

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
APRIL 27, 2005
(APPROVED, MAY 11, 2005)

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

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Members Frank Peixoto, Chair; Ron Palmeri; Lester Friedman and Judy Roos.

MEMBERS EXCUSED: Jewell Spalding.

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

There were approximately 10 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.

No one requested to be heard under open forum.

CONSENT CALENDAR:

1. **PATRICK LOVE, VARIANCE, VARIANCE, V-11899-** Application to retain a converted garage so as to locate one required on-site parking space partially in the required front yard where not otherwise permitted in a R-1-CSU-RV (Single Family Residence with Secondary Unit and Recreational Vehicle) District, located at 3773 Cottage Court, north side, approximately 284 feet west of Parsons Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1329-017-00. (Continued from January 26, February 23, March 9 and April 13, 2005; to be continued without discussion to May 11, 2005).

Member Roos motioned to approve the Consent Calendar as submitted. Member Friedman seconded the motion. Motion carried 4/0. Member Spalding was excused.

Regular Calendar

1. **BERNARD J. VIGGIANO, CONDITIONAL USE PERMIT, C-8396** – Application to operate a small auto sales lot in an M-1 (Light Industrial) District, located at 311 West “A” Street, north side, approximately 248 feet west of Hathaway Avenue, unincorporated Cherryland area of Alameda County, designated Assessor’s Parcel Number: 0429-0077-018-04.

Staff recommended approval of the application and then gave an overview of the project. The two parking spaces for the auto sales lot are proposed on the irregular portion of the parcel facing both A Street. A two story meat packing plant is located on the West A Street side. The food processing plant is currently undergoing renovation. The Hathaway Street side of the parcel contains a restaurant and a catering truck business. The catering truck application, C-8283 is pending clarification of an existing County Ordinance. Public testimony was opened.

Mr. Viggiano the property owner introduced himself. He assured the Board he would be able to designate the two spaces and control the rest of the parking on the parcel.

The Board had the following concerns and questions:

- The lot was already congested due to the presence of the restaurant
- One of the businesses was currently under construction
- What was the City of Hayward’s recommendation. The area is slated for possible annexation
- Did Alameda County Redevelopment Agency have any comments
- What was the Cherryland Association’s recommendation
- What was the Alameda County Clean Water’s response
- Possible CEQA issues regarding waste water mitigation from car detailing
- How to distinguish between the two vehicles for sale from other vehicles in the parking lot per DMV requirements
- If the use were granted could the number of vehicles for sale be limited once the property was sold to a different owner

Staff explained that the food processing plant had closed and a new business was going into the location. The Board can approve its use if they deem it appropriate. The Cherryland Association was sent a referral but did not respond. As of yet Alameda County Clean Water, Redevelopment and the City of Hayward have not been sent referrals. Mr. Viggiano told the Board that the business would be run by an older relative. The undertaking is mainly to keep him active and he plans to keep the operation small. Cars would be detailed at a nearby car wash. Public testimony was closed.

Member Roos asked staff how long it would take to refer the applications to additional agencies. Staff recommended the application be heard at the May 25, 2005 hearing. The Chair asked for clarification as to the Board’s ability to determine if the use was compatible for the site. Staff confirmed that the Board had the ability to approve to the use as compatible or deny it per the Zoning Ordinance. Member Roos motioned to continue the application to May 25, 2005. Member Friedman seconded the motion. Motion carried 4/0. Member Spalding was excused.

2. **J & M INCORPORATED, CONDITIONAL USE PERMIT, C-8385** – Application to continue operation of an outdoor storage yard, in an M-2-B-E (Heavy Industrial, 5 Acre Minimum Building Site Area) District, located at 3826 Depot Road, south side, approximately 0.75 miles west of Clawiter Road, unincorporated Eden area of Alameda County, designated Assessor's Parcel Number: 0439-0070-008-04.

The staff recommendation was approval of the application. The Board had the following questions:

- Is the area slated for possible annexation
- Has the business been in operation for 45 years
- Did the existing CUP expire in 2003
- Is there a business license on file
- What is the staff notification process for expired CUP's

Staff confirmed that annexation by the City of Hayward has been considered for a number of years. C-7678 did expire in 2003. The status of a business license is unknown. The applicant submitted an application after contact from Code Enforcement. This property had just recently been notified due to an addressing error. The area had been re-addressed several years ago with the advent of the 911 System. Staff then outlined the notification process. Property owners are notified 60 days prior to the expiration of their permits or that their permits are currently expired. After a 60 day period if an application has not been submitted a warning notice is sent and Code Enforcement follows through with appropriate action. There had been a back log but the notification process is now current. This should prevent uses with expired permits from going unnoticed in the future. Member Friedman asked staff:

- If a use could continue to do business legally when a permit had expired
- What enforcement options and/or penalties are available to Code Enforcement

County Counsel, Brian Washington told the Board enforcement mechanisms were in place however he would report back as to the specifics. Public testimony was opened. The business operations manger, John Cooper spoke to the Board. The original owner passed away and his son now runs the business. Their goal is to bring all permits current. The business has been in operation since the early 1950's. Public testimony was closed.

Member Palmeri said that during his tenure he had revisited consideration of non compliance. The County is denied fees and the public is denied an opportunity to ensure conditions are being implemented and followed. He was not disinclined to uphold the staff finding in the affirmative however he was not inclined to grant the permit for a period of five years. Member Roos concurred. Member Friedman motioned to approve the application for a two year period based on the fact there had been no problems on the property in the past. Member Palmeri seconded the motion. The Chair concurred and hoped that staff would follow through with monitoring expired CUP's. Motion passed 4/0. Member Spalding was excused.

3. **MC DONALD'S CORPORATION, CONDITIONAL USE PERMIT, C-8387** – Application to allow continued operation of a drive-through restaurant (Mc Donald's) and to extend the drive-thru hours of operation from 1:00 a.m. to 24 hours a day in a C-2 (General Commercial) District, located at 347-375 West A Street, approximately 200 feet east of the Nimitz Freeway, unincorporated Cherryland Area of Alameda County, designated Assessor's Parcel Numbers: 0429-0077-021-02, 0429-0077-022-02 and 0429-0077-023-02.

Staff reviewed the application and recommended approval. Member Palmeri noted that the Taco Bell Restaurant mentioned in the staff report was no longer at that location. Member Friedman had a concern that the application proposed no expiration date.

The Board had the following questions:

- What were the recommendations of the California Highway Patrol
- What were the recommendations of the Alameda County Sheriff's Department
- Is the location part of the Redevelopment District
- What if any impact would result with the introduction of housing to the area
- Is food service after 1:00 a.m. limited to the drive thru
- Will the location be the only drive-thru in the area
- How many employees are present from 1 a.m. to 5 a.m.
- How would loitering, security and littering be addressed in the late evening
- Will additional lighting be provided at night

Staff responded that the Highway Patrol had no comment. The Cherryland Association was in favor however they want the applicant to keep the area free of litter. The Sheriff's Department said there were no outstanding issues at the current time. The location is within the Redevelopment Zone. If the site was slated for housing, Redevelopment would purchase the property. This would be the only drive-thru in the immediate area. Public testimony was opened.

Nadia Holober spoke to the Board on behalf of Mc Donald's Corporation. Maureen, a representative from the Mc Donald's Real Estate Division was also present. Ms. Holober said the request for a 20 year expiration period is based on the fact that there has been compliance with all past permits. Other drive-thru operations located within the County have been granted permits with no expiration dates attached. The gas station next to Mc Donald's is also in operation for 24 hours a day. Mc Donald's has a 20 year lease with five year options after that. They have a vested interest in the location. Night staffing levels can range from six employees and one manger to five employees and a manger. Five additional crew members arrive at 5 a.m. An active 24 hour business just off of the freeway may discourage crime. A standard operating procedure at any restaurant is an hourly sweep of a one block area. Crew Members clean and check the parking area. This process could also prevent loitering. The applicant is open to additional lighting. Security cameras are present at the drive-thru. If an incident does occur the security tape is retained. Maureen said that 75% of the restaurants are small business franchise owners who take any precautions necessary to ensure the operation complies with conditions. She humbly asked the Board to approve the application. Public testimony was closed.

Member Palmeri had concerns that long term permit approval could limit the ability to mitigate the impact on future development in the area. If proposed senior housing were built, noise, lighting or a possible increase in crime between the hours of 1-5 a.m. could affect the residents. The Chair asked staff if the Board could retain jurisdiction if future issues arose. Staff confirmed that was possible. Member Friedman motioned to approve the permit for a period of five years. Additional lighting should be added to the site as well as signage instructing customers to lower radios between 1-5 a.m. A security patrol will be conducted hourly. He announced that his motion was open for modification. Member Palmeri asked for a modification to retain jurisdiction to review, modify add or delete condition(s) if necessary. A security and lighting plan shall be submitted within 90 days subject to final approval by the Planning Director. Member Palmeri seconded the motion. Motion carried 4/0. Member Spalding was excused.

4. **MARIA ROSSANA SCHLAEPFER, CONDITIONAL USE PERMIT, C-8390** – Application to allow continued operation of a day care facility and to increase the capacity at the facility from 30 to 40 children, in an R-2-B-E (Two Family Residence, 8,750 square feet Minimum Building Site Area) District, located at 21619 and 21629 Vallejo Street, southwest side, approximately 956 feet northwest of Sunset Boulevard, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Numbers: 0428-0001-051-00 and 0428-0001-052-00.

The staff recommendation was approval with the modification/correction of Condition #8. The permit shall expire in five years, April 27, 2010 not 2005. Member Roos asked for clarification regarding the number of children that live on-site. Staff confirmed that the applicant also owns residences which are located on the adjoining parcels. The units that are designated as homes are not used for the day care but the 10 children do reside there. Public testimony was opened. Member Roos asked the applicant if there were any plans to increase the number of children living on site. Ms. Schlaepfer said the there were none and she would agree to a limit of 10 children on site. Public testimony was closed.

Member Palmeri motioned to uphold the staff Tentative Findings, approval subject to Pre Hearing Recommendations. Said Permit shall expire in five years, April 27, 2010. Member Roos seconded the motion. Motion carried 4/0. Member Spalding was excused.

5. **MONACHERE FALCON, CONDITIONAL USE PERMIT, C-8395** – Application to allow operation of a massage therapy business, in a C-N (Neighborhood Business) District, located at 3562 Somerset Avenue, north side, southeast corner of Parsons Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0570-062-02.

Staff reviewed the application and recommended approval. The CVMAC heard the matter and voted 7/0 to approve the application. Public testimony was opened. The applicant Ms. Mona Falcon was present. Member Friedman stated he was concerned with the hours of operation. 8:00 a.m. to 10:00 p.m., 7 days a week seemed to be a lot for a sole proprietor. Ms. Falcon responded that clients were scheduled by appointment only. Each appointment lasted either one hour in length, 90 minutes or two hours. Two hour appoints are rare. She also factors in clean up time. Normally she leaves by 10:00 p.m. Member Friedman told Ms. Falcon that her application was thorough and the materials were well prepared. Public testimony was closed.

Member Palmeri motioned to approve the application subject to Pre Hearing Recommendations with a modification to #3. The hours of operation for service to patrons will be from 8:00 a.m. to 9:00 p.m. Member Friedman seconded the motion. The applicant asked the Board if the hours were required to be posted. Member Palmeri said the posted hours can state "by appointment only". Service to clients would be limited to the hours stated above. Cleaning of the establishment can take place after 9:00 p.m. to 10:00 p.m. Motion carried 4/0. Member Spalding was excused.

6. **RYAN GREVES, VARIANCE, V-11882** - Application to construct a detached garage located in the front half of the lot and within the Future Width Line adopted by Ordinance where not otherwise permitted and three feet from the

property line where six feet is required, in a R-1-L-B-E (Single Family Residence, Limited Agriculture, 5-acre Minimum Building Site Area) District located at 6270 Crow Canyon Road, west side, approximately 0.74 miles north of Cold Water Drive, in the unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 0085-1600-003-03. (Continued from January 12, March 9 and April 13, 2005).

Staff reminded the Board that the application had been before them on January 12, March 9 and April 13, 2005. The applicant had revised the design of the project and the recommendation was approval. The CVMAC recommended approval with the modification to Pre Hearing Recommendations. A condition should be added to require the applicant to make an irrevocable offer of right of way dedication to the County. Board Members had the following questions:

- What is the height of the project
- Will the proposed garage be use to store equipment in addition to cars
- Were the Hayward Area Recreation Department's concerns regarding the placement of roll up doors on the garage resolved

Staff responded that the proposed garage was within the Zoning Ordinance 15 foot height limitation. HARD had concern that a structure with roll up doors located at the rear might provide easy access to adjoining HARD property. The rear design now features windows, instead of roll up doors. The placement of the proposed structure now has a six foot set back from the property line as opposed to three. Member Roos felt the application materials should include more information as to the immediate surroundings. This would prevented the Board from considering the project in isolation. Public testimony was opened.

The applicant Ryan Greves introduced himself and commented that the application process had been a learning experience. The property was purchased by his son Marc for \$175,000.00. The garage would be used to store only cars. The tractors currently on the property will be moved to their property out of state. All additional vehicles not owned by them have been removed. The application process has been complicated due to the water well located on the right side of the property. A survey was conducted to establish the creek line. The scaled down design of 600 square feet is now within the required setbacks. He acknowledged that the Future Right of Way would run through the corner of the property if instituted however he believes the chance is remote. That section of Crow Canyon Road has a blind curve. Widening the road would require filling a portion of Crow Creek on the opposite side. If the future widening did take place, they would tear the garage down. Marc Greves reviewed plans with the Board that indicated Crow Creek separates the proposed garage from HARD property. Public testimony was closed.

