

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
FEBRUARY 24, 2010
(APPROVED MARCH 24, 2010)**

The Regular 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, Frank Peixoto and Ineda Adesanya.

MEMBERS EXCUSED: None.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel, William Fleishhacker; Code Enforcement staff; and Yvonne Bea Grundy, Recording Secretary.

There were approximately 5 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. **Petros Balaskas, Kent Avenue, San Lorenzo, CA 94580**
In violation of the Alameda County Ordinance Sections 17.52.430 & 6.65.030 F (1).
 1. Fence exceeding allowable height; and.
 2. Paving of the front yard exceeding more than 50%.

Member Peixoto motioned to uphold the staff recommendation . Declare the property a public nuisance, and require abatement to be complete within 10 days. The Vice Chair seconded the motion. Motion carried 4/0. Member Adesanya did not participate in the vote, as she had not yet arrived.

CONSENT CALENDAR:

1. **FRED PRICE / EL SHADDI MINISTRIES, CONDITIONAL USE PERMIT, C-8762, PLN-2009-00037, VARIANCE, PLN-2008-00020** – Conditional Use Permit Application to allow continued operation of a church, Variance Application to allow fewer than the required on-site parking spaces in a R-C ABCD (Residential Commercial, Ashland Cherryland Business Specific Plan) District, 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. **Staff Planner: Richard Tarbell.** (Continued from November 12,

2008 and January 28, February 25 and May 27, June 10, July 8, September 23, October 28 and December 16, 2009; to be continued to April 14, 2010).

Member Peixoto asked staff why the application continued to be delayed. It was reported the Applicant was negotiating a parking agreement with the neighboring property owner. Staff responded the Applicant was able to obtain a short term parking agreement from the neighboring property owner. However they are now in litigation over the ownership of the parking area. If the church cannot prevail, they do not have sufficient parking to meet zoning requirements. The determination cannot be made regarding parking, until litigation is resolved. The BZA has the option of hearing the matter prior to April 14, 2010. The use permit application can be denied outright; or the parking aspect of the application can be denied. Further Board questions were as follows:

- Is the church currently using the parking spaces
- What is the length of the temporary agreement
- Can the Board increase the number of parking spaces required, prior to the next consideration
- Are Conditions of Approval contained in the expired permit, currently in force
- Will the Applicant be given further continuances

Staff confirmed the parking spaces are in use. The Applicant was unaware an issue existed regarding parking. The matter came to light when staff reviewed the renewal application. The Board can increase, or change the number of parking spaces, in the application description. However public re-notification is necessary. Staff was unsure how long the temporary agreement would be in effect. The Chair recalled the temporary agreement was in effect, until the issue is resolved. The Vice Chair said the outcome of the parking lot ownership is important, if determined the Applicant cannot provide the necessary parking spaces. The status of the application resolves itself. Member Peixoto was concerned. The Applicant is operating a de-facto use, without approval. Legal action can take years to resolve. Staff said the site has been well maintained. The Applicant is in compliance with prior Conditions of Approval. Member Peixoto asked that staff ensure the matter be on the Regular Calendar, and considered by the Board on April 14, 2010.

2. **CLEARWIRE LEGACY LLC / CHRISTIE CHAD, CONDITIONAL USE PERMIT, PLN-2009-00145** – Application to allow installation of two 26.1 inch, and one 15.3 inch in diameter microwave antenna dishes; two 42 inch by 12.7 inch panel antennas, and one 4 inch in diameter GPS antenna, on three corners of an existing PG&E transmission tower, with an equipment enclosure located at the base of the tower, in a PD (Planned Development, 1337th Zoning Unit) District, located opposite 17249 San Franciscan Drive, east side, approximately 325 feet south of the T intersection with Bellingham Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085-6311-001-00. **Staff Planner: Andrew Young.** (Continued from January 27, 2010; to be continued to April 14, 2010).

Member Spalding motioned to adopt the Consent Calendar as presented. Member Peixoto seconded the motion. Motion carried 5/0.

REGULAR CALENDAR

1. **BONORA / CLEARWIRE LEGACY, LLC, CONDITIONAL USE PERMIT, PLN-2009-00148** – Application to allow construction and operation

of a telecommunication facility (rooftop antennas and microwave dishes) in a PD (Planned Development, 1417th Zoning Unit) District, located at 19125 Redwood Road, west side, at the southwest corner of Wilson Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0583-003-06. **Staff Planner: Christine Greene.** (Continued from February 10, 2010).

Staff reviewed the application and recommended approval. The CVMAC recommended approval as well. The Draft Minutes of the February 8, 2010 CVMAC Meeting were circulated. Board questions for staff were as follows:

- Has the Sheriff requested a Condition requiring immediate shut for safety frequency interference
- Where will the antennas be located
- Where will the equipment cabinet be located
- Are other carriers located on the property
- Is co-location possible at the site

Staff confirmed the Sheriff requested a Condition with the ability to enact immediate shut down, in the event of Emergency Frequency interference. The Sheriff would enact the Condition, if it ever became necessary. The panel antenna installation will be on the center top of the Bonfaire Market building. Three additional carriers have installations on the roof. The installations are screened, and cannot be seen from the ground. The equipment cabinet is located on the ground, in the southwest corner of the lot. Public testimony was opened.

Mr. Chad Christie of Clearwire LLC was present. He clarified two other carriers are located at the site. The third carrier, AT&T obtained approval, however never installed equipment. The Clearwire installation will be attached to a fiberglass parapet, approximately 6 feet in height. The antennas are side mounted as close to the edge of the building as possible. This propagates the telecommunication signal. Board questions for the Applicant were as follows:

- Has Mr. Christie read the staff report
- Is Clearwire in agreement with the further proposed Conditions of the CVMAC
- Were alternate sites considered
- Will camouflage be employed

Mr. Christie said Clearwire considered Castro Valley High School as an alternate location. However the parties could not come to an agreement. Clearwire agrees to the CVMAC Condition: mechanical screening shall be painted. Although Clearwire is not the only carrier with mountings behind the screening, Clearwire will complete the work. Clearwire will contact the other carriers regarding compensation, and continued upkeep. Public testimony was closed.

Member Spalding motioned to uphold the staff recommendation of approval of PLN-2009-00148. Member Adesanya seconded the motion. Motion carried 5/0.

2. **CLEARWIRE LEGACY LLC / CHRISTIE CHAD – CONDITIONAL USE PERMIT, PLN- 2009-00153** - Application to allow installation of a telecom facility, including three (3) panel antennas, three (3) microwave antennas, and one (1) BTS equipment cabinet to be located on an existing PG&E tower, on an "A" (Agricultural) District parcel that is 11 acres, located on Matilda Lane, west

side, approximately one half mile east of Fairview Avenue, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 085A-6100-005-03. **Staff Planner: Jeff Bonekemper.** (Continued from January 27, 2010).

Staff reviewed the history of the application. The recommendation was approval. The BZA continued the item from the January 27, 2010 Hearing. Matilda Lane is also known as Llama Lane. A more detailed map of the site and surroundings were submitted. Also a landscape plan, and plans for the proposed home on the adjoining eastern parcel. The proposed 8 foot wide East Bay Regional Park trail is not located on the site in question. It is approximately 90 feet from the PG&E tower. The Hayward Fire Department confirmed the present road surface on the site is acceptable for the use. The road surface was approved when the private road was installed in 2008. Initial Board questions were as follows:

- Which entity would shut down the facility if there is interference on the Public Safety frequency
- Has an address been assigned to the property
- Are there alternate road entrances to the site
- Will the Fire Department have alternate access to the site

Staff confirmed the Sheriff's Department would be the Agency to shut down the facility, in the event of interference. In the past occasional, interference was experienced. There have been no issues in recent years. Member Spalding pointed out Condition #4 (b) requires the carrier to provide an inter-modulation report that clearly concludes no interference to public safety frequencies will be caused at the site. The Chair suggested the last sentence in Condition #4 (a) be modified to state "immediately" cease. This will provide more clarity. County Counsel found the language discussed acceptable. Staff said Llama Lane as an access road must remain. The Fire Department does have another access point to Llama Lane from a road located behind the Fire Station. Although another easement exists on the along Llama Lane permission to access the easement would be required by the parties that control it. Access from Five Canyons Parkway is via another private easement. The sliver of land is possibly owned by the Five Canyons Homeowners Association. This easement was formed when the Pacific Terrace Development was formed. The Building Department assigned a physical address to the site, last week. Public testimony was opened.

Mr. Chad Christie, representing Clearwire Legacy was present. He confirmed updated plans with site address have been submitted to staff. The property owner is present, and can provide more information regarding the proposed residence.

The property owner, Mr. Gary Parham said the assigned address is 4901 Matilda Lane. In addition to a home, a large barn and caretaker's unit will be built. The home will be on the eastern portion of the parcel. Redwood trees will be planted in the vicinity of the tower, but not directly underneath wires. Smaller variety trees will be planted closer to the tower. Member Spalding asked if Mr. Parham had access to Five Canyons Parkway from the site. He told the Board he did not have access. He believes there will be a fire gate from the horse trail that will allow access to Llama Lane. Public Testimony was closed.

Staff clarified the access road on the site noted in Condition #3 is not required to be paved. An all-weather surface is required. The road consists of a material called Grasscrete. Member Adesanya asked that language in all Conditions of Approval be consistent with plans already approved for the private road. Member Spalding pointed out the road was not yet complete. She asked if the Hayward Fire

Department had approved the road since they had specific recommendations in their referral response, dated December 4, 2009. Also which party would be responsible for installation costs. Staff explained the Fire Department approved the road in conjunction with the Building permits connected with the home. The Chair re-opened Public Testimony to further discuss the road.

Mr. Parham confirmed the Hayward Fire Department had already given approval for the road. He explained to the Hayward Fire he did not want to install concrete. The current condition of the road that exists is satisfactory. The Chair asked if it would be appropriate to call a short recess to obtain the original road plans that were approved. Member Spalding said, Condition of Approval can be stated as such: The Applicant is not required to install an asphalt or concrete road. Public testimony was closed.

Member Spalding motioned accept the staff recommendation of approval with the following modifications: Condition #3 shall add language. A concrete or asphalt surface is not required for any roads on the property. Condition #4 (a) third sentence shall now state "The County will then have the right to cause the carrier's equipment to immediately cease operation, including the disconnection of power to the carrier's equipment. Conditional Use Permit, PLN 2009-00153 to expire in 10 years. Member Peixoto seconded the motion. Motion carried 5/0.

3. **GAYLER CONSTRUCTION, VARIANCE, PLN-2009-00159** - Application to allow construction of a single family dwelling with a 10 foot side yard where 20 feet is required, and a 10 foot front setback where 15 feet is required, in an R-1-B-E (Single Family Residence, 5 Acre Minimum Building Site Area, 60 foot Median Lot Width, 20 foot Front Yard, 7 foot Side Yard Minimum) District, on Clover Road, east, located behind 26036 Clover Road, southeast side, approximately 500 feet southwest of East Avenue, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 425-0240-006-00. **Staff Planner: Damien Curry.**

Staff reviewed the application. The recommendation was approval. An addendum to the staff report and two letters from neighbors were distributed. The road frontage is 50 feet wide. The flare of the road is 30 feet. At the stem the road narrows to 20 feet. Initial Board questions were as follows:

- Has the parcel been granted building site status
- What conditions are present that precipitated the variance requests
- On what portion of the site are the requests located
- On what side of the parcel will the road be placed
- Has the proposed septic system been approved
- Will the septic leech fields cross under the proposed driveway

The road entrance will be placed on the right side of the property. Staff used the site plan to show location of the proposed septic field. You cannot drive over a leech line and/or field. A septic tank is encased in concrete. It can, be placed under a driveway. The property has been granted building site status. A certificate of compliance has been issued. The variance requests are to bring the property into compliance with the Fairview Plan. A 15 foot setback from the stem of the lot to the main access road is required. The front of the property is facing Clover Road. Staff was unsure if Environmental Health had granted approval of the septic system. Public testimony was opened.

The property owner Mr. Saleem Van Gruenou was present. A 25 feet portion of the wall at the entrance of the neighboring property will be torn down. The goal is to remove the minimum amount necessary. One of the neighboring properties is owned by his Sister in Law. The driveway to the site will go toward the rear of the parcel. Septic testing and engineering has been completed. An advanced System has been specified. The proposal has been submitted to Environmental Health. The septic system will be 3 ½ feet deep. The tank will be a slight distance from the field. There is no garage at the site. A small road will lead to the house to drop people off. None of the septic field will be driven over. There is a primary, and a secondary leech field. The proposed trench design is included in the staff report graphic. Board questions for the Applicant were as follows:

- How much grading is anticipated for the project
- Will the septic system have an impact on the neighbor
- Has Environmental Health visited the surrounding sites to consider possible impacts

Mr. Van Gruenou said the Hayward Fire Department requires a 120 foot turnaround, and a 20 foot wide driveway at the rear. A minimum of 12 feet must be paved down the length of the road. The home must also have sprinklers installed. His neighbor has a driveway 150 feet long. The home Mr. Van Gruenou proposes is near the end of the driveway. A fire truck can go back there. However the Fire Department is also requiring the same type of driveway at his home. Mr. Van Gruenou used a Site Plan Map to show the surrounding properties. His In-Laws home is closer to Clover Road. The adjacent property owner is not a relative. The area is not heavily sloped. The property of the neighbor on Clover Road is approximately at the same elevation. Grading should be minimal. The site is quite a distance from the neighbor's septic field which is located upward from the site. Member Spalding asked if the Applicant would consider a continuance to obtain more information from Environmental Health. With more specifics as to requirements, grading and setbacks may possibly be reduced. The staff report says the grade is 14%. The property is also near the riparian area. New septic system technology is available that may reduce leech field size. This may also reduce the setback, or remove the need for a variance. The Applicant said he met with the Environmental Health Engineer. He visited the site, and said the proposed system looks okay. Mr. Van Gruenou was unsure if he visited neighboring properties. Further information about system specifications are on page 5 and 6 of the staff report. Member Spalding again said the Applicant may want to confirm approval from Environmental Health before continuing in the process. Environmental Health should be asked if they considered the fact the surrounding properties are zoned for 5 acres. There is a lot of bed rock in the area.

Mr. Sergio Kuaebel lives at the neighboring property at 26036 Clover Road. He holds a Masters Degree in Conservation Biology. He works in the Land Protection field. His site is located in front of the Applicant's. He showed the Board the septic system location at his property. The septic field sits in a basin area, located behind the house. The variance request is an attempt to minimize impact. Placement in the corner of the site will also minimize tree removal, and protect the Riparian area. The goal is to use the smallest septic system possible, regardless if the variance request is granted.

Member Spalding pointed out the entire area was situated in a down slope area. She reminded the Applicant required findings must be made, in order to grant a variance. Placing leech fields in a particular location may cause detriment to another property. This can impact Tentative Finding #2. The Applicant told the Board the majority of driveway grading is an attempt to place the septic well below the neighbor's septic system. A small amount of earth will be cut out of the slope. However that earth will be used on the other side of the roadway. Grading will only occur in the 25 foot stem area of the

roadway. No grading will occur in the septic field area.

Mr. Kuaebel interjected with further detail. The septic field of the adjacent neighbor is shown in Figure #3. The site is above the proposed home. Grading will actually take place on the other side, adjacent to his home at 26036 Clover Road. Referring to the topographical map, he showed the Board where his septic field was located behind his home. Mr. Van Gruenou further clarified that Mr. Kuaebel's septic field flowed, and ended within a knoll area. Using the topographical map he indicated terrain, and how the leech fields within the vicinity flow. Mr. Van Gruenou will get water from the City of Hayward system. There is approximately 50 feet from the edge of property to the septic field. The tributary to Ward Creek is 30 feet from the closest property line boundary. This is at the rear. From the other parcel boundary line, the leech field is approximately 100 feet to the tributary. The Friends of San Lorenzo Creek have reviewed project plans, and have submitted comments. They do not object to the project.

Member Spalding said the Board cannot determine if leech field runoff will impact another neighbor. County Environmental Health Department has only considered the project from the perspective of the proposed home. Not how the system will affect surrounding properties. One of the reasons minimum parcel size for the area was changed to 5 acres is the large amount of bedrock present. Mr. Van Gruenou may want to consider a leech field at the top of the property. Although the option may increase costs, the system would pump waste uphill. Mr. Van Gruenou said placement at the top of the site would cause grading issues. Member Spalding responded earlier Mr. Van Gruenou noted the flatter portion of the site was toward the top. Public testimony was closed.

The Vice Chair asked the position of the neighbor's home at 26022 Clover Road who submitted a comment. Member Spalding asked the Applicant to also indicate the neighbor's home in relation to the proposed house. Members Peixoto and Adesanya also wanted more information as to the requests by the City of Hayward Fire Department regarding the roadway.

Public testimony was re-opened. Mr. Van Gruenou said that neighbor lived above his site, toward the home at 26022 Clover Road. The existing homes are a fair distance from his proposed home. There is another property that is much closer. However there are no setback issues on that side. A variance is not required for that portion. In the end, the Fire Department required a 12 foot wide asphalt or concrete road, with a 20 foot clearance. Portions of the road require a 14 foot clearance to maneuver around the trees. At least 12 feet of the road width must be paved. Based on the language of the Ordinance which requires an acceptable road that can withstand 75,000 lbs. of pressure, Mr. Van Gruenou tried to negotiate another surface. Crushed gravel or mehadum was a consideration however the Hayward Fire Department insisted on asphalt. As a result of the Fire Department requirements, more large trees must be removed to meet road requirements. The requirements will result in a road that is wider than Clover Road at 16 feet. Public testimony was closed.

The Vice Chair, Members Adesanya and Peixoto were inclined to support the staff recommendation of approval. The Chair said she had concerns about access to the site. Do to the existing fence. The property could not be fully accessed to view terrain. Members Peixoto and Spalding visited the site. They explained Clover Road was at the top. All of the homes drop down from that point. Member Spalding said although the BZA would not make the decision regarding the leech field. She was concerned that sufficient information is not available regarding buffer zones. Multiple requirements and considerations are necessary to ensure leech fields do not affect the property owner above. Sufficient overflow and reserve areas must be provided. The BZA does not want to make a decision that would impact another site. Member Adesanya agreed there are reasons for concern. However the Applicant must meet the criteria set in Condition #2, compliance with Environmental Health. She trusts the process will work. Environmental Health will review their requirements. This should cover the BZA decision if they follow through. Further Board questions for staff were as follows:

- Does Environmental Health had a variance process for septic
- Are there proposed changes to the frontage of the property
- If the BZA grants approval, is Environmental Health obligated to approve a septic system
- Does Environmental Health consider surrounding properties when approving septic fields
- Has a Certificate of Compliance been issued for the proposed home

Staff said there is a variance process through Environmental Health that is heard by the Board of Supervisors. The typical Environmental Health variance involves reduced size lots. The Plumbing Code requires a 40,000 square foot minimum lot size. If a lot is requesting plumbing facilities does not meet this threshold. The variance request goes directly to the BOS. There are no proposed changes to the 50 foot frontage. A Certificate of Compliance has been issued. The Chair said the question is, what location is optimal placement for septic. Also is the placement far enough from the creek. Member Spalding said she was skeptical. In her experience Environmental Health does not necessarily consider neighboring properties. The Environmental Health Design could have a detrimental effect on the neighbors. Planning should work closely with them to ensure this does not happen. Member Adesanya said one of the neighbors is present, and provided testimony. The Board has determined based on maps and testimony the property is downward. A Condition can be added requiring Planning approve of the Grading Plan before it is final. Staff confirmed Planning does review grading plans prior to Public Works issuing final permit approval.

Member Adesanya motioned to uphold the staff recommendation of approval, subject to Pre-Hearing Recommendations, and Conditions of Approval. Condition #5 shall be modified: Staff shall confirm final Grading Plan with Public Works Grading so as to ensure no adverse impact to adjacent Parcel #7, 425-0240-007-00, Property address 26144 Fairview Avenue, specifically regarding leech field run-off. Member Peixoto seconded the motion. Member Spalding asked for a modification to the motion. Condition #4, the word “necessary” shall be replaced with the word “required”. The modification to the motion was accepted.

The motion to uphold the staff recommendation of approval of Variance, PLN-2009-00159 passed 5/0.

APPROVAL OF MINUTES: Member Adesanya motioned to accept the January 13, 2010 Minutes with corrections. The Vice Chair seconded the motion. Motion carried 5/0.

The Minutes of January 27 and February 10, 2010 were continued to March 10, 2010.

STAFF COMMENTS & CORRESPONDENCE: The BOS Hearing scheduled for March 2, 2010 has been cancelled. Application, PLN-2009-00061, Rombough will be continued to the March 30, 2010 Hearing. An updated Board letter will be send to BZA Members.

Staff gave an update on the appeal of Application, PLN-2009-00098 Oscar & Susan Miller: The Applicant requested to withdraw the application then re-submitted the appeal request. PLN-2009-00098 will be placed on an upcoming BOS Calendar in approximately three months.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Member Adesanya asked the location of the proposed day care center for 150 to 200 students noted on the February 8, 2010 CVMAC Calendar. Staff said the day care is proposed at the Palomares Hills Commercial Center, Villareal Drive, Castro Valley.

ADJOURNMENT: There being no further business, the hearing adjourned at 4:00 p.m.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS