

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
JANUARY 9, 2008
(APPROVED ON FEBRUARY 13, 2008)

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

FIELD TRIP: 1:00 p.m.

MEMBERS PRESENT: Vice Chair, Frank Peixoto; and Member, Kathy Gil.

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

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner.

FIELD TRIP: The meeting adjourned to the field and the following properties were visited:

1. **RAYMOND CHOY, CONDITIONAL USE PERMIT, C-8444** – Application to renew the Terms and Conditions set forth in Application, C-7599 which authorized the placement of a radio transmission facility (Cellular phone transmission tower) on the site in a C-N (Neighborhood Business) District, located at 22253 Redwood Road, west side, corner north of Grove Way, in the unincorporated Castro Valley Area of Alameda County, Designated Assessor's Parcel Number: 415-0100-054-00. **Staff Planner: Christine Greene.**
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.
3. **JOHNNY POUR, CONDITIONAL USE PERMIT, C-8669** - Application to allow an auto sales and repair business in an ACBD - TC (Ashland and Cherryland Business District Specific Plan) Transit Corridor District, located at 21621 Mission Boulevard, southwest side, approximately 150 feet west of Rufus Court, Unincorporated Cherryland area of Alameda County, Assessor's Parcel Number: 428-0006-108-00.
Staff Planner: Andy Young.
4. **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. **Staff Planner: Howard Lee.**
5. **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. **Staff Planner: Christine Greene.**

6. **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.**
7. **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. **Staff Planner: Howard Lee.**

REGULAR MEETING: 6:00 p.m.

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

MEMBERS EXCUSED: Ineda Adesanya.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel; Brian Washington; Yvonne Bea Grundy, Recording Secretary.

There were approximately 15 people in the audience.

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

ANNOUNCEMENTS BY THE CHAIR: The Chair made no Special announcements.

OPEN FORUM: Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes.

No one requested to be heard under open forum.

CONSENT CALENDAR:

1. **GUADALUPE LOZA/FRED FULCHER, CONDITIONAL USE PERMIT, C-8271**– Application to allow continued operation of a drive-in business (catering truck), in a PD-ZU-1487 (Planned Development, 1487th Zoning Unit) District, located at 691 West A Street, north side, corner, northwest of Royal Avenue, unincorporated Hayward area of Alameda County, bearing Assessor's Parcel 0432-0016-035-00. (Continued from February 11, April 14, April 28, May 26, July 14, September 8, October 13, 2004, March 23, June 22, October 12, December 14, 2005, March 22, May 24, September 13 and November 15, 2006,

March 28, July 11, August 8 and September 12, 2007; to be continued to February 13, 2008). **Staff Planner: Christine Greene.**

Staff announced that C-8271 was continued to April 23, 2008.

2. **FRANCISCO PENA, CONDITIONAL USE PERMIT, C-8389** – Application to allow the operation of a temporary outdoor business (Catering Truck) in a TC (Transit Corridor) District, located at 16211 East 14th Street, southwest end of 162nd Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080C-0479-003-00. (Continued from January 11, March 22, May 24, September 13 and November 8, 2006, February 7, April 11, July 11, August 8 and September 12, 2007; to be continued to February 13, 2008). **Staff Planner: Christine Greene.**

Staff announced that C-8389 was continued to April 23, 2008.

3. **RAYMOND CHOY, CONDITIONAL USE PERMIT, C-8444** - Application to renew the Terms and Conditions set forth in Application, C-7599 which authorized the placement of a radio transmission facility (Cellular Phone Transmission Tower) on the site in a C-N (Neighborhood Business) District, located at 22253 Redwood Road, west side, corner north of Grove Way, in the unincorporated Castro Valley Area of Alameda County, Designated Assessor's Parcel Number: 415-0100-054-00. (To be continued to January 23, 2008). **Staff Planner: Christine Greene.**

Staff announced that C-8444 was continued to February 13, 2008 so the CVMAC can review the application.

4. **RICHARD GOLD, CONDITIONAL USE PERMIT, C-8640** – Application to allow continued operation of a “B” Type Service Station, in an ACBD – BDI (Ashland and Cherryland Business District Specific Plan- Business Industrial) District, located at 594 East Lewelling Boulevard, north side, terminus, north of Boston Road, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 413-0027-058-02. (Continued from September 26, October 24, November 14 and December 5, 2007; to be continued to February 27, 2008). **Planner: Pat Anekayuwat.**

Staff announced that the Applicant was present to testify if the Board had questions. Consent Calendar Item #4 was then moved to Regular Calendar.

5. **JOHNNY POUR, CONDITIONAL USE PERMIT, C-8669** - Application to allow an auto sales and repair business in an ACBD - TC (Ashland and Cherryland Business District Specific Plan) Transit Corridor District, located at 21621 Mission Boulevard, southwest side, approximately 150 feet west of Rufus Court, Unincorporated Cherryland area of Alameda County, Assessor's Parcel Number: 428-0006-108-00. (To be continued to February 13, 2008). **Staff Planner: Andy Young.**
6. **BRIAN LESEUR, VARIANCE, V-12071** – Application to subdivide one site into two parcels (with a boundary adjustment) resulting in a zero foot side and a

16 foot, front setback where 10 feet, and 20 feet setbacks respectively are required, in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 19223 Carlton Avenue, west side, approximately 380 feet south of Massachusetts Street, unincorporated Castro Valley Area of Alameda County, Designated Assessor's Parcel Number: 084B-0441-043-00. (Continued from October 24 and November 14, 2007; to be continued to February 13, 2008). **Staff Planner: Andy Young.**

7. **KENNETH KREMER, VARIANCE, V-12080-** Application to consider a petition to allow subdivision of one parcel containing approximately 17,362 square feet into two lots, with the retention of an existing secondary dwelling unit as a legal non-conforming use where not otherwise allowed, limited to ordinary maintenance and minor repair only, two stories in height where one story is the maximum, and with a two foot, six inch side yard where seven feet is the minimum for residential use, in an R-1 (Single Family Residence) District, located at 22440 Charlene Way, unincorporated Castro Valley area of Alameda County, Assessor's Parcel Number: 416-0130-001-00. (Continued from September 26, and October 10, November 7, 2007; to be continued to March 12, 2008). **Staff Planner: Andy Young.**

Several requests were submitted to submit public testimony. Consent Calendar Item #7 was moved to Regular Calendar.

Vice Chair Peixoto motioned to adopt the Consent Calendar as amended. Member Clark seconded the motion. Motion passed 4/0. Member Adesanya was excused.

REGULAR CALENDAR

1. **VARIANCE, V-12003 – HHT ENGINEERING -** Application to allow subdivision of one site into three lots: 1) an 18 foot driveway where 20 feet is the minimum required; 2) a driveway, one foot from a building wall where 10 feet is required; and 3) an 11 foot rear yard where 20 feet is required in an R-S-D-35 (Suburban Residence, 3,500 square foot, Minimum Building Site Area per Dwelling Unit Density) District, located at 134 Grove Way, northwest side, approximately 150 feet southeast of Meekland Avenue, unincorporated Cherryland Area of Alameda County, designated Assessor's Parcel Number: 429-0032-030-00. (Continued from March 28, May 23, August 22, September 12 and December 12, 2007). Staff Planner: Shahreen Basunia.

Staff reviewed the history of the application, and presented the Board with updated plans. The recommendation was approval. The plans have been modified, and are now for a 2 lot subdivision, as opposed to a 3 lot subdivision. Initial Board questions for staff were as follows:

- Would it be possible to increase the setback from the driveway to the dwelling wall
- How will the proposed walkway be delineated from the driveway
- What is the total distance between the property line and the existing dwellings
- Can the walkway be switched to the opposite side of the parcel

Staff responded that the setback variance would apply to the house that remains on Parcel #2. Technically the distance from the existing dwelling and the driveway is 3 feet. The 3 foot distance is

comprised of walkway area. The setback is considered zero feet because the walkway could be used as a drivable surface, in an emergency. The walkway could be delineated from the driveway by a contrasting stamped concrete pattern or the surface could be another material, suitable for pedestrian/vehicle access. The width of the driveway is 14 feet. The distance to the property line is 19 feet, which includes the land swale. The walkway could possibly be moved to the opposite side of the property. However due to the fence placement there would only be 6 inches between the walkway and the fence. The Chair commented that her observation during a site visit was that the condominiums on the neighboring property abutted the other side of the fence. Public testimony was opened.

Mr. Tong the Project Designer from HHT Engineering was present. Mr. Tong was representing the Property Owner, Mr. Huan Dang. Mr. Tong reviewed the history of the project. The project has been ongoing for a period of 2 years. Originally Mr. Dang wanted to subdivide the parcel into 3 lots. This proved to be very difficult. Although the 3 lot design was reduced in square footage, the Planning Department did not believe there was sufficient access to the rear of the parcel. After further consideration, Mr. Tong was in agreement. The entire conceptual design has been reduced, resulting in a two lot subdivision. There is sufficient land on the parcel to allow two new homes on the front lot (Lot#1). The frontage will also be improved by the addition of curb and gutter, and sidewalks. The existing home at the rear of the parcel will remain with the addition of a 2 car garage (Lot#2). The other home on the parcel will be removed, and replaced with guest parking. Drainage will be improved on the entire parcel. When it rains, water now pools at the rear of the parcel. Once drainage lines and swales are installed, water will absorb into porous surfaces, and drain to the street. Mr. Tong believed the variance request was minor. He then presented research of other variances that had been granted in the area. The Board reviewed the materials. In response the Chair told Mr. Tong that one of the reasons the Board of Zoning Adjustments was empanelled, was to bring consistency to zoning decisions. Each application must meet findings, in order for the Board to grant approval. Board questions for the Project Engineer and Staff were as follows:

- Can the variance be avoided by modifying another portion of the remaining home on Parcel #2
- What room will be located next to driveway, ie., bedroom, bathroom etc.
- What will be the total number of homes on the property
- What were the referral comments from the Cherryland Association

Mr. Tong clarified that there are currently two homes on the property. If the variance is approved, the home that is deteriorated would be demolished. After implementation of the project there will be a total of three homes on the property. When the parcel is subdivided, Parcel #1 at the front of the property would be comprised of two new homes. Parcel #2 at the rear of the property would be comprised of the remaining home, augmented with a new addition and garage. A bedroom faces the proposed driveway. However the same extended family will occupy both parcels. There will not be heavy use of the driveway. Mr. Dang currently lives in the home and plans to move forward with the addition to the home, in the future. However he is open to design recommendations. Staff said the Cherryland Association was concerned with the 12 foot width of the driveway specified in the original design submittal. The proposed driveway is now 14 feet. Public testimony was closed.

Vice Chair Peixoto motioned to uphold the staff recommendation of approval. Board Members requested further discussion, and possible modification of the motion. Board Members wanted to ensure that the property design allowed safety access, and could be maintained in an attractive manner. The following questions were posed:

- What is the maximum roadway width that can be supported at the entrance of the parcel

- What is the minimum roadway width that is allowed for the project
- Can a “No Parking Zone” be designated along the access road
- Would “No Parking” signage be appropriate along the access road
- Is the existing front yard paved
- Would the swale be more effective if placed on the east side of the walkway, or in the front of the of the existing home on Parcel #2
- Can a Landscape Plan be incorporated into the application

Staff told the Board that the Zoning Ordinance requires any project with more than 4 parking spaces must provide a 20 foot driveway width. If the project requires 4 spaces or less, the minimum driveway width is 12 feet. However a provision within the Subdivision Ordinance allows the Planning Director to reduce the width, under certain circumstances. Typically if Alameda County Fire deems the reduced width is acceptable for that particular project, the Planning Director will support the determination. For this project, Alameda County Fire finds the current design acceptable. The proposed design is a 14 foot driveway, and a 3 foot walkway. The walkway can be utilized as a drivable surface, if it is at the same grade. A Condition can be added that requires the driveway to flare to the maximum width, the parcel frontage will allow. Staff did not recall if the front of the property was completely paved. The Applicant interjected and stated that the yard was currently comprised of loose gravel. Staff continued that a Landscaping Plan would be an appropriate Condition. The landscape swale can still be placed adjacent to the driveway on the west side of the property. At the point of the southern driveway entrance, of the existing home on Parcel #2. The landscape swale can be placed on the east side of the walkway, adjacent to the home. A Condition can be added to the Parcel Map which requires a Maintenance Agreement. Walkways can be delineated from the stamped concrete driveway by another material or a contrasting pattern. The Agreement can specify and ensure that parking areas and surfaces be maintained, in addition to ensuring parking solely in designated spaces. Physical signage could be employed however curb designation may be more appropriate. Vice Chair Peixoto said he was amenable to the proposed modifications. However he did feel the Board should become, Designers. Staff responded that all of the modifications could be incorporated as Conditions of Approval in the Variance, and Parcel Map. The Planning Director will also have final approval of the Parcel Map.

Vice Chair Peixoto renewed his motion to uphold the staff recommendation of approval with the following modifications to Condition #3. The landscape swale shall be placed adjacent to the driveway on the west side of the property. At the entrance to the driveway for Parcel #2, the landscape swale shall then be placed in front of the existing home. The driveway flare at the entrance to the property shall be at least 20 feet wide; or the maximum allowable width, up to 20 feet.

A Condition shall be added which requires submission of a Landscaping Plan. Approval is required by the Planning Director prior to recordation of the final Parcel Map.

Member Gil seconded the motion. Motion carried 4/0. Member Adesanya was excused.

2. **RICHARD GOLD, CONDITIONAL USE PERMIT, C-8640** – Application to allow continued operation of a “B” Type Service Station, in an ACBD – BDI (Ashland and Cherryland Business District Specific Plan- Business Industrial) District, located at 594 East Lewelling Boulevard, north side, terminus, north of

Boston Road, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 413-0027-058-02. (Continued from September 26, October 24, November 14 and December 5, 2007; to be continued to February 27, 2008). **Planner: Pat Anekayuwat.**

Staff announced that the Applicant had submitted new application material. The Fire Marshal had not yet inspected the property. He was on vacation until January 3, 2008. Public testimony was opened.

Mr. Gold said he had operated his business on the same block for a total of 30 years. From 1974 through 1992 his shop was located at the end of the block. Since 1992 he has occupied the site at, 594 East Lewelling Boulevard. At this juncture he is just waiting for an inspection by the Fire Department. He has met with the Staff Planner regarding the refrigeration unit on the property. The unit was installed 10 years ago. Mr. Gold would like to retain the unit in the present spot. If the 8 foot by 10 foot unit were moved, the width of the driveway would be reduced. If it is necessary to move the unit, he may also need to revise his application. Staff said the refrigeration unit would be permitted through the Building Department. Environmental Health may also have permit requirements. Typically only exceptions to standard permits, are referred to Public Works. The Chair suggested the Applicant clarify any outstanding permit requirements with Public Works prior to the February 27, 2008 Meeting. Public testimony was closed.

Vice Chair Peixoto motioned to continue, C-8640 to the February 27, 2008 Meeting. Member Gil seconded the motion. Motion carried 4/0. Member Adesanya was excused.

3. **KENNETH KREMER, VARIANCE, V-12080-** Application to consider a petition to allow subdivision of one parcel containing approximately 17,362 square feet into two lots, with the retention of an existing secondary dwelling unit as a legal non-conforming use where not otherwise allowed, limited to ordinary maintenance and minor repair only, two stories in height where one story is the maximum, and with a two foot, six inch side yard where seven feet is the minimum for residential use, in an R-1 (Single Family Residence) District, located at 22440 Charlene Way, unincorporated Castro Valley area of Alameda County, Assessor's Parcel Number: 416-0130-001-00. (Continued from September 26, and October 10, November 7, 2007; to be continued to March 12, 2008). **Staff Planner: Andy Young.**

Staff reviewed a history of the application. The applicant submitted a letter requesting a continuance to the March 12, 2008 Meeting, to conduct further research regarding his application. Public testimony was opened.

Mrs. Karolyn Burhart-Schultz testified that at the November 7, 2007 Meeting. The neighbors discovered that the Application had been placed on the Consent Calendar. Neighbors were told that the application had been continued, and would return to the CVMAC. At the meeting, neighbors were assured that the item would be heard by the BZA on January 9, 2008. Mrs. Burhart-Schultz said she understood the Applicant had now asked for a continuation to March. Regardless of the continuance request, she asked why a staff report was not available. Staff responded that the intention was to provide a staff report, and then let the Board make the decision regarding the continuance. However the Staff Planner's Father had passed away. As a result of the sudden emergency, a staff report was not available. Tonight the Board will make a determination regarding the continuation request. The Chair asked staff if the application would return to the CVMAC. Staff said the application would not return to CVMAC. The CVMAC recommended denial of the application. County Counsel told the Board they had broad discretion to consider continuations. Mrs. Karolyn Burhart-Schultz asked that the Hearing be moved up prior to March.

The Board Members said they will consider the reasons for the continuance, and then come to a decision.

Mr. James Faulkner said he was also curious, as to the reason for the continuance request. If the continuance was granted, he also requested the Hearing occur before the month of March, preferably an evening meeting.

Mr. Gordon Burhart-Schultz of 22525 Charlene Way said he had the same questions as the prior speakers. He also requested an evening meeting, but did not see why an extension until March was necessary. The application has been continued several times. Each time the CVMAC has supported denial of the application. The neighbors are ready to address the issues.

The Applicant, Mr. Ken Kremer said the issues he would be researching were outlined in his December 18, 2007 letter. A copy of the continuance request was also forwarded to Mr. Gordon Burhart-Schultz. Mr. Kremer said he met with Planning earlier in the day to continue discussion of his application. As outlined in his letter, Mr. Kremer believed it would take 5 weeks to complete the entire process. He is currently awaiting research material from staff. Once the data is received he will need to interpret the material. Finally staff will then need to incorporate his findings, into their staff report. The Chair questioned Mr. Kremer's comment in his letter that he wanted to look into of the BZA's process, policies procedures, and the role politics played in the BZA decision making process. The Chair explained that the BZA is a "fact finding" body as opposed to an adjudicatory proceeding. The BZA would be making their decision on "findings", based on facts presented to them. The BZA is not a legislative body. The BZA is an adjudicatory body. County Counsel confirmed that the proceedings are quasi judicial proceedings. The Chair told Mr. Kremer that findings are based on testimony and facts presented to the Board. The Chair said an example of what factual findings must be made for each application, could be found in one of the staff reports presented on the Regular Calendar. Regarding the neighbor's request for an evening meeting, more people were available at that time. The community must also be noticed of the meeting date, in advance. Mr. Kremer said he understood. However he did think politics played a role. He realizes that the neighbors want an evening meeting. Considering the upcoming Holidays, the request is not unreasonable. The continuance should not cause a major hardship. Mr. Kremer said he was available on February 27, 2007, which is a day time meeting. However if the date were moved up, there may not be sufficient time for staff to turn around a report. He should also have the right to fully investigate what he believes necessary, to best enhance his application request. He thought March was more realistic. Planning staff told the Board that it would take 2 to 3 weeks to process the information. Staff reports must also be mailed out the Friday, prior to the hearing date.

The Vice Chair asked Mr. Kremer if the extension request was to make a change to his project plans. Mr. Kremer said possibly. The proposal is to subdivide an 18,000 square foot parcel, into 2 lots. At the inception of the permit process he did not anticipate the uproar that has ensued. He spoke to the neighbors adjoining his property. They were in support of the project. Mr. Kremer admitted that he did not attend the first meeting. He thought it had been postponed. This may have created some of the uproar. At this juncture he knows that written rules apply to the process, however he believed that politics did have an impact. He hoped to understand the application process and the affect of politics more clearly.

The Chair said the continuance request would be considered. However she reminded him again that the BZA was a quasi adjudicatory body. The BZA can only make determinations based on facts presented. This process is different from the way a legislative body operates. The BZA is limited to the information and testimony presented, when making their findings. Mr. Kremer said he was not debating the Board's process. However at the prior hearing when his application had been continued, the Board took public testimony. Mr. Kremer said he supported the public's right to speak. During testimony the Chair reminded speakers that the issue of the lot split was not in front of the BZA, only the variance. The Chair

interjected and clarified that although only the variance would be decided by the BZA. The information regarding the lot split was also part of the application on record. The lot split has been raised during testimony by the neighbors. Mr. Kremer again said he did not want to debate the Board's role, but he did feel it was his right to conduct research. This would ensure he could put the best possible report, in front of the Board. He assured the Board that he would conduct himself within applicable rules, and guidelines.

Member Gil said the Board's job was to consider what is presented for consideration. She visited the property during the, Board Field Trip. She did not believe the proposal: The addition of a 2 story detached unit at the rear of the parcel, located on the property line, was not in keeping with surrounding single story home designs. Zoning in the area allows single story homes. Mr. Kremer said he did not think the format in which the comment was made, was appropriate. Member Gil is making a statement of what she observed. He pointed out that the existing unit was built in 1946, prior to the Zoning Ordinance. The unit is legal non-conforming. He also presented evidence of a similar unit in existence that is 2 stories. In any case, the meeting tonight is to consider his request for a continuance. The continuance request is to further conduct research, in order to present the best possible application.

The Chair told Mr. Kremer it was to everyone's benefit to provide him an opportunity to present his application. However based on his presentation today, there appeared to some inconsistencies with his December 18, 2007 letter. Perhaps there is some confusion between the differences between a legislative body, and an adjudicatory body. Mr. Kremer apologized for not being clear about his goal. However he will have a clear understanding of the process by March. The Chair and Vice Chair also reminded Mr. Kremer that he could appeal the BZA's decision to the Board of Supervisor's. The neighbors also had the right to appeal a BZA decision to the Board of Supervisor's.

Mr. Burhart-Schultz returned to testify. He thought the process of raising questions regarding, policies, and procedures should take place during an appeal process. Mr. Burhart-Schultz thought the line of questioning being pursued should be considered by the Board of Supervisor's. The Applicant's inquiries appear to focus on questioning a decision, as opposed to reaching a decision. The Chair responded that it was acceptable to ask that type of question at the on-set, of the application process. If the continuance request was granted more information could be presented, at the next hearing. Once that information is presented the BZA can consider, and respond to it. Public testimony was closed.

Member Clark said she understood the concerns the neighbor's have brought forth. However she hesitated to hinder the Applicant's discovery process. This may result in further delay of the application. The Applicant agrees the application will be ready on March 12, 2008.

Vice Chair Peixoto said he would not be opposed to a continuance. However if there is a change to existing plans this must be considered. Staff will need time to absorb the information. A substantive change would also require re-noticing the public. The Chair asked County Counsel if the staff report could be released immediately upon completion. Member Clark asked if a cut off date could be imposed for plan changes. Counsel told the Board it was acceptable to set a release date, and plan revision deadlines. However staff would have to determine if they would be prepared, in sufficient time to meet the deadlines. Re-notification of the application would only be necessary if there was a major change in the application.

Planning staff said that the current staff report could be used as a draft in preparation for the next meeting. Mr. Kremer agreed that he would remain in communication with staff regarding the application. The research he was conducting to enhance his application regarded pre-existing second story units above garages. He is reviewing legal non-conforming units that have less than the current required setbacks, built prior to 1946. By identifying these units he would be able to show that, granting his variance would not be special privilege. Mr. Kremer assured the Board if his request for a continuance was granted. He

would aggressively complete his research. At present he is awaiting information from Planning Staff. Once he completes his research, staff will need time to incorporate his response into a staff report. Mr. Kremer assured the Board there would be no further requests for extensions, on his part. Public testimony was closed.

Member Clark motioned to continue Variance, V-12080 to the March 12, 2008 Meeting. Vice Chair Peixoto seconded the motion. Motion carried 4/0. Member Adesanya was excused.

STAFF COMMENTS & CORRESPONDENCE:

Staff announced that the next Board of Supervisors Meeting would now be on February 5, 2008.

Regarding pending Application, Conditional Use Permit, C-8675. The signage for Basketball League sign ups has now been removed.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

The Vice Chair asked Code Enforcement to verify the site for C-8638 had been cleaned.

ADJOURNMENT:

There being no further business, the hearing adjourned at 8:40 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS