Action Minutes

Zoning Adjustments Board  
Monday, November 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

Roll Call  
Call to Order: 7:01 PM  
Roll Call: Powell for Allen, Anthony, Arreguin, Blake, Judd, Metzger, Shumer, Tiedemann, Wilson  
Approximate Public Attendance: 42 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.

2433 Channing added to the consent calendar.
1. **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:** 11/09/06  
**Recommendation:** Continue to 12/14/06  
**Action:** Continued on consent (9-0-0-0).

2. **1513 Shattuck**  
Request by: Deepak Aggarwal, 1513 Shattuck Avenue, Berkeley CA 94709  
Use Permit #06-10000112 to legalize a full service restaurant offering beer and wine beverage service with associated seating for 45 patrons in a 1,425 sq.ft. lease space including outdoor patio seating, with hours of operation from 10 a.m. to 12:30 a.m. daily, and Use Permit Modification #06-70000024 to modify Use Permit #04-1000010 to include the retail sale of beer in addition to existing wine tasting/retail sales. (C-NS, North Shattuck Commercial, KM/GMS)  
**Continued From:** None  
**Recommendation:** Continue to 12/14/06  
**Action:** Continued to 12/14/06 on consent (9-0-0-0).

3. **1406 San Pablo Avenue**  
Request by: Antonio Lao, 5771 Buena Vista Ave., Oakland, CA 94618  
Use Permit Modification #06-70000037 to reduce the number of parking spaces in an approved 8-unit project from 10 to 9 (C-W, West Berkeley Commercial; AS)  
**Continued From:** None  
**Recommendation:** Approve  
**Action:** Approved (8-1-0-0) (No: Judd).

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

**Appeal of Administrative Use Permit:** None  
*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.*

**Continued Hearings:**

4. **1842 Euclid Avenue**  
Request by: Jamal Fares, 1814 Euclid Ave., Berkeley, CA 94709  
Use Permit #06-10000058 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). **Note that the Public Hearing has already been closed.**  
**Continued From:** 11/09/06
5. **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 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, 11/09/06
Recommendation: Continue to 12/14/06
Action: Continued to 12/14/06 (9-0-0-0).

**Nuisance Proceedings:** None

**New Hearings:**

6. **2433 Channing**
Request by: City of Berkeley Mental Health/ Health and Human Services Division, 1947 Center Street 3rd Floor, Berkeley, CA, 94704
Use Permit #06-10000107 to change the use of an existing commercial tenant space from a retail bookstore to administrative office space for the City of Berkeley’s Health and Human Services mobile crisis team (C-T, Telegraph Commercial District, ND/GMS).

Continued From: None
Recommendation: Approve
Action: Approved on consent (9-0-0-0).

7. **1715 Solano**
Request by: Vi Bao Nguyen/Vanessa Dang, 85 Vernon Street #301, Oakland CA 94610
Use Permit #06-10000071 to add the sales of spirits to the existing sale of beer and wine (with meals and at a bar) in a full-service restaurant and provide outside seating; and a variance to allow closing hour of midnight (C-SO, Solano Commercial District, GMS.)

Continued From: none
Action: Approved Use Permit and denied Variance (8-0-1-0) (Abstain: Metzger).
8. **1325 Sixth Street**  
Request by: Mr. Lew Jones, Facilities Division, Berkeley Unified School District, 1720 Oregon Street, Berkeley, CA 94703  
Use Permit #04-10000141 to establish a bus depot (including bus and staff/visitor parking, office and classroom space, and mechanical shop) for the Berkeley Unified School District; (MU-LI, Mixed Use-Light Industrial District, CW).  
Continued From: None  
Recommendation: Take Comments. Take no Action.  
Action: Continued to 12/14/06 (9-0-0-0).

9. **837 Bancroft Way**  
Request by: Timothy Carter, 2717 San Pablo Avenue, Berkeley, CA 94702  
Use Permit #05-10000147 to demolish existing dwelling and build 2-unit building with 3 stories, average height of 32 feet 5 inches, floor area of 4,432 square feet, and 2 parking spaces, on a 4,996 square foot lot; (R-1A, Limited Two-family Residential, AS).  
Continued From: None  
Recommendation: Approve  
Action: Continued to 01/11/07 (9-0-0-0).

10. **2817 Eighth Street**  
Request by: Jim Novosel of The Bay Architects, 1840-B Alcatraz Ave., Berkeley 94703  
Remand from City Council of Use Permit #05-10000116 to demolish an existing single-family dwelling and construct 4 new dwelling units; Council directed ZAB to consider project as being subject to inclusionary housing requirements; applicant has requested Variance from these requirements (MU-R, Mixed Use-Residential, AS).  
Continued From: None  
Recommendation: Deny Variance, Approve Use Permit with In-lieu Housing Fee  
Action: Denied Variance and Approved Use Permit with In-lieu housing fee (5-2-1-1) (No: Metzger, Wilson) (Abstain: Powell) (Absent: Tiedemann).

11. **2701 Shattuck Avenue/ 2100 Derby Street**  
Request by: 2701 Shattuck LLC, 2600 10th Street, Suite 509, Berkeley, CA  
Use Permit #04-10000014 to construct a 34,894 square foot, five-story mixed-use building containing 24 residential units (5 Inclusionary), 3,198 square feet of commercial floor area within up to 4 ground floor tenant spaces (to include a 2,000 square foot quick-service food use) and 24 parking spaces (C-SA, Commercial South Area, GP).  
Continued From: None  
Recommendation: Approve  
Action: Continued to 12/14/06 (9-0-0-0).

**Additional Agenda Items:**  
A. Information/Communication
i. Discussed the procedural changes to streamline the enforcement of permit violations and abatement of nuisances (BMC Chapters 23B.60 and 23B.64). Generally supported.

ii. Discussed the possibility of a special meeting on December 14, 2006. Concluded with holding a Special Meeting if Staff concluded that it was allowed under the Berkeley Rules for the ZAB.

iii. Approved the 2007 ZAB meeting schedule.

B. Business Meeting
C. Chair’s Report
D. Current Business/Committee Appointments
E. Future Agenda Items
F. Other Matters
G. Adjourned 11:45 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, ZAB, 12/3/06.]