

**MINUTES OF MEETING**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**  
**APRIL 23, 2008**  
**(APPROVED MAY 28, 2008)**

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

**FIELD TRIP: 11:00 p.m.**

**FIELD TRIP:** The Field Trip was cancelled

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

1. **FIRST BAPTIST CHURCH, CONDITIONAL USE PERMIT, C-8619** – Application to allow continued operation of a church in a C-N (Neighborhood Business) District, located at 4274 Seven Hills Road, north side, corner west of Watters Drive, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084D-1212-001-11. **Staff Planner: Richard Tarbell**
2. **WESTOVER VINEYARD, CONDITIONAL USE PERMIT, C-8714** - Application to allow continued operation of a winery with winery-related uses and a caretaker's dwelling, in an 'A' (Agricultural) District, located at 34329 Palomars Road, south side, approximately 2.7 miles north of Niles Canyon Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 085A-5275-013-02. **Staff Planner: Jeff Bonekemper**
3. **WILLIAM and SUZANNE KLAUSNER, VARIANCE, V-12106** – Application to allow an existing five feet 10 inch high fence in the front yard where four feet is the maximum height allowed, in a R-1 (Single Family Residence) District, located at 2919 D Street, south side, approximately 550 feet west of Fairview Avenue, unincorporated Fairview area of Alameda County, bearing Assessor's Parcel Number: 426-0020-001-04. **Staff Planner: Jeff Bonekemper**
4. **DONALD KLEIN, VARIANCE, V-12109** – Application to allow 26 off-street parking spaces where 38 spaces are required on an existing 19-unit apartment building site with the subdivision of one parcel into two lots (Tentative Tract Map, TR-9762), in a R-S-D-20 (Suburban Residence, 2,000 square feet Minimum Building Site Area per Dwelling Unit) District, located at 20670 Forest Avenue, east side, approximately 500 feet of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084C-0716-002-01. **Staff Planner: Howard Lee**

**REGULAR MEETING: 1:30 p.m.**

**MEMBERS PRESENT:** Chair; Jewell Spalding; Vice Chair, Frank Peixoto; Members, Dawn Clark-Montenegro, and Ineda Adesanya.

**MEMBERS EXCUSED:** Member; Kathy Gil.

**OTHERS PRESENT:** Phil Sawrey-Kubicek, Senior Planner; County Counsel, Andrea Weddle; Yvonne Bea Grundy, Recording Secretary.

There were approximately 9 people in the audience.

**CALL TO ORDER:** The meeting was called to order by the Chair at 1:39 p.m.

**ANNOUNCEMENTS BY THE CHAIR:** The Chair made no special 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:**

Staff recommended that Item #4, Variance V-12085 Mike Bocks be moved to the Consent Calendar. The Applicant has requested a continuance to May 28, 2008.

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, December 14, 2005, March 22, May 24, September 13 and November 15, 2006, March 28, July 11, August 8 and September 12, 2007; and January 9, 2008; to be continued to August 27, 2008). **Staff Planner: Christine Greene**
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, March 22, May 24, September 13 and November 8, 2006, February 7, April 11, July 11, August 8 and September 12, 2007; and January 9, 2008; to be continued to August 27, 2008). **Staff Planner: Christine Greene.**
3. **RICHARD GOLD, CONDITIONAL USE PERMIT, C-8640** – Application to allow continued operation of a "B" Type Service Station, in an ACBD – BDI (Ashland and Cherryland Business District Specific Plan- Business Industrial) District, located at 594 East Lewelling Boulevard, north side, terminus, north of Boston Road, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 413-0027-058-02. (Continued from September 26, October 24, November 14 and December 5, 2007; January 9 and February 27, 2008; to be continued to May 28, 2008). **Staff Planner: Pat Anekayuwat.**

Staff announced that the Applicant Mr. Gold was present to answer questions. The Chair said the letter from Alameda County Fire had been received explaining the delay on the Fire Department's behalf. There

were no questions for the Applicant.

4. **MIKE BOCKS, VARIANCE, V- 12085** - Application to allow a garage conversion providing: 1) Three parking spaces where four are required; 2) A zero foot setback from the driveway where 10 feet is required; and 3) A two foot side yard where five feet is required in an RC (Residential and Commercial District within the Ashland and Cherryland Business District Specific Plan,) District, on a property 7,500 square feet in area, located at 330 Lewelling Boulevard, south side, 50 feet west of Tracy Street, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 413-0097-021-00. (Continued from November 14, 2007; January 23 and March 26, 2008). **Staff Planner: Christine Greene.**

Variance V-12085 was moved from the Regular Calendar. The application will be continued to May 28, 2008.

The Vice Chair motioned to accept the Consent Calendar as amended. Member Clark seconded the motion. Motion carried 4/0. Member Gil was excused.

#### **REGULAR CALENDAR**

1. **FIRST BAPTIST CHURCH, CONDITIONAL USE PERMIT, C-8619**  
– Application to allow continued operation of a church in a C-N (Neighborhood Business) District, located at 4274 Seven Hills Road, north side, corner west of Watters Drive, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 084D-1212-001-11. **Staff Planner: Richard Tarbell**

The staff recommendation was approval. Public testimony was opened. The Executive Pastor, Mr. John Mileham was present. Mr. Mileham confirmed that he read the staff report. He was in agreement with the Conditions of Approval, including the Hours of Operation. First Baptist Church has leased a portion of the building from Righetti Partners since 1998. Public testimony was closed.

Board Members were concerned about the overall condition of the site. Further Conditions of Approval may be appropriate. Questions were as follows:

- Is Alameda County Public Works scheduled to upgrade the Public Right of Way, i.e. Sidewalks
- Are there any American with Disabilities Act, requirements
- Does the property owner plan to upgrade the landscaping, painting etc. in the near future

Further information regarding site improvement was not available at the hearing. Staff told Board Members they can conduct further research, and follow up. Public testimony was re-opened.

Pastor Mileham explained that the church maintains the grounds per the lease agreement. The Church has engaged a gardening service. The property owner is responsible for building upkeep. Pastor Mileham said the church was not opposed to adding additional greenery to the site. He can discuss the possibility with the owner. Public testimony was closed.

The Vice Chair motioned to uphold the staff recommendation of approval. The Chair engaged the Board in discussion. The Chair recommended that the Applicant submit a landscaping plan. The Vice Chair responded that the tenant was not responsible for site improvement(s). Additional landscaping should be the responsibility of the owner. Member Adesanya suggested Code Enforcement address any issues regarding site improvement with the property owner. This will ensure that the tenant will not be affected. Staff agreed to contact the property owner. A landscaping plan can be submitted, and implemented within 30 days.

The Vice Chair amended the motion. The Applicant will submit, and implement a landscaping plan within 30 days. Code Enforcement will address the peeling paint at the site. Member Adesanya accepted the modifications.

The motion to uphold the staff recommendation of approval with the stated modifications passed 4/0.

2. **METRO PCS, CONDITIONAL USE PERMIT, C-8708** - Application to allow continued operation of a cell site, in an "A" (Agricultural) District, located at 23207 Hollis Canyon Road, east side approximately 100 feet north of Interstate - 580 Freeway, Unincorporated Castro Valley Area of Alameda County, designated Assessor's Parcel Number: 085A-1150-001-05. (Continued from February 27 and March 26, 2008). **Staff Planner: Richard Tarbell.**

Staff reviewed the application and recommended approval. The Application was continued from prior Calendars to confirm the parcel number of the remote site. A correction shall be made to Condition #7. The Application *shall* allow future co-location, to other wireless telecom companies. The Castro Valley Municipal Advisory Committee also recommended approval. The Vice Chair asked staff how many other telecom sites were located in the area. Staff confirmed there was one site, with 2 antennas. Public testimony was opened.

Mr. Patrick Cruzen was present representing Metro PCS. Mr. Cruzen had read the staff report. Metro PCS was in agreement with staff recommendations. Board Members had no questions for the Applicant. Public testimony was closed.

Member Clark asked if co-location applications were required to come before the Board. Member Clark also pointed out that recent telecom applications reviewed by the Board had 10 year permit lengths, as opposed to 5 years. Staff explained that for the most part, 10 year permits are now standard. Although not impossible, it would be difficult for another carrier to co-locate at this site, due to the remote location. If antenna design and height are similar, co-location applications are normally processed at the Permit Center. County Counsel added that the height threshold which triggers additional Board review is 20 feet. The Telecom Design Standards Policy is silent, regarding equipment cabinets. The Chair commented that future revisions of the Telecom Policy should include discussion of underground vaults to reduce clutter.

The Vice Chair motioned to uphold the staff recommendation of approval. Member Clark seconded the motion with the modification to Condition #7. The word "not" shall be deleted. Motion to approve Conditional Use Permit, C-8708 passed 4/0. Member Gil was excused.

3. **WESTOVER VINEYARD, CONDITIONAL USE PERMIT, C-8714** - Application to allow continued operation of a winery with winery-related uses

and a caretaker's dwelling, in an 'A' (Agricultural) District, located at 34329 Palomars Road, south side, approximately 2.7 miles north of Niles Canyon Road, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 085A-5275-013-02. **Staff Planner: Jeff Bonekemper**

Staff reviewed the application, and recommended approval. Initial Board questions were as follows:

- Are there limitations to "food use" at the site
- Has the Applicant been in compliance with past permits and Conditions of Approval

Staff explained that the any food preparation / service must be subordinate to winery uses. For example the Deli, at the site must be closed during the hours the winery is closed. The property owner has been in compliance with all terms of past permits. Public testimony was opened.

The property owner, Mr. Bill Smyth said that he had been operating the winery since 1985. Mr. Smith is the 3<sup>rd</sup> Generation to operate the Westover Winery. The Smyth's are a branch of the Mc Conaghy Family. Mr. Smyth's Grandmother was born on the property in 1906. The Westover Winery is the only local winery to win a Double Gold Medal. The most recent CUP has been in effect since 1991. There have never been any issues. The Hours of Operation will remain un-changed. The Deli is not used to sell or prepare food. A professional caterer may use the Deli area to stage food to be served. The site is rented for social events like weddings, and the yearly Livermore Winegrowers Association event. Most people bring picnic baskets to events. During wine tasting crackers are served.

A member of the community, Mr. Howard Beckman came to testify regarding two creek related matters. Mr. Beckman is a member of the Friends of the San Lorenzo Creek. In addition he wanted further information about winery uses. He asked for the BZA to define the term "winery related uses". In the past the term had been debated at the Board of Supervisor's. The Chair said she remember the discussion that took place at the BOS. This application differs in that the use is a continuing operation. Staff read the Zoning Ordinance definition of a Winery.

The term [winery or olive oil mill] includes accessory uses such as administrative offices, cooperage, and maintenance facilities. The term includes wine (olive oil) marketing activities that are consistent with the other limitations in this definition. The term includes a winery (olive oil mill) visitor center: a day use facility which may include winery (olive oil mill) tours and wine tasting, retail sales of wine (olive oil) and wine related items, display of historical or educational items related to the wine region, or art, etc. not to exceed thirty (30) percent of the floor area of the winery (olive oil mill) visitor center accessible to the public. The term includes sale or complementary food service and picnic facilities limited to cold foods prepared off-site, such as bread, cheese, crackers, sandwiches or salads, in conjunction with wine tasting and wine sales, provided such food service remains incidental and subordinate to the wine tasting and wine (olive oil) sales."

Mr. Beckman continued. Many people are concerned with properties that boarder creeks, and waterways. Agricultural operations have a different impact on creeks, as opposed to commercial uses. The Regional Water Quality Board does not have the staff to review all applications. Regarding this application, is the picnic area incorporated in the "agricultural zoning". The Chair referred to the staff report which stated that the zoning did include the surrounding property. The Chair thought that Condition #7 addressed Mr. Beckman's concerns and questions. Mr. Beckman said that he had also submitted comments to the staff planner, and never received a response. Overall, Friends of the Creek would like to have an ongoing dialog with planning staff regarding all creek related matters. Regarding this application does the topographic slope of the property near the creek, affect exposure in any way. Staff told Mr. Beckman that

the County Clean Water Division said that the use did not affect the creek. Mr. Beckman said he had serious issue with the statement from Clean Water. The Public Works staff County staff is very limited and may not have thoroughly reviewed the application. Mr. Beckman said he did not have a magic answer however an educational forum regarding creek issues, would be helpful.

Mr. Smyth returned to testify. He said the map in the staff report was somewhat misleading. There is one picnic table approximately 30 feet from the creek. The drop to the creek is 6 to 7 feet. Children are not allowed on vineyard property, due to the possible liability. What usually takes place when food is consumed on property is that it eaten in the picnic area behind the barn. This space is approximately 150 feet from the creek. Mr. Smyth invited Mr. Beckman to the site for a tour of the grounds. The Chair said due to the long family history and insights, this would be an invaluable opportunity. Public testimony was closed.

Member Clark motioned to uphold the staff recommendation of approval with a modification to Condition #2. The sentence, "There shall be no deli service provided on the property" shall be stricken. The balance of the Condition shall remain. The permit will expire on April 23, 2018. Member Adesanya, seconded the motion to approve Conditional Use Permit, C-8714. The motion carried 4/0. Member Gil was excused.

4. **MIKE BOCKS, VARIANCE, V- 12085** - Application to allow a garage conversion providing: 1) Three parking spaces where four are required; 2) A zero foot setback from the driveway where 10 feet is required; and 3) A two foot side yard where five feet is required in an RC (Residential and Commercial District within the Ashland and Cherryland Business District Specific Plan,) District, on a property 7,500 square feet in area, located at 330 Lewelling Boulevard, south side, 50 feet west of Tracy Street, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 413-0097-021-00. (Continued from November 14, 2007; January 23 and March 26, 2008). **Staff Planner: Christine Greene.**

This item was moved to the Consent Calendar. The application will be continued to May 28, 2008 per the Applicant's request.

5. **JEFFERY and JANELLE MCDONALD, VARIANCE, V-12094** – Application to retain a six foot high fence where two feet and four feet is the maximum allowed in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle Parking) District, located at 18563 Madison Avenue, west side corner, southwest of Seaview Avenue, unincorporated Castro Valley Area of Alameda County, designated Assessor's Parcel Number: 084C-0865-001-03. (Continued from January 23, March 12 and April 9, 2008) **Staff Planner: Howard Lee.**

Staff recommended approval of the fence height variance pertaining to the fence on Seaview Avenue, and denial of the fence on Madison Avenue. The fence on the Madison Avenue should be lowered to a height of 4 feet. Alameda County Public Works was concerned about site distance / visibility issues when vehicles back out of the property.

Initial Board questions were as follows:

- Is visibility obstructed due to the height of the fence on Madison Avenue

- What material does the fence on Madison Avenue consist of
- Is it possible to see through the fencing material on Madison Avenue

Staff further explained that the fence height and fencing material were at issue. The height exceeds 4 feet, and is made of solid wood. Public testimony was opened.

Mr. Mc Donald said he owned the home for 1 year. Since he has purchased the property he has made improvements. The fence on Madison Avenue was already in place. He would like to keep the fence. However he would be willing to reduce the height. There is a creek along the Seaview Avenue side of the property. Mr. Mc Donald has one small child and another on the way. He installed the Seaview Avenue fence, for safety. He did consult the Building Department prior to installation. He was told that the height could not exceed 6 feet. Mr. Mc Donald said he considered the creek an “attractive nuisance” The fence on Seaview Avenue is made out of a solid material so people cannot see through it. The portion that sits atop the retaining wall is made of chain link. During the winter the creek level rises. If someone fell in, it is unlikely they could get out. His first priority is to protect the creek, and to limit possible liability if someone were to fall into the water. However in an attempt to increase visibility, he is willing to angle the fence.

Further Board questions were as follows:

- Is the fence parallel to the flood control channel also part of the height variance
- Does the chain link portion of the fence belong to the County
- Is either fence in the public right of way
- Are there any encroachment permits associated with either fence
- What is the staff recommendation for fence heights, and placement

Staff responded that the Zoning Ordinance designates whichever parcel dimension as the most narrow, as the front of the property. As a result the Madison Avenue fence height cannot exceed a maximum of 4 feet at the side, and 2 feet at the corner. The variance request can resolve the retention of the 6 foot height on the Seaview Avenue. However the fence height on Madison Avenue must conform to 2 feet and 4 feet. In an attempt to retain the 6 foot, fence height. Mr. Mc Donald then offered to move the Madison Avenue fence to a location alongside the home. The house is setback 6 feet, 6 inches from the property line. A future improvement project will include siding. Although strictly cosmetic this will also cover the old garage, and provide a uniform appearance. Staff said that although the height would not be in compliance with the Zoning Ordinance, the Board could approve the request. If the fence were set back from the property line, the site distance issue would be sufficiently reduced. Counsel confirmed that the request did fall within the current scope of the application.

A member of Friends of the San Lorenzo Creeks, Mr. Howard Beckman was present. Mr. Beckman said he was one of the members of the community that requested the installation of a Board of Zoning Adjustments. In the past, the Zoning Administrator and Planning Department were not consistent when making zoning decisions. He was present at the hearing to express an important concern regarding creeks. A water channel like the one the Mc Donald property might be referred to as a ditch in jurisdictions, like the City of Hayward. Alameda County Public Works Engineers usually refer to creeks as flood control channels. This terminology minimizes any emotional connection with creeks. The general public has the right to access water ways. The FSLC in addition to community members who gave input on the Madison Avenue Specific Plan are concerned with more than creeks. The FSLC are also concerned with drainage, and water shed. There is an entire system of creeks within the County. This includes culverts, and concretized channels. This system involves more than day light, natural creeks. Mr. Beckman stated for the record that the notion water channels have no public value is

inaccurate. Water channels are a public asset. This is an attitude that the FSLC are fighting to change. This attitude has been pervasive within the County for the past 100 years. Regarding fences to provide safety, there are trade offs. Their use can be tricky. Although there may be some benefit. In general creeks should not be walled off. Mr. Beckman then addressed the staff report. Regarding Tentative Finding #1, he found it offensive that staff would find that approval of prior variances, relevant. He then referred to the history of the parcel. The parcel was initially approved as a legal building site by means of a variance in 1967. The prior variance on the property created the current situation by reducing the front and rear setbacks. The staff finding was not based on a logical concept. In addition the fact that a creek is running through the property, is not a special circumstance. If that concept were true, that would result in the coverage of all, area creeks. Mr. Beckman said staff was adept at making findings to support variances. However he wanted to call the faulty logic to the Board's attention. The BZA hears a lot of fence applications. In general there are height parameters that are considered. In regard to Variance, V-12094, Mr. Beckman did not believe the special circumstances of an irregularly shaped lot, which was created as the result of a prior variance was applicable.

The Chair said overall she agreed with Mr. Beckman. If the original variance proposal had come before the BZA, it is unlikely that it would have been approved. However in this case, a young couple was now attempting to improve their property. The property is an awkward shape. Mr. Beckman responded that special circumstances must apply to the land. The Chair said in this case the triangular shape of the lot was an issue. Albeit not as the result of a situation the Applicant caused.

The Vice Chair pointed out the property owner should have an option to secure the property. If a fence were not allowed, there could be a liability issue if someone were injured. The owner should have a right to secure the property. He agreed that special circumstance should apply to the property when considering variance findings. However the issue has been raised before. When the BZA received their training, he posed the question to Professor, Tom Davidson. The Vice Chair said the question was not completely answered in black and white terms. The Vice Chair also cited an example of a request for an increased side set back. The Zoning Ordinance did allow a second story. The property owner was handicapped, and could not climb stairs. The variance request was granted. Mr. Beckman said the aforementioned story was an example of how decisions are sometimes made based on a personal story. Although he is empathetic the Mc Donald's situation, personal stories should not be a basis for approval. Mr. Beckman said that it can become more complicated if an application is appealed to the Board of Supervisors. On occasion at Board of Supervisors Meeting, Members have responded in an unkind manner, because he adopted a particular position on an issue. Mr. Beckman said he did not want to belabor the particular point. In this case as with many other applicants the issue is larger than one individual case. The Mc Donald's are caught up in a larger debate. This specific lot does have a creek flowing through it. That is a big issue. One of the reasons the Friends of San Lorenzo Creek was founded was to educate the public. Often the County considers issues parcel by parcel. However this is not how water flows. Member Adesanya asked Mr. Beckman if he believed that all water ways should be open to the public. Mr. Beckman said not every inch of every creek should be open to the public. The Friends of the Creek does not hold the belief that every inch, of every creek should be accessible to the public. However there should be access in general. In contrast there are some people who think every inch, of every creek should be covered. In any case he was speaking in general, and did not want to get caught up or belabor the point. More issues are created from the larger, overarching issue. There should be continued future discussion of variances and the decision process. In addition to water issues.

The Chair asked the Applicant if would be amenable to the omission Condition #2. Mr. Mc Donald did not object. Public testimony was closed.

The Board asked staff to confirm the following:

- Does the height variance include the fence that is parallel to the creek
- Is there an encroachment permit
- Is either fence within the public right of way
- Is the Applicant responsible for maintaining the flood control channel

Staff responded that the variance application was applicable to the fence facing the backyard. Staff confirmed that next to the flood channel, a fence height of 6 feet was acceptable. The wooden portion of the fence is the portion that the Applicant is responsible for. The Applicant is not responsible for maintaining the flood channel area. The fence on Madison Avenue is currently within the public right of way. The fence on Seaview Avenue is not located within the public right of way. There is no encroachment permit in effect for either fence. Board discussion ensued as to how best to clarify the Applicant's responsibilities regarding maintenance; and the responsibility of limiting access to the flood control channel. Board Members did not believe the Applicant should bear responsibility for the maintaining the County owned portion of the fence. In addition the Applicant should also be allowed to provide some modicum of public safety.

Based upon staff and Board discussion, Board Members agreed to strike Tentative Findings #2 and #3. County Counsel posed the following modifications and additions to the proposed Conditions of Approval. Condition #1 shall remain unchanged. Condition #2 shall be revised to state, Variance, V-12094 shall allow a fence height variance along Seaview Avenue from the required 2 and 4 foot to a maximum of 6 feet subject to Findings and Conditions contained herein. A Condition shall be added. Condition #3 shall allow a fence height variance, along Madison Avenue from the required 4 feet to a maximum of 6 feet at a location behind the allowed six foot, six inch set back.

The Vice Chair motioned to approve the application. Tentative Findings #2 and #3 shall be stricken. Condition #2 shall be revised as stated. A further Condition, Condition #3 shall be adopted as stated in the aforementioned paragraph. Member Clark seconded the motion. Motion carried 4/0.

6. **WILLIAM and SUZANNE KLAUSNER, VARIANCE, V-12106** – Application to allow an existing five feet 10 inch high fence in the front yard where four feet is the maximum height allowed, in a R-1 (Single Family Residence) District, located at 2919 D Street, south side, approximately 550 feet west of Fairview Avenue, unincorporated Fairview area of Alameda County, bearing Assessor's Parcel Number: 426-0020-001-04. **Staff Planner: Jeff Bonekemper**

Staff recommended approval of the application. A fence height variance was approved by the BZA at the site next door on January 23, 2008 (V-12093 Crozier). Member Clark asked staff if graffiti was still present on the fence of the pending application. Staff confirmed that was the case. Alameda County Code Enforcement will follow up regarding the graffiti. Public testimony was opened.

The Applicant, Mr. William Klausner was present. Mr. Klausner distributed photographs of the site. The fence has been in place for more than 30 years. The D Street area is now a busy thoroughfare. Originally the area was mostly chicken farms. He acknowledged that graffiti has always been a problem. The site is near an Elementary School, and is heavily trafficked. Graffiti appeared on the fence, 3 days after installation. Mr. Klausner confirmed that the graffiti will be removed within a matter of days. Like his neighbor he will plant wild roses on the fence to discourage future tagging. The Chair asked if the gate located on the shared driveway belonged to Mr. Klausner, or to the neighboring property. Mr. Klausner explained that the gate was his neighbor's. His neighbor was in the process of remodeling. The

excess debris should be removed soon, and the gate repaired. In closing the Chair asked Mr. Klausner to ensure that vegetation did not grow into the public right of way. Public testimony was closed.

Member Adesanya asked for clarification of the actual fence height, and if there were further fence height variances pending for the neighborhood. Staff stated for the record that the fence height in the staff report should be 5 feet, 10 inches not 6 feet in height. There are no additional height variances pending at this time. Thus far the Board has granted a height variance for the front fence on the neighboring property (V-12093 Crozier).

The Chair asked that Public Works, Building, Fire and the Traffic Engineering Department be removed from the Conditions of Approval. The Applicant should also keep the fence free of graffiti. Additional landscaping will help. However the Applicant should ensure that the public right of way shall be kept clear.

Member Clark asked staff how the Fire Department would gain access to the property, also if the gate height was included in the variance application. Staff responded that the gate will provide access to the property. The variance application includes the gate and fence height.

The Vice Chair did not believe special circumstances were applicable to the property. If the finding is based upon safety, every home located within proximity of a heavy traffic area will want a variance for fence height. However, in the event other Board Members were able to make findings to approve the application. The Vice Chair suggested that first portion of Tentative Finding #1 be deleted. The Finding should begin with, the proximity.... The Vice Chair also recommended that the Fire Department be omitted from the Conditions of Approval.

Member Adesana motioned to uphold the staff recommendation of approval with a correction. The Conditions of Approval shall be corrected to reflect a fence height of 5 feet, 10 inches as opposed to a fence of 6 feet. The Chair asked for a modification to the motion. She requested that Condition #1 have the following subsections removed. Subsection a. Building Inspection Department; Subsection b. Fire Department; and Subsection c. Public Works Traffic Engineering. Condition #2 should be modified to include the following sentence: The fence shall remain graffiti free. Member Clark seconded the motion.

The Vice Chair asked a question. He was not in agreement with, Tentative Finding #1. As stated, special circumstances were applicable to the property. He reiterated that if safety was indeed a special circumstance. The Finding should be re-worded. Finding #1 should state: The proximity to a busy intersection and the amount of traffic on D Street raise safety issues regarding front yard use by children to warrant an over height fence. After discussion all Board Members were in agreement with all of the proposed modifications.

Member Adesanya restated he motion to uphold the staff recommendation of approval with the aforementioned modifications. Member Clark seconded the motion. The motion to approve Variance, V-12106 was carried 4/0. Member Gil was excused.

7. **DONALD KLEIN, VARIANCE, V-12109** – Application to allow 26 off-street parking spaces where 38 spaces are required on an existing 19-unit apartment building site with the subdivision of one parcel into two lots (Tentative Tract Map, TR-9762), in a R-S-D-20 (Suburban Residence, 2,000 square feet Minimum Building Site Area per Dwelling Unit) District, located at 20670 Forest Avenue, east side, approximately 500 feet of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel

Number: 084C-0716-002-01. **Staff Planner: Howard Lee**

Staff recommended approval of the application. Initial Board questions were as follows:

- Why did the CVMAC recommend denial of the project
- What is the status of the prior condo conversion application
- Is there a method to prevent a future condo conversion request
- If the buildings were not currently in existence would an SDR be required
- What street does the house at the entrance of the lot face
- What is the required parking for the proposal
- How long has the paved area been in existence
- Does the square footage of the paved area exceed the 50% maximum threshold
- Does the Ordinance require a dumpster and/or enclosure for projects that exceed a certain of units

Staff responded that a Condo Conversion application had been submitted a few years ago for the site. After a long period of review, the Applicant agreed with staff there was not sufficient room to meet the Condo Conversion Guidelines. As a result, the application was withdrawn. It is unlikely that a new request would be submitted. Condo Guidelines require that a total of 2 spaces for each unit be provided. In addition guest parking must also be provided. In the event a new application were submitted, the condo parking guidelines would be almost impossible to meet. The Applicant now plans to split off the section of the parcel that already contains the apartment complex. Two individual lots will be created. The house at the front of the parcel fronts onto Forest Avenue. The Zoning Ordinance requires that 2 off street parking spaces be provided. Once the off street parking is met. The Ordinance does not prevent you from parking in an area that is not, located within the front yard set back. There is a separate Section in the Neighborhood Preservation Ordinance that does not allow more than 50% of a front yard, to be paved. If the area was paved prior to June 1999, the paving is Grand Fathered in. This parking in the front and rear of the site were in existence prior to the Ordinance. Public testimony was opened.

The Applicant, Mr. Klein and Jeff Moore from, Greenwood & Moore were present. Mr. Moore has been working with Mr. Klein on the current project. Mr. Moore said he was well aware of past parking issue discussions. Staff recommended the condo-conversion application be submitted to the Castro Valley Municipal Advisory Committee to illicit feed-back. The feedback received from the CVMAC determined that although technically feasible, parking would be difficult to achieve. Based on the feedback, Mr. Moore recommended the condominium conversion application be rescinded. A new application was submitted for a Parcel Map. The existing parcel will be divided into separate lots. When the application was revised there was an impression that if approved. A future variance request would materialize. Mr. Klein does not intend to convert the apartments into condos. He is willing to include any language that allays concerns regarding a future right to condo conversion. If another person bought the land, they would have to go through the entitlement process. Approval for a condo conversion is unlikely to be granted.

The Applicant, Mr. Klein proposes to add a 2 car garage to the site. The garage will be set, at the back of the site. Parking in the front area will be removed. Frontage improvements will be added to the streetscape, and in front of the apartment complex. The apartment complex is a total of 19 units. Most of the units are 1 bedroom. There are two larger units. The variance application is a formality to resolve the existing, non-conforming parking. Additional Board questions for the Applicant were as follows:

- What can be achieved by splitting the parcel, as the Applicant owns the entire site
- Does Mr. Klein live on site
- Is security present on the property

- Are there parking solutions posed in response to the neighbors comments about limited street parking
- Why aren't guests allowed to park on - site
- Where will the new parking be located
- Will proposed parking be tandem
- Will the driveway on the property be reduced
- Will there be delineation between resident and guest parking

Mr. Klein said that he would like to fix up the home in the front portion of the lot, and then sell it at some point in the future. Waste Management has approved a dumpster for the site. This will be an improvement over individual garbage cans. He does not live on-site. The 1 bedroom apartments are too small for his needs. The new parking will be added onto the open dirt, and grass area. Currently there is posted signage that does not permit guests to park on-site. A property manager does live on-site. He is keenly aware of what takes place on the grounds. He patrols the site, and knows all of the residents.

Mr. Moore said that the issues the Board raised were common when conducting this type of project. He then referred to the site plan. Typically parking and landscaping issues are resolved during the site map process. Mr. Moore said he was willing to work with staff, and accept recommendations to create as much parking as possible. The width of the driveway is 16 feet. The net width of the driveway will not be reduced. A landscape buffer will be placed next to the rear parking area. The existing 3 foot high fence will be reduced.

Staff took a brief break to review parking options with the Applicant. After a discussion with Board Members and staff, the project consultant, Mr. Jeff Moore agreed to add as many parking stalls that can reasonably be accommodated. As the result of the agreement to install a trash enclosure, the exact number of stalls is yet to be determined. Mr. Moore thought it would be appropriate to leave the variance request of 26 off street parking spaces, unchanged. After the dumpster is complete, Mr. Klein will submit a parking use plan. This plan will encourage visitors to park on-site. County Counsel provided language to provide a condition to address guest parking concerns: The Applicant shall remove from the site, any signage restricting the use of on-site parking, solely to occupants. Board Members agreed. This process will also allow the property owner sufficient time to create signage, and notify tenants of the new parking policy. The Applicant and Project Consultant agreed to the following: install a dumpster enclosure, submit a parking plan that includes signage revision, encouraging on-site guest parking. In addition the Applicant shall submit a landscape plan. Public testimony was closed.

Member Adesanya motioned to approve the staff recommendation of approval with the following modifications: The Applicant shall add a dumpster enclosure to the site; The Applicant shall submit a parking plan; The policy shall include a policy which revises property signage, and encourages on-site guest parking. All tenants shall be notified of this Condition; The Applicant shall submit a landscaping plan. Member Clark seconded the motion. Motion carried 4/0.

**APPROVAL OF MINUTES:** Member Clark motioned to accept the Minutes of March 12, 2008 as amended. Member Adesanya seconded the motion. Motion carried 4/0. Member Gil was excused.

Member Clark motioned to accept the Minutes of March 26, 2008 as amended. Member Adesanya seconded the motion. Motion carried 3/0/1. The Chair was not present at the March 26, 2008 Meeting. The Chair abstained and did not participate in the vote. Member Gil was excused.

**STAFF COMMENTS & CORRESPONDENCE:** Staff distributed information regarding the Design Guideline and Development Standard Taskforce. Participants will be chosen from the Ashland, Castro Valley,

Cherryland, El Portal Ridge, Fairview Hillcrest Knolls and San Lorenzo communities to work with staff. Applications are due on May 23, 2008.

**BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:** The Chair asked staff if there were Conditional Use Permits in existence that did not have expiration dates. Staff confirmed a few had been issued many years ago prior to the existence of the BZA. The Chair asked staff to devise a method to periodically follow up on sites that have old use permits that do not contain an expiration date.

The Vice Chair also asked staff to periodically check sites that have applied for a permit however the application process is still pending.

Member Clark asked that Code Enforcement follow up with the graffiti on the fence located at 2929 D Street. Code Enforcement should also follow up regarding possible graffiti, an in-operable vehicle and the presence of shopping carts at 20670 Forest Avenue.

**ADJOURNMENT:** There being no further business, the hearing adjourned at 5:05 p.m.

---

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