

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
MAY 28, 2008
(APPROVED JUNE 11, 2008)**

The Field Trip was held at the hour of 11:00 a.m. The Regular Meeting was held at the hour of 1:30 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California.

FIELD TRIP: 11:00 a.m.

MEMBERS PRESENT: Kathy Gil.

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

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner

FIELD TRIP: The meeting adjourned to the field and the following properties were visited:

1. **BYRENS ASSOCIATES, CONDITIONAL USE PERMIT, C-8707** – Application to allow an addition to a church, in an R-1- (Single Family Residence) District, located at 22577 Bayview Avenue, west side, approximately 1,000 feet north of Kelly Street, unincorporated, Fairview area of Alameda County, designated Assessor's Parcel Number: 417-0020-018-01. **Staff Planner: Andy Young.**

2. **AMELIA SCHIMMELS, CONDITIONAL USE PERMIT, C-8730** - Application to allow an indoor recreation center for children in a CVCBDSP – Sub 5 (Castro Valley Central Business District – Specific Plan, Sub Area 5) District, located at 2751 Castro Valley Boulevard, south side, approximately 300 feet east of Lake Chabot Road, unincorporated, Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084A-0015-004-00. **Staff Planner: Christine Greene.**

3. **ANTHONY & MARTHA CASSINI, VARIANCE, V- 12107** – Application to allow a wrought iron fence, four feet, nine inches in height where two and four feet are the maximum allowed, in an R-1- (Single Family Residence) District, located at 16006 Via Harriet, south side, corner southwest of Via Catherine, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 411-0045-077-00. **Staff Planner: Richard Tarbell.**

REGULAR MEETING: 1:30 p.m.

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

MEMBERS EXCUSED: None.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel, Andrea Weddle; Recording Secretary, Yvonne Bea Grundy
There were approximately 10 people in the audience.

CALL TO ORDER:

The meeting was called to order by the Chair at 1:35 p.m.

INTRODUCTION TO THE PLANNING DIRECTOR: The Acting Director of Community Development, Mr. Chris Bazar introduced the new Planning Director, Mr. Albert Lopez to the Board. Mr. Lopez is from Berkeley California, and has worked for the City of Martinez, the City of San Pablo, and the City of Oakland. Board Members welcomed the new Director. Mr. Lopez said he looked forward to working with the Board.

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

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

No one requested to be heard under open forum.

CONSENT CALENDAR:

1. **RICHARD GOLD, CONDITIONAL USE PERMIT, C-8640** – Application to allow continued operation of a “B” Type Service Station, in an ACBD – BDI (Ashland and Cherryland Business District Specific Plan- Business Industrial) District, located at 594 East Lewelling Boulevard, north side, terminus, north of Boston Road, unincorporated San Lorenzo area of Alameda County, designated Assessor’s Parcel Number: 413-0027-058-02. (Continued from September 26, October 24, November 14 and December 5, 2007; January 9, February 27 and April 23, 2008; to be continued to July 9, 2008). **Staff Planner: Pat Anekayuwat.**
2. **ANIL SINGH, CONDITIONAL USE PERMIT, C-8737** – Application to allow the expansion of an auto repair facility in the CN District (Commercial Neighborhood) District. Applicant requests an existing two car canopy and a 40 foot container unit be allowed to remain on the subject property, the subject parcel contains approximately 0.24 acres and is located at 19592 Center Street, east side, corner of Edwards Lane and Center Street, unincorporated, Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 084C-1062-024-00. (To be continued to June 25, 2008). **Staff Planner: Jeff Bonekemper.**

Member Adesanya moved to approve the Consent Calendar as presented. Member Gil seconded the motion. Motion carried 5/0.

REGULAR CALENDAR

1. **SPRINT PCS, CONDITIONAL USE PERMIT, C-8690** - Application to allow continued operation of a telecommunications facility in an R-S-D-15 (Suburban Residence, 1,500 square feet, Minimum per Dwelling Unit) District, located at 16065 Mateo Street, southwest side, approximately 350 feet west of 162nd Avenue, unincorporated, Ashland area of Alameda County, designated

Assessor's Parcel Number: 080-0057-036-00. (Continued from January 23 and March 26, 2008). **Staff Planner: Howard Lee.**

Staff recommended approval. Public testimony was opened. Ms. Rochelle Swanson was present representing Sprint Nextel. Ms. Swanson requested that the 1 year permit review component be waived, and the 10 year expiration date, remain. Member Adesanya asked if the past permits required the submission of status reports. Ms. Swanson said that permits had been issued for the site in 1997, 2000, and 2002. Thus far there have been no issues. The antennas share the dispatch guide tower for Hank's Tow. Member Adesanya requested that Condition #11 remain unchanged. The review period is an opportunity to respond to any issues that may arise in the future. The Chair agreed. Public testimony was closed.

Additional Board questions were as follows:

- Are the equipment cabinets graffiti free
- Are there any outstanding Code Enforcement violations on the site

Staff confirmed, Code Enforcement made no comments regarding violations.

The Vice Chair motioned to uphold the staff recommendation of approval. Member Adesanya seconded the motion. Motion carried 5/0.

2. **BYRENS ASSOCIATES, CONDITIONAL USE PERMIT, C-8707** – Application to allow an addition to a church, in an R-1- (Single Family Residence) District, located at 22577 Bayview Avenue, west side, approximately 1,000 feet north of Kelly Street, unincorporated, Fairview area of Alameda County, designated Assessor's Parcel Number: 417-0020-018-01. **Staff Planner: Andy Young.**

Staff recommended approval with a modification to Condition #11. The City of Hayward is the correct Fire District as opposed to Fairview Fire. Initial Board questions were as follows:

- Are the services of the Fairview Fire District contracted out to the City of Hayward
- Is the current Conditional Use Permit still in effect

Staff confirmed that the City of Hayward Fire Department coordinated the Fairview Fire District's activities. There is an active use permit in effect for the church. However the current permit does not have an expiration date. The Applicant proposes an addition to the church. The proposed addition requires a new use permit. Therefore the new permit will have an expiration date. Public testimony was opened.

The Applicant Mr. David Byrens and his Associate, Mr. Dong Kim was also present. A visual presentation of project highlights was shown. The scope of the project is modest, and there will be no increase in the level of activity at the site. The design will improve the current flow of activities at the church. Existing office space will be re-located within closer proximity to the sanctuary. This will improve security by allowing church staff to see who is entering the property. The activity and office area will be expanded. In addition, accessible restrooms will also be added. The sanctuary will remain unchanged. The addition is perpendicular to the building which minimizes the impact to the creek.

Board questions were as follows:

- What is the required setback from the creek
- Is there a dispute regarding the location of the creek setback line
- Which Agency will make the determination as to the actual location of creek setback line
- Will any trees be removed from the property
- Will the roofing materials match
- Will sprinklers be installed
- Is there an encroachment permit required
- How will possible sediment issues be resolved

Mr. Kim showed a graphic indicating two locations of the creek set back line. By Mr. Kims' estimation the building sits back approximately 15 feet into the setback. He anticipates that the project would not encroach into the unpaved slope that leads to the creek. A water course permit application will be submitted, and processed as part of the Building Permit. The final distance of the building from the property line will be determined by the Building Department. The existing retaining wall will be modified. Mr. Kim told the Board that none of the existing trees will be removed from the property. The roofing materials for the addition will be of Class A, Material, and match the addition. The Fire Department and East Bay Mud have verified that the existing fire hydrants have sufficient fire flow to support the facility, in case of fire. Mr. Kim said he had been working with the staff planner who in turn is coordinating with Public Works. He acknowledged that the Applicant will be responsible for obtaining a Watercourse Permit. During construction the Applicant will also be responsible for preventing sediment or run off into the creek. There should be no impact to the site. Mr. Kim said although there is a small difference in opinion regarding the location of the set back line. He is agreement with the Conditions of Approval, and will comply with Planning and Public Works requirements. He was willing to adopt the final County interpretation. The exact location of the setback will be resolved when supporting documentation is submitted. The staff report estimates that the setback is through the center of the building. The building is 20 to 30 feet in width. The only area of the addition that will be effected by encroachment is the rear portion. A 15 foot by 15 foot area, 225 square feet. The present building is already 15 feet within the setback. Public testimony was closed.

The Vice Chair asked for clarification of the Watercourse Protection Ordinance. At this juncture since the BZA is unsure if the project would meet the requirements for a Watercourse Permit. There may not be sufficient information upon which the Board can make the necessary findings for the use permit. Further it would be difficult to set further conditions since the Director of Public Works will make the final Watercourse Permit determination. Further Board questions were as follows:

- Is public notice required for the Director of Public Work's determination
- Is there an opportunity for the public to submit comments
- Is there an opportunity for the public to appeal the Director of Public Work's determination
- Are there any plans to sell the property
- Can the property be subdivided
- Would a variance apply to a portion of the property that was split off
- Are there any design alternatives that do not encroach further into the creek set back
- Will the project require relocation of utility poles on the property
- Which County Agency interpreted the location of the creek set back line

Staff reminded the Board that the Applicant would be required to meet the conditions of all involved County Agencies. The Building Department processes the Watercourse Ordinance which is administered through Public Works. The Vice Chair asked if the Applicant could ask for a variance from Conditions set by the Building Department. Staff responded that any exceptions would be directed to the Director of

Public Works. The Chair thought the approval process could be problematic given the fact Ordinance 13.12.310 states that no development shall occur within the creek set back. The Ordinance also provides for an exception “ in certain situations, where, in the opinion of the Director of Public Works may grant a permit for said development provided that the above specified purpose would be satisfied”. The Public Works Director may not have sufficient information available to make such a determination. The BZA Hearing is the forum through which public testimony is taken. The Director of Public Works is not involved with current process at this juncture, and may or may not be aware of what is considered, “the public interests”. Staff agreed that it was uncommon for the Director of Public Works to hold a hearing. Public testimony was re-opened.

The project designer, Mr. Byrens acknowledged there were prior design considerations. They entailed extending the building along the creek bank. The current proposal places the office portion away from the creek bank. Although a small portion, approximately 15 feet of the activity space would encroach into the setback. This relationship cannot be avoided because the extension is connected to an existing kitchen.

Staff explained that the utility pole was relocated when the 1997 CUP was approved. The Public Works Agency established what they believed to be the creek setback line. Mr. Byren’s Associate Mr. Kim clarified that a survey was done in 1992 by the County. He is not aware of the specific data upon which the surveyor based the determination. However the survey was not based on the Watercourse Ordinance. It was not in existence at the time. The alternative interpretation of the set back line presented on the site plan is an estimation of the worst case scenario, of the project impact. Mr. Kim used the current Watercourse Ordinance upon which to base his estimation. The setback line already goes through the center of the existing building. Ultimately Public Works will be responsible for making the final determination of the setback line. However the proposed further encroachment will be minor. Total impact should be negligible. As that is the case, Public Works requests mitigation measures be submitted for erosion control during construction. Mr. Kim confirmed that he had been in contact with the Friends of the San Lorenzo Creek throughout the application process. All current proposals have been submitted, and FSLC have provided comments.

Board discussion then ensued. In general the BZA does review permits based on land use issues that require due diligence and governance of other County Agencies and/or Directors to participate. Although permit consideration was based granting a land use, for a church. It may be problematic making findings, and conditions for determinations that have yet to be made. Staff said prior BZA consideration is necessary. For example some projects may require additional geological studies etc. Applicants may not want to push forward until the CUP status has been determined. County Counsel told the Board the Watercourse Protection Ordinance, did contain a provision that allows appeal to the Board of Supervisors. For this particular case, further conditions can be added to the CUP to accommodate public notice, and a comment period. Notice can be sent to the public, and any interested parties and/or groups summarizing the proposal being considered by the Director of Public Works, and the date by which the Public Works Director will make a final Determination. The 15 day Ordinance appeal period goes into effect on the date of determination. Any appeals to the Board of Supervisors must follow the existing Watercourse Ordinance, and be submitted within 15 days of determination.

Mr. Bossier, a Member of the Starr King Church, introduced himself. He was involved with the 1997 expansion of the Church. After the infrastructure was installed there were insufficient funds to complete the expansion. A proposal was put forward to sell the property, and re-locate to another area. At the time Paragon Homes which owned property to the south of the parcel considered purchasing the land. However they were unable to make an offer. The church congregation then reconsidered, and decided to stay at the present location. The setting is unique, and the sale of the property is no longer a consideration. There are no plans to move in the future, or to subdivide the property.

Staff confirmed that a use permit did go with the land. However sale of a portion of the property may be acceptable, depending on the situation. A variance may or may not apply to a subdivided portion of land. For example there may be a portion of the land that is vacant, and not being utilized. If sold there would not be an impact on the use. In contrast a portion of land may have an effect if there was an ability to provide an extra parking lot. County Counsel told the Board if they felt it was appropriate. The application could be conditioned such that a sale of the property, or a portion thereof would trigger a review or revocation of the use permit. Staff added that if there was a future request to subdivide. There is a required subdivision application process. Lot size mitigates the use. If the owner were to reduce the size of the parcel, the reduction may mitigate some of the requirements. In this particular case the majority of the land slopes downward toward the creek. The opposite side of the creek also has a steep slope. There is a drop of 70 feet to the bottom of the creek. Given the terrain, it would be difficult to develop further. Public testimony was closed.

The Vice Chair motioned to uphold the staff recommendation of approval with a modification to Condition #2. Condition #19 shall be modified to include language to address sale or transfer of the property.

Board questions to the motion were raised as to if the use runs with the land, the facility, or the owner. The Vice Chair believed that the use permit would be in conjunction with the applicant. The Chair recommended a condition be added that a change in ownership, or sale of the property cancel the use. Conditioning a review process is past Board practice. The Board could specify that ownership changes could trigger permit review, including revocation. Counsel agreed such conditions would be acceptable. Such Conditions would not affect a property owner's due process rights because the revocation process of the use permit is triggered in the event of a sale. Not affected by the owner. The Chair said there were two separate questions to address in the Conditions of Approval. What would happen to the use if there is a change of property ownership. The second issue to address through Conditions is what would happen if there is the sale of any portion of the land. Counsel suggested adding to Condition #17, as a review process has already been outlined. Board Members also discussed if it were necessary to address Tentative Findings. How could the BZA verify that the permit would be conditioned as not to impact performance standards for the district or affect the public as Public Works has yet to designate their required conditions. Staff responded that the BZA setting an expiration date for the facility and its continued established use. Discussion ensued as to the merits of imposing overarching Conditions of Approval as opposed to addressing each specific and/or anticipated issue. In addition Board Members also discussed modifying Tentative Findings to support Conditions since Conditions related to the Watercourse Ordinance are unknown. Member Adesanya thought that conditions the BZA set would be sufficient to guide the Public Works process. For example Condition #4 requires the Applicant to obtain a watercourse permit, and comply with the County grading ordinance. All of the issues are governed by CEQA rules. Conditions imposed will support CEQA requirements, and should provide sufficient support to carryout the intent of the use. In the event the Watercourse Permit cannot be obtained. The permit process will stall, and the use would be void. County Counsel added that Zoning Ordinance Guidelines for the R-1 District govern and support the intent for the zone. Conditions could be imposed that can address the issue of intent contained in Tentative Findings. Board discussion ended. Member Adesanya called for the question.

The Vice Chair restated his motion to uphold the staff recommendation of approval with the following modifications to language. Language submitted by County Counsel is as follows:

Condition #2 shall add the following language. Public Notice shall be given and posted by the County to residents within a 300 foot radius of the property, and to the Friends of the San

Lorenzo Creek when a Watercourse Permit is submitted to the Director of Public Works. Notice shall also be given, at the time of action as to the date of intended determination and the outcome including entitlement to the appeal process. The cost of such notice shall be borne by the applicant.

Condition #8, shall include the insertion of the Fairview Fire District in parenthesis.

Condition #11, shall include the insertion of the City of Hayward Fire Department. Fairview Fire District shall be placed in parenthesis.

Condition #17, shall be modified to insert the language after the words 6 months: *or if there is a transfer of ownership or any transfer of land or any part thereof shall trigger a review of the conditional use permit. These events shall trigger a rehearing of the matter to determine....*

Member Adesanya seconded the motion. The motion to uphold the staff recommendation of approval of Conditional Use Permit, C-8707 with modifications passed 5/0.

3. **AMELIA SCHIMMELS, CONDITIONAL USE PERMIT, C-8730** - Application to allow an indoor recreation center for children in a CVCBDSP – Sub 5 (Castro Valley Central Business District – Specific Plan, Sub Area 5) District, located at 2751 Castro Valley Boulevard, south side, approximately 300 feet east of Lake Chabot Road, unincorporated, Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084A-0015-004-00. **Staff Planner: Christine Greene.**

Staff reviewed the project description, and recommended a continuation to the June 11, 2008 Hearing. It was determined at the May 26, 2008 Castro Valley Municipal Advisory Committee Meeting that additional information was necessary. The Applicant is to provide a copy of a Franchise Agreement, in addition to the proposed Policies and Procedures for the recreation center. Public testimony was opened. There were no requests to speak. Public testimony was closed.

The Vice Chair asked if there was an age limit for the on site parties, and if babysitting services were available. Member Adesanya said she had been to the site. The concept was similar to Chucky Cheese. Staff did not have any further information available. A response will be provided in the next staff report.

Vice Chair Peixoto motioned to continue C-8730 to the June 11, 2008 Meeting. Member Gil seconded the motion. Motion carried 5/0.

4. **MIKE BOCKS, VARIANCE, V- 12085** - Application to allow a garage conversion providing two parking spaces where three are required in an RC (Residential and Commercial District within the Ashland and Cherryland Area Business District Specific Plan) District, on a property 7,500 square feet in area, located at 330 Lewelling Boulevard, south side, 50 feet west of Tracy Street, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 413-0097-021-00. (Continued from November 14, 2007; January 23 and March 26, 2008). **Staff Planner: Christine Greene.**

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

- Where are the 2 existing parking spaces located

- Is the property located within the Ashland Cherryland Specific District
- How many parking spaces does the Zoning Ordinance require
- Do the parking requirements vary if the garage is attached as opposed to, detached
- Does the total number of structures on the site affect consideration of the variance
- Is there an open space requirement
- Will the property be affected by the proposed street widening of Lewelling Boulevard
- What were the comments of the Ashland Homeowners Association

Staff explained that the original home and garage required 1 parking space. The garage is detached and was converted without benefit of building permits into living space, approximately 10 years ago. The variance is an attempt to legalize the existing conversion. The conversion is now considered a second unit. The property is within the ACBD Specific Plan, Residential Commercial District. The ACBD District does not specify setbacks or development standards for the RC Designation. Zoning is determined by the Zoning Ordinance 17.52 and 17.54 which requires a total 3 parking spaces. The calculation is 1 space for the original dwelling and 2 spaces for the second unit. The Applicant submitted a site plan that indicates 3 parking spaces, 1 space in the front of the property, and 2 on the side, next to the porch. The Specific Plan again refers to the Zoning Ordinance for residential development. Parking must be provided on-site. The parking space in the front of the property would not meet the Zoning Ordinance which does not allow parking within the first 20 feet of the property. Parking would be further impacted by the 2009, slated road widening. The width of the property would be reduced to a depth of 10 feet from the sidewalk to the front steps. This eliminates one parking space. There is no method through which the Applicant could provide 3 on-site spaces. If the Board does not grant the variance, the Applicant will be required to return the conversion into an accessory structure. An accessory structure cannot have a kitchen, and is limited to a half bath. The number of structures on the property is not a consideration, and there are no open space requirements. The application was submitted to the Ashland HOA. There were no responses regarding the application. The San Lorenzo Village Homes Association did respond to the project referral. The HOA is adamantly opposed to the application because it does not comply with the County Garage Conversion Ordinance. Public testimony was opened.

The Applicant Mr. Mike Bocks greeted the Board. He told the Board that his property was within the Ashland Cherryland Business District. The Plan however, is not specific. The Plan was developed to because of the unique nature of the area. It designates higher density but is lacking in that it does not provide design criteria. The variance request is for 2 additional parking spaces for a garage conversion. Mr. Bocks said the staff report has been altered from the original version. There were no prior comments that the General Zoning Ordinance was the reference. Mr. Bocks asked staff to point out where the ACBD Plan is silent, and therefore refers to Section 17 of the Zoning Ordinance. Mr. Bocks thought his project was reasonable given the intent of the Specific Plan, and the eclectic nature of the neighborhood. He purchased the property 2 years ago. It is used as a rental. One tenant was already living on-site. The second was placed after he purchased the property. Mr. Bocks was told that the prior tenant converted the garage. Code Enforcement discovered the conversion and required the space be returned, to a garage. Sometime later the tenant again converted the garage into habitable space. Questions for the Applicant were as follows:

- How many people have an interest in the property
- Is the home located within an HOA jurisdiction
- Is the Applicant aware that the neighbors are opposed to the garage conversion

Mr. Bocks told the Board three parties owned the property. Collectively this is their first experience with rental property. Mr. Bocks acknowledged that he and his partners all lived in East County. In general he and his partners believe it is beneficial to have the space occupied given that affordable housing in the

area is limited. Mr. Bocks said due to the eclectic nature of the neighbor he believed that the street should be exempt from the General Zoning Ordinance. The Specific Plan was adopted to address the motley nature of the area. In addition he reiterated that Section 17.2 does not definitively confirm the required number of parking spaces. He believed the parking requirements for the project are assumed. In addition there are no established supporting, design guidelines. Most of the homes associated with the HOA are not in the ACBD Plan. Due to the eclectic nature of the area, each project should be judged on its own merits. Mr. Bock said he was aware there were neighbors opposed to the project. However each project should be judged on an individual basis. The Chair responded that each application is considered on an individual basis. In order for the Board to grant an application findings must be made that support each individual application.

The Vice Chair told Mr. Bocks that although the issue was not directly related to the application before the Board. He has gone to the site several times on week-ends. There are so many motor cycles in front of the property, the home cannot be seen. Vice Chair Pexioto recommended the Applicant visit the property during the week-end.

Member Clark asked the status of the Code Enforcement complaints. Alameda Code Enforcement staff believes the site is being used as a club house. The complaint is still under investigation. Public testimony was closed.

Member Adesanya motioned to uphold the staff recommendation of denial. Member Gil seconded the motion. The Motion to deny variance V-12085 carried 5/0.

5. **ANTHONY & MARTHA CASSINI, VARIANCE, V- 12107** – Application to allow a wrought iron fence, four feet, nine inches in height where two and four feet are the maximum allowed, in an R-1- (Single Family Residence) District, located at 16006 Via Harriet, south side, corner southwest of Via Catherine, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 411-0045-077-00. **Staff Planner: Richard Tarbell.**

Staff recommended denial of the application. The Vice Chair pointed out that the San Lorenzo Village Homes Association's approval of the fence in 2004. The HOA approved the application with the caveat that the Applicant must also obtain approval from the County as well. The Chair commented that the fence was a curved open, wrought iron design. It appears that height would not cause site distance or visibility issues. Staff confirmed that the measurement from the grade to the top of the post is 4 feet, 5 inches. The dimension at the lowest curved section of the fence has yet to be determined. Public testimony was opened.

The Applicants, Anthony and Martha Cassini were present. Mr. Cassini presented photographs of fences in his neighborhood that exceeded the Ordinance height limit. There are also fences on Via Catherine, and Via Amigos less than 9 feet from the curb. Two of the homes are located on a corner. Mr. Cassini said his fence was inside of his property line by approximately 8 inches. He measured from the center of the street. He was in agreement with staff that the highest point, including the post was 4 feet, 5 inches. However he has not taken a measurement of the fence, at the lowest point. Staff clarified that measurements are calculated by extending the two property lines until they cross. Setback 30 feet from that point is the radius at which the fence height is designated at 2 feet. Board questions were as follows:

- Has the exact property line been established
- Is the fence within the public right of way

- Are there pending Ordinance revisions that would affect fence height limitations
- Has the stated fence height been average throughout the length
- Can the fence location be moved to achieve compliance
- Have any of the neighbors been granted a variance for fence height

Staff further explained that even if the fence were moved further back onto the Via Catherine side of the property, the height threshold would be 4 feet. The 4 foot height would be in effect from a distance of 30 back. The fence height has been averaged. However the existing fence exceeds the 4 foot height throughout the length. It has not been clearly determined if the fence is within the public right of way. The Design Guideline Committee is in the process of selecting members. Fence heights could be a topic for consideration once the Committee starts in earnest.

Mr. Cassini asked the Board to approve the variance. The fence design does not block motorists view when at the stop sign. The fence is attractive and improves the neighborhood.

Mr. Cassini's neighbor who lives at 16034 Via Catherine said people stop and acknowledge that the fence is gorgeous. He told the Board that the visual affect could only be fully appreciated in person. Even in the depressed economy, the fence adds value to the property.

Mrs. Cassini agreed that the fence did not block traffic, or cause any line site issues. The fence is beautiful. Thus far, there have been no complaints submitted to the HOA from the neighbors. Mrs. Cassini was not sure if any fence height variances had been granted in the neighborhood. Public testimony was closed.

Member Adesanya said that the Zoning Ordinance overall seems to address site distance issues. In this particular case due to the material. There does not appear to be a safety hazard. At this juncture, fence height is the only issue.

Member Gil said security may be a factor to consider.

The Chair agreed with Member Adesanya. The Chair suggested that the since the variance request is technically for 5 inches. The issue might be tabled to obtain additional information. The Applicant should determine the exact location of the property line. Once that is established an encroachment permit may not be necessary.

The Vice Chair agreed that site distance, vehicular safety was not as much of an issue. Since the home was located in the middle of the block.

County Counsel recommended that staff determine if other variances had been granted for fence height in the immediate area. The schedule for the Design Guideline Committee can also be determined.

Member Clark motioned to continue Variance, V-12107 to September 24, 2008. The Vice Chair seconded the motion. Motion carried 5/0.

APPROVAL OF MINUTES: Member Adesanya moved to approve the Minutes of April 23, 2008 as submitted. The Vice Chair seconded the motion. Motion carried 4/0. Member Gil abstained, and did not participate in the vote, as she was not present at the April 23, 2008 Meeting.

Member Clark motioned to approve the Minutes of May 14, 2008 as amended. Member Gil seconded the motion. Motion carried 5/0.

STAFF COMMENTS & CORRESPONDENCE: Staff had not yet received the Action Minutes from the Board of Supervisors Meeting. Minutes will be included in the next packet.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Member Gil reported that a total of 12 applications were received for the 9 available posts on the Design Guideline Taskforce. Staff will review the applications and select 9 people for the Taskforce.

Member Adesanya asked County Counsel if the term motioned, or if the term moved was appropriate when taking an action. Counsel responded that either term was acceptable.

ADJOURNMENT: There being no further business, the hearing adjourned at 4:30 p.m.