

**DRAFT MINUTES**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**  
**JANUARY 12, 2022**

**REGULAR MEETING: 1:30 p.m.**

The Chair welcomed everyone to the virtual meeting. She gave instructions on how to participate in the Zoom meeting by calling in.

**MEMBERS PRESENT:** Dawn Clark-Montenegro, Chair; Lewis, Vice-Chair, Members Seibert, and Voves.

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Planning staff: Rodrigo Orduña, Christine Greene, Michael Flemming, William Chin, Ed Labayog, Holly Felix, Juan C. Martinez and Jazmin Sanchez, Recording Secretary. Heather Littlejohn, County Counsel.

**CALL TO ORDER:** *The meeting was called to order by the Chair at 1:30 p.m.*

**CONSENT CALENDAR:**

**Adopt Findings Authorizing Remote Teleconference Meetings for the West County Board of Zoning Adjustments - ACTION ITEM -** Staff Recommendation: Adopt the findings that the board meetings will be held by teleconference in accordance with the Brown Act, due to state and local measures to promote social distancing.

Member Spalding moved to adopt the consent calendar. Vice-Chair Lewis seconded the motion.

Rodrigo Orduña conducted the roll call. *Yeas: Chair Clark, Vice-Chair Lewis, Members Voves, Spalding and Seibert. Motion passed 5/0*

**ANNOUNCEMENTS BY THE CHAIR:** None

**Tobacco Retailer Regulations Administrative Hearings** – None

**Neighborhood Preservation and Zoning Ordinance Abatement Hearings** – The Chair read the instructions for the Neighborhood Preservation Abatement hearings.

**20600 Garden Avenue, Hayward, CA 94541, APN#: 432-0008-016-03** - Hearing regarding violations of Alameda County Neighborhood Preservation Ordinance Section 6.65.030 A(1, 12) & B(6), based upon accumulation of trash, debris, abandoned, discarded, or dilapidated objects on the property and obstruction of the public sidewalk area. Staff recommendation is to declare the property in violation of the Alameda County Neighborhood Preservation Ordinance, a public nuisance, and require abatement of the violations at the property.

Juan Carlos Martinez presented the report. Property is not vacant. Staff recommends that the property be declared in violation of Alameda County Neighborhood Preservation Ordinance and therefore a public nuisance and require abatement within ten days and or commence assessing fines and fees.

Vice-Chair Lewis asked if this is owner occupied. Staff said yes. The Chair asked about the big truck and is it associated with the property. Staff said it is believed that the owner brings items to the property. She asked if the property owner explained why this keeps happening. The items that have value will not be removed. Staff said tools and items that can be used will stay. The Chair said for example the big fountain in the front yard. Staff said it will stay. Member Spalding spoke on the items in the front yard and asked if some of these items are in the backyard. Staff said these items are in the front and side yard. He said they have explained to the property owner that plants and landscape items may stay but other items will have to be removed and also items on the sidewalk.

Public comment was open.

The property owner said she did not place the items on the street. She asked for an extension to clean the property. Member Spalding asked if she is the property owner and if she needs more time to clean up. The property owner said she removed some of the garbage but she is not finished. The Vice-Chair asked who is bringing all this stuff to the property. She said her husband.

Public comment was closed.

Member Spalding said the property owner is asking for more time. She asked for staff's opinion. Staff said the case has been open since October and it seems that there has not been any improvement. Some of the items were moved to the sidewalk and then moved back to the property. Basically, there has been no progress. The Chair said looking at the photos from October to December it seems that it has gotten worse. Member Voves said with the weather improving they should be able to catch up. Member Spalding said with waste management pick up it should help and hope that Code Enforcement informs them of the bulky pick up. Staff said they discussed other options with the owner. The Chair asked if the dog is in good condition or should animal control do an inspection. Staff said the dog seems to be okay. He seems to have enough space in the front yard and move around. The Chair said the property owner mentioned giving the dog to the police so she wanted to make sure the dog is okay. Staff is recommending ten days. She asked board members for regarding the timeframe. Member Spalding said to add five to ten days for motivation. Vice-Chair Lewis said the bulky pick-up day could take longer to schedule. Member Spalding said the extension would total thirty days. Discussion ensued on scheduling with waste management. Member Seibert said they should not depend only on Waste Management, they have a truck. Member Spalding said WM is free and the dumps is costly.

Member Spalding moved to declare the property located at 20600 Garden Avenue a nuisance and in violation of the Neighborhood Preservation Ordinance and require the owner to abate the property within thirty days and commence fines and fees after the thirty days. Vice-Chair Lewis seconded the motion.

Rodrigo Orduña conducted the roll call. *Yeas: Chair Clark, Vice-Chair Lewis, Members Voves, Spalding and Seibert. Motion passed 5/0*

**22319 Meekland Ave, Hayward, unincorporated area of Alameda County, designated Assessor's Parcel Number: 429-0086-008-00** - Hearing regarding violations of the Alameda County Zoning Ordinance Section 17.44.030 and 17.44.040 based upon: Outdoor storage is not a permitted use without a valid Conditional Use Permit (CUP) in a M-1 Zoning District. Staff recommendation is to declare the property in violation of the Zoning Ordinance, a public nuisance and commence fines and fees.

Holly Felix presented the report. Staff recommends that the board declare the property in violation of the Alameda County Zoning Ordinance and therefore a public nuisance and require abatement. Remove all outdoor storage or submit an application for a conditional use permit within thirty days and obtain approval and also commence fines and fees.

Ed Labayog spoke on M-1 Light Industrial zoning and conditional uses allowed once approved by the West County Board of Zoning Adjustments. The property owner said they have a conditional use permit. This business is an outdoor storage of equipment and they need to have a conditional use permit. They do not have one right now. The form the property owner presented is used to obtain a business license and not for a conditional use permit.

Vice-Chair Lewis asked if the form is only for outdoor storage and not repair. Rodrigo Orduña said any of the permitted uses need to be conducted within an enclosed building. Any business conducted on the property needs to be conducted inside a building. For storage, if conducted outside, it needs a conditional use permit. Discussion ensued on requirements for a conditional use permit, the type of business being conducted on the site and code section. Member Voves asked if the previous violation was about outdoor storage. Ed Labayog said it was trash and debris. The Chair asked about the permit that was included with the report. Rodrigo Orduña said it is a certification or zoning affidavit for the business license. The Chair said the sections that Mr. Tarbel filled out on the form says the business is permitted. Rodrigo said yes, it is a permitted business, the zoning ordinance says any business needs to be conducted in an enclosed building. The Chair asked why wasn't there more follow up by the planner. The form is signed and stamped. She asked about the floor area of the buildings and what is considered outdoor storage. Ed Labayog said all of it. Member Spalding said the way the ordinance reads is very ambiguous. This is zoned industrial. Does everything have to be conducted inside a building and no outside storage. It looks like it is a salvage yard. She asked the property owner where is the bumper business conducted? The Chair said she is looking at the form, it says it is a permitted use, there are no other requirements and it is signed by the planner and approved as to zoning.

Public comment was open.

Mr. Soares said he hopes that Mr. Orduña sent the board members his e-mail. He attempted to contact the board members directly and was told that it would have to be done thru Mr. Orduña. They feel they were treated unfairly by Code Enforcement throughout this process. He just hopes they will not be blindsided with additional issues not specific to the citation, the outdoor storage and nothing more. Any additional issues, he asked the board to ask code enforcement to follow protocols and guidelines they have established and put all questions in writing. He is certain that Mr. Orduña and Mr. Labayog have a personal vendetta against them and they are prepared to deal with that as a separate legal issue. It was obvious at the last hearing that Mr. Labayog had enlisted the help of someone from the Historical Society to speak during the public comment.

Nowhere in the past had this issue been brought up during code enforcement inspections. This issue was not listed on the agenda but Mr. Labayog was well versed on the issue. Since the last hearing another department contacted us regarding another business that has not existed for over 20 years. Another attempt of enlisting another department. At the last meeting we raised the virtual hand and were never given a chance to speak. We were at the mercy of Mr. Orduña to be allowed to speak. Given what happened at the last hearing and the vendetta that is being carried out we ask that Mr. Orduña and Mr. Labayog not be involved at this hearing. He also asked that once the public comment is closed please ask us if we have any additional information.

Member Spalding asked what kind of business is being conducted on this property. Mr. Soares said it is a bumper repair business and it is being conducted inside the building. Member Spalding said there are a lot of bumpers in the back. Will those be moved or are they waiting to be fixed. Mr. Soares said they are waiting to be fixed and Mr. Moran needs to have inventory. Member Spalding asked if the tenant is the one that applied for the permit in 2013. Vice-Chair Lewis said the permit is for Ruben Moran. Member Spalding asked who is Ruben Moran. Member Soares said he is the present tenant. Member Spalding asked if Mr. Moran is present. Member Soares said no. Member Spalding said this looks like a salvage yard. Member Soares said this is not a salvage yard. A salvage yard takes cars apart. The permit was issued within the zoning. Member Spalding said the permit is simply a zoning clearance for the business license. The zoning is M-1. The use is permitted but not conditionally permitted. It has to be conducted inside a building. Member Soares said the walls around the property are cement walls. Member Spalding asked if the solid cement walls qualify. Rodrigo Orduna said if the argument is that storing within the enclosed fence, it still needs a conditional use permit. If manufacturing, assembling, wholesale storage is being conducted inside a building, then it is a permitted use. Staff looks at the use, the storage of the bumpers is conducted outside of the building. Member Spalding argued that it is part of the business being conducted inside the building.

Member Soares said there are a lot of uses on Meekland that have outside storage. Mr. Manuel Soares said he wishes that Mr. Labayog would not use the County to hold personal vendettas. They have dealt in good faith, but Mr. Labayog always comes up with other stuff and brought other departments and that shows how dirty of a game he plays.

Vice-Chair Lewis said she recalls that at the last meeting Manuel Soares was running the bumper business and Mr. Moran is running the bumper repair. Mr. Soares responded that Mr. Moran is the tenant and conducting the business. Member Seibert asked if at this time the board is trying to decide if Mr. Soares needs a conditional use permit. Does the business owner need to apply? Member Spalding said that is a different issue. She asked for the first name of Mr. Soares. He said his first name is Daniel, son of Mr. Manuel Soares.

Mr. Daniel Soares said he thought initially everything was in good standing. Did everything that was asked and cooperated with Mr. Mayfield. Did not know that he did not close the case. Any reasonable person would know that it was okay, but here we are today facing fines. The case started in 2014. Mr. Mayfield contacted us and he was given the permit and then he said everything was fine.

Tyler Dragoni said he is a resident of the area and he is on Meekland just about every single day. Very familiar territory for him. Was this back in 2013 packed to the gills like it is now. This is a decade in the making. The job of this board is to protect the health and safety and welfare of the surrounding community. Anyone looking at it, knows that this is incorrectly zoned. Whether or not this is in violation, this is a detriment to the community. Millions of dollars were spent on the street landscape. All of this to have at least two violations on this million dollar tax payer sidewalk. This is very clear, this outdoor storage needs an enclosed building. The tenant is very successful and he has outgrown the space and needs to move somewhere else or they need to be in compliance. The Historical Commission part is that this was supposed to be a construction yard and that was the reason at the time, that the commission consented to the demolition. There was a destruction of a historical artifact. Mr. Dragoni spoke on the loss of the Amtrack station and how it could be tied to the uses in the area. Ed Labayog and staff are doing their job, the property owner is not being targeted. He thanked code enforcement for doing their job. Member Spalding asked about the historical issue. Tyler Dragoni said there was a historical building on the property, an adobe structure built in the early 1800s. The historical building was designated potentially significant. It was demolished but there were certain conditions that were never met. Member Spalding asked for the conditions. Mr. Dragoni said it is probably in the minutes of the meeting in 2008. There were some stipulations that are on the books that were never met.

Rodrigo Orduña said Mr. Dragoni is referring to a PRHC meeting that took place on May 1, 2008. Member Spalding asked staff for a copy. Rodrigo Orduña said this is a separate issue from the code enforcement case. There was a plaque that was supposed to be placed on the site. He said he could share the minutes with the committee members.

Member Voves said this was explained by Cindy Torres at the last meeting.

Kelly Abreu said he would like to focus on the satellite photos of the site. This is not a residential area, it is light industrial and it is clear from the photos of the area located right next to the railroad tracks. There is a claim that in 2014 there were not a lot of bumpers piled up. He said there is a fantastic feature on google earth, there are photos, at the beginning of 2012 it was completely empty but by the end of 2012 it was stacked to the gills with bumpers. Google says it was there, they were stacked everywhere. Heard what both Soares were talking about selective enforcement and he pointed to another fantastic feature that can look at other adjacent properties, 200 feet south of this, there is a junkyard of old cars stacked up and another 250 feet north of this property there are other buildings, junk cars parked on the parcel. What one sees all over this neighborhood is stuff like this. Anyone that provides this wrong reference and compares to what the law says should be going on here, and therefore they should enforce it. How come code enforcement is not enforcing these other neighbors in close vicinity to this property. There is junk everywhere in this neighborhood. This operation may be out of compliance but there is a lot of non-compliance in this neighborhood. The claim on behalf of Mr. Soares that enforcement is being selective, seems to be born out of google earth. How come Code Enforcement is not enforcing the other places. Why only this one and in 2014 it was full of bumpers.

Dr. Anne Maris spoke on the adobe historic building. Wanted to speak up for the community and how there needs to be access to these resources. There was supposed to be a condition in the first place and instead of having a plaque it is all fenced off. Hearing a lot of argument about the

business, there was no reason for the place to be dilapidated, a lot of people are working really hard to make the neighborhood better. Too bad the historic issue is not part of this.

Cindy Torres said that first of all Kelly Abreu is a frequent attendee at these meetings and he is a resident of the City of Fremont. He likes to come to these meetings and tell people how they should live in these neighborhoods, but this is my neighborhood. The applicant and Mr. Kelly spoke on the surrounding lots and how they are in disarray, they are correct, but they have taken advantage of our neighborhood and have no consideration of how we live and that this is a light industrial area. If Ed Labayog is of any fault is the fact that there are not enough code enforcement officers to address all of these issues. It is interesting that the owner picks out the issues, he does not recognize what he is accountable for, at the last hearing he was aware of the historical plaque and part of the wall that should have been saved. He has not addressed that issue. Doubt that there is work being done at this location except for being a salvage yard. There is no room to move let alone do any work. There is usually garbage piled up where the truck is located. These people do not care about the community. Need to clean up the community. No one has the right to create blight in our neighborhood. Just a street over is residential. She requested that the board to agree with staff's recommendation.

The Chair reiterated that the committee understands that there are historical issues, but today's hearing is only about the code enforcement issue.

Mr. Daniel Soares said this is exactly what we are talking about, the community activist Mr. Dragoni spoke about the minutes for the Historical Society. Mr. Orduña said he has a copy of the minutes of which we never heard about. It is obvious that Mr. Dragoni is enlisting the assistance of others in the county. Need to stick to what the hearing is about. The other one that spoke on pride of the community, we did not make the zoning, did not put M-1 this close to residential. This problem would be with someone else.

Member Spalding said the property owner identified a building and what is in the front of the property, they look like RVs. Mr. Daniel Soares said one is an RV and the others are cars. They are all operable. Member Spalding said it looks like more than one RV. Mr. Soares said it is an RV and a van. Mr. Daniel Soares said he separated the property. It is a separate tenant in the front. The front is being used for personal storage. He said he showed the cars to Mr. Mayfield and that they were in working condition. Member Spalding asked how is the tenant getting to the bumper business. Mr. Daniel Soares said they get thru the driveway on the right side of the property where the truck is parked.

Public comment was closed.

Vice-Chair Lewis said she is perplexed about some of the conflicting information. She recalls that at the last meeting Mr. Manuel Soares said he was running the business. Heather Littlejohn, County Counsel, said the conditional use permit goes with the land and the name of the person running the business does not matter. Member Spalding said the bumper repair business is allowed. Vice-Chair Lewis said the business needs to be indoors. Member Seibert said storage is outside. The business is happening inside a building. The business does not need a conditional use permit, but does the storage need one. Ed Labayog said yes. Member Voves understands why the

violation was written this way. She said she is in agreement with staff's recommendation. The Chair said everyone is correct. She is going back to 2013. The way the business was established and was approved to zoning. Her opinion is that it is permitted as it is. If they were not in compliance Planning should have addressed the issue at the time. Member Spalding said the business is taking place inside. The Chair said code enforcement never followed up. Again, as a reasonable person, they provided their business overview and planning staff approved it. The property owner relied on planning's determination. Is it causing blight to the neighborhood, yes it is. Hope that the property owner finds some way to change the impact to the neighborhood. She said she can't find a violation.

Member Spalding said she is concerned about the storage going on in the front. The violation is not just the back, it is the whole property. It is a storage business, it does not matter that if the cars are running or not. The portion of the property has zero enclosed building. The one with the bumper business does have a building which is consistent with the zoning. The storage business is in violation because it has nothing to do with the bumper business. The storage is not permitted. The Chair said staff is saying that if the vehicles are running it is not storage. Member Spalding said this is a storage of vehicles, it is a violation. He is renting it to somebody else. The Chair asked if Member Spalding is saying that they need a permit for the front. Staff's recommendation is to remove all outdoor storage or submit an application for a conditional use permit. Are you proposing to remove the vehicles. Member Spalding said this is not associated with the bumper business. The citation includes the whole property. the testimony by the property owners is that they are renting the front of the property for personal storage. There is not a building and nothing associated with it. The bumper business is permitted. The issue is with the storage of the bumpers in the back. Does this satisfy the performance conditions, is there some guidance on how storage is taking place. Performance standards are referred to in the ordinance. The Chair said the business is being conducted in the enclosed building. The business includes the storage. The approval of the business seems to have included this outdoor storage of bumpers with no stipulation or how many or how high. In her opinion, the property owner is operating as it was permitted. Member Spalding read the performance standards. Rodrigo Orduña read a section of 17.44.120 regarding open areas for vehicle storage. In no case shall the storage be above or higher than the fence. The Chair said this section is not noted in the violation. The County should have done a lot more in 2013, instead of now having the property owner come back now and say that he is in violation. Member Spalding spoke on the storage above the fence lines. The Chair said Member Spalding is proposing that the storage in the front yard is applicable for the violation. Member Spalding said the front part falls within the violation. She asked staff if this is an appeal or not.

County Counsel asked staff to speak to what action is being appealed. She said this board should look at the code section that talks about appeals of violation. The Chair said it is a good point, these are usually hearings for a violation and not appeals. Appeals from this board are heard by the Board of Supervisors. Member Spalding said this is an appeal of staff's recommendation. The Chair said historically this would not be referred as an appeal but as a request for a hearing. County Counsel read the section of title 17 which says no appeal is required to bring this to hearing. Member Spalding said at the November 10<sup>th</sup> abatement hearing the board decided to continue the abatement hearing. The question is, does the violation apply to the front half of the

property and does this board agree. The storage of bumpers is associated with the business. This is the issue. Vice-Chair Lewis said the property owner does have a permit issued to Mr. Moran for the bumper business. Mr. Moran apparently does not have a business license and it appears that in 2013 there was an error by planning issuing the permit. It is unfortunate and how does this commission fix it and make it fair. Member Spalding said the 2013 is not a conditional use permit, it is a zoning clearance. It was permitted as long as it is indoor, but the storage is outside. The Chair said based on the testimony and on discussion from Member Spalding that she is right as far as the front part of the property, but that the bumpers are related to the bumper business and planning staff should have addressed it in 2013. Member Spalding said based on the property owner's testimony, the front area is rented for storage.

Public comment was open.

Mr. Daniel Soares said maybe he misspoke. The cars come and go. Now being cited for something that is not even in the citation. Member Spalding said he is being cited for storage. Daniel Soares said it is within an enclosed wall. Member Spalding said it is not an enclosed building. Mr. Soares said now you are saying that anyone on M-1 zoning, on Meekland, can't park cars on their property. He said he will go down on Meekland and get supporting evidence for the new citation this board is issuing. Member Spalding said he is being cited for storage. Member Soares said Mr. Rodrigo read the section of zoning ordinance related to the cars on the property, it was not listed on the citation notice or the hearing notice either. Then the cars do not qualify as storage, they leave and come back. Member Spalding said the space is rented and the purpose is storage, Mr. Daniel Soares asked if Member Spalding is saying that movable cars can't be kept on the property. Member Spalding said this is not a parking lot for the business, you said this is for storage, you said it twice. Member Soares they are within concrete walls and they do not go above the walls. Member Spalding said the entire property is being cited. Member Soares said this is a very slippery slope Ms. Spalding is going down, because he has a lot of evidence of cars being parked on M-1 and that is what is being done on this property. Member Spalding asked to see the citation.

Public comment was closed.

