Action Minutes
Planning & Development Department
Land Use Planning Division

Zoning Adjustments Board
Thursday, October 10, 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:
Michael Alvarez Cohen (Chairperson), appointed by Councilmember Wozniak
Deborah Matthews (Vice Chairperson), appointed by Mayor Bates
George Williams, appointed by Councilmember Capitelli
Shoshana O’Keefe, appointed by Councilmember Anderson
Sophie Hahn, appointed by Councilmember Worthington
Steven Donaldson, appointed by Councilmember Moore
Igor Tregub, appointed by Councilmember Arreguin

Excused:
Robert Allen, appointed by Councilmember Wengraf
Prakash Pinto, appointed by Councilmember Maio

Substitutions:
Charles Kahn for Robert Allen

Members of the Public
Present: 45
Speakers: 16

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 – Visited 778 Contra Costa Avenue project site and spoke with applicants and adjacent neighbors to get a better understanding and clarification of the project and also answered ZAB process questions.

I. Tregub – Received an email from Nicolá Bourne about 800 University Avenue regarding concerns about development in project vicinity. Met with Jason Laub to discuss changes to the 2201 Dwight Way project since last time it was presented to the ZAB. Spoke with Nathan George about his concerns with the 2201 Dwight Way project prior to the recent changes. Received a call from Rena Rickles to discuss the client’s position on the recent 2201 Dwight Way project changes. Received a call and email from Rob Wrenn supporting the transportation benefits of the 2201 Dwight Way project.

G. Williams – Visited 778 Contra Costa Avenue and spoke with applicant and neighbors adjacent to the project site and also received clarification from applicant on submitted plans.

C. Kahn – Was present as a member of the community at Design Review hearing for 2201 Dwight Way project and spoke informally with the applicant at that time.

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

Agenda Changes
The Board Chairperson 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 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.

<table>
<thead>
<tr>
<th>1.</th>
<th>Approval of Previous Meeting Minutes</th>
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<tbody>
<tr>
<td></td>
<td>Minutes from 08/22/2013 meeting</td>
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<tr>
<td></td>
<td>Continued From: 09/26/13</td>
</tr>
<tr>
<td></td>
<td>Recommendation: APPROVE</td>
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<td>Action: APPROVED</td>
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<td>Motion / Second: D. Matthews / S. Hahn</td>
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<td></td>
<td>VOTE: 5-0-3-1 (Abstain: C. Kahn, S. O’Keefe, I. Tregub; Absent: P. Pinto)</td>
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2. Approval of Previous Meeting Minutes

<table>
<thead>
<tr>
<th>Continued From:</th>
<th>None</th>
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<tbody>
<tr>
<td>Recommendation:</td>
<td>APPROVE</td>
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| Action:           | APPROVED with corrections. |
| Motion / Second:  | I. Tregub / S. Hahn |
| VOTE:             | 7-0-1-1 (Abstain: C. Kahn; Absent: P. Pinto) |

New Public Hearings:

3. 778 Contra Costa Avenue

**Administrative Use Permit #AUP2013-0085** to enlarge an existing 2,458 sq. ft. single family dwelling by raising the existing two-story residence with an existing average height of 20' by 2' to create 765 sq. ft. of habitable space on the ground floor, construct a 347 sq. ft. second story addition, and construct a third story covered roof deck 20' in height from grade, resulting in a new 3,570 sq. ft. residence.

**CEQA Action:** Categorically Exempt under Section §15301 ‘Existing Facilities’.

**Applicant:** John Newton, 5666 Telegraph Ave., Suite A, Oakland, CA 94609

**Property Owner:** Carlos Martinez and Joanna Wulbert, 778 Contra Costa Ave., Berkeley, CA 94707

**Zoning:** R-1H, “Single Family Residential District, Hillside Overlay”; **Planner:** Pamela Johnson

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<tr>
<th>Continued From:</th>
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<tr>
<td>Recommendation:</td>
<td>APPROVE Administrative Use Permit #AUP2013-0085 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions.</td>
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| Action:           | CONTINUED to December 12, 2013 meeting. |
| Motion / Second:  | I. Tregub / S. Hahn |
| # of Speakers:    | 6 |
| Vote:             | 8-0-0-1 (Absent: P. Pinto) |
4. **800 University Avenue**

**Use Permit #13-10000022** to demolish an existing 5,750 square-foot office building and construct a 54,302 square-foot, 4 to 5-story, 45 to 55-foot tall, mixed use project with 58 residential units, 1,175 square feet of office or retail space and 60 parking spaces.

**CEQA Action:** Categorically Exempt under Section §15332 ‘In-fill Development Projects’.

**Applicant:** David Trachtenberg, 2421 Fourth Street, Berkeley, CA 94710

**Property Owner:** R&S Fifth St. Apartments, 2025 Fourth St., Berkeley, CA 94710

**Zoning:** C-W, “West Berkeley Commercial District” and MU-R, “Mixed Use Residential”;

**Planner:** Greg Powell

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<tr>
<td><strong>Recommendation:</strong></td>
<td><strong>APPROVE</strong> Use Permit #13-10000022 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td><strong>APPROVED</strong> Use Permit #13-10000022 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions.</td>
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<td><strong>Motion / Second:</strong></td>
<td>M. Cohen / S. Hahn</td>
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<tr>
<td><strong># of Speakers:</strong></td>
<td>1</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>8-0-0-1 (Absent: P. Pinto)</td>
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## 5. 2201 Dwight Way

**Use Permit #12-10000021** to demolish an existing one-story office building and construct a 5-story apartment building with 77 units and 4 to 10 parking spaces for shared vehicles.

**CEQA Action:** Environmental Impact Report (EIR) was prepared in accordance with the California Environmental Quality Act (CEQA).

**Applicant:** Randall Miller, 2201 Dwight Way, LLC, 2201 Dwight Way, Berkeley, CA 94704

**Property Owner:** Anthony Levandowski, 2917 Ashby Ave., Berkeley, CA 94705

**Zoning:** R-S, “Residential Southside District”; **Planner:** Aaron Sage

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| **Recommendation:** | A. **CERTIFY** the project’s EIR (see Attachment 1, Finding 1);  
B. **ADOPT** required CEQA findings and Mitigation Monitoring & Reporting Program (see Attachment 1, Findings 2 and 3 and Exhibits A and B); and,  
C. **APPROVE** Use Permit #12-10000021 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions and Project Plans. |
| **Action:** | A. **CERTIFIED** the project’s EIR (see Attachment 1, Finding 1);  
B. **ADOPTED** required CEQA findings and Mitigation Monitoring & Reporting Program (see Attachment 1, Findings 2 and 3 and Exhibits A and B); and,  
C. **APPROVED** Use Permit #12-10000021 pursuant to Section 23B.32.040 with corrections to Findings and added Conditions. |

**Motion / Second:** I. Tregub / S. O’Keefe

**# of Speakers:** 9

**Vote:** 8-0-0-1 (Absent: P. Pinto)
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

<table>
<thead>
<tr>
<th>Berkeley NAACP Town Hall Meeting Report</th>
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<td>Continued From: 9/26/13</td>
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<tr>
<td>Recommendation: The Board made a motion that directed Staff to draft a letter, for review and signature by the ZAB Chairperson and Vice Chairperson, supporting the NAACP Town Hall Meeting Report and to invite any of its members to attend a future ZAB meeting.</td>
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<tr>
<td>Motion / Second: S. Hahn / I. Tregub</td>
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<tr>
<td>VOTE: 8-0-0-1 (Absent: P. Pinto)</td>
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</tbody>
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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. 1935 Addison Street, 10/15/2013
     ii. 2227 Dwight Way, 10/29/2013
     iii. 3001 Telegraph Avenue, 11/19/2013

Adjourn: 11:30 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.