To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Interim Director, Planning & Development

Subject: ZAB Appeal: 2150 Shattuck Avenue

RECOMMENDATION
Conduct a public hearing and upon conclusion, adopt a Resolution upholding the Zoning Adjustments Board decision to approve Design Review Sign approval #DRSA2016-0024 to install two signs, each sign made up of one set of channel letters with exposed neon, or comparable LED lighting, located on the rooftop equipment enclosure of a building determined eligible for National Register designation on the State Historic Resources Inventory (SHRI).

FISCAL IMPACTS OF RECOMMENDATION
None.

CURRENT SITUATION AND ITS EFFECTS
On March 23, 2017, the Zoning Adjustments Board (ZAB) held a hearing for an appeal of the Design Review Committee (DRC) decision to uphold the Staff Level Design Review approval for two signs at the top of the structure at 2150 Shattuck Avenue. At the hearing, there were community members both for and against the proposed new signage. Some community members expressed concern with signage located that high on a building, while others spoke in support of it in that location, and voiced support for the Skydeck organization whose signage would be installed if approved. At the conclusion of the hearing, the ZAB discussed the proposed signage. Several members of ZAB were concerned that the signage was approved as wall signage when it is clearly proposed to be located on the mechanical screen above the roof deck. In response, it was noted that there are already precedents for signage at this level on this building, and that this signage did not project above the solid mechanical screen wall. Members of ZAB noted that this building design, and specifically the design and proportions of the mechanical screen, made this an appropriate location for the proposed signage.

ZAB upheld the Design Review Committee (DRC) decision upholding the Staff Level Design Review approval by a 5-3-0-1 vote (Yes: Pinkston, Clarke, Kahn, O'Keefe, Clark; No: Selawsky, Sheahan, Simon-Weisberg; Abstain: None; Absent: Ericson).
On April 12, 2017, Steven Finacom filed an appeal with the City Clerk. The Clerk set the matter for review by the Council on July 25, 2017. On July 11, 2017, staff posted the public hearing notice at the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site, and to interested Downtown and neighborhood organizations.

BACKGROUND
The project proposes to install two sets of channel letters with exposed neon, or comparable LED lighting, on the rooftop equipment enclosure of 2150 Shattuck Avenue. (See Exhibit B for project drawings and Attachments 2 and 3 for renderings.) The proposed signage on the south elevation of the enclosure would be 150 square feet and the proposed signage on the east elevation of the enclosure would be 84 square feet. The metal screen on the rooftop equipment enclosure is nonstructural, so signage would be attached to the frame rather than the screen. The proposal also includes vertical and horizontal supports behind the signage that match the building color. The wall sign on the east elevation is the smaller of the two signs proposed, with a three-foot letter height centered on that face. The wall sign on the south elevation has four-foot high letters and starts five feet from the southeast corner. That sign is proposed at the maximum wall sign area allowed in this commercial district, but takes up only a small portion of the total area of the south elevation of the equipment screen.

ENVIRONMENTAL SUSTAINABILITY
There are no identifiable environmental impacts or opportunities associated with the subject of this report. The signage will conform to the State’s Energy Code, and staff has conditioned that the signage be installed with a dimmer so that it can be reviewed after installation for any potential glare issues.

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 re-stated in their entirety; refer to the attached appeal letter (Attachment 6) for full text. Also included in the attachments are the previous appeal letters, appealing the Staff Level approval (Attachment 4) and the Design Review Committee approval (Attachment 5).

Issue 1: Appellant asserts Downtown Design Guidelines now include a guideline for signs on taller buildings, and the appellant maintains that the proposed signage is not consistent with that guideline.

Response 1: A guideline was added to the Downtown Berkeley Design Guidelines when they were amended in 2012 for signs on taller buildings. It reads:

*Architecture, not advertising, should define the upper elevations of buildings, especially those visible from beyond the Downtown. Commercial signage, advertising signage (including emblems or*
logos) or building name signage should be avoided on adjacent to [sic] the roofs of buildings in Downtown.

NOTE: DRC considered whether signage should be limited to below a certain height to avoid the “commercialization of Berkeley’s skyline.” No recommendation was made.

As stated in the City’s Response 4, below, the sign here constitutes building name signage, which is allowed by the sign ordinance, and is not therefore “advertising,” which is typically an off-site sign, commonly called a billboard. The guideline discourages but does not prohibit the proposed building name sign. The legislative history for this section, and the grammatical error, renders this provision of the amended design guidelines murky at best. Unless the ordinance is amended to prohibit such signage, the Council should consider the proposal in light of the overall permitting framework, which establishes size and location requirements.

In order to address possible impacts to the city skyline, the project was approved with conditions of approval for both the amount of illumination, as well as reducing the amount of time that the sign can be lit at night (See Exhibit A).

Issue 2: The appellant asserts that the signage should be prohibited as “wall signage” on the rooftop mechanical screen since it would be above the roof deck of the building structure, and should therefore be regulated as a “roof sign.”

Response 2: Although the signage has been proposed on the rooftop mechanical screen of the building instead of the exterior walls of the floors below, the screen design is substantial and visually similar to a penthouse floor setback from the main façade. The previous two building signage approvals on this building were also located on this level. The application file for the first of those, the Powerbar sign, noted that the design on this same rooftop mechanical screen was not in the spirit of a roof sign that visually changes the existing roofline profile, but was instead a wall sign (see BMC sections 20.16.140 and 150). In either case, a wall sign and a roof sign are allowed in commercial districts (see BMC section 20.24.030).

Issue 3: Appellant maintains that roof signs are not allowed under the Downtown Design Guidelines.
Response 3: As noted above, the proposed sign was approved as a wall sign, not a roof sign. General design guidelines apply to both types of signs and do not prohibit them. If the sign were classified as a roof sign, it would be limited to 8 feet above and three feet behind the parapet, and a maximum of 100 square feet instead of 150 square foot as with a wall sign. This would result in a slightly lower sign, closer to the front edge of the exterior wall below, and a reduced sign size for the south facing sign only. The sign facing east is already less than 10% the face of the building or 100 square feet.

Staff has reviewed this sign application as wall signage on facades that already had previously permitted wall signs. Staff also believes that the proposed design is more integrated into the building design than would be the case if the roof signs were three feet behind the parapet on independent frames where there would have to be a new supporting structure, instead of attached to the existing mechanical screen as proposed. The Design Review Committee and the Zoning Adjustments Board agreed with this conclusion.

Issue 4: Appellant maintains that the proposed signage is advertising and prohibited under the Downtown Design Guidelines.

Response 4: Guideline 9 at the beginning of the Signs & Graphics section states that signs for ground floor tenants should be located at storefront level, and "[s]igns on the upper façade should be building identification signs only." The building owner has stated that they have chosen “Skydeck” as its building signage, and therefore it is not advertising.

Issue 5: Appellant maintains that over-the-counter permits could be approved for multiple illuminated signs on Downtown highrise buildings.

Response 5: There is no process for over-the-counter approvals for new signage. Any new signs proposed, for this building and other highrise structures, would need to go through a design review process.

ALTERNATIVE ACTIONS CONSIDERED
Pursuant to BMC Section 23B.32.060.D, the Council may: (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB’s decision, or (3) remand the matter to the ZAB with directions.

ACTION DEADLINE:
Pursuant to BMC Section 23B.32.060.G if the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council (not including any Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.
CONTACT PERSONS
Timothy Burroughs, Interim Director, tburroughs@cityofberkeley.info
Steven Buckley, Land Use Planning Manager, sbuckley@cityofberkeley.info
Anne Burns, Design Review Planner, aburns@cityofberkeley.info, (510) 981-7415

Attachments:
1. Resolution
   Exhibit A: Staff Level Post Notice with Conditions, dated November 1, 2016
   Exhibit B: Project Drawings, dated September 7, 2016
2. Renderings, received September 2, 2016
3. Additional Renderings, received October 6, 2016
4. Appeal Letter (Staff Decision), received November 15, 2016
5. Appeal Letter (Committee Decision), received February 1, 2017
6. Appeal Letter (ZAB Decision), received April 12, 2017
7. Administrative Record with Index
8. Public Hearing notice
RESOLUTION NO. ##,###-N.S.

AFFIRMING THE ZONING ADJUSTMENTS BOARD’S APPROVAL OF DESIGN REVIEW #DRSA2016-0024 TO INSTALL TWO SIGNS, EACH SIGN MADE UP OF ONE SET OF CHANNEL LETTERS WITH EXPOSED NEON, OR COMPARABLE LED LIGHTING, LOCATED ON THE ROOFTOP EQUIPMENT ENCLOSURE OF A BUILDING DETERMINED ELIGIBLE FOR NATIONAL REGISTER DESIGNATION ON THE STATE HISTORIC RESOURCES INVENTORY (SHRI) AND DISMISSING THE APPEAL

WHEREAS, on September 7, 2016, Ad Art, Inc. (“applicant”) filed an application to install two signs at 2150 Shattuck Avenue (“project”); and

WHEREAS, on October 6, 2016, Staff referred this project to the Landmark Preservation Commission (LPC) for design comments on this project and whether it would affect a potential historic resource since this structure is listed on the SHRI inventory; and

WHEREAS, on November 1, 2016, Staff posted a Notice of Staff Level Design Review (DRSL) approval for the project in accordance with BMC Section 23E.12.060.A; and

WHEREAS, on November 15, 2016, Steven Finacom filed an appeal of the Staff Level Design Review approval to the Design Review Committee (DRC); and

WHEREAS, on December 10, 2016, Staff posted notices on-site and in the DRC agenda for this appeal to be considered at the December 2016 DRC Meeting; and

WHEREAS, on December 15, 2016, this item was continued to the January DRC Meeting at the applicant’s request; and

WHEREAS, on January 13, 2017, Staff posted notices on-site and in the DRC agenda for this appeal to be considered at the January 2017 DRC Meeting; and

WHEREAS, on January 19, 2017, the DRC held a public meeting in accordance with BMC Section 23E.12.050, and upheld the DRSL approval; and

WHEREAS, on February 1, 2017, Steven Finacom filed an appeal of the DRC decision to uphold the DRSL approval; and

WHEREAS, on March 8, 2017, Staff mailed and posted a Notice of Public Hearing in accordance with BMC23B.32.020; and

WHEREAS, on March 23, 2017, the ZAB held a public hearing in accordance with 23B.32.030; and upheld the DRC decision to uphold the Staff Level approval; and

WHEREAS, on March 29, 2017, Staff issued the notice of the ZAB decision; and

WHEREAS, on April 12, 2017, Steven Finacom filed an appeal with the City Clerk; and
WHEREAS, on July 25, 2017, 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 the public record, including comments made at the public hearing, do not warrant further hearing.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby affirms the decision made by the ZAB and approves Design Review #DRSA2016-0024, and adopts the Staff Level Design Review approval, including conditions, in Exhibit A and the project plans in Exhibit B.

Exhibits
   Exhibit A: Staff Level Post Notice with Conditions, dated November 1, 2016
   Exhibit B: Project Drawings, dated September 7, 2016
CITY OF BERKELEY
NOTICE OF PROPOSED DESIGN REVIEW ACTION-STAFF LEVEL
Chapter 23E.08 of 23E.12 of 6478 N.S. Zoning Ordinance
DESIGN REVIEW # DRSA2016-0024

A PROJECT has been proposed for this site which is subject to Design Review by Land Use Planning Staff as per Chapter 23E.08 and 23E.12 of the Zoning Ordinance of the City of Berkeley. Under this section, the design can be approved administratively by staff with no public hearing.

<table>
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<tr>
<th>PROJECT LOCATION:</th>
<th>2150 SHATTUCK AVENUE</th>
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<tbody>
<tr>
<td>APPLICANT:</td>
<td>Ad Art, Inc.</td>
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<tr>
<td>ZONING DISTRICT:</td>
<td>C-2 DOWNTOWN COMMERCIAL - CORE</td>
</tr>
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<td>PROPOSED ACTION:</td>
<td>Approved, According to Conditions on Page 2 (see attached drawings)</td>
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<tr>
<td>DATE OF POSTING:</td>
<td>November 1, 2016</td>
</tr>
<tr>
<td>APPEAL PERIOD EXPIRES AT 5:00 P.M. ON:</td>
<td>November 15, 2016</td>
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Any concerned party may appeal the proposed action by submitting a letter specifying the reason(s) for the appeal prior to 5 p.m. on the expiration date with the appeal fee that is required at that time.

You may review project materials at the Permit Service Center at the Zoning Counter located at 2120 Milvia Street, Berkeley, CA. Response to this notice should be made in writing to the Design Review Planner _ Land Use Planning Division, at the address stated above. Based on comments received, Design Review Staff may extend the appeal period, revise the proposed design review action, or determine that a public hearing with the Design Review Committee will be required in order to process this application.

If Design Review Staff determines that no changes are warranted based on the issues raised, and or comments received, and if no appeal is received during the review period time, the proposed permit will be issued after the first working day following the expiration of the appeal period. Questions! Please call the Design Review Staff at (510) 981-7410.

NOTICE: If you object to this project or to any City action or procedure relating to this project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else at the public hearing on this project or in written communications presented at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge related to this application is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.
REQUIRED CONDITIONS:

1) The proposed signage, size, location and colors are approved as shown on the drawings “received September 7, 2016” subject to the following conditions.

2) **ILLUMINATION** is subject to a six month review period after installation by Design Review (DR) Staff. Notify DR Staff when sign has been installed. Signage shall be installed with dimmer for brightness adjustment if needed.
   - Illumination is not allowed between the hours of 11 pm and 7 am.
   - Illumination shall not cause glare on the public right-of-way or nearby parcels.
   - Sign design and hours of illumination shall be within safe standards for migratory bird flights.

3) **FINAL LETTER DESIGN** is subject to a six month review period after installation by Design Review (DR) Staff so that they can determine if the acrylic cover has a visible impact from the public right-of-way or nearby parcels and if so, it shall be removed from the letter face. Notify DR Staff when sign has been installed. If the acrylic lense remains in the signs, long-term maintenance will need to be monitored and lense shall be replaced when worn.

4) All non-temporary signage and awnings not previously approved and not listed in this application are prohibited.

5) All materials will be matte unless otherwise noted.

6) **No changes can be made to these approved plans without Design Review approval.**

7) The applicant shall be responsible for identifying and securing all applicable permits from the Building and Safety Division and all other affected City divisions/departments prior to the start of work.

8) The applicant is responsible for complying with all the above conditions. Failure to comply with any condition could result in construction work being stopped, issuance of citations, as well as further review by the Design Review Committee, which may modify or impose additional conditions, or revoke the zoning approval.

9) All building permit drawings and subsequent construction shall substantially conform to the final design review plans as outlined in Condition #1. Any
modifications must be reviewed by the Zoning Officer or his designee to
determine whether the modification requires additional approvals by the
Zoning Adjustments Board or the Design Review Committee.

ATTEST:  
Anne Burns, Associate Planner - Design Review
(510) 981-7410

...

g:\landuse\projects by address\shattuck\2150\DRSA2016-0024\pn 11-01-2016.doc
LEGAL NOTICE CONCERNING YOUR LEGAL RIGHTS

If you object to a decision by the Design Review Staff, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Design Review Committee at, or prior to, the public hearing.

2. You must appeal to the Design Review Committee within fourteen (14) days of the date of this post notice.

3. Pursuant to Code of Civil Procedure Section 1094.6(b), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.

4. Pursuant to Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.

5. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.

6. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
   A. That this belief is a basis of your appeal.
   B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
   C. All evidence and argument in support of your belief that the decision or condition constitutes a “taking” as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.
**Channel Letters**

Manufacture and Install one (1) set of channel letters with exposed neon.

<table>
<thead>
<tr>
<th>Description</th>
<th>Specification/Material</th>
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<td>Signcomplex Neon Flex</td>
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<tr>
<td>Horizontal supports</td>
<td>1 1/2&quot; Unistrut</td>
<td>Paint (satin)</td>
<td>Match building color</td>
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**Section Detail - Scale: NTS**

- Low voltage power supply to be contained in sheet metal box
- 2" Trimcap
- 1/4" x 1" Studs
- 1 1/2" Unistrut
- 3/16" Acrylic Face
- Faux neon LED rope
- 1/4" Conduit pass thru
- .063 Aluminum returns
- Weep holes
- 2" x 2" Angle clips
- Disconnect switch

**Received**

SEP 7 2016

**Land Use Planning**
**CHANNEL LETTERS**

Manufacture and install one (1) set of channel letters with exposed neon.

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- **1/4" Conduit pass thru**
- **.063 Aluminum returns**
- **Wedge bolts**
- **2" x 2" Angle clips**
- **Disconnect switch**
November 15, 2016

TO: Anne Burns, Design Review Planner, City of Berkeley

FROM: Steven Finacom

RE: Appeal of Design Review # DRSA2016-0024 staff level approval

Pursuant to the City of Berkeley’s procedures I am writing to appeal Design Review # DRSA2016-0024 staff level approval of proposed illuminated “Sky Deck” signage for the top of 2150 Shattuck Avenue.

A full statement of issues related to this project and the grounds for the appeal will be presented at the mandated Design Review Committee hearing on this project. A basic introduction to the appeal is provided below.

The signage approved is impermissible under the City of Berkeley’s Downtown Design Guidelines. It violates a key provision of the guidelines.

Under the design guidelines, building identification signage is allowed under certain conditions on the facade of downtown buildings, not on the roofs.

However, the proposed 2150 Shattuck / “Skydeck” signage proposed would not be placed on the exterior wall of the building as is allowed. The proposed location is on the metal screening surrounding the mechanical penthouse, above the useable floors of the structure.

Signage at this location must be disallowed according to the Downtown Berkeley Design Guidelines.

Here is the relevant language from the Downtown Berkeley Design Guidelines.

“SIGNS ON TALLER BUILDINGS:

Architecture, not advertising, should define the upper elevations of buildings, especially those visible from beyond the Downtown. Commercial signage, advertising signage (including emblems or logos) or building name signage should be avoided on adjacent to the roofs of buildings in Downtown.” (emphasis added by underlining)

(Note: there may be a typo in the last line of the first paragraph. To make grammatical sense, it probably should have read, “avoided on or adjacent to the roofs”, not “avoided on adjacent to the roofs”. The meaning, however, does not change.)

The proposed signage is clearly to be mounted not on the facade of the building below the roof but on the penthouse enclosure, which rises above the building roof.)
We find in the Berkeley Municipal Code, this helpful definition:

"PENTHOUSE, MECHANICAL: A room or enclosed structure, attached to the roof level for the uppermost story, for purposes of sheltering mechanical equipment, water tanks and/or vertical openings for stairwell and elevator shafts." (from Section 23F.04.010 Definition)

The municipal code also includes this useful illustration, below. Note "Penthouse" is the windowless structure set back from the facade and located above the useable / inhabited floors.

Now let's look at the actual structure of 2150 Shattuck itself. At right is an illustration of the proposed signage location from the submittal packet.

The building consists of a base (with the large arches at the bottom), a tower element (11 office floors, with regular windows), and a flat roof. Above the flat roof is a windowless and roofless penthouse enclosure narrower that the tower width, that encloses mechanical equipment and stairwell and elevator housings.

It is clear from the municipal code that the roof of the building is below the penthouse, and the penthouse is not a floor of the building or, itself, topped by a roof.

The penthouse itself is "on the roof".
Here is an aerial view of the top of 2150 Shattuck, viewed at an angle from the west (the grid-like dark section at left is the western wall of the building). You can see that the roof is covered with various mechanical structures, including HVAC equipment, and elevator and stairwell housings. The perimeter of this area is a freestanding metal screen which simply serves to conceal the clutter of equipment from view.

An additional contention of the appeal is that the proposed signage is too large for the building, extending nearly 30 feet across the penthouse, or more than half the main eastern width of the entire structure.

Further issues may be presented in follow-up communication and at the hearing.

At the Landmarks Preservation Commission review of this proposal the only testimony in favor of the proposed signage came from a representative of the “Sky Deck” organization who explained all the good things the program does.

But the social value of the program is not germane to consideration of signage. Approving inappropriate or impermissible signage because it represents a “good” program or cause is the beginning of a slippery slope.

Let’s say, as a hypothetical, the owners of 2150 Shattuck decided to license the name of a high-rise downtown building to a certain rich New Yorker who likes to have his name on buildings.
Under the current signage interpretations of staff, Berkeley would have no recourse but to allow a big illuminated sign across the top of the building reading "TRUMP TOWER - BERKELEY".

Regardless of such hypotheticals, this project is a terrible precedent for Downtown Berkeley.

It is larger and more obtrusive than the previous "Chase Building" bank logos on 2150 Shattuck, and even larger than the highly controversial "Powerbar" sign that was once located atop this building. The Powerbar signage extended across six of the ten bays of the penthouse enclosure; the "Sky Deck" signage would extend across fully eight of the ten bays.

The size and location of the proposed signage would make it possible for every one of a dozen or so high-rise buildings in Downtown Berkeley (existing or under construction) to have their own penthouse level "building identification" signage, cluttering the skyline of Berkeley with lighted promotional announcements.

This would undermine the clear intent of the Downtown Design Guidelines that "Architecture, not advertising, should define the upper elevations of buildings, especially those visible from beyond the Downtown."

I ask that the staff level design review approval of this proposal be considered and disallowed by the Design Review Committee.

Sincerely,

Steven Finacom
CITY OF BERKELEY
Permit Service Center
2120 Milvia St
Berkeley, CA 94704

R E C E I P T
PLN2016-0048

Applicant Information
Steven Finacom
2308 RUSSELL ST
BERKELEY CA 94705-1926

Property Information
Parcel Number: 057 202600201

Project Information
Type: Planning
Group: Special Request
Category: NA
Sub-Category: Appeal
Project: Appeal of DR staff level decision
Work Description: 2150 Shattuck Avenue

Location
2150 SHATTUCK Ave
BERKELEY, CA 94704

Payor: Steven Finacom | Payment Status: Paid
Cashier: RASMIT | Payment Method: Check

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<th>Amount</th>
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<td>APPL050 - APPEAL of DRC or DRSL - Non Applicant</td>
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2150 SHATTUCK Ave
BERKELEY, CA 94704

Date: 11/15/2016
Receipt Number: 463238

Print Date: 11/15/2016
February 1, 2017

TO: Carol Johnson, Planning Director, City of Berkeley
FROM: Steven Finacom

RE: Appeal of Design Review # DRSA2016-0024 approval

Dear Carol:

Pursuant to the City of Berkeley’s procedures I am writing to appeal to the Zoning Adjustments Board Design Review # DRSA2016-0024, Design Review Committee approval of proposed illuminated “Sky Deck” signage for the top of the building at 2150 Shattuck Avenue.

The Design Review Committee approved this signage at the meeting of January 19, 2017.

Attached is my $95 fee for the appeal.

A full statement of issues related to this project and the grounds for the appeal will be presented at the mandated Zoning Adjustments Board hearing on this project. In brief summary, the grounds for appeal include, but are not limited to:

1. the DRC ignored relevant and binding Downtown Design Guidelines in approving the signage;
2. the DRC mis-applied or ignored relevant provisions of the Signage Ordinance;
3. staff impermissibly created a previously non-existent category of signage, “Building Identification Signage”, to allow the proposed sign. (Ironically, the applicant and building owner then established in their testimony that the proposed signage will not, in fact, function as “building identification” signage but is de-facto advertising signage for a single tenant.)

These and other appeal issues will be more fully explained in public hearing testimony and additional written submissions prior to the appeal hearing.

Please contact me regarding the scheduling of the appeal before the ZAB. There are some dates in February and March when I am not available.

Sincerely,

Steven Finacom
berkeley1860@gmail.com
cc: Anne Burns, City of Berkeley

RECEIVED
FEB 02, 2017
LAND USE PLANNING
Applicant Information

David Esajian
150 EXECUTIVE PARK BLVD
SAN FRANCISCO CA 94134-3303

Property Information

Parcel Number: 057 202600201

Project Information

Type: Planning
Group: Design Review
Category: NA
Sub-Category: Signs
Project: SKy Deck sign app

Location

2150 SHATTUCK Ave
BERKELEY, CA 94704

Payor: Steven B Finacom
Payment Status: Paid
Cashier: RASMITH
Payment Method: Check
Check #: 2884

Fees:

<table>
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<th>Description</th>
<th>Amount</th>
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<td>APPL050 - APPEAL of DRC or DRSL - Non Applicant</td>
<td>$95.00</td>
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2150 SHATTUCK Ave
BERKELEY, CA 94704

Total: $95.00
Honorable Mayor
Members of the City Council

Appeal of Zoning Adjustments Board Decision in Staff Level Design Review
#DRSA2016-0024

I am writing to appeal the Zoning Adjustment Board March 23, 2017 approval of proposed illuminated rooftop signage for 2150 Shattuck Avenue for "SkyDeck".

The majority of the ZAB and the City staff erred in approving this proposed signage. (Three ZAB members did not vote for my appeal.)

Overall, this process has been a frustrating one since, after the “Chase” signage on this same building was approved years ago, I went to the Planning Commission and asked them to amend the Downtown Design Guidelines to clarify the issue of rooftop signage. They did, in a very clear way, but City staff and the ZAB have either ignored that clarification or cherry-picked elements to support a case for the signage while ignoring other provisions that prohibit it.

The proposed “SkyDeck” signage placement violates the Downtown Design Guidelines that prohibit signage on the roof of Downtown buildings.

The signage approved is impermissible under those Design Guidelines. Here is the relevant language from the Guidelines:

“SIGNS ON TALLER BUILDINGS: Architecture, not advertising, should define the upper elevations of buildings, especially those visible from beyond the Downtown. Commercial signage, advertising signage (including emblems or logos) or building name signage should be avoided on (or) adjacent to the roofs of buildings in Downtown.”

Under the design guidelines, signage is allowed under certain conditions on the facade of downtown buildings, not on the roofs. However, the proposed 2150 Shattuck / “Skydeck” signage proposed would not be placed on the exterior wall of the building.

The proposed location is on the metal screening surrounding the mechanical penthouse, above the useable floors of the structure. Even the wording of the Notice of Decision acknowledges this. It states that the signs would be "located on the rooftop equipment enclosure" of 2150 Shattuck Avenue.

Signage at this location must be disallowed according to the Downtown Berkeley Design Guidelines. The ZAB majority erred in redefining the rooftop mechanical enclosure as a wall of the building for the purpose of justifying the sign.
The proposed “Skydeck” signage is also clearly commercial signage, representing one of the tenants of the building, in the same manner that the previous “Powerbar” and “Chase” signs at the same location on the same building represented and advertised commercial tenants, not the building. “SkyDeck” clients and supporters testified at both the Design Review and the ZAB hearings that the signage would help their private for-profit businesses located in “SkyDeck” office space acquire venture capital, attract clients and attention, and recruit new staff. That’s advertising.

Even if it were actually “building name signage” as City staff have asserted, it would be prohibited under the Downtown Design Guidelines. It would also not be allowed under the Signage Ordinance, which has no definition or category of signage for “building identification”.

City staff have raised the specter that free speech rights would be infringed if the “SkyDeck” sign is denied. This is not true. The City is not asked in this case to choose between one signage message and another; it is simply asked to equally deny all sign proposals that are for locations where signage isn’t allowed.

If the ZAB decision / staff interpretation is allowed to stand, it will set a terrible precedent for an array of lighted commercial signage atop Berkeley’s tallest buildings, both those existing and those yet to be built.

The 2150 Shattuck owners have stated that they were approached by several parties wishing to place their signage atop the building. And City staff have stated that they see no reason not to allow, via over the counter permits, multiple lighted signs atop each Downtown highrise.

Is this the Berkeley of the future that the Council would like to see? A Downtown where the skyline is defined not by wonderful sunsets, architecture, or scenic views, but by lighting commercial advertising visible from throughout the city?

I ask that the decision of the ZAB majority be reversed by the City Council, and this signage proposal denied. The applicants could easily reapply for appropriate signage that would be permitted elsewhere on the building. The application could also be remanded to the Design Review Committee with instructions to properly apply the Design Guidelines and Signage Ordinance and consider placing “SkyDeck” signage at another appropriate location on the building as part of the same application.

Further information and arguments will be presented to the Council by the appeal hearing date.

Sincerely,

Steven Finacom
Administrative Record
ZAB Appeal:
2150 Shattuck Avenue

This attachment is on file and available for review at the City Clerk Department, or can be accessed from the City Council Website. Copies of the attachment are available upon request.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley, City Council’s Web site
http://www.cityofberkeley.info/citycouncil/
NOTICE OF PUBLIC HEARING - BERKELEY CITY COUNCIL
CITY COUNCIL CHAMBERS, 2134 MARTIN LUTHER KING JR. WAY
ZAB APPEAL: 2150 SHATTUCK AVENUE, DESIGN REVIEW #DRSA2016-0024

Notice is hereby given by the City Council of the City of Berkeley that on TUESDAY, JULY 25, 2017 at 6:00 P.M. a public hearing will be conducted to consider an appeal against a decision by the Zoning Adjustments Board to uphold Design Review Committee Decision to uphold Staff Level Design Review #DRSA2016-0024 to install two signs, each sign made up of one set of channel letters with exposed neon, or comparable led lighting, located on the rooftop equipment enclosure of a building determined eligible for National Register designation on the State Historic Resources Inventory (SHRI).

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of Thursday, July 13, 2017.

For further information, please contact Anne Burns, (510) 981-7415
Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Mark Numainville, City Clerk
Mailed: July 11, 2017

NOTICE CONCERNING YOUR LEGAL RIGHTS: If you object to a decision by the City Council to approve or deny (Code Civ. Proc. Sec. 1094.6(b)) or approve (Gov. Code 65009(c)(5)) a development project, the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.