

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
JULY 26, 2006
APPROVED AUGUST 23, 2006**

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 Frank Peixoto, Jewell Spalding; and Dawn Clark.

MEMBERS EXCUSED: Lester Friedman

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

There were approximately 7 people in the audience.

CALL TO ORDER:

The meeting was called to order by the Chair at 1:35 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. **CHARLES & DONNA KOOPMAN, CONDITIONAL USE PERMIT, C-8441** – Application to allow continued operation of a horse boarding facility, in an “A” (Agricultural) District, located at 10330 Crow Canyon Road, west side, approximately 1.8 miles north of Norris Canyon Road, unincorporated Castro Valley area of Alameda County, designated Assessor’s Parcel Number: 0085-1901-002-01. (Continued from April 26, 2006; to be continued without discussion to September 27, 2006).

2. **PHOI PHAN, VARIANCE, V-11951** – Application to allow construction of four dwelling units with: a) A five foot side yard; b) a two foot driveway set back, raised to four feet; c) 1,536 square feet of open space where 2,400 square feet of open space is required; d) no sidewalk; and e) A 13 foot wide driveway where 16 feet is required in an R-S-D-20 (Suburban Residence, 2,000 square feet Minimum Building Site Area per Dwelling Unit) District, located at 230 Laurel Avenue, north side, approximately 400 feet west of Princeton Street, unincorporated Cherryland area of Alameda County, designated Assessor’s Parcel Number: 429-0091-058-00. (Continued from April 26 and June 28, 2006; to be continued without discussion to September 13, 2006).

3. **JERRY REILLY/WEST WINTON AVE. LLC, VARIANCE, V-11980** - Application to allow 1) one site with 3,948 square feet as a building site which is less than the minimum 5,000 square feet required; and 2) allow an addition above the garage with a zero foot front yard setback where 20 feet is required, in an R-1 (Single Family Residence) District, located at 14643 Saturn Drive, west side, approximately 600 feet south of Joan Drive, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Numbers: 079-0006-033-02 and 079-0006-032-02. (Continued from February 22, March 22, April 12 and June 28, 2006; to be continued without discussion to August 9, 2006).
4. **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, May 24 and July 12, 2006; to be continued without discussion to September 27, 2006).
5. **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, June 14 and July 12, 2006; to be continued without discussion to August 23, 2006).
6. **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. (Continued from July 12, 2006; to be continued without discussion to August 23, 2006).
7. **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. (Continued from July 12, 2006; to be continued without discussion to August 23, 2006).

Member Pexioto motioned to accept the Consent Calendar as submitted. Member Spalding seconded the motion. Motion carried 4/0. Member Friedman was excused.

REGULAR CALENDAR

1. **TRINH HOANG, CONDITIONAL USE PERMIT, C-8443** – Application to allow continued operation of an auto service facility for minor auto repair in a C-N (Neighborhood Commercial) District, located at 20009 Meekland Avenue, west side, corner southwest of Blossom Way, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 429-0032-001-04. (Continued from January 11, March 8, April 24 and June 28, 2006).

Staff recommended approval of the application. Corrections to the staff report were noted. The words auto sales shall be omitted from Condition #7. Condition #20 should read, July 26, 2006. The applicant submitted an action plan detailing the proposed clean up of the property just prior to the hearing. Clean up will include the removal of the construction materials being stored in the rear of the property. Materials shall be removed by October 1, 2006.

Additional Board questions were as follows:

- Is there a mechanism to hold applicants accountable when Use Permits are not in compliance with prior Conditions of Approval
- Are the construction materials being stored as a result of a sub-lease

Staff told the Board that currently there was not an official process in place. As a result of recent discussions staff recommended that the planner originally assigned to the application verify compliance. If Conditions are not met a complaint will be submitted to Code Enforcement. Public testimony was opened.

Mr. Fong represented the property owner. Board Members asked Mr. Fong to address the following violations:

- Vehicles marked "For Sale" parked under the canopy after the repair shop is closed
- Can the property owner produce written confirmation, including a date for removal of the stored materials
- Food sales taking place on the property after business hours

Mr. Fong acknowledged there was a problem concerning parking. Customers that shop with the merchants on the other side of the street utilize parking area. He has talked with the owner of the pet shop etc. with no success. The business owners park there too. Regarding the stored materials there is no official lease agreement. The owner of the property Mr. Trinh Hoang then introduced himself. He was not aware there was a condition prohibiting storage on the property. A casual agreement exists between him and the contractor storing the materials. He anticipates the materials will be removed by October 1, 2006. The contractor will need time to locate another storage location. The cars marked "For Sale" belong to the owner of the urban clothing store. Mr. Hoang has talked to the owner of the barber shop as well in an effort to resolve the issue however a day later a window was broken on his property.

Mr. Hoang was not aware that food vendors were operating on his property but he will see that the activity is stopped. The Chair told Mr. Hoang that it was his responsibility to oversee activities on his

property. If the Board was not confident food sale activities can be halted they would not be inclined to approve the Condition Use Permit.

Member Spalding asked why the staff recommendation was for a period of 3 years when the former conditions had never been met. It appears that the applicant was not seriously concerned until the permit was up for renewal. In its present state the business is not beneficial, and could affect the health and safety of the neighborhood. Staff told the Board they could limit the permit to a one year period if deemed appropriate. Member Spalding thought another possibility would be for the permit not to go into effect until all conditions are satisfied. Member Pexioto did not have an issue with a 3 year permit however he would require the applicant to appear before the Board in 30 days.

The Chair pointed out that the applicant had recently been on the Calendar several times, and they had yet to bring the property into compliance. The applicant has waited until renewal to try and satisfy all of the conditions yet staff recommends another 30 to 60 days. Member Clark agreed that at current time she had issue, pre approving a permit with outstanding issues. Member Spalding asked if the Board would allow the applicant 30 days to repair the windows, stripe the parking lot and submit a written maintenance plan. Staff said that the applicant could not enter into a maintenance agreement with the County. A maintenance plan would however inform staff of who would take responsibility and the methods of achieving compliance. If the applicant does not comply, Code Enforcement can pursue the issue or the use permit can be brought up for revocation.

Member Pexioto motioned to approve the application for a period of 3 years with an expiration date of August 26, 2009. The applicant shall appear before the Board of Zoning Adjustments in 60 days to verify that all conditions of approval are in compliance. If all conditions are not met, revocation of the permit will proceed.

Member Spalding asked staff if the application were considered for revocation would a separate notice be required to proceed. County Counsel recommended the Board continue the application at the current juncture to avoid any potential noticing issues. The Chair pointed out that the applicant was present, would that not suffice as notice. County Counsel told the Board he would need to confirm revocation noticing requirements however he believed it was 60 days. Member Pexioto withdrew his motion.

Member Pexioto put forth a new motion to continue the application to September 27, 2006 to allow the applicant time to comply with Conditions 1-8 as set forth on page 5 and 6 of the staff report. Member Clark seconded the motion. Member Spalding was not in agreement. The applicant may not want to complete the entire scope of conditions at this juncture without knowing if he will receive approval. Motion to continue the application to September 27, 2006 carried 3/1. Member Friedman was excused.

2. **LETICIA & JEFFREY LOSTICA, VARIANCE, V-11990** – Application to retain: 1) a five foot high fence where two and four feet are the maximum allowed; 2) two accessory structures covering 40% of the required rear yard where 30% is allowed; 3) two accessory structures five feet from the Property Line where 20 feet is required; and 4) a fence located in the Future Width Line, in an R-1 (Single Family Residence) District, located at 2896 Romagnolo Street, north west, side corner of Maud Avenue, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 416-0190-019-00.

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

- What Ordinance language states a fence cannot be in the Future Width Line
- Was this area once zoned Agricultural
- Is there County funding set aside to widen roads in the area

- Does the Zoning Ordinance allow canopies in the side or front yard
- Which side of the property was considered the “front”
- What is the depth of the yard that faces Maude Street
- Are the two sheds in the backyard part of the variance application

Staff responded that the parcel was initially zoned R-1-A in 1948, however the site was re-zoned to R-1 in 1968. The R-1 zoning would apply in this case. Ordinance 17.52.270 states that an accessory building cannot be located between the street lot line and any special building lot line pursuant to prior code Section 8-84.0. At this time staff does not believe funds are available to widen roads in the area. The question of canopies is still being discussed by the Ordinance Review Committee. Canopies are allowed at this time however they must come within accessory structure parameters set forth in the Ordinance. Per zoning standards the front side of property is Maude Avenue. Therefore the canopies are located in the rear yard. A twenty foot setback is required for an accessory structure in the rear yard. In this case the rear yard is 23 feet deep. The maximum square footage of an accessory structure allowed that would not exceed 30% coverage would be 150 square feet. The two sheds in the yard are not part of the variance application. Public testimony was opened.

The applicant, Mr. Lostica told the Board he was in the process of making repairs to the entire house, including the fence. He received a letter from Code Enforcement regarding the fencing and the canopies. A Planner then came and took photographs of the site. One of the canopies was actually down during the visit due to recent high winds. He always thought the front of his home was Romagnolo Street and did not know Maude Avenue was considered the front until today. One of the sheds will be removed. He spoke with someone from Public Works and was informed the fence was acceptable as long as it was made of see through materials, 30 feet back from the corner. He has children and would like to retain the five foot height to increase the level of safety. Drivers do doughnuts on the street.

Member Pexioto asked what was the height of the fence at the corner of Maud Avenue, and Romagnolo Street where the AC Transit stop was located. Mr. Lostica confirmed that the height is five feet. The section that wraps around the corner is made of chain link. The gated section in front of the driveway is five foot high as well however this section includes wooden slats. The measurement from grade is six foot to allow the gate to open. Public testimony was closed.

The Chair asked if it was within the realm of the Board’s authority to assign the front of the parcel as Romagnolo Street and Maud Street as the side to address the lot coverage issue. Staff confirmed that was not an option. Member Pexioto pointed out that the Traffic Department did not have concerns with the front fence. He believed lot coverage was the more important issue.

Member Spalding motioned to approve the application subject to Conditions C with the following modifications based on the property surroundings. The corner lot is subject to a high level of activity and traffic due to its location directly across the street from a school. A public transit stop is located in front of the property and a slight increase in fence height provides some level of security. A fence height of five feet shall be allowed on the corner of the property 30 feet back on each side. A fence height of five feet shall be allowed 20 feet from the rear property line. Building material shall not obstruct the line of sight and be made of ornamental iron or open chain link. Condition C- #1 (c) shall be modified. Canopy, accessory structures are not permitted in the rear yard. Condition C- #8 (b), Land Development shall be omitted.

Member Clark seconded the motion. Motion carried 4/0. Member Friedman was excused.

APPROVAL OF MINUTES: Member Pexioto motioned to approve the Minutes of June 28, 2006. Member Clark seconded the motion. Member Spalding abstained. Motion carried 3/0.

Member Pexioto motioned to continue the Minutes of July 12, 2006 to August 9, 2006. Member Clark seconded the motion. Motion carried 4/0.

STAFF COMMENTS & CORRESPONDENCE: Staff made no announcements.

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

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

Member Pexioto asked staff to give a verbal update at the end of each meeting regarding Code Enforcement complaints turned in to staff by Board Members. Staff agreed to give follow up during staff correspondence.

Member Pexioto asked staff to also report the status of discussions regarding the definition of a "temporary business".

The Board then continued a discussion from the June 28, 2006 Meeting on methods staff could employ to ensure applicants were adhering to conditions of approval. Staff said one proposed solution is to have the project planner verify if conditions are being met. Member Pexioto did not think planners had time for thorough follow up. The Chair agreed. Applications consist of substantive conditions. There appears to be a nexus between imposing a fee that would allow staff to determine if conditions are being met. If conditions are not in compliance a specific staff person should be assigned to enforce conditions. Non compliance affects the neighbors as well as the surrounding community.

Member Spalding asked staff if the Ordinance Review Committee had come to a decision regarding a recommendation to increase fence heights. She believed the Ordinance Review Committee should also consider making a recommendation to the Board of Supervisors to address fences that are in the Future Width Line. A simple process could be determined and then adopted instead of applicant's going through a costly variance process. Future Width Lines were determined long ago and it is unlikely many roads will be expanded due to County budget constraints. The issue is pervasive in the unincorporated County. A streamlined process would be more cost effective for property owners and be a more efficient use of Board time.

Member Clark announced that she would not be present at the August 9, 2006 Meeting

ADJOURNMENT:

There being no further business, the hearing adjourned at 3:30 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS