

RESOLUTION NO. -N.S.

OVERTURNING THE DECISION OF THE LANDMARKS PRESERVATION COMMISSION AND APPROVING THE STRUCTURAL ALTERATION PERMIT FOR THE CONGREGATION BETH EL PROJECT AT 1301 OXFORD STREET

WHEREAS, Congregation Beth El submitted an application for a new synagogue and associated religious school and day care facilities at 1301 Oxford Street (the Project); and,

WHEREAS, the application was complete on October 17, 1999; and,

WHEREAS, the proposed Project requires approval of a Structural Alteration Permit pursuant to the provisions of the Landmarks Preservation Ordinance (BMC Sec. 3.24.200); and,

WHEREAS, the City determined that an Environmental Impact Report (EIR) was necessary under the California Environmental Quality Act (CEQA, at Public Resources Code Section 21000 et seq. and following), and retained the firm of Pacific Municipal Consultants (PMC) to prepare the EIR for the Project; and,

WHEREAS, PMC conducted the preparation of the EIR under the direction of City staff, and all draft products prepared by PMC were reviewed and approved by City staff; and

WHEREAS, the Notice Of Preparation of an EIR was circulated for review to the public and other agencies in February, 2000 (CEQA Guidelines Sec. 15082); and

WHEREAS, in March 2000, the City held a publicly noticed scoping session to receive public input on the scope of the EIR (CEQA Guidelines Sec. 15083); and

WHEREAS, the Draft EIR was prepared and completed. A Notice Of Completion was filed with the State OPR on July 20, 2000 (CEQA Guidelines Sec. 15085). The Draft EIR consists of two documents: Congregation Beth El Synagogue and School Draft Environmental Impact Report, dated July, 2000 and the Technical Appendices, dated July, 2000; and

WHEREAS, the public review period for the Draft EIR continued for 45 days, through September 8, 2000 (CEQA Guidelines Sec. 15087); and

WHEREAS, on August 7, 2000, the City of Berkeley Landmarks Preservation Commission met to receive public comments on the Draft EIR; and

WHEREAS, on August 7, 2000, the City of Berkeley Landmarks Preservation Commission forwarded comments to the Zoning Adjustments Board on the Draft EIR; and

WHEREAS, at the close of the public review period, City staff and PMC compiled all of the written responses on the Draft EIR and prepared Responses to Comments, all of which are contained in the Final EIR titled Congregation Beth El Synagogue and School Final Environmental Impact Report/Response to Comments, dated October 20, 2000 (CEQA Guidelines Sec. 15088, 15089); and

WHEREAS, the applicant granted a 90-day extension to allow the City to certify the EIR no later than January 15, 2001 (CEQA Guidelines Sec. 15108; Government Code Sec. 65950(b), 65957); and,

WHEREAS, the ZAB held properly noticed public hearings on whether to certify the EIR on November 9 and 27 and December 14, 2000; and,

WHEREAS, on December 14, 2000, the ZAB certified the Final Environmental Impact Report (FEIR) for the Congregation Beth El Project as complete (CEQA Guidelines Sec. 15090); and,

WHEREAS, the FEIR concluded that, despite its designation as a City Landmark, based on the preponderance of evidence, the property was not an historic resource meeting the criteria for listing on the California Register of Historical Resources and, therefore, pursuant to the requirements of CEQA (CEQA Guidelines Sec. 15064.5), the Project would not have any significant environmental impact on an historical resource; and,

WHEREAS, the proposed demolition permit was forwarded to the Berkeley Landmarks Preservation Commission (LPC) for review and comment as required by Section 23C.08.050.C ("Demolitions of Buildings Used for Commercial, Manufacturing or Community, Institutional or Other Non-residential Uses); however, the LPC did not send comment to the Zoning Adjustments Board regarding this proposal; and,

WHEREAS, on January 8, 2001 and March 5, 2001, the Landmarks Preservation Commission conducted public hearings on the proposed Structural Alteration Permit; and

WHEREAS, on March 5, 2001, the Landmarks Preservation Commission conducted a continued public hearing on the proposed Structural Alteration Permit; and

WHEREAS, the City of Berkeley Landmarks Preservation Commission (LPC), at their meeting of March 5, 2001, denied the requested "Alteration Permit" regarding the construction of the subject project, pursuant to BMC Section 3.24.200 (Landmarks, historic districts and structures of merit--Construction, alteration or modification--Approval required) based on a finding that the proposed project was too massive for the site and would adversely affect the special character and historical nature of the site; and,

WHEREAS, the Berkeley City Council, on April 24, 2001, voted to appeal the decision of the Landmarks Preservation Commission and set the matter for public hearing; and,

WHEREAS, the Berkeley City Council held duly noticed public hearings regarding the aforementioned Alteration Permit on July 16, 19, 24; and

WHEREAS, the City Council has considered the Project, the FEIR, the Addenda to the FEIR, and the information submitted in the staff reports and at the public hearings; and,

WHEREAS, the 1975 survey that was the basis for the designation by the City found that, in addition to the house, the site contained notable landscaping, including the large pine and the Auracaria trees, elements that may date from the Byrne era;

WHEREAS, of the elements described as significant in the 1975 survey, the house was demolished in 1988 and the large pine tree was removed in 1997; leaving only the Auracaria tree, which will be preserved and incorporated into this project; and,

WHEREAS, although the Project will alter the site in general and, therefore, will affect the resource identified in the 1975 report as a “hodgepodge of different plants” by adding new landscaping and removing the existing landscaping for the proposed parking spaces and building, the proposed removal of landscaping for the parking spaces and building and addition of landscaping does not constitute an impact that has independent significance nor does the Project adversely affect any element of the site that has been separately identified as historic or as dating from the Byrne era;

WHEREAS, the 1990 affirmation of Landmark status of the site by the Landmarks Preservation Commission included a revised description of the significant features of the site -- trees, open creek bed, open spaces and fence - -features that were thought to be part of the original estate;

WHEREAS, of the features found to be significant in 1990, the project will restore and enhance the existing, exposed portion of Codornices Creek, avoid placing any paving or parking spaces on the unexposed portion of the Creek and will retain the existing, historic elements of the fence along Oxford Street;

WHEREAS, the 1998 Landmarks Preservation Commission subcommittee conducted a site visit to inventory the remaining historical features and concluded that the following features should be reused, preserved or restored: the main Oxford Street entry gates and posts, ornamental metalwork on top of the western fence, the Oxford Street retaining wall, small set of concentric rock circles on the grounds, the small white shack once behind the house (if documentable as original), the Auracaria (Monkey Puzzle tree), the line of cypress trees on the south property line, the oak groves located along the north and southwest sections of the site, and the exposed and culverted sections of the creek; and,

WHEREAS, of the features identified by the Landmarks Preservation Commission in 1998, the project will reuse, preserve or restore the Oxford Street gates and posts, the small white shack, the ornamental metalwork on top of the western fence, the Auracaria (Monkey Puzzle tree), the mature oak trees located along the north and southwest sections of the site and the exposed section of Codornices Creek; and,

WHEREAS, based on requirement of the City's Traffic Engineer to widen the proposed entry gateway to facilitate bus traffic by removing the southern portion of the entry gate and wall and reconstructing to the gate and wall to match the existing wall and gate will not create a significant environmental impact or adverse effect on a significant historic feature because of the conclusion of the EIR that the Oxford Street retaining wall is not original to the Byrne Era; and,

WHEREAS, based on the conclusion of the EIR that the concentric rock circles are not original, the project proposes the removal and replacement with a portion of the structure. This removal is conditioned to require documentation by a qualified historic resource specialist prior to their removal to provide a record of the feature and shall include excavation to determine if any artifacts or remains are located beneath the rock circles; and

WHEREAS, at the recommendation of the City's Design Review Committee to the Zoning Adjustments Board, the Project will not retain the cypress trees but will instead re-landscape with new landscaping; and

WHEREAS, the 1998 Landmarks Preservation Commission subcommittee also recommended that a landmark plaque should be installed at the Oxford Street entrance to commemorate and describe the importance of the Byrne House and to include a photograph of the original appearance of the house; and

WHEREAS, the project incorporates the 1998 Landmarks Preservation Commission recommendation to install a plaque to commemorate and describe the importance of the Byrne House, subject to Landmarks Preservation Commission approval of design and content; and

WHEREAS, the 1998 Landmarks Preservation Commission also recommended that the project follow the natural slope of the hillside, preserve the creek's natural environment, including the bay and Big Leaf Maple trees, and that any development should follow the established garden setback line along Oxford Street; and

WHEREAS, the project retains the bay and maple trees in the creek area and proposes to replant the creek area with native plant species, follows the existing east-west slope of the site from Spruce to Oxford Street and locates the building 20 feet from Oxford and Spruce streets; and,

WHEREAS, the applicant has agreed to install and maintain public displays illustrating the site's history subject to approval by the Zoning Officer in consultation with the public and the Landmarks Preservation Commission (see Use Permit Condition A.7), and

WHEREAS, based on the remaining features of the site that were found to be significant by the Landmarks Preservation Commission in 1976, 1990 and 1998, the project will not adversely affect the exterior architectural features of the landmark, nor shall the proposed work adversely affect the special character or special historical, architectural or aesthetic interest or value of the landmark and its site, as viewed both in themselves and in their setting.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley hereby overturns the decision of the Landmarks Preservation Commission and approves the Structural Alteration permit for the Congregation Beth El project at 1301 Oxford Street.

Approved as to form:

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City Attorney