



Z O N I N G
A D J U S T M E N T S
B O A R D
M E E T I N G A G E N D A

Thursday, March 11, 2021 - 7:00 PM

Zoning Adjustment Board Members

Igor Tregub, appointed by Mayor Arreguin

Yes Duffy, appointed by District 1 (Councilmember Kesarwani)

Kimberly Gaffney, appointed by District 2 (Councilmember Taplin)

John Selawsky, appointed by District 3 (Councilmember Bartlett)

Carrie Olson, appointed by District 4 (Councilmember Harrison)

Shoshana O'Keefe (Vice Chairperson), appointed by District 5 (Councilmember Hahn)

Charles Kahn (Chairperson), appointed by District 6 (Councilmember Wengraf)

Dohee Kim, appointed by District 7 (Councilmember Robinson)

Denise Pinkston, appointed by District 8 (Councilmember Droste)

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the Zoning Adjustments Board (ZAB) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID19 virus, there will not be a physical meeting location available.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://zoom.us/j/91445166785>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

To join by phone: Dial +1 669 900 6833 and enter Meeting ID 914 4516 6785. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.

Please be mindful that the teleconference will be recorded as any ZAB meeting is recorded, and all other rules of procedure and decorum will apply for ZAB meetings conducted by teleconference or videoconference.

Public Testimony Guidelines

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

At the start of the meeting the Board may rearrange the agenda or place additional agenda items on the Consent Calendar, so it is important to be present 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 e-mail in advance of the meeting. See **Supplemental Communications and Reports** at the end of this Agenda for procedures.

How to Contact Us: Land Use Planning Division, Attn: Leslie Mendez, (510) 981-7410, (Zoning Adjustments Board Secretary), 1947 Center Street, 2nd Floor, Berkeley, CA 94704; zab@cityofberkeley.info.

Communications

All communications submitted to Zoning Adjustments Board are public record and are for information only. Other than referring an item to the Secretary for investigation and/or recommendations, no action may be taken in response to any non-agenda communication.

Preliminary Matters

Roll Call

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, the substance of the communication must be disclosed to all interested parties in advance of any public hearing or testimony to allow rebuttal. Written *ex parte* communications must be forwarded to the Secretary so that they can be disclosed to the entire Board and the public.

Public Comment on Non-Agenda Matters

Each Speaker is limited to a maximum of three minutes.

Agenda Changes

The Board Chairperson may reorder the agenda at the beginning of the meeting.

Consent Calendar

The Consent Calendar allows the Board to take action, without discussion, on Agenda items for which there are no persons present who wish to speak, and no Board members who wish to discuss. The Consent Calendar may include four types of 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 will be postponed to another meeting);
- (4) Applications that were withdrawn by the applicant after release of the Agenda; and
- (5) Items noticed for public hearing which the Board decides to move to the Consent Calendar.

The Board Chairperson will announce any additional items proposed for the Consent Calendar at approximately 7:05 PM. Anyone present who wishes to speak on these items should raise his or her hand and advise the Chairperson, and the item(s) will be pulled from the Consent Calendar and heard at this meeting.

1. Approval of Action Minutes from February 25, 2021

Recommendation: **APPROVE**

2. [1330 and 1336 Gilman Street](#) – New Public Hearing

Application:	Use Permit #ZP2020-0117 to add the sale of beer and wine at an existing grocery store.
Zoning:	C-N – Neighborhood Commercial District
CEQA Recommendation:	Categorically exempt pursuant to Section 15301 (“Existing Facilities”) of the CEQA Guidelines.
Applicant:	The Natural Grocery Company, 10367 San Pablo Ave, El Cerrito
Owner:	PARS Investments LLC, 1600 Shattuck Ave, STE 106, Berkeley
Staff Planner:	Jim Frank, jfrank@cityofberkeley.info , (510) 981-7548
Recommendation:	APPROVE Use Permit #ZP2020-0117 pursuant to BMC Section 23B.32.030.

Action Calendar

The public may comment on each item listed on the agenda for action as the item is taken up. The Board Chairperson may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue. Action items may be reordered at the discretion of the Board Chairperson with the consent of the Zoning Adjustments Board.

3. [800 Dwight Way – Bayer Building 69](#) – New Public Hearing

Application:	Use Permit #ZP2020-0087 to construct an approximately 98,840-square-foot, four-story, 79-foot tall building for manufacturing use.
Zoning:	Project site is governed by the Bayer Development Agreement, Block 1
CEQA Recommendation:	An infill checklist was prepared for this project that indicates that the project would not have any significant effects on the environment that either have not already been analyzed in Program Environmental Impact Report prepared in conjunction with the Development Agreement and with the Mitigated Negative Declaration prepared for the Major Amendment to the Development Agreement, or that are more significant than previously analyzed, or that uniformly applicable development policies would not substantially mitigate. Pursuant to Public Resources Code Section 21094.5, CEQA does not apply to such effects.
Applicant:	Emilio Balingit, Urban Planning Partners, 388 17 th Street, Suite 230, Oakland
Owner:	Bayer HealthCare LLC, 800 Dwight Way, PO Box 1986, Berkeley
Staff Planner:	Leslie Mendez, lmendez@cityofberkeley.info , (510) 981-7426
Recommendation:	APPROVE Use Permit #ZP2020-0087 pursuant to the Bayer Development Agreement.

4. Appointment of ZAB member to Design Review Committee

[BMC 23B.08.010.B](#): “the Design Review Committee shall include two members of the Zoning Adjustments Board.”

Subcommittee Reports

- **Design Review Committee (DRC)**
<https://www.cityofberkeley.info/designreview/>

Staff Communications

Adjourn



Accessibility Information / ADA Disclaimer

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@cityofberkeley.info) to request hard-copies or electronic copies.

Communications Disclaimer

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.

Supplemental Communications and Reports

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), 1947 Center Street, Second Floor, Berkeley CA 94704, or via e-mail to: zab@cityofberkeley.info. All materials will be made available via the Zoning Adjustments Board agenda page online at this address: <https://www.cityofberkeley.info/zoningadjustmentboard/>.

Correspondence received by 5:00 PM eight days before this public hearing will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing.
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

It will not be possible to submit written comments at the meeting.

Notice of Decision Requests

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@cityofberkeley.info.

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.
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; and
 - 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.
