

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
DECEMBER 12, 2007
(APPROVED ON JANUARY 9, 2008)

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

REGULAR MEETING: 6:00 p.m.

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

MEMBERS EXCUSED: None.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel; Eric Chamblis; and Yvonne Bea Grundy, Recording Secretary

There were approximately 15 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 6:05 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.

CONSENT CALENDAR:

1. **TERESITA LAGUNA, CONDITIONAL USE PERMIT, C-8555** – Application to allow the continued operation of a 22 bed Residential Care Facility, in an R-1 (Single Family Residence) District, located at 268 Lewelling Boulevard, south side, approximately 100 feet east of Tracy Street, , unincorporated, San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 413-0093-002-00. (Continued from January 24, February 7, March 28, April 25, June 13 and September 12, 2007; to be continued to January 23, 2008).

Staff updated the Board on the status of the application. Staff has sent a letter to the Applicant informing them they must be in compliance with all Building and Fire Department requirements. If compliance is not met by January 23, 2008, Planning will recommend denial of the application. The Vice Chair asked what appeared to be causing the delay. Staff said the Fire Marshall spoke with the Applicant in August. At that time the Applicant said they had installed a sprinkler system. The Applicant was to then schedule an appointment for testing of the system. Thus far the Applicant has not contacted the Fire Marshall. The Vice Chair said the application would be acted upon at the January 23, 2008 Meeting. Without a permit the site could pose a danger to the elderly residents. The Vice Chair asked staff if there was a policy that required that the facility be shut down within 90 days, in the event of non-compliance. Staff responded there was no specific policy. However the Board could start revocation proceedings.

2. **VARIANCE, V-12003 – HHT ENGINEERING** - Application to allow a driveway located zero feet from the existing dwelling where 10 feet is required with the subdivision of one site into two lots (PM-8981) in an R-S-D-35

(Suburban Residence, 3,500 square foot, Minimum Building Site Area per Dwelling Unit Density) District, located at 134 Grove Way, northwest side, approximately 150 feet southeast of Meekland Avenue, unincorporated Cherryland Area of Alameda County, designated Assessor's Parcel Number: 429-0032-030-00. (Continued from March 28, May 23, August 22, September 26 and October 24, 2007; to be continued to January 9, 2008).

Member Clark motioned to accept the Consent Calendar as presented. Member Gil seconded the motion. Motion carried 3/0. The Chair, nor Member Adesanya participated in the vote, as they had not yet arrived at the meeting.

REGULAR CALENDAR

1. **KRISTIE CORUJO, CONDITIONAL USE PERMIT, C-8582 -**
Application to allow continued operation of a community facility (Child Care) for 50 children, in an R-S-D-15 (Suburban Residence, 1,500 square feet Minimum per Dwelling Unit) District, located at 20166 Wisteria Street, east side, approximately 0.2 miles south of Somerset Avenue, unincorporated Castro Valley area of Alameda County, bearing County Assessor's designation: 084D-0130-066-00. **Staff Planner: Richard Tarbell.**

Staff recommended approval of the application with the modification to Condition #4. The title, Zoning Administrator shall be replaced by, Planning Director. The Castro Valley Municipal Advisory Committee was in favor of approval for a 10 year period. Member Gil said she had toured the facility. It was very nice. Public testimony was opened.

Board questions for staff were as follows:

- What is the status of the use permit in the event of "change of ownership"
- Would a change in "facility operator" affect the use permit

Staff told the Board that a use permit is connected to the property. However Conditions of Approval can be added to modify the permit.

The Chair motioned to approve the application with the following modifications to Condition #4:
The title, Zoning Administrator shall be replaced by, Planning Director.

A Condition shall also be added that requires the notification of the Planning Director in the event of change of; Ownership of the business and /or Operator of the business. Member Clark seconded the motion. Motion to approve, Conditional Use Permit, C-8582 was carried 4/0.

Member Adesanya abstained and did not participate in the discussion or the vote for C-8582, as she arrived late.

2. **T MOBILE, CONDITIONAL USE PERMIT, C-8662 –** Application to allow a telecommunications facility (Cell Site) in a P-D (ZU-1334, 1336, 1341 Zoning Units) District, located at Coolidge Court, northeast side corner of Summer Glen Place, unincorporated Castro Valley area of Alameda County, bearing County Assessor's designation: 085A-0100-002-08. **Staff Planner: Christine Greene.**

Staff recommended a continuance of the application to allow review by the Palomares Hills Homeowners

Association. The application was continued at the CVMAC. Public testimony was opened.

There were no requests to speak during public testimony. Public testimony was closed.

The Vice Chair asked staff to clarify if the facility was to employ ground mounted equipment. If so, it does not appear that the location is a minimum of 300 feet from residences. If that is the case, the proposed application would not be in compliance with Telecommunication Guidelines. Staff responded that Telecommunication Guidelines recommend that ground mounted facilities be placed a minimum of 300 feet. However this is a Guideline the Board can overrule. The current placement is proposed at a distance of 250 feet, away from residences.

Member Clark motioned to continue the application to the February 27, 2008 Hearing. Member Adesanya seconded the motion. Motion carried 5/0.

3. **MIKE GOUREA, CONDITIONAL USE PERMIT, C-8675** – Application to allow an indoor recreation facility (Basketball), in a C-1 (Retail Business) District, located at 676 Bockman Road, south side approximately 50 feet east of Via Arriba, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0085-006-03. **Staff Planner: Richard Tarbell.**

Staff recommended a continuance to the January 23, 2008 Meeting. The San Lorenzo Homeowners Association would like to review the application. The Alameda County Sheriff's Department would also like to review the parking plan. A parking variance may be required for the site. Member Clark asked staff if they had verified the operational status of the recreation facility. Staff confirmed the basketball facility was not yet in operation. Public testimony was opened.

The Applicant, Mr. Gourea said he would like to move forward. However if a continuance is required by the Board, he does not object.

Ms. Peggy Sheidan said her home at 18701 Via Arriba backs up to the facility. She was very concerned about security. The shopping center is dark, and poorly lit at night. There are only 36 parking spaces for a use that requires 50 spaces. The parking situation is further exacerbated by the lack of on-street parking on Bockman Road, and Via Arriba. Local residents take all available spaces. During the yearly Zucchini Festival parking overflow also goes onto Via Arriba. It is a serious problem. Ms. Sheridan asked that the Applicant be required to share the proposed loitering plan, with the neighborhood. Information should also be available as to where patrons would wait, until an open basketball court is available. A sign-up notification has already been posted. This sign should be removed until all of the issues are resolved. Ms. Sheidan was in agreement with the HOA. Children need a place to go. However this particular location is too small. Ms. Sheridan closed her testimony, and asked the Board to deny the application.

Mr. Brian Fogel said his home at 18250 Via Arriba also abutted the facility. He has been a teacher in the area for 37 years. He told the Board that teenagers would be using the facility, not kids. The intentions are well meaning. However there will be gambling and betting taking place. Participants have to pay a fee to participate. The facility could bring up to 100 cars to the area, each car potentially playing loud music. The BZA should obtain an accurate profile of who will be utilizing the facility. The only remaining Athletic Leagues are run through PAL. After the shooting incident that occurred at the

Southland Mall no other facility will take on a tournament that is not run through PAL. Now tournaments are trying to move to the Unincorporated Areas to avoid police supervision. Mr. Fogel confirmed that current parking is insufficient on Via Arriba. There would not be enough space to park 50 vehicles at the

shopping center.

Mr. Wulf Bieschke, The President of the San Lorenzo Homeowners Association, was present. He read an excerpt from a letter he submitted from local business owners. He asked the Board to continue the application to allow people in the neighborhood to testify at the next HOA Meeting. Mr. Bieschke did not believe the project met the Zoning Ordinance requirement of 50 parking spaces. Currently there are only 36 spaces available at the site, and he did not believe the standard should be waived. Mr. Bieschke was also concerned about loitering in front of the building. There is a history of drug activity at the site. Preventative action is necessary. The Applicant says the program will be run by volunteers. However a paid staff person should be there to supervise. The Hours of Operation are from 12:00 noon to 7:00 p.m., school lets out at 3:00 p.m. What will prevent children from cutting class to play basketball. In addition the Applicant does not have a use permit for Game Time, his current business. Mr. Bieschke said he has seen patrons urinating outside of the establishment. Mr. Gourea should present his plans for building improvement, including public restrooms.

Mr. David Gehrke told the Board he owned Kwik Milady Dry Cleaners which is an occupant of the shopping center. He is a 3rd Generation Owner. He was also concerned about parking. The dry cleaner's is a drive-through business. When the shopping center was sold years ago his families business gave part of an egress in exchange for a total of 4, dedicated parking spaces. When the shopping center parking reaches capacity, vehicles park in the dry cleaners drive-through lane. Mr. Gehrke said there was also a problem with graffiti at the shopping center. He spends his own money each month to remove the graffiti that appears on his business. He also paints over the graffiti at the nearby gas station. If the recreational facility is approved, he will probably have to remove graffiti on a daily basis. Board questions for Mr. Gehrke were as follows:

- Is the cleaners open on week-ends
- Are the 4 designated parking spaces, delineated
- Is there a time limit for parking spaces in front of the businesses at the center

Mr. Gehrke said Kwik Milady was closed on Sundays. Monday through Friday they are open from 7:00 a.m. to 7:00 p.m. On Saturdays from 8:00 a.m. to 6:00 p.m. The parking spaces are not marked. Thus far he has not had a problem with the other small business owners that occupy the center about the spaces. There is no time limit currently marked on the spaces. The real parking problems occur during the Zucchini Festival.

The Chair asked the Applicant, Mr. Gourea if he was aware of the upcoming HOA Meeting. She also asked about availability for upcoming BZA Hearings. Mr. Gourea said he was not aware of the HOA Meeting. He was unsure of his upcoming schedule but preferred to have the hearing as soon as possible. The Chair explained that if a continuation was not acceptable to Mr. Gourea, the Board could take action based upon the information currently before them. Mr. Gourea agreed to a continuance. Public testimony was closed.

The Vice Chair motioned to continue, C-8675 to the February 13, 2007 Meeting. Member Gil seconded the motion. Motion carried 5/0. Member Adesanya asked that the Applicant to include a draft of a Loitering Plan with the upcoming staff report.

4. **METRO PCS, CONDITIONAL USE PERMIT, C-8684** - Application to allow a telecommunications facility in an "A" (Agricultural) District, located at 17930 Lake Chabot Road, north side, approximately 0.34 of a mile east of Fairmont Drive, unincorporated Castro Valley area of Alameda County, bearing

County Assessor's designation: 084D-1400-002-17. **Staff Planner: Christine Greene.**

Staff reviewed the application, and clarified that the facility was located behind the maintenance yard at the site. Public testimony was opened.

The representative, Ms. Maryann Miller Novak was present. Ms. Novak was in agreement with the Conditions of Approval. Member Clark asked staff if the equipment cabinet would be enclosed. Ms. Novak responded that new equipment would be housed in an enclosed cabinet. The existing equipment is not in a cabinet. However she would be happy to install a fence to shield all equipment. Public testimony was closed.

Staff informed the Board that currently a fence was not part of the Conditions of Approval. However the Board could alter and/or add Conditions accordingly. Member Adesanya recommended Condition #2 be modified to include language that: all telecommunications equipment be surrounded by fencing. New equipment, and fencing shall also be painted beige to blend in with the existing equipment, and surroundings. The Chair recommended further expansion of Condition #2. Language shall also include the addition of enclosed, equipment cabinets. Equipments cabinets shall also be beige in color to blend with existing equipment, and surroundings.

Member Clark motioned to approve the application with the modification to Condition #2. all telecommunications equipment shall be surrounded by fencing. New equipment, and fencing shall also be painted in beige to blend in with the existing equipment, and surroundings. New communications equipment shall be housed within enclosed cabinets. Cabinets shall be beige color, to blend in with existing equipment, and surroundings at the site. The Vice Chair seconded the motion. Motion carried 5/0.

5. **VARIANCE, V-12061 - SEAD SISIC** - Application to allow a six foot high fence where four feet is the maximum, and to allow an accessory structure in the front half of the lot in an "R-1-RV" (Single Family Residence, Recreational Vehicle) District, located at 18658 Crest Avenue, northeast side, approximately 440 feet northwest of Titan Way, in the unincorporated Castro Valley area of Alameda County, and designated Assessor's Parcel Number: 084B-0370-007-13. (Continued from May 23, June 27, August 22, September 26, October 24 and November 7, 2007).
Staff Planner: Christine Greene.

Staff reviewed the application. The application had been continued multiple times to: obtain additional site measurements, consider design options, and to obtain more information from County Agencies. Staff recommended denial of the application. The Applicant met with the Alameda County Traffic Department in addition to the Staff Planner. The Applicant was not opposed to modifying the fence with wrought iron. However the Alameda County Traffic still felt the line of site would be obstructed. Board Members had the following questions for staff:

- What was the most recent recommendation of the CVMAC
- What is the total number of trips generated on Crest Avenue
- How old is the current fence

Staff responded that the application had not returned to the CVMAC since the October Hearing. The CVMAC recommendation at that time was also denial. A traffic study was not necessary. Traffic is minimal at that segment of Crest Avenue. There are only a few homes further up the street past the

Applicant's home. The fence was built a few years ago. Public testimony was opened.

The Applicant, Mr. Sisic said he had met with Alameda County Traffic. They reasserted the fence was a visual obstacle, but would not specifically explain in what manner. Mr. Sisic showed photographs which he believed supported his contention. Sufficient visibility was present. In addition the Speed Limit was 45 miles per hour. Other homes on the street extended outward toward the curve of the road. There do not appear to be any visibility issues on the street. He did not understand if homes did not block ingress and egress, how could his fence. Mr. Sisic also showed photographs of fences which were taller than his. Mr. Sisic said his property needed a 6 foot fence to prevent people from entering the swimming pool, located in the front yard. Initial Board questions were as follows:

- Would the Applicant be willing to replace a portion, or the fence in its entirety with wrought iron
- Is the lot considered a corner lot
- What are the fence height requirements for a corner lot
- What are the fence height requirements for a swimming pool
- Can the fence be redesigned in a curve to set back further from the street, where necessary
- When were the other neighborhood fences, erected
- Can the columns for the corner portion of the fence be removed or lowered
- Is the RV parked on the property within compliance of the Zoning Ordinance
- Can the RV be parked on the street
- Were Building Permits obtained for the cabana structure

Staff told the Board the property is considered a corner lot. Front fencing cannot exceed a height of 4 feet. Fencing height on the sides of the property cannot exceed 4 feet, until you are 30 feet back from the intersection of the street. Swimming pool requirements are part of the Building Code. Staff did not have Building Requirements available at the meeting. The R-1-CSU-RV, District does allow Recreational Vehicle Parking. The Applicant obtained a permit in 2006 to park the RV on the property. If the RV were moved to another section of the property, it may cause a site distance issue. It cannot be parked on the street. All of the structures on the property are currently in existence. The Applicant is seeking permits for the structures, and the fence. Staff then referred to Tentative Finding #2. Although there is no other suitable location on the lot for an accessory structure, the size of the structure exceeds more than 30% of the lot coverage. Allowing the structure to remain would be granting, special privilege.

Mr. Sisic said it would be very difficult to modify the existing fence into a curved design, especially since he does not know exactly what portion of the fence to modify. He was not aware at the time of installation, that permits were required for the cabana. Member Gil commented that the fence was very attractive. The Chair agreed. Prior to the Applicant living in the home, the frontage was filled with weeds. Further, the Chair believed the Board had approved a variance for a wrought iron fence on Hidden Lane. It was unfortunate Traffic Engineering was not in favor of a wrought iron fence at this location. Fence height still appears to be an issue.

Additional Board questions were as follows:

- What is the height of the fence columns
- What is the distance of the cabana from the sidewalk
- Would the removal of the cabana roof, bring the structure into compliance
- Is the swimming pool considered an accessory structure
- Can the cabana be placed on any other section of the lot
- What percentage of the accessory structure exceeds the 30% lot coverage allowance
- Is the accessory structure portable

Staff confirmed that the swimming pool is not an accessory structure. Removal of the accessory structure roof would not address the issue of lot coverage. Staff again referred to Tentative Finding #2. There is no suitable location for the cabana at the rear of the yard. However the structure is located closer than 6 feet to other structures on the lot. The accessory structure is also in the front half of the lot, which is not allowed in the Zoning Ordinance.

Mr. Sisic said the fence columns were approximately 6 feet in height. The fence could be lowered to a height of 4 feet. However at the corner as a result of the slope, the height would be 2 feet. A height of 2 or 4 feet would not address the safety issue with the public, possibly gaining access to the swimming pool. The distance from the cabana to the sidewalk is approximately, 20 feet. In addition there is a 7 foot sidewalk adjacent to the street. The pool is about 30 feet from the street. The cabana does have a foundation, but is not permanently set into the ground. However there is no other place for the cabana on the lot. The rear yard is too small.

Member Idesanya said a pool cover may help reduce the risk, and restrict access to the pool. The Vice Chair suggested the Applicant consider moving the cabana back from the corner, of the property. Mr. Sisic said the Traffic Engineering Department never gave him any specific direction as to how to bring outstanding issues into compliance. He does not know where to lower the fence, or how much to move structures. The Chair pointed out that Traffic Engineering had issue with fence height, as it relates to site distance obstruction. It looks as if there are discrepancies between the site plans submitted by the Applicant, compared to the photographs. Each site plan is also from a different angle. She recommended the Board take another field trip to the site. Member Clark agreed the site plans were confusing. Mr. Sisic said the plans were accurate. Staff interjected that the hand drawn site plan provided by the Applicant, did not appear to accurately represent the property. Public testimony was closed.

Member Adesanya suggested a continuance to allow the Applicant to present an accurate set of plans. The plans must include all fences and accessory structures. The Chair also asked Mr. Sisic to present design options as to how the fence might be modified. Member Gil commented that when she visited the site. She did not recall the accessory structure impeding ingress or egress. The Vice Chair motioned to continue Variance, V-12061, to the January 23, 2008 Meeting. The Board will also take another field trip to the site on January 9, 2008. Member Gil seconded the motion. Motion carried 5/0.

6. **BEVERLY DIXON, VARIANCE, V-12087** – Application to allow a four foot rear yard where 20 feet is the minimum required to retain an existing solarium, located in an R-1-BE-CSU-RV (Single Family Residence, 7,000 square feet Minimum Building Site Area, Conditional Secondary Unit, Recreational Vehicle Parking) District, located at 5953 Highwood Road, south east side, approximately 500 feet north of Lomond Way, unincorporated Castro Valley area of Alameda County, Assessor's Parcel Number: 085-1605-012-00. (Continued from November 14, 2007). **Staff Planner: Christine Greene.**

Staff reminded the Board the application had come before them on November 14, 2007. The recommendation was approval. A survey was conducted on the property which confirmed a 7 foot, rear setback. The application did not return to the Castro Valley Municipal Advisory Committee, as they recommended approval from the onset. Public testimony was opened.

The Applicant, Mrs. Beverly Dixon was present. Mrs. Dixon did not present testimony in addition to the staff presentation.

Mr. Felix Elizalde, lives at 5942 Greenridge Road, directly behind the Dixon's property. He asked staff to view a copy of the survey, indicating the rear property line of the Dixon property. Staff testified that the staff planner confirmed the surveyor's measurements. Datum markers were present at the site. Mr. Elizalde asked if the Dixon's were required to record the survey document at the County Recorder's Office. Staff confirmed that the variance would not be recorded at the Recorder's Office. Recordation of the survey is not required. However the Applicant can chose to do so. Member Gil said she had also visited the site. The property is unique, as a result of being located on a hill. The slope is deceptive in that it appears that the rear yard would be at the base of the hill. However that is not the case. Member Adesanya added that if the Elizalde property was referenced in the survey, Mr. Elizalde could also file a copy of the survey at the Recorder's Office. Public testimony was closed.

Member Adesanya, moved to uphold the staff recommendation of approval of a 7 foot rear yard. Member Gil seconded the motion. Motion carried 5/0.

APPROVAL OF 2008 BOARD OF ZONING ADJUSTMENTS CALENDAR: Member Clark motioned to adopt the 2008 Board of Zoning Adjustments Calendar. Member Gil seconded the motion. Motion carried 4/0.

STAFF COMMENTS & CORRESPONDENCE: Staff updated the Board on the status of Variance, V-12080-Kramer. The application returned the CVMAC on December 10, 2007. There were still many issues regarding the proposal. The CVMAC recommended denial. The application will be heard again by the BZA on January 9, 2008.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: The Chair asked staff to ensure Code Enforcement verify the removal of the notice for basketball sign-ups at 676 Bockman Road. The Chair also asked staff if a CUP was required for the current use at the site. Staff responded that the location currently had a retail store for pinball machines, video games, etc. Rental time is sold in order to test the games. The use is border-line, as to the requirement of a CUP. In staff's opinion it does not meet the threshold for a permit. However staff will conduct further research as to the requirement of public restrooms.

Member Clark informed staff that Cherubim Church & Child Care Center (C-8600) appeared to be defunct. Although the permit was granted in July, she questioned the possibility of the church being, closed.

ADJOURNMENT: There being no further business, the hearing adjourned at 8:00 p.m.

