

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
JULY 25, 2007
(APPROVED ON AUGUST 22, 2007)

The 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 Jewell Spalding; Vice Chair Frank Peixoto; Members Lester Friedman and Dawn Clark-Montenegro.

MEMBERS EXCUSED: Ron Palmeri.

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

There were approximately ten 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: None.

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

No one requested to be heard under open forum.

CONSENT CALENDAR:

1. **JOSE OLIVAREZ, CONDITIONAL USE PERMIT, C-8559** – Application to allow the continued operation of an indoor recreation facility in an ACBD-FA (Ashland Cherryland Business Districts Specific Plan) Freeway Access District, located at 20613 Mission Boulevard, southwest side, approximately 100 feet, northwest of Medford Avenue, unincorporated Cherryland Area of Alameda County, designated Assessor's Parcel Number: 414-0041-037-00. (Continued from February 28, March 28, April 25, May 23 and June 13, 2007; to be continued to August 22, 2007).
2. **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. (Continued from July 11, 2007; to be continued to August 22, 2007).
3. **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. (To be continued to March 12, 2008).

4. **ARNOLDO HERNANDEZ / PETTIT, VARIANCE, V-11978 and SITE DEVELOPMENT REVIEW, S-2051**– Application to allow the conversion of an existing attached one car garage to living space and provision of two uncovered spaces in the rear, in an R-1-CSU-RV (Single Family Residential) District, located at 4421 Alma Avenue, south side, approximately, 770 feet west of Brickell Way, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0820-014-00. (Continued from September 27 and November 8, 2006; January 10, March 28 and June 27, 2007; to be continued to September 12, 2007).
5. **PATRICK LOVE, VARIANCE, V-11982** – Application to allow a garage conversion with on-site parking in the side yard, in an R-1-SU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 3773 Cottage Court, north side, approximately, 284 feet west of Parsons Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1329-017-00. (Continued from April 12, May 24, July 12, July 26, September 27 and November 8, 2006, January 10, March 28 and June 27, 2007; to be continued to September 12, 2007).
6. **AC MAHARAJ CONSTRUCTION, VARIANCE, V-12060** – Application to allow the construction of two new single family dwellings with a zero foot setback from the existing dwelling wall to the driveway where 10 feet is required, in an R-S-SU (Suburban Residence, Secondary Unit) District, located at 670 & 672 Hampton Road, north side, approximately 150 feet northwest of Camden Avenue, Unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 414-0026-100-00. (Continued from May 9, June 13 and June 27, 2007; to be continued to August 22, 2007).

Member Friedman asked if the garage conversions are being continued due to the new ordinance being finalized for garage conversions. Staff responded that the revised Garage Conversion Ordinance had been approved at the Board of Supervisors. Once the final reading of the Ordinance was complete, applications will be brought forward for review.

Vice Chair Peixoto made the motion to approve the Consent Calendar as presented. Member Clark-Montenegro seconded the motion. Motion carried 4/0.

REGULAR CALENDAR

1. **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.

Mr. Sawrey-Kubicek read the project description and informed the board that this item had been heard by

the Castro Valley Municipal Advisory Council and was approved. The Chair asked if approval was unanimous. Staff responded that the item was on the Consent Calendar.

The Vice Chair noted that the facility had been operating without a permit since 2004. The Chair asked if this is a new use, the previous facility was for the elderly and the current application says for Alzheimer's patients. Staff verified that the previous application dated 1984 mentions Alzheimer's patients. Public testimony was opened.

Terry Carson owner and operator of the facility stated that he has owned, and operated the facility since 1989. The last permit was approved for ten years. Mr. Carson was not aware there had been a lapse in the permit. The facility has been operating without incidents since 1989. Member Clark-Montenegro asked if all patients are ambulatory. Mr. Carson explained that the term ambulatory versus non-ambulatory is a term used by the Fire Department to define patients who need assistance and/or direction when exiting a building. Mr. Carson said that all the patients have some form of dementia. The most prevalent type is, Alzheimer's. Additional Board questions were as follows:

- When was the last Fire inspection completed
- Is the facility considered a "skilled nursing facility"
- Does the facility have nurses on staff
- What is the total occupancy of the facility
- How many beds are designated for Alzheimer's patients

Mr. Carson did not bring verification of the most recent fire inspection to the meeting. The inspection was most likely within the past year. The facility is licensed under the Department of Social Services for residential care facilities for the elderly. ALT Care is not a skilled nursing facility. California State Licensing also requires an annual Fire Inspection. The facility must also maintain a fire alarm, and monitoring system. Mr. Carson confirmed the facility has 38 beds, with double occupancy. This includes Alzheimer's patients. There are no nurses on staff. Public testimony was closed.

Member Friedman made the motion to approve the conditional use permit with an expiration of ten years. Member Clark-Montenegro seconded. Vice-Chair Peixoto asked that an amendment be made to request documentation for the most recent fire inspection. If a fire inspection has not been completed, inspection must be completed before the permit is extended.

Discussion ensued on Fire inspection requirement. Staff recommended the following conditions modified to read:

- #6 All requirements of the following County and State agencies shall be met:
- a. Alameda County Environmental health Department;
 - b. State Department of Social Services, State Licensing Agency;
 - c. Fire Department in compliance with inspection or secure inspection clearance within 30 days
 - d. Building Inspection Division, Public Works Agency

Member Friedman agreed with the amendment to the original motion. Member Clark-Montenegro seconded. Motion carried 4/0.

2. **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.

Mr. Sawrey-Kubicek presented staff report. Staff recommended approval of the application. Vice-Chair Peixoto asked if Pajaro Court is a private street. If so this would preclude the staff from providing recommendations. Staff confirmed that Pajaro Court was a public street. However, in the event a street is private, staff can still impose conditions within a planning application. Public testimony was opened.

The applicant, Mr. Mar, stated that Pajaro Court was a private street. As a result he questioned Condition #2, requiring installation of curb, gutter and sidewalk since he is not the owner of the property.

Mr. Mar leases the property from Ms. Josephine Silva. He stated that there has not been any changes to the business mode of operation. Mr. Mar then asked what was the standard time period for a use permit. Staff, recommended a three year term for his application, although he pointed out that an application heard prior to his was granted for 10 years. The permit process is expensive. The Chair said she understands that the permit process is expensive. In reference to the permit that was granted for 10 years, the business had a 50 year history. The Board would take Mr. Mar's request into consideration. However, planning staff would also have to be in agreement with an extension in permit length.

Staff related to the Board that 50 feet of the road is County Right of Way. The street currently has concrete on the side. The Board could eliminate Condition #2, and have the Redevelopment Agency improve the street as part of the slated plans for the enhancements for East 14th Street. Vice Chair Peixoto agreed with staff's recommendation. The Chair asked the applicant and the owner of the property if they read the staff report. Both confirmed that they had. The property owner, Ms. Silva, testified that Pajaro Court is a private street. Half of the street is owned by the Fire Department, and half is owned by Public Works. The Chair asked staff if input from the Traffic Engineering Department was required. Staff said that Traffic Engineering reviews Redevelopment Agency projects. The Chair suggested the deletion of Condition #5b, Traffic Engineering. The Chair asked Mr. Mar if the hours of operation were acceptable. Mr. Mar confirmed the hours were acceptable. Mr. Mar then asked what was the submittal time frame for the required landscaping plan. Staff confirmed 90 days. Public testimony was closed.

Vice Chair Peixoto made the motion to approve the conditional use permit with the deletion of Condition #2. Condition #3 shall require submission of a plan at the end of 90 days. Condition #5b shall be deleted. Member Friedman seconded the motion with the modification that the permit be extended 2 additional years. The permit shall now expire in 2012. Staff agreed to Member Friedman's modification. Motion carried 4/0.

3. **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.

Mr. Sawrey-Kubicek presented the staff report. The staff recommendation was approval of the project. The item was unanimously recommended for approval by the Castro Valley Municipal Advisory Council. The Vice Chair questioned the extension of ten years of conditional use permit C-7327. Consideration for a new CUP appeared to be premature. Staff explained that this facility houses different carriers. Conditional Use Permit, C-7327 is held by Nextel. This permit does not expire until October, 2008. The Chair asked that staff distinguish the terms and uses for each permit in the front of the staff report. Member Clark-Montenegro asked staff if this permit also discusses camouflaging the tower. Staff said thus far, camouflage had not been part of the discussion. Public testimony was opened.

The applicant was not present. Public testimony was closed. The Chair stated that she would like to continue this item since the applicant is not present. She would like to address concerns regarding the appearance of the tower with the applicant.

Member Clark-Montenegro motioned to continue the item to September 26, 2007. Vice Chair Peixoto seconded the motion. Motion carried 4/0.

4. **BILL BRENNAN, VARIANCE, V-12074** - Application to allow an accessory structure (barn) on the front half of the property; and with a zero foot depth front yard where 30 feet is the minimum required in an R-1-L-B-E (Single Family Residence, Limited Agricultural, 5 acre Minimum Building Site Area, 300 foot Minimum Lot Width, 30 foot Front Yard, 20 foot Side Yard) District, 25634 Clover Road, north side, 900 feet west of East Avenue in the unincorporated Fairview area of Alameda County, Designated Assessor's Parcel Number: 425-0050-021-02.

Mr. Sawrey-Kubicek presented the staff report, and recommended denial of the application. Member Clark-Montenegro asked staff if a property with a barn in the front yard, located at the corner of Star Ridge Road and Clover Road had been granted a variance. Staff was not aware of the zoning history on the barn. Member Friedman asked if the applicant had resolved the issues with the septic and leach field. Staff said that as of the hearing date, no additional documentation had been received as to septic system or the location of current leech fields. The Chair asked if she was required to recuse herself since she knows the applicant. County Counsel said the fact that the Chair knew the applicant was not sufficient to mandate, recusal. However, if the Chair has any financial connection, she may not want to participate regarding this application. Public testimony was opened.

Bill Brennan, the owner of the property, stated that the barn has been there for 7 years. The barn doors are approximately 25 feet from the street. The property was first developed in 1950, and has 160 feet of frontage along Clover Road. Mr. Brennan referred to a plot map to illustrate the location of the site. The site faces two streets, and is at a 90 degree angle with the property facing west. The front of the property is approximately 1 acre in depth. The rear of the property is about 15 feet. His property is unique because the frontage is much larger than other parcels. The lot next to his has a frontage of 60 feet. The next parcel down only has a frontage of 25 feet. Mr. Brennan told Board Members that there were barns and structures in the neighborhood without permits. Mr. Brennan then showed a video of his property, and other properties in the area which have zoning issues. He stated that he was very frustrated with the County's handling of a complaint about his barn which has now escalated to other issues with his property. He believed County staff should have stayed focused on the barn during a site visit as opposed to focusing on septic systems and the number of animals on the property. Mr. Brennan said that he has had an animal fanciers permit for 15 years. The permit was issued by the Sheriff's Department. When he installed the barn he discussed the placement with the Sheriff's Department. He said that after discussing issue like access to feed, hitching posts, and limiting paved surface areas the Sheriff's Department told him where to place the barn. The septic lines were already in place when he purchased the property. Originally Mr. Brennan considered placing a garage in the spot 30 feet from where the barn is now located. This was not practical because when it rains the ground is continuously muddy due to the property slope. The staff report also confirms that the rear of the property is too steep for any structure. Mr. Brennan pointed out an error in the staff report. The report said that 1997 bedrooms were added to the existing home, resulting in a total of six. He presented the original plans, an occupancy report from the Building Department.

Mrs. Judy Brennan reiterated that their property was different from others in the neighborhood due to the

following reasons:

- Location of the house on the site
- Shallow rear yard
- Slope of the property
- Effect of slope, Areas that retain mud when it rains etc.
- Existing septic fields

Mrs. Brennan said that moving the structure back 75 feet of the front property line would prevent the use of most of the property. The Chair asked Mrs. Brennan if the barn could be moved to the rear of the property without interfering with existing leech fields. Mrs. Brennan confirmed it could not.

Mr. Dale Silva told the Board he lives across the street from the site at 25633 Clover Road. The barn is visible when he leaves his home. He believes the structure is well built, and un-obtrusive. There are no animals housed in the barn. Mr. Silva said that he has not experienced any health or safety issues as a result of the barn. The building blends well with the character of the neighborhood. He has been to the Brennan's home. They do not have 6 bedrooms. Mr. Silva said that Bob Bowman from Alameda County Fire conducts inspections in the area and is also familiar with the neighborhood. In his opinion he does not believe that Condition #2 is relevant since Environmental Health approved the septic system at the time of installation. The County's issues should be satisfied, based on information obtained during public testimony. Public testimony was closed.

County Counsel clarified his earlier statement regarding the Chair's inquiry about recusal. In general the fact that the Chair has worked the applicant's wife is not sufficient to mandate recusal. However more information would be needed as to the nature of the work. The Chair stated for the record that she worked with Mrs. Brennan on the Fairview Homeowner's Association Board. She was a Member for 15 years. Officer Posts are elected positions. The Chair then asked Counsel if he would like to further opine on the question. Counsel responded that based on the information given there did not appear to be a conflict.

Board questions were as follows:

- Is the house more than 75 feet back from the property line
- Is the barn elevated from the street grade
- Would a barn were placed in the rear of the property require a non-porous driveway
- Is a building permit required for the barn
- What is the total number of bedrooms Planning staff has on record
- What is the maximum number of animals allowed on the property

Staff confirmed that the house was set back more than 75 feet on the parcel. However the barn was not. A building permit is required for accessory structures of this size. Staff did not have documentation on file as to the number of bedroom, just the number communicated through Environmental Health. Environmental Health may use a different method of counting rooms, as opposed to Building or Planning. Staff believes they may employ a method which considers all space, such as closets living rooms, etc. The Limited Agricultural District is determined by density. The District allows for 2 domesticated animals for each 20,000 square feet of lot area. These animals could be combination for example, 1 goat, and 1 horse. Additional animals require a CUP. A driveway may be necessary if the barn were moved. More information, regarding locations of leech fields would be necessary to determine that. Staff did not know the grade at the barn location. The Chair interjected that she noticed during a site visit that the barn was raised above street level.

The Board asked staff if the consideration of animal excretions is separate from septic provisions. Counsel confirmed that was the case. Board discussion ensued regarding conditions of approval as to if Environmental Health requirements might be in conflict with the zoning density requirements of Limited Agriculture (17.26.030) B. The Chair said it appears there was no conflict in this case since the applicant presented documentation that the remodeling done on the property in 1997 was completed with permits. The barn does not have plumbing so this would not affect the septic system.

Member Friedman motioned to approve the application with the following modifications:

Tentative Finding #1. There are special circumstances that apply to the property. Based on the shape of the property, existing shallow setbacks, the location of leech lines, and slope supported by evidence shown which includes, verbal testimony, a plot plan of the property, and a video presentation.

Tentative Finding #2. The granting of the application will not constitute special privilege. The barn structure is highly typical and compatible with similar structures in the area.

Tentative Finding #3. The use will not be detrimental to persons or property in the neighborhood, based on over whelming evidence presented by neighbors.

A condition shall be added that the Applicant shall comply with all requirements and limitations of the Limited Agricultural Zoning District. If required the Applicant shall obtain a Conditional Use Permit for additional animals.

A condition shall be added that the Applicant shall obtain Building Permits if necessary.

Vice Chair Peixoto seconded the motion. Motion carried 4/0.

5. **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.

Staff recommended approval of the application. The Castro Valley Municipal Advisory Committee voted unanimously to approve the project as well. Member Clark asked for clarification regarding the lot frontage. Staff explained there was approximately 97 feet of frontage on Proctor Road, and 176 feet of frontage along Cardinal Court. The Zoning Ordinance for R-1, Combining Districts designates the narrow frontage as the lot front. Public testimony was opened.

The applicant, Mr. Chris Roland told the Board that he purchased the home with the 6 foot fence. He showed the Board a photo detailing the downward slope of the property from, Proctor Road. As a result, standing at the sidewalk you can look into the yard. The front door and garage of the home are located on Cardinal Court. A public easement extends 28 feet into the Cardinal Court side which prevents the placement of the pool, and arbor. The Chair asked Mr. Roland when he purchased the home. The applicant confirmed he lived in the home for one year. Public testimony was closed.

The Chair agreed with staff that special circumstances did apply, due to the location of the house on the

parcel and the corner location. In addition the drop in elevation related to the street grade was apparent. However she believed staff's finding was inconsistent with past applications, considering fence height and slope. The Chair then referred to an application request that had been denied for a 5 foot fence, located on a property with a downward slope. Staff responded that each application is considered on an individual basis. A different set of recommendations is made for each project. In this case the project is located in the front yard setback, and has a swimming pool. The Chair continued and said she was in agreement with this specific recommendation, but did not agree that staff had been consistent in determining findings related to fence heights on properties with slope. She added that Fairview residents were sensitive to the issue, as a lot of properties have changes in grade and elevation.

Member Friedman motioned to adopt the staff finding of approval. Member Clark seconded the motion. The Chair requested that Condition #3c, Traffic Division be deleted. Member Friedman accepted the modification. Motion carried 4/0.

STAFF COMMENTS & CORRESPONDENCE: Staff had no correspondence.

County Counsel reviewed Government Code statutes concerning Open Forum during Public Meetings with Board Members. Counsel summarized points covered in Government Code Section 54954.3 (a), relating to time provided to the public to speak during regular agenda meeting. Subject matter shall be within the jurisdiction of the legislative body. Counsel will provide Board Members with a hard copy of the complete Government Code Section 54954.3 and 54954.2.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: The Board had no additional comments.

APPROVAL OF MINUTES: The Chair motioned to continue the Minutes of May 23, 2007 as there was not a quorum of Members present from that date.

Vice Chair Peixoto motioned to approve the Minutes of July 11, 2007 with corrections. Member Friedman seconded the motion. Member Clark abstained. Motion carried 3/0.

Member Clark motioned to approve the Minutes of June 13, 2007 with submitted corrections. Member Friedman seconded the motion. Vice Chair Peixoto abstained. Motion carried 3/0.

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

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS