



City Manager's Office

PUBLIC HEARING

January 21, 2021

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jordan Klein, Interim Director, Planning & Development Department
Subject: Appeal of Landmarks Preservation Commission Decision – Denial of City Landmark or Structure of Merit Designation for 1915 Berryman Street

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the decision of the Landmarks Preservation Commission (LPC) to not designate the property at 1915 Berryman Street as a City Landmark or Structure of Merit, and dismissing the appeal.

SUMMARY

In June 2020, neighbors of the property at 1915 Berryman Street in North Berkeley petitioned the LPC to designate it a City Landmark or Structure of Merit (SOM). The LPC considered all of the evidence and testimony, concluded that the property did not meet the standards for designation set forth in the Landmarks Preservation Ordinance (LPO), and denied the nomination. In making its decision, the LPC found that the subject property and extant main building lack architectural merit and the necessary aspects of integrity, or direct connections to potentially significant individuals, organizations, and events that are important to Berkeley's history or culture.

On October 8, 2020, neighbors filed an appeal seeking to overturn the LPC's decision because they contend that:

- The City must complete an environmental review of LPC's decision instead of claiming a categorical exemption for its action pursuant to CEQA.
- Several staff errors occurred during the review process that could have adversely influenced the LPC decision.
- Fines must be imposed for the unpermitted removal of coast live oak trees at the site.
- The subject building represents an opportunity for providing low-income housing.

This report presents the evidence that the LPC considered, and the detailed appeal points, to the City Council for its consideration in resolving the petition for designation and the appeal.

FISCAL IMPACTS OF RECOMMENDATION

Action on the landmark application would have no impact on the City's adopted budget.

CURRENT SITUATION AND ITS EFFECTS

On October 8, 2020, Deborah Kropp submitted an appeal on behalf of a group of 70 Berkeley residents seeking to overturn the LPC decision to deny a landmark application for the property at 1915 Berryman Street. This appeal followed a public hearing on August 6, 2020, at which the LPC reviewed the written application materials and a technical report prepared for the property owner, staff analysis, and public testimony. LPC voted 7-2-0-0 to deny the request [Yes: Abranches Da Silva, Adams, Crandall, Enchill, Johnson, Montgomery, Schwartz; No: Allen, Finacom; Abstain: none; Absent: none]. In accordance with Berkeley Municipal Code Section 3.24.300, the City Council must conduct a hearing to resolve the appeal. The Council hearing is conducted *de novo*, meaning that Council must consider all evidence and make independent findings to support its action.

BACKGROUND

The subject property is located on the northwest corner of the intersection of Berryman Street and Bonita Avenue. It is a rectangular corner lot, oriented in the north-south direction, and is comprised of approximately 10,500 sq. ft. in total area. It features a two-story main building originally constructed as a single-family residence and currently containing a total of three dwelling units. The building faces south, toward Berryman Street. A detached, single-car garage is located at the rear of the parcel, and is served by driveway access to Bonita Avenue. There are mature trees on the site, including multiple coast live oak trees, which are a species protected under City ordinance. The property was developed in 1889, and the main building was built by the prominent firm Lord and Boynton for the owner William Hawes Payson (1855-1914), a co-founder of the First Unitarian Church.

A development application for a 10-unit residential project was submitted for the property at 1915 Berryman Street on May 26, 2020. As part of that application, the property owner provided a technical analysis of the property using the standard Department of Parks and Recreation (DPR) Forms A and B for the purpose of showing that the demolition of the building would not affect a historic resource. Prepared by historic architect Mark Hulbert, the report contains an evaluation of the property's potential historical significance according to each of the standards of the DPR and LPO. In his technical report and final evaluation, Mr. Hulbert finds that the property is not eligible for City Landmark status. He cites the property's lack of outstanding physical or aesthetic qualities or direct associations to any significant historic period or event.

On June 8, 2020, Deborah Kropp, on behalf of 65 Berkeley residents, submitted an application to designate the subject property as a City Landmark or Structure of Merit (SOM). The application was prepared by historian Daniella Thompson in accordance with Berkeley Municipal Code (BMC) Section 3.24.120. The application presented a

discussion of the history of the neighborhood and its associated architectural styles, occupants of the subject building, and the building's architectural features, and concluded that the property meets the criteria for designation.

On July 13, 2020, the applicant submitted a revised report by Mr. Hulbert in response to comments from staff regarding the incomplete development application.

On July 20, 2020, Ms. Thompson submitted a rebuttal to Mr. Hulbert's evaluation, taking issue with several of his statements.

The LPC conducted a public hearing on the designation request on August 6, 2020, which was duly noticed ten days prior to the hearing in accordance with BMC Section 3.24.140. The Commission received approximately 20 letters of support for the designation request and 15 letters expressing opposition. The staff report summarized the relevant information from the record, analyzed it against the applicable BMC/LPO criteria, concluded that the property and extant building dated to Berkeley's early establishment but were not representative of exemplary design or the notable accomplishments of persons important to history, and encouraged the Commission to discuss these matters.

The record showed that Ms. Thompson's narrative history was thorough and well-supported by her research but did not demonstrate connections to history that were direct, significant, or of primary importance to warrant designation as a City Landmark or SOM. There are no photographs of the extant building from its early period and, therefore, there was no documentation to confirm its original appearance or to chronicle its historical integrity; however, permit records confirm that the structure had been substantially altered in the 1920s and 1940s. The property owner's representatives spoke in opposition to the designation and asked the Commission to deny the application, citing a lack of evident historical or architectural significance as presented in Mr. Hulbert's report.

The nomination argues that the property is eligible for listing according to three sub-criteria established in the LPO (see page 59 of the Landmark Application):

Consistent with Section 3.24.110A.1.b. [Properties that are prototypes of or outstanding examples of periods, styles, architectural movements or construction, or examples of the more notable works of the best surviving work in a region of an architect, designer or master builder]: *the William H. & Esther L Payson House possesses architectural merit. It was built in 1889 by the important construction firm of Lord & Boynton and is one of only five surviving buildings constructed by that firm. The Payson House's appearance is unique in the firm's surviving body of work; it is the only single-story, unadorned, hip-roofed building, reflecting the Unitarian spirit of its first owners.*

Consistent with Section 3.24.110A.1.c. [Architectural examples worth preserving for the exceptional values they add as part of the neighborhood fabric.]: *the Payson House is worth preserving for the exceptional values it adds to the neighborhood fabric. It was one of the first houses built north of Berryman Street—an area that wasn't even mapped by the Sanborn Map Company before 1911—and the first house on Block 16 of the Berkeley Villa Association tract, which had been subdivided in 1875. The Payson House is the oldest surviving building north of Rose Street and south of Hopkins Street between Shattuck and San Pablo avenues. The only houses north of Hopkins Street that are the same age are three Peralta Park houses built by Lord & Boynton in the same year. In addition, the Payson House is now the only original structure still standing at the intersection of Berryman Street and Bonita Avenue. The other three corners are occupied by apartment buildings dating from the 1920s, 1960s, and 1970s, respectively.*

Consistent with Section 3.24.110A.4. [Historic value: Preservation and enhancement of structures, sites and areas that embody and express the history of Berkeley/Alameda County/California/United States.]: *the Payson House has historic value. Its builders were the Berkeley pioneers Carlos Reuben Lord (1831–1914) and Ira Alton Boynton (1844–1921), who arrived in Berkeley in 1877 and made their respective names in the civic life of the town as elected officials, leaders of fraternal organizations, and bank founders. In a little over a year, Lord & Boynton constructed many major buildings in Berkeley, including Maurice B. Curtis's fabled Peralta Park Hotel, Curtis's own home, and the Niehaus Brothers' West Berkeley Planing Mill, to name a few. The house was built for William Hawes Payson (1855–1914), a lawyer who cofounded the First Unitarian Church of Berkeley in 1891. Payson continued to be one of the foremost American Unitarian leaders for the rest of his life, serving as president of the church and its various offshoots multiple times. He was also a well-known political reformer, fighting for fair voter representation and active in the anti-graft movement that brought down corrupt San Francisco Mayor Eugene Schmitz and political boss Abe Ruef after the 1906 Earthquake and Fire. The Payson House retains integrity of location, setting, feeling, and association. Despite some exterior alterations carried out in 1925 and the mid-1940s, anyone who knew the house in its early days would recognize it today.*

Mr. Hulbert had similarly evaluated the property according to all of the criteria and concluded that it did not meet any of them.

Almost 80 attendees addressed the Commission during the public comment session of the hearing, which lasted nearly four hours. Thirty commenters spoke in favor and another 48 spoke in opposition. The supportive statements primarily centered on: the subject building's character and an appreciation of its age, which linked it to Berkeley's early formation; a respect for its original occupant, W. H. Payson, and his work in

forming the First Unitarian Church; the neighbors' sentimental attachment to the property and mature trees; and a general belief that the site was worthy of preservation as a symbol of a previous era. Those speaking in opposition believed that the property holds no meaningful importance to Berkeley's history, that the extant building exhibits no aesthetic value or architectural merit, and that the Landmark application is intended to preempt a development that has been proposed to replace the subject building.

After closing the public comment session, the Commissioners deliberated on the facts of the case and evidence presented in the application record. The record before the Commission included: Ms. Thompson's Landmark application and rebuttal to Mr. Hulbert's evaluation; Mr. Hulbert's evaluation; staff's analysis of best practices; and written correspondences from the public. In spite of the conflict between the conclusions of the Landmark application and the DPR Forms, the LPC found that there was sufficient information in the record to take action on the designation request. This information included:

- Photographs of the extant building and its architectural design, which was notably unremarkable.
- Payson's productive life and contributions in founding the First Unitarian Church that are only indirectly associated with the subject property.
- The more notable work of Lord and Boynton in Berkeley, including the LPC's recent designation of the firm's residential property at 2328 Channing Way, approved July 2, 2020 (#LMIN2020-0001).

When the discussion concluded and the Chair called for a motion, Commissioner Crandall moved denial of the designation request citing staff's recommended draft findings that the property possesses insufficient architectural merit, lacks necessary aspects of integrity, and does not represent the significant contributions of historical figures (e.g., Mr. Payson or the firm Lord & Boynton). Commissioner Abranches Da Silva seconded the motion. Commissioner Finacom suggested but did not make a substitute motion for a lesser designation status as a Structure of Merit. The motion for denial of the nomination for landmark status carried with a 7-2-0-0 vote [Yes: Abranches Da Silva, Adams, Crandall, Enchill, Johnson, Montgomery, Schwartz; No: Allen, Finacom; Abstain: none; Absent: none].

On August 7, 2020, a group of 76 interested persons submitted a petition in opposition of the Landmark request and asked that it be forwarded to City Council in the event of an appeal of the denial.

The Notice of Decision was issued on September 28, 2020.

On October 8, 2020, Deborah Kropp (Appellant) submitted an appeal of the Commission's decision to deny the designation request. She did so on behalf of a group of 70 Berkeley residents comprised of nearly the same residents who submitted the

petition for designation. The appeal document was prepared by Rachel Mansfield-Howlett, an attorney for the group of appellants.

ENVIRONMENTAL SUSTAINABILITY

The decision to deny City Landmark or Structure of Merit designation status to the subject project would affirm its status as a non-historical resource and would have no effect on the environment. All relevant land use regulation and policy directives related to environmental sustainability would continue to apply to this property.

RATIONALE FOR RECOMMENDATION

The appeal argues that several staff errors form a basis to overturn the LPC decision, makes a request for the imposition of fines for the unauthorized removal of coast live oak trees at the subject property, and suggests retaining the subject building in order to promote low-income housing. Of these three considerations, only the first relates to the landmark application and the LPC action taken pursuant to BMC 3.24.150.

Appeal Point 1: *“Any proposed exemption from CEQA would be subject to the historic resources exception, which generally requires projects that include historic resources to undergo full environmental review prior to considering their demolition.”*

Response 1: The Commission’s decision to disapprove this request for designation as a City Landmark or Structure of Merit represents a disapproval of its status as a potential historic resource pursuant to CEQA Guidelines Section 15064.5. Therefore, the subject property is not a historic resource and the Appellant’s invocation of CEQA Guidelines section 15300.2(f) is not applicable.

Further, in disapproving this request, the Commission found that its action was exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(4) for projects that are rejected by the lead agency (see also CEQA Guidelines § 15270(a) [“CEQA does not apply to projects which a public agency rejects or disapproves.”]).

Recommendation 1: Staff recommends that the City Council find this appeal point is without merit and dismiss it.

Appeal Point 2: *“Staff erred in several ways, including the assertion that the conversion of the house from single family home to multiple family dwelling negatively impacted its historic nature.”*

Response 2: The record shows that staff made no such assertion, and that the Commission made no such finding when it disapproved the designation request. The conversion to a multi-family residence is pertinent however when evaluating the integrity of the property, which was compromised by numerous modifications

over the early decades of the 20th century, including a third floor addition, new exterior stairs and entryways, porch enclosures and window replacements. These changes are reversible, so do not necessarily disqualify the property from designation.

Recommendation 2: Staff recommends that the City Council find this appeal point is without merit and dismiss it.

Appeal Point 3: *“Staff erred in claiming that the Payson House did not have a distinctive style.”*

Response 3: The landmark application author described the style of the Payson House as “Rustic Victorian” (see Attachment 4, index to the Administrative Record, Landmark Application, page 1), which generally refers to its era of construction and unrefined characteristics. This term serves more as a description than a precise stylistic identification. It would appear to place the design in a default category of buildings from the Victorian period which do not possess the more commonly associated features of the Victorian residential styles that were fashionable at the time, namely decorative detail and ornamentation. Staff stated on page 5 of the August 6, 2020 staff report that the building’s design is “distinctly residential in character and reflects no particular architectural style from its time of construction.”

This fact alone did not render the property unworthy of City Landmark or Structure of Merit designation. The Commission found the property lacking in several ways that are unrelated to its stylistic label and, given the totality of information and evidence in the record, disapproved the request for designation.

Recommendation 3: Staff recommends that the City Council find this appeal point is without merit and dismiss it.

Appeal Point 4: *“Staff erred in asserting that no architect or builder of merit is associated with the Payson House, but Ms. Thompson confirmed that Lord and Boynton were considered master builders.”*

Response 4: On page 7 of the August 6, 2020 LPC staff report, staff wrote: “The property at 1915 Berryman is directly associated with the firm Lord and Boynton, who multiple historians suggest is among Berkeley’s master builders. This association is well-documented in the LM application and, therefore, the property meets the consideration criteria. However, this property is not an outstanding or good example of their work, and better examples exist, including 2328 Channing Way and the City Landmark Bonita House at 1410 Bonita Avenue.” The LPC agreed with this conclusion in making its decision to not designate the property.

The LPC recognizes Lord and Boynton as an important firm in Berkeley's history, and has recently designated another of their important buildings.

Recommendation 4: Staff recommends that the City Council find this appeal point is without merit and dismiss it.

Appeal Point 5: "*Staff applied a criterion that does not exist in within the LPO [BMC Section 3.24.110], namely that the property's owners' occupation must have been tied to the residence.*"

Response 5: In evaluating the subject property for City Landmark designation, neither staff nor the Commission used criteria beyond those prescribed by the Berkeley Municipal Code. In the Appellant's stated instance, staff and the Commission applied BMC Section 3.24.110.A.4 criterion of "historic value" to W. H. Payson's work establishing the First Unitarian Church as it relates to the property at 1915 Berryman.

On page 7 of the August 6, 2020 staff report, staff offered the following analysis of the *historic value* criterion for the Commission's consideration: "The subject property is also associated with its original owner and occupant, William H. Payson, who was an attorney, political reformer and co-founder of the First Unitarian Church. The Landmark application, however, has not demonstrated how the extant residential building at 1915 Berryman Street currently embodies or represents Payson's contributions. His activities within religious and political organizations (if found significant) would be more correctly associated with the institutions and locations in which they occurred. Because the subject site served as his personal residence, productive activities would not be attributed to it."

During the hearing, staff was asked to explain further why they did not recommend designation based on the property's association with Payson given that LPC has previously designated the private residences of persons found to be significant to history. Referring to the report, staff cited the guiding practice from the National Park Service and California Historic Preservation Officer that would establish a direct link between the *activities* found to be significant to history and the *location* where they occurred. Previous LPC designations that did not make this connection may not have aligned with the established practice.

This practice is a recognized means of analyzing the historical significance of a potential resource; it is not a criterion in itself.

The staff report analysis and the Commission's deliberation and decision accurately applied the BMC/LPO criteria while considering the totality of evidence in this case, and concluded that the subject property does not warrant

designation as a City Landmark or SOM. The Appellant has not provided new evidence to consider on appeal.

Recommendation 5: Staff recommends that the City Council find this appeal point is without merit and dismiss it.

Appeal Point 6: *“Staff erred in asserting there were other representative residences of the period in the area. Ms. Thompson showed that all of the structures cited by staff were designed in architectural styles quite different from Payson House...”*

Response 6: The record shows that staff made no such assertion, and the LPC considered all of the evidence presented by the Appellant and property owner when considering the petition to designate the property. The property lacks distinction or integrity.

Recommendation 6: Staff recommends that the City Council find this appeal point is without merit and dismiss it.

Appeal Point 7: *“Regarding the criterion that requires architectural examples worth of preserving for the exceptional values they add as part of the neighborhood fabric, staff claimed that ‘the subject building has no preservation-worthy characteristics of values relative to its neighborhood, where there exist other contemporaneous period houses and which, in addition to retaining single-family use as well as having direct street, are far more characteristic of their period.’ Ms. Thompson responded that this is incorrect...”*

Response 7: This appeal point is factually incorrect; the record shows that staff made no such claim. Mr. Hulbert made a similar statement on behalf of the applicant, but it was not used as evidence in the LPC decision to deny the designation request. This information was not a determining factor in this case.

Recommendation 7: Staff recommends that the City Council find this appeal point is without merit and dismiss it.

Appeal Point 8: *“Staff claims that the property has no direct association to cultural developments important to the city.... Staff’s statement about Payson’s relationship to the Unitarian and Universalist Churches is inaccurate, Payson was never associated with the Universalist Churches but was prominent in co-founding the First Unitarian Church of Berkeley... staff’s assertion that historic references of the Payson House have been lost, Ms. Thompson stated that this was an absurd conclusion...”*

Response 8: The Appellant challenges the conclusions of Mr. Hulbert’s evaluation of the Payson House, cites a typographic error within the document, and attributes the statements and error to staff.

The record shows that staff made no such claims, statements or assertions; Mr. Hulbert provided similar information on behalf of the property owner. The Commission's findings for disapproval did not reference or rely on any of the information that the Appellant has identified in this appeal point. This information was not a determining factor in this case.

Recommendation 8: Staff recommends that the City Council find this appeal point is without merit and dismiss it.

Appeal Point 9: *"Berkeley Residents also reject staff's assertion that the LPC does not need to find a resource significant if there are other historic resources in the area."*

Response 9: The record shows that staff made no such assertion. The LPC considered the application's description of the neighborhood fabric and its development history, extant buildings, and the subject property when making its decision. This appeal point is not supported by any factual evidence in the record.

Recommendation 9: Staff recommends that the City Council find this appeal point is without merit and dismiss it.

Additional Recommendation: Consider that the designation of the First Unitarian Church has already occurred.

Analysis: Upholding the LPC decision to deny the Landmark or SOM petition for 1915 Berryman Street would not be a rejection of W. H. Payson, co-founder of the First Unitarian Church, or any potentially significant contributions of his work or the religious organization, because the City recognized them through a previous designation process.

In 1981, the City designed the First Unitarian Church at 2401 Bancroft Way as a City Landmark, recognizing the structure's architectural merit as an example of the First Bay Tradition style and historic value related to its early members and congregation who were notable for humanitarian activities. This structure was built in 1898 and therefore is a contemporary of the main building at 1915 Berryman Street, and better demonstrates its associations with the Church and the work of its founders in a direct, emblematic and physically embodied way.

The work of W. H. Payson and his fellow co-founders of the First Unitarian Church have been honored and will continue to be preserved notwithstanding the City's denial of Landmark or SOM status for the property at 1915 Berryman Street.

In its entirety, this appeal is without merit, provides no new evidence for the City Council's consideration, and has not refuted the Commission's findings for denial of the designation request. Staff recommends that City Council dismiss the appeal and uphold the Commission's decision.

ALTERNATIVE ACTIONS CONSIDERED

In accordance with BMC Section 3.24.300, the City Council may: take action to continue the hearing on this matter; reverse, affirm or modify the LPC decision in whole or in part; or remand the matter to LPC for reconsideration. If Council remands the decision, then Council must also specify which issues shall be reconsidered.

ACTION DEADLINE

Pursuant to BMC Section 3.24.300.F, if the disposition of this appeal have not been determined within 30 days of the date that City Council closed this hearing (not including Council recess), then the LPC decision shall be deemed affirmed and the appeal shall have been denied.

CONTACT PERSON

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Fatema Crane, Senior Planner/LPC Secretary, Planning & Development Department;
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Attachments:

- 1: Resolution
 Exhibit A: Findings
- 2: LPC Appeal letter, received October 8, 2020
- 3: LPC Staff Report, August 6, 2020
- 4: Index of Administrative Record
- 5: Administrative Record
- 6: City Council Public Hearing Notice

RESOLUTION NO. ##,###-N.S.

UPHOLDING THE LANDMARKS PRESERVATION COMMISSION DECISION TO DENY LANDMARK OR STRUCTURE OF MERIT DESIGNATION STATUS FOR THE PROPERTY AT 1915 BERRYMAN STREET – THE PAYSON HOUSE

WHEREAS on June 8, 2020, the applicant, Deborah Kropp, on behalf of a group of 65 Berkeley residents, submitted Landmark application #LMIN2020-0003 requesting City Landmark or Structure of Merit status for the property at 1915 Berryman Street, known as the Payson House; and

WHEREAS on July 2, 2020, the City deemed the application complete; and

WHEREAS on July 23, 2020, the City duly noticed the Landmarks Preservation Commission (LPC) hearing on this matter in accordance with Berkeley Municipal Code (BMC) Section 3.24.230; and

WHEREAS on August 6, 2020, the LPC held a public hearing and, upon close of the hearing, disapproved Landmark application #LMIN2020-0003 with a vote of 7-2-0-0; and

WHEREAS on September 28, 2020, the City issued a Notice of Decision for the disapproval of #LMIN2020-0003; and

WHEREAS on October 8, 2020, Deborah Kropp submitted an appeal of the LPC decision to disapprove Landmark application #LMIN2020-0003 on behalf of 70 residents of Berkeley; and

WHEREAS on or before January 11, 2021 the City posted notices of the public hearing for this appeal at the site; and

WHEREAS on or before January 11, 2021 the City mailed notices of the public hearing for this appeal to all parties who had previously expressed interest, to the owners and tenants the properties within 300 feet of the site, and to registered neighborhood groups; and

WHEREAS on January 21, 2021, the City Council held a public hearing to consider the LPC decision and, in the opinion of this Council, the points of evidence of the appeal and facts stated in or ascertainable from the public record, including comments made at the public hearing, warrant upholding the disapproval and dismissing the appeal; and

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Berkeley that the Council hereby dismisses the appeal of the denial of initiation #LMIN2020-0003 and affirms the LPC decision to disapprove the Landmark or Structure of Merit designation application, and hereby adopts the findings contained in Exhibit A.

Exhibit A: Findings

EXHIBIT A

FINDINGS

JANUARY 21, 2021

1915 Berryman Street – The Payson House

Landmark application #LMIN2020-0003 for City Landmark or Structure of Merit designation status for a residential property

PROJECT DESCRIPTION

City Landmark designation of the property 1915 Berryman Street

CEQA FINDINGS

1. The project is found to be exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15061.b.4 of the CEQA Guidelines (the project will be rejected or disapproved by the public agency).

LANDMARKS PRESERVATION ORDINANCE FINDINGS

2. Pursuant to Berkeley Municipal Code (BMC) Section 3.24.110.A and B of the Landmarks Preservation Ordinance (LPO), the City Council of the City of Berkeley finds that the subject property and extant main building: possess insufficient architectural merit; lack necessary aspects of integrity; and do not represent the more significant contributions of persons important to local history. As such, the property and main building do not warrant designation as a City Landmark or Structure of Merit either individually or as a member of a group of related sites. Therefore, the Council disapproves the application for designation status.

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To: Mayor Arreguín and City Council Members
council@cityofberkeley.info
City Clerk
clerk@cityofberkeley.info
Planning Dept.
planning@cityofberkeley.info

October 8, 2020

Via email

Re: Appeal of Landmark Preservation Commission's decision to deny the application for Landmark or Structure of Merit Designation, William H. & Esther L. Payson House

Dear Mayor Arreguín and Council Members:

I'm writing on behalf of Concerned Berkeley Residents, an unincorporated public benefit group, to appeal the decision of the Landmark Preservation Commission (LPC) which denied the application to designate the William H. & Esther L. Payson House as either a City of Berkeley Landmark or a Structure of Merit. As provided by Chapter 3.24.300.A, the city requires at least 50 signatures from Berkeley residents on the appeal letter. This appeal is supported by 70 residents of the city who are aggrieved or affected by the determination of the LPC. Group member and Landmark applicant Deborah Kropp will be in contact with you to arrange payment for the appeal. (travelbydeborah@earthlink.net, (510) 524-7572; attached, exhibit 1, signatures.) The petition supports:

- The appeal of the LPC's Decision;
- Imposition of a reasonable penalty for the project applicant's illegal removal of five protected Coast Live Oak trees from the property, such that it will stand as a deterrent for further illegal acts by developers and disallow the applicant to benefit from his illegal acts, and;
- Affirmation of the numerous benefits of retaining the historic house, which provide potential for establishing a larger number of low-income housing units than the single low-income unit proposed by the applicant.

The historic significance of the 1889 house is well documented by the recorder and historic expert Daniella Thompson in the detailed application submitted to the LPC in June of 2020. Ms. Thompson is a past president of the Berkeley Architectural Heritage Association (BAHA), current longtime editor of the BAHA website, author of hundreds of articles on Berkeley's architectural history, as well as the author of numerous successful landmark applications. She submitted a follow-up letter in July 2020, which provided substantial evidence to refute staff's reasons for denying the application, and explained how the LPC misapplied the criteria for designation. Ms. Thompson summarized her findings as follows: "The William H. & Esther L. Payson House is eminently worthy of preservation. It could be restored and repurposed for greater density without demolition or loss of historic character." The Payson House retains integrity of location, setting, feeling, and association; it has architectural merit as well as meeting the criteria for historic value.

The project applicant proposes to demolish the Payson House and construct a 10-unit residential project. The LPC's denial paves the way for demolition of this important historic structure without first conducting environmental review.

The LPC's findings state that the action is exempt from CEQA, which, if applied, could allow the project applicant to avoid review of the project's environmental impacts altogether. Any proposed exemption from CEQA would be subject to the historic resource exception, which generally requires projects that include historic resources to undergo full environmental review prior to considering their demolition. (CEQA Guidelines sections 15300.2 (a) location within a sensitive resource; (b) cumulative impacts of successive projects of the same type in the same place are significant over time, precludes adoption of exemption.) Berkeley Residents urge the Council to overturn the LPC's findings and require environmental review be conducted prior to any further consideration of the historic structure's demolition. Environmental study should include the review of a reasonable range of alternatives to the demolition that will retain the structure for adaptive reuse, consistent with Berkeley's stated goals of retaining historic structures, and which could result in the implementation of an even greater number of affordable housing units than proposed by the applicant.

In applying the criteria under section "3.24.110 Landmarks, historic districts and structures of merit, Designation, Criteria for Consideration, A. 1. Architectural merit: a. Property that is the first, last, only or most significant architectural property of its type in the region", staff erred in several ways, including the assertion that the conversion of the house from a single-family home to a multiple family dwelling negatively impacted its historic nature. Historian Daniella Thompson explained why staff's assertion was incorrect: "Like many other Berkeley houses, the Payson House

was converted to three apartments by the Miller family to meet housing shortages during World War II, but descendants of the same family later reunified the main floor into a single dwelling and lived there until recently.” (Thompson letter, pg. 1.)

Staff erred in asserting there were other representative residences of the period in the area. Ms. Thompson showed that all of the structures cited by staff were designed in architectural styles quite different from the Payson House, and not one of them resembles the original appearance of the Payson House. (Thompson letter, pg. 2.) The Payson House is the oldest structure standing between Shattuck and San Pablo avenues north of Rose Street and south of Hopkins Street.

Staff erred in claiming that the Payson House did not have a distinctive style. Ms. Thompson stated that just because the house can’t be compared to the more commonly seen styles of Victorian domestic architecture, doesn’t make the Payson House less Victorian or a poor architectural example, on the contrary, it makes it all the rarer and worthier of preservation. (Thompson letter, pg. 2.)

Staff also erred in asserting that no architect or builder of merit is associated with the Payson House, but Ms. Thompson confirmed that Lord & Boynton were considered master builders; they constructed the Peralta Park Hotel; the Lueders House, 1330 Albina Avenue; the Anita Fallon House, 1307 Acton Street; and the recently designated Luttrell House, at 2328 Channing Way. “The Payson House is unique in design and appearance within Lord & Boynton’s known surviving body of work, which comprises a total of five houses.” (Thompson letter, pg. 3.) Ms. Thompson appeared at the August 6, 2020 LPC hearing and testified that “[i]n addition to being master builders, Lord & Boynton played significant roles in the civic and political life of Berkeley, which is why they are also cited as contributing to the historic significance of the Payson House.”

Ms. Thompson found that the information prepared by Mark Hulbert for the historic evaluation was inaccurate and incomplete and should not have been relied upon by the LPC to discount the historic value of the Payson House. The information submitted by Mr. Hulbert with the project application packet, recorded the builder as “unknown” — Mr. Hulbert was not even aware of Lord & Boynton’s reputation when he opined about the lack of historic merit of the Payson House.

Staff applied a criterion that does not exist within the Berkeley LPO, namely that the property’s owner’s occupation must have been tied to the residence. As noted by Ms. Thompson: “[h]ere in Berkeley, many houses have been designated for historic significance without their owners’ careers being tied specifically to their residence. For example, Captain John Slater gained his fame while commanding sailing ships, and Charles Spear was City Clerk, County Recorder, and President of

the State Board of Harbor Commissioners. In both cases, as in many others, the LPC accepted their public prominence as contributing to the historic significance of their houses." Ms. Thompson urged the LPC to apply the same standard to the William Payson and his home. The Council must not allow this mistaken criterion to be used to discount the local significance of structures with historic merit.

Regarding the criterion that requires architectural examples worth preserving for the exceptional values they add as part of the neighborhood fabric, staff claimed that "the subject building has no preservation-worthy characteristics or values relative to its neighborhood, where there exist other contemporaneous period houses and which, in addition to retaining single-family use as well as having direct street, are far more characteristic of their period." Ms. Thompson responded that this assertion is incorrect, "the Payson House is considerably older than all the other houses in the neighborhood. It was continuously inhabited by the Miller-Petrash family from the early 1940s until very recently, and is clearly recognizable as a specimen of its period. Indeed, the house has been generally referred to by local residents as "the old farm house." (Thompson letter, pg. 3.)

As to the requirement for importance as to "cultural value: structures, sites and areas associated with the movement or evolution of religious, cultural, governmental, social and economic developments of the City," staff claims that property has no direct association to cultural developments important to the city. Mr. Hulbert stated that "[b]ased on numerous news accounts, its original owners, the Paysons, were closely associated with the Universalist church, yet which focused interest and association do not convey to their former home." Ms. Thompson stated that, to the contrary, Payson was an "important co-founder and leader of the First Unitarian Church of Berkeley while he lived at 1915 Berryman Street. Payson co-founded the church in 1891, two years after the house was built, and continued in a leadership role on the West Coast until his death in 1914. His civic and political activities also took place while he was living in this house." The Unitarian and Universalist churches did not merge until 1961. Staff's statement about Payson's relationship to the Unitarian and Universalist Churches is inaccurate, Payson was never associated with the Universalist Church but was prominent in co-founding the First Unitarian Church of Berkeley.

William Payson was also valued as a political reformer, who fought for fair voter representation and was active in the anti-graft movement that led to the prosecution of the corrupt San Francisco Mayor Eugene Schmitz and powerful political boss Abe Ruef. The house should also be recognized as related to a noteworthy woman artist, Charlotte Elizabeth Bodwell Morgan (1867–1947) who was part of the Carmel and Berkeley Art Colonies and an early resident in the house. She

received a master's degree from the University of California, Berkeley in 1928 and exhibited her paintings throughout California.

In response to staff's assertion that historic references of the Payson House have been lost, Ms. Thompson stated that this was an absurd conclusion given Mr. Hulbert's ignorance and disregard for the prominence of Lord & Boynton and their work, and Payson's clear connection to the founding of the First Unitarian Church of Berkeley. "Until very recently, the Payson House was the longtime residence of the Miller-Petrash family. It was in livable condition at the time of its sale on 18 March 2020. Furthermore, it is eminently restorable and adaptable. The Berryman Street façade could easily be returned to its original appearance by reopening the front porch. There are no other houses of this type in the neighborhood, therefore better examples can't be cited. There are also no other houses as old as the Payson house in the entire area." (Thompson letter, pg. 5.) Thompson attested that staff's analysis ignored two important criteria for Structure of Merit designation: the age of the structure and its historic significance.

Berkeley Residents also reject staff's assertion that the LPC does not need to find a resource significant if there are other historic resources in the area. The suggestion that not all historic resources need to be recognized merely by virtue of the occurrence of other historic resources, is nonsensical.

The article recently published by the Berkeley Daily Planet by Becky O'Malley summarizes the importance of establishing local significance for historic resources in Berkeley, not just landmark monuments:

In most towns ordinances like the one which governs Berkeley's LPC are called historic preservation ordinances—perhaps we should change the name of ours. It's now considered important by egalitarian people to preserve places and buildings where ordinary people lived and worked, not just grandiose "landmark" monuments to lifestyles of the rich and famous. Architectural historians call this vernacular architecture, and in most countries thoughtful citizens now take pains to preserve it in situ.

History used to be all about famous men, but now it's also about regular women and men and how they lived their ordinary lives. If you read up on Berkeley history, you'll discover that this city and its physical and cultural fabric were woven of lots of kinds of lives: the Ohlone whose shell mound is located near what's now the Fourth Street mini-mall, the Irish workman buried in a collapse while Old City Hall was being built, the Japanese-American family who ran a laundry in an inconspicuous building on Shattuck, and sincere high-minded Unitarian intellectuals like the Paysons who built Berkeley's brown shingle houses like this one with respect for nature and fought for social justice. We need to remember all of them.

Illegal Removal of Five Protected Coast Live Oak Trees

As the Council is aware, area residents recently circulated a petition signed by 126 people objecting to the project applicant's precipitous illegal removal of five protected Coast Live Oaks from the subject site without a permit and in gross violation of the city's requirements for the retention of protected oaks. Residents also submitted a PowerPoint presentation that documented the illegal removal of these protected trees from the property. The petition states:

As longtime residents of Berkeley, we are shocked by the calculated, illegal, and irrevocable actions of the new owner of 1915 Berryman Street, who, within two weeks after taking ownership of the property in March 2020, promptly cut down five mature *Quercus agrifolia* (Coast Live Oak) trees in direct violation of City Ordinance No 6462-N.S. It is clear that the removal of these protected trees makes possible the scope of the proposed development subsequently put forward by the owner and substantially increases the financial return on his investment.

In light of this, we are asking each of you to review the case and exercise the City's prerogative to assess fines and punishment in keeping with the flagrant violation of, and blatant disregard for, Berkeley's laws and municipal codes. We ask that the owner/developer be required to replant and maintain five mature Coast Live Oaks on the property, in the same locations from where they were felled (and perhaps multiple oaks in each location, as they will be smaller and have a lower survival rate), and that any building on the property accommodate the full growth of those trees.

We implore each of you, in your respective positions, to send a strong, clear message to current and future developers that the illegal removal of protected Coast Live Oaks will be taken extremely seriously; and that the penalty for such an infraction cannot simply be the cost — and a minor one at that — of doing business in our City. The penalties both by a direct fine and by imposing limitations on project approval in the tree removal areas should be in line with the brazenness and severity of the action. The new owner should not be allowed to reap a huge financial gain by being permitted to construct a building in the locations where the protected Coast Live Oak trees were illegally removed.

The city's ordinance maintains a moratorium on the removal of any single-stem Coast Live Oak tree with aggregate circumference of 18" or more, and multi-stemmed Coast Live Oak tree with aggregate circumference of 26" or more. All five trees meet the criteria to be valued as protected trees as documented in the Boundary and Topographic Survey by Moran Engineering, Inc. on June 22, 2017. In light of this

egregious disregard for the law and the environment, Concerned Berkeley Residents now further request the Council remove consideration of the adoption of an exemption from CEQA for this project. An EIR should be prepared which considers alternatives to the project, requires replacement plantings of Coast Live Oaks, and reviews alternatives to the project that avoid construction on the locations of removed protected oak trees.

Affordable Housing

The project applicant has only proposed one unit to be developed as affordable housing. Alternatives to the project should be considered that analyze the site for adaptive reuse to provide greater than the single affordable unit proposed by the project applicant and mandate the continued application of the City's rent control provisions. Historically, there were three units under rent control, and we recommend that the city reestablish rent control provisions for three units. More units could also be added by lifting the existing house a few feet and creating another floor of housing in the basement space.

For the foregoing reasons, we urge the Council to reject the LPC's denial and require the Payson House to be treated as a significant historic resource for the purposes of CEQA.

Sincerely,



Rachel Mansfield-Howlett

Attorney for Appellants, Concerned Berkeley Residents

Enclosure: Exhibit 1, Signature Pages

Exhibit 1

Signature pages for letter from Rachel Mansfield-Howlett to
Berkeley City Council
City Clerk
2180 Milvia St., 1st Floor, Berkeley, CA 94704

**Appeal of LPC Landmark or Structure of Merit Designation Denial
for 1915 Berryman Street**

	Name	Berkeley Address	Signature
1.	Deborah Kropp	1231 Bonita Ave Berkeley, 94709	Deborah Kropp
2.	Alan Kropp	1231 Bonita Ave Berkeley, 94709	Alan Kropp
3.	TIM LENZ	1275 BONITA AVE #302 BERKELEY, CA 94709	TIM LENZ
4.	Perian Flaherty	1230 Bonita Ave.	Perian Flaherty
5.	Ashol Shapiro	1235 Bonita Ave	Ashol Shapiro
6.	Jally Sowko	1203 Bonita Ave Berkeley CA 94709	Jally D Sowko
7.	ETMER Sowko	1203 Bonita Ave Berkeley CA 94709	ETMER Sowko
8.	Jane Morrison	1241 Martin Luther Berkeley CA 94709	Jane Morrison
9.	Lawrence Wight	1332 Rose St Berkeley CA 94702	LWight
10.	Mary Ann Wight	1332 Rose St Berkeley, CA 94702	Mary Ann Wight

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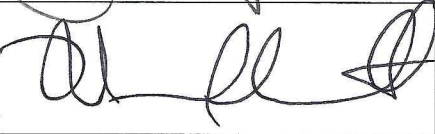
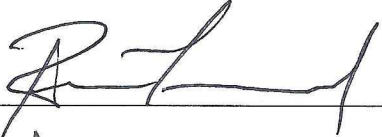
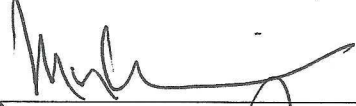
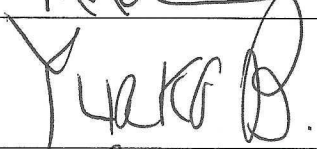


	Name	Berkeley Address	Signature
11.	DANIELLA THOMPSON	2663 LE CONTE AVE BERKELEY, CA 94709	
12.	JM SHARP	2517 REGENT BERKELEY CA 94704	
13.	Harald Leventhal	1929 Yolo Ave Berkeley 94707	
14.	Renee Leventhal	1929 Yolo Ave Berkeley 94707	
15.	MONSEN MAHBUBIAN	1221 BONITA AVE	
16.	YURIKO BRIMM	1221 BONITA AVE	
17.	Ali Zareh	1227 BONITA AVE	ali 2
18.	SHARIPAH ZAREH	1227 BONITA AVB	She
19.	Isaak Zewoldi	1915 Yolo Ave.	
20.	Tsighereda Kiflema	1915 Yolo Ave.	

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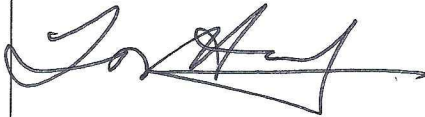



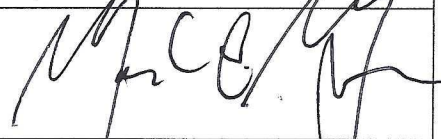
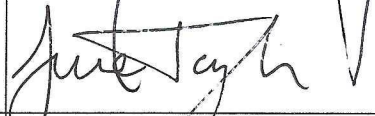

Name	Berkeley Address	Signature
21. Kathleen Griston	2015 Yolo Avenue Berkeley 94707	
22. Larry Griston	" "	
23. James Zoulas	1933 Yolo Ave. Berkeley CA 94707	
24. Tom G. Hall	1210 Milvia St	
25. Rachel Callaghan	1236 Milvia St	
26. MARTIN REICH	1236 MILVIA ST	
27. Karen Weil	1209 Bonita	
28. Mark Morris	1209 Bonita	
29. Jerome Taylor	1235 Bonita	
30. Margaret P. How	1235 Bonita	

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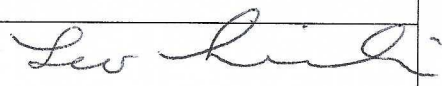
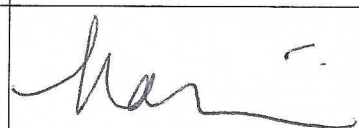



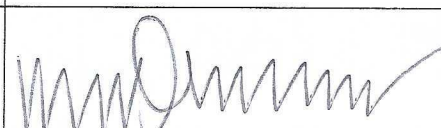
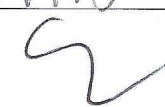
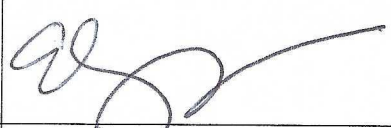

	Name	Berkeley Address	Signature
31.	Leo Siecienski	1305 Bonita Ave	
32.	Nancy McGinnis	1305 Bonita Ave	
33.	MIRIAM PETRUCK	1275 MLK JR. WAY	
34.	Ataya Cesspooch	1277 MLK Jr. Way	
35.	Will Shields	1900 Berryman St	
36.	Heather Nicholls	1905 Berryman St.	
37.	Connor Moore	1271 MLK Jr Way	
38.	Elizabeth Nijima	1273 MLK Jr Way	
39.	Teo Carlone	1321 Bonita Ave	

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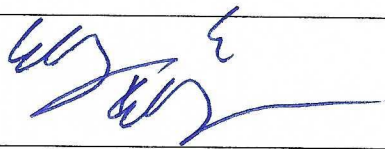

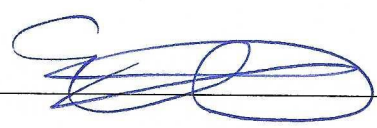

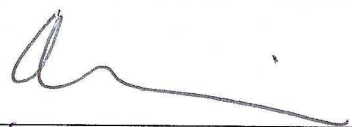
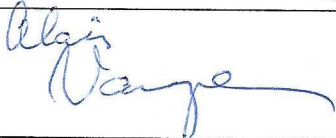
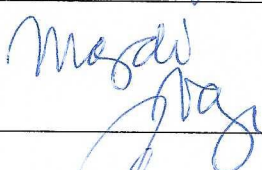
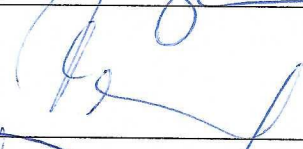
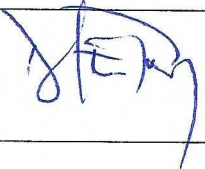
	Name	Berkeley Address	Signature
40.	Elizabeth Rosenberg	1913 B Berryman St Berkeley, CA 94709	
41.	CLM DONALD	1905 BERRYMAN BERKELEY 94709	
42.	Ellen Wenreb	1909 Berryman 94709	
43.	Charles Hamer	1909 Berryman St 94709	
44.	Pearl Pan	1304 Milvia St Berkeley 94709	
45.	Alis Vanya ALOIS VANVA	1911b Berryman Berkeley CA 94709	
46.	Magdalena Vanya	1911b Berryman Berkeley CA 94709	
47.	Magdalena, VANYOVA	1911 B BERRYMAN BERKELEY CA 94709	
48.	David Toy	" "	

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**Appeal of LPC Landmark or Structure of Merit Designation Denial
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	Name	Berkeley Address	Signature
49.	John Wadman	1216 Bonita Ave Berkeley CA 94709	John Wadman
50.	Helen Wadman	1216 Bonita Ave Berkeley CA 94709	Helen Wadman
51.	Sara Sowko	1203 Bonita Ave Berkeley, CA 94709	Sara Sowko
52.	Kathy McDonald	1940 Yolo Ave Berkeley CA 94707	K McDonald
53.	Joe McDonald	1940 Yolo Ave Berkeley 94707	Joe McDonald
54.	Martann Wolfe	Berkeley, 94707 1934 Yolo Ave	Martann Wolfe
55.	Francine Masciello	1934 Yolo Ave B. 94707	Francine Masciello
56.	Scott Sowko	Berkeley 94709 1203 Bonita Ave	Scott Sowko

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Name	Berkeley Address	Signature
57. HELEN G. TOY	1771 BEVERLY PL BERKELEY 94707	Helen G. Toy
58. SONDRA JENSEN	1161 COLUSA BERKELEY 94707	Sondra Jensen
59. PAUL CLINTON	1161 COLUSA AV BERKELEY CA 94707	Paul Clinton
60. MARGO ANN NASOU	1722 Beverly Place	Margo Ann Nasou
61. Constance Rivemdale	1916 Yolo Ave	Constance Rivemdale
62. Jennifer Osborne	1236 Bonita Ave	Jennifer Osborne
63. Ding Roumiqutsev	1330 Milvia St	Ding
64. LILLIAN HOWAN	1935 Yolo Ave	Lillian Howan

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Name	Berkeley Address	Signature
65. Lisa Bruce	3027 claremont Ave	Lisa Bruce
66. Leo Mc Cord	69 Dominguez Ave	Leo Mc Cord
67. Anthony Bruce	6 ENCINA PLACE	Anthony Bruce
68. S.E. Brockmann	2711 Buena Vista Way	S.E. Brockmann



L A N D M A R K S
P R E S E R V A T I O N
C O M M I S S I O N

S T A F F R E P O R T

FOR COMMISSION ACTION
AUGUST 6, 2020

1915 Berryman Street – The Payson House

Landmark application #LMIN2020-0003 for the consideration of City Landmark or Structure of Merit designation status for a residential property– APN 006-2449-013-00

I. Application Basics

A. Land Use Designations:

- Zoning: R-2A, Restricted Multi-Family Residential District

B. CEQA Determination: Exempt from environmental review pursuant to CEQA Guidelines Section 15061

C. Parties Involved:

- **Property Owner:** Alon and Ravit Danino
1493 Firebird Way
Sunnyvale, CA
- **Applicant:** Deborah Kropp and 64 Berkeley Residents
1213 Bonita Avenue
Berkeley, CA
- **Application Author:** Daniella Thompson
2663 LeConte Avenue
Berkeley, CA

D. Staff Recommendation: Hold a public hearing and consider final action on this request.

Figure 1: Vicinity Map – highlighting nearby City Landmarks and Structures of Merit

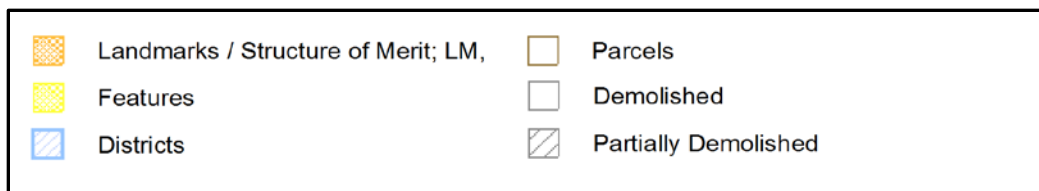
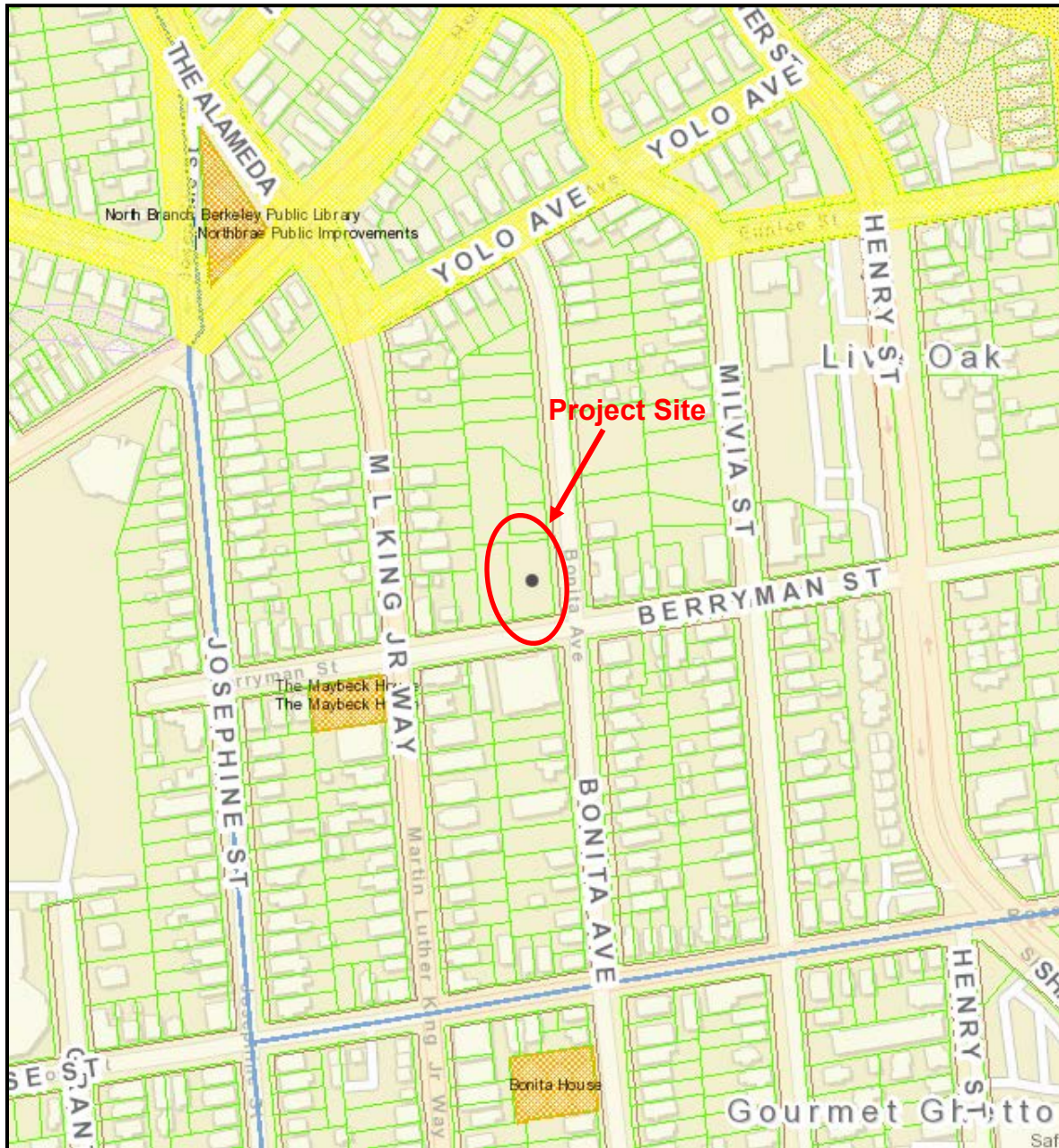


Figure 2: Subject property, current conditions – primary (south) facade



(Photo by Hulbert)

Figure 3: Subject property, current conditions – north (rear) facade



(Photo by Thompson)

Figure 5: Subject property, current conditions – west facade

(Photo by Thompson)

II. Application Chronology

On June 8, 2020, Deborah K submitted a Landmark or Structure of Merit application for the subject property on behalf of 65 Berkeley residents; see Attachment 1 of this report. The application was prepared by historian Daniella Thompson. In accordance with the provisions of Berkeley Municipal Code (BMC) Section 3.24.120, this application submittal initiated consideration of the property for designation status.

Previously, on May 26, 2020, the property owner provided City staff with early drafts of Department of Parks and Recreation (DPR) Forms A and B for the subject property, which were prepared by historic architect Mark Hulbert. On July 24, 2020, staff sent a letter to the property owner informing them of the Landmark initiation and tonight's anticipated public hearing. On July 13, 2020, the property owner provided the final drafts of the DPR Forms; see Attachment 2.

In accordance with the requirement of BMC Section 3.24.130, staff mailed and posted 10-day advance notices of this hearing; these notices were provided to the applicant, property owner and occupants of the properties within 300 ft. of the subject property.

While this application has been under review, the City has received more than twenty letters in support of the designation request; see Attachment 4.

IV. Property Description

The subject property is located on the northwest corner of the intersection of Berryman Street and Bonita Avenue. It is a rectangular corner lot, oriented in the north-south direction, and is comprised of approximately 10,500 sq. ft. in total area. It features a two-story main building originally constructed as a single-family residence and currently containing a total of three dwelling units. The building faces south, toward Berryman Street. A detached, single-car garage is located at the rear of the parcel, and is served by driveway access to Bonita Avenue. There are mature trees on the site, including multiple coast live oak trees, which are a species protected under City ordinance. The property was developed in 1889, and the main building was built by the prominent firm Lord and Boynton for the owner William Hawes Payson (1855-1914), a co-founder of the First Unitarian Church.

The Landmark application (Attachment 2) provides a detailed description of the subject main building; see Attachment 1 of this report. In order to provide only a brief description here, staff points out that the building is comprised of several building segments following an irregular plan, topped with variations of both hipped and gable roof forms. It is clad with unpainted wood shingles and painted board siding at the basement level. The abundant window openings are trimmed with painted wooden frames, and most of the windows feature painted wooden sashes with only a few metal sash exceptions. The primary façade (south) is two-stories in height and features the main entry porch, which appears to have been partially enclosed. A brick chimney protrudes from the roof near the rear of the building, extending from the building's interior. The design is distinctly residential in character and reflects no particular architectural style from its time of construction, although Thompson has referred to it as *rustic Victorian*.

The application and historical documentation do not include early photographs of the property, so it is not known with certainty what the building's original appearance might have been. Building records and Sanborn Maps indicate that it was altered as early as 1925 when the central segment of building was expanded (vertically). Further alterations are documented in the mid 1940's when the interior was sub-divided into multiple units and the rear porch was reconfigured. Other alterations, such as enclosing the front porch and replacing windows, are presumed to have occurred.

In addition to information in the Landmark application, the property owner's evaluation provides relevant information and documentation of the property, its history and development, and persons associated with it; see Attachment 3.

IV. Historic Resource Status

The subject property does not appear on the National Register of Historic Places or the State Historic Resources inventory. Nearby City Landmarks include the Bonita House,

at 1410 Bonita Avenue, the Maybeck House at 1300 Martin Luther King Jr. Way, the North Berkeley Public Library at 1170 The Alameda, and the Northbrae Public Improvements, located throughout the neighborhood immediately north of the site; see Figure 1.

V. Analysis and Evaluation

The analysis section of this report will refer to the research and information provided in the Landmark application (Attachment 1) and DPR Forms (Attachment 2) regarding the subject property's historic context and existing conditions. This section analyzes the extent to which the property appears to meet significance criteria set forth in the Landmarks Preservation Ordinance (LPO), Berkeley Municipal Code (BMC) Chapter 3.

Historic Context¹. Given its 1889 date of completion and type of construction (e.g.: residential/single-family), the subject site is associated with the theme of residential development and the early development of Berkeley, generally. Its period of significance is understood to have begun with its construction in 1889, and estimated to have lasted until the time of its first documented structural alteration in 1925.

Landmarks Preservation Ordinance Significance Criteria. When it designates a property as a Landmark, Historic District, or Structure of Merit, the Commission must find that the property meets one or more of the required criteria codified in LPO, BMC Section 3.24.110. These criteria are relatively specific and appear to align with California Register and National Register criteria. The significance criteria for a Structure of Merit are broader than those for Landmarks status, and include properties that qualify individually as good examples of architectural design, or that qualify as contributors to the context of a larger streetscape or area.

The Landmark applicants believe that the property at 1915 Berryman Street would meet the LPO criteria related to *architectural merit* as well as criterion for *historic value*. However, as explained in the analysis that follows, the existing conditions and available information about the property's history do not appear to support this conclusion.

Landmark criteria – Architectural Merit. The subject property could be measured against the LPO designation criteria for *noteworthy work of a master builder* (BMC Section 3.24.110.A.1.b) owing to Thompson's assessment that it is notable within the body of Lord and Boynton's surviving work because it is an unadorned residential design that seemingly reflects the Unitarian spirit of its commissioning owner. Because Lord and Boynton's extant residential buildings – including the recently-designated Queen Anne residence at 2328 Channing Way² – are exceptionally decorative, this assessment is accurate.

¹ National Register Bulletin #15, Item V: *How to Evaluate a Property within its Historic Context* (2002); National Register Bulletin #16A, Section III: *How to Complete the National Register Registration – Period of Significance* (1997).

² The Landmarks Preservation Commission approved the City Landmark designation of 2328 Channing Way, the Luttrell House attributed to the building firm Lord and Boynton, on July 2, 2020. This decision is pending certification by

The LM application goes on to state that the property could be eligible for designation consideration under the criterion for *neighborhood value* (BMC Section 3.24.110.A.1.c). However, staff observes that the LPO specifically requires that a property add value as part of a “neighborhood fabric,” and this implies that the building would be within a concentration of, or linked to, similar buildings that together exhibit a particular continuity. But the application does not make this case for 1915 Berryman Street and does not relate the subject building to an ensemble of comparable structures in the area. The property owners’ DPR Form B evaluates the building in relation to its contemporaries in the immediate vicinity and then concludes that 1915 Berryman is not comparable in design quality to these structures, which are the more distinctive historic architectural examples in the immediate neighborhood (Attachment 2, Supplemental analysis, page 3).

The Payson House has discernable character and feeling, and a direct association with the building firm Lord and Boynton; but it possesses limited other aspects of integrity. Most importantly, it lacks the aspects of design, materials and workmanship³ that are necessary for any structure to exhibit historical significance related to its architecture.

The subject property may not possess sufficient features and aspects of integrity to exhibit architectural merit; the Commission should discuss this matter.

Landmark criterion – Historic Value. According to BMC Section 3.24.110.A.4, properties that embody or express the history of Berkeley, Alameda County, California or the US, may be eligible for designation consideration for their *historic value*. The property at 1915 Berryman is directly associated with the firm Lord and Boynton, who multiple historians suggest is among Berkeley’s master builders. This association is well-documented in the LM application and, therefore, the property meets the consideration criteria. However, this property is not an outstanding or good example of their work, and better examples exist, including 2328 Channing Way and the City Landmark Bonita House at 1410 Bonita Avenue. Further, as a best practice in the field of historic preservation, properties that are potentially significant as examples of professional design or engineering skill should be evaluated for architectural merit rather than historic value or significant persons.

The subject property is also associated with its original owner and occupant, William H. Payson, who was an attorney, political reformer and co-founder of the First Unitarian Church. The Landmark application, however, has not demonstrated how the extant residential building at 1915 Berryman Street currently embodies or represents Payson’s contributions. His activities within religious and political organizations (if found significant) would be more correctly associated with the

City Council and completion of the appeal period (anticipated to occur on September 15, 2020).

³ National Register Bulletin #15, Item VII: *How to Evaluate the Integrity of a Property*.

institutions and locations in which they occurred. Because the subject site served as his personal residence, productive activities would not be attributed to it.⁴

Structure of Merit criteria. For the reasons explained above, the property does not appear to be worthy of preservation as a Structure of Merit (BMC Section 3.24.110.B) as part of a neighborhood, a block or a street frontage, or a member of a group of City Landmark buildings because the extant building is:

- (1) Not a good example of architectural design; and
- (2) Not compatible or comparable to the nearest City Landmark buildings, The Maybeck House (constructed 1892) and The Bonita House (constructed 1892), although it is a contemporary of both.

For all of these reasons, staff concludes that the property at 1915 Berryman may not exhibit sufficient features or associations for designation as a City Landmark or Structure of Merit. Staff has prepared draft Findings for Denial should the Commission reach a similar conclusion; see Attachment 3. However, if the Commission acts to grant designation status, then it may consider adopting the Findings for Significance (Attachment 1, page 59) and list of Features to be Preserved (page 17) that are included in the Landmark application.

VI. Recommendation

Staff recommends that the Commission consider the extent to which this property meets the criteria for City Landmark or Structure of Merit designation pursuant to BMC Section 3.24.110.A.1, and whether favorable action is warranted.

Attachments:

1. **Landmark application** 1915 Berryman Street, prepared by Daniella Thompson, date received June 8, 2020
2. **Department of Parks & Recreation Forms A & B** and Supplement analysis for 1915 Berryman Street, prepared by Mark Hulbert of Preservation Architecture
3. **Draft Findings for Denial**
4. **Correspondences received** (qty. 26)

Prepared by: Fatema Crane, Senior Planner; fcrane@cityofberkeley.info (510) 981-7410

⁴ National Register Bulletin #32, *Guidelines for Evaluating and Documenting Properties Associated with Significant Persons.*

**NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL
BERKELEY UNIFIED SCHOOL DISTRICT BOARD ROOM,
1231 ADDISON STREET
PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY**

**LANDMARKS PRESERVATION COMMISSION APPEAL: #LMIN2020-0003, 1915
BERRYMAN STREET**

Notice is hereby given by the City Council of the City of Berkeley that on **THURSDAY, JANUARY 21, 2021 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of a decision by the Landmarks Preservation Commission (LPC) to deny a request for City Landmark or Structure of Merit designation for a residential property originally constructed in 1889.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **January 14, 2021**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Fatema Crane, LPC Secretary, at (510) 981-7413. Written comments should be mailed to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704 or emailed to council@cityofberkeley.info, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Mark Numainville, City Clerk

Mailed: January 6, 2021

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

If you challenge the above in court, you may be limited to raising only those issues you or someone

ATTACHMENT 6

else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available by request from the City Clerk Department and posted on the City of Berkeley webpage prior to the public hearing.