

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
NOVEMBER 16, 2005
APPROVED, DECEMBER 7, 2005**

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

MEMBERS EXCUSED: None.

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

There were approximately 7 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: There were no announcements.

OPEN FORUM:

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

No one requested to be heard under open forum.

CONSENT CALENDAR:

There were no items scheduled for the Consent Calendar.

REGULAR CALENDAR

1. **ADAMS, ADAMS & MORRIS, CONDITIONAL USE PERMIT, C-8411-** Application to allow continued operation of a minor automotive repair shop, in a C-1 (Retail Business) District, located at 186 East Lewelling Boulevard, north side, corner north east of Ashland Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 0413-0019-004-02. (Continued from September 14, 2005; to be continued without discussion to November 16, 2005).

Staff recommended approval of the application. Member Friedman referred to a Planning Consideration notation regarding auto repair use under the former Zoning for the area, and the current Specific Plan. Staff responded that the use for the surrounding area is R-1 (Single Family Residence). The former Zoning was C-1 (Retail Business). The business has been at the site for 10 years. Staff suggested the Board could add a condition of approval that if ownership of the business changes the application would then return to the Board of Zoning Adjustments for review. Public testimony was opened.

Mr. Max Morris of Adams, Adams and Morris was present to represent the applicant, Mr. Carl Graffenstatte. The current tenant, Mr. Graffenstatte takes pride in the appearance of the site has made several improvements to the property. The owner of the property has added landscaping as well. Mr. Morris believes the corner location is ideal, and accessible to surrounding homes.

Board questions were as follows:

- Why was this parcel not excluded when the ACBD Specific Plan designated the overall area Residential zoning
- Has the former CUP Permit for the property expired

Staff did not have a definitive answer as to why this parcel was not included when the area was rezoned. At the time of the adoption of the Specific Plan, the applicant had already submitted an application. The County decided to review the application under the C-1 Zoning. Mr. Morris interjected that the property owner was never notified of re-zoning and if the conflict could be rectified. Staff said one method would be to amend the Specific Plan. The Redevelopment Agency was sent a referral in July. There were no comments. The Chair added that he had lived in the area since 1948. He believes the property was originally part of a larger parcel owned by the Silva's. Since 1948 a gas station was always located at the site, never a home.

Member Palmeri said he had some knowledge of the area as well. He was of the community participants on the ABCD Specific Plan development team. The goal was to target certain areas and change them for the betterment of the community. Although the current tenant is far better at upkeep of the property, the development team spent seven years in the re-development process considering what would be appropriate. He asked staff to find a definitive answer to the zoning of the parcel. However he acknowledged that the redevelopment process moves slowly, as a result he would not be opposed to a three year use permit.

Member Palmeri motioned to adopt staff Tentative Findings. Finding #8 shall reflect expiration in a period of three years or a change in tenants, whichever occurs first. Member Friedman seconded the motion. Member Spalding abstained. However her comments regarding the application were that a number of automotive repair shops already existed in the area. An abundance of such shops can be considered blight. This particular business should also post signage as to the name of the business and the type of services offered. Part of a larger zoning issue is that currently there is no definition as to what constitutes "minor auto repair". Motion carried 3/0/1.

2. **BURTON BUSK, CONDITIONAL USE PERMIT, C-8445** – Application to allow the continued use of a mobile home park in an R-S-D-3, Suburban Residence (3,000 square feet per Unit Density) District, located at 17754 Meekland Avenue, north east side, approximately 550 feet south east of Hampton Road, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 413-0047-027-03.

The staff recommendation was approval. Public testimony was opened. The applicant, Mr. Burton Busk thanked staff for the accurate recording of the site history. The park has been in existence since 1957. It consists of 23 spaces. The tenants of the park own their individual units. A five year permit period provides them some comfort that they will not be re-located in the near future. Member Friedman noted that past permits had been approved for a period of one to three years. However in 1992 permit, C-6161 and V-10406 was approved for a period of five years. He believed that fact established precedence for a five year expiration period. Public testimony was closed.

