

November 15, 2016

City Clerk  
2180 Milvia St., 1st Floor,  
Berkeley, CA 94704

City Clerk:

We the undersigned neighbors of 2902 Adeline appeal to the Berkeley City Council to reverse the Zoning Adjustments Board's decision of October 27, 2016, in regards to Use Permit #ZP2015-0177 to redevelop three parcels at 2902 and 2908 Adeline Street and 1946 Russell Street.

The Notice of Decision was mailed November 1, 2016 and this appeal is timely filed pursuant to Berkeley Municipal Code section 23B.32.050(C). The required fee is enclosed. The required signatures are attached.

We appeal the decision on multiple grounds, including but not limited to:

**1. The ZAB failed to interpret state law and the Zoning Code so as to maximize the number of affordable units.**

On this site, C-SA and R-4 development standards would permit a three-story building with 18 residential units, one 931-square-foot commercial unit, one live-work unit, and 17 parking spaces ("Base Case" in the proforma; see pages 15-17 of Attachment 4 to the 10/27/16 staff report).

Making two (11%) of those units affordable at the Very Low Income (VLI) level entitles the applicant to a 35% state density bonus and two concessions. Using the bonus would result in a four-story building with 25 residential units, one commercial unit, one live-work unit, and 24 parking spaces ("Density Bonus" in the proforma).

To add additional market-rate units using state law, the applicant would have to show that the Density Bonus project would have a lower return on investment (ROI) than the Base Case. They could then use their two concessions to waive two local development standards such as the height or lot coverage limit to reach the same ROI. If that did not get them to their ROI target, they could add an additional VLI unit for a third concession. With an accurate proforma, this would likely not get them more than four stories, unless they used the extra height to increase setbacks on the west side abutting the adjacent residences.

Instead of requiring that, the ZAB granted discretionary use permits to increase the height and lot coverage and reduce the setbacks and parking, approving a six-story building with 50 residential units, the commercial unit, four live-work units, and 24 parking spaces. The applicant then used one of the concessions to increase the floor-area ratio from 4.0 to 4.5. The ZAB's interpretation of the law thus doubled the size of the building without requiring Realtex to give the city or neighborhood anything in return.

## **2. The ZAB failed to negotiate with the applicant for a better deal for the city.**

In her closing comments, ZAB Chair Denise Pinkston said, "I think it is our job to take all the testimony we heard and try to make the best deal that we can." (See attachment 1 to this appeal.) The ZAB then failed to do that job by approving the applicant's proposal without modification. As detailed above and below, the ZAB exercised considerable discretion in approving this project, and could have used it to maximize affordable housing or mitigate detriment to the neighborhood.

Any discretionary increase or waiver by the ZAB should require something from the applicant in return. For example, the applicant could volunteer to build the full number of BMR units required by the city (five VLI and five low Income (LI)) on site. This could result in significantly more affordable units than could be created with the in-lieu fees. You can find many other quid pro quo suggestions in the written record.

## **3. The ZAB refused neighbors' request for mediation.**

The ZAB denied neighbors' request for mediation. Chair Pinkston claimed in her closing remarks that this was because during public testimony some neighbors asked for things the ZAB could not grant, such as higher numbers of affordable units than required by law. Chair Pinkston framed these as demands for community benefits, and therefore claimed that the ZAB did not have a responsibility to respond to the neighbors' concerns. In reality, the neighbors' demands were clearly intended to remind the ZAB of the urgent need for affordable housing and were related to our call for mediation.

One specific proposal neighbors intended to raise in mediation was partnership with an affordable housing developer as foreseen by AB 1394 / California Government Code section 65915.7. The East Bay Community Law Center, which has been assisting neighbors in this matter, has a potential nonprofit partner in mind.

Mediation is identified on the ZAB's own web site as a tool for resolving differences between developers and neighbors and as it has been proven useful in many previous proposals. It should be granted as a matter of course for any application as controversial and potentially precedent-setting as this one.

## **4. The ZAB failed to apply California Government Code 65915(c)(3)(B)**

When the properties were listed for sale with Coldwell Banker last year, listings showed that 2908 Adeline had two units, one with five bedrooms and the other with two, and 1946 Russell had two units, one with five bedrooms and the other with one (see attachment 2 to this appeal).

Since lower-income people live or, prior to eviction by the owners, lived in those units (see attachment 3 to this appeal), California Government Code 65915(c)(3)(B), enacted by AB 2556 in 2014, requires that the project include replacement units of equivalent size with the same total number of bedrooms.

If the properties were subdivided, they were and are subject to Berkeley's Rent Stabilization and Eviction for Good Cause Ordinance. If that is the case, the application described the existing conditions incorrectly, and the tenants may have been illegally evicted or forced out by illegal rent increases. It also

appears that the residential portion of 2908 Adeline is, or was prior to eviction by the owners, most recently used as a rooming house (see attachment 3 to this appeal).

#### **5. The proforma is inaccurate.**

The following all exaggerate the number of units required to achieve the same ROI as the Base Case. (See see pages 15-17 of Attachment 4 to the 10/27/16 staff report.)

A. Since the two LI units were voluntarily proposed by the applicant and have nothing to do with the state density bonus law, they should be added to the Base Case and not be used to reduce the projected ROI for variants A, B-lite, and B. While as detailed above we strongly support adding additional below-market units to the project, they cannot be used as part of the state density bonus ROI calculation the way a third VLI unit could.

B. The proforma shows one live-work unit for the Base Case but four in variants A, B-lite, and B (the approved project). Since the projected rent for a live/work unit is much lower than for a residential unit, this reduces the estimated ROI for the latter variants. The staff report Table 5 and 10/27/16 Errata for 2902 Adeline Street Use Permit #ZP2015-0177 tables 5 and 5a show various other numbers of BMR units, all incorrect for the latter variants.

C. The projected \$1,770,521 in annual revenues from market-rate units is based on the assumption that rents are based on square footage, whereas in Berkeley the market price is determined more by the number of bedrooms. Using current rental prices for new buildings results in significantly higher revenues:

variant B	studio	1-bdrm	2-bdrm	
# of units	3	34	13	
# affordable		2	2	
# market-rate	3	32	11	
market rents	\$2,950	\$3,275	\$4,150	
monthly total	\$8,850	\$104,800	\$45,650	\$159,300
annual total				\$1,911,600

D. The stated land cost of \$3,587,500 seems to be exaggerated, given that in recent years the properties were for sale at various prices as low as \$1.3 million for the two Adeline lots and \$1 million for 1946 Russell without selling (see attachment 2 to this appeal). The \$2.8 million asking price for the Adeline parcels dates from August 17, 2015, the day Realtex filed their application (see attachment 2). The proforma should use the market value of the land now, not the projected increased value when bundled with an approved application.

#### **6. The ZAB's finding that the design is compatible with the neighborhood is unreasonable.**

To grant use permits to exceed the lot coverage and reduce the required setbacks and parking under section 23E.52.070.D.7, the ZAB was required to find, per 23E.52.090.B.2, that the proposed structure is "compatible in design and character with the District and the adjacent residential neighborhoods."

The Design Review Committee unanimously disagreed with that finding, saying that the height should be reduced while preserving the massing toward Adeline Street (see pages 9-10 of the 10/27/16 staff

report). The hundreds of neighbors who signed the petition (see pages 134-181 of Attachment 8 to the staff report) also disagreed.

There are only two buildings in the Adeline Corridor that are more than three stories, and both are nonprofit senior housing. The staff report's comparison with Harriet Tubman ignores the setbacks that allow that building to be hidden from adjacent residences by tall trees. Please see the written record for details of these and many other ways the proposal is incompatible with the neighborhood.

The applicant should be required to update their proforma and shadow studies to include four- and five-story versions of the project incorporating the Design Review Committee's recommendations.

## **7. Approving more market-rate units than are required by law is contrary to city goals.**

Berkeley has fallen well short of its ABAG "fair share" goals in every category except Above Moderate Income (that is, market-rate):

City of Berkeley Housing Unit Production for 2007-2014 Regional Housing Needs Determination					
Building Permits by calendar year	Total Units	Very Low Income (31-50% AMI)	Low Income (51-80% AMI)	Moderate Income (81-120% AMI)	Above Moderate Income (>120% AMI)
2007	258	5	35	5	213
2008	280	23	15	6	236
2009	304	23	23	0	258
2010	5	0	0	0	5
2011	24	10	1	0	13
2012	136	11	10	1	114
2013	39	0	3	7	29
2014	144	4	0	3	137
GRAND TOTAL 2007-2014	1190	76	87	22	1005
07-14 Regional Fair Share Goal	2431	328	424	549	1130
Percent of Goal Achieved	51%	23%	21%	4%	89%

from *City of Berkeley 2015-2023 Housing Element*, page 8)

In this context, given the current affordability crisis, the ZAB should not approve for-profit projects that do not have the highest possible percentage of below-market units.

Accordingly, we the undersigned, request that the Council reverse the decision of the Zoning Adjustments Board approving Use Permit #ZP2015-0177.

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Robert Lauriston  
1918 Woolsey St.

See also attached signature sheet.

**Appeal to the Berkeley City Council  
Regarding ZAB decision at 2902 Adeline Street**

We the undersigned neighbors of 2902 Adeline Street endorse this letter and strongly object to the October 27, 2016 decision ("Decision") of the Zoning Adjustments Board to approve Use Permit #ZP2015-0177 to build a six-story mixed used to redevelop 3 parcels at 2902 and 2908 Adeline Street and 1946 Russell Street (approximately 14,065 square feet total), which includes the demolition of one single-family dwelling and one mixed use (commercial and residential) structure; and the construction of a 6-story, mixed-use building with 4,119 sq. ft. of commercial space including 1 commercial unit, 4 live/work units, and 50 dwelling units, including 2 qualifying units available to very low income households and a commitment to provide 2 additional units on site available to low income households. The project would include 56 bicycle spaces and stacked parking for 24 vehicles.

We listed below own or lease property within 300 feet of the proposed project:

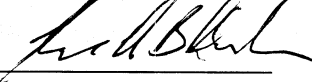
Name (please print)	Address (please print)	Telephone (required)	Signature
David S. Ramin	1930 Russell St.	510-549-9194	<i>David S. Ramin</i>
PATRICK OH	294 Adeline St.	510-274-0256	<i>Patrick Oh</i>
ANDREW VERITY	1943A RUSSELL ST	415-632-7445	<i>Andrew Verity</i>
Shari Selk	1930 Russell St	510-725-1127	<i>Shari Selk</i>
DH Mamon	1927 Russell	510-941-1800	<i>DH Mamon</i>
Catherine Guimond	1929A Russell	510-457-8118	<i>Catherine Guimond</i>
Tamar Enoch	1933 1/2 Russell	510-644-1928	<i>Tamar Enoch</i>
ALEXANDRA FRAPPIER	1933 RUSSELL ST. #A	415-613-9210	<i>Alexandra Frappier</i>
BRUCE COUGHRAN	1933 RUSSELL ST #A	310-430-9744	<i>Bruce Coughran</i>
KEAN STEINBERG	1938 OREGON ST	650-740-3114	<i>Kean Steinberg</i>
LUCINDA BINGHAM	1938 Oregon St.	650-454-6212	<i>Lucinda Bingham</i>

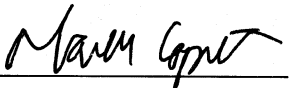
Name  
(please print)

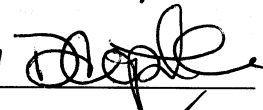
Address  
(please print)


Telephone  
(required)


Signature


KEN POWELSON 1929A RUSSELL STREET 510 526 3752 


MARIL COPITHORNE 1935 RUSSELL ST 510-849-3517 

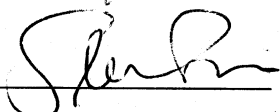
Diana Copithorne 1935 Russell St. (510) 849-3517 


CHRISTINA CHANG 1943 RUSSELL ST #A (415) 307 2285 

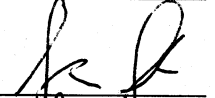
Clayton Anthony 1943B Russell St (710) 502 9285 

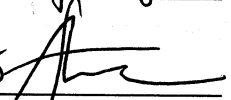
RATUL BROWN 1937A RUSSELL ST 510-499-7002 

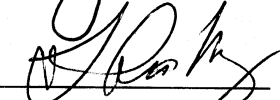
ISHA BROWN 1937A RUSSELL ST 

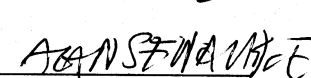
Shwetha Sridharan 1937 Russell St 518 292 6532 

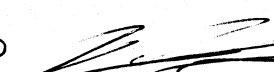
Ellen Woods, 1937 Russell St, #B, 510-301-0334 

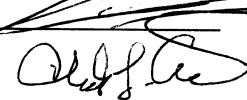
Arum Shamasander " " 818 835-6201 

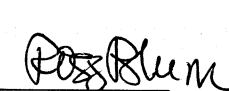
Jerome Graham 1940 Russell St 510 918-0338 

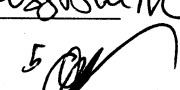
LEONIE ~~SEAN~~ SCHLEY 1933 RUSSELL ST 

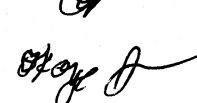
ALAN SENAUKE 1933 RUSSELL ST 

Christopher Chiles 2870 Milvia St. (415) 599-1180 

<sup>to sign</sup> \* Charles Austin 2923 Milvia St Berkeley 510 834 1462 

ROSS BLUM 1933 1/2 Russell St apt B 306.1964 

Omar Kaye 1923 Russell St Berkeley CA 94703 

Okoye Jones 1925 Russell St Berkeley CA 94703 

## **2908 Adeline - Appeal of Use Permit #ZP2015-0177**

### **Attachment 1**

### **Unofficial transcript of Chair Pinkston's closing remarks**

From 4:14:30 in [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=4f125865-9d34-11e6-8170-f04da2064c47](http://berkeley.granicus.com/MediaPlayer.php?publish_id=4f125865-9d34-11e6-8170-f04da2064c47)

Before we vote on the main motion, I want to say why I did not vote to support [Vice Chair Tregub's] substitute motion [to continue the project and ask for four- and five-story design alternatives and encourage the two sides to work together]

I think typically when we have neighborhood concerns it's not an uncommon thing for the Zoning Adjustments Board to ask for there to be some follow-on meetings, um, but what I found to be suggested today was less about the design of the project than just opposition to the size and massing, and that the design changes that could be made, like having a park next to the residential neighborhood, setting the building back significantly away from the residential neighborhood, and gathering the massing, I think that's the best building. So I'm not sure that, that, that, from the, from the, what our purview is, which is design, would, anything would be gained by having additional neighborhood mediation. I think a lot of what's being asked is to have additional community benefits and that that's what folks wanted the negotiation for, was to, was to sit down and demand more from the developer.

And that process is going on around the Bay Area. Um, I think the result of that process is that a lot of buildings get delayed or denied, moratorium or proposed, it's sort of putting the skids on building housing at a time when we need to be building more housing. And I think that in this particular instance where we have an adopted zoning code and we have the density bonus from the state that's confusing and yet that the rules are clear and in black and white, um, I think it is our job to take all the testimony we heard and try to make the best deal that we can. That is our job. And so that's why in this instance I didn't support the continuance, because I think a lot of it had more to do with community benefits than with design, other than to reduce the size of the project, and I'm not hearing from the ZAB that there's a lot of interest in reducing the size of the project, so I'm not sure what would be gained by additional time.

I think that to the extent that the Adeline Corridor Plan comes up with community benefits that are associated with the SCS planning process, that's a different situation. At some point in time if those become clear then presumably there's an upzoning in exchange for a benefit, but that needs to be worked out through the planning process. In the meantime, we have to just enforce the rules we have. So I just wanted to clarify why I felt that way about this particular project this evening.

All right. Are there any further remarks or comments? All right, so then can you take a roll call vote on the main motion?



**2908 Adeline - Appeal of Use Permit #ZP2015-0177**

**Attachment 2**

**Real estate listings for 2902-2908 Adeline and 1946 Russell**

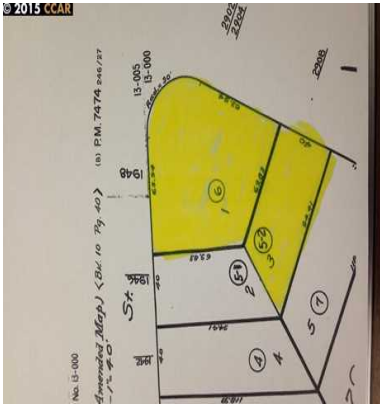


ColdwellBankerHomes.com

# 2908 Adeline St, Berkeley, CA 94703

\$2,800,000 SALE PENDING

For Sale | Pending | Commercial | 3,285 Sq. Ft. | 0.07 Acres



DEVELOPMENT LAND LOTS IN BERKELEY. CURRENT ZONING-MIX USE. 7 BEDROOM/2 BATH UPSTAIRS- 2 units, 2/1 kitchen, living room and 5/1 with a large kitchen, living room. DOWNSTAIRS OFFICE/RETAIL. ADJACENT VACANT LOT #053159800600 WITH 7500 SF IS TO BE SOLD TOGETHER.

### Full Property Details for 2908 Adeline St

**Price:** \$2,800,000

**Status:** Pending

**Type:** Commercial

**MLS ID:** 40717921

**Updated:** 10/2/2015

**Added:** 454 day(s) ago

**Viewed:** 22 times

#### Property History

2908 Adeline St, Berkeley, CA

Listed at **\$2,800,000** on 8/16/15

#### Interior

**Interior Features:** Burglar Alarm, Smoke Detector

**Flooring:** Other

#### Exterior

**Exterior Features:** Wood Frame

#### Parking

**Parking:** Street Parking

#### Location

**Area:** Berkeley Map Area 8

**County:** Alameda

**Driving Directions:** ASHBY-ADELINE

#### Heating & Cooling

**Cooling Type:** Other

**Heating Type:** Space

#### Structural Information

**Roof:** Composition Shingles

**Stories/Levels:** 2

**Square Feet:** 3,285

#### Lot Features

**Lot Size (Acres):** 0.07

**Zoning:** MIX

**Lot Description:** Corner

#### Financial Considerations

**Terms:** Cash, Conventional, 1031 Exchange, Price As Is

Listed by Coldwell Banker Bartels, Thang, Seet

2 of 4

11/12/16, 2:20 PM

2908 Adeline St, Berkeley, CA 94703 (MLS# 40717921) is a Commercial property. 2908 Adeline St is currently listed for \$2,800,000 and was received on August 16, 2015. Want to learn more about 2908 Adeline St? Do you have questions about finding other Commercial real estate for sale in Berkeley? You can browse all [Berkeley real estate](#) or contact a Coldwell Banker agent to request more information.

Listed by Coldwell Banker Bartels, Thang, Seet



# 1946 RUSSELL ST - Berkeley, CA


\$1,000,000

#40730678

5 Beds / 3 Baths / 2,136 Sq Ft

Listed by [Seet Thang](#)  
DRE# [01759282](#)  
[seet.thang@gmail.com](mailto:seet.thang@gmail.com) | 510-812-6999  
Coldwell Banker Bartels

FIXER UPPER

 [Sign Up](#) to see what your friends like.

## Property Details

Source: Public Records   Own Type:   Pool: No   Garage: No   Stories: Two Story   Status: Pending  
Building Type: Detached   Neighborhood: NORTH OF ASHBY   Area: Berkeley Map Area 8   Lot Sq Ft: 3280  
Sale or Rent: For Sale   Point of Sale Ordinance: Yes   Elem. School:   Middle School:   High School:   Special Info: None  
Sale Coop:   HOA Name:   [Property Features](#)   [Berkeley Demographics](#)  
[Berkeley Days on Market](#)

STREET  
URLS

1946 RUSSELL ST - Berkeley, CA

\$1,000,000  
#40730678  
5 Beds / 3 Baths / 2,136 Sq Ft

Listed by Seet Thang  
DRE# 01750282  
seet.thang@gmail.com | 510-812-6999  
Coldwell Banker Bartels

FIXER UPPER

## Property Features for 1946 RUSSELL ST



Prop

Source: N  
Garage: N  
Building: N  
Lot Sq Ft: N  
Elem: S  
Special: N  
Property: N  
Berkeley: N

Views:  
HOA Fees:  
Non-Master Bath:  
Heating: Forced Air 1 Zone  
Upper Level: 4 Bedrooms, 2 Baths  
Additional Rooms: No Additional Rooms  
Foundation: Crawl Space  
Pets: Other  
Kitchen Features: Counter - Laminate, Electric Range/Cooktop  
Inspection Report: None  
  
Construction Status: Existing  
HOA Transfer Fee:  
Style: Craftsman

Lot Description: Level  
HOA Fees Include:  
Garage Parking: Side Yard Access  
Lower Level:  
Exterior: Composition Shingles, Stucco, Wood Shingles  
Additional Equipment: Water Heater Gas  
HOA Amenities:  
Pool: None  
Roof: Unknown  
Flooring: Hardwood Floors  
Yard Description: Back Yard, Fenced, Front Yard, Garden/Play,  
Patio Covered  
Disabled Features: None

HOA:  
Master Bath:  
Terms: Cash  
Street Level: 1 Bedroom, 1 Bath  
Water/Sewer: Sewer System - Public  
Unit Features:  
HOA Documents:  
Laundry: Hookups Only  
Cooling: None  
Possession: COE  
  
Disclosures: Nat Hazard Disclosure  
Fireplaces: None



QR codes by QRstyler

# 2908 Adeline - Appeal of Use Permit #ZP2015-0177

## Attachment 3

### 2908 Adeline rooms for rent

Note that the 12/31/69 dates indicate a Unix date value of 0.

hotpads. For Rent For Sale Explore Dashboard Post a Listing Sign in / Register

Berkeley, CA

Any Price All Beds All Baths Pets More Get Alerts

CA / Berkeley

**2908 Adeline Street #2**  
Berkeley, CA 94703

**\$800**  
1 bed / 1 bath

Below is a snapshot of this listing from Dec 31, 1969.

Photos Street View

1 of 1

Listing no longer available

1 bed 1 bath 180 sqft

Pricing confirmed

Description

This is a room for rent in the apartment, ideally for international student. Location is near Bart station and across street from Berkeley Market Place.

Amenities

Property Amenities Unit Amenities

Laundry: Shared Dishwasher

hotpads. For Rent For Sale Explore Dashboard Post a Listing Sign in / Register

Berkeley, CA

Any Price All Beds All Baths Pets More Get Alerts

CA / Berkeley

**2908 Adeline Street #ROOM 4**  
Berkeley, CA 94703

**\$1,100**  
1 bed / 1 bath

Below is a snapshot of this listing from Dec 31, 1969.

Photos Street View

1 of 2

Listing no longer available

1 bed 1 bath 150 sqft

Pricing confirmed

Description

This is one of the rooms for rent in an apartment. Located near Ashby Bart & Berkeley Bowl Market Place. Ideal for international students.

Amenities

Property Amenities Unit Amenities

Laundry: Shared Dishwasher