ACTION MINUTES

ZONING ADJUSTMENTS BOARD AGENDA
THURSDAY, AUGUST 25, 2005
7:00 PM

CITY COUNCIL CHAMBERS, OLD CITY HALL
2134 MARTIN LUTHER KING JR. WAY
BERKELEY, CA 94704
(Wheelchair Accessible)

CONSENT CALENDAR PROCEDURES

Due to the length of the Zoning Adjustments Board agenda, a Consent Calendar will be used to approve certain types of applications at one time. The Consent Calendar includes:

Routine business such as modifications of use permits which are not subject to a public hearing and items proposed for continuance. (Please note that items proposed for continuance to a date certain will not be re-noticed by mail or posting on site.)

Public hearings on use permits and variances that are apparently non-controversial, on which no adverse comment has been received, and on which the Zoning Officer recommends approval.

The Chairperson of the Board will announce the items on the Consent Calendar at 7:05 p.m. 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. Any applicant, member of the audience, or Zoning Adjustments Board member may require that a Consent Calendar item be removed from the Calendar for discussion and testimony (if already posted for hearing). Items pulled from the Consent Calendar will be heard following Continued Items.

PUBLIC TESTIMONY PROCEDURES

The Board may limit the number of speakers and the length of time allowed to each speaker. Persons wishing to offer testimony are encouraged to submit their comments in writing. You may also submit comments by E-mail at zab@ci.berkeley.ca.us. If you want to speak at a public hearing, you must turn in a speaker card by 7:15 PM on the night of the hearing. Cards may also be submitted at the Zoning Counter at 2120 Milvia Street prior to 5 p.m. on the day of the hearing.
Action Minutes

Roll Call 7:02 P.M. All present (Judd arrived 7:21 P.M.)

Public Comment

Consent Calendar

Agenda Changes

Appeal of Administrative Use Permit

NOTE: Appeals of Administrative Use Permit are not subject to public hearing and no public testimony will be taken at this time. The Board can choose to set the matter for public hearing, or affirm or deny the decision of the Zoning Officer to grant the permit.

1. 1617 SEVENTH STREET
   Applicant: Mary Bull-Ransom, 2563 64th Avenue, Oakland, CA 94605.
   Appellant: Mr. Guillermo Pulido, 1613 Seventh Street Berkeley, CA 9741019.
   Appeal of Administrative Use Permit #04-20000158 to construct a 525 sq. ft. (21 ft. length x 25 ft. width) habitable accessory building with one parking space, 200 sq. ft. of habitable space with an average height of 10 ft., located 4-feet 6-inches from the property line; (R-1A, Limited Two-Family Residential SRF)
   Continued From: None
   Recommendation: Deny Appeal; Affirm Zoning Officer’s Decision.
   Action: Denied appeal on Consent- 8-0-1 (Judd absent)

2. 2170 SHATTUCK AVENUE
   Request by: Curtis Chin, 456 Kentucky Ave., Berkeley, CA
   Appealed by: Chris Tan for GMSX LLC, 2106 Shattuck Ave, Berkeley, CA
   - Appeal of AUP #04-20000173 to establish a quick-serve food service and establish off-site parking.
   - Modification #05-70000026 of AUP #04-20000173 to waive the required parking for the proposed quick-serve food service. (C-2, Central Commercial, FC)
   Continued From: None
   Recommendation: Deny appeal; Affirm Zoning Officer’s Decision; Approve MOD.
   Action: Denied appeal and approved modification on Consent- 8-0-1 (Judd absent)
Appeal of Design Review Committee Action:

NOTE: Appeal of Design Review Committee action is subject to public hearing, thus public testimony will be taken. The Board may affirm either (1) uphold the DRC decision, (2) overturn the DRC decision and uphold Staff Level Design Review decision, or (3) overturn the DRC decision and uphold the Staff Level Design Review decision with added conditions.

3. 3045 SHATTUCK AVENUE

Applicant and Appellant: Ching F. Sun, 2418 Carleton St., Berkeley, 94704.
Public Hearing on Appeal of Design Review Committee action to overturn the Staff Level Design Review Approval and deny the Design Review (DR#04-30000100) of a proposed Mixed Use Development (two dwelling units above commercial space) at this address. (C-SA, South Area Commercial, DRS).

Continued From: None
Recommendation: Overturn DRC decision and Approve the proposed design with added conditions.
Action: Continue Public Hearing to September 22, 2005 and appointed a subcommittee to review and recommend Design Review conditions - 8-1-0 (No: Metzger)

Nuisance Consideration

The following projects are being brought to the Zoning Adjustments Board by Staff for consideration as a public nuisance. These items have not been set for public hearing. Staff is requesting that ZAB review the evidence and consider a determination of public nuisance pursuant to Zoning Ordinance Section 23B.64.

4. 2440 SACRAMENTO AVENUE

Request by Code Enforcement Staff
Consider initiation of nuisance proceedings under BMC 23B.64 for liquor store at above address.

Continued From: None
Recommendation: Make a determination of public nuisance, and set a public hearing to consider appropriate remedies.
Action: Set for Public Hearing September 22, 2005 on Consent- 8-0-1 (Judd absent)

5. 2369 TELEGRAPH AVENUE

Request by Code Enforcement Staff
Consider initiation of nuisance proceedings under BMC 23B.64 for liquor store at above address.

Continued From: None
Recommendation: Make a determination of public nuisance,
and set a public hearing to consider appropriate remedies.

Action: Set for Public Hearing September 22, 2005 on Consent- 8-0-1 (Judd absent)

Continued Hearings: None

New Hearings:

6. 2039 FOURTH STREET
Request by: David Trachtenberg, 2421 Fourth Street, Berkeley, CA  94710
Use Permit #04-10000119, to construct a new three-story mixed use building (office and residential over retail) of approximately 19,394 square feet and demolition of two warehouse buildings totaling approximately 14,500 square feet; (C-W, West Berkeley Commercial district, SDR)
Continued From: None
Recommendation: Adopt Mitigated Negative Declaration and Approve Project
Action: Approved with changes - 9-0-0

7. 2310 FULTON STREET
Request by: Mr. Avi Nevo; 2071 Addison Street, Berkeley, CA  94704
Use Permit Modification #05-70000020, modifying Use Permit #02-10000009 to change the number of inclusionary units from 16 to 14 (approximately 20% of the 74 total units in the project), the minimum number required under BMC Section 23C.12.030 (C-2: Central Commercial, SRF)
Continued From: None
Recommendation: Approve
Action: Continued to September 8, 2005- 9-0-0

8. 2538 HILLEGASS AVENUE
Request by: David Meyers, 3708 Penwood Place, Dublin, CA 94568
Use Permit #04-10000151 to add 3 dwelling units to an existing 2-story, 4-unit apartment building on an 8,293-square-foot lot; 2 units will be located in new third story, which increases building height by 9 feet, and one unit will be located in enlarged basement (not considered a “story”); 7 parking spaces are proposed behind building; (R-3, Multiple-family Residential, AS)
Continued From: None
Recommendation: Approve
Action: Continued to September 8, 2005- 8-0-1 (Tiedemann absent)
9.  **3075 TELEGRAPH AVENUE**
Request by: Mokka, LLC, 1991 Marin Avenue, Berkeley, CA  94707
Use Permit #05-1000069 to establish an 898 square foot quick service restaurant in a new mixed use building, located within 200 feet of a residential district; (C-1, General Commercial, SDR)

Continued From: None
Recommendation: Approve
Action: Approved with changes - 8-0-1 (Judd absent)

10. **Information/Communication**
- Letter from Sharon Hudson: Blood House
- Density Bonus Subcommittee
- Compliance Subcommittee

11. Business Meeting
12. Chair’s Report
13. Current Business/Committee Appointments
14. Future Agenda Items
15. Other Matters
16. Adjourn 12:15 A.M.

**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.

**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.

[Approved for posting by Debra R. Sanderson, Secretary to ZAB, 9/1/05]