

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
OCTOBER 12, 2005
(APPROVED NOVEMBER 9, 2005)

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

FIELD TRIP: 1:30 p.m.

MEMBERS PRESENT: Members Frank Peixoto, Chair.

MEMBERS EXCUSED: Ron Palmeri; Jewell Spalding and Lester Friedman.

OTHERS PRESENT: Bret Lucas, Planner III.

1. **BOB MASON, CONDITIONAL USE PERMIT, C-7756** - Application to modify Conditional Use Permit, C-7447 to allow: 1) storage for 20 vehicles; 2) increase from 125 to 145 horses; and 3) to legalize a feed store at an existing breeding, boarding and training facility for 125 horses, in an "A" (Agricultural) District, located at 24550 Palomares Road, east side, approximately ¼ mile south of Palo Verde Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 085A-2700-001-07. (Continued from December 11, 2002; February 26, March 26, April 23, May 28, June 25; July 23, September 10 and October 8, November 5, 2003; January 14, August 11, July 14, December 8, 2004, January 26, April 13, June 8, July 13, August 10 and September 28, 2005).
2. **BAY CHRISTIAN CHURCH, CONDITIONAL USE PERMIT, C-8409** – Application to allow continued operation of an indoor recreational facility in an R-S-D-35 Suburban Residence, 3,500 square feet Minimum Building Site Area per Dwelling Unit) District, located at 20450 Royal Avenue, northeast side, corner northeast of West Sunset, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0432-0008-036-00.
3. **ANTONIO LOPEZ, CONDITIONAL USE PERMIT, C-8410** – Application to allow continued operation of an outdoor storage facility for pallets and materials associated with a pallet business, in an M-1 (Light Industrial) District, located at 2493 Dunn Road, north side, approximately 92 feet east of Southern Pacific Railroad, unincorporated Eden area of Alameda County, designated Assessor's Parcel Number: 0439-0013-017-00.
4. **JOHN AND ZAMBIA WENTWORTH, CONDITIONAL USE PERMIT, C-8414**- Application to allow continued operation of a residential care facility in an R-S-SU (Suburban Residence, Secondary Unit) District, located at 143 Hampton Road, south side, approximately 238 feet east of Meekland Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0413-0047-004-00.
5. **KMJ ASSOCIATES, CONDITIONAL USE PERMIT, C-8415** – Application

to allow continued operation of a 14 bed residential care facility in an R-S-D-3 (Suburban Residence, 1,500 square feet per Dwelling Unit) District, located at 1476 – 164th Avenue, southwest side, approximately 700 feet northeast of East 14th Street, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 0080-0071-033-02.

6. **ARWPS INCORPORATED, CONDITIONAL USE PERMIT, C-8421**

-Application to allow continued operation of an outdoor storage yard with rental and storage of containers in a P-D (PD-1780) Planned Development, 1780th Zoning Unit, located at 23422 Clawiter Road, west side corner, south east of Middle Lane, unincorporated Eden area of Alameda County, designated Assessor's Parcel Numbers: 0441-0090-001-02, 0441-0090-003-02, 0441-0090-002-00 and 0441-0090-004-00.

7. **JOHN MASCULINE, CONDITIONAL USE PERMIT, C-8426-** Application to allow continued operation of an indoor recreational facility (Martial Arts Studio, Karate, Kung Fu, Judo) in a C-2 (General Commercial) District, located at 17144 East 14th Street, northeast side, approximately 160 feet southeast of 171st Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080A-0109-010-00.

8. **NWAKAMMA OKORO, CONDITIONAL USE PERMIT, C-8435 –** Application to allow continued operation of an auto sales lot in a C-1 (Retail Business) District, located at 20979 Foothill Boulevard, southwest side, approximately 300 feet northwest of Ash Street, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 0414-0051-035-00.

9. **HAYWARD FELLOWSHIP, CONDITIONAL USE PERMIT, C-8436-** Application to allow continued operation of a community clubhouse (meeting hall for alcoholics anonymous) in an ACBD Specific Plan – TC (Ashland and Cherryland Business Specific Districts Plan – Transit Corridor) Districts located at 16250 East 14th Street, northeast side, approximately 260 feet northwest of 163rd Avenue, unincorporated San Leandro area of Alameda County, designated Assessor's Parcel Number: 0080-0063-035-02.

10. **TRINH HOANG, CONDITIONAL USE PERMIT, C-8443 –** Application to allow continued operation of an auto service facility for minor auto repair in a C-N (Neighborhood Commercial) District, located at 20009 Meekland Avenue, west side, corner southeast of Blossom Way, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0429-0032-001-04.

11. **SOHAILA IBRAHIMI/JAWORSKI, SILVA & JAWORSKI PARTNERSHIP, CONDITIONAL USE PERMIT, C-8452 –** Application to allow the operation of an auto sales facility with a display area for two automobiles, in a Sub Area 1 (Low Intensity Retail) District within the Castro Valley Central Business District Specific Plan (CVCBD) District, located at

1700 Norbridge Avenue, south side, at the intersection with Stanton Avenue,

unincorporated Castro Valley, area of Alameda County, designated Assessor's Parcel Number: 084A-0007-021-00.

12. **PHOI PHAN, VARIANCE, V-11951** – Application to allow construction of four dwelling units with:
- a) a five foot side yard where 10 feet is the minimum;
 - b) a two foot setback from an access driveway where 10 feet is the minimum; and
 - c) useable open space of 1,536 square feet where 2,4000 square feet is the minimum

in an R-S-D-20 (Suburban Residence, 2000 square foot Minimum Building Site Area per Dwelling Unit) District, located at 230 Laurel Avenue, north side, approximately 400 west of Princeton Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0429-0091-058-00.

13. **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.

14. **DAVE AND CONNIE CLAYTON, VARIANCE, V-11956** – Application to allow two accessory structures to be located less than six feet from each other and the existing dwelling, in a P-D (ZU-1905) Planned Development, 1905th Zoning Unit, located at 3759 Boulder Canyon Drive, west side, approximately 300 feet south of Ridge Place, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 0417-0163-009-00.

15. **ZHITONG ZHANG, VARINACE, V-11961** – Application to allow a rear yard setback of 14 feet, eight inches, where 20 feet is the minimum with the subdivision of the site into three lots, in an R-S-D-25 (Suburban Residence, 2,500 square feet Minimum Building Site Area per Dwelling) District, located at 16130 Maubert Avenue, northeast side, approximately 160 feet northwest of 162nd Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 0080-0048-020-04.

16. **NANCY DUMAN, VARIANCE, V-11962** – Application to remodel an existing dwelling where by a new bay window encroachment would result in an 11 foot front yard where 20 feet is required in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 1707 Grove Way, south side corner, east of Gail Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 0415-0180-001-00.

17. **MICHAEL LUCIANI, VARIANCE, V-11965** – Application to construct an

attached two story addition resulting in a 28 foot, five inch building height where 25 feet is maximum and a six foot, six inch side yard where 10 feet is required, in an R-1-CSU-RV, (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 18540 Madison Avenue, east side corner, north of Seaview Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0885-002-01.

18. **ROBERT DEKAS, VARIANCE, V-11966** – Application to retain an attached deck providing a zero foot side yard where six feet is required in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 4990 Seaview Avenue, north side, approximately 90 feet west of Rockhurst Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0921-100-00.
19. **LYN LEE, VARIANCE, V-11967** – Application to approve as a building site a parcel reduced in median lot width from 300 feet to 110 feet and reduced in area from five acres to one acre, in an R-1-L-B-E (Single Family Residence, Limited Agricultural Uses, 5 acres, Minimum Building Site Area) District, located on Arbutus Court, north side, approximately 375 feet west of Quercus Court, Unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 0425-0500-023-00.
20. **HENRY CHAN, VARIANCE, V-11968** – Application to reconfigure an existing parking lot so as to provide 32 parking spaces where 37 spaces are required and retain an (e) handicap ramp providing an 11 foot, nine inch driveway access where 20 feet is required, in an C-O [Commercial (Medical and Dental) per Castro Valley Central Business District Plan, Sub Area 4] District, located at 20600 Lake Chabot Road, east side, approximately 84 feet south of Congress Way, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084A-0160-013-04.

REGULAR MEETING: 6:00 p.m.

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

MEMBERS EXCUSED: None.

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

There were approximately 18 people in the audience.

CALL TO ORDER:

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

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 and June 22, 2005; to be continued without discussion to December 14, 2005).

2. **VICTOR BECERRA, SITE DEVELOPMENT REVIEW, S-1991** - Petition to allow conversion of an existing two-car garage into a family room, and replace it with two uncovered legal on-site parking spaces, on a 5,254 square foot lot in the R-1 (Single-Family Residence) Zoning District, located at 17498 Via Alamitos, northeast corner with Via Nube, unincorporated San Lorenzo area of Alameda County, bearing County Assessor's Parcel Number: 0412-0079-155-00. (Continued from August 10, August 24 and September 28, 2005; to be continued without discussion to October 19, 2005).

3. **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 north of Joseph Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1208-021-00. (Continued from September 28, 2005; to be continued without discussion to October 26, 2005).

Member Palmeri motioned to accept the Consent Calendar as submitted. Member Friedman seconded the motion. Motion carried 4/0.

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.

REGULAR CALENDAR

1. **MICHAEL STROM, LAMB SURVEYING INC., VARIANCE, V-11941** – Application to allow a one foot side yard where five feet is required (lot 1) 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 and September 14, 2005).

Staff Member Phil Sawrey-Kubicek reminded the Board the item had come before them at the September 14, 2005 Meeting. The item could not be heard by the Board due to a lack of a quorum. Member Palmeri

recused himself. Staff recommended approval. The applicant slightly modified the application. The request is for a one foot side yard. The Board asked staff the following questions:

- Is the variance application necessary as a result of the placement of the existing home in the front of the property
- Does the applicant propose to divide the parcel into two or three lots
- Would a variance be necessary if the number of lots were reduced
- If a variance is granted by the West County BZA who will make the final determination as to how many lots the parcel can be divided into
- Would granting the variance constitute implicit approval of the Parcel Map application
- What are the objections of neighbors and the Cherryland Association
- What is the exact width of the proposed vehicle corridor
- Will there be a fence along the proposed extended driveway portion/property line
- Which lot would be designated as a flag lot
- If the driveway were extended to proposed lots #2 and #3 would it be considered an easement

Staff responded that the applicant would need a variance to develop the property because the existing dwelling would have a one foot setback to the proposed twelve foot wide driveway. To continue development the only way to avoid a variance to would be to tear down the existing dwelling. The proposed development would conform to setbacks for height, parking and open space requirements. Although the property is zoned for 5,000 square feet per dwelling unit, due to the minimal amount of usable open space in the rear of lots #1 and #2, the applicant may consider removing one lot. This would result in a two lot subdivision. Neighbors are concerned about the high volume of traffic and noise on the proposed narrow driveway. A letter they submitted states granting the variance would encourage the introduction of multi story homes with secondary units causing increased vehicle traffic during peak hours, affecting ingress and egress. The Cherryland Association said in their referral response that the setbacks do not meet the Ordinance requirement and the application should be denied. The Planning Director would then consider the parcel map application if the variance were approved. Approval of the variance would not mean implicit approval of the Parcel Map, PM-8641. Condition #2 in the Pre Hearing Recommendation clarifies that. Public testimony was opened.

Mick Lamb of Lamb Surveying Incorporated introduced himself as the applicant's representative. He explained that 13 feet currently existed between the existing home and the property line. Twelve feet would be taken up by the proposed connecting driveway. This design will minimize the need for additional variances. The Board asked Mr. Lamb for further clarification:

- Would parcels #2 and #3 share a driveway
- Would each lot own a portion of the driveway
- Would the applicant consider two lots on the parcel as opposed to three

Mr. Lamb said Lot #2 and Lot #3 would share the driveway. Lot #1 already has frontage on Cherry Way. An easement would be split with half of the easement on lot #2 and half on lot #3. This would allow each additional parcel frontage on Cherry Street and access to the easement. The applicant has not seriously considered reducing the number of lots at this time however that debate could continue as part of the tentative map process. Public testimony was closed.

Member Spalding asked staff to review the County zoning requirements. Staff stated that each parcel must have frontage on a street however that requirement could be waived in a parcel map application. This particular design enables the middle lot to be developed without a variance. A house could be set 10

feet off of the easement which allows for a bigger building pad. Member Spalding thought granting the variance could be detrimental under the circumstances. A one foot set back was not in compliance with the Ordinance. Although, zoning allows 5,000 square feet per unit and frontage requirement could be waived under the parcel map process she thought a one foot side yard would give the appearance of an overbuilt parcel. She was in agreement with the neighbors concerns that the resulting density could be detrimental. Member Spalding moved to deny the application because she did believe the applicant could make Tentative Finding #3. Member Spalding's motion died due to the lack of a second. Member Friedman said the one foot set back troubled him as well however all of the lots would be of a sufficient size. He did not necessarily like the proposal however Tentative Finding #2 pointed out that similar consideration could be, and has been made for other properties with similar considerations. Perhaps a condition could be added that prevents a fence from being installed. Member Spalding said that potentially each lot satisfied square footage however the parcel was narrow and the area as a whole has had problems with overbuilding. The parcel is also zoned for a second unit which could potentially create more issues like the ones raised buy the current neighbors regarding noise, loss of light and quality of life. The Chair pointed out that the driveway on lot #1 was currently in existence and had been for a number of years. Member Spalding responded that currently there was one homeowner; further development would add two separate owners who may not have similar concerns. A member of the audience interjected and asked if they might submit a speaker card. The Chair responded that public testimony was closed. The Chair asked staff if similar variances had been granted in the area. Staff confirmed there had. The Chair also commented that the lots would meet the standard size per County requirements. The parcel could fit three lots.

Member Friedman motioned to uphold the staff recommendation of approval, and to adopt staff's Pre Hearing Recommendations. Member Spalding asked a question to staff in reference to the motion. Although variances have been granted under similar circumstances would this variance be similar in respect to the subdivision of the parcel. Staff confirmed that the average lot size would be consistent but some projects do not require variances due to differences in configuration of the parcel. The Chair asked County Counsel if he could relinquish the gavel to Mr. Palmeri who had recused himself for purposes of seconding Member Friedman's motion. County Counsel advised the Chair to relinquish the gavel to a Member currently participating.

The Chair relinquished the gavel to Member Friedman. Member Pexioto seconded the motion. Member Friedman and Member Pexioto were in favor of upholding the staff recommendation of approval. Member Spalding was not in favor of approval of the application. The motion was 2/1. Member Palmeri was excused. Staff announced that the application would be heard by the Alameda County Planning Commission as a result of the Board not being able to come to a majority decision.

2. **BOB MASON, CONDITIONAL USE PERMIT, C-7756** - Application to modify Conditional Use Permit, C-7447 to allow: 1) storage for 20 vehicles; 2) increase from 125 to 145 horses; and 3) to legalize a feed store at an existing breeding, boarding and training facility for 125 horses, in an "A" (Agricultural) District, located at 24550 Palomares Road, east side, approximately ¼ mile south of Palo Verde Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 085A-2700-001-07. (Continued from December 11, 2002; February 26, March 26, April 23, May 28, June 25; July 23, September 10 and October 8, November 5, 2003; January 14, August 11, July 14, December 8, 2004, January 26, April 13, June 8, July 13, August 10 and September 28, 2005).

Staff Member, Jana Beatty told the Board the application was a modification of Conditional Use Permit,

C-7447. The item is before the Board per their request, as an informational item. Preliminary information regarding the modification of C-7447 was also given at the September 28, 2005 Hearing. New site managers have taken over recently. They have worked hard to remove most of the debris on the property, and continue to work with Environmental Health to finalize a manure management plan. Currently the Fire Department is not satisfied with access to the site. They feel the width and condition of the road is sub standard. The road also provides public access to a feed store on the property. Emergency crew access and public evacuation during a fire could be problematic. An additional concern is road erosion. Portions of the access road are eroding directly underneath. The new managers of the property do not believe expansion should occur and would like the feed store to be removed. Staff asked the Board to give their input regarding the application. Member Spalding asked staff what if there were CEQA implications. Staff responded that expansion would require a CEQA review. The feed store on the property was not legally installed at the site. Member Spalding said she was familiar with the site and had purchased feed there. She asked if the request for expansion of the number of horses were dropped if CEQA would still apply. Staff confirmed that it would. The Chair suggested the Board hear the application in its current form and consider changes only at such time they are posed. Public testimony was opened.

The applicant, Mr. Mason and his business partner, Herbert Von Rusten were present. Mr. Von Rusten stated that the property with the exception of 10 acres is run by two site managers. The ten acre portion, Mr. Mason retains for his sole use. Site managers Kevin Algar and Aimee Labat run the day to day operation well. Cleanliness and soil erosion control have improved. A combination of trailers exists at the site some of which are horse trailers. Most of the trailers are located on the portion of the property that is controlled by Mr. Mason. None of the trailers are currently occupied. The feed store was started by Mr. Mason who obtained a business license to operate it. He requested that the Board consider the feed store separately from the expansion of the number of horses. He was in agreement with the site manager, Kevin Algar that 125 horses at the site was an adequate number.

Richard Rigg, a neighbor who lives at 24542 Palomares Road said he was in opposition to the application. One area of concern is environmental issues. His property is adjacent to the ranch. The ranch is above his parcel and no erosion control exists. Due to grazing of the horses the grass is short which allows heavy water runoff onto his property. Grazing is not alternated. The County Agricultural Department has inspected the property and told the owners they could not expand until issues were resolved. Traffic on the road has increased as a result of deliveries and people going to the feed store. Noise has increased and the area is littered with fast food wrappers, beer bottles and soda cans from people visiting the ranch.

Ms. Pamela Rigg who also lives at, 24542 Palomares Road said that she was also opposed to the application. The application process had been ongoing for a period of five years. An application was submitted after a fire started on the property, resulting from spontaneous combustion from a manure pile. The application is an attempt to mitigate issues with the Fire Marshall. The issues have been ongoing for more than a five year period and they have had to live with the situation. She asked if the Fire Department or the Board would make the final determination as to standards for the ranch. The Chair responded that the Fire Department can set standards however the Board would make the decision as to the application. Ms. Rigg referred to a parcel map and information that she had given to the Board. Her letter states that the access road could not be legally expanded to meet fire code standards. She asked the Board when a decision would be made. Ms. Rigg purchased her property at the same time Mr. Mason did. She wants to be a good neighbor however she did not realize that the bucolic ranch would expand beyond its capacity. In closing Ms. Rigg urged the Board to follow the Fire Department recommendations, not allow further expansion and consider if the ranch should be permitted to operate.

New ranch manager, Aimee Labat said she and Kevin Algar took over daily operations in 2004. She

primarily handles the stable and riding arena operation. The owners did not disclose that the feed store was not an allowed use or that the Conditional Use Permit for the property had expired. She and Kevin met with former staff Planner, Ronald Gee. Currently they are utilizing manure removal with a combination of wood chips. Pasture rotation is also used. The two pasture areas that the Rigg Family referred to have no more than two to three older horses grazing at a time. Kevin Algar added that the ranch is vital because it provides a retirement home for older animals that have limited options compared to younger animals. Most owners of the retired animals do not visit often so their owners do not create traffic on the road. Ms. Labat said the pastures are rotated but due to past overgrazing it will take some time for them to fill in. Horses are fed hay as well. There are 50 stalls, 38 in use that house 40 to 45 horses and a paddock area that houses 15 horses. Total there are 108 to 112 horses on the property.

Kevin Algar told the Board he primarily manages the outdoor operation of the ranch. There is a lot of natural run off on the property due to the natural hillside terrain. He will continue to work with the County to resolve drainage issues. V ditches can be cut to channel water and retaining walls installed. Logs have been put down under the road where it is deteriorating. The next step is to get money from the owner to complete improvements. Thus far obtaining money from Mr. Mason has been difficult. Currently there are no people living on the property, however recently a friend of the owners who was occupying a trailer was told to leave the property. Member Spalding asked Mr. Algar if the site was sufficient to accommodate the current 105 horses, and if the road could handle the amount of traffic to the property. Mr. Algar said the site still needed more grazing rotation and some repairs but the property can sustain current number. He was not in favor of expanding the number of horses on the property.

The applicant, Mr. Bob Mason of Eagles Nest Ranch told the Board that the feed store helps staff at the ranch since the closest feed stores are in Fremont and Walnut Creek. The store sells feed and blankets. He makes deliveries to customers in the local area as far out as Sonoma. Mr. Mason said an application was submitted for the feed store at the same time of the CUP. He is waiting to hear about the status of the application for the store and use permit. He has paid his business license fee and taxes for the store for almost four years. The former owner Judy Simon opened the store and he took over the shop from her. Public testimony was closed.

Member Spalding said that she lived in the area and knew that soil erosion was an issue. She added that the managers of the property were very concerned perhaps they could be co-applicants. Member Friedman asked since the CUP had been expired for three years if the request to expand the use was valid. There were serious problems with the expansion proposal considering issues on the property and the large number of stored vehicles. Member Palmeri responded that it was his understanding since the application was submitted when the old permit was active the application must be considered. Although it is a travesty that continuations have gone on for such a long period of time, his feeling is that the feed store is an illegal operation. The use has created issue with the fire department, litigation through the Appellate Court. The inadequacy of the road way is a detriment to the safety of the neighbors, horses and others on the property if a fire occurs. Evacuation might be impacted as a result of its condition. Member Palmeri said he did not believe expansion of the use should be granted. The existing use permit should be granted for 125 horses with a maximum of three caretaker units, subject to the submission and approval of a manure management and erosion control plan within 90 days.

The road must also be repaired within in 90 days. Stored recreational vehicles shall be removed and all remaining debris must be removed. Alameda County Code Enforcement will inspect the property to verify compliance. The owner has not proven that there is reason to expand the use. The feed store is causing traffic issues and he would not be willing to legalize its use on the property. The Chair agreed that the application Conditional Use Permit, C-7756 to modify Conditional Use Permit, C-7447 should be denied. Recreational vehicles should be removed from the property as well as the feed store.

Member Spalding interjected and said that trailers are necessary for a boarding facility. She also asked County Counsel when Measure D was enacted. Staff clarified that horse trailers are acceptable however recreational vehicles with satellite dishes and propane tanks are not necessary for the operation. County Counsel confirmed that Measure D was enacted in the Fall of 2000. Member Spalding said that 105 horses is a large number for the amount of pasture on the property. If there is a specific use that might be expanded it should be the stables to house the animals. In response to Member Palmeri's comments she agreed that the use should not be expanded. She asked County Counsel if the application were denied would the facility have to cease operations. County Counsel said the applicant would have a vested right to continue the use during an appeal process. The Board would also have to conduct a revocation hearing to revoke the use on the property.

Member Palmeri motioned to grant Conditional Use Permit, C-7756 for the boarding and breeding facility for up to 125 horses for a period of 3 years subject to specific conditions. The permit shall be reviewed after a period of one year and subject to modification and/or addition of conditions. The current owner and/or lessee shall submit a manure management, erosion control plan subject to final approval by the Planning Director and other appropriate County Agencies within a period of 90 days. The current owner and/or lessee shall obtain Fire Department clearance for road use on the property. A maximum of three caretaker units shall be on the allowed on the grounds of the property in its entirety.

The application for expansion of the boarding, breeding facility to 145 horses, the storage of recreational vehicles and operation of a feed store is denied. The uses are detrimental to the neighborhood. Member Spalding asked County Counsel if the Board could make a determination since the application submitted was to expand a use. The motion allows no expansion. She also directed the following questions to staff: Can the Board could ask for removal of the recreational vehicles if they are being utilized as care taker's quarters. Where did the fire that precipitated the application renewal process start. Staff said they believe it started near the stables but they would have to verify that fact. The number of caretaker units and design can be determined by staff. County Counsel confirmed that the Board can motion to modify an application however they must provide conditions a resolution to support the motion. Member Friedman seconded the motion. Member Spalding said she was in support of the motion due solely to problems that had occurred on the site. She believed there was a great need in the area for a feed store and pointed out that the next closest location was in Fremont. Motion carried 4/0.

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 162nd 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, June 22 and September 14, 2005).

The attorney for the applicant requested a continuance to October 19, 2005 to allow her to observe a religious holiday. Member Friedman motioned to continue the item without discussion to October 19, 2005. Member Spalding seconded the motion. Motion carried 4/0.

4. **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 and September 14, 2005).

Staff told the Board that the application had been heard by the CVMAC on October 10, 2005. CVMAC requested that the applicant have the driveway widened to allow two vehicles to park in the front yard setbacks and to remove the accessory structure that is already under construction at the rear of the property. Member Palmeri commented that the request to approve two parking spaces in the front yard set back was not in compliance with the County Ordinance. He asked County Counsel if the Board was in a position to make a decision that evening since the application description did not state the location of the parking spaces. County Counsel told the Board the item should probably be re-noticed. Member Palmeri said based on County Counsel's feedback the item should be re-notice to comply with County Ordinance and procedure. Public testimony was opened.

The applicant, Mr. Scott said the only remaining issue with the CVMAC was the accessory structure. The home itself is three bedrooms. Many homes in the area had been expanded into three bedrooms. The original garage in the home had been legally converted into a kitchen and bedroom in 1958 by the prior owner. Mr. Scott wants to now add on two bathrooms in addition to the single bathroom in the home to accommodate his family of four. He plans to add a new roof and update the electrical wiring in the home as well. The concept of an accessory structure was developed to give the family additional space. The way the house is laid out the only way to meet requirements for expansion would be to tear down a seven foot portion of the home. Member Spalding asked if the accessory structure was completed. Mr. Scott said not fully but the family would like to keep it because it provides an area for home improvement projects, hobbies and a toilet. In regard to parking there has been no off street parking since the prior owner converted the garage in 1958. Although non-conforming, allowing widening of the driveway results in keeping two cars off of the street. Public testimony was closed.

Member Palmeri motioned to continue the item to November 9, 2005 in order to re-notice the application specifying the location of proposed parking. Member Spalding seconded the motion. Motion carried 4/0.

5. **TAM, TAM, YU AND KUAN, VARIANCE, V-11952 and PARCEL MAP, PM-8738** – Application to allow a 18 feet wide driveway where 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. (Continued from September 28, 2005).

The applicant requested a continuance in order to revise their plans and return to the CVMAC for further review. Member Palmeri motioned to continue the application to the November 9, 2005 Hearing. Member Spalding seconded the motion. Motion carried 4/0.

6. **DAVE AND CONNIE CLAYTON, VARIANCE, V-11956** – Application to allow two accessory structures to be located less than six feet from each other and the existing dwelling, in a P-D (ZU-1905) Planned Development, 1905th Zoning Unit, located at 3759 Boulder Canyon Drive, west side, approximately 300 feet south of Ridge Place, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 0417-0163-009-00.

Staff gave the Board an overview of the application. The recommendation was denial. The application was heard at the October 10, 2005 CVMAC Meeting. CVMAC also recommended denial. Public testimony was opened.

The applicant, Mr. Dave Clayton introduced himself to the Board. He thanked them for hearing his application and allowing him due process. He requested a variance for two accessory structures. One is used to store earthquake supplies and the other contains client records. Other neighbors have accessory structures in their backyards. Mr. Clayton referred to page #2 of the staff report which states that the current location is best to reduce visual impact on the surrounding neighbors. His neighbor to the north can see the structures if the neighbor looks directly down onto the property. Due to the trees and fence line the structures are barely visible from the street. To this date none of the neighbors have submitted a written or verbal complaint to the Home Owners Association complaining about the structures. One of his friends, a retired Alameda County Firefighter told him the placement is acceptable. Mr. Clayton submitted paperwork to the Home Owners Association through his lawyer regarding the issue. Mr. Clayton submitted photographs of other homes in the area with accessory structures that have not been challenged to the Board. Member Spalding asked Mr. Clayton if he had considered a storage facility. Mr. Clayton said he felt he had better control over the documents on his own property. He closed asking the Board to approve his variance and asked for rebuttal time prior to the closure of public testimony.

Danielle Primas was called to speak but was no longer present.

Ms. Doretta Carbone introduced herself as a Board Member of the Lake View Commons Home Owners Association. An application for a shed was received in February of 2004 and denied on June 7, 2004. The reason the Association denied the application is the placement is 3 feet away from the fence. The homes are located near a canyon and there is a concern about fire danger. Five other homes have been required to move their sheds because they did not meet the Home Owners Associations CC&R's or County Ordinances. Mr. Clayton as well as all homeowners within the Association are required to sign off they understand the CC&R's when they purchase their homes. The architectural application Mr. Clayton was sent also which specifies the rules. As an Association Board Member she is has to enforce the rules which state that: sheds cannot be seen from the street. The sheds also extend almost the entire length of the house. The CC&R's do allow homeowners with a three car garage to use one space for storage purposes. This rule would apply on Mr. Clayton's property.

The Chair asked if the accessory structure materials were fire resistant. Mr. Clayton confirmed that the sheds were. The color fits with color of the house. He felt the shed was a better place to store earthquake supplies because the garage may not be accessible after a quake. It is more likely he would have access using the shed as storage. The supplies would sustain three families for a period of 5 days. The Chair stated that he had visited the site and acknowledged that you would have to climb the fence to clearly see the accessory structures but the requirement is placement must be 6 feet from the dwelling. Member Spalding asked why the structures could not be placed at the back of the property. A slight slope does exist on the property but the applicant has not submitted testimony as to that affecting the placement in any way. Member Friedman said he did not believe the structures were a blight, it did appear there were some homes where CC&R's had not been enforced, however it was not the Board of Zoning Adjustments function to enforce the Home Owners Association rules. The structures did not meet the Zoning Ordinance and the applicant had access to storage such as the garage. Member Palmeri agreed that the Board must enforce the Zoning Ordinance period. The applicant can pursue civil action with the Home Owners Association if he so chooses. Earthquake supplies can be stored in the garage. There is no guarantee that in a natural disaster the accessory structures would remain standing either. He did not believe there is anything that distinguishes the house from any other home. There are alternatives for

placement of the structures. The placement may not be as desirable but an alternative is available. Public testimony was closed.

Member Spalding motioned to deny the application. The applicant could not show that special circumstances are applicable. It would not be detrimental to place the structures in the rear of the property. In regard to the Homeowners Associations CC&R's the Board does not have any authority. As a general concept it would be detrimental to public welfare to grant a variance that might cause civil strife among the neighbors. Member Friedman asked staff what the Building Department requires for accessory structures. Staff responded that typically the size and specific materials are not outlined. Depending on the placement, a one hour fire wall on the accessory structure may be required. Member Friedman seconded the motion. Motion carried 4/0.

7. **NANCY DUMAN, VARIANCE, V-11962** – Application to remodel an existing dwelling where by a new bay window encroachment would result in an 11 foot front yard where 20 feet is required in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 1707 Grove Way, south side corner, east of Gail Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 0415-0180-001-00.

The staff recommendation was denial however the CVMAC recommended approval of the application. Member Friedman asked for more specifics regarding the CVMAC recommendation. CVMAC felt the applicant could make the findings. Member Palmeri asked what aspect qualifies the structure as non-conforming. Staff said the property was developed in 1951 with a 15 foot front yard setback. The Zoning Ordinance only allows a two foot encroachment into the 20 foot minimum front yard setback. This setback is currently a legal non-conforming use. To expand a non-conforming use, a variance is required. Member Palmeri asked where the setback measurement was taken from. Staff confirmed it was the outer edge of the road easement. Public testimony was opened.

The applicant, Ms. Nancy Duman was present. Ms. Duman explained that her bedroom faces out onto Grove Way. A public bus stop exists on the sidewalk just outside. The current window opens outward and she is not able to keep the window open without a loss of privacy. At one time there was a tree that provided some privacy but due to a security issue the tree was cut down. The security issue was resolved however the privacy coverage the tree provided is no longer there. The proposed bay window design would allow the side sections to remain open, providing air circulation. The front section can be covered with shutters to provide privacy. There is 27 feet from the front curb.

In 1951 after the easement was put in, a 15 foot setback from the outer edge of the sidewalk to the side of house was left. The window would be installed within the existing 15 foot setback, reducing it by 4 feet. Public testimony was closed.

Member Spalding asked what the County Ordinance required of a homeowner if the road were widened in the future. The Chair commented that although not impossible it was unlikely widening would ever take place at that section of the Grove Way. Member Palmeri asked if the bay window would be considered as a portion of the house. Staff responded that the Zoning Ordinance will allow a 2 foot encroachment into the required 20 foot front yard. Member Palmeri motioned to approve the application. The applicant has established that special circumstances exist due to the presence of a transit stop. The applicant will be required to remove the bay window solely at their expense if Alameda County Public Works decides to exercise the Right of Way. Member Spalding did not think it would be fair for the property owner to incur the total costs. At this juncture it would difficult to predict how much work may be required, therefore difficult to predict the cost.

The Chair pointed out that if the window is installed it should not impede traffic. Member Palmeri commented that the fact the parcel was on a corner decreases the chance the road would be widened since it would require widening on both sides. Current lack of County funding for similar projects is another indicator that widening probably will not happen. Member Friedman added that it did not appear the window would affect traffic.

Member Palmeri clarified the motion to specify that: The applicant will be required to make changes and/or remove the bay window solely at their expense if Alameda County Public Works decides to exercise the Right of Way and determines that the window impedes or inter-fears with traffic or causes site-distance issues. Member Spalding announced that she would vote no on a motion that would require the property owner to remove the window at their expense. Member Friedman seconded Member Palmeri's motion. Member Spalding was not in favor of approval based on the fact the applicant would be required to remove the window at their own expense if the County exercised the Right of Way. Motion to approve the application carried 3/1.

APPROVAL OF MINUTES: Member Palmeri motioned to approve the Minutes of September 28, 2005. Member Friedman seconded the motion. Member Spalding abstained. She was not present at the September 28, 2005 Meeting. Motion carried 3/1.

STAFF COMMENTS & CORRESPONDENCE:

Staff met with Nate Miley's Office last week however due to the length of the meeting, appointment of a New Board Member was not discussed. Staff will meet with the Supervisor's Miley's Office next week.

CHAIR'S REPORT: None.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

Member Palmeri reviewed suggestions discussed at the last meeting to manage agenda items that may generate a high volume of public comment:

Do not call agenda items after a certain time if more than 5 speaker cards are submitted announce that the item may be:

- Put to the end of the agenda.
- Scheduled for a special hearing date.
- Limited to a certain time frame, ie. 60 to 90 minutes.
- Add verbiage to all Agendas once policy has been set so the public is aware of possible hearing formats.

County Counsel recommended the discussion be scheduled as an Agenda Item. Board Members and the public can discuss options and then adopt policy. Staff will report back as to which meeting date would be suitable to add Policy Discussions to the Agenda.

ADJOURNMENT:

There being no further business, the hearing adjourned at 9:10 p.m.

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