



PLANNING & DEVELOPMENT

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A CITIZENS' GUIDE TO THE BERKELEY ZONING ADJUSTMENTS BOARD

The Zoning Adjustments Board (ZAB) is charged with responsibility for approving or denying permits related to the use and development of land within the City of Berkeley. The Mayor and each City Council Member shall appoint a member to the Board. The nine member Board serves without pay. In general, the ZAB considers two types of permits:

Use Permits are required for structures and uses of property that are allowed conditionally because they might, under certain circumstances, be detrimental to the City, residents, neighbors or others as set forth in Section 23B.32.040 of the Zoning Ordinance;

Variances are exceptions from Zoning Ordinance requirements that may be granted only in cases of unusual hardship or practical difficulty as set forth in Section 23B.44.030 of the Zoning Ordinance.

In addition, the Zoning Ordinance empowers the Board to place conditions on permits, review existing permits to determine whether a use has expanded or changed, to revoke or impose additional conditions on previously granted permits due to violations, and to determine compliance with the California Environmental Quality Act (CEQA).

This guide provides general information about the operations of the Zoning Adjustments Board. Citizens who desire more detailed information on regulations are urged to consult with Planning Department staff, the Zoning Ordinance, the Commissioners' Manual adopted by City Council, and applicable sections of the Berkeley Municipal Code.

MEETING SCHEDULE

The Board's regular meetings are on the second and fourth Thursdays of each month in the City Council Chambers at Old City Hall, 2134 Martin Luther King Jr. Way. Consideration of applications begins at 7:00 PM. From time to time, the Board may schedule special meetings or may begin the meeting earlier than 7:00 PM to consider business items or preview projects not yet scheduled for public hearing. Notice and agendas are posted 72 hours before the meeting at the Civic Center Building.

BOARD MEETING AGENDA

Public Comment: Members of the public may speak for up to three minutes on issues not scheduled for public hearing or scheduled for future consideration. Citizens may use this time to request that the Board discuss any item included on the Consent Calendar.

Speaker Cards: Members of the public who wish to address the Board must submit a speaker card to the Board Secretary. Speaker cards may be submitted to the Zoning Counter in the Permit Service Center (see "Questions?", below) prior to the meeting.

Consent Calendars: The Consent Calendar is used to address routine matters when there has been no indication of public controversy. Items are described on the Agenda by project address, the type of request, and the name of the person(s) making the request. There are two parts to the Consent Calendar:

Consent Calendar I includes items that do not necessarily require a public hearing such as minor changes to previously approved projects or Use Permits, including extensions of time to exercise Use Permits. All items that have been noticed for public hearing that evening, but which are to be continued to a future meeting, are also listed on the Consent Calendar to authorize their continuance to the next meeting. Board members may ask questions regarding items on Consent Calendar I and the Board may vote to schedule an item for public hearing at a future meeting. Members of the public may only comment on Consent Calendar I items during the general Public Comment period.

Consent Calendar II includes items that have been (1) noticed for a public hearing, (2) staff has recommended approval, and (3) no adverse comments have been received at the time the agenda was prepared. If any member of the public or Board requests removal of an item from Consent Calendar II, the matter will be subject to public hearing that evening.

Appeals of Administrative Use Permits: Appeals of the Zoning Officer's decisions on Administrative Use Permits are scheduled for Board action at the first available regular meeting after an appeal is received. Based solely on the written record, the Board initially decides whether to hold a public hearing on the matter or affirm the decision of the Zoning Officer. No public testimony is taken at that meeting. If the Board votes to hold a public hearing, it will be set for a later date. (Also see Zoning Ordinance Section 23B.28.060 for more information.)

Public Hearings: Public hearings are required prior to the Board taking action on most permits. Public hearing notices are posted in the vicinity of the affected property and mailed to nearby residents, property owners, and interested groups fourteen (14) days before the meeting date. Any concerned individual(s) may participate by speaking during the public hearing and/or by submitting information in writing. All speakers -- including applicants -- must submit a speakers card to the Board Secretary.

In most cases, a written staff report with recommendation and other material is provided to the Board a few days before the scheduled hearing. Comment letters to be included in the Board's packet must be received at the Zoning office one week in advance of the Board meeting. Copies of staff reports are mailed to applicants and are available for review by the public approximately three working days in advance of the public hearing at the Zoning Counter in the Permit Services Center, 2120 Milvia Street.

After public comment and the Consent Calendar, the Chair of the Board will establish a "time certain" prior to which the hearing for a particular item will not begin. Hearings may start later than the time certain, but not earlier.

At the public hearing, the applicant is given a maximum of 5 minutes to present the project. All other speakers are generally limited to 3 minutes, although the Chair of the Board may further limit public testimony if warranted by a large number of speakers. Finally, if there is opposition, the applicant is given 3 minutes at the end of the hearing to rebut opponents' testimony.

The Board then closes the public hearing, discusses the application, and makes a decision. The Board can approve, deny or modify an application, or it can continue a matter for further consideration at a future meeting. Five affirmative votes are required to take any action.

Continuations. An applicant may request that consideration of a case be continued to a later date. Matters may also be continued by staff or by the Board. Matters are often continued to allow time for an

applicant to meet with concerned neighbors, or for redesign. Cases that are continued to a specific date are not re-noticed. Continued Public Hearings are items noticed for a previous hearing which either were not heard the scheduled evening, where the Board requested additional information, or for other reasons. Continued items are generally heard prior to new public hearing items.

APPEALS

Any decision by the Zoning Adjustments Board may be appealed to the City Council by any aggrieved person(s) after the Land Use Planning Division issues written notice of the Board's decision. In most cases, written notice of the Board's decision is issued within two weeks following the Board's action. The Division mails a Notice of Decision (NOD) to the party identified as the applicant and to anyone who has requested notice (a written request must be submitted to the Board Secretary). Appeals must be filed, in writing, with the City Clerk with the required fee by 5:00 PM of the fourteenth (14th) day following the date of mailing on the written NOD (see Section 23B.32.050 of the Zoning Ordinance for details). After reviewing the written record, the City Council may dismiss the appeal without further hearing, remand the matter back to the Board for a new public hearing, or schedule the item for a public hearing before the Council. After the public hearing, the Council can modify, affirm, or reverse in whole or in part, the decision of the ZAB.

SUBMITTAL OF WRITTEN COMMENTS AND DOCUMENTS

Written comments received by the Land Use Planning Division at least one week prior to a schedule hearing will be distributed to Board members prior to the hearing. The City will duplicate items of ten (10) pages or less; for items of ten (10) pages or more, twelve (12) copies should be submitted. Twelve (12) copies must be submitted for documents turned in late to the Land Use Planning Division or at a Board meeting. All charts, graphs, photos, or references used to provide testimony to the Board become part of the official record and will be retained by the Land Use Planning Division.

MEDIATION

The Berkeley Dispute Resolution Service (BDRS), a volunteer, non-profit agency, is available to help resolve differences between neighbors and applicants regarding proposed projects. There is no charge to any of the participating parties. Following a mediation session, the mediators provide a written report to the Board summarizing the outcome. After successful mediation, the Board may incorporate recommendations from the mediation session as Conditions of Approval. For further information about this service, contact Victor Herbert of BDRS at (510) 526-4571.

QUESTIONS?

Please contact the Land Use Planning (Zoning) Division at the Permit Service Center, 2120 Milvia Street, Berkeley, 94704, or call 510-981-7410; Fax: 510-981-7420.

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