Zoning Adjustments Board
Thursday, February 14, 2008 -- 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
Arreguin
Absent: S. Wilson
Public Attendance: ~15

Public Comment NONE
Each Speaker is limited to a maximum of three minutes.

Consent Calendar:
The Consent Calendar allows the Board to take action with no discussion, on projects to which no
one objects. The Agenda includes two types of Consent Calendar items: (1) Modifications of
existing Use Permits (which have not been noticed for public hearings); (2) 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.

Item 1. 1923 Ninth moved to be continued off calendar on consent
Item 2. 1441 Ashby moved to be continued to February 28, 2008 on consent
Item 3. 3173 College moved for approval on consent

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

Appeal of Administrative Use Permit: NONE

Continued Items (Public Hearing has been closed):

1. 1923 Ninth
   Applicant: JDIP, LLC, Attention Justin Jee, 480 Second Street, Suite 203, San Francisco, CA 94107
   Use Permit #07-10000063 to demolish two existing residential buildings containing a total of five dwelling units and construct two three-story buildings containing 15 condominium dwelling units, over an 18-space below-grade parking garage. (R-3, Multiple Family Residential District; CM/GP)

   Recommendation: Continue off calendar
   Action: Continued off calendar on consent (8-0-0-1; Absent: S. Wilson)

Continued Public Hearings:

2. 1441 Ashby Ave
   Applicant: BioFuel Oasis, 2265 Fourth Street; Berkeley, 94710
   Use Permit #07-10000046 to establish biodiesel fueling station at existing former gas station (currently used for auto detailing); main building to remain, pump canopies to be altered or replaced to accommodate taller vehicles (C-SA, South Area Commercial; AS)

   Continued From: November 26, 2007, January 24, 2008
   Recommendation: Continue to February 28, 2008
   Action: Continued to February 28, 2008 on consent (8-0-0-1; Absent: S. Wilson)

Compliance Determination: NONE

New Hearings:
3. **3173 College**  
**Applicant:** Tara Esperanza, 2426 Spaulding Avenue, Berkeley, CA 94703  
Use Permit #07-10000145 to change use from retail to a carry out food service establishment serving organic ice cream in a 737-square-foot tenant space on the ground level of an existing multi-tenant, two-story commercial building; and to convert three individual tenant spaces used for commercial activities with a reduction in floor area (C-N, Neighborhood Commercial, ND)  

**Continued From:** NONE  
**Recommendation:** Approve  
**Action:** Approved on Consent (8-0-0-1; Absent: S. Wilson)

4. **2600 Tenth**  
**Applicant:** Wareham Development, 100 Nye Street, Suite 400, San Rafael, CA 94901  
Variance #07-10000132 to operate a child care center for Pixar employees and on-site employees (MULI, Mixed Use-Light Industrial, GS)  

**Continued From:** NONE  
**Recommendation:** Open public hearing and continue to February 28, 2008  
**Action:** Opened Public Hearing; Board comments made; Continued to 02/28/2008 with Public Hearing (7-1-0-1; No: R. Judd; Absent: S. Wilson)

5. **1811 University**  
**Applicant:** Barry Kami, DDS, 1813 University Avenue, Berkeley, CA  
Variance #08-1000003 to construct a new 1-story dental office building of approximately 3,000 sq. ft. and 21 ft. in maximum height where a minimum height of 2 stories and 30 ft. is required. (C-1/ University Avenue Mixed-Use Overlay, FC)  

**Continued From:** NONE  
**Recommendation:** Open public hearing and continue to February 28, 2008  
**Action:** Opened Public Hearing; Continued to 02/28/2008 with Public Hearing (8-0-0-1; Absent: S. Wilson)

**Additional Agenda Items:**

A. Information/Communication  
   • Speaker Card Policy
B. Business Meeting
C. Chair’s Report
D. Current Business/Committee Appointment
E. Future Agenda Items
F. Other Matters
G. Adjourn 7:51 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 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.