



# Action Minutes

Planning and  
Development Department  
Land Use Planning  
Division

## Zoning Adjustments Board

Thursday, February 11, 2010, 7PM

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.

Planning and Development Department, Land Use Planning Division

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### **Roll Call: 7:08PM**

**Present: J. Anthony, R. Lau, G. Williams, B. Allen, S. Shumer, E. Mikiten, D. Koon, D. Matthews**

**Excused: M. Cohen**

**Substitutions: NONE**

**Public Attendance: 54 people and 13 people after the recess**

**Number of Speakers: 22**

### **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.*

**R. Lau:** Spoke with Ms. Rickles about 2312 Telegraph project

**G. Williams:** Spoke with Ms. Rickles about 2312 Telegraph

**B. Allen:** Spoke with Ms. Rickles about 2312 Telegraph

- S. Shumer:** Spoke with Steve Wollmer and Ms. Rickles on 2312 Telegraph, visited the site, especially the basement, and spoke with the sons of the applicant; also visited 1319 McGee Street and talked to the owners but didn't discuss issues involved
- E. Mikiten:** Email exchange with Pear Michaels and Kerry Wilson on PSC, advised them to forward their materials to the full board
- D. Matthews:** Spoke with Ms. Rickles about 2312 Telegraph

### **Public Comment**

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

**Opened 7:25PM**

**One comment – Linda Burden spoke regarding public notice procedures.**

**Closed 7:27PM**

### **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 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 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 01/14/10 meeting

**Recommendation: APPROVE**

**Action: APPROVED on Consent**

**Motion: B. Allen, S. Shumer**

**Vote: (8-0-0-1; Excused: M. Cohen)**

**NOTE: Agenda items listed below as 4, 7, 9, and 10 were approved on Consent.**

### **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.*

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2. **2244 Dwight Way**

**Appeal of Administrative Use Permit #09-20000078** to construct a 3-story, 1,661-sq.ft. addition at the rear of an existing 2,668-sq.ft., 2-story duplex

**Applicant:** Charles Huddleston, 1305 Boulevard Way, Walnut Creek, CA 94595  
(Zoning: R-4, Multi-family Residential; Planner: Fatema Crane)

**Continued From:** NONE

**Recommendation:** UPHOLD the Zoning Officer's decision to approve AUP#09-20000078 and dismiss the Appeal.

**Action:** SET A PUBLIC HEARING FOR MARCH 11, 2010

**Motion:** E. Mikiten, G. Williams

**Vote:** (8-0-0-1; Excused: M. Cohen)

3. **1319 McGee Avenue**

**Appeal of Administrative Use Permit #09-20000012** to construct a 3-story, 924-sq.ft. addition with an average height of 23 feet, to an existing 2-story, 1,015sq.ft. single family residence with an average of 13 feet

**Applicant:** Jason Kaldis Architect, Inc.; 1250 Addison St., #210 Berkeley, CA 94702  
(Zoning: R-2, Restricted Two-Family Residential District; Planner: Lief Bursell)

**Continued From:** NONE

**Recommendation:** SET A PUBLIC HEARING on March 11, 2010 to uphold the Zoning Officer's decision and revise the findings to address the loss of the hedge as a screening element.

**Action:** UPHOLD the Zoning Officer's decision and dismiss the Appeal.

**Motion:** B. Allen, S. Shumer

**Vote:** (8-0-0-1; Excused: M. Cohen)

4. **778 Contra Costa Avenue**

**Administrative Use Permit #08-20000123** to construct an approximately 1,449-sq.ft. addition, including a new third story at the front of the existing two-story dwelling, and construct new second and third story decks located at the rear of the dwelling.

**Applicant:** Laura Elizabeth Gannaway and Kourosch Ghassemi, 778 Contra Costa Ave., Berkeley, CA 94707

(Zoning: R-1H, Single-family Residential Hillside Overlay District; Planner: Leslie Mendez)

**Continued From:** NONE

**Recommendation:** SET A PUBLIC HEARING on March 11, 2010.

**Action:** SET A PUBLIC HEARING on March 11, 2010.

**Motion:** G. Williams, E. Mikiten

**Vote:** (8-0-0-1; Excused: M. Cohen)

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

**Continued Public Hearings:**

**5. 1421 Second Street**

**Use Permit #06-1000045:** Performance Review

**Owner/Operator/Representative:** Christina Chan, 1333 Second Street, Berkeley, CA

**Continued From:** January 14, 2010

**Recommendation:** CONTINUE OFF CALENDAR

**Action:** CONTINUE TO MARCH 11, 2010 for update on schedule for considering additional information from health experts

**Motion:** S. Shumer, J. Anthony

**Vote:** (8-0-0-1; Excused: M. Cohen)

**6. 2312 Telegraph Avenue**

**Variance / Use Permit #09-1000039** to establish beer and wine sales in an existing grocery store and delicatessen in a district where these sales are prohibited, and to extend the hours of operation for the store from 7 a. m. to 10 p. m. daily to 7 a. m. to 10 p. m. Sunday through Friday and 7 a. m. to 11 p. m. on Saturdays

**Applicant:** Fuad and Muna Ayyad for Samer Market, Inc., 2312 Telegraph Avenue, Berkeley

(Zoning: C-T, Telegraph Avenue Commercial; Planner: Fatema Crane)

**Number of Speakers: 11**

**Continued From:** January 28, 2010

**Recommendation:**

- DENY** the request for a **Variance** and associated **Use Permit** to establish the sale of beer and wine in the Telegraph Avenue Commercial district; and
- APPROVE** that aspect of **Use Permit #09-1000039** which will modify Condition #13 of Use Permit 07-1000026 to extend the operating hours for the existing store beyond those hours previously established in the Use Permit.

**Action:** CONTINUE HEARING to March 11, 2010

**Motion:** S. Shumer, J. Anthony

**Vote:** (7-1-0-1; No: B. Allen; Excused: M. Cohen)

**Compliance Determination: NONE**

**New Hearings:**

7. **2506 Durant Avenue**  
**Use Permit #09-10000098** to exceed the quota for Barber/Beauty Shops in a 715 square foot retail tenant space.  
**Applicant:** Alan D. Batt, dba Amplify Barber Shop, 35 Barbara Rd., Orinda, CA 94563  
(Zoning: C-T – Telegraph Area Commercial; Planner: Lief Bursell)  
**Continued From: NONE**  
**Recommendation: APPROVE**  
**Action: APPROVED on Consent**  
**Motion: G. Williams, E. Mikiten**  
**Vote: (8-0-0-1; Excused: M. Cohen)**
8. **2640 Telegraph Avenue**  
**Use Permit #09-1000103** to demolish an existing two-story, 2,500 sq. ft. medical office building and construct a new, two-story, 4,408 sq. ft. medical office building and **Variance #10-10000010** to provide five off-street parking spaces where 15 are required.  
**Applicant:** Kava Massih Architects, 2830 Ninth Street, Berkeley, CA 94710  
(Zoning: C-1, General Commercial; Planner: Nathan Dahl)  
**Continued From: NONE**  
**Recommendation: APPROVE**  
**Action: APPROVED**  
**Motion: B. Allen, R. Lau**  
**Vote: (7-0-1-1; Abstain: S. Shumer; Excused: M. Cohen)**
- Number of Speakers: 8**
9. **1812 Chestnut Street**  
**Use Permit #09-10000078** to alter and raise a portion of the roof line on a duplex within a non-conforming rear yard setback at a property that exceeds the maximum residential density and lot coverage standards for the district.  
**Applicant:** Jose Vilar, 1812 Chestnut Street, Berkeley, CA  
(Zoning: R-2, Restricted Two-family Residential District; Planner: Fatema Crane)  
**Continued From: NONE**  
**Recommendation: APPROVE**  
**Action: APPROVED on Consent**  
**Motion: G. Williams, E. Mikiten**  
**Vote: (8-0-0-1; Excused: M. Cohen)**

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**10. 1950 Shattuck Avenue**

**Use Permit #09-10000083** to convert an existing retail building with 5,230 square feet (formerly Radston's Stationery) into two or three tenant spaces, allow full or quick service restaurants with incidental beer and wine, and extending hours of operation in three spaces, and waive 7 required parking spaces.

**Applicant:** Heidi Miller, P.O. Box 1267, Orinda, CA 94563

(Zoning District: C-1, General Commercial; Planners: Shawna Brekke-Read/Aaron Sage)

**Continued From: NONE**

**Recommendation: APPROVE**

**Action: APPROVED on Consent**

**Motion: G. Williams, E. Mikiten**

**Vote: (8-0-0-1; Excused: M. Cohen)**

**11. 2146 Center Street**

**Use Permit #09-10000082** to establish beer and wine retail sales, to establish beer and wine service incidental to food service, and to install an Automatic Teller Machine (ATM) at an existing quick service restaurant and convenience store open 6 am to midnight daily.

**Applicant:** Roy Nowrouzi, 2146 Center Street, Berkeley, CA 94704

(Zoning: C-2, Central Commercial; Planner: Leslie Mendez)

**Continued From: NONE**

**Number of Speakers: 2**

**Recommendation: APPROVE**

**Action: APPROVED** with additional condition that the previous alcohol use permit for the existing adjacent restaurant tenant space be relinquished once this permit goes into effect

**Motion: G. Williams, B. Allen**

**Vote: (7-0-0-1; Excused: M. Cohen)**

**Additional Agenda Items:**

A. Information/Communication

B. Business Meeting

C. Chair's Report

D. Current Business/Committee Appointment

- **E. Mikiten motions for D. Matthews to continue as chairperson, and B. Allen to continue as vice-chair; D. Koon seconds.**

- i. **Vote: (8-0-0-1; Excused: M. Cohen)**

E. Future Agenda Items

- **On next agenda, D. Matthews requests the Boards' full names are listed under the "Roll Call" section on all future agendas.**

F. Other Matters

- **Upcoming ZAB training session for February 25, 2010 at 6:00PM (City Attorney to attend discussion on variance)**

G. **Adjourn: 9:54 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.
- Correspondence received by 5 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: Steven Buckley, 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:

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- 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.