Action Minutes

Zoning Adjustments Board
Thursday, November 4, 2010 – 7:00PM

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: Steven Buckley, ZAB Secretary), 2120 Milvia Street, Berkeley, CA 94704; (510) 981-7410; zab@ci.berkeley.ca.us

Roll Call: 7:06PM

Excused: D. Koon
Absent: E. Kopelson

Public Attendance: 27
Number of Speakers: 25

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._

**Items #4 and #6 were approved on Consent Calendar**

**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></th>
<th>Approval of Previous Meeting Minutes</th>
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<tbody>
<tr>
<td></td>
<td>Minutes from 10/28/10 meeting</td>
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<tr>
<td></td>
<td>Recommendation: APPROVE</td>
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<tr>
<td></td>
<td>Action: APPROVED</td>
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<td></td>
<td>Motion: B. Allen, G. Williams</td>
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<td></td>
<td>VOTE: 7-0-0-2 (Absent: D. Koon, E. Kopelson)</td>
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<tr>
<th></th>
<th>2175 Allston Street</th>
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<tbody>
<tr>
<td></td>
<td>Use Permit # 10-10000049 to extend hours of operation from 10:00 a.m. - 11:30 p.m. to 10:00a.m. - 3:00 a.m. for an existing restaurant currently serving beer and wine.</td>
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<td>Applicant: Heidi Miller, P.O. Box 1267, Orinda</td>
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<td>Business Owner: Tristan Nathe, 633 Norvelle Street, El Cerrito</td>
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<td></td>
<td>Property Owner: Nick Kashani, 2175 Allston Way, Berkeley</td>
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<td></td>
<td>(Zoning: C-2, Central Commercial District; Planner: Claudine Asbagh)</td>
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<td></td>
<td>Continued From: NONE</td>
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<tr>
<td></td>
<td>Recommendation: CONTINUE to December 9, 2010</td>
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<tr>
<td></td>
<td>Number of Speakers: 4</td>
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<td></td>
<td>Action: Continued hearing to January 13, 2011</td>
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Continued Hearings

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<thead>
<tr>
<th>3.</th>
<th>1423 Kains Avenue</th>
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<tbody>
<tr>
<td><strong>MODUP #10-70000010 and Variance #10-10000071 to modify Use Permit #07-10000045 by reducing the amount of approved off-street parking from four spaces to two, where four spaces are required.</strong></td>
<td><strong>Applicant/Property Owner:</strong> Ali Eslami, P.O. Box 4623, Berkeley (Zoning: R-2, Restricted Two-Family Residential; Planner: Leslie Mendez)</td>
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<td><strong>Continued From:</strong></td>
<td><strong>October 28, 2010</strong></td>
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<tr>
<td><strong>Recommendation:</strong></td>
<td><strong>APPROVE (as per Findings &amp; Conditions) MODUP #10-70000010 and VAR #10-10000071 pursuant to Section 23B.32.040</strong></td>
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<tr>
<td><strong>Number of Speakers:</strong> 8</td>
<td><strong>Action:</strong> DENIED Variance <strong>Motion:</strong> B. Allen, S. Shumer <strong>VOTE:</strong> 5-1-1-2 (No: J. Anthony; Abstain: G. Williams; Absent: D. Koon, E. Kopelson)</td>
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New Hearings

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<tr>
<th>4.</th>
<th>2437 Sixth Street</th>
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<tbody>
<tr>
<td><strong>Use Permit #10-10000012 to allow a combination of office use and quick service restaurant with incidental beer and wine service.</strong></td>
<td><strong>Applicant/Property Owner:</strong> Hoss Azimi, POLL LLC, 1511 Hearst Avenue #C, Berkeley (Zoning: MU-R, Mixed Use Residential; Planner: Leslie Mendez)</td>
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<tr>
<td><strong>Continued From:</strong> NONE</td>
<td><strong>Recommendation:</strong> <strong>APPROVE</strong> pursuant to Findings &amp; Conditions</td>
</tr>
<tr>
<td><strong>Action:</strong> APPROVED on Consent Calendar <strong>Motion:</strong> G. Williams, J. Anthony <strong>VOTE:</strong> 7-0-0-2 (Absent: D. Koon, E. Kopelson)</td>
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5. **1760 Solano Avenue**  
**Use Permit Modification 09-70000017 to modify the T-Mobile wireless telecommunication facility approved by AUP 98-20000229 to allow the relocation of three existing antennas and installation of one additional equipment cabinet.**  
Applicant: T-Mobile Communications, c/o Alex Morin, 1888 Golden Gate #20, San Francisco  
Property Owner: Arnold and Dorothy Intorf Trust, c/o Stephen Ng, 1760 Solano Avenue, Berkeley  
(Zoning: C-SO, Solano Avenue Commercial District; Planner: Pamela Johnson)  
Continued From: NONE  
Recommendation: APPROVE pursuant to Findings & Conditions  
Number of Speakers: 4  
Action: CONTINUE to January 13, 2011  
Motion: B. Allen, G. Williams  
VOTE: 7-0-0-2 (Absent: D. Koon, E. Kopelson)

6. **730, 750 Potter Street**  
**Use Permit #10-10000066 to demolish an existing single-story office building to allow the expansion of the existing automobile sales and service operation.**  
Applicant: George S. Avanessian, Avanessian and Associates, 400 Oyster Point Boulevard, Suite 115, South San Francisco  
(Zoning: C-W, West Berkeley Commercial; Planner: Greg Powell)  
Continued From: NONE  
Recommendation: APPROVE pursuant to Findings & Conditions  
Action: APPROVED on Consent Calendar  
Motion: G. Williams, J. Anthony  
VOTE: 7-0-0-2 (Absent: D. Koon, E. Kopelson)
Informational Items

7. 2300 Bancroft Avenue

Use Permit/Variance #10-10000017 to demolish a 49-space parking garage, a 1,500 square foot church community facility, and a Montessori school, and to construct a five-story mixed-use building with a 59-space parking garage, 2,722 square foot church community facility and Group Living Accommodations for 164 persons.

Applicant: Lion’s Hall, LLC, 1600 Shattuck Avenue, Suite 218, Berkeley
Property Owner: The Rectors, Wardens, and Vestrymen of St. Mark’s Parish, 2300 Bancroft Way, Berkeley
(Zoning: R-4, Multi-Family Residential; Planner: Aaron Sage)

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Number of Speakers: 9  Recommendation: Provide advisory comments to the applicants, with emphasis on the following topics:
- Historical Resources and Neighborhood Character
- Parking Waiver

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.
1. Information/Communication
2. Business Meeting
3. Chairperson’s Report
4. Current Business/Committee Appointment
5. Future Agenda Items
6. Other Matters

Adjourn 9:45PM

[Approved for posting by Steven Buckley, 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 the 5:00 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: Steven Buckley, 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.