



# Zoning Adjustments Board Agenda

Planning & Development Department  
Land Use Planning Division

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**Thursday, November 14, 2019 - 7:00 PM**

**Berkeley Unified School District Board Room, 1231 Addison Street, Berkeley**  
**(Wheelchair Accessible)**

## **Zoning Adjustment Board Members:**

**Igor Tregub**, appointed by Mayor Arreguin

**Teresa Clarke**, appointed by District 1 (Councilmember Kesarwani)

**Patrick Sheahan**, appointed by District 2 (Councilmember Davila)

**John Selawsky**, appointed by District 3 (Councilmember Bartlett)

**Carrie Olson**, appointed by District 4 (Councilmember Harrison)

**Shoshana O'Keefe (Chairperson)**, appointed by District 5 (Councilmember Hahn)

**Charles Kahn**, appointed by District 6 (Councilmember Wengraf)

**Dohee Kim**, appointed by District 7 (Councilmember Robinson)

**Denise Pinkston (Vice Chairperson)**, appointed by District 8 (Councilmember Droste)

## **Public Testimony Guidelines**

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. The Board Chairperson may limit the number of speakers and the length of time allowed to each speaker. To speak at a public hearing, please submit a speaker card to Planning Staff as early as possible at the meeting.

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 e-mail in advance of the meeting. See **Supplemental Communications and Reports** at the end of this Agenda for procedures.

**How to Contact Us:** Land Use Planning Division, Attn: Greg Powell, (510) 981-7410, (Zoning Adjustments Board Secretary), 1947 Center Street, 2<sup>nd</sup> Floor, Berkeley, CA 94704; [zab@cityofberkeley.info](mailto:zab@cityofberkeley.info).

## **Preliminary Matters**

### **Roll Call**

### **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, the substance of the communication they must be disclosed to all interested parties in advance of any public hearing or testimony to allow rebuttal. Written ex parte communications must be forwarded to the Secretary so that they can be disclosed to the entire Board and the public.

## Preliminary Matters (Continued)

### Public Comment on Non-Agenda Matters

Each Speaker is limited to a maximum of three minutes.

### Agenda Changes

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

## Consent Calendar

The Consent Calendar allows the Board to take action, without discussion, on Agenda items for which there are no persons present who wish to speak, and no Board members who wish to discuss. The Consent Calendar may include four types of 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 will be postponed to another meeting);
- (4) Applications that were withdrawn by the applicant after release of the Agenda; and
- (5) Items noticed for public hearing which the Board decides to move to the Consent Calendar.

The Board Chairperson will announce any additional items proposed for the Consent Calendar at approximately 7:05 PM. Anyone present who wishes to speak on these items should raise his or her hand and advise the Chairperson, and the item(s) will be pulled from the Consent Calendar.

### 1. Approval of 2020 ZAB Meeting Schedule

**Recommendation: Consider draft 2020 ZAB meeting dates**

### 2. Approval of Action Minutes from October 24, 2019

**Recommendation: APPROVE**

### 3. 2528-B Durant Avenue – Continued from October 10, 2019 and September 26, 2019

**Application:** Use Permit #ZP2019-0079, to add the service of distilled spirits incidental to an existing 2,340-sq. ft. food service establishment (Taco Bell).

**Zoning:** C-T – Telegraph Avenue Commercial

**CEQA** Categorically exempt pursuant to Section 15301 of the CEQA Guidelines

**Determination:** ("Existing Facilities").

**Applicant:** Jinglebells LLC, 6500 Dublin Blvd., Suite 200F, Dublin

**Owner:** Ruegg and Ellsworth, 2437 Durant Ave, Suite 204, Berkeley

**Staff Planner:** Jim Frank, [jfrank@cityofberkeley.info](mailto:jfrank@cityofberkeley.info), (510) 981-7548

**Recommendation: Continue Off Calendar.**

## Consent Calendar (continued)

### 4. [3020 College Avenue](#) – New Public Hearing

**Application:** Use Permit #ZP2019-0093, to expand an existing 3,902 sq. ft., 3-story residential building and alter a 4,800-sq. ft. residential parcel that exceeds the maximum density, with 5 existing dwelling units where 3 are permitted in the R-2A District, by: 1) altering the roofline at the second story to construct a 50 -sq. ft. residential addition to expand the existing first and second story; and 2) creating a 142-sq. ft. roof deck with a height of 16'-11" to the top of the railing.

**Zoning:** R-2A – Restricted Multiple-Family Residential

**CEQA** Categorically exempt pursuant to Section 15301 (“Existing Facilities”) and

**Determination:** Section 15332 (“In-Fill Development Projects) of the CEQA Guidelines.

**Applicant:** Steve Swearngen, 825 Page Street, Suite 203, Berkeley; Pamela Jackson, 3020 College #5, Berkeley

**Owner:** Anthony Jackson, 3020 College #1, Berkeley; and David and Babette Jackson, 2633 Ellsworth Street, Berkeley

**Staff Planner:** Ashley James, [ajames@cityofberkeley.info](mailto:ajames@cityofberkeley.info), (510) 981-7458

**Recommendation:** **APPROVE** Use Permit #ZP2019-0093 pursuant to BMC Section 23B.32.030.

### 5. [2348 Hilgard Avenue](#) – New Public Hearing

**Application:** Use Permit #ZP2019-0126, to allow the construction of a 25-sq. ft. ground floor addition on a property that is non-conforming for lot coverage.

**Zoning:** R-3 (H) – Multiple-Family Residential, Hillside Overlay

**CEQA** Categorically exempt pursuant to Section 15301 of the CEQA Guidelines

**Determination:** (“Existing Facilities”).

**Applicant:** Allen Chung Kuo & Weiqi Zheng, 807 Key Route Blvd., Albany

**Owner:** Same

**Staff Planner:** Leslie Mendez, [lmendez@cityofberkeley.info](mailto:lmendez@cityofberkeley.info), (510) 981-7426

**Recommendation:** **APPROVE** Use Permit #ZP2019-0126 pursuant to Section 23B.32.030.

### 6. [2431 Fifth Street/2424 Sixth Street](#) – New Public Hearing

**Application:** Use Permit #ZP2019-0134, to 1) convert an existing 31,420-sq. ft. building from two tenant spaces to three; and 2) establish a 10,803-sq. ft. light manufacturing use and a 2,502 square-foot wholesale trade use in two of the three tenant spaces.

**Zoning:** MU-R – Mixed Use – Residential

**CEQA** Categorically exempt pursuant to Section 15301 of the CEQA Guidelines

**Determination:** (“Existing Facilities”).

**Applicant:** Ezra Malmuth, 1636 California Street, Berkeley

**Owner:** Tom Wolfman – Trustee Wolfman Family Trust, 236 Sundown Terrace, Orinda

**Contract Planner:** Abe Leider of Rincon Consultants, [aleider@rinconconsultants.com](mailto:aleider@rinconconsultants.com), (510) 671-0175

**Staff Planner:** Leslie Mendez, [lmendez@cityofberkeley.info](mailto:lmendez@cityofberkeley.info), (510) 981-7426

**Recommendation:** **APPROVE** Use Permit #ZP2019-0134 pursuant to Section 23B.32.030.

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### Action Calendar:

The public may comment on each item listed on the agenda for action as the item is taken up. The Board Chairperson may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue. Action items may be reordered at the discretion of the Board Chairperson with the consent of Zoning Adjustments Board.

#### 7. [2128 Ward Street](#) – New Public Hearing

**Application:** Use Permit #ZP2018-0237, to add a 2-story, 2,567-sq. ft. duplex on a 10,088-sq. ft. lot, with an existing 2-story, 2,697-sq. ft. duplex; and 1) reduce the required building separation between the two main buildings; and 2), allow the 4 required parking spaces in the rear yard.

**Zoning:** R-2 – Restricted Two-Family Residential

**CEQA Determination:** Categorically exempt pursuant to Sections 15303 and 15332 of the CEQA Guidelines (“New Construction or Conversion of Small Structures” and “In-Fill Development Projects”).

**Applicant:** Maurice Levitch, Levitch Associates, 1029 Heinz Avenue, Berkeley

**Owner:** Suzanne Masuret, 5690 Ocean View Drive, Oakland

**Staff Planner:** Allison Riemer, [ariemer@cityofberkeley.info](mailto:ariemer@cityofberkeley.info), (510) 981-7433

**Recommendation:** **APPROVE** Use Permit #ZP2018-0237 pursuant to Section 23B.32.030.

#### 8. [1312 Josephine Street](#) – New Public Hearing

**Application:** Use Permit/Variance #ZP2019-0065, to 1) legalize the construction of a 65-sq. ft. balcony and sliding glass door within the required rear yard of an existing 3-story, 8-unit, 5,796-sq. ft. building on a 6,750-sq. ft. parcel; and 2) increase lot coverage from 49.5% to 50.5%, where 35% is the maximum allowed.

**Zoning:** R-2 – Restricted Two-Family Residential

**CEQA Determination:** Categorically exempt pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).

**Applicant:** Herand M. DerSarkissian, 520 E. Glenoaks Blvd., Suite D, Glendale

**Owner:** Same

**Staff Planner:** Annelise Dohrer, [adohrer@cityofberkeley.info](mailto:adohrer@cityofberkeley.info), (510) 981-7425

**Recommendation:** **DENY** Use Permit #ZP2019-0065.

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### Project Preview:

Public meeting to solicit input and comments from the Zoning Adjustments Board, the general public and other interested parties. No action will be taken.

### 9. [2099 Martin Luther King Jr. Way](#) – New Public Hearing

**Application:** **Project Preview for Use Permit #ZP2019-0081**, to demolish an existing one story 3,595-sq. ft. auto service building and construct a 62,419 sq. ft., 7-story, 69-ft. tall, mixed-use building with 72 dwellings (including 5 dwellings available to very low income households), and 2,448 sq. ft. of ground floor retail space. The project would provide 12 parking spaces and secure storage for 38 bicycles within a grade level garage.

**Zoning:** C-DMU – Downtown Mixed-Use

**CEQA** Studies are currently being prepared to evaluate the project's potential environmental impacts prior to making a CEQA determination.

**Determination:**

**Applicant:** 2099 MLK LLC, 95 Federal Street, Suite D, San Francisco

**Owner:** Thompson Trust, 1639 Bowling Lane, San Jose

**Staff Planner:** Loyal Nawfal, [lnawfal@cityofberkeley.info](mailto:lnawfal@cityofberkeley.info), (510) 981-7424

**Recommendation:** **Hold a public hearing and provide advisory comments.**

### Subcommittee Reports:

- **Joint Subcommittee for the Implementation of State Housing Laws (JSISHL)**  
[https://www.cityofberkeley.info/Clerk/Commissions/Joint\\_Subcommittee\\_for\\_the\\_Implementation\\_of\\_State\\_Housing\\_Laws\\_Homepage.aspx](https://www.cityofberkeley.info/Clerk/Commissions/Joint_Subcommittee_for_the_Implementation_of_State_Housing_Laws_Homepage.aspx)
- **Design Review Committee (DRC)**  
<https://www.cityofberkeley.info/designreview/>

### Communications

All communications submitted to Zoning Adjustments Board are public record and are for information only. Other than referring an item to the Secretary for investigation and/or recommendations, no action may be taken in response any non-agenda communication.

### Adjourn

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### **Communications Disclaimer**

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.



### **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 981-6418 (V) or 981-6347 (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 1947 Center Street, Berkeley, during regular business hours.

### **Communications and Reports:**

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: [zab@cityofberkeley.info](mailto:zab@cityofberkeley.info). All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://www.cityofberkeley.info/zoningadjustmentboard/>.

**Correspondence received by 8:00 AM, on the Thursday before this public hearing, will be provided with the agenda materials provided to the Board.** Note that if you submit a document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by Noon Tuesday**, the week of this public hearing, will be conveyed to the Board in Supplemental Communications and Reports #1, which is released the end of the day Tuesday, two days before the public hearing;
- **Correspondence received by Noon Wednesday**, the week of this public hearing, will be conveyed to the Board in Supplemental Communications and Reports #2, which is released the end of the day Wednesday, one day before the public hearing; or
- **Correspondence received by 3 PM Thursday** will be given to the Zoning Adjustment Board just prior to the public hearing.

### **Notice of Decision Requests**

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at [zab@cityofberkeley.info](mailto:zab@cityofberkeley.info).

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### **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 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.

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