Action Minutes

Zoning Adjustments Board
Thursday, October 8, 2009
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.

Roll Call: 7:00 pm
Absent: G. Williams
Substitutions: Jim Novosel for G. Williams
Public Attendance: 50

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: Conversation with Rena Rickles regarding Item 2, 1630 Capistrano
J. Novosel: Previously worked with Rony Rolnizky, applicant for Item 9, 3001 Telegraph Avenue. No current contact.
B. Allen: Conversation with Rena Rickles regarding Item 2, 1630 Capistrano
S. Shumer: Conversation with Rena Rickles regarding Item 2, 1630 Capistrano
D. Matthews: Conversation with Rena Rickles regarding Item 2, 1630 Capistrano

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.

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 9/10/09 meeting

Recommendation:  APPROVE
Action  APPROVED, with the following correction to Agenda Item 3 (1421 Second Street): “Sources of” shall be added to item 4 of the motion, to read “Sources of historical data regarding particulates and odors in the area in order to understand the magnitude of Pacific Steel’s contribution to the air quality problems.”
Motion:  VOTE:  S. Shumer, B. Allen
9-0-0-0

Agenda Item 3 moved to Consent Calendar for Approval.

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. **1630 Capistrano Avenue**  
Applicant: Debbie Kim & Kathy Rogers, 1996-C Solano Avenue, Albany, CA 94706  
Appeal of Administrative Use Permit #09-2000072 to establish one (1) uncovered off-street parking space within the required rear yard setback of a property with an existing single-family dwelling; (R-1, LB)  

**Recommendation:** AFFIRM Zoning Officer’s approval and DENY appeal  
**Action:** DENIED Appeal and AFFIRMED Zoning Officer’s approval.  
**Motion:** B. Allen, J. Anthony  
**VOTE:** 9-0-0-0

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

**Continued Public Hearings:** NONE

**Compliance Determination:** NONE

**New Hearings:**

3. **700 University Avenue**  
Applicant: Essex Property Trust, 925 East Meadow Drive, Palo Alto, CA 94303  
Use Permit #09-7000016 to modify #04-1000069 to revise Condition #56 regarding air quality, within a project approved by the ZAB in 2007 for a mixed use development with 171 dwelling units (31 below-market) and 9,995 square feet of new commercial floor area. (CW, GP)  

**Recommendation:** APPROVE  
**Action:** APPROVED on Consent. Staff clarified item was intended to be on the Consent Calendar, and it was not noticed as a public hearing  
**Motion:** S. Shumer, B. Allen  
**VOTE:** 9-0-0-0
4. **2200 Oxford Street**  
Applicant: Ari Derfel, Terrain LLC, P.O. Box 11286, Berkeley, CA 94712  
UP #09-10000047 to modify use permit #04-10000114 for an approved restaurant/catering establishment with beer and wine service to add full liquor service, patio seating, sidewalk seating and live entertainment; (C-2 Central Commercial, JWC/GMS)  

**Recommendation:** APPROVE  
**Action:** APPROVED  
**Motion:** M. Cohen, J. Anthony  
**VOTE:** 9-0-0-0

5. **2598-2600 Shattuck Avenue**  
Applicant: Mark Rhoades, CityCentric Investments, 5715 Claremont Avenue, Oakland, 94618  
Use Permit/Variance #08-10000130 to construct a mixed-use development with two 5-story buildings and one 3-story building, a total of 155 dwelling units, 23,354 sq. ft. of ground floor commercial space, and 180 parking spaces (C-SA, South Area Commercial and R-2A, Restricted Multiple-Family Residential; AS/CW)  

**Purpose of review:** This is a “preview” to solicit ZAB and community input on the project’s height, massing, traffic, parking, and other community concerns; ZAB will take no formal action on the project.  

**Recommendation:** ZAB provide advisory comments to the applicant  
**Action:** E. Mikiten recused self; applicant is a potential client.  
**ZAB provided advisory comments on the proposal.**

6. **2307-09 California Street**  
Applicant: Edward Soos, 2303 California Street, Berkeley, CA 94703  
Use Permit #08-10000097 to renovate an existing one-story duplex, including the construction of a new, approximately 855-square-foot second story; (R-2, LMM)  

**Recommendation:** APPROVE  
**Action:** Continue off Calendar  
**Motion:** B. Allen, E. Mikiten  
**VOTE:** 9-0-0-0
7. **1930 Martin Luther King Street**  
Applicant: 1950 MLK, LLC, 1600 Shattuck Ave #218, Berkeley, CA 94709  
Use Permit #09-10000028 to establish a quick-service restaurant in an existing mixed-use building (under construction) with beer and wine, sidewalk café seating, and extended hours of operation. (C-1, SBR)

Recommendation: **APPROVE**  
E. Mikiten recused self; applicant is a current client.  
Action: **APPROVED**, on condition applicant integrate outdoor seating into landscaping (Condition #10). Conditions 17 and 52 of Findings and Conditions also removed.  
Motion: B. Allen, J. Anthony  
VOTE: 7-0-1-1 (Abstain: J. Novosel; Absent: E. Mikiten); S. Shumer requested the record reflect her objection to removal of Condition #17.

8. **1625 Shattuck Avenue**  
Applicant: AT&T c/o Jacqueline Smart, Cortel LLC, 26 Stoneyford Avenue, San Francisco, CA 94112  
Use Permit #08-10000047 to establish a new wireless facility for AT&T, including eight directional panel antennas and four equipment cabinets, on the roof of an existing three-story building (C-NS, LMM)

Recommendation: **APPROVE**  
Action: Continue Off-Calendar.  
Motion: B. Allen, S. Shumer  
VOTE: 8-1-0-0 (No: T. Doran)

9. **3001 Telegraph Avenue**  
Applicant: Rony Rolnizky, 121 Devonshire Way, San Francisco, 94131  
Use Permit #08-10000092 to construct a 5-story mixed-use building with 38 dwelling units, 4,039 sq. ft. of ground floor commercial space, and 42 parking spaces, on a vacant 12,181 sq. ft. lot (C-1, AS)

Recommendation: **APPROVE**  
Action: APPROVED  
Motion: E. Mikiten, J. Anthony  
VOTE: 7-2-0-0 (No: S. Shumer, D. Koon)
Additional Agenda Items:
A. Information/Communication
   a. Daily Planet Article submitted by Mark Rhoades
B. Business Meeting
C. Chair’s Report
D. Current Business/Committee Appointment
E. Future Agenda Items
   i. One-hour training session at 6 pm, before the start of the November 12th meeting.
   ii. Special meeting on Pacific Steel, scheduled for January 14th
F. Other Matters
   ❑ Future Council Hearings on ZAB Decisions
      o 10/27/09 – 2421 Ninth Street (2nd dwelling unit)
      o 10/27/09 – 1854-78 Euclid (Conversion and Quick Serve Food Service)
G. Adjourn 12:00

[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.
- 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.
- 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.