

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
JANUARY 28, 2009
(APPROVED FEBRUARY 25, 2009)

The meeting was held at the hour of 1:30 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California.

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Chair, Dawn Clark-Montenegro; Vice Chair, Kathy Gil; Members, Jewell Spalding and Ineda Adesanya.

MEMBERS EXCUSED: None.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel, Andrea Weddle and Adrienne Alexander; Yvonne Bea Grundy, Recording Secretary.

There were approximately 3 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 1:35 p.m.

ANNOUNCEMENTS BY THE CHAIR: The Chair made no special announcements.

OPEN FORUM: Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes.

No one requested to be heard under open forum.

NEIGHBORHOOD PRESERVATION ORDINANCE ABATEMENT HEARING

- 1. TERRI L. TOULZE, 670 Via Mirabel, San Lorenzo, CA 94580**
In violation of Alameda County Ordinance Sections 17.52.955.
 1. Unlawful garage conversion.

Member Spalding motioned to continue the item to the February 25, 2009 Hearing. The Applicant shall work with staff to determine applicable ordinances and permit requirements for Code Enforcement; the Planning Department; and Alameda County Public Works. Member Adesanya seconded the motion. Motion carried 4/0.

- 2. ELIZABETH CHONG & ION ILOVAN, 21358 Locust Street, Hayward, CA 94541**
In violation of Alameda County Ordinance Sections 6.65.030 D (1), D (3) and M (1).
 1. Overgrown vegetation and weeds in the front, side and rear yards.

Member Spalding motioned to uphold the staff recommendation. Declare the property a public nuisance and require abatement to be completed within 10 days. Member Adesanya seconded the motion. Motion carried 4/0.

- 3. RANELL C. JONES, 25785 Fairview Avenue, Hayward, CA 94542**
In violation of Alameda County Ordinance Sections 6.65.030 A (1), A (2), A (4) and M (1).
 1. Unlawful outdoor storage of debris including scrap wood, concrete pieces, and other items under plastic tarps in driveway.

Staff reviewed the violation of 6.65.030 A(1), A(2), A(4) and M(1): Unlawful outdoor storage of debris

including scrap wood, concrete pieces, and other items under plastic tarps in driveway. There are no previous violations. Staff recommended the Board declare the property a public nuisance and require abatement to be complete within 10 days. Board Members had no initial questions. Public testimony was opened.

The property owner, Ranell Jones was present. He resides at the residence. Mr. Jones acknowledged the work was not complete. He works as a designer. The plant materials being stored are used for projects. Mr. Jones has been focusing all of his energy on his property at 1574 - 159th Avenue. The outstanding graffiti violation, at the 159th Avenue site is now in compliance. He has now lost his home on China Court through foreclosure. He is living apart from his wife, and her items were left in the home on China Court. They are both having financial problems. Mr. Jones requested the Board give him more time. By trade Mr. Jones designs architectural plans and utilizes building equipment. Due to the nature of self employment, he does not receive unemployment insurance. Mr. Jones proposes storing some of the furniture currently on the driveway, on the deck. The broken concrete stored on the property is to be used for a 30 foot landscape wall. The wall will span the frontage of Fairview Avenue, and a portion of Star Ridge Road. A portion of the concrete will be used as rubble pavers. He has talked with the Building Department. They told him he can retain the material if he had a permit. Board questions for Mr. Jones were as follows:

- Can the material be stored in the garage
- Can items be placed under a tarp and stored inside of the home

Mr. Jones told the Board the garage was full. He and his wife will be getting a divorce, his wife left multiple boxes at the home including the attic. His children live out of town. Originally his wife wanted to store sentimental items. He will coordinate with his wife to see what can be stored, donated to charity, or hauled away. A bulky pick up is scheduled next Monday. There will be an extra cost because the amount exceeds the standard. He will be clearing some of the other items with the assistance of a helper. Mr. Jones said he had walking pneumonia, his helper has been sick as well. He plans to place items to the deck, and cover it with a tarp. The home is set back from the street, and cannot be seen. He asked the Board for 30 days to bring the property into compliance. He would also like to have Code Enforcement staff come to the site to confirm which items can remain. In addition to the abatement issues Mr. Jones is in currently in foreclosure. He is trying to modify his loan. Due to the banking turmoil, negotiations are slow. He is suing other individuals to recoup the vast amount of money that is owed to him. His wife has just recently begun work. Thus far, there is not a steady flow of income.

Further Board questions were as follows:

- Will landscaping plans be put on hold since the property is in foreclosure
- When will the work at Fairview Avenue be completed
- When will Mr. Jones obtain a building permit
- Can the work be completed without assistance
- Is the property on 159th Avenue occupied
- Is there a vehicle parked on an unpaved surface at the home on Fairview Avenue

Mr. Jones said the property on 159th Avenue was not occupied. The site is boarded up. All of the copper and wiring was stolen. Holes were punched in all of the surfaces so it can't be rented out. There is an open insurance claim. Mr. Jones is surprised his neighbors complained about the furniture on the driveway at Fairview Avenue. There is no room to put anything else in the house. They are also aware he is going through a divorce. The Fairview Avenue property is set back and the deck cannot be seen from the street. He would like to confirm with staff if deck storage is acceptable, and which items he can retain.

This will prevent him from moving the items, twice. Mr. Jones will need assistance to move and sort through the items in addition to setting items out for bulky pick up. Member Spalding said she was familiar with the site, as she lives on the same street. She pointed out that the driveway was visible from Star Ridge Road. Mr. Jones said he has yet to make an appointment with staff. He would like to get more work done. The delay was caused because he had to complete the work for his home on 159th Avenue. He is unsure of the completion date on his home on 159th Avenue, approximately 2 weeks ago. He is currently on medication, and confused about the dates. When he asked for additional time to complete the work on 159th Avenue, the request was denied. Board Members said the graffiti was unsightly. The Chair said she drives by the 159th Avenue property daily. The work was not complete until recently. Mr. Jones said the situation is different at his Fairview Avenue home. There are no graffiti issues at the Fairview site. The address of the property is on Fairview Avenue. The driveway to the home's garage is off of Star Ridge Road. The vehicle in the driveway is stored on brick pavers, and is operable. Mr. Jones told the Board he will apply for a building permit on Monday. He is unsure of the cost. He hopes to get an insurance payout. It is difficult dealing with insurance companies. He anticipates a payout in approximately one month. Mr. Jones would like to keep the landscaping material as he anticipates the loan modification will come through. He has already resolved the "second". Mr. Jones asked for a 30 day extension. However if a 30 day extension is not acceptable he would like a minimum of 2 weeks. This will allow him to get beyond the garbage pick up. Public testimony was closed.

Member Spalding asked staff if they were aware that Mr. Jones wanted to meet to confirm storage of materials on the deck. Staff said this is the first request they received from him regarding storage on the deck. They are willing to meet with Mr. Jones. They have met with Mr. Jones in the past. The matter was continued from a previously set hearing date to allow him to resolve outstanding issues. At present there are no items that would be allowed to remain out. Staff talked with the Building Department, and was told the proposed wall does not require a permit. Mr. Jones interjected, he talked with the Building Department and could add further information. The Chair announced that the public hearing portion of the meeting was now closed.

Member Adesanya asked staff to explain what would happen during abatement of the site. Staff explained Enforcement staff would be on site. Operable vehicles would remain. Miscellaneous items and debris would be sorted through. The concrete would be removed as a whole under the current state of abatement. The Neighborhood Preservation Ordinance does not allow the material to be stored in a pile.

Member Spalding said she was familiar with the site. The concrete has been there for 10 years. Would it be possible for the concrete to remain as a wall? There are many in the area made of the same material. Staff confirmed that was acceptable. Mr. Jones interjected, and clarified the concrete has been there for 3 years. Member Spalding asked staff if the case could be bifurcated. Perhaps the items on the driveway prompted the complaint. County Counsel said that decision is within the Board's discretion, if the Board they feel there is a need to treat the items separately. However the Board is not obligated to do so. Staff further clarified the concrete is stored on the Fairview Avenue side of the property. The driveway to the site is located on Star Ridge Road

The Chair then asked Board Members their thoughts regarding an abatement extension or a continuance.

Member Spalding thought an abatement of 30 days would be appropriate for the concrete, a 20 day extension beyond the staff recommendation of 10 days. The material is common for the area. This would allow Mr. Jones to make use of the material. The home is beautiful. Regarding the debris at the site, a short extension would be appropriate. A 5 day extension beyond the staff recommendation of 10 days would give Mr. Jones 15 days to abate.

The Vice Chair thought the Board should take Mr. Jones poor health into account. The abatement could be a hardship.

The Chair pointed out that Mr. Jones property on 159th Avenue which came before the BZA was just completed. The neighbors are still talking about the poor maintenance of the property. The decision regarding Mr. Jones property on 159th Avenue was appealed to the Board of Supervisor's. An option in this instance is a continuance; or that Mr. Jones can appeal any decision to the Board of Supervisor's. Staff added an additional point of clarification some of the debris items were located on the hill area of the site.

Member Spalding placed a motion as follows: Regarding the unlawful outdoor storage of debris including scrap wood, and other items under plastic tarps in the driveway: Member Spalding motioned to declare the property a public nuisance and require abatement to be completed within 15 days. This is 5 days beyond the staff recommendation of 10 days which provides the additional time Mr. Jones requested. Member Adesanya seconded the motion. Motion carried 4/0.

Regarding the outdoor storage of pieces of concrete on the hillside: Member Spalding motioned to declare the property a public nuisance and require abatement to be completed within 30 days. This is 20 days beyond the staff recommendation of 10 days which provides the additional time Mr. Jones requested. Member Adesanya seconded the motion. Motion carried 4/0.

4. JIANG ZHANG & LILLIAN LAU, 2091 Strobridge Avenue, Castro Valley, CA 94546

In violation of Alameda County Ordinance Section 6.65.030 A (1), D (1), D (3) and M (1).

1. Debris, miscellaneous items and dead vegetation in driveway.

Member Spalding motioned to uphold the staff recommendation. Declare the property a public nuisance and require abatement to be completed within 10 days. Member Adesanya seconded the motion. Motion carried 4/0.

CONSENT CALENDAR:

1. **T-MOBILE / HARD, CONDITIONAL USE PERMIT, C-8734** –Application proposal to replace an existing 25 foot light pole with a new 35 foot pole with lights and four concealed antennas. A new equipment enclosure is also proposed to be located nearby. The subject parcel contains approximately 0.91 acres and is zoned R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, RV Parking) District, located at 18988 Lake Chabot Road, east side, north east of Keith Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1305-012-00. (Continued from July 9, September 10, November 5, 2008; to be continued to February 25, 2009). **Staff Planner: Jeff Bonekemper.**
2. **CAMBRA / EL SHADDI MINISTRIES, CONDITIONAL USE PERMIT, C-8762, PLN-2008-00020** - Application to allow continued operation of a church, in a R-C ABCD (Residential Commercial, Ashland Cherryland Business) District Specific Plan, located at 565 East Lewelling Boulevard, south west side, corner southwest of Wickman Court, unincorporated San Lorenzo, area of Alameda County, designated Assessor's Parcel Numbers: 413-0031-053-00 and 413-0031-054-00. (Continued from November 12, 2008; to be continued to February 25,

2009). **Staff Planner: Pat Anekayuwat.**

3. **DARYL DWAYNE MANGRUM – VARIANCE, V-12123, PLN- S-2173** - Application to reduce the front yard setback from 30 feet to 20 feet for the construction of a new single family dwelling in an “A” (Agricultural) District, located at the 4.7 mile marker on Palomares Road, south of Palo Verde Road, unincorporated Castro Valley area of Alameda County, bearing Assessor’s Parcel Numbers: 085A-4100-009-28 and 085A-4100-009-30. (Continued from October 22, November 12, December 10 and 17, 2008; and January 14 2009; to be continued to February 11, 2009). **Staff Planner: Jana Beatty.**

Member Spalding motioned to accept the Consent Calendar as presented. The Vice Chair seconded the motion. Motion carried 4/0.

The Chair called a brief recess at 2:30 p.m. The Meeting reconvened at 2:45 p.m.

REGULAR CALENDAR

1. **ANIL SINGH / BILL LANE, CONDITIONAL USE PERMIT, C-8737** – Application to allow the expansion of an auto repair facility in the CN District (Commercial Neighborhood) District. Applicant requests an existing two car canopy and a 40 foot container unit be allowed to remain on the subject property, the subject parcel contains approximately 0.24 acres and is located at 19592 Center Street, east side, corner of Edwards Lane and Center Street, unincorporated, Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 084C-1062-024-00. (Continued from May 28, June 25, July 9, September 10, October 8, December 10 and 17, 2008; and January 14, 2009). **Staff Planner: Jeff Bonekemper.**

Staff announced the application was continued at the Castro Valley Municipal Advisory Council Meeting to obtain additional information. Council Members asked how the application might relate to the pending Tent and Canopy Ordinance. The Council’s concern is the canopy would become permanent. Council asked staff to assist the Applicant in determining a more viable economic solution for the business. Board questions for staff were as follows:

- Has the prior use permit expired
- Is the hard cover canopy considered an expansion of the existing use
- Is the current application considered a new permit, or a continuance of the prior use
- Is further information available regarding the revocation application filed

Staff confirmed the prior permit expired in 2001, due to an over site. The canopy is considered an expansion of the use. The current application is for continuance of the prior use. Staff presented documentation confirming the prior revocation application had been withdrawn. Member Spalding pointed out the project description did not include the words “expansion”. Staff should verify wording for the next staff report.

Member Spalding motioned to continue Conditional Use Permit, C-8737 to February 25, 2009. The Vice Chair seconded the motion. The Chair interjected to open public testimony. Member Spalding withdrew her motion. Public testimony was opened. There were no requests to speak. Public testimony was closed.

Member Spalding restated her motion. Continue Conditional Use Permit, C-8737 to February 25, 2009 Hearing. The Vice Chair seconded the motion. Motion carried 4/0.

2. **DANTON GARNHART, PLN-2008-00072** - Variance application to allow expansion of a non-conforming use with the addition of a second story to one unit on a property with seven units where one single family dwelling is allowed, in R-1 (Single Family Residence) District, located at 1143 Grove Way, south east side, approximately 77 feet north Birch Street, unincorporated Cherryland area of Alameda County, bearing Assessor's Parcel Number: 428-0011-111-01. **Staff Planner: Damien Curry.**

Staff reviewed the application, and recommended approval. An addendum and revised materials were distributed. The Alameda County Redevelopment Agency does not object to the project. The Cherryland Association asked that new construction conform to the quality and style of the primary residence on the property. One neighbor submitted a letter in favor of the project. Two neighbors submitted comments opposing the project. Initial Board questions to staff were as follows:

- Does the zoning allow more than 1 residence at the site
- Is the building considered legal non-conforming
- Is the use considered non-conforming
- Is the expansion of a non-conforming structure considered an expansion of a non-conforming use
- What is the total number of units on site
- How many parking spaces are required for the site
- Would legal non-conforming status change if the remodeling exceeds a 50% threshold
- How does the footprint of the new structure compare to the old footprint
- Are there photographs of the prior unit
- If a non-conforming unit is replaced, is the new structure required to conform to current zoning
- Is the project required to meet required variance findings

Staff confirmed the Zoning is R-1 (Single Family Residential). The existing 7 units at the rear of the site were in existence prior to zoning. One original unit on the ground floor was torn down. Staff did not have a floor plan of the previous building. Aerial photos of the site were available. However the original home was built prior to requirement of building permits. The Applicant contends he discovered too much deterioration when attempting to make repairs. As a result, the unit had to be completely demolished. The Applicant now proposes to build a one unit dwelling with parking underneath. This would return the total number of units on the site to 7. The single dwelling unit and garage that was demolished held 2 vehicles. County Counsel explained that once a non-conforming structure is removed, the non-conforming status is lost. In this case the Applicant's right of non-conformity was lost when the unit was torn down. The project must also meet required findings, for a variance to be granted. There is a difference between a non-conforming use, and a non-conforming structure. Staff further clarified the 50% threshold applies to parking requirements, and yard regulations. *Zoning Ordinance 17.52.650 applies to non conforming dwellings in R or A Districts where the non conformity consists only of deficiency in yard dimensions or the required parking spaces and were no such deficiency exceeds 50% of the requirements of the district, or any dwelling in A District located on a building site of at least 5 acres on a parcel of record prior to 1972, may be altered or enlarged; provided, that any addition or enlargement shall itself be fully conforming and that the number of dwelling units therein shall not be increased.* For example, the current side yard requirement is 5 feet. However the unit has a side yard of 3 feet and was in existence prior to zoning. An addition could be added, however the addition must conform to the current set back

rules without the need of a variance. Member Adesanya asked staff how Zoning Ordinances 17.52.640 and 17.52.650 relate to the project. Counsel explained that 17.52.650 is triggered only if there is a deficiency in parking spaces, or yard dimensions. That deficiency shall not exceed 50% of the requirements of the R or A Zoning District. That deficiency does not relate to the non-conforming structure. Staff clarified the Applicant was not proposing additional units. The location and footprint is approximately the same as the previous structure. Member Spalding pointed out that the new unit is larger than the old. This could be considered as an expansion. Member Adesanya asked if the replacement could result in an increase of the building size as it relates to Ordinance 17.52.640. Counsel reiterated there were two separate issues, one being the "building", the other "the use". One portion of the Ordinance address the building, another addresses the use. In this case as it relates to the Ordinance, the non-conformity of the structure has changed in that the structure was torn down. The residential "use", however is the same. For example if a non-conforming structure is expanded and the use is conforming in every respect, the project may or may not be in compliance. That is a consideration the Board must make in this case. Public testimony was opened.

The Applicant, Danton Garnhart told the Board there are several addresses at the site. The unit that is being rebuilt is 1143 Grove Way. The garage is part of the structure of the main home which is 1131 Grove Way. Mr. Garnhart lives in the front house which is 1163 Grove Way. The original home was built in 1888. It was poorly preserved and not well maintained. Mr. Garnhart had known the original owner for many years. The original owner considered tearing down the entire home because of the extensive damage. Major renovations were required. When Mr. Garnhart purchased the home, he discovered the property needed to be completely re-worked. The east side of the home had rotted. The bathroom floor had fallen through. The foundation under the structure was almost non-existent. The cost of repairing the structure was more than the cost of replacement. The entire unit had to be demolished. The carports were also completely rotted. The building was directly on the property line which posed a further challenge to undertake repairs. Initially Mr. Garnhart did not know how to proceed. He took the wrong approach. Now he is before the Board to resolve the outstanding issues. The intent is to complete all repairs, and make the property functional and livable. All of the pipes, wiring, concrete, and plants have been replaced. Mr. Garnhart would like to replace the rental unit with something an occupant would be happy to call home. All of the corbels and moldings have been re-manufactured to match the originals on the main house. He would really like to finish the project. The entire renovation process has been frustrating. At one point he tried to sell the property, but could not due to the extent of the damage. Mr. Garnhart currently provides parking for 8 tenants. The variance application will allow 11 spaces. Member Spalding told Mr. Garnhart he has done a great job restoring and improving the property. However parking is an issue that does arise, when a site is over developed. Mr. Garnhart responded his intent is to add 3 additional parking places for tenants. That takes cars off of the street, which is beneficial for the neighborhood. Staff distributed photographs of the original home at the front of the site.

Member Adesanya departed the Hearing at 3:17 p.m. The remaining Board Members comprised a quorum. Testimony continued.

Mr. Garnhart continued. He inherited a 50 year feud with the neighbors on the east side of his property when he purchased the home. The Building Department asked that the prior structure be repaired. However the neighbor wanted the structure to be demolished. Since the home was on the property line he asked the neighbor for access to their property to conduct repairs. She would not allow it. They even went through an arbitration process. In the end there was no agreement. The Building Department asked that Mr. Garnhart bring the neighbor to civil court. Mr. Garnhart declined. He did not want to jeopardize his 80 year old neighbor's health, or cause undue stress over a piece of property. Mr. Garnhart has experienced a stroke himself and is sensitive to health issues. His neighbor has since passed away. The new property owner, Mr. Lucero does not object to the project, and has submitted a letter of support.

Additional photographs were distributed. The Board commented that the original carport appeared to be a carriage house. There was no dwelling attached. Mr. Garnhart further explained the prior owner used recycled materials that were damaged. All of the damaged materials had to be removed. The home is 25 feet in height. Board questions for the Applicant were as follows:

- Is the Applicant aware that letters in opposition have been submitted
- Is the Applicant a contractor by trade
- Has the Applicant obtained a building permit
- Where will the addition be placed on the site
- How large are the rental units
- Are there rental units in the surrounding area
- How many vehicles did the demolished car port accommodate

Mr. Garnhart said he was not aware letters had been submitted in opposition. He has had the opportunity to speak with the neighbor to the east of the Lucero property. She is in support of the project. The neighbor immediately to the left of his home is also in support of the project. Ms. Lucero uses the property as a home for the disabled. The units on Mr. Garnhart's property are approximately 1,000 square feet. The new structures are similar to the old units. Although Mr. Garnhart did not have plans for the original structure, the footprint for the new structure is the same. The new structure will be moved 18 inches from the placement of the prior structure. The old carport that was that was demolished, housed 5 vehicles. The carport and the storage shed that were demolished are being replaced with an elevated addition. Three parking garages will be located underneath the elevated units. This accomplishes a gain of 3 parking spaces. Staff pointed out photos of the old structures on page 5 of the staff report. Mr. Garnhart acknowledged that he has worked as a contractor. The problem started as the result of the structure being located on the property line. Mr. Garnhart admitted it was a mistake to conduct the work without a building permit. Now he is attempting to rectify the situation. Public testimony was closed.

The Chair said she was concerned. There did not appear to be sufficient open space. The required setbacks cannot be met. According to the old photographs, the footprint of the 3 dwelling units formed a u shape. One of the dwelling units has now been replaced with a garage. There does not appear to be clear ingress to the garage. The area between one of existing homes looks to be approximately, 15 to 20 feet.

Member Spalding thought it would be difficult to make required variance findings. She challenged staff's position that a special circumstance is present due to the legal non-conforming status of the units. The units were not constructed in 1888. The unit that was replaced was built in 1930. Her interpretation of the Zoning Ordinance is that a non-conforming use shall not be enlarged, or extended. If the non-conforming structure or use is lost due to fire, damage etc., current Ordinance requirements apply. Intellectually she had a problem with staff's analysis. Regarding staff's position the setbacks for the units were created prior to zoning, therefore not constituting special privilege inconsistent with limitations on other properties. The proposal does not conform to zoning requirements for parking. The proposal will result in further development of a parcel that is already over developed. She was not in agreement with staff's position that the proposed project location was adjacent to largely open area. No evidence has been presented to that effect. The units are next to a fence. Staff explained there was open space at the rear of the site. Member Spalding pointed out that another building occupied the space between the proposal, and the rear of the site. She said she appreciates that the owner has tried to improve the property. He has even ordered matching moldings. However the work has already started. She was in support of the effort, but was finding difficulty with the application in its present iteration. Perhaps staff would like to continue the matter to strengthen, or modify the findings.

The Chair said based on County Counsel's review of the Ordinance, when a non-conforming building

ceases to exist, the non-conforming status disappears. Any new project must now meet current zoning requirements. This does not. The structure is not set back from the property line. Current zoning only allows a single dwelling unit. The Chair asked staff if the Applicant could limit the project to a parking structure. Staff responded that a variance would still be needed. A parking structure could be categorized as a detached accessory structure. The detached structure could sit on a property line but must have a 1 hour fire wall. The detached accessory structure could also sit 3 feet from the property line, and must not exceed 15 feet in height. Either proposition would require a variance. The required setback is 75 feet from the front property line; or placement in the rear half of the lot.

The Vice Chair said she was torn. She can also appreciate, and support the Applicant's effort. However the Board must be fair to all applicants. Required findings must be met for all applications.

Staff told the Board they could not provide additional analysis. The Chair re-opened public testimony to obtain further input from the Applicant regarding special circumstances.

Mr. Garnhart returned to the podium. Board Members asked Mr. Garhart to explain why he thought special circumstances were applicable that deprive the property of privileges enjoyed by other property in the vicinity, under the identical zoning classification. Mr. Garnhart said he understood the question. However in his case the costs to remodel will exceed the rent from the unit. He asked the Board for sympathy to his plight. He would not have gone to such a great extent, had it not been necessary. At this point he needs assistance in replacing what he had. Member Spalding pointed out the new proposal is slightly different than the prior structure. Mr. Garnhart said that he needed the extra parking. Member Spalding asked the Applicant if he was interested in a continuance. Mr. Garnhart said the application had been on-going for 2 years. He asked the Board possible outcomes if his permit request was not approved. He also asked staff to advise him since he was unsure of the legalities. Member Spalding said one possibility is that he may have to tear down the construction. The Chair further clarified the Board could not advise him. They could offer a continuance to a future date, allowing him an opportunity to further investigate with staff, possibilities that have been overlooked. Member Spalding said the other option is for the Board to make a decision. Mr. Garnhart can then appeal any decision made by the Board of Zoning Adjustments to the Board of Supervisor's. Public testimony was closed.

The Chair asked staff for further information:

- How does Zoning Ordinance 17.52.640 contrast with 17.52.650
- Can the proposal be reduced solely to additional parking
- Can the proposed unit be constructed without parking placed underneath the structure
- What is the Applicant's responsibility to the Building Department for un-permitted work
- Are there Ordinance allowances for repairs to un-inhabitable non-conforming structures

Member Spalding said she had sympathy and wanted to work with the Applicant. However the findings as presented were somewhat inconsistent with the express language of the Ordinance. Staff said possible configurations, and work that has been completed would be considered by the Building Department. They will work with the Applicant, once they obtain Planning approval. Counsel said there is case law that may allow repairs to a certain degree, to address health and safety issues. However in this case the line may have been crossed since the structure has already been removed. Staff will conduct further research and report back. The Chair asked staff to craft alternate Tentative Findings based on further analysis.

The Vice Chair motioned to continue PLN-2008-00072 to the March 25, 2009 Hearing. Member Spalding seconded the motion with a request the item be set on March 11, 2009 as the Applicant is anxious to resume work on the project. The Vice Chair accepted the modification. Motion carried 3/0.

Member Adesanya did not participate in the vote, as she had departed the meeting.

3. **MAX MORRIS, PLN-2008-00073** - Conditional Use Permit application to allow continued operation of an automotive repair facility, in an ACBD-“R” (Residential) within the Ashland Cherryland Business District Specific Plan, located at 186 East Lewelling Boulevard, corner northwest of Ashland Avenue, unincorporated San Lorenzo area of Alameda County, bearing Assessor’s Parcel Number: 413-0019-004-02. **Staff Planner: Damien Curry.**

Staff distributed additional information. The Alameda County Redevelopment Agency had no comments. The staff recommendation was approval. Initial Board questions were as follows:

- What were the required Conditions of the prior use permit
- Were all prior Conditions met
- Is the current permit a result of a Code Enforcement compliant

Staff explained all Conditions of the prior use permit had been met. Signage at the property was not part of the prior use permit. Alameda County Code Enforcement sent the Applicant notice as part of a proactive Redevelopment program for the area. Once the Applicant was notified, signage was brought into compliance. Conditions of Approval for the current permit are similar to previous requirements. The present permit requires the curb cut on Ashland Avenue remain fenced off. The curb cut on East Lewelling Boulevard will also be removed as a result of Redevelopment improvement to Lewelling Boulevard. The curb cut on Ashland Avenue may also be removed to accommodate future improvements. The use is considered non-conforming. PLN-2008-00003 is the 5th use permit renewal. Public testimony was opened.

The Applicant, Mr. Morris was present. Mr. Morris confirmed he is willing to comply with proposed Conditions. However he requested the curb cuts on Ashland Avenue remain intact for possible future access. The curb cut areas for Lewelling Boulevard and Ashland Avenue are fenced off, and not in use. The Board explained they had no Conditions of Approval specifically relating to curb cuts. Mr. Morris can discuss possible options with Public Works. Board questions for the Applicant were as follows:

- Will further landscaping be added to the site
- What type of roofing material has been utilized at the site

Mr. Morris acknowledged landscaping at the corner of the site could be improved. The landscaping on Ashland Avenue will be trimmed. Mr. Morris requested the landscape barrier between the properties remain intact. It delineates the site from the neighboring property. Mr. Morris confirmed the roof is made of metal. He will ensure the roof remains clean, and clear of foliage. The Vice Chair recommended the Applicant coordinate with Redevelopment. The Agency plans to improve Lewelling Boulevard. Landscaping may be augmented through slated improvements. Staff further clarified the Redevelopment Agency will improve the public right of way, and not private property. County Counsel recommended modification to Condition #2c to address the concern. Language can state: *Additional plantings shall be added to the southeast area of the property, consistent with Redevelopment improvement plans for Lewelling Boulevard.* This should prevent conflicts with future improvements. Public testimony was closed.

Member Spalding for further modification of Condition #2c: landscaping shall be to the extent to mitigate the wrought iron fence.

The Chair asked if the Redevelopment Agency was opposed to the recommended 5 year permit length. Most use permits have been granted for a 3 year period. Staff confirmed the Redevelopment Agency did not respond to that specific aspect of the application.

Member Spalding motioned to adopt the staff finding of approval for PLN-2008-0003. Condition #2c shall be modified to include the following: Landscaping or plantings shall be added to the southeast corner of the property, to mitigate the wrought iron fence consistent with Redevelopment improvement plans for Lewelling Boulevard. The Vice Chair seconded the motion. The Applicant stated for the record, he did not object to the modification.

Motion carried 3/0. Member Adesanya did not participate in the vote, as she had departed the meeting.

APPROVAL OF MINUTES: Vice Chair Gil motioned to accept the Minutes of October 22, 2008 with corrections. Member Spalding seconded the motion. Motion carried 3/0.

Member Spalding motioned to accept the Minutes of January 14, 2009 with corrections. Vice Chair Gil seconded the motion. Motion carried 3/0.

The Chair continued the Minutes of November 5 and 12, 2008. A voting quorum of Members present on the aforementioned dates was not present at the Hearing.

STAFF COMMENTS & CORRESPONDENCE: Staff announced there are no Board of Zoning Adjustment appeals on the upcoming Board of Supervisor's Calendar. The appeal of Conditional Use Permit, C-8555- Laguna will return to the BOS Calendar in April.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: The Chair asked staff for additional information regarding cell towers. When applicants appear before the Board for permit approval they are not opposed to co-location. However when other carriers apply for antennas at the same site, existing carriers say co-location is not compatible because of equipment. What standard permit requirements can be implemented which require pre planned designs that ensure future co-location. This will reduce the number of cell sites in residential areas. Staff reminded the Board that many carriers do, co-locate. When a second carrier is added to a site, the process is handled through the Building Department. Board review is not required.

ADJOURNMENT: There being no further business, the hearing adjourned at 4:30 p.m.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS