favor of remanding the proposed project to ZAB for CEQA evaluation.** Please find enclosed:

1. Sophie Hahn response at the 1/29/19 City Council meeting (legal issues).
2. Map of our creek-Oakland Museum Creek and Watershed Map of Oakland and Berkeley
3. Summary re. our buried seasonal creek by Carole Schemmerling of Urban Creeks Council

I live at 1148 Delaware St. My lot borders the proposed development 1155-1173 Hearst on the north of the development. I have lived there for 51 years. When I first moved there elderly neighbors told tales of the creek that had been filled in with University Ave debris during "modernization". It was said that there was originally a path on either side of the creek that ran through the properties (east to west) and through what are now backyards of the Hearst and Delaware properties. Houses were later built atop the creek on Curtis St. Those properties and the back lots of the Hearst and Delaware properties experience "flooding/laking/ponds" during heavy rainstorms in spite of elaborate sump pumps and French drain systems. We have video to show this still occurring in spite of drier climate. Hearst St. sidewalks and gutters flood and become unpassable. Neighbors have video.

In addition, there are areas in the backyards above the creek where the soil sinks. We wonder if over the years the "debris fill" has shifted and decomposed to leave possible "sinkholes". The composition of the "fill" is unknown. Water-loving trees flourish.

In July of 2018, the developer hired a firm to evaluate the soil and water level. This was done at the driest time of the year. I visited the site during the evaluation and noted that the drilling of holes was happening in areas less apt to flooding. I questioned the contractor and was told that their contract had a limited scope at the areas of the proposed foundation pilings. I am also curious as to why the developer-submitted "peer review" reports are not noting the creek that is noted on several maps that neighbors have been able to obtain.

We urge ZAB to request a CEQA report to make sure this proposed development is built to ensure the safety of its residents and to ensure that neighbors are not adversely affected. If you would like an ex parte meeting with neighbor(s), we would be happy to meet with you. We understand that you cannot make comments and will respect that process.

Sincerely,

Pam Ormsby



RECEIVED
APR 11 2019
LAND USE PLANNING

Sophie Hahn
at the
Berkeley City Council Meeting January 29, 2019
Transcriptions with time stamps
Found at following web address:

Timestamp 4:05:35

Sophie Hahn

This is a complex project and I have some thoughts put together before coming here. And I wanted to listen very carefully to what staff had to say to see if it would change my mind at all. And it didn't. So I'm going to go ahead and read the comments that I've prepared. I would just like to say that I spent a lot of time the last few days looking at the law, CEQA, my background is the law. And it's kind of fun cause the seminal case that addresses the questions that were raised in the appeal is actually a Berkeley case, which I didn't know. But it means that it is very easy to imagine what the circumstances that were around that case. And I have to say that I respectfully disagree with the conclusions of ZAB and staff's arguments on this. I believe that this project is clearly and absolutely subject to CEQA. And I also believe that there are many grounds to find detriment. And that the non-detriment finding that is required to issue a permit or an administrative use permit in Berkeley have not been met. So I'm going to go through each of the appeal questions and explain why I am so confident that this project is subject to CEQA. And also that the non detriment findings cannot be made. And that this project is easily subject to denial.

Timestamp 4:07:53

So the first. The project is subject to CEQA and should not have been found exempt by ZAB. This is based on the contention that the project does not meet subsection E which states that the site must be adequately served by all the required utilities and public services. The main thrust of the appellant's arguments is that the site cannot be adequately served by required public services. The main thrust is that the storm drain system is unable to address runoff, and that the project has the potential to exacerbate flooding conditions.

First I think it is very important to clarify that this property is on a creek as are adjacent properties. The creek is clearly shown on city of Berkeley planning department maps, creek and watershed maps, city of Berkeley creek maps, and others. While it is very clearly a creek, it happened to be not subject to Berkeley's creek ordinance. The creek

ordinance only applies to certain portions of the documented creek system in Berkeley. Failure to subject this creek to the city's creek ordinance does not mean that it is not a creek. And the question of whether this creek is subject to that ordinance, in fact is entirely moot with respect to the question of whether it is a creek and entirely removed from any question relating to CEQA. So it is a creek it is shown as a creek and it functions as a creek. The appellants show numerous photos supplementing these maps that are well established and videos of pooled water on their property, in their garage, in their basement as well as gushing down Hearst Street jumping onto sidewalks. Even when the skies are clear, there are some photos that were shown when I met with them that they didn't show here. Got blue skies no rain. Most of the street is getting dry. And there is an absolute river called a stream of water running down one side of Hearst Avenue even without any rain. This is a marker of a waterway or a creek which by definition gathers water from a broader watershed and funnels it into a channel which can rise hours or even days after the end of a rain. We all know when the Russian River crests, it crests days after the rain. That's what a stream or river does.

The conditions shown recorded over multiple occasions by the appellant over many years who live there and are able to observe the conditions on a daily and hourly basis are far more probative than a single field visit by a staff member, or the opinion based on opinion of a member of the city staff. It is objectively and clearly proven including through pictures of elderly and blind people (and I'm sorry they didn't show them but they have them) unable to cross streets because of a lake of water in the street and running over the sidewalk. That storm drain cannot handle the existing flows.

Timestamp 4:12:10

The argument that the developers' drainage plan fully addresses this concern are irrelevant. CEQA applies when the conditions exist. And it is through the CEQA process that proper mitigations are determined, if any and in what form the project can go forward.

You do not have someone who has a super-fund site who says that I have someone who tells me that laying saran wrap is going to mitigate it. So now I don't have an environmental issue. So now I'm not under CEQA. That's not how it works. If you have the environmental issue, you're subject to CEQA. And CEQA will tell you how to mitigate it. That is the whole point of CEQA. It is not up to the developer to posit their improvements render CEQA inapplicable. In fact, their insistence that the drainage plan handles "*the problem*" is in and of itself an admission that the problem exists. Clearly the site cannot be adequately served by existing public services. And the project should not have been found exempt from CEQA. So even if the project is categorically exempt. So even if people don't agree with that, we're moving on to the situation where someone says, OK it's categorically exempt from CEQA. It is subject to the unusual

circumstances exception to the categorical exemption because there is substantial evidence of an unusual circumstance. And a fair argument that there is a reasonable possibility of a significant effect on the environment due to that unusual circumstance. And that is a piece of the test that is very clear in the California Supreme Court precedent which was not even brought forward in the conversation.

So not surprisingly the seminal case establishing the standard to qualify for an exception for the infill exemption is a Berkeley case that went all the way to the California Supreme Court. In Berkeley Hillside Preservation the Supreme Court adopted a two part standard.

Timestamp 4:14:45

For the standard to apply, there must be substantial evidence of unusual circumstances and 2) a fair argument (not definitive proof) that the unusual circumstance gives rise to a reasonable possibility that the activity will have a significant effect on the environment.

So let's go to the first element: Unusual circumstances may be shown when the project has some feature that distinguishes it from others such as size or location. In the Berkeley Hillside Preservation case size and location were the claimed unusual circumstances. That's why the court pointed them out. And it said such as. That doesn't mean only those two circumstances. Other circumstances can absolutely qualify as unusual circumstances. The existence of hundreds of other properties with the same circumstances as the property in Berkeley Hillside, did not render that circumstance usual or common. It's right here in the case law. They actually stated that the fact that there are hundreds of other parcels and houses in Berkeley that have the same circumstance did not mean that that circumstance was not unusual as a matter of law. So we cannot absolutely make this finding and the courts give us significant deference on our determination. The determination we make is given significant deference by the courts.

Timestamp: 4:16:50

So the creek underlying the Hearst and adjacent properties is an unusual circumstance, even though similar unusual circumstances may be present on other properties in the city of Berkeley, in the East Bay or in the state. Unusual does not mean singular or unique. And the case law supports it. So the fact that there are other properties have creeks on them it's irrelevant. It does not mean that this is unusual.

So having established that the creek is an unusual circumstance, the next question that Berkeley Hillside requires is that there is a (quote) reasonable possibility of a significant effect due to that unusual circumstance or evidence that the project will have a

significant environmental impact. A reasonable possibility of a certain effect does not require certainty. It's in the case law. Gotta read the whole case. The fact that this property is on an active creek that floods regularly, pools, floods neighboring houses and properties, and the subject property and overflows the capacity of storm drains, turning parts of sidewalks into rivers, certainly meets the reasonable possibility of a significant effect standard. The developer's insistence that his drainage plan addresses the d significant effect is a de facto admission that the significant effect exists. Once again it is not for the developer or city staff, to determine whether an adequate mitigation for an impact that is subject to CEQA analysis. The proper way to address the significant effect or the reasonable possibility of a significant effect due to unusual circumstance is to subject the project to CEQA review.

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So the third argument, and I clearly believe that is what we should do, is that even if the project is exempt from CEQA the project will be detrimental or injurious to adjacent properties and the surrounding area. This is something we forget to talk about a lot. Every use permit or administrative use permit granted in Berkeley, requires the same non-detriment finding. The project seeks 5 separate permits each subject to the finding. Section 23b 28 050a sets forth the non-detriment finding which must be made 5 times. And I'm quoting, "the project under the circumstances of this particular case existing at the time at which the application is granted (not later right now) would not be detrimental to the health safety morals comfort, general welfare or of the persons residing or working in the neighborhood 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". This finding singles out (inaudible) to adjacent properties. It is not a nebulous detriment thing. There's a lot here. Which means properties touching or next to the subject property. In addition it is not necessary to find that the project will be detrimental. We must find affirmatively that it will not be detrimental. We have to say that we are 100% sure that there is no detriment to make this finding. That means the project and applicant must demonstrate and prove affirmatively that they will not cause detriment or injury to property or improvements – an improvement is a building including a garage and a home, which are already flooding – on adjacent properties. This finding cannot be made on the facts before us. Another element of the non detriment finding is that it is applied to the circumstance existing at the time at which the application was granted. Not later if the city might do something or the applicant said it might do something. It is very clear that the circumstances of this case do not support the necessary 5 affirmative findings of non-detriment. The developer seeks to assert that his drainage plan addresses any potential detriment. However and very importantly, the peer review by Balance Hydrologics Inc, on Aug 11, clearly states, and I'm quoting, "Information on soil properties and depth to groundwater have not yet been collected. This is an unfortunate limitation, because the lack of definitive information on both

subjects impacts several aspects of the drainage design, most notably the potential efficiency of the proposed permeable pavement surfaces (close quote). Thus it is clear that critical information required to make an affirmative finding that the proposed drainage plan fully mitigates the admitted detriment (we are already admitting there is a problem) is not available”.

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Staff confirms the importance of a geotechnical report prior to a building permit, by restating the standard requirement for a geotechnical report done on every single conditions (sic) of approval. In most instances where the unusual circumstance of detrimental flood and water flows is not present, a geotechnical report after the use permit is sufficient. In this case where the peer review clearly states that a geotechnical report, soil properties and depth to groundwater is necessary to determine the efficacy of the proposed mitigating drainage plan the geotechnical report would be necessary to determine whether the clearly admitted detriments have been addressed. That report was not done.

Timestamp 4:24:18

Finally with respect to the detriment caused by the creek and flooding, It is clear that the CEQA analysis is the proper way to determine the detriment caused by the project and to determine the appropriate mitigations. That is not up to the applicant and it is not up to staff. That's why CEQA exists. Detriment is established and supposed mitigations are technically insufficient to support a non-detriment finding. In addition, negative impacts to rent controlled properties and the increase displacement of low income rent protected residents, constitutes detriment to the general welfare of the neighborhood and the city. There are numerous grounds for denying the 5 permits subject to this non-detriment finding.

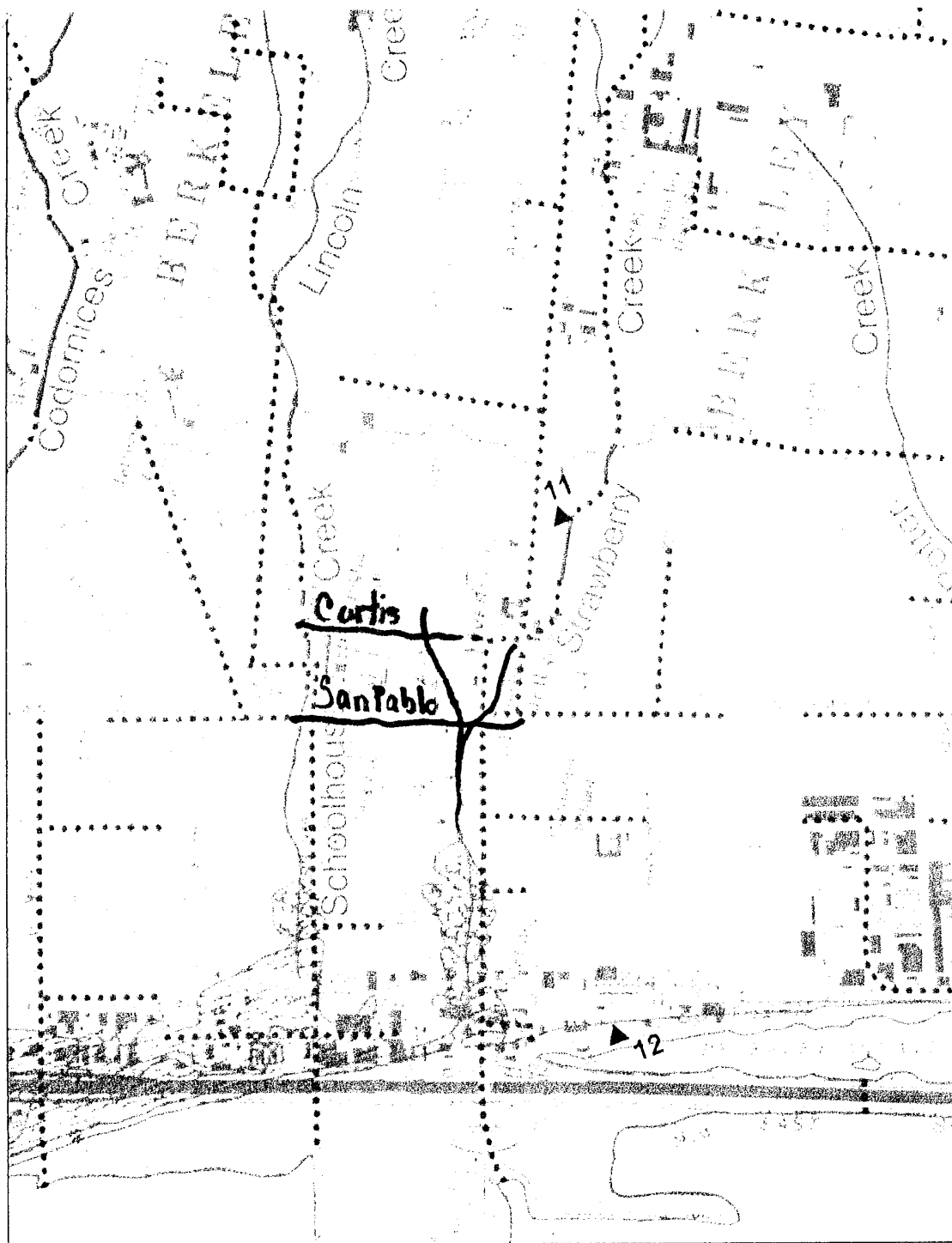
So where am I going from here? I have a motion to get us out of this mess. I believe there are ample grounds to flat out deny this project. And I have made the case for that. But I think a better outcome, is that we make two findings. Because this is subject to CEQA on two grounds. And remand this to ZAB to undertake the required CEQA process. Take appropriate action based on CEQA findings, and if there is a project that meets CEQA requirements, and able to mitigate detriments if any, they can consider that project for approval. And that is my motion.

Mayor Arreguin

So I'll second the motion. But also within the motion to clarify that the potential detriments to rent control properties, the potential displacement and loss of residential

housing is something that should also be analyzed the the ZAB. And if a project is going to proceed that appropriate conditions be developed.

Strawberry & Schoolhouse Creeks Watershed Map



Portion of Creek & Watershed Map of Oakland & Berkeley -- Purchase Printed Map

Urban Creeks Council

Carole Schemmerling

12/17/02

North Branch of Strawberry Creek

Filled in with soil and debris

Shown on most historical maps

"filled wetlands"

"seismically unstable and subject to liquefaction"

ABAG liquefaction susceptibility map

USGS soil type and shaking hazard map

Vulnerable to moderate to high hazard in a seismic event

Berkeley Creeks Ordinance

Creeks-culverted or open-setbacks

Flood hazard-defines seasonal pools/flood zones and set-backs

And restrictions to remedies

Hussein M Saffouri
Attorney

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925-402-8053

RAMSEY LAW GROUP
A Professional Corporation



April 10, 2019

By Email and U.S. Mail

Leslie Mendez
Berkeley Planning and Development Department
Land Use Planning Division
2120 Milvia Street
Berkeley, CA 94704
LMendez@cityofberkeley.info

Re: Use Permit #ZP2016-0028; 1155-1173 Hearst Avenue; Remanded ZAB Hearing

Dear Ms. Mendez:

I am writing ahead of the upcoming remanded ZAB hearing on the Rhoades Group's proposed development for 1155-1173 Hearst Avenue, to clarify and identify the environmental issues which must be considered by staff and ZAB pursuant to the motion of the Berkeley City Council.

The City Council requires a CEQA study and finds the project will be detrimental

The City Council found that this project is "absolutely subject to CEQA" because "the project has the potential to exacerbate flooding conditions." Specifically, the City Council found that "the creek underlying the Hearst and adjacent properties is an unusual circumstance" and "[t]he fact that ... [the] active creek ... floods regularly, pools, floods neighboring houses and properties, and the subject property and overflows the capacity of storm drains, turning parts of sidewalks into rivers, certainly meets the reasonable possibility of a significant effect standard," making the project subject to CEQA review.

In addition, the City Council explained that in order to approve the project, BMC § 23B.32.040 requires it "to say that [it is] 100% sure that there is no detriment" "to the health safety morals comfort, general welfare of the persons residing or working in the neighborhood 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."

However, the City Council found a possibility that "the project will be detrimental or injurious to adjacent properties and the surrounding area" for two reasons. First, because "critical information [on groundwater and subsurface conditions] which would be required to make an affirmative finding that the proposed drainage plan fully mitigates the admitted detriment ... is not available." And second, due to the project's "... negative impacts to rent controlled properties and the increased displacement of low income rent protected residents, [which] constitutes detriment to the general welfare of the neighborhood and the city."

As a result, the City Council concluded that "There are numerous grounds for denying the ... permits"

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ZAB must require a CEQA technical study addressing subsurface conditions

As identified by the City Council, and supported by the historical record, the neighbors' evidence, and the information provided by Dr. Lucas Paz, the critical issues are the surface and subsurface conditions and groundwater dynamics of the site. What is required is a detailed site-specific groundwater evaluation to assess surface and subsurface conditions and groundwater dynamics to characterize existing conditions and to avoid impacts of the proposed development on surrounding properties and to identify engineering controls necessary to avoid future risks.

None of the studies the applicant has submitted to date address this issue. The applicant's reports submitted before the City Council hearing do not evaluate subsurface drainage conditions. They lacked the proper context of the site's background and were prepared following a historic drought, and thus are even less relevant.

The applicant's additional environmental reports submitted after the City Council hearing also fail to address the relevant issue. As a result, these new reports (which relate to the stability of the proposed foundations) at best provide incomplete information and are of limited use. At worst they suggest an ongoing effort by the applicant to avoid conducting a proper investigation by investigating everything but the issue of concern. If that is the case, it is troubling that the applicant would be trying to avoid discovery of the extent of the problems affecting the site.

In fact, the site-specific conditions include the buried channel of the northern fork of Strawberry Creek, likely to have been filled with material that has a higher permeability and porosity than the surrounding subsurface sediments. The buried creek channel is a contributing factor to the local shallow groundwater conditions and the historical flooding of the site and neighboring properties. Indeed, properties along Curtis Street experience annual flooding in their basements and backyards, even during relatively dry water years.

A full-fledged and proper CEQA technical study, carried out in accordance with applicable CEQA guidelines, which assesses the surface and subsurface conditions and groundwater dynamics on the site, is therefore imperative for this project. The study must include a groundwater evaluation to support the required CEQA study for the project to evaluate the site-specific concerns. A detailed assessment of subsurface drainage conditions and groundwater flow dynamics is needed to characterize existing conditions and to avoid impacts of the proposed development on surrounding properties and to identify engineering controls necessary to avoid future risks. Among other things, the study must address the major concern that any construction including foundations and structures could impact the existing groundwater conditions in a fashion that would alter the existing groundwater flow direction, block existing subsurface preferential flow paths and/or cause local groundwater levels to rise, leading to increased flooding.

To properly accomplish these goals, the technical study must include the following components because the buried creek channel may be preferentially directing groundwater/subsurface flow towards and beneath the proposed development site:

- Review available geology, groundwater, geotechnical reports and maps to better characterize regional and local subsurface soil and groundwater conditions.

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Page 3

- Identify the alignment, depth and fill material properties associated with the buried creek located under the proposed development site. This would require a number of soil borings to identify and delineate the alignment of the buried creek channel (in addition to the 3 limited borings conducted to date).
- During the completion of the soil borings a series of shallow groundwater piezometers would need to be installed in order to monitor water levels. Piezometers would be located to adequately monitor groundwater conditions in the buried channel and surrounding sediments.
- Fully characterize sub-surface soils, subsurface drainage conditions and local groundwater dynamics so that existing groundwater release preferential pathways (due to the buried creek) are identified and are not impacted during construction of the project. The final technical study report would include the interpretation of field data, completion of hydraulic analyses, and documentation of the investigation results including recommendations with respect to potential significant impacts to groundwater conditions and flooding hazards associated with the proposed project.
- Apply results of the final technical study to support design of engineering controls and/or other mitigation measures necessary to avoid risks associated with construction and potential future risks including existing flooding in the vicinity of the project.
- The evaluation should include a process to ensure coordination, review and consideration of site-specific information provided by neighboring properties to the hydrogeologist performing the investigation.
- The proposed development drainage plan shall be re-assessed and revised accordingly once site-specific data is collected and shall incorporate recommendations from the groundwater investigation. The revised drainage plan shall be peer-reviewed. [The proposed development drainage plan in its current form is provisional pending the collection and evaluation of the above site-specific data.]

ZAB must ensure that the project does not result in the loss of rent controlled housing

The City Council has required that “the potential detriments to rent control properties, the potential displacement and loss of residential housing is something that should also be analyzed the ZAB. And if a project is going to proceed that appropriate conditions be developed” addressing those impacts.

Due to the applicant’s past lack of candor and evasion, ZAB must impose strict conditions that will require the applicant to retain the existing rent controlled housing and that will prohibit the applicant from attempting to displace the existing residents now or in the future. ZAB’s conditions of approval must ensure the rent controlled housing retains now and in the future, all of the safeguards of the BMC.

Please feel free to call me if you have any questions.

Very truly yours,



Hussein Saffouri

Mendez, Leslie

From: Guy Sussman <skyguy1299@gmail.com>
Sent: Thursday, March 28, 2019 8:04 AM
To: Mendez, Leslie
Subject: Re ZP2016-0028 1155 Hearst Ave
Attachments: CityCouncil_meeting_20190129.doc

Dear Leslie

Please include the attached transcript of Councilwoman Sophie Hahn's comments at the city council meeting January 29, 2019.

Thank you

Guy Sussman

Sophie Hahn
at the
Berkeley City Council Meeting January 29, 2019
Transcriptions with time stamps
Found at following web address:

Timestamp 4:05:35

Sophie Hahn

This is a complex project and I have some thoughts put together before coming here. And I wanted to listen very carefully to what staff had to say to see if it would change my mind at all. And it didn't. So I'm going to go ahead and read the comments that I've prepared. I would just like to say that I spent a lot of time the last few days looking at the law, CEQA, my background is the law. And it's kind of fun cause the seminal case that addresses the questions that were raised in the appeal is actually a Berkeley case, which I didn't know. But it means that it is very easy to imagine what the circumstances that were around that case. And I have to say that I respectfully disagree with the conclusions of ZAB and staff's arguments on this. I believe that this project is clearly and absolutely subject to CEQA. And I also believe that there are many grounds to find detriment. And that the non-detriment finding that is required to issue a permit or an administrative use permit in Berkeley have not been met. So I'm going to go through each of the appeal questions and explain why I am so confident that this project is subject to CEQA. And also that the non detriment findings cannot be made. And that this project is easily subject to denial.

Timestamp 4:07:53

So the first. The project is subject to CEQA and should not have been found exempt by ZAB. This is based on the contention that the project does not meet subsection E which states that the site must be adequately served by all the required utilities and public services. The main thrust of the appellant's arguments is that the site cannot be adequately served by required public services. The main thrust is that the storm drain system is unable to address runoff, and that the project has the potential to exacerbate flooding conditions.

First I think it is very important to clarify that this property is on a creek as are adjacent properties. The creek is clearly shown on city of Berkeley planning department maps, creek and watershed maps, city of Berkeley creek maps, and others. While it is very clearly a creek, it happened to be not subject to Berkeley's creek ordinance. The creek

ordinance only applies to certain portions of the documented creek system in Berkeley. Failure to subject this creek to the city's creek ordinance does not mean that it is not a creek. And the question of whether this creek is subject to that ordinance, in fact is entirely moot with respect to the question of whether it is a creek and entirely removed from any question relating to CEQA. So it is a creek it is shown as a creek and it functions as a creek. The appellants show numerous photos supplementing these maps that are well established and videos of pooled water on their property, in their garage, in their basement as well as gushing down Hearst Street jumping onto sidewalks. Even when the skies are clear, there are some photos that were shown when I met with them that they didn't show here. Got blue skies no rain. Most of the street is getting dry. And there is an absolute river called a stream of water running down one side of Hearst Avenue even without any rain. This is a marker of a waterway or a creek which by definition gathers water from a broader watershed and funnels it into a channel which can rise hours or even days after the end of a rain. We all know when the Russian River crests, it crests days after the rain. That's what a stream or river does.

The conditions shown recorded over multiple occasions by the appellant over many years who live there and are able to observe the conditions on a daily and hourly basis are far more probative than a single field visit by a staff member, or the opinion based on opinion of a member of the city staff. It is objectively and clearly proven including through pictures of elderly and blind people (and I'm sorry they didn't show them but they have them) unable to cross streets because of a lake of water in the street and running over the sidewalk. That storm drain cannot handle the existing flows.

Timestamp 4:12:10

The argument that the developers' drainage plan fully addresses this concern are irrelevant. CEQA applies when the conditions exist. And it is through the CEQA process that proper mitigations are determined, if any and in what form the project can go forward.

You do not have someone who has a super-fund site who says that I have someone who tells me that laying saran wrap is going to mitigate it. So now I don't have an environmental issue. So now I'm not under CEQA. That's not how it works. If you have the environmental issue, you're subject to CEQA. And CEQA will tell you how to mitigate it. That is the whole point of CEQA. It is not up to the developer to posit their improvements render CEQA inapplicable. In fact, their insistence that the drainage plan handles "*the problem*" is in and of itself an admission that the problem exists. Clearly the site cannot be adequately served by existing public services. And the project should not have been found exempt from CEQA. So even if the project is categorically exempt. So even if people don't agree with that, we're moving on to the situation where someone says, OK it's categorically exempt from CEQA. It is subject to the unusual

circumstances exception to the categorical exemption because there is substantial evidence of an unusual circumstance. And a fair argument that there is a reasonable possibility of a significant effect on the environment due to that unusual circumstance. And that is a piece of the test that is very clear in the California Supreme Court precedent which was not even brought forward in the conversation.

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For the standard to apply, there must be substantial evidence of unusual circumstances and 2) a fair argument (not definitive proof) that the unusual circumstance gives rise to a reasonable possibility that the activity will have a significant effect on the environment.

So let's go to the first element: Unusual circumstances may be shown when the project has some feature that distinguishes it from others such as size or location. In the Berkeley Hillside Preservation case size and location were the claimed unusual circumstances. That's why the court pointed them out. And it said such as. That doesn't mean only those two circumstances. Other circumstances can absolutely qualify as unusual circumstances. The existence of hundreds of other properties with the same circumstances as the property in Berkeley Hillside, did not render that circumstance usual or common. It's right here in the case law. They actually stated that the fact that there are hundreds of other parcels and houses in Berkeley that have the same circumstance did not mean that that circumstance was not unusual as a matter of law. So we cannot absolutely make this finding and the courts give us significant deference on our determination. The determination we make is given significant deference by the courts.

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So having established that the creek is an unusual circumstance, the next question that Berkeley Hillside requires is that there is a (quote) reasonable possibility of a significant effect due to that unusual circumstance or evidence that the project will have a

significant environmental impact. A reasonable possibility of a certain effect does not require certainty. It's in the case law. Gotta read the whole case. The fact that this property is on an active creek that floods regularly, pools, floods neighboring houses and properties, and the subject property and overflows the capacity of storm drains, turning parts of sidewalks into rivers, certainly meets the reasonable possibility of a significant effect standard. The developer's insistence that his drainage plan addresses the d significant effect is a de facto admission that the significant effect exists. Once again it is not for the developer or city staff, to determine whether an adequate mitigation for an impact that is subject to CEQA analysis. The proper way to address the significant effect or the reasonable possibility of a significant effect due to unusual circumstance is to subject the project to CEQA review.

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subjects impacts several aspects of the drainage design, most notably the potential efficiency of the proposed permeable pavement surfaces (close quote). Thus it is clear that critical information required to make an affirmative finding that the proposed drainage plan fully mitigates the admitted detriment (we are already admitting there is a problem) is not available”.

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So where am I going from here? I have a motion to get us out of this mess. I believe there are ample grounds to flat out deny this project. And I have made the case for that. But I think a better outcome, is that we make two findings. Because this is subject to CEQA on two grounds. And remand this to ZAB to undertake the required CEQA process. Take appropriate action based on CEQA findings, and if there is a project that meets CEQA requirements, and able to mitigate detriments if any, they can consider that project for approval. And that is my motion.

Mayor Arreguin

So I'll second the motion. But also within the motion to clarify that the potential detriments to rent control properties, the potential displacement and loss of residential

housing is something that should also be analyzed the the ZAB. And if a project is going to proceed that appropriate conditions be developed.

Jacob, Melinda

Subject: FW: How to build faith in local government?

From: R S [mailto:rain.sussman@gmail.com]

Sent: Tuesday, May 07, 2019 12:13 PM

To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; All Council <council@cityofberkeley.info>

Subject: How to build faith in local government?

Dear City Council and members of ZAB,

I am writing to you with sadness and concern about restoring the community's faith in local government. It is important to me that citizens feel empowered, connected, and well-protected by their representatives, local government officials and agencies. Without this, I fear that reasonable people will disengage and the political discourse will be overrun by extremists.

I am especially concerned for the younger generation of Berkeley residents and voters, who may be interfacing with the local government for the first time. I'm disturbed by the experience of my neighbor, a young woman of color, who sought help from the Berkeley Rent Board with fears of displacement by the owner/landlord of her rent-controlled unit.

The owner/landlord, Mark Rhoades, is also an investor and developer, and has been working for years on a permit to replace my neighbor's rent-controlled unit with condos. I'm sure you are aware of the controversy surrounding ZP2016-0028. And as we all know, Rhoades is a former City employee and extremely well-connected within city government.

At a meeting with the rent board, Rhoades signalled his power and influence by chumming it up with the very Rent Board staff from whom this young woman was seeking help. Consider the experience of someone in my neighbor's position, watching three white men in positions of power over her displaying their camaraderie as she seeks information about her rights vis-a vis one of those men. Consider that this woman struggled for years to get a meeting with the rent board, yet this meeting took place at Rhoades' request. Consider that this woman is herself a public servant, working with marginalized populations in our community, yet does not feel protected by the public servants who are supposed to be there for her.

I am deeply saddened to hear of her experience, and hope that the City government will strive to be more responsive to the less-powerful, less-connected members of our community. The appearance of bias or cronyism is toxic to our political process, and leads people to cynicism and disengagement with civic life. Please consider the experience of those who are not "insiders," and help keep faith in local government alive.

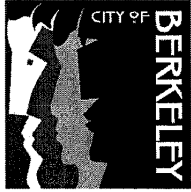
Warmly,

Rain

--

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Rent Stabilization Board

May 7, 2019

To: Members of the Zoning Adjustments Board

From: ^{fy} Jay Kelekian, Executive Director, Berkeley Rent Stabilization Board

Subject: **1155-1173 Hearst Ave – Use Permit ##ZP2016-0028**

On July 3, 2018, we wrote to you to provide information on the rental history and status of the properties at 1157 and 1173 Hearst Avenue. In that letter (see attached) we explained that the project would not impact the existing tenant protections that apply to these properties, and we proposed conditions of approval that could help mitigate the effect of the project upon the sitting tenants.

On February 26, 2019, we hosted a meeting at the Rent Board to counsel the sitting tenants about their rights under local law. At that meeting the applicant stated his intention not to convert any of the existing units to condominiums, and also said he would not seek to renovate the interior of any sitting tenant's unit until that unit was vacant. He reiterated this point in an email to the ZAB dated May 6, 2019 as follows: "there will be no work performed on occupied units that will require tenants to move out. The only work contemplated for any of the occupied duplexes are cosmetic exterior treatments, such as painting."

Although we do not foresee any risk that the sitting tenants could be displaced by legal action of the applicant, we are concerned that the parties' respective understandings of tenant's rights and obligations may be at odds with one another. For that reason we have written this letter to help clarify the rights that are most directly implicated by this project.

Tenant Relocation

Although the Relocation Ordinance (B.M.C. 13.84) does not apply to projects that seek to upgrade rental housing rather than to make necessary repairs to correct code violations, it is common for the ZAB to apply conditions of approval requiring that an applicant provide relocation benefits commensurate with those set forth under the Relocation Ordinance. One of the reasons for this practice is the fact that a landlord does not have the right to evict a tenant or *even enter a rental unit* to perform work that is not necessary or agreed upon. Simply put, if the applicant wants to do work on the interiors of the existing units, he will need to reach an agreement with each tenant to gain access to each occupied unit.

At our February 26, 2019 meeting we made this point clearly to the applicant, and he stated that he had no intention of performing any work in the interior of any occupied unit. Given the repeated statements of the applicant, it seems appropriate to include conditions of approval consistent with those statements,

such as Conditions 15 and 16. It is wise to include these conditions because they do not abridge the right of the applicant to enter the unit and perform routine maintenance and repairs, and they make clear that approval of the project does not somehow impair the rights of the tenants under state law to refuse the landlord access to their rental units to perform work that is neither necessary nor agreed upon. In the absence of such conditions, the legal right of the tenants to refuse the landlord may result in unnecessary conflict between the applicant (or his successor in interest) and the tenants.

Good Cause is Required for Eviction

The tenants are protected by the eviction protections set forth in the Rent Stabilization Ordinance (B.M.C. 13.76) namely the requirement that the applicant or any successor in interest must allege and prove one of the enumerated Good Causes for Eviction. The landlord's desire to perform renovations is not good cause for eviction, even if the landlord has obtained a Use Permit for such renovation work. This is another reason why it is expedient for the ZAB to impose conditions (such as Condition 15 and 16) that clarify the circumstances under which the applicant may become entitled to perform the work upon occupied rental units.

Conclusion

This project does not put any tenants in direct legal jeopardy, but conditions acknowledging and accounting for the tenants' legal rights are appropriate to ensure that the applicant and any successor in interest fully understands the scope of those rights, and the legal alternatives at their disposal should they seek to perform interior renovations that require access to the occupied rental units.

Name and Telephone Number of Contact Person:

Jay Kelekian, Executive Director (510) 981-4949



Rent Stabilization Board

July 3, 2018

To: Leslie Mendez, Senior Planner, Planning & Development Department

From: Jay Kelekian, Executive Director

By: Lief Bursell, Associate Management Analyst

Subject: **1155-73 Hearst Avenue**

The following information on the rental history and status under the Rent Stabilization Ordinance of the properties at 1157 and 1173 Hearst Avenue. We have also included a recommendation on proposed conditions of approval related to the work proposed to the existing, tenant occupied buildings.

Property History

1157 Hearst Avenue is listed as owned by Hearst Avenue Cottage LLC with a purchase date of January 22, 2015. Alameda County records indicate the property has a county use designation of "Residential Property 5+ Units". City of Berkeley records show that the property at 1157 Hearst Avenue originally contained two duplex structures built in 1926. A 3rd structure containing a single residential unit was constructed in 1957. In 1985 a zoning application was submitted requesting the City acknowledge the 3rd structure as a duplex in order to add a 2nd meter for the lower unit addressed 1159 Hearst Ave #B. Since address 1159 Hearst Ave. #B is currently active, it appears the City allowed the owner to legalize this unit.

1173 Hearst Avenue is also listed as owned by Hearst Avenue Cottage LLC with a purchase date of January 22, 2015. Alameda County records indicate the property has a county use designation of "Single Family Residential Home". City of Berkeley records show that the existing building at 1173 Hearst Avenue was constructed in 1927 for use as a single family home.

Rental History

Rent Stabilization Board records also reflect that 1157 Hearst Avenue and 1173 Hearst Avenue are separate properties:

1173 Hearst Avenue contains one dwelling that is exempt from rent regulation per the Costa Hawkins Rental Housing Act. Previously this property contained a second unit with the address 1173 Hearst Ave. #Lower that was rented and under rent control from 1980 through 1996. The unit was claimed as "not available for rent" from 2000 until 2015 when the current owner claimed this unit had been removed because it was unpermitted. Rent Board staff inspected the property and verified the 2nd kitchen had been removed from the lower level, and that the

property was being rented as a single dwelling. On July 2, 2015 1173 Hearst Avenue #Lower was inactivated.

The property at 1157 Hearst Avenue contains six (6) dwelling units. The following table includes the address, occupancy status, date tenancy began, and rent ceiling for each unit:

Address	Occupancy Status	Tenancy Began	2018 Rent Ceiling	No. Bedrooms
1155 Hearst Ave.	Rented	8/10/2011	\$1,170.91	1
1157 Hearst Ave.	Rented	7/1/2009	\$1,135.22	1
1159 Hearst Ave. #A	Rented	5/31/1980	\$1,259.56	1
1159 Hearst Ave. #B	Rented	6/14/1997	\$1,136.65	3
1161 Hearst Ave.	Rented	10/15/2015	\$624.85	1
1163 Hearst Ave.	Rented	12/12/2011	\$1,226.66	1

Ellis Act

No buildings at either 1157 or 1173 Hearst Avenue have been removed from the rental market under the Ellis Act at any time during the preceding five (5) years.

Harassment or Illegal Eviction

The Rent Board has no record of any verified cases of harassment or threatened or actual illegal eviction occurring at either 1157 or 1173 Hearst Avenue.

Rent Control Status

Rent Board records indicate that all six units at 1157 Hearst Avenue are “controlled rental units” with a history of being rented and fully subject to the Rent Stabilization Ordinance. The property at 1173 Hearst Avenue has a history of being a rent controlled duplex, but is now exempt from rent regulation per Costa Hawkins as long as the property only contains a single dwelling unit.

Project Analysis

The project proposes to build 6 new condominium units by creating 3 new duplex structures, and substantially improve the 7 existing units through renovation and the addition of new floor area. Two of the duplex structures are proposed on the 1173 Hearst parcel, and the 3rd duplex structure is proposed for the 1157 Hearst Avenue parcel. Since there are no proposed changes to the existing units, there is no impact to their existing tenant protections or rent control status. The 6 proposed units would qualify for the “new construction” exemption from rent control if the project is approved, but they would be subject to the eviction protections.

While there are no changes proposed that will impact the existing tenant protections that apply to these properties, the renovation of the existing buildings will cause the existing units to become temporary uninhabitable. The applicant has indicated that the owners intend to construct the new units first, and then to renovate the existing buildings at a later date when the units are vacant. We recommend the Zoning Adjustments Board (ZAB) include conditions of approval to ensure the work does not take place until the units are voluntarily vacated by the existing tenants and have drafted language for two conditions for the ZAB’s consideration (see the recommendation section).

The applicant also mentioned that the owner may wish to convert the existing units to condominiums at some point in the future. This is a separate application process under Berkeley's Condominium Conversion Ordinance, which provides ample protection to the existing tenants by providing them with the right to stay in the unit, stabilized rent, and the exclusive right to purchase their unit as a condominium.

Recommendation

Since the application proposes both interior and exterior alteration to the existing, tenant occupied units, we recommend the Zoning Adjustments Board attach the following conditions of approval to the project:

1. Prior to building permit approval for any interior improvements, renovations or additions to the existing buildings at 1157 and 1173 Hearst Avenue, the property owner shall provide proof that all tenants have voluntarily vacated or proof that the owner and tenants have come to a written agreement on a plan for temporary relocation.
2. The property owner shall provide a minimum of 2 weeks written notice to existing tenants prior to performing any exterior work to any of the existing, tenant occupied buildings.

Conditions of approval are typically included to reduce the impact of construction to neighboring properties, but in this case there will also be significant impacts to the existing tenants who live on site. Individual tenants may also have specific concerns related to how the development will impact the accessibility and livability of their units during construction. If the standard conditions of approval do not address these concerns, we recommend that the ZAB consider including additional conditions that specifically mitigate the projects impact to the existing tenant households.

Please feel free to contact Mr. Bursell with any further questions regarding this matter.

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: Use Permit #ZP2016-0028; 1155-1173 Hearst Avenue - ZAB Hearing 5-9-19
Attachments: Lt.HS to Leslie Mendez and ZAB 5-7 for Remanded ZAB Hearing HS3.pdf
Importance: High

From: Hussein Saffouri [mailto:Hussein@ramseylawgroup.com]
Sent: Tuesday, May 07, 2019 11:57 AM
To: Mendez, Leslie <LMendez@cityofberkeley.info>; Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>
Subject: Use Permit #ZP2016-0028; 1155-1173 Hearst Avenue - ZAB Hearing 5-9-19
Importance: High

Leslie and ZAB, please see attached correspondence being sent to you in connection with the upcoming May 9, 2019 ZAB hearing concerning Use Permit #ZP2016-0028 regarding 1155-1173 Hearst Avenue. Please add this correspondence to the packet for the hearing.

Regards, Hussein Saffouri.

HUSSEIN SAFFOURI
Attorney
hussein@ramseylawgroup.com
(925) 284-2002 Direct
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RAMSEY LAW GROUP
A Professional Corporation



May 7, 2019

By Email

Leslie Mendez
Berkeley Planning and Development Department
Land Use Planning Division
2120 Milvia Street
Berkeley, CA 94704
LMendez@cityofberkeley.info

Zoning Adjustments Board
Land Use Planning Division
1947 Center Street, 2nd Floor
Berkeley, CA 94704
zab@ci.berkeley.ca.us

Re: Use Permit #ZP2016-0028; 1155-1173 Hearst Avenue
Remanded ZAB Hearing

Dear Ms. Mendez and Members of ZAB:

The determination by Rincon Consultants, Inc. that the project is categorically exempt is incorrect, and its analysis in reaching that conclusion is incomplete and flawed. As a result, the City staff's adoption of that determination in its report is unwarranted and improper.

Rincon Consultants' analysis fails to consider the subsurface conditions, drainage, and groundwater dynamics of the site, which is the issue of concern identified by the residents' and neighbors' testimony, the presence of a buried creek under the site, undocumented fill, the historic evidence of significant flooding, the analysis of Dr. Paz, my client's consulting hydrologist, and the assessment and proposed workplan prepared by the highly experienced and regarded hydrogeologist Greg Kamman in 2002. As Councilmember Hahn expressly concluded, this evidence reflects that the subsurface hydrology of the site is unusual, and without detailed evaluation of subsurface drainage the project may exacerbate the flooding conditions on the site and neighboring properties as a result (and thus have a significant effect on the environment under CEQA). As the Councilmember also noted, the fact that the conditions on the site might not be unique does not make the conditions any less unusual.

In light of this evidence, before one can conclude that there is not a reasonable probability the project may have a significant effect on the environment, a groundwater evaluation to assess the subsurface conditions must be completed as proposed by Mr. Greg Kamman and Dr. Paz. However, none of the studies relied on by Rincon Consultants, the City or the Applicant address this crucial issue.

Contrary to staff's representation, the Alan Kropp and Associates report was not prepared to understand the subsurface drainage conditions and associated hydrologic concerns of the site. It is a typical geotechnical soils report intended to only investigate soil material properties on the site with 3 limited borings. It was not intended to, and does not, address the issue of subsurface flow. Furthermore, the study conducted by

May 7, 2019
Page 2

Clearwater Hydrology for the applicant only addresses the surface hydrology of the site, and not the subsurface hydrology which is the issue of concern.

In fact, both of the firms retained by the City to peer review the applicant's studies – Balance Hydrologics and Cotton Shires – informed Dr. Paz that they did not focus on subsurface conditions. They also acknowledged that the applicants' studies did not address subsurface conditions. Moreover, they concurred with Dr. Paz that in light of the evidence available about the site, a subsurface hydrology study, such as recommended by Mr. Greg Kamman in 2002, would be appropriate.

In sum, the City's current report disregards the known concerns about the subsurface hydrology of the site. As a result, the current staff report concludes that the project will not have a significant impact on the environment (and thus is categorically exempt from CEQA as the unusual circumstances exception does not apply) without having considered the actual unusual circumstance of concern on the site. Staff's conclusion is therefore based on incomplete information, and thus unsupported and incorrect. It is also inconsistent with the motion of the City Council which specifically identified the subsurface conditions as the issue of concern requiring further study.

The solution is simple. The Applicant should be required to conduct a detailed site-specific groundwater evaluation to assess both surface and subsurface conditions and groundwater dynamics. That study will disclose the actual existing conditions permitting an informed determination whether the project will have adverse impacts or not.

Very truly yours,



Hussein Saffouri

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: ZP2016-0028 Hearst Ave Condos: Email from planning to applicant re. geotechnical report

From: R S [mailto:rain.sussman@gmail.com]
Sent: Tuesday, May 07, 2019 11:32 AM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; All Council <council@cityofberkeley.info>
Subject: ZP2016-0028 Hearst Ave Condos: Email from planning to applicant re. geotechnical report

As evidenced below, staff requested a copy of the geotechnical report in August 2018. Geotechnical data collection was completed on August 4, 2018 but applicant did not submit the report until almost seven months later, on March 1, 2019.

----- Forwarded message -----

From: Mendez, Leslie <LMendez@cityofberkeley.info>
Date: Thu, Aug 30, 2018 at 1:49 PM
Subject: Geotechnical Report
To: Mark Rhoades <mark@rhoadesplanninggroup.com>, Mia Perkins <mia@rhoadesplanninggroup.com>
Cc: Rain Sussman <rain.sussman@gmail.com>

Hi Mark and Mia,

I am wondering if the geotechnical study that you commenced has been completed and, if so, if it is something that you could share with staff and the neighbors.

As you are aware, the neighbors still retain concerns about the impacts of the proposed development and they are hoping that the geotech will address their concerns and potentially stave an appeal.

Let us know.

Thanks,
Leslie

Leslie Mendez | Senior Planner | City of Berkeley

Planning and Development | Land Use Planning Division

1947 Center Street, 2nd Floor | Berkeley, CA 94704

☎ 510. 981.7426 | 📠 510. 981.7420

✉ lmendez@CityofBerkeley.info

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Jacob, Melinda

From: R S <rain.sussman@gmail.com>
Sent: Tuesday, May 07, 2019 10:08 AM
To: Zoning Adjustments Board (ZAB)
Subject: ZP2016-0028 Hearst Ave Condos: Comments of Staff report, Kamman Inc. work plan
Attachments: 2019-05-09_ZAB_Staff Report_1155-73 Hearst RS edits.pdf; Kamman Hydrology Work Plan 6-26-02 (003).pdf

Follow Up Flag: Follow up
Flag Status: Completed

Please see attached for my in-line edits and comments on the latest staff report, and work plan from Kamman Hydrology and Engineering, Inc. I look forward to discussing this with all of you this Thursday, and possibly beyond!

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Z O N I N G
A D J U S T M E N T S
B O A R D
S T A F F R E P O R T

FOR BOARD ACTION
APRIL 25, 2019

1155-1173 Hearst Avenue

Use Permit #ZP2016-0028 to develop two parcels, including the substantial rehabilitation of the existing seven dwelling units and construction of six new dwelling units.

I. Background

A. Land Use Designations:

- General Plan: HDR – High Density Residential
- Zoning: R-2A – Restricted Multiple-Family Residential

B. Zoning Permits Required:

- Use Permit for construction of dwelling units, under BMC Section 23D.32.030
- Use Permit for the addition of a sixth or greater bedroom in existing dwellings on a parcel, under BMC 23D.32.050.A
- Administrative Use Permit to construct residential additions greater than 14' in average height, BMC Section 23D.32.070.C
- Administrative Use Permit to allow an extension of a non-conforming front and side yard, BMC Section 23C.04.070.B
- Administrative Use Permit to reduce the building separation from 8' on the first floor and 12' on the second floor to 6'-1", BMC Section 23D.32.070.D.4

C. CEQA Determination: Categorically exempt pursuant to Section 15332 of the CEQA Guidelines ("In-Fill Development Projects").

D. Parties Involved:

- Applicant/ Property Owner Hearst Avenue Cottages, LLC c/o Rhoades Planning Group, 46 Shattuck Square, Suite 11, Berkeley, CA 94704

Table 1: Project Chronology

Date	Action
February 2, 2016	Application submitted
May 17, 2017	Application deemed complete
August 10, 2017	ZAB public hearing notices mailed/posted
August 24, 2017	ZAB hearing continued item to September 28, 2017
September 28, 2017	ZAB hearing, item continued off calendar
March 6, 2018	Revised Application submitted
July 3, 2018	Revised Application deemed complete
August 8, 2018	ZAB public hearing notices mailed/posted
August 23, 2018	ZAB hearing
August 30, 2018	Notice of Decision issued
September 12, 2018	Appeal filed
January 29, 2019	Council Hearing remand to ZAB
April 25, 2019	ZAB public hearing notices mailed/posted
May 9, 2019	ZAB hearing

II. Project Background

On August 23, 2019, the ZAB approved Use Permit #ZP2016-0028 to rehabilitate the seven existing dwelling units (three duplexes and one single-family dwelling) and add three two-story duplexes as a common interest development (i.e. condominiums) for a total of seven buildings and 13 dwelling units.

A key issue in the August ZAB meeting was subsurface water and the unprotected underground creek that runs through the property. ZAB heard testimony from neighbors regarding extensive flooding, sink holes, and subsidence issues on adjacent properties; ZAB also heard Dr. Lucas Paz of Terraphase Engineering testify to the need for a focused geotechnical investigation of the subsurface water conditions and preferential flow pathways. At the time of the ZAB meeting, the applicant had already hired the firm of Alan Kropp & Associates, Inc. (AKA) to perform an investigation to evaluate the geotechnical characteristics of the site for the proposed project and to provide geotechnical engineering recommendations for the proposed work, and had a report prepared based on three soil borings collected on August 4, 2018. The applicant but did not make this report available, but referred to this report in his testimony to ZAB as “a preliminary study.” After extended discussion, ZAB decided to require a geotechnical investigation with an expanded scope, and added the following conditions:

COA13 “The applicant shall submit to the Building and Safety Division a geotechnical report that addresses the subsurface water conditions in and in the immediate vicinity of the project site. A civil engineer shall be employed to draft plans in conformance with all recommendations of the Geotechnical and Hydrology reports.”

The ZAB *also* added the following conditions revising the plan set:

- The north facing window of the northeast bedroom in **Geranium** be a minimum of 68 inches from finished floor level to ensure privacy between residents of the two opposing units.
- The roof deck on **Geranium** shall be moved to the east side of the roof and the roof access shall not include any windows and shall be reduced in massing (i.e. sloped) to limit impacts to the western neighbors.
- All west facing windows on **Freesia** and **Geranium** shall, subject to review and approval by the Zoning Officer, be redesigned to ensure privacy for the residents of the building to the west. This may include, but is not limited to, frosted glass and/or clerestory design.
- A maximum of three full bathrooms are permitted in the two **Freesia** dwelling units.

In addition, the ZAB revised and added to the conditions of approval for tenant protections. *Please see correspondence for serious concerns related to the enforceability of tenant protections.*

Staff sent the Notice of ZAB decision out on August 30, 2018. *On that same date, staff also emailed the applicant to request the AKA geotechnical report “to stave off an appeal.” The applicant did not comply, stating that a basic geotechnical report would be submitted at plan check, and that a geotechnical investigation with expanded scope would only take place if required by the Building Official, contending that COA13 was redundant and did not impose any meaningful conditions on the project. On August 31, Rain Sussman, owner and resident of 1824 Curtis Street, and Dr. Lucas Paz (via teleconference), met with Staff and a Building Official to discuss the need for a geotechnical investigation with an expanded scope. In that meeting, the Building Official stated that “geotechnical investigations don’t have a scope.”*

On September 12, 2018, Hussein Saffouri, on behalf of Rain Sussman, owner and resident of 1824 Curtis Street (“Appellant”), filed an appeal with the City Clerk. Twenty-nine additional individuals signed a petition in support of the appeal. The Clerk set the matter for review by the Council on January 29, 2019.

After a public hearing, Council remanded the project back to ZAB to undertake further CEQA analysis, review the project based on CEQA findings, and analyze the detriment to rent-controlled units.

III. Current Status

- A. Further CEQA Analysis – Geotechnical Investigation:** *On March 1, 2019, the applicant finally submitted the AKA geotechnical report that had been completed nearly seven months earlier.* Staff hired the firm of Cotton, Shires & Associates, Inc. (CSA) to peer review the geotechnical report. See Attachment 8 for all results of the geotechnical report and peer review.

As noted in the peer review, the AKA report does not address potential flooding or hydrologic concerns within the scope of their work, *and thus does not satisfy COA13. Likewise, the peer reviewer was constrained by the City to limit their review to the same scope as that of the AKA report.*

In the absence of a focused geotechnical investigation of the flooding or hydrologic concerns, staff has concluded ~~The investigation concludes~~ that the site is suitable for

the construction of the proposed project from a geotechnical standpoint provided that all of the conclusions and recommendations presented in the report are incorporated in the design and construction of the project.

The geotechnical report was, however, reviewed by Clearwater Hydrology (CH) for an engineering hydrologic review. *However, as the scope of the geotechnical investigation did not include flooding and hydrologic concerns, CH review is necessarily constrained by these same limitations. Nevertheless, staff was satisfied when* CH reviewed the geotechnical investigation with the aim to note any soils information that may differ from the conditions assumed for the project site by CH relative to its stormwater drainage design for the site. As summarized in its letter dated February 22, 2019 (see Attachment 8), the groundwater depth measured by AKA is greater than that assumed by CH, rendering CH's design assumptions conservative. ~~The results of the investigation, therefore, confirm that no further revisions to the design as presented in the July 2017 final report are required.~~

The CSA peer review also concluded that the geotechnical report was in general conformance with the prevailing standard of practice and recommended conditions be added to Use Permit entitlement. *However, COA13 added by ZAB in August has not yet been met. Additionally, the applicant has challenged ZAB's authority to impose such conditions, stating both that "this is not a zoning issue" and claiming that COA13 is redundant. The applicant withheld the completed geotechnical report for almost seven months, including throughout the appeal process. To reflect current project status, we recommend that the existing condition of approval regarding the geotechnical investigation be strengthened, and that a focused geotechnical investigation take place as part of an EIR under CEQA. This will allow for proper review by all parties and provide an appropriate forum for public comment and review. As part of the initial study, a geotechnical and subsurface drainage investigation is recommended as outlined below:* updated as follows with track changes reflecting the current project status:

Prior to Issuance of Any Building Permit:

13. **Geotechnical Report.** The applicant shall submit to the Building and Safety Division a geotechnical and subsurface drainage report that addresses the subsurface water conditions in and in the immediate vicinity of the project site. *The investigation will meet or exceed the scope of work proposed by Kamman Hydrology and Engineering in the attached Work Plan: Recommended Evaluation of Subsurface Drainage Conditions, 1173 Hearst Avenue and Vicinity, Berkeley CA.* A civil engineer shall be employed to draft plans in conformance with all recommendations of the Geotechnical and Hydrology reports.

June 26, 2002

Marc Mathieu and Elaine Eastman
1173 Hearst Avenue
Berkeley, CA

Subject: Recommended Evaluation of Subsurface Drainage Conditions
1173 Hearst Avenue and Vicinity, Berkeley, CA

Dear Mark and Elaine:

The purpose of this letter is to propose an investigation to characterize the shallow groundwater conditions in the vicinity of your property at 1173 Hearst Avenue. Based on our site meeting on June 24, 2002 and a review of background materials, I believe that there are potential significant impacts to the local groundwater and subsurface drainage conditions in the vicinity of, and in association with, the proposed redevelopment project at 1155-1163 Hearst Avenue. The area including this property, your property, and the neighboring properties along Curtis Street are hereafter referred to collectively as "the Site". The background and rationale for an investigation are presented below followed by a proposed study approach.

BACKGROUND AND RATIONALE FOR INVESTIGATION

Based on a site visit and review of available correspondence and maps, the history and physical setting of your neighborhood can be summarized as follows. Historical maps and the map entitled, "The Creek & Watershed Map of Oakland & Berkeley (J. Sowers, 1995) indicate that a tributary channel to Strawberry Creek once existed across your property. Based on these maps, the alignment of this creek extends downstream across the 1155-1163 Hearst property and in an upstream direction somewhere towards the homes between 1826 and 1814 Curtis Street. It appears that the creek channel has been filled and there are no records that it is contained in a culvert or storm drain.

Your neighbors along Curtis Street experience annual flooding in their basements and backyards, even during dry water year-types. The depth of ponding at these properties rises and falls with the passage of winter storms, but a base level of ponding is sustained throughout the winter season. Your neighbor at 1814 Curtis Street has installed a sump-pump in his back yard to alleviate flooding. Based on his observations, there is water in the sump-pump throughout the year at shallow depths below the ground surface.

Based on this information, my observations during the site visit, and my experience/knowledge on similar hydrologic projects, I have developed the following hypothesis regarding the current subsurface hydrologic conditions at the site. There is a shallow groundwater table beneath the site vicinity. During the winter season, rainfall that does not run off impervious surfaces infiltrates into the ground and recharges the shallow water table. As a result, there is a seasonal rise in the water table during the winter months. During the winter, the rising water table intersects the ground surface, which is expressed as ponding in the low-lying portions of the Site. As winter rains subside and groundwater recharge ceases, the local groundwater table recedes during the spring-summer dry period

At the very least, the buried creek channel may be a contributing factor to the local shallow groundwater conditions. Regionally, groundwater flow is toward the Bay (west) with the water table surface likely mimicking the ground surface. If the buried creek channel is filled with material that has a higher permeability and porosity than the surrounding subsurface sediments, it may preferentially hold and

transmit groundwater beneath and across the Site. Based on the available maps, the buried creek channel may be receiving surface and groundwater recharge from areas as far east (upstream) as West Street, between Delaware and Bay Streets (1878 Historical Atlas of Alameda, California). In summary, the buried creek channel may be preferentially directing groundwater and subsurface flow towards and beneath your property, which then continues westward beneath the 1155-1163 Hearst Avenue site and westward to the confluence with the main-stem Strawberry Creek near University and San Pablo Avenues.

My biggest concern with respect to the proposed development at 1155-1163 Hearst Avenue is that any construction including subsurface foundation and/or structures would impact the existing groundwater conditions in a fashion that would alter the existing groundwater flow direction (from east to west) and/or cause local groundwater levels to rise, leading to increased flooding. Such an adverse scenario could easily evolve, if construction “dams” or blocks the buried creek channel, altering the preferential flow of groundwater through it.

PROPOSED SCOPE OF WORK

In order to better characterize subsurface conditions beneath your property and better evaluate the potential adverse impacts to subsurface drainage associated with construction of the proposed facilities on 1155-1163 Hearst Avenue, we propose the following tasks of work.

Task 1: Obtain and Review Background Information

Review available geology, groundwater, geotechnical reports and maps to better characterize regional and local subsurface soil and groundwater conditions. This task should also include time to review City plans/drawings of the storm sewer system and interview City personnel to investigate the drainage problem along Hearst Avenue in front of your house. In addition, it would be helpful to review proposed construction plans for the proposed development at 1155-1163 Hearst to better identify potential impacts to subsurface conditions.

Task 2: Field Investigation

This task will include time to complete a number of soil borings in an effort to identify and delineate the alignment of the buried creek channel. This work will also allow us to better characterize and document shallow groundwater conditions. During the completion of soil borings, we will install a series of shallow groundwater piezometers to monitor water levels on a monthly basis over the ensuing year. Piezometers will be located to adequately monitor groundwater conditions in the buried channel and surrounding sediments. All soil boring will be logged according to the Unified Soil Classification System. Soil boring work may be coordinated with geotechnical investigations to better characterize the liquefaction potential of local soils. All boring and piezometer locations will be surveyed and incorporated into your existing neighborhood topographic survey map.

Task 3: Groundwater Flow Analyses and Reporting

This task includes time to interpret field data, complete hydraulic analyses, and prepare a letter report documenting the results of this investigation including recommendations with respect to potential significant impacts to groundwater conditions and flooding hazards associated with the 1155-1163 Hearst Avenue project. This task also includes time to prepare the necessary figures and maps to support the report.

SCHEDULE AND STAFFING

All work can be initiated immediately upon your authorization. If you wish to pursue this work through our firm, we will prepare a cost estimate. All hydrology work would be managed and directed by Greg Kamman (a California Registered Geologist and Certified Hydrogeologist). Review of project plans would be completed by Rachel Kamman (California licensed Professional Engineer). Resumes for these key individuals are attached.

If you have any questions or concerns, please call me.

Sincerely,



Greg Kamman
Principal Hydrologist

Cc: Brian Gaffney, Attorney

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: 1155-1173 Hearst Ave, May 9th ZAB Hearing

From: Mark Rhoades [mailto:mark@rhoadesplanninggroup.com]
Sent: Monday, May 06, 2019 2:51 PM
To: Yashu Jiang <yashujiang@gmail.com>; Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Mendez, Leslie <LMendez@cityofberkeley.info>
Cc: Burroughs, Timothy <TBurroughs@cityofberkeley.info>; Darrow, Brendan <Bdarrow@cityofberkeley.info>; Bursell, Lief <LBursell@cityofberkeley.info>; Berkeley Mayor's Office <mayor@cityofberkeley.info>; All Council <council@cityofberkeley.info>
Subject: RE: 1155-1173 Hearst Ave, May 9th ZAB Hearing

Dear ZAB and Ms. Mendez,

I have provided responses to Ms. Jiang's email to you from yesterday (May 5), embedded in the text of her email, below. We look forward to the ZAB's reconsideration of this project and its additional CEQA review, this Thursday. If you have any questions please do not hesitate to contact me directly.

Thank you,

Mark Rhoades, AICP
Rhoades Planning Group
510.545.4341

From: Yashu Jiang <yashujiang@gmail.com>
Sent: Sunday, May 5, 2019 2:03 PM
To: ZAB@cityofberkeley.info
Cc: Mendez, Leslie <lmendez@cityofberkeley.info>; tburroughs@cityofberkeley.info; Darrow, Brendan <bdarrow@cityofberkeley.info>; Bursell, Lief <lbursell@cityofberkeley.info>; Mark Rhoades <mark@rhoadesplanninggroup.com>; mayor@cityofberkeley.info; council@cityofberkeley.info
Subject: 1155-1173 Hearst Ave, May 9th ZAB Hearing

Dear ZAB members and Leslie,

I have reviewed the Staff Reports regarding this project and have several concerns related to tenant protections. I have cc'd Mr. Rhoades and the Rent Board Attorneys I spoke with in case they want to clarify.

I am the tenant at 1163 Hearst Ave since 2011, and I was the sole participant at the February 26th meeting with Mr. Rhoades and the Rent Board. I won't speak for the other tenants, but I sense there is fatigue in communicating with Mr. Rhoades about his intentions because he has repeatedly shown he does not keep his words. Unfortunately, this has again proven to be true.

Applicant Response: Ms. Jiang's characterization is unfortunate. This has been a difficult process for EVERYONE but it must be stated that the intentions with respect to the project have not changed since the project team made the commitment not to convert rent controlled units to condominiums. That is in fact why the team requested the assistance of the City of Berkeley Rent Stabilization Board. The notices for the February 26, 2019 meeting at the Rent

Board offices were sent by Rent Board staff to all 1155-1173 Hearst residents via email and USPS well in advance of the meeting date. The meeting was scheduled for 6PM. Ms. Jiang was the only resident that attended.

At the February 26th meeting, Mr. Rhoades stated (1) there will be no relocation required of current tenants and that units with sitting tenants will have no work done on them until the tenants have voluntarily vacated (whatever that means...)

Applicant Response: As we have stated consistently for the last several months – there will be no work performed on occupied units that will require tenants to move out. The only work contemplated for any of the occupied duplexes are cosmetic exterior treatments, such as painting.

and (2) once the tenants vacate, their units will be rehabilitated/demolished and rebuilt and converted into and ultimately sold as condominiums.

Applicant Response: Ms. Jiang is unfortunately confusing two issues. The first, we will not do interior work pursuant to the requested use permits that might require a tenant to temporarily relocate. We will ONLY do rehabilitation work on any of the existing duplexes after any existing tenants have vacated one or more of the duplex buildings. And then work would commence on that building to achieve the improvements allowed under the use permit. In the event that units in two separate buildings are vacated, we would extend an offer to the remaining resident in each building to see if either were agreeable to permanently move into the other, so that work might proceed on one of the buildings.

However, in multiple staff reports it is stipulated that the Relocation Ordinance can be implemented within 30 days of construction. It is confusing and contradictory to state that the units won't be touched while we are living here AND that we can be relocated so the buildings can be remodeled/demolished. It is common knowledge that "relocation" means "displacement" for renters. It will be hard for me to find an affordable place to rent in Berkeley within 30 days of a notice, and I'm sure I will not be able to move back into my community if I were displaced from my current housing.

Applicant Response: The only relocation that may occur is in the event the Rent Board determines (as is the case with all construction related projects in Berkeley) that construction nuisances are of the nature to warrant it. In that case, as the applicant team understands it, WE are responsible for finding Ms. Jiang temporary residency in the vicinity and we are subject to any rental offset for the duration. That's not displacement and the City of Berkeley Rent Stabilization Board has a well-defined process for making sure tenants get to go back to their homes.

Staff Reports also stated that the rent controlled units will both "remain under rent control in perpetuity" (directly contradictory to what Mr. Rhoades shared on February 26th) AND will remain under rent control as long as current tenants are living here. Again, it is confusing and contradictory to say that the units will be under rent control forever AND that they will not be under rent control forever. Rent control housing is a non-renewable resource in Berkeley that preserves diversity and affordability. These units should remain under rent control regardless of who is living here, but based on current reports, it is unclear what the developers' intentions are.

Applicant Response: The project team agrees with Ms. Jiang that rental housing units are of utmost importance. In fact, existing rental housing units are probably one of Berkeley's most valuable assets in this era of housing crisis. The project team has represented in writing and verbally that the existing rent controlled units would remain as such in perpetuity. The project team remains committed to, and has not wavered from, that position. The February 26, 2019 meeting was attended by two Rent Board staff members (Brendan Darrow and Lief Bursell) in order to thoroughly answer questions as well as to inform the residents of their rights, in the presence of the developer. The rent board staff explained the rights that tenants have under the Berkeley Municipal Code and Rent Board guidelines. Project team members also again explained the commitment to: 1. Not perform any construction related to the Use Permit on any existing building that is occupied by any resident—meaning that if one unit in a duplex is occupied and the other is vacant, construction per the use permit will not commence until both units in that building are permanently vacant, so as to not disturb residents. 2. The project team explained the commitment to keep the six existing units that are subject to rent control as rental units in perpetuity which means that those units will never be converted to condominiums and will be rent

controlled units in perpetuity. Regarding Condition of Approval #16, the applicant has no intention of moving current residents out of their units unless the Rent Board determined that conditions during construction were too burdensome for existing tenants, then the applicant would follow BMC 13.84.040 for temporary relocation. If it were the case that an existing duplex had a vacant unit and a tenant agreed to permanently move in to another open unit in one of the other duplexes, then renovation would occur on the empty duplex.

I point these contradictions out not to pick nits, but because they can be exploited to the developer's gain. Mr. Rhoades is a sharp and cunning businessman and real estate developer, and he has repeatedly used double-talk, deceit, and manipulation to get his plans pushed through in Berkeley. Having been on the receiving end of his antics, there is already deep mistrust between the community and Mr. Rhoades and co. We do not trust that the developers will do what is right and best for our community or even for the potential buyers. Rather, they are only focused on enriching themselves and their investors. We hoped that our government and public servants, i.e. the Planning Department, are conscientious and critical enough to look at this project without bias and prejudice, and can be the ones holding developers accountable to their neighbors and the environment. However, the fact the staff reports are just as equivocating and misleading as Mr. Rhoades is irresponsible, careless, and unsettling.

Applicant Response: The project team takes exception to Ms. Jiang's characterizations. Rhoades Planning Group has been at the forefront of affordable and market rate housing development here in Berkeley for more than 20 years. Our projects and the families they house can speak for themselves, but I have been an owner of rental property in Berkeley for over 20 years and I have never been characterized in this manner, or received a complaint from a tenant relevant to harassment or poor treatment. The Hearst project has been a difficult project from a zoning and state law perspective. It is why the project was revised to a smaller 13 unit (six new) project rather than pursuing an 18 unit project under State Density Bonus law.

Over the last 3 years, I have expended personal time and resources to fight for my housing so I can remain in the Bay Area working as a social worker, providing mental health treatment to those who are the most in need, including monolingual immigrants. Having displacement looming over me has been stressful and tiring. Yet I know that once this project gets pushed through, the fight will continue, and the onus for holding the developers accountable will fall on us, the tenants and the neighbors, not on the City, and not on the developers. The onus will fall on us to know and stand up for our rights, to sue for constructive eviction, to make complaint after complaint about noise, harassment, traffic and safety hazards, flooding, etc. Please consider at least continuing the decision until our concerns are heard and addressed thoroughly and carefully.

Applicant Response: The project team feels good about the decision to provide a long term means for the current residents to remain in their rent controlled apartments for as long as they wish. As reflected in Condition of Approval #15, no work related to the Use Permit will commence on existing units until all units in that building are vacant. As reflected in Condition of Approval #57, the six units that are currently subject to rent control, will remain rental units in perpetuity and will not be converted to condominiums. During construction, all procedures will be followed to minimize disruption to the current residents.

Thank you again for your time,

Yashu

Yashu Jiang
1163 Hearst Ave
678-559-4213

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: 1155-1173 Hearst Ave, May 9th ZAB Hearing

From: Yashu Jiang [mailto:yashujiang@gmail.com]
Sent: Sunday, May 05, 2019 2:03 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>
Cc: Mendez, Leslie <LMendez@cityofberkeley.info>; Burroughs, Timothy <TBurroughs@cityofberkeley.info>; Darrow, Brendan <Bdarrow@cityofberkeley.info>; Bursell, Lief <LBursell@cityofberkeley.info>; Mark Rhoades <mark@rhoadesplanninggroup.com>; Berkeley Mayor's Office <mayor@cityofberkeley.info>; All Council <council@cityofberkeley.info>
Subject: 1155-1173 Hearst Ave, May 9th ZAB Hearing

Dear ZAB members and Leslie,

I have reviewed the Staff Reports regarding this project and have several concerns related to tenant protections. I have cc'd Mr. Rhoades and the Rent Board Attorneys I spoke with in case they want to clarify.

I am the tenant at 1163 Hearst Ave since 2011, and I was the sole participant at the February 26th meeting with Mr. Rhoades and the Rent Board. I won't speak for the other tenants, but I sense there is fatigue in communicating with Mr. Rhoades about his intentions because he has repeatedly shown he does not keep his words. Unfortunately, this has again proven to be true.

At the February 26th meeting, Mr. Rhoades stated (1) there will be no relocation required of current tenants and that units with sitting tenants will have no work done on them until the tenants have voluntarily vacated (whatever that means...) and (2) once the tenants vacate, their units will be rehabilitated/demolished and rebuilt and converted into and ultimately sold as condominiums. However, in multiple staff reports it is stipulated that the Relocation Ordinance can be implemented within 30 days of construction. It is confusing and contradictory to state that the units won't be touched while we are living here AND that we can be relocated so the buildings can be remodeled/demolished. It is common knowledge that "relocation" means "displacement" for renters. It will be hard for me to find an affordable place to rent in Berkeley within 30 days of a notice, and I'm sure I will not be able to move back into my community if I were displaced from my current housing. Staff Reports also stated that the rent controlled units will both "remain under rent control in perpetuity" (directly contradictory to what Mr. Rhoades shared on February 26th) AND will remain under rent control as long as current tenants are living here. Again, it is confusing and contradictory to say that the units will be under rent control forever AND that they will not be under rent control forever. Rent control housing is a non-renewable resource in Berkeley that preserves diversity and affordability. These units should remain under rent control regardless of who is living here, but based on current reports, it is unclear what the developers' intentions are.

I point these contradictions out not to pick nits, but because they can be exploited to the developer's gain. Mr. Rhoades is a sharp and cunning businessman and real estate developer, and he has repeatedly used double-talk, deceit, and manipulation to get his plans pushed through in Berkeley. Having been on the receiving end of his antics, there is already deep mistrust between the community and Mr. Rhoades and co. We do not trust that the developers will do what is right and best for our community or even for the potential buyers. Rather, they are only focused on enriching themselves and their investors. We hoped that our government and public servants, i.e. the Planning Department, are conscientious and critical enough to look at this project without bias and prejudice, and can be the ones holding developers accountable to their neighbors and the environment.

However, the fact the staff reports are just as equivocating and misleading as Mr. Rhoades is irresponsible, careless, and unsettling.

Over the last 3 years, I have expended personal time and resources to fight for my housing so I can remain in the Bay Area working as a social worker, providing mental health treatment to those who are the most in need, including monolingual immigrants. Having displacement looming over me has been stressful and tiring. Yet I know that once this project gets pushed through, the fight will continue, and the onus for holding the developers accountable will fall on us, the tenants and the neighbors, not on the City, and not on the developers. The onus will fall on us to know and stand up for our rights, to sue for constructive eviction, to make complaint after complaint about noise, harassment, traffic and safety hazards, flooding, etc. Please consider at least continuing the decision until our concerns are heard and addressed thoroughly and carefully.

Thank you again for your time,

Yashu

Yashu Jiang
1163 Hearst Ave
678-559-4213

JUNE 3, 2002

Current Planning Division/Permit Service Center
Mr. Greg Powell
2120 Milvia Street; Berkeley, CA 94704

Dear Mr. Powell,

My name is Barbara Getz and I live with my family at 1146 Delaware. Our back yard meets the yard of where the proposed development is planned.

I would like to add my voice to a unanimous community – deny the variance that will allow the developer to build within 30 feet of a portion of Strawberry Creek and deny the use permit for this ill-conceived project.

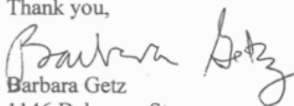
We have flooding every year as a result of the creek running underground behind us and directly through 1155-63 Hearst Ave. Much of our neighborhood does – as fire department will attest. Do not exacerbate this problem by building over the creek. Do not discard the Berkeley Creek Ordinance. Do not grant this variance!

The development plans call for a 3-story building to be set within 8/10 feet of our rear property line, greatly effecting our sense of privacy and space. Our morning southern light will be obliterated by this structure. The shadow study shows a 40-foot shadow being cast into our yard. This creates incalculable detriment to our privacy, space and light. Please protect us for this obvious and significant detriment!

We want affordable housing for Berkeley. Indeed many of us live in it, including the 6 rent-controlled units that will be destroyed. This developer cynically uses the need for Section 8 housing to force through a project that will be built on the backs of the community. Surely the City has a more studied and reasonable way to address its affordable housing needs than to make a joke of the standard Berkeley has established for our neighborhood!

Do not grant the creek variance.
Do not grant the rear setback variance.
Deny the use permit!

Thank you,


Barbara Getz
1146 Delaware St.
Berkeley, CA

RECEIVED
JUN 06 2002
CURRENT PLANNING

Marc Mathieu & Elaine Eastman
1173 Hearst Ave
Berkeley, Ca 94702

Greg Powell
City of Berkeley Planning Department
2121 Milvia St
Berkeley, Ca 94704

RECEIVED
MAR 28 2002
CURRENT PLANNING

Dear Mr. Powell,

This neighborhood has been working with the Waterways Restoration Institute and the Urban Creeks Council to collect more data on site to evaluate a full array of possibilities to address the flood control issues. We are conducting field surveys and collecting topographic data.

There is evidence that suggests there has been a creek here historically. It was likely filled. However, filling creek channels with debris does not preclude water movement. It is likely the pattern of water movement is following historical patterns. Both the Berkeley Creeks Map and the physical environment supply evidence to support this.

Two other points of interest are a spring on Short Street, which falls in line with the map and indicates ground water flow, and the drainage problems pointed out by Pierce MacDonald involving the Holiday Inn and 1154-60 Hearst Avenue. This also falls in line with the Berkeley Creeks Map.

The neighborhood is concerned about development on the historic creek potentially worsening drainage by altering ground water flow. We are also interested in creating alternative flood control as well as adding to the aesthetic setting of the land.

Sincerely,



Marc Mathieu

1155 Hearst St
Project

received 11/20/01 pm

Stacey Shulman and Sam Louie
1818 Curtis Street
Berkeley, CA 95702
(510) 644-9540

November 12, 2001

Berkeley Zoning Board
Attn: Pierce Macdonald, Assistant Planner
2180 Milvia Street
Berkeley, CA 94704

Dear Mr. Macdonald:

My name is Stacey Shulman and I have been a homeowner at 1818 Curtis Street for the past 13 years. Since the end of the drought in the early 1990s, we have lived with severe flooding on our property in winter months, the worst during the early El Nino years. The lack of proper drainage on our block has left our homes and properties in a disabling condition in winter months, where I have to worry to about water damage, and even the pilot light on my furnace during heavy storms.

My backyard stretches approximately 20 feet past the back of my house. During heavy rains lasting more than 3-4 hours, the following regularly occurs on my property, affecting my backyard, downstairs room, and garage/basement.

- Our backyard begins to fill up and after 24 hours or so reaches a depth of 6-8 inches of standing water. My children stare out of our back windows and affectionately call this Lake Louie (our last name). This water can take up to 24 hours to recede. This forces me to move my emergency earthquake supplies closer to the house, or even inside, during the winter months, impacting the accessibility of my disaster supplies should an emergency arise.
- The water surrounding the house itself in the back of my property reaches depths of up to 1-2 inches, sometimes flooding the downstairs room.
- My garage/basement floor will be completely wet, though due to the slope of my property, the water flows through the door down into the backyard. My garage/basement is above ground. The water comes up through cracks in the cement.
- The downstairs room in the back of my house also has water coming up through the tile, and during heavy rain years, mopping up down there has filled up to one and one-half cleaning buckets per episode of flooding. The tiles have sustained considerable water damage.
- Everything in my garage is up on wooden pallets to protect the bottom from water damage, as are most things in our downstairs room.
- During the winter months, we have to be sure all electrical wires are up off of the floor in our downstairs room.

We had a neighborhood meeting with Linda Maio several years ago, after our first really bad year of El Nino flooding, and we were promised the new sewer system would help us. Though we have been paying for this for years on our water bill, the sewers in our neighborhood have yet to be re-done. At the time of the meeting we were promised a pump with a generator to pump out all our backyards during the heavy rains predicted for the coming winter. None of these things materialized and once again, we were forced to call the city to come pump us out on several occasions. I would

My neighbors have called either the city or the fire department at least once (if not twice) a year for the past 5 or 6 years to pump out our backyards.

I encourage you to come visit our block to see how the flooding affects our properties. If you come during or after a rainstorm, be sure to wear high boots.

Sincerely yours,


Stacey Shulman

RECEIVED

NOV 14 2001

NO. 1155-63 Hearst

Pam Ormsby
1148 Delaware St. CURRENT PLANNING
Berkeley, Calif. 94702
(510) 524-6080
POrmsby@aol.com

Nov. 11, 01

Pierce McDonald
Current Planning Dept.
2120 Milvia St.
Berkeley, Calif. 94704

I would like to respond to inaccuracies in the most recent application by Alice Landis and Lynda A. Hart in re. to a proposed development at 1155-63 Hearst St.

The applicant states that there is no wildlife on this lot, only the occasional domestic cat or dog. In fact, as a 30 year resident, I can attest to the ongoing existence of opossums, raccoons, squirrels, hawks, crows, starlings, hummingbirds, finches, sparrows, mocking bird, bush tits, bees, rats, mice, and numerous insects and reptiles. Because of the double-lots merging onto each other from both Hearst-(north side) and Delaware (south side), there is a unique greenbelt providing a rich urban habitat for wildlife. In addition to native trees, some quite old and no doubt predated the homes, residents have spent much time and money planting to preserve this urban habitat for living creatures. The residents of this block are dedicated, at our own expense, to maintaining this greenbelt.

The developer questions the existence of a creek. Although the creek may not be listed on her map, it is on the local creeks map. In addition, elderly residents throughout the time I have lived here, have spoken about the existence of the creek. The story I have been told is that the back parts of these lots used to be a ravine with the creek flowing through the ravine. When University Ave. was widened in the 20's ??, the debris was used to fill up the ravine. Property owners approved, because they got usable land. I can attest that when property owners rototill or dig deeply, the water table is about three feet down. The back parts of our lots are constantly shifting and do not present an even surface for building. In digging, I have found what I have been told are cobblestones from the old University Ave.

In the rear of my lot where I have been told the creek once ran, there is an ancient willow tree of 200 inch circumference. In the winter time when there has been a lot of rain, there is a lake of about a foot deep in the back of my yard, touching the rear fence of 1155-63 Hearst. I am assuming that the lake exists in that back yard also, as its elevation is lower than mine.

I can testify to flooding problems in our lots. In the winter time, my sump pump goes on and on. In the two times it has broken, I have had as much as 18 inches of water in

my finished basement. My neighbors have sump pumps and equally deep experiences with flooding.

I am also concerned that in the applicant's proposal, the properties to the north side of the proposed development are not discussed. The proposal projects a new setback of only 10 feet. This will have significant detriment to my sunshine, and sense of privacy. It also adversely affects my options in building a cottage in my back yard because of the loss of sun. I need the city's investigation as to my rights re. detriment, both economic and quality of life.

The applicant discussed meeting with neighbors. She invited only a few neighbors, never an open neighborhood meeting. Then when we respectively disagreed with her proposal as to scale and setbacks, she named other local developers who she felt would build an even bigger development. When asked if the elderly or disabled would be encouraged for the affordable units, she replied, "I don't want those kind of people. They stay. I need turnover." She said she was in communication with the ASUC and had discussed signing a contract for use of her development as housing for students. The only way in which we as neighbors have not worked with the developer, is in not agreeing to her proposal, as stated in size and setbacks.

We have continued to be available to discuss a development of reasonable size and character with the developer from Danville and property owner who lives in Walnut Creek. We have asked to meet with the property owner herself, rather than continue to communicate through the developer. We were told that was not appropriate. The plans we were presented were never complete enough to sign off on. There were always pieces and numbers missing, including a compass rose. It became impossible to know what was really being proposed from meeting to meeting.

The current buildings house six rent control residences for people who need this affordable housing. In the proposed development, 20% of 14 means @ 2 "affordable units." What have the current renters been told about their rights if the developer goes forward with this proposal? This new proposal requires demolition of six rent-controlled units to be replaced with 12 market-value units and two "affordable housing" units. This is not an altruistic proposal.

I would greatly appreciate the Planning Dept.'s help in making sure this application is complete and accurate. As a long-term resident, I appreciate your dept.'s work to ensure that all properties are protected under the zoning codes.

Sincerely,


Pam Ormsby

November 6, 2001

RECEIVED

NOV 14 2001

CURRENT PLANNING

Berkeley Zoning Board
Attn: Pierce Macdonald, Assistant Planner
2180 Milvia Street
Berkeley, CA 94704

Re: 1155-63 Hearst Street Development Application

Dear Ms. Macdonald: /

Our names are Paul Shain and Barbara Getz. We live with our 14-year-old daughter at 1146 Delaware Street. We have lived here since 1990.

We're writing to let you know our personal history with drainage and flooding problems on our property.

Our home is a conventional single family craftsman house built in 1911. In the 1950's, part of the basement was finished as an in-law style small apartment/recreation space and is currently used as a basement rental unit.

Like many people living in this area, we have been battling flooding constantly since moving in. We have a sump-pump running all year around and, in the winter, have faced constant flooding in the rainy season. This flooding was critical enough in the winters of 1993, 1996, 1998, and most recently, 2000 to actually flood the rental space.

On several other occasions, water has leaked through the walls enough to cause damage to the siding but did not gather on the floor.

In 1993, we were using the space for our family as my mother was living with us. The flooding ruined our rugs, some furniture, and clothing. It forced us to abandon the basement and live upstairs until the rains subsided and we could fix the damage.

In 1996, the flooding forced us to lose our renter and replace our rugs and other water soaked items. We also replaced our sump pump with a more powerful one.

In 1998, flooding again caused significant damage to the basement and we had to move the tenant out for a few weeks while we replaced the carpeting.

In 2000, the flooding ruined the flat, causing severe water damage to the floors and walls. It also damaged many of our tenant's belongings and she was forced to move out permanently. The resulting short-term cost went into the thousands of dollars in repair fees and reimbursement costs to the tenant for her losses. This event prompted us to spend tens of thousands of dollars to shore-up our foundation (\$40K), create an elaborate drainage system to supplement the sump

pump (\$35K) and to rebuild the rental space (\$14K). This work took almost a year to complete and we were denied rental income for the entire time, which costs us several thousand dollars in additional lost income.

In summary, the creek that used to run through the back of my property ensures an extremely high water table, particularly in the winter. We are hopeful that the significant money we just spent implementing an expensive and elaborate drainage/foundation system will shield us from future problems. However, with the water table so high in our yard, there is no guarantee that flooding will be prevented in spite of the tens of thousands of dollars we have spent in the last years attacking the problem.

Obviously, with this history, we are extremely concerned about any developments in our area that could impact the underground water flows and table.

Please feel free to contact us if you require additional information.

Best



Paul Shain and Barbara Getz
1146 Delaware Street
Berkeley, CA 94702

RECEIVED

NOV 13 2001

CURRENT PLANNING

Ms. Dale Anania
1819 Curtis St.
Berkeley, CA 94702

November 7, 2001

Berkeley Zoning Board
Attn: Pierce Macdonald, Assistant Planner
2180 Milvia Street
Berkeley, CA 94704

Dear Ms. Macdonald,

I live at 1819 Curtis St., between Delaware and Hearst Streets, and am constantly faced with a damp basement. Worse, during the rainy season I find myself with a flooded basement at least a few times each year. Two winters ago I had over 2 feet of water! This ruined my water heater, and I had to go 10 days without hot water before I could get this replaced. Four years ago, during an exceptionally heavy rain, the sewer backed up into my basement, and although the city came and pumped out the line, I was faced with an expensive clean-up.

As a severe asthmatic, this has been particularly problematic for me, as the damp conditions create mold, which is bad for anyone, but especially for those with respiratory problems.

I do have a pump, which I run in the basement when the water level rises enough for it to work, but this doesn't address the dampness when the floor "only" has an inch or two of water on it.

In addition, the storm drains in our neighborhood are possibly inadequate and, in any case, are constantly stopped up with debris, so the streets are always flooded for at least a few hours after a heavy rain. This causes our yards to fill with water, which of course ends up in our basements.

I am concerned that any building that occurs in our neighborhood could negatively affect our drainage, and sincerely hope that this will be seriously studied.

Sincerely,



Dale Anania

~~MacDonald, Pierce~~

From: rolwilliams@netscape.net
Sent: Tuesday, November 13, 2001 9:24 AM
To: PMacdonald@ci.berkeley.ca.us
Subject: Seasonal flooding at Curtis and Hearst

Dear Ms. MacDonald:

My Name is Rolf Williams and I live at 1814 Curtis St.. I have been told that you are interested in locating anyone in the neighborhood who has flooding issues. I am such a neighbor. On a wet year I have severe flooding problems, which I attribute to an extremely high water table and very poor drainage at my back property line. This issue was recognized as a problem by the city when I was building an addition onto my home in the mid 90s. At that time a single neighbor's complaint resulted in the city mandating that I install drainage and a sump before my permits would be approved. By the way, nearly all the neighbors on my side of Curtis have pumps. I should also point out that this is not exclusively water from rain runoff; I also pump a considerable amount of water from my cellar where water seeps up through the dirt floor. The water table is so high here that, when digging my French drains in the backyard, I hit water at 2 to 3 foot below grade.

Some of the neighbors feel that the problem is due to a tributary of Strawberry creek, which is running through our backyards and was covered up with building debris several decades ago, so the story goes. None of us knows for sure, but I tend to believe we probably have a creek here. For one thing, like a creek, the water continues flowing into the sump for days once the rain has ended. I also found the name "strawberry" stenciled on the curb in front of my house. The paint is worn now, but if you like, I'd be glad to show you what is left of the label and/or give you a tour of our flood plane.

Lastly, I'd like to thank you for taking an interest in this problem. We have spent years looking for a solution, but after meeting with our city council member a few years back, the best the city had to offer was to have the city workers come out and pump the backyard when the water got too high for our pumps to handle -- which it has many times.

Thanks again,

Rolf Williams
1814 Curtis St
Berkeley, CA
510 527 9141

Your favorite stores, helpful shopping tools and great gift ideas.
Experience the convenience of buying online with Shop@Netscape!
<http://shopnow.netscape.com/>

Get your own FREE, personal Netscape Mail account today at
<http://webmail.netscape.com/>

MacDonald, Pierce

To: rolfwilliams@netscape.net
Subject: RE: Seasonal flooding at Curtis and Hearst

Thank you for your e-mail. I will include it in the project file. If you have concerns regarding the project planned for 1155-63 Hearst, please include them in a letter and direct it to me or to the Zoning Adjustments Board.

Thank you,

Pierce Macdonald
Berkeley Planning and Development Department
2120 Milvia Street
Berkeley, CA 94704
(510) 705-8125

-----Original Message-----

From: rolfwilliams@netscape.net [mailto:rolfwilliams@netscape.net]
Sent: Tuesday, November 13, 2001 9:24 AM
To: PMacdonald@ci.berkeley.ca.us
Subject: Seasonal flooding at Curtis and Hearst

Dear Ms. MacDonald:

My Name is Rolf Williams and I live at 1814 Curtis St.. I have been told that you are interested in locating anyone in the neighborhood who has flooding issues. I am such a neighbor. On a wet year I have severe flooding problems, which I attribute to an extremely high water table and very poor drainage at my back property line. This issue was recognized as a problem by the city when I was building an addition onto my home in the mid 90s. At that time a single neighbor's complaint resulted in the city mandating that I install drainage and a sump before my permits would be approved. By the way, nearly all the neighbors on my side of Curtis have pumps. I should also point out that this is not exclusively water from rain runoff; I also pump a considerable amount of water from my cellar where water seeps up through the dirt floor. The water table is so high here that, when digging my French drains in the backyard, I hit water at 2 to 3 foot below grade.

Some of the neighbors feel that the problem is due to a tributary of Strawberry creek, which is running through our backyards and was covered up with building debris several decades ago, so the story goes. None of us knows for sure, but I tend to believe we probably have a creek here. For one thing, like a creek, the water continues flowing into the sump for days once the rain has ended. I also found the name "strawberry" stenciled on the curb in front of my house. The paint is worn now, but if you like, I'd be glad to show you what is left of the label and/or give you a tour of our flood plane.

Lastly, I'd like to thank you for taking an interest in this problem. We have spent years looking for a solution, but after meeting with our city council member a few years back, the best the city had to offer was to have the city workers come out and pump the backyard when the water got too high for our pumps to handle -- which it has many times.

Thanks again,

Rolf Williams
1814 Curtis St
Berkeley, CA
510 527 9141

Your favorite stores, helpful shopping tools and great gift ideas.
Experience the convenience of buying online with Shop@Netscape!
<http://shopnow.netscape.com/>

Get your own FREE, personal Netscape Mail account today at
<http://webmail.netscape.com/>

RECEIVED

JUN 27 2002

CURRENT PLANNING

1125 Delaware Street
Berkeley CA 94702-1619
(510) 527-1018
25 June 2002

RECEIVED

JUN 27 2002

CURRENT PLANNING

Zoning Adjustments Board
City of Berkeley

Dear Members of the Board;

In reference to the development proposed at 1155-1163 Heerst Avenue, I hope the Board is aware of the watershed conditions within the block of the project.

Several years ago, I bought books from Charles & Lynnsee Shere who lived at 1824 Curtis just east of the project. From Curtis Street, their property sloped west and level to the middle of the 1155-1163 site. In their cellar, just above the grade of the backyard was clear evidence of seasonal flooding: much of their wine cellar had floated, and bottles had lost their labels. Charles Shere showed me the points in the backyard where the water rose & fell with the tides of the bay.

I expect that this water action continues down the remains of the creek in that block. I suggest that these conditions at the very least demand further study.

John McBride



November 14, 2001

Pierce Macdonald,
Assistant Planner
2189 Milvia Street
Berkeley, CA 94704

Dear Ms. Macdonald,

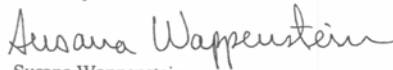
My name is Susana Wappenstein I own and live in the house located at 1826 Curtis Street. I am writing with regards to the concerns with drainage and flooding in our neighborhood. My property, along with most others on the west side of the 1800 block of Curtis street, is affected by problems with drainage of water. The most significant problem occurs with medium to heavy rains and especially after ground saturation, when water pools in the backyard and percolates from the ground into the basement. Often this water drains on its own after several hours or sometimes days, however on several occasions in the last few years I have had to use a pump to clear water from the basement. In the past, during several days of heavy rains, the Fire Department has used their pumps to drain the water accumulated in our area, particularly from the back of the properties in 1824 and 1822 Curtis St, my immediate neighbors to the North.

In addition to these issues, we have problems with drainage on our street since the city rain gutters are not appropriately maintained and cannot handle the large amounts of water that flow West towards the Bay on Hearst Street. Every winter we see the sidewalks on the north side corners of Curtis and Hearst streets disappear as water overflows the curb, rises to cover tires of cars and threatens to flood garages.

Given these experiences, I am very concerned about the impact of the proposed construction of three, three-story buildings on 1155-63 Hearst Street. I believe that problems with drainage and flooding, along with concerns about limited parking and increased traffic, will only worsen if such a large project is built in this area and no solutions are given to these existing problems. In addition to the personal costs (including high cost of electricity to run a pump and repairs to damaged property) associated with drainage problems, there will be significant and costly consequences for the City of Berkeley as more frequent services will be required in this zone.

I appreciate your careful attention to all these neighborhood concerns as you consider this project.

Sincerely,



Susana Wappenstein
1826 Curtis St.
Berkeley, CA 94702
e-mail: wappenst@uclink4.berkeley.edu
Phone/Fax: (510) 845-3455

RECEIVED

NOV 20 2001

CURRENT PLANNING



1155 Hearst

Transcript of Zoning Adjustments Board Meetings

June 13, 2002 Meeting

1155-1163 HEARST AVENUE
ZONING ADJUSTMENTS BOARD
JUNE 13, 2002
Page 9 of 12

ARMESTY: So, until you have that real life experience of looking up at that pole and imagining walking back into my yard with the shadow and seeing what will happen to privacy and life, you can't get it from the drawings. So, I would personally like to invite you to come by and I hope you will take that opportunity to really understand the devastating effect, the detriment of this proposed three story building...

TAPE 1 OF 3, SIDE B:

ARMESTY: We have tried to work with the developer again and again, but we can't say okay to three stories with the detriment. Thank you so much.

CAPITELLI: Thank you. Question? Excuse me, ma'am, ma'am, there's a question

ISSEL: Could I just clarify. Did I hear correctly? You're on 48 Delaware?

ARMESTY: I'm at 1148 Delaware which is directly behind the development

ISSEL: Thank you. I just want to get the address right. Thank you ma'am

ARMESTY: You're welcome

BLAKE: Mark, I had a question. Do we need to, can we ask the applicant to show where, where the stream, where the creek runs onto the property? Do we know, what's the situation with that?

RHOADES: Staff asserts that the stream does cross part of this property. The applicant has refuted that from the beginning. In fact they've given us a hydrologic study that says that there's no indication of a stream. The City's Creek Maps, however, show that the north branch of, I think Strawberry Creek, does flow down across Hearst and what we're trying to verify right now using GIS Maps is just where exactly on this parcel that alignment is.

ISSEL: Have red herring been found in the stream yet?

*

1155-1163 HEARST AVENUE
ZONING ADJUSTMENTS BOARD
JUNE 13, 2002
Page 10 of 12

RHOADES: No herring yet

CAPITELLI: Let's move on. There's one other person who wanted to address us tonight? No? Okay

BLAKE: So, we can expect to see something in some report next meeting

WEINBERGER: Maybe some black and blue ones

RHOADES: Let me clarify this. This isn't necessarily a stream that would be visible to you and I. This is an historic spring tributary that has been, we believe graded over in time

BLAKE: But, we have required the applicant to make a Variance application for something the applicant asserts doesn't exist

RHOADES: But, we assert it does

CAPITELLI: You want to speak tonight?

BLAKE: And never again on this project. This is the one chance you get. You speak tonight, you don't speak next time. Whoever you may be.

CAPITELLI: This is parliamentarian here by the way

WEINBERGER: Put the name in black letters please

HOWIE MUIR: My name is Howie Muir. I don't live near this project. I live on Derby near San Pablo. I will not be in town when this project comes before you again. Thank you for the opportunity to address you. I wanted to bring to your attention that Government Code 65589.5 has been eluded to as a reason for which this project must be considered under old zoning. It would be my contention the law's inapplicable to this project when this project was notionably deemed complete. The Master Plan applied. The Master Plan suggested a residential density of 20 units per acre maximum which would mean 6 units on this particular parcel, which oddly enough is exactly the number that are there now. The General

DEC-19-01 WED 01:30 PM NATHAN LINDSEY & ASSOC 512 43 0428 P.01



City Planning Department
Current Planning Division

October 29, 2001

Lynda Hart
610 Logan Lane
Danville, CA 94526

RE: **1155-1163 Hearst Avenue**, Use Permit 01-1000087

Dear Ms. Hart,

Thank you for speaking with me October 22, 2001 regarding the incomplete letter sent October 11, 2001. I hope that I was able to answer your questions.

As I mentioned at our meeting, under the California Environmental Quality Act Guidelines your project is not categorically exempt. Based on the information submitted so far, staff has determined that there are **two reasons why this project cannot be exempted**. The first is that the number of units exceeds the six units allowed by the exemption. The CEQA Guidelines, as of February 2001, state the following:

15303. New Construction or Conversion of Small Structures

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. **The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:**

... (b) A duplex or similar multi-family residential structure, totaling no more than four dwelling units. In urbanized areas, this exemption applies to apartments, duplexes and similar structures designed for not more than six dwelling units.

The second reason is that the **Berkeley Creeks Map**, adopted by the City Council in 1990, includes a branch of Strawberry Creek drawn across the southern portion of the subject property. In addition to this map, the Public Works Department has received calls regarding small flooding or "ponding" in the area during storms. Further investigation of impacts of your project on drainage and other hydrology issues in this sensitive area are necessary prior to Board consideration of the project. Based on information provided at this point, staff requests a hydrological study to assist the determination of the following Initial Study questions (as appropriate):

Will the project:

a) Violate any water quality standards or waste discharge requirements?

2120 Milvia Street, Berkeley, CA 94704 Tel: 510.705-8111 TDD: 510.644.6915 Fax: 510.883.6943
E-mail: planning@ci.berkeley.ca.us

DEC-19-01 WED 01:31 PM NATHAN LINDSEY & ASSOC 510 43 0428 P.02

- b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?
- c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?
- d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?
- e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?
- f) Otherwise substantially degrade water quality?
- g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?
- h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?
- i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?
- j) Inundation by seiche, tsunami, or mudflow?

Please note that the required fee for the Initial Study is \$ 1,000. Your project will be considered incomplete pending submittal of this fee and the other items identified in the October 11, 2001 letter. Please send the requested materials as soon as possible. If you have any questions or concerns regarding the application or this letter, please contact me at (510) 705-8125. PAID

Sincerely,



Pierce Macdonald
Assistant Planner

Cc: Mark Rhoades, Current Planning Manager
Matt Le Grant, Principal Planner



Portion of Creek & Watershed Map of Oakland & Berkeley -- [Purchase Printed Map](#)



[Schoolhouse Creek Information](#)

[Strawberry Creek Information](#)

[Glossary](#)



Jacob, Melinda

Subject: FW: 5/9/19 ZAB, Supplemental Communication #2

From: Yashu Jiang [<mailto:yashujiang@gmail.com>]
Sent: Wednesday, May 08, 2019 7:52 PM
To: Kelekian, Jay <JKelekian@cityofberkeley.info>
Cc: Mendez, Leslie <LMendez@cityofberkeley.info>; Mark Rhoades <mark@rhoadesplanninggroup.com>; Mia Perkins <mia@rhoadesplanninggroup.com>; Powell, Greg <GPowell@cityofberkeley.info>; Bursell, Lief <LBursell@cityofberkeley.info>; Darrow, Brendan <BDarrow@cityofberkeley.info>
Subject: Re: RSB attendance at May 9th ZAB meeting

Hi Jay,

I appreciate you taking the time to compose this letter. I'm afraid I remain unsettled because, as you have probably seen around Berkeley, there are ways in which people get displaced "legally." With that said, what will be the role of the Rent Stabilization Board if there are breaches to the conditions laid out? My sense is that the Board can act as a mediator, but is not an advocate or legal counsel for tenants... as tenants, are we then left to fend for ourselves?

Please clarify how we can hold the developers accountable moving forward?

Also, the property is currently managed by a third party, so who will I direct my concerns to moving forward, the company I pay my rent to (SG Real Estate) or the developers (Mr Rhoades and Mr George).

Thanks for clarifying.

Yashu

Jacob, Melinda

From: Julia Cato <otacja@yahoo.com>
Sent: Wednesday, May 08, 2019 11:28 AM
To: Zoning Adjustments Board (ZAB)
Subject: 1155-1173 Hearst Ave. -- Use Permit #ZP2016-0028

Follow Up Flag: Follow up
Flag Status: Completed

ZAB Commissioners:

I am writing to urge you to make sure both that the tenants in the above-referenced units are allowed to remain as long as they wish, and that the units themselves remain permanently under rent control. I support the contentions made and conclusions reached by the Rent Stabilization Board as set forth by Director Jay Kalekian in his letter to you of May 7, 2019. To that end, I urge you to make sure that written agreements with the tenants and with the City are signed by the applicant, so that there will be legal redress should he fail to uphold his promises.

In this time of affordable housing crisis, it is more important than ever that we retain every one of our rent controlled housing units, and that we continue to protect the tenants who live in them.

Thank you.
Julia Cato, Berkeley Tenants Union

"An imbalance between rich and poor is the oldest and most fatal ailment of all republics." Plutarch
"First they ignore you. Then they laugh at you. Then they fight you. Then you win."
--Mahatma Gandhi

Jacob, Melinda

From: Yashu Jiang <yashujiang@gmail.com>
Sent: Wednesday, May 08, 2019 3:48 PM
To: Mark Rhoades
Cc: Zoning Adjustments Board (ZAB); Mendez, Leslie; Burroughs, Timothy; Darrow, Brendan; Bursell, Lief; Berkeley Mayor's Office; All Council
Subject: Re: 1155-1173 Hearst Ave, May 9th ZAB Hearing

Follow Up Flag: Follow up
Flag Status: Completed

Dear Mr. Rhoades, members of Planning Staff, members of the Rent Board, and members of the Berkeley City Council,

I would like to reiterate my concerns which were not completely addressed by Mr. Rhoades response.

Thank you Mr. Rhoades for your timely responses to my concerns. I don't mean to make ad hominem attacks to your character, I'm sure you are loved in your community. However, as your tenant, and in working with you in this capacity over the last 4 years, I have plethora of evidence that you equivocate, deliberately obfuscate facts, and go back on your words. For instance, my concerns about parking and disruption before and after construction went unanswered for years, and your answers about the condo conversion have changed every time I asked. In many of our interactions, I experience you as being disrespectful, condescending, and keen to leverage your power and privilege. Again, I'm sure there are folks who would disagree with me. I just want to make sure there is a way to make your promises to the tenants iron-clad and there is a clear avenue for accountability.

Planning staff, would it be possible to amend/change the staff reports to reflect that (1) there will be no requests for tenants to relocate, and that should tenants initiate relocation during construction, the developers will find tenants appropriate and comparable housing, pay for the difference, and pay for relocation fees based on City of Berkeley's Relocation Ordinance. I do not want the promise of no relocation be based on the developers' words solely, but rather written into the permit and staff report. And (2) that current units will not be converted into condominiums, and remain rentals even after current residents move out on their own volition. Of course the concern here is that once the sitting tenants move out, the buildings can be demolished and rebuilt and won't be under rent control any way. So really, these units will only remain under rent control as long as they are not developed per the proposed plan, certainly not in perpetuity as promised in Mr. Rhoades letter. This is misleading and confusing. I would like for the permit and staff report to make the construction and condo conversion process more explicit to eliminate confusion and room for different interpretations. I believe this will also mean that the developers need to commit to a plan regarding the development and future condo conversion and communicate this plan clearly.

Finally, I would like to know who will be here to protect the tenants when we face hardship. Who will look out for our neighbors when their properties face more severe flooding. Who will clean up our streets in the rainy season (the Hearst and Curtis intersection flooded up to my ankles this evening and was impassable). Who can we turn to if the developers are not beholden to their words? In my experience, The communication between landlord, property management, and tenants is already lacking. For instance, I was not made aware of remodeling in my adjacent unit which occurred before 8am several mornings (including at 6:00 am on Tuesday 5/7/19) and after 5 pm several evenings, which had originally led me to believe there was a break-in next door. While this work did not occur in my unit, it was very frightening for a single woman to suddenly hear loud

noises in a supposed empty (empty In perpetuity) unit at odd hours, and inconsiderate that property management did not give us a heads up. At the last ZAB heading, Mr. Rhoades and Mr. George also did not know the name of the property management company, who has actually been slow to respond to many of the tenants' basic repair and safety concerns. While the Rent Board has been kind enough to provide me with their expertise, this was only at the request of Mr. Rhoades. When the tenants approached the Rent Board back in 2017, we got a much icier response, literally treated like nuisance by one staff member and made to wait 40+ minutes for a meeting). All of these promises and concessions are nice, but how will they actually be enforced? If we need to seek legal recourse (which is what a private attorney I've sought council from and the EBCLC attorney we consulted with both indicated may be in our futures), who will be our advocates and who will pay our attorney's fees and damages to battle someone as well-resourced and savvy as the developers. Yes this is cynical, but let's not pretend that this current tension is just going to go away.

The tenants and nearby residents will end up bearing the onus and fallout of this development and in short and long term. Yes we are 100% in favor of affordable housing and a diverse and inclusive Berkeley, but this shouldn't be at the expense of long term residents who have contributed to their communities or at the expense of existing affordable housing options. Keep in mind this development is market rate only, and units will likely sell for around \$1 million. Is this the gentrification we want in our currently diverse communities? Please put thoughtful consideration into our concerns and address them before the project is approved and construction begins, at which point it may be too late.

Thank you, again for your time,

Yashu

Yashu Jiang
1163 Hearst Ave

On Mon, May 6, 2019 at 2:51 PM Mark Rhoades <mark@rhoadesplanninggroup.com> wrote:

Dear ZAB and Ms. Mendez,

I have provided responses to Ms. Jiang's email to you from yesterday (May 5), embedded in the text of her email, below. We look forward to the ZAB's reconsideration of this project and its additional CEQA review, this Thursday. If you have any questions please do not hesitate to contact me directly.

Thank you,

Mark Rhoades, AICP

Rhoades Planning Group

510.545.4341

From: Yashu Jiang <yashujiang@gmail.com>
Sent: Sunday, May 5, 2019 2:03 PM
To: ZAB@cityofberkeley.info
Cc: Mendez, Leslie <lmendez@cityofberkeley.info>; tburroughs@cityofberkeley.info; Darrow, Brendan <Bdarrow@cityofberkeley.info>; Bursell, Lief <LBursell@cityofberkeley.info>; Mark Rhoades <mark@rhoadesplanninggroup.com>; mayor@cityofberkeley.info; council@cityofberkeley.info
Subject: 1155-1173 Hearst Ave, May 9th ZAB Hearing

Dear ZAB members and Leslie,

I have reviewed the Staff Reports regarding this project and have several concerns related to tenant protections. I have cc'd Mr. Rhoades and the Rent Board Attorneys I spoke with in case they want to clarify.

I am the tenant at 1163 Hearst Ave since 2011, and I was the sole participant at the February 26th meeting with Mr. Rhoades and the Rent Board. I won't speak for the other tenants, but I sense there is fatigue in communicating with Mr. Rhoades about his intentions because he has repeatedly shown he does not keep his words. Unfortunately, this has again proven to be true.

Applicant Response: Ms. Jiang's characterization is unfortunate. This has been a difficult process for EVERYONE but it must be stated that the intentions with respect to the project have not changed since the project team made the commitment not to convert rent controlled units to condominiums. That is in fact why the team requested the assistance of the City of Berkeley Rent Stabilization Board. The notices for the February 26, 2019 meeting at the Rent Board offices were sent by Rent Board staff to all 1155-1173 Hearst residents via email and USPS well in advance of the meeting date. The meeting was scheduled for 6PM. Ms. Jiang was the only resident that attended.

At the February 26th meeting, Mr. Rhoades stated (1) there will be no relocation required of current tenants and that units with sitting tenants will have no work done on them until the tenants have voluntarily vacated (whatever that means...)

Applicant Response: As we have stated consistently for the last several months – there will be no work performed on occupied units that will require tenants to move out. The only work contemplated for any of the occupied duplexes are cosmetic exterior treatments, such as painting.

and (2) once the tenants vacate, their units will be rehabilitated/demolished and rebuilt and converted into and ultimately sold as condominiums.

Applicant Response: Ms. Jiang is unfortunately confusing two issues. The first, we will not do interior work pursuant to the requested use permits that might require a tenant to temporarily relocate. We will ONLY do rehabilitation work on any of the existing duplexes after any existing tenants have vacated one or more of the duplex buildings. And then work would commence on that building to achieve the improvements allowed under the use permit. In the event that units in two separate buildings are vacated, we would extend an offer to the remaining resident in each building to see if either were agreeable to permanently move into the other, so that work might proceed on one of the buildings.

However, in multiple staff reports it is stipulated that the Relocation Ordinance can be implemented within 30 days of construction. It is confusing and contradictory to state that the units won't be touched while we are living here AND that we can be relocated so the buildings can be remodeled/demolished. It is common knowledge that "relocation" means "displacement" for renters. It will be hard for me to find an affordable place to rent in Berkeley within 30 days of a notice, and I'm sure I will not be able to move back into my community if I were displaced from my current housing.

Applicant Response: The only relocation that may occur is in the event the Rent Board determines (as is the case with all construction related projects in Berkeley) that construction nuisances are of the nature to warrant it. In that case, as the applicant team understands it, WE are responsible for finding Ms. Jiang temporary residency in the vicinity and we are subject to any rental offset for the duration. That's not displacement and the City of Berkeley Rent Stabilization Board has a well-defined process for making sure tenants get to go back to their homes.

Staff Reports also stated that the rent controlled units will both "remain under rent control in perpetuity" (directly contradictory to what Mr. Rhoades shared on February 26th) AND will remain under rent control as long as current tenants are living here. Again, it is confusing and contradictory to say that the units will be under rent control forever AND that they will not be under rent control forever. Rent control housing is a non-renewable resource in Berkeley that preserves diversity and affordability. These units should remain under rent control regardless of who is living here, but based on current reports, it is unclear what the developers' intentions are.

Applicant Response: The project team agrees with Ms. Jiang that rental housing units are of utmost importance. In fact, existing rental housing units are probably one of Berkeley's most valuable assets in this era of housing crisis. The project team has represented in writing and verbally that the existing rent controlled units would remain as such in perpetuity. The project team remains committed to, and has not wavered from, that position. The February 26, 2019 meeting was attended by two Rent Board staff members (Brendan Darrow and Lief Bursell) in order to thoroughly answer questions as well as to inform the residents of their rights, in the presence of the developer. The rent board staff explained the rights that tenants have under the Berkeley Municipal Code and Rent Board guidelines. Project team members also again explained the commitment to: 1. Not perform any construction related to the Use Permit on any existing building that is occupied by any resident—meaning that if one unit in a duplex is occupied and the other is vacant, construction per the use permit will not commence until both units in that building are permanently vacant, so as to not disturb residents. 2. The project team explained the commitment to keep the six existing units that are subject to rent control as rental units in perpetuity which means that those units will never be converted to

condominiums and will be rent controlled units in perpetuity. Regarding Condition of Approval #16, the applicant has no intention of moving current residents out of their units unless the Rent Board determined that conditions during construction were too burdensome for existing tenants, then the applicant would follow BMC 13.84.040 for temporary relocation. If it were the case that an existing duplex had a vacant unit and a tenant agreed to permanently move in to another open unit in one of the other duplexes, then renovation would occur on the empty duplex.

I point these contradictions out not to pick nits, but because they can be exploited to the developer's gain. Mr. Rhoades is a sharp and cunning businessman and real estate developer, and he has repeatedly used double-talk, deceit, and manipulation to get his plans pushed through in Berkeley. Having been on the receiving end of his antics, there is already deep mistrust between the community and Mr. Rhoades and co. We do not trust that the developers will do what is right and best for our community or even for the potential buyers. Rather, they are only focused on enriching themselves and their investors. We hoped that our government and public servants, i.e. the Planning Department, are conscientious and critical enough to look at this project without bias and prejudice, and can be the ones holding developers accountable to their neighbors and the environment. However, the fact the staff reports are just as equivocating and misleading as Mr. Rhoades is irresponsible, careless, and unsettling.

Applicant Response: The project team takes exception to Ms. Jiang's characterizations. Rhoades Planning Group has been at the forefront of affordable and market rate housing development here in Berkeley for more than 20 years. Our projects and the families they house can speak for themselves, but I have been an owner of rental property in Berkeley for over 20 years and I have never been characterized in this manner, or received a complaint from a tenant relevant to harassment or poor treatment. The Hearst project has been a difficult project from a zoning and state law perspective. It is why the project was revised to a smaller 13 unit (six new) project rather than pursuing an 18 unit project under State Density Bonus law.

Over the last 3 years, I have expended personal time and resources to fight for my housing so I can remain in the Bay Area working as a social worker, providing mental health treatment to those who are the most in need, including monolingual immigrants. Having displacement looming over me has been stressful and tiring. Yet I know that once this project gets pushed through, the fight will continue, and the onus for holding the developers accountable will fall on us, the tenants and the neighbors, not on the City, and not on the developers. The onus will fall on us to know and stand up for our rights, to sue for constructive eviction, to make complaint after complaint about noise, harassment, traffic and safety hazards, flooding, etc. Please consider at least continuing the decision until our concerns are heard and addressed thoroughly and carefully.

Applicant Response: The project team feels good about the decision to provide a long term means for the current residents to remain in their rent controlled apartments for as long as they wish. As reflected in Condition of Approval #15, no work related to the Use Permit will commence on existing units until all units in that building are vacant. As reflected in Condition of Approval #57, the six units that are currently subject to rent control, will remain rental units in perpetuity and will not be converted to condominiums. During construction, all procedures will be followed to minimize disruption to the current residents.

Thank you again for your time,

Yashu

Yashu Jiang

1163 Hearst Ave

678-559-4213

ITEM #: 2

ZAB DATE: 5/9/19

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-1173 Hearst Ave
(Project Address)

NAME Joseph Michael
(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION
(Optional)

OTHER RESIDENT BUSINESS OWNER _____

SIGNATURE: Joseph Michael

PHONE 510-848-4623 DATE 5/9/19
(In case we would like to contact you)

ITEM #: ZP 2016-0028

ZAB DATE: Page 2472 of 2986

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-1173 Hearst Ave
(Project Address)

NAME Christine Schwartz
(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION
(Optional)

OTHER RESIDENT _____ BUSINESS OWNER _____

SIGNATURE: Christine Schwartz

PHONE (510) 717-0463 DATE 5/9/19
(In case we would like to contact you)

ITEM #: 2

ZAB DATE: _____

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-1173 Hearst Ave
(Project Address)

NAME Sylvie Wong
(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION
(Optional)

OTHER RESIDENT BUSINESS OWNER _____

SIGNATURE: Sylvie Wong

PHONE 510-540-5411 DATE 5-09-19
(In case we would like to contact you)

ITEM #: 3

ZAB DATE: 5/9/19

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-1173 HEARST AVE
(Project Address)

NAME VIJAY VENUGOPAL
(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION
(Optional)

OTHER RESIDENT BUSINESS OWNER _____

SIGNATURE: Vijay

PHONE (510) 364-9803 DATE 5/9/19
(In case we would like to contact you)

ITEM #: _____ ZAB DATE: _____

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1157-73 Hearst
(Project Address)

NAME Teal Major
(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION
(Optional)

RESIDENT BUSINESS OWNER _____
OTHER _____

SIGNATURE: 

PHONE 510 527-9141 DATE 5/9/19
(In case we would like to contact you)

ITEM #: 1 ZAB DATE: 5/9/19 Page 2473 of 2986

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-1173 Hearst Ave
(Project Address)

NAME Rain Sussman
(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION
(Optional)

RESIDENT BUSINESS OWNER _____
OTHER _____

SIGNATURE: 

PHONE 510 776218 DATE 5/9/19
(In case we would like to contact you)

ITEM #: 2 ZAB DATE: 5/9/2019

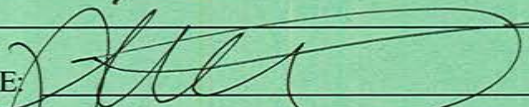
CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-1173 Hearst Ave
(Project Address)

NAME Rolf Williams
(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION
(Optional)

RESIDENT BUSINESS OWNER _____
OTHER _____

SIGNATURE: 

PHONE 510 508 1791 DATE 5/9/2019
(In case we would like to contact you)

ITEM #: 2 ZAB DATE: 5/9/19

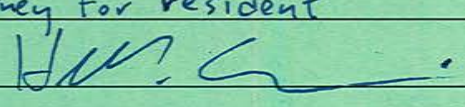
CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-1173 Hearst
(Project Address)

NAME Hussein Saffouri
(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION
(Optional)

RESIDENT _____ BUSINESS OWNER _____
OTHER Attorney for resident

SIGNATURE: 

PHONE 510-708-1122 DATE 5/9/19
(In case we would like to contact you)

ITEM #: 2

ZAB DATE: 5/9/19

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-1173 Hearst Ave.

(Project Address)

NAME LUCAS W. PAZ

(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION X
(Optional)

OTHER RESIDENT _____ BUSINESS OWNER _____
hydrologist consultant for resident

SIGNATURE: [Signature]

PHONE 510 697 1238 DATE 5/9/19
(In case we would like to contact you)

ITEM #: 2

ATTACHMENT 9 - ADMINISTRATIVE RECORD
ZAB DATE: Page 2474 of 2986

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-1173 Hearst Ave

(Project Address)

NAME MASANORI OBA

(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION ✓
(Optional)

OTHER RESIDENT ✓ BUSINESS OWNER _____

SIGNATURE: [Signature]

PHONE 510-517-3814 DATE 5/9/19
(In case we would like to contact you)

ITEM #: 2

ZAB DATE: 5/9/19

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-1173 Hearst Ave.

(Project Address)

NAME Tracey Emerson

(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION X
(Optional)

OTHER RESIDENT X BUSINESS OWNER _____

SIGNATURE: [Signature]

PHONE _____ DATE _____
(In case we would like to contact you)

ITEM #: 2

ZAB DATE: 5/9/19

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-1173 Hearst

(Project Address)

NAME Tam Ormsby

(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION X
(Optional)

OTHER RESIDENT X BUSINESS OWNER _____

SIGNATURE: [Signature]

PHONE (510) 524-6080 DATE 5/9/19
(In case we would like to contact you)

ITEM #: 2

ZAB DATE: 5/9/19

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-1173 Hearst

NAME BRENDA REYSEN
(Project Address)

(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION
(Optional)

OTHER RESIDENT BUSINESS OWNER _____

SIGNATURE: Brenda Reyson

PHONE (510) 548-3478 DATE 5/9/19

(In case we would like to contact you)

ITEM #: 2

ZAB DATE: Page 2475 of 2986

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-73 Hearst

NAME Yashu Jiang
(Project Address)

(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION
(Optional)

OTHER RESIDENT BUSINESS OWNER _____

SIGNATURE: Yashu Jiang

PHONE _____ DATE 5/9/19

(In case we would like to contact you)

ITEM #: 2

ZAB DATE: 5/9/19

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-73 Hearst

NAME Stacey Shulman
(Project Address)

(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION
(Optional)

OTHER RESIDENT BUSINESS OWNER _____

SIGNATURE: Stacey Shulman

PHONE _____ DATE 5/9/19

(In case we would like to contact you)

ITEM #: 2

ZAB DATE: 5/9/19

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-73 Hearst

NAME Alan Spector
(Project Address)

(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION
(Optional)

OTHER RESIDENT BUSINESS OWNER _____

SIGNATURE: Alan Spector

PHONE _____ DATE 5/9/19

(In case we would like to contact you)

ITEM #: 2

ZAB DATE: 5-9-19

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC Hearst Ave Project
(Project Address)

NAME Wayne Comy
(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION X
(Optional)

RESIDENT X BUSINESS OWNER _____
OTHER _____

SIGNATURE: Way Comy

PHONE _____ DATE _____
(In case we would like to contact you)

ITEM #: 2

ZAB DATE: Page 2476 of 2986

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-1173 Hearst Ave.
(Project Address)

NAME Joe Chen
(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION _____
(Optional)

RESIDENT X BUSINESS OWNER _____
OTHER _____

SIGNATURE: Joe Chen

PHONE _____ DATE _____
(In case we would like to contact you)

ITEM #: 1

ZAB DATE: 5/9/19

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1173-1155 Hearst
(Project Address)

NAME LAIN BOAL
(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION X
(Optional)

RESIDENT X BUSINESS OWNER _____
OTHER _____

SIGNATURE: Lain Boal

PHONE 848 7710 DATE 5/9/19
(In case we would like to contact you)

ITEM #: 2

ZAB DATE: 5/9/19

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 1155-1173 Hearst Ave
(Project Address)

NAME Bill Gies
(Please Print- to be sure we spell your name correctly)

SUPPORT _____ OPPOSITION X
(Optional)

RESIDENT ✓ BUSINESS OWNER _____
OTHER _____

SIGNATURE: Bill Gies

PHONE _____ DATE _____
(In case we would like to contact you)

ITEM #: 2

ZAB DATE: 5/9/19

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

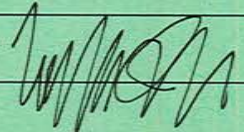
AGENDA TOPIC 1155-1173 Hearst Ave
(Project Address)

NAME Leighlin Gies
(Please Print- to be sure we spell your name correctly)

SUPPORT OPPOSITION
(Optional)

RESIDENT BUSINESS OWNER

OTHER _____

SIGNATURE: 

PHONE _____ DATE _____
(In case we would like to contact you)

ITEM #: 2

ZAB DATE: Page 2477 of 2986

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD


AGENDA TOPIC 1155-1173 Hearst Ave
(Project Address)

NAME Jill & Cory
(Please Print- to be sure we spell your name correctly)

SUPPORT OPPOSITION
(Optional)

RESIDENT BUSINESS OWNER

OTHER _____

SIGNATURE: 

PHONE _____ DATE _____
(In case we would like to contact you)

ITEM #: 2

ZAB DATE: 5/9/19

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC HEARST
(Project Address)

NAME MARK KHODES
(Please Print- to be sure we spell your name correctly)

SUPPORT OPPOSITION
(Optional)

RESIDENT BUSINESS OWNER

OTHER _____

SIGNATURE: 

PHONE _____ DATE _____
(In case we would like to contact you)

Public Testimony Guidelines:

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. The Board Chairperson may limit the number of speakers and the length of time allowed to each speaker. To speak at a public hearing, please submit a speaker card to Planning Staff as early as possible at the meeting.

At the start of the meeting the Board may rearrange the agenda or place additional agenda items on the Consent Calendar, so it is important to submit speaker cards at the start of the meeting to avoid losing the chance to speak to an item.

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>> MAYOR J. ARREGUIN: GOOD EVENING, LADIES AND GENTLEMEN.
WE'RE GOING TO START TONIGHT'S MEETING. WILL THE COUNCILMEMBERS
PLEASE JOIN US ON THE DAIS? THE REGULAR MEETING OF THE BERKELEY
CITY COUNCIL FOR TUESDAY JANUARY 29, 2019 IS CALLED TO ORDER.
CAN WE HAVE A ROLL CALL PLEASE? [ROLL CALL]

>> R KESARWANI: HERE.

>> B. BARTLETT: PRESENT.

>> S. HAHN: PRESENT.

>> S. WENGRAF: PRESENT.

>> R. ROBINSON: PRESENT.

>> L. DROSTE: HERE.

>> MAYOR J. ARREGUIN: PRESENT. QUORUM IS PRESENT.

>> STAFF: AND COUNCILMEMBER DAVILA PRESENT.

>> MAYOR J. ARREGUIN: WE'RE GOING TO PRESENT TO
PROCLAMATIONS THE FIRST IS THE ROE V. WADE DECISION AND
COUNCILMEMBER WENGRAF WILL PRESENT.

>> S. WENGRAF: WOULD YOU LIKE TO COME FORWARD PLEASE? MS.
RODRIGUEZ IS HERE FROM PLANNED PARENTHOOD. REAFFIRMING THE CITY
OF BERKELEY'S COMMITMENT TO ROE V. WADE. WHEREAS, JANUARY 22,
2019 MARKS THE 46TH ANNIVERSARY OF THE HISTORIC SUPREME COURT
DECISION, ROE V. WADE, WHICH LEGALIZED ABORTION AND RECOGNIZED
WOMEN'S FREEDOM OF REPRODUCTIVE CHOICE AS ESSENTIAL TO THE

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LIVES, RIGHTS, HEALTH AND EQUALITY OF WOMEN. AND WHEREAS, PRIOR TO 1973, THE YEAR WHEN ROE V. WADE WAS ENACTED, WOMEN FACED SIGNIFICANT OBSTACLES TO SAFE REPRODUCTIVE HEALTH SERVICES, RESULTING IN WIDESPREAD LOSS OF LIFE AND SERIOUS ILLNESS. AND WHEREAS, INDIVIDUAL STATES ARE PASSING LAWS BANNING RIGHTS TO ABORTION: MISSISSIPPI AND KENTUCKY BANNED ABORTION AFTER 15 WEEKS AND 11 WEEKS OF GESTATION, RESPECTIVELY. IOWA BANNED ABORTIONS AFTER A FETAL HEARTBEAT IS DETECTED, WHICH IT TYPICALLY SIX WEEKS, BEFORE MOST WOMEN EVEN KNOW THEY ARE PREGNANT. THESE LAWS DEMONSTRATE A PATTERN OF ATTEMPTS TO REVERSE ROE V WADE. WHEREAS, THE RIGHT TO SAFE, LEGAL AND ACCESSIBLE ABORTION CONTINUES TO BE UNDERMINED BY VARIOUS FEDERAL INITIATIVES, THREATENING THE HEALTH AND SAFETY OF WOMEN'S LIVES, INCLUDING THE MOST MARGINALIZED WOMEN: LOW-INCOME WOMEN, WOMEN OF COLOR, REFUGEE AND IMMIGRANT WOMEN. WHEREAS, THROUGHOUT THE BAY AREA, HUNDREDS OF HEALTH CARE WORKERS HAVE DEVOTED THEIR CAREERS TO ENSURING THAT THE WOMEN OF THE BAY AREA HAVE ACCESS TO SAFE AND LEGAL REPRODUCTIVE HEALTH SERVICES, WHILE OFTEN PUTTING THEIR OWN SAFETY AT GREAT RISK DUE TO HARASSMENT AND VIOLENT OPPOSITION. NOW THEREFORE, BE IT RESOLVED BY THE CITY OF BERKELEY THAT WE RECOGNIZE AND CELEBRATE THE 46TH ANNIVERSARY OF ROE V. WADE AND PRAISE THE PERILOUS AND SELF-SACRIFICING WORK OF THE HEALTHCARE PROVIDERS WHO FACE THREATS

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AND VIOLENCE FOR PROVIDING SAFE AND LEGAL HEALTH SERVICES TO WOMEN THROUGHOUT THE BAY AREA. BE IT FURTHER RESOLVED THAT THE CITY OF BERKELEY RE-AFFIRMS ITS COMMITMENT TO: THE HUMAN RIGHTS AFFORDED TO ALL WOMEN UNDER ROE V. WADE, REGARDLESS OF SOCIOECONOMIC, ETHNIC, RACIAL, CULTURAL OR RELIGIOUS BACKGROUND, AGE OR SEXUAL ORIENTATION AND TO OPPOSING ANY LAWS OR REGULATIONS THAT POSE A THREAT TO ABORTION, REPRODUCTIVE, SEXUAL FREEDOM AND SELF-DETERMINATION. [APPLAUSE]

>> STAFF: I'M NOT SURE IF THIS IS ON. I'M THE DIRECTOR OF PUBLIC AFFAIRS FOR PLANNED PARENTHOOD, THE LOCAL ORGANIZATION THAT SERVES BERKELEY AND OAKLAND AND ALAMEDA COUNTY. ON BEHALF OF THE ORGANIZATION, I WANT TO EXPRESS OUR INCREDIBLE GRATITUDE FOR COUNCILMEMBER WENGRAF AND THE CITY OF BERKELEY INTEREST THE INCREDIBLE PROCLAMATION AND HONOR AND RECOGNITION OF THE ROE V. WADE AND WHAT OTHER PROVIDERS DO ACROSS THE CITIES AND THE COUNTY AND THE STATE OF CALIFORNIA TO PROVIDE THIS CARE. AND CERTAINLY, OF COURSE, ACROSS THE U.S. AS YOU MENTIONED THE RIGHT TO ABORTION IS BEING TESTED AND CHALLENGED IN VARIOUS PARTS OF THE COUNTRY. IN CALIFORNIA WE'RE LUCKY TO HAVE A CONSTITUTIONAL TO ABORTION THAT WOULD PRECLUDE US FROM HAVING POTENTIAL POOR OUTCOMES FOR ROE V. WADE WERE TO BE OVER TURNED BY THE SUPREME COURT OF THE UNITED STATES. WE'RE FIGHTING HARD IN CALIFORNIA TO ENSURE THAT OUR SISTERS ACROSS THE COUNTRY ARE ABLE TO HAVE THIS

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RIGHT. AND THANK YOU SO MUCH FOR THIS RECOGNITION. AND WE'RE FIGHTING HERE AND WILL CONTINUE TO DO SO TO HOLD THIS RIGHT AND KEEP IT FOR ALL WOMEN. THANK YOU. [APPLAUSE]

>> S. WENGRAF: THANK YOU.

>> MAYOR J. ARREGUIN: THANK YOU VERY MUCH. NOW MY PLEASURE TO PRESENT A PROCLAMATION TO MAX DRESKIN. WE HAVE HIM HERE THIS EVENING AND HIS FRIENDS AND FAMILY. BEFORE CHRISTMAS I WAS READING THE CHRONICLE AND THERE WAS AN ARTICLE ABOUT AN INCREDIBLE YOUNG MEN, MAX, WHO IS A BERKELEY RESIDENT, WHO ATTENDS PROSPECT SIERRA SCHOOL WHO HIS GIVEN HIS MONEY TO SUPPORT THE WOMEN'S DAY TIME DROP-IN CENTER. I WANTED TO INVITE HIM TO RECOGNIZE HIS SELFLESS CONTRIBUTIONS TO HELPING THE MOST NEEDIEST IN THE COMMUNITY AND DECLARE JANUARY 29, 2019 AS MAX DRESKIN DAY IN THE CITY OF BERKELEY. [APPLAUSE] I'M GOING TO READ THIS PROCLAMATION AND THEN TURN THE FLOOR OVER TO MAX. THIS IS IN HONOR OF MAX. WHEREAS, MAX DRESKIN IS A SEVENTH GRADER LIVING IN BERKELEY WHO HAS BEEN MOVED BY THE HOMELESS CRISIS FACING THE CITY. WHEREAS, ON HIS 13TH BIRTHDAY, HE RECEIVED \$40 FROM HIS UNCLE TO BE USED AS "TZEDAKAH," A HEBREW WORD THAT SIGNIFIES CHARITABLE GIVING AS RIGHTEOUS BEHAVIOR AND A MORAL OBLIGATION. WHEREAS, THROUGH HIS BIRTHDAY MONEY AND SAVINGS, TOTALING \$165, MAX DONATED HIS MONEY TO THE BERKELEY WOMEN'S DROP-IN CENTER, WANTING TO GIVE TO A LOCAL ORGANIZATION TO MAKE

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AN IMPACT LOCALLY. WHEREAS, THE DONATION WAS ENOUGH TO COVER FOR 75 MEALS TO BERKELEY'S MOST VULNERABLE RESIDENTS. WHEREAS, THIS GENEROUS DONATION IS JUST ONE EXAMPLE OF THE DAILY GOOD DEEDS MAX DOES TO IMPROVE THE LIVES OF THOSE LESS FORTUNATE. FORTUNATE. WHENEVER HE GOES TO ZACHARY'S PIZZA ON SOLANO AVE WITH HIS FRIENDS, THEY WILL BUY AN EXTRA SLICE IF THEY SEE A HOMELESS PERSON OUTSIDE. WHEREAS, AS A BERKELEY RESIDENT, MAX THINKS BERKELEY IS A REALLY NICE PLACE TO LIVE BUT HE RECOGNIZES THERE ARE A LOT OF PROBLEMS HE WOULD LIKE TO FIX, WITH HOMELESSNESS IS AT THE TOP OF HIS LIST. WHEREAS, MAX'S MATURE MORAL CHARACTER AND EMPATHY TOWARDS OTHERS EXEMPLIFIES THE BEST OF BERKELEY. NOW THEREFORE, BE IT RESOLVED THAT I, JESSE ARREGUIN, MAYOR OF THE CITY OF BERKELEY, DO HEREBY DECLARE JANUARY 29, 2019 AS MAX DRESKIN DAY. CONGRATULATIONS, MAX, AND THANK YOU FOR EVERYTHING YOU DO. [APPLAUSE]

>> STAFF: CAN WE ASK MAX'S MOM AND DAD TO COME UP. I'M.

>> I WANTED TO LET YOU KNOW WHAT A HUGE RIP TIDE IT MAKES WHEN SOMEBODY DOES SOMETHING LIKE THIS. AFTER WE GOT THE DONATION, WE RECEIVED \$200 FROM A FAMILY IN SAN FRANCISCO IN HONOR OF MAX, AND A NEIGHBOR WALKED IN WITH A \$1,000 CHECK AND GIFT CARDS FOR THE LADIES. IT'S GREAT WHEN SOMEONE DOES A GREAT EXAMPLE. I WANTED TO RECOGNIZE MAX'S GENEROSITY. MAX CAME UP

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WITH A COUPLE OF OTHER IDEAS. DO YOU WANT TO SAY WHAT YOUR FRIENDS ARE GOING TO DO NEXT?

>> I'M NOT ON MY BASKETBALL TEAM AT SCHOOL BUT MY COACH, COACH NICK, DECIDED THAT HE THINKS WE SHOULD DO A FOOD DRIVE AND GET A LOT OF FOOD FOR THE DROP-IN CENTER AND DO A BAKE SALE TO RAISE MONEY TO KEEP ON HELPING WHAT NEEDS TO BE HELPED. [APPLAUSE]

>> MAYOR J. ARREGUIN: MOVING ON WITH THE AGENDA. I WOULD LIKE TO RECOGNIZE THE CITY AUDITOR WHO IS GOING TO MAKE SOME COMMENTS THIS EVENING.

>> STAFF: GOOD EVENING, EVERYONE, MAYOR, COUNCILMEMBERS AND THE BERKELEY COMMUNITY. TODAY I WOULD LIKE TO REPORT ON ITEMS NUMBER 7 AND 20. PART OF ITEM 7, GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS IS RELATED TO ONE OF THE RECOMMENDATIONS OF ITEM 20. WHICH FOLLOWS UP ON RECOMMENDATIONS FROM THE CODE ENFORCEMENT AUDIT. AS THE CITY AUDITOR OUR OFFICER IS CHARGED WITH LOOKING AT VARIOUS CITY AGENCIES AND MAKES RECOMMENDATIONS FOR IMPROVEMENT. AS I STATED AT THE LAST MEETING, MY SHORT-TERM TOP PRIORITY IS TO WORK WITH THE CITY MANAGER IN RESOLVING THE 100 OUTSTANDING RECOMMENDATIONS FOR FROM THE PAST SEVERAL YEARS. TODAY I HAVE GOOD NEWS REGARDING ONE OF THOSE PAST AUDITS. THE AUDIT OF A CODE ENFORCEMENT UNIT RELEASED ON JUNE 26, 2018. OF THE 12 AUDIT RECOMMENDATIONS, THE

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DIVISION HAS EITHER ADDRESSED OR BEGUN TO ADDRESS 10 OF THEM. THIS IS SIGNIFICANT. GIVEN THE UNSTABLE STAFFING IN THIS UNIT AS A TIME THAT CODE VIOLATIONS HAVE INCREASED. IN ADDITION, THE UNIT CONTINUES TO BE ASKED TO DO MORE AND MORE AS ADDITIONAL ORDINANCES ARE PASSED REQUIRING CODE ENFORCEMENT. WHILE WE ALL WANT TO SEE MANY THINGS HAPPEN IN BERKELEY, IF THE UNIT CHARGE WITH ENFORCING REGULATIONS REMAINS THE SAME SIZE YET ASKED TO DO MORE, THERE WILL BE TRADE OFFS ON WHAT IS AND IS NOT ENFORCED AND AT WHAT LEVEL. THIS WAS A MAJOR THRUST OF OUR RECOMMENDATION. AND THE POINT OF ITEM 20 ON THE AGENDA TODAY. WE ALL WANT ILLEGAL DUMPING CLEANED UP FOR EXAMPLE BUT IT'S DIFFICULT TO DO WHEN MORE CODE IS PASSED WITHOUT STAFFING OR CONVERSATION ABOUT WHAT NEEDS TO GIVE. OUR AUDIT RECOMMENDATIONS FELL INTO FOUR MAIN CATEGORIES. ONE, IMPLEMENT A PROCESS FOR ANALYZING THE IMPACT OF NEW ORDINANCE ON CITY RESOURCES INCLUDING THE OPPORTUNITY COST OR CONSIDERATION OF ACTIVITIES THAT WILL BE DE-PRIORITIZED IN ORDER TO MEET NEW DEMANDS. TWO, CREATE PROCEDURES TO ADDRESS EQUITABLE SELECTION AND PRIORITIZATION OF HIGH-RISK AREAS. THREE, CONDUCT A STAFFING ANALYSIS TO DETERMINE THE APPROPRIATE STAFFING LEVEL NEEDED TO EFFECTIVELY ENFORCE CITY CODE. AND FOUR, USE TECHNOLOGY TO STREAMLINE PROCESS AND MONITOR ACTIVITIES. THE CITY HAS MADE SIGNIFICANT PROCESS IN THE FIRST TWO CATEGORIES. SPECIFICALLY, I

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AM PLEASED THAT THE POLICY COMMITTEE PROCEDURES THAT HAVE BEEN DEVELOPED STAFF WILL NEED TO PROVIDE COST AND STAFFING NEEDS INFORMATION. COUNCIL IS ALSO CONSIDERING ITEM 7 TODAY GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS WHICH ADDRESSES PART OF THE RECOMMENDATIONS IN LOOKING AT IMPACTS OF NEW ORDINANCES. GUIDANCE ON DEVELOPING COUNCIL AGENDA ITEMS INCLUDE DISCUSSING HOW THE RECOMMENDED ITEMS WILL BE IMPLEMENTED AND WHAT STAFF OR COSTS ARE REQUIRED. BASED ON THE RECOMMENDATION, I SUGGEST THAT ALL ITEMS RELATED TO AN ORDINANCE CONSIDER THE FEASIBILITY OF IMPLEMENTATION, INCLUDING WHAT CURRENT WORK BY STAFF WILL BE OFFSET AS A RESULT OF NEW ORDINANCE. THIS IS CRITICAL TO THE PUBLIC TO UNDERSTAND AND YOU AS DECISION MAKERS SHOULD BE EQUIPPED WITH THE FULL AMOUNT OF INFORMATION REGARDING WHETHER TO ADOPT ADDITIONAL MEASURES TO ENSURE THAT THEY AND OTHER IMPORTANT REGULATIONS ARE FULLY IMPLEMENTED. I ALSO WANT TO THANK THE CITY MANAGER FOR WORKING ON HOW TO IMPLEMENT THE OPPORTUNITY-COST PORTION OF THIS, THE RECOMMENDATIONS. WHICH ASKED A QUESTION, WHAT IS A TRADEOFF? REGARDING THE STAFFING ANALYSIS RECOMMENDATION, THE CODE ENFORCEMENT UNIT REPORTED THEY WILL BE CONDUCTING AN ANALYSIS LATER THIS YEAR TO DETERMINE IF THEY NEED MORE STAFFING. I ALSO WANT TO COMMEND THE UNIT FOR ADDRESSING THE RECOMMENDATION OF CREATING WRITTEN POLICIES AND PROCEDURES TO ADDRESS HOW TO PRIORITIZE HIGH-RISK AND EQUITABLE

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SELECTION OF CASES. THESE PROCEDURES ARE A WONDERFUL MODEL OF COMMUNICATING THE EXPECTATIONS OF HOW WORK IS DONE. FINALLY, I KNOW THE CITY IS EXPLORING SOFTWARE TO BETTER MANAGER ITS CASELOAD. I HOPE THE UNIT CAN TRANSITION FROM A MANUAL PROCESS TO A DIGITAL PROCESS OF CONDUCTING INSPECTIONS TO IMPROVE EFFICIENCY. THANK YOU VERY MUCH.

>> MAYOR J. ARREGUIN: THANK YOU VERY MUCH, MADAM CITY AUDITOR. TOMORROW IS OUR CITY AUDITOR'S BIRTHDAY. THANK YOU FOR YOUR SERVICE TO OUR CITY, AND HAPPY BIRTHDAY. THAT COMPLETES THE CEREMONIAL MATTERS.

>> STAFF: NO COMMENTS THIS EVENING.

>> MAYOR J. ARREGUIN: WE'LL MOVE TO PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA. IT'S AN ITEM FOR MEMBERS OF THE PUBLIC TO ADDRESS ITEMS NOT ON THE AGENDA. HOW MANY CARDS?

>> STAFF: 10 CARDS.

>> MAYOR J. ARREGUIN: EACH WILL HAVE ONE MINUTE TO ADDRESS THE CITY COUNCIL. PLEASE READ THE NAMES AND IF YOUR NAME IS CALLED, COME FORWARD.

>> STAFF: STEPHANIE HOLMAN. EVA QUINCY CUMMINGS. ADEAN CHUNG. JAY PARK. JOHN LOVE. ERICA ANDERSON. RICHY SMITH. CHARLES CLARK. AND EMILY RICHARDS.

>> MAYOR J. ARREGUIN: OKAY. THANK YOU. THOSE SPEAKERS PLEASE COME FORD.

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>> MY NAME IS STEPHANIE HOLMAN. YOU MIGHT HAVE SEEN ME AS MRS. SANTA CLAUS DURING THE CHRISTMAS BOAT PARADE. I'M A LIVE-ABOARD AND AS I UNDERSTAND FROM READING THE VERY GOOD REPORT BY OUR CITY MANAGER, MS. WILLIAMS-RIDLEY, WE THE LIVE-ABOARDS AND OTHER BERTHERS MAKEUP HALF OF THE MARIN SUN REVENUE. ACCORDING TO THIS REPORT, DATED DECEMBER I THINK 2018, THE MARINA IS IN BIG TROUBLE AS WE KNOW. I HAVE A MINUTE OR TWO?

>> MAYOR J. ARREGUIN: ONE MINUTE.

>> OKAY, I'LL BE QUICK THEN. ANYWAY, I WAS CURIOUS HOW THE MARINA IF WE'RE FUNDING HALF, IT'S KIND OF FALLING DOWN, FALLING APART, QUITE DANGEROUS, THE SECURITY ET CETERA. I'M CURIOUS WHY WONDERFUL ADVENTURES AND EXPERIENCES LIKE THE BOAT PARADE ARE FUNDED OUT OF THE EMERGENCY MARINE FUND AND THE SHORE BIRD CENTER GETS \$400,000 A YEAR OUT OF OUR EMERGENCY FUND. I'M NOT AGAINST THE SHORE BIRD CENTER BUT AND ALSO ADVENTURE PLAYGROUND GETS \$120,000 AND ALSO THE EVENTS. THE DRY ICE SNOW WE HAD WAS LOVELY. I LOVED THE DIVERSITY OF EVERYBODY COMING TO HAVE A GREAT TIME. BUT I JUST WONDER WITH THE MARINA AS DETAILED IN THIS REPORT IN SUCH DIRE STRAIGHTS SHOULD IT BE SUBSIDIZING THE ACTIVITIES. IT'S A GREAT ASSET TO THE CITY. THE WORD IS GETTING AROUND. DONE.

>> MAYOR J. ARREGUIN: THANK YOU. MA'AM. AND SO MADAM CLERK, IT'S ONE MINUTE. THANK YOU. NEXT SPEAKER, PLEASE. WELCOME.

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>> GOOD EVENING, COUNCILMEMBERS. THANK YOU FOR THE OPPORTUNITY TO SPEAK. I'M NOT THE BERKELEY MARIN AND A LIVE-ABOARD AS WELL AS STEPHANIE AND SOME OF MY COMMUNITY HERE TONIGHT. I'M ALSO A BUSINESS OWNER. MY PARTNER AND I RUN CHARTERS. OUR PARKING LOT IS GOING TO BE FENCED OFF AND USED FOR THE TRANSPORTATION AND PARKING ENFORCEMENT POLICE DEPARTMENT. AND THIS IS GOING TO BE SEVERELY IMPACTING OUR HOME AND BUSINESSES. IN THE WAY IT WAS PRESENTED TO US, IT WAS KIND OF A SURPRISE AND SHOCK. WE HAD NO INPUT OR SAY IN THE MATTER. SEVERELY EFFECT BUSINESSES, COMMERCIAL FISHERMAN WHO NEED THE PARKING LOTS AND PEOPLE WHO LIVE IN THE AREA AS WELL.

>> MAYOR J. ARREGUIN: THANK YOU.

>> MY NAME IS JAY PARK. I'M HERE TO ASK YOUR HELP ON OVER CHARGES TO MY GARBAGE BILL. FROM JANUARY 2011 TO AUGUST 2018, DUE TO A BILLING ERROR WE HAVE OVER CHARGED FOR GARBAGE COLLECTION. I'M ASKING YOU TO AUTHORIZE STAFF TO ISSUE A FULL REFUND FOR ALL THE OVER CHARGES. WE'RE RESIDENTS IN BERKELEY, PAYING PROPERTY TAXES, CITY SERVICES SINCE JANUARY OF 2011. THE BILLING ERROR HAS BEEN ACKNOWLEDGED. STAFF ISSUED A PARTIAL REFUND. YOU CAN SEE THE ATTACHED BILL ON THE BACK SIDE. IT'S NOT OBVIOUS TO THE AVERAGE RESIDENT AND NOT TO STAFF. WHEN WE CALLED TO INQUIRE, THERE WAS A MISMATCH BETWEEN DATABASES. SO WHEN THEY FIRST LOOKED, THEY SAID IT WAS FINE. WE'RE ASKING YOU PROMPTLY

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ALLOW THEM TO MAKE THE CORRECTION TO DO THE RIGHT THING. CITY MADE A MISTAKE, THEY SHOULD DO THE RIGHT THING AND ISSUE US A FULL REFUND.

>> MAYOR J. ARREGUIN: THANK YOU. MR. CHUNG, I BELIEVE COUNCILMEMBER DAVILA HAS A QUESTION.

>> C. DAVILA: CAN YOU EXPLAIN THE OVER CHARGE?

>> WE GET A GARBAGE, RECYCLE AND COMPOST BIN. IT SHOWS A COMPOST BIN AND TWO GARBAGE BINS. WE SEE THREE BINS AND THOUGHT THAT IS WHAT WE WERE CHARGED FOR. ONE IS A SECONDARY GARBAGE BIN. WE ASKED FOR ONE BIN IN THE BILLING DATABASE WE WERE CHARGED FOR TWO. WE UNDERSTAND MISTAKES HAPPEN. WE JUST WANT IT TO BE RECONCILED.

>> C. DAVILA: THANK YOU.

>> MAYOR J. ARREGUIN: THANK YOU.

>> HI MY NAME IS ADINA CHUNG. THANK YOU FOR THE TIME TO LISTEN TO THIS ISSUE. I THINK MY HUSBAND HAS STATED THE FACTS OF WHAT WE'RE ASKING FOR PRETTY WELL. I JUST WANTED TO ADD ABOUT WE WERE REJECTED A FULL REFUND BASED ON A DELAYED [INDISCERNIBLE] WE BELIEVE WE HAVE A REASONABLE -- I'M SORRY, BECAUSE WE DIDN'T ASK FOR A REFUND WITHIN ONE YEAR. WE BELIEVE WE HAVE REASONABLE DELAY BECAUSE THE BILL IS UNCLEAR. THE ADDITIONAL CHARGE WAS ALWAYS ON OUR BILL. SO THERE WAS NEVER A CHANGE, LIKE A SUDDEN UPDATE IN CHARGES. AND ALSO, THAT DISCREPANCY BETWEEN THE

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CUSTOMER AND BILLING DATABASE. WHEN WE CALLED TO TALK TO THEM, THEY WOULD HAVE CONFIRMED THE CORRECT SERVICES TO US.

>> MAYOR J. ARREGUIN: THANK YOU FOR COMING THIS EVENING AND BRINGING THE ISSUE TO OUR ATTENTION. I WOULD LIKE TO REFER THIS MATTER TO THE CITY MANAGER. AND WE'LL BE IN TOUCH WITH YOU. THANK YOU VERY MUCH. NEXT SPEAKER, PLEASE.

>> HELLO, MEMBERS OF THE COUNCIL. THANK YOU FOR YOUR TIME. MY NAME IS EMILY RICHARDS. I'M HERE AS A MEMBER OF THE BERKELEY MARINA COMMUNITY. I SPEAK FOR MYSELF INDIVIDUALLY AS WELL AS MY FAMILY WHO IS HERE. MY DAUGHTER AND MY HUSBAND. WE ARE LIVE-ABOARDS AT THE MARINA. AND ALSO, VERY CONCERNED ABOUT THE PROPOSAL THAT WE HAVE BEEN NOTIFIED ABOUT THE BERKELEY POLICE AND TRANSPORTATION. I WOULD LIKE TO HEED MY TIME TO ERICA ANDERSON WHO HAS A PREPARED STATEMENT. THANK YOU.

>> GOOD EVENING, AND THANK YOU FOR YOUR TIME. I BELIEVE I HAVE A LITTLE BIT OF TIME ON THE BACK. SO I HAVE A TWO-MINUTES AND SIX-SECOND-LONG STATEMENT. MY NAME IS ERICA ANDERSON. HERE TO ADDRESS A PROPOSED CHANGE TO PARKING AT THE BERKELEY MARINA, SPECIFICALLY TO VOICE OPPOSITION TO A PROPOSAL TO RENT SERVICE OFFICE SPACE, ALONG WITH ONE HALF ACRE. THE PARKING WILL BE FENCED IN WITH RAZOR WIRE AND USED TO STORE PARKING ENFORCEMENT VEHICLES. THIS LOT IS HEAVILY USED BY MANY MARINA STAKEHOLDERS, COMMUTERS, FAMILIES, BERKELEY DRAGON BOAT CLUB, MARINA STAFF AND

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PEOPLE WHO COME TO THE MARINA TO ENJOY THE SCENIC BEAUTY. THE PARKING WILL BE A VISUAL BLIGHT AND CAUSE A PARKING CRISIS. THE MOST SEVERELY IMPACTED ARE THE BUSINESSES ON THE SOUTH SIDE. THERE ARE APPROXIMATELY 20 LIVE-ABOARD FAMILIES. VETERANS, SMALL BUSINESS OWNERS AND RETIREES LIVING ON FIXED INCOME. MANY OF US LIVED HERE FOR YEARS AND IT'S OUR HOME. WE RAISE OUR KIDS, WALK OUR DOGS AND SECURE OR BOATS. IT HAS BEAUTY AND GRIT TO CREATE A SPECIAL SENSE OF COMMUNITY. THIS WILL CREATE SIGNIFICANT HARDSHIP AND CUT THE NUMBER OF SPACES IN HALF AND REMOVE OUR A.D.A. SPACES. THEY WILL HAVE TO WALK THROUGH DISTANT LOTS. THIS RACES EXPOSURE TO CRIME AND ACCIDENTS. WHEN THEM TAKING SPACES, OTHER BUSINESSES WILL BE NEGATIVELY IMPACTED. TO MY ACKNOWLEDGE, THE STAKEHOLDERS WERE NOT CONSULTED IN THE PROCESS AND HAVE EXPRESSED CONCERNED. I'M DISMAYED THE DECISION WAS MADE WITHOUT TRANSPARENCY. MEMBERS OF THE MARINA ARE ORGANIZING. I AM SEEKING YOUR SUPPORT IN WORKING WITH THE MARINA FOR A MORE TRANSPARENT PROCESS TO ADDRESS HOW WE MAY IDENTIFY A COMPROMISE THAT MEETS THE NEEDS OF ALL. I INVITE YOU TO VISIT US AT L. DOCK TO GET A FEEL FOR OUR COMMUNITY. THANK YOU VERY MUCH.

>> MAYOR J. ARREGUIN: THANK YOU VERY MUCH. I BELIEVE THAT WAS ALL OF IT. THANK YOU FOR HIDING YOUR TIME.

>> I WAS ONE OF THE ORIGINAL ORGANIZERS OF THE TENANTS ACT WHEN BERKELEY BECAME A LEADER IN THE COUNTRY FOR TENANTS'