

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
JULY 28, 2010
(APPROVED AUGUST 25, 2010)

The Regular Meeting was held at the hour of 1:30 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California 94544.

REGULAR MEETING: 1:30 p.m.

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

MEMBERS EXCUSED: Vice Chair, Kathy Gil; Member, Ineda Adesanya.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel, William Fleishhacker; Code Enforcement staff; and 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 1:45p.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. Kent A Hoggan/Cal-Western Reconveyance, Palomares Rd., Castro Valley CA 94552**
In violation of Alameda County Ordinance 6.65.030 A (8), A(10) and B (6).
 1. Overgrown vegetation & weeds in the front, side & rear yards.

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

- 2. Kendrick V Stager, Vacant lot at 166th Ave., San Leandro CA 94580**
In violation of Alameda County Ordinance 6.65.030 A (8), A (10) and B (6).
 1. Overgrown vegetation and weeds throughout the property.

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

- 3. Kendrick V Stager, Vacant lot at 166th Ave., San Leandro CA 94580**
In violation of Alameda County Ordinance 6.65.030 A (8), A (10) and B (6).
 1. Overgrown vegetation and weeds throughout the property.

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

4. Michael & Dana Rasmussen, Vacant lot at Hannah Dr., San Leandro CA 94580

In violation of the Alameda County Ordinance 6.65.030 A (8), A (10) and B (6).

1. Overgrown weeds and vegetation throughout the property.

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

5. Delano E Larsen, Christensen Ln., Castro Valley CA 94546

In violation of the Alameda County Ordinance 6.65.030 A (8), A (9) and A (10).

1. Overgrown vegetation in the front, side & rear yards.

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

6. Nedal & Etab Elbarouki/Recontrust Company, Vergil St., Castro Valley CA 94546

In violation of the Alameda County Ordinance 6.65.030 A (1) A (8), A (9) and A (10).

1. Overgrown weeds and vegetation in the front, side & rear yards.
2. Accumulation of debris & miscellaneous items in the side & rear yards, and driveway.

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

7. Geneva Fund LLC, (Vacant Lot) Upland Rd., San Leandro, CA 94578

In violation of the Alameda County Ordinance 6.65.030 A (1) and A (8).

1. Overgrown vegetation and weeds throughout the property.

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

8. Recontrust Company, Ano Avenue, San Lorenzo CA 94580

In violation of the Alameda County Ordinance 6.65.030 A (1), A (8), A (9), A (10), A (12) and B (6)

1. Overgrown vegetation and weeds throughout property; and
2. Miscellaneous trash and debris in rear yard.

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

CONSENT CALENDAR:

There were no items scheduled for the Consent Calendar.

REGULAR CALENDAR

1. **ABC PRESCHOOL & DAYCARE / MAGGIE LAM, CONDITIONAL USE PERMIT, PLN-2010-00049** – Application to allow expansion of a child care facility from 41 to 56 children, in an R-S-D-3 (Suburban Residential, 2,500 square feet per Dwelling Unit) District, located at 20135 San Miguel Avenue, west side, approximately 350 feet north of Jeanine Way, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084A-0124-001-04. **Staff Planner: Christine Greene.** (Continued from June 23, 2010).

Staff reviewed the history of the application. The recommendation was approval. The Castro Valley Municipal Advisory Council voted to approve the project with the recommendation of 5 parking spaces. The vote was 4 to 3. The Alameda County Fire Department is also in favor of approval. The Applicant has submitted a new site plan. All outstanding issues have been resolved. Public testimony was opened.

The Applicant, Maggie Lam was present. ABC Preschool has 41 kids. They would like to expand, and accommodate 56 children. Board questions for the Applicant were as follows:

- What is the impetus for the expansion request
- Has there been a change of ownership
- Has the Applicant read the staff report
- How many children does the State License allow
- How many staff people work at the site
- What is the age range of children accepted
- What is the required ratio of staff to child
- Has the Daycare kept a record of parking violations as required by the prior CUP
- How much of the area will be used for storage space

Ms. Lam told the Board she is the new owner. She purchased the daycare in April 2009. The building is leased. The State of California license allows 41 children. The Hours of Operation are from 7 am to 6 pm. The daycare accepts children from 3 to 11 years. Twenty pre-school, 20 school age children. Infants are not accepted. There are 5 staff people. Two staff persons work afternoons, part time. The ratio of staff to preschool children is 1:14, 1:12 for school age children. Many parents have expressed an interest in daycare services. The kindergarten teachers at the school next door also like their students placed at the daycare. As a result Ms. Lam would like to accommodate more children. If the expansion is approved, she anticipates hiring one full time, and one part time staff member. This will depend on the number of additional signups. Ms. Lam has read the staff report. There have been no parking violations blocking the driveway since she has owned the business. However staff has not kept a written record. Member Spalding reminded Ms. Lam Condition #4 of the prior use permit requires the facility operator maintain a written log of parking violations. Public testimony was closed.

Board questions for staff were as follows:

- What is the current number of parking spaces available at the site
- What is the minimum number of parking spaces required
- What is the minimum number of bathrooms required
- Was a floor plan of the interior available for CVMAC review
- Will storage area be converted to class room space
- Has the Applicant developed a Drop-Off and Pick-Up Plan

Staff referred to Exhibit #C, there are two parking spaces in the carport and one space in front of the

carport. Two additional spaces can be added, if carport area ingress and egress is not blocked. The Zoning Ordinance does not assign a specific number of parking spaces per student or staff people for childcare centers. Planning looked to the Ordinances at the City of Hayward and San Leandro for examples. They require five or six. Staff is recommending 5 spaces for this application. The small 50 square foot storage structure is approximately 5 feet from the accessory structure. The Board asked if CVMAC had an issue with parking distribution, also with bathrooms at the site.

Mr. Dean Nielson, a Member of the CVMAC happened to be present to provide testify on another application. He confirmed some Members had issue with parking distribution. They recommended an additional bathroom. They were unsure sufficient bathrooms are available. An interior floor plan was not presented at the CVMAC Hearing.

Member Spalding was in agreement restrooms may not be sufficient. Although based on photographs the site is well maintained by the new operator. They appear to run the business in the same manner as the prior owner. The Chair stated she still had concerns. The CVMAC vote in support of approval was close, 4 to 3. They engaged in discussion regarding number of bathrooms. The Chair pointed out the Applicant proposes to increase daycare patronage by 40%, in addition to three staff members. There may also be issues with drop off and pick-up. Public testimony was re-opened to speak with the Applicant.

Ms. Lam testified there are two parking spaces in the carport and two on the driveway. In addition, three spaces will be added. Not all children are dropped off at the same time. Drop off can begin at 7 am. The school next door starts at 8:07 am. Children at the daycare attending Castro Valley Elementary School are walked next door. Children that attend half day or pre-school usually start at 8:30 am. This is when Circle Time begins however children can arrive until 10:00 am. Since Ms. Lam has purchased the business there has never been an issue with parking. The site has been there for the past 40 years. Additional Board questions were as follows:

- How many pre-school children are enrolled
- What is the maximum number of pre-school children allowed
- Is there an established activity schedule for pre-school children
- Is there an established activity schedule for school children
- Are parents required to sign children in and out of the facility
- Does the Applicant own another daycare facility

Ms. Lam told the Board the facility now can accommodate 20 school age children and 20 pre-school children. If the application is approved a maximum of 28 pre-school children would be accepted. The balance of the 56 child allowance would be held for school age children that return to the site in the afternoon. Afternoon children are walked back to the facility at 3 p.m. The facility is open until 6 p.m. During summer the daycare can take up to the current allowed 41 children, of any age. Typically the facility does not fill during this time. Parents have kids enrolled in other summer activities. Average enrollment is 30 students, half pre-school age. Arrival time is staggered. It takes parents 5 minutes to drop children off. Parents are required to sign children in and out of the facility. This takes place inside the daycare. The rear building has one bathroom with a single stall and one sink. The State requirement is one stall per 15 children. At this time Ms. Lam is not considering adding an additional restroom to the rear building. There are two restrooms, one with a single stall and sink for staff the other a multiple stall restroom. The State of California requires each child have 35 square feet available per child. Ms. Lam does own another daycare facility in Pleasanton. It accommodates 60 children and is approximately 3,200 square feet. The Pleasanton site is larger and shares a parking lot with a church. Public testimony was closed.

The Chair said based on the Applicant's testimony the required space needed is 1,956 square feet. Therefore sufficient space is available. Member Spalding asked staff if they had concerns regarding an increase of children and staff members; or traffic ingress and egress. Staff said Condition #7 addresses some of the issues raised. Member Spalding believed Condition #7 began to address issues to an extent, but further specifics are needed. A breakdown of arrival and departure of school age, and preschool age children could help alleviate traffic issues. The Chair was still unsure the proposed expansion met State requirements. Condition #4 should also require the Applicant to track parking violations at the site. Also the CVMAC did not mandate an additional restroom. A further Condition should be added requiring Planning Department notification upon a change in ownership. Mr. Dean Nielsen interjected from the audience. The CVMAC did set an additional restroom requirement because they did not have a floor plan available for reference. Counsel pointed out the main building is 3,158 square feet. The detached accessory structure is 1,337 square feet. This is double the space required. Member Spalding said an added restroom would result in one per 22 children. Her observation regarding past applications is also that the Board did not have the ability to successfully limit the number student drop-offs at a particular time. Counsel explained the State of California will issue a license when the cup is obtained. The number of restrooms required corresponds to enrollment.

The Chair stated she would like the CVMAC to review the interior floor plan, and updated site plan. Recommendations can then be forwarded to the BZA. At this juncture, if the three BZA Members present cannot come to a unanimous decision. The application would be referred to the Planning Commission. Counsel told the Board, the Planning Department received updated plans. They can review the materials and move forward with the application. A second review by the Advisory Council is not required. However if the BZA feels strongly they can refer the application back to CVMAC. Member Peixoto recommended the application be referred back to the CVMAC, as a courtesy.

Member Spalding motioned to continue PLN-2010-00049 ABC Preschool to the August 25, 2010 Hearing. Member Peixoto seconded the motion. The Chair asked staff to modify Condition #1. It shall be modified to correctly state, 3 years as opposed to 3 months. The motion to continue PLN-2010-00049 passed 3/0.

2. **ALAN CORMIER, CONDITIONAL USE PERMIT, PLN-2010-00069** – Application to allow continued operation of a dog daycare, training, and overnight boarding facility for up to 20 dogs, in an R-1-L-BE-SU-RV (Single Family Residence with limited Agricultural Uses, 5 Acre Minimum Building Site Area, Secondary Unit with Recreational Vehicle Parking Regulations) District, located at 6776 Crow Canyon Road, west side, approximately 0.57 miles south of Norris Canyon Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085-1700-003-06. (Continued from June 23, 2010). **Staff Planner: Jeff Bonekemper.**

The Applicant, Mr. Alan Cormier was present. He has lived at the location since 1998. The operation will continue in the same manner. The business is primarily a dog daycare. However the Zoning Ordinance only provides a definition of "kennel facility". Kamp K9 is open from 7 am to 7pm. Drop-off time is between 7 am and 9 am. Pick-up time is between 3 pm and 7 pm. The facility holds up to 20 dogs. Board questions for the Applicant were as follows:

- Is this facility affiliated with Camp K-9
- Has the Applicant read the staff report
- Is Mr. Cormier in agreement with the Conditions of Approval

Mr. Cormier confirmed his facility had no association with Club K-9. He has read the staff report, and is agreement with all Conditions of Approval. Public testimony was closed.

Member Peixoto motioned to adopt the staff recommendation of approval. Member Spalding seconded the motion. The motion to approve, PLN-2010-00069 carried 3/0.

3. **FIRST PRESBYTERIAN CHURCH, CONDITIONAL USE PERMIT, PLN-2010-00058** - Application to allow continued operation of a child care center facility for up to 150 children in a C-1 (Retail Business) and R-S-D-20 (Suburban Residence, 2,000 square feet per Dwelling Unit) Districts, located at 2490 Grove Way, northwest side approximately 170 feet northeast of Redwood Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 416-0030-014-03. **Staff Planner: Christine Greene.**

Mr. Dean Nielsen was present. The facility at this site has been operated as a pre-school for 17 years. The pre-school takes children from 18 months until they are ready to enter Kindergarten. Prior to use as a pre-school, the facility was a nursery school. The State of California has issued a license for a total of 150 children. Twenty two spaces are for infants/toddlers, 26 for Pre-Kindergarten and 102 for Pre-School children. The facility has a staff of 28 people, including two cooks. Two hot meals are served each day, and two snacks. Mr. Nielsen referred to photos of the site. The facility has a gym. This allows exercise on rainy days and during the Winter Season. Outside of each class room there is a play yard. A shade area with a roof has recently been added to the site. The building has fire sprinklers. The Fire Department has not requested further improvements. The facility has adequate bathrooms. The facility has a separate parking lot for 128 cars. There is also a covered walkway for drop off and pick-up. The facility operates from 6 am to 6 pm. The State of California requires that all children be met at drop off and pick-up. Board questions for the Applicant were as follows:

- Where is the drop-off located
- Does the church own the Trader Joes property
- Is the church site located in Castro Valley

Mr. Nielsen explained the church incorporated in the year 1895 within Hayward. In 1957 the church moved to Castro Valley. The name, First Presbyterian Church of Hayward was retained. The covered walkway for child drop-off is accessed through a driveway off Redwood Road. A second driveway is located off Grove Way. In addition there is a larger parking lot in the center of the parcel, and a smaller lot behind Trader Joes. Arrows have been painted to direct drivers. The church owns the Trader Joes property. Mr. Nielsen included Yelp Internet ratings for additional referrals. Although Yelp no longer provides ratings, His Growing Grove Pre-School was rated #1 for six years. Public testimony was closed.

Member Peixoto motioned to uphold the staff recommendation of approval. Member Spalding seconded the motion. The motion to approve PIN-2010-00058 passed 3/0.

APPROVAL OF MINUTES: The Chair continued the Minutes of July 14, 2010 to the August 11, 2010 Hearing.

STAFF COMMENTS & CORRESPONDENCE: No new appeals have been filed with the Board of Supervisor's.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: The Chair asked staff the basis of appeal of Application PLN-2010-00028 Seventh Step Foundation. County Counsel said thus far he is not aware of any specific information. The Applicant is working with Supervisor Miley. There is a meeting scheduled next week. Member Spalding thought this type of facility is better suited for a transit access zone. The testimony given by the Parole Officer at the BZA hearing should be considered as basis of what is effective. Member Spalding said rehabilitation takes place in stages, perhaps zoning can accommodate facilities in locations appropriate for these stages. Zoning should allow transition options in between an environment of incarceration and a quiet residential neighborhood. Counsel responded the way to address zoning is through the General Plan. In this case the General Plan directs placement of this type of facility in opposite type areas. The Chair and Member Peixoto agreed with Member Spalding. Interim housing options should be available that don't leap dramatically after initial rehab.

The Board Members asked staff to convey condolences to the family of Therese Carrera. Therese's graphic productions were an integral part of every Board packet. She will be missed by all Planning staff.

ADJOURNMENT: There being no further business, the hearing adjourned at 3:30 p.m.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS