

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
JULY 11, 2007
(APPROVED JULY 25, 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 p.m.

1. **JULIANA and JOSEPH TABURAZA, CONDITIONAL USE PERMIT, C-8561** – Application to allow continued operation of a residential care facility for eight elderly adults, in a R-1-B-E (Single Family Residence, 6,000 square feet Minimum Building Site Area, 60 feet Median Lot Width, 20 feet Front Yard, 7 feet Side Yard) District, located at 2767 Colony View Place, south side, approximately 150 feet east of Winfeldt Road and Second Street, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 0425-0170-085-00.
2. **CASTRO VALLEY WOMEN'S CLUB, CONDITIONAL USE PERMIT, C-8607** – Application to allow continued operation of a clubhouse, in a P-D (Planned Development, 1581st Zoning Unit) District, located at 18330 Redwood Road, east side, approximately 90 feet south of Emily Court, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 414-0036-055-00.
3. **ALT CARE, INC., CONDITIONAL USE PERMIT, C-8613** – Application to allow continued operation of a residential care facility, in an R-1-L-B-E (Single Family Residence, Limited Agricultural, 5 acre Minimum Building Site Area, 300 feet Median Lot Width, 30 Front Yard) District, located at 6127 East Castro Valley Boulevard, south side, approximately 700 feet of Palo Verde Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085A-0550-012-00.
4. **MAR, CONDITIONAL USE PERMIT, C-8617** – Application to allow continued operation of a Type-A service station (smog only test site), in an ACBD Specific Plan – TC (Ashland and Cherryland Business District Specific Plan, Transit Corridor) District, located at 16446 E. 14th Street, northeast side, corner northwest of Pajaro Court, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0071-044-00.
5. **FIRST BAPTIST CHURCH, CONDITIONAL USE PERMIT, C-8619** – Application to allow continued operation of a church, in a C-N (Neighborhood Business) District, located at 4274 Seven Hills Road, north side, corner west of Watters Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1212-001-11.
6. **CHRISANN NICHOLSON, CONDITIONAL USE PERMIT, C-8632** – Application to allow continued operation of a pre-school for 22 children, in a R-S-D-25 (Suburban Residence, 2,500 square feet Minimum Building Site Area per Dwelling Unit) District, located at 20121 Santa Maria Avenue, west side, approximately 280 feet north of Jamison Way, unincorporated Castro Valley area

of Alameda County, designated Assessor's Parcel Number: 084A-0108-001-04.

7. **JASON OSBORNE, CONDITIONAL USE PERMIT, C-8633** – Application to allow continued operation of a telecommunication tower, in an “A” (Agricultural) District, located at 10410 Crow Canyon Road, north side, approximately ½ mile northeast of Belina Canyon Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085-1950-002-06.
8. **OSBORNE/NSA WIRELESS, CONDITIONAL USE PERMIT, C-8638** – Application to allow continued operation of a telecommunication facility in a M-1 (Light Industrial) District, located at 22020 Center Street, east side, corner northeast of Grove Way, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 417-0010-007-05.
9. **ROBERTO GOMEZ, VARIANCE, V-12069** – Application to allow the expansion of a nonconforming parcel, four feet side yard where 10 feet is required, with the construction of a new single family residence, in a R-S-SU (Suburban Residence, Secondary Unit) District, located at 20253 Concord Avenue, west side, approximately 200 feet south of Hampton Road, Cherryland area of unincorporated Alameda County, designated Assessor's Parcel Number: 414-0036-055-00.
10. **CHRIS and ANGELA WILHELM, VARIANCE, V-12077** – Application to allow an accessory structure (pool and arbor) in the front half of the lot and to allow a six feet high fence where four feet is the maximum, in a R-1-B-E-CSU-RV (Single Family Residence, 10,000 square feet Minimum Building Site Area, 80 feet Median Lot Width, Conditional Secondary Unit, Recreational Vehicle) District, located at 17520 Cardinal Court, east side, corner northeast of Proctor Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1401-021-00.

MEMBERS PRESENT: The Field Trip was cancelled.

MEMBERS EXCUSED: All Members were excused. The field trip was cancelled.

REGULAR MEETING: 6:00 p.m.

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

MEMBERS EXCUSED: None.

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

There were approximately 12 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: The Chair asked County Counsel if a voce ballot or secret ballot was required for the election of Board Officers. County Counsel responded that, voce ballot was acceptable.

ELECTION OF OFFICERS: For the Year 2007-2008.

Member Friedman nominated Member Spalding for the position of Chair for 2007-2008. Member Spalding accepted the nomination. Member Clark seconded the motion. Motion carried 5/0. Jewell Spalding was elected Chair of the West County Board of Zoning Adjustments for the Year of 2007-2008.

Member Palmeri nominated current Vice Chair Peixoto for re-election. Vice Chair Peixoto accepted. Member Friedman seconded the motion. Motioned carried 5/0. Vice Chair Peixoto was re-elected as Vice Chair of the West County Board of Zoning Adjustments for the Year of 2007-2008.

The gavel was surrendered to the new Chair, Jewell Spalding.

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. **GUADALUPE LOZA/FRED FULCHER, CONDITIONAL USE PERMIT, C-8271**– Application to allow continued operation of a drive-in business (catering truck), in a PD-ZU-1487 (Planned Development, 1487th Zoning Unit) District, located at 691 West A Street, north side, corner, northwest of Royal Avenue, unincorporated Hayward area of Alameda County, bearing Assessor's Parcel 0432-0016-035-00. (Continued from February 11, April 14, April 28, May 26, July 14, September 8, October 13, 2004, March 23, June 22, October 12, December 14, 2005, March 22, May 24, September 13 and November 15, 2006 and March 28, 2007; to be continued to August 8, 2007).
2. **FRANCISCO PENA, CONDITIONAL USE PERMIT, C-8389** – Application to allow the operation of a temporary outdoor business (Catering Truck) in a TC (Transit Corridor) District, located at 16211 East 14th Street, southwest end of 162nd Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080C-0479-003-00. (Continued from January 11, March 22, May 24, September 13 and November 8, 2006, February 7 and April 11, 2007; to be continued to August 8, 2007).
3. **JULIANA and JOSEPH TABURAZA, CONDITIONAL USE PERMIT, C-8561** – Application to allow continued operation of a residential care facility for eight elderly adults, in a R-1-B-E (Single Family Residence, 6,000 square feet Minimum Building Site Area, 60 feet Median Lot Width, 20 feet Front Yard, 7 feet Side Yard) District, located at 2767 Colony View Place, south side, approximately 150 feet east of Winfeldt Road and Second Street, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 0425-0170-085-00. (To be continued to July 25, 2007).

4. **COPTIC ORTHODOX CHURCH, CONDITIONAL USE PERMIT, C-8599** – Application to allow the continued operation of a church facility, in a R-1 (Single Family Residence) District, located at 2500 Hansen Road, west side, approximately 400 feet north of East Avenue, unincorporated Fairview area Alameda County, designated Assessor’s Parcel Number: 0426-0130-072-00. (To be continued to August 8, 2007).
5. **ROBERTO GOMEZ, VARIANCE, V-12069** – Application to allow the expansion of a nonconforming parcel, four feet side yard where 10 feet is required, with the construction of a new single family residence, in a R-S-SU (Suburban Residence, Secondary Unit) District, located at 20253 Concord Avenue, west side, approximately 200 feet south of Hampton Road, Cherryland area of unincorporated Alameda County, designated Assessor’s Parcel Number: 414-0036-055-00. (To be continued to August 8, 2007).

Vice Chair Peixoto motioned to accept the Consent Calendar as presented. Member Palmeri seconded the motion. Motion carried 5/0.

REGULAR CALENDAR

1. **CHERUBIN’S CHILDRENS CENTER, CONDITIONAL USE PERMIT, C-8600** – Application to allow operation of a child care facility for 40 children and the expansion of an existing church to allow hall rental for special events, in an R-1 (Single Family Residence) District, located at 18651 Via Toledo, west side corner, north west of Hacienda Avenue, unincorporated San Lorenzo area of Alameda County, designated Assessor’s Parcel Number: 413-0083-065-00. (Continued from June 13, 2007).

Staff reviewed the history of the application. The application was continued from the June 13th Hearing to obtain a response from San Lorenzo Village Homes Association. Based on the response received, staff recommended approval with a modification to Condition #9. The applicant shall return in one year for review. The Board can determine if Conditions of Approval should be modified or if new conditions should be imposed. Staff clarified that since the operator of the child care center was different from the management of the church the Board can solely re-consider the hall use in one year. Public testimony was opened.

The Pastor of Saint Christopher’s Church, Joanne Bennett told the Board that she had submitted a letter in conjunction with the application. She made her self available to answer any additional questions. Initial Board questions for Pastor Bennett were as follows:

- Is Saint Christopher’s Church the applicant for both the childcare center, and the hall
- What types of events have been held in the hall
- How often is the hall rented
- Is security provided for all “hall” events

- Is the church aware of the recommendations of the HOA which include, the hall close at 10:00 p.m.
- Who will be the license holder for the child care center
- Why has there been a 4 year lapse between the expiration of the past child care permit
- Why is there a difference in the number of children requested from the prior child care application for 30 children vs. the new application for, 40 children
- What is the minimum amount of square footage, and the number of bathrooms required by the State of California for the proposed child care
- Will landscaping be added to the area between Hacienda Avenue and Toledo Way

Staff explained that the application for the hall and the child care center are combined. Pastor Bennett said that the hall was used for social events. For example recently a local family hosted a Quinceanera. Saint Christopher's employs a security company for all events. The manager of the security company is also present to answer any questions. The hall gets the most usage on Saturday nights, from the early Spring throughout late Summer. The slow season is between late Fall, and early Spring. Pastor Bennett said that she had talked with Nancy Van Huffel of the HOA several times. The church did not have a problem with the HOA's recommendation. Pastor Bennett pointed out that the HOA recommended that the hall close at 11:00 p.m. It was Planning staff's recommendation that the hall close at 10:00 p.m. Currently, parties close down between 10:00 p.m. to 10:30 p.m. The doors are closed, and people leave the parking lot. After the doors close, cleaning takes place until 11:00 p.m. The church has a professional janitorial staff that cleans the hall after each use. Staff responded that the 10:00 closing time corresponded with the Alameda County Noise Ordinance. Member Clark also interjected, and clarified that the HOA recommended that the property be vacated by 11:00 p.m. Vice Chair Peixoto commented that in addition to the HOA recommendation, he would like to see a condition added that prohibits the use of amplified music after 10:00 p.m.

Pastor Bennett said that the current applicant for the child care center is new. She was not involved with the prior applicants. There has been no child care at the church since the old application expired. The current applicants will be applying for all of the State licenses etc. The applicants should be familiar with all of the requirements, as they have another child care center. The applicant for the child care center is also present to respond to Board questions. Regarding landscaping, the Bay Area is currently experiencing drought conditions. When it rains the section between Hacienda Avenue, and Toledo Way will turn green naturally. She believed it would be irresponsible to water during a drought. In the past when the section of ground was watered year round, the church was saddled with a huge East Bay Mud bill. The Vice Chair pointed out that the church across the street was required, as a Condition of Approval to keep their grass green. They were also given the option of installing drought resistant plants. Saint Christopher's could do the same thing. Pastor Bennett said that she was very familiar with Christ Lutheran Church. She pastured there for a year and ½ in addition to her responsibilities at Saint Christopher's. The area at the church across the street is quite a bit smaller. They have also added a sprinkler system to bring water, to the area. In contrast, the area at Saint Christopher is much larger. Pastor Bennett reiterated that in a time of drought, watering the area would be irresponsible.

Mr. Mauricio Villa told the Board that he had his wedding reception, at the hall. He confirmed that the pastor and the security staff stick to the Hours of Operation. He is employed as a janitor at the church,

and even he was required to end his reception on time. Mr. Villa and his wife appreciated the fact there was an affordable facility in their own neighborhood. They also believe the preschool would be a great addition to the community.

Ms. Araceli Calderon testified that she rented the hall for her Quinceanera. The facilities were wonderful, and at an affordable price. Since the event, she and her family have begun to attend Saint Christopher's Church. It is nice to have such an outstanding church in the community.

Kathleen Harrigan spoke on behalf of the San Lorenzo Village Homeowners Association. The HOA has no objection to the proposed child care based on the conditions in the staff report including, obtaining State licensing. Regarding the rental hall, the HOA recommends that the hall close by 10:00 pm. and the property be vacated by 11:00 pm. Security should also be present at all functions. When the HOA rents their hall they follow the same guidelines. This works well for the Association, and nearby residents. The Association conducted a survey of 20 homes near the proposed application. They did not receive any complaints. Some people were not aware there had been hall rentals for approximately 1 year. The Association also requested that the application come back to the BZA for review in a period of one year for monitoring, as the church advertises the hall as rental space, in the phone book.

Masih Jalala with MJ Security introduced himself. The Board had no questions of Mr. Jalala.

Mr. Joseph Hoeschen told the Board that he lives at 18456 Via Toledo. His home is across the street from the church. Until now he was not aware of the proposed day care center but thinks that it will be okay for the neighborhood. Mr. Hoeschen said he was however opposed to increasing the frequency of the hall rental. In the past 8 to 12 months he has observed some security guards at the property. However there have been many occasions when the parties go until midnight. Mr. Hoeschen also said during events, cars screech up and down the street making a lot of noise. People should have spoken up prior to this hearing, and called the Sheriff during each incident. Sometimes he has to start work early, and must get up at 2:00 a.m. Often Mr. Hoeschen has been disturbed by excessive noise, and unable to sleep. He asked the Board to visit the site to observe the tire marks on the street. He wants to be a good neighbor but asked that the parties be limited to 10:00 p.m., in an effort to reduce noise.

Ms. Patricia Pringle said that she also had experienced serious noise disturbances as a result of the hall rental. Her home is located at 59 Corte Eulalia. The cul-de-sac is one block away from the church. Even with her doors closed, music from the hall emanates into her home. Ms. Pringle confirmed Mr. Hoeschen's testimony regarding screeching vehicles. She also has seen cars doing doughnuts on the street. Ms. Pringle said that she had called the Sheriff on several occasions about the noise, and screeching cars. She even waited for the Sheriff to arrive, and accompanied them inside one of the parties. The Sheriff was told at the party, a permit was in existence to use the hall. That apparently was not the case, as the application is only now being considered. Ms. Pringle said that she tried to obtain a copy of the Sheriff's report but was told one was not available. The person from the Sheriff's Department however did confirm there had been additional noise complaints. The HOA may have circulated letters regarding the use permit application, but they did not get to the right people. Ms. Pringle said her only concern regarding the proposed child care is that there may be a time overlap. The day care ends at 7:00 p.m. If an event at the hall were to begin at 8:00 p.m. this could cause more, noise nuisance.

The Chair called Ms. Rosita Almario to testify. Ms. Almario told the Board that she is one the day care teachers but would prefer that the applicant for center speak, during public testimony.

Mrs. Calderon, the applicant for Cherubin's Childcare Center told the Board that the building is different from the one occupied by the prior child care. The proposed Hours of Operation are 7:00 a.m. to 6:00 p.m. Monday through Friday. The center would be closed on weekends. Eventually the center would have 40 children, up to 5 years of age. Mrs. Calderon would initially like to begin with 24 children.

Board Members asked Mrs. Calderon the following questions regarding the child care facility:

- What is the number of children the applicant will apply for on their State License
- How long is a State License in effect
- Is a separate State License required for each child care location
- How many years has the applicant been in operation at their first child care site
- What is the maximum number of children the Fire Department will allow in the proposed space

Mrs. Calderon said that she would be requesting a license for 24 children. The State will not process a request for a child care license until approval of a use permit is granted. A State license will last for a period of one year. When you apply for a license you must have adequate money in the budget to operate. Mrs. Calderon said that her initial budget was small. She will begin with 24 kids, and hopefully grow in the future. The prior applicant had been approved for a maximum of 40 children. This included Fire Department, approval. Based on the prior permit Mrs. Calderon did not believe she would have difficulty obtaining a State license. Member Friedman interjected. He clarified that the prior day care permit was for a total of 30 children. Mrs. Calderon continued. She currently runs another day care called, Cherubin's Childcare Center I. The Hayward facility has been in operation for 9 years. The proposed center at Saint Christopher's would be the 2nd location.

Mr. Masih Jalala with MJ Security returned to offer rebuttal testimony. Mr. Jalala said that he was surprised by the prior testimony. He and his staff have made every effort to keep people in the parking lot from making noise. Mr. Jalala acknowledged that the security guard does spend most of the time in the hall. However the street is a big, and there is no proof that the cars making noise outside are connected to the party. Member Clark asked Mr. Jalala the following questions:

- How many security staff are on duty for each function
- Does security patrol the parking lot
- Is a security report generated for each event at the hall
- What methods are employed when security staff has to deal with unruly people
- What time is the hall vacated

Mr. Jalala said that the parking lot is patrolled approximately every half hour. The primary focus is on the party, especially if there are a lot of kids present. An event brief is generated for each event. A copy is given to the Pastor. One security person is on hand per 100 people. The music is stopped at approximately 10:15 p.m. to allow time to clean up. Everyone is out by 11:00 p.m. All security staff have received their State issued license. Staff receives further training from Mr. Jalala. If there is a problem on site, the Sheriff is called right away. Thus far, there have been no issues. The MJ Security staff is very sensitive and conscientious in providing their service. Many Elders attend events at the hall.

Ms. Cassandra Munoz testified that she also had a Quincera at the hall. There were no problems. Security walked the entire premises during the party. She also now attends Saint Christopher's Church. Public testimony was closed.

Additional Board questions for Pastor Bennett were as follows:

- Has Pastor Bennett read the staff report
- Is the church in agreement with Condition #5, to re-stripe the church parking lot
- How large is the church hall

- How large is the proposed child care area
- How would persons renting the hall be prevented from accessing the area reserved for child care
- Is amplified music currently being played beyond 55 dB in the hall

Pastor Bennett said that she had briefly reviewed the staff report. Pastor Bennett then took additional time during testimony, to read the staff report more thoroughly. Regarding, Condition #5, the Pastor responded that the parking lot was in good condition, and did not require re-paving. The applicants for the day care center would be re-striping to clearly delineate the drop off, and pick up area. Staff clarified that the parking lines throughout the lot were worn, and not clearly visible. To provide safety, all lines must be re-painted. Pastor Bennett continued. The child care would occupy a building with 4 classrooms. She did not believe there would be a problem accommodating 40 children. However she did not know the official capacity of the building. The church hall can hold more than 300 people. The maximum number of people the church will allow at any event is 200 people. Pastor Bennett asked staff for a definition of amplified music. For example, would a boom box or the church organ being played during Sunday Service could be considered "amplified". To her knowledge the music in the hall has not reached that level. However the church is willing to comply with the 55 dB (decibels) at the property line rule. The Chair asked staff what was the purpose of limiting noise levels to 55 dB's. Staff explained that amplified, means any sound put through a speaker. However the Zoning Ordinance, 6.60.040 A, measures sound in the following way. Ambient noise level is all encompassing noise associated with a given environment, being a composite of all sources, excluding the alleged offensive noise, at the location and approximate time at which a comparison with the alleged offensive noise is to be made. The Noise Ordinance does not allow more than 55 dB for more than 15 minutes during the hours of 7:00 a.m. to 10:00 pm. The Condition requiring that noise not exceed that level at the property line, in addition to no amplified music will help the sound level to remain in compliance. Pastor Bennett believed the condition requiring the elimination of amplified music in the hall would be cruel and unusual punishment. Member Friedman asked Pastor Bennett if the church would be willing to consider no amplified music past 10:00 pm. as a compromise. Public testimony was closed.

Vice Chair Peixoto said that he many unanswered questions. The application states the child care center is for 40 children. The applicant now claims there will be 24 children at the site. What Agency will confirm the occupancy load for the proposed site. Staff responded that the BZA had the ability to lower the occupancy level of the submitted permit. Vice Chair Peixoto added that the Fire Marshall should determine the official occupancy load of the proposed space.

Member Palmeri asked staff if the County had obtained a decibel meter. To staff's knowledge the County had not obtained a decibel meter. Member Palmeri pointed out additional concerns. The applicant said the hall was used in conjunction with the church. However testimony presented states the hall has been used for functions that are not connected to church activities. Would the hall rental be considered a "commercial operation". Based on information presented, it was his personal opinion that rental of the hall was a commercial use. Staff read the definition contained in the Zoning Ordinance Section 17.04.010. "Clubhouse": A building used for social or civic activities by a group of persons who are members of an organized and incorporated association, excluding any building where the chief activity is one carried on as a business, or where a room or suite of rooms is frequently rented or regularly offered for rent to nonmember groups or to the general public. The definition of "Community Clubhouse": Means a clubhouse containing facilities for neighborhood civic and social activities, operated by and for residents in the vicinity, where residence in the area served is requisite for membership. Member Palmeri responded that in comparison to a past application (The Sante Fe Application) when the BZA had to consider what constitutes an allowed commercial use, it was determined the "commercial" use was allowed to continue, because the "use" was determined non-conforming. This is not the case regarding the application currently being considered. In addition there appeared to be a lack of adequate supervision being provided, as the church and on-site security are not aware of the extent of the noise level generated

at the site. Regarding the maximum number of children allowed. The Chair was in agreement with the Vice Chair. The Fire Marshall should determine the occupancy load. In addition the Board must also know which applicant who will be responsible for upholding all Conditions of Approval.

The Chair agreed that it was imperative to understand the Zoning definition of the “use” the Board was being asked to consider. Also the actual use the applicant is conducting at the site. The Chair asked Counsel if his interpretation was that once the hall is advertised the use is no longer a permitted use, per the Zoning Ordinance. Counsel responded that his reading of the Ordinance was that the allowed use is limited to church and parish use.

Public testimony was re-opened. Pastor Joanne Bennett said that she now regretted advertising the hall in the phone book. When the ad expires she will not extend the contract. Most of the business at the hall is generated by word of mouth. People renting the hall are usually related to the church. The Chair asked Pastor Bennett if it was her intent to limit the use of the hall to church members only. Pastor Bennett confirmed that on occasion when she has received calls for events for 400 people etc. those types of inquiries are rejected. When the ad for the hall expires she will not renew the phone book advertisement.

County Counsel interjected to alert the Chair that another member of the public wanted to be heard. The Chair said it was her intent to solely re-open public testimony for purposes of clarification of the applicant’s intent. Addition testimony could be accepted if the testimony was related specifically to that issue. Public testimony was closed.

Member Clark said that she would like to further discuss the use of amplified music, and the Hours of Operation being considered for the hall.

Member Friedman asked staff to clarify Pre Hearing Recommendation #2. Hall rental for special events in conjunction with a church. Who would enforce and/or verify this condition. Also would special events be limited to Monday through Friday only.

Vice Chair Peixoto said in his opinion once the hall is advertised, it is open for public use. Vice Chair Peixoto said although Ordinance 17.04.010, limits rental by the public what Ordinance language allows special event space, “rented by the public”. He shared the concern as to who would monitor events for compliance, and limit access to church members. It appears the church has a relatively small congregation. What would supplement the loss of rental income if hall rentals were greatly reduced. Vice Chair Peixoto also asked Counsel to make a recommendation regarding the applicant’s intent to initially have 24 children at the child center, and then expand the number at a later time.

The Chair said it appeared that all of the Board Members were in agreement that the hall would be used from 8:00 a.m. to 10:00 p.m. on the week-ends. Friday night was still an unanswered question. Also is the use of the hall as a rental restricted to, related church uses according to the zoning ordinance. If that is the case would this application require public require public re-noticing. In reference to access to the parking lot after hours, perhaps posts and chain can be added to limit access to persons not authorized to be on the property.

Member Palmeri said he believed the hall should be limited to use by the church for special events. The permit should be conditioned as such, restricting the use to “church related special events”.

Staff said that their interpretation is that in the R-1 District Zoning Ordinance use of the hall is related to the church. Staff continued and said that the application description states that the special events in the hall are connected to the existing church. County Counsel confirmed that it was in the BZA’s purview to condition the permit as such to limit the use of the hall rental, to the church and the parish. The number

of children allowed at the daycare could also be limited to a maximum of 24 children. As to how the posed conditions might be enforced, Counsel was not sure what methods might be verifiable.

After Board discussion of the following issues:

- Maximum number of children allowed at the day care
- Amplified music
- Access to hall
- Access to the parking lot of the church
- Permit length

The Board agreed on modifications to the Pre Hearing Recommendations of Conditional Use Permit, C-8600.

Member Palmeri motioned to adopt staff's Tentative Findings and Pre Hearing Recommendations with the following modifications. The word "rental" shall be deleted from all Tentative Findings.

Condition #1 shall allow the operation of a pre-school facility for a maximum of 24 children, age 2 ½ or older; prior to Kindergarten.

Condition #2, shall authorize operation of a hall for special events in conjunction with the church or parish. Use of the hall is not authorized for rental to the general public.

Condition #6, shall state that noise shall not exceed 55 dB at the property line. The term amplified music shall be omitted from this Condition. All facility functions shall be limited to the interior of the hall after 7:00 p.m. in the evening. Doors and windows of the facility must remain closed after 7:00 p.m.

Condition #7, shall state that the hall is available on Saturday and Sunday between the hours of 8:00 a.m. and 10:00 p.m. Events must end promptly at 10:00 p.m. Church property must be vacated by 11:00 p.m.

A Condition shall be added that the permit return for review in a period of one year to the Board of Zoning Adjustments. At which time the BZA will consider the modification and/or addition of Conditions, up to and including revocation. A determination will be made if the Permit, C-8600 shall be allowed to remain in effect, and expire on June 13, 2010.

Vice Chair Peixoto seconded the motion. Member Clark asked for a modification. Her request was that a Condition be added that required security be present at all hall functions. The Chair responded that security may not be required once the use of the hall is limited to church functions. This issue can be reviewed in a period of one year. Member Palmeri agreed to modify his motion to include a Condition that the church be required to secure the parking lot, each day from 11:00 pm. to 6:00 a.m.

Vice Chair Peixoto accepted the modification. The motion to approve Condition Use Permit, C-8600 as modified carried 5/0.

The meeting was adjourned for a 5 minute recess at 7:45 p.m. The meeting reconvened at 7:50 p.m. The Chair announced that Member Palmeri would not be present for the balance of the meeting.

2. **CASTRO VALLEY WOMEN'S CLUB, CONDITIONAL USE PERMIT, C-8607** – Application to allow continued operation of a clubhouse, in a P-D (Planned Development, 1581st Zoning Unit) District, located at 18330 Redwood Road, east side, approximately 90 feet south

of Emily Court, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 414-0036-055-00.

Mr. Dick Bigelow spoke on behalf of the Castro Valley Women's Club. The Club was in agreement with the Conditions of approval. Mr. Bigelow explained that he is not a member of the Club but was asked to represent them at the hearing. Mr. Bigelow was the Realtor that sold the group the parcel 24 years ago. He has maintained an ongoing friendship. Public testimony was closed.

Member Friedman motioned to adopt the staff finding of approval. Member Clark seconded the motion. Motion carried 4/0. Member Palmeri was not present during consideration of this item.

3. **CHRISANN NICHOLSON, CONDITIONAL USE PERMIT, C-8632**
– Application to allow continued operation of a pre-school for 22 children, in a R-S-D-25 (Suburban Residence, 2,500 square feet Minimum Building Site Area per Dwelling Unit) District, located at 20121 Santa Maria Avenue, west side, approximately 280 feet north of Jamison Way, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084A-0108-001-04.

Staff reviewed the application. Planning staff and the CVMAC were both in support of the application. CVMAC voted 7/0 to approve the permit. Member Friedman asked staff if the reference on page #3 of the staff report about costs to submit a use permit application was used as a "boiler plate", since the same language was also in another application. Staff responded they were not familiar with all of the details related to this specific application. Most applicants do however state that cost, is an issue. Public testimony was opened.

The applicant, Ms. Chrisann Nicholson was present. She told the Board that she was not aware the cargo trailer on the property required a permit. The trailer was leased to hold supplies. The container will be removed from the property. At this time she cannot afford the application costs, to bring the issue before the Board. The cars that have been left on the property belong to members of the church. The owners of the vehicles have been notified, and the vehicles will be removed from the property. In response to Member Friedman's earlier statement, Ms. Nicholson said the \$1,000 application cost had a big impact on the church. The membership of Unity Church is small. The last permit renewal cost, \$500. The increase has quite a financial impact. A 10 year expiration date helps keep cost down. Board Members asked the following questions:

- Is the applicant in agreement with the recommended Conditions of Approval
- Is there a plan to improve landscaping on the property
- Is the space used by the daycare also used for A.A. Meetings

Ms. Nicholson confirmed that she was in agreement with staff's recommendations. Since the pre-school has been at the site there have been no complaints, or problems. The landscaping is the responsibility of the church. Ms. Nicholson rents the space. The A.A. Meetings do not take place during the same hours as the pre-school, and are held in a different room. The space occupied by the pre-school is sometimes used on the week-ends as overflow for church functions. However there is never any overlap. Public testimony was closed.

Member Clark motioned to approve the application based on staff's Tentative Findings. Pre Hearing Recommendations shall be adopted as Conditions of Approval. Vice Chair Peixoto seconded the motion. Motion carried 4/0. Member Palmeri was not present during consideration of this item.

4. **ENVISION HOME DEVELOPMENT, VARIANCE, V-12056** - Application to allow expansion of a non-conforming building with construction of a duplex with a: Zero foot setback from the access driveway where 10 feet is required, and a nine foot wide driveway where 20 feet is required, in an R-3-B-E (Three Family Residence, 8,750 square feet Minimum Building Site Area) District, located at 1435 – 166th Avenue, north east side, approximately 270 feet, north west of East 14th Street, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0076-030-00. (Continued from March 14, April 11 and April 25, 2007).

Staff told the Board that the original application was continued from the March 14, and the 11th and 25th of April Hearings, for the applicant to explore design alternatives. The applicant now proposes to build a single family dwelling at the rear of the lot, as opposed to a duplex. This change would reduce the driveway width requirement to 12 feet. The applicant could meet the 12 foot width requirement by removing the 2 foot planting strip that currently exists. One variance for a zero foot setback from the existing home would still be needed as the existing home was placed before zoning requirements were enacted. Member Friedman asked staff if this application had gone before CVMAC. Staff responded that the project location was outside of the CVMAC's sphere of influence. Member Clark asked staff to confirm the only variance request now before the BZA was for; a zero foot setback from a dwelling wall to a driveway. Staff confirmed that was correct. Public testimony was opened.

Mr. Bobbie Scoot, a representative for Envision Home Development said he discussed the modification plan with staff planner, Christine Green. The rear unit is no longer a duplex, and will be built as a single unit. Mr. Scott was not able to bring the modified drawings to the hearing but assured the Board he would submit them on Monday. The Chair asked staff if this would be acceptable. The Chair also asked if a planting strip could still be incorporated into the modified design. Staff confirmed drawings for the single dwelling could be submitted next week. The existing planting strip would have to be removed to accommodate a 12 foot driveway. The existing home is placed as such this would be the only way to access the rear of the lot. The total distance from the driveway to the fence is only 13 feet. Vice Chair Peixoto added, the original home on the property was built in 1924. Public testimony was closed.

Vice Chair Peixoto motioned to approve the zero foot setback from the dwelling to the driveway, portion of the variance. Member Clark seconded the motion with a request that Condition #4, referring to structurally attached units be deleted. Vice Chair Peixoto accepted the modification. Motion carried 4/0. Member Palmeri was not present during consideration of this item.

5. **LEE'S SIGN/LINDA THAI – VARIANCE, V-12070-** Application to allow a roof sign where otherwise not permitted in a C-O (Administrative Offices) District, located at 1600-150th Avenue, southeast side corner of Lark Street; unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0022-015-01. (Continued from June 27, 2007).

Staff reviewed the application, and recommended approval. The matter was continued from the June 27, 2007 Calendar to allow the Redevelopment Agency time to consider the design. Redevelopment has now submitted a referral, and has no objection to the sign. Public testimony was opened.

Mr. Luan Le, the owner of the property was available to answer Board Questions. Mr. Le clarified that Ms. Linda Thai is the owner of the sign business, located on the property. The Board had no questions.

Public testimony was closed.

Member Friedman motioned to adopt the staff recommend of approval. Member Clark seconded the motion. Motion carried 4/0. Member Palmeri was not present during consideration of this item.

APPROVAL OF MINUTES: Member Clark motioned to approve the Minutes of May 30, 2007 with submitted corrections. Member Friedman seconded the motion. Motion carried 3/0. Vice Chair Peixoto abstained. He was not present at the May 30, 2007 Hearing. Member Palmeri was not present during consideration of this item.

The Minutes of June 13, 2007 were continued by the Chair.

Member Clark motioned to approve the Minutes of June 27, 2007 with submitted corrections. Member Friedman seconded the motion. Motion carried 3/0. The Chair abstained. She was not present at the the June 27, 2007 Meeting. Member Palmeri was not present during consideration of this item.

STAFF COMMENTS & CORRESPONDENCE: Staff made no comments.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

Member Friedman asked staff if comments made during the Open Forum portion of a Board of Zoning Adjustments Meeting were limited to topics related to Board business. The Chair commented that many adjudicatory bodies have Open Forum as an agenda item. Additional Board Questions for staff were as follows:

- Are there any State of California statutes that govern public testimony
- Can profanity be used during open forum, public testimony
- Can topics of discussion be limited during public testimony

County Counsel responded that he believes public testimony maybe be limited to specific topics. There is a portion of the Brown Act that addresses the public's right to speak. Counsel will research the provision and report back to BZA. Counsel will also review the BZA's Charter to determine if the Board is obligated to provide time on the agenda for public testimony. Vice Chair Peixoto said that in his past experience on various Boards and Commissions, when a member of the public began to castigate a Board Member or Commissioner about issues such as field trip attendance. The person was told that their conduct was out of order. The person was then asked to be seated, and their testimony was ended by the Chair. The method proved to be effective.

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

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS