

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
APRIL 25, 2007
APPROVED MAY 09, 2007

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

MEMBERS EXCUSED: None.

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

There were approximately 17 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:

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.

Mrs. Doris Marciel, introduced herself. Mrs. Marciel asked the Board if an applicant is required to be present when their application is reviewed. Her concern is that if the applicant is not present it does not give the public an opportunity to ask questions. The Chair explained that an applicant is not required to be present, for an application to be considered. If an item is on the Consent Calendar anyone from the public can comment on the item. The item can then be moved to the end of the Regular Calendar. However the Board will not take action. The public can pose questions to staff. If there is a question, and staff does not have an immediate answer, a response can be given the next time the item is heard. Member Spalding encouraged the public to ask and/or raise questions and issues. If the BZA is made aware of an issue, they can attempt to resolve it.

CONSENT CALENDAR:

1. **JOSE RAMIRO, CONDITIONAL USE PERMIT, C-8489** – Application to allow the continued operation of a tavern “The Stadium Club” in an ACBD (Ashland Cherryland Business District Specific Plan) – Transit Corridor District, located at 15698 East 14th Street, east side, corner north of Plaza Drive, unincorporated Ashland area of Alameda County, designated Assessor’s Parcel Number: 080-0034-007-00. (Continued from October 11, November 15, December 6, 2006; January 10 and 24, 2007; to be continued to May 23, 2007).
2. **JOSE OLIVAREZ, CONDITIONAL USE PERMIT, C-8559** – Application to allow the continued operation of an indoor recreation facility in an ACBD-FA

(Ashland Cherryland Business Districts Specific Plan) Freeway Access District, located at 20613 Mission Boulevard, southwest side, approximately 100 feet, northwest of Medford Avenue, unincorporated Cherryland Area of Alameda County, designated Assessor's Parcel Number: 414-0041-037-00. (Continued from February 28 and March 28, 2007; to be continued to May 23, 2007).

3. **ENVISION HOME DEVELOPMENT, VARIANCE, V-12056** - Application to allow expansion of a non-conforming building with construction of a duplex with a: Zero foot setback from the access driveway where 10 feet is required, and a nine foot wide driveway where 20 feet is required, in an R-3-B-E (Three Family Residence, 8,750 square feet Minimum Building Site Area) District, located at 1435 – 166th Avenue, north east side, approximately 270 feet, north west of East 14th Street, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0076-030-00. (Continued from March 14 and April 11, 2007; to be continued to May 23, 2007).

Member Clark asked staff why, Conditional Use Permit, C-8489 was being continued. Staff explained additional time was needed to gather further information.

Member Clark motioned to accept the Consent Calendar as presented. Member Spalding seconded the motion. Motion carried 5/0.

REGULAR CALENDAR

1. **TERESITA LAGUNA, CONDITIONAL USE PERMIT, C-8555** – Application to allow the continued operation of a 22 bed Residential Care Facility, in an R-1 (Single Family Residence) District, located at 268 Lewelling Boulevard, south side, approximately 100 feet east of Tracy Street, , unincorporated, San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 413-0093-002-00. (Continued from January 24, February 7 and March 28, 2007).

Staff requested a continuance to the June 13, 2007 Meeting. Through no fault of the applicant, the Fire Department has not been able to make an inspection. Member Spalding asked to review letters submitted by neighbors in response to the application. Board Members reviewed submissions. Public testimony was opened.

Mrs. Doris Marciel told the Board that she had properties adjacent to the facility, at 254 and 221 Lewelling Boulevard. She then gave a neighborhood history of the facility. The Lorenzo Manor began in 1962. In 1994 the ownership changed, and mentally disabled clients were brought into the facility. There were many problems. In 1995 when the application was up for renewal many people from the community came to testify. Mrs. Marciel said she was happy to see Condition #5 in the current staff report, that no clientele from locked institutional facilities like John George Pavilion may reside at on the property. Had this condition been in place in 1995 permit, many problems could have been prevented. Mrs. Marciel asked staff who would monitor the facility to ensure the applicant is in compliance. Her concern is safety. The staff report says the facility is locked at 10:00 p.m. However there is after hour access through 2 side gates. This past summer a client was standing outside of her bathroom window shouting obscenities. Mrs. Marciel said she has also been harassed by clients while gardening. She went to speak to on-site staff, and was subjected to rude behavior which resulted in her contacting the owner. Ms. Marciel told the Board she was not convinced clients were supervised. One female client had on winter clothes in the middle of Summer. Some clients are seen talking to themselves. Mrs. Marciel was concerned with safety

as some clients are seen jaywalking and may not realize the danger. Some of the clients have also been seen shopping at the local liquor store. Member Clark asked Mrs. Marciel if she had contacted the Sheriff's Department. Mrs. Marciel said that she has never contacted the Sheriff. In addition she no longer goes to the facility to speak with staff. In the past when the Sheriff was called, neighbors found their tires slashed. It then took months for problem clients to be removed from the facility. The current residents are referred by the Mental Health Agency. In turn what pool does the Health Agency use for its referral list. Some of the current clients are only at the facility 2 weeks at a time. Some are long term. Member Friedman said he was concerned as well. Developmentally Disabled clients are different from Mentally Disabled clients. Mrs. Marciel added that the Mentally Disabled clientele was also brought in without the community's knowledge. Member Friedman pointed out that there was no Board of Zoning Adjustments at that time. Mrs. Marciel acknowledged the fact there is now a BZA, however it does not resolve the following issues:

- Where the clients originate from
- Does staff get to review client profiles
- Who monitors the clients once they arrive at the facility

Member Friedman responded that the referral agencies should have a monitoring component. Member Friedman acknowledged that the concerns Mrs. Marciel raised were valid, real concerns. County staff would also like to know the answers to the same questions. Member Spalding observed that many issues of concerns had been raised regarding the application. Public testimony was closed.

Member Spalding asked staff how many clients had been referred from County locked facilities. Staff was not sure but they would attempt to find out. Member Spalding commented from prior experience it is difficult for the general public to obtain that type of information from a State Licensing Agency. She also asked staff if the County Zoning Ordinance specifically addressed facilities for the Developmentally Disabled. Staff responded that the Ordinance did not differentiate facilities to that level of detail. Member Clark asked staff to obtain stats from the Sheriff's Department for review in the next staff report.

Vice Chair Peixoto motioned to continue the application to June 13, 2007. Member Friedman seconded the motion. Motion carried 5/0.

2. **RABIT NORZEI, CONDITIONAL USE PERMIT, C-8560** – Application to allow a retail store with alcohol sales, in an ACBD Specific Plan – FA (Ashland Cherryland Business District Specific Plan – Freeway Access) District, located at 20930 Mission Boulevard, northeast side, approximately 160 feet north of Saint James Court, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 414-0056-020-03. (Continued from March 28, 2007).

Staff recommended denial of the application. Member Friedman asked if the applicant, Mr. Rabbit had met the 4-20-1999, submission date for the landscape plan. Staff confirmed the plan was submitted. Member Clark asked if Code Enforcement had gone to the location to follow up on the comment from Comm Pre that the applicant was not in compliance with the County Sign Ordinance. Staff responded thus far there were no referral responses from Code Enforcement. However they can be sent to the location. Public testimony was opened.

Mr. Rick Cole was present representing the owner, Mr. Ratib Norzei who's child had been in an accident. Member Friedman asked Mr. Cole if he had read the staff report. Mr. Cole confirmed that he had. However he was in disagreement with some of the statements. He is not aware that a senior facility is located next door to Mr. Norzei's business. He asked staff to clarify the statement. Mr. Cole also

disagreed with the number of alcohol outlets in the vicinity. The State says that 3 facilities with off-sale licenses are allowed in the area. Staff is using the definition of off-site alcohol sales. Member Friedman asked Mr. Cole about excess signage in the store window. Mr. Cole said that ABC has sign criteria. That signage may not advertise alcohol. The store would comply with the applicable rules. Member Friedman pointed out that the existing signage did however advertise cigarettes. The excessive signage prevented law enforcement, a clear visual into the store.

Member Spalding asked Mr. Cole why he believed there was a public need to sell alcohol at the site. Mr. Cole responded that the State, not the County governs alcohol licenses. According to the State, a total of 3 alcohol licenses is an acceptable number.

Ms. Pamela Russell told the Board that she owns Geneo's Lounge. She objects to the Norzei, application. In 2005 Mr. Norzei applied for on-site alcohol sales, for fine wines. The application was denied. Now Mr. Norzei wants to sell hard liquor. She clarified that her alcohol license does allow her to sell off-sale liquor. In 2005 to determine if there was a need for off-sale liquor, she decided to stock a small inventory of 6 packs and cases of alcohol, in addition to cigarettes. In the past two years, she has only sold 1 and ½ cases of liquor for off-site consumption. Her clients tell her there is no need for additional places to purchase liquor. Autumn Liquor is also located on the same side of the street. Ms. Russell said she is reasonable. She is not against the sale of alcohol however there is no need for off-site sales. She runs a legitimate bar. Mr. Norzei's site is 30 feet away from her bar. She has run her business for 45 years with no problems. Mr. Norzei's is an absentee shop owner. Problems exist at his store. For example his staff does not have change. They come to her bar to purchase change from her. The store sells crack pipes, Brillo Pads for cleaning pipes, adult videos, and cleaning supplies. It would not be a good idea to add the sale of pints and fifths of liquor, too. There has been an increase in theft at the shopping center. As a result, another tenant of the shopping center closed their shop. Ms. Russell says she works with parking lot security there has been an increased activity in the parking lot. Her fear is that if problems continue, the shopping center could be razed, and condos put on the site. Member Friedman said he was familiar with the shopping center. He has seen it go down hill over the past several years. The landscaping could also use an upgrade. When Albertsons left the shopping center, existing problems worsened. He asked Ms. Russell if her establishment sold hard liquor, and if there were any other problems at the center overall. Ms. Russell said Geneo's just sold beer and wine. At the shopping center she has witnessed high drug activity in the parking lot, and automobiles that are not registered to tenants, are left on the property. There has been an increase in automobile traffic within the center. Cars are speeding and there are also pot holes. An accident recently occurred on the corner of the center. The damage is now being repaired. A fire broke out at the shopping center but fortunately, tenants contacted the fire department.

Ms. Russell has met with Pan Pacific the new owner of the Creekside Center to resolve the ongoing issues. The owners have installed speed bumps to slow traffic down. New landscaping has also been installed. It should look better when it begins to mature. Big Lots has spent over \$10,000 dollars to improve their store. Ms. Russell said she has an interest in retaining nice environment. If she sees people creating trouble or evading law enforcement she calls the Sheriff. Geneo's is a place that you can bring your wife or girlfriend. To ensure there is a neighborhood environment at Geneo's she has installed 9 security cameras, and lighting

Mr. Alfredo Correa was present representing, Comm Pre. Comm Pre, strongly opposes the application based on the over concentration of alcohol outlets in the vicinity. The State of California Department of Alcoholic Beverage Control reported 7 active off-sale licenses within the 4355 Census Tract, where only 5 licenses are allowed. Studies have shown that the over availability of alcohol has a direct correlation to an increase in crime, sexual assault, and on the community overall. The County Alcohol Policy states, no Alcohol Outlet/Tavern is to be located within close proximity of another similar use, so as not allow clustering of such uses which may adversely affect the neighborhood. The County Sign Ordinance also

limits signage to a maximum 25% of window space. Member Spalding asked if Mr. Correa had visited the site. Mr. Correa said he had been to the site many times but had not visited recently.

Mr. Cole returned to respond to public comments given. The applicant, Mr. Norzei will take the drug paraphernalia out of the store if the CUP is approved, as the removal is required by the State. Adult videos will also be placed out of site. Public testimony was closed.

Member Clark asked staff if Code Enforcement could do anything about the applicant selling drug paraphernalia. County Counsel said that as long as the selling of paraphernalia is legal, the County does not have jurisdiction. Regarding State alcohol licensing law preempting local ordinances and policies, California State law does not preempt local decisions in local jurisdictions. The BZA can take this into account when making decisions about local concerns.

Member Friedman recommended Tentative Finding #3 should be expanded. Language stating that there is a high concentration of residential care facilities in Cherryland. Many of the clientele are attending AA and/or NA Meetings. An additional liquor store within close proximity of the mentally disabled would adversely affect the health and safety of those persons. The health and safety of persons at the elder care facility and the entire community would be affected as well.

Member Spalding asked staff to verify if the applicant was in compliance with the County Sign Ordinance. Regarding staff reaching an affirmative finding Tentative Finding #2, Existing community problems and substandard care facilities are an indication that the use is not properly related, nor helpful. She asked staff to discuss their position. County Counsel said the issues were more related to Finding #3. Although the General Policy is not as clear or specifically stated the case could be argued that the issues Member Spalding raised, did relate to health and safety.

Member Spalding motioned to deny the application. Regarding, Finding #1 The use is not required. There are existing alcohol outlets in the vicinity. Testimony was presented that the location is substandard. There is also a Senior Residence near by. Regarding, Finding #2, the use is not related to other uses in the area. Three taverns are already in existence within close proximity. The Alameda County Alcohol Policy does state alcohol outlets are not to be located within 500 feet of a similar use. Regarding, Finding #3, The use would materially affect the health and safety of the neighborhood. Substantial testimony, records and statistics have been presented that the use would have an adverse affect on the community. Member Spalding was in agreement with staff, Regarding, Finding #4. The use would be contrary to character and performance standards for the District. Member Clark seconded the motion. Motion to deny the application carried 5/0.

3. **SPRINT PCS/ROCHELLE SWANSON, CONDITIONAL USE PERMIT, C-8567** – Application to allow continued operation of a cell site in the CVCBD (Castro Valley Central Business District Specific Plan, Subarea 4) District, located at 20103 Lake Chabot Road, west side, approximately 600 feet north of Congress Way, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084A-0280-004-01.

The staff recommendation was approval. The Castro Valley Municipal Advisory Council was also in favor of approval. Public testimony was opened.

Ms. Rochelle Swanson was present on behalf of Sprint PCS. Member Friedman asked if there was currently a Sprint antenna at the location. Ms. Swanson confirmed there was. AT&T also has communications equipment located at the same facility. Member Friedman told Ms. Swanson that he lives close to the installation, and Sprint is his cell phone carrier. He is surprised that he experiences a lot of

dropped calls. Ms. Swanson explained that the immediate area could probably benefit from an addition cell site. Lots of people are using wireless, and Lake Chabot Road is a heavily traversed site. Public testimony was closed.

Member Friedman motioned to adopt the staff finding of approval, and to accept the Pre Hearing Recommendations as Conditions of Approval. Vice Chair Peixoto seconded the motion. Motion carried 5/0.

4. **HARMAN MANAGEMENT CORP / DAN MUNDY, CONDITIONAL USE PERMIT, C-8569** - Application to allow the continued operation of a drive-in restaurant (Kentucky Fried Chicken), in a C-1 Retail Business District, located at 17630 Hesperian Boulevard, east side corner, northeast of Hacienda Avenue, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0071-024-04. (Continued from March 14 and 28, 2007).

Staff recommended approval of the application. Initial Board questions for staff were as follows:

- Will the posed Conditions address the areas of concern listed on page #5 of the staff report, such as conformity, truck deliveries, litter control, noise, signage, landscaping, compliance reporting and permit term
- Are there any code enforcement violations on the property such as dumping, graffiti, shopping carts, etc.
- Has the pedestrian walkway been installed

Staff confirmed there were no code enforcement violations at present. Another KFC application came before the BZA recently that did have code enforcement issues. There do not appear any issues with any of the areas of concern. The proposed conditions are designed to address any issues. Public testimony was opened.

Mr. Dan Mundy the Construction Manager for Harman Management was present. He was not the construction manager during the period the restaurant was built. He may not have a complete project history, but should be able to answer most questions. KFC leases roughly 6,500 square feet of area including the restaurant building pad, the drive-through and adjacent landscaped area from the shopping center owner. Harman Management has no control over space outside of that area. Often graffiti does appear on the easterly fence that runs parallel with the building. Recently graffiti was removed from the fence. Unfortunately it was done in a different paint color. The staff suggestion to extend the planter box and add more landscaping would assist in reducing graffiti. However the property owner would have to provide her consent. One issue on the property is as a result of the narrow, one way truck access that is adjacent to the drive-through. There is a drain inlet at that juncture which is probably why the separated parking areas have an "island design". Trucks must make the turn, resulting in damage of the curb edge at that parking island. He agreed with staff that redesigning the curb alignment and creating a larger turning radius is something that should be reconsidered, so as not to cause problems with truck drivers. He has witnessed trucks run over the curb. In any case the curb will be repaired. A pedestrian walk through has not been added to the drive-through exit lane. Mr. Mundy said he was sensitive to ADA Requirements. He believes striping to indicate a crossing would be sufficient. It would be difficult to connect the proposed wheel chair ramp from the front door to the sidewalk, due to the 4 foot of landscaped area in between. There is not sufficient space to meet the required rise that would make the ramp useable. He believes the best solution is to install the wrought iron fence along the landscaped area to prevent people from cutting through to the front entrance. However he is willing to work with the

Building Department, and staff to find a solution. In regard to Condition #9 his is willing to follow the arborist's recommendation.

Board questions for Mr. Mundy were as follows:

- Does Mr. Mundy have any alternate suggestion that can be implemented which would comply with ADA
- Why can't the menu speaker board be moved
- When the KFC staff paints over graffiti does the property owner reimburse them
- Is Mr. Mundy aware that the crepe myrtle trees may have been switched

Mr. Mundy said that although the menu preview board which faces easterly held a speaker, it does not emit sound. Only the order menu board emits sound. Thus far, there have been not been any noise complaints. However per staff's recommendation the menu board can be moved toward Hacienda Avenue at a 20 degree angle. Regarding the 2005 Arborist's Report he was not aware of it until he reviewed the staff report. Regarding graffiti abatement, it is easier to purchase the paint and have the KFC Manager repaint the fence. He acknowledged that the trees did appear to be small.

A member of the community, Mr. Howard Beckman introduced himself. He first told the BZA Members that each time he attends a meeting he is pleased to see that focus and attention given to whoever is testifying. The Board is doing a good job. Mr. Beckman said that he was in agreement with the staff report, and saw no substantive reasons the application should be denied. However the application did need modification. Mr. Beckman pointed out the fact that the existing permit had been expired for a period of one year. This time lapse is due in part to the lack of staff, at the Planning Department. He was happy to learn that a staff position will be created to monitor permit compliance, landscape and architectural plans and developer submissions. He told the Board that he was part of a larger group of people that originally opposed a fast food restaurant at the location. There were already 2 existing restaurants on the corner. He believed the any new development should raise the bar. A group was formed to address these types of issues. Several committee members had a total of 6 meetings with Harman Management, during which time Harman Management dragged their feet. Supervisor Gail Steele attended every meeting, and is responsible for the outcome. A Policy for Drive-In Restaurants was eventually developed and adopted by the BOS. Mr. Beckman said that he was pleased with the resulting landscaping plan agreed upon at the time, given the recalcitrant property owner. The Board and community have fought to get the property owner to comply with Conditions of Approval. One of the original issues that remain from the prior permit is lighting. The light standards are very tall. This is used by some franchises, in an attempt to get high illumination onto the location.

The second tough issue, are the trees. Mr. Beckman clarified that the staff report refers to the, County Arborist. The County does not have a designated arborist per say. There is an arborist within the Public Works Department to oversee, and enforce the Tree Preservation Ordinance. Ms. Inta Brainerd completed an exhaustive study of the entire site. Ms. Brainerd noted that the Crepe Mrytle trees along

Hacienda Avenue appeared to be, one year old. It appears they have been replaced, over the time of the permit. He then showed photos to the Board of pictures taken on April 21, 2007 of trees at the site, and of similar age trees, planted at his home. The larger issue is illustrated by the response written by Planning Director, Chris Bazar to a 2005 letter Mr. Beckman had written. "The landscaping shall be installed to provide the aesthetic values identified in the applicable conditions". This is important to the community

to retain the desired look and feel. In this particular installation there is a large berm. This is a feature that the community pushed for. The arborist has determined that the overall health of the trees is not at issue. Many Counties have Ordinance rules that prevent them cutting down trees 5 to 6 years old. It appears in this case the original trees that were planted have been removed. Mr. Beckman prefaced his following comments with the statement, he is not an arborist. The trees at the application site should be larger in terms of canopy height, and trunk size. As a result, Mr. Beckman did not believe that the original landscaping conditions have been met. He suggested that the trees be replaced with specimens that look to be, 7 to 8 years old. An arborist can give their expertise as to the appropriate trunk size. He was opposed to the wrought iron fence that Mr. Mundy proposed. This would defeat the intent of the architectural plan. Public testimony was closed.

Member Spalding asked staff to respond to comments in the staff report regarding the landscape planter. The Chair interjected. Given the past challenges with the property owner. It would not be prudent to set a condition which may require the owner to implement, as they have not been cooperative in the past.

Member Friedman recommended Pre Hearing Recommendation #11 be modified. The first two lines shall be deleted. The applicant shall, relocate the speaker device to the north side of the building so as to face Hacienda Avenue only, with no more than 20 degrees angle of deviation.

The Chair commented that he also had concerns regarding the application based on the history of the shopping center, not KFC or Harman Management Group. The Chair added that he was directly involved in the writing of the County's Fast Food Ordinance. The installation of this project 7 years ago precipitated the Ordinance. In this particular case, the conditions imposed 7 years ago have not been enforced. It is a known fact, County staffing levels are not sufficient to follow up on implementation. In this case the expectations of the community have not been met. In his opinion 15 gallon Crepe Myrtle trees, should suffice. Staff can determine the language required that is compatible with the original conditions of approval C-7324. Pre Hearing Recommendation, #9 can be modified to meet the recommendation of using an arborist, to determine the appropriate replacement tree size.

Vice Chair Peixoto motioned to approve the staff recommendation of approval with the following modifications: Condition #9 shall be modified to reflect an arborist will determine the appropriate replacement tree size. Condition #11, The first two lines shall be removed from the condition. Member Friedman seconded the motion. Motion carried 5/0.

5. **MEGAN JOHNSON, CONDITIONAL USE PERMIT, C-8572** – Application to allow continued operation of a commercial recreation facility (Curves), in a C-1 (Retail Business) District, located at 15938 Hesperian Boulevard, east side, approximately 300 feet north of Paseo Grande, unincorporated San Lorenzo area of Alameda County, bearing Assessor's Parcel Number: 412-34-011-02.

Staff gave an overview of the project, and recommended approval. Public testimony was opened. The applicant, Megan Johnson explained that Curves goal was to help women strengthen their bodies, to help them improve their lives. She asked the Board to approve the permit. Public testimony was closed.

Staff pointed out the permit expiration date had accidentally been omitted from the Conditions of Approval. Public testimony was re-opened. The Vice Chair pointed out that the shopping center was currently up for sale. This may be a factor to consider regarding the term of the permit. The Board asked staff what was the applicable standard for this type of use. Staff recommended a 5 year permit. Ms. Johnson asked the Board to reconsider the Hours of Operation. Currently the facility opens Monday through Friday at 6:30 a.m. and closes at 8:00 p.m. On Saturdays the facility is open from 7:30 a.m. to 1:00 p.m. but generally closes by 11:00 a.m. She would like to open the facility at 6:00 a.m. Monday

through Friday and close at 8:00 p.m. The Chair asked Counsel to confirm this kind of change was within the Board's purview. Counsel acknowledged that the Board did have the authority, as this was not a significant change. Public testimony was closed.

Member Spalding motioned to adopt the staff recommendation of approval with the following modifications: The Hours of Operation shall be from 6:00 a.m. to 8:00 pm. Monday through Friday, and 7:30 a.m. to 1:00 p.m. on Saturday. The permit shall expire in 5 years on April 25, 2012. Vice Chair Peixoto seconded the motion. Motion carried 5/0.

6. **ABILIO TRIGO, CONDITIONAL USE PERMIT, C-8577** – Application to allow continued operation of a retail market with beer and wine sales, in the ACBD Specific Plan – TC (Ashland and Cherryland Business District Specific Plan – Transit Corridor) District, located at 15100 E. 14th Street, northeast side, approximately 50 feet southwest of 151st Avenue, unincorporated San Leandro area of Alameda County, bearing Assessor's Parcel Number: 080-0027-033-00.

The staff recommendation was approval. Initial Board questions were as follows:

- Did the applicant meet the parking requirements from the original CUP
- Has Code Enforcement investigated the site in response to Comm Pre's observation that the store was selling "short packs"

Staff confirmed that the applicant had met all of the parking requirements. Regarding Comm Pre's observation, ABC would be the Agency responsible for investigating shortages. Public testimony was opened.

The applicant, Mr. Abilio Trigo was present. The property owner, Mr. Fujiko Iwane was also present. Mr. Abilio confirmed that he read the staff report, and was in agreement with the Conditions of Approval, but would like the permit to expire in five years as opposed to 3 years. He explained to the Board that the missing beers were used by his family. His wife had taken a few cans of beer from the sales floor to marinate some meat. The short, six packs have now been removed. The Luso Mercado serves the Portuguese population in the area. The store is also convenient for people that do not want to cross busy East 14th Street to do their grocery shopping. Member Spalding agreed that crossing East 14th Street could be dangerous.

Mr. Alfredo Corrida from Comm Pre testified that the observation was that the applicant had been in compliance with Zoning Ordinance. Since the market has been located at the site, the exterior is clean and neat. On the interior, alcohol is not displayed where youth can easily access it. The only problem that has been observed at the site is the "short six packs". Comm Pre is also in support of the applicant adding signage about littering. Member Clark asked Mr. Corrida if Com Pre objected to a 5 year permit expiration date. Mr. Corrida confirmed Com Pre would not object.

Mr. Robert Perry said he supported the market. He is a 3rd Generation Portuguese. The market was opened originally in San Leandro, 25 years ago. There have never been any problems. Luso Mercado supports Portuguese culture. They sell Portuguese bread, blood sausage, imported cheeses, wines and liquors. The market is a well established asset. If the market closed, you would have to go the San Jose to find the same items. Many local people walk to the market everyday to do their shopping. The photos in the staff report prove there has been a vast improvement from the empty store front in 2002, to the present. Public testimony was closed.

Vice Chair Peixoto motioned to uphold the staff recommendation of approval. The permit expiration shall be modified to expire in 5 years. Member Friedman seconded the motion. Motion carried 5/0.

7. **ZORAN MILENKOVIC, VARIANCE, V-12038** – Application to allow the construction of an accessory structure covering 48% of the required rear yard where 30% is allowed in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 3575 Christensen Lane, south side, approximately 800 east of Lake Chabot Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0529-002-00. (Continued from February 28, 2007)

Staff recommended denial of the application. Member Friedman asked what the CVMAC recommended. Staff confirmed CVMAC was also in favor of denial. Member Spalding asked if the CVMAC decision was unanimous. Staff confirmed that all of the Members were in favor of denying the application. Public testimony was opened.

There were no requests to speak during public testimony. Neither the applicant nor a representative was present. Public testimony was closed.

Member Spalding motioned to continue the application to the May 9, 2007 to ensure that the applicant had been notified of the hearing. Member Clark seconded the motion. Motion carried 5/0.

8. **MAXWELL BEAUMONT, VARIANCE, V-12068** – Application to allow construction of a second story living room addition providing a 13-foot front yard setback where 20 feet is required, in a R-1-RV (Single Family, Recreational Vehicle) District, located at 17012 Robey Drive, east side, approximately 49 feet south of 170th Avenue, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 080A-0233-018-00.

Staff recommended approval of the application. CVMAC was also in favor of approval. Member Friedman asked staff what about the referral response from Land Development, that the applicant's plans were confusing. Staff responded that the applicant's plans did indicate an existing sidewalk. In actuality the roadway was misaligned when it was built. The paved area is actually a curb. Public testimony was opened.

The architect for the project, Mr. Beaumont told the Board that there was not an actual sidewalk in existence. There is a paved area in front of the home with curb cuts. However it did not meet County standards to qualify as a "sidewalk". Due to the steep topography of the site, the front area is more suitable to build in. The applicant, Mr. Kuo would like to create living space within the front yard setback. He would also like to add a second story above the new attached garage. A previous variance request was submitted for a second story. Currently there is a garage under construction. This is an opportune time to add livable space to the existing home. The applicant proposes to abandon an existing entrance on the right side of the home, and add a second entrance to the front of the home. Board questions for the applicant were as follows:

- Will the proposed project be closer to the street than any of the immediate neighbors
- Is the applicant in agreement with the requirement of a Public Works Encroachment Permit
- What is the square footage of the existing home

- What is total square footage of the proposed addition
- What is the square footage of the garage
- Will there be interior access from the garage into the family room

Mr. Beaumont confirmed he was in agreement with the Conditions in the staff report. The existing home is 1,200 square feet. The garage will be 400 square feet. The proposed addition will be 4,50 square feet in total. There will be no interior entrance from the garage to the home. There is rear access to the interior of the home from the deck. Member Spalding pointed out that none of the surrounding neighbors had sidewalks. Some neighborhood areas like to preserve more of a rural atmosphere, and do not want sidewalks installed. Mr. Beaumont said he was willing to conform to the surrounding homes in the area. However Public Works will require curb cuts at the entrance. The design will have a slightly deeper set back than other homes on the street. Public testimony was closed.

Member Spalding said she was concerned as to what specific requirement Public Works would impose. The end requirements may be in stark contrast to the applicant's proposal. The Vice Chair commented that the area currently had no sidewalks. The Chair added that the topography was steep throughout the entire neighborhood. Public Works will likely implement frontage solutions similar to what exists in surrounding homes. Member Spalding asked staff if Condition 1#b, Public Works Agency could be omitted. This would ensure consistency to the proposed design. Staff confirmed that Public Works Agency could be removed. The applicant would still need to meet all Building Department conditions, which would encompass compliance on the frontage as well.

Member Spalding motioned to adopt the staff finding of approval with the modification of Condition #1. Section b, shall be deleted. Member Friedman seconded the motion. Motion carried 5/0.

APPROVAL OF MINUTES: Member Friedman motioned to approve the Minutes of April 11, 2007 with the submitted corrections. Member Clark seconded the motion. Motion carried 5/0.

STAFF COMMENTS & CORRESPONDENCE:

Staff confirmed a meeting date of May 30th at 6:00 p.m. to hear Variance, V-12051. The application is within the Madison Avenue Specific Plan, and the proposal is to exceed a slope of 30%.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

Member Clark asked staff if Code Enforcement had monitoring oversight on CUPS for alcohol outlets. For example if an outlet is prohibited from selling single malt liquor and 40 ounce containers can Code Enforcement, site the operator. County Counsel said Code Enforcement can make a recommendation that can be referred to ABC. Code Enforcement Manager, Tona Henninger can give the Board more information regarding that process.

Member Friedman asked staff the outcome of BOS Appeal, C-8515 Seventh Step Foundation. County Counsel responded that the application was approved on appeal for a reduced total number of residents. The applicant also agreed to additional conditions submitted by Supervisor Nate Miley. Member Friedman asked why the application had not been referred back to the BZA for input since the scope of the application had changed. Counsel explained that the BOS had the authority to consider, and/or pose modifications, and make a decision accordingly. Member Clark said that she had listened to the proceeding, on-line. The applicant said their future plans were to expand the facility and add 1 bathroom.

APRIL 25, 2007

PAGE 12

ADJOURNMENT:

WEST COUNTY BOARD OF ZONING ADJUSTMENTS

APPROVED MINUTES

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

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS