

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
SEPTEMBER 8, 2004
(FINALIZED SEPTEMBER 22, 2004)**

FIELD TRIP: 1:30 p.m.

MEMBERS PRESENT: Members Frank Peixoto, Chair and Judy Roos.

MEMBERS EXCUSED: Ron Palmeri; Jewell Spalding and Lester Friedman.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner.

FIELD TRIP: The meeting adjourned to the field and the following property was visited:

1. **ESTATE OF JACK HOLLAND, Sr., CONDITIONAL USE PERMIT, C-8326** – Application to allow an auto sales lot, in a TC (Transit Corridor) District, located at 16285 East 14th Street, north side, approximately 110 feet northwest of 163rd Avenue, unincorporated San Leandro area of Alameda County, bearing Assessor's Parcel Number: 080C-0479-006-03.
2. **JERALD W. VALLAN, SR., VARIANCE, V-11855** – Application to allow a 15 foot front yard setback where 20 feet is required; 18 feet six inches rear yard setback where 20 feet is required, two foot side yard setback where 10 feet is required, allow one parking space in the rear yard setback and allow conversion of the garage to living space, in a R-S-D-35 (Suburban Residence with 3,500 square feet Minimum Building Site Area/Dwelling Unit) District, located at 429 Willow Avenue, south side, corner of Princeton Street, unincorporated Hayward area of Alameda County, bearing Assessor's Parcel Number: 0429-0059-016-00.
3. **LEO & MATHILDE SCHMIDT, VARIANCE, V-11862** – Application to retain accessory structures (three sheds) in a side yard, three feet from a residence where six feet is required and located in the front half of the lot where otherwise not allowed in a R-1-B-E-SU-RV (Single Family Residence, 10,000 square feet Minimum Building Site Area, Secondary Unit Permitted, Recreational Vehicle) District, located at 18386 Walnut Road, west side, approximately 745 feet south of Reamer Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084D-1165-010-02.
4. **KARLO PALAVRA, VARIANCE, V-11865** – Application to allow construction of a single story addition providing a six foot rear yard where 20 feet is required in a R-S-D-15 (Suburban Residence, 1,500 square feet Minimum Building Site Area/Dwelling Unit) District, located at 16395 Gordon Way, southwest side, approximately 60 feet northwest of 164th Avenue, unincorporated San Leandro area of Alameda County, bearing Assessor's Parcel Number: 0080-0069-019-15.
5. **CESAR CERVANTES, VARIANCE, V-11867** – Application to allow retention of three existing dwellings and construction of seven new apartment units providing 15 foot rear yard where 20 feet is required, five foot from driveway to residential wall where 10 feet is required, in a R-S-D-20 (Suburban Residence, 2,000 square feet Minimum Building Site Area/Dwelling Unit)

District, located at 16024 and 16030 Marcella Street, southeast side, approximately 858 feet southeast of 159th Avenue, unincorporated San Leandro area of Alameda County, bearing Assessor's Parcel Number: 0080-0051-048-03.

6. **LEONILA VISMONTE, VARIANCE, V-11871** – Application to allow construction of an addition to the rear dwelling providing a five foot rear yard where 20 feet is required and a five foot side yard where 10 feet is required on a parcel with various non-conforming setbacks and driveway width, in a R-S-D-15 (Suburban Residence, 1,500 square feet Minimum Building Site Area/Dwelling Unit) District, located at 1421 and 1423 – 163rd Avenue, northwest side, approximately 161 feet northeast of East 14th Street, unincorporated San Leandro area of Alameda County, bearing Assessor's Parcel Number: 0080-0063-034-04.
7. **NICHOLAS DWONCH, VARIANCE, V-11873-** Application to allow construction of five units providing a five-foot setback from access driveway to building wall where 10 feet is required and without an independent walkway system where otherwise required in a R-S-D-20 (Suburban Residence, 2,000 square feet minimum building site area per unit density) District located at 1168 Elgin Street, north side, 75 feet northwest of the intersection with Los Reyes Avenue, in the unincorporated San Lorenzo area of Alameda County, bearing Assessor's Parcel Number: 080B-0300-021-00.

REGULAR MEETING: 6:00 p.m.

MEMBERS PRESENT: Members Frank Peixoto, Chair; Ron Palmeri; Jewell Spalding; Lester Friedman and Judy Roos.

MEMBERS EXCUSED: None.

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

There were three 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: 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.

Neighborhood Preservation Ordinance Abatement Hearing: No items scheduled for the calendar.

CONSENT CALENDAR:

1. **TRINITY CHURCH, CONDITIONAL USE PERMIT, C-7753 and VARIANCE, V-11436** – Application to allow construction of a new church facility (Anglican Church) and approve as a building site one site approximately 21 acres where 100 acres is the minimum parcel size, in an “A” (Agricultural) District, located on Sunnyslope Avenue, east side, north of I-580, unincorporated Castro Valley area of Alameda County, bearing Assessor’s Parcel Numbers: 085A-1400-003-02; 085A-1500-001-03 and 085A-400-001-09; (Continued from August 11, 2004; to be continued without discussion to October 13, 2004).

Member Palmeri motioned to uphold staff’s recommendation to continue the item to October 13, 2004. Motion seconded by Member Friedman. Motion carried 4/1. Member Spalding absent.

2. **BOB MASON, CONDITIONAL USE PERMIT, C-7756** - Application to modify Conditional Use Permit, C-7447 to allow: 1) storage for 20 vehicles; 2) increase from 125 to 145 horses; and 3) to add a feed store at an existing breeding, boarding and training facility for 125 horses, in an “A” (Agricultural) District, located at 24550 Palomares Road, east side, approximately ¼ mile south of Palo Verde Road, unincorporated Castro Valley area of Alameda County, bearing Assessor’s Parcel Number: 085A-2700-001-07. (Continued from December 11, 2002; February 26, March 26, April 23, May 28, June 25; July 23, September 10 and October 8, November 5, 2003, January 14 and August 11, 2004; to be continued without discussion to November 10, 2004).

Member Palmeri asked why the application had been continued for such a long period of time. Mr. Sawrey-Kubicek said he would speak with the Planner and return to the Board with an update. Member Palmeri motioned to continue the application with the condition that the application be heard at the November 10, 2004 hearing and not be continued past that date. Member Spalding arrived at 6:05 p.m. and asked if the operation on the property had formerly been called Horses and More. She suggested that due to the long history additional time may be necessary to make a determination. Member Palmeri restated his motion with the caveat that the application not be continued unless extraordinary circumstances warranted it. Member Friedman seconded the motion. Member Spalding was in disagreement. Motion carried 4/1.

3. **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, May 26 and July 14, 2004; to be continued without discussion until October 13, 2004).

Mr. Sawrey-Kubicek asked for a continuance because the Ordinance Review Committee was currently considering catering trucks and their findings might have relevance regarding the application. Member Palmeri motioned to continue the application to the October 13, 2004 hearing. Member Friedman seconded the motion. Motion carried 5/0.

4. **MARTHA B. HERRARA, CONDITIONAL USE PERMIT, C-8283** – Application to allow continued operation of a mobile drive-in business (catering

truck) in a M-1(Light Industrial) District, located at 22221 Hathaway Avenue, south side, approximately 300 feet west of A Street, unincorporated Hayward area of Alameda County, bearing Assessor's Parcel Number: 0429-0077-018-04. (Continued from April 14, 2004 and July 14, 2004; to be continued without discussion to November 10, 2004).

Member Palmeri motioned to uphold staff's recommendation to continue the item to November 10, 2004. Motion seconded by Member Friedman. Motion carried 5/0.

5. **JUAN GARCIA, CONDITIONAL USE PERMIT, C-8287 and VARIANCE, V-11856-** Application to allow continued operation of an existing church facility and use of a residential parcel as a parking lot, a 12 foot driveway where 20 feet is required and a zero foot setback between building and driveway where 10 feet is required, in a R-S-D-35 and R-S-D-3, Suburban Residential, 3,500 square foot Minimum Building Site Area/Per Dwelling Unit) Districts, located at 21625 Western Boulevard, west side, approximately 150 feet northwest of Willow Avenue, unincorporated Cherryland area of Alameda County, bearing Assessor's Parcel Numbers: 429-0050-007-00 and 429-0050-010-00. (Continued from April 28, June 9, and August 25, 2004; to be continued without discussion until September 22, 2004).

Member Palmeri motioned to uphold staff's recommendation to continue the item to November 10, 2004. Motion seconded by Member Friedman. Motion carried 5/0.

6. **BERNARDO BUTTLER, VARIANCE, V-11698** – Application to allow construction of an attached addition thereby reducing the required front yard from 20 feet to 17 feet – 8 inches and retaining a garage conversion providing zero parking spaces where two spaces are required, in a R-1 (Single Family Residence) District, located at 18184 Rainier Avenue, east side, approximately 200 feet southeast of the intersection with Whitney Court, unincorporated Cherryland area of Alameda County, bearing Assessor's Parcel Number: 0413-0055-015-00. (Continued from November 20, 2002; February 26, April 23, May 27, August 27, 2003, January 14, April 14, and July 14, 2004; to be continued without discussion to November 10, 2004).

Mr. Sawrey-Kubicek asked for a continuance because the Ordinance Review Committee was currently considering garage conversions and the issue is expected to be heard by the Board of Supervisors this October. Member Palmeri motioned to continue the application to the October 13, 2004 hearing. Member Friedman seconded the motion. Motion carried 5/0.

7. **CHRISTINE-YIN/ZHU, VARIANCE, V-11852** - Application to subdivide one lot, creating a non-conforming lot of 4,484 square feet, and a conforming lot of 5,000 square feet in an R-1 (Single Family Residence) District, located at 14850 Boulevard Court, north side, approximately 196 feet north west of 149th Avenue, unincorporated San Leandro area of Alameda County, bearing Assessor's Parcel Number: 0080-0008-008-00; (Continued from July 14 and August 11, 2004; to be continued without discussion until October 13, 2004).

Member Palmeri motioned to uphold staff's recommendation to continue the item to October 13, 2004. Motion seconded by Member Friedman. Motion carried 5/0.

8. **VAN EEGHEN, VARIANCE, V-11857** - Application to allow 462 square feet of sign area on a property where 219 square feet is the maximum allowed, and to allow retention of an existing non-conforming freestanding sign, on a 33,977 square foot property within C-1 (Retail Business), C-2 (General Commercial), and R-S-D-35 (Suburban Residence 3,500 square feet of Building Site per Dwelling Unit) Zoning Districts, located at 20286 – 20400 Hesperian Boulevard, northeast side, 150 feet north of “A” Street, unincorporated San Lorenzo, area of Alameda County, designated County Assessor’s Parcel Numbers: 432-0020-028-08 and 432-0020-029-05. (Continued from June 23, and August 11). **The applicant has withdrawn this application.**
9. **DONALD & VERA CLAIR, VARIANCE, V-11872** – To allow storage of a recreational vehicle in a required side yard where not otherwise permitted in a P-D, (Planned Development) District, located at 4169 High Ridge Place, west side, approximately 187 feet east of Chaparral Lane, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number:0085-6301-020-05. (Continued from August 26, 2004; to be continued without discussion until November 10, 2004).

Member Palmeri motioned to uphold staff’s recommendation to continue the item to November 10, 2004. Motion seconded by Member Friedman. Motion carried 5/0.

REGULAR CALENDAR:

1. **COMUNIDAD CRISTIANA CRISTO, CONDITIONAL USE PERMIT, C-8270** – Application to allow continued operation of a church facility, in a R-S-D-35 (Single Family Residence with 3,500 square feet Minimum Building Site Area/Dwelling Unit) District, located at 21753 Haviland Avenue, west side, approximately 161 feet south of Grove Way, unincorporated Hayward area of Alameda County, bearing Assessor’s Parcel Number: 429-0028-081-00. (Continued from February 11, May 12, June 23 and August 25, 2004).

The applicant was not present and Mr. Sawrey-Kubicek requested that the item be continued to October 13, 2004. Member Palmeri motioned to uphold staff’s recommendation to continue the item to October 13, 2004. Motion seconded by Member Spalding. Motion carried 5/0.

2. **CHARLES CROWELL, CONDITIONAL USE PERMIT, C-8272** - Application to renew and modify Conditional Use Permit C-7586, allowing a 100-horse boarding facility and equestrian center and a permanent agricultural caretaker’s unit, in an “A” (Agricultural) District, located at 10970 Crow Canyon Road, north side, approximately 2.8 miles east of Norris Canyon Road, unincorporated Castro Valley area of Alameda County, bearing Assessor’s Parcel Number: 085-2026-001-00. (Continued from May 26, June 9, July 14, July 28, August 11 and August 25, 2004).

Mr. Sawrey-Kubicek requested that the application be continued to October 22, 2004 to allow County Counsel to obtain more information from Steven Buckley, Assistant Planning Director. Member Friedman motioned to continue the application to October 22, 2004. Member Spalding seconded the

motion. Motion carried 5/0.

3. **EMILY MAY FRANKLIN/JOHN CORLEY, VARIANCE, V-11860** – Application to retain an existing 50 square foot bathroom where 20 square feet is maximum floor area allowed in a detached accessory structure (pool cabana), in an R-1-B-E-SU-RV (Single Family Residence, 10,000 square foot Minimum Building Site Area, Secondary Unit, Recreational Vehicle) District located at 4824 Beacon Hill Drive, west side, approximately 283 feet east of the intersection with Crow Canyon Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084B-0441-018-00. (Continued from July 28 and August 11, 2004).

Member Palmeri requested that the application be heard at an evening meeting to allow neighbors an opportunity to speak. Member Spalding motioned to continue the application to the October 13, 2004. Member Friedman seconded the motion. Motion carried 5/0.

4. **LEO & MATHILDE SCHMIDT, VARIANCE, V-11862** – Application to retain accessory structures (three sheds) in a side yard, three feet from a residence where six feet is required and located in the front half of the lot where otherwise not allowed in an R-1-B-E-SU-RV (Single Family Residence, 10,000 square feet Minimum Building Site Area, Secondary Unit Permitted, Recreational Vehicle) District, located at 18386 Walnut Road, west side, approximately 745 feet south of Reamer Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084D-1165-010-02.

Staff Planner, Phil Sawrey-Kubicek gave an overview of the application. Staff recommended approval of the application subject to the four conditions outlined in the staff report. Member Palmeri asked about the Planning Consideration which states that it would not be economically viable to relocate the sheds due to their location in the rear portion of the lot and the steep topography. He referred to the topography map and pointed out that the map markings flattened towards the back of the property which would indicate that the land was level. Mr. Sawrey-Kubicek responded that although the lines were close together the topography was indeed steep. The sheds were built in 1950, 1960 and 1980 respectively, and due to their age they could not be moved.

Member Friedman asked why no building permits were registered for any of the structures and if the applicant was the owner of the property when the sheds were erected. Mr. Sawrey-Kubicek explained that structures of that size did not require a building permit. Member Spalding asked if the sheds were considered accessory structures and Mr. Sawrey-Kubicek clarified that anything detached was considered an accessory structure. Member Spalding asked in regard to Zoning Ordinance 17.54.100 and 17.54.140 if a structure had to begin 75 foot back on a parcel or specifically if the Ordinance restricted accessory structures in the first 75 foot of a parcel. Member Palmeri stated in his opinion that the Ordinance literally said an accessory structure was not allowed. County Counsel clarified that an accessory structure was not allowed in the front half of a lot. Mr. Sawrey-Kubicek stated that the Ordinance states that if you do have an accessory structure in the front half of a lot it must be at least 75 feet back from the front property line. County Counsel and Member Palmeri concurred with the interpretation.

Member Palmeri asked if the Board could limit the Variance to the life of the structures. He also asked if it would be possible for the owner to replace the structures if they were torn down. Mr. Sawrey-Kubicek said that the Board could set a condition that the variance would expire at the end of the life of the

structures. Mr. Chambliss added that the Board would still have to make findings to support approval of the variance, based on topography etc. Member Roos pointed out that a similar variance had been denied by the Board of Zoning Adjustments but approved by the Board of Supervisors.

Public testimony was opened and the applicant, Mr. Schmidt stated his, neighbor Mr. Peterson told him the sheds were built in 1960, 1970 and 1980 respectively. Mr. Schmidt had recently purchased the property and discovered that the sheds were actually located on his side of the property line. Mr. Peterson was told by planning staff that a boundary adjustment would allow him to keep the sheds. A one hour rated fire wall would also be needed on the south side of the sheds. The addition of the firewall would enlarge the sheds resulting in the property line passing through the middle of the structures and would also cause the sheds to sit directly next to the fence. Mr. Sawrey-Kubicek interjected that a stucco wall could be added instead but would also result in a slight enlargement of the sheds. Member Roos commented that the boundary adjustment appeared to resolve some of the issues regarding the structures but not all them. Public testimony was closed.

Member Spalding asked staff when Zoning Ordinance 17.54 was adopted because if the first shed was built prior to zoning then it would be considered non-conforming. Mr. Schmidt would then only need a variance for the sheds built in 1970 and 1980. Mr. Sawrey-Kubicek said he did not know but that he would find out. Member Palmeri said his main concern regardless of the topography was that the sheds could deteriorate in the next few years and the owner could then want to re-build which would not be in compliance with the Zoning Ordinance. He asked County Counsel if a time limit could be set for a variance and what would happen if the variance was not granted. Mr. Chambliss said planning staff could determine if one of the sheds was non-conforming. Any structures that did not meet non-conforming status would become an issue for Code Enforcement; the other option could be a variance tied to the life of the structures. The Chair asked if a variance could be granted that stipulated the structures may not be re-built. Mr. Chambliss said that it was possible as well however findings such as steep topography would have to be made to support replacement. Member Spalding said that she did not feel there was sufficient information available on which to base a decision.

Member Spalding asked the neighbor, Mr. Peterson what the sheds were being utilized for. Mr. Peterson explained that one of shed was used for the storage of garden supplies the second for his son's climbing gear and the third for BBQ equipment. He further explained that his son was a mountaineer stationed in New Zealand and it was more economical to store his gear and retrieve it when he visits rather than shipping it around the World to his various climbing sites in Asia and South America. Member Friedman said there were two issues. The first was that the sheds were located only three feet away from the residence and the second was that the sheds were setback only 40 feet from the front property line.

Member Roos motioned to approve the variance for the life of sheds. If the sheds fall down and the owner wants to replace them the new structures must comply with all codes. Member Spalding said her concern was that it was still unclear to her that a time limit could be placed on a variance. The Chair confirmed that the Board of Zoning Adjustments did have the authority to set a time limit. Member Roo's motion was not seconded therefore the motion died.

Member Palmeri commented that it could possibly be determined that the applicant's property was non-conforming. He motioned based on the age of the sheds which appear to pre-exist the Zoning Ordinance a variance is not required, and the application should be denied. Member Spalding seconded the motion.

The applicant, Mr. Schmidt then asked for an explanation of the motion. Member Palmeri explained if the structures were destroyed or were to fall apart etc. they would then be subject to current zoning limits if rebuilt. Mr. Schmidt asked if this was due to the age of the structures and the Chair, responded yes it

was. Mrs. Schmidt said she was concerned because they did not want to be liable for any damages that the aging structures may cause. Member Spalding responded that the issue of possible damage was not in front of Board. Member Roos asked staff how Pre Hearing Recommendation #3 which would require the removal of the sheds if the fire wall is not installed within 90 days might affect the motion. Mr. Sawrey-Kubicek confirmed that the motion would not change the Pre Hearing Recommendation. At that point Member Palmeri withdrew his motion. Member Spalding did not want to withdraw her second, however no other Members were in favor of the motion. Motion withdrawn.

Mr. Schmidt commented that his concern was that the structure appeared to have always been illegal as opposed to non-conforming. He thought the sheds should not be grandfathered in because it would not be legal. Member Spalding restated that if the one of the structures were erected prior to zoning that structure would be legal. Member Friedman asked if Pre Hearing Recommendation #2 was a standard condition that applicants obtain permits within 30 days. He also asked if the steepest portion of the lot was in the right rear corner. Mr. Sawrey-Kubicek confirmed that although all of the lines on the topographical map were close the entire lot was steep.

Member Roos motioned to approve the variance application subject to the life of structures. With the condition if one or all of the structures meet their demise they can not be replaced. Member Palmeri seconded the motion. Member Spalding was not in favor of the motion. Motion carried 4/1.

5. **KARLO PALAVRA, VARIANCE, V-11865** – Application to allow construction of a single story addition providing a six foot rear yard where 20 feet is required in a R-S-D-15 (Suburban Residence, 1,500 square feet Minimum Building Site Area/Dwelling Unit) District, located at 16395 Gordon Way, southwest side, approximately 60 feet northwest of 164th Avenue, unincorporated San Leandro area of Alameda County, bearing Assessor's Parcel Number: 0080-0069-019-15.

Member Palmeri motioned to continue the application to September 22, 2004. Member Roos seconded the motion. Motion carried 5/0.

Approval of Minutes: Member Roos motioned to approve the Minutes of August 11 and August 25, 2004 with corrections. Member Palmeri seconded the motion. Motion carried 5/0.

STAFF COMMENTS & CORRESPONDENCE:

Member Spalding announced that she would be applying for a Variance. Member Friedman asked that that the variance application would satisfy the Fairview Plan. She asked Mr. Chambliss what the application procedure was as a Board Member. Mr. Chambliss responded that as a Board Member she could apply for a variance. The application could be heard, however, she would have to recuse herself. He said the other option would be to let the Board of Zoning Adjustments hear the application and not take an action, causing the application to go before the Planning Commission. He thought the best option was to have the Planning Commission hear the application.

CHAIR'S REPORT: None.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: None.

ADJOURNMENT:

There being no further business, the hearing adjourned at 7:20p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS