

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
APRIL 22, 2009
APPROVED JUNE 24, 2009

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

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Chair, Dawn Clark-Montenegro; Vice Chair, Kathy Gil; Members, Jewell Spalding.

MEMBERS EXCUSED: Ineda Adesanya.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel, Eric Chambliss; Code Enforcement Staff; Yvonne Bea Grundy, Recording Secretary.

There were approximately 14 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 1:30 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. **Frank W Lusk, 17107 Mayflower Dr., Castro Valley, CA 94546**
In violation of Alameda County Ordinance 6.65.030 A(1), D(1,23) and M(1).
 1. Overgrown vegetation & weeds in front, side and rear yards and in public right-of-way
 2. Unlawful outdoor storage of debris & miscellaneous items in front and rear yard, including a partial engine block
 3. Dead, fallen trees in side and rear yards

The Vice Chair 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 3/0.

2. **Jiang Zhang & Lilian Lau, 2089 & 2091 Strobridge Ave., Castro Valley CA 94546**
In violation of Alameda County Ordinance 6.65.030 A(1,2), B(1,2), C(2), D(1,2) and M (1).
 1. Unlawful outdoor storage of debris and miscellaneous items in front, side & rear yards
 2. Overgrown vegetation, weeds & dead vegetation
 3. Accumulation of dirt & gravel not incorporated into landscape
 4. Unsecured dwellings

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 3/0.

3. **Katharina Rodges, Tr, 19227 Garrison Ave., Castro Valley CA 94546**

In violation of Alameda County Ordinance 6.65.030 A(1), D(1,23) and M(1).

1. Overgrown vegetation & weeds, including bush facing Lux Ave., growing in public
2. right-of-way.

Member Spalding motioned to continue the matter to the May 13, 2009 Hearing. The Vice Chair seconded the motion. Motion carried 3/0.

4. Oscar and Rosa Hurtado, 2145 Manchester Rd., San Leandro, Ca 94578

In violation of 6.65.030 A (1), D (1), G (1) and M (1).

1. Discarded sofa.
2. Overgrown weeds and vegetation.
3. Broken gate.

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 3/0.

5. Nhu T. Huynh & Thinh Tran & Jonny Xuan, 1098 Elgin Street, San Lorenzo

In violation of 6.65.030 A (1), D (1), D (2) and M (1)

1. Unlawful outdoor storage of garbage, debris and miscellaneous items.
2. Tall grass and overgrown vegetation.

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 3/0.

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 and April 8, 2009; to be continued to June 10, 2009). **Staff Planner: Jeff Bonekemper.**
2. **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. (Continued from March 22, 2009; to be continued to May 13, 2009). **Staff Planner: Richard Tarbell.**

Member Spalding motioned to accept the Consent Calendar as presented. The Vice Chair Seconded the motion. Motion carried 3/0.

REGULAR CALENDAR

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.**

The staff recommendation was approval. Staff did contact the Ashland Homeowners Association which had no comments to offer. Initial Board questions were as follows:

- What percentage of the area will be paved
- What paving material is proposed
- Will a contact number to the Facilities Manager be clearly posted at the site
- How often will materials be removed from the site
- How often will the site be maintained
- Where is proposed storage located on the site
- Will the current curb cuts allow sufficient access to the site
- How will staff ensure compliance with Conditions of Approval

Staff explained the Zoning requirement is an all-weather surface up through the first 20 feet of the property. The current material is gravel which is sufficient to satisfy the Ordinance. The site will be cleaned daily by the Applicant. The curb cuts located near the sports facility will not be re-opened. The curb cuts are sufficient to support the recycling operation. Items that are to be recycled will be stored in a single on-site container that will be picked up weekly. Tools used in the daily operation will be kept in the storage container. A Condition can be added requiring clear visible posting of signage with contact information. Public testimony was opened.

The Applicant, Hector Sanabria was present. The recycling center will take, glass, aluminum and plastic. No paper. A staff person will be present during the Hours of Operation. Gravel will be swept from the pavement by the staff person. Items to be recycled are put into sacks, and taken away at the beginning, and end of each day. Trucks come from a facility approximately 30 minutes away. All processing is conducted off-site. Board questions for the Applicant were as follows:

- Is the property owner also the operator of the facility
- Why was this location chosen for the recycling facility
- Is there seating for an on-site operator
- If storage is full prior to the end of the day, can materials be removed from the site
- What is the anticipated noise level generated by the use
- Will further landscaping be added to mitigate gravel on the site
- Can further asphalt be added to the entrance of the site
- Is there a contact phone number posted on the storage container
- Does the facility allow recycling items left after Hours of Operation
- Is there a fence to further delineate the recycling business with other on-site business

Mr. Sanbria told the Board the property is owned by Mr. Piedemonte. He then showed a photo display of the site. There is no fence separating the other businesses on-site, however landscaping will be added to the 2nd parcel behind the site. Recycling CRV Centers must be located within ½ mile from a grocery store. The Center is near a Grocery Store. Recycle materials are placed in bags within the storage container. This process reduces noise. The container also has an interior seating area for the on-site operator. The operator will clean the site when customers are not present. A call for pick-up can be placed as needed, if

the storage container becomes full before the end of the day. Contact information will be posted on the exterior of the storage container. In addition signage will be posted defining the types of recycling materials accepted at the site. Signs will also be posted prohibiting drop-off of materials after business hours. Mr. Sanabria believes there is a paved asphalt surface under the gravel. Prior to the recycling center the space was used to store building materials, which resulted in the gravel.

Ms. Peggy Guernsey asked for further information regarding: restrooms for on-site staff, access to on-site water, possible contamination, cleaning and disinfection. She also asked how the site would abate ants, bugs, and left over garbage from recycling materials. She asked the Board not to approve the permit until these specific issues had been addressed. Staff confirmed there is a restroom facility on-site. Member Spalding also asked if a hose was available at the site and what cleaning methods would be employed.

The Applicant returned to address issues raised. Liquids remaining inside cans etc. will be emptied into buckets. Bucket contents will be filtered and disposed of at the processing center. There is a hose located on the side of the building which will be used to clean the site. Disinfectant will also be part of the cleaning process. Public testimony was closed.

Further Board questions for staff were as follows:

- Which Public Agency has jurisdiction of Recycling Centers
- What is closing time for the site
- Has staff received a landscaping plan

Staff believed Environmental Health is the Agency that oversees recycling centers. The Building Department is listed in Conditions of Approval to oversee electrical needs, if any at the site. The Center closes at dusk. The Applicant has yet to submit a landscape plan. The permit can be conditioned to require plan submission within 30 days of approval, and implementation in 90 days. Staff will verify any further processes required by the Recycling Board.

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

Condition #3 shall have language added requiring the site to remain free of graffiti, garbage and litter. The site shall be cleaned on a daily basis.

Condition #6 shall have language added requiring the clear posting of signage with the following information: Hours of Operation including drop off of recycling materials, Contact Information, The prohibition of dumping, including trash and debris.

Condition #5 shall be modified to include the Environmental Health Agency.

Condition #7 shall be modified to require review in a period of 1 year from the date of approval to monitor compliance of all Conditions of Approval, including the addition of further Conditions if warranted.

A further Condition of Approval shall be added stating, access to water, and a water hose must be provided. The site shall also remain clean from spillage.

A further Condition of Approval shall be added stating Vector Control shall be notified of the facility, and conduct periodic checks of the site

A further Condition of Approval shall be added stating the Applicant must submit a Landscape Plan within 30 days of approval, and implement the Plan within 90 days.

A further Condition of Approval shall be added stating PLN-2009-00004 is subject to a review in a period of 1 year to verify compliance with all Conditions of Approval, including the addition of further Conditions if warranted.

The Vice Chair seconded the motion. The motion to approve PLN-2009-00004 carried 3/0.

2. **PETER KO, CONDITIONAL USE PERMIT, PLN-2008-00006-** 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, is zoned R-1-CSU-RV (Single Family Residential, Secondary Unit, Recreational Vehicle Parking) District, located at 20600 John Drive, north side, approximately 253 feet north west of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County bearing Assessor's Parcel Numbers: 84A-0240-001-02; 84A-0228-001-03; 84A-0235-001-06; 84A-0230-003-03; 84A-0230-001-02 and 84A-230-004-00. (Continued from March 11, 2009).

