INFORMATION CALENDAR
April 24, 2018

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Timothy Burroughs, Director, Planning and Development
Subject: LPC NOD: 2151 Shattuck Avenue #LMSAP2017, The Wright Block Building

INTRODUCTION
The attached Notice of Decision (NOD) from the Landmarks Preservation Commission is presented to the Mayor and City Council pursuant to Berkeley Municipal Code (BMC) Section 3.24.240, which requires that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS
The Landmark Preservation Commission (LPC or Commission) has approved a Structural Alteration Permit (SAP) for the subject property. This approval is subject to appeal for 15 days from the mailing of the NOD.

BACKGROUND
BMC Section 3.24.300 provides that the City Council is the hearing body for any appeal to review any action of the Commission in granting or denying an SAP. The code also provides that the City Council may file its own appeal to review the decision on its merits. An individual Council member may file such an appeal, without prejudice, by providing a written statement clearly and concisely setting forth the grounds upon which the appeal is based. Alternatively, the Council as a whole may vote to appeal the decision; to do so, this Information Item must be moved to the Action calendar and a motion must pass to appeal the LPC decision. Either form of Council appeal or a public appeal must be presented to the City Clerk within 15 days from the mailing of the NOD, i.e. by April 24, 2018. Council review of any appeal by any party stays all proceedings in the matter until the appeal is resolved.

Any appeal of the decision of the Commission would be set for a future public hearing at which time all evidence including testimony would be considered de novo by the City Council.

ENVIRONMENTAL SUSTAINABILITY
Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than
their removal, achieves construction and demolition waste diversion, and promotes investment in existing commercial and residential neighborhoods.

POSSIBLE FUTURE ACTION
The Council may choose to appeal the decision, in which case it would conduct a public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION
There are no known fiscal impacts associated with this action.

CONTACT PERSON
Fatema Crane, Landmarks Preservation Commission Secretary, Planning and Development, 510-981-7410

Attachments:
1: Notice of Decision – 2151 Shattuck Avenue #LMSAP2017
2151 Shattuck Avenue

Structural Alteration Permit #LMSAP2017-0001 for the installation of two new wall signs and two new blade signs on the public elevations of a designated City Landmark building.

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, APPROVED the following permit:

PERMITS REQUIRED:

- Structural Alteration Permit

APPLICANT: David Ford, 124 Allimore Court, Roseville, CA

ZONING DISTRICT: C-DMU Core, Commercial - Downtown Mixed Use District

ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to Section 15331 of the CEQA Guidelines (Historical Resource Rehabilitation).

The Application materials for this project are available online at: http://www.cityofberkeley.info/zoningapplications

FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE

1 Pursuant to BMC Section 1.04.070, if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day. Pursuant to BMC Section 3.24.190, the City Council may “certify” any decision of the LPC for review, within fifteen days from the mailing of the NOD. Such certification shall stay all proceedings in the same manner as the filing of a notice of appeal.
COMMISSION VOTE: 6-0-0-3

YES: ADAMS, ALLEN, BEIL, BROWN, FINACOM, SCHWARTZ

NO:

ABSTAIN:

ABSENT: CARTER, CRANDALL, O’MALLEY

TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code):

To appeal a decision of the Landmarks Preservation Commission 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. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" 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).

3. Submit the required fee (checks and money orders must be payable to ‘City of Berkeley’):
   a. The basic 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 appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is $500, which may not be reduced.
   c. The fee for all appeals by Applicants is $2500.

STRUCTURAL ALTERATION PERMIT ISSUANCE:

If no appeal is received, the Structural Alteration permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time. Information about the Building Permit process can be found at the following link: http://www.ci.berkeley.ca.us/permitservicecenter/.
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 Landmarks Preservation Commission at, or prior to, the public hearing.

2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission 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, your appeal of this decision must including the following information:

   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.
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, Lucy Sundelson, at (510) 981-7410 or lsundelson@cityofberkeley.info. All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 2120 Milvia Street, between 8 a.m. and 4 p.m., Monday through Friday.

ATTACHMENTS:
1. Findings and Conditions
2. Project Plans, modified NOVEMBER 27, 2017

ATTEST:
Fatema Crane, Secretary
Landmarks Preservation Commission

Cc: Owner
City Clerk
Applicant: David Ford
124 Allimore Court
Roseville, CA 95747
Property Owner:
CS Company, LLC
1600 El Camino Real, Suite D
Belmont, CA 94002
2151 Shattuck Avenue

**Signage Alteration Permit #LMSAP 2017-0001**

**PROJECT DESCRIPTION**

Installation of two new wall signs and two new blade signs on the exterior of a designated City of Berkeley Landmark, the Wright Block Building.

**CEQA FINDINGS**

The project is categorically eligible for exemption from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15331 of the CEQA Guidelines (Historical Resource Rehabilitation).

**SECRETARY OF THE INTERIOR’S STANDARDS FOR REHABILITATION FINDINGS**

1. The property’s use been used commercially since its original construction in [insert year]. The proposed new use, retail banking, is also a downtown commercial retail use.

2. The scope of proposed work does not alter any significant features to be preserved, and thus the LPC finds the historic character of the property will be retained and preserved.

3. The proposed signage is contemporary and, thus, will not lead to any changes that will create a false sense of historical development.

4. The proposed signage will not affect any changes to the property that have acquired historic significance in their own right.

5. The required alterations to the building to accommodate the proposed signage are minimal and will not affect any distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the property. Required anchors in the historical façade shall be as discreet as possible and patched when signage is removed as conditioned herein; see Condition #6.

6. There are no deteriorated historic features affected by this request and none are proposed to be replaced.
7. The applicant does not propose chemical or physical treatments. However, standard conditions of SAP approval would require any chemical or physical treatments to be undertaken using the gentlest means possible; see Condition of Approval # 7 of Attachment 1.

8. The project does not have the potential to affect any archaeological resources because there will be no excavation.

9. The required alterations to the building to accommodate the signage are minimal. The new work will be compatible with the old through its use of colors and materials and by conforming to the Sign Ordinance (BMC Section 20.24) and Downtown Design Guidelines.

10. The signage will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

LANDMARKS PRESERVATION ORDINANCE FINDINGS

1. For permit applications for construction, alteration or repair (BMC Section 3.24.260.C):

   a. As described in the previous discussion of the Secretary’s Standards for Rehabilitation, the LPC finds that the proposed sign will not adversely affect the exterior features of the landmark, the special character or special historical, architectural or aesthetic interest or value of its site and will preserve its distinguishing features. The signs will be installed without impairing the building, and their design will be compatible with the existing proportions, colors, and scale of the architecture.
STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Landmarks Preservation Ordinance, apply to this Permit:

1. **Conditions Shall be Printed on Plans**

    The conditions of this Permit shall be printed on the second sheet of each plan set submitted for a building permit pursuant to this Permit, under the title ‘Structural Alteration Permit Conditions’. Additional sheets may also be used if the second sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2” by 11” sheets are not acceptable.

2. **Plans and Representations Become Conditions**

    Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

3. **Subject to All Applicable Laws and Regulations**

    The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

4. **Exercise and Lapse of Permits (BMC Section 23B.56.100)**

    A. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.

    B. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

5. **Indemnification Agreement**

    The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages,
claims, demands, judgments or other losses (including without limitation, attorney’s fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney’s fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant’s expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

ADDITIONAL CONDITIONS

The following additional conditions are attached to this Permit:

6. Anchors in the historical façade shall be as discreet as possible and patched when signage is removed.

7. Any chemical or physical treatments shall be undertaken using the gentlest means possible.

8. The wall sign at the Center Street façade shall be attached to the building façade at the grout, and not the bricks.