Zoning Adjustments Board
Thursday, February 12, 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.

Roll Call: 7:10 PM
Absent: S. Wilson
Substitutes: E. Mikiten for S. Wilson, G. Williams for R.Judd

Public Attendance: ~175

Public Comment 2
Each Speaker is limited to a maximum of three minutes.

Byron and Paula Kirkendoll, 3024 Harper Street, spoke about a property line dispute they are having with their neighbor. Staff has previously corresponded with the Kirkendolls and their neighbor regarding this matter.

Patrick Kennedy spoke regarding the Gaia Arts Center

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 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 5. 1048 University moved to Consent Calendar for Approval.
Item 6. 2125 Ninth Street moved to Consent Calendar for Approval.
Item 8. 2398 Bancroft moved to Consent Calendar for Approval.

1. Approval of Previous Meeting Minutes
   Minutes from 01/22/09 ZAB Meeting

   Recommendation: Approve Minutes
   Action: Approved Minutes (6-0-3-0; Abstain: E. Mikiten, D. Koon, G. Williams)

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.

2. 54 Sunset
   Applicant: Susan Killebrew & Richard Bruehl, 54 Sunset Lane, Berkeley, CA 94708
   Appeal of Administrative Use Permit #08-2000079 to construct a 584-square-foot, second story addition to an existing 2,027 square-foot single family residence, thereby increasing the average height from 15’ 6” to approximately 24’ 2” and to vertically extend a non-conforming front yard setback of approximately 18’ 1” where 20’ is required; (R-1H, LMM)

   Continued From: NONE
   Recommendation: Deny Appeal and Approve Project
   Action: Denied Appeal and Approved Project (9-0-0-0)

Continued Items (Public Hearing has been closed): NONE

Continued Public Hearings:
3. **1911 Russell**  
**Applicant:** Guy Supawit, on the behalf of Wat Mongkolratanaram, 1911 Russell Street, Berkeley CA  
Use Permit #07-10000040/#08-70000019 to: 1) modify the limitation that on-site food sales be only for special events and to increase the frequency from a total of 3 weekends per year to 52, with hours of 10:00 AM - 1:00 PM; 2) relocate the food service from the rear yards of 1911-1913 Russell Street to the MLK Jr. parcel; 3) demolish the existing 14’ by 26’ Buddha Sanctuary building and an existing 76’ by 14’ shed structure; 4) create eight off-street parking spaces; 5) construct a 16’ by 24’, 44’ total height sanctuary to contain three Buddha statues; 6) construct a 10’ by 36’, 12’-9” total height food service pavilion; 7) construct two 84’ long, 10’-4” total height unenclosed shade structures; 8) install two 10’ by 20’, 10’ total height tent structures; and 9) install a 6’ high landscaped wall. (R-2A, GPowell)  

Recommendation: Approve  
Action: Continued to 3/12/09. Board directed staff to finalize conditions of approval pursuant to Board direction and return to ZAB on 03/12/2009 for approval. (8-1-0-0; No: B. Allen)  

4. **2573 Virginia**  
**Applicant:** Zia and Farideh Sabetimani, 80 Poplar Street, Berkeley CA  
Use Permit #08-10000038 to construct a new 2-story, approximately 1,580 square-foot main building with a 5-car garage and one dwelling unit, at a site with an existing two-story, approximately 3,000 square-foot, four-unit apartment building; (R-3H, LB)  

Recommendation: Approve  
Action: Continued to 03/12/2009 at the applicant’s request. (9-0-0-0)  

**Compliance Determination:** NONE  

**New Hearings:**

5. **1048 University**  
**Applicant:** Pet Emergency Treatment Service c/o Christopher Rodi, 1058 University Avenue, Berkeley, CA 94710  
Use Permit Modification #08-70000024 to expand existing emergency pet hospital into adjacent tenant space and change hours of operation from 6:00 p.m. to 8:00 a.m. to twenty-four hours per day and seven days per week; (CW, West Berkeley Commercial, PJ)  

Continued From: NONE  
Recommendation: Approve  
Action: Approved on Consent (9-0-0-0)
6. **2125 Ninth Street**  
**Applicant:** Xin Jin/Ronald Dorosin, 635 El Dorado Ave #302, Oakland, CA 94611  
Use Permit #08-10000098 to renovate a fire-damaged building, legalizing a pre-existing illegal second unit; relocate stairs maintaining a nonconforming front yard setback and allow two parking spaces to encroach into a side yard setback, (R-1A, SBR, GMS)  
**Continued From:** NONE  
**Recommendation:** Approve  
**Action:** Approved on Consent (9-0-0-0)

7. **29 Bonnie Lane**  
**Applicant:** Robin and Edward Wenrick, 29 Bonnie Lane, Berkeley, CA 94708  
Variance/Use Permit #09-10000008 to legalize substandard lot area of 4,743 sq. ft where a minimum of 5,000 sq. ft. is required. To construct a residential addition of 601 sq.ft. at a 2-story, single family residence by creating a new third story; to expand a property that has exceeded the permitted lot coverage; and to legalize the installation of an unenclosed hot tub. (R-1 (H) – Single Family Residential, Hillside Overlay; FC)  
**Continued From:** NONE  
**Recommendation:** Deny  
**Action:** Continued to 03/12/2009. Board directed staff to prepare findings for approval of Variance. Project will return to ZAB with a staff report that analyzes the proposed residential addition and findings and conditions required for approval of the Variance and Use Permits for the project (8-0-0-1 Absent: B. Allen)

8. **2398 Bancroft**  
**Applicant:** Mark Rhoades, Citycentric Investments, 5715 Claremont Ave., Oakland, CA 94618  
Modification #08-70000023 to modify density bonus-related permits, lot area, parking and open space requirements for approved 4-story mixed-use building; no changes to building (R-4 – Multi-Family Residential, AS)  
**Continued From:** NONE  
**Recommendation:** Approve  
**Action:** Approved on Consent (9-0-0-0)

**Additional Agenda Items:**  
A. Information/Communication  
   • Letter from Gaia Arts Center 02-06-09  
   • Gaia Arts Center: Letter from Anna’s Jazz Island 02-05-09  
B. Business Meeting
• Chair and Vice-Chair election [Conducted at the start of meeting]
  • Chair: Deborah Matthews (9-0-0-0)
  • Vice Chair: Bob Allen (9-0-0-0)
• No ZAB meeting February 26, 2009

C. Chair’s Report
D. Current Business/Committee Appointment
E. Future Agenda Items
F. Other Matters
G. Adjourn 11:40 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.

[Approved for posting by Steven D. Ross, Secretary, Zoning Adjustments Board]