

Landmark Structural Alteration Permit (LMSA#2022-0004)

Requesting Permission to Change Roof Materials

May 20, 2022



Ladies and Gentlemen of the Commission:

We respectfully request that you consider several factors in your review of LMSAP#2022-0004. As we outline below, there are *Aesthetic and Safety* considerations, and well as *Legal* considerations in this matter.

Aesthetic and Safety Considerations

(1) First and foremost, we would like to clearly and unequivocally establish that the house is undergoing a painstaking restoration using Bernard Maybeck's original blueprints. Indeed, several interior alterations and additions that were made in the 1960s (by the 2nd owners, Mr. and Mrs. Wright) have been removed in favor of restoring the house to its original architectural specifications and design. The only exceptions to this are the substitutions of newer and/or safer materials for the roof (composite slate) and in the replacement of leaking plumbing pipes and fixtures (using copper rather than galvanized piping).

With regard to the roof renovation (the subject of this hearing), when specifically queried about why she was intervening in this matter at a time well past the legal issuance of the building permit, as well as the purchase of hundreds of thousands of dollars of parts and materials, Ms. Crane clearly stated that she received "*numerous complaints from neighbors*" regarding the destruction of a historical property. We asked Ms. Crane about the identity of these unidentified "neighbors" (so that we could have the builders reach out to them and share the materials), she refused. It certainly odd that a public, government employee would deny a request from a homeowner to actively work with neighbors in collaboration to provide updates and information about an ongoing construction project.

Lacking any specific information about these alleged complainants, we approached each neighbor and HOA grouping in the immediate area and found there were no neighbors or groups who made any such complaint. In fact, the major HOA in our area, the Maybeck Twin Drive Association (of which we are members) stated that not only did

they not complain about the project or the roof, but they strongly supported using a fire safe material--mostly due to the extreme fire danger in this area. Further, using California Public Records Act section 6250 et seq, we filed a request with the City of Berkeley to provide any copies and/or notes related to complaints received. The city responded in full accord with the law, that no such complaints were received. In fact, as stated above, the Maybeck Twin Drive Association delivered a letter in full support of the project (Please review Attachment B).

Clearly Ms. Crane's capricious and vindictive suspension of our (General Roofing) building permit was based entirely on a falsehood and has no basis whatsoever in fact. The facts are indisputable, that the property is being painstakingly restored, using the original Maybeck design.

(2) Specific Historic Preservation code sections describing "materials" provided by Ms. Crane's office clearly indicate that historical structures **MAY** use wooden shingles to preserve character. It does NOT say *MUST USE*. Further, **the selected materials in no way alter the look, feel or character of the structure**. More specifically, there are 10-12 Maybeck-designed homes in what could be considered the "*immediate area*." **Only ONE** of those structures has a wooden shingle roof. Three of the Maybeck-designed properties have slate or composite slate materials. Several others use cheap "tar paper asphalt shingles." (Please review Attachment A). The materials selected for LMSAP#2022-0004 are the absolute best available on the market. These shingles are entirely appropriate and are more fire safe than wooden shingles. **The owners of the property DO NOT elect to use wooden shingles.**

(3) In the book, *Blooming in Winter*, by Pamela Valois, Jacomena Maybeck is quoted as follows: "...***towering eucalyptus trees were cut down to make room for a new Maybeck project, the J. B. Tufts house. Completed in 1931 for the grand sum of \$8,000 it was in Jackie's estimation 'the most elegant and expensive house on the street.'***" The selected roofing materials are entirely in keeping with this description and are absolutely aligned with Mr. Maybeck's architectural vision for this home.

Legal Considerations

1) We were issued a valid, bona-fide building permit to re-roof the house using composite slate. It was submitted, reviewed, accepted, and approved by the City of Berkeley Building Department. Relying on the legally issued permit, we removed the existing roof (91 years old) from the house, purchased materials, and have accepted delivery of those materials. This roof project is costing more than \$350,000 to ensure top-quality materials, the best roofing company, and alignment with both the architect's vision and the best fire safe materials to use in this extreme fire danger area.

In fact, Mr. Maybeck, who had several of his houses destroyed in this area by the 1929 Berkeley Hills fire, was keenly aware that he should use the best materials he could find at the time to prevent homes being destroyed by another devastating Berkeley Hills fire.

At some point Berkeley City employee Fatima Crane “suspended” this building permit and halted construction mid-project. This has caused substantial delays, and left the home without a roof, and very susceptible to weather conditions, including wind, rain, heat, and natural element destruction. Ms. Crane’s suspension of this permit has now caused the house to be in peril and could face structural and foundational damage that may destroy the entire structure and cause permanent harm to this extraordinary structure.

Based on the legal doctrine of DETRIMENTAL RELIANCE the City, and Ms. Crane personally, are liable for all costs associated with the reversal of the initial position.

(2) The area where the residence is located is designated by our insurance underwriters as an extreme *high fire danger* area. They will not insure the house for fire with a wooden roof of any description. It is reckless and irresponsible to put a wooden roof, with or without fire retardant chemical treatment, on this structure in this dangerous and potentially destructive fire damage area. (Please review Attachment C).

The City and Ms. Crane personally, will be entirely liable for any lack of insurance coverage that results from not allowing a composite roof to be put on the building.

(3) During the period this matter is in a “suspended” state (caused entirely by Ms. Crane), and the roof is off the house, the house is not inhabitable as well as vulnerable to wind and rain damage in addition to burglary (which has already occurred during this period, please refer to Berkeley Police Department report number 2022-19651). This intrusion alone caused an estimated \$50,000 to \$100,000 loss of valuable antiques and personal possessions.

The City and Ms. Crane personally, will be entirely liable for any ongoing damage to the structure and/or burglary losses that result from the entirely insecure state the residence is in.

(3) The property owners have a valid contract with General Roofing Inc. to complete a re-roofing project. Stopping that project during the contract period constitutes Tortious Interference in Contractual Relations per California Business and Professions Code Section 16600, (also known as Economic Interference) see also *Pacific Gas and Electric Company v. Bear Stearns and Co.* 50 Cal. 3rd 1118 (1990). Further, The City and Ms. Crane can also be held liable for punitive damages should it be demonstrated

that Ms. Cranes malicious behavior caused the contract to be breached, see *Duff v. Engelberg*, 237 Cal. App 2d 505 (3d Dist. 1965).

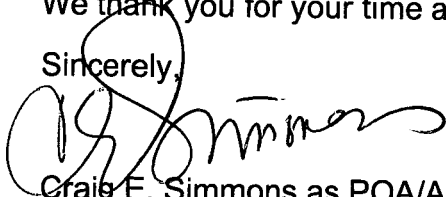
Based on the legal doctrine involving Tortuous Interference in Contractual Relations, The City and Ms. Crane personally can be sued for all related damages.

(4) From a strictly legal perspective, the only circumstances under which a government entity can "take" property and dictate what may or may not happen to that property are under the legal doctrine of Eminent Domain (which is not applicable in this instance) or with a lien filing (which could only affect potential sale proceeds to address a delinquent tax bill) or with a legal contract. The notion that any type of contract (between The City of Berkeley and 2733 Buena Vista Way) exists is false, as there was no consideration of any type offered to Mrs. Edginton at the time of application in 2002 or at any time thereafter. **As such, the authority of the Landmarks Preservation Commission can be challenged in a court of law.** In addition, we have worked with a member of the City Council to understand how we may withdraw from Landmark Status and were informed "no such process exists." This alone would be struck down in court along several fundamental legal precedents.

All said, we hope the Landmarks Preservation Commission will consider the factors detailed herein and direct the Planning and Development Department to immediately re-instate the building permit to re-roof 2733 Buena Vista Way as originally issued. We know that Mr. Maybeck would be proud of our efforts to fully realize his original 1931 plans he created to design and build this incredible product of his genius, imagination, and innovative use of building materials. We all need to honor his heritage and legacy here in Berkeley.

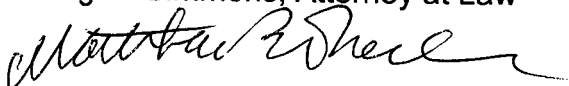
We thank you for your time and your attention to this matter.

Sincerely,



Craig E. Simmons as POA/Administrator for Jane Simmons Edginton and the Jane Simmons Edginton Trust.

Craig E. Simmons, Attorney at Law



Matthew O'Neill Ph. D. Professor of Mechanical Engineering (Ret.)

ATTACHMENT A

PHOTOS OF NEARBY MAYBECK HOMES









ATTACHMENT B

MAYBECK TWIN DRIVE ASSOCAITION LETTER IN SUPPORT

April 6, 2022

Hello Craig and Matt,

Thank you for notifying the Maybeck Twin Drive Association Board of the complaint you received through the City of Berkeley. We are sorry to hear you are experiencing this.

The MTDA Board is not aware of this complaint, nor was a complaint filed by the MTDA Board or by any Board member.

This concern goes beyond the scope of the MTDA, which is, in brief, only to deal with the matters of the physical road and its very near periphery (trees, shrubs, signs, reflectors and drains). Our association has no qualms with your remodel project, and our association has no authority or control over any member's private property.

As always, we open our MDTA Newsletters and meetings to members to share MTDA-related business. We encourage members to resolve other business directly with each other or through appropriate City forums. While we do not consider this issue to be MTDA business, as it was brought to the Board, we will include a mention of it in our upcoming April 10th newsletter.

We wish you luck and hope that you can resolve this with the City of Berkeley as soon as possible.

Thank you again and please feel free to reach out to me with any questions or concerns.

Best Regards,
Kathryn, President, and the MTDA Board

ATTACHMENT C

AREA EXTREME FIRE MAP

