

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
MAY 13, 2009
APPROVED JUNE 24, 2009**

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

MEMBERS PRESENT: The Field Trip was cancelled. Members visited the site on an individual basis.

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

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner

FIELD TRIP: Staff visited the following property:

FIELD TRIP: 1:00 p.m.

1. **MISSION HOPE DAY PROGRAM / NIMFA COLEMAN, CONDITIONAL USE PERMIT, PLN-2009-00031** - Conditional Use Permit Application to allow continued operation of an adult day care center for developmentally disabled persons in an existing building, on an 8,850 square foot lot, in an ACBD-TA (Ashland Cherryland Business Specific – Transit Access) District, located at 21328 Mission Boulevard, northeast at its intersection with Blossom Way, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 414-0081-012-00. **Staff Planner: Andrew Young.**

REGULAR MEETING: 1:30 p.m.

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

MEMBERS EXCUSED:

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel, Eric Chambliss; Code Enforcement Staff; Yvonne Bea Grundy, Recording Secretary.

There were approximately 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 special announcements.

**EDEN AREA LIVABILITY INITIATIVE'S (EALI) MODELS OF GOVERNMENT
(SUPERVISOR NATE MILEY)**

Supervisor Nate Miley distributed updated material, including a revised Model of Governance. Today's discussion will focus on 2 governance issues related to commissions. Supervisor Miley's presentation included discussion from the April 8, 2009 Eden Area Livability Working Group Meeting. The goal of EALI is to create a vision of the Unincorporated Area based on a common dream. The project thus far involved 800 people. Participants voted on 24 projects they had interest in. Out of the 24 candidate

projects, a Top 5 List was created. Other topics discussed at meetings have been the anatomy of a permit. To which Planning staff conducted a refresher course on variances and cups. .

The EALI Group heard concerns about the make up of the Planning Commission. The Planning Commission has 7 members. Four of the members are from the unincorporated area. Chapter 2.4 of the Administrative Code will be updated. One Commissioner will be from the unincorporated portion of District #1, Scott Haggerty, probably the East County. The second Commissioner may come from the incorporated portion of District #1. Alice Lai-Bitker, District #3 will appoint one person from the unincorporated area. District #4, Nate Miley will have two Commissioners, totaling 4 Commissioners from Unincorporated County. The modification will codify what presently exists. Persons who would like to be appointment to the Planning Commission must have 1 year residency in Unincorporated County. Presentations of the proposed changes will take place at the Unincorporated Services Meetings, The BOS Transportation and Planning Meetings. When a vacancy occurs on the Board of Zoning Adjustments or Planning Commission the nomination process requires a 30 day posting of the opening. The process will not apply to the Castro Valley Municipal Advisory Committee. After the 30 day notification period has elapsed, submitted applications will be reviewed by the appropriate Supervisor. The Supervisor will review, and indicate within 15 days a list of qualified persons to be posted as official candidates. Members of the public can submit comments regarding candidates to the appropriate Supervisor. Comments are confidential. After a 15 day period the BOS will announce the Appointee. The process will take a total of 60 days. The process would be a Policy, as opposed to Law.

Supervisor Miley then referred to a Memo drafted by County Counsel, Brian Washington dated March 11, 2009 based on discussion from the EALI Working Group. Supervisor Miley is looking for Board feedback, as standard of review process is on-going discussion. Thus far he has talked with the CVMAC. He will also be soliciting feed-back from the Cherryland and San Lorenzo Homes Association. Regarding matters of appeal to the BOS from the Planning Commission BZA:

The Board currently has discretion, and reviews matters on a de novo review. The BZA has requested that matters be sent back for review, if new information arises. This would be a revolutionary change. No other State, City or Counsel body processes appeals in this manner. Although the Board of Supervisors has the ability to change process, the result could eliminate flexibility. At present the BOS can use their discretion, if the proposed were to become law. All cases would return for review if new information came up. New law changes would also have to be approved by the Board of Supervisor's. The Vice Chair asked Supervisor Miley how often the BOS was informed new information has arisen. Supervisor Miley said it did not happen often. Again there is no other body in the State that operates in that fashion. If the County changed to the process, it would be dramatic. Presently California law does not allow for remand. Based on existing language the BOS cannot remand on land use items. However due to a lack of specificity there may be ways to get around it. Caution must be exercised. Any word developed that is so descriptive to be recognized as achieving the same process, may be identified as such. Therefore the process could be challenged legally. The EALI Working Group is still reviewing the remand process. In the end there may be no change to the current process.

Board questions for Supervisor Miley were as follows:

- What is the difference between case review and case remand
- Who determines what denotes a substantive change

Supervisor Miley said if a project is changed substantially the BOS can send an item back to BZA for review. However if the proposed EALI language is enacted even small non-substantive changes can be sent back for review. This could have a chilling effect on projects moving through the system. Staff gave an example. If a variance approved for 5 foot side yard. The project is changed to an 8 foot setback in

addition to the proposed home has been redesigned. That would be a change that could be returned to the BZA to consider. In most cases applications do not change to that extent. Remand is when substantial new information is presented. A change of process could slow review, and possibly run afoul of the Subdivision Map Act. There was a case that was referred to the BOS regarding a paved front yard. Members of the audience were frustrated the Board was using their time to calculate parking. Staff added that often the BOS does not get the new information until just before the meetings begin. Supervisor Miley said if there is sufficient time staff may offer options for the BOS to consider. The other option EALI discussed is adding a second layer to the appeal process, first to the Planning Commission and then to the BOS. This is emphatically disallowed in the Zoning Code. Appeals must have one level of appeal, directly to the BOS.

Supervisor Miley continued. Regarding the discussions of the community planning process the 4 options continue to be considered. The goal is to get the community more involved in the decision making process. Options discussed are as follows:

The first option is have a Castro Valley MAC and Eden Area MAC that would include the urban unincorporated areas Cherryland, Fairview, San Lorenzo and Ashland. The Committees would be advisory in their capacity. The Unincorporated Services Committee coordinated by Supervisors Miley and Lai Bitker will be disbanded. This option did not get a lot of votes.

A second option is to have an Unincorporated Council and a CVMAC. The Unincorporated Services Committee would be disbanded. This option would allow the CVMAC representation on the Unincorporated Council. This option received a lot of votes.

A third option is to retain the status quo.

The fourth option is have a Castro Valley MAC and Eden Area MAC and all of the members of each come together having representatives on an Unincorporated Area Council. The Unincorporated Services Committee would be disbanded.

Further Board questions were as follows:

- How would the proposed committees / boards be staffed
- Would staffing levels increase or decrease
- What is the role of the Unincorporated Services Meeting
- Can a Planning Commission Appointee live anywhere within the Unincorporated Area
- If an Eden Area MAC were empanelled can Members attend general Council Meetings
- Who would be responsible for making appointments to the various Boards
- How would Fairview issues be considered
- Would the CVMAC remain unchanged

Supervisor Miley explained that if the Unincorporated Services Committee were disbanded as in Option #1, the staffing level would remain the same. Only Option #4 would increase staffing commitment. The number of committee members for Option #4 has yet to be determined, if adopted support staff would be assigned accordingly. An Eden Area Council would hear issues from Eden, and be allowed to attend general Council Meetings. The current Unincorporated Services Committee covers the entire Unincorporated County, and is advisory in capacity. Citizens can bring forward issues. If warranted, issued can then be forwarded to the BOS. Regarding the Planning Commission, appointees that represent Cherryland must live in the Cherryland. The same is true for the other Districts. Currently the BOS makes appointments. Often recommendations are forwarded for consideration. It is undecided how the

process might change. Perhaps representatives from the community might make appointments; or do so jointly with the BOS. Supervisor Miley acknowledged some of the Planning Areas overlapped. The CVMAC would remain unchanged. Fairview applications/issue could be referred to the entity that has jurisdiction within the closest proximity.

The Chair said she liked Option #1 even though it did not get a lot of votes. She would like the Eden Area to have the same abilities of the CVMAC. The Vice Chair noted that Option #4 was popular at EALI Meetings however she thought Option #1 was viable. It may also have less of an impact on the Budget. Member Spalding said there are areas of Fairview that adjoin and overlap into Castro Valley. This can cause division among the areas. She asked if the Fairview representative would be able to attend both the Eden and CVMAC Councils. Supervisor Miley said some of the current issues regarding Fairview are at the top area along the ridge. The Castle Homes subdivision overlaps the Castro Valley planning area. Any proposed solution should not further divide, but bring consistency and commonality. Member Adesanya acknowledged she was somewhat biased having served on the CVMAC. However Option #1 was the best consideration, because it did not add a further layer of review.

Public testimony was opened for comment. There were no requests to speak.

Supervisor Miley thanked Board Members for their feedback. Comments will be forwarded to the EALI Meeting held on June 17, 2009.

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.

Neighborhood Preservation Ordinance Abatement Hearing

1. **Erick W. Byrd, 1953 Manchester Road, San Leandro, CA 94578**
In violation of Alameda County Ordinance 6.65.030 D(1) and M(1).
 1. Overgrown weeds and vegetation.

The Vice Chair motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 4/0.

2. **Henry T. Nguyen, Vacant Lot at 170th & President Dr., San Leandro CA 94580**
In violation of Alameda County Ordinance 6.65.030 D(1,3), G(1) and M(1).
 1. Overgrown vegetation & weeds.

Member Spalding motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. The Vice Chair seconded the motion. Motion carried 4/0.

3. **Ernest Silva, 20016 Forest Ave., Castro Valley CA 94546**
In violation of Alameda County Ordinance 6.65.030 A(1,3), D(1,2,3) and M(1).
 1. Unlawful outdoor storage of debris & miscellaneous items in rear yard
 2. Overgrown vegetation & weeds.

Member Spalding motioned to uphold the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Adesanya seconded the motion. Motion carried 4/0.

**4. Katharina Rodgers, 19227 Garrison Ave., Castro Valley CA 94546
(continued from April 22, 2009's hearing)**

In violation of Alameda County Ordinance 6.65.030 D(1,2) and M(1).

1. Overgrown vegetation & weeds.

Member Spalding motioned to uphold the staff recommendation. The \$94.00 Re-inspection fee will remain. The Vice Chair seconded the motion. Motion carried 4/0.

CONSENT CALENDAR:

1. There were no items scheduled for the Consent Calendar.

REGULAR CALENDAR

1. **LILY & ANGELA VEGARA, CONDITIONAL USE PERMIT, PLN-2009-00001 -** Conditional Use Permit Application to allow a child care center for 46 children, in an R-1 (Single Family Residence) District, located at 2500 Hansen Road, west side approximately 300 feet north of Cross Street, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 426-0130-072-00. (Continued from March 22 and April 22, 2009).
Staff Planner: Richard Tarbell.

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

- How many children will be allowed at the facility
- Is this a new application

Staff explained the original request was for 46 children. The State of California licensing is site specific. To meet State Licensing requirements for that number of children the facility would need substantial renovation. The Applicant has now reduced the request to 28 children. Public testimony was opened.

The Applicant Angela Lilly Vegara was present. Board questions for the Applicant were as follows:

- What will be the age range of children at the daycare
- Has the Applicant read the staff report
- What are the drop off and pick-up times
- Does the Applicant operate additional child care facilities
- Does the Applicant have a current State License for childcare
- From what area will the center draw its clientele

Ms. Vegara has read the staff report. The age range will be from 2 to 5 years. There may be some children in the 2 year old range still in diapers. Drop off and pick up times are arranged with parents depending on their schedules. The facility Hours of Operation are from 7:00 a.m. to 6:00 p.m. Ms. Vegara has been in the daycare business for 14 years. She has also worked for relatives in the same field. Currently she runs a daycare from her home which will close when she moves to the facility at the Coptic Church. Ms Vegara is a contractor, and will only operate the daycare. Attendance is not limited to church members. Children from the Hayward area are eligible. Ms. Vegara holds a valid State License. She hopes to have 28 children at the church facility however the State Licensing Board will determine the final number allowed. Anticipated staff will be 6 persons. Public testimony was closed.

Board Members discussed possible modifications to Tentative Findings, and Conditions of Approval. A permit length of 5 years may be too long. Also, enforcing Conditions for pick-up and drop off could be difficult. Noise should not be an issue. Tentative Finding #1 should not specifically refer to urbanized areas of unincorporated County unless there are statistics to support the reference. Staff responded the 5 year permit length could remain, and a 1 year review can be instituted. Conditions can be modified or added if necessary. The Condition enforcing pick-up and drop off was part of a prior permit. Typically that is an issue for sites where pick-up and drop-off, impact traffic. At this site transfer will take place within the parking lot of the church. The statement regarding Tentative Finding #1 was intended to be general. That portion of the statement can be stricken.

Member Spalding motioned to accept the staff recommendation of approval of PLN2009-00001 with the following modifications:

Tentative Finding #1 shall now state: Yes, there is a need for daycare facilities in Unincorporated County.

Condition #1 shall now state the facility is limited to 34 Pre School Children, ages 2 to 5 years.

Condition #4 shall now state, the operator shall keep a log of persons blocking drive isles. Language relating to drop-off and pick up violations shall be stricken.

Condition #5 shall be stricken.

Condition #9 shall be modified the permit shall be for a period of 5 years from the date of approval with a required review at the end of the first year. At such time Conditions may added and/or modified.

The Vice Chair seconded the motion. Motion to approve PLN2009-00001 carried 4/0.

2. **FRANK PHAM / MILL LIQUORS & DELI, PLN-2008-00054** – Conditional Use Permit application to allow off-site alcohol sales as part of a grocery store use, in an ACBD - TA (Ashland Cherryland Business District Specific - Transit Access) District located at 15984 East 14th Street, north east side, approximately 500 feet south west of 159th Avenue, unincorporated Ashland area of Alameda County, bearing Assessor's Parcel Number: 080-0057-035-00. (Continued from January 28 and February 11, March 11 April 8, 2009) **Staff Planner: Howard Lee.**

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

- Does the Walgreens Store in proximity of the site sell alcohol
- Does the Mobile Gas Station in proximity of the site sell alcohol
- Is either business within 500 feet of Mill Liquors
- Is the prior store owner related to the current owner

Staff made a site visit to Walgreens approximately 2 months ago. They do not sell alcohol. Staff was unsure if the Mobile Gas Station sold alcohol. The prior owner, Kenny Pham may be the son of the current owner. The business is now solely in the name of Frank Pham. Public testimony was opened.

Mr. Warren Nguyen, the Attorney representing the Applicant announced that he would also be translating

for Mr. Pham, due to his limited ability to communicate in English. On behalf of the Applicant Mr. Nguyen asked the Board to approve conditional use application, PLN-2008-00054. Mr. Nguyen referred to a letter submitted April 28, 2009 which detail steps Mr. Pham has taken to adhere to Conditions within the staff report. Mr. Pham feels what is fundamentally great about America is that people are entitled a second chance. Mr. Pham's liquor license was revoked due to a series of mishaps, resulting from mismanagement of the property. During the suspension Mr. Pham has atoned and implemented steps to prevent further mishaps. The store has his full attention. Mr. Pham acknowledges he could have done a better job. If a new permit is granted, Mr. Pham will do his up most to uphold the dignity of the community. Violations will not happen again. In contrast to what is in the staff report Mr. Pham is well liked in the community. Mr. Nguyen presented a petition with 150 signatures, and 38 letters of support for the application. He submitted the material and made himself available to answer questions. Board questions for the Applicant were as follows:

- What will the Applicant specifically do to prevent further mishaps
- Who did Mr. Pham purchase the business from
- Have there been any robberies since Mr. Pham has owned the store
- Was the Alcohol License suspended or revoked by Alcoholic Beverage Control
- Was there a physical altercation with a male juvenile involving a soda
- Is Mr. Nguyen aware that a minor drinking at school returned to purchase more alcohol
- Are the photos of signage located on the interior or the exterior
- How many people are employed at the store
- Is there graffiti at the site
- Is clothing for sale at Mill Liquors
- Is drug paraphernalia for sale at Mill Liquors
- Are Adult items for sale at the store
- What type of magazines are sold at the store ie. Sports, Crossword, Home & Garden
- Are guns or knives for sale at the store
- What is the percentage of floor area taken by the sale of groceries
- What is the percentage of floor area taken by the sale of tobacco products

Mr. Nguyen said Mr. Pham has adopted a Zero Tolerance Policy with his staff regarding the sale of alcohol to minors. Signage has been added to the interior and store exterior stating this Policy. Photographs of the building exterior were submitted for the record. Often there have been "bad elements" that hang outside of the store. Mr. Pham has instructed his staff to contact law enforcement immediately if they see acts prostitution or drugs outside of the store. This will prevent children from being exposed to such elements. Mr. Pham was not aware of the graffiti on the signage however it will be removed. Kenny Pham is his son, Gai Huygh is his wife. There are 3 staff people. Mr. Pham obtained the business through transfer from his son, Kenny Pham in November 2006. His son received violations. They thought it would be better to let Mr. Pham take over. The Chair pointed out that Mr. Frank Pham was cited for violations, as well. Mr. Nguyen continued. The store was robbed when Kenny was the Proprietor. There have been no robberies since Mr. Frank Pham has owned the store. ABC did revoke the alcohol license 6 months ago. The license was under revocation proceeding one time. However Mr. Pham has an opportunity to obtain another license, if he can get an approved CUP within a period of 1 year. Mr. Frank Pham was not arrested. His son Kenny Pham was arrested for not attending a hearing. Kenny Pham is no longer employed at the store, only Mr. Pham's wife. Kenny Pham and Gai Huygh were assaulted in an altercation with a male youth involving a soda. Mr. Nguyen is aware of the incident where the youth purchased a second bottle of alcohol.

The proposed layout for the store if the permit is approved will designate approximately 60% of the floor space to alcohol sales. Currently alcohol is not for sale at the store. The area designated for liquor,

including the beer cooler is the space for alcohol. All other areas would be for sodas, cold beverages, etc and groceries. Tobacco products take up approximately 5% to 10%. Tobacco products are kept behind the sales counter. Adult magazines are to the right, near the store office, approximately 5% of the floor space. There are no other Adult materials for sale at the store. The store does not sell any other type of magazines, knives, or guns, drug paraphernalia. Previously tee shirts were the store sold. The only clothing sold now is baseball hats but Mr. Pham would like flexibility to possibly sell shirts in the future. Caps are placed near the counter. Public testimony was opened.

Filiberto Reyes lives on Ashland Avenue, and is in support of the application. The nearest store that sells alcohol is a block away. In his opinion that was not a good thing.

Sherrilyn Miller has a print business located 2 doors from Mill Liquors. She has been at her shop for 15 months. She teaches young people in the neighborhood how to silk screen. Ms. Miller has lived in an Unincorporated County neighborhood for 5 years. Ms. Miller has witnessed the improvements at Mill Liquors, including the removal of graffiti. She is also aware of the East 14th improvement projects. She would like to see the permit approved. Ms. Miller is aware the owner has made some mistakes. Ms. Miller is a certified bartender in the TIPS Program, has offered her assistance to help Mr. Pham understand the process. If Mr. Pham is granted a temporary license she will be retained to prevent violation of further laws. Ms. Miller said there is no other liquor store on the same block. The Walgreens is 2 ½ blocks away, and does not sell liquor. The 76 Gas Station does not sell alcohol either. The closest outlet that sell beer is the 7-11 on 159th Avenue. Without a liquor license profits are reduced, the business is currently operating at a loss. If the store goes out of business, the owners could end depending on the State for support. An empty store front will also impact the neighborhood. You would have to go to 161th Avenue and East 14th to find another liquor store. Her estimate is there are 6 to 7 open, functioning liquor stores within a quarter mile radius. Her print shop is located one block from the Super Mercado.

Jenei Peterson lives on 166th Avenue. Ms. Peterson was not in favor of approval. Mill Liquors is located on a street with other liquor stores. She clarified the Town & Country Liquor store is close to Ashland Avenue, 1 block away from Mill Liquors. Mill Liquors broke the law by selling alcohol to minors. She did not believe they would change their ways. The store has been given more than one chance. They do not care about the community, they are concerned with money. Hillside Middle School is close to the store. Mill Liquors, Walgreens and the gas station all sell tobacco products. The Applicant should think of other products to sell. The Chair asked Jenei if she had been inside of the establishment, also if the area needed a grocery store. Ms. Peterson confirmed she had been in the store. There is a cooler, and an area for chips and snacks, no produce. The store is known as a place for kids to go and buy liquor.

The Chair read submitted comments of Jules Miller into the record: Great friendly people who are loosing business. They are within walking distance from my house. It is a real convenience to have them supply my needs.

Lamont Thompson moved to Amador Street from the Ashland community. Mr. Thompson lived in Ashland from age 5 to 15. Although he no longer lives in Ashland he wanted to offer information about stores in the area. There is a high concentration of young people in the community. Stores offer service but they are located near schools. The Edendale Middle School is 3 minutes walking distance from the store. Mr. Thompson is part of an Organization that is trying to build up the community. The community cannot continue to build when 13 and 14 year olds can buy alcohol. The kids don't know any better. Alcohol brings out the wrong elements. There is a lot of drug trafficking in the area. The County does not need stores that to offer alcohol to minors. The Unincorporated area is already unpopular. Mr. Thompson is in favor of supporting the community. Money should not be the only consideration when considering the issuance of liquor licenses to businesses. Negative effects on the community, must also be calculated. Mill Liquors is near a Middle School. When he lived in the area the store had a nickname

“Bing Bing” store because kids could get their way. It is easier to get to than Town & Country Liquor. Mr. Thompson is a Member of FYI Further Youth Inspiration. The Vice Chair said it was commendable that Mr. Thompson was trying to give back to the community. His enthusiasm is inspirational.

Dominique Parras lives on 165th Avenue. She was not in support of the application. Ms. Parras and her friends have stopped going to the local stores, including Mill Liquors. Kids that drink alcohol get in trouble with the Police. Ms. Parras went into Mill Liquors. The owners and staff were asking patrons to sign a petition. Member Adesanya asked where kids now go to purchase alcohol. Ms. Parras said kids now ask adults to purchase alcohol for them.

Ms. Jennifer Hyde was not in support of the application. The BOS should not allow youth to drink. Students that drink alcohol can lose self control. They are slow in school and are more likely to act out. The sale of alcohol to youth is not worth the problems it causes. Ms. Hyde is a Member of the Sheriff’s Activity League. The Chair asked if Ms. Hyde was familiar with the nickname “Bing Bing Store”. Ms Hyde confirmed she was.

Ms. Erica Campisi lives on Hampton Avenue. She is familiar with the number of outlets in the area. Another alcohol outlet is not needed near a school.

Alfredo Coria a Community Organizer with COMPRE distributed a Police Report, which showed an overview of calls from the larger community. COMPRE is strongly opposed to the Application. The use is in compliance with the Alameda County Alcohol Policy which requires a minimum 500 feet between outlets. Mills Liquors is located 410 feet from Club Zamora, and 400 feet from Light House Christian Church Town & Country Liquors and Cigarettes for Less is located less than 1,000 feet from Mill Liquors. Mr. Coria referred to the Community Map supplied by the Planning Department. The store does not meet the finding for convenience as outlined in the County Alcohol Policy, and is located in a high crime area. There were 63 calls associated with the area which include, DUI, alcohol and drugs. The establishment has a history of violations with Alameda County Code Enforcement, Health Department and Alcoholic Beverage Control in 2005, 2004 and 2006. The City Walk Condominium Complex is opposed to the application. Residents have observed littering, and drug dealing in front of the site. The business owner at 15980 East 14th Street is opposed to the application. Community members will support a business at the site, however not alcohol sales. Each alcohol permit increases related costs for the County. The area is over saturated with Alcohol Outlets. Board questions were as follows:

- Were violations that occurred in 2005 attributed to the present owner
- When the license was revoked in 2007 was that attributed to the present owner

Staff clarified the business was transferred to Frank Pham in 2005. The License was revoked during the tenure of Mr. Frank Pham. Public testimony was closed.

The Chair asked staff if Club Zamora is located within 500 feet of Mills Liquors. Staff confirmed Club Zamora is located within 500 feet in addition to a church and childcare facility within 500 feet of the location.

Member Spalding said she was in agreement with the staff findings. The findings of denial are easily met. The use is not required by public need. However she believed there is a need for a store that sells items other than alcohol. The property has a refrigeration unit. There are no other stores that sell vegetables in the immediate area. Food and grocery items such as detergent are always needed.

The Chair referred to comments made by a former Ashland Resident. The store was called the Bing Bing Store, and known for selling alcohol to underage children. In her youth a neighborhood business was also

known for selling liquor to underage kids. She lost friends in drunk driving accidents, one person died in a fiery crash. Alcohol does have adverse impacts youth,

The Vice Chair said children see and hear things that adults do not. Based on the testimony the use is not helpful to the community. The community is trying to improve the area. It takes a lot of courage for community members to stand up for themselves.

The Vice Chair motioned to uphold the staff recommendation of denial of PLN-2008-00054. Motion to deny passed 4/0.

3. **MISSION HOPE DAY PROGRAM / NIMFA COLEMAN, CONDITIONAL USE PERMIT, PLN-2009-00031** - Conditional Use Permit Application to allow continued operation of an adult day care center for developmentally disabled persons in an existing building, on an 8,850 square foot lot, in an ACBD-TA (Ashland Cherryland Business Specific – Transit Access) District, located at 21328 Mission Boulevard, northeast at its intersection with Blossom Way, unincorporated Cherryland area of Alameda County, designated Assessor's: 414-0081-012-00.
Staff Planner: Andrew Young

Staff recommended approval. Alameda County Fire has verified the facility is in compliance, and up to date with required inspections. The Applicant is also in compliance with all other the prior Conditions of Approval including landscaping. However some plantings remain above ground in containers. The site is neat, and well maintained. Public testimony was opened.

Director of Quality Control, Mr. Fred Houston was present. Board questions for the Applicant were as follows:

- How long has Mission Hope Day Program been in operation
- Does the operator run more than one facility
- How many persons are allowed on site
- Are program participants supervised
- What is the length of time persons spend on-site
- Is the service limited to day time hours
- What is the clientele profile
- How are persons referred to the facility
- Which County Agencies are involved in the permit review process

Mr. Houston said 30 people are allowed on the site. The age range is from 21 to 60 years. During the day 15 to 20 persons remain at the center the balance of the participants go out into the community, during the day. The average participant day is 6 hours. They do not spend the night. Participants leave for group homes or institutions at the end of the day. On average group homes have 6 residents. Autism is the predominate disability. There are different levels Most of the clients at Mission Hope are Level 4. There are no clients with schizophrenia. Participants will never get well. Some have behavioral problems. The program tries to make participants as much as a part of the community, as possible. They attend school, vocational training, and church. Staff supervisors may take program participants on Bart and public transportation but the center has its own transportation. Mission Hope receives their licensing through Community Care Licensing of the East Bay. One supervisor is required per three participants. Mission Hope has been at the center in Cherryland for 5 years. They have other Bay Area locations. The Vice Chair said she lives in the area but was unaware of the facility. Mr. Houston said the goal of the

center is to blend into the community. Each community has day program facilities. Supervisors at Mission Hope do a good job. Although there are some persons with behavioral problems may become violent. If managed well issues can be kept at a minimum. Regional Case Managers handle case files for up to 15 persons. Clients are then referred to area centers. Another Mission Hope staff person interjected from the audience with further information. A person has to be diagnosed before 18 prior to entry to a care program. The Mission Hope Program is limited to day care. However there are other full time adult programs in the area. Mission Hope operates one facility on Mission Boulevard. There are two neighboring sites that were formally run by another operator. They appear to be closed. Public testimony was closed.

Staff confirmed Alameda County Fire Department, and Behavioral Health reviewed the project. The application can be conditioned as such to comply with requirements of both Agencies.

Member Spalding made the following recommendations: Condition #3, language for the shuttle bus should state: The shuttle bus shall be instructed not to sound horns to announce their presence. Condition #6 shall require the landscaping plan to be implemented within 90 days of permit approval. A Condition shall be added requiring the site and plantings be maintaining in good condition. The site shall remain graffiti free.

The Chair asked staff if the 10 year permit length was common, also if the Operator was required to remain unchanged during the permit period. Staff said the Program had a good record. The permit length reflects that fact. The use permit is tied to the site, not the Operator. Permits are conditioned as such to address issues, and maintain compliance regardless of property owner or operator. Mr. Houston interjected from the audience. A State license is only valid for one specific operator, and cannot be transferred. The Chair recommended a Condition be added requiring a review. Staff confirmed this was acceptable. Counsel said if so, Findings supporting the review should be included in the motion.

The Vice Chair motioned to uphold the staff recommendation of approval with the following modifications:

Condition #1 shall include the following language: maintain compliance with the Alameda County Fire and Behavioral Health Department.

Condition #3, language for the shuttle bus should state: The shuttle bus shall be instructed not to sound horns to announce their presence.

Condition #4 shall add the following language: the site shall remain clean, kept clear of graffiti and remain in compliance with the Neighborhood Preservation Ordinance.

Condition #5 shall require the landscaping plan to be implemented within 90 days of permit approval. The site and plantings be maintaining in good condition.

A further Condition shall be added requiring a review in a period of 5 years, at which time Conditions may be added and/or a determination is made to continue said permit for and additional 5 years, up to a period of 10 years.

Member Spalding asked a question to the motion requesting the permit period be limited to 5 years. The Vice Chair said staff review, public testimony, and the permit review in 5 years supported the motion as proposed.

The motion to approve PLN-2009-00031 was upheld 4/0.

APPROVAL OF MINUTES: The Minutes of April 22, 2009 were continued to May 27, 2009.

STAFF COMMENTS & CORRESPONDENCE: The appeals of PLN-2009-00013, 14, 15, 16, 17, and 18 regarding temporary Directional Tract Signs, and CUP, PLN-2008-00072, Danton Garnhart will go before the Board of Supervisors in June.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: The Chair asked Code Enforcement to visit the property at 21290 Mission Blvd. to investigate possible violations.

ADJOURNMENT: There being no further business, the hearing adjourned at 9:45 p.m.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS