

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
NOVEMBER 10, 2010
(APPROVED DECEMBER 8, 2010)

The Regular Meeting was held at the hour of 6:00 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California, 94544.

FIELD TRIP: 1:00 p.m.

MEMBERS PRESENT: None.

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

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner

FIELD TRIP: The Field Trip was cancelled. Members visited properties on an individual basis.

1. **T MOBILE WEST / HARD, CONDITIONAL USE PERMIT, PLN-2010-00111** - Application to allow installation of a new cell site facility that includes a 60 foot monopole and a 10 by 28 foot equipment area, in the northwest corner of the Castro Valley Community Park, in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle Parking Regulations) District, located at 18988 Lake Chabot Road, east side approximately 300 feet, northeast of Keith Avenue, in the unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1305-003-02. **Staff Planner: Jeff Bonekemper.**
2. **WINGPORT BAR & GRILL, CONDITIONAL USE PERMIT, PLN-2010-00160** - Application to allow a restaurant (Wingport Grill & Bar) in conjunction with a full service bar. A "tavern" is a Conditional Use under the C-1 (Retail Business) Zoning District, located at 19510 Hesperian Boulevard, south east from the corner of Bartlett Avenue, in the unincorporated Hayward Acres area of Alameda County, designated Assessor's Parcel Number: 432-0004-028-03. **Staff Planner: Jeff Bonekemper.**
3. **ANTONIO HURTADO, SITE DEVELOPMENT REVIEW, PLN-2010-00138** – Application to legalize an existing conversion of an attached two car garage to a non-garage use, in an R-1-BE (Single Family Residential, 10 foot side yard, 30 foot front yard, Minimum Building Site Area) District, located at 2816 Hidden Lane, north side, approximately 550 feet west of Hansen Road, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 426-0030-019-00. **Staff Planner: Damien Curry.**
4. **CASTRO VALLEY PARENT NURSERY SCHOOL, CONDITIONAL USE PERMIT, PLN-2009-00173** - Application to allow continued operation of a nursery school facility for 28 children in each session: two sessions per day, five days a week , in an R1-CSU-RV (Single Family Residence with a Secondary Unit and Recreational Vehicle Parking Regulations) District, located at 2657 Christensen Lane, south side, approximately 10 feet west of Almond Road, in the

unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0531-006-00. **Staff Planner: Shahreen Basunia.**

REGULAR MEETING: 1:30 p.m.

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

MEMBERS EXCUSED: None.

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

There were approximately 11 people in the audience.

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

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

OPEN FORUM: Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes. No one requested to be heard under open forum.

Neighborhood Preservation Ordinance Abatement Hearing

1. **Herman Cruz, Cherry Way, Hayward, CA 94541**
In violation of Alameda County Ordinance 6.65.030 A (1 & 8).
 1. Overgrown vegetation and weeds in the front, side and rear yards.

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

2. **David & Sofia Topete, Blossom Way, Hayward CA 94541**
In violation of the Alameda County Ordinance 6.65.030 A (7).
 1. Graffiti on the exterior wall of the business complex.

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

Alcoholic Beverage Sale Regulations Administrative Hearing: There were no items on the Alcoholic Beverage Sale Regulations Administrative Hearing Calendar.

CONSENT CALENDAR:

1. **AILIAN LU / CHINESE HEALTH CENTER, CONDITIONAL USE PERMIT, PLN-2010-00135** - Application to allow operation of a massage therapy business (Chinese Health Center) offering acupuncture, acupressure, pressure point massage and foot reflexology, in a C-1 (Retail Business) District, located at 17780 Hesperian Boulevard, east side, south of Hacienda Avenue, in the unincorporated San Lorenzo area of Alameda County, designated Assessor's

Parcel Number: 412-0071-024-04. **Staff Planner: Andy Young.** (Continued from October 27, 2010; to be continued to December 8, 2010).

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

REGULAR CALENDAR

1. **TERESA NAZARETH, VARIANCE, V-12114** – Application to allow construction of a 2,436 square foot, two story, single family dwelling with seven foot side yard setbacks where 15 foot setbacks are required. The parcel contains 0.12 acres (5,200) square feet and is zoned R-1-BE (Single Family Residential, 10,000 square foot Minimum Building Site Area) District, located at 3306 D Street, northwest side, approximately 1,000 feet east of Fairview Avenue, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 417-0220-004-00. (Continued from August 25 and October 13, 2010). **Staff Planner: Jeff Bonekemper.**

Staff reviewed the history of the application. The application was continued to consider possible modification to the project. The Applicant has chosen not to revise the application. The staff recommendation was approval. Public testimony was opened.

Mr. Marc August lives next door to the proposed project. At the October 13, 2010 Hearing, the Board asked that the Applicant meet with neighbors. The Applicant has not contacted anyone. The Chair asked Mr. August to locate his property on an aerial photograph. He indicated his home was on the left and rear of the proposed building.

The Applicant and a Representative were present but chose not to testify. Public testimony was closed.

Member Spalding pointed out the Applicant was asked to reduce the severity of the variance. This may have resulted in the elimination or reduction of the variance. A smaller home will fit on the parcel, and be in compliance with existing zoning. Ms. Nazareth was asked to work with the neighbors to address effects on neighbors, and public welfare. She chose not to, after accepting a continuance for that specific purpose. Member Peixoto agreed, the parcel is flat, there are no restrictions. The Chair asked staff for further information regarding Finding #3, how does the proposed 7 foot setback relate to the Fairview Specific Plan. Staff explained a comparison was made to lots zoned 5,000 square feet Minimum Building Site Area. The proposed setbacks would be in compliance. This lot size is common. The proposed lot is within the Fairview Specific Plan. The Minimum Lot Size is 10,000 square feet Minimum Building Site Area with 15 foot side yard requirements. Counsel pointed out the lot's non-conforming status relevance. In comparison there are many lots similar in size, with 7 foot setbacks. Member Spalding pointed out the Applicant removed the existing bungalow, rather than remodeling it. She asked staff for clarification if the bungalow was damaged in a fire. Staff confirmed removal was voluntary. Member Peixoto said an argument was posed that a small house would not blend into the neighborhood. The footprint would not match those in the community. He believed that was a stretch. However he did not believe the Applicant could make the required Findings, specifically, Findings #1 and #2. Member Spalding did not believe the Applicant could make required Findings #1, #2 or #3. The Applicant chose not to address the issues.

Member Spalding motioned to deny the application. There are no special circumstances applicable that deprive the property privileges enjoyed by other properties in the vicinity, in the identical zoning classification. A home can be built on the site under the parameters of the Zoning Ordinance. She disagreed with Planning staff's position the required 15 foot setbacks would deprive the Applicant the ability to build a modern home. No proof has been submitted to that effect, and there has been no

discussion. Regarding Finding #2, granting the variance will be special privilege. No other neighbor with the same size property would be exempt from Zoning. If the application were granted, the variance would exceed the minimum requirements by more than 50%. In addition there are multiple variance requests. Regarding Finding #3 granting the application would be detrimental. Neighbors have come multiple times seeking mitigation of harmful effects. The Applicant has declined to work with neighbors. In addition, the application does not meet the Fairview Specific Plan.

Member Peixoto seconded the motion. The motion to deny, Variance, V-12114, Nazareth carried 4/0.

2. **ANTONIO HURTADO, SITE DEVELOPMENT REVIEW, PLN-2010-00138** – Application to legalize an existing conversion of an attached two car garage to a non-garage use, in an R-1-BE (Single Family Residential, 10 foot side yard, 30 foot front yard, Minimum Building Site Area) District, located at 2816 Hidden Lane, north side, approximately 550 feet west of Hansen Road, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 426-0030-019-00. **Staff Planner: Damien Curry.**

The staff recommendation was approval. Initial Board questions were as follows:

- Has a determination been made regarding the structure's ability to support the conversion
- Is a building permit required
- Where will the converted garage be located
- Is there sufficient alternate storage space available
- Is a building permit required for the compensating storage area
- What portion of the proposed addition is the garage conversion
- What is the minimum height requirement for a garage
- Is there a proposed worship room
- Why does the Applicant want a 5 car garage
- What is the timeframe for implementation of landscaping

Staff explained the Building Department did not have a record of permits. Permits are required to legalize the conversion. The Building Department will determine what specific permits are required for completed work, the proposed addition and storage area. The prior owner converted the garage. The Applicant can provide sufficient compensating storage space. They propose a family room, a carport that will hold 5 vehicles and possible additional storage. Thus far a rendering of the proposed carport has not been submitted. Staff has not set a date for landscaping implementation however the BZA can assign one. The property is currently used as a Single Family home. The Board may want to speak to the Applicant to review their proposal. They will be removing a portion of the concrete in the front of the property. The home is setback from the frontage to the extent current paving does not exceed the Neighborhood Preservation Ordinance threshold of 50%. Public testimony was opened.

Mr. Antonio Hurtado the property owner was present. He would like to move the 2 car garage at the rear of the property. The area will then be made into a Family Room. This will provide space for the family to watch television. The front of the property will be nicely landscaped however addition money is needed to obtain materials. The Board asked staff if a landscaping plan is required, also if landscaping is required for the entire site. Staff referred to the Site Plan. Landscaping presumably will be limited to the front yard. Typically the Applicant is required to complete a Site Development Review in a period of 3 years. Mr. Hurtado confirmed he can implement landscaping within 6 months. The Chair asked the Applicant the following additional questions:

- Is the dwelling Single Family
- Is a 5 car garage needed for the site
- What additional work has taken place at the site
- Will there be changes or upgrades to the roof or roof line
- Is an exterior lighting plan required

Mr. Hurtado told the Board his father had a vehicle, in addition to himself and his sister. Therefore he would like a 5 car garage. The home is Single Family. He has completed some updates. Further updates will include the roof. A lot of things were wrong with the home when he purchased it.

Mr. Bernie Hurtado said when the family took possession of the home they discovered work had been done without permits. Half of the structure had to be demolished to make repairs. A permit was obtained for all work. The Building Inspector saw the work in progress.

Mr. Antonio Hurtado returned to the podium. Member Spalding asked if he read the Conditions of Approval. Mr. Hurtado confirmed his father had. Mr. Hurtado, Senior did not express any objections to the Conditions of Approval. The Planner informed Antonio only the front yard had to be landscaped.

Staff clarified the Site Development Review process typically combines a lighting plan with the landscaping plan. Public testimony was closed.

Member Peixoto motioned to accept the staff recommendation of approval with the following modifications: Condition #5 (b) shall strike the word property and insert the word *house*. A sentence shall be added stating: *the Landscaping Plan shall be implemented within one year from date of approval.*

Member Spalding seconded the motion. The motion to approve PLN-2010-00138, Hurtado carried 4/0.

3. **T MOBILE USA / ANA GOMEZ, CONDITIONAL USE PERMIT, PLN-2009-00142** – Application to allow installation of a telecommunications facility including one 65 foot high mono-pine (artificial tree), in an R-S-D-25 (Residential-Suburban, 2,500 square feet Minimum Building Site Area per Dwelling Unit) District, located at the southeast corner at the intersection of Nielsen and Grant Avenues (no street number) in the unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 411-0030-001-05. **Staff Planner: Andy Young.**

Staff reviewed the application and recommended approval. A neighbor came to the Planning Department yesterday to voice objections to the project. The staff Planner has provided summarized notes. A second letter in opposition to the project was submitted today. Public testimony was opened.

Mr. Ian Crawford was present on behalf of T Mobile. The Chair asked the Applicant if he was aware there was opposition to the application, within the community. Mr. Crawford was not. The Chair will recall him once community members testify.

Mr. David Mallia's home is adjacent to the proposed tower, approximately 25 feet. He has lived there 14 years. There are problems in Mervin Morris Park, including underage drinking, drug use and graffiti. Mr. Mallia only received the notice for the hearing on Thursday. The aerial shows the post will be 33 feet

from his fence line, and overhang 10 feet. Visibility is already blocked. He has made several calls to the Sheriff, Highway Patrol and Parks Departments. Community members are trying to work together to improve the neighborhood. The tree/pole will cause further isolation, and further obstruct the view of activities at the park. There is also a proposed 250 square foot building to the southeast side. The location is directly next to his back yard. It provides a place for kids to hide and engage in underage drinking and drug activity. He asked the Board to deny the application. A few years ago someone built homes nearby. They sold for \$890,000 thousand dollars. He might like to build homes on his site, one day. Mr. Mallia spoke to a Realtor. If a telecom tower is installed. His property value would go down. He is fighting to keep value up. The Vice Chair asked why he thought the installation would reduce his property value. Mr. Mallia pointed out recent stories in the news. In San Francisco residents might be required to post in their windows how much radiation they are emitting. The manual provided for his cell phone states, do not carry in a pocket. Mr. Mallia does not believe everything the Government says. Agent Orange is a good example. He follows information released from the technology manufacturer, regarding harmful effects. The Chair asked if prime objection to the tower was based on the proposed location. Mr. Mallia said, even the Fire Department thought the proposed rear placement would restrict access. He agrees. There is also a high school, and baseball field down the street. Further down there is an industrial area, a park, and open space near the Sanitation District. These may be more suitable for the installation. People in his home, a 70 year old and children are there throughout the day. They will be exposed. Mr. Mallia has a swing set in his yard for his grandchildren. If the tower is installed they will not visit, as often. He cannot blame them. Mr. Mallia will not feel comfortable living there either. Most likely he will have to move away. He assumed when he bought a home next to a park. The land would remain open forever. He did not know the community could be sold out. Member Peixoto pointed out that Telecom laws prevent the BZA from stopping installation as a result of health concerns. Mr. Mallia is aware of that fact. However he wanted to bring this information to the Board's attention. Others told him prostitution is suspected at the park, used condoms were found. A fenced area with a tree and a building will provide a perfect location for people to hang out. When the Police patrol, typically they do not leave their cars. If a fence is erected, the view will be obstructed further.

Mrs. Margaret Mallia submitted a letter signed by family members in opposition to the application. She is aware the Board cannot deny the application based on health concerns. However there is wildlife in the area that will also be affected. Fox, eagles, crows, raccoons, possums, skunks and squirrels come into the yard. They enjoy the wildlife. She found a website called the Dark Tower. It provides information showing how towers kill birds. Mrs. Mallia also believed installing something that provides a hiding place would increase crime.

Mr. Mallia returned to point out what he believed to be an error in the location of the installation. The address 15800 Nielsen Avenue cannot be on the south side of the tennis courts. The homes directly across the street are in the 15900 address sequence. A 15800 address has to be on the northwest side. His home is at 15960 Nielsen Avenue. The proposed installation should therefore be approximately one block away, not 25 feet. There is a discrepancy. A 15800 address should be located near the bathrooms. The Chair acknowledged the Fire Department expressed a similar concern.

The Applicant, Mr. Crawford returned. Further Board questions for the Applicant were as follows:

- Is Mr. Crawford willing to consider an alternate installation location for the tree/tower
- Is there a minimum distance required to the nearest residence
- Is a ground mounted pole an option
- Is a flag pole design an option
- Is a design other than a monopole viable
- Is a façade mounted design an option

- Is the proposed installation to provide interior or outdoor signal coverage
- Is the installation proposed to increase signal strength
- Can nearby T Mobile equipment be upgraded to achieve coverage goals

Mr. Crawford said the Planning Department specifically selected the current location. The prior application, locating a pole at the east of the HARD property next to the tennis courts was denied. The Fire Department objected to the location. Mr. Crawford did not know what other options were available. Staff explained the Fire Department raised concerns regarding the original application on the other side of the tennis courts, specifically the placement of equipment cabinets. At that time staff recommended placing antennas inside a light structure for the tennis courts. The Fire Department did not believe there was sufficient access to equipment cabinets at the rear of the tennis courts. In response, T-Mobile returned with the current proposal. Member Spalding pointed out that regardless of tower, tree or light pole placement. The cabinet placement and graffiti issues must be resolved. Board Members asked if the rule requiring a minimum distance of 300 feet would apply. Staff said the Telecom Development Standards for Siting of Telecommunication Facilities Guidelines were adopted by the Alameda County Board of Supervisor's in 1997. Ground, roof or façade mounted facilities require a minimum distance of 300 feet to the closest residence. The proposed installation is a freestanding monopole. Therefore the 300 foot minimum distance would not apply. A ground mounted antenna with a support structure directly mounted in the ground cannot exceed 15 feet in height, including antennas. The proposed installation is 65 feet in height and categorized as freestanding. In consideration of freestanding poles Guidelines are to, minimize visual impact, prevent installation in the front setback, and prevent installation within 1,000 feet from another telecom facility. Counsel added the Telecom Development Standards provide a guideline. If the Board believes Findings cannot be made for the use, and the application will have an impact on the community. The Board can deny the application. Mr. Crawford was unsure of the range of the proposed facility. The coverage map Exhibits provide more information. The interior coverage, service goals cannot be achieved by upgrading existing antennas. A high monopole/pole is needed to achieve the outer area of the coverage ring goal. The Chair pointed out the Exhibit shows some interior coverage. Mr. Crawford clarified the facility would increase coverage. The proposal likely resulted from complaints about signal service in the area. Coverage cannot be increased by upgrading nearby towers. Mr. Crawford again stated he did not know what alternate locations might be suitable. The light standard at the tennis court was rejected. The space necessary to accommodate the tower base would have taken almost an entire tennis court. In addition the light emitted from the standard would have shown into players eyes. This would result from placement on either side. A flagpole may be possible however more research would be necessary. The private school nearby was not interested in allowing placement of a facility. The high school is too far away to reach the network. The Chair said the restrooms next to the trees may be a possible cabinet location. In her opinion concerns raised by the neighbors regarding public safety were legitimate, given current conditions that exist at the park. Mr. Crawford responded a chain link fence may be more effective as opposed to the proposed green mesh fence. He would accept a continuance to explore further options, if that was the best option at this juncture. Counsel noted it appears the Applicant was not aware of opposition until today. Options can be: a continuance to explore alternate placement considerations; the BZA can make a decision. If that results in denial, the Applicant can appeal. Mr. Crawford confirmed he would be open to a continuance.

Mr. Mallia returned to the podium to offer further information. There is a church steeple on Grant Avenue on the other side of Washington Avenue. This may be an alternate location.

The Chair said the issues raised, the tree/pole blocking visual access, and the equipment cabinet providing a location to commit crime and blight such as graffiti, had validity. Public testimony was closed.

The Vice Chair motioned to continue the application to the December 8, 2010. Member Spalding

seconded the motion. Staff shall work with the Applicant to identify alternate locations, and attempt to address concerns raised by the neighbors.

The motion to continue PLN, 2009-00142, T Mobile to the December 8, 2010 Hearing carried 4/0.

4. **CASTRO VALLEY PARENT NURSERY SCHOOL, CONDITIONAL USE PERMIT, PLN-2009-00173** - Application to allow continued operation of a nursery school facility for 28 children in each session: two sessions per day, five days a week, in an R1-CSU-RV (Single Family Residence with a Secondary Unit and Recreational Vehicle Parking Regulations) District, located at 2657 Christensen Lane, south side, approximately 10 feet west of Almond Road, in the unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0531-006-00. **Staff Planner: Shahreen Basunia.**

The staff recommendation was approval with the following modification. Condition #7, shall read November 10, 2015. The Vice Chair asked when the application had been submitted. Staff confirmed the application was received in December 2009. The item was approved via the CVMAC Consent Calendar in October 2010. Typically it takes time to determine State licensing requirements. A pick-up and drop-off plan also had to be developed. This included approval from the Board of Supervisors for the white striped area in front of the school. Public testimony was opened.

Mr. William Mills was present on behalf of Castro Valley Parent Nursery School. He told the Board the application was initially delayed to determine if the school was subject to State Community Care Licensing. It was determined because the nursery school operates under the auspices of the Castro Valley Adult School. The nursery school is exempt. Public Works Traffic Division took some time in responding to the referral request. This coupled with the project Planner being on vacation delayed the application process. Mr. Mills has read the staff report and is in agreement with the proposed Conditions of Approval. Most are carried over from the prior permit. He is unsure why the 2005 use permit listed 26 children. The 2000 permit was for 28 children. Perhaps the State issued the license for the number of children enrolled at the time. Board questions for the Applicant were as follows:

- Is there a waiting list of children to attend the Nursery School
- Is there a person directing traffic during drop-off and pick-up

Mr. Mills confirmed there was a waiting list. The nursery school is a co-op therefore the price is very low. Parent involvement is required. Mr. Mills asked the Board to extend the permit to a period of 10 years with a 5 year review. Staff did not object to the requested modification. Thus far they have received no complaints. Mr. Mills said there are five adjacent properties to the Nursery School. Parents are to avoid parking in front of these homes. A parent is assigned daily to monitor parking restrictions. One parent assists loading children in and out of vehicles, so parents do not park in restricted areas. No Parking signs are placed during pick-up and drop-off. The Director also reaches out to neighbors to ensure there are no problems. Public testimony was closed.

Member Spalding motioned to uphold the staff recommendation of approval with the following modification. The permit shall now expire on November 10, 2020 with a 5 year review by Planning Staff. **Member Peixoto seconded the motion. The motion to approve PLN-2009-00173 passed 4/0.**

APPROVAL OF MINUTES: The Vice Chair motioned to accept the Minutes of October 27, 2010 with submitted corrections. Member Peixoto seconded the motion. The motion carried 4/0.

STAFF COMMENTS & CORRESPONDENCE: The appeal of Club K9 INC. / Eric Fabianac, Conditional Use Permit, PLN-2010-00019 was heard by the Board of Supervisor's. The Board did find the use was non-conforming however expansion to 100 dogs was not consistent with the Resource Management District component of Measure D. The use is limited to 65 dogs.

The BZA decision to uphold the staff recommendation of approval regarding, Conditional Use Permit Application, PLN-2010-00129, T-Mobile USA was appealed to the Board of Supervisor's. The appeal will most likely be on the December Calendar.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: The Chair asked if the BZA decision regarding the Code Enforcement case to declare the property a public nuisance was appealed: Meekland Avenue, operating a contractor's business. Staff confirmed an appeal was received. It will likely be on the December BOS Calendar. The Chair stated her observation is the business has expanded over the past few months. Vehicles associated with the business now block the roadway to unload.

ADJOURNMENT: There being no further business, the hearing adjourned at 7:44 p.m.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS