Action Minutes
Planning & Development Department
Land Use Planning Division

Zoning Adjustments Board
Thursday, October 11, 2012 - 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:
George Williams (Chairperson), appointed by Councilmember Capitelli
Deborah Matthews, appointed by Mayor Bates
Robert Allen appointed by Councilmember Wengraf
Steven Donaldson, appointed by Councilmember Moore
Elisa Mikiten, appointed by Councilmember Maio
Sara Shumer, appointed by Councilmember Arreguin

Absent:
Toya Groves, appointed by Councilmember Anderson

Excused:
Michael Alvarez Cohen (Vice-Chairperson), appointed by Councilmember Wozniak
Sophie Hahn, appointed by Councilmember Worthington

Members of the Public

Present: 24
Speakers: 5

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.

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

- None

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

- Item #2 removed from Consent Calendar
- Item #5 placed on Consent Calendar
- Item #7 moved before item #6

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. Approval of Previous Meeting Minutes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minutes from the 09/27/2012 meeting</td>
</tr>
<tr>
<td>Recommendation: APPROVE</td>
</tr>
<tr>
<td>Action Motion / Second:</td>
</tr>
<tr>
<td>VOTE: 5-0-1-3 (Abstain: D. Matthews; Absent: M. Alvarez Cohen, T. Groves, S. Hahn)</td>
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<tr>
<td>VOTE: APPR...</td>
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2. **2840-B Sacramento Street**

Resolution recommending that the City Council, after hearing, find that 2840-B Sacramento Street operating as Perfect Plants Patient Group (3PG) is: 1) In violation of Berkeley Municipal Code (BMC) Chapter 12.26; 2) In violation of BMC Chapter 23E.16; 3) In violation of BMC Section 23A.12.010; and 4) a public nuisance under BMC Chapter 23B.64 and order the use enjoined and terminated.

<table>
<thead>
<tr>
<th>Recommendation:</th>
<th>APPROVE</th>
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<tbody>
<tr>
<td>Action:</td>
<td>APPROVED, with the addition of the following language: Regarding finding number 2, two members, George Williams and Sara Shumer, believed that the evidence presented needed to be strengthened in order to support a finding of nuisance. However, the Board unanimously recommended that the Council consider the evidence before the Board and seek additional information including but not limited to police reports and further public testimony.</td>
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Motion / Second: E. Mikiten / S. Shumer

Vote: 6-0-0-3 (Absent: M. Alvarez-Cohen, T. Groves, S. Hahn)

New Hearings:

3. **1332 Harmon Street**

Appeal of Administrative Use Permit #12-20000009 to enlarge a 754 sq. ft. single family residence by constructing 593 sq. ft. to the lower level, and a 482 sq. ft. new second story, for a total addition of 1,075 sq. ft., resulting in a new 1,829 sq. ft. residence and to waive the required off-street parking space for a new 475 sq. ft. Accessory Dwelling Unit

**Applicant:** Trevor Tupscott, 15501 San Pablo Avenue, Richmond, CA, 94806

**Property Owner:** Community First Fund V, 15501 San Pablo Avenue, Richmond, CA, 94806

**Appellant:** Reginald Pates, Robert Mokrick, Tania Wells, et. al., 1400 Harmon Street, Berkeley, CA 94702

**Zoning:** R-2A “Restricted Multiple Family Residential”; **Planner:** Pamela Johnson

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<tr>
<th>Continued From:</th>
<th>None</th>
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<tbody>
<tr>
<td>Recommendation:</td>
<td>UPHOLD the Zoning Officer’s decision to approve Administrative Use Permit #12-20000009</td>
</tr>
<tr>
<td>Action:</td>
<td>CONTINUED to November 8</td>
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**Number of Speakers:** 4

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<thead>
<tr>
<th>Motion / Second:</th>
<th>R. Allen / E. Mikiten</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vote:</td>
<td>6-0-0-3 (Absent: M. Alvarez-Cohen, T. Groves, S. Hahn)</td>
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</tbody>
</table>
### 4. 2129 Durant Avenue

**Use Permit #12-10000026** to expand alcohol service to include distilled liquor for on-site consumption at an existing restaurant and lounge currently serving beer and wine, and to extend hours from 4 p.m. to 12 a.m. Sunday – Thursday and 4 p.m. to 2 a.m. Friday & Saturday, to 11 a.m. to 2 a.m. daily  
**Applicant:** Elon Khelif & Gabriel Duran, dba Beta Lounge, 2129 Durant Avenue, Berkeley, CA. 94704  
**Property Owner:** BVP Fulton LLC 111 South Wacker Drive STE. 3300, Chicago, Illinois 60606  
**Zoning:** C-DMU Buffer “Downtown Mixed Use”; **Planner:** Nathan Dahl  

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<tr>
<th>Continued From:</th>
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<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit #12-10000026 subject to the Findings and Conditions.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>APPROVED Use Permit #12-10000026 subject to the Findings and Conditions</td>
</tr>
<tr>
<td>Number of Speakers:</td>
<td>1</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong></td>
<td>R. Allen / E. Mikiten</td>
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<tr>
<td><strong>Vote:</strong></td>
<td>6-0-0-3 (Absent: M. Alvarez-Cohen, T. Groves, S. Hahn)</td>
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### 5. 2010 Ninth Street

**Use Permit #12-10000027** to construct three two-story single-family homes, totaling 5,363 sq. ft. of floor area on a vacant, 6,500 sq. ft. lot, instead of a three-story, nine-unit building with 7,254 sq. ft. of floor area as previously approved under Use Permit #9416  
**Applicant & Property Owner:** Prescott Holdings LLC, 2781 Piedmont Avenue #301 Oakland CA. 94611  
**Zoning:** R-3 “Multiple Family Residential District”; **Planner:** Nathan Dahl  

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<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit #12-10000027 subject to the Findings and Conditions.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>APPROVED on consent</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong></td>
<td>R. Allen / S. Shumer</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>6-0-0-3 (Absent: M. Alvarez-Cohen, T. Groves, S. Hahn)</td>
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6. **1519-21 Harmon Street**

**Use Permit #12-10000001** to construct a two-story, 1,722-square-foot single-family dwelling behind an existing two-story duplex; four total parking spaces proposed

**Applicant:** Matthew Baran, Architect, 3840 San Pablo Avenue, Oakland, California, 94608  
**Property Owner:** REO Homes 2, LLC, 210 3rd St. #102, Oakland, CA 94608  
**Zoning:** R-2A "Restricted Multiple-Family Residential"; **Planner:** Aaron Sage

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<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit #12-10000001 subject to the Findings and Conditions.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>APPROVED Use Permit #12-10000001 subject to the Findings and Conditions</td>
</tr>
</tbody>
</table>

**Number of Speakers:** 0  
**Motion / Second:** E. Mikiten / S. Shumer  
**Vote:** 6-0-0-3 (Absent: M. Alvarez-Cohen, T. Groves, S. Hahn)

### Appeal of Administrative Use Permits

Appeals of Administrative Use Permit 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 decision.

7. **1488 Keoncrest Drive**

**Appeal of Administrative Use Permit #12-20000050** to enlarge an existing one-story, 1,200 sq. ft. single family residence by constructing an approximately 110 sq. ft. addition to the ground floor, an approximately 290 sq. ft. second story addition, and approximately 290 sq. ft. for a new third story, resulting in a new 1,652 sq. ft. residence, increasing the average height of the existing residence from 14’6” to 25’11”, and to vertically extend a non-conforming front yard setback of 10’10” where 20’ is required

**Applicant:** Kennerly Architecture & Planning, 375 Alabama, Suite 440, San Francisco, CA 94110  
**Property Owner:** Andrew Shanken & Vika Teicher, 1488 Keoncrest Drive, Berkeley, CA 94702  
**Appellant:** Bertrand Racine & Lina Urbain, et. al., 1545 Keoncrest Drive, Berkeley, CA 94702  
**Zoning:** R-1 “Single Family Residential”; **Planner:** Pamela Johnson

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<tr>
<th>Continued From:</th>
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<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>UPHOLD the Zoning Officer’s decision to approve Administrative Use Permit #12-20000050</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>UPHELD the Zoning Officer’s decision to approve Administrative Use Permit #12-20000050</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong></td>
<td>R. Allen / E. Mikiten</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>6-0-0-3 (Absent: M. Alvarez-Cohen, T. Groves, S. Hahn)</td>
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Additional Agenda Items:

A. Information/Communication
B. Business Meeting
C. Chair’s Report
D. Current Business/Committee Appointment
E. Future Agenda Items
F. Other Matters
G. Future Council Hearings on ZAB decisions
   • October 16, 2012 – 2329 Grant Street

Adjourn: 9:47 PM

[Approved for posting by Terry Blount, Secretary, Zoning Adjustments Board]
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.