Planning and Development Department
Land Use Planning Division

Action Minutes

Zoning Adjustments Board
Thursday, March 12, 2009 -- 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) as early as possible at the meeting, or (2) at the Permit Service Center, 2120 Milvia Street, before 5:00 PM on the day of the hearing. At the start of the meeting the Board may rearrange the agenda or place additional agendized items on the Consent Calendar, so it is important to submit speaker cards at the start of the meeting to avoid losing the chance to speak to an item.

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: 7:00 PM
Absent: S. Wilson
Substitute: E. Mikiten (for S. Wilson)
Public Attendance: ~35

Public Comment
Each Speaker is limited to a maximum of three minutes.
Byron and Paula Kirkendoll, 3024 Harper Street

Ex Parte Disclosure

Consent Calendar:
The Consent Calendar allows the Board to take action with no discussion, on projects to which no one objects. The Agenda includes three types of Consent Calendar items: (1) Approval of previous meeting minutes; (2) Modifications of existing Use Permits (which have not been noticed for public hearings); (3) Items being continued to another meeting (Board action has been postponed to another meeting). The Board Chairperson will announce items for the Consent
Calendar at 7:05 p.m. The Board may place additional Agendized items on the Consent Calendar, if no one present wishes to testify on an item. 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 from the consent calendar. Modification Projects may be discussed by the Board at this meeting or set for a public hearing at a later meeting. Items already noticed for a public hearing will be heard following Continued Items, or, if necessary, posted for a public hearing at a subsequent meeting.

1. Approval of Previous Meeting Minutes
   Minutes from 02/12/09 ZAB Meeting
   
   Recommendation: Approve Minutes
   Action: Approved Minutes (9-0-0-0)

Item 4. 2573 Virginia moved to Consent Calendar to Continue off Calendar
Item 7. 2395 Telegraph moved to Consent Calendar for Approval

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

Appeal of Administrative Use Permit/Staff Level Design Review: NONE
Appeals of Administrative Use Permit and Design Review applications 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 or Design Review Secretary's decision.

Continued Items (Public Hearing has been closed):

2. 1911 Russell
   Applicant: Guy Supawit, on the behalf of Wat Mongkolratanaram, 1911 Russell Street, Berkeley CA
   Use Permit #07-10000040/#08-70000019 to: 1) modify the limitation that on-site food sales be only for special events and to increase the frequency from a total of 3 weekends per year to 52, with hours of 10:00 AM - 1:00 PM; 2) relocate the food service from the rear yards of 1911-1913 Russell Street to the MLK Jr. parcel; 3) demolish the existing 14’ by 26’ Buddha Sanctuary building and an existing 76’ by 14’ shed structure; 4) create eight off-street parking spaces; 5) construct a 16’ by 24’, 44’ total height sanctuary to contain three Buddha statues; 6) construct a 10’ by 36’, 12’-9” total height food service pavilion; 7) construct two 84’ long, 10’-4” total height unenclosed shade structures; 8) install two 10’ by 20’, 10’ total height tent structures; and 9) install a 6’ high landscaped wall. (R-2A, GP)

   Recommendation: Approve revised Findings and Conditions
   Action: Approved revised Findings and Conditions with additional edits to conditions (6-3-0-0; No: B. Allen, M. Cohen, S. Shumer)
3. **29 Bonnie Lane**  
**Applicant:** Robin and Edward Wenrick, 29 Bonnie Lane, Berkeley, CA 94708  
Variance/Use Permit #09-10000008 to legalize substandard lot area of 4,743 sq. ft where a minimum of 5,000 sq. ft. is required. To construct a residential addition of 601 sq.ft. at a 2-story, single family residence by creating a new third story; to expand a property that has exceeded the permitted lot coverage; and to legalize the installation of an unenclosed hot tub. (R-1 (H) – Single Family Residential, Hillside Overlay; FC)  
**Continued From:** 02/12/2009  
**Recommendation:** Approve  
**Action:** Opened public hearing for the Use Permit (Variance remained closed) and Approved the Variance and Use Permit (8-0-1-0; Abstain: G. Williams)

**Continued Public Hearings:**

4. **2573 Virginia**  
**Applicant:** Zia and Farideh Sabetimani, 80 Poplar Street, Berkeley CA  
Use Permit #08-10000038 to construct a new 2-story, approximately 1,580 square-foot main building with a 5-car garage and one dwelling unit, at a site with an existing two-story, approximately 3,000 square-foot, four-unit apartment building; (R-3H, LB)  
**Continued From:** 10/06/2008; 11/13/08; 12/11/2008; 02/12/2009  
**Recommendation:** Continue off Calendar  
**Action:** Continued off Calendar on Consent (9-0-0-0)

**Compliance Determination:** NONE

**New Hearings:**

5. **651 Addison**  
**Applicant:** Hudson-MacDonald, 1600 Shattuck Avenue, Suite #218, Berkeley, CA 94709  
Use Permit #07-10000057 to construct a 92,470 square foot, 5-story, mixed-use building to include 94 residential units, 1,100 square feet of general commercial floor area, a 1,484 square foot quick-service restaurant (with incidental sidewalk seating and the service of beer and wine with food) and 102 parking spaces. (CW - Commercial West Berkeley, GP)  
**Continued From:** NONE  
**Recommendation:** Open public hearing & continue  
**Action:** Opened public hearing and continued (9-0-0-0)
6. **2230 Shattuck**

   **Applicant:** Viet Q. Truong, Kahn Design Associates for Landmark Theatres, 1810 Sixth Street, Berkeley CA 94710

   Use Permit #08-10000116 to establish a full service restaurant with alcohol service; to allow consumption of food and alcoholic beverages in two theatre auditoriums; and to allow occasional special events in two theatre auditoriums, with food and alcohol service. (C-2, GMS)

   **Continued From:** NONE  
   **Recommendation:** Approve  
   **Action:** Approved (9-0-0-0)

7. **2395 Telegraph**

   **Applicant:** SF Falafel Co. LLC, 1717 Oxford Street #310, Berkeley, CA 94709

   Use Permit #08-10000131 to exceed the quota for a Quick Service Restaurant in a 1,492 sq. ft tenant space previously occupied by a Carry Out Food Service and extend the hours of operation until 2:00 a.m. seven days per week. (C-T, Telegraph Avenue Commercial, PJ)

   **Continued From:** NONE  
   **Recommendation:** Approve  
   **Action:** Approved on Consent Calendar (9-0-0-0)

**Additional Agenda Items:**

A. Information/Communication
   - Letters regarding 3022-3024 Harper Street
   - Letter from Sophie Hahn regarding Outstanding Women of Berkeley Awards

B. Business Meeting
   - Vote to cancel March 26, 2009 ZAB meeting
     - **Cancelled March 26, 2009 Meeting (9-0-0-0)**
   - Vote to start April 9, 2009 meeting at 6 p.m. in order to preview new development projects
     - **Consented to earlier start time at 6 PM for April 9, 2009 meeting to preview projects**
   - Board also indicated that it will also be prepared have another meeting on April 23, 2009 to accommodate additional agenda items.

C. Chair’s Report

D. Current Business/Committee Appointment

E. Future Agenda Items

F. Other Matters

G. Adjourn **10:07 PM**

[Approved for posting by Steven D. Ross, Secretary, Zoning Adjustments Board]
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 e-mail) 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.