

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
JULY 12, 2006
APPROVED AUGUST 23, 2006

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

FIELD TRIP: 1:00 p.m.

MEMBERS PRESENT: Members Frank Peixoto and Dawn Clark-Montenegro.

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

OTHERS PRESENT: Assistant Planning Director; Steve Buckley.

FIELD TRIP: The meeting adjourned to the field and the following property was visited:

1. **CHINESE FOR CHRIST CHURCH / HAYWARD, CONDITIONAL USE PERMIT, C-8504** – Application to allow expansion of an existing church with the addition of a 20 foot x 60 foot modular building, in a C-1 (Retail Business) District and an R-S-D-20 (Suburban Residence, 2,000 square foot Minimum Building Site Area) District, located at 22416 Meekland Avenue, east side, approximately 50 feet south of Smalley Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Numbers: 431-0016-050-00, 431-0016-052-00, 431-0016-051-00 and 431-0016-053-00.
2. **JOSEPH WILLIAMS, CONDITIONAL USE PERMIT, C-8494** – Application to allow an "A" type Service Station (smog test only) , in an M-1 (Light Industrial) District, located at 335 West A Street, north side, approximately 500 feet east of Hathaway Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 429-0077-019-02.
3. **ERIC & VERONICA YOOS, VARIANCE, V-12007** – Application to allow an addition attached to an existing garage creating a three foot, six inch wide side yard where five feet is required, in an R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 4112 Omega Avenue, north side, approximately 120 feet east of Forest Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0707-010-05.
4. **LEE MASON, VARIANCE, V-12008** – Application to retain an existing secondary unit with a: 1) a side yard setback of five feet where seven feet is required; 2) a five foot rear yard where 20 feet is required; and 3) two independent accessible parking spaces where three are required, in an R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 2546 Lessley Avenue, north side, at the northwest corner of Idena Avenue, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 416-0020-064-00.

REGULAR MEETING: 6:00 p.m.

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

MEMBERS EXCUSED: None.

OTHERS PRESENT: Steve Buckley, Assistant Planning Director; Yvonne Bea Grundy, Recording Secretary.

There were approximately 12 people in the audience.

CALL TO ORDER:

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

ANNOUNCEMENTS BY THE CHAIR: The Chair made no announcements.

OPEN FORUM:

Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes.

No one requested to be heard under open forum.

CONSENT CALENDAR:

1. **VERBINA & JAGMOHAN SETHI, VARIANCE, V-11970** – Application to subdivide a parcel so as to provide a one foot side yard where five feet is required in an R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 3213 Keith Avenue, south side, approximately 524 feet west of Lake Chabot Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084B-0510-011-01. (To be continued without discussion to September 27, 2006).
2. **PATRICK LOVE, VARIANCE, V-11982** – Application to allow a garage conversion with on-site parking in the side yard, in an R-1-SU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 3773 Cottage Court, north side, approximately, 284 feet west of Parsons Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1329-017-00. (Continued from April 12 and May 24, 2006; to be continued without discussion to July 26, 2006).
3. **RAYMOND WONG / TONY TANG / FONG & FONG, PARCEL MAP, PM – 8605 – and VARIANCE, V-11987** - Application to subdivide one parcel measuring 20,568 square feet (0.47 acres) into two parcels, resulting in median lot widths respectively of 62 feet, six inches and 47 feet, six inches where 80 feet is required in an R-1-B-E-CSU-RV (Single Family Residence, 10,000 square foot Minimum Building Site Area, 80 feet Median Average Width, Secondary Unit with Recreational Vehicle) District, located at 17472 Almond Road, north side, approximately 600 feet southwest of Vineyard Road, unincorporated Castro

Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1250-031-01. (Continued from June 14, 2006; to be continued without discussion to August 9, 2006).

4. **FOREST CIRCLE / LLC, VARIANCE, V-11993** – Application to allow construction of a new detached secondary unit two stories, 26 feet in height where one story and 15 feet in height are the maximum; and providing a three foot, six inch side and rear yard where six feet and 20 feet are required; and three parking spaces where four are required, in an R-S-D-20 (Suburban Residence, 2,000 square feet per Dwelling Unit) District, located at 20554 Forest Avenue, east side, approximately 350 feet north of Vincent Court, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0713-012-01. (Continued from May 10 and June 14, 2006; to be continued without discussion to July 26, 2006).
5. **RAYMOND WONG / RAJESHWAR SINGH – VARIANCE, V-11997 & CONDITIONAL USE PERMIT, C-8492** – Application to construct two new secondary dwelling units and retain the existing dwelling as the third unit providing a 12 foot wide driveway where 15 feet are required: a 16 foot rear yard where 20 feet are required; and 7,440 square feet of lot area where 7,500 square feet is required for a third unit in an R-2-B-E (Two Family Residence with a Minimum Building Site Area of 8,750 square feet) District, located at 16790 Los Banos Street in the unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0083-007-01. (To be continued without discussion to July 26, 2006).

Member Friedman motioned to accept the Consent Calendar as submitted. Member Pexioto seconded the motion. Member Spalding did not participate in the vote. Motion carried 4/0.

REGULAR CALENDAR

1. **CHINESE FOR CHRIST CHURCH / HAYWARD, CONDITIONAL USE PERMIT, C-8504** – Application to allow expansion of an existing church with the addition of a 20 foot x 60 foot modular building, in a C-1 (Retail Business) District and an R-S-D-20 (Suburban Residence, 2,000 square foot Minimum Building Site Area) District, located at 22416 Meekland Avenue, east side, approximately 50 feet south of Smalley Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Numbers: 431-0016-050-00, 431-0016-052-00, 431-0016-051-00 and 431-0016-053-00.

The staff recommendation was approval if the Board concurred with Tentative Findings. The applicant proposes to add a modular building 24 feet by 60 feet to the church site. The church has been at the location since 1939. The modular expansion will house church offices and classrooms for Sunday school. Six parking spaces would be displaced. Zoning requires a minimum 50 parking spaces, 64 would remain. Final approval is subject to Fire Department clearance. At this juncture the Board may want to reconsider the hours of operation as the past CUP was somewhat restrictive. No complaints have been received from neighbors regarding noise. For example church administrative office hours might be from 9-5 p.m. Monday through Friday.

Board questions for staff were as follows:

- Will the modular unit contain restroom and/or kitchen facilities
- What are the locations of existing signage
- Will additional signage be required

Staff said the modular unit will not have restroom or kitchen facilities. The facilities in the main church building will be accessed for restrooms and will remain unchanged. Existing signage includes the church name and hours of operation. The Zoning Ordinance allows one sign, 32 square feet in area with the same height limitations applicable to fences or hedges. Public testimony was opened.

Deacon, Joe Chan was in agreement with staff recommendations. Restrooms and kitchen facilities can be accessed in the main church building. Pastor Jay Huang said he would like to have office hours Monday through Friday 8-5 p.m. Church activities Thursday and Friday night 7:00 p.m. until 9:00 p.m. On Sundays it would be helpful if the congregation could stay until 3:00 p.m. for worship service. Additional questions for the applicant were as follows:

- Will the modular unit have a permanent foundation
- Will administrative office hours be needed during the week-end
- Will additional signage be required

Pastor Huang told the Board the modular will be supported with pillars. Administrative hours will be limited to week-days only. The existing signage would be sufficient. Public testimony was closed.

Member Friedman motioned to approve the application for a period of 10 years with the following modifications. Condition #3 shall state, additional signage shall not be permitted. Condition #4, The Hours of Operation shall be as follows: Administrative Office Hours Monday through Friday 8 a.m. to 5 p.m., Church Activities Thursday and Friday from 6 p.m. to 10 p.m. Sunday services from 8 a.m. to 3 p.m.

Member Clark seconded the motion. Member Pexioto asked for a modification to the motion. A modular unit is one that sits on a permanent foundation. Therefore Condition #1 shall state a 24 foot by 63 foot, mobile unit. The modification was accepted. Member Spalding did not participate in the vote. Motion to approve carried 4/0.

2. **JOSEPH WILLIAMS, CONDITIONAL USE PERMIT, C-8494** – Application to allow an “A” type Service Station (smog test only) , in an M-1 (Light Industrial) District, located at 335 West A Street, north side, approximately 500 feet east of Hathaway Avenue, unincorporated Cherryland area of Alameda County, designated Assessor’s Parcel Number: 429-0077-019-02.

Member Spalding arrived at 6:28 p.m. Staff reviewed the application. The use as a Smog Test Only Facility is consistent with the M1 (Light Industrial) Zoning under the General Plan. The commercial structure is currently vacant. Although no changes are proposed to the site the Building Department may require substantial upgrades to the facility. After review of the submitted plans the applicant may want to consider a continuance to clarify project details regarding, landscaping, fencing and signage.

The Chair referred to inconsistencies within the staff report. Tentative Findings and Pre-Hearing Recommendation also mention service facilities and minor auto sales. Although not a reflection on present staff on more than one occasion it appears material has not been reviewed by a manager.

Member Clark asked how long the property had been vacant and if any aerial photographs existed of the site. Overall the area is congested and has had a history of problems. She questioned if four parking spaces would be sufficient for the proposed business. Also no recommendations for on site storage have been presented in the staff report.

Member Friedman alerted staff to an error in Tentative Finding #4. Finding #4 should state that the service station, Type "A" is not contrary to the intent clauses established for the District. Staff confirmed, Finding#4 should not be stated in the affirmative. Public testimony was opened.

The applicant, Mr. Joseph Williams presented aerial photographs taken in 2004. The property owner also owns the parcel next door. In recent years the property owner let an auto dismantler run a business from the site. Prior to that use, the property was used to store construction materials. Sign choices are limited for this type of operation. The Bureau of Automotive Repair mandates size, and posting location. Additional Board questions were as follows:

- Are public restroom facilities available
- Has the Building Department verified that the structure is sound
- Is the proposed facility a franchise or an independently owned business
- How many similar facilities exist in the area
- Will this area be annexed by the City of Hayward
- Is the proposed business located within the County Redevelopment Area

Mr. Williams said the station would be independently operated. If the business is successful he plans to open additional locations. As of yet he has not obtained approval from the Building Department or Fire. One change he would like to implement is the addition of a roll up door. There are 30 test and repair stations in Hayward, eight smog test only businesses. The total number of test businesses is small compared to the number of test and repair businesses. Member Pexioto verified that the property would be incorporated into the City of Hayward and would remain within the Unincorporated County. Staff also confirmed that the site was within a Redevelopment Zone. Member Spalding suggested Mr. Williams speak with Redevelopment, funding might be available for property improvements. Public testimony was closed.

Member Spalding motioned to continue the application to August 9, 2006. Photographs presented indicate that the building is need of repair. The applicant should include plans for façade and parking improvements, also a landscaping plan. The Applicant may want to enclose information to determine if there is an actual need for this type of facility. With 30 test and repair, and eight test only facilities, it appears there are already a lot of smog test facilities in existence.

Member Pexioto seconded the motion with a correction to Pre Hearing Recommendations. Auto sales should not be allowed at the facility. Verification that the building contains public restrooms must be provided as well. Motion to continue the application to August 9, 2006 carried 5/0.

3. **ALFREDO GONZALEZ, VARIANCE, V-11989** – Application to allow construction of a seven foot, six inch high fence where four feet, zero inches is the maximum height allowed, in an "A" (Agricultural) District, located at 22469 Eden Canyon Road, north west side, approximately 0.65 miles north east of Hollis Canyon Road, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085A-0100-003-00. (Continued from May 24 and June 14, 2006).

Staff received an E Mail from the applicant requesting a continuance to September 13, 2006. The variance application had come before the BZA on May 24th and June 14th, 2006. The Castro Valley Municipal Advisory Board recommended approval. The application had been continued to process the Variance request in conjunction with the Site Development Review. Because of the Ordinance structure the fence height variance must be processed separately. Staff has considered an option of moving the fence back from the property line however due to a leach field, and the placement of the existing home this is not practical. Staff believes the security issues at the horse boarding facility will be resolved during Site Development Review process. As a result the proposed fence height can be lowered.

Member Friedman motioned to continue the application to September 13, 2006 per the applicant's request. Member Spalding seconded the motion. She asked staff why a six foot open wire fence was acceptable in Agricultural Zoning but not a solid metal fence. Member Pexioto added that based on observations in the field he believed Agricultural Zoning should not be limited to four and six foot fence heights however it was his responsibility to uphold the Ordinance. Motion to continue the application to September 13, 2006 carried 5/0.

4. **FUENTES - NAJARRO, VARIANCE, V-11992** – Application to retain an existing secondary unit providing a five foot rear yard where 20 feet is required, in an R-S-SU (Suburban Residence, Secondary Unit) District, located at 234 Cherry Way, north side, approximately 550 feet east of Meekland Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0429-0010-071-00. (Continued from June 14, 2006).

Staff reviewed a history of the property. The lot was created in 1987 as a result of subdivision in 1987. The parcel and the lot behind it share a driveway under an easement agreement. The subject lot, approximately 8,000 square feet contains a single family home, approximately 1,440 square feet. At the rear of the lot is a 1,025 square foot accessory structure. Variance, V-9829 was approved in 1989 for 56% coverage of the rear yard where a maximum of 30% is allowed. The accessory structure constructed as a result of V-9829 has been converted into habitable living space without benefit of permit. The current owner seeks a variance to retain the secondary unit, providing a for a five foot rear yard where 20 feet is required. The site plan submitted shows sufficient open space exists between the structures for two legal parking spaces. If the variance is approved the applicant would need to obtain Building and Fire Department verification that the secondary unit meets code requirements.

Member Pexioto pointed out that the staff report did not make a direct recommendation in support of the application. Further Board questions were as follows:

- How many parking spaces are required for the site
- Will the parking area be covered or un-covered
- What specifics were sited in the referral response from the Cherryland Association regarding overcrowding and insufficient parking
- Were additional responses received opposing the application

Staff advised that four parking spaces would be required. The accessory structure/secondary unit provides two spaces. Two un-covered spaces can be provided in the open area between the secondary unit and the residence. The open space is currently paved with concrete. The Cherryland Association was opposed the project because the structure was never supposed to be a unit. It was converted illegally;

the property shares a driveway with a rear lot and is already cramped; parking cannot be provided for the front of the house. One neighbor also contacted planning staff and expressed concerns about overcrowding. Member Friedman pointed out that community sources were incongruent with the staff's Tentative Findings.

The Chair added that he lives in the same neighborhood and is somewhat familiar with the property. He knew the former owner of adjacent parcel when the property was subdivided. A variance was granted to limit the side yard setbacks. Two years later a variance was granted to allow 56% coverage. Staff can verify the facts but from what he understands the property was reduced in size. Sufficient compensating open space is not available for parking. At the time there was concern that if the oversized garage and storage area were allowed it would later become an illegal unit. The community's fears have come to fruition. This is the third request for a variance on the property. Parking is definitely an issue on Cherry Way. At least three nights a week he cannot find a parking space in front of his home. Staff clarified that the recommendation in 1989 regarding, Variance, V-9829 was denial. The Zoning Administrator did approve the variance with the stipulation that the structure only be used for storage purposes and a garage. Member Pexioto asked if a copy of 1989 building permit was available for review. Unfortunately staff did not have a copy.

Member Spalding asked if the Garage Conversion Ordinance would apply to this application. The Chair confirmed that it did not due to the fact the variance request was for setback reduction. Public testimony was opened.

Mr. Carlos Fuentes Najarro told the Board that he lives alone and the studio is not occupied. He would like to retain the property in its current state. He plans to use the space when family comes to visit. Questions for the applicant were as follows:

- When was the garage converted to an illegal unit
- Did the variance application arise a result of notification from Alameda County Code Enforcement
- Was Mr. Fuentes required to appear at an Abatement Hearing

Mr. Fuentes told the Board he purchased the property in April of 2005. At the time tenants were living in the secondary unit. When the sales transaction was finalized, the Realtor asked the tenants to move out. Additional Board questions were as follows:

- Was the property sold to Mr. Fuentes as a one or two unit property
- Did Mr. Fuentes receive a list of disclosures regarding the property
- Did Mr. Fuentes receive any rent money from the tenants prior to vacating the secondary unit

Mr. Fuentes purchased the property as one unit. The home was sold to him as one unit and he did not receive any rent monies. At the time of the sale he did not receive a disclosure but noted that he had difficulty with the Realtor. It took several follow up attempts to obtain keys to the property after the purchase occurred. He later received a letter stating that his garage was converted. Perhaps from Code Enforcement but he was not sure. Thus far the present hearing is the only one he has attended.

Member Friedman suggested that the applicant follow up on the possible erroneous or lack of disclosure since a property disclosure is required by law. Public testimony was closed.

Member Spalding asked staff what constitutes a unit. In this case it appears the area is being used for visitors. Staff said a full bath and a kitchen would qualify the space as a dwelling unit. Both are present

in this case. Member Spalding then asked if the application were denied what could be removed from the unit to prevent it from being rented in the future. Member Pexioto said in similar cases applicants were required to pour concrete down the main shower line.

Member Spalding motioned to deny the application. Regarding Finding#1, In the absence of testimony providing evidence that special circumstances exist, and the fact that the lot has had benefit of development there are no special circumstances that apply to the property. Finding #2, Granting the variance will be special privilege in recognition of the number of pre-existing variances already granted on a property of this type. Finding #3, Based on evidence presented at the hearing, and the fact that neighbors opposing the application have contacted the Planning Department, granting the variance would have a detrimental affect the neighbors. Member Friedman seconded the motion of denial. Motion carried 5/0.

5. **LUIS ROBLES/GURCHARAN DHALIWAL, VARIANCE, V-11995** – Application to allow construction of a second dwelling providing a 10 foot wide driveway where 12 feet is the minimum and a zero foot setback between a driveway and a dwelling, and a dwelling and dwelling wall, in an R-S-D-35 (Suburban Residence, 3,500 square feet Minimum Building Site Area per Dwelling Unit) District, located at 167 Blossom Way, south side, approximately, 300 feet east of Meekland Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 0429-0032-017-00. (Continued from April 12, May 24 and June 28, 2006).

Staff reviewed the application. The recommendation was approval however the main issue that needs to be addressed is ingress and egress. There are two driveways, separated by a small two foot planting strip. An adjoining parcel in the rear containing eight units shares the use of the driveways. A reciprocal agreement for ingress, egress and utilities appears to exist but the applicant must submit a recorded deed for approval. Details must be added to the landscaping plan as well. The Cherryland Association is not opposed to the application if adequate parking can be provided. The Board had the following concerns:

- Has the applicant submitted a copy of a written easement
- What is the actual size of the existing home in the front portion of the lot
- How many accessory buildings exist on the property
- Are written comments from the Cherryland Association available for review
- Have updated drainage and storm water control plans been submitted to Public Works

Staff clarified that the site plan notes ingress and egress. The prescriptive easement has been used for years. One shed currently exists which will be demolished. Member Spalding said a motion by the Board of Zoning Adjustments could be considered implicit approval of the applicant's proposed use. Without written verification there is no proof that the applicant has a legal right to use the driveway.

Member Friedman did not believe that any of the outstanding questions had been answered. The existing home is described as small less than 1,800 square feet however that is not definitive as a habitable or non habitable structure. He asked County Counsel if the size of an existing dwelling could be considered a special circumstance. County Counsel said it would depend on circumstances in the neighborhood etc. Member Friedman asked if the exact size of the home would be required to make a determination. Counsel confirmed that it would. Public testimony was opened.

The brother of the applicant, Ravi Dhaliwal was present. The architect, Mr. Robles represented the applicant. Mr. Dhaliwal told the Board that the adjoining property was sold two years ago. An attorney was involved and the written easement was completed at that time, as this was a requirement of the

finance company. Questions for the applicant's representatives were as follows:

- How long has the applicant occupied the property
- What is the total square footage of the proposed home
- How many units are present on the adjoining properties
- How wide is each individual driveway
- How many cars can utilize the driveway

Mr. Dhaliwal said his brother had lived there 10 years. The home has two bedrooms, one bath. His brother's family is the only one that occupies the parcel. The lot behind has a single family house and two duplexes, eight units total. Mr. Robles said that the total square footage for the proposed two story house would be 2,100 square feet. The ground floor would be 1,335 square feet. The driveway used is 10 feet wide. The driveway used by the neighbors is approximately 8 foot wide. The landscape strip is over the property line and belongs to the rear parcel. Member Spalding asked Mr. Robles if he would object to a continuance. This would allow time to clarify questions with staff, placement of curb cuts and to submit updated plans. Mr. Robles was in agreement with a short continuance. His goal was to start grading on the project before the rainy season.

Member Spalding motioned to continue the application to August 9, 2006. Staff should obtain written comments from, Public Works, The Cherryland Association and clarify any discrepancies in the staff report. The applicant shall submit a detailed landscape plan, verify the actual driveway widths, and a copy of the recorded easement agreement. The Chair asked for a modification to the motion. The applicant shall have the Building Department verify that the viability of accessory structures on the property. The modification was accepted. Member Friedman seconded the motion. Motion to continue to August 9, 2006 carried 5/0.

6. **ERIC & VERONICA YOOS, VARIANCE, V-12007** – Application to allow an addition attached to an existing garage creating a three foot, six inch wide side yard where five feet is required, in an R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 4112 Omega Avenue, north side, approximately 120 feet east of Forest Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0707-010-05.

Staff recommended denial of the request for the attached family room and approval a two bedroom addition attached to the garage. The existing garage has a setback of three foot, six inches. The proposed attached family room would encroach into the existing driveway, limiting access to the garage. The residence was built in 1920 prior to the zoning setback requirement of five feet. A variance is required because the proposal would now connect the garage and residence. The applicant's view is that the design is the best opportunity to provide a consistent architectural façade. Public testimony was opened.

The applicant was not present and there were no requests to speak. Public testimony was closed.

Member Spalding motioned to continue the application to July 26, 2006. A continuance will allow the applicant to be present. Staff can also incorporate the recommendation from MAC and work with the applicant to determine if alternate design options are feasible. Member Clark seconded the motion. Motion carried 5/0.

7. **LEE MASON, VARIANCE, V-12008** – Application to retain an existing secondary unit with a: 1) a side yard setback of five feet where seven feet is

required; 2) a five foot rear yard where 20 feet is required; and 3) two independent accessible parking spaces where three are required, in an R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 2546 Lessley Avenue, north side, at the northwest corner of Idena Avenue, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 416-0020-064-00.

Staff reviewed the history of the property. The applicant would like to retain an existing secondary unit, which apparently was converted from a garage. Retain reduced side and rear yard setbacks, and maintain two independently accessible parking spaces where three are required. The original home was built in 1948 and the garage in 1952. The 617 square foot garage was converted into habitable space in 1953. Several accessory structures on the property appear to be built without the benefit of permit. Actual records of the building permit have not been found. The applicant contends the structure was always meant to be a unit, proven by the original installation of 13 outlets and 100 amps of electrical service. A separate water valve shut off was installed for the structure as well. The applicant discovered that a variance was required when he recently requested a building permit. The permit would be to: upgrade the kitchen, laundry room, bathroom, replace all windows, bring electrical and plumbing up to code, and insulate the unit.

Side and rear setback requirements differ for habitable vs. non-habitable space. When the garage was converted, the off street parking requirement for the primary dwelling changed as well. Three independent parking spaces and an additional (fourth) parking space with an area, not less than 18 square feet must be present on the property. Currently only two independent parking spaces are available on the property. Staff recommended denial of the application due to the fact findings cannot be made in the affirmative. Side and rear setbacks are not conforming, and there is a lack of compensating open space. A grandfather clause would not apply in this situation as a record of a Building Permit was never located for the conversion of the garage. The MAC was in favor of approval based on land available adjacent to the property that provides independently accessible parking. The applicant would be required to lower the fence height and demolish the dilapidated accessory structure known as the portrait studio. The Board asked for clarification regarding the following:

- Specifically, what documentation exists regarding the conversion
- Would the original parking requirements be grandfathered in
- What is the zoning definition of independently accessible parking

Staff confirmed that electrical permits were located however the 1953 permit listed the space as a garage. The parking requirements applied in 1952 when the garage was added were for a residence and a non habitable structure. Public testimony was opened.

The applicant, Mr. Lee Mason pointed out that all MAC Members were present and unanimous in favor of approval. Mr. Mason told the Board the variance process began when he attempted to get permits from Building to upgrade the secondary unit on the property. There was never a question that the space was going to be used as a secondary unit. In 1969 the Mason Family purchased the home from Sunset Realty. It was listed as a three bedroom home with a single unit in the rear. The original owner had an electrician apply for and install 13 electrical outlets, several electrical panels and 8 breakers with a total of 100 amps. The space was built 20% larger than the average garage. This is consistent with a structure containing a bathroom, kitchen and laundry room. You would not need that kind of space or electrical service for a garage. The permit was never signed off by a Building Inspector. During the time his family owned the property, 5 cars were always parked in the driveway. His mother ran a drapery business and the staff used the driveway to park. Additional Board questions were as follows:

- Was the unit established prior to zoning
- Would the unit qualify as non-conforming or be grandfathered in
- Is an electrical permit sufficient documentation to establish the structure as a dwelling unit
- Would County documents required for an FHA Loan establish that the structure was considered a dwelling unit
- Would title documents establish that the structure was considered a dwelling unit
- Does any other documentation exist concerning the conversion status of the garage

Staff said at the onset a planner probably surmised that the structure had been established as a dwelling unit. After gathering subsequent information this was not the case. An application for electrical work is not sufficient to establish the structure as a dwelling unit. Loan documents processed through a title company are private. Staff could search microfiche however documentation may or may not exist. Mr. Mason interjected when he thought the conversation was becoming misdirected. He has lived in Castro Valley since the 40's. It was a different time then and the Building Department operated in a more casual manner. Many illegal units existed in the area at the time. Perhaps due to the fact that the War had recently ended and there was a lot of expansion and development. Public testimony was closed.

The Chair thought a finding of a non-conforming use might be established. Staff interjected that Zoning went into effect in 1951. Secondary units were not allowed until 1988. In theory the structure could qualify as a garage conversion however it has been occupied for a long time. The Chair acknowledged that in this case non-conforming status was not applicable. He then asked staff for recommendations on how findings could be made to address, parking, setbacks, and accessory buildings. Staff suggested the accessory structure known as the portrait studio and the tool shed be removed; The parking canopy should also be removed; The fence height would need to be lowered; Regarding the driveway, access could be widened; There is also ample street parking available on the Idena Avenue side of house since the residence is on a corner with no housing across the street.

Member Pexioto said after visiting the property he observed that given the size of the unit and the parcel, perhaps the space was used as an agricultural caretakers unit. However one impediment is parking. The driveway can fit three cars behind one another but not independently.

The Chair added, considering the topography and the corner lot placement gravel could be added to accommodate additional parking. Mr. Mason mentioned that the current parking set up had been in existence for a period of 40 years. The Chair clarified that the parking spaces must be independent.

Member Spalding motioned to approve the application. Regarding Tentative Finding #1, given the rectangular shape of the lot and the placement of the original residence prior to zoning. This dictated the later placement of the garage/secondary unit. Regarding Tentative Finding #2, The corner lot location with no housing across the street, is unique and does not constitute a grant special privilege.

The side street provides independent parking. Regarding Tentative Finding #3, The use will not be detrimental as it has been in existence for years and no complaints have been received. The applicant shall demolish the structures know as the carport canopy, the portrait studio and the tool shed. The fence height will be brought into compliance with maximum height allowances.

Member Clark asked for clarification of the motion. Will the applicant be required to demolish the BBQ Pit. Mr. Mason interjected. He would like to retain the BBQ Pit. The structure is already slated to be repaired. The two accessory structures will be torn down.

Member Pexioto asked for a modification of the motion. Finding #3 shall be modified to include that due the corner lot location with no housing across the street granting will not be detrimental. Modification accepted. Motion to approve the application carried 5/0.

STAFF COMMENTS & CORRESPONDENCE: Board stipends For May and June have been processed. A delay was caused due to accounting staff being on vacation.

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

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

The Chair asked if the Board of Supervisors had received a raise. Staff advised that a study of pay in other jurisdictions was being conducted. An update will follow.

The Chair stated for the record that the condition of the Board Packet received was unacceptable. The complaint was not directed at management staff present that evening but to staff members that have the weekly support responsibilities. Although revised materials were sent, Board Members spent considerable time organizing new material. All materials should be reviewed for accuracy and content prior to the Board receiving it. Staff should take a higher level of pride in their work. Member Spalding added that she only received one packet of material, and was disillusioned with the quality of the staff reports. Staff Member, Steve Buckley said he was filling in for vacationing staff however as a manger he was concerned. Quality control was his responsibility. The Board will see an immediate improvement.

ADJOURNMENT: There being no further business, the hearing adjourned at 9:00 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS