Planning and Development Department, Land Use Planning Division

Zoning Adjustments Board
Thursday, May 14, 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
G. Williams, E. Mikiten

Public Attendance: ~35

Public Comment-Non Agenda Items 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.

1. Approval of Previous Meeting Minutes
   Minutes from 04/27/09 ZAB Meeting
   
   Recommendation: Approve Minutes
   Action: Approved on Consent (9-0-0-0)

2. 700 University
   Applicant: Essex Property Trust, 925 East Meadow Drive, Palo Alto, CA 94303
   Use Permit #09-70000002 to modify the project description and a condition of approval relating to the use of air filters for the residential units within a project approved by the ZAB in 2007 for a mixed use development with 171 dwelling units (31 below-market), 9,995 square feet of new commercial floor area and 213 vehicle parking spaces (CW - Commercial West Berkeley, GP).
   
   Continued From: NONE
   Recommendation: Adopt addendum to EIR and Approve Use Permit Modification
   Action: Adopted addendum to EIR and Approved Use Permit Modification 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/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):** NONE

**Continued Public Hearings:** NONE

**Compliance Determination:**


3. **2116 Allston – GAIA Building**  
Review of Conformance with Use Permits # 97-10000093, # 02-70000014 and Discussion of Possible Initiation of Nuisance Proceedings (C-2, WC)  

**Continued From:** 08/14/2008, 09/11/2008, 04/09/09  
**Recommendation:** Unless lease terms with a resident theater company have been agreed upon by May 21, 2009, schedule a public hearing on June 11, 2009 to consider both revocation/modification proceedings under BMC Chapter 23B.60 and nuisance abatement pursuant to BMC Chapter 23B.64.  
**Action:** Continued to June 11, 2009 on Consent (9-0-0-0)

**New Hearings:**

4. **740 Heinz**  
Applicant: Chris Barlow, Wareham Development  
Use Permit #05-10000017 to demolish the existing single-story, 10,000 square foot City of Berkeley Landmark (the Copra Warehouse) to construct a building with 82,000 square feet of research and development laboratories and pilot manufacturing facilities and 10,000 square feet of warehouse floor area and 49-stall sub-surface garage. (MU-LI - Mixed-Use Light Industrial, GP)  

**Continued From:** None  
**Recommendation:** Open Public Hearing, Take Public Testimony  
**Action:** No Action Taken. Opened Public Hearing, Took Public Testimony and received Board’s Questions and Comments. Return to Board on July 2, 2009 Special Meeting with LPC

5. **1222 University Avenue**  
Applicant: Lew Jones for Berkeley Unified School District, 1701 Russell St Berkeley 94703  
Variance #09-10000027 and UP #09-20000036 to change the use of classroom space to predominantly administrative office space, convert a portion of a cafeteria to a multi-purpose room and improve an existing parking lot; (C-1; R-2 and R-2A, GMS)  

**Continued From:** None  
**Recommendation:** Approve  
**Action:** Approved on Consent (9-0-0-0)
6. Zoning Officer Interpretation – Main Buildings in the R-1A District
Zoning Officer’s Memorandum in response to questions raised by the Council about
Main Buildings in the R-1A District. The issue was raised during the Council’s discussion
about the Appeal of 2421 Ninth Street.

Continued From: Remanded to ZAB by City Council on
March 10, 2009
Recommendation: Approve Zoning Officer’s
Interpretation
Action: Approve Zoning Officer’s
Interpretations (6-2-1-0) (No: M.
Cohen, S. Shumer; Abstain: E.
Mikiten)

7. 2421 Ninth Street
Applicant: Gregory VanMechelen, 1117 Virginia Street, Berkeley, CA 94702
Use Permit 05-10000084 to construct a two-story 1,596-square-foot, detached dwelling
unit at the rear of a 6,500-square-foot lot with an existing single-family dwelling unit; (R-
1A, LMM).

Continued From: Remanded back to ZAB by City
Council, March 10, 2009
Recommendation: Approve with modifications
Action: Approve, Subject to Zoning Officer’s
Approval (5-3-1-0) (No: M. Cohen, S.
Shumer, D. Matthews; Abstain: D.
Koon)

Additional Agenda Items:
A. Information/Communication
   • Staff Memorandum response regarding wireless facilities at 1760 Solano Avenue,
     including May 1, 2009 letter from Mr. Yong Q.Liu with neighbor petitions
   • Letter from Halcyon Neighborhood Association regarding 3001 Telegraph
B. Vote to cancel May 28, 2009 meeting
   Motion Passes; meeting canceled.
C. Board Training (continued)
   • Density Bonus
   • CEQA
B. Business Meeting
C. Chair’s Report
D. Current Business/Committee Appointment
E. Future Agenda Items
F. Other Matters
G. Adjourn

[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.