Member Friedman motioned to adopt the staff finding of approval for a period of five years. Member Palmeri seconded the motion. Motion carried 4/0.

3. **CHRISANN NICHOLSON / KIDS CARE, CONDITIONAL USE PERMIT, C-8453** – Application to allow the continued operation of a child care facility for 49 children in an R-1-B-E-CSU-RV (Single Family Residence, 10,000 square feet Minimum Building Site Area, Secondary Unit, Recreational Vehicle) District, located at 19600 Cull Canyon Road, east side approximately 600 feet north of Crow Canyon Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 0085-1520-002-11.

The staff recommendation was approval with a modification to Pre-Hearing Recommendation #4. The applicant has already installed the appropriate signage. The application was also heard before the CVMAC. Their recommendation was approval as well. Public testimony was opened.

Board Members asked the following questions:

- What are the days and hours of operation
- What is the age range of children accepted at the day care

Ms. Chrissann Nichols told the Board the hours of operation were from 6:30 a.m. to 6:30 p.m. Child care is offered Monday through Friday for infants and children up to 14 years of age. The center is located on a school site but is open on school holidays and summer vacation. Public testimony was closed.

Member Spalding motioned to uphold the staff recommendation of approval for a period of ten years. Member Palmeri commented that typically the Board will approve a permit for up to a five year time limit. Member Friedman said he would be in favor of a seven year approval. Member Spalding responded that the school had a track record of a successful operation since 1992, however she would modify her motion. The permit shall expire on November 16, 2012. Condition, #1 shall be modified to state: Hours of Operation shall be between Monday and Friday, 6:30 a.m. and 6:30 p.m. Member Friedman seconded the motion. Motion carried 4/0.

4. **DONNA WILLIAMS, VARIANCE, V-11958** – Application to allow construction of an attached addition with a front yard setback of 11 feet where 20 feet is the maximum required in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 18472 Vernon Court, east side, corner north of Joseph Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1208-021-00. (Continued from September 28, October 12 and October 26, 2005).

Planning staff as well as the CVMAC recommended approval of the application. Member Friedman asked for clarification of Pre Hearing Recommendation #1. Staff confirmed that the requested front yard set back was 11 feet. Public testimony was opened.

Mr. Doug Rogers of Greenwood and Moore represented the applicant. The request is for a 288 square foot addition. A variance is required due to the unusual configuration and corner location. Overall the lot is narrow and the greater portion of the home is oriented toward Vernon Court. The proposed addition is on the narrow front section of the lot that faces Joseph Drive. The proposed addition will align with the garage located in the northeast corner of the lot. The design will extend approximately the same distance as other homes that surround it. Public testimony was closed.

Member Palmeri reminded staff that the approval of other variances in the R-1 District is not a finding to support conditions of approval. Each application must stand on its own merits. In the future staff should refrain from using prior approvals as findings. In this particular case the configuration of the corner lot is a special circumstance.

Member Palmeri motioned to adopt staff's Tentative Finding of approval with the modification to Tentative Finding #2. Finding #2 shall reflect only that it would not constitute a grant of special privilege. Member Spalding seconded the motion. Motion carried 4/0.

5. **MIKE LUCIANI, VARIANCE, V-11965** – Application to allow construction of an attached two-story addition resulting in a 29 foot average building height where 25 feet is the maximum allowed, and continuation of an existing three foot, six inch street side yard where a 10 foot yard is required in an R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 18540 Madison Avenue, east side corner, north of Seaview Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number:084C-0885-002-01.

Staff recommended approval of the application subject to a 28 foot height limit for the proposed addition. CVMAC was not opposed to a height of 29 feet. They also recommended the following approval subject to the following:

- Overall clean up on the property
- Resurfacing of the concrete retaining wall with the installation of a new fence on the top
- Submission of a landscaping plan for the strip next to the sidewalk

Member Friedman advised staff the use of possibly in Tentative Finding #1 regarding the side yard setback should state a conclusion as opposed to using the term possibly. The Board commented that due to the slope and topography in this case it appeared special circumstances were present. Staff reviewed a site plan with the Board. The planting strip is located in the County Right of Way however Ordinance states that the property owner is responsible for maintaining the area. Member Spalding asked if the original Developer was responsible for installing greenery. County Counsel said the Board was within their realm to request landscaping. If the Board preferred he could take the request back to the office and for specific Ordinance language. Member Palmeri said he was satisfied with County Counsel's response.

Staff said the side yard faces Madison Street. The three foot, six inch side yard is non-conforming. The setback was conforming at the time the home was placed on the property in 1961. Member Palmeri brought up the point that last week the Board heard another application in which a non-conforming use as opposed to a structural non-conformity was considered.

The Board can determine if some latitude is appropriate provided there is no change to the use. The Chair raised the question as to if alternatives were available to the proposed design.

Staff confirmed that this variance request was for the setback. The proposed two story addition to the existing dwelling would be built over the attached two car garage. The garage already extends three feet, six inches from the side property line. The addition would extend the wall to four feet. Because the existing street side yard is more than 50% deficient of the current Zoning Ordinance, the lot does not qualify for an exemption of expansion under Section 17.52.650. Member Spalding raised a question as to if the applicant could reduce the proposed addition, to eliminate the need for a variance. The Chair added

that in this case the existing garage already extended out three feet, six inches. The addition did not affect the pre-existing condition of the side yard. The last question the Board had for staff was what the maximum height of the retaining wall and fence could be. Staff confirmed that since the retaining wall height was six feet, the fence on top must not exceed three feet. If an individual fence were installed separate from the retaining wall, a distance of five foot would have to be maintained. Public testimony was opened.

The applicant, Mr. Luciani said the current fence on top of the retaining wall was five foot. Due to the slope of the property, the total height of the fence/retaining wall varies up to a total nine feet. His goal is to beautify the property as well as keep the neighbors happy. He will add landscaping to the planting strip too. Board Members added that the area did not have to have a sprinkler system but vegetation must be maintained in a living state. Drought resistant plants are acceptable.

Ms. Heather Hindmarsh, the neighbor across from Mr. Luciani told the Board she was happy someone had purchased the home and was making repairs. Due to the steep drop in slope, the retaining wall/fence should remain at the current height. This would ensure the safety of children in the neighborhood. Vehicles speed on the street, and high fence would prevent a vehicle from going over into the yard. Staff interjected that Ordinance 17.52.440 B does allow an increased fence height which would be appropriate in this application. Public testimony was closed.

Member Palmeri motioned to adopt staff Tentative Findings with the modification of Finding #2. Finding #2 shall state, no. Staff will insert the appropriate language to reflect that a variance is granted due to the configuration of the parcel and the corner location. Building height shall not exceed 29 feet. The replacement fence on top of the retaining wall shall not exceed a height of five feet as allowed per 17.52.440 B. The applicant shall submit a landscaping plan, subject to approval by the Planning Director. Vegetation shall be placed in the Public Right of Way planting strip. Plants must be maintained in a living state, drought resistant or low maintenance shrubbery is acceptable. Member Spalding requested a modification to the motion to reflect that Finding #1 shall be in the affirmative. Member Spalding seconded the motion. Motion carried 4/0.

APPROVAL OF MINUTES: Member Palmeri motioned to continue approval of the Minutes of September 14, 2005 to the December 12, 2005 Meeting. Member Spalding seconded the motion. Member Friedman abstained. Motion carried 3/0/1.

STAFF COMMENTS & CORRESPONDENCE: The policy discussion on Meeting Agendas will take place on December 7, 2005.

CHAIR'S REPORT: No Chair's Report was submitted.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: The Board had no announcements.

ADJOURNMENT: There being no further business, the hearing adjourned at 2:30 p.m.

Chris Bazar - Secretary
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