Action Minutes
Planning & Development Department
Land Use Planning Division

Zoning Adjustments Board
Thursday, September 27, 2012 - 7:00 PM
City Council Chambers, 2134 Martin Luther King Jr. Way, Second Floor.
Berkeley, CA 94704 (Wheelchair Accessible)

How to Contact Us: Land Use Planning Division (Attn: Terry Blount, AICP, ZAB Secretary), 2120 Milvia Street, Berkeley, CA 94704; (510) 981-7410; zab@ci.berkeley.ca.us

Roll Call: 7:07

Present:
George Williams (Chairperson), appointed by Councilmember Capitelli
Michael Alvarez Cohen (Vice-Chairperson), appointed by Councilmember Wozniak
Robert Allen appointed by Councilmember Wengraf
Toya Groves, appointed by Councilmember Anderson
Steven Donaldson, appointed by Councilmember Moore
Elisa Mikiten, appointed by Councilmember Maio
Sara Shumer, appointed by Councilmember Arreguin

Excused:
Sophie Hahn, appointed by Councilmember Worthington
Deborah Matthews, appointed by Mayor Bates

Substitutions:
Michael Smart

Members of the Public

Present: 40
Speakers: 26

Ex Parte Communication Disclosures
In the context of adjudicative matters that come before the ZAB, ex parte communications are those which occur outside the formal hearing process. ZAB members should avoid ex-parte contacts on matters pending before the ZAB as much as possible, as they may represent, or be perceived to represent, the receipt of evidence that can unfairly influence a Board member’s decision on a matter before the Board. If such contacts do occur, they must be placed in the
record and disclosed to all interested parties sufficiently in advance of the decision to allow rebuttal.

- M. Alvarez Cohen: Contacted by applicant (agenda item #6)
- R. Allen: Spoke with neighbors (agenda item #7)
- T. Groves: Spoke with neighbors (agenda item #7)
- E. Mikiten: Spoke with Laura Menard (agenda item #7)
- S. Shumer: Spoke with Laura Menard (agenda item #7)
- G. Williams: Emailed with Wareham Development (agenda item #6)

Public Comment: 1
Each Speaker is limited to a maximum of three minutes.
- Curtis Manning, M. Alvarez Cohen’s relationship to the 740 Heinz Avenue project

Agenda Changes
The Board Chairperson may reorder the agenda at the beginning of the meeting.
- Items #2, #3, and #4 moved to Consent Calendar
- Item #7 moved prior to item #6

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 pm. The Board may place additional Agenda 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.

<table>
<thead>
<tr>
<th>1. Approval of Previous Meeting Minutes</th>
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<tbody>
<tr>
<td>Minutes from the 8/23/12 meeting</td>
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<table>
<thead>
<tr>
<th>Recommendation:</th>
<th>APPROVE</th>
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<tbody>
<tr>
<td>Action</td>
<td>APPROVED</td>
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<tr>
<td>Motion / Second:</td>
<td>R. Allen / E. Mikiten</td>
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<tr>
<td>VOTE:</td>
<td>8-0-0-1 (Absent: S. Hahn)</td>
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</tbody>
</table>
### 2. 2190 Bancroft Way

**Use Permit Modification #12-70000011** to modify Use Permit #A1337 to add 2,260 square feet of floor area to an existing 3,044 square foot full service restaurant with incidental service of beer and wine and to reduce the number of required off-street parking spaces from eight to five.

**Applicant/Property Owner:** Tai Yu, 1801 Oakland Blvd., Suite #320, Walnut Creek, CA 94596

**Zoning:** C-DMU “Commercial, Downtown Mixed-Use District”; **Planner:** Claudine Asbagh

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<tr>
<th>Continued From:</th>
<th>None</th>
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<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit Modification #12-70000011 subject to Findings and Conditions.</td>
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<td><strong>Action</strong></td>
<td><strong>Motion / Second:</strong></td>
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<td>R. Allen / E. Mikiten</td>
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<td><strong>VOTE:</strong></td>
<td>8-0-0-1 (Absent: S. Hahn)</td>
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### 3. 1908 Shattuck Avenue

**Use Permit Modification #12-70000010** to modify design for approved 7,402 square foot, 3-story addition to an existing commercial building at 1906 Shattuck (Use Permit #08-10000067).

**Applicant & Property Owner:** Steve Tipping, 1906 Shattuck Avenue, Berkeley, CA 94704

**Zoning:** C-DMU “Commercial, Downtown Mixed-Use District”; **Planner:** Aaron Sage

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<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit Modification #12-70000010 subject to Findings and Conditions.</td>
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<td><strong>Action</strong></td>
<td><strong>Motion / Second:</strong></td>
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<td></td>
<td>R. Allen / E. Mikiten</td>
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<td><strong>VOTE:</strong></td>
<td>8-0-0-1 (Absent: S. Hahn)</td>
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4. **1770 La Loma Avenue**

**Use Permit #12-10000020** to allow the expansion of a lawful non-conforming Group Living Accommodation, including a 248 square-foot third floor addition, to allow up to seven (7) additional residents with a minimum of 630 square feet of usable open space, and three regulation off-street parking spaces.

**Applicant:** W. Harold Bexton, AIA, 640 Santana Road, Novato, CA 94945  
**Property Owner:** Fred Koopman Estate, Bill Shine, Trustee, 1956 Lombard Street, San Francisco, CA 94123  
**Zoning:** R-3(H) “Multiple-Family Residential, Hillside Overlay District”; **Planner:** Jay Claiborne (Contract Planner)

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<tr>
<th>Continued From:</th>
<th>NONE</th>
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<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit #12-10000020 subject to Findings and Conditions.</td>
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<tr>
<td><strong>Action</strong></td>
<td>APPROVED</td>
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<tr>
<td><strong>Motion / Second:</strong></td>
<td>R. Allen / E. Mikiten</td>
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<tr>
<td><strong>VOTE:</strong></td>
<td>8-0-0-1 (Absent: S. Hahn)</td>
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**New Hearings:**

5. **2500 Hillegass Avenue**

**Use Permit and Variance #10-10000053** to legalize an existing dwelling and waive usable open space requirements for this dwelling.

**Applicant & Property Owner:** Affordable Housing Associates, 1250 Addison Street, Suite G, Berkeley, CA 94702  
**Zoning:** R-3 “Multiple-Family Residential District”; **Planner:** Greg Powell

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<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit /Variance #10-10000053 subject to Findings and Conditions.</td>
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<tr>
<td><strong>Action</strong></td>
<td>APPROVED subject to the Findings and Conditions</td>
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<tr>
<td><strong>Number of Speakers:</strong></td>
<td>2</td>
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<tr>
<td><strong>Motion / Second:</strong></td>
<td>R. Allen / S. Shumer</td>
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<td><strong>Vote:</strong></td>
<td>7-0-0-2 (Absent: S. Hahn; Recused: E. Mikiten)</td>
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**Modifications of Use Permits**

*Modifications of Use Permits are not subject to public hearing and no public testimony will be taken at this time.*

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<th>6.</th>
<th>740 Heinz Avenue</th>
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| **Remand of Use Permit Modification #11-70000020** to demolish the entire structure on the site, enlarge the building footprint to create a new entrance lobby at the southwest corner of the building, expand the 3rd and 4th floors, delete the 49-car basement parking garage, and revise building elevations. **Applicant:** Chris Barlow, Wareham Development, 1120 Nye St., Suite 400, San Rafael, CA 94901  
**Property Owner:** Garr Land & Resource Management, 1120 Nye St., Suite 400, San Rafael, CA 94901  
**Zoning:** MU-LI “Mixed-Use, Light Industrial District”; **Planner:** Greg Powell | **Continued From:** None  
**Recommendation:** APPROVE Use Permit Modification #11-70000020 subject to Findings and Conditions.  
**Action:** APPROVED subject to Findings and Conditions  
**Number of Speakers:** 7  
**Motion / Second:** R. Allen / G. Williams  
**Vote:** 5-3-0-1 (No: M. Alvarez Cohen, S. Shumer, E. Mikiten; Absent: S. Hahn)
Compliance Determination:

7. 2840-B Sacramento Street

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<tr>
<td>Recommendation</td>
<td>RECOMMEND that the City Council determine that the property is a public nuisance and order the use enjoined and terminated.</td>
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<tr>
<td>Action</td>
<td>RECOMMENDED to the City Council that they determine the property to be a public nuisance and order the use enjoined and terminated.</td>
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<tr>
<th>Number of Speakers: 16</th>
<th>Motion / Second:</th>
<th>Vote:</th>
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<tr>
<td></td>
<td>M. Alvarez Cohen / R. Allen 7-0-1-1 (Abstain: T. Groves; Absent: S. Hahn)</td>
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Additional Agenda Items:

A. Information/Communication
B. Business Meeting
C. Chair's Report
D. Current Business/Committee Appointment
   - Design Review Committee recommendation for landscape architect position
     - E. Mikiten moved to reappoint Chuck McCullough, R. Allen seconded (8-0-0-1).
E. Future Agenda Items
F. Other Matters
G. Future Council Hearings on ZAB decisions
   - October 16, 2012 – 2329 Grant Street

Adjourn: 9:35 PM

[Approved for posting by Terry Blount, Secretary, Zoning Adjustments Board]
Correspondence and Notice of Decision Requests

- Communications to Berkeley boards, commissions or committees are public record and will become part of the City’s electronic records, which are accessible through the City’s website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

- 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 or if in color or photographic format.

- Correspondence received by 4:00 pm the Tuesday before the meeting will be posted on the ZAB web site for review by the Board and public prior to the meeting. Correspondence received later, and after the meeting, will be posted to the web site following the meeting.

- 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: Terry Blount, AICP, ZAB Secretary), 2120 Milvia Street, Berkeley, CA 94704 OR at zab@ci.berkeley.ca.us

Accessibility Information / ADA Disclaimer
This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB 343 Disclaimer
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Permit Service Center, Planning and Development Department located at 2120 Milvia Street, Berkeley, during regular business hours.

Notice Concerning Your Legal Rights
If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Adjustments Board at, or prior to, the public hearing.
2. 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 Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.

3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit 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). Any lawsuit not filed within that ninety (90) day period will be barred.

4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.

5. 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.