Zoning Adjustments Board
Thursday, November 8, 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: 7:04 PM

Present:
George Williams (Chairperson), appointed by Councilmember Capitelli
Deborah Matthews, appointed by Mayor Bates
Toya Groves, appointed by Councilmember Anderson
Steven Donaldson, appointed by Councilmember Moore
Elisa Mikiten, appointed by Councilmember Maio
Sara Shumer, appointed by Councilmember Arreguin

Absent:
Michael Alvarez Cohen (Vice-Chairperson), appointed by Councilmember Wozniak

Excused:
Robert Allen appointed by Councilmember Wengraf
Sophie Hahn, appointed by Councilmember Worthington

Members of the Public

Present: 35
Speakers: 26

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: 2
Each Speaker is limited to a maximum of three minutes.

- Chris Smith, allowing medical marijuana collectives in non-residential districts and not as incidental to residential uses.
- Janette Galaviz, Measure T (2010) and medical marijuana collective zoning laws.

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

- Items #2 and #4 placed 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>1.</th>
<th>Approval of Previous Meeting Minutes</th>
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<tbody>
<tr>
<td>Minutes from the 10/11/12 meeting</td>
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</table>

<table>
<thead>
<tr>
<th>Recommendation:</th>
<th>APPROVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Action Motion / Second:</td>
<td>APPROVED on consent</td>
</tr>
</tbody>
</table>
## Modifications of Use Permits

Modifications of Use Permits are not subject to public hearing and no public testimony will be taken at this time.

### 2. 245 Tunnel Road

**Use Permit Modification #12-70000007** to establish an eight-car parking lot for Bentley School faculty and staff at the Headmaster’s house property located at 245 Tunnel Road.

**Applicant:** Linda Klein, Cox, Castle & Nicholson LLP, 555 California Street, 10th Floor, San Francisco, CA  94104  
**Property Owner:** Bentley School, 1 Hiller Drive, Oakland, CA  94618  
**Zoning:** R-1H, “Single Family Residential, Hillside Overlay”; **Planner:** Leslie Mendez

<table>
<thead>
<tr>
<th>Continued From:</th>
<th>NONE</th>
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</thead>
<tbody>
<tr>
<td>Recommendation:</td>
<td>APPROVE Use Permit Modification #12-70000007 subject to Findings and Conditions</td>
</tr>
<tr>
<td>Action</td>
<td>APPROVED on consent</td>
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<tr>
<td>Motion / Second:</td>
<td>D. Matthews / E. Mikiten</td>
</tr>
</tbody>
</table>

### 3. 1332 Harmon Street

**Appeal of Zoning Officer’s decision to approve 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

<table>
<thead>
<tr>
<th>Continued From:</th>
<th>October 11, 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation:</td>
<td>UPHOLD the Zoning Officer’s decision to approve Administrative Use Permit #12-20000009, and dismiss the Appeal</td>
</tr>
<tr>
<td>Action:</td>
<td>UPHELD the Zoning Officer’s decision to approve Administrative Use Permit #12-20000009 and dismiss the Appeal</td>
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<tr>
<td>Number of Speakers:</td>
<td>5</td>
</tr>
<tr>
<td>Motion / Second:</td>
<td>E. Mikiten / T. Groves</td>
</tr>
<tr>
<td>Vote:</td>
<td>5-0-1-3 (Abstain: D. Matthews; Absent: M. Alvarez-Cohen, S. Hahn, R. Allen)</td>
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</tbody>
</table>
New Hearings:

### 4. 1600 Shattuck Avenue

<table>
<thead>
<tr>
<th>Use Permit #11-10000048 to modify the existing Sprint wireless telecommunication facility approved by Use Permit #02-10000053 to remove three existing antennas and replace with three new panel antennas and install two equipment cabinets within a basement lease space.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Applicant:</strong> Sprint c/o Misako Hill, Cortel LLC, 1075-45th Street, Emeryville, CA 94608</td>
</tr>
<tr>
<td><strong>Property Owner:</strong> 1600 Shattuck Associates, 1625 Shattuck Avenue, Suite 102, Berkeley, CA 94709</td>
</tr>
<tr>
<td><strong>Zoning:</strong> R-2A/C-NS “Restricted Two-Family Residential” / “North Shattuck Commercial”</td>
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<tr>
<td><strong>Planner:</strong> Pamela Johnson</td>
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<tr>
<td><strong>Continued From:</strong> NONE</td>
</tr>
<tr>
<td><strong>Recommendation:</strong> APPROVE Use Permit #11-10000048 subject to Findings and Conditions</td>
</tr>
<tr>
<td><strong>Action:</strong> APPROVED on consent</td>
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<tr>
<td><strong>Motion / Second:</strong> D. Matthews / E. Mikiten</td>
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<tr>
<td><strong>VOTE:</strong> 6-0-0-3 (Absent: M. Alvarez-Cohen, S. Hahn, R. Allen)</td>
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</table>

### 5. 1861 Solano Avenue

<table>
<thead>
<tr>
<th>Use Permit #11-10000032 to establish a new wireless telecommunication facility for AT&amp;T including twelve antennas on the façade of the Oaks Theatre and related equipment in an outdoor lease area.</th>
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</thead>
<tbody>
<tr>
<td><strong>Applicant:</strong> AT&amp;T c/o Valeria Tallerico, 7901 Stoneridge Dr., Ste. 503, Pleasanton, CA 94588</td>
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<tr>
<td><strong>Property Owner:</strong> John Gordon/Janis Mitchell, 2095 Rose St., Berkeley, CA, 94709</td>
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<tr>
<td><strong>Zoning:</strong> C-SO/R-1(H), “Solano Avenue Commercial” / “Single-Family Residential Hillside Overlay”; <strong>Planner:</strong> Pamela Johnson</td>
</tr>
<tr>
<td><strong>Continued From:</strong> NONE</td>
</tr>
<tr>
<td><strong>Recommendation:</strong> APPROVE Use Permit #11-10000032 subject to Findings and Conditions</td>
</tr>
<tr>
<td><strong>Action:</strong> APPROVED Use Permit #11-10000032 subject to Findings and Conditions</td>
</tr>
<tr>
<td><strong>Number of Speakers:</strong> 10</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong> D. Matthews / S. Donaldson</td>
</tr>
<tr>
<td><strong>Vote:</strong> 5-0-1-3 (Abstain: S. Shumer; Absent: M. Alvarez-Cohen, S. Hahn, R. Allen)</td>
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6. **2433 Martin Luther King Jr. Way**

**Use Permit #11-10000010** to construct two dwellings within a two-story, 1,551 square foot building on a 5,200 square foot parcel with an existing one-story, 1,064 square foot, single-family residence.  
**Applicant:** Minxi Liu, 812 Fifth Avenue, Suite D, Oakland, CA  
**Property Owner:** Thanh Thai, 2433 Martin Luther King, Jr Way, Berkeley, CA  
**Zoning:** R-3, “Multiple Family Residential”; **Planner:** Greg Powell

- **Continued From:** NONE
- **Recommendation:** APPROVE Use Permit #11-10000010 subject to Findings and Conditions  
- **Action:** CONTINUE off calendar

**Number of Speakers:** 7  
**Motion / Second:** D. Matthews / S. Shumer  
**Vote:** 6-0-0-3 (Absent: M. Alvarez-Cohen, S. Hahn, R. Allen)

7. **2504 Dana Street**

**Use Permit # 12-1000032** to convert an existing Foster Care center to a Residential Triplex with a new foundation and significant interior modifications including new and renovated bathrooms and kitchens, a modified roofline, demolition of an existing garage and parking for three cars.  
**Applicant:** Victor Rasilla, 2 Madsen Court, Moraga, CA  
**Zoning:** R-3, “Multiple Family Residential”; **Planner:** Greg Powell

- **Continued From:** NONE
- **Recommendation:** APPROVE Use Permit #12-1000032 subject to Findings and Conditions  
- **Action:** APPROVED Use Permit #12-1000032 and AMMENDED Condition #5 to allow changes to deck size and configuration pending Zoning Officer approval.

**Number of Speakers:** 2  
**Motion / Second:** D. Matthews / S. Shumer  
**Vote:** 5-1-0-3 (No: E. Mikiten; Absent: M. Alvarez-Cohen, S. Hahn, R. Allen)

**Additional Agenda Items:**
A. Information/Communication
   - **Memo:** Nuisance Determinations Pursuant to MBC Chapter 23B.64
   - **Memo:** Vehicle Sharing
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

**Adjourn:** 10:32 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.