Zoning Adjustments Board
Thursday, April 9, 2009 -- 6:00 pm

NOTE - EARLIER START TIME FOR THIS MEETING DUE TO PROJECT PREVIEW:
6:00 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: 6:00 PM

Absent: G. Williams (Excused)
Substitute: R. Judd (arrived at 6:30 p.m.)
Resignation: Suzanne Wilson (E. Mikiten is her permanent replacement)

Public Attendance: ~40

Public Comment – Non Agenda Items
Each Speaker is limited to a maximum of three minutes.
PROJECT PREVIEW:

1. 3001 Telegraph
   Applicant: Rony Rolnizky, 121 Devonshire Way, San Francisco, 94131
   Use Permit #08-10000092 to construct a 5-story mixed-use building with 38 dwelling units, 4,039 sq. ft. of ground floor commercial space, and 42 parking spaces, on a vacant 12,181 sq. ft. lot; (C-1, General Commercial; AS)

   Continued From: NONE
   Recommendation: Open Public Hearing, solicit Board Comments and Recommendations; No Action to be taken.
   Action: Board provided direction to applicant regarding requested permits and major design issues

REGULAR MEETING AGENDA

Public Comment– Non Agenda Items
Each Speaker is limited to a maximum of three minutes.

Ex Parte Disclosure

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.

2. Approval of Previous Meeting Minutes
   Minutes from 03/12/09 ZAB Meeting
   Recommendation: Approve Minutes
   Action: Approved Minutes (8-0-1-0; Abstain: Judd)

Item 6. 1854-78 Euclid Avenue moved to Consent Calendar to Continue off Calendar
Item 7. 841 Folger moved to Consent Calendar for Approval
3. **2996 Shattuck Avenue**  
**Applicant:** Muthana Ibrahim, MIA Architects, 2960 Camino Diablo, Suite 100, Walnut Creek, CA 94597  
Use Permit Modification #09-70000003 to construct an additional 112 sq. ft. of floor area to a new, previously approved retail building of 873 sq. ft., for a total of 985 sq. ft., at an existing fueling station; (C-SA, FC)  
**Continued From:** NONE  
**Recommendation:** Approve  
**Action:** Approved (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 Public Hearings:**

4. **651 Addison**  
**Applicant:** Hudson-MacDonald, 1600 Shattuck Avenue, Suite #218, Berkeley, CA 94709  
Use Permit #07-10000057 to construct a 92,470 square foot, 5-story, mixed-use building to include 94 residential units, 1,100 square feet of general commercial floor area, a 1,484 square foot quick-service restaurant (with incidental sidewalk seating and the service of beer and wine with food) and 102 parking spaces. (CW - Commercial West Berkeley, GP)  
**Continued From:** 03/12/2009  
**Recommendation:** Approve  
**Action:** Approved (8-1-0-0; No: Shumer)

**Compliance Determination:**

5. **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  
**Recommendation:** 1) Use Permit Conformance: Continue for one month to allow negotiations to continue for a resident theater company; 2) Schedule a public hearing for Nuisance Abatement  
**Action:** Public Hearing Opened. Board continued to May 14, 2009 (9-0-0-0)
New Hearings:

6. 1854-78 Euclid Avenue
   Applicant: The Bay Architects, 1840b Alcatraz Avenue, Berkeley, CA 94703
   Use Permit #09-10000012 to renovate a building façade, partially demolish and
   reconfigure existing mezzanine areas, combine two storefronts into one, establish a
   2,308-sq. ft. Quick Service Restaurant, and reduce the number of required parking
   spaces for the change-of-use from one to zero. (C-N, FC)
   Continued From: NONE
   Recommendation: Continue Off-Calendar
   Action: Continued Off-Calendar on Consent (9-0-0-0)

7. 841 Folger
   Applicant: City Of Berkeley Police Department, 2100 MLK Jr. Way, Berkeley CA 94701
   Use Permit #09-10000019 to establish a City of Berkeley Police Department Traffic and
   Parking Enforcement Units office and parking at 841 Folger Street, and construct a
   temporary canopy over vehicle parking at 3000 Seventh Street; (MU-LI, GMS)
   Continued From: NONE
   Recommendation: Approve
   Action: Approved on Consent (9-0-0-0)

8. 1110 Parker
   Applicant: John Newton, 837 Coventry Road, Kensington, CA 94707
   Use Permit #08-1000124 to construct a second dwelling unit within an existing single-
   family house; (C-W, LMM)
   Continued From: NONE
   Recommendation: Approve
   Action: Approved (9-0-0-0)

9. 1116-1132 University
   Applicant: 1122 University Avenue LLC, 470 Arlington Avenue, Berkeley, 94707
   Use Permit Modification #09-70000005 to modify the mixed-use project approved by Use
   Permit #03-1000078 to 1) allow construction Monday - Friday to begin at 7 AM instead
   of 8 AM and end by 5 PM instead of 6 PM; 2) to allow construction on Saturday from 9
   AM to 4 PM instead of 9 AM to Noon; and 3) to allow extended construction hours for
   special construction activities for no more than a total of 10 working days, subject to
   Zoning Officer approval, with 2 weeks advance notice to surrounding residents and
   businesses. (C-1, GPowell)
   Continued From: NONE
   Recommendation: Approve
   Action: Approved with Changes (5-4-0-0; No: Doran, Judd, Alvarez Cohen, Mikiten)
10. **840 Delaware**  
Applicant: Lynden McLaughlan and Melanie Mac Innis, 840 Delaware Street, Berkeley, CA 94710  
Variance and Use Permit #08-10000054 for a technical demolition of an existing, approximately 1,040-square-foot, single-story residence and the reconstruction of that residence, requiring variances to exceed the allowed residential density, to exceed lot coverage, to reduce the required usable open space, and to reduce the front yard setback;(R-1A, LMM)

Continued From: **NONE**  
Recommendation: **Deny Variance & Approve Use Permit**  
Action: Approved (9-0-0-0) Variances to permit demolition and replacement with new dwelling unit. Board directed staff to prepare Findings and Conditions and issue NOD.

Board approved 2nd motion (9-0-0-0) to request that City consider refunding the applicant’s zoning fees.

Board approved 3rd motion (9-0-0-0) requesting staff to forward memo to Planning Commission to consider changes to the demolition provisions to permit similar in-kind reconstruction projects as of right.

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**Additional Agenda Items:**

A. Information/Communication  
   - **MOTION:** April 23, 2009 meeting CANCELED  
   - Housing Element Update  
   - Design Review Committee Chair & Vice Chair Election Results

B. Business Meeting
C. Chair’s Report
D. Current Business/Committee Appointment
E. Future Agenda Items
F. Other Matters
G. **Adjourn 9:30 p.m.**

[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.