

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
OCTOBER 24, 2007
(APPROVED DECEMBER 5, 2007)

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, and Kathy Gil.

MEMBERS EXCUSED: None.

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

There were approximately 20 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. **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, 2007; to be continued to November 14, 2007)

2. **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, 2007; to be

continued to January 23, 2008).

3. **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, and September 26, 2007; to be continued to December 12, 2007).
4. **RUBEN SOTO, VARIANCE, V-12046** - Application to allow a driveway located four feet from the existing dwelling, and four feet from the new dwelling where 10 feet is required with the construction of three (3) dwelling units, in an R-S-D-35 (Suburban Residence, 3,500 square feet per Dwelling Unit, Minimum Building Site Area) District, located at 21587 Banyan Street, west side, approximately 450 north of Willow Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 429-0046-056-00. (Continued from October 10, 2007; to November 7, 2007).
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. (Continued from May 23, June 27, August 22 and September 26, 2007; to be continued to November 7, 2007).

A speaker card was submitted by Mr. Sead Sisic. The Chair asked Mr. Sisic if he would like to have the item pulled from the Consent Calendar for purposes of public testimony at the end of the Regular Calendar. However the Board will take no action on the item. Mr. Sisic told the Board he would return on November 7, 2007.

Member Clark motioned to accept the Consent Calendar as submitted. Vice Chair Peixoto seconded the motion. Motion carried 4/0.

REGULAR CALENDAR

1. **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.

Staff recommended a continuance to the November 14, 2007 Hearing. The Castro Valley Municipal

Advisory Committee asked for more information. Parcel #1 would allow a 16 foot deep front yard where 20 feet is required. And a zero foot street side yard on parcel #2 where 10 feet is required. Public testimony was opened. There were no requests to speak on this item. Public testimony was closed. Vice Chair Peixoto asked staff the following questions:

- Can the application could be achieved without a variance by adjusting the size of each parcel
- If the driveway width were reduced to 16 feet would that meet Alameda County Fire requirements

Staff explained a variance would still be necessary. The variance refers to lot size consistency. A portion of the variance for the existing home could be eliminated by reducing the driveway width. The Vice Chair recommended options be discussed with the Applicant.

Vice Chair Peixoto, motioned to continue the application to November 14, 2007. Member Gil seconded the motion. Motion carried 4/0.

2. **OSBORNE/NSA WIRELESS, CONDITIONAL USE PERMIT,**

C-8638 – Application to allow continued operation of a telecommunication facility in a M-1 (Light Industrial) District, located at 22020 Center Street, east side, corner northeast of Grove Way, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 417-0010-007-05. (Continued from July 25, and September 26, 2007).

Staff reviewed current information. The recommendation was approval with the modification of Condition #7. The word "not" shall be removed. The language shall now read, the Applicant / Owner shall allow co-location. The Chair asked in addition to site restoration what can be done to reduce the starkness of the site. Staff said the Applicant was present and can propose possible solutions to address the concerns and issues. Public testimony was opened.

Mr. Steve Christensen of NSA Wireless was present on behalf of Sprint/PCS. This is the first meeting he has been present. Mr. Christensen thanked the Board for the past continuances. Thus far he has contacted the RF Engineer for NSA Wireless. There may be some possible solutions however he wanted to explain why the tower has such a specific design that differs from the other carries stealth pole that is painted brown. The technology being employed needs separation of the antennas as well as much height as possible. The antennas are needed at the specific height to address the capacity. There are a total of 9 separate antennas. Each antenna also has flanges which that add an additional 16 inches in width. There is newer technology that can somewhat reduce the flange width. The new style antennas can be installed. However that will not eliminate the 3 foot space between each antenna. The overall width of the equipment would be approximately 2 feet, 6 inches on each side. If the distance between each antenna is less than 3 feet, the result will be reduced coverage for subscribers.. The pole can also be painted brown to blend in with the T Mobile on the site. The Sprint antennas must clear the T Mobile antennas. The Sprint equipment is attached to a PG&E pole. The PG& E pole may also be painted brown, and the top hat equipment may also be reduced. The Chair reminded Mr. Christensen that the application had been continued to develop solutions. Mr. Christensen also proposed the length of the permit be reduced to a 5 year time limit as opposed to 10 years. This would allow more substantive changes in 5 years with the advent of new technology. Mr. Christensen said he was open to additional suggestions. The Board asked the following questions:

- What specifically is Sprint proposing to reduce blight on the site
- Can a "tree pole" be used on the site to camouflage the antennas

Mr. Christensen said landscaping could be added to improve the site. A tree pole at 40 feet in height may be possible. Tree poles look more natural if they are spruce or pine. The Chair asked if the pole could be made to look like an oak tree. Mr. Christensen said the base of a camouflage oak would be at least 36 to 40 inches in width. There must also be natural trees and surrounding oaks for them to blend into the overall skyline. However Sprint is leasing the space from PG&E. Negotiations with PG&E would be necessary for that extensive change. This could take 4 to 5, additional months. The Chair said that this was the first time proposals were being set forth. It was unfortunate the Applicant had not taken full advantage of the prior continuances to start this type of negotiation with PG&E. Mr. Christensen apologized but noted that this was the first meeting he had attended. The Vice Chair said although the height of the pole was an issue. He was more concerned with the overall condition of the property site which included debris etc. This is more obvious than pole height. The Vice chair was aware the site was owned by PG&E. Member Clark asked that Code Enforcement visit the site. Public testimony was closed.

Member Clark pointed out the Applicant can continue to use the existing equipment. The operation would not be affected during the 5 year permit term.

Vice Chair Peixoto motioned to adopt the staff recommendation of approval with the modification of Condition #7. The word "not" shall be removed. The language shall now read, the Applicant / Owner shall allow co-location. The term of the permit will be 5 years. Also the antenna wings shall be reduced. The telecommunications pole shall be covered with brown paint to camouflage and reduce the visual presence. Member Gil seconded the motion. Motion carried 4/0

3. **AMERICAN TOWER CORPORATION, CONDITIONAL USE PERMIT, C-8646** - Application to allow the continued operation of a radio transmission facility (cell site) in an "A" (Agricultural) District, located at 23205 Eden Canyon Road, east side, approximately 100 feet north of the Interstate I-580 Freeway, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085A-1200-001-00. (Continued from September 27, 2007).

The staff recommendation was approval. Vice Chair Peixoto recused himself from participating in the consideration or the vote regarding C-8646. Public testimony was opened.

The Applicant, Mr. Steve Christensen with NSA Wireless was present Representing the Applicant. Lisa Nahmanson with American Tower Corporation was also present. Mr. Christensen and Ms. Nahmanson were in agreement with the Conditions of Approval. The Chair asked if Mr. Christensen had read the staff report. He confirmed he had. Public testimony was closed.

Member Gil motioned to uphold the staff recommendation of approval. Member Clark seconded the motion. Motion carried 3/0. Vice Chair Peixoto recused himself and did not participate in the consideration or the vote regarding C-8646.

4. **IBC BUILDERS / PRASAD, TENTATIVE PARCEL MAP, PM-9516 and VARIANCE, V-12073** - Application to subdivide one parcel measuring approximately 43,560 square foot (1.0 acre) parcel into four lots allowing a six foot side yard where a 10 foot side yard is required in a R-1-B-E (Single Family Residence, per Fairview Plan) District, located at 23330 Maud Avenue, east side, approximately 300 feet south of Pickford Way, unincorporated Fairview area of Alameda County, Assessor's Parcel Number: 417-0210-67. (Continued from

October 10, 2007).

Staff recommended approval of the application. The application would result in a corner lot with a 6 foot street side yard, where 10 feet is required. The Chair asked if the site location was the object of a recent Code Enforcement action before the Board. Staff confirmed that the location was not. The Zoning Enforcement case was at 23066 Maud Avenue. However the application currently being considered is located near by. Member Clark asked if the project was for a total of 4 or 5 parcels. Staff confirmed the sub-division would contain 4 parcels. A private street will be combined with the lots. This is standard with this type of application. Public testimony was opened.

Ms. Cathy Langley testified that she lived at 23922 Maud Avenue, adjacent to the Applicant's property. She has lived there 7 years. Ms. Langley said she was concerned with the population density, urban sprawl, and traffic congestion in the area. There are already unsafe traffic practices happening. The proposed development is near a school. The property along Maud Avenue is being developed at a rapid rate. The hillside is being chopped into which also concerns her. Ms. Langley then referred to the letter submitted by the Fairview Community Club. Drainage from the site runs across a neighboring property. That should be corrected. Drainage should be channeled toward Maud Avenue. It is questionable if the 2 foot by 2 foot splash pad can handle water runoff, and prevent erosion on the neighboring property. Ms. Langley asked the Board if the issues with Alameda County Fire had been addressed. If not they should be addressed with the Applicant during public testimony. In addition, Ms. Langley questioned the impact of geological erosion in area, and the number of mansions being built in the neighborhood.

Mr. Chadha the Engineer from IBC Builders was present. Mr. Chadha prepared the plans for the Applicant. He was in agreement with the staff Recommendations and Conditions of Approval. Mr. Chadha said the runoff that falls onto the splash pads will be from the roof drain spouts. The water then goes onto plants. A clean filter will be installed. If Public Works does not find that method acceptable, runoff can be channeled into the water storage boxes. Then go directly into the street drain. Erosion Control Plans will be submitted prior to construction. Post construction Erosion Control Plans will also be implemented prior to getting the permit for the street. This is standard procedure for Public Works. Board questions were as follows:

- Is the variance isolated to the existing home on Parcel #1
- Does the Applicant plan to demolish the existing home on Parcel #1
- Have the concerns raised by the Alameda County Fire Department been addressed
- Has Mr. Chadha read the letter from the Fairview Community Club

Mr. Chadha said the Fairview Community Club mistakenly interpreted the setback information. The variance request is for the setback of the existing home. All of the Fire Department issues have been addressed in the letter to the Planning Department. There will a fire lane on the private street. Signage will also be installed according to Fire Department specifications. The exact location of signage will be determined at the Parcel Map stage of the process. A guest parking space will also be provided. Mr. Chadha said the Applicant was present and could confirm if the existing home would be demolished. The Chair interjected and said the question of the demolition of the home on Parcel #1 appears to be answered by the variance request. If the house were not going to be retained, there would be no need for a setback variance.

Ms. Langley asked if a soils report was required for the project. Staff explained that sometimes Public

Works requires a Soils Report at the beginning of the application process. In this case the report was not required upfront. However a Soils Report is required, prior to the start of any grading. Public testimony was closed.

The Chair asked staff to address the letter dated, September 26, 2007 from Public Works which stated the application was in violation of the Subdivision Map Act. Staff explained in the prior application submission, the Applicant had the road way separated in conjunction with only 1 lot. The road design has now been re-configured, and is compliance with the Subdivision Map Act. The design is standard with 4 lot subdivisions in the County. The Chair asked staff to clarify that the proposal is to create 3 lots in and create a single lot on the area containing the existing home, resulting in a 4 lot subdivision. Staff confirmed that was the case. Additional Board questions for staff were as follows:

- Can staff confirm that the setbacks are correct
- Would the elimination of a parcel, eliminate the need for a variance
- Is it possible to remove a portion of the existing home
- Is it necessary to demolish the existing home
- Are there any other methods that can be used for the private road design

Staff confirmed the setbacks were correct. Removing a parcel would not prevent the need for a variance. The Applicant would still need a private street. The proposed configuration is the best solution. Installing a private street creates a corner lot in the front of the parcel where the existing home is located. The street, side yard setback requirements are 10 feet. The existing home has a setback of 6 feet. The only way to eliminate a variance would be to tear down a portion, or remove the entire existing home. Staff responded that neither option may be practical.

The Vice Chair motioned to adopt the staff recommendation of approval. The motion failed due to the lack of a second.

In the absence of a second to the Vice Chair's motion, Member Clark suggested the Applicant and their engineer engage in a dialog with the neighbors. This should alleviate confusion, and concerns. The Chair agreed. Member Clark made a motion to continue the application.

The Chair asked staff if the easements were included in the calculation of the 5,000 square foot Minimum Building Site Area. Staff responded that the easement area is always deducted from MBSA calculations. The Vice Chair posed the question if it was appropriate to ask for a variance to a condition that existed prior to zoning. The Chair pointed out that in addition to the variance for the setback to the existing house, there is a Parcel Map application. The two applications should be considered together. Lot size consistency could still be an issue. The Chair asked Mr. Chadha if he would be amenable to a continuance. Mr. Chadha said if the variance was of concern, although costly his client would be willing to completely demolish the old house. The Chair pointed out this would alleviate the need for a variance. The Vice Chair asked Mr. Chadha if the Applicant planned to subdivide the lots at a future time. Mr. Chadha said the Applicant planned to subdivide. However if the variance for the existing house is precipitated as a result of the subdivision application, rebuilding the existing house solves the problem. The Chair told Mr. Chandra if he were not opposed to a continuance, he and the Applicant should take the opportunity to review all of the options. They should also meet with the Fairview Community Club. Mr. Chandra responded that he was not opposed to a brief continuance.

Member Clark renewed her motion to continue the application. Staff recommended November 14, 2007. Member Gil seconded the motion. Motion to continue the application passed 3/1. Vice Chair Peixoto was not in favor of a continuance.

5. **SILRAY & SILVIA DELA CADENA, VARIANCE, V-12057 and SITE DEVELOPMENT REVIEW, S-2111** – Application to allow construction of a house within an area that is 30% or greater in slope, where no structures are allowed on such slopes by the Madison Area Specific Plan; located on a vacant parcel approximately 1,200 feet north of Seaview Avenue on Common Road, east side of Castro Valley Creek, in the R-1-B-40-CSU-RV (Single Family Residence, 40,000 square foot Minimum Building Site Area, 150 foot Median Lot Width, 30 foot front yard, Conditional Secondary Unit) Zoning District and within the Madison Area Specific Plan, unincorporated Castro Valley area of Alameda County, Assessor's Parcel Number: 084C-0895-041-00. (Continued from October 10, 2007).

Staff recommended denial. The item was heard again by the Castro Valley Municipal Advisory Committee. The recommendation was also denial. The CVMAC voted 4/1/2 to deny the application. Two Members were excused. Public testimony was opened.

The Applicants, Mr. Silray & Silvia De La Cadena gave their speaking time to their Architect, Mr. Ken Ibarra. Mr. Ibarra distributed a reduction of updated, large scale plans. In addition a Section Detail of how the proposed home will sit on the property, was distributed. The Chair announced that the anticipated new BZA Member representing Castro Valley had not been sworn in as of yet. Mr. Ibarra presented an updated analysis on the height of the proposed retaining walls. The testimony given at the prior hearing from neighbors that the walls would be 10 to 15 feet was inaccurately stated. Mr. Ibarra said he would not respond to some of the individual statements from prior meetings, such as the following:

- The variance application should be narrowly tailored to the Madison Avenue Specific Plan;
- The proposed retaining walls are too high;
- The retaining walls will detract from the site;
- The applicant cannot meet the variance findings; and
- The project will cause mudslides

Mr. Ibarra testified that this is not the case. There are studies that prove this will not be the case. A considerable amount has been spent on studies, and reports that support that fact. Mr. Ibarra then addressed the staff Tentative Findings. He agreed with staff:

Regarding Finding #1: Special Circumstances. The special circumstance present on the site is the topography. There is a small area where the proposed driveway will be located that is less than a 30% slope. The balance of the lot consists entirely of area that is 30% in slope. There has been testimony that there is an area comprised of 20% slope. However this is located within the lot setbacks. The home must be placed 55 feet from the property line.

Mr. Ibarra then referred to the Site Section diagram. There is an estimated total of 2,600 cubic yards of earth work required. However this does not mean all of the earth will be exported. The engineering firm estimates approximately 500 cubic yards, can become fill. This will flatten out the front of the site. The topography is such that a minimum of 645 cubic yards of grading will be required to get to the area where the proposed driveway will be located. Remember this is the area of less than 30% slope. This calculation does not include the grading estimate for the house. The proposed design does not require extensive cutting into the hill. The topography is such that it would wrap around the home on 3 sides. Visually from the sides and rear, the home will appear to be a single story. The perspective from the front of the property will be two stories. The existing foliage and landscaping will be maintained. The design is bench cut into the hill. The footprint does not require more grading than any other home

design. Mr. Ibarra asked the Board to keep in mind the grading total includes, driveway area, patio area, and house. The proposed design is realized all within the confines of the site. To say the project is detrimental is untrue. There is an area at an elevation of 449 feet, located 40 feet behind the property line. The concerns that neighbors expressed about views are not accurate. The neighbors that live behind the parcel are 20 to 30 feet above the peak of the roof, of the proposed home. The roof peak of is measured at an elevation of 424 feet.

Regarding Finding #3. Will the granting of the application be detrimental. The current proposal is probably the best use of the site. The design could possibly be altered by excavating a garage, and then building a 1 or 2 story house at the top of the hill. But this would result in more of a visual impact at the top of the hill. The current design has less of a visual impact. The sliver of land at the front of the property toward the road is not usable, because it is located within the setback. Thus far no one has come forward with the stance that Finding #3 is untrue. Mr. Ibarra said he hoped to convince the Board based on the details presented that the project would not be detrimental. The current proposal is the best use of the site. When viewing the project from a side elevation, it is evident the existing grade is not changed.

The Chair asked Mr. Ibarra if he had met with the neighbors. Mr. Ibarra confirmed that he had not. His client, Mr. De La Cadena did receive a letter from the Copra's Attorney. He instructed Mr. De La Cadena to respond to the letter.

The Applicant, Mr. De La Cadena testified that since the initial submission of his application to the CVMAC, he informed the neighbors that he would be willing to work with everyone. Since the first CVMAC Meeting, only one couple has spoken with he, and his Architect. The initial home design was larger. That designed has been reduced. Mr. De La Cadena said what the neighbors are asking for now is another re-design. If the design is further reduced he will be in the position of living in a smaller home than he currently lives in. The Chair reminded De La Cadena that the prior hearing had been continued to allow him to get together with the neighbors. Mr. De La Cadena said he did not get that impression. He interpreted the Chair's intent of the continuation was to obtain more information regarding the retaining walls, and grading. Until now the neighbors have been opposed to any construction on areas of 30% slope. The area neighbors know that his door is always open. They also know how to contact him. Mr. De la Cadena believed that some of the neighbors did not wish to meet with him. In addition he got the impression that some of the neighbors did not want him to build on the property.

Ms. Cindy Silva gave her speaking time to Gerald Thompson. Mrs. Winifred Thompson of 17764 Madison Avenue gave her speaking time to Gerald Thompson.

Mr. Gerald Thompson gave materials to the Board. He referred to the 3 un-developed parcels on Madison Avenue. The parcels were originally listed as Parcel A, Parcel B and Parcel C. Mr. Thompson showed the location of his home in relation to the parcels. He lives directly across from Parcel B, and just south of Parcel C. Mr. Thompson believed the submitted design should be denied. He was in agreement with the Planning Staff Report, and the CVMAC recommendation of denial. He asserted that none of the required findings could be met by the Applicant.

Regarding Finding #1, Special Circumstances. The fact that the property is on a 30% slope, cannot be distinguished from other properties along Madison Common Road. Eighty five percent of the owners, 17 out of 20 property owners cannot build on a 30% slope or greater. These property owners cannot build on a 30% grade. The variance is self inflicted by trying to place an oversized home on a limited building area. If the Board grants the variance it would be a case of special privilege.

Regarding Finding #2, Special Privilege. No other lot in the area will share the same privilege if the application is granted. The granting of the application will set a negative example, and nullify the Madison Avenue Plan, opening the area up to development on 30% slope. The home design is a flat land home, gouged into a hillside. There has been no attempt to conform to the Madison Plan in terms of limiting grading or employing a stepped up, house design.

Mr. Thompson then referred to Finding #3. Will the granting of the application be detrimental. The location is a dangerous place to build. He referred to Figure 10-4 in the Castro Valley General Plan Proposal, Seismic Hazards. The area is outlined as a potential landslide area. Landslides have already occurred to the north, and to the south of the parcel. The proposal will endanger area residents. Mr. Thompson then showed photographs of a landslide that is active, 50 feet north of the property. A mudslide on the Applicant's property could completely engulf the proposed retaining wall, and flow over into Kelly Creek. This could dam the creek, as well as possibly damage the home. Removal of 2,600 cubic yards of earth would destabilize the slope. The geological study in the Madison Avenue Plan specifies, there should be no building on the canyon walls.

Per the Chairperson's request from the prior hearing, Mr. Thompson presented drawing of a home design that would conform to the Madison Avenue Plan. He pointed out a key design feature was that the home was stepped up, above the grade. Grading is reduced to, 200 cubic yards. Mr. Thompson pointed out that his 2 story sample design is, 2,500 square feet. Mr. Thompson then asked the BZA to deny the variance, and quoted Mr. Andy Frank of the CVMAC. "Either the area has a Specific Plan or it does not". Mr. Thompson also submitted a survey he conducted of other homes that surround Lots, A, B and C. The medium sized home size is 2,338 square feet. The median square footage is 2,177. These homes are in tune with the Madison Avenue Plan. The De La Cadenas proposal is 4,402 square feet. Houses in the area, including those on Canyon Hills Court, Madison Common, and Wild Rose Lane are smaller by 89%. Of the homes that are larger homes, they are located on larger parcels. 17 of them have slope restrictions. These homeowners have adhered to the Madison Plan, and not built in the 30% slope. For the Board to grant a variance to build a large home on a small lot, when the surrounding neighbors have regular sized homes, would be unfair. The hypothetical design Mr. Thompson said in addition to a stepped design, the sample home includes a full garage, and a deck along the front of the property. The design sample also complies with grading standards. The Applicant's design rises 22 feet between the top and bottom of the grade, at the rear of the home. Mr. Thompson summarized that the issue is not to deny a structure. The goal is to build a structure that conforms more closely to the Madison Avenue Plan. Mr. Thompson told the Board that he met with his neighbors but was not contacted by the Applicants since the last hearing. As a result he sent a letter to the De La Cadenas. He and the neighbors are open to meeting with the De La Cadenas. He looks forward to a dialog with the Applicants, if they are willing to re-design their home to more closely match the Specific Plan. The Chair said it was unfortunate that the neighbors did not take advantage of the continuance to meet with the Applicants.

Ms. Nancy Churchill gave her speaking time to Mr. Lyle Bogue. Mrs. Sue Bogue gave her speaking time to Mr. Lyle Bogue.

Mr. Lyle Bogue said he and his wife live at 17800 Madison Avenue. Their home is directly across from Parcel A of the original development. He is opposed to the variance application to build on, 30% slope. He and his wife have voiced their opposition at every opportunity. They have attended 13 Public Meeting regarding the 30% slope issue. The area residents are becoming numb with all the discussion. The 1st meeting was in 1975. Recently there was a revision of the Madison Plan. The community adopted the Specific Plan language by a 31 to 7 vote. The revised Plan was finally adopted in 2006. The County commissioned a geological survey. The survey recommendation was that building be limited to the

valley floor because of stability and erosion problems. Grading should be minimized to the greatest extent possible. Access roads should be improved only to the extent of the terrain. Due to geological conditions, possible erosion problems and their visual impact, the valley walls shall not be build upon. Grading should be held to a minimum on all development. The determination was that earth scarring and potential earth flowage could result, if building occurred in these areas. This may also cause an increase in runoff. There is already earth flowage at the top section of the subject property, and the property next door. If there is reason to believe the original parcel was 5,000 square feet, what happened to the rest of the parcel. Mr. Bouge said a single bore hole conducted by the former owner at the top of the hill, will not convince him of what his eyes can clearly see. The ground is falling. The established Madison Avenue Plan contains mitigation measures to reduce peak runoff. This is achieved by reducing grading. Grading and increased development can cause stream erosion, siltation, and creek flooding. Mr. Bogue's property is on lowest point of ground between both creeks in the area. His property has a huge impact potential, if the creeks overflowed. The proposed 4,200 home, 20 foot wide driveway, and a 3 car garage which includes a 3 car apron, are all impervious surfaces. This proposal will only increase run off. The revised plan still has too much grading. The proposed design exceeds Plan height limits. The home should step up with the terrain. With all of the revisions, the proposal still does not comply with the Madison Avenue Specific Plan. The project would still require the removal of 2,600 cubic yards of earth. This is 3 times the amount that should be allowed. The Plan states, nothing should be built in areas of 30% slope or more. Mr. Bogue did not believe the parcel should be built on. However if the Board does approve the application he requested the following restrictions and safeguards be attached to the approval:

- An EIR should be required
- Grading should be reduced by at least 2/3rds. This could be achieved by the following:
 - The footprint of the home could be reduced
 - The driveway could be reduced in width
 - garage size could be limited
 - The home could employ a stepped design or be erected on piers
 - Prohibit a secondary unit on the parcel
 - Prohibit the use of RV pads
 - Install protections for the Riparian Habitat
 - Install protections for properties located up hill from the parcel

Mr. Bogue thanked the Staff Planner, Christine Green for requiring that the application adhere to the Madison Avenue Plan. He added his voice to Mrs. Greens, in request of the Board to deny the application. Mr. Bouge clarified for Board Members that he not been contacted to meet with the Applicants. He has only talked with the Applicants at meetings.

Ms. Roxann Lewis listed her address as 17750 Madison Avenue. Ms. Lewis said the Applicants and the seller of the property were well aware of the restrictions prior to their purchase. The lot was created in 1979, and has no frontage. A landslide did occur in on the property next to the parcel. As a result the neighbor had to erect retaining walls. If the project continues and a variance is granted, an EIR should be required to ensure the public interest is up held. Ms. Lewis said she was pleased to see the staff recommendation of denial. Ms. Lewis thanked the Staff Planner, and confirmed the lot square footage in the staff report was correct. The staff report addendum dated, October 10, 2007 refers to the Madison Plan. It states, there should be no building on areas of 30% slope or greater. It also states, buildings should be stepped up to reduce profile, and reduce grading. The Plan does not state allowable home size, but it states homes cannot be put in areas of 30% slope. The applicants are going against the very root of the Plan. The Madison Avenue Plan was updated in 2006. The Board of Supervisors, Planning Staff and the neighbors all approved of the new Plan. The ink is hardly dry on the revised Plan. The variance request should be denied by the BZA. The CVMAC also voted in favor of denial. The Chair asked Ms.

Lewis to clarify if the Number of meetings she had attended. Ms. Lewis confirmed there had been approximately 13 meetings to discuss the Madison Avenue Plan, and variance applications.

Ms. Connie Deets stated her address as 18413 Madison Avenue. She asked if the BZA had a representative for Castro Valley. Ms. Deets requested that the application be continued until the new Member can be present. The Chair explained a new Member had been appointed. The hope was to have the Member start at the current meeting. However the appointment process is not complete. Member Adesanya should be present at the next meeting. Ms. Deets said that the application had been continued to allow the applicants and the neighbors to meet. This did not happen either. Ms. Deets testified she missed the last few meeting, due to illness. However she was not contacted by the Applicants thus far. She knows the Applicants do not live in the area. It may be difficult to contact everyone, and get clear information regarding meetings with the Applicant. Ms. Deets thought there was a question of consistency regarding lot size. The staff report states that 2/3rds of the lot exceeds 25% slope, and one half of the lot exceeds a 30% slope. The Applicant states that, 90% of the lot has a slope of 30% or more. She believed there was an error somewhere as to which description is accurate. When the lot was zoned there was a 4,600 square foot area that had less than 25% slope. There has been significant change in the in the parcel. The Applicant has now modified their design, which will increase the footprint of the proposed home. The original lot features have also changed due to landslides. She asked the BZA to postpone the application until the design complies with the Specific Plan. Ms. Deets said there is nothing wrong with leaving the parcel as a greenbelt space. She owns an additional parcel that is so steep you cannot even walk in the area. Ms. Deets said she pays taxes on the parcel, and has designated it as a green space. Every piece of land does not need to be developed. It is perfectly acceptable to leave the property vacant. Ms. Deets, closed and asked the Board to deny the variance.

Mr. Martin Lysons the Attorney for Mr. & Mrs. Copra thanked staff for a through report. He and his clients were in agreement with the finding of denial. Mr. Lysons said he would put all of the neighbor's concerns into the context of the required variance findings, most notably:

Regarding Tentative Finding #3. Will the granting of the application be detrimental. The current size, and mass of the home would have a detrimental affect on the neighborhood. The project compromises the standards set forth in the Specific Plan. The project can be reduced in size.

Mr. Lysons said he sent a letter to the De La Cadenas, and also spoke with Silvia De La Cadena. Mrs. De La Cadena said there may be room for compromise. Mr. Lysons asked the BZA for one more continuance, in order to have a roundtable discussion with the Applicants. Mr. Lysons reiterated that he believed the De La Cadenas should build their home. They need not leave the parcel vacant. However the variance should adhere to, or be narrowly tailored to the Madison Avenue Plan. He hoped in the future that any prospective builders, homebuyers etc. allow neighbors to have a say in the proposed home designs. This will hopefully prevent neighborhood opposition to every project in the area. A face to face meeting and discussion with the Applicants will hopefully bring out misconceptions, and result in the negotiation of a reasonable design. Mr. Lysons requested that more information be presented at the meeting with Mr. Ibarra, to flesh out the details regarding the retaining wall height. The meeting process will set a standard, and also serve notice that future proposals put forward in the Madison Plan Area, will be closely scrutinized. The outcome should be projects that comply with the Madison Avenue Plan.

Mr. Aufdermauer stated his address as, 17580 Madison Avenue. He was in support of granting the variance and the site development review application. Mr. Aufdermauer said he was concerned with decisions that affect the Madison Plan Area. He owns 1 home on Madison Avenue, and 2 undeveloped lots directly connected to the south of the subject property. He attended meetings, gave input, submitted comments, and voted on the updates to the Madison Avenue Plan. At the time of the updates he owned 1 property within the Plan Area. He purchased 3 parcels, after the Plan update. The updates to the Plan

include the requirement of a site development review when developing, and grading plans. In addition changes were made to the Plan setback requirements. Setback requirements were 20 feet on each side. Now they are flexible, and can range from 30 feet to 10 feet. Former height averaging has been abolished. Height is now measured straight from existing grade. The allowable height for this lot is 30 vertical feet from the grade. The De La Cadenas have an inset design to limit the impact to neighboring, views.

Regarding Finding #1 Special Circumstances. There are special circumstances present. Almost the entire lot is comprised of area, more than a 30% slope. Variances to the 30% slope have been granted in the area. Resolution, Z-7794 for Variance, V-10476 was granted in April of 1993.

Regarding Finding #2. Special Privilege. Granting the application will not constitute special privilege. The proposed home is approximately 3,600 square feet. The garage will be approximately 4,400 square feet. Mr. Aufdermauer believed the neighbor's testimony that the 17 homes, including homes on Wild Rose Lane and Canyon Hill Court average square footage of 2,338, was based on a guesstimate. The last 6 homes, which include the home recently approved by the CVMAC, are all larger than the De La Cadenas proposal. A home is currently being built on Parcel #A. This is two lots from the subject parcel. The home at 5247 Canyon Hill Court, Built in 1991 is 5,000 square feet. This is just the square footage of the home, and does not include the square footage of the garage. The home at 5263 Canyon Hill Court was built in 1991 is, 3,300 square feet. 17580 Madison Avenue was built in 1995. This home is, 3,266 square feet. The home at 17700 Madison Avenue, built in 1997 is, 2,900 square feet. The home at 18456 Madison Avenue was built in 1997, and is a total of 5,000 square feet. The home at 17760 Madison Avenue is nearly complete. This home is, 3,570 square feet with a secondary unit of, 640 square feet. The total area of the home is 4,349 square feet. Assessors Parcel Number: 084C-0895-039-00, SDR-2098 has been approved by the CVMAC for a total of 4,349 square feet. Mr. Aufdermauer testified that the average home size built since 1990 is, 3,949 square feet. Mr. Aufdermauer pointed out that there have been variance requests granted in the area.

Regarding Finding #3. Will the granting of the application be detrimental. This variance will not be a detriment to persons and property in the neighborhood. The De La Cadenas home will be built with properly engineered retaining walls, and required drainage. Mr. Aufdermauer said he had reviewed the drainage plans. He believed the plan will be effective, and retain water well. Part of the application process is to conduct a flow study. The De La Cadenas have agreed to carry out the recommendations of the California Department of Fish & Game, Army Corps of Engineers, and Regional Water Quality Control Board. The California Department of Fish and Game has granted the application to repair the creek, and protect the Riparian Area. Piping will also be changed to improve the flow of the creek. Mr. Aufdermauer closed, and offered his support of the application.

Mr. Ken West stated his address as 18525 Madison Avenue. His home is approximately 1,200 square feet, and feels the quality of life is great. He has attended all of the meetings to revise the Madison Plan, and found them interesting. Mr. West said Mr. Aufdermauer lives on Madison Avenue too. He purchased 3 lots. Mr. Aufdermauer submitted an application for one of the lots, Lot #B. The CVMAC was not in favor of approval. Neither was the BZA. When Mr. Aufdermauer could not get approval to build on a 30% slope, he sold the lot. Now someone else is expected to get approval on a project that another man could not. This proposal appears to be about money. The goal is to build as large a home as possible, to maximize profits. People in this society want nice things the Applicant is building his dream home. However in this case there is a serious impact to the community. Mr. West felt the BZA was being deceived. The lot was an odd lot from the beginning. Mr. West said he ran for Castro Valley City Council because he wanted to get involved in the community, and be a part of what is going on. For

example, he would like to see the Specific Plan enforced. Mr. West said he gets aggravated when the rules for the community are ignored. He was not in favor of approval of the application, and believed a 1,200 square foot home is perfectly acceptable.

Mr. Ed Copra stated his address as 5385 Elaine Court. He asked the BZA if they had reviewed the Minutes from the September 26th, 2007 Meeting. The Chair confirmed they had. Mr. Copra said he had not been contacted by the Applicants or their Attorney since the meeting. Mr. Copra said he directed his Counsel to write a letter to the Applicants. A response was received yesterday. Mr. Copra clarified that the Attorney representing him stated he was not opposed to a variance, if it were narrowly tailored to the Specific Plan, and not set precedence. Mr. Copra testified that he was able to contact Cynthia Elliot, the original owner of the property next to the De La Cadenas. She confirmed there was a land slide on the parcel. The incident was recorded in County Records when Mrs. Elliot had to install a retaining wall, as a result of the landslide. The core samples the Mr. Ibarra referred to actually consists of 1 core sample. In the past the lot had 5,300 square feet of area that was less than a 30% slope. When the landslide occurred in the 1980's, this area was shrunken down. The core sample was taken from that area. The sample was from 2 ½ feet down. Mr. Copra said he has also taken core samples from his property, in the course of work he has undertaken for retaining walls etc. The samples show sensitive topography. The ground consistency is like butter, and can easily be penetrated down to 8 feet. The sensitive topography is prone to land slides. There is an ongoing landslide that is underway on the neighboring parcel at 5378 Elaine Court. Mr. Aufdermauer, the gentleman that sold the property to De La Cadenas, home size comparison analysis is deceiving. The parcels he referred to are not nearly as constrained as the parcel in question. None of the homes in his comparison would be approved, on the parcel being considered. Mr. Copra closed and said he hoped the BZA would be in agreement with the CVMAC and deny the application. Cutting into the hillside to such a great extent, has caused increased concern about mudslides for the neighbors. He asked the Board to deny the application.

Mr. Ibarra, the Architect for the De La Cadenas returned to testify. Although he had complete respect for the neighbor's opinions he found it surprising they now wanted to submit their own designs for the site. Mr. Ibarra said he has attended 4 hearings regarding the application. At the previous meetings there was no discussion of a stepped design. The testimony presented at prior meetings was that the neighbors did not want the De La Cadenas to build on areas of more than a 30% slope. Mr. Ibarra was unsure if meeting with the neighbors would be fruitful, or if they had the same goals. The consensus of the neighbors was that the De La Cadenas build only in the parcel area that is less than 30%. He did not sense there was a way to appease anyone if they were opposed to building on slopes of 30% or more. Mr. Ibarra said his interpretation of the reason for the last continuance was to clarify the height of the retaining walls, and the amount of grading that will be required. At this juncture it did not appear there was a reason for the Applicants and the neighbors to meet. However if there is now a change in opinion, and change in direction to consider a stepped design that is in keeping with the intent of the Specific Plan. There is a platform on which to meet. Mr. Ibarra then requested a continuance to discuss a change in direction, and concept with his clients. Mr. Ibarra did not believe the comments regarding the lack of cooperation were accurate. It was not until today that an apparent alternative to, not building at all was presented. The Chair said it was unfortunate that a meeting has not taken place as of yet. Mr. Ibarra explained there had been a delay with the hydrogeology, and grading report. Although he did not anticipate a favorable decision he was willing to meet. The De La Cadenas have been open to meeting. However the neighbors were not cooperative until today's meeting.

Additional Board questions for Mr. Ibarra were as follows:

- What is the height of the retaining walls
- Is the actual retaining wall height noted on the plans

- When did the De La Cadenas purchase the property
- Were the De La Cadenas aware of the issues with the property
- Were the neighbors in attendance at the CVMAC Meetings
- Are there any other sections of the parcel that are buildable

Mr. Ibarra said the retaining wall average height is 5 to 7 feet. There is a 10 foot retaining wall section at the back of the driveway, at the front of the garage. This is the only wall at that height. The wall height terraces upward from that point. The walls are all within the envelope of the home design. For example the 9 foot wall at the back of the garage is not seen until you enter the garage area. Mr. Ibarra referred the Board to the large scale drawings. The neighbors did attend the CVMAC Meetings. There was no discussion about alternate designs. The neighbors made the argument, why have a Specific Plan for the area, if the Plan was to be ignored. The neighbors did not want the Applicants to build on a 30% slope. They wanted the De la Cadenas to limit the house design to a total of 400 square feet. That may be acceptable to the gentleman who spoke earlier. However the De al Cadenas have spent \$500,000 thousand dollars on the land. They have a different idea of what they would like to build. The other projects that have been referred to had a larger buildable area. The prior owner had an engineer perform a slope study to determine where the buildable areas were located. There is an additional 100 square feet that is buildable, at the top of the property. However that area is small as well. The Vice Chair said the fact there was so little "buildable" square footage, raises the question as to if the property is buildable. The Applicants are tired of revising their plans. The neighbors want the Specific Plan adhered to. This is what the BZA is there to do. Sort out the issues. Mr. Ibarra repeated that the lot is only 3,300 square feet. However with the neighbor's new outlook he can devise some plans to build further onto the 30% slope. It will be a challenge, as the parcel is the smallest yet of those considered by the Board.

Mr. De la Cadena told the Board he purchased the property in November of 2006. He was aware of the Madison Avenue Specific Plan. He was also aware that he could apply for a variance if there was no other area on the parcel to build, except areas of more than a 30% slope. Member Gil noted that according to testimony, some of the neighbors have built within areas of 30% slope. She did not believe the neighbors should necessarily control design. However the design Mr. De la Cadena does develop, should be more in line with the Specific Plan. She hoped since an opportunity presented itself to further discussions, Mr. De La Cadena will take advantage of the opportunity. There is a fine line between controlling the design of the home, and offering input. Member Gil explained that as far as the homes that were built on a slope prior to the implementation of the Madison Plan, they are Grandfathered in. That consideration must be balanced with the work the community has contributed to establish guidelines that preserve the neighborhood. These are the same issues the BZA must balance as well. Mr. De La Cadena said from the beginning he has been happy with the area. He did not want to cause any turmoil. He acknowledged that did not personally introduce himself to everyone, and agree to change the design to whatever the neighbors designate. However he was willing to work with everyone.

At the first CVMAC Meeting, the neighbors did not want him to build on any area of 30% slope. Now it appears they are willing to work with he, and his Architect. Mr. De la Cadena reiterated that he has been willing to work with everyone, from the start. He is ready to start the discussion in earnest, if the neighbors are sincere.

Member Gil asked if this new point of discussion was raised at the CVMAC Meeting, and if so were the same neighbors present. The Architect Mr. Ibarra said that an even larger group of neighbors were in attendance at the CVMAC Meetings. He reiterated that until now the only discussion the neighbors would consider was a reduction in the design to fit within the 400 square feet that is less than 30%. There was no discussion about altering the design until today. Some of the neighbor's remarks made at the CVMAC Meeting were sarcastic. Although there is a gentleman in the neighborhood that is content to live in a 1,200 square foot home, the De la Cadenas do not want to build a home of that size. The cost of the lot

was half of a million dollars. A 400 square foot home is not going to be satisfactory. Mr. Ibarra reiterated that if there was a larger area on the site less than a 30% slope, the Applicant's would definitely use that area. The other sites that neighbors referred to had larger buildable areas that did not exceed a 30% slope. The former owner of the property, Mr. Aufdermauer hired a civil engineer to perform a slope study. There was a Parcel Map in existence prior to the slope study conducted by the engineering firm. That Parcel Map has a loose reference to areas less than a 30% slope. However there was no topographical map or survey done, just a reference. Based on the slope study, there is a small area at the top of the very top of the parcel. This small area is on the property line, and also within the set back line. The Vice Chair said that although there may be some willingness to meet and discuss design. It appears that some portion of a 30% slope would be encroached upon, no matter what section of the parcel you chose. Based on what the neighbors have said. The Board of Supervisors and the community came to a decision there should be no building on area 30% slope, period. That decision was the Madison Avenue Plan. However in 1979, a BOS decision split the parcel into 3 lots. The community is frustrated that a Specific Plan exists, but the Plan rules are constantly being called into question. Mr. Ibarra agreed with the Vice Chair's comment. However the reality is the lot has already been subject to a variance. The lot is 33,000 square feet. This is less than the Minimum Lot Size of, 40,000 square feet. He and the De la Cadenas can only work with the parcel they have. Mr. Ibarra again said he would take advantage of an opportunity to speak with his clients, and talk with the neighbors since now there is a different outlook regarding the project. The neighbors have now provided hypothetical designs, which also encroach onto the 30% slope area. This wiliness to consider encroachment leaves room for discussion. The Vice Chair noted that is why the BZA was in existence, to hear and consider Zoning. Neighbors do have the right to come before the Board, for relief. Mr. Ibarra said the bottom line was that up until now. There has not been a site with such a limited buildable area. The Chair agreed there have been other variance applications before the BZA. However the buildable areas of the other lots were larger. One parcel also had an existing home on the lot. The Chair asked Mr. Ibarra to confirm that he was requesting a continuance. Mr. Ibarra requested a continuance to an indefinite date. If an open date was not acceptable. The Board could set a date. If the project was not ready, it could be further continued at that time. The Vice Chair questioned consideration of a continuance. The 30% slope on the property is a factor that will not change. You cannot get away from the fact a variance will be required. Mr. Ibarra pointed out that Finding #3, Will the granting of the application be detrimental may be resolved by meeting with the neighbors, and re-designing the project. The Vice Chair acknowledged that he was most concerned with, Finding #3. The Chair added that landslides were also a serious concern. The Chair asked staff for a recommendation. Staff said the December 5, 2007 was available. The project can be re-noticed to inform the public.

Mr. Bogue interjected from the audience. He asked if there was a change in the project design, would that trigger a new application. Mr. Bogue also requested that any new designs be re-submitted to the CVMAC for consideration. The Chair explained that the project description is: to allow construction of a house within an area of 30% slope or greater. This would not change. The BZA was not opposed to re-noticing the hearing dates, and agreed to resubmit the applicant to the CVMAC. Public testimony was closed.

The Vice Chair again stated that regardless of the design, a variance would still be needed to build on a 30% slope. Member Gil pointed out that some of the neighbors are willing to accept encroachment into the 30% sloped area, if the design footprint is reduced. The Chair said further, the question is how far will the design impede into the 30% sloped area. Member Gil said that the answer depends upon the interpretation of the Madison Avenue Plan. Member Clark commented that another variance application in the neighborhood was recently denied because it proposed to encroach, 330 square feet into a sloped area. Staff responded that the particular application referred to was denied because there was an alternative to reduce the design, which would have resulted in compliance. The Chair pointed out that the application now before the Board had a limited buildable area of, 400 square feet. Member Clark asked if there was a threshold for a lot to be considered viable. By her calculation the total buildable area was approximately 1% of the total parcel. Staff said that there was no minimum lot percentage. If an

Applicant wants to encroach into a 30% sloped area, they must apply for a variance. The Chair asked County Counsel for guidance. Perhaps there is existing Case Law that addresses the issue. County Counsel said that one could build on an area of 29% grade or less, according to his interpretation of the Madison Avenue Plan. The Vice Chair asked if the two lots on either side of the parcel had areas that exceeded a 30% slope. Staff said the neighboring lots also had areas of 30% slope. However they did have larger buildable areas, compared to the De La Cadenas lot. The Vice Chair asked how many other lots existed in the immediate area with 30% sloped areas that cannot be built upon. Staff was unsure, but they presumed that some were in existence. Member Clark said she was concerned about setting precedence if the Board were to deem the lot as "buildable". The Chair clarified that the lot was already deemed as "buildable", although the buildable area was only 400 square feet. The Chair reminded everyone that the primary purpose of the continuance was to achieve some compromise. The Applicant's Architect was supposed to arrange a meeting with the neighbors the last time but, communication broke down. The Applicant's and their Architect can make arrangements, and set a meeting date with the neighbors before leaving. The continuance period will also allow the new West County Board of Zoning Adjustments Member from Castro Valley to be sworn in. Ineda Adesanya will be the new Member. She was formally on the Castro Valley Municipal Advisory Council.

Someone interjected from the audience and told the Chair they had additional questions. Mr. Ibarra asked if he could take a poll of the audience to determine the number of people who wished the home be limited to 1,200 square feet. The Chair reiterated that, public testimony was closed. The Applicant does have the right to request a continuance. The Chair hoped everyone would be amenable to further discussion. However that discussion should take place outside of the current forum, and during the continuance. Board discussion resumed.

Member Gil motioned to continue the application to December 5, 2007 to allow the Applicant to meet with neighbors to discuss a design more in conformance with the Madison Avenue Specific Plan. The motion died due to the lack of a second.

Member Clark motioned to uphold the staff recommendation of denial. She did not believe the Applicant could not make Tentative Finding #3. Will the granting of the application be detrimental. Member Clark was in agreement with staff. The granting of the application would be detrimental to persons or property in the neighborhood or to the public welfare. The project could be reduced in size which would also reduce the amount of grading required. As presented the project could have a detrimental effect on the neighborhood. Vice Chair Peixoto was in agreement, and seconded the motion. Member Gil was in favor of a continuance of the application. The Chair said she supported the staff recommendation of denial. The application had been continued and the unfortunately there did not appear to be agreement. The motion to deny the application was carried 3/1.

The Chair stated that decision of the West County Board of Zoning Adjustment's decision could be appealed to the Board of Supervisors. Further information regarding appeals can be obtained from Planning Staff.

6. **MICHAEL JUNG, VARIANCE, V-12081** - Application to allow construction of a new single family dwelling with a height of 30 feet where 25 feet is the maximum allowed, in an R-1 (Single Family Residence) District, located at Aurelia Way, east side, approximately 220 feet north of Midland Road, unincorporated San Leandro area of Alameda County, Designated Assessor's Parcel Number: 079-0010-020-00.

Staff explained Applications, V-12081 & V-12082 were adjoining parcels. The Applications would be discussed and considered together. Each Application was reviewed. The recommendation was approval.

The recommendation was approval for Variances, V-12081 & V-12082. Member Clark asked if the Hillcrest Knolls Homeowners Association was sent a referral. Staff confirmed the HOA had yet to be contacted. Member Clark asked what was the average slope of each lot. Staff responded that Lot #1 has a slope of over 30%. Lot #2 has an average of 40% slope. Member Clark asked if the issue of slope was addressed in the Eden Plan or the Castro Valley Specific Plan. Staff responded that neither plan addressed, slope. Public testimony was opened.

The property owner of both parcels, Mr. Michael Jung was present. He explained the two lots sit on a very steep slope. The lots are the only remaining on the street. There are two newer homes built a few years ago to the left of the property which were granted a variance. There is also a newer home to the right of the parcel that was granted a variance, as well. Mr. Jung asked for a 30 foot height to accommodate for the steep, 30% slope. The design is stepped to accommodate the property slope. Member Clark asked Mr. Jung the following questions:

- What is the relation in height of the proposed dwellings in relation to other homes on the street
- What is the elevation above street level of the proposed homes
- Would Mr. Jung be willing to meet with the HOA to discuss the projects
- Would Mr. Jung be willing to erect height markers to illustrate the proposed height to the neighbors
- Does Mr. Jung own another property on the street in addition to the vacant lots

Mr. Jung said the structures would appear to be single story from the street level. The first floor will sit just below the street level. In relation the homes will be lower than other homes due to the downhill slope of the street. The garage will be at street level to allow cars to enter. The proposed entry will be 6 feet below street level. The homes on the left of the lots would be about even with the garage level of the proposed design. Mr. Jung said he would be willing to meet with the HOA and the neighbors. He would also erect height markers. Mr. Jung's properties are limited to the vacant parcels on the street. The Chair asked if Mr. Jung would be amenable to a short continuation. Mr. Jung agreed. Public testimony was closed.

The Peixoto motioned to continued to the Application to the November 7, 2007 Meeting. Member Clark seconded the motion. Motion carried 4/0.

Vice Chair Peixoto asked Mr. Jung to also determine the exact roof height of the dwellings prior to the November 7, 2007 Hearing.

7. **MICHAEL JUNG, VARIANCE, V-12082** - Application to allow construction of a new single family dwelling with a height of 30 feet where 25 feet is the maximum allowed, in an R-1 (Single Family Residence) District, located at Aurelia Way, east side, approximately 220 feet north of Midland Road, unincorporated San Leandro area of Alameda County, Designated Assessor's Parcel Number: 079-0010-004-00.

Staff explained Applications, V-12081 & V-12082 were adjoining parcels. The Applications would be discussed and considered together. Each Application was reviewed. The recommendation was approval. The recommendation was approval for Variances, V-12081 & V-12082. Member Clark asked if the

Hillcrest Knolls Homeowners Association was sent a referral. Staff confirmed the HOA had yet to be contacted. Member Clark asked what was the average slope of each lot. Staff responded that Lot #1 has a slope of over 30%. Lot #2 has an average of 40% slope. Member Clark asked if the issue of slope was addressed in the Eden Plan or the Castro Valley Specific Plan. Staff responded that neither plan addressed, slope. Public testimony was opened.

The property owner of both parcels, Mr. Michael Jung was present. He explained the two lots sit on a very steep slope. The lots are the only remaining on the street. There are two newer homes built a few years ago to the left of the property which were granted a variance. There is also a newer home to the right of the parcel that was granted a variance, as well. Mr. Jung asked for a 30 foot height to accommodate for the steep, 30% slope. The design is stepped to accommodate the property slope. Member Clark asked Mr. Jung the following questions:

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- Does Mr. Jung own another property on the street in addition to the vacant lots

Mr. Jung said the structures would appear to be single story from the street level. The first floor will sit just below the street level. In relation the homes will be lower than other homes due to the downhill slope of the street. The garage will be at street level to allow cars to enter. The proposed entry will be 6 feet below street level. The homes on the left of the lots would be about even with the garage level of the proposed design. Mr. Jung said he would be willing to meet with the HOA and the neighbors. He would also erect height markers. Mr. Jung's properties are limited to the vacant parcels on the street. The Chair asked if Mr. Jung would be amenable to a short continuation. Mr. Jung agreed. Public testimony was closed.

The Peixoto motioned to continue to the Application to the November 7, 2007 Meeting. Member Clark seconded the motion. Motion carried 4/0.

Vice Chair Peixoto asked Mr. Jung to also determine the exact roof height of the dwellings prior to the November 7, 2007 Hearing.

8. **MAURICE DAWSON, VARIANCE, V-12084** - Application to allow a two foot side yard setback where five feet is required, in an R-1-RV (Single Family Residence, Recreational Vehicle) District, located at 16715 Rolando Avenue, southwest side, approximately 280 feet northeast of Winding Boulevard, unincorporated San Leandro area of Alameda County, Designated Assessor's Parcel Number: 080A-0212-021-00.

Staff recommended a continuance to the December 5, 2007 Hearing. The CVMAC would like the Applicant to re-design the project. Public testimony was opened. There were no requests to speak were submitted. Public testimony was closed.

Member Clark motioned to continue the Variance, V-12084 to December 5, 2007. Member Gil seconded

the motion. Motion carried 4/0.

9. **JACK MOORJANI / UNION 76, VARIANCE, V-12092 and SITE DEVELOPMENT REVIEW, S-2128** - Application to allow building coverage of 29% where 20% is the maximum permitted with additions and remodel of an existing service station in the CVCBD Specific Plan Sub Area 1 (Castro Valley Central Business District Specific Plan, Low Intensity Retail), located at 2445 Castro Valley Boulevard, southeast, approximately 200 feet southwest of Stanton Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084A-0007-011-02.

The staff recommendation was approval. The CVMAC also recommended approval. Public testimony was opened.

Mr. Moorjani explained that at this time he had given up the pursuit of a use permit that allows the sale of beer and wine. Mr. Moorjani asked County Counsel if he was aware of a neighboring County that has lifted their moratorium on beer and wine sales, at service stations. The ban was lifted because the alcohol sales do provide a secondary source of income. The neighboring County found that the Service Station Business generated very slight profit margins. Counsel was not familiar with the action. The variance application is now the remodel and expansion of the existing service station. Mr. Moorjani said he will add a Convenience Store. Without a secondary income it is almost impossible to generate the necessary revenue to keep a service station operating. The CVMAC was in favor of the new proposal submitted. The current lot coverage is 22%. This includes the canopies that cover the pump islands. The expansion will cover 29% of the lot, including the canopies. The expansion will occur on the south side of the property. The expansion cannot extend into the front of the property which includes a section of Public Right of Way, and existing PG&E equipment. Additional landscaping will be added to the front area. Mr. Moorjani showed a large color rendering of the new design. The cost of the project will be six hundred thousand dollars. Board questions were as follows:

- Has the paint color been determined by Union 76
- Will the complete landscaping be installed prior to building occupancy, as required by the Redevelopment Agency

Mr. Moorjani said the paint color was chosen with the input of the Redevelopment Agency. However the outside station signage. Color is mandated by Union 76. The signage color is now red. The cost of changing the paint color of the site will be fifty six thousand dollars. Mr. Moorjani said the landscaping plan will be reviewed by CVMAC, and again when the entire project is submitted to the Planning Department. Staff confirmed that a standard condition with a SDR is for the Planning Department to approve the landscaping plan. Prior to the issuance of a Certificate of Occupancy from the Building Department, all landscaping must be installed. Public testimony was closed.

Member Clark asked staff how CVMAC voted regarding the application. Mr. Moorjani interjected that the vote was 5/0 in favor of the proposal. The Chair reviewed the Conditions of Approval. She questioned staff as to the role of Traffic Engineering and Land Development. Land Development did not respond to staff's referral request. Mr. Moorjani clarified that the storm water system was existing. Staff said Traffic Engineering would get involved with monument signage, and site distance concerns. Land Development would review any further expansion of the property. Member Clark stated she was unsure if she agreed with the language contained in Tentative Finding #1. The location of the business was not necessarily a focal point on Castro Valley Boulevard. Member Clark believed the fact that the existing

building provided limited opportunities to expand, was more relevant. She asked staff to modify the finding and remove the words focal point, safe, and clean. Language regarding the existing building with limited expansion opportunities should be added.

Member Clark motioned to uphold the staff recommendation of approval. Condition #4 shall have Condition 4, section #b, Traffic Engineering and #c Land Development, Storm Water Requirements removed. Vice Chair Peixoto accepted the amended requirements, and seconded the motion. Motion passed 4/0.

APPROVAL OF MINUTES: Member Clark motioned to accept the Minutes of September 26, 2007 as submitted. Vice Chair Peixoto seconded the motion. Motion carried 3/0. Member Gil did not participate in the vote as she was not a Member of the Board of Zoning Adjustments on September 26, 2007.

The Chair continued the Minutes of October 10, 2007.

STAFF COMMENTS & CORRESPONDENCE: Staff informed the Board that the denial decision for Variance Applications: V-11982, Love and V-12060, A.C. Maharaj were appealed to the Board of Supervisors. Hearings will be set in January of 2008.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: There were no Board Comments.

ADJOURNMENT: There being no further business, the hearing adjourned at 4:30 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS