

Topic: Alternative Dispute Resolution
Resource Type: Regulations
State: California
Jurisdiction Type: Municipality
Jurisdiction: City of Berkeley
Year (*adopted, written, etc.*): 1999
Community Type – applicable to: Urban; Suburban
Title: City of Berkeley Planning and Development Procedures – Alternative Dispute Resolution Provision
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Abstract

During the Zoning Board application process, the Board may direct the parties to mediate a dispute over the proposed land use. The Board or Zoning Officer will direct the mediator as to which issues are to be addressed, and the mediator will submit a report to the Board or Zoning Officer within 45 days of the mediation. This mediation is voluntary and non-binding.

Resource

Title 22. Planning and Development Procedures
Sub-title 23B. Ordinance Administration
23B.16 Use of Conflict Resolution or Mediation Service
23B.16.010 Conflict Resolution and Mediation

The Zoning Adjustments Board or the Zoning Officer may refer an applicant and other persons affected by a pending application to a conflict resolution or mediation service which has been deemed acceptable by the Board. The purpose of such referral shall be to resolve conflicts between these parties, but the results thereof shall not bind the Board or the Zoning Officer to any result. A referral may be made either before or after a public hearing on a pending Permit decision, but only after an application is deemed complete by the Zoning Officer. Nothing in this Chapter shall preclude the parties from meeting on their own at any time, with or without a mediator, in an attempt to resolve their differences. It is the policy of the City to encourage applicants and neighbors to have early discussions on proposed projects so that differences may be resolved prior to the submission of an application. (Ord. 6478-NS § 4 (part), 1999)

23B.16.020 Rules and Expectations of the Conflict Resolution/ Mediation Process

Mediation and conflict resolution shall be conducted in accordance with the following provisions, a copy of which shall be made available to participating parties, prior to beginning the process.

- A. The goal of mediation is to seek a mutually agreeable result for the pending application.
- B. Participation for the applicant and others parties is strictly voluntary.
- C. All participants shall be made aware that there is no need to come to an agreement.
- D. The Board or Zoning Officer shall direct the mediator as to what issues are to be addressed in the mediation process; the mediator may ask the Board or the Zoning Officer for a clarification of these issues from time to time.
- E. City Staff will be available to provide the mediating parties with information on rights and requirements prescribed by the Ordinance.
- F. The mediation service will provide the Board or the Zoning Officer with a report as to the result of the mediation within forty-five (45) days of the referral.
- G. If no agreement between the parties is reached within forty-five (45) days, or at any time that the mediator indicates that further meetings between parties is futile, the Board or Zoning Officer shall take up the matter themselves, except that if the parties to the mediation/conflict resolution agree to continue the mediation process, it may be extended for an additional time period not to exceed forty-five (45) days. Unless the applicant expressly waives his or her rights thereunder in conformance with law, in no case shall the time periods for mediation cause the application review period to exceed the time limits prescribed by State law.
- H. Participants in mediation should be aware that the Board cannot deny applicants the opportunity to develop their properties in a reasonable manner. The Ordinance requires that a project must meet all minimum Ordinance requirements and any other applicable City Ordinances and regulations.
- I. Results of the mediation will in no way be binding upon the Board, and the Board may approve, deny or modify any aspect of any mediated agreement.
- J. A participant who has indicated either agreement or disagreement with the results of a mediation is in no way bound by his or her decision, but may change his or her mind after the mediation.
- K. Participation in a mediated meeting, or agreement with the results of a mediation, affects in no way the statutory right of any party to appeal the Board decision to the Council.
- L. Only those aspects of a mediated agreement that are either incorporated into the approved plans of a project, or are made conditions of a Use Permit or Variance, shall be enforceable by the City.

(Ord. 6478-NS § 4 (part), 1999)