

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
SEPTEMBER 22, 2010
(APPROVED OCTOBER 13, 2010)

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

REGULAR MEETING: 1:30 p.m.

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

MEMBERS EXCUSED: Vice Chair, Kathy Gil.

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

There were approximately 8 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 1:40 p.m.

ANNOUNCEMENTS BY THE CHAIR: The Chair announced the Alcoholic Beverage Sale Regulations Calendar would be heard prior to the Neighborhood Preservation Ordinance Calendar to allow a staff person to assist with translation for Agenda Item #1.

Alcoholic Beverage Sale Regulations Administrative Hearings

1. El Amigo II, Mission Blvd., Hayward, CA 94541

In violation of Alameda County Ordinance 6.104.060 B(4).

1. Violation of Chapter 6, Title 12 of the Alameda County General Code, or any other applicable provision of any other county, state or federal regulation, ordinance or statute.

Member Spalding motioned to uphold the staff recommendation. Declare El Amigo in violation of General Code Section 6.104.060 B(4); Order the waitress who served the alcoholic beverage to our decoy to attend Responsible Beverage Service training within 60 days. Order El Amigo II to pay a civil penalty of \$750.00 within 60 days. Member Peixoto seconded the motion. Motion carried 4/0.

2. CVS Pharmacy Store 9904, Castro Valley, CA 94546

In violation of Alameda County Ordinance 6.104.060 B (4).

1. Violation of Chapter 6, Title 12 of the Alameda County General Code, or any other applicable provision of any other county, state or federal regulation, ordinance or statute.

Member Spalding motioned to uphold the staff recommendation. Declare CVS Pharmacy Store in violation of General Code Section 6.104.060 B(4); Order CVS to pay a civil penalty of \$750.00 within 60 days; Recommend the clerk who sold an alcoholic beverage to our minor decoy attend Responsible Beverage Service training. Member Peixoto seconded the motion. Motion carried 4/0.

3. Genghis Khan Kitchen, Redwood Road, Castro Valley CA 94546

In violation of Alameda County Ordinance 6.104.060 B(4).

1. Violation of Chapter 6, Title 12 of the Alameda County General Code, or any other applicable provision of any other county, state or federal regulation, ordinance or statute.

Member Spalding motioned to uphold the staff recommendation. Declare Genghis Khan Kitchen in violation of General Code Section 6.104.060 B(4); Order Genghis Kahn Kitchen / Hop Tai Chong INC. to pay a civil penalty of \$750.00 within 60 days; Recommend the waitress who served an alcoholic beverage to our minor decoy attend RBS class. Member Peixoto seconded the motion. Motion carried 4/0.

Neighborhood Preservation Ordinance Abatement Hearing

1. Bao Lu, Ocean View Dr., Hayward CA 94541

In violation of Alameda County Ordinance 6.65.030 A (7).

1. Graffiti on the rear exterior walls/fence of the residence which faces Birch St.

Member Adesanya motioned to uphold the staff recommendation. Declare the property a public nuisance, and require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 4/0.

2. Georgiana F. Combs Trust, Berkshire Rd., San Leandro, CA 94578

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

1. A large pile of cut vegetation, brush and miscellaneous items in the driveway.

Member Spalding motioned to uphold the staff recommendation . Declare the property a public nuisance, and require abatement to be complete within 10 days. Member Adesanya seconded the motion. Motion carried 4/0.

3. Federal National Mortgage Association Ave. San Leandro CA 94578

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

1. Cut and remove all of the overgrown vegetation and weeds from the property.
2. Remove recliner, mattress and debris from the property.

Member Peixoto motioned to uphold the staff recommendation . Declare the property a public nuisance, and require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 4/0.

4. DME Asst Services LLC., Cherry Way. Hayward, CA 94541

In violation of Alameda County Ordinance 17.52.290.

1. Storing a cargo container in side yard in an RS-SU (Suburban Residence with Secondary Unit) District.

Member Spalding motioned to declare the property a public nuisance, and modify the staff recommendation requiring abatement to be complete within 10 days to be complete within 14 days. Member Adesanya accepted the modification, and seconded the motion. Motion carried 4/0.

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: There were no items scheduled for the Consent Calendar.

REGULAR CALENDAR

1. **ADVENTURE TIME / SUSAN SUNG, CONDITIONAL USE PERMIT, PLN-2010-00079** - Application to allow continued operation of a childcare

facility for 70 children in a PD-ZU-1529 (Planned Development, ZU-1529) 1529th Zoning Unit District, located at 20001 Carson Lane, south side, approximately 700 feet east of the convergence of Glenwood Drive and Carson Lane, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085A-6402-028-00. **Staff Planner: Richard Tarbell.**

The staff recommendation was approval. The Castro Valley Municipal Advisory Committee recommended approval 6/0/1 with one abstention. The Chair asked if previous noise issues have been resolved. Staff confirmed neighbors had not submitted comments. The Applicant employed screening methods which have been successful. Public testimony was opened.

The Applicant Susan Sung was present. Ms. Sung asked for more information. The Fire Department recommended the alarms in both buildings be connected to one another. Over the years, the Fire Department has never raised an issue. On-site inspections are completed every year. There is a distance of 700 feet between the two buildings. Given the current economy, Adventure Time would prefer not to take on a major construction project. Her understanding is the project could require hundreds of feet of conduit. Member Spalding explained the issue must be worked out with staff. However the language in the staff report states that systems "*should be linked*" not "*must be linked*". The Chair said the BZA does not have the ability to waive Fire requirements. Member Peixoto clarified the Fire Department is not setting a specific requirement. Ms. Sung will have to confirm requirements with the Fire Department. The Chair then asked Ms. Sung if there had been recent noise issues. Ms. Sung said 14 years ago a neighbor lodged a noise complaint. There has been nothing since. She believes that particular neighbor has moved. Public testimony was closed.

Member Spalding noted Conditions of Approval did not address requirements to maintain the property or keep the site graffiti free. Public testimony was re-opened to speak with the Applicant.

Ms. Sung explained the daycare is located on school grounds. The School District maintains the property. Member Spalding asked if she would object to modifications of the Conditions of Approval. Ms. Sung did not object. Public testimony was closed.

Member Peixoto motioned to adopt the staff recommendation of approval with the following modifications: Condition #3 shall add the words, grounds, buildings; the lands and grounds shall remain in good condition, and graffiti free. Member Spalding seconded the motion. The motion carried 4/0.

APPROVAL OF MINUTES: The Minutes of August 25, 2010 and September 9, 2010 were continued to the October 13, 2010 Hearing.

STAFF COMMENTS & CORRESPONDENCE: The appeal of James Silva, Variance, PLN2009-00010 was approved by the Board of Supervisor's.

The appeal of Condition Use Permit, PLN-2010-00028 Seventh Step Foundation will again be heard by the Board of Supervisor's on October 5, 2010.

Conditional Use Permit Application, PLN-2010-00019, Club K9 INC. / Eric Fabianac, was appealed to the Board of Supervisor's by the Sierra Club.

Code Enforcement staff gave Board Members further information about penalties levied in Alcoholic Beverage violations. The intent is for levied fines to remain. Violations have already occurred. Penalties are assessed after the facts have been established. Many discussions have taken place between the Sheriff and the business owner/operator. Mitigation as such, includes training but not a reduction of fines. This process was established by Alcoholic Beverage Control, the Board of Supervisor's and other Agencies after outreach, and multiple workshops with the public. The community feels strongly that penalties should be assessed. Sheriff's staff said the fees are objective and remove subjectivity. Changing penalty fees for one person who committed the same violation as another would be inconsistent. Staff recommended specific employee names be omitted during testimony. The term, *violation person of record* may be more appropriate. The Board can also use the business owner's name, as they are the responsible party. Board Reports can also reference the Police Report, and Citation number. In response Board Members recommended Administrative Hearing Opening Comments consider alternate language. The use of the word "may" in regard to civil penalties and aggravating factors does not clearly communicate procedures.

The election of Board of Zoning Adjustment's Officers will take place at the October 13, 2010 Hearing.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Member Spalding suggested Board Members review proposed revisions of the Zoning Ordinance. In addition she spoke with Planning regarding Special Building and Future Width Lines and references to Center Lines. Her observation is not all center lines are in the middle of the right of way. Public Works uses center lines established in 1996. Member Adesanya said the Planning Department typically uses the term, center line. Public Works uses the term in the context of a survey line. Staff clarified, current Ordinance revisions are limited to the existing Zoning Ordinance. The first round of Ordinance revisions are technical, substantive revisions will follow. Staff will obtain further clarification regarding center lines.

The Chair asked in response to a complaint she received what latitude the Building Department had in altering building height on approved plans. Staff told the Board any changes require sign-off by Planning. They are familiar with the complaint to which the Chair referred. In that case the height was established by averaging. The site is in compliance.

Member Adesanya announced she would be resigning from her Board position at the end of October to pursue a Masters of Divinity degree. The Chair wished her the best of luck.

ADJOURNMENT: There being no further business, the hearing adjourned at 2:06 pm.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS