

**MINUTES OF MEETING  
WEST COUNTY BOARD OF ZONING ADJUSTMENTS  
DECEMBER 15, 2010  
(APPROVED JANUARY 12, 2011)**

The Regular 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:** Chair, Dawn Clark-Montenegro; Vice Chair, Kathy Gil; Members, and Frank Peixoto.

**MEMBERS EXCUSED:** Jewell Spalding.

**OTHERS PRESENT:** Phil Sawrey-Kubicek, Senior Planner; County Counsel, William Fleishhacker; Code Enforcement staff; and Yvonne Bea Grundy, Recording Secretary.

There were approximately 18 people in the audience.

**CALL TO ORDER:** The meeting was called to order by the Chair at 1:03 p.m.

**ANNOUNCEMENTS BY THE CHAIR:** The Chair announced that Item #2 on the Regular Calendar, Valley Pointe Premium Health Services, PLN-2010-00065 will be moved to the Consent Calendar. The Item will be considered at the January 12, 2011 Hearing.

Item #3 on the Regular Calendar, Anchor Education, PLN-2010-00085 will now be the first item heard on the Agenda.

**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.

**Neighborhood Preservation Ordinance Abatement Hearing**

**1. Eduardo & Liwayway Aglibot, Laurel Ave., Hayward, CA 94541**

In violation of Alameda County Ordinances 17.52.270 and 6.65.030 E (2).

1. Maintaining a canvas accessory structure located in the front half of the property and within six feet of the residence; &
2. Parking vehicles on an unpaved surface.

Member Peixoto motioned to uphold the staff recommendation. Declare the property a public nuisance and uphold the previously issued fines/fees in the amount of \$612.00. The Vice Chair seconded the motion. The motion carried 3/0.

**CONSENT CALENDAR:**

1. **FRED PRICE / EL SHADDI MINISTRIES, CONDITIONAL USE PERMIT, C-8762, PLN-2009-00037, VARIANCE, PLN-2008-00020** – Conditional Use Permit Application to allow continued operation of a church and a Variance Application to allow fewer than the required on-site parking spaces in a R-C ABCD (Residential Commercial, Ashland Cherryland Business Specific

Plan) District, located at 565 East Lewelling Boulevard, south west side, corner southwest of Wickman Court, unincorporated San Lorenzo, area of Alameda County, designated Assessor's Parcel Numbers: 413-0031-053-00 and 413-0031-054-00. (Continued from November 12, 2008 and January 28, February 25 and May 27, June 10, July 8, September 23, October 28 and December 16, 2009; and April 14, August 25 and November 10, 2010; to be continued to January 26, 2011). **Staff Planner: Richard Tarbell.**

2. **VALLEY POINTE PREIM HEALTH SERVICES LLC / JEREMY GRIMES, CONDITIONAL USE PERMIT, PLN-2010-00065** – Application to allow continued operation of 50 bed skilled nursing facility in an R-S-D-3 (Suburban Residence, 1,500 square foot Minimum Building Site Area per Dwelling Unit) District, located at 20090 Stanton Avenue, east side, approximately 75 feet northeast of Stanton Hill Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084A-0279-003-00. **Staff Planner: Shahreen Basunia.**

Staff requested PLN 2010-00065, Valley Pointe Premium Health Services be removed from the Regular Calendar, and placed on the Consent Calendar. The project was considered by the Castro Valley Municipal Advisory Committee. A discrepancy was discovered between the number of beds approved in the prior permit and the number requested in the current permit. The application will be re-noticed, and scheduled for the January 12, 2011 Hearing.

The Vice Chair motioned to accept the Consent Calendar with as modified. Member Peixoto seconded the motion. The motion carried 3/0.

#### **REGULAR CALENDAR**

1. **ANCHOR EDUCATION / HUGH FUSSELL, CONDITIONAL USE PERMIT, PLN-2010-00085** – Application to allow operation of a K-12 school for up to 30 children in an R-1-SU-RV (Single Family Residence, Secondary Unit Permitted, Recreational Vehicle Parking Regulations) District, located at 19234 Lake Chabot Road, east side approximately 75 feet north of Barrett Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0529-011-02. **Staff Planner: Christine Greene.**

Staff recommended approval of the application. The Castro Valley Municipal Advisory Committee also recommended approval. The Chair asked when the permit expired. Staff confirmed five years. The permit is subject to a review in one year and a second review in five years. Public testimony was opened. No one requested to be heard on the matter. Public testimony was closed. The Chair complemented staff on the excellent staff report.

**The Vice Chair motioned to uphold the staff recommendation of approval.** Member Peixoto requested a modification to the motion. The front of the building is in need of landscape improvement. The area is well traveled. The parcel is in a visible location. The Chair recommended Condition #6 be modified to include a Landscape Plan, to be implemented within 60 days of permit approval.

**The Vice Chair restated her motion to uphold the staff recommendation of approval, and accepted the proposed modifications:** Condition #8 shall correctly reflect permit expiration in 5 years.

Condition #6 shall add the following language: A Landscape Plan for the front of the site shall be submitted to the Planning Director for approval, and installation of plantings within 60 days.

**Member Peixoto seconded the motion with the stated modifications. The motion to uphold the staff recommendation of approval of PLN-2010-00085 Anchor Education / Hugh Fussell passed 3/0.**

2. **WU HUI, VARIANCE, PLN-2010-000176** - Application to maintain a two story accessory structure where one story is permitted, in a R-1-RV (Single Family Residence, Recreational Vehicle Parking Regulations) District, located at 16027 Gramercy Drive, southwest side approximately 200 feet south of Selborne Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 080A-0170-011-00. **Staff Planner: Christine Greene.**

Staff recommended approval of the application. The Castro Valley Municipal Advisory Council recommended denial in a 7/0 vote. Staff said there is an alternative to make the project conforming without the need of a variance. A retaining wall can be built 5 feet from the rear of the property. The rear height of the building will be less than 12 feet. Small retaining walls at each side can raise the finished grade at the exterior of the building to approximately, 6 feet. Estimated costs would be approximately \$6,000 thousand dollars. It appears required Findings can be met. Window placement can be dictated within the parameters of the variance. Board questions for staff were as follows:

- Why did the CVMAC recommend denial of the project
- Is the Applicant aware of the possible alternatives
- Would new construction conform to current plans
- What is the square footage of the existing home
- What is the square footage of the accessory structure
- Is the current garage in use
- Where is the proposed parking for the project located
- When was the curb cut installed
- Has the prior Building Permit expired

Staff said the retaining wall proposal was raised at the initial CVMAC meeting. The Advisory Committee did not believe the Applicant could make the Findings required to approve a variance. The new retaining wall concept is not related to internal construction. The structure is a detached accessory structure approximately 1,200 square feet. The existing home is 3,000. The only requirement of an accessory structure is that it be subordinate to the main home. Vehicle parking is proposed on the street. Staff was unsure of the curb cut installation date, or if the existing garage was in use. Public Works did not comment related to the garage. The prior building permit has expired. Public Testimony was opened.

The Applicant, Mr. Hui Wu was present. Public Works staff, Judy Jung assisted him with English language translation. Ms. Jung explained the staff discussion thus far to Mr. Wu. Mr. Wu responded that he obtained a building permit 4 years ago. He has undertaken construction and grading on the residence ever since. Mr. Wu's has tried his best to comply. Progress has been slow due to unexpected periods of unemployment. He would like to keep the structure. However he will follow the Board's recommendations. The Board asked the Applicant the following questions:

- What are Mr. Wu's thoughts on the proposed retaining wall
- What is the purpose of an additional garage as opposed to a work shop

Public Works staff person, Ms. Jung recalled when the first permit was issued. Due to the size of the proposed structure, additional parking was required. She was unsure if it was a Planning or Building requirement.

Mr. Richard Hancocks said the project should have never been approved. The Planning Department signed Building Plans in error. The project exceeds the 15 foot height limit for accessory structures. This building is 18 feet in height. The staff report does not accurately reflect description of the project. Regarding the required Findings that must be met in order to grant a permit, there is no unique feature at this site, compared to properties in the neighborhood. Other property owners have accessory structures. They have met required guidelines. When considering a variance, all other properties in the area are subject to comparison. Special circumstance does not exist. Any property seeking this excessive height would need a variance. The Applicant is making a design choice. The building permit has expired, in addition to incorrect zoning approval. The law is not to let a mistake continue to stand. Mr. Hancock's, strongly recommended the Board deny the permit.

Ms. Suzanne La Bare lives on Berkshire, downhill from the site. She is in opposition to the application. She addressed the third Tentative Finding. Fairmont Terrace was a planned subdivision built according to specific design rules. The property owner has viable options. The existing garage can be turned into a workshop by means of installing a roll up door. The Applicant's proposal is a detriment to safety. It has caused a lot of water runoff. Excess water has been diverted to other properties. One property owner was forced to install additional drainage as a result. The area is also earthquake prone. One occurred a few years ago. The property owner brought in 50 truckloads of dirt. The installation done with borrowed equipment. There are no drainage guidelines for the project. Mr. Wu acknowledged he was unaware of what the fill consisted of. The home no longer fits the original guidelines for the area. This will affect property values. It also disregards building permit requirements. The Applicant is asking for permission after the fact.

Claudia Provost has lived in the neighborhood for 40 years. She said, dirt fill was brought in by automotive vans, and dump trucks. The fill was not properly compacted. A few years ago Ms. Provost installed a fence. The fence posts are exposed, and no longer covered. This is proof ground has moved and eroded away.

Mr. Gary Gin submitted a letter of opposition after reading the staff report, hearing neighbors concerns and the Castro Valley Mac's recommendation of denial. The fence at the site appears to be used as part of the retaining wall system. If further retaining walls are added, it will present more of a hazard. The Chair asked Mr. Gin how additional retaining walls will impact the project, also what type of soil is prevalent. He remembers approximately 100 truckloads of dirt coming to the site. Soil in the area has a sandy composition. Mr. Gin believes construction was done improperly. Dirt is escaping from underneath. The existing retaining wall does not go deep enough, and is made of wood. From the lowest point in his yard, he can see a pile of dirt, 10 feet high.

Ms. Helen Chandler lives directly behind the property. The project will affect her privacy. The structure looks directly into her backyard. Her second concern is stability of the slope, as a result of dumping. She believes Mr. Gin's estimate of 100 truck loads is accurate. If the structure fails, it will fall directly into her home. Since construction began in 2004, more water has come into her home. During the Spring Ms. Chandler called East Bay Mud to see what was going on. She also contacted OSHA regarding multiple concerns about construction quality. The project changes the neighborhood, too much. She strongly urged the Board to deny the project. Public testimony was closed.

The Board asked the following questions of staff:

- Is it possible to eliminate the need for a variance
- If a variance is granted does the BZA have the purview to deem the space non-habitable
- Are wooden retaining walls acceptable
- Is compaction required
- Is slope an issue at the site
- What is the definition of subordinate structure
- Is it possible to re-locate the structure to another section of the site
- What design options such as window placement are viable

Staff explained the exterior garage could be converted into living space. The curb cut can be removed. By adding retaining walls, the need for a variance could be eliminated. Windows can be placed in the structure if Public Works deems it is viable. There is no definition of “subordinate” in the Zoning Code. The structure is smaller than the home. The slope of the lot is less than 30%, therefore no special conditions apply per the Zoning Code. During the time of initial permit issuance, the definition of a “story” was the same for Zoning and Building Codes. The Building Code definition has since changed. Rendering the structure, non compliant. Alternate placement on the site may not possible due to a 6 feet minimum distance requirement from the main structure. However further measurements have not been taken. Geotechnical studies are required for building a home, not an accessory structure. Staff confirmed with Public Works the accessory building has been there for the last few months. If there are issues regarding grading, they are overseen by Public Works.

The Chair said based on public testimony there appeared to be some possible design options that would reduce the structure mass. Perhaps a continuance is in order. The Vice Chair agreed options may be possible. The Applicant may find designs that lower the rear height of the structure. The building could also be de-constructed and moved to another location on the site. She was also concerned about the possibility of insufficient compaction, raised during public testimony. Member Peixoto voiced concern about water run-off.

**The Vice Chair motioned to continue the application to January 26, 2011 to allow the Applicant to explore alternate design options. Member Peixoto seconded the motion. The Motion to continue Variance, PLN-2010-00176 Wu Hui passed 3/0.** The Chair encouraged the Applicant to also speak with neighbors, regarding possible design options.

**APPROVAL OF MINUTES:** The Chair continued the Minutes of December 8, 2010 to the January 12, 2011 Hearing.

**STAFF COMMENTS & CORRESPONDENCE:** Staff made no announcements.

**APPROVAL OF 2011 WEST COUNTY BOARD OF ZONING ADJUSTMENTS CALENDAR.**

The Board accepted the West County Board of Zoning Adjustments Calendar with modifications. The November and December Hearings shall be held the first and second Wednesday, as opposed to the second and fourth Wednesday.

**BOARD’S ANNOUNCEMENTS, COMMENTS AND REPORTS:**

The Vice Chair asked County Counsel to obtain more information regarding consideration of use permits without set expiration dates. Counsel will report back at the next hearing. In past experience within other jurisdictions, he has rarely seen use permits with expiration dates. If Alameda County Planning began to follow this practice, it would be consistent with most cities and jurisdictions.

The Chair asked when appeal of Code Enforcement case, Ramon & Virginia Delatorre, Meekland Ave., operating a contractor business on a property zoned R-2, is scheduled to be heard by the Board of Supervisor's. Staff said the item would likely be on the January Calendar, due to a scheduling conflict with the property owner's attorney

**ADJOURNMENT:** There being no further business, the hearing adjourned at 3:03 p.m.

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**ALBERT LOPEZ - SECRETARY**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**