

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
DECEMBER 13, 2006
APPROVED JANUARY 24, 2007**

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; Lester Friedman and Dawn Clark-Montenegro.

MEMBERS EXCUSED: None.

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

There were approximately 4 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 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. **4000 AUTO WRECKERS, CONDITIONAL USE PERMIT, C-8419** – Application to allow continued operation of an auto dismantling yard, in an M-2-B-E (Heavy Industrial, 5 acre Minimum Building Site Area) District, located at 3810 Depot Road, south side, approximately 0.75 miles west of Clawiter Road, unincorporated Eden area of Alameda County, designated Assessor's Parcel Number: 0439-0070-008-06. (Continued from April 12, May 10, August 9 and August 27 and October 11, 2006; to be continued to February 28, 2007).
2. **JOHN SULLIVAN, CONDITIONAL USE PERMIT, C-8495** – Application to allow continued use of one site for: a) an outdoor storage yard; b) occupancy of a contractor's unit; and c) contractor's storage yard, in an M-2 (Heavy Industrial) District, located at 16520 Worthley Drive, southwest side, approximately 1,650 feet southeast of Grant Avenue, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 438-0010-004-14. (Continued from August 9, August 23 and October 11, 2006; to be continued to January 24, 2007).
3. **PHOI PHAN, VARIANCE, V-11951** – Application to allow construction of

four dwelling units with: a) A five foot side yard; b) a two foot driveway set back, raised to four feet; c) 1,536 square feet of open space where 2,400 square feet of open space is required; d) no sidewalk; and e) A 13 foot wide driveway where 16 feet is required in an R-S-D-20 (Suburban Residence, 2,000 square feet Minimum Building Site Area per Dwelling Unit) District, located at 230 Laurel Avenue, north side, approximately 400 feet west of Princeton Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 429-0091-058-00. (Continued from April 26, June 28, July 26, September 13 and October 11, 2006; to be continued to January 24, 2007).

4. **ACKLAND INTERNATIONAL, VARIANCE, V-12003 and TENTATIVE PARCEL MAP, PM-8981** – Application to subdivide one site into three lots with a 12 foot driveway where 20 feet is required in an R-S-D-35 (Suburban Residence, 3,500 square foot Minimum Building Site Area) 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 October 25, 2006; to be continued to February 28, 2007).
5. **ALEXANDRU TET, VARIANCE, V-12016** – Application to allow conversion of an accessory structure into a secondary unit with A) a one foot rear yard setback where 20 feet is required; B) a two foot, eight inch side yard where six feet is required; and C) eight feet between structures where 10 feet is required in an R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 18787 Carlton Avenue, southwest side, approximately 255 feet southeast of Sydney Way, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0420-004-03. (Continued from September 13 and October 25, 2006; to be continued to March 14, 2007).
6. **JOE TEIXEIRA, VARIANCE, V-12023 and PARCEL MAP, PM-9237** – Application to subdivide one parcel into three lots and a variance to allow a four foot setback from a private street where 10 feet is required, in an R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 19448 Lake Chabot Boulevard, east side, approximately, 250 feet north of Barlow Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0529-038-04. (Continued from October 25 and November 15, 2006; to be continued to January 10, 2007).

Member Spalding motioned to accept the Consent Calendar as submitted. Member Friedman, seconded the motion. Motion carried 5/0.

REGULAR CALENDAR

1. **RAYMOND WONG / RAJESHWAR SINGH – CONDITIONAL USE PERMIT, C-8492 and VARIANCE, V-11997** – Application to construct two new secondary dwelling units and retain the existing dwelling as the third unit providing a 12 foot wide driveway where 20 feet is required: a 16 foot rear yard where 20 feet are required; and 7,440 square feet of lot area where 7,500 square feet is required for a third unit in an R-2-B-E (Two Family Residence with a

Minimum Building Site Area of 8,750 square feet) District, located at 16790 Los Banos Street in the unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0083-007-01. (Continued from July 12, 26, August 23, September 27, October 11, 2006 and November 15, 2006).

Staff recommended denial of the application. There is some discrepancy in the Assessor's Records regarding the exact size of the parcel. Dimensions are shown as 50 feet in width by approximately 150 feet in depth. The lot square footage is listed as 7,440 square feet. Although it is apparent that a documentation error does exist, the parcel would still not meet the 8,750 square foot, Minimum Building Site Area requirement of the Combining District. Initial Board questions were as follows:

- Is the property located in an Earthquake Trace Fault Zone
- Has the question raised by the applicant in reference to special circumstances regarding easements and improvements on the neighboring property been resolved

Staff informed the Board that a neighboring lot on Marcella Street is located within an Earthquake Trace Fault Zone. The applicant's parcel is not. The applicant believes that special circumstances apply to their property. A variance was granted on the neighboring property for a reduced front yard to avoid a fault trace located midway on the parcel. The variance did not address the rear yard reduction. In addition the applicant asserts that a 24 foot driveway between the properties is sufficient to meet driveway width requirements. There is no established easement agreement for the driveway. The neighbors state they are not aware of an easement agreement, and confirmed they are not in negotiations to establish an agreement. Half of the driveway would be 12 feet. A 12 foot width still would not meet the 20 foot minimum driveway requirement. Staff told the applicant, Zoning Ordinance Section 17.54.080 (A) requires that variance findings must be made to grant a variance request. Special circumstances are relevant when they apply to the size, shape, topography, location or surroundings applicable to the property. Public testimony was opened.

The architect, Raymond Wong spoke on behalf of the applicant. He has worked with planning staff for some time on the application. Mr. Wong acknowledged there were issues with the project. However they were not insurmountable. The square footage of the lot will allow the addition of second unit. An alternate solution would accommodate the applicants request for three units. Originally Mr. Wong believed the residence next door had a 16 foot rear yard setback. Once he was made aware of the seismic issues which resulted in the necessity of a variance, Mr. Wong developed an alternate design. The applicant would like a 16 foot rear setback. However they are prepared to comply with required 20 foot setback as the alternate design will accommodate either option. The property owner would like to pursue the request for a third unit. Parking requirements can be met that would not require a 20 foot wide driveway. A written easement agreement between the two property owners does not currently exist. If the application is approved, the applicant will obtain a written easement agreement for the use of 12 feet. Board Members had the following questions for Mr. Wong:

- What has prevented the applicant from establishing a written easement agreement between the properties
- Does the alternate design proposal meet the requirement for open space
- What is the current width of the driveway on the applicant's property

Mr. Wong told the Board a new fence had been installed between the properties. There had been a

misunderstanding as to who would pay for the fence. That issue has been resolved. The Wong's do not have a full 12 feet at this time. That will be established when the written easement is obtained. Member Spalding commented that the absence of a written easement could create legal issues. Member Friedman suggested a continuance might be in order. The Board could not act on the variance request for driveway width, without a written easement agreement. Mr. Fong asked the Board if they could give him an indication as to the possibility of approval for three units. Member Spalding informed Mr. Wong that an advance opinion would not be possible. Public testimony was closed.

Member Spalding motioned to continue the application to March 28, 2007. Vice Chair Peixoto seconded the motion. Motion carried 5/0.

2. **DAVIS HUNG PHAN, CONDITIONAL USE PERMIT, C-8510** – Application to allow a massage therapy business, in an ACBD - FA (Ashland Cherryland Business District Specific Plan) Freeway Access District, located at 11, Lewelling Boulevard, north side, approximately, 300 feet east of Via Granada, unincorporated San Lorenzo area, of Alameda County, designated Assessor's Parcel Number: 413-0015-038-00.

The staff recommendation was denial. Vice Chair Peixoto asked staff if the application had been referred to the San Lorenzo Village Homes Association. Staff confirmed the application was not. Member Friedman asked staff to further expand on why the use may not be compatible with the FA (Freeway Access) Zoning. Staff said the Redevelopment Agency was not in support of the application. The proposed massage operation would not be compatible with the envisioned type of business growth. A massage therapy business at this location does not mix well with freeway design in the area. In addition, the County is currently negotiating to purchase of a portion of the subject property frontage. The frontage would encompass a depth of six feet, from the front property line. This could impact parking availability on the site. Public testimony was opened.

The applicant, Mr. Phan was present. Member Spalding asked Mr. Phan if had reviewed the staff report as the staff recommended was denial. Mr. Phan responded that he had not read the staff report. The Board recommended a continuance to allow staff to explain all of the findings, and issues. It appeared there may be a language barrier. Staff should also involve an interpreter. Public testimony was closed.

Board Members asked if local homeowners would be affected by the widening of Lewelling Boulevard. Staff confirmed that the County Real Estate Department had notified come of the homeowners in the area. The Board requested that staff include further information regarding the proposed street widening when the item returns for consideration. In the interim, referrals should be sent to the San Lorenzo Village Homes Association, and the Cherryland Association.

Member Spalding motioned to continue the application to January 24, 2007. Member Friedman seconded the motion. Motion carried 5/0.

3. **ALFREDO GONZALEZ, VARIANCE, V-11989** – Application to allow construction of a seven foot, six inch high fence where four feet, zero inches is the maximum height allowed, in an "A" (Agricultural) District, located at 22469 Eden Canyon Road, north west side, approximately 0.65 miles north east of Hollis Canyon Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085A-0100-003-00. (Continued from May 24, June 14, July 12, September 13, October 11 and November 8, 2006).

Staff reminded the Board that the application had been continued from previous hearings to allow the applicant to provide additional topographical data. The staff recommendation was denial. However the applicant would like to submit revised plans for consideration. The new request is for a 6 foot fence. Board questions were as follows:

- Is the new proposal of 6 feet in compliance with the Zoning Ordinance
- Has the Conditional Use Permit for the horse boarding facility expired
- Can the applicant continue the horse boarding “use” prior to a determination regarding the variance request
- What is the total number of agricultural caretaker units on the property

Staff said that a 6 foot fence would still exceed the maximum allowed height of 4 feet. At the present time only the variance application is before the Board. The County has developed a separate application for Horse Boarding Facilities. A new application is being processed. The prior use permit has expired but Mr. Gonzalez is allowed to operate, as he is within the review process. Currently, there are two caretaker units on the property. The applicant is requesting a third. This may be a possibility through a Williamson Act Contract. Public testimony was opened.

Mr. Wright the architect for project reviewed past design revisions. The 7 and ½ foot design has now been changed to 6 feet. To maintain security the average 4 foot fence will not suffice. The “A” (Agricultural) District will allow a 6 foot wire fence. The current proposal combines both concepts. The columns will be spaced 25 feet apart at a height of 6 feet. The wrought iron design between the posts will swag at a height slightly lower than 6 feet. The gate area will be slightly higher. This compromise will help protect the valuable Andalusia horses on the property. Mr. Gonzalez’s neighbors are in support of the design. Board questions were as follows:

- Did CVMAC recommend approval of the of a 20 foot setback from the caretaker’s unit
- What is the average height of the wrought iron portion of the fence

Mr. Wright said the wrought iron portion averaged 5 feet. The CVMAC recommendation has been incorporated into the design. Staff clarified that the 20 foot setback is from the front property line. This allows cars to enter the property without traffic cueing onto Eden Canyon Road. Mr. Wright confirmed that the additional setback from the property line was possible. Public testimony was closed.

Member Spalding motioned to approve the application. Special circumstances are present due to the extraordinarily deep, narrow lot. The front half of the parcel also has a natural slope. The balance of the topography consists of steep hills and canyons. Granting the application will not be a special privilege. The parcel is in an “A” (Agricultural District) which allows, 6 foot wire fencing. Fence placement is also restricted to the front of the parcel due to an existing leech field. The fence will not be a detriment as the open design would not inhibit pedestrian, vehicular or horse traffic. In addition the fence provides an added level of safety for the horses boarded on the property.

Member Friedman seconded the motion with the modification that the staff finding be included: The excess fence height would not cause a safety hazard or cause line and/or site issues for drivers. Member Spalding accepted the modified motion. The motion to approve the application carried 5/0.

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.

Staff recommended approval of the 5 foot side yard, and denial of the accessory structure covering 58% of the required rear yard. The CVMAC made the same recommendation. Initial Board questions were as follows:

- What is the size of the existing pool house
- Is the square footage of the existing pool house included in the calculation of rear yard coverage

Staff responded that the square footage of the existing pool house is 120 square feet. The pool house area is part of the rear yard coverage calculation. Although a separate structure, the combined square footage of both structures would exceed zoning requirements. Public testimony was opened.

Mr. Milenkovic testified on behalf of the applicant. The applicant, Mr. Sabnovic would like to use the pool, year round. The old, flat pool cover needs to be replaced. Mrs. Sabnovic's used to be a professional swimmer and would like to use the pool throughout the year. Area winter's can be cold, and the proposed cover design will provide some insulation. Mr. Milenkovic was in agreement with the staff finding regarding the five foot side setback. The neighbor on the right side of the property has a five foot setback too. By granting the variance, the garage can be expanded. The enclosed design will benefit the adjoining neighbor as well. Board Members had the following questions:

- Will the domed enclosure cover the entire pool area
- What is the height of the pool cover
- Is the estimated height calculated from the water or from the ground
- Is the pool cover removable
- What are the exact dimensions of the pool cover
- What are the dimensions of the pool
- What is the distance from the edge of pool to the outer edge of the pool cover
- Will the existing pool house be demolished

Mr. Milenkovic said that the modular cover can be delivered and assembled on-site. The cover will be attached to mounting tracks, a slight distance from the pool. The mounting tracks will be set on the ground at the most conservative distance possible, approximately 6 feet. The panel covers are 8 feet which is standard for the pool cover industry. The panels are also removable. The estimated height is 6 to 8 feet. At the widest point the pool spans, 25 feet. Mr. Milenkovic said that he did not have the manufactures design specifications present but offered to submit them for Board review. The applicant would like to retain the pool house for storage of their BBQ equipment. Public testimony was closed.

The Board had the following questions for staff:

- What classifies the pool cover as an accessory structure
- What was the basis of the CVMAC recommendation of denial of the pool cover

Staff explained that a structure that sheds water is considered an accessory structure. A carport or a portable structure is considered an accessory structure. As the popularity of the portable tent covers has increased, the number of enforcement complaints has dramatically increased. Member Spalding pointed out that compared to a carport the pool cover can be open, as well as closed. Staff responded that it would be difficult to monitor and enforce. At the present time staff had no further details as to the CVMAC recommendation regarding the pool cover.

Vice Chair Peixoto motioned to uphold the staff recommendation of denial. The finding was in agreement with the Zoning Ordinance. The Chair seconded the motion. The motion to uphold the staff recommendation of denial failed to pass by a vote of 2/3.

Member Clark asked staff if the Board could consider the variance request for the side yard separately from the pool cover. The side yard could be voted on now. Consideration of the pool cover can be continued. This would allow the applicant time obtain additional measurements and placement information. The applicant should also submit alternate plans that consider removal of the pool house. Staff confirmed that was possible. The Chair clarified for the record that the Member Clark wished to bifurcate the application.

Member Clark motioned to uphold the staff recommendation of approval of the variance request for a five foot side yard. Consideration of the pool cover request will be continued to February 28, 2007. Vice Chair Peixoto seconded the motion. Motion carried 5/0.

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.

The Chair recused himself and did not participate in consideration of the application. The gavel was passed to Vice Chair Peixoto. Vice Chair Peixoto announced that the CVMAC recommended the application be continued to allow further review of possible impacts. Public testimony was opened.

The applicant, Mr. Barbosa was also in favor of the continuance. Public testimony was closed.

Member Clark motioned to continue the application to January 24, 2007. Member Spalding seconded the motion. The Chair abstained. Motion to continue the application was carried 4/0.

APPROVAL OF MINUTES: November 15, 2006. Staff secretary, Yvonne Bea Grundy and Board Members reviewed a recording of the November 15, 2006 Meeting to review discussion regarding the split decision vote on Conditional Use Permit, C-8515. Member Spalding motioned to approve the Minutes of November 15, 2006 with submitted corrections and clarifications. Member Clark seconded the motion. The Chair abstained as he was not present at the November 15, 2006 Meeting. Motion carried 4/0.

STAFF COMMENTS & CORRESPONDENCE: Staff made no comments.

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

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

ADJOURNMENT:

There being no further business, the hearing adjourned at 9:00 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS