Action Minutes

Zoning Adjustments Board
Thursday, July 9th, 2009, 7 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 7:03
Present: T. Doran, G. Williams, B. Allen, D. Matthews, S. Hahn, S. Schumer, E. Mikiten
Absent: J. Anthony, D. Koon, M. Cohen
Substitutions: S. Hahn (for D. Koon)

Public Attendance: ~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.

S. Hahn: Toured facility, donor to YMCA Youth Center, re: Item 5, 2109 Martin Luther King Jr. Way
S. Schumer: Spoke with Nancy Holland regarding parking, re: Item 5, 2109 Martin Luther King Jr. Way
Public Comment: NONE
Each Speaker is limited to a maximum of three minutes.

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

Agenda Items 3 and 4 moved to Consent Calendar for Approval.

Consent Calendar:
The Consent Calendar allows the Board to take action with no discussion, on projects to which no one objects. The Agenda includes two types of Consent Calendar items: (1) Modifications of existing Use Permits (which have not been noticed for public hearings); (2) 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 6/25/09 meeting

   Recommendation: APPROVE
   Action: APPROVED
   Motion: (B. Allen, G. Williams)
   VOTE: (6-0-1-2; Abstain: S. Hahn; Absent: J. Anthony, M. Cohen)

2. 1960 University Avenue
Applicant: Christopher Laramie, 2738 Bruchez Pkwy, #101, Westminster, CO 80234
Modification #09-7000012 to Use Permit/Variance #04-1000061 to relocate an approved full-service restaurant with incidental beer and wine service and outdoor seating from an approved new building (not yet built) at the rear of the property to an existing vacant tenant space at the front of the property. (C-2, Central Commercial; AS)

   Recommendation: APPROVE
   Action: APPROVED on Consent
   Motion: (B. Allen, G. Williams)
   VOTE: (7-0-0-2; Absent: J. Anthony, M. Cohen)

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:

3. **1624 Martin Luther King Way**
   Applicant: Gary Earl Parsons Architect, 814 Camelia Street, Berkeley, CA 94710
   UP #08-10000115 to construct a second, approximately 1,166-square-foot three-bedroom dwelling unit on the first floor of an existing 4,155-square-foot single-family home, and to convert an approximately 215-square-foot, 10 foot tall detached garage to a habitable accessory building; (R-2A, LMM)

   **Recommendation:** APPROVE
   **Action:** APPROVED on Consent
   **Motion:** (B. Allen, G. Williams)
   **VOTE:** (7-0-0-2; Absent: J. Anthony, M. Cohen)

4. **1600 Shattuck Avenue, Suite #112**
   Applicant: MRE Commercial, 6001 Shellmound St., Suite 825, Emeryville, CA 94606
   MOD-UP #09-70000006 to convert an approximately 300-square-foot storage room from Suite #100 to Suite #112 for use as an existing seating area for the full service restaurant, and to expand the existing alcohol beverage service (beer and wine) to the new seating area; (C-NS, LMM)

   **Recommendation:** APPROVE
   **Action:** APPROVED on Consent
   **Motion:** (B. Allen, G. Williams)
   **VOTE:** (7-0-0-2; Absent: J. Anthony, M. Cohen)

5. **2109 Martin Luther King Jr. Way**
   Applicant: Noll and Tam Architects and Planners, 729 Heinz Ave, #7 Berkeley, CA 94710
   Use Permit #09-10000031 to establish a “teen center” and administrative offices for the YMCA, with a 3rd-story addition to an existing 2-story office building (C-2, Central Commercial; AS)

   **Recommendation:** APPROVE
   **Action:** APPROVED
   **Motion:** (B. Allen, E. Mikiten)
   **VOTE:** (7-0-0-2; Absent: J. Anthony, M. Cohen)
Additional Agenda Items:
A. Information/Communication
   • Update: Gaia Building Cultural Uses
   • 1994 City Attorney memo: Ex Parte Communications
B. Business Meeting
   • Board Training: Density Bonus Law and Procedures (continued from 6/25/09)
     Item B postponed to future meeting when more permanent Board members are present.
C. Chair’s Report
D. Current Business/Committee Appointment
E. Future Agenda Items
   The Board clarified its June 25, 2009 action regarding Pacific Steel Castings. Staff will return to ZAB within two months with an information item providing background and a status report on Pacific Steel Castings. At that time ZAB can decide if it would like to set a future public hearing to receive public testimony on the subject.
F. Other Matters
G. Adjourn 8:15 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.

• NEW: Correspondence received by the 5 pm 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.

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• 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.