Action Minutes
Planning & Development Department
Land Use Planning Division

Zoning Adjustments Board
Thursday, June 27, 2013- 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: 7:00 PM

Present:
George Williams, appointed by Councilmember Capitelli
Robert Allen, appointed by Councilmember Wengraf
Shoshana O’Keefe, appointed by Councilmember Anderson
Steven Donaldson, appointed by Councilmember Moore
Prakash Pinto, appointed by Councilmember Maio
Igor Tregub, appointed by Councilmember Arreguin

Excused:
Michael Alvarez Cohen (Chairperson), appointed by Councilmember Wozniak
Deborah Matthews (Vice Chairperson), appointed by Mayor Bates
Sophie Hahn, appointed by Councilmember Worthington

Substitutions:
Kava Massih for Michael Alvarez Cohen
Derek McDonald for Sophie Hahn
David Stoloff for Deborah Matthews

Members of the Public
Present: 73
Speakers: 43

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-partes 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.
G. Williams – Conversation with resident about the 3001 Telegraph Avenue project.
S. O’Keefe – Conversation with neighbor near 596 Spruce Street project.
I. Tregub – Conversation with Andrew Zall and John Steere regarding 3001 Telegraph Avenue project.

Public Comment
Each Speaker is limited to a maximum of three minutes.
- Gale Garcia – Encouraged ZAB to not approve projects detrimental to surrounding neighborhoods.

Agenda Changes
The Board Chairperson may reorder the agenda at the beginning of the meeting.
- Item #4 placed on consent calendar.
- Item #5 continued to August 8, 2013 meeting.

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.

1. Approval of Previous Meeting Minutes
Minutes from the 06/13/13 meeting

<table>
<thead>
<tr>
<th>Recommendation:</th>
<th>APPROVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motion / Second:</td>
<td>I. Tregub / S. O’Keefe</td>
</tr>
<tr>
<td>VOTE:</td>
<td>9-0-0-0</td>
</tr>
</tbody>
</table>
**New Public Hearings:**

### 2. 1931-35 Addison Street

**Use Permit #12-10000042** to construct a mixed-use building with 7,240 square feet of ground level commercial space and 69 residential units (a mix of studio, one, two, and three bedroom units) and basement level parking for 9 vehicles and 48 bicycles.  
**Applicant:** Rony Rolnizky Architect, 121 Devonshire Way, San Francisco, CA  94131  
**Property Owner:** Avi Nevo, 1935 Addison LLC, 2073 Addison St., Berkeley, CA  94704  
**Zoning:** C-DMU, “Downtown Mixed Use District Buffer”;  
**Planner:** Leslie Mendez  

<table>
<thead>
<tr>
<th>Continued From:</th>
<th>None</th>
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</thead>
<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit #12-10000042 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>APPROVED Use Permit #12-10000042 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions.</td>
</tr>
</tbody>
</table>

**Motion / Second:** G. Williams / S. Donaldson  
**Number of Speakers:** 6  
**Vote:** 7-0-2-0 (Abstain: I. Tregub, P. Pinto)

### 3. 2446 McKinley Avenue

**Use Permits and Variance UP#13-10000006** to make an existing legal nonconforming school into a conforming use, to demolish three of the five buildings on the site, to allow renovations and additions to two existing buildings and the construction of a new building, to allow placement of accessory structures in the required front and rear yards, and to waive the requirement for the provision of one off-street loading space.  
**Applicant/Property Owner:** The Walden Foundation, 2446 McKinley Ave., Berkeley, CA  
**Zoning:** R-2A, “Restricted Multiple-Family Residential District”;  
**Planner:** Greg Powell  

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<tr>
<th>Continued From:</th>
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<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit UP #13-10000006 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions, but DENY the Variance from providing an off-street loading space.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>APPROVED Use Permit UP #13-10000006 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions, and APPROVED the Variance from providing an off-street loading space.</td>
</tr>
</tbody>
</table>

**Motion / Second:** I. Tregub / S. O’Keefe  
**Number of Speakers:** 6  
**Vote:** 9-0-0-0
4. **1005 Overlook Road**

<table>
<thead>
<tr>
<th>Use Permit 13-10000014</th>
<th>to construct a new 2,356 sq. ft. single-family home on a 5,732 sq. ft. vacant lot at 1005 Overlook Road.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Applicant:</strong></td>
<td>Chris Gayler, 390 Diablo Rd. # 10, Danville, CA 94526</td>
</tr>
<tr>
<td><strong>Property Owner:</strong></td>
<td>Elaine Taylor, 212 La Questa, Danville, CA 94526</td>
</tr>
<tr>
<td><strong>Zoning:</strong></td>
<td>R-1(H), &quot;Single Family Residential District, Hillside Overlay&quot;; <strong>Planner:</strong> Greg Powell</td>
</tr>
</tbody>
</table>

**Continued From:** None

**Recommendation:** APPROVE Use Permit #13-10000014 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions.

**Action:** APPROVED on consent.

**Motion / Second:** I. Tregub / S. O'Keefe

**Vote:** 9-0-0-0

5. **596 Spruce Street**

<table>
<thead>
<tr>
<th>Use Permit #13-10000021</th>
<th>to construct a new three-story, 3,321 square-foot, single-family dwelling with an average and maximum height of approximately 22' 7&quot; and 33' respectively, on a 9,206 square-foot vacant lot.</th>
</tr>
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<tbody>
<tr>
<td><strong>Applicant:</strong></td>
<td>David Trachtenberg, Trachtenberg Architects, 2421 Fourth St., Berkeley, CA 94710</td>
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<tr>
<td><strong>Property Owner:</strong></td>
<td>John and Kristie Lavelle, 428 61st St., Oakland, CA 94609</td>
</tr>
<tr>
<td><strong>Zoning:</strong></td>
<td>R-1(H), &quot;Single Family Residential District, Hillside Overlay&quot;; <strong>Planner:</strong> Claudine Asbagh</td>
</tr>
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</table>

**Continued From:** None

**Recommendation:** CONTINUE to August 8, 2013.

**Action:** CONTINUED to August 8, 2013.

**Motion / Second:** I. Tregub / S. O'Keefe

**Vote:** 9-0-0-0
**Appeal of Administrative Use Permit(s):**

<table>
<thead>
<tr>
<th>7.</th>
<th>1924 Fairview Avenue</th>
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<tbody>
<tr>
<td><strong>Appeal of Administrative Use Permit #13-20000025</strong> to relocate a two-story, 2,165 square-foot single family dwelling from the front (northwest) of the lot to the rear (southeast) of the lot. <strong>Applicant:</strong> Kristin Personett, Indigo Design Group, 6140 Johnston Dr., Oakland, CA 94611 <strong>Property Owner:</strong> Brian Murphy, 1924 Fairview Ave., Berkeley, CA 94703 <strong>Appellants:</strong> Michelle and Edwin Cooper, 6521 Dover St., Berkeley; Beatrice Barrigher, 1922 Fairview Ave., Berkeley; Gwyneth Arnold, 1926 Fairview Ave., Berkeley; James Grant, 6531 Dover St., Berkeley; Kansas Lawrence, 6525 Dover St., Berkeley; Leonard Powell, 1911 Harmon St., Berkeley. <strong>Zoning:</strong> R-2A, “Restricted Multiple-Family Residential District”; <strong>Planner:</strong> Claudine Asbagh</td>
<td></td>
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</table>

<table>
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<tr>
<th>Continued From:</th>
<th>None</th>
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</thead>
<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>AFFIRM the Zoning Officer’s decision to approve Administrative Use Permit #13-20000025, subject to the attached findings and conditions, and DISMISS the appeal.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>CONTINUED to July 25th meeting.</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong></td>
<td>I. Tregub / S. O’Keefe</td>
</tr>
<tr>
<td><strong>Number of Speakers:</strong></td>
<td>6</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>9-0-0-0</td>
</tr>
</tbody>
</table>
### 8. 3001 Telegraph Avenue

**Appeal of Administrative Use Permit #13-20000024** to establish a quick-service food use within an existing 2,063 sq. ft. commercial tenant space with hours of operation from 5:30 a.m. to 9 p.m. daily and to waive three required off-street parking spaces required with the change of use from general commercial to a food service use.

**Applicant:** Adam Orozco, Arktegraf, Inc., 1800 27th St., Sacramento, CA 95816  
**Property Owner:** Avi Nevo, 2071 Addison St., Berkeley CA 94704  
**Appellants:** Andrew Johnson, 3073 Bateman St., Berkeley, CA 94705 and James Smith, 3031 Dana St., Berkeley, CA 94705  
**Zoning:** C-1, “General Commercial”; **Planner:** Nathan Dahl

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<tr>
<th>Continued From</th>
<th>None</th>
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<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>AFFIRM the Zoning Officer’s decision to approve Administrative Use Permit #13-20000024, subject to the attached findings and conditions, and DISMISS the appeal.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>AFFIRMED the Zoning Officer’s decision to approve Administrative Use Permit #13-20000024, subject to the attached findings and conditions, and DISMISSED the appeal.</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong></td>
<td>K. Massih / G. Williams</td>
</tr>
<tr>
<td><strong>Number of Speakers:</strong></td>
<td>24</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>5-4-0-0 (No: D. McDonald, I. Tregub, S. O’Keefe, P. Pinto)</td>
</tr>
</tbody>
</table>

**Additional Agenda Items:**

*The following agenda items may be discussed, but no action may be taken unless a specific item is listed on this agenda.*

A. Information/Communication  
   - Correspondence regarding 2227 Dwight Way (UP #13-10000018)  
   - Correspondence regarding 1799 University Ave. (UP # 13-10000013)

B. Discussion Item  
C. Business Item  
D. Chairperson’s Report  
E. Current Business/Committee Appointment  
F. Future Agenda Items  
G. Other Matters  
   - **Future Council Hearings on ZAB Decisions**  
     i. 2401 Telegraph Avenue, 5/21/2013  
     ii. 2433 Martin Luther King, Jr Way, 6/11/2013  
     iii. 2024 Durant Avenue, 6/25/2013  
     iv. 2360 Telegraph Avenue, 6/25/2013

**Adjourn:** 11:15 PM
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.