Action Minutes

Zoning Adjustments Board
Thursday, November 9, 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

Roll Call
Call to Order: 7:00 PM
Roll Call: Allen, Anthony, Arreguin, Blake, Judd, Metzger, Shumer, Tiedemann, Wilson
Approximate Public Attendance: 88 people

Public Comment
Each Speaker is limited to a maximum of three minutes.

Opened: 7:02 PM
Three comments
Closed 7:13 PM

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.

1510-1512 Shattuck added to the consent calendar.
2200 Oxford added to the consent calendar.

1. 2076 Ashby Avenue
Request by: Maxaco, LLC, 2550 Appian Way, Suite 201, Pinole, CA 94564
Use Permit Modification 06-70000029 to change from stucco to horizontal siding on east side of an existing 3-story mixed-use building; (C-SO, Solano Avenue Commercial, AS).

Continued From: 10/26/06
Recommendation: Approve
Action: Approved with changes (9-0-0-0).

2. 1215 Oxford Street
Request by: Robert Nebolon, Architect, 801 Camelia St., Suite E, Berkeley, CA 94710
Modification #06-70000034 to change unenclosed accessory structures (walls and stairs) exceeding 6’ in height within required yards, of Use Permit #04-10000087 for demolition of an existing single family dwelling unit and construction of a new single family dwelling unit. (R-1(H) Single Family Residential - Hillside; CW)

Continued From: None
Recommendation: Approve
Action: Approved 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.

3. 635 Spruce
Applicant: Babette Jee, 1504 Fifth Street, Berkeley CA, 94710
Appellant: Michael and Julie Sautman, 5 Alamo Ave. Berkeley CA, 94708
APPEAL of Administrative Use Permit #06-2000097 to construct a fence over six feet in height along the rear property line; (R-1(H), Single Family Residential, Hillside Overlay, NFD).

Continued From: None
Recommendation: Deny the Appeal
Action: Set for public hearing (9-0-0-0).

Continued Hearings:

4. 3192 Adeline Street
Request by: Huck Rorick, 2640 Silvercrest, Pinole, and Judith A. Meyer, 1613 Bonita Avenue, Berkeley, CA
Use Permit # 06-70000017 to modify Use Permit A1840 to allow the expansion of the South Berkeley Police Substation for employee lockers and vehicle storage; (C-SA, South Area Commercial, GP).

Continued From: 08/10/06, 09/14/06, 09/28/06, 10/26/06
Recommendation: Approve
Action: Denied (7-0-0-2) (Abstain: Judd, Wilson).
5. **2114 McKinley Avenue**  
Request by: Amira Jackmon, 1220 Dwight Way, Berkeley, CA 94702  
Use Permit #06-10000047 to construct two approximately 1,900 square foot dwelling units on a 6,500 square foot vacant lot, previously used as a parking lot. (R-2, Restricted Two-Family Residential District, GMS).

Continued From: 10/26/06  
Recommendation: Approve  
Action: Approved (9-0-0-0).

**Nuisance Proceedings:** None

**New Hearings:**

6. **2200 Oxford**  
Request by: Oxford Street Development, LLC, P.O. Box 29585, San Francisco, CA 94129  
Use Permit Modification #06-7000031 to reduce the number of parking spaces in the underground garage of an approved mixed-use project by up to 8 (from 104 to at least 96); (C-2, Central Commercial, AS).

Continued From: None  
Recommendation: Approve  
Action: Approved on Consent (8-0-0-1) (Abstain: Judd).

7. **1842 Euclid Avenue**  
Request by: Jamal Fares, 1814 Euclid Ave., Berkeley, CA 94709  
Use Permit #06-1000058 to establish 500 sq. ft. carry-out food service store (no seating) in existing commercial space with no off-street parking; (C-N, Neighborhood Commercial, AS).

Continued From: None  
Recommendation: Deny  
Action: Continued to November 27, 2006 (9-0-0-0).

8. **2600 San Pablo**  
Request by: A. Ali Eslami, P.O. Box 4623, Berkeley, CA 94704  
Use Permit # 05-0000130 to expand the kitchen and interior seating area of the Missouri Lounge, add outdoor seating, reconfigure and reduce the required parking, and expand alcohol service to new seating areas; (C-W, West Berkeley Commercial District, GMS).

Continued From: None  
Recommendation: Approve  
Action: Continued to November 27, 2006 (9-0-0-0).
9. 1885 University  
Request by: 1950 MLK, LLC, c/o Chris Hudson, Hudson McDonald LLC, 2140 Shattuck Avenue, Suite 302, Berkeley, CA  94704.
Use Permit #02-1000070, Preliminary consideration of a modified design to allow construction of a mixed use development with 148 dwelling units, 14,390 square feet of retail, and 157 parking spaces in a two level parking garage. The existing commercial building (totaling approximately 20,375 square feet) would be demolished; (C-1, General Commercial, SDR).

Continued From: Previously discussed: 04/27/06, 5/11/06, 05/25/06, 06/22/06, 07/13/06
Recommendation: Open public hearing, take testimony and continue to future ZAB meeting
Action: Took public comment and continued to November 27, 2006 (9-0-0-0).

10. 1510-1512 Shattuck  
Request by: Maurice Levitch, Levitch Associates Inc., 1029 Heinz Avenue, Berkeley, CA 94710
Use Permit #06-10000137 to expand an existing restaurant into an adjacent 721 square foot tenant space, expand alcohol sales, expand sidewalk seating, and waive the requirement for additional off-street parking; (C-NS, North Shattuck Commercial, SDR).

Continued From: None
Recommendation: Approve
Action: Approved 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 11:25 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)
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, 11/17/06]