Action Minutes

Zoning Adjustments Board
Thursday, July 27, 2006
7:00 PM

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) at the public hearing, by 7:15 PM on the night of the hearing, or (2) at the Permit Service Center, 2120 Milvia Street, before 5:00 PM on the day of the hearing.

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 division

Agenda

Roll Call  Call to Order: 7:00 PM
Roll Call: Allen, Blake, Tim Perry substituting for Rick Judd, Katz, Metzger, Shumer, Tiedemann, Wilson
Approximate Public Attendance: 20

Public Comment  No Speakers
Each Speaker is limited to a maximum of three minutes.

Consent Calendar
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, or, if necessary, posted for a public hearing at a subsequent meeting.

1187 Delaware Street moved to the consent calendar
704 Keeler Avenue moved to the consent calendar
2814 Kelsey Street moved to the consent calendar
2395 Telegraph Avenue moved to the consent calendar
2461-63 Hilgard moved to the consent calendar
2501 Telegraph Avenue moved to the consent calendar

1. 1191 Delaware Street
   Request by: Elizabeth Buchanan and Michael Fretz, 1191 Delaware Street, Berkeley, CA 94702
   Yard Variance 06-10000088 to further reduce an existing, non-conforming side yard setback from 3.29 ft. to 2.57 ft. in order to permit a lot line adjustment that will correct a non-conforming property line (R-2, Restricted Two-Family Residential, FC).
   
   Continued From: none
   Recommendation: Continue Public Hearing to August 10, 2006
   Action: Continued on consent (9-0-0-0).

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

Appeal of Administrative Use Permit:
Appeals of Administrative Use Permit 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 decision.

2. 1187 Delaware Street
   Appeal by: Michael Fretz, 1191 Delaware Street, Berkeley, CA 94702
   AUP 04-2000020 to legalize construction that vertically extended existing, non-conforming front and side yard setbacks (R-2, Restricted Two-Family Residential, FC).
   
   Continued From: none
   Recommendation: Set for Public Hearing August 10, 2006
   Action: Set for Public hearing on consent (9-0-0-0).

3. 704 Keeler Avenue
   Appeals by: James and Lisa Kaufman, 700 Grizzly Peak Blvd. Berkeley, CA 94702, and Melvin Hodges, 705 Grizzly Peak Blvd., Berkeley, CA 94702, of AUP 05-20000135 to create a major residential addition of 1,934.5, and to vertically extend an existing, non-conforming side yard setback. (R-2, Restricted Two-Family Residential, FC).
   
   Continued From: none
   Recommendation: Set for Public Hearing August 10, 2006
   Action: Set for Public hearing on consent (9-0-0-0).
4. **2814 Kelsey Street**  
Appeal by: Peter Jacobson, 2814 Kelsey Street  
Appeal of Administrative Use Permit #04-20000017 to legalize an existing habitable accessory building; (R-2, Restricted Two-Family Residential; AS).  
Continued From: none  
Recommendation: Set for Public Hearing August 10, 2006  
Action: Set for Public Hearing on consent (9-0-0-0).  

**Continued Hearings:**

5. **2501 Telegraph Avenue**  
Request by: Max Crome, Crome Architecture, 85 Bolinas Road, Suite 17 Fairfax, CA 94930  
Variance #06-10000053 to establish a quick service restaurant (Peet’s Coffee and Tea) in an existing landmark building, which would exceed the numerical and size limitations for quick service restaurants. (C-T, Telegraph Avenue Commercial, CLW/AS).  
Continued From: 07/13/06  
Recommendation: Approve Findings and Conditions of Approval, approving this project.  
Action: Approved findings and conditions, on consent (9-0-0-0).  

6. **2437 Sixth Street**  
Request by: Hoss Azimi, 1511 Hearst Avenue #C, Berkeley, CA 94703.  
Use Permit #05-10000142 to demolish 2 one-story, vacant laboratory/office buildings and construct 4-unit dwelling units; and Variances to allow a dwelling unit within 150’ of a MM - Mixed Manufacturing District boundary and to reduce the street side setback (along Dwight Crescent). (MU-R, Mixed Use- Residential, SDR/CLW).  
Continued From: 07/13/06  
Recommendation: Approve Findings and Conditions of Approval, approving this project.  
Action: Approved findings and conditions (9-0-0-0).  

**Nuisance Proceedings:** None

**New Hearings:**
7. **2113 West Street**
Request by: Phil Lovett, Tom & Sue Dodd, and JoJenn Corporation, 7412 Park Vista, El Cerrito, CA 94530.
Use Permit #05-10000088 to convert a legal, non-conforming potter’s studio into two dwelling units with a total of 3,639 square feet of floor area and two parking spaces in a garage (R-2, Restricted Two-Family Residential, SDR).

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

8. **2395 Telegraph Avenue**
Request by: Charles Heinrich, 37053 Cherry Street #105, Newark, CA 94560.
Use Permit #06-10000068 to change use from Retail to a Carry-Out food establishment with no seating (C-T, Telegraph Avenue Commercial, GMS/TG).

Continued From: none
Recommendation: Approve
Action: Approved as recommended, on consent (9-0-0-0).

9. **2817 Eighth Street**
Request by: Jim Novosel of The Bay Architects, 1840-B Alcatraz Ave., Berkeley, 94703
Use Permit #05-10000116 to demolish an existing single-family dwelling and construct 4 new dwelling units in a 3-story building with 6,118 square feet of floor area, average height of 32 feet, 3 inches (middle portion only), and 6 off-street parking spaces on a lot of 7,315 square feet (MU-R, Mixed Use-Residential, AS).

Continued From: none
Recommendation: Approve
Action: Approved with change (7-0-2-0) (Abstain: Tiedemann, Katz).

10. **2461-63 Hilgard Avenue**
Request by: John P. Blankenship P.O. Box 852, Berkeley, CA 94701.
Use Permit #06-10000075 to add a dwelling unit to the lower level of an existing duplex by converting existing laundry/storage space and expanding the footprint by 185 square feet (R-3H, Multiple Family Residential and Hillside Overlay, CW/JL).

Continued From: none
Recommendation: Approve
Action: Approved as recommended, on consent (9-0-0-0).
Additional Agenda Items:
A. Information/Communication
B. Business Meeting
C. Chair’s Report
D. Current Business/Committee Appointments
E. Future Agenda Items
F. Other Matters
G. Adjourn 8:17 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.
- 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 email) 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.

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.

[Approved for posting by Debra R. Sanderson, Secretary, Zoning Adjustments Board, 7/28/06.]