

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
JULY 22, 2009
(APPROVED AUGUST 26, 2009)

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

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Chair, Dawn Clark-Montenegro; Members, Jewell Spalding, and Frank Peixoto.

MEMBERS EXCUSED: Vice Chair, Kathy Gil and Ineda Adesanya.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel, Andrea Weddle, William Fleishhacker; Code Enforcement Staff; Yvonne Bea Grundy, Recording Secretary.

There were approximately 3 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 1:30 p.m.

ANNOUNCEMENTS BY THE CHAIR: 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.

Neighborhood Preservation Ordinance Abatement Hearing

- 1. Deutsche Bank National Trust, Standish Ave., Hayward, CA 94541**
In violation of Alameda County Ordinance 6.65.030 D (1), D (3) and M (1).
 1. Overgrown vegetation & weeds throughout the front yard.

Member Peixoto motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 3/0.

- 2. Bertha & Juan Medina/Countrywide Home Loans, Medford Ave., Hayward, CA 94541**
In violation of Alameda County Ordinance 6.65.030 D (1), D (3) and M (1).
 1. Overgrown vegetation & weeds throughout the property.

Member Spalding motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Peixoto seconded the motion. Motion carried 5/0.

- 3. Qasemi A Moqim, vacant lot at 16881 Robey, Dr., San Leandro, CA 94578**
In violation of Alameda County Ordinance 6.65.030 D (1), D (3) and M (1).
 1. Overgrown vegetation & weeds on the property.

Member Spalding motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Peixoto seconded the motion. Motion carried 5/0.

- 4. Bayfair Commons LLC., vacant lot at East 14th St., San Leandro, CA 94578**
In violation of Alameda County Ordinance 6.65.030 A (1), D (1), D (3) and M (1).

1. Debris & litter
2. Overgrown vegetation & weeds on the property.

Member Peixoto motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 3/0.

5. **Reconstruct Company, N.A., Dawe Ave., Castro Valley CA 94546**
In violation of Alameda County Ordinance 6.65.030 D (1), D (3) and M (1).
 1. Overgrown vegetation & weeds on the property.

Member Spalding motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Peixoto seconded the motion. Motion carried 5/0.

6. **Ruth A Moal, Tr., Carmel Dr., Castro Valley CA 94546**
In violation of Alameda County Ordinance 6.65.030 D (1), D (3) and M (1).
 1. Debris & miscellaneous items.
 2. Overgrown vegetation & weeds on the property.

Member Spalding motioned to modify the staff recommendation to complete abatement within 10 days. Declare the property a public nuisance, require abatement to be abatement to now be complete in 15 days. Member Peixoto seconded the motion. Motion carried 3/0.

7. **Lyle R. Smith, Valley View Drive, Hayward, CA 94541**
In violation of Alameda County Ordinance 6.65.030 A (1), D (1), D (2), D (3) and M (1).
 1. Weeds and overgrown vegetation on the property.
 2. Torn tarps and/or debris on roof house.

Member Peixoto motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 3/0.

8. **Jose D. Loza/Quality Loan Service Corp., Star Ridge Road (East Ave), Hayward, CA 94542**
In violation of Alameda County Ordinance 6.65.030 D (1), D (2), D (3) and M (1).
 1. Overgrown vegetation and weeds on the property.

Member Spalding motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Peixoto seconded the motion. Motion carried 3/0.

CONSENT CALENDAR:

1. **T-MOBILE / HARD, CONDITIONAL USE PERMIT, C-8734** – Application proposal to replace an existing 25 foot light pole with a new 35 foot pole with lights and four concealed antennas. A new equipment enclosure is also proposed to be located nearby. The subject parcel contains approximately 0.91 acres and is zoned R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, RV Parking) District, located at 18988 Lake Chabot Road, east side, north east of Keith Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1305-012-00. (Continued from July 9, September 10, November 5, 2008 and January 28, February 25 and March 11 and April 22, 2009; to be continued to September 23, 2009). **Staff Planner: Jeff**

Bonekemper.

Member Peixoto asked why the application continued to be delayed. Staff told the Board the request had been considered by the Castro Valley Municipal Advisory Committee on two occasions. Each time the recommendation was denial. The Application has undergone multiple revisions. At this juncture the Applicant is determining if they will move forward with the present design, or undergo another revision.

2. **STACI ROMBOUGH, VARIANCE, PLN-2009-00061** – Application to allow: a) building site status for a site of 2,479 square feet, where 5,000 square feet is required; b) a 0.27 foot rear yard setback, where 20 feet is required; c) a 1.04 foot street side yard setback, where 10 feet is required; d) a 2.47 foot front yard setback where 20 feet is required; e) a 2.95 foot setback side yard setback, where five feet is required; and f) zero parking spaces, where two are required. The site is zoned R-1 (Single Family Residential), located at 2005-150th Avenue, west side, north of 149th Avenue, in the unincorporated Hillcrest Knolls area of Alameda County, designated County Assessor's Parcel Number: 080-0006-013-04. (To be continued to August 12, 2009). **Staff Planner: Howard Lee.**

The Chair asked if project had been forwarded to the Hillcrest Knolls Homeowners Association for review, and if the parcel is considered a buildable lot. Staff said further research is required to determine the history, and creation of the parcel. The Chair responded, the community was concerned about the viability of the site. The project should also be re-submitted to the Sheriff's Department. The nearby Sheriff's station has a fairly intense commercial use. Eight Sheriff's units are supported from the site, in addition to use as bunker and dispatch center. The entirety of the frontage along 149th Avenue is a "no parking zone". Therefore parking for the proposal would take place in front of the Sheriff's Office. Staff will re-submit a referral to the Sheriff's Department. A project referral will also be sent to the Hillcrest Knolls Homeowners Association.

Member Spalding motioned to accept the Consent Calendar as modified. Member Peixoto seconded the motion. Motion carried 3/0.

REGULAR CALENDAR

JAMES SILVA, VARIANCE, PLN-2009-00010 – Application to allow an illegally constructed garage located in the front half of the property where otherwise not allowed, and within six feet of the side property line of the front half of an abutting lot, in an R-1-B-E-CSU-RV (Single Family Residence, Minimum lot size 10,000 square feet, Median lot width 70 feet, Conditional Secondary Unit, Recreational Vehicle Parking Regulations) District, located at 4235 Krolop Road, south side, approximately 96 feet west of Vineyard Road, unincorporated Castro Valley area of Alameda County, designated County Assessor's Parcel Number: 084D-1140-009-20. **Staff Planner: Carole Kajita.**

Staff reviewed the application, and recommended denial. The CVMAC also recommended denial at the July 20, 2009 meeting. Initial Board questions were as follows:

- What was the recordation of the CVMAC vote
- When was the site red tagged
- At what stage did the work cease
- How many garages and or accessory structures are located on the site

- What structures existed prior to construction of the garage
- Where is the property line

The final vote of the CVMAC was five Members in support of denial, one in support of approval, and one abstention. The structure was red tagged in 2007. An Alameda County Building Inspector was in the area, and discovered active construction. The doors of the structure had not been installed. There were also issues with the siding. The incomplete structure was red-tagged. The detached garage is located on the northwestern side of the property. Although incomplete, it is in use. The added garage structure is the only accessory building on the site. The property line forms an angle. The neighboring property has a garage along side the property line within its own boundaries. Public testimony was opened.

The Applicant, Mr. Silva was not present. Staff confirmed Mr. Silva was notified of the hearing, and given a staff report. Mr. Silva also came to the Planning Department at the first of the week, to discuss the application.

Mr. William Burton, a neighbor that lives on Krolop Road read a prepared statement. Mr. Burton said he did not enjoy giving testimony in opposition because Mr. Silva is a nice guy. However Mr. Silva made a serious error in judgment when he built the garage without obtaining required zoning, inspection, and permit approval. If the Board granted the variance, precedence would be established zoning approval is a waste of time, therefore encouraging circumvention of the permit process. Mr. Burton strongly objected to the absence of front, and side setbacks. As a licensed, active building contactor Mr. Silva knew what he was doing, and that the setbacks were insufficient. Mr. Burton urged the Board to deny the variance. He continued beyond his prepared statement, telling the Board he spoke with Mr. Silva when 12 construction timbers appeared. He asked Mr. Silva if he had obtained permits. Mr. Silva confirmed he had not. The Building Department discovered the work when they were present at a near by site. The Building Inspector did red tag the garage. Mr. Burton said in his opinion the property is too close to the street. The driveway is so short that when a vehicle is parked, it protrudes into the street. It would be difficult for another car to hit the vehicle, but it protrudes none the less. Most homes in the area have driveways approximately 20 feet in length. The Silva's driveway could be 6, 8 or 10 feet, but a maximum of 12 feet. If the garage remains and is completed, four doors with a maximum of six feet of separation will face street ward. This gives the structure a condominium like appearance which Mr. Burton believed was unattractive. The construction project has gone too far. The Board should not allow the structure to remain without modification. The garage should be limited to dimensions allowed by the building code. Mr. Silva has already added living area to the home. In addition there is a swimming pool behind the house. Although the aforementioned work was probably done with benefit of permit, the added unpermitted garage overloads the site. The site is at maximum density. Board questions were as follows:

- How many garages are located on the site
- What is the distance between the garage and the pool
- Where is the property line located
- Is Mr. Burton aware a possible outcome of application denial is demolition of the garage
- Did Mr. Burton have design recommendations to offer

Staff displayed a site plan and further explained the property line jogs in an L shape, at the rear. The adjoining property also has a garage toward the rear, which may lead to the illusion there are two garages at the rear of the Silva's property.

Mr. Burton said the site should be measured. The structure appears to be movable, and salvageable. Perhaps the garage could be relocated on the site without complete demolition. At the time of construction, Mr. Burton proposed relocation to right rear portion of the property. Mr. Silva said relocation would require a retaining wall, and further engineering. He did not want to pursue that option.

because it reduced the recreational portion of the site. Mr. Burton told the Board another possible option is to move the garage diagonally toward the pool, and then connect it to the house. This may greatly reduce encroachment into the setback. He was unsure of the exact distance however there appears to be 8 feet of available space. Mr. Burton did not want to see the garage demolished, but he did not want someone to be rewarded for an act they were not supposed to commit. There has to be a penalty, and consequences for building without permits. Illegal construction also prevents the County from obtaining tax revenue. Mr. Burton told the Board he has lived in the area, 48 years. During which time he has obtained 21 building permits. All work passed final inspection and received approval. None of the work was conducted in a bootleg manner. He reminded the Board the Applicant was a building professional, who actively uses his license. He should not be allowed to hide from responsibility. Mr. Burton did not if it was up to him or the Board to re-design the project. Ultimately demolition may be necessary. If the structure is allowed to remain, it may encourage others to build illegally and obtain variances. He asked staff if Mr. Silva had an opportunity to consider alternate designs. Present staff was unsure if prior consideration of re-location was discussed with Mr. Silva.

Ms. Eleanor Perry told the Board she has lived in the neighborhood longer than Mr. Burton. She agrees with his comments. Ms. Perry was very upset that a building professional would knowingly violate building code regulations. He has erected a structure that is blatantly out of character with the neighborhood. The garage is obtrusive, and obviously does not belong. Mr. Silva knows the garage is not in compliance. The structure is presently without doors. However when a truck is parked in front the garage, doors it will further re-enforce the "industrial" appearance. No one should be allowed to break the law this way. If the garage were a shed at the rear of the lot, it would not bother her to the same degree. However the garage is so obvious, it is offensive. Although Ms. Perry does not live directly across the street from the Applicant, she does see the garage when she drives up and down the street. Public testimony was closed.

Member Spalding said she visited the area. She observed many sites with greatly reduced setbacks. The staff report lists six homes, with set back issues. Member Spalding noted overall the neighborhood was lovely. The Silva home was well maintained. It is important when people maintain their property. Staff said they are aware of one site that had been granted a variance, and completed construction with benefit of permit. Some of the sites have obviously added carports, without the benefit of permit. Staff explained a variance may still be required if the structure is re-located to the rear of the lot. The requirement is 20 feet for the front, and 10 feet for side setbacks. The option of angling the garage 90 degrees may be a possibility, however measurements are necessary. Member Spalding said Mr. Silva's absence presented a challenge. A continuance may allow redesign resulting in a lesser, or elimination of a variance. Mr. Burton interjected from the audience. He said he also recommended that Mr. Silva revert to use of the original 2 car garage on-site. Mr. Silva told him his pick-up truck would not fit. Perhaps the original garage can be modified.

Staff announced they were amenable to a continuance if the Board would like them to determine if sufficient room is available for relocation. Further Board questions were as follows:

- What are the total number of parking spaces required at the site
- How is the size requirement calculated for each space
- Was the pool on the site installed with benefit of permits
- Is the dwelling located directly on the rear setback
- How is the front setback calculated
- Is the Applicant using the original garage for parking

Staff was unsure if Mr. Silva is using the original garage. Zoning requires two on-site parking spaces that

are not located within the front setback. The configuration of the site without the added garage is acceptable. The setback is measured from the front property line. Twenty feet is allowed for a parking space. There is a potential regardless of the placement the parking spaces, there may be encroachment into the public right of way. Actual site measurements would be necessary to determine present right of way encroachment, or the possibility of encroachment, as the result of modification. The rear yard setback is deficient however open space at the site compensates for the deficiency. Staff was unsure if the pool had been installed with benefit of permits.

Board Members further discussed the possible options of rotating the structure 90 degrees, attaching it to the home, and street parking. Staff said a continuance to August 26, 2009 should be sufficient to consider design modification. Counsel confirmed the item could be put on the Regular Calendar, and continued from that point if additional time is needed.

Member Spalding said the Applicant had made an investment in the project, they probably would like to consider possible options. A continuance may be in order. In the event the application is continued and the Applicant is not present at the future hearing, The Board can always uphold the staff recommendation of denial.

The Chair noted after reviewing a Site Plan that the parcel is square in shape, and appears to be completely, built out. The garage structure has been red-tagged since 2007. She acknowledged she was slightly conflicted. However testimony provided by Mr. Burton that Mr. Silva is a licensed contractor illustrates, he should be an expert in the relevant subject matter. There should be more of a burden on someone with expertise. She acknowledged re-design by the Board could be a slippery slope. The most disturbing fact was the absence of Mr. Silva at the hearing. It may be appropriate for the Board to vote on the application. If Mr. Silva had been present, she may have been more inclined to proceed in a different manner. She asked Members for their thoughts.

Member Peixoto said in most instances he was inclined to continue applications if the Applicant was not present to hear the Board's recommendation of denial. However in this case the structure was red-tagged and Mr. Silva did not resolve the issue proactively. It does not appear Mr. Silva would like to speak with the County. As a licensed contractor he should know better. It is not the Board's responsibility to micro manage the project. The staff recommendation should be upheld. The variance should be denied.

Board Members were concerned if they could not come to a unanimous vote there was an insufficient number present to break a tie. The Chair asked Counsel what options might be available in the event a unanimous decision could not be reached. Counsel reviewed the West County Board of Zoning Adjustments Bylaws. Bylaws confirmed that every action must have three affirmative votes. If three votes cannot be reached in agreement, the application would be referred to the Planning Commission.

Member Spalding said she was inclined to continue the application to the next meeting because Mr. Silva was not present.

Member Peixoto said he wanted to enforce the Zoning Ordinance, and would support the staff recommendation of denial.

Member Spalding motioned to continue PLN-2009-00010, Silva to the August 12, 2009 Hearing. The motion died due to lack of a second.

The Chair passed the gavel to Member Spalding and motioned to uphold the staff recommendation to deny PLN-2009-00010, Silva. Member Peixoto seconded the motion. Member Spalding was opposed. The motion of 2/1 was not sufficient to reach a unanimous decision.

As Board Members present could not reach a unanimous decision, PLN-2009-00010, Silva was referred to the Alameda County Planning Commission. The Chair requested the information regarding today's proceedings and the future hearing date be forwarded to the Applicant, and to the neighbors that offered public testimony.

APPROVAL OF MINUTES: Member Spalding motioned to approve the Minutes of July 8, 2009 as amended. Member Peixoto seconded the motion. Motion carried 3/0.

Due to the lack of a quorum of Members that were present at the Hearings of June 1, and June 24 the Chair continued approval of June Minutes the August 12, 2009 Hearing.

STAFF COMMENTS & CORRESPONDENCE: Counsel Andrea Weddle. Andrea Weddle introduced new Deputy County Counsel Representative, William Fleishhacker. Mr. Fleishhacker told the Board he practiced law for 14 years, specializing in Land Use. He began his career with the San Francisco City Attorney's Office. He has also held positions at private law firms handling land use matters. In addition Mr. Fleishhacker appeared on a matter before the San Francisco Planning Commission. He looks forward to working with the BZA. Board Members welcomed Mr. Fleishhacker.

Staff announced there were no recent appeals of Board of Zoning Adjustments decisions to the Board of Supervisor's.

The Board of Zoning Adjustments denial decision of Conditional Use Permit, C-8555 Laguna appealed to the Board of Supervisor's, was upheld. The Applicant can apply for a new permit one year from the date of the decision.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Board Members made no announcements.

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

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS