Action Minutes
Planning and Development Department
Land Use Planning Division

Zoning Adjustments Board
Thursday, June 11, 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.

Planning and Development Department, Land Use Division

Roll Call: 7:00 PM
Absent: D. Koon
Substitute: Sophie Hahn (for D. Koon)
Public Attendance: ~55

Public Comment NONE
Each Speaker is limited to a maximum of three minutes.

Ex Parte Disclosure
T. Doran: conversation with Rena Rickles re: 1828 Euclid
G. Williams: conversation with Rena Rickles re: 1828 Euclid and prospective tenant at 1878 Euclid
S. Hahn: knows owners of 1434 Grant street through school activities
S. Schumer: conversation with Joe Posner of 1 Bolivar regarding traffic, Rena Rickles re: 1828 Euclid
B. Allen: conversations with Rena Rickles re: 1828 Euclid, Harry Pollack re: 1854 Euclid
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 05/28/09 ZAB Meeting
   Recommendation: Approve Minutes
   Action: Approved Minutes
   Motion: VOTE: (8-0-1-0; ABSTAIN: S. Hahn)

Item 4. 1539 Solano Avenue moved to Consent Calendar for Approval

Agenda Changes
The Board Chair may reorder the agenda at the beginning of the meeting.

Appeal of Administrative Use Permit/Staff Level Design Review: 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. 1434 Grant
   Applicant: Terrence MacClure, 1434 Grant Street, Berkeley, 94703
   Administrative Use Permit #08-20000161, to legalize an existing teaching-related home occupation for college preparation, utilizing approximately 70 square feet within an existing single-family dwelling; (R-2, Limited Two-Family Residential; AS)
   Continued From: NONE
   Recommendation: DENY APPEAL
   Action: DENIED APPEAL and Upheld Approval of AUP
   Motion: Moved to Consent Calendar, Approved on Consent
   VOTE: 9-0-0-0

Continued Items (Public Hearing has been closed): NONE
Continued Public Hearings: NONE

Compliance Determination: NONE

New Hearings:

3. 1 Bolivar
Applicant: City of Berkeley
Use Permit 09-100000004 to construct a new municipal animal shelter totaling approximately 13,610 square feet on an approximately 19,000 square foot lot recently purchased by the City. The City previously approved a use permit to demolish the existing structure on the property. The project also involves a modification to the use permit for the existing wireless facility at the site. (C-W, GS)

Continued From: NONE
Recommendation: APPROVE
Action: APPROVED with condition requiring transportation to review truck access to loading area, site lines and signage where driveway and bike path meet
Motion: (Mikiten, Shumer)
Vote: (9-0-0-0)

4. 1539 Solano Avenue
Applicant: John and Filomena Giese, 67 Kensington Road, Kensington, CA 94707
Use Permit #09-10000009 to add incidental service of distilled liquors to the incidental beer and wine service for an existing restaurant (C-SO, FC).

Continued From: NONE
Recommendation: APPROVE
Action: Moved to Consent Calendar, Approved on Consent
Motion: Moved to Consent Calendar, Approved on Consent
VOTE: 9-0-0-0
5. **1640 Hopkins**
Applicant: Mustard Seed Preschool, 1640 Hopkins Street, Berkeley CA 94707
Use Permit #08-70000020 to modify Use Permit #9761 to legalize increase in enrollment of preschool from 24 to 66 children and extend hours of operation; (R-2A, GS)

Continued From: NONE
Recommendation: APPROVE
Action: APPROVED with motion (not condition) that Transportation work with pre-school & church to see if additional short term parking can be added adjacent to church, or if traffic calming measures are warranted in the area.

Motion: Anthony, Allen
VOTE 9-0-0-0

6. **1828 Euclid**
Applicant: Rene Cardinaux, AIA Architect; 4233 Browns Lane, Petaluma, CA 94954
Use Permit #08-10000114 to operate a full service restaurant with alcohol service (beer, wine, and distilled spirits) and to renovate the front façade of the existing storefront. (CN-H, LM).

Continued From: NONE
Recommendation: DENY
Action: CONTINUED TO 6/25/09, with motion directing staff to prepare findings for approval. Applicant withdrew request for distilled spirits license, but will serve beer & wine.

Motion: Allen, Anthony
VOTE: 7-0-2-0 ; ABSTAIN: T. Doran, S. Schumer)
7. **1854-78 Euclid**

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: 4/9/2009**

**Recommendation:**
1) APPROVE AUP for floor area conversion, and
2) DENY Use Permit for food service and parking waiver

**Action:** CONTINUED TO 6/25/09, with motion directing staff to prepare findings for approval

**Motion:** Allen, Anthony

**VOTE:** (7-1-1-0; ABSTAIN: S. Shumer, NO: S. Hahn)

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**Additional Agenda Items:**

A. **Information/Communication**
   - Memo from Wendy Cosin, regarding cultural uses and list of scheduled events from May-August 2009 at the GAIA Building (2116 Allston Way)
   - Memo from Jane Micallef, Acting Housing Director, regarding Housing Trust Fund Application Summaries
   - Memo regarding proposed revisions to Berkeley sign regulations
   - 16th Annual report on the Status of the Development Agreement between the City of Berkeley and Bayer Healthcare

B. **Business Meeting**
   - Next ZAB meeting June 25, 2009
   - Special Joint ZAB – LPC Meeting July 2, 2009 at 6 pm *(To be held at City Council Chambers)*

C. **ZAB Training** *(Rescheduled for June 25th at 6 p.m.)*
   - Density Bonus
   - CEQA

D. **Chair’s Report**

E. **Current Business/Committee Appointment**

F. **Future Agenda Items**

G. **Other Matters**

H. **Adjourn 10:00 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.