



Planning and  
Development  
Department  
Land Use Planning  
Division

# Action Minutes

## Zoning Adjustments Board

Thursday, March 11, 2010

Special Meeting – 6:00 PM

Regular Meeting – 7:00 PM

City Council Chambers, 2134 Martin Luther King Junior Way, 2<sup>nd</sup> Floor  
Berkeley, CA 94704 (Wheelchair Accessible)

### Public Testimony Guidelines

The Board Chairperson 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 agenda 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 Division

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### 6:00 PM – Special Meeting

**Roll Call:** Present: J. Anthony, G. Williams, D. Matthews, S. Shumer, D. Koon, E. Mikiten  
Substitutions: B. Olds substituting for B. Allen  
Absent / Excused: R. Lau, B. Olds  
Public Attendance: 1  
Number of Speakers: 0

**Workshop / Training Session:** The Board had a discussion with the City Attorney and Planning Staff regarding Ex Parte Communications, Conflict of Interest Considerations, Findings, and Other Topics of General Interest Related to the Conduct of Board Meetings

**Public Comment:** None

**Adjourn**

**7:00 PM – Regular Meeting**

**Roll Call: 7:01 PM**

**Present:** J. Anthony, G. Williams, B. Olds, D. Matthews, M. Cohen, S. Shumer, D. Koon, E. Mikiten  
**Substitutions:** B. Olds substituting for B. Allen  
**Absent / Excused:** R. Lau  
**Public Attendance:** 19  
**Number of Speakers:** 11

**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.*

**S. Shumer – spoke with Pat Shanks about 778 Contra Costa and the story poles; also spoke with Rena Rickles about 2312 Telegraph Avenue**

**D. Matthews – spoke with Rena Rickles about 2312 Telegraph Avenue**

**B. Olds – spoke with Appellant about 778 Contra Costa and toured the Appellant's home to see whether their view would be obstructed**

**Public Comment**

*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.*

Zoning Adjustments Board ACTION MINUTES

Thursday, March 11, 2010

Page 3 of 9

1. **Approval of Previous Meeting Minutes**

Minutes from 02/25/2010 meeting

**Recommendation: APPROVE**

**Action APPROVED**

**Motion: M. Cohen, G. Allen**

**VOTE: 8-0-0-1 (Absent: R. Lau)**

2. **1421 Second Street**

**Performance Report: Use Permit #06-1000045** – Pacific Steel Castings

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

**Continued From: February 11, 2010**

**Recommendation: CONTINUE TO APRIL 22, 2010**

**Action APPROVED ON CONSENT**

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

**VOTE: 8-0-0-1 (Absent: R. Lau)**

3. **7 Alamo Avenue**

**Use Permit #08-10000108** to construct a new, three-story, approximately 4,500-square-foot single family home with an average height of 30.5 feet and a maximum height of 40.5 feet.

**Applicant:** Daniel Frederick, Daniel Frederick Architecture, 1045 Keith Avenue, Berkeley, CA 94707

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

**Continued From: NONE**

**Recommendation: CONTINUE OFF CALENDAR**

**Action APPROVED ON CONSENT**

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

**VOTE: 8-0-0-1 (Absent: R. Lau)**

4. **1006 Creston Road**

**Appeal of Administrative Use Permit #09-20000034** to reconstruct a 2-story, approximately 3,100-sq. ft., fire-damaged residence as-of-right, to add approximately 1,800 sq. ft. of new floor area to the original building envelope, to include a new Accessory Dwelling Unit in the lower level of the building and roof deck atop.

**Applicant:** Mark Anderson, AIA, of Anderson Anderson Architecture, 90 Tehama Street, San Francisco, CA 94105

(Zoning: R-1(H), Single-Family Residential, Hillside Overlay; Planner: Fatema Crane)

**Continued From: NONE**

**Recommendation: SET FOR HEARING ON APRIL 8, 2010**

**Action APPROVED ON CONSENT**

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

**VOTE: 8-0-0-1 (Absent: R. Lau)**

Zoning Adjustments Board ACTION MINUTES

Thursday, March 11, 2010

Page 4 of 9

5. **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  
(Zoning: R-4, Multifamily Residential District; Planner: Fatema Crane)

**Continued From: NONE**

**Recommendation: SET FOR HEARING ON APRIL 8, 2010**

**Action APPROVED ON CONSENT**

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

**VOTE: 8-0-0-1 (Absent: R. Lau)**

**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.*

**6. 778 Contra Costa Avenue**

**Appeal of Administrative Use Permit #08-20000123** to construct an approximately 1,449-square-foot 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:** Elizabeth Gannaway & Kourosh Ghassemi, 778 Contra Costa Ave., Berkeley, CA 94707

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

**Continued From: NONE**  
**Recommendation: EITHER**

1. **APPROVE** Administrative Use Permit #08-10000123 pursuant to BMC Section 23B.32.040 with amendments to the plan specified by Condition #10 to eliminate the new third story and third story roof deck, but allow the construction of an approximately 305-square-foot, two-story addition located at the front of an existing residence and a new 261-square-foot second story deck located at the rear of the dwelling.

**OR**

2. **DENY** Administrative Use Permit #08-10000123 based on findings of detriment.

**Number of Speakers: 5**

**Action: CONTINUE OFF CALENDAR** to allow the applicant and appellant to consider mediation and for the applicant to submit alternative plans prepared by an architect and install complete story poles

**Motion: E. Mikiten, J. Anthony**

**VOTE: 8-0-0-1 (Absent: R. Lau)**

**Continued Public Hearings:**

**7. 2312 Telegraph Avenue**

**Variance / Use Permit #09-10000039** 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).

**Continued From: February 11, 2010**

**Recommendation: EITHER**

**A.**

1. **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
2. **APPROVE** that aspect of **Use Permit #09-10000039** which will modify Condition #13 of Use Permit 07-10000026 to extend the operating hours for the existing store beyond those hours previously established in the Use Permit.

**OR**

- B. APPROVE** Variance and Use Permit #09-100000039 to establish alcoholic beverage sales at the subject grocery and take-out deli and establish operating hours subject to the Findings and Conditions of Attachment 2, or Findings and Conditions of Attachment 2 that have been modified by Board action.

**Number of Speakers: 4**

**Action: APPROVE Variance and Use Permit**  
with modified Findings & Conditions

**Motion: G. Williams, S. Shumer**

**VOTE: 6-2-0-1 (No: E. Mikiten, M. Cohen;  
Absent: R. Lau)**

**New Public Hearings:**

**8. 1222 University Avenue**

**Use Permit Modification MODUP#10-70000004** to extend the allowable work hours during construction. The Berkeley Unified School District (BUSD) requests that condition #14, imposed as part of Use Permit 09-20000036, be amended to conform to the usual ordinance-allowed hours of 7 am to 7 pm on weekdays and 9 am to 8 pm on weekends and legal holidays.

**Applicant:** Berkeley Unified School District, 1707 Russell Street, Berkeley, CA  
(ZONING: C-1, General Commercial District; R-2 – Restricted Two-Family Residential District; R-2A – Restricted Multiple Family Residential District; Planner: Steven Buckley)

**Continued From:** NONE

**Recommendation:** APPROVE Use Permit Modification #10-70000004 pursuant to Zoning Ordinance Section 23B.56.020.C and subject to Findings and Conditions.

**Number of Speakers: 2**

**Action:** APPROVE with modified Findings & Conditions

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

**VOTE:** 5-3-0-1 (No: B. Olds, M. Cohen, S. Shumer; Absent: R. Lau)

**Additional Agenda Items:**

- A. Information/Communication
- B. Business Meeting
- C. Chair's Report
- D. Current Business/Committee Appointment
- E. Future Agenda Items
- F. Other Matters
- G. Future Council Hearings on ZAB decisions

**Adjourn 9:00 PM**

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

## Zoning Adjustments Board ACTION MINUTES

Thursday, March 11, 2010

Page 8 of 9

### **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.

The Secretary of the commission is responsible for relaying all communications from the public to the members of the commission. The Secretary's contact information is listed below.

- 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 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](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 Land Use 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 use permit or variance for a 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 Current 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), 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

Zoning Adjustments Board ACTION MINUTES

Thursday, March 11, 2010

Page 9 of 9

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 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.
5. 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.
6. 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.