



Planning and Development  
Department  
Land Use Planning Division

# Action Minutes

## Zoning Adjustments Board

Thursday, September 27, 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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### Roll Call: 7:03 PM

**Present: J. Anthony, T. Doran, B. Allen, R. Judd, C. Tiedemann, S. Wilson, S. Shumer, M. Alvarez-Cohen, J. Arreguin**

**Public Attendance: ~40**

### Public Comment: NONE

*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.*

**Item 3. 1037 Pardee Street moved to Consent Calendar to continue off-calendar.**

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**Item 4. 2748 San Pablo moved to Consent Calendar for Approval.**

**Item 9. 2235 San Pablo moved to Consent Calendar for Approval.**

**Item 11. 2331 Jefferson moved to Consent Calendar for Approval.**

**Agenda Changes**

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

**Appeal of Administrative Use Permit:**

*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.*

**1. 2129 Rose Street**

Applicant: Joan Spiegel 2129 Rose Street Berkeley CA, 94709

Appellant: Peter Lomhoff 1335 Walnut Street Berkeley CA, 94709

Appeal of Administrative Use Permit # 06-20000098 to legalize the installation of a skylight and French doors to a building within a non-conforming rear yard setback. (R-2A(H), Restricted Multiple Family Residential - Hillside, ND)

**Continued From: None**

**Recommendation: Deny the Appeal and affirm Zoning Officer's decision**

**Action: Denied Appeal (9-0-0-0)**

**Continued Items (Public Hearing has been closed):**

**2. 2525 Telegraph Avenue**

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, 08/09/2007, 09/10/07**

**Recommendation: Approve revised findings and conditions**

**Action: Approved with changes (5-1-2-0; No: B.Allen; Abstain: J.Anthony, R.Judd)**

**Continued Public Hearings:**

**3. 1037 Pardee Street**

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 District, SDR)

**Continued From: 08/09/2007**

**Recommendation: Continue off calendar**

**Action: Continued off calendar on consent (9-**

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**0-0-0)**

**4. 2748 San Pablo Avenue**

Applicant: Andre Rothblatt, AIA; 2 Henry Adams Street, Suite 460, San Francisco, CA 94103

Use Permit #06-10000119 to demolish existing shed structures (used in connection with a plant nursery) to construct four-story, mixed-use building with 20 condominium dwelling units, 2,064 square feet of ground-floor commercial space and a 24-space parking garage. (C-W, West Berkeley Commercial; C. Wagner/S.D.Ross)

**Continued From: 09/10/2007**

**Recommendation: Approve**

**Action: Approved on consent (9-0-0-0)**

**Compliance Determination: NONE**

**New Hearings:**

**5. 2323 Shattuck Avenue**

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, 08/09/2007, 09/10/2007**

**Recommendation: Approve**

**Action: Approved project as revised (9-0-0-0)**

**6. 2072 University Ave.**

Applicant: Robert Gaustad, 40 Summerhill Way, San Rafael CA 94903

Use Permit Modification #07-70000018 to extend hours and add live entertainment to an existing restaurant (C-2, Downtown Commercial Zoning District, GMS)

**Continued From: None**

**Recommendation: Approve with modifications**

**Action: Approved with modifications (9-0-0-0)**

**7. 2518 Durant Avenue**

Applicant: Ruegg & Ellsworth, 2437 Durant Ave., Berkeley, CA 94704

Use Permit #07-10000034 to approve a combination of the following uses through a partial conversion of an existing commercial building: Carry Out Food Services, a fitness club, a live entertainment venue, and extended operating hours. (C-T, FC)

**Continued From: None**

**Recommendation: Approve**

**Action: Approved (9-0-0-0)**

**8. 2837 Fulton Street**

Applicant: Mr. Ken Lowney, AIA, Lowney Architecture, 1440 Broadway Street, Suite 715, Oakland, CA 94612

Use Permit #06-10000128 to construct a detached single-family dwelling unit at the rear of a lot with an existing single-family dwelling unit, and reduce the rear yard setback for the new dwelling unit; (Restricted Two-Family Residential (R-2) District, C. Wolf)

**Continued From: None**

**Recommendation: Approve**

**Action: Continued to 10/25/2007 (6-3-0-0; No: J.Anthony, T.Doran, B.Allen)**

**9. 2235 San Pablo Avenue**

Applicant: Mr. Aaron Porter, 200 Second Street #301, Oakland, CA 94607

Use Permit #06-10000146 to convert one (1) existing second story dwelling unit into two (2) dwelling units and waive one (1) required off-street parking space; (West Berkeley Commercial (C-W) District, C. Wolf)

**Continued From: None**

**Recommendation: Approve**

**Action: Approved on consent (9-0-0-0)**

**10. 1505 Shattuck Avenue**

Applicant: Mr. Allen Connolly, 1505 Shattuck Avenue, Berkeley, CA 94709

Variance #04-10000074 to demolish two commercial buildings totaling 1,765 square feet (the single-story building located at 1505 Shattuck Avenue and a single story storage building located at the rear of the site) and construct a new 4,820 square foot two story mixed-use building (retail on the lower level and one (1) dwelling unit on the upper level) (C-NS) District, C. Wolf)

**Continued From: None**

**Recommendation: Deny**

**Action: Instructed staff to return on 10/11/07 with Findings and Conditions for Approval, with changes (8-1-0-0; No: R.Judd)**

**11. 2331 Jefferson**

Applicant: Michael Bradley, 2331 Jefferson St., Berkeley, CA

Use Permit #07-10000021 to create a duplex by constructing a new dwelling unit as a building addition to an existing single-family residence. (R-2, FC)

**Continued From: None**

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**Recommendation: Approve**

**Action: Approved on consent (9-0-0-0)**

**Additional Agenda Items:**

- A. Information/Communication
  - **1441 Ashby**
    - Review of Draft EIR for Use Permit #07-10000046 to establish biodiesel fueling station at existing former gas station (currently used for auto detailing); main building to remain, pump canopies to be altered or replaced to accommodate taller vehicles; (C-SA, South Area Commercial, AS)
    - **Comments made. Send comments to Planner Aaron Sage**
  - **Memo from City Clerk**
    - Form 700 – Revised Due Date: 30 days from Appointment
    - **Informed**
  - **Discussed Planning Commission/ZAB Correspondence**
- B. Business Meeting
- C. Chair's Report
- D. Current Business/Committee Appointment
- E. Future Agenda Items
- F. Other Matters
- G. Adjourn **10:11 PM**

**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

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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]*