# INDEX TO ADMINISTRATIVE RECORD

**2150 SHATTUCK AVENUE**  
**PERMIT #DRSA2016-0024**  
Prepared: June 19, 2017

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2150 Shattuck Avenue

Staff Level Design Review Application (DRSA#2016-0024) to install two (2) signs; each sign made up of one (1) 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). This project is being referred to the LPC for advisory comment. (Prepared by Anne Burns, Design Review Staff)

I. Application Basics

Parties Involved:

Applicant: Ad Art Inc.
150 Executive Park Blvd.
San Francisco, CA 94134

Property Owner: First Shattuck LLC
2150 Shattuck Avenue, B100
Berkeley, CA 94704
Figure 1: Vicinity and Site Map

Note: Double-hatched shading indicates landmarked properties.
I. Background

The project is located at 2150 Shattuck Avenue, on the west side of Shattuck Avenue at Center Street, and is in the Downtown Mixed Use (C-DMU) Core district. The building was included in the State Historic Resources Inventory (SHRI) list as the First Savings/Great Western Building in 1979. It is across Center Street from the landmarked American Trust building (Wells Fargo) located at 2140 Shattuck Avenue.

In November 2010, Design Review Staff approved two (2) Chase logo signs on this rooftop equipment enclosure of 2150 Shattuck Avenue following recommendations received at the Landmark Preservation Commission (LPC) meeting the previous month. Those sign faces were approved as an opaque blue surface with the illumination shining on to the sign background matching the building color. This signage was approved under the conditions that all materials will be matte unless otherwise noted, and that no illumination is allowed between the hours of 12 am and 6 am. Signage previously approved on this level was the front-lit ‘Powerbar’ channel letters approved in the late 1990’s.

II. SHRI Status

The property at 2150 Shattuck Avenue is listed under the State Historic Resource Inventory (SHRI) as 2S2: individual property determined eligible for NR by a consensus through Section 106 process. Listed in the CR; and 3S: appears eligible for NR as an individual property through survey evaluation. Pursuant to Section 23E.12.020.B. of the Berkeley Municipal Code, design review of projects which involve a building listed on the SHRI shall be referred to the Landmarks Preservation Commission for Advisory comment.

III. Project Description

The project proposes to install two (2) sets of channel letters with exposed neon, or comparable led lighting, on the rooftop equipment enclosure of 2150 Shattuck Avenue. It is before the Landmarks Preservation Committee (LPC) as a referral from Design Review Staff. According to Sub-title 23E (23E.12) of the Berkeley Municipal Code, Design Review Staff has responsibility for review of new signage, while signs involving SHRI properties may shall be referred to LPC for comments.

The proposed signage on the south elevation will be 150 sq. ft. and the proposed signage on the east elevation will be 84 sq. ft. The metal screen on the rooftop equipment enclosure is nonstructural, so signage must be attached to the frame rather than the screen, and has proposed vertical and horizontal supports behind the signage that match the building color. The wall sign facing east is the smaller of the two signs proposed with a 3’ letter height and is centered on that face. The wall sign facing south has 4’ letters and starts two bays west of the southeast corner. That sign is proposed at the maximum wall sign height allowed in this commercial district, but takes up only a small portion of this building face.
The Staff Level process will continue after this advisory review and the final design will be posted on-site for 14 days with conditions. Those conditions will include that illumination be turned off from 12 am – 6 am. An additional condition will be that a dimmer be installed on the light source and Staff will review the new signage for six months.

IV. Issues and Analysis

Code Compliance
The current proposed signage is consistent with Title 20 of the Berkeley Municipal Code (signs) and the Downtown Berkeley guidelines as overall building signage in terms of size, the number of signs allowed, and illumination. Attached are the relevant sections of the Ordinance and the guidelines.

Commercial District Regulations (20.24), allow four (4) signs for the building. Individual tenant signage is considered separately. Wall signs are not to not exceed 15 percent of the building face of the premises or 150 sq. ft. in sign area, whichever is less. Two signs are currently being proposed; the proposed signage at the south elevation is 150 sq. ft. and the proposed signage at the east elevation is 84 sq. ft., so the signage is within these limitations.

Staff has also considered any General Regulations (20.16) that may be relevant. Wall signs are not to be located higher than the roof and shall not project more than twelve (12) inches from the wall of the building when it is located higher than ten (10) feet above existing grade. The proposed signage is located on the face of the penthouse and has a total projection of five (5) inches from the wall of the building, so it is consistent with these limitations.

While the general regulations for business complexes limit location of signage to below the third floor or less than forty (40) feet above existing grade, these regulations only apply to tenants with no visible frontage. Furthermore, the building owner has proposed the signage as overall building signage and not tenant signage, so this regulation does not apply to this project.

According to the Downtown Berkeley Design Guidelines, sign lighting, if any should utilize spot-lighting, halo-lighting, or exposed neon (All Signs #18). The proposed signage uses exposed neon, or comparable led lighting, which is consistent with this guideline.

In terms of location, the Downtown Berkeley Design Guidelines recommend that signs on the upper façade of a building be building identification signs only, while signs for ground floor tenants are to be located at the storefront level (All Signs #9). Signage has been proposed as overall building signage and not tenant signage, so it is consistent with this guideline. The guidelines also recommend that wall signs be located on the upper portion of the storefront (Wall Signs #1); however, this guideline applies to storefront tenant signage and not overall building signage.
V. Recommendation

Staff requests advisory comments from the LPC on how the proposed signage works with the existing SHRI building as well as the adjacent landmarks.

Attachments:

1. Proposed Signage drawings, received September 7, 2016
2. Renderings, received September 2, 2016
3. State Historic Resources Inventory (SHRI) Profile

Staff Planner:
Anne Burns, Design Review Planner; ABurns@cityofberkeley.info, (510) 981-7415
### Channel Letters

**Description**

<table>
<thead>
<tr>
<th>Channel Letters</th>
<th>Finish</th>
<th>Color</th>
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</thead>
<tbody>
<tr>
<td>Returns</td>
<td>Fabricated .063 alum.</td>
<td>Black</td>
</tr>
<tr>
<td>Faces</td>
<td>Clear acrylic</td>
<td>Clear</td>
</tr>
<tr>
<td>Trims</td>
<td>2&quot; Trim caps</td>
<td>Black</td>
</tr>
<tr>
<td>Illumination</td>
<td>Signcomplex Neon Flex</td>
<td>White</td>
</tr>
<tr>
<td>Horizontal supports</td>
<td>1&quot; x 1.5&quot; Unistrut</td>
<td>Match building color</td>
</tr>
</tbody>
</table>

**Scale:** 1/8" = 1'-0"

**Section Detail - Scale: NTS**

- Low voltage power supply to be contained in sheet metal box
- 2" trim cap
- 1/4" x 1" Sladi
- 1 1/2" Unistrut
- 3/16" Acrylic Rod
- Faux neon LED rope
- 1/4" conduit pass thru
- .063 Aluminum returns
- 2" x 2" angle clips
- Disconnect switch

**RECEIVED\**

**SEP 07 2016**

**LAND USE PLANNING**

**SKYDECK**

Night View

**South Elevation - Scale: 1/32" = 1'-0"**
**CHANNEL LETTERS**

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

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<th>Description</th>
<th>Specification/Material</th>
<th>Finish</th>
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<td>Fabricated, .063 alum.</td>
<td>Paint (satin)</td>
<td>Black</td>
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<tr>
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<td>Horizontal support</td>
<td>1 1/2&quot; Unistrut</td>
<td>Paint (satin)</td>
<td>Match building color</td>
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**East Elevation - Scale: 1/16" = 1'-0"**

**Section Detail - Scale: NTS**

- Low voltage power supply to be contained in sheet metal box
- 2" Trims
- 1/4" x 1" Studs
- 1 1/2" Unistrut
- 3/16" Acrylic Flex
- Flux near LED rope
- 1/4" Conduit pass thru
- .063 Aluminum returns
- Weep holes
- 2" x 2" Angle clips
- Disconnect switch
HISTORIC RESOURCES INVENTORY

IDENTIFICATION

1. Common name: Great Western Building
2. Historic name, if known: First Savings Building
3. Street or rural address: 2150 Shattuck Avenue
   City: Berkeley          ZIP: 94704    County: Alameda
   Address: 555 California St., suite 28
   City: San Francisco      ZIP: 94104    Ownership is: Public [ ] Private [x]
5. Present Use: Office building
   Original Use: Office building
   Other past uses:

DESCRIPTION

6. Briefly describe the present physical appearance of the site or structure and describe any major alterations from its original condition: 13-story, with basement and 2 service floors, office building in contemporary International style. Opaque glass curtain wall with brown aluminum (?) mullions. A building whose importance is structural. A building whose 10 upper floors are suspended from 16 2-foot wide and about 125-foot long steel straps hung from two 160-foot long steel trusses or braces mounted in turn atop 2 160-foot high reinforced concrete towers or cores which are 20' x 36' in size and seventy feet apart.

7. Locational sketch map (draw and label site and surrounding streets, roads, and prominent landmarks):

   - NORTH
   - Wells Fargo
   - Bank
   - Center Street
   - Great Western
   - Building
   - Shattuck Pkwy
   - Havens Block

8. Approximate property size:
   Lot size (in feet) Frontage
   Depth 200
   or approx. acreage

9. Condition: (check one)
   a. Excellent [x]    b. Good [ ]    c. Fair [ ]
   d. Deteriorated [ ]  e. No longer in existence [ ]

10. Is the feature Altered? [x] — Unaltered? [ ]

11. Surroundings: (Check more than one if necessary)
   a. Open land [ ]    b. Scattered buildings [ ]
   c. Densely built-up [x]    d. Residential [ ]
   e. Commercial [x]    f. Industrial [ ]
   g. Other [ ]

12. Threats to site:
   a. None known [x]    b. Private development [ ]
   c. Zoning [ ]    d. Public Works project [ ]
   e. Vandalism [ ]    f. Other [ ]
SIGNIFICANCE

20. Briefly state historical and/or architectural importance (include dates, events, and persons associated with the site when known):

Structurally, one of Berkeley's most unusual and interesting buildings. As of 1970, apparently the first suspended high-rise building in Northern California and only the second in the Western United States. As of 1979, still only one of four similar suspended buildings in the San Francisco Bay Area. A structure which was supposed to revolutionize high-rise construction but ultimately proved to be more expensive than the traditional steel girder method. The original City Building Permit dated Feb. 13, 1969 gave total cost at $3.2 million; the Oct. 28, 1970 Berkeley Gazette reported the cost with garage as $6.5 million. A structure which consequently had several bankruptcies and brought much grief to all concerned. A structure supposedly highly resistant because of its novel strap suspension construction and massive reinforced concrete foundation. Yet a structure whose integrity is questioned because of fears the floors will sway in a quake and acting as battering rams will demolish the cores. All in all, almost a unique structure and one which perhaps has even world significance because of its double-core. A representative of a still experimental building technique which seems to have lost favor.


21. Main theme of the historic resource: (Check only one): a. Architecture ☑  b. Arts & Leisure  
   g. Religion  h. Social/Education  

22. Sources: List books, documents, surveys, personal interviews, and their dates:


23. Date form prepared: 2/22/1979 By (name): Charles S. Marinovich

Address: 2108 Shattuck Avenue  City  Berkeley  ZIP: 94704  
Phone: (415) THORNTOWN 3-0235  
(State U:  

24. Attachment 7 - Admin Record Page 13 of 177
2150 Shattuck Avenue

APPEAL OF STAFF LEVEL DESIGN REVIEW

Design Review #DRSA2016-0024 to install two (2) signs; each sign made up of one (1) 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).

I. Introduction

The building signage proposed is located at 2150 Shattuck Avenue, on the west side of Shattuck Avenue at Center Street, and is in the Downtown Mixed Use (C-DMU) Core district.

It is before the Design Review Committee (DRC) as an appeal of a Staff Level Design Review approval for new signage.

II. Background

The building was included in the State Historic Resources Inventory (SHRI) list as the First Savings/Great Western Building in 1979. The Staff Level Design Review application (DRSA2016-0024) was submitted on September 7, 2016 for new building signage on an existing commercial structure. The project proposes 4 foot illuminated channel letters at the top of the existing building facade. Staff approved the application with Conditions of Approval (see attached) and posted Notices on November 1, 2016. The decision was appealed on November 15, 2016.

III. Project Setting

A. Neighborhood/Area Description:

The project site and its surrounding neighbors are in the C-DMU, Commercial Downtown Mixed Use, zoning district in the core area. The project site is located at the southwest corner of Center Street and Shattuck Avenue. The area around the site is characterized by a diverse mix of uses, including mixed...
use (ground floor commercial, with residential units above), office, and commercial.

B. Site Conditions:

Figure 1: Vicinity Map

Note: Double-hatched shading indicates landmarked properties.
IV. Proposed Project Description
The project proposes to install two (2) sets of channel letters with exposed neon, or comparable led lighting, on the rooftop equipment enclosure of 2150 Shattuck Avenue. It was before the Landmarks Preservation Committee (LPC) as a referral from Design Review Staff on October 6, 2016. In Sub-title 23E (23E.12) of the Berkeley Municipal Code, Design Review Staff has responsibility for review of new signage, but signs involving SHRI properties shall be referred to LPC for comments. While members of the LPC were supportive of the signage, they did request that Staff be careful with the amount of illumination, the time of night that the signage should be turned off, and the specific letter design. Staff has added conditions into the post notice that the installation will require a dimmer and a six-month review period and the signage should be turned off at 11 pm, instead of midnight as the two previous approvals had been permitted.

The proposed signage on the south elevation will be 150 sq. ft. and the proposed signage on the east elevation will be 84 sq. ft. The metal screen on the rooftop equipment enclosure is nonstructural, so signage must be attached to the frame rather than the screen, and has proposed vertical and horizontal supports behind the signage that match the building color. The wall sign facing east is the smaller of the two signs proposed with a 3’ letter height and is centered on that face. The wall sign facing south has 4’ letters and starts two bays west of the southeast corner. That sign is proposed at the maximum wall sign height allowed in this commercial district, but takes up only a small portion of this building face.

V. Issues and Analysis

Code Compliance
The current proposed signage is consistent with Title 20 of the Berkeley Municipal Code (signs) and the Downtown Berkeley guidelines as overall building signage in terms of size, the number of signs allowed, and illumination. Attached are the relevant sections of the Ordinance and the guidelines.

Commercial District Regulations (20.24), allow four (4) signs for the building. Individual tenant signage is considered separately. Wall signs are not to not exceed 15 percent of the building face of the premises or 150 sq. ft. in sign area, whichever is less. Two signs are currently being proposed; the proposed signage at the south elevation is 150 sq. ft. and the proposed signage at the east elevation is 84 sq. ft., so the signage is within these limitations.

