



Planning & Development
Department
Land Use Planning
Division

Action Minutes

Zoning Adjustments Board

Thursday, June 24, 2010 7:00PM

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

Roll Call: 7:04

Present: J. Anthony, E. Kopelson, D. Stoloff, B. Allen, D. Matthews, M. Cohen, S. Shumer, T. Turman

Excused: G. Williams, D. Koon, E. Mikiten

Substitutions: D. Stoloff for G. Williams; T. Turman for E. Mikiten

Public Attendance: 17

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

Public Comment

Each Speaker is limited to a maximum of three minutes.

- ❑ NONE

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Agenda Changes

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

- **Items #2, #5, and #6 moved to Consent Calendar**

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 pm. The Board may place additional Agenda 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 06/10/10 meeting | | |
| | | Recommendation: | APPROVE |
| | | Action: | APPROVED |
| | | Motion: | M. Cohen, S. Shumer |
| | | VOTE: | 6-0-2-1 (Abstentions: J. Anthony, D. Stoloff; Excused/Absent: D. Koon) |

- **Items #2, #5, and #6 moved to Consent Calendar**

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Compliance Determination:

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| 2. | 2366 Pablo Avenue | Use Permit #8495 - Revocation of non-conforming abandoned drive-thru service window at existing food service establishment, under BMC Section 23C.04.030 (Zoning: RC-W, West Berkeley Commercial; Planner: Aaron Sage) |
| | | Applicant: Sally Lang, Bliss design/build, 4132 Shafter Avenue, Oakland, CA 94609 Owner: Sylvia Spengler, Oliver Goldschmidt and Francoise Sorgen Goldschmidt, 2006 Delaware Street, Berkeley |
| | | Continued From: NONE |
| | | Recommendation: ADOPT a resolution declaring Use Permit #8495 for a drive-thru service window to be terminated |
| | | Action: ADOPTED on Consent Calendar Motion: B. Allen, M. Cohen VOTE: 8-0-0-1 (Excused/Absent: D. Koon) |

Continued Public Hearings:

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| 3. | 2004-06 Delaware Street | Use Permit #09-1000052 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 District; Planner: Pamela Johnson) |
| | | Applicant: Sally Lang, Bliss design/build, 4132 Shafter Avenue, Oakland, CA 94609 Owner: Sylvia Spengler, Oliver Goldschmidt and Francoise Sorgen Goldschmidt, 2006 Delaware Street, Berkeley |
| | | Continued From: 04/22/10 |
| | | Recommendation: APPROVE revised design option 1, subject to Findings & Conditions |
| | Number of Speakers: 2 | Action: CONTINUED until July 22, 2010 Motion: S. Shumer, J. Anthony VOTE: 8-0-0-1 (Excused/Absent: D. Koon) |

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New Hearings:

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| 4. | 3206 College Avenue | <p>Use Permit #10-10000040 to establish a retail candy store with incidental gelato sales in an existing 1,517 square foot retail space. (Zoning: Neighborhood Commercial (C-N) District; Planner: Leif Bursell)</p> | | | | | | |
| | | <p>Applicant: Zoon Enterprises Inc. dba Powell's Sweet Shoppe, 2727 Lariat Lane, Walnut Creek, CA 94596 Owner: KB Properties/Brad Drury, P.O. Box 6456, San Rafael, CA, 94903</p> | | | | | | |
| | | <table border="0" style="width: 100%;"> <tr> <td style="width: 30%;">Continued From:</td> <td>NONE</td> </tr> <tr> <td>Recommendation:</td> <td>APPROVE subject to Findings & Conditions</td> </tr> </table> | Continued From: | NONE | Recommendation: | APPROVE subject to Findings & Conditions | | |
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| | Number of Speakers: 7 | <table border="0" style="width: 100%;"> <tr> <td style="width: 30%;">Action:</td> <td>APPROVED subject to Findings and Conditions</td> </tr> <tr> <td>Motion:</td> <td>B. Allen, J. Anthony</td> </tr> <tr> <td>VOTE:</td> <td>8-0-0-1 (Excused/Absent: D. Koon)</td> </tr> </table> | Action: | APPROVED subject to Findings and Conditions | Motion: | B. Allen, J. Anthony | VOTE: | 8-0-0-1 (Excused/Absent: D. Koon) |
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| 5. | 2140 McKinley Avenue | <p>Use Permit #09-10000095 to construct a three-story, 2,323 square foot, single-family dwelling, with an average height of 28'-7" on a 3,848 square foot parcel. (Zoning: R-2 Restricted Two-Family Residential District; Planner: Pamela Johnson)</p> | | | | | | |
| | | <p>Applicant: Stuart Wright c/o Studio Bergtraun Architects, 5500 Doyle Street, Emeryville, CA 94608 Owner: Jack and Lorraine Scanlin, 2005 Eagle Avenue, Alameda, CA 94501</p> | | | | | | |
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| 6. | 251 Tunnel Road Use Permit # 09-10000102 to establish a 21 car parking lot to be used by faculty and staff from the Bentley School. (Zoning: R-1(H) – Single-Family Residential, Hillside Overlay; Planner: Nathan Dahl) |
| | Applicant/Owner: Bentley School, 1 Hiller Drive, Oakland, CA 94618 |
| | Continued From: NONE |
| | Recommendation: APPROVE subject to Findings & Conditions |
| | Action: APPROVED on Consent Calendar Motion: B. Allen, M. Cohen VOTE: 8-0-0-1 (Excused/Absent: D. Koon) |

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 – Discussion of 2010 Downtown Plan Ballot Measure
- G. Future Council Hearings on ZAB decisions

Adjourn: 8:12PM

[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.

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- 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

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.
3. Pursuant to Code of Civil Procedure Section 1094.6(b), and 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.
4. 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.
5. 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.