

**MINUTES OF MEETING  
WEST COUNTY BOARD OF ZONING ADJUSTMENTS  
MARCH 11, 2009  
(APPROVED MARCH 25, 2009)**

The Regular Meeting was held at the hour of 6:00 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California.

**FIELD TRIP: 1:00 p.m.** The Field Trip was cancelled. Members visited properties on an individual basis.

**MEMBERS PRESENT:** None.

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

**OTHERS PRESENT:** Phil Sawrey-Kubicek, Senior Planner

**FIELD TRIP:** Properties were visited on an individual basis.

1. **LILY & ANGELA VEGARA, CONDITIONAL USE PERMIT, PLN-2009-00001 -** Conditional Use Permit Application to allow a child care center for 46 children, in an R-1 (Single Family Residence) District, located at 2500 Hansen Road, west side approximately 300 feet north of Cross Street, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 426-0130-072-00. **Staff Planner: Richard Tarbell.**
2. **HECTOR SANABRIA, CONDITIONAL USE PERMIT, PLN-2009-00004 –** Conditional Use Permit Application to allow the continued operation of a recycling center in a C-1 (Retail Business) District, located at 1802 Fairmont Drive, east side of Liberty Street at the eastern terminus of Oriole Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0035-004-03. **Staff Planner: Damien Curry.**
3. **KO ARCHITECTS, CONDITIONAL USE PERMIT, PLN-2008-00006 –** Consideration of adoption of a Mitigated Negative Declaration for, and approval of Conditional Use Permit Application to allow a proposed addition of approximately 27,800 square feet to the Neighborhood Church facility that will include a new lobby, chapel and two story school/office building. The subject property contains 16 acres, and is zoned R-1-CSU-RV (Single Family Residential, Secondary Unit, Residential Secondary Unit, Recreational Vehicle Parking) District, located at 20600 John Drive, north side, approximately 250 feet northwest of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Numbers: 084A-0240-001-02; 084A-0228-001-03; 084A-0235-001-06; 084A-0230-003-03; 084A-0230-001-02 and 084A-0230-004-00. **Staff Planner: Jeff Bonekemper.**
4. **MICHAEL, FRANCES & CHARLES AAHL, CONDITIONAL USE PERMIT, PLN-2009-00026 -** Application to allow the continued operation of a daycare facility in an RS-D3 (Suburban Residence, 2,500 square feet per Dwelling Unit) District, located at 20135 San Miguel Avenue, west side, approximately 260 feet north of the intersection with Jeanine Way, unincorporated Castro Valley area of Alameda County, designated Assessor's

Parcel Number: 084A-0124-001-04. **Staff Planner: Richard Tarbell.**

5. **TRAN TUONG, VARIANCE, PLN-2008-00076** – Variance Application to allow a front yard setback of 18.56 feet where 20 feet is required, in conjunction with Parcel Map, PLN-2008-00051, located at 1515 Mono Avenue, west side approximately 215 feet northwest of the intersection of Mateo Street and 159<sup>th</sup> Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0040-068-02. **Staff Planner: Damien Curry.**

**REGULAR MEETING: 6:00 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, Eric Chambliss; Yvonne Bea Grundy, Recording Secretary.

There were approximately 8 people in the audience.

**CALL TO ORDER:** The meeting was called to order by the Chair at 6:35 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**

There were no Neighborhood Preservation cases scheduled for the Agenda.

**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 and January 28 and February 25, 2009; to be continued to April 8, 2009. **Staff Planner: Jeff Bonekemper.**
2. **KO ARCHITECTS, CONDITIONAL USE PERMIT, PLN-2008-00006** – Consideration of adoption of a Mitigated Negative Declaration for, and approval

of Conditional Use Permit Application to allow a proposed addition of approximately 27,800 square feet to the Neighborhood Church facility that will include a new lobby, chapel and two story school/office building. The subject property contains 16 acres, and is zoned R-1-CSU-RV (Single Family Residential, Secondary Unit, Residential Secondary Unit, Recreational Vehicle Parking) District, located at 20600 John Drive, north side, approximately 250 feet northwest of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Numbers: 084A-0240-001-02; 084A-0228-001-03; 084A-0235-001-06; 084A-0230-003-03; 084A-0230-001-02 and 084A-0230-004-00. (To be continued to March 25, 2009).

Staff announced PLN -2008-00006 will be continued to May 13, 2009.

3. **FRANK PHAM / MILL LIQUORS & DELI, PLN-2008-00054** – Conditional Use Permit application to allow off-site alcohol sales as part of a grocery store use, in an ACBD - TA (Ashland Cherryland Business District Specific - Transit Access) District located at 15984 East 14<sup>th</sup> Street, north east side, approximately 500 feet south west of 159<sup>th</sup> Avenue, unincorporated Ashland area of Alameda County, bearing Assessor's Parcel Number: 080-0057-035-00. (Continued from January 28 and February 11, 2009; continued to April 8, 2009) **Staff Planner: Howard Lee.**

Member Spalding asked staff why the application was continued. Staff told the Board the Applicant's translator cancelled at the last moment. Staff asked the Applicant to provide a date that allowed their translator to be present. Member Spalding requested staff confer with the Applicant prior to the April 8, 2008 Hearing, to prevent further continuances.

4. **DANTON GARNHART, VARIANCE, 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. (Continued from January 28, 2009; continued to March 25, 2009). **Staff Planner: Damien Curry.**

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

#### **REGULAR CALENDAR**

1. **GUADALUPE LOZA/FRED FULCHER, CONDITIONAL USE PERMIT, C-8271**– Application to allow continued operation of a mobile outdoor business (Catering Truck), in a PD-ZU-1487 (Planned Development, 1487<sup>th</sup> Zoning Unit) District, located at 691 West A Street, north side, corner, northwest of Royal Avenue, unincorporated Hayward area of Alameda County, bearing Assessor's Parcel Number: 0432-0016-035-00. (Continued from February 11, April 14, April 28, May 26, July 14, September 8, October 13, 2004, March 23, June 22, October 12, December 14, 2005, March 22, May 24, September 13 and November 15, 2006, March 28, July 11, August 8 and September 12, 2007;

January 9, April 23, August 28, September 24, October 8, December 10 and 17, 2008 and January 14 and February 25, 2009). **Staff Planner: Christine Greene.**

Staff recommended approval of the continued operation of the mobile restaurant operation (food truck) with the following modified Conditions: The Applicant must submit a building permit application within a period of 6 months. A building permit must be obtained within 6 months after permit application submission. This should allow the Applicant sufficient time to coordinate with the Project Architect, PG&E, and the Public Works Agency. The use permit is limited to the time period at which the building is occupied; or a 3 year period whichever occurs first. Initial Board questions were as follows:

- Can the building permit be extended if the Applicant does not meet the 3 year occupancy
- If the Applicant does not obtain a certificate of occupancy within 3 years will the food truck be required to vacate the premises
- Is the food truck located within 300 feet of similar food establishments
- Did staff address the Cherryland HOA's concerns regarding building materials finishes
- Has the Redevelopment Agency made further recommendations since 2007

Staff confirmed the permit for the use will expire in 3 years. The Applicant must submit a building permit application within 6 months of cup approval. A building permit must be obtained within 6 months after permit request. An extension of the building permit might be possible, however the food truck will be required to vacate the premises in 3 years; or when the building Certificate of occupancy is obtained, whichever occurs first. There are other food businesses within 300 feet, Carmen & Family BBQ Restaurant, and a Sandwich/Smoothie take out Restaurant. Little Mexico Taqueria is just outside of the 300 foot radius. The Redevelopment Agency is in agreement with the application. The goal is to insure a permanent restaurant facility at the site. The issues that the Cherryland Association raised have been addressed. The material sample board submitted by the Applicant incorporates recommendations. Public testimony was opened.

The Applicant, Mr. Fred Fulcher told the Board after listening to a recording of the October 10, 2008 Hearing. He got the impression the Board believed he did not want to take responsibility for property. Mr. Fulcher raised the issue of graffiti removal, the consent decree, and the troublesome house next to his property, solely to make the Board aware of actions he has undertaken. He wanted to reaffirm his integrity. Mr. Fulcher remains proactive, and has an interest in maintaining his property. Member Spalding said she was unsure as to why Mr. Fulcher would have gotten that impression. The Board asks questions, and provides comments as a part of the application process. Mr. Fulcher then submitted a Police Report detailing a transcript of calls to show his cooperation with County Agencies, and the community. He provided a copy of a consent decree given to the Sheriff's Department, and a release allowing Public Works to remove graffiti. The submissions were added to the record. Mr. Fulcher is considering two franchise agreements. The retail project designer is from Miami Florida. The theme is called the Waffle Café. If Mr. Fulcher can obtain approval for the use permit, he will continue to negotiate an agreement. If he does not move forward with the franchise agreement, the restaurant will be operated independently. Mr. Fulcher will also sign an agreement with a local operator (El Indio) to run the taco truck. El Indio currently has a taco truck on A Street and Hathaway Avenue. Mr. Fulcher would like to further increase the size of the proposed building, at a future date to accommodate a taqueria. Future expansion will depend on financial considerations. Construction plans for the current proposal will be submitted within 6 months. Ms. Loza will run the waffle restaurant, and be responsible for day to day site operations. Board questions for the Applicant were as follows:

- How much time has elapsed since the site has contained a brick and mortar restaurant
- How long has Mr. Fulcher been in negotiations with El Indio

- Is Mr. Fulcher in agreement with the Conditions of Approval
- Where is the current location of the El Indio food truck
- Can the Applicant reconcile prohibition of close proximity of permanent/similar restaurants
- Has the Applicant confirmed he will install a waffle restaurant
- Will there be a second Mexican Food outlet on his property, in addition to the food truck

Although he did not receive the staff report until Thursday, Mr. Fulcher has reviewed the Conditions of Approval. He requested the Board allow the food truck to remain at the site for the entire 3 year period for financial purposes, regardless of completion of the restaurant. The operator of El Indio would also prefer this arrangement. The catering truck will be rotated to the rear of the site once the standing restaurant is complete. The current design proposal may allow space for an interior taqueria. If not the future goal is to add 700 square feet. Mr. Fulcher would like the Hours of Operation to be from 9:00 a.m. to 10:00 p.m. A food truck has worked at the site for 12 years. In the past 25 years, the truck has been the only successful financial venture at the site. There has never been a brick and mortar restaurant. As discussed at his prior Hearing, plans were submitted but the application process never progressed. The concept of a permanent restaurant, in conjunction with a food truck should work well. The decision regarding a franchise agreement will depend on fees. The food truck will be operated by El Indio. Mr. Fulcher said he did not interpret Ordinance language “same” and “similar”, in the manner. Carmen’s BBQ is not a taqueria. Mr. Fulcher pointed out the staff report states the Little Mexico Taqueria is located just outside of the 300 foot radius. There is a possibility he may have an interior, and exterior restaurant at the site. If the possibility is allowed, Mr. Fulcher will adhere to all requirements of the Environmental Health Department. The proposed space should be sufficient for both a Waffle, and Mexican Food Restaurant. Parking should also be adequate. Any further expansion would take place in the future. He anticipates it will take 15 months to complete the restaurant building. That would leave approximately 1 ½ years for the taco truck to continue in conjunction with the restaurant. Member Spalding pointed out that all of the establishments are “restaurants”. A food truck in concurrent operation with a restaurant would be in violation of the Mobile Food Ordinance. Mr. Fulcher acknowledged that he would like Ordinance language changed, to allow both.

Ms. Adrianna Rojas told the Board, El Indo has a food truck across from Costco. El Indo also has a truck on A Street and Royal Avenue. The truck does have an operation permit. El Indio would like to move the truck on Royal Avenue to Mr. Fulcher’s property. Member Adesanya asked what happened to the prior food truck operator, Ms. Loza. Mr. Fulcher interjected. He acknowledged that Ms. Loza no longer had an operating license. El Indio is well suited to take over as they are a local community business. The Vice Chair pointed out that when the Mobile Food Ordinance was first discussed with Mr. Fulcher. The concept was to have a brick and mortar operation. The proposal Mr. Fulcher has put forward is a different concept. Member Spalding pointed out the current El Indio operation did not appear to be as large as the proposed operation at Mr. Fulcher’s property. Also the 10:00 p.m. closing of the mobile restaurant may be an issue for the neighborhood. Mr. Fulcher said the effective Hours of Operation for the 1996 permit were from 10:00 a.m. to 10:00 p.m. El Indio’s truck operates from 9:00 a.m. to 10:00 p.m. Member Spalding pointed out the 1996 food truck permit had expired. Although there may be a positive outcome resulting from people occupying the site extended hours. Graffiti has appeared on the fence where the auto tinting business takes place.

Member Adesanya noted that the project description contained in the staff report did refer to the Hours of Operation from 9:00 a.m. to 9:00 p.m. The Sheriff’s Department would need time to review the extended hours, request. Mr. Fulcher requested a review the proposed Hours of Operation with the food truck operator. Member Spalding asked the Applicant to also review the Sheriff’s comments in related application, C-8727. A response should then be taken under public testimony to ensure the Applicant and Food Truck operator are making a knowledgeable decision. Hours of Operation can then be added to Conditions of Approval. Public testimony was closed.

The Chair asked staff their position on the food truck remaining active for a period of 3 years alongside the restaurant. Also if the use permit can be issued in the name of the Applicant since the original application included the name of the prior operator. Staff said their position was that the truck should vacate the site once the restaurant certificate of occupancy is obtained. Staff was unaware El Indio was the new proposed operator. However the property owner's name was on notice of the use permit. The use permit can be issued to the property owner. Board Members asked County Counsel if this is supported by ordinance and/or law; or County practice. Counsel explained that use is tied to the land. The primary requirement may be that the operator of the food truck be licensed. The Chair asked if notification was required in the event of an ownership change. Also if re-notification was required since the original public notice also contained Guadalupe Loza's name. County Counsel said he would have to familiarize himself with the specific requirements of the Mobile Food Ordinance. Planning staff clarified the property owner can be the primary name on a permit. If the Board deems necessary, the application can be conditioned as such to include the truck operator's name. Member Spalding did not feel it was necessary to continue the application to conduct research, based on staff information. There did not appear to be any concern represented by the property owner regarding the new operator. The Applicant will be the sole name on the application.

Member Adesanya agreed. It is her understanding a property owner can obtain a use permit. The operator is not a required party. If there is a change in operators, it is the property owner's responsibility to ensure the operator is in compliance with Conditions of Approval. A specific Condition requiring Planning Department notification of change of operator is not necessary. Board Members agreed.

The Chair asked if the catering truck was stored on site after hours, or taken off premises. She noticed the truck at the site at 11:00 p.m. The Chair also asked if traffic would be affected by moving the food truck during construction. Staff believed the vehicle is taken off site nightly to be cleaned, and re-stocked. The Board can also condition the application, as such. There is sufficient ingress and egress on the site to accommodate various locations on-site during construction.

Member Spalding questioned the necessity of Land Development as a Condition of Approval. Staff explained the Land Development Agency conditions are related to new construction. The BZA is considering a new building, parking spaces, building materials, and overall design. The Ordinance allows consideration of the Site Development Review in conjunction with the Conditional Use Permit. Public testimony was re-opened to discuss the Hours of Operation with the Applicant.

Mr. Fulcher confirmed after discussion with the food truck operator, he would like the Hours of Operation be from 10:00 a.m. to 10:00 p.m. The Chair asked if Mr. Fulcher was aware the staff report recommendation is from 9:00 a.m. to 9:00 p.m. Member Spalding also asked if lighting was sufficient after dark. According to the Police Report there has gang activity in the area. Mr. Fulcher clarified there had not been gang activity at the site. The Sheriff was summoned to the site at the behest of Mr. Fulcher. A tennis shoe vendor was squatting on the property. To Mr. Fulcher's knowledge people do not hang out at the site. The Sheriff's Department also has a consent document that allows entrance to the site at any time, per their discretion.

Member Adesanya asked the operator of the food truck, Ms. Rojas to testify as to what happens with the truck after hours, and what type of inspections are required. Ms. Rojas said trucks are taken to the American Foods warehouse commissary each night. Trucks are re-charged and cleaned. The food is restocked at a local restaurant. Mr. Fulcher explained that Environmental Health conducts periodic, on-site inspections. The temperature is verified daily at the time the food is stocked. Member Adesanya asked Conditions of Approval to outline required food truck inspections.

Member Spalding asked the Applicant if he was in agreement with the staff report. Mr. Fulcher referred



to page 11, Item #3. He would like the truck to remain for the entire 3 year period. The requested balance of time requested is insignificant in relation to the 18 month County permitting process. Retaining the truck for a 3 year period would be an incentive for him to quickly complete the permit process. Member Spalding pointed out a certificate of occupancy for the restaurant could be issued. However there may be no restaurant operator. Mr. Fulcher acknowledged that could be a scenario but would not make good business sense.

Member Adesanya asked Mr. Fulcher if he had informed staff of a change in operators, also if Guadalupe Loza would retain her role at the site. Mr. Fulcher said he had been working with staff. Notification was given of the change of operators. Ms. Loza would be the manager of the site, and have full responsibility for the interior restaurant. Public testimony was closed.

Member Adesanya did not support the Applicant's request, to allow the catering truck for a period of 3 years. If granted, the use would not comply with the Mobile Restaurant Ordinance. Additional Board questions for staff were as follows:

- How did staff determine the 9:00 a.m. to 9:00 p.m. Hours of Operation
- What were the Hours of Operation in the prior permit
- What constitutes " final occupancy "
- Is a permit from Environmental Health required
- Is a restaurant tenant required to fulfill the term " final occupancy "
- Who is ultimately responsible the property owner, or the operator
- Is the City of Hayward opposed to the catering truck
- Who will be responsible for litter at the site
- Is a variance appropriate if the catering truck is to remain for 3 years

Staff told the Board a permit from Environmental Health would be required for the restaurant, in addition to a certificate of occupancy. The Building Department issues the occupancy certificate in conjunction with Planning Department approval. This ensures review of landscaping etc. Occupancy means the gas and electricity is on, and a certificate of occupancy has been obtained. A tenant is not necessarily required at the time a certificate of occupancy is obtained. The prior permit, Hours of Operation were from 9:00 a.m. to 10:00 p.m. If the Applicant wished to obtain an extension of the catering truck beyond occupancy of the restaurant, a new use application must be submitted. Condition #12 holds the permittee responsible for litter pick-up, waste disposal etc.

Member Spalding thought the Condition #3 should be altered to reflect the removal of the catering truck upon the opening of the permanent restaurant. Member Adesanya thought the word restaurant would be sufficient. Member Spalding thought safety might be an issue. The truck should be removed from the site daily. The City of Hayward sphere of influence is close to the site. Redevelopment has taken place in the area. They were opposed to the catering truck application. In 2007 the County Redevelopment Agency recommended the catering truck be limited to a 1 year permit.

Mr. Fulcher told the Board there had been no robberies at the site. The food truck has been in operation for 12 years.

The Vice Chair thought allowance of the mobile restaurant after completion of the permanent restaurant would be in violation of the Mobile Outdoor Restaurant Ordinance. Although it may be convenient to pick up food late in the evening, she agreed there may be safety issues. Conditions of Approval should be modified to require removal of the catering truck to the commissary every night.

The Chair was concerned there were similar businesses within close proximity. She believed the use was in violation of the Mobile Outdoor Business Ordinance. However if the Applicant's intent is to convert into a permanent restaurant, she would allow limited flexibility. The 3 year permit length is too long for a non-compliant use to operate. She would only be willing to grant the permit, if the mobile use is converted when the permanent restaurant is complete. The Chair was not opposed to the 10:00 p.m. closing time. However the operator may be assuming increased risk and liability on behalf of their employees. The BZA should require a review period. Sheriff's calls and other issues that may occur can be monitored. In her opinion Condition #3 should remain, as recommended by staff.

Member Spalding motioned to uphold the staff recommendation of approval of Conditional Use Permit, C-8271 with the following modifications:

Condition #3 shall remain unchanged.

Condition #11 shall have the added language: *the operator of the catering truck*

Condition #12 shall have the added language: *permittee and/or operator*

Condition #13 shall have the added language: *permittee and/or operator*

A new Condition shall be added under the Section for Food Truck Operation: the Hours of Operation for the catering truck shall be 9:00 a.m. to 10:00 p.m., 7 days per week.

Member Adesanya asked for clarification regarding the definition of "commissary" for mobile restaurants. The Chair re-opened public testimony for that express purpose. Mr. Fulcher told the Board, a monthly membership to a deemed commissary is required. A commissary facility can be a specific approved restaurant; or a commissary yard. Commissaries must have appropriate drainage etc. Food trucks are can only be parked at an approved commissary yard. These requirements are contained in the California Food Safety Code, and enforced by Environmental Health. Public testimony was closed.

Condition #10 shall be further modified to state after the word food preparation: *for truck cleaning and storage ....*

Member Adesanya seconded the motion and posed a question of clarification as to the colors designated for the roof, and main building structure. After showing material samples to the Board staff confirmed the upper portion the structure color will be "Rosewood", the lower portion, "Fox Tail". Member Spalding asked staff if the Board was also responsible for approving building veneers. Staff confirmed all presented samples are a component of the approved application.

The motion to uphold the staff recommendation of approval of Conditional Use Permit, C-8271 as modified carried 4/0.

2. **ROBERT NAVARRO, CONDITIONAL USE PERMIT, C-8727** – Application to allow sales and installation of car audio, stereo systems and window tinting in a P-D (Planned Development) ZU-1487 (1487<sup>th</sup> Zoning Unit) District, located at 691 West A Street, north side, corner north west of Royal Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 432-0016-035-00. (Continued from August 27, October 8, December 10 and 17, 2008 and January 14 and February 25, 2009).  
**Staff Planner: Christine Greene.**

Staff recommended approval of the car window tinting business use subject to same requirements as also



stated in C-8727, which shares the site. The Applicant shall submit plans to Alameda County Building Department within a 6 month period. The Applicant must obtain a building permit within a 12 month period. Initial Board questions were as follows:

- Is the window tinting use application part of the SDR Plan approved in conjunction with C-8271
- Is parking at the site sufficient for both business
- Is there a tenant currently occupying the window tinting business
- Is the window tinting business active
- Is there a current use permit for the window tinting business
- Is stereo installation part of the business function
- Are there any restrictions and/or limitations in operation near a food facility
- Does the Zoning Ordinance consider the uses of window tinting and food sales, compatible
- Can staff provide further explanation of Finding #1; the use is required by public need...

The Board will be considering the window tinting use. The Site Development Review plan was approved in conjunction with Conditional Use Permit, C-8271. The P-D Zoning allows the sale of auto related items. Stereo installation is no longer part of the business operation. Auto repair is not allowed at the site. Currently there is no use permit in effect for the window tinting business. The window tinting use has been in operation therefore establishing a need for the use. The business does not use chemicals to apply tinting. A thin film is applied to windows. Staff has observed intermittent activity at the location, including display signage. Parking at the site will accommodate both the window tinting, and food related uses. Public testimony was opened.

The property owner Mr. Fred Fulcher informed the Board, the former Applicant Robert Navarro was not present. Apparently Mr. Navarro found the permit process, too daunting. The employee of Mr. Navarro sporadically comes to clean, and cut the grass. The site has been well maintained. The former employee's main function is to keep the site clean throughout the application process. Occasionally he applies auto tinting. He has talked with Mr. Fulcher about taking over the business. Thus far Mr. Fulcher has not imposed any conditions upon him, and will consider his proposal. He will allow the employee to operate at the site, until a decision is made. Therefore Mr. Fulcher is applying for the use permit as the property owner. It was his understanding the window tinting use can continue while undergoing the permit process. Member Spalding acknowledged that traditionally the County allows a business to operate while in the permit process. The Chair clarified it was her understanding that Code Enforcement action ceases while the Applicant pursues a permit. Board Members had the following questions for the Applicant:

- Does Mr. Fulcher want to pursue the tinting use, since he has no tenant
- Does Mr. Fulcher's site plans include the tinting business

Mr. Fulcher said he would maintain the use while he considers his options. He is not opposed to the tinting business, however ultimately he may not go through with the use. He would like to move forward with constructions plans, and avoid delays. The site plan does reflect the window tinting use, including a roll up door. Design consideration is a reflection of issues raised regarding noise from prior stereo installation activity. After discussing the complaints leveled against the stereo installation business. Mr. Fulcher said interaction between he and Mr. Navarro became strained, perhaps as a result of the issues at the site. Mr. Navarro vacated the site without official notice. Currently Mr. Fulcher does not charge rent for the space. It is more important to maintain the site and prevention any violations. The former employee of Mr. Navarro has expressed an interest in the business. Based upon what happens at the Hearing, Mr. Fulcher will assess the employee's business abilities. If it is not possible to use the space as a window tinting business, Mr. Fulcher will use it for storage. Board Members asked if Mr. Fulcher if he would be interested in a continuance to locate another tenant; or to explore further retail business options.

It may be his advantage not to obtain a determination at this time. A continuance would allow some flexibility. In the event C-8727 is denied, Mr. Fulcher would have to start the permit process from the beginning to allow any other use. The window tinting use permit would not delay construction related to the SDR. In addition a permit is not required for storage. A use such as window tinting, may limit Mr. Fulcher. Mr. Fulcher said in the current economy there were no tenants knocking at his door. The PD (Planned Development) Zoning was limiting, as to allowed uses. He is fortunate in that he is self financing. Unlike others dealing with sub-prime mortgages, he does not have to wait for a response from the bank. He would like to move forward, and complete the project. This will also prevent his Architect from making further design changes. Ideally he would have liked the food truck to operate on site for a 3 year period. However since that is not an option, a continuance regarding the window tinting use is out of the question. Mr. Fulcher has been in business successfully for 30 years. He would like to work with the County. However he has faced a long daunting process with the County to develop the site. He understands the Board will render their decision. Whatever the outcome, he will be able to use the space to some degree. The Chair asked Mr. Fulcher to clarify if he was actively leasing space to Mr. Navarro. Mr. Fulcher said he had not filed any action with Mr. Navarro although the lease is in default. He has an informal agreement with the former employee, and is satisfied. Thus far the businesses seem to work well together. Based on the outcome of the permit process he will proceed with discussions with Mr. Navarro's former employee. Ms. Loza who is at the site can provide further information about day to day operations.

Ms. Guadalupe Loza told the Board the former employee Luis, was a sub contractor of Mr. Navarro. Luis is on the site two Sundays per month "off and on". Luis lives, and operates another business in Tracy. The Chair asked if Luis maintained a business license, and has contact information on file with Ms. Loza. Ms. Loza was unsure if Luis has a business license. She did have contact information. Mr. Fulcher confirmed that Luis was under contract with Mr. Navarro. Public testimony was closed.

Member Adesanya asked staff for clarification. The permit application specifies window tinting. However one set of plans attached to the staff report shows a window tinting business; another attached set of plans states, window tinting / storage; another Tentative Finding states the window tinting business is temporary. Staff confirmed the window tinting business is permanent. Further Board questions to staff were as follows:

- Is the window tinting use valid if Conditions for C-8271 and SRD are not in compliance
- Can another use be substituted for window tinting at the site
- Is the window tinting subject to the mobile restaurant use on the site
- Can the BZA issue a permit for the window tinting use if there is no current operator
- Will the Applicant pursue the stereo/sales installation use preformed by the former tenant

Staff acknowledged inconsistencies in the staff report were confusing. The intent of the application is a permanent window tinting business. The business use would operate during construction at the site, and continue after completion of the SDR. The window tinting use would not be subject to the mobile restaurant use. Stereo sales would be acceptable at the site. Stereo installation is not allowed. Member Spalding pointed out that the staff report states the tentative finding establishing need is based on a temporary use. Staff responded Conditions of Approval can be modified to omit the word "temporary". The Vice Chair pointed out the need for the use was established when Mr. Navarro testified on December 17, 2008. He said window tinting brought in more revenue than stereo installation. Member Spalding responded that ultimately Mr. Navarro abandoned the business.

The Chair said she was uneasy about issuing a permit for a business that has no current operator. Staff explained a property owner can request a permit, for a use. If the property owner does not implement the use within a period of 3 years, the use will be null and void. In most applications, property owners do not

inform the County of operators/tenants.

The Vice Chair thought Conditions #2 and #15 should be deleted. Condition #5 should also be modified if there is business activity on Sundays. Member Spalding also wanted further Conditions added that require a landscaping plan. Conditions contained in C-8271 that address cleaning of the site, removal of litter, graffiti, trash and debris should tie into C-8727. This would provide consistency.

Member Adesanya said she felt the Board was rewriting too much of the staff report. The staff report is poorly written, and confusing. It would be helpful to continue the application, to provide proper a recommendation, with proper findings. It was not appropriate for the Board to re-write the staff report. She could not support the application in its present form. If the Staff intent is a stand alone use, the report should be re-written to address the intended use, with supportive findings. Member Spalding asked staff to conduct further research on the compatibility of window tinting, and mobile food use. The Chair pointed out that the uses are allowed within PD Zoning. The Chair recommended a continuance in light of the issues raised. The Applicant said he would prefer to resolve the application tonight. However if that was not possible Ms. Loza could represent him at the April 8, 2009 Hearing.

The Vice Chair motioned to continue Conditional Use Permit, C-8727 to April 8, 2009. Mr. Fulcher asked the Board to clarify the issues.

Member Spalding said the staff report should be drafted to reflect the specific proposed use.

Member Adesanya seconded the motion with further clarification that the continuance of C-8727 should not delay movement on C-8271. Conditional Use Permit, C-8271 is approved, and should move forward. The Chair also asked staff to include an updated referral from the City of Hayward.

The motion to continue C-8727 carried 4/0.

**APPROVAL OF MINUTES:** Member Adesanya motioned to accept the Minutes of February 25, 2009 with stated corrections. Member Spalding seconded the motion. Motion carried 3/0. The Chair did not participate in the vote, as she was not present at the February 25, 2009 Hearing.

**STAFF COMMENTS & CORRESPONDENCE:** The appeal of C-8555- Laguna returns to the Board of Supervisor's April 14, 2009.

**BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:** The Chair asked staff if mobile restaurants (taco trucks) were allowed to set up on the public street or right of way. As the result of the placement of one truck on East 14<sup>th</sup> Street, people are running across the thoroughfare to access the location. Staff believed the truck on East 14<sup>th</sup> Street is in the City of San Leandro's jurisdiction. Rules and/ordinances may vary depending on jurisdiction. For example, mobile restaurants located on State owned property are allowed in the public right of way.

Member Spalding asked staff to verify the mobile restaurant in the parking lot of the liquor store on Redwood Road had a use permit. Staff will verify the zoning, and follow up.

**ADJOURNMENT:** There being no further business, the hearing adjourned at 8:45 p.m.

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ALBERT LOPEZ - SECRETARY  
WEST COUNTY BOARD OF ZONING ADJUSTMENTS