

**MINUTES OF MEETING  
WEST COUNTY BOARD OF ZONING ADJUSTMENTS  
SEPTEMBER 14, 2005  
APPROVED JANUARY 11, 2006**

The meeting was held at the hour of 1:30 p.m. in the Alameda County Building, 224 West Winton Avenue, Suite #111, Hayward, California.

**FIELD TRIP: 1:30 p.m.**

**MEMBERS PRESENT:** Frank Peixoto, Chair.

**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. **DONALD O'CONNOR, CONDITIONAL USE PERMIT, C-8408** – Application to allow continued operation of a clubhouse use within an existing multi-tenant commercial building in a C-1 (Retail Commercial) District, located at 1353 Bockman Road, north side, approximately 100 feet west of Via Chiquita, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 0411-0063-017-00.
2. **REDWOOD CHRISTIAN SCHOOLS, CONDITIONAL USE PERMIT, C-8432** – Application to allow renewal of C-8128 for five years and the addition of a 2,400 square foot physical education room, in a R-1 (Single Family Residence) District, located at 1000 Paseo Grande, west side, terminus west of Via Alamos, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 0411-0030-047-00.
3. **ARSHAD MALIK, CONDITIONAL USE PERMIT, C-8434** – Application to relocate an existing alcohol outlet in a C-1 (Retail Business) District, located at 18880 Hesperian Boulevard, west side, approximately 600 feet north of Bartlett Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0412-0087-075-04.
4. **GRACIANO MORALES, VARIANCE, V-11930** – Application to retain a 548 square foot detached accessory structure (workshop and covered patio) and a separate 140 square foot accessory structure (storage shed) which together occupy sixty-one (61%) percent of the required rear yard where thirty (30%) percent is the maximum, in a R-1 (Single Family Residence) District, located at 16774 Meekland Avenue, east side, approximately 60 feet north of East Lewelling Boulevard, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 0413-0023-057-00. (Continued from July 13, 2005).

5. **XUE QIANG CHUENG, VARIANCE, V-11944** – Application to allow:

- 1) 6.7 foot front yard setback where 20 feet is minimum
- 2) 6.4 foot and 8 foot side yard setback where 20 feet is minimum
- 3) 14.7 foot and 7.6 foot rear yard setback where 20 feet is maximum
- 4) 14 foot wide driveway where 20 feet is minimum
- 5) no walkway along the driveway where it is required

in an R-S-D-35 (Suburban Residence, 5,000 square feet Minimum Building Site Area, 3,500 square feet of land per Dwelling Unit) District, located at 836 Blossom Way, north side, approximately 550 feet west of Montgomery Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0414-0071-032-02.

6. **TAM, TAM, YU AND KUAN, VARIANCE, V-11952** – Application to allow a 18 feet wide driveway where there 20 feet is the minimum and a six feet side yard setback where 10 feet is the minimum with subdivision of the site into three lots, in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 18332 Carlton Avenue, east side, approximately 200 feet north of Dominic Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0472-039-00.

7. **GERARDO DELFIN, VARIANCE, V-11953** – Application to expand a nonconforming use (Dwelling with reduced side and rear yard structures) by the construction of a conforming attached addition in an R-1 (Single Family Residence) District, located at 15935 Paseo Largavista, east side, approximately 300 feet north of Paseo Grande, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 0412-0031-050-00.

8. **BLAKE AND DANA CRISP, VARIANCE, V-11955** – Application to construct an attached addition so as to maintain an existing one foot side yard where five feet is required in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 18623 Sandy Road, west side, approximately 320 feet south of Seaview Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0870-013-00.

9. **DONNA WILLIAMS, VARIANCE, V-11958** – Application to allow construction of an attached addition with a front yard setback of 11 feet where 20 feet is the maximum required in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 18472 Vernon Court, east side, corner of Joseph Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1208-021-00.

10. **MARIO MAPOY, VARIANCE, V-11960** – Application to establish building site status for a parcel without frontage on a country road in an R-

S-D-20 (Suburban Residence, 2,000 square feet Minimum Building Site Area per Dwelling Unit) District, located at 2060 Miramonte Avenue, southeast side, approximately 320 feet northwest of Foothill Boulevard, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080A-0204-002-06.

11. **PATRICIA BARKER, VARIANCE, V-11964** – Application to construct an attached addition so as to extend an existing dwelling wall providing a five feet side yard where eight feet is required in an R-1 (Single Family Residence) District, located at 1117 Via Esperanza, north side, corner north of Via Los Trancos, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 0412-0079-033-00.

**CLOSED SESSION**

Time: 5:00 p.m.  
Place: 224 West Winton Avenue, Room 111  
Hayward, California

CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION

- Significant exposure to litigation pursuant to Subdivision (b) of Government Code § 54956.9: (One Cases).

**MEMBERS PRESENT:** Members Frank Peixoto, Chair; Ron Palmeri and Jewell Spalding.

**MEMBERS EXCUSED:** Lester Friedman

**OTHERS PRESENT:** Chris Bazar, Planning Director; Brian Washington; County Counsel; Tona Henninger, Assistant Planning Director; Jana Beatty, Phil Sawrey-Kubicek, Senior Planners.

**REGULAR MEETING: 6:00 p.m.**

**MEMBERS PRESENT:** Members Frank Peixoto, Chair; Ron Palmeri and Jewell Spalding.

**MEMBERS EXCUSED:** Lester Friedman

**OTHERS PRESENT:** Phil Sawrey-Kubicek, Senior Planner; Yvonne Bea Grundy, Recording Secretary

There were approximately 90 people in the audience.

**CALL TO ORDER:**

The meeting was called to order by the Chair at 6:15 p.m.

**ANNOUNCEMENTS BY THE CHAIR:** The Chair had no 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.

**CONSENT CALENDAR:**

1. **GUL AHMAD, CONDITIONAL USE PERMIT, C- 8306** – Application to continue operation of an auto dismantling and auto sales use in an M-2-B-E (Heavy Industrial with Five Acre Minimum Building Site Area) District, located at 3788 Depot Road, south side, approximately 66 feet south of Cabot Boulevard, unincorporated Eden area of Alameda County bearing Alameda County Assessor’s Parcel Number: 0439-0070-006-00. (To be continued without discussion to October 26, 2005).
  
2. **MAX MORRIS AND ADAMS & MORRIS, CONDITIONAL USE PERMIT, C-8411** – Application to allow continued operation of a minor automotive repair shop in a C-1 (Retail Business) District, located at 186 East Lewelling Boulevard, north side, corner northeast of Ashland Avenue, unincorporated Ashland area of Alameda County, designated Assessor’s Parcel Number: 0413-0019-004-02. (To be continued without discussion to October 26, 2005).
  
3. **JOSE J. RAMON, VARIANCE, V-11902 and SITE DEVELOPMENT REVIEW, S-1965** – Application to retain two existing dwellings and to construct a new triplex so as to provide: 1) one foot and five feet between a driveway and dwelling wall where 10 feet is required; 2) a 14 feet – 10 inch rear yard where 20 feet is required; and 3) to maintain an existing five foot side yard where 10 feet is required, in a R-S-D-20 (Suburban Residence with 2,000 square feet Minimum Building Site Area per Dwelling Unit), located at 299 Sunset Boulevard, southwest side, approximately 325 feet southwest of Princeton Street, unincorporated Cherryland area of Alameda County, designated Assessor’s Parcel Number: 0429-0091-009-00. (Continued from February 9, March 9 and April 13, May 11, June 8 and August 10, 2005; to be continued without discussion to September 28, 2005).
  
4. **JOSE MANUEL VALDES, VARIANCE, V-11939** – Application to approve as a building site a lot having 88 feet of median lot width where 150 feet is required, in an R-1-L-B-E (Single Family Residence, Limited Agricultural Uses, 5 Acre Minimum Building Site Area) District, located at 3998 East Avenue, southeast side, approximately 1084 feet northeast of Clover Road, unincorporated Fairview area of Alameda County, designated Assessor’s Parcel Number: 0425-0070-001-00.  
**WITHDRAWN.**

Member Palmeri motioned to adopt the Consent Calendar as submitted. Member Spalding seconded the motion. Motion carried 3/0.

1. **DONALD O'CONNOR, CONDITIONAL USE PERMIT, C-8408** – Application to allow continued operation of a clubhouse use within an existing multi-tenant commercial building in a C-1 (Retail Business) District, located at 1353 Bockman Road, north side, approximately 100 feet west of Via Chiquita, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 0411-0063-017-00.

Staff described the application. The applicant requests continued operation of a clubhouse within an existing multi-tenant commercial building. Member Palmeri asked if Conditions, #4, #5 and #6 in the Pre Hearing Recommendations were actual conditions in the prior permit. Staff confirmed that they were. Lodge Members utilize the facility and make it available to local civic and community groups as appropriate. No complaints have ever been registered, and the Lodge is in compliance with all required conditions. Public testimony was opened.

The applicant, Mr. Donald O' Connor told the Board the Lodge has been located at Bockman Road since 1998. This is the third request and probably the last request since the Center is slated to be torn down in the future. Public testimony was closed.

Member Palmeri motioned to approve the application subject to the Conditions contained in the Pre Hearing Recommendation. Member Spalding seconded the motion. Motion carried 3/0.

2. **ARSHAD MALIK, CONDITIONAL USE PERMIT, C-8434** – Application to relocate an existing alcohol outlet in a C-1 (Retail Business) District, located at 18880 Hesperian Boulevard, west side, approximately 600 feet north of Bartlett Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0412-0087-075-04.

Planning staff reviewed the application to relocate an existing alcohol outlet. The staff recommendation was denial. Public testimony was opened.

Mr. Jay Woidtke, a representative speaking for the applicant said Mr. Malik is making a concerted effort to relocate his establishment due to the eventual closing of Bockman Center. The applicant would like to remain in the same neighborhood. Village Plaza at 18880 Hesperian is the proposed location. The owner of Village Plaza, as well as his representative are present and can answer any questions that the Board may have. Mr. Malik has operated Bockman Liquor for seven years, purchasing it as an existing business. There have been no incidents or problems with State of California Alcoholic Beverage Control or reported incidents or complaints from the Sheriff's Department. Mr. Malik submitted a petition containing 150 signatures of residents of San Lorenzo that would like to have access to Bockman Liquor. It is recognized as a symbol of customer service, and excellent prices. He continued and said he spent \$150,000.00 on his liquor license. If he cannot relocate he will go out of business. He needs the income from his business to support his family. The new proposed location is not near a school unlike the current location. He respectfully disagreed with the lack of visibility into the front of the proposed location. Many Sheriff and CHP patrol the area. Mr. Jay Woidtke said his client has modified the proposed hours. The proposed hours are now from 9:00 a.m. to 9:00 p.m., Monday through Friday and 9:00 a.m. to 8:00 p.m. on Sundays. Member Spalding asked why almost all snack food would be eliminated from the new location. Mr. Woidtke explained the new location would have 1,200 square feet which is very limited compared to the current location which has approximately 3,000 square feet. The store

would carry wines, a full range of alcohol, lotto tickets and beer. Other stores in the area like Kavanaugh's Liquor's carries snack foods. Paula Zenti, representing COMM PRE opposed the application. She requested that the Board deny the application. In reference to the comment in the staff report that COMM PRE was conservative in their interpretation of the County Alcohol Policy she said that was not the case at all. The County Alcohol Policy states that No Alcohol Outlet/Tavern is to be located within close proximity of another use, so as not to allow the clustering of such that which may adversely affect the neighborhood. She also referenced the section that states that a minimum distance of 500 feet should be required between facilities when located within close proximity of schools, parks churches etc. COMM PRE is simply following the County Ordinance. The applicant has a license type 40. A type 40 license as well as other license types allow liquor to be sold for off-site consumption in the same area. This means they are similar businesses. The Board of Zoning Adjustments has also denied other applications based on the same criteria in December of 2002. Recently an application for Club Zamora was denied. Ms. Zente closed and said approval would be in violation of the County Alcohol Policy and would constitute special privilege. Approval would also set a precedence making the current Alcohol Policy useless.

Mr. Malik said his license was a transfer from one premise to another as a result of a lease termination. His store is different. Other stores like 7-11 sell only beer and wine he will sell a full range of alcohol. Member Spalding asked why Mr. Malik chose the proposed site as opposed to a location further away from other alcohol outlets. He had been looking for five months and no other suitable sites were available in the area. By remaining in the area he can serve the same clientele. Max Morris with Adams, Adams and Morris said as a side note his understanding is that the Alcohol Policy Board approves of the transfer. The owner of the proposed site, Mr. Morrison then spoke and said he had questions regarding Condition #3. He did not wish to make any physical improvements to the property at the current time.

The following were some of his comments:

- Only a small amount of space is available and he did not wish to give additional space for landscaping if it means removing parking area.
- He is willing to work with the County regarding signage but will not agree to general statement without more specific information. The current pole sign with the martini is a strong identifier. Signage is expensive and there have been no objections in the past.
- He has just spent \$75,000 to upgrade the building. He does not want to commit to a program he could not live with.

Mr. Morrison said he had been contacted by Redevelopment. All of his tenants had applied for programs but their applications lost steam when the former tenant who owned the (copy center) became ill and had to close their business. Public testimony was closed.

Member Spalding said it did not appear the property owner was ready to commit to additional improvements at this time. The issue of other alcohol outlets within 500 feet had not been resolved either. She asked staff if a continuance might be appropriate to allow the applicant to consider using the current open application to find alternate locations. Member Palmeri stated that the County Alcohol Policy limits outlets within close proximity to one another. He is also familiar with the location. Parking is a challenge. On several occasions he has left the property prior to frequenting any of the businesses because of the lack of parking.

He did not believe the applicant could make the finding for #1, #3 and #4. Member Spalding

agreed with the analysis but said the application process was expensive. She inquired into whether the applicant would be interested in continuing the application. Fees applied could be used to find a better location that would allow for the business.

Member Palmeri motioned to deny the application. The applicant cannot make Tentative Findings for #1, #3 and #4. Member Spalding seconded the motion. Motion carried 3/0.

3. **MYRNA HOAG, VARIANCE, V-11908** - Application to retain an expansion of a non-conforming use (tow yard in a residential area) and retention of an eight foot chain link fence in a R-S-D-15 (Suburban Residence with 1,500 square feet Minimum Building Site Area per Dwelling Unit) District, located at 16037 to 16097 Mateo Street, southwest side, approximately 311 feet northwest of 162<sup>nd</sup> Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Numbers: 0080-0057-030-00, 0080-0057-036-00 and 0080-0057-037-02. (Continued from May 11 and June 22, 2005).

Staff Planner, Phil Sawrey-Kubicek reviewed the history of the application. The application to retain expansion of a non-conforming use (tow yard) had come before the Board on May 11 and June 22, 2005. The Board had asked the applicant to provide additional information regarding the operation of the business. The staff recommendation is denial of the expansion of non-conforming use, and approval of the eight foot fence height. Public testimony was opened.

General Counsel for the applicant, Mr. Ray Sherman asked the Board for a continuance. Based on new information provided by the applicant and consultation with co-counsel the application may move away from a variance process to possible re-zoning. The business has been in the applicant's family for 56 years. Specialized counsel will be required to further evaluate options. Member Palmeri commented that he was not opposed to a continuance. The fence was a non issue. Conditions could also be imposed that might address pollutants and storm water issues, however the main concern about expansion onto the adjoining property has been ongoing for sometime. Each continuance should be weighed on the merits at the time but the application process has already been open for 60 days. The community has submitted negative feedback. The applicant would need to accomplish a lot within the next 30 days. Member Palmeri closed and said now that the applicant had appropriate counsel this should be the last continuance request. The process should not stop or become non existent. Member Spalding added that the Board had been generous with the time already allotted. Mr. Sherman said the applicant was sensitive to the related issues and the Board had their full attention. A card with the name of Max Morris had been submitted however he was no longer present. Public testimony was closed.

Member Palmeri motioned to continue the application to October 12, 2005. Member Spalding seconded the motion. Motion carried 3/0.

4. **JEFF and JULIE DE LIMA, VARIANCE, V-11917** – Application for building site status on a parcel without approved frontage in order to construct: 1) a single family dwelling 28 feet - six inches in height where 27 feet is the maximum allowed, and a 10 foot side yard where a 20 foot yard is required; and 2) a detached secondary dwelling unit two stories and 20 feet in height where one story and 15 feet are the maximum allowed in an R-1-B-40-CSU-RV (Single Family Residence, 40,000 square foot Minimum Building Site Area, Secondary Unit, Recreational Vehicle) District, located at 17760 Madison Avenue, east side, approximately 1,200

feet north of Seaview Avenue, unincorporated, Castro Valley area of Alameda County, and designated Assessor's Parcel Number: 084C-0910-005-07. (Continued from May 25 and July 13, 2005).

Assistant Planning Director, Steve Buckley gave the Board back ground and a description of the project. On July 13, 2005 the application was considered for building site status, height and side yard setbacks exception, as well as a detached secondary dwelling unit in excess of Zoning Ordinance allowance. The application received approval for building site status and construction of the main dwelling, including a height variance of 28 feet, 6 inches where 27 feet is allowed.

Questions arose at the last hearing, regarding how slope of the property was measured and how that may affect the variance application. Staff prepared several graphics and a list of several options which may assist the Board in interpreting existing County Policy. Regarding the upper Madison Avenue Plan there are two elements of the plan that impact the secondary dwelling and garage as detached structures, should they be located as currently proposed. Policy #5 in the Plan discusses geologic conditions and visual importance of the valley walls. The policy states the valley walls should not be built on. Regulation #5 of the Plan, states that no building shall be permitted on areas, greater than 30% slope or more. Map #6 in the Specific Plan delineates areas of 30% slope. Based on Map #6, staff made the prior decision that placement of the secondary dwelling was allowed as proposed, meeting setbacks from the road and side yard requirements. Height and number of stories have yet to be determined. Further discussion and interpretation has taken place since July and a new topographical map has been submitted by the applicant. Areas shown on the site plan and new topographical map have been used to interpret areas of 30% slope not shown on Specific Plan maps. Staff prepared several overlay interpretations to be used over the Specific Plan Map. Currently Alameda County does not have a definition or standard approach of measuring slope.

- The two foot contour overlay, interpretation shows fairly extensive areas (fingers) of 30 % slope that take up large areas at the western end of the site. This leaves the top and bottom or north and south ends of the property to be developed.
- Using the 5 foot contour intervals condenses the area but concentration of the 30% slope is focused on the middle of the property.
- Another method used by other jurisdictions is to consider areas substantial in slope to both extent and degree. This method identifies more important areas of slope as opposed to minor site features. This method is consistent with the method of calculating slope in the Fairview Specific Plan. Necessary access and custom buildings are allowed as exceptions to slope limitations.

Staff asked the Board to consider the different methods and interpretations of the Specific Plan to determine placement of the accessory structure. Height and number of stories can then be determined. The Chair asked if the proposed second unit and garage should be moved out of the 30% slope area. Staff said that Board would first have to determine how slope and be measured. Final placement could then be determined. Staff is of the belief that Specific Plan Policy could/should be followed then the Specific Plan Map can be used to determine where 30% slope exists. This keeps in mind building does not take place on the canyon walls. In staff's opinion the area greater than 30% is a minor site feature and does not encroach onto the canyon walls.

Originally there was a proposal that located the secondary dwelling 20 feet from the roadway. That original proposal was modified. The current proposal is a 30 foot setback from roadway outside of

the 30 % slope zone. The Board asked staff what height was used to calculate the slope examples. A generalized 15 foot height was used. Staff explained that the exact height calculation used in writing the Madison Avenue Specific Plan is not known. In general the lower areas of the valley tend to be less developable and upper valley areas more developable. This site is located in a margin in between. Areas not shown in the Specific Plan Map are predominately canyon walls. Public testimony was opened. The applicants Jeff & Julie De Lima distributed material to the Board. Mr. De Lima referred to Exhibit #1, Map #6 of the Madison Avenue, Specific Plan. The map shows areas that of 30% slope and greater. Mr. De Lima said the map clearly showed a corner of his property that exceeded 30% slope but that none of the property shown was as non-buildable.

The area on the property that people refer to as a swale is not a swale at all. The structure is unlike a swale in that it does not have a bed or bank. It was built by the former owner to access a gate at the top of the property. Areas that are in addition to what the Specific Plan Map indicates is greater than 30% slope are man made. If the Board decides that a 30% slope exists he did not believe that should prevent the application from being granted. The lot is narrow and variances have been granted in the area for building on a slope greater than 30%. He reminded the Board a portion of the application had already been granted for the main home which is not on a sloped area. Their property is located in the lower valley which on Map #6 is out of the 30% slope area. Although the topographical map prepared for the application does show the garage is within a 30% slope area it refers to the overall land in that section not necessarily the specific location of the proposed garage. He continued, and said regarding the side yard variance some small variances had already granted in the area. He referred to Exhibit #2 which listed approved side yard variances. His property was a unique shape which was difficult to build on. The Alameda County Fire Department requested the set back for emergency crew access in the event of an emergency. Additional features would be fortified windows in the bathroom area of the secondary dwelling and a distance of 44 feet would remain between the secondary dwelling and the closest property. The property has had dual road access for 50 years. The De Lima's said they would be willing to pay any additional fees necessary for road maintenance. In regard to impact on the surrounding area most homes have been granted variances as well. The proposed placement of the garage and secondary unit is the best solution for the narrow lot. Mr. De Lima also read from the Specific Plan as to what circumstances variances could be granted. He closed by referring to Exhibit #7 which listed neighbors in favor of the project but who were not able to attend the hearing. He said he was just looking for the same opportunity as his neighbors had been given. Those opposed should be ashamed of themselves.

Ms. Laurie Childers, a neighbor who lives at 17875 Madison Avenue showed the Board where her home was located in proximity to De Lima's. She felt the variance should be denied because her property is most affected when creek flooding occurs along Common Road as a result of the creek. Member Spalding asked Ms. Childers if she had reviewed the options proposed in the staff report. Ms. Childers had not reviewed them as of yet. Member Spalding responded that grading, erosion standards etc. would apply to the project. The various options were worth consideration.

Richard Nuld, Chris Sarantakis and Sue Bogue gave their speaking time to Mr. Lyle Bogue. Mr. Bogue said he had written two letters to the Board and spoken at two meetings. Initially staff did not respond to his letter or to others submitted by neighbors. He did receive a response prior to the meeting. His concern was that the Specific Plan in Section, #5 does not state it refers to Exhibit #1, Map #6.

He pointed out that if the Board of Supervisor's wished to limit the 30% slope they would have stated just that. He did not feel there was agreement as to if the garage structure would be on a 30% slope because the Planning Department prepared Map #6, not an actual surveyor. If the Planning

Department sample is used the area should be surveyed. That will confirm if the structure is outside a 30% sloped area. Two shoulders come down from the canyon walls and there is a finger that comes straight down. The De Lima property is not unusual in size and shape, in comparison to other properties in the area. The entire project can be built without a variance. Mr. Bogue said he had been granted a variance on his property to build his garage. Without a variance a garage would not have been possible. He believes the De Lima's want to build their garage 70 feet from their own front door but 40 feet from the their neighbors door. Option #3 would still require a variance but admitted he had not considered the position of the hill until that night. Member Palmeri again stated that if options were in existence other than a variance they should be considered. In this case if a variance were granted the Madison Avenue Specific Plan could be opened up for interpretation. Staff and the applicant have also stated this could set precedence. Member Spalding asked Mr. Bogue what he thought possible alternatives to Option #2 or #3 might be. His closing comment was that if the De Lima's wanted a seven car garage they should put it near their own front door, and all of the structures should be on the eastern side of the property.

Maria Nuld and John Lewis gave their time to Ms. Roxann Lewis who lives at 17750 Madison Avenue. Ms. Lewis said perhaps none of the neighbors would be present that night had the Madison Avenue Plan been updated. The original Planner working on the project had passed away some years ago and work on the update was never completed. In regard to dual road access it had not been used in over 20 years. Neither the current or prior owner of the property has paid into the road maintenance fund for the Madison Avenue side. She did not know the status of payment into the fund for the Madison Avenue Common side. All County maps show some portion of the parcel at 30% slope. Option #1 for example says that only slope for building locations would be considered and swimming pools would not. The 1995 Draft of the Specific Plan says pools are considered as buildings. Tentative Finding #2 in the staff report states that a determination of special circumstance may depend on the calculation of slope used and interpretation. The De Lima's knew the lot had limited development potential when they purchased it. Conforming development is possible. Ms. Lewis raised the concern that another neighbor had about traffic on the 50 year old bridge. She recommended that a bond to ensure repair of road damage be a condition of granting the variance. Member Spalding asked Ms. Lewis which option she preferred. Ms. Lewis believed there was sufficient area to locate the structure close to the dwelling. Option #3 would be a compromise, although it may require a variance as well.

Mr. Dean Nielson requested that the Board adopt the recommendation of the CVMAC. After site visits they believe the proposed structure should be limited to one story. He also pointed out an error on the Assessor's Map that shows Madison Avenue and Madison Avenue Common as one street. Madison Avenue is to the west and Madison Avenue Common is to the east. Several properties border both roads and a legal determination should be established. There is a question of access. Both the De Limas and the previous owners have unresolved questions, regarding sharing the road. This question must also be resolved.

- Member Spalding asked if CVMAC also had concerns regarding the bridge.
- Member Palmeri asked Mr. Nielsen if thought road access should be allowed or if road access should be qualified.
- The Chair asked if the address on each were the same.

Mr. Nielsen said a legal determination must be made first. If access can be gained legally that would be ok, if not access would have to be restricted. If it is legally determined as an easement there is no way to condition access. The addresses on each street are different. In regard to the

definition of a secondary unit CVMAC struggled with the definition that allows a secondary unit to be erected without a variance. CVMAC believed that a 1,250 square foot garage with a 640 square foot unit attached is without question a secondary unit. CVMAC is currently working on design guidelines to address such issues, but this example falls through the cracks. A compromise is to put the garage closer to the proposed home. To put a secondary unit on the garage and place it at the top of the hills would be intrusive. Although legal, it is still large. He did not feel the number of spaces in the garage was up to the Board to interpret. He closed and asked the Board of Zoning Adjustments to support the recommendation of the CVMAC.

Ms. Nancy Churchill who lives at 17823 Madison Avenue said she had lived in her home for 43 years. The house is located one home further north of the De Lima's. There is trouble when flooding occurs. Runoff is not completely absorbed. The Columbia Estates development in the area has already had an impact by filling the creek with silt. An additional dwelling will impact the creek and affect overflow.

Ms. Connie Deets lives at 18413 Madison Avenue which is on the east side. This application process has turned into a disaster, turning one neighbor against another, and she feels badly. As a home owner she strongly disagrees with the proposed garage. She believes the County should show some impartiality in the planning process. She hopes the De Lima's can build the home of their dreams. The Madison Plan was designed to prevent flooding and keep the area safe. The process of taking an entire lot to measure topography would mean any space was buildable including Half Dome. The De Lima's have an acre on which to build a four car garage. They installed the road on the property. A four car garage can be attached to the house

Mr. Dave Deets who also lives at 18413 Madison Avenue felt the secondary unit should be limited to 1,200 square feet. If the building design is cut into the hill, square footage can then be averaged. Vehicle access did not exist prior to the De Lima's arriving at the property. It is evident that the grade has been altered. Option #2 would still be on a 30% grade. The Bogue's need only one variance on their property, the De Lima's would need five. Most neighbors live on the west side of the De Lima's property. The secondary unit would be most visible from the west side. The De Lima's had never been asked for a road maintenance fees because a road did not exist.

Mr. Cliff Olsen of 5212 Wild Rose Lane said he has walked the property several times over the years. He thought the structure should be built on top of the hill. Currently there is an old mobile home there and a new house would look good.

Mr. Robert Peterson who lives at 5294 Canyon Hill Court told the Board he was the only one present who participated in the development process of the Madison Avenue Specific Plan. His own garage has a height of 19 feet. He is a retired Building Inspector and worked for Bay Area Agencies like, City of Hayward, Oakland and Milpitas for 31 years. Many parcels like the De Lima's exist throughout the area. He thought the best solution was to build at the top of the hill, and not to dig into the toe of the canyon walls. Other neighbors like the Thompson's have lived in the area for a year and they have erected structures without permits.

Mr. John Aufdermauer of 17580 Madison Avenue told the Board he lived on the Madison Common Road side. He welcomed the De Lima's and thought they should build their home. He has done research on the creek and obtained information from Fish and Game. The De Lima project should not create more run off than any other property in the area.

They will have to meet the standards and conditions set forth by the County. Mr. John Aufdermauer collects money from residents of the neighborhood to trim the trees along the road. He approached the De Lima's right away, and they have paid into the fund. He believes a homeowner should have rights. In 1994 he requested a variance on his property. During that

process the decision was that building on slope exceeding 30% was limited to areas not on the canyon walls.

Mr. Larry Vanderbilt told the Board his north property line connected to the De Lima's. The project would affect him more than anyone else. He was tiring of the continuous discussion. If he had to hear about 30% slope one more time he was going to puke. The De Lima's should be allowed to build.

Mr. James Oldakowski encouraged the De Lima's to follow their American Dream. Mr. Oldakowski announced that he was speaking on behalf of Mr. De Lima. The De Lima's, simply want to build a nice home on the property. Others in the area have expressed the same desire. He is building a home in Amador County with a design similar to the De Lima's. The structure is considered one story. For the purposes of financing the bank also considered his structure one story as well. As the entire area expands home owners will have to consider parcels that are left undeveloped. Mr. De Lima has tried to compromise throughout the process, modifying the design. The variance should not be denied.

The architect for the project, Mr. Alan English said he would like to address two issues. His firm has done many projects over the years regarding, land planning and the identification of slope. Large chunks of area are identified. Every small indentation and grasshopper hole is not. Identifying slope in this manner was a well established practice and is probably still in use. The Madison Avenue Plan does not want building to take place on the canyon walls but to micro manage beyond that is insanity. There are probably some sections that exceed 30% a result of man made road. Staff confirmed that there are portions of land within the Specific Plan area that are entirely over 30%. It is not the implication to completely restrict building on portions that do not completely exceed 30%.

The second issue is the structure being categorized as a second story. Planning staff states the structure is two stories however the Building department considers it a single story structure with a basement. Member Palmeri asked Mr. English what portion of the site he considered to have a slope greater than 30%. Mr. English responded that using the standards of land development he considers one section of the northwest corner to have greater than 30% slope. Based on the map prepared by staff that portion might be 20% to 25% of the total parcel. He reiterated that the larger portion of the parcel should be considered in the overall determination of slope. Member Palmeri responded that determination would be made by the Board of Zoning Adjustments. Member Spalding pointed out that the application was for a two story secondary dwelling. What, is the distinction between a between a single story with a basement and a two story building. In the past staff has referred to the interpretation of the Building Department. Mr. English said the definition was semantics.

The Chair closed public testimony at 10:30 p.m.

Member Palmeri differed slightly with the three options offered in the staff report. Regarding Option #1 he believes, Map #6 using the five foot contours was inclusive, not exclusive. Areas that are inclusive which prohibit building on a 30% or greater slope does not mean those areas may include a portion that does not exceed 30% slope. He used the example of a gopher hole.

A standard should apply that considers a significant area of slop. This should be a significant portion of the area described by the total footprint of the parcel. He shared the staff concern that the grade of property may have been altered. When looking at the pre-altered grade of the neighborhood, a spread out area of 10% to 12% appears to be at 30% more. On this parcel the area is less significant. Member Palmeri's interpretation was that this area on the parcel should not be

excluded from building. He also believed the single story description of the secondary structure from the Building Code should be allowed, however the matter before the Board was a “two story structure”. There may also need to be a minimum relaxation of the 15 foot height limit to realistically consider the contours of this site. His said his motion would be to grant the application in the current foot print and limit the secondary dwelling to one story.

Member Spalding said she did not have an issue as to stories. The two story description as it relates to the planning application describes the fact that secondary unit is stacked on top of the garage. Thus far based upon testimony, a great deal might be considered special circumstance. If an issue regarding flooding exists, minimizing coverage of the parcel could result in reduced runoff.

The Specific Plan seeks to limit grading. If the goal is to retain the topography of the hillside, a two story structure satisfies that end. Hurricane Katrina has proven that Nature can be a great adversary. Member Palmeri responded that first a determination would necessary to allow construction on areas greater than 30% slope. The remaining issue regarding the number of stories is a secondary issue. Mitigation and soils engineering should be designed to ensure runoff will channel water away from the property to an appropriate location. The best design for drainage may be to limit the height of the secondary dwelling, and relocate it to another location on the parcel. Member Spalding clarified that at the current juncture the question did not appear to be about 30% slope as much as the exact location of the accessory structure, and if the structure should be limited to a maximum of 1,200 square feet. Staff Member, Steve Buckley responded that the Building Code uses a standard that incorporates square footage of a detached accessory structure. The Zoning Ordinance calculation used by Planning incorporates yard coverage and structure height. For planning purposes a structure is two stories if it contains stairs and/or appears to be two stories in height. The Board can consider the intention of height, regarding this specific application. Staff Member, Phil Sawrey-Kubicek gave an example. The applicant could just build a garage into the hillside area with an average height of 15 feet, and comply with the Ordinance height limits. Member Spalding asked staff to confirm if a variance would be required if height limits could be met. Staff said the proposed structure could be reduced in height eliminating the need for a variance however the design looks more desirable with a slightly higher roof. The Chair added that if height compliance was indeed possible Board Members should focus on remaining issues.

Member Palmeri motioned that Map #6, referred to in the staff report should be considered inclusive not exclusive, qualified by the fact a significant area of the lot must be greater than 30% in slope. Staff Member Steve Buckley said he was not sure that was the case. If this portion of the application were not approved, as was also considered by the CVMAC, the applicant could redesign the garage/secondary unit. The garage could be built conforming and a secondary unit could be placed on another section of the parcel.

Member Spalding asked staff what re-design would be appropriate if the 10 foot side yard variance was not granted and the garage/secondary unit design was limited the 15 foot Ordinance height limit. Staff responded that the one possibility allowed is to build an attached secondary unit. An attached secondary unit could be built significantly higher than the current proposed detached structure height of 20 feet.

The garage could be placed as an individual accessory structure. Placement would be restricted to areas outside the front quarter of the lot. The Madison Avenue Specific Plan contains a restriction that buildings be located within 70 feet of the roadway to limit grading. If this placement could be achieved the need for a variance would be eliminated. The Building Code does not restrict height. Member Spalding's did not believe all issues about possible flooding had been considered. She also thought it was appropriate to omit #d from Pre Hearing Recommendation #6, if the property

owner agrees not to build on a portion of the property exceeding 30% slope. The question now is to determine where that area is so the applicant can avoid it.

Member Palmeri motioned that Map #6, using a 5 foot topographical contour should be interpreted as inclusive, not exclusive. More than 30% of the area must exceed 30% slope.

There are special circumstances that warrant the 10 foot set back on the north side.

Deny the height variance. Any accessory should be limited to a height of 15 feet maximum.

Member Spalding thought it was unfair, especially to the De Lima's. The De Lima's have agreed to limit building outside of 30% slope areas, but they have not been given specific clarification as to where those areas are located on the parcel or design options.

The Chair stated that he was in agreement with Member Palmeri's motion.

Member Spalding was not in favor of the motion. The motion was 2/1. Member Friedman was excused.

County Counsel said that Planning Director had the ability to transfer the application to the Planning Commission if the Board could not reach a decision due to lack of a quorum. The application will be scheduled for the next Planning Commission Meeting, October 4, 2005.

5. **GRACIANO MORALES, VARIANCE, V-11930** – Application to retain a 548 square foot detached accessory structure (workshop and covered patio) and a separate 140 square foot accessory structure (storage shed) which together occupy sixty-one (61%) percent of the required rear yard where thirty (30%) percent is the maximum, in a R-1 (Single Family Residence) District, located at 16774 Meekland Avenue, east side, approximately 60 feet north of East Lewelling Boulevard, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 0413-0023-057-00. (Continued from July 13, 2005).

The staff recommendation was denial unless the applicant can present testimony that that would lead to all findings in the affirmative. Based on denial, the staff report also lists the required steps to enforce the prohibition of secondary units. Public testimony was opened.

Mr. Morales stated that he would like to keep the bathroom, shower stall, and storage shed. The storage shed is in a good location and does not want to relocate it. The backyard is large, 1,039 square feet and can accommodate all of the structures. The workshop takes up only 31 square feet. Mrs. Ana Morales said her family had lived in the home for 13 years. They are first time homeowners. The site has not been altered since they acquired it except for the replacement of some rotten windows. They have a large extended family in the area. Mrs. Morales's Mother is the elder of the family.

The family has a lot of parties and many relatives from out of town stay at their home. The additional space is helpful and provides a large cooking area which is therapeutic for Mrs. Morales. Relocation of the shed would be costly and the present location is ideal. Mrs. Morales closed and asked the Board to allow the family to retain the extra dwelling. Public testimony was closed.

The Chair commented that the original application for a workshop with a sink and toilet had come before him during his tenure on the Planning Commission, 13 years ago. Since that time the

workshop has been expanded. Code Enforcement had directed the prior owner to plug the shower drain, now it is has been re-opened. Regardless of the description, the detached accessory structure is a secondary unit.

Member Palmeri motioned to adopt the staff finding of denial and Tentative Findings. Member Spalding seconded the motion. Motion carried 3/0.

6. **MICHAEL STROM, LAMB SURVEYING INC., VARIANCE, V-11941** – Application to allow a one foot side yard where five feet is required (lot 1); and a lot less than 5,000 square feet (lot 2) net in an R-S-SU (Suburban Residence, Secondary Unit) District, located at 325 Cherry Way, south side, approximately 124 feet east of Saint George Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0429-0014-057-00. (Continued from August 24, 2005).

Member Palmeri announced that due to a possible conflict of interest he will recuse himself on the item. Due to the lack of a quorum the Chair continued the application to the September 28, 2005 Meeting.

7. **LEE SCOTT, VARIANCE, V-11946** – Application to allow expansion of a nonconforming use (reduced parking spaces) by construction of an attached addition and a detached accessory structure in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 21522 Lake Chabot Road, east side, approximately 25 feet south of Meg Court, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 0415-0060-083-00. (Continued from August 24, 2005).

The applicant requested a continuance of the application to allow review by the CV MAC. Mr. Lee was not present at the last MAC Meeting. Member Spalding motioned to continue the application to the October 12, 2005 BZA Meeting. Member Palmeri seconded the motion. Motion carried 3/0.

**APPROVAL OF MINUTES:**

Member Palmeri motioned that due to the late hour approval of the Minutes of August 10 and August 24, 2005 would be continued to September 28, 2005. Member Spalding seconded the motion. Motion carried 3/0.

**STAFF COMMENTS & CORRESPONDENCE:** There were no staff comments.

**CHAIR'S REPORT:** No Chair's Report was submitted.

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

**ADJOURNMENT:**

There being no further business, the hearing adjourned at 11:30 p.m.

---

**CHRIS BAZAR - SECRETARY**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**