Staff described the application. The permit process will finalize the conditional use permit. The recommendation was approval of the CUP and accompanying mitigated negative declaration. The Castro Valley Municipal Advisory Committee recommended approval, on condition the site development plan return for review to the CVMAC. Initial Board questions were as follows:

- What prompted the request for expansion of the facility
- Will the number of pews at the church be increased
- What was the mailing radius to the surrounding neighborhood of the hearing notification
- What was the total number of public mailings
- Which Boards / Committees considered the application
- Will the Board of Zoning Adjustments make a determination regarding the SDR
- What solutions have been posed regarding parking at the site

Staff confirmed the BZA will be making a decision on the variance and the mitigated negative declaration. The Applicant is present and can further discuss the expansion request. Public Notice was sent to properties within a 500 foot radius of the site announcing the CVMAC and the BZA meetings. A re-notification was sent for April hearings. There will be no outward expansion of the footprint, additions to the student body or the number of church pews. Public testimony was opened.

Senior Pastor, Larry Vold has lived in Castro Valley for 25 years. He is delighted to share information about the project. The Architect will also give a presentation of the proposal. Mr. Vold has attended the church for 40 years. His spiritual needs have been met, and his life has been transformed through following Christ. It has been 40 years since the church has undergone renovation. Service delivery to the community will be enhanced by an improved flow through the site. There is no change in ownership. The church bylaws state Oakland CA, as that was the original location. The church moved to Castro Valley in 1969.

Assistant Pastor Mark Taylor was also present. He did not add further testimony but made himself available for questions.

Mr. Mark Munoz of Ko Architects conducted a presentation which detailed, site orientation, and existing conditions. Due to the large plaza it is difficult to control access to the site, and travel between buildings. The proposed solution is to reduce the size of the stairs and add a new foyer. An information booth will be added, and provide a control point. The expanded lobby will also provide more fellowship space. The present meeting rooms are outdated. A new 2 story building will be placed on the east side which opens

up the site. New classrooms will be oriented toward an internal courtyard. The expanded kitchen will be next to meeting rooms. The chapel will have a dedicated area. The existing sanctuary has a recessed placement and is open to the plaza. As a result of the location, the sanctuary is not often used. The new lobby design takes cues from the lobby fins. This uplifting effect should encourage fellowship. The new chapel will be placed inward providing a modern look. Skylights will add warmth to the room. The school will have a lower profile than the second story, which will eliminate competition with other buildings at the site. Board questions were as follows:

- Has the current footprint been expanded
- Where will the new chapel be placed
- What is the maximum proposed building height
- Is there a plan to upgrade exterior lighting
- What is the estimated time frame to complete construction

Mr. Munoz explained the current foot print covers approximately 85,000 square feet. The proposed added area is 28,000 square feet. When complete the project will cover 105 square feet. The highest point will remain the existing sky loft. A Ko Architect staff member said construction should last 18 to 24 months. Exterior lighting will remain unchanged with the exception of small bulbs that will be recessed around the exterior balconies. Interior lighting will flow outward, and be the focus to support conceptual ideas.

Mr. Mark Teyler has been a Member since he was in 4th Grade. Now he is an adult with a family of his own. There have been no improvements since 1969. Church Members are excited about what the new facility will provide.

Mr. Jack Wilcox has lived on Magee Way in Castro Valley for 30 years, married 40 years. The church provides a tremendous amount of help. It provides a safe clean, friendly environment, as well. Mr. Wilcox has taken advantage of the facilities for the past 30 years. His daughter attended the school as a child, and learned a lot. She also got married at the church. His grown children attend the church, two grandchildren attend the church school, and one grandchild attends the pre-school. The classrooms are crowded.

The Chair read a comment card submitted by Ms. Peggy Guernsey into the record: The Neighborhood Church has been a positive member of the Alameda County Community for over 50 years. It continues to touch the personal lives with food programs, educational and outreach programs for all members of all cities within the County. The church provides ongoing positive support of the following Alameda County Services, Fire, Sheriff, and CHP and abides by the law.

Ms. Peggy Guernsey also testified. She lives in the City of Hayward but attends the church. The Neighborhood Church has always been a wonderful safe place that has reached out to the surrounding community. Church outreach started when they were located in Oakland, and continues. Assistance is provided to people in Hayward, and outreach is still growing. Although Ms. Guernsey's son lives in Dublin, he insisted the Pastor at Neighborhood Church perform his wedding ceremony. Ms. Guernsey added the church needs to update and remodel accessible ramps to comply with American with Disabilities Act requirements.

Amanda Guernsey thinks the project is important. With the occurrence of child kidnapping issues, the church design adds a level of safety. Children will be in an enclosed area. Ms Guernsey believes the timing is appropriate. It should have been implemented before. Safety is an important component to keep kids happy.

Further Board questions for the Architect were as follows:

- Will the application be submitted to a SDR per CVMAC's recommendation
- Would Public Noticing be required for further application review
- Would the CUP return to the BZA after submission of an SDR
- Will additional classrooms be added to the site
- Will a Lighting Plan be submitted for review

Staff said a further Condition of Approval can be added requiring an SDR. The Castro Valley Municipal Advisory Committee would then make recommendations to the Planning Director. The Planning Director will make a determination of approval or denial. Public Notice regarding the SDR will be mailed to locations within a 500 foot radius of the project. Local newspapers get copies of the Meeting Agendas. Typically lighting is part of the Landscaping Plan. Condition #10 can be modified to specify that requirement. Mr. Ko told the Board there will be 2 additional classrooms. One classroom will be used for Sunday school lessons. Originally the classroom/teaching area was a single story building. The new design is a two story structure. Each classroom is approximately 20 by 30 feet. The second floor classrooms will be used for Bible study. Class sizes have not increased however activities now require more area. There will also be a technical information area. The new main building and classroom area will add further landscaping. Construction will take place behind the church. Staff then showed documentation and site plans including location, and designated plant names. Public testimony was closed.

Member Spalding thought the application should be further Conditioned to implement an SDR that will be reviewed by CVMAC, and require a determination by the Planning Director. This process should be publicly noticed. Staff recommended Condition #3 be modified to include the SDR requirements. The Applicant has already submitted a conceptual lighting plan. Requirements can be incorporated into Condition # 10.

Member Spalding motioned to uphold the staff recommendation, approval of the Mitigated Negative Declaration and Conditional Use Permit PLN-2008-00006 with the following modifications: Condition #6 shall include requirements PLN-2008-00006 is subject to a Site Development Review before the Castro Valley Municipal Advisory Committee. The Planning Director shall make a final SDR determination. Public Notice shall be given of Site Development Review proceedings and/or consideration. Condition #4 shall include requirement of a landscape plan which shall include exterior lighting design as described in the accompanying CEQA Mitigation.

The Vice Chair seconded the motion. The motion to approve PLN-2008-00006 passed 3/0.

3. **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, March 11 and 25, 2009). **Staff Planner: Damien Curry.**

Staff reviewed the application. The recommendation was approval. The item was continued from prior hearings to conduct further research regarding non-conformance in reference to the Alameda County Zoning Ordinance, and possible case law. Initial Board questions were as follows:

- Has the project description changed
- Is the ground floor unit a new aspect of the proposal
- Is there any change to the project footprint
- What is Staff's analysis as to why the project should be approved
- Is there an expansion of floor area
- Is there case law supporting changes to non-conforming uses
- Where was the location of the non-conforming building that was destroyed
- Is the carriage house still present at the site

Staff clarified the proposal language may have been slightly refined however the description has not changed. The single story unit that was torn will be replaced with a two story unit. The footprint will be expanded. Staff believed the project should be approved because the non-conforming unit was in existence. The size of the replacement unit is not appreciably larger in comparison. Staff then referred to photos of the structure prior to demolition. Member Spalding stated she had been to the site. Photographs do not give a complete representation of the area the on-site structures encompass. County Counsel said case law discussing non-conforming did not specifically correspond to the County Zoning Ordinance. In this instance the non-conforming structure has been demolished. Under the County's non-conforming use provisions there is no method to replace the structure. A variance from the County's non-conforming use policy is required to build a new structure. Ordinance rules that apply to percentages of change to non-conforming uses do not apply, as the non-conforming structure no longer exists. There is no maintenance, repair or expansion of an existing structure. Since the non-conformity no longer exists, a variance from the R-1 Single Family Residential Zoning is required. Public testimony was opened.

The Applicant Mr. Garnhart lives in the home at the front of the parcel, 1131 Grove Way. The position of the replacement structure is slightly different than the original structure. The building is no longer on the property line. The space the replacement structure now occupies was formally a landscaped area. The footprint of the structure is pretty close to the original that was torn down. His intent is to gain 3 garages for parking, and the return of the unit that had to be demolished. When he purchased the property it contained 7 units. The original structure had to be demolished due to the deteriorated condition. He would like to have a functional unit that is not rotted and molding, and gain additional parking. Originally he attempted to make repairs to the old structure from the east side of the site. However the neighbor that lived next door would not allow access from her property. Member Spalding asked Mr. Garnhart if he understood the permit request was now for a variance, as the non-conforming structure had been demolished. Mr. Garnhart acknowledged that he created a situation that was not good. Questions for the Applicant were as follows:

- Where was the location of the original garage
- What was the prior number of garages on the site
- Did the original garage have a second story

Staff showed the location of the original garage via an old aerial photograph. Mr. Garnhart told the Board at one time a garage, and a single story home was located on that portion site. The new garage will be placed in the same location. The total number of garages will be four. Mr. Garnhart said he was at the Board's mercy.

Ms. Peggy Guernsey lives on Delmar Avenue in Hayward. She told the Board she had some concerns. Work at the site has been conducted without permits. Violation of the law is being flown in the public's face. The driveway at the site is less than 12 feet, zoning requires 20 feet. This does not allow rear access for fire engines, emergency vehicles, and older vehicles. There is also less than 6 feet between

structures at the site which eliminates any privacy. Ms. Guernsey read letters submitted by neighbors that are in favor of denial of the project. She is in agreement. Ms. Guernsey believed staff had not seriously considered the full impact of infill development on the surrounding community. A landlord may be nice however that does not ensure the tenants will be. Neighbors have to deal with tenants. Ms. Guernsey said when she attempted to improve her home she was not able to get approval through the City of Hayward approval process. She had to abide by the rules. A neighboring project was able to gain approval because the work had already been completed. Her privacy is impacted because the neighbors are now able to look directly into her backyard. Neighbors have also left trash and beer bottles in her yard. Calling the landlord or the Sheriff is not a remedy because you still have to see the same people, in the neighborhood. After an incident your property and animals are threatened. An application should not be approved, solely because work has already begun. She asked the Board to deny the project based on the fact it does not conform to the Zoning Ordinance. In addition there are safety, and loss of privacy issues. Public testimony was closed.

Board Members had the following additional questions for staff:

Can a property owner repair a non-conforming building that is in need of repair

What is the threshold for change to a non-conforming structure, if a structure is in need of repair

Since the non-conforming status of the demolished building no longer exists as the result of removal, does the proposed driveway width have to be in compliance with current zoning

Can the BZA approve a variance limited to 3 garages without a second story for living space

Can the garages be considered accessory structures

Counsel said the general rule is that a non-conforming use exists because it was built prior to the existence of Land Use Policy. Non-conforming uses are not encouraged. Alameda County Zoning has provisions that allow maintenance and repair/rebuild up to 75% of the structure. However that rule does not apply since the structure has been demolished. Staff said in most cases any construction on a non conforming lot would require a variance. There are some instances that do not require a variance when required setbacks can be met. In this case the non-conformity is the number of dwelling on the site. Driveway width is not part of the application. The driveway is located on the opposite side of the property.

Member Spalding pointed out the site contained the original home, carriage house, and the newer structures. The Applicant expanded the non-conforming use further increasing the footprint by adding a second story. There are four buildings on the site. The garages are for the existing 6 living units, and do not address parking for the 7th living unit. The fourth garage will be placed in close proximity to a stairway. In addition to the garages there is a carport. Member Spalding said she had multiple problems with the application and was not in favor of approval of a fourth garage. She recommended the project be modified. She would support a maximum of 3 garages, and a structure limited to a single story. Counsel said the Board must amend the application if the description were changed. The Applicant would also have to be in agreement with any changes.

The Chair acknowledged Board Members were in agreement the non-conforming status was lost when the non-conforming structure was demolished. The Board reviewed a letter from the Cherryland Association, which requested the project comply with all building and fire codes. On January 7th the Association withdrew support of the project, if a seventh dwelling unit was added to the parcel. The Cherryland Association would be in support of one additional garage, and covered parking. The Association was not

in favor of a second story. The Chair pointed out that it would be necessary for the Building Department to approve any modified proposal. The Chair re-opened public testimony for the purpose of determining interest of the Applicant in continuing the application in order to modify the request. Public testimony was re-opened.

Mr. Garnhart stated it was strange the application was in the same state as when continued from the January 28, 2009 Hearing. The prior continuance periods were to be used to gain a clear understanding of non-conforming use versus a conforming use to determine, and to obtain permission to regain his lost apartment. Without the unit he loses the value of the unit which is \$140,000.00. In addition he loses the rents. The garages do not provide gain for him. Mr. Garnhart acknowledged he created a complete nightmare for himself. He would not gain anything with 3 garages therefore it was not a consideration. It will not benefit him. He would like the Board to consider the current proposal and render a decision, so he can move on. Public testimony was closed.

The Chair said based on the discussion at the January 28, 2009 Hearing, and additional analysis conducted by County Counsel the site has not retained its non-conforming status. The Board then discussed application Findings. Regarding Finding #1, Members agreed granting the variance application would be a grant of special circumstance. There are no circumstances that deprive the site of privileges enjoyed by other properties in the same zoning classification. Regarding Finding #3 the Chair and Member Spalding believed the use could potentially have a detrimental effect on persons or property in the neighborhood due to the second story, and the proximity to the property line. The Vice Chair pointed out the structures always sat on the property line. That aspect of the application is not a new component. Letters from neighbors have been submitted in support of the application. Member Spalding responded the second story was a new component. In addition the fact the Cherryland Association withdrew their support of a project containing a second story. That is an important consideration.

The Vice Chair motioned to deny Variance, PLN-2008-00072, the staff finding a special circumstance exists on the property cannot be supported. Regarding Finding #1, the R-1 (Single Family Residential) Zoning allows one home per site. Regarding Finding #2 the staff finding, granting the application would not constitute grant of special privilege cannot be supported. There are no properties in the vicinity and zone with the same number of dwelling units and buildings. The Applicant interjected and said there are several properties in vicinity that have multiple units. The Vice Chair said there no other properties in the vicinity zoned R-1 with 6 units. The non-conforming structure on the site was torn down completely. Had a portion of the non-conforming structure been retained perhaps the circumstances would be different. The Chair called for order, re-establishing public testimony was closed.

Member Spalding seconded the motion with a note for the record that three BZA Members were present. All Members were in agreement in non support of staff Findings #1 and #2. If there is an appeal to the Board of Supervisors, a notation shall be made regarding Tentative Finding #3. Two Members have concluded the use would be detrimental to persons or property in the neighborhood or the public welfare, based on the additional 2nd story. The Vice Chair said she could argue the 2nd story was not detrimental based on a photograph of the structure, and a letter submitted by the next door neighbor in support of the project. Member Spalding referred to the photograph on page 11 of the staff report that the impact of the 2nd story was visible in the photograph. Construction is not yet complete therefore the full outline of the structure is not yet obvious reflecting the impact.

The motion to deny Variance, PLN-20008-00072 passed 3/0.

APPROVAL OF MINUTES: The Vice Chair motioned to accept the Minutes of March 25, 2009 with submitted modifications. Member Spalding seconded the motion. Motion carried 3/0.

The Vice Chair motioned to accept the Minutes of and April 8, 2009 with submitted modifications. Member Spalding seconded the motion. Motion carried 3/0.

STAFF COMMENTS & CORRESPONDENCE:

The Applicant for Conditional Use Permit, PLN 2008-00054 Mill Liquors has retained Counsel to represent him, and assist in language translation. They will be present at the May 13, 2009 BZA Hearing.

The appeal of Condition Use Permit C-8555 Laguna will be heard at the April 23, 2009 Board of Supervisor's Hearing.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

The Chair asked if private companies were allowed to market to County employees. She understood T Mobile was attempting to obtain a list. Counsel was unsure if Alameda County had an established policy. Counsel will conduct further research and report back.

ADJOURNMENT: There being no further business, the hearing adjourned at 4:45 p.m.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS