

Letter of Appeal to Berkeley's City Council

Re: 1936 Delaware Street's Use Permits as approved by ZAB
From: Ted Kluger, owner 1938 Delaware Street, 845-1335
Date: 3/10/03

CITY OF BERKELEY
CITY CLERK DEPT

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A brief walk on Hearst Street along Ohlone Park reveals that there are no houses as close to the park as this project's rear house in question has been given approval to be built – except for two corner-lot houses. ZAB issued a Use Permit that allows this rear house to stand only four feet away from the park when the required rear setback is fifteen feet.

In walking along the park, one would also see that there are currently no two-story rear units – along all six blocks of park. There are three older apartment buildings that pre-date the 1977 General Plan that stand two-stories near the park, but even they have rear setbacks of five, seven, and eight feet. This sets an alarming precedent! Delaware Street has numerous examples of tasteful one-story rear rental units (1937 Delaware and 1738 Delaware, for example), but nothing on the scale of Mr. Kayah's proposed rear house.

So we ask, is this truly what Berkeley wants? Do we really want to cram the lots in the flatlands with two-story houses in the front, two-story houses at the rear, and parking lots in-between? Should the park view be dominated by this monolith?

My wife and I spent months and months of our lives remodeling and improving our home and yard to suit us and accommodate the needs of our large family. We built our equity with our own sweat. Mr. Kayah's rear house would cause us severe economic loss, significantly reducing the value of our home by rendering our yard much less useable and desirable because of its shade impact and large, looming presence. It would also detract from our present quality of life and ruin our views of Ohlone Park, the only bit of municipal greenery in our area.

ZAB heard complaints about the size of the proposed rear house from every neighbor who would be impacted – Deede Sloan (1803A Bonita St.), Jim Mellgren (1803B Bonita St.), David Hom (1930 Delaware St.), and Ted Kluger. We are the ones who would have to live with these new buildings every day. Does Berkeley's need for more housing outweigh the wishes of the people who live here already? While our complaints were heard by ZAB, we feel they were not properly weighed or considered.

Indeed we feel we were the victims of an unfair bias: it seems that if a building project is located in the flatlands, especially near campus, then anything goes. While this project may not be located up in the Berkeley hills, it deserves the same careful consideration and sensitivity to the existing environment as anywhere else.

To call the proposed rear house a "cottage" (as the architects did) is euphemistic at best. This is a 24-foot by 32-foot, two-story structure with a full basement, three bedrooms, three and a half baths, a kitchen and living space. It would be larger than Mr. Kayah's existing home - half again as big - and would stretch from side setback to side setback to reduced rear setback - smack up against Ohlone Park.

This project lacks any sort of balance. The raised front house will have two three-bedroom units, and the rear house will also be a three-bedroom unit. Hence, there will be

three new units of which none will be affordable housing, and all three are family-sized units. Shouldn't there be some balance by making the rear house a smaller unit that in-turn would be less offensive? To make all three units so large and rented at full market rates is totally excessive.

It seems Mr. Kayah did not erect the story poles for the proposed rear house correctly – at least initially. Ten days after the first ZAB hearing - after the public portion of the hearings were over - he made the poles a full two feet taller. Apparently he knew a staff member from the Planning Department was coming to check the height of the poles. Then this staff person appeared at the second ZAB meeting two days later and attested to the fact that the story poles were the correct height. Thus, we neighbors never even got to see the actual height of the rear house before it was too late to comment.

The architects grossly misrepresented the size and position of our existing single-story shed in the rear of our (1938 Delaware) property on sheets A-2 and A-3, such that it appears that Mr. Kayah's rear building would be slightly behind or south of our shed and would be roughly the same size as our shed. In fact our shed is not anywhere near twenty-plus feet deep as drawn. Mr. Kayah's rear house would project a full ten feet beyond or north of our shed. This sloppy or deceptive drafting tricked us – at first. We even signed Mr. Kayah's petition not realizing that the plans are so very inaccurate.

The rear house is referred to on the plans and project presentation as a "cottage." This simple ploy was enough to confuse all the neighbors who looked at the plans when Mr. Kayah originally sought our approval. Most who signed the applicant's petition were not aware of the size of the rear house. Our new petition will show this.

While this project does conform to the technical zoning requirements, it falls far short of satisfying the numerous non-technical codes and policies.

Section 23D.32.020 of the Berkeley Zoning Code states: "A. Implement Master Plan policy by encouraging the development of medium density residential areas ***characterized by small multiple-family and garden-type apartment structures with a maximum of open space*** consistent with this type of development."

The approved design in fact features large, dormitory-type apartment structures and leaves the barest minimum of required open space (900 sq. ft.)!

It is astounding to us that ZAB did not consider the spirit of the numerous policies listed below that are specifically laid out to guide them in their decision-making.

Policy LU-7 Neighborhood Quality of Life

Preserve and protect the quality of life in Berkeley's residential areas through careful land use decisions.

Actions: A. Require that new development be consistent with zoning standards and ***compatible with the scale, historic character, and surrounding uses in the area.***

A. Carefully evaluate and monitor new and existing uses ***to minimize or eliminate negative impacts on adjacent residential uses.***

The approved rear house detracts from our quality of life and is not compatible with the scale or density of the neighborhood.

Policy UD-3 Regulation of Neighborhood Character

Use regulations to *protect the character of neighborhoods* and districts, and *respect the particular conditions of each area*.

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-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*.

Actions:

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.

The two-story rear house will block a significant amount of sunlight from our yard and vegetable gardens – not just on the shortest day of the year either.

Ted Klugh 3/21/03

1938 Delaware St.

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