



Office of the City Manager

ACTION CALENDAR

October 16, 2012

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Eric Angstadt, Director, Planning & Development

Subject: ZAB Appeal: 2329 Grant Street

RECOMMENDATION

Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Use Permit No. 10-10000041 to raise an existing single-family residence by 2 feet thereby vertically extending a non-conforming front yard setback (15 feet where 20 feet is required); to construct a 149-square-foot first story addition, a 135-square-foot second story addition, and a new 1,054-square-foot third story; and to establish a child care center on the first floor for up to 15 children a day, with hours of operation from 7:30 a.m. – 3:00 p.m. Monday through Friday.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On June 14, 2012, the Zoning Adjustments Board (ZAB) held a public hearing and approved the application by a 6-0-0-1 vote (Yes: Allen, Groves, Hahn, Matthews, Shumer, Williams; No: None; Abstain: None; Absent: Mikiten). On July 19, 2012, staff issued the notice of the ZAB decision. On July 3, 2012, Don Simonds and Mary Sawatzki filed an appeal signed by 35 people with the City Clerk. The Clerk set the matter for review by the Council on October 16, 2012.

BACKGROUND

The project is to raise an existing, two-story, single-family residence located at 2329 Grant Street by two feet, thereby vertically extending a non-conforming 15-foot front yard setback where 20 feet is required. The project proposes minor additions to the first and second story, and proposes a new third story. The driveway would be widened from 11.25 feet to 16 feet to allow access to both the one-car, attached garage and a newly proposed uncovered parking space in the right (south) side yard. The project also includes the establishment of a child care center for up to 15 children a day on the first floor. The childcare center includes a kitchen, two classrooms, lunch room, dramatic play area, and two bathrooms. The main entrance to the child care would be located on the left (north) side of the house. Refer to the attached ZAB reports for further project information (Attachment 3).

The Board initially heard the project on March 8, 2012. After a lengthy public hearing and Board deliberation, the ZAB returned the project to the applicant, requested a significant reduction in shadow impacts to the neighbor to the north, suggested the applicant may wish to use mediation, and continued the project off calendar. Mediation was held on April 23, 2012 between the applicants and the neighbors to the north. It did not, however, result in any resolution. On May 21, 2012, the applicants submitted revised plans with a modified third story massing to address the shadowing impacts. The project was set for hearing and approved by the ZAB on June 14, 2012. A group of neighbors appealed the ZAB decision.

#### RATIONALE FOR RECOMMENDATION

The issues raised in the appellant's letter, and staff's responses, are as follows. For the sake of brevity, the appeal issues are not always re-stated in their entirety; refer to the attached appeal letter for full text.

Issue 1: Adverse Parking Impacts [p. 1 of attached appeal letter]

Response 1: Child Care Centers do not have a set off-street parking standard but are required to provide the number of spaces as determined by the Board, based on the amount of traffic generated by the particular use and comparable with specified standards for other uses (BMC §23D.28.080). The current project proposes the retention of a one-car garage to supply the required parking for the dwelling unit/resident day care director (a condition of approval requires the day care operator to live in the dwelling unit) and would provide an additional, uncovered parking space in the side yard setback for use by the non-resident day care employee.

In order to access both parking spaces, the project proposes to widen the existing driveway from 11.25 feet to 16 feet. The driveway widening would result in the loss of one on-street parking space located between the subject property's driveway and the neighbor to the south. While this on-street space is not standard length, it is long enough to accommodate smaller cars as evidenced by staffs' field visits and Google Earth Street View, which shows a car parked there.

Planning staff referred the application to the City's Traffic Engineer for review and comment. Traffic Engineering generally does not support the loss of public on-street parking to accommodate one, private off-street parking space; however, in this case, Traffic Engineering felt that the project would potentially "add" two temporary off-street spaces (i.e. tandem parking in the driveway) available for use during drop off and pick up times, which could help mitigate parking impacts on the neighborhood.

Although there would be a net increase of one to two temporary parking spaces, Traffic Engineering believes that the day care operation could

generate a short-term, twice-a-day, parking demand impact on the neighborhood that the center would not be able to accommodate on-site. The issue is further compounded in that being a day care for pre-school aged children, there is no sidewalk drop off; parents need to disembark their vehicle and walk their child into the center. Although the applicant states that parents would be encouraged to walk or bike their children to the proposed child care facility, this stipulation cannot be incorporated as a project condition, nor can it be assumed as a baseline.

Although the new use would increase the demand for parking during pick-up/drop-off, the impact would be mitigated by the staggered drop off and pick up times. The day care schedule provides a two hour window (7:30 – 9:30 am) for parents to drop off their children, and pick up would be divided between “early bird” pick up (12:30 – 1:00 pm) and standard dismissal at 3:00 pm. Additionally, the Board attached the following condition to the project approval to address parking impacts:

*“The applicant shall have each day care patron sign that he/she agrees to a parking policy that includes the following:*

- *Day care patrons should use on-street parking spaces directly in front of the day care home or in the subject site’s driveway, when available;*
- *Day care patrons may use other on-street parking spaces provided that children are escorted or can safely travel between the day care home and parking;*
- *Day care patrons shall drive safely and follow all traffic regulations and be mindful of adjacent property owners’ concerns when driving to and from the site;*
- *Day care patrons shall not make U-turns or park in, or block neighboring driveways;*
- *Under no circumstances shall day care patrons double park, park in the middle of the street, or park on the wrong side of the street;*
- *Day care patrons shall turn off their engines when parked during pick-up and drop-off periods;*
- *Barring an emergency, day care patrons shall not blow their car horns while picking up and dropping off their children.”*

Due to the staggered nature of both drop off and pick up times, the relatively short time that clients would be parked, adherence to the above condition, and the relatively low addition to the parking demand, the ZAB found that the parking impacts would not result in significant detriment to the neighborhood.

Issue 2: Adverse Traffic Impacts [p. 1]

Response 2: Due to the number of schools in the immediate vicinity, the neighborhood experiences high levels of traffic during school peak hours (7:30-8:30 am and 2:30-3:30 pm). Additionally, the 2300 block of Grant Street can experience “cut through” traffic during these times, as the 2300 block of McKinley does not allow pass through traffic during school hours.

The proposed day care facility would generate up to 16 additional car trips twice a day (15 children plus one non-resident employee), the majority of which would fall into the peak traffic hours for the surrounding educational uses. Staff reviewed the project with the Traffic Engineer who did not believe that the maximum 16 additional vehicle trips warranted a traffic study for this location and constituted an insignificant addition to the total volume of existing traffic.

Due to the amount of traffic already experienced on the subject block, and due to the staggered drop off and pick up times described in the Parking Analysis section above, the ZAB decision reflected its belief that the proposed project is unlikely to substantially alter existing traffic patterns in the area.

Issue 3: “[P]roposed verbal mitigations such as reduced tuition for not using a vehicle are vague, not stipulated in detail in writing, and are generally non-binding and/or unenforceable.” [p. 1]

Response 3: Staff agrees with this statement and, therefore, did not include such verbal mitigations as part of the project’s impact analysis. In addition, ZAB did not include them as conditions of approval. As evidenced by the ZAB’s discussion on the project, it also did not factor these verbal mitigations into its ultimate decision that the project’s impacts to traffic and parking would not cause undue detriment to the neighborhood.

#### ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23B.32.060.B, the Council may (1) affirm the ZAB decision and dismiss the appeal, (2) set the matter for a public hearing, (3) remand the matter to the ZAB.

#### Action Deadline:

Pursuant to BMC Section 23B.32.060.C, if none of the three actions described above has been taken by the Council within 30 days from the date the appeal first appears on the Council agenda (not including Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSONS

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

Leslie Mendez, Associate Planner, Planning & Development Department, (510) 981-  
7426

Attachments:

1: Resolution

    Exhibit A: Findings and Conditions

    Exhibit B: Project Plans dated May 21, 2012

2: Appeal Letter dated July 3, 2012

3: ZAB Staff Reports, dated March 8, 2012 and June 14, 2012 (without attachments)

4: Index to Administrative Record

5: Administrative Record

6: Communications

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD'S APPROVAL OF USE PERMIT 10-10000041 TO CONSTRUCT A MAJOR RESIDENTIAL ADDITION AND ESTABLISH A CHILD CARE CENTER IN THE RESTRICTED TWO-FAMILY RESIDENTIAL (R-2) ZONING DISTRICT AND DISMISSING THE APPEAL

WHEREAS, on May 11, 2010, Catarina and Noah Friedman ("applicants") filed an application for a Use Permit to construct a major residential addition and establish a child care center at 2329 Grant Street ("project"); and

WHEREAS, on February 14, 2012, staff deemed this application complete; and

WHEREAS, on February 23, 2012, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on March 8, 2012, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, returned the project to the applicant, requested a significant reduction in shadow impacts to the neighbor to the north, suggested the applicant may wish to use mediation, and continued the project off calendar; and

WHEREAS, on April 23, 2012, the applicants met with the neighbors to the north (Kagehiros) and SEEDS mediators though mediation did not result in any resolution; and

WHEREAS, on May 21, 2012, the applicants submitted a revised plan with a modified third story massing to address the shadowing impacts; and

WHEREAS, on May 31, 2012, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on June 14, 2012, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, and approved the project; and

WHEREAS, on June 19, 2012, staff issued the notice of the ZAB decision; and

WHEREAS, on July 3, 2012, Don Simonds, Mary Sawatzki, et. al. filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on October 16, 2012 the Council considered the record of the proceedings before the ZAB, and the staff report and correspondence presented to the Council, and, in the opinion of this Council, the facts stated in, or ascertainable from this information, do not warrant further hearing.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby adopts the findings made by the ZAB in Exhibit A, affirms the decision of

October 16, 2012

the ZAB to approve Use Permit No. 10-10000041, adopts the conditions in Exhibit A and the project plans in Exhibit B, and dismisses the appeals.

Exhibits

A: Findings and Conditions

B: Project Plans dated May 21, 2012