Planning and Development Department
Land Use Planning Division

Action Minutes

Zoning Adjustments Board

SPECIAL MEETING
MONDAY, April 27, 2009 -- 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 (for G. Williams)

Public Attendance: ~35

Public Comment – Non Agenda Items NONE
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.

1. Approval of Previous Meeting Minutes
   Minutes from 04/09/09 ZAB Meeting
   
   Recommendation: Approve Minutes
   Action: Approved Minutes (8-0-0-1; Absent: E. Mikiten)

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 Items (Public Hearing has been closed): NONE

Continued Public Hearings: NONE

Compliance Determination: NONE

New Hearings:
2. **920 Heinz Avenue (West Berkeley Bowl)**

Applicant: Berkeley Bowl Produce, Inc., 2020 Oregon Street, Berkeley, CA 94703

Modification #09-70000007 to Use Permit #04-10000084 to allow approved “full-service grocery marketplace” to open without required traffic signal at Heinz/San Pablo and left turn signal at Ashby/San Pablo, but with interim mitigations until required signals are installed: (1) prohibit left turns at Heinz/San Pablo and direct northbound traffic to Seventh St.; (2) prohibit westbound left turns at Ashby/San Pablo (C-W, West Berkeley Commercial and MU-LI, Mixed Use-Light Industrial; AS)

**Continued From:** NONE

**Recommendation:** Approve

**Action:** Approved with modifications to findings and conditions, including a follow-up traffic study to be reported back to the Board September 10, 2009 (7-2-0-0 No: D. Koon, E. Mikiten)

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**Additional Agenda Items:**

A. Information/Communication
   - 740 Heinz Draft EIR

B. Board Training
   - Density Bonus law and procedures – continued to future meeting
   - CEQA Basics – continued to future meeting

C. Current Business/Committee Appointment

D. Future Agenda Items
   - Joint Meeting with LPC on Thursday, July 2, 2009

E. Other Matters

F. Adjourn: 9 pm

[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.