To:Berkeley City CouncilFrom:Robert LauristonDate:March 7, 2017Re:3/7 hearing - 2902 Adeline St. - appeal of ZP2015-0177Subject:state density bonus requires replacement of existing units

Staff's response to appeal point 4 rests on the property owners' assertions that the fivebedroom and two-bedroom units at 2908 Adeline "have been owner occupied since the date of construction" and that the five-bedroom house at 1946 Russell "has never been occupied by a lower income household."

- California Government Code 65915(c)(3)(B) looks only at the income of the current or last tenant households. It makes no exception for owner-occupied units. As documented by attachments to this memo, the owners, who live in Pleasant Hill, Seattle, and Malaysia, are operating 2908 Adelas as a rooming house. A list of 25 past or current tenants whose surname is not "Aw" is attached.
- According to co-appellant Jerome Graham, who lives two doors down at 1940 Russell, 1946 Russell had since 2003 been shared by roommates (multiple households) who split the \$2000 a month rent. They moved out when the owners raised the rent to \$4,000, and the owners have since left the house vacant. A list of 37 past tenants is attached.
- If the tenant households are or were lower-income, then sections 65915(c)(3)(B) and (D) require that the project include affordable replacement units of equivalent size with the same total number of bedrooms (see attached code excerpts).
- Since the tenant households' incomes are not known, to quote the law, "*it shall be rebuttably presumed* that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database" (emphasis added). Per the most recent data, 61% of Berkeley renter households are low-income (see attachment for detailed breakdown).

Since the applicant has neither rebutted the required presumption nor provided the otherwise required replacement units, **the project is not eligible for a density bonus**, so the applicant can not use a concession to exceed the maximum floor-area ratio of 4.0.

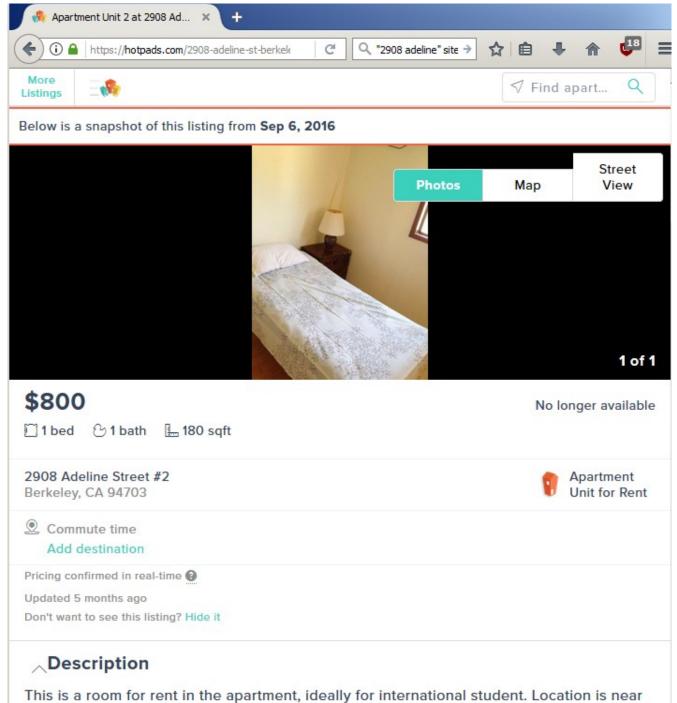
Note that Variant A, discussed in EPS's 8/29/16 and 11/11/16 "2902 Adeline Development Feasibility Review" memos (pages 388-404 print or 390-406 PDF) of the administrative record), has the same number of units but does not require a concession.

Robert Lauriston, one of 30 appellants robert@lauriston.com 510-290-4977 Public records searches find the following current or past residents of 2908 Adeline:

Seowhiong H Aug Shean Aug Michael Boot Chi C. Cheng Jing Han A. Hua Jin Hui Aug Sewo Iong Lee Jacobs Wimala Jang Sinchai Kesorn Catherine Leger A. Long S. Longaug Z. Ren Yao Shi Xiangyun Song Cheng-khim Tan Eileen Ny Tan Indah Tjang Eddy Tjoa Johnnie Tjoa Xiaohui Vhang Shih P. Wang Zuofei Wei

and the following past residents of 1946 Russell:

Stephanie Addocks Henry Alford Bridget M. Andersen Gia R. Austin J. Austin Marc Bianchi A. Blankman Mark J. Borgschulle Jacob Butler Charles Carroll Francisco Delao William Dixon Jeff Drudge Jordan Elbaum Matt George Kate Goines Gabriel Edward Grano Calum Grant Janice Guido Naomi Hopper R. Huang Gregory Iskander Michael J. Jshin Daniel J. Kennedy Eileen J. Kennedy Thomas S. Kennedy Harry Larman Joon Lee Jonathan Foster Matthews Andrea D. Moiseve Barbara Pettus Anthony C. Qvalle Benjamin Schwab Iksuaku Spencer Mark A. Stone Andrew D. Tsu Nicholas Van Brunt



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.

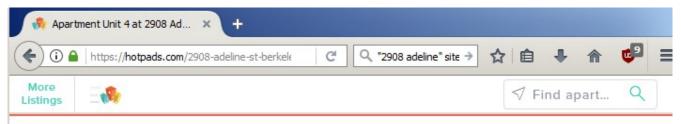
#### Amenities

**Property amenities** 

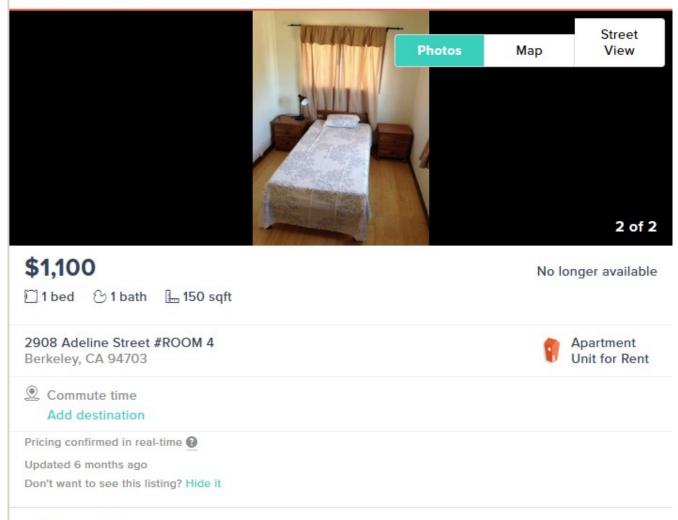
Laundry: Shared

Unit amenities

Dishwasher



#### Below is a snapshot of this listing from Sep 2, 2016



#### 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** 

Laundry: Shared

Unit amenities

Dishwasher

- California (/CA)»
- Berkeley (/CA/Berkeley)»
- Aw Pottery Usa, Inc.

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## **Contact Information**

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Aw Pottery Usa, Inc. 2908 Adeline Streetrussel Street Berkeley, CA 94703

## Other Information

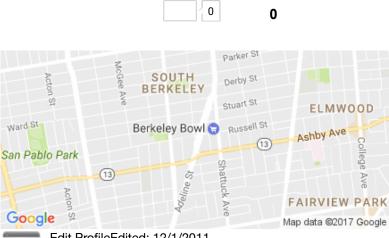
*Entity Status:* Active *Type of Entity:* Domestic Stock *Entity Creation Date:* Nov 14, 1980 *Days in Business:* 13260 days

# **Company Description**

Aw Pottery Usa, Inc. is located in Berkeley, California and is listed as an active Domestic Stock. Aw Pottery Usa, Inc. was started on Nov 14, 1980 which was 13260 days ago.

## **Registered Agent**

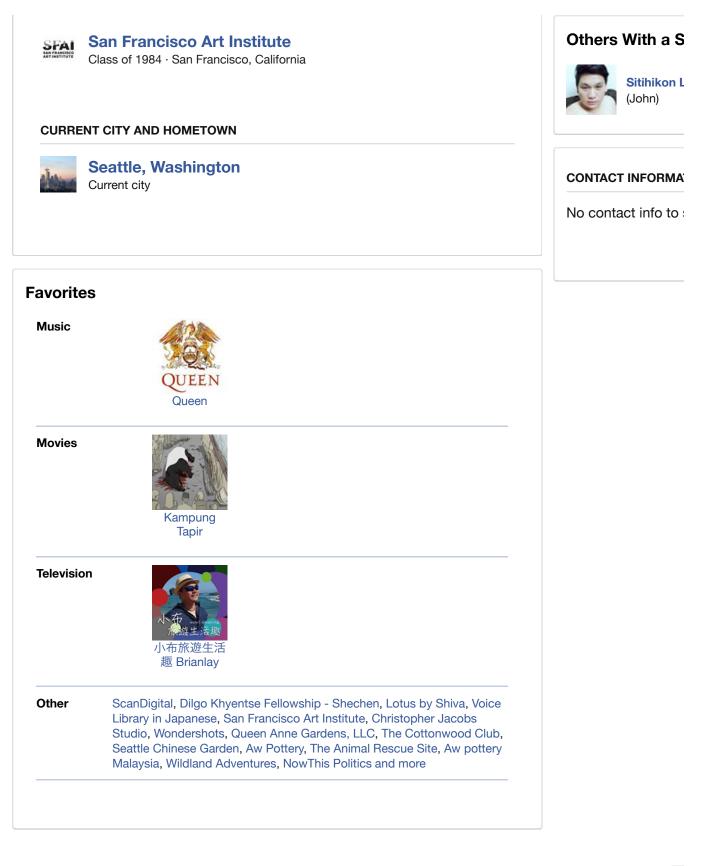
Lee Hua Susan Aw 184 Hazel Drive Pleasant Hill, CA 94523



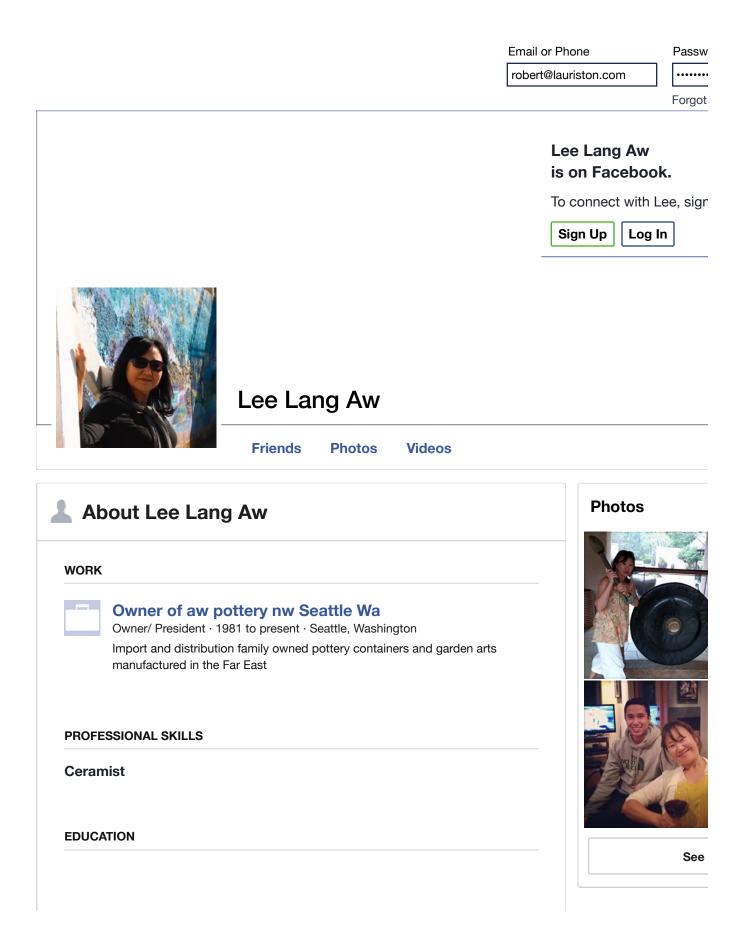
Edit ProfileEdited: 12/1/2011

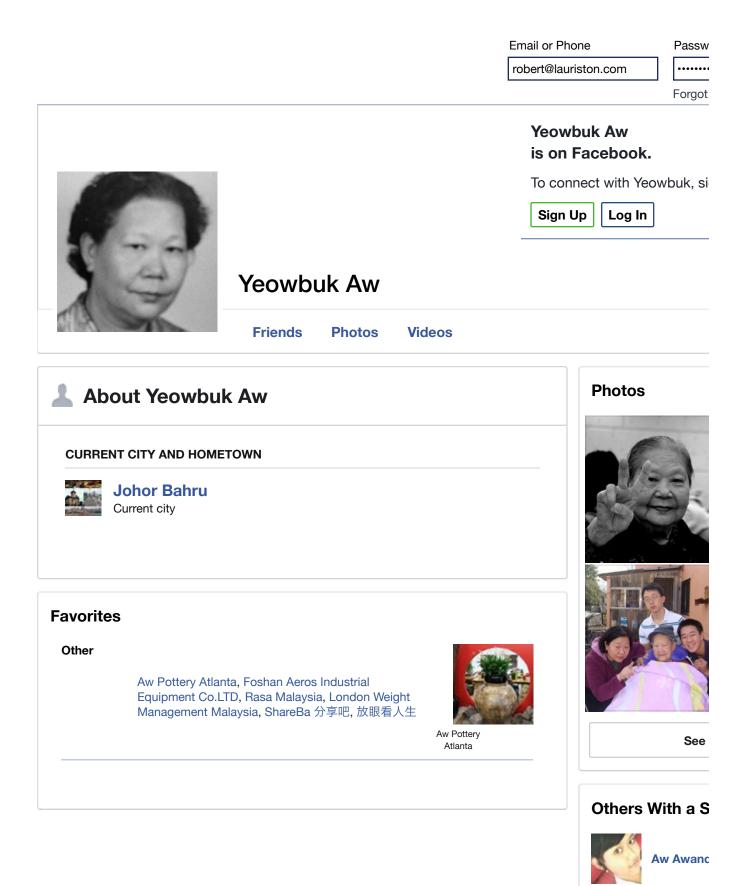
To edit this profile, please click here (/edit/8948363/aw-pottery-usa-inc). You will be able to add a custom description, social networks, website, phone number, and many more features to your ISHCC.org profile.

**Reviews0** Reviews



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3/5/17, 11:55 AM

Berkeley renter household income	# households	% of total
Household Income <= 30% HAMFI	8,850	33.7%
Household Income >30% to <=50% HAMFI	3,580	13.6%
Household Income >50% to <=80% HAMFI	3,640	13.8%
Household Income >80% to <=100% HAMFI	2,780	10.6%
Household Income >100% HAMFI	7,445	28.3%
Total	26,295	
Household Income <=80% HAMFI	16,070	61.1%

Source: HUD CHAS dataset (https://www.huduser.gov/portal/datasets/cp.html)

#### California Government Code sections 65915(c)(3) (excerpts)

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been ... occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b). ...

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income

renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2). ...

(D) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.