

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
DECEMBER 7, 2005
APPROVED 1/11/2006

The meeting was held at the hour of 1:30 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California.

FIELD TRIP: 10:00 a.m.

1. **ESTATE OF JACK HOLLAND SENIOR, CONDITIONAL USE PERMIT, C-8452** – Application to allow an auto sales lot, in an ABCD Specific Plan – TC (Ashland and Cherryland Business District Specific Plan – Transit Corridor) District, located at 16285 East 14th Street, northeast side, approximately 110 feet northwest of 163rd Avenue, unincorporated Ashland area of Alameda County, designated Assessor’s Parcel Number: 080C-0479-006-03.
2. **QUINTANA-CASTANEDA, CONDITIONAL USE PERMIT, C-8454** – Application to allow an alcohol outlet (off-sale beer and wine in a grocery store) in a C-1 (Retail Business) District, located at 18400 Hesperian Boulevard, east side, north of Bockman Road, unincorporated San Lorenzo area of Alameda County, designated Assessor’s Parcel Numbers: 412-0071-024-04 and 412-0071-023-02.
3. **RICHARD CHEUNG, CONDITIONAL USE PERMIT, C-8457** – Application to allow continued operation of a church in an R-1 (Single Family Residence) District, located at 19741 Hathaway Avenue, southwest side, approximately 900 feet southeast of Hacienda Avenue, unincorporated Cherryland area of Alameda County, designated Assessor’s Parcel Number: 429-0001-131-00.
4. **THOMAS VAN VOORHIS, VARIANCE, V-11963** – Application to approve as two building sites, lots that are reduced in area from 100 acres to five acres and 73.23 acres; and one parcel without frontage on an approved county road in an “A” (Agricultural) District, located at 22000 Eden Canyon Road, southeast side, approximately one mile northeast of Hollis Road, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 085A-2201-012-00.
5. **OPHELIA HOLLY, VARIANCE, V-11974** – Application to expand a non-conforming structure and a four foot – six inch rear yard where twenty feet is required with a 240 square foot conforming addition in an R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 2719 Barlow Drive, south east side, corner of Carlton Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 084B-0520-034-00.
6. **MINXI LIU, VARIANCE, V-11975 & SITE DEVELOPMENT REVIEW, S-2027** – Application to retain an existing dwelling, construct a two-unit addition to an existing duplex and construct a new single family dwelling with:

- 1) a nine foot – eight inch setback from the driveway where 10 feet is required; and
- 2) a twelve foot – nine inch separation between main structures where 20 is required, and without a pedestrian walkway

in an R-S-D-20 (Suburban Residence, 2,000 Minimum Building Site Area per Dwelling Unit) District, located at 261 Laurel Avenue, southeast side, approximately 250 feet southwest of Princeton Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 431-0016-014-00.

MEMBERS PRESENT: None.

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

OTHERS PRESENT: None.

FIELD TRIP: No Field Trip was taken.

REGULAR MEETING: 1:30 p.m.

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

MEMBERS EXCUSED: Jewell Spalding.

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

There were approximately 7 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:

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 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, and five foot setbacks between a driveway and dwelling wall 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 239 and 247 Sunset Boulevard, southeast side, approximately 325 feet southwest of Princeton Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Numbers: 0429-0091-010-00 and 0429-0091-009-010. (Continued from February 9, March 9 and April 13, May 11, June 8, August 10, September 14, September 28, October 26 and November 9, 2005; to be continued without discussion to December 14, 2005).

2. **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, October 12 and November 9, 2005; to be continued without discussion to January 25, 2006).

REGULAR CALENDAR

1. **ESTATE OF JACK HOLLAND SENIOR, CONDITIONAL USE PERMIT, C-8452** – Application to allow an auto sales lot, in an ABCD Specific Plan – TC (Ashland and Cherryland Business District Specific Plan – Transit Corridor) District, located at 16285 East 14th Street, northeast side, approximately 110 feet northwest of 163rd Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080C-0479-006-03.

The staff recommendation was denial because the use does not conform with the ACBD, TC (Ashland, Cherryland, Business District, Transit Corridor, Specific Plan). However alternative, Pre-Hearing Recommendations have been outlined that offer a temporary use status as an alternative.

Board comments and concerns were as follows:

- The use no longer complies with the ACBD Specific Plan which requires vehicles be stored in an enclosed show room
- The need for the use may be questionable as there are multiple car lots in existence
- Oil leaks and/or abandoned vehicles can cause an environmental hazard
- Inoperable vehicles continue to remain on the property
- Is the site slated for future housing

Staff Member Phil Sawrey-Kubicek said that a point could be made that if a use has been in existence that proves there is a need. Normal use sustained by a car lot is not a nuisance to public health. Public testimony was opened.

Mark Fazli from Unique Motors introduced himself. Unique Motors is the tenant currently leasing the property. Only two inoperative vehicles still remain on the property. They are not complete, therefore

identification and notification has been slow. Removal should occur soon. Mr. Fazli was in agreement with all of the proposed Conditions of Approval. Photographs were presented of improvements made to the property. Lighting has been enhanced which has prevented homeless from camping on the site at night. The interior of the building has been painted, demarcation poles have placed in the parking lot, restrooms have been updated and new carpeting installed. Twenty cars, in the range of ten to twenty thousand dollars each will be up for sale. The total number of cars may grow to a maximum of thirty. Member Friedman asked what was the permanent plan for the space. Staff told the Board that the property owner was currently in negotiations with Hayward Area Recreation to turn the site into a park. As a result of a family disagreement litigation is currently pending. Mr. Fazli added that Unique Motors realizes the location is temporary however the revenue generated in the interim will assist them finding a new location when they do have to relocate. They are willing to work on a 30 day notice when the plans for the park come to fruition.

The applicant, Ms. Holland said her Father's Estate was still not settled after 19 years. Her former Sister in Law has an interest in the parcel, located behind the auto lot and there is an unresolved claim. Ms. Holland told the Board she has already come to an agreement with HARD to sell the property she has control over to create a children's park. The agreement she has with the tenant is month to month. Public testimony was closed.

Board Members discussed options such as an Administrative Conditional Use Permit which is issued on a temporary basis. Issuance can be under the provision that if the property is sold the temporary permit can be ended. Member Friedman summarized and said in this particular case the property will be acquired for public use. This ensures that the current use will not continue into perpetuity. The addition of a park with youth activities will enhance the area.

Member Palmeri motioned to grant the application with modifications, based on the fact that the applicant can make the Findings. Pre Hearing Recommendation B should reflect that: The permit shall expire in one year; or if there a change in ownership of the property; or the business operator. The Chair asked to amend the motion. Tentative Finding #2 shall state in the affirmative. The sentence regarding the ABCD Plan shall be omitted. Language shall be modified to reflect that there are some unique circumstances regarding the property and the continuation of the use is temporary. Tentative Finding #3 shall omit the word however. The use is temporary, and shall be stated as such. Tentative Finding #4 shall indicate that the use will not be contrary to performance standards due to the fact that the auto use is temporary and will not be brought into permanent standing. The permit shall expire on December 7, 2006; or if there is a change in ownership of the property; or a change in tenants, whichever occurs first. The permit may or may not be renewed in the future. Member Friedman seconded the motion. Motion carried 3/0. Member Spalding was excused.

2. **QUINTANA-CASTANEDA, CONDITIONAL USE PERMIT, C-8454** – Application to allow an alcohol outlet (off-sale beer and wine in a grocery store) in a C-1 (Retail Business) District, located at 18400 Hesperian Boulevard, east side, north of Bockman Road, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Numbers: 412-0071-024-04 and 412-0071-023-02.

Staff recommended denial of the application. Member Palmeri made that point that in order to assist the Board in coming to a decision Planning Staff should make a determination in each staff report in the affirmative or denial. The Board had the following concerns regarding the application:

- Three alcohol outlets exist within 500 feet of the proposed outlet. More also exist just outside of the 500 foot radius
- Limited parking at the location and access issues
- On going Code Enforcement issues regarding food and merchandise sales in the parking lot

Public testimony was opened. Mr. Edie Ishioka, a representative for the applicant, Mr. Quintana introduced himself. Mr. Ishioka explained that he was a retired ABC investigator and believed the application met all County standards. The Latina Supermarket offers check cashing, a meat department and a full service bakery. Customers have requested that the store carry beer and wine as well.

Mr. David Cota, the Manager of COMPRE and the President of the Ashland Association introduced himself. He said he was opposed to the representation in the staff report that differentiates between alcohol outlets. Both the deli business and bar located within the shopping center have a license for on-site consumption. However their license allows them to sell alcohol for off-site consumption as well. Specialty store outlets that sell alcohol are often cited for selling alcohol to minors. Although the Alameda County Sheriff's Department has not conducted decoy operations, other communities have, and found alarming results. The issuance of the proposed specialty store application will increase the sale of alcohol to minors. Mr. Cota pointed out that the Board had denied applications with similar issues on Bockman Road. Based on the surrounding community and the on-going issues he urged the Board to deny the application. Public testimony was closed.

The Chair did not believe the applicant could make Tentative Findings #2 or #3. The applicant just barely makes a favorable argument regarding Finding #1. Member Palmeri motioned to deny the Conditional Use Application. In regard to Tentative Finding #1, the fact that other market services like a bakery etc. were grouped in the same setting does not establish grounds for an affirmative finding regarding the sale of alcohol. Member Friedman agreed that no proof existed that the use is required. Tentative Finding #2 should reflect that the use is not properly related, in that it violates the Alameda County Alcohol Policy, Section #1 and #2. Tentative Finding #3 should be modified. The use could be detrimental and violates Alameda County Alcohol Policy #1 and #4 in reference to Code Enforcement issues and sidewalk sales. Tentative Finding #4 shall be modified to reflect the affirmative. The use is contrary to Alameda County Alcohol Policy standards. As a result of the applicant not being able to make all of the finding in the affirmative the Board has determined that the use will be contrary to performance standards for the District. Member Friedman seconded the motion. Motion carried 3/0. Member Spalding was excused.

3. **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. (Continued from November 9, 2005).

The staff recommendation was approval. Member Friedman commented that although the area was zoned R-S-D-3 he believed there were too many proposed units for the parcel. Ultimately the zoning

designation for the area may need to be revised. Member Palmeri added that as a resident of the area he had participated in the development of the General Plan. He did not believe that special circumstances were present. The parcel is the same size as all other parcels in the neighborhood with the exception of one. The placement of a home on a particular portion of the lot does not eliminate all options. For example one option would be to move the existing home. Member Friedman asked if the applicant had provided examples of design options if the home were moved to the rear of the lot or demolished. Public testimony was opened.

The applicant was not present. Ms. Erica Campisi from the Cherryland Association wanted more specific information the plans the Applicant had submitted. The plans show an addition to the existing building and the construction of two additional dwelling units on the property. The description of the project is for setbacks only. She did not believe that the turnaround area was sufficient, and recommended the proposed rear home be reduced in size. Ms. Campisi, closed and asked the Board to deny the application until the project could be re-designed. Public testimony was closed.

The Chair said he had visited the site. The frontage of the lot is narrow, but is standard for the area. The staff report states that complete re-design would be necessary to fully comply with the Zoning Ordinance. Given that the original house is undergoing extensive renovation, essentially being reconstructed alternate considerations may be possible even with a narrow lot design.

Member Palmeri motioned to deny the application. There are no special circumstances that exist on the property different from other lots on the block. Tentative Finding #1 shall be modified to reflect that the current location of the existing dwelling is not an obstacle to further development. The dwelling is undergoing a massive re-modeling. Tentative Finding #2 should be stated in the affirmative. Granting the application would constitute special circumstance. Each application must be able to make findings. The fact that other variances have been granted in the R-S District cannot be used as a Finding. Member Friedman seconded the motion. Motion carried 3/0. Member Spalding was excused.

APPROVAL OF MINUTES: Member Friedman motioned to approve the Minutes of November 9, 2005. Member Palmeri seconded the motion. Motion carried 3/0. Member Spalding was excused.

Member Friedman motioned to approve the Minutes of November 16, 2005. Member Palmeri seconded the motion. Motion carried 3/0. Member Spalding was excused.

Member Friedman was not present at September 14, 2005 Meeting, therefore he could not vote approve the Minutes. Member Palmeri motioned to continue approval of the September 14, 2005 Minutes to the December 14, 2005 Meeting. Member Friedman seconded the motion. Motion carried 3/0. Member Spalding was excused.

STAFF COMMENTS & CORRESPONDENCE: No Staff comments were submitted.

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

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

The Board had no announcements or comments.

POLICY DISCUSSION:

Based on Board discussion regarding Agenda Meetings, Member Palmeri recommended the following changes:

Items that are anticipated to take more than 30 minutes shall be scheduled for a special night meeting on the third Wednesday of the month.

At the discretion of the Chair, Agenda items may be taken out of order.

At the discretion of the Chair, new items that have not yet been heard by 9:00 p.m. may be continued.

New adopted policy shall be clearly stated on Meeting Agendas.

Agenda's should be limited to no more than 8 Regular Calendar items

The Chair said that the Board's first priority is to serve the public. The proposed guide lines will be used to ensure that everyone can participate in the hearing process, and that the Board provides effective service.

APPROVAL OF 2006, BOARD OF ZONING ADJUSTMENTS MEETING CALENDAR: Member Palmeri motioned to approve the 2006, Meeting Calendar. Member Friedman seconded the motion. Member Spalding was excused.

ADJOURNMENT:

There being no further business, the hearing adjourned at 3:30 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS