

**MINUTES OF MEETING**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**  
**JUNE 11, 2008**  
**(APPROVED JUNE 25, 2008)**

The Regular 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 p.m.**

1. **AT&T / BRIAN LEEGWATER, CONDITIONAL USE PERMIT, C-8713** – Application to allow the continued operation of a cell site in a P-D (Planned Development) ZU – 1785 District, located at 15951 Hesperian Boulevard, west side, approximately 191 feet north of Paseo Grande, unincorporated San Lorenzo area of Alameda County, designated Assessor’s Parcel Number: 412-0031-115-00. **Staff Planner: Shahreen Basunia.**
2. **T-MOBILE, CONDITIONAL USE PERMIT, C-8733** - Application to consider a petition to allow replacement of an (e) telecommunications facility within the Ashland Cherryland Business District Specific Plan (T-C Zoning) District, located at 15770 East 14<sup>th</sup> Street, north east side, approximately 150 feet north west of Thrush Avenue unincorporated Ashland / Cherryland area of Alameda County, designated Assessor’s Parcel Number: 080-0035-104-00. **Staff Planner: Richard Tarbell.**
3. **BAY GOSPEL HALLS, CONDITIONAL USE PERMIT, C-8738** - Application to allow continued operation of a church in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle Parking) District, located at 4035 Seven Hills Road, south side, approximately 180 feet east of Parsons Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 084D-1342-004-03. **Staff Planner: Christine Greene.**
4. **XUAN DINH, CONDITIONAL USE PERMIT, C-8740** - Application to allow continued operation of an automotive repair facility in a C-1 (Retail Business) District, located at 957 West A Street, north side, approximately 108 feet west of Hesperian Boulevard, unincorporated Cherryland area of Alameda County, designated Assessor’s Parcel Number: 432-0020-026-02. **Staff Planner: Richard Tarbell.**
5. **RUSSELL ZEN, VARIANCE, V-12095** – Application to allow: 1) a six foot, eight inch high fence where six feet is the maximum allowed; and 2) Recreational Vehicle parking in the side yard, located at 2954 Hidden Lane, north side approximately 150 feet west of Hansen Road, unincorporated Fairview area of Alameda County, Assessor’s Parcel Number: 426-0030-058-00. **Staff Planner: Shahreen Basunia.**
6. **DHARAM SALWAN, VARIANCE, V-12098** - Application to allow expansion of a non-conforming parcel (reduced parking & excess building height) with the addition of one dwelling unit, in an R-S-D-20 (Suburban Residence, 2,000 square foot, Minimum Building Site Area per Dwelling Unit) District, located at 15814 Marcella Street, unincorporated Ashland area of Alameda County, designated Assessor’s Parcel Number: 080-0045-004-15. **Staff Planner: Shahreen**

**Basunia.**

7. **MIKE GUTIERRES, VARIANCE, V-12111** - Application to allow a 2 - story accessory building with a height of 31 feet and 4 inches where 1 – story with a height of 15 feet and zero inches is the maximum permitted, in an R-1-L-B-E (Single Family Residence, Limited Agricultural, 5 Acre, Minimum Building Site Area) District, located at 3914 Picea Court, northwest side at the terminus west of Oakes Drive, unincorporated Fairview area of Alameda County, designated Assessor’s Parcel Number: 425-0500-001-00. **Staff Planner: Andy Young.**
8. **BRIAN KHO, VARIANCE, V-12112** - Application to allow construction of an attached garage creating an average height of 32 feet where 25 feet is the maximum allowed, in an R-1 (Single Family Residence) District, located at 14625 Midland Road, west side approximately, 420 feet north of Altamont Road, unincorporated Hillcrest Knolls area of Alameda County, designated Assessor’s Parcel Number: 079-0004-011-02. **Staff Planner: Christine Greene.**
9. **BRIAN KHO, VARIANCE, V-12113** - Application to allow construction of an attached garage creating an average height of 32 feet where 25 feet is the maximum allowed, in an R-1 (Single Family Residence) District, located at 14641 Midland Road, west side approximately, 300 feet north of Altamont Road, unincorporated Hillcrest Knolls area of Alameda County, designated Assessor’s Parcel Number: 079-0004-011-03. **Staff Planner: Christine Greene.**

**MEMBERS PRESENT:** None.

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

**OTHERS PRESENT:** There were no Staff Members present.

**FIELD TRIP:** The Field Trip was cancelled. Members visited properties on an individual basis.

**REGULAR MEETING: 6:00 p.m.**

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

**MEMBERS EXCUSED:** Vice Chair, Frank Peixoto.

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

There were approximately 6 people in the audience.

**CALL TO ORDER:** The meeting was called to order by the Chair at 6:10 p.m.

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

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

No one requested to be heard under open forum.

**CONSENT CALENDAR:**

1. **T-MOBILE, CONDITIONAL USE PERMIT, C-8733** - Application to consider a petition to allow replacement of an (e) telecommunications facility within the Ashland Cherryland Business District Specific Plan (T-C Zoning) District, located at 15770 East 14<sup>th</sup> Street, north east side, approximately 150 feet north west of Thrush Avenue unincorporated Ashland / Cherryland area of Alameda County, designated Assessor's Parcel Number: 080-0035-104-00. (to be continued to July 9, 2008) **Staff Planner: Richard Tarbell.**

Member Gil motioned to accept the Consent Calendar as submitted. Member Clark seconded the motion. Motion carried 4/0. Vice Chair Peixoto was excused.

**REGULAR CALENDAR**

1. **AT&T / BRIAN LEEGWATER, CONDITIONAL USE PERMIT, C-8713** – Application to allow the continued operation of a cell site in a P-D (Planned Development) ZU – 1785 District, located at 15951 Hesperian Boulevard, west side, approximately 191 feet north of Paseo Grande, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0031-115-00. **Staff Planner: Shahreen Basunia.**

Staff reviewed the application, and recommended approval. Board questions for staff were as follows:

- Is the application located within a Redevelopment Area
- Were comments submitted from the San Lorenzo Village Homes Association
- Are there visible equipment cabinets at the site

Staff confirmed the location was within a Redevelopment Area. The Redevelopment Agency was contacted. There were no comments received from Redevelopment or the HOA regarding the application. There will be cabinets at the site. The Chair said staff should be conscious of placement and/or methods to mitigate graffiti. Staff said there had been no prior issues with graffiti, at the site. Public testimony was opened.

The Applicant Brian Leegwater told the Board that equipment cabinets would be located inside, existing storage units. The antennas are hidden inside of the stealth pole. The layout of the site will not change. Board questions were as follows:

- Is there another telecom antenna at the site
- Is co-location with another carrier possible

Mr. Leegwater told the Board it was unlikely another carrier could co-location with the current design. The slim diameter of the stealth pole would prove difficult. A modification would be necessary to the pole to accommodate another carrier. Staff confirmed that T Mobile had an approved flag pole antenna on the site prior to the AT&T Application. The AT&T replacement light pole will be within 100 feet of the taller T Mobile antenna. Although Telecom Design Guidelines favors this type of placement for commercial locations. Each carrier's applications are scheduled to expire in June of 2011. Board Members pointed out that at times companies are unable to coordinate. They requested that specific

language be added to Condition of Approval, #8. The telecom applications should be heard simultaneously, on the same agenda. Mr. Leegwater agreed to the added Condition. Public testimony was closed.

Member Adesanya asked why there had been a 3 year time lapse since the last permit. Staff explained the history of the application. The planner that processed the application in 2005 did not realize there were two separate carriers, at the site. The planner had the Applicant withdraw their original application based on the belief there was only one telecom facility. In 2008 it was confirmed that two separate carriers had installations at the site. This mistake occurred to no fault of the Applicant.

Member Clark motioned to uphold the staff recommendation of approval with the following modifications: Condition #8 shall add language requiring C-7848 to be heard in conjunction with C-8713 at the point of permit expiration in 2011. Condition #10, The first sentence shall now state “ One year from the date of this approval, permittee shall submit to the Board of Zoning Adjustments a brief status report describing compliance with conditions of the permit including, maintenance or equipment, fencing, and antennas, a photograph of the site and verification that the facility is in compliance with an active FCC License”. Member Adesanya seconded the motion. Motion carried 4/0. Vice Chair Peixoto was excused.

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. (Continued from May 28, 2008) **Staff Planner: Christine Greene.**

The staff recommendation was approval. The Castro Valley Municipal Advisory Committee recommended approval as well. Member Adesanya asked why the application had been continued from the May 28<sup>th</sup> Hearing. Staff confirmed the CVMAC wanted the Applicant to provide a copy of a Franchise Agreement. In addition they wanted to ensure the proposed signage would not exceed the level of current signage, at the site. The Applicant has provided the Agreement. Signage will also be in compliance with the Zoning Ordinance. Public testimony was opened.

Ms. Amelia Schimmels was present. Board questions for the Applicant were as follows:

- Has the Applicant read the staff report
- How were the Hours of Operation determined
- When will the Party Place open for business
- Are party events limited to children

Ms. Schimmels confirmed she read the staff report. State of California licensing for a recreational facility allows the business to be open for an ongoing period of 12 hours to 15 hours. As a result the Party Place will stay open late to accommodate evening events. Monday through Thursday the Hours of Operation are from 8:30 a.m. to 8:00 p.m., Friday’s 8:30 a.m. to 11:00 p.m., Saturday’s for private parties from 10:00 a.m. to 2:30 p.m. Drop in hours from 3:00 p.m. to 11:00 p.m. Sunday’s private parties only, 9:30 a.m. to 7:00 p.m. There is sufficient staff to support the operation, including coverage if some is ill. Parties are limited to children from ages 2 to 12. Ms. Schmmels will open as soon as all required permits are obtained. The Chair expounded. There is a 10 day appeal period in conjunction with permits acted upon by the BZA. Board Members agreed that the use would be compatible with the site. There is a

definite need for children's party services in the area. Public testimony was closed.

Member Adesanya moved to uphold the staff recommendation of approval, with adoption of Conditions of Approval. Member Gil seconded the motion. Member Clark asked that the motion be modified. Condition #1 shall have the words "private children's parties" added. Members Adesanya and Gil accepted the modification. The motion to approve, C-8730 passed 4/0. Vice Chair Peixoto was excused.

3. **BRIAN KHO, VARIANCE, V-12112** - Application to allow construction of an attached garage creating an average height of 32 feet where 25 feet is the maximum allowed, in an R-1 (Single Family Residence) District, located at 14625 Midland Road, west side approximately, 420 feet north of Altamont Road, unincorporated Hillcrest Knolls area of Alameda County, designated Assessor's Parcel Number: 079-0004-011-02. **Staff Planner: Christine Greene.**

Staff announced that Variance, V-12112 and V-12113 are adjacent properties. The applications are identical, and will be considered together. The staff recommendation was denial. Public testimony was opened.

The Applicant, Mr. Brian Kho was present. The Project Designer, Mr. Derek Chau was also present.

Mr. Chau told the Board that he had not received a staff report. He briefly reviewed the report at the hearing but would need additional time to discuss options with staff. He requested a continuance to review an alternate proposal. Staff did not object. Board Members asked the following:

- Will the proposed use of solar panels cause glare on neighboring properties
- Will the solar energy captured be sold to the grid in addition to use for the home
- Will there be an exterior access to the storage/crawl space

Mr. Kho said the solar energy captured will be used for the home. There is no expectation to sell power to the grid. The neighbors are in agreement with the project. The solar panels will be set back such that the lower portion will be obscured from view. The upper portion will be shielded by the garage. Mr. Chau further explained, one option would be to move the garage closer to the front setback. Due to the location of the hill, and the garage sitting close to the panels, most of the glare from the sun should be blocked. Additional mitigation could include a mechanical screen like those seen on some commercial buildings. Member Adesanya asked Mr. Chau to provide a detail of the proposed panel design to staff, prior to implementation. The new equipment could affect height estimates. Mr. Chau then showed Board Members the proposed design. The design will allow for open space. A deck will be placed in between the new garage. Member Clark commented that she lived in the area, and had experienced power surges in her home. As a result a television is no longer functional. More information is needed to ensure that surges will not occur, as a result of power being transferred to the grid. Power surges may also cause fires, in older homes. Mr. Chau said he would confer with PG&E. There may be technology available to regulate current. Public testimony was closed.

Member Adesanya asked staff how the initial plan was approved with a height that exceeded the Zoning Ordinance. Staff said the original design had a carport. The prior designer on the project, quit. The Applicant has now retained Mr. Chau.

Member Clark motioned to continue Variance, V-12112 and V-12113 to the July 9, 2008 Meeting. This will enable the Applicant to work with staff, to refine proposed design changes. Member Gil seconded

the motion. Motion carried 4/0. Vice Chair Peixoto was excused.

4. **BRIAN KHO, VARIANCE, V-12113** - Application to allow construction of an attached garage creating an average height of 32 feet where 25 feet is the maximum allowed, in an R-1 (Single Family Residence) District, located at 14641 Midland Road, west side approximately, 300 feet north of Altamont Road, unincorporated Hillcrest Knolls area of Alameda County, designated Assessor's Parcel Number: 079-0004-011-03. **Staff Planner: Christine Greene.**

Staff announced that Variance, V-12112 and V-12113 are adjacent properties. The applications will be considered together.

Member Clark motioned to continue Variance, V-12112 and V-12113 to the July 9, 2008 Meeting. This will enable the Applicant to work with staff, to refine proposed design changes. Member Gil seconded the motion. Motion carried 4/0. Vice Chair Peixoto was excused.

**APPROVAL OF MINUTES:** Member Clark motioned to approve the Minutes of May 28, 2008 as amended. Member Adesanya seconded the motion. Motion carried 4/0. Vice Chair Peixoto was excused.

**STAFF COMMENTS & CORRESPONDENCE:** Staff read the outcome of appeals filed with the Board of Supervisors. The BOS did not uphold the BZA finding of denial. Variance, V-12080, Kremer was approved. The Parcel Map portion of the application will now be considered by the Planning Director. Variance, V-12072 – Menezes was continued to a future date. The decision to approve Variance, V-12071-Lesur was upheld by the BOS. A revised Parcel Map will be considered by the Board of Supervisors.

Elections for the Chair and Vice Chair will take place at the June 25, 2008 Meeting.

**BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:** The Chair asked staff how a project recently discussed in the newspaper received approval to exceed the Zoning Ordinance height limit. Staff said the project was a Planned Zoning Unit. A PD is acted upon by the Planning Commission then sent to the Board of Supervisors for action. The project was approved by the Planning Commission and the Board of Supervisors in 2004.

The Chair thought the zoning was inconsistent with the area. Staff responded that a P-D is a re-zoning of existing zoning. A P-D Zoning can vary, height set backs, parking spaces, density. Although a P-D is a re-zoning, in general the application should be consistent with the General and Specific Plans for an area. Overriding considerations must be supported. In addition there are findings that must be made, to grant a P-D Zoning. Two years ago, findings were not a required part of a P-D Application. Since that time the Planning Commission adopted a requirement that each P-D must meet necessary findings to grant approval. The above mentioned project was approved prior to the requirement of findings.

Member Gil announced that she may not be present at the July 9, 2008 Meeting. She will be returning from vacation. Depending on available transportation she may or not attend.

**ADJOURNMENT:** There being no further business, the hearing adjourned at 7:30 p.m.

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**ALBERT LOPEZ - SECRETARY**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**