

**MINUTES OF MEETING**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**  
**MARCH 26, 2008**  
**(APPROVED APRIL 23, 2008)**

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

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

**MEMBERS PRESENT:** Vice Chair, Frank Peixoto; Members, Dawn Clark-Montenegro, Kathy Gil and Ineda Adesanya.

**MEMBERS EXCUSED:** Chair; Jewell Spalding.

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

There were approximately 16 people in the audience.

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

**ANNOUNCEMENTS BY THE CHAIR:** The Vice Chair was conducting the meeting due to the excused absence of the Chair.

**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. **SPRINT PCS, CONDITIONAL USE PERMIT, C-8690** - Application to allow continued operation of a telecommunications facility in an R-S-D-15 (Suburban Residence, 1,500 square feet, Minimum per Dwelling Unit) District, located at 16065 Mateo Street, southwest side, approximately 350 feet west of 162<sup>nd</sup> Avenue, unincorporated, Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0057-036-00. (Continued from January 23, 2008; to be continued to May 28, 2008). **Staff Planner: Howard Lee.**
  
2. **MIKE BOCKS, VARIANCE, V- 12085** - Application to allow a garage conversion providing: 1) Three parking spaces where four are required; 2) A zero foot setback from the driveway where 10 feet is required; and 3) A two foot side yard where five feet is required in an RC (Residential and Commercial District within the Ashland and Cherryland Business District Specific Plan,) District, on a property 7,500 square feet in area, located at 330 Lewelling Boulevard, south side, 50 feet west of Tracy Street, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 413-0097-021-00. (Continued from November 14, 2007; and January 23, 2008; to be continued to April 23, 2008). **Staff Planner: Christine Greene.**

Member Clark asked staff why the application was being continued. Staff said the Applicant requested the continuance. He was unable to attend the hearing due to family problems. The Applicant will be available to attend the next meeting.

Member Adesanya motioned to accept the Consent Calendar as submitted. Member Clark seconded the motion. Motion carried 4/0. The Chair was excused.

## REGULAR CALENDAR

1. **T MOBILE, CONDITIONAL USE PERMIT, C-8662** – Application to allow a telecommunications facility (Cell Site) in a P-D (ZU-1334, 1336, 1341 Zoning Units) District, located at 7804 Coolidge Court, northeast side corner of Summer Glen Place, unincorporated Castro Valley area of Alameda County, bearing County Assessor's designation: 085A-0100-002-08. (Continued from December 12, 2007; and February 27, 2008). **Staff Planner: Christine Greene.**

Staff reviewed the application history. The item was heard on December 12, 2007 and February 27, 2008. Per the Board's request the Applicant provided further information regarding coverage area, sound dispersion and installation options. Staff recommended approval. Public testimony was opened.

The Representative for T-Mobile, Ms. Kelly Pepper was present. Ms. Pepper said she originally met with the Palomares Hills, and the Summer Glen Home Owners Associations in February. Project revisions were made based on their input, and testimony presented at hearings. Ms. Pepper distributed mock ups of the completed installation. There will be two 13 foot towers with antennas, installed at the site. The original sound study was based on a total of 4 cabinets. The sound emitted is 45 decibels. This is equivalent to the ambience of a library or soft whisper. The revised proposal will consist of 3 equipment cabinets. The sound emanated from the 2 functioning cabinets should be negligible, as a result of landscaping. If an under ground equipment vault were employed, 50 cubic yards of dirt will have to be removed from the site. This would be equivalent to the size of a swimming pool. The installation would also require an above ground hatch approximately the size of an equipment cabinet. The projected amount of earth removal would have a significant impact on the environment, and the existing East Bay Mud equipment at the site. Landscaping will mitigate the visual impact of equipment cabinets. The revised proposal will also be in compliance with FCC Standards. Board questions were as follows:

- Where is the East Bay Mud water tank in relation to the T-Mobile equipment
- What is the distance from the closest residence to the equipment
- Does the distance meet the Telecom Guideline recommendations
- Did the HOA's review the revised proposal

Ms. Pepper said CVMAC was in favor of the application. The cabinets will be at the base of the water tower. The placement will be slightly rotated, per the recommendation of the HOA. The existing trees will provide a back drop. Additional landscaping will be added to the site as well to further mitigate the visual impact. The HOA's reviewed the mock up photographs, as well. The closest residential property line is 206 feet from the site. The distance staff estimated to the water tower is estimated at 250 feet. Ms. Pepper said that Telecom Guidelines do not require visual impact be mitigated. However T-Mobile chose to do so.

Ms. Barbara Gain said this was her second appearance before the Board. Her concerns are still the same. She lives at 20050 Summercrest Drive. The neighborhood is quiet. Any noise created will echo. Although T-Mobile assured the neighbors the equipment will be quiet, she still was not convinced. She

presented a subdivision map. If the Applicant measured the distance from homes on Coolidge Court the impact could be very different. Summerridge Drive is actually closer to the water tower, and will get the most audio exposure, etc. Ms. Gain was opposed to the installation of a telecommunications tower at the site. Approval of the application will set precedence. Then other telecom companies will follow. She asked the Board to deny the application.

Mrs. Monica Hui said her home at 19945 Summeridge Drive is on the opposite side of the street, 4 homes from the tower. Originally she and her husband considered purchasing a home on the other side of the Five Canyons area. The location was not suitable, due to telecom sites. Properties that are within close proximity of telecom sites are still for sale. The outcome will be the same in their neighborhood if the application is approved. T-Mobile conducted a sound study based on a facility with 2 towers. This does not account for greater exposure to waves when other companies co-locate. Mrs. Hui was concerned about the impact on her children, as well as the other neighborhood children. There may also be an impact on wildlife. Mr. Hui said the deer and wild turkeys are a bonus of living in the area. The Hui Family asked that the Board consider the petition submitted by neighbors, opposed to application. They also asked the Board to consider the impact the installation will have on the neighborhood lifestyle. Public testimony was closed.

Additional Board questions for staff were as follows:

- Why are telecom installations encouraged to co-locate
- Would increased equipment as a result of future co-location trigger CEQA
- Is there a co-location limit
- Can the Board modify the Telecom Guidelines re: co-location for this specific application
- Do the neighborhood HOA's have any view or scenic corridor limitations
- Is Telecom Guideline H-2 solely limited to visual mitigation

County Counsel clarified that the Telecommunications Act of 1996 requires co-location in certain instances. The County Telecom Policy that encourages co-location is consistent with Federal Law. She advised the Board to exercise caution in considering the alteration of the overall Telecom Policy, in reference to Condition #10. If the Board felt that Condition #10 was not applicable in this specific case. A basis would have to be given. Reconsideration restricting the allowance of co-location may have to be justified for each future application, if implemented in this case. Counsel said the intent in the Telecom Act is to minimize telecom equipment. The Act does not address the possible affects of such equipment, but encourages companies to co-locate. Regarding co-location, there are thresholds considered which are taken into account: size and/or amount of existing equipment. Counsel believed there was a limit. However documentation was not available at the hearing. The Board could modify Condition #10 to address some of the concerns. Staff was not aware of any HOA rules regarding view or scenic corridor limitations that would apply.

The Vice Chair said, prior to the last meeting he was not aware that telecom sites emit a humming sound. Perhaps the equipment housing could be insulated to further mitigate noise. The Vice Chair requested that a letter from Frank Seuss in opposition to the application. Be submitted for the record.

Member Gil acknowledged that the CVMAC recommended approval at the February 11, 2008 Meeting. They pointed out that the installation would be smaller than the trees at the site.

Member Clark commented that telecom sites do emit noise. The humming noise emitted from the site at the Bay Fair Mall can be heard from 75 feet away. Comparably the Bay Fair site is on flat terrain. In contrast sound will carry from an elevated, hill location.

Member Adesanya said she understood the neighbors concerns. However in this case, based on the laws and guidelines the Board did not have any discretion to not approve the application, as it has been presented. However she suggested that Condition #13 be modified. The phrase, “or review should be added”. This will allow a review period for surrounding residents. The sound comparison study submitted by the Applicant shall be committed to the record, to allow a basis of comparison for the review period.

Member Adesanya motioned to uphold the staff recommendation of approval, subject to posed Planning Considerations, and Conditions of Approval. The following modifications shall be imposed: Condition #13 shall include language to review noise impacts. Member Clark seconded the motion with a modification. The permit expiration shall be shortened to a period of 6 months, to accommodate a review period. Member Adesanya responded that a foreshortened permit length should not be necessary due to the review process. In the event revocation becomes necessary, the process can be instituted at the Review Hearing. The Vice Chair asked if the review would be limited to sound levels. Member Gil asked that all Conditions, be subject to review. Member Adessanya accepted the modification to allow a review of all conditions including noise impact, at the 6 month Review Hearing.

The motion to uphold the staff recommendation of approval of C-8662 was upheld 4/0. The Chair was excused.

2. **METRO PCS, CONDITIONAL USE PERMIT, C-8708** - Application to allow continued operation of a cell site, in an “A” (Agricultural) District, located at 23207 Hollis Canyon Road, east side approximately 100 feet north of Interstate - 580 Freeway, Unincorporated Castro Valley Area of Alameda County, designated Assessor’s Parcel Number: 085A-1150-001-05. (Continued from February 27, 2008). **Staff Planner: Richard Tarbell.**

The Application was considered by the Castro Valley Municipal Advisory Council on March 24, 2008. The Applicant requested a continuance to complete additional drawings. Public testimony was opened. There were no requests to speak. Public testimony was closed. Member Adesanya asked staff to verify the co-location recommendation contained in Condition #7. The prohibition of co-location may be in error.

Member Adesanya motioned to continue the item to the April 23, 2008 Meeting. Motion carried 4/0. The Chair was excused.

3. **BRIAN LESEUR, VARIANCE, V-12071** – Application to subdivide one site into two parcels (with a boundary adjustment) resulting in a zero foot side and a 16 foot, front setback where 10 feet, and 20 feet setbacks respectively are required, in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 19223 Carlton Avenue, west side, approximately 380 feet south of Massachusetts Street, unincorporated Castro Valley Area of Alameda County, Designated Assessor’s Parcel Number: 084B-0441-043-00. (Continued from October 24 and November 14, 2007; and January 9, and February 13, 2008). **Staff Planner: Andy Young.**

Staff reviewed the history of the application. The application has been on the Board Agenda, four times. The most recent continuance was to allow staff to conduct further research on neighboring lots sizes. Revised calculations are contained in the staff report. The staff recommendation is approval. Public testimony was opened.

The Applicant, Mr. Brian Lesur was present. He did not provide testimony in addition to the staff presentation.

The secondary Applicant, Mrs. Marilyn Lesur was also present. The daughter of Marilyn Lesur testified on her behalf. Ms. Hollis Lesur said that many of the neighbors that spoke out against the application have issues with their own properties. Most of the issues would not meet Ordinance standards. Some neighboring properties have obtained variances for similar requests. Granting approval would not be special privilege. There are 5 lots to the north, and south of the property with similar conditions. The proposal would not be a detriment, as lots of similar size, exist in the immediate area. Carlton Avenue is an older neighborhood. Ms. Lesur referred to the project planner's February 11, 2008 comments, regarding the Subdivision Ordinance: Lots may not be created that are substantially smaller than the prevailing lots in the neighborhood. This is a standard for, new subdivisions. The proposal is for an existing home. The average size of the lot that would be created is 8,565 square feet. The prevailing lot size of surrounding neighborhood lots is, 8,292 square feet. Mrs. Lesur is not a developer. The lot size that would result would be approximately 5,013 square feet. If a replacement home were built in the future, it may have a 2<sup>nd</sup> story. However the footprint would be modest to meet the 5,000 Minimum Square Foot per Dwelling Unit, setbacks. The concern raised by neighbors about driveway access for fire and emergency vehicles, is not valid. The proposal has been reviewed by the County Fire Inspector. The County Fire Department is not requesting any additional requirements for access. The gas meters have also been approved by the Fire Department. The variance application came about as a result of a family dispute. A solution was to split off a separate lot for their mother, Marilyn Lesur. During the preliminary stages, Hollis Lesur went to the Planning Department with a surveyor. Planning staff said that the minimum lot size for the area was 5,000 square feet. They were told there would not be any issues with lot size. When the family dispute escalated they sought mediation. A judge confirmed a plausible solution would be to create an individual lot from the overall parcel. Ms. Lesur did not think it was fair to ask that the parcel now be a minimum of 6,000 square feet, because of neighborhood opposition. The Zoning for the area is 5,000 square feet. If the Planning Department was going to institute a different requirement, they should have notified Ms. Lesur when she first sought direction. Ms. Hollis Lesur then addressed the neighbors concerns regarding lot size. The family has no intention of building a 3,500 square foot home. This will not happen due to the setback limitations. She has been thorough in her preparation, and is surprised by the neighbor's objections. The issues listed on the petition circulated at the last CVMAC Meeting are ridiculous. The garbage cans on each property are already in existence. On garbage days there are not, 27 cans. She did not believe the parking location of her brother's vehicles, or his work shop were a concern of the neighbors. The gas meter design was set forth by Alameda County Fire, when the lot was split in 2006. Mrs. Marilyn Lesur had a stroke 3 ½ years ago. Caring for her has been difficult. This project will allow her to access the equity in her home. This could determine her quality of life. Over the years, Marilyn Lesur has been a community volunteer for the CV Library and 4H. Board questions for Hollis Lesur were as follows:

- What is the current number of lots on the parcel
- Where would the lot line be for Marilyn Lesur's lot in relation to the other lots
- Will there be future remodeling on Marilyn's home
- How would the final square footage of Marilyn's Lesur's parcel be determined
- What is the square footage of the other lots

Hollis responded that the proposed lot line is currently at the front of Marilyn's home. Her brother, Brian's home is on the front lot. Marilyn's lot would be created from the rear section of that parcel. Hollis lives on the lot at the extreme rear of the parcel. Hollis explained that her lot had already been approved as an individual parcel, two years ago. Presently there are no plans to remodel Marilyn Lesur's

home. Any future plans would comply with setback minimums, therefore guaranteeing a small home. Since the past meeting, Marilyn Lesur has had the opportunity to speak with 2 neighbors, about the application. Both have submitted letters to the Board removing their names from the original petition. Staff said that a Boundary Adjustment would be implemented to achieve the lot square footage.

Mr. Dan Grimes said that he also testified at the February 13, 2008 Hearing. He was concerned about neighborhood property values, and adequate on-site parking. Mr. Grimes believed that parking should be calculated on the equivalent necessary for, 3 homes. The current structure is a secondary unit, not a home. These considerations should have been taken into account when the property was originally developed. A subdivision request was already granted when the parcel was divided for Hollis and Brian. Mr. Grimes objected to enlarging the secondary unit. The variance is being sought because Brian and Hollis are unwilling to give a larger portion of their lots. Therefore the Planning Department is now being charged with drawing an arbitrary line through the property. Mr. Grimes was not in favor of approval. There is another neighbor with a corner lot. Granting this application might set precedence. However if the BZA does chose to grant the application, the following should be implemented. Restrict the placement of garbage cans and parking to the private road.

A friend of the Lesur Family, Mr. Todd Finlay spoke in support of the application. Mr. Finlay thought the request was reasonable, and supported the family's efforts. Especially when considering the situation. Unforeseen circumstances do arise. No one anticipated there would be boundary issues. The variance would provide for Marilyn's support. Mr. Finlay thought one of the roles of government is to allow flexibility when warranted. Marilyn Lesur has given to the community, and is deserving of accommodation. Public testimony was closed.

Additional Board questions for staff were as follows:

- What was the original size of the overall parcel, prior to any subdivision
- What is the prevailing lot size in the neighborhood
- What is the depth on the front yard on the parcel that faces Carleton Avenue
- What is the width of Carleton Avenue
- Will subdivision result in the creation of a corner lot
- Can 1 variance request be eliminated by a consistent driveway width
- Once each parcel is split, will Zoning allow the addition of another home on each lot
- If another home were added would the secondary unit become the main residence
- Can the Planning Director make the lot close to 6,000 sq. ft. during the map process

The original overall lot size prior to subdivision was approximately 28,500 square feet. The first subdivision resulted in Brian Lesur's portion to be roughly 16,000 square feet. Hollis Lesur's portion is 12,000 square feet. If the application is granted, (Lot #1) Marilyn Lesur's lot will be at least 5,000 square feet. The prevailing lot size for the neighborhood is 8,300 square feet. The median lot size in the neighborhood is 7,400 square feet. Parcel #2 (Brian Lesur) fronts on Carleton Avenue. This would become a corner lot. Parcel #1 (Marilyn Lesur) is in the center. The road starts at a depth of 16 feet. The Subdivision Ordinance recommends that the entry at the front parcel be 20 feet. By subdividing, the access driveway becomes within the parcel becomes, a private road. The Ordinance related to the Subdivision Ordinance does allow the Planning Director discretion in making road width determination. This is typically done in conjunction with the Fire Marshall. Staff confirmed that 1 variance could be eliminated by leaving the width at 16 feet, throughout the parcel. This modification would also be subject to the approval of the Fire Marshall. Based on past decisions, staff did not anticipate a problem. The Applicant will be required to install fire sprinklers, regardless. The Planning Director can also bring the final lot size on Parcel #1 as close to 6,000 square feet as possible. If another home were added the

secondary unit would become the main home. Any new structure would have to comply with setback limitations. Neighbors always have the option of appealing the Planning Director's decision to the Board of Supervisors.

Member Adesanya motioned to uphold the staff recommendation of approval, based on the staff report and public testimony. The following modifications to Conditions of Approval will be required: The private road shall remain 16 feet throughout the entirety of the parcel. The variance request for a setback of 20 feet shall be eliminated. The Planning Director shall implement a Boundary Adjustment to make the square footage of Parcel #1, more consistent with neighborhood parcel sizes. Member Gil seconded the motion.

The motion to approve Variance, V-12071 passed 3/1. Member Clark was not in favor of approval. The Chair was excused.

4. **CHOONG HYUN PAIK, VARIANCE, V-12096** – Application to consider an application to allow subdivision of one site into two lots, with front yards of 13.66 feet, and 14.45 feet where 20 feet is the minimum required; and side yards of 3.71 feet, and 4.83 feet where 5 feet is the minimum required, in an R-2-B-E (Two Family Residence, 7,500 square foot Minimum Building Site Area) District, located at 21415 and 21437 Locust Street, southwest side, approximately 250 feet northwest of Grove Way in the unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 414-0086-074-00. (Continued from February 27, 2008). **Staff Planner: Christine Greene.**

Staff recommended approval of the application. The application had been continued from February 27, 2008 to allow the Mr. Paik to determine if he wanted to subdivide the property. Initial Board questions were as follows:

- Has the Applicant determined if he wanted to subdivide the property
- Is the Building Department requiring that the Applicant subdivide the property
- Was one of the existing homes on the property expanded beyond 25% of the original footprint
- What is the status of the stop work order
- How is the Applicant restricted from further development as a result of the setbacks
- Is the lot split necessary

Staff said that the Applicant now wants to subdivide. Subdivision would be necessary if the Applicant wants to put an addition onto the existing home. There is not a sufficient setback between the dwellings on the property, to accommodate an addition. Staff believes that the issue was brought to the Planning Department when the Applicant came in to renew an expired Building Permit. When the building permit was first issued, the Building Department did not recognize a variance was required. Staff was unsure if the work Mr. Paik completed was during the active stage of the permit. The Stop Work Order issued by the Building Department was still in effect during the application process. For non-conforming structures the Zoning Ordinance does not allow an expansion beyond 25% of the structure, per year. The Applicant has not expanded beyond the 25% threshold. Since the setbacks are non-conforming, a variance would be required to make any changes on the property. To avoid a lot split, the alternative is for the Applicant to

ask for a variance for the separation between the existing dwelling units. Public testimony was opened.

Mr. Paik reviewed the history of the project thus far. The existing home on the property at 21415 Locust Street may have been built in 1939. Mr. Paik obtained permits to remodel his home, located at 21437 Locust Street, and to build a shed in January 2007. When Mr. Paik went to the Building Department to renew his permit an error was discovered. Prior to that he was not told there was a problem. The work is almost complete. As a result of the mix-up he has not been able to do any work on the project, for the past 7 months. It was always his intent to subdivide at some point in the future.

Member Clark referred to a comment in the staff report regarding an increased financial value if the property were subdivided. Mr. Paik said he always intended to sell one of the homes on the property. Subdivision was always the goal. However the distance between the existing homes is not sufficient. Member Clark said that during prior testimony, Mr. Paik said it was his intent to have a total of two homes, on the parcel. That is the present condition.

Member Adesanya said there appeared to be some confusion as to the Applicant's understanding of a variance for the distance between the two homes, as opposed to a variance for the side yard setbacks. The R-2 Zoning would allow 2 homes on each parcel. If the Applicant did not subdivide he would still need a variance because the distance between each home does not meet the Ordinance minimum. If a scenario that provided a variance for the distance between the two were exercised, the distance issue would be resolved.

The Vice Chair stated that the Board could not consider financial gain loss, cost etc. when making variance findings. There is nothing wrong with the property in its present state. Staff pointed out that the Applicant wanted to add another home on proposed Parcel #2.

Mr. Paik said he had poured the foundation on the second home for Parcel #2. Mr. Paik requested that the time on his Building Permit re-instated since so much time had been lost in the application process. It would be up to staff to come up with an alternate solution. At this juncture he did not know how to proceed. Member Adesanya asked if Mr. Paik would accept a variance for the distance between the existing homes, as opposed to a variance for the side yard setbacks. Mr. Paik said he did not wish to change his plans. Since the beginning of the process he has spent a considerable amount of time, and money. Member Adesanya told Mr. Paik that the resulting possibility could be denial of the application, if he did not find the plan revision recommendation acceptable. Mr. Paik said he had been confused by the entire process, and was unsure of what to do. Public testimony was closed.

Member Clark thought a possible communication gap still existed. The Board asked staff the following additional questions:

- If the parcel were subdivided how many homes would access the driveway
- Which is the largest of the setback, the side or the setback between the existing homes
- If a variance between the existing homes were exercised would a re-notice be necessary

Staff said that the side yard is 3.17 feet. The side yard for the remodeled home that is almost complete, is 4.83 feet. The front yards are 13.66 and 14.45. The distance that exist between the existing homes, is 8.54 feet. Counsel confirmed that a re-notice would be necessary if a variance between the buildings was to be considered. A continuance could be granted to facilitate that process. The Applicant can then return with revised plans. Another option would be to deny the current application before the Board. If Board Members determined the Applicant could not meet the variance findings.



Member Adesanya said she was fundamentally opposed to creating a new variance for the purposes of creating a subdivision. She was willing to grant a variance to an existing non-conforming use, as it relates to the distance between the homes. The Applicant could still achieve the end result of 2 homes on each parcel. Regarding Finding #1, Special circumstance is applicable to the pre-existing conditions on the property, regarding the side yard setbacks on the exterior of the parcel. However the variances are not pre-existing, they would be created. Therefore creating a variance in terms of the exterior side yard setbacks, would be a grant of special privilege, in regard to Finding #2. Although a variance that applies to the distance between the existing homes on the interior of the parcel is not an actionable consideration presently before the Board. The Applicant may want to consider this as a future option.

The Vice Chair said that he was in agreement with the staff, Regarding Finding #1. The home was built in the 1920's. However regarding Finding #2, granting the application would be special circumstance, based on financial consideration. Member Adesanya countered that when considering Finding #1, the outer setbacks, as opposed to the interior setbacks are in existence as non-conforming. There is no need to create a variance for something that is in existence. Also it would be special privilege to create a variance for the outer side yard setbacks, solely to create a subdivision.

Member Clark asked how this application compared to others that requested a variance which would result in subdivision. Member Adesanya responded that in this case, 2 of the variances requested are not currently in existence. They would be created. Counsel said that the discussion did seem to be somewhat circular. However proposed language within the motion must address the points the BZA is attempting to make, to support or deny their position.

Member Adesanya motioned to deny the Variance, V-12096 on the basis that the Applicant cannot meet Tentative Findings #1 and #2. The outer side yard variance requests are not pre-existing. The outer side yard setbacks that are presently in existence have benefit of non-conforming status. The pre-existing condition between the houses is not a consideration before the Board at this juncture. Member Clark seconded the motion. Regarding Finding #2, the Applicant seeks a variance for financial purposes.

The motion to deny Variance, V-12096 passed 4/0. The Chair was excused.

5. **BP WEST COAST PRODUCTS, VARIANCE, V-12105 & SITE DEVELOPMENT REVIEW, S-2157** – Application to allow construction of a service station with lot coverage of 31% where 20% is the maximum allowed and to locate a building 8 feet from the street lot line where 40 feet is required in a CVCBD, Specific Plan, Sub Area 5 (Castro Valley Central Business District Specific Plan, Low Intensity Commercial), located at 2770 Castro Valley Boulevard, north at the intersection on the northwest side of Wisteria Street, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084A-0160-006-01. **Staff Planner: Christine Greene.**

Staff recommended approval of the application. The Castro Valley Municipal Advisory Board reviewed the application on March 24, 2008. The application is acceptable, subject to the Conditions of Site Development Review, S-2157. In addition the recommendations of the Castro Valley Chamber of Commerce shall become Conditions with the omission of #3 and #6. The Vice Chair reminded the Board that only the variance application was before them. Public testimony was opened.

Mr. Mike Majors was present, representing British Petroleum West Coast Products. He said it had been a pleasure working with staff. The Applicant was in agreement with the Conditions of Approval, and the supplemental Chamber of Commerce recommendations. Members Clark and Adesanya had the following questions:

- Will the expansion of the building impact the use permit for the sale of beer
- Why is BP opposed to the specific designation of employee parking spaces
- How many employees are scheduled per shift
- Will the parking lot striping be modified

Mr. Majors told the Board there was sufficient parking to meet the requirements. If additional spaces were set aside solely for employees, the project may not meet compliance. The CVMAC commented that customers may not patronize the station if customer spaces were filled, yet spaces were designated for employees. The overall site has been under utilized in the past. The lot will be re-striped which will increase the current capacity. Parking typically is not an issue because some of the employees do not have cars. Two people are scheduled per shift. There are a total of 5 employees. Staff confirmed that the proposed expansion met Zoning, parking requirements. The alcohol use at the site is non-conforming. The status would not be affected unless the sale of alcohol ceased for a period of more than 180 days, per Zoning Ordinance Section, 17.52.695. That will not be the case, in this instance. Public testimony was closed.

Member Gil motioned to uphold the staff recommendation of approval in regard to Variance, V-12105. Member Adesanya seconded the motion with a modification. The March 21, 2008 recommendations of the Castro Valley Chamber of Commerce numbered #1, #2, #4, and #5 shall become Conditions relevant to Variance, V-12105. Motion carried 4/0.

**STAFF COMMENTS & CORRESPONDENCE:** Staff made no announcements.

**BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:** Member Gil announced that she would not be present at the April 23, 2008 Meeting.

**ADJOURNMENT:** There being no further business, the hearing adjourned at 3:40 p.m.

---

**CHRIS BAZAR - SECRETARY**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**