

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
NOVEMBER 9, 2005
APPROVED, DECEMBER 7, 2005

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

FIELD TRIP: 1:30 p.m.

1. **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.
2. **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.
3. **JOSE J. RAMON, VARIANCE, V-11902 and SITE DEVELOPMENT REVIEW, S-1965** – Application to retain an existing dwelling and construct a new triplex attached to the existing dwelling, so as to maintain a four foot side yard where 10 feet is required, in a R-S-D-20 (Suburban Residence with 2,000 square feet Minimum Building Site Area per Dwelling Unit), located at 247 Sunset Boulevard, southeast side, approximately 325 feet southwest of Princeton Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0429-0091-010-00. (Continued from February 9, March 9 and April 13, May 11, June 8, August 10, September 14, September 28 and October 26, 2005).
4. **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.
5. **LUIS BARBOSA, VARIANCE, V-11971** – Application to permit the construction of an attached addition to the existing dwelling, so as to maintain a one foot, three inch side yard where five feet is required, in an R-S-SU (residential Suburban, Secondary Unit) District, located at 1343 Ash Street, east side, approximately, 100 feet west of Locust Street, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Numbers: 414-0086-024-01 and 414-0086-045-01.

6. **JOSE MANUEL VALDES, VARIANCE, V-11972** – Application to allow construction of two dwelling units resulting in: 1) a five foot side yard setback where 10 feet is required; and 2) a one foot setback from the access driveway where 10 feet is required, in a R-S-D-3 (Suburban Residence, 3,000 square feet Minimum Building Site Area per Dwelling Unit) District, located at 21709 Meekland Avenue, south west side, corner south east of Willow Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 429-0064-001-00.

MEMBERS PRESENT: All Members excused.

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

REGULAR MEETING: 6:00 p.m.

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

MEMBERS EXCUSED: Jewell Spalding.

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

There were approximately 8 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 had no announcements.

OPEN FORUM:

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

No one requested to be heard under open forum.

CONSENT CALENDAR:

1. **TAM, TAM, YU AND KUAN, VARIANCE, V-11952 and PARCEL MAP, PM-8738** – Application to allow a 18 feet wide driveway where 20 feet is the minimum and a six feet side yard setback where 10 feet is the minimum with subdivision of the site into three lots, in a R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 18332 Carlton Avenue, east side, approximately 200 feet north of Dominic Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0472-039-00. (Continued from September 28 and October 12, 2005; to be continued without discussion to December 7, 2005).
2. **JOSE J. RAMON, VARIANCE, V-11902 and SITE DEVELOPMENT REVIEW, S-1965** – Application to retain an existing dwelling and construct a

new triplex attached to the existing dwelling, so as to maintain a four foot side yard where 10 feet is required, in a R-S-D-20 (Suburban Residence with 2,000 square feet Minimum Building Site Area per Dwelling Unit), located at 247 Sunset Boulevard, southeast side, approximately 325 feet southwest of Princeton Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0429-0091-010-00. (Continued from February 9, March 9 and April 13, May 11, June 8, August 10, September 14, September 28 and October 26, 2005; to be continued without discussion to November 16, 2005).

Staff announced that the applicant would not have revised drawings ready until December. The application should be continued until December 7, 2005.

Member Friedman motioned to accept the Consent Calendar with submitted corrections. Member Palmeri seconded the motion. Motion carried 3/0. Member Spalding was excused.

REGULAR CALENDAR

1. **OKORO/SHIPMAN, CONDITIONAL USE PERMIT, C-8435** – Application to allow continued operation of an auto sales lot in a C-1 (Retail Business) District, located at 20979 Foothill Boulevard, southwest side, approximately 300 feet northwest of Ash Street, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 0414-0051-035-00. (Continued from October 19, 2005).

Staff reviewed the application and recommended approval. Member Friedman asked what criteria and/or data the City of Hayward used to conclude in their referral response that the retail center did not have sufficient parking. Member Friedman also asked staff what possible impact the conclusion might have if the property were annexed by the City. Staff said each jurisdiction has their own guidelines for parking. The application, does meet Alameda County standards. Public testimony was opened.

Mr. Okoro told the Board to his knowledge the property was not being considered for annexation. The business has been at the location for a period of 8 years. Vehicles are advertised/purchased at auction. Vehicles are shown by appointment only with a maximum of three vehicles displayed at one time. Public testimony was closed.

Member Friedman motioned to adopt the staff finding of approval. Member Palmeri seconded the motion. Motion carried 3/0. Member Spalding was excused.

2. **LEE SCOTT, VARIANCE, V-11946** – Application to allow expansion of a nonconforming use (reduced parking spaces) by construction of an attached addition and a detached accessory structure, and to allow parking in the front yard setback where otherwise not allowed in an R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 21522 Lake Chabot Road, east side, approximately 25 feet south of Meg Court, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 415-0060-083-00. (Continued from August 24, September 14 and October 12, 2005).

Staff reminded the Board that the application had come before them on October 12, 2005. The application was also heard by the Castro Valley Municipal Advisory Council. CVMAC recommended

approval of the proposed bathroom addition and two additional parking spaces. It was recommended that the proposed rear accessory structure be removed from the design. Staff pointed out that the accessory structure currently met zoning requirements. Parking is the only aspect of the application that currently is not in compliance with the Ordinance. Member Palmeri asked County Counsel if the non-conforming use related to the reduced parking spaces. He then asked staff if the issue preventing the driveway from extending to the back of the property was the chimney. County Counsel confirmed that there is a general prohibition on the expansion of a non-conforming uses. In this case non-conformity related to parking. The Board, however has the discretion to make what they determine is appropriate for a particular application. Considerations can be structural nonconformity, the expansion of a non-conforming use or other considerations. Staff responded that even if two feet of the chimney were removed the proposed driveway would not meet width requirements. Public testimony was opened.

Mr. Lee Scott and his wife told the Board the home contained three bedrooms. Many homes in the neighborhood have been converted from two bedrooms into three bedroom homes. The conversion of the garage was done by the previous owner with approval by Alameda County. The home is now in need of new wiring, a new roof, plumbing and paint. The proposed accessory structure would provide a much needed additional bathroom, more storage space, and a work shop area for family projects. The only other design option would be to cut off an eight foot section of the home. This would result in a reduction of property value, and the loss of one bedroom. Public testimony was closed.

Member Palmeri said he was still concerned about approving a variance for a non conforming use. Ordinance language states that if approval is given in error the mistake should still be rectified. The Chair made a point that the garage conversion was done in 1958 with permits issued by the County. The fact that the conversion happened with approval, although it eliminated parking could be considered a special circumstance. Member Friedman added that common sense should prevail. Work was completed with permits. Many cases have come before the Board requesting variances for work done, without benefit of permit. He believed this application was an exception.

Member Palmeri motioned to accept the staff finding of approval with a modification to Tentative Finding #1. Condition #1 shall be modified to reflect that the non-conformity was created by Alameda County prior to the applicant submitting the variance application. Pre Hearing Recommendations shall become Conditions of Approval. The Chair asked for a modification to the motion. The motion shall include proposed Condition #4 to allow one off street parking space in the required front yard. Member Friedman seconded the motion. Motion carried 3/0. Member Spalding was excused.

3. **ZHITONG ZHANG, VARIANCE, V-11961** – Application to allow a rear yard setback of 14 feet, eight inches, where 20 feet is the minimum with the subdivision of the site into three lots, in an R-S-D-25 (Suburban Residence, 2,500 square feet Minimum Building Site Area per Dwelling) District, located at 16130 Maubert Avenue, northeast side, approximately 160 feet northwest of 162nd Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 0080-0048-020-04. (Continued from October 26, 2005).

Staff recommended approval of the application based on the fact that R-S (Suburban Residence), Zoning does not allow for compensating open space for side yard areas.

Staff clarified, Tentative Finding, #1 should be stated in the affirmative. If the parcel were zoned R-1 (Single Family Residence) as other lots in the area, the proposed setbacks would meet Ordinance requirements, therefore eliminating the need for a variance. Public testimony was opened.

The Chair asked Mr. Zhang if there would be two access points onto the parcel. The applicant confirmed there would be access points from Liberty Street and Maubert Avenue. Public testimony was closed.

Member Friedman motioned to adopt staff Tentative Findings with the modification to Finding #1. Tentative Finding #1 shall reflect in the affirmative. Member Palmeri seconded the motion. Motion carried 3/0. Member Spalding was excused.

4. **LUIS BARBOSA, VARIANCE, V-11971** – Application to permit the construction of an attached addition to the existing dwelling, so as to maintain a one foot, three inch side yard where five feet is required, in an R-S-SU (residential Suburban, Secondary Unit) District, located at 1343 Ash Street, east side, approximately, 100 feet west of Locust Street, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Numbers: 414-0086-024-01 and 414-0086-045-01.

Staff explained the house was oriented such that a commercial building on Foothill Boulevard is located at the rear north of the property. Recommendation was approval of the application. The proposed addition would be attached to the existing garage. On the side opposite of the garage the width of the proposed addition would extend northeast, intersecting with the rear lot line. As a result the setback is considered a side yard setback. Public testimony was opened.

Mr. Barbosa testified that the proposed design will allow the addition of bedrooms without the home extending completely to the rear property line. The second option would place the proposed addition directly behind the commercial building, which would eliminate privacy and reduce light. The total addition would include two bedrooms and one bathroom. Public testimony was closed.

The Chair asked the following questions:

- How much square footage would be deducted if the proposed addition were not attached to the garage
- Would a free standing design eliminate the need for a variance

Staff responded that currently a three foot space existed between the house and garage. The garage was built in 1957 with building permits and prior to zoning implementation in the area. It is considered nonconforming. A variance is required due to the location of the proposed addition (one foot and three inches from the side yard). The addition would aesthetically look better attached to the garage. Member Friedman concurred with staff.

Member Friedman motioned to adopt the staff finding of approval. Member Palmeri seconded the motion. Motion carried 3/0. Member Spalding was excused.

5. **JOSE MANUEL VALDES, VARIANCE, V-11972** – Application to allow construction of two dwelling units resulting in: 1) a five foot side yard setback where 10 feet is required; and 2) a one foot setback from the access

driveway where 10 feet is required, in a R-S-D-3 (Suburban Residence, 3,000 square feet Minimum Building Site Area per Dwelling Unit) District, located at 21709 Meekland Avenue, south west side, corner south east of Willow Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 429-0064-001-00.

Staff recommended approval of the application. Member Palmeri questioned that the parcel was not unique and that there were no special circumstances that could be applied in regard to the lot. He pointed out that 21 other parcels in the immediate area have the same width and depth. Staff responded that the parcel was narrow, and could not be developed without a variance. The parcel located two lots away did receive a variance for side yard and driveway setbacks. The Chair pointed out that many homes in the Cherryland District had been built in the 1930's and 1940's. It was the custom at that time to place the home in the center of the lot. He acknowledged after a site visit that the existing home was in great need of remodeling. Further questions of the Board were as follows:

- What were the specific comments from the Cherryland Association
- How many other homes in the area had received variances

The Cherryland Association believed the lot was too narrow and unsuitable for two additional dwelling units. Staff did not know the total number of variances that had been granted in the area. Public testimony was opened.

Mr. Valdes told the Board his proposal was consistent with others in the area. A number of setback variances had already been granted in the area. To accomplish the project a five foot setback would be necessary between the existing home and the second proposed driveway. Most of the structure of the current home would be torn down with the exception of the kitchen. Expansion would take place in the front and rear resulting in a five bedroom home. Public testimony was closed.

The Chair told the Board to take into consideration how the lots in Cherryland were designed. Most are 50 feet wide with space in the rear. Options available are variances or tearing down a portion of the house. Member Palmeri pointed out that alternate design options were available. One possibility would be to move the existing home to the rear of the lot. A minor relaxation of the set backs may still be required however this may be preferable to a dramatic deviation of zoning requirements. If the applicant is tearing down most of the existing home, the new design can then be modified to conform to setback standards. Staff pointed out that the current proposed design would only have one side yard setback, slightly less than required. Member Palmeri said another major issue was access to the proposed garages located at the center of the property. The applicant requested to address the Board again. Public testimony was re-opened.

Mr. Valdes said there was a mistake in the floor plan that was submitted. From the property line to the house is actually 16 ½ feet. Staff interjected and confirmed that 12 feet was needed for a driveway setback. Member Palmeri recommended that the application be continued for a brief period of time to verify setback measurements and discuss design options with staff. Mr. Valdes agreed. Public testimony was closed. Member Palmeri motioned to continue the application to December 7, 2005. Member Friedman seconded the motion. Motion carried 3/0. Member Spalding was excused.

APPROVAL OF MINUTES: Member Palmeri motioned to approve the Minutes of October 12, 2005 with submitted corrections. Member Friedman seconded the motion. Motion carried 3/0.

Member Palmeri motioned to approve the Minutes of October 19, 2005. Member Friedman seconded the motion. Motion carried 3/0.

Member Palmeri motioned to approve the Minutes of October 26, 2005. Member Friedman seconded the motion. Motion carried 3/0.

Member Palmeri motioned to continue approval of the September 14, 2005 Meeting Minutes until Member Spalding was present. Member Friedman seconded the motion. Motion carried 3/0.

STAFF COMMENTS & CORRESPONDENCE: The policy discussion for alternative hearing formats for lengthy agendas will be scheduled on December. Staff notified Member Friedman that his term for the Board of Zoning Adjustments will expire in December, 2005. Supervisor Miley's office will be forwarding renewal materials.

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

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

ADJOURNMENT:

There being no further business, the hearing adjourned at 7:15 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS