To: Honorable Mayor and Members of the City Council
From: Phil Kamlarz, City Manager
Submitted by: Dan Marks, Director, Planning & Development
Subject: ZAB Appeal: 2707 Rose Street, Use Permit No. 09-10000038

RECOMMENDATION
Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Use Permit No. 09-10000038 to demolish the existing two-story, 2,477 square foot, single-family dwelling, a detached one-car garage, and two one-car carports to facilitate the construction of a two-story, 6,478 square foot, single-family dwelling with a 3,394 square foot, 10-car garage, on a 29,714 square foot parcel in the Single Family Residential District - Hillside Overlay.

FISCAL IMPACTS OF RECOMMENDATION
None.

CURRENT SITUATION AND ITS EFFECTS
On January 28, 2010, the Zoning Adjustments Board (ZAB) held a public hearing and approved the application by a 7-0-1-1 vote (Yes: Allen, Alvarez Cohen, Koon, Lau, Matthews, Mikiten, Williams; No: None; Abstain: Shumer; Absent: Anthony). On February 5, 2010, staff issued the notice of the ZAB decision. On February 19, 2010, Susan Nunes Fadley filed an appeal signed by 34 Berkeley residents with the City Clerk.

BACKGROUND
Setting: The 29,714 square foot parcel abuts Rose Street and an elevated portion of La Loma Avenue to the south and Shasta Road to the north. Pedestrian and automobile access is via Rose Street, which terminates at the project site. The site is heavily wooded and includes nine Coast Live Oaks and 32 other trees. The grade of the site generally slopes downward from the southeast to northwest, with a change in elevation of approximately 80 feet.

The existing two-story, 2,477 square foot, single-family dwelling, is setback approximately 50-feet from Rose Street, 63-feet from Shasta Road, and over 70-feet from either side property line (west or east). From Rose Street, the view of the existing dwelling is obscured by the garage and carports. Within the 20-foot setback from

1 Based on Alameda County Assessor’s Data.
Shasta Road, the site rises 20-feet, and the base of the existing dwelling is approximately 45-feet above street level. Changes in topography and existing vegetation block most of the view of the existing dwelling, but it is partially visible when seen through breaks in the trees (when looking upwards at an approximate angle of roughly 30 degrees). The roof ridgeline of the existing dwelling is at the 688-foot elevation (all elevations noted in this staff report are based on City of Berkeley Datum, which is based on the adjusted mean sea level).

Offsite, Shasta Road ranges in elevation from 611-feet at the northwest corner of the site to 620-feet at the northeast corner of the site; to the south of the site, the La Loma Avenue roadway rises from west to east from 684 to 705-feet.

The dwelling to the west at 2637 Rose Street abuts the Rose Street right-of-way, is flanked by trees on three sides and the roof ridgeline of this dwelling is at the 677-foot elevation. Two dwellings abut the site to the east: a two-story, street-level, dwelling at 2650 Shasta Road and a four-story dwelling at 1371 La Loma Avenue. Each dwelling site to the east provides less landscaping, and fewer mature trees than the project site. As a result, each dwelling that abuts the site to the east is highly visible from the Shasta Road right-of-way and to most parcels to the north. Finally, the highest ridgeline of the 1371 La Loma Avenue dwelling is at the 717-foot elevation.

Pre-application Neighbor Outreach: In fall 2008, prior to making application to the Planning Department, the applicant contacted the immediate neighbors of the property to discuss potential concerns and to provide initial design concepts.

In response to this pre-application contact with the immediate neighbors, the project was designed to reflect the following:

- Maintain as many existing trees as possible to provide privacy between properties.
- Prune and treat existing trees that were long neglected by the previous owner.
- Keep the proposed house as close as possible to Rose Street to not impede views from the adjoining neighbors on the east and west.
- Set the proposed house as far from the side property lines as possible, for the privacy of the east and west neighbors.
- Install a low retaining wall on the west property line for the first 20’ or so from Rose Street, to rectify a crumbling slope at the neighboring property.
- Render the proposed dwelling in dark colors that will allow it to blend with the trees and be less visible.
- Provide an automobile “turnaround” using the proposed driveway.
- Provide for off street visitor parking for the proposed house, since Rose Street is narrow and has no available street parking for much of its length in this neighborhood.

2 The four adjacent and confronting neighbors consist of 2637 Rose Street (Opsvig); 2645 Shasta Road (Olson, Carr); 2650 Shasta Road (Merin); 1371 La Loma Avenue (Shriro, Brown).
Beautify and landscape and maintain the area under the La Loma overpass, which currently detracts from the appearance of the neighborhood.

Provide new trees to augment visual privacy between the site and the neighbors, and to replace any trees removed as a result of construction.

Project Description: The application presented to the City in May 2009, requested use permits to allow the demolition of the existing dwelling, garage and carports to allow the construction of a two-story dwelling to include 6,478 square feet of habitable space on two floors over an open-air terrace that provides usable open space. Excavation below the proposed house and closer to Rose Street would allow a partially below grade, 10-car parking garage. The access to this garage meets City standards to serve as an automobile turn-around for Rose Street. The primary living areas of the dwelling would connect to the Rose Street right-of-way via a street-level courtyard; the bedrooms and secondary living space would be below the level of Rose Street.

Eight Coast Live Oaks subject to the City Oak Tree Moratorium will be preserved, while 11 trees would be removed (all are located within the proposed footprint) and 13 new trees would be planted. Due to the downward slope of the site, an open-air lower level would be constructed beneath a portion of the house and would extend to the north as a patio/yard.

The proposed dwelling would be setback 45-feet from Rose Street, 50-feet from Shasta Road and over 40-feet from either side property line (west or east). The parapet, which would be the highest point of the proposed dwelling, would be at the 694-foot elevation (which is six-feet higher than the existing roof ridgeline).

ZAB Hearing: The ZAB held a public hearing on January 28, 2010, and was presented with public testimony from ten members of the public (this does not include the 5 speakers representing the applicant), and over 30 letters (please refer to attachment 5, pages 151-220, for a record of correspondence presented to the ZAB for the January 28, 2010 meeting). Aside from the testimony and letters in support of the project, the ZAB received written and oral testimony to request additional time to consider the project, that story poles should be erected to help the public better understand the project and that off-site construction impacts need to be considered.

The ZAB members making the motion to approve felt that the proposed dwelling was harmonious with the lot, that story poles were not needed (in particular since the existing public infrastructure supporting La Loma Avenue would be higher than the proposed dwelling) and that a finding of non-detriment could be made.

In approving the project, the ZAB felt that a continuance and story poles were not needed. One ZAB member questioned the lack of story poles, but did so without assessing the project pro or con and abstained from voting on the motion to approve. No motion was made by the ZAB to request story poles or to continue the hearing to a later date. Instead, in response to concerns regarding off-site construction-related
impacts, the ZAB added a condition of approval to require pre-building permit submittal consultation with the neighbors to help inform the standard construction management plan that is required for most construction projects (See Exhibit A, Finding and Conditions, page 5 for Condition of Approval #11). Please refer to attachment 5, page 225-272 for the ZAB Captioner's record of January 28, 2010 meeting for further information.

RATIONALE FOR RECOMMENDATION

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

Issue 1: Inadequate Public Notification – “Too few neighbors were consulted prior to application submittal, the City’s notification period is too short and the notification area is too small.” [p.4 of attached appeal letter]

Response 1: Section 23B.32.020 of the Zoning Ordinance requires that notification of a ZAB public hearing be posted at three visible locations in the vicinity of the subject property, at a bulletin board at the Zoning Counter, and be mailed to interested neighborhood organizations and adjoining property owners and occupants within 300 feet of the site. This notice was provided on January 14, 2010, as required. To help facilitate early public input, the City requires that a pre-application poster be erected on the site prior to submittal of any application to the City. In this case, the two-foot by three-foot pre-application poster was erected in May 2009. This poster was visible from the Rose Street public right-of-way.

In addition, the Land Use Division requires that applicants in residential districts contact the abutting and confronting owners/occupants prior to submittal of any application to the City. This neighbor consultation concluded in April 2009 when these neighbors signed the plans as depicted within the plan set (See Exhibit B: Project Plans, page 2).

Issue 2: Landmarks Preservation Notification – “The LPC was not adequately informed of the proposed demolition of the dwelling.” [p. 4-5]

Response 2: The Zoning Ordinance, in Section 23B.24.030.B, requires that the Landmarks Preservation Commission (LPC) receive a list of all pending applications for Permits at every regular meeting. This project was first listed on the LPC’s agenda in June 2009. This list provides the address and permit type (AUP, UP or Variance), but does not offer a description of any project. The intent of providing a list of pending projects is to afford the LPC the opportunity to initiate a property for consideration of landmark or structure of merit designation per BMC 3.24. The Zoning Ordinance requires referral to the LPC of any demolition of a non-
residential building, but not for residential buildings. The dwelling to be demolished is not on the State Historic Resources Inventory (the area was surveyed in the 1970’s, and over a dozen properties in the vicinity are listed). Submitted with the application is a structure history report researched by Mark Hulbert of Oakland-based Preservation Architecture that documents that the architecture, the designer, the builder and any occupant does not have historic significance. Based on the data available to staff, the demolition of this building was not referred to the LPC for comment. The appeal does not present any evidence to support that this dwelling presents architectural, cultural, historical, or educational value to warrant review by the LPC.

To date the LPC has not chosen to initiate this property for consideration as a Berkeley Landmark or Structure of Merit.

**Issue 3**: Story Poles - “H” District requirement for story poles was not met. [p. 5 & 11]

**Response 3**: The Zoning Ordinance defines a view corridor as "significant view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz Island or any other significant vista that substantially enhances the value and enjoyment of real property". Using this definition, the ZAB has determined that the loss of a view of trees or other nearby land features is not part of a protected view.

Story poles are not required by the Zoning Ordinance or any section of the Berkeley Municipal Code. Instead, story poles are required by the City’s Use Permit Checklist, unless the project planner concludes that story poles would not provide useful information concerning the project’s potential impacts on protected views or on loss of solar access. In this case, the project staff concluded that protected views would not be affected by this project, given the relative elevations and orientation of surrounding properties and the presence of existing mature trees that cover most of the site.

Based on the City’s definition of view corridor, using the project plans and observations made when visiting the area, Staff identified 1371 La Loma as the only dwelling that may possess a significant view under the Zoning Ordinance that warranted review in relation to this project. In this case, the existing view available to 1371 La Loma of Marin County, Mt. Tamalpais and Angel Island would remain because of building orientation (most windows face north and not the project site) and because the living areas are at a higher elevation than the proposed dwelling. Other dwellings to the north and south of the project currently
do not have views of any significant features over the site due to building orientation, significant change in topography and the presence of mature trees.

The requirement for story poles is an administrative requirement subject to interpretation by the Zoning Officer. The City has previously approved new construction in the hills without placement of story poles. Examples include the City’s Fire Station on Shasta Road, and two recent residential proposals on 629 The Arlington and 1286 Queens Road. Within this neighborhood, the City did require story poles for a project on Maybeck Twin Drive. In that case, the adjacent dwellings had significant views as defined by the Zoning Ordinance, the site was less densely vegetated, and the dwellings were proposed to be separated by 8-12 feet only.

The primary purpose of story poles is to help the ZAB and nearby neighbors assess potential view impacts. In this case, the ZAB considered the information presented to the Board, including public testimony to request story poles, and concluded that the project would not affect a view corridor. It is important to note that the ZAB’s use of story poles has not been to prove that a proposed project would not be visible, but rather that they do not cause an unreasonable obstruction to a significant view. The appeal does not provide any facts to demonstrate how a defined significant view would be affected or how the ZAB’s conclusion was inaccurate.

Please refer to the City’s response to Issue 8 for an analysis of the visibility of the site and the proposed dwelling.

Issue 4: Excavation/Slope – “The report does not mention the impact of massive excavation and topographical changes to the property.” [p. 5 & 6]

Response 4: This appeal point is factually incorrect. Page 5 of the ZAB staff report informed the ZAB and the public that the site slope is approximately 50% and that approximately 1,500 cubic yards would be excavated with approximately 800 cubic yards to be retained on site (preliminary cut/fill calculations are provided within the approved plan set, on page 16). As with most site development in the hills, the ZAB’s approval for this project includes five conditions to address construction-related erosion and drainage (See Exhibit A, pages 6-7 for Conditions of Approval #14, 15, 23, 24 and 27).

The appeal does not provide any facts to demonstrate how the conditions adopted by the ZAB are inadequate.
Issue 5: Historic Resources – “The staff report fails to mention the existence of historic resources in the neighborhood.” [p. 6]

Response 5: No City Landmark, Structure of Merit, or property within a City Historic District abuts or confronts the Site. Page 5 of the ZAB staff report informed the ZAB that no locally designated properties exist in the vicinity. This was in error. As shown in the Vicinity Map in Figure 1, Landmark properties do exist within the vicinity, when that area is expanded to any property within 400 feet of the site. For example, Hume Castle at 2900 Buena Vista is 250 feet south of the site and is a designated Landmark. The nearest Landmark within Greenwood Commons is 400 feet to the west of the project site.

Figure 1: Vicinity Map - City of Berkeley Landmark properties are shown as shaded parcels.

The notification provided in the staff report is intended to alert the ZAB of off-site conditions that could influence the review of new construction. The City Landmarks in the vicinity of the proposed dwelling are not visible from this site nor are the Landmarks and the proposed dwelling visible together, off-site. The appellant is correct to note that City Landmarks exist in the vicinity of the site but the appellant does not demonstrate the significance of this proximity, nor of any project related impacts to these resources.

Issue 6: Seismic Hazards, Landslide, Alquist Priolo Act – “No mention of conditions related to landslide were thought to be necessary (even in the face of massive excavation), and the building has been exempted from the requirements of the Alquist-Priolo Act (which primarily requires the project proponents to establish if there are any earthquake faults on the
property so that the structure can be designed appropriately).  Staff finds that the building is a two story wood-frame structure, despite indications that structurally it is a three-story building”.  [p. 7]

Response 6: The project site is included within an area of potential landslide or fault rupture hazard. This designation is applied broadly and does not mean that the subject site is part of an active slide or that an active fault exists. Rather, the presence on this list informs the City and property owners that additional review may be necessary. In this case, more detailed studies exist to show that no active slide exists on the site and that this site is at the eastern-most boundary of the Alquist Priolo Fault Zone, with the nearest mapped fault trace 600-900 feet to the west. In 2009, a geotechnical study was prepared for this site to document site conditions and make recommendations for the design of the proposed dwelling. The report concluded that the site was suitable for the construction of the proposed dwelling, subject to implementation of specific design recommendations.

Additional review under the State Hazards Mapping Act is not required because the Act only calls for additional review of projects that are either more than two floors, or not wood frame or steel construction. In this case, per the Act, this project is exempt because it would be no more than two floors and would be constructed of either wood frame or steel construction. It is important to note that the Act does not qualify any of the exemptions due to the floor area of a dwelling.

Should this project proceed, the design of the dwelling will require site-specific engineering to obtain a building permit. The appeal does not present any facts to demonstrate how the proposed dwelling would impact public safety.

Issue 7: Height Measurement – ”The building as proposed exceeds both the average height and maximum height standards.”  [p. 8 & 9]

Response 7: According to the applicant statement, the project was designed to be within the R-1 (H) limitations for height (28-feet average, 35-foot maximum). A condition of approval (#30) requires that the height and location of the dwelling be as depicted in the project plans. The ZAB approved an administrative use permit to allow the average to exceed the 28-foot limit (staff recommended the ZAB do so to reflect a conservative reading of the proposed average height). A small portion of the dwelling could exceed the 35-foot limit adjacent to the north-south wing of the dwelling near the rear yard terrace. The final grading and landscape plans are not complete, and will not be until the applicant is ready to apply for a building permit. Should this project proceed, the
The final grading plan will be reviewed by staff to ensure that the dwelling complies with the maximum 35-foot height limit. In other words, the dwelling would be constructed to the average and maximum height limits as approved by the ZAB, and the dwelling will never exceed the 694-foot roof parapet elevation.

Issue 8: Visibility – “The proposed structure is much higher and more visible than the description accepted in the staff report.” [p. 9]

Response 8: The proposed dwelling would be visible off-site. Any view of the proposed dwelling from Rose Street would occur only close to the site as the existing dwelling at 2637 Rose Street would block most views that would be available from the west of the site. Thus, when visible, the view of the proposed dwelling would only be from the portion of Rose Street that abuts the site. From this viewpoint, the view from the west would be of the upper floor of the dwelling; the view of the lower floor or the garage would only be available when standing further east near 2637 Rose Street immediately adjacent to the site. The street terminates at this location, so this is not a common public view.

From below the proposed dwelling on Shasta Road looking southeast, the lower floor of the dwelling would be separated from the roadway by nine mature trees, and would be setback 55-feet. Most of the lower terrace that forms the base of this dwelling would be minimally visible from this viewpoint because of the change in elevation and vegetation that help block this view. Nonetheless, the base of the lower terrace will be planted to integrate the wall into the site.

Figures 3-7 that follow illustrate current conditions and the visibility of the proposed dwelling from three vantage points in the area (full color originals will be provided separately by the applicant).
Figure 2: Photo Key

Figure 3: Existing Conditions - View from ‘Point A’ (Approx 35’ west of the site along the Shasta Road Right-of-Way)
Figure 4: Existing & Proposed Conditions - View from ‘Point A’

Figure 5: Proposed Conditions Only - View from ‘Point A’
Figure 6: Proposed Conditions - View from ‘Point B’ within the 2nd Floor of 2664 Shasta Road, which is 300-feet to the northeast and roughly the same elevation as the proposed dwelling.

Figure 7: Proposed Conditions - View from ‘Point C’ within the Glendale- La Loma Park, which is roughly 450-feet to the northeast and roughly 90-feet higher in elevation above the ridge of the proposed dwelling.
Issue 9: Tree Preservation – “There are no conditions attached that would ensure that masking vegetation stays put, as inadequate as it may be.” [p. 10]

Response 9: As noted in the project description, eight Coast Live Oaks and 20 other trees will be preserved while 13 new trees will be planted. Should this project proceed, staff will require that the landscape plan include the tree planting plan presented to the ZAB. A building permit will not be issued unless this detail is provided. Applicable to all ZAB approvals is the standard condition that states:

“Except as expressly specified herein, the site plan, floor plans, building elevations and any additional information or representations submitted by the applicant during the Staff review and public hearing process leading to the approval of this Permit, whether oral or written, which indicated the proposed structure or manner of operation are deemed conditions of approval.”

This condition implements Section 23B.56.030 of the Zoning Ordinance, and is used to ensure that the project presented to the ZAB is implemented during construction. In particular, to the extent that the various plans and representations made by the applicant address landscaping, this standard condition makes them conditions of approval. In the future, should the landscaping deteriorate or should trees be removed, the Zoning Ordinance provides for ZAB enforcement to ensure that the trees are maintained as presented in the plans, or replaced in kind (noting that new plantings may take time to attain the height of the trees to be replaced).

Issue 10: Green Building – “The assertion that this project meets “green building goals” is highly questionable.” [p. 10]

Response 10: The green building rating provided in the staff report used the Single Family GreenPoint Checklist. The Planning Department required this applicant to consult with City Staff prior to finalizing their permit application. The purpose of doing this consultation and for including this information in the ZAB report is to increase the awareness of the public, applicants and the ZAB of green construction elements, and to provide consistent information on a project’s “greenness.” Build It Green is a professional non-profit organization that promotes healthy, energy and resource efficient buildings in California. A new dwelling that has earned 50 points and meets the minimum requirements in Energy, Indoor Air Quality, Resources, and Water is considered a “green home”. In this case, the pre-construction rating for this dwelling was 91 points overall and within each category the project would exceed the required minimums. The score noted in the staff report was included as
information only. It is important to note that the GreenPoint Checklist does not qualify any green rating based on the floor area of a dwelling.

The appeal does not offer any evidence to support that the ZAB’s finding of non-detriment was made in error.

Issue 11: Views – “The staff report notes that dwellings to the north do not have views across the site, but neglects views toward the site.” [p. 11]

Response 11: Please refer to response #3 and #8

Issue 12: Neighborhood compatibility – “The staff report understates the size and volume of the building and misrepresents how it fits into the topography.” [p. 11 & 12]

Response 12: Please refer to response #8 and #13 that follows.

Issue 13: General and Area Plan Consistency. [p. 12-13]

Response 13: In approving the project, the ZAB concluded that a finding of non-detriment could be made and that the proposed dwelling was consistent with the purposes of the R-1 and Hillside Overlay Districts. The appellant asserts that this dwelling, if constructed, would be one of the largest in the City (on page 2 of the appeal the appellant notes only 17 dwellings in Berkeley exceed 6,000 sq ft and only one exceeds 9,000 sq ft). In fact, 68 dwellings in Berkeley have more than 6,000 square feet of floor area and, of these, nine are larger than 9,000 square feet, and 5 are larger than 10,000 square feet. It is worth noting that the floor area to lot area ratio (FAR) of these 68 dwellings is .55, whereas the FAR of the proposed dwelling with the full floor area of the garage is .33. Using FAR as a measure of development intensity, within 300-feet of the proposed dwelling, 16 parcels are developed with an FAR that is greater than the proposed.

Thus, the proposed dwelling is by no means the largest in the City nor among the most intensely developed parcels citywide or within 300-feet of the proposed dwelling. The appeal states that because of the size of the proposed dwelling, the process for approval should be different. However, the appeal does not offer specifics to note how the process followed by the ZAB was in error. The ZAB has acted on other use permits for new, large dwellings in the past, using the same analytic tools applied in this case; therefore this process was consistent with past practice.

3 Based on Alameda County Assessor’s data.
The appeal also states the historic setting of the area should be a factor for review. The ZAB’s acceptance of the modern design of the proposed dwelling is consistent with other recent approvals, in similarly ‘historic’ neighborhoods. The ZAB’s standard is to look to the style of the area, but not be held to a continuance of historical building styles or details for new construction. As stated in this report, the nearby historic buildings have a significant visual separation from this site such that the proposed dwelling cannot be viewed along with any Landmark property. The view of the proposed dwelling along with the abutting neighbors would include significant horizontal separation allowed by the large parcel and on-site setback, mature trees and steep topography. The ZAB concluded that the proposed project would be consistent with the purposes of the R-1 District, H Overlay District, and General Plan policies.

**Issue 14:** Conditions of Approval / Notice of Decision – “The only additional condition attached to the approved Permit was “Neighbor Consultation,” added at the end of the ZAB hearing after the Board voted to approve the permits.” [p. 13 & 14]

**Response 14:** As a standard condition, the ZAB requires that a construction management plan be prepared to limit the impact of construction on neighbors. As noted previously in this report, in response to concerns presented by neighbors to the west, the ZAB added a condition of approval to require pre-building permit submittal consultation with the neighbors to help inform the standard construction management plan that is required for most construction projects (See Exhibit A, page 5 for Condition of Approval #11). The ZAB believed that this added condition would allow the neighbors to participate in the preparation of the plan, and to provide area-specific concerns that may not be typical for construction management plans prepared elsewhere.

On January 31, before the notice of decision was released, the applicant held a meeting with at least 10 neighbors (including many of the signers of the appeal) to solicit input. Should this project proceed, and after a contractor is chosen, the applicant will again meet with neighbors to present a more formal construction management plan. During the building permit review process, Staff will confirm that this has occurred and that consultation and the plan meet the intent of the direction provided by the ZAB. The appeal does not present any facts to demonstrate how the added condition is inadequate.
ALTERNATIVE ACTIONS CONSIDERED
Pursuant to BMC Section 23B.32.060.B, the Council may (1) affirm the ZAB decision and dismiss the appeal, (2) set the matter for a public hearing, (3) remand the matter to the ZAB.

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

CONTACT PERSONS
Debra Sanderson, Land Use Planning Manager, Planning & Development Department, (510) 981-7410
Greg Powell, Senior Planner, Planning & Development Department, (510) 981-7414

Attachments:
1: Resolution
   Exhibit A: Findings and Conditions
   Exhibit B: Project Plans, dated January 28, 2010
2: Appeal Letter, dated February 19, 2010
3: ZAB Staff Report, dated January 28, 2010
4: Index to Administrative Record
5: Administrative Record
RESOLUTION NO. ##.###-N.S.

AFFIRMING THE ZONING ADJUSTMENTS BOARD’S APPROVAL OF USE PERMIT NO. 09-10000038 AT 2707 ROSE STREET TO DEMOLISH THE EXISTING TWO-STORY, 2,477 SQUARE FOOT, SINGLE-FAMILY DWELLING, A DETACHED ONE-CAR GARAGE, AND TWO ONE-CAR CARPORTS TO FACILITATE THE CONSTRUCTION OF A TWO-STORY, 6,478 SQUARE FOOT, SINGLE-FAMILY DWELLING WITH A 3,394 SQUARE FOOT, 10-CAR GARAGE, ON A 29,714 SQUARE FOOT PARCEL IN THE SINGLE FAMILY RESIDENTIAL DISTRICT- HILLSIDE OVERLAY AND DISMISSING THE APPEAL

WHEREAS, on May 19, 2009, Donn Logan of Wong-Logan Architects (“applicant”) filed an application for a Use Permit to demolish the existing two-story, 2,477 square foot, single-family dwelling, a detached one-car garage, and two one-car carports to facilitate the construction of a two-story, 6,478 square foot, single-family dwelling with a 3,394 square foot, 10-car garage (“project”); and

WHEREAS, on October 13, 2009, the applicant submitted a revised application; and

WHEREAS, on November 12, 2009, staff deemed this application complete; and

WHEREAS, on January 14, 2010, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on January 28, 2010, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, and approved the project; and

WHEREAS, on February 5, 2010, staff issued the notice of the ZAB decision; and

WHEREAS, on February 19, 2010, Susan Nunes Fadley filed an appeal, signed by 34 Berkeley residents, of the ZAB decision with the City Clerk; and

WHEREAS, on April 27, 2010, the Council considered the record of the proceedings before the ZAB, and the staff report and correspondence presented to the Council, and, in the opinion of this Council, the facts stated in, or ascertainable from this information, do not warrant further hearing.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby adopts the findings made by the ZAB in Exhibit A, affirms the decision of the ZAB to approve Use Permit No. 09-10000038, adopts the conditions in Exhibit A and the project plans in Exhibit B, and dismisses the appeal.

Exhibits
A: Findings and Conditions
B: Project Plans dated January 28, 2010
2707 Rose Street

Use Permit #09-10000038

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15332 of the CEQA Guidelines ("In-fill Housing") as follows:
   A. The project is consistent with the applicable General Plan designation and applicable General Plan policies (see “General Plan” discussion in this report), as well as with the applicable zoning designation and regulations.
   B. The project occurs within the Berkeley city limits on a project site of no more than five acres, and is surrounded by urban uses.
   C. The site has no value as habitat for endangered, rare or threatened species.
   D. The project would not result in any significant effects relating to traffic, noise, air quality or water quality.
   E. The site is already served by required utilities and public services, which will also adequately serve the project.

2. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15303 of the CEQA Guidelines ("New Construction or Conversion of Small Structures") because this project would involve the construction of one single-family residence.

3. Furthermore, the project does not trigger any of the exceptions in CEQA Guidelines Section 15300.2. In particular, the project will not have any significant effects due to unusual circumstances, or any cumulatively significant impacts (such as traffic), and it will not adversely impact any designated historical resources. Therefore, because the project meets the requirements of CEQA Guidelines Sections 15332 and 15300.2, it is exempt from further review under CEQA.

GENERAL NON-DETRIEMENT FINDING

4. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the proposed demolition of the existing two-story, 2,477 square foot, single-family residence to construct a two-story, 6,478 square foot, single-family residence, with a 3,394 square foot garage on a 29,714 square foot parcel, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City, for the following reasons:
A. That the proposed project conforms to the applicable General Plan Policies by replacing the existing dwelling with a new dwelling;

B. That the proposed project conforms to the applicable Purposes of the R-1 District by proposing a dwelling that:
   1. Will preserve the building pattern in the area of large lots with ample setbacks (Purpose A).
   2. Provides usable open space that is in excess of the R-1 District minimum (Purpose B); and
   3. Would provide setbacks that are well above the minimum, thereby minimizing the potential bulk and unreasonable obstructions of light and air (Purpose C).

C. That the proposed project conforms to the applicable Development Standards of the R-1 District by conforming to the maximum height limit, maximum lot coverage and the minimum setback from the interior parcel lines and Shasta Road, usable open space and the parking requirements for new dwellings.

OTHER REQUIRED FINDINGS

5. Pursuant to Berkeley Municipal Code Section 23E.96.070.C, the Zoning Adjustments Board finds the exception for average height (31'-6" proposed, 28' maximum) and the reduction to the required yard adjacent to Rose Street (16’ proposed, 20’ minimum) is warranted because of steep topography.
STANDARD CONDITIONS

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 Use Permit, under the title ‘Use Permit Conditions’. The 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. **Applicant Responsible for Compliance with Conditions**
The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. **Uses Approved Deemed to Exclude Other Uses** (Section 23B.56.010)
   A. This Permit authorizes only those uses and activities actually proposed in the application and exclude other uses and activities.
   B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. **Modification of Permits** (Section 23B.56.020)
No change in the use for which this Permit is approved is permitted unless the Permit is modified by the Zoning Adjustments Board, in conformance with Section 23B.56.020.A.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board’s policy adopted on May 24, 1978, which reduce the size of the project. The Zoning Officer may also approve a maximum two-foot variation to Board approved plans, provided, that such variation does not increase a structure’s height, reduce the minimum distance to any property line, and/or does not conflict with any special objective sought by the Board. In the case of modifications to Use Permits for construction of, or additions or changes to, single-family homes which required Board review, the Zoning Officer shall follow Board policy adopted March 13, 1997, as follows:
   A. Upon applications for modifications to a home where a Use Permit has been granted, Staff shall review the Use Permit to determine if any explicit conditions were placed on the Use Permit that would be affected by the proposed modification.
   B. If, prior to acting on a Building Permit, Staff becomes aware of controversy over an earlier application, Staff may choose to conduct a more detailed review of the record to determine if conditions were implied by the Board or offered by the applicant (but not included in the Use Permit conditions) that would be affected by the proposed modification (this does not imply that Staff will review the whole Use Permit record for all applications).
C. If there are explicit conditions (#A) or implied conditions (#B) affected by the proposed modification, the project shall be brought back to the Board as a Use Permit Modification.

D. If there are no explicit conditions that would be affected by the proposed modification, and if Staff is not otherwise aware of implied conditions, and the project would otherwise meet the requirements of the Zoning Ordinance, Staff will approve the Building Permit without Board or public review.

5. **Plans and Representations Become Conditions** (Section 23B.56.030)
   Except as expressly specified herein, the site plan, floor plans, building elevations and any additional information or representations submitted by the applicant during the Staff review and public hearing process leading to the approval of this Permit, whether oral or written, which indicated the proposed structure or manner of operation are deemed conditions of approval.

6. **Subject to all City and Other Regulations** (Section 23B.56.040)
   The approved use and/or construction are subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies.

7. **Exercised Permit for Use Survives Vacancy of Property** (Section 23B.56.080)
   Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8 below.

8. **Exercise and Lapse of Permits** (Section 23B.56.100)
   A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
   B. 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.
   C. 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.

9. **Indemnification Agreement**
   The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.
ADDITIONAL CONDITIONS

Pursuant to BMC Section 23B.32.040.D, the Zoning Adjustments Board attaches the following conditions to this Permit:

Prior to Issuance of Any Building Permit

10. **Construction Noise:** The applicant shall provide the project planner with the name and telephone number of the individual empowered to manage construction noise from the project. The individual’s name, telephone number, and responsibility for noise management shall be posted at the project site for the duration of construction in a location easily visible to the public. The individual shall record all noise complaints received and actions taken in response, and submit this record to the project planner upon request.

- Noise Management Individual __________________________
  Name __________________________ Phone # __________________

11. **Neighbor Consultation:** Prior to submitting the construction management plan required by condition #12, the applicant shall prepare a draft of this plan for presentation to the neighborhood that includes at least the following:
  - Plans to move materials on/off of the site;
  - Tentative start and duration of construction;
  - Streets to be used for access to the site;
  - Description of vehicles that will access the site (aside from vehicles weighing less than 6,000 lbs when empty);
  - Plan for worker parking;
  - Measures to address potential damage to public or private property; and
  - Plans for full or partial street closures, if any.

12. **Construction Traffic Management Plan:** The applicant shall secure the City Traffic Engineer’s approval of a construction traffic management plan. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, 3rd floor, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The City Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety, or convenience of the surrounding neighborhood.

- City Monitor: Traffic Engineer __________________________
  Signature __________________________ Date __________________

13. **Green Building:** The applicant shall complete and submit an updated *Draft GreenPoint Checklist* to the project planner with comments on any revisions to the project that affect the project’s green building score.

14. **Construction Erosion Control and Drainage:** The project shall comply with all Phase II NPDES Storm Water regulations for Small Construction activities. In
particular, the project grading plan shall include Drainage and Erosion Control Plans to minimize the impacts from erosion and sedimentation during grading. This plan shall conform to all standards adopted by the City of Berkeley and Alameda County. This plan shall include at least the following procedures: (1) restricting grading to the dry season; (2) protecting all finished graded slopes from erosion using such techniques as erosion control matting and hydroseeding; (3) protecting downstream storm drainage inlets from sedimentation; (4) using silt fencing and hay bales to retain sediment on the project site; and (5) any other suitable measures outlined in the Association of Bay Area Governments' (ABAG) Manual of Standards for Erosion and Sediment Control Measures or the San Francisco Bay Regional Water Quality Control Board’s Erosion and Sediment Control Field Manual.

15. **Construction Erosion Control and Drainage:** Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

16. **Coast Live Oaks.** The Arborist Survey Report, prepared by Grant Hamilton and dated September 9, 2009, shall be incorporated into the building permit plans.

**During Construction:**

17. **Coast Live Oaks.** Construction shall adhere to the requirements of the Arborist Report, and any subsequent recommendations required to ensure the continued health of the Coast Live oak trees.

18. **Construction Hours and Noise:** Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment re-design, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible and necessary).

19. **Construction Noise:** Impact tools (e.g., jack hammers, pavement breakers and noise drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to 10dB. External jackets on the tools themselves shall be used where feasible and this could achieve a reduction of 4 dB. Quieter procedures shall be used such as drilling rather than impact equipment whenever feasible.

20. **Construction Noise:** To ensure compliance with BMC Section 13.40.070.B.7 (a-b) Prohibited acts, the operation of any tools or equipment used in construction, drilling, repair, alteration, or demolition work is subject to the following standards measured at the property line of the subject site:
A. Maximum sound levels for nonscheduled, intermittent, short-term operation (less than ten days) of mobile equipment shall not exceed 85 dBA Monday-Friday from 7:00 a.m. to 7:00 p.m. or 70 dBA weekends and legal holidays 9:00 a.m. to 8:00 p.m.

B. Maximum sound levels for repetitively scheduled and relatively long term operation (period of ten days or more) of stationary equipment shall not exceed 70 dBA Monday-Friday from 7:00 a.m. to 7:00 p.m. or 60 dBA weekends and legal holidays 9:00 a.m. to 8:00 p.m.

21. **Construction Noise**: No construction activity that may cause vibrations or excessive noise involving the use of heavy machinery shall be allowed.

22. **Construction Noise**: To ensure compliance with the City of Berkeley’s Noise Ordinance, the Zoning Officer is authorized to place additional limitations on the hours of operation and/or halt construction until corrective measures are taken.

23. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.

24. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season (between October 15 and April 15), the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department.

25. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

26. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.

27. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.

28. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.

29. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.

30. The height and location of the proposed structure, property lines and spot elevations shall be verified by a licensed surveyor or engineer on site after foundation forms are placed, but before pouring concrete or placing construction material in its permanent position. This verification shall be to the satisfaction of the Zoning Officer.
Prior to Issuance of Occupancy Permit or Final Inspection:

31. The project shall conform to the plans and statements in the Use Permit.

32. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated January 20, 2010.

33. Green Building: The applicant shall update, sign, and submit an As-Built GreenPoint Checklist reflecting final as-built conditions, including the total green building score, to the project planner.

At All Times:

34. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.

35. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

36. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
Applicant Statement for 2707 Rose Street

MAY 19 2009

LAND USE PLANNING

15 May 2009

Description

The project is a new house with a gross floor area of 6,478 square feet on a steep, down-slope hillside in R1-HI District. The house is sited not only for the Bay view, but also sited and designed to provide the maximum privacy for and from the immediate neighbors. This was achieved by taking into consideration the locations of existing tall and screening trees / vegetation, and providing large setback distances from the neighbors’ property lines.

The owners and / or applicant have met with all abutting and confronting neighbors. These neighbors are very supportive of the project and the design. Since the house is at the dead end of a street lacking turn-around accommodation, the project’s site plan provides a way for vehicles to easily turn around – a benefit that is welcome by the neighbors. In addition, there is also virtually no street parking along this portion of Rose Street. To address the absence of street parking for visitors, and to take advantage of the site’s steep topography, parking for ten cars is provided beneath the main floor level of the house. There is also a two-car carport at the main floor elevation.

The project is intended to be sustainably designed and constructed in keeping with City of Berkeley guidelines. The site is over 2/3 acre on which is a dilapidated house which has been vacant for close to ten years. Even prior to the vacancy, the house had been deteriorating from several decades of lack of maintenance. The material from the deconstructed house will be salvaged and recycled. The new house construction shall consist of concrete foundation and retaining walls using recycled ingredients such as slag and fly-ash. The exterior finish of the new house will be a homogeneous cementitious or panelized material in a medium dark color that harmonizes with the natural setting.

Non-Detriment Findings Per R-1 Single Family Residential and Hillside H District Provisions

1. The project conforms to Berkeley Municipal Code Section 23D.16.070 and Section 23E.96.020 Hillside (H) District Development Standards
2. The project protects the character of Berkeley’s Hill District and the immediate environs
3. The house is sited to provide more than reasonable protection of neighbors’ sunlight, air and views
4. The lot exceeds the minimum required area of 5,000 square feet
5. The house is only two stories and does not exceed the maximum 35 ft. height limit.
6. The house is set back from the lot lines at the front rear and sides at greater than required distances.
7. Privacy impacts on the adjacent dwellings will be minimal since the house is sited at generous distances (possible by the site size) and at locations screened by existing tall trees.
8. Maximum lot coverage is well below the 40% of lot area threshold.
9. The lot shall contain far more than the minimum required usable open space requirement.
10. The house casts no new shadows on any neighboring houses.
11. The project will not have any deleterious off-site impact as a result of the house. If anything, the project will alleviate existing parking and vehicle turn-around problems on the dead-end street. A greater than required number of off street parking is provided as well as a turn-around for vehicles.
February 19, 2010

City Clerk's Department
2180 Milvia Street
Berkeley, CA 94704

Re: Zoning Adjustments Board Decision Date: 01-28-10
USE PERMIT: #09-10000038
Project Location: 2707 Rose Street
Date amended NOD mailed: 02-05-10
Appeal Period Expiration: 02-19-10

To the City Clerk:

In accordance with the provisions of the Berkeley Municipal Code, we are appealing the Zoning Adjustments Board's approval of use permits for a project at 2707 Rose Street. The reasons for the appeal are presented in the attached document and exhibits. Also included are the signatures of neighbors and other Berkeley residents who support this appeal.

Sincerely,

[Signature]

Susan Nunes Fadley
1 Tamalpais Road
Berkeley, CA 94708
510-841-7541
E-mail: suminu@mindspring.com

Attachments: Signature pages, Appeal Document, Supporting Exhibits
We the undersigned, support the appeal of this ZAB decision, as presented in the following document.

Signature: [Signature]
Date: 2/12/2010
Name (Printed): Susan Nunes Fadley
Address in Berkeley (with zip): 1 Tamalpais Rd., 94708

Signature: [Signature]
Date: 2/12/2010
Name (Printed): Charles S. Fadley
Address in Berkeley (with zip): 1 Tamalpais Rd., 94708

Signature: [Signature]
Date: 2/12/2010
Name (Printed): Paul Newachech
Address in Berkeley (with zip): 2666 Shasta Road, 94708

Signature: [Signature]
Date: 2/13/10
Name (Printed): James Simmons
Address in Berkeley (with zip): 4 Greenwood Canyon, 94708

Signature: [Signature]
Date: 2/13/10
Name (Printed): Mary T. Kent
Address in Berkeley (with zip): 74 Tamalpais Rd, 94708
Appeal of the ZAB decision of 01/28/10
USE PERMIT: #09-10000038
Project Location: 2707 ROSE STREET
Project Description: demolish an existing two-story, 2,477 square foot, single-family
dwelling and three detached one-car garages and to construct a two-story, 6,478
square foot, single-family dwelling, with a 3,394 square foot, 10-car garage

We the undersigned, support the appeal of this ZAB decision, as presented in the
following document:

Signature: [Signature]
Date: 2/16/10
Name (Printed): Richard J. Carr
Address in Berkeley (with zip):
2505 Rose St, 94708

Signature: [Signature]
Date: 2/16/10
Name (Printed):
Address in Berkeley (with zip):

Signature: [Signature]
Date: 2/17/10
Name (Printed): Erika F. John
Address in Berkeley (with zip):
2736 Hasta Rd, 94708

Signature: [Signature]
Date: Feb. 18, 2010
Name (Printed): Bob B. Buchanan
Address in Berkeley (with zip):
19 Tamalpais Road
Appeal of the ZAB decision of 01/28/10
USE PERMIT: #09-10000038
Project Location: 2707 ROSE STREET
Project Description: demolish an existing two-story, 2,477 square foot, single-family dwelling and three detached one-car garages and to construct a two-story, 6,478 square foot, single-family dwelling, with a 3,394 square foot, 10-car garage

We the undersigned, support the appeal of this ZAB decision, as presented in the following document:

Signature: Beverley Bolt  
Date: 2/18/2010  
Name (Printed): BEVERLEY BOLT  
Address in Berkeley (with zip): 1491 Greenwood Terrace 94708

Signature: Eileen W. Stine  
Date: 2/18/2010  
Name (Printed): CAROLINE SCHREIBER, M.D.  
Address in Berkeley (with zip): 9 Tamalpais Rd 94708

Signature: James A. Edginton  
Date: 2/19/10  
Name (Printed): K. FRANKLIN HOLLINGSHEAD, M.D.  
Address in Berkeley (with zip): 2733 Buena Vista Way 94708
Appeal of the ZAB decision of 01/28/10
USE PERMIT: #09-10000038
Project Location: 2707 ROSE STREET
Project Description: demolish an existing two-story, 2,477 square foot, single-family dwelling and three detached one-car garages and to construct a two-story, 6,478 square foot, single-family dwelling, with a 3,394 square foot, 10-car garage

We the undersigned, support the appeal of this ZAB decision, as presented in the following document:

Signature: [Chair, LE]  
Date: 02/16/10  
Name (Printed): REPRESENTING MYSELF  
Address in Berkeley (with zip): 1820 VINE ST.

Signature: [Name]  
Date: 2/16/10  
Name (Printed):  
Address in Berkeley (with zip): 180 CAMPAIS 94708

Signature: [Name]  
Date: Feb 17, 2010  
Name (Printed): VALERIE J. HIRE  
Address in Berkeley (with zip): 1541 HAWTHORNE TER, BERKELEY 94708

Signature: [Name]  
Date: 2/27/2010  
Name (Printed): DANIELLA THOMPSON  
Address in Berkeley (with zip): 2663 LA CONTE AVE. 94709

Signature: [Name]  
Date: 2/17/10  
Name (Printed): LUCINDA OLNEY  
Address in Berkeley (with zip): 2731 SHASTA RD. 94708

Signature: [Name]  
Date: Feb 17, 2010  
Name (Printed): BARBARA A. ADAIR  
Address in Berkeley (with zip): 2732 SHASTA ROAD 94708
Appeal of the ZAB decision of 01/28/10
USE PERMIT: #09-10000038
Project Location: 2707 ROSE STREET
Project Description: demolish an existing two-story, 2,477 square foot, single-family
dwelling and three detached one-car garages and to construct a two-story, 6,478
square foot, single-family dwelling, with a 3,394 square foot, 10-car garage

We the undersigned, support the appeal of this ZAB decision, as presented in the
following document:

Signature:  
Date:  
Name (Printed):
Address in Berkeley (with zip):

Signature:  
Date:  
Name (Printed):
Address in Berkeley (with zip):

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Name (Printed):
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Appeal of the ZAB decision of 01/28/10
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We the undersigned, support the appeal of this ZAB decision, as presented in the following document:

Signature: Carolyn Porter
Date: 2/19/2010
Name (Printed): Carolyn Porter
Address in Berkeley (with zip):
2514 Buena Vista Way 94708

Signature: Eric O. Johannesson
Date: 2/19/2010
Name (Printed): Eric O. Johannesson
Address in Berkeley (with zip):
2664 Shasta Rd 94708

Signature: Madeley Johannesson
Date: 2/19/2010
Name (Printed): Madelynn Johannesson
Address in Berkeley (with zip):
2664 Shasta Rd 94708

Signature:
Date:
Name (Printed):
Address in Berkeley (with zip):
February 19, 2010

To: Berkeley City Council

RE: APPEAL OF THE ZAB DECISION OF 01/28/10
USE PERMIT: #09-10000038
Project Location: 2707 ROSE STREET
Project Description: demolish an existing two-story, 2,477 square foot, single-family dwelling and three detached one-car garages and construct a two-story, 6,478 square foot, single-family dwelling, with a 3,394 square foot, 10-car garage

The Zoning Adjustments Board of the City of Berkeley conducted a public hearing on 01/28/10 and approved the following permits for the above project:

- Use Permit to demolish an existing dwelling unit;
- Use Permit to construct a dwelling unit;
- Administrative Use Permit to allow a 35-foot average height limit for a main building (28 feet is the maximum); and
- Administrative Use Permit to reduce front yard setback to 16 feet (20 feet is required).

We are appealing that decision to the City Council. This document specifies the reasons for the appeal. It contains the basis and purpose of the appeal, an overview, a discussion of the specific deficiencies in the process, conclusions and recommendations, supporting exhibits, and, in the cover pages of this document, the signatures of residents who support the appeal.

BASIS OF APPEAL

The basis of this appeal is twofold:

(1) The material submitted by the applicants and the staff report on which the ZAB decision is based contain numerous significant omissions, inaccuracies and oversights, and is misleading on important points, as discussed in detail below.

(2) The ZAB process applied to this project was not consistent with ZAB processes in other projects and ignores the failure to comply with City regulations, raising significant questions regarding transparency and objectivity. The quality and depth of the ZAB review of this project was seriously deficient.
THE PURPOSES OF THIS APPEAL

- To allow the input from the applicants and the staff report to be corrected so as to reflect the true nature of the neighborhood and the project, and to deal with the many flaws, mistakes, inaccuracies or unclear aspects contained therein. The additional actions should include the erection of surveyor-verified story poles.

- To nullify the ZAB decision and require a new consideration of this project by the Zoning Adjustments Board and the Planning and Development Department. This reconsideration should address the various points that are raised in this Appeal, and include a fair airing of all community concerns that have been or might be expressed during this process.

- Overall, to permit a more accurate assessment of the impacts of this extraordinarily large project on the architectural and visual character of a historic neighborhood, and to permit consideration of mitigations of the harm that would be caused by the current version of the proposal.

OVERVIEW

The ZAB-approved project at 2707 Rose Street will be one of the largest houses in Berkeley, four times the average house size in its vicinity, and situated in a canyon where the existing houses are of a much smaller scale. While the applicants and the staff throughout refer to this project as being a 6,478 square foot dwelling “with a 3,394 square foot 10 car garage,” the proposed structure is in fact a single structure of 9,872 square feet, including an attached 10-car garage, and carport space for two vehicles. Out of over 17,000 single-family residences in the city of Berkeley, only 17 exceed 6,000 square feet, only 10 exceed 6,400 square feet, and there is only one structure that exceeds 9,000 square feet. [See Exhibits A-1: Distribution of home sizes in Berkeley & A-2: Homes in Berkeley Over 6,400 Square Feet.] Only two homes greater than 6,400 square feet have been constructed since 1942. [See Exhibit A-3, Homes in Berkeley...with dates of construction.] This is thus a truly unique project in its neighborhood and in the City, and it deserves the most careful consideration.

Many neighbors of this project feel that they have not been supplied with adequate information to fully assess the impacts of the proposed building, especially in terms of style, visual character, height and mass. Since most people are not trained to read architectural drawings, the purpose of the City requirement for story poles is to enable neighbors to visualize the building as it will be, rather than relying on an architect’s drawings, or photos taken from selected angles. Story poles are in fact required by Planning and Development Department rules for any home construction or story addition in the “H” Hillside Overlay District that applies to the parcel at 2707 Rose. [See Exhibit B: Excerpts from “Planning & Development: Zoning Project Submittal Requirements.”] This was not done.

The ZAB decision process for this application was highly problematic. Based on a staff report containing glaring inaccuracies or omissions (discussed in detail below), a positive
decision was made in the face of more than two dozen apparently unread letters of concern [Exhibit C: Letters submitted for the ZAB hearing of 01/28/20] and in the face of oral testimony by a number of concerned citizens. Their concerns were not addressed by the ZAB, with the exception of one ZAB member who seemed puzzled and concerned by the absence of story poles and who abstained from the vote. [The video of this hearing is available at: http://www.cityofberkeley.info/ContentDisplay.aspx?id=13104#Current_Year].

The staff report noted that only three comment letters were received by the time the report was written. Having heard from neighbors who didn’t learn of the project until it was too late to submit comments, the Planning staff allowed additional comments to be submitted until noon of the day of the hearing, a laudable act in view of the late notification for the project (see below). Twenty-eight letters of concern or opposition were received, most of them asking for a continuance [Exhibit C]. However, these were apparently not distributed to ZAB members until the start of the hearing itself. These letters could not possibly have been read, let alone adequately assessed by the ZAB before it voted for approval. In our view, the handling of this issue by the ZAB, if allowed to stand, would set new and dangerous precedents for the zoning adjustments process that deserve serious consideration by the Council.

It has for years been standard operating practice for the ZAB to continue a hearing when there is significant opposition or community concern registered. This is a well-reasoned and time-honored practice that allows the concerned parties and the project proponent to see if a mutually agreeable solution can be worked out. A check of ZAB records will show that this type of continuance is often granted when only a single dissenting voice is heard. In the case of 2707 Rose Street, when such a continuance was directly requested in oral testimony by several neighbors and requested specifically in a large number of letters of concern in possession of the board, no consideration for continuation was entertained. None of the ZAB members other than the one disturbed by the absence of the story poles discussed the letters or asked questions of speakers who opposed the measure.

Looked at more broadly, this project, clearly one of the most extraordinary residential proposals in decades, has in effect slid through without serious examination, based on incorrect factual statements, while attempts by neighbors to secure and provide to the ZAB information that would permit substantive scrutiny were squelched. The ZAB largely ignored their legitimate concerns. This is not the Berkeley that should be.

In the following sections, we detail the various inadequacies or errors in the notification and review process to date.
INSUFFICIENCIES IN THE NOTIFICATION PROCESS

1. Public Notification

The process of notifying the neighborhood was sorely inadequate. While the owners of four abutting and confronting properties signed as having seen the plans between April 9th and May 4th, 2009, few in the surrounding “vicinity” were aware of the proposal until two weeks before the hearing, when a notice was sent to residents within a roughly 300-foot radius and to potentially concerned neighborhood organizations. [Exhibit D: ZAB Notice of Public Hearing.] The planning report notes notices were sent to 119 residences; however the list later provided by Planning puts that number at around 74. The result of this process was that people living just steps outside this notification radius did not learn of the project until days before the hearing, when a letter was circulated by a resident through the wider neighborhood, as a result of one of the neighborhood organizations having been informed.

The large yellow “Proposed Project” posters were not positioned for maximum visibility. For example, the poster at the actual 2707 Rose Street address was posted according to city standards, but inside a dilapidated garage facing on the street with a “Private Property No Trespassing” sign over the entrance threatening trespassers with arrest. [Exhibit E: Photograph of “Proposed Project” Poster] Beyond this, a hearing notice stapled to a nearby telephone pole, well above the point of most foot traffic, was missing several pages within a week of the hearing.

Of special significance and as noted previously, had the Planning Department’s own application requirements been followed, story poles should have been erected at least one month prior to any hearing so that the public would have a chance to view the size and height of the structure. [Exhibit B.]

As an aside, with a project of this magnitude, the standard 300’ radius of notification seems quite inadequate; perhaps a future ordinance change could include a square footage threshold above which expanded notification would be required. Our Exhibit A-1 could provide guidelines for this.

2. Landmarks Preservation Notification

Other improper shortcuts in public notification were apparent with regard to landmarks. The staff failed to provide the Landmarks Preservation Commission (LPC) with information specifying that a 1920s home was being demolished, to be replaced with a new dwelling. The hearing notices show that staff was aware that an old building and three garages were to be torn down: “demolish an existing two-story, 2,477 square foot, single-family dwelling and three detached one-car garages....” [Exhibit D.]
Each month the LPC agenda contains an updated list of pending zoning applications. Bare project details are provided so that the Commission or individual commissioners can make inquiries about projects that might warrant attention as having an impact on historic resources.

2707 Rose Street was first included on the September 2009 agenda, but with no mention of a building to be demolished. The October agenda included a table with a little more information on the Rose Street project. However, once again the entry failed to provide the LPC with accurate information. The entry describes a “new” building but says nothing about the demolition of an existing house. [Exhibit F: Excerpts, LPC Agendas for September & October, 2009]

In other words, the LPC, the City body whose charge is to evaluate older buildings proposed for demolition, was not informed. While the demolition of residential structures does not require formal LPC review, the LPC depends upon planning staff for proper notification of proposed demolitions; especially in a neighborhood as rich in historically significant buildings as this one, this notification is very important.

INACCURACIES AND INSUFFICIENCIES IN THE STAFF REPORT
[Exhibit G: 2707 Rose Staff Report of January 28, 2010]

1. **Tables 1 and 2 – Land Use and Special Characteristics (Page 5)**

   (a) **Parcel Zoning District.** The “H” District’s requirement for story poles was not met.

   The ZAB’s submittal requirements state that story poles are required for new buildings and stories in the “H” District, and that they be installed “prior to completion of any Mitigated Negative Declaration for the project or at least one month prior to a scheduled public hearing. [See Exhibit B, Item 7.] This requirement has not been met.

   Table 1 of the Planning report clearly indicates that this parcel and its neighbors lie in the “H” district. The staff decision to waive the requirement for story poles in the R1-H district violated its own guidelines and eliminated any realistic possibility for neighbors to see the magnitude and visual impact of the proposed structure and its looming presence. To purport to waive such a requirement when a structure of such unprecedented size and wholly different architectural style from the neighborhood is proposed is not only contrary to the department’s own requirements, but especially grievous.

   (b) **Excavation/ Slope.** The report does not mention the impact of massive excavation and topographical changes to the property.
The report notes that 1,500 cubic yards of soil will be moved or removed. This is an extraordinarily large amount of soil to move (700 cubic yards will be used to re-contour the terrain in such a manner that the building can be said to meet the maximum height requirement), yet no conditions relative to grading or excavation standards are mentioned (time of year, erosion control, etc.). While these conditions may be part of the approved permit set down the line, it is better to consider the impact of such massive earthmoving and potential safeguards and precautions before use permits are issued.

(c) Historic Resources: The staff report fails to mention, and indeed denies the existence of, historic resources in the neighborhood.

The report states that “No locally designated properties exist in the vicinity” and that there are no historical resources in the vicinity. This is grossly in error considering that one can, with a minute’s walk, arrive at two of the densest enclaves of local landmarks, namely Greenwood Common and the La Loma Park Historic District, and the La Loma Steps. Landmarks in the vicinity include architecturally highly prized works by Maybeck, John Galen Howard, Joseph Esherick, Ernest Coxhead, William Wurster, and others. In addition, properties on Tamalpais Road and Shasta Road, while not yet landmarked, are nevertheless listed on the State Historical Resources Inventory, a special survey done in Berkeley. [See H-1, H-2 & H-3, in Exhibit H: Identified Historical and Architectural Resources in the Neighborhood.] Likewise, the Rose Walk and the Rose Garden are in close proximity. In fact, the mailing to the 70+ addresses made two weeks before the January 28th hearing actually went to several homes that are designated landmarks, and several of the neighbors who have signed this petition live in such homes.

Furthermore, even within the tiny “vicinity map” used by the staff and applicant, there is one landmark designated by the LPC (the Hume House, 2900 Buena Vista), and at least three houses listed on the State Historic Resources Inventory for Berkeley. [See H-2.]

It is difficult to understand how these important historic resources could have been overlooked in the staff’s review.

Berkeley boards and commissions work best when they work together. The failure to notify, and the consequent exclusion of the LPC, nullifies any beneficial oversight and cooperation by the Landmarks Preservation Commission. [See discussion of LPC Notification above.]

In addition, though there is no requirement for the demolition of a residence over 40 years old to come formally before the LPC (as do demolitions of public and commercial buildings), it is shocking that there has been no research done to see if the existing structures on the site, due to be demolished, have any significant history attached to them, or whether they are associated with any significant people or events.
This represents a gaping hole in what should be considered proper land use planning procedures.

(d) **Seismic Hazards, Landslide, Alquist Priolo Act:** No mention of conditions related to landslide were thought to be necessary (even in the face of massive excavation), and the building has been exempted from the requirements of the Alquist Priolo Act (which primarily requires the project proponents to establish if there are any earthquake faults on the property so that the structure can be designed appropriately). Staff finds that the building is a two story wood-frame structure, despite indications that structurally it is a three-story building.

The report only notes that the proposed project is within a mapped Landslide Zone and also within the boundaries of the Alquist Priolo earthquake zone and then states that it is exempt because it is a two story wood-frame structure. However, it is easy to see that on the north the building is clearly three levels built above a newly made plinth retaining 700 cubic yards of newly excavated soil. *[Exhibit I-3a, Story, Useable Space]* The plinth itself appears to be at least 21 feet in height. *[Exhibit I-1]* Further, the Project Description (page 7) describes a “third open-air lower level” [emphasis added] [that] would be constructed beneath a portion of the house.”

To call this a two-story structure violates the letter and spirit of any such definition.

The fact that the tallest portion of the building is supported on isolated columns, along with the fact that the walls above are predominantly glass, further suggests that the primary earthquake-resisting structural system for the building must be steel or steel reinforced concrete (no detail is provided). There may be wood-framed infill walls, but it seems clear that the primary structural frame must be other than wood. Clearly staff was not provided with this information but nevertheless has determined that the building qualifies as a two-story wood framed structure, with the consequence that the project is exempt from the requirements of the Alquist-Priolo Act.

**That Alquist-Priolo Act exists to minimize loss of life in the event of the major earthquake that we all know is coming.** Surely this building is not the small wood-framed building meant to be exempted by the writers of the act. Such a large home, overhanging a steep hillside, perched on 700 cubic yards of fill, seems to be a candidate for the research required by the Act, not only for the safety of the occupants, but also for the safety of the public. What should count here is not simply what an assessor’s definition of two or three stories might be for tax record purposes but the reality of risks on the ground for people in an earthquake.
2. Development Standards (page 6):

(a) The building as proposed exceeds both the average height and maximum height standards.

Table 4 entries:
Allowable Average Height: 28'-0''/35' 0'' with AUP
Proposed Average Height: 31'-6''

Why is this standard exceeded with an Administrative Use Permit? Surely a newly designed building could fit within the standard. It is also unclear how the 31' 6" proposed average height is calculated since there are no helpful notations on the drawings. Unlike the proposed maximum height, the definition of “average height” does not refer to “finished grade,” but rather to “the average level of the highest and lowest point of that portion of the lot covered by the building.” [Section 23F.04.010 of Berkeley Planning Code, see Exhibit I-3(a)]

Table 4 entries:
Allowable Maximum Height: 35'-0''
Proposed Maximum Height: 35'-0''

The proposed maximum height has been measured in error. Although the building’s massive plinth allows it to be measured in a way that stretches the intention of the 35-foot standard, measurements from the architect’s drawings yield a maximum height in excess of the stated 35 feet. Specifically, the parapet of the northwest corner of the living room/master bedroom wing (noted at elevation 694'), when measured to the finished grade below (655'), yields a height of 39 feet, four feet over the maximum. [See Exhibits I-1: Height Measurements; I-2: The Topography...]. See also definition of “finished grade” Chapter 23F.04 of the planning code in Exhibit I-3(b)]. Granted, this could be reduced using the same method applied elsewhere (i.e., increasing the area of the plinth and adding still more retained earth on the hillside), but the point is that the staff report should have noted this inaccuracy. It is also important to note that the architect’s drawings, sheets 5 and 11, are inconsistent when evaluating the grade at this area of the building; the topographic information on sheet 5 would yield a maximum height of 39 feet, whereas the graphic information on sheet 11 shows a maximum height of 45 feet or so. [Exhibits I-1 and I-2]

In view of this discussion and that of the prior section, the architect’s statement on p. 17 of the Project Description that “The house is only two stories and does not exceed the maximum 35’ height limit” is unsupported.

(b) In general, the project takes advantage of a loophole in the Zoning Ordinance’s definitions, which states that building height is measured from “finished grade.” [See Exhibit I-3, Relevant Definitions.]
In usual projects there may be some grading and minimal changes in the natural grade, which is then considered the “finish grade.” [Exhibit I-3(b)] However, it is hard to imagine that the Zoning Ordinance anticipated a project of such great scope that the profile of a hill would be greatly changed to avoid the standard measurement of the maximum height. The plinth rises (conservatively speaking, as no dimensions are given) to a height 21 feet above the existing grade. If one were to measure the height of the building from the natural grade at the base of the plinth to the top of the parapet, the building would rise to a height of 56 feet (638’ to 694’ in true elevation, as taken from the architect’s drawings). [Exhibit I-1]

While the guidelines apparently allow for other calculations to be made, this 56’ height will be what people actually experience. (Think of it this way: the submitted height calculations for this building are like a six foot tall person telling you that s/he is really only four feet tall because s/he has been allowed to start measuring at the knees instead of at the ground beneath the feet.) Therefore, a realistic standard—bearing in mind its purpose—would not support the staff interpretation.

3. **Project Description (Page 7):**

(a) The proposed structure is much higher and more visible than the description accepted by the staff report.

The Project Description states that the home will appear to be one story in height when viewed from Rose Street. This is only true if viewed frontally from the very top of Rose Street (from beneath the La Loma viaduct); approaching up Rose Street, a much larger building will be visible.

The Description goes on to state that from the north (Shasta Road) the “dwelling would be visible upslope.” However, there is no corresponding indication of how many stories the building will appear to be from this viewpoint. Clearly, that will be three stories, not counting the new plinth and its retaining walls which will stand more than 20 feet above natural grade in some places.

The Description says that the dwelling will be set 45 feet above the Shasta roadway, but it neglects to state that this 45’ would be to the level of the plinth/terrace only, and that the building would then rise another 35 feet above that. In other words, the top of the building will be about 79 feet, or about eight stories, above Shasta Road. The staff report should offer and clarify this type of information rather than obscure or neglect the disclosure.

Story poles would help people visualize these measurements.
(b) There are no conditions attached that would ensure that masking vegetation stays put, as inadequate as it may be.

The report states that the north side of the building will be “behind significant vegetation.” However, the architect’s model and the site plan drawing shows that the building will be very visible. If the building did indeed fit the neighborhood’s development pattern, there would be little need to point out that there is a need to mask it with vegetation. It should also be noted that most of that vegetation is of unprotected species and in some cases lies between the house and a view of the bay. The future of such vegetation thus would lie solely at the discretion of the homeowner under current regulations. Eleven mature trees will be removed during construction; 16 young trees are proposed to be planted.

It thus appears likely that several mature bay trees will be removed, exposing a great deal of hillside, and the proposed structure. There are no conditions attached to the report to make sure that masking vegetation stays put, as adequate as it may or may not be at present.

(c) The assertion that this project meets “green building goals” is highly questionable.

The Project Description points out how the building is “intended to meet green building goals.” While it is laudable that the building will be built to green standards, the city of Berkeley should be wary of “greenwashing” that fails to make real efforts to build appropriate and sustainable structures. A 9,872 square foot building (or even larger, if one counts the developed roofs and terraces) serving a single family (in this case with there having been no mention of children, a family of two people), while it may be legal, can never be a green building.

The scrutiny of this building could have benefitted the world of sustainable development by establishing an occupancy ratio by which green points would be increased or diminished based on area per occupant. Using the smaller 6,378 square footage number as a conservative gauge, and noting that the average size of a dwelling in the area is about 2,000 square feet, one finds that 2707 Rose Street would be about three times that size. Thus, the 91 green points earned should really be divided by three, yielding a score of 30, merely half of the minimum for a building to be considered ‘green.’ The score would be even lower using the total square footage of 9,872.

Green building begins with using “just enough” and preserving what already exists where its embodied energy can be appropriately used. Clearly the idea of “just enough” is not part of the design concept of 2707 Rose Street.
4) Issues and Analysis (Page 8):

(a) Views: The staff report notes that dwellings to the north do not have views across the site, but neglects views toward the site

It is correct that dwellings to the north do not now have views across the site. But the issue here is not views from or across the site, but rather views toward the site. The architect’s model and drawings show that the building will be quite visible from properties to the north. It is stated that trees will be planted to further mask the building. It is important to think this through: the trees will have to attain a height of at least 50 feet in order to mask the north side of this building. The effect may not be attained for decades, if at all.

The issue here isn’t view protection, but rather the effects of the height and bulk of such a massive building on its surroundings. Staff once again leans on the idea that unprotected vegetation will obscure the building (even if the photos of the architect’s model do not confirm that), but no conditions were included in the staff report attachment to ensure that adequate vegetative cover will be present after construction. The first owner of this structure may not be the last. Assuming that the first owner lives up to his architect’s promises, there is nothing to bind a subsequent owner to maintain that vegetation, unless conditions are added to the use permits.

(b) Story poles have not been erected as required. Staff represented this requirement as discretionary; however it is a requirement for all R1-H projects. The requirement was waived without explanation or justification.

As discussed above, nowhere in the ordinance is it stated that the use of story poles is at the discretion of City staff, or is limited to the evaluation of views. In other instances staff has upheld the requirement to supply story poles owing to neighborhood concerns regarding height, bulk and massing (at least in one case because a single neighbor was concerned, not the 28 people who asked to have more time to review this project [Exhibit C]). To waive this requirement when such an usually large structure is proposed is unsupportable and, in fact, in violation of Planning rules. [Exhibit B]

This issue also speaks to more city-wide concerns that ZAB was not in this case applying its powers and the requirements of our ordinances evenly and fairly. First waiving the story pole requirement and then ignoring a concerted outcry from concerned neighbors to continue the issue are an affront to the community.

(c) Neighborhood Compatibility: The staff report understates the size and volume of the building and misrepresents how it fits into the topography.
The report notes that the considerable volume of the building would not be visible from the public right of way or from any adjacent dwelling. This is unsupported by the information at hand and probably unsupportable in any case.

Staff states that the proposed house is merely “larger than the average home size within this area”; stated another way, the proposed house is three times the size of the average home in the area, four and a half times if one counts the total square footage. [Exhibit A-1: Distribution of home sizes in Berkeley] Understatement of this magnitude misleads.

The staff report states that the home is designed to fit the topography of the site. In fact, the building looms above a topography that must be greatly changed to keep the building at a height where bay views can be accessed. The building is not an example of topographically sensitive design. Surveyor-verified story poles would tell this story clearly and unambiguously.

5) General and Area Plan Consistency (Page 8)

The staff report maintains that the proposed project is consistent with the General Plan. This is simply not true. By failing to raise a single concern regarding consistency with plan policies, staff is implying compliance when that is not justified. Specifically, we note:

Policy LU-3 Infill Development
The staff report concludes that the building is architecturally and environmentally sensitive. But it would be hard to imagine a building that is less sensitive to its site and to the surrounding environs. Beyond the vague description on page 17 of the Project Plans, which states: “The exterior finish of the new house will be a homogeneous cementious or panelized material in a medium dark color that harmonizes with the natural setting,” we know nothing more about what it will really look like. Berkeley, unlike many surrounding communities, has no residential design review requirement, so there is no requirement to disclose the exact nature of the building’s skin or its color. But surely, for a project of this unique scale in a historic neighborhood, more detail is needed.

The staff report goes on to state that the building is compatible with neighboring architectural design and scale. Perhaps ‘compatible’ is too subjective a word to use in this instance. What can be said objectively is that the building actively and aggressively ignores its architectural context, is of a scale that is totally unknown to this neighborhood, and in fact will have only one other sister of its size in the entire City. Furthermore, this sister, built in 1990, is near Tilden Park, and not in the midst of the concentration of historical resources as this project would be. [Exhibit A-2] Staff explicitly states that the building “reflects the character of the buildings in the vicinity.” These findings are wholly unsupported, as would be readily apparent to any person walking through this neighborhood.
**Policy UD-16 Context**
This policy states that “The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings” (emphasis added). The proposed building does not acknowledge in the slightest way the nature of its context. The staff report completely ignores what is one of Berkeley’s richest collection of historically significant buildings. [Exhibits H-1, H-2, H-3.]

**Policy UD-17 Context**
This policy states that “In relating a new design to the surrounding area, the factors to consider should include height, massing, materials, color, and detailing or ornament.” Clearly neither the architect nor the city staff (let alone ZAB) has considered these factors. The lack of clarity about the height and mass of the structure and the absence of any indicated finishing detail are the defining characteristics of this proposal. There is no ornament proposed that would soften its presence or make it in some way acknowledge its surroundings. As presented, this design makes little effort to relate to the surrounding area; rather it celebrates its insistence on violating existing patterns.

**Policy UD-24 Area Character**
This policy calls for the City to “regulate new construction and alterations to ensure that they are truly compatible with, and where feasible, reinforce the desirable design characteristics of the particular area they are in.” The ZAB and its staff have not evaluated this project so as to produce such a result. While other projects in the city—e.g., commercial buildings of compatible size and design—receive considerable attention from staff and from ZAB, the handling of this proposal has seemed to be guided by a “hands off” approach. Certainly this cannot be supported.

**Policy UD-31 Views**
This policy states that wherever possible, projects should “enhance a vista...or clarify the urban pattern.” It can be easily argued that the building does neither. It could be further argued that it actively undermines both. To repeat a key point: those concerned about this project have been denied an opportunity to see what story poles would reveal about these issues.

**NOTICE OF DECISION [NOD]**

The same questions raised in this appeal about the staff report also apply to the ZAB Notice of Decision (NOD).

The only additional condition attached to the approved Permit was “Neighbor Consultation,” (Item #11), added at the end of the ZAB hearing after the Board voted to approve the permits. It states that the applicant “shall prepare” a draft of the construction management plan “for presentation to the neighborhood.” The draft would include plans for the removal
of debris and materials on and off the site, the “tentative start and duration of construction,”
streets to be used for access; description of vehicles that will access the site (aside from
vehicles weighing less than 3 tons “when empty”; plans for worker parking; and measures to
address potential damage to public or private property; and plans for full or partial street
closures.

This condition only requires that the applicant present an ill-defined group of “neighbors”
with the construction management plan. It does not specify what recourse these neighbors
have should they not agree with items in the plan.

CONCLUSIONS AND RECOMMENDATIONS

• The notification of the public and the LPC concerning this large-scale project involved
several flaws, including for example, the lack of required story poles.

• The ZAB hearing did not fairly address the concerns of many people in the neighborhood,
presented in both written and oral testimony.

• The staff report, which includes many errors and omissions, concludes that the building is
consistent with the Zoning Ordinance (even though it exceeds both average and
maximum height standards), that it is consistent with the policies of the General Plan (an
unsupportable conclusion, as detailed above), and that it will have minimal impact on
surrounding properties. **We should make no mistake: the impact of this building on its
surroundings will be great. Its construction will entail massive retaining walls to re-
profile the hill, and the building will loom over a small canyon to the north.**

• The process has thus denied concerned residents of the area the opportunity to evaluate
these issues for themselves; rather, it has sidestepped each issue in turn. It sets a bad
precedent for future situations of this kind in the city of Berkeley.

• The ZAB decision should not stand; the project should be remanded to Planning with
specific instructions to consider the points raised in this Appeal, including the
construction of readily visible **surveyor-verified** story poles (fluorescent painted so that
the typically small pieces comprising the story poles can be readily seen and evaluated
from a distance), the ramifications of this structure as they relate to the General Plan
provisions, meaningful consideration of mitigations and conditions for the building and
its construction, and any and all community input.

• In summary, the Planning staff and the ZAB should be given a second chance to execute
their duties with regard to this proposal so as to ensure fair and equal treatment for all the
residents of this city. To do otherwise would set a damaging precedent for future
planning in Berkeley, and constitute a drastic departure from the traditions that we have
come to expect from this special place in which we live.
EXHIBITS

Exhibit A: Homes sizes in Berkeley
   A-1: Distribution of home sizes in Berkeley
   A-2: Homes in Berkeley over 6,400 sq ft
   A-2: Homes in Berkeley over 6,400 sq ft, with dates of construction

Exhibit B: Excerpts from "Planning & Development: Zoning Project Submittal Requirements"

Exhibit C: Letters submitted for the ZAB hearing of 01/28/20

Exhibit D: ZAB Notice of Public Hearing

Exhibit E: Photograph of "Proposed Project" poster.

Exhibit F: LPC Agendas for September and October, 2009

Exhibit G: 2707 Rose Staff Report of January 28, 2010

Exhibit H: Historical and Architectural Significance of the Neighborhood
   H-1: Historic resources (discussion)
   H-2: Landmarked sites and others designated as of historical interest (map)
   H-3: Planning Department map of landmarked sites

Exhibit I: Architectural drawings, measurements, and definitions
   I-1: Height measurements
   I-2: The topography, including proposed home and Shasta Road
   I-3: Relevant definitions: (a) Story, Usable Space  
      (b) Existing and Finish Grade  
      (c) Average and Maximum Height
Exhibit A-1: Distribution of home sizes in Berkeley

**Berkeley:** 17255 single-family homes
Average square footage: 1734

**94708 Zip:** 3135 single-family homes
Average square footage: 1970

Source: East Bay MLS
Points mapped:

1. 2959 Russell St, Berkeley, CA 94705, USA
2. 2930 Avalon Ave, Berkeley, CA 94705, USA
3. 2821 Claremont Blvd, Berkeley, CA 94705, USA
4. 1410 Arch St, Berkeley, CA 94708, USA
5. 812 Mendocino Ave, Berkeley, CA 94707, USA
6. 610 Woodmont Ave, Berkeley, CA 94708, USA
7. 2 Park Gate, Berkeley, CA 94708, USA
8. 41 Hill Rd, Berkeley, CA 94708, USA
9. 244 Alvarado Rd, Berkeley, CA 94705, USA
10. 10 Roble Rd, Berkeley, CA 94705, USA

Berkeley--Single family residences of greater than 6,400 sq. ft.

10 out of over 17,400 total in the City
Ca. 1 in 1700

Source: East Bay MLS
Exhibit A-3: Homes in Berkeley over 6,400 sq ft, with dates of construction

- Woodmont-1942
- Mendocino-1929
- Arch-1918
- Park Gate-1940
- Hill-1990 (Only one over 9,000 sq ft)
- Only two since 1942

- Russell-1914
- Claremont-1929
- Avalon-1910
- Alvarado-2002
- Roble-1935
I. ZONING PROJECT SUBMITTAL REQUIREMENTS

Effective May 1, 2007

NOTE TO APPLICANTS:

- This document is intended to provide minimum requirements for most zoning projects. Some projects may require additional information not listed here, as determined by the project planner within 30 days of application submittal.
- You are responsible for the accuracy and completeness of all application materials. Incorrect or incomplete information may result in delay or denial of your application.
- All application materials become the property of the City of Berkeley and are subject to public review.
- All application materials must be clear and legible. Faxes, poor reproductions, and cluttered or confusing drawings will not be accepted.

How to determine what information is required for YOUR application –

For each information requirement listed below, staff has identified the types of projects for which it is required. For example, everything listed in Section I is required for all Zoning Project Applications; however, conceptual grading plans (Item III.A.2) are only required for projects involving more than 50 cubic yards of grading.

This detailed list of requirements is a companion document to the Zoning Project Application Form. We suggest you first complete that application form, answering “yes” or “no” to each question listed. For each question answered “yes”, note the “Application Requirements” indicated. Find the corresponding section of this document for a more detailed description of the information. This document also indicates where staff has prepared even more detailed Guidelines to help people prepare their applications.

I. Required For All Projects

A. Zoning Project Application Form
   Required for all projects
   Submit Zoning Project Application Form

B. Fees
   Required for all projects
   Submit fees to the cashier in the Permit Service Center

6. Shadow Study –

Required for construction of two stories adjacent to dwelling units, or as determined necessary by the project planner.

Submit: A shadow study that meets the following requirements.

1. Provide diagrams showing shadows cast by the project prior to construction and after construction. Indicate shadows for each of three times of day (2 hours after sunrise, noon, and 2 hours after sunrise). Calculate shadows for three times of year – the winter solstice, the summer equinox, and the application date (or thereabouts).

2. Include a photo of the structures to be affected showing the existing shadows at the application date (or thereabouts) to corroborate the accuracy of the shadow study.

3. Overlay (in the same diagram) the existing shadows and those projected for the proposed structure, for each scenario required in #1 above, indicating clearly the incremental shadow due to the proposed project.

4. Show all structures that the shadows from the proposed project will hit. Indicate in writing that all buildings being shadowed are shown on the diagram.

5. If a shadow (existing or future) hits the wall of an adjacent structure, (1) show where existing shadow hits the wall, and (2) indicate locations of windows on walls affected.

6. If increased shadowing caused by the proposed project would affect any windows on residential buildings, then Indicate the use of those windows (garage, bedroom, bathroom, living room, etc.).

Guidelines: See “Shadow Study Instructions.” Also, several computer programs are available to provide this information.

7. Story Poles –

Required for new buildings and stories in the “H” District, or as determined necessary by the project planner.

Submit: Story poles must be installed prior to completion of any Mitigated Negative Declaration for the project or at least one month prior to a scheduled public hearing date, which ever occurs first. [Work with assigned planner.]
Exhibit C: Letters submitted for the ZAB hearing of 01/28/10--51 pages

36 letters total

25 letters expressed reservations concerning the nature of the project and/or asked for more time to evaluate it.

3 letters asked for more time particularly to evaluate the impact on Rose Street/Greenwood Common of the actual construction project.

28 letters total requested more time to evaluate the project

2 letters involved the same person requesting more time and later rescinding it. However, this person has now signed this Appeal.

4 letters supported the project and were not in favor of a continuation. 3 of these represented nearest 2 nearest-neighbor residences who had already signed off on the plans.

2 letters were basically character references for Mr. Kapor and Ms. Klein, but we do not believe that should be the issue here.
Subject: FW: Questions concerning a proposed home at 2707 Rose

-----Original Message-----
From: Chuck Fadley [mailto:fadley@physics.ucdavis.edu]
Sent: Friday, January 22, 2010 4:59 PM
To: Jacob, Melinda
Subject: Questions concerning a proposed home at 2707 Rose

To the Zoning Adjustments Board
Statement concerning the proposed project at 2707 Rose Street, Berkeley
From: Charles Fadley, 1 Tamalpais Road, Berkeley 94708

I am out of the country and have just heard about the plan to build a 6,478 square foot home in my neighborhood. I live right outside the radius of the area the city is required to notify.

While I have not seen all of the plans for the project, from what I know, it is out of scale with the neighborhood. I understand there are some who support the structure in the belief it will add to the value of their properties and because it will replace a dwelling that is in very bad shape. However, the sheer size of the proposal and the potential effect it will have on our neighborhood should at the very least call for more careful consideration by those who live outside the legal notification boundary.

I thus urge you not to grant the permits to demolish the existing structure and start construction until the wider neighborhood has been notified and given time to consider it and react.

Thank you for your consideration,

Charles S. Fadley
1 Tamalpais Road
Jacob, Melinda

Subject: FW: 2707 rose

---------- Forwarded message ----------
From: s twigg <scteig@gmail.com>
Date: Fri, Jan 22, 2010 at 7:10 PM
Subject: 2707 rose
To: gpowell@ci.berkeley.ca
Cc: donn@wonglogan.com

After speaking to Susan Opsvig I do have some questions. I sent a letter to the planning commission opposing your plans, but Susan reassured me somewhat. I cannot attend the hearing so here goes. The garage seems absurd, it is not explained that it is subterranean. Is this true? It would have been nice to know. Is it your intention to blend the building into the terrain and landscaping as she says? how? My concern is that the first stretch of Shasta (Ont on the last wooded areas in Berkeley) would be seriously compromised. I wonder at the size of the garage, is this just convent because of the construction? What will we see from our front window?

Steve Twigg
Subject: FW: Use permit for 2707 Rose street, #09-0000038

-----Original Message-----
From: Mary Reed Johnson [mailto:maryreed.johnson@comcast.net]
Sent: Sunday, January 24, 2010 8:47 AM
To: Jacob, Melinda
Subject: Use permit for 2707 Rose street, #09-0000038

January 24, 2010

Zoning Adjustments Board, City of Berkeley.

To whom it may concern,

I live at 1401 Greenwood Terrace, across Rose street from the proposed project. I find it appalling that you would present the neighborhood with plans that include the Shasta and Rose street elevations in your information packet. Why are we looking at the building through a bunch of trees. From the plan you clearly show the driveway entrance from Shasta Road and yet this elevation puts the building behind a hill of trees. Construction documents are supposed to be clear, and accurate giving us an accurate depiction of what the builder is proposing.

The property has huge elevation changes and the building will house large retaining walls that will impact Shasta Road. If this is a good plan then lets see it. Why have they left out the difficult parts that could be very ugly, and why have you let them? If this is a public process and if you are truly guiding and guarding what a few of us think of as a special neighborhood, then lets go ahead and see what an accurate elevation looks like and then have the planning meeting. If the Shasta elevation could show us Shasta Road and how the house relates to the road, that would be very helpful. Could it also show the driveway and the large retaining wall to the left of the house? On the right side it looks like the plan view shows retaining along that edge also in walls but I do not see them on the plans.

This is a great piece of property and a rare opportunity to build what seems to be a nice house. It is clear that they have a large budget that can support proper drawings. Why is the Zoning Adjustments Board doing such a poor job of presenting this project? Please send me and our neighborhood accurate elevations before the January 28 meeting so that we may address any concerns that this information will give us.

If you can not give us the elevations before the January 28, meeting then please postpone the meeting until we have the information.

Thank you.

Peter Beaudry, 1401 Greenwood Terrace, Berkeley California 94708. Ph#
(510) 910-2886
Dear zab

After corresponding with Mr. Logan I am withdrawing my opposition to this construction.

Stephen Twigg
From: elizabeth jordan [mailto:vermeer.llilies@gmail.com]
Sent: Sunday, January 24, 2010 2:29 PM
To: Jacob, Melinda
Subject: Proposal for over 6,000 square foot home with 10 car garage on Rose St. in Berkeley, CA.

To ZAB;

I respectfully request that you delay the Board's decision on approval of the above home until neighbors of the proposed structure can study the proposal more carefully. This is in keeping with the democratic process and would be expected under the circumstances.

Notification to all home owners within a 300 foot radius would be logical if the structure was in keeping with the size of the structures it will reside within. This proposed very large home and garage, however, are outside of the scale of the existing homes and so notification to those in the geographical vicinity would be in order. And, I understand that notification of some of the residents was not received and/or understood. More time as well as neighborhood meetings are in order so that negotiation and the working out of compromises are in order.

Please consider treating this issue in a diplomatic manner.

Regards,
Elizabeth Jordan

eli_jor@calalum.org
To: Greg Powell, Planning Department, City of Berkeley  
Date: January 24, 2010  
Re: ZAB hearing on 2707 Rose St., Jan. 27, 2010

Dear Mr. Powell:

We are the neighbors at 2645 Shasta Road, which is the property immediately below and across Shasta Road from the proposed development at 2707 Rose St. We will face the north elevation of the proposed house from our front door. This elevation is the widest and tallest elevation of the house, and we have a full view of it.

We have reviewed the plans for the house with the architects, Marcy Wong and Donn Logan, and the owners, Mitch Kapor and Freeda Klein. In the review, we expressed our concerns about the surface colors of the house and about the retention or removal of trees between us and the new house. The architects assured us that the surface colors would be generally dark earth tones, and that trees would be retained and/or planted to create a green buffer between us and the new house. We were satisfied with these responses, and do not have further concerns about the details of the construction.

Yours truly,  
Jana Olson and Roger Carr  
2645 Shasta Road  
486-0481 Home, 204-9375 Work
Subject: FW: Zoning and permits at 2707 Rose St, Berkeley, CA

From: rebeccaw@dslextreme.com [mailto:rebeccaw@dslextreme.com]
Sent: Monday, January 25, 2010 12:50 PM
To: Jacob, Melinda; Powell, Greg; suminu@mindspring.com
Subject: Zoning and permits at 2707 Rose St, Berkeley, CA

Dear Zoning and Adjustments Board,

I am writing to oppose the permits for the project at 2707 Rose St. This proposed building is way out of scale for the area, and, really a bit grossly piggish. It will of course be an energy hog (regardless of what they may claim-6500sq ft is 6500 sq ft), disrupt the charm and quaintness that is signature of the Berkeley hills, add traffic, and probably create water run off and/or similar impacts of an overly large structure on a steep fragile hillside.

On top of this, the public notice of this project, which is legally required to be announced in the area, was placed behind a 'no trespassing' sign at the end of a dead end street where only a small fraction of the nearby residents would even hear of it, and would no doubt have felt they were trespassing to view. That is unethical in and of itself, and the scope of the project completely out of place in the area.

I grew up in this neighborhood, currently reside nearby, with my elderly mother still around the corner. I am there much of the time, and will probably move there in the relatively near future.

Thank you,

Rebecca Weinstein
From: Lucinda Olney [mailto:l.olney0415@gmail.com]
Sent: Monday, January 25, 2010 10:10 PM
To: Jacob, Melinda
Subject: Rose Street house proposal

To the City of Berkeley Zoning Adjustment Board

I wish to voice my opposition to the granting of use permits to build a 6,478 square foot, single-family dwelling, with a 3,394 square-foot, 10-car garage at 2707 Rose Street, until the surrounding neighborhood is given time to consider the proposal and react.

While the project meets the legal requirements for a parcel that size, the structure is entirely out of scale for the neighborhood. It will exceed the city's height limit and setback requirements. A 10-car garage must mean that the building is intended for commercial use such as a bed and breakfast or rooming house, not a single-family dwelling.
What single family has 10 cars? And what single-family dwelling is 6,478 square feet? Maybe in Napa Valley or Sonoma something that size might be built, but not in an earthquake zone of Berkeley.

Most homes in the area are in the 1200-1800 square foot range. We (four people) live in a small 1300 square foot house and it is quite adequate. Our energy needs are modest, it is doubtful that the proposed dwelling could anticipate the same. Surely the city of Berkeley must consider energy usage now, with signs of climate change all around us.
This is a MacMansion that does not belong at that site, and all people in the neighborhood need to be fully informed of the proposal.

Thanking you for your consideration,

Lucinda Olney
2731 Shasta Rd.
Berkeley, 94708
1/25/10
To: Greg Powell, Planning Department, City of Berkeley  
Date: January 25, 2010  
Re: ZAB hearing on 2707 Rose St., Jan. 27, 2010

Dear Mr Powell:

We, Susan and Paul Opsvig, live at 2637 Rose Street, the lot directly west of the proposed new construction. We share the entire west boundary running between Rose Street on the South and Shasta Road on the North. We have lived here since 1976 and on nearby Tamalpais Road from 1970 to 1976.

We are writing in favor of the proposed construction. This proposed plan provides solutions for long standing problems, does not create problems.

For more than 10 years the property at 2707 Rose Street has been dangerously neglected. During that time the previous owner did essentially nothing to care for the house and property. He moved because of declining health about 6 years ago. Since then the house has been vacant. The abandoned house became a target for vandalism, burglary and unauthorized people breaking in and using the house for shelter. The house deteriorated rapidly and at this time is unsalvageable.

In addition to the deteriorating house the property has deteriorated. Trees have been neglected and branches have fallen, hitting power cables, leading to loss of electricity to the whole neighborhood several times. Once I discovered a broken power cable lying on the street. More recently a large branch fell on Shasta Rd. blocking the street. This could have potentially led to serious injury. Also during this period of abandonment, the public area beneath the La Loma abutment has become a target for graffiti, abandoned vehicles, illegal parking, and camping. While these issues occur in close proximity to us, they impact the integrity of the adjoining neighborhood.

Needless to say we have been unhappy about this situation for a long time. We have tried our best to address problems as they arose and to keep watch over the property. When our neighbor died and the property was sold we hoped that it would be purchased by someone who would build a single family dwelling, maintain the property and understand the special circumstances of living on a narrow dead end street that is rarely dead due to the lost and confused drivers not seeing the warning sign.

2707 is a very large lot. We are keenly aware that this large parcel could be subdivided, resulting in up to 5 houses. Even though this is a large house, it is not overly large for the amount of land it is on. 60 % of the property will remain “green,” with trees and other landscaping.

We were consulted by the Kapors when they began working with their architects. We presented our primary concerns to them. One had to do with maintenance of privacy which, not surprisingly, was something the they also wanted for themselves.
We were also very concerned about parking. There is no street parking on this section of Rose Street and no-parking signage has been up since before we moved to the neighborhood. Rose is very steep and narrow and parking on the street makes it difficult for emergency vehicles to get by. When we moved here in 1976 we were told by our neighbors that the building that preceded the construction of our house had burned down because fire trucks were unable to get to the house... because of the narrow street and parked cars. Similar conditions contributed to access problems during the Oakland fire. We requested that the Kapers provide abundant off-street parking so their visitors would not park on the street, which is illegal, nor obstruct access. They generously provided this feature in their house plan and did so in a very unobtrusive way. There has been a lot of misunderstanding about the parking. I believe that this is a very good feature, offering a positive solution to existing problems.

Additionally, we have had frequent problems with people who don’t see or ignore the Dead End sign at the beginning of this stretch of Rose Street. They drive up the street anyway and then they have to turn around which is not easy. We have had our garage door bumped several times and once it was damaged so badly that we had to put in a new door. Our old, vulnerable oak tree has been also hit by drivers struggling to turn around. This is a frustrating situation for us. The Kapers, again were responsive to our concerns and generously provided a turnaround at the end of the street. A recent example: on Monday my wife was on Rose Street talking with neighbors when a Para Transit van approached. The driver was confused when she saw that she was faced with turning around or backing down the steep street. She became fearful and it took her with my wife’s help several minutes to turn around in our off-street parking area. This happens frequently.

We have heard some negative comments about the number of parking spaces they have in the house plans. We are able to horse shoe 8 off-street parking places at our house and it is often not enough when we have guests. One of our neighbors also has built in off street parking for about 8 cars. One of the problems in this part of Berkeley and maybe in other parts as well is that there is not enough parking for all the cars that need to have spaces. Streets then become narrower and emergency vehicles have difficulty getting through. The current plans for 10 spaces is a very good plan and will be helpful to the neighborhood, not a problem. Additionally, the parking is under the house and will not be obtrusive to passersby... in fact it won’t be easily seen by others at all.

We think that the Kapers have been sensitive to our needs and generous and cooperative in finding solutions. This has been true beyond my expectations and we are grateful for this. We think they will be fine neighbors, take care of their property, and be responsive to legitimate requests from other neighbors. We have been waiting a long time for something positive to be done here and are eager for it to get started. Approving their proposal will solve problems, not create them.

Thank you,

Susan and Paul Opsvig
We would like to express concern that damage may be done to our already battered street, Greenwood Terrace, during the construction of this large project. We hope that any traffic plan that will be required will minimize use of Greenwood Terrace by heavy construction vehicles.

Thank you

Kate and Dan Funk
10 Greenwood Common
Berkeley
Subject: FW: Building Permit for 2707 Rose St.

-----Original Message-----
From: Mark Richards [mailto:Mark_Richards@berkeley.edu]
Sent: Wednesday, January 22, 2010 8:07 AM
To: Powell, Greg; Jacob, Melinda
Cc: Mitchell Kapor; Freada Klein
Subject: Building Permit for 2707 Rose St.

Deborah Matthews, Chairperson
Zoning Adjustments Board
2120 Milvia Street
Berkeley, CA 94704

Dear Ms. Matthews,

I am writing on behalf of my friends Mitchell Kapor and Freada Kapor-Klein, who have recently purchased a home in Berkeley at 2707 Rose St., and wish to undertake a remodeling project. I have lived in north Berkeley since 1989. Although I am not familiar with the proposed project or the home in question, I have known Mitch and Freada for a decade, and would like to comment on their character, both as neighbors and Berkeley community members.

I have come to know Mitch and Freada through my work as a UC Berkeley faculty member on building more diversity among Berkeley students. Through their foundation, the Level Playing Field Institute, Mitch and Freada have made it possible for hundreds of underrepresented minority students to obtain a UC Berkeley education, they have created a successful summer science program for minority high school students that has an almost perfect record of placing these students in four-year colleges, and they have contributed greatly to diversity efforts across the Berkeley campus. This work speaks of a devotion to the principle of fair opportunity for all children to obtain a first-class education, and I have been inspired by their accomplishments. They are the kind of people who strive to make the world better, globally and locally.

I was very happy to learn that Mitch and Freada were relocating from San Francisco to Berkeley. I am sure they will bring a lot to our community, and that they will be respectful of their new neighbors in the renovation project they have proposed.

Sincerely yours,

Mark Richards
925 Mendocino Avenue
Berkeley
Jacob, Melinda

To: susan n
Subject: RE: Dropping off some written testimony

From: susan n [mailto:suminu1@gmail.com]
Sent: Wednesday, January 27, 2010 9:45 AM
To: Powell, Greg
Cc: Jacob, Melinda; mjacobs@ci.berkeley.ca.us
Subject: Dropping off some written testimony

Dear Greg,

Later today I'll be dropping off 15 copies of written testimony submitted by several of my neighbors who were either unable to submit e-mail testimony or preferred to submit written material. One of them is the widow of Jack Kent, who was on the planning commission and the city council, another is Bernard Moen, whose wife Ruth was responsible for rallying the neighborhood to purchase the property on Shasta that is now the Codornices Foundation. At this hour the list includes:

Mary Kent, 74 Tamalpais Road,
Eric O. and Madelyn S Johanssesson, 2664 Shasta Road
Gertrude and Robert Allen, 1486 Greenwood Terrace
Beverley Bolt, 1491 Greenwood Terrace
Charlene Woodcock, 2355 Virginia Street
Susanne Kaspar, 14 Tamalpais Road
Bernard Moen, 2607 Shasta Road
Bob B. Buchanan, 19 Tamalpais Road

My husband, Charles Fadley, and I will e-mail in more detailed testimony to be added to my original letter. I understood from our last conversation that the deadline for e-mail testimony has been extended to 12 noon Thursday, January 28.

Many thanks,

Susan Fadley
Dear Zoning Adjustments Board:

I am writing in protest to your recommendation to approve Use Permit #09-10000038 at tomorrow’s scheduled meeting for the following reasons:

- In polling neighbors near the affected intersections (Rose/Tamalpais/Shasta/Greenwood Terrace), it does not appear that most of the affected neighbors were even aware of the project, much less its size & scope. Therefore I believe the neighbors have not been fully informed. Where was the public notification signage informing public of this project? If it was placed on Rose Street at the proposed project site, then it was at the end of a dead-end street, with limited exposure to “walk-by” traffic. I assert that public notification requirement has not been fulfilled.

- The project is sited on what is essentially a one lane road, with limited access & scarce parking. Greenwood Terrace is not even properly paved and lacks a proper sidewalk, and it will be further degraded by construction traffic and increased use introduced by this project. Pedestrian traffic in the area is high, with a large percentage of elderly walkers. There is already a hazardous speeding problem at the Rose Street/LeRoy Ave. transition, which is directly below the proposed project. Potential traffic & public safety impacts caused by the proposed project to that portion of Rose Street and Greenwood Terrace and the Rose/Shasta/Tamalpais intersection seem unsafe and unreasonable, given existing conditions.

- Though proposed project is in name “residential”, a project of this size with the proposed amount of parking will in fact invite “commercial level use” in terms of traffic to & from proposed project. I assert that the condition of the section of Rose Street & Greenwood Terrace adjacent to the proposed project are not sufficient to support this increased use safely, and that it will introduce “commercial level” traffic into a residential neighborhood – which is not consistent with current zoning.

- Approving a project with probable “commercial level use” adjacent to the historic Greenwood Terrace neighborhood seems inappropriate, and not consistent with neighborhood character.

- Because of aforementioned access limitations, the inevitable construction disruption caused by project of this size and scope is unacceptable in a residential neighborhood.

I therefore encourage the Zoning Adjustments Board to NOT approve this use permit until the public notification requirement is fulfilled & the other concerns I’ve detailed are properly addressed.

Best regards,

Rick Carr
2565 Rose Street
Berkeley, CA 94708
Jacob, Melinda

Subject: FW: 2707 Rose Street

From: Jennifer Burt [mailto:jennifer@michaelburtlaw.com]
Sent: Wednesday, January 27, 2010 10:26 AM
To: Jacob, Melinda
Cc: 'jennifer@michaelburtlaw.com'
Subject: 2707 Rose Street

We wish to voice our views to the granting of use permits to build a 6,478 square foot, single-family dwelling, with a 3,394 square-foot, 10-car garage at 2707 Rose Street, until the surrounding neighborhood is given time to consider the proposal and react.

While the project meets the legal requirements for a parcel that size, the structure is entirely out of scale for the neighborhood. It will exceed the city’s height limit and setback requirements. It is several times larger than the median sized home. It threatens the integrity of an old and established community. It is environmentally irresponsible, and its sheer size puts it at odds with the energy policies of this city.

Thank you for your attention.

Michael and Jennifer Burt

178 Tamalpais Rd
Berkeley CA 94708
510-644-0198
From: nancy russell [mailto:nurussell@googlemail.com]
Sent: Wednesday, January 27, 2010 10:59 AM
To: Jacob, Melinda
Subject: Rose Street home construction

Dear Zoning Board,
We wish to express our concern, as neighbors, about the construction plans for a home at 2707 Rose Street.

Rose Street is a small, dead-end road and as our home faces Rose Street in the back, we would like to make sure that all necessary arrangements are made regarding the delivery and movement of construction-related materials for this project. We understand that the duration of construction will be one year.

We plan to attend the meeting on Thursday night and hope to learn more information about the project in general and this aspect of the plan in particular.

Thank you.

Regards,
Nancy and Jim Russell
2 Greenwood Common
January 26, 2010

Land Use Planning Division
zab@ci.berkeley.ca.gov.us
2134 Martin Luther King Jr. Way
Berkeley, CA 94704

Cc : Mr. Greg Powell, gpowell@ci.berkeley.ca.gov.us

Dear Division, and Zoning Adjustments Board Members:

I am writing to request a continuation to the next meeting of the Board of the hearing on the Kapor-Klein application for construction of a single family 9,8726 sq. ft. structure (of which 3,394 sq. ft. are for a ten car garage) at 2707 Rose Street. In addition there is a carport for two cars. (If a building of that size is to be built, the provision for parking for ten cars for the use of guests seems a sensible thing, to avoid additional parking problems in the area.)

I reside at Greenwood Common, a landmarked complex of eight houses bordering on Rose Street on the north and Greenwood Terrace on the east. Four of the residences in Greenwood Common (Nos. 1,2,3, and 4) abut Rose Street, on a stretch from the junction of Tamalpais and Rose up to Greenwood Terrace. Rose Street (directly) and Greenwood Terrace (as an approach to Rose Street) are the only access roads to the proposed construction site. Both Rose Street and Greenwood Terrace are narrow roads not in the best of conditions, with cracks and potholes. Heavily loaded truck traffic in any substantial amount (for a duration of at least a year, and possibly substantially longer) will almost certainly aggravate the conditions of the roads. The abutments of Greenwood Common properties on both Rose Street and Greenwood Terrace do not have sidewalks or curbs marking the exact borders of their properties, and are thus susceptible to trucks trying
to negotiate the narrow roads past parked cars and running onto the properties at the edges

The residents of Greenwood Common made major efforts in the past to achieve landmark status for Greenwood Common, and did achieve that status, thus avoiding efforts at the time to build an oversized structure that did not fit the architectural concept and status of the Common. We are of course quite sensitive to matters that might affect the peaceful enjoyment and tranquility of that landmark status. It is regrettable that the residents of Greenwood Common were not notified and had no knowledge of this major construction project until January 23, 2010, when a neighbor who knew of the project informed us of it. Since we are directly and importantly affected by the traffic of trucks along Rose Street (and Greenwood Terrace, perhaps) past our properties which any such project would involve, we are vitally concerned with the protections and conditions of any such project. We wish we had been notified earlier, so that we could have considered and consulted with the project applicants and the City earlier and would not have to ask for this postponement. It is most important to us to have the time to consult with the applicants regarding precautions necessitated by these facts, provisions for limitations on truck traffic, provisions for possible repairs of damages to properties and roads, etc.

Since January 23, I have had several conversations with the architect for the project. We understand, as the architect informed us, that the City will require traffic plans before actual construction begins. We would much appreciate being included in any future consultations on that score. The project architect has assured us that he favors such participation. In addition to traffic during actual construction, we are equally concerned about any early truck traffic related to the elimination of trees, possible massive earth movements, and dismantling and trucking out of the existing structures at 2707 Rose Street, if that is to take place prior to the construction phase of the project, if approved.

Not having had the benefit of original notification of the project, we have not had the time to consider the matter and consult with the applicants, in order to seek to present a possibly agreed position to the Zoning Adjustments Board. Other neighbors who were also not notified until a few days ago may have other subjects of concern to discuss with the applicants. In order to give us time to consider the matter properly and consult with the applicants, and the Land Use Planning Division, I respectfully request
continuation of the public hearing of the applicants' use permits application to the next meeting of the Board.

Yours respectfully,

Frederick S. Wyle
3 Greenwood Common
Subject: FW: Objection to 2707 Rose Street K-Mart

----- Forwarded Message ----
From: Cliff Magnes <cliffmagnes@yahoo.com>
To: GRP1@cityofberkeley.info
Sent: Wed, January 27, 2010 11:58:42 AM
Subject: Objection to 2707 Rose Street K-Mart

Mr. Powell,

I just heard about the proposal to tear down the beautiful (but dilapidated) house at 2707 Rose Street. I have just seen pictures of the new structure, and it looks like a K-Mart. This is the most inappropriate building for this neighborhood that I could possibly imagine, and I wish to go on record as opposing it.

It is too big, too ugly, too tall, and too close to the property line. I have other objections, but I do not know if there is a deadline for making my objections. Please let me know what the process is for making formal objections to this monstrosity.

Thank you.

Cliff Magnes
January 27, 2010

Berkeley Zoning Board
attention: Greg Powell

My name is Valerie Herr. I have been living at 1541 Hawthorne Terrace 1969. Old timers may remember that my husband, Richard, and I put a lot of effort into the question of the vacant lot that was part of the Maybeck house, corner of Euclid/Buena Vista. We objected to an out-of-scale house on an under-scale lot, and in the end there was a wonderful, elegant resolution, a small extension of the adjacent Kazdan-Leap house and the rest of the garden was opened up beautifully between the two properties. So that effort, we were perhaps 12 families all together, produced a great success.

I am writing now to express some of my concerns about the proposed structures at 2707 Rose St., so that these comments can be included in the considerations at the ZAB meeting. The proposed main house and the 10-car garage are completely out of the scale and spirit of the neighborhood, which contains historic districts and numerous individual houses by notable local architects built over many decades. My husband and I were personal friends of Florence Minard, an Art Teachers at Mills College, who designed the bottom two redwood houses at the Tamalpais junction, between Shasta and Rose.

However may spaces the garage is intended to hold, the question of topography at that location should be very carefully addressed. This is a very steep site and if the garage drive is to come into Shasta, very near the first major bend, it will either have to be a very steep grade, or else be extremely deep on the lot, two stories down or three at least. It all looks like a wholly inelegant arrangement. At the very least, if a smaller, more appropriate structure can be achieved, the garage exit should be at the top of the site where it would cause far less of a traffic hazard.

I am aware that the property has been unoccupied for years, and that this fact has posed a problem for the immediate neighbors. The space can and should be put to use, but in a manner that recognizes its larger impact.

My request to the ZAB is to postpone a ruling on this proposal so that the neighborhood on which it will have an impact can have a chance to consider it.

Thank you.

Valerie Herr
1541 Hawthorne Terrace
Berkeley, CA 94708
Dear Ms. Jacobs,

I just heard about the proposal to tear down the beautiful (but dilapidated) house at 2707 Rose Street and build a 6478 square foot single family home with a 3,394 square foot, 10-car garage on Rose Street overlooking Shasta Road.

I am currently on vacation in Brazil but I have been told the pictures of the new structure looks like a K-Mart. It is too big, too ugly, too tall, and too close to the property line for building in my neighborhood.

This is a most inappropriate building for this neighborhood that I could possibly imagine, and I wish to go on record as opposing it.

Thank you.

Bob

Bob Cowart
2692 Shasta Rd
Bob@cowart.com
510-540-6667
www.cowart.com
January 27, 2010

Berkeley Zoning Board
attention: Greg Powell
Re: 2707 Rose St. proposal

My name is Herta Weinstein. I have been living at 2525 Buena Vista Way since 1966, have watched changes in the neighborhood and houses being built, but none of this size and character. Tamalpais and Shasta Roads, Greenwood Commons, Rose Street and Walk, Rose and LaLoma Steps are frequent walks of mine. I don’t have reason to walk beyond the steps to LaLoma, to the very (dead) end of Rose Street, and was made aware of the building plans at 2707 Rose only by the merest chance, on January 23. Also not aware were any neighbors between this property and mine (except the four immediately bordering on it) until the last four days.

I am writing to express some of my concerns about the proposed structures at 2707 Rose St., so that these comments can be included in the considerations at the ZAB meeting. If possible, I will also attend the meeting to comment orally.

The proposed main house and the 10 car garage are completely out of the scale and spirit of the neighborhood, which contains historic districts and numerous individual houses by notable local architects built over many decades. The size and blocky appearance would be visually very disruptive, no matter how screened by trees. It will obviously not be completely hidden as the owners will want to have the view.

Of personal concern to me is the 10 car garage and the predictable traffic increase in the neighborhood that will likely result to and from the extra 8 spaces. In addition there is the general environmental impact of the cars and the energy use inherent in such a large residence, regardless of “green” construction.

I am aware that the property has been unoccupied for years, and that this fact has posed a problem for the immediate neighbors. The space can and should be put to use, but in a manner that recognizes its larger impact.

My request to the ZAB is to postpone a ruling on this proposal so that the neighborhood on which it will have an impact can have a chance to consider it.

Thank you.

Herta Weinstein
Deborah Matthews, Chairperson  
Zoning Adjustments Board ("ZAB")  
2120 Milvia Street  
Berkeley, CA 94704  

Jan. 27, 2010  

Re: 2707 Rose Street; Request for Approval  

Dear Chairperson Matthews and ZAB Members:  

I have been a faculty member at UC Berkeley for 30 years, and am a Berkeley resident. I've known the Kapos for the past 6 years, because we have a common interest in helping promote the education of underrepresented minorities. They have been running and helping fund several programs at the high school and university levels that set very high standards and have achieved great results. I am aware of a number of other worthy and progressive projects they are involved with. We are also personal friends, and I look forward to their move to Berkeley. I can vouch for their sensitivity to the values that characterize Berkeley, and know that they will work constructively to minimize their environmental impact and maximize their societal impact for good. I believe that you should take their intentions as in very good faith, and work to enrich our fair city with their presence.

With Regards,  

![Signature]

Professor Gibor Basri
27 January, 2009—With minor corrections, to replace comments of 26 January

Comments on the plan for demolition of an existing two-story, 2,477 square foot, single-family residence at 2707 Rose Street to construct a two-story, 6,478 square foot, single-family residence, with a 3,394 square foot garage on a 29,714 square foot parcel.

I believe there are serious design and procedural deficiencies in the above-named proposal that require a continuance until more information and a reassessment of the design is provided by the proposer and a wider set of opinions is sought from the larger neighborhood that will be impacted. The several points leading to this conclusion are:

- The home proposed is approximately three times larger than any in the adjacent historic neighborhood that exists at the conjunction of Rose, Greenwood Terrace, Tamalpais, Shasta, and La Loma, and of significantly different aesthetic character: In fact, there are few single-family homes in North Berkeley of this large size. It is also of a modern rectangular design that cannot be said to be fully compatible with most of the existing homes in this neighborhood. Even with the mitigating circumstances that the large lot involved is on a downhill slope at the deadend of Rose Street, I do not believe that this home meets the guidelines set by several Berkeley planning policies that have been framed with this overall goal in mind:
  
  Protect and enhance Berkeley’s special built environment and cultural heritage by carefully conserving the numerous existing good buildings, areas, and other features and ensuring that new elements are so located and designed as to respect and strengthen the whole.

The specific land use and urban design and preservation guidelines that are affronted by this proposal are:

- **Policy LU-3 Infill development**: The proposed building does not embody the principles of sustainable planning; its size is in direct opposition to these principles. It is not compatible with neighboring architectural design and scale.

- **Policy UD-16 Context**: The proposed structure does not respect the built environment in the area, which is filled with historically and architecturally significant buildings. Page 5 of the Planning Staff Report is erroneous in stating that such buildings do not exist near the proposed structure.

- **Policy UD-17 Design Elements**: The proposed building does not relate to buildings in the surrounding area in terms of height, size, detail or ornament. The proposal for materials and color is also so vague as to be unknowable (see recommendation below).

- **Policy UD-24 Area Character**: This building is not compatible with the desirable design characteristics of the area, nor does it reinforce those characteristics. The building in fact denies these characteristics. This section requires Planning Staff to regulate new construction so that these goals are met.

- **Policy UD-33 Sustainable Design**: Although the Staff Report on p. 7 states that the building will meet sustainability/green standards, it is hard to understand on the most meaningful per capita basis how a 6,478 sq ft residence for two people can be described in this way. As one point in this respect, such large structures, even if not fully occupied much of the time, are known to lead to heat sinks or heat sources from the unoccupied portions that make them less energy efficient, as discussed in recent PG&E literature.

In view of this, I would suggest that the project be downscoped in size and the design philosophy be revisited with regard to the context of the surrounding neighborhood, so as to at least accommodate some of the objections above.
The documents provided and procedures taken to assess the project are seriously lacking in several respects:

- The approval process was limited to the four nearest-neighbor properties, but in view of the size of the proposed structure and its lack of compatibility with the surrounding neighborhood, the residences in the approval area should have been considerably widened.
- Even within the 300 ft diameter for which notification is obligatory (see attached photo), the posting of the Proposed Project notices were not easily visible, and the project’s scope was in fact a total surprise to many people within this circle. The Project Notice on the existing structure was in fact posted inside a carport with a No Trespassing sign over the door (see attached photo), hardly a conspicuous spot.
- The drawings provided as 2010-01-28_ZAB_ATT2_2707 Rose Project Plans and Applicant Statement.pdf (application/pdf Object) do not adequately indicate the relationship of the structure to nearby existing homes and the views from the adjacent streets of Rose, Shasta, La Loma and Greenwood Common. Additional section drawings should include the neighboring houses so that the public can understand how big the house is and how it will loom in the neighborhood. Photos indicating the relationship to adjacent houses should also be included.
- The overall height of the structure appears to be underestimated, as it is in fact more like three stories high at some points of its expanse and grade, and will at its highest point be approximately 100 feet above Shasta Street below. The building is also 35' above a newly constructed platform (plinth) that is as much as 15 feet above natural grade; so it seems that the true height should be stated as 50'.
- The only way to fully assess these previous two inadequacies in the proposal is to erect accurate story poles. It is surprising that this has not been done already for a structure so much larger than any in its neighborhood, or in most of Berkeley.
- A materials board and additional discussion of the exterior of the house are also needed to adequately determine the coloration and aesthetic character of this large home. The present drawings show a large white structure against green trees which more resembles a hotel or hospital than a home.
- As noted above, the structure is in some places effectively of three, not two, stories, and so should come under additional study for earthquake resistance due to its location in the Landslide and Alquist-Priolo Zone.
- A detailed staging plan is needed in order to evaluate the deleterious effects to the neighborhood and the upper end of Rose Street during the construction period. There also appear to be erroneous statements concerning the width of the street, which is more like 16-20 ft, rather than the 25 ft stated in the planning documents. Will this entail limiting neighborhood parking on this section of the street during construction, thus inconveniences homes in the neighborhood? Some discussion of the considerable amount of debris and soil that will have to be trucked down from the site is needed as well.

For the above multiple reasons, this project should not be approved at the present time, but should be put into continuance until the above concerns have been addressed and the opinions of a greater number of the residents affected have been consulted.

Sincerely,

[Signature]

Charles S. Fadley, 1 Tamalpais Road, Berkeley, CA 94708

Attachments: Two photos
From: Georgia Becker [mailto:georgiav.becker@yahoo.com]
Sent: Thursday, January 28, 2010 9:49 AM
To: Jacob, Melinda
Cc: Wengraf, Susan
Subject: 2707 Rose Street

Dear Zoning Adjustment Board Members:

My address is 2528 Hawthorne Terrace and I have been a neighbor of the upper Rose Street community since 1953. Our home is about 3 blocks southwest of 2707 Rose and our street is the main access route to upper Rose from Euclid Ave.

I am requesting that you delay your decision on the Use Permits for 2707 Rose Street in order to that the neighborhood residents most impacted by such a large development have time to learn more about the details of the Use Permit applications.

I only learned of the demolition and construction Use Permit applications two days ago. I walked to the site to take a look at what would be a massive building totalling almost 10,000 square feet in a neighborhood of homes some less than half that size and many less than a third as large.

The neighbors deserve to know how the proposed home and 10-car garage, totally out of scale with neighboring homes, merits the requested Use Permits including variances for setback and average height.

Sincerely,

Georgia V. Becker
2528 Hawthorne Terrace
To: Zoning Adjustments Board  
From: Ann Hughes, neighborhood resident “within 300 feet”  

Re: Use Permits requested for 2707 Rose Street - ZAB Hearing 1-28-10  

I wish to request that the board not grant a use permit to allow a 35-foot average height limit, where 28-feet average is the maximum. No argument for this special need is presented.  

Upon viewing the “Figure 1: Vicinity Map” of the Public Hearing Notice, one can see immediately the major concern with this proposal. Even though only four other structures are shown on the rough sketch, the structure is out-of-scale with the neighborhood fabric.  

The neighborhood can be pleased that, on this large lot, no subdivision and only a single-family home is being proposed. And the inclusion of 10 out-of-sight parking spaces is a boon to our narrow streets.  

However, introducing a house with built square footage greater than the parcel size of many lots in the area requires more subtle handling than the big box – a flat wall over 100 feet long - looming over Shasta Road 75 feet below. When viewed on its own, the model and drawings may be handsome, but more representation of the adjacent homes should have been included in the submittal: then the problems of scale would be revealed.  

As the applicants had a very large lot to work with, there was opportunity to break up the volume of the structure, to respond to the general environment (houses half the size) in which this home is placed. As conceived, the building, with an extended, unornamented parapet, claims much more space (visually) than is actually used by the inhabitants. The description of the house as “only two stories” is not necessarily a recommendation in a hillside area. The pedestal from which the 35-foot height is measured is already 8 – 10 feet above grade.  

The huge expanse of this structure in this setting should not be approved without more consideration. What is the specific exterior building material to be used? What texture and color? (White is shown on submittal.) What is the effect of this large building on neighbors, not next door, but very near, directly across the creek canyon?  

In sum, I ask the board to consider these questions and issues when reviewing this application, and specifically to deny the extra - unnecessary - height request. 
Sincerely, Ann Hughes (resident 33 years)
From: Dawn Hawk [mailto:dawnhawk1@yahoo.com]
Sent: Thursday, January 28, 2010 11:51 AM
To: Powell, Greg
Cc: Jacob, Melinda
Subject: Objections to 2707 Rose St. Development

To The Zoning Adjustment Board,

I am writing with my concerns about the proposed development at 2707 Rose St, particularly the issue of notification and time that neighborhood groups and neighbors around this project have been given to comment. Many of my neighbors are just learning about this project. I walk through the neighborhood regularly, especially up Rose and upper Rose Steps to LaLoma, and this weekend was the first time I saw any notice of this project. I had to go to the very end of the cul de sac to find the notice which had been posted inside the garage - which also has many clearly posted "No Trespassing" signs - and not easily visible from the street.

At an absolute minimum, we as a community need more time to review this project, and to get a better sense of the bulk of this structure. I note that during the recent approval process for the reservoir on Euclid, poles were erected to show the new size and height of the structure, yet this has not yet been done for this project, and it will impact my view.

I am not opposed to new construction, particularly the restoration, even expansion of the existing home on this site, and I look forward to a constructive dialogue between the owners, their architects, and my neighbors. However, absent additional time for neighborhood input, I strongly oppose this development on the following grounds:

This is an historic neighborhood of older homes, mostly built just after the 1923 fire. Many are modest but architecturally significant, a number of homes were designed by noted east bay architects of distinction such as Julia Morgan, Bernard Maybeck, Walter Ratcliffe, Carr Jones, and John Thomas Hudson. Part of the great charm of this neighborhood is the variety of older homes which are a mixture of styles, but with few exceptions, preserving the building pattern in the area which was begun in the teens.

As noted by the owners, the current property has been vacant and allowed to deteriorate for ten years, but it could be restored, even added on to by the kind of owners who respected the vernacular of architecture in the community. I note that there is a property in much worse condition at 2687 Shasta Ave, 6 lots north, which is in substantially worse condition, but is being restored.

Instead, the proposed building is a breathtaking and radical departure from the style of the neighborhood. A modernist rectilinear shoe box with walls of glass, devoid of any decoration or detail, whose only saving grace is that there are several mature oaks which will partially screen it from the view of the rest of the community. My neighbors have begun to refer this house as the "K-Mart House", and it is hard to disagree with this assessment.

It is difficult to agree with the assertion that this project protects the character of Berkeley's Hill District and the immediate environs.

I want to point out that the views in our neighborhood are not merely the sweeping views of the bay, San
Francisco, the Golden Gate and Richmond-San Rafael bridges and Mt. Tamalpais, but also of the surrounding neighborhood. This massive and imposing piece of commercial design is completely out of character for this neighborhood.

Thank you in advance for considering my objections, which I would be willing to withdraw if there is an adequate additional period of community review for this project.

Dawn Hawk
2707 ROSE ST
BERKELEY, CA 94708
Letter to the City of Berkeley Zoning Adjustment Board

I wish to oppose the granting of use permits to build a 6,478 square foot, single-family dwelling, with a 3,394 square-foot, 10-car garage at 2707 Rose Street, until the surrounding neighborhood is given time to consider the time and react.

While the project meets the legal requirements for a parcel that size, the structure is entirely out of scale for the neighborhood. It will exceed the city's height limit and setback requirements. It is several times larger than the median sized home. It threatens the integrity of an old and established community. It is environmentally irresponsible, and its sheer size puts it at odds with the energy policies of this city.

The median size of 50 homes sold in the area in 2009 was roughly 1500 square feet. The largest was 2874 square feet, the smallest 648 square feet. Most homes are in the 1200-1800 square foot range. The proposed house dwarfs virtually all its neighbors.

Homes of this size are energy hogs, despite the claims that they use state-of-the-art materials. PG & E has a simple formula: if Home B is twice the size of Home A, it will use twice the energy. This proposed house will consume several times the energy of its neighbors.

There is a general concern that the project will destroy the character of the neighborhood. At the very least, the ZAB should delay granting the requested use permits until a wider segment of the neighborhood has had time to review the plans and react.

Name: Dolores Williamson
Address: 170 Tamalpais Road
Signature: Dolores Williamson
Date: January 26, 2009
Letter to the City of Berkeley Zoning Adjustment Board

I wish to voice my opposition to the granting of use permits to build a 6,478 square foot, single-family dwelling, with a 3,394 square-foot, 10-car garage at 2707 Rose Street, until the surrounding neighborhood is given time to consider the proposal and react.

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The project threatens the character of the neighborhood. In the past decade, only two homes of similar or larger size have been sold in the North Berkeley area.

Thank you for your attention.  

Justine Hume

Name: Justine Hume  
Address: 1520 LeRoy Avenue  
Berkeley, CA 94708  
Signature:

Date: Jan. 27, 2010
Letter to the City of Berkeley Zoning Adjustment Board

I wish to voice my opposition to the granting of use permits to build a 6,478 square foot, single-family dwelling, with a 3,394 square-foot, 10-car garage at 2707 Rose Street, until the surrounding neighborhood is given time to consider the proposal and react.

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The project threatens the character of the neighborhood. In the past decade, only two homes of similar or larger size have been sold in the North Berkeley area.

Thank you for your attention.

Name: MARY TOLMAN KENT
Address: 74 TAMALPAIS RD
Signature: [Signature]
Date: 1/29/10

P.S. I have lived in this neighborhood for 58 years. My late husband, Jack Kent, was on the Planning Commission - City Council - I know he would join me in the arguments as set down above. Thank you for your consideration - MARY T. KENT
Letter to the City of Berkeley Zoning Adjustment Board

I wish to voice my opposition to the granting of use permits to build a 6,478 square foot, single-family dwelling, with a 3,394 square-foot, 10-car garage at 2707 Rose Street, until the surrounding neighborhood is given time to consider the proposal and react.

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Thank you for your attention.

Name: Eric O. & Madelyn S. Johannesson
Address: 2664 Shasta Road
Signature: Madelyn (Suzy) Johannesson
Date: 1-25-18
Letter to the City of Berkeley Zoning Adjustment Board

I wish to voice my opposition to the granting of use permits to build a 6,478 square foot, single-family dwelling, with a 3,394 square-foot, 10-car garage at 2707 Rose Street, until the surrounding neighborhood is given time to consider the proposal and react.

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The project threatens the character of the neighborhood. In the past decade, only two homes of similar or larger size have been sold in the North Berkeley area.

Thank you for your attention.

Name: Gertrude & Robert Allen
Address: 1486 Greenwood Terrace
Signature: Robert Allen
Date: January 23, 2010
Letter to the City of Berkeley Zoning Adjustment Board

I wish to voice my opposition to the granting of use permits to build a 6,478 square foot, single-family dwelling, with a 3,394 square-foot, 10-car garage at 2707 Rose Street, until the surrounding neighborhood is given time to consider the proposal and react.

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The project threatens the character of the neighborhood. In the past decade, only two homes of similar or larger size have been sold in the North Berkeley area.

Thank you for your attention.

Name: Beverley Bolt (Beverley Bolt)
Address: 1491 Greenwood Terrace, Berkeley 94708
Signature: Beverley Bolt
Date: 1/25/2010
City of Berkeley Zoning Adjustment Board:

I understand you plan to recommend approval for what seems to be hugely out-of-scale new buildings on this fragile hillside site, where there is an existing single-family house. I write to request a stay of any decision until the surrounding neighborhood has time to consider the consequences of a much larger building than currently exists in this area.

If it is indeed city policy to reduce our carbon footprint, making exceptions in order to grant approval of this project is incomprehensible. Reducing the city's carbon footprint would mean discouraging demolitions and, certainly, encouraging reduced automobile use. To overrule existing regulations to allow for a 10-car private garage on a very narrow hillside street is so hypocritical, not to mention environmentally destructive, as to boggle the mind. This neighborhood is zoned for single-family dwellings. How can a 10-car, 3,394 square foot garage possibly be justified or acceptable to the zoning board?

How many trees will have to be cut down to make space for nearly 10,000 square feet of new buildings? How much consideration has been given to the near proximity of the Hayward Fault? to the likelihood of mudslides on this steep hillside? to the tiny 16-foot-wide street that would have to service large trucks to remove the demolished building and heavy building equipment to excavate the hillside for this huge building and move materials to and from the site. To build in so fragile a hillside area so close to an earthquake fault will surely require an extraordinarily strong foundation.

I urge you to reconsider your presumed intention to recommend this project in light of Berkeley's efforts to be an environmentally responsible city.

And at the very least, I request that you stay this decision until all concerned nearby residents and those who abhor the building of absurdly over-sized residences can further study this project.

Thank you,

Charlene Woodcock
2355 Virginia Street
Berkeley 94709
Letter to the City of Berkeley Zoning Adjustment Board

I wish to oppose the granting of use permits to build a 6,478 square foot, single-family dwelling, with a 3,394 square-foot, 10-car garage at 2707 Rose Street, until the surrounding neighborhood is given time to consider the time and react.

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There is a general concern that the project will destroy the character of the neighborhood. At the very least, the ZAB should delay granting the requested use permits until a wider segment of the neighborhood has had time to review the plans and react.

Name: JusHNE HaSPIR
Address: 14 TAMAIPA'S POI, B(1, C, CA 94708
Signature: 
Date: 10.2S-2010
Letter to the City of Berkeley Zoning Adjustment Board

I wish to voice my opposition to the granting of use permits to build a 6,478 square foot, single-family dwelling, with a 3,394 square-foot, 10-car garage at 2707 Rose Street, until the surrounding neighborhood is given time to consider the proposal and react.

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Thank you for your attention.

Name: BERNARD MOEN
Address: 2607 SHAHSTA RD, BERKELEY, CA 94708
Signature:
Date: 1/22/10

Susan: 1/24/10
Thanks for bringing this to our attention. If you could take it to the ZAB it would be greatly appreciated.

Barney Moen
Vicki Moen
Zoning Adjustment Board  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

RE: 2707 Rose Street

Dear Sir/Madam:

I wish to comment on the proposed development at 2707 Rose Street. I live a few feet outside the notification radius and didn't learn this was happening until quite recently. I would like to request that the ZAB continue the issue until the neighborhood has had more time to understand the project and its implications. Thank you.

Sincerely yours,

Bob B. Buchanan

Bob B. Buchanan
January 26, 2016

Zoning Board
City of Berkeley
2134 Milvia Street
Berkeley, California 94704

Re: Proposed addition/Rebuilding @ 2707 Rosa Street

Dear Sirs,

Let me state that my conviction, and I assume it is the same for many of our neighbors, is that we have a society based on laws rather than individual opinions and conclusions, i.e. a law of man.

I have read the letter and accompanying materials re: this issue submitted by Ms. Fadley. She seems confused. In her letter to the ZAB she states that the application for this project “meets all legal requirements” for a project of this size. She then continues that the project will “exceed the height limits and setback requirements”. This seems to be a reflection of her ignorance or a prejudicial statement of the facts and a prejudicial statement that is way out of line and at best a mis-statement & self-serving.

I personally believe that is a proposed project meets all zoning criteria it should be approved. There really is no place in our system of governance for personal opinion not supported by facts or regulations.

Ms. Fadley’s statement should be judged by what it is... a personal opinion unsubstantiated by the law. For example, where is it stated energy use limits the size of a building? Also, is there something in the planning code which limits the number of garages on a particular site? I personally would rather have cars parked on a site rather than on the street.

I have had personal experience of frustration caused by irrational neighbors. It took over 3 years for me to get approval of a 590 sqft addition to my house on Buena Vista Way, even though no variances were requested or required. My application was delayed again and again by various mis-statements and sham historical claims of facts, all based on irrational opinions, not on facts. To this day I do not understand why City staff allowed this to happen when the facts were so clear.

Please do not let this happen again.

Yours truly,

Thad Kusmierski
2750 Buena Vista Way
Berkeley, California 94708
(510) 548-1800
Subject: FW: Tonights hearing on 2707 Rose Street

-----Original Message-----
From: Paul Opsvig [mailto:spopsvig@pacbell.net]
Sent: Thursday, January 28, 2010 12:32 PM
To: Powell, Greg
Subject: Tonights hearing on 2707 Rose Street

Letter to:
Mr. Greg Powell
Senior Planner, City of Berkeley

Re: proposed project at 2707 Rose Street.

Dear Mr. Powell:

I wish to convey additional views about an organizing effort that is circulating among some neighbors living blocks away from our home and well outside the 300’ notice area from the proposed home construction site which is next door to my husband Paul and myself. They are advocating the greater neighborhood beyond what is required by the Zoning Ordinance should weigh in on our neighbor’s plan to build a home here. They want the process delayed. Their request: write or go to ZAB and demand a “Continuance.”

I have thought long and hard about this and now more than ever believe that a Continuance is not justified by either the facts or the law. The project has met all the criteria that the City of Berkeley has established for reviewing such plans. The hearing information has been posted in several areas, affected neighbors have received the permit hearing announcement and the architects have been available to answer questions. Notice of the plans were also mailed to all addresses within 300’. The senior planner, Greg Powell, has been available to respond to any and all requests for information.

There is already a specific regulation for notification and the process for making decisions which work because it provides for decisions to be made with input from the applicant and impacted parties in a reasonable period of time. It is not rushed. Here it has taken eight months to get to this hearing. Adding more review from increasing numbers of people will be inefficient, take much longer, be much more expensive, and add significantly more hardship to those applying for project approval as well as those of us who have a stake in improving our immediate surroundings.

The people most affected by a project should have the most input for what seems to me to be obvious reasons. In this instance the immediate neighbors are the most affected, share the responsibility to make constructive recommendations, and would not be happy if others with opinions but no accountability were able to delay or block projects that affect them very little. We live here, have experienced the problems of living here, and are the ones who can and should influence decisions affecting “our own back yard.”

Most of those advocating for themselves having more input have not taken the opportunity to get readily available information. Why give more input to those who are expressing opinions but don’t go to the trouble to get the facts. In fact, it’s my understanding that the architect offered to meet anytime prior to the hearing with the leader of this effort and
anyone she chose to invite. She refused stating that she didn't have time and that her quarrel wasn't with the architect but with the city.

In summary we are against delaying this project. There is and has been sufficient information readily available to anyone making any effort to get it. Those of us who are immediately affected have made that effort and received the information we needed to make an informed recommendation. Those less affected have understandably not made this effort. We believe that the rules have been followed, the immediate neighbors have expressed their opinions and we believe now is the time for the Board to make their decision.

If hearings are continued every time someone outside the notification area wants to weigh in, then no decision will ever be reached in a timely basis.

Susan Opsvig
-----Original Message-----
From: Carolyn Porter [mailto:cporter@berkeley.edu]
Sent: Wednesday, January 27, 2010 12:11 PM
To: Jacob, Melinda
Subject: 2707 Rose

To: Zoning Adjustment Board

From: Charles Altieri & Carolyn Porter, 2514 Buena Vista Way

We have just learned of your plans to approve a gigantic building project at 2707 Rose St. At 6,478 square feet, with a 3,394 square feet 10-car garage, the project is absurdly out of scale for the location it would occupy, fundamentally altering the entire neighborhood surrounding it. We will not here list the many ways in which such a building would do immeasurable harm, not only to the nearby -- and historical -- Greenwood Common, but to those of us who own and inhabit houses in the larger area of the North Berkeley hillside. Suffice it to say here that a "house" of this size, with a 10 car garage larger than most houses in the area, is at best a monstrosity and at worst a harbinger of similar or worse developments to come.

Since so few of us in the neighborhood were aware of this ridiculous plan until quite recently, I want to join my neighbors in emphatically requesting a postponement of your planned discussion and possible approval of this project tonight, Jan. 28. How the Board could even consider such an "adjustment" to the city's zoning statues is astonishing to us and the neighbors who have become aware of the plan. The least -- and the most -- the Board should do tonight is postpone a decision until everyone effected has learned about it and has a chance to assess it thoroughly and participate in the discussion. Although some will be there tonight, many of us can't be there at such short notice.

We thus urge you in the strongest terms to postpone the discussion until all of us who are concerned have a chance to speak in public about the serious impact such a project would have.
2707 Rose Street

Use Permit #09-10000038 to demolish an existing two-story, 2,477 square foot, single-family dwelling and three one-car garages to construct a two-story, 6,478 square foot, single-family dwelling, with a 3,394 square foot, 10-car garage on a 29,714 square foot parcel.

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, January 28, 2010, at the Maudelle Shirek Building (formerly Old City Hall), 2134 Martin Luther King, Jr. Way, second floor Council chambers (wheelchair accessible). The meeting starts at 7:00 p.m.

PERMITS REQUIRED:

- Use Permit to demolish an existing dwelling unit;
- Use Permit to construct a dwelling unit;
- Administrative Use Permit to allow a 35-foot average height limit (28-feet is the maximum); and
- Administrative Use Permit to reduce front yard setback to 16-feet (20-feet is required).

PARTIES INVOLVED:

- Owner: Mitchell D Kapor
  543 Howard Street, Suite 500, San Francisco

- Applicant: Donn Logan, (MARCY WONG DONN LOGAN ARCHITECTS)
  800 Bancroft Way, Suite 200, Berkeley

ZONING DISTRICT: R-1 (H)

ENVIRONMENTAL REVIEW STATUS: Categorically exempt under Section 15332 of the California Environmental Quality Act (CEQA) Guidelines ("In-fill Housing").

ATTACHMENTS: Vicinity map, project plans (some drawings not included to facilitate mailing; all drawings are available for public review; see "Further Information" below).
PUBLIC COMMENT

Comments may be made verbally at the public hearing and in writing before the hearing. Those wishing to speak at the hearing must submit a speaker card by 7:15 p.m. The Board may limit the number of speakers and the time granted to each speaker. Written comments to the Board are encouraged and should be directed to:

Land Use Planning Division
2120 Milvia Street
Berkeley, CA 94704

Fax: (510) 981-7420
E-mail: zab@ci.berkeley.ca.us

To assure distribution to Board members prior to the meeting, correspondence must be received by 12:00 noon, seven (7) days before the meeting. 15 copies must be submitted of any correspondence with more than ten (10) pages or any item submitted less than seven days before the meeting.

NOTICE CONCERNING YOUR LEGAL RIGHTS

If you object to a decision of the Zoning Adjustments Board, the following apply:

1. Appeals to the City Council must be filed with the City Clerk within 14 days after notice of the Board’s decision is mailed. It is the appellant’s obligation to inquire with the Current Planning Division to determine when a Notice of Decision is mailed.

2. No lawsuit challenging a City decision to approve (Government Code §65009(c)(5)) or deny (Code of Civil Procedure §1094.6(b)) a Use Permit or Variance may be filed more than 90 days after the date the decision becomes final, as defined in Code of Civil Procedure §1094.6(b). Any lawsuit not filed within that 90-day period will be barred.

3. Any lawsuit challenging a City decision to approve or deny a Use Permit or Variance will be limited to the issues and evidence raised orally or in writing at a public hearing on the project.

COMMUNICATION ACCESS

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-7474 (TDD). Notice of at least five (5) business days will ensure availability. Agendas are also available on the Internet at: www.ci.berkeley.ca.us.

FURTHER INFORMATION

Questions about the project should be directed to the project planner, Greg Powell, at (510) 981-7414 or gpowell@ci.berkeley.ca.us. All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 2120 Milvia Street, during normal office hours.
Figure 2: Site Plan
Figure 4: Elevation, from Rose Street (southern view)

Figure 5: Elevation, from Shasta Road (northern view)
Planning and Development Department
Land Use Planning Division
LANDMARKS PRESERVATION COMMISSION

Meeting Announcement and Agenda

Date:    Thursday, September 3, 2009
Time:    7:00 p.m.
Place:   North Berkeley Senior Center, 1901 Hearst Avenue, Main Room

The Landmarks Preservation Commission (LPC) packet is available for review at the Berkeley Main Public Library at 2090 Kittredge Street and at the Permit Service Center at 2120 Milvia Street.

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 ☰ (510) 981-6346  (V) or ☰ (510) 981-7075  (TDD) at least three business days before the meeting date.

Contact: Landmarks Preservation Commission Secretary, ☰ (510) 9... , LPC@ci.berkeley.ca.us.
19. "Kittredge Street Historic District" - 2124 Kittredge Street (Elder House and storefront), 2138 Kittredge (Fitzpatrick House and storefront), and 2117 Kittredge Street (A.H. Broad House and storefront) (JK 11/5/2001)
20. 2800 Block of Staten Street (LE 3/4/02)
21. 935 Grayson Street (7/1/02)
22. 2132 Haste Street (LE 9/4/02)
23. 962, 964, 966, 968 & 970 Euclid Avenue (JK 10/1/04)
24. BB. 2212 Fifth Street, Charles Spear House
25. CC. 1842-1878 Euclid Avenue (CO 9-14-07)
26. DD. Berkeley High School Campus Historic District (SW 1/3/08)
27. FF. 2124 Vine Street/1500 Walnut Street, Original location of Peet’s Coffee (CO 3/5/09)
28. GG. U.C. Berkeley Campus, Earl C. Anthony Hall (Pelican Building)


For each property below, there is a pending application for a Use Permit with Public Hearing, an Administrative Use Permit, or a Variance currently under review. The list below is limited to the addresses only. Properties in bold have been added to the list since the last LPC meeting. For additional information about applications, please contact the Planning and Development Department, 981-7410.

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<th>Permit Type</th>
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LANDMARKS PRESERVATION COMMISSION
MEETING ANNOUNCEMENT AND AGENDA

Date: Thursday, October 1, 2009
Time: 7:00 p.m.
Place: North Berkeley Senior Center, 1901 Hearst Avenue
       Main Room

The Landmarks Preservation Commission (LPC) packet is available for review at the Berkeley Main Public Library at 2090 Kittredge Street and at the Permit Service Center at 2120 Milvia Street.

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Contact: Landmarks Preservation Commission Secretary, ☎️ (510) 981-7410 ; LPC@ci.berkeley.ca.us

Initiation of Landmark or Structure of Merit designation lies within the range of action to be considered on each structure or property appearing at any place on the agenda.

Due to the length of the LPC agenda, a Consent Calendar may be used to approve certain
W. 962, 964, 966, 968 & 970 Euclid Avenue (JK 10/1/04)
X. 2500 Shattuck Avenue, Berkeley Bank of Savings and Trust Co., 1923, Louis M. Upton (JK 11/23/05)
Y. 3200 Adeline Street (LE 8-3-06)
Z. 1915 Addison Street (JK 8-3-06)
AA. 2611 Parker Street, Evelyn Ratcliff House
BB. 2212 Fifth Street, Charles Spear House
CC. 1842-1878 Euclid Avenue (CO 9-14-07)
DD. Berkeley High School Campus Historic District (SW 1/3/08)
EE. 2746 Garber Street (SW 3/5/09)
FF. 2124 Vine Street/1500 Walnut Street, Original location of Peet’s Coffee (CO 3/5/09)
GG. U.C. Berkeley Campus, Earl C. Anthony Hall (Pelican Building)
HH. 2727 Marin Avenue (CO 7/20/09)
II. 2600 Bancroft, YWCA (CO 9/3/09)


SEE ATTACHED TABLE OF LAND USE PLANNING CURRENT PROJECTS, COPIED FROM CITY’S WEB SITE BELOW

http://www.ci.berkeley.ca.us/uploadedFiles/Planning_and_Development/Level_3 - ZAB/LU%20Projects(1).pdf

13. ADJOURN
Room reservation expires at midnight. The Senior Center employee who monitors the center must be able to close the building by midnight at the latest. In order to comply with this standard, the meeting must adjourn by 11:45 p.m. to provide time to return the furniture to its original location, pack up meeting materials, and vacate the Senior Center. Please assist by exiting promptly once the meeting has adjourned.
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<th>Code</th>
<th>Name</th>
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2707 Rose Street

Use Permit #09-10000038 to demolish an existing two-story, 2,477 square foot, single-family dwelling and three detached one-car garages and to construct a two-story, 6,478 square foot, single-family dwelling, with a 3,394 square foot, 10-car garage, on a 29,714 square foot parcel. (Zoning: R-1 (H), Single-Family Hillside District; Planner: Greg Powell)

I. Application Basics

A. Zoning Permits Required:
   - Use Permit to demolish an existing dwelling unit, per BMC Sections 23C.08.010 and .020;
   - Use Permit to construct a dwelling unit, per BMC Section 23D.16.030;
   - Administrative Use Permit to allow a 35-foot average height limit for a main building (28-feet is the maximum), per BMC Section 23E.96.070.B; and
   - Administrative Use Permit to reduce front yard setback to 16-feet (20-feet is required), per BMC Section 23E.96.070.C.

B. CEQA Determination: Categorically exempt pursuant to Sections 15303(a) ("New Construction") and 15332 ("In-Fill Development Projects") of the CEQA Guidelines.

C. Parties Involved:
   - Owner: Mitchell D. Kapor
     543 Howard Street, Suite 500, San Francisco

   - Applicant: Donn Logan (Marcy Wong / Donn Logan Architects)
     800 Bancroft Way, Suite 200, Berkeley
Figure 2: Site Plan/ Upper Floor Plan

North
Figure 4: View from Rose Street (looking north)

Figure 5: View from Shasta Road (looking south)
Table 1: Land Use Information

<table>
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<tr>
<th>Location</th>
<th>Existing Use</th>
<th>Zoning District</th>
<th>General Plan Designation</th>
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<td>Subject Property</td>
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<td>R-1 (H)</td>
<td>Low-density Residential</td>
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<td>North</td>
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<td>R-1 (H)</td>
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<td>South</td>
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Table 2: Special Characteristics

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<th>Explanation</th>
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<td>CEQA</td>
<td>No</td>
<td>The project satisfies the conditions of CEQA Guidelines Section 15332 for In-Fill Development Projects, as follows:</td>
</tr>
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<td></td>
<td></td>
<td>• The project is consistent with the applicable General Plan designation and applicable General Plan policies (see &quot;General Plan&quot; discussion in this report), as well as with the applicable zoning designation and regulations.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The project occurs within the Berkeley city limits on a project site of no more than five acres, and is surrounded by urban uses.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The site has no value as habitat for endangered, rare or threatened species.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The project would not result in any significant effects relating to traffic, noise, air quality or water quality.</td>
</tr>
<tr>
<td></td>
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<td>• The site is already served by required utilities and public services, which will also adequately serve the project.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Furthermore, the project does not trigger any of the exceptions in CEQA Guidelines Section 15300.2. In particular, the project will not have any significant effects due to unusual circumstances, or any cumulatively significant impacts (such as traffic), and it will not adversely impact any designated historical resources. Therefore, because the project meets the requirements of CEQA Guidelines Sections 15332 and 15300.2, it is exempt from further review under CEQA.</td>
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<tr>
<td>Creeks</td>
<td>No</td>
<td>Codornices Creek is 50’ north west of the site and approx. 110’ from the proposed footprint.</td>
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<tr>
<td>Excavation/Slope</td>
<td>Yes</td>
<td>Excavation is approx. 1,500 cubic yards and on-site fill would be approx. 800 cubic yards. Slope is approx. 50%.</td>
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<tr>
<td>Historic Resources</td>
<td>No</td>
<td>No locally designated properties exist in the vicinity.</td>
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<tr>
<td>Oak Trees</td>
<td>Yes</td>
<td>The proposed dwelling would be adjacent to several Coast Live Oaks. An Arborist Report, prepared by a Certified Arborist, was prepared to assess the potential impacts related to the proposed footprint and related construction. The Tree Preservation mitigations identified in this report will be included in the conditions of approval for this permit.</td>
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<tr>
<td>Seismic Hazards</td>
<td>Yes</td>
<td>Mapped within Landslide and Alquist Priolo Zone, but exempt from additional study because proposed project involves a two-story, wood-frame, single-family dwelling.</td>
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<td>Green Building</td>
<td>Yes</td>
<td>Expected Score: 91 Points out of a total of 251; a score of over 60 is considered 'green'.</td>
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C. Neighborhood Compatibility:
No objections have been raised by the abutting and confronting property owners, as evidenced by signatures on the applicant’s plan submittal. Assessor’s data for the 41 neighboring dwellings shown on the vicinity map in Figure 1 indicates that the average floor area is 2,440 square feet and that two dwellings have floor and lot area similar to the proposed project. The dwelling would not be readily visible from the west or east due to the presence of mature vegetation and the significant building-to-building setback (53-feet to the west; 63-feet to the east), as well as topographic variations in the area. From Rose Street, only one floor of the dwelling would be visible, and this is at the terminus of Rose Street below the La Loma Avenue overpass. From Shasta Road, the dwelling would not be readily visible due to the significant setback of 35 to 77-feet, the 40 to 50-foot change in elevation from the road to the building, and the intervening vegetation. Thus, while the proposed project is larger than the average home size within this area, the volume would not be readily apparent when viewed from the public right-of-way or from any adjacent dwelling.

The applicant also proposes to plant several trees around the property that will fill in a small open area along Shasta Road and near the immediate neighbor to the west. The neighborhood is comprised of a variety of architectural styles, and so would accommodate the modern design of the proposed residence. The residence is also designed to fit the topography of the site and provides ample off-street parking for residents and guests, minimizing potential impacts in this constrained access area.

D. General and Area Plan Consistency:
The 2002 General Plan contains several policies applicable to the project, including the following:
- **Policy LU-3 Infill Development**: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
- **Policy UD-16 Context**: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
- **Policy UD-17 Design Elements**: In relating a new design to the surrounding area, the factors to consider should include height, massing, materials, color, and detailing or ornament.
- **Policy UD-24 Area Character**: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.
- **Policy UD-31 Views**: Construction should avoid blocking significant views, especially ones toward the Bay, the hills, and significant landmarks such as the Campanile, Golden Gate Bridge, and Alcatraz Island. Whenever possible, new buildings should enhance a vista or punctuate or clarify the urban pattern.
- **Policy UD-32 Shadows**: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.
Staff Analysis: See "Project Description" and "Key Issues" section above. In summary, staff believes that the project protects views, incorporates green building design and materials and reflects the character of the buildings in the vicinity.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board APPROVE Use Permit #09-10000038 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:
1. Findings and Conditions
2. Project Plans and Applicant Statement
3. Notice of Public Hearing
4. Correspondence Received

Staff Planner: Greg Powell, gpowell@ci.berkeley.ca.us, (510) 981-7414
The proposed project at 2707 Rose Street is located on the north/eastern edge of the 1923 Fire, that destroyed more than 500 buildings, mostly residences. A contemporary pamphlet described the horrendous conflagration:

“A square mile of charred relics spreading from Cragmont to the edge of the University grounds...no words could convey the power of the torrent of flame which demolished in a few short hours on September 17, 1923 one of the most beautiful residence tracts of Berkeley...”

Before the 1923 Fire the north Berkeley hillside had been a neighborhood of rustic houses set in gardens of native trees and bushes. Unaccountably, some buildings were left standing, while others, next door or nearby, were destroyed.

2707 Rose Street survived the 1923 Berkeley Fire and, despite its neglect, is an example of that pre-fire, country atmosphere and ambience.

The area has been and continues to be the subject of numerous walking tours held year after year, as well as books, chapters in books, magazine and newspaper articles and recently a documentary film.¹

The property is in a neighborhood full of architecturally significant houses and groups of houses. Some are individually designated City of Berkeley Landmarks, and there are three separate historic districts.

City of Berkeley Officially Designated Landmark Districts

1. Greenwood Common Historic District  
   *William Wurster/Lawrence Halprin, 1952-1957*  
   Number 1, Donald Olsen (1955); Number 2, Robert Klemmedson (1957); Number 3, Joseph Esherick (1954); Number 4, Harwell Hamilton Harris (1954); Number 7, Rudolph Schindler (1932, with subsequent additions); Number 8, Howard Moise (1953); Number 9, Henry Hill (1954); Number 10, John Funk (1952).

2. La Loma Park Historic District  
   *(all properties in City of Berkeley list-from J. Claiborne, CoB)*  
   1) 1508 La Loma Avenue, Tyndal Bishop House, Ernest Coxhead, 1923  
   2) 1509 La Loma, Rowell House, Maston and Hurd, 1930  
   3) 1512 La Loma Avenue, John Ballantine House, John Ballantine, 1924  
   4) 1514 La Loma, Arthur J. Weeks House, Arthur J. Weeks, 1924  
   5) 1515 La Loma Avenue, Andrew Lawson House, Bernard Maybeck, 1907 *LM*  
   6) 1521 La Loma, Mrs. Fritz Walton House, Hans Gerson, 1940  
   7) 1525 La Loma, Prof. C.W. Wells House, Roland I. Stringham, 1922  
   8) 1530 La Loma, Prof. E.C. Tolman House, Warren C. Perry, 1924  
   9) 1542 La Loma (Tolman Cottage)  
   10) 1544 La Loma (Tolman Cottage)
11) 1581 Le Roy (Hillside School)
12) 2678 Buena Vista, Henry H. Gutterson, 1924
13) 2704 Buena Vista Way, Kerna Maybeck House, Reece Clark, 1959  SHRI

3. Rose Walk & Cottages
Rose Walk
2500 Block Rose Street
between Le Roy and Euclid
Bernard Maybeck, 1913

2555 Rose Walk,  Frank Gray House, Henry Gutterson, 1936
2523-05 Rose Walk, Four Duplexes, Henry Gutterson, 1924
2518 & 2500 Rose Walk, Two Houses Henry Gutterson, 1928
40, 50, 60 Codornices Road, Cottages, Henry Gutterson, 1924

Individually Recognized Historic Resources
- L  City of Berkeley Landmark
- SHRI State Historic Resource Inventory Rated: Appears Eligible for Listing on the National Register of Historic Places.
- H  Considered historically significant based on comprehensive Berkeley Architectural Heritage Association surveys.

1. 2637 Rose Street, 1958   H
Charles Warren Callister, architect
Callister is considered one of the very best Mid-century architects.

2. Teggar House             H
2621 Rose
Junk-Riddell Inv. Co., 1913

3. J.M. Mackie House SHRI
2652 Shasta Road
Frederick Holberg Reimers, 1915
Note: This property boarders subject property to the east.

4. George Manchester House SHRI
2645 Shasta Road
Williamson & Winterburn, 1911

5. John Galen Howard House L
1401 Le Roy

6. Cottages
1425-37 Greenwood Terrace  
William A. Wurster, 1955

7. Warren Gregory House, 1903 & 1906 SHRI  
1459 Greenwood Terrace  
John Galen Howard, architect

8. 1471 Greenwood Terrace  
Winfield Scott Wellington, 1950

9. Francis Gregory House, 1907 SHRI  
1476 Greenwood Terrace  
Bernard Maybeck, architect

10. George Noyes/Gregory House, 1912 SHRI  
1486 Greenwood Terrace  
John Galen Howard, architect

11. Hillside School L & NRHP  
2500 Buena Vista Way (1581 Le Roy Avenue)  
Walter H. Ratcliff, Jr., 1925

**Buena Vista Hill** “Maybeck Country” Although this group of houses have not officially designated a historic district have been recognized for decades as architecturally important.

12 Charles Seeger House, 1915 H  
2683 Buena Vista Way  
Bernard Maybeck, architect

13. Professor Etchevery House H  
2678 Buena Vista  
Henry H. Gutterson, 1924

14. The Maybeck Studio SHRI  
2711 Buena Vista Way  
Bernard Maybeck, 1924

15. Margaret van Barneveld Cole House, 1968 SHRI  
2717 Buena Vista  
Felix Rosenthal, architect

16. Pennell House H  
2730 Buena Vista Way, 1930
17. Charles Aikin House, 1940  SHRI
2750 Buena Vista Way
Bernard Maybeck, 1940-The last home he designed

18. Tufts House, 1931  LM
2733 Buena Vista Way
Bernard Maybeck, architect

19. Wallen Maybeck House, 1933  SHRI
2751 Buena Vista Way/corner Maybeck Twin Drive

20. Kern Maybeck House, 1933  LM
2780 Buena Vista Way

The district also includes:
21. Number 1 Maybeck Twin Drive, The Maybeck Cottage, Bernard Maybeck, 1924  SHRI
23. 2785 Buena Vista Way, John Ekin Dinwiddie, architect, 1948

Tamalpais and Shasta roads
These two roads form a large oval-shaped loop that is a favorite walk. The area survived the Berkeley Fire of 1923 and is shaded by mature trees. The street is lined with a diversity of large homes and small cottages, often set right on the street; this provides urbanity complimented by rustic wood siding and lush gardens.

\[1\] See attached bibliography
This is the official City of Berkeley map showing the location of designated City Landmarks. Properties listed on the State Historic Resources Inventory are indicated by "SHRI". These are all rated "appear eligible for listing on the National Register of Historic Places."

"H" indicates the property is considered to have significance.

This area survived the 1923 Berkeley Fire. It is considered a historically significant neighborhood with cultural and architecturally significant properties.

Planning report vicinity map

Exhibit H-2: Landmarked sites and others designated as of historical interest (see Exhibit H-1)
Exhibit I-1: Height measurements

Italicized elevations and differences are taken from topographic maps (see I-2)

655’ from topo*

638’ from topo (bottom of plinth)

Top of House will be 79’ above Shasta Road at ca. 615 ft.

*Measures 648.5±0.3’ on this drawing. Drawing and topo. on site plan I-2 do not agree.
**Story:** That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building between the floor of the topmost floor and the ceiling or roof above. If the finished floor level directly above the ceiling of a basement, garage structure, cellar or unused underfloor space is more than six (6) feet above existing grade at any point, such basement, cellar or unused underfloor space shall be considered a story. Penthouses used for purposes other than shelter of mechanical equipment or shelter of vertical shaft openings in the roof shall be considered a story. See Figure 8.

(Figure 8 Determination of Stories)

**Usable Space:** Any portion of a building or structure which is designed to be or can be used as habitable space, which has finished walls (sheetrock or plaster) and/or is heated with any fixed furnace or central heating system, including bathrooms, halls, garages and laundry rooms. Storage areas with over six (6) feet of vertical space shall also be considered usable space.

*From Berkeley Municipal Code: 23F.04.010 Definitions*
Grade: The location of ground surface.
Existing Grade: The elevation of the ground at any point on a lot as shown on the required survey submitted in conjunction with an application for a building permit or grading permit. See Figure 5.
Finish Grade: The lowest point of elevation of the finished surface of the ground between the exterior walls of a building and a point five (5) feet distant from said wall, or the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and the property line if it is less than five (5) feet distant from said wall. In the case of walls which are parallel to and within five (5) feet of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley or public way. See Figure 5.

(Figure 5 Grade, Existing and Finish)

From Berkeley Municipal Code: 23F.04.010 Definitions
Height of Building, Average: The vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building (or, in the case of residential additions, that portion of the lot covered by the addition) to: in the cases of sloped, hipped or gabled roofs, the average height of the roof between the ridge and where the eave meets the plate; in the case of a roof with parapet walls, to the top of the parapet wall; in the case of a gambrel roof the average height of the roof between the ridge and the point where the uppermost change in the roof’s slope occurs; in the case of a mansard roof, to the height of the deck; and in the case of a shed roof, to the height of the roof ridge. Dormers, as defined in this subsection, shall not be included in the average height calculation.

Height of Building, Maximum: The vertical distance of a building at any point, within a given plane, from finished grade to the top of the roof or parapet walls. See Figure 6.
2707 Rose Street

Use Permit #09-1000038 to demolish an existing two-story, 2,477 square foot, single-family dwelling and three detached one-car garages and to construct a two-story, 6,478 square foot, single-family dwelling, with a 3,394 square foot, 10-car garage, on a 29,714 square foot parcel. (Zoning: R-1 (H), Single-Family Hillside District; Planner: Greg Powell)

I. Application Basics

A. Zoning Permits Required:
   - Use Permit to demolish an existing dwelling unit, per BMC Sections 23C.08.010 and .020;
   - Use Permit to construct a dwelling unit, per BMC Section 23D.16.030;
   - Administrative Use Permit to allow a 35-foot average height limit for a main building (28-feet is the maximum), per BMC Section 23E.96.070.B; and
   - Administrative Use Permit to reduce front yard setback to 16-feet (20-feet is required), per BMC Section 23E.96.070.C.

B. CEQA Determination: Categorically exempt pursuant to Sections 15303(a) ("New Construction") and 15332 ("In-Fill Development Projects") of the CEQA Guidelines.

C. Parties Involved:
   - Owner: Mitchell D. Kapor
     543 Howard Street, Suite 500, San Francisco
   - Applicant: Donn Logan (Marcy Wong / Donn Logan Architects)
     800 Bancroft Way, Suite 200, Berkeley
Figure 1: Vicinity Map

North

File: G:\LANDUSE\Projects by Address\Rose\2707\UP 09-10000038\ARCHIVE\ADMIN RECORD\attachment 3 ZAB Staff Report, dated January 28, 2010.doc
Figure 2: Site Plan/ Upper Floor Plan

North
Figure 4: View from Rose Street (looking north)

Figure 5: View from Shasta Road (looking south)
Table 1: Land Use Information

<table>
<thead>
<tr>
<th>Location</th>
<th>Existing Use</th>
<th>Zoning District</th>
<th>General Plan Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject Property</td>
<td>Single-family Dwelling</td>
<td>R-1 (H)</td>
<td>Low-density Residential</td>
</tr>
<tr>
<td>Surrounding</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Properties</td>
<td>North</td>
<td>Single-family Dwelling</td>
<td>R-1 (H)</td>
</tr>
<tr>
<td></td>
<td>South</td>
<td>Single-family Dwelling</td>
<td>R-1 (H)</td>
</tr>
<tr>
<td></td>
<td>East</td>
<td>Single-family Dwellings</td>
<td>R-1 (H)</td>
</tr>
<tr>
<td></td>
<td>West</td>
<td>Single-family Dwelling</td>
<td>R-1 (H)</td>
</tr>
</tbody>
</table>

Table 2: Special Characteristics

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Applies to Project?</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEQA</td>
<td>No</td>
<td>The project satisfies the conditions of CEQA Guidelines Section 15332 for In-Fill Development Projects, as follows:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The project is consistent with the applicable General Plan designation and applicable General Plan policies (see “General Plan” discussion in this report), as well as with the applicable zoning designation and regulations.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The project occurs within the Berkeley city limits on a project site of no more than five acres, and is surrounded by urban uses.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The site has no value as habitat for endangered, rare or threatened species.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The project would not result in any significant effects relating to traffic, noise, air quality or water quality.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The site is already served by required utilities and public services, which will also adequately serve the project.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Furthermore, the project does not trigger any of the exceptions in CEQA Guidelines Section 15300.2. In particular, the project will not have any significant effects due to unusual circumstances, or any cumulatively significant impacts (such as traffic), and it will not adversely impact any designated historical resources. Therefore, because the project meets the requirements of CEQA Guidelines Sections 15332 and 15300.2, it is exempt from further review under CEQA.</td>
</tr>
<tr>
<td>Creeks</td>
<td>No</td>
<td>Codornices Creek is 50’ north west of the site and approx. 110’ from the proposed footprint.</td>
</tr>
<tr>
<td>Excavation/Slope</td>
<td>Yes</td>
<td>Excavation is approx. 1,500 cubic yards and on-site fill would be approx. 800 cubic yards. Slope is approx. 50%.</td>
</tr>
<tr>
<td>Historic Resources</td>
<td>No</td>
<td>No locally designated properties exist in the vicinity.</td>
</tr>
<tr>
<td>Oak Trees</td>
<td>Yes</td>
<td>The proposed dwelling would be adjacent to several Coast Live Oaks. An Arborist Report, prepared by a Certified Arborist, was prepared to assess the potential impacts related to the proposed footprint and related construction. The Tree Preservation mitigations identified in this report will be included in the conditions of approval for this permit.</td>
</tr>
<tr>
<td>Seismic Hazards</td>
<td>Yes</td>
<td>Mapped within Landslide and Alquist Priolo Zone, but exempt from additional study because proposed project involves a two-story, wood-frame, single-family dwelling.</td>
</tr>
<tr>
<td>- Landslide</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>- Alquist Priolo</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Green Building Score</td>
<td>Yes</td>
<td>Expected Score: 91 Points out of a total of 251; a score of over 60 is considered 'green'.</td>
</tr>
</tbody>
</table>
### Table 3: Project Chronology

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 19, 2009</td>
<td>Application submitted</td>
</tr>
<tr>
<td>October 13, 2009</td>
<td>Revised Application submitted</td>
</tr>
<tr>
<td>November 12, 2009</td>
<td>Application deemed complete</td>
</tr>
<tr>
<td>January 11, 2010</td>
<td>CEQA deadline / PSA deadline</td>
</tr>
<tr>
<td>January 14, 2010</td>
<td>Public hearing notices mailed/posted</td>
</tr>
<tr>
<td>January 28, 2010</td>
<td>ZAB hearing</td>
</tr>
</tbody>
</table>

### Table 4: Development Standards

<table>
<thead>
<tr>
<th>Standard</th>
<th>Existing</th>
<th>Proposed Total</th>
<th>Permitted/Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>BMC Sections 23D.16.070-080 &amp; 23E.96.070</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lot Area (sq. ft.)</td>
<td>29,714</td>
<td>N/A</td>
<td>5,000 Min</td>
</tr>
<tr>
<td>Gross Floor Area (sq. ft.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dwelling</td>
<td>2,477</td>
<td>6,478</td>
<td>N/A</td>
</tr>
<tr>
<td>Garage</td>
<td>384</td>
<td>3,394</td>
<td></td>
</tr>
<tr>
<td>Floor Area Ratio</td>
<td>.10</td>
<td>.28</td>
<td>N/A</td>
</tr>
<tr>
<td>Dwelling Units Total</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Building Height</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average</td>
<td>N/A</td>
<td>31’-6”</td>
<td>28’</td>
</tr>
<tr>
<td>Maximum</td>
<td>N/A</td>
<td>35’</td>
<td>35’</td>
</tr>
<tr>
<td>Stories</td>
<td>2</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Building Setbacks</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Front (south) -Dwelling</td>
<td>N/A</td>
<td>45’</td>
<td>20’</td>
</tr>
<tr>
<td>-Garage (partially below grade)</td>
<td></td>
<td>16’</td>
<td></td>
</tr>
<tr>
<td>Rear (north)</td>
<td>N/A</td>
<td>50’</td>
<td>20’</td>
</tr>
<tr>
<td>Side yard (west)</td>
<td>N/A</td>
<td>45’</td>
<td>4’</td>
</tr>
<tr>
<td>Side yard (east)</td>
<td>N/A</td>
<td>40’</td>
<td>4’</td>
</tr>
<tr>
<td>Lot Coverage (Sq Ft/%)</td>
<td>N/A</td>
<td>4,654/15.6%</td>
<td>11,885/40%</td>
</tr>
<tr>
<td>Usable Open Space (sq. ft. - Min)</td>
<td>N/A</td>
<td>400</td>
<td>400</td>
</tr>
<tr>
<td>Landscaped</td>
<td></td>
<td>160</td>
<td>160</td>
</tr>
<tr>
<td>Parking</td>
<td>Automobile</td>
<td>3</td>
<td>10</td>
</tr>
</tbody>
</table>

N/A: Not available

1 Per Section 23D.16.040.B.4 of the Zoning Ordinance, only one dwelling is allowed for this portion of Rose Street.
II. Project Setting
   A. Neighborhood/Area Description:
      The project is located in a hillside neighborhood of single-family dwellings. A mix of native and non-native vegetation is in the area, including many Coast Live Oaks. Development in the surrounding area represents a mixture of architectural eras and styles and the dwellings range in size from 728 to 5,746 square feet\(^2\). Due to the steep slope of the area, many properties enjoy views of the San Francisco Bay.

   B. Site Conditions:
      The parcel slopes downward towards Shasta Road to the north and abuts an elevated portion of La Loma Avenue to the south. Pedestrian and automobile access is via Rose Street, which terminates at the project site. Rose Street is approximately 25 feet wide adjacent to the site and for 600 feet to the west. The site is heavily wooded and is presently developed with an existing single-family dwelling.

III. Project Description
   The project would demolish the existing two-story, 2,477 square foot, single-family dwelling, a detached one-car garage, and two one-car carports to facilitate the construction of a two-story, wood-frame dwelling intended for the use of the property owner. The single-family dwelling would be approximately 6,478 square feet on two floors plus an open-air lower level. The upper floor would include a kitchen, family room, study and living rooms. The lower floor is oriented towards the rear yard and would include a master bedroom, two guest rooms, a craft/study/exercise room and a 10-space parking garage. Due to the downward slope of the site, a third open-air lower level would be constructed beneath a portion of the house and would extend to the north as a patio/yard. The view of the dwelling from Rose Street would appear as a one-story dwelling. From the north at Shasta Road, which is below the site, the proposed dwelling would be visible upslope, setback approximately 35 to 65 feet from the street and roughly 45 feet above the roadway, behind significant vegetation. The garage would be accessed from a driveway at the southwest corner of the site near the terminus of Rose Street. The residence is intended to meet green building goals by achieving a score of 91, which far exceeds the threshold of 60, by incorporating a variety of features including PV panels.

IV. Community Discussion
   A. Neighbor/Community Concerns:
      The pre-application poster was erected in May 2009. On January 14, 2010, the City mailed 119 notices to adjoining property owners and occupants, and to interested neighborhood organizations. As of the writing of this staff report, staff received three comment letters, each are attached.

   B. Committee Review:
      No advisory committee review is required.

\(^2\) Of dwellings shown on the vicinity map in Figure 1, based on Alameda County Assessor’s information.
V. Issues and Analysis

A. Views:
Many dwellings within this neighborhood benefit from views of the Bay. However, protected views are not available across this site due to the relatively flat east to west topography and the presence of mature vegetation. Based on staff’s review of the plans and observations made when visiting the site, the project would only minimally alter the views available from one abutting dwelling at 1371 La Loma. However, any significant view to the west from 1371 La Loma would remain as 1371 La Loma is located at a slightly higher elevation and is much taller.

The dwellings to the north and south currently do not have views across the site due to building orientation, significant change in topography and the presence of mature trees.

B. Shadows:
Existing vegetation, the La Loma Road overpass and slope, affect the amount of natural light available in the area. The proposed project adds to existing shading conditions as shown within the attached plan set (See pages 17-25\(^3\)). While the proposed dwelling would increase shading, the project would not create unreasonable shading impacts onto any adjacent dwelling due to the horizontal separation between the dwellings, existing tree cover, and the change in grade between buildings.

The worst-case scenario for off-site shade impacts is depicted on pages 17 and 23 of the attached plan set. Each depicts the shading that would occur on the dwelling to the west at 2637 Rose Street, two hours after sunrise at the winter and summer solstice. New shadows would be cast on the roof and yard two hours after sunrise on the winter solstice and on the rear yard at the summer solstice. This impact is not considered detrimental because the shadows fall on the roof or yard for a short period of time but would not fall on any window of this dwelling.

---

\(^3\) Note that the shadow studies include a 2-story structure at the southwest corner of the site that is no longer part of the project. Thus, the shadow studies overstate the shading impact of the proposed project.
C. Neighborhood Compatibility:
No objections have been raised by the abutting and confronting property owners, as evidenced by signatures on the applicant’s plan submittal. Assessor’s data for the 41 neighboring dwellings shown on the vicinity map in Figure 1 indicates that the average floor area is 2,440 square feet and that two dwellings have floor and lot area similar to the proposed project. The dwelling would not be readily visible from the west or east due to the presence of mature vegetation and the significant building-to-building setback (53-feet to the west; 63-feet to the east), as well as topographic variations in the area. From Rose Street, only one floor of the dwelling would be visible, and this is at the terminus of Rose Street below the La Loma Avenue overpass. From Shasta Road, the dwelling would not be readily visible due to the significant setback of 35 to 77-feet, the 40 to 50-foot change in elevation from the road to the building, and the intervening vegetation. Thus, while the proposed project is larger than the average home size within this area, the volume would not be readily apparent when viewed from the public right-of-way or from any adjacent dwelling.

The applicant also proposes to plant several trees around the property that will fill in a small open area along Shasta Road and near the immediate neighbor to the west. The neighborhood is comprised of a variety of architectural styles, and so would accommodate the modern design of the proposed residence. The residence is also designed to fit the topography of the site and provides ample off-street parking for residents and guests, minimizing potential impacts in this constrained access area.

D. General and Area Plan Consistency:
The 2002 General Plan contains several policies applicable to the project, including the following:

- **Policy LU-3 Infill Development:** Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
- **Policy UD-16 Context:** The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
- **Policy UD-17 Design Elements:** In relating a new design to the surrounding area, the factors to consider should include height, massing, materials, color, and detailing or ornament.
- **Policy UD-24 Area Character:** Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.
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- **Policy UD-32 Shadows:** New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.
Staff Analysis: See “Project Description” and “Key Issues” section above. In summary, staff believes that the project protects views, incorporates green building design and materials and reflects the character of the buildings in the vicinity.

VI. Recommendation

Because of the project’s consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board APPROVE Use Permit #09-10000038 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:
1. Findings and Conditions
2. Project Plans and Applicant Statement
3. Notice of Public Hearing
4. Correspondence Received

Staff Planner: Greg Powell, gpowell@ci.berkeley.ca.us, (510) 981-7414
INDEX TO ADMINISTRATIVE RECORD
2707 ROSE STREET - UP#09-10000038
Prepared March 1, 2010

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Attachment 5 to this report, ZAB Appeal: 2027 Rose Street, is on file and available for review at the City Clerk Department, or can be accessed from the City Council Website. Copies of the attachment are available upon request.

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

or from:

The City of Berkeley, City Council’s Web site
http://www.cityofberkeley.info
Three Greenwood Common, Berkeley, CA 94708

Feb. 21, 2010

The City Clerk
City Clerk's Department
2180 Milvia Street
Berkeley, CA 94704

Re: Appeal on 2707 Rose Street
Decision of ZAB of Jan 28, 2010

Dear City Clerk:

Enclosed please find a letter for Councilwoman Susan Wengraf.

Please submit it to her. Thank you.

Frederick S. Wyle
Feb. 21, 2010

Re: 2707 Rose Street Appeal

Dear Ms. Wengraf:

This is a request to hear the appeal from, and to have a public hearing on, the Zoning Adjustments Board decision on July 28, 2010 to issue use permits to the owner and applicant to demolish a 1920 building of approximately 2477 square feet and three separate garages at 2707 Rose Street, and to build instead a single family dwelling structure of 9782 square feet, including an internal garage for 10 cars.

Let me state the reasons for my support of the appeal, first by using a somewhat fanciful imagined conversation;

If Bill Gates were to decide that he wanted to live in Berkeley, and to live in the North Berkeley hills in the middle of the historically rich collection of architecturally significant dwellings, many of them landmarked or on the State Register of Historic Resources, to be in walking distance of the University, and that he would build a house there, I assume that most Berkeley residents would welcome him with open arms. A man of such enormous philanthropic deeds, matching his enormous commercial accomplishments, would be likely to be considered a pride to any neighborhood.

However, if Bill Gates were then to say that he had in mind a particular type of structure, and for him to construct it, he would need exemptions from Berkeley laws and regulations

1. dealing with zoning regulation, including matters of true compatibility with the surrounding neighborhood of architectural style, mass, maximum height, ornaments (in particular policies UD-16,17, and 24);
2. requiring the erection of story poles for any proposed construction of homes in the hills area (“H” district) for a month before any hearing for variances and use permits, so that neighbors could consider the degree of view obstruction;
3. the definitions of “two story wood frame” house, so as to include the likelihood steel frame or support poles in order to support a...
9782 square foot structure and thus avoid filing an earthquake analysis under the Alquist-Priolo Act,
(4) notifying the Landmarks Preservation Commission of the impending demolition of a 1920 building by a distinguished architect
and a few other such things,

I assume that the Berkeley governmental authorities at all levels faced with such conditions would say: Dear Mr. Gates, we would love to have you as a Berkeley citizen, but we have to apply our laws to all people alike, whether highly or lowly regarded, whether philanthropists or misanthropes, whether rich or poor, whether nice in personality or not nice. We cannot grant you exemptions, or changes in application of definitions of our own or State laws and regulations. Much as we would love to have you come and live among us, we would need to have you abide by all laws and regulations, the same as other people. The rule of law is our most valued principle, and that applies to City government as well as to State and federal government. Equal protection of the laws is a fundamental value, and trust in government rests on the observance of that principle in housing regulation as in other areas of governance. We cannot indulge in favoritism or in overlooking violations of our laws.

I assume that Mr Kapor, the owner (and substantive applicant) here would agree entirely with that statement of principles. It is the more remarkable that in this instance, each of the imagined requests for favoritism in an imagined conversation with Mr. Gates has here in my opinion and that of other signatories of the appeal occurred in executed fact, and without such a conversation:

1. The 9,782 square foot Kapor-Klein structure is a modernist, rectilinear, structure, wholly unlike any of the surrounding or neighborhood architectural styles or structures. The Staff Report saying that it would be “truly compatible” in design and scale with the surrounding homes and “reflects the character of the buildings in the vicinity” is truly flabbergasting. It is in fact nearly four times the size of the house it replaces, and four and a half times the size of average surrounding homes. (See p. 11
of the Appeal). Including the 3,394 sq. ft. 10 car garage inside the structure bulks it up to a size that according to the MLS real estate source has only once been exceeded or equaled in all of Berkeley's 17,000 single family dwellings, and that near Tilden Park, at a considerable distance from the rich collection of architecturally outstanding homes surrounding or in the neighborhood of 2707 Rose Street. The structure is contrary to the General Plan on its face. (See pages 11-13 of the Appeal).

2. The Staff Report favoring the application of Mr. Kapor says that "no locally designated properties exist in the vicinity" and denies the existence of any "historic resources" in the vicinity. This is a mind-boggling misstatement. See page 6 of the Appeal and Exhibit H to the Appeal. Exhibit H is a compilation by a recognized authority, Susan D.Cerny. It lists 48 City landmarked, State Inventoried, and otherwise generally recognized historic resources in the vicinity. (See also the maps attached as part of Exhibit H, showing some of the historic resources.) It is difficult to accept that members of the Zoning Adjustments Board would not know of their own knowledge as Berkeley citizens that the Staff Report is grossly in error here.

3. No story poles were required to be erected by the applicant, for one month prior to any hearing before the ZAB, in direct violation of the Zoning Submittal Requirements. ["Required for new buildings or stories in the "H" District, or as determined necessary by the project planner". The Staff has no authority to waive the requirement in the H district. The phrase "or as determined necessary by the project planner " clearly refers to additional projects outside the H district, not a nullification of the absolute requirement for all H district projects. See Exhibit B of the Appeal, and discussion on p. 11 of the Appeal]

4. The Alquist-Priolo Act was made inapplicable by the acceptance by the Staff of a definition of this 9,872 sq.ft. structure as a two story wood framed house. There is a basic incongruity and room for serious doubt in such a
definition for this major structural project, almost certainly requiring steel supports or steel reinforced walls. A specific statement on that point, based on a more searching examination would seem a minimum requirement of a proper Staff report and ZAB finding on that point. See p.7 of the Appeal.

5. The ZAB acted without reading the 28 letters from Berkeley residents in the neighborhood requesting a continuation or opposing the project, and without thus the input from the community that is a supposed important feature of its functioning. (The letters were in fact only delivered to the members at the beginning of the meeting, making a reading and reasoned consideration of the letters impossible. See p. 3 of the Appeal and Exhibit C for the text of the letters. Many of these letters are thoughtful and serious statements, some from past members of City authorities concerned with housing and zoning, and entitled to serious consideration by the ZAB before its decision.).

There are several other significant grounds for reversal of the ZAB decision documented in the Appeal. The Appeal is voluminous, but the subject is a serious infraction of the fair and equal application of the rules and the law. Upholding the appeal and reversing the ZAB decision here will open the door to meaningful consultation and consideration with the owner and substantive applicant to see whether mitigations or modifications of his plans can be accomplished. That is what 14 letter requests and several oral requests at the hearing of January 28 for a continuance of the ZAB hearing (normally granted almost as a matter of course but here rejected by the ZAB out of hand) originally intended. Perhaps a second chance will have some constructive results and work toward a more peaceful neighborhood mood in respect of this truly unique, not to say startling, project.

Yours respectfully,

Frederick S. Wyle, 3 Greenwood Common
February 23, 2010

The City Clerk
City Clerk’s Department
2180 Milvia Street
Berkeley, CA 94704

Re: 2707 Rose Street

Dear City Clerk:

Enclosed please find a letter for Councilwoman Wengraf. Please submit it to her. Thank you.

Yours truly,

Frederick S. Wyle
3 Greenwood Common, Berkeley, CA 94708
Dear Ms Wengraf:

I apologize for banging on so about this matter, but new information keeps coming out. So please add this to your file (which must be growing apace). This concerns the basic use of this uniquely large structure, supposedly a single family dwelling, and raises new questions about the residential zoning of that structure.

Mr. Kapor lists five commercial and charitable organizations on his business card (Kapor Capital, One Web Day, Xmarks, Mitchell Kapor Foundation, Level Playing Field Institute). The architect’s plans show a “family room” with a conference table for ten persons, in addition to the ten parking spaces in the building. It would seem a fairly expansive and formal kind of family room in a single family dwelling. The suspicion was inevitable that the Kapor-Klein single family dwelling, with its ten person conference table and 10 car garage might be used for purposes in addition to dwelling, and that the traffic in this residentially zoned area would see a commensurate increase in automobile traffic other than dinner guests.

In other words, reasonable fears might have been that instead of the Kapor dwelling this 9,872 sq ft structure might become the Kapor Headquarters Building as well.

Mr. Kapor has now confirmed some of those fears. In an email directed to and cited in the Daily Californian of Feb. 23, 2010, responding to criticism that the proposed building was too large and out of scale for the neighborhood, Mr. Kapor conceded that “a substantial part of the home would be used to raise funds” (emphasis supplied) for various charitable purposes (community and campus groups, he added, including scholarship programs for low-income and underrepresented students enrolled at UC Berkeley.)

So there we have it. A “substantial part” of this building which is four times or more the size of the average single family home in the area, would be used not for dwelling, but for office space of some kind, to conduct fund raising activities. To be clear: We are not talking, and Mr Kapor is not talking, about doing charity from your home like anyone else. What could be
“use” of a substantial “part” of the home, other than accommodating secretarial or other staff?

If I may use an example again, if a Red Cross executive were to ask for exemption from City housing and planning regulations on size of a home he wished to build in a residential area because he planned to use a substantial part of an oversized building to conduct Red Cross business activity—clearly charitable—would that entitle him to an exemption from residential single family dwelling rules and regulations? One can approve of and support charitable activity and Red Cross work, as most of us do, without ignoring or plainly violating the rules and regulations of Berkeley on residential districts, i.e. the law.

Yours very truly,

[Signature]

Frederick S. Wyle
Greenwood Common
Berkeley, CA 94708
I am appalled to learn that Mr. Mitch Kapor plans to build a 10,000 square foot house with a 10-car garage on Rose Street in Berkeley, in a neighborhood of modest and appropriately-sized homes. How could such a project possibly have been approved by the planning department? I don't understand how the city of Berkeley could tolerate such an out-of-place development on a small city lot, nor do I understand why Mr. Kapor, who obviously has the means to buy and build anywhere he likes, would choose a small lot and quiet neighborhood in Berkeley to build his mansion.

Can anything be done to reverse this decision?

Thank you,

Judy Tart
1675 Visalia Avenue
Berkeley, CA 94707
A 10,000 foot square billionaire mansion in the middle of a traditional Berkeley neighborhood?

Just what all the ultra-liberal voters will be excited about..... :-(

This is so un-Berkeley, please, vote against it!

Charles T. Tart
1675 Visalia Ave
Berkeley 94707

Note: If you are emailing me for the first time, your email will be intercepted by my spam arrest service, which will email you and ask you to type in a word or number displayed against a wavy background - something computers can't do. Respond to this request, and then your email will be forwarded to me from then on.


Charles T. Tart, Ph.D.
Professor, Institute of Transpersonal Psychology, Palo Alto CA
Professor Emeritus, Psychology, University of California, Davis
Home page & archives: http://www.paradigm-sys.com/cttart/
Editor, The Archives of Scientists' Transcendent Experiences
http://psychology.ucdavis.edu/tart/taste/
TRANSMITTAL

March 12, 2010

TO:  City Clerk,
     Mayor Bates and
     Council Members Maio, Moore, Anderson, Arreguin, Capitelli, Wengraf, Worthington and Wozniak

FR:  Neighbors Immediately Adjacent to 2707 Rose Street

RE:  Letter of Support from Neighbors Immediately Adjacent to 2707 Rose Street to Neighborhood

Please enter the attached three-page document into the record as a letter to the neighborhood and for the City Council's information that reflects our unanimous support for the proposed project at 2707 Rose Street.

Paul Opsvig  2637 Rose St., Berkeley, 94708  510-845-1842
Susan Opsvig  2637 Rose St., Berkeley, 94708  510-845-1842
Roger Carr  2645 Shasta Rd., Berkeley, 94708  510-486-0481
Jana Olson  2645 Shasta Rd., Berkeley, 94708  510-486-0481
Alan Shiro  1371 La Loma, Berkeley, 94708  510-848-6607
Lorna Brown  1371 La Loma, Berkeley, 94708  510-848-6607
Miki Merin  2650 Shasta Rd., Berkeley, 94708  510-486-8198
March 10, 2010

RE: 2707 Rose Street

Dear Friends and Neighbors,

We are a group of four families who are all the immediately adjacent neighbors to the property at 2707 Rose Street, where a new house is proposed to be built. The purpose of this letter is to let the neighborhood know of our strong support for the proposed project, and the reasons for it. We are communicating with you, the larger neighborhood, because we are concerned about the unity of the neighborhood and harmony among its residents, and believe that this project deserves to be supported.

A year ago we all received a letter from Mitch Kapor and Freda Kapor Klein, the new property owners, asking if they could introduce themselves and describe their plans to build a house immediately adjacent to us, on Rose St. We met them, and later with their architects to review their design. We informed them of long standing problems with the property, and gave our own suggestions about what was needed to be done to resolve these issues while maintaining our own privacy. Mitch and Freda were exceptionally collaborative, responsive and sensitive to our concerns and issues.

Over a month ago, their initial proposal was approved by Berkeley's Zoning Adjustment Board (ZAB) (7 for, 1 abstention, 1 absent), a necessary step for all new house construction. However, an appeal against the ZAB approval was then filed, and signed by people who live beyond our immediate street. The appeal raises concerns both about the project and the City's process. From what we see, the eight month City Zoning process, preceded by the five months of working with the neighbors, was neither short nor deficient but rather, complete and proper. The project is completely in keeping with the standards of the City Zoning Ordinance, blocks no protected views and poses no other detriments. In fact it provides amenities and improvements valuable to the neighborhood, such as the extensive landscaping, a turn-around on Rose Street, and ample off street parking.

A city council meeting will take place on April 27, at which the parties pro and con will each have seven minutes to present their cases. The Berkeley Zoning Adjustments Board based its decisions on a set of issues within their purview under the Zoning Ordinance including the use of property, the height of buildings, the setbacks of buildings, the percentage of lot coverage, the lot area requirements, and the parking requirements. Their approval was based on the design's meeting the criteria the ZAB uses for these issues. They do not have jurisdiction over questions of aesthetics, seismic engineering, or other building and life safety issues that are regularly addressed during the building permitting phase. The appeal of their decision concerns several of these latter issues, even though they fall outside the purview of the ZAB. The appeal also cites some issues with the procedures and practices of the City of Berkeley. Per our request, the architecture have prepared a summary response to the assertions in the appeal and we have attached this letter to provide a more complete discussion of the issues brought up by the appeal. We hope that this explanation clears up some of the questions people may have.

We assume that we all have some areas of agreement like the willingness to welcome new neighbors and the interest in improving a blighted property. We feel that the Kapor Kleins would be very desirable neighbors. The project is designed to minimize its impact by providing underground parking for guests, by setting the house well back from its neighbors, and by making the house colored to blend in with surrounding vegetation.

Moreover the Kapor Kleins, in deference to their neighbors, were willing to invest in solutions to long-standing problems on the cul-de-sac street which has no turn around and no legal street parking. All of us have been long distressed by the hazardous, dilapidated existing house and lot in the neighborhood -- a problem that we want dealt with as soon as possible. All of us would prefer not to have an intensive development of several houses put on the lot, which would be a developer's likely alternative to having a single house.

Joining together our support and hopefully your support of this project will go a long way toward healing the recent divisiveness in the neighborhood, which we think is the result of confusion and unwarranted fears about the project. We would be happy to talk to any of you about the project. Our contact information is below. We are planning to appear at the April 27th meeting in support of this project, and hope that some of you will, also.

Please contact any of us to let us know of your thoughts and willingness to openly support the project.

Paul Opsvig
2637 Rose St., Berkeley, 94708
510-845-1842
sopsvig@pacbell.net

Susan Opsvig
2637 Rose St., Berkeley, 94708
510-845-1842
sopsvig@pacbell.net

Roger Carr
2645 Shasta Rd., Berkeley, 94708
510-486-0481

Jana Olson
2645 Shasta Rd., Berkeley, 94708
510-486-0481

Alan Shriro
1371 La Loma, Berkeley, 94708
510-848-6607
dshriro@sbcglobal.net
510-848-6607

Lorna Brown
1371 La Loma, Berkeley, 94708
510-848-6607
dshriro@sbcglobal.net
510-848-6607

Miki Merin
2650 Shasta Rd., Berkeley, 94708
510-486-8198
canine.intelligence@gmail.com
Date: March 10, 2010

To: Paul Opsvиг, Susan Opsvиг, Jana Olson, Roger Carr, Miki Merin, Alan Shiro, Lorna Brown (Neighbors)
Fr: Marcy Wong (Architect)
Re: 2707 Rose Street, Appeal Response Summary

Dear Mr. and Ms. Opsvиг, Ms. Olson, Mr. Carr, Ms. Merin, Mr. Shiro, and Ms. Brown,

Per your request that I provide a description of the appeal assertions, and responses explaining the facts which demonstrate that the assertions are erroneous, here is a summary:

1) APPEAL ASSERTION: “The process of notifying the neighborhood was sorely inadequate.”
   RESPONSE: The notification of the neighborhood with regard to mailed notices within the standard 300’ radius, and the posting of several bright yellow posters met if not exceeded Zoning Ordinance requirements. Moreover the owners secured and continue to enjoy the approval of all of the immediate neighbors.

2) APPEAL ASSERTION: “Had the Planning Department's own application requirements been followed, story poles should have been erected...” and “The “I” District’s requirement for story poles was not met.”
   RESPONSE: The Planning Department’s application form indicates that the decision of whether to require story poles is at the discretion of the staff. The standard practice has been to require story poles when a neighbor’s protected view may be impacted by a structure. Staff is not required to mandate story poles because someone from afar, who is clearly not impacted by the project, demands that it be done. Story poles were not required for this project, because the project is completely lower than the elevation of the LaLoma Avenue structure, and does not impact any protected views including those from neighbors above and directly adjacent sides.

3) APPEAL ASSERTION: “Other improper shortcuts in public notification were apparent with regard to landmarks. The staff failed to provide LPC with information specifying that a 1920s home was being demolished to be replaced with a new dwelling.”
   RESPONSE: The application for demolition and new structure was available to the LPC per the usual procedure and standard practice of the Zoning Department. Applicant provided Planning staff with a six-page history of the 2707 property.

4) APPEAL ASSERTION: “To...waive such a requirement when a structure of such unprecedented size and wholly different architectural style from the neighborhood is proposed is not only contrary to the department’s own requirements, but especially grievous [sic].”
   RESPONSE: Architectural style for single family residential structures is not a Zoning Ordinance use permit issue. To make it an issue in this case would be to deviate from the department’s purview. The City’s own records show that the size of the house, whose livable area is about 6,500 s.f., is far from “unprecedented.” The lot is very large and could contain a house four times the size of the proposed project or four houses with “granny units” in a subdivision.

5) APPEAL ASSERTION: “The report does not mention the impact of massive excavation and topographical changes to the property.”
   RESPONSE: The report does describe the excavation and cites specific numbers of cubic yards of cut and fill, along with the slope of the site. Detailed issues about execution and engineering of excavation are dealt with during the building permit phase rather than the zoning use permit phase. All projects on steep hills have these issues; they are technical issues that are routinely addressed to meet life safety standards. See item 6) below.

6) APPEAL ASSERTION: “...No conditions relative to grading or excavation standards are mentioned.”
   RESPONSE: The use permit that is being contested includes City of Berkeley imposed conditions that must be met in this regard.
7) **APPEAL ASSERTION:** “The staff report fails to mention, and indeed denies the existence of, historic resources in the neighborhood.”
**RESPONSE:** The City Ordinance defines the relevant historic resources as being “adjacent” to a subject property. None of the adjacent properties are historic resources. The historic resources named in the appeal are Greenwood Commons and the Hume House, which are hundreds of feet away.

8) **APPEAL ASSERTION:** “It is shocking that there has been no research done to see if the existing structures on the site, due to be demolished, have any significant history attached to them…”
**RESPONSE:** As part of the use permit application, the existing structures were researched and a history of the structures was submitted to the City. (See response to #3 above.)

9) **APPEAL ASSERTION:** “No mention of conditions related to landslide were thought to be necessary… and the building has been exempted from the requirements of the Alquist Priolo Act…”
**RESPONSE:** The project is not in a landslide zone; this has been verified by a licensed geo-technical engineer. Therefore, the project is not and never was subject to and has not been “exempted” from the Alquist Priolo Act.

10) **APPEAL ASSERTION:** “Staff finds that the building is a two story wood-frame structure, despite indications that structurally it is a three story building.”
**RESPONSE:** The project is a 2-story building. The drawings show 2 stories. The upper level is entirely living area, the lower of two levels has both an subterranean garage built into the hill, as well as living area daylighting to the north. There is no 3rd level.

11) **APPEAL ASSERTION:** “The building as proposed exceeds both the average height and maximum height standards.”
**RESPONSE:** The project heights –both average and maximum – are at or under the City standards. Moreover, the height of the building blocks no protected views, poses no shadow or other detriment and is not objected to by any of the immediate neighbors.

12) **APPEAL ASSERTION:** “The project takes advantage of a loophole in the Zoning Ordinance’s definition which states that a building height is measured from “finished grade”.
**RESPONSE:** The appeal authors appear to be confirming that our method of calculating height is consistent with what is prescribed in the Zoning Ordinance.

13) **APPEAL ASSERTION:** “The assertion that this project meets “green building goals” is highly questionable.
**RESPONSE:** The project exceeds the required points under the City’s “Build-It-Green” program as it has about twice as many points as the minimum required. The Build-It-Green program (which the City of Berkeley has adopted for its green standards) involves a Green Point check list for single family homes. Under this system, a home is considered green if it earns at least 50 points. This project has thus far a score of 91 points, which may ultimately be even higher as the design develops.

14) **APPEAL ASSERTION:** “(T)he average size of a dwelling in the area is about 2,000 square feet, one finds that 2707 Rose Street would be about three times that size.”
**RESPONSE:** The average size house in the area is well above 2,000 sq. ft. In fact, the houses immediately surrounding the site average well over 3,000 sq. feet and in some cases exceed 4,000 sq. ft. Some of the most cherished houses in the neighborhood are over 6,000 s.f. in area.

15) **APPEAL ASSERTION:** “The staff notes that dwellings to the north do not have views across the site but neglects views toward the site.”
**RESPONSE:** The implication of the appeal is that houses should be invisible as one looks up at or across hills. However, visibilities of houses across a canyon are not violations of protected views, as defined by the City of Berkeley’s Municipal Code. Moreover, this site is one of the most hidden and tree-screened properties in the hills. It will be less visible to its neighbors than the vast majority of houses in the Berkeley Hills.

Marcy Wong, Architect
March 30, 2010

Councilmember Susan Wengraf
2180 Milvia Street
Berkeley, CA 94704

Dear Susan:

We are writing to you about the proposed house at 2707 Rose Street. I hope that the City Council will send the proposal back to the Planning staff and ZAB for further review. The neighbors were not properly informed of the proposal. While I realize that design considerations are pretty much outside of the permit process, I would like to call your attention to a strange (we believe) finding by the staff that “No locally designated properties exist in the vicinity.” In fact, the house immediately adjacent to the property and the one adjacent to that were both designed by Warren Callister, an architect of some renown. In addition, the Gregory house designed by John Galen Howard is within a block, as is Greenwood Common, a landmarked area.

The point of some concerned neighbors is not to stop the project, but to make sure that it is properly reviewed. Other neighbors are addressing issues in which we feel that the planning staff was remiss.

I’ll take this opportunity to mention that we very much appreciate your monthly e-mail newsletters. They keep us well informed.

Sincerely,

Bob & Gert Allen

cc: City Clerk
From: brenda webster [mailto:websterbrenda1@aol.com]
Sent: Monday, March 29, 2010 1:11 PM
To: Wengraf, Susan
Subject: April 27th review of 2707 Rose Street

March 29, 2010

To: Councilmember Susan Wengraf

From: Brenda Webster

Re: April 27 review of 2707 Rose Street

Dear Susan:

I wanted to let you know that I have reviewed the plans for the new house at 2707 Rose Street, and find that it would not present any detriment to the neighborhood, but in fact, be a good new addition. I therefore ask that you vote to allow the Zoning Adjustment Board’s decision, approving this project, to stand, and not require the homeowners to delay their project any further.

Yours truly,
Brenda Webster

Brenda Webster
2671 Shasta Road
Berkeley, CA 94708

Brenda Webster
Author of VIENNA TRIANGLE
Jan.09 from Wings Press
"...a fascinating dramatization...An extraordinary set of people...poses crucial questions about women, war, psychoanalysis..."  
- Rosellen Brown author of Before and After.
Honorable Mayor & Councilmembers:

Attached please find BAHA's letter in support of the appeal of Use Permit #09-10000038, approved by the Zoning Adjustments Board on January 28, 2010.

Honorable City Clerk:

Please enter this letter into the record and include it in the Council's packet for the appeal hearing on April 27, 2010.

Sincerely,
--
Daniella Thompson

President
Berkeley Architectural Heritage Assn.
http://berkeleyheritage.com
March 25, 2010

Mayor Bates & City Council
2180 Milvia Street
Berkeley, CA 94704

Re: 2707 Rose Street—Appeal of Use Permit #09-10000038

Dear Mayor Bates & Councilmembers:

The Berkeley Architectural Heritage Association (BAHA) is supporting the appeal of Use Permit #09-10000038, approved by the Zoning Adjustments Board on January 28, 2010. We base our support of the appeal on historic preservation issues and on errors and omissions in the project application.

The Structure History report submitted on May 19, 2009 claims that “there is no architect of record and no associated persons of historical interest” for the existing structure. Both claims are wrong.

The 1917 building permit for the Dunham house at 2707 Rose Street, which was submitted as part of the Structure History report, clearly shows A. Appleton as the architect.

Abraham Appleton (1887–1981) was a notable figure in Bay Area architecture. He studied under John Galen Howard and William C. Hays at the newly founded School of Architecture at the University of California, completing his studies at the École des Beaux-Arts in Paris. Howard and Hays thought highly enough of him to have employed him in their private practices. Before establishing his own practice in 1920, Appleton was a junior partner in Hays’ practice.

At the time he designed the Dunham house, Appleton was also employed by the University of California as Inspector of Buildings on the campus. His client, Lucia Dunham, was a well-known mezzo-soprano with an active concert schedule and a teaching position at the University of California, where she was a collaborator of Prof. Charles L. Seeger. In 1921, after the death of her husband, Lucia Dunham returned to New York, where she became an influential teacher at the Juilliard School, training many future concert and operatic singers.

Abraham Appleton went on to establish a successful and long-tenured architectural practice in San Francisco with Samuel Lightner Hyman (1885–1948). The firm of Hyman and Appleton designed the National Bank of Petaluma (1926); an elegant 10-story apartment building at 2100 Pacific Ave., SF (1926); the Jewish Community Center of SF (demolished); Sinai Memorial Chapel, SF (1938); Hebrew Home for the Aged, SF; Visitacion Valley School, SF (1937); and many homes.
Hyman and Appleton remodeled the 16-story Crown Zellerbach building (1908) at 343 Sansome Street, SF, in distinctive Art Deco style. A two-story terracotta-clad commercial building at 2080 Chestnut Street was designed in a similar style.

After Hyman’s death, the firm changed its name to Appleton and Wolfard. In the 1950s and ’60s, Appleton and Wolfard designed eight modern branch library buildings for the San Francisco Public Library—more than any other single firm. They also designed the Hall of Flowers in Golden Gate Park (1960).

None of this information was made available in the Structure History report.

Moreover, the project application claims that there are no designated historic resources in the vicinity. In fact, the immediate neighborhood is an architectural treasure trove, including but not limited to the following:

- **Greenwood Common**, a City of Berkeley Landmark (designated in 1990) developed by William W. Wurster, with landscape design by Lawrence Halprin and eight houses designed by important mid-century architects.
- **La Loma Park Historic District** (designated in 2002), comprising 13 properties, including two designed by Bernard Maybeck, one by Ernest Coxhead, one by Henry Gutterson, and one by John Ballantine.
- **Rose Walk**, a City of Berkeley Landmark (designated in 1975), designed by Maybeck and lined with houses by Henry Gutterson.

The proposed project overlooks Shasta Road, where there are two properties listed on the State Historic Resources Inventory—one practically next door and the other across the street.

Considering the existing structure’s architectural provenance, its notable first owner, its being a survivor of the 1923 Berkeley Fire, and its location surrounded by numerous historic resources, the project should have been brought to the attention of the Landmarks Preservation Commission. Yet the City staff update sent to the LPC concerning this project defined it only as a new construction, without mentioning the demolition or the historic context of the neighborhood.

The proposed project should be sent back to City staff and to the applicant for preparation of an accurate and complete application, followed by a new hearing before the Zoning Adjustments Board, with input from the Landmarks Preservation Commission.

Sincerely,

[Signature]

Daniella Thompson
President
April 5, 2010

Mayor Bates and Berkeley City council Members Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthinton, and Wozniak
c/o City Clerk
2180 Milvia Street
Berkeley, CA 94704

Re: 2707 Rose Street – Support of Project Use Permit – Opposition to Appeal

As a resident of Berkeley for more than forty years and specifically the Panoramic Hill neighborhood for more than thirty, I am disturbed that a small group of citizens, significantly not those most proximate to the project, who will suffer no detrimental impact, seek to shut down a project strongly supported by all its immediate neighbors. The tactics employed, little more than harassment, should be unanimously deplored and rejected. The council should uphold the ZAB decision and issue the use permit.

The primary alleged objection, that he house is out of scale with the neighborhood, is patently without merit. The distinguished design is well within the lot coverage permitted for the site. Moreover, I extrapolate from my neighborhood where 600 sq. ft. owner built cottages sit comfortably near much larger homes designed by Julia Morgan, Frank Lloyd Wright, Harwell Hamilton Harris, and other notable architects. Surely, within the parameters of the zoning code, the diversity and heterogeneity Berkeley so vocally prizes are no less desirable in the aesthetic realm.

Sincerely,

Jim Baum
To: City Clerk  
Re: For inclusion in agenda packet, communications

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From: Jana Olson [mailto:janaolson@comcast.net]  
Sent: Sunday, April 11, 2010 1:23 PM  
To: Maio, Linda  
Subject: Appeal on 2707 Rose Street

Dear Linda:
I understand you spoke with Marcy Wong recently, and she has brought you up to date on the issues (non-issues?) around the proposed home at 2707 Rose Street.
As you know, Roger and I live directly across the street from the north (largest) side of the house. We were pleased when the Kapers came around and introduced themselves and gave us the opportunity to comment on their project. We both felt that if the house were done in dark, earthy colors, it would recede into the plentiful vegetation on the site and not loom above us like the houses on La Loma. We were quite dismayed to see our neighbors Susan and Chuck Fadley take strong exception to this proposal, and eventually file an appeal on the ZAB’s decision. This house in no way creates a detriment for them, or really for anyone in the neighborhood. In spite of its size, it will be located well inside the property lines and behind enough vegetation that it will not be visible except from a few vantage points, and then only partially visible. We, as the neighbors across the street have the most view of it.
Marcy thought you would like to see my comments on assertions raised in the appeal, so I have attached them. If you have any other questions, feel free to write or call.
My daytime number is 204-9375, home is 486-0481, and my cell phone is 334-7136. Live and let live, I say.

Jana Olson and Roger Carr  
2645 Shasta Road

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PANACHE LIGHTING

2743 Ninth Street, Berkeley, CA 94710

Phone and Fax: 510-204-9375

www.panachelightning.com
Dear City Clerk, The Mayor, and City Councilmembers,

As a neighbor close to the property at 2707 Rose Street (approximately 5 houses away), we want to add our support to the proposed project.

We think it is an excellent idea to build the residence as proposed by Mitch and Freada Kapor Klein, and the architect, Marcy Wong. They have been diligent in addressing issues such as structure size, parking, green-building and excavation. We are happy to have a new single family residence at the site which has been in a disgraceful state for too long.

We support the construction of the proposed structure.

Sincerely,

Tina and Dennis Etcheverry
1471 Greenwood Terr
Berkeley 94708
Please convey the attached letter to the council.

thank you.
April 12, 2010

TO: City Clerk and The Mayor and all Councilmembers
RE: Affirm the ZAB Use Permit Decision - 2707 Rose

We write to say that we fully support the Kapor-Klein's case to build their proposed house at 2707 Rose Street. We have lived in this neighborhood for fifteen years; one of us—Hesse—grew up a few blocks away; both of us are devoted to the historical character of the neighborhood (owning one of its oldest craftsman houses). We walked the site and reviewed the plans and would welcome the improvement of that property along the lines the Kapor-Klein have proposed. There is room for both the old and the in this neighborhood, and in Berkeley more generally.

Sincerely,

Carla Hesse
Thomas Laqueur

56 Tamalpais Rd.
Berkeley, Ca. 94708
549-2170
Harris, Leslie D.

From: valfer@aol.com
Sent: Saturday, April 10, 2010 6:43 PM
To: City Clerk
Subject: Use permit for 2707 Rose Street, Berkeley

I (with my wife) am the owner of 2621 Rose Street. We have lived here since 1961 and have owned the property since 1963.

We are very attached to the Berkeley style character if this neighborhood; but since Berkeley has no stylistic rules or guidelines (unlike Santa Barbara) I realize that I can not dictate the style in which residents can build or remodel their homes.

I therefore do not object to the building plan submitted by the owners of the property of 2707 Rose Street.

Ernst Valfer
2621 Rose Street.
TO: City Clerk and The Mayor and all Councilmembers

RE: Affirm the ZAB Use Permit Decision - 2707 Rose

We live in close neighborhood proximity to 2707 Rose Street and are writing to add our voices to those who support the approval of the use permit for the construction of a new residence at this address.

We feel the new owners and their architect have been very open with the neighbors regarding their plans and have been responsive to input provided to them.

The proposed new residence will be a welcome addition to the neighborhood.

Sincerely,

Paul and Susan Grossberg

1437 Greenwood Terrace

Berkeley, CA 94708
My name is Annette LaRue and I have lived at 50 Tamalpais Rd. for over 50 years. I am writing to support the construction of a new house at 2707 Rose St. The project sounds like a nice addition to the neighborhood. Thank you for considering my opinion.

Annette LaRue
To City Clerk and The Mayor and all Council Members:

We have been following the controversy about the permit decision re 2707 Rose closely. We are very familiar with the neighborhood and the issues. We believe that this project will enhance the neighborhood considerably and strongly support the affirmative Permit Decision.

Sincerely,

O'Neil and Marcia Dillon
891 Regal Rd.
Berkeley, CA 94708
510-525-3604
To the City Clerk, the Mayor, and City Council members

I am writing this letter in support of the proposed construction at 2707 Rose Street. I live in the house my grandparents built in 1915 at 77 Tamalpais Road, and as a lifelong resident on Tamalpais Road, I have a special appreciation for the greater neighborhood and its history, as well as the varied architecture of greater Berkeley.

Some of the objections to the nature of the design remind me of how many of the mid-century dwellings that were once considered iconoclastic and controversial, and that are now considered important mid-century architecture and, in some cases signature properties. So will go the direction of many of the architecturally designed dwellings of the 21st century!

I have read carefully the varied communication and have spoken to some of the immediate neighbors who favor this project. I have particular respect for the hundreds of hours they have carefully spent both analyzing this project and formulating a thoughtful response to the objections of some people in the greater neighborhood. These are not the type of neighbors to easily and blithely approve any project! The impact this project will have on their lives is significant and yet they fully endorse the ZAB Use Permit Approval.

Of course there will be disruption to the greater neighborhood, both in terms of traffic and construction noise during demolition and construction of the new dwelling. But I don’t understand how extensive remodeling, including major structural work or any new construction for that matter of smaller dimensions would diminish the noise or congestion of construction crews and trucks. Everyone is entitled to remodel, add on, or build a new dwelling as long as they follow zoning and code requirements and obtain a Use permit.

Also, everyone is entitled to his own opinion and can respectfully disagree or articulate preferences. But not everyone should be entitled to an equal voice in this matter. I urge the City Council to listen to the immediate neighbors who border 2707 Rose and affirm the ZAB USE Permit Decision.

Respectfully submitted,

Susie Schevill
77 Tamalpais Road
Berkeley 94708
April 12, 2010

City Clerk on behalf of the City Council
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

Re: 2707 Rose Street Council Agenda Item for April 29, 2010

Dear City Council Members

As a Berkeley resident, I am writing to express my concern about the proposed development at 2707 Rose Street. I live about a block from the building site. The fast tracking of a project that will have a huge impact on my neighborhood is deeply disturbing. I am very worried that this large, office-like structure will change the character of the neighborhood in a negative way. It is way too large and too out of character with the rest of the neighborhood.

I hope you will support a more careful consideration of this project and send it back to the Zoning Adjustments Board for further review.

Sincerely,

Elaine Chan

2666 Shasta Road
City Officials,
I live on Tamalpais and have a view of the four lots that have been approved for a one building solution. Currently the properties are overgrown with trees and vegetation. Which makes for a spectacular and relaxing view but also causes other problems. Like power outages and power surges for our neighborhood. It is also an oasis for the homeless. Short of this land being donated for "Open Space" a one building vs four building solution gets my vote.

Darlene Dami
108 Tamalpais Road
Berkeley, Ca 94708
To: City Clerk, the Mayor, and all Council members

Re.: Affirm the ZAB Use Permit Decision - 2707 Rose

From: Louise Brown
2728 Shasta Road
Berkeley 94708
510-548-5301

This is to express my strong support of the proposed project at 2707 Rose Street. I am a 27 year resident and property owner of 2728 Shasta Road and have watched several properties succumb to neglect and blight. I believe the proposed building which includes ample off-street parking will be an exciting and positive addition and change to the neighborhood. I have reviewed the plans as well as the process for approval to date and give my full support.

I hope that you will stand firm and not delay the process by overturning a decision that was appropriately made.

Respectfully,
Louise Brown
Harris, Leslie D.

From: Wengraf, Susan
Sent: Monday, April 12, 2010 8:09 PM
To: City Clerk
Subject: FW: support the 2702 Rose Street ZAB decision

Please include in materials for 2707 Rose St. appeal

Susan Wengraf
Berkeley City Council, District 6

From: LBrown1070@aol.com [mailto:LBrown1070@aol.com]
Sent: Monday, April 12, 2010 6:32 PM
To: Wengraf, Susan
Subject: support the 2702 Rose Street ZAB decision

To: Council member Susan Wengraf
Re: Affirm the ZAB Use Permit Decision - 2707 Rose

From: Louise Brown
2728 Shasta Road
Berkeley 94708
510-548-5301

I hope we can count on you to support and uphold the ZAB use permit Decision for the 2707 Rose Street project. My husband Ron Brown (formerly of the City of Berkeley HR Department) and I strongly support of the proposed project at 2707 Rose Street. We are 27 year residents and property owners of 2728 Shasta Road and have watched several properties in the neighborhood succumb to neglect and blight. We believe the proposed building which includes ample off-street parking will be an exciting and positive addition and change to the neighborhood. We have reviewed the plans as well as the process for approval to date and give our full support. We hope that you will stand firm and not delay the process by overturning a decision on a proposal that was appropriately submitted and a decision that was appropriately made.

Respectfully,
Ron and Louise Brown
Please include in materials for 2707 Rose St. appeal.

Susan Wengraf

-----Original Message-----
From: Richard B. Norgaard [mailto:norgaard@igc.org]
Sent: Monday, April 12, 2010 9:50 AM
To: Wengraf, Susan
Subject: 2707 Rose

Dear Susan:

While I am not so alarmed by the potential impacts of this large home as some, I am a little disturbed by the process of approval and think it needs addressing.

Dick Norgaard
1198 Keith Avenue
Dear Mayor Tom Bates and City Council Members,

We write in support of the neighborhood initiative to appeal the Zoning Adjustment Board’s approval of the building project at 2707 Rose Street.

Having read Fred Wyle’s analysis of the impact of the project on Tamalpais and Le Roy traffic patterns, we realize that enormous pressure will be put on two hillside roads by traffic seeking to avoid the congestion to the south. Both Keith Rd and Cragmont Rd are very narrow and winding, and are ill equipped to handle the burden that they would be exposed to. Needless to say, the effects of this congestion on fire trucks and other emergency traffic up Shasta Rd., one of our only through streets in the hills, could be catastrophic. Citizens of Berkeley would in that case hold the city responsible.

In other words, the Kapor project is likely to have profoundly disturbing effects on hill traffic up to 5 miles away to the north and east of the Tamalpais/Rose Street intersection.

In initially approving the project, the city of Berkeley did not take such heavy consequences into consideration.

In light of this and other concerns that have already been voiced by our neighbors, we urge you to affirm the appeal, and either hold a full public hearing on this project or send it back to ZAB for consideration.

Sincerely yours,

Robert & Michaela Grudin, 2711 Shasta Rd, Berkeley, CA 94708

cc: Fire Chief Debra Pryor
Please include these attached WORD document comments from Jana Olson in the material for the appeal of 2707 Rose St.

Susan Wengraf
Berkeley City Council, District 6

Hi Susan:

As you kknow, I suport the project, and I find the criticisms of the appellants to be without merit. Live and let live, I say. If you have any questions, feel free to call me:
Work: 204-9375 Cell: 334-7136 Home: 486-0481

Jana Olson

PANACHE LIGHTING

2743 Ninth Street, Berkeley, CA 94710

Phone and Fax: 510-204-9375

www.panachelightning.com
Comments on the Appeal for 2707 Rose Street *Quotes from the Appeal are in italics.*
Jana Olson, Feb. 24 2010

**OVERVIEW**

...four times the average house size in its vicinity, and situated in a canyon where the existing houses are of a much smaller scale.
In fact, of the immediately surrounding houses, the Opsvig house on Rose Street, the Carr/Olson house on Shasta, the Shiro house, 1331 La Loma, the Chang house, 2623 Shasta Road, the Staudehahr house, 2660 Shasta Road are all about 4,000 sq. ft.

The size of this house is larger than those of its neighbors, but to say four times the average size is incorrect. However, it is completely in keeping with the size of the lot, and completely legal. There is no prohibition against the construction of any particular size of house. The lot is wooded and hidden, so that even a large house will not stand out.

...the proposed structure is in fact a single structure of 9,872 square feet, including an attached 10-car garage...
The proposed structure is in fact a residence of 6,478 sq. ft. and an UNDERGROUND parking garage which will not be seen from outside the house. The owners, being mindful that there is virtually NO on street parking near their proposed home and because they are involved in a civic activities and expect to have gatherings at their proposed home, are thoughtfully providing parking. In fact, they are providing a HUGE neighborhood benefit, so that their guests will not impinge on neighbors’ limited parking.

Many neighbors of this project feel that they have not been supplied with adequate information to fully assess the impacts of the proposed building, especially in terms of style, visual character, height and mass. This house will only be visible to a very small number of residents, due to its hidden site and woodsly lot. All of those affected neighbors have been part of the planning process, and do not object to the proposed home. Since most people are not trained to read architectural drawings, the purpose of the City requirement for story poles is to enable neighbors to visualize the building as it will be... That’s true. However, the purpose of the story poles is to enable the immediate neighbors to review issues regarding light and shadow patterns, and restriction of views. In this case, nothing about this proposed home creates any shadows on adjoining homes, nor does it block any views for anyone, so the decision was made that the expense of several thousand dollars to erect story poles was not justified in this case. In fact, the wording is that story poles are required in the H district, “or as determined necessary by the project planner.” So NOT erecting story poles in this case was perfectly correct.

*It has for years been standard operating practice for the ZAB to continue a hearing when there is significant opposition or community concern registered. This is a well-reasoned and time-honored practice that allows the concerned parties and the project proponent to see if a mutually agreeable solution can be worked out.* This is an interesting statement, because there does not seem to be an alternate proposal suggested in this appeal. The
appeal seems to be solely based on an “I didn’t hear about it, and I don’t understand it” attitude. The appellants are not proposing a different building, or changes in the building. They are asking for: 1) more time to ponder the project 2) More obvious demarcation of the building. The criticisms seem to be over process, not product. So what is their end view? What changed results are they hoping for? None has been stated so far. This leaves nothing to work out, therefore, no reason to continue the hearing.

1. Public Notification
I have no comments on this. I cannot comment on how thorough the city was or was not.

2. Landmarks Preservation Notification.
Again, I do not know the procedures which are normally followed.

INACCURACIES AND INSUFFICIENCIES IN THE STAFF REPORT
(a) Parcel Zoning District. The “H” District’s requirement for story poles was not met. See comments on preceding page
(b) Excavation /Slope
It is inappropriate, in zoning review, to consider engineering issues. The ZAB’s role is to determine whether the concept of the project fits into existing zoning regulations. This project does. Excavation and earth moving are handled by the Building Permit process, as are all the other construction aspects.
(c) Historic Resources: The staff report fails to mention, and indeed denies the existence of, historic resources in the neighborhood.
The report states the “No locally designated properties exist in the vicinity”...
This is an unfortunate mis-statement by the staff, because as we all know, we live in one of the most historically rich neighborhoods in Berkeley. However, this omission by the staff does not change the outcome of this project, as the proposed home in no way impinges on or adversely affects any historic resource. Although it may be legal to state that the planning staff did not label this correctly, it really makes no difference in the outcome of the project.
Whether this is an historic property on its own is not known to me.
(d) Seismic Hazards, Landslide, Alquist Priolo Act:
Issues related to seismic and landslide strengthening are addressed in the building permit process. All homes in the zones where either landslide or earthquake is likely must adhere to strict standards. Whether this is two or three stories, wood frame or no, is irrelevant to the Zoning Adjustments Board, who simply need to review the height, setbacks, percentage of lot covered, etc. This is not an issue to be covered at this time, and ANY home built on this site would have to address these issues.
2. Development Standards (page 6):
   (a) The building as proposed exceeds both the average height and maximum height standards.
   Table 4 entries:
   Allowable Average Height: 28’-0”/35’-0” with AUP
   Proposed Average Height: 31’6”
   Allowable Maximum Height: 35’ 0”
   Proposed Maximum Height: 35’ 0”
The proposed maximum height has been measured in error....Specifically, the parapet of the northwest corner of the living room/master bedroom wing (noted at elevation 694’), when measured to the finished grade below (655’), yields a height of 39’, four feet over the maximum.

Whatever. From my perspective, this house, even at 45’, won’t be much different than its neighbors. Our house, 2645 Shasta Road, is three stories on the downhill side, plus space below, plus roofline, which must equal 40’. If we include the rock retaining walls below, we are over 50’. (A 10’ height is common for measuring one story.) The house across the street from me is four floors plus space below and roofline, so it must be close to 50’. The two houses on La Loma immediately above the proposed home are both three floors, huge space below, and a garage on top, which exceeds 50’ easily. The home to the east of the proposed project is also essentially a three story house, although some of its bulk is hidden with a deck. All of us who live on slopes have houses with retaining walls below, and houses above, and the height at the back of the house can be quite a lot. This house is exactly characteristic of the surrounding houses.

(b) In general, the project takes advantage of a loophole in the Zoning Ordinance’s definitions, which states that building height is measured from “finished grade.”...If one were to measure the height of the building from the natural grade at the base of the plinth to the top of the parapet, the building would rise to a height of 56’ (638’ to 694’ in true elevation, as taken from the architect’s drawings.) ...this 56’ height will be what people will actually experience.

Again, this is not out of character with the neighborhood. When building on slopes, measuring on slopes, what is the “finished grade”? This is difficult to determine, and grading can change it dramatically. What is true is that no one in the neighborhood (except the residents of 2645 Shasta Road) will EVER look at the house from this perspective. Standing on Shasta Road, you will look up at the existing 12’ retaining wall and a steep slope, from which only parts of the proposed home will be visible through the vegetation.

3. Project Description (Page 7)
(a) The proposed structure is much higher and more visible than the description accepted by the staff report.

The Project Description states that the home will appear to be one story in height when viewed from Rose Street. This is only true if viewed frontally from the very top of Rose Street (from beneath the La Loma viaduct); approaching up Rose Street a much larger building will be visible.

This is not true. From that angle, the house to the west (the Opsvig’s) will block most of the view of the new structure. From the street, directly across from the house, it will appear as a one story house. Since Rose Street is a cul de sac, very few people even go up it. The project site is hidden from view of all of the neighborhood; from the south, it is situated below the elevated La Loma roadway; from the west, it is tucked behind an existing two story home and attached garage, and greenery; from the north, even though this is its tallest elevation, it will be screened by vegetation and by its height above road level; from the east, it is many feet below the nearest houses, and separated again by a wall of trees.
The Description goes on to state that from the north (Shasta Road) the “dwelling will be visible upslope.”......In other words, the top of the building will be about 79 feet, or about eight stories, above Shasta Road.

Which is about the same height above Shasta Road as the old house which exists on the property (the new house is exactly four feet higher than the existing one) and is much lower than other houses we see from Shasta Road. In building in the hills, these numbers can get pretty big. I don’t need story poles to visualize these measurements.

(b) There are no conditions attached that would ensure that masking vegetation stays put, as inadequate as it may be.

Well, there are no conditions that ensure that anything that anyone has built stays put, and in fact, it doesn’t. Your neighbor can cut down a big tree that you have relied upon for shade, or plant one that in twenty years will obstruct your view. You have to rely on trying to work these things out, when there is a problem, neighbor to neighbor. However, a vegetative screen will happen anyway. The bay trees on the lower part of the lot will regrow after construction is done, in addition to whatever new trees are planted.

(c) The assertion that this project meets “green building goals” is highly questionable.

This is also not an issue that is pertinent to the ZAB. If these goals are to be argued, it needs to be done in the framework of reviewing the green building standards the city has in place. This is not within the purview of any single project. Apparently, it meets the city’s standards.

4) Issues and Analysis (Page 8)

(a) Views: The staff report notes that dwellings to the north do not have views across the site, but neglects views toward the site....The architect’s model and drawings show that the building will be quite visible from the properties to the north. It is stated that trees will be planted to further mask the building. It is important to think this through: the trees will have to attain a height of at least 50 feet in order to mask the north side of this building. The effect may not be attained for decades, if at all.

Again, this is not a true statement. First, there is only one property to the north of the site and that is 2645 Shasta Road, which because of its own tall bay trees along the road, will block the view for others farther away. Also, if you think about viewing angle, when a person is on Shasta Road, he is already at least 20’ below the lowest portion of the foundation. From a low angle such as this, even shrubs of 15’ -20’ will have a tremendous effect toward masking the view.

(b) Story poles have not been erected as required.

Please see earlier discussion of story poles.

© Neighborhood compatibility.
See Earlier discussions on height, etc.
April 13, 2010

City Clerk
City of Berkeley
2180 Milvia Street, First Floor
Berkeley, CA 94704.

Re: 2707 Rose Street

Members of the City Council:

I am a resident of the City of Berkeley. I live at 1185 Keith Avenue, near the intersection with Shasta, and just a few blocks from 2707 Rose Street. I am writing to express my concern about the process by which construction of a new home at 2707 Rose Street has been approved.

The proposed construction is for an extremely large house, and it may well be that the height and bulk of the house is inappropriate for the location and the neighborhood. Story poles are a good means of determining whether proposed residential construction will be out of place in a neighborhood, yet the owners of 2707 Rose Street have not been required to erect story poles reflecting their proposed construction.

I urge the City Council to take the simple step of requiring story poles at 2707 Rose Street to give everyone affected by the proposed construction some objective sense of whether this project is truly out of place or instead a welcome addition to the City.

Very truly yours,

Andrew H. Baker
April 12, 2010

The Mayor and the City Council  
C/o The City Clerk  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

Re: 2707 Rose Street Zoning Appeal (Agenda Item for April 29, 2010)

Dear City Council Members

As a long time Berkeley resident, I am writing to express my concern about the proposed development at 2707 Rose Street. I live about a block from the building site.

I attended the Zoning Adjustments Board meeting when this project was approved and was very surprised that Board seemed to pay little attention to the concerns of those who asked for further time to understand the impact of this huge development. I am very worried that this large, office-like structure will change the character of the neighborhood in a negative way. It is out of character with the rest of the neighborhood. Specifically, this project does not conform to several of the City’s General Plan provisions including:

Policy UD-16 Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.

Policy UD-17 Design Elements: In relating a new design to the surrounding area, the factors to consider should include height, massing, materials, color, and detailing or ornament.

Policy UD-24 Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

This project and the approval process for it neglected all three of these important provisions of the General Plan.

I hope you will support a more careful consideration of this project.

Sincerely,

[Signature]

Paul Newacheck  
2666 Shasta Road
Dear Berkeley City Clerk:

I am attaching a letter that I would like you to distribute to the city council before the April 27 meeting. I will also mail you a hard copy of this letter.

Thank you.

John McArthur

John Burritt McArthur
Law Office of John Burritt McArthur
Zaentz Media Center
2600 Tenth St., Suite 636
Berkeley, CA 94710
Phone 510.845.5605

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April 12, 2010

Berkeley City Council
C/o City Clerk
City of Berkeley
2180 Milvia Street, First Floor
Berkeley, CA 94704

Dear City Council:

I have lived in Berkeley since 1994. I came to Berkeley to get a Ph.D in public policy from the Goldman School of Public Policy at the University of California, a degree I received in 2003. I have also practiced law in the Bay Area, for most of that time as a partner of Hosie McArthur LLP in San Francisco. I should quickly add that I do not represent, directly or indirectly, any party in this matter, and my area of practice involves complex commercial cases, arbitration, and oil and gas, not land use or zoning. I am writing this letter solely in my capacity as a concerned, long-term Berkeley resident.

I am writing because of an issue that has given me a deep concern about an important aspect of Berkeley city government. A few weeks ago, I read a short article on SFGate about the almost uniquely large house approved by the Zoning Adjustments Board (ZAB) for 2707 Rose Street. The story and the house sounded so unusual that I began finding out more.

What I learned about the zoning approval process for the 2707 Rose Street house astounded me, is at odds with the way an open and transparent government would function, and is vastly at odds with the way Berkeley’s city government should function. My concern is not only procedural; there are major substantive problems with the report as well.

To mention a few of the substantive problems first, problems that show something has gone astray with the ZAB report: The Zoning Adjustment Board staff found that there are no “locally designated historic resources” in the vicinity. In fact, this huge house will be in the middle of one of the largest clusters of historic houses in Berkeley. (You can see this from three exhibits in the Appeal, Exs. H-1, H-2, & H-3).
ZAB staff approved the maximum allowable height of 35 feet, yet portions of the house are higher than. The house sits on a new artificially raised plinth, as much as 20’ tall, that the owners intend to build. In fact, the house is over 55 feet high in parts when measured from the current grade. This is a whopping house, a huge new structure, that will affect the look of this part Berkeley for all residents, not just its neighbors. It makes no sense that it could be approved without ZAB accurately describing and analyzing the break in the character of the neighborhood and allowing fair comment and discussion.

Perhaps most inexplicably of all, faced with a mandatory story-pole requirement of the hill section (the applicable regulation reads, under Story Poles: “Required for new buildings and stories in the “H” District, or as determined necessary by the project planner” -- a phrasing that only makes sense if poles are mandatory in the hill district and discretionary in other areas), staff exempted the house from that mandatory requirement. It is my understanding that the ZAB often requires story poles even on relatively small additions on homes. It is inexplicable that ZAB would not require poles on a huge new building, one far larger than its neighbors or almost any house in Berkeley, in one of the most historic districts in the city. Even were it true that the requirement is discretionary in the hill district, this house will present the most extreme change possible in the area. If any house should have to put up story poles, it is this house.

The procedural problems with this project are just as severe. In my understanding, ordinarily when neighbors express concerns about a house, ZAB routinely continues the hearing to allow the parties to attempt to work things out. This time, a few immediately bordering neighbors wrote letters of support, but 28 neighbors wrote letters of concern and opposition. Yet the opposing letters were not presented to the Board until the day it had to vote on the application, and they were ignored. Coupling that procedural problem with the substantive errors in the report, there is every appearance of a double standard for this particular project. It is being pushed through regardless of neighborhood concern in a way that would not happen with the average homeowner applying to build or modify his or her house.

I want to stress that this is not just a Rose-Street-area concern. The fair and equal application of zoning regulations are a major part of the quality of life for all of us in Berkeley. If relatively small changes in houses receive detailed scrutiny, as they often do, but the largest house built in decades, one of the largest houses ever built in Berkeley, is rubberstamped without allowing meaningful citizen participation, it would be a sign that the zoning board is not ruling even-handedly on applications that come before it.

This issue is of great concern to many, like me, who live in other parts of the city. The concern will multiply many times over if a house of such dramatically different size and appearance is allowed to be built before having to consider and perhaps incorporate real neighborhood concerns, and if this tall a house can be built in the hill district, near so many historic houses, without even requiring story poles so that everyone can see the effect on the landscape and then comment. Rejecting the appeal would send the message that Berkeley has no effective zoning regulation, or that it has regulations but they only apply to some Berkeley residents, and not others.
To write frankly, it is also a great concern that after ZAB disregarded the large group of letters from concerned neighbors, the city council is now restricting discussion— in a matter that involves fundamental policy questions about the zoning review process, neighbors’ rights, and historic neighborhoods—by allowing only seven minutes of presentation per side on this matter. As a practical matter, this means that the ordinary citizen like me who is gravely worried about the failure of the review process will have no voice in the appropriate public forum.

I urge the council, first, to grant the appeal and reject the thoroughly flawed ZAB report.

Second, because it is hard to see how the ZAB staff could act objectively on the application given the errors in their existing report, I urge the council to require the homeowner to consult with neighbors, but then to itself hold a hearing on this application. At that hearing, the council should allow much broader comment and consider the legitimate concerns of Berkeley residents before taking final action on this matter.

Sincerely,

[Signature]

John McArthur
Dear City Clerk, the Mayor, and City Councilmembers,

The proposed new home project at 2707 Rose has the support of the immediate neighbors and many like us who live some distance away but visit friends in the area. We see no harm to the neighborhood resulting from the demolition of the existing blighted property and building of a single family home on a very large lot with underground parking for guests on the dead end street. We support the right of the property owners to develop the land per the plans the Zoning Board approved. Please move to confirm the ZAB use permit and reject the appeal at your April 27 Board Meeting.

Sharon Smith
1015 Keeler Avenue
Berkeley, CA 94708
Dear Councilmembers:

I follow the zoning board closely as I am very interested in all projects presented to the board. I have sat on the board in the past and have handled zoning matters both personally and as an attorney. Being a neighbor of the proposed project on Rose Street I have followed it closely.

I can enthusiastically say I am very much in favor of the proposed house. I know it is irrelevant as to the backgrounds and status of the owners of the property. From strictly a zoning standpoint, I think it clearly complies with the zoning ordinance and is a definite improvement and benefit to the neighborhood.

The architects are first class. Although I am generally not a fan of most modern design, I think this building is beautifully designed and will certainly add to the neighborhood aesthetically.

In terms of size, there are many large homes in Berkeley. This project is well within the size and scope allowed for a lot of this size. Rose street is an extremely narrow street with minimal parking and little to nonexistent turn around room for vehicles. This project will significantly improve this condition. Additionally I believe it will be a definite aesthetic plus, a unique and beautiful addition to Berkeley.

I don't think we should discourage imaginative architecture. Even though I am a fan of the old, modern has a place in Berkeley. We should not bury our heads in the sand and discourage architects from being willing to go in new and different directions.

There is also clearly a tax advantage to the City of Berkeley, as the proposed home will generate far more tax income than the current dilapidated structure.

Lastly, the owners of this house are indeed a very welcome addition to the citizenry of Berkeley.

Paul Schwartz       149 Tamalpais Road, Berkeley, Ca 94708 (home phone: 1-510-543-2822)
Re: Building project: 2707 Rose Street, Berkeley, CA 94708
From: Robert & Michaela Grudin

Dear Mayor Tom Bates and City Council Members,

We write in support of the neighborhood initiative to appeal the Zoning Adjustment Board’s approval of the building project at 2707 Rose Street.

Having read Fred Wyle’s analysis of the impact of the project on Tamalpais and Le Roy traffic patterns, we realize that enormous pressure will be put on two hillside roads by traffic seeking to avoid the congestion to the south. Both Keith Rd and Cragmont Rd are very narrow and winding, and are ill equipped to handle the burden that they would be exposed to. Needless to say, the effects of this congestion on fire trucks and other emergency traffic up Shasta Rd., one of our only through streets in the hills, could be catastrophic. Citizens of Berkeley would in that case hold the city responsible.

In other words, the Kapor project is likely to have profoundly disturbing effects on hill traffic up to 5 miles away to the north and east of the Tamalpais/Rose Street intersection.

In initially approving the project, the city of Berkeley did not take such heavy consequences into consideration.

In light of this and other concerns that have already been voiced by our neighbors, we urge you to affirm the appeal, and either hold a full public hearing on this project or send it back to ZAB for consideration.

Sincerely yours,

Robert & Michaela Grudin

cc: Fire Chief Debra Pryor
To: City Clerk and the Mayor and All City Council Members

The applicant seems to be interested in a quality project and has retained an architectural firm with a strong reputation. I see no reason why this project should not turn out to be a plus for both the neighborhood and the City, or at least not a detriment as alleged by some people.

Very truly yours,
Dan Funk

10 Greenwood Common
Berkeley
To the City Clerk, Mayor and all Council Members,

I am a resident of the neighborhood in which the new house will be built at 2707 Rose St. I fully support the already approved permit decision and look forward to this house being completed. I’ve seen the plans and think it will be a great addition to the wonderful houses in our neighborhood. Sincerely, Eileen Adams, 88 Tamalpais Rd.
To, the Mayor and City Council Members

c/o City Clerk
2180 Milvia St.
Berkeley, CA 94704

Letter in support of the appeal, 2707 Rose St. project

Dear Mayor and City of Berkeley Councilmembers,

I would just like to comment, that if this structure is built to scale as proposed, the expenditure in materials, labor, transportation (including hauling - use of fossil fuels and emissions) will be massive.

All for a "home" for 2 people? Whatever happened to the principle, of not taking more than one's share (from the planet)?

If individuals like the Kapors, who have the means to build anything they want, cannot agree to live somewhat modestly for the benefit of our environment, would the city of Berkeley please develop an ethic of scale to protect the rest of us?

Thank you,

Lucinda Olney
2731 Shasta Rd.
Berkeley, 94708
lolney0415@gmail.com
From: Phyllis Freund Ritvo
Subject: Affirm the ZAB Use Permit Decision for 2707 Rose
Date:
To: clerk@cityofberkeley.info

Dear City Clerk, Mayor and City Councilmembers,

I am a longtime resident of Berkeley and I am familiar with the proposed construction project at 2707 Rose. I not only see no harm to the neighborhood resulting from the project, but a vast improvement from the current blighted site and lack of parking and turnaround on this dead end street. I support the right of the property owners to develop the site per the plans the Zoning Board approved. Please move to confirm the property owners to develop the site per the plans the Zoning Board approved. Please move to confirm the ZAB use permit and reject the appeal at your April 27 Board Meeting.

Phyllis Freund Ritvo
471 Vassar
Berkeley, CA 94708
14 April, 2010

Re: 2707 Rose Street - ZAB Decision, Use Permit #09-10000038

Dear Councilmember Susan Wengraf,

I have spent a long time studying this project and the arguments presented on both sides. However, to keep this letter short, I will write only my conclusions, assuming that you have made yourself familiar with the issues, and with the site itself.

I may have reservations about the design of this project - the imposing visual effect created by the large blocks of structure - but not enough to understand the tsunami of comment and criticism that it seems to have stirred up. And although I am well aware (thru personal experience) of the imperfections of the Use Permit and zoning adjustments process, that is the process we have in place, and these applicants (whom I have never met) appear to have followed it.

Although the appeal brings up many points of argument regarding the proposal’s compliance with the existing city requirements, they do not add up to reason enough to stop the project. Consideration of this proposal cannot be about these red herrings:
- earthquake zones
- landslide zones
- construction process
- green building claims
- sq.ft. of home per future resident.

All these issues, it seems to me, are not part of the ZAB review procedure, but rather part of the building permit, design and inspection processes, and are items for which any property owner takes responsibility.

The Zoning Adjustments Board approval process is often frustrating, and the compromise results can be felt to be unfair - to both sides. But in this case, although the appeal cites much detail, I believe it does not show willful misconduct or rule-breaking.

This site has been derelict for some years, and this project has been approved by the city. As a 37-year resident of the Rose/Shasta/Tamalpais neighborhood, living within the "300-foot limit" distance from the site of the proposal, I ask you to reject the appeal.

Sincerely,

Ann Flandreau Hughes

Ann Flandreau Hughes
Berkeley 94708

Cc: Councilmember Gordon Wozniak
Councilmember Kriss Worthington
Councilmember Laurie Capitelli
Councilmember Jesse Arreguin
Councilmember Max Anderson
Councilmember Darryl Moore
Councilmember Linda Maio
April 14, 2010

To: City Clerk, the Mayor, and all Council members

Re.: Affirm the ZAB Use Permit Decision - 2707 Rose

From: Louise Brown
2726 Shasta Road
Berkeley 94708
510-548-5301

This is to express my strong support of the proposed project at 2707 Rose Street. I am a 27 year resident and property owner of 2728 Shasta Road and have watched several properties succumb to neglect and blight. I believe the proposed building which includes ample off-street parking will be an exciting and positive addition and change to the neighborhood. I have reviewed the plans as well as the process for approval to date and give my full support.
I hope that you will stand firm and not delay the process by overturning a decision that was appropriately made.

Respectfully,
Louise Brown

[Signature]

Louise Brown
<table>
<thead>
<tr>
<th>From:</th>
<th>Barbara &amp; Henrik Bull [<a href="mailto:henrikbarbarabull@sbcglobal.net">henrikbarbarabull@sbcglobal.net</a>]</th>
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<tr>
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<td>Thursday, April 15, 2010 4:32 PM</td>
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<td>To:</td>
<td>City Clerk</td>
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<td>Cc:</td>
<td>Berkeley Mayor's Office; Capitelli, Laurie; Wengraf, Susan; Paul Opsvig</td>
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<tr>
<td>Subject:</td>
<td>Affirm the ZAB Use Permit Decision, 2707 Rose Street</td>
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<td>Attachments:</td>
<td>2707 Rose St..pages</td>
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April 14, 2010

Re: 2707 Rose Street

Dear Mayor Bates and Council members:

My name is Henrik Bull, a Berkeley resident for 40 years. I have been a practicing architect for 56 years and studied under William Wurster when he was Dean of the School of Architecture at MIT. I was President of Berkeley Architectural Heritage in the early 1970’s.

This letter is in support of the proposed house at 2707 Rose Street. I have visited the site and have read the ZAB application and various news accounts as well as the many letters and blog comments regarding this house.

In my professional opinion the proposed house will not block any views or be detrimental in any way to this unique neighborhood. The most affected neighbors are in favor of its construction. Because the building is one story above Rose Street, with a flat roof, it has a lower profile than its neighbors to the west on Rose Street. It is proposed to be set back further from the street than its immediate neighbor at 2637 Rose Street.

Looking up from Shasta Road, the proposed house would be screened by existing trees. The height and mass is easy to visualize because the existing house at 2637 is three stories on the downhill side. Story poles would be difficult to see amongst the trees and would do nothing to help visualize the completed building.

**Height and Bulk Relative to Historic Neighbors**
One of the best known houses in the neighborhood is the John Galen Howard house at the corner of Rose and LeRoy. It was built in 1912 with an addition by Julia Morgan in 1927. Had there been concern about height at the time of its construction, it would not be there today. That house is three stories along LeRoy and at the corner is probably
less than 15 feet from the street. Its facade along the two streets is longer than the
proposed project at 2707 Rose. It is also by any standard a large house.

Architectural Style
For anyone questioning the architectural style of the proposed house, I can only say
that it shares a “modernist” label with most of the houses around Greenwood Common.
The house will also have an exterior color range similar to its Greenwood Common
neighbors. It is unfortunate that a bird’s eye view of the white foam board model was
published. I can understand why this picture caused concern, but it does not reflect the
reality of the proposed house in its actual setting.

Existing House by A. Appleton

As an architect, I am sad when houses I have designed are torn down, badly altered or
allowed to deteriorate. The architect for the existing house, A. Appleton (later of the firm
Appleton and Wolfard), would be distressed to see its condition today and he might also
agree that it does not represent his best work. In any case it is unlikely that anyone
would restore the original house and any discussion of its present architectural value is
meaningless.

Henrik Bull, FAIA
477 Arlington Avenue
Berkeley, 94707
510-524-8685
To the City Clerk, Mayor, and all Councilmembers:

I am forwarding this note for my mother, age 81, who lives at 2625 Rose St. in Berkeley and lacks e-mail.

-- Andy Imbrie (Jr)

To the City Clerk, Mayor, and all Councilmembers:

I wish to express my continued support for the new construction at 2707 Rose St. The ZAB use permit decision which has already been issued should stand; the proposed project is both appropriate and a desirable asset for the neighborhood. The neighbors who are most directly affected are also in favor. I urge you to allow the project to continue without further delay.

Barbara C. Imbrie  
2625 Rose St.  
Berkeley, CA 94708
Harris, Leslie D.

From: Fontaine, Doug [dfontaine@compasslex econ.com]
Sent: Friday, April 16, 2010 9:14 AM
To: Wengraf, Susan; City Clerk
Cc: Jana Olson
Subject: Proposed Development on Rose Street

Susan – I am writing to voice my support for the proposed development at the end of Rose Street by Mitch Kapor and his wife. As a general proposition, I believe that an individual should enjoy wide latitude in terms of the development and use of his or her property. Of course, such latitude should be constrained by concerns relating to safety and interference with neighboring owners’ enjoyment of their properties. But I absolutely do not support constraints that are linked to complaints that a proposed development is too large or too modern or any other kind of subjective condemnation.

It is my understanding that Mr. Kapor’s immediate neighbors all support his plans, and frankly, unless there are issues relating to safety or the environment, the debate over whether he should be allowed to proceed should end right there. Please count me as a neighboring resident and property owner who fully supports Mr. Kapor’s plans and who hopes that Mr. Kapor and his family will eventually be welcomed into our community.

Best regards.

Doug

DOUG FONTAINE
Senior Vice President
COMPASS LEXECON
1111 Broadway, Suite 1500
Oakland, CA 94607
510.285.1212 direct
510.285.1240 main
510.285.1245 fax
dfontaine@compasslex econ.com
www.compasslex econ.com

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In January, prior to the zoning department's hearing and its approval, we wrote the following in support of the planned residence. Since that time we have heard various people's complaints and opposition and, yet, we continue to be even more strongly in support of the Kapors' plans.

"We live at 1459 Greenwood Terrace in close proximity to the above property. We have reviewed the notice sent to us and the attached plans and we support their approval. We have talked with our good friends, Sue and Paul Opsvig, who are immediate neighbors of the property in question and who are also supportive of the Kapors' plans.

It is our impression that the Kapors have made gracious and substantial efforts to ameliorate potential problems involving parking, access and privacy (screening for immediate neighbors) and addressing design issues (in terms of the structure being compatible with its surroundings). They have shown an unusual amount of sensitivity and concern for their neighbors. We hope their plans gain approval and we look forward to having them as neighbors."

Beverly Cheney and Avrum V. Gratch
1459 Greenwood Terrace
Berkeley, CA 94708
540-8663
TO: City Clerk and The Mayor and all Councilmembers
FROM: Bronwyn H. Hall, homeowner, 123 Tamalpais Road
RE: Affirm the ZAB Use Permit Decision - 2707 Rose

I am writing to express my support for the planned construction of a single family home at 2707 Rose Street (the Klein-Kapor house) and to encourage that the Use Permit already issued be affirmed. I have lived in this neighborhood for over 20 years, and walk around the area frequently. In my view the proposed project will fit well within the site and enhance the area greatly.

Unfortunately, I am unable to attend the meeting where this will be considered so I am sending my support via email.

Thank you,

Bronwyn Hall

(Mrs.) Bronwyn H. Hall
123 Tamalpais Road
Berkeley, CA 94708
USA
John Blankenship
Box 852
Berkeley, CA 94701
April 15, 2010

City Clerk, Mayor and City Council
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

RE: Affirm ZAB Use Permit Decision - 2707 Rose

Dear City Clerk, Mayor, and City Council:

I am currently living at Rose and Tamalpais and have received correspondence regarding opposition to the new home proposed at 2707 Rose. I have visited the site several times, and I have reviewed several iterations of the plans with its nearest neighbors, the Opsvigs. As an architect and a neighbor, closer to the project than many of the most vociferous of the opposition, I believe this project should be approved.

I first visited the site when it was offered for sale. I could not afford to buy the property due to the obviously expensive site work and structural work which would be required; however, I thought a savvy developer could put a number of large homes on this site without negatively impacting the neighborhood. I visited the site once again after purchase by the Kapors and looked at the proposed plans by Logan & Wong. I was impressed by the accommodation the clients were making to their neighbors, by the low profile of the new building, and with the resolution of the parking and vehicular access. It is extremely modest relative to the size of the lot which has been misrepresented by its detractors as well as the national press. Given what could have happened with this site, this was a Godsend to the neighborhood, if not to the taxpayers (more square footage would have meant more tax dollars.). This does much to improve the neighborhood and to alleviate the attractive nuisance of graffiti “artist” and the homeless at this end of Rose.

I encourage you to approve the ZAB Use Permit Decision for this site.

Sincerely,

John Blankenship
Architect
Stephen Twigg  
2668 Shasta Road

The City Council,  
% City Clerk, 2180 Milvia Street, Berkeley, 94704.

Re: 2707 Rose Street--Appeal ZAB Decision, Use Permit #09-10000038.

City council members:

My wife and I live in one of the Daniel Gibb Cottages immediately in front of the proposed development. These 3 timber frame houses were built circa 1923 as a community, similar in concept to Greenwood Terrace and Rose Commons. The cottages are sited in the Norwegian manner, on slightly different elevations and skewed angles to give each privacy and a partial bay view. There was always a large community garden, once highly noted, surrounding them, unfenced. Many famous people, including Robert Oppenheimer, Albert Einstein, and Paul Robesone have visited here, and members of the Gerrer Quartet lived here for many years. All three of our houses will fit into the proposed structure at 2707 Rose Street, twice over. We will have a clear frontal view of the unadorned shoebox like structure whose ascetics it's architect could only defend to me as ‘not cheap’.

Our neighborhood is unusual and innovative in that it was planed around public transportation. The streets, which run roughly north and south, purposely following the contours of the terrain, with many narrow sharp bends and generally gradual grades, were intended to preserve the rustic character of the hills. They were never intended as parking spaces. The original planners anticipated the theories of Hans Monderman by some 80 years, designing streets with few traffic signs, no signal lights, and curbs and sidewalks only where needed to control ground water. Cars, pedestrians, and cyclists coexist civilly. There are many city owned paths running generally east and west that connect the streets with the street car line (now AC Transit) on Euclid Avenue. We have El Mirador Path, Redwood Path, Martinez Path, Tamalpais Path, and Rose Walk within a ten minute walk of our house.

Rose Walk, which was intended to connect The Euclid Avenue streetcar line with houses
further up the hills (according to the Berkeley Historical Plaque of 1998) was designated a Work of Civic Art by the City of Berkeley 1951 because in 1913 members of the community had the foresight to commission Bernard Maybeck to design and build it. It was designated a City of Berkeley Landmark 1991; because, quoting from it’s plaque: ‘Rose Walk is Berkeley’s only pedestrian pathway where buildings were designed to create an ensemble integrating the walk with a planned development’. Some 60 years after original construction the functionality of Rose Walk was extended further up Shasta Road by the formation of the Cordenices Foundation which was created by members of the community to buy and maintain a vacant lot diagonally opposite 2707 Rose street to keep it from development and preserve the rustic character of the neighborhood. Erecting this huge institutional building, where visitors will drive into a hermetically sealed structure and interact with it’s environment through large plate glass windows, or from a deck 90 feet above grade, in this location, is architecturally insensitive and exploitative.

Besides Rose Walk, other notable architecture in the area include Bernard Maybeck’s own house at 1 Twin Maybeck drive, and Charles Green’s design for the Rudolph Schevill Studio at 77 Tamalpais (This should be visible from 2707 Rose Street). They are marked on the attached printout. These are all less than 1000 feet from the construction site.

From section 23E.96.020 of chapter 23E.96 entitled H HILLSIDE OVERLAY DISTRICT PROVISIONS

B. Protect the character of Berkeley’s hill Districts and their immediate environs;

C. Give reasonable protection to views yet allow appropriate development of all property.

D. Allow modifications in standard yard and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other aspects of the Hillside District area.

The weight of paragraph B rests on the definition of the character of the Hill District. I think that the first part of this letter speaks to the character of the people who made this
neighborhood. I can only speak from what I know personally. We live in a half log half heavy timbered bungalow with a tile roof of 1800 square feet. The logs and timbers have tool marks showing that they were hand shaped. It is located on a steep hillside and the soil is stabilized with stone walls and plantings. The floors are softwood with three fireplaces and a brick chimney. Our next door neighbor’s house is also of heavy timber construction with a profile that derived from Norwegian stav churches. It’s details are similar to ours. Behind us is a smaller wooden house constructed of dovetail timbers, with similar details. Across the street we see a beautiful reproduction of a Normandy cottage, and the roof of a circa 1920 shingled house. On the other side is a small 1920 style stucco house. We all have a lot of steps to climb and big yards. What we don’t have is 10 car garages inside of 10,000 square foot buildings. Or 20 foot high 200 cu yard retaining walls.

**Paragraph D** of the Hillside Overlay District Provisions concerns environmental factors that may justify height or setback variances. The owners stated intention is to replace a two story building with another two story building. Since the original building could be built without variances, the environment is suitable for another two story building without variances.

**Paragraph C** directs the planning officer to reasonably protect views and still allow appropriate development of all property. It does not specify that adjacent properties’ views are to be weighed any more heavily than any other properties’ views, nor that the wishes of adjacent property owners can define what reasonable views are for anyone but themselves. In fact, giving landmark status to Rose Walk indicates that in this location the City of Berkeley grants pedestrians some rights to the views that they pass. The proposed construction is not new construction as there is already a building on the site. Our existing view of the site is reasonable by ZAB’s own definition. Construction of a larger building can only diminish it.

With regard to the definitions of reasonably protected views and appropriate development it it interesting to look at ZAB’s staff report on may 27, 2008 on 11 Twin Maybeck Drive. This residence is 226 feet from 2707 Rose Street. This is a 3600 square foot new residence on an undeveloped lot. The staff reported that this was over the mean size on the 18 nearby properties it surveyed (mean size 2449 Square feet) but smaller than 3 of them. The staff concluded that the volume or the building would not be apparent from Twin Maybeck Drive because it was on the lower side of the street and would be obscured the slope, and when
viewed from below it would be similar to the massing of adjacent residences. It further found that the greater depth of the building would be masked by variations in the floor plan that ensure that this building does not appear out of scale with adjoining residences. Even so, the staff reports that neighborhood acceptance required the intervention of the Berkeley Dispute Resolution Services, and 7 revisions to the plan.

With respect, none of the accommodations quoted above apply to us. We see the site not from Rose Street nor from below on Shasta Road, but from across a canyon less than 300 feet away, and slightly from above. There is no group of adjacent structures visible to lump together to mask it’s volume. This is a 10,000 square foot building, not 3600 square foot one, which has been granted a height variance to make it appear even larger than needs be. Apparently there is to be a huge concrete substructure that was not disclosed in ZAB’s mailing. This will all be painfully apparent. We were not informed of this in any timely manner, as is our right, nor were we invited to take part any neighborhood compatibility reviews. The last minute notice mailed to was misleading in that it seemed to read as a 6,000 square foot building containing a 3,000 square foot house and a 3,000 square foot garage, not a 10,000 square foot box containing a 3500 square foot garage and a 6500 square foot house. Story poles would have helped to clarify this.

With regards to appropriate development, from the 2002 general plan (quoted from the staff report above):

**Policy LU-3 Infill Development:** Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.

This is a 10,000 square foot building in a 2,000 Square foot neighborhood. If it were located at Shattuck and Cedar Streets in the defunct Elephant Pharmacy parcel, it would be obvious that this structure is a commercial building. The need for private parking identifies it as a business who’s clients would be charged enough to expect guaranteed parking, and may value their anonymity. Simply locating the parking to street level as is customary in this area would have reduced the volume by some 30 percent, and the carbon footprint by perhaps 50 per cent due to smaller excavations, smaller footings, less building material, and
reduction of landfill use and hauling. The ZAB staff report above addresses foundation of 11
Twin Maybeck drive: 'according to the applicant, the foundation design will minimize site
disruption by using piers and grade beams that would rest on grade and not require
substantial excavation for the foundation system (other than the drilled piers)'. Mr. Logan
and Ms. Wong seem to be relying on masses of concrete.

Policy UD-16 Context: The design and scale of new or remodeled buildings should
respect the built environment in the area, particularly where the character of the built
environment is largely defined by an aggregation of historically and architecturally
significant buildings.

I've tried to comment on this, and I am sure that other people better informed than me have
done so. Note that no specific distances or numbers are specified.

Policy UD-24 Area Character: Regulate new construction and alterations to
ensure that they are truly compatible with and, where feasible, reinforce the
desirable design characteristics of the particular area they are in

This is an enormous building scaled for 10 vehicles in a planned community designed for
walking and public transportation. It is Berkeley's stated goal to reduce vehicular traffic and
encourage use of public transit, and to reduce global warming. This building is a square peg
in a round hole.

Because of these errors and omissions of ZAB I ask the City Council to overturn it's decision.

Stephen Twigg
To City Clerk and The Mayor and all Councilmembers:

As the immediate neighbors to 2707 Rose Street do NOT object to the proposed house project, we think (as fellow Berkeley residents) that the ZAB use permit should be approved and the appeal denied at your April 27 Board meeting.

Sincerely,

Judy and Bill Fujimoto
April 14 2010

Dear Council Members,

I am writing this to express my disapproval with the recent decision of the zoning adjustment board in its decision to permit the building of Mitch Kapor’s house at 2707 Rose St. Whether he should build on this property ought to be decided by the same observance of city requirements as all other Berkeley citizens. The zoning board should be able to honorably apply their own directives. In this instance they have not come close. Have they any idea of where the property in question is even located? You the council must correct this. After all this is Berkeley, not Rome.

Yours,  
Elise White
2600 Woolsey St
Berkeley, CA 94705
City Council  
c/o City Clerk  
2128 Milvia Street  
First Floor  
Berkeley, CA 94704  

RE: 2707 Rose Street Project

Dear Council Members:

I write in support of the request of a broad group of neighbors to return the proposal for building a new structure at 2707 Rose St. to the Zoning Adjustments Board for a full review. I earlier signed the (summarily denied) request of January 28, 2010 to the ZAB for a continuance of discussion of the project. The question of whether the rules have been equitably applied to the proposed Rose St. structure needs to be answered openly, fully and with finality. Otherwise, I fear that many in the neighborhood, and beyond, will question the evenhandedness of our city government.

Sincerely yours,

[Signature]

Bob B. Buchanan
Attached please find my letter to the City Council regarding the appeal of the permit for 2707 Rose Street.

Susan Cerny
April 16, 2010
Mayor Bates & City Council
2180 Milvia Street
Berkeley, CA 94704

Re: 2707 Rose Street—Appeal of Use Permit #09-1000038

Dear Mayor Bates & members of the City Council:

I support the appeal of Use Permit #09-10000038, approved by the Zoning Adjustments Board on January 28, 2010. I support the appeal because of historic preservation issues and on errors and omissions in the project application.

Four use permits were issued:

- Use Permit to demolish an existing dwelling unit;
- Use Permit to construct a dwelling unit;
- Administrative Use Permit to allow a 35-foot average height limit for a main building (28 feet is the maximum); and
- Administrative User Permit to reduce front yard setback to 16 feet (20 feet is required).

These types of issues are commonly aired at public hearings because concerned neighbors request more information, but because of the geographic nature of the subject site, not all affected property owners were notified of the proposed project.

Furthermore, the application claims there are no designated historic resources in the vicinity. In the immediate neighborhood there is a high concentration of historic resources including:

- **Greenwood Common**, a City of Berkeley Landmark (designated in 1990) developed by William W. Wurster, with landscape design by Lawrence Halprin and eight houses designed by important mid-century architects.

- **La Loma Park Historic District** (designated in 2002), comprising 13 properties, including two designed by Bernard Maybeck, one by Ernest Coxhead, one by Henry Gutterson, and one by John Ballantine.

- **Rose Walk**, a City of Berkeley Landmark (designated in 1975), designed by Maybeck and lined with houses and duplexes by Henry Gutterson.
The proposed project overlooks Shasta Road, where there are two properties listed on the State Historic Resources Inventory and rated “appear eligible for the National Register of Historic Places” — one is essentially next door and the other directly across the street.

Even the existing house, proposed for demolition, has historic merit. While the 1917 building permit submitted with the architect’s Structure History report, clearly shows A. Appleton as the Architect of 2707 Rose, the application claims there is no architect of record. As it turns out, Abraham Appleton (1887–1981) was an important figure in Bay Area architecture. His client, Lucia Dunham, was a well-known mezzo-soprano with a teaching position at the University of California, where she was a collaborator of Prof. Charles L. Seeger, who was also a close-by neighbor on La Loma and Buena Vista. (Seeger’s house, which is still standing was designed by Bernard Maybeck.)

There is so much history and so many cultural connections that today have a physical and tangible presence in this neighborhood the project should have been brought to the attention of the Landmarks Preservation Commission. Yet the City staff update sent to the LPC concerning this project defined it only as a new construction, without mentioning the demolition or the historic context of the neighborhood.

Other issues of concern include the extensive grading, removal of soil, and the reconfiguration of the lot, as well as the scale, massing and color of the proposed house in this historic neighborhood.

The proposed project should be sent back to City staff and to the applicant for preparation of an accurate and complete application, followed by a new hearing before the Zoning Adjustments Board, with input from the Landmarks Preservation Commission.

Sincerely,

Susan Cerny
Former Chair of the Landmarks Preservation Commission
To: The Honorable Mayor and Members of the City Council

From: Jay Claiborne as Secretary to the Landmarks Preservation Commission

Subject: Landmarks Preservation Commission Concerns with the Review Process for Development at 2707 Rose Street

LPC REQUEST:
An accurate and complete application should be prepared for the proposed project and a new hearing scheduled, either before the Zoning Adjustments Board or at Council.

BASIS OF CONCERN:
The Landmarks Preservation Commission at their April 1, 2010 meeting expressed concern over their sense of the information or lack thereof that was submitted by Planning Staff to the Zoning Adjustments board on the proposed development at 2707 Rose Street in the North Berkeley Hills area of the City. These concerns are summarized as follows:

1. The Land Use Planning Projects list did not identify the project as including a demolition for a building older than 40 years, but rather only as new construction. While residential demolitions are not referred to the LPC, several commissioners do try to visit and photograph these sites when the home is older than 40 years, and the LPC relies on an accurate list identifying the types of permits required.

2. The Structure History Report of May 19, 2009, prepared by the applicant states that “there is no architect of record and no associated persons of historical interest.” In fact, the 1917 building permit for the house at 2707 Rose Street identifies A. [Abraham] Appleton as the architect. Appleton became a noted architect in the Bay Area and his client for the house at 2707 Rose Street, Lucia Dunham, was a noted mezzo-soprano who taught at UC Berkeley and, later at the Juilliard School in Manhattan. The LPC knows that in most cases this information is not difficult to find and should have been included in the Structure History Report. It appears that the report was not questioned by staff and it was not forwarded to the LPC for comment.

3. The LPC is further concerned with the statement in the project application that there are no designated historic resources in the “vicinity.” Within a few minutes walk of the project site
are numerous landmarked historic resources which give the North Berkeley Hilla area a rich architectural heritage. The Hume Cloister or Castle built in 1927 by John Hudson Thomas is 260 feet from the site and within the Planning Department’s vicinity map for the project. Greenwood Common, a Berkeley Landmark since 1990, is approximately 450 feet from the project site and includes eight houses designed by important mid-century architects. Also in the architecturally rich neighborhood is the La Loma Park Historic District with 13 houses representing noted architects, including Maybeck, Gutterson and Coxhead. Maybeck Twin Drive, which also is nearby, includes the celebrated architect’s family home built after the 1923 fire. Rose Walk is another nearby designated Berkeley Landmark (1975), designed by Maybeck and with houses designed by Gutterson. Addionally there are several houses in the area that are on the State Historical Resources Inventory (SRHI), a document which the LPC feels should be easily available to the Planning Department. All of this pertinent information should have been made part of the original application to the Zoning Adjustments Board.

4. It appears that the language used in the application, “vicinity,” and “adjacent,” has been used by Staff in the most restrictive sense when referencing historic resources in the neighborhood, but in a much more inclusive sense when referencing a comparable handful of houses throughout the City in supporting the size of the proposed structure.

FINANCIAL IMPLICATIONS:
None

CONTACT PERSONS:
Anne Wagley, Landmarks Preservation Commissioner
Deborah Sanderson, Planning Manager
Jay Claiborne, Senior Planner and Secretary to the LPC

Approved:

Dan Marks, Planning Director
April 14, 2010

The Mayor and the City Council
C/o The City Clerk
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

Re: 2707 Rose Street Zoning Appeal

Dear Mayor Bates and City Council Members,

We are long time Berkeley residents and have lived in our current house at 2664 Shasta Road for 47 years. We are writing to express our concerns about the proposed development at 2707 Rose Street. We live less than a 100 yards from the building site and have an unobstructed view of it from our living room.

We have discussed this project with our neighbors and the architects who designed it. The size and style of the planned structure is out of character with the rest of the neighborhood. We are also concerned that the project will be very noisy for a prolonged period of time. We are 86 and 89 years old and enjoy whatever peace and quiet we can. We feel that the project is moving forward without due consideration of its impact on the neighborhood.

We ask you to vote to return this project to the Zoning Adjustments Board for further consideration.

Sincerely,

Eric O. Johannesson

Madelyn S. (Sury) Johannesson

Madelyn S. (Sury) Johannesson

Madelyn S. (Sury) Johannesson
Please see attached letter in support of the project at 2707 Rose St.
Thank you.

Norah Brower

Senior Sales Associate, CRS, SRES, GREEN
PACIFIC UNION
510-540-6934(res)
510-703-6934(cell)
510-982-4407 (vm)
dre # 01197240
norah@norahbrower.com
www.norahbrower.com
To the City Clerk, the Mayor, and City Council members

I am writing this letter in support of the proposed construction at 2707 Rose Street. I am a neighbor and have lived in the same house for 26 years. On my daily walks, I have seen the house at 2707 Rose Street deserted, neglected and falling into ruin. This beautiful large site deserves to have a fine well built structure that is cared for and it certainly seems like the new owners are intending to do so.
The neighbors who will be most impacted by the structure are the neighbors next door and across the road on Shasta. I have spoken to them and read the communication and I understand that they support this project. The owners consulted them about their concerns right at the very beginning and the Kapers addressed these concerns. What more could we ask of our neighbors? Yes, it is a large house, but it will sit on an oversized parcel(s) that I feel can support a house of this size. It is a narrow street and the fact that they are putting in a 10 car garage will help take the traffic off the street when they entertain their friends. I don’t see why there should be any objection to this.
I urge the City Council to respect the opinions of the contiguous neighbors and affirm the ZAB USE Permit Decision.

Sincerely,

Norah Brower
2701 Buena Vista Way
Berkeley CA 94708
norah@norahbrower.com
Hello. I would appreciate it if you would provide this letter to the members of the City Council for their consideration. Thank you.
April 16, 2010

Mayor Tom Bates
and Members of the City Council
City of Berkeley
Via email mayor@cityofberkeley.info, clerk@cityofberkeley.info

Subject: Appeal of ZAB Permits and Approvals
2707 Rose Street, Use Permit #09-10000038

Honorable Mayor Bates and Councilmembers:

I write to support the appeal of the ZAB actions approving a 10,000 square foot residence on Rose Street, including a 10-car garage. The City has inadequate information relative to site constraints and environmental impacts, and procedures mandated by City ordinances have not been followed. The appeal should be granted.

proposed demolition of an unlisted historic resource]; and *League for Protection v. City of Oakland* (1997) 52 Cal.App.4th 896 [requiring an EIR for proposed demolition of an unlisted historic resource], all at the California Court of Appeal.

**Inadequate Environmental Setting Data.** As explained by the documents in the record, the City does not yet have adequate information upon which to base consideration of approval of this project. As explained by BAHA, the c. 1917 bungalow proposed for demolition was designed by Abraham Appleton, a master architect. This may be Appleton's only surviving early residential project in the East Bay, and may thereby be eligible for the California Register of Historical Resources and must be treated as historic for CEQA purposes. Yet the project application, and the staff report prepared for the ZAB approval, do not mention the bungalow's famous architect or its potential historic status.

The City Code requires story poles for this project, which were not erected. This huge structure will be visible from Rose Street and Shasta Road, and beyond, and visual analysis has not been prepared to assist ZAB or the Council in assessing aesthetic impacts. The historic character of the neighborhood has also not been assessed as part of the environmental setting, and so neighborhood compatibility has not been be fairly considered as required by the H District Hillside Overlay District provisions described in the letter of Stephen Twigg, among others.

Consulting engineer Lawrence B. Karp, who holds an earned doctorate in civil engineering from the University of California, Berkeley, and an Earthquake Engineering Certificate from Berkeley as well, and is licensed as a civil engineer, geotechnical engineer, and architect in California and elsewhere, has provided a professional opinion that a geotechnical report is needed to provide adequate information about project impacts on the “very steep existing slopes” of the project site. Mr. Karp, who has over 45 years experience in design and construction with
specialization in stability evaluation of excavations and slopes, site development and construction logistics, indicates that the project as proposed will require “major retaining walls not shown ... resulting in much larger earth-work quantities than now expected. The massive grading necessary ... will involve extensive trucking operations ...” (Karp Letter.) Further, significant environmental impacts are likely “not only during construction but in service due to the probability of seismic lurching of the oversteepened side-hill fills.” (Karp Letter.)

The application and staff report fail to provide accurate and adequate geotechnical information and fail to assess traffic and other impacts relating to disposal of large amounts of fill, including cumulative traffic impacts in conjunction with upcoming improvements to the Berryman Reservoir. The appeal and its addendum also document inadequate and inaccurate application descriptions, including the project height and the three-story nature of the building triggering seismic code compliance.

The project should be remanded to planning staff to assure an accurate project application, adequate supporting technical and historic information, and assessment of the environmental setting.

The Fair Argument Standard. The appeal documents grave concern about many environmental issues, including those referenced above. CEQA provides that categorical exemptions are rebuttable: they “shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource” — or for a project that may have any other potentially significant environmental impact due to its particular circumstances. (CEQA Guideline § 15300.2, subd.(c), (f), italics added; Pub. Resources Code § 21084, subd.(e).) The City’s claimed categorical exemption for infill development is not applicable because the site is not surrounded by urban uses but is in a wholly
residential neighborhood marked by steep wooded terrain and very narrow streets. The project is also not exempt as a standard single-family home; the 10,000 square foot, 10-car garage structure is proposed to be used not simply as a residence but for significant fundraising for the applicant's philanthropic interests. This is akin to a small office building in both appearance and function, incompatible with the selected site and neighborhood.

Even if the project were aligned with an exemption category, the standard of review as to whether an exception may defeat the exemption is the "fair argument" standard. If the record before this Council includes a fair argument that the project may have a significant environmental impact, the exemption fails. (*Banker's Hill v. City of San Diego* (2006) 139 Cal.App.4th 249.)

The fair argument standard triggers an EIR if any substantial evidence in the record — that is, facts or reasonable assumptions/expert opinions based on facts — supports a fair argument that significant impacts may occur, even if a different conclusion may also be well-supported. (*Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1000-1003.) This standard markedly differs from the deferential review normally enjoyed by agencies:

... if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.

(Guideline § 15064, subd.(f), subd.(l).) Importantly, if there is a dispute among experts, the City must defer to the evidence in favor of environmental review. (*E.g.,* Guideline § 15064, subd. (f).)
Substantial Evidence Defeats the Categorical Exemption. The record before the Council abundantly fulfills the low-threshold requirement for the requisite “fair argument” that the proposed project may have environmental impacts based on, among other things:

- Demolition of an historic resource
- Aesthetic impacts on public views
- Neighborhood character incompatibility based on mass, scale, and institutional design
- Traffic impacts relating to construction and non-residential uses
- Massive, unstudied excavation of steep hillsides and creation of large retaining walls
- Inconsistencies with City land use plans and policies adopted for environmental protection
- Unusual size of the proposed structure out of scale with neighboring development and historic character
- Removal of mature trees

Project Conditions Cannot Support a Categorical Exemption. Categorical exemptions only apply to projects that have no potential environmental impacts and require no mitigation measures. As held by the First District Court of Appeal in Salmon Protection and Watershed Network v. County of Marin (2004) 125 Cal.App.4th 1098, any project that requires mitigation measures cannot be approved via categorical exemption:

Only those projects having no significant effect on the environment are categorically exempt from CEQA review. (Pub. Resources Code, §§ 21080, subd.(b)(9), 21084, subd. (a).) If a project may have a significant effect on
the environment, CEQA review must occur and only then are mitigation measures relevant. *(Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1199-2000.) *Mitigation measures may support a negative declaration but not a categorical exemption.*

*(Id. at 1102, italics added.)*

There are a number of “additional conditions” that were imposed on this project by ZAB in order to address potential environmental impacts. While inadequate to address all environmental issues, these also defeat the exemption.

Please grant this appeal, and require environmental review and compliance with Berkeley's plans and ordinances following submission of a revised project application. All newly-provided information will be put to good use to assist City decisionmakers in making discretionary land use decisions that protect the integrity of its character-defining historic neighborhoods. An EIR will analyze impacts, explore the feasibility of project alternatives, and “demonstrate to an apprehensive citizenry” that the City has analyzed and considered the environmental implications of its actions. *(Guideline § 15003, subd.(d).)*

Thank you very much for your consideration.

Sincerely yours,

Susan Brandt-Hawley

cc: Zach Cowan *(zcowan@ci.berkeley.ca.us)*
Dear Mayor and Councilmembers,

This letter is written in support of ZAB Board approval of plans for 2707 Rose Street. I understand that you will be considering an appeal on April 27 at the Board meeting.

As a long time Berkeley resident (25 plus years) and ardent admirer of Berkeley's unique blend of local architecture that is both historically significant and forward-looking, I am bewildered by the opposition to plans to replace a structurally impaired property of no intrinsic value with a home that has been designed with emphasis on fitting in well with its existing neighbors and with its lush hillside terrain. I would like to add my support to the removal of barriers to proceed with the construction of the proposed plan for 2707 Rose St.

Please reject the appeal so that construction can begin.

Sincerely,

Linda C. Nelson
1607 Chestnut St.
Berkeley, Ca 94702
From: Tara Staudehar [mailto:tstaudehar@gmail.com]
Sent: Saturday, April 17, 2010 8:41 PM
To: Wengraf, Susan
Subject: Fwd: Appeal on 2707 Rose Street

To: Mayor Bates and the City Council
Re Appeal on 2707 Rose Street

Dear Mayor and Councilmembers:

I am writing to ask that you uphold the decision of the Berkeley Zoning Board when the 2707 Rose Street project comes up for appeal at your April 27th meeting.

This project not only has the support of the immediate neighbors of the property, but also the support of neighbors like me, who live within a block or two of this site. I believe that when land owners propose to build a new home that fits within City guidelines and have followed all the rules to submit their plans to the City and receive its approval, they should not have to incur further delays due to the appeals of distant neighbors who missed the ZAB meetings.

One of the major attractions of Berkeley is the great variety of homes and properties that reside here. I chose to buy two homes here in Berkeley because of the diversity and lack of C,C & R's that could place limitations on properties. Thank goodness we don't all have to live in cookie cutter homes, painted the same color, like they do in the suburbs! In the present case, I believe that the Kapur's should be allowed to build the home that suits them on their own property. While I myself do not care for the style of their new home, I can appreciate the contrast it will bring to the neighborhood, and I can appreciate that they followed the process to obtain approval from the Zoning Board. =That approval should be allowed to stand.

Thank you for your consideration,

Tara Staudehar
2652 Shasta Rd.
City Clerk & The Mayor & all Council Members:

Re: Affirm the ZAB Use Permit Decision - 2707 Rose Street

We have lived at 1371 LaLoma Avenue, which borders the site of the proposed and approved project, for 21 years. We join with all the surrounding neighbors in our endorsement of this project.

We have been aware of the project for some time as we were provided an opportunity to review the plans and make any comments or requests. It is clear that the property owners and their architect considered and were sensitive to the concerns of their neighbors and acted accordingly.

As the property owners on the east side of 2707 Rose Street we have been affected by this now distressed property and welcome the contraction of this beautiful and tasteful home.

Please approve this project and deny the appeal.

Lorna Patton Brown

Alan G. Shriro

All that is necessary for the forces of evil to win in the world is for enough good men(sic) to do nothing... Edmund Burke
Dear Mayor and Council Members,

I and many of my neighbors have been following the contretemps surrounding the use permit for construction at 2707 Rose with both interest and concern. While this is not an issue that directly affects our neighborhood, the decision of the Council has ramifications for all neighborhoods.

I understand that many people are uncomfortable with change, and in this case the construction of a large structure in place of a somewhat smaller one is a notion that some people are having difficulty accepting. But the immediate neighbors, the people whose daily lives--and sight lines--will be the most affected are in support of this project. As we understand it, the family applying for the permit has worked closely with the neighbors to come up with a design that is acceptable to everyone, they have worked within the parameters of what is permissible in their neighborhood, they have responded forthrightly to concerns. Should the appeal be upheld, we think every Berkeley homeowner would have to wonder what it would take to get approval for a project in this city. There is a dilapidated house on my street that has been a source of concern to the neighborhood for some years. Are we to understand that proposed reconstruction on that building site has to meet the approval of a group of "concerned citizens" three blocks over?

I certainly hope the Council will deny the appeal and allow the project at 2707 Rose to go forward.

Sincerely,

Sandy Bails
11 Southampton Ave.
Berkeley 94707
From: Harry Weininger [hweininger@sbcglobal.net]  
Sent: Sunday, April 18, 2010 3:47 PM  
To: City Clerk  
Cc: Paul Sue Opsvig; Berkeley Mayor's Office; Wengraf, Susan  
Subject: Affirm the ZAB Use Permit Decision - 2707 Rose

TO: City Clerk and the Mayor and all City Councilmembers,

I am a resident of Berkeley and am writing in support of the proposed construction at 2707 Rose St.

You may find it curious that I’m writing about a project not immediately adjacent to me, but this project is of interest to those in the entire community as well. I have friends who live nearby and I’m familiar with Rose Street, the neighborhood, and the issues around the proposed construction. This project is an excellent solution to the many difficulties—litter, mischief, etc.—caused by this vacant property for years. I support the surrounding neighbors who are the most affected and in the best position to make a judgment about the project.

I see no harm to the neighborhood resulting from this project. I support the right of the property owners to develop it per the plans the Zoning Board approved.

Please move to confirm the ZAB use permit and reject the appeal at your April 27th Board Meeting.

Sincerely,

Harry D. Weininger  
698 Creston Rd.  
Berkeley, CA 94708

Information from ESET NOD32 Antivirus, version of virus signature database 5039 (20100418)

The message was checked by ESET NOD32 Antivirus.

http://www.eset.com
Re: 3095 Telegraph Ave.

Dear City Council:

On March 23, 2010, Frank Daar spoke at the public hearing on the above captioned property. He told you that Sam Sorokin had stated during the development of the Southside Lofts project that a laundromat would not be a good fit for that building. Upon questioning by Mr. Worthington, Mr. Sorokin denied having said that.

At that point it would have been out of order for me to have spoken up, so I will do it here. I was with Frank Daar during that meeting with Mr. Sorokin, in Mr. Sorokin’s business office on Telegraph Ave., Oakland, when Mr. Sorokin stated to both Frank and myself that a laundromat would be an inappropriate use for his building. In fact, Mr. Sorokin made that same statement in one of two other meetings attended by neighbors and his partners in the City Manager’s office shortly after the fire at Milt’s Coin-Op.

Those two meetings were arranged by Jim Hynes, then our neighborhood liaison in the City Manager’s office. I had advised Mr. Hynes that the property was not secured, I was concerned that it could attract criminal behavior and that homeless people could take shelter there and harm themselves (there had been a fire in a vacant building occupied by homeless people that had caused their deaths previous to the fire at Milt’s).

Frank Daar has been my next door neighbor for 42 years. I know him to be an honest man who does not lie. He has served this community as a whole and my neighborhood all the years I’ve known him.

Very truly yours,

Marcy McGaugh
My wife and I are writing in support of 2707 Rose St. The property owners have complied with ALL Berkeley requirements. Therefore, the City should move quickly, and grant them final permit approval. We welcome our new neighbors, and their effort's to add to the beauty of this neighborhood.

Patricia Bordonaro
Jurdy Hughes
1425 Greenwood Terr.
Berkeley, CA 94708
Harris, Leslie D.

From: Martine Kraus [martinekraus@msn.com]
Sent: Sunday, April 18, 2010 10:26 PM
To: City Clerk
Subject: In Support of Appeal on 2707 Rose Street

To the attention of: Mayor Tom Bates and City Council

Dear Sir and Members of the City Council:

I am writing in support of the appeal to the City Council (that was submitted by a group of neighbors including Susan Nunes Fadley, Charles S. Fadley, Dawn Hawk, Paul Newacheck and Frederick S. Wyle and is scheduled to be heard on April 27, 2010) requesting that fair and proper process be followed in the review and approval of the very large construction project proposed to be undertaken at 2707 Rose Street. Procedural omissions and violations of due process, including but not limited to misrepresentations about the actual size of the planned structure, inadequate notice of the project, failure to notify the Landmarks Preservation Commission of the proposed demolition of a distinguished architect’s historic work, have occurred. They are inappropriate and need to be rectified.

Best regards,

Martine Kraus, Ph.D.
1481 Greenwood Terrace
Berkeley, CA, 94708

April 18, 2010

cc City Clerk, 2128 Milvia Street, Berkeley, CA 94704

The New Busy think 9 to 5 is a cute idea. Combine multiple calendars with Hotmail. Get busy.

The New Busy is not the old busy. Search, chat and e-mail from your inbox. Get started.

Hotmail has tools for the New Busy. Search, chat and e-mail from your inbox. Learn more.
Mayor and City Council
c/o City Clerk
2180 Milvia Street
Berkeley, CA 94704

Re: PROJECT AT 2707 ROSE STREET

Mayor Bates and Councilmembers:

I strongly urge you to either hold your own full public hearing on the
2707 Rose Street project or remand the matter to the Zoning Adjustments Board. The ZAB's
glaringly flawed January decision to approve the project needs reconsidering for multiple
reasons--one of which this letter discusses.

The following intriguingly pertinent statement appeared in reporter Chris Carrassi's article
about the project in the February 23 issue of the Daily Californian: "[Mitchell] Kapor said in an e-mail that a substantial part of the home would be
used to raise funds for community and campus groups, including scholarship programs for low-income and under-represented students enrolled at UC Berkeley."

Gee, that sounds nice--but wait a minute! Would such "substantial" usage jibe with the
property's R-1 zoning?

The fund-raising mentioned by Kapor's e-mail sounds like what's done by the Mitchell Kapor
Foundation, a 501(c)(3) organization whose directors evidently are Kapor and his wife. That
foundation and/or others closely linked to it have several staff members who presently work
in offices at
543 Howard Street in Downtown San Francisco.

What would the fund-raising at 2707 Rose Street involve--and who would be doing it?

Would it be just a sort of hobby pursued only by the house's residents, Mitchell Kapor and
his wife?

Would using a substantial part of the proposed very large house for fund-raising constitute,
and qualify as, a "home occupation"? The Zoning Ordinance prescribes maximum square footage
for such occupations. And its very definition of "home occupation" includes the relevant key
words "operated only by the inhabitants of the subject residence."

In reality, would non-resident staff members of the Kapors' foundations regularly or
frequently work at 2707 Rose? This well may explain why the building would be so big--and why
there'd be 10 or 12 parking spaces!

If the fund-raising would qualify neither as a purely residential hobby nor as a home
occupation, how would it be classified? Arguably it would be an "office use," which the
Zoning Ordinance defines as "A building or portion of a building used for conducting the
business or affairs of a profession, business service, non-profit organization, agency, public utility and/or government entity." It might also be called a "charitable use," which the Zoning Ordinance defines as "A use which is conducted by a charitable institution, organization or association organized for charitable purposes and conducted for charitable purposes only, as defined under state or federal tax laws."

But now look at the Zoning Ordinance's Section 23D.16.030, which lists the specific uses allowable in the R-1 District. This mentions some non-profit-type uses such as "clubs" and "community centers," both of which would require a Use Permit--but it doesn't list general "office use" or "charitable use."

The project application failed to disclose anything at all about using part of the building for fund-raising. The staff report said nothing about such use and whether or not it would be allowable in R-1.

For this and other compelling reasons the whole project should be thoroughly--and even-handedly--reconsidered.

Sincerely,

John S. English
2500 Hillegass Avenue, #3
Berkeley, CA 94704-2937
To The Mayor, all Councilmembers, and members of the Zoning Adjustments Board:

I'm writing to express my enthusiastic support for the proposed building project, a single family home at 2707 Rose Street.

I live about a mile away (in Councilmember Capitelli's district), but I do visit friends who live right next to 2707 Rose, and I'm aware of the many problems that this run-down property has caused for years.

The proposed project addresses every concern of the nearby neighbors. I'm impressed by the degree to which the new owners of the property have extended themselves in every way to be cooperative.

The immediate neighbors are all very supportive of the project--and it makes sense that their voices should carry the most weight in this matter.

I strongly encourage The Mayor and Councilmembers to vote at your April 27 meeting to reject the appeal and to affirm the use permit that has been approved by the Zoning Board.

Thank you for your consideration,

Jean Weininger
1949 Hopkins St.
Berkeley, CA 94707
Re 2707 Rose Street

TO:  City Clerk and The Mayor and all Councilmembers
RE:  Affirm the ZAB Use Permit Decision - 2707 Rose

This is to state our support for the project on 2707 Rose Street. We live in the Berkeley hills near the fire station on Shasta and have admired what the architect did for that structure. We understand that the same architect, M. Wong, is the architect for the project on Rose Street. We have looked at the plans available on the web, and think they show a very imaginative approach which has taken into account many of the concerns neighbors might have. Incidentally, initially, before the fire station on Shasta was built, we too had reservations about the size of the structure that was going to be built. However, the structure melts into the scenery beautifully.

John and Manjari Ohala
1149 Hillview Road
Berkeley, CA94708
Dear Mayor Bates and council members,

We have recently purchased a William Wurster designed house within a block of the proposed building site on 2707 Rose Street. One of the reasons for choosing to live in this particular neighborhood was the combination of architecturally significant homes and wooded hillsides.

We have seen the new plans for the lot 2707 Rose Street. We agree with many of our neighbors that this project will be a boost to the neighborhood. Not only the deteriorated existing house will be removed, but the open space on this large lot will be maintained, and the plans incorporate thoughtful landscaping and off street parking. The size and style of the house is appropriate for the large lot and the neighborhood.

We honestly see no downside. We would therefore like to ask you to deny the appeal, and hope you vote to support the project.

Yours sincerely,

Cindy Looy & Ivo Duijnste
1409 Greenwood Terrace
Berkeley, CA94708
18 April 2010

Dear Council Member Wengraf,

I write as a constituent of yours and someone concerned with environmental and historic preservation in Berkeley. I'm a member of the Hillside Club and I admire enormously the efforts of its women founders to engender respect for Berkeley's natural beauty and to preserve the hills from inappropriate building, street layout, tree-cutting, and other destruction so often wreaked by thoughtless development. The natural beauty of the hills, such an important value in our city, was preserved from the sort of blanket development that has devalued large areas of our neighboring towns. As you no doubt know, the Hillside Club was founded in 1898 to "protect the hills of Berkeley from unsightly grading and the building of unsuitable and disfiguring houses."

Which brings me to my concerns with what seems an inadequately reviewed proposal to demolish an existing home of 2500 square feet at 2707 Rose Street and to build a nearly 10,000 square foot building on this very narrow block, the house and 10-car garage requiring, as I understand it, zoning waivers for both height and setback from the street.

There was less-than-successful communication with the neighborhood, some neighbors only finding out just a few days before the 1/28 Zoning Board meeting about the very large scale of the project. There were no story poles placed on the site to give people an idea of the size of the project. I'm concerned about what trees would be cut down to allow for construction of such a large structure. Older trees absorb much more carbon than new trees, so taking down old ones should be avoided (as should demolition) if the city is aiming to be environmentally responsible.

Berkeley city government wishes to present our city as respectful of the environment and committed to reducing energy use and automobile traffic, and to slowing global warming. Thus for the Zoning Adjustment Board slip through with evidently little serious examination a proposal to build a greatly out-of-scale building in a neighborhood of relatively small houses, on a hillside adjacent to an earthquake fault and in a potential slide area seems, at the least, irresponsible. The only apparent explanation is that the prospective owner is very wealthy.

Our city employees should be capable of better judgment than the ZAB approval of this project without regard to neighbors' concerns would seem to imply. Thus, I urge that the project be remanded to the ZAB for more careful consideration and more even-handed recognition of the concerns of the neighbors and all those of us who want the city to ensure that new building on Berkeley's hills is done responsibly, with consideration of both the built and the natural context. Clearly, little heed was paid to these concerns when the ZAB granted their waivers for this huge building.

Thank you.

Charlene M. Woodcock
2355 Virginia Street
Berkeley

cc: city council members
TO: CITY CLERK AND THE MAYOR AND ALL COUNCILMEMBERS  
RE: Affirm the ZAB USE PERMIT DECISION - 2707 Rose Street

FROM:
DAVID AND VALERIE ALLSWANG  
2606 Shasta Road  
Berkeley, CA 94708  
510-704-9120

We reside at the junction of Rose Street and Greenwood Terrace (our house is at the gore between Shasta and Rose) which is about 100 yards from the proposed development. We have lived there for 15 years and are aware of the deterioration of the existing structure and the blight it brings to the neighborhood. We support the application to construct the proposed house and urge you to let the Zoning Board's decision stand.

Sincerely,
David Allswang  
Valerie Allswang
April 19, 2010

TO: Mayor Bates and Councilmembers /c/o City Clerk, City of Berkeley
FR: Marcy Wong Donn Logan Architects
VIA: Hand Delivery to 2180 Milvia Street, Berkeley, CA
RE: Transmittal of 16 copies of design drawings regarding 2707 Rose Street

INTRODUCTION

The proposed house project meets or exceeds the City’s zoning development standards. Its abutting and confronting neighbors have over a five-month intensively period collaborated with the applicant and architect, to arrive at a design which they now strongly support. Being thoroughly knowledgeable about and involved in the project, these adjacent neighbors have worked hard to inform the outlying neighborhood about the details of the project and the reasons the project is an asset to all of them. The following facts underline the neighborhood’s strong support for the project:

1) THE PROPOSED HOUSE NOT ONLY POSES NO DETRIMENT, IT BRINGS BENEFITS

Rather than introducing detriment, the project solves serious, long-standing problems on the street and in the neighborhood the most significant of which are:

a. The design provides a 3-point vehicular turn around at the dead end (currently vehicles must back down a narrow, steep road);

b. The design removes graffiti and other blight and beautifies the currently bleak view of the base of the La Loma Avenue fly-over.

c. By providing 8 off-street (and out of public view) visitor parking spaces in addition to 2 spaces for the owners’ cars, the design creates safe off-street parking on Rose Street where any on-street parking is both impermissible and a safety hazard; and finally:

d. This new house removes existing hazardous conditions on the site, such as fire, vandalism, graffiti, and blight. In addition to addressing the delayed maintenance of the vegetation and trees which have resulted in the accumulation of bio-fuel, the proposed removal of a severely dilapidated, long-abandoned home fronted by unattractive carports/sheds/garage that has attracted vandals, homeless occupants, and graffiti "artists will enhance the safety, security and aesthetics of the entire neighborhood.

2) THE PROJECT MEETS OR EXCEEDS ALL ZONING STANDARDS

a. Lot coverage: The house unusually low lot coverage (only 16% whereas Zoning allows up to 40%) on this 1-acre site, and exceptionally large setbacks from the side and rear property lines, which means less impact on neighbors than the typical house. The coverage is very low as 84% of the property is open space.

b. Height: Although, due to the challenges of steep topographies, it is common in the Hills for projects to be approved with heights beyond the Zoning standards, this two-story project does not exceed the 28 ft. average and 35 ft. maximum height limits of the Zoning Ordinance. (The upper level is entirely living area, the lower of two levels has both a subterranean garage built into the hill, as well as living area day-lighting to the north.) Moreover, the height of the building blocks no protected views, poses no shadow or privacy impact and is supported by all of the immediate neighbors.

3) THE PROPOSED NEW HOUSE HAS NO SIGNIFICANT IMPACTS ON ANYONE BEYOND THE IMMEDIATE NEIGHBORS WHO AGREE THAT THE IMPACTS WILL BE SALUTARY.

This proposed new house is invisible or hardly visible from any vantage point; and it is far less visible to its neighbors than the average Berkeley House. The project’s roof is lower than LaLoma Road, thus it blocks no Bay or other protected views of any houses above or elsewhere. This site is one of the most hidden and tree-screened properties in the hills. The existing and added trees will further shield views of the house from any direction. The steep topography of the site means that the view from Shasta Road (immediately below) is mostly of a tree-lined, verdant cliff. To see the house, one would have to contort one’s neck way up, and even then it is doubtful that much, if any, of the dark surfaced house would be visible.
April 19, 2010
Mayor and Council
2707 Rose Street

4) THE CITY PROCESS FOLLOWED ITS USUAL AND THOROUGH REVIEW

The City’s Planning Department crossed every “t” and dotted every “i” in making sure that the design followed all rules.¹ The process was conducted exactly the way it should have been:

- The applicants are fortunate that their site is surrounded by people who welcomed them and their proposed new home to the neighborhood. This is the result of many productive and positive meetings and discussions among the architects, the applicants and residents of abutting and confronting properties. The architects and applicants listened closely to and worked closely with these neighbors to devise and implement the design aspects the neighbors wanted.

- The City’s planning department was meticulously thorough in its review (over a period more than eight months long) of every aspect of the submittal and in working with the architects following submission of the project application. The notification of the neighborhood with regard to mailed notices within the standard 300’ radius, and the posting of the required bright yellow posters on surrounding major streets met if not exceeded Zoning Ordinance requirements. The City was correct in not requiring story poles, as is their ‘discretion’ and their practice, even in the hills, when, as is the case here, a project clearly will not impact protected views, light or privacy and when the immediate neighbors are in agreement that story poles are not necessary. It is clear that no protected views are impacted, as the roof of the project is well lower than the La Loma Avenue structure guardrail. Moreover there is no mention of story poles in the Zoning Ordinance. Only the project submittal checklist mentions story poles:

  “7. Story Poles – Required for new buildings and stories in the "H" District, or as determined necessary by the project planner.”

This language’s exact words give the Planner latitude. There is no authority mandating Staff to require story poles from distant neighbors where basic common sense dictates that the more distant neighborhood is clearly not impacted by protected views light or privacy.

5) THE PROJECT IS APPROPRIATE TO THE NEIGHBORHOOD IN EVERY WAY

a) Neighborhood Fit

The neighborhood consists of an eclectic mix of houses with regard to era, style, and size. If anything, the house size and lot coverage is well below what it could be, and the open space percentage and setbacks are far larger than those of the typical house in the neighborhood. The City’s own records show that the size of the house, whose livable area approaches 6,500 sq. ft., is far from “unprecedented.” Of note is the fact that the houses immediately surrounding the site average well over 3,000 sq. feet and in some cases exceed 4,000 sq. ft. Some of the most cherished houses in the neighborhood are over 6,000 sq. ft. in area. The lot is very large and could contain a house four times the size of the proposed project or four houses with “granny units” in a subdivision.

¹ November 4, 2009  E-mail excerpt from Greg Powell, COB Planner to Donn Logan, Architect:
“....Just as an FYI, we inform applicants that most of new homes in the hills can take at least 6 months, and in looking at the track record over time, as many as 12 month, to be heard by the ZAB ....”

To make architectural style an issue in this case would be to deviate from the department’s purview. It is notable that the “Historic Resources” closest to the site (which are hundreds of feet away), are in one case the Hume House which is even larger in area than the subject project and in another case, the Greenwood Commons complex of Modern houses that were at the cutting edge of design ideas for their time. Ironically, had these projects been prohibited at the time they were built for being too big or too modern (as Appellants assert re: 2707 Rose design), these currently cherished Historic Resources would not exist!

6) THE PROJECT COMPLIES WITH ALL LOCAL AND STATE REGULATIONS

All projects on steep hills have construction issues of grading and excavation; the Zoning Department has already imposed conditions that must be met in this regard. However these technical issues are routinely addressed in great detail and strict scrutiny at the construction documents and building permit phase to meet life safety standards. This project will go through the same rigorous process required by the City’s Building Department that other projects do.

The project is not in a landslide zone nor does it have liquefaction hazard; this has been verified by a licensed geo-technical engineer. Therefore, the project is not and never was subject to and has not been “exempted” from the Alquist Priolo Act. The project shall be structurally designed to meet or exceed the seismic and structural standards of the currently applicable California Building Code.

The project exceeds the required points under the City’s “Build-It-Green” program. The Build-It-Green program (which the City of Berkeley has adopted for its green standards) involves a Green Point check list for single family homes. Under this system, a home is considered green if it earns at least 50 points. This project has thus far a score of 91 points, which may ultimately be even higher as the design develops.

7) THE PROJECT HAS STRONG SUPPORT FROM THE NEIGHBORHOOD

The project has the support and approval of not only all of the immediate neighbors, but post ZAB hearing, have received – as of today - the additional support of or no objection from all the neighbors with addresses on upper Rose Street (6 of 6), the vast majority of occupants on Shasta Rd (12 of 20), Tamalpais (18 of 26), Greenwood Terrace (7 of 9) and Greenwood Common (6 of 8).

CONCLUSION

The proposed new house has no significant impacts on anyone beyond the immediate neighbors who agree that the impacts will be salutary. As a result the vast majority of both the immediate and the wider neighborhood is supportive of and/or has no objection to the project. Most of these neighbors live much closer to the project than do the appellants.

In addition to the project’s compliance with all local and state regulations, the project meets or exceeds all zoning standards, and the City process followed its usual and thorough review process.
To: Berkeley City Council  
From: Jane Edington  
Re: Appeal of ZAB Decision, 2707 Rose Street Project

This letter is in strong protest of the ZAB approval for the massive, completely inappropriate, nearly 10,000 sq. ft building approved for the historic arts and crafts neighborhood of 2707 Rose Street.

This building is two-thirds house and one third parking garage for ten cars. It will be home to only two people but claims to be "green." The greenest building is the original building left in place and upgraded. A demolition and moving and removing 40,000 cu. ft. of soil and building this nearly 10,000 sq. ft. building for two residents cannot possibly be considered green.

The failure to appropriately notify the neighbors, the hidden signs posted, secret deals with four nearest neighbors 6-8 months before notifying the rest of the neighbors within 300 feet just two weeks before the ZAB hearing disregards the laws of the City.

The City staff, the architect and the owners' applications all deceptively list the project as a 2-story 6478 sq. ft. dwelling with a presumed separate 3394 sq. ft. ten car garage—not the 9872 sq. ft. building that it is.

The construction aspect of the trucks and equipment required to move the massive 40,000 cu. ft. of soil, the building of massive concrete foundations for the garage and the upper 6478 sq. ft building above could not be less appropriate for this space and neighborhood. Rose St dead ends at the west edge of the property and is one lane 16-20 ft. wide leading up to it, Shasta Rd. below is a 2-lane main access road to the neighborhoods above; There is no way to turn around at the end of Rose St.

Filed with the appeal is a summary of clear violations of the rules and regulations of the City and interpretations of State laws that favor the applicant and his project over treatment of other applicants and contrary to City of Berkeley rules. (See Appeal and Addendum.)

- No recognition of neighborhood landmarks or historic resources
- No notification of the Landmark Commission of proposed demolition of an architecturally significant house built in 1917 by distinguished San Francisco Architect Abraham Appletone called in his obituary, "a titan of the architectural world."
- No mention of the distinguished Berkeley Dunham family who built the house, nor Helen and Frank Lindgren who last resided there for more than 50 years. He was a distinguished LBL scientist who pioneered the identification of blood lipoproteins and was a Nobel prize contender. The Lindgrens were old friends of ours.
. No Alquist-Priola Act which required earthquake safety tests—the Hayward fault is just 750 ft. away for this "two story building."
. Incorrectly declared exempt from the California Environmental Quality Act
. Declaring the project was "truly compatible" with the surrounding style and scale. Locally known as "the Wal-Mart", this commercial or industrial design could not be further from the truth.

All of these issues point to skewing of land use regulatory process in favor of a prominent applicant with a totally inappropriate project.

I strongly urge you to support the appeal and deny the most inappropriate project ever proposed for this historic Berkeley neighborhood.

Very truly yours,

Jahe Edginton
Harris, Leslie D.

From: h.lerner@comcast.net
Sent: Monday, April 19, 2010 3:40 PM
To: City Clerk
Cc: spopsvig@pacbell.net
Subject: Request to Affirm ZAB Use Permit Decision re 2707 Rose, #09-1000038

Via E-Mail:
clerk@cityofberkeley.info

Hon. Tom Bates
Members of the Berkeley City Council
Berkeley City Clerk
2180 Milvia Street
Berkeley, CA 94104

Re: Request to Affirm ZAB Use Permit Decision re 2707 Rose, #09-1000038

Dear Mayor Bates and Members of the Council:

We write to express our support for the new single family residence and garage at 2707 Rose Street. We reside on Tamalpais Road, in a home we have owned for 24 years, very close the intersection of upper Rose, Shasta and Tamalpais, and not far from 2707 Rose. Although our home is in the same neighborhood, our property will not be directly affected by the project. The project creates no view, height, or privacy concerns for us. We also cannot see how the proposed new home could have significant adverse impacts for the neighborhood in general or on anyone other than the immediately adjacent neighbors. The 2707 Rose property was developed nearly a century ago; the current project involves no change of use or increased burden on the property or the neighborhood. We therefore have serious reservations as to the relevance of opinions—pro or con—of persons who do not own directly affected properties. Nonetheless, if you do consider the views of unaffected homeowners in the neighborhood to be of importance, we would like to register ours for your consideration.

First, we regard the concerns of the four families whose adjacent properties, at 2637 Rose, 2645 Shasta, 1371 LaLoma, and 2650 Shasta, will be directly affected by the project, to be a proxy for any concerns that we might have as to possible wider impacts. The owners of 2707 Rose, Mitch Kapor and Freda Kapor Klein, consulted extensively with the immediate neighbors. The immediate neighbors have written to us and other neighbors, stating that the owners “were exceptionally collaborative, responsive and sensitive to [their] concerns and issues.” The immediate neighbors strongly support the project. We have no reason to question their judgment or good faith.

Second, we are pleased that the project will directly address the long-standing issues with the area beneath the La Loma overpass at the top of Rose, the lack of off-street parking on upper Rose, and the lack of an adequate turn-around area at the top of the road. We understand that the owners, when these issues were brought to their attention, volunteered solutions to them at their own expense. Such beneficial improvements at no expense to the public should be accepted with open arms.

Third, the existing structures at 2707 Rose need to be replaced as soon as possible. The prior owners effectively abandoned the property and permitted it fall into ruin. We understand that the existing house has
suffered from animal infestation and has been used from time to time by squatters. We think that the neighborhood is fortunate that the property is now in the hands of responsible new owners with the interest, resources and determination to eliminate such blight.

Fourth, many of the strongest objections to the project go to the project's contemporary design. We do not agree with those objections. We do not think that new construction in the neighborhood needs to conform to traditional designs from earlier eras. The neighborhood has homes with a variety of architectural styles, including several "mid-century modern" homes in the vicinity of the project. A contemporary modern design by prominent local architects will be a positive addition to the architectural richness of the area. We think the project will add, not detract, to the historic interest of the neighborhood's residential architecture.

Fifth, we are pleased that the project is of extremely low density, with only a single residence remaining on a very large lot, nearly 30,000 sq. ft., with a very small coverage ratio. Although the proposed home is large, it is of a size that is not unprecedented in Berkeley, and is similar in size to other homes in the neighborhood. As a practical matter, approval of this project would prevent the property from ever being subdivided and having actual wider impacts beyond the adjacent properties. The site and the neighborhood can certainly accommodate this project without serious negative consequences.

We accordingly believe that the ZAB made the right decision in approving issuance of use permits for the project, and that the City Council should affirm of the ZAB's actions. Thank you for your attention.

Sincerely,

Henry Lerner
JoAnne L. Lerner

cc: Paul and Susan Opsvig
April 15, 2010

Berkeley City Council
c/o The City Clerk
City of Berkeley
2180 Melvia Street, First Floor
Berkeley, CA 94704

Dear City Council:

I am writing because like the others who are currently writing to you, I am concerned regarding the notably uneven way in which the zoning approval process for the 2707 Rose Street proposed residence has been handled. I grew up in Lincoln, Massachusetts, a small town outside of Boston where we had town meetings. The meetings were open to all of us -- young and old -- and I was early on impressed by the open exchanges between the richest men (usually men) and the farmers and small business men who took part in the meetings and argued for and eventually resolved their separate concerns. I am both proud and pleased to be living in Berkeley where we don't have groups battling to take the study of science out of our schools and where both Democrats and Republicans along with Independents can still engage in civil dialogue. And we have City Council Meetings.

Critical parts of the country such as, for instance, our legislature in Washington is not functioning at all. President Obama has to go around Congress to get any action taken -- as, not incidentally, did President Bush before him. The Supreme Court has now passed a law which will allow Corporations to extend the mythology of their personhood further by being able to openly and legally provide even more enormous sums of money in the buying of elections and the lobbying of Congress. Where the larger legal frame around all of us is buckling and our democratic processes and practices are rather speedily dissolving, the concern expressed through our letters by our relatively small group of Berkeley citizens concerning the zoning rules and practices being ignored in this instance must seem insignificant and a nuisance, even a bloody nuisance.

Actually what is happening here is an exact microsome of what is happening in ever so numerous towns, cities, states in our country. Huge size (comparatively speaking) is smothering smaller size and individuals. Huge corporations are killing off smaller corporations, smaller businesses, small family-run operations, and individuals. The analogy between our situation here with the push to insert a truly enormous structure into a closely knit, long-standing, historically interesting residence area and the big money, big corporate push everywhere to wipe out smallness and individuality is strikingly similar.

At some point, if we are to save an open-minded,
fairness-oriented, democratic society and way of life, we have to stop ignoring agreed to laws and practices and begin to protect and cherish them for the foundation they provide for communal connection and trust.

Sincerely,

Mildred M. Henry
April 14, 2010

The City Council
c/o The City Clerk
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

Re: 2707 Rose Street Zoning Appeal scheduled for April 29.

Dear Members of the Council:

I am writing to express my concerns about the proposed development of nearly 10,000 square feet at 2707 Rose Street. We live only about 100 yards from the building site and are worried about the potential impact on the neighborhood.

We have discussed this project with our neighbors. The planned building is much larger than other houses in the neighborhood and the style is not in character with the rest of the neighborhood.

We ask that further consideration be given of the impact of this project on our neighborhood before the project is approved.

Sincerely,

[Signature]

Ira Lapidus

2671 Shasta Road
Mayor and Members of the Berkeley City Council
c/o The City Clerk
2180 Milvia Street, First Floor
Berkeley, California 94704

Re: 2707 Rose St.; Appeal of the ZAB decision of 01/28/10; Use Permit # 09-10000038

Dear Mayor and Councilmembers,

In the last weeks I have met with some of you regarding ZAB’s approval of the project proposed for 2707 Rose Street. All of you will have met with concerned neighbors prior to the appeal hearing. While the neighbors in the vicinity have every right to be concerned, I am writing because I believe that this issue represents a problem of city-wide importance. The process as it has unfolded for this project has been so unlike that endured by other less significant projects that questions regarding preferential treatment, systemic bias and equal treatment under the law must be raised.

As a local architect I must be able to describe and characterize the city’s approvals processes to my clients. During the past decades I have been able to describe to them a process that, if not quick and if not inexpensive, has been fair and evenly applied. Berkeley’s process has at its root an assumption that community members should be informed and invited into the process, and that those voices are important. The process that we have witnessed for 2707 Rose seems to be the opposite of inclusive and fair; in fact it leaves me unable to explain to my clients what treatment they may be able to expect at ZAB. Does the ease or difficulty of attaining approvals vary if the applicant has a lot of money? if the applicant describes himself as the world’s nicest guy? if the applicant is a philanthropist? In the case of 2707 Rose it appears that these attributes make approval both quick and certain, justify a very sloppy staff report, obviate the need for any meaningful discussion, and make any community involvement nothing more than a nuisance.

When ZAB heard this item, they had in front of them 28 letters of concern from the neighborhood. Additionally, ZAB heard polite testimony from concerned neighbors asking for two things 1) a month’s continuance to better understand the proposed project (most had only found out about it less than two weeks prior to the hearing), and 2) the installation of story poles so that the scope of the project, one of the largest houses ever built in Berkeley, could be understood at full scale. ZAB did not read the letters and summarily dismissed the requests of the concerned neighbors: no continuance, no story poles. This result was shocking to the neighbors but may be even more shocking to those who are familiar with the city processes. ZAB usually errs on the side of caution and routinely grants continuances so that productive conversations can take place amongst neighbors and project proponents. ZAB has done so countless times before the 2707 item was considered and has already done so after it. In the case of 2707 there was no discussion of the project, and no evaluation of the staff report, just
obsequious kow-towing to the prominent applicant and rudeness to the concerned neighbors. All of this falls well below the minimum standard that every citizen has the right to expect of city boards and commissions.

I have personal experience of a 20 square foot addition (yes, 20) which received far more staff scrutiny than this project has seen. Make no mistake about it: this project consists of nearly 10,000 square feet of contiguous built area; even more if you count the massive terrace upon which it sits. Although the proponents always refer to only the area of the house, obscuring the true size of the project, I feel sure that a builder would charge them for the 3,500 square foot garage as well, so I would suggest that we call a spade a spade. This will be one of the largest houses ever built in this city and the rubberstamping of its approval with little or no real scrutiny amounts to nothing more than arrogance and sycophancy. The call for story poles is entirely appropriate; the scale of this structure is completely unlike anything around it; to imagine that lay people might be able to infer something so massive and so different by only consulting a tiny drawing is absolutely unrealistic.

There is no doubt that ZAB’s approval should be vacated; the staff report is riddled with errors and misstatements, and ZAB’s unwillingness to review the staff’s work is truly negligent. As I understand it, Council has three options: 1) uphold ZAB’s decision (I believe that this would be legally untenable), 2) uphold the appeal, vacate the approval, and remand the item to staff and to ZAB, and 3) uphold the appeal and hold the item over for public hearing at the City Council. As unattractive as the third option may be, I believe that it offers the only responsible way forward. Staff and ZAB have shown themselves to be incapable of operating in good faith when it comes to this application; remanding it to ZAB may end up with a process that resembles the norm, but to hope that ZAB would be self-policing and self-correcting is far too much to expect. Council should seize this opportunity to explore how a city board could act so brazenly and so contrary to their trust, and then Council should implement the changes necessary to re-establish that trust.

It is worth pointing out that the concerned neighbors have not once attempted to dictate an architectural solution; however, I would be unfaithful to my profession if I didn’t offer a critique. From an architectural point of view, the building is very disappointing. It is an example of the bland and featureless modernism that propagated once the founding principles were eroded. True modernism is lyrical, artful, forward-thinking, and engages its context (both physical and cultural) in a meaningful way; this building is none of these things. Charles Keeler and Bernard Maybeck clearly outlined the principles of good hillside building; sadly this building violates every one of them. I wonder if the owners realize that they will be identified with a banal and awkward building, an energy dinosaur in the era of global warming, a true white elephant exemplary of backward thinking. The New York Times article that questioned whether such mansions could ever be ‘green’ used 2707 as a negative example; others in the article espoused a trickle-down technology alibi, stating that energy efficiency and green building will of course be pioneered by the rich and will then make its way down to the common folk. As bizarre as that idea may be, it should be pointed out that 2707 does not measure up as a green building in any way. Its score of 91 on the Build It Green Checklist sounds great, 91 out of 100 is excellent, right? Well really it is 91 out of 250 for a score of 36%, a failing grade in any test. The building avoids the more rigorous LEED certification process, as it would not come close to a high rating. I wonder if the owners know how much better they could be doing? Beyond being used as offices for philanthropic work, the building itself could champion
admireable values such as sustainability, efficiency, and contextual sensitivity, and could be a beacon for future projects. It could be a game-changer. Instead it just lowers the bar at a very critical time. One might ask why such a monster of a building is being forced on this community. If the proponents built a house half the size (still well in excess of the average house size in the neighborhood) and spent some of the capital saved to create an exemplary zero-net-energy building (and then simply donated the rest of the savings to the underprivileged rather than re-raising that money through wasteful fundraising), then perhaps we would have a win-win-win situation. As it is, we have the intrusion of a baronial estate into a quiet neighborhood, peasants be damned.

As a veteran of many runs through the city approval processes, I can attest that it can be quite a delicate matter to balance the interests and input of all concerned parties. Badly done, the process easily becomes corrosive and toxic; sometimes applicants and neighbors become soured on each other and on the neighborhood as a whole. Done well, with open channels of communication and a design team that is responsive and accepting of neighborhood concerns, the process can, and has, led to better projects and closer relationships within the neighborhood. The 2707 project is a case study in how NOT to address the process. So far, a sense of entitlement and in-crowd privilege has prevailed, leading to widespread alienation and distrust. When asked if he would entertain a month’s continuance for the sake of educating the neighborhood about the project, the owner simply stated that such a thing would be "inappropriate". One wonders what is appropriate in this case; one would think that when moving into an established neighborhood, and building a very large, ostentatious and intrusive building, it would be appropriate to reach out and inform the neighbors as much as possible, to hear their concerns and take them to heart. After all, these people will be one’s neighbors for a long time. Apparently what is thought to be appropriate here is to manipulate the system and ignore any concerns but one’s own.

There is no doubt that the building would be improved through a more community-based process. A building this big and so willfully out of context with its architectural environment will effect that community negatively for generations. The community should have something to say about it; once the story poles are erected I’m sure that the already significant level of concern will increase, and rightfully so. It is too bad that it will take council action for the applicants to supply their future neighbors with the information that they have been asking for during the past few months. If the project is remanded to ZAB, the improvement of the building will take care of itself IF AND ONLY IF ZAB affords the concerned neighbors equal treatment, AND if ZAB knows that it is under close scrutiny from here on out. Certainly concise and pointed council instructions would be a crucial part of any remand.

I look forward to looking back on this sad set of events as an aberration that allowed the city to recalibrate one of its most important boards and re-establish the kind of caring community-based process that represents the city so well.

Sincerely,

Gary Earl Parsons, AIA
Born in Berkeley, UCB ’76 and ’82
Berkeley businessman since 1987
Dear Mayor Bates and all Councilmembers,

We, Susan and Paul Opsvig, are the immediate neighbors to the west of the proposed construction at 2707 Rose Street and have a very personal investment in what happens here. We have lived on upper Rose Street for almost 34 years and before that, 6 years on nearby Tamalpais Road.

We am writing in support of the Kapor’s proposed new home and to ask that the Appeal be denied.

From the time they first bought 2707 Rose, Mitch Kapor and Freada Klein have been sensitive to our needs and generous and cooperative in finding solutions to long standing problems that have affected us and our immediate neighborhood. They asked for our input and they listened. This has been true beyond our expectations and we are grateful.

Approving their proposal will solve many problems, not create them.

2707 Rose is a very large property. We are aware that this property could be subdivided exaggerating the problems we already have. While this is a large house the scale is in keeping with the size of the lot and the existing trees and new landscaping will filter the view of the house from all directions.

We would like to tell you about the issues that we face on upper Rose Street:

Rose Street is a very narrow, very steep dead end street with extremely little parking and difficult turn around for visitors and the many vehicles mistakenly coming up the street.

There is no legal parking on this area of Rose Street. Illegal parking prevents emergency access and presents dangers to those living here. We live in a high fire zone and access is crucial. For safety reasons we requested very early on that the Kapor’s provide significant off street parking for themselves and their guests as there is no legal or safe on-street parking. Their design provides for this. We ourselves have off street parking for 8 cars and that is often not enough.

Neglected tree maintenance on the property has led to power outages and fallen branches.

The abandoned and rapidly deteriorating existing house has attracted unauthorized people looking for shelter and raised the danger of fire. It has also attracted abandoned cars, graffiti, and break-ins.

In our opinion the Kapers and their architects have confronted these problems with their proposed construction plan. We strongly approve of their plan.

We think they will be fine neighbors, take care of their property, and be responsive to legitimate requests from other neighbors. We have been waiting a long time for something positive to be done here and are eager for it to get started.
The writers of the Appeal have complained about the process and suggested without any concrete evidence that there was special consideration given to the Kapors by the City. This was not our experience. What we observed was the opposite. The City of Berkeley staff were knowledgeable, informed the Kapors of the rules and expectations of the city, and the Kapors in turn followed the rules. I was at the ZAB meeting and testified for the proposed construction permit. The unsubstantiated accusation that there was anything underhanded or dishonest by the Board is both without any merit and also regrettable.

The writers of the Appeal and their supporters do not live near the proposed project and have not expressed any understanding or concern for the problems at this end of Rose Street. Whatever decision is made by the Board will not affect them significantly but will affect those of us abutting the property every day, 365 days of the year.

What does affect all of us is the divisiveness in the larger neighborhood provoked by the way the opposition to the project was promoted and the subsequent Appeal. The best way for the Board to promote the healing process for this neighborhood is to make a decision on the ZAB permit and the Appeal at the April 27th Board meeting. Extending the process will lead to further divisiveness and anger.

Please vote on April 27 to affirm the ZAB decision on this project, reject the Appeal, and support the immediate neighbors of 2707 Rose Street.

Thank you, Paul & Susan Opsvig, 2637 Rose Street, Berkeley, CA 94708
April 19, 2010

City Clerk’s Department
2180 Milvia Street
Berkeley, CA 94704

Re: Board Decision Date: 01-28
USE PERMIT: #09-10000038
Project Location: 2707 Rose Street
Date amended NOD mailed: 02-05-10
Appeal Period Expiration: 02-19-10

To the City Clerk:

In accordance with the provisions of the Berkeley Municipal Code and as per your instructions on the submittal of supporting material to be included in the appeal packet by the deadline of April 19, 2010, I am submitting the attached addendum to the appeal.

Included in the addendum are copies of letters to the Mayor and members of the City Council from the Brandt-Hawley Law Group, Lawrence B. Karp, Consulting Geotechnical Engineer, and the Berkeley Architectural Heritage Association.

Sincerely,

Susan Nunes Fadley
1 Tamalpais Road
Berkeley, CA 94708
suminu@mindspring.com

Attachments: Addendum, 3 letters, supporting exhibits
April 18, 2010

To: Berkeley City Council

RE: ADDENDUM TO THE APPEAL OF THE ZONING ADJUSTMENTS BOARD (ZAB) DECISION OF 01/28/10
USE PERMIT: #09-10000038
Project Location: 2707 ROSE STREET

The purpose of this Addendum is to clarify and amplify important legal points we raised in the Appeal, and to provide additional supporting information. We discuss these points and refer to them by Appeal section and text page and specific Exhibit as appropriate, with additional Exhibits attached as needed. (The complete Appeal is downloadable from www.2707rose.org).

A. INSUFFICIENCIES IN THE NOTIFICATION PROCESS (Appeal, text pages 2-5)

1. Public Notification and the ZAB process: (Appeal, text pages 2-4)

Beyond insufficiencies in public notification and the ZAB process, including the fact that the Board did not acknowledge or consider 28 letters asking for more time to evaluate the project, we now realize one more insufficiency of notification with respect to the owners of 1397 and 1401 La Loma, two confronting properties as defined in BMC 23F.04.010-Definitions (see Exhibit J). ZAB residential project submittal guidelines indicate that proposers should “Provide abutting and confronting neighbors (includes owners and occupants) an opportunity (1) to review the full set of plans and (2) to indicate that they have seen these plans.” Neither the required signatures, nor evidence that the applicants attempted to contact these two owners and provide them with the plans has been submitted.

2. Landmarks Preservation Notification: (Appeal, text page 4-5, item 2) and Historic Resources (Appeal, text page 6, item (c)):

The staff report fails to mention, and denies the existence of, historic resources in the neighborhood (Appeal, page 6, item 1(c) and Exhibits H-1, H-2, H-3), which is clearly incorrect, as discussed further in a letter in support of this Appeal submitted by the Berkeley Architectural Heritage Association (BAHA, Appendix 1).

These conclusions appear to be based in part on inaccurate information in the architect’s application. For example, the architect’s assertions concerning the history of the existing house are simply not correct. The Structure History in the application packet states: “There were no architects or landscape architects, renowned or not, who were associated with the site.....” In fact, the original 1917 City Application for a Building Permit (Exhibit K), obtained from records held by BAHA, lists the architect as “A. Appleton.” Abraham Appleton (1887-1981) was a distinguished architect who worked in his early years with Bernard Maybeck, John Galen Howard, and William C. Hays, before opening his own practice in San Francisco. He is described as “one of the titans in the local architectural world” in his Examiner obituary of August 25, 1981. The BAHA records indicate that 2707 Rose is the only residential example of

2707 Rose Appeal Addendum 1
his work in Berkeley and must be one of his earliest independent commissions. This point is amplified in the BAHAA letter (see Appendix 1). Further historical aspects of the existing home with regards to its owners have been pointed out: the first resident, Lucia Dunham, taught music at Berkeley and Juilliard again, Appendix 1); the last resident, Frank Lindgren, did pioneering research on cholesterol at the Lawrence Berkeley Laboratory (http://www.lbl.gov/today/2008/Apr/15-Tue/lindgren-obit.html).

The Structure History thus incorrectly denies that the building has any history attached to it that might warrant notification of, and review by, the Landmarks Preservation Commission (LPC). As pointed out in the Appeal, the LPC was not notified that a house was going to be demolished, a process routinely followed with the LPC for residential projects.

B. INACCURACIES AND INSUFFICIENCIES IN THE STAFF REPORT (Appeal, pages 5-14)

1. Excavation/Slope. The report does not mention the impact of massive excavation and topographical changes to the property. (Appeal, text pages 5 and 6, item 1(b))

The staff report noted that some 1500 cubic yards of soil would be moved or removed, with about 800 cubic yards being used for fill of the plinth underlying the structure. Taking into account that dislodged soil is known to be roughly half as dense as compacted and aged soil, this would mean about 700 x 2 = 1400 cubic yards of soil to be removed. Rose Street is the only reasonable access for multiple heavy loads to and from the proposed construction project. This would require 140 trips of the 10-yard-capacity trucks that could most easily be maneuvered on narrow Rose Street. Add to this the hauling of tree debris, delivery of building materials and supplies, including concrete, and the number of trips could exceed a thousand.

Rose Street is listed by the architects’ submission and the staff’s vicinity map as being a street of 25 ft width. This is incorrect. The Right-of-Way is 25’ wide, but the actual street width is between about 17 and 20 feet. This section of Rose, more of a country lane than a street, also narrows as it approaches the dead end that is the access to 2707 Rose. The pavement is already in an advanced stage of disrepair. The lower portion allows parking, and is usually filled by eight to ten cars, leaving a passageway of around ten feet. Medium-sized trucks such as the 10-yard or 20-yard vehicles that would be used for hauling soil are themselves about ten feet wide. (For comparison, a typical passenger sedan is about 6-6.5 feet wide.) As Rose Street approaches its end, the street is red-lined, with no parking allowed. All trucks, empty or full, using this approach would probably have to back up or back down the street, not having enough room at the top to turn around. The stress on Rose Street by all these trips during this project will be enormous. All parking would have to be disallowed for the construction period of up to two years. A large percentage of the residents along this path are Senior Citizens, some with limited mobility. The lack of parking and the traffic and construction noise from 8 am to 6 pm on weekdays and 9 am to noon on Saturdays will also greatly impact their lives.
These considerations should be included in assessing whether the scale of this project is compatible with the neighborhood and other criteria in the General Plan. These impacts should have been thoroughly examined in the project review, so that the above difficulties would be apparent to the public and the ZAB. To be sure, any construction project on the site would have some of the problems listed, but this project will multiply them by five or six, considering not only structure size, but the demolition of an existing home, the removal or relocation of some 1,500 cubic yards of hillside soil, the concrete needed for a plinth big enough to support a structure totaling ten thousand square feet, not to mention the delivery of all the materials needed to actually construct the building and its contents that would occur in the later stages of the project.

Another environmental impact during construction that needs to be taken into account is the demolition and construction of the Berryman Reservoir, which will take place nearly concurrently. The reservoir is roughly 1000 feet from the Rose Street site, and truck and heavy vehicle access to it from below the hills will have to use the same streets (e.g. Cedar or Eunice). The cumulative impact of these two immense endeavors on the neighborhood would be considerable.

2. Seismic Hazards, Landslide, Alquist-Priolo Act: Appeal, text page 7, item 1(d). (We note a minor correction in this section of the Appeal in that the 2007 and 2009 versions of the Alquist Priolo Act exempt both wood- and steel-framed two-story homes.)

The 2707 Rose plot is inside of the Alquist-Priolo Special Studies zone, lying about 750 ft from the Hayward Fault and the City also lists it also as being in a landslide area. More comments on the geotechnical aspects of the plot are contained in the letter by a professional in this field, Lawrence B. Karp, a consulting engineer in this field (Appendix 2). This letter we believe makes it clear that further investigation of the geotechnical aspects of this project are needed, both for the stability of the structure and the safety of the neighborhood surrounding, and particularly below, it.

Regarding the number of stories, the staff report states that the structure was exempt from additional study under this Act because it involved a two-story wood-frame, single family dwelling. We strongly insist that the proposed structure is a three-story building and thus should not have been exempt from further Alquist-Priolo study. We present a comparison of the architect's elevation with the figure illustrating the BMC definition of story in Exhibit I. We return to the consequences of this below in discussing the California Environmental Quality Act (CEQA) provisions. The ramifications of this issue are further discussed in the letter by Larry Karp (Appendix 2).

C. ENHANCED USAGE ISSUES

Subsequent to the ZAB hearing, Mr. Kapor, one of the applicants, was quoted in the Daily Californian (http://www.dailyca.org/article/108372/city_approval_of_house_plans_incites_resident_oppo) as justifying the extraordinary size of his project by saying that “a substantial part of the home would be used to raise funds for community and campus groups,...” These are certainly
laudable activities, but City law regarding Low Impact Home Occupation (http://www.ci.berkeley.ca.us/uploadedFiles/Online_Service_Center/Planning/Low_Impact_Home_Occupation_Application.pdf) limits residential (R-I) home occupations to a maximum of 400 square feet, and to activities that do not involve employees. A “substantial portion” of 6,478 square feet, or even more so 9,872 square feet, would certainly be a great deal more than 400 square feet.

We note that, although no permits have been requested for any activities other than normal residential occupancy by two people, Mr. Kapor’s statement raises further environmental impact issues of enhanced traffic and noise concomitant with its use as a locale for events, as well as possible office use, after the construction is completed.

D. NON-DETRIMENT FINDINGS IN THE APPLICANT’S STATEMENT AND STAFF REPORT/FINDINGS AND CONDITIONS

The project was declared categorically exempt from CEQA review pursuant to Sections 15322 and 15303 of the CEQA Guidelines, and further that these exemptions did not trigger the exceptions of Section 15300.2.

We believe that, as presently proposed, the project’s unusual size, location, nature and scope may have significant impact on its surroundings. It is inconsistent with applicable General Plan policies and does not respect the context of the surrounding built environment. It is three stories high and located in an Earthquake Fault Rupture Zone and a landslide area. More specifically:

**Applicant Statement, Finding 1 (Staff General Finding C),** states that the project conforms to Berkeley Municipal Code Section 23D.16.070 and Section 23E.96.020 Hillside (H) District Development Standards.

This is incorrect.

The proposed project exceeds the maximum allowable height, and encroaches on the required front yard setback (see more discussion in Finding 6).

**Applicant Statement, Finding 2,** states that the project protects the character of Berkeley’s Hill District and the immediate environs.

Our Appeal states that the project does not agree with the policies in the General Plan. It is out of character in size, height, and bulk. Staff claims that the house will be screened by trees, yet the architect’s model, photos, and site plan, as well as visual inspection of the building site, all show otherwise. The “trees” in the photo simulations mask the true height and mass of the building, which would have been clarified if story poles had been erected as part of the first review. The extensive soil removal may require additional tree removal.

**Applicant Statement, Finding 5,** asserts that the house has only two stories and does not exceed the maximum 35 ft. height limit.
This is incorrect.

We repeat here for emphasis: A story is defined in BMC 23F.04 as follows: “If the finished floor of the level directly above the ceiling of a basement, garage structure, cellar, or unused under-floor space is more than six (6) feet above the existing grade at any point, such basement, cellar, or unused under-floor space shall be considered a story.” The finished floor above the under-floor space (called a “level” by staff) that exists under the two finished living floors in the proposed project is consistently 9 feet above the finished grade, and in places as much as 18 feet or more above existing grade. Exhibit M makes this amply clear.

Maximum Height is defined in BMC 23F.04 as “The vertical distance of a building at any point, within a given plane, from finished grade to the top of the roof or parapet walls” (see Appeal, Exhibit I-3(c.).) Finished grade is defined in BMC 23F.04 as “The lowest point of the finished surface of the ground between the exterior walls of a building and a point five (5) feet distant from said wall....” (see Appeal, Exhibit I-3(b.).) We show in Exhibit M here (a clarified version of Exhibit I-1 in the Appeal) which clearly shows that the maximum height of the building occurs at the northwest corner of the Living Room / Master Bedroom wing, where the parapet, measured to finished grade 5’ from that wall, yields a height of 39’ (if the info on the architect’s sheet 5 is consulted) or 45’ (if the info shown on the architect’s sheet 11 is consulted). Even though the architect’s drawings are inconsistent, both representations show a maximum height in excess of 35’. Although the building substantially violates the maximum height limit, no variance for maximum height was applied for or approved.

Applicant’s Statement, Finding 6 (General Finding B.3) states that the house is set back from the lot lines at the front rear and sides at greater than required distances.

In contrast, an Administrative Use Permit was granted to allow the house to encroach onto the required 20’ front yard setback.

Applicant’s Statement, Finding 11, states that the project will not have any deleterious off-site impact as a result of the house.

The supporting evidence provided by staff for accepting this non-detriment claim is that the house will provide ten parking spaces and a turn-around for vehicles. This does not include mention of the turnaround that would be required for firetruck maneuvering, with the fire marshal not having been consulted. It also implicitly accepts the notion that ten parking spaces will be a good thing (especially if in-home business use is established in a residential district), even though this implies additional permanent traffic on Rose Street.

We also note that a nighttime and weekend survey of parking on the street at present shows anywhere from 8-10 parking spaces open; one can thus ask if 10 more cars in this neighborhood, for a total of up to 18 or 20 more, is not going to change the environment considerably.
One inescapable deleterious effect due to the construction of this building will be the irrevocable loss of the residential form and scale of this small canyon, and the violation of every General Plan provision regarding context, compatibility, and environmental sensitivity. The views across the canyon of neighboring homes on Shasta will be forever changed. We note again that neighbors have been denied the opportunity to see the building’s full height and bulk represented by story poles.

E. RELEVANCE TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (See also letter from Susan Brandt-Hawley, an attorney practicing in land-use issues: Appendix 3)

Every construction project in California must comply with the provisions of the California Environmental Quality Act (CEQA). The Zoning Adjustments Board approved the project on the basis that 2707 Rose Street was covered by two categorical exemptions pursuant to Sections 15332 (infill housing) and 15303 (small residential projects) and further that the project did not trigger any of the exceptions of Section 15300.2. We disagree for numerous reasons cited in the Appeal and in this Addendum, as amplified below.

This is a project of unusual scope and size (Appeal Exhibits A-1 to A-3) and is located in an Earthquake Fault Rupture Zone. The 10,000 square foot structure will rise more than 55 feet from natural grade, is over 110 feet long, and covers 3-5 times the developed area of the average surrounding homes. The unusual size, location, nature and scope will have significant environmental impact on its surroundings.

The project is not consistent with applicable Land Use and Urban Design policies in the General Plan. It does not respect the context of the surrounding built environment that is characterized by some of the most historic and architecturally significant buildings in the city. The staff report failed to consider that this is one of the most historic neighborhoods in Berkeley. The project disregards several UD policies on issues of height, size, massing and exterior materials.

As discussed above, the architect’s Structure History of the existing house neglected to indicate the architect of record and his standing in the architectural community, as well as the home’s distinguished prior residents, thus compounding the error of not reporting its planned demolition to the LPC.

The project is not a standard single family home for two people. The owner has publicly acknowledged that a substantial portion of the building will be used for the fundraising work of his foundation(s), which makes sense in light of the grand size and configuration of the project. However laudable these philanthropic activities are, they do not create exemptions from zoning or environmental protection.

According to the City’s parcel report, the site is located in an Earthquake Fault Rupture Zone (Alquist-Priolo) and a landslide area (Seismic Hazards Mapping Act). The building is three-stories high. The amount of grading that will be needed on slopes over 50 percent may have significant impacts. Consideration of future landslides and water runoff also need to be considered.
The impacts relating to noise, air quality, and neighborhood safety, as well the long-term influence on historic resources can only be considered and mitigated by a full Environmental Impact Review (EIR). The project, probably the largest steep-hillside single-family structure ever proposed for the City, will involve the demolition of a house, the reconfiguration of a hillside, the removal of trees, soil, and debris, the pouring of concrete for a massive retaining wall and pedestal (plinth), the transport of materials in and out of a site that is accessed by a narrow lane that is less than 20 feet wide at its widest point. Shasta Road to the north and La Loma to the south, both main thoroughfares west from the hills, are the only other roads that border the site. The removal of large quantities of soil, trees and vegetation, and demolition materials and the need to haul it down these narrow hillside roads, through residential neighborhoods, and then along city streets may constitute unusual circumstances and the reasonable possibility of a significant effect on the environment in the form of air pollution, noise pollution, and reduction in air quality for residents.

Cumulative impacts related to the concurrent demolition of the Berryman Reservoir also were not, but must be, taken into account at the initial stage. This major replacement project is projected to begin construction in June 2010, or later, and will extend over at least 18 months. The project will involve major work along Euclid between Bayview and Codornices Roads. The neighborhoods overlooking the project will be affected by noise, dust, and traffic problems during construction. In addition, a 3,677 square-foot major residential addition to an 810 square-foot dwelling on Tamalpais Road is in the planning process. This large project is four house lots away from the intersection of Rose and Tamalpais.

F. SUMMARY AND CONCLUSIONS

Any one of the significant misinterpretations, misapplications, and irregularities described in the Appeal and in this Addendum would require a reversal of the ZAB approval of the 2707 Rose Street project. If Council returns the project to ZAB rather than set it for a full public hearing at a later date, then it should be with instructions that require the submission of an accurate revised project application that meets the requirements of the Alquist-Priolo Act, Berkeley’s General Plan and related ordinances, and is accurate as to height measurements, planned uses, architectural history, grading and disposal specifics, environmental setting, and historic resources. An EIR must be prepared, and the LPC should review the proposed demolition to consider historic resource impacts. Any further review should take place with full involvement of residents, including all abutting and confronting properties.

As one part of the review process for the final design, story poles should be erected. The neighborhood deserves to see what may be coming its way. The poles should be painted day-glo orange so they can be seen through trees that are planned for removal. Accuracy should be verified by a licensed surveyor. Trees to be removed should be marked with day-glo tape. The poles should indicate the scope of the proposed earth-retaining pedestal (plinth), which is up to 20 feet high.

Respectfully submitted,
2707 Rose Appeal Addendum
Signature Page

Susan Nunes Fadley

Charles S. Fadley

Dawn Hawk

Paul W. Newacheck

T. James Symons

Frederick S. Wyle

Mark Hawk
March 25, 2010

Mayor Bates & City Council
2180 Milvia Street
Berkeley, CA 94704

Re: 2707 Rose Street—Appeal of Use Permit #09-10000038

Dear Mayor Bates & Councilmembers:

The Berkeley Architectural Heritage Association (BAHA) is supporting the appeal of Use Permit #09-10000038, approved by the Zoning Adjustments Board on January 28, 2010. We base our support of the appeal on historic preservation issues and on errors and omissions in the project application.

The Structure History report submitted on May 19, 2009 claims that “there is no architect of record and no associated persons of historical interest” for the existing structure. Both claims are wrong.

The 1917 building permit for the Dunham house at 2707 Rose Street, which was submitted as part of the Structure History report, clearly shows A. Appleton as the architect.

Abraham Appleton (1887–1981) was a notable figure in Bay Area architecture. He studied under John Galen Howard and William C. Hays at the newly founded School of Architecture at the University of California, completing his studies at the École des Beaux-Arts in Paris. Howard and Hays thought highly enough of him to have employed him in their private practices. Before establishing his own practice in 1920, Appleton was a junior partner in Hays’ practice.

At the time he designed the Dunham house, Appleton was also employed by the University of California as Inspector of Buildings on the campus. His client, Lucia Dunham, was a well-known mezzo-soprano with an active concert schedule and a teaching position at the University of California, where she was a collaborator of Prof. Charles L. Seeger. In 1921, after the death of her husband, Lucia Dunham returned to New York, where she became an influential teacher at the Juilliard School, training many future concert and operatic singers.

Abraham Appleton went on to establish a successful and long-tenured architectural practice in San Francisco with Samuel Lightner Hyman (1885–1948). The firm of Hyman and Appleton designed the National Bank of Petaluma (1926); an elegant 10-story apartment building at 2100 Pacific Ave., SF (1926); the Jewish Community Center of SF (demolished); Sinai Memorial Chapel, SF (1938); Hebrew Home for the Aged, SF; Visitacion Valley School, SF (1937); and many homes.
Hyman and Appleton remodeled the 16-story Crown Zellerbach building (1908) at 343 Sansome Street, SF, in distinctive Art Deco style. A two-story terracotta-clad commercial building at 2080 Chestnut Street was designed in a similar style.

After Hyman’s death, the firm changed its name to Appleton and Wolfard. In the 1950s and ‘60s, Appleton and Wolfard designed eight modern branch library buildings for the San Francisco Public Library—more than any other single firm. They also designed the Hall of Flowers in Golden Gate Park (1960).

None of this information was made available in the Structure History report.

Moreover, the project application claims that there are no designated historic resources in the vicinity. In fact, the immediate neighborhood is an architectural treasure trove, including but not limited to the following:

- **Greenwood Common**, a City of Berkeley Landmark (designated in 1990) developed by William W. Wurster, with landscape design by Lawrence Halprin and eight houses designed by important mid-century architects.
- **La Loma Park Historic District** (designated in 2002), comprising 13 properties, including two designed by Bernard Maybeck, one by Ernest Coxhead, one by Henry Gutterson, and one by John Ballantine.
- **Rose Walk**, a City of Berkeley Landmark (designated in 1975), designed by Maybeck and lined with houses by Henry Gutterson.

The proposed project overlooks Shasta Road, where there are two properties listed on the State Historic Resources Inventory—one practically next door and the other across the street.

Considering the existing structure’s architectural provenance, its notable first owner, its being a survivor of the 1923 Berkeley Fire, and its location surrounded by numerous historic resources, the project should have been brought to the attention of the Landmarks Preservation Commission. Yet the City staff update sent to the LPC concerning this project defined it only as a new construction, without mentioning the demolition or the historic context of the neighborhood.

The proposed project should be sent back to City staff and to the applicant for preparation of an accurate and complete application, followed by a new hearing before the Zoning Adjustments Board, with input from the Landmarks Preservation Commission.

Sincerely,

\[Signature\]

Daniella Thompson
President
April 16, 2010

Mayor & City Council
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

Subject: 2707 Rose Street (Use Permit)

Dear Mayor & City Council:

I have reviewed the architectural plans and topographic survey filed with the Zoning Administrator for the proposed project and I have visited the subject site on several occasions. I am familiar with the area having been involved since 1960 with new residences on Buena Vista and La Loma, and with remedial foundation design and construction on Euclid, Le Roy, Shasta, Tamalpais, and Maybeck Twin Drive.

The file, and the Administrative Record last updated on 3/1/10, do not show a geotechnical report being part of the record and it appears that the plans were not prepared pursuant to site specific geotechnical engineering recommendations for earthwork (excavations, subdrainage, placement of engineered fill). The architectural Conceptual Grading Plan (Sheet 16) gives cut and fill quantities but the Transverse Section Looking East (Sheet 14) indicates fills are placed directly on very steep existing slopes.

The project site is located alongside the major trace of the Hayward fault and it is mapped within a state designated earthquake-induced landslide hazard zone. Although the site as now configured appears stable, Rose Steps and the concrete of the elevated part of La Loma are cracked from fault creep and other ground movement. An alternative project should be considered to avoid grading with massive excavations and fills as well as the shoring and retaining walls necessary to achieve grades shown on the drawings.

Portions of the major fill for the project are shown to be placed on an existing slope inclined at about 42° (~1.1h:1v) to create a new slope more than 50° (~0.8h:1v). These slopes cannot be constructed by earthwork and all fill must be benched and keyed into the slope which is not shown in the sections or accounted for in the earthwork quantities. To accomplish elevations shown on the architectural plans, shoring and major retaining walls not shown will have to be constructed resulting in much larger earthwork quantities than now expected. The massive grading necessary to achieve grades for the proposed project will involve extensive trucking operations, as a nearly site to stockpile and stage the earthwork is not available. Such work has never before been accomplished in the greater area of the project outside of reservoirs or construction on the University of California campus and Tilden Park. In my professional opinion, the project as proposed is likely to have very significant environmental impacts not only during construction but in service due to the probability of seismic lurching of the oversteepened side-hill fills.

Yours truly,

[Signature]

2707 Rose Appeal Addendum

Lawrence B. Karp

100 TRES MESAS, ORINDA CA 94563  (925) 254-1222  fax: (925) 253-0107  e-mail: lbkarp@lbkarp.com
Appendix 2

April 18, 2010

Mayor & City Council
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

Subject: 2707 Rose Street (Use Permit)
Supplemental Information

Dear Mayor & City Council:

After my letter-report of 4/16/10, which was based on my review of the file as was provided to me by City Planning on 4/15/10, a report “Geotechnical Investigation - Kapur Klein Residence” prepared for Marcy Wong was filed with the City. The report by Alan Kropp & Assoc. is dated 7/31/09. Architectural plans are not referenced, but the text refers to preliminaries and the Site Plan shows locations of exploratory borings. No fill slopes are shown in plan or section and the recommendations for retaining walls do not include lateral earth pressures for slopes with inclinations of more than $2h:1v$ (−27°) or for wall heights more than 12 feet. A footnote reads “Slopes steeper than 2:1 are not anticipated at the site.”, consistent with 2007 CBC §106.1.

The architectural plans I reviewed for the 4/16/10 letter-report are dated 11/12/09 and they include cross-sections and elevations that are inconsistent with the Site Plan and limitations in the 7/31/09 report (there have been significant changes). The Site Plan is the topo survey (attached) overlain with a building footprint of 3,870 sq. ft. (includes carport). Decks indicated on fill total 1,670 sq. ft. without including the off-street parking area. The 7/31/09 report indicates the project will be a 6,000 sq. ft. single family residence with a detached carport. The building that was approved is 9,868 sq. ft. which includes a 10 car garage.

As noted in my letter-report of 4/16/10, the plans (11/12/09) approved by the ZAB (1/28/10) depict portions of the major fill for the project (Sht. 16 attached) to be placed on an existing slope inclined at about 42° (−1.1h:1v) to create a new fill slope more than 50° (−0.8h:1v). The main site section (Sht. 14 attached) has the building’s roof at Elev. 694, lower yard at Elev. 659, and Shasta is at Elev. 616. There will be 78 feet vertical between Shasta and the roof and 43 feet between Shasta and the lower yard level which means, for a 2h:1v maximum slope between Shasta and the building, all vegetation will have to be removed for grading, and retaining walls totaling 27 feet in height will be necessary to achieve grades. Vertical cuts for grading and retaining walls will total about 43 feet (17 feet for bench cutting and 26 feet for wall cutting).

A drawing in the report depicts site drainage to be collected and discharged into an energy dissipator dug into the slope, which is inconsistent with the intended very steep fill slopes. To reiterate, in my professional opinion, the project as proposed is likely to have very significant environmental impacts not only during construction, but in service due to the probability of seismic lurching of the oversteepened side-hill fills.

Yours truly,

Lawrence B. Karp

100 TRES MESAS, ORINDA CA 94563 - (925) 254-1222 fax: (925) 253-0101 - email: lbkarp@lkbkarp.com
April 16, 2010

Mayor Tom Bates
and Members of the City Council
City of Berkeley
Via email mayor@cityofberkeley.info, clerk@cityofberkeley.info

Subject: Appeal of ZAB Permits and Approvals
2707 Rose Street, Use Permit #09-1000038

Honorable Mayor Bates and Councilmembers:

I write to support the appeal of the ZAB actions approving a 10,000 square foot residence on Rose Street, including a 10-car garage. The City has inadequate information relative to site constraints and environmental impacts, and procedures mandated by City ordinances have not been followed. The appeal should be granted.

proposed demolition of an unlisted historic resource]; and *League for Protection v. City of Oakland* (1997) 52 Cal.App.4th 896 [requiring an EIR for proposed demolition of an unlisted historic resource], all at the California Court of Appeal.

**Inadequate Environmental Setting Data.** As explained by the documents in the record, the City does not yet have adequate information upon which to base consideration of approval of this project. As explained by BAHA, the c. 1917 bungalow proposed for demolition was designed by Abraham Appleton, a master architect. This may be Appleton’s only surviving early residential project in the East Bay, and may thereby be eligible for the California Register of Historical Resources and must be treated as historic for CEQA purposes. Yet the project application, and the staff report prepared for the ZAB approval, do not mention the bungalow’s famous architect or its potential historic status.

The City Code requires story poles for this project, which were not erected. This huge structure will be visible from Rose Street and Shasta Road, and beyond, and visual analysis has not been prepared to assist ZAB or the Council in assessing aesthetic impacts. The historic character of the neighborhood has also not been assessed as part of the environmental setting, and so neighborhood compatibility has not been be fairly considered as required by the H District Hillside Overlay District provisions described in the letter of Stephen Twigg, among others.

Consulting engineer Lawrence B. Karp, who holds an earned doctorate in civil engineering from the University of California, Berkeley, and an Earthquake Engineering Certificate from Berkeley as well, and is licensed as a civil engineer, geotechnical engineer, and architect in California and elsewhere, has provided a professional opinion that a geotechnical report is needed to provide adequate information about project impacts on the “very steep existing slopes” of the project site. Mr. Karp, who has over 45 years experience in design and construction with
specialization in stability evaluation of excavations and slopes, site development and construction logistics, indicates that the project as proposed will require “major retaining walls not shown ... resulting in much larger earth-work quantities than now expected. The massive grading necessary ... will involve extensive trucking operations ...” (Karp Letter.) Further, significant environmental impacts are likely “not only during construction but in service due to the probability of seismic lurching of the oversteepened side-hill fills.” (Karp Letter.)

The application and staff report fail to provide accurate and adequate geotechnical information and fail to assess traffic and other impacts relating to disposal of large amounts of fill, including cumulative traffic impacts in conjunction with upcoming improvements to the Berryman Reservoir. The appeal and its addendum also document inadequate and inaccurate application descriptions, including the project height and the three-story nature of the building triggering seismic code compliance.

The project should be remanded to planning staff to assure an accurate project application, adequate supporting technical and historic information, and assessment of the environmental setting.

*The Fair Argument Standard.* The appeal documents grave concern about many environmental issues, including those referenced above. CEQA provides that categorical exemptions are rebuttable: they "shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource" — or for a project that may have any other potentially significant environmental impact due to its particular circumstances. (CEQA Guideline § 15300.2, subd.(c), (f), italics added; Pub. Resources Code § 21084, subd.(e).)

The City's claimed categorical exemption for infill development is not applicable because the site is not surrounded by urban uses but is in a wholly
residential neighborhood marked by steep wooded terrain and very narrow streets. The project is also not exempt as a standard single-family home; the 10,000 square foot, 10-car garage structure is proposed to be used not simply as a residence but for significant fundraising for the applicant's philanthropic interests. This is akin to a small office building in both appearance and function, incompatible with the selected site and neighborhood.

Even if the project were aligned with an exemption category, the standard of review as to whether an exception may defeat the exemption is the "fair argument" standard. If the record before this Council includes a fair argument that the project may have a significant environmental impact, the exemption fails. (Banker's Hill v. City of San Diego (2006) 139 Cal.App.4th 249.)

The fair argument standard triggers an EIR if any substantial evidence in the record — that is, facts or reasonable assumptions/expert opinions based on facts — supports a fair argument that significant impacts may occur, even if a different conclusion may also be well-supported. (Friends of "B" Street v. City of Hayward (1980) 106 Cal.App.3d 988, 1000-1003.) This standard markedly differs from the deferential review normally enjoyed by agencies:

... if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.

(Guideline § 15064, subd.(f), subd.(l).) Importantly, if there is a dispute among experts, the City must defer to the evidence in favor of environmental review. (E.g., Guideline § 15064, subd. (f).)
Substantial Evidence Defeats the Categorical Exemption. The record before the Council abundantly fulfills the low-threshold requirement for the requisite "fair argument" that the proposed project may have environmental impacts based on, among other things:

- Demolition of an historic resource
- Aesthetic impacts on public views
- Neighborhood character incompatibility based on mass, scale, and institutional design
- Traffic impacts relating to construction and non-residential uses
- Massive, unstudied excavation of steep hillsides and creation of large retaining walls
- Inconsistencies with City land use plans and policies adopted for environmental protection
- Unusual size of the proposed structure out of scale with neighboring development and historic character
- Removal of mature trees

Project Conditions Cannot Support a Categorical Exemption. Categorical exemptions only apply to projects that have no potential environmental impacts and require no mitigation measures. As held by the First District Court of Appeal in Salmon Protection and Watershed Network v. County of Marin (2004) 125 Cal.App.4th 1098, any project that requires mitigation measures cannot be approved via categorical exemption:

Only those projects having no significant effect on the environment are categorically exempt from CEQA review. (Pub. Resources Code, §§ 21080, subd.(b)(9), 21084, subd. (a).) If a project may have a significant effect on
the environment, CEQA review must occur and only then are mitigation measures relevant. [*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1199-2000. ]Mitigation measures may support a negative declaration but not a categorical exemption.

(*) at 1102, italics added.

There are a number of “additional conditions” that were imposed on this project by ZAB in order to address potential environmental impacts. While inadequate to address all environmental issues, these also defeat the exemption.

Please grant this appeal, and require environmental review and compliance with Berkeley’s plans and ordinances following submission of a revised project application. All newly-provided information will be put to good use to assist City decisionmakers in making discretionary land use decisions that protect the integrity of its character-defining historic neighborhoods. An EIR will analyze impacts, explore the feasibility of project alternatives, and “demonstrate to an apprehensive citizenry” that the City has analyzed and considered the environmental implications of its actions. (Guideline § 15003, subd.(d).)

Thank you very much for your consideration.

Sincerely yours,

[Signature]

Susan Brandt-Hawley

cc: Zach Cowan (zcowan@ci.berkeley.ca.us)
Exhibit J: Four abutting and confronting properties approving (●), two confronting not consulted (♦)

BMC 23F.04.010 Definitions-

"Confronting Lot: A lot whose front property line is intersected by a line perpendicular to and intersecting the front property line of the subject lot."

(These lines shown in red on the map.)
Exhibit K: Building Permit for present home at 2707 Rose

APPLICATION FOR BUILDING PERMIT
FRAME BUILDING

Application is hereby made to the Department of Buildings and Inspections of the City of Berkeley for permission to build a frame building on the following premises:

Street: Miverva Street
Lot: 11
Block: 3

According to plans and specifications herewith submitted, all provisions of the Building Law will be complied with in the erection of said building whether specified herein or not.

Estimated entire cost of building $ 2,000.00

Building to be occupied as: Dwelling

Estimated number of families 4

Footprint of lot 40' x 100'

Size of proposed building 1 1/2 stories

Height in clear of eaves 12 ft.

Height in clear of first story 8 ft.

Height in clear of second story 10 ft.

Height in clear of third story 12 ft.

Foundation to be of concrete

Walls:

First floor exterior walls 8 inches

Second floor exterior walls 8 inches

Third floor exterior walls 8 inches

Ceiling joists:

First floor: 2 x 4 inches

Second floor: 2 x 4 inches

Rafter:

First floor: 2 x 4 inches

Second floor: 2 x 4 inches

Roof covered with:

Stairs in basement permitted 3 steps or less

Chimneys:

Sized with 3/8 inch diameter

Gas grate fans to be pedestrian entrance or hook

Any dumb waiters or elevators?

Cove beam will be:

Name of Owner of Ground: 
Residence Address:

Name of Owner of Building: 
Residence Address:

Name of Lot of Building: 
Residence Address:

Name of Architect or Design: 
Residence Address:

Name of Builder: 
Residence Address:

I hereby agree to save, indemnify, and hold harmless the City of Berkeley against all liabilities, judgments, costs and expenses which may in any way arise against said City in consequence of the granting of this permit or from the use or occupancy of the dwelling, street or walk accessible space by virtue thereof and will in all things strictly comply with the provisions of this permit and regulations of the City of Berkeley.

Permit No. 647

This Permit expires one year from date unless sooner revoked by the City Council.

Day of Month: 13

2707 Rose Appeal Addendum 23
Exhibit L: This is a 3-story building in the Alquist-Priolo Special Studies Zone: additional earthquake evaluation required

*To finished grade; greater to existing grade

Original from:
2010-01-28_ZAB_ATT2_2707
Rose_Project Plans and Applicant Statement.pdf

From Berkeley Municipal Code: 23F.04.010 Definitions
Exhibit M: Height measurements: inconsistent and exceeding maximum allowable (clarified from Exhibit I-1 in Appeal)

Italicized elevations and differences are based on topographic maps (see I-2)

From drawings:
694' - 655' = 39'
694' - 649' = 45'

655' - from topo*

638' - from topo
(bottom of plinth)

Top of House will be 79' above Shasta Road at ca. 615 ft.

*Measures 648.5±0.3' on this drawing. Drawing and topo. on site plan I-2 do not agree.