



Planning and Development  
Department  
Land Use Planning Division

# Action Minutes

Revised August 6, 2007

Revised Consent Calendar, August 7, 2007

## Zoning Adjustments Board

Thursday, August 9, 2007 -- 7:00 pm

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) at the public hearing, by 7:15 PM on the night of the hearing, or (2) at the Permit Service Center, 2120 Milvia Street, **before** 5:00 PM on the day of the hearing.

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.

Planning and Development Department, Land Use Division

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**Call to Order:** 7:03 pm

**Roll Call:** Anthony, Doran, Allen, Perry (for Judd), Tiedemann, Wilson, Shumer, Mitchell (for Alvarez Cohen), Arreguin

**Attendance:** 40 people present

**Public Comment:** 5 people

*Each Speaker is limited to a maximum of three minutes.*

### **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.*

**Moved to Consent Calendar:**

2342 Shattuck  
2525 Telegraph

**1. 3126 Shattuck Ave.**

Applicant: Nexus Patient Collective, Inc. 3124 Shattuck Avenue, Berkeley CA 94705  
Use Permit #06-10000013 to establish a medical cannabis facility (currently located at 3124 Shattuck Avenue): (C-SA Zone, South Area Commercial, GMS)

**Continued From: July 12, August 9, 2007**

**Recommendation: Continue to September 10, 2007**

**Action: Continued Off Calendar (9-0-0)**

**5. 2526 Durant Ave**

Applicant: Ruegg & Ellsworth, 2437 Durant Avenue, Berkeley, 94704

Use Permit #00-10000066 to demolish the Blood House, a City of Berkeley Structure of Merit and to construct a mixed use building with 29,855 square feet of residential floor area (44 dwelling units, including 7 affordable) and 2,483 square feet of non-residential floor area, 5 stories with an average height of 50 feet, on a 10,377 square foot lot. 18 parking spaces are proposed. (C-T Telegraph Commercial Zoning District) (GP).

**Continued From: None**

**Recommendation: Continue to September 10, 2007.**

**Action Continued to September 10, 2007 (9-0-0)**

**Agenda Changes**

*The Board Chair may reorder the agenda at the beginning of the meeting.*

**Appeal of Administrative Use Permit: NONE**

*Appeals of Administrative Use Permit 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 decision.*

**Continued Items (Public Hearing has been closed): NONE**

**Continued Public Hearings:**

**2. 2323 Shattuck Ave**

Applicant: Jim Novosel, Bay Architects. 1840B Alcatraz Ave. Berkeley, CA 94703  
Use Permit and Variance #06-10000148 to convert an existing 4,000 sq.ft. landmark office building into a restaurant with beer and wine service plus one dwelling unit; to allow sidewalk café seating; remove 8 existing parking spaces; to construct a new 5-story mixed-use building with 2,609 sq.ft. of commercial floor area and 15 dwelling units. (C-2, SDR/ASC)

**Continued From: 07/26/2007**

**Recommendation: Deny Variance**

**Action:**

- **Closed Public Hearing.**
- **Approved Variance and Project; instructed Staff to prepare supporting Findings and Conditions for approval at September 10, 2007 meeting. (5-3-0-1) (No: Mitchell; Perry; Tiedemann) (Recused: Wilson)**
- **Motion to City Council to amend ordinance and to initiate nexus study for Downtown Parking in Lieu Fee (9-0-0)**

**3. 2525 Telegraph Ave**

Applicant: Ali Eslami, Telegraph/Regent LLC, P.O. Box 4623, Berkeley, CA 94704  
Use Permit #07-10000055 to convert two adjacent commercial spaces, previously used for a restaurant and an oxygen bar/retail space, into one 5,803 square foot space to be used for a restaurant and an art gallery, with service of distilled spirits, operating hours of 6:30 a.m. to 2:00 a.m. daily, and occasional live entertainment. (C-T, Telegraph Ave. Commercial, CW/JL)

**Continued From: 07/26/2007**

**Recommendation: Approve with modified hours & no distilled spirits, as staff recommended 07-26-07.**

**Action:**

**Moved to Consent Calendar.  
Continued to September 10, 2007. (9-0-0)**

**Compliance Determination: NONE**

**New Hearings:**

**4. 634 Woodmont**

Applicant: Aron Eisenhart, 950 Grayson Street, Berkeley, CA 94760  
Use Permit #07-10000068 to construct a new two-story 3,340 square foot single family residence with a 175 foot long driveway over an easement to a landlocked 10,006 square foot parcel; (R-1H, SDR/SBR)

**Continued From: None**

**Recommendation: Approve**

**Action :**

**Approved with Changes (9-0-0)**

**Item 5 moved to Consent calendar.**

**6. 2819 Eighth St**

Applicant: Kava Massih, 2830 Ninth Street, Berkeley, CA 94710

Use Permit #07-10000041 to demolish a one story, single-family dwelling and construct two new three-story buildings containing 2 dwelling units each and 4 parking spaces, totaling 4,594 square feet; (MU-R, GMS/JL)

**Continued From: None**  
**Recommendation: Approve**  
**Action: Approved (9-0-0)**

**7. 3237 Ellis St.**

Applicant: Andus Brandt, 1818 Harmon Street, Suite 2, Berkeley, CA 94703

Use Permit #07-10000056 to construct a two-story, 3,868 sq.ft. office building at the rear of a vacant 6,386 square foot lot, with 6 parking spaces at the front of the lot; (C-SA, SDR/SBR)

**Continued From: 07/12/2007**  
**Recommendation: Approve**  
**Action: Approved (9-0-0)**

**8. 1037 Pardee St.**

Applicant: Hoss Azimi, HOPA LLC. 1511 Hearst Avenue, Suite C, Berkeley, CA 94703

Use Permit and Variance #06-10000138 to allow a new three story mixed-use building with four dwelling units, one commercial office space, and eight parking spaces within a garage on a 5,335 square foot vacant lot (C-W, West Berkeley Commercial; SR).

**Continued From: None**  
**Recommendation: Deny Variance and approve project.**  
**Action: Continue to September 27, 2007 (9-0-0)**

**9. 2342 Shattuck Ave.**

Applicant: Bay Architects; 1840b Alcatraz Avenue, Berkeley, CA 94703

Use Permit #07-10000059 to consolidate two commercial lease units for reuse as space for financial services (Credit Union) and ATM in existing building; (C-2 Central Commercial, GMS/JC)

**Continued From: None**  
**Recommendation: Approve**  
**Action: Approved on Consent (9-0-0)**

**Additional Agenda Items:**

**A. Information/Communication**

- 2844 Derby Street (no attachment)
- UCB Continuing Extension, note one-day course on "Land Use Planning for Non-Planners."

Zoning Adjustments Board ACTION MINUTES  
Thursday, August 9, 2007  
Page 5 of 5

- B. Business Meeting
- C. Chair's Report
- D. Current Business/Committee Appointment
- E. Future Agenda Items: **Reminder – next meeting on Monday, September 10, 2007!**
- F. Other Matters
- G. Adjourn

### **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.
- 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 email) 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](mailto: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.

[Approved for posting by Debra R. Sanderson, Secretary, Zoning Adjustments Board, August 10, 2007.]