

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
SEPTEMBER 27, 2006
APPROVED, OCTOBER 25, 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: Members Frank Peixoto, Chair; Ron Palmeri; 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 17 people in the audience.

CALL TO ORDER:

The meeting was called to order by the Chair at 1:37 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, May 10 and August 9, 2006; to be continued without discussion to October 11, 2006).
2. **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 and July 27, 2006). **THIS APPLICATION HAS BEEN WITHDRAWN.**
3. **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. (Continued from July 12, 2006; to be continued without discussion to October 25, 2006).

4. **ARNOLDO HERNANDEZ / PETTIT, VARIANCE, V-11978 and SITE DEVELOPMENT REVIEW, S-2051**– Application to allow the conversion of an existing attached one car garage to living space and provision of two uncovered spaces in the rear, in an R-1-CSU-RV (Single Family Residential) District, located at 4421 Alma Avenue, south side, approximately, 770 feet west of Brickell Way, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0820-014-00. (To be continued without discussion to November 8, 2006).
5. **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, July 12, and July 26, 2006; to be continued without discussion to October 25, 2006).
6. **RAYMOND WONG / RAJESHWAR SINGH – CONDITIONAL USE PERMIT, C-8492 and VARIANCE, V-11997** – 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, 26, and August 23, 2006; to be continued without discussion to October 11, 2006).

Staff asked that Variance, V-11982 be continued to November 8, 2006. Member Peixoto asked why C-8419 and V-11982 have been continued for so long. Staff stated that C-8419 had issues getting the property clean and building permit records. Changes have been made from the original Variance application, V-11982. The applicant has requested the continuance. Member Spalding wanted to know why Conditional Use Permit, C-8441 had been withdrawn. Staff stated that they are an older couple and did not want to go through the application process. Member Spalding motioned to accept the Consent Calendar as modified. Member Clark, seconded the motion. Motion carried 5/0.

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, June 28 and July 26, 2006).

Staff recommended approval of the application. Staff reminded the Board that this application had previously come before them but was continued in order to address compliance with prior conditions of approval. Member Friedman questioned as to how staff can assure the Board that the applicant will

comply with the conditions of approval for the current application. Staff stated that the applicant knows what the conditions are and the Board can certainly ask for a one year term of review for the application. Discussion ensued in regards to compliance with conditions of approval and role of Zoning Enforcement on making sure that conditions of approval are met. Member Peixoto expressed his concern with the lack of enforcement by the Planning Department on conditions of approval. Staff admitted that there is a problem with following up on the compliance of conditions.

The Chair asked if the applicant was present. The applicant, Mr. Hoang was present but did not wish to speak. The owner of the property, Mr. Mike Fong stated that he understands the conditions and that the applicant will comply with the conditions of approval. In regards to the food vendors, they are on the property after the business is closed and he has no control over the use of the property after the applicant is gone.

Legal counsel stated that according to Zoning Ordinance, Chapter 17.54.030 the Board can grant the permit for three years and ask for a review of the permit after one year. Member Peixoto stated that if the applicant was asked to pay another \$1,000 for the review period that most applicants would think twice about non-compliance with the conditions of approval. Member Spalding disagreed and said that the \$1,000 could be a hardship for the applicant.

The Chair stated that the board has four options:

- a. Grant the permit as it reads;
- b. Limit the permit to one year, and the applicant will have to reapply and pay the additional fee for a new permit;
- c. Grant the permit for three years with a review period of one year; or
- d. Deny the application

Member Spalding motioned to adopt staff recommendation for a three year permit to expire on September 27, 2009 with the following modification. A 16th Condition shall be added. Permit, C-8443 shall return to the Board after a period of one year to review conditions of approval, and allow the Board the option to modify or add conditions. Member Clark seconded. Motion to approve the application carried 5/0

2. **ABDUL NOOR MAYER, CONDITIONAL USE PERMIT, C-8490** – Application to remodel an existing service station by replacing the pump island canopy and business signage; to renew a Conditional Use Permit ; and to allow the sale of alcohol, in a C-1 (Retail Business) District, at 18501 Hesperian Boulevard, west side corner south of Bockman Road, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0085-003-03. (Continued from September 13, 2006).

Staff reviewed the application. The recommendation was approval for the canopy and signage. However staff recommended denial for portion of the application to allow the sale of alcohol. The San Lorenzo Homeowner's Association requested denial of alcohol sales. Member Peixoto asked for clarification on contradicting statements in the staff report. Page 6, states that there are no alcohol outlets nearby and page 2 states there are alcohol outlets in the vicinity of the property. Staff clarified the statement on page 2 was correct. The Chair referred to the finding portion of the staff report pertaining to the Alcohol Outlet where it reads "Is the use required by public need". He believed the answer should be no. Staff agreed. Member Friedman asked about the business selling alcohol without a permit. Staff stated the prior owner had been selling alcohol for a long period of time. The former property owner said they had obtained a license from ABC but never obtained a use permit from Planning. Normally ABC sends a referral before giving the alcohol license. The Chair pointed out that the conditional use permit expired nine years ago. Member Clark asked if the Sheriff's Office responded to the referral of this application.

Staff responded no.

Mr. Wes Clark, representing the applicant, stated that the applicant has a license to sell alcohol. When he purchased the property two years ago, it did not have a conditional use permit. The applicant was not aware of the requirement until he applied for the remodeling and upgrading permit. There is also the possibility that the prior use permit was under the name of Phillips Conoco. He would like to continue with the remodeling and upgrading project so he can get a reimbursement of \$75,000 from the gas company if the project is complete by the end of the year. Member Friedman asked if alcohol is still being sold. Mr. Clark confirmed that it was not but then stated inventory had been removed from the shelves to be returned to the vendor. The alcohol license expires in June. Member Spalding asked if the applicant objected to, approval of the cup without the portion allowing the sale of alcohol.

Mr. Richard Hancocks wanted to bring to the Board's attention that according the ordinance, sales of alcohol at a service station is prohibited. He did not understand how this project got this far when the County ordinance clearly states that it is a prohibited use. The Chair pointed out that the report at bottom of page 5, states that a State law preempts the County Ordinance.

Akela Kade, Program Manager from Commpre, stated that the alcohol license expires in June of 2007, and that the applicant can continue selling alcohol until that date. She wanted to clarify that despite the denial of the applicant saying that they are no longer selling alcohol, she was able to buy three different alcoholic beverages on September 13th, and on the 26th without having to show any ID. She reiterated that there are other places close by like the 7-11 store which sells alcoholic beverages. This gas station is close to a park and a church. In addition, she pointed out that no other gas stations in the area sell alcohol. She closed and stated that Commpre supports the denial of the application.

Mr. Mayer, owner of the station, addressed the Board and stated that he was not aware that the station needed a cup to operate, and that he still has alcohol on the premises. He has notified all vendors that he will no longer be purchasing alcohol for re-sale. He has no objection to the Board's recommendation of approving the cup for the remodeling and voluntarily withdrew the portion of the cup to sell alcohol.

Member Spalding motioned to adopt the staff's recommendation to "remodel a service station". The portion of the application for an alcohol outlet shall be deleted. A 16th condition will be added requiring the County to contact and notify ABC of the cup condition of prohibiting alcohol sales on the premises. Member Friedman seconded. Motion to approve the application as modified was carried 5/0

Member Peixoto asked if there is a conditional use permit for the Panoys Church. Staff added that the church existed prior to the Zoning Ordinance. Member Peixoto asked staff to check the status of the use permit for the nearby church.

The Board took a five minute recess.

- 3. ASHOKEE KERR, CONDITIONAL USE PERMIT, C-8519 and VARIANCE, V-12033** – Application to allow expansion of a non conforming church (reduced setbacks and parking) by adding a 223 square foot addition, providing restrooms compliant with Americans with Disabilities Act guidelines, in an R-2-B-E (Two Family Residence, 8,750 square foot Minimum Building Site Area) District, located at 15602 Maubert Avenue, northeast side, approximately 50 feet southeast of Mono Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0046-013-00.

The staff recommendation was approval. Member Peixoto inquired about the facilities that are attached

to the hall, and if they will be demolished. He also inquired if the reason this is being called an addition is because it is separated by the 4½ foot space. Staff responded yes. The Chair questioned if the property is located in Cherryland or Ashland. Staff confirmed that the staff's report erroneously described it as being located in Cherryland. It should be Ashland.

Mr. Ashokee Kerr, speaking on behalf of the owner, stated that he has no problem with staff's recommendation and would answer any questions of Board Members. Member Clark asked if there are any future plans to widen the driveway. Mr. Kerr stated that it is not possible to widen the driveway due to the proximity of the property line.

Member Peixoto recommended approval of the application per staff's recommendation. The permit, shall expire on September 13, 2016. Member Friedman seconded the motion. Motion carried 5/0.

4. **SAMUEL HERNANDEZ, VARIANCE, V-12024** – Application to allow: 1) a nine foot rear yard where 20 feet is required; and 2) a three foot, three inch side yard where seven feet is required with the conversion of a storage building into a dwelling in an R-S-SU (Suburban Residence, Secondary Dwelling Unit) District, located at 566 Cherry Way, north side, approximately 400 feet east of Haviland Avenue, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Number: 429-0019-015-00.

Staff presented the staff report. The recommendation was approval. Member Spalding noted that the Cherryland Association recommended denial. She requested to see a copy of the letter to review the reasons for the denial recommendation. Staff said the denial is based on the lack of setbacks. Member Peixoto did not understand how tentative findings could be made for a structure which was a storage shed and subsequently converted illegally into a living unit. By law the special circumstances have to be related to the property not the dwelling. How did staff come up with a come up with special circumstance when it was changed into a living unit by an illegal conversion? Staff explained that the reasoning for the special circumstance is that it was an existing structure built in 1950 with a permit. The applicant believed that since permits were obtained prior they could convert the structure without having to demolish it. Member Spalding expressed concern about the storage structure being converted into a dwelling unit in 2006 without building permits. The Chair stated that he agreed with the Vice-Chair's concerns in regards to the special circumstance, being the storage structure was made into a dwelling unit. Finding #2 – Will the granting of the application constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone? The Chair asked how many other properties in the vicinity had storage sheds converted to dwelling units. Staff answered that they did not know. The Chair asked how many are in the pipeline. Staff answered none. Member Spalding asked if the R-S Zoning allows for a second unit on the property. Staff answered that it allows for two units, 5,000 square feet per unit. Member Friedman stated that illegally converting a storage unit into a living structure without permits, and then awarding the applicant with a variance is just rewarding bad behavior. Staff pointed out that there is adequate open space between units and the buildings next to this property are far enough from the applicant's property. Member Spalding asked if these type of projects pay all the fees related to new buildings. Staff confirmed they did. Public testimony was opened.

The applicant, Samuel Hernandez, confirmed he was the property owner. He wanted to work with the Board and explain why he converted the space into a living unit. He has been working with Richard Tarbell and Lora Hogan, and they are aware of the project. He will agree with any decision the Board makes. He travels a lot and there is nobody that can take care of my children. His sister in law now lives in the unit to help with the children. Other lots in the area are smaller, and have three homes. The original structure was built in 1950 and in 1999 it came down due to the lack of a foundation. It was re-built with permits in 2000. In 2006 he converted it into a living unit. Richard Tarbell told him that he could build a second dwelling larger in size but that is not what he prefers to do. He would like to use the current unit

as a place for his children.

Member Spalding asked the size of the existing residence and the converted dwelling. The applicant said the main home is approximately 1,800 square foot. The unit where his sister in law lives is 900 square feet but it has a two car garage. He also referred to a statement signed by all of his neighbors, confirming they do not object to the project. The applicant shared before and after photos of the converted garage.

The Chair asked that when he tore down the old structure and he built the new structure, was it his intent to have people living in it. The applicant said that the structure fell and he had no intentions of having people living in it. Yes it had a bathroom but no shower. Originally it also had gas, electrical and sewer. Public testimony was closed.

Member Peixoto stated that according to the testimony the structure was built with permits for a workshop. Staff said that a detached accessory structure can have gas, electrical, sewer, and a half bath. However the size of the bathroom is limited. Member Peixoto said that the property is well kept. The Chair said that making the storage shed into a special circumstance is bothersome. Tentative Finding #2 should show that granting the application would be special privilege. There was example of the same thing on Meekland Avenue where the owner started converting storage into a unit. This is an illegal conversion.

Member Spalding stated that as a storage shed the setbacks are appropriate, but not as a living unit. Member Peixoto said that the converting this unit does not create a special circumstance. Member Spalding asked if the building were moved, could it meet the setback requirements.

Member Friedman stated that he can't make the findings. Granting the application would set a precedence for similar properties in the area. Member Friedman moved to deny the application. Member Peixoto seconded the motion. There is an option to move this unit and it would meet all the setbacks. Member Spalding asked if this would be physically possible. Motion carried 4/1. Member Spalding did not vote in favor of denial based on the absence of additional information as to the possibility or the requirements necessary to move the structure.

5. **FRANK CISNEROS, VARIANCE, V-12025** – Application to retain an existing six foot high wooden fence where four feet is the maximum allowed in an R-1 (Single Family Residence) District, located at 22635 Bayview Avenue, west side, approximately 220 feet south of Jacobs Street, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 417-0299-030-00.

Staff presented the staff report and recommended denial of the application. The fence has been installed very recently. Member Spalding said she was familiar with the area and confirmed the lot was vacant. The Fairview Community Club asked that it be approved for one year, and consequently bring it down to a height of four foot. The Chair asked if that request could be met. County Counsel said that a variance runs with the land. It can allow under special circumstances, be allowed for a limited term under Ordinance 17.54.110.

The Chair asked if the entire front section of the fence was six feet in height. Member Spalding stated that the property owns the adjacent property as well. Could this property be viewed as a side yard? Staff said no because they are separate lots. If combined they would still be required to have a four foot fence. Public testimony was opened.

The applicant, Frank Cisneros, told the Board that the lot was vacant. They are having problems with

vandalism and trash being dumped in the lot. He would not mind a variance that expired in one year. He hopes he can retain the current height, because it keeps vandalism out of the property. Mr. Cisneros confirmed he also owed the adjacent lot.

Member Spalding stated that the neighbor brought up the fact of visibility for the lot. The four foot height restriction may not really affect sight, distance issues. Member Friedman asked the applicant if he would be adverse to a reduced fence height of 4 feet at the section that adjoins the neighbor.

Mr. Tony Perez, said he had lived on the neighboring property and has had no issues with visibility. The fence was there before but at a height of four foot high there was a lot of vandalism.

Alicia Cisneros, daughter of the applicant, confirmed that vandalism and litter was constant. People knocked the previous fence down and entered the property.

Agnes Lorens, submitted a speaker card that stated the fence is a side fence, and has enhanced the appearance of the neighborhood. Public testimony was closed.

The Chair asked if there is anything in the ordinance that allows for temporary fences. I have problems making findings for this variance. Is it possible to make this a cup while it is undeveloped? Member Friedman asked if there is an exemption for a future project. Staff said regarding temporary construction type fencing in the Building Code there is an exemption for a higher fence, but nothing in the Zoning Ordinance for permanent fencing. County Counsel said he was not sure if it could be switched to a cup. County Counsel said that this application could fall under special circumstances. The Board could grant the variance for a period of time because vandalism caused a nuisance to the neighborhood. The variance does run with the land, but it can be termed out. If the conditions have not changed you could extend the variance for a longer period of time. A condition can be added that if the property is developed the variance cannot be open ended.

Member Spalding moved to grant the application because the six foot fence protects the property from vandalism. The application will not be detrimental to the neighbors. This variance is limited to the term of three years or development of the property, whichever is first. Member Peixoto seconded. Motion passed 5/0.

APPROVAL OF MINUTES: Approval of the Minutes of September 13, 2006 were continued September 27, 2006 Meeting.

STAFF COMMENTS & CORRESPONDENCE: No comments

CHAIR'S REPORT: None

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: County Counsel talked about cars being stored on a parcel, located on Meekland Avenue. Thus far he has discovered the use pre-existed the Zoning Ordinance. Counsel suggested staff approach the owner with concerns regarding the condition of the property. Hopefully in the interest of being a good neighbor the owner will be amiable to some general clean up. In the interim County Counsel will do more research and report back.

ADJOURNMENT:

There being no further business, the hearing adjourned at 4:30 p.m.

CHRIS BAZAR - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS