Action Minutes

Planning and Development Department
Land Use Planning Division

Zoning Adjustments Board
Thursday, December 10, 2009
City Council Chambers, 2134 Martin Luther King Junior Way.
Berkeley, CA 94704 (Wheelchair Accessible)

Public Testimony Guidelines
The Board Chair may limit the number of speakers and the length of time allowed to each speaker. To speak at a public hearing, complete a speaker card and submit to Planning Staff (1) as early as possible at the meeting, or (2) at the Permit Service Center, 2120 Milvia Street, before 5:00 PM on the day of the hearing. At the start of the meeting the Board may rearrange the agenda or place additional agendized items on the Consent Calendar, so it is important to submit speaker cards at the start of the meeting to avoid losing the chance to speak to an item.

The Board encourages the public to submit comments in writing or by email, in advance of the meeting. See Correspondence and Notice of Decision Requests at the end of this Agenda for procedures.

Roll Call: 7:00 pm
Excused: B. Allen, D. Koon
Substitutions: George Beier for B. Allen, Sophie Hahn for D. Koon
Public Attendance: 31
Number of Speakers: 12

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.

G. Beier: Spoke with owner of Shattuck Grocery, applicant for Agenda Item 5
S. Hahn: Conversation with Chris Keifer, board member of LifeLong Medical Care, regarding Agenda Item 7
Public Comment  NONE
Each Speaker is limited to a maximum of three minutes.

Agenda Changes
The Board Chair 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 two types of Consent Calendar items: (1) Modifications of existing Use Permits (which have not been noticed for public hearings); (2) 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 p.m. The Board may place additional Agendized 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.

1. Approval of Previous Meeting Minutes
Minutes from 11/12/09 meeting

   Recommendation: APPROVE
   Action: APPROVED
   Motion: T. Doran, M. Cohen
   VOTE: 7-0-2-0 (Abstain: G. Beier, S. Hahn)

2. Approval of ZAB Meeting Schedule for 2010
Meeting Date Form 2010
Staff reported that the calendar provided in advance of the meeting contained an error: the December meeting is scheduled for the 9th.

   Recommendation: APPROVE
   Action: APPROVED as corrected
   Motion: T. Doran, M. Cohen
   VOTE: 9-0-0-0

Agenda items 4 and 5 moved to the Consent Calendar for approval.

Appeal of Administrative Use Permit/Staff Level Design Review:
Appeals of Administrative Use Permit and Design Review 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 or Design Review Secretary’s decision.
3. 1340 Arch Street
Applicant: Megan Kirkwood, 1340 Arch Street, Berkeley, CA 94708
APPEAL of the decision of the Zoning Officer to approve AUP #09-20000019 to operate a large family day care home for up to 14 children between the hours of 8:00 am to 6:00 pm, Monday through Friday. (Zoning: R-1H, Single-Family Residential, Hillside Overlay District; Planner: Leslie Mendez)

Recommendation: AFFIRM the Zoning Officer’s decision
Action: AFFIRMED the Zoning Officer’s decision
Motion: E. Mikiten, J. Anthony
VOTE: 8-1-0-0 (NO: G. Beier)

Continued Items (Public Hearing has been closed): NONE

Continued Public Hearings: NONE

Compliance Determination: NONE

New Hearings:

4. 2600 San Pablo Avenue
Applicant: A. Ali Aslami, P.O. Box 4623, Berkeley
Use Permit Modification #08-70000026 to Use Permit Modification # 08-70000130 to eliminate Condition #15. (Zoning: C-W, West Berkeley Commercial District; Planner: Gisele Sorensen)

Recommendation: APPROVE ON CONSENT
Action: APPROVED ON CONSENT
Motion: T. Doran, M. Cohen
VOTE: 9-0-0-0

5. 2441 Shattuck Avenue
Applicant: Baywood Building and Design, 5745A Horton Street, Emeryville
Use Permit #09-10000015 to establish a Carry Out Food Service delicatessen in an existing grocery store. (Zoning: C-SA, South Area Commercial District; Planner: Fatema Crane)

Recommendation: APPROVE ON CONSENT
Action: APPROVED ON CONSENT
Motion: T. Doran, M. Cohen
VOTE: 9-0-0-0
6. **3240 Sacramento Avenue**  
Applicant: Affordable Housing Associates, c/o Teresa Clarke, 1250 Addison Street, Suite G, Berkeley  
Modification #09-70000021 to Use Permit #08-10000127 to revise approved plans for a 4-story mixed-use development for transition-age youth; revisions include increased height of 21.25 inches, reduced rear setback on rear services building, new windows, and various architectural changes. (Zoning: C-SA, South Area Commercial District; Planner: Aaron Sage)

<table>
<thead>
<tr>
<th>Recommendation:</th>
<th>APPROVE ON CONSENT</th>
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<tbody>
<tr>
<td>Number of Speakers:</td>
<td>2</td>
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<tr>
<td>Action:</td>
<td>APPROVED Modification to Use Permit</td>
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<td>Motion:</td>
<td>T. Doran, G. Beier</td>
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<tr>
<td>VOTE:</td>
<td>8-0-0-1 (E. Mikiten recused self due to potential conflict of interest)</td>
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7. **2031 Sixth Street**  
Applicant: Barbara Winslow, JSW/D Architects, 3106 Shattuck Ave., Berkeley  
Variance/Use Permit #09-10000056 to construct 3-story addition (about 7,400 sq. ft.) to existing community health center, without providing required rear setback or off-street parking. (Zoning: R-4, Multi-Family Residential District; Planner: Aaron Sage)

<table>
<thead>
<tr>
<th>Continued from:</th>
<th>NONE</th>
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<tbody>
<tr>
<td>Recommendation:</td>
<td>DENY Variance and Use Permit</td>
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<td>Number of Speakers:</td>
<td>6</td>
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<td>Action:</td>
<td>APPROVED Variance and Use Permit, with the condition that the Applicant shall continue to rent 15 offsite spaces in perpetuity and prioritize parking for patrons. The Applicant shall also meet with the contractor, architect, and head of nearby Black Pine Circle School to address concerns and discuss mitigations relating to possible disturbance to students from noise and dust during construction.</td>
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<td>Motion:</td>
<td>E. Mikiten, G. Beier</td>
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<td>VOTE:</td>
<td>9-0-0-0</td>
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8. **3045 Shattuck Avenue**  
   Applicant: Christina Sun, 3045 Shattuck Ave., Berkeley  
   Use Permit #09-10000046 to create a new dwelling unit and a quick service restaurant (café) with outdoor benches in an existing mixed use building. (Zoning: C-SA, South Area Commercial District; Planner: Aaron Sage)  

   Continued From: NONE  
   Recommendation: APPROVE Use Permit  
   Number of Speakers: 4  
   Action: APPROVED Use Permit  
   Motion: J. Anthony, T. Doran  
   VOTE: 9-0-0-0  

**Additional Agenda Items:**  
A. Information/Communication  
B. Business Meeting  
C. Chair’s Report  
D. Current Business/Committee Appointment  
   i. G. Williams was appointed to the Design Review Committee to replace T. Doran, who is retiring.  
E. Future Agenda Items  
   i. Special meeting on Pacific Steel, scheduled for January 14th  
F. Other Matters  
   i. Farewell to T. Doran  
G. Future Council Hearings on ZAB decisions  
   a. 1/19/10: 2421 Ninth Street (two story 2nd dwelling unit)  
   b. 1/26/10: 1930 Martin Luther King Avenue (quick-serve with outdoor seating and extended hours)  
   c. 1/26/10: 3001 Telegraph Avenue (mixed-use development)  

**Adjourn 9:35**

[Approved for posting by Steven Buckley, Secretary, Zoning Adjustments Board]

**Correspondence and Notice of Decision Requests**
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.

NEW: Correspondence received by the 5 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.

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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: ZAB Secretary)
2120 Milvia Street, Berkeley, CA 94704 OR at zab@ci.berkeley.ca.us

Communication Access
To request a meeting agenda in large print, Braille, or on cassette, or to request a sign language interpreter for the meeting, call the Current Planning Division at 981-7410 (voice) or 981-7474 (TDD); at least five (5) working days notice will ensure availability.

Legal Notice Concerning Your Legal Rights
If you object to a decision by the Zoning Adjustments Board to approve or deny a permit or variance for a project, the following requirements and restrictions apply:

1. 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 Current Planning Division in writing to receive a Notice of Decision when it is completed.

2. Pursuant to Code of Civil Procedure, Section 1094.6(b), no lawsuit challenging a City Council decision to deny a permit or variance 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), which has been adopted by the City. Any lawsuit not filed within that ninety (90) day period will be barred.

3. Pursuant to Government Code, Section 65009(c)(5), no lawsuit challenging a City Council decision to approve (with or without conditions) a permit or variance 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), which has been adopted by the City. Any lawsuit not filed within that ninety (90) day period will be barred.

4. 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.