



Planning and  
Development  
Department  
Land Use Planning  
Division

# Action Minutes

## Zoning Adjustments Board

Thursday, January 14, 2010

City Council Chambers, 2134 Martin Luther King Junior Way.  
Berkeley, CA 94704 (Wheelchair Accessible)

### Public Testimony Guidelines

The Board Chair may limit the number of speakers and the length of time allowed to each speaker. To speak at a public hearing, complete a speaker card and submit to Planning Staff (1) as early as possible at the meeting, or (2) at the Permit Service Center, 2120 Milvia Street, **before** 5:00 PM on the day of the hearing. *At the start of the meeting the Board may rearrange the agenda or place additional agenda items on the Consent Calendar, so it is important to submit speaker cards at the start of the meeting to avoid losing the chance to speak to an item.*

The Board encourages the public to submit comments in writing or by email, in advance of the meeting. See **Correspondence and Notice of Decision Requests** at the end of this Agenda for procedures.

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### **Roll Call: 7:00 PM**

**Present:** J. Anthony, R. Lau, G. Williams, B. Allen, D. Matthews, M. Cohen, S. Shumer,  
D. Koon, E. Mikiten

**Excused:** NONE

**Substitutions:** NONE

**Public Attendance:** 115

**Number of Speakers:** 30

### **Ex Parte Communication Disclosures: NONE**

*In the context of adjudicative matters that come before the ZAB, ex parte communications are those which occur outside the formal hearing process. ZAB members should avoid ex-parte contacts on matters pending before the ZAB as much as possible, as they may represent, or be perceived to represent, the receipt of evidence that can unfairly influence a Board member's decision on a matter before the Board. If such contacts do occur, they must be placed in the record and disclosed to all interested parties sufficiently in advance of the decision to allow rebuttal.*

### **Public Comment: NONE**

Each Speaker is limited to a maximum of three minutes.

### **Agenda Changes: NONE**

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*The Board Chair may reorder the agenda at the beginning of the meeting.*

**Consent Calendar:**

*The Consent Calendar allows the Board to take action with no discussion, on projects to which no one objects. The Agenda includes two types of Consent Calendar items: (1) Modifications of existing Use Permits (which have not been noticed for public hearings); (2) Items being continued to another meeting (Board action has been postponed to another meeting). The Board Chairperson will announce items for the Consent Calendar at 7:05 p.m. The Board may place additional Agendized items on the Consent Calendar, if no one present wishes to testify on an item. Anyone present who wishes to speak on an item should raise his or her hand and advise the Chairperson, and the item will be pulled from the consent calendar. Modification Projects may be discussed by the Board at this meeting or set for a public hearing at a later meeting. Items already noticed for a public hearing will be heard following Continued Items, or, if necessary, posted for a public hearing at a subsequent meeting.*

**1. Approval of Previous Meeting Minutes**

Minutes from **12/10/2009** meeting

**Recommendation: APPROVE**

**Action APPROVED**

**Motion: G. Williams, S. Shumer**

**VOTE: 6-0-3-0 (Allen, Koon, Lau abstain)**

**Appeal of Administrative Use Permit/Staff Level Design Review: NONE**

*Appeals of Administrative Use Permit and Design Review applications are not subject to public hearing and no public testimony will be taken at this time. The Board may set the matter for public hearing, or affirm the Zoning Officer's or Design Review Secretary's decision.*

**Continued Items (Public Hearing has been closed): NONE**

**Continued Public Hearings: NONE**

**Compliance Determination: NONE**

**New Hearings: NONE**

**Public Meeting:**

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**1. 1421 Second Street**

Owner/Operator/Representative: Christina Chan, 1333 Second Street, Berkeley CA 94710

Use Permit #06-1000045: Performance Review

**Continued from: SEPTEMBER 10, 2009**

**Recommendation: RECEIVE INFORMATIONAL REPORT**

**Number of Speakers: 30**

**Action: Continue discussion to the meeting of February 11** with health department representative present to address community concerns raised today, with a limit on the discussion to 1 hour.

**Motion: B. Allen, S. Shumer**

**VOTE: 8-1-0-0 (No: M. Cohen)**

**Additional Agenda Items:**

- A. Information/Communication
- B. Business Meeting
- C. Chair's Report
- D. Current Business/Committee Appointment
- E. Future Agenda Items
- F. Other Matters
- G. Future Council Hearings on ZAB decisions

**Adjourn 11:50PM**

*[Approved for posting by Steven Buckley, Secretary, Zoning Adjustments Board]*

**Legal Notice Concerning Your Legal Rights**

If you object to a decision by the Zoning Adjustments Board to approve or deny a permit or variance for a project, the following requirements and restrictions apply:

1. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Current Planning Division in writing to receive a Notice of Decision when it is completed.
2. Pursuant to Code of Civil Procedure, Section 1094.6(b), no lawsuit challenging a City Council decision to deny a permit or variance may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure, Section 1094.6(b), which has been adopted by the City. Any lawsuit not filed within that ninety (90) day period will be barred.
3. Pursuant to Government Code, Section 65009(c)(5), no lawsuit challenging a City Council decision to approve (with or without conditions) a permit or variance may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure, Section 1094.6(b), which has been adopted by the City. Any lawsuit not filed within that ninety (90) day period will be barred.
4. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose,

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was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:

- A. That this belief is a basis of your appeal.
- B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
- C. All evidence and argument in support of your belief that the decision or condition constitutes a “taking” as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.