

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
FEBRUARY 13, 2008
(APPROVED MARCH 12, 2008)**

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

FIELD TRIP: 1:30 p.m. The Field Trip was cancelled. Board Members will visit the property on an individual basis.

1. **JOHNNY POUR, CONDITIONAL USE PERMIT, C-8669** - Application to allow an auto sales and repair business in an ACBD - TC (Ashland and Cherryland Business District Specific Plan) Transit Corridor District, located at 21621 Mission Boulevard, southwest side, approximately 150 feet west of Rufus Court, Unincorporated Cherryland area of Alameda County, Assessor's Parcel Number: 428-0006-108-00. (Continued from January 9, 2008; to be continued to March 12, 2008). **Staff Planner: Andy Young.**

MEMBERS PRESENT: None.

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

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner

FIELD TRIP: The Field Trip was cancelled. Board Members visited the property individually.

REGULAR MEETING: 6:00 p.m.

MEMBERS PRESENT: Chair; Jewell Spalding; Vice Chair, Frank Peixoto; Members, Dawn Clark-Montenegro. The Chair announced that Member Gil would arrive late to the Meeting.

MEMBERS ABSENT: Ineda Adesanya.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; 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 6:00 p.m.

ANNOUNCEMENTS BY THE CHAIR:

The Chair announced that Item #4 on the Regular Calendar, Variance -V-12071, Brian Leseur would be moved to the 1st Item 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.

CONSENT CALENDAR:

1. **CHOONG HYUN PAIK, VARIANCE, V-12096** – Application to consider an application to allow subdivision of one site into two lots, with front yards of 13.66 feet, and 14.45 feet where 20 feet is the minimum required; and side yards of 3.71 feet, and 4.83 feet where 5 feet is the minimum required, in an R-2-B-E (Two Family Residence, 7,500 square foot Minimum Building Site Area) District, located at 21415 and 21437 Locust Street, southwest side, approximately 250 feet northwest of Grove Way in the unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 414-0086-074-00. **Staff Planner: Christine Greene.**

Member Clark motioned to accept the Consent Calendar as presented. The Vice Chair seconded the motion. Motion carried 3/0. Member Gil did not participate in the vote, as she arrived late. Member Adesanya was absent.

REGULAR CALENDAR

1. **BRIAN LESEUR, VARIANCE, V-12071** – Application to subdivide one site into two parcels (with a boundary adjustment) resulting in a zero foot side and a 16 foot, front setback where 10 feet, and 20 feet setbacks respectively are required, in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 19223 Carlton Avenue, west side, approximately 380 feet south of Massachusetts Street, unincorporated Castro Valley Area of Alameda County, Designated Assessor's Parcel Number: 084B-0441-043-00. (Continued from October 24 and November 14, 2007 and January 9, 2008). **Staff Planner: Andy Young.**

Staff reviewed the history of the application. The variance is conjunction with a boundary adjustment, and subdivision of 1 parcel, into 2 lots. The variance portion of the application is before the BZA. The variance request for Parcel #1 is a 16 foot front yard setback where 20 feet is required; and a zero foot side yard where 10 feet is required for Parcel #2. The Castro Valley Municipal Advisory Council recommended denial of the project. CVMAC considered the variance and subdivision as a whole, and did not separate the applications. Planning staff recommended approval of the variance application. If the BZA approves the variance application, the subdivision will then be considered by the Planning Director. The Chair posed a question regarding the order in which the application should be reviewed. Staff responded that a determination regarding the variance must be made prior to a consideration of subdivision. The application must be in compliance with the Zoning Ordinance, prior to any further determination. Public testimony was opened.

Hollis Lesur confirmed her address as 19227 Carlton Avenue. She testified that the parcel was quite large. Her lot is located at the rear of the parcel owned by her brother, Brian Lesur. The hope is that Brian Lesur's parcel can be subdivided into 2 separate lots. Many neighbors attended the last Castro Valley Municipal Advisory Council Meeting in support of application denial. Ms. Lesur thought the neighbors may be confused between the lot split and variance application. People are not in support of the lot split. Although many properties have variances approved for the same type of application. There are properties with a flag lots to north, and south of her parcel. Therefore Hollis Lesur did not believe that approval of the variance would be special privilege. There are homes similar in height in the neighborhood, as well. The staff report supports this position. The staff report also supports the finding that the lot split would not be a detriment. The neighborhood is mixed. Many homes are similar in size. Hollis Lesur then referred to page 12 of the staff report. The Policy Statement for Lot Size Consistency of Single Family Subdivisions in Castro Valley, states that any a new subdivision may not create lots that

are substantially smaller or more narrow than prevailing lots in the neighborhood. This statement has been interpreted by staff to mean that, any lot that is smaller than prevailing lots should not be created by new subdivision. This parcel in question is not a new subdivision. Ms. Lesur showed an e-mail dated January 14, 2008 from the Fire Marshall. They corresponded for a period of 6 months. The Fire Department has no additional requirements, to complete the current requested lot split. The fire access road was approved when the lot split for her property was completed, 2 years ago. They are familiar with the both properties. Hollis Lesur is present testifying on behalf of her Mother, Marilyn Lesur. Hollis and Marilyn attended all of the CVMAC Meetings. Hollis was aware that the BZA will seriously consider the neighborhood position. However she asked the Board to consider her mother Marilyn's contribution to the community, as well. This includes volunteer work with the Castro Valley Library, and 4-H. Marilyn has lived in the area for 55 years. Due to her recent stroke, expenses have soared. Now she is in need of assistance. She currently lives in an Assisted Living Facility. Hollis would like to separate her Mom's property from her brother's, to provide her mother financial options, and improve the quality of her life. This will be possible with the lot split.

Mr. Richard Uribe told the Board that he was the original developer. At one time he was married to Hollis Lesur. Mr. Uribe referred to the setback comment in the staff report. The setbacks are not uncommon for the general neighborhood as the neighborhood was not a planned development. Variances have been granted for the area. The project would meet the minimum lot square footage requirement, of 5,000 square feet. The variance would only be needed for the setbacks. Mr. Uribe then showed photographs to the Board. He felt the CVMAC would not be opposed to the project if objections had not been raised by the neighbors. Regarding the family dispute, Hollis has already given up a portion of her property, as a result of a mediation settlement. The additional square footage required to give Marilyn Lesur a separate lot, should be taken from the section of the parcel jointly owned by Brian and Marilyn. However Brian Lesur does not want to give up any more property, this is what is causing the impasse.

Mr. Dan Grimes lives at 19221 Carlton Avenue. He is the adjacent neighbor to Brian and Marilyn Lesur. Mr. Grimes thought it was apparent. The original developer did not plan the project wisely. This contingency should have been considered when the lot was split was done the first time. Originally the family wanted a variance for the mother in law cottage. This variance was granted for addition square footage. Height variances were also granted for the Hollis Lesur's home. The initial two variances were okay. Now the family is requesting a 3rd variance. The resulting lot size will be the smallest in the neighborhood, and not consistent with lots in the area. Approval of smaller parcels will reduce the value of surrounding lots. The CVMAC made the same finding. The proposal does not provide sufficient parking. Brian Lesur has a single car garage which is used as a workshop. One vehicle can be parked in the rear yard, and one in the drive way. If his parking area is removed by the lot split, parking will be greatly impacted. Mr. Lesur has 3 cars. In addition he brings home his employer's truck. This increases street parking. Mr. Grimes listed the following additional issues:

- Exposed placement of gas meters
- Insufficient driveway width
- The proliferation of garbage cans
- Garbage can storage and placement
- Notification of meetings

There is a safety issue with the gas meters. The meters are unprotected and 14.5 feet from the driveway. This can be dangerous. If a vehicle hits one of the meters, there could be an explosion. The existing driveway is 15.6 feet wide. The width should have been 16 feet. Mr. Grimes asked if the Building Department had measured to ensure there was sufficient distance. He believed the width requirement should be met. The Planning Department did not take garbage disposal into account when considering the

overall project. Garbage days are also a real problem. There will be 27 garbage cans. Each garbage day, cans are placed on Carlton Avenue. Mr. Grimes said he did not receive a notice of the most recent CVMAC Meeting, or for the BZA meeting. When the application was continued at the CVMAC Hearing to an unspecified date, staff announced that it would be re-noticed. Mr. Grimes was also promised by the Supervisor's Office that all future meetings would be noticed. Mr. Grimes confirmed that he had not received anything in the mail. Nor had he seen a posting on the telephone poles. He only found out about tonight's meeting through, Brian Leseur. He is sorry about Marilyn Lesur's family problems, and her failing health. However when the original lot split transpired. The entire family was in good health. There were options at that time. There are options available now. The Chair told Mr. Grimes that if the BZA did grant the variance, findings would have to be made to support approval. Mr. Grimes did not think the Zoning Ordinance was taken seriously, based on the multiple variance requests. Member Clark asked Mr. Grimes how he determined the total number of garbage cans. Mr. Grimes explained there was a private street, behind his home with a total of 3 homes. Each home has 3 garbage cans, in addition to the Lesur's property and Mr. Grime's home. There are 27 garbage cans. This is unsightly. The home owners on the private street should not bring them down to Carlton Avenue. On trash day no one can park on the street. Member Clark acknowledged this could result in a 60 foot path of garbage cans.

Todd Finlay told the Board he lived at 19953 Forest Avenue. He is a friend of the family and wished to focus on the human aspect of the situation. The decision made regarding the property configuration was based on the reality at the time. Marilyn thought she was helping her son. Now the situation has changed, and the family is in conflict. Marilyn Lesur has contributed a lot to the community. Now she is vulnerable. At some point in life, everyone might be in the same situation. Mr. Finlay said he had confidence the Board would make a reasonable decision for the Applicant, and the community. The Chair responded that Board made decisions related to land use issues, and information based on facts presented. Mr. Finlay confirmed that he had read the staff report. His observation was that the number of garbage cans would remain the same, regardless of the variance application. This point should not be held against Marilyn Lesur. He believed the variance request was reasonable. The Board should grant the application. .

Alison Maloney said she was the daughter of Hollis Lesur. She lives at the property with Hollis Lesur. Miss Lesur responded to the petition of opposition, presented by the neighbors to the CVMAC. The objections raised are related to issues that may arise, if there were new development on the property. There won't be any development on the property. Current conditions will not change. In the beginning the County was in favor of the project. Since there has been neighborhood opposition, the County may feel they should oppose, the lot split and the variance. The issues regarding garbage cans and gas meters will not be affected by the variance. There is an existing gas meter on the side of the home that she lives in. The meter was approved by the Building Department. The 2 steel poles that cover the meters were approved by the Fire Marshal, as a safe design. The gas meter is a moot point. There are 21 garbage cans between the 3 homes on the Hollis property. All of the cans go down on Wednesday night for pick up. She did not feel the issue had relevance. The garbage cans will still be on the property. Miss. Lesur said her Uncle, Brian Leseur claimed neutrality regarding the application. She doubts his authenticity. He did not attend two of the CVMAC Hearings. When Mr. Lesur did attend, he presented a petition along with neighbors who were in opposition. Ms. Lesur thinks there was a misinformation campaign about the application. There will be no changes to the property, just the property lines. The only goal is for her Grandmother Marilyn, to have her own property. One of the neighbors that originally opposed the application rescinded their petition signature, and is now in favor of the project. Ms. Lesur presented a letter. Had her Grandmother not been ill she could have gotten the correct information out to the neighborhood. The Chair asked Miss Leseur to confirm the owner of the property requesting the variance. Miss. Leseur confirmed that Brian and Marilyn jointly owned the property.

The Applicant, Brian Lesur was present. He has lived on the property for 10 years. His mother, Marilyn

Lesur has lived on the property for 9 years. He gets along with his neighbors, and family members. He was upset that others believed there was a conspiracy. Mr. Lesur said his position was neutral. He has tried to remain quiet. There had been no family problems until recently. He believed the problems started when the family discovered they needed more space. He owned an ATV, a camper, and a trailer. Mr. Lesur sold all 3 vehicles to create more space, and resolve any problems. He did not attend the CVMAC Meetings, in an attempt to remain neutral. Neighbors showed up that he did not even know. The Staff Planner asked him to attend the last CVMAC Meeting, and the BZA Meeting. Mr. Lesur said the problems began when the rear home was built on Hollis's lot. That is when the neighbors began to show opposition. Mr. Hollis purchased the property with his Mother and Sister. His sister Hollis was the 1st Family Member to subdivide in order to create an individual lot. She has the largest lot, at the rear of the parcel. Mr. Lesur moved into the existing home on his lot. A secondary unit was built on the property for his Mother, Marilyn Lesur. The Chair asked Mr. Lesur if there was a family disagreement. Mr. Lesur confirmed that there was. As part of a Settlement Agreement, all of the parties agreed to give up sufficient land, in order to create a separate lot for Marilyn Lesur. However Hollis did not want her lot to be further reduced. The CVMAC denied the application because the proposed 5,000 square foot lot for his Mother, Marilyn Lesur would be one of the smallest in the area. Mr. Leseur is willing to do the lot split. He maintains good friendships with neighbors. One of his neighbors is a 90 year old widower. Brian has him over for dinner, often. Unfortunately there has been a lot of misinformation about the situation. He did not think it was appropriate for Mr. Todd Finally to speak on his Mother's behalf. He has only known her for a few years. The Chair said that one of the reason neighbors are vocal about area projects, is the community's great concern about lot size consistency. This helps preserve neighborhood characteristics.

Mr. Dan Grimes returned to testify. He told the Board he was present speaking for and representing himself. There was no conspiracy. He thought it was sad that families could not get along. He has no intention of getting involved in the family problems. He just wanted to present his concerns regarding his property. His lot is 55 feet by 200 feet, a total of 11,000 square feet.

The Chair asked Hollis Leseur to confirm the size of her lot. Mr. Richard Uribe Ms. Hollis's husband testified that the lot was 13,000 square feet. There is an easement which includes the large driveway. Public testimony was closed.

Board questions for staff were as follows:

- What is the total square footage of Lot #1
- How does Lot #1 compare in size to neighboring lots
- Would the variance apply to both Lot #1 and Lot #2
- Would denial of the Variance application halt the subdivision application
- Does the Single Family Subdivision Policy Statement for Castro Valley effect this application
- Were other large properties within the vicinity that have the possibility of subdivision, considered in the Lot Size Comparison Summary
- Are the lot sizes from other unincorporated areas comparable to lot sizes found near Carlton Avenue

Staff clarified that the net lot size of Hollis's lot would be 14,338 square feet in gross area, including the driveway. Without the driveway the lot was 12,356 square feet. If the proposed a boundary adjustment was enacted the adjusted gross lot square footage of the shared lot would be 13,901. The net square footage would be 11,928 square feet. After the boundary adjustment Marilyn's portion would be a net square footage of 5,013. Brian's lot would be 8,325, totaling 13,901. The Ordinance allows the Board to act on the boundary adjustment now, or the adjustment can be completed during the subdivision map process. However staff further explained that the Zoning Ordinance is outlined as such, that a parcel map cannot be approved until a finding is made on the variance. The advantage of adjusting the boundaries during the subdivision process, is the ability to as close to compliance as possible, to area lot size consistency.

The Vice Chair compared the prospective size of Lot #1, (Marylyn Lesur) to others in the area. There are only 4 other lots with an area less than that 6,000 square feet. This is out of a total of 43 lots. There are a substantial number of lots larger than the proposal. Staff clarified that the said the parcel map application could not move forward without approval of the variance application. The determination of the parcel map is approved by the Planning Director. The BZA is only considering the variance. The variance is required to bring the subdivision in compliance with the Zoning Ordinance. If the parcel map application is denied by the Planning Director. The variance is null and void. The only other way the Applicants could subdivide the property without a variance, is to tear down the two existing homes.

The Chair referred to page #5 of the staff report. The guidelines for defining the "Surrounding Neighborhood", contained in the Single Family Subdivision Policy Statement for Lot Size Consistency of Single Family Subdivisions in Castro Valley. Table 2 confirms that the average size of 40 lots in the neighborhood is 10,000 square feet. This includes the subject site. In addition there are 6 other properties of greater than 15,000 square feet. The Chair said to have an understanding of area lot size consistency, calculation methods must also be clearly understood. The staff practice of the exclusion of properties that could be subdivided in 10 years, from their calculations of surrounding lot size, is surprising. This is an important point that should be more clearly stated. More importantly the exclusion caveat should have been disclosed to area residents, when the Castro Valley Plan was revised in 1991. If the exclusion practice had been more clearly stated, there is a possibility the neighborhood could have arrived at a different conclusion, when considering specific plan revisions. Guidelines should be clear from the onset. Staff responded that the language stating the exclusion of properties likely to subdivide, is standard.

The Vice Chair asked is the need for the zero clearance variance on Lot #2, was as a result of the driveway configuration. Staff confirmed that was the case

Member Clark said she was concerned that approval might set precedence for variances in conjunction with secondary units. The Chair agreed. It is not uncommon that the property owner could add a secondary unit and later subdivide the property. This creates a backdoor process. Neighbors get upset, and do not like the result. Addition Board questions for staff were as follows:

- What is the scope of the original variance on the property
- How long has the original variance been in effect
- What Zoning was in effect at the time of the adoption of the Zoning Ordinance
- How many times has the property been subdivided

Staff said that R-1 (Single Family Residence) District Zoning was adopted in 1962. The Minimum Lot Size is 5,000 square feet. The site was rezoned in 1986 to R-1-CSU (Single Family Residence, Conditional Secondary Unit) District. The parcel was subdivided once. There was a lot created to the rear of the subject lot.

The Chair said that she did not agree with the staff practice of excluding lots that may be subdivided in the future, when calculating lot size comparisons. Perhaps the Applicants prefer to exercise the Performance Agreement they negotiated. The Vice Chair responded the issue before the BZA was consideration of the variance. The CVMAC had already reviewed the application. The Chair acknowledged that although the Performance Agreement was not in within the Board's per view. The Applicants are before the Board, because they could not reach an agreement by other means. The CVMAC may have focused considered on the Parcel Map, attached to the Variance application. The CVMAC found that the proposal was not consistent with the neighborhood. The Vice Chair acknowledged that the lot size did appear to be inconsistent with the lots in the neighborhood. However if the project were proposed on a lot of similar size in Cherryland, it would likely be approved. Many of the lots are 50 to 60 feet wide, with a depth of 380 feet. The BZA has granted variances in the area for reduced, or zero foot side yards. The Chair said she was also uncomfortable with the miscommunication regarding noticing standards.

Member Clark thought that granting the variance might set precedence for making secondary units into homes. She asked staff if the secondary unit requires a variance, if there is an impact on the garage. Staff said the size of the secondary unit triggers a variance request. The secondary unit is over 640 square feet. The garage attached of any secondary unit would not be included, in the calculation of the living space. The Chair agreed that had been a pattern and practice within the community to attempt to make a secondary unit, a primary dwelling. This is a sensitive issue for the community. Special privilege could apply not only to the lot size, but to the secondary unit. Staff re-confirmed that the Zoning was R-1, with a Conditional Secondary Unit. The Minimum Lot Size is 5,000 square feet. The Vice Chair pointed out again that the variance only was before them, and the R-1 Zoning was adopted in 1962. The Chair replied that that the lots were developed long before the R1 Zoning was in place. The lots are large in comparison with the Zoning. In any case the Applicants bought a large parcel. They had an opportunity to subdivide. Member Clark added that the applicant had already subdivided in the past. The Vice Chair said, ultimately the variance is what is before the BZA. The application is in compliance with the Zoning, Minimum Lot Size Requirements.

The Vice Chair motioned to uphold the staff recommendation of approval. Member Clark seconded the motion. Member Gil abstained, and did not participate in the vote, as she arrived after testimony had begun. The Chair was not in favor of approval of the application. The Chair asked the Applicant if they would consider a continuance, as the vote would not result in a determination. The Vice Chair called for the question. The Chair called the vote as 2/1/1.

The Chair then asked County Counsel if an additional motion or a replacement motion could be entertained, in response to the deadlock. The Vice Chair stated that action had already been taken. The Board was unable to reach a determination. The application should be referred to the Planning Commission. County Counsel said the Board could reconsider a motion of approval or denial. If there is a determination that the Board vote was deadlocked, as a result of the lack of a majority, establishing a determination. The application would then be referred to the Planning Commission. The Chair said she had not yet determined the Board was deadlocked. One option would be to, continue the application. Another option would be to re-open public testimony. Hollis Lesur's testimony may provide Member Gil with sufficient information to allow her participation in the vote. A determination may then be possible. Member Gil thought the Board should re-notice the application. A considerable length of time had passed. However she would be willing to hear Hollis Lesur's testimony. The Chair re-opened public testimony for the limited purposes of repeating Hollis Lesur's testimony.

Ms. Hollis Lesur returned to repeat her earlier testimony, for the benefit of Member Gil. Ms. Hollis Lesur told the Board that she was the sibling of the Applicant, Brian Leseur. Marilyn Lesur is the Mother to herself and Brian. Hollis explained that she lives in the rear house on the parcel behind the site. Many

angry neighbors attend the CVMAC Meetings. Her brother Brian did not attend the first two CVMAC Meetings. Marilyn Leseur was in attendance at all of the meetings, but since her name was recently added to the application. Her presence was not sufficient for the CVMAC to make a recommendation. As a result the CVMAC delayed making a determination, until Brian was present. Hollis said she conducted research at the Planning Department, of surrounding lots in the area. Many of the parcels owned by neighbors in opposition have been granted a variance for a flag lots. The staff report acknowledges that there are parcels to the north, and south of her property each with flag lots. Findings contained in the staff report confirm that granting the variance request would not be a grant of special privilege. There are similar lots with the same conditions in the vicinity. There are also many homes of the same size and height. The Carlton Neighborhood is older, consisting of large lots with small homes. The area is very eclectic. Ms. Lesur then referred to page 12, of the February 11, 2008 staff report. The Size Consistency Policy states that "subdivisions may not create lots that are substantially smaller or narrower than the prevailing lots in the neighborhood." The phrase is normally interpreted as meaning, that any lot that is smaller than the prevailing lot size shall not be created by new subdivisions. Hollis pointed out that the application before the BZA was not a request for a, new subdivision. The staff report also notes that it appears none of the parties want to adjust the boundaries, for the purpose of creating substantially smaller lots. The average of the 3 lot sizes within the parcel would be 8,565 square feet in comparison, to a prevailing lot size of 8,292 square feet. Each lot would not be substantially larger, or smaller. The average lot size within the parcel would not change regardless of any adjustment made to Lot #1. If Lot #1 were approved at 5,013 square feet, the lot size would discourage the construction of a large house on the parcel. It would also ensure that any future home would have a modest footprint, even if a second story were added. The Alameda County Fire Marshall has been to site several times to conduct inspections during the original lot split. Issues of driveway access were fully addressed. The Fire Marshall proposed the current steel post design that covers the PG&E Box. Ms. Lesur said it has been difficult since her Mother has experienced a stroke. The project is also a financial necessity. Her Mother Marilyn Lesur cannot draw funds via a Reverse Mortgage or Line of Credit from her home because she does not have control over the property. Over the past 10 months she has been living at an Assisted Living Center. The project would provide a means to care for Marilyn Lesur in her own home. Ms. Leseur repeated that the CVMAC continued the application because Marilyn Lesur was not listed as a co-applicant. Marilyn was later added to the application. Public testimony was closed.

Vice Chair Peixoto moved to reconsider his original motion to uphold the staff recommendation of approval of Variance, V-12071. The Chair interjected. She posed that a new motion to continue the application be put forth, prior to the reconsideration. A continuance would allow re-notification of the application, and give staff the opportunity to determine if the CVMAC denial recommendation, referred to the Variance or the Parcel Map Application. County Counsel said it would be appropriate to first hear the motion to reconsideration.

Vice Chair Peixoto motioned to uphold the staff recommendation of approval of Variance, V-12071. Member Clark seconded the motion. The Chair interjected again and asked if Board Members wished to continue discussion on the item. In an attempt to determine if the Board would again be deadlocked. It may be appropriate to have the CVMAC reconsider the application, as well. There is not specific information as to what aspect of the application the CVMAC took action upon, or how they reached their opinion. It is also unknown if the CVMAC was aware of the method staff used to calculate lot size comparisons. It should be determined if the CVMAC recommendation was solely based on area lot size consistency. At this juncture the details of the CVMAC determination are extraordinarily, un-clear. It would also be helpful for staff to provide the Board with the CVMAC Minutes. There is a question as to if there was proper notification for the BZA Hearing. The Vice Chair pointed out that if the application was heard by CVMAC. Re-noticing would be necessary. County Counsel confirmed that re-noticing would be necessary. The CVMAC had already taken an action. Staff clarified that the CVMAC did not discuss the application on the first and second hearing. However at the 3rd hearing, the application was

discussed, and acted upon. After further discussion Member Clark said she was also concerned that some neighbors may not have clearly understood the notification process. The application had been ongoing for a period of time. According to testimony, a specific date to which the application had been continued was not announced. Member Clark then withdrew her second. The Vice Chair's motion to uphold the staff recommendation of approval died, due to the lack of a second.

Staff said that the Meeting Calendar of March 26, 2008 could accommodate the item. The application could be re-noticed, and re-posted. The CVMAC Minutes can be included with the upcoming staff report. The Chair added that it would also be advantageous to have the Castro Valley Member of the BZA present, at the upcoming meeting.

Member Clark motioned to continue Variance, V-12071 to the March 26, 2008 Meeting. Staff shall obtain information regarding variances granted in the area, provide the CVMAC Meeting Minutes and BZA shall be included. The application shall also be re-noticed. Member Gil seconded the motion. The motion carried 4/0. Member Adesanya was absent.

1. **RAYMOND CHOY, CONDITIONAL USE PERMIT, C-8444** - Application to renew the Terms and Conditions set forth in Application, C-7599 which authorized the placement of a radio transmission facility (Cellular Phone Transmission Tower) on the site in a C-N (Neighborhood Business) District, located at 22253 Redwood Road, west side, corner north of Grove Way, in the unincorporated Castro Valley Area of Alameda County, Designated Assessor's Parcel Number: 415-0100-054-00. (Continued from January 9, 2008). **Staff Planner: Christine Greene.**

The staff recommendation was approval. Public testimony was opened. The Applicant/Property Owner, Mr. Raymond Choy described the installation. The transmission tower is currently located on top of the building. The antenna is enclosed inside of the supermarket signage. A fire had erupted at the center, causing the most damage to the space occupied by the antique shop. There was also minor damage to the supermarket sign. The building and sign are under repair. The Board had the following questions for the Applicant.

- Has the Applicant read the staff report
- What has caused the delay in the permit renewal process
- What is the anticipated completion date for all shopping center repairs
- Has the antenna caused interference with the National Public Safety Band (800 MHz)
- Have the Neighborhood Preservation Ordinance issues been brought into compliance
- Did the Building Department issue a Stop Work Order

Mr. Choy acknowledged that he read the staff report. He was in agreement with the Conditions of Approval. However he did not clearly understand the various communications frequencies. To his knowledge the antenna has not caused any issues. Since 2005 there have been two different planners assigned to the project. The original staff person left. The reassignment process has caused the long delay. The project is awaiting the second stage of inspection. The Fire and Building Departments require that the entire site be brought up to current codes. This includes new doors and windows. Mr. Choy confirmed that initially the Building Department did issue a Stop Work Order. He obtained a second set of permits, and is now clear on all requirements. Re-construction should be complete in 2 ½ months. Mr. Teixeira is a tenant at the shopping center. He manages the Gun Shop, and has the onsite responsibility for cleaning and maintaining the property. The garbage that was dumped has now been removed from the

site.

Ms. Rochelle Swanson was present representing Sure Site/Sprint. She explained that the language used in the staff report stated that, some facilities have issues with the (NPSPAC) Band. The communication site at Mr. Choy's property has not been a problem. If an issue were to arise in the future, it would be rectified by Sprint engineers. Ms. Swanson confirmed that said she had inspected the site, including the roof. The trash on the property has been removed. Due to construction, the antenna has temporarily been placed on a pole and moved to the rear portion of the roof. The antenna will be placed inside of the new signage when remodeling is complete. Ms. Swanson requested a modification to Condition #3. An automatic Revocation Hearing in 6 months, should not be necessary. In the event NPO issues are not brought into compliance. The existing NPO Ordinance would remediate any outstanding issues. If issues cannot be resolved, revocation proceedings could be employed at that point. Ms. Swanson did not want Sprint to experience further delays. The application was submitted in 2005. Sprint has invested time, and money in the process. If Alameda County and Mr. Choy cannot come to an agreement, it could cost Sprint \$200,000 dollars to re-locate the equipment. Member Clark asked if the equipment could be co-located at another site in the area, such as the church behind Trader Joes. Ms. Swanson explained that the equipment would not be compatible with any of the nearby sites. The installation would have to be changed to a mono-pole design, as a result of the lower building height. Even though the distance is not great, the coverage would be greatly reduced. The current location is at a busy intersection. Re-location would affect coverage.

The owner of the gun shop, Mr. Teixeira said he performed maintenance duties, and cleaned the property twice a week. The garbage bill ranges from \$60 to \$80 dollars. Unfortunately illegal dumping occurs. Items range from yard clippings to Xmas Trees. Mr. Teixeira has contacted the Sheriff, but was told he had to provide proof, before they could pursue anything. The Chair said that the expectation for any business is that the property should be cleaned daily. Mr. Teixeira further explained that he cleaned the property daily. Trash was hauled away, twice a week. The fire at the site was actually caused by the Sheriff's Department. Telephone poles outside of the shopping center were cut, which caused a shortage in the wiring. As a result the antique store caught fire. Mr. Teixeira did not believe it was fair to penalize Mr. Choy for the accident. Public testimony was closed.

The Vice Chair motioned to uphold the staff recommendation of approval. Member Clark seconded the motion, with a modification to Condition #3. The word revocation will be replaced by the word, review. Staff was in support of the modification. The application would be set for a Revocation Hearing, if there were an outstanding, Ordinance issue. Condition #3 shall be modified. The reference to NPO Ordinance, 6.64 shall be struck, as it relates to revocation.

The motion to approve, Conditional Use Permit, C-8444 passed 4/0. Member Adesanya was absent.

2. **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. (Continued from December 12, 2007). **Staff Planner: Richard Tarbell.**

Staff requested a continuance to the March 26, 2008 Meeting. The application had come before the Board on December 12, 2007. A continuance was recommended to research the appropriate parking requirements for the project. It was discovered that the current proposal will require a variance for parking. The Board cannot entertain the conditional use permit until the applications are combined. The

Chair acknowledged that Speaker Cards had been submitted regarding the application. Public testimony was opened.

The Applicant, Mike Gourea said he had hoped to obtain approval of the application at the hearing. He has not received any communication from the Planning Department. He had no idea that his application would be continued. He was shocked to learn there were issues. Mr. Gourea had already agreed to 1 continuance. Now, 2 months have passed. The project is for the benefit of kids, in the area. Each month the project is delayed, results in a \$10,000 per month financial loss. At the inception of the process, the staff planner told him that his project was straight forward and would be approved. This is the 2nd hearing. Mr. Gourea referred to the staff report. He disagreed with staff's interpretation. Staff categorizes the proposed basketball court in a use category with skate rinks, an assembly, or bowling alleys etc. A basketball court is not the same use. In addition he has a video store at the location. In Mr. Gourea's opinion a basketball court is, sports oriented. Sports oriented uses fall into an auditorium, or arena use. Minimal parking will be required for the basketball court.

Board Members asked staff what was the parking threshold for an auditorium. Staff responded that the current usage would require 31 spaces. This takes into account the maximum potential use, of the vacant space. This calculation is prior to consideration of the basket ball court. There are a total of 36 spaces at the shopping center. This would leave 5 parking spaces for any additional use. The original staff recommendation was made prior to a second review of the Zoning Ordinance. The language in Zoning Ordinance 17.52.290, Parking Requirements for Places of Assembly, is general. However findings can be made, under a variance classification. This provides a means to approve the application.

Mr. Gourea said he was upset to read the recommendation of the 2nd staff planner; that Mr. Gourea should consider if he would like to pursue the application. It would be difficult to make the findings in the affirmative for a sub-standard parking variance. Approval would be unlikely. The 1st staff planner came to the site, and said the project would be approved. Mr. Gourea said he had already spent \$50,000 based on the information given to him by the 1st staff planner. He currently has no income from the basketball games, to defray costs. Additional Board questions were as follows:

- Would the Applicant incur an addition fee if the application were expanded
- Can the Board waive application fees
- What Ordinance language requires that both a variance and cup are required
- Does the available number of spaces meet any of the parking requirements in Ordinance 17.52.920
- Does the Board have the per view to modify the parking requirements
- How many seats are available in the game area
- Will spectators be allowed to observe the games
- Is there an age limit for children participating in the activity
- Is there a waiting area for children scheduled to play

Staff told the Board that Ordinance 17.52.920 factors in spectators too. The number of available spaces

(5) would not meet the current proposal. The Applicant would be subject to the secondary application fee of \$750 dollars. County Counsel said the Board did not have the authority to waive the variance fee. However they could forward a recommendation of a partial refund to the Planning Director. The Director would then make a determination.

Mr. Gourea testified that the basketball games will be 3 on 3. Only 6 kids will be allowed in the play area. A coach, referee and score keeper are at each game. The league will be small and there will not be a lot of spectators. Therefore the use should qualify under auditorium and sports arena. Children ride their bikes and/or skateboards to the site. They must sign up for games, in advance. There will be a ½ hour break, between games. Kids that are waiting can do so inside Mr. Gourea's video game store. There are only 6 seats available. Parents that want to observe can use the available seats. There are no additional spectators allowed. The age limit for children participating will be 10-15 years of age. The 36 available parking spaces will be sufficient. The Bank Manger at Washington Mutual agreed to let Mr. Gourea use 20 additional spaces, after 6:00 pm. Mr. Gourea will clean the parking lot on game days. The agreement is verbal at this point. The two parties will try the arrangement, and see how it goes.

Based on the testimony given by Mr. Gourea, staff re-read the Zoning Ordinance. There is a provision that gives the Planning Director the authority to determine the category for use, if there is ambiguity. Staff determined on behalf of the Planning Director, that the project could fall within 17.52.920, Category #1, Auditorium etc. If the Board were in agreement, the use could be conditioned to meet the threshold by limiting the number of seats, to a maximum of 20.

Ms. Kathy Martins representing the San Lorenzo Village Homes Association was present. The Applicant met with the HOA. Kathy Martins said she toured the facility. The environment would be safe. Mr. Gourea has addressed all concerns, and complied with Association requirements. The HOA is recommending approval of the application with the caveat that the permit be revoked, if there are any serious violations. Ms. Martins said, she would like the application to move forward. Mr. Gourea has presented a detailed Business Plan, and has restricted games to after school hours. All of Mr. Gourea's staff will be taking CPR. Each child is required to sign a Code of Conduct. The children will be issued ID Cards to participate in the League. There is only 1 bench at the facility. This can accommodate parents. Although there may not be a lot of parent participation. Game hours are mostly doing work hours. There should not be any loitering. The location is near a bus stop. Children waiting will do so inside of the building. The only time parking may be an issue, is during a tournament. However tournaments will also take place during work hours. The Loitering Plan the Applicant submitted should be effective. Member Clark asked if the Loitering Plan addressed kids that may hang out in the vicinity. Kathy Martins said there is nothing to prevent kids from going to KFC or Taco Bell. Mr. Gourea responded that kids participating in the program will have ID Cards. If any of the kids are found loitering, they receive 1 warning. The 2nd time, their parents will be contacted. The child will not be allowed to return until Mr. Gourea talks with the Parent. The Vice Chair asked Mr. Gourea if the store front used as a church, was currently in operation. Mr. Gourea confirmed that it was not. He was the lease holder, and had no plans to re-open the church.

The property owner, Mr. Reed said he reviewed the project with the staff planner. The planner also came to visit the site. The basketball operation would operate 6 days per week. There has not been a loitering problem at the site with the present video game business. Mr. Reed will be monitoring the site, and the other businesses. The Sheriff's Department will make patrols, as well. Mr. Reed did not foresee any problems. He would not have gone through the long application process with Mr. Gourea. If he did not think the project was viable. He has observed the Applicant operate Game Stop for one year. Mr. Gourea has proved to be a disciplinarian. There is a zero tolerance policy for littering. If a child is found violating the Rules of Conduct, parents must meet with Mr. Gourea before the child can resume participation. Public testimony was closed.

The Board determined based upon public testimony given by the Applicant, and staff's interpretation of the Zoning Ordinance. That Conditional Use Permit, C-8675 was within Zoning Ordinance 17.52.920. Parking Spaces Required for Places of Assembly [Auditorium, church, mortuary, chapel, sports stadium or arena, race track, theater]. [One for each four seats, counting 18 inches of seating space on a bench as one seat, and counting only the largest assembly room in the case of a church]. The Conditional Use Permit under consideration could be acted upon by the Board.

Staff proposed the Tentative Findings and Pre-Hearing Recommendations from the December 12, 2007 Staff Report be used as Conditions of Approval.

The Board posed the following modifications to the Tentative Findings:

Tentative Finding #2: The word no, shall be replaced by a finding in the affirmative. Seating will be limited in the facility. The basketball court would be located on a property with adequate parking facilities available for the proposed use. The balance of the sentence shall be stricken.

Tentative Finding #3: The affirmative finding shall be replaced by the word no. There is no anticipation of detrimental impacts. Loitering would be avoided by the use of the required "No Loitering Plan". The facility would enhance opportunities for sport activities for area residents.

Pre Hearing Recommendations shall be adopted as Conditions of Approval.

The Board posed the following modifications to the Conditions of Approval:

Condition #1: Shall omit the words, and minimum parking spaces. The language shall now read as follows: This permit authorizes the remodeling and operation of an indoor recreation facility (basketball court) within an existing building. Final site improvements shall include adequate lighting.

Condition #4: Shall be modified. The Hours of Operation shall be limited to 3:30 p.m. to 9:00 p.m. on School Days set forth by the San Lorenzo School District. Hours of Operation on non School Days and Summer Days shall be limited to 10:00 a.m. to 9:00 p.m.

Condition #9: Shall be modified to insert the word *for*, after the word, waiting.

A further Condition of Approval shall be added.

Condition #11: Shall state. The Use Permit shall be limited to 20 seats to satisfy the Parking Requirements in Section 17.52.920 of the Zoning Ordinance, for an Auditorium, Stadium, Arena, or similar use. Additional seats may be allowed by the Planning Director if a joint use contract is filed consistent with Zoning Ordinance 17.52.880 or additional on site parking, is otherwise provided.

Public testimony was re-opened. Ms. Kathy Martins from the SLHOA testified that the Hours of Operation were discussed at their meeting. An end time of 9:00 p.m. would be acceptable. The recommended hours for days that school is session are from, 3:30 p.m. to 9:00 p.m. Mr. Gourea was in agreement with the HOA recommendation. Member Clark thought the Hours of Operation should be more specific. She was not comfortable with the proposed language. Board Members asked about the Holidays etc. The Chair responded that the Applicant was willing to take on the full responsibility of the operation. County Counsel suggested using a specific School Calendar within the San Lorenzo School District, as an outline to determine the Hours of Operation. This will provide an enforcement guideline. Mr. Gourea told the Board that he would accept the recommendation of restricting the Hours of Operation

to the school days, of the San Lorenzo School District. Ms. Martins asked what would be appropriate during summer school. Everyone agreed that the non school hours of 10:00 a.m. 9:00 a.m. would be acceptable. Vice Chair Peixoto pointed out that the center had vacancies. Staff confirmed that the parking ratio was based on the most restrictive guidelines, one parking space for every 250 square feet of retail and/or commercial space. This calculation was based on full occupancy, of the shopping center. Public testimony was closed.

Member Gil motioned to approve Conditional Use Permit, C-8675 and adopt the Pre Hearing Recommendations as Conditions of Approval; Set forth in the December 12, 2007 Staff Report with the afore mentioned modifications. Member Clark seconded the motion. Motion carried 4/0. Member Adesanya was absent.

3. **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, November 7 and December 12, 2007; and January 9, 2008).
Staff Planner: Christine Greene.

Staff reviewed the history of the application, and recommended approval. The item was continued several times to obtain more specific information from Public Works, regarding site distance issues. Planning staff has also visited the property several times, to confirm measurements and review possible options. After measuring the interior and exterior height of the fence, staff determined that the averaged height is approximately 5 feet. It is feasible for the Applicant to remove the last fence panel and rock pillar, at the corner. As a result the corner section will create a 45 degree angle. This will resolve any sight distance issues for vehicular traffic. Public testimony was opened.

The Applicant was present. Mr. Sead Sisic asked staff if he should lower the replacement section of fence to a height of 4 feet at the corner, as opposed to angling the fence at a 45 degree angle. Staff explained that the fence sits on top of a 2 foot retaining wall. The height of the retaining wall and fence were averaged to obtain the overall height calculation. The total height of 5 should be maintained to compensate for the property slope. The Applicant will not achieve site-distance clearance by lowering the fence height, because the roadway grade is below the fence. The only way to achieve site distance clearance is to remove, 2 stone posts and the corner fence panels. This creates a 45 angle. The Chair asked Mr. Sisic if he understood staff's proposal. Mr. Sisic confirmed that he was in agreement with the proposal. Public testimony was closed.

The Vice Chair motioned to adopt the staff recommendation of approval. Member Gil seconded the motion. The motion to approve, Variance, V-12061 was carried 4/0. Member Adesanya was absent.

4. **BRIAN LESEUR, VARIANCE, V-12071** – Application to subdivide one site into two parcels (with a boundary adjustment) resulting in a zero foot side and a 16 foot, front setback where 10 feet, and 20 feet setbacks respectively are required, in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 19223 Carlton Avenue, west side, approximately 380 feet south of Massachusetts Street, unincorporated Castro Valley Area of Alameda County, Designated Assessor's Parcel Number: 084B-0441-043-00. (Continued from October 24 and November 14, 2007 and January

9, 2008). **Staff Planner: Andy Young.**

This Agenda Item was moved to the beginning of the Regular Calendar, at the Chair's discretion.

APPROVAL OF MINUTES: Vice Chair Peixoto motioned to approve the Minutes of January 9, 2008. Member Gil seconded the motion. Motion carried 3/0. The Chair abstained.

Member Clark motioned to approve the Minutes of January 23, 2008 with corrections, and the annotation that the testimony was recorded accurately. However the testimony given by the Applicant for Conditional Use Permit, C-8555 was inconsistent. Member Gil seconded the motion. Motion carried 4/0. Member Adesanya was excused.

STAFF COMMENTS & CORRESPONDENCE: The Board of Supervisors upheld the BZA determination of denial regarding, Variance V-12057, De La Cadena.

Staff has prepared a Summary of BZA Decisions from 2004 through 2006 that have appeal to the Board of Supervisors. The Summary will be forwarded in the next meeting packet.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Board Members asked the status of Variance, V-12060 – AC Maharaj Construction which was appealed to the Board of Supervisors. Staff confirmed that the BZA decision of denial was upheld. The Applicant has stated they have dropped the prior use, and will re-submit a revised application.

The Chair asked for an update on the Neighborhood Preservation Ordinance violation case at 14775 Saturn Drive. Staff responded that the County abated the property, after the property owner did not bring the Public Nuisance into compliance, within 30 days.

ADJOURNMENT: There being no further business, the hearing adjourned at 9:30 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS