

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
FEBRUARY 28, 2007
APPROVED APRIL 11, 2007**

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Chair, Ron Palmeri; Vice Chair, Frank Peixoto; Members, Jewell Spalding, Lester Friedman and Dawn Clark-Montenegro.

MEMBERS EXCUSED: None.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; Yvonne Grundy, Recording Secretary

There were approximately 13 people in the audience.

CALL TO ORDER:

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

NEIGHBORHOOD PRESERVATION AND ZONING ORDINANCE ABATEMENT HEARINGS

- 1. 931 DELANO ST, SAN LORENZO – VIOLATION OF SECTION 6.65.030I1 PAVING OVER MORE THAN 50% OF THE FRONT YARD AND STREET SIDEYARD – STAFF RECOMMENDATION TO DECLARE THE PROPERTY A NUISANCE.**

Member Friedman asked what portion of what he sees in the photo is sidewalk. Discussion on what is sidewalk area. Part of the sidewalk was constructed in 2006 and 560 square feet was constructed before the ordinance in June 1999. The abatement applies to post 1999 construction because it exceeds the more than 50% of the front yard. Discussion on what is 50% of the yard.

The applicant explained to board members what was constructed prior to 1999. Some of the old concrete was taken out and new concrete was poured. He asked what part has to be removed. The daughter of the applicant said that they have four cars and need the space to park their cars.

Ms. Henninger pointed out to the board members that the area of concrete constructed prior to 1999 was considered non-conforming. Once the applicant removed the old concrete, it can't be replaced. The new portion has to be removed. Member Friedman asked if they can park on the unpaved surface once the concrete is removed. Discussion on the Neighborhood Preservation Ordinance and how this ordinance came into effect because residents of the unincorporated area pressed the Board of Supervisors to adopt the ordinance to resolve parking in the front yard.

Vice-Chair Peixoto moved to adopt staff's recommendation, declare the property a nuisance and removal of no less than 550.4 feet of paved concrete area. Seconded by Member Clark. Member Spalding opposed based on the abatement, not a proper solution. Motion carries 3/2. Member Spalding and Friedman voted against.

- 2. 12223 BOCKMAN ROAD, SAN LORENZO – VIOLATION OF SECTION 6.65.030A1, 3, B2, F5 & 6 AND M – DEBRIS SURROUNDING THE PROPERTY, GRAFITTI, BROKEN WINDOWS/DOORS. PREVIOUS VIOLATIONS. STAFF RECOMMENDATION DECLARE THE PROPERTY A NUISANCE AND ABATE WITHIN TEN DAYS.**

Member Spalding asked if it could be less than 10 days. Member Friedman asked if there are any additional fines to this property. Ms. Henninger stated that this empty lot is part of a future development and Supervisor Lai-Bitker asked that we abate the blight on this property. The current owners are addressing the demolition but not the current status of the property.

Member Friedman moved to adopt staff's findings and declare the property a nuisance and require abatement within ten days. Member Spalding seconded. Motion carried unanimously.

3. PROPERTY LOCATED AT FAIRVIEW AND LAMA LANE, CASTRO VALLEY – VIOLATION 6.64030A 1 TO 4, H1-3, L1 – MISCELLANEOUS DEBRIS. – DECLARE THE PROPERTY A PUBLIC NUISANCE AND ABATE IN 15 DAYS.

Ms. Henninger stated that part of the abatement has already been done and thirty vehicles have been removed. Member Friedman asked how the variation of abatement period was determined. Ms. Henninger stated that it depends on the property and the owner. There is a period from 10 to 60 days. It all depends on the history and staff's ability to hire contractors right away to clean it up. Member Spalding stated that she is very happy to see this being addressed.

The property owner, Joseph Walters, described a history of substantial criminal activity on the properties next to his which included methamphetamine manufacturing. Thus far he has cleaned up debris from the neighboring properties, as well as his own. He stated that the Sheriff's Office had not been notified properly. He said that a lot of collector cars had been removed from his property. Member Clark asked if all the cars belonged to him. He said most of them were his but some were his friends. The applicant said his attorney, Mr. Moser was supposed to be here to represent him. Vice-Chair Peixoto asked why he was storing wrecked vehicles. The applicant said he had them to sell parts. Member Spalding stated that she hopes this will be the final run on this property since this has been going on for years and a lot of criminal activity has been happening on this property.

Member Spalding moved to adopt staff's recommendation to declare the property a public nuisance and abate within 15 days. Member Clark seconded. Motion passed unanimously.

4. 16298 ASHLAND AVENUE, SAN LORENZO – VIOLATION 6.65.030 – GRAFFITI ON THE FENCE. – DECLARE THE PROPERTY A PUBLIC NUISANCE AND ABATE IN 15 DAYS.

Member Friedman stated that this is something that can be corrected very quickly. Ms. Henninger said staff is looking at changing the ordinance for a fine instead of abating so that there is not a waiting period for cases such as this one. Staff said the property owner has been non responsive.

Member Friedman moved to adopt staff's recommendation to declare the property a public nuisance and abate within 10 days. Vice Chair Peixoto seconded. Motion passed unanimously.

ANNOUNCEMENTS BY THE CHAIR: The Chair made no 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.

CONSENT CALENDAR:

1. **JOHN SULLIVAN, CONDITIONAL USE PERMIT, C-8495** – Application to allow continued use of one site for: a) an outdoor storage yard; b) occupancy of a contractor's unit; and c) contractor's storage yard, in an M-2 (Heavy Industrial) District, located at 16520 Worthley Drive, southwest side, approximately 1,650 feet southeast of Grant Avenue, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 438-0010-004-14. (Continued from August 9, August 23, October 11 and December 13, 2006 and January 24, 2007; to be continued to March 14, 2007).
2. **DAVIS HUNG PHAN, CONDITIONAL USE PERMIT, C-8510** – Application to allow a massage therapy business, in an ACBD - FA (Ashland Cherryland Business District Specific Plan) Freeway Access District, located at 11 Lewelling Boulevard, north side, approximately, 300 feet east of Via Granada, unincorporated San Lorenzo area, of Alameda County, designated Assessor's Parcel Number: 413-0015-038-00. (Continued from December 13, 2006 and January 24, 2007). **THIS APPLICATION HAS BEEN WITHDRAWN.**
3. **JOSE OLIVAREY, CONDITIONAL USE PERMIT, C-8559** – Application to allow the continued operation of an indoor recreation facility in an ACBD-FA (Ashland Cherryland Business Districts Specific Plan) Freeway Access District, located at 20613 Mission Boulevard, southwest side, approximately 100 feet, northwest of Medford Avenue, unincorporated Cherryland Area of Alameda County, designated Assessor's Parcel Number: 414-0041-037-00. (To be continued to March 28, 2007).
4. **MICHAEL GAHAGAN, VARIANCE, V-12037** – Application to allow a secondary unit of 720 square feet in area where 640 square feet is the maximum allowed in an, R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 4157 Krolop Road, south side, approximately, 450 feet west of Vineyard Avenue, unincorporated, Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1140-017-12. (Continued from January 10 and January 24, 2007; to be continued to March 14, 2007).

Vice Chair Peixoto moved to approve the consent calendar. Member Clark seconded. Motion passed unanimously.

REGULAR CALENDAR

1. **VINCENT ROOFING COMPANY, CONDITIONAL USE PERMIT, C-8545** – Application to allow the continued operation of a contractor's storage yard, in an M-1 (Light Industrial) District, located at 2181 Dunn Road, north side, approximately, 350 feet west of Clawiter Road, unincorporated Eden Area of Alameda County, designated Assessor's Parcel Number: 439-0016-016-02. (Continued from January 24 and February 7, 2007).

Staff presented the staff report. Staff's recommendation is approval. Staff pointed out that this property is going to be annexed to the City of Hayward, which will go into effect on March 5, 2007. Member Clark stated that the Building Department said that none of the buildings have permits. Member Friedman did not see why this board should take any action on this application based on the fact that the City is going to annex it. County Counsel said it is the board's discretion to defer the applications to the City.

Staff said that the application was submitted on November 2006, prior to the annexation vote. The Chair asked if it is within this boards discretion to limit the conditional use permit to the date of annexation. County Counsel said yes, it is within the board's discretion to have the permit expire by the date of annexation. Member Spalding asked if they limit the permit to four days, they could appeal to the board to extend to a greater time. County Counsel said that the applicant will have the right to appeal this board's decision.

Public testimony was opened. The applicant, Mr. Vincent, stated that he has improved this property quite a bit. He asked that the permit be continued for a few years and then once annexed, the City will have to deal with it.

Member Friedman stated that the permit expired last year. He asked the applicant's position on the annexation of this property. The applicant asked for a one year permit so he can conform to the city's requirements. Member Spalding asked if the applicant has read the staff report and the conditions of approval. The Chair asked if the applicant read the conditions from the City of Hayward. The applicant said that in regards to the driveway, one of them they do not use it anymore and he does not see why the City is asking that it be paved. He said half of the yard is paved and half is not. He does not see why the rest of the yard has to be paved. The block wall does not make sense. He feels if he has to do it than everyone else in the neighborhood should do the same. He has a cyclone fence with slats. Public testimony was closed.

County Counsel said that once the annexation is effective than the County might not have any jurisdiction on this parcel. The Vice Chair asked if the item can be continued to after the annexation and not take any action so it is off the County's calendar. Member Friedman asked if the applicant can be refunded the fees. Member Spalding said that the board should not punish the applicant because of the annexation and a one year permit will give the applicant time to adjust to new conditions by the City and no disruptions to his business.

Vice Chair Peixoto said that the staff's recommendation is the best option. Member Friedman stated that whatever the board decides today it will affect two other items on the agenda. The Chair stated that the only concern he has is that something that this board does affects the long term plan for the City of Hayward for at least one year. The Chair said that he also does not agree with some of their suggested conditions.

Vice Chair Peixoto moved to adopt staff's tentative findings and grant the conditional use permit for one year to expire with the sooner of February 28, 2008 or one year of annexation. Member Spalding seconded. Motion carried unanimously.

2. **KAREN CARTER, CONDITIONAL USE PERMIT, C-8551** – Application to allow the continued operation of a 15 bed residential care facility, in an R-S-SU (Suburban Residence, Secondary Unit) District, located at 237 Cherry Way, south side, approximately, 500 feet east of Meekland Avenue, unincorporated Cherryland Area of Alameda County, designated Assessor's Parcel Number: 429-0010-047-00.

Staff presented the staff report. Staff recommends approval. The Chair asked staff if they want the conditions of approval to include in condition #3 a Fire inspection within thirty days of approval. Staff said yes. Member Clark asked in regards to a unit to remain to be used right now. Staff said it should stay as it is without a kitchen. Member Clark condition #4 did the applicant submit a maintenance contract? Staff said no.

Public testimony was opened. The applicant was not present. Member Spalding stated that since the applicant is not here the board should continue the item. The Chair said that they could approve the item

with staff's recommendation. He asked if any of the members had any additional conditions to be added to this item. Member Clark stated that comments from Cherryland Community Association should be added to the conditions. Public testimony was closed.

Member Friedman moved to continue the item for thirty days to March 28, 2007. Member Spalding seconded. The Chair asked staff to request the applicant to appear at the next meeting in regards to the addition of one condition from the Cherryland Community Association. Member Spalding asked that the comments from the Cherryland Community Association be added to the staff report. Member Peixoto asked that staff contact the Fire Department in regards inspection and their current policy on these care facilities. He said in the past the Fire Department used to inspect the facilities on a yearly basis. Motion passed unanimously.

3. **PETER MITCHELL, CONDITIONAL USE PERMIT, C-8553** – Application to allow the continued operation of an outdoor storage facility, in an M-1-B-40 (Light Industrial, 40,000 square feet Minimum Building Site Area) District, located at 24018 Clawiter Road, east side, approximately, 250 feet north of West Street, unincorporated Eden Area of Alameda County, designated Assessor's Parcel Number: 441-0090-014-00.

Staff presented the staff report. Staff noted that this property is going to be annexed to the City of Hayward.

Public testimony was opened. The applicant, Peter Mitchell, asked the board to grant the permit for five years and that the one year extension be removed from the conditions. He stated that for the last seven years they have served customers with RVs and the one year permit would affect his business and create a hardship for their customers. He has over 100 customers. He has a month to month agreement with his customers. This property is being used for storage of vehicles and RVs. He said five years would give him time to accommodate his customers. Member Friedman asked if he would like the one year or have the action be deferred to the City of Hayward. The applicant asked this board to approve the permit for five years. This is his source of income and in compliance with staff's recommendation. Member Clark asked if he has had meetings with the City of Hayward. The applicant said that the County and City have in the course of years assured us that the annexation would not be affected. He said he would like to keep his property as is until the City of Hayward starts developing this area. Public testimony was closed.

Member Spalding asked the zoning for the City of Hayward. Staff said that the City anticipates that Industrial development will continue in this area.

Vice Chair Peixoto moved to adopt staff's tentative findings with a modification on condition #4 that the permit shall expire with the sooner February 28, 2008 or one year of annexation. Member Spalding seconded. Motion carries unanimously.

4. **HORIZON SERVICES, CONDITIONAL USE PERMIT, C-8557** – Application to allow continued operation of a residential care facility and use of an existing office trailer in a PD (Planned Development) District, located at 2595 Depot Road, north side, northwest corner of Monte Vista, Unincorporated Eden Area of Alameda County, Assessor's Parcel Number: 441-0068-040-04.

Staff presented the staff report. This property is in the second phase of the City of Hayward for annexation and will go to the Board in February of next year. Staff recommended an additional condition to remove the trailer in one year's time. Member Friedman asked if item #14, should be changed to 2010 for a three year period.

Vice Chair Peixoto pointed out that the staff report on page 7, item #5 states that the Alameda County Fire Department inspection should be within thirty days and #6 states City of Hayward Fire. Staff said it should say Alameda County Fire. Member Friedman asked page #3, City of Hayward comments were they included in the conditions of approval. Staff said some of the comments were incorporated in the conditions of approval.

Public testimony was opened. Keith Lewis, Executive Director for Horizon, said he is available for questions. Member Friedman asked if Mr. Lewis has any problems with the conditions of approval from the City of Hayward. Mr. Lewis said no. Member Spalding asked if he agrees with the landscape requirements or suggestions for landscape, parkway strip. Mr. Lewis advised him that the landscape was fine and could not understand the City's requirement, he said he would put up something to block the trash bins. Member Spalding inquired about the broken sidewalks. He said he would be glad to fix them and have been doing other maintenance over the years. Public testimony was closed.

Member Spalding said that there seems to be some conflict between the landscape requirements from the City and the County.

Member Friedman moved to approve staff's tentative findings and to have the City of Hayward's comments on pages 3 and 4 be incorporated with the exception of the parkway strip. Member Peixoto seconded with the deletion of City of Hayward Fire and addition Alameda County Fire Department on item #6C. The Chair added to change #14 to read that the permit will expire on the sooner of three years on the date of this action February 28, 2009 or two years from the annexation of the City of Hayward whichever occurs first. Member Clark asked that an additional condition be added that any trailers located on the property be removed within one year from today's date. Motion carried unanimously.

5. **SACRED ORDER of CHERABRIM & SERAPHIM, CONDITIONAL USE PERMIT, C-8568** – Application to allow the operation of a church, in a C-1 (Retail Business) District, located at 676 Bockman Road, Unit E & F, south side, approximately, 50 feet east of Via Arriba, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0085-006-03.

Staff presented the staff report. The Sheriff's Office had no concerns on the proposed application. Member Clark asked if the church has been operating in this location without a permit for the last ten years. Staff answered yes. The Chair stated that the staff report indicates that this church facility is 1800 square feet and accommodates congregation of 15 to 20 members but typically only 8 to 10 members attend the services. It seems that the use required by the public need seems a little inconsistent when only 8 to 10 members are using this facility. Member Spalding asked if there has to be a certain number of members to qualify as a church. County Counsel was not aware of any rules on that subject.

Public testimony was opened. Mr. Brian Poble a resident adjacent to his address said he does not object to

the conditional use permit, but there is no insulation or sound proofing on this building. The Church plays music on an amplifier and it goes through the house. He wanted assurance that something can be done in regards to the music. He said that occasionally they have over 100 people, an outdoor bazaar or food fair but the only concern they have is the amplified music.

Mr. Tom Reed, the owner of the applicant, representing the pastor for the church said that there is an amplifier in the building and he was not aware that it could be heard by the neighbors. He assured the board that this issue will be addressed with the applicant. Member Spalding asked if he knew if the applicant would oppose the condition of no amplified music. He said he would talk to the applicant. Member Friedman asked if he was aware that sometimes there are close to 100 people at this facility. Mr. Reed said that sometimes they will have potluck luncheons or fellowship where other congregation members will come to this church and they will hold an outside service. On Friday evening they also have some services. On an average day they probably attract 14 members. They are in the process of joining with another church and regular attendance will most likely have 20 to 28 members. Discussion ensued on parking availability for the small shopping area. Mr. Reed was not opposed to having a limit on the number of members attending any of the services not to exceed 100. Public testimony was closed.

Vice Chair Peixoto was concerned that the applicant was not present to address some of the board's concern. Member Clark asked county staff if the church is required to get a permit from the Sheriff's for some of these events. County staff said that the permit normally permits one or two events during the year or through an administrative use permit. Member Spalding said that there's no mention of hours of operation in the staff report. Also the amplified music is important to address and based on the testimony she would like to discontinue amplified music. The Chair stated that the consensus of the board is to have the applicant present to address some of these issues.

Member Spalding moved to continue the item to march 28, 2007. Vice Chair Peixoto seconded. Motion passed unanimously.

6. **ZORAN MILENKOVIC, VARIANCE, V-12038** – Application to allow the construction of an accessory structure covering 48% of the required rear yard where 30% is allowed in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 3575 Christensen Lane, south side, approximately 800 east of Lake Chabot Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0529-002-00.

Staff presented the staff report. Staff's recommendation is denial of the application. Vice Chair Peixoto asked page 2 and 3, structure covers 48% but the resolution dated December 13, it says 58%. Staff said that the original application was for 58% but the applicant has modified it to 48%.

Public testimony was opened. The applicant, Zoran Milenkovic, stated that this request was originally filed in December. In terms of the staff's recommendation, they are defining this as an accessory structure. The intent of the owner of the property is to use the pool all year round instead of having to drive to a community center for the use of an indoor pool. The applicant agreed to remove the existing pool house if they are allowed to construct a shell, aluminum frame cover for the use of the pool. Member Clark asked if the applicant has gone before the MAC board once the revisions to the original plan had been done. Mr. Milenkovic said no. He is only asking to cover the pool which is already there and it should not be considered an accessory structure. This is a lightweight and not a permanent structure, but it is not retractable. The first option was retractable but this one is not. Public testimony was closed.

Member Clark moved to continue this matter to April 25, 2007 to have MAC consider the revised application. Member Spalding seconded. Motion passed unanimously.

7. **THOMAS RANFTL, VARIANCE, V-12054** – Application to allow a 12 foot front yard where 20 feet is required with an attached addition, in an R-1-RV (Single Family Residence, Recreational Vehicle Parking) District, located at 16566 Toledo Way, east side, approximately 270 feet north of 166th Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080A-0197-005-00

Staff presented the staff report. Staff recommends approval of the stairway and denial of the deck.

Member Friedman asked if this deck is part of the house. Staff stated that yes, anything over 30 inches above the ground is considered part of the house. Member Friedman stated that on page 3, an adjoining property reduced their front yard to 11 feet. He asked if the precedent set by the adjoining property would apply to this property. Staff said the adjoining property has an approved variance. Member Friedman asked why staff found a special privilege applied on tentative finding #2. . Staff said it is the planner's opinion and each case is looked at individually. The Chair asked in regards to the size of the lots in the vicinity. Staff said that all the lots are about the same size.

Public testimony was opened. The applicant, Thomas Ranftl, agrees with Member Friedman and said that the neighbor's house has a complete garage and second floor. They also got a variance. He just want a deck. There is not enough height for the stairs. Currently there is a door inside the garage and that is how the family access the home. This was a condemned home and it has been cleaned up. The front deck will help us with living space. He had gotten the impression from the planner that it was going to be approved for 7 feet. This improvement will be a nice addition to the neighborhood.

Member Clark asked if he is proposing to leave the bottom of the deck open. The applicant said it will be a nice set of stairs and it will remain open. The post for the steps will go on the edge of the driveway. Member Friedman stated that he is aware that most of the driveways in this neighborhood are very small and parking is very difficult. The applicant said this addition does not inhibit the parking for his home. Public testimony was closed.

The Chair asked staff what difference does the landing size make? The landing of the steps, the code requires a minimum, not a maximum. Staff there is a difference if you are in the right of away.

Member Spalding moved to approve the variance. To adopt staff's tentative finding, with exception of modification of paragraph 2 that it does not grant special privileges for either the stairs or landing/deck. Exhibit A to landing remain open. Member Clark seconded. Motion passed unanimously.

APPROVAL OF THE MINUTES: FEBRUARY 7, 2007. Member Friedman moved to approve the minutes with an amendment to C-8537. His statement shall read that he believed Tentative Finding #1 was unreasonable. Member Clark seconded. Motion passed unanimously.

STAFF COMMENTS & CORRESPONDENCE: Staff updated the board on, C-8328 Fabianac (Club K-9) on Crow Canyon Road update a year later. The Site Development Review has been submitted, as required per Condition #11.

CHAIR'S REPORT: None.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:
ADJOURNMENT:

There being no further business, the hearing adjourned at 4:40 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS