

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
JANUARY 23, 2008
(APPROVED FEBRUARY 13, 2008)

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

REGULAR MEETING: 1:30 p.m.

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

MEMBERS EXCUSED: None.

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

There were approximately 6 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 1:30 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.

CONSENT CALENDAR:

1. **ALI REZ MASOUDI-MOFRAD / ANN MARIE HOLLAND, CONDITIONAL USE PERMIT, C-8645** – Application to allow the continued operation of an auto sales lot in the an ACBDSP - TC (Ashland Cherryland Business District Specific Plan- Transit Corridor) District, located at 16285 East 14th Street, northeast side, approximately 110 feet northwest of 163rd Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080C-0479-006-03. (Continued from September 26, and October 24, 2007; to be continued to March 26, 2008). **Staff Planner: Christine Greene.**

The Vice Chair asked staff for an update on the project, as it was his understanding that the property would soon be sold to the East Bay Regional Park District. Staff responded that they had talked with the property owner, Ms. Marie Holland today. Ms. Holland confirmed that the sale was in its final stages. The Purchase Agreement requires that the tenant be removed from the property. The result will be a withdrawal of the, use permit application.

2. **SPRINT PCS, CONDITIONAL USE PERMIT, C-8690** - Application to allow continued operation of a telecommunications facility in an R-S-D-15 (Suburban Residence, 1,500 square feet, Minimum per Dwelling Unit) District, located at 16065 Mateo Street, southwest side, approximately 350 feet west of 162nd Avenue, unincorporated, Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0057-036-00. (Continued to March 26, 2008). **Staff Planner: Howard Lee.**

3. **VARIANCE, V-12061 - SEAD SISIC** - Application to allow a six foot high fence where four feet is the maximum, and to allow an accessory structure in the front half of the lot in an “R-1-RV” (Single Family Residence, Recreational Vehicle) District, located at 18658 Crest Avenue, northeast side, approximately 440 feet northwest of Titan Way, in the unincorporated Castro Valley area of Alameda County, and designated Assessor’s Parcel Number: 084B-0370-007-13. (Continued from May 23, June 27, August 22, September 26, October 24 and November 7, 2007; and January 9, 2008; to be continued to February 13, 2008). **Staff Planner: Christine Greene.**

4. **JEFFERY & JANELLE MC DONALD, VARIANCE, V-12094** – Application to allow a six foot high fence where two feet, and four feet is the maximum allowed in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle Parking) District, unincorporated Castro Valley Area of Alameda County, Designated Assessor’s Parcel Number: 084C-0865-001-03. (Continued to March 12, 2008). **Staff Planner: Howard Lee.**

Member Clark motioned to accept the Consent Calendar as presented. Member Gil seconded the motion. Motion carried 5/0.

REGULAR CALENDAR

1. **TERESITA LAGUNA, CONDITIONAL USE PERMIT, C-8555** – Application to allow the continued operation of a 22 bed Residential Care Facility, in an R-1 (Single Family Residence) District, located at 268 Lewelling Boulevard, south side, approximately 100 feet east of Tracy Street, , unincorporated, San Lorenzo area of Alameda County, designated Assessor’s Parcel Number: 413-0093-002-00. (Continued from January 24, February 7, March 28, April 25, June 13 and September 12, 2007; to be continued to January 23, 2008). **Staff Planner: Pat Anekayuwat.**

Staff reviewed the history of the application. The permit request was for continued use of a residential care facility, for 22 disabled adults. The recommendation was denial. Initial Board questions for staff were as follows:

- How long has the facility been in operation without a use permit
- How long has the facility been in operation without a fire clearance certificate
- Does the facility have a current State issued, license
- What is the total number of calls received by the Sheriff’s Department, regarding the facility
- What was the nature of the calls received by the Sheriff’s Department, regarding the facility
- What issues have the neighbors brought forward, regarding the facility
- Is the facility considered a “boarding facility”

- If the Board upholds the staff recommendation of denial, what will happen to the Residents of the facility
- Are the residents considered developmentally disabled

Staff responded that the prior permit expired in 2005. The facility has not had a valid fire permit for a period of 5 years. The Fire Inspector has conducted inspections, and issued recommendations in 2004 and 2007. As of yet the Applicant has not completed the work. Therefore a current fire clearance certificate has not been issued. Planning staff made a referral request to the Sheriff's Department. The only response received, confirmed they had no objection to renewal. No additional information was submitted. Neighbors have a list of suggested Conditions on page #3 of the staff report. Neighbors hope the Conditions will address past issues including residents trespassing onto neighboring properties, and dropping litter. Neighbors also believe there should be designated ingress and egress points from the facility, and additional staff during the Night Shift. County Counsel said a number of scenarios may be possible if the use permit were not renewed. If the facility were directed to close, staff could consider a stepped process to move residents out of the facility. The Property Owner, Care Provider, Payor, and Residents could be notified of the possibility of transference. Available options and time frames could then be considered. The Applicant may also be able to provide additional information during public testimony. Public testimony was opened.

The Applicant, Ms. Teresita Laguna introduced herself. Ms. Laguna said she was the Licensee of the facility. The clients are not developmentally disabled. They are referred from the County Mental Health Care Agency, and recovering from drug and alcohol addiction. The Chair pointed out that the application before the Board was for a facility for the developmentally disabled. Ms. Laguna said that she corrected this distinction with staff long ago. Apparently the application and the notice were never corrected. The Chair asked if Ms. Laguna was being paid directly from the mental health care agencies. Ms. Laguna responded that her clients were referred from the County. The County issues payment to her. The facility does have a current State issued license. Ms. Laguna took over the facility in 1998. She stated that a fire certificate was issued, and there were no violations at that time. The Vice Chair asked if State licensing had been in effect at the time of purchase. Ms. Laguna confirmed that it was. The Fire Marshall came to inspect the site in 2003. After the inspection she never received a copy of the report. During the current permit process she asked the Fire Inspector about the past report. She was told there had been a mix-up. The report was never sent out. Ms. Laguna told the Board a copy of the 2003 Report could be obtained from the Alameda County Fire Department. The Fire Inspector came again to inspect the facility in 2007. The Chair asked what had transpired since the, 2007 Fire Inspection. Ms. Laguna said the drawings she submitted to Alameda County Fire were approved in September of 2007. The plan was approved, and the required fees were paid. She has been working in conjunction with a fire alarm company, on the implementation of the new plan. The Fire Inspector raised another issue after review of the plans. The Inspector indicated that a fire wall would need to be installed at the facility. Ms. Laguna then hired a professional architect. The architect will work with the alarm company to install a new upgraded fire alarm system at the facility. Ms. Laguna then showed the Board a copy of the Fire Report. The Chair reviewed the submission and pointed out that the fire alarm design submitted in August 28, 2007, was approved with comments, errors and omissions. The Fire Department notes included a statement with the following language: Approval of plans does not constitute permission to deviate from any Code requirements. This document should not be construed to be a permit for, or as approval of any violation of the applicable statute. The Chair clarified that the document appeared to be approval of a proposal. Staff confirmed that was the case, and referred to an e mail submitted by the Fire Inspector. The Inspector talked with the Applicant a few weeks ago. There has been a discussion regarding solutions, and a follow-up meeting is set next week with the architect. However no work has been completed at this time. Staff reiterated that the Applicant has stated she is in the process of completing the

requirements, for a number of years. Ms. Laguna responded that, the fact that she never received the inspection results in 2003 began the delay. There was a prior submission of an alarm plan that was not approved. A modified plan was submitted, and then approved. Now the process will move forward. Board Members then asked the Applicant the following additional questions:

- Has Ms. Laguna read the staff report
- Why hasn't the balance of the work been completed at the site
- Is the facility a "locked" facility
- What was of the cause of the incident which resulted in a resident losing their life at a nearby railroad track

Ms. Laguna confirmed that she had read the staff report. The resident who lost their life had only been at the facility a few months. The resident had told everyone she was going to buy cigarettes. She was not despondent, and did not have a history of depression or unusual behavior. The client did not have a history of mental illness. Nor was she showing signs or symptoms of anything out of the ordinary. Ms. Laguna said that often times people with mental illness exhibit unpredictable behavior. The facility is not a locked facility. The residents are allowed to come and go, and they have individual rights. The incident was investigated by the Coroner's Office, Police, and the Community Care Licensing Agency. There were no citations issued as a result. Regarding the reports of garbage dumping, there is no proof of the accusations. One of the neighbor's owns an apartment building. The trash is being generated by the children of the tenants. Not by the residents. Member Gil pointed out that the fire permit Ms. Laguna showed was dated September 11, 1997. The most recent fire report was dated, August 28, 2007. Member Gil wanted to know what has caused the continued delays. Ms. Laguna said that she was waiting for the Architect. The Architect had a stroke. In addition she had been undergoing medical treatment. Ms. Laguna then submitted documentation of her treatment. The Chair acknowledged that the treatment must have been difficult. However the medical treatment was administered in May of 2007. However Ms. Laguna had owned the facility since 1998. The use permit expired, in January 2006, one year before undergoing treatment. The Applicant showed the Board a safety inspection report issued in November 12, 1997 by the Fire Department. Ms. Laguna said that the inspection record was on file with the Community Care License Bureau. Currently she is working with the same Agencies. As they have issued permits before, she did not understand why new issues were arising at this juncture. The Chair responded that new regulations may be effect, at this time. The permit Ms. Laguna referred to was 10 years old. Ms. Laguna told the Board that she would abide the current requirements. She has already obtained an alarm permit, and is working with the Architect on the installation of a fire door. Ms. Laguna asked the Board for additional time. She estimated that it would take a month to complete all of the outstanding work. Member Clark pointed out that a permit in the record showed it was issued to Ms. Laguna in 1997. Yet Ms. Laguna said she purchased the facility in 1998. Member Clark asked the status of the facility permit between 1997 and 1998. Ms. Laguna explained that it took approximately 1 year to complete the community care licensing process. The process is difficult. The Chair commented further. The current fire report was 9 pages in length. Ms. Laguna clarified that many of the things listed in the report were minor. The major corrections the Fire Inspector wanted were the enclosure of the living, and dining room. Once the living and dining room walls are built in, the alarm system can be installed.

Member Adesanya asked Ms. Laguna if she was sure she could address, and correct all of the deficiencies within 30 days. The Chair said she was not confident, given the Fire Report was issued in June, and work has yet to begin. Ms. Laguna reminded the Board that she had been ill and undergoing treatment in the hospital. The company that she hired to begin the project did submit a plan to the Fire Department. The first plan was rejected. A second proposal was submitted, and then approved. An engineer is now in the

process of drawing final plans based on the approved proposal. Vice Chair Peixoto said based on his past experience as a Fire Inspector, the outstanding violations were, major. Ms. Laguna's interpretation that the violations are minor is completely inaccurate. The report contained extensive information. For example the Dutch door in the facility was not fire rated. The Vice Chair was adamant that the Applicant, re-read the report. Additional issues and questions raised by Board Members were as follows:

- Including staff how many persons are housed at the facility
- How many bedrooms does the facility hold
- How many persons sleep in each bedroom
- Why was the 1st Fire Plan submitted to the Fire Marshall rejected
- Has the fire alarm at the site been repaired or replaced
- Has staff at the facility been trained, and do they know how to operate the Alarm System

Ms. Laguna told the Board that 9 bedrooms are used for the clients. Client bedrooms are all down stairs. The staff is housed on the 2nd story. The facility used to be a convalescence hospital with 30 beds. The rooms are very large. Community Care has approved the facility for 22 clients. Four of the rooms house, 3 residents each. Member Gill asked Ms. Laguna why she did not follow up with the Fire Department when she did not receive a report in 2003. Ms. Laguna said the Fire Inspector told her, he would contact her. After the 2003 inspection she did not hear anything. She was under the impression there were no outstanding issues. She discovered there were problems in the course of obtaining the current permit. The Fire Inspector was under the impression that his Assistant had forwarded the Fire Report to Ms. Laguna. The Assistant thought the Fire Marshall had followed up with Ms. Laguna. The Chair reiterated that the violations contained in the 2003 and 2007 fire report, were still outstanding. Also, staff at the facility was not familiar with operation of the current alarm system. The upstairs area which staff has been using for sleeping rooms is also unsafe. A rescue/escape window was never installed. Ms. Laguna said she was not aware of the violations when she purchased the facility. These issues were brought to light during the most recent fire inspection. There is new staff at the care facility. She also has a new a new contract with Bay Alarm. Member Adesanya asked Ms. Laguna to clarify what she had done thus far in the application process. Ms. Laguna confirmed she had hired an architect. Although the architect had been ill, he has now recovered. The Architect has met with the Fire Inspector to review the alarm plan in the past week to review final details. Member Adesanya asked if the architect was responsible for completing all of the outstanding work. Ms. Laguna confirmed that was the case. Member Clark asked what was the duration of the architect's illness. Ms. Laguna said she was not sure of the length of the illness. Perhaps 3 months. The architect's staff members were supposed to handle the project during his absence. Unfortunately they did not follow through. Member Clark asked if there was an attempt to hire another firm to carry out the work. Ms. Laguna said she un-clear as to why the associates did not follow through. However the lead architect had now returned, and is actively working on the application. The Chair asked Ms. Laguna to provide staff with copies of all of the documents she presented at the hearing, so they can be added to the record. Public testimony was closed.

Member Clark asked staff if a Building Permit was needed for the replacement of doors and windows. Staff confirmed permits were need for window replacement. Building permits are not needed for standard door replacement. Member Clark said perhaps the Applicant could determine if a contractor could be used for the repairs that did not require a building permit. This might speed up the process, allowing the architect to complete the work requiring his expertise. Board Members posed the following questions to staff:

- How many times has the application come before the Board
- When did the CUP permit expire
- When was the last inspection by the Fire Department

Staff responded that C-8555 had been on the Agenda 7 times. The Application had been heard 3 times. The Chair was extremely concerned. The Fire Department had recently inspected the facility 6 months ago. A report was generated. However the Applicant has not completed any of the recommendations. Many of the recommendations were also in the, 2004 Fire Report. The Chair reiterated that the use permit had expired in 2006. The Vice Chair added that the required Conditions of Approval contained in the 2003 permit were never implemented. There has been no action. This jeopardizes the safety of the community, and the patients. The Chair agreed. Photographs taken of the facility support the fact that it is not in compliance.

The Vice Chair motioned to uphold the staff recommendation of denial. The Applicant could not make Finding #3. The use does materially affect the health and safety of the residents. If there is no appeal of the decision within the 10 day appeal period, staff should forward the decision to the State Licensing Agency, and any applicable County Agencies. Board Members should also receive a copy of the Resolution. The Chair asked for modifications to the motion. The Chair wanted to ensure the record was clear, and the Board's decision was not subject to ambiguity. Board discussion ensued. The Chair then stated her modifications to the motion. If the Board determination is denial, the County Mental Health Agency should receive notice as the Payor. Tentative Finding #1 should state: Various residential care uses have operated on the property for over 29 years and served the community by providing housing for unincorporated residents with specific needs. Finding #2 should be modified to state: Yes. The balance of the sentence should be stricken. Regarding Finding #3 should be modified to state: Yes. The second sentence should be stricken. The balance of Finding #3 should state, The outstanding Fire and Building Code non-compliance issues could adversely affect the health and safety of persons residing or working in the facility or vicinity. Issues concerning the adequacy or lack of supervision have been presented, including the death of some of the residents. In addition residents have trespassed onto neighboring properties. Finding #4 should be limited to the word, No. The balance of the Finding shall be stricken. The Vice Chair also modified the motion to include notification of the Fire Department, as well as State Licensing Agency, and any applicable County Agencies in the event the Applicant appeals the decision.

Member Adesanya asked staff for clarification. What would happen if the Board voted for denial of the permit? Staff told the Board that the Applicant did have the right to appeal the BZA decision to the Board of Supervisors, within 10 days. County Counsel said it is the Board's responsibility to make a decision regarding the CUP. Staff would then notify the appropriate Licensing Agencies. Based on each Agency's process, staff can follow through with the required notifications and action(s). This can be a stepped process, and may be somewhat easier to coordinate if working with County Agencies.

Member Clark suggested that balance of statement, after the 2nd sentence on Finding #3 should be stricken. The language should state that the lack of supervision of the residents has resulted in the off-site deaths, of two of the residents. Neighbors have also had incidents with the residents, and have experienced trespassing. Regarding Finding #4, the finding should state that the use is not compatible.

Member Clark seconded the Vice Chair's motion of denial of C-8555 with the modifications, as stated herein. The motion to uphold the staff recommendation of denial was upheld in a vote 3/0/2. Member Adesanya and Member Gil abstained.

The Vice Chair requested that if the Applicant does not submit an appeal within 10 days, a copy of the action shall be directed the appropriate State and County Agencies, including the Fire Department. The Chair also asked staff to notify the Health Department, and Behavioral Health of the findings, record of the past Hearings, and Minutes. Member Clark asked that if the application was appealed to the BOS, there be no continuances, as the application was 5 years old. The Chair agreed based on the determination by the Fire Department that serious health and safety issues are present at the facility.

2. **CHOUINARD WINERY, CONDITIONAL USE PERMIT, C-8581** – Application to allow the continued operation of a winery with winery related uses (CUP-6772) in an “A” (Agricultural) District, located at 33853 Palomares Road, west side approximately 4.5 miles north of Niles Canyon Road, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 085A-6427-006-00. **Staff Planner: Jeff Bonekemper.**

Staff recommended approval of the application. Public testimony was opened. The Applicant, Mr. George Chouinard was present. The Chair asked if he had read the staff report. Mr. Chouinard said he was in agreement with the Conditions of Approval. He further explained that the buffer area recommended in Staff Recommendation #2 was already being employed at the site. The wash down process limits storm water discharge, and is part of the State of California permit requirement. Each year a detailed report is submitted to the State as part of the permit renewal process. Public testimony was closed.

Member Adesanya motioned to uphold the staff recommendation of approval. Member Gil seconded the motion. Motion carried 5/0.

3. **MAURO ESCOBAR, VARIANCE, V-12083** - Application to allow an attached addition with a six-foot front yard setback, and a three foot, seven inch rear yard setback where 20 feet is the minimum required in the front and rear yards, in a R-1 (Single Family Residence) District, located at 14747 Midland Road, west side, approximately 200 feet north of Placer Drive, unincorporated San Leandro area of Alameda County, bearing Assessor’s Parcel Number: 080-0002-001-04. (Continued from August 22, September 26, October 10 and December 5, 2007). **Staff Planner: Andy Young.**

Member Clark recused herself and did not participate in the discussion or the vote regarding V-12083. Staff reviewed the history of the application. The application had been continued several times, to allow the Applicant to explore the possible option of bringing the addition into compliance. The staff recommendation was denial of the application. Public testimony was opened.

Per the Board’s request, a staff person was available to assist the Applicant in translating from Spanish to English. Senior Planner, Rodrigo Orduna was present. Mr. Mauro Escobar introduced himself as the project designer. The Applicant Mr. Donato Perez accepted the translation assistance from staff.

Initial Board questions were as follows:

- Can the addition be brought into compliance
- Is the structure/addition still red tagged
- Has the addition been inspected by the Building Department
- What would a Building Inspection entail
- What recommendation would staff make to bring the addition into compliance
- Are special circumstances present on the property as a result of slope
- Have other setback variances been granted for the area
- What triggered the Applicant to file a variance application

Mr. Escobar said he tried to develop alternate designs for the existing structure that would meet the required Ordinance setbacks. After considering all of the options, the only way to get close to compliance was to demolish the rear half of the storage room. This would be very difficult. A variance application

was filed after Mr. Escobar spoke with the Building Department. Mr. Perez would like to keep the addition. Staff explained that the Building Department had placed the red-tag, and stop work order on the addition. The order is still in place however, construction continued, and the structure appears to be complete. The Building Department had not conducted an inspection. They are awaiting the outcome of the BZA decision. The staff planner is recommending demolition of the addition. There is no way to for the Applicant to meet the setbacks. A conforming addition could have been built on the site that met the set back requirements. Staff has been unable to determine any viable method to bring the addition into compliance. Thus far the Applicant has not submitted any verification to the contrary. The staff report shows the slope present on the property is minor, compared to other properties in the area. The variances that have been granted in the area have been for garages on steep slopes. This property does not fall into that category. The Vice Chair added that many of the properties in the area had been developed prior to Zoning. Setbacks, varied widely.

The Project Designer, Mr. Escobar reminded the Board of circumstances thus far. The property owner, Mr. Perez had hired a contractor to build an addition to his home. The contractor was paid \$40,000.00 in advance. The project was never completely finished, and the contractor disappeared. The contractor lied to the property owner. Mr. Escobar became familiar with the project through the property owner. Mr. Escobar brought in an electrician to complete, and legalize the contractor's work. Initially they were unaware that a stop work order had been placed. The contractor told said he had obtained all of the necessary permits from the Building Department. Board Members asked the following additional questions:

- What was the name of the contractor
- Was the contractor licensed
- Does the property owner have receipts that the contractor was paid
- Does the property currently meet the open space requirement

The Chair referred to the eight setback variances granted within a 400 foot radius of the property (page #5, staff report). Staff said that the other properties with approved variances all had steep slopes. The Applicant's property has a moderate slope. The Chair asked if there were any properties that had not been granted a variance, with setbacks of less than 20 feet. Staff was not aware of any. There is an Ordinance exception, only if the property slope exceeds a 4:1 ratio. Staff did not know if the intent was to merely secure the structure, after the stop work order was issued. Staff Member Adesanya commented that the addition seemed to flow as a natural extension of the existing home. Mr. Perez testified through the staff interpreter that the contractor never told him about the stop work order. Mr. Perez found out after the contractor disappeared with full payment, that the addition was constructed in violation of the Building Code. The contractor's name is Mario. He did not remember the contractor's last name, and was unsure if he was licensed. The work was not entirely completed until Mr. Escobar came to assist. The project designer, Mr. Escobar told the Board that the electrician he hired completed the electrical work, and all of the other deficiencies listed on the stop work order. The completed work did pass inspection. Mr. Escobar believed that the entire structure would also, pass inspection. The Chair asked staff to address the reference in the staff report, regarding relaxation of building requirements. There is a notable exception of granting variances in the area for properties with shallow, front set backs. Staff explained that the exception applied to properties with steep slopes, this lot would not apply.

The Chair said given that this particular lot did not meet the criteria for steep slope, the only option appeared to be demolition. However based upon testimony, the structure is likely to pass a Building Inspection. This could possibly be considered, a special circumstance. Staff told the Board that the lot did not have a 25% or greater slope. Therefore the slope was not considered steep and did not fall into the exception category. It is unknown if the structure could pass a Building Inspection. An Inspector would probably have to look inside of the walls to confirm structure stability. The Vice Chair interjected

that the Chair was referring to Building Code. The Board could only base their decision on the Zoning Ordinance. The Chair acknowledged the Ordinance and Building Code were different statutes. However what means of relief is available to the Applicant. Often when a structure is partially or fully demolished, the result is, blight. The Vice Chair pointed out that the Applicant did have options available on the property. The Chair said that option would be costly. Member Adesanya acknowledged that was the case. However the Board could not base their decision on financial costs. The Chair said the financial aspect of an application could be taken into consideration, all be it to a limited extent. Economics had been considered in the past. The Applicant may have been under the impression, based on the number of other properties with reduced setbacks that his property was also in compliance. Staff has also posed Conditions of Approval as an alternative, in the event the Board makes a favorable decision regarding the variance. The Chair said although Board Members, and staff can sympathize with the unfortunate situation the Applicant experienced. A variance is granted in conjunction with the land. Board Members then reviewed photographs of the addition. Board Members acknowledged that the addition was well constructed. Mr. Escobar said that the only place the setback was deficient was at one corner of the property. Staff said in actuality the entire front setback was deficient. The setback ranged from 6 feet to 14 feet, 5 inches. At no point did the setback equal 20 feet.

Mr. Michael Crozier said he had no personal interest in the application, but he suggested the Board separate the question of the variance and the permit into separate issues. If the Board decided to grant the variance request they could condition approval, requiring the Applicant to obtain Building Permits. This would be easier than demolishing the entire structure. The Chair acknowledged that Mr. Crozier's suggestion was consistent with the secondary, staff recommendation. Public testimony was closed.

Vice Chair Peixoto motioned to adopt the staff recommendation of denial. The Applicant could not make the findings. In addition had the contractor obtained the necessary Building Permits, the project could have been executed in compliance. Although he felt sorry for the Applicant, the Board had to be consistent. If allowance was given in this situation, precedence could be set. Member Adesanya seconded the motion. The Chair asked Board Members if they would like to further discuss the possible affect of, property slope. The Vice Chair declined, and called for the vote. The Chair was opposed to the motion of denial, and was in favor of approval. Member Gil abstained. Member Clark recused herself and did not participate in the discussion or the vote regarding, Variance-V-12083. As the vote was 2-1-1, The Board of Zoning Adjustments did not come to a determination. Staff announced that the Application would be referred to the Planning Commission.

4. **MIKE BOCKS, VARIANCE, V- 12085** - Application to allow a garage conversion providing: 1) Three parking spaces where four are required; 2) A zero foot setback from the driveway where 10 feet is required; and 3) A two foot side yard where five feet is required in an A-C-B-D Specific Plan - RC (Ashland and Cherryland Business District Specific Plan, Residential / Commercial) District, located at 330 Lewelling Boulevard, south side, 50 feet west of Tracy Street, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 413-0097-021-00. (Continued from November 14, 2008). **Staff Planner: Christine Greene.**

Staff announced that the Applicant, Mr. Mike Bocks requested a continuance. Mr. Bocks would like a hearing in March in order to work through personal issues. Staff recommended March 26, 2008. Public testimony was opened. There were no requests to speak during public testimony. Public testimony was closed.

Member Clark motioned to continue Variance, V-12083 to the March 23, 2008 Hearing. The Vice Chair seconded the motion. Motion carried 5/0.

5. **MICHAEL CROZIER, VARIANCE V-12093** - Application to allow a five foot, nine inch high fence where four feet is the maximum allowed in an R-1 (Single Family Residence) District, located at 2935 D Street, south side, approximately 450 feet west of Fairview Avenue, unincorporated, Fairview area of Alameda County, designated Assessor's Parcel Number: 426-0020-082.00.
Staff Planner: Jeff Bonekemper.

Staff recommended denial of the application. Member Clark asked staff when the Fence Ordinance was adopted. Staff did not currently have the information but could research the question. The Applicant, Mr. Crozier interjected, and said the Ordinance was created in 1975. Board Members commented that the date was probably accurate. Public testimony was opened.

Mr. Crozier commended the Board on the comportment of the hearing, and the civil process. Mr. Crozier purchased the home in 1995. The home was built in 1891. He was told the fence was erected in the 1960's. Mr. Crozier would like to retain the fence, and repair the area that was damaged. He then showed the Board photographs. The neighbor gains entry to the adjoining property via the adjacent driveway. The fence is perpendicular to D Street. The neighbor has a business that employs large trucks. A section of the fence was completely taken out by a large vehicle. Regarding the Code Enforcement issues, the fence is contiguous. The graffiti is actually located on the neighbor's portion. To discourage graffiti Mr. Crozier planted a climbing rose bush. Mr. Crozier acknowledged there has been damage on his property, inflicted by his former tenants. The tenants attached some unsightly metal to the gate. This has now been removed, and the tenants have been evicted. Thus far Mr. Crozier has spent \$15,000 on repairs to the property. The Chair said that although the graffiti on his portion of the fence had been removed, the fence was still unsightly. The outline of the graffiti was still visible. Mr. Crozier told the Board he would re-stain the wooden fence, to give it more of a uniform finish. When he spoke to the staff planner he was told there would not be any issues. He was shocked to see the recommendation of denial. Mr. Crozier then referred to the project description contained in the staff report. He clarified that the fence was five foot, nine inches high, as opposed to the stated height of five foot, 10 inches. Although there may not be any fence variances granted in the area. There are 10 other residences on D Street with fences that exceed 6 feet. Mr. Crozier then distributed photographs of the neighboring properties. He submitted an address located on Fairview Avenue, as well. Mr. Crozier thought the Board should consider amending the Fence Ordinance to include taller structures. He did not believe granting the variance would be special privilege. As other homes in the neighborhood have high fences.

The Board asked staff the following questions:

- Is the fence considered "non-conforming"
- Is the fence "Grandfathered In"
- Can the fence be considered a "structure"

Mr. Crozier said he was told by staff that the fence was not Grandfathered In. County Counsel said typically if the structure is in existence, it would be legal non-conforming. The Chair called a short break to further research the Zoning Ordinance. When the Board reconvened County Counsel read the definition of a "structure". The reference seemed to indicate, "buildings". Historically a fence has not been considered a structure. A structure as defined in the Ordinance would typically have, bearing walls, supporting beams and/or girders. By that definition it is not surprising that staff did not consider the fence, a structure. Based on the definition, County Counsel did not believe the fence was legal non-conforming. Regarding non conforming uses, you would also have to establish that the fence is a structure. This cannot be reconciled within the Ordinance, based on the definition of building, or structure.

The Board asked the following further questions:

- Is there an EIR in existence for the area
- What is the traffic count for D Street
- How many homes in the area are Circa 1800

Staff confirmed that an EIR had been conducted for the area. Staff did not have a copy but the EIR did include a Traffic Study. The Chair said that she lived in the area. She knew first hand that the intersection was used heavily traveled. She believed the traffic study forecasted approximately 7,000 trips per day. A child was also killed at the intersection of D Street, and Maude Avenue. This prompted the installation of a light at the intersection. Mr. Crozier said he believed the home to the east of his was from the same Era (1800's). The home was originally part of the Castro Ranch and was used as one of the four the Pump Houses. Mr. Crozier's home is the only remaining example. The house is close to the road frontage, as it was originally part of a much larger parcel. The roadway was installed much later. Because of the close proximity of the road there is constant noise, and dust. The house is not eligible for the Historic Register because too many changes have been made over the years. However there are still remaining historical characteristics. The earthen duct work and water well it supports remain on the property.

Member Clark motioned to grant approve of Variance, V-12085. The existing well on the property is a potential danger. The fence height provides a modicum of safety. Granting the variance would not be special privilege. Another fence height variance was granted in the area to prevent trespassers, and the property from being littered with debris. Although the home is not on the Historical Register it is one of the oldest homes in the Fairview area. The Chair added that the property was within close proximity of D Street and Maud Avenue, which is a busy intersection. In addition the driveway is perpendicular to the fence. The Chair requested a modification to the motion. The Applicant should be required to add landscaping to deter graffiti. Member Clark responded that landscaping was not allowed within the Public Right of Way. However she would like to require the Applicant to keep the fence in good repair, and the area clear of weeds. Member Gil seconded the motion to approve the application.

The Vice Chair did not believe the Applicant could make the required findings. He did not believe this application was similar to the variance the Board approved on Woodrore Street. The property on Woodrore was a vacant parcel. The variance application on Woodrore Street also was conditioned that when the adjoining parcel was developed. The Applicant must lower the fence height to a maximum of 4 feet. Member Adesanya was in agreement with the Vice Chair. The Applicant could not make the Findings.

The motion to approve, Variance, V-12093 was carried 3/2. The Chair, and Members Clark, and Gil were in favor of approval. The Vice Chair and Member Adesanya were not in favor of approval.

APPROVAL OF MINUTES: The Chair recommended the Minutes of January 9, 2008 be continued. As a result of the Martin Luther King Holiday the Board Packets were not delivered until, Tuesday.

Member Clark motioned to continue the Minutes of January 9, 2008 to the February 13, 2008 Meeting. Member Gil seconded the motion. Motion carried 5/0.

STAFF COMMENTS & CORRESPONDENCE: County Counsel, Ray Mac Kay introduced a new staff member. Ms. Andrea Weddle. Ms. Weddle will be the new representative for the West County BZA.

Ms. Weddle is from Kentucky, and has experience in Zoning and Planning. The Chair welcomed Ms. Weddle, and thanked Ray Mac Kay for his years of service.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Member Clark asked staff to forward the pictures submitted by Mr. Crozier of fences exceeding the maximum height, to Code Enforcement. The Chair commented that many areas had an abundance of fences that exceed the height limit. Particularly in the Fairview District, the proliferation of inconsistent frontage has occurred as a result of tract developments that have received approval for increasing taller, fence heights

ADJOURNMENT: There being no further business, the hearing adjourned at 4:45 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS