Action Minutes

Planning & Development Department
Land Use Planning Division

Zoning Adjustments Board
Thursday, May 23, 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:
  Michael Alvarez Cohen (Chairperson), appointed by Councilmember Wozniak
  Deborah Matthews (Vice Chairperson), appointed by Mayor Bates
  George Williams, appointed by Councilmember Capitelli
  Robert Allen, appointed by Councilmember Wengraf
  Shoshana O'Keefe, appointed by Councilmember Anderson
  Sophie Hahn, appointed by Councilmember Worthington
  Steven Donaldson, appointed by Councilmember Moore
  Prakash Pinto, appointed by Councilmember Maio
  Igor Tregub, appointed by Councilmember Arreguin

Members of the Public
  Present: 18
  Speakers: 10

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, they must be placed in the record and disclosed to all interested parties sufficiently in advance of the decision to allow rebuttal.

R. Allen – Conversation with Linda Maio regarding 1799 University Avenue.
I. Tregub – Received a call from Kathy Harr regarding 1799 University Avenue.
Public Comment

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.

- Item #2 placed on consent calendar.

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.

<table>
<thead>
<tr>
<th></th>
<th>Approval of Previous Meeting Minutes</th>
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<tbody>
<tr>
<td></td>
<td>Minutes from the 05/09/13 meeting</td>
</tr>
<tr>
<td>Recommendation:</td>
<td>APPROVE</td>
</tr>
<tr>
<td>Action:</td>
<td>APPROVED with a correction.</td>
</tr>
<tr>
<td>Motion / Second:</td>
<td>I. Tregub / R. Allen</td>
</tr>
<tr>
<td>VOTE:</td>
<td>9-0-0-0</td>
</tr>
</tbody>
</table>
### New Public Hearings:

2. **2031 Fourth Street**  
   **Use Permit #13-10000020** to permit sales (both on-site and off-site) and service of alcoholic beverages within a 1,945 square foot beer tasting room facility for Sierra Nevada Brewing Company in a vacant retail space at 2031 Fourth Street.  
   **Applicant:** David Trachtenberg, Trachtenberg Architects, 2421 Fourth Street, Berkeley, CA 94710  
   **Property Owner:** RI-Berkeley II, LLC, c/o Read Investments, 2025 Fourth Street, Berkeley, CA 94710  
   **Zoning:** C-W, “West Berkeley Commercial”; **Planner:** Greg Powell

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<thead>
<tr>
<th>Continued From:</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit #13-10000020 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>APPROVED on consent with modified Condition #36.</td>
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<tr>
<td><strong>Motion / Second:</strong></td>
<td>I. Tregub / S. Hahn</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>9-0-0-0</td>
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3. **866 Regal Road**  
   **Use Permit #13-10000031** to construct a three-story, 3,529 square-foot, single family dwelling that will have a reduced front yard setback of 18’ 8” where 20 feet is required on a 7,794 square foot vacant lot.  
   **Applicant:** John Newton, 837 Coventry Road, Kensington, CA 94707  
   **Property Owner:** Tom Anthony, 5666 Telegraph Avenue, Oakland, CA 94609  
   **Zoning:** R-1(H), “Single-Family Residential, Hillside Overlay”; **Planner:** Claudine Asbagh

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<tr>
<th>Continued From:</th>
<th>None</th>
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<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit #13-10000031 pursuant to Section 23B.32.040 and Section 23E.96.070, subject to the attached Findings and Conditions.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>APPROVED.</td>
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<tr>
<td><strong>Motion / Second:</strong></td>
<td>R. Allen / G. Williams</td>
</tr>
<tr>
<td><strong>Number of Speakers:</strong></td>
<td>3</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>9-0-0-0</td>
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4. **1799 University Avenue**

   **Use Permit #13-10000013** to establish a quick service restaurant, extend the restaurant hours until 2:00 AM every day, increase the hours of incidental service of beer, wine and distilled spirits at a quick service restaurant, establish an Amusement Device Arcade and modify Use Permits #A1954/VAR#1401 and UP #99-10000046 which established a full service restaurant with incidental service of beer, wine and distilled spirits until 10:00 PM.  
   **Applicant:** Joel DiGiorgio, 431 Moraga Avenue, Piedmont, CA 94611  
   **Property Owner:** John Solomon, 39 Monticello Avenue, Piedmont, CA 94611  
   **Zoning:** C-1, “General Commercial”; **Planner:** Beth Greene

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<tr>
<th>Continued From:</th>
<th>None</th>
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<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit #13-10000013 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>APPROVED with modified Conditions #27 B and C &amp; an added condition prohibiting renting of the premises to third party groups.</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong></td>
<td>R. Allen / D. Matthews</td>
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<tr>
<td><strong>Number of Speakers:</strong></td>
<td>7</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>9-0-0-0</td>
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### 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.

- Information/Communication
- Discussion Item
- Business Item
- Chairperson’s Report
- Current Business/Committee Appointment
- Future Agenda Items
- Other Matters
  - Future Council Hearings on ZAB Decisions
    - 2401 Telegraph Avenue, 5/21/2013
    - 2433 Martin Luther King, Jr Way, 6/11/2013
    - 2024 Durant Avenue, 6/25/2013
    - 2360 Telegraph Avenue, 6/25/2013

**Adjourn:** 9:00 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.