



Planning and  
Development  
Department  
Land Use Planning  
Division

# Action Minutes

## Zoning Adjustments Board

Thursday, April 08, 2010, 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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### Roll Call: 7:05PM

**Present:** D. Matthews, B. Allen, J. Anthony, M. Cohen, D. Koon, E. Mikiten, G. Williams

**Substitutions:** S. Hahn for S. Shumer

**Absent / Excused:** S. Shumer

**Public Attendance:** 18

**Number of Speakers:** 9

### 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.*

- **None**

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**Public Comment**

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

**E. Mikiten** – as a resident of 1601 Delaware Street had the following comments:

- Suggestion for adding a section on applicant's yellow sign board at properties of proposed projects to give more guidance to neighbors and interested parties as to how they can comment or raise questions/concerns
- The City phone number on the sign board should go to a live person or have a message about how to reach a live person / operator, rather than be terminated
- Internally illuminated billboard (a giant TV screen) – are these in Berkeley? If so, this goes against Berkeley's effort to eliminate billboards, and this form is particularly problematic

**Agenda Changes:**

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

- **Item 5 was added to the Consent Calendar, to set for hearing on May 13, 2010**
- **Item 6 was added to the Consent Calendar for approval**
- **Item 7 was added to the Consent Calendar for continuance to April 22, 2010**

**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.*

**1. Approval of Previous Meeting Minutes**

Minutes from **03/11/2010** meeting

**Recommendation: APPROVE**

**Action: APPROVE**

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

**VOTE: 7-0-0-1 (Abstain: S. Hahn)**

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2. **35 Rock Lane**

**Appeal of Administrative Use Permit #09-20000090**, to construct a new third story of approximately 583 sq. ft. on an existing two-story, approximately 1,589-sq. ft. single-family residence. (Zoning: R-1(H), Single-Family Residential, Hillside Overlay District)

**Applicant:** Phillip Moss, 912 Santa Fe Avenue, Albany, CA 94706

**Appellant:** Steven Rood, Esq., 405 14<sup>th</sup> Street, Suite 212, Oakland, CA 94612  
for Iris X. Wang and JiangKang Liu, 43 Rock Lane, Berkeley, CA 94708

**Appellant:** Margaret Paternek, 55 Rock Lane, Berkeley, CA 94708

**Continued From:** NONE

**Recommendation:** Continue Without Discussion to  
April 22, 2010

**Action:** Consent Calendar

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

**VOTE:** 8-0-0-0

3. **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. (Zoning: R-1(H), Single-Family Residential, Hillside Overlay District)

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

**Property Owner:** Christine Sheppard, P. O. Box 1007, Jamestown, ND 58402

**Appellant:** Joseph Wood of Hennefer, Finley & Wood, LLP, 425 California Street, San Francisco, CA 94104

**Continued From:** NONE

**Recommendation:** Continue Without Discussion to  
April 22, 2010

**Action:** Consent Calendar

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

**VOTE:** 8-0-0-0

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4. **2244 Dwight Way**

**Appeal of Administrative Use Permit #09-2000078** to construct a 3-story, 1,661-sq. ft. addition at the rear of an existing 2,668- sq. ft., 2-story duplex. (Zoning: R-4, MultiFamily Residential District)

**Applicant:** Charles Huddleston, 1305 Boulevard Way, Walnut Creek, CA 94595

**Property Owner:** Robert Cabrera, 23 Hillside Court, Berkeley, CA 94704

**Appellant:** Bob Viener, 2239 Blake Street, Berkeley, CA 94704

**Appellant:** Linda Bunden, 2520 Ellsworth Street, Berkeley, CA 94704

**Continued From:** NONE

**Recommendation:** Continue Without Discussion to  
April 22, 2010

**Action:** Consent Calendar

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

**VOTE:** 8-0-0-0

5. **2412 Stuart**

**Appeal of Administrative Use Permit #09-2000070** to eliminate one dwelling unit in a 3,070 square foot multi-family residential apartment building with five dwelling units. (Zoning: R-2, Restricted Two-Family Residential District)

**Applicant:** Mary Jennifer Friday, 2412 Stuart Street #1, Berkeley, CA 94705

**Appellant:** Anne Tamiko Omura, Esq. Executive Director Eviction Defense Center, A Nonprofit Law Corporation, 1611 Telegraph Avenue #726 Oakland, CA 94612

**Continued From:** NONE

**Recommendation:** AFFIRM the Zoning Officer's approval  
of the Administrative Use Permit, and  
dismiss the appeal

**Action:** Under Consent Calendar, set for  
hearing on May 13, 2010

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

**VOTE:** 8-0-0-0

6. **1634 62<sup>nd</sup> Street**

**Use Permit #10-1000016** to relocate a two-story former dwelling from UC Berkeley ("Cheney Cottage") to the front of this site, and move an existing dwelling on the site ("Delaney House") from the front to the rear, raising it 4 feet, 2 inches. (Zoning: R-2A, Restricted MultiFamily Residential District)

**Applicant/Architect:** Andus Brandt, 1818 Harmon St., Berkeley

**Property Owners:** Dmitri Belser & Tom White, 2024 Parker St., Berkeley

**Continued From:** NONE

**Recommendation:** Approve pursuant to Findings and  
Conditions

**Action:** Approved on Consent Calendar

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

**VOTE:** 8-0-0-0

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**7. 2926 Domingo**

**Use Permit #10-10000004** to establish a retail wine store with daily on-site wine tasting in an existing 1,300 square foot retail space. (Zoning: C-N, Neighborhood Commercial District)

**Applicant:** Jim Meyers/Wine Thieves, 542 Gabriel Court, Walnut Creek, CA 94597

**Continued From: NONE**

**Recommendation: Approve pursuant to Findings and Conditions**

**Action: Under Consent Calendar, continued to April 22, 2010 at applicant's request**

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

**VOTE: 8-0-0-0**

**New Public Hearings:**

**8. 2121 San Pablo**

**Use Permit # 10-10000011** to establish a full-service restaurant and bakery that serves beer and wine with meals and offers incidental retail food, beer and wine sales and incidental catering and wholesale of pastries with daily operating hours of 6 a.m. to midnight. (Zoning; C-W, West Berkeley Commercial District)

**Applicant:** Anja Voth, 1929 8th Street, Berkeley CA, 94710

**Property Owner:** Bruce and John Gordon, 2091 Rose Street, Berkeley CA, 94709

**Continued From: NONE**

**Number of Speakers: 2**

**Recommendation: Approve pursuant to Findings and Conditions, including reduced operating hours**

**Action: Continued to May 13, 2010 while the applicant discusses operating conditions with neighbors**

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

**VOTE: 8-0-0-0**

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**9. 2307-09 California**

**Use Permit #08-1000097** to renovate an existing one-story duplex, and construct a new, approximately 697-square-foot second story on a property that is non-conforming for residential density and setbacks. (Zoning: R-2, Restricted Two-Family Residential District)

**Applicant:** Edward Soos, 2303 California Street, Berkeley, CA 94703

**Continued From:** NONE  
**Number of Speakers: 2**                      **Recommendation:** Approve pursuant to Findings and Conditions  
**Action:** Continued to May 13, 2010 while the applicant revises architectural/design plans in discussion with neighbors  
**Motion:** B. Allen, G. Williams  
**VOTE:** 8-0-0-0

**10. 2928 Otis**

**Use Permit #09-1000076** to construct a three-story single-family dwelling with 2,534 square feet and a 4-foot rear setback behind an existing single-family dwelling on a 5,022.5 square-foot lot. (Zoning: R-4, MultiFamily Residential District)

**Applicant/Architect:** David Soffa, 2926 Otis St., Berkeley, CA 94704

**Property Owners:** David Soffa, Theresa Clarke, and Madeleine Clarke, 2926 Otis St., Berkeley, CA 94704

**Continued From:** NONE  
**Number of Speakers: 4**                      **Recommendation:** Review and direct applicant to make design modifications  
**Action:** By consensus, continued off calendar for applicant to make revisions in discussion with neighbors and in response to ZAB comments  
**Recused:** E. Mikiten

**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 9:35PM**

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

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### **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 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), 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

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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.