



Planning
Development
Department
Land Use Planning
Division

and

Action Minutes

Zoning Adjustments Board Thursday, August 13, 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

Present: J. Anthony, T. Doran, D. Matthews, B. Allen, M. Alvarez-Cohen, S. Shumer, G. Williams

Absent: E. Mikiten, D. Koon (arrived 7:05)

Substitutions: Leni von Blanckensee (for E. Mikiten)

Public Attendance: ~15

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.

T. Doran: Spoke with Applicant David M. Mayeri re: item 1, 2030-36 University Avenue.

B. Allen: Spoke with Applicant David M. Mayeri about crowd control issues re: item 1, 2030-36 University Avenue.

Zoning Adjustments Board ACTION MINUTES

Thursday August 13th 2009

Page 2 of 5

D. Matthews: Spoke with Applicant David M. Mayeri re: item 1, 2030-36 University Avenue.

Public Comment-Non Agenda Items NONE

Each Speaker is limited to a maximum of three minutes.

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 7/9/09 ZAB Meeting

Recommendation: APPROVE

Action: APPROVED on Consent

Motion: G. Williams, S. Shumer

**VOTE: (7-0-1-1; Abstain: L. von Blanckensee;
Absent: D. Koon)**

Agenda items 2 and 3 moved to Consent Calendar, to be Approved on Consent.

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

Zoning Adjustments Board ACTION MINUTES

Thursday August 13th 2009

Page 3 of 5

New Hearings:

1. 2030-36 University Avenue

Applicant: David M. Mayeri and Dawn Holliday, c/o Remiker Architects, 2233 Fifth St., Berkeley, 94710

Modification #09-70000008 to Use Permit #05-10000097 to establish a "popular live entertainment music venue" with capacity of 1,440 persons; approved use is a "dinner theater and jazz club" with capacity of 555 persons. (C-W, West Berkeley Commercial; AS)

Recommendation: APPROVE

Action: APPROVE

Motion: B. Allen, M. Alvarez- Cohen

Vote: (9-0-0-0)

2. 700 University Avenue

Applicant: Essex Property Trust, 925 East Meadow Drive, Palo Alto, CA 94303

Use Permit #08-10000113 to modify Use Permit #7457 to expand the service hours to open at 6:00 AM and close at 2:00 AM (Current hours are limited to 11:00 AM to 2:00 AM). No other change is proposed. (CW GP)

Recommendation: APPROVE

Action: APPROVED on Consent

Motion: G. Williams, S. Shumer

Vote: (8-0-0-1; Absent: Koon)

3. 2050 University Avenue

Applicant: Bayani Flores, CEO of Fireball Industries, (510) 697-0334

Use Permit #09-10000014 to modify Use Permit #a281 to establish sidewalk seating within the public right-of-way to seat 12, convert the restaurant's storage area to a dining room and to establish an exterior seating area to the rear of the existing restaurant. No other change is proposed. (C-2 GP).

Recommendation: CONTINUE OFF CALENDAR

Action: Moved to Consent Calendar and continued off calendar. Due to recent downtown zoning changes, this item can be approved via an AUP instead of a UP.

Motion: G. Williams, S. Shumer

Vote: (8-0-0-1; Absent: Koon)

Zoning Adjustments Board ACTION MINUTES

Thursday August 13th 2009

Page 4 of 5

Additional Agenda Items:

- A. Information/Communication
 - Correspondence from Alicia Abramson regarding 2850 Telegraph parking lot
- B. Business Meeting
- C. Chair's Report
- D. Current Business/Committee Appointment
- E. Future Agenda Items
 - **Staff asked the ZAB members to submit questions they'd like addressed regarding Pacific Steel Castings, which is scheduled as an information item on the 9/10/09 agenda.**
 - **Staff indicated that a special training workshop will be scheduled in the coming months. DRC members may be invited if the topic is relevant (such as density bonus)**
- F. Other Matters
 - Tentative Council dates for Appeals of ZAB Decisions
 - i. 9/22/09 - 1911 Russell (Thai Temple)
 - ii. 10/27/09 – 2421 Ninth Street (2nd dwelling unit)
 - iii. 10/27/09 – 1854-78 Euclid (Conversion and Quick Serve Food Service)
 - Other Council Hearings on ZAB Decisions
 - i. 9/22/09 – 2109 MLK Jr. Way (YMCA Teen Center)
- G. Adjourn 8:00 pm

[Approved for posting by Steven D. Ross, Secretary, Zoning Adjustments Board]

Zoning Adjustments Board ACTION MINUTES

Thursday August 13th 2009

Page 5 of 5

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.