

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
09-09, 2009
(APPROVED OCTOBER 14, 2009)

The Regular Meeting was held at the hour of 6:00 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California.

FIELD TRIP: 1:00 p.m. The Field Trip was cancelled. Board Members visited sites on an individual basis.

MEMBERS PRESENT: None.

MEMBERS EXCUSED: Chair; Dawn Clark-Montenegro; Vice Chair, Kathy Gil; Members, Jewell Spalding, Frank Peixoto and Ineda Adesanya.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner.

1. **FRED FULCHER, CONDITIONAL USE PERMIT MODIFICATION, C-8727, PLN-2009-00062** – Application to allow modification to approved Conditional Use Permit, C-8727, with the construction of additional floor area for a commercial establishment and to maintain the mobile outdoor business in a P-D (Planned Development, ZU-1487, 1487th Zoning Unit) District, located at 691 West A Street, north side, corner north west of Royal Avenue, Unincorporated Hayward Acres Area of Alameda County, designated Assessor's Parcel Number: 432-0016-035-00. **Staff Planner: Christine Greene.**
2. **BAY AREA COMMUNITY SERVICES, CONDITIONAL USE PERMIT, PLN-2009-00064** – Conditional Use Permit Application to allow expansion of a residential care facility from 12 bedrooms to 15 bedrooms with a 1,230 square feet expansion, in an R-1 (Single Family Residence) District located at 22505 Woodroe Avenue, west side, approximately 150 feet north of Ralston Way, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 417-0080-005-04. **Staff Planner: Carole Kajita.**
3. **GERI LEON, CONDITINAL USE PERMIT, PLN-2009-00073** - Application to allow continued operation of a massage therapy establishment in a PD (Planned Development, ZU-1408, 1408th Zoning Unit) District, located at 3045 Grove Way, south side, approximately 400 feet east of Center Street, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 417-0010-020-02. **Staff Planner: Christine Greene.**
4. **PUBLIC STORAGE, CONDITINAL USE PERMIT, PLN-2009-00081** – Application to allow the installation and operation of a telecommunications facility (Cell Site) in an M-1-B-40 (Light Industrial, 40,000 Square Foot Minimum Building Site Area) District, located at 2497 Grove Way, south side, approximately 800 feet east of Redwood Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 0080-001-03-00. **Staff Planner: Richard Tarbell.**
5. **T MOBILE USA / CHRIS COONES - CONDITINAL USE PERMIT, PLN-2009-00085** - Application to allow a telecommunications facility (Antenna

Array) in a PD (Planned Development, 1591st Zoning Unit, allowing single family residential uses with additional conditions) District, located at 17228 San Franciscan Drive, west side approximately 150 feet south of Bellingham Drive (PG&E Easement), unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 0085-6312-054-00. **Staff Planner: Richard Tarbell.**

6. **T MOBILE USA / CHRIS COONES - CONDITINAL USE PERMIT, PLN-2009-00090** - Application to allow a telecommunications facility (Cell Site) in a PD (Planned Development, 1268th Zoning Unit) District, located at 18832 Cavendish Place, approximately 500 feet from the intersection of Troost Court, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 0085-1510-013-00. **Staff Planner: Richard Tarbell.**

REGULAR MEETING: 6:00 p.m.

MEMBERS PRESENT: Chair, Dawn Clark-Montenegro; Vice Chair, Kathy Gil; Members, Jewell Spalding, Frank Peixoto and Ineda Adesanya.

MEMBERS EXCUSED: None.

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

There were approximately 10 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 6:00 p.m.

ANNOUNCEMENTS BY THE CHAIR: The Chair 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. **Sing Cheng, Via Pasatiempo, San Lorenzo, CA 94580**
In violation of Alameda County Ordinance 6.65.030 D (1) and M (1).
 1. Overgrown weeds and vegetation.

The Vice Chair 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 4/0. Member Adesanya did not participate in the vote.

2. **Angela Y. Wei, Gordon Rd., Castro Valley, CA 94546**
In violation of Alameda County Ordinance 6.65.030 A (1), D (1), D (3) & M (1).
 1. Unlawful outdoor storage of debris & miscellaneous items;
 2. Weeds & dead trees.

The Vice Chair 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 4/0. Member Adesanya did not participate in the vote.

3. **Diamond Financial Marketing Group, Inc., Thrush Avenue, San Leandro, CA 94578**
In violation of Alameda County Ordinance 6.65.030 A (1), D (1), D (2), D (3) and M (1).
 1. Overgrown vegetation and weeds on the property; and
 2. Garbage, trash, debris and miscellaneous items stored 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 5/0.

4. **Altima Contracting Limited Inc., Vacant lot on Jelincic Drive, Hayward, CA 94542**
In violation of Alameda County Ordinance 6.65.030 D (1), D (2), D (3), M (1) and 17.52.290
 1. Weeds; and
 2. Cargo containers and/or truck trailer stored 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. The Vice Chair seconded the motion. Motion carried 5/0.

5. **Wells Fargo Bank, Hathaway Ave., Hayward, CA 94541**
In violation of Alameda County Ordinance 6.65.030 D (1), D (3) & M (1).
 1. Overgrown vegetation and weeds throughout the property.

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

6. **Isabel Nevarez, Trustee, Sunset Blvd., Hayward, CA 94541**
In violation of Alameda County Ordinance 6.65.030 A (1) & M (1).
 1. Unlawful outdoor storage of furniture, household items, miscellaneous items, rubbish and debris in the front, side and rear yards.

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

7. **Ramiro & Victorina Cornejo, Grove Way, Hayward, CA 94541**
In violation of Alameda County Ordinance 6.65.030 I (1) and M (1).
 1. Recently installed front yard paving exceeds the maximum 50% allowed.

The Chair 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 4/1. Member Spalding was not in support of the staff recommendation.

CONSENT CALENDAR:

There were no items on the Consent Calendar.

REGULAR MEETING: 6:00 p.m.

REGULAR CALENDAR

1. **BEHZAD & TARANEH BARFEEI, PLN-2009-00056** - Conditional Use Permit Application to allow continued operation of an auto sales and minor service facility in an ACBDSP – TA (Ashland Cherryland Business District Specific Plan – Transit Access) District, located at 21273 Mission Boulevard, southwest side, approximately 50 feet northwest of the intersection with Blossom Way, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 414-0076-028-00. **Staff Planner: Christine Greene.**

Staff reviewed the application and recommended modification to the staff report. Finding #4 should now state: The auto oriented use is not consistent with the Ashland Cherryland Business District Plan, Transit Access designation. The recommendation was denial: Initial Board questions were as follows:

- Is the use in compliance with the General Plan, and Draft General Plan
- Is the use in compliance with the Specific Plan
- Are used auto sales allowed in the ACBD Specific Plan
- If the BZA denies the application could possible contention between the Plans arise
- Did the ACBD Plan prohibit used car sales when the prior CUP's were in effect
- What comments were submitted by the Redevelopment Agency
- Is the site vacant
- Did the Applicant submit a renewal request prior to expiration of the former permit
- Where is the business located on the site

Staff told the Board the Redevelopment Agency continues its position, in that it would not support a business that does not conform to the ACBD Guidelines. The Chair noted that when the prior permit was renewed the Redevelopment Agency did not submit comments. In the past the application had been delayed to obtain input from the Redevelopment Agency. Staff said in general. Redevelopment would like to phase out uses that are no longer allowed in the ACBD Specific Plan, over a period of time. However the Redevelopment Agency does not have a policy that is in effect, in the interim. The Applicant did submit a renewal request prior to the expiration of the former permit. Currently the site is vacant. It appears the Applicant would like to keep his options open. Staff referred to the site plan. The sales lot is located at the rear of the site. There is an auto sales business next door that faces the frontage of Mission Boulevard. However Golden Gate Motors is not the business in question. Board Members pointed out the ACBD Plan was adopted in 1995. At that time Used Car Lots were to be phased out. Language in the use permit, and resolution issued in 2006 also state the "use" will be phased out over time. Staff clarified the 2006 use permit did not refer to the General Plan only the Specific Plan. Public testimony was opened.

The Owner / Applicant, Mr. Behzad Barfeei was present. Mr. Barfeei told the Board he first applied for a use permit 10 to 11 years ago. Since that time, the permit for used auto sales has been renewed. Mr. Barfeei owns other properties throughout the County in San Leandro and Hayward, including the lot with Golden Gate Motors that is not in question. He has not experienced any problems renewing his permits. Next to his site on Mission Boulevard there are other auto related businesses like Napa Auto Parts, and a car stereo sales store. The permit he is requesting is in keeping with the businesses, in the surrounding area. He also owns the property to the rear of the car sales site. Currently the site is vacant because the tenant went bankrupt. He broke his lease agreement, and walked away. Mr. Barfeei is attempting to find another tenant however it is difficult in these economic times. The rent is \$1,500 dollars per month. He can only find a tenant willing to pay \$1,000 per month. Money is also necessary to cover taxes, which are increasing. He is more likely to get a tenant with an active use permit. Twenty to thirty years ago the area was thriving. Now businesses are closing all around the area, including sites at the Southland and

Bayfair Malls. Small businesses like Mr. Barfeei's are in competition with large retail locations. He is trying to keep his site nice to make an impact. He also owns a medical office use property on B Street in Hayward. He has been unable to rent the site, and there have been no inquiries in some time. Board questions for Mr. Barfeei were as follows:

- Is Mr. Barfeei aware of what the current zoning allows
- Was Mr. Barfeei informed when his prior permit was renewed, the use was to be phased out
- Why was Mr. Barfeei under the impression at the renewal of his prior permit that the site was "Grandfathered In" for auto sales
- Has the use changed in any way
- How long has the site been vacant

Mr. Barfeei said the property was designated "TA" (Transit Access). He was aware the used car sales use would be phased out. However in the interim he will still attempt to find a tenant. Mr. Barfeei owns four properties next to one another. The site with Golden Gate Motors located next door, is the site he referred to as "Grandfathered In". A new tenant began to use the site in 1999. The DMV requires a release be signed by the Planning Department confirming the use is allowed. The Planning Department told the tenant a cup was required, in addition to a fee. Mr. Barfeei thought the process was like that of San Leandro. Once the fee is paid, the permit is processed. He was unaware there was a further process. He did not know continual renewals were required for the use. Although the zoning has changed, he was not aware that a use permit was necessary. Mr. Barfeei said he was open suggestions. Other property owners in the area have Medical Marijuana Dispensaries and Massage Parlors. However his religion will not allow Mr. Barfeei to conduct those types of establishments. He asked the Board what other uses were allowed at the site.

Staff said the zoning in effect since 1966 has required a conditional use permit for auto sales. The use is not allowed under the current zoning, even with a use permit. Member Spalding asked if the prior use has ceased, would the Applicant be required to return for a use permit. Staff clarified that "auto related", and "auto dependant uses" are allowed in the District, not auto sales. Mr. Barfeei said the auto business next to his, is not maintained. The store that was selling tire rims has now gone out of business. The owner discovered that once rims are placed on a set of tires, the warranty is voided. Mr. Barfeei told the Board he was a retired engineer. He now sells Real Estate and knows the profile of customers that shop in Walnut Creek will not shop on East 14th Street. Member Spalding told Mr. Barfeei the purpose of Redevelopment is to improve the area, so all customers come and shop. There are efforts that could be made to improve the property. Board Members asked staff the following questions:

- Is a cup required for an allowed use in the District
- Does the TA vs. the TC District allow auto sales
- Can the Applicant amend the application for another use
- Can monies spent be used toward a new application
- Can the application be withdrawn

Staff confirmed allowed uses in the District do not require a CUP. Staff further explained auto sales is an allowed use in the TC (Transit Corridor) however it is not allowed in TA (Transit Access). There are some lots in the local area that are zoned TC. The Applicant can apply unused funds toward a new application; or if the application is withdrawn, any unused monies would be returned after time and

material costs were deducted. Public testimony was closed.

Member Spalding thought Finding #2 should be changed, and not be stated in the affirmative. She did not believe the land use was properly related. Just because auto sales and service facilities have been in the area does not mean the use is proper. The Specific Plan does not permit the use this would trump the General Plan. In her opinion maintenance is minimal, at the site. The site does not set a stellar example. County Counsel said the Specific Plan can more generally define a use in the General Plan. If it is a case that the General Plan does more specifically not allow a use, the General Plan would trump the Specific Plan.

Member Adesanya pointed out the Finding referred to zoning. The finding should remain unchanged with the exception of the last sentence. The use is no longer present. She did not object to enforcement of zoning however she did have a problem with the status of the General Plan. It would be helpful to know the status, and extent of General Plan revisions. It may take 20 years to complete updates.

Member Peixoto agreed. Some sites have remained vacant for 20 years.

The Chair thought the Redevelopment Agency should clarify the point on East 14th Street where consideration has been given regarding redevelopment. Auto Row sites are viable for redevelopment however she did not believe this site was suited for auto sales.

Member Spalding did not believe there was an overwhelming need for used auto sales in the area. The rear of the site cannot be seen well from the street. All that is seen from the street is the driveway. The lot looks to be subdivided originally from a neighboring parcel. Member Peixoto agreed.

Member Peixoto motioned to uphold the staff recommendation of denial. The Vice Chair seconded the motion. Member Spalding asked a question to the motion. Would Member Peixoto be willing to accept amendments to the Findings: For example Finding #1 would not be in the affirmative. There are plenty of used car lots in the area; Finding #2, Although car sales exist in the area, the zoning prohibits the use; Finding #3 *or business in the vicinity as proven over the years*, could be stricken.

Member Peixoto accepted Member Spalding's proposed modifications to Finding #2. He declined to accept modifications to Finding #1. Used car lots are needed in the County. However it would be impossible to monitor all of them. He will accept modifications to Finding #4 as proposed by staff, *The auto oriented use is not consistent with the Ashland Cherryland Business District Plan, Transit Access designation*.

The motion to deny PLN2009-00056 carried 4/0. Member Adesanya abstained and did not participate in the vote due to lack of information available regarding redevelopment for the area.

1. **FRED FULCHER, CONDITIONAL USE PERMIT MODIFICATION, C-8727, PLN-2009-00062** – Application to allow modification to approved Conditional Use Permit, C-8727, with the construction of additional floor area for a commercial establishment and to maintain the mobile outdoor business in a P-D (Planned Development, ZU-1487, 1487th Zoning Unit) District, located at 691 West A Street, north side, corner north west of Royal Avenue, Unincorporated Hayward Acres Area of Alameda County, designated Assessor's Parcel Number: 432-0016-035-00. **Staff Planner: Christine Greene.**

Staff reviewed the application for modification of approved permit C-8727. The request is for an expansion to the floor area of the commercial building by 1,300 square feet, and to maintain a mobile

outdoor business on the site. The recommendation was approval. Initial Board questions were as follows:

- Has the Applicant applied for the building permit
- Is the site currently under construction
- Is the advertisement banner still on the west face of the building
- What is the status of the Alarm/Stereo business at the site
- How will permit modification effect the surrounding area
- Where is the boundary of the City of Hayward in relation to the site

Staff said the application expires 3 years or when the Applicant obtains a certificate of occupancy whichever occurs first. The auto alarm business appears to be vacant, and has ceased business. The Chair acknowledged she did not observe any activity during her site visit, although there were approximately 3 people at the mobile outdoor business (taco truck). The appearance of the site had greatly improved. There is no Graffiti, and the location looks very clean. Standards should remain high, as the City of Hayward development across the street containing Target, Starbucks, etc. set a high mark. These businesses are doing quite well. County parcels are evident in comparison to the parcels located within the City of Hayward. Staff said the site is one of the few pockets of Unincorporated County left in that vicinity. City boundaries are to the north, County boundaries to the south. Public testimony was opened.

The Applicant Mr. Fred Fulcher thanked the Board for acknowledging the cleanliness of the site. He has an agreement with Guadalupe Lopez to maintain the site. The mobile outdoor business (taco truck) is still operational, however business is very slow. The company that manages the taco truck also owns a mobile restaurant nearby called, El Indio. The company has a 2 year lease to move from the taco truck on his site, into the proposed interior restaurant. Although business is now at a subsistence level. Mr. Fulcher will see if business improves. The banner has been removed for 5 months. Board questions for the Applicant and staff were as follows:

- How does the modification request differ from the recently approved permit
- What are the consequences if the deadline to obtain the building permit is not met
- Has the Applicant obtained financing for the project
- When will construction be complete

Staff further explained the building permit for the modified plan must be applied for within a period of 12 months, or the use permit becomes null and void. Building construction must begin within a 3 year period. If there is a delay, the Applicant can request a building permit extension from Public Works. Typically delays occur if the plans are further modified. However the Building Department seeks to turn submissions around quickly.

Mr. Fulcher said initially he had obtained financing. Due to the current economic situation, the bank withdrew their financing. Mr. Fulcher owns the land, and is self financed at this point. Now the economy is slow, and he does not immediately need a sit down restaurant. It is important to keep the tenant at the site to maintain the property. In addition to the agreement with the company that runs the mobile outdoor business, Guadalupe Lopez will be the second tenant. She will run the proposed Waffle House shown in the construction drawings. Additional tenants will be necessary. The Chair again complemented Mr. Fulcher. Although the site still needs a lot of work, there has been vast improvement regarding cleanliness. She shops in the area and would like to see the construction process accelerated, to blend in with the nearby shopping area in the City of Hayward. Mr. Fulcher said the presence of Guadalupe Lopez as the site manger, and the tenant have been invaluable. He anticipates construction will move quickly once initiated. A lot of time and money has been invested in design plans. Updated plans with

proposed changes have already been submitted to the Building Department. Public Works has suggested a method through which the storm drain can be re-directed onto the landscaping. He is working with Environmental Health to resolve the issues with non-conforming bathrooms at the site. The site will be re-painted in the interim. The entire project will cost approximately \$350,000 dollars. Staff confirmed updated plans had been submitted. The Board approved exterior paint colors as a component of Conditional Use Permit, C-8727. Public testimony was closed.

Member Spalding motioned to uphold the staff recommendation of approval PLN-2009-00062 as reflected in the September 9, 2009 Staff Report. The Vice Chair seconded the motion. Motion carried 5/0.

3. **GERI LEON, CONDITINAL USE PERMIT, PLN-2009-00073** - Application to allow continued operation of a massage therapy establishment in a PD (Planned Development, ZU-1408, 1408th Zoning Unit) District, located at 3045 Grove Way, south side, approximately 400 feet east of Center Street, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 417-0010-020-02. **Staff Planner: Christine Greene.**

Staff recommended approval of the application. The Castro Valley Municipal Advisory Committee recommended approval, as well. The Chair asked if the cargo container on the site was part of the permit. Staff confirmed cargo containers are allowed in PD (Planned Development) Zoning. Public testimony was opened.

Ms. Geri Leon told the Board she still has a passion for her work, as a massage therapist. The use permit for the business has been renewed several times. The business is monitored by the Sheriff's Department. Site visits are conducted to confirm the business is reputable. Her establishment is always found in compliance. Letters confirming professional certification and business license are attached to the staff report, in addition to letters of commendation from Hayward City Council Members, as well as the Vice President of Patient Services, at Saint Rose Hospital. Based on her record, Ms. Leon's requested the Board extend the length of the permit to a period of 10 years. Member Peixoto said permit length is not necessarily a reflection of her operation but a component of area zoning. Member Spalding acknowledged zoning use is tied to the land, however if the permit length were extended. Perhaps the Applicant is willing to accept a condition upon sale of the business, the use permit automatically expires. Board questions for the Applicant were as follows:

- Does Ms. Leon rent or own the site
- Does Ms. Leon have an assistant
- How does Ms. Leon attain clients
- Would the use permit be valid if the massage therapy business is sold

Ms. Leon is a sole proprietor. She rents the space used for her business. An extension of the permit period would save time. There is also a financial impact while undergoing the renewal process. She cannot work when present at hearings, etc. Ms. Leon only accepts appointments she books herself. She enjoys networking face to face. She also meets clients at Chamber of Commerce functions. Ms. Leon would be willing to accept a condition that upon change of ownership, permit renewal is required. Public testimony was closed.

Member Peixoto motioned to uphold the staff recommendation of approval with a modification to Conditions of Approval. The permit shall expire in ten (10) years or upon change of business ownership whichever comes first. Member Adesanya seconded the motion. Motion carried 5/0.

APPROVAL OF MINUTES: The Minutes of August 26, 2009 were continued to September 23, 2009 Meeting.

STAFF COMMENTS & CORRESPONDENCE: The Board of Supervisor's upheld the BZA's decision of denial, regarding the PLN-2008-00072, Garnhart.

The BZA's decision to approve Conditional Use Permit, C-8734, T Mobile / HARD was appealed to the Board of Supervisors. The BZA's decision to uphold the staff recommended Conditions of Approval for PLN-2009-00049, T Mobile / Amy Million was appealed to the Board of Supervisors.

The Planning Commission voted to deny Application PLN-2009-00010, Silva. The application was referred to the Planning Commission because the Application did not meet the Board of Zoning Adjustments requirement of a minimum 3 confirmative votes. The original BZA vote was 2/1 in support of denial.

The October 14, 2009 Hearing will be limited to one Agenda item. PLN-2009-00098 Miller/Crawford is anticipated to require lengthy testimony and Board discussion.

The Redevelopment Agency will make an informational presentation at the October 28, 2009 Meeting.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

The Chair asked the status of Variance Application, ROMBOUGH, PLN-2009-00061. Staff responded the Applicant recently submitted information on the history of the parcel. The submission will be forwarded to County Counsel.

ADJOURNMENT: There being no further business, the hearing adjourned at 9:00 p.m.

ALBERT LOPEZ - SECRETARY

WEST COUNTY BOARD OF ZONING ADJUSTMENTS