



Planning & Development  
Department  
Land Use Planning  
Division

# Action Minutes

## Zoning Adjustments Board THURSDAY, MAY 13, 2010, 7:00 PM

City Council Chambers, 2134 Martin Luther King Jr. Way, Second Floor  
Berkeley, CA 94704 (Wheelchair Accessible)

**How to Contact Us:** Land Use Planning Division (Attn: Steven Buckley, ZAB Secretary), 2120 Milvia Street, Berkeley, CA 94704; (510) 981-7410; [zab@ci.berkeley.ca.us](mailto:zab@ci.berkeley.ca.us)

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### **Roll Call: 7:12 PM**

**Present:** Deborah Matthews (Chairperson)  
Robert Allen (Vice-Chairperson)  
Jesse Anthony  
Teresa Clarke  
Elisa Mikiten  
Sara Shumer  
George Williams

**Excused:** Danfeng Koon; Michael Alvarez Cohen

**Substitutions:** Sophie Hahn for Danfeng Koon  
Molly Malone for Michael Alvarez Cohen

**Public Attendance: 56**

**Number of Speakers: 31**

### **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*

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*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**

**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 **04/22/2010** meeting

**Recommendation: APPROVE**

**Action: APPROVED**

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

**Vote: 9-0-0-0**

**2. 1600 Shattuck Avenue, Suite 100**

**Use Permit Modification #10-70000005** to Use Permits #9955, #A2007 and #A2148, to establish a café, provide 5 on-site parking spaces through a Joint Use Parking Agreement rather than 10 off-site spaces at 1665-67 Shattuck Avenue. (Zoning: C-NS, North Shattuck Commercial)

**Applicant:** David Shamszad, 6001 Shellmound St. #825, Emeryville, CA 94608

**Property Owner:** Daniel and Hilary Goldstine, 1749 Martin Luther King, Jr. Way, Berkeley, 94709

**Continued From:** April 22, 2010

**Recommendation:** APPROVE pursuant to Findings and subject to modified Conditions

**Action:** APPROVED

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

**VOTE:** 9-0-0-0

**3. 2307-09 California Street**

**Use Permit #08-10000097** 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:** October 8, 2009

**Recommendation:** Continue to June 10, 2010

**Action:** Continued to June 10, 2010

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

**VOTE:** 9-0-0-0

**Compliance Determination:**

- NONE

**Appeal of Administrative Use Permit/Staff Level Design Review:**

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- NONE

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

- NONE

**Continued Public Hearings:**

**4. 1625 Shattuck Avenue**

**Use Permit #08-1000047** to establish a new wireless facility for AT&T, including eight directional panel antennas and four equipment cabinets on the roof of an existing three-story building. (Zoning: C-NS, North Shattuck Commercial)

**Applicant:** AT&T c/o Shannon McDougall, Cortel LLC, 26 Stoneyford Avenue, San Francisco, CA 94112

**Property Owner:** Investor's LLC, 1625 Shattuck Avenue, Berkeley, CA 94709

**Continued From: October 8, 2009**

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

**Number of speakers: 6**

**Action: APPROVED**

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

**VOTE: 7-1-1-0 (No: J. Anthony; Abstain: S. Hahn)**

**5. 2121 San Pablo Avenue**

**Use Permit # 10-1000011** 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: April 8, 2010**

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

**Number of speakers: 10**

**Action: APPROVED** with incorporation of amended condition to limit hours per staff report and inclusion of an operation management plan as represented by the applicant

**Motion: B. Allen, J. Anthony**

**VOTE: 9-0-0-0**

**6. 1006 Creston Road**

**Administrative Use Permit #09-20000034** to construct a three-story, 3,049 gross square foot main dwelling with a 833 gross square foot, unfinished basement area. The average height of this building would be 25 feet and the maximum height would be 28-feet, 8 inches. Two off-street parking spaces would be provided within a carport to supply the parking for a main dwelling and an accessory dwelling unit (ADU). Above the new dwelling would be an open-air, 248 square foot, roof deck and an enclosed 220 square foot viewing room that would project above the roof. A lower floor, 640 gross square foot, accessory dwelling unit would be located within the western portion of the building, with access to be provided along the southern building elevation. (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 22, 2010

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

**Number of speakers:** 10

**Action:** APPROVED with the following conditions: green roof; rooftop vegetable garden of raised planter beds and pathways between the beds exceeding no more than four feet; no rooftop lighting; no rooftop solid railing – single pipe only; an exterior, uncovered, open-air staircase in a location to be determined by architect and applicant

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

**VOTE:** 9-0-0-0

**New Public Hearings:**

**7. 2412 Stuart Street**

**Appeal of Administrative Use Permit #09-20000070** to eliminate one dwelling unit in a 3,070 square foot multi-family residential apartment building with five dwelling units. (Zoning: Restricted Two-Family Residential (R-2) District)

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

**Appellant:** Anne Tamiko Omura, Esq., Eviction Defense Center, 1611 Telegraph Avenue # 726, Oakland, CA 94612

**Continued From:** April 8, 2010 – set for hearing

**Recommendation:** **AFFIRM** the Zoning Officer's decision to approve the project, subject to the Findings and Conditions

**Number of speakers: 2**

**Action:** **AFFIRMED** Zoning Officer's decision

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

**VOTE:** **5-4-0-0 (No: J. Anthony, G. Williams, S. Shumer, S. Hahn)**

**8. 2721 Shattuck Avenue**

**Use Permit #09-10000070** to co-locate a new T-Mobile wireless facility, including eight directional panel antennas and four equipment cabinets, on the roof of an existing four-story building (Zoning: C-SA, South Area Commercial District)

**Applicant:** T-Mobile c/o Dayna Aguirre, Sutro Consulting, 4166 Clarinbridge Circle, Dublin, CA 94568

**Property Owner:** 2721 Shattuck, LLC, 2116 Allston Way, Suite 1, Berkeley, CA 94704

**Continued From:** **NONE**

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

**Number of speakers: 2**

**Action:** **APPROVED**

**Motion:** **B. Allen, E. Mikiten**

**VOTE:** **8-1-0-0 (No: J. Anthony)**

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**9. 2400 Telegraph Avenue**

**Use Permit #10-100000013** to exceed the quota for Quick Service Restaurants in the Telegraph Commercial (C-T) District and establish a frozen yogurt shop in a 1,170 square foot, retail tenant space.

**Applicant:** Brady Thus, 502 Los Gatos Way, San Mateo, CA 94403

**Continued From:** NONE

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

**Number of speakers:** 3

**Action:** APPROVED

**Motion:** B. Allen, J. Anthony

**VOTE:** 7-0-2-0 (Abstain: G. Williams, S. Shumer)

**Additional Agenda Items:**

A. Information/Communication

- **Amended 2926 Domingo Findings and Conditions**

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 11:17PM**

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

### **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.
- 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)



### **Accessibility Information / ADA Disclaimer**

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

### **SB 343 Disclaimer**

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Permit Service Center, Planning and Development Department located at 2120 Milvia Street, Berkeley, during regular business hours.

### **Legal Notice Concerning Your Legal Rights**

If you object to a decision by the Zoning Adjustments Board regarding a land use permit 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.

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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 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.