

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
APRIL 8, 2009
(APPROVED ON APRIL 22, 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: The Field Trip was cancelled. Members visited sites on an individual basis.

FIELD TRIP: 1:00 p.m.

1. **HECTOR SANABRIA, CONDITIONAL USE PERMIT, PLN-2009-00004** – Conditional Use Permit Application to allow the 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.**

MEMBERS PRESENT: None.

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

OTHERS PRESENT: None.

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 2 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 6:00 p.m.

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

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

No one requested to be heard under open forum.

Neighborhood Preservation Ordinance Abatement Hearing

1. **William K. Wong, 17032 Via Pasatiempo, San Lorenzo, CA 94580**

In violation of Alameda County Ordinance 6.65.030 D (1) and M (1).

1. Weeds on property.

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

2. Henrietta Hortman & Philys West Tr., 2921 Kelly Street, Hayward, CA 94541
In violation of Alameda County Ordinance 6.65.030 A (1), D (1), D (2), F (1)
and M (1).

1. Unlawful outdoor storage of furniture, boxes, debris and miscellaneous items;
2. Tall grass and overgrown vegetation; and
3. Unsecured structure(s).

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

CONSENT CALENDAR:

1. **T-MOBILE / HARD, CONDITIONAL USE PERMIT, C-8734** – Application proposal to replace an existing 25 foot light pole with a new 35 foot pole with lights and four concealed antennas. A new equipment enclosure is also proposed to be located nearby. The subject parcel contains approximately 0.91 acres and is zoned R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, RV Parking) District, located at 18988 Lake Chabot Road, east side, north east of Keith Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1305-012-00. (Continued from July 9, September 10, November 5, 2008 and January 28, February 25 and March 11, 2009; to be continued to April 22, 2009). **Staff Planner: Jeff Bonekemper.**
2. **CAMBRA / EL SHADDI MINISTRIES, CONDITIONAL USE PERMIT, C-8762, PLN-2008-00020** - Application to allow continued operation of a church, in a R-C ABCD (Residential Commercial, Ashland Cherryland Business) District Specific Plan, located at 565 East Lewelling Boulevard, south west side, corner southwest of Wickman Court, unincorporated San Lorenzo, area of Alameda County, designated Assessor's Parcel Numbers: 413-0031-053-00 and 413-0031-054-00. (Continued from November 12, 2008 and January 28 and February 25, 2009; to be continued to May 27, 2009). **Staff Planner: Pat Anekayuwat.**
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 14th Street, north east side, approximately 500 feet south west of 159th Avenue, unincorporated Ashland area of Alameda County, bearing Assessor's Parcel Number: 080-0057-035-00. (Continued from January 28, February 11 and March 11, 2009; to be continued to May 13, 2009) **Staff Planner: Howard Lee.**

The Vice Chair asked staff why the application had been delayed. Staff explained the Applicant has not been able to secure a translator to assist him. Per the Applicant's request at the November 12, 2009 Hearing County staff located a translator. The Applicant was informed the cost of a professional translator started at \$75 per hour. The Applicant declined the option, and has attempted to have a family member provide translation. In addition staff did locate an interagency staff person that speaks Vietnamese. Staff will speak with Applicant to confirm his presence at the May 13, 2009 Hearing. The Chair asked Counsel if a translator is required to be a neutral party. Counsel responded persons speaking at BZA Hearings are not sworn in. He was unaware of any specific requirement regarding translators. Counsel will conduct further research and report back. Member Spalding said in the past family members have provided translation for Applicants appearing before the Board. It is the Applicant's choice, therefore issues should not arise.

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

REGULAR CALENDAR

1. **FRED FULCHER, CONDITIONAL USE PERMIT, C-8727** – Application to allow sales and installation of car window tinting in a P-D (Planned Development) ZU-1487 (1487th 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, February 25 and March 11, 2009). **Staff Planner: Christine Greene.**

Staff reviewed the history of the application. The application was continued to confirm compatibility of the window tinting use with the restaurant use that shares the site. Staff also refined the staff report. The PD (Planned Development) Zoning also allows CN (Neighborhood Business) and CO (Administrative Office). The window tinting and the food use are compatible. Zoning allows the window tinting use to operate 7 days from 9:30 a.m. to 7:00 p.m. Staff recommended approval for 3 years. The City of Hayward request that all window tinting work be conducted inside of a building.

Board questions for staff were as follows:

- What is the size of the area used to conduct the window tinting operation
- Will California Vehicle Code 26708 (materials obstructing driver's views) be Conditions
- Does the window located at the installation site remain broken
- What is the completion date of the site renovation
- Is graffiti still present on the site

Staff said the existing garage area is approximately 10 feet wide, and can easily fit a vehicle. The garage depth is approximately 20 feet. There is an additional room beyond the garage area. The California State Vehicle Code will not become Conditions of Approval. However the Code, and background information is provided in the staff report. Redevelopment of the site is scheduled to be complete in 3 years. Condition(s) can be added that require the property to remain clean, and graffiti free. Public testimony was opened.

The Applicant Mr. Fulcher was present, and in agreement with Conditions of Approval. Questions for the Applicant were as follows:

- What portion of the site will be dedicated to the window tinting business
- Is the garage area sufficient to provide work area for a car, shelves, materials, supplies, etc.
- Is graffiti still present on the site
- Does the window located at the installation site remain broken

Mr. Fulcher referred to a site plan which indicated the placement of the window tinting business. He explained the broken windows have been boarded up. The windows have been replaced twice. At this juncture the windows will not be replaced until the property is redesigned as part of the site development review. To Mr. Fulcher's knowledge boarding the windows, is within compliance of the County Ordinance. The employee of the prior tenant has been hired to keep the site clean, and graffiti free. Mr. Fulcher is also a participant in the Alameda County Graffiti Abatement Program. Mr. Fulcher's goal is to obtain his building permits, and move forward with redevelopment of the site. He met with Supervisor Lai Bitker's office to discuss plans that have been approved for the site. Member Spalding said it would be an act of good faith to replace the windows. The window tinting business is on-going, and redevelopment of the site will not likely begin for a year. Mr. Fulcher said that as a result of not gaining approval to retain the catering truck for a period of 3 years. The loss of anticipated revenue will affect decisions on interim projects at the site. His options are limited because banks are not giving construction loans.

Board Members acknowledged that Mr. Fulcher had assigned someone to clean, and maintain the site. However the site must always be maintained. The goal during construction is to prevent the property from becoming an eyesore to the community. Perhaps the boarded windows can be painted to match the building. Mr. Fulcher accepted the Board's suggestion. He will paint the windows to match. Public Testimony was closed.

Staff re-confirmed the property must be well maintained. A condition can be added which requires the entire site be maintained graffiti free, and in compliance with the Neighborhood Preservation Ordinance. Board Members discussed possible modifications to Tentative Findings and Conditions of Approval. Tentative Finding #1 should not be contingent upon future business. Sentence 2 which discusses market demand should be stricken. Sentence 1 and 3 should remain. Conditions of Approval shall be modified to state the property owner or business operator must maintain the site, and shall remain in compliance with the Neighborhood Preservation Ordinance. The site shall also remain graffiti and garbage free. All windows and doors and/or areas of penetration shall remain closed.

Member Spalding motioned to uphold the staff recommendation of approval with the following modifications:

Tentative Finding #1 shall have the second sentence stricken.

Condition #14 shall add: The property owner or business operator must maintain the site and shall remain in compliance with the Neighborhood Preservation Ordinance.

An additional Condition of Approval (#15) shall state: The property and sidewalk frontage shall be maintained in a manner that is free of graffiti, trash and litter, to the satisfaction of the Planning Director.

Mr. Fulcher interjected with a question. The Chair reminded Mr. Fulcher, an active motion was on the

floor for consideration. Member Spalding asked that the Applicant be allowed to speak due to the distance traveled to be present at the hearing. Public testimony was reopened.

Mr. Fulcher asked why a Condition of Approval was being added to address graffiti. The property is a participant in the Public Works Graffiti Abatement Program. If there is graffiti present at the site. Alameda County Public Works will come and remove it. The Vice Chair thought the Condition was appropriate. Participating in the Graffiti Abatement Program would only give him an edge in maintaining the site. Public testimony was closed.

Member Adesanya clarified that subsequent Conditions of Approval shall be re-numbered as a result of an added Condition. She seconded the motion. The motion to approve Conditional Use Permit, C-8727 passed 4/0.

APPROVAL OF MINUTES: The Minutes of March 25, 2009 were continued to the April 22, 2009 Hearing.

STAFF COMMENTS & CORRESPONDENCE:

Staff submitted letters for review to be presented at the April 14, 2009, Board of Supervisor's Meeting. Board Members asked that further information be added to the Background Summary portion, C-8555, Laguna. Staff should include the newspaper article about the facility which discussed many issues, including the death of one of the residents on the local train tracks. BZA Members wanted the BOS to be aware that multiple deaths occurred as a result of lack of staff supervision. In addition one of the residents was making unauthorized contact with a neighbor's minor child. The BZA findings which resulted in permit denial should be re-emphasized as they addressed serious life and safety issues present at the facility.

The letter addressing the appeal for 25785 Fairview Avenue, Ranell Jones should clarify that per Mr. Jones request. The BZA granted an extension of 30 days in which to complete the abatement. This was 20 days beyond the staff recommendation of 10 days.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

Board Members asked Counsel to supply language regarding requirements for translators. Counsel said there were no specific requirements. Applicants are required to make their case, Board of Zoning Adjustment Hearings are not judicial proceedings. There are no defendant, or witness requirements. The Chair gave Counsel further background information. There has been strong community opposition to the application (Mill Liquors). Member Spalding said although the Applicant was given the option of providing a translator, and information regarding a professional translator. The application cannot be continued indefinitely. The Vice Chair pointed out that at least during the continuance period. The Applicant's license to sell alcohol has not been renewed by Alcoholic Beverage Control. Therefore the Applicant cannot sell alcohol. Member Adesanya added the BZA is not obligated to continue an application solely as the result of a request. The Board has the authority to deny the continuance, or take action with or without the Applicant's presence. Member Spalding agreed. There will be no further continuances granted for PLN2008-00054-Mill Liquors. The Applicant should be ready to proceed on May 14, 2009. The Board will take action on the item.

ADJOURNMENT: There being no further business, the hearing adjourned at 7:30 p.m.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS