



Action Minutes

Planning and
Development Department
Land Use Planning
Division

Zoning Adjustments Board

Thursday, January 28, 2010, 7PM

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 agendized 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.

Planning and Development Department, Land Use Planning Division

Roll Call: 7:00PM

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

Absent: J. Anthony

Substitutions: NONE

Public Attendance: 50 people and 23 people after the recess

Number of Speakers: 29

Ex Parte Communication Disclosures

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.

R. Lau: Spoke with Ms. Rickes about Rose Street and 2312 Telegraph project, also spoke with residents above the 3095 Telegraph project

G. Williams: Spoke with Ms. Rickles about Rose Street and Telegraph Ave projects

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- B. Allen: Spoke with Ms. Rickles about 2312 Telegraph and Rose Street, also spoke with Applicant for Rose Street on Logan
- S. Shumer: Spoke with Ms. Rickles on Rose Street and Telegraph Ave, also ran into Susan Wengraph and Jean Poshman on Rose Street, also talked with Mr. Ali regarding 3095 Telegraph Ave project
- D. Koon: Spoke with Mr. Ali regarding 3095 Telegraph Avenue project
- D. Matthews: Spoke with Mr. Ali re: 3095 Telegraph Ave, also spoke with Rena Rickles about 2312 Telegraph Ave as well as 2707 Rose Street projects

Public Comment

Each Speaker is limited to a maximum of three minutes.

Agenda Changes

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

- D. Matthews requested Deb Sanderson (Planning Manager) to review the Commission on new staff members

Consent Calendar:

The Consent Calendar allows the Board to take action with no discussion, on projects to which no one objects. The Agenda includes three types of Consent Calendar items: (1) Approval of previous meeting minutes; (2) Modifications of existing Use Permits (which have not been noticed for public hearings); (3) 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 01/14/10 meeting

Recommendation: APPROVE

Action: Approved on Consent

Motion: G. Williams, S. Shumer

VOTE: (8-0-0-1; Absent: J. Anthony)

Agenda items 2, 3, and 6 moved to Consent Calendar to be Approved on Consent (Item #6 was reopened later in the meeting)

Agenda item 5 to be continued to February 11, 2009 meeting without discussion

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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:

1. 3095 Telegraph Avenue

Use Permit #09-20000161 to establish a laundromat.

Applicant: PWS, The Laundry Company c/o Bob McTavish, 365 Swift Street, South San Francisco

(Zoning: C-1, General Commercial District; Planner: Pamela Johnson)

Recommendation: APPROVE

Number of Speakers: 13

Action: DENIED

Motion: M. Cohen, S. Shumer

VOTE: (8-0-0-1; Absent: J. Anthony)

2. 2329 Valley Street

Use Permit #09-10000062 to construct a new second story of approximately 690 square feet to an existing single-story house that vertically extends a non-conforming left side yard setback (1'-7¼" where 3'-6" is required) on a property with a lawful, non-conforming lot coverage of 42.27% where 40% is permitted.

Applicant: Alyson Furer Kaldis, Jason Kaldis Architect, Inc., 1250 Addison Street, Studio 210, Berkeley

(Zoning: R-1, Single-Family Residential; Planner: Leslie Mendez)

Recommendation: APPROVE

Action: APPROVED on Consent

Motion: S. Shumer, G. Williams

VOTE: (8-0-0-1; Absent: J. Anthony)

3. 145 Forest Lane

Use Permit #09-10000096 to construct a third-story deck and add new rear window to a single-family dwelling with non-conforming lot coverage and rear setback.

Applicant: Christian Bauer and Alicia Kavelaars, 145 Forest Lane, Berkeley

(Zoning: R-1, Single-Family Residential; Planner: Aaron Sage)

Recommendation: APPROVE

Action: APPROVED on Consent

Motion: S. Shumer, G. Williams

VOTE: (8-0-0-1; Absent: J. Anthony)

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4. **2707 Rose Street**

Use Permit #09-10000038 to demolish an existing two-story, 2,477 square foot, single-family dwelling and three detached one-car garages and to construct a two-story, 6,478 square foot, single-family dwelling, with a 3,394 square foot, 10-car garage, on a 29,714 square foot parcel.

Applicant: Donn Logan (Marcy Wong / Donn Logan Architects), 800 Bancroft Way, Suite 200, Berkeley

(Zoning: R-1 (H), Single-Family Hillside District; Planner: Greg Powell)

Recommendation: **APPROVE**

Number of Speakers: 15

Action: **APPROVED**

Motion: **M. Cohen, G. Williams**

VOTE: **(7-0-1-1; Abstain: S. Shumer; Absent: J. Anthony)**

5. **2312 Telegraph Avenue**

Variance / Use Permit #09-10000039 to establish beer and wine sales in an existing grocery store and delicatessen in a district where these sales are prohibited, and to extend the hours of operation for the store from 7 a. m. to 10 p. m. daily to 7 a. m. to 10 p. m. Sunday through Friday and 7 a. m. to 11 p. m. on Saturdays.

Applicant: Fuad and Muna Ayyad for Samer Market, Inc., 2312 Telegraph Avenue, Berkeley

(Zoning: C-T, Telegraph Avenue Commercial; Planner: Fatema Crane)

Recommendation: 1. **DENY** the request for a **Variance** to establish the sale of beer and wine in the CT - Telegraph Avenue Commercial district; and

2. **DENY** the request for a **Use Permit** to establish a retail alcoholic beverage sales outlet; and

3. **APPROVE Use Permit #09-10000039** to modify Condition #13 of Use Permit 07-10000026 to extend the operating hours for the existing store beyond those hours previously established in the Use Permit.

Action: **Continued to Feb. 11, 2010 ZAB meeting, without discussion**

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

VOTE: **(8-0-0-1; Absent: J. Anthony)**

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6. 2565 Telegraph Avenue

Use Permit #09-10000068 to add incidental beer and wine service to an existing full service restaurant.

Applicant: Permit Expeditors, P.O Box 1267, Orinda

(Zoning: C-T, Telegraph Commercial District; Planner: Steven Buckley)

Recommendation: APPROVE

Number of Speakers: 1

Action: APPROVED with modified condition of approval to allow serving beer/wine at 3 outside tables located on front outdoor patio area that are not in the public right of way

Motion: G. Williams, E. Mikiten

VOTE: (6-0-2-1; Abstain: R. Lau, S. Shumer; Absent: J. Anthony)

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

- Reminder to Board that there will be 2 ZAB Meetings for February and March of 2010

G. Adjourn: 9:55 PM

Correspondence and Notice of Decision Requests

- To distribute correspondence to Board members *prior to the meeting date* -- submit comments *by 12:00 noon, seven (7) days before the meeting*. Please provide 15 copies of any correspondence with more than ten (10) pages.
- Correspondence received by 5 pm the Tuesday before the meeting will be posted on the ZAB web site for review by the Board and public prior to the meeting. Correspondence received later, and after the meeting, will be posted to the web site following the meeting.
- Any correspondence received after this deadline will be given to Board members on the meeting date just prior to the meeting.
- Staff will not deliver to Board members any additional written (or e-mail) materials received after 12:00 noon on the day of the meeting.
- Members of the public may submit written comments themselves early in the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Zoning Adjustments Board Clerk just before or at the beginning of the meeting.
- Written comments, or a request for a Notice of Decision should be directed to the ZAB Secretary at: Land Use Planning Division (Attn: ZAB Secretary), 2120 Milvia Street, Berkeley, CA 94704 OR at zab@ci.berkeley.ca.us

Communication Access

To request a meeting agenda in large print, Braille, or on cassette, or to request a sign language interpreter for the meeting, call the Current Planning Division at 981-7410 (voice) or 981-7474 (TDD); at least five (5) working days notice will ensure availability.

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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, 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.