The Chair Member Spalding asked if the citation is all encompassing about storage or if vehicle storage would fall under a different citation requirement. County Counsel said it is worth for this board to discuss the concept between storage and parking, storage of vehicles and how the language is typically used. She pointed out that code section 17.44. 030 permitted uses, subject to conformance performance standards includes parking lots. Not confident whether to consider this as a parking lot, if the decision is going to be about the storage of cars and it is worth making findings that this is not a parking lot. Member Spalding said this is not a parking lot. Vice-Chair Lewis said that in some of these pictures the vehicles have not moved. Member Spalding said they can be moved but they are still storage. Vice-Chair Lewis said this is not parking for the business. The space is being rented out. Member Spalding read the citation and agreed that the recommendation applies to the whole property. The Chair said initially she agreed with Member Spalding but now she is hesitant. She asked staff if all these vehicles are operable and can be moved, are they considered not storage. Ed Labayog said it looks like the vehicles are being

stored there and not just a parking lot. The Chair said her motion will be based on Mr. Daniel Soares testimony about the front half of the lot being rented out and utilized by a tenant for personal storage which appears to be vehicles.

The Chair moved to declare the property located at 22319 Meekland Avenue in violation of the Alameda County Zoning Ordinance Section 17.44.040, therefore requires abatement. From the front half of the lot the vehicles that are not associated with the bumper business need to be removed or the applicant must submit an application for a conditional use permit within 45 days and obtain approvals. This is very narrowly tailored regarding the front half of the lot that is currently being rented and that part of the lot being used as storage for vehicles. This does not include any storage by the bumper business. This is unrelated to the bumper business. Currently per testimony, personal storage for vehicles. Member Spalding seconded the motion.

Christine Greene conducted the roll call. *Yeas: Chair Clark, Vice-Chair Lewis, Members Voves, Spalding and Seibert. Motion passed 5/0*

The Chair said if anyone wants to appeal this decision, they have ten days to appeal to the Board of Supervisors. Member Spalding asked staff to address any storage such as bumpers stacked above the fence line.

**Alcoholic Beverage Sale Regulations Administrative Hearings** – The Chair read the instructions for the Alcoholic Beverage Sale Regulation hearings. – No items

**Open Forum** – The Chair instructed the public on how to participate in the meeting using the Zoom platform.

Kelly Abreu warned everyone about the dangers of what Ms. Torres is advocating and speaking against the Brown Act. The Brown Act allows members of the public to comment on items and prohibits the bodies from trying to exclude criticism. Ms. Torres is trying to exclude outsiders, she is expressing territoriality, and saying that only people that live in Cherryland may speak. Government does not work like that, people may call in and talk about what happened in 2012 and talk about what they see on google earth. They do not have to live in Cherryland. Cherryland has benefitted enormously and Ms. Torres knows, she was the recipient of the individual of the year award from HARD which runs the Cherryland Community Center. It is a very expensive center, they spent a lot of money on the facility. Like to point out that the setbacks required, they do not apply there, they threw those rules out the window and it turned out pretty well, it is wonderful for the community. The parking requirements, which for a private owner would need a certain number of parking spaces, this place only has 18 parking spaces on site, normally it would require three times that number of parking spaces. This is a fabulous facility, but rules did not apply to the facility. Everyone should go see the facility and see what a lot of money, excluding building rules can create for the community.

**Field Trip Report** – None

**Consent Calendar** - There are no items

**Regular Calendar**

- 1. PLN2021-00153, CONDITIONAL USE PERMIT, T-MOBILE USA / GARY GOCHBERG, SPECTRUM WIRELESS SERVICES (Agent)** – Application to allow continued operation with equipment modifications of an existing roof mounted wireless telecommunication facility (T-Mobile) on an existing office building, in the Subarea 9: Lower Redwood Road -Retail/Office District, located at 20980 Redwood Road, on the east side of Redwood Road, 50 feet north of Norbridge Avenue, Castro Valley area of unincorporated Alameda County, bearing Assessor’s Parcel Number: 08004C-0615-5-00. The project is deemed exempt from CEQA under Article 19, Section 15303 New Construction or Conversion of Small Structure, Class 3. **Staff Planner: Pat Anekayuwat.**  
**Action Item**

Pat Anekayuwat presented the staff report. Staff’s and the Castro Valley Municipal Advisory Council’s recommendation is to approve the conditional use permit allowing for a continued operation with equipment modifications of an existing T-Mobile roof mounted telecommunication facility, based on drawings marked Exhibit A and conditions on file.

Vice-Chair Lewis said the company has done a very good job screening the antenna. Member Seibert agreed. Member Voves asked if the proposed height of the new equipment is going to be much taller than the existing equipment and if the proposed screen will be painted the same color of the building. Staff said the antenna will not be higher than the existing one and the color will be the same as the building.

Public comment was open.

Gary Gochberg, representing T-Mobile, said staff did a good job on the presentation. They are just modifying the site.

Public comment was closed.

Vice-Chair Lewis made the motion to recommend approval of PLN2021-00153 and changing the language removing Castro Valley Municipal Council from the recommendation language. Member Voves seconded the motion.

Christine Greene conducted the roll call. *Yeas: Chair Clark, Vice-Chair Lewis, Members Voves and Seibert. Excused: Member Spalding. Motion passed 4/0/1*

- 2. PLN2021-00155, CONDITIONAL USE PERMIT, AUSTIN & HENDERSON / T-MOBILE ON PG&E TOWER, LORI NOVOTNY** - Application to allow the continued operation of an existing wireless telecommunication facility (on an PG&E tower) in a R-1- BE-SU-RV-HO (Single Family Residential, 7,000 sq. ft. MBSA, Secondary Unit and Recreational Vehicle parking is permitted, Hillside Overlay) District, located at 5314 Crown Court, north side, approximately 350 feet west of Greenridge Road, unincorporated Castro Valley area of Alameda County, bearing County Assessor’s Parcel Number: 85-1601-006; measuring approximately 33,900 square feet in area. This

project is Categorically Exempt from the requirements of the California Environmental Quality Act; Article 19, Section 15301, Existing Facilities. **Staff Planner: Christine Greene, Action Item**

Christine Greene presented the staff report. The Castro Valley Municipal Advisory Council recommended approval as presented. Staff noted some of the typos on the staff report and resolution. Staff recommends approval of the conditional use permit allowing continued operation of an existing telecommunication facility located at 5314 Crown Court with proposed changes based on Exhibit A dated October 25, 2021. The conditions of approval should be considered and expiration of ten years.

The Chair noted a typo on page 3, the third line, Sheriff's is spelled incorrectly and the word office should be capitalized.

There were no speakers for this item.

Member Voves moved to approve conditional use permit, PLN2021-00155 for a wireless telecommunications facility with the proposed changes to page #s 1 and 3 and updating the draft resolution identifying the type of facility as well as the parcel number. Vice-Chair Lewis seconded the motion.

Christine Greene conducted the roll call. *Yeas: Chair Clark, Vice-Chair Lewis, Members Voves, and Seibert. Excused: Member Spalding. Motion passed 4/0/1*

- 3. PLN2021-00186, CONDITIONAL USE PERMIT, CHURCH OF NAZARENE, GARY GOUCHBERG** - Application to allow continued operation of a wireless telecommunication facility (faux cross) for T-Mobile at 2301 Miramar Ave, north side, 50 feet east of Miramar Place, Castro Valley Area of unincorporated Alameda County, zoned R1-RV-HO, bearing Assessor's Parcel Number 080A-0191-034-04. The use permit would be exempt from the requirements of the California Environmental Quality Act (CEQA, 1970 as amended), per Article 19, Section 15301, Class 1, existing facilities. **Staff Planner: Michael Flemming, Action Item**

Michael Flemming presented the staff report. Staff recommends the approval of conditional use permit PLN2021-00186 allowing continued operation of a wireless telecommunications facility based on drawings marked Exhibit A at the Planning Department. The enclosed conditions of approval should be considered. The only changes to the conditions of approval are the size of the faux cross, which is slightly larger, and the addition of condition numbers 21 and 18. He read an additional condition that could be added. The condition is to preserve the cross design. He said it could be simpler terms. The board members, if desired, could discuss different wording to be used. The Chair said the language is fine. County Counsel said there are some co-locations or enlargements of telecom structures that are required by right and there is the potential for new antennas want to co-locate on existing structures. They are not permitted by right. If this board is interested in ensuring that the cross shape is preserved, the board might want to add language to the conditions.

Member Spalding said she understands that the neighbor might have some issues with the report. Michael Flemming said the attorney for the Miramar Homeowners Association wanted to look at the report on Monday. The applicant said he had some problems with it. He is probably going to speak during this meeting. These issues just came up in the last two days.

Vice-Chair Lewis said in the application is from Church of Nazarine and the T-Mobile application says East Bay Korean Church of Nazarene. Michael Flemming said he shortened the name. It is a Korean church. Member Voves asked about Castro Valley Municipal Advisory Council recommendation. Michael Flemming said they did not have much to say, they liked that it was still a cross and the same height. The neighbors did not speak during the CVMAC meeting. Member Voves says she thinks the cross is too large. It is a significant change in size. It is quite huge. Not sure that this is appropriate. She said it goes from 17.6 wide to 31 feet. The height stays the same. The diameter is going from 2.6 to 4 feet. The pole is going from 30 inch to a 48 inch diameter pole. It will be a different presence on the hill. Member Seibert wanted to know if it will be on the same location. Michael Flemming said it will be 7 feet away from the current location. Member Seibert asked if it is moving away from the homes. Michael Flemming said yes.

The Chair said the new design loses the cross essence and it looks like an addition sign. Not sure the simulation is accurate based on the exhibits provided. Member Voves said if it was a tree, it would not be a problem.

Public comment was open.

Gary Gochberg asked staff to share an exhibit that shows the full site. He said he will speak to the applicant about changing it to a tree. They thought about making the cross higher but were not sure if it would be an issue. T-Mobile most likely would like to keep the proposed design. Michael Flemming said the height limitation is 90 feet, but this antenna is 65 feet. It could go taller. Gary Gochberg said the concern with a monopine is that it is very wide at the base. The preference would be to increase the height of the pole if that is the main issue with the visual. Vice-Chair Lewis suggested raising the cross arm. Mr. Gochberg said he would ask the architect. This is the best design we could come up with for the cross. The Chair said there is a consensus that the design is not quite ready. Member Spalding said it is twice the size of the original one. Member Voves said the exhibit does not seem to be to scale.

David Charter, representing the Miramar Homeowners Village Association, said that what is missing is the proper photo simulation, the one that shows the enormous visual impacts of this proposed cross from his client's property. The place where there is the greatest impact does not show on the photo simulation. The cross itself is 60% wider. There is a need to have the right photo simulation and why have it so close to his client's property line. Why not place it on the church's property at a higher elevation and away from his client. It would have less RF emissions coming from the facility. It would actually be reduced. The fact is that FCC was recently chastised by the D.C. Circuit and they found that the FCC decision not to revisit the 1996 RF limits was "arbitrary and

capricious” under the federal Administrative Procedure Act because the agency did not provide a reasonable explanation. This is another reason to relocate the cross away from his client’s property. The concern from the board members is right on the money. Looking at the old conditions of approval, there was a requirement to provide update reports on emissions. Condition #5, carrier contact information, it says Verizon. Michael Flemming said that is a typo, it should say T-Mobile. It seems that there is increase in antennas and service but no justification for it. In respect to the 2009 procedures, they are building right along the Hayward fault, there was concern if it would fall, it would fall down hill, on his client’s home. T-Mobile in the past obtained access for installation thru the property where his client’s home is located so they could safely install. The other thing is that T-Mobile agreed to do was to do RF studies, so that we would know that the RF emissions are not causing cancer.

Member Spalding asked if the neighbors would object to have the cross placed somewhere else on the hill away from the residences. She said the item should be continued. Rodrigo Orduña said there are other residences at the suggested alternate location. Michael Flemming said placing it close to the street would be better. Understand that it is an existing facility, but they are proposing to double the size. It is good news to know that the D.C. Circuit is sending back to FCC. David Charter said his client would like to see that cross as far away from his property line as possible. Member Spalding said a tree might be better. Rodrigo Orduña said that usually for trees the branches themselves, make the overall structure taller.

Speaker asked about the tower, and how will they access the tower. He mentioned that it looks like it is on his property line. He asked why the CEQA exemption. Rodrigo Orduña said the board is discussing moving the antenna to another location on this parcel. He said staff’s determination was that there was not impact. It looks like the application is going to be continued and staff may review the exemption. This application was approved in 2006 and also exempt. Speaker said the rules back then were different. Rodrigo Orduña said staff will look at the D.C. Circuit ruling. Speaker said it would be great if it moved from the original location. He asked what other carriers may access this tower. Michael Flemming said the applicant would have the answer to that.

David Charter said that on the CEQA issue, the exemption is for existing facilities. this is a brand new cross, so how could it be exempt. This is not an existing facility. They are tearing down the tower. He expressed concern on the demolition of the tower.

Member Spalding spoke on having language for decommissioning. Staff said they will look at the language. Member Spalding said this item needs to be continued.

Gary Gochberg said he is not sure if what he says is going to make much difference. It is irrelevant where it is moved, because there will always be someone that is not going to like the location. The decision is made because of the location and placement of the tower. Not sure that the D.C. Circuit critic is relevant. The court would have to require FCC to comply. Discussion ensued amongst staff and board members on relocation and design of tower.

Speaker said he owns the unit next to the cross. There's a noise that comes from the base of the unit. There are times when it makes a significant amount of noise, sometimes all night and it is a concern. It is an eyesore. It is a nuisance. It would be great if the structure could be moved. Member Seibert asked how far is it from his home. He said it is one or two feet from the property line and 30 feet from his home, but it can be heard inside the house. He said when he moved in the cross was there but not as an antenna.

Public comment was closed.

The Chair said there are some issues that staff needs to review such as CEQA, better simulation, different designs, placement at other location on the stie, better design, away from residential units, and maybe a tree instead of a cross. The proposed is significantly bigger and not appropriate at the present location. Member Spalding said to add the noise, it needs to be examined. That is another reason to have it moved. County Counsel commented on the D.C. Circuit issue.

Member Spalding moved to continue PLN2021-00196 to a date yet to be determined, to allow staff to address the issues mentioned. Member Voves seconded the motion.

Rodrigo Orduña conducted the roll call. *Yeas: Chair Clark, Members Voves, Spalding, Lewis and Seibert. Motion passed 5/0*

4. **PLN2021-00196, VARIANCE, NATHAN MIAO** - Application to allow a lot line adjustment between two parcels, resulting in a median lot width less than the required minimum median lot width within the "Planned Development District" (PD-1489 and PD-1876 allowing Single Family Residential development, subject to 40,000 square feet minimum building site area, 150 feet median lot width) Zoning District, unincorporated Castro Valley Area of Alameda County, with Assessor's Parcel Number: 085A-0350-002-08 and 085A-6436-006-00. This project is Categorically Exempt from the requirements of the California Environmental Quality Act; Article19, Section 15305, Class 5, Minor Alterations in Land Use Limitations. **Staff Planner: William Chin.**  
**Action Item**

William Chin presented the staff report. Staff recommends that the board approve the variance application to allow a lot line adjustment between the two parcels, resulting in substandard Median Lot Width of 115 feet where 150 feet is required, based on Exhibit A at the Planning Department.

Member Seibert asked if only one parcel is not going to meet the Median Lot Width. Rodrigo Orduña said only one of them is in a zoning district that requires a Median Lot Width. Member Spalding asked to look at the map and why two lots that are each in a different zoning district. William Chin explained the lot line adjustment.

Public comment was open.

Chester Lo said his property is north of the proposed change for the widened lot. He said there is an EBMUD easement on his property and not sure if it is on the other property too. Would that make a difference for the proposed home's placement and size. William

Chin said once a design application is submitted it will be reviewed. It is EBMUD regulation regarding building on the easement. Mr. Lo asked about height. William Chin said they need to meet the height requirement. There is not an application submitted yet for a home, once submitted it will be reviewed for height, setbacks, size, etc.

Hays Sho he said he is the architect representing the owners. These lots are owned by different owners. He said he is here to answer questions. One of the strategies is to have have a nicer frontage experience. There is a 30-foot setback, which could be wider to give more room for landscape. In terms of the easement, that has not shown up on the title records. Any further plans on development will come out later.

Mr. Chester Lo asked the architect on the setbacks on the side, next to his property. Is that a twenty-foot setback. The architect said it has to be thirty. Mr. Lo wanted to know when will he received the notice for the proposed home. William Chin there will be a courtesy notice sent out to the adjacent neighbors when the plans are submitted.

Public comment was closed.

Vice-Chair moved to approve the variance, PLN2021-00196 per staff's recommendation. Member Spalding seconded the motion.

Rodrigo Orduña conducted the roll call. *Yeas: Chair Clark, Vice-Chair Lewis, Members Voves, Spalding and Seibert. Motion passed 5/0*

5. **PLN2021-00108, VARIANCE, SAWTOOTH DEVELOPMENT GROUP** – Petition to allow the conversion of an existing commercial building to residential, with substandard front and side yard setbacks within the R-S-D-15 (Suburban Residential, 1,500 square feet minimum building site area) Zoning District located at 1475 162nd Avenue, north side, 375 feet east of East 14th Street, unincorporated Ashland Area of Alameda County, with Assessor's Parcel Number: 080-0057-038-02. This project is categorically exempt from the requirements of the California Environmental Quality Act; Article 19, Section 15301, Class 1, "Existing Facilities".

William Chin presented the staff report. At the November 10<sup>th</sup> meeting of this board, the item was continued in order to provide the applicant additional time to allow staff to work with the applicant on design changes. He shared the new proposed design for the building. The Board asked that the design be updated to provide more of a residential feel to each unit and a softer base color for the building. Staff recommends that this board approve the variance application allowing a substandard front yard and side yard that would result in the conversion of the commercial building to residential use subject to Exhibit B on file at the Planning Department. The conditions of approval should be considered.

Members Voves and Vice-Chair Lewis commented that the new submitted design looks a lot better. Member Spalding asked where is the play-yard or exercise area. William Chin shared the exhibit showing the open space area in the back of the lot. She asked how big is the public open space area, is it lawn. Vice-Chair Lewis said it is lawn. Member

Spalding asked who is going to be responsible for the upkeep of the open space area. The Chair said it will be the property owner. Member Seibert and the Chair said the design looks much better.

Public comment was open.

Will Goede, the property owner, shared exhibits of before and after renderings. He spoke on repurposing the current commercial building. He thanked the board members for suggestions and how they were incorporated to the design.

Member Voves asked if they are going to integrate solar in the design. She asked staff if there are any requirements for residential. Rodrigo Orduña said he is not sure that repurposed building has the same requirements. Member Spalding said there have been requirements on water retention and minimize water runoff. It could all be on the same basis. Member Voves said she thought that it would be cost effective and a good time to take advantage of it.

The Chair thanked the property owner for incorporating their ideas on the new design.

Public comment was closed.

William Chin said the board members could add a condition of lighting plans for the project. The board members agreed that it is a good idea. The Chair said condition #18 already includes parking lighting. Member Spalding said it could be modified and also include photometrics plan. The Chair said to be reviewed by the Planning Director. Rodrigo Orduña conducted the roll call. *Yeas: Chair Clark, Vice-Chair Lewis, Members Voves, Spalding and Seibert. Motion passed 5/0*

Orduna said staff would review it. Member Voves asked if solar should also be included. Rodrigo Orduña conducted the roll call. *Yeas: Chair Clark, Vice-Chair Lewis, Members Voves, Spalding and Seibert. Motion passed 5/0*

Orduna said if it is part of the conditions it would be automatically required, he was not sure if repurposed if it is required. He said during the building process they will review it. Member Spalding said the staff should report back on the requirement. William Chin said conversion of a building is not required. Rodrigo Orduna asked William to contact Building and find out if it is required and send an e-mail to the board members.

The Chair said condition #18 should read: “a parking lot plan to include lighting, photometric plan for staff to review.”

The Chair moved to approve PLN2021-00108 adopting the findings and conditions with the modification for condition #18 adding a new sentence that reads “a parking lot plan that include overall lighting and photometric design shall be submitted and reviewed by staff.” Member Voves seconded the motion.

Rodrigo Orduña conducted the roll call. *Yeas: Chair Clark, Vice-Chair Lewis, Members Voves, Spalding and Seibert. Motion passed 5/0*

**APPROVAL OF MINUTES: DECEMBER 8, 2021** – Vice Chair Lewis moved to approve the minutes of December 8, 2021 as presented. Member Voves seconded the motion.

Rodrigo Orduña conducted the roll call. *Yeas: Chair Clark, Vice-Chair Lewis, Members Voves and Seibert. Abstained: Member Spalding. Motion passed 4/0/1*

**STAFF COMMENTS & CORRESPONDENCE:** Rodrigo Orduña said he sent documents related to SB9 the board members via e-mail. He expanded on the SB9 bill regarding new regulations for housing. He said new applications and subdivision applications will not be subject to public hearings or neighborhood notices. County Counsel said if there is more interest in discussing this issue further, it should be agendaized. She asked that discussion not continue and wait until the item is on the agenda. The Chair asked staff to do some research on properties that are already very small, will there be a variance requirement or site development review.

**BOARD’S ANNOUNCEMENTS, COMMENTS AND REPORTS:** None.

**ADJOURNMENT:** *There being no further business, the hearing adjourned at 6:10 p.m.*

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ALBERT LOPEZ - SECRETARY  
WEST COUNTY BOARD OF ZONING ADJUSTMENTS