

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
MAY 9, 2007
(APPROVED JUNE 27, 2007)

The meeting was held at the hour of 6:00 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California.

FIELD TRIP: 1:00

FIELD TRIP: The Field Trip was cancelled to following properties:

1. **NEW LIFE CHRISTIAN CHURCH, CONDITIONAL USE PERMIT, C-8583** – Application to allow continued operation of a church facility in a CVCBD – Subarea -7, (Castro Valley Central Business District, Subarea – 7) , located at 20394 San Miguel Avenue, east side, approximately 550 feet north of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, and designated Assessor’s Parcel Number: 084A-0012-016-02.
2. **LOURDES TRAUTNER, CONDITIONAL USE PERMIT, C-8597 -** Application to allow an alcohol outlet (Beer & Wine) in an ACBD Specific Plan –TC (Ashland Cherryland Business District Specific Plan – Transit Corridor) District, located at 16490 East 14th Street, southeast side, approximately 160 feet south of 165th Avenue, unincorporated, Ashland area of Alameda County, designated Assessor’s Parcel Number: 080-0071-049-00.
3. **HENRY TUNG NGUYEN, VARIANCE, V-12059, -** Application to allow the construction of a new single family residence with: a) six foot front yard where 20 feet is the minimum required; and b) garage door 10 feet from a property line where 20 feet is required, in an R-1-RV (Single Family Residence, Recreational Vehicle) District, located at President Drive, south side, corner northwest of 170th Avenue, unincorporated, Ashland area of Alameda County, designated Assessor’s Parcel Number: 080A-0221-040-00.
4. **AC MAHARAJ CONSTRUCTION, VARIANCE, V-12060** – Application to allow the construction of two new single family dwellings with a zero foot setback from the existing dwelling wall to the driveway where 10 feet is required, in an R-S-SU (Suburban Residence, Secondary Unit) District, located at 670 & 672 Hampton Road, north side, approximately 150 feet northwest of Camden Avenue, Unincorporated Cherryland area of Alameda County, designated Assessor’s Parcel Number: 414-0026-100-00.
5. **SEAD SISIC, VARIANCE, V-12061 -** Application to allow a six foot high fence where four feet is the maximum, and to allow an accessory structure in the front half of the lot in an “R-1-RV” (Single Family Residence, Recreational Vehicle) District, located at 18658 Crest Avenue, northeast side, approximately 440 feet northwest of Titan Way, in the unincorporated Castro Valley area of Alameda County, and designated Assessor’s Parcel Number: 084B-0370-007-13.
6. **KEN GRANT, VARIANCE, V-12063** – Application to allow construction of a retail space encroaching 23 feet, five inches into a Special Building Line of 50 feet, in an ACBD Specific Plan –TC (Ashland Cherryland Business District

Specific Plan – Transit Corridor) District located at, 1415 – 168th Avenue, northwest side, approximately 180 feet northeast of East 14th Street, unincorporated, Ashland area of Alameda County, designated Assessor’s Parcel Number: 080A-0100-030-00.

REGULAR MEETING: 6:00 p.m.

MEMBERS PRESENT: Chair Ron Palmeri; Members Jewell Spalding, Lester Friedman and Dawn Clark-Montenegro.

MEMBERS EXCUSED: Vice Chair Frank Peixoto.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; Brian Washington, County Counsel; Yvonne Bea Grundy, Recording Secretary.

There were approximately 8 people in the audience.

CALL TO ORDER:

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

ANNOUNCEMENTS BY THE CHAIR: None.

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. **RAYMOND WONG / RAJESHWAR SINGH – CONDITIONAL USE PERMIT, C-8492 and VARIANCE, V-11997** – Application to construct two new secondary dwelling units and retain the existing dwelling as the third unit providing a 12 foot wide driveway where 20 feet is required: a 16 foot rear yard where 20 feet are required; and 7,440 square feet of lot area where 7,500 square feet is required for a third unit in an R-2-B-E (Two Family Residence with a Minimum Building Site Area of 8,750 square feet) District, located at 16790 Los Banos Street in the unincorporated Ashland area of Alameda County, designated Assessor’s Parcel Number: 080-0083-007-01. (Continued from July 12, 26, August 23, September 27, October 11, November 15 and December 13, 2006; March 28, and April 11, 2007; to be continued to June 27, 2007).
2. **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 and April 25, 2007).

THIS APPLICATION HAS BEEN WITHDRAWN.

3. **HENRY TUNG NGUYEN, VARIANCE, V-12059**, - Application to allow the construction of a new single family residence with: a) six foot front yard where 20 feet is the minimum required; and b) garage door 10 feet from a property line where 20 feet is required, in an R-1-RV (Single Family Residence, Recreational Vehicle) District, located at President Drive, south side, corner northwest of 170th Avenue, unincorporated, Ashland area of Alameda County, designated Assessor's Parcel Number: 080A-0221-040-00. (To be continued to May 23, 2007).

The Chair pointed out that Conditional Use Permit, C-8492 & Variance, V-11997 had first been heard on July 12, 2006. He asked staff if the applicant had begun, or completed construction. Staff confirmed that work had not begun on the project. The staff planner originally assigned to the project has since left the County. A new planner has been assigned, and the project will now be moving forward for consideration.

Member Spalding motioned to adopt the Consent Calendar as submitted. Member Friedman seconded the motion. Motion carried 4/0. Vice Chair Peixoto was excused.

REGULAR CALENDAR

1. **SACRED ORDER of CHERABRIM & SERAPHIM, CONDITIONAL USE PERMIT, C-8568** – Application to allow the operation of a church, in a C-1 (Retail Business) District, located at 676 Bockman Road, Unit E & F, south side, approximately, 50 feet east of Via Arriba, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0085-006-03. (Continued from February 28 and March 28, 2007).

Staff gave the Board an update on the application. Alameda County Building Department Occupancy requirements are, 7 square feet per person. The church has 20 members. The auditorium/meeting space requirement would be 210 square feet. The total square footage of the building is 1,800 square feet, which satisfies the requirement. Staff confirmed the criteria for plans submitted to the Building Department. Drawings must be to scale, but do not require a Civil Engineer's or Architect's stamp. Public testimony was opened.

The property owner Mr. Tom Reed was present, representing the pastor of the church. Member Spalding asked Mr. Reed if he had read the staff report. He confirmed that he had. Member Friedman asked Mr. Reed the following questions:

- As the property owner, and applicant representative is Mr. Reed aware that a neighbor raised concern about noise emanating from the church, as a result of amplified music
- Staff proposes the application return to the BZA in a period of 1 year for compliance review, is that condition acceptable

Mr. Reed confirmed that he was aware of the requirement. He believes the noise issue has been addressed. He has checked the church site for the past 4 weeks on Friday nights, and Sunday mornings. Church noise could not be detected outside of the building. In addition, no complaints have been submitted to the church, or County staff regarding noise. Public testimony was closed.

Staff announced there was a correction to the staff report. Condition #9 should state, The permit shall expire in 3 years on May 9, 2010. Member Spalding motioned to accept the staff recommendation of approval with the modification to Condition #9. Member Clark seconded the motion. Motion carried 4/0. Vice Chair Peixoto was excused.

2. **GURDIP SAHOTA, CONDITIONAL USE PERMIT, C-8573** – Application to allow liquor sales at Cherryland Grocery where beer and wine sales are already allowed in an R-S-D-35 (Suburban Residence, 3,500 square feet Minimum Building Site Area per Dwelling Unit) District, located at 688 Blossom Way, north side corner, west of Western Boulevard, Unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 429-0019-043-00. (Continued from March 14 and 28, 2007).

The staff recommendation was approval. Staff distributed a Distance Study of sites within proximity that sell alcohol. Board Members had the following initial questions:

- What is the zoning density for the area
- Is the Cherryland area within 1 or 2 separate Census Tracts
- Which Census Tract is applicable to the application

Staff responded that the Residential Density was from 2,000 to 4,000 square feet. The Draft Eden Area General Plan that is due to be adopted would designate the area as, Medium Range Density. Medium Density is between 10 and 22 units per acre. Comparably the MDR would be allow 2,000 square feet for the lowest density, and 4,400 square feet for highest density. The density ranges are similar and comparable to the current zoning. Staff did not know the total number of Census Tracts in Cherryland, or which Tract number would be applicable to the application. The applicant may have more information. Public testimony was opened.

The applicant Mr. Gurdip Sahota told the Board that he had owned the store for approximately 2 years. The store has been at the same location for 70 years. He has remodeled, and added a green grocery. The percentage of alcohol, to total store product will be approximately 10% to 15%. He would like to upgrade his liquor license from a Type 20 to a Type 21. Currently the store sells beer and wine. Many of the customers request to purchase alcohol. Customers that live on the same side of Mission Boulevard don't want to cross Mission Boulevard, or go past his store to purchase alcohol. They prefer a one stop shop. Mr. Sahota said he also gets customers from Western Boulevard.

Board questions for the applicant were as follows:

- Does the applicant currently sell single serving beers or 40 ounce beers
- Do patrons loiter outside of the store or consume alcohol on the premises
- Do a high percentage of school children frequent the store after school
- How many requests for hard alcohol does the applicant decline each day
- What type of alcohol requests does the applicant receive
- What percentage of customers walk to the location
- Has the store sold beer and wine for the entire 70 year history

Mr. Sahota confirmed that he does sell 40 ounce beers. However customers do not gather outside of the store. A few school children come after school, but most of the customers are families that walk to the store. A few children also come to the store during the lunch hour. The customers remind Mr. Sahota that there is a need for a convenience store. He then referred to the Distance Study in the staff report.

Customers have to go past his store to purchase alcohol other than beer or wine. The next closest store is located on Montgomery Avenue, 1,800 feet away. The next store would be the New Handy Market, 800 feet in the other direction. Mr. Sahota said that in order for him to remain competitive, he must offer a wide range of products. Customers request to purchase margaritas and tequila. Although the Cherryland Association circulated a petition in opposition to the application, he did not believe they were able to get any signatures. He said his customers asked him why there was opposition to his application. As customers they live in the area, and want the convenience. Each day there are 7 to 8 "in store" requests from customers who want to purchase hard alcohol. Mr. Sahota told the Board that he obtained approximately 300 signatures from people who want to purchase their alcohol at his store so they do not have to walk to the next store. Member Spalding asked Mr. Sahota if he had a petition or copy of the signatures he compiled. Mr. Sahota did not have that information with him. He continued and said that the Cherryland Grocery has sold beer and wine for the past 70 years. In addition, the current application meets all of Alcoholic Beverage Control's requirements. Member Clark told Mr. Sahota she begged to differ regarding the proximity of neighboring stores that sell hard alcohol. She did not believe a distance of 1,800 feet was that great. Member Clark said she also observed adults hanging around outside of the store during a Board site visit. She assumed they were drinking alcohol because they were drinking from containers that were covered with paper bags. Member Clark was very concerned that the store sold 40 ounce beers. Although this was her personal opinion, 40 ounce beer are solely marketed to induce intoxication. Mr. Sahota explained that he puts all beverages including sodas in a paper bag, to keep them cold.

Ms. Kathy Gil, representing the Cherryland Association introduced herself. The Association is opposed to the application. She was in agreement with all of the observations made by the BZA. In considering the application, the Association took the size of the store into account. Comparably the size of the Cherryland Grocery is smaller than the Handy Corner Market, which sells alcohol. If you compare the stores, the Cherryland Grocery has a much smaller interior which would result in a higher concentration of product dedicated to alcohol sales. She has lived in the area for years, and shopped at the market as a child. Beer and wine are acceptable. They have been sold at the store for a long period of time. As a community there is no need for, additional stores that sell alcohol. The next store is at Blossom Way and Cherry Street. Depending on where one lives, this is still one block away from the Cherryland Grocery. The New Handy Corner Market is on Haviland Avenue and Blossom Avenue. Hanks Liquor is on Blossom Avenue and Meekland Avenue. The neighborhood is surrounded with stores that sell alcohol. The Association also based their decision on the type of people that are hanging around the places where alcohol is available. The community already has 32 liquor stores that sell alcohol within a 1 square mile area.

Ms. Erica Campisi, also a member of the Cherryland Association stated that the residents of Cheryland were opposed to additional alcohol outlets. She respectfully asked the Board to vote no on the application. Public testimony was closed.

Member Clark asked staff if ownership change triggers the need for a new Conditional Use Permit. Staff responded that the CUP goes with the property. The transfer of the alcohol permit would require approval by ABC.

Member Friedman asked staff to confirm that the store has sold beer and wine for the past 70 years. Staff believed that to be the case.

Member Spalding asked staff if the proposed application would affect the applicant's current permit to sell beer and wine. Staff confirmed that it would not.

Member Spalding motioned to deny the permit. Given the number of existing alcohol outlets, and the applicant's current permit to sell beer and wine, there is not a public need for the use. Public testimony

supports this as, 32 alcohol outlets already exist in the Cherryland area. Regarding Finding #2, The use will not be properly related to uses in the area, as there are schools located in the immediate area. Public testimony has also been given that school children frequent the store. Regarding Finding #3, The health and safety of persons will be affected by the detrimental impact associated with hard liquor; and by the high density, and close proximity of alcohol outlets in the neighborhood. Regarding Finding #4 the staff finding was up held. Member Friedman seconded the motion. Motion to deny the application carried 4/0. Vice Chair Peixoto was excused.

3. **MARCO ANTONIO ARIAS, CONDITIONAL USE PERMIT, C-8576** – Application to allow sales of hard liquor in an existing tavern/restaurant (Los Molcajetes) in a C-1 (Retail Business) District, located at 22152 & 22154 Redwood Road, east side, approximately 550 north of Grove Way, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 416-0030-017-02. (Continued from March 28, 2007).

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

- Does the China Garden Restaurant across the street have a license to serve hard liquor in addition to beer and wine
- Can the BZA limit a CUP to the sale of specific types of alcohol, for example margaritas or tequila
- In staff's opinion why would the illegal discharge of kitchen waste not constitute a violation of Performance Standards of Alcoholic Beverage Sale Regulations (Chapter 6.104)
- What is the status of the illegal dumping violation issued to the applicant by Alameda County Clean Water

Staff was unsure of the type of liquor license held by the China Garden Restaurant. Member Friedman noted that he made two site visits to the general location prior to attending the hearing. He observed that parking is a serious issue. During both visits, one at approximately 12:00 Noon and the other at 6:00 p.m. there was no parking available. Trader Joes is popular, and their lot is always full. A portion of the lot is supposed to be reserved for the dance studio however cars were also parked there, even though the studio was closed. Member Friedman acknowledged he parked at the dance studio as well, due to the lack of available parking. He was concerned that if the applicant's intent is to boost clientele, the parking situation that is not being addressed will become more exacerbated. Member Spalding said her interpretation of the staff report was that the applicant's intent was to offer clients a broader array of choice with the addition of margaritas, and other specialty drinks. For example tequila only bars have opened in the Bay Area, could the applicant limit hard alcohol exclusively to the sale of tequila. County Counsel did not believe local authorities have the ability to limit a license to sell alcohol. The State of California sets regulations as to what is pursuant to the various licenses they issue. Local authorities would be preempted by the State of California from changing alcohol licenses. Member Spalding said she believed the City of Piedmont had approved permits with limited alcohol sales, based on the applicant's agreement. Mr. Arais could agree to a condition that the type of alcohol sales would be limited. Counsel said that possibly the applicant could agree to such terms, but this type of limitation was breaking new ground. If the applicant agreed to the condition, this could presumably provide shelter from controversy. Regarding the applicant's current permit to sell beer and wine, staff said that there was no information regarding violations against the owner. A neighbor did submit a complaint to Alameda County Environmental Health about the discharge of grease waste, into the storm drain. The property was

inspected, and preliminary clean-up was begun. A Notice of Violation Letter was sent to the applicant from the Alameda County Clean Water Program on March 21, 2007. The Department of Fish and Game was also notified as a result of the discharge. The storm drain directly connects to Castro Valley Creek, and is a short distance from San Lorenzo Creek. Eight separate County Ordinance violations were noted. The violations were also referred to the Alameda County District Attorney's Office. The District Attorney's Office has written a letter to request a meeting with the restaurant owner. The owner was also informed of the DA's intent to file misdemeanor charges. As of yet the District Attorney's Office has not provided any new information. Staff will let each Agency pursue their specific violations. Planning staff recommends the applicant comply with all County Ordinances for a period of one year, and then re-apply for the CUP. Public testimony was opened.

Mr. Edward Guerrero was present representing the applicant, Mr. Arias. Mr. Guerrero said he has also talked with staff about the use permit. Staff Planner, Andy Young has been to the site several times to discuss the Conditions of Approval with Mr. Arias, and Mr. Guerrero. They are in agreement with the staff regarding signage. They do not want to advertise liquor, and they will take the advertisements from the window if the CUP is granted. Mr. Guerrero wanted to clarify for the record that the disposal incident is not a case of mismanagement. Mr. Arias was not aware of the employee's actions. The employee was ignorant of the proper procedures. This was a problem with one employee. Mr. Arias has now taken care of the problem. Mr. Guerrero told the Board that the restaurant planned to add margaritas, daiquiris, and tequila to the menu. Clients can also request specific cocktails. Hard alcohol will be served only during specified meal times, and not in the presence of children. Los Molcajetes is a Mom & Pop restaurant. It is not a tavern, and does not have a bar. The applicant has been notified that Alcoholic Beverage Control would issue a liquor license, if the CUP request is granted. The license will be an upgrade to restaurant services, and solely for the purposes of selling tequila and cocktails as part of the dining experience. Hard alcohol will not be served to intoxicated customers coming in off of the street. This will be for the existing clientele only. Mr. Guerrero acknowledged that parking is a problem. Trader Joes, restaurants, a nail shop, and doughnut shop use the parking area. Parking was greatly reduced when Redwood Road was expanded. This resulted in reduced overall parking. When Mr. Arias purchased the building, 8 years ago, parking was not an issue. Mr. Arias wants to improve the dining experience, and provide an extra service for his clients. Mr. Guerrero did not know if limiting the types of alcohol available to the customer would be acceptable to ABC. However Mr. Arias is flexible, and would probably be in agreement with the staff findings. The liquor license was purchased at the time of the restaurant, and Mr. Arias would like to continue doing business. Mr. Arias also wants to respect the security and health of the neighborhood. The Board addressed the following questions and concerns to Mr. Guerrero:

- Has Mr. Guerrero reviewed the staff report
- Has the applicant applied for a Type 47 Alcohol License for hard liquor
- Why is the applicant, Mr. Arias absent from the proceedings
- Has the applicant tried to negotiate a parking agreement with the neighboring church
- What parking solutions has the applicant posed to handle the anticipated increase in clientele considering parking agreement negotiations with the church next door have been un-successful
- Did Mr. Arias originally deny that grease had been dumped into the storm drain
- Has the employee responsible for dumping the grease been discharged from employment

- Was the employee who discharged the grease being supervised
- If the restaurant business is sold would the hard liquor license go with the building
- Would a new owner have to re-apply for the alcohol permit

Mr. Guerrero re-confirmed the fact that he was speaking on behalf of Mr. Arias. He was present at all of the meetings with Mr. Arias, and the staff planner. He has read most of the material contained in the staff report. Mr. Guerrero said that Mr. Arias owns 2 restaurants. Due to a sick staff member Mr. Arias was needed to manage the businesses, and could not be present at the hearing. The dinner hour is a very busy time. Member Friedman asked Mr. Guerrero to clarify what types of hard alcohol would be served, as his statement differed from the staff report. Mr. Guerrero responded that margaritas will be the main type of drink served. The restaurant will also have whiskey, or other ingredients to make 5 to 6 different types of cocktails. Member Friedman pointed out that the China Garden Restaurant did not have a license to serve hard liquor. He questioned the justification for Los Molcajetes to be the only restaurant in the immediate area serving hard liquor. Mr. Guerrero said the restaurant can handle additional customers. During the lunch and dinner hour parking may be limited but Mr. Guerrero has determined that many customers walk to Los Molcajetes, or park in surrounding areas and walk 2 to 3 blocks. Local patrons also walk to the restaurant. Regarding the dumping of grease Mr. Guerrero wanted to make it clear that this was the only violation ever observed at the restaurant. The person who just happened to see the dumping is a customer that walks to the restaurant. He enjoys eating there but is also the person who complained. The gentleman has made an issue of the incident to the CVMAC, and to the County. Still, he is the only complainant and was adamant that the issue bear heavy weight in consideration of the application. The staff person who dumped the grease has been discharged. The young man was approximately 20 years old. He was fairly new, and had only been working there 3 to 4 months. The young man is not related to the owner. The cook was the employee's supervisor, but the cook had no idea he was discharging grease in that manner. Mr. Arias did not deny grease was dumped. He paid to have the grease cleaned up the same day of the complaint, at the expense of \$250 dollars. Member Friedman pointed out that the grease was cleaned only after the applicant received a violation letter. Mr. Guerrero clarified and said that Mr. Arias denied the complaint because the grease had already been cleaned up and removed. Member Friedman asked if Mr. Guerrero if he was aware of the DA's intent to file criminal charges against Mr. Arias. Mr. Guerrero responded that he could not testify as to possible charges, as he has not discussed that with Mr. Arias. Member Friedman said he had several concerns; the denial of waste discharge; pending criminal charges; and the shortage of available parking. The lack of management supervision and the effect on safety regarding the dumping incident would lead one to presume there may be a lack of responsibility in other areas, such as the proper management required when a hard liquor license is issued.

Mr. Guerrero told the Board that Los Molcajetes currently serves beer and wine. Prior to this there has never been a complaint lodged of any kind regarding, issues with alcohol, parking, or dumping. There was only one occasion. This was a one time situation. The restaurant has never served alcohol to minors. There have been no complaints from neighbors. As far as complaints about garbage left in the parking area, Trader Joes and the First Presbyterian Church also have issues with people dumping trash. The parking area is completely open to public traffic.

Member Spalding asked Mr. Guerrero to confirm that the employee had been discharged. Mr. Guerrero confirmed that the employee had been let go. Member Spalding said she would tend to agree with the CVMAC recommendation, to grant the application with a condition that the owners limit the type of alcohol they served. Margaritas and tequila are associated with typical Mexican Fare. Although Mr.

Guerrero said whiskey might also be served, would the owner Mr. Arias be willing to solely serve tequila as a condition of approval. Limiting the sale of alcohol to tequila would ensure the BZA that what the applicant promised, will be delivered. This limitation will ensure there is not an expansion of the stated, "intended use". If the applicant voluntarily agrees, a condition of approval is an enforceable clause. This shows the applicant only intends to follow the use as stated. Member Spalding asked Mr. Guerrero if he would like to take a temporary recess to contact Mr. Arias by phone. Mr. Guerrero had reservations, although Mr. Arias may be open to the concept. In his experience as a licensee for liquor applications and a real estate professional, once Alcoholic Beverage Control issues a license, the license can not be limited to such an extent. Member Spalding responded that although ABC would not limit the license, Mr. Arias could voluntarily do so. Mr. Guerrero said that Mr. Arias might volunteer but probably on a temporary basis. Discussion continued between Member Spalding and Mr. Guerrero about the prospect of the applicant voluntarily limiting their liquor license. The Chair interjected and said it appeared that Mr. Guerrero could not come to agreement with Member Spalding's proposal. Member Friedman asked Mr. Guerrero if the liquor license would go to a new owner if the business were sold. Mr. Guerrero said in some cases that a transfer of a license was possible. Member Spalding interjected. A new owner would have to apply to ABC for the liquor license.

Member Clark asked Mr. Guerrero for additional information regarding the discharged employee, including his responsibilities. Mr. Guerrero said that the young man was a kitchen helper, and bus boy. His responsibility was to clean the kitchen and dump the garbage. He worked for the restaurant for a period of 3 to 4 months. He was supervised by the cook. The cook did not realize that the young man was dumping grease in the street. The restaurant has a special container to hold grease. The container is taken by the owner to an appropriate disposal location. Member Clark asked Mr. Guerrero if the improper disposal of grease in the garbage dumpster occurred on the same day grease was dumped in the storm drain. Mr. Guerrero was unsure. Member Clark said she found it hard to believe that in such a busy restaurant, either incident were first occurrences for a 4 month veteran employee. Mr. Guerrero said that when the drain dumping complaint was called in County Inspectors came the same day. The complaint was legitimate but, Mr. Arias cleaned up the violation on the same day. Public testimony was closed.

Member Spalding said she would like to revisit the CVMAC recommendation with the applicant to grant the CUP for a period of 6 months, and set a condition of approval, limiting alcohol sales to margaritas in conjunction with revocation provisions. However the representative for the applicant seems disinterested in the limitation, and has expressed an interest in expanding the drink selection over time. Given the fact that his position is different than what was earlier stated. The CVMAC recommendation does not appear to be an option. Member Spalding asked for clarification from staff if the business were sold what is the status of the liquor license. County Counsel clarified that the liquor license stays with the former business owner. The new owner can then apply to ABC for a transfer of that liquor license, not to the BZA. Member Spalding said that she differentiates between stores and restaurants. Although Trader Joes and China Garden Restaurant did not come before the BZA for a CUP, these types of operations are somewhat distinguishable, and specialized. If the owners were willing to limit alcohol sales solely to tequila, there may be a good argument for the sale of alcohol in the restaurant. Although there are alcohol outlets in the area, Los Molcajetes has been at the location for a long time, and currently serves beer and wine. The restaurant has a good reputation, and is very popular. They also appear to have a high level of respect within the community. Perhaps the high volume of business has caused the applicants to over extend themselves, which resulted in a lack of supervision, grease dumping etc. She would be willing to extend some good will, and go along with the CVMAC recommendation, if the applicant would limit alcohol sales to margaritas. There is not a lot of room for maneuvering, but as for on-sale alcohol sales in a restaurant, this is not a case of over concentration. There is some room for consideration.

Member Clark asked staff to confirm the type of alcohol sales, a Type 47 liquor license allowed. The Chair confirmed that a Type 47 License was primarily on-sale but, did allow for off-sale as well. Member

Clark then clarified that the China Garden Restaurant is 400, liner feet from Los Molcajetes. The First Presbyterian Church is 200 feet from the restaurant. As a result, Member Clark believed there was an over saturation of alcohol outlets. She acknowledged there is a distinguishing point to a degree to differentiate restaurants from stores. However there are places to purchase alcohol on both sides of the street, within 100 feet of restaurant. Trader Joes, Town & Country Liquor, 7-11, and China Garden Restaurant are just a few. There is a lot of selection.

The Chair said he was concerned. Before the BZA could consider the applicant's ability to comply with ordinances and regulations the fact is, there an over saturation of hard alcohol outlets in the area. The Castro Valley area experiences the same problems with alcohol outlets as those associated with a similar application in the Cherryland area, recently heard by the BZA. Based on those facts, an application in Cherryland was recently denied. In consideration of C-8576 beyond the fact of the over saturation of alcohol outlets, there is the issue of the illegal dumping of grease. There is not sufficient supervision at the site. There is no indication that proper disposal processes are being employed with grease collection and disposal, as grease was found in the dumpster. The applicant is also currently in violation of the Sign Ordinance. There is no expectation that the applicant will follow required conditions. The representative for the applicant testified that alcohol advertisements in the window will be taken down, if the CUP is granted. Ordinance compliance should not be contingent upon the granting of the CUP. The Chair said he was concerned with the application in its entirety based on the testimony given, reports, and evidence received.

Member Friedman commented that the BZA had denied the application of the grocery store across the street. The same reasoning applies to this application. Although one application is a store and the other a restaurant, there is a liquor store and gun shop across the street. In addition to that the outlets that Member Clark mentioned, 7-11, Trader Joes etc. there are others in close proximity as well. If this CUP were granted, a precedent could be set. For example if the China Garden Restaurant were to request a CUP for alcohol, the BZA would have to approve that request as well. This would further increase an over saturation, and the availability of alcohol. Member Friedman also pointed out the dates the applicant was cited for violations. This was after the CVMAC considered the application. Had the CVMAC been able to consider all of the information regarding misdemeanor charges being considered by the DA, the outcome may have changed. One CVMAC Board Member abstained, and did not participate in the vote. That person is employed by the church next door. The church and the applicant were not able to come to an agreement regarding shared parking. Parking at the location is already a problem. This can only get worse if the applicant plans to increase the level of clientele. Member Friedman believed the staff recommendation was appropriate. The applicant can maintain compliance with current ordinances for a period of one year, and then re-apply for a CUP.

Member Friedman motioned to accept the staff recommendation of denial; and to adopt the staff language recommending the applicant maintain compliance with County Ordinances, and follow proper procedures for waste product disposal for a period of one year. The applicant can then re-apply for a CUP. Member Clark seconded the motion. Member Spalding asked a question regarding the motion. Does a finding of denial impact the length of time an applicant must wait to re-apply for a CUP. Staff confirmed that a one year waiting period was standard procedure. Motion to deny the application carried 4/0. Vice Chair Peixoto was excused.

4. **AC MAHARAJ CONSTRUCTION, VARIANCE, V-12060** – Application to allow the construction of two new single family dwellings with a zero foot setback from the existing dwelling wall to the driveway where 10 feet is required, in an R-S-SU (Suburban Residence, Secondary Unit) District, located at 670 & 672 Hampton Road, north side, approximately 150 feet northwest of Camden

Avenue, Unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 414-0026-100-00.

The staff recommendation was approval. Member Clark asked staff to clarify if one of the existing homes on the parcel would be demolished, and where the garage would be located. Staff responded that the home closest to the street would be retained. The home in the rear would be torn down. Two new homes will be built at the rear of the property. This would result in 1 existing home, and 3 new homes. The existing garage in the center of the lot would remain with the new structures placed behind it.

The Chair asked staff the following questions:

- Is the Creek Moratorium still in effect
- Will this project be impacted by the Creek Moratorium
- Is the project exempt from CEQA
- What is the total area of proposed impervious surface
- What is the total difference of slope from the rear of the parcel to the front of the parcel
- What is the slope at the north corner of the parcel
- Are there additional concerns about water from the parcel draining into the creek

Staff said that initially the Creekside Moratorium was in effect for a period of one year. The Moratorium has been extended by the Board of Supervisors, and is due to expire in 2008. The Creek Moratorium has an exemption for single family, and multi-family homes. The Moratorium essentially applies to subdivisions and tracts. This property is currently zoned for multiple units. The applicant will not be subdividing the property. The Chair responded that when the property is developed, paved areas and impervious surfaces will increase. Therefore runoff will increase. The slope of the property is such that the runoff will all go downward into the creek. In turn, runoff then goes into the Bay. Staff responded that the project is exempt from CEQA. Alameda County Clean Water makes the determination as to how water is dispersed, and disposed of on the property. The Chair pointed out there was no referral response from Clean Water. Staff told the Board that all applications were referred to Clean Water. The Chair said he was concerned about development close to the creek, and water runoff into the Bay because of new Federal Legislation. The County could be held liable if they do not ensure that applicant plans show proper drainage. There is no discussion in the staff report about the impact of the increase of proposed paved areas, roofing, and impervious surfaces. Staff referred to the Impervious Surface Form submitted with the application, and responded to the Board. The applicant states that the total impervious surface area would be increased to 4,000 square feet. In turn Clean Water will respond if there is an issue. Typically Clean Water is concerned with projects that exceed 10,000 square feet of impervious surface. The Chair pointed out that a limitation of impervious surface area does not address runoff into the creek. The Chair asked staff to further explain their conclusion that runoff would be addressed by drainage. Staff again referred to the applicant's elevation plans. The rear of the site is slightly higher than the front of the site. Although details are not indicated, the applicant can confirm if they plan to drain water out toward Hampton Avenue. The topographical line at the back of the rear house shows 65%, the line then moves to 63%. The slope continues to move downward, going toward Hampton Avenue. The house on the north corner of the property is on an approximate 65.3% slope. The Chair responded that the topographical lines at the westerly corner indicate a downward slope toward the concrete channel. Staff

acknowledged that was the case at the rear of the property however the balance of the parcel slopes toward Hampton Avenue. The applicant can drain water with leaders, and roof channels toward the street. Roof water can be routed into underground pipes. The Chair interjected, and said that the applicant's plans did not indicate their how runoff will be addressed. Staff agreed. The Chair asked County Counsel if the project would be exempt from CEQA if creek-side habitat were affected, or what might trigger a CEQA review. Counsel responded that he believed a categorical CEQA exemption would generally apply in most cases. If an application has a unique set of environmental circumstances an exemption may not be applicable under, Section 15303, New Construction or Conversion of Small Structures (a). If this application is indeed a special circumstance, further research can be done to determine if that is the case.

Member Spalding asked staff the following questions:

- What is the total open space area on the parcel
- Under CEQA Guidelines 15303 what constitutes a Small Structure

Staff responded that the Zoning for the area is R-S-SU (Suburban Residence, Secondary Unit) District. In the R-S District, 6,000 square feet is the minimum required, per unit. The proposed project is more than adequate in size to meet the requirements. Member Spalding asked if the request for a zero foot setback from the driveway applied to the existing home at the front of the parcel. Staff explained that the existing home at 670 Hampton Road has an existing three foot setback. The applicant plans to widen the driveway. As to the CEQA criteria for Small Structures, staff did not have complete CEQA background materials at the meeting. Staff can respond back with more information. The two new homes that are proposed are slightly under 2,000 square feet, each. Member Spalding thought the classification "Small Structure" may be more accurately applied to an accessory structure.

Member Clark asked if the existing, and proposed homes would be single family residences. Staff said the proposed homes would be single family, multiple bedroom residences. Each proposed home will have 1 kitchen, 5 bedrooms and 3 bathrooms. The existing homes on the property are single family. Public testimony was opened.

Mike, from AC Maharaj Construction was present. He told the Board he was not aware of the setback requirements until drawings for the project were submitted. The setback requirement is 10 feet. Alameda County Fire told Mike that if the project could not meet a setback of 10 feet between the driveway and dwelling wall, each home in the rear would need 5 sprinklers. A fire truck will not be able to go completely to the rear of the parcel, but by widening the driveway next to the front home at 670 Hampton Road, a fire truck can get onto the property, and make a turnaround. The fire hydrant in front of the property would have to be replaced to accommodate additional sprinklers. The only other design option available is to tear off a part of the home. Since the home at 670 Hampton Road is classified as historic, the best option is to reduce the setback to the driveway to zero feet. Mike confirmed that drainage from the property will occur, at the street.

Ms. Erica Campisi from the Cherryland Association asked the Board to continue the application. The Association has sent a referral response to County staff, but has just received the site plan from the applicant. More time is needed to review the submitted materials.

Member Clark asked the applicant if the new homes would be rentals, as 5 bedroom homes were uncommon as rental units. Member Clark also wanted to know if there were any future plans to subdivide the property. Mike said that his client planned to rent the homes to their relatives. The owner does not plan to subdivide. Member Spalding asked the representative if he was in agreement with a

continuation. Mike confirmed that a continuance was acceptable. Public testimony was closed.

Member Clark motioned to continue the application to June 13, 2007 to allow the Cherryland Association to review recently submitted project plans. Staff should provide CEQA Guidelines for Section 15303, Small Structures to determine the appropriate parameters for size. The Chair asked staff to visit the property to determine if the existing home at the front of the parcel is being used as a single family residence. Information should also be presented as to how the application relates to the County Creek Moratorium. The amount of proposed grading the project would require, and what constitutes a sensitive ecological area. In addition staff should provide what the County requirements are as to water run off into the creek and the Bay. An additional consideration is management of dust and debris during construction going into the creek. The Chair noted that at one time there were salmon and steel head in the creek. This project, as well as others could have a direct impact. In addition it is the BZA's responsibility is to insure that the County is not sanctioned, as the State of California has become strict with non-compliance enforcement. Member Friedman seconded the motion. Motion carried 4/0. Vice Chair Peixoto was excused.

APPROVAL OF MINUTES: Member Clark motioned to approve the Minutes of April 25, 2007 with submitted corrections. Member Spalding seconded the motion. Motion carried 4/0. Vice Chair Peixoto was excused.

STAFF COMMENTS & CORRESPONDENCE: Staff reminded Board Members of the Special BZA Hearing on May 30, 2007 at p.m.: To consider Variance, V-12051 in the Madison Avenue Specific Plan.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: There were no Board announcements.

ADJOURNMENT: There being no further business, the hearing adjourned at 8:30 p.m.

CHRIS BAZAR – SECRETARY: WEST COUNTY BOARD OF ZONING ADJUSTMENTS