



# Z O N I N G A D J U S T M E N T S B O A R D M E E T I N G A G E N D A

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**Thursday, February 23, 2023 - 7:00 PM**

## **Zoning Adjustment Board Members**

**Igor Tregub**, appointed by Mayor Arreguin

**Yes Duffy**, appointed by District 1 (Councilmember Kesarwani)

**Kimberly Gaffney**, appointed by District 2 (Councilmember Taplin)

**Michael Thompson**, appointed by District 3 (Councilmember Bartlett)

**Cecilia Lunaparra**, appointed by District 4 (Councilmember Harrison)

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

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

**Brandon Yung**, District 7 (Councilmember Robinson)

**Debra Sanderson**, appointed by District 8 (Councilmember Humbert)

**PUBLIC ADVISORY:** THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Zoning Adjustments Board (ZAB) will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

**To access the meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device: Please use this <https://us06web.zoom.us/j/83676641171> If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

**To join by phone:** Dial **US: +1 669 900 6833 or +1 669 444 9171** and enter Meeting ID 836 7664 1171. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.

Please be mindful that the teleconference will be recorded as any ZAB meeting is recorded, and all other rules of procedure and decorum will apply for ZAB meetings conducted by teleconference or videoconference.

## **Public Testimony Guidelines**

All persons are welcome to attend the virtual hearing and will be given an opportunity to address

the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

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 be present 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: Samantha Updegrave, (510) 981-7414, (Zoning Adjustments Board Secretary), 1947 Center Street, 2<sup>nd</sup> Floor, Berkeley, CA 94704; [zab@cityofberkeley.info](mailto:zab@cityofberkeley.info).

### **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 to any non-agenda communication.

### **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 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.

#### **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 and heard at this meeting.

**1. Approval of Action Minutes from February 9, 2023**  
**Recommendation: APPROVE**

**2. [2439 Durant Avenue](#) – New Public Hearing**

<b>Application:</b>	<b>Use Permit #ZP2021-0192 to demolish a two-story commercial building and construct a 36,529 square-foot 7-story mixed-use building with 22 dwelling units and a roof deck, and establish an entertainment use with the service of distilled spirits.</b>
<b>Zoning:</b>	C-T Telegraph Avenue Commercial District
<b>CEQA Recommendation:</b>	Categorically exempt pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development Projects”).
<b>Applicant:</b>	Austin Springer, Studio KDA, 1810 Sixth Street, Berkeley, CA
<b>Owner:</b>	Fortuneworld Inc., c/o Wilson Wong, 200 Creedon Circle, Alameda, CA
<b>Staff Planner:</b>	Allison Riemer <a href="mailto:ariemer@cityofberkeley.info">ariemer@cityofberkeley.info</a> , (510) 981-7433
<b>Recommendation:</b>	<b>CONTINUE</b> Use Permit #ZP2022-0192 pursuant to BMC Section 23.406.040 to a date certain, April 27, 2023

**3. [1337-39 Hearst Street](#) – New Public Hearing**

<b>Application:</b>	<b>Use Permit #ZP2021-0160 to construct a major residential addition by lifting the existing duplex at 1337-39 Hearst Avenue on a lot that exceeds residential density.</b>
<b>Zoning:</b>	R-2 Restricted Two-Family Residential District
<b>CEQA Recommendation:</b>	Categorically exempt pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).
<b>Applicant/Owner:</b>	Allyson Noman, 1339 Hearst Avenue, Berkeley
<b>Staff Planner:</b>	Nilu Karimzadegan, <a href="mailto:nkarimzadegan@cityofberkeley.info">nkarimzadegan@cityofberkeley.info</a> , (510) 981-7430
<b>Recommendation:</b>	<b>APPROVE</b> Use Permit #ZP2021-0160 pursuant to BMC Section 23.406.040

#### 4. [2930 College Avenue](#) – New Public Hearing

<b>Application:</b>	<b>Use Permit #ZP2022-0139 to add the service of distilled spirits under a new Type 47 ABC license, expand the existing outdoor seating area by 239 square feet on private property, and allow indoor unamplified live music at an existing full-service restaurant.</b>
<b>Zoning:</b>	C-E Elmwood Commercial District
<b>CEQA Recommendation:</b>	Categorically exempt pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).
<b>Applicant:</b>	RM Ventures LLC (In the Wood) 2930 College Avenue Berkeley
<b>Owner:</b>	John and Molly Gordon, 2091 Rose Street, Berkeley
<b>Staff Planner:</b>	Russell Roe, rroe@cityofberkeley.info, (510) 981-7548
<b>Recommendation:</b>	<b>APPROVE</b> Use Permit #ZP2022-0139 pursuant to 23.406.040

#### 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 the Zoning Adjustments Board.

#### Subcommittee Reports

- **Design Review Committee (DRC)**  
<https://www.cityofberkeley.info/designreview/>

#### Staff Communications

- [Land Acknowledgement](#) – Discuss the October 21, 2022 memorandum on the Land Acknowledgement Statement Resolution from the City Council, and consider the inclusion of the Land Acknowledgement in ZAB meeting practices.
- [Health and Safety Protocols for In-Person Meetings](#) – City of Berkeley policy for in-person meetings of Boards and Commissions held in accordance with the Government Code (Brown Act) after the end of the State-declared emergency on February 28, 2023.

#### Elections

- **Elections of Chair and Vice Chair at the February 23, 2023 meeting.**  
See pages 35 – 40 of the [City of Berkeley Commissioner's Manual - 2019 Edition](#) for regulations for officer elections, required training, and officer duties:

Table 1: ZAB Chair and Vice Chair by Year, February 2017 – Present

<b>Dates</b>	<b>Chair</b>	<b>Vice-Chair</b>
February 2022 - February 2023	Charles Kahn	Shoshana O’Keefe
February 2021 - February 2022	Charles Kahn	Shoshana O’Keefe
February 2020 - February 2021	Shoshana O’Keefe	Charles Kahn
February 2019 - February 2020	Shoshana O’Keefe	Denise Pinkston
February 2018 - February 2019	Igor Tregub	Denise Pinkston
February 2017 - February 2018	Igor Tregub	Denise Pinkston

**Adjourn**



**Accessibility Information / ADA Disclaimer**

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.

**SB 343 Disclaimer**

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division ([zab@cityofberkeley.info](mailto:zab@cityofberkeley.info)) to request hard-copies or electronic copies.

**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.

**Supplemental Communications and Reports**

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), 1947 Center Street, Second Floor, Berkeley CA 94704, 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 5:00 PM eight days before this public hearing will be provided with the agenda materials provided to the Board.** Note that if you submit a hard copy 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 5:00 PM two days before this public hearing will be conveyed to the Board in a Supplemental Communications and Reports, which is released**

around noon one day before the public hearing.

- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

It will not be possible to submit written comments at the meeting.

### **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).

### **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.
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; and
  - 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.