

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
DECEMBER 6, 2006
(APPROVED)**

The meeting was held at the hour of 10:30 a.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California.

FIELD TRIP: 10:30 a.m.

MEMBERS PRESENT: Vice Chair: Frank Peixoto; Members, Dawn Clark-Montenegro.

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

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner

FIELD TRIP: The meeting adjourned to the field and the following properties were visited:

1. **ALFRED CARBONETTI, CONDITIONAL USE PERMIT, C-8527** – Application to allow a massage therapy business, in a CVCBD-Sub-7 (Castro Valley Central Business District Specific Plan) Sub Area 7 District, located a 20200 Redwood Road, Suite #10, west side, approximately, 110 feet south of Modesto Street, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0770-001-00.
2. **JOSEPH MCGRATH, VARIANCE, V-12027** – Application to allow construction of a detached accessory structure (garage and shop) located in the portion of a lot, less than 75 feet from the front property line, in an R-1-L-B-E (Single Family Residence, Limited Agricultural, 5 Acre Minimum Building Site Area) District, located at 31089 Palomares Road, southwest side, approximately, 2.8 miles southeast of Palo Verde Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085A-3600-003-14.
3. **GARY POPE, VARIANCE, V-12035** – Application to allow expansion of a non conforming lot (reduced side and front yard setbacks) with the construction of a single family dwelling with: 1) a zero foot setback from the driveway where 10 feet is required; 2) a six foot side yard where 10 feet is required; and 3) no pedestrian walkway where one is required, in an R-S-DV (Suburban Residence, Density Variable) District, located at 594 West Sunset Boulevard, south side, approximately, 500 feet east of Royal Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel: 432-0016-009-00.
4. **ZORAN MILENKOVIC, VARIANCE, V-12038** – Application to allow a five foot side yard where seven feet is required with the construction of an attached garage; and construction of an accessory structure covering 58% of the required rear yard where 30% is allowed in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 3575 Christensen Lane, south side, approximately 800 east of Lake Chabot Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0529-002-00.
5. **LUIS BARBOSA, VARIANCE, V-12041** – Application to allow construction

of a new single family dwelling 27 feet, five inches in height where 25 feet is the maximum, in a P-D (ZU-1451- Planned Development, 1451st, Zoning Unit) District, located at 2867 Eugene Terrace, south side, approximately, 270 feet west of Dominic Court, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0405-036-00.

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Chair; Ron Palmeri; Vice Chair, Frank Peixoto; Member, Dawn Clark.

MEMBERS EXCUSED: Members: Jewell Spalding, and Lester Friedman.

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

There were approximately 6 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 1:30 p.m.

ANNOUNCEMENTS BY THE CHAIR: The Chair made no 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. **JOSE RAMIRO, CONDITIONAL USE PERMIT, C-8489** – Application to allow the continued operation of a tavern “The Stadium Club” in an ACBD (Ashland Cherryland Business District Specific Plan) – Transit Corridor District, located at 15698 East 14th Street, east side, corner north of Plaza Drive, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0034-007-00. (Continued from October 11 and November 15, 2006; to be continued to January 10, 2007).

Staff informed the Board they were still waiting for data from the Sheriff's Department regarding the application.

Member Clark motioned to accept the Consent Calendar as submitted. Vice Chair Peixoto seconded the motion. Motion carried 3/0. Members, Friedman and Spalding were excused.

REGULAR CALENDAR

2. **ALFRED CARBONETTI, CONDITIONAL USE PERMIT, C-8527** – Application to allow a massage therapy business, in a CVCBD-Sub-7 (Castro Valley Central Business District Specific Plan) Sub Area 7 District, located a 20200 Redwood Road, Suite #10, west side, approximately, 110 feet south of Modesto Street, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0770-001-00.

Staff recommended approval of the application. Board Members had no initial questions. Public testimony was opened.

The applicant, Mr. Carbonetti told the Board that he had received an approval recommendation from the Castro Valley Municipal Advisory Council, Sheriff's Department, and Alameda County Fire. He was in agreement with staff's Pre Hearing Recommendations. Vice Chair Peixoto asked staff if it was standard practice that a change in ownership triggers submission of a new use permit. Staff acknowledged that a change in ownership does require the new owner to obtain a separate use permit. The application under consideration is conditioned as such. Public testimony was closed.

Member Clark stated that the applicant had made all of necessary findings. She motioned to adopt the staff recommendation of approval. Pre Hearing Recommendations shall be adopted as Conditions of Approval. Vice Chair Pexioto seconded the motion. The motion to adopt the staff finding of approval was carried 3/0. Members, Spalding and Friedman were excused.

3. **JOSEPH MCGRATH, VARIANCE, V-12027** – Application to allow construction of a detached accessory structure (garage and shop) located in the portion of a lot, less than 75 feet from the front property line, in an R-1-L-B-E (Single Family Residence, Limited Agricultural, 5 Acre Minimum Building Site Area) District, located at 31089 Palomares Road, southwest side, approximately, 2.8 miles southeast of Palo Verde Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085A-3600-003-14.

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

- Has the comment received from Mr. Nielsen regarding encroachment concerns been resolved
- Have comments been submitted from the Department of Fish and Game

Staff researched the inquiry and determined that Mr. Nielsen's property at 31111 Palomares Road was adjacent to the south of another parcel owned by Mr. Mc Grath. The parcel on which Mr. Mc Grath proposes to build an accessory structure is a different parcel that does not boarder Mr. Nielsen's, Palomares Road property. Mr. Mc Grath has responded to the concerns raised in the initial letter. Thus far, staff has not been contacted by Mr. Nielson. As the project site is located at 31089 Palomares Road, the Neilson property would not be affected. Although no comments were received from the Department of Fish and Game, the applicant must comply with all requirements of all agencies set forth in the Conditions of Approval. The Department of Fish and Game is one of those agencies. Public testimony was opened.

The applicant, Mc Grath thought compliance with Condition #4 may prove to be difficult. He asked for an amendment to Condition #4. Typically PG&E requires a utility pole be placed 15 feet off of the property. If it becomes necessary to install a separate utility service he would obtain the appropriate easement. He has personally talked with Mr. Nielsen. Mr. Neilsen mistakenly thought an additional power line might cross his property. This was as a result of a misrepresentation. Mr. Mc Grath was able to clarify that he owns two parcels. No new power lines have been proposed. Furthermore the parcel in question is one parcel removed, from the Neilsen property. Once the issues were clarified Mr. Neilsen was ok with the project. Public testimony was closed.

The Chair asked County Counsel what language would be appropriate in this situation. Counsel recommended language that included the phrase, absence a valid easement or utility service will not cross

private property without an approved, valid utility easement. Vice Chair Peixoto moved to approve the application with the revisions to Condition #4, as stated. Member Clark seconded the motion. The Motion to approve the application with revisions to Condition #4 as stated was carried 3/0. Members, Spalding and Friedman were excused.

4. **GARY POPE, VARIANCE, V-12035** – Application to allow expansion of a non conforming lot (reduced side and front yard setbacks) with the construction of a single family dwelling with: 1) a zero foot setback from the driveway where 10 feet is required; 2) a six foot side yard where 10 feet is required; and 3) no pedestrian walkway where one is required, in an R-S-DV (Suburban Residence, Density Variable) District, located at 594 West Sunset Boulevard, south side, approximately, 500 feet east of Royal Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel: 432-0016-009-00.

Staff recommended approval of the request for a zero foot setback from the dwelling wall to the driveway with the absence of a pedestrian walkway, but recommended denial of the six foot side yard request. The property is in an R-S-D-V (Suburban Residence Density Variable) District. The parcel has the potential for three units which require that each not exceed 10% of the lot width. As a result the six foot, side yard would not meet 10% requirement. The proposal is new construction. Alternate design options are available. The driveway setback is reasonable as the existing home was built with a six foot, side yard in 1929 prior to zoning regulation. Board questions were as follows:

- Will the residence have a garage or provide uncovered parking
- Why do rear yard setback requirements vary for new residences vs. existing residences
- Can the property be sub-divided

Staff stated the proposed parking will be un-covered. The existing and the proposed two story residence would share the four parking spaces. Regarding setbacks, comparably in the R-1 (Single Family Residence) District a provision exists, allowing compensating open space. This property is located in an R-S-D-V District which has different provisions. It would be possible to sub-divide the lot. However any proposal would still be required to meet parking requirements, and the Minimum Square Footage of 3,500 per foot density requirement. Public testimony was opened.

The designer of the project Mr. Gary Pope introduced himself to the Board. An architect by trade, he stated that he has spent considerable time and detail on the design process. The project has been re-designed several times. The six foot, side yard is the best option. Alternate designs that considered the impact of future road setbacks were submitted to the Planner. She did not respond with comments. Mr. Pope said he also spoke with staff in person to discuss the options. Staff confirmed they did review all of the submitted material. The dedication of public right of way was taken into considered during the staff review process. Vice Chair Peixoto commented, typically when granting variances the Board omits the requirements of Public Works regarding future width lines if it appears there will be no real future impact. Additional Board questions for the applicant were as follows:

- If there sufficient space to place an additional two garage on the property
- Is guest parking provided
- Is there an area established for overflow parking

Mr. Pope said the property owner has a growing family, and does not plan to move. They would like a two story residence. The proposed design is economical and leaves open the possibility of future expansion. The placement of a garage may add width. This could limit future expansion options. The applicant currently parks in the 20 foot set back at the rear of the property. However this parking was not

considered in the parking requirement calculation. There is church located across the street from the property. After hours there is street parking available. The property owner, Mr. Tran was also present but did not wish to offer additional testimony. Public testimony was closed.

Vice Chair Peixoto was in agreement with the staff recommendation. The applicant did have alternate design options available. Vice Chair Peixoto motioned to uphold the staff recommendation to approve a zero foot setback from the dwelling wall to the driveway with the absence of a pedestrian pathway, and to deny the six foot side yard. Member Clark seconded the motion. Motion carried 3/0. Members, Friedman and Spalding were excused.

Mr. Pope asked the Board for clarification on the ruling. The Chair explained that the approval was for a zero foot setback from the existing home to the driveway. The absence of a pedestrian pathway has also been approved. The applicant will not be required to install a walkway.

APPROVAL OF MINUTES: November 8 and November 15, 2006.

Vice Chair Peixoto motioned to approve the Minutes of November 8, 2006 as submitted. Member Clark seconded the motion. The motion to approve the Minutes of November 8, 2006 was carried 3/0. Members Spalding and Friedman were excused.

Approval of the Minutes of November 15, 2006 was continued to December 13, 2006.

STAFF COMMENTS & CORRESPONDENCE: Staff informed Board Members that additional telecommunications information regarding cell towers would be distributed in the next meeting packet.

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

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: The Chair asked County Counsel to provide Members information regarding ethics. What rules, laws or guidelines apply to an individual on an Association or Board, regarding the ability to offer application comments or opinions if the application is within the vicinity of property owned by that official. Specifically an application that was heard by the CVMAC will also come before the West County BZA. The applicant's property is one parcel removed from a parcel owned by the Chair. In another capacity the Chair also sits on a Homeowners Architectural Review Commission for his neighborhood. The applicant's request for a height variance would not affect the Chair's property. Is it necessary and/or appropriate for the Chair to recuse himself in either capacity when the applicant's request is considered. If a Member does not participate in the decision would they have the ability to offer comments or opposition to the application. County Counsel told Board Members in general, although it is not mandatory to recuse oneself. A Board Member may wish to do so as it helps alleviate any sense of impropriety. Regarding actual legal statues that apply to Board Members, Counsel will research the question and respond at the next hearing.

ADJOURNMENT: There being no further business, the hearing adjourned at 2:15 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS