

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
MAY 23, 2007
ACCEPTED AS A DRAFT ON SEPTEMBER 26, 2007

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

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Chair; Ron Palmeri; Members, Lester Friedman and Dawn Clark-Montenegro.

MEMBERS EXCUSED: Vice Chair; Frank Peixoto; Member, Jewell Spalding.

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

There were approximately 14 people in the audience.

CALL TO ORDER:

The meeting was called to order by the Chair at 1:36 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:

1. **JOSE OLIVAREZ, CONDITIONAL USE PERMIT, C-8559** – Application to allow the continued operation of an indoor recreation facility in an ACBD-FA (Ashland Cherryland Business Districts Specific Plan) Freeway Access District, located at 20613 Mission Boulevard, southwest side, approximately 100 feet, northwest of Medford Avenue, unincorporated Cherryland Area of Alameda County, designated Assessor's Parcel Number: 414-0041-037-00. (Continued from February 28, March 28 and April 25, 2007; to be continued to June 13, 2007).

2. **HHT ENGINEERING, VARIANCE, V-12003** – Application to allow subdivision of one site into three lots: 1) an 18 foot driveway where 20 feet is the minimum required; 2) a driveway, one foot from a building wall where 10 feet is required; and 3) an 11 foot rear yard where 20 feet is required in an R-S-D-35 (Suburban Residence, 3,500 square foot, Minimum Building Site Area per Dwelling Unit Density) District, located at 134 Grove Way, northwest side, approximately, 150 feet southeast of Meekland Avenue, unincorporated Cherryland Area of Alameda County, designated Assessor's Parcel Number:

429-0032-030-00. (continued from March 28, 2007; to be continued to June 27, 2007).

3. **SEAD SISIC, VARIANCE, V-12061** - Application to allow a six foot high fence where four feet is the maximum, and to allow an accessory structure in the front half of the lot in an "R-1-RV" (Single Family Residence, Recreational Vehicle) District, located at 18658 Crest Avenue, northeast side, approximately 440 feet northwest of Titan Way, in the unincorporated Castro Valley area of Alameda County, and designated Assessor's Parcel Number: 084B-0370-007-13. (To be continued to June 27, 2007).

Mr. Sead Sisic requested an opportunity to speak regarding his application, V-12061. The Chair announced that Consent Calendar item #3, V-12061 will be placed at the end of the Regular Calendar for the discussion. The Board will not take action but will receive public testimony. Member Clark motioned to accept the Consent Calendar with the Chair's modification. Member Friedman seconded the motion. Motion carried 3/0. Vice Chair Peixoto and Member Spalding were excused.

REGULAR CALENDAR

1. **JOSE RAMIRO, CONDITIONAL USE PERMIT, C-8489** – Application to allow the continued operation of a tavern "The Stadium Club" in an ACBD (Ashland Cherryland Business District Specific Plan) – Transit Corridor District, located at 15698 East 14th Street, east side, corner north of Plaza Drive, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0034-007-00. (Continued from October 11, November 15, December 6, 2006; January 10 and 24 and April 25, 2007).

Staff reviewed the past history of the application and information discussed at the prior hearings. Planning staff has also met with the applicant and a translator to review all of the proposed Conditions of Approval. The staff recommendation is approval of the application. Initial Board Questions for staff were as follows:

- Has the Sheriffs Department submitted updated information in addition to their Calls for Service Report
- Can the hours of operation be limited
- Are there any snack or food items being served at the location
- Is there any off-street parking
- Is off-street parking shared with multiple businesses
- Does the Ashland Cherryland Business District Specific Plan require off-street parking
- Does the Ashland Cherryland Business District Specific Plan set parking requirements in relation to building size
- How many staff people does the business employ in addition to the applicant and his wife
- Do the staff members work full or part time

Staff confirmed that the Sheriff's Department had not provided additional information. The business operates as a tavern and does not serve food. The ACBD Plan does not require off-street parking. However there are 2 spaces in the back of the property. Staff confirmed that the spaces are shared with three businesses. There is parking on East 14th Street. Member Clark pointed out that parking on East 14th Street was limited as there was a red zone on the curb in front of the Club. The Stadium Club is now a tavern which does not serve food. Prior to the current applicant purchasing the property in 1985 it was a restaurant. The restaurant existed prior to zoning. Had the applicant not changed the use a CUP would have not been required. Staff was not sure how many staff members Mr. Ramiro employed but there are 2 security guards. The applicant can tell the Board if the security staff works on a full or part time contract.

Sonia Urzua, from Alameda County Community Development assisted with translating Spanish to English. The Applicant, Mr. Jose Ramiro confirmed that he was the owner of the Stadium Club. He asked the Board if they had any questions of him. Member Friedman told Mr. Ramiro that based on his testimony from the prior hearing, and the possible limitations of reading and writing in English he was concerned on how he might respond to patrons in an establishment where there is alcohol consumption and possible violence. Further questions from Member Friedman to Mr. Ramiro were as follows:

- Since Mr. Ramiro testified that he prefers to handle issues at his establishment and does not call the Sheriff, how would he respond to an emergency at the site
- How would Mr. Ramiro respond to non Spanish speaking persons that enter the bar
- How many people are on staff at the Stadium Club
- What are the hours of the Stadium Club
- What hours is dancing allowed at the Stadium Club

Mr. Ramiro reassured the Board that he could respond to an emergency. He has an Emergency Plan that he has trained his staff on. The Emergency Plan includes English speaking staff members. Most of the clientele is Latino at the Stadium Club. There are 3 bartenders and 2 waitresses employed in addition to himself and his wife. From time to time his brother helps as well. Member Friedman asked why Mr. Ramiro's business license obtained in February 2007 only listed 1 employee. In addition how did he support all of his business costs on the amount listed on his Business License Renewal Notice. Mr. Ramiro said at the time he obtained the business license, the Stadium Club was a lot slower. Recently, business has picked up, and he has gained a lot of new clientele. As a result, in the past 4 months he has hired additional staff. Mr. Ramiro said his gross receipts were actually less than the \$72,000 listed on his Business License. He does not make a lot of profit from the business. The Stadium Club is open from 4:00 p.m. to 2:00 a.m. Dancing is from 9:00 p.m. to 1:45 a.m. Fridays, Saturdays and Sundays. Member Friedman pointed out that the dance permit issued by the Sheriff's Department allows dancing until 1:00 a.m. Mr. Ramiro said that the music is played by a disk jockey, not a live band. There is no music advertisement or special events. Member Friedman reiterated that the Sheriff's permit allows dancing between 4:00 pm. and 1:00 a.m. Mr. Ramiro should follow the Sheriff's licensing rules. Mr. Ramiro said he did not have a problem following the permitted dance hours. Member Clark asked Mr. Ramiro the following additional questions:

- Are there were any special dance parties held on the week-ends
- How many people attend
- Is the ratio of clientele at the Stadium Club mainly male or female

- What is the female to male ratio of staff
- Does security patrol the interior and the exterior of the business
- Does Mr. Ramiro own more than one establishment

Mr. Ramiro confirmed there was routine dancing every weekend however there were no formal parties. Fridays and Saturdays are the busier days. Not as many patrons come on Sunday as Monday is a work day. Most of the patrons are male. The club employs some female staff. Member Montenegro said that she has driven by the exterior of the Stadium Club several times and observed 2 young ladies loitering outside of the establishment on Plaza Drive. Her concern was that the security was not patrolling often enough, especially on the exterior of the club. Mr. Ramiro said that he patrolled the club in addition to his security staff. He was not aware of anyone hanging around outside, and security had not reported anything to him. Currently the Stadium Club is the only business he owns. He sold his other ventures to concentrate on the Stadium Club.

Mr. Alfredo Corra, a Prevention Specialist for Compre introduced himself. Mr. Corra acknowledged that the business had made vast improvements. Some renovations were completed, including additional lighting in the rear. Mr. Corra visited the site for 2 hours on Friday, May 18th, 2007. He observed all 3 bartenders consuming beverages while they were serving alcohol. The female bartenders were also dancing with patrons while their drinks were left unattended. Patrons were smoking outside of the establishment and littering the area with cigarette butts. Mr. Corra asked the Board implement the following measures and procedures recommended by Compre, in addition to the recommendation in the staff report.

Bar Hours of Operation should be consistent with prior Conditions of Approval from noon to 9:00 pm. on Monday through Thursday. Friday and Saturday, noon to 1:00 a.m. On Sunday noon to 11:00 p.m.

Hours of Operation should be posted outside of the establishment

Signage in English & Spanish should be posted in the front and rear of the establishment to inform people not to smoke in front, or near entrances as not to expose people to secondhand smoke

Professional quality signage at least 2 feet square with two inch block lettering in English & Spanish should be posted in the front, and rear of the establishment and parking lot that reads: NO LOITERING, NO LITTERING, NO DRINKING OF ALCOHOLIC BEVERAGES, VIOLATORS ARE SUBJECT TO ARREST

All existing bartenders, managers, and/or owners shall attend responsible service training.

New personnel shall receive responsible service training prior to working a regular shift

Mr. Ramiro should familiarize himself with all of the rules regarding a tavern

Licensed, uniformed security should be in the parking lot and in the front of the building to maintain order and prevent activity from which might interfere with the quiet enjoyment of nearby residents

The interior and exterior of the premises shall be patrolled once an hour to prevent loitering and litter from cigarette butts

Happy hour or reduced price, alcoholic beverage promotions shall not be allowed

The Applicant and his/her Agents shall comply with Condition #5 which requires adherence to State rules

and regulations.

Mr. Corra said the Hours of Operation Compre recommended were from the Minutes of a prior BZA Meeting. Mr. Corra said he was concerned about the bartenders leaving their drinks unattended. This could impair their judgment. Thus far staff members nor the owner have taken responsible beverage service class. Member Friedman also expressed concerned about the testimony regarding the female bartenders. He then asked Mr. Corra if he had observed any evidence of solicitation or prostitution. Mr. Corra said he not observe any conduct of that nature. The bartenders just provided drinks to the patrons. He is fluent in Spanish, and confirmed the conversation was limited to dancing. Additional Board questions for Mr. Corra were as follows:

- Did Mr. Corra announce his presence as a Compre staff member during the site visit
- Did Mr. Corra consume alcohol during his site visit
- Did he observe security personnel at the site
- Did he observe security staff or the applicant patrolling the site
- Was parking available when he arrived at the location
- Did Mr. Corra observe any language other than Spanish being spoken
- Is Compre in agreement with the proposed length of the permit

Mr. Corra told the Board that he although he did not announce his presence, Mr. Ramiro remembered him and said hello. He did not consume any alcohol, just water during the site visit. Parking was an issue at the location. Mr. Corra observed that most patrons were parked in front of the car wash. Throughout the night he went outside a few times, and the parking situation remained the same. There was a security person in the front, and in the rear of the club. During the evening he witnessed Mr. Ramiro proactively making rounds of the establishment. Mr. Corra said for the record that he only spoke Spanish and English. He observed Spanish being spoken. All of the patrons were Latino. Many were new immigrants. Mr. Corra believed the permit length should be shortened. From a prevention perspective, 3 years may be too long of a permit time period. Public testimony was closed.

Staff clarified that the prior CUP did not contain Hours of Operation. However the 1996 CUP contained a discussion on the Hours of Operation for the bar. During more recent years the establishment has been open later than the times listed in the 1996 CUP. Member Clark asked what the occupancy limit was for the establishment. Member Friedman asked if occupancy was determined by Alameda County Fire, and if an occupancy limit is required to be posted on the property. Staff confirmed that Alameda County Fire set occupancy rates. The occupancy limit must also be posted on the premises.

Member Friedman commented that the lack of parking has an impact on the local streets and residents. The applicant must find a way to address the parking issue, especially after hours. Staff interjected and said that parking for the area is something that would have to be addressed by the Public Works Traffic Division, and then go the BOS. Member Friedman asked staff if anything could be done in the interim. Staff said other than posting signs out front there were no easy solutions.

The Chair asked County Counsel if there was enough of a nexus, based on testimony given about the large number of patrons, the parking issues, and past testimony regarding public urination etc. to lessen the Hours of Operation on Sundays. County Counsel responded that the BZA could make the ultimate determination. Based on the evidence and testimony presented there is an indication there is an active nuisance. The most aggressive way to handle the issue would be revocation of the permit. The most conservative is to allow operation with modification to conditions of approval. The Chair noted that it appears the Applicant is making efforts to deal with issues. He has presented a security contract, and testimony has been given that Mr. Ramiro proactively patrols the Club. Bartending classes are required

and the proposed conditions recommended by Compré should be implemented. Further outstanding concerns are the parking congestion, and the impact it has on the area residents. The parking area available in the triangular shaped block is limited. As a result spills out into the neighborhood. Friday and Saturday, area residents may be more tolerable of the impact of the business. However on Sunday, residents may need relief. The Chair stated that he was not comfortable with Counsel's most conservative recommendation. He felt it was appropriate to have the application come back before the Board for review in a period of 1 year.

Member Friedman asked staff if the ACBD Specific Plan and or zoning rules affected parking. He also asked Compré if the parking would be impacted by any rules and regulation they might have. Mr. Corra responded that they had no comment specific to parking. However the main issue was the bartenders consuming beverages that may contain alcohol while on duty, and leaving their drinks unattended. If a bartender is intoxicated they may lack the judgment to determine when a customer is impaired Member Friedman was in agreement with Compré's recommendations. The reduced hours on Sundays, responsible beverage training for the owner and all staff people. It is also prudent to have signage in English and Spanish and security patrolling the property. Member Friedman agreed with the Chair that the application be reviewed in a period of 1 year. The list of recommended conditions submitted by Compré should be added as conditions of approval. The BZA should reserve the right to change and/or modify conditions of approval if necessary. Condition #2 should be modified. On street parking is insufficient. Condition #3 should be modified. If the conditions are not adhered to, health and safety could be impacted.

Member Clark thought all bartenders should take responsible serving classes within 6 months. County Counsel recommended that language be added to conditions of approval that require the all bartenders to adhere to State laws, rules and regulations regarding the serving of alcohol. Member Clark continued. The permit should return to the BZA for review in a period of 1 year. Sunday hours should be shortened. Dancing should end by 1:00 a.m. on Saturdays. The neighborhood should not be impacted until 2:00 a.m. every night. Regarding the parking revisions that require BOS review, the process is too cumbersome. Most of the parking impact is caused by the Applicant's business.

The Chair thought it might behoove the applicant to put forward parking solutions in 6 months as opposed to setting conditions now. That would give staff 6 months to monitor effectiveness at the 1 year review point

Member Clark motioned to uphold the staff recommendation of approval. Supported by the addition of Compré's modification recommendations. A condition shall be added that the applicant shall not exceed the Fire Department's recommended occupancy level. Condition #3 shall be modified to reflect in the negative. If proposed conditions are implemented, health and safety will not be affected. The permit shall return to the BZA in a period of 1 year for review. Subject to modification, up to and including revocation. All alcohol servers shall be in compliance with all applicable State laws, and County rules and regulations. The applicant shall present proactive solutions to reduce parking issues. Member Friedman seconded the motion. Motion carried 3/0. Vice Chair Peixoto, and Member Spalding were excused.

2. **NEW LIFE CHRISTIAN CHURCH, CONDITIONAL USE PERMIT, C-8583** – Application to allow continued operation of a church facility in a CVCBD – Subarea -7, (Castro Valley Central Business District, Subarea – 7) , located at 20394 San Miguel Avenue, east side, approximately 550 feet north of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, and designated Assessor's Parcel Number: 084A-0012-016-02.

Staff recommended approval of the application, and announced an update to the staff report. Condition #5 will be removed as the Church no longer has a K-12 School Program. Member Friedman asked staff why there was a recommendation for a 1 year review period. Staff responded, that condition was a requirement of the prior permit. Since there have been no issues, or complaints from the community, staff recommended the Board remove the review requirement within Condition #8. Public testimony was opened. The applicant Mr. Crook was present but did not submit public testimony in addition to the staff report. Public testimony was closed.

Member Clark motioned to accept the staff recommendation of approval and the modification to Condition #8. The permit shall expire on May 23, 2012 with no review period. Condition # 5 shall be eliminated. Member Friedman seconded the motion. Motion carried 3/0. Vice Chair Peixoto and Member Spalding were excused.

3. **LOURDES TRAUTNER, CONDITIONAL USE PERMIT, C-8597 -**
Application to allow an alcohol outlet (Beer & Wine) in an ACBD Specific Plan –TC (Ashland Cherryland Business District Specific Plan – Transit Corridor) District, located at 16490 East 14th Street, southeast side, approximately 160 feet south of 165th Avenue, unincorporated, Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0071-049-00.

Staff recommended denial of the application. Public testimony was opened. Mr. Jerry Cariveau spoke on behalf of the Applicant, Lourdes Trautner. Mr. Cariveau said Ms. Trautner is requesting a beer and wine license as the result of requests from customers, and to help grow the business. He said Ms. Trautner is the hardest working lady that he knows. Originally Ms. Trautner tried to purchase the liquor license of the previous owner. However the prior owner disappeared and never followed through. Member Clark asked Mr. Cariveau the following questions:

- Did the applicant apply for a Type 41 Liquor License
- Does a Type 41 License allow "off-sale" of liquor sales
- What type of food does the restaurant serve
- Is the restaurant sit down, or take out food
- What kind of wine does the applicant propose to serve if the CUP is granted

Ms. Trautner confirmed that she applied for a Type 41 License. Type 41 does allow for off-sale. Asian Kitchen Delight serves Pilipino Cuisine. If the CUP is granted she would like to serve, Cabernet and Merlot Wines. Member Friedman referred to a photograph of the interior of the restaurant and asked about the 5, existing bar stools. Ms. Trautner explained that the stools were part of the establishment prior to her purchase. Member Friedman also asked Ms. Trautner to outline what activities took place during the operating hours of the restaurant from 7:30 a.m. and 1:00 a.m. Ms. Trautner said cooking took place most of the day. There is a steam tray that usually closes at 8:00 pm. They clean up and usually go home by 11:00 p.m. The restaurant is close to the hospital. Many of the nurses that work the night shift come to eat breakfast there before they go home. Ms. Trautner said she would like to retain the extended hours of operation because they serve people that get off work late at night as well. They often get customers knocking on the door late on week-ends. Wine would only be served with food. Member Friedman asked Ms. Trautner if she would object to restricting the alcohol to on-site sales only, or if she would be willing to have late hours on the week-ends only. Ms. Trautner said that she would not object to the recommendation.

Staff explained that when the applicant came in to inquire about the necessity of a CUP, the planner confirmed a CUP was not necessary as the establishment was a restaurant. The applicant said that they

wanted to add to the existing number of bar stools. This addition would constitute a Tavern, which requires a CUP for operation. The Chair asked staff for clarification if the denial was as a result of Zoning Rules or the Alameda County Alcohol Policy. He also asked how a possible approval of this application might effect the recent alcohol applications that were denied by the BZA. The Chair said he was also troubled by the fact that the applicant testified that food steam trays are turned off at 8:00 p.m. but alcohol would continue to be served after 8:00 p.m. at night. That location is in the middle of a high crime area in Ashland. Member Clark thought a continuation might be in order to allow the applicant, and staff to clarify if a CUP is needed to add barstools.

Member Clark motioned to continue the application to June 27, 2007, Member Friedman seconded the motion. Motion carried 3/0. Vice Chair Peixoto and Member Spalding were excused.

4. **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, April 11 and April 25, 2007).

Staff recommended denial of the application. Member Clark asked staff how far away the location was from East 14th Street. Staff confirmed approximately 100 feet. Public testimony was opened. The architect, Mr. Willie Scott said the proposed design was developed after considering multiple options, and assessing the owner's needs. The home was built in 1924 and the current design does not allow maximum use of the space. The expansion of the existing home and the addition of a duplex will allow for a higher use. The parking design can be altered however that would not completely resolve the need for a variance. Staff further explained that a variance would still be need for the distance between the driveway and the dwelling wall. However if the design is altered on the rear of the parcel, the variance that addresses the width would not be required. A single family residence design in the rear of the parcel would still require a driveway width of 10 feet. The Chair asked Mr. Scott if a continuance would be in order. If a decision is made based on the current design plans there is no opportunity to make any changes. Public testimony was closed.

Member Friedman motioned to continue the application to the July 11, 2007 Meeting. Member Clark seconded the motion. Motion carried 3/0. Vice Chair Peixoto and Member Spalding were excused.

5. **HENRY TUNG NGUYEN, VARIANCE, V-12059**, - Application to allow the construction of a new single family residence with zero foot and 14 foot, front yard setbacks where 20 feet is the minimum required, in an R-1-RV (Single Family Residence, Recreational Vehicle) District, located on President Drive, south side, at the intersection with 170th Avenue, unincorporated, Ashland area of Alameda County, designated Assessor's Parcel Number: 080A-0221-040-00. (Continued from May 9, 2007).

Staff reviewed the project, and recommended approval of the application. Public testimony was opened. Member Friedman asked the Applicant, Mr. Henry Nguyen if he felt the 2nd driveway would be dangerous as it is 135 feet in length, and there is no room for a vehicle to turn around. Mr. Nguyen said he would be willing to remove the 2nd driveway. However he explained he owned a small RV. Parking in the area is very difficult and there is a blind curve on President Drive and 170th Avenue that is also

potentially dangerous. Mr. Friedman responded that he does not live far away from the location, and made a visit to the site. In his opinion he did not believe RV parking was appropriate. In contrast the Castro Valley area has specific zoning for parking Recreational Vehicles. Member Clark asked the applicant what were his plans for the garage, and was there an intention to create a duplex. Mr. Nguyen confirmed that he would be using the garage for the RV. If the RV is parked on the street it will be ticketed. He has no intention of creating a duplex. The home will remain a single family home. Public testimony was closed.

Member Friedman motioned to uphold the staff recommendation of approval. Member Clark seconded the motion with a request for a modification. The number of driveways on the property shall be limited to, one. Member Friedman accepted the modification. Motion carried 3/0. Vice Chair Peixoto and Member Spalding were excused.

6. **KEN GRANT, VARIANCE, V-12063** – Application to allow construction of a retail space encroaching 23 feet, five inches into a Special Building Line of 50 feet, in an ACBD Specific Plan –TC (Ashland Cherryland Business District Specific Plan – Transit Corridor) District located at, 1415 – 168th Avenue, northwest side, approximately 180 feet northeast of East 14th Street, unincorporated, Ashland area of Alameda County, designated Assessor’s Parcel Number: 080A-0100-030-00.

The staff recommendation was approval. Member Clark asked staff if retail uses attached to single family zoning requires mixed use zoning. Staff responded that the ACBD Specific Plan-TC (Ashland Cherryland Business District Specific Plan – Transit Corridor) Business District allowed for retail use on upper floors in the District. The Specific Plan for the area also allows for mixed use. The Chair asked staff if in the event the County exercised the option of using the Future Width Line, can the BZA set a finding that the Applicant indemnify the County. Such a condition could protect the County from future litigation as a result of removing the structure. County Counsel confirmed that language can be added to the variance to indemnify the County if the Applicant is in agreement. However, the applicant’s indemnification of the County may not be complete protection in a law suit.

The Applicant, Mr. Ken Grant was present. Mr. Grant said that after the submission of preliminary plans indicating footings, staff said the exact length of encroachment may change. The Chair asked for more information. Staff explained that after construction the distance from the building wall may slightly change. The footing design will not be affected as the footings are underground. The Chair asked staff for additional information about assumption of risk:

- If the County grants the variance application to allow “building” within the Future Width Line does the Applicant assume all costs for demolition if the Right of Way is exercised
- Is it the Applicant’s understanding that indemnification of the County would mean that he is responsible for a tenant’s loss of revenue, and would pay all costs for removal, and forego the right to sue the County
- Is the Applicant aware that if he accepts the conditions and the street is widened he may lose future rights to sue the County for changes made to the Right of Way

Mr. Grant asked if all of the conditions would apply solely to the addition. Staff confirmed that was the case. Public testimony was closed.

Member Clark motioned to uphold the staff recommendation of approval. Conditions will be modified to reflect the added condition that the Applicant assumes all risk, and waives his right to sue. The Applicant also indemnifies the County in any and all claims and other remedies of himself or tenants as related to requirements of removing the structure, if the Future Width Line is exercised. Member Friedman seconded the motion. Motion carried 3/0. Vice Chair Peixoto and Member Spalding were excused.

7. **SEAD SISIC, VARIANCE, V-12061** - Application to allow a six foot high fence where four feet is the maximum, and to allow an accessory structure in the front half of the lot in an "R-1-RV" (Single Family Residence, Recreational Vehicle) District, located at 18658 Crest Avenue, northeast side, approximately 440 feet northwest of Titan Way, in the unincorporated Castro Valley area of Alameda County, and designated Assessor's Parcel Number: 084B-0370-007-13. *(Moved from the Consent Calendar to allow for public testimony).*

Staff told the Board that the application will be reviewed by CVMAC and then return for consideration on the June 27, 2007 Calendar. Public testimony was opened.

Mr. Sead Sisic explained that he would like to keep the existing 6 foot fence because it adds safety for his family. In addition there is a swimming pool in the yard. A four foot fence is not as much of a deterrent to prevent children from jumping the fence as a 6 foot fence. Initially he contacted Public Works and they issued him a permit for the cabana. He was not told at the time that a variance would be needed for fence height. Currently there are many fences in the neighborhood that exceed 4 feet in height. The fence does not obstruct the line of sight. The cabana is 25 feet from the street. Mr. Sisic said he spent considerable time on the cabana and the fence to insure it looked nice, and blended with the surrounding area. Mr. Sisic reiterated that there many other tall fences in the area and that he planned to make the point at the CVMAC. The Chair advised the applicant that he would need to make variance findings. As a result he may want to point out the slope of the property etc. Public testimony was closed.

Member Clark motioned to continue the application to June 27, 2007. Member Friedman seconded the motion. Motion carried 3/0. Vice Chair Peixoto and Member Spalding were excused.

APPROVAL OF MINUTES: The Chair continued approval of the Minutes for May 9, 2007 to June 13, 2007.

STAFF COMMENTS & CORRESPONDENCE: Staff reminded the Board there was a Special Meeting on May 30, 2007 at 6:00 p.m. to consider an application in the Madison Avenue Specific Plan.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

The Chair commented that when an applicant is not fluent in English the County should have designated interpreters they rely on as opposed to County staff. Using a staff member or member of a related agency may not be perceived as neutral. The Chair did not know if there was an additional cost however one advantage of a trained interpreter is they have the ability to speak while the applicant is testifying. The applicant may also want to bring in their own interpreter. If the applicant chooses to use an interpreter the County provides, they can state for the record that this is acceptable to them. Member Friedman asked County Counsel if it was the County's obligation to provide an interpreter if there is a request from the applicant. Also would the County be entitled to recover the cost of translation services. Counsel responded he believed that the County would cover the costs. He will confirm the information, and report back to the Board.

ADJOURNMENT:

There being no further business, the hearing adjourned at 3:44 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS