

**MINUTES OF MEETING  
WEST COUNTY BOARD OF ZONING ADJUSTMENTS  
MARCH 22, 2006  
(APPROVED JUNE 14, 2006)**

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:** Frank Peixoto, Chair; Members: Ron Palmeri; Jewell Spalding; Lester Friedman and Dawn Clark.

**Members Excused:** None.

**Others present:** Phil Sawrey-Kubicek, Senior Planner; Maria Elena Marquez, Recording Secretary.

There were approximately 15 people in the audience.

**A. Call to order:**

The meeting was called to order by the Chair at 1:30 p.m.

**B. 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. **GUADALUPE LOZA/FRED FULCHER, CONDITIONAL USE PERMIT, C-8271**– Application to allow continued operation of a drive-in business (catering truck), in a PD-ZU-1487 (Planned Development, 1487<sup>th</sup> Zoning Unit) District, located at 691 West A Street, north side, corner, northwest of Royal Avenue, unincorporated Hayward area of Alameda County, bearing Assessor's Parcel 0432-0016-035-00. (Continued from February 11, April 14, April 28, May 26, July 14, September 8, October 13, 2004, March 23, June 22, October 12 and December 14, 2005; to be continued without discussion to May 24, 2006).

The Chair continued this item to June 28, 2006.

2. **FRANCISCO PENA, CONDITIONAL USE PERMIT, C-8389** – Application to allow the operation of a temporary outdoor business (Catering Truck) in a TC (Transit Corridor) District, located at 16211 East 14<sup>th</sup> Street, southwest end of 162<sup>nd</sup> Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080C-0479-003-00. (Continued from January 11, 2006; to be continued without discussion to May 24, 2006).

The Chair continued this item to June 28, 2006.

3. **JERRY REILLY/WEST WINTON AVE. LLC, VARIANCE, V-11980** - Application to allow 1) one site with 3,948 square feet as a building site which is less than the minimum 5,000 square feet required; and 2) allow an addition above the garage with a zero foot front yard setback where 20 feet is required, in an R-1 (Single Family Residence) District, located at 14643 Saturn Drive, west side, approximately 600 feet south of Joan Drive, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Numbers: 079-0006-033-02 and 079-0006-032-02. (Continued from February 22, 2006; to be continued without discussion to April 12, 2006).

Member Spalding made a motion to adopt the Consent Calendar as revised. Member Friedman seconded the motion. The Chair accepted the motion to approve the Consent Calendar as provided. Motion carried 5/0.

### Regular Calendar

1. **SON X. HOANG, CONDITIONAL USE PERMIT, C-8469** – Application to allow operation of an alcohol outlet (Tony and Ted's Liquor) in conjunction with a convenience store, in a CVCBDSP-SUB3 (Castro Valley Central Business District Specific Plan – Consumer/Medical Oriented Retail/Service/High Density Residential) District, located at 2688 Castro Valley Boulevard, north side, corner of Park Way, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Numbers: 084A-0181-057-03 and 084A-0181-058-03. (Continued from January 25 and March 8, 2006).

Staff recommended denial of the application. Board Members had the following comments and questions:

- Member Friedman asked if the property was under a lease agreement and how long it had been posted for non occupation. In addition he asked staff to discuss the referral from CVMAC where "the Council stated they were compelled to conditionally approve the application for six months" and which law or ordinance section supported the recommendation. It did not appear that Tentative Finding #1 proved the use was required by the public.
- Member Palmeri asked if the alcohol license was seized for off sale alcohol in 2004.
- Member Clark asked if the building had been fully vacated or if the tenant was on site to conduct repairs.

Staff confirmed that the Building Department posted the building as do not occupy in July, 2004. Ms. Tona Henninger said some of the CVMAC Council Members felt since the business had been in place a long time a six month permit could be issued. Conditions of Approval could be drafted that would address the current building code violations, and other issues. The decision was based on those facts not a specific ordinance or law. Public testimony was called for.

Mr. Alan West, Attorney representing the applicant, stated that Tony and Ted's had been in business for over 50 years. The store is in a commercial community, not a neighborhood community. In 1996 Mr. Hoang purchased a lease from the owner. Mr. Hoang had an ABC license in place when he obtained an assignment of lease from the landlord. In July of 2004 the building was condemned by Alameda County. From July 2004 to December 2005 there were negotiations between Mr. Hoang and the owner to fix the

building. Repairs were finally completed, and Hoang purchased the building in December of 2005. The repairs include an interior partition wall. The building is not abandoned however currently there is no product being displayed.

When the building was condemned in July, 2004 the use was a permitted use. Mr. Hoang also had a valid liquor license under ABC. When Mr. Hoang was not able to conduct business for a period of three months, the alcohol license was involuntarily surrendered to ABC for inactivity. This is an unusual set of circumstances and the liquor license was not lost due to anything his client did. Mr. Hoang is in a position where he must apply for a CUP. The rules and regulations in effect now regarding alcohol outlets obviously were not in effect when the business started or when Mr. Hoang purchased the business. The license can be put back into effect as soon as the CUP is granted. In regard to the partition wall Mr. Hoang would like to do what is most expedient. Have the CUP granted for 6 months. Conditions can be set that either the wall is removed or the applicant will go through the process to obtain Building Department approval. After the 6 month period, Mr. Hoang will apply for a new CUP.

Member Spalding asked why the application would not be in violation of the Alameda County policy stating "no alcohol outlets within 500 feet of a similar use". Mr. West said technically there may be other alcohol outlets within 500 feet of similar use, however he believed the Board has leniency to consider what is relevant. Quick Stop, located in an adjacent building primarily sells gasoline, snacks beer and wine. Quick Stop made an application to ABC and received a license to sell liquor well after, the building was condemned. The license states they sell a limited amount of liquor. The use is not the same at Tony & Ted's since they do not sell gasoline. Member Spalding pointed out that in addition to Quick Stop there is an AM/PM. Mr. West said that AM/PM sells beer only, and is primarily a gas station. Sazio and the Japanese restaurant will be closing within the next six months as a result of the Eden Hospital expansion. They have already received eviction notices.

Member Friedman said that he was very concerned not only about the illegal sale of liquor to minors but also alcohol sales without an alcohol permit. Mr. West responded that his client denies that is what occurred. All of the charges against Mr. Hoang were dismissed. Copies of the minute orders from each court hearing were submitted with the use application. Member Friedman asked Mr. West if he was referring to the dates: January 14, 2000, January 5, 2001 and May 31, 2003 as well as March 11, 2005. Mr. West said the 2000 case was against an employee of Mr. Hoang's. He was not the attorney for the 2000 case, and does not know the outcome. However the issue was discussed at great length at MAC. MAC recommended that the permit be granted for a year or 6 months to give Mr. Hoang an opportunity to show he can conduct business properly.

Member Spalding then referred to a list of numerous ABC violations and asked if ABC had stayed the suspension as a result of the charges being dismissed. She commented that the issue of a surrendered license for lack of doing business for a period of 6 months is different than having a license suspended. Mr. West responded that the license was suspended twice in 2003 and once in 2004 for a period of ten days. ABC can suspend a license for an offense without a hearing. You can appeal to a Government Appeals Board, and then to Superior Court. It is a time consuming and expensive process. The suspensions were appealed, and the charges for those offences were dropped with the exception of two. Regarding the other two suspensions, Mr. Hoang made a business decision due to time and expense to accept the 10 day suspension. Mr. West pointed out that during the same time period sting operations were conducted, at other outlets, including, Quick Stop. Licenses were suspended and arrests were made on 3 or 4 occasions.

Member Friedman said that he was concerned about the Sheriff's report. He asked if the findings in the report were in dispute and if the statements attributed to Mr. Hoang were denied. Mr. West confirmed that the report findings were in dispute, and the charges were denied in court. He believed the report was highly prejudicial to Mr. Hoang. Member Friedman asked for written documentation disputing the

reports. Mr. West said only his testimony on court record. Two other charges were dismissed by the District Attorney in the interest of justice. The place has been open since the 1950's. Mr. Hoang should be given an opportunity under the given the circumstances to conduct business in a business like manner during the 6 month permit period.

Dean Nielsen, Chairman of the MAC, stated that he is appearing not as a Member of the MAC but as an individual. Tony & Ted's application for a CUP has been quite a disappointing education for him. After the MAC meeting, he looked into the application, and questioned discrepancies in the process. When the Police Department cites a liquor operation for illegal sales, the District Attorney does not prosecute as a matter of course. It is too much trouble and too costly. He verified that with Supervisor Nate Miley. The ABC is in the same posture. A business is cited for violation, the license is suspended. They renew it, suspended it again and renew it. The same is true in this situation. It has become very disheartening. The facts were presented and the District Attorney did not prosecute. A plea of not guilty is not sufficient as far as he is concerned whether or not illegal sales happened. Members of the Planning Commission witnessed illegal activity. It is not a matter of semantics but how the operation is affecting our community. Mr. Nielsen said if he knew prior to the MAC meeting what he knows now, his vote would have been different. But again he is not present a MAC member but as a private individual. The problem we face in the community is that we get tangled up in semantics about liquor stores. Castro Valley is saturated, you can talk about whether they sell gasoline primarily or chicken fat it does not make any difference. There are too many liquor stores. One of the concerns discussed in a meeting with Supervisor Miley was the proclivity for problems to exist where there is a concentration of liquor stores. It is something that you cannot put your fingers on. You cannot point at an individual operator as being the perpetrator of all these problems, but it is a fact that they have substantiated in Oakland, San Leandro and various places. There appears to be a question as to how many times a liquor outlet has to be cited before something can be done about it. In this case he said he was sorry they were unable to do more.

Member Spalding asked Mr. Nielsen to comment on the fact that the building been condemned and was not being taken care of. Mr. Nielsen said that one of the reasons that he went along with approval for 6 months was that he was troubled by the application. As a result MAC recommended conditions of approval that were strict because of the history of the business. He was not made aware of the specific facts concerning the convictions, how ABC handles the licenses, and how the DA handles citations to the site, now he is. Member Palmeri asked Mr. Nielsen for an approximation of how many retail alcohol outlets are within the geographical area designated as Castro Valley. How many were bars and how many were liquor stores. Mr. Nielsen said that in the immediate area according to the ABC Report, seven in the immediate area and 15 to 16 around Castro Valley.

Marc Crawford, resident at 3832 Somerset Avenue, Castro Valley, stated that he attended the MAC meeting for another matter. Listening to Mr. West motivated him to be at this hearing. Mr. Hoang's attorney's statement that his client is innocent is based solely on the fact that the DA dropped the charges. The man was caught selling alcohol to minors and selling alcohol out of the condemned building without an ABC license. Disciplinary action was taken by a government agency against the license. Mr. Crawford believed that was guilt. He is a contractor. If he were to violate contractor's license laws his license would be suspended, and he would be guilty.

Having a District Attorney with 386 pending murder cases and limited resources is not a proclamation of one's innocence as Mr. West would have you believe. Secondly, there is an over concentration of alcohol establishments in the area. If you stand in front of Carrow's Restaurant you can see four of the five establishments just in one location. They all are licensed to sell alcohol, just because one sells beer and wine and the other sells whiskey is really irrelevant, especially under the Alameda County Alcohol Policy. The actions of this man are clearly dangerous to this community. The ABC and the DA would not do anything, so that leaves the Board of Zoning Adjustments as the last line of defense against this type of

business establishment. The fact that the business has been there for 50 years is not the only factor. A business is like the person running it. The owner has clearly demonstrated that he is a danger. He has been arrested, and an employee was charged as well. There have been continual problems. The Board should take a chance and do something good for the community. In the unfortunate event the Board finds itself having to approve the application, please insert a condition that would allow for the immediate rescission of the permit if any more violations occur.

Ruben Massa, representing Comm Pre, stated that his agency opposes granting the CUP to this application. By granting a CUP allowing Tony & Ted's to re-open would be a violation of the Alameda County Alcohol Policy Statement. It would add another alcohol outlet to an already over concentrated area thus providing more easily available alcohol access to the Castro Valley community. No alcohol outlet should be located within close proximity of another similar use. It suggests there should be a minimum distance of 500 feet between such uses. This proposed liquor store would be next to a Quick Stop. Quick Stop has a Type 21 license which authorizes the outlet to sell beer, wine and spirits off premises. It has had this license since March, 1984. Type 21, is the same type of license that the applicant would be applying for. The proposed alcohol outlet is located in census tract 4309 which according to ABC is an over concentrated area. Currently there are five off site establishments, Tony & Ted's would be six, where four are allowed. There are 19 on-site establishments, where six are allowed. Clearly, there is an over concentration of alcohol establishments around this area. Based on these facts, it is Comm Pre's conclusion that if the applicant were to be granted a CUP it would be a clear violation of the Alameda County Policy Statement, therefore setting a precedent for other alcohol outlets to open. It was Comm Pre's belief that the Board of Zoning Adjustments had consistently ruled by the Alameda County Policy Statement, denying alcohol outlets in over concentrated areas, respecting the 500 feet distance. This practice can not be ignored nor should it be left open to arbitrary decisions in the future. Comm Pre requested that the BZA follow what has been customary, abide by the Alameda County Policy Statement, and deny the application.

Deputy Jason Fien stated that he has worked for the Community Oriented Policing & Problem Solving Unit, for two years and one half years. Deputy Fien was not the arresting officer but was present when Mr. Hoang's charges were dismissed. Member Spalding asked Deputy Fien if he had received complaints and if so from whom. Deputy Fien told the Board had been receiving anonymous complaints for about two years that alcohol was being sold from a van in the parking lot.

Member Friedman asked Deputy Fien if he prepared the January 5, 2001 and January 11, 2002 report. Deputy Fien confirmed that he had. Member Friedman asked Deputy Fien about the statements listed under January 11, 2002 and if the statements were correct. Deputy Fien said he was at the unit during that time. The statements are from the prior investigator who said they did not feel entirely comfortable pressing charges. However he wanted the unit to be aware of what type of business it was. Deputy Fien said he also received a couple of phone call complaints from an elderly woman who was afraid to testify.

Member Palmeri asked if Deputy Fien had personally witnessed any activity. Deputy Fien said he had. When he pursued Mr. Hoang, he ran. Public testimony was closed.

Member Spalding made a motion to deny the application. She disagreed with the Tentative Finding that there was a public need for alcohol outlet (liquor store) just because the business had been in operation for years. The use will not be properly related to other uses and transportation facilities in the vicinity based on the testimony presented. There is an over concentration of alcohol outlets, verified by the records of ABC for this area. Additionally, the use, if permitted, under all circumstances will materially affect adversely the health or safety of persons residing in the vicinity. Based on the testimony presented there is a consistent problem of selling alcohol to minors and persistent violations. The use will clearly be contrary to the specific intent clauses or performance standards established for the district in which it is to

be considered. Notwithstanding the fact that other outlets exist within 500 feet, there is a consistent pattern of violations, license suspensions and law enforcement problems at the location. This in and of itself is a violation of performance standards. Member Friedman asked for a modification to Tentative Finding #1. The store had been closed for 6 months and there is nothing that indicates there has been public demand. Member Spalding accepted the modification. Member Friedman seconded the motion.

Member Palmeri stated for the record that the Alameda County Alcohol Policy states a 500 foot is a minimum distance is not absolute. There are other outlets in the immediate vicinity. Although not 500 feet away, certainly, the testimony of two of the speakers indicates the abundance of on and off site alcohol dispensing outlets within the Castro Valley area.

Member Clark agreed with all of the concerns that had been raised. She does not see how fixing up the building will change Mr. Hoang's business practices in the future.

Member Spalding stated in regard to Finding the fact that it became necessary to condemn the building is proof that the use is contrary to performance standards. Finding #4 shall be modified to reflect that fact.

The Chair said that each time the Board considers an alcohol permit, an important consideration is Tentative Finding #1: Is the use required by the public. Do we need more and more, alcohol outlets, and is the use in the interest of the public welfare. He did not believe the use was required, and that the use might adversely affect the health and safety of persons residing in the vicinity.

Member Spalding motioned to deny the application; amending Finding #1 to no. The use is not required by the public. The applicant presented no evidence to the contrary; and Finding #2 to no. The use is not properly related to other land uses in that an over concentration of alcohol outlets exist in the area. Finding #3, The use will adversely affect the health or safety of persons residing in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood proved by consistent violations. Finding #4, The use be contrary to the specific intent clauses or performance standards established for the District in which it is to be considered. The Policy adopted in 1995 for the Review and Approval of New Conditional Use Permits or Alcohol Outlets and Taverns states there shall be 500 feet within two similar facilities. This Alcohol Outlet would be in violation of this policy. Member Friedman seconded the motion. Motion carried 5/0.

2. **KIPTIATU ISCANDARI, VARIANCE, V-11983** – Application to allow construction of three single family dwellings with an addition to an existing single family dwelling, with: A) a 14 foot wide driveway where 20 feet is required; and B) a zero foot setback from the access driveway where 20 feet is required, in an R-S-D-3 (Suburban Residence, 3,000 square feet Minimum per Dwelling Unit) District, located at 19635 Meekland Avenue, southwest side, approximately 125 feet south of Cherry Way, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 429-0005-021-00.

The staff recommendation was denial of the second story addition to the existing home at the front of the property, and the request for a 14 foot wide driveway width. The recommendation was approval of a zero foot setback from the access driveway. Board questions to staff were as follows:

- Would the proposed rear setback require a variance
- Would the proposed addition be within the existing five foot side yard set back.

- Would an additional variance be required if the addition was not within the setback of the existing home
- What are the open space requirements for the project

Staff said that the applicant's proposal is to tear down the garage to provide access to the rear of the property. Due to the placement of the existing home on the lot the extension of a driveway to allow access to the back of the property would create a zero foot setback. The proposed two story addition would be a cantilever that would encroach into the driveway access. Therefore, the 19 foot driveway would be reduced to approximately 14 feet going up. An additional variance would be required to encroach into the setback because it is an expansion of a non-conforming use.

Member Palmeri pointed out that the stated 10 foot setback for the proposed new dwellings, indicated on the site plan did not appear to be accurate. Staff responded that if the setback was indeed less than 10 foot a variance would be required.

Staff said the open space requirement would be 600 square feet per unit of open space. The front and rear yard have been considered and the project appears to meet the total square footage requirements. Public testimony was opened.

The Chair said public testimony would be taken. However the application may need to be continued because it appeared another variance may be needed. Mr. Alieu Iscandari, representing his wife, Kiptiatu said it was not his understanding that an additional variance would be required. He believes two variances are required. The first variance would be for the driveway width and the second for required setback from the driveway. Regarding the driveway width, a 19 foot wide access driveway can be provided by removing the garage and utilizing the easement between the two properties. The easements are recorded on each property respectively. The existing home was built in 1957 on a rectangular lot. The proposal was to tear down the garage and put it in the rear of the property. The cantilever design would create an area that does not allow 19 feet driveway. As a result the plot plan has been redesigned with a non cantilever garage. This would allow a 19 foot wide driveway.

Erica Campisi, representing the Cherryland Community Association addressed the Board. The Association made the decision to decline the project based on information they had received. However Ms. Campisi received a call from Mr. Iscandari asking her to come to the property to consider the proposed design changes. She and Kathy Gil were shown the property, including the easements. It appears that the proposed changes allow the appropriate driveway width. The proposed additional structures at the rear of the property do not appear to be able to meet the required setback. The setback of the current home seems to be only three foot, five inches from the property line. The Cherryland Association asked the Board to uphold the requirement of 10 feet from the access driveway. If an exception is made other people will follow. The Association will review any new materials submitted, however the request to uphold the 10 foot setback from the access driveway will remain. Public testimony was closed.

Member Palmeri told Mr. Iscandari that staff needed to review the design changes. The set back issue did not appear to be resolved, additional public notice may also be required. The Chair recommended that the item be continued to April 26, 2006 to clarify design changes. Member Spalding asked staff what was the zoning history and if the density would allow future subdivision and/or additional units. Staff responded that the density was 3,000 square foot of land per dwelling unit, and 5,000 square feet minimum lot size. The applicant's request did not request subdivision of the parcel. Any future subdivision must meet zoning requirements.

Member Spalding commented that zoning density for the area encourages the de facto development of rental units. Member Spalding motioned to continue the application to April 26, 2006 to allow the applicant to submit revised plans. Member Friedman seconded the motion. Motion carried 5/0.

**Approval of Minutes – February 8 and February 22.**

Member Spalding motioned to adopt the Minutes of February 8, 2006 as presented. Member Friedman seconded the motion. Member Clarke abstained. Motion carried 4/0/1.

Member Palmeri motioned to adopt the Minutes of February 22, 2006 with submitted corrections. Member Spalding seconded the motion. Member Clarke abstained. Motion carried 4/0/1.

**Staff Comments & Correspondence:** None.

**Board Announcements, Comments & Reports:** Member Spalding commented that often there was inconsistency or contradiction between zoning densities and State, and County policy. The last application was an example that an applicant could have multiple dwelling units within a building site area. Past State and County policy has been to encourage home ownership. High density zoning may encourage the building of rental units.

**Adjournment:** There being no further business, the hearing adjourned at 2:46 p.m.

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**CHRIS BAZAR - SECRETARY**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**