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 Boardmember 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.
A G E N D A

Roll Call Call to Order: 7:02 PM
Roll Call: Anthony, Judd, Allen Tiedemann, Sprague, Metzger
Absent: Wilson, Blake, Katz
Approximate Public Attendance: 43 people

Public Comment
Open: 7:02 PM
Closed: 7:05 PM
Two Speakers

Consent Calendar

Wilson arrived 7:04 PM
Blake arrived 7:06 PM

2601 Telegraph moved to consent calendar
1501 University moved to consent calendar
1839 Sixty-Third Street moved to consent calendar

1. 1729 Ashby Avenue
Request By: Mr. Thiele Obrien, 2942 Ellis Street, Berkeley, CA 94703
Use Permit Modification 06-70000005 to allow creation of an 84-square-foot mezzanine within an
approved two-story, 2,480-square foot, single-family dwelling with accessory dwelling unit
(R-2A, Restricted Multiple-Family Residential, AS).
Continued From: 03/09/06
Recommendation: Approve
Action : Approved (6-2-0-1) (No : Metzger, Sprague) (Absent : Katz).

Agenda Changes

Appeal of Administrative Use Permit: None
NOTE: Appeals of Administrative Use Permit are not subject to public hearing and no public testimony
will be taken at this time. The Board will choose to set the matter for public hearing, or affirm or deny
the decision of the Zoning Officer to grant the permit.

Continued Hearings: None
Nuisance Proceedings:
This agenda item is not a public hearing and no public testimony will be taken in this meeting. At the March 9, 2006 meeting, the Zoning Adjustments Board directed staff to prepare a resolution that determines a public nuisance and sets appropriate remedies, as specified by the Board at that meeting. This action results from that request.

2. 3027 Adeline
Request: Adopt a resolution that finds a public nuisance and specifies appropriate remedies, under BMC 23B.64 for the Black & White Liquors at the address above. (GDaniel, Code Enforcement).

   Previously Discuss: 11/28/05; 12/08/05; 1/26/06; 2/09/06; 3/9/06
   Recommendation: Adopt Resolution
   Action: Resolution Adopted (9-0-0-0)

New Hearings:

Katz arrived 7:25 PM

3. 1725-35 Le Roy Avenue
Request By: Jim Goring of Goring and Straja Architects, 5885 Hollis St., Emeryville, CA 94608
Modification of Variance/Use Permit #04-10000002 to allow bell “tower” at front terrace of approved theology school (R-3H, Multiple Family Residential, Hillside, AS)

   Continued From: None
   Recommendation: Approve
   Action: Continued to May 25th, 2006 with project modification maximizing the view of the building and make tower as unobtrusive as possible (9-0-0-0).

4. 3048 Ashby Avenue
Request by: Timothy J. Banuelos, Architect, 2300 Hoytt Court, Pinole, CA 94564
Use Permit #05-10000119 to add approximately 238 square feet of new floor area to an existing gas station for the conversion of the existing automobile repair shop to a convenience store; (C-N, Neighborhood Commercial District, SDR).

   Continued From: none
   Recommendation: Approve
   Action: Approved with Change (9-0-0-0).

5. 2601 Telegraph Avenue
Request by: Shams & Amina Makhany, 2601 Telegraph Avenue, Berkeley, CA 94704
Use Permit #05-10000117 to permit an automatic teller machine (ATM) within an existing convenience store; (C-1, General Commercial, SDR).

Continued From: none
Recommendation: Approve
Action: Approved on Consent (8-0-0-1) (Absent: Katz).

6. 2437 Sixth Street
Request by: Hoss Azimi, 1511 Hearst Avenue #C, Berkeley, CA 94703
Variance #06-10000022 to allow a dwelling unit within 150’ of a MM - Mixed Manufacturing District boundary and to reduce the street side yard setback from 6’4” to 5’ (MU-R, Mixed Use- Residential, SDR)

Continued From: none
Recommendation: Deny Variance
Action: Sense of majority of the Board to support Variance; unsure of ability to make required finding on property value impact.

7. 1501 University Avenue
Request by: Balpinder Sandhu, 1763 Norwalk Way, Fairfield, CA 94534.
Use Permit #05-10000118 to permit an automated teller machine (ATM) within an existing convenience store; (C-1, General Commercial, SDR).

Continued From: none
Recommendation: Approve
Action: Approved on Consent (8-0-0-1) (Absent: Katz).

8. 10 Mosswood Road
Request by: Mr. Steven O’Connor, Engineered Soil Repairs, Inc. 1267 Springbock Road Walnut Creek, CA 94597.
Use Permit #05-10000052 to construct a single-story, 360 square foot, two-car garage, with an average height of 6 feet (maximum height of 12 feet – 9 foot high structure and 3-foot tall rooftop railing to allow patio), located one foot behind the front property line, 3 feet from a side property line and and seven feet from a building on an adjacent property; (ES-R Environmental Safety District, SRF).

Continued From: none
Recommendation: Adopt MND and Approve Project
Action: Adopted MND and approved project (8-1-0-0) (No: Metzger).

9. 1839 Sixty-Third Street

File: ac032306
Request by: Mr. Shawn Smith, Fargo Farnesi, Inc., 2119 West Street, Berkeley, CA 94702
Use Permit #05-10000051 to lift an existing single-family dwelling to construct an additional dwelling unit on the lower level; (Restricted Multiple-Family Residential (R-2A) District, CW).
Continued From: none
Recommendation: Approve
Action: Approved on Consent (8-0-0-1) (Absent: Katz).

Additional Agenda Items:
A. Information/Communication
   i. Staff update on Use Permit compliance for 2120 Allston Way

   Advised staff that currently proposed change to the floor plan (i.e., with open mezzanine, reflecting existing conditions) requires a use permit modification because (1) it differs from either approved plan and (2) it raises issues concerning use. (6-2-1-0) (No: Allen, Wilson) (Abstain: Sprague)

   Advised staff that the physical layout reflected in the “Barrett Plan” (approved administratively by City Planning Director Carol Barrett on June 6, 2003) subdividing the mezzanine into two function rooms, an office, and a smaller open mezzanine, does not require a use permit modification, and can continue under uses specified in condition ten of the use permit (9-0-1-0) (Abstain: Sprague).

   Directed staff to set a public hearing pursuant to BMC 23B.60, Compliance and Revocation, to consider whether the performance standard, which allows private events and non-cultural uses, is consistent with the Use Permit. (9-0-1-0) (Abstain: Sprague).

   ii. Memo, dated March 14, 2006, from Jordan Harrison, requesting comments on proposed Zoning Ordinance Amendment to the DRC membership and appeals Not Discussed.
   iii. Compliance Subcommittee Report
   iv. Joint Density Bonus Subcommittee Report
   v. Correspondence: Concerning proposed project at 1885 University

B. Business Meeting
B. Chair’s Report
C. Current Business/Committee Appointments
D. Future Agenda Items
E. Other Matters
F. Adjourn 11:15 PM

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, Debra R. Sanderson, Secretary, Zoning Adjustments Board, April 21, 2006.]