

**MINUTES OF MEETING**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**  
**OCTOBER 28, 2009**  
**APPROVED DECEMBER 16, 2009**

The Regular 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, Dawn Clark-Montenegro; Vice Chair, Kathy Gil; Members, Jewell Spalding, Frank Peixoto.

**MEMBERS EXCUSED:** Ineda Adesanya.

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

There were approximately 13 people in the audience.

**CALL TO ORDER:** The meeting was called to order by the Chair at 1:35 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.

**Neighborhood Preservation Ordinance Abatement Hearing**

1. **Adrienne Williamson etal, Via Chiquita, San Lorenzo, CA 94580**  
In violation of the Alameda County Ordinance 6.65.030 A(1) and B(6).
  1. The accumulation of discarded furniture, clothing, tools, gas cans, junk, debris and miscellaneous items.

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

2. **Kendrick V Stager, Vacant lots at 166<sup>th</sup> Ave., San Leandro, CA 94578**  
In violation of Alameda County Ordinance 6.65.030 A (8), A (10) and B (6).
  1. Overgrown vegetation & weeds throughout vacant lots.

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

3. **Michael P & Patricia A Boshard, Sydney Way, Castro Valley CA 94546**  
In violation of Alameda County Ordinance 6.65.030 A (8), A (10) & B (6).
  1. Overgrown vegetation & weeds.

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

**CONSENT CALENDAR:**

1. **FRED PRICE / EL SHADDI MINISTRIES, CONDITIONAL USE PERMIT, C-8762, PLN-2009-00037, VARIANCE, PLN-2008-00020** – Conditional Use Permit Application to allow continued operation of a church, Variance Application to allow fewer than the required on-site parking spaces in a R-C ABCD (Residential Commercial, Ashland Cherryland Business Specific Plan) District, located at 565 East Lewelling Boulevard, south west side, corner southwest of Wickman Court, unincorporated San Lorenzo, area of Alameda County, designated Assessor's Parcel Numbers: 413-0031-053-00 and 413-0031-054-00. (Continued from November 12, 2008 and January 28, February 25 and May 27, June 10, July 8 and September 23, 2009; to be continued to December 16, 2009). **Staff Planner: Pat Anekayuwat.**

The Vice Chair asked why the application continued to be delayed. Staff said the Applicant had a short term parking agreement with the adjoining property owner. However a long term agreement must be secured before the application can move forward.

2. **T MOBILE USA / CHRIS COONES - CONDITIONAL USE PERMIT, PLN-2009-00085** - Application to allow a telecommunications facility (Antenna Array) in a PD (Planned Development, 1591<sup>st</sup> Zoning Unit, allowing single family residential uses with additional conditions) District, located at 17228 San Franciscan Drive, west side approximately 150 feet south of Bellingham Drive (PG&E Easement), unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 0085-6312-054-00. (Continued from September 23, 2009).

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

**REGULAR CALENDAR**

1. **STACI ROMBOUGH, VARIANCE, PLN-2009-00061** – Application to allow: a) building site status for a site of 2,479 square feet, where 5,000 square feet is required; b) a 0.27 foot rear yard setback, where 20 feet is required; c) a 1.04 foot street side yard setback, where 10 feet is required; d) a 2.47 foot front yard setback where 20 feet is required; e) a 2.95 foot setback side yard setback, where five feet is required; and f) zero parking spaces, where two are required. The site is zoned R-1 (Single Family Residential), located at 2005-150<sup>th</sup> Avenue, west side, north of 149<sup>th</sup> Avenue, in the unincorporated Hillcrest Knolls area of Alameda County, designated County Assessor's Parcel Number: 080-0006-013-04. (Continued from July 22, August 26 and September 23, 2009). **Staff Planner: Howard Lee.**

Staff reviewed the application, recommended approval. The lot was originally part of the adjoining parcel that contains another building constructed in 1953. The building on application the site was constructed in 1951. There was a common owner until recently. Initial Board questions were as follows:

- In the 1950's did the Assessor's Office require a lot merger

- In the 1950's did the Assessor's Office require Subdivision and a Parcel Map
- Is there a deed on file for the lot
- Has a traffic study been conducted for the site
- What governing structure was in place when the 1998 variances were granted
- Is the property non-conforming
- Is the property occupied
- Is the commercial use non-conforming
- Has the commercial use been abandoned
- Is the parcel considered a "legal" lot
- Can a structure be placed on a legal parcel
- What is the description of "building site status"
- Is the project considered in-fill development
- Was this lot created as a result of the installation of the 580 freeway
- Which General Plan is in effect for the application, the present or draft Plan
- What is the average lot size for the neighborhood
- What is the standard lot size for Hillcrest Knolls
- How many sub-standard lots exist in Hillcrest Knolls
- How will the Public Works comments regarding the driveway be addressed
- Will the telephone poles at the front of the site be removed

Staff explained the 1998 variances were granted by the Zoning Administrator. The BZA was not in existence at that time. The Subdivision Map Act was instituted in 1972. Prior to that enactment, parcel splits did not require a Subdivision or Parcel Map unless there were 5 or more parcels being created. The Assessor's Office required a separate deed filed for each individual lot. There is a separate deed on file. The Subdivision Map Act states that any parcel created prior to 1972 is presumed to be a legal parcel. It appears when the structure was originally built, plans were referred to the Assessor's Office. These plans may have contained general boundaries for the property. Perhaps the separate parcel number was assigned at the time a second structure was built. County Counsel further explained a parcel may be established as a legal parcel, however may or may not accommodate and/or building/structure. Appropriate zoning rules would apply. If those rules cannot be met the owner can request a variance. The commercial use would be non-conforming. Based on information available, it appears the commercial use is inactive at this time. A certain length of time must elapse according to the Zoning Ordinance to constitute abandonment. The threshold is 6 months. It is unclear if the property owner has reached that length of time, at this juncture. Present zoning does not allow commercial use at this site. A traffic study has not been conducted for the site. The home located on the property is not abandoned but vacant.

The General Plan that was adopted in 1973 is in effect. The updated General Plan that is currently circulating is a Draft. The Board is to make a determination regarding legality of the parcel. The site is not legal at present, according to zoning. Zoning requires a lot to have a minimum of 5,000 square feet. Prior to R-1 (Single Family Residential) Zoning requirements, 4,000 square feet was the minimum requirement. The term, building site status is not used in the Subdivision Map Act. A parcel may be a legal but not buildable. The Chair asked when the change took effect. Staff said the R-1 Zoning took effect in 1956. Member Spalding pointed out the staff report did use the language "establish as a building site". If this is language does not correspond to the Subdivision Map Act, references to building site in the staff report should be changed to "legal non-buildable parcel". Staff said infill could be considered development of a vacant lot. There are no standard lot size calculations available at present for the area. Although the staff report does note a substandard lot, there is no table provided of substandard lots. Removal of the telephone poles is not part of the application at this time. Public Works may have further recommendations. Public testimony was opened.

Mr. Carlos Plazola of Terra Linda Development Service was present, representing the owner of the property. Mr. Plazola was retained when the question of legality of the lot was raised. Terra Linda conducts land history searches, and development work. Mr. Plazola background includes work as Chief of Staff of Economic Development, for Ignacio De La Fuente. The present lot setbacks and building pre-existed present area zoning. Therefore the use and legality is grandfathered in. Mr. Plazola then presented photo simulations of the proposal. He understands the neighbors have expressed interest in the property becoming a park, and can appreciate their sentiment. However the legal rights of the property owner should be respected. Mr. Beck did not purchase the property. He took it over when the prior owner defaulted on a loan. The County created the parcel. The burden should not shift to the owner, now. The fact the parcel is a corner lot, is benign. Parking will be addressed in the proposal. The owner proposes a nice home that will meet Fire Code, and enhance the neighborhood. Some of the neighbors were under the impression an apartment building was proposed. Now that the neighbors have seen the design, some no longer oppose the project. They are willing to testify. Mr. Plazola presented documentation. Member Spalding asked Mr. Plazola if he was aware a variance application is a request process. The Applicant does not have a legal right to a variance. That is an important distinction. The Applicant may have a legal parcel, however may not have building site status. She then asked County Counsel to weigh in. Counsel agreed there was a distinction. The application submitted, must stand on its own merits. Mr. Plazola agreed the application would stand on its merit.

Ms. Laura Blair the attorney for Terra Linda Development pointed out the staff recommendation was approval. The history of the zoning use seems to be the only thing in question. The R-1 Zoning went into effect in 1956. The structure was erected in 1948, prior to the institution of zoning in the area. If the variance is not granted, the lot will have no value. The purpose of a variance is to bring the property into parity with other properties in the area. State of California Government Code 65906 governs this. The physical character of the site, topography, size, and shape allow the property to gain parity. The staff report references the fact the inability to use the parcel will render a hardship, on Page #6. This will cause serious economic hardship for the property owner. Denial of the application will deny the owner his property rights. Mr. Beck should be treated as other property owners in the area per the recommendation of staff. This right goes to the 14<sup>th</sup> Amendment. If the right of the property owner is denied, the County is applying selective enforcement. Ms. Blair then asked the Board to uphold the staff recommendation of approval. Member Spalding pointed out by quoting Ms. Blair's earlier statement that the use had been abandoned. Ms. Blair responded the use was abandoned during the tenure of the former owner. The variance was granted for a period of 3 years, therefore the use has not been abandoned. Member Spalding asked if Mr. Beck was requesting building site status for the parcel. Ms. Blair said she was not familiar with the term however Mr. Beck is seeking the ability to build on the parcel. She reiterated the use had lapsed during the period when Mr. Beck was not the owner. Mr. Beck obtained the property in 2008. Member Spalding asked the following additional questions:

- Were both parcels owned by the same person prior to Mr. Beck's ownership
- Which of the lots was created in 2007

Ms. Blair confirmed both parcels were owned by one person in 2007. The lot at 2005-150<sup>th</sup> Avenue was created in 1948.

Ms. Debbie Molina conducted research on the property. She then gave a history. The property was acquired in 1948 by the Dawson Family. The site was a welding shop. In 1952 Mr. Dawson got married, and built a house. The staff report contains a 1953 plot plan that indicates the home. The Vice Chair asked if an existing structure was present on the site. Ms. Molina confirmed the site was open land. The lot with the address 2011-150<sup>th</sup> Avenue is where the home is located. Mr. Beck's property is the one that contains the welding shop. The shop was present before the home.

Mr. Plazola returned to testify. A legal record of the lot was created when the home on the neighboring parcel was built. Staff interjected and clarified a building permit was submitted for the welding shop. County Counsel said at this point the parcels had started to be treated differently. One of the Dawson's daughters sold the parcels separately in 2007. Member Spalding said that residential zoning was in effect at the time of sale, of the parcels. Ms. Debbie Molina commented that in 1948, zoning laws were not in effect. The welding shop is, grandfathered in. The building remains, although the commercial use has lapsed. Now that the Residential use is in effect, the Applicant is trying to work with the neighbors and put forward a residential proposal. Member Spalding asked if that meant the time lapse was not relevant. County Counsel said the shop had been used as storage and a welding shop after the commercial use. Ms. Blair said the neighbors would probably prefer the site no longer be used as a welding shop. Even if Mr. Beck would like to use the shop as an upholstery shop, a variance would be required. Her understanding is the County does not allow variances for uses. Mr. Beck would still need a conditional use permit. County Counsel said the effective period of the prior variance which allowed a commercial use to exist for a period of time, had lapsed. In addition the actual use lapse which is required for a non-conforming use to continue. Currently the only permitted uses are residential. Only a re-zoning would allow a commercial use. Member Spalding pointed the Applicant put himself in this position, as they let the use become abandoned. Ms. Blair clarified the staff report said the use was not abandoned, it had lapsed. County Counsel said that was irrelevant. Ms. Molina said Variance V-11078 was denied because it was determined the use would be detrimental. The Applicant tried to restart the commercial use again, and was denied. A few months later a variance was approved for storage use. In the same manner someone would use their garage. Member Spalding responded the property owner states he has a right. However the history of the property is such the use expired prior to Mr. Beck obtaining the property. Mr. Beck acquired the property in 2007. Ms. Laura Blair again stated Mr. Beck has a right to use his property. He obtained a vacant lot, and is now attempting to have the property comply with the General Plan. If he cannot obtain the variance, he has no economic use for the property. The Chair explained the BZA is not obligated to consider economic hardship or finances when deciding applications. County Counsel confirmed that under Government Code provisions there is mention of hardship on a property as one of the factors. This provision is not part of the County Ordinance, as a factor relating to required findings. The BZA has the discretion to consider hardship, if it is relevant to the application. Member Spalding said the prior owners created the issue. The present owner obtained the property "as is". The Applicant cannot contend they have a building site. This is the issue before the BZA.

The property owner, Mr. Ed Beck told the Board he obtained the property through foreclosure. He made a loan to the previous owner, who defaulted. The property is vacant. He would like to make the site into a small residence. Currently the neighbors do not like site because it is unattractive. The proposed home will have landscaping which will be consistently maintained. Questions for the Applicant were as follows:

- Will the foot print of the present structure change
- Was money lent to the prior owner to purchase the home
- Was the prior owner in possession of both parcels
- Did the prior owner make any payments to Mr. Beck
- Was Mr. Beck involved in the financial transaction regarding the home on the other parcel
- Was a bank involved in the financial transaction
- Has Mr. Beck conducted due diligence on the property
- Is an Assessor's History of the parcel available

Mr. Beck said the prior owner was in possession of the property prior to his involvement. The bank was not a party to the transaction. Mr. Beck lent money to the prior owner. The prior owner held both parcels, however Mr. Beck was only involved with the parcel he obtained when the loan defaulted.

One payment was made to Mr. Beck. The property is assessed as an occupied single family dwelling. Mr. Beck did not notify the Assessor's Office the property is now vacant. However at this juncture, the property has not been re-assessed. Mr. Beck hopes the property will be occupied soon. The footprint of the structure will not change. He did conduct some research, and was aware a variance would be required. Staff did not have an Assessor's History available.

Mr. Lemke a resident of the area since 1970 could not understand the staff recommendation of approval. He is opposed to the application, and cannot find a reason for the variance. Usually when someone files for a variance, the neighborhood gets burned. There is no way to control what other residents do. For example there is a nearby home that has a lot of graffiti, and 5 cars. The building code was established for a good reason. Codes should be enforced. The zoning requirement of a 5,000 square foot minimum lot size should be adhered to. He asked the BZA to put their foot down. The Applicant should conform to required lot size. The property is inadequate for the proposed purpose, and does not meet zoning requirements. Therefore the project should not be approved. The Vice Chair said it appears the proposal would improve the site. She asked Mr. Lemke if he believed the site is currently an eye sore. Mr. Lemke agreed it was an eyesore. However he is afraid to envision what may happen in the future. The property could be sold as a rental. You cannot control what renters do. When the owner sells, things can get out of control.

Ms. Nora Cardicia has lived in the neighborhood for 30 years. She showed photographs of how close properties were to one another. The former owners, the Christopher's had kids that would play in the garage. A boat was also stored there. The County allowed the garage to be converted in 2001. That is why the second lot was used to park vehicles. Later the space was used as storage. The property is on a corner. Telephone poles and wiring are located on the site. If the property is used as a rental, vehicles parked at the site will extend out into traffic. The corner is tight, and the incursion will stop traffic. The neighbors have put forward suggestions the lot be used to store things; or as a right of way for road widening. Another rental in the neighborhood will exacerbate a bad situation. In 1978 Ms. Cardicia bought a home to use as rental. She received a notice from the County to clean up the site. The same rules should apply. The Ashland Homeowners Association got involved with the application as well. They are not in support of approval due to zero parking spaces. The person who signed the Ashland HOA letter is a Real Estate professional. They are very familiar with land use rules, and property in the area. The size of the garage is only 20 to 28 feet. Member Spalding said the staff report listed the building as 1,200 square feet. Ms. Cardicia then read a letter submitted by the neighbor that lives directly across the street from the property. Ms. Fong was also opposed to the project due to lot size, and the corner location. There are no sidewalks. In addition the variance request exceeds the 50% deficiency provision in the Ordinance. The BOS denied a similar application on Saturn Drive. Ms. Cardica told the Board, neighbors do not want the project to proceed. A petition of 83 signatures was submitted in opposition. Neighbors are aware the project is not an apartment building. To clarify there is an apartment building presently in the neighborhood. The home would be next to an apartment building.

Mr. Plazola returned to submit letters from neighbors in support of the project. The abandoned building will not benefit the neighborhood. An empty home will cause more problems. An occupied home will be an asset. Member Spalding asked if the Applicant had responded to the letter from the Fire Department. Mr. Plazola said the rear roof eaves will be cut. The wooden gables and the rear of the building will also have stucco added.

Ms. Lillian Castillo was in agreement with Ms. Nora Cardicia. Ms. Castillo read a letter from Ms. Sims. She also requested the application be denied due to the lack of parking. The building had not been deemed habitable, only acceptable for storage. The community should not be subject to the whims of property owners. In the past anything was allowed in Hillcrest Knolls. This project should not move forward. It does not add intrinsic value. The site is already an eyesore, at the entrance of the

neighborhood. The project will not be an asset. In Ms. Castillio's opinion the corner has grown into a big traffic issue. It is hazardous, there is no street light. There are also trees overhead. In addition the property is on a bus route. Although there are stop signs they are often ignore, due to the lack of light. In addition a PG&E pole is located at the entrance of the neighborhood. The area is too densely populated. The variance should be denied. Public testimony was closed.

Member Spalding pointed out the Applicant is requesting zero parking spaces. Additional Board questions to staff were as follows:

- Who is the actual Applicant
- Will the existing structure be torn down
- What is the Applicant requesting
- Can the application be modified to reduce the building size
- Can a future owner build upward on the same footprint
- If the Applicant destroyed more than 50% of the structure is a variance required
- Is a variance required for a nonconforming structure

Staff clarified that Staci Rombough is the project architect. The building will be remodeled, not torn down. The parcel is a legal parcel. The Applicant is now requesting building site status. For example if a lot does not have legal frontage on a County road, building site status would be sought. County Counsel clarified the variance request is not for average lot size. A future owner could possible build upward on the same footprint. However a variance would still be required for expansion of a non-conforming building. Counsel said if more than 50% of the structure were destroyed, a variance would be required. A different type of variance however required none the less.

Member Spalding said the Applicant has the option of reducing the size of the structure. It does not have to be as large as proposed. She thought the issue was design related. Further options are available. The staff finding that special circumstances are present is not valid other options would mitigate the need for multiple variances. The BZA has been given one set of findings to fit all of the variances. The variances are dramatic. The footprint can be reduced. The Chair asked if special circumstance applied if there is a distinct difference as to the creation of the parcel, natural means as opposed to self creation. The original owner was using the entire site as one parcel, and enjoyed the property for 50 years. Should every future have the need to continue enjoyment of the property if zoning requirements cannot be met? Counsel responded one reason to request a variance, is to allow the new owner use of the property. Member Spalding said Mr. Carter the prior owner owned both sites. He could have merged the parcels. Counsel said as to the legality of the Subdivision Map Act. There are owners that own large tracts of land. The BZA can decide the result as to the question of the variance request. The Chair thought the parcel on Saturn Drive noted in the staff report was one of the smallest in Hillcrest Knolls. However this lot is one of only two entrances to Hillcrest Knolls. The entry is also on the same street in which the Sheriff's Substation is located. Staff pointed out the site was zoned as a commercial use before. The entry is not at the front of the parcel. Member Peixoto pointed out the property can only be used as the allowed uses, residential. Member Spalding agreed, but said the home could remain small. Member Peixoto said he visited the site. He did not have issue with Tentative Finding#1. However he did have issue with Tentative Finding #3. There is no parking at the site. With a home, there will be vehicles. As far as he is concerned what else can be done with the property. A residential design will at least improve the look of the site. Member Spalding thought the Applicant should present alternate proposals, perhaps the severity of the variance request can be reduced if the footprint were smaller. A reduction in size could also address Tentative Finding #3. She asked staff if individual findings were required for the 6 variance requests. The Chair pointed out an application on Saturn Drive was denied the BZA. This project was only 56 square feet deficient of the minimum lot requirement. That lot was deficient as a result of the

creation of the 580 Freeway. Member Spalding agreed. In contrast the lot in consideration was small because the owner chose to divide the lot. The Chair agreed this appeared to be the case. Staff has not provided average lot size for parcels in the Hillcrest Knolls area; or the time frame as to when the lot was divided.

Public testimony was re-opened to ask the Applicant if he was willing to re-design the project. Mr. Beck said if he were to demolish the home and build upward. The economic feasibility would disappear. The neighbors do not like the site in its current state because it is an eyesore. If the building is remodeled, neighbors would like the site.

Mr. Plazola said financial feasibility is the question. Staff stated on the record that a legal parking space can be placed in the garage. The footprint of the residence can be reduced which will provide a parking space. Public testimony was closed.

Member Peixoto motioned to uphold the staff recommendation of approval of the variance, and allow building site status. Board discussion ensued.

The Chair said she could not make the necessary Findings for #3. Although paint and stucco would improve the site, it was not used as a home. The use would be more intense if used as a residence. The site was exposed to other uses before. Issues occurred at the site when it was used for commercial purposes. In addition they have not had the opportunity to review the CVMAC's recommendations. She was unsure the BZA had a full history of the parcel. There is a question as to if the method of creation of the parcel. This has an impact on the application. County Counsel said they were not aware of case law that makes a distinction regarding, site creation. The BZA has the discretion to use creation method as an aspect of approval or denial this could potentially be valid if supportable. The Chair said the circumstances in this case appear to be unique, however not a special circumstance. The previous owner had use of the property as a commercial site. Member Peixoto pointed out the previous owner sold the property, and left the new owner to figure out possible outcomes. Member Spalding noted the properties could have easily been merged together. The change has been recent.

The motion died due to lack of a second.

Member Spalding said she had trouble with Finding #2. There had been a common owner of both parcels until one year ago. Essentially this site was the garage for the home on the adjoining parcel. She did not believe special circumstances were present. Member Peixoto asked where the line should be drawn for average parcel square footage. The Chair said she would like further information on lots in the area. Member Spalding said the total number of homes in the area should also be taken in to consideration. The Chair responded there were approximately 350 homes in the area. Member Spalding pointed out the staff report lists one home as an example as a deficient lot. This is not a strong persuasive argument.

Member Peixoto asked Counsel to confirm the application was to establish building site status. Counsel confirmed the application was for a variance to allow building site status. Member Spalding questioned how the lot could have a building placed on it, since it was less than 5,000 square feet. The request is for more than 50% of zoning requirement. If the variance application is the appropriate vehicle, the question must be established as to the number of lots in the area less than 5,000 square feet in area, and why they are deficient. If three of the lots in the area are deficient due to the installation of the freeway, staff cannot rely on Finding #3. This has to be addressed. In her opinion a one hour firewall next to the adjoining home was not sufficient. Member Peixoto said according to Fire Code, a one hour fire wall was sufficient. The Chair said another issue that should be addressed is the when you step out of the front door you are directly on the driveway.



Member Spalding motioned to continue the application in order to address the issue of average lot size. Mr. Plazola interjected and requested the BZA render a decision. The Chair said the Board did not have sufficient information at this juncture to render a decision. Mr. Plazola then said December 16, 2009 would be acceptable as a continuance date.

Member Spalding continued stating her motion. Staff should also provide information regarding the number of lots in the area that are 5,000 square feet, the number of lots that are above 5,000 square feet, and the number of lots below 5,000 square feet. The reason for the resulting size should also be presented. The full history of the adjoining lot at 2011 – 150<sup>th</sup> Avenue should also be included, and any related impacts of that history. Staff should make a determination if the lot noted in the staff report on Sol Street is vacant or occupied. The Chair asked staff to provide a history of all use permits at the site, in addition to an Assessor's History of the parcel. A determination should be made as to when the commercial use ended, and what use was re-started. The exact date of ownership change should also be verified. Member Peixoto seconded the motion. Motion carried 4/0.

**The Chair called for a 5 minute recess at 4:05 p.m. The Hearing was reconvened at 4:15 p.m.**

2. **BAY AREA COMMUNITY SERVICES, CONDITIONAL USE PERMIT, PLN-2009-00064** – Conditional Use Permit Application to allow expansion of a residential care facility for mentally disabled adults from 12 to 15 beds. The one story, 1,230 square foot addition will be attached to the existing facility that includes: three bedrooms, one shower room, one half bathroom, and replacement of the exterior staircase in the same location, in the Fairview Area Specific Plan, R-1 (Single Family Residence) District located at 22505 Woodroe Avenue, west side, approximately 150 feet north of Ralston Way, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 417-0080-005-04. (Continued from September 23, 2009). **Staff Planner: Carole Kajita.**

Staff reviewed the history of the application. The application had been continued to allow the Applicant to incorporate recommendations, submit additional information, and to meet with neighbors. The staff recommendation was approval with the following modification: Condition #13 shall strike the words, *and along all property lines*. The Condition shall now state, along the north and east property lines, and along the front right property line. Initial Board questions were as follows:

- What are possible outcomes if there is a change in operator, business and /or property ownership
- Is owner / operator considered equivalent to facility manager
- Did staff contact the East Bay Regional Parks District since Don Castro is located in the area

Staff said Condition #17 addresses the manager or person in control of the site /facility, Condition #30 is related to the owner of the facility. County Counsel said although he was unsure as to the complete intention, there may be some contradiction in terminology. The initial portion of Condition #17 addresses notification. The later portion addresses notification in the event of ownership change. Condition #30 also seems to suggest a change of ownership, as well. The Board could distinctly address the possibility of transfer of business ownership by requiring notification, although this possibility is remote; or the Board could require that any change in ownership or management however accomplished, requires notification, and a new cup. Applicant testimony may provide further information. A further option is to strike Condition #30 and let Condition #17 related to State licensing requirements control this aspect. Staff said standard practice is to require a review in the event of any change in operator, or ownership. The Board agreed to remove Condition #30. The East Bay Regional Park District was contacted after the initial meeting. However they did not respond to the referral. The Chair asked that the reference in the

staff report to the six foot diameter pine tree be changed to six inches. Staff agreed to make the change. Public testimony was opened.

Dr. Mary Ann Jones, Chief Program Operations for Bay Area Community Services was present. The President of the Board of Directors, Mr. David Stoloff was present earlier but had to leave before the application testimony was reached on the Agenda. The Board asked Dr. Jones if she concurred with the proposed Conditions of Approval. Dr. Jones confirmed she did. Board questions were as follows:

- Will the permit request to expand the facility replace the current permit that expires in 2011
- Where is the other facility within the County that serves the same population as Woodroe House
- How do other facilities differ from Woodroe Place
- What was the outcome of the Open House hosting area neighbors
- On average how many people are admitted to Woodroe House each month
- Will there be an increase in staff at the facility
- What is the average length of stay at a short term facility
- Does Woodroe Place staff object to wearing identification badges at all times
- Will permanent parking for ambulances and emergency vehicles be provided at the facility

Dr. Jones said the current application would replace the present permit which expires in 2012. She explained that different facilities serve different segments of the community. Woodroe Place has 12 beds and is limited to residents with mental health issues. Casa de la Vida has 13 beds, and is the other short term facility for adults in the County. Casa de la Vida and Woodroe Place are the only two facilities for adult mental health rehabilitation. There are a total of 25 beds available in the County. Member Spalding said she located information on the California Behavioral Health Care Services Newsletter and website which listed four facilities for psycho social rehabilitation. Dr. Jones was not familiar with one of the facilities listed but further explained. Different facilities serve different segments of the population. Lincoln and Fred Finch centers are for children, and transitional age persons with substance abuse issues. In addition these persons have mental health issues. Bonita House is also for residents with dual diagnosis. Dual diagnosis facilities are usually full because they only accept that type of resident. They cannot accept a person solely with a mental health diagnosis. Woodroe Place is licensed for 15 persons. However it is now only a 12 bed facility, due to the addition of staff offices. This is what makes Woodroe Place so critical for short term facility needs. The term residential care facility is often confused. Residential care facility is used as a housing term. The term rehabilitation facility is a mental health / treatment term. Mental health falls under the jurisdiction of Alameda County Behavioral Health Care Services. Housing terminology is guided by State Community Care Licensing. Woodroe Place is a psycho social rehabilitation facility. Member Spalding said the Behavioral Health Care Services referral list contained an additional facility. It also stated the average length of stay is 6 to 12 months. Dr. Jones said there may be further facilities, but they serve a different segment of the population. Woodroe Place serves short term rehabilitation needs. The County controls the amount of time residents stay based on a contract agreement. Casa de la Vida is often full because the residents stay for 6 to 12 months at a time. The Open House with the neighbors went well. The event was long overdue. Dr. Jones felt they were able to address legitimate concerns. Woodroe Place should be able to move forward with a working relationship. Neighbors of all ages, including children were present. Everyone that came said they were surprised at the home environment. They said they did not intend to discriminate they just had insufficient information about the facility. Neighbors had an opportunity to observe the routine, including meal preparation. Some said they would even donate to supplies, like shampoos and toiletries. Neighbors were also surprised to find there was another board and care facility in the neighborhood, toward the end of the block. Many calls to the Sheriff are generated by the board and care facility. The board and care is licensed by Community Care Licensing through the State of California. There are approximately 213 in the County. However they are similar to group homes for adults. Typically they

do not provide structured programs. At Woodroe Place an average of 2 residents per month are admitted to the facility. A resident will stay between 14 and 28 days. New residents are not admitted on the same day a resident departs. The process is staggered. Transitional age youth between ages 18 through 24 stay 30 days, on average. If they do not have families to go to, youth cannot be released to adult transitional housing. It may take longer to find permanent housing. This brings the average stay for 30% to 40% of the residents to, one month. Often it is the case persons released from John George have chronic health conditions. The person may be stable medically but need additional time to stabilize medication doses, and a psychiatric regiment. If they have family that is ready to receive them, the stay at Woodroe Place can be brief. Other patients with chronic health conditions like diabetes or high blood pressure that do not have an immediate place to go, may stay for a longer period. Some of the Senior Residents are referred to permanent Senior Facilities that provide housing, health care, and transportation. Depending on availability of placement resources, the length of stay may vary. The number of residents that stay longer than a month is 5, on average. Residents are stable when they come to Woodroe Place. Because of their mental disabilities they are given a high priority for placement. Woodroe Place is an interim stopping point. The County prefers not to send persons to homeless shelters. Facility staff will be increased based on the contracted number of beds with Alameda County. The County can contract for up to 12 beds. Presently the County is contracted for 9.2 beds. The range of contracted beds ranges from 6 to 12 at any given time. A spot taken by persons in a wheelchair or persons who require additional assistance dictate staffing levels. Woodroe staff agreed that wearing id badges at all times was a good idea. The procedure has already been implemented. Dr. Jones referred to the site plan to indicate the new designated smoking, and social area. Residents will no longer have access to the area along the fence shared with the neighbor, once the expansion is complete. The facility has also implemented a smoking cessation program. Ideally the County prefer Woodroe Place be a smoke free environment. Residents have been instructed not to smoke along the fence area. They are using another portion of the yard that contains benches. However there is no specific interim plan while the permanent Smoking Area is constructed. Ambulances now have a designated place to park and turnaround, which prevents vehicles from backing out of the driveway.

Mr. Fred Tomlinson said he attended the Open House on September 18, 2009. Dr. Jones and Kent Ellsworth did an excellent job of explaining what would be done to address the concerns of the neighbors. This includes the landscaping on the north and east of the residence; moving the smoking area to a non fire hazard area in the center of the property; repair of the fence along the northern property line; an emergency vehicle turnaround on the property, to prevent vehicles from backing out into the street; a sidewalk along Woodroe Avenue to prevent pedestrians from entering the street, to cross in front of the property; and the requirement staff wear badges when they take residents to the park. The Open House was long overdue, and went well. This interaction with neighbors in the area should occur more often. However there are still outstanding concerns. There is a sense that since Board identification of concerns, everything is okay. Mr. Tomlinson was not convinced. Traffic operations in the area make it unsafe for pedestrian traffic. Mr. Tomlinson has almost been hit by cars along the Woodroe Avenue stretch, several times. He acknowledged many of the issues are caused from speeding car leaving the pre-school. However the residential facility adds traffic when ambulances and taxis come to the site. It is also imperative staff control residents when at the park. Children from the pre-school go to the park within the same time sequence as the residents. He is unsure the pre-school would still be open if they were aware the residential care facility was located directly across the street. Mr. Tomlinson said he understood originally this facility was to be used as a half way house. Not as a facility for mental health issues. He asked the Board, and Planning staff to further review the history of the site to determine how, and when changes occurred. The facility is a short term facility. Residents are there on average, 21 days. Facility staff that is present 20 hours a week is inadequate for frequent turnover. Mr. Tomlinson summarized and asked the Board to address the landscaping along the front, and side; fencing repair; emergency vehicle turnaround; the addition of a sidewalk at the front of the property; movement of the smoking area to the center of the lot; and staff identification worn while at the park, for purposes of identification in the event

of an emergency. These issues should be addressed regardless of the expansion. The Planning Department must address traffic issues in the area. This application is the second in the area submitted without solutions to traffic issues. The goals of the Fairview Plan should be considered. Mr. Tomlinson would also like to see the complete analysis of Sheriff calls regarding 51-50 responses to the facility. This question was raised when the item was last considered. There is yet to be a specific discussion. Additionally the number and types of care facilities within a 1 mile radius need to be identified. This is necessary to assess the impact of persons with mental health issues in the area. Mr. Tomlinson was told at the Open House there were 700 care facilities in the area. Now he is being told there are less than 300. This is important to evaluate persons present on the streets. If there are people with serious mental health issues, they should not be out walking the street by themselves. If the community has this information, informed comments can be submitted regarding the application. If the BZA does not address these issues now, they will never be addressed.

Neighbor, Mr. Kent Sheppard said he still had minor concerns since the original public hearing. He has not seen the greenbelt plans. He only received notice of the Open House, 4 days prior. If this is indicative of the standard of communication he is skeptical. The notification timing was ridiculous, because he had plans for that day. As Mr. Tomlinson said nothing official has been done regarding smoking activity at the site. Dr. Jones responded that some smoking issues have now been addressed. She agreed it is an issue that should be addressed irrespective. The Vice Chair asked Mr. Sheppard if he had contacted the facility to set up a site visit. He explained, he had not yet had the opportunity. The Vice Chair asked that Mr. Sheppard be given the facility contact information, and be given the opportunity to review the landscape plans at the hearing. After review, Mr. Sheppard said he was happy with the proposed smoking area. The landscape plan that proposes greenery along the fence be maintained at 6 to 8 feet is satisfactory. Board Members asked staff if a building permit had been issued. Staff confirmed it had not.

Mr. Winston Win the project architect then testified. He reviewed specified plant types and placement locations. All designated plants are fast growing, easily maintained native species that are drought tolerant. Shrubs will be added to screen the eastern front of the property. Plants along the northern line of the property that share the fence with the Sheppard' property can be maintained at 6 to 8 feet. Plants along the frontage of Woodroe Avenue will screen existing parking, and emergency vehicle parking. They will be maintained at a height of 4 feet, and 6 feet on the internal portion of the parcel. The Vice Chair said care should be taken not to create excessive landscaping. There are a lot of kids in the area. This will prevent a pedestrian hazard.

Member Spalding then recalled Dr. Jones to confirm she was amenable to submitting updated landscaping plans with the building permit. Dr. Jones agreed. Neighbor, Mr. Tomlinson submitted pictures of the site that were distributed at the Open House. The frontage of the site is 106 feet. The Chair asked staff to confirm the distance. As that is the proposed location of sidewalk installation. Staff indicated the placement on a site plan. The process can be approved in conjunction with the cup process.

Neighbor, Kent Sheppard interjected. There are already some sidewalks installed on the street. He has them in front of his home. He prefer shrubbery alongside the shared fence be as tall, as possible. Public testimony was closed.

Member Peixoto said he would like to see a one year review added as a Condition of Approval. In addition landscaping should be required prior to issuance of a building permit. This allows a mechanism of control. Member Spalding pointed out the permit request is for expansion. The current permit expires in 2012. Landscaping will be verified when the permit comes back for renewal. Staff clarified the permit for expansion will replace the prior permit. Public testimony was re-opened.

Dr. Jones told the Board, expansion was financed by stimulus dollars. She was unsure funding would also

cover the addition of sidewalks. Public testimony was closed.

Member Peixoto motioned to uphold the staff recommendation of approval with the following modifications. Condition #12 will include the requirement of a one year review.

The Vice Chair seconded the motion. Based on the modification recommended by staff, Condition #30 shall be stricken.

The following new Conditions of Approval shall be added:

Submission of a Site Plan that includes the design for emergency vehicle parking and turnaround;

Woodroe Place Staff shall wear identification badges at all times;

Social gathering shall be concentrated in the center of the lot, as not to inter-fear with neighbors;

A sidewalk shall be added to the front of the property.

Member Peixoto said the applicant may not have the resources to add a sidewalk. County Counsel said the BZA could remove the Condition at the review period. The Chair noted she was sensitive of the resource shortage. However drivers should be conscious of activity in the area, like the day care, and pedestrians. The Chair asked staff if the Applicant could be allowed 18 months in which to implement sidewalk installation. In the event they do not have funding, the Condition can be removed in 12 months. Member Spalding thought the Sherriff's Report was a significant document. A review will allow the facility time to work through any unresolved issues.

Dr. Jones interjected, requesting the entity responsible for the funding weigh in. As a non-profit, Bay Area Community Services did not have the money. Member Peixoto estimated that a sidewalk would cost a minimum of \$6,000 dollars. The Vice Chair pointed out the requirement set as a Condition, could assist in obtaining funding. If funding cannot be obtained, the Condition can be withdrawn. Staff told the Board, landscaping along the north side of the property is limited to a height of 6 feet per the Zoning Ordinance. However this can be overrode if assigned as a component of the cup process. Mr. Sheppard then interjected. If allowable, landscaping along the shared fence should be no lower at 8 feet. Staff confirmed this could be added to Condition #13. Member Peixoto accepted the recommendations.

Member Peixoto re-stated his motion to uphold the recommendation of approval. The permit will be for a period of 5 years with a 1 year review. Condition #13 shall be modified. Landscaping shall be maintained between 8 and 12 feet. Condition #30 shall be stricken. Space must be provided for emergency vehicles. Smoking shall be limited to the center of the parcel. Sidewalks shall be installed within 18 months.

The motion to uphold the staff recommendation of approval of PLN-2009-00064 Bay Area Community Services passed 3/1. Member Spalding was not in support of the approval recommendation.

**APPROVAL OF MINUTES:** Member Peixoto motioned to accept the Minutes of October 14, 2009 as presented. The Vice Chair seconded the motion. Motion carried 4/0.

**STAFF COMMENTS & CORRESPONDENCE:** Staff announced application, MILLER / CRAWFORD – CONDITIONAL USE PERMIT, PLN-2009-00098 – To allow a community facility (outdoor recreational facility – batting cages) will be the only item on the November 4, 2009 Hearing Agenda. Members agreed the Field Trip should begin at 3:30 p.m.

Code Enforcement will visit the site to determine if there is non-compliance for insufficient landscaping, and the over-night storage of vehicles will be sent to the property owner regarding PLN-2008-00073, Max Morris.

A letter of non-compliance for incorrect placement of telecom antennas will be sent to the property owner regarding Conditional Use Permit, C-8444 Raymond Choy.

**BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:** Member Spalding asked staff to confirm allowed uses and Conditions of Approval for Conditional Use Permit, C-7992 Golden Gate Motors. It appears uses and upkeep may not be in compliance. The Vice Chair said she saw a sign has been posted for a future auto detailing business. Buckets were also in use at the entrance of the establishment.

The Chair commented that she saw a sign on the freeway in San Ramon for the Hosana's Boy's Home. She asked staff to determine if the September 2006 decision made in the Board of Supervisor's appeal (Hosanna Homes, C-8143) allowed the use to continue. Staff said the BOS did allow some limited uses to continue. County Counsel was to work with the Applicant to resolve terms and issues at the time. Staff will follow up and report back.

**ADJOURNMENT:** There being no further business, the hearing adjourned at 5:45 p.m.

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**ALBERT LOPEZ - SECRETARY**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**