Staff has also considered any General Regulations (20.16) that may be relevant. Wall signs are not to be located higher than the roof and shall not project more than twelve (12) inches from the wall of the building when it is located higher than ten (10) feet above existing grade. The proposed signage is located on the face of the penthouse and has a total projection of five (5) inches from the wall of the building, so it is consistent with these limitations.
While the general regulations for business complexes limit location of signage to below the third floor or less than forty (40) feet above existing grade, these regulations only apply to tenants with no visible frontage. Furthermore, the building owner has proposed the signage as overall building signage and not tenant signage, so this regulation does not apply to this project.

According to the Downtown Berkeley Design Guidelines, sign lighting, if any should utilize spot-lighting, halo-lighting, or exposed neon (All Signs #18). The proposed signage uses exposed neon, or comparable led lighting, which is consistent with this guideline.

In terms of location, the Downtown Berkeley Design Guidelines recommend that signs on the upper façade of a building be building identification signs only, while signs for ground floor tenants are to be located at the storefront level (All Signs #9). Signage has been proposed as overall building signage and not tenant signage, so it is consistent with this guideline. The guidelines also recommend that wall signs be located on the upper portion of the storefront (Wall Signs #1); however, this guideline applies to storefront tenant signage and not overall building signage.

VI. Response to Appeal Issues

Signage has been Permitted as Wall Signs – 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 is similar to a penthouse floor setback from the main façade. The previous two building signage approvals were also located on this level. The application file for the first of those, the Powerbar sign, noted that that design on this same rooftop mechanical screen, was not in the spirit of a roof sign that visually changes the existing roofline profile, but instead, a wall sign.

Downtown Design Guidelines for Taller Buildings – While there is a design guideline for signage on taller buildings that asked that commercial signage, advertising signage, or building name signage should be avoided where adjacent to roofs of buildings Downtown, this has not been incorporated in the City’s Sign Ordinance, and the number, size and location of the proposed signage is allowed. Staff has added conditions for both the amount of illumination, as well reducing the amount of time that the sign can be lit at night.

Size and Design of Signage on the East Elevation – while the proposed signage on the east elevation is a little over 2’ longer than the Powerbar signage previously approved in this location, the letter height of the P and B in that signage was 5’4” instead of the 3’ proposed, and the SKYDECK letters proposed are spaced so that more of the bronze screen behind sign remains visible. The illumination on this signage is open channel letters with exposed neon, or a comparable led lighting consistent with our downtown sign guidelines.
VII. Recommendation
Staff recommends that the Design Review Committee discuss the issues above, DISMISS the Appeal and APPROVE Design Review DRSA2016-0024.

Attachments:
1. Proposed Signage drawings, received September 7, 2016
2. Renderings, received September 2, 2016
3. Additional Renderings, received October 6, 2016
4. Staff Level Post Notice, November 1, 2016
5. Appeal Level, received November 15, 2016

Staff Planner:
Anne Burns, Design Review Planner; ABurns@cityofberkeley.info, (510) 981-7415
**CHANNEL LETTERS**

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

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<td>Black</td>
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<td>Faces</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 Flex
- Flux near LED rope
- 1/4" conduit pass thru
- .063 Aluminum return
- Wrap ties
- 2" x 2" Angle clips
- Disconnect switch
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.

PROJECT LOCATION: 2150 SHATTUCK AVENUE

APPLICANT: Ad Art, Inc.

ZONING DISTRICT: C-2 DOWNTOWN COMMERCIAL - CORE

PROPOSED ACTION: Approved, According to Conditions on Page 2 (see attached drawings)

DATE OF POSTING: November 1, 2016

APPEAL PERIOD EXPIRES AT 5:00 P.M. ON: November 15, 2016

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

Anne Burns
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.
**SKYDECK**

Night View

South Elevation - Scale: 1/32" = 1'-0"

**CHANNEL LETTERS**

Scale: 1/8" = 1'-0"

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

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<td>Horizontal supports</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 Rod
Faux neon LED rope
1/2" Conduit pass thru
.063 Aluminum returns
Weld holes
2" x 2" angle clips
Disconnect switch

RECEIVED
SEP 07 2016

LAND USE PLANNING
East Elevation - Scale: 1/16" = 1'-0"
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
**Applicant Information**

Steven Finacom  
2308 RUSSELL ST  
BERKELEY CA 94705-1926

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**Property Information**

Parcel Number: 057 202600201

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**Project Information**

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

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**Location**

2150 SHATTUCK Ave  
BERKELEY, CA 94704

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2150 SHATTUCK Ave  
BERKELEY, CA 94704

| Total: | $95.00 |

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Date: 11/15/2016  
Receipt Number: 463238  

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Print Date: 11/15/2016
MEMORANDUM

January 19, 2017

To: Design Review Committee

From: Anne Burns, Associate Planner - Design Review

Subject: 2150 Shattuck Avenue (DRSA2016-0024) Appeal of Staff Level Design Review

The Staff Level Design Review application (DRSA2016-0024) was submitted on September 7, 2016 for new building signage on an existing commercial structure. The project proposes 4 foot illuminated channel letters at the top of the existing building facade. Staff approved the application with Conditions of Approval (see attached) and posted Notices on November 1, 2016. The decision was appealed on November 15, 2016.

The item was on the December 15, 2016 agenda, and continued at the request of the applicant. The staff report and attachments from that meeting can be viewed at the link below or also found through the Boards and Commissions page for the Design Review Committee agendas:

http://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/2150_Shattuck.aspx

There is one additional submittal from the appellant and that is noted below in the attachments and is linked to the January 19, 2017 agenda along with this memorandum.

Attachments:
Correspondence, received January 12, 2017
January 12, 2017

Design Review Committee
City of Berkeley

Members of the Design Review Committee

**Re: 2150 Shattuck Avenue. Design Review #DRSA2016-0024**

I am writing with a supplement to my appeal of the proposed “Sky Deck” signage for the 2150 Shattuck Building.

This is a fairly straightforward issue. The proposed signage clearly violates several provisions of the Signage Ordinance, as outlined below, and should not be allowed.

If allowed, the proposed signage would also create a terrible precedent allowing what is essentially highly visible advertising signage atop Berkeley’s tallest private buildings.

There will be as many as eight—perhaps more—privately owned buildings 120 feet or taller in Downtown Berkeley in coming years. If most or all of these buildings are allowed signage under the questionable and unduly permissive conditions proposed by staff for the “Sky Deck” signage, the skyline of Berkeley—particularly as seen from the Berkeley Hills and the UC campus—will be transformed for the worse into an intrusive illuminated advertising display.

**Incompatibility with the Signage Ordinance**

The proposal violates the Signage Ordinance in as many as eight specific respects. I note these specific points for your consideration.

(A) The proposal violates Section 20.04.020 of the Signage Ordinance.

"Section 5: purpose of sign ordinance is ‘to allow signs to have adequate visibility from streets and rights-of-way that abut a site, but not necessarily to streets and rights-of-way farther away’...” (underlining added for emphasis).

Note that this condition is part of the overall purposes of the Ordinance, applying to all signage and giving it a higher status than supplementary conditions governing specific types of signage.

The primary purpose of signage atop a 180 foot building such as 2150 Shattuck is manifestly obvious—to display the signage to distant locations, not to the immediately
abutting streets. Pedestrians on the sidewalks in front of 2150 Shattuck would not even be able to see the proposed “Sky Deck” signs.

In the case of 2150 Shattuck, the sign proposed on the east would be primarily visible from a broad area of the Berkeley Hills and the UC Berkeley campus. The sign proposed on the south elevation would be visible from as far south as the Oakland border. Those areas are clearly “streets and rights-of-way farther way”, that do not abut 2150 Shattuck.

If the proposed signage were lower on the building where it would be visible primarily from Shattuck Avenue or Center Street, and not from further away, it might fit this provision of the Signage Ordinance. As proposed, however, it does not.

(B) The proposal violates Section 20.08.250 of the Signage Ordinance.

“Section 20.08.250 Wall sign. A sign that is attached to and placed flat against any exterior wall of a building, or which is painted on any exterior wall of a building, but is not a mural. (Ord. 7120-NS § 5 (part), 2009)”

The staff report categorizes the proposed sign as “building identification” signage or “overall building signage”. But there is no such category of signage in the Signage Ordinance. This seems to be something made up by staff.

(The Downtown Berkeley Design Guidelines do make some reference to “building identification signs” but they are not included in the Signage Ordinance. Staff cannot argue on the one hand that material in the Downtown Plan that I cited in the appeal does not apply to this proposal since it’s not in the Signage Ordinance, but on the other hand that material in the Downtown Design Guidelines can be inferred to apply to the Signage Ordinance even when it is not reflected in the Ordinance.)

Since there is no such thing in the Berkeley Signage Ordinance as “building identification” signage, what category does the“Sky Deck” signage fall into?

Most likely it would be classified as a “business complex” sign, a Signage Ordinance definition intended for structures that contain multiple businesses and/or offices.

But the Signage Ordinance prohibits business complex signs at high elevations. Specifically:

“Section 20.16.070 Business Complex Signs. 3. No sign of any type shall be suspended from or attached to the face of a multistory building above the third floor space, or forty (40) feet above the existing grade adjacent to the building, whichever is less.”
The proposed “Sky Deck” signage, at an elevation 160 or more feet above the street and above the 12th floor, clearly does comply with this condition. It should be disallowed.

(C) The proposed signage is impermissible under Section 20.24.020 of the Signage Ordinance.

“Section 20.24.020 C-1, C-2 and C-3 district signs. The following signs shall be permitted on premises in C-1, C-2 and C-3 districts...2. One ground or wall sign not exceeding thirty-two (32) square feet in area, no portion of which is higher than twenty (20) feet above existing grade. (Ord. 7120-NS § 10 (part), 2009: Ord. 6424-NS § 1 (part), 1998)”

The proposed signage is more than 20 feet above grade, and larger than 32 square feet. Please note that this provision does not specify it applies only to advertising signs, or commercial signs. It applies to ALL “ground or wall signs” without distinction.

(D) The proposed signage violates Section 20.24.030 of the Signage Ordinance.

“Section 20.24.030 Number of on-premises signs permitted on premises. In addition to temporary signs, the number of on-premises signs on premises in commercial districts is limited to...B. On premises with more than one street frontage, for each additional street frontage any combination of two of the following: one wall sign, one projecting sign, one marquee sign, one moving sign.” (underlining added for emphasis.)

Note that this language applies broadly to all signs in commercial districts, and is not limited to one type of building or complex.

2150 Shattuck is a premise with two street frontages. The applicant is proposing two wall signs, where only one is permitted for the entire building, regardless of how many street frontages it has. The ordinance doesn’t allow two wall signs. It allows a single wall sign, in combination with a second sign of another type (marquee, moving, projecting, etc.)

(E) Staff have defined the proposed signs as wall signs (see staff report, section V. page 3). If the signs are indeed “wall signs”, then their placement violates the Signage Ordinance Section 20.16.150.

“Section 20.16.150 Wall signs. Wall signs shall comply with the following standards: A. Height. No portion of a wall sign shall be higher than the roof of a building or lower than three feet above existing ground level.”

As noted in my initial appeal letter, staff have made the proposed signage “comply” by ignoring the existence of the building roof. The roof of 2150 Shattuck is below the proposed signage, which would be mounted, as staff admit in the staff report, on a non-
structural screen that rises above the top floor of the building and has no “roof” itself (it is open to the sky).

However, the actual roof cannot be defined away. It’s that solid horizontal thing above the top floor of the building and below the mechanical structures on the roof.

Staff attempt to make the existing roof disappear by arguing in the staff report that “although the signage has been proposed on the rooftop mechanical screen of the building instead of the exterior walls of the structure below, the screen design is substantial and visually is similar to a penthouse floor setback from the main facade… (the signage) was not in the spirit of a roof sign that visually changes the existing roofline profile, but instead, a wall sign.”

This is technical sophistry that does not stand up. I would suggest that the DRC act in accord with the reality of the site, not “the spirit” of what staff says might be interpreted to exist on the site. The building has a tangible, physical, roof. It is below the proposed signage. No architect or building inspector would disagree.

If the City had wished to allow signage on mechanical screens, open-air penthouse structures, and other features projecting above the roof, the Signage Ordinance would address that. Instead, the Ordinance flatly prohibits signs “higher than the roof of a building.” Case closed.

(F) Staff state that “The building owner has proposed the signage as overall building signage and not tenant signage.”

I ask the Committee to be highly skeptical of this assertion.

First, there is no statement from the building owner in evidence before the committee. The technical submittals come from an advertising signage firm, AdArt, and the tenant—Sky Deck, not the building owner—is the party that made a previous appearance before a City commission (Landmarks).

The previous signage atop the building, the Chase Bank logo signage, was also justified and permitted in this manner. The then-building owners said in writing that they were happy to have the building called the “Chase Building”.

If that was the case, they had a strange way of showing it. I could never find anything officially referring to the “Chase Building” once the signage was permitted and up. The building remained identified as “2150 Shattuck” not only on site, but in commercial advertising for rental space.

In essence, the then-owners “sold” the name of the building, but never changed anything about the building identification, so far as I could find. The Chase logos atop the building functioned as Chase Bank advertising, plain and simple, and the City never enforced the fiction that it was the “Chase Building”.

4 of 7
If the current applicants are arguing along the same lines that this building will now be formally and officially called the “Sky Deck Building”, I suggest that conditions of approval make that specific. The building should be required to have street level signage identifying it as the “Sky Deck Building”, the building directory and staff should consistently use that name, and the building should be advertised in that manner.

(Also note that the Signage drawings in your packet label the building as the “Shattuck Center” (sic) building and the “Customer” as “Shattuck Center”. Is this name currently official, and also proposed to be abandoned?).

It is also worthwhile to note that at the time the “Chase Building” signage was proposed in 2010, the then-building owners asserted that it would be there for the long term and they were happy to have the entire structure called the Chase Building as a permanent name. Specifically, a representative of the owner told the City, “Due to its location downtown, we feel it is appropriate that this building is observed as a financial institution. Historically the building was considered a financial center...We feel the building benefits from having an ‘identity’ and we would be pleased to have ‘Chase’ as the named tenant.”

Now, just six years later, the Chase logos and “name” are gone, and another building “identity” is proposed. This is despite the fact that Chase Bank remains the primary retail / ground floor tenant in the building. How long before “Sky Deck” disappears and there is a signage proposal for a fifth name for 2150 Shattuck?

(G) The proposal violates Section 20.24.040 of the Signage Ordinance.

“Section 20.24.040 On-premises signs—Allowable sign area limitations.  Except as otherwise provided in Section 20.24.050 and Chapter 20.36, the allowable sign area of on-premises signs in commercial districts shall be subject to the provisions of Chapter 20.16 and the following limitations...C. The sign area of wall signs shall not exceed fifteen (15) percent of the building face of the premises or one hundred fifty (150) square feet, whichever is less...D. The sign area of roof signs shall not exceed ten (10) percent of the building face of the premises or one hundred (100) square feet, whichever is less.”

Note that the ordinance does not say that “each” wall sign be allowed up to 150 square feet of coverage; it says that “the sign area of wall signs (sic, plural) shall not exceed...”

Staff has misinterpreted the Ordinance. To accurately interpret this, the area of all proposed wall signs needs to be combined in one number, and compared to the square footage limit.

Proposed signage is 150 square feet on the south elevation, and 84 square feet on the east elevation, for a total of 234 square feet, or 84 feet more than is allowed.
The proposal violates Section 20.60.030 of the Signage Ordinance.

“Section 20.60.030 Information to be shown on sign. Electric signs shall have placed within easy view in sufficient size and contrast to be readable from a reasonable distance the following information: A. Name of sign erector; B. Date of erection; C. Electrical power consumption (in amperes); D. Lamp complement. (Ord. 6424-NS § 1 (part), 1998).”

The proposed signs are electric, but there is no provision of this information to be included where it can be read “from a reasonable distance.” I hope the Committee will agree that identification information 160+ feet in the air is not “readable”, save with binoculars.

As you can see from my citations above, the proposal violates several provisions of the Signage Ordinance and can and should be disallowed on those conditions alone.

In addition to these specific violations of the Signage Ordinance, I would like to refer the Committee again to the clear provisions of the Downtown Berkeley Design Guidelines (revised 2012).

“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.” (Design Guidelines, page 54.)

This provision was added to the Guidelines after the Chase Building logo signs were approved. The language was a direct response to the Chase Building signs, and the Planning Commission made it clear that it did not want signage at or above the roof level of tall Downtown buildings.

In “Response to Appeal Issues” in the current staff report, the staff reject the applicability of this Design Guideline provision. They write:

“Downtown Design Guidelines for Taller Buildings – While there is a design guideline for signage on taller buildings that asked that commercial signage, advertising signage, or building name signage should be avoided where adjacent to roofs of buildings Downtown, this has not been incorporated in the City’s Sign Ordinance…” (emphasis added)
Yet in the immediately preceding paragraph of the staff report, staff cite the very same Downtown Design Guidelines as direct justification for one of their conclusions in favor of the proposed signage!

The staff report should not be allowed to cherry-pick policies it likes, and reject others.

Either the Downtown Design Guidelines do apply to the current signage (which I believe they do), or they don’t apply because they “have not been incorporated in the City’s Sign Ordinance,” as the staff report asserts. They can’t be presumed to apply in one instance, and not in another.

Finally, and most broadly, the current proposal is of no benefit to the people of Berkeley or the public good. There are only two parties that benefit from this proposed signage.

First, the building owners who may get paid for the “naming rights” to the building.

The second beneficiaries are the “Sky Deck” tenants who get the opportunity to publicize their name higher and more visibly than any other entity in Berkeley (even the University of California does not place any “identification” signs high in the air on properties it owns, although it has ample high structures).

City staff and the Design Review Committee should not go to extraordinary lengths to find ways to justify and accommodate this proposed signage, because it does no public good. There is no public interest served here—only private interests. And permitting this private interest to be accommodated opens the door for more onerous private interests to emblazon advertising signage on the tops of the other seven existing or permitted high rise buildings in the Downtown. The proposal should be rejected.

Thank you for your time and consideration, and sincerely,

Steven Finacom
2150 Shattuck Avenue

Appeal of 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).

I. Background

A. Land Use Designations:
   - General Plan: DT – Downtown
   - Zoning: C-DMU – Commercial Downtown Mixed-Use (Core Subarea)

B. Zoning Permits Required:
   - Staff Level Design Review for new signage, under BMC Section 23E.08

C. CEQA Determination: Categorically exempt pursuant to section 15301 (“Existing Facilities”) and does not apply to any exceptions stated in section 15300.2 (“Exceptions”) of the CEQA Guidelines.

D. Parties Involved:
   - Applicant        Ad Art, Inc.
   - Appellant        Steven Finacom
Figure 1: Vicinity Map
Table 1: Land Use Information

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II. Project Setting

A. Neighborhood/Area Description: The project site and its surrounding neighbors are in the C-DMU, Commercial Downtown Mixed Use, zoning district in the core area. The project site is located at the southwest corner of Center Street and Shattuck Avenue. The area around the site is characterized by a diverse mix of uses, including mixed use (ground floor commercial, with residential units above), office, and commercial. Existing building heights in the vicinity range from one to thirteen stories. Eighteen story structures have recently been permitted a block away to the south and across Shattuck on the northeast corner at Center.

III. Proposed Project Description

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 Attachment 1) 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, and has proposed 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 3 foot letter height and is centered on that face. The wall sign on the south elevation has 4 foot high letters and starts two bays west of 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.

IV. Community Discussion

A. Neighbor/Community Concerns: Members of the community spoke at the January 19, 2017 Design Review Committee meeting. Four members of the community spoke in opposition and expressed concern with signage located that high on a building. Nine members spoke in support of the Skydeck organization as well as the signage in that location. Appeal points and Staff responses are provided in Section V below.

B. Commission / Committee Review: The proposed signage was before the Landmarks Preservation Committee (LPC) as a referral from Design Review Staff on October 6, 2016. In Sub-title 23E (23E.12) of the Berkeley Municipal Code, Design Review Staff has responsibility for review of new signage, but signs involving SHRI properties may be referred to LPC for comments. While members of the LPC were supportive of the signage, they did request that Staff be careful with the amount of illumination, the time of night that the signage should be turned off, and the specific letter design. Staff added conditions into the Staff Level Design Review Approval that the installation will require a dimmer and a six-month review period after installation, and that the signage should be turned off at 11:00 p.m., instead of midnight as the two previous approvals had been permitted. (See Attachment 4)

The Design Review Committee (DRC) reviewed this signage as an Appeal of a Staff Level Design Review approval at their January 19, 2017 meeting. They discussed the proposed signage and the appeal points, listened to the community’s comments, and voted to uphold the Staff Level Design Review approval.

V. Issues and Analysis

Code / Guideline Compliance

The current proposed signage is consistent with Title 20 of the Berkeley Municipal Code (signs) and the Downtown Berkeley guidelines as overall building signage in terms of size, the number of signs allowed, and illumination. Relevant sections of the Ordinance and the guidelines follow.

Commercial District Regulations (20.24), allow four signs for the building. Individual tenant signage is considered separately. Wall signs are not to exceed 15 percent of each building face of the premises or 150 square feet in sign area, whichever is less. Two signs are currently being proposed; the proposed signage at the south elevation is 150 square feet and the proposed signage at the east elevation is 84 square feet, so the signage is within these limitations.

Staff has also considered any General Regulations (20.16) that may be relevant. Wall signs are not to be located higher than the roof and shall not project more than 12 inches from the wall of the building when it is located higher than 10 feet above existing grade. The proposed signage is located on the face of the penthouse and has a total...
projection of 5 inches from the wall of the building, so it is consistent with these limitations.

While the general regulations for business complexes limit location of signage to below the third floor or less than forty (40) feet above existing grade, these regulations only apply to tenants with no visible frontage. Furthermore, the building owner has proposed the signage as overall building signage and not tenant signage, so this regulation does not apply to this project.

According to the Downtown Berkeley Design Guidelines, sign lighting, if any should utilize spot-lighting, halo-lighting, or exposed neon (All Signs #18). The proposed signage uses exposed neon, or comparable led lighting, which is consistent with this guideline.

In terms of location, the Downtown Berkeley Design Guidelines recommend that signs on the upper façade of a building be building identification signs only, while signs for ground floor tenants are to be located at the storefront level (All Signs #9). Signage has been proposed as overall building signage and not tenant signage, so it is consistent with this guideline.

A guideline was added to the Downtown Berkeley Design Guidelines when they were amended in 2012 for 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. 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.

The roof adjacent to this building to the south, the Constitution Square Building and the building directly across Shattuck to the east, the Wright Block, are both three stories in height and would not be adversely affected by the new signage.

V. Response to Appeal Issues
As described above, Staff Level Design Review Approval was posted on site on November 1, 2016. That approval was appealed on November 15, 2016 to the Design Review Committee. (See Attachment 5) The Committee upheld Staff’s approval at their January 19, 2017 meeting. The Design Review Committee’s decision was appealed to the Zoning Adjustments Board on February 1, 2017. (See Attachment 6) Below is Staff’s response to the appeal points raised.

A. Signage is Appropriately Scaled within its Downtown Context – The size, location and number of signs proposed is consistent with the City’s Sign Ordinance as well as the Downtown Design Guidelines. The guidelines (All Signs #9) request that upper level signage be building identification signage only and not tenant signage. Staff has reviewed the size, location and design of the signage and not the content.
In the general provisions of the Sign Ordinance, section 5 states that one of its purposes is to allow adequate visibility from streets and rights-of-way that abut the site, but not necessarily from farther away. Views from farther away are not prohibited, and the design and conditions included in the Staff Level approval allow this sign to be a reasonable proposal. (See Attachment 4)

B. Signage has been Proposed as Wall Signs – 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 is similar to a penthouse floor setback from the main façade. The previous two building signage approvals were also located on this level. The application file for the first of those, the Powerbar sign, noted that that design on this same rooftop mechanical screen, was not in the spirit of a roof sign that visually changes the existing roofline profile, but instead, a wall sign.

C. Downtown Design Guidelines for Taller Buildings – While there is a design guideline for signage on taller buildings that states that commercial signage, advertising signage, or building name signage should be avoided where adjacent to roofs of buildings Downtown, this has not been incorporated in the City’s Sign Ordinance, and the number, size and location of the proposed signage is allowed. Staff has added conditions for both the amount of illumination, as well as reducing the amount of time that the sign can be lit at night. (See Attachment 4)

D. Size and Design of Signage on the East Elevation – While the proposed signage on the east elevation is a little over 2 feet longer than the Powerbar signage previously approved in this location, the letter height of the P and B in that previous signage was 5 feet, 4 inches instead of the 3 feet proposed here, and the SKYDECK letters proposed are spaced so that more of the bronze screen behind the sign remains visible. The illumination on this signage is open channel letters with exposed neon, or a comparable led lighting, consistent with our downtown sign guidelines.

VI. Recommendation

Because of the project’s consistency with the Sign Ordinance and the Downtown Design Guidelines, staff recommends that the Zoning Adjustments Board:

A. Uphold Staff Level Design Review DRSA2016-0024 pursuant to Section 23E.08 and 23E.12 and subject to the attached Staff Level Design Review Conditions (see Attachment 4) and DISMISS the Appeal.

Attachments:
1. Proposed Signage drawings, received September 7, 2016
2. Renderings, received September 2, 2016
3. Additional Renderings, received October 6, 2016
4. Staff Level Post Notice, dated November 1, 2016
5. Appeal Letter (Staff Decision), received November 15, 2016
6. Appeal Letter (Committee Decision), received February 1, 2017
7. Correspondence: Appeal Supplement, received January 12, 2017; Building Owner Support, received January 19, 2017

Staff Planner: Anne Burns, ABurns@cityofberkeley.info, (510) 981-7415
**SKYDECK**

**Night View**

**South Elevation - Scale: 1/32" = 1'-0"**

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**CHANNEL LETTERS**

Scale: 1/8" = 1'-0"

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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" Studdi
- 1 1/2" Unistrut
- 3/16" Acrylic Rod
- Faux neon LED rope
- 1/4" Conduit pass thru
- .063 Aluminum returns
- Wire holes
- 2" x 2" angle clips
- Disconnect switch

---

**Land Use Planning**

**Received SEP 07 2016**
**East Elevation - Scale: 1/16" = 1'-0"**

**CHANNEL LETTERS**

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

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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 Feet
- Flux near LED rope
- ½" Conduit pass thru
- .063 Aluminum returns
- Weep hole
- 2" x 2" Angle clips
- Disconnect switch
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.

PROJECT LOCATION: 2150 SHATTUCK AVENUE
APPLICANT: Ad Art, Inc.
ZONING DISTRICT: C-2 DOWNTOWN COMMERCIAL - CORE
PROPOSED ACTION: Approved, According to Conditions on Page 2 (see attached drawings)

DATE OF POSTING: November 1, 2016
APPEAL PERIOD EXPIRES AT 5:00 P.M. ON: November 15, 2016

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
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.

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- 3/16" Acrylic Flange

Faux rear LED rope
- 3/8" Conduit pass thru
- .063 Aluminum returns
- Wrep Hanger
- 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 29F.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 Finacorn
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: RASMITH
Payment Method: Check
Check #: 2831

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2150 SHATTUCK Ave
BERKELEY, CA 94704
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
CITY OF BERKELEY
Permit Service Center
2120 Milvia St
Berkeley, CA 94704

RECEIPT
DRSA2016-0024

**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: 
Work Description: SKy Deck sign app

**Location**

2150 SHATTUCK Ave
BERKELEY, CA 94704

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Total: $95.00

**RECEIVED**

FEB 02 2017
LAND USE PLANNING
January 12, 2017

Design Review Committee
City of Berkeley

Members of the Design Review Committee

Re: 2150 Shattuck Avenue. Design Review #DRSA2016-0024

I am writing with a supplement to my appeal of the proposed “Sky Deck” signage for the 2150 Shattuck Building.

This is a fairly straightforward issue. The proposed signage clearly violates several provisions of the Signage Ordinance, as outlined below, and should not be allowed.

If allowed, the proposed signage would also create a terrible precedent allowing what is essentially highly visible advertising signage atop Berkeley’s tallest private buildings.

There will be as many as eight—perhaps more—privately owned buildings 120 feet or taller in Downtown Berkeley in coming years. If most or all of these buildings are allowed signage under the questionable and unduly permissive conditions proposed by staff for the “Sky Deck” signage, the skyline of Berkeley—particularly as seen from the Berkeley Hills and the UC campus—will be transformed for the worse into an intrusive illuminated advertising display.

Incompatibility with the Signage Ordinance

The proposal violates the Signage Ordinance in as many as eight specific respects. I note these specific points for your consideration.

(A) The proposal violates Section 20.04.020 of the Signage Ordinance.

“Section 5: purpose of sign ordinance is ‘to allow signs to have adequate visibility from streets and rights-of-way that abut a site, but not necessarily to streets and rights-of-way farther away’...” (underlining added for emphasis).

Note that this condition is part of the overall purposes of the Ordinance, applying to all signage and giving it a higher status than supplementary conditions governing specific types of signage.

The primary purpose of signage atop a 180 foot building such as 2150 Shattuck is manifestly obvious—to display the signage to distant locations, not to the immediately
abutting streets. Pedestrians on the sidewalks in front of 2150 Shattuck would not even be able to see the proposed “Sky Deck” signs.

In the case of 2150 Shattuck, the sign proposed on the east would be primarily visible from a broad area of the Berkeley Hills and the UC Berkeley campus. The sign proposed on the south elevation would be visible from as far south as the Oakland border. Those areas are clearly “streets and rights-of-way farther way”, that do not abut 2150 Shattuck.

If the proposed signage were lower on the building where it would be visible primarily from Shattuck Avenue or Center Street, and not from further away, it might fit this provision of the Signage Ordinance. As proposed, however, it does not.

(B) The proposal violates Section 20.08.250 of the Signage Ordinance.

“Section 20.08.250 Wall sign. A sign that is attached to and placed flat against any exterior wall of a building, or which is painted on any exterior wall of a building, but is not a mural. (Ord. 7120-NS § 5 (part), 2009)”

The staff report categorizes the proposed sign as “building identification” signage or “overall building signage”. But there is no such category of signage in the Signage Ordinance. This seems to be something made up by staff.

(The Downtown Berkeley Design Guidelines do make some reference to “building identification signs” but they are not included in the Signage Ordinance. Staff cannot argue on the one hand that material in the Downtown Plan that I cited in the appeal does not apply to this proposal since it’s not in the Signage Ordinance, but on the other hand that material in the Downtown Design Guidelines can be inferred to apply to the Signage Ordinance even when it is not reflected in the Ordinance.)

Since there is no such thing in the Berkeley Signage Ordinance as “building identification” signage, what category does the “Sky Deck” signage fall into?

Most likely it would be classified as a “business complex” sign, a Signage Ordinance definition intended for structures that contain multiple businesses and/or offices.

But the Signage Ordinance prohibits business complex signs at high elevations. Specifically:

“Section 20.16.070 Business Complex Signs. 3. No sign of any type shall be suspended from or attached to the face of a multistory building above the third floor space, or forty (40) feet above the existing grade adjacent to the building, whichever is less.”
The proposed “Sky Deck” signage, at an elevation 160 or more feet above the street and above the 12th floor, clearly does comply with this condition. It should be disallowed.

(C) The proposed signage is impermissible under Section 20.24.020 of the Signage Ordinance.

“Section 20.24.020 C-1, C-2 and C-3 district signs. The following signs shall be permitted on premises in C-1, C-2 and C-3 districts... 2. One ground or wall sign not exceeding thirty-two (32) square feet in area, no portion of which is higher than twenty (20) feet above existing grade. (Ord. 7120-NS § 10 (part), 2009: Ord. 6424-NS § 1 (part), 1998)”

The proposed signage is more than 20 feet above grade, and larger than 32 square feet. Please note that this provision does not specify it applies only to advertising signs, or commercial signs. It applies to ALL “ground or wall signs” without distinction.

(D) The proposed signage violates Section 20.24.030 of the Signage Ordinance.

“Section 20.24.030 Number of on-premises signs permitted on premises. In addition to temporary signs, the number of on-premises signs on premises in commercial districts is limited to... B. On premises with more than one street frontage, for each additional street frontage any combination of two of the following: one wall sign, one projecting sign, one marquee sign, one moving sign.” (underlining added for emphasis.)

Note that this language applies broadly to all signs in commercial districts, and is not limited to one type of building or complex.

2150 Shattuck is a premise with two street frontages. The applicant is proposing two wall signs, where only one is permitted for the entire building, regardless of how many street frontages it has. The ordinance doesn’t allow two wall signs. It allows a single wall sign, in combination with a second sign of another type (marquee, moving, projecting, etc.)

(E) Staff have defined the proposed signs as wall signs (see staff report, section V. page 3). If the signs are indeed “wall signs”, then their placement violates the Signage Ordinance Section 20.16.150.

“Section 20.16.150 Wall signs. Wall signs shall comply with the following standards: A. Height. No portion of a wall sign shall be higher than the roof of a building or lower than three feet above existing ground level.”

As noted in my initial appeal letter, staff have made the proposed signage “comply” by ignoring the existence of the building roof. The roof of 2150 Shattuck is below the proposed signage, which would be mounted, as staff admit in the staff report, on a non-
structural screen that rises above the top floor of the building and has no “roof” itself (it is open to the sky).

However, the actual roof cannot be defined away. It’s that solid horizontal thing above the top floor of the building and below the mechanical structures on the roof.

Staff attempt to make the existing roof disappear by arguing in the staff report that “although the signage has been proposed on the rooftop mechanical screen of the building instead of the exterior walls of the structure below, the screen design is substantial and visually is similar to a penthouse floor setback from the main facade... (the signage) was not in the spirit of a roof sign that visually changes the existing roofline profile, but instead, a wall sign.”

This is technical sophistry that does not stand up. I would suggest that the DRC act in accord with the reality of the site, not “the spirit” of what staff says might be interpreted to exist on the site. The building has a tangible, physical, roof. It is below the proposed signage. No architect or building inspector would disagree.

If the City had wished to allow signage on mechanical screens, open-air penthouse structures, and other features projecting above the roof, the Signage Ordinance would address that. Instead, the Ordinance flatly prohibits signs “higher than the roof of a building.” Case closed.

(F) Staff state that “The building owner has proposed the signage as overall building signage and not tenant signage.”

I ask the Committee to be highly skeptical of this assertion.

First, there is no statement from the building owner in evidence before the committee. The technical submittals come from an advertising signage firm, AdArt, and the tenant—Sky Deck, not the building owner—is the party that made a previous appearance before a City commission (Landmarks).

The previous signage atop the building, the Chase Bank logo signage, was also justified and permitted in this manner. The then-building owners said in writing that they were happy to have the building called the “Chase Building”.

If that was the case, they had a strange way of showing it. I could never find anything officially referring to the “Chase Building” once the signage was permitted and up. The building remained identified as “2150 Shattuck” not only on site, but in commercial advertising for rental space.

In essence, the then-owners “sold” the name of the building, but never changed anything about the building identification, so far as I could find. The Chase logos atop the building functioned as Chase Bank advertising, plain and simple, and the City never enforced the fiction that it was the “Chase Building”.

4 of 7
If the current applicants are arguing along the same lines that this building will now be formally and officially called the “Sky Deck Building”, I suggest that conditions of approval make that specific. The building should be required to have street level signage identifying it as the “Sky Deck Building”, the building directory and staff should consistently use that name, and the building should be advertised in that manner.

(Also note that the Signage drawings in your packet label the building as the “Shattuck Center” (sic) building and the “Customer” as “Shattuck Center”. Is this name currently official, and also proposed to be abandoned?).

It is also worthwhile to note that at the time the “Chase Building” signage was proposed in 2010, the then-building owners asserted that it would be there for the long term and they were happy to have the entire structure called the Chase Building as a permanent name. Specifically, a representative of the owner told the City, “Due to its location downtown, we feel it is appropriate that this building is observed as a financial institution. Historically the building was considered a financial center... We feel the building benefits from having an ‘identity’ and we would be pleased to have ‘Chase’ as the named tenant.”

Now, just six years later, the Chase logos and “name” are gone, and another building “identity” is proposed. This is despite the fact that Chase Bank remains the primary retail / ground floor tenant in the building. How long before “Sky Deck” disappears and there is a signage proposal for a fifth name for 2150 Shattuck?

(G) The proposal violates Section 20.24.040 of the Signage Ordinance.

“Section 20.24.040 On-premises signs—Allowable sign area limitations. Except as otherwise provided in Section 20.24.050 and Chapter 20.36, the allowable sign area of on-premises signs in commercial districts shall be subject to the provisions of Chapter 20.16 and the following limitations... C. The sign area of wall signs shall not exceed fifteen (15) percent of the building face of the premises or one hundred fifty (150) square feet, whichever is less... D. The sign area of roof signs shall not exceed ten (10) percent of the building face of the premises or one hundred (100) square feet, whichever is less.”

Note that the ordinance does not say that “each” wall sign be allowed up to 150 square feet of coverage; it says that “the sign area of wall signs (sic, plural) shall not exceed...”

Staff has misinterpreted the Ordinance. To accurately interpret this, the area of all proposed wall signs needs to be combined in one number, and compared to the square footage limit.

Proposed signage is 150 square feet on the south elevation, and 84 square feet on the east elevation, for a total of 234 square feet, or 84 feet more than is allowed.
(H) The proposal violates Section 20.60.030 of the Signage Ordinance.

“Section 20.60.030 Information to be shown on sign. Electric signs shall have placed within easy view in sufficient size and contrast to be readable from a reasonable distance the following information: A. Name of sign erector; B. Date of erection; C. Electrical power consumption (in amperes); D. Lamp complement. (Ord. 6424-NS § 1 (part), 1998).”

The proposed signs are electric, but there is no provision of this information to be included where it can be read “from a reasonable distance.” I hope the Committee will agree that identification information 160+ feet in the air is not “readable”, save with binoculars.

As you can see from my citations above, the proposal violates several provisions of the Signage Ordinance and can and should be disallowed on those conditions alone.

In addition to these specific violations of the Signage Ordinance, I would like to refer the Committee again to the clear provisions of the Downtown Berkeley Design Guidelines (revised 2012).

“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.” (Design Guidelines, page 54.)

This provision was added to the Guidelines after the Chase Building logo signs were approved. The language was a direct response to the Chase Building signs, and the Planning Commission made it clear that it did not want signage at or above the roof level of tall Downtown buildings.

In “Response to Appeal Issues” in the current staff report, the staff reject the applicability of this Design Guideline provision. They write:

“Downtown Design Guidelines for Taller Buildings - While there is a design guideline for signage on taller buildings that asked that commercial signage, advertising signage, or building name signage should be avoided where adjacent to roofs of buildings Downtown, this has not been incorporated in the City’s Sign Ordinance...” (emphasis added)
Yet in the immediately preceding paragraph of the staff report, staff cite the very same Downtown Design Guidelines as direct justification for one of their conclusions in favor of the proposed signage!

The staff report should not be allowed to cherry-pick policies it likes, and reject others.

Either the Downtown Design Guidelines do apply to the current signage (which I believe they do), or they don’t apply because they “have not been incorporated in the City’s Sign Ordinance,” as the staff report asserts. They can’t be presumed to apply in one instance, and not in another.

Finally, and most broadly, the current proposal is of no benefit to the people of Berkeley or the public good. There are only two parties that benefit from this proposed signage.

First, the building owners who may get paid for the “naming rights” to the building.

The second beneficiaries are the “Sky Deck” tenants who get the opportunity to publicize their name higher and more visibly than any other entity in Berkeley (even the University of California does not place any “identification” signs high in the air on properties it owns, although it has ample high structures).

City staff and the Design Review Committee should not go to extraordinary lengths to find ways to justify and accommodate this proposed signage, because it does no public good. There is no public interest served here—only private interests. And permitting this private interest to be accommodated opens the door for more onerous private interests to emblazon advertising signage on the tops of the other seven existing or permitted high rise buildings in the Downtown. The proposal should be rejected.

Thank you for your time and consideration, and sincerely,

Steven Finacom
January 19, 2017

Anne Burns, Associate Planner
City of Berkeley
Design Review
1947 Center Street,
Berkeley, CA 94704

Regarding ---

Subject: 2150 Shattuck Avenue (DRSA2016-0024)
Appeal of Staff Level Design Review

Dear Anne,

I am sorry I will not be able to attend your hearing this evening. Heather Scott will be there representing our ownership. On behalf of the ownership of 2150 Shattuck I would like to express my support for the Skydeck sign on our parapet. We have had several inquiries from parties wishing to install their signs on our parapet but it was an easy decision to proceed with Skydeck.

We realize that this signage will, for some, become our building’s reference. My feeling is that Skydeck aptly reflects the spirit of innovation that we hope to foster in our building and which is the same spirit that occurs to me when I think of the City of Berkeley and the broader Berkeley community.

Please let me know if I can be of any assistance in this process.

Best Wishes,

Scott Newman
CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC
2150 Shattuck

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

SUPPORT □ OPPOSITION □
(Optional)

RESIDENT □ BUSINESS OWNER □

OTHER □

SIGNATURE: □

PHONE (14) 342-2575 DATE 3/23/2017
(In case we would like to contact you)

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC
2150 Shattuck ave, berkeley

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

SUPPORT □ OPPOSITION □
(Optional)

RESIDENT □ BUSINESS OWNER □

OTHER □

SIGNATURE: □

PHONE DATE march 23, 2017
(In case we would like to contact you)

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC
Sky Deck Sign Support 2150 Shattuck

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

SUPPORT □ OPPOSITION □
(Optional)

RESIDENT □ BUSINESS OWNER □

OTHER □

SIGNATURE: □

PHONE 734-308-7655 DATE 3/23/2017
(In case we would like to contact you)

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 2150 Shattuck / Support Signage

NAME Ernest C Brown
(Please Print- to be sure we spell your name correctly)

SUPPORT □ OPPOSITION □
(Optional)

RESIDENT □ BUSINESS OWNER □

OTHER □

SIGNATURE: □

(In case we would like to contact you)
CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 2150 Shattuck

NAME Avi Singh
(Project Address)
(Please Print- to be sure we spell your name correctly)

SUPPORT (Optional)
OPPOSITION

RESIDENT BUSINESS OWNER

SIGNATURE:

PHONE 618-643-7899 DATE 3/23/2017
(In case we would like to contact you)

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC 2150 Shattuck Avenue

NAME Anastasia Lim
(Project Address)
(Please Print- to be sure we spell your name correctly)

SUPPORT (Optional)
OPPOSITION

RESIDENT BUSINESS OWNER

SIGNATURE:

PHONE 925-267-6821 DATE 3/23/2017
(In case we would like to contact you)
ITEM #: ___________  ZAB DATE: ___________

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC  2150 Shattuck Ave
(Name)

NAME Shawn McDonald
(Project Address)

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

SUPPORT __  OPPOSITION ___
(Optional)

RESIDENT ___  BUSINESS OWNER ___

OTHER

SIGNATURE: ____________________________

PHONE 510-673-1926  DATE 3/23
(In case we would like to contact you)

ITEM #: ___________  ZAB DATE: ___________

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC  2150 Shattuck Ave
(Name)

NAME Jason Lee
(Project Address)

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

SUPPORT ___  OPPOSITION ___
(Optional)

RESIDENT ___  BUSINESS OWNER ___

OTHER

SIGNATURE: ____________________________

PHONE 510-402-8060  DATE 3/23
(In case we would like to contact you)

ITEM #: ___________  ZAB DATE: ___________

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC  2150 Shattuck Ave
(Name)

NAME Thura Lin Naing
(Project Address)

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

SUPPORT ___  OPPOSITION ___
(Optional)

RESIDENT ___  BUSINESS OWNER ___

OTHER

SIGNATURE: ____________________________

PHONE 510-384-4285  DATE 03/23/2017
(In case we would like to contact you)

ITEM #: ___________  ZAB DATE: ___________

CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC  2150 Shattuck Ave
(Name)

NAME Tristan Rocheleau
(Project Address)

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

SUPPORT ___  OPPOSITION ___
(Optional)

RESIDENT ___  BUSINESS OWNER ___

OTHER

SIGNATURE: ____________________________

PHONE 607-232-216  DATE 3-23-2017
(In case we would like to contact you)
AGENDA TOPIC: 2150 Shattuck (Project Address)
NAME: Rita Macedo (Please Print to be sure we spell your name correctly)

SUPPORT   OPPOSITION   (Optional)
RESIDENT   BUSINESS OWNER   

SIGNATURE: ___________________________ DATE: 3/23/2017
PHONE: ___________________________ (In case we would like to contact you)

AGENDA TOPIC: 2150 Shattuck (Project Address)
NAME: Akash Barshi (Please Print to be sure we spell your name correctly)

SUPPORT   OPPOSITION   (Optional)
RESIDENT   BUSINESS OWNER   

SIGNATURE: ___________________________ DATE: ___________________________
PHONE: ___________________________ (In case we would like to contact you)

AGENDA TOPIC: Support Skydeck Sign (Project Address)
NAME: Wendell Hunter (Please Print to be sure we spell your name correctly)

SUPPORT   OPPOSITION   (Optional)
RESIDENT   BUSINESS OWNER   

SIGNATURE: ___________________________ DATE: ___________________________
PHONE: ___________________________ (In case we would like to contact you)

AGENDA TOPIC: SKYDECK Sign (Project Address)
NAME: Yaseen Acs (Please Print to be sure we spell your name correctly)

SUPPORT   OPPOSITION   (Optional)
RESIDENT   BUSINESS OWNER   

SIGNATURE: ___________________________ DATE: ___________________________
PHONE: ___________________________ (In case we would like to contact you)
CITY OF BERKELEY
ZONING ADJUSTMENTS BOARD
REQUEST TO ADDRESS THE BOARD

AGENDA TOPIC: SkyDeck 2150 Shattuck Ave.

NAME: Charlotte Irwin
(Project Address)
(Please Print - to be sure we spell your name correctly)

SUPPORT: ✓  OPPORTION: ___
(Optional)

RESIDENT: ✓  BUSINESS OWNER: ___

OTHER: 

SIGNATURE: 

PHONE: 510-541-9700  DATE: 3/23/17
(In case we would like to contact you)
Excerpted from the City of Berkeley's Signage Ordinance

Section 20.08.250 Wall signs.
Wall signs shall comply with the following standards:
A. Height. No portion of a wall sign shall be higher than the roof of a building or lower than three feet above existing ground level.
B. Maximum Projection.
1. When the lower edge of a wall sign is between three feet and ten (10) feet above existing grade, no portion of the sign shall project more than four inches from the wall of the building.
2. When the lower edge of a wall sign is more than ten (10) feet above existing grade, no portion of the sign shall project more than twelve (12) inches from the wall of the building. (Ord. 7120-NS § 5 (part), 2009)

Note: the Sign Ordinance contains no definition of "building identification signage" and makes no reference to it whatsoever. The ordinance does on page 20 (Section 20.16.070) refer to "Business complex signs" and includes this provision:

3. No sign of any type shall be suspended from or attached to the face of a multistory building above the third floor space, or forty (40) feet above the existing grade adjacent to the building, whichever is less.

Excerpts from Downtown Berkeley Design guidelines. Page 51, Signs and Graphics:

9 Locate signs for ground floor tenants at storefront level. Signs on the upper façade should be building identification signs only.

Page 54:

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.
Date: Thursday, October 6, 2016
Time: 7:00 p.m.
Place: North Berkeley Senior Center, 1901 Hearst Avenue

1. DISCUSSION/COMMENT

A. 2150 Shattuck Avenue**
   New signage on State Historic Resources Inventory (SHRI) building

B. 2100 San Pablo Avenue (#ZP2016-0034) Referral**
   Use Permit including demolition of a non-residential building over forty years old

C. 1717 University Avenue (#ZP2016-0101) Referral**
   Use Permit including demolition of a non-residential building over forty years old

D. 1218 Santa Fe Avenue (#ZP2016-0009) Referral**
   Use Permit including demolition of a non-residential building over forty years old

Advisory comments given.
ACTION SUMMARY FOR
DESIGN REVIEW COMMITTEE MEETING
December 15, 2016
7:00 PM

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Public Attendance: 27
Public Speakers: 15

Staff in Attendance:
Burns, Sundelson,

2150 Shattuck Avenue [at Center Street] (DRSA2016-0024) Appeal of Staff Level Design Review to install two (2) signs; each sign made up of one (1) set of channel letters with exposed neon, or comparable led lighting, located on the rooftop equipment enclosure of a building listed on the State Historic Resources Inventory (SHRI).

The applicant for building signage on 2150 Shattuck has requested that this item be continued until the next meeting in order to give everyone enough time to prepare.

Ex parte communications: Edwards received an e-mail from the appellant requesting that this agenda item be continued for more preparation time. He forwarded that e-mail on to Staff.
2150 SHATTUCK AVENUE [at Center Street] (DRSA2016-0024) Appeal of Staff Level Design Review to install two (2) signs; each sign made up of one (1) set of channel letters with exposed neon, or comparable led lighting, located on the rooftop equipment enclosure of a building listed on the State Historic Resources Inventory (SHRI)

**Staff Level Design Review approval was upheld:** MOTION (Clarke, Mitchell) VOTE (4-1-0-0) Anno - no.
S. Allen: We will do roll call and ex parte. Thank you.

Board Member Teresa Clarke.

T. Clarke: Present, no ex parte.

Board member John Erickson.

Present, no ex parte.

Board Member John Selawsky.

Present. Steve Finacom gave me a call and asked me to meet with him. I did briefly. He wanted to discuss signage under the Downtown Area Plan as it relates to 2150 Shattuck.

Board Member O'Keefe.

Present, no ex parte.

Board Member Kahn.

Present, no ex parte.

Board Member Brazile Clark.

Present, no ex parte.

Board Member Sheahan.

Present, no ex parte.

Board Member Simon-Weisberg.

Present, no ex parte.

And Acting Chair Pinkston.

D. Pinkston: Present, no ex parte.

D. Pinkston: If we can take up the remaining items on the agenda, that would be great.
The next item on the agenda is 7 Avenue, an appeal of a two rooftop signs decision by the design review committee. Did I get that right?

Staff, if you want to give us a brief report.

>> A. Burns: Yes. Thank you. My name is Anne Burns. I'm here with design review here at land use planning. The decision to appeal is the design review committee's decision from last month -- several. It was the January. They have reviewed the staff-level approval of the sign application.

>> D. Pinkston: Can you speak into the mic?

Thanks.

>> A. Burns: Okay. All right.

So again it was a design review committee upheld staff approval of two signs. So the two signs on the 2150 Shattuck is on the southwest corner of center and Shattuck. And I have to say it had also gone to landmarks because it is on a building that is on the list of potential landmarks. It is modern. And I wanted to make sure that landmarks was able to review it before we posted it. And they did comment on it. We changed some conditions on illumination and the amount of time it could be you will -- illuminated and posted after.

One of the signs is on the east elevation where the two previous approvals have been, the chase sign and before that a Powerbar sign. And the other sign is on the south elevation which previously had a Chase sign.

It is consistent with the zoning ordinance, title 20, for the number of signs and the maximum square footage allowed for each sign.
There are two street frontages, so the zoning ordinance calculates it based on street frontages and how many signs you get. It is on the corner, it gets more.

>> D. Pinkston: I'm sorry. Were you finished?
If you are not, keep going.

>> A. Burns: I can be. That is the ordinance. And then in terms of the guidelines, we looked at the illumination. And then also one of the guidelines that comes up that is not in the ordinance, one of the guidelines is the building identification signage should be at the top of the building and not just where the tenants are. This was a sign that was chosen and approved by the owner of the building. And I think that is fine. So thank you.

>> D. Pinkston: Other questions?

John.

>> J. Selawsky: Admittedly this may be a little bit of parsing and technical, but I see that structure on top of the building as a rooftop structure and not the roof itself. The interior of the roof is defined. The final roof element is the roof covering. Anything above that is considered a rooftop structure. So technically that is not the roof. That is the rooftop structure, in my mind.

>> They even have it in the definition.

>> J. Selawsky: I checked the state building code. It is there.

>> What is your question?

>> J. Selawsky: My question is I don't think that is permissible because that is not the roof. That is my question. Or that is my contention at this point.
>> D. Pinkston: Why don't we limit it to questions. Fair enough.

>> J. Selawsky: That is my question.

>> D. Pinkston: Is the question, is that a rooftop structure?

>> J. Selawsky: Is that a roof?

>> A. Burns: It is a mechanical screen, I grant you. It is substantial mechanical screen that is articulated the same as the building facade and has a substantial roof element.

>> J. Selawsky: My question is, is there a roof covering under that facade?

Beneath. The roof itself is --

>> A. Burns: There is a roof under that. There is a mechanical equipment and maybe telecommunication equipment, I believe, behind those screens. Very substantial screens. And already had two approvals.

>> J. Selawsky: I'll have further comments.

>> T. Clarke: They have a roof on the mechanical or open to the air?

>> A. Burns: Open to the air.

>> D. Pinkston: How big was the Powerbar and Chase signs?

Would they occupy roughly the same amount of real estate for the same locations?

>> A. Burns: Powerbar kid on the east location. The letter size is three-foot letter height on the sky deck and the Powerbar was the P and the B were five-feet-four-inches. The sky deck is spaced out farther by the two bays but it allows you to see more of the building between the building bays. And it is illumination. It is consistent with the guidelines. The power bar had the plex on the front face.
>> D. Pinkston: We have a number of cards for the public hearing. Nearly all of them are in support of sign. Given the hour, what I would like to do is get everybody to a minute and for those who want to say hi I'm here to support the sign and you don't have anything else more technical to share with us, you stand up and say just that and we keep moving. Otherwise we will be here for an hour listening to people support the sign, which is lovely. We are glad you came and we want to hear from you. I just wonder if we might accelerate the process slightly. Do what you can.

Is there a presentation by the applicant before we move into the hearing?

>> S. Allen: This is an appeal. We would do five minutes for the applicant and the appellant. We will start with the appellant followed by the applicant.

>> D. Pinkston: Is the appellant here?
Steve.

>> Good evening, again, commissioners. First I want to clarify what the hearing is not about. It is not about the merits of the sky deck. Sky deck is a worthwhile program that has nothing to do with whether a sign should be allowed at this particular location. That could really shorten down the hearing if everybody understands that. You are ruling on the legality of the sign, not the nature of the applicant. What does matter at the sign?

Three issues. Is a sign allowed?

No. The signage ordinance is really clear. A roof sign is a sign that is either painted upon or attached wholly to the roof of any building
or which is attached to or painted upon a structure attached wholly to the roof of a building. And that is a mechanical penthouse, as the staff concede. It is a screen. I have actually been up there. It is open to the sky. It is simply a metal screen that you can see through at various points and has doors through it. That is on top of the roof of the building. There is no other way to define this. There is no roof above that. That is prohibited. It is a roof sign that is attached to the structure. And the staff report confirms that it is a rooftop equipment enclosure and that signage has been proposed on the rooftop mechanical screen. Okay.

The guidelines are clear. Architecture, not signage, should define the upper elevation of the building, especially those visible from the downtown, as this is. Commercial signage including emblems or logos or names shall be avoided on or adjacent to the roofs of buildings in the downtown. The staff report tries to get around this by defining this as a wall sign. A wall sign according to the signage ordinance is a sign that is attached to and placed flat against any exterior wall of a building. We have already established that is not an exterior wall of the building. It is a rooftop screen. The walls of a building are below it, and the facade.

Also, the definition of wall signs allowable contains this provision. Height, no portion of a wall sign shall be higher than the roof of a building or lower than three feet above existing ground level. Even if you were to make the leap of logic and say that is a wall up there, it is still above the roof. And it is impermissible because wall signs are not allowed above the roof of a building.
So then there is the issue of what is the nature of this proposed signage. The applicant and staff say this is building identification signage. This caused me to look through the signage ordinance. No definition of building identification signage is provided in the signage ordinance. There is a definition of building complex signs, but those are ruled out by staff in this case.

So we have building identification signage as a term that does not exist in the signage ordinance. The downtown Berkeley design guidelines say signs on the upper facade of a building should be building identification signs only. So that is where the justification comes from.

But again, this sign is proposed for the roof not for above the roof, not for the facade of the building. I'm sorry. The design guidelines say signs on the upper facade should be building identification signs only.

So is this really building identification signage?

No. It is really actually de facto commercial signage. The owners have told us in writing, "We realize that the signage will for some become the building's signage." That is a really tepid statement. They are saying let's not call it the sky deck building. If somebody is walking by, there is a sky deck sign up there, we are fine with that. That was the case with the Powerbar or Chase sign. They never changed anything about the building. Nothing about the signage. They called it 2150 Shattuck or they called it the Shattuck -- Shattuck center building. Not Powerbar or Chase building. They just had the advertising up there.

The applicants will say sky deck is a UC program, and that is true. But the purpose of the UC program there is to incubate for-profit businesses. So I want to read you three things that at the DRC hearing
owners of the for-profit businesses said. The signage will create more awareness of sky deck and the start-ups. Another, because of the signage and creating more awareness about sky deck it will be easier for me to get funding. It will be easier for me to recruit more people. The third person said I think that the signage would certainly help people look like me get customers and help with investors.

So I'll conclude there, but basically this is advertising signage. It is above the roof. It is not permissible. And it is very easy to reach that conclusion. Thank you.

> D. Pinkston: Steve, I have a question. Berkeley as I'm sure you know wants to encourage office development uses in the downtown because we have been getting a preponderance of housing. And for many office owners building identification signage can be a huge help. Presuming we could decide a sign was allowable on this building, I'm setting aside the issue of whether it is building identification or tenant signage for the moment, where would you put that sign?

Since you are saying don't put it there, where do you think is a better place to put that sign?

> It certainly shouldn't be above the roof.

> D. Pinkston: I got that.

> I would say follow the signage guidelines.

> D. Pinkston: I guess I'm saying why do you care?

Other than as a zoning technicality and we like to be correct to the zoning, I'll grant you that as well, we like to be technically correct, if that sign is on that rooftop enclosure or down at the top of the building, which frankly I think is a more visible more prominent
location for you to put it on the cornice, what aesthetic goal you achieving by shifting it from where it is, where it appears to be part of the building even though technically maybe it is not, to a location that might be more visually prominent?

>> Well, so first I disagree that you like to be technically correct. You have to be technically correct.

>> D. Pinkston: Okay. I'm trying to shift off the technical correctness. Because I think we have a gray area, and part of interpreting a gray area is what is the right outcome. What is the right outcome from a policy perspective?

Because that informs your interpretation of the gray.

So I'm trying to understand why the sign is worse where it is than where it would be if one were to follow your logic.

>> It is impermissible where it is.

>> D. Pinkston: I got that.

>> I'm not arguing aesthetics here. But I want to refer to something that staff said. I wish you had the transcript at the DRC meeting because there was a long discussion between the DRC chair and staff about adding what other signage would be permitted. And staff basically said that other poem could come in and the city would give them permits, or under the staff interpretation, could give them permits for additional signs on other facades of the building and those signs would not need to say Skydeck. They could be something else.

>> You are not answering the question that she asked.
D. Pinkston: Presuming this building gets two signs at the top of the building somewhere. Why is this an inferior location as opposed to what you are calling the building wall? Or do you just not care and you care about the technicality? Which is okay.

I want you to rule on the technicality.

D. Pinkston: That is fine. That answers my question.

One option for you would be to send it back to DRC.

D. Pinkston: I wasn't looking for options. I was just looking for what policy goal you are attempting to achieve. What you are saying is I'm worried about the technical zoning language, that is fine. That is an okay answer.

I worried about this policy goal. In the downtown design guidelines, architecture not advertising should define the upper architecture of the buildings, especially those downtown. I wrote that, because after the Chase sign went up I went to the Planning Commission and went through the long laborious process of asking the Planning Commission to amend the design guidelines. This is what the result. Architecture, not advertising, should define the upper elevations. That is my goal, to see that snored.

D. Pinkston: All right. Thank you.

Any questions?

L. Simon-Weisberg: Are you admitting it should be the skyscape, or you are allowing that they are allowed to have some kind of sign?
I think the architecture should define the building. And I'm not going to play staff and say exactly where a sign would be permissible. I would like to hear the staff arguments on that.

D. Pinkston: Okay. Thanks. The applicant. Would the applicant please come forward?

Good evening, ZAB members. It is odd to be on the other side of the dais at this time. The sky deck as you mentioned is a program of UC Berkeley at the top of the building. And this identity, and this is the sky deck, many of the members and many of the people who are talking tonight, they have start-ups, they contribute to innovate with new businesses, it is not a commercial operation. The building owners have waived any rent for the sign because they want it to be identified as the Skydeck building. One of them teaches at Cal and is a big supporter of this kind of innovation and what is going on. So it is very important for them.

I took this last week, not too long ago. This was a temporary sign. And the previous Powerbar signage under the building that was allowed under the same signage ordinance, which has not changed in all of this time. So I'm assuming the city has considered that structure a component of the roof because they have done this all along and we worked carefully with them in doing the design, the scale, the size, proportions and everything. This is the Chase signage. Again, they followed the guidelines. So we followed the same guidelines. And as a result we created this. It is a metal channel aluminum which has LED lighting which is similar to a neon but uses 10% of the energy but can be dimmed. At night
it can be adjusted and we have agreed to turn it off at a certain hour to not offend or bother anybody.

This is how it would look at night. This is how it would look during the day on the building from the hills. Here at night you can't even really see it. This is about a block away during the twilight and then at night. This is looking north at Shattuck. And then this is even a few more blocks away by the Shattuck Hotel. And as you can see, it blends in well. It fits with the building. We are attempting to accommodate the rules, which we didn't invent, and we are not trying to change anything. That is really all we have to say on this whole thing. Any questions?

>> D. Pinkston: Any questions?

Charles.

>> C. Kahn: I have a question. Maybe it is more for Ann than for you. But don't sit down yet. I'm reading Steve Finacom's sheet here, and I'm looking at the thing that says roof sign. Which seems to be what a lot of this discussion is about. It says a sign that is either painted upon or attached wholly to the roof of any building which arguably this is not, but then it says or, which is attached to or painted upon a structure attached wholly to the roof of a building. So in my opinion a mechanical shield like this is a structure attached wholly to the roof of a building. So it appears that this in fact section, 20.08.200 was specifically written for situations like this where you would have a mechanical structure or similar structure, maybe an elevator shaft that went up above, attached wholly to the roof of a building. I'm not sure why we are talking about this. Am I misunderstanding what this says?

>> A. Burns: That is a definition of a roof sign, right?
C. Kahn: And this is not a roof sign?

A. Burns: Well, the two previous approvals, and I went back through the Powerbar approval because the planner at the time tried to make it a roof sign. They argued that there was a very strong roof parapet and the sign was not sticking above that very strong line and it was permitted as a wall sign by square footage. The ordinance has not changed since then. So we went, and the Chase sign also was permitted as wall signs.

C. Kahn: You are just trying to be consistent with past history.

A. Burns: Honestly if they put an office up there and put a roof over it it would be the same building. It is the same building, and it is visually less impactful than if you brought it down on the facade.

C. Kahn: That is my feeling.

A. Burns: And roof signs are allowed on that building. It is actually two roof signs are allowed on the building. Different square footage, they have to be set back from the parapet. They have to be only so far above the thing. It wouldn't be exactly the same but it is certainly possible.

C. Kahn: Thank you for the clarification, Anne. So much was talking about is this a roof sign or not. I think it would qualify as one. If you historically have proved these things as wall signs, I think it is probably more appropriate to stay with that history. Thanks, Steve. I don't have any questions.

D. Pinkston: Any other questions?
What I would like to do is move into the hearing. We have a good half hour, 45 minutes of testimony if we do the typical two minutes. What I would like to do is make this like speed dating. This is speed testimony. Unless you have something substantive to say. So I would like the following three people -- everyone who is here to testify, stand up and come to the mic. I'm going to give you each one minute. And rather than me pull a card, why don't you state your name, state your position, and we will take your testimony based on the cards you have submitted. Go right ahead.

>> I'm Carolyn W, the executive director of Skydeck. You are aware of what Skydeck is. We are a program at UC Berkeley, we are a not for profit. We depend solely on donations. And what we are trying to do here, because I do believe it is relevant, as we have heard, the sign does conform with the city staff's recommendation and historical public safety of the signs. I thought I would let you know what our goals are. We accept start-ups that are trying to change the world. We tell them we are not charging you rent, not taking any fees or equity from you. We have one requirement. That is you try to solve the world's biggest problems. The start-ups we have are very young, young companies. They are one, two, three, four people. So our help and nurturing of them can make the difference of their very survival. The building owners themselves who are very involved in Skydeck -- and my minute's up. You'll hear from my start-ups. Thank you for your time.

>> D. Pinkston: Thank you. Please come forward.

>> I am one of the founders in the Skydeck company. The company is developing a medical device that is addressing the management issues of
the hypertension that is a public health concern among 80 million Americans. And we are in very early stages, even though we are a not for profit company. Right now we don't have revenue. So all our founders are using our savings to develop this world-changing technology. And we feel Skydeck is a home for us to develop in this early stage, providing a lot of resources and support. That is why we also support Skydeck to get this sign on the building so that we can have better recognition. I'm also a Berkeley resident and I have been here for five years. So I would like the city --

>> D. Pinkston: Thank you. Next.

>> Hello. I am the founder of monoliths, and we are developing wireless networks for the Internet of things. We are solving a really challenging problem of getting rid of the -- from future wireless -- I just want to say that I personally support the signage on the building and I think this looks pretty beautiful and we need to project a very strong image of the entrepreneurship activities that are going on in the City of Berkeley. That is really great opportunity to do that. And it helps for the young companies like us to support the mission that we are working on. Thank you.

>> D. Pinkston: Thank you.

>> My name is an drew G. I'm with ad art sign company, the sign company that will be building and installing the sign at Skydeck. In short, obviously I am in support of the sign. We have spent the better part of a year and a half working with the designers and with Skydeck so come up with something aesthetically pleasing and minimalistic and also promotes the brand and image that the building owners wanted and also that
represents the community in general. So I'm also here to field any technical questions that you might have.

>> D. Pinkston: Thank you. Next.

>> Thanks for having us. Graduate of 2010 of UC Berkeley. And I will tell you when I graduated it was very hard to find a job. About six, seven months I couldn't find a job. Now a part of Skydeck we have hired five students from Cal. And these start-ups are actually helping Cal students who are graduating. Also giving them an opportunity. A sign like that would inspire young entrepreneurs and students to come to a home where they can feel like they are part of a community. Thank you very much.

>> D. Pinkston: Thank you. Next.

>> My name is Wendall hunter and I'm the founder of a start-up shower pill. And we are enabling people to work out and be healthy. I was actually a student at Cal when the Powerbar building was up and it was very aspirational to me to start my own CPG company. Being a part of Skydeck I know it will have an even greater impact to touch more lives and inspire more entrepreneurs, which will be better for the City of Berkeley. And I'm in support of the sign.

>> D. Pinkston: Thank you. Next.

>> Hi. My name is AKASH. I'm a staff member at UC Berkeley. And like everyone said, Skydeck allows a number of programs to help entrepreneurs actually change the world in meaningful ways. I think as the number of you have been studying research, research shows that underrepresented minorities and female companies disproportionately change the world. And there are organizations all across the East Bay that are
working towards helping underrepresented minorities and female companies find the resources. Allowing Berkeley to highlight some of the programs we provide at no cost with no equity as a resource to the public is something that I think would be really exciting for Berkeley to kind of promote and have around us. Thank you.

>> D. Pinkston: Thank you.

>> My name is Rita and I'm a cofounder of a start-up at Skydeck. What we are doing is developing a heart rate monitor. Heart rate monitor that will be more affordable, that will provide more accuracy and also will perform the measurement in a very -- way. We do this so we are developing these at Skydeck. Still in research and development stage. We are getting not only work space but also guidance, technical guidance and mentorship from Skydeck. So I support the sign. I think actually it is a way of honoring the city for its contribution for start-ups and for innovation. Thank you.

>> D. Pinkston: Thank you.

>> Hi. My name is Charlotte Irwin, founder of an education start-up trying to change education in K-12 and a Skydeck graduate. The designer of the logo that is shown on the building, which I am very proud of. I'm reading from my phone and I'm a little nervous. To me Skydeck really enables UC Berkeley graduates to effect great change in the world, and I would like to see that symbol of entrepreneurship and advancement reflected in the culture and skyline of Berkeley.

>> D. Pinkston: Thank you very much.

>> Tristan R. So I'm also at Skydeck but before that I'm actually a Berkeley resident as well. I have lived here off and on since I
was born. And I want to say that the sign actually is a cool thing to have. I think it improves the skyline here. I see only benefits to having it.

>> I'm just going to tell a little bit about my personal story. I'm just graduating from UC Berkeley a year ago. So I wanted to make a difference. But with very limited resources, there is nothing that we can do. We need a program like Skydeck supporting us to achieve our goals. So plus, Skydeck is not making any profit for all of this. It will allow us to do what we want to do. So I am very proud to be part of Skydeck. More importantly, I am proud to be part of the community for the City of Berkeley.

>> D. Pinkston: Thank you.

>> My name is Sean McDonald. Founder at Skydeck of a digital media company. And also been a resident for the past five years or so, and I support the sign. Thanks.

>> D. Pinkston: Thank you.

>> Jason. I'm a cofounder with Sean. And I'll keep it short and sweet. Support the sign.

>> Francis Wong, Berkeley resident and Berkeley alum. Physician working on a company called outcomes.com that helps clinicians track how the patients do after major surgery. We are working with great customers like UCSF to help solve some of the biggest challenges in health care in the U.S. Skydeck has been an incredible support for us. We are a boot-strap team of three people and I really very much support the sign. Thank you.
Kelly Hammargren. I was at design review the evening this was discussed and approved and that having they discussed that if this sign is approved there could be multiple signs approved for any number of businesses that go into this building. So it is not about whether this is a good group or a bad group, but envisioning having a bunch of signs representing activity groups all around the top of the buildings. So I think we need to think about something differently than this. There certainly needs to be some limits so you don't have all this scattering all the way around of what everybody's going to do. So that is my concern. We write these ordinances for a reason. Thank you.

D. Pinkston: Thank you. All right. Bringing it back to the ZAB for discussion.

One more?

D. Pinkston: Yes, of course.

I want to second what Kelly said. I think we have all seen what billboards have done to many different cities. And I think that once you allow one piece of advertising it opens the door for many others to come in. So I would second what Kelly says. I would rather limit. And we have done things like throw out McDonald's and other kinds of things. We have done some pretty radical things. McDonald's is still here, of course. But we have tried to limit fast food places for many reasons and stuff like that. But I think it is a good idea to think very carefully about bringing more advertising into the city and more visible advertising. Thank you.

D. Pinkston: Thank you. All right. Back to the ZAB.
>> C. Kahn: I have a question for Anne relative to Kelly's comment. Is it possible that we are opening the door to having signage all the way around the top of this building by approving this tonight?

>> A. Burns: I mentioned that with title 20 there are two street frontages for this parcel. And each street frontage, is a maximum of two signs. So I think what happened at design review committee, was hoping that maybe we could condition that it is only two signs. I don't believe it is an appropriate condition to do that, but I do believe that anything that would come in would require further design review. It could be where it was one thing on the other side. We would look very carefully at it, and I believe it is a very, very small chance. But I also don't believe that we should permit something.

>> C. Kahn: I want to really clearly understand this. We are looking at two signs here. One on each side of these two sides of the building, one facing south, one facing east.

>> A. Burns: Right.

>> C. Kahn: There could be at some point in the future two additional signs that would come before us. They would be uniquely on the west side of the building and the north side of the building, is that correct?

>> A. Burns: We would have to look at what impact that had and who it was. It wouldn't be that we would put McDonald's there.

>> C. Kahn: Would you put Burger King?

>> A. Burns: I think what happened at design review committee is they wanted to put restrictions on this, which I felt was not --

>> C. Kahn: I don't feel the need to put restrictions.
>> A. Burns: The building owner has a right to sign the building and they choose the message of the sign. And we look at the design and the square footage and how it fits in. I think it would be incredibly difficult to do that, and it is subject to design review no matter what. But I also think you don't want to say -- we would look always to the sign ordinance and the guidelines with any proposal.

>> D. Pinkston: Why don't we start down this end and just go all the way down.

>> L. Simon-Weisberg: I'm confused about the -- there has been discussion about whether it can be advertising or not. Is there a restriction that it cannot be advertising?

>> A. Burns: These two signs are on-premises signs, which means they are chosen by the building owner. And off-premises signs, very little place in Berkeley you can do off-premises signs anymore. A very small part of the manufacturing district you can, as long as you can't see it from the freeway. And off-premises sign is one where the building owner gives their right to choose the message on that sign like a billboard.

>> L. Simon-Weisberg: That doesn't clarify it for me. If you are saying we are not going to put McDonald's on there because it is advertising, is it the tenant?

>> A. Burns: Probably I would have to knock it out based on aesthetics because it wouldn't go with the Skydeck of the building. Or I could just say design review can say we reduce the size of it or we reduce the location or put it somewhere else. We can't tell somebody not to choose that message. But we can look at adversely what a design impact might be on it.
L. Simon-Weisberg: So the language we are getting about architecture versus that it can't be advertising does that not apply to this?

A. Burns: No. It is not advertising. It is not advertising because it is a message that is chosen by the owner. They wanted to name their building this right now. Granted, five years ago it might have been two Chase emblems. So I can't say, wow, you chose a better one with Skydeck than that. It is their choice.

L. Simon-Weisberg: It is the name, they are saying it is the name of the building.

A. Burns: Right.

L. Simon-Weisberg: Not that this is a sign from our tenant.

A. Burns: Right. If they wanted to put something on one side and something on something else, it would be ad hoc. It wouldn't be appropriate for them. We have to be very careful. We did look very carefully at the design.

D. Pinkston: I'm going to keep moving quickly. Patrick.

First of all, I have a question for you. I'm confused about the distinction between a roof sign and wall sign. You said it is pretty clear that a wall sign would not be allowed on a penthouse structure. I can see that. I think it is clearly not the primary structure, it is above the roof. Isn't a wall sign above the roof prohibited?

A. Burns: If we were starting from square one and we read all this we would have probably said it was a roof sign. But there have been two approvals already in this position and there was a strong argument --

You mean historical?
You have made that point several times. I think we have to disregard that.

>> A. Burns: It is a very strong edge.

>> That is history. And we are here to reinterpret history. Can you clarify whether it is a roof sign or wall sign?

>> A. Burns: Because of the square footage, it is wall sign.

>> You are interpreting it as a wall sign.

>> You are they are allowed two roof signs.

>> A. Burns: They could have been.

>> Could have been.

>> A. Burns: Because already in this position, already in these locations had been permitted wall signs. So we continued with that.

>> Okay. But we can reinterpret, right?

Even though it is the same code.

This is still confusing because you are not staking your ground and saying what it is.

>> D. Pinkston: Called it a wall sign and we can agree or disagree with that interpretation.

>> I think it is pretty clearly prohibited to put a wall sign on a penthouse structure. In my reading of the code, which I think has been well-argued by Steve Finacom, I would agree with. By the way, I think it is actually quite a handsome job of signage. But that has no bearing on my opinion of whether it is appropriate or not. It is a great logo. I think it is well-scaled, taken out of context. But also I think speaking of context, the fact this is up for landmark consideration I'm not sure --
A. Burns: It is not up for landmark consideration. It is on a list. And because of that list we need to refer things to landmarks or can. We do in the case of design review.

I would rather not take a vote. I would encourage not taking a vote until we have the landmark theory.

A. Burns: We did on October 6th. Not on the landmark. We did go to landmarks. We went on October 6th and asked them. It is really not whether the building's a landmark. It is how they referred, it is like they look at design review, would this mess up any potential historic that may be in the future.

Okay. So there is no further action on the part of landmarks in connection with this?

A. Burns: No. Sorry about that. That was my confusion.

C. Kahn: I actually think this is a wall sign. I appreciate the letter of the section 20.16.150 does specifically say, quote, no portion of a wall sign shall be higher than the roof of a building. And we are kind of focused on that. But I think what was meant by that is you are not supposed to have a wall sign that projects up. It is on a wall, it shouldn't project up past the top of the building. That is the way it happens to have been written. So I think it is unfortunate language but clearly was not the intent to prevent this from happening. That would be a case where you would have the Skydeck sign literally on the top floor of the building projecting past the roof. And it would look bad. And I can see why that was provided. But I really think personally that was the intent. I don't think it was to stop this from happening. We could say, oh, no, you have to move it down to the top floor, but it would lock worse
to do that. So I'm inclined to vote for it in support of the staff interpretation.

>> D. Pinkston: Shoshana.

>> S. O'Keefe: I agree with you, Charles. You said that very well, that it is a gray area and the way out of the gray area is to move it down and it would be fine but that is not a good outcome. It's a gray area enough that I'm okay with this project per the code.

I want to add one thing. I think we need to be really careful when we are talking about this issue of advertising versus building identification. I'm concerned about that. I don't want to see a bunch of advertising on tops of buildings in Berkeley. But we have to be careful. It sounds like this is maybe a free speech issue and we need to be careful. We can't say, oh, well -- like we should be very careful saying I would never allow McDonald's. If McDonald's had the same, we better allow it.

>> It was design.

>> S. O'Keefe: I appreciate all the Skydeck people coming. It is wonderful. I agree and most of my colleagues do as well. It is irrelevant. If McDonald's was here and they said they wanted McDonald's in this font, I would hope everything would be identical. It would need to be under the law. I want to focus our discussion on the only thing we are allowed to talk about is whether it is a wall sign or whether it is allowed.

>> D. Pinkston: I'll go next and we will keep going. Typically in zoning there is the letter of the law and the history of administrative interpretation over time. And sometimes there is some yay. So I think we have a situation here where it is a little bit gray. It is on what appears
to be a wall. If you haven't told me it was a rooftop mechanical enclosure I would have thought it was part of the building because of the way the enclosure is designed. It has been approved as a wall sign twice in the same place with far less attractive signage. This seen, one of the other findings we are supposed to make is the building architecture is dominant and visible. And I think this particular design and the location allows the architecture to be much more dominant and visible than if the sign were moved off of this what we will call the wall, the high wall, and put on the low wall, which is the dominant building face. Then the sign would begin to interrupt the rhythm of the fenestration and the way the emollients are done.

I think this particular location is far more consistent with the finding that the building architecture is dominant and visible with the sign, certainly more than the previous designs and the new location. I think this is the optimal sign in this location for this building. I think it is very handsome and elegant and subtle. There is a lot of really bad sign design that gets offered up on the tops of buildings in the East Bay, and this is an example of restraint and art industry, and I think an identity for a high-rise building in Berkeley that we can be proud of. And that really, an identity on the building top is important, what the community wants to say. And I think this identity is good for Berkeley too. And it doesn't turn it into an advertising sign.

Also we don't have to approve any more signs. Every sign comes to us for design review and the same findings apply. What have we done historically, how many signs were there historically. Does it fit into the architecture?
So forth. I'm not sure we can continue to make the findings for additional signs that marched around the top of the building. So I do not think we are taking a step tonight that will cause it to take some action in the future we might or might not want to take. I reject that argument entirely. I think we are doing something that has been consistent with our historic practice here and a vast improvement over what we have done in the past. That doesn't worry me. For those reasons I think we should accept the staff recommendation.

John.

>> J. Selawsky: Very briefly. I have already had one comment. Charles, I don't really know the intent, so I can't address that. And it is immaterial to me whether or not it is an elegant sign.

I do see there is a commercial aspect to this. Is maybe it is free speech. Money is free speech. That does concern me. I want that noted going forward. Even from the public testimony there is a commercial aspect to this. No doubt about it. Nobody was hiding that. So that concerns me as part of this whole thing. That is it.

>> T. Clarke: I think I'm convinced that to me this is -- the penthouse is part of the building and this is a wall. Architecturally if you even take the argument architecturally, that penthouse is part of the building, and it clearly shows in the way the building was articulated there on the penthouse. That penthouse is not merely a roof structure. It is part of the architecture of the building. And I agree that it is a wall sign. And I would like to make a motion to approve.

>> D. Pinkston: Is there a second?

>> C. Kahn: I'll second.
D. Pinkston: Brazile.

B. Clark: I'll make my comments. I do also believe it is a wall sign. And just because it is defined as a rooftop equipment closure and not defined as the roof itself. I do think it is a sign on a wall. But I would also like to highlight John's point that you can't deny it is not commercial signage, but then going back to the argument prior to the two signs beforehand were approved in the same location on this building. So I'm inclined to go with what has historically been done using the same code and same rules. They haven't changed. So I support the motion to approve the staff's report, staff's finding.

D. Pinkston: Is there any further discussion?

There is a motion and it has been seconded. Are we ready to take a roll call vote on this one since there is a difference of opinion?

Call the roll.

Board Member Kahn.

I support the staff's recommendation.

Board Member Selawsky.

No.

Board Member Teresa Clarke.

Yes.

Board Member Sheahan.

No.

Board member Brazile Clark.

Yes.

Board Member O'Keefe.

Yes.
>> Board Member Simon-Weisberg.

>> No.

>> And Chair Pinkston.

>> D. Pinkston: Yes.

You have your sign permit. We approved the sign as far as the ZAB goes. Obviously that decision is appealable to the city council. Thank you very much for coming and sharing with us your code interpretations and also your thoughts about the building identity. Thanks for coming.
Design Review Application Form

For: [ ] Preliminary Design Review (PDR)  [ ] Final Design Review (FDR)  [ ] Staff Level Design Review (DSRL)  [x] Signs and Awnings  [ ] Modification: PDR or FDR

Effective July 16, 2012

Intake Planner

Project Address: 2150 Shattuck Avenue Zone:

Project Description: Illuminated channel letters

Date Building Permit/Sign Permit/Use Permit or Zoning Permit was applied for: 

Associated Use Permit number: 

For exterior changes to existing buildings, other than signs and awnings, the estimated construction cost is $ 

- Property Owner Name (Print)  FIRST SHATTUCK LLC

Owner's Mailing Address: 2150 SHATTUCK AVE  B100

BERKELEY CA  94704

Daytime Phone # 510-2441752  E-mail: propertymanagement@firstshattuck.com

- Applicant Name (Print)  SAME as Above:  Ad Art Inc.

Applicant's Mailing Address: 150 Executive Park Blvd.

San Francisco, CA 94134

Daytime Phone # 559-354-7408  E-mail: andrew@adart.com

Under penalties of perjury, I certify that the information above and in any attachments hereto, is true and accurate to the best of my knowledge.

Applicant Signature:  [Signature]  Date: 8/14/16

Owner's Signature:  [Signature]  Date: 9/2/16
CITY OF BERKELEY
Permit Service Center
2120 Milvia St.
Berkeley, CA 94704

R E C E I P T
DRSA2016-0024

Date: 9/7/2016
Receipt Number: 459324

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

Property Information
Parcel Number: 057202600201

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

Location
2150 SHATTUCK Ave
BERKELEY, CA 94704

---

Payor: David Esajian  Payment Status: Paid
Cashier: DCOWANS  Payment Method: Check

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<td>2150 SHATTUCK Ave</td>
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<tr>
<td>BERKELEY, CA 94704</td>
<td></td>
</tr>
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</table>

Check #: 2631  Total: $582.00

COB1dcowans  Print Date: 9/7/2016
**Channel Letters**

Manufacturer and Install One (1) Set of Channel Letters with Exposed Neon.

<table>
<thead>
<tr>
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<tr>
<td>Trims</td>
<td>2&quot; Trims</td>
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<td>Black</td>
</tr>
<tr>
<td>Illumination</td>
<td>Signcomplex Neon Flex</td>
<td>White</td>
<td></td>
</tr>
<tr>
<td>Horizontal supports</td>
<td>1 1/2&quot; Unistrut</td>
<td>Paint (satin)</td>
<td>Match building color</td>
</tr>
</tbody>
</table>

**South Elevation - Scale: 1/32" = 1'-0"**

**Section Detail - Scale: NTS**

- Low voltage power supply to be contained in sheet metal box
- 2" Trimcap
- 1/4" x 1" Stud
- 1 1/2" Unistrut
- 3/16" Acrylic Rod
- Faux neon LED rope
- 1/4" Conduit pass thru
- .063 Aluminum returns
- Weld loose
- 2" x 2" angle clips
- Disconnect switch
Channel Letters

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

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Low voltage power supply to be contained in sheet metal box
2" Trimcap
1/4" x 1" Studs
1 1/2" Unisnut
3/16" Acrylic Fluice
Flux near LED rope
1/4"Conduit pass thru
.063 Aluminum return
Warp tills
2" x 2" Angle clips
Disconnect switch

East Elevation - Scale: 1/16" = 1'-0"
**NOTICE OF PROPOSED DESIGN REVIEW ACTION-STAFF LEVEL**

**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>
<thead>
<tr>
<th>PROJECT LOCATION:</th>
<th>2150 SHATTUCK AVENUE</th>
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<tr>
<td>APPLICANT:</td>
<td>Ad Art, Inc.</td>
</tr>
<tr>
<td>ZONING DISTRICT:</td>
<td>C-2  DOWNTOWN COMMERCIAL - CORE</td>
</tr>
<tr>
<td>PROPOSED ACTION:</td>
<td>Approved, According to Conditions on Page 2 (see attached drawings)</td>
</tr>
<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>
</tr>
</tbody>
</table>

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
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.

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Section Detail - Scale: NTS

Low voltage power supply to be contained in sheet metal box
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3/16" Acrylic Flue
Fix bit LED rope
1/4" Conduit pass thru
.063 Aluminum returns
Weld holder
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

Date:
11/15/2016

Receipt Number:
463238

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: RASMITH
Payment Method: Check
Check #: 2831

Fees:
APPL050 - APPEAL of DRC or DRSL - Non Applicant

2150 SHATTUCK Ave
BERKELEY, CA 94704

Amount
$95.00

Total: $95.00
PUBLIC NOTICE

Notice of Intent to Perform Design Review
Chapter 23E.08 AND 23E.12(Design Review) of 6478 N.S.,
Zoning Ordinance

ADDRESS: 2150 SHATTUCK AVENUE

ZONE: C-DMU (Downtown Commercial) - Core

D.R. #: DRSA2016-0024

APPLICANT: Ad Art, Inc.

PROJECT DESCRIPTION: Appeal of Staff Level Design Review to install two (2) signs; each sign made up of one (1) set of channel letters with exposed neon, or comparable led lighting, located on the rooftop equipment enclosure of a building listed on the State Historic Resources Inventory (SHRI).

(PLEASE SEE ATTACHED DRAWINGS)

A Project has been proposed for this site which is subject to review as per Chapter 23E.08 and 23E.12 of the Zoning Ordinance of the City of Berkeley.

The design will be reviewed by the Design Review Committee at their meeting of Thursday, December 15, 2016 at 7:00 PM at the North Berkeley Senior Center, 1901 Hearst Avenue, Classroom B, Berkeley, CA 94710.

Written comments pertaining to Design Review issues must be submitted to the Current Planning Division at the address below by 12 NOON on December 15, 2016. Persons wishing to offer testimony are encouraged to submit their comments in writing. Written or verbal comments must be limited to issues under the scope of the Design Review Ordinance.

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, 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 secretary of the relevant board, commission or committee. 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 secretary of the relevant board, commission or committee for further information.

The public is advised that the Design Review Committee may limit the number of speakers and the length of time allowed for testimony.

Project materials are available for review at the Permit Service Center Building at the Zoning Station located at 1947 Center Street 3rd Floor, Berkeley, CA. Business hours are 8:30 a.m. to 4:00 p.m. weekdays.

DATE POSTED: December 10, 2016

Anne Burns, Associate Planner – Design Review (510) 981-7410
LEGAL NOTICE CONCERNING YOUR LEGAL RIGHTS

If you object to a decision by the Design Review Committee, 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 Zoning Adjustments Board within fourteen (14) days of the date of the action of the Design Review Committee.

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.

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(PLEASE SEE ATTACHED DRAWINGS)

A Project has been proposed for this site which is subject to review as per Chapter 23E.08 and 23E.12 of the Zoning Ordinance of the City of Berkeley.

The design will be reviewed by the Design Review Committee at their meeting of Thursday, January 19, 2017 at 7:00 PM at the North Berkeley Senior Center, 1901 Hearst Avenue, Classroom B, Berkeley, CA 94710.

Written comments pertaining to Design Review issues must be submitted to the Current Planning Division at the address below by 12 NOON on January 19, 2017. Persons wishing to offer testimony are encouraged to submit their comments in writing. Written or verbal comments must be limited to issues under the scope of the Design Review Ordinance.

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, 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 secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

The public is advised that the Design Review Committee may limit the number of speakers and the length of time allowed for testimony.

Project materials are available for review at the Permit Service Center Building at the Zoning Station located at 1947 Center Street 3rd Floor, Berkeley, CA. Business hours are 8:30 a.m. to 4:00 p.m. weekdays.

DATE POSTED: January 13, 2017

Anne Burns, Associate Planner – Design Review (510) 981-7410
LEGAL NOTICE CONCERNING YOUR LEGAL RIGHTS

If you object to a decision by the Design Review Committee, 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 Zoning Adjustments Board within fourteen (14) days of the date of the action of the Design Review Committee.
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.
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 impossibly 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
**City of Berkeley**  
Permit Service Center  
2120 Milvia St  
Berkeley, CA 94704

**Receipt**  
DRSA2016-0024

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### Applicant Information

David Esajian  
150 Executive Park Blvd  
San Francisco CA 94134-3303

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### Property Information

Parcel Number: 057 202600201

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### Project Information

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

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### Location

2150 Shattuck Ave  
Berkeley, CA 94704

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- **Check #:** 2884

### Fees:

- **Fees:** APPL050 - APPEAL of DRC or DRSL - Non Applicant  
  **Amount:** $95.00

**Total:** $95.00

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**Received**  
FEB 02 2017  
Land Use Planning

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CCB1|RaSmith  
Print Date: 2/2/2017
ZONING ADJUSTMENTS BOARD
NOTICE OF PUBLIC HEARING

SUBJECT: 2150 SHATTUCK AVENUE
Appeal of DRSA2016-0024

Meeting starts at 7:00 pm.

WHERE: Council Chambers, Maudelle Shirek Bldg.
2134 Martin Luther King Jr. Way, 2nd Floor.
Wheelchair accessible.
SUBJECT: 2150 Shattuck Avenue
Appeal of 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).
CEQA STATUS: Categorically exempt pursuant to Section 15303 of the CEQA Guidelines (“New Construction or Conversion of Small Structures”).

All persons are welcome to attend the hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

Send written comments to: Zoning Adjustments Board, Permit Service Center, 1947 Center Street, Berkeley, CA 94704, or e-mail to: ZAB@CityofBerkeley.info, or fax to: (510) 981-7420. To ensure inclusion in the packet, submit correspondence seven (7) days before the hearing. For any correspondence submitted less than seven days before the meeting, submit 15 copies for staff to deliver to the Board at its meeting.

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342(V) or 981-6345(TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

PLEASE NOTE: email addresses, names, street addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, it will become part of the public record, and will become accessible on the City Website.

The Zoning Application for this project is available at the Permit Service Center, 1947 Center Street, Berkeley, and at our website: 
http://www.cityofberkeley.info/zoningapplications

The agenda and staff report for this meeting will be available 3 to 5 days prior to this meeting at the Permit Service Center, 1947 Center Street, Berkeley, and at our website:
http://www.cityofberkeley.info/zoningadjustmentsboard
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AD ART, INC. 150 EXECUTIVE PARK BLVD. SAN FRANCISCO, CA 94134
STEVE FINACOM 2308 RUSSELL ST BERKELEY, CA 94705
Zoning Adjustments Board

Notice of Public Hearing

2150 Shattuck Avenue

Appeal of 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).

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23B.32.020, on Thursday, March 23, 2017 at the Maudelle Shirek Building, 2134 Martin Luther King, Jr. Way, second floor Council chambers (wheelchair accessible). The meeting starts at 7:00 p.m.

PERMITS REQUIRED:

- Staff Level Design Review for new signage, under BMC Section 23E.08

APPLICANT: Ad Art, Inc., 150 Executive Park Blvd., San Francisco, CA 94134

APPELLANT: Steve Finacom, 2308 Russell Street, Berkeley, CA 94705

ZONING DISTRICT: C-2  DOWNTOWN COMMERCIAL - CORE

ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to section 15301 (“Existing Facilities”) and does not apply to any exceptions stated in section 15300.2 (“Exceptions”) of the CEQA Guidelines.

The Zoning Application and application materials for this project is available online at: http://www.cityofberkeley.info/zoningapplications

The agenda and staff report for this meeting will be available online 3 to 5 days prior to this meeting at: http://www.cityofberkeley.info/zoningadjustmentsboard

Correspondence and Notice of Decision Requests

- Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, 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 secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

- **To distribute correspondence to Board members prior to the meeting date** -- submit comments by 12:00 noon, seven (7) days before the meeting. Please provide 15 copies of any correspondence with more than ten (10) pages or if in color or photographic format.
- Correspondence received by 5:00 p.m. on the Tuesday before the meeting will be posted on the ZAB web site for review by the Board and public prior to the meeting. Correspondence received later, and after the meeting, will be posted to the web site following the meeting.
- Any correspondence received after this deadline will be given to Board members on the meeting date just prior to the meeting.
- Staff will not deliver to Board members any additional written (or e-mail) materials received after 12:00 noon on the day of the meeting.
- Members of the public may submit written comments themselves early in the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Zoning Adjustments Board Clerk just before or at the beginning of the meeting.
- Written comments, or a request for a Notice of Decision should be directed to the ZAB Secretary at:  Land Use Planning Division (Attn: ZAB Secretary), 1947 Center Street, Berkeley, CA 94704 OR at zab@ci.berkeley.ca.us.

**Accessibility Information / ADA Disclaimer**

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

**SB 343 Disclaimer**

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Permit Service Center, Planning and Development Department located at 1947 Center Street, Berkeley, during regular business hours.
Notice Concerning Your Legal Rights

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, 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 Zoning Adjustments Board at, or prior to, the public hearing.

2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.

3. Pursuant to Code of Civil Procedure Section 1094.6(b) and 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.

4. 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.

5. 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.

Further Information

Questions about the project should be directed to the project planner, Anne Burns, at (510) 981-7410 or aburns@cityofberkeley.info. All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, during normal office hours.
DATE OF BOARD DECISION: March 23, 2017
DATE NOTICE MAILED: March 29, 2017
APPEAL PERIOD EXPIRATION: April 12, 2017
EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification): April 29, 2017

2150 Shattuck Avenue

Appeal of 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).

The Zoning Adjustments Board of the City of Berkeley, after conducting a public hearing, UPHELD the DECISION of the Design Review Committee and DISMISSED the appeal of the following permit:

- Staff Level Design Review for new signage, under BMC Section 23E.08

APPLICANT: Ad Art, Inc., Executive Park Blvd., San Francisco, CA 94134

ZONING DISTRICT: C-DMU – Commercial Downtown Mixed-Use (Core Area)

1 Pursuant to BMC Section 23A.08.030, the appeal period begins on the first business day following the date the Notice of Decision is mailed. Pursuant to BMC Section 1.04.080, any deadline that falls on a non-business day is extended until the next business day.

2 Pursuant to BMC Section 23B.32.090, the City Council may certify any ZAB decision for review during the 14-day appeal period after the notice of the ZAB’s decision is issued. Certification has the same effect as an appeal. However, BMC Section 1.04.070 suspends or “tolls” the Council’s deadline to certify when the Council is on recess. Thus, in cases where the 14-day appeal period is scheduled to end during a Council recess, the certification deadline is extended past the end of the recess for the remainder of the appeal period. In cases where the appeal period begins during a Council recess, the certification deadline is extended until 14 days after the first Council meeting after the recess. Extension of the certification deadline has no effect on the appeal deadline.
ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to section 15301 ("Existing Facilities") and does not apply to any exceptions stated in section 15300.2 ("Exceptions") of the CEQA Guidelines.

The Zoning Application and application materials for this project is available online at: http://www.cityofberkeley.info/zoningapplications

CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE

BOARD VOTE: 5-3-0-1

YES: CLARK, CLARKE, KAHN, O'KEEFE, PINKSTON,

NO: SELAWSKY, SHEAHAN, SIMON-WEISBERG

ABSTAIN:

ABSENT: ERICKSON

Note: Simon-Weisberg was not authorized to participate as a commissioner. While her votes are recorded above, they did not count.

TO APPEAL THIS DECISION (see Section 23B.32.050 of the Berkeley Municipal Code):

To appeal a decision of the Zoning Adjustments Board to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1st Floor, Berkeley; or by facsimile to (510) 981-6901. The City Clerk’s telephone number is (510) 981-6900.

2. Submit the required appeal fee (checks and money orders payable to “City of Berkeley”):
   a. The fee for persons other than the applicant is $500. This fee may be reduced to $100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
   b. The fee for all appeals by Applicants is $2500.

3. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION"
   a. Simon-Weisberg was not authorized to participate as a commissioner. While she did vote, her vote does not count.
date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision 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 Zoning Adjustments Board at, or prior to, the public hearing.

2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.

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   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.

   a. Simon-Weisberg was not authorized to participate as a commissioner. While she did vote, her vote does not count.
PUBLIC COMMENT:
Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, 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 secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

FURTHER INFORMATION:
Questions about the project should be directed to the project planner, Anne Burns, at (510) 981-7410 or Aburns@cityofberkeley.info. All project application materials, including full-size plans, may be viewed at the Land Use Planning Division, 1947 Center Street, 2nd floor, Monday through Friday from 8:30 a.m. to 4 p.m. (except on holidays and reduced service days; check City’s website for details).

ATTACHMENTS:
1. Staff Level Post Notice 11-01-16 with Conditions
2. Project Plans, received SEPTEMBER 7, 2016

ATTEST:
Shannon Allen, Secretary
Zoning Adjustments Board

cc: City Clerk
Building and Safety Division
Central Library - Reference Desk
Public Works Engineering Division
ZAB Members
First Source

a. Simon-Weisberg was not authorized to participate as a commissioner. While she did vote, her vote does not count.
a. Simon-Weisberg was not authorized to participate as a commissioner. While she did vote, her vote does not count.
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 lens remains in the signs, long-term maintenance will need to be monitored and lens 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
SKYDECK

Night View

South Elevation - Scale: 1/32" = 1'-0"

PLAN APPROVED BY ZONING ADJUSTMENTS BOARD

March 23, 2017

SIGNATURE DATE

* Findings and Conditions Attached

CHANNEL LETTERS

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

<table>
<thead>
<tr>
<th>Description</th>
<th>Specification/Material</th>
<th>Finish</th>
<th>Color</th>
</tr>
</thead>
<tbody>
<tr>
<td>Return</td>
<td>Fabricated .063 alum.</td>
<td>Paint (satin) Black</td>
<td></td>
</tr>
<tr>
<td>Face</td>
<td>Clear acrylic</td>
<td>N/A Clear</td>
<td></td>
</tr>
<tr>
<td>Trimcaps</td>
<td>2&quot; Trimcaps</td>
<td>Paint (satin) Black</td>
<td></td>
</tr>
<tr>
<td>Illumination</td>
<td>Signcomplex Neon Flex</td>
<td>White</td>
<td></td>
</tr>
<tr>
<td>Horizontal</td>
<td>1.125&quot; Unistrut</td>
<td>Paint (satin) Match building color</td>
<td></td>
</tr>
</tbody>
</table>

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 Rod
Faux neon LED rope
1/4" Conduit pass thru
.063 Aluminum return
Weep holes
2" x 2" angle clips
Disconnected switch

RECEIVED SEP 07 2016

LAND USE PLANNING
PROOF OF SERVICE

DATE: March 29, 2017

TO: Whom It May Concern

FROM: Melinda Jacob, OSII

SUBJECT: APPEAL #DRSA2016-0024 – 2150 SHATTUCK AVENUE

I, the undersigned, certify that I am employed in the City of Berkeley, County of Alameda, California; that I am over eighteen years of age; that I am not a party to the within action; and that my business address is 2120 Milvia Street, Berkeley, California 94704. On this date, I served the following documents:

DECISION OF ZONING ADJUSTMENTS BOARD FOR
APPEAL #DRSA2016-0024 – 2150 SHATTUCK AVENUE

On the parties stated below by placing true copies thereof in sealed envelope(s) addressed as shown below by the following means of service:

- **Steve Finacom**
  
  2308 Russell Street
  
  Berkeley, CA 94705

- **Ad Art, Inc.**
  
  150 Executive Park Blvd.
  
  San Francisco, CA 94134

- By First Class Mail - I am readily familiar with the City's practice for collecting and processing of correspondence for mailing. Under the practice, the correspondence is deposited with the U.S. Postal Service on the same day as collected, with First Class postage thereon fully prepaid, in Berkeley, California, for mailing to the addressee following ordinary business practices.

- By Personal Service - I caused each such envelope to be given to the City of Berkeley mail service person to personally deliver to the office of the addressee.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 29, 2017 at Berkeley, California.

Melinda Jacob, OSII
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 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 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