

EAST BAY express

SEPTEMBER 17, 2003 | VOLUME 25, NO. 49 | THE WEEKLY



A
WALKING
TOUR
OF

BY
WILL
HARPER

BERKELEY'S HYSTERICAL LANDMARKS

POLITICAL FÚTBOL

Anarchists won this round,
but commies are more colorful.

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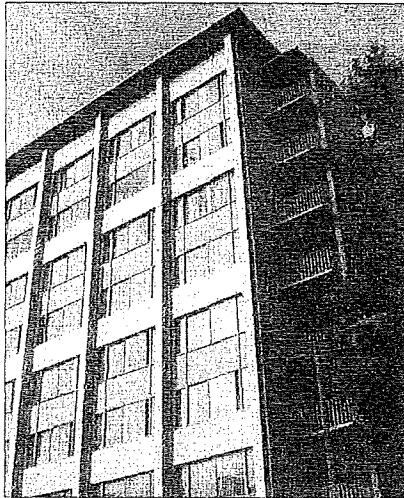


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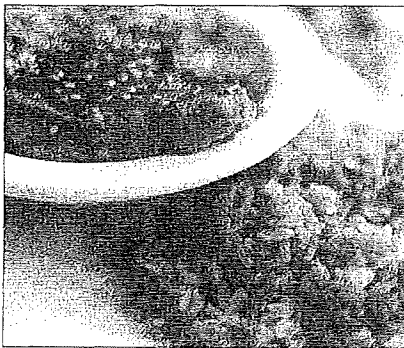


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COVER ILLUSTRATION BY MARK GARTLAND

A Walking Tour of

BERKELEY'S HYSTERICAL LANDMARKS

BY WILL HARPER

LONG, LONG AGO, in a strange land far away, there was a magical wall. It didn't really look magical. It looked every day of its 97 years, which is to say dilapidated, with cracks scarring the aging concrete surface. But the crumbling wall served a heroic purpose: It kept the earth-soil from collapsing onto the sidewalk below. Sorcerers in the village's Public Works Department known as *engineers* called it a "retaining wall."

One day, a wicked "out-of-town developer" bought the property containing the wall from its owner, ninety-year-old Mrs. Ellen Bentley, who'd grown too old to live alone. The developer's evil plan was to fix up the neglected property and sell it. She didn't much care for the old wall. In fact, she wanted to *destroy* a twenty-foot stretch of it and build a two-carriage garage, which she arrogantly insisted was necessary on a crowded block just three blocks north of a university with thirty thousand students.

Once neighbors heard of the plan, they joined forces to save the magical retaining wall. They went to the wise village elders on the Landmarks Preservation Commission, who agreed with the angry villagers and declared the magical wall that could retain earth-soil a historic landmark. The elected village council, in turn, also chose to protect the wall, which its members agreed embodied "back-to-nature principles" of an earlier era. The wicked developer scoffed, asking how a man-made structure could embody back-to-nature principles.

The town's leaders stood their ground, and the wicked woman fled the strange land in defeat, vowing never to return.



PAVE PARADISE, LANDMARK THE PARKING LOT
NAME: Spenger's Indian Shellmound
BUILT: 5,700 BC (parking added more recently)
LOCATION: Fourth and Hearst streets
SIGNIFICANCE: Archaeology, paid parking
THREAT: Retail development
STATUS: Landmarked in 2000

The commission landmarked this fine parking lot as a monument to Native Americans (some of whom might have preferred a casino on the site). Actually, it isn't so much the parking lot as what may lie beneath: ancient Indian shellmounds of the type buried throughout West Berkeley and Emeryville.

Some people asked how the commission could landmark something no one could actually see. The panel itself had no such reservations. One commissioner at the time even griped about how

Berkeley's landmarks ordinance favors "above-ground historic structures."

While some shellmounds are filled with archaeological treasures like ancient tools, bones, and shells, workers excavating for the Spenger's parking lot didn't find much of anything. Some Cal archaeologists think the good stuff is actually a block west, though no one disputes that Native Americans once inhabited this part of town and threw out their trash here. Yet neither is it disputed that most of the artifacts were carted off a century ago by the white man to fertilize his gardens and pave his roads — and, uh, parking lots.

OF COURSE, this fairy tale didn't really happen long, long ago. It happened six years ago. And it didn't take place far away — at least not geographically — though it was indeed a strange land: Berkeley. Oh, and the wicked "out-of-town developer" wasn't really wicked. Nor was she from out of town, or even a developer — those were just things angry villagers called her at the time.

If anything, Realtor Mary Hanna wasn't the story's pariah, but its victim — the victim of a city landmarking process that is completely out of control.

Hanna had lived in Berkeley for 37 years when she bought the house at 2683 Le Conte Avenue. She'd come here as a young graduate student to study English literature, and never left. One thing she loved about Berkeley was its beautiful old houses. She was a member of the Berkeley Architectural Heritage Association, and served as a volunteer docent on the organization's walking tours. Before she bought the house on Le Conte, she knew plenty about the neighborhood. In fact, she had brokered the sale of the Julia Morgan-designed home next door a couple of years earlier.

When she bought the Bentley home it was a disaster, Hanna says. It required a new foundation. The dry rot was so bad that her foot sank into the floor in spots. Because of its condition, she labored to find a lender. Finally, she and her business partner settled on a \$312,000 construction loan that required they build a garage. Without parking, Hanna says, she couldn't sell the house.

Yes, Hanna was engaging in real-estate speculation on a modest scale, but her garage proposal even had the backing of the elderly previous owner, who wrote the city saying she had struggled to get her groceries home. "My personal freedom to buy a house and remodel it the way I

PHOTOGRAPH BY CLAUDIA WARD (4)



GETTING BLOOD FROM A DEVELOPER

NAME: Blood House
BUILT: 1891
LOCATION: 2526 Durant Avenue
SIGNIFICANCE: Part of College Homestead Tract
THREAT: Apartments
STATUS: Designated a "structure of merit" in 1999; the developer is still vying to build apartments on the site

wanted was completely demolished by the city of Berkeley," she now says ruefully.

The Realtor's critics did have one legitimate argument, though it had nothing to do with preserving the neighborhood's character. The issue was traffic safety: The garage would have been located on a dangerous street curve where hundreds of drivers passed every day. Someone backing out might have caused an accident. This, in fact, was the top concern cited by most neighbors, but a city traffic engineer ultimately deemed the garage safe so long as Hanna followed proscribed precautions. Consequently, like so many disgruntled folks before them, the opponents of the project put their chips on the Landmarks Preservation Commission.

If patriotism is the last refuge of a scoundrel, the Berkeley landmarks commission is the last refuge of anyone desperate to thwart a developer, or even a home renovation.

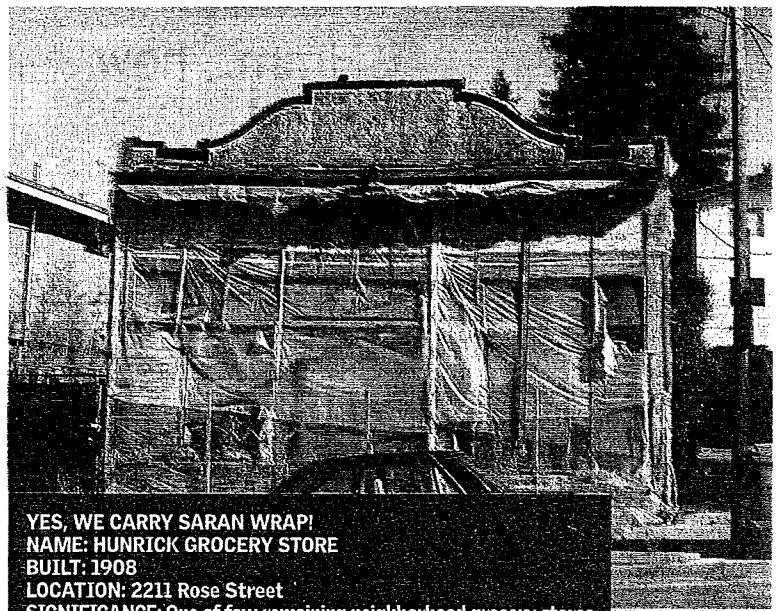
BERKELEY is old by California standards. It was founded in 1866 by trustees of the College of California — Cal's predecessor — and incorporated in 1878. The town quickly expanded as the university grew into its current role as centerpiece of the state's higher education system. Point is, most of the city's homes, and to a lesser extent its commercial structures, have been around awhile.

Current city zoning law says that if you want to demolish any commercial structure older than forty years, you need approval from the Landmarks Preservation Commission, the nine-member, city council-appointed enforcement body created by Berkeley's 1974 Landmarks Preservation Ordinance. Because so many local structures are forty-plus, the commission has a say over the fate of an extraordinary number of commercial developments. And once it grants landmark status to any structure, commercial or residential, the slightest alteration requires the commission's stamp.

But that veto power — the secret weapon Hanna's neighbors unleashed against her — is all too often abused. In its 29-year existence, the LPC has shown an appalling readiness to grant historic status to the most questionable things.

The retaining wall is just one example. Consider the vacant lot in North Berkeley, the former site of the truly historic Byrne House. The house burned to the ground in the '80s, but no matter. In 1990 the commission reaffirmed the entire parcel's landmark status, a move commission critics considered a blatant attempt to delay or hinder future development. And that's precisely what Berkeley Temple Beth El encountered when it proposed building a synagogue on the site.

There have been landmarks created out of neighborly spite. One Berkeley Hills couple, for instance, convinced the LPC to landmark their own Julia Morgan home on Yosemite Road. This would have been justifi-



YES, WE CARRY SARAN WRAP!

NAME: HUNRICK GROCERY STORE
BUILT: 1908
LOCATION: 2211 Rose Street
SIGNIFICANCE: One of few remaining neighborhood grocery stores
THREAT: Termites and dry rot
STATUS: Structure of merit 1988; current health/fire hazard

commission swooped in and initiated a landmark

This decrepit 95-year-old building is a visual reminder not so much of another era, but of what happens when Berkeley preservationists attack. The old neighborhood grocery has been boarded up for more than two decades and is in such bad shape that city building officials feared they would have to condemn it as unsafe.

Fifteen years ago, the property owner (who once ran the grocery store himself) proposed replacing the store with a triplex. Then a member of the landmarks

marks designation on the building. Even a next-door neighbor who was skeptical of the owner's plans questioned the wisdom of designating the old store a landmark.

The commission deemed it a structure of merit anyway, and the owner has let the place steadily deteriorate ever since. To prevent this landmark from collapsing, the back of the building had to be gutted earlier this year and the rest shored up so that the facade wouldn't fall down. The front of the building is now covered in translucent plastic.

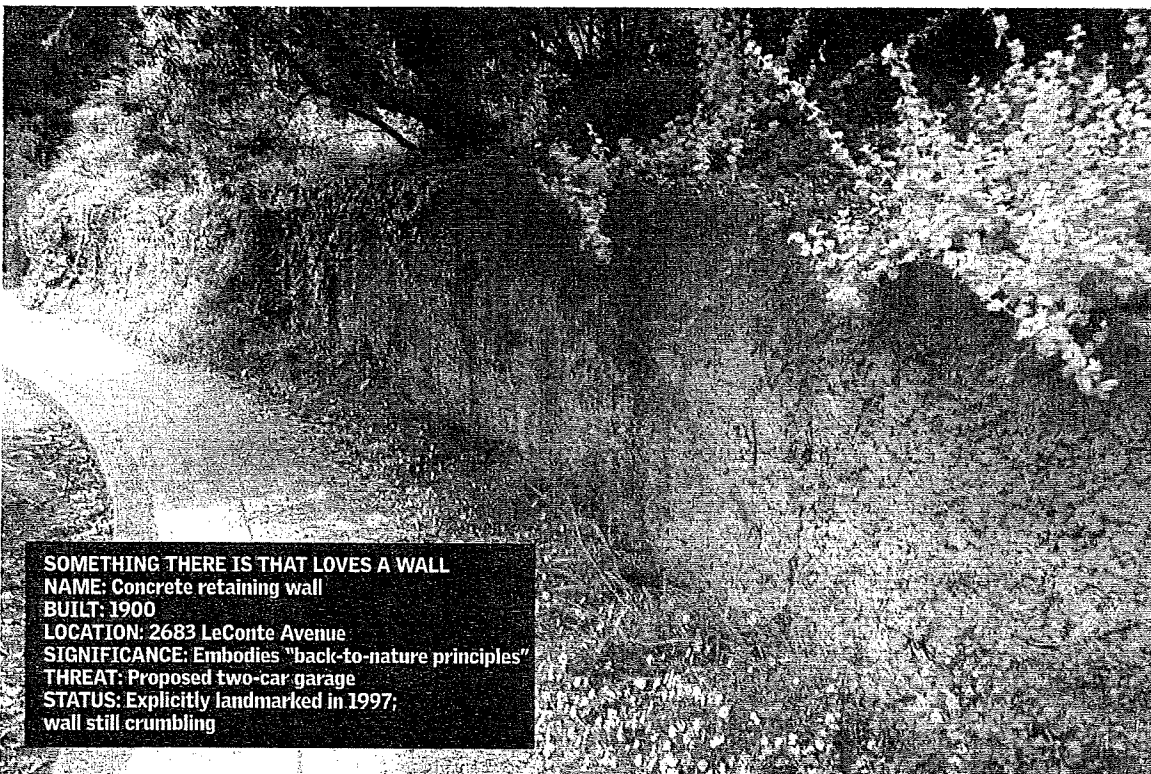
fied had it not been motivated by the couple's desire to prevent a neighbor building an addition that would have affected their bay view. (Yes, landmark status puts restrictions on neighboring properties as well.)

As for the retaining wall, Hanna's neighbors found a sympathetic audience on the landmarks panel. They argued that the wall was a vital portion of an already-designated scenic tract in the north-of-campus area. As one neighbor put it, "We feel that a proliferation of driveways and garages could undermine much of the woody charm that was conceived in the pre-automobile era."

The commission sided with the anticar neighbors and by doing so spoiled Hanna's chances of obtaining a permit from the city's zoning board, which refused to disturb the integrity of an existing landmark, even a crummy retaining wall. Hanna took the matter to court, where the judge ruled to let Berkeleyans decide for themselves what deserves landmark status, strange as their logic may have seemed.

In the end, Hanna defaulted on her construction loan. She figures she lost more than \$100,000 in all. And while she wasn't left a pauper, she did flee town in favor of Oakland's Montclair district because the experience, she says, soured her on Berkeley forever. "A landmark should be a thing of beauty," she reasons. "It should be architecturally attractive, not a ninety-year-old wall that is dirty, full of cracks, and about to collapse."

BY NOW, many readers probably think the lady has a point: It's an ugly old retaining wall, not a damn landmark. Right? Trouble is, the distinction is largely subjective. One woman's future two-car garage is another's historic streetscape. The courts continued on page 21.



SOMETHING THERE IS THAT LOVES A WALL

NAME: Concrete retaining wall
BUILT: 1900
LOCATION: 2683 LeConte Avenue
SIGNIFICANCE: Embodies "back-to-nature principles"
THREAT: Proposed two-car garage
STATUS: Explicitly landmarked in 1997; wall still crumbling

Hysterical Landmarks

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typically let locals decide what's worthy of the "L" word. That, however, can be a perilous proposition in Berkeley, where the landmarks commission is dominated by zealous foes of development.

Berkeley's landmarks commission also has more power than its counterparts in other Bay Area cities. The commissions in Oakland, San Francisco, and San Jose, for example, are all advisory bodies answering to the planning commission or city council. In Berkeley, however, if the LPC deems something a landmark, it's a landmark. A builder can appeal the decision to the city council, but that entails further delays and expenses.

The practical result is that Berkeley has created more than 260 full-fledged landmarks, while neighboring Oakland, an older and much larger city with similar architecture, an active preservation community, and four times the population, has only 134 designated landmarks (not counting its seven historic districts). San Francisco had 231 individual landmarks as of 2002.

It wasn't supposed to happen this way. Berkeley's landmarks law was penned thirty years ago with noble intentions. In the years leading up to the law's passage, the historic character of the city had come under assault

by real-estate speculators looking to make a quick buck. They were demolishing beautiful old Victorians in residential neighborhoods and replacing them with stucco-covered apartment buildings.

Yet ills of this nature can be controlled by a city's zoning laws. In 1973, Berkeley voters passed the Neighborhood Preservation Ordinance, which severely restricted demolitions in the city. Even without landmark protection, the new law made Berkeley one of the toughest cities in California for developers to do business.

The following year, the city council passed its Landmarks Preservation Ordinance. Local preservationists, led by a new nonprofit called the Berkeley Architectural Heritage Association, set out to identify which places in town qualified as historic treasures.

Mary Ann Beach Harrel and her late husband, John Beach, were among BAHHA's earliest members. But Harrel says it didn't take long for the couple to become disillusioned with their fellow preservationists. In the late '70s, she recalls, her peers fought a proposal by world-renowned architect Louis Kahn to build a library for the Graduate Theological Union. As Harrel saw it, the association's leaders would fight to protect something just because it was old, rather than embrace what could become a future landmark. "So rather than building

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OR WAS THAT LAND-SCAPING PRESERVATION?
NAME: Vacant lot (formerly Byrne House)
BUILT: 1868 (house); ~4 billion years ago (land)
LOCATION: 1301 Oxford Street
SIGNIFICANCE: Historic home site
THREAT: Judaism
STATUS: House landmarked 1976, lot in 1990; synagogue under construction.

In 1997, after the Beth El congregation purchased the property and proposed building a new synagogue on the site, furious neighbors immediately objected, fearing traffic and parking problems. The

next year the — let's just call it the *Landscaping Preservation Commission* — decreed that any future development should save the monkey puzzle tree and cypress trees on the property, maintain a small set of concentric rock circles, and uncover a culverted portion of the Cordonices Creek.

The city zoning board approved the synagogue plan, but the landmarks commission refused to let Beth El alter the site, even though the state Office of Historic Preservation opined that the property remnants no longer qualified it as a state historic resource. In a last-minute city council-brokered compromise in 2001, Beth El was finally allowed to build, albeit four years later and with considerable restrictions. ■

Byrne House was among Berkeley's finest historic resources. It was the city's oldest house, built in 1868 by Napoleon Bonaparte Byrne, a former slave owner who arrived from Missouri with two freed slaves believed to be Berkeley's first black settlers. Most people would agree Byrne's villa, dubbed "The Cedars," was an awesome sight — except that they'll never see it. The house burned down two decades ago.

When the property owner, Chinese Christian Alliance Church, sought to remove city landmark status in 1990, arguing that the house no longer existed, the LPC deemed the lot itself a landmark. Commissioners claimed the "trees, open spaces, and fence" were "remnants of a past era."

Hysterical Landmarks

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for the future, they've got a death grip on the past," she says. "They get overwhelmed in their duty to preserve everything old instead of everything worthwhile. There are a lot of things that are old that are not worthwhile."

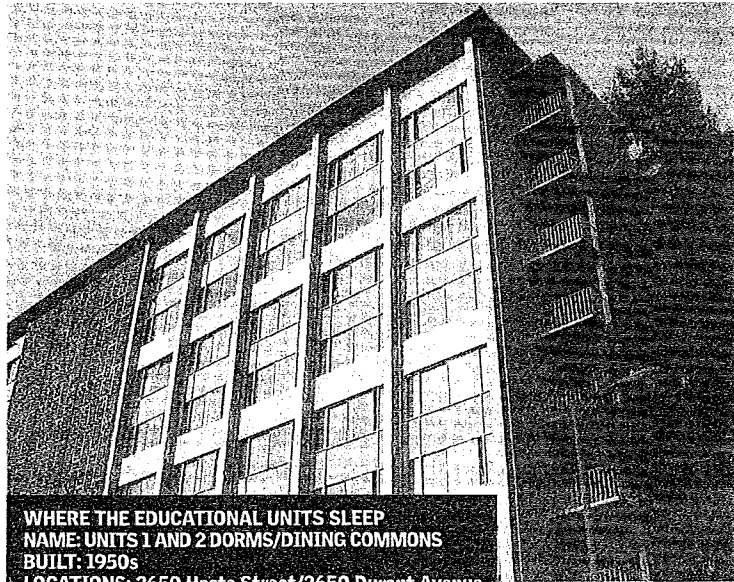
Other prominent preservationists have split from BAHAs over the years, but the association has grown steadily. It now boasts 1,500 members, putting it among the most powerful political forces in town, according to former City Councilman Fred Collignon, a BAHAs member himself.

But the preservationists haven't just thwarted development, argues landmarks commissioner and BAHAs researcher Leslie Emmington. They've protected Berkeley's character; instead of ugly strip malls, we have turn-of-the-century buildings throughout the city. Emmington concedes that the process is controversial, but says that's because people only remember the fights. Twenty-five years ago, she says, the commission's creation of a historic district in West Berkeley saved Fourth Street from being the site of an industrial park. Now the street is one of the city's top retail attractions. "Always in the end," she says, "landmarking has accentuated the positive morale of the city."

OFTEN, BAHAs's most active members moonlight as appointees to the city's Landmarks Preservation Commission. One of them is Becky O'Malley, the landmark panel's queen bee — though not its chair. O'Malley, who along with her husband, Michael, bought the *Berkeley Daily Planet* newspaper last December, has been on the commission for the past seven years. At an October 1999 city council meeting where she argued to landmark what critics called a "tin shed" in West Berkeley, the former software maven riffed off the words of a developer who'd called her "my favorite career obstructionist." "I was so successful that I sold the business and am now retired," O'Malley said, "which allows me to be a career obstructionist."

O'Malley excels in this new career, so much that the antidevelopment zeal of she and her fellow commissioners has had an improbable side effect: making people feel sorry for a developer.

Say "developer" and "Berkeley" in one sentence these days, and chances are you're talking about Patrick Kennedy. No relation to those Kennedys, of course, but he does have the same sort of lizard-thick skin that has kept him in Berkeley, fighting to build a variety of mixed-use commercial and housing projects since 1990. Kennedy, continued on page 25



WHERE THE EDUCATIONAL UNITS SLEEP
NAME: UNITS 1 AND 2 DORMS/DINING COMMONS
BUILT: 1950s
LOCATIONS: 2650 Haste Street/2650 Durant Avenue
SIGNIFICANCE: "Pioneering example of Modernism's 'tower in the park' approach"
THREAT: UC's plan to demolish and rebuild
STATUS: Landmarked 2000, but commission lacks jurisdiction; Unit 1 now under reconstruction

One can easily imagine the pride architect John Carl Wernecke felt after the rectangular high-rise dorms south of the UC campus were built. No doubt he gazed upon his creations, spread his arms wide, and declared, "I shall call them Unit 1 and Unit 2." Yes, fittingly charmless names for charmless buildings erected in a hurry to house a swelling student population during the early '60s.

The units have been hated for decades by student residents and neighbors alike. Nonetheless, when the university began moving forward with its plan to totally redesign and rebuild the so-called Underhill area — demolishing the old dorms and dining commons in the process — the

landmarks commission put its historic stamp on the structures. The units, the commissioners wrote, were "significant for [their] incorporation of

local architectural and landscape traditions." That's odd — there don't seem to be any other nine-floor monstrosities in the South Campus neighborhood. Commissioner Leslie Emmington, who seems to be on hand for every landmark massacre in town, told the *Daily Californian* at the time, "It's about as good as anybody offered at the time."

Now Cal is offering four-story housing with a far better design, and unfortunately for Emmington — but fortunately for everyone else in this particular case — the university isn't subject to local landmark rules. Wernecke's dubious masterpieces, it appears, will kiss the wrecking ball. ■

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Hysterical Landmarks

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who has eight local projects built and three under construction, has faced off against O'Malley and the commission on several occasions. "A landmark in the city of Berkeley is anything the landmarks commission says it is," he grumbles. "It could be something like, 'Mario Savio ate lunch here and therefore it's a historic resource.' When it's that broad, there are basically no standards."

Reached on Monday, O'Malley said she didn't have time to respond to questions.

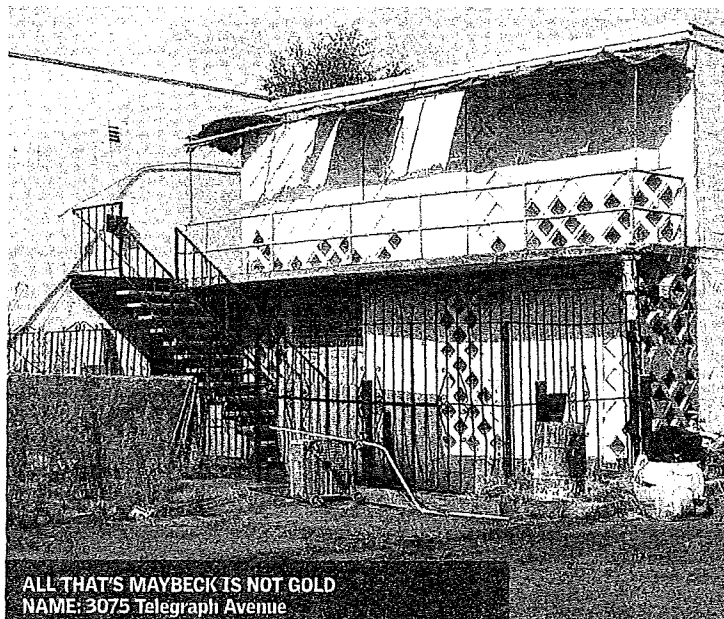
Most recently, Kennedy and the hysterical preservationists battled it out over the old two-story house behind the Darling Flower Shop on University, which the developer wanted to replace with a 35-unit apartment complex. The commission stalled Kennedy's application using an old trick: It nominated the 110-year-old house as a potential landmark. In Berkeley, this very act brings the building-permit process to a screeching halt. Nothing can be done until the commission decides, after extensive research, whether to landmark the property. And this can delay the normally sluggish process for months.

Kennedy hired a well-regarded Bay Area architecture-history consultant, who opined that the current building had been remodeled so extensively over the years that it was hardly an example of its era any longer. The landmarks commissioners saw it differently, saying the house was historically significant because it was a "proud survivor" of the "rural pioneer days of Berkeley."

He then appealed the designation to the city council, meaning even more delay. The council punted the case back to the landmarks commission and asked it to reconsider. Another delay. The commission then unearthed more information showing the historical importance of the home's original owner, John Doyle, whom it described as a "leading member" of the Workingman's Party, which led the charge to incorporate Berkeley as a city. As Kennedy later revealed to the council, the Workingman's Party also had a less noble purpose — forcing Chinese laborers out of California. The council ultimately overruled the landmarks panel. It took fourteen months, but finally Kennedy had his permission.

Then the Berkeley Architectural Heritage Association sued to

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ALL THAT'S MAYBECK IS NOT GOLD

NAME: 3075 Telegraph Avenue

BUILT: 1938

SIGNIFICANCE: Maybeck experiment

THREAT: Proposed apartments

STATUS: Landmarked 2003; owner mulling his options

ant, according to a historic survey report.

This was a rare case in which the landmarks

Sources say the elderly owner of this property practically begged the LPC not to landmark it, claiming it was his family's primary source of income. Neighbors also urged the commission to let the ten-unit apartment project proceed. Commissioners didn't listen.

The now-fenced site housed a liquor store and Milt's Coin-Op Laundromat until a fire gutted both two years ago. But the LPC only cared about a two-story curiosity hiding out back. Long ago, the now-crumbling structure was the "demonstration building" for what was in the '30s a new concrete grid-style space. Several grid-style buildings were later built in industrial West Berkeley, but this was among the first. What's more, famed local architect Bernard Maybeck served as a design consult-

commission had to make a tough judgment call. For one, the building was already listed as a state historic resource, and Maybeck's peripheral involvement further complicated things. Maybeck is among Berkeley's most famous early-20th-century architects, best known for his First Church of Christ Scientist at 2619 Dwight Way.

Yet numerous examples of Maybeck's own architecture already exist in town — as of July 2000, the LPC has landmarked at least a dozen. Did the city really need to enshrine another one in which the architect played a limited role? The commission said yay earlier this month. Now the senior property owner must decide whether to appeal to the city council, redesign his project, sell off the land, or let it remain a festering eyesore.

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stop the project. Kennedy finally got his apartments, but he says the experience set him back \$50,000 in legal fees, not to mention the delays.

TO THEIR CREDIT, even the hyperpreservationists on the landmarks commission didn't make the Doyle House a full-fledged landmark. They instead gave it a lesser honor, a "structure of merit."

What, exactly, is a structure of merit? Technically, Berkeley's landmarks ordinance considers it a "contributing structure," not remarkable in and of itself, but somehow contributing to what might be characterized as the historic vibe of a neighborhood — a dilapidated grocery store, a common bungalow, a corrugated tin shed.

Oddly, although the classification doesn't carry the impressive imprimatur of "landmark," the two have almost the same regulatory weight. According to the law, the commission may review any proposal to alter either one. The only real difference, says Assistant City Attorney Zach Cowan, is that the commission can suspend demolition of a landmark for one year, but a structure of merit for only six months.

When Berkeley sought state certification of its landmarks commission a couple years back, officials from the California Office of Historic Preservation puzzled over why the city needed this secondary historic classification if the regulatory effect was no different from a landmark. State officials even suggested that Berkeley reconsider the "usefulness" of the designation.

The state guys weren't getting it: The structure of merit classification is a convenient tool for monkey-wrenching development in cases where reasonable citizens would likely question a landmark designation. What particularly irks developers is that the commission often hastens to name something a landmark or structure of merit *after* someone submits a building proposal, or even when neighbors hear rumors of something in the works. In such cases, the whole thing becomes a sort of preemptive strike.

Paul Dyer, a project manager for developer Ruegg & Ellsworth, suspects that's what happened in 1999 with the turn-of-the-century Blood House — a Queen Anne Victorian named for its original owner, Emily Blood — next to Top Dog on Durant Avenue. Though Ruegg & Ellsworth hadn't formally applied to build anything, a company rep had begun talking to city planners. Next thing, the landmarks commission initiated the process to landmark Blood House and other adjacent houses. The commissioners ultimately named it a structure of merit, arguing that it was one of the few remaining single-family homes from the College Homestead Tract, a stretch of land near campus that was once owned by the university.

But the commission's claim wasn't really true, Dyer says. According to architectural historian Michael Corbett, there are 48 residential buildings remaining from the old Homestead tract, 37 of which haven't been renovated over the years. That wasn't the case with the Blood House, says Corbett, who was hired by Dyer's bosses to research the matter. The house, he says, has been so radically altered and remodeled over the years — for instance, the original surface was stuccoed over — that it barely resembles the original.

In architectural parlance, the Blood House lacks "integrity." A landmark, in

Corbett's view, should represent the time period in which it was built; it should visually take you back to another time. State and federal landmarking guidelines also stress architectural integrity — the Blood House, and Doyle House for that matter, would not qualify for the California Register of Historical Resources.

But Berkeley's landmark guidelines ignore integrity, Corbett says. As a result, the landmarks commissioners invent superlatives to describe the mediocre, such as citing "back to nature principles" to landmark a concrete retaining wall.

In November, Corbett went before the city council to accuse Berkeley's preservationists of crying wolf. "These people have used the language of preservation to pursue other objectives," he told the city leaders. "In my opinion, the persistent advocacy of the preservation of unqualified buildings is an abuse of

preservation laws that undermines the credibility of historic preservation and may prove a backlash against historic preservation."

Corbett isn't the only one pissed off. As this story goes to press, Mayor Tom Bates is considering reeling in Berkeley's landmarks commission as part of a broader effort to streamline the city's Byzantine building-permit approval process. He has appointed a fourteen-member task force — including developers, architects, and consultants critical of the commission — to recommend changes. Already, developer-friendly task-force members have said they hope the mayor will limit its ability to hold up projects.

Ironically, the commission has more or less foreclosed on an opportunity to reform itself. Although Mary Hanna lost her case against the city, Superior Court Judge Ronald Sabraw sympathized with her to an extent: He derided Berkeley for its confusing and slow process, which he said violated the state's Permit Streamlining Act. After the judge's spanking, the city attorney recommended amending city law to satisfy the judge's criticisms. The city council directed the commission to come up with a proposal in sixty days. That was more than three years ago, and the commission hasn't yet acted. So much for deadlines.

As might be expected, the preservation crowd isn't happy about the latest threats to its last-minute power to halt the bulldozer. At a recent task force meeting, LPC chair Carrie Olson expressed sympathy for people fighting proposed developments in their neighborhoods. "They come to the LPC," she said candidly, "to put a foot in the door."

And, if they're lucky, to put a boot in some builder's ass.

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