Action Minutes
Planning & Development Department
Land Use Planning Division

Zoning Adjustments Board
Thursday, December 12, 2013- 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: Debbie Sanderson, ZAB Secretary), 2120 Milvia Street, Berkeley, CA 94704; (510) 981-7410; zab@ci.berkeley.ca.us

Roll Call:  7:00 PM

Present:
- Michael Alvarez Cohen (Chairperson), appointed by Councilmember Wozniak
- George Williams, appointed by Councilmember Capitelli
- Robert Allen, appointed by Councilmember Wengraf
- Shoshana O’Keefe, appointed by Councilmember Anderson
- Sophie Hahn, appointed by Councilmember Worthington
- Steven Donaldson, appointed by Councilmember Moore
- Prakash Pinto, appointed by Councilmember Maio
- Igor Tregub, appointed by Councilmember Arreguin

Excused:
- Deborah Matthews (Vice Chairperson), appointed by Mayor Bates

Members of the Public
- Present: 103
- Speakers: 69

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. Williams – Had a conversation with Rena Rickles regarding 778 Contra Costa Avenue project.

R. Allen – Had a conversation with Rena Rickles regarding 778 Contra Costa Avenue project.

M. Cohen – At the Downtown Business Association Holiday event, was in a group with John Gordon but did not discuss the 2635 Ashby Avenue project.
S. Donaldson – Had a brief conversation with John Paulska at the Downtown Business Association Holiday event but did not discuss the 2635 Ashby Avenue project.

P. Pinto – Met with both the applicants, appellants and Rena Rickles to discuss the 778 Contra Costa project.

I. Tregub – Received call from Rena Rickles regarding 778 Contra Costa Avenue project to discuss her view of the project and the changes the applicant had made since the last ZAB hearing. Had a conversation with Councilmember Arreguin on 2501-09 Haste Street and 2635 Ashby Avenue projects. Received emails from Judith Epstein and Dean Metzger regarding their concerns about the 2635 Ashby Avenue project.

Public Comment
Each Speaker is limited to a maximum of three minutes.
Judith Epstein – Made comments regarding procedure, specifically the timing of the Agenda being released to the public, the inclusion of letters for the Board’s packets and how the ZAB responds to emails,

Agenda Changes
The Board Chairperson may reorder the agenda at the beginning of the meeting.
The Board Chairperson reordered the Agenda to move Item #6 to 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 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.

1. Approval of Previous Meeting Minutes

<table>
<thead>
<tr>
<th>Continued From:</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation:</td>
<td>APPROVE</td>
</tr>
<tr>
<td>Action:</td>
<td>APPROVED</td>
</tr>
<tr>
<td>Motion / Second:</td>
<td>R. Allen / I. Tregub</td>
</tr>
<tr>
<td>VOTE:</td>
<td>7-0-1-1 (Abstain: G. Williams; Absent: D. Matthews)</td>
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</table>
Continued Public Hearing:

<table>
<thead>
<tr>
<th>2.</th>
<th>778 Contra Costa Avenue</th>
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<tbody>
<tr>
<td><strong>Administrative Use Permit #2013-0085</strong> to enlarge an existing 2,458 sq. ft. single family dwelling by raising the existing two-story residence with an existing average height of 20’ by 2’ to create 765 sq. ft. of habitable space on the ground floor, construct a 347 sq. ft. second story addition, and construct a third story covered roof deck 20’ in height from grade, resulting in a new 3,570 sq. ft. residence.</td>
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<tr>
<td><strong>CEQA Action:</strong> Categorically Exempt under Section §15301 ‘Existing Facilities’</td>
<td></td>
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<tr>
<td><strong>Applicant:</strong> John Newton, 5666 Telegraph Ave., Suite A, Oakland, CA 94609</td>
<td></td>
</tr>
<tr>
<td><strong>Property Owner:</strong> Carlos Martinez and Joanna Wulbert, 778 Contra Costa Ave., Berkeley, CA 94707</td>
<td></td>
</tr>
<tr>
<td><strong>Zoning:</strong> R-1H, “Single Family Residential District, Hillside Overlay”; <strong>Planner:</strong> Pamela Johnson</td>
<td></td>
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</tbody>
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| Continued From: | 10/10/2013 |
| **Recommendation:** | APPROVE Administrative Use Permit #AUP2013-0085 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1). |
| **Action:** | APPROVED Administrative Use Permit #AUP2013-0085 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1). |
| **Motion / Second:** | R. Allen / S. Donaldson |
| **# of Speakers:** | 13 |
| **Vote:** | 8-0-0-1 (Absent: D. Matthews) |
New Public Hearings:

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<tbody>
<tr>
<td>3.</td>
<td>2635 Ashby Avenue</td>
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<tr>
<td>Use Permit #2013-0033</td>
<td>to establish a Full Service Restaurant within an existing two-story commercial building, exceeding the C-E District’s numerical limit on such restaurants, with 5,282 sq. ft. of gross floor area, (approx. 1,900 sq. ft. customer service area), incidental service of beer, wine and distilled spirits, and extended operating hours.</td>
</tr>
<tr>
<td>CEQA Action:</td>
<td>A Negative Declaration has been prepared pursuant to Article 6 of the CEQA Guidelines.</td>
</tr>
<tr>
<td>Applicant:</td>
<td>John Paluska, Belt and Suspenders, LLC, 126 Lomita Dr., Mill Valley, CA 94941</td>
</tr>
<tr>
<td>Property Owner:</td>
<td>John Gordon, 2091 Rose St., Berkeley, CA 94709</td>
</tr>
<tr>
<td>Zoning:</td>
<td>C-E, “Elmwood Commercial District”; Planner: Aaron Sage</td>
</tr>
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</table>

| Continued From: | None |
| Recommendation: | ADOPT the Proposed Negative Declaration (Attachment 3) subject to the CEQA findings in Attachment 1, and APPROVE Use Permit #2013-0033 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1). |
| Action: | ADOPTED the Negative Declaration, and APPROVED Use Permit #2013-0033 with additions and corrections to the Findings and Conditions. |
| Motion / Second: | R. Allen / S. O’Keefe |
| # of Speakers: | 29 |
| Vote: | 7-0-1-1 (Abstain: G. Williams; Absent: D. Matthews) |
### 4. 2749 Acton Street - A

**Use Permit #2013-0041** to construct a new, 2,344-square-foot, two-story, four-bedroom single-family house on an existing vacant lot.

**CEQA Action:** Categorically Exempt under Section §15303 ‘New Construction or Conversion of Small Structures’

**Applicant/Property Owner:** Xiaopei (Chad) Qi, 636 Jerome St., Davis, CA 95616

**Zoning:** R-1, “Single Family Residential District”; **Planner:** Leslie Mendez

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<thead>
<tr>
<th>Continued From:</th>
<th>None</th>
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<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit #2013-0041 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>APPROVED Use Permit #2013-0041 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).</td>
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<tr>
<td><strong>Motion / Second:</strong></td>
<td>I. Tregub / P. Pinto</td>
</tr>
<tr>
<td><strong># of Speakers:</strong></td>
<td>1</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>8-0-0-1 (Absent: D. Matthews)</td>
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### 5. 2127 Russell Street

**Use Permit #2013-0034** to construct two detached two-story dwelling units on an existing vacant lot, each with an attached one-car garage. The front house is 1,697 square feet with three bedrooms; the house to the rear is 2,640 square feet with four bedrooms.

**CEQA Action:** Categorically Exempt under Section §15303 ‘New Construction or Conversion of Small Structures’

**Applicant/Property Owner:** Slava Leonov, 2159 Dwight Way, Berkeley, CA 94704

**Zoning:** R-2, “Restricted Two-Family Residential District”; **Planner:** Leslie Mendez

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<tr>
<th>Continued From:</th>
<th>None</th>
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<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit #2013-0034 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>APPROVED Use Permit #2013-0034 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong></td>
<td>R. Allen / I. Tregub</td>
</tr>
<tr>
<td><strong># of Speakers:</strong></td>
<td>5</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>8-0-0-1 (Absent: D. Matthews)</td>
</tr>
</tbody>
</table>
6. **2240 Ninth Street**

**Use Permit #2013-0032** to expand an existing Montessori school/childcare center by demolishing an existing two-story, 2,885 square foot transitional housing facility and by constructing a one-story, 2,455 square foot classroom and office building. Total enrollment would increase from 46 children (ages 18 months to 6 years) to 84 children; staff would increase from 9 full time staff to 15. Total gross floor area would decrease from 7,155 to 6,725 square feet. No parking spaces exist and none are proposed.

**CEQA Action:** Categorically Exempt under Section §15301 ‘Existing Facilities’

**Applicant:** Nia House Learning Center, 2234 9th St., Berkeley, CA

**Property Owner:** City of Berkeley

**Zoning:** R-1A, “Limited Two-Family Residential District”

**Planner:** Greg Powell

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**Recommendation:** APPROVE Use Permit #2013-0032 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).

**Action:** APPROVED Use Permit #2013-0032 with corrections and modifications to the Findings and Conditions.

**Motion / Second:** R. Allen / G. Williams

**# of Speakers:** 19

**Vote:** 8-0-0-1 (Absent: D. Matthews)

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**Preview of Upcoming Project:**

7. **2501-09 Haste Street, 2433 Telegraph Avenue**

**Use Permit # 12-10000012** to demolish a 6,950 square foot retail building at 2433 Telegraph Avenue and to construct a 89,054 square foot, 69’/6-story, mixed-use building to include 79 dwelling units, 30,356 square feet of commercial floor area and no off-street parking spaces.

**CEQA Action:** Pending.

**Applicant:** Kirk Peterson, Kirk E. Peterson & Associates Architects, 5253 College Ave., Oakland, CA 94608

**Zoning:** C-T, “Telegraph Avenue Commercial District”; **Planner:** Greg Powell

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**Recommendation:** HOLD a Public Hearing to preview the project and to provide comments to the Staff and to the applicant.

**Action:** NO ACTION TAKEN – received ZAB input on the project.

**# of Speakers:** 1
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.

A. Information/Communication
   - E-mail from Jeanie Shaterian regarding proposed Walgreens store on Solano Avenue

B. Discussion Item
C. Business Item
   - 2014 ZAB Meeting Dates

<table>
<thead>
<tr>
<th>2014 ZAB Meeting Dates</th>
<th>Continued From:</th>
<th>None</th>
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<tbody>
<tr>
<td></td>
<td>Action:</td>
<td>The Board moved to approve 2014 meeting dates as provided by Staff.</td>
</tr>
<tr>
<td></td>
<td>Motion / Second:</td>
<td>G. Williams / I. Tregub</td>
</tr>
<tr>
<td></td>
<td>Vote:</td>
<td>8-0-0-1 (Absent: D. Matthews)</td>
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</table>

D. Chairperson’s Report
E. Current Business/Committee Appointment
F. Future Agenda Items
G. Other Matters
   - Future Council Hearings on ZAB Decisions
      i. 3001 Telegraph Avenue, 1/21/2013

Adjourn: 1:35 AM

[Approved for posting by Greg Powell, 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: Debbie Sanderson, 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.