



Planning and
Development
Department
Land Use Planning
Division

Action Minutes

Zoning Adjustments Board

Thursday, April 22, 2010, 7:00 PM

City Council Chambers, 2134 Martin Luther King Junior Way, 2nd 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 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 Division

Roll Call: 7:12 PM

Present: J. Anthony, T. Clarke, G. Williams, B. Allen, D. Matthews, M. Cohen, S. Shumer, E. Mikiten

Substitutions: none

Absent / Excused: D. Koon

Public Attendance: 50

Number of Speakers: 38

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.

Zoning Adjustments Board ACTION MINUTES

Thursday, April 22, 2010

Page 2 of 9

- **E. Mikiten** – had a conversation with Ali Kashani as well as Linda Maio
- **S. Shumer** – visited 1006 Creston, talked with appellant regarding the impact to her views and looked out the respective windows
- **M. Cohen** – significant correspondence in group emails and conversations regarding 2926 Domingo
- **B. Allen** – conversations with residents of 1000 Creston and 1010 Creston, also spoke with immediately north resident of 35 Rock Lane
- **G. Williams** – spoke to applicant/resident of 35 Rock Lane as well as next-door neighbor
- **T. Clarke** – spoke with CityCentric’s Ali Kashani regarding Parker Place project
- **D. Matthews** – spoke with Ali Kashani regarding Parker Place project

Public Comment

Each Speaker is limited to a maximum of three minutes.

- **NONE**

Agenda Changes:

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

- **NONE**

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 04/08/2010 meeting
	Recommendation: APPROVE
	Action: APPROVED
	Vote: 6-0-2-1 (Abstain: T. Clarke, S. Shumer; Excused: D. Koon)

Zoning Adjustments Board ACTION MINUTES

Thursday, April 22, 2010

Page 3 of 9

2.	<p>651 Addison Street Use Permit Modification #10-70000002 to revise a mitigation measure regarding air quality required by Use Permit #07-10000057, within a project approved by the ZAB in 2009, for a mixed use development with 94 dwelling units, 1,100 square feet of general commercial floor area, and 1,484 square feet quick-service restaurant (with incidental sidewalk seating and the service of beer and wine with food). (Zoning; CW, Commercial West Berkeley)</p>
	<p>Applicant: Aquatic Park Enterprises LLC, 1600 Shattuck Avenue, Suite #216, Berkeley</p>
	<p>Continued From: April 8, 2010</p>
	<p>Recommendation: ADOPT the Addendum to the EIR; and APPROVE Use Permit Modification #10-70000002, to modify Use Permit #07-10000057</p>
	<p>Action: APPROVED Motion: J. Anthony, E. Mikiten Vote: 8-0-0-1 (Excused: D. Koon)</p>

3.	<p>700 University Avenue Use Permit Modification #10-70000001 to revise Condition #56 regarding air quality required by Use Permit #04-10000069, within a project approved by the ZAB in 2007 for a mixed use development with 171 dwelling units and 9,995 square feet of new commercial floor area. (Zoning: CW, Commercial West Berkeley)</p>
	<p>Applicant: Essex Property Trust, 925 East Meadow Drive, Palo Alto, CA 94303</p>
	<p>Continued From: None</p>
	<p>Recommendation: ADOPT the Addendum to the EIR; and APPROVE Use Permit Modification #10-70000001, to modify Use Permit #04-10000069</p>
	<p>Action: APPROVED Motion: J. Anthony, E. Mikiten Vote: 8-0-0-1 (Excused: D. Koon)</p>

Zoning Adjustments Board ACTION MINUTES

Thursday, April 22, 2010

Page 4 of 9

Compliance Determination:

4.	1421 Second Street		
	Use Permit #06-10000045: Performance Review Owner/Operator/Representative: Christina Chan, 1333 Second Street, Berkeley		
		Continued from:	March 11, 2010
		Recommendation:	Conduct workshop with OEHHA regarding health and air quality impacts of Pacific Steel Castings
	Number of Speakers: 5	Action:	Suggestions for staff: <ol style="list-style-type: none"> 1. Continue to track compliance with the Use Permits for the facilities 2. Bring the next annual report back for review, and post to the website, making the public aware of the report 3. Focus planning efforts on the needs of West Berkeley as funds become available

Appeal of Administrative Use Permit/Staff Level Design Review:

5.	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)		
	Applicant: Mark Anderson, AIA, Anderson Anderson Architecture, 90 Tehama Street, San Francisco Property Owner: Christine Sheppard, P. O. Box 1007, Jamestown, ND Appellant: Joseph Wood of Hennefer, Finley & Wood, LLP, 425 California Street, San Francisco		
		Continued From:	April 8, 2010
		Recommendation:	APPROVE project, upholding the Zoning Officer's decision with modified plans, and dismiss the appeals
	Number of Speakers: 8	Action: Motion: Vote:	CONTINUE off calendar with direction for design revisions B. Allen, J. Anthony 8-0-0-1 (Excused: D. Koon)

Zoning Adjustments Board ACTION MINUTES

Thursday, April 22, 2010

Page 5 of 9

6.	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)
	Applicant: Charles Huddleston, 1305 Boulevard Way, Walnut Creek Property Owner: Robert Cabrera, 23 Hillside Court, Berkeley Appellant: Bob Viener, 2239 Blake Street, Berkeley Appellant: Linda Bunden, 2520 Ellsworth Street, Berkeley
	Continued From: April 8, 2010
	Recommendation: APPROVE project, upholding the Zoning Officer's decision with modified plans, and dismiss the appeals
Number of Speakers: 4	Action: APPROVE with Zoning Officer's recommendations, with the addition of 10 bicycle parking spaces Motion: J. Anthony, G. Williams Vote: 7-1-0-1 (No: B. Allen; Excused: D. Koon)

7.	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)
	Applicant: Phillip Moss, 912 Santa Fe Avenue, Albany Appellant: Steven Rood, Esq., 405 14 th Street, Suite 212, Oakland for Iris X. Wang and JiangKang Liu, 43 Rock Lane, Berkeley Appellant: Margaret Paternek, 55 Rock Lane, Berkeley
	Continued From: April 8, 2010
	Recommendation: APPROVE project, upholding the Zoning Officer's decision, and dismiss the appeals
Number of Speakers: 7	Action: CONTINUE off calendar and hold a mediation with all concerned parties Motion: E. Mikiten, S. Shumer Vote: 8-0-0-1 (Excused: D. Koon)

Continued Items (Public Hearing has been closed):

- NONE

Zoning Adjustments Board ACTION MINUTES

Thursday, April 22, 2010

Page 6 of 9

Continued Public Hearings:

8.	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)
	Applicant: Jim Meyers/Wine Thieves, 542 Gabriel Court, Walnut Creek, CA 94597
	Continued From: April 8, 2010
	Recommendation: APPROVE pursuant to Findings and Conditions
Number of Speakers: 5	Action: APPROVED pursuant to conditions being worked out between staff and applicant re: beer sales and size/control of tasting area Motion: G. Williams, B. Allen Vote: 8-0-01 (Excused: D. Koon)

New Public Hearings:

9.	2004-6 Delaware Street Use Permit #09-10000052 to alter and raise a portion of the roof line on a duplex at a property that exceeds the maximum lot coverage standards for the district. (Zoning: R-2A Restricted Multiple Family Residential)
	Applicant: Sally Lang, Bliss design/build, 4132 Shafter Avenue, Oakland Property Owner: Sylvia Spengler, Oliver Goldschmidt and Francoise Sorgen Goldschmidt, 2006 Delaware Street, Berkeley
	Continued From: None
	Recommendation: APPROVE pursuant to Findings and Conditions
Number of Speakers: 1	Action: CONTINUE off calendar with direction for design revisions Motion: B. Allen, S. Shumer Vote: 8-0-0-1 (Excused: D. Koon)

Zoning Adjustments Board ACTION MINUTES

Thursday, April 22, 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

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

Zoning Adjustments Board ACTION MINUTES

Thursday, April 22, 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.