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ACTION CALENDAR

July 10, 2018

(Continued from June 12, 2018)

To: Honorable Mayor and Members of the City Council
From: Councilmembers Sophie Hahn and Susan Wengraf
Subject: Defining Objective Standards for Views

RECOMMENDATION

Refer to the Planning Commission and the City Manager the drafting of ordinance provisions defining objective standards for views in Berkeley, and for the protection of views from detrimental impacts.

FINANCIAL IMPLICATIONS

Planning Commission and Staff time to research and develop policies.

BACKGROUND

Views are significant elements for homes in Berkeley, and are recognized throughout the Berkeley Municipal Code as important interests to be considered in zoning approvals. This is true for homes in flatter, western portions of the city, where views of the East Bay Hills, the Campanile, the San Francisco Bay, the Golden Gate and Bay Bridges, San Francisco Skyline, Alcatraz and Angel Islands, and Marin County and Mt. Tamalpais are important features, for homes in the hilly, eastern portions of Berkeley with views of these same features, and for homes on the Eastern side of the Berkeley hills, whose views may include Wildcat Canyon and Tilden Park. Views often include a combination of factors, including the scope of a vista and its completeness, as well as views of specific landmarks.

In efforts to streamline permitting for critically necessary housing, the State has started to impose "by-right" approvals for projects that meet "objective standards" of the zoning code. By-right approvals involve no discretionary review by the Zoning Officer or the Zoning Adjustments Board (ZAB) or City Council, and can not be appealed. If a project conforms to a checklist of fixed criteria, it is approved, regardless of any unanticipated impacts to surrounding properties. SB35 requires that projects consistent with "objective" zoning and design review standards that meet certain affordability requirements be approved by-right. The Housing Accountability Act, recently re-interpreted by the courts to apply to all buildings (not just affordable projects, as previously understood), imposes some by-right elements, and pursuant to Government Code § 65852.2 Accessory Dwelling Units (ADUs) are required to be approved "by right" under certain circumstances as well.

While well intended, the move towards by-right approvals poses challenges for cities like Berkeley, whose zoning code was written with a combination of objective and subjective/discretionary standards. The overwhelming majority of Berkeley's zoning standards are objective, but a few areas have traditionally been left to the cumulative wisdom and experience of Berkeley's Zoning Officers (staff, whose decisions can be appealed to ZAB or the City Council), or to the democratically elected City Council and their appointed Zoning Adjustments Board, who are best equipped to consider all factors relating to a specific application, and craft solutions that balance the many interests that inevitably arise among property owners in a dense urban environment. Areas traditionally in the purview of discretion include access to sunlight and air, privacy and views.

Guidelines exist for application of subjective standards, but decisions are made on a case by case basis, taking into account the "circumstances of the particular case existing at the time at which the application is granted."¹ While occasional circumstances arise that result in lengthy adjudications or appeals, the vast majority of applications subject to discretionary standards are approved without fanfare, and move ahead expeditiously, with acceptable outcomes for all parties involved.

Unfortunately, because standards for protection of views in Berkeley have always been adjudicated through discretionary review, the code has no objective standards to apply when by-right approvals are imposed by the State. The result is that sunlight, air, privacy and views are simply disregarded altogether - a poor outcome given Berkeley's extreme variations in topography and geography; building, lot and home shapes, styles and sizes; placements of structures on parcels; street widths and configurations; and more. What may be relatively easy to accomplish through "objective standards" in a subdivision in the Central Valley, where uniformity is built-in, or in a flat area with a grid pattern of streets and no significant vistas, is much more difficult to achieve with fairness and sensitivity in Berkeley.

Despite the challenges to devising objective standards for views in Berkeley, it is incumbent upon the City to create and adopt such standards as quickly as possible. Long-serving staff and ZAB members (current and past) with significant experience successfully applying Berkeley's discretionary standards across hundreds of applications should be consulted in creating these standards, as helpful patterns emerge from the many scenarios decision makers have encountered over the years.

The Planning Commission may wish to take up objective standards for shadows, light, air and privacy as well, but because views are highly valued by residents and cannot be recovered through other mitigations (light lost from a newly shadowed window can be recovered via a skylight, for example, and privacy impacts can be recovered by using frosted glass or window coverings), this referral asks for objective standards for views to be developed expeditiously.

¹BMC § 23B.32.040 Findings for Issuance and Denial and Conditions (Use Permits)

The following is a review of areas of the BMC that already address views, and a suggested framework for establishing objective standards applicable to the protection of views in Berkeley.

Berkeley Municipal Code Sections related to views:

In addition to consulting with experienced staff and ZAB members, the Planning Commission should review all pertinent BMC Sections and review view codes from other similarly situated cities in the Bay Area (Oakland, SF, Marin County, etc.) to propose objective standards for Berkeley. Berkeley's General Plan and other Plans should also be consulted references to views. The following is a sampling (not an exhaustive list) of BMC sections that address views:

Section 23F.04 defines a view corridor as "a significant view of the Berkeley Hills, San Francisco, Mt. Tamalpais, or a significant landmark such as the campanile, Golden Gate Bridge, and Alcatraz Island or any other significant vista that substantially enhances the value and enjoyment of real property."

Section 12.45 Solar Access and Views addresses trees that have grown to block or partially block sunlight, views, etc. in a neighboring property. Views are defined as "a distant vista or panoramic range of sight of Berkeley, neighboring areas or the San Francisco Bay. Views include but are not limited to skylines, bridges, distant cities, geologic features, hillside terrains and wooded canyons or ridges."

In determining impacts on views, a mediator or other decision maker is asked to consider, among other things, "the existence of landmarks, vistas or other unique features which cannot be seen because of growth of trees since the acquisition of the property," "the extent to which the alleged obstruction interferes with sunlight or view. The degree of obstruction shall be determined by means of a measuring instrument or photography," and "the extent to which solar access or the view is diminished by factors other than trees."

Section 23C.17 Wireless Telecommunication Facilities, prohibits antenna placement in locations that "would impair a significant or sensitive view corridor" except in certain situations.

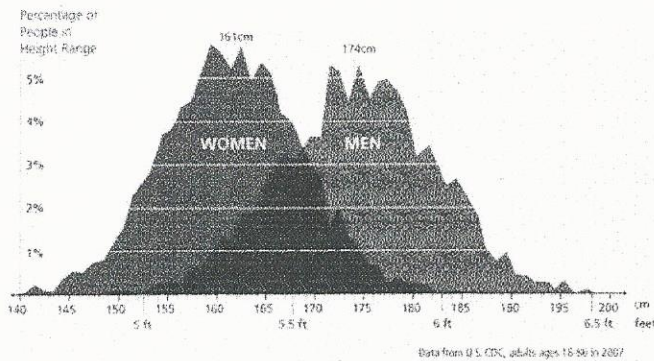
The preservation of "sunlight, air, or views" is cited as an element of Findings required in numerous sections throughout the BMC, and views are considered elsewhere in the BMC as well.

Suggested Framework for Objective Standards to Protect Views:

The Planning Commission, with the support of Staff and other experts, is asked to provide their recommendations to address this pressing issue for Berkeley property owners and residents. The following suggestions provide a sense of scope, and important elements to consider, but may not be exhaustive. Considerations include views of landmarks; view expanses; rooms from which views should be more or less protected; and vantage points for determining when views are impacted.

1. Protected views should be defined more clearly.
 - a. Significant landmarks should be listed. Suggested list would include:
 - i. Campanile
 - ii. East Bay Hills ridgeline
 - iii. Golden Gate Bridge
 - iv. Bay Bridge
 - v. Richmond/San Rafael Bridge
 - vi. Alcatraz Island
 - vii. Downtown San Francisco Skyline
 - viii. Marin County/Angel Island
 - ix. Wildcat Canyon/Tilden Park/East Bay Hills
 - b. Major Locations from which views are generally protected should be identified. Suggested list would include:
 - i. Living Room
 - ii. Dining Room
 - iii. Kitchen
 - iv. Family/Great room
 - v. Master Bedroom
 - c. Views from other ("Minor") rooms and locations (such as landings, hallways, etc.) may be considered for protection if
 - i. One or more of these Minor Locations has the only view(s) in the unit
 - ii. While Major Rooms have other views, a Significant Landmark can be seen only from a Minor Location or Locations.
 - d. "View" should be defined. Suggest defining a view as what can be seen from the vantage point of a 4'5" foot tall individual standing one foot back from a window. This would allow for adults on the shorter end of the height spectrum to have their views protected, and would mitigate against protecting views of men over women.

Height of Adult Women and Men
Within-group variation and between-group overlap are significant



- e. Building or additions can only impact a view expanse/ensemble according to a set of requirements.
 - i. Suggested approach might include:

1. For a view of 180 degrees or more, up to X% of the view spectrum may be impacted from the left or right side of the spectrum "by right," so long as no Significant Landmark is obstructed from a Major Room.
 2. For a view of 100 to 180 Degrees, up to Y% of the view spectrum may be impacted "by right," so long as
 3. For a view of
- f. Interruptions to expanses (incursions not coming from the left or right) must be considered, as ensembles can be significant in and of themselves and interruptions may be more significant than reductions in breadth.
 - g. Building and additions should not cut off a view of a Significant Landmark from a Major Location, or if the only view of a Significant Landmark is from a Minor Location, from a Minor Location.
 - h. Some view incursions may be allowed, while some may require an AUP or UP, depending on circumstances. Some may be prohibited outright (cannot block a view of the Golden Gate Bridge from Major Rooms, for example).
 - i. To determine if a view will be impacted, plans must be shown to neighbors within a certain number of square feet, as well as all abutting and adjoining neighbors (for areas where homes are far apart from each other) and signed attesting as to whether the neighbor believes, in good faith, that the new building or addition may impact a protected view. The form for neighbors to sign would have to describe what views are protected as a matter of right (if any), which may be protected, depending on a discretionary review (if allowed), and what views are not protected at all. This would preclude individuals arguing that, for example, a view of the Eastern Span of the Bay Bridge from a bathroom should be preserved, when the same view is available from the Living Room (example based on an actual past application).
 - j. Protections and allowable interference with views should apply to all Residential districts equally, to ensure equity between all neighborhoods. Protections among buildings within Commercial and Manufacturing districts may differ, but impacts of buildings built in C and M districts should not unduly impact residences in R districts.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental opportunities or risks associated with this recommendation

CONTACT

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