Zoning Adjustments Board
MONDAY, October 6, 2008 -- 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, B. Allen, R. Judd, S. Wilson, S. Shumer, M. Cohen
Absent: D. Matthews, J. Arreguin
Public Attendance: ~25

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

Consent Calendar: NONE
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 09-25-08 ZAB Meeting

   Recommendation: Approve Minutes
   Action: Approved Minutes (7-0-0-2; Absent: D. Matthews, J. Arreguin)

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:

2. 2421 Ninth
   Applicant: Gregory VanMechelen, 1117 Virginia Street, Berkeley, CA 94702
   Use Permit 05-1000084 to construct a two-story 1,776 sq. ft., detached dwelling unit at the rear of a 6,500 sq. ft. lot with one existing dwelling unit, (R-1A, ES)

   Continued From: 08/14/2008; 09/11/2008
   Recommendation: No Action Taken. Not enough votes for Approval (4-3-0-2; No: T. Doran, S. Shumer, M. Cohen; Absent: D. Matthews, J. Arreguin);
   Action: Continued to 11/13/2008 (7-0-0-2; Absent: D. Matthews, J. Arreguin)

Compliance Determination: NONE

New Hearings:
3. **2573 Virginia**  
**Applicant:** Zia and Farideh Sabetimani, 80 Poplar Street, Berkeley CA  
Use Permit #08-10000038 to construct a new 2-story, approximately 1,580 square-foot main building with a 5-car garage and one dwelling unit, on a site with an existing two-story, approximately 3,000 square-foot, four-unit apartment building; (R-3H, LB)

- **Continued From:** NONE  
- **Recommendation:** Approve  
- **Action:** Continued to 10/23/2008 (7-0-0-2; Absent: D. Matthews, J. Arreguin)

4. **651 Addison**  
**Applicant:** Hudson-MacDonald, 1600 Shattuck Avenue, Suite #218, Berkeley, CA 94709  
Use Permit #07-10000057 to construct a 92,470 square foot, 5-story, mixed-use building to include 94 residential units, 1,100 square feet of general commercial floor area, a 1,484 square foot quick-service restaurant (with incidental sidewalk seating and the service of beer and wine with food) and 102 parking spaces. (CW - Commercial West Berkeley, GPowell)

- **Continued From:** NONE  
- **Recommendation:** Receive comments from the Board and public regarding the Draft EIR.  
- **Action:** Opened public hearing for public comments; Received comments from the Board regarding the Draft EIR

**Additional Agenda Items:**
A. Information/Communication  
B. Business Meeting  
C. Chair’s Report  
D. Current Business/Committee Appointment  
   - Discussion of Design Review Committee appointment to replace Sara Shumer  
     - Due to possible changes in the Board configuration as a result of the election, the Board elected to postpone the discussion until after the November election.  
E. Future Agenda Items  
F. Other Matters  
G. Adjourn **9:30 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.