Action Minutes

Planning & Development Department
Land Use Planning Division

Zoning Adjustments Board
Thursday, December 9, 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


Public Attendance: 40
Number of Speakers: 15

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.

- E. Kopelson, contacted by email to set up meeting (declined) with Kava Massih regarding project at 1499 University Avenue

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 #4 moved to 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>
</tr>
</thead>
<tbody>
<tr>
<td>Minutes from 11/04/10 meeting</td>
<td></td>
</tr>
<tr>
<td>Recommendation:</td>
<td>APPROVE</td>
</tr>
<tr>
<td>Action:</td>
<td>APPROVED</td>
</tr>
<tr>
<td>Motion:</td>
<td>M. Cohen, G. Williams</td>
</tr>
<tr>
<td>VOTE:</td>
<td>6-0-3-0 (Abstain: E. Kopelson, S. Jones, D. Koon)</td>
</tr>
</tbody>
</table>

Continued Hearings

<table>
<thead>
<tr>
<th>2.</th>
<th>2133 Parker Street</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Use Permit #10-20000097 to alter the front roof line; expand a rear access stair and deck; and relocate parking to the front yard of an existing three-unit building.</td>
<td></td>
</tr>
<tr>
<td>Applicant/Property Owner: Ali Eslami, P.O. Box 4623, Berkeley</td>
<td>(Zoning: R-2A, Restricted Multiple-Family Residential; Planner: Greg Powell)</td>
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<tr>
<td>Continued From:</td>
<td>October 28, 2010</td>
</tr>
<tr>
<td>Recommendation:</td>
<td>CONTINUE Off-Calendar While the Applicant Revises Plans</td>
</tr>
<tr>
<td>Number of Speakers: 5</td>
<td></td>
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<tr>
<td>Action:</td>
<td>CONTINUED to January 13, 2011 to adopt Findings for Denial</td>
</tr>
<tr>
<td>Motion:</td>
<td>G. Williams, E. Mikiten</td>
</tr>
<tr>
<td>VOTE:</td>
<td>9-0-0-0</td>
</tr>
</tbody>
</table>
3. **1499 University Avenue**

   Use Permit #10-10000014 to construct and operate a 3-story, 16,738 square foot, 39-room tourist hotel with a 33-space parking garage, which includes 20 surface parking spaces and 13 attendant-operated tandem mechanical lifts.

   Applicant/Property Owner: Applicant: Dennis Vermeulen, Kava Massih Architects, 2830 Ninth Street, Berkeley, CA 94710

   Property Owner: Jay Desai, 6288 Redwood Drive, Rohnert Park, CA 94928

   (Zoning: C-1, General Commercial, Mixed Use Overlay; Planners: Shawna Brekke-Read and Greg Powell)

   Continued From: October 28, 2010

   Recommendation: APPROVE pursuant to Findings & Conditions

   Number of Speakers: 3

   Action: APPROVED with design review suggestions and tree preservation requirements

   Motion: G. Williams, J. Anthony

   VOTE: 8-1-0-0 (No: D. Koon)

**New Hearings**

4. **1820 Fourth Street**

   Use Permit # 10-10000069 to expand existing alcohol service by enlarging an outdoor dining patio by approximately 175 sq. ft. and to modify the original Use Permit # 8677 to reflect the expansion.

   Applicant: Elliot Abrams, 1834 4th Street, Berkeley CA, 94710

   Property Owner: Abrams/Millikan, 1834 4th Street, Berkeley CA, 94710

   (Zoning: West Berkeley Commercial District (C-W); Planner: Nate Dahl)

   Continued From: NONE

   Recommendation: APPROVE pursuant to Findings & Conditions

   Number of Speakers: None

   Action: APPROVED on Consent Calendar

   Motion: E. Mikiten, M. Cohen

   VOTE: 9-0-0-0

5. **1818 Tenth Street**

   Use Permit #08-10000117 to demolish an existing 1,698-foot single story dwelling unit and detached garage and construct two, 1,590-square-foot, two-story detached dwelling units.

   Applicant: Thomas Liu, 20710 Carniel Avenue, Saratoga, CA 95070

   Property Owner: Marvin Louie, 16214 San Remo Dr., San Leandro, CA 94578

   (Zoning: R-1A – Limited Two-Family Residential District; Planner: Leslie Mendez)

   Continued From: NONE

   Recommendation: DENY Use Permit #08-10000117 (without prejudice) pursuant to Section 23B.32.040 and subject to the Findings for Denial

   Number of Speakers: 6

   Action: DENIED Use Permit without prejudice

   Motion: M. Cohen, S. Jones

   VOTE: 9-0-0-0
6. 1101 University Avenue

Use Permit #10-10000056 to modify the existing AT&T wireless telecommunication facility approved by Administrative Use Permit #97-20000249 to remove two existing antennas and replace with six antennas within the existing parapet and replace one existing equipment cabinet and install one new equipment cabinet within the rooftop lease area.

Applicant: AT&T c/o Jason Osborne, 755 Baywood Drive, Suite 350, Petaluma, CA 94952
Property Owner: Berkeley Capital Partners, LLC, P.O. Box 1357, Santa Cruz, CA 95061 (Zoning: C-W, West Berkeley Commercial; Planner: Pamela Johnson)

<table>
<thead>
<tr>
<th>Continued From:</th>
<th>NONE</th>
</tr>
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<tbody>
<tr>
<td>Recommendation:</td>
<td>APPROVE pursuant to Findings &amp; Conditions</td>
</tr>
<tr>
<td>Number of Speakers: 1</td>
<td>Action: APPROVED with design review requirements</td>
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<tr>
<td>Motion: B. Allen, M. Cohen</td>
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<tr>
<td>VOTE: 8-1-0-0 (No: S. Jones)</td>
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**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
   - Administrative Regulations: Revising the number of affordable units (1 public speaker) – Directed Staff to bring the amendment to the ZAB as a Use Permit Modification
2. Business Meeting
   - Meeting Schedule for 2011
3. Chairperson’s Report
4. Current Business/Committee Appointment
5. Future Agenda Items
6. Other Matters

**Adjourn:** 9:36PM
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.