

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
APRIL 11, 2007
(APPROVED, APRIL 25, 2007)

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

FIELD TRIP: 1:00 p.m.

MEMBERS PRESENT: Vice Chair; Frank Peixoto and Member; Dawn Clark-Montenegro.

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

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner

FIELD TRIP: The meeting adjourned to the field and the following properties were visited:

1. **OMNIPOINT dba T-MOBILE, CONDITIONAL USE PERMIT, C-8558** – Application to allow installation of a new wireless communication site, including the placement of three sets of antenna and one microwave dish at the top of an existing PG&E lattice tower, as well as the construction of an equipment enclosure at the foot of the same PG&E tower, in an R-1-B-E (Single Family Residence, 6,000 square-foot Minimum Building Site) District, located at 2702-2734 East Avenue, northwest side, approximately 350 feet north of Windfeldt Road, Fairview area of unincorporated Alameda County, bearing Assessor's Parcel Number 425-0310-028-00.
2. **SPRINT PCS/ROCHELLE SWANSON, CONDITIONAL USE PERMIT, C-8567** – Application to allow continued operation of a wireless communication facility in a CVCBDSP - SUB4 (Castro Valley Central Business District Specific Plan – Subarea 4) District, located at 20103 Lake Chabot Road, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Number: 084A-0280-004-01.
3. **T-MOBILE/HOLY CROSS EPISCOPAL CHURCH, CONDITIONAL USE PERMIT, C-8570** – Application to allow continued operation of a wireless communication facility, in a R-S-CSU-RV (Suburban Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 19079 Center Street, west side, corner north of Heyer Avenue, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Number: 084C-0775-006-07.
4. **T-MOBILE/ELIZABETH PENNINGTON, CONDITIONAL USE PERMIT, C-8571** – Application to allow continued operation of a wireless communication facility in a P-D-ZU-1566 (Planned Development, 1566th Zoning Unit) District, located at 4169 High Ridge Place, southeast side, approximately 220 feet east of Chaparral Lane, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Number: 085-6301-020-05.
5. **MEGAN JOHNSON/BOHANNAN ORGANIZATION, CONDITIONAL USE PERMIT, C-8572** – Application to allow the operation of a commercial recreation facility (Curves for Woman's Fitness), in a C-1 (Retail Business) District, located at 15938 Hesperian Boulevard, east side, approximately 300 feet

north of Paseo Grande, San Lorenzo area of unincorporated Alameda County, bearing Assessor's Parcel Number: 412-0034-011-02.

6. **ABILIO TRIGO/FUJIKO IWANE, CONDITIONAL USE PERMIT, C-8577** – Application to allow continued operation of a retail market with beer and wine sales, in a T-C (Transit Corridor) District, located at 15100 East 14th Street, northeast side, approximately 50 feet southeast of 151st Avenue, Ashland area of unincorporated Alameda County, bearing Assessor's Parcel Number: 080-0027-033-00.
7. **JOE SILVA/RON SILVA, VARIANCE, V-12058** – Application to allow construction of two dwelling units with: 1) seven dwelling units on-site where six units are maximum allowed; 2) three-foot rear yard where 20 feet is required; 3) five-foot side yard where 10 feet is required; 4) 13-foot wide driveway where 20 feet is required; 5) no pedestrian walkway where otherwise required; 6) zero-foot setback from dwelling wall to driveway where 10 feet is required, in a R-S-D-35 (Suburban Residence, 3,500 square feet per Dwelling Unit) District, located at 154 and 156 Blossom Way, north side, approximately 300 feet east of Meekland Avenue, Hayward area of unincorporated Alameda County, bearing Assessor's Parcel Number: 429-0010-062-00.
8. **BEAUMONT/KUO, VARIANCE, V-12068** – Application to allow construction of a second story living room addition with a 13-foot front yard setback where 20 feet is required, in a R-1-RV (Single Family Residence, Recreational Vehicle) District, located at 17012 Robey Drive, east side, approximately 170th Avenue, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Number: 080A-0233-018-00.

REGULAR MEETING: 6:00 p.m.

MEMBERS PRESENT: Chair; Ron Palmeri; Vice Chair; Frank Peixoto; Members, Jewell Spalding, Lester Friedman and Dawn Clark-Montenegro.

MEMBERS EXCUSED: None.

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

There were approximately 17 people in the audience.

CALL TO ORDER:

The meeting was called to order by the Chair at 6:00 p.m.

ANNOUNCEMENTS BY THE CHAIR: The Chair made no announcements.

OPEN FORUM: Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes.
No one requested to be heard under open forum.

CONSENT CALENDAR:

1. **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 14th Street, southwest end of 162nd Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080C-0479-003-00. (Continued from January 11, March 22, May 24, September 13 and November 8, 2006, and February 7, 2007; to be continued to July 11, 2007).
2. **RAYMOND WONG / RAJESHWAR SINGH – CONDITIONAL USE PERMIT, C-8492 and VARIANCE, V-11997** – Application to construct two new secondary dwelling units and retain the existing dwelling as the third unit providing a 12 foot wide driveway where 20 feet is required: a 16 foot rear yard where 20 feet are required; and 7,440 square feet of lot area where 7,500 square feet is required for a third unit in an R-2-B-E (Two Family Residence with a Minimum Building Site Area of 8,750 square feet) District, located at 16790 Los Banos Street in the unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0083-007-01. (Continued from July 12, 26, August 23, September 27, October 11, November 15 and December 13, 2006, and March 28, 2007; to be continued to May 9, 2007).
3. **ENVISION HOME DEVELOPMENT, VARIANCE, V-12056** - Application to allow expansion of a non-conforming building with construction of a duplex with a: Zero foot setback from the access driveway where 10 feet is required, and a nine foot wide driveway where 20 feet is required, in an R-3-B-E (Three Family Residence, 8,750 square feet Minimum Building Site Area) District, located at 1435 – 166th Avenue, north east side, approximately 270 feet, north west of East 14th Street, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0076-030-00. (Continued from March 14, 2007; to be continued to April 25, 2007).

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

REGULAR CALENDAR

1. **KAREN CARTER, CONDITIONAL USE PERMIT, C-8551** – Application to allow the continued operation of a 15 bed residential care facility, in an R-S-SU (Suburban Residence, Secondary Unit) District, located at 237 Cherry Way, south side, approximately, 500 feet east of Meekland Avenue, unincorporated Cherryland Area of Alameda County, designated Assessor's Parcel Number: 429-0010-047-00. (Continued from February 28 and March 28, 2007).

Staff recommended approval of the application. Vice Chair Pexioto asked staff if there had been a history of maintenance problems which resulted in Condition #4, requiring the applicant to enter into a landscape agreement. This could prove, to be costly for the applicant. Staff responded that there had been no reported problems. However a landscaping agreement would ensure consistency in the event facility staff could not perform maintenance duties. Public testimony was opened.

The applicant, Karen Carter told the Board that she's had a weekly maintenance contract on the property since 1991. Public testimony was closed.

Member Spalding asked if the facility was run by the applicant or a tenant. Public testimony was reopened. Ms. Karen Carter confirmed that her daughter is the current tenant. Public testimony was closed.

Member Friedman motioned to adopt the staff finding of approval. Vice Chair Peixoto asked for an amendment to Condition #4. All language after the first sentence should be omitted, as the applicant has an existing landscape maintenance agreement for property. Member Friedman accepted the amendment. Member Spalding seconded the motion. Motion to approve carried 5/0.

2. **OMNIPOINT dba T-MOBILE, CONDITIONAL USE PERMIT,**

C-8558 – Application to allow the installation of a new wireless communication site, including the placement of three sets of antenna and one microwave dish at the top of an existing PG&E lattice tower, as well as the construction of an equipment enclosure at the foot of the same PG&E tower, in an R-1-B-E (Single Family Residence, 6,000 square foot Minimum Building Site) District, located at 2702-2734 East Avenue, northwest side, approximately 350 feet north of Windfeldt Road, Fairview area of unincorporated Alameda County, bearing Assessor's Parcel Number: 425-0310-028-00.

Staff recommended approval of the application with one correction to the Environment Impact portion of the staff report. Section 15303, New Construction or Conversion of Small Structures applies. Initial Board questions for staff were as follows:

- Is this application considered new construction
- Why does staff believe the application is exempt from CEQA in contrast to the opinion of letters received from the public stating the project is not exempt
- Can staff provide additional information regarding the possible affect of a microwaves emitted from the proposed microwave dish
- What is the proximity of housing to the tower
- What is the zoning density of the property
- Is an encroachment permit required by AT&T prior to approval of the CUP

Staff explained that the proposal is to add an additional 6 feet and a microwave dish to an existing 115 foot, PG&E lattice tower. AT&T has an encroachment permit for the telephone lines. This is not unusual with telecommunication applications. Encroachment paper work is processed at the time of permit issuance. The addition of 6 feet to the existing tower is considered new construction, and fits within the Section 15303 CEQA exemption criteria. The application provided by T-Mobile states the facility will not have an adverse affect on the public. The property is zoned R-1 (Single Family Residential). Unit Density in an R-District is a minimum of 5,000 to 6,000 square feet per unit. Telecom sites are allowed in all Districts with CUP approval, except H-1(Highway Frontage) and some P-D (Planned Development) Zonings. Staff was unsure of the distance between the tower and closest housing. The Alameda County Development Standards for Siting of Telecommunication Facilities, Design Guidelines classify the tower as Freestanding. ACDSSSTF Guidelines require freestanding towers to be outside of any 20 foot, front yard setback. This application meets that requirement. Member Spalding pointed out that page #4 of the T-Mobile application only refers to Radio Frequencies. It does not discuss microwaves. New documentation should be presented as to the affect of microwaves on the public. Public testimony was opened.

Ms. Jacquelyn Cordimas was present, representing T-Mobile. She testified that the project was CEQA exempt per County staff's findings. T-Mobile used Hammett & Edison Inc. to conduct a site analysis. The study conducted, included Radio Frequency Radiation and Microwaves. The resulting calculation found that ambient (ground) level exposure would be 0.00072%, and second floor elevation level to be 0.087% of the public exposure limit set by FCC Guidelines. At both ground and second story emission levels would be less than 1% of acceptable public exposure levels. The results include worst case assumptions, and are expected overstate the actual power density levels. The microwave dish would be directional, point to point service, and have no significant contribution to RF exposure conditions at ground level. Board questions for the applicant were as follows:

- Is the applicant amenable to additional communication entities co-locating at the site
- What is the required minimum distance between homes and this type of equipment
- What type of service does T-Mobile currently have in the area
- Why is a microwave dish required at this site
- Can the microwave dish be flush mounted
- If additional communication entities co-locate will this require additional microwave dishes
- What is the required minimum distance between telecommunication antennas
- What is the total proposed number of antennas on the site
- What steps will be taken to mitigate the visual impact of the antennas

Ms. Cordimas explained that T-Mobile does have some existing service in the area. The new proposal would fill coverage gaps in the existing network. Ms. Cordimas then reviewed coverage maps with the Board. The microwave dish is a way of to bring remote telephone power to the site. The dish is 2 feet in diameter. Ms. Toriana Henderson was also present representing T-Mobile. Ms. Henderson explained FCC requirements do not designate a distance requirement. The FCC requires that an operator remain within their emission guidelines. The Hammett & Edison Report shows levels would be within FCC Guidelines. Measurements from the ground level and a second story level are used because when a signal is emitted it continues out to the horizon. T-Mobile is using the County's Guidelines which set no distance requirements for proximity to residences. The project does meet all required guidelines. In general the nearest residence is approximately 45 feet away. The proposed application is on an existing 115 foot tower and should not affect anything in the area. Regarding CEQA exemption, T-Mobile defers to County Staff's recommendation that the application is exempt. The antennas will be painted to blend in with the existing tower. T-Mobile is not opposed to additional providers sharing the facility however T-Mobile is the operator. PG&E is the easement holder of the property and owner of the tower itself. PG&E would have to approve of addition entities using the site, and work out any agreement. The possibility of the addition of microwave dishes and mounting style would depend on the provider's design proposal. Staff reiterated that ACDSSTF, Design Guidelines consider 4 types of telecommunication facility mountings: façade mounted, roof mounted, ground mounted, and free-standing. This facility is considered a free-standing tower. Regarding installation distance from residences, the ACDSSTF Design Guidelines do not have a minimum distance requirement. Guidelines specify that free-standing towers not be located within 1,000 feet of one another. Staff is not aware of any other free-standing towers within 1,000 feet of this location.

Sally Fielden, a representative of the East Avenue Hills Rural Homes Association testified. She told the Board that she had not been notified of the telecom application. She only found about the hearing today. Concerns have been raised by members of the HOA. Ms. Fielden wanted to review the Hammett & Edison Study, and any other pertinent material. This would be necessary to determine what the potential impacts would be in the Unincorporated County, from this type of project.

Karen Carey, a local resident also testified that she did not receive a written notice but saw a notice on a telephone pole. She was also very concerned about the proposal. She believed the wireless site would be a hazard to the East Avenue Elementary School, located across the street.

Ms. Jacquelyn Cordimas of T-Mobile responded to the issues raised by the neighbors. Ms. Cordimas said that County staff followed their standard application procedure regarding public noticing. Written notices were mailed to addresses within 300 feet of the site location. A copy of the application is also available for review at the Planning Department. Ground maintenance will be the responsibility of T-Mobile, and performed once a month. Landscaping will be added to beautify the area. The proposal is within FCC, and Alameda County Guidelines. There will be no posed health hazards related to the project. Ms. Cordimas closed, and asked the Board to approve the application. Public testimony was closed.

Member Clark asked staff if it was in the Board's pre-emptive to also require PG&E to participate in the maintenance of the parcel. At present the parcel is unsightly, and not in the best condition. County Counsel said that to consider that type of agreement, notification would be required. That process would be beyond the present scope of the current application. Vice Chair Pexioto asked if County Code Enforcement staff could site PG&E for, lack of maintenance. Staff confirmed it was possible to start a compliant process.

Member Spalding asked staff how the application was consistent with the current zoning and environmental guidelines. She also asked what zoning rules applied to the 15 by 20 foot, equipment enclosure. Staff responded that under Policy, A-2 of the ACDSSTF, telecommunication facilities may be allowed with a CUP in all areas except, H-1 (Highway Frontage) and P-D (Planned Development) where specifically restricted. Placement in an R-District is appropriate. The tower is an existing one. The CUP application for the use applies to CEQA Section 15303, New Construction or Conversion of Small Structures. The 6 foot addition and microwave dish to the top of the existing tower are new. The equipment cabinet is considered related support equipment to the tower. Member Spalding did not believe the proposal was considered a conversion of a small structure. The tower is 115 feet in height. The applicant wants to add six antennas, and increase the tower height to a total of 121 feet. Language within Section 15303 says conversion "in" small structures. The tower is not a small structure. Member Spalding said based on her examination of the guidelines provided, more information was necessary. Staff should consider re-visiting the CEQA requirements for the project as the East Avenue School is close to the proposed installation. Member Spalding also recommended staff expand the notification area for this project. In addition staff should refresh Board Members on all telecommunication policies, and ordinances.

The Chair asked County Counsel to comment as to why CEQA review may or may not apply to this specific application. Counsel responded that based on information presented, Article 19, Section 15301 Existing Facilities, Class 1, and Section 15303, New Construction or Conversion of Small Structures would, trigger a CEQA exemption. Vice Chair Peixoto pointed out that the Board had considered many cell site applications. He could not recall one application that did, trigger CEQA. Member Spalding responded that this particular site was larger than most the Board has considered. This is also the first telecommunications application the Board has considered which includes a microwave dish as a component. Staff clarified that the Board had considered applications that did, include a microwave dish. The Chair then pointed out that the BZA had also considered applications where antennas were mounted on top of church steeples, commercial buildings etc.

Member Spalding motioned to continue the application to June 13, 2007 to allow staff to: Re-notice a larger portion of the community regarding the application. Re-examine the application of CEQA and the necessity of an Initial Study. Member Clark seconded the motion with a requested amendment. The noticing area should be expanded to a 1,000 foot radius. The Chair interjected and asked County staff

what the additional cost would be. Staff confirmed the cost would be 0.24 cents per notice. Member Spalding accepted the amendment. Vice Chair Peixoto, and Member Friedman were not in favor of application continuance. Motion to continue the application to June 13, 2007 failed to pass 2/3.

Vice Chair Peixoto motioned to adopt the staff recommendation of approval. Pre Hearing Recommendations will be adopted as Conditions of Approval. Member Friedman seconded the motion. The Chair asked if co-location was a condition of approval. Staff confirmed co-location was addressed in Condition #12. Members Clark and Spalding were not in favor of approval of the application. Motion to approve the application carried 3/2

3. **T-MOBILE/HOLY CROSS EPISCOPAL CHURCH, CONDITIONAL USE PERMIT, C-8570** – Application to allow continued operation of a wireless communication facility, in a R-S-CSU-RV (Suburban Residence, Conditional Secondary Unit, Recreational Vehicle) District, located at 19079 Center Street, west side, corner north of Heyer Avenue, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Number: 084C-0775-006-07.

Staff recommended continued use of the permit. The Castro Valley Municipal Advisory Committee is in favor of approval as well. Public testimony was opened. There were no requests to speak during public testimony. Public testimony was closed.

Member Friedman motioned to adopt the staff finding of approval. Vice Chair Peixoto seconded the motion. Motion to approve the application carried 5/0.

Member Spalding clarified that she was in favor of granting this particular application as opposed to another telecommunications application presented, because this application did not include a microwave dish.

4. **T-MOBILE/ELIZABETH PENNINGTON, CONDITIONAL USE PERMIT, C-8571** – Application to allow continued operation of a wireless communication facility in a P-D-ZU-1566 (Planned Development, 1566th Zoning Unit) District, located at 4169 High Ridge Place, southeast side, approximately 220 feet east of Chaparral Lane, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Number: 085-6301-020-05.

Staff recommended approval of the application. CVMAC also recommended approval. Public testimony was opened. There were no requests to speak during public testimony. Public testimony was closed.

Member Friedman motioned to adopt the staff finding of approval. Member Clark seconded the motion. Motion to approve the application carried 5/0. Member Spalding renewed her comment that her decision to approve this application was based on the fact there is no microwave dish related to the application.

5. **EARL JOHN PARDO, CONDITIONAL USE PERMIT, C-8575** - Application to allow the continued operation of a residential care facility, in an ACBD-RC (Ashland Cherryland Business District Specific Plan, Residential/Commercial) District, located at 827 East Lewelling Boulevard, south side, approximately 250 feet east of Morrill Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 414-0026-005-00. (Continued from March 14, 2007).

Staff reminded the Board that the application had come before them on March 14th, 2007. The

application had been continued at the Board's request to for staff to determine: If the application is considered a Residential Care Facility or Board and Care Facility; Determination as to the use classification of "new" vs. "continued". At the prior hearing an issue was also raised by a neighbor regarding the installation of a fence between their neighboring properties.

Member Friedman told staff that he had an issue with Tentative Finding #3. He did not agree that the issue of adverse affects of health and safety have been addressed. Letters submitted thus far in support of the application are from individuals who do not have a Psychiatric Technician or Psychiatry background. Letters submitted by neighbors, state clients are unsupervised and there is no licensed staff present. At this juncture, additional information has not been submitted from the Sheriffs Department as to the history of the facility. Nor has prior history of the clientele been submitted from physicians. Too much information is still unknown.

Member Spalding asked staff for more information regarding a letter from Telecare Corporation that referred to persons "Dually Diagnosed" and if the term was synonymous with "Bipolar". Staff did not have additional information but recommended the Board ask the applicant for clarification. Public testimony was opened.

Maria Sumner, told Board Members she had been working for Telecare as a Case Manager for some time, and has witnessed a wide range of facilities. The facility collaborates well with Telecare. It is a good place that provides a high level of care. Dually Diagnosed means someone has a psychological diagnosis and is also dealing with drug and alcohol issues. Telecare keeps case loads small so case managers can see clients as often as necessary. Telecare Case Managers are on call 24 hours a day. Member Clark asked Ms. Sumner the following questions:

- How often do clients see a doctor
- What type of training do case workers receive
- What specific type of training have staff members at the applicant's facility received
- How prone are Dually Diagnosed clients to acts of violence

Ms. Sumner said that clients see a doctor once a month, more often if needed. Telecare Case Workers receive on going training. Ms. Sumner told the Board that she did not have specifics as to the level of staff training at the applicant's facility. However based on her observations she has witnessed a high level of care. As each client is an individual. There is no way to predict 100% if someone will become violent. One important component to prevent issues, including violent behavior is communication between case workers and clients. Work closely with clients reduces the possibility of issues. For example if a client is incarcerated the case worker will start to work with the client before they are released. Each person is responsible for taking their medication but case workers do follow up with clients. The Board had the following additional questions for Ms. Sumner:

- On average how long do clients stay at the facility
- How often do Telecare Case Workers visit the facility
- Who provides the determination that clients are capable of living independently
- Who monitors medicine intake at the facility
- What method or procedure is used to verify client history, client mix, daily activities etc.
- Are any of the staff members certified as Psychiatric Technicians

Ms. Sumner confirmed there is one female client living at the facility. Most clients placed at this facility will live there indefinitely. The doctor of each individual client determines their ability to, live independently. She visits the Telecare clients at the facility 2 to 3 times per week, more if necessary. The applicant can give the Board details pertaining to daily operations on site, staff certification, and back

ground information of clients not serviced by Telecare.

Mr. Lloyd Wells from the Telecare Corporation told the Board also gave a definition of “Dually Diagnosed”. Most persons with a dual diagnosis have a mental health history, and an issue with substance or alcohol abuse. Some persons have harmed themselves or others. Mr. Wells is an active Telecare Team Leader that provides service to residents at this, and other area facilities. This includes medical support and referral to additional services. It is imperative that clients have clean, safe and stable housing. Board questions for Mr. Wells were as follows:

- What is Mr. Well’s level of training and experience
- Who determines each client diagnoses
- Do clients have structured and/or sufficient daily activities
- What has been done to respond to, and correct past complaints
- What is total number of Telecare Clients at the facility

Mr. Wells told the Board he had a Masters Degree in Social Work, and 25 years of experience. Everyone wants to remain safe. Team leaders work together with other team leaders, facility owners, clients, and the community to achieve that goal. However there is always a risk. Each Telecare client meets with a psychiatrist once a month or more if needed. Telecare pre-screens their clients. People with a history of violent behavior are not accepted as Telecare clients. If a problem does arise the team leader will work to resolve it, with a solution that also addresses what caused the issue. Some clients attend an out-patient program during the day at Highland Hospital. Currently there are a total of 3, Telecare clients at the facility.

Member Friedman responded that Telecare’s goals were laudable. However without client background and history Board Members may not have enough information to make a decision regarding the application. For example, how can the Board determine if monthly doctor visits are sufficient to provide a safe environment for everyone involved.

Ms. Lisa Ontiveros told the Board that she was the new Administrator for the facility. She began her tenure 3 weeks ago. She has tried to contact the neighbor regarding the fence but has not gotten a response. Ms. Ontiveros sought out the neighbor prior to the meeting but they had not reached a decision. When Mr. Pardo spoke with the neighbor last month, they agreed to build the fence. Mr. Pardo requested that prior to construction he be provided with an estimate of approximate costs. Member Friedman pointed out that the applicant could install a fence between the properties. The fence could be placed solely on the applicant’s property, resolving the issue of costs. The applicant should bear the cost of the fence, as all of the issues regarding the residents stem from Mr. Pardo’s facility. Member Spalding said there appeared to be some confusion regarding the fence. The neighbor testified at the prior hearing that the two homes were originally part of one larger parcel. Perhaps there has been a lot split or boundary adjustment. Staff may need to assist the applicant in addressing property line issues.

Ms. Aracelis Santiago is a resident at the facility. She told the Board this is the second boarding home she has lived in. The facility and staff are very nice and she enjoys living there. Staff members are present at the facility and verify that she takes her medication. She is the only female currently living at the home. Currently there are 5 male residents. She works during the day and returns in the evening. Member Friedman stated, he did not want to break any rules of medical confidentiality but asked Ms. Santiago if she could give Board Members any addition information about her background to understand how the facility operated, and what services they provided. Member Clark asked Ms. Santiago if the facility provided a separate bathing, and sleeping area from male residents. Ms. Santiago responded that she had been diagnosed bipolar at John George Psychiatric Pavilion after trying to harm herself. That

was six years ago. Since then she has been on medication and has not had any problems. At the facility she has her own bedroom, and a separate bathroom to shower etc. Member Spalding congratulated Ms. Santiago for maintaining her health for the past 6 years, and wished her luck in the future.

The Applicant, Mr. Pardo thanked his family, friends and residents for their support. Mr. Pardo said he was first inspired to care for people after seeing the movie Pay it Forward. He believes he has been called to do this kind of work. He wanted to turn his ideas on effecting change on society and turn them into action. Mr. Pardo explained the different levels of care facilities. The highest level is a nursing home. The second level is an adult care facility where patients need supervision with their medications. The lowest is independent living. This is where persons can administer their own medications, and care for themselves. His facility is a low level facility. Patients can take care of themselves but the facility provides some structure. Some of the clients eventually go home. In the interim the facility is their home, and he wants people to feel "at home". Mr. Pardo assured the Board that he wants to maintain a safe environment as well. His family members also live at the residence. He would not put them at risk. He does not make a lot of money operating the home, but is happy with the work. The work allows him to help the government, community and people with disabilities. He also enjoys helping people achieve their dreams. Money cannot buy that kind of happiness.

Member Clark commended Mr. Pardo for his goals but said she was concerned about the safety of his family and the neighbors. Additional Board questions for the applicant were as follows:

- Who is responsible for evaluating the clients that are not referred by Telecare
- What specific training has his staff undergone, to respond to emergencies
- What specific training has the applicant received
- Have any of the clients ever been incarcerated
- Are residents required to attend Alcoholics Anonymous or Narcotics Anonymous Meetings
- How many times has the Sheriff been called to respond to the facility
- How many family members live on-site
- How much is the facility paid per client

Mr. Pardo told the Board that specific training was not required to run an independent living facility. However Mr. Pardo and his staff have attended a Community Care Educational Workshop. This familiarizes people with State of California, Title 22 Regulations. Mr. Pardo said he believes that information is a foundation, but compassion is the key. You have to have compassion to work with the elderly or mentally disabled. The patients at his facility are the lowest level need patients. The referral agencies pre-screen clients. Mr. Pardo then screens, and personally interviews all prospective clients to confirm they are compatible for an independent environment. Some residents only stay at the facility, one month. Many residents work during the day. His aunt and cousin live on site. He lives at a different facility 3 minutes away. Currently there are 6 residents. He would like to have a total of 10 residents. The facility encourages clients to attend A.A. or similar support groups. Some residents attend anger management classes. Facility staff always tries to motivate residents but it is not mandatory. Each person has a free will, and personal rights. Drugs and alcohol are not allowed at the facility. On the unfortunate occasion that a resident is not compatible, they are referred back to a social worker and re-assigned to a more appropriate environment. One resident was arrested for public drunkenness. The person was discharged from the facility and assigned to a higher level facility. Mr. Pardo has owned the facility since August 2006. The facility has called the sheriff 6 times. The facility receives \$700.00 to \$1,000.00 dollars per month for each client depending on the level of care that is required, and if the person is provided with a private or shared room. Public testimony was closed.

The Chair said that he had an issue with the staff report regarding the number of care facilities in Cherryland. The Board does not appear to be getting accurate information. At minimum information is,

under reported. The staff report states there are 10 permitted, Adult Residential Care Facilities within the Cherryland area. The BZA just approved a facility last month that is located around the corner from the current application. Staff information appears not to accurately reflect the total number of recent facility approvals. Staff acknowledged that the recently approved facility in the area was not reflected in the staff report. Staff further clarified that care facilities with six or less persons are not included in the report as facilities that serve 6 clients or less do not require a CUP.

The Vice Chair asked staff to define the difference between a boarding house and residential care facility. He pointed out a discrepancy with the application under consideration. The old permit granted in 1990 was to allow operation of a boarding facility up to 6 people or less. The subsequent permits were for a boarding house. In 2001 a permit was granted for a residential care facility for up to 12 elderly women. The current use has changed from the 2001, use. In comparison to the other 10, known facilities in the area, this facility is not licensed. The applicant testified that the residents are independent. He provides independent living with the rental of rooms, where people work during the day. The application before the Board does not reflect that type of use. The Vice Chair further questioned staff regarding the applicant's description of activities. As a result of clients taking their own medications, working during the day and taking meals at the facility, does this constitute an "independent living facility". Vice Chair, Pexioto acknowledged there was a community need for services but without better information from staff he could not make a decision. He was not clear on the type of facility he was being asked to consider. Staff reviewed Zoning Ordinance Definition, Section 17.04.010. A "boarding house" means a building or portion thereof, other than a hotel or restaurant where four or more persons are provided with lodging or both meals and lodging for a consideration and pursuant to previous arrangement. The term includes lodging house or rooming house, but does not include institutional uses such as hospital, orphanage or home for the aged. The definition of a Residential Care Facility is outlined in the Standards for Development of Hospitals and Medical or Residential Care Facilities, Adopted by the Alameda County Planning Commission on November 3, 1969. "Residential Care Facility": Nursing and Convalescent Home as licensed by the State Department of Public Health; includes Residential Care Homes as licensed by the State Department of Social Welfare and the Alameda County Welfare Department. (Sec. 8-22.5A). The definition of "Independent Living Facility" is contained within the definition of a Medical or Residential Care Facility. This includes the language, group living quarters and/or person placed by an authorized agency for rehabilitation purposes.

Member Clark said she could not make the finding that the use will not adversely affect health and safety based on calls made to the sheriff from the applicant, and neighbors. She would also like to see actual Sheriff's stats to confirm the type, and total number of calls. There may be issues that have not been addressed, because no one is aware of them. In respect to facility staff, she did not feel there is a sufficient number of staff on site. At night there is only one staff person. In addition, she was not confident staff was sufficiently trained to handle a serious on-site emergency.

Member Friedman said based on what has been presented at the current, and prior hearing, it appears the applicant has a lack of control over the clients at the facility. There is also a lack of knowledge on the part of the Board as to why the clients are there. All though information has been presented that the environment is appropriate for one highly functioning client, adequate information is not available to show the facility can service the other clients. Regarding Finding #3, health and safety of persons in the vicinity, further evidence of inadequacy are the owner's monthly calls to the sheriff. Neighbors have felt it necessary to call the sheriff to lodge complaints, and have also testified at prior hearings. There are no letters submitted by medical personnel as to the functional independence of all clients. Without this information, a danger could be posed to the community. Staff and Counsel must address what types of facilities are required to be licensed. It is evident that this facility needs more safety precautions, and staff to work with that type of clientele, as it is not a standard facility. It is not appropriate to request approval until the facility is licensed. All of the issues need to be resolved.

Member Spalding agreed that it was imperative to get clarification on all of the issues raised. The “use” the applicant seeks is new for this facility, and the community. The neighborhood is already saturated with care facilities. The letters submitted from social workers, apply to the current residents. Over time, new residents can move in. New residents may have varying needs within a broad/wide classification, different from the current residents.

The Chair acknowledged Telecare for doing such a good job of screening the 3 clients that are residents. If all of the residents were subject to the scrutiny, care and support of Telecare he would not have the serious concerns regarding the safety of the non Telecare residents, staff, and the community. They have done an excellent job of helping. Regarding the facility, the Chair was concerned that an “un-licensed facility” was monitoring and supervising people taking their medications, as opposed to clients taking their medicines on their own. The facility is un-licensed, and staff is un-trained. In addition, the operation is operating illegally. The Chair said until recently he had lived in the area. Approximately 8 years ago the Cherryland Association provided documentation of 40 residential care facilities within a 1 square mile area. The area is, over saturated. Some facilities may be grandfathered in, or may constitute a house of 6 or less persons. He reiterated that the high concentration was within a 1 square mile area. Within the total number there are some that service people paroled from the correctional system or house people that have been diagnosed with a mental condition. However they have been granted CUP’s. What differentiates these facilities is their license to operate the “use” and trained staff. If relevant, these facilities have staff present, 24 hours per day, 7 days a week. The Chair closed and said that he was torn. There is a constructive element of the applicant’s facility that is benefiting from the independent environment, and functioning well. This component is getting additional support through Telecare. However there are other residents who do not appear to be getting the same care and treatment needed.

Member Spalding motioned to deny the application. The speakers that testified should be commended, and have done a great job. However the “use” being considered is ongoing. The use cannot be tied solely to Telecare or any referral agency. Telecare Corporation cannot be a component of approval, as it supports only some of the residents. Regarding Tentative Finding #1, The use is not required as a public need, proven by overwhelming evidence presented in the staff report. There is an over saturation of care facilities in this neighborhood. Regarding Tentative Finding #2, the use will not be properly related to other uses. The facility is not licensed. The facility is not a supervising facility, nor does the facility purport to supervise the residents. Testimony was given that residents loiter, also excessive cigarette smoke generated by residents drifts onto the neighboring property. Regarding Tentative Finding #3, per testimony given by the applicant. Six calls have been placed by the facility to the Sheriff’s Department. This number does not include calls made to the Sheriff by neighbors. The Sheriff’s Department referral stated they have no issues with the application. However no supporting documentation has been provided detailing past contact with the facility. In addition, second hand cigarette smoke has been proven to be harmful. Regarding Tentative Finding #4, The use will be contrary to intent clauses for the District. The facility is un-licensed. Staff has also provided documentation that the area is oversaturated with care facilities. Member Friedman seconded the motion to deny the application. Motion carried 5/0.

6. **FEDERICO RAMOS/NOOR WAIS, VARIANCE, V-12029** – Application to allow construction of four condominium units providing: 1) a 2-foot setback between driveway to dwelling wall, 2) no independent walkway where otherwise required, and 3) 10-feet between buildings where 20 feet is required located at 305 Willow Avenue, south side, east of Banyan Street, unincorporated Cherryland area of Alameda County, bearing County Assessor’s Parcel Numbers: 429-0059-041 and 429-0059-042. (Continued from March 14 and 28, 2007).

Staff reviewed the application. The recommendation was approval of the driveway setback, and denial of

the request to omit a required pedestrian walkway from the site. Board questions for staff were as follows:

- Does the application meet the minimum parking requirements
- What is the reason for denial regarding omission of a pedestrian walkway
- Is there a nexus between the Sheriff's Department's comment that, increased staffing would be necessary to service an increasing population, as a result of new development

Staff responded that the application does meet the minimum parking requirements. The issue of the independent pedestrian walkway can be resolved by the installation of an asphalt driveway. The walkway area can be delineated from the driveway portion by stamping the concrete. Another method to achieve the same end would be to create a driveway with a slight elevated curb that rolls onto a walkway. Either option would allow pedestrian or emergency vehicle access. County Counsel stated that the Sheriff's Department referral response did not appear to meet the threshold of a staff increase. Public testimony was opened.

The applicant, Mr. Noor was present. Board Members had the following questions for the applicant:

- Is the applicant aware that the Cherryland Association is opposed to the application
- Are there windows on the wall that face the driveway
- Where will parking for the proposed new units be located
- Will the property be sub-divided
- What is the standard setback requirement between a driveway and dwelling wall
- Why is the driveway for parcel #4, only 12 feet in width
- Will landscaping be added along the proposed driveway to the rear of the property

Mr. Noor told the Board that he contacted the Cherryland Association. He believed there was some initial confusion between the respective property, and another application the Association was reviewing. Mr. Noor clarified with the Association that parking was provided for each unit. Mr. Noor said he further explained that the property was not going to be subdivided. The proposal is condominiums. The lot will remain as one common lot, with exclusive use for each unit provided in the backyard. Mr. Noor admitted that he had been very busy and did not have time to for a second follow up with the Association. He believes all of their questions were answered, and resolved. Mr. Noor informed the Board that he was the developer. The applicant Mr. Silva was present to answer questions as well. Mr. Noor continued and confirmed that in the existing home there are windows along the wall that faces the driveway. The existing home in the front of the parcel is the only one that is 2 feet from the driveway. Cars using the driveway should not be disruptive as each home on the parcel will be owned by related family members. Landscaping and/or posts will be added along the driveway to beautify and create a buffer. The existing width of the driveway area next to the single family house is 20 feet. The rear of the parcel, where the proposed units would be placed has sufficient space to accommodate a 4 foot walkway in addition to the driveway. Mr. Noor clarified that driveway width is will not be reduced. The width of the driveway is 20 feet until it reaches Parcel #4. At that point the driveway would narrows to 12 feet, which meets zoning requirements. This allows for an enlarged, landscaped area at the back of the lot. The unit on Parcel #4 will not be affected by a 12 foot driveway as it is the last unit at the rear of the parcel. Only the occupant of Parcel #4 will use that end of the driveway. Mr. Noor explained with the aid of a parcel map that one parking space would be located between the each unit. Two additional spaces will be provided in the garage for each unit. Staff clarified that if the parking requirements 4 spaces or less, a 12 foot width is sufficient. The required distance between a driveway and dwelling wall is 10 feet. However the 2 foot

distance between the existing home and driveway are a special circumstance. The home was built prior to the Zoning Unit adoption in, 1957. The proposed detached units are considered condominiums. Public testimony was closed.

The Chair asked staff if the project were submitted as a subdivision, would the current layout be feasible. Staff responded that the parcel is not large enough to sub-divide into 3 lots. A subdivision requires a minimum lot size of 5,000 square feet each. The Chair asked what would prevent someone from returning in the future to request further variances in order to create a subdivision. Staff said there is no way to prevent someone from requesting a variance. However, the Zoning Ordinance criteria could not be met to subdivide the parcel. The proposed condominium project is feasible because it does not require subdivision.

Vice Chair Peixoto motioned to uphold the staff recommendation of approval. The Chair asked for a clarification to the motion. Does the motion include, Pre Hearing Recommendation #3, the inclusion of an independent walkway, Planning Director shall give final approval of paving material. The Vice Chair confirmed the motion included Pre Hearing Recommendation #3.

Member Spalding requested an amendment to the motion. Would the Vice Chair consider an amendment to require CC&R's for the development, the installation of landscaping and a maintenance clause with final approval of landscaping materials and design given by the Planning Director. Staff interjected that the issue of CC& R's and maintenance could be resolved prior to approval of the Parcel Map. Vice Chair Peixoto only accepted portion of the amendment to motion related to landscaping materials and design. Member Friedman seconded the motion. Motion carried 5/0.

7. **JAMES OFFERMAN, VARIANCE, V-12055** – Application to allow a six foot high fence where two feet is the maximum allowed, in an “R-1” (Single Family Residence, 5,000 square feet Minimum Building Site Area) District, located at 15851 Corte Angelo, southwest corner of Via Lacqua, unincorporated San Lorenzo area of Alameda County, designated Assessor’s Parcel Number: 411-0039-056-00. (Continued from March 14, 2007).

Staff reviewed the history of the application. The application was originally on the March 14, 2007 Agenda, and continued per the applicant’s request. Staff recommended denial of the application. Public testimony was opened. The applicant was not present. There were no requests to speak submitted. Public testimony was closed.

Vice Chair Peixoto motioned to adopt the staff finding of denial. Member Clark seconded the motion. Member Spalding abstained and did not participate in the vote. Motion to deny the application carried 4/0/1.

8. **JOE SILVA/RON SILVA, VARIANCE, V-12058** – Application to allow construction of two dwelling units with: 1) seven dwelling units on-site where six units are maximum allowed; 2) three-foot rear yard where 20 feet is required; 3) five-foot side yard where 10 feet is required; 4) 13-foot wide driveway where 20 feet is required; 5) no pedestrian walkway where otherwise required; 6) zero-foot setback from dwelling wall to driveway where 10 feet is required, in a R-S-D-35 (Suburban Residence, 3,500 square feet per Dwelling Unit) District, located at 154 and 156 Blossom Way, north side, approximately 300 feet east of Meekland Avenue, Hayward area of unincorporated Alameda County, bearing Assessor’s Parcel Number: 429-0010-062-00.

Staff recommended denial of the application. Public testimony was opened. The applicants, Ron & Joe Silva were present. Joe Silva told the Board that there was an existing single family home in the front of the parcel, and an existing four-plex in the rear of the property. They would like to add two additional, single story units in the un-developed, rear portion of the lot. The 13 foot, existing driveway is as a result of a variance granted in 1965, and should not be part of the current variance. They met with Kathy Gil of the Cherryland Association regarding the project and received approval. The Cherryland Association said they were in favor of the project due to the fact that most of the variance requests are pre-existing from the 1965 variance. In addition the property is well maintained. Joe Silva said that his family has lived in Cherryland for 75 years. He lives in another home on Blossom Way. Although it appears there are multiple variance requests, Mr. Silva believes the project design elements will be a better fit with the existing neighborhood. The proposed, single story design will impact neighbors less than a two story structure. The project at 790 Blossom Way, built by his family 30 years ago is an example of what they are trying to achieve. The foot print still looks contemporary and the units have been appealing to tenants.

Ron Silva testified that he also lives in the area. The property at 154-156 Blossom Way is used as a rental. However the property, along with others will remain in the family. As a result he takes considerable time to design, quality projects. He asked Board Members if they had visited the property. Based on the fact that the property is well maintained, he hoped the BZA would agree that the variance request was reasonable. In contrast to the 2nd story property next door, two separate, 1 story units would have less of an impact on the surrounding area. The proposed garages and garage doors are larger than required. The back yard would also be larger than the average footprint in the area. Tenants should find the units appealing, throughout. Mr. Silva said he believes when the parcels in the area were created, gross lot size was determined by measuring from the center of the street. Gross lot size was originally 25,029 square feet. This calculation includes, approximately 1,900 square feet that goes out to center line of the street. When the right of way was created for sidewalks in 1910, the gross lot square footage was reduced by 1,900 square feet. Member Spalding acknowledged the fact that the property is well maintained. However she pointed out a reference in the staff report which reiterated the fact, a variance cannot be granted to increase density. Joe Silva clarified that the request is to use the total lot size not to change density. Additional Board questions were as follows:

- Is there on-site guest parking
- Has the applicant considered reducing the size of either of the proposed units
- Has the applicant considered a two story unit design
- Has the applicant considered reducing the proposed garage size
- How much open space will the proposed single story unit design, provide

Ron Silva told the Board that in order for the project to be feasible there had to be two individual units. The single units also fit his property management style. In terms of design, smaller units were considered but Mr. Silva said he thought of, what were the needs for the area. He and his son represent 3 generations of property management. Most people want a 1 or 3 bedroom unit. Some tenants have moved simply because they need more space. Although the larger unit design is not specifically for accessible use, wider halls and open spaces could benefit an aging population. Ultimately even though the units are single story they are more practical infill compared to a two story design. Each of the proposed units would have a two car garage. Parking is at a premium. In his 42 years of living in Cherryland he has seen an increase in the parking requirements. Regarding overflow parking, guest parking is not a requirement for rental property. However the section of Blossom Way where the property is located is not as congested as the opposite end. The Zoning Ordinance, open space requirement would be met. The backyards are also larger than required. This should fit today's lifestyles, as most parents no longer let children play in the front yard. Staff confirmed that the applicant exceeded the open space requirement by

600 square feet. Public testimony was closed.

Board Members asked staff the following additional questions:

- What is the total property size
- What is the minimum requirement for the rear yard
- If the applicant re-designed the project and submitted a different application type, would additional application fees apply

Staff said the parcel was 23,075 square feet. The Zoning Ordinance allows a unit density of 3,500 square foot per unit. Dividing the lot size by 3,500 would only allow a maximum of 6 units on the parcel. Public property, such as the sidewalk area cannot be used to calculate square footage. The minimum rear yard setback requirement is 20 feet. The applicant could apply fees already paid to a new application, and pay any applicable cost difference.

Based on staff's response regarding density, Vice Chair Peixoto stated the Board would have to deny the application in its current form. Member Spalding asked the applicants if they wanted to consider a continuance to consider their options. Public testimony was re-opened.

Ron Silva asked the Board if he should apply for a P-D Application, instead. The Chair explained possible options. The BZA could make a decision on the variance application before them. Based on the current application, Mr. Silva could anticipate denial. Mr. Silva could then appeal any decision made by the BZA to the Board of Supervisors. The applicant could ask for a continuance after which he may consult with staff to weigh options, such as a P-D, Application. Mr. Silva requested a continuance. Public testimony was closed.

Vice Chair Peixoto motioned to continue the application to the June 13, 2007 Hearing. Member Clark seconded the motion. Motion carried 5/0.

APPROVAL OF MINUTES: Member Spalding motioned to approve the Minutes of February 28, 2007 with submitted amendments and corrections. Member Friedman seconded the motion. Motion carried 5/0.

Member Clark motioned to approve the Minutes of March 14, 2007 with submitted amendments and corrections. Member Friedman seconded the motion. Motion carried 5/0.

Member Clark motioned to approve the Minutes March 28, 2007 with submitted corrections. Vice Chair Peixoto seconded the motion. Member Friedman abstained. He was not present at the March 28, 2007 Meeting. Motion carried 4/0/1.

STAFF COMMENTS & CORRESPONDENCE: Staff made no announcements.

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

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Member Spalding asked County Counsel if CUP's for the sale of alcohol could be limited to one specific type of alcohol. For example, could the Board consider granting a permit for an establishment that specialized in tequila's or imported beer. Counsel told the Board he did not believe an alcohol sales (use permit) could be limited to that extent. However he would confirm the information, and report back. Staff added that the issue had been discussed at past hearings. Code Enforcement staff pointed out that monitoring such a condition would be almost impossible.

ADJOURNMENT:

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

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS