Action Minutes

Planning & Development Department
Land Use Planning Division

Zoning Adjustments Board
Thursday, June 13, 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:
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
Prakash Pinto, appointed by Councilmember Maio
Igor Tregub, appointed by Councilmember Arreguin

Excused:
Michael Alvarez Cohen (Chairperson), appointed by Councilmember Wozniak
Steven Donaldson, appointed by Councilmember Moore

Substitutions:
Sachu Constantine for Steven Donaldson

Members of the Public
Present: 38
Speakers: 17

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 – Spoke with Mark Rhoades regarding City property taxes before and after the proposed project at 2133 University Avenue is constructed.
I. Tregub – Spoke with Andreas Cluver regarding 2133 University Avenue, Toni Mester regarding 1020 Addison Street, and Councilmember Maio regarding 1936 Delaware Street on concerns these individuals had regarding the specific projects.

Deborah Matthews – Had a general conversation with Mark Rhoades concerning parking and community benefits for the proposed project at 2133 University Avenue.

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

- Peter Spoerl – Generally discussed tree and view corridor impacts and the inclusion of such language in applicable conditions on future Board approvals.

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

- Item #3 and Item #4 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.

1. Approval of Previous Meeting Minutes
Minutes from the 05/23/13 meeting

<table>
<thead>
<tr>
<th>Recommendation:</th>
<th>APPROVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Action: Motion / Second:</td>
<td>APPROVED. S. Hahn / R. Allen</td>
</tr>
<tr>
<td>VOTE:</td>
<td>7-0-1-1 (Abstain: S. Constantine; Absent: M. Cohen)</td>
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</tbody>
</table>
New Public Hearings:

2. **2133 University Avenue**

**Remand of Use Permit #10-10000078** for a project at 1979-1987 Shattuck Avenue, 2101-2113 University Avenue, 2125-2145 University Avenue and 1922 & 1930 Walnut Street, that would create 205 new dwelling units, convert 16,824 square feet of office use to residential, reuse approximately 30,000 square feet of existing commercial space (approximately 8,000 square feet of food service use and 22,000 square feet of retail use) and relocate or demolish the residential structures with eight dwelling units at 1922 & 1930 Walnut Street. 80 parking spaces are proposed.

**Applicant/Property Owner:** Equity Residential, 26970 Aliso Viejo Pkwy. #250, Aliso Viejo, CA

**Zoning:** C-DMU, “Commercial, Downtown Mixed-Use District”; **Planner:** Greg Powell

<table>
<thead>
<tr>
<th>Continued From:</th>
<th>May 9, 2013</th>
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<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit #10-10000078 pursuant to BMC Section 23B.32.040 and subject to the attached Findings and Conditions.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>APPROVED with added conditions for providing a total of 26 units at 50% AMI and added findings of no impact on historic resources and no material detriment to housing needs.</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong></td>
<td>S. Hahn / G. Williams</td>
</tr>
<tr>
<td><strong>Number of Speakers:</strong></td>
<td>6</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>7-0-1-1 (Abstain: O’Keefe; Absent: M. Cohen)</td>
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3. **1020 Addison Street**

**Use Permit #13-10000009** to raise an existing two-story single-family dwelling by 3 feet, 3 inches in order to create a second dwelling unit on the lower level.

**Applicant/Property Owner:** Avram “Bene” Sklare, 1020 Addison St., Berkeley, CA 94710

**Zoning:** R-1A, “Limited Two-Family Residential District”; **Planner:** Aaron Sage

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<tr>
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<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit #13-10000009 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.</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong></td>
<td>R. Allen / I. Tregub</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>8-0-0-1 (Absent: M. Cohen)</td>
</tr>
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4. **1919 Berkeley Way**

**Use Permit #13-10000004** to convert an existing non-conforming commercial building to a dwelling unit.

**Applicant:** The Bay Architects, 1840B Alcatraz Ave., Berkeley, CA 94703  
**Property Owner:** Marilyn Sarig, 1919 Berkeley Way, Berkeley, CA 94704  
**Zoning:** R-2A, “Restricted Multiple-Family Residential District”; **Planner:** Leslie Mendez

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<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit #13-10000004 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.</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong></td>
<td>R. Allen / I. Tregub</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>8-0-0-1 (Absent: M. Cohen)</td>
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5. **2227 Dwight Way**

**Use Permit #13-10000018** to rebuild a fire-damaged, legal non-conforming six-unit apartment building to the same size, extent and configuration as previously existed.

**Applicant:** William Coburn Architects, 1224 Center St., Oakland, CA 94607  
**Property Owner:** L.B. Lakireddy, Everest Properties, 2278 Shattuck Ave., Berkeley, CA 94704  
**Zoning:** R-3, “Multiple Family Residential District”; **Planner:** Leslie Mendez

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<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit #13-10000018 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>APPROVED Use Permit #13-10000018 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions.</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong></td>
<td>R. Allen / S. Constantine</td>
</tr>
<tr>
<td><strong>Number of Speakers:</strong></td>
<td>3</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>5-3-0-1 (No: I. Tregub, S. Hahn, P. Pinto; Absent: M. Cohen)</td>
</tr>
</tbody>
</table>
### 6. 1936 Delaware Street

**Use Permit #13-10000001** to demolish an existing one-story, 1,355 square-foot, single-family home and to construct a two-story, 2,397 square-foot, single-family home on a 5,372 square-foot lot.  
**Applicant:** Toby Long, 6114 La Salle Ave., #552, Oakland, CA 94611  
**Property Owner:** Kao and Eliza Khumer, 1811 Fairview St., Berkeley, CA 94703  
**Zoning:** R-2A, “Restricted Multiple-Family Residential District”; **Planner:** Beth Greene

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<th>Continued From:</th>
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<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit # 13-10000001 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>APPROVED Use Permit # 13-10000001 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions.</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong></td>
<td>R. Allen / S. O'Keefe</td>
</tr>
<tr>
<td><strong>Number of Speakers:</strong></td>
<td>4</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>6-0-1-1-1 (Abstain: I. Tregub; Absent: M. Cohen; Recused: P. Pinto)</td>
</tr>
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### Appeal of Administrative Use Permit(s):

#### 7. 2341 Derby Street

**Administrative Use Permit #12-20000082** to legalize a play structure measuring approximately 13’ in maximum height within the required rear and side yards.  
**Applicant:** Kristin Personett, Indigo Design Group, 6140 Johnston Dr., Oakland, CA 94611  
**Property Owner:** Summer Nastich, 2341 Derby St., Berkeley, CA 94705  
**Appellant:** Richard and Barbara Yoder, Owners at 2638 Dana St., Berkeley, CA 94705  
**Zoning:** R-2, “Restricted Two-Family Residential District”; **Planner:** Claudine Asbagh

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<th>Continued From:</th>
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<tr>
<td><strong>Recommendation:</strong></td>
<td>AFFIRM the Zoning Officer’s decision to approve Administrative Use Permit #12-20000082, subject to the attached Findings and Conditions, and DISMISS the appeal.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>AFFIRMED the Zoning Officer’s decision to approve Administrative Use Permit #12-20000082, subject to the attached Findings and Conditions, and DISMISSED the appeal.</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong></td>
<td>R. Allen / C. Kahn</td>
</tr>
<tr>
<td><strong>Number of Speakers:</strong></td>
<td>3</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>8-0-0-1 (Absent: M. Cohen)</td>
</tr>
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8. **2367 Telegraph Avenue**

   **Administrative Use Permit #12-20000139** to establish incidental amplified entertainment within an existing full service restaurant.  
   **Applicant:** Alex Poppov for Pappy’s Grill, 2367 Telegraph Ave., Berkeley, CA 94704  
   **Property Owner:** Prado Group, 150 Post St., Ste. 320, San Francisco, CA 94108  
   **Appellant #1:** Kyle Beckman, 2500 Durant Ave. #208, Berkeley, CA 94704  
   **Appellant #2:** Ghaouar Camij Toschian, 2500 Telegraph Ave. #310, Berkeley, CA 94704  
   **Zoning:** C-T, “Telegraph Commercial”; **Planner:** Claudine Asbagh

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<tr>
<td><strong>Recommendation:</strong></td>
<td>CONTINUE off calendar.</td>
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<tr>
<td><strong>Action:</strong></td>
<td>CONTINUED off calendar.</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong></td>
<td>D. Matthews / S. Constantine</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>8-0-0-1 (Absent: M. Cohen)</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.*

A. Information/Communication  
B. Discussion Item  
C. Business Item  
D. Chairperson’s Report  
E. Current Business/Committee Appointment  
F. Future Agenda Items  
G. Other Matters  
   - Future Council Hearings on ZAB Decisions  
     i. **2401 Telegraph Avenue**, 5/21/2013  
     ii. **2433 Martin Luther King, Jr Way**, 6/11/2013  
     iii. **2024 Durant Avenue**, 6/25/2013  
     iv. **2360 Telegraph Avenue**, 6/25/2013

**Adjourn:** 11:36 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.

[Approved for posting by Terry Blount, Secretary, Zoning Adjustments Board]