

**MINUTES OF MEETING**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**  
**AUGUST 9, 2006**  
**APPROVED 9/13, 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:** Frank Peixoto.

**MEMBERS EXCUSED:** Chair; Ron Palmeri; Jewell Spalding, Lester Friedman and Dawn Clark.

**OTHERS PRESENT:** Steve Buckley, Assistant Planning Director.

**FIELD TRIP:** The meeting adjourned to the field and the following properties were visited:

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.
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.
3. **EMAN COLLINS / REYES, CONDITIONAL USE PERMIT, C-8505** - Application to allow continued operation of a church, in an M-1 (Light Industrial) District, located at 22117 Meekland Avenue, west side, approximately 100 feet south of Poplar Avenue, unincorporated Cherryland Area of Alameda County, designated Assessor's Parcel Number: 429-0064-020-02.
4. **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, designated Assessor's Parcel Number: 412-0087-075-06.
5. **EAST BAY MUD, VARIANCE, V-12004** – Application to establish building site status for a parcel without frontage on a county road, in an R-1-B-E (Single Family Residence, 6,000 square foot Minimum Building Site Area, 60 foot Minimum Lot Width, 20 foot Front Yard, 7 foot Side Yard) District, located off of Second Street, unincorporated Fairview Area, designated Assessor's Parcel Number: 425-0160-009-00.
6. **RICHARD LOUNSBURY, VARIANCE, V-12005** – Application to allow a

three foot side yard where five feet is required by attaching the existing detached garage to the dwelling unit, in an R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 18391 Carlton Avenue, west side, approximately 100 feet north of Dominic Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 804B-0405-007-02.

7. **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.

**REGULAR MEETING: 6:00 p.m.**

**MEMBERS PRESENT:** Chair; Ron Palmeri; Members Frank Peixoto, Jewell Spalding and Lester Friedman.

**MEMBERS EXCUSED:** Dawn Clark.

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

There were approximately 40 people in the audience.

**CALL TO ORDER:**

The meeting was called to order by the Chair at 6:10 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. **4000 AUTO WRECKERS, CONDITIONAL USE PERMIT, C-8419** – Application to allow continued operation of an auto dismantling yard, in an M-2-B-E (Heavy Industrial, 5 acre Minimum Building Site Area) District, located at 3810 Depot Road, south side, approximately 0.75 miles west of Clawiter Road, unincorporated Eden area of Alameda County, designated Assessor's Parcel Number: 0439-0070-008-06. (Continued from April 12 and May 10, 2006; to be continued without discussion to September 27, 2006).
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. (Continued from July 12, 2006; to be continued without discussion to August 23, 2006).

3. **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. (To be continued without discussion to August 23, 2006).
4. **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 and July 12, 2006; to be continued without discussion to September 13, 2006).

Mr. Joseph Williams submitted a Request to Speak Form for Conditional Use Permit, C-8494. Staff announced that a request for a continuance to the month of September had been submitted. Per the Chair's discretion the application was continued to September 13, 2006. The Chair then announced that Agenda item #2 could be removed from the Consent Calendar and placed at the end of the Regular Calendar. Due to the fact the item was on the Consent Calendar a staff report was not available. Testimony can be submitted however the Board will take no action on the item. Mr. Williams told the Board he would submit supplemental reference materials prior to the September hearing and return to speak at that time.

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

#### REGULAR CALENDAR

1. **EMAN COLLINS / REYES, CONDITIONAL USE PERMIT, C-8505** - Application to allow continued operation of a church, in an M-1 (Light Industrial) District, located at 22117 Meekland Avenue, west side, approximately 100 feet south of Poplar Avenue, unincorporated Cherryland Area of Alameda County, designated Assessor's Parcel Number: 429-0064-020-02.

The staff recommendation was approval. The two acre parcel contains a total of seven buildings. The current renewal request is for Conditional Use Permit (C-6797) to operate a church has been in effect for the past 10 years. The three buildings toward the front of the site are currently being used for church purposes. Two are used as churches, and one for office and storage space. Hayward Spanish Seventh Day Adventist Church uses the facility as well as another congregation. Auxiliary buildings on the site include an auto body repair business that will eventually leave and a large warehouse building. The

applicant would eventually like to convert the entire two acre site into a church facility. Detailed plans have not been submitted and would be required for review and consideration at that time. Proposed future development includes conversion of the large warehouse into a sanctuary with a fellowship hall, library and classrooms. Although the present use will not change the applicant would like to have the ability to obtain permits as leases phase out and the church can afford to remodel. Board questions were as follows:

- What are the limitations of the current CUP since details regarding the proposed expansion have not been determined
- What is the anticipated time frame for the installation of landscaping
- Is the CUP for one or two church facilities
- How many total parking spaces are required for the two congregations

Member Pexioto thought the applicant should submit a landscaping plan within 60 days. Staff agreed that could become a condition of application approval, a site inspection could take place in 120 days. Parking is calculated by the available seating capacity in the largest assembly hall. The capacity is up to 300 people. One parking space for every four persons is required. The site now maintains more than 75 and is large enough to add more spaces in the future. Once the applicant solidifies expansion plans review and approval can be accomplished through a Site Development Review process or the applicant can return to the Board of Zoning Adjustments. The use permit would be for the site. Two congregations use the buildings on site. One congregation meets on Saturdays and the other on Sundays. Public testimony was opened.

The architect, Ricardo Reyes represented the applicant. Member Spalding asked Mister Reyes if there was an objection to installing the landscaping now and then work with staff on further details involving the Site Development Review. Mr. Reyes said it was more ideal to create one master plan for the site because it was more economical and would give the project greater continuity. The plans for conversion of the warehouse are already prepared. The Church is serious about the project and is moving forward. Public testimony was closed.

Member Spalding asked if a Site Development Review required a public hearing and when the review process would begin. Staff clarified that an SDR was a staff level hearing however conditions can be appealed. The SDR could begin when the remodeling of the site begins. Staff posed an option of installing the landscaping in phases. Planters can be installed on the streetscape first and the balance phased in. The Chair requested that the Planning Director be required to approve the landscaping proposal. Staff agreed.

Member Spalding motioned to the adopt the staff recommendation of approval with modifications. Condition #1 shall be modified. A landscaping plan be shall be submitted within 60 days subject to approval of Planning Director or his designee. Landscaping to be installed within 120 days. A condition shall be added that any remodeling or addition of 1,000 square feet or more shall be subject to approval in conjunction with the Site Development Review application. In addition a certificate of occupancy is required prior to the use of such space. Member Pexioto seconded the motion. Motion carried 4/0. Member Clark was excused.

2. **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, June 28 and July 26, 2006).

Staff reminded the Board the application had been continued to allow the applicant to review options with County Agencies and further discussion with the homeowners association and neighbors. The proposal is to merge two parcels reduced in area. Lot size was reduced when Caltrans created the 580 Freeway. The site is 3,948 square feet, 5,000 square feet Minimum Lot Size is required for the area. Most lots in the area are 6,000 to 7,000 square feet. Public Works commented on driveway design. In addition there is concern with liability in regard to a proposed retaining wall, and space donated for parking which would have to be maintained in the public right of way.

Initial Board questions were as follows:

- If the applicant is willing to donate space why is Public Works not willing to issue an encroachment permit
- How do the four new design proposals impact parking in the area
- Would a variance still be required if the space above the garage was not habitable space

Staff reviewed the Addendum to the staff report. Although the applicant is willing to donate an area for guest parking on the street the space would still be private. It has not been determined that a space could be built on such a sloped area. Zoning for the area does not require a guest parking space. A variance for the project would be required since the area above the garage would be habitable space that does not meet the minimum setback requirement. Public testimony was opened.

Mr. Gerald Reilly updated the Board on the progress of the application since the last hearing. He has met with the homeowners association eight times. He had also met with the Building Department to address all of the issues. As a result of requirements by Public Works new parking proposals have been submitted. Originally Mr. Reilly was willing to donate land for two public parking spaces along the 100 foot right of way. Public Works will not allow that parking option due to liability. There was also a concern about the 5 foot drop from the berm, and parallel parking next to a telephone pole. Public Works would also like the garage pushed back approximately 3 to 4 feet from the property line. An option Mr. Reilly would consider. Multiple options have been explored. As a result of the parking prohibition on that side of the street and required fire access, four alternative plans have been developed.

Ms. Olivia Santos was present at the hearing in January. She has been in monthly contact with the Planner assigned to the project. Ms. Santos told the Board she had just received the staff report and has not had sufficient time to review its contents. It appears there are still parking issues. Originally the space in front of the property was a condition of approval now Public Works does not want guest parking. Ms. Santos said her home is between the properties being developed on Saturn Drive. She often gets trapped in her driveway as a result of people parking in front of it. There is no parking allowed on that side of the street. In the past you could pull over to let another car pass now due to the number of cars on the street you have to back up six houses to let someone pass. Ms. Santos thought in light of the many revisions submitted, the issue should return to the HOA to discuss possible impacts. Ms. Santos closed and said that she has lived on the street for a long time and would like to remain in the neighborhood. Mr. Reilly purchased the property to sell one parcel and give one to his son. He is a seasoned builder, knew the limitations of the property when he purchased it.

Mr. Ted Wolney a neighbor who lives at 14620 Saturn Drive said he was present at the past hearing. Photographs were submitted which he believes conveyed the density and parking issues. He also attended HOA meeting regarding the project, during which the applicant heard the concerns of the community. He did not believe the current Pre Hearing Recommendations addressed any of the issues. He thought staff had "missed the boat". Mr. Wolney also requested that the question raised at the last hearing by Member Spalding as to if the applicant was required to provide a public parking space be addressed. He wanted the issue to be determined at the current meeting. Another change since the last meeting has been the sale of the adjoining parcel. Mr. Wolney believed more time was required to review the revised plans submitted by the applicant.

Mr. Ed Bovee said he had lived in the neighborhood for 50 years. During that time he has lived on Upland Road. Having lived there a long time he has seen the area change. At one time there were fewer homes. Often the properties were in poor condition and many had in-law units. Things have progressed and the tax roles have increased. The area is much cleaner now and many nice people have moved into the neighborhood. He attended the HOA meeting concerning the project, and believes this is an opportunity to add a viable project to the tax rolls. The lot falls 52 feet short of 4,000 square feet. Mr. Bovee said he was in construction for 45 years and realizes there will be disruption during construction. However that is progress. He supported the application but acknowledged that the proposal does not impact him as much as the residents on Saturn Drive.

Mr. James Reilly submitted a Request to Speak but gave his time to Mr. Gerald Reilly.

The Chair read a letter submitted by Mr. Howard Beckman into the record dated August 9, 2006. Some points in the letter were that the requested variances clearly reflect the limitations set by R-1 Zoning. Rather than making minor adjustments due to of unique characteristics of the property. The property is significantly substandard at 3,948 square feet, resulting in a zero foot setback from the street front. Granting the variances would be unacceptable in a zoning setting, and set a strong precedence of overbuilding on the lots in the neighborhood. The role of the BZA is not to evaluate the wisdom of existing zoning limitations but to preserve those limitations while granting variances that are inline with zoning. Mr. Beckman asked the Board to deny the application for the variances. Public testimony was closed.

Staff told the Board the R-1 Zoning did not require guest parking. This application would combine two lots by means of a boundary adjustment. Subdivisions may require guest parking spaces. The original subdivision did not require guest parking. Parking for the proposal is provided in the garage, and on the driveway. The revised plans submitted by the applicant detail this design. A condition can be added that requires a setback from the property line. One of the revised plans shows the proposed setback. This street was created 40 feet from right of way with 20 feet of pavement. Although it may be considered substandard this was the original subdivision design.

The Chair said he was troubled. Even if the two substandard parcels were combined they only get close to 4,000 square feet. The Minimum Lot Size required is 5,000 square feet. Being familiar with the area he did not feel it was safe or appropriate to put a habitable structure on or near the property line. He was concerned with safety because of the steep downhill slope. He acknowledged that the parking issue will persist in the area regardless of any new structures built. One proposed plan does provide parking on the property. The option of guest parking if front of the parcel was not acceptable to Public Works due to safety concerns. The Chair closed, stating that if the recommendation of Public Works is no street parking the Board should follow their recommendation.

Member Pexioto motioned to approve the application. He believed there were special circumstances present because Caltrans reduced the two parcels as a result of taking land to build the 580 Freeway. Regarding the second variance request because of the reduced lot size it should be acceptable to have a zero to three foot setback from the front property line. The motion died due to lack of a second.

Member Friedman motioned that he did not believe the applicant met all of the findings. He would have difficulty making Tentative Finding, #2. In regard to Finding, #3, the use would be detrimental to persons or property in the neighborhood or public welfare by placing habitable space on the property line near a deep slope.

Member Spalding seconded the motion based on the final design proposals submitted. Member Pexioto was not in favor of denial. Motion to deny the application was carried 3/1. Member Clark was excused.

3. **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, June 28 and July 12, 2006).

Staff gave the Board an update and reviewed the status of the application. The application was first heard in front of the Board on July 12, 2006. Written verification has been provided of a reciprocal easement agreement between the parcel at 167 Blossom Way and the property behind it. The setback between the driveway and dwelling wall has been confirmed at 20 feet. One proposed solution for creation of a pedestrian walkway is to delineate the area with marking and/or landscaping. Board questions were as follows:

- What is the actual size of the home at 167 Blossom Way
- In accordance with zoning how many units can be placed on the parcel
- Can the property be subdivided
- Is guest parking required
- How many parking spaces would be required for the new dwelling

The Chair stated he did not believe that adequate space existed on the property to add three additional parking spaces. He was not in agreement with the staff report comment that parking was available on the street. He lives in the neighborhood, and due to recent infill there is never adequate street parking. Staff responded that the property was zoned for 3,500 square feet per unit. At this juncture possible future development plans are unknown. A maximum of two units would fit on the lot. The parcel could not meet the 5,000 square foot minimum required for subdivision, but could qualify as a condo conversion. Presently there are two separate situations on the property. In terms of parking, the existing home is non conforming. It has a one car garage. The property owner is entitled to retain that one space. A non conforming use can be expanded, and have a 50% deficiency as it relates to parking. The new proposed home at the rear of the property would require two covered spaces which are outlined in the design for the garage. Guest parking is not a requirement. There is an apron that leads from Blossom Way to the existing one car garage. There is a frontage area of about 40 feet not occupied by the driveway apron. This is parking for two vehicles that anyone can use. The space is not designated guest parking as that is not a requirement but anyone can access it. The proposal at the rear of the property is a two car garage set

back 20 feet from the easement. This will provide two 10 by 20 foot parking spaces in addition to the spaces inside of the two car garage. The uncovered spaces in the rear would be tandem however there is sufficient area to turn and park. Public testimony was opened.

Erica Campisi from the Cherryland Association told the Board she would be addressing the issue of the driveway. Originally the Association did not receive complete information regarding the project prior to the last hearing. Documentation has now been received confirming the easement between the two properties. Mrs. Campisi visited the site and was able to clarify the property layout. Originally the Association requested a separate walkway for safety but after visiting the site Mrs. Campisi did not believe that was possible. She acknowledged that in the 1950's it was not uncommon for multiple properties to share one driveway. Mrs. Dhaliwal said she would forward a landscaping plan to the Association as soon as it was complete.

The architect for the project Mr. Robles told the Board that the size of the existing home was 1,550 square feet. A portion of the existing home will be demolished, leaving 1,280 square feet. Parking will be provided in the back approximately 20 feet from the easement. The apron will be approximately 20 feet from the garage door. This creates an approach to the parking area which will provide two 10 by 20 foot parking spaces. Public testimony was closed.

Staff suggested that Condition, #5 in the staff report be clarified as part of the Board motion. A three foot walkway could be accomplished by creating a flush paved area or by a marked paint line. The Fire Department recommended delineation along the western side of the home. The landscape planter is recommended to delineate the front parking area.

Member Friedman motioned to approve the variance subject to modifications submitted by staff. Member Pexioto seconded the motion. Motion carried 4/0. Member Clark was excused.

4. **EAST BAY MUD, VARIANCE, V-12004** – Application to establish building site status for a parcel without frontage on a county road, in an R-1-B-E (Single Family Residence, 6,000 square foot Minimum Building Site Area, 60 foot Minimum Lot Width, 20 foot Front Yard, 7 foot Side Yard) District, located off of Second Street, unincorporated Fairview area, designated Assessor's Parcel Number: 425-0160-009-00.

Staff gave the Board a history of the property. The parcel was created in 1954 from a larger parcel. The property was subjected to a General Plan conformance review this year by the Planning Commission. It was not considered a building site at that time but was found consistent with the General Plan. The parcel does not have frontage but has access via an easement through intervening parcels and Second Street. East Bay Mud purchased the property in 1954 for future use and utility access. East Bay Mud has determined they do not have a use for it and would like to sell the property as surplus. The topography has hillside, drainage area and tree cover that could constrain development opportunity of the site. Staff noted a correction to the Tentative Finding #3, in the staff report. The report should state, the 20 foot recorded easement, could providing access with further research as to what grading, improvements etc. may be necessary. Granting Building Site Status could lead to someone purchasing the property and pursuing building a single family home or possible subdivision. However topography issues are present.

Board questions were as follows:

- Was the lot originally acquired through sale or eminent domain
- Was it part of the original subdivision split
- Has there been public notice that East Bay Mud intends to change the status of the site



- Are any additional lots for sale in the area
- Would an EIR be required if someone wanted to subdivide the parcel
- Does CEQA apply to the parcel
- If a dwelling were added to the parcel how would that affect zoning
- Is this parcel part of the Ward Creek water shed
- Does the County Creek Moratorium apply to this parcel
- Is the parcel located in close proximity to property owned by H.A.R.D

Staff responded that the parcel was originally part of two 6.3 acre parcels. The parcels were then granted to Hildegard Millage then to Phillip Cuff. The parcel was then sold by deed to East Bay Mud. Alameda County Planning posted notices of public hearing. At this time staff is not aware of future plans that East Bay Mud might have. Environmental review would depend if grading were required for road improvement or to install a building pad. The parcel is not directly adjacent to HARD property, there are intervening properties. Based on the topography referenced in a site map of the area staff inferred that water passing through the property easement, empties into a tributary which flows into Ward Creek. The County Creek Moratorium includes exemptions for a 50 foot setback for single family homes, and infrastructure. Since the future intent or use of the parcel is unknown the Creek Moratorium and/or CEQA may or may not apply. Public testimony was opened.

Mr. Stephen Boeri representing, East Bay Municipal Utility District Real Estate Services told the Board the property was offered to other Public Agencies like the County and H.A.R.D. The property was also offered to the neighbors as well. No responses were received. East Bay Mud has also gone through the General Plan process described earlier by staff. The property was purchased in the mid 1950's for fair market value, possibly \$20,000 thousand dollars. There may have been threat of condemnation however there are no existing files with that specific information. Mr. Boeri offered to provide copies of notices sent to HARD and other County Agencies.

Connie Sutcliffe introduced herself. She is the daughter of the original property owner Phillip Cuff. Ms. Sutcliffe currently lives next to the East Bay Mud Property. She told the Board that shortly after her family moved to the property East Bay Mud required that the family sell them 5 acres or the acreage would be taken by eminent domain. Ms. Sutcliffe showed proof that \$12,000 thousand dollars was paid for the parcel. Ms. Sutcliffe continued and said that since the sale, the property had changed. Grading has drastically changed the depth of the tributary where an access road would go. Her property remains next door. Development would impact her property because a road would have to go directly over the leach field of her septic system. The septic system has undergone extensive upgrades in the past 10 years. The County required that she install drain lines that traverse almost the entire property. Ms. Sutcliffe questioned the viability of the site for development due to topography, consequential grading and the creek tributary. Over the years she has been in contact with East Bay Mud as to the status of the parcel. She was told there were no plans for the property at this time, perhaps next year. She was surprised to receive a card in the mail about the hearing. Member Friedman asked if a preliminary feasibility study had been done by East Bay Mud to determine development potential. Ms. Sutcliffe said not that she was aware of. She understands that when East Bay Mud originally obtained the property they planned to buy water from the City of Hayward. The site was to be a future reservoir which would service the low lands of Hayward. When the plan fell through she believes they forgot about the property for some time. In the past when she called to inquire, no one had any knowledge of it. Apparently the property has now been rediscovered, and there is no longer a use for it. Member Friedman asked if any documentation existed as to the original intent of the use. Ms. Sutcliffe read from the easement agreement her family established with East Bay Mud. The easement was to allow a maintenance road to access the property. The easement also stipulated a water pipe line to the parcel and power. It does not include sewage or any additional utilities. The plan was that when grading was done at the top of the top of the hill the soil was then to be

used to fill the gully. Ms. Sutcliffe confirmed that the tributary through her property does feed into Ward Creek. Member Spalding asked if Ms. Sutcliffe was aware of any other projects in the area. Ms. Sutcliffe believes Paramount Homes is presently developing a lot in the area.

Mr. Don Van Eeghen has lived at the property next to the Sutcliffe's for 23 years. The easement runs directly between their houses. The current environment is quiet. Mr. Van Eeghen hoped the current arrangement would remain. Obtaining easements are difficult. When he wanted to build his home it took 5 ½ years to get approval for the project. He had to deed 5 acres over to H.A.R.D to accomplish his goal. To see that someone is trying to build a home on the proposed building site is a surprise. Mr. Van Eeghen asked the Board to deny the application. Public testimony was closed. Additional Board questions were as follows:

- Is the installation of public roadways exempt from the Creek Moratorium
- What date was the easement on Ms. Sutcliffe's property established
- What is the scope of the easement
- How long has the easement been out of use
- Has the easement expired
- Does the parcel need access to a county road

Staff described the easements for the property. A right of way easement exists for water, electrical, pipes and wiring. There is an easement for ingress and egress for pedestrians, and vehicles. Sewer and other services are not specifically mentioned. A confirmed date was not available. Staff believed it was possibly part of the original subdivision agreement from the 1950's. Member Friedman commented that the original subdivision agreement did not anticipate further development. If building site status were granted for the parcel the scope of the easement would have to be greatly expanded, expanding potential burden, therefore harm to persons, property or public welfare would be expanded. The Chair asked County Counsel if the fact that the easement had not been in use for a period of 64 years be the basis of a legal argument of abandonment. County Counsel said there could be a possible argument. However in this case a written easement does exist. It does not go away with the passage of time. The fact that the easement has not been used in 64 years could touch on an estoppel type argument however in this case there is a written easement. It is still valid. I think the point Members raised about the expansion of the easement is valid. At this time the question is unanswered as East Bay Mud has not provided sufficient evidence as to the future use. CEQA and other questions such as the Creek Moratorium cannot be answered. East Bay Mud may want to give additional testimony as to possible future uses. Public testimony was reopened.

Mr. Stephen Boeri spoke again. The intent of East Bay Mud is to sell the land as surplus as other Public Agencies like the County often do. Public Agencies, the public, including the neighbors were provided an opportunity to bid on the property. East Bay Mud has no intention of going through the planning process of subdividing the property and then building on it. County Counsel, Ray Mc Kay responded if that was the case, East Bay Mud may want to sell the property "as is". Mr. Boeri told the Board the General Plan review consistently said infill development would be promoted. The property is a lot of record and has access. East Bay Mud has a fiduciary responsibility when selling property to get as much as possible on behalf of the rate payers. When the property was originally purchased in 1954 there were no legal requirements to provide frontage onto a County Road, only access to the property. The lot does have access. Public testimony was closed.

The Chair said he had trouble with the fact there was no way to determine if an EIR or Negative Declaration was required since the end use is unknown. Member Spalding agreed that it did not allow the Board to consider potential impacts. Potential unanswered impacts exist, included drainage into the

creek, the presence of the California Whip Snake, and the Red Legged Frog. Thus far there is no site plan. Concerns about the limited easement have not been resolved either. Another unanswered question is without expanded easement access how can utilities be put onto the property, and will the size of the easement handle septic etc. Regarding the Creek Moratorium it cannot be determined that an exemption is appropriate since it has yet to be determined a home can be built.

Member Pexioto asked if a liability issue could arise as a result of the County granting building site status and the owner was not able to build a home on the site. Member Pexioto pointed out that the parcel has a prior established legal status which is still in effect. County Counsel said there could be a liability issue. The current owner is not precluded from selling the property in its current state. Counsel agreed that unanswered questions remained since the end use is unknown.

Member Spalding agreed that the Board would not be able to make a finding relating to CEQA and environmental issues which is required when determining application approval.

The Chair did not believe the applicant could make Finding, #1. The parcel can be sold without building site status.

Member Spalding motioned to deny the application. There were no special circumstances applicable to the property. Granting the application would be a grant of special privilege. To grant the application without requiring an applicant to provide environmental information required of all applicants, would be a grant of special privilege. Granting the application would be detrimental to persons and property in the neighborhood. Based on testimony by the adjoining property owner the easement is adjacent to a septic leach field. Member Friedman seconded the motion. Member Pexioto added that the Board cannot grant a variance solely for the benefit of financial gain. Motion to deny the application was carried 4/0. Member Clark was excused.

5. **RICHARD LOUNSBURY, VARIANCE, V-12005** – Application to allow a three foot side yard where five feet is required by attaching the existing detached garage to the dwelling unit, in an R-1-CSU-RV (Single Family Residence, Secondary Unit, Recreational Vehicle) District, located at 18391 Carlton Avenue, west side, approximately 100 feet north of Dominic Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 804B-0405-007-02.

Staff gave the Board an overview of the project. The dwelling has been in existence for several decades. The applicant proposes retain an existing 3 foot side yard. The detached garage would be attached to the main dwelling as part of remodeling. The property is a total of 8,500 square feet, two hundred feet deep and 51 feet wide at the front of the property. The property narrows to a total of 32 feet at the rear. The rear and side yards are conforming under the current configuration. If this garage were already attached to the main dwelling it would not require a variance, qualifying under a non conforming statute for additions less than 50% of the current square footage. In this case since the garage is currently detached it does not apply. Staff however is recommending approval due to the limited opportunities for expansion on the small parcel. The approval recommendation is subject to removal of the canopy structure on the property. Staff believes the pre-existing small lot and detached garage are a special circumstance.

The Chair recused himself from participating in the decision and voting process. The gavel was then surrendered Vice Chair, Pexioto. Public testimony was opened.

The applicant was present but did not wish to add comments to the staff presentation. Public testimony was closed.

Vice Chair Pexioto commented that he had visited the property. He acknowledged that the lot was very small. It would be difficult to modify the property in any way without a variance. Member Friedman motioned to accept the staff recommendation of approval. Member Spalding seconded the motion. The Chair abstained and did not participate in the decision or vote. Motion to adopt the staff recommendation of approval was carried 3/0/1. Member Clark was excused.

- F. APPROVAL OF MINUTES:** July 12 and July 26, 2006. Minutes for July 12, 2006 and July 26, 2006 were not submitted to the Board for review.
- H. STAFF COMMENTS & CORRESPONDENCE:** Staff made no announcements.
- I. BOARD ANNOUNCEMENTS, COMMENTS & REPORTS:** The Board made no announcements.
- J. ADJOURNMENT:**

There being no further business the Meeting was adjourned at 10:30 p.m.

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**CHRIS BAZAR - SECRETARY**  
**WEST COUNTY BOARD OF ZONING ADJUSTMENTS**