Member Palmeri motioned to approve the application subject to the Pre Hearing Recommendations with the following modifications: New language shall be added to reflect that the owner shall provide an irrevocable offer of Right-Of-Way Dedication of the area within the Future Width Line to the County, without any cost to the County, and a copy of the document certifying the dedication shall be submitted to the Planning Department. At any such time that the County chooses to exercise the Right-Of-Way Dedication, the property owner shall be responsible for relocating or removing the garage, and any and all costs of modifying the sewage disposal system to provide an engineered or alternative sewage waste disposal system if required by the Environmental Health Department to accommodate a relocated garage at the owners sole expense. Member Friedman seconded the motion. Motion carried 4/0. Member Spalding was excused.

7. **CLIFFORD and JULIE HAMMOND, VARIANCE, V-11915** – Application to construct an attached addition so as to provide a three foot side yard where eight feet is the minimum required, in an R-1-CSU-RV (Single Family Residence with Secondary Unit and Recreational Vehicle) District, located at 4619 Mira Loma Street, south side, approximately 260 feet west of Judy Street, unincorporated Castro Valley Area of Alameda County, designated Assessor's Parcel Number: 084C-0851-055-04.

The staff recommendation was approval of the application. Board questions were the following:

- What the project referred to the CVMAC
- Where is proposed addition situated on the lot
- Will the stairway connect the addition to the existing dwelling from the interior or exterior

Staff clarified that the addition would be located at the west, rear portion of the property. The proposed addition would be over the current garage and would be connected to the existing dwelling with interior stairs. Public testimony was opened. The applicant, Clifford Hammond said the existing dwelling was 1,800 square feet. The secondary unit and garage were added by the prior owner sometime in the 1950's. Once the proposed addition over the current garage is added the square footage will be approximately 2500 square feet. He pointed out that County Agencies may have different requirements. The Building Department for example required that a dwelling be six feet from the property line where Planning required eight. The garage was already located three foot from the neighboring property which would remain unchanged with the addition. The project should not have an affect on the home next to his. Public testimony was closed.

Member Roos said she was inclined to approve the application after viewing the site however her concern was that the addition might become a secondary unit in the future. She asked staff if record added to the property deed would be appropriate. Staff responded that a Condition of Approval could be added stating no additional dwelling units are permitted on the site.

Member Roos motioned to approve the application subject to modification of Pre Hearing Recommendation #2 that prohibits additional dwelling units on the site. Member Palmeri requested a modification of Tentative Finding #2. Verbiage that states what has been granted to others shall be omitted. California Law states that each property must be looked at on an individual basis. The Chair added that Recommendation #2 should be limited to the word no. Member Friedman requested to supplement the motion to include a modification to Tentative Finding #3. The response shall only contain the word no. Member Palmeri seconded the motion. Motion carried 4/0. Member Spalding was excused.

APPROVAL OF MINUTES: Member Palmeri motioned to approve the minutes of April 13, 2005 with submitted corrections. Member Roos seconded the motion. Motion carried 3/0/1. Member Friedman abstained. Member Spalding was excused.

STAFF COMMENTS & CORRESPONDENCE: None.

CHAIR'S REPORT: None

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

Member Palmeri motioned to approve the letter submitted to the Director of the Planning Department regarding Conditional Use Permit, C-7756 with corrections. Member Roos seconded the motion. Motion carried 4/0. Member Spalding was excused.

Member Roos asked staff what was the basis of holding zoning violation enforcement while an applications is in progress. Staff stated thus far, that is Department Policy. She said as a result there were applicants that continue to conduct business while in violation. Member Palmeri said he was concerned that dangerous conditions existed on some properties and if someone were injured the County could be liable. He had one application in mind but would discuss it further when he could locate archived materials. The Board of Supervisors installed the Board of Zoning Adjustments to show that the County cares about community issues and to ensure things move quickly. When applications in violation drag on the public has to look at the mess. County staff has to follow up and are not reimbursed for additional time. Perhaps it would be helpful to have a session with Code Enforcement Director Tona Henninger and Planning Director Chris Bazar to revise policy.

Member Roos asked if Comunidad Cristiana Cristo, C-8270 or Hosanna Homes, C-8143 had filed appeals. Staff noted both items were on the May 26, 2005, Board of Supervisors Calendar.

ADJOURNMENT:

There being no further business, the hearing adjourned at 3:15.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS