

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
AUGUST 23, 2006
APPROVED SEPTEMBER 13, 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; Lester Friedman and Dawn Clark-Montenegro.

MEMBERS EXCUSED: None.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; 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 1:30 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. **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 and July 26, 2006; to be continued without discussion to September 27, 2006).

Member Spalding motioned to adopt the Consent Calendar as submitted. Member Friedman seconded the motion. Motion approved 5/0.

REGULAR CALENDAR

1. **SUSAN REGAL, CONDITIONAL USE PERMIT, C-8448** – Application to allow continued operation of a community care facility for up to 25 elderly adults, in an R-S-SU (Suburban Residence, Secondary Unit) District, located at

629 Hampton Road, south side, approximately 400 feet northeast of Western Boulevard, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 414-0036-006-00.

The staff recommendation was denial. Staff has been working with the applicant for months in an effort to resolve issues with Alameda County Fire. The applicant states sprinklers will be installed soon. The Board may want to consider a postponement however staff would like to move forward. Member Pexioto asked what would happen to the residents of the facility if the application were denied at the hearing. Staff said the residents would have to move. Member Spalding asked if it was in the County's purview to notify the residents that the facility would be closing. Her concern was that the property owner may not be responsible and relocation of the residents may not take place. County Counsel told the Board they could condition their finding to appoint responsible parties that must provide proof that applicants were relocated. Member Spalding reminded the Board that they probably did not want to create further issues resulting from a defacto closing as the facility is in existence, and currently open.

Member Friedman said he believed the State Health Department should have been brought in to review the situation long before today's hearing based on the number of calls to the Sheriff's Department. The fact that the applicant had not installed greenery and landscaping required by their last permit shows they are not working in good faith to resolve ongoing issues or to bring the property into compliance. He would be interested in what the applicant has to say to the Board. The Chair asked County Counsel if the Board was obligated to notify the State Community Care Licensing Board. Counsel said he was not sure if that was a requirement however if the Board deems notification appropriate they can contact the Licensing Board. Public testimony was opened.

The Applicant was not present. No speaker requests were submitted. A letter in opposition to the application was submitted prior to the hearing. Public testimony was closed. The Chair stated that it was the policy of the Board to continue the application for a period of two weeks if the applicant was not present. Member Spalding asked if the applicant had been notified of the hearing. Staff confirmed they had. The planner assigned to the project also spoke with the applicant last week. Member Spalding recommended moving the item to the end of the Calendar in the event the applicant was delayed. The Chair moved the item to the end of the Calendar.

2. **JOHN SULLIVAN, CONDITIONAL USE PERMIT, C-8495** – Application to allow continued use of one site for: a) an outdoor storage yard; b) occupancy of a contractor's unit; and c) contractor's storage yard, in an M-2 (Heavy Industrial) District, located at 16520 Worthley Drive, southwest side, approximately 1,650 feet southeast of Grant Avenue, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 438-0010-004-14. (Continued from August 9, 2006).

Staff submitted a revised staff report and notified the Board that the applicant requested a continuance to September 27, 2006. Member Friedman asked staff to revise Tentative Finding, #3. He did not believe the word questionable was definitive. The Chair added that the purpose of the staff report is to provide information that will assist the Board in making determinations. The use of the word questionable is not helpful. Staff should recommend a determination in favor or in opposition to each application. Public testimony was opened.

The applicant, John Sullivan requested the continuance because he was going to be out of the country until October. He asked the Board what recommendations they had in regard to the renewal of the application. Mr. Sullivan was not in agreement with the comment in the staff report which stated he had a

history of non compliance. Staff distributed photographs of the property taken in July verifying that dumping had taken place. The site is being used for a transfer station for yard waste. The transfer operation was not an allowed use on the property. Waste can be taken directly from a truck to a dump site but waste cannot be stored. Other uses taking place on the property are truck repair, oil storage and storage of rocks. Mr. Sullivan confirmed that the site was used as a transfer station. Member Spalding advised the applicant he may want to revise the application to incorporate actual uses taking place on the property. He should also speak with staff to confirm that the current uses fall within the category of construction storage. Member Pexioto reminded Mr. Sullivan that he was responsible for what takes place on his property. It was up to him to ensure the activities were limited to what is specifically allowed in the conditional use permit.

Mr. Jim Tress, the Manager of the site said he believed the current permit was applicable there had just been a break down in the process. There had been past issues regarding the transfer station but he had worked with the County to resolve them. When he no longer heard from the County he believed the issues had been resolved. Mr. Tress said he was told the green waste was acceptable. A staff person from the Fire Department came to the site and did not inform him that anything was wrong. Mr. Tress asked that in the future one County staff person be designated to communicate with him to alleviate confusion. Member Spalding thought it might be helpful for staff to submit written requirements. That way if discrepancies arise they can be clarified. Public testimony was closed.

Member Spalding motioned to continue the application to October 11, 2006. Staff shall provide the applicant with a definitive list of what must be completed by September 13th so they can be ready for the October 11th Meeting. Member Pexioto asked a question of clarification regarding page 3, second paragraph. Code Enforcement asked the applicant to submit a modification to Conditional Use Permit, C-7761. Staff explained that C-8159, approved in May 2003 was for an expanded use which includes the contractor's storage yard. This is the renewal the applicant is currently seeking. Member Pexioto seconded the motion. Motion to continue to October 11, 2006 carried 5/0.

3. **CRMS ARCHITECTS, CONDITIONAL USE PERMIT, C-8512** – Application to allow construction of a new Mc Donald's store with a drive through facility and the demolition of the existing Mc Donald's store, in a C-1 (Retail Business) District, located at 18700 Hesperian Boulevard, east side, approximately 620 feet north of Bartlett Avenue, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0087-075-06.

Staff recommended approval of the application. The Homes Association is in favor of approval if the current hours of operation are not altered. Member Friedman asked for clarification regarding the hours of operation. The operation has remained open until midnight however adjacent Residential Zoning requires that a drive-in be closed by 10:00 p.m. during the week and midnight on Friday and Saturday nights. Member Friedman also questioned the fact that the business had been opening at 5:00 a.m. and not 8:00 a.m. Staff responded that the restaurant had received approval in 1999 to open at 8:00 a.m. The restaurant had been operating under the hours of 5:00 a.m. to midnight and thus far no complaints have been received. Public testimony was opened.

Mr. Mark Mc Ilvain of CRMS Architects introduced himself as the representative of Mc Donald's. He was in agreement with the proposed conditions in the staff report. He clarified that the lobby hours are from 5:00 a.m. to 10:00 p.m. and the drive-thru hours are until midnight. Member Friedman asked if any noise complaints had been received from residents.

Mr. Mc Ilvain confirmed he had never received complaints. Member Spalding remarked that the

proposed design was a good use of lot space and did an excellent job of incorporating generous landscaping. Board Members asked if the existing structure required demolition, and if so what was the anticipated project completion date. Mr. Mc Ilvain expected the entire project, from demolition to installation of appliances would take 3 to 4 months. Public testimony was closed.

Member Spalding pointed out that the permit did not have an expiration date. Staff responded that a drive-in application typically did not have an expiration date. Member Pexioto motioned to adopt the staff recommendation of approval. Member Spalding seconded the motion. Motion to approve the application was carried 5/0.

4. **FOREST CIRCLE / TODD, 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, July 12 and July 26, 2006).

Staff recommended denial of the application. The Board had the following questions for staff:

- Have alternate design options been discussed with the applicant
- What is the maximum height limit allowed
- Are there any future zoning changes proposed for height limit in the area
- How many parking spaces are required
- Is independent access to each parking space required

Staff responded that the variance request was as a result of a proposed boundary adjustment. The applicant states the adjustment is to accommodate development on the neighboring property however the applicant can build a single story unit on the remaining property. The Zoning Ordinance was updated several years ago to allow building height up to 30 feet under certain circumstances. Four parking spaces are required for the property. Three must be independently accessible, spaces that cannot be blocked by any other parking. Public testimony was opened.

Mr. Scott Andrews, the co-applicant and the owner of the adjacent property introduced himself. Forest Circle is developing a 35 unit town home project on the adjacent parcel which will replace the old mobile home park. This will be possible as a result of a lot line adjustment. The Planning Commission has approved the project. In comparison the project is 3 stories and 37 feet in height. The Castro Valley Municipal Advisory Council has stated that one of the goals for the community is to create more density. This project helps achieve that goal. Community Development was also in favor of the project. It increases the number of units that can be counted as part of the overall State Housing goal. This application should be considered in context as part of that goal. Mr. Andrews then displayed presentation boards of re-build projects in the area. The Todd's project would blend well with the fairly dense town homes next door. The garage is situated one foot from the property line between the two parcels. The current garage will be demolished.

Board questions for Mr. Andrews were as follows:

- Is the mobile home park vacant

- Has the applicant considered reducing the rear setback to prevent a reduced side setback
- Will there be a fence between the two properties
- What fencing materials are being considered
- Can a secondary unit be added to the existing garage
- Is Forest Circle being compensated for the work being done on the Todd property
- Is the work on the Todd property being done in conjunction with the town home project

Mr. Andrews confirmed the mobile home park was vacant. The property was purchased in 2005 by Forest Circle. Both a rear and side setback would be required for the proposed secondary unit. The current garage is too close to the property line therefore a unit could not be added. The proposed fence between the properties would be made of wrought iron and masonry. Forest Circle is doing the work on the Todd property in conjunction with the town home project.

Mr. Harry Todd said he read in the newspaper that the Board of Supervisors wanted to increase density in Castro Valley. He did not give zoning much thought until Forest Circle approached him. All of his family has moved out of the area and he was no longer using the space. In addition he owns a second home near the University of California. He decided to sell his orchard to enable the project to move forward. The detached garage needed to be rebuilt. When it is demolished it will be relocated closer to the existing home. The roof will match and the new design of the structure will allow easier access into the garage. Further Board questions were as follows:

- What does Mr. Todd plan to do with the second unit
- Does zoning allow for a second unit
- What is the height of the current home on the parcel
- Why is a variance required for parking
- Does the parking configuration on the adjoining property affect the Todd property in any way

Mr. Todd thought a studio apartment would be a good idea. It could possibly become a rental as he owns another home in Berkeley. Mr. Todd was unsure of the height of existing home on the property. Staff confirmed the property was zoned for a second unit. Mr. Andrews told the Board that the Ordinance required that 17 spaces be provided on the adjoining property. Parking does not affect the Todd property as they have parking available on the street, and in front of the existing home. Tandem parking could be provided as well although it would not be independently accessible. Mrs. Mary Todd clarified that the studio apartment would be used for their 3 kids and grandchildren when they come to visit the Bay Area. She thinks the studio would be a wonderful place to stay. Public testimony was closed.

Staff clarified that the project slated for the parcel behind the Todd's had not been approved by Planning Commission. The Commission recommended approval. The Board of Supervisor's will consider the application and then decide to approve or deny the project. Member Spalding asked if the application could be heard in conjunction with the application that will be considered by the Board of Supervisor's. The Todd's want to effect a boundary adjustment in cooperation with Community Development's goal to create increased density as a result a variance request for a secondary unit is needed. Staff said the two property owners were different. The project could not be combined. Reconfiguration might be possible but the applicant would have to pursue that option. As a result of the sale of a portion of the property it will be difficult to achieve setback requirements for the proposed project.

The Chair said the applicant was asking for a height variance on a secondary unit above a garage and side setbacks. More options would be available had the applicant had not sold a portion of their property. Staff added that if the applicant just builds a garage they would be limited to 30% yard space.

Mr. Todd said it was necessary to place the garage in that specific location to enable the town home project to achieve proper density. Mr. Andrews added that every square foot was crucial in a project of that scale, especially when you have to deal with issues like impervious surfaces. He was encouraged to move the project forward at the behest of the County and was never informed that variances would be an issue. The subdivision of the parcels is slated to take place in November. It would be difficult to redesign the project now. Public testimony was closed.

The Chair said although the Developer, Forest Circle states the County wants to have higher density for development near B.A.R.T a second unit does not currently exist on the Todd's property. Member Spalding said the Todd's may want to consider submitting a new application in conjunction with the Forest Circle application that will be considered by the Board of Supervisor's.

Member Pexioto motioned to deny the application. There are no special circumstances applicable to the property. The variance request for height, side and rear yard reductions and reduced parking requirements is a result of a proposed boundary adjustment. The boundary adjustment is voluntary. It is possible for the applicant to add a single story conforming secondary unit with an attached garage to the property. Member Spalding seconded the motion. Motion to deny the application carried 5/0.

5. **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 and July 26, 2006).

Staff recommended approval of the revised application. The application was continued from July 12th and 26th of July. Member Pexioto asked the following questions of staff:

- Does the second bullet on page #2 of the staff report refer to the proposed addition or to the existing garage
- Is the variance request as a result of the addition (habitable space) being attached to the garage (non-habitable space)
- Would the proposed addition look into private areas on neighboring properties such as bathrooms or bedrooms

Staff responded that existing garage was added with benefit of permit in 1958 with a side yard of 3 feet, 5 inches. As a result of addition being attached to the garage the R-1 (Single Family Residence) Zoning setbacks would apply. The bedroom addition would conform in size and to the 5 foot side yard setback requirement in that it would be on the east side of the property. The existing 3 foot, 5 inch setback on the west side remains the issue. The family room addition has been reduced from the original plan submission to allow easier access into the garage. The project would not impact the neighboring home as the proposed addition will be located on the opposite side of the property. Public testimony was opened.

Mr. Eric Yoos said he would like to expand his home to have more space for his two daughters. The Board had no questions for the applicant. Public testimony was closed.

Member Pexioto motioned to uphold the staff finding of approval. Member Clark seconded the motion.

Motion to approve the application carried 5/0.

6. **EDWARD SOOS, VARIANCE, V-12014** – Application to allow expansion of a non-conforming dwelling (rear yard setback) in an R-1 (Single Family Residence) District, located at 17463 Via Annette, west side, corner northwest of Via Sarita, unincorporated San Lorenzo area, Alameda County, designated Assessor's Parcel Number: 411-0084-035-00.

The staff recommendation was approval. The San Lorenzo Village Homeowners Association recommended approval of the application as well. The original home was built in 1954 prior to the establishment of zoning. The front lot line for the home was considered Via Annette. In 1960 a 300 square foot covered patio addition was constructed with benefit of a building permit trusting that the parcel was 80 foot wide measured from Via Annette. The Zoning Ordinance establishes that the front of the corner lot is considered Via Sarita, which is a shorter. As a result the area considered the rear yard is only eight feet deep. The front yard and street side yard are large and more than compensate for the loss of open space. Public testimony was opened.

The applicant, Edward Soos explained that he would like to add a 410 square foot patio cover at this time, and the 40 foot storage area in the future. He requested the Board allow him to retain the nonconforming setbacks that were established by the issuance of the 1960 Building Permit. The 1960 Building Permit actually details the current proposal of a 410 square foot addition and 40 feet of storage. Staff confirmed that the original drawings from 1960 show the proposed addition. However if the applicant is not going to construct the storage shed until a future date he will have to return for a separate variance pertaining to the storage shed. Public testimony was closed.

Member Friedman motioned to adopt the staff finding of approval. Member Spalding seconded the motion. Motion carried 5/0.

7. **SUSAN REGAL, CONDITIONAL USE PERMIT, C-8448** – Application to allow continued operation of a community care facility for up to 25 elderly adults, in an R-S-SU (Suburban Residence, Secondary Unit) District, located at 629 Hampton Road, south side, approximately 400 feet northeast of Western Boulevard, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 414-0036-006-00.

The Chair re-opened consideration of Conditional Use Permit, C-8448. During earlier discussion Member Friedman recommended denial of the application. The Chair recommended a two week continuance since the applicant was not present at the proceedings. Member Spalding said although she wanted to continue the application to allow all of the issues to be brought into compliance she was concerned about the lack of supervision at the facility, and the fact that the applicant had not complied with former Conditions of Approval.

Public testimony was re-opened. The Applicant was not present. No speaker requests were submitted. Public testimony was closed.

Member Friedman motioned to deny the application. The prior Conditional Use Permit had been expired for one year. The applicant was still not in compliance with Conditions of Approval nor was the applicant present. The application should be brought quickly to the Board of Supervisor's so they can deal with the serious outstanding issues. Regarding Condition #3, there is a danger to the residents as the applicant has not shown compliance with significant fire safety issues. The property is in disrepair and

the landscaping is unsightly. There is also danger to the community. The facility is running illegally. It is licensed for 23 persons but has occupancy of 25 people. There is also a lack of supervision of the residents which has been witnessed by the neighbors. Member Spalding added that staffing at the facility also appeared to be insufficient. Member Spalding seconded the motion for denial.

Member Pexioto said in most cases he would recommend a continuance if an applicant is not present however in this case due to the serious safety concerns he was in agreement with the motion of denial. A copy of the Findings should also be sent to all applicable State Organizations. Motion to deny the application carried 5/0.

APPROVAL OF MINUTES: Member Pexioto motioned to approve the Minutes of July 12, 2006 with submitted corrections. Member Friedman seconded the motion. Motion carried 5/0.

Member Pexioto motioned to approve the Minutes of July 26, 2006 as submitted. Member Clark seconded the motion. Member Friedman abstained and did not participate in the vote. Motion carried 4/0/1.

The Minutes of August 9, 2006 were not submitted for review.

STAFF COMMENTS & CORRESPONDENCE: Staff made no comments.

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

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: The Board had no announcements.

ADJOURNMENT: There being no further business, the hearing adjourned at 3